

# Legal Methodology of Eclecticism in Contemporary Islamic Jurisprudence: Impediments and Edicts

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## ABSTRACT

Islam is the only religion with the attribute of universality and ever-ready to regulate the individual and society both at any time in everywhere. It has no obsolete for inexistence of ruling in the Shari 'ah to deal emerging issues. Veracity of opinions among all Sunni schools, relied just on secondary issues not in fundamental beliefs or otherwise. Mostly difference of views is on the preference of a matter not on the validity and this one is also appraisable for the 'Ummah'. In fact, all Sunni schools are the branches of the same tree. There must be consistency among their notions not the depiction of contradictions. The most significant method of Islamic Jurisprudence known as 'Talfiq' (Eclecticism) is very effective and implementing to compete the contemporary issues of the society, even in the antique period of Ottoman Empire exercised by the great Scholars during the codification of 'Al-Majallah al-Ahkam al-Adaliyyah'.

**Keywords:** *Eclecticism, Islamic Jurisprudence, Talfiq, School of Thought*

### **Introduction**

Islamic Jurisprudence is the unique jurisprudence in the whole legal system of the world. It has many characteristics which are not available in any other legal structure. The Interpretory method of the text was presented by the Islamic jurisprudence in the history of the law. The richest heritage in the global history is referred the work of Muslim 'Fuqaha' even today in the modern and digital world. The Muslim jurists' writings have not just the museum status but still practice in the whole world.<sup>1</sup>

It is not wrong to denote that Islamic jurisprudence has comprehensive rulings, methods, and ethics covering all aspects of life. It has universal approach not restricted to a particular human race, places, or color. As stated in the Holy Quran:

"وما أرسلناك إلا رحمة للعالمين"<sup>2</sup>

"And we have sent you (o Muhammad) except as a mercy to the worlds"

The Islamic rulings facilitate the individual and society lives both. It is not containing only some worships and spiritual matters but entailing the guideline for all human needs. It is considered a moderate and balanced system with essential components of spiritual and physical aspects. It is described in the Holy Quran:

"وابتغ فيما آتاك الله الدار الآخرة ولا تنس نصيبك من الدنيا"<sup>3</sup>

"But seek, through that which Allah has given you, the home of hereafter; and yet do not forget your share of the world"

Unlike other ruling systems Islamic system is a much-balanced system. It has not unapproachable and vague rules beyond the practice of human beings. Islamic jurisprudence intended to bring easy way for public and eradicate the hurdles. Allah Almighty said:

"يريد الله بكم اليسر ولا يريد بكم العسر"<sup>4</sup>

"Allah intends for you ease and does not intend for you hardships"

The Holy Prophet also (ﷺ) said;

"يسروا ولا تعسروا وبشروا ولا تنفروا"<sup>5</sup>

"Make things easy and do not make them difficult, cheer the people up by conveying glad tidings to them and do not repulse (them)"

Contemporary issues, new situations, and innovations will be reviewed within the Shari'ah framework, and the process will be carried out by jurists using divine legal texts, such as the Quran and Sunnah, as well as other Shari'ah legal sources. The degree of harmony reached between revelation and reason is the core oneness of the Shari'ah, and 'ijtihad' is the primary vehicle for sustaining this harmony. The immense achievements of humanity in the field of science have resulted in significant changes and advancements, and resolving such essential concerns necessitated the use of a good and complete methodology. Strict devotion to literal interpretations and the lack of an effective approach for dealing with texts resulted in a limited grasp of Shari'ah and immobility in response to new conditions and circumstances. Apart from that, the aim and higher purposes of Islam, as well as their right relationship, must be comprehended. The Muslim 'Ummah' will be able to stay up with the times and reclaim its former respect and reputation in this way. It is mostly caused by the closing of the ijtihad door, hence the desire must be reactivated via the employment of a complete technique. The dynamic spirit of Islam, as well as the atmosphere of stagnation and blind imitation, must be revitalised by current scholars.

