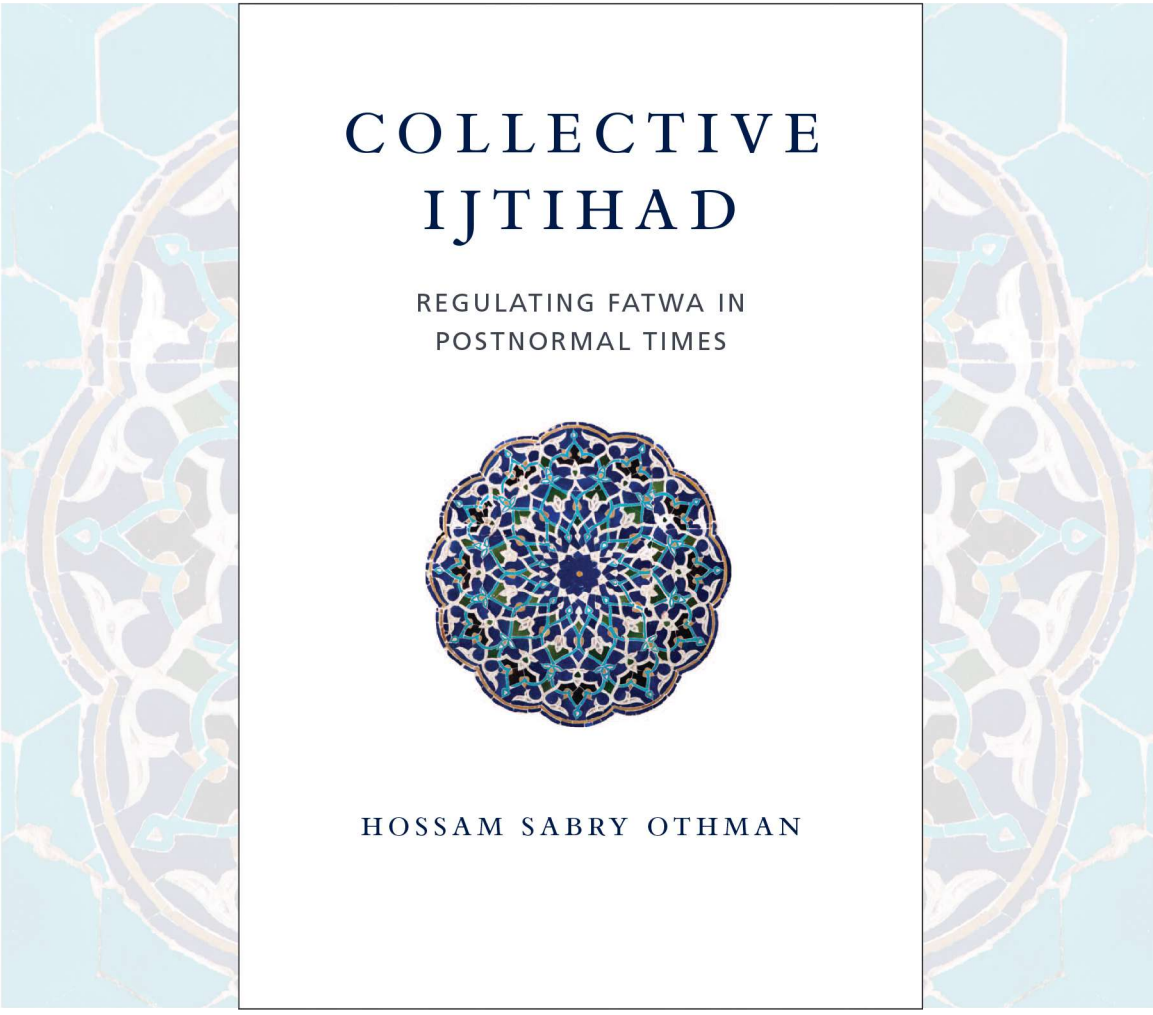
Collective Ijtihad

Regulating Fatwa in Postnormal Times



IIIT Books-In-Brief Series

COLLECTIVE IJTIHAD

Regulating Fatwa in Postnormal Times

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Title: BIB - COLLECTIVE IJTIHAD: REGULATING FATWA IN POSTNORMAL TIMES
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ISBN 979-8-89193-224-1 Paperback
ISBN 979-8-89193-225-8 eBook

Typesetting by Shiraz Khan

Printed in USA

IIIT Books-In-Brief Series

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In light of the chaotic status of contemporary fatwa, the complex nature of the present-day world, the ramifications of the breathtaking advancements in all spheres of life and branches of knowledge which brought about complicated novel issues to be juristically investigated, contemporary ijtihad requires interdisciplinary and multidisciplinary knowledge mostly unattainable by individual scholars. Taking this into consideration, many scholars have voiced their concern and expressed a critical need for regulating the process of producing fatwas especially when they touch highly technical issues born out of the particularities of a very complex modern life. In line with these calls, this book suggests employing the mechanism of collective ijtihad in regulating fatwa issuance. This consultative mode of ijtihad could be a viable alternative to the controversial classical *ijmā'* which may be difficult to materialize in our present-day world.

The work examines the various Islamic organisations, fatwa councils, fatwa committees, academies and other Muslim organisations that have been set up over the decades, outlining some of the debates that have taken place, and fundamentally how each has chosen to framework its own understanding and interpretation of the issues at hand. In doing so it offers a methodology (collective ijtihad) and various proposed solutions to aid jurists and regulate this rapidly out-of-control process in the face of rapidly changing society. The point is to be extremely vigilant and not

betray the Qur'an's spiritual principles and the highest standards set by the Prophet (ṢAAS),* Companions, and early scholars. According to the author internal processes need to be managed today through a strategy employing collective ijtihad, so that Islamic stability is not threatened tomorrow when that evolution and complexity become too unwieldy to handle.

*(ṢAAS) – *Ṣallā Allāhu ʿalayhi wa sallam.* 'May the peace and blessings of God be upon him.' Said whenever the name of the Prophet Muhammad is mentioned.

Abridged Edition of Hossam Sabry Othman's Original
COLLECTIVE IJTIHAD: REGULATING FATWA IN POSTNORMAL TIMES
ISBN hbk: 978-1-64205-876-5
ISBN pbk: 978-1-64205-877-2
E-ISBN: 978-1-64205-878-9
2024

INTRODUCTION

Being a vehicle of reform, renewal and religious guidance, ijtihad seeks to maintain the continuity of the fundamentals of Islam while also keeping pace with the ever-changing realities of societies. This concern for continuity and change characterizes the role ijtihad plays in its association with real life, making the Islamic Shariʿah a living force in society and ensuring its flexibility and applicability to all times and places. Given the accelerated pace of social change and technological advancements with their attendant complexities, contemporary ijtihad has to grapple with very intricate issues born out of the particularities of our modern life. In fulfilling its role of providing religious guidance, it treads a delicate path capitalizing on the inherently fluid and evolutionary nature of Islamic Fiqh, benefiting from the accumulated knowledge of past precedents and contributing to the contemporary juridical discourse. However, in light of the complex nature of the present-day world, the ramifications of the breathtaking advancements in all spheres of life and branches of knowledge and complexity of fresh issues to be juristically discussed, contemporary ijtihad requires interdisciplinary and multidisciplinary knowledge mostly unattainable by individual scholars.

Ijtihad needs to become a collective endeavor that combines the knowledge and contributions not only of the scholars of Shariʿah, but of experts in various disciplines. Together, jurists and experts approach the question in a deliberative mode to ensure a thorough understanding of all aspects of the issue under juristic investigation. As a mechanism of deliberative reasoning, collective ijtihad is hypothetically characterized by having the potential to address intricate technicalities of complex novel issues and expected to be less prone to error in comparison with the individual endeavor. Furthermore, this mode of ijtihad could overcome a lot of problematic issues of individual *iftā'* including the issuance of fatwa by unqualified individuals, the shortcomings of live fatwas, politicization and manipulation of fatwa, and restricting fatwa to extreme leniency or overstrictness.

Chapter One
Conceptual and Historical Framework of Collective Ijtihad

In fact *ijtihad jamāʿī* as a technical term, has no mention in the classical *uṣūl* manuals. However, the idea of collective ijtihad could be easily found in the early practice of ijtihad. Some contemporary scholars and researchers attempted to explain this term. According to them collective ijtihad meant entrusting the mission of examining and deducing rulings to a specific group of scholars, experts and specialists, whether they undertake this mission on the basis of absolute consultation or in a specific council in which they deliberate and consult with each other to reach a common opinion by unanimity or majority. Taking into consideration the classical and modern definitions of ijtihad, collective ijtihad may be defined as: total expenditure of effort by a group of jurisprudents to reach a probable knowledge of a legal ruling based on mutual consultation. Surely, when the group contains as many scholars and experts as possible, the resulting fatwa of such a process will be more reliable.

From the early beginning, the Prophet adopted a consultative approach in dealing with new incidents faced by the Muslim community and was keen to implant this approach in his companions as proven in his teachings and acts. It was reported from ʿAlī b. Abū Ṭālib that he asked the Prophet what should we do upon encountering a new incident where we have no clear commandment? The Prophet replied, "Consult the jurists and worshippers and do not decide individually." This consultation lays the foundation for collective ijtihad. The historical record shows a lot of critical decisions to have been taken on the basis of such consultation. For instance, the incident concerning how the captives taken in the battle of Badr were dealt with clearly reflects a consultative approach in a military issue. Such consultative practice during the lifetime of the Prophet illuminated the Companions when they attempted to find legal rulings for new incidents.

