

**CONTEMPORARY *IĞTIHĀD* IN
THE PERSPECTIVE
OF YŪSUF AL-QARADĀWĪ**

by Felianus Dogon



Sources of Islamic Law

Primary sources:

1. Al-Qur'ān (Arabic القرآن), literally meaning “the recitation”, is the central religious text of Islam, which Muslims believe to be a revelation from God.
2. Al-Sunna (Arabic السنة) is the verbally transmitted record of the teachings, deeds and sayings, silent permissions (or disapprovals) of the Islamic prophet Muhammad, as well as various reports about Muhammad's companions.

Secondary sources:

1. *Iğmā'* (اجماع) refers to the consensus or agreement of the Muslim scholars basically on religious issues.
2. *Iğtihād* (اجتهاد) means independent judgment (reasoning) or the thorough exertion of a jurist's mental faculty in finding a solution to a legal question. It is contrasted with *taqlīd* (blind imitation).



Technical terms (1)

- *Ṣarī‘a* : rulings governing the lives of Muslims, derived in principal from the Qur’ān and the Sunna. It is usually translated as the sacred law of Islam.
- *Fiqh*: technical term for jurisprudence, the science of religious law in Islam.
- *Usūl al-fiqh*: methodology of *fiqh*, fundamental principles of Islamic law.
- *Fatwā* : juristic opinion (opinion on a point of law).
- ‘*Ulamā*’ (sing. ‘*ālim*) refers more specifically to the scholars of the religious sciences (*faqīh*, *mufasssir*, *muftī*, etc.).
- *Qiyās* literally means measuring or ascertaining the length, weight or quality of something. Technically, *qiyās* is the extension of *ṣarī‘a* value from an original case to a new case, because the latter has the same effective cause as the former. For example: the **Qur’ān 62:9** forbids selling or buying goods after the last call for Friday prayer until the end of the prayer. By analogical reasoning, this prohibition is extended to all kinds of transactions, since the effective cause, that is, diversion from prayer, is basically common to all.

Technical terms (2)

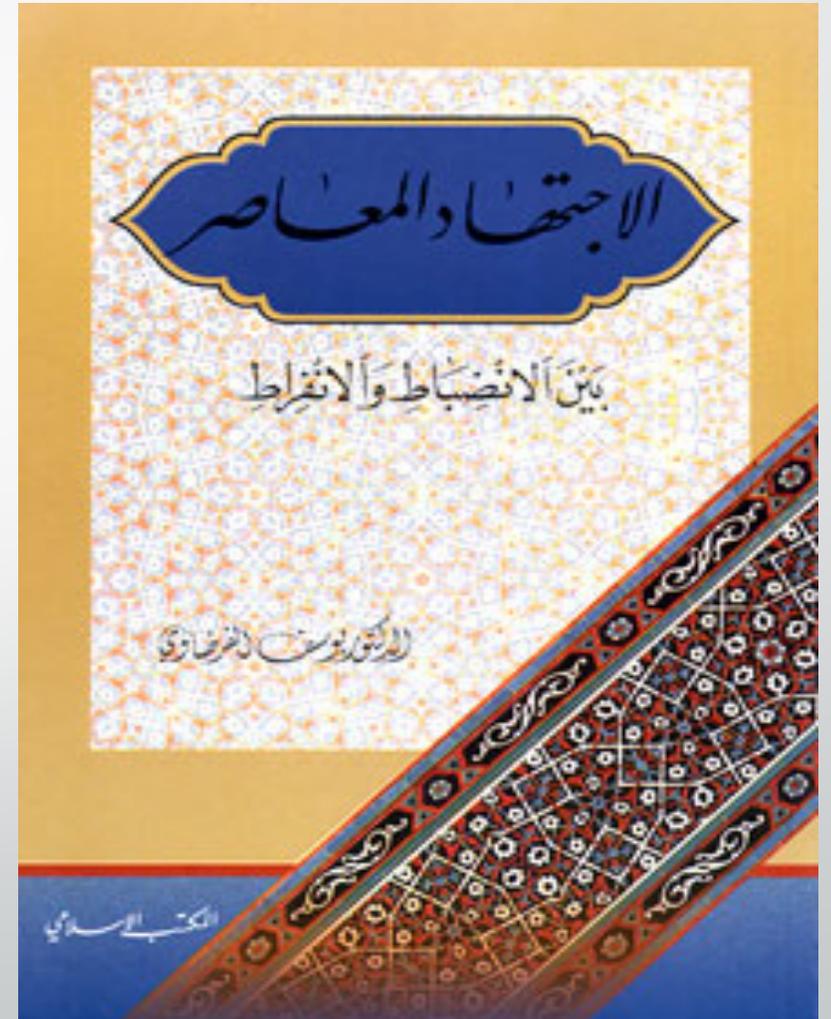
- *maḍhab* : school of Islamic law (jurisprudence)
- *daḥīl* : proof
- *mu‘āmalā* (pl. *mu‘āmalāt*) : Civil transaction, social affair
- *maṣlaḥa* (pl. *maṣāliḥ*) : Public welfare, benefit, interest, common good
- *maqāṣid al-ṣarī‘a* : the objectives, purposes, goals and intents behind the Islamic rulings, such as *maṣlaḥa*, justice, and protection of a set of values including religion, life, intellect, family and property.
- *ḥalāl* : Permissible, lawful
- *ḥarām* : Forbidden
- *‘ibāda* (pl. *‘ibādāt*) : Worship

