The Synthesis of Juristic Opinions (Talfiq) between the Legitimacy of Taqlid and the Risks of Seeking Legal Concessions (Tatabbuʿ al-Rukhas): An Analytical and Comparative Study in Islamic Legal Theory (Usul al-Fiqh)

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ABSTRACT

This study examines the issue of Talfiq (the synthesis of juristic opinions) and its relationship to Taqlid (following a juristic authority) and Tatabbuʿ al-Rukhas (seeking legal concessions), as one of the significant issues in Islamic legal theory through which the impact of juristic disagreement becomes evident in regulating ijtihad and fatwa, and in determining the limits of legitimately benefiting from the plurality of Islamic legal schools.

The research problem lies in identifying the extent to which Talfiq is connected to the legitimacy of Taqlid, and in distinguishing between the permissible combination of juristic opinions and forms of Talfiq that lead to the disapproved pursuit of legal concessions or to evading the requirements of religious obligation.

The study aims to clarify the concept of Talfiq and distinguish it from Taqlid and Tatabbuʿ al-Rukhas; analyze the positions of Islamic legal theorists (Usuliyyun) and jurists regarding its legal ruling; identify the governing principles and conditions regulating its practice; and highlight the distinctive Maliki approach in light of the principles of Muraʿat al-Khilaf (consideration of juristic disagreement), Sadd al-Dhara'i (blocking the means to prohibited ends), and Iʿtibar al-Ma'alat (consideration of consequences). The study adopts an inductive methodology to trace the opinions of scholars, an analytical methodology to examine and discuss their evidence, and a comparative methodology to assess the different juristic approaches.

The study concludes that Talfiq is distinct from unrestricted Taqlid and the mere transition between legal schools, as it involves combining the opinions of different independent jurists in a single interconnected legal matter, resulting in a composite form that the respective followed jurists would not endorse in its entirety. It also demonstrates that the relationship between Talfiq and Tatabbuʿ al-Rukhas is not one of necessary concomitance, but rather one of partial intersection: either may occur independently of the other, although they may coincide in certain cases.

The study further reveals the importance of Maliki legal principles in evaluating forms of Talfiq, particularly the consideration of juristic disagreement, blocking the means to prohibited ends, and consideration of consequences, while emphasizing the need to distinguish between the validity of a particular legal act and the legitimacy of the methodology adopted in selecting juristic opinions.

The study ultimately advocates a differentiated approach to determining the legal ruling on Talfiq, based on three complementary criteria: the validity of the composite legal form, the legitimacy of the selection process, and the soundness of its consequences. This approach seeks to strike a balance between benefiting from juristic plurality and preserving the coherence of Islamic legal rulings and their underlying objectives, while preventing juristic disagreement from being exploited as a means of circumvention or the violation of rights.

Keywords: Talfiq (Synthesis of Juristic Opinions); Taqlid; Tatabbuʿ al-Rukhas (Seeking Legal Concessions); Juristic Disagreement; Maliki School of Law; Consideration of Consequences (Iʿtibar al-Ma'alat)..

1.INTRODUCTION

Juristic disagreement is one of the most prominent manifestations of ijtihad in the Islamic intellectual heritage. It arose from differences in the approaches adopted by independent jurists in understanding Islamic legal texts, assessing their implications, reconciling their evidences, and determining the applicability of legal rulings to particular cases (tahqiq al-manat). This diversity

gave rise to multiple schools of Islamic jurisprudence, which contributed to the development of systematic and disciplined methodologies for legal deduction and the issuance of fatwas. Consequently, Islamic jurisprudence acquired considerable intellectual richness and the capacity to accommodate emerging and changing circumstances

Nevertheless, this plurality of juristic schools has raised several issues in Islamic legal theory concerning the position of the legally accountable individual (mukallaf) in the face of differences among jurists, the extent to which one is required to adhere to a particular school of law, the permissibility of moving between different schools, and the limits of combining their respective opinions in a single case. Among the most significant of these issues is Talfiq (the synthesis of juristic opinions), which is closely related to Taqlid (following a juristic authority) and Tatabbuʿ al-Rukhas (seeking legal concessions), although its technical meaning is distinct from both concepts.

The significance of this issue has become increasingly pronounced in the contemporary era, particularly in view of the expanding scope of collective ijtihad and the codification of Islamic jurisprudence. These developments necessitate examining the different juristic opinions and selecting those that best serve the realization of legally recognized interests (masalih sharʿiyyah).

The distinctive contribution of this study lies in moving beyond a mere presentation of the disagreement over the permissibility or prohibition of Talfiq toward an analysis of the underlying structure of the relationship between Talfiq, Taqlid, and Tatabbuʿ al-Rukhas. It also seeks to uncover the implications of this relationship for determining the legal status of composite juristic forms, while drawing upon the principles of the Maliki school of law, particularly Muraʿat al-Khilaf (consideration of juristic disagreement), Sadd al-Dhara'i (blocking the means to prohibited ends), and Iʿtibar al-Ma'alat (consideration of consequences).

2. RESEARCH PROBLEM

The research problem is formulated in the following central question:

To what extent can Talfiq be regarded as an extension of the legitimacy of Taqlid? Under what circumstances does it become a means of pursuing disapproved legal concessions (Tatabbuʿ al-Rukhas)? And what are the principles of Islamic legal theory that govern the distinction between its permissible and impermissible forms?

The research further examines the nature of Talfiq, the implications of adherence to a particular school of law, the legal ruling on combining juristic opinions, its relationship to the introduction of a third position (Ihdath al-Qawl al-Thalith), and the limits of drawing upon juristic disagreement in contemporary fatwa.

3. RESEARCH METHODOLOGY

This study adopts an inductive methodology to trace relevant texts in Islamic legal theory and jurisprudence, an analytical methodology to examine the concepts of Talfiq, Taqlid, and Tatabbuʿ al-Rukhas, and a comparative methodology to assess and weigh the different juristic approaches to this subject.

Structure of the Research

The nature of the subject necessitates dividing the study into three main sections, preceded by an introduction and followed by a conclusion.

Section One: The Nature of Talfiq and Its Relationship to Taqlid.

Section Two: Talfiq and Its Relationship to Tatabbuʿ al-Rukhas.

Section Three: Talfiq in Light of the Principles of the Maliki School of Law and Its Juristic Applications.

