

The Impact of Scientific Development on the Scholars' Ijtihad (A Jurisprudence Study)

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Abstract

This research deals with a vital issue related to the tremendous scientific development that requires scholars and mujtahids to face and clarify its effects on legitimate issues in order to make the correct legitimate judgments. Hence, this research addressed the impact of new science on the scholars' ijtihad, in addition to directing or correcting the jurisprudence of the ancient scholars in the light of reality and capabilities.

Three sections have been addressed in this research; the first section addressed the intersection between Ijtihad and science, the second section addressed the role of science in Sharia, and the third section addressed directing the jurisprudence of ancient scholars by science.

The most important result of the study is that science intersects with ijtihad, so the knowledge of the mujtahid with scientific facts has an impact on the clarity of his vision and the right perception that enables him to make the right judgments on specific issues. Furthermore, the most important recommendation is that the competent authorities should establish committees to provide legitimate and scientific consultation, and these committees should consist of scholars with different specializations in order to help provide legitimate, or scientific provisions on contemporary issues.

Keywords: Scientific; Development; Scholars'; Ijtihad.

Introduction:

According to the rapid scientific progress in all fields of science, especially those related to medical and genetic issues, the attention of the world is drawing to the diligent scholars to answer inquiries and questions looking for solutions for the problems of the nation attributed to the system of Islamic values and legislative principles.

This certainly requires a serious standpoint from the jurists to reveal the details of modern events and find solutions according to accurate scientific concepts and the legislative rules in order to develop their means, find solutions and build judgments that are suitable to the changes in human reality.

Thus, the researcher would like to show the relationship between ijtihad and science and its role in the legal ruling, whose impact is reflected in the clarity of the mujtahid's vision and the correct perception that enables him to judge

due to the Sharia rules. Furthermore, it has a great impact on directing the interpretations of new scholars.

The Problem of Research:

The problem of the research lies in the existence of the same legitimate provisions for the old or new issues, so this requires a serious standpoint from the jurist's Mujtahids and scholars to understand issues accurately in order to be able to make the judgment commensurate with the nature of these issues and rules of the legislation.

Hence, this research addresses the role of science in guiding, correcting, or confirming the jurisprudence of ancient scholars.

The questions of research:

- 1- Is science considered a tool that enables the mujtahid to visualize the current issue by himself or by experts and specialists?
- 2- Is it permissible to reform ijtiḥād due to scientific bases that are commensurate with our contemporary reality, developments, and discoveries?
- 3- Can science make vital decisions in jurisprudence issues?
- 4- What is the importance of mujtahid detection for the scientific details of the jurisprudential issue?
- 5- Does the concealment of scientific facts from the new mujtahids have an impact on the legitimate ruling?

The Importance of Research:

The importance of the research topic lies in the tremendous scientific development that requires scientists and mujtahids to face the biological scientific revolution and clarify its effects on legitimate issues, then benefit from all scientific achievements and seek to formulate a legitimate and moral law that works to control these issues in accordance with the standards of Islamic Sharia.

The Research Objectives:

The research is a jurisprudential study related to the impact of scientific development on the scholars' jurisprudence, as it deals with a contemporary topic related to the relationship between ijtiḥād and science and its role in the legitimate ruling, especially there are many of the jurisprudence of the ancient scholars that are incorrect

because of the lack of the sufficient scientific information about the current issues.

The Theoretical Framework

The first topic: the intersection between ijihad and science

There is no doubt that knowing the scientific details has become an urgent necessity in order to make judgments correctly. It is certain that the unknown reality will lead the jurist to make incorrect judgments because of the lack of clarity in the scientific vision that constitutes the integration with the legitimate sciences.

The definition of Ijtihad in terminology: It means that the mujtahid seeks to reach a state in which he feels incapable of asking for more so that he will not be blamed for his negligence ^(I).

Ijtihad is to make effort to obtain a practical legitimate judgment by deduction process ^(II).

The interest of new scholars in science includes various fields, such as religion, astronomy, medicine, language, and other sciences.

However, this research addressed the applied sciences that deal with medical and scientific issues. The details of these issues are considered the tools that enable the mujtahid to visualize the issue by himself, or with experts and specialists.

Al-Mujtahid: He is a reasonable adult who has the capacity to deduce judgments from their sources ^(III).

The personal traits of a mujtahid: he should be Muslim, adult, sane and fair. Ijtihad is contemplation, so the person who has no mind, people do not take his opinion account, such as the child and the insane. Likewise, ijihad is honesty, and non-Muslims are not entrusted even if he masters all sciences and arts. Ijtihad is a state of interaction between the mujtahid and Sharia through all the tools he possesses, and this interaction cannot be achieved for a non-

(I) Al-Ghazali (2/199).

