

## The Importance of Taking the Expert's Opinion

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### Abstract

*This study aimed to get acquainted with the importance of taking the expert's statement of ijthab, as the correct legal ruling for any of disasters comes only with its understanding, conception, and realization of its frame in a correct and accurate way. Therefore, no fatwa can be valid, and no judgment can be established without a conception of the reality and the essence of the emerging disaster. This is not possible without referring to the experts and their opinions in these disasters when the scholars are unable to reach their truth, essences, and perception. The researcher followed the comparative analytical approach to his suitability of the nature of the study, and the most prominent results of the study were that the expert's opinion is extremely important in the fatwa of the Mufti and the judge's judgment, and neither of them can dispense with the expert and his clarifications, because his opinion contributes to controlling individual and collective fatwas and avoids disturbance, shortcomings and chaos, and leads to provide an accurate and complete depiction of the reality for the mufti and judge before they take the correct legal judgment in these disasters and developments which are in their hands, which fulfills the purposes of the street and takes into account the implications of this judgment in the reality of the life of the concerned, because the judgment on something is a branch of its perception and that the assistance and the referring to the experts in the disasters and developments; will assist and enable the mufti and the judge to attain responsibility for these issues, which removes confusion, concealment and ambiguity in its subdivisions, and their depiction of facts related to their specialty which are awaiting the legal judgment of both, and that the scholar- whether it is an individual or a group of scholars (institutional collective ijthab) - before taking these opinions issued by the people of experience, must set his sights in mind a set of controls that control and regulate the use of experts' opinions. From here, the urgent need appears, and the great role that the expert plays and his expertise and techniques play in controlling the fatwa or judicial rulings to keep him away from shortcomings, and brings him to the optimum intent, which is reaching of the right which pleasing to God - Mighty and Glorious - and His prophet, our master Muhammad - Peace Be Upon Him-.*

**Keywords:** *Experts, Ijthab, Collective Ijthab, Islamic Judgment, The Judge*

## INTRODUCTION

Praise be to God, Lord of the worlds, we seek his help and his forgiveness, he ordered with justice and charity and exalted from injustice, obscenity and tyranny, he knows every things big and small, great and little before they are bean, wise in all that has been arranged, spent, destiny and achieve, no reviewer for his rule, glory be to him, and he is swift at reckoning, prayers and peace be upon the noblest of the prophets and messengers, our Prophet Muhammad And to all his family and companions, and now:

One of the most important entrances for seeking legal judgment in the science of the principles of jurisprudence is ijthab, and some fundamentalists in jurisprudence counted it as one of the four chapters that make up this science, as it was given great attention and care by theorists and scholars of this art, so it was found that ijthab is a difficult and complex path It is dangerous and it is not a right that is permitted for the general public, but only the elite scholars who have fulfilled its conditions and completed its requirements.

And given the great concern of Islamic law to the judiciary because it is considered one of the most ancient and important jobs that work to justice among the people in the Islamic state, as the judge adheres to what was stated in the provisions of the Qur'an and the Sunnah in issuing judgments and is attached to them by measurement and consensus, in addition to the use of other means of evidence represented by acknowledgment and testimony, and If there is no text for the ruling, the legislator has left the judge with the possibility of ijthab, and the judges use the expert's opinion in documenting cases and upholding the rulings for several reasons, the most important of which are the evolving and diversified aspects of crimes in the modern era, and some provisions included technical limitations and new provisions that he did not know about before, the judge had to rule them lest the conditions of the people and their cases pending remain.

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In view of the role played by the expert in the process of issuing judgments and legal fatwas, the importance of research emerged in the importance of taking the expert's opinion in ijtiḥād.

