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Neo-Ijtihād In the Modern Legal Studies: A Case Study of Al-Qaraḍāwī's Concept of Neo-Ijtihād

Kazeem Adekunle Adegoke[1]

Abstract

Shaykh Yūsufʿ Abd Allah al-Qaraḍāwī is a notable erudite Islamic legist (faqīh) in the contemporary Islamic world of the fifteenth century after Hijrah. His rich and wide scholarship and intelligibility have immensely benefitted the Muslim world. He is, most of the time, a controversial scholar as a result of his preference of situational Neo-Ijtihād to traditional juristic approaches of medieval legists. This has indeed created an interesting landmark in the contemporary development of various areas of Islamic law and jurisprudence which calls for thorough research. The objective of this paper is to examine the opinion of al-Qaraḍāwī on neo-Ijtihād. This study explores the legal position of Ijtihād and Neo-Ijtihād in the contemporary Islamic legal system and al-Qaraḍāwī's approach to the necessity, methodology and employment of Neo-Ijtihād in the modern day Islamic legal theory. He premises this on a certain legal assumption of Tajdīd al-Fiqh. The research methods used in this study are expository, descriptive and analytical. This research paper concludes that the situational jurisprudential issues should be better handled by contemporary seasoned Islamic jurists who are fully aware of the situation and circumstances surrounding the issues in relation to time and place. Also, the researcher maintains that this paper could be used as a reference to prove that contemporary jurisprudential issues are limited by time and are geographically binding, and thus medieval juristic materials would be lacking in addressing them.

Keywords: Ijtihād, Neo-Ijtihād, al-Qaraḍāwī, Tajdīd al-Fiqh.

الاجتهاد الجديد في الدراسة الفقهية الحديثة: دراسة حالة مفهوم القرضاوي للاجتهاد الجديد

ملخص البحث

يعد الشيخ يوسف عبد الله القرضاوي من كبار الفقهاء في العالم الإسلامي المعاصر في القرن الخامس عشر الهجري. أفاد علمه الغزير والواسع وذكاؤه العالم الإسلامي بشكل كبير. إنه، في معظم الأحيان، عالم مثير للجدل نتيجة لتفضيله للاجتهاد الظرفي الجديد على الأساليب الفقهية التقليدية لفقهاء العصور الوسطى. لقد خلق هذا بالفعل معلمًا مثيرًا للاهتمام في التطور المعاصر لمختلف مجالات الشريعة والفقه الإسلامي الذي يدعو إلى إجراء بحث شامل. الهدف من هذه الورقة هو دراسة رأي القرضاوي في الاجتهاد الجديد. تستكشف هذه الدراسة المكانة القانونية للاجتهاد والاجتهاد الجديد في النظام القانوني الإسلامي المعاصر ونهج القرضاوي للضرورة ومنهجية الاجتهاد الجديد وتوظيفه إياه في النظرية الفقهية الإسلامية المعاصرة. لقد فرض هذا على افتراض قانوني معين لتجديد الفقه. مناهج البحث المستخدمة في هذه الدراسة هي تفسيرية، ووصفية وتحليلية. تخلص هذه الورقة البحثية إلى أن القضايا الفقهية ذات الصلة بالظروف ينبغي معالجتها بشكل أفضل من قبل فقهاء إسلاميين معاصرين مدركين تمام الإدراك للأوضاع والظروف المحيطة بالقضايا المتعلقة بالزمان والمكان. أيضًا، يؤكد الباحث أن هذه الورقة يمكن استخدامها كمرجع لإثبات أن القضايا الفقهية المعاصرة مرتبطة بالزمن والمكان الجغرافي، وبالتالي لن تكون هناك مواد فقهية من القرون الوسطى موجودة لمعالجتها.

كلمات مفتاحية: الاجتهاد، الاجتهاد الجديد، القرضاوي، تجديد الفقه.

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1. Introduction

In the early period of Islam, the fundamental sources of the *Sharīʿah* and *Fiqh* were the Qur'ān and the *Sunnah* of the Prophet (S.A.W). During this period, *Sunnah* served as a means for the elaboration, exemplification and interpretation of the Qur'ān. The Arabian society (place of origin of Islam) in which these fundamental sources were revealed and practised was naturally designed to develop further as a result of the expansion of Islam outside that society. Hasan (1982) observes that a majority of the jurisprudential issues that confronted the first generation of Muslims differed from those of the coming generations in the wake of the interplay between Islam and other non-Islamic cultures which generated situations where the former had to inadvertently interact with the latter. (Hasan, 1982, 115).

