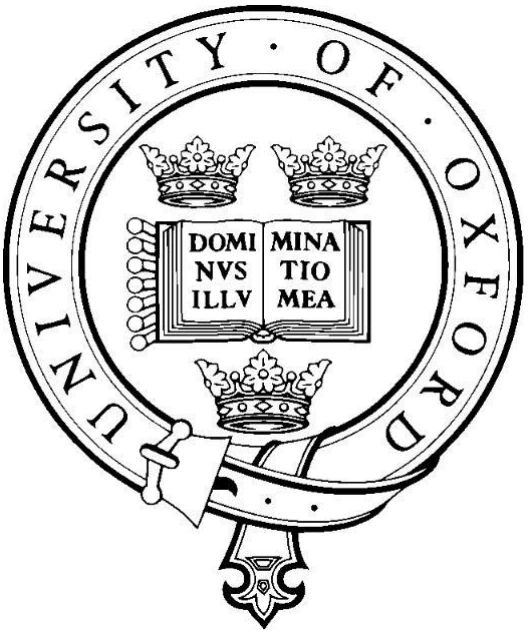
Muftī Taqī ʻUthmānī: a study of the legal methodology and juristic opinions of a contemporary *muftī*



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Short Abstract

This thesis offers a person-centred view into the practice of *ijtihād* and legal innovation within the *madhhab*, focusing on the legal methodology and juristic conclusions of Muftī Muḥammad Taqī ʻUthmānī, a prominent jurist from Pakistan. As the central figure in the international Deobandī movement—a revivalist Sunni tradition of South Asia known for its legal conservatism and strict *madhhab* adherence—ʻUthmānī's jurisprudence reflects a sophisticated synthesis of legal innovation and faithful adherence to traditional Ḥanafī jurisprudence. This thesis highlights the underexplored dynamics of *ijtihād* from within the *madhhab*, demonstrating how traditional jurisprudence can adapt to contemporary challenges through the engagement of an individual jurist.

The thesis is structured into three parts. Part I explores ʻUthmānī's life and works, grounding his juristic approach in the intellectual and socio-political influences that shaped him. Part II examines the epistemological and methodological foundations of his juristic practice, analysing his methodological monograph, *Uṣūl al-Iftā' wa Ādābuhū*, and contributions to discussions on Ḥanafī procedural norms (*rasm al-muftī),* which elucidate legal change and *ijtihād* within the *madhhab*. This part also discusses ʻUthmānī's approach to *madhhab* adaptations due to societal changes, including the hermeneutic limits of *maqāṣid* (objectives), ʻ*urf* (custom), and *ḍarūra* (necessity), and the conditions for departing from the *madhhab* on specific issues. Part III applies these insights to practical case studies, including the first volume of his *Fatāwā ʻUthmānī* and treatises on contentious occupations and interest-free financing. This section highlights how his juristic creativity allows for legal innovation, even in traditionally rigid areas like rituals and acts of worship. The conclusion synthesises these findings, illustrating how studying ʻUthmānī's work reveals his *fiqhī mizāj*—the juristic inclinations that guide his approach to jurisprudence. The research underscores the dynamic potential of *madhhab*-based jurisprudence, and the central role of the individual *muftī* in commandeering legal change within the *madhhab*.

Long Abstract

What does contemporary *ijtihād* look like when practised within a *madhhab* framework? This thesis seeks to answer this question through an in-depth study of the legal methodology and *ijtihādī* conclusions of one of the most influential contemporary Sunni jurists: Muftī Muḥammad Taqī ʻUthmānī (b. 1943) from Pakistan. As the central figure in the international Deobandī movement—a revivalist South Asian Sunni tradition known for its legal conservatism and strict *madhhab* adherence—ʻUthmānī's jurisprudence reflects a sophisticated synthesis of legal innovation and faithful adherence to the *madhhab*'s traditional framework of interpretation. Unlike much of the academic work that has focused on modernist and reformist approaches to *ijtihād*, this thesis highlights a largely unexplored area of contemporary Islamic law: the role of *madhhab*-based *ijtihād* in the modern world. ʻUthmānī, who is deeply rooted in the Ḥanafī *madhhab* and upholds the principle of *taqlīd shakhṣī*, i.e., that *madhhab* adherence is mandatory upon both the scholar and the layperson, demonstrates how traditional Islamic jurisprudence can navigate and respond to contemporary challenges without abandoning the structured interpretative methods of its scholastic heritage.