## **THE STUDY PROBLEM**

The process of ijtiḥād is considered as a difficult and complex process that needs to accurately understand the fact and visualize all the facts and dimensions related to it. Therefore, the scholar cannot absolve himself of his total ijtiḥād except through seeking the assistance of the people of experience and specialization in matters and issues related to their specialization, and given the nature of the modern era and his contribution to the many catastrophes related to knowledge and arts. Because of the wide spread of advanced technical means and the dependence of people on them in most affairs of their lives as groups or individuals, therefore most of these sciences require special perceptions and properties that can only be provided by experienced individuals who spent most of their time studying this sciences, scrutiny and delve deeper into their subjects.

And depending on what was mentioned previously, there are many reasons that made the process of taking the expert's opinion an important process, because there are weaknesses of some judges and muftis in specific types of cases that require special expertise and deep knowledge in matters related to a specific case, as the cases are no longer based on a certain specialty or a specific way, and this is due to the expansion of societies and their openness to the world, which led to the transmission of knowledge and its diversity, changing the ideas and trends of individuals and the multiplicity of methods and ways of crime and its essence, in addition to the large number of inquiries about religious subjects that were not mentioned in clear texts in the Qur'an and Sunnah and as a result of that, the problem of the study revolves around the following main question:

"What is the importance of taking into account the expert's opinion in ijtiḥād?"

The following sub-questions emerges from the main question:

What is the significance of the expert's opinion in individual ijtiḥād and institutional collective ijtiḥād?

Is there a need for the scholar to take the expert's opinion in the two fields of ijtiḥād: advisory and judiciary?

What is the impact of the expert's opinion on the difference of jurists?

## **THE STUDY OBJECTIVES**

The main objective of the study revolves around the importance of taking the expert's opinion of ijtiḥād through the following points:

Discovering of the importance of the expert's opinion in individual and institutional collective ijtiḥād.

Discovering the need for a scholar to take the expert's opinion in the fields of ijtiḥād: the advisory opinion and the judiciary.

Discovering the impact of the expert's opinion on the difference of jurists.

## **THE STUDY IMPORTANCE**

The importance of this study lies in the importance of the topic that it dealt with, which is the importance of taking the expert's opinion about ijtiḥād through the following points:

The possibility of benefiting from the results of this study to show the great role played by the expert and his expertise and techniques in controlling the fatwa or judicial rulings in order to keep them away from shortcomings, and to reach the intended purpose.

The possibility of using the results of this study to show the importance of the expert's opinion on the Mufti's fatwa and the judge's judgment.

Lack of recent studies that dealt with the importance of taking the expert's opinion of ijtiḥād, so this study will help enrich the content of Arab libraries.

## THE PREVIOUS STUDIES

Wael Al-Najjar conducted a study titled "The expert's opinion and its impact on compensation for damages in contemporary financial transactions." The study aimed to reveal the impact of expert's opinion on matters related to compensation for damage resulting from contemporary financial transactions, and the researcher combined the rooting approach and the comparative analytical approach, because of their suitability of the nature of the study. The most prominent results of the study were that the expert is an individual with a high degree of learning and knowledge of one of the arts, to back to him and seeking his assistance in a specific case at the request of the judge, and that the seeking of the assistance of an expert in any of the technical arts is one of the most important references for the judge due to the multiplicity and expansion of the technological, industrial and commercial activities, conflict resolution and to decide on the issues.

Abdul Karim Al-Ruwaili conducted a study entitled "Civil Experience - A Comparative Analytical Study" aimed at touching on the subject of experience in civil subjects through a comparison between Kuwaiti and Egyptian law and some international legislation, and the researcher followed the comparative analytical approach, and the most prominent results of the study were that the Qatari legislator He was successful in setting up an independent law to regulate the work of experience, and authorizing the taking of expert's opinion based on an order and ruling by the judicial authorities or other bodies, establishing laws specific to the conditions for appointing experts and included that the number of years of experience exceed 10 years since graduation and the possibility of appointing experts from other nationalities.