Globalization has ushered in fast societal transformation, which is now knocking on the door of ijtihad. In terms of discussions on its evidences and varied perspectives from associated scholars, the notion Talfiq (eclecticism) deserves more clarification from experts in Islamic jurisprudence. It became widely used and had an impact during the twentieth century, an epoch that saw the revival of Islamic jurisprudence as well as the codification of laws around the world. The ottomans practiced it properly with some other methodologies to meet the contemporary issues of the society. The current study explores the familiar extensive method of Islamic jurisprudence known as *Talfiq*. It denotes the Muslim jurists' notions regarding this method and highlights the rules, conditions and limits provided by them for the legality of the said concept. It provides Scholars with help in distinguishing between non-amended fixed laws and laws that may alter depending on the validity of situations and localities. For example, when it comes to the pressing needs of Muslim populations in the West, rigorous interpretation must be avoided. Their issues and needs are distinct, and they should be treated as such.

Islamic law as a divine law has a great impact on humankind. Nowadays the Muslim world needs the upgraded edition of Islamic law. The acme of success is the revival of Ijtihad especially regarding those countries which are interested in sharia supremacy. In this article, we stressed and emphasized on the thinking about modernization of '*Fiqh*' and its procedure in order to all schools of thought. It is inexcusable that the door to ijtihad was closed when there is a pressing need for ijtihad renewal in the context of the rebirth of Muslim governments and societies. However, freedom of expression is a prerequisite for ijtihad. In his famous book "The Reconstruction of Religious Thought in Islam," Allama Muhammad Iqbal likewise urged for the resurrection of Ijtihad in order to rouse the Muslim world. The truth is that '*Taqlid*' is allowed only for those who cannot search for or understand the evidence. It is permissible just for layman not for *Ulema*, *Ibn al-Qayyim* also was of this opinion. *Shah Wali ullah* was also in this opinion that '*Taqlid*' is not permitted for a person who can investigate even some matters. Veracity and thinking in different schools of thought cause the facility and pave the way for Ummah not the restrictions. But the invent of *Taqlid* perished the beauty of this system. It's considered as a sin to follow any other Imam rather to get fruit of his planted trees. Although *Talfiq* is not considered one of the sources of Islamic law, it is widely used by contemporary scholars. It was not very popular and was not acknowledged by the majority of

classical scholars during the establishment of schools of law. In the context of the implementation of the Shari'ah in modern state laws in the Islamic world, there is a lot of debate. Talfiq, like others, is an important approach for getting beyond the Taqlid's stringent rigidity and unquestioning commitment.

The Ottoman Empire, which was magnificent, multi-cultural, and multi-religious, used legislative reforms to transform the Empire and protect its territorial integrity from outside powers as well as nationalist movements within the country. Another noteworthy feature is that they launched the first proper contemporary codification process in the Muslim world, particularly in the area of family law. The Ottomans Codification has an ample experience of such methods. The burning topic '*Talfiq*' has two dimensions to talk; first is '*Jama bain ul Mutardib*' and second is '*Khroj an-el Madhab al-Mutayin*'. In the sense of '*Tatbiq*' and '*Jama ul Madhab*', the '*Talfiq*' is not controverted. The other name is also used for it, '*Tatubu al-rukhs*'.

### **Literature Review**

The twentieth century was a period of reform (tajdid) in Islamic history, and it was at this time that Talfiq gained popularity among Muslims, particularly with the appeal to free people from the shackles of rigidity in selecting a certain school of jurisprudence. It was termed as an alternative for modern scholars who regard ijthad (independent legal reasoning) to be limited and difficult to apply in providing legal solutions.

Because of the magnitude of the reforms, a great deal has been written about it. It has been attempted to review some classic books and articles pertinent to the research topic in the following sections. The following are some examples of peer-reviewed literature: Ghazala Ghalib Khan's thesis for her LLM, *An Analysis of Application of Talfiq in Modern Islamic Commercial Contracts*, is a good piece of work. It is a basic source having origin and evaluating touch of the Talfiq but skipped the detailed working orbit. The other remarkable work on eclecticism in present era is compiled by Dr.Zainab Ameen and Dr. Irshad Ahmad. They tried to shed light on the importance and significance of the Talfiq in the modern era. They raised the points to activate this strategy to compete the new challenges of the ever-day change society. There is nothing to do with the detailed impediments regarding it. Aside them, another contemporary writing is by Dr. Tahir Mansori in connection of Talfiq in the field of Fatwa but also limited in financial transactions having no minutes about orbit of Talfiq.