As a result of this development, the Qur'ān and *Sunnah*, which served as the only fundamental sources of Islamic law during the time of the first generation of Muslims, had to be supplemented, or sometimes re-interpreted and elaborated to capture new jurisprudential problems in order to find answers and solutions to them. It is on this understanding that Islamic jurisprudence (*Fiqh*) was developed to deal with the emergence of new jurisprudential issues from time to time and from one place to another since the time of the Prophet (S.A.W). This time and location bound jurisprudential development was created and re-created, interpreted and re-interpreted, developed and re-developed on the premises of varied circumstances relating to time, place, situation and culture. (Hasan, 1982, 115).

Regarding this development, Kamali (1991) reveals that *ijtihād* became necessary and it has to be a continual jurisprudential process of interpreting the primary source of Islamic law (*Sharīʿah*) by relating it to the changing conditions of Muslim societies in the aspiration for justice, salvation and truth. (Kamali, 1991, 366). This jurisprudential exercise of re-reading, re-thinking and re-interpreting the Islamic jurisprudence in accordance with the above-mentioned circumstances is what is popularly known as *ijtihād*. It was later re-packaged in the modern period as neo-*ijtihād* and this is the ambit of this study.

Thus, this paper attempts to examine the concept of neo-*ijtihād* in the modern Islamic legal system in light of the legal competence of Yūsuf al-Qaraḍāwī, one of the outstanding legists of the fifteen century after *Hijrah*. The paper is divided into eight sections. Section one introduces the topic with a brief review of relevant literature, section two cites a short life sketch of al-Qaraḍāwī, section three deals with the position of *ijtihād* and neo-*ijtihād* in the Islamic legal system, section four examines *ijtihād*, neo-*ijtihād* and other principles of Islamic legal sources, section five discusses al-Qaraḍāwī's approach to the employment of neo-*ijtihād* in his legal theories, section six expatiates on the rationale behind al-Qaraḍāwī's concept of neo-*ijtihād* in his legal theories, section seven examines al-Qaraḍāwī's methodology and employment of neo-*ijtihād* in the contemporary period while section eight concludes the study.

2. Who is al-Qaraḍāwī?

There is no doubt about the fact that Yūsuf ʿAbd Allah al-Qaraḍāwī is one of the controversial figures in the discipline of Islamic jurisprudence (*Fiqh*) in the contemporary period.

He was born in Egypt in 1926. This is equivalent to 1344 of the *Hijrah* calendar. He completed the memorization (*ḥifz*) of the Qur'ān before the age of ten. He had his elementary education, secondary education, undergraduate and post-graduate studies at Al-Azhar Institution of learning. These studies ended in 1973 with the completion of his doctoral programme (Ph.D) in *Sharīʿah* and *Fiqh*. He once worked as a *khaṭīb* and writer in the Department of *Awqāf* and *Sharīʿah* at Al-Azhar University in Cairo. He also served as the Dean of the College of *Sharīʿah* and Islamic Studies as well as the Director of the Centre for *Sunnah* and *Sīrah* Studies at the University of Qaṭar. (Al-Raysūnī, 2003, 111).

He is a member of several Islamic academic societies and associations. He was appointed as chairman of the Academic Council of the University of Al-Amīr ʿAbd al-Qādir for Islamic Sciences in Constantine, Algeria and a Special Adviser on Islamic Affairs to the Ministry of Islamic Affairs in the same country. (Al-Qaraḍāwī, Y., 1991, ii). Currently, he is

the chairman of the International Union of Muslim Scholars (IUMS) and the European Council for *Fatwa* and Research (ECFR). He has also involved himself in the most popular *Fiqh* session aired by Al-Jazeera TV Channel "*Al-Sharīʿah wa al-Ḥayāt.* This programme anchored by Yūsuf al-Qaraḍāwī has ceased to exist after the last appearance of al-Qaraḍāwī on the show on August 25, 2013 for unknown reason, which has earned him popularity and recognition not only among the Muslims in the Middle East, but among European Muslims as well. (El-Wereny, 2016, 7).

Without mincing words, al-Qaraḍāwī is an influential authority on contemporary Islamic jurisprudence in the Islamic world. (Caeiro & Al-Saify, 2009, 109).

As a scholar of high repute, al-Qaraḍāwī has written and published several books on various aspects of *Sharīʿah* and *Fiqh*. Among these books are:

1. *Al-Ḥalāl wa al-Ḥarām fi al-Islām;*
2. *Fiqh al-Zakāh;*
3. *Al-Imān wa al-Ḥayah;*
4. *Al-Ḥulūl al-Mustawradah wa Kayfa Janat ʿAlā Ummatinā;*
5. *Ḥatmiyyat al-Ḥall al-Islāmī;*
6. *Al-Ṣaḥwah al-Islāmiyyah bayna al-Juḥūd wa al-Taṭārruf;*
7. *Al-Fatāwā al-Muʿāsirah;*
8. *Al-Fiqh al-Islāmī bayna al-Aṣālah wa Al-Tajdīd;*
9. *Al-Islām wa al-ʿUlmāniyyah Wajhan li-Wajh;*
10. *Dirāsah fī Fiqh Maqāsid al-Sharīʿah bayna al-Maqāsid al-Kuliyyah wa al-Nuṣūṣ al-Juzʾiyyah;*
11. *Madkhal li-Dirāsat al-Sharīʿah al-Islāmiyyah;*
12. *Naḥwa Fiqh Muyassar Muʿāsir fī Uṣūl al-Fiqh al-Muyassar Fiqh al-ʿIlm;*
13. *Sharīʿat al-Islām Ṣāliḥah Lil-Taṭbiq fī Kulli Zaman wa Makān;*
14. *Kayfa Nataʿāmal maʿa al-Qurān al-ʿAzīm;*
15. *Kayfa Nataʿāmal maʿa al-Sunnah al-Nabawiyyin: Maʿālim wa Ḍawābiṭ;*
16. *Al-Siyāsah al-Sharʿiyyah fī Ḍāw al-Nuṣūṣ al-Sharʿiyyah wa Maqāsiduhā;*
17. *Madkhal li-Maʿrifat al-Islām;*
18. *Bayyinat al-Ḥall al-Islāmī wa Shubuhāt al-ʿUlmānīyyīn wa al-Mutagarribīn;*
19. *Fī Fiqh al-Aqallīyyāt al-Muslimah Ḥayat al-Muslimīn Wasaṭ al-Mujtamaʿāt al-Ukhrā* (El-Wereny, 2017).

Al-Qaraḍāwī is also one of the most temperate Islamic legists who has combined traditional knowledge of *Sharīʿah* and *Fiqh* with the understanding of contemporary problems (*Fiqh al-Wāqiʿ*). His writings have found general acceptance among all sectors of the Muslim world, and many of his works have been translated into various languages (Al-Raysūnī, 2003)

3. The Position of Ijtihād and Neo-Ijtihād in the Islamic Legal System

The legal term "*ijtihād*" gets its derivation from the Arabic verb "*ijtahada*" which, according to Cowan, means "he exerted effort on a project; he attempted to carry out a project".

In line with this meaning, he described *ijtihād* as the independent judgement on a legal or theological question, based on the interpretation and application of the four *uṣūl* (foundations), which are the Qur'ān, *Sunnah*, *Ijmāʿ* and *Qiyās,* as opposed to *taqlīd*. (Cowan, 1976, 143). Al-Alwani describes *ijtihād* as the technical and legal interpretation of the source materials. It involves inferring rules from these materials as well as giving a legal verdict or decision on any issue on which there is no specific guidance in the Qur'ān and *Sunnah.* (Cowan, 1976, 143). According to Philips, *ijtihād* is the legal process of reasoning through which Islamic law is deduced from the textual evidences from the Qur'ān and *Sunnah* after thorough research; while neo-*ijtihād* simply means juristic re-interpretation of already-exercised legal opinions of renowned medieval Islamic jurists (Philips, 1980, 147). According to Muḥammad ʿAbduh, the former Mufti of Egypt, neo-*ijtihād* could be defined as an intellectual re-interpretation of various challengeable jurisprudential issues arising in the contemporary Islamic world. Ajetunmobi elucidated better when he pointed out that neo-*ijtihād* is an offshoot of previous *ijtihād. Ijtihād* was practised by the earlier generation of Islamic jurists (*fuqahāʾ*) in order to bring out a new legal ruling for the issues

arising from certain circumstances or occasions in any given environment; while neo-*Ijtihād* is the juristic output of contemporary jurists. (Ajetunmobi, 1989, 30).

Thus, both *ijtihād* and neo-*ijtihād* require that legists strive to understand the *Sharīʿah* as a legal system on the basis of available evidence from its primary, secondary and subsidiary sources. This is done through the instruments of legal exercise. This exercise of both *ijtihād* and neo-*ijtihād* is regarded as a communal obligatory religious duty in a Muslim community (*ummah*). However, this exercise is also considered as an individual religious duty which is binding on any intellectually-capable Muslim who is qualified and competent and who must engage in it whenever both or either of them are required. Such a Muslim must be well grounded in knowledge of *Sharīʿah* texts and the basic principles of Islamic jurisprudence (*Uṣūl Al-Fiqh*), as well as have an understanding of the guidelines of deriving legal rulings with a full awareness of the legal viewpoints of other scholars. This is in line with the Qur'ān, 16:43 and 21:7 which go: *"Ask those who know the Scripture, if you know not."*

It should be noted that this study does not shy away from the fact that both *ijtihād* and neo-*ijtihād* are volatile and sensitive areas as they could be subjected to manipulation by people to achieve either positive or negative ends. On the pretext of exercising *ijtihād* and neo-*ijtihād*, some biased-minded scholars were guilty of misusing these two intellectual exercises. This happened as a result of their blind followership (*taqlīd*) to a certain school of thought (*madhhab*), sectarian dogma and orientalism. Despite this wrong application of *ijtihād* and neo-*ijtihād* by some Islamic scholars, its importance in the contemporary Islamic world cannot be denied as there are contemporary jurisprudential issues in the modern age that need a re-interpretative *ijtihād* that will reveal the Islamic jurisprudential stand on them.

The contemporary jurisprudential issues which are in dire need of fresh *ijtihād* and re-interpretative *ijtihād* are modern family planning, abortion, in-vitro fertilization, human cloning, artificial insemination, surrogacy, test-tube babies, genetic counselling, prosthetic surgery, milk banking, organ transplantation, etc. (Adegoke, 2011, 47). Considering the modern approaches to the methodological employment and positive utilization of neo-*ijtiḥād* in the contemporary period, Al-Qaraḍāwī's contribution towards this jurisprudential project forms the essence of the dynamism of neo-*ijtiḥad* as an offshoot of *Ijtihād* of the earlier generation of Muslim legists (*mujtahidūn*). The latter is now being re-interpreted so as to bring out new legal rulings on the premise of the culture and custom of a society.

Ijtihād and neo-*ijtihād* are legally necessary in this contemporary age as there should be no period of time without a qualified Islamic legist (*Mujtahid*). This is a welcome idea since the Qur'ān (16:89) attests to the fact that the Islamic legal system is comprehensive enough to accommodate any lawful thing at any period of time. Hence, there is a contemporary jurisprudential vacuum which al-Qaraḍāwī wishes to fill, in the fifteenth century of the *Hijrah* calendar, through his legal theory (Adegoke, 2011, 43).

4. Ijtihād, Neo-Ijtihād and other Principles of Islamic Legal Sources

The sources of legal rules in Islamic jurisprudence (*Fiqh*) are popularly known as *maṣādir al-aḥkām* in the Islamic legal system. These sources are classified into three by Islamic legists, namely, primary sources, secondary sources and subsidiary sources.

The primary sources are the the Qur'ān and the *Sunnah* of Prophet Muḥammad (S.A.W), while the secondary sources are the *Ijmā*'(consensus) and *Qiyās* (analogical deduction) of competent Islamic legists. The subsidiary sources are the subordinate legal exercises which are subjected to circumstances and conditions. The derivation of the legal rules from the primary sources of Islamic jurisprudence (*Fiqh*) could be made through two ways, namely, *al-dilālah al-qatʿiyyah* (certain and fixed meaning) and *al-dilālah al-ẓaniyyah* (speculative meaning) (Adegoke, 2012, 297).

4.1 *Al-Dilālah al-Qatʿiyyah*

The rules derived through *al-dilālah al-qatᶜiyyah* of the verses of the Qur'ān and the *Sunnah* of Prophet Muḥammad (S.A.W) are absolute rules in which neither *ijtihād* nor neo-*ijtihād* is allowed. This is in line with a popular legal axiom which says "*La Ijtihāda*

Ma'a Naṣṣ" meaning "There is no legal exercise (of a legal expert) on a textual clear-cut issue". This is so because the primary sources (Qur'ān and *Sunnah*) have provided the absolute verdict. This type of legal rule is decisive (*qaṭ'ī*) in nature. (Al-Ilūrī, 1991, 8). This *qatᶜiyyah* (decisiveness or certainty) could also be sub-divided into two, namely: i. *qatiᶜiyyat al-thubūt*; and ii. *qatᶜiyyat al-dilālah*.

4.1.1 *Qatiᶜiyyat al-Thubūt*

Qatiᶜiyyat al-thubūt means certainty of the transmission of a text. For example, in terms of its transmission, the whole Qur'an is certain. Therefore, no *Ijtihad* or neo-*Ijtihad* is allowed to find out the certainty of any verse of the Qur'an. Likewise, transmission of some *ahadith*, such as *ahdith mutawatirah*, is certain. Like the verses of the Qur'an, no *Ijtihad* or neo-*Ijtihad* is permissible to find out the certainty of these *ahadith*.

4.1.2 *Qatᶜiyyat al-Dilālah*

This is the type of legal system which only instructs and guides the people to observe certain compulsory forms of worship ('*ibādah*). Examples of this legal ruling are the divine instructions on the performance of obligatory *Ṣalāwat* (canonical prayers), *Ṣiyām* (fasting), *Zakāt* (obligatory charity) and *Ḥajj* (pilgrimage) as stated in the Qur'ān. The *qatᶜiyyat al-dilālah* could appear as the legal rules which are decisive (*qaṭ'ī*) in authenticity and transmission and also decisive in meaning. Sometimes, such a rule could appear as a legal rule which is probable and speculative in authenticity (*ẓannī*), but definite and decisive in meaning as it comes from a competent jurist after either thorough *ijtihād* or neo-*ijtihād* legal exercises. (Adegoke, 2012, 297).

4.2 *Al-Dilālah al-Ẓanniyyah*

Al-Dilālah al-Ẓaniyyah is the presumptive legal rule based on the legal assumption or presumption of a renowned Islamic legal expert such as an *Usūlī* and *Faqīh*, which occurs either thorough *ijtihād* or neo-*ijtihād* legal exercises. An example of this appears in *Sūrat al-Baqarah* (Qur'ān 2:228) on *'iddah* or the waiting period of a divorced woman (*muṭallaqah*) after her husband's pronouncement of divorce which the Qur'ān refers to as *qur'*. The term '*qur*' was interpreted by al-Imām al-Shāfiʿī as the cleaning period (*Ṭuhr*) after menstruation, while al-Imām Abū Ḥanīfah referred to it as the menstrual period (*hayḍ*) of such a divorced woman.

It is also derived from any of the secondary sources such as *Ijmā'* (consensus of contemporary scholars) and *Qiyās* (analogical deduction of a contemporary scholar); and subsidiary sources of Islamic jurisprudence which serve as neo-*ijtihād* such as *Istiḥsān* (Public Welfare), *Istishāb* (Legal Presumption), *Istiṣlaḥ* (Public Interest), *Maṣāliḥ al-Murṣalaḥ* (Public Interest), *Al-'Urf wa al-'Ādāt* (Custom and Cultures), *A'māl ahl al-Madīnah* (Practices of the People of Madinah), *Qawl al-Ṣahābah* (Sayings of the Prophet's Companions), *Shar' Man Qablanā* (Legal Rules of Earlier Prophets), *Sadd al-Dharā'i'* (Precautionary Measure), *Istiqrār* (Common Legal Understanding), etc.

5. Al-Qaraḍāwī's Approach to the Employment of Neo-Ijtihād in His Legal Theories

Al-Qaraḍāwī's approach to the concept of neo-*ijtihād* was basically apologetic and persuasive. This stance of al-Qaraḍāwī' can be deduced from the scholar's appeal to contemporary Muslims that Islamic law (*Sharīᶜah*) is a programme which left no affair untouched irrespective of age and environment because of its natural absolute and universal approach.

As a result of this development, al-Qaraḍāwī opines that Islamic law is applicable to every human society in every age. This is so because history bears witness that it brought societal peace, justice, social welfare and stability wherever this law is well understood and perfectly put into practice (Al-Qaraḍāwī, 1997, 2-6). The success of Islamic law is attributed to the fact that Islamic law has been divinely equipped by Allah and perfectly exercised by Prophet Muḥammad (S.A.W) with a remarkable flexibility in such a way that it could effectively confront the problematic issues of every society and age. (Al-Qaraḍāwī, 1997b, 11).

However, al-Qaraḍāwī maintains that in this contemporary period, Muslims are now confronted with a myriad of jurisprudential problems emanating from western civilization, scientific and technological innovations, as well as socio-political and economic

ideologies which are hurriedly transforming the daily life of the people in the Islamic societies. The majority of these jurisprudential problems are somewhat a novelty and are recent problems in the daily life of contemporary Muslims as they were not treated by the earlier medieval Islamic legists. (Al-Qaraḍāwī, 1997b, 10). This is where al-Qaraḍāwī's approach to neo-*ijtihād* lies. Al-Qaraḍāwī's concept of neo-*ijtihād* in his legal theories is premised on the fact that all of these contemporary myriads of jurisprudential problems require a transformation and renewal of Islamic law so as to technically handle such problems. This is popularly known as *tajdīd al-Fiqh*.

As far back as 1970, a majority of al-Qaraḍāwī's academic materials written for public consumption targeted the transformation and renewal of Islamic law (*tajdīd al-Fiqh*) through the re-interpretation process of the presumptive aspects of primary and secondary sources of Islamic law (*Sharī'ah*). This was to be achieved through the effective use of neo-*ijtihād* to treat and meet the emerging social jurisprudential problems since *Sharī'ah* is a universal remedial programme for social illness of every human society. Al-Qaraḍāwī discussed extensively in some of his academic materials such as *Sharī'at al-Islām Ṣāliḥah lil-Taṭbiq fī Kulli Zaman aa Makān*, *Al-Fiqh al-Islāmī bayna al-Aṣālah aa al-Tajdīd* and *Min Hadī al-Islām: Fatāwā Mu'asirah*, about this subject. He wrote that all the rising social jurisprudential problems should be professionally handled by competent Islamic legists through the process of re-interpretation (neo-*ijtihād*) of already-existing traditional materials on those problems. Al-Qaradawi posits that such scholars or legists should beware of blind imitation (*taqlīd*) and total dependency on old or traditional methods without consideration of the different circumstances in a particular time and society. (El-Wereny, 2016, 4).

6. Rationale Behind Al-Qaraḍāwī's Concept of Neo-Ijtihād in His Legal Theories

Al-Qaraḍāwī's concept of neo-*ijtihād* in his legal theories was not meant to involve the unconditional modification, adjustment and amendment of Islamic law in the way the Western legal system is operated, with its usual unconditional adjustment and amendment of the constitution so as to suit the interest of the government in power.

To al-Qaraḍāwī himself, the transformation and renewal of Islamic law (*tajdīd al-Fiqh*) is not a paradigm shift of Islamic law from Islamic values to Western foreign elements as was done by some Islamic nations such as Egypt, Libya, Pakistan, United Arab Emirates, Iraq, etc., in some areas of their Islamic family law (*Al-Ahwal al-Shakhsiyyah*).

Therefore, it is not out of tune to point out, at this juncture, that this change from Islamic values to Western-oriented ones is not a renewal of law; rather, it is a distortion and falsification of law. (El-Wereny, 2016, 4). The focus of al-Qaraḍāwī's concept of neo-*ijtihād* in his transformation and renewal of Islamic law (*tajdīd al-Fiqh*) is to appraise and utilise Islamic law as the main solution for the socio-cultural, socio-economic and socio-political illnesses of Muslim societies in the contemporary period. Al-Qaraḍāwī's approach also seeks to consider new living conditions, on one hand, and the foundations and basic principles of the Islamic legal system (*Uṣūl al-Fiqh*) and juristic neo-*ijtihād*, on the other hand. (Al-Qaraḍāwī, 2011, 10).

Regarding this, al-Qaraḍāwī classifies the Islamic jurists into two categories namely Quasi-Dependent Islamic Jurist and Dependent Islamic Jurist. (Al-Qaraḍāwī, 1997c, 124).

6.1 Quasi-Dependent Islamic Jurist

This is a contemporary Islamic jurist who does not only deem the legacy of old and medieval Islamic Jurists (*fuqahā' qudamā'*) necessary as an immense archive of Islamic jurisprudence (*Fiqh*) that serves as a pacesetter to the contemporary Islamic jurists (*fuqahā' mu'āṣirūn*) but also builds on it through his *ijtihād* and neo-*ijtihād* exercises in order to treat contemporary jurisprudential problems while considering the change of time, place, circumstances and human conditions. Such a contemporary Islamic jurist does not employ blind imitation (*taqlīd*) of the past juristic legacy. Even wherever it is necessary to make use of any of the past juristic legal opinions, he uses it with an eye open for contemporary needs and necessities. As a result, the aim of this class of jurists is to develop the Islamic law

from within its divine methods while ensuring that its properties and natures are neither jeopardized nor tampered with.

6.2 Dependent Islamic Jurist

This is an Islamic jurist who dogmatically follows and imitates any early legal opinion of Islamic law and then wholeheartedly accepts its obsolete standpoint on a contemporary jurisprudential problem without giving consideration to the change of time, place, circumstances and human conditions.

Al-Qaraḍāwī cherished the quasi-dependent Islamic jurists because they move with the current trends of the present time in the field of Islamic jurisprudence (*Fiqh*), while criticizing the dependent Islamic jurists for their dogmatic conservatism.

7. Al-Qaraḍāwī's Methodology and Employment of Neo-*Ijtihād* in the Contemporary Period

Al-Qaraḍāwī's methodology and employment of the concept of neo-*ijtihād* in the contemporary time is captured under what he termed *tajdīd al-Fiqh* which is based on the following assumptions:

i. Modification of the traditional juristic legacy and the renewal of *Fiqh* content.
ii. Formal renewal and codification of a *Fiqh*-based legal theory.
iii. Implementation of Islamic legal rules in the daily lives of Muslims.

7.1 Modification of Traditional Juristic Legacy and the Renewal of *Fiqh*-Content

This is the first jurisprudential method used by al-Qaraḍāwī in his own neo-*ijtihād* concept. Here, he opines that various jurisprudential positions of the traditional juristic legacy need to be re-interpreted and re-packaged to solve contemporary jurisprudential problems according to the demands of the time, place and circumstance without negligence or tampering of the *Sharī'ah*'s framework. Modification of these traditional legacies would give way to the formulation of the corresponding neo-*ijtihād.* These re-interpreted rulings would enable contemporary Islamic jurists to integrate Islamic law (*Sharī'ah*) into the modern daily life of Muslims. This will convince the people that *Sharī'ah* is always valid and suitable for mankind irrespective of time, place and circumstances. (El-Wereny, 2017, 38).

This modification is highly necessary because not all juristic positions of traditional jurists are compatible with the present demands of the modern period because of their consideration of the public welfare (*Maṣlaḥah*), local customs and cultural inclinations ('*Urf wa al-Ādāt*) and analogical usage (*Qiyās*). However, this should be interpreted as neither a condemnation nor rejection of the juristic legacies of the traditional Islamic jurists of the medieval period of Islam. Rather, it is a continuation from where they stopped in their legacies.

Thus, there should be a linkage between modern day neo-*ijtihād* and traditional juristic positions as the latter serves as the foundational basis of Islamic legal maxims which the former seeks to re-interpret and re-package to meet the demands of time, place and circumstance. (El-Wereny, 2017, 38). If there is no traditional juristic legacy, what would the contemporary jurists modify, re-interpret, re-examine and re-package? This form of neo-*ijtihād* is what al-Qaraḍāwī refers to as *al-Ijtihād al-Tarjīḥī* (re-interpreted *ijtihād*). Al-Qaraḍāwī moved further to state that neo-*ijtihād* could be considered as an independent jurisprudential legal maxim if it serves as a jurisprudential solution to emerging problems which have not been covered by the previous traditional juristic legacies. (Al-Qaraḍāwī, 1993, 11). According to him, the world is changing on a daily basis and these changes, most of the time, lead to the emergence of new challenges for ordinary Muslims and contemporary Islamic jurists.

As a result of this development, there is a dire need for contemporary groups of highly-competent Islamic jurists, experts and specialists to exercise a new neo-*ijtihād* in order to tackle these novel challenges and problems. This form of neo-*ijtihād* should take place at an independent academic institute of learning such as a university in which Islamic jurists and other concerned professional bodies would meet to professionally deliberate on the emerging issues. The contemporary need for Islamic Law (*Sharī'ah*) leads the Islamic legal

experts and professionals of other conventional fields to revise the *ijtihād* and neo-*ijtihād* of previous jurists in accordance with the changes of time, place and situation. (El-Wereny, 2017, 38). For instance, the position of professional bodies in medicine has to be given consideration when exercising neo-*ijtihād* on health-related issues such as modern family planning, abortion, in-vitro fertilization, human cloning, artificial insemination, surrogacy, test-tube baby, genetic counselling, prosthetic surgery, milk banking and organ transplantation in order to arrive to an adequate jurisprudential solution. (Adegoke, 2011, 47).

However, on the concept of neo-*ijtihād*, it should be rightly stated at this juncture that al-Qaraḍāwī himself is conscious of the fact that there are Islamic legal provisions which are already fixed and unalterable and on which any form of *ijtihād* or neo-*ijtihād* is not allowed. These Islamic legal provisions are context-independent and are valid for all time and at every place, such as Islamic belief system (‘*Aqīdah*), Islamic worship (‘*Ibādah*) and Islamic moral values (*Akhlāq*). The Islamic legal provisions that al-Qaraḍāwī mentions, on which *ijtihād* or neo-*ijtihād* are allowed, are those with variable norms because their Qur’anic and prophetic references are presumptive (*ẓannī*) in terms of their authenticity (*thubūt*) and their meaning (*dilālah*) as this present study has earlier highlighted. (Adegoke, 2012, 14). With this understanding, such Islamic legal provisions are subjected to various interpretations and re-interpretations through the intellectual processes of *ijtihād* or neo-*ijtihād* from highly competent Islamic jurists in consideration of changes in living conditions. This is what al-Qaraḍāwī refers to as *al-Ijtihād al-Inshā’ī* (productive or creative *ijtihād*). (Al-Qaraḍāwī, 1993, 78).

7.2 Formal Renewal and Codification of *Fiqh*-Based Legal Theory

The two types of legal theory in the Islamic legal system are *Sharī‘ah*-based legal theory and *Fiqh*-based legal theory. The *Sharī‘ah*-based legal theory is immutable and eternally valid because it is neither time-bound, nor geographically and circumstantially bound unlike any of the Western legal theories. The reason for this development is that the *Sharī‘ah*-based legal theory is sourced from the major primary sources of the *Sharī‘ah* which are the Qur’ān and *Sunnah* of Prophet Muḥammad (S.A.W). *Fiqh*-based legal theory is the interpretation and re-interpretation of the *Sharī‘ah*-based legal theories, and these interpretations are subjected to time, location and circumstances (El-Wereny, 2016, 11).

Because of this development, the *Fiqh*-based legal theory is flexible, amendable and renewable. The renewability of the *Fiqh*-based legal theory led to the interpretation (*ijtihād*) and re-interpretation (neo-*ijtihād*) of the *Sharī‘ah*-based legal theory. As a result of this, the formal renewal of this *Fiqh*-based legal theory needs to be drafted into an orderly manner that is perfectly numbered and well-organised in codes so as to make Islamic law easily accessible for consultation and create avenues through which all contemporary *Fiqh*-related challenges could be satisfactorily treated. In the opinion of al-Qaraḍāwī, the codification of Islamic law, which he termed “*taqnīn al-Fiqh*”, would not only help to define the relationship between the rulers and the ruled but would also protect the rights of the ruled and restrict the power of the rulers. (El-Wereny, 2016, 11).

7.3 Implementation of Islamic Legal Rules (*Sharī‘ah*) in Daily life

A full implementation of *Sharī‘ah* rules in every society serves as the main focus of al-Qaraḍāwī’s neo-*ijtihād* in his legal theory. According to him, *Sharī‘ah* sets the limits and conditions that must be observed and or avoided in dealings since its rules are a suitable panacea to the current jurisprudential problems in the modern Islamic world.

However, because the nature of the contemporary world as a global village does not fully permit a complete implementation of *Sharī‘ah* rules, the process of the entire implementation of these rules should be a gradual process and cannot come about in the twinkle of an eye. (Al-Qaraḍāwī, 1997, 75). The first step which should be considered in order to achieve this, is to provide *Sharī‘ah* provisional rules that can be applied to the current societal problems which are hindering the application of these *Sharī‘ah* rules in such a society.

Al-Qaraḍāwī cited samples of these societal problems such as problems of unemployment, poverty, ignorance, disease, marriage issues, housing, increase in prices, disasters, and the enormous disparity between the miserable poverty of some, on the one hand and the colossal wealth of others on the other hand (Al-Qaraḍāwī, 1997, 75). All these need the intervention of interpretation (*ijtihād*) and re-interpretation (neo-*ijtihād*) of both the *Sharī'ah*-based and the *Fiqh*-based legal theories through the processes of thorough renewal of Islamic law, since these new jurisprudential issues are necessary.

Like Al-Alwani, al-Qaraḍāwī makes it clear that the provisional rules of *Sharī'ah* should not be reduced to criminal law (*Ḥudūd wa Uqūbāt*) only as if that is the primary objective of the *Sharī'ah* (al-*Maqāṣid al-Shar'iyyah*) (Al-Alwani, 2012, 5). In essence, it should be noted that the provisional rules of *Sharī'ah* do not simply treat issues that are crime-related only, the *Sharī'ah* also covers personal social matters in politics, economics, marriage contracts and faith-based issues in worship, ideology, morals as well as values of the Muslims etc. (Zubair, 2005, 11).

Al-Qaraḍāwī opines for a gradual introduction and implementation of *Sharī'ah* provisional rules in a multi-religious and multi-cultural environment. The *modus operandi* of al-Qaraḍāwī's standing is based on his fear that a sudden and radical implementation of *Sharī'ah* provisional rules in a particular society may make people develop a misconception about the provisional rules and thereby frighten and scare them away from these divine provisional rules. (El-Wereny, 2016, 12).

7. Conclusion

This research summarises that:

1- Neo-ijtihād is still viable in this contemporary period to meet the demands of the time and to address new jurisprudential matters which were not directly addressed in the ijtihād of medieval Islamic legists (mujtahidūn).

2- Ijtihād and neo-ijtihād are the exercises of an Islamic legist (Mujtahid) of a particular society, and they are meant for that society and should not be given universal application.

3- Neglect of this dynamic nature of Fiqh in the contemporary period would eventually lead to unnecessary confusion in local Fiqh-based jurisprudential matters.

4- The contemporary Muslim communities are in need of situational Fiqh through the exercise of neo-ijtihād by competent Islamic jurists in the modern jurisprudential-related matters.

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