In another study conducted by Ahmed Al-Shaiban entitled "Judicial Experience Procedures and its Role in Evidence", the study aimed to address the expert who is used in the courts and explain his important role in resolving the issues that need his technical expertise before issuing judgments, and the researcher followed the descriptive approach for its suitability of the nature of the study. The most prominent results of the study were that the expert's possession of practical and scientific expertise and his personality have a great role and importance in deciding issues that need experience, and the expert is appointed as a temporary assistant to the judge to consider issues that need the knowledgeable and experience in the practical and scientific field, and that the expert's opinion is not binding on the judge judgment and it is not permissible for a judge to divide the experience, so he either takes it as a whole or dispenses with it altogether.

Ibrahim Al-Qatawneh conducted a study entitled "The Penal Responsibility of the Judicial expert in the scope of his experience: a comparative study - Jordan and the United Arab Emirates" which aimed to reveal the extent of the responsibility of the judicial expert in the tasks required of him from the penal side in the group of occurred crimes, and the researcher followed the comparative analytical method, and the most important results of the study were the seriousness of the judicial expert's work and the importance of his role in crimes and committed cases, which became a necessity that requires the creation of integrated and special legislation for all these issues, and that the penal responsibility of the judge includes commercial, civil and penal cases, and the necessity to find an inclusive and comprehensive definition of the concept of expert and its types and conditions.

Muhammad Al-Rehaili prepared a study titled "The experience in Penal Matters: A Comparison between Jordanian and Kuwaiti Legislation" aimed at identifying the status of experience in the stage of reasoning and the stages of public lawsuit and researching the legal provisions regulating the experience, whether the provisions in the laws of evidence in commercial and civil matters or the penal laws, where the researcher followed the comparative analytical method, and the most important results of the study were that experience is a method of penal evidence used by the investigator or the court at the request of the litigants or on their own, and that the Jordanian legislator was successful in organizing the experience unlike the Kuwaiti legislator who did not was good at it.

And Ahmed Al-Dhwaihi prepared a study entitled "The use of specialists in ijthad" that aimed to shed light on the fundamental aspects of ijthad, and the researcher followed the analytical approach, and the most prominent results of the study were that each of Sunnah, the Book and the work of the Companions indicated the legitimacy of relying on the opinions of specialists and referring to them in ijthad matters related to their science, and experience and skill are the two most important conditions that must be met in the expert to seek

assistance, and from the viewpoint of scholars, that the choice of the expert is made by the celebrity of his knowledge among people or by considering him as a reference in his art by them, or a reliable scientific authority, or with a certificate of two justices.

**The first requirement: the importance of "expert's opinion" in individual and institutional collective ijthihad.**

The process of ijthihad with its two types (individual and institutional collective), to reach the goal of perfection and accuracy requires three things - the scholar should be careful and aware of them and work with them - namely: perception and understanding, then classification and adaptation, then application and implementation, and display it to the purposes of Sharia, so that if it happened a defect in one of them resulted in a defect in the result.

Based on the three points mentioned above, we find that the conceptualize of disaster and its understanding is the most important axis, where the rest of the axes of adaptation and application are based on it.

Ibn al-Qayyim said: "What is plagued by this nation is the lack of understanding of the Sharia, the lack of understanding of reality and the lack of understanding of how to apply one over the other." Understanding is a great origin in the Sharia, so the rule of "judgment on something is a part of its conception," Almighty said: "We made Solomon to understand it, and to both We gave judgment and knowledge. And with David We subjected the mountains and birds to exalt (Allah). All this We have done."

Al-Shanqeeti said in his book (Kawthar al-Maani al-Dharari): "Judging something - in refusal and acceptance - is a branch of what is acceptable." This means that before you judge something by refusal, invalidity, and corruption, or by acceptance, validity, and legality, you must conceive of its truth, its essence, and what it is, because in the event of incomprehension, you will judge with ignorance and injustice.