This thesis is split into three parts. The first chapter of the thesis, the first and only chapter of Part I, traces the life and works of Taqī ʻUthmānī, highlighting the key influences that shaped his juristic thought. Born into a family dedicated to Islamic law, his father, Muftī Muḥammad Shafīʻ (d. 1976), played a crucial role in the Pakistan movement and viewed Pakistan as a unique opportunity to establish a nation governed by Sharia principles. This background, along with ʻUthmānī's education at Dār al-ʻUlūm Karāchī and his advanced degrees in Western disciplines, positioned him to bridge traditional Islamic scholarship with modern challenges, particularly in Islamic finance. A significant moment in his intellectual development was his engagement with modernist thinker Fazlur Rahman in the 1960s, which prompted ʻUthmānī to defend traditionalist perspectives within the Deobandī framework. His rise to prominence, both within Pakistan's judiciary and internationally, reflects his ability to integrate Islamic principles with contemporary economic systems. Notably, he served on the Sharia Appellate Bench of Pakistan's Supreme Court and continues to lead the Sharia Board at the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), whose standards are legally mandatory in a dozen Muslim countries and fully or partially implemented in over twenty-one jurisdictions. ʻUthmānī's focus on developing Islamic economic systems is closely tied to his broader commitment to actualising Islamic law in Pakistan.

Having explored the biographical and intellectual foundations of Taqī ʻUthmānī's thought in Part I, the thesis transitions in Part II to a detailed examination of the methodological and

epistemological principles that underpin his juristic approach. In Chapter 2, the thesis examines the Deobandī principle of *taqlīd shakhṣī*, which demands strict adherence to a single *madhhab*. This chapter contextualises the Deobandī commitment to the Ḥanafī *madhhab*, emphasising the continuity of medieval Ḥanafī *fiqh* in India, where a rich and thriving Ḥanafī legal tradition had flourished since the Middle Ages. By examining key texts such as ‘Uthmānī’s *Taqlīd Kī Shar‘ī Haysiat*, the discussion traces the lineage of *taqlīd* from the early Deobandīs, through the founders of the movement—such as Rashīd Aḥmad Gangohī (d. 1905) and Qāsim Nānotawī (d. 1880)—and later figures like Ashraf ‘Alī Thānawī (d. 1943), to the present. ‘Uthmānī builds upon their foundational arguments with rigorous academic scrutiny, reinforcing the necessity of *taqlīd shakhṣī* as a means of safeguarding the integrity and continuity of Islamic jurisprudence. His defence of this principle is not merely a rigid adherence to tradition but is presented as a deliberate effort to maintain the coherence and stability of the Ḥanafī *madhhab*, ensuring its relevance and applicability in contemporary contexts.

Chapter 3 examines the hermeneutic principles within the Ḥanafī *madhhab*, focusing on *rasm al-muftī*, the procedural norms that inform the *muftī*’s task of *fatwā*-giving. ‘Uthmānī challenges the notion that absolute *ijtihād* is closed, asserting that while few today can fully exercise it, *ijtihād fī l-madhhab*—*ijtihād* within the *madhhab*—remains dynamic and essential. In *Uṣūl al-Iftā wa Ādabuhū*, he categorises key juristic activities such as *takhrīj* (extracting opinions from the methodology of the Ḥanafī masters), *taṣḥīḥ* (authenticating between opinions), *tarjīḥ* (granting preponderance between opinions), and *tamyīz* (differentiating between opinions), emphasising that these practices are vital for the *madhhab*’s ongoing relevance in an ever-changing world. Even *naql*, the act of transmitting the *madhhab*'s norms with careful contextual application, plays a significant role in enabling legal adaptation and addressing modern challenges.