(II) Al-Zarkashi (4/488).

(III) Al-Zarkashi (4/488)

Muslim; A non-Muslim cannot investigate the transparency of Sharia, wisdom, justice, and purposes ^(I).

The practical traits of a mujtahid are divided into two parts:

The first: The efficiency of meditation

The Mujtahid should have meditation, acumen, the strength of mind, depth of vision, and straightness of thinking, so he is far from superficiality, negligence, corruption, and deviation ^(II).

The second: The knowledge of various types of sciences.

1. Figuring out the texts of a revelation: the Qur'an and the Sunnah are the two original legislative sources, so the Knowledge of these sources was the basis of ijihad. The sciences must include knowledge of the text, its reasons, and circumstances ^(III).
2. Figuring out the language: revealing the text's meaning of the Qur'an and Sunnah in order to understand the principles and rules that demonstrate the legislation because ignorance will lead to making mistakes in determining God's purpose ^(IV).
3. Figuring out the points of consensus: the mujtahid should look for the points of consensus so that he does not give fatwas contrary to the consensus. If the mujtahid ascertains unanimity on an issue, then he should save himself the trouble of ijihad ^(V).
4. Figuring out the principles and rules: Ijtihad should be subject to controls and standards, so the Mujtahid cannot do diligence without figuring out these sciences.

New sciences today have become one of the essential things that help the mujtahid to understand reality, which is considered an important point where connect science with ijihad. Thus, the mujtahid in the current era must have sufficient knowledge of the structures, tools, and problems of reality in order to adapt reality in its various aspects to God's purpose.

(I) Ibn Al-Qayim (1/19)

(II) Al-Zarkashi (4/488)

(III) Tayseer Al-Tahreer (4/181)

(IV) Al-Bahr Al-Muheet (4/202)

(V) Al-Mustasfa (2/200)

If the mujtahid encounters difficulty in evaluating the reality of some issues, such as delicate medical issues and complex financial transactions, he should resort to specialists and experienced people and consult them on these issues ^(I).

Therefore, the mujtahid must realize the intended and basic knowledge required in the legitimate sciences with their branches that clarify the specific means and methods for a good evaluation of reality. This knowledge in different fields gave the mujtahid ability to judge some inherited jurisprudential judgments that are weak, or valid.

I would like to point out here that the knowledge required for the mujtahid in these sciences is the extent that makes the vision clear, and it is not intended that precise specialized knowledge, such as precise medical issues, or complex economic issues.

The mujtahid is not required to be a scholar in these sciences, but he must have a general understanding that makes him compatible with life. He must be able to comprehend what intersects with legislation; Either by himself or through specialists, then he can visualize the issue and then judge it, which confirms the importance of science in judging the issues, and there are many examples, including: Brain death and its relationship to the end of human life: It is also called a living dead, and it is a condition that occurs in the brain and leads to a permanent and irreversible disruption in its functions. It is known that death in normal cases begins with the stopping of the heart and breathing, and the flow of oxygen-laden blood to the organs of the body, and then death gradually spreads to these organs. The first of these organs affected by the interruption of blood is the brain, which dies within minutes of the interruption of blood flow to it ^(II).

This appears to be a problem with brain death in the medical field, so attention was drawn to the jurists to find out Sharia's opinion on the matter. Today, with the availability of modern resuscitation devices, it is now possible to preserve the life of the rest of the children's organs despite the death of the brain.

(I) (Al-Dwaihi, p. 23)

(II)(Kanan, p. 846)

Here, the role of knowledge of scientific facts in arriving at a Sharia ruling emerges, as the mujtahid must review what medicine has concluded in this issue with all its scientific details, and refer to the specialists whose role appears in revealing the organs and systems of the human body, as well as showing function and importance of each organ ^(I).

The second topic: The role of science in the rule of law

There is no doubt that the scientific dimension has a positive role in revealing scientific facts to the new mujtahids because these facts are considered the gateways that reveal the concept and details of reality in order to make the proper judgment on issues.

Science (terminologically): It is the mutual knowledge that arises from observation, study, and experimentation, which is carried out to determine the nature, and fundamentals of what is being studied ^(II).

Forming the image in the mind of the learner would integrate only through the accumulation of knowledge that aimed at reaching a systematic truth based on fixed laws that enable people to understand their targets and control views.