The Companions of the Prophet were careful and scrupulous in examining different incidents, fatwas and legal issues, doing their utmost to determine suitable legal rulings. They would begin with consulting the Qur'an and if they did not find anything in it, they would turn to the Sunnah of the Prophet, and if they did not reach anything here, they would then mutually consult each other and exercise ijtihad. This

collective approach is particularly evidenced in the practice of the Rightly-Guided Caliphs. When Abū Bakr and ʿUmar were faced with a new issue with no direct ruling from the Qur'an or precedent from the Prophet, they would summon the Companions and ask for their opinion. After this, they would pass judgment based either on a consensus or the majority opinion of those present at the time. One of the most prominent demonstrations of the adoption of such a consultative approach in dealing with new incidents appears in the way in which Abū Bakr was nominated as the first Caliph. Another example of the collective ijtihad is ʿUmar's handling of a territory in Iraq known as the land of Sawād. Similarly, ʿUthmān b. ʿAffān adopted the same approach in dealing with legal rulings and judicial issues.

In the aftermath of the murder of ʿUthmān, political division and split intensified among Muslims with the spirit of unity which had hitherto characterized the Muslim community fading away. Moreover, the Companions had already dispersed across Islamic territories, formulating their own methods of reasoning and deducing legal rulings. Against this background, ijtihad tended to generally be a more individual endeavor without any collective consultation process except for a few exceptions during the era of ʿUmar b. ʿAbd al-ʿAzīz and the Umayyad dynasty in Andalusia. Ijtihad in the era of the Tābiʿūn was performed on an individual basis where the earlier practice of convening leading juristic figures to discuss certain juridical issues was no longer common. Historically speaking, collective ijtihad went through two main stages: one in which it thrived during the time of the Companions, and other in the era of decline during the time of the Tābiʿūn and the formative period of Islamic schools of Fiqh. That said, Islamic history occasionally witnessed some attempts to revive this collective form of reasoning before such attempts successfully materialized in the modern age with the establishment of certain academies and ijtihad institutions. Among such attempts is the compilation of *Al-Fatāwā al-ʿĀlamgīriyyah* and *Mecelle*.

Al-Fatāwā al-ʿĀlamgīriyyah is a comprehensive legal text of Ḥanafī fiqh, compiled by a selected board of eminent jurists, muftis and judges who extracted rulings from a wide group of authoritative manuals. A large number of prestigious scholars were employed in the collective effort which united diverse scholars from across various regions of India in a common project to review the existing collection of authorities, weigh their relative authority, decide between contradictory views and select the most applicable rulings. In the same vein, *Mecelle* (Ar.

Majallat al-Aḥkām al-ʿAdlīyah) is an Ottoman legal code promulgated between 1869 and 1876 CE during the *Tanẓīmāt* period. Basically, derived from the Ḥanafī school of law, the *Mecelle* incorporated jurisprudential opinions advanced by the early Ḥanafī jurists. The Ottoman council of ministers decided to commission a work based on Islamic law and entrusted this task to a committee chaired by Aḥmed Cevdet Pasha (d. 1895). The committee of eminent figures with suitable juristic knowledge and technical qualifications convened, studied the classical manuals of Ḥanafī fiqh, scrutinized the different views and chose the ruling considered to be the most appropriate for their time and in harmony with the exigencies of life.

Over the course of compiling it, separate parts were regularly sent to the Ottoman religious establishment and the authoritative jurists to review and confirm the legitimacy of this work as a representative of Islamic legal tradition and the accuracy of its Ḥanafī content. Their feedback was taken into consideration and amendments were processed when necessary. Evidently, the Ottoman *Mecelle* marks an outstanding stage in the development of legal tradition as it represents the earliest attempt by an Islamic state to codify Islamic fiqh and enact it as law of the state.

Both *Al-Fatāwā al-ʿĀlamgīriyyah* and *Mecelle* are envisaged to have inspired jurists of the next generations and had a profound impact in the revival movement that called to codify Islamic law and voiced the necessity for institutionalizing ijtihad. Those calls have rung true and yielded tremendous results in the modern age when Egypt took the lead in this regard through establishment of the Islamic Research Academy in 1961. Shortly thereafter, Saudi Arabia followed suit and established the Islamic Fiqh Council in 1977.

In 1984, another council, the International Islamic Fiqh Academy, was established by the Organization of Islamic Cooperation (OIC) in Jeddah, KSA. From this time onward collective ijtihad has taken an institutional form. It has come to be the principal method of arriving at consultative decisions through the parallel establishment of international Islamic law academies, made up of prominent jurists from various Islamic countries.

In addition to the three academies discussed above, there exist certain other institutions where ijtihad is exercised by scholars of Shariʿah as well as by experts of other disciplines in a consultative process. Such

institutions include the Islamic Fiqh Academy of India established in 1988 in New Delhi and the Islamic Fiqh Academy of Sudan, established in 1998. Geographically, some of these academies are based in the Muslim world whereas others are located in the West and thus focus mainly on specific issues relevant to their locality. The Assembly of Muslim Jurists of America (AMJA) and the European Council for Fatwa and Research (ECFR) are of crucial importance at present. The ECFR was established in 1997 in Dublin, Ireland while AMJA was founded in Maryland, USA in 2002.

There are also a number of international institutes and organizations that undertake specialized research in Islamic legal themes. The increasing need for a more intensive and systematic integration of the contributions made by physicians in the process of religio-ethical reasoning eventually led to the activation of the mechanism of collective ijtihad in the field of Islamic Bioethics by the beginning of the 1980s. The Islamic Organization for Medical Sciences, established in Kuwait in 1984, is one of the most prominent institutions in this regard. Similarly, the intricate and highly technical areas of finance and economics require the input of highly trained experts and economists. This fact led to the establishment of Shariʿah boards in the banking sector. Those boards represent a form of specialized institutional ijtihad. Of special significance in this regard is the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), an independent international organization established in Algiers in 1990 and later moving to Bahrain. This organization prepares accounting, auditing, governance, ethics and, most importantly, Shariʿah standards for Islamic financial institutions. The AAOIFI accounting standards are a modern case of collective ijtihad.

The mechanism of collective ijtihad has been institutionalized through the establishment of various academies and institutions primarily in the Muslim world and elsewhere to a) ensure collaboration among Shariʿah scholars and b) integrate the specialized expertise of scientists and technical experts in various disciplines. This allows fiqh to be made compatible with and relevant to the complex and fast-changing challenges and realities of contemporary life. Moreover, the mechanism allows for a lot of weight, credibility and authority to be given to the fatwas issued and serves as a referential authority and a viable alternative to classical *ijmāʾ* as shown in the next chapter.

Chapter Two

Collective Ijtihad: Authority, Conditions and Reformative Role

Discussion focuses in this chapter on the legal authority of collective ijtihad based on the authoritativeness of majority opinion and the potential of this mechanism to act as a viable alternative to classical *ijmā'*. It is argued that the mechanism itself is reformative in terms of promoting unity, eliminating controversy, combating radicalism and extremism, and employing the highly emphasized principle of mutual consultation in deciding on legal rulings.

This mode of ijtihad is predicated on agreement by the majority, an issue thoroughly examined in *uṣūli* literature in the course of discussions on the authority of *ijmā'* and whether it can be constituted by a majority view or only through unanimous agreement. Scholars of *uṣūl* have held different positions with respect to the legal authority of majority opinion. According to the orthodox mainstream view, a majority opinion does not constitute *ijmā'* and the disagreement of even a single competent jurist invalidates it. However, a group of other scholars maintained that the majority opinion of competent scholars constitutes *ijmā'* or at least a speculative authority for a view without yielding certainty. Arguments and counter-arguments were advanced by each party in support of their view. Whether or not the majority opinion constitutes *ijmā'*, its legal significance cannot be underestimated in juridical reasoning. This significance is particularly emphasized in the realm of collective endeavor to realize legal rulings for new intricate issues.

However, disagreement concerning the authoritativeness of majority opinion evidently echoes in discussing the legal effect of collective ijtihad. A group of contemporary scholars holds the view that collective ijtihad, being an opinion of the majority, is the feasible *ijmā'*. For them, total consensus on juridical issues subject to ijtihad is not possible and this kind of deliberative and collective reasoning is the viable alternative to *ijmā'*. A review of supposed *ijmā'* incidents where the Companions agreed on a certain issue reveals the fact that *ijmā'* in the *uṣūli* sense never materialized. Rather, agreement was reached by the Companions present and based on a group consultation. The practice dubbed by the scholars of *uṣūl* as *ijmā'* is in fact a collective legislation. Such a total *ijmā'* according to them is not practically possible. The

feasible *ijmā'* is the incomplete one represented by majority agreement.

Another group maintains that collective ijtihad is a middle approach between *ijmā'* and individual ijtihad. It constitutes a speculative authority weightier than the individual ijtihad and should be given priority. Some researchers conclude that it is considered to be on par with tacit *ijmā'*. Others opine that if this collective reasoning leads to *ijmā',* be it explicit or tacit, then it will yield certainty and constitute a conclusive authority. In the latter case it could have the authority of clothing legal rules with the mantle of certainty.