Therefore, it was obligatory for the scholar, whether he is an individual or a group of scholars (institutional collective ijthihad) to conceived and understood the disaster accurately, in order to be able to judge it correctly, that would achieve the purposes of the street and take into account the implications of this judgment in the reality of the life of the concerned, because judgment on something is a part of its conception.

And if the conception of disaster had such importance and consideration, the mujtahid must take into account the mechanisms and ways of achieving this perception, the most important of which is the necessity of reference and seeking the assistance of experts and specialists, because it is "what is not the duty will complete without it, it is a duty", in order for them to contribute In clarifying and revealing ambiguity and confusion in the events and developments in various fields.

If the disaster is related to new economic transactions and contemporary contracts, it is necessary for the scholars to refer to prominent experts in the economic field to inquire, reveal ambiguity and clarify what is hidden from them in this aspect. All this with the aim of completing the understanding, and accurate and correct perception from the people of experience in this disaster that awaits the legal ruling therein. And as it was said: "Understanding the disaster is the half of the ijthihad".

The reality testifies that the expert's opinion is extremely important (especially in our time) in contributing to controlling individual and collective fatwas and avoiding disturbance and shortcomings.

This importance is highlighted by the following points:

Specialization in various fields of life has become a prominent feature of this era, so the use of the opinion of experts specializing in the disaster to make ijthihad about it, leads to knowledge and methodological integration in the issue that made ijthihad about.

The knowledge and scientific revolution in the various fields left behind many inventions, discoveries and achievements, which have become an integral part of our lives, and of course it was not for our ancestors; therefore, this knowledge revolution resulted in a lot of disasters concerning those inventions and discoveries, which have become the subject of inquiry and a question among the people, so the issuance of the fatwa and the judiciary in these and developments, whether it is an individual or collective fatwa without recourse and the

use of the opinions of experts and specialists in it; will inevitably lead to error and shortcomings in these fatwas and rulings, which is due to its negative effects on the individual and society, and loses the advisory and judiciary institution their dignity in front of people.

There is no doubt that the collective institutional *ijtihād* (juristic councils) in this aspect is of the utmost importance and a major advantage, in which it is distinguished from individual *ijtihād*, because of the cross-fertilization of ideas and the benefit from all opinions, and the availability of advisory bodies and experts in various fields in these juristic groups often supported by The state and its various institutions.

Al-Sawa says: "And I think that the best ways to do this (facing the contemporary disasters and developments) is the most effective and the closest to the truth and the right, the method of collective *ijtihād*, in which different legal and scientific competencies meet".

Speaking about emerging issues and the difficulty of looking at them, Muhammad Othman Shbeir says: "This calls for the use of specialists in every science on which this issue is based, because it is difficult for the individual scholar to understand all the science and accurate vision of all aspects that the issues are required. That is why the idea of establishing juristic councils in this era came as an organized way to the idea of collective *ijtihād*, as it is better able to explain the legal rulings of these issues.

**The second requirement: the need of scholar to take the expert's statement in the areas of *ijtihād*: advisory opinion and the judiciary.**

The expert's statement and clarification for developments and disasters is extremely important in the fatwa of the Mufti and the judge's judgment, and neither of them can dispense with the expert and his clarifications, and his depiction of facts related to his specialty, which await the legal judgment of both.

What is evidenced by that is what their works and books contain, as there is hardly a door devoted to jurisprudence, except in which it is mentioned by referring to the question of the people of experience and knowledge of the matters.

The same applies to works that are concerned with the judiciary and judges, so we find this field full of assistance from the people of experience, by including them under the name of the judge's aides, or under the means of evidence, and also detailed in the conditions of the expert and his rights and responsibilities, and were it not for the need of the judiciary and judges for the people of experience, this interest in taxonomy and authorship would not have been in this aspect.