### **Objective of Research**

The current study intends to denote the prominence of the Talfiq in contemporary era to overcome the challenges of the day particularly facilitating the reactivation of the mood of Ijtihad. Because of the Ottoman Empire's importance, several study papers, publications, and studies have touched on the concept of Talfiq, but have overlooked its drawbacks and separate status from other methods. It is true that decisions based on 'Talfiq' are still ambiguous as to whether they are permanent or transitory. In modern texts, there is nothing but a few cue. To study the Islamic wonderful comprehensiveness to deal with current society, and especially to pave the path for new legislation, a detailed investigating and analytical job is required

### **Meaning and Definition**

Talfiq gained popularity among Muslims during the twentieth century's period of Islamic reform (tajdid), notably with the appeal to free them from the shackles of rigidity in joining a certain school of jurisprudence. It was termed as an alternative for modern scholars who regard ijthad (independent legal reasoning) to be limited and difficult to apply in providing legal solutions. Yet, there are doubts on whether the ruling derives from '*Talfiq*' should be treated as a permanent solution or

temporary. For a better understanding the concept of 'Talfiq', it is worthy to shed light on the status of the 'taqlid'. It is not wrong that the phenomenon of 'talfiq' has rooted in the 'taqlid's concept even it is named, compound 'taqlid', by some scholars.<sup>6</sup>

The word 'Taqlid' comes from the Arabic root word "q-l-d" which means "fixing of an animal". It may be derived from the root word "Qaladah" means: Placing something around the neck, which encircles the neck. It linguistically means "to follow (someone)" or "to imitate". It is to follow others without thinking or questioning. In a juristic meaning, this terminology states to follow a Mujtahid's efforts with no proof or argument.<sup>7</sup>

In technical sense 'Taqlid' means "to copy, reproduce. To pick a statement of another with no demand of proof or evidence, believing the statement accordingly fact and proof, is known as 'Taqlid'. As to the technical meaning, Al Ghazali described it as "to follow without knowing the reason". Abd ul Karim Zaidan preferred "to adopt opinion of others without knowing the basis and the strength of the opinion". According to Abu Ma'ali al- Juwayni, 'taqlid' is "to follow someone without having proofs and doesn't trust upon knowledge".<sup>8</sup> According to a more comprehensive definition supplied by Kaml Ibn al-Hamm, "Without any evidence, acting upon the words of one, whose words are not (regarded as) proof."<sup>9</sup>

The Qur'an Commands

"فاسئلوا اهل الذكر ان كنتم لا تعلمون"<sup>10</sup>

"And, ask the People of Knowledge if you do not know."

This verse is directed to those who do not possess knowledge, so they will seek guidance from others. In the context of seeking knowledge of the religion, they were to seek from *ahl-dhikr*, the people of message, which refers to *ulema* or people of knowledge.

There are two ways to practise Shari'ah: Ijtihad, which means practising one's own understanding, and Taqlid, which involves mimicking or following someone else's understanding. In this regard, Allah Almighty validates Taqlid by commanding to follow a scholar if you don't have knowledge and at the same time Allah Almighty condemns to follow Ullama (scholars) blindly as Jews did. The scholars, who can search for the evidence, are excluded from this group of Taqlid. It is understood here that All Mujtahid Imams dislike and forbade the 'Taqlid' to be adopted by their disciples.<sup>11</sup>

Articles 189 and 201 of Pakistan's constitution allow for taqlid. The Supreme Court and High Courts' decisions are binding on lower courts under these clauses. Here, Precedents or stare decision are practical forms of Taqlid.