It should be noted that *ijmā'* has been subject to a ceaseless controversy since its inception for its religious sanction. Scholars differed on *ijmā'* feasibility and authority, whether or not it is authoritative in itself, and if it yields certainty or probability. Besides, there are no clear criteria to define the persons whose views count in ijtihad. Countless difficulties are experienced in distinguishing a *mujtahid* from a non-*mujtahid*. Still, there are some jurists who are well-qualified to exercise ijtihad, but they did not enjoy wide fame among people. Even if there would be a mechanism to identify and gather all qualified jurists, there remains no guarantee that some of them may change their view after a while. Even if we assume, for the sake of argument, that *ijmā'* was feasible in the past, it is not conceivable to establish it in our present-day world. Surely, technological advances in communication have changed the face and the pace of the contemporary world, turning it into a small village where people can easily communicate with each other all over the globe. However, this great advance has also brought about new problems and obstacles. Given the proliferation of digital tools and mass communication, ramifications of breathtaking advancements in all spheres of life and complexity of fresh issues to be juristically discussed, ijtihad has to tread unprecedented paths and reach new horizons that require interdisciplinary and multidisciplinary knowledge unattainable by individual scholars. This adds to the impracticability of establishing total unanimity in any given issue. That is why this study suggests collective ijtihad as a viable alternative to classical *ijmā'*.

Considering the intricate particularities of modern times, qualifications of ijtihad have assumed new dimensions beside the specifications and requirements set by the classical scholars of *uṣūl*. One aspect which merits special attention in terms of conditions and qualifications of collective ijtihad is the necessity of collaboration between jurists and experts. Admittedly, contemporary ijtihad is in dire need of making

use of the specialized expertise of various experts and scientists. The highly technical areas of law, as well as those of finance, medicine, genetics and numerous other fields require the input of specialized individuals and well-trained experts. This ensures epistemological complementarity of fields of inquiry. Seeking the help of experts in this sense can be considered one of the required conditions for ijtihad in our present-day world. One of the established principles in Islamic jurisprudence states that passing a judgment on something is dependent on having a proper conception thereof. For jurists to reach the proper legal ruling on a certain issue, there has to be a right and precise perception of this issue. To fulfil this aim, jurists exert their utmost in understanding the reality of a given case and verifying the underlying basis and character in order to decide a ruling that is in consonance with the teachings of Islam. Ijtihad has been seen in the past as a juristic concept, a preserve of the jurist to the exclusion of specialists in other disciplines. However, given the fact that the educational background of the overwhelming majority of religious scholars is almost exclusively theological and religious in nature and due to the peculiar and sophisticated character of novel issues, there arises a critical need to seek the help of scholars outside the domains of religious sciences to formulate a sound and precise perception. These experts can be specialists in finance, economics, medicine, architecture, astronomy, or any other discipline. Together jurists and experts can approach an issue in a deliberative mode to ensure a thorough understanding of all its aspects under juristic investigation. This process is usually undertaken through the mechanism of collective ijtihad.

This collective nature has enabled ijtihad to assume its reformative role in uniting Muslims, eliminating controversy, standing against deviation and extremism, and promoting the sublime value of consultation. Today, the Muslim Ummah desperately needs to unite in face of a deteriorating social fabric. Islam calls for unity and highly appreciates it. The ideal collective ijtihad can serve as a vehicle for such unity especially in the legislative domain. If the way to geographic unity is hampered by territorial boundaries, the mechanism of collective ijtihad with its global presence surpasses any geographical barriers and transcends the spatiotemporal constraints of nation states. As a method of collective decision, this mode of ijtihad can contribute to achieving the desired consensus and unify the various opinions on the sensitive and complex issues of the whole Ummah as much as possible. This philosophy stood behind the establishment of various Fiqh academies to fulfill the purpose of minimizing differences and discrepancies. The role

of collective ijtihad in promoting unity and eliminating controversy is also evident in many resolutions issued by different fiqh academies. Actually, the possibility of Islamic unity is further enhanced through the effect of collective ijtihad in bringing different jurisprudential schools closer together and establishing rapprochement among them with a view to consolidating solidarity and strengthening the sense of belonging to one Islamic nation. Realizing the importance of this rapprochement, almost all fiqh councils and academies set it as a basic goal and a point of departure. As provided by the governing Statute of the OIC International Islamic Fiqh Academy (IIFA), it works towards achieving the theoretical and practical unity of the Islamic Ummah in addition to finding potential consensus and rapprochement among the range of traditional schools of Islamic interpretation. The issue of rapprochement was remarkably present in the agenda of different institutions of collective ijtihad.

Affirming rapprochement between different schools could ensure fairness, moderation, mutually beneficial dialogue in addition to life-affirming and supportive values of peace, justice, cohabitation, harmony and honoring humanity. It undoubtedly contributes to the efforts of combating religious extremism. Contrary to widespread perception, the perceived rise of religious extremism is not limited to a certain religion or peculiar to a specific country. It is premised on an ideology opposite to moderation seeking to impose a particular set of values and customs in a given society and rejecting diversity based on a corrupt reading of its own doctrine. In this sense, extremism includes any immoderate action, attitude, interpretation, or practice of religious tenets based on a puritanical interpretation of the religion. This ideology imbues the radicals with a sense of spiritual superiority, setting themselves apart from the rest of society and embarking on a long journey of demonizing the other. Others in this context may be followers of the same religion or any other religion. This curtailment of diversity is an indication of predominance of an exclusionary ideology reflected in an outright or partial rejection of the other. Religious extremism, including religiously motivated terrorism, has been instrumental in destroying the achievements of great civilizations. It is one of the most pernicious and destructive issues which confronts the present-day world and paves the way to cultural, social, political, and economic insecurities.

Combating all manifestations of extremism has become a main priority and agenda regionally and globally. The efforts of countering extrem-

ism need to be directed towards eradicating the socio-cultural and ideological factors that contribute to generating narratives of radicalization, and instrumentalization of religion for particular agendas. This engagement should occur with endogenous Islamic reformist thought and scholarly reasoning in a collective endeavor. Collective ijtihad is key to coming to grips with this problematic issue. Taken into consideration the very nature of this mechanism where the opinion of the majority carries more weight and credibility in addition to the referential authority it represents as being issued by a group of high-caliber jurists, collective ijtihad has the potential to address some of the root causes of extremism. This fact did not escape the attention of Muslim leaders and was an underlying catalyst for the establishment or reform of some collective ijtihad institutions. The Islamic Research Academy was envisioned as a forum for the renaissance of Islamic culture. According to article 15 of law no. 103 of 1961 this academy was established with a view to renewing Islamic culture and freeing it from intrusion, vestiges and traces of political and ideological fanaticism. Similarly, the OIC international Islamic Fiqh Academy is specifically charged with responding to those who wrongly purport to speak on behalf of Islam, particularly those who promote violence and condemn other Muslims. The issue of combating extremism with its various aspects has remarkably occupied the attention of Muslim scholars and fiqh academies. This attention is not limited to violent extremism only; rather it touches on all aspects and manifestations of fanaticism, radicalism and extremism. A lot of conferences and sessions were organized by different fiqh academies to collectively find practical and intellectual measures to combat all these aspects.

The collective effort of Muslim scholars through this consultative mode of reasoning functions like the symbolic glue that holds the diverse Muslim nation together, despite its varied ethnicities, nationalities, and political entities. This contributes to increasing credibility, reliability and potentiality of collective ijtihad in addressing the contemporary needs of Muslims all over the world based on mutual consultation and deliberative reasoning. Furthermore, it serves as a practical application of the highly recommended principle of mutual consultation or *Shūrā*. By virtue of consultation, it is possible to prevent an individual or a group of individuals from imposing their will upon others, thus releasing them from the tyranny of subjectivity and selfish whims. It helps determine the most correct course of action and promotes an atmosphere of freedom. It sustains a high degree of social cohesion based on mutual confidence, respect, trust and a sense of belonging as well as

responsibility. *Shūrā* furthers the concept of shared responsibility and togetherness and strengthens cordial ties between individuals. In the sphere of juridical reasoning, *shūrā* has greater significance as a means for effectuating the mechanism of collective ijtihad. Collective ijtihad is collaborative in nature and thus is not based on one single jurist but a group of individuals who mutually manage the whole process. In this endeavor, *shūrā* can take the form of consulting non-fiqh specialists, like physicians, economists, sociologists or scientists, in order to improve the perception of the issue under discussion or consulting other religious scholars to make sure that the right juridical methodology has been employed and the resulting fatwa is not flawed. This makes *shūrā* an integral part of ijtihad, helps narrow the scope of juristic disagreement, promotes rapprochement between different views, prevents extremist and radical positions, ensures credibility and reliability of the resulting rulings and lends them much credence. By applying consultative ijtihad in its collective mode, it is possible to revive the principle of *ijmā'* and avoid the arguments leveled against it and its feasibility. In so doing, the essence of *ijmā'* could be realized, and the vitality of ijtihad ensured. Moreover, this increases the potential to address a wide spectrum of issues related to contemporary fatwa in light of the explosion in self-declared experts in Islamic law that has led many people to appoint themselves as muftis and proceed to issue bizarre fatwas.