Thus, figuring out the truth of the case accurately has a great impact on forming the correct perception before making a judgment. A diagnosis based on knowledge is an integral part of the correct treatment, as our ancient scholars stated that judging a thing is a branch of its perception. This is clear in new issues that reveal the essential role and impact of scientific facts on making judgments that is consistent with legitimate principles.

There are many issues that do have not legitimate provisions, and the decisive role in them belonged to the specialists who contact with reality directly, and then present the results of their research and observations to the scholars of Sharia in order to make judgments on these issues, for example, genetic therapy whose techniques work to treat hereditary diseases through genes, by compensating and replacing the defective gene with a healthy one by suppressing and inhibiting the defective gene and providing

(I) (Al-Awadi, p. 416)

(II) (Al-Laqani, p. 210)

the body with therapeutic protein from an external source, or by eradicating some of the genes that are responsible for causing a particular disease or deformity^(I).

According to the technological and scientific revolution, we face this important issue that contributes to the preservation of humankind through medication that the Shariah indicated the legality of medication by genetic treatment.

Genetic therapy reveals the role of science and knowledge in the dimensions of this issue that give opportunities to the Mujtahid to deduce the legitimate judgment related to this issue.

The mujtahid should reveal the scientific details of the issue that help him in deducing the judgment, or refer the matter to the scholars. In this case, he is required to present the details of genetic therapy and reveal the nature and types of genes used by doctors in genetic treatment, as well as the risks and advantages that entail the mujtahid to be able to make a judgment in accordance with the principles and legitimate rules.

Another example: The issue of the prenuptial medical examination^(II):

It is the examination concerned with the knowledge of genetic, infectious, and sexual diseases, and daily habits that may affect in the health of the eligible spouses, or the children at childbearing.

As the availability of scientific capabilities and accurate devices for conducting medical examinations, especially those related to serious diseases that pass from spouses to their children leads to verifying the safety of the prospective married couple, their injury and illness, or the possible diseases that may transmit to their children, such as acquired immunodeficiency virus (AIDS), or genetic diseases, such as deformities and mental retardation^(III).

Although positive results of medical examinations on the reality through preventive measures or treatment of diseases early, a dispute appeared among the scholars when applying these examinations on a prospective married

(I) (Daghi, p. 317).

(II) (Al-Ashqar, p. 83)

(III) Al-Keelani, p. 86.

couple and making it a condition for conducting the prenuptial agreement because it is related to non-scientific facts.

Conducting a prenuptial medical examination refers to the will and consultation of the spouses, and it is transmitted to a mandatory provision in the case of the spread of genetic and infectious diseases in a particular country, and marriage is the main cause of the spread of these diseases ^(I).

Another example: The effect of using genetic engineering on plants and animals ^(II).

Genetic engineering: a science that deals with studying the genetic composition of living creatures, including plants, animals, and humans. It also aims to know the laws that control genetic traits in order to modify them positively or fix defects.

In recent years, scientists have been able to detect many secrets of the genetic code of some animals and plants and develop genetic engineering techniques to provide effective medicines for pests that affect plants and animals. They have improved the breeds of these creatures to be more productive, resistant to disease and a higher quality ^(III).

One of the most important example on this case is the palm tree, as most of the widespread trees in the Arab countries are unsolicited type. There are very good types, but they are few, and planting them requires a long time. Research centers have been able to produce large quantities of seedlings of the improved type ^(IV).

However, this tremendous success caused hazardous effects that may harm humans, as experiments have proven that the production of genetically modified animal or plant breeds that humans depend on for food may be a cause of the transmission of some serious diseases. This issue had scholars' perspectives and diligence, so their opinions came emerging from the legislative rules whose purposes are achieved by protecting humans from prejudices. As a result,

(I) Encyclopedia of medical jurisprudence, p. 891

(II) Encyclopedia of medical jurisprudence, p. 472

(III) Jurisprudential studies in contemporary medical issues (2/708)

(IV) Jurisprudential studies in contemporary medical issues (2/708)

research related to genetic engineering should be subject to prevent threats and hazards ^(I).

The third topic: directing the ijtiḥad of the ancient scholars through science

The positive impact of scientific development appeared in many jurisprudential issues, in which studies and experiments revealed their scientific truth necessitating the scholars to reissue the provisions properly.