For this reason, we find in the books of jurists and judges the many examples in which the mufti and the judge used the sayings of the people of experience, and I mention some indicative models that confirm the return of the scholar (mufti or judge) to the sayings of the opinion of experience:

Al-Nawawi stated in *Rawdat Al-Talebin*: "If a disease was created, and it is not known whether it is fearful or not, so there is a need to consult to the people of experience, science and medicine".

Al-Shirazi mentioned in the polite: "The issue of burying the dead in an ancient grave, they said: A dead is not buried in a grave in which another is dead until the body of the first dead is worn out, and that is due to knowledge of the people of experience about the nature of the earth ..."

Ibn Qudamah said: "If it differs in describing the defects that are required for annulment in marriage, is it a defect that is binding for the annulment or not, then refer it to the people of jurisdiction".

As we mentioned earlier, the mufti or judge cannot succeed in fatwa and judging truth and justice, except after they understand the reality and fact of these issues and disasters, and remove ambiguity, concealment and confusion from the details.

Therefore, the expert's statement of developments and jurisprudence and doctrine debates is extremely important in depicting the reality accurately and completely for the Mufti and the judge before they giving the correct legal ruling in these debates and developments that are in their hands, so we find Ibn Taymiyyah permitting the sale of the lands of expatriates, which has apparent evidence for them, by referring to the righteous who are experienced in it.

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Accordingly, seeking the assistance and referral of the expert in the disasters and developments; assists and enables the mufti and the judge to achieve the matters related to these issues, Shatby says: "Ijtihad may be related to achieving the goals, so it does not lack knowledge of the purposes of the street, and it also lacks knowledge of Arabic.... Rather, it lacks knowledge of what is known only to him in terms of what I meant to know about it.

What is meant by Al-Shatby's previous statement is that the scholar does not need to be aware of all kinds of knowledge and specialization (even if the existing of them, is perfect in the scholar), but it is sufficient for him to do so to know what he has missed and hidden from him in the events and developments, using the assistance and referring to the people of experience in each disaster, so that after the perception of the issue or the disaster a correct and accurate conception to achieve the right function, in order for him to deliver a legal ruling for this issue considering the purposes of legislation and the implications of this ruling in the reality of the concerned.

And what is known among the scholars, and their word agreed in this field, is the extent of the need to refer to and seek assistance from the people of expertise in clarifying, explaining and revealing the ambiguity and details of the disasters that descend in the juristic and judicial arena, but that this matter has become very necessary due to the large number of these disasters and developments in our jurisprudential and judicial reality contemporary, so that the mufti and judge facing the accumulation of these disasters have become unable to accommodate them because of their diversity and branching in various fields of life.

Speaking about the impossibility of wastewater and impure things, Ali Al-Sawa says: "People may ask about the rule of law regarding the extent of utilizing wastewater and feed mixes that some impurity enters in its manufacture ... The opinion was to waiting in the answer until we gather to solve this problem the most number of scholars, First: A team of scientists who specialize in knowing how to manufacture wastewater, feed mixtures, medicine and food, their task is to depict the issue as it is in reality, and to describe the ingredients in a realistic scientific description. And second: a team of scholars with a legal knowledge, their task is to look in the matter after its conception, then devising the appropriate legal ruling and apply it on the incident".

whoever check in this description, will believes that these speech is accurate and correct, because when science and Sharia were crossed, the difficulties were overcome, and the dilemmas facing the whole nation were broken, and God's law was ruled in the reality of life, and all humanity benefited from the goodness of this glorious and glorious law, and people lived in It contained a dignified and cherished life in which rights are preserved, souls are saved, bloods are injected, and injustice and tyranny are lifted.

Rather, some contemporaries went to the issue of the expatriates, for example, that the judge must return in our days in light of the technical revolution in the means of research and communication, to the people of experience and their sayings, and use the means and techniques in their hands to reach the correct legal ruling in the issue of the expatriates, this ruling that achieves Legitimate intentions, and takes into account the interests of people in the urgent and future.