Introduction (1)

- The rapid changes and developments in science and technology in the contemporary world have led to social change in the life of humankind.
- Change and progress in the economic, political, cultural, and medical spheres are inevitable realities.
- Muslims are challenged to give a legal response to new questions and challenges arising from the change and progress of the contemporary world.
- **Al-Qaraḍāwī** is one of the well-known Sunni Muslims '*ulamā*' who deals with new questions and challenges of the contemporary world.
- He advocates the idea of contemporary *iğtibād* as an appropriate instrument that could help Muslims to be able to give a legal response to new issues and challenges in the contemporary world.
- The question: what is *iğtibād*? What kind of *iğtibād*, in al-Qaraḍāwī's view, is more ideal and proper for contemporary era? How should it be done? And what are its norms?

Introduction (2)

- These questions will be answered in this presentation
- The main reference of this presentation is a text entitled *Ma‘ālim wa-ḍawābiṭ l-iġtibād mu‘āṣir Qawīm* [Characteristics and Norms of Authentic Contemporary *Iġtibād*] selected from al-Qaraḍāwī’s book entitled *Al-Iġtibād al-mu‘āṣir bayna-l-inḍibāṭ wa-l-infirāṭ* [Contemporary *Iġtibād*: Between Discipline and Liberality, p. 86-100].



THE CONCEPT OF *IĞTIHĀD* (1)

- Linguistically, the term *iğtihād* is derived from the Arabic root word *ğahada* which means “to strive” or “to exert oneself”. It literally means self-exertion in any activity that entails a measure of hardship.
- As a technical term in Islamic law, it refers to a total effort made by a jurist in deriving (*istinbāt*) the rules of *šarī‘a* from their sources or in implementing such rules and applying them to particular issues.
- Two important points: (1) the endeavour of the jurist in the process of deriving the rules of *šarī‘a* involves **a total effort**. It needs a total effort because such proofs are not certain in the sources, (2) only **a jurist** may practise *iğtihād*.

Conditions for a *muğtabid*

- (1) Knowledge of the Arabic language
- (2) Knowledge of the Qur'ān and *ḥadīth* sciences
- (3) Deep knowledge of the objectives of the *šarī'a* (*maqāṣid al-šarī'a*)
- (4) Knowledge of the principle of analogical reasoning (*qiyās*) and its methodology
- (5) Knowledge of the historical, social, and political contexts; that is, the situation of his society
- (6) Recognition of his competence, honesty, reliability, and uprightness.