Chapter Three
Collective Ijtihad and Rationalizing Fatwa

For all their merits, great advances in the field of communications have brought about collateral damage in certain fields. In relation to Muslims this is easily discernible in the sphere of fatwa where we now witness complete chaos. *Iftā'* or ijtihad is of two categories; a reliable ijtihad practiced by those who have equipped themselves with the necessary knowledge, and another form practiced by those lacking the adequate qualifications. The second ijtihad has no significance because it is a worthless opinion based on one's desires and interests and following unguided directions and personal whims. Unfortunately, given the proliferation of self-declared muftis, the spread of mass media and the absence of a formal credible entity that can discredit or vouch for the qualifications of fatwa issuers, there is complete chaos in the world of Islamic law. The present age witnesses a number of people intruding into the domain of fatwa without being properly qualified. Such people

are very far from Shariʿah sciences, yet they do not refrain from deciding lawful and unlawful matters. Fatwa issuance is not an easy undertaking, and the technical rulings of Islamic law cannot be known intuitively, neither can any conceited person with a delusional sense of jurisprudential acumen pontificate as to the details of the law. While the pre-modern scholars were sometimes reluctant to issue fatwas and used to question their own qualifications, the process of *iftā'* is nowadays approached by some individuals who lack the minimum qualifications. A variety of reasons may drive them to have the audacity to issue fatwa without requisite knowledge. Generally speaking, weak religiosity and following one's desires account for such intrusion into the process of fatwa issuance. Similarly, showing off and pretentiousness are serious defects and maladies that drive some people to break into the field of *iftā'*, in quest of fame and honor. Moreover, non-fiqh specialists sometimes issue fatwa on the pretext that there is no monopoly or priesthood in Islam. Showing no respect for specialization is another reason behind this phenomenon. Specialty must be respected in every discipline which needs to be practiced by its competent people only. In addition, there are certain things that render any fiqh specialist unqualified for issuing legal verdicts. Ignorance of Shariʿah objectives constitutes one of the most prominent matters that hinder man's capacity for *iftā'*. Similarly, ignorance of people's reality and conditions is another main reason leading to error in fatwa. Passing a judgment on something is dependent on having a proper conception thereof. Such a perception cannot be correct unless one truly understands the reality or status quo.

This chaotic state of affairs has some pernicious outcomes. One of the outcomes of fatwa producing by unqualified persons is the proliferation of contradictory fatwas which could lead to anarchy. Conflicting fatwas not only pose a theological or legal problem but also a political-ideological dilemma. The scope of disagreement has widened in this age as a result of issuance of abnormal legal verdicts by unqualified people. This is running rampant in our world because of irresponsible handling of religious issues incautiously, in pursuit of fame, showing-off, power or money, or for supporting deviant doctrines or extremist ideologies. Such abnormal fatwas cast shadows of doubt on the whole process of *iftā'* and have far-reaching negative effects on the credibility of scholars. Eventually, they may undermine trust in the institution of fatwa and discredit muftis. When people lose confidence in fatwas, they stop paying heed to the legal advice of scholars; this may be conducive to permitting the unlawful, forbidding the lawful, and tarnishing

the pure image of Shariᶜah. As a consequence, fatwa fails to fulfil its very function; rather than settling an unresolved question, it may elicit further debate and controversy. When abnormal legal verdicts permeate the domain of fatwa, this gives room for divergent stances and fissiparous tendencies endangering the fabric of a united society. The consequences could be exacerbated by providing unqualified muftis the opportunity to appear on satellite channels and the media to reach broader audiences.

In very recent years, fatwa has become a worldwide media phenomenon. Adapting to changing times and also to a novel medium, the institution of *iftā'* has gained greater significance in the media age. Today mass media fatwas are a vital communication tool with which various people can articulate a specific worldview. Instead of individualized communication, the new fatwas are broadcast messages for a mass audience. Satellite TV and internet technologies take religious discourse and fatwa into unprecedented spaces beyond the geographical areas. However, satellite channels are in fact a double-edged sword, as they can be used for good and bad purposes, or to guide and misguide people. Given the rapid spread of fatwa issued through media, the large number of viewers, the diversity of their backgrounds, and the immediate answer to various questions in all areas, this relatively new genre of fatwa necessitates special attention and cautiousness.

The popularity of satellite TV fatwa programs has revealed various concerns in terms of the qualification of individuals issuing fatwas from one part of the world to another that they know little about. Consequently, the importance of the context when delivering a fatwa and the understanding of the sociocultural specificities of countries that the fatwa addresses has become one of the growing problems attached to who should give a fatwa and what criteria they should fulfil before voicing scholarly opinion to avoid chaos or disorder. The idea of chaos is perhaps most commonly seen in relation to the impact of new media. The new media are not only often seen as more than simple instruments from which good and evil alike can be derived; rather, they are understood as having changed the kinds of questions that are being asked, as well as the competencies required. New criteria for issuing fatwas on media came to exist. Charisma and fame, rather than knowledge and piety, have thus become for some among the main criteria in the new media world. Accordingly, it has become a necessity to lay down regulations for these channels and programs to reap their benefits and avoid their harms.

The nature of fatwa programs with their limited time frames demands hurried legal verdicts to be issued, with the mufti under pressure to answer as quickly as possible. To do this, the mufti is required to rapidly recall jurisprudential rulings as well as their evidence driving some muftis to even interrupt the questioner before finishing the question. Such haste contradicts the deliberateness required for *iftā'*. It even contradicts the nature of the questioning itself, which needs careful elaboration. Some fatwas issued on satellite channels require the attendance of another party, such as legal verdicts concerning financial transactions or divorce issues. But the mufti hears only from one party, and in some cases, the questioners are not able to detail their questions due to time restrictions. Another problematic feature of live fatwa programs is giving room for unqualified persons. Some programs invite guests who have never practiced fatwa issuance with its established rules, or those who specialize in an irrelevant branch of Islamic scholarship. Some preachers and imams are invited to participate in fatwa programs while they are not eligible to do so, and the viewers are deceived into listening to their words. The criteria for choosing a guest have become fame, charisma, good looks, good style, and smartness even if a more knowledgeable and more religious prudent scholar is available. To compound the problem, no regulatory body exists to control the quality of fatwa disseminated on such programs. Additionally, answers are always present for any question in whichever discipline without paying due attention to the different customs and circumstances of the viewers. Some fatwa issuers on satellite channels do not tolerate other opinions. Conflict between fatwas often occurs because each channel adopts a particular school of fiqh or a specific jurisprudential opinion. Even if there happens to be a qualified mufti whose fatwas are well suited to reception and adoption by many people from different countries, it is still necessary for such a person to be alert to any attempts on the part of the questioner to elicit a pre-determined fatwa. Some satellite channels choose the mufti according to their own tendencies in order to use the fatwa to support a given stance or justify it. For all these reasons, many scholars have voiced their concern and criticism of live fatwa calling for its prevention or at least setting strict measures to regulate it to put an end to both 'fatwa chaos' and 'fatwa politicization'.

Manipulation or politicization of fatwa is a process of producing a made-to-measure fatwa to support or to justify a given stance. In this situation the mufti amasses the proofs, and twists and decontextualizes them in support of a certain and pre-stated political stance. Moreover,

the authority interferes in formulating the fatwa by exerting pressure directly or indirectly. Instead of being a demonstration of God's ruling and wisdom, fatwa becomes a signature on behalf of the rulers and an expression of their whims and desires. Politicizing legal rulings exacerbates the chaotic status of fatwa. It is employed by different parties, not only the official muftis.

The rise of violent and radical movements acting in the name of religion and legitimizing their actions through fatwas has provided a further impetus to this phenomenon. When analysts speak of the phenomenon of political fatwas and the politicization of the fatwa, they often posit the second Gulf war and the post 9/11 "war on terror" as two pivotal moments. The Gulf war broke out in 1990 when the Iraqi regime invaded Kuwait. This war precipitated a sharp and profound division in the Arab and Muslim world. Fatwa became entangled in this crisis, oscillating between support for and condemnation of seeking military help from US-led coalition forces during this war. The juridical arena witnessed a proliferation of fatwas and counter-fatwas which revolved around the question of whether it was Islamically legitimate to seek military help from non-Muslims, form a coalition against other Muslims, and whether the presence of non-Muslim troops in Saudi Arabia constituted defilement of the holy places.

This war unleashed a concomitant war of fatwa where official muftis representing various governments issued fatwas validating and justifying the policies advocated by their respective political leaders, buttressing them with reference to Qur'anic and Prophetic textual evidence. On the other side, such fatwas were refuted by counter declarations and fatwas. Some independent ad hoc bodies convened for the specific purpose of providing the Islamic view on this crisis. There were also numerous statements by individuals, including various notable Islamists, commentators, and opinion makers. Each party attempted to secure legal sanction for their stance. The competing fatwas talked in the name of Shari^{c}ah. Both parties claimed their stance to be in accordance with orthodox Islamic teaching. The two views cited the Qur'an and the Sunnah to support their stand. This highlights how the textual evidence can be manipulated to serve certain aims. The primacy of the Qur'an and the Sunnah is not a point of contention between the issuers of fatwas; the question is rather how the text may be interpreted and the influence of political agendas on this interpretation. The evident biases of fatwas supporting various Muslim leaders undermine public confidence in the institution of fatwa. When scholars manipulate legal

rulings, craft fatwas to accord with the political stance of various regimes, and veer according to the wishes of rulers, surely, they are then in danger of losing their credibility leading people to search for another frame of reference.

Another problematic issue of the contemporary fatwa lies in the departure from a moderate approach of legislation that seeks balance between two extremes; namely, extreme leniency and extreme strictness. Reflecting over the texts of the Shariʿah demonstrates that it is ordained to uplift hardship from people and make things easy for them so that their interests are accomplished in this life and in the Hereafter. But a problem occurs when facilitation reaches the point of leniency, negligence, laxity and twisting texts to find an easy way out to escape religious duties. On the other hand, it is unacceptable behavior for a person to become extremely strict, making life difficult for people, particularly in the field of fatwa. Strictness here is synonymous with extremism and signifies reluctance to moderation, a balanced approach and easiness. Both laxity and extremism are discouraged in the process of formulating legal rulings. The qualified mufti should exercise this process in a justly balanced approach that avoids both leniency and overstrictness.