Moamen Shweidah says: "Rather, ijtihad must be taken on this issue (the issue of the expatriate) in a way that is commensurate with our contemporary reality, and the developments that have achieved, and discoveries that will change the legal rulings, and renew previous jurisprudence .... And if we say: Modern means of communication are the same What is required in our time, or is something permissible at the very least, shows us that the legal and costly ruling for the use of these means is obligatory".

Hence the urgent need appears for us, and the great role played by the "expert" and his expertise and techniques in controlling the fatwa or judicial rulings that he takes away from shortcomings, and brings it to the optimum intent, which is to reach the right that pleases God Almighty-Glorified and His Messenger - Peace be upon him-

**The third requirement: The impact of the "expert's opinion" on the difference of jurists. It has four branches:**

**The first branch: The reality of the juristic difference and its causes.**

The juristic difference is inevitable, because most legal texts were not definitive indications of their meanings, and because the branches did not descend on their rules, but this depended on the consideration and research of the scholars who differ in their mental capabilities with the nature of their creation and composition. It is of human nature, and it cannot usually be disposed of. Almighty said: "Had your Lord willed, He would have made mankind a single nation. But they continue in their differences" Al-Shatby said: "So consider - may God have mercy on you - consider how the agreement became impossible ordinarily".

Al Bayanouni says in his book Scientific Differences: "The wisdom of the street required that the forensic evidence come forth unequivocally and explicitly in the roots of legal issues, and the scientific foundations, in order to ward off the corruption of the difference in them, and the split about them, and that the legal evidence is most likely to be thought in the sub-issues, and the practical branches, to achieve the advantage of realization of opinion and ijihad in it".

This means that the difference, no matter how wide, will not be abhorred as long as its goal is to reach the right, achieve the purposes of Sharia, and as long as it is in areas of possibility, issues of ijihad, and based on the principles and basics established by the wise street.

Al-Zarkashi said: "I know that God did not establish all legal rulings as conclusive evidence, but rather made it presumptive in order to expand on those concerned with it, so that they would not be confined to a single school of thought because the definitive evidence was established on it".

Ibn Taymiyyah also saw that the difference is a mercy, and he explained this by saying: "The Companions were united and agreed upon and if they disagreed in some branches of Sharia, such as purity, prayer, Hajj, divorce, and enjoins, etc., and so their consensus is a conclusive argument, and their struggle is wide mercy".

There are two types of reasons that influence the difference of jurists:

**The first:** It refers to the legislative texts that represent the subject of Ijihad.

**The second:** lies in the person of the scholar. It is we who will talk about it briefly.

This type of reason for the difference is due to the limited capabilities of the jurists and their difference in thinking, and among the most important forms of difference in thinking, the image that relates to the formative nature of the hardworking, and from the most important and most prominent points and factors in the formative nature of the scholar, the difference of scholars to achieve function, as the achievement of functions is a reason for the difference of the jurists at the past and now. Perhaps the jurists agree on a specific ruling, but when applying it to one of the events they differ in the extent to which the meaning of the judgment is achieved in this studied part, they agree on the total rule, and they differ in its application to some parts, and this is what the so-called by fundamentalists to "achieve the function".

So, the experience with the facts and details of things, their understanding, and their perception, correctly by specialists and experts, has become an unavoidable necessity to reach a deep understanding of these disasters, to allow the jurists and scholars at that time to achieve their function correctly and devoid of fallacies, or there are gaps between judgment and reality.

**The second branch: The impact of "the expert's opinion" on the juristic difference in the areas of advisory and judiciary:**

We said earlier, the "expert" function is about depiction, clarifying, and revealing ambiguity, which includes the details and component of disaster (jurisprudence or legal doctrine).

There is no doubt that the correct Shariah ruling for any disaster comes only with its understanding, conceptualization, and realization of its functions in a correct and accurate manner. Therefore no fatwa is valid, and no judiciary can be established without a conception of the reality and the essence of the emerging disaster,

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and this is not possible, except by reference to the people of experience and their sayings in these disasters when the scholars are unable to reach its truth, its essence, and its perception.