Authority of *iğtibād*

- The famous *ḥadīṭ* which provides a clear authority for the practice of *iğtibād* is the *ḥadīṭ* of Mu‘ād b. Ğabal.
- This *ḥadīṭ* narrates about a discourse between the Prophet and Mu‘ād b. Ğabal on his way to the Yemen as a judge.
- The Prophet asked him how he would decide matters coming up before him. In reply, Mu‘ād referred first to the Qur‘ān and then to the Sunna of the Prophet, and if it is not in that either, then he would make a personal effort (*iğtibād*) and judge according to that.
- The Prophet approved of this and was pleased with Mu‘ād’s response.

Iğ̣tihā̄d: Its Brief History (1)

- In the classical period of Islam, *iğ̣tihā̄d* was understood as an individual reasoning (*ra'y*). This type of reasoning was freely used by every scholar in Islamic law.
- After the classical period of Islam, the question of who was qualified to practise *iğ̣tihā̄d* was raised.
- The consequence: only the great scholars of the past had the right to perform *iğ̣tihā̄d*.
- The individual reasoning (*ra'y*) in the process of deriving the law was restricted.
- Term *qiyās* (analogical reasoning) was used.

Iğtihād: Its Brief History (2)

- By the beginning of the fourth century of the *hiğra* (about A.D. 900): the scholars of all *madhabs* considered that all essential questions had been thoroughly discussed and finally settled.
- All depended on the explanation and interpretation of the ‘*ulamā*’ of the *madhabs*.
- This is the beginning of what came to be known as the “closure of the gate of *iğtihād*”. It is also known as the period of *taqlid*.
- The Sunni Muslim scholars in the later generations [such as Ğamāl al-Dīn al-Afğānī, Muḥammad ‘Abduh, and Muḥammad Rašīd Riḍā] articulated the idea of reopening the gate of *iğtihād*.

Iğtibād in the 20th Century

- New situations and conditions of the 20th century urged the Muslim scholars to refresh the practice of *iğtibād*.
- One of the new developments in the field of Islamic law is the emergence of the concept of collective *iğtibād*.
- It means that *iğtibād* is not merely done by a *muğtabid* like in the past, but it is done by a group of *muğtabids*.
- This concept was introduced formally in the Islamic world by The Academy of Islamic Research (*Mağma' al-buḥūt al-Islamiyya*) in Cairo in 1964.
- Through the collective *iğtibād*, Muslim scholars from different schools [and various disciplines of science] could sit together to find solutions for the problems.

Biography of Yūsuf al-Qaraḏāwī (1)

- He was born on the 9th of September 1926 in a small village of the Nile delta region of Northern Egypt called Şafaṭ al-Turāb.
- His father was died when he was two years old and then his uncle raised him.
- He was impressed deeply the figure of **Ḥasan al-Bannā** especially after listening his speeches. In the late 1940s, he decided to join the **Muslim Brotherhood**.
- In 1949, he moved to Cairo and began his university studies at al-Azhar.
- While at al-Azhar, he continued his activity in the Muslim Brotherhood.



Biography of Yūsuf al-Qaraḏāwī (2)

- In September 1961, al-Azhar University sent him to Qatar and appointed him to direct the newly established College of Higher Religious Studies.
- In Qatar, he took part in founding and directing some institutes in Islamic studies.
- Now he lives in Qaṭar, where he has held a number of posts, both in and outside the country.
- In the wake of the Egyptian Revolution in 2011, he came to Egypt. This was his first public appearance in Egypt since 1981.