Leniency in this respect means the issuance of fatwas according to the easiest and most lenient opinion all the time and in all cases even if it goes against reliable evidence. Excessive leniency appears in the intentional failure to verify legal evidence, in circumventing the texts and persistent following of concessions and exceptions, or in attempts to justify the reality even if this conflicts with established rulings. Some muftis, in their attempt to depart from strict adherence to literal meanings at the expense of the spirit of the law, fall into the trap of laxity.

The approach of laxity and leniency is exemplified by those who give preference to *maslahah* (public interest) over the text or justify corrupt reality based on baseless interpretations. Similarly, excessive reliance on the Shariʿah objectives at the expense of textual evidence, and the unjustified quest of concessions and *talfīq* between the opposing opinions characterize this approach. *Talfīq* is the deliberate shopping around for easy ways insofar as one takes from every school what is the least burdensome solution without having any necessity or excuse to do so. It brings forward a fashion (of a rule of law) that no qualified legal jurist adopts.

On the other hand, the approach of over-strictness in *iftā'* is characterized by several things, including exaggeration in blocking the means and always adopting the most burdensome opinion in any disagreement, in addition to rigidity and blind conformity to certain juridical opinions without taking into consideration their proof or the perceived changes of time, place and different conditions. This blind *taqlīd* eventually leads to an intellectual catalepsy extinguishing any dynamism in the field of juridical reasoning. Another manifestation of this extreme approach in giving fatwas surfaces when the mufti holds fast to the apparent literalist meaning of the texts without understanding the intent of the Shariᶜah in these texts or while ignoring the wisdom and causes behind them. This phenomenon is known as literalism or stagnation, usually described as considering the literal meanings of the texts and ignoring their purposes. In fact, non-observance of the serious necessities and considerable needs of people while insisting on the apparent literalist meaning of the text and neglecting the conditions of application of rulings with their resulting consequences – all this is a type of strictness and puritanism that the Shariᶜah principles and rules do not endorse. As a religion of moderation, Islam takes the middle course between extreme puritanism and extreme laxity. As Islam is committed to establishing a system of truth and justice that shuns laxity on one side and extremism on the other, the institution of *iftā'* and ijtihad has to reflect this middle course. The persistent application of either one of the two extremes contributes to chaos in the field of *iftā'*.

Evidently, the field of contemporary fatwa is afflicted by a chaotic situation where practically any person can declare himself a mufti and proceed to spew out abnormal legal verdicts that perplex the laity and contribute to the phenomenon of competing fatwas especially in the open space era of today's media-saturated world. Rather than being a tool of religious guidance, fatwa has sometimes become a source of perplexity among believers and constituted one of the major quandaries facing the Muslim community. Bearing this in mind, many scholars have voiced their concern and expressed a critical need for regulating the process of producing fatwas, especially when they touch upon very technical issues that require specific qualifications. In line with these calls, the present study suggests employing the mechanism of collective ijtihad in regulating fatwa issuance.

Collective ijtihad is generally characterized by having the potential to address intricate technicalities of complex novel issues which are characteristic of our age. Being a mechanism of collective reasoning, this

mode of ijtihad is less prone to error in comparison with the individual endeavor. The collaborative nature and involvement of many jurists and technical experts, rather than one single jurist, enables conducting a rigorous and multi-layered examination before construing a legal ruling so that the possibility of reaching erroneous decisions can be kept to the minimum. By adopting this collaborative mode of legal reasoning, the problem of legal verdicts being issued by unqualified persons can be efficiently handled. The same holds true for when fatwas are politicized or given adopting an extremely lax or over-strict approach. The following discussion examines the potential of collective ijtihad to address the problematic issues of individual *iftā'*, with special reference to bioethics and financial issues.

As far as biomedical ethics is concerned, the majority of contemporary Muslim religious scholars are trained neither in biomedical sciences nor in the Western languages in which the latest scientific studies are available. Bearing this in mind, these scholars admitted the necessity of collaborating with biomedical scientists. Consequently, collective ijtihad in the field of biomedical ethics assumed a clear institutionalized form through a number of collective ijtihad institutions. Two of the most influential bodies of Islamic bioethical-legal deliberation are the OIC-affiliated International Islamic Fiqh Academy and the Islamic Organization for Medical Sciences (IOMS). The verdicts issued by these organizations carry significant weight in medical and legal circles, as these organizations are recognized as being at the forefront of collective Muslim efforts to address ethico-legal challenges brought forth by modern technological advances. The proceedings and final resolutions of symposia held by such institutions has revealed that the conclusions reached at the end of the ijtihad process are not solely based on how to approach the scriptural texts or the opinions of classical jurists. In fact, modern scientific knowledge proved to be one of the quintessential tools in this process and some classical interpretations and contentions were crossed out because of their incompatibility with modern science.

Collective fatwas were reached after lengthy discussions and deliberations between Shari^{c}ah scholars, physicians and biomedical scientists. Indeed the script of the discussions reveals the important role of the mechanism of collective ijtihad in correcting misperceptions and some individual fatwas. These discussions show that formulating a proper perception of the biomedical issues and the resulting legal rulings would not have been possible without resorting to physicians whose

expertise falls outside the scope of Shariᶜah specialists. It became clear during the consultations that certain issues were too complex to be addressed by those specialized in either religious sciences or biomedical sciences alone. Moreover, scientists played a very important role in providing scientific information needed for the development of a sound understanding and perception of the issues at hand. On some occasions, the scientific information led certain scholars of Shariᶜah to change their previously chosen opinion and change their ijtihad. Sometimes, the scientists helped correct wrong perceptions upon which the individual legal ruling was based. This was remarkably evident during some IOMS seminars. In one seminar jointly organized by IIFA and IOMS to discuss transplantation of genital organs, among other biomedical issues, one person presented a paper in which he permitted transplanting testicles. In his counter-argument he highlighted that the decisive question in this regard was the source of the spermatozoa, whether they come from the donor or the recipient. In other words, does the transplanted testicle belong to the donor or the recipient? In answering this question, he claimed it to exclusively belong to the recipient as it is physically attached to his body and follows the orders issued by the recipient's mind. Sometimes, the testicle, he argued, is taken from a dead person. Consequently, it cannot be claimed that a woman is impregnated by a dead donor. Moreover, the spermatozoa produced by the transplanted testicles originate in the recipient's body and not anywhere else. During the discussions, a group of biomedical scientists proved this argument wrong from a scientific perspective. In order to correct this faulty perception, which led to an erroneous conclusion and a flawed legal ruling, they engaged in a lengthy discussion with him. The scientists and physicians explained that the sperm producing organ and spermatogenic cells are formed early in the fourth or sixth week of the gestational development of the fetus. By this early time, the formation of such cells will have been completed and what happens subsequently is only a process of maturation and development. Given this fact, the transplanted testicles will continue producing the donor's sperm. The person asked about the possibility of emptying the testicles of any sperm before the process of transplantation. The biomedical scientists answered that, even if this was possible, nothing would in fact change, because any resulting sperm after transplantation would be produced by the donor's spermatogenic cells, which had been formed in the testicles since the fourth or sixth week of gestation. Based on scientific knowledge, biomedical scientists stressed that the sperm produced by the transplanted testicles cannot be that of the recipient. Thus in this specific case, biomedical scientists assumed a crucial role

in formulating the correct perception. They managed to convince all the participating religious scholars that what they presented was the correct perception and accurate understanding of testicle transplantation. Due to the updated scientific information provided by these scientists, the person in question appended a postscript to his original paper in which he retracted and revoked his previous opinion permitting the transplantation of testicles on the basis that the resulting child will not be produced by the recipient's sperm.

In the same vein, this collective mode of reasoning is urgently required in other fields which necessitate the input of technical experts for the purpose of formulating a proper perception in order to rationalize fatwa and minimize erroneous legal verdicts. The financial field represents one of these domains where the mechanism of collective ijtihad has special significance and a crucial role. This role can be fulfilled by the different councils of fiqh and, most importantly, by the specialized Shariʿah boards in the Islamic financial institutions.

With the emergence of Islamic finance, the financial institutions had to rely heavily on the ijtihad of Shariʿah scholars, particularly in terms of their new products of conventional origins and structures according to the Islamic model of business. In an attempt to collectively handle the emerging issues pertaining to Islamic finance, fiqh academies and councils assumed a crucial role in providing legal guidance for the Islamic financial institutions. Given the nature of new transactions and financial products, the resolutions of these academies sometimes considerably diverge in a way irksome to Islamic institutions and lay persons. Although the resolutions have attempted to take into consideration certain constraints and challenges facing implementation of such resolutions in many jurisdictions that have yet to pave the way for Islamic finance to be the mainstream choice of the Muslim laity, however, some of the resolutions issued by fiqh academies have overlooked the specificities and the regulatory framework of certain countries. This state of affairs has revealed that the world fiqh academies may not be enough and there is a dire need for a Shariʿah framework at the national level. Here comes the role of Shariʿah supervisory boards (SSBs) as institutions of collective ijtihad specifically dedicated to Islamic financial organizations.