The ancient scholars worked doggedly on some issues that science played a role in guiding, correcting, or confirming their provisions, these issues are as follows:

The first issue: the missing person

The missing person: the person whose origin of absence is safety, such as captivity, trade, tourism, and education ^(II). Referring to the jurisprudence of the ancient scholars on the issue of the missing person, we find that their ijtiḥad in determining a specific period in which the missing person is sentenced to death (judicial death) came according to the limited capabilities available in their era. The Hanafis stated that the missing person is sentenced to death if none of his peers remains ^(III).

Some scholars state that the missing person is considered dead if he reaches a certain age, and their opinions differed in determining this age which includes one hundred and twenty years, one hundred years, ninety years, or sixty years. However, the Hanbalis estimated the duration of four years ^(IV).

Today, we live in rapid scientific progress and development in the means of communication, in addition to modern media and transportation, and the techniques used in exchanging information among countries to investigate their people. Thus, it is necessary to reconsider this issue and build ijtiḥad based on scientific fundamentals that are

(I) Jurisprudential studies in contemporary medical issues (2/746)

(II) Ibn Dawyan (2/87)

(III) Al-Marghanani (2/181)

(IV) Ibn Qudama (6/263, 8/106)

commensurate with our contemporary reality and developments ^(I).

The second issue: The minimum and the maximum duration of pregnancy

The jurists agreed that the minimum duration of pregnancy is six lunar months, which is equivalent to one hundred and eighty days ^(II).

Sharia and reality show that it is six months, so Sharia is through what is mentioned in the Qur'an, and as for nature, it is through the statements of specialist doctors who proved that the minimum pregnancy duration was in one hundred and eighty days ^(III).

Modern medicine has confirmed the provisions of jurists that stated the minimum duration of pregnancy which is six months, and medical evidence proves that a fetus born before the completion of the sixth month does not live ^(IV).

According to the issue of the maximum duration of pregnancy, the Hanafis stated that the maximum duration of pregnancy is two years, The Hanbalis ^(V) stated that four years, but the Sahafis, Hanbalis, and Malikis stated that five years ^(VI).

Modern science based on observation and experience rejects these exaggerated provisions that are not supported by observation and induction. Moreover, there is no evidence from the Quran, or the Sunnah that support these provisions.

Al-Dhahiri referred to this issue as the people's repeated habits that determine the duration of pregnancy (nine months), and Muhammad bin Abdullah bin Abdul Hakam stated that the maximum duration of pregnancy is a lunar year ^(VII).

Science makes the decisive judgment in this case, the scholar Sheikh Abu Zahra says: (These estimates were not

(I) Sano, p. 140

(II) Al-Ramly (7/26)

(III) Ibn Al-Qayim (1/339)

(IV) Jurisprudential studies in contemporary medical issues, p. 339

(V) Al-Mughni (11/48)

(VI) Al-Mardawi (23/466)

(VII) Al-Mahali (10/316)

based on legitimate texts, but on alleging these periods, as well as the deduction in the current age does not reveal any cases that state the duration of five, four, or two years. However, the cases support the estimate of nine months, and precaution may require the estimate of a year^(I).

The third issue: the hermaphrodite

A person whose masculinity or femininity is not clear, but his sex is confused so that it is neither male, so it is treated as male, nor female, so is treated as female. It is a congenital condition in which the traits of masculinity and femininity combine in the same person to varying degrees^(II).

It is known that the sex of the fetus is determined from the first moment when the man's sperm meets the woman's oocyte. If the sperm carries the (y) chromosome, the sex of the fetus is male, and if the sperm carries the (x) chromosome, the sex of the fetus is female. However, in rare cases, it may happen a defect in sperm division, so some of them contain two sex chromosomes (xx) instead of one, while some remain devoid of any sex chromosome resulting in different cases of hermaphroditism^(III).

The ancient jurists divided the cases of hermaphrodites according to the apparent scenes in their time into two types, as follows:

First: The unmixed hermaphrodite:

A person whose case is clear since childhood, or at puberty, so person knows that he is a male or a female and is treated on this basis^(IV).

Sahib Al-Hidaya said: (If a hermaphrodite hit puberty and had a beard, he is treated as a man, as well as if he had a wet dream as a man does, or a flat breast, he is treated as a man because these signs are specific for males. However, if he had a breast like a woman's breasts, or milk in his breast, or menstruation, or pregnancy, he is treated as a woman because these signs are specific for women)^(V).

(I) the personal affairs, p. 386

(II) Jurisprudential studies in contemporary medical issues, p. 394.

(III) Jurisprudential studies in contemporary medical issues, p. 394.