Talfiq literally; (لَفَّقْتُ التَّوْبَ) (لَفَّقَ - يَلْفُقُ - تَلْفِيقًا) the connecting, mixing or amalgamation of schools' opinions, to join of two things; to emerge or mixture of things.<sup>12</sup>

Technically; it means to leave a particular thought partially and join or tilt to other thought. There is no stern definition but it may be named as taqlid murakkab. It is jurisprudentially recommended that a jurist who adheres to a particular school of thought should leave that school's jurisprudence on a particular issue and adopt a rival point of view presented by another school if the latter is more practical and conforms to the needs of the time.<sup>13</sup>

"الأخذ بأكثر من قول من الأئمة في مسألة ذات أركان و جزئيات مختلفة"<sup>14</sup>

To pick more than one view of distinct school of thoughts Imam in a single issue of several branches and sub matters.

Sheikh Muhammad Sa'id al-Bānī, defines the term comprehensively: "talfiq is adoption of a practice (fashion/pattern) not propounded by any mujtahid."<sup>15</sup>

### **Evolution of *Talfiq***

Dr. Wahba Zuhaili and the most prominent scholar Maulana Khalid Saifullah Rahmani stated in their writings about the Initiation of the *Talfiq*. They said that this methodology was not known in the ancient era till seventh hijri. This was practiced in the regime of Uthmani Khilafat due to wideness as in internal and external affairs regarding trade, industry and accords.<sup>16</sup> There may be caught three or more types of eclecticism based on various dimensions as known literal eclecticism, in the sense of Fuqaha, in the Sense of *Usuliyyeen*. But in current discussion it is took completely in a distinct view in the *usuliyyeen*. It is used to leave a specific school of thought rather used in one of them.<sup>17</sup>

It may be classified into prohibited and permissible types also on the controversy among scholars regarding its impediments.<sup>18</sup> For Brief understanding, it may be stated that there are two types of '*Talfiq*' (Eclecticism) one of them is just to search easy ways to satisfy desires, this kind is not permitted at all. The second type is to leave the strict point of view and select the easiest opinion the most favorable on any issue just to show the flexible face of Islam as a code of life, this kind is not only permissible but appraisable.

Islamic laws based on flexible legislation and provide a comprehensive guideline to the public. There are deemed many terminologies having different meanings regarding implementation of Islamic rule and principles. For a lay person, *Taqlid* is permitted because of lack of deep knowledge of the *Shari'ah* and instructed to ask guideline from Knowledgeable persons. But the *Ulema* are not allowed to travel on *Taqlid* way but they have to activate the *Ijtihad* practices. The *Ulema* have various ways to open this door of *Ijtihad*. It is not wrong that *Talfiq* terminology has no proper exercise in pre-reform era of Islamic laws. This term was not popularized with classical scholars but has some roots in the 17<sup>th</sup> Hijri. To pick the only easy opinions of different schools for satisfaction of own desires is named '*Talfiq e Mazmoom*' which is prohibited. On the other hand, for the public interest to issue the *Fatwa* on most favorable view is encouraged and backed by the flexible face of the Islam.

### **Fatwa shopping and *Talfiq***

Although Fatwa shopping is one of the most contentious issues in modern Islamic finance, it has surprisingly received little attention from Islamic finance specialists. Fatwa shopping is considered as a source of wealth rather than a source of difficulty, a continuation of the *Talfiq* technique of picking *Shar'ah* norms. The fact is that this is the method of doctrinal selections (*Talfiq*) provided by a Muslim jurist in a particular interpretation best competing the circumstances, whether this interpretation given by his own school of thought or not. This legalistic approach review and select various opinions from distinct schools to bring a single conclusion. This study aims to fill that gap by critically evaluating a traditional method in Islamic jurisprudence known as *Talfiq*, which is frequently used to select, review, and combine various *Sharia* opinions to justify a desired outcome in a specific case, and by examining the relationship between this traditional methodology in Islamic law and modern fatwa shopping practises in contemporary Islamic finance.