The OIC International Fiqh Academy discussed the significance of SSB for regulating the operations of Islamic banks in its nineteenth session in 2009. The Academy laid stress on the necessity of practicing

collective ijtihad for such boards and called them to adopt the fatwas issued by fiqh academies and institutions of collective ijtihad. Actually, Shariᶜah boards are the backbone of the Islamic financial industry, without which the integrity of this industry will be at stake. They assume a variety of roles including supervisory and advisory ones. Such boards are responsible for ex-ante Shariᶜah audit through issuing fatwas to certify the permissibility of instruments or products in addition to the ex-post Shariᶜah audit through verification of compliance with the given fatwas. In addition, they are entrusted with the task of calculating zakah, disposal of non-Shariᶜah compliant earnings, and providing legal advice on the distribution of income or expenses among the shareholders. The board participates in the preparation of drafts of decrees, decisions and orders presented by the bank; prepares studies and research to direct the zakah resources towards deserving parties; and formulates new contracts and Islamic alternatives to the conventional models. In fulfilling its advisory role, the Shariᶜah board advises the board of directors and management on policy and procedures related to Shariᶜah matters and conducts seminars and trainings for the staff of the Islamic financial institutions.

The establishment of SSBs in Islamic financial institutions is an example of applying the mechanism of collective ijtihad in the specific field of Islamic finance. The board is comprised of a group of Shariᶜah scholars, mainly specialized in fiqh of transactions, who are responsible for making ijtihad on new problems faced by the industry. Given the relatively recent emergence of Islamic banking and finance, most active players in this industry come from the conventional sector. They do not have a suitable Shariᶜah background that enables them to realize the legal rulings of transactions. On the other hand, the educational background of the overwhelming majority of members of Shariᶜah boards is almost exclusively jurisprudential in nature and due to the peculiar and sophisticated character of novel financial issues, a critical need arises to seek help from economic experts. Against this backdrop, both parties, i.e. Shariᶜah scholars and economic experts, need each other. The mutually beneficial cooperation and deliberation enables both parties to fulfil their mission, reap the fruits of collective ijtihad in regulating the issuance of financial fatwas as well as eliminate controversy to narrow the scope of disagreement in contemporary Islamic finance.

In view of the foregoing analysis the study has highlighted the role of collective ijtihad in addressing the problems of individual *iftā'*, with special reference to the medical and financial aspects. It is apparent

that this collective mechanism has the potential to address many problematic aspects in the field of fatwa including the issuance of legal verdicts by unqualified persons, the adoption of extreme approaches of laxity or overstrictness, in addition to countering the phenomenon of competing fatwas. However, this potential can be maximized if certain obstacles and challenges are adequately addressed to ensure smooth and ideal application of collective ijtihad.

Chapter Four
Challenges Facing Collective Ijtihad

There are certain challenges that raise weighty doubts on the potential and effective application of collective ijtihad. These challenges may negatively affect the credibility of the institutions of collective ijtihad and eventually render them useless and ineffective. This takes place when these institutions are influenced by any kind of pressure that prevents them from exercising their functions impartially and in complete freedom. Such pressure arises from the fact that almost all fiqh academies are affiliated either to a given country or organization, which may possibly intervene in the process of taking the legal decision. This affiliation has its bearing on the independence of these institutions and challenges their credibility.

Independence is the state of being free from an external control so that the independent entity will not be subject to control by others or affiliated with a larger controlling unit. This independence is a prerequisite for exercising a reliable ijtihad, without which the practice of ijtihad could be treading a delicate path of politicization and surrender to the whims of one party or another. Affiliation with political regimes or organizations is the basic reason behind lacking independence. This affiliation could manifest itself in the form of financing or appointing. When the members of an academy or a supervisory board are chosen or appointed by a certain entity, this could jeopardize their objectivity and independence. For example, as provided by the governing statute of one fiqh academy, its members are appointed by the member states where every state nominates a scholar to represent it. The observations and suggestions made by various member states on the statute of this academy and later approved by the general constitutive conference reveal a clear intervention in the mechanism of appointment. A specific article of the governing statute was amended to stipulate that the academy members are to be appointed by the respective member states. This

act of nomination makes them political appointees representing such member states.

This intervention poses serious threats to the institutions of collective ijtihad and could undermine their credibility. This state of affairs is more evident in the case of Shari'ah supervisory boards. There exists healthy debate amongst Muslim scholars concerning the independency of these boards and their ability to fulfil their function objectively and in complete freedom. The debate arises from the fact that members of those boards have a dual relationship with the Islamic financial institution as providers of remunerated services and as controllers of the nature of operations. To ensure independence, the SSB members cannot be employees of the Islamic financial institution to avoid a conflict of interests. Similarly, the mechanism of appointment and remuneration has an important bearing on the issue of independence. Their financial independence is achieved when their fees are not determined by the number of products or contracts they have approved, or linked with the content of their compliance reports. The fact that the financial institution board or management can appoint, dismiss, or fix the remuneration of the SSB members leaves the door open for the management to use such leverage to influence the decisions of the board.

The financial Islamic institutions adopt various ways of appointment. Many of these institutions do not cite in their regulations the procedure of choosing members of the boards or the body responsible for their appointment. Generally, SSB Members can be appointed either directly by the board of directors or management, in the annual general assembly of shareholders, or by a state-affiliated body. Many researchers prefer the latter style in which SSB members are appointed by the state to ensure greater independence. If not possible, the general assembly of the shareholders is to undertake the duty of choosing members of these committees. In this way, it is possible to minimize the impacts of administrative affiliation to the board of directors or management of the financial institution, which relegates the supervisory board into another department of the institution controlled by its administrative management.

Another element that could jeopardize SSB independence pertains to the remuneration received by its members. In principle, there is nothing wrong in receiving money for giving a professional service. However, in the context of the SSB, there is a threat of conflict of interests especially when the members of the board receive lucrative compensations.

The financial incentives may be attractive enough to affect the SSB members' behavior to some extent. Therefore, Shariʿah scholars might surrender to pressures exerted by the management to show some sort of leniency in relation to Shariʿah compliance. One reason some Shariʿah advisors are tempted to be lenient is their job, compensation, promotion, and other perks which are determined by the management. Indeed, money can be a motivation for some people to turn a blind eye and deaf ear to the truth. The financial effect should not be overlooked; consequently, adequate measures have to be put in effect to avoid any negative influence. It is necessary to address who should determine the renumerations of SSB members and the basis of such renumeration.

There are different methods adopted in determining renumerations of SSB members. One method is to determine a specific percentage of the profit, where the general assembly of the bank specifies a proportion that does not exceed ten percent of the profits. However, this pattern is criticized for casting suspicions on the validity of SSB decisions. It can severely endanger SSB independence and raise a serious conflict of interests given the fact that whenever the institution gains higher profits, generous remunerations are given to SSB members. This mechanism elicits another discussion concerning the permissibility of receiving a percentage of product revenue approved by the SSB. Some scholars argue this is prohibited as it may cast suspicions over the validity of the fatwas. They base this prohibition on the principle that a testimony is not accepted when the witness is directly benefiting from it. In our context, the financial institution uses SSB judgement as a testimony to endorse the compliance of a certain product with the Shariʿah. There is a considerable benefit for both parties to approve more products to achieve more profit. Another method of determining renumerations of SSB members is fixing a monthly salary where the supervisory board is considered a department of the bank. A third mechanism is to determine fixed remunerations at the time of appointment where the general assembly appoints members of the Shariʿah supervisory board and determines their salaries.

These are the different mechanisms used in determining the compensation of SSB members. To avoid any suspicions, it is better to fix remunerations from the budget of the institution at the time of appointment by the general assembly. Given the incontrovertible importance of determining the appropriate mechanism of financial compensation to ensure the greatest possible financial independence, it is of paramount importance to determine which party compensates SSB for its

services. In fact, these departments are numerous. AAOIFI states that the shareholders may authorize the board of directors to fix the remuneration of the SSB. However, there is no standard practice in this regard. In some financial institutions, SSB remuneration is decided by shareholders in the annual general assembly, or by the board of directors or even the management of the institution. Some voices call for setting this remuneration by a regulatory authority such as the Central Bank or an international body such as the General Council for Islamic Banks and Financial Institutions so that the SSB members may not be pressurized or controlled by the BOD or Management to adopt lenient positions.

Moreover, the SSB needs to be placed at the top levels of the administrative structure to reduce the influence of administrative affiliation and give its decisions due effect. The legal status of the SSB decisions means whether this decision is deemed binding or merely advisory. Although by default a fatwa is generally non-binding, the case can be different in the context of SSBs where *iftā'* is not the sole duty. Moreover, there are certain cases when fatwas are given binding legal force. For instance, a government may choose to put a certain fatwa into practice by sanctioning and granting it a special legal status. In the context of SSBs, these boards can draw their legal authority from different sources. For example, in countries such as the United Arab Emirates, Kuwait, Jordan, Lebanon, Malaysia, and Pakistan, the national regulations require establishing an SSB before approving the establishment of the Islamic financial institution. In addition, the articles of association of the financial institution have to include provisions for setting up an SSB and defining its power. A lower ground of SSB authority can be based on the terms of the contract signed between the BOD, on behalf of shareholders, and the SSB. The SSBs derive their legitimacy from the fact that the financial institution commits itself to abiding by the Shariʿah rules. Nevertheless, even in cases where legal grounds are found for establishing an SSB, the legal effect of its decisions, whether they are binding or not, is still unclear. If the SSB decision is merely advisory, then the primary motivation of ensuring Shariʿah compliance by setting up SSBs has not been achieved. In this case, the role of the SSB is reduced to a mere marketing tool as its decisions are not enforced in reality unless the administration of the financial institution decides to do so. It cannot be acceptable that the board serves only the role of Shariʿah consultant or a consulting body with no implementation authority given to its decisions. Implementation here means that the board has the authority to force the financial institution to

implement the decisions and fatwas issued. To limit the role of SSBs to expressing an advisory opinion or giving legal advice goes in contradistinction with the objective for which these boards are originally established.