Conclusion: Presenting the findings of the study.

Section One: The Nature of Talfiq and Its Relationship to Taqlid

First Subsection: The Concept of Talfiq in Linguistic and Technical Usage

Linguistically, the term Talfiq derives from the Arabic root associated with joining, combining, and bringing things together harmoniously. One example is the joining of pieces of fabric by attaching them to one another until they form a single piece. [1] This linguistic origin conveys the meaning of composition and combination, which was subsequently transferred into juristic usage. Accordingly, Muslim jurists employed the term in contexts involving the joining and combining of separate elements, including the following:

1. The use of Talfiq to refer to combining separate intervals of purity or intermittent menstruation in

[1] - Al-Fayyumi, Ahmad ibn Muhammad, Al-Misbah al-Munir fi Gharib al-Sharh al-Kabir, entry: "L-F-Q"; Ibn Manzur, Lisan al-Arab (Beirut: Dar Sadir, n.d.), entry: "L-F-Q," vol. 10, p. 330.

determining a woman's period of ritual purity.

2. Its use to refer to combining different forms of expiation (kaffarah), such as combining the provision of food with the provision of clothing. [2]

In technical juristic usage, Talfiq refers to adopting the opinions of different independent jurists with regard to separate components of a single legal case, in such a manner that the resulting composite form is one that none of the followed jurists would consider valid. An example is a person who contracts a marriage without specifying a dowry, following the Shafi'i school; without a guardian (wali), following the Hanafi school; and without witnesses, following the Maliki school. The resulting composite form of marriage is one that none of these schools would recognize as valid. [3]

This definition indicates that Talfiq does not arise merely from a legally accountable individual (mukallaf) moving from one school of law to another. Rather, it requires an effective connection between the individual rulings adopted, such that their combination produces a composite legal ruling. This qualification excludes from the concept of Talfiq the adoption of one school's position in an independent act of worship and another school's position in an unrelated transaction. The plurality of sources of Taqlid does not, in itself, entail that the underlying cases are identical or that their respective rulings are combined into a single composite form. [4]

Second Subsection: The Concept of Taqlid and Its Legitimacy

A. The Concept of Taqlid in Linguistic and Technical Usage

1. The Linguistic Meaning of Taqlid

The term Taqlid is a verbal noun derived from the triliteral Arabic verb Qallada (to place around someone's neck or to entrust with something), in its intensive form. The verb is conjugated as Qallada – Yuqallidu – Taqlidan. The Arabic root (Q-L-D) carries several linguistic meanings, including the following:

First Meaning: Placing Something Around the Neck

Ibn Faris states: "The letters Qaf, Lam, and Dal have two sound root meanings, one of which indicates the attachment of something." [5]

This meaning is reflected in the Arabic word Qiladah (necklace), the plural of which is Qala'id. [6] God Almighty says: "And do not violate the sanctity of the sacrificial animals or the garlands placed around their necks" Surah Al-Ma'idah (5:2). The expression Qalladtu al-Mar'ata Qiladatan means that I placed a necklace around the woman's neck. [7]

Second Meaning: Delegation or Entrustment

This usage is metaphorical. The expression Qalladahu al-Amr means that he entrusted or delegated the matter to him, as though he had placed the responsibility around his neck. This meaning is also reflected in the expression referring to the appointment of governors to official positions. [8] It is also illustrated in the

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[2] - Muhammad Arafa al-Dusuqi, Hashiyat al-Dusuqi ʿala al-Sharh al-Kabir, ed. Muhammad ʿAlish (Beirut: Dar al-Fikr, n.d.), vol. 1, p. 170; vol. 2, p. 133.

[3] - Abu al-Abbas Shihab al-Din Ahmad ibn Idris ibn Abd al-Rahman al-Maliki, known as al-Qarafi, Sharh Tanqih al-Fusul, ed. Taha Abd al-Ra'uf Sa'd (United Technical Printing Company, 1st ed., 1393 AH/1973 CE), p. 432. See also Ahmad ibn Ghanim Shihab al-Din al-Nafrawi, Al-Fawakih al-Dawani ʿala Risalat Ibn Abi Zayd al-Qayrawani (Dar al-Fikr, 1415 AH/1995 CE), vol. 1, p. 24.

[4] - Egyptian Dar al-Ifta, "Talfiq between the Schools of Islamic Jurisprudence," previously cited.

[5] - Ahmad ibn Faris ibn Zakariyya, Muʿjam Maqayis al-Lughah, ed. and revised by Abd al-Salam Muhammad Harun (Egypt: Mustafa al-Babi al-Halabi and Sons Library and Printing Company, 2nd ed., 1389–1392 AH/1969–1972 CE), entry: "Q-L-D," vol. 5, p. 19.

[6] - Muhammad ibn Ahmad ibn al-Azhari al-Harawi, Tahdhib al-Lughah, ed. Muhammad ʿAwad Murʿib (Beirut: Dar Ihya al-Turath al-Arabi, 1st ed., 2001), entry: "Q-L-D," vol. 9, p. 47; Abu Nasr Ismaʿil ibn Hammad al-Jawhari al-Farabi, Al-Sihah: Taj al-Lughah wa-Sihah al-Arabiyyah, ed. Ahmad Abd al-Ghafur Attar (Beirut: Dar al-Ilm lil-Malayin, 4th ed., 1407 AH/1987 CE), entry: "Q-L-D," vol. 2, p. 527.

[7] - Majd al-Din Abu Tahir Muhammad ibn Yaʿqub al-Firuzabadi, Al-Qamus al-Muhit, ed. Heritage Research Office, Al-Risalah Foundation, supervised by Muhammad Naʿim al-ʿArqsusi (Beirut, Lebanon: Al-Risalah Foundation for Printing, Publishing, and Distribution, 8th ed., 1426 AH/2005 CE), entry: "Q-L-D," p. 312.

[8] - See the preceding references, same pages.

following verse by the poet [9]:

So entrust your affairs to a man, may you prosper,

Broad-shouldered and capable in matters of war.

2. The Technical Definition of Taqlid

In technical usage, Taqlid is defined as adhering to the adoption of another person's juristic school or opinion without knowing the specific evidence upon which that opinion is based. [10]

This definition is also indicated by the author of Maraqi al-Suʿud in the following verse:

It is adherence to another's school without …Knowledge of the evidence upon which it is founded.