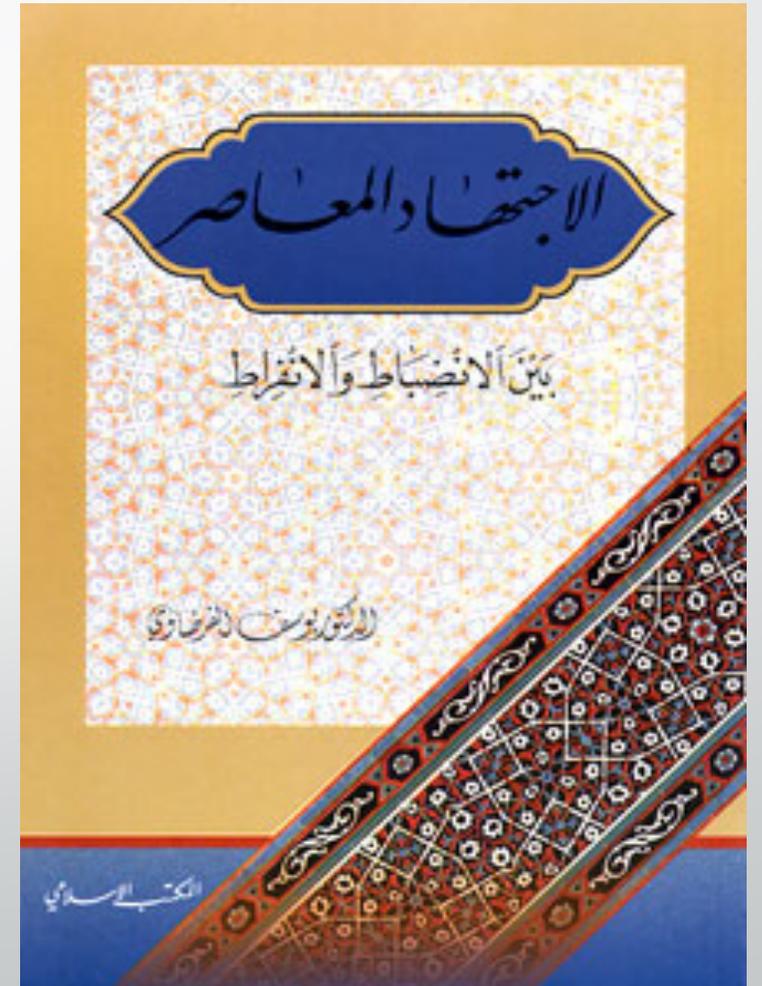


Al-Qaraḍāwī's Works and Importance

- Al-Qaraḍāwī has authored more than a hundred books in various areas of study.
- Most of them have been translated into other languages.
- Several main books in the field of *fiqh*: *Al-Ḥalāl wa-l-ḥarām fī al-Islām*, Al-Maktab al-Islāmī, Bayrūt, Dimašq, ‘Ammān 1960; *Fiqh al-ḡakāʾt*, Mu’assasat al-Risāla, Bayrūt 1971; *Fī fiqh al-aqalliyyāt al-muslima*, Dār al-Šurūq, al-Qāhira 2001, etc.
- Three important roles of al-Qaraḍāwī in contemporary Islamic discourse: (1) as a legal scholar, (2) as a preacher, (3) as an activist

Contemporary *iğtibād* in the perspective of Yūsuf al-Qaraḏāwī

- In his book *Al-Iğtibād al-mu‘āṣir bayna-l-inḏibāṭ wa-l-infirāṭ* [Contemporary *Iğtibād*: Between Discipline and Liberality], al-Qaraḏāwī argues that the gate of *iğtibād* is still open.
- He shows the importance of (1) knowing the trends and schools of contemporary *iğtibād*, (2) understanding the essential norms of the contemporary *iğtibād*, (3) knowing the models of contemporary *iğtibād*.



Trends and schools of contemporary *iğtibād* (1)

1. The trend of restriction

This trend is represented by two schools, i.e.:

First, the *maḍhabīyya* school. This school believes in the necessity of following a certain *maḍhab*.

Second, the modern *zāhiriyya*. This school relies exclusively on the literal (*zāhir*) sense of the Qur'ān and the Sunna.

2. The trend of excessive exaggeration

This trend is represented by two schools as well:

First, the *Tūfiyya* school. It refers to Nağm al-Dīn al-Ṭūfī (d. 716 A.H/ 1316 A.D) who espoused a famous opinion about giving public welfare (*maṣlaḥa*) preference over a Text (the Qur'ān and the Sunna)

Trends and schools of contemporary *iğtibā*d (2)

Second, the school of “justifying the circumstance”.