Taking this into consideration, the AAOIFI Shariʿah governance standards and the OIC international Fiqh academy resolutions state that SSB pronouncements shall be binding and fully implemented. However, even where such standards are adopted, or where articles of association have stipulated the mandatory nature of SSB decisions, the problem still persists. This is because SSBs only take decisions on cases brought to them by the management. A possible scenario can arise when directors think the SSB will not approve a particular transaction; in this case they may avoid the issue by not referring the whole matter to the board. Bearing this in mind, some regulators and academic researchers suggest appointing one of the SSB members as a non-executive director on the board of the financial institution. For the same reason, some have voiced their concern in regard to the SSB location within the organizational chart. For SSBs to fulfil their mission, they need to enjoy complete independence, to be free from any kind of pressure. To ensure such independence, the mechanism of appointment, termination and remuneration has to be addressed in the contractual agreement. These issues can be fixed by a state-affiliated regulatory entity such as the Central Bank, or referred to an international body funded by charity and comprising globally recognized scholars provided that its advice is put into practice by the legal mandate of the Central Bank. By properly tackling those challenges, SSBs can serve as a form of institutionalized collective ijtihad capable of regulating fatwa in the financial field.

Another challenge that may negatively affect the potential of collective ijtihad concerns the supposed role of non-fiqh experts in the process of ijtihad. Some Shariʿah scholars are still reluctant to accept an increasingly effective role by technical experts. The controversial nature and scope of this role could problematize the whole deliberative process. This specific aspect will be tackled with special reference to biomedical issues; however, it still holds true for all fields of collective ijtihad.

As a consequence of breathtaking advancements in all spheres of life, issues have grown in complexity and ramification. Thus, a critical need arises to bring Shariʿah scholars and technical experts together to

collaboratively deliberate on complex multi-disciplinary issues to ensure epistemological complementarity. The necessity of this collaborative approach is acknowledged by both Shariʿah scholars and scientists. The scientists have justified the necessity of adopting this collective approach by arguing that contemporary scientific discoveries have become so innovative and groundbreaking and also so full of ramifications that it is inevitable for both scientists and religious scholars to collaborate in order to handle the intricate aspects of these discoveries from an Islamic perspective. Shariʿah scholars have admitted that some of the classical jurists could master both Islamic law and medicine such as Averroes, but this has become unattainable in the present day where having a minor specialization is the norm. Given the nature of the modern educational system which has fragmented sciences into various disciplines and created multiple specializations and subdivisions within each discipline, it has become almost impossible for contemporary Shariʿah scholars to grasp their new techniques and subtleties. Accordingly, Shariʿah scholars urgently need scientists in order to understand the reality upon which they are to draw their conclusions.

The rapid and complex evolution of biomedical sciences over recent decades has seen the emergence of a large number of techniques in the field such as organ transplantation, resuscitation, assisted reproductive techniques, genetics, genetic engineering, cloning, stem cell research, gene therapy, human genome and genomics, etc. which pose new juridical dilemmas as well as serious challenges for religious scholars practicing ijtihad in the field of bioethics. A major issue in grasping the technicalities of scientific information has been lack of knowledge access due to the language barrier, which sees much information available in English but not many contemporary Muslim scholars master of it. All these problematics have magnified the need for biomedical specialists to play a role in aiding contemporary Shariʿah scholars to fulfill their duty allowing for correct Islamic perspectives to be formulated on emergent issues.

A variety of roles can be played by non-fiqh specialists in the deliberative process of juridical reasoning. The first step towards construing a legal ruling is to develop a correct perception of the issue at hand and to verify its underlying basis or character. Specialists can assume an informative role which entails providing technical and scientific information for Shariʿah scholars to help them develop this proper understanding of the reality of issues under juristic discussions. Biomedical scientists are responsible for presenting biomedical infor-

mation, and some of that information will be indispensable for without it Shariʿah scholars will not be able to develop a proper perception of specific bioethical questions. This informative role sometimes contributes to correcting misconceptions. Through this interdisciplinary approach, Shariʿah scholars will be able to develop a kind of scientific literacy gaining scientific information that they otherwise would not have access to. In this way, the process of juridical reasoning is no longer solely based on the way of interpreting scriptural texts or analyzing classical juristic opinions. Modern scientific knowledge has proved to be one of the main tools for contemporary ijtihad in fields like bioethics where some classical interpretations have been found to be incompatible with new scientific information.

Integral to this informative role is that of setting the discussion agenda and deciding which topics need to be discussed first and which ethical dilemmas such topics raise. The technical experts can sometimes propose specific issues to be included in the agenda of discussions even if Shariʿah scholars are reluctant to discuss them. This reveals the significant role assumed by technical experts and scientists in collective deliberations over new and complex issues. However, a problem arises when scientists go beyond this specific role. A clear disagreement on the limit of the scientists' role can be easily perceived during the collective deliberations. Whether their roles should be limited to providing scientific information only or whether they can go beyond this restricted informative role was a frequently raised question. The possibility of disagreement between both groups raises another question of authority and the party whose opinion should be given priority in the case of disagreement. Many Shariʿah scholars were uneasy about extending the role of scientists beyond that of the informative. A conventional position inclines to restriction on the basis of lacking necessary qualifications to exercise ijtihad. Accordingly, the duty of experts is to help Shariʿah scholars but not to issue fatwas or interfere in the process of formulating the juridical ruling. After all, they are not jurists. This tendency is found in the practices of fiqh academies where the collective deliberations are divided into two stages: during the first stage the biomedical scientists explain the scientific aspects to the jurists and together they discuss related issues. But the second stage of discussing and voting on the final recommendations and resolutions is generally attended only by the Shariʿah scholars. Many Shariʿah scholars express strong reservations against involving scientists in this second stage. For them the technical experts can assume the role of translation and simplification of scientific terminology; providing

consultation for the purpose of construing proper perceptions; giving their testimony; and depending on their scientific decision in relation to their respective specialization when required. Although it is permissible to involve experts in devising a correct perception of issues or refining and classifying their underlying reality, it is not acceptable to permit experts to practice ijtihad as some economists, astronomers and physicians do.

On the other hand, the biomedical scientists were not content with merely acting as informants only, limited to explaining or simplifying specific scientific information. Rather, they wanted to participate in their capacity as equal partners in the process of ijtihad with jurists. In their view neither the religious scholar nor the physician has the capacity to examine issues of such complexity alone, both parties need to engage in mutual discussions. Deliberations on these issues, physicians argue, should remain interdisciplinary by facilitating communication between specialists in biomedicine on the one hand and jurists on the other. To this Shariʿah scholars responded that while scientists are encouraged to actively participate in deliberations, the final word at the stage of drafting juridical conclusions rests with jurists only. Nevertheless, the biomedical scientists in various meetings refused to restrict themselves to the role of informants and attempted to participate in the juridical reasoning process itself and even interfered in the drafting of the final resolutions and recommendations. Attempts to separate biomedical scientists and religious scholars as two distinct groups with two distinctive roles have always failed. The overlapping nature of modern scholarship makes it almost impossible to clearly draw the lines of demarcation between the two parties. Things become more complicated due to the absence of a shared methodological platform, which is able to calibrate between scientific and religious knowledge in the collective ijtihad process. Lacking such a methodology undermines the hoped-for epistemological complementarity.

In addition to the above-mentioned challenges, there are some other difficulties and shortcomings facing the effective implementation of collective ijtihad. In many cases, involving such experts is usually occasional. A lot of fatwa institutions seek the help of technical experts only when they desperately need specialists. In this case, specialists are only invited for consultation about certain aspects, without having permanent membership of such institutions or the right to vote when taking a decision on the issue.

Another aspect that merits attention is the absence of some important disciplines. Examination of *iftā'* institutions engaging specialists of non-Shariʿah sciences reveals that they have not included all different disciplines. Only two groups seem to dominate the interdisciplinary deliberations, namely biomedical specialists and economists. However, the complex and multifaceted nature of novel dilemmas presenting themselves in the modern context necessitates utilising various groups with far more diversified backgrounds. Actually, institutions are almost devoid of using the services of specialists in other fields of science and knowledge, especially the humanities and social sciences.

The same holds true with regards to the involvement of women in these institutions. The absence of female members in fiqh academies makes them patriarchal institutions, which represents another serious challenge to be addressed in order to ensure efficiency of the mechanism of collective ijtihad. Unfortunately, modern religious authority in most places was reshaped to include men only. The exclusion and absence of the voices of women in legal discourse is remarkable in fiqh academies and fatwa institutions. This adamant insistence on excluding women from participation in the collective institutions of ijtihad is unfathomable. Argument if any to support this policy of exclusion would not be well constructed and only depend on ungrounded sociological considerations. Fiqh academies do need female members to represent Muslim women in discussing juridical cases especially those relating to family issues.

Another prominent challenge lies in the issue of membership politicization. Participation in fatwa institutions and fiqh academies is sometimes subject to political considerations. Most fiqh academies are affiliated either to a given country or organization. This entails a kind of direct or indirect intervention in nominating the members of those academies. It is almost impossible for candidates whose political orientation and juridical opinions are inconsistent with the whim of these countries to join such academies. Membership of such institutions is not generally independent of any state control. While scholarly accomplishment should be the main criterion in granting membership, favoritism and politics play a decisive role in deciding the appointment of scholars in such institutions. Sometimes, membership is terminated because of political considerations.

In addition, the lack of liaison between different academies represents another major problem. Today, there exist many fiqh councils in

different parts of the world. The multiplicity of these academies can be a double-edged sword given the possibility of competing resolutions and fatwas resulting on the same issue. In this case, the mechanism of collective ijtihad practiced by those academies, rather than addressing the issue of contradictory fatwas, may exacerbate it. This contradiction is a natural consequence of non-liaison between these institutions. A quick review of scores of resolutions and recommendations issued by these academies suggests a particular focus on the same issues. The problem arises when different academies discuss the same question but issue two different resolutions. Which resolution will be given priority and on which basis?

Based on the forgoing discussion, it is conceivable that these different challenges could hinder the institution of collective ijtihad and cast doubts on its viability as a mechanism to reform ijtihad and regulate fatwa in our present-day world. Realizing this fact, many scholars and researchers have proposed suggestions to overcome such obstacles and challenges. The differing suggestions agree on one pivotal element which is ensuring the independence of collective ijtihad institutions. To ensure this independence, the majority of suggestions call for the establishment of a central fiqh academy transcending geographical boundaries and precluding any governmental influence. One particular suggestion states the necessity to establish three different kinds of fiqh academies, that is a national one that handles the juridical issues of a certain nation or a country; a regional one entrusted with the task of ijtihad in a given region or province; and a world central academy that dedicates its efforts to addressing special issues of paramount importance for the entire Muslim world. This central academy is to undertake the responsibility of liaising between different academies to ensure consistency and eliminate the emergence of competing resolutions and contradictory fatwas.

All proposed solutions and suggestions, whether those calling for establishing a central academy or reforming current ones, are in agreement on the necessity of addressing the problem of independence to enable the collective ijtihad institution to fulfil its mission impartially without any control. In order to eliminate any restrictions or imposed limitations, the mechanism of public funding through Zakah or endowments is suggested to ensure financial independence. Similarly, the members of those academies may be chosen by means of free direct elections by the scholars themselves in an international Islamic conference. In the case of establishing an international central academy

funded by charity, it can be responsible for nominating members of Shariʿah supervisory boards. This central academy may serve the role of a controlling unit that nominates members for regional academies, decides their remuneration, ensures consistency of resolutions, and eliminates the possibility of contradiction. It can also oversee setting the agenda of discussions and juridical issues to be deliberated by the regional academies taking into consideration the specific circumstances and status quo of each academy. Additionally, in cases of potential sensitivity identified in discussing a particular issue having political or social implications, the issue can be referred to the central academy to freely examine. Based on the status quo of the existing academies, it is acknowledged that certain issues are purposefully avoided, such as questions of political freedom, human rights, good governance, etc. These reasons represent the crux of the argument raised by the proponents of establishing a central world academy as a necessary means to organize the practice of all other academies and promote unity among them.

The common suggestion in terms of membership is to convoke a world conference where eminent jurists and Shariʿah scholars attend to elect the best candidates in free direct elections. To be an eligible candidate, a person needs to be a specialist of Shariʿah with outstanding scholarly accomplishments or have assumed a position of *iftā'*. A committee of senior scholars can set certain conditions and qualifications for membership for both Shariʿah scholars and non-Shariʿah specialists. As for choosing technical experts, the academy can select a group of experts in all non-fiqh disciplines based on scholarly accomplishments and significant contributions to the specific field of specialization. One of the qualifications of eligible experts is to have published a number of works in peer-reviewed scientific journals. It is important to include some representatives of other regional academies, expand the pool of participation with regard to the technical experts and scientists and engage female jurists as full members.

The foregoing analysis highlights the different suggestions proposed to ensure the effective application of collective ijtihad. However, establishing a central academy fully independent of any government may be feasible in theory, but almost impossible in practice. Even when governments have nothing to do with financing the academy or appointing its members, governmental influence will still persist. Governments will not allow the establishment of such a central world academy on their lands without some special privileges. Moreover, the host state can

impose restrictions on the academy, cancel its conferences or prevent certain members from attending its meetings. Other governments may intervene by preventing their nationals from joining the academy. In addition, any resolutions made by this academy will remain ineffective unless the respective governments decide to abide by them. For these reasons, the existence of a fully independent academy is only a theoretical assumption which cannot be realized in the real world.

Given the unfeasibility of establishing a central world academy fully independent of any governmental influence, one viable alternative is to attempt to make use of already existing academies by capitalizing on their strengths while minimizing their weaknesses. In an attempt to do so, one suggestion calls for the establishment of a coordinating body to liaise between the different academies. This body is to be elected from the members of all present academies. It is to shoulder the responsibility of coordinating discussions so as not to simultaneously discuss the same issues by more than one academy. Moreover, it should arrange for the participation of representatives of other academies during annual conferences. In this way, the possibility of issuing contradictory resolutions can be kept to a minimum. This coordinating body can hold an international conference to be attended by representatives of all academies across the world to discuss any issues that necessitate the input of all academies. To ensure greater independence of the present academies, the issue of terminating membership shall be an exclusive right of the respective academy and is to be decided by majority vote. An alternative mechanism of financing is also necessary through zakah or endowments. In so doing, the required independence can be fulfilled without having to establish a central world academy.

In fact, the present academies do a great job in tackling some very complicated issues and challenging some of the most deeply embedded practices in different parts of the world. However, to improve their efficacy and ability to provide religious guidance for issues born out of the particularities of a very complex modern life, some weaknesses have to be dealt with. The engagement of female members is indispensable exactly as the expansion of the pool of experts. Similarly, making use of modern technologies especially in disseminating the vast bulk of resolutions and recommendations of those academies and attempting to codify the juridical rulings to find their way into governmental legislations are recommended measures that can contribute to greater efficiency. The results of collective deliberations have to be included in the academic curricula at the university level based on the relevant

disciplines and specializations. For example, the bioethical resolutions are to be taught for both students of Shariʿah sciences and medicine. The same holds true for the juridical resolutions in financial issues where both students of commerce and Shariʿah need to learn them. In this manner, we can ensure epistemological complementarity between various disciplines and one day can possibly have professional bankers with a solid background in Shariʿah aspects or competent physicians well versed in ethico-juridical issues. This could eventually contribute to fulfilling the need for both jurists and experts to be multidisciplinary in both religious and scientific knowledge as much as possible.

To conclude, it is more practical to reform the status quo of the existing academies rather than establishing a central world one which may eventually end up as another copy with the same shortcomings. Fiqh academies, albeit their imperfection, have proven to be a necessity for contemporary religious discourse. The mechanism of collective ijtihad facilitated by these academies testifies that Islamic law, by virtue of ijtihad, moves through time with notable ease and smoothness due to its inherent fluidity and evolutionary nature, transcending spatio-temporal boundaries and ensuring its viability and applicability to all generations and times.

As a final word, it is worth emphasizing that the call to adopt the mechanism of collective ijtihad is in no way an invitation to close the gate of individual reasoning. Surely, the individual mode of reasoning will continue to assume its role in addressing legal issues. Still, individual ijtihad represents the foundation for the collective one. Papers and studies prepared for fiqh academies and councils are the basis on which the collective decision is taken. Accordingly, the individual mode of reasoning cannot be terminated by the collective form because the two modes are not necessarily mutually exclusive to each other; rather, they are complementary, and both are desperately needed. The scope of each form could be somewhat different; that is to say the collective mode is more suitable for issues of a public nature that concern the whole community. It is not practical that whenever a questioner needs a fatwa in a given private affair, s/he is told to wait until one of the fiqh academies convokes and discusses the issue. However, to keep the negative aspects of individual live fatwa to a minimum, it is recommended to establish a regulatory body including a group of prominent scholars of Shariʿah to oversee the whole process of *iftā'* on live programs. This regulatory body can choose persons suitable to issue fatwa and set a general framework to ensure consistency and minimize

anarchy and chaos. Those live muftis need to stick to the resolutions and fatwas issued by fiqh academies. In this way, the individual *iftā'* is illuminated and guided by the collective one.

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The contemporary postnormal world is posing for Muslims ever strange ethical, financial, and medical dilemmas for which modern jurists are expected to provide a suitable theological response. Yet even with an encyclopedic knowledge of Islamic law, the task facing them is daunting. In the real world this level of complexity has led to chaos in fatwa issuance with many scholars voicing concern at the direction to which things are moving and calling for the process to be regulated. This book critiques fatwa issuance in the modern context and calls for application of a synthesised approach using the mechanism of collective ijtihad to formulate rulings and overcome current weaknesses. It carefully examines central juristic concepts and puts forward consultative ijtihad as a viable alternative to the controversial classical ijma' approach which may be difficult to realize in the contemporary world. The author argues that fatwas become questionable when jurists, out of their depth, fail to grasp concepts which only engagement with specialists can fully elucidate, or give way to top down financial and/or political pressure from the executives of institutions employing them. Matters are compounded by the face of fatwas having undergone a radical transformation in modern times with online programs and social media often a go-to source for Muslims. The author exposes the world of modern fatwa pronouncements – packaged, supplied and broadcast in a matter of minutes, under a mentality of one-fatwa-fits-all. In a bid for much needed reform he calls for a reassessment of current institutional practices contending that Muslim societies need not be vulnerable to the demands of a media driven, technocratic age, with rapid shifts in ethical norms, but that, in the interests of a healthy functioning society, issue fatwas cognizant of the wider modern context, specialist knowledge, as well as the cultural diversity that exists in the common Ummatic identity.

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