The phrase in the definition, "without knowledge of the specific evidence upon which it is based," indicates that the person practicing Taqlid does not belong to the category of qualified independent jurists (mujtahids), since such an individual is not qualified to derive Islamic legal rulings from their general sources. Al-Shatibi alludes to this distinction in his discussion of the different levels of legally accountable individuals in their engagement with the rulings of Islamic law, stating:

A person legally accountable under its rulings falls into one of three categories:

First: A person who is a qualified independent jurist with respect to those rulings; his ruling is determined by the conclusion reached through his own ijtihad.

Second: A person who is a pure imitator, entirely devoid of the knowledge required to exercise independent legal judgment. Such a person necessarily requires a guide to lead him.

Third: A person who has not attained the rank of independent jurists but possesses an understanding of the evidence and its relevance, and whose understanding qualifies him to exercise preference through the recognized criteria of legal weighting, such as the verification of the effective cause of a ruling (tahqiq al-manat) and similar methods. [11]

In this sense, Taqlid differs from ijtihad, which is based on examining legal evidence and deriving rulings from it.

The basis for the non-specialist's recourse to scholars is found in the Qur'anic statement: "So ask the people of knowledge if you do not know" (Qur'an 16:43). This verse indicates the necessity of referring to those possessing knowledge when one lacks the relevant understanding.

B. The Legitimacy of Taqlid

A number of distinguished Muslim scholars have explicitly affirmed the legitimacy of Taqlid, and indeed its obligatory nature for those who are not qualified to exercise independent legal reasoning (ijtihad).

Al-Qarafi states in Sharh al-Mahsul:

Imam al-Haramayn said:The authoritative scholars unanimously agreed that ordinary people are not entitled to adhere directly to the legal opinions of the Companions of the Prophet (may Allah be pleased with them). Rather, they are required to follow the schools of the leading jurists who systematically investigated, examined, and organized the legal questions. This is because the Companions (may Allah be pleased with them) did not devote themselves to the systematic refinement of legal questions, the development of juristic reasoning, or the clarification of the methods of legal analysis, unlike the scholars who came after them.

Al-Qarafi then added:

I have also encountered a statement by Shaykh Taqi al-Din ibn al-Salah, the substance of which is that adherence to Taqlid should be confined to these four Imams, rather than others, because their schools became widely disseminated and comprehensively developed, to the extent that the qualifications attached to their unrestricted rulings, the specifications of their general rulings, and the conditions are transmitted in the form of isolated fatwas, and it is possible that such opinions have supplementary qualifications, restrictions, or specifications that would become apparent had their authors' statements been systematically preserved and documented. Consequently, following such opinions without full knowledge of their context cannot provide the same degree of confidence as adherence to the opinions of these four Imams." Al-Qarafi then remarked: "This is a sound argument, containing an element that is absent from Imam al-Haramayn's statement." [12]

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[9] - The verse is attributed to Laqit ibn Yaʿmar al-Iyadi.

[10] - Sidi Abdullah al-Alawi, Nashr al-Bunud ʿala Maraqi al-Suʿud, vol. 2, p. 336.

[11] - Ibrahim ibn Musa ibn Muhammad al-Lakhmi al-Gharnati, known as al-Shatibi, Al-Iʿtisam (Kingdom of Saudi Arabia: Dar Ibn al-Jawzi for Publishing and Distribution, 1st ed., 1429 AH/2008 CE), vol. 3, p. 313.

[12] - Shihab al-Din Abu al-Abbas Ahmad ibn Idris al-Qarafi, Nafa'is al-Usul fi Sharh al-Mahsul, studied, edited, and annotated by Adel Ahmad Abd al-Mawjud and Ali Muhammad Muʿawwad (Mecca, Saudi

Al-Shatibi also states:

The fatwas of independent jurists, in relation to ordinary people, are equivalent to the Islamic legal evidences in relation to independent jurists. The proof of this is that the existence or absence of legal evidences makes no difference to those who follow juristic authority (muqallidun), since they derive no benefit from them. Examining legal evidences and deriving rulings from them are not within their competence, nor are they permitted to undertake such tasks under any circumstances. Allah Almighty says: "So ask the people of knowledge if you do not know" (al-Nahl 16:43). Since the person who practices Taqlid is not a scholar, his only appropriate course is to consult the people of knowledge. They are his point of reference in all matters relating to religious rulings; thus, they effectively occupy the position of the Shari'ah for him, and their statements serve as a substitute for the statements of the Lawgiver. [13]

Al-Hattab states:

The position adopted by the majority of scholars is that anyone who lacks the qualifications for independent legal reasoning (ijtihad) is required to follow one of the qualified Imams, whether that person possesses scholarly knowledge or not. Another opinion holds that a learned person should not practice Taqlid, even if he has not attained the rank of a mujtahid, because he possesses the capacity to derive a ruling directly from its evidence. [14]

Scholars have cited several proofs to establish the obligation of Taqlid for the non-specialist, including the following:

1. The statement of Allah Almighty:

"So ask the people of knowledge if you do not know" (al-Nahl 16:43).

Scholars have unanimously agreed that this verse constitutes a command directed to those who do not know the legal ruling or its supporting evidence to follow those who possess such knowledge. The majority of scholars of Islamic legal theory have therefore regarded this verse as their primary evidence for the obligation of the non-specialist to follow a qualified jurist (mujtahid). [15]

2. The statement of Allah Almighty:

"The believers should not all go forth together. Rather, a group from every community should go forth to gain a deep understanding of religion and to warn their people when they return to them, so that they may be cautious." (al-Tawbah 9:122).