### **Tatabbu' al-rukhas and *Talfiq***

The terminology of the *talfiq* is referred to a type of *tatabbu' al-rukhas* where views of one or more scholars put together for the purpose to establish one complex shape of *tatabbu' al-rukhas*.<sup>19</sup> It is true that the Ottomans adopted the Hanafi School as the official School but in case of need to choose another school, they preferred the most lenient facilitating people's transactions. This was achieved through either *tatabbu'*

*al-rukhas* or *talfiq*.<sup>20</sup> They were also practised by jurists to redefine the dominant view within the school (*rājih*). The use of such legal strategies has evaluation in the Ottoman era and later on, applied for codification. Along with these two terms, another terminology has similarity to them is *takhayyur*. But thus latter had limited use for utility in the pre-modern period, it was appropriated by reformers in the modern period.

The term *tatabbu' al-rukhas* had also practice to pick the most expedient of multiple rulings within the same school. In this sense, it is more general than *talfiq*. Any act of *talfiq* can be a form of *tatabbu' al-rukhas*, but the reverse is not necessarily true. This term is seldom discussed in modern historiography of Islamic law.

### **Takhayyur and Talfiq**

These techniques can be seen to have had a significant part in the development of current legislation, such as the rules of The Muslim Personal Law Application Act 1937, which regulate civil proceedings for Muslims in India. According to the Hanafi School, this Act announced marital issues and divorce for the Muslim people in India. Hanafi School is thought to be highly rigorous when it comes to divorce for women. If a woman desired to divorce, she had no choice but to leave Islam, and the marriage ended as a result of the breakdown. Since then, the social influence of this law has led in many Muslim women in India opting out of Islam only for the purpose of divorce. Seeing these negative symptoms, the Ulama handled the matter in 1939, enacting The Dissolution of Marriage Act, which governs divorce using *takhayyur* procedures, and moving from the Hanafi School to Maliki Thoughts.<sup>21</sup> Apparently, the *takhayyur* technique is rejected by ulama as happened in *maslaha* approach (public interest). Some Scholars declared the *Maslah* as the foundation “*maqasid e shari'a*” that had no wide acceptance for law determination later on expanded and adopted by the legislators.<sup>22</sup> *Takhayyur* is a reasonable process of selection used to assess various options from a spectrum of juristic viewpoints on a given point of law, with the goal of applying the least restrictive legal rules to difficulties that arise, according to jurisprudential science. *Takhayyur* has played a significant role in the development of a number of women-friendly family law codes in Muslim countries. Dissolution of Muslim Marriages Act 1939, Moroccan Code of Personal Status 1858, Jordanian Law of Family Rights 1951, Syrian Law of Personal Rights 1953, Ottoman Law of Family Rights 1917, and the most recent Moroccan Family Code (*Moudawana*) 2004 are just a few examples.

*Talfiq*, which literally means “patchwork,” refers to the process by which Muslim jurists build legal norms by combining and fusing viewpoints from several schools of thought on a given topic.<sup>23</sup> Furthermore, Shi'ite jurists, like their Sunni counterparts, have recognised the relevance of the synthetic method (*Talfiq*) as a significant idea in Islamic jurisprudence.<sup>24</sup> *Takhayyur* comes in two varieties.<sup>25</sup> The varied selection of legal viewpoints both within and outside the school with the goal of adjusting the changing realities of modern Muslim societies,” says the first type of *takhayyur*.<sup>26</sup>

When giving a fatwa, a Muslim jurist affiliated with a single school of law can use this procedure to select a legal opinion from other schools of law. Modernist Muslim academics have commonly used this style of *takhayyur* as an efficient technique of implementing Islamic legal reform in ways that address changing situations in modern Muslim societies. For example, the Hanafi school recommends a ninety-year waiting time for a Muslim lady whose husband goes missing, whereas the Hanbali school recommends only four years. Muslim jurists in India used the *takhayyur* approach to embrace the Hanbali school's opinion in the Dissolution of Muslim Marriages Acts of 1939. *Takhayyur* has become an important legal weapon among reformist jurists in

the last two centuries to achieve necessary and desirable legal reform. The practise of merging legal opinions from different schools of law to generate a new decision is the second sort of takhayyur. This approach allows jurists to not only rely on a single judgement outside of their Islamic law schools, but also to produce a new legal opinion by integrating many rulings into a single conclusion.<sup>27</sup>