From the requirements of what was mentioned above, we find that the expert and his sayings in these developments have a prominent impact on the mufti's or judge's access to the legal judgment.

As a result of that speech, that there are legal rulings in which fatwas are not envisaged or judged, except through expert statements, clarifications, interpretations, and their clarification of them.

Therefore, we find the jurists taking their time to give fatwa on many issues so that the expert's opinion takes its rightful place in it, such as the issue of tayammum for the wounded or the sick, the issue of taking the forbidden medicine for those who did not find a substitute for it, the issue of breaking the fast in Ramadan for the sick or pregnant or suckling mother, and the issue of the impossibility of impure things, as well as we find the judges also taking their time in the judgment and ruling on many issues so that they can know the opinion of the people of experience in the details of these disputes or deductions, such as the issue of identifying defects in sales, the issue of divorce of the expatriate's wife, the question of estimates in wounds and fractures, and the issue of the difference in the value of money in debt and dowries.

According to the foregoing, it becomes clear that the expert's opinion in the fatwa and the judiciary is so important, because it is a mechanism, and a way through which that are the subject of considered disaster are depicted, and that is one of the reasons for the difference of jurists in achieving the functions of these disasters and developments, but rather the difference and variation in the opinions of experts in a matter is considered as one of the most important reasons for the difference of the scholars in the giving the legal ruling in them sometimes, and in others, we find that the statements of experts in the issue or the disaster, may contribute to bridging the gap between the jurists in these developments, and reconcile the divergent opinions, with what it provides of facts and data about because it is not a dispute in the origin of the legitimate ruling, but in its perception and clarify its details, and evidenced by the issue of sighting the new moon of Ramadan and the use of astronomical science.

In order for this speech to take its rightful place and to be understood in its appropriate epistemic context, we must mention that Islamic Sharia includes two types of rulings:

**The first:** Firm provisions that cannot be violated, and without any change, or alteration in terms of times and places, and no place for ijtiḥad in them, such as the provisions of beliefs and pillars of Islam, faculties of Sharia, the fundamental moral virtues, obligatory duties, and prohibiting taboos, and the punishments set by the law on crimes, these provisions has neither change nor alteration, and it is not subject to ijtiḥad.

The second: Those that change according to the necessity of the interest by the changes of time and place, and conditions, norms and customs change, and the development of science, knowledge and technologies in various fields of life, while preserving the principles, rules and purposes of the Shariah, which the scholars have expressed by saying: "The change of rulings by changing times does not deny, and other rules in this context.

The meaning of this speech is that ijtiḥad is renewed in many of the events and developments that accompany developments in various fields of life, and this requires the scholars to search for the most effective experiences, the most accurate information, and the most recent; so that the law and the advisory can keep pace with civilization development and scientific progress, to represent Sharia tolerance, clemency, flexibility, and suitability for every time and place, taking into consideration the legal principles, achieving divine purposes, and observing interests and benefits.

Al-Qarafi says: "The stalemate of movables is a delusion in religion, and ignorance of the purposes of past Islamic scholars and predecessors".

### **The third branch: The controls that the mujtahid should observe when taking the expert's opinion.**

While we acknowledge the importance, and the need to go back and seek the help of the expert in the issues and disasters that the scholar is exposed to (a mufti or a judge), the scholar must, before taking these statements issued by the experts, set his mind in a set of controls that control and regulate the use of the people of



experience, Not all the opinions, or speech issued by them are taken, certain, and correct, and do not accept argument, but there are a number of criteria that a scholar has to abide by when he needs to refer to the sayings of the experts in any disaster or issue, and without these controls perhaps it opens a wide door for sick minds, and bad persons. Among the most important of these controls are the following:

**The first control: that the expert's opinion and his report are not against the legal texts of absolutely proof and significance or the purposes of the legislation:**

If the expert's opinion came to breach the one of basic principles of Sharia law, or break a fixed rule in it, or violates a definite legal text, or contradicts one of the major purposes of the legislation, then his opinion must be neglected, and nullified it whatever it is spread and commonly, because the expert's saying which is violator of the law is a categorical violation that is not considered. As if some say that it is permissible to sell wine for the country's economic interest in attracting tourism, and to allow usury in order to stimulate the economic movement, this talk contradicts and opposes the definitive legal texts in this field, so there is no consideration for this talk regardless of its source or its saying.