For God Almighty prohibited all people from setting out together for military expeditions and jihad, and commanded that a group among them remain behind and devote themselves to acquiring a deep understanding of religion. Thus, when their fellow believers returned, they would find among them those capable of issuing fatwas on matters of what is lawful and unlawful and explaining the rulings of God Almighty. [16]

3. Another proof is the consensus established by the fact that the Companions of the Messenger of God (peace and blessings be upon him) differed in their levels of knowledge. Not all of them were qualified to issue fatwas; rather, among them were a small number of muftis capable of independent juristic reasoning (ijtihad), while the overwhelming majority were people who sought fatwas and followed the opinions of others (muqallids). When issuing a ruling, a Companion who acted as a mufti was not required to explain its supporting evidence to the person seeking the fatwa. The Messenger of God would also send a jurist from among the Companions to a place whose inhabitants were unfamiliar with Islam, its creed, and the beliefs concerning its fundamental tenets. They would then follow him in everything he instructed them to do or imposed upon them, including acts of worship, transactions, and the various affairs pertaining to what is lawful and unlawful. At times, he might encounter an issue for which he could find no evidence in the Book or the Sunnah; he would then exercise his own juristic reasoning and issue a fatwa according to the

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Arabia: Nizar Mustafa al-Baz Library, 1st ed., 1416 AH/1995 CE), vol. 9, p. 3966.

[13] - Abu Ishaq Ibrahim ibn Musa ibn Muhammad al-Shatibi, Al-Muwafaqat, ed. Abu ʿUbaydah Mashhur ibn Hasan Al Salman (Dar Ibn ʿAffan, 1st ed., 1417 AH/1997 CE), vol. 5, p. 336.

[14] - Shams al-Din Abu Abd Allah Muhammad ibn Muhammad ibn Abd al-Rahman al-Hattab, Mawahib al-Jalil fi Sharh Mukhtasar Khalil (Dar al-Fikr, 2nd ed., 1412 AH/1992 CE), vol. 1, p. 30.

[15] - Muhammad Saʿid Ramadan al-Buti, Al-La Madhhabiyyah: Akhtar Bidʿah Tuhaddid al-Shariʿah al-Islamiyyah (Syria: Dar al-Farabi, 1426 AH/2005 CE), p. 97.

[16] - Al-Qurtubi, Abu Abd Allah Muhammad ibn Ahmad, Al-Jamiʿ li-Ahkam al-Qur'an, ed. Ahmad al-Barduni and Ibrahim Atfayyish (Cairo: Dar al-Kutub al-Misriyyah, 2nd ed., 1384 AH/1964 CE), vol. 8, pp. 293–294.

conclusion reached through his ijtihad, and they would follow his judgment (Taqlid) in that matter. [17]

Ibn Khaldun alluded to this point in his Muqaddimah, stating:

"Furthermore, not all the Companions were qualified to issue fatwas, nor was religious knowledge acquired from every one of them. Rather, this role was confined to those who had memorized the Qur'an and were knowledgeable about its abrogating and abrogated verses, its ambiguous and unequivocal passages, and its other indications, through what they had received from the Prophet (peace and blessings be upon him), or from those who had heard it from him, as well as from the most distinguished among them. For this reason, they were called al-Qurra', meaning those who recite the Book, because the Arabs were an unlettered people, and thus those among them who could read the Book were given this designation because of its rarity at that time." [18]

Second Subsection: Talfiq and Its Relationship to Tatabbuʿ al-Rukhas

First Branch: The Concept of Tatabbuʿ al-Rukhas and the Distinction between It and Permissible Resort to Legal Concessions

In juristic usage, Tatabbuʿ al-Rukhas refers to moving between the opinions of different schools of law in pursuit of whichever is the easiest. This practice is considered reprehensible when it stems merely from personal inclination or the desire to evade the requirements of Islamic law, without regard for evidence, necessity, or the established criteria governing the selection of juristic opinions. It is therefore incorrect to equate this approach with resorting to the concessions prescribed by Islamic law to alleviate hardship when the circumstances warranting them are present. Likewise, not every choice of an easier opinion can be classified as prohibited Tatabbuʿ al-Rukhas, since the easier opinion may be the one better supported by evidence or more suitable for achieving a recognized legal benefit (maslahah).

Jurists have distinguished between a divinely prescribed legal concession (al-rukhsah al-sharʿiyyah) and a juristic concession (al-rukhsah al-fiqhiyyah). The former is a legal ruling prescribed to provide relief in the presence of an excuse, even though the circumstances giving rise to the original ruling remain in place, such as permitting a person facing necessity to consume carrion. The latter, by contrast, is a juristic opinion within a particular school that permits an act which another juristic opinion prohibits.

The term rukhsah may also be used to refer to selecting the easier and less burdensome opinion for an individual from among the differing juristic positions of the various schools of law. This constitutes Talfiq in its broader sense. In its narrower sense, however, Talfiq refers to combining the opinions of different schools in a particular legal matter in such a way that the resulting combination cannot be regarded as acceptable under any of those schools. [19]

Talfiq in this narrower sense is what is commonly referred to as Tatabbuʿ Rukhas al-Madhahib (seeking out the concessions of the various schools of law). Al-Shatibi warned against this practice when discussing the harmful consequences of unrestricted choice in issuing fatwas, stating: "Furthermore, this leads to seeking out the concessions of the various schools of law without relying on any legal evidence..." [20]

He further stated, in response to those who permitted seeking out such concessions on grounds of necessity or need: "If this issue falls within that category (that is, matters involving necessity), the founder of the school has already undertaken to clarify its ruling, drawing upon the teachings of the Lawgiver; therefore, there is no need to depart from that position. If, however, it does not fall within that category, then the claim that it does is a grave error and an unacceptable assertion." [21]

Al-Shatibi concluded his discussion by identifying the harmful consequences of following the concessions of the various schools of law, including: "Abandoning religion by forsaking adherence to legal evidence in favor of following juristic disagreement; treating religion lightly; abandoning what is established in favor of what is uncertain; undermining the regulatory framework of Islamic governance by abandoning adherence to a recognized and established standard; and combining the opinions of different schools in a manner that violates their consensus..." [22]

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[17] - Muhammad Saʿid Ramadan al-Buti, Al-La Madhhabiyyah: Akhtar Bidʿah Tuhaddid al-Shariʿah al-Islamiyyah, pp. 97–98.

[18] - Abd al-Rahman Ibn Khaldun, Tarikh Ibn Khaldun, text edited and annotated, with indexes, by Khalil Shahadah; reviewed by Suhayl Zakkar (Beirut: Dar al-Fikr, 1st ed., 1401 AH/1981 CE), vol. 1, p. 563.

[19] - Journal of the Islamic Fiqh Academy, affiliated with the Organization of the Islamic Conference, Jeddah, no. 8, p. 165.