3. The balanced trend or school of moderation (*al-wasat*)

- This school combines following the texts with preserving the objectives of *šarī‘a*.
- This trend is the proper one which Islamic community (*umma*) needs.
- **Q. 2: 143**: “And thus we have made you a moderate community”

وَكَذَلِكَ جَعَلْنَاكُمْ أُمَّةً وَسَطًا لِتَكُونُوا شُهَدَاءَ عَلَى النَّاسِ
وَيَكُونَ الرِّسُولُ عَلَيْكُمْ شَهِيدًا وَمَا جَعَلْنَا الْقِبْلَةَ الَّتِي كُنْتَ
عَلَيْهَا إِلَّا لِنَعْلَمَ مَنْ يَتَّبِعُ الرِّسُولَ وَمَنْ يَنْقَلِبْ عَلَى عَقْبَيْهِ وَإِنْ
كَانَتْ لَكَبِيرَةً إِلَّا عَلَى الَّذِينَ هَدَى اللَّهُ وَمَا كَانَ اللَّهُ لِيُضَيِّعَ إِيمَانَكُمْ
إِنَّ اللَّهَ بِالنَّاسِ لَرءُوفٌ رَحِيمٌ ﴿١٤٣﴾

Characteristics and norms of the contemporary *iğtibā*

1. There is no *iğtibā* without exerting oneself to the utmost.
2. *Iğtibā* is not permitted upon the texts which are certain.
3. It is not allowed for us to transform the probable [texts] into certain ones.
4. Welcoming what is new and beneficial.
5. We must not disregard the spirit of the necessities of the times.
6. The transition to the collective *iğtibā*.
7. Let us open our hearts to the *muğtabid*'s mistakes.

These are the necessary characteristics and norms which *iğtibā* should take into consideration in the contemporary world.

Models of Contemporary *iğtibād*

1. *Iğtibād intiqā'ī/ tarğihī* [choice/ selection]. It is a method of exercising *iğtibād* by choosing one of the strongest legal opinions (*fatwās*) among some legal opinions of 'ulamā' [in the past] which is found in *fiqh*.
2. *Iğtibād inšā'ī/ ibdā'ī* [creation/innovation]. It is a method of exercising *iğtibād* by deducing the law of new or old problems which has not been raised by 'ulamā' in the past. In other words, this type of *iğtibād* not only includes new problems, but also old problems that have not been sought its legal status by 'ulamā' in the past.

These two models of *iğtibād* should be done in the collective *iğtibād*.



Al-Qaraḍāwī's Contribution (1)

1. Calling for the importance of exercising contemporary *iğtibād*.

- Al-Qaraḍāwī demonstrates two models of *iğtibād* that are required in the contemporary Islamic life, i.e. selective *iğtibād* (*iğtibād intiqā'ī/ tarğḥī*) and creative *iğtibād* (*iğtibād inšā'ī/ ibdā'ī*).
- These models of *iğtibād* should be done in collective *iğtibād*. It should take place within an international Islamic scientific academy.

Al-Qaraḍāwī's Contribution (2)

2. Advocating the idea of “moderation” (*wasatīyya*).

- Al-Qaraḍāwī is well known by his idea of moderation.
- He advocates the idea of moderation with at least two intentions:

First, to introduce his own method in exercising *iğtihād*. This method combines between the texts and the requirements of the time.

Second, to promote an identity of Islamic community. He says: “This trend is the proper one which our community needs. It is the trend which truly represents the moderation of Islam among the other religions, and the moderation of its community among the other communities”.

Al-Qaraḍāwī's Contribution (3)

3. Showing norms of contemporary *iğtibā*d.

- Al-Qaraḍāwī shows seven norms that must be followed in performing contemporary *iğtibā*d.
- Three important goals: *firstly*, to keep the direction of *iğtibā*d in the right path. He wants to maintain the moderate position in exercising *iğtibā*d, i.e. to retain balance between “following the texts” and “responding the necessities of the time”.
- *Secondly*, to reject *taqlid* (blind imitation) to the *fatwās* of ‘*ulamā*’ in the past. It is because the context could be different.
- *Thirdly*, to go beyond the boundaries between the *madhabs*. He wants to diminish fanaticism to certain *madhab*.