**The second criterion: That the expert's opinion be certain or close to the certainty of the disaster subject of ijthihad:**

This control means that the jurists who took some juristic rulings based on what was available to them from the knowledge and experience in their times, but in the event that circumstances changed and the means of knowledge evolved, and the science reached certain definitive or certain results in which suspicions were not, and these results were contrary to what was known from before, the provisions of these provisions are reviewed on the basis of the certainty of the proven results of the scientific statements and their data, in which to achievement of the purposes of the legislation, and taking into account the interest considered in the reality of the life of concerned, because in ignoring these contemporary knowledge, scientific discoveries, and their marginalization from Sharia provisions, damage and difficulty for concerned, and Sharia came to lifting of the damage and the removal of hardship.

There is no evidence for that better than the issue of determining the maximum period of pregnancy for modern scholars, as well as determining the contemporary judge for the period of time during which the wife of the expatriate husband lurks before his death, and the rest of the legal rulings are arranged on the judge's decision in this regard, so it is not reasonable to leave and ignore the scientific data, and the means available technology, and help in revealing the fate of the expatriates; we adhere to the rulings issued by our venerable jurists - these rulings have no conclusive text to control - which in itself was a subject of widespread disagreement between the former scholars, to build on what was in their time of data, and mechanisms of knowledge at that time.

## **STUDY RESULTS AND RECOMMENDATIONS**

The study came out with a set of results, the most important of which are:

The correct legal ruling for any disaster comes only with its understanding, conceptualization, and realization of its function in a correct and accurate manner, so no fatwa is valid, and no judiciary is righteous without visualizing the fact and the essence of the emerging disaster, and this will not achieved, except by reference to the people of experience and their sayings in these disasters when the scholars inability to reach its truth, its essence, and its perception.

And that the expert's statement is extremely important in the fatwa of the Mufti and the judge's judgment, and neither of them can dispense with the expert and his clarifications, and his depiction of facts related to his speciality, which await the legal ruling of both.

And that the expert's opinion contributes to controlling individual and collective fatwas and avoids disturbance, shortcomings and chaos, and leads to an accurate and complete depiction of reality for the Mufti and the judge before they take the right legitimate ruling in these events and developments that are in their hands, thus achieving the purposes of the street and taking into account the implications of this ruling in the reality of the life of the concerned, because judging on something is a branch of its conception.

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And the assistance and back to the expert in the disasters and developments; it helps and enables the Mufti and the judge to achieve the function of these issues, which removes confusion, concealment and ambiguity in its parts.

And that the scholar- whether it is an individual or a group of scholars (institutional collective ijihad) - before considering the statements issued by the people of experience, must take into account the setting out in his eyes a set of controls that control and regulate the use of the people of experience.

And that the great role played by the "expert" and what he has of the experience and techniques in his hands in controlling the fatwa or judicial rulings in order to keep him away from shortcomings, and bring him to the optimal intent; and to achieve the truth which pleasing to God Almighty - and his Messenger - may God bless him and his God and peace be upon him -.

Based on the results, the researcher recommends the following:

Conduct training sessions and programs for new judges on ways to use experts and how to benefit from them.

The use of special laws to develop qualified experts and regulate the process of using them specific to the principles, conditions and controls.

The need for more studies on ijihad and taking expert statements to cope with the disasters and issues related to modern science.

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