[20] - Ibid., vol. 5, p. 82. See also: Mawahib al-Jalil, vol. 1, p. 31.

[21] - Ibid., vol. 5, p. 82. See also: Mawahib al-Jalil, vol. 1, p. 31.

[22] - Al-Shatibi, Al-Muwafaqat, vol. 5, pp. 102–103.

This passage is of considerable importance because it establishes a connection between Tatabbuʿ al-Rukhas and Talfiq when the latter leads to a violation of consensus. It does not, however, necessarily establish that every form of Talfiq is prohibited merely because it involves combining juristic opinions.

This indicates that the object of censure is not simply the use of differing juristic opinions, but rather turning juristic disagreement into an independent basis for permissibility without examining the supporting evidence or the relevant criteria. Accordingly, adopting the easier opinion is not prohibited merely because it is easier; rather, its evidentiary basis, purpose, and consequences must be considered.

Ibn Abd al-Barr went further in this regard, reporting a consensus that seeking out juristic concessions is impermissible. After citing the statement of Imam Sulayman al-Taymi, he remarked: "If you adopt the concession of every scholar, all evil will be gathered within you... This is a consensus regarding which I know of no disagreement." [23]

Second Branch: The Ruling on Talfiq between the Schools of Law and Tatabbuʿ al-Rukhas in Light of the Usuli Disagreement

First: Defining the Precise Scope of the Disagreement and the Ruling on Talfiq between the Schools of Law

Before discussing the ruling on Talfiq, it is necessary to define the precise scope of the disagreement, since the positions adopted on this issue are influenced by differences in what is meant by the term itself. Adopting the opinions of multiple schools of law in separate and independent matters does not constitute Talfiq in its specific technical sense, according to those who require that the legal case be a single one and that its constituent elements be interconnected.

The Talfiq over which jurists have disagreed, however, involves combining different opinions in an interconnected legal matter in such a way that the resulting composite form is not endorsed in its entirety by any of the mujtahids whose opinions are being followed. [24] Scholars have differed on this issue, adopting two principal positions:

The First Position: Prohibition of Talfiq

A group of later scholars held that Talfiq is prohibited when it results in an act that none of the followed mujtahids would consider valid. This position is motivated by the concern that Talfiq may lead to the violation of an established consensus (ijmaʿ), or to the creation of a composite form that contradicts the common ground underlying the opinions of the mujtahids. Moreover, opening the door to Talfiq without appropriate restrictions may turn juristic disagreement into a means of evading religious obligations, whereby a legally responsible person (mukallaf) selects from each school whatever affords the broadest scope of permissibility, without adhering to the methodological framework upon which the selected opinion is based. [25]

Al-Qarafi, quoting Yahya al-Zanati, stated—in his discussion of following different schools of law in unprecedented legal cases (nawazil) and moving from one school to another—that such a transition is permissible subject to three conditions:

First: The person must not combine the two positions in a manner that violates consensus, as in the case of someone who contracts a marriage without a dowry, a guardian, or witnesses, since no scholar has endorsed such a form of marriage.

Second: The person must believe that the scholar whose school he intends to follow is distinguished in merit, rather than remaining blindly and uncritically attached to the first school.

Third: The person must not seek out the concessions of the various schools of law (Tatabbuʿ Rukhas al-Madhahib). [26]

Al-Zarkashi also quoted Ibn Daqiq al-ʿId as identifying one of the conditions for the permissibility of moving from one school of law to another as follows: "The combination must not result in a form whose invalidity is established by consensus, as in the case of someone who undergoes bloodletting, touches his

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[23] - Ibn Abd al-Barr, Abu Umar Yusuf ibn Abd Allah ibn Muhammad, Jamiʿ Bayan al-ʿIlm wa-Fadlihi, ed. Abu al-Ashbal al-Zuhayri (Saudi Arabia: Dar Ibn al-Jawzi, 1st ed., 1414 AH/1994 CE), p. 927.

[24] - Egyptian Dar al-Ifta, "Talfiq between the Schools of Islamic Jurisprudence," previously cited.

[25] - Al-Shatibi, Al-Muwafaqat, vol. 5, p. 103.

[26] - Al-Qarafi, Abu al-Abbas Shihab al-Din Ahmad ibn Idris ibn Abd al-Rahman al-Maliki, Sharh Tanqih al-Fusul, ed. Taha Abd al-Ra'uf Saʿd (United Arab Printing Company, 1st ed., 1393 AH/1973 CE), p. 432. See also: Ahmad ibn Ghanim Shihab al-Din al-Nafrawi, Al-Fawakih al-Dawani ʿala Risalat Ibn Abi Zayd al-Qayrawani (Dar al-Fikr, 1415 AH/1995 CE), vol. 1, p. 24.

penis, and then performs prayer." [27]

Al-Mawardi, in his discussion of seeking out juristic concessions, stated: "A later scholar qualified this by stipulating that it must not result in something that renders the act invalid. Thus, if a person follows the Shafiʿi position that rubbing the limbs is not obligatory, and the Maliki position that touching without sexual desire does not invalidate ablution, and then performs prayer, his prayer is valid if his ablution included rubbing the limbs; otherwise, it is invalid according to both schools."

The Second Position: Conditional Permissibility

Another group of scholars held that Talfiq is permissible subject to certain conditions. Their position is based on the view, adopted by a number of Usul scholars, that a person practicing Taqlid is not necessarily required to follow one particular school of law in all legal cases, and that juristic opinions do not acquire definitive status merely by virtue of being attributed to a particular Imam. The Egyptian Dar al-Ifta has adopted the position of conditional permissibility, linking it to the existence of a genuine need, the absence of any violation of consensus or definitive textual evidence, due consideration of the objectives of Islamic law (Maqasid al-Shariʿah), and the avoidance of overturning established rulings. [28]

Discussion and Preferred Position

Upon examining the evidence advanced by both positions, it becomes apparent that an unrestricted prohibition or an unrestricted permission, without further qualification, fails to encompass all forms of Talfiq, since composite forms differ in their underlying reasons, purposes, and consequences. A particular combination may be based on a legitimate need; another may serve as a means of circumventing religious obligations; while yet another may concern rights specific to the legally responsible individual (mukallaf) or rights whose effects extend to others. [29]

The preferred position is that Talfiq should not be judged merely on the basis of its designation, but rather by examining three complementary levels: the validity of the composite form in light of the legal evidence; the legitimacy of the method by which the juristic opinions are selected; and the consequences arising from acting upon them. This preference does not entail validating every form of Talfiq in which no prohibitive consensus has been established. Rather, it requires a recognized juristic basis and the preservation of the conditions and objectives underlying the relevant legal rulings.