The Talfiq technique, like takhayyur, has been in use since pre-modern times. Nonetheless, Ahmed Fekry Ibrahim claims that the term "Talfiq" has evolved in modern times to encompass both the takhayyur and Talfiq meanings. As a result, there is occasionally ambiguity over the use of the term, particularly in works authored by Western scholars in the modern period.<sup>28</sup>

### **Combination of all Leniencies**

Minority fiqh scholars who adopt the practice of takhayyur point out that any ruling derived from this method should not contradict the consensus of the Companions.<sup>29</sup>

The practice described in the following quotation is an example of takhayyur that does conflict with the consensus of the Companions. A person marries his daughter off with no guardian (walī), according to the Ḥanafī school, no witnesses according to the Mālikī school and no dowry according to the Shāfi‘ī school, turning marriage into fornication.<sup>30</sup> As indicated in the quotation, each school of law offers different leniencies in rulings related to marriage. For example, a lack of dowry is permissible in Shafi'i legal school, and lack of witness is allowed in Maliki legal school. However, these dispensations are sometimes requirements for a valid marriage in other legal schools. Accordingly, when a person combines leniencies of all legal schools to form a new ruling, it becomes a ruling that is in opposition to all legal schools.

### **Necessity of ‘Talfiq’**

Veracity of the world is the integral ingredient of the world. It is demand of nature but the soul of divine teachings. Therefore the techniques like Talfiq are much needed to remove the virus of freezing on the name of Taqlid and to pave the way of resolving new coming issues. There may be mentioned some reasons showing the significance of the promotion of the technique of the Talfiq and reactivation of the Ijtihad.

1. It is a natural phenomenon that veracity is the joy of life. Different point of views on an issue caused by distinct approaches of humans. Human nature demands such distinctions. So, it is a native demand which cannot be sided.
2. Veracity among the different school of thoughts causes the expansion, easement and flexibility of the Islam. Facility to the human, is a fundamental principle of the Islam. Talfiq is a form of flexibility in Islam.
3. It is an appropriate and reasonable theory regarding the religion of Islam. Because the Hard and Fast ruling theories cannot prevail and sustain in the society in a proper way.
4. The daily abrupt changing movement of the modern world is bringing new issues in every day. So, this method of ijtiḥad is a strong way to overcome such burning contemporary issues.
5. This way is also providing the solid basis to codify the laws in Islamic countries especially for those who are willing to enforce the Shari ‘ah. So, this method reduces the gaps among different schools and creates integrity among them. It is a helpful way to get fruits of different schools hardworking regarding legislation.
6. To search the easiness for human being is not only the will of the Shari ‘ah but also complements the goals of the Islam regarding evaluation of the world day by day.

### **Legal approach to *Talfiq***

1. Ancient Scholars' view
2. Modern Scholars' initiation
3. Contemporary Scholars

In ancient era, *Talfiq* was used only in its literal meaning not in current technical sense as took by latest scholars. Such technical meaning was not known to them at that time.

The modern scholars tells its origin history in the era of Uthman regime. As the famous scholar Khalid Saifullah and Wahba Zuhaili stated in their works. They stated its initiation approximately between seven to ten hijri.<sup>31</sup> The contemporary scholars, Sha waliullah, Wahba Zuhaili and Molana Taqi Uthmani declared it permissible with some impediments. They gave detailed descriptions in their writings.<sup>32</sup> It circulates on the orbit of Taqleed and Ijtihad. Wages on the ita'at, fiqh and imamat, azan and iqamat these all are permitted on the statement of Shafi School. Jama ul Salat is also allowed on the basis of Shafi School.<sup>33</sup> Imam abu Yousaf also practiced Takberaat of Eid according to the school of Ibn e Abbas rather than the school of Ibn e Masood in the name of ifta bi madhab al gair.<sup>34</sup> The faqih Abullaith said; if there is absent of Hanfi school statement on an issue then will be moved to Malki School because they are more closed to the Hanfi than others and also they are pupil.