(IV) Al-Muhathab (2/418)

(V) Al-Murghani (4/266)

Second: the mixed hermaphrodite

A person who has traits of masculinity and femininity, and none of the previous traits appeared on him/her, as well as if these traits were opposing ^(I).

In ancient time, scholars made their judgments according to the limits of reality and looked at the apparent scenes to reveal visual signs which help them to determine the type of hermaphrodite.

In light of medical progress in the current time, the mujtahid can make his judgments according to the chromosomal composition that determines the sex of the internal gonads, instead of making the judgment on the basis of the external form. Hence, they can reform the reproductive system to be closer to the natural state that corresponds to the organic composition, and then the case will be subjected to Judgments that correspond to suitable gender ^(II).

It is worth noting that today science has revealed two types of hermaphroditism:

The first: the true hermaphrodite

In this case, the testicles and ovaries combine in the organs of the same body, and this case is very rare.

The second type: Pseudo-hermaphrodite

In this case, the gonads are in the same sex (either ovaries or testicles), while the visible gonads are different from the sex of the gonads, and this case is not rare, but is found in one child per 25 thousand children ^(III).

The fourth issue: Bleeding during pregnancy

The ancient scholars differed in interpretation regarding the blood that some women see during pregnancy, is it menstrual blood or istihaadah? Shafi's and Malikis stated that it is menstrual blood, and the opinions of scholars came based on the traits of this blood and the time of menstruation, which the woman used to menstruate in pre-pregnancy. Al-Nawawi said on the issue of the blood which woman sees during pregnancy that: It is blood with the traits

(I) Al-Shirazi (2/418)

(II) Badran, p. 259.

(III) Jurisprudential studies in contemporary medical issues, p. 395.

of menstruation and at the time of its occurrence, and because it is hesitant between being corrupted for a disease or menstruation, and the origin should be safe from the disease^(I), while Abu Hanifa and Ahmad said that there is no menstruation with pregnancy, and Ahmad said: (Women only know pregnancy by stopping the menstruation)^(II).

According to modern science in the new era, we know with certainty that the blood that bleeds from a pregnant woman during her pregnancy is not menstrual blood because it has been proven that menstruation and pregnancy cannot be combined at the same time. Thus, if pregnancy is present, there is no menstruation and vice versa. This interpretation refers to the hormonal changes that occur in the pregnant woman's body as a result of pregnancy. The uterus in the case of pregnancy is under the influence of the hormones secreted by the placenta to continue the pregnancy. Therefore, it is not possible for a pregnant woman to bleed except for pathological reasons such as ectopic pregnancy, or this blood is a warning of miscarriage^(III).

The Results of the Study:

- 1- Science intersects with ijihad, so the knowledge of the mujtahid with scientific facts has an impact on the clarity of his vision, and the right perception that enables him to make the right judgments in the targeted cases.
- 2- Knowing the truth of the case accurately has a great impact on forming the correct perception before making a judgment. A diagnosis based on knowledge is an integral part of the correct treatment, as our scholars have stated.
- 3- The required knowledge for the mujtahid in these sciences is the extent which helps to clear the case, and it is not intended the accurate specialized knowledge, such as precise medical issues, or complex economic issues.
- 4- Genetic therapy and brain death are issues that the Shari'ah texts are not mentioned, thus the specialists have the decisive role in submitting the observations and

(I) Al-Nawawi (3/310)

(II) Al-Bahoti (1/37)

(III) Al-Ashqar (1/132)

results of their research to the scholars of Shari'a in order to make judgments related to these issues.

- 5- The prudential medical examination showed its positive result on the reality in terms of taking preventive measures, or treating diseases at an early time. However, a dispute arose among the scholars when it forces the prospective married couple to make the prudential medical examination, as well as making it a condition for conducting the marriage contract due to its connection to unrelated scientific fact.
- 6- The ancient scholars worked hard to make right judgments on many issues, such as the missing person, the hermaphrodite, the bleeding of the pregnant woman, the less and more duration of pregnancy, as well as science had a role in guiding, correcting, or confirming their jurisprudence in these issues.

Recommendations:

- 1- The competent authorities should establish committees to provide legitimate and scientific consultation, and these committees should consist of scholars with different specializations in order to provide legitimate, or scientific provisions on contemporary issues.
- 2- The legislative bodies should work on enacting laws that address new scientific issues in accordance with legitimate principles.
- 3- Government and universities should work on establishing research centers that specialized in the scientific and humanitarian fields to support contemporary studies and issues.
- 4- The jurist should know contemporary scientific issues in order to obtain the correct conception that enables the mujtahid to make the right judgments.

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