This qualified approach is supported by the resolution of the International Islamic Fiqh Academy, which prohibits Talfiq when it leads to seeking out juristic concessions merely out of personal inclination; overturning a judicial ruling; reversing what has already been acted upon through Taqlid in a single legal case; violating consensus; or creating a composite form that none of the mujtahids would endorse. [30]

These are criteria that underscore the necessity of examining the outcomes and consequences of Talfiq, while recognizing that their application to particular cases requires careful juristic scrutiny.

Second: Tatabbuʿ al-Rukhas in Light of the Usuli Disagreement

Scholarly opinions on the ruling governing Tatabbuʿ al-Rukhas have been divided into three positions:

The First Position: Its proponents maintain that seeking out juristic concessions is absolutely impermissible. This position has been adopted by the Maliki and Shafiʿi schools of law. [31]

The Second Position: Its proponents maintain that seeking out juristic concessions is absolutely permissible. This position may be inferred from the views of some Hanafi scholars, particularly Kamal al-Din Ibn al-Humam, who stated:

"Most likely, such restrictions imposed by them are intended to prevent people from seeking out juristic concessions. Otherwise, an ordinary person may adopt, in every legal matter, the opinion of whichever mujtahid offers him the least burdensome position. I know of nothing in either transmitted

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[27] - Badr al-Din Muhammad ibn Bahadur ibn Abd Allah al-Zarkashi, Al-Bahr al-Muhit fi Usul al-Fiqh, text verified and edited, hadiths referenced, and annotated by Muhammad Muhammad Tamir (Beirut: Dar al-Kutub al-ʿIlmiyyah, 1421 AH/2000 CE), vol. 4, p. 595.

[28] - Ali ibn Sulayman al-Mardawi, Al-Tahbir bi-Sharh al-Tahrir, ed. Ahmad al-Sarrah (Riyadh: Maktabat al-Rushd, publication date not stated), vol. 4, p. 254.

[29] - Egyptian Dar al-Ifta, "Talfiq between the Schools of Islamic Jurisprudence," previously cited.

[30] - International Islamic Fiqh Academy, Resolution No. 70 (8/1), Journal of the Academy, no. 8, vol. 1, p. 41.

[31] - Al-Tahir al-Maʿmuri, Fatawa al-Imam al-Mazari (Tunisian Publishing House, 1994 CE), p. 222; al-Shatibi, Al-Muwafaqat, vol. 5, p. 82; Abu Hamid Muhammad ibn Muhammad al-Ghazali, Al-Mustasfa, ed. Muhammad Abd al-Salam Abd al-Shafi (Dar al-Kutub al-ʿIlmiyyah, 1st ed., 1413 AH/1993 CE), vol. 1, p. 374.

religious evidence or rational reasoning that precludes this. As for a person following the opinion that is easier for him among the opinions of a mujtahid qualified to exercise juristic reasoning, I know of no basis in Islamic law for censuring him on that account. The Prophet (peace and blessings be upon him) used to favor what made things easier for his community. God Almighty knows best what is correct." [32]

The Third Position: The Qualified Approach. This position maintains that seeking out juristic concessions is permissible subject to certain conditions and restrictions, including:

1. The motive must not be mere personal preference or the pursuit of one's desires; rather, it must arise from necessity or genuine need.

2. It must not lead to abandoning the original, more demanding rulings (ʿaza'im) to such an extent that the legally responsible person (mukallaf) effectively escapes the obligations of religious accountability, which entail accepting the requirements and burdens imposed by Islamic law.

This is the position of the Hanbali school of law. [33]

Third Subsection: Talfiq in Light of the Principles of the Maliki School of Law and Its Juristic Applications

First: The Maliki Position on Talfiq

A study of the Maliki position on Talfiq requires distinguishing between the views of early and later scholars. This is because Talfiq, as an independent technical term, emerged in the discussions of later scholars, although some of the concepts associated with it are connected to earlier juristic issues, such as Taqlid, moving between schools of law, and Muraʿat al-Khilaf (consideration of juristic disagreement). Accordingly, it would be inappropriate to attribute an absolute position of either permissibility or prohibition to Imam Malik or to all Maliki jurists without first examining the relevant textual evidence addressing the issue.

Some later Maliki scholars addressed the issue of Talfiq explicitly. Among the sources consulted in this regard are al-Dusuqi's Hashiyat al-Dusuqi ʿala al-Sharh al-Kabir [34] and al-Sawi's Bulghat al-Salik. [35] Their discussions indicate the existence of multiple approaches to dealing with Talfiq and underscore the need to distinguish between the permissibility of following another school's opinion and the validity of a composite form resulting from combining opinions across different schools.

The fact that some later scholars transmitted an opinion permitting Talfiq should not be understood to mean that the Maliki school permits every form of juristic combination. Matters of marriage, divorce, and legal rights differ in their consequences from certain matters of worship. Moreover, acting upon an uncommon opinion or the position of another school may be subject to specific regulations governing the issuance of fatwas and judicial rulings. This distinction is essential when examining the applications of Talfiq in Maliki jurisprudence. [36]

Second: The Relationship between Talfiq and Muraʿat al-Khilaf

The principle of Muraʿat al-Khilaf (consideration of juristic disagreement) represents one of the important methods of juristic reasoning in the Maliki tradition. In some of its applications, this principle involves recognizing certain consequences of an opposing juristic opinion when specific conditions are fulfilled, particularly after the relevant act or transaction has already taken place. [37] Nevertheless, Muraʿat al-Khilaf differs from Talfiq in both subject matter and function. The former may involve arranging certain legal consequences after an act has occurred, whereas the latter concerns combining juristic opinions within a single interconnected legal case.

It may therefore be argued that Muraʿat al-Khilaf can help address certain consequences arising from acts involving Talfiq. However, it cannot, on its own, serve as evidence for the permissibility of initially

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[32] - Kamal al-Din Muhammad ibn Abd al-Wahid Ibn al-Humam, Fath al-Qadir (Dar al-Fikr, publication details not stated), vol. 7, p. 258.