Critical Notes (1)

1. Concerning the norm of contemporary *iğtibād* which affirms that “there is no *iğtibād* upon the texts which are certain (*qat’ī*)”.
 - Al-Qaraḍāwī clearly states that “it is not permitted to open the gate of *iğtibād* concerning rulings which are certain, such as imposing fasting upon the community, or forbidding wine, or eating the meat of swine, or *ribā*, or the obligation of cutting off a thief’s hand, or the inheritance between men and woman(Q. 4:11)”.
 - His answers to numerous controversial issues such as the punishments and inheritance issues between men and women belong in his view to the closed zone which is non-renewable.

Critical Notes (2)

- **Tariq Ramadan:** it is important to distinguish between, on the one hand, legal methodology link to the creed (*'aqīda*) and the worship (*'ibāda*) texts, and, on the other hand, that which deals with social affair (*mu'āmalā*) texts.
- There is no *iğtibād* in the two spheres of *'aqīda* and *'ibāda*



Critical Notes (4)

2. Concerning the role of government in pursuing the collective *iğtihād*.

- Al-Qaraḍāwī seems to ignore the role of the government in pursuing the practice of collective *iğtihād*.
- He writes: “There is no freedom for an academy whose members are appointed by a local government and whose premises were built on [the government’s] land, and whose budget is paid by [the government]. At the very least, this freedom is not secure. The government often only chooses people who support it, and only funds an institution which follows its path”.
- In the contemporary world, the process of collective *iğtihād* in the academy necessitates the role of the government.

Critical Notes (5)

3. Concerning the *muğtabid*'s mistakes.

- Al-Qaraḍāwī emphasises the importance of opening hearts to the *muğtabid*'s mistakes.
- The *muğtabid* is a man who thinks, derives, and errs at the same time.
- However, al-Qaraḍāwī does not limit the kind of *muğtabid*'s mistakes that could be tolerated or to what extent the people must accept the *muğtabid*'s mistakes.
- It would be important to create the norms that must be obeyed by the *muğtabids* to minimise the grave mistakes.
- It would also be important to give the punishment for the *muğtabids* who commit in grave mistakes.

Collective *Iğtihād* in Indonesian Context (1)

- Indonesian ‘*Ulamā*’ Council (Indonesian Language: Majelis Ulama Indonesia (MUI)) was funded by the Soeharto regime in 1975 particularly to produce *fatwās* and to advice Muslim community on contemporary issues.
- During the Soeharto regime, MUI has never been really controlled by the state.
- The independence of MUI came to the fore in the National Congress of MUI in 2000 (two years after the fall of the Soeharto regime)
- At this congress, MUI changed its basic ideology from “Pancasila” to “Islam”.

Collective *Iğtibād* in Indonesian Context (2)

- After 2000, MUI formalised a new role for the organisation, moving it from being custodian of the state to custodian of the Muslim community.
- In the course of time, the position of MUI in issuing *fatwās* for the Muslim community is becoming stronger.
- The two largest Islamic organisation in Indonesia, i.e. Nahdlatul Ulama (NU) and Muhammadiyah also supports this council.
- Many *fatwās* in response to various issues have been issued by MUI.
- Some of them are controversial, such as: *fatwā* proposing death penalty for people caught having gay sex, *fatwā* opposing pluralism, *fatwā* against Muslims attending Christmas celebrations, *fatwā* declaring that Ahok (governor of Jakarta) was guilty of committing blasphemy against Islam, etc.
- The question is why are some of these *fatwās* contrary to the spirit of modernity, such as freedom, human rights, pluralism, etc.?

شكراً لكم جميعاً!!!

GRAZIE A TUTTI VOI!!!