In Chapter 4, the thesis explores ‘Uthmānī’s methodological framework for departing from established legal norms in response to societal changes and legal necessities. The chapter explores the conditions under which a jurist may depart from the *madhhab*’s norms, such as changes in custom (‘*urf*), underlying legal causes (*‘ilal*), and public predicaments (‘*umūm al-balwā*). By referencing the works of Ibn ‘Ābidīn (d. 1252/1836) and Ashraf ‘Alī Thānawī, ‘Uthmānī demonstrates a jurisprudence that is both deeply rooted in tradition and cautiously adaptive to modern challenges. Much of this discussion serves as a dialectic; rather than pushing for broad innovations, ‘Uthmānī emphasises the traditional boundaries of these principles and chastises their misuse. He also develops a framework for departing from the *madhhab* and adopting the position of another *madhhab* on single issues. Recognising the potential controversy of this approach, he draws heavily on Thānawī’s *al-Ḥīlat al-Nājiza*, closely aligning his method with Thānawī’s

conditions and practices, thereby ensuring that such departures are carefully justified and remain within a well-established Deobandī framework.

Part III of the thesis transitions from methodological discussions to practical applications, with Chapter 5 focusing on the first volume of *Fatāwā 'Uthmānī*. This chapter examines how 'Uthmānī operates as a *muqallid muftī* within the Ḥanafī *madhhab*, demonstrating the potential for legal innovation even in traditionally rigid areas like rituals and acts of worship. By employing *naql* and *taḥrīr* (critical examination of *madhhab* discourse to uncover its most forthright opinion), 'Uthmānī extends and adapts classical Ḥanafī norms to contemporary needs, such as the nuanced argument for the permissibility of Friday prayers in modern prisons. While *naql* might appear unremarkable, the case studies reveal its crucial role as a vehicle for legal change, ensuring the continuity of the *madhhab* in the modern age. Furthermore, 'Uthmānī's reliance on Ibn 'Ābidīn for classical scholarship and his bias towards Thānawī for aligning with Deobandī perspectives underscores the distinctive features of his juristic approach, revealing a personal aspect to his legal reasoning.

Chapter 6 provides an in-depth analysis of 'Uthmānī's most expansive *fatwā* on contentious occupations and unlawful wealth, showcasing *taḥrīr* as a vital juristic tool for facilitating *ijtihād* within the *madhhab*. By meticulously integrating *madhhab* discourse with contemporary issues, 'Uthmānī formulates nuanced legal opinions that address the complexities of contentious occupations, such as those involving bank employees, software engineers, and business analysts. The chapter also touches on the challenges of conceptualising the on-ground reality (*al-wāqi'*) of a case, especially when technical intricacies obscure the issues at hand. Additionally, it discusses the lively debates among Deobandī scholars at the Jamiat Ulama-e-Hind's eighteenth *fiqh* conference, where 'Uthmānī's treatise served as a significant reference point. These discussions underscore both the celebration and critique of 'Uthmānī's contributions, highlighting the complexities of achieving consensus within even the same sub-school of the *madhhab*.

Chapter 7 explores 'Uthmānī's pioneering work in Islamic finance, focusing on how he innovatively crafts Sharia-compliant financial models within the Ḥanafī *madhhab* framework. Unlike conventional juristic responses, 'Uthmānī proactively harmonises existing solutions like mark-up sales (*murābaḥa*) and diminishing partnerships (*al-sharikat al-mutanāqiṣa*) with Ḥanafī norms and broader Islamic principles, creating a form of financing that is profitable, interest-free, and consistent with Deobandī *fatwā* conventions. His method blends tradition with pragmatism, reinforcing his Ḥanafī interpretations with authoritative positions from the Mālikī *madhhab* to justify mechanisms such as self-imposed charity for late payments, ensuring compliance with both scriptural and *madhhab