[33] - Kamal al-Din Muhammad ibn Abd al-Wahid Ibn al-Humam, Fath al-Qadir (Dar al-Fikr, publication details not stated), vol. 7, p. 258.

[34] - Muhammad ibn Ahmad ibn Arafah al-Dusuqi, Hashiyat al-Dusuqi ʿala al-Sharh al-Kabir (Dar al-Fikr, publication details not stated), vol. 1, p. 2.

[35] - Ahmad ibn Muhammad al-Sawi, Bulghat al-Salik li-Aqrab al-Masalik, also known as Hashiyat al-Sawi ʿala al-Sharh al-Saghir (Dar al-Maʿarif, publication details not stated), vol. 1, p. 19.

[36] - International Islamic Fiqh Academy, Resolution No. 70 (8/1).

[37] - Al-Shatibi, Al-Muwafaqat, vol. 5, p. 108.

creating every possible composite form.

Third: The Relationship between Talfiq and Sadd al-Dhara'i

The principle of Sadd al-Dhara'i (blocking the means to prohibited ends) plays a role in evaluating Talfiq by directing attention to the means that may lead to circumventing the rulings of Islamic law. If combining juristic opinions becomes a means of disregarding the conditions of contracts, forfeiting rights, or evading religious obligations, its prohibition may be considered in light of its anticipated consequences, in addition to examining the juristic validity of the resulting composite form. [38]

Nevertheless, Sadd al-Dhara'i does not entail prohibiting every instance of Talfiq merely because of the possibility of its misuse. The assessment of a potential means depends on the likelihood and strength of its leading to harm, the nature of the countervailing benefit, and the circumstances surrounding the particular case. Accordingly, concern about circumvention should not become a reason for eliminating the possibility of legitimately benefiting from juristic disagreement.

Fourth: The Relationship between Talfiq and Iʿtibar al-Ma'alat

Iʿtibar al-Ma'alat (consideration of consequences) assumes particular importance in the study of Talfiq, since evaluating composite forms is not limited to examining their theoretical permissibility, but extends to their practical effects on the legally responsible individual (mukallaf), third parties, and the judicial system. Al-Shatibi emphasized the importance of considering the consequences of actions in the process of juristic reasoning (ijtihad). [39] This principle can therefore be applied when evaluating contemporary instances of Talfiq.

The significance of this approach becomes particularly evident in financial transactions and matters of personal status, where combining multiple juristic opinions may produce outcomes that were not intended in the original juristic positions upon which the legally responsible individual relied. Accordingly, consideration of consequences requires examining the overall result of the combination rather than being satisfied with establishing the permissibility of its individual components in isolation. [40]

Fifth: The Criteria Governing Talfiq and Its Juristic Applications

A. Criteria for Permissible Talfiq

The criteria governing Talfiq can be derived by combining the principles of Usul al-Fiqh with contemporary juristic resolutions. The foremost of these criteria are that the adopted opinion must be recognized as legally authoritative under Sharia; that there must be a legitimate need for resorting to it; that the choice must be made by someone possessing the requisite scholarly qualifications or be based on a fatwa issued by a qualified authority; and that the intention must not be merely to follow personal whims or evade religious obligations.

It must also be ensured that Talfiq does not lead to contravening an established consensus, overturning a judicial ruling, disregarding what has become established practice in the same legal case, or creating a composite form that none of the mujtahids would endorse. These criteria are particularly important in preventing the exploitation of juristic disagreement to undermine rights or circumvent legal rulings. [41]

Applying these criteria requires distinguishing between the validity of an act and the legitimacy of the choice made in performing it. An opinion may be recognized as authoritative within its original juristic framework, yet combining it with another opinion may produce an invalid composite form. Similarly, the intention to facilitate religious practice may be legitimate, but it is not, by itself, sufficient to establish the validity of the resulting combination unless the relevant juristic conditions are fulfilled.

B. Juristic Applications of Talfiq

1. Applications in Acts of Worship:

Questions of ritual purity are among the most prominent examples discussed by jurists in connection with Talfiq, given the multiplicity of conditions and essential elements on which the schools of law differ. The problem arises when a legally responsible person combines the omission of one condition recognized by one school with the omission of another condition recognized by a different school, in such a way that the validity of the act of worship is not established according to any of the schools being followed.

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[38] - Al-Shatibi, Al-Muwafaqat, vol. 5, pp. 102–103.

[39] - Ibid., vol. 5, p. 179.

[40] - International Islamic Fiqh Academy, Resolution No. 70 (8/1).

[41] - International Islamic Fiqh Academy, Resolution No. 70 (8/1), Journal of the Academy, no. 8, vol. 1, p. 41.

For example, a person may follow Mālik's opinion that loud laughter during prayer does not invalidate ablution, and Abu Hanifa's opinion that touching the penis does not invalidate it, and then perform the prayer. Such a prayer is unanimously regarded by both Imams as invalid. Similarly, if a person follows Mālik's opinion that touching a woman does not invalidate ablution when there is neither an intention to experience sexual pleasure nor the actual presence of such pleasure, while following al-Shafiʿi's opinion that wiping only part of the head is sufficient, his ablution is invalid, as is his prayer. This is because following another school's opinion is conditional upon not thereby falling into a situation that is deemed invalid by both the Imam whose school one originally followed and the Imam whose school one has adopted. [42]

2. Applications in Financial Transactions:

Forms of Talfiq may arise in composite financial contracts when particular rulings drawn from different schools of law are combined within a single contract. The validity of the contract cannot be established merely by showing that each of its individual components has a recognized juristic basis. Rather, it is necessary to verify the validity of the contractual structure as a whole and to ensure that combining its components does not give rise to anything prohibited under Sharia.