When there is a disagreement among jurists over Shari'ah norms or fatwas given to a lay person (a muqallid), the jurists might choose a legal view, both within and outside the madhab, that is best to deal with the situation.<sup>35</sup> This strategy alleviates the difficulties that a certain doctrine faces in a given situation by giving a methodology for improvement.<sup>36</sup> Although some classical Muslim academics dismissed *Talfiq* as a viable method of determining Sharia norms, others defended it.<sup>37</sup> There are also several fatwas from the seventeenth and eighteenth centuries that question its legitimacy.<sup>38</sup> *Talfiq* became legal in recent years when state authorities, such as judges and legislators, used it to write new codes.<sup>39</sup>

### **Application of *Talfiq***

It is not wrong to mention that *Talfiq* has scope and application limited to the matters to the Ijtihad not otherwise. Its permanent or temporary status as solution is still controversial. Scholars disagree over whether it is legal to define Islamic law by combining legal perspectives. Two points of view stand out among the many differing viewpoints on this subject:

1. Great majority of the *Ulama* announced the *Talfiq* absolutely invalid.<sup>40</sup>
2. *Talfiq* adopted legislation is valid only where certain prerequisite conditions are fulfilled.<sup>41</sup>
3. Only if there is no purposeful adoption of concessions is *talfq* of legal opinions valid.
4. It should not breach any consensus (ijmā).
5. It should be permissible in circumstances when no jurist's opinion (taqlid) has been followed
6. It is only permitted in extreme circumstances (al-Hājah wa aldurūrah).<sup>42</sup>

### ***Talfiq* as a Source of Legislation**

A significant aspect of debate on *talfiq* is to sort out whether Islamic jurisprudence appreciates mixing of legal opinions for law-making. A keen observation of modern Islamic laws reveals that the methods of *talfiq* and *takhayyur* are applied at various levels in the modern Islamic legislations. Firstly, in a moderate form of *talfiq* whereby the opinions of another school of thought are borrowed and merged to fill up deficiency of one's adopted school of thought. In such cases of *talfiq* and



takhayyur, the allegiance with the previously adopted school of thought is not abandoned altogether. For instance, the family law of Egypt is primarily based upon the Hanafi doctrine, nonetheless it contains provisions from other schools of thought as well. Likewise, in Pakistan, the Dissolution of Muslim Marriages Act of 1939 is an example of this form of *talfiq* whereby Maliki legal opinions have been adopted in an effort to find most workable solutions for a desperate woman seeking dissolution of her marriage on various grounds.<sup>43</sup>

Secondly, in an intense form of *talfiq* the norms of *taqlid* are altogether abandoned in a way that jurists tend to construct legal rulings upon the most feasible opinions of all established schools of thought. In fact, all established schools of thought are regarded as providing a vast legal legacy from which practical opinions might be freely taken to fulfil the purpose. This pattern has been adopted by modern fiqh academies for resolving contemporary legal difficulties, notably those connected to Islamic banking and finance. Indeed, such academies play the role of *mujtahid* in settling current legal difficulties. It is more fair to refer to their methodology as *takhayyur* or *ijtihad intiq'* than than *talfiq*, which many contemporary jurists find repulsive..

### **Prohibited Form of ‘Talfiq’**

#### **To follow easiness intentionally and on regular basis**

It is to take from every school that is easier without any necessity and valid reason and cause. This is declared prohibited because it will open door for venality and disorder.

#### ***Talfiq* violating decision of the Judge and Qazi**

As which results in breaking or suspending or repealing of the order or decision of the Judge and Qazi is not allowed.

#### ***Talfiq* that requires deviation from an act done as result of imitation**

As well as *taqlid* where necessary to comply with once is followed is not allowed .

### **Impediments and Edicts**

The permissive class scholars made some conditions regarding adopting this method as Sha Waliullah and maulana Taqi Uthamni said.

These impediments are;

#### **There must be a real and much need and necessity not a just thought**

Without any must need and necessity of shari ‘ah no place for such methodology. There must to be a desired need causing hurdle for the people at large level. The need is great, and the affliction is pervasive in real life, not only in theory.

#### **Such need and necessity involved the public / Widespread Need**

This desired need has to be involved the people at large level.it ought not to be just a thought or myth. Only for individual facilitation and easiness purposes don’t open the door for this method but such based activity to be declared as *Fisq* Activity.

#### **There is not Qati Text available**

The *Talfiq* based action must not be contrary to the Qati Text. And there shouldn’t be availability of Qati Text in the matter where the *Talfiq* action is seen to be required.

#### **Not contrary the primary sources of Shari ‘ah**

Such *Talfiq* has nothing to do with the primary sources of Shari ‘ah regarding contraction. But it must to be according to them and based on them.

#### **It does not perished the objective of shari ‘ah**

The *Talfiq* issue shouldn’t perishing the objectives of the Shari ‘ah. But it must be against the principles of Shari ‘ah and fulfilling its purposes.

#### **It should not contrary the court**

As contemporary scholars impeded that the Talfiq matter must not be violating the decision of the court. The Qadhi's decision will be prevailed and violating Talfiq is not permitted.

**It should not having only base of facility and laziness**

Only purpose of Talfiq is not easiness and lenience but providing the environment to act upon shari 'ah easily. The Talfiq based on just laziness is not permitted with anyone and such Talfiq is job of Fisq.

**It must eradicate the complications and pave the way**

The Talfiq methodology is a way of Ijtihad which purpose is to eliminate the complexity of Shari 'ah. It paves the way for human regarding Shari 'ah practices.

**Such work must be regarding Faroee issues not beliefs**

The Talfiq methodology is applicable only to the Faroee Matters not to the beliefs and already clear matters by the Shari 'ah.

**It must not convert the prohibited into permitted form**

This methodology must not causing the permission of the prohibition. The prohibition and permission line shouldn't be ruptured by it.

**It must not disturbing the rights of people**

Such Talfiq must not be harming the rights of the people in any way. Its own fundamental aim to facilitate them and to protect their rights.

**There must be demarcation between legal and Fiqhi Talfiq**

The modern primitive class of scholars have stated that the legal and fiqhi Tlafiq must be distinctive. Their demarcation must be seen carefully.

**The doer must have grip on both schools or should consult other schools' scholars**

The doer of the Talfiq methodology must have grip on both school of thought statements. And he has to consult the other school's scholars before to do such methodology.

By interviewing other fatwa experts and others with experience in the topic, the mufti is certain of the severity of the requirement.<sup>44</sup>

**Prior search to any revoked or weak quotation within his school**

The performer of the Talfiq should search within his school the any revoked or weak statement on the issue. If find, should be preferred otherwise move to next nearest thinking school as the Hanfi should to move the Malki school.

**The work should not be done individually but collectively**

The work shouldn't be done individually. Such activity must be done collectively because it has most ethnicity and care.<sup>45</sup>

## **Conclusion and Recommendations**

It is known that *Talfiq* strategy has some reserving and controversial status among scholars as happened in the circle of Fatwa Shopping and Takhayur as well as Tatabbu' al-rukhas strategies. Later on, it is proved that these methods were not only practiced by the legislators but many laws were based on them. In spirit of objectives of Islam, such reformative methods of Ijtihad in is not only allowed and permitted within the impediment circle but praised. The Talfiq method is not only the facilitator for the Islamic governments to codify the laws but reduce the extremist orbit among the Islamic *Ummah* also. It has the stronger permissive stance than its prohibitory stance. In fact, there is, not available, even one text from the Quran and Sunnah, prohibitory view for it. The stated prohibition by the scholars, just based on precaution, to save the objectives of the Shari 'ah and to protect it from becoming publically worthless. Its ample examples could be seen, done, by ancient scholars, even within one school of thought including Hanafi School. Its proper use will pave

the way to re-open the door for Ijtihad. No doubt its practice should be till permission not to build up the Shari 'ah buildings upon it permanently. To sum up, no one can deny and escape from here that the Shari 'ah's will to facilitate the people and veracity among the Ummah is blessing. Not to ratify it, it will not only the denial of flexibility and permanency of the Islam as a code of life but also will lead to the Kufr.

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