

# Fatwa Methodology In Emerging Issues (Fundamentalist Study)

**Instr. Dr. Ahmed Abdel Majid Abdel Jabbar**

*Department of Islamic Sciences, Al-Imam University College, Iraq.*  
[aam59529@gmail.com](mailto:aam59529@gmail.com)

## Abstract

The fatwa is one of the important and necessary matters in our tolerant Sharia, and it is one of the tasks that fall on the shoulders of the mujtahid when he lacks a fatwa on new and emerging issues, in which there is no text or saying, especially since we hear and witness every day the technological development that takes place in various issues of life. Such as electronic means of communication, the Internet, digital currencies, and the governance of the joints of society, and this resulted in the emergence of legal problems, the position of the legislator must be stated about them or their rulings. Therefore:

The problem lies in the fact that these innovations are devoid of legal rulings, and from here it was necessary to draw up a systematic study showing the way to identify the rulings related to those matters by the requirements of the legal principles and rules.

As for the aim of the study, it is to prepare a curriculum through which it is possible to stand on the ruling of the calamity, which did not come with a legal ruling, and then to stand on a ruling that does not contradict the rules and Sunnahs of the the Shari'a.

In the study, I relied on the analytical method, so I dealt with the specific pronunciation of the subject of the study, so I knew it linguistically and idiomatically, and inferred it from the original references, and after that, I referred to the sayings of the scholars to support what is more likely than them, after I explained it with analysis and dealt with it with documentation.

The results of the study can be summarized in three things:

1. Determine the methodology that must be followed and observed by the questioner when ruling on the calamity.
2. Accurate understanding and true knowledge of the Shari'a rules and evidence related to the conditions and circumstances of the calamity by the requirements of Shari'a.
3. The ability to derive the provisions of calamities.

What is related to the recommendations is the obligation to adhere to the legal regulations, especially what the research study concluded to avoid falling into a spiral of opinion, and not to turn away from those controls because turning away from the spoils disturbs the religious and worldly matters of the mufti and the questioner.

**Keywords:** Mujtahid, fatwa, descending, fatwa, interest, ijihad.

## Search Background

A fatwa is an effort on the part of the mujtahid to consider the newly created issues, to find out their rulings after exhausting his efforts and applying his mind to derive a ruling or fatwa, and it is through his extrapolation of the legal texts and the sayings of the righteous predecessors, by analogy or what is achieved from the necessary interests, so

the fatwa is not an abstract statement from Evidence or defamation is only an investigation, research, and comparison, which is what is known as ijihad.

Ijtihad is subject to fixed controls and rules that determine the path of the mujtahid's consideration, to protect him from slipping or falling into error, and for his saying to be disciplined with legal controls, so the mujtahid must take into account the

application of those controls before uttering the fatwa on those issues, and therefore the controls are the templates that the mujtahid formulates his saying.

### **The Introduction:**

Fatwas are one of the difficult matters that fall on the shoulders of the mujtahid because they are not ready-made legal texts, and the mujtahid has nothing but to convey them and communicate them to the people or the questioners. The principles of legislation, such as the Book, the Sunnah, and the sayings of the predecessors, to find out its ruling on these principles, otherwise he devotes his energy and effort and works his mind, to elicit and determine its ruling by analogy or by way of the achieving interests. Especially in calamities, because the ruling of the calamity may not be from what is mentioned in a text or effect, he needed to make diligence and exert effort in it.

This ijtihad must be disciplined with agreed conditions because the rules are the basis on which the fatwa is built, so the mujtahid must take into account their application before pronouncing the ruling related to them.

Therefore, in this study, we will address the methodology that must be followed and taken into account when judging the calamity, through an accurate understanding and true knowledge of the rules and evidence followed by our righteous predecessors, as well as by looking at the conditions and circumstances of the calamity, which in total lead to the mujtahid devote his effort and effort to his standing. The correct judgment and these controls can be summarized in the following sections.

### **The First Topic**

#### **Etiquette of consideration and observance of purposes**

The beginning of the consideration of the fatwa is in stages, and these stages can be summarized in the following demands. The first requirement: is the etiquette of looking at fatwas, The etiquette that a mujtahid must observe and consider can be summarized as follows (Ibn Qayyim al-Jawziyya, 1968, p. 4/174):

**First** - the mujtahid should mention the evidence for the ruling and its source, which he relied on in the fatwa of the calamity, and he should not cast his fatwa abstract from the evidence and its source, but rather point out that and mention the aspect of its legitimacy, and not suffice to mention that it is permissible or forbidden without evidence or effect to be inferred. If the questioner has knowledge of Sharia and knowledge of the connotations of meanings, or if the questioner is asked to know the evidence, then the mufti should at that time mention the argument and the evidence; To reassure the heart of the questioner and increase his knowledge and understanding.

**Secondly** - if the questioner is illiterate and does not understand the meaning of the evidence, then mentioning the evidence to him in a speech to those who do not understand it and a waste of time, which is what the Shafi'is held when they said: "It is not necessary to strive hard in seeking evidence" (al-Zarkashi., 2000., p. 590/4).

**Third** - If the calamity is related to a matter of religion, the interests of Muslims, or one of the five necessities, then the mujtahid should mention the argument or evidence, and simplify the evidence and its conclusions as much as possible.

**Fourth** - If the ruling of the fatwa is prohibition, then the mujtahid should explain what leads to the permissible alternative, because in that alternative is of great importance, especially in our present time, which brought us many developments coming from the dissolved Western societies, which do not take into account Islamic values and their constants; It invaded the minds of our children with all its might until it affected them, such as intellectual, technological, financial, and other developments. Accordingly, the mujtahid must decide what is acceptable and what is permissible according to Sharia, and what is prohibited and forbidden, and then proceeds to explain the ruling and wisdom of that prohibition, so that he may have

**Fifthly** - the mujtahid should prepare for the ruling of the calamity before explaining it, so that that ruling is acceptable to the questioner and the mujtahid also should turn away from what the questioner answered in his question in which he asked him what would benefit him in it and this is inferred from the Almighty's saying: [They ask you (O Muḥammad r ) about the new moons. Say: "They are signs to mark fixed periods for mankind and the pilgrimage". It is not Al-Birr (piety, righteousness) that you enter the houses from the back, but Al-Birr (is the quality of the one) who fears Allāh. So enter houses through their (proper) doors, and fear Allāh that you may be successful.] [Surat Al-Baqarah from verse 189]

### **The second requirement: Searching for a previous ruling in the calamity**

As we have said previously, the mujtahid relies on doing his best while searching for the legal ruling for this calamity, by following the well-known deduction methods. A stipulated ruling or it is close to it, or he resorts to exegesis according to the sayings of the imams, or he resorts to following the analogy according to the requirements of the evidence available to him; It necessitates caution not to contradict the deduced ruling with a stipulated ruling or to be agreed upon, nor to be contrary to reason and logic, because all of this is from the postulates of the Shari'a and its purposes.

### **The third requirement: Observe the legitimate purposes**

Among the considered purposes of the Shari'a, the meanings and the ruling envisaged in the ruling and which take into account the interests of the people provided that it is considered in the eyes of the legislator, so that its wisdom is not limited to a specific type of interests such as its consideration of personal interest or related to the public interest, but it does not take into account or is controlled by the descriptions of the Shari'a or its general purpose. Among the matters that must be taken into account in the purposes, are the five necessities - religion, soul, honor, reason, and money - which the Shariah established for the sake of security and

safety between people and to reform their conditions in both worlds. The Book and the Sunnah.

These and other purposes may be far from the mujtahid's consideration in the usual cases, but he is in dire need of them when the calamity strikes and considers them, so he must take them into account in understanding the texts that he will apply it to the facts, and then append each calamity with its new ruling.

Likewise, one of the matters that emerges the need for it when the mujtahid resorts to deducing the ruling of the calamity, is reconciliation, especially when he uses analogy or approval, and the evidence in his hands is conflicting, so he then intends to reconcile the the them through his understanding of those purposes.

If the ruling of the calamity is established for the mujtahid, and it resonates between conflicting interests and no doubt about it, then it is inevitably and obligatory for him to put forward what is in the interests of the people over what is in the interests of the groups, and to ward off what involves a major corruption rather than the small evils that he is embarrassed by because the laws are only legislated for the interests of the people. In both the urgent and the future (Al-Shatby, 1997, p. 1/46).

Otherwise, the laws of the laws in general, do not legislate what contains evil and do not forbid what has interests, and this is evidenced by the general stability of the verses of the Noble Qur'an and the hadiths of the Messenger (peace be upon him). The calamity so that his fatwa does not depart from the purposes and faculties of Sharia.

### **The second topic is the concept of interest, its divisions, and its considered aspects**

#### **The first requirement: is the concept of interest**

The concept of interest is a relative matter or a general claim for each one of his claims, so no mujtahid issued a ruling on a matter in which there is no text except that he claimed that his ruling is a realization of the interest, and the truth of his claim from his lie is not the subject of research, but rather the subject of research, i.e. interests intended, is it the private interest that

Everyone claims it in what he goes to, or is it the legitimate interest in line with the legitimate approach.

If the first is rejected, because it is of great danger, and because everyone wants to say what he wants.

**The first:** warding off evil, which is called necessities.

**The second:** bringing interests, called needs.

**The third:** It is the ongoing course of noble morals or the best of habits, and it is called tahsiniyat .

These three interests may be sent or not. As for the description of these interests, it is one of three cases (alsabiki, 1999, p. 4/46).

**In the first case:** the ruling is assigned a description that includes one of the three types of interests.

**The second case:** is that the judgment is assigned a description without including an interest, not by nature or by follow-up.

**The third case:** is that the ruling is entrusted with a description, but it does not include an interest in the subject, but rather includes it by follow-up, or by necessity.

If the ruling is entrusted with one of the three interests, then it is what is known by the appropriate description, and this description includes interest that is: preserving the mind, or warding off evil from it, even if there is no Shariah; As intoxication in the prohibition, staving off evil is one of the necessities.

And if the ruling is entrusted with interest and does not include interest, not by itself or by tracking, then this Alwasf altardi, and it is not valid for reasoning with it unanimously.

Alwasf altardi, which is neither appropriate nor includes interest, is divided into two parts:

One: Alwasf Altardi, of all legal rulings such as shortness and length, so we do not find any legal ruling that was justified by shortness or length, because there is no interest in them. The other: trdyaan in some and not in others, such as masculinity and femininity, they are mutually exclusive

with regard to emancipation, because the emancipation provisions were not assigned to any of them, while they are not mutually exclusive with regard to the provisions of inheritance or testimony.

If the ruling is entrusted with the interest, and it does not include the interest of the person, except that it necessitates it by way of following, then this description is called the likeness, and for example, he says: "Vinegar is a fluid that does not build a bridge according to its gender, it does not remove impurity like oil," because this is definitely canceled, as for masculinity and femininity, They are considered in the provisions.

### **The second requirement: Sections of interests**

The scholars divided the interests in relation to the Shariah's position on them into three categories:

**The first section:** It is what the Sharia has witnessed for its consideration, and this section of the interest is an argument, and its result is due to analogy, i.e. Quoting its ruling from the reasonable text and consensus. For example, our ruling that every drink that intoxicates is forbidden, by analogy with wine, and the wisdom of this prohibition is to preserve the mind, because the mind is the source of the mandate, so the prohibition of alcohol came to preserve this interest.

**The second section:** It is what the Sharia has witnessed to its invalidity, and its example is the fatwa of a scholar of a king who has intercourse with his wife during the day in the month of Ramadan, that he should fast for two consecutive months and not feed or free a slave. The king denied that fatwa. And when the scholar was asked why you did not answer the king by feeding or freeing him, he said: If I ordered him to one of them, it would be easier for him to expiate his sins because of his large amount of money, and he would dare to do taboo before satisfying his desire And because it opens the door to changing many of the punishments and expiations on the pretext of changing conditions, and on the other hand it leads to the kings questioning the fatwas of scholars, because they think that

everything that is issued against them is a deviation from the texts with the opinion.

**The third section:** It is what is not attested to by a text of the Sharia, neither with regard nor with invalidity, so it is under consideration, because of the detail and additional examination it contains, which is what we will talk about in the next requirement.

### **The third requirement: Considered aspects of interest**

The most important aspects considered in the interest, which the mujtahid should take into account when giving fatwas, can be summarized as follows:

**First:** That the legitimate interest is fulfilled:

Since the interest is one of the most important legal purposes, it must be taken into account that achieving the interest is one thing and the interest is another thing, as the interest may exist and there is no way to achieve it, so the realization of the interest was another legitimate aim in addition to the interest itself, and because in achieving it that brings benefit and repels harm.

**Second:** That the interest is not sent:

The interests that are sent are different because there is no legal text in them that necessitates considering them for their nature or type or does not necessitate excluding them, so they are hesitant between rejection and consideration. Among them is Al-Amidi, who said: "If the stated interest was not an argument, this also led to the fact that the facts were free from the legal rulings" (al-Amidi, 1404, p. 4/32), in addition to our contemporary reality, which is attested to in some cases by consideration, which is represented in emerging issues. The new ones, such as civil and international regulations, and the necessary documentation for financial and personal contracts due to technological development.

**The Fourth Requirement: the position of scholars on the transmitted interests** (alshuwkani, 1999, p. 2/184).

The sent interests were known by various acquaintances, and it was said that they are "that which is not based on a complete or partial origin" (al-Zarkashi, p. 4/377), and it was said that it is "what was not attested by the Sharia to invalidity or to be considered a specific text" (al-Ghazali, 1997, p. 1/78). And it was said other than that, which is too long to mention, and all of what I know is united in one meaning, which is that it was not in accordance with the laws of interests and the mind has accepted it. Nevertheless, the saying about it differed, and this was followed by their difference in justifying the rulings on it based on three sayings:

**The first saying:** is that the rulings of the legislator are justified "in accordance with the interests of the servants," out of favor and kindness from God Almighty, and those who said that are the jurists.

**The second saying:** is that the ruling is established where a valid description of its loftiness is established and there is no other, so it is assumed that this description is the basis for that ruling, and acting on conjecture is obligatory, and it is the Mu'tazila school of thought.

**The Third Saying:** It is absolutely forbidden to adhere to it, and the argument is that the rulings are not justified by interests, neither from the path of necessity nor from the path of permissibility, because actions are related to the purposes, so their attainment is in relation to the doer of them first, whether those purposes belong to him or to someone else, and if the matter is like that, then it is incomplete. In himself and complete in others, and God Almighty is transcendent over that, and this is the view of the majority of Hanafis and Shafi'is.

### **The third topic is the controls considered in fatwas and the interests sent**

#### **The first requirement: the controls considered in the fatwas**

When a calamity occurs due to a change in time, place, or surrounding circumstances, the first dilemma that a mujtahid encounters in his fatwa is to consider its



ruling, and consideration requires specific controls, so it was appropriate to review some of the most important controls that a mujtahid should observe, and among these controls are the following: (alsarukhsiu, 1993, p. 3/458):

1. Adding the ruling to the description: the description that is the cornerstone of the explanation is variable, but the rulings are fixed and do not change, even if the time, place, and situation change. The rulings, therefore, the rulings differ from one event to another because of the change in the description, which may be due to a time, place, or condition, and this meaning is different from the meaning that the rulings are different or confused, but rather on the meaning that the rulings are necessary for their causes, and as for the causes, the course of their descriptions is in progress, so whenever they differ Descriptions due to the different conditions of place and time are different ills, and these will lead to a difference in the rulings, which indicates that the rulings may not be obligatory according to a description, but rather in terms of another description, so the mujtahid at that time must rely on the description to explain his ruling.

2. That the description be subject to a legal basis, not that it be subject to reason or to the approval of the action or its reprehensible, because both lead to the fatwa being subject to various perceptions, which change with the change of those perceptions.

3. That what is considered in a fatwa and its change is only the mujtahid's statement, not the statement of whom, and the more a fatwa is issued by a group of people of diligence and fatwa, the more accurate it is to the truth and closer to the truth

#### **The second requirement: the controls considered in the interests sent**

The interests sent, even if they differ in them, but they are from the established principles of jurisprudence, the difference is no more than a slander in them, especially on what we are dealing with, so for the interest sent to be considered and disciplined, it must be subject to a set of controls that govern it, which is what the diligent must It should be taken into

account when looking at the calamity, and among those controls are the following:

1. That it be included in the legitimate purposes considered.
2. That it does not contradict a legal text of the Qur'an and Sunnah.
3. To be definitive, or to be present in most cases.
4. To be inclusive.
5. Not to miss out on an interest that is more important or equal to it.

What should be noted is that the mujtahid must take into account the change of interest by changing the circumstances and the circumstances surrounding the rulings. In other words, if the mujtahid gives a fatwa on an incident with a ruling based on a legitimate interest that surrounded that incident, then he must abandon that ruling according to the circumstances of the interest achieved in another incident. Not according to the circumstances of the interest in the first fatwa, and this change of fatwa is not a change in the Shari'a, rather it changes according to the change of the reasons for the ruling, according to its reasons and principles, For example travel or residence in the countries of the infidels. If the travel or residence has a significant interest that benefits the owner, whether the benefit is material or scientific, then travel is permissible, and if there is no interest, it is not permissible to travel or stay because of the harmful consequences to the traveler or resident in that.

#### **The fourth topic: The rule of raising the embarrassment and looking at the outcomes (consequences)**

##### **The first requirement: is the adoption of the rule of raising the critical**

The meaning of lifting the embarrassment is: removing everything that leads to excessive hardship in performing the assignment letter, By removing hardship from him in everything related to that discourse and removing embarrassment is one of the principles of Sharia when necessary, It is inferred from the Qur'an and the Sunnah, from the Book the Almighty's saying:[, **has not laid upon you in religion any hardship:(V.22:78))**].

Thus it becomes clear that this principle is definitive, and this necessitates that the mujtahid should observe this rule when looking at facts and developments so that his fatwa is not outside the legal curriculum and includes something intolerable. It must also be taken into account to take into account the licenses that God has bestowed upon us for those for whom these licenses have been prescribed in cases of necessity. The principle of removing the hardship has conditions that the mujtahid must verify that they are met with the right of the calamity or the questioner, and among these conditions:

1. That the embarrassment is real, i.e., if a certain reason falls on al-mukalafin and it becomes difficult for them to carry out their shar'i duties, so they are forced to take the concessions; Such as travel and illness, and there is no lesson in delusional embarrassment, which is devoid of any real cause because Because it is not correct to base a ruling on a presumed cause that did not exist in the first place, the rulings are entrusted with real, not imaginary, causes.
2. He does not contradict a text, for hardship or embarrassment is considered in the places where there is no text, and they are not considered if the presence of the violation is realized.
3. That the embarrassment occurs in a general calamity among the people, as for the specific embarrassment, there is a difference of opinion about it.

#### **The second requirement: Considering the consequences**

When the mujtahid looks at the applications of the texts, he must consider what the application of those texts will lead to and whether the purposes and goals will be achieved or not? Therefore, he should not rush to give a fatwa until after looking at and examining what his fatwas will lead to, which is what is called considering the outcomes in achieving interests or warding off evil, and it is inferred from the texts of Sharia, such as the Almighty's saying: **And eat up not one another's property unjustly (in any illegal way e.g. stealing, robbing, deceiving, etc.), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property**

**of others sinfully:(V.2:188))** ] The Sunnah is what the Messenger of God (PBUH) said to Umar when he wanted to kill the hypocrite: **" Let the people not speak that Muhammad kills his companions "**.

The consideration of outcome is a legitimate purpose regardless of the approval of the act or its violation because the construction of rulings is not based on the same act or the occurrence or non-occurrence of the act. Rather, it is based on what the action leads to, so the act may be legitimate and lead to interest or to ward off a spoiler, but it may also lead to the opposite of what was intended, so it is not legitimate, to prevent spoilage arising from it or for the benefit of it that rushes to prevent it, which leads to the opposite.

If the rule of legality is released in the first place, the desired interest in it may lead to corruption equal to it or greater than it. illegality (Al-Shatby, 1997, p. 5/195).

All of this explains to us the reason for the decline in religious values in some societies have to lead to, and the many corruptions and deviations in them, because of those fatwas that did not look into the consequences, such as allowing women to mix with men in various fields, without legal regulations, and without appreciating the consequences On that of the evils, or such as preventing children from watching television in order to ward off the evil of wasting time. This prohibition leads them to follow the Internet, the evils of which are more serious and greater, and therefore looking into the consequences of it is a great benefit and abundant good.

#### **The fifth topic: What should be taken into account in the fatwa**

##### **The first requirement: taking into account the reality of the situation at the time of the calamity**

The mujtahid, when considering the fatwa of the questioner or the time of the calamity, should take into account the circumstances surrounding them, the reasons leading to the incident, and the temporal, spatial, and customary changes that took place from similar events that preceded the it. After that, to look and scrutinize his fatwa, according to this or

that fact, especially since many of the jurisprudential rulings are subject to the changes that occur to them, such as the conditions of people, their habits, temporal and spatial circumstances, and even the inspiration of the environment surrounding them.

In other words, the legislator enjoined the mujtahids to organize the affairs of the people according to the principles of Sharia, in a manner that guarantees to bring them benefit, warding off corruption from them, and establish justice among them.

Accordingly, looking into the fatwa is a process of organizing and linking the reality of the situation, time, and place in everything related to people and the Sharia, in a way that guarantees to bring benefits and avoid evil. This is evidenced by the jurisprudence rulings that were an effective treatment for societies in a time and place that are no longer valid for societies in others. Because of the societal and moral developments and the subsequent developments that accompanied them, and for this reason and others, the mujtahids of different sects in later times went in their fatwas in opposition to what their first imams held, and they justified the reason for their fatwas due to the difference in time and place and the bad morals in their societies, not in violation of the origins of their imams and their doctrines. Indeed, if the previous imams were presented with these calamities and what surrounded them from the reality of the situation and the conditions of the people, they would have issued a fatwa with the fatwas of the later ones, and that is why the jurisprudential rule came "The change of rulings with the change of times" (Al-Barakti, 1986, p. 1/113) and let us give an example that shows what we said:

- Aisha said: "Had The prophet Muhammad seen from the women what we see, He would have prevented them from the mosques as people of Israel prevented their women. You have seen us pray the dawn with The prophet Muhammad in our veil and we leave without knowing each other's faces "

The hadith indicates two things: one of them changed the ruling of the Messenger of God regarding the presence of women for congregational prayers in mosques,

because of what the women's society is upon and the changes they brought about, and the other is that the rulings change with changing the data and reality is only followed in the laws before us, and it was originally from the principles of jurisprudence and legislation.

- Likewise what was reported on the authority of Abu Hanifa said: The ruler is confined to the apparent justice in the Muslim and does not ask even by stabbing the opponent, so praise is an innovation for him, unlike his two companions, Abu Yusuf and Muhammad, who said: "He must be asked about them in secret and in public, and this difference indicates that the origin of people's conditions according to Abu Hanifa is that they are just because of his (PBUH) saying: ((“The Muslims are just to one another, except in a limited guilt.”)) This principle is what changes it and requires witnesses, because of the different conditions of people, and it is what Abu Yusuf and Muhammad realized, so he renounced the fatwa of their sheikh to what contradicted it. (Marginani, p. 3/118)

### **The second requirement: is an observance of customs and returns.**

The scholars defined custom and custom as: "an expression of what settles in the soul from the recurring matters that are acceptable according to the sound character" (Ibrahim bin Muhammad, 1980, p. 1/93), and therefore they went to consider mores and traditions, if they do not conflict with the legal texts, then they are among the considered principles in fatwas. They are referred to in many issues of jurisprudence and made them a principle of the principles, to the extent that they devoted chapters to it in explaining the totality of what the facts are left with, and examples of them are the age of menstruation, the age of puberty, ejaculation, and in the words of offer and acceptance and other rulings, especially those that were On issues of sales, oaths, constructions and declarations (al-suyuti, 1990, p. 1/90).

For this reason and others the text of the jurists based on the rule of "the custom is firm", the basis of which is what was reported from Ibn Masoud in a suspended state: ((What the Muslims perceive good is



with God it is good, and what they perceive bad is with God it is bad)), Traditions and custom, if they are taken into account in the Shari'a and are frequently afflicted by them, then there is nothing wrong with the mujtahid referring to them, and that many changes and alterations occur to them according to time and place and the changing conditions of people, but on condition that they do not lead to a violation of a text or the permissibility of forbidden, and this is what The mujtahid must observe it and take it into account, especially since many of the newly created matters contradict the texts or allow taboos.

That is why Al-Qarafi - may God have mercy on him - said: "It is obligatory for the mufti if a questioner comes to him who does not know that he is from the people of the country in which the mufti is located, not to give fatwas according to what he used to issue fatwas until he asks him about his country and whether a custom has occurred to them in that linguistic expression or not. Knowing the country is in agreement with this country in its custom or not, and this is a matter that is certain and obligatory in which the scholars do not differ and that the two customs when they are in two countries are not the same, then their rulings are not the same, but the scholars differed in the custom and the language" (alsabiki, Rafae alhajib an mukhtasar AIBN alhajibi, 1999, p. 2/78).

In view of the importance of tradition and custom in the issue of fatwas, so the mujtahid must be careful when taking them and also be careful when issuing fatwas with them lest he falls into the danger of lying about God and His Messenger so he is among those whom, this is what made our righteous predecessors embarrassed to speak on the authority of the Messenger of God (peace be upon him) as well.

This Abdullah bin Al-Zubayr asks his father Al-Zubayr, "Why do I not hear you talk about the Messenger of God (PBUH) as the Companions said, He said: "As for me, I did not separate from him, but I heard him say, 'who he lied about me, so let him take over his seat in the Hellfire (Al-Bukhari, 1999, p. 1/33). Therefore, the one who touches on this principle must beware of falling into it, forbidding what is not forbidden or allowing what is not

permissible, which is not mentioned in a text but may be clarified by analogy. In order for custom and custom to be considered and by the provisions of Sharia, the scholars enjoined four conditions:

1. That the custom is steady or dominant, for example, if he sold for a dinar or a dollar in a place where their money and popularity differed, the sale goes to the majority (Ibrahim bin Muhammad, 1980, pp. 1/94-97).

2. That the custom on which the expressions are applied should be relative or antecedent, not late or contingent, both of which are irrelevant. For example, if a woman swears by her husband to divorce every woman he wants to marry her, and he said to her: "Every woman I marry to you, she is divorced" but he intended by this that it was "a divorce from the bonds" and his intention occurred as a valid religion (alsarukhsi, 2000, p. 30/429).

3. That the custom does not contradict the Sharia, for example, if a man "swore not to marry So-and-so," he is breaking the contract because it is common in Sharia, and he does not break the law by intercourse. As for if he swears against his wife then he breaks his oath because it is intercourse. For example, if he swore "not to sit under a roof" but sat under the sky, he will not break his oath (alshaashi, 1402 hu., p. 1/46).

4. That the custom does not contradict the language, and the scholars' position on this condition is that it is of two parts: one of them presented the verbal truth, because the origin for them is the linguistic situation, and the other presented the customary signification because they govern the custom in behavior, for example, if a man enters another house, food is served to him and he refuses The man said, "If you do not eat, then my wife is divorced, and the man went out and did not eat, but he came on the second day, and that food was presented to him and he ate, so he does not break the first saying, and he does not break the second.

In sum, taking into account the traditions or customs related to individuals or societies when considering fatwas in everything related to them, is a necessary and inevitable requirement for every mujtahid, especially in our present time, in which the world has become like a small village, so

cultures and customs have diversified and some customs have disappeared, and it is accelerating in it. Because of technological development, the time has brought the distant closer and made the imagination a reality. So, it is incumbent on the mujtahids to look closely and think long before uttering the fatwa, so that they can stand on the customs of the questioners to see what suits their rulings. It is also necessary to beware of generalizing fatwas and issuing them without specifying a time, place, or situation. or knew.

What must be mentioned and alerted to due to its great danger, is to avoid fatwas on what is known as social media sites, which is what is happening now with great regret, because this is a mistake and danger in a place, and that is due to ignorance of the condition of the questioner on the one hand, and on the other hand because of the generalization of the fatwa. Which he warned us against, and therefore today we see many erroneous fatwas circulating like wildfire among those who follow these websites.

**The Third Requirement: Take into account not to delay the statement until the time of need.**

The scholars differed regarding the statement in the statement, so it was said that “to bring something out of the sphere of confusion to manifestation” (Al-Jassas, 1985, p. 2/17), and it was said, “Al-Bayan is knowledge or evidence” (al-Amidi, 1404, p. 3/29), and what is not meant here is weighting. This or that limit, but rather a clarification of its meaning and the significance of its limit in the intended purpose for which the title of the request was given, and this meaning is that it is not permissible to delay the statement until the time of its need, and the time is the time in which the evidence for the necessity of acting upon it is likely to be acted upon without delay or space in it, because the work on something before knowing it is not possible, and the mujtahid has no say in it, because it is a task that is intolerable, and it is in contrast to the meaning of delaying the statement until the time of need, because knowledge is achieved and the mujtahid in this has to assume issues and put solutions to them other than the first meaning, this rule is of great importance for what it

contains. From clarifying the rulings related to the calamity, with the questioner, he should be aware of his matter.

What the mujtahid should do when considering the statement of this principle are the following:

1. The statement should be clear and unambiguous, not ambiguous or ambiguous.
2. That his statement or fatwa does not lead to suspicion as to the meaning of the fatwa.
3. Paying attention to the condition of the questioner in terms of his ability to understand the fatwa and the meaning of its ruling.
4. That the language of the fatwa is not That the language of the fatwa is not high level speech, so that it is limited to understanding a specific group, nor that it be simple and devoid of legal rooting, on the pretext of coming down to the level of the common people, but rather that it be at a level that everyone understands without prejudice to the meaning or evidence, and in order for the fatwa to reach its goal and obtain Its effect, and towards this meaning, Al-Khatib Al-Baghdadi said: “And in order to avoid addressing the common people and their fatwas with *bialtashqiq waltaqeir walgharib* speech, it is cut off from the desired purpose, and the unintended may happen to them.” (al-Baghdadi, 1421 ah, p. 2/400).

**Conclusion:**

After we have explained the most important controls that must be observed by the mujtahid, which were scattered in the research pages and referred to, we summarize the most important findings that we have reached through this study, in order for those who come after that to complete what we did not complete or did not touch upon or what will arise after that, Especially since the texts are limited and numbered, and the calamities are many and emerging, and this is explained in the next paragraph.

**Most important recommendations:**

1. The one who addresses fatwas and ijtiḥād should have a good mind and memorization, and he should be able to deduce, so that a text is not absent from

him, a question is not hidden from him, and an observation is not lost.

2. He should be sober in thought, with a penetrating look, with a strong argument, perceptive of what matters will turn out to be, and a gentleman with no hurry, so he is not described as a lack of discipline or a lack of understanding.

3. That he be stopped by consultation, he preserves his religion, has chivalry, is merciful to the people of his religion, renounces suspicions, refrains from corrupt interpretations, and does not fear in truth the blame of the blamer.

4. He should always be acquainted with issues of fatwa and ijihad, and he should study a lot of the most important issues in jurisprudence and principles, and what were issues of consensus, in order to avoid issuing fatwas contrary to what was said about them, so he should not issue fatwas with what was hidden from him in that.

5. He should not refrain from turning away from issues that he does not know, and to take cover with a fever " I don't know " when he is not aware of the fatwa or the ruling, because that does not detract from anything and does not detract from it. It is hidden from him, for whoever claims to have science of everything, he does not know anything. It was reported from Ibn Umar that he said: " Knowledge is three: a speaking book, and a past Sunnah, and I do not know " , this principle is given precedence over others and it must be revealed. By the mujtahid, when he lacks knowledge and ability to give fatwas.

## Bibliography

1. al-Amidi, A. a.-H. (1404). *Al'ahkam fi 'usul al'iihkam*. Beirut: Arab Book House.
2. al-Baghdadi, A. B.-K. (1421 ah). *Alfaqih walmutafaqih*. Saudi Arabia: Dar Ibn al-Jawzi.
3. Al-Barakti, M. A.-I.-M. (1986). *rules of jurisprudence*. Karachi: seashells blushers.
4. albukhari, M. b. (1999). *Sahih albukharii*. Dar tawq alnajatii.
5. al-Ghazali, A. H.-T. (1997). *Almustasfaa min eilm al'usul*. Beirut, Lebanon: Al-Resala Foundation.
6. Al-Jassas, A. B.-R. (1985). *Alfusul fi al'usul*. State of Kuwait: Ministry of Awqaf and Islamic Affairs.
7. alsabiki, T. a. (1999). *Rafae alhajib ean mukhtasar aibn alhajibi*. Bayrut , lubnan: ealam alkatub.
8. alsabiki, T. a. (1999). *Rafae alhajib ean mukhtasar aibn alhajibi*. Bayrut , lubnan: ealam alkatub.
9. alsarukhsi, S. a. (2000). *Almabsuta*. Lubnanu: dar alfikr liltibaeat walnashr waltawziei.
10. alsarukhsiu, A. b. (1993). *'Usul alsarakhisi*. Bayrut lubnan: dar alkitaab aleilmiati.
11. alshaashi, M. b. (1402 hu.). *'Usul alshaash*. 'Usul alshaashi. Bayrut: dar alkitaab alearabii.
12. Al-Shatby, I. b.-L. (1997). *Almuafaqat*. Ibn Affan House.
13. alshuwkani, M. b. (1999). *Tirshad alfuhul 'ilaya tahqiq alhaqi min eilm al'usulu*. Beirut: Dar alkitaab alearabii.
14. al-suyuti, A. B. (1990). *Al'ashbah walnazayir*. Beirut: Books House.
15. al-Zarkashi, B. a.-D. *Badr al-Din Muhammad bin Abdullah bin Bahader al-Zarkashi*. The ocean in its origins. Beirut, Lebanon: Scientific Books House, 2000.
16. al-Zarkashi., B. a.-D. (2000.). Beirut, Lebanon: Scientific Books House.
17. Ibn Qayyim al-Jawziyya, M. i. (1968). *'ielam almuqiein ean rabi alealamin*. Egypt Cairo: Al-Azhar Colleges Library.
18. Ibrahim bin Muhammad, b. k. (1980). *Al'ashbah walnazayir*. Beirut, Lebanon: Scientific Books House.
19. Marginani, A. b. *mitan bidayat almubtadi*. Cairo: Muhammad Ali Sobh Library and Press.