It is important not to apply the label of Talfiq too broadly to contemporary financial ijtihad, since some newly developed contracts may be based on independent juristic reasoning concerning their legal characterization or the verification of the effective cause of a ruling (Tahqiq al-Manat), rather than on the mere combination of opinions from different schools. Accordingly, evaluating such applications requires distinguishing between juristic selection, constructive ijtihad, and Talfiq in its technical sense. [43]

3. Applications in Matters of Personal Status:

The risks of unregulated Talfiq become more serious in matters of marriage, divorce, and family rights, because its consequences may extend beyond the legally responsible individual (mukallaf) to affect the rights of spouses and children, as well as the stability of family relationships. Jurists have cited examples of Talfiq in marriage, explaining that combining certain opinions may produce a form of marriage that conflicts with the objectives of Islamic legislation and violates consensus. One example is a marriage contracted without a dower, a guardian, or witnesses, a form of marriage that no jurist has endorsed. [44]

One of the most important criteria in this regard is that moving between schools of law must not be used as a means of overturning the legal effects of a contract whose validity has already been acted upon, or of escaping the consequences of a divorce that has already taken effect. This criterion is grounded in the need to preserve the stability of legal rulings and rights and to prevent inconsistency in dealing with a single legal case. [45]

4. CONCLUSION AND FINDINGS OF THE STUDY

This study has examined the problem of Talfiq between the schools of Islamic law in light of its relationship with Taqlid and Tatabbuʿ al-Rukhas, considering it one of the issues in Usul al-Fiqh through which the impact of juristic disagreement on the conduct of the legally responsible individual (mukallaf) and on the regulation of fatwa and ijtihad becomes evident. The study has sought to clarify the concepts related to this issue, identify the nature of the relationships among them, and analyze the positions adopted by jurists and scholars of Usul al-Fiqh regarding the legal rulings on Talfiq and Tatabbuʿ al-Rukhas. It has also highlighted the distinctive features of the Maliki approach in light of the principles of Muraʿat al-Khilaf (consideration of juristic disagreement), Sadd al-Dhara'i (blocking the means to prohibited ends), and Iʿtibar al-Ma'alat (consideration of consequences).

The study has demonstrated that the Usuli problem concerning Talfiq does not lie merely in the fact that the legally responsible individual refers to more than one school of law, nor in the act of moving from one juristic opinion to another as such. Rather, it is determined by examining the nature of the combination of opinions, the validity of the resulting composite form, and whether that combination is grounded in a recognized legal basis or is used as a means of evading the requirements of religious obligation. Accordingly, although the legitimacy of Taqlid permits a person who has not attained the level of ijtihad to refer to qualified scholars, it does not necessarily establish the validity of every form resulting from the combination

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[42] - Al-Shatibi, Al-Muwafaqat, vol. 5, p. 103.

[43] - International Islamic Fiqh Academy, Resolution No. 70 (8/1).

[44] - International Islamic Fiqh Academy, Resolution No. 70 (8/1).

[45] - International Islamic Fiqh Academy, Resolution No. 70 (8/1).

of the opinions of different mujtahids. The ruling on such a form remains contingent upon its fulfillment of the relevant legal conditions and the absence of legally recognized impediments.

The study has also revealed that the relationship between Talfiq and Tatabbuʿ al-Rukhas is neither one of necessary entailment nor one of complete equivalence. Rather, the two overlap in certain cases while each retains its own distinct nature and operative basis. Talfiq concerns the combination of juristic opinions within an interconnected legal case, whereas Tatabbuʿ al-Rukhas concerns the selection of less burdensome opinions from different schools of law. Consequently, either may occur independently of the other, although they may coincide when the combination of opinions is driven merely by personal preference and the desire to escape the constraints imposed by Sharia.

The study has shown that the differences among scholars of Usul al-Fiqh and jurists regarding the ruling on Talfiq are connected to their differing views on the permissibility of moving between schools of law, the extent to which a person practicing Taqlid is bound to adhere to a particular school, and the ruling on creating a composite form that the followed mujtahids would not endorse as a whole. It has also become clear that the warning against Tatabbuʿ al-Rukhas should not be understood as a prohibition of resorting to the less burdensome opinion in every instance. Facilitation may, in fact, be grounded in recognized legal evidence or a legitimate need. The objection is directed, rather, at using juristic disagreement as a pretext for following personal whims, circumventing legal obligations, or disregarding the rulings of Sharia.

The examination of the Maliki position has helped highlight the importance of methodological criteria governing movement between schools of law, particularly the conditions attributed to some Maliki jurists, namely, that such movement must not contravene consensus or involve seeking out legal concessions. The study has also demonstrated that the principles of Muraʿat al-Khilaf, Sadd al-Dhara'i, and Iʿtibar al-Ma'alat constitute important tools of juristic reasoning for evaluating forms of Talfiq. These principles facilitate an examination of their legal foundations and consequences, as well as a balancing of the benefits and harms arising from them. Nevertheless, merely invoking these principles is not sufficient to validate every juristic combination.

In light of the discussion and comparison of the different juristic approaches, the study has found that a differentiated methodology for determining the ruling on Talfiq is better suited to accommodating the nature of the issue than an unconditional declaration of either its permissibility or prohibition. Such an approach distinguishes between Talfiq grounded in a recognized legal basis and fulfilling the conditions of validity, and Talfiq that leads to contravening an established consensus, undermining rights, overturning settled rulings, or using differences among mujtahids as a means of evading religious obligations.

Accordingly, the central conclusion of this study is that Talfiq between the schools of law cannot be judged merely by the occurrence of a combination of opinions, nor simply by the intention to facilitate religious practice. Rather, its ruling is determined in light of the validity of the resulting composite form, the legitimacy of the method of selection, its conformity with the legal evidence, and the soundness of its consequences. In this way, a balance can be achieved between the legitimacy of benefiting from juristic plurality and the necessity of preserving the coherence of Sharia rulings and their objectives, thereby combining the methodological foundations of Islamic jurisprudence with its flexibility in responding to emerging cases.

The need to regulate Talfiq is further reinforced by its contemporary juristic applications, particularly in financial transactions and matters of personal status, where an unregulated combination of opinions may lead to consequences affecting the rights of others and the stability of legal rulings. This makes it necessary to examine the resulting composite form as an integrated juristic whole.

On the basis of the foregoing, the study's scholarly contribution lies in shifting the examination of Talfiq beyond the mere disagreement over its legal ruling toward the development of a composite Usuli criterion founded on three complementary elements: the validity of the combination, the legitimacy of the selection, and the soundness of its consequences. This criterion may be used to evaluate both classical forms of Talfiq and its contemporary applications, thereby achieving a balance between juristic discipline and legally recognized facilitation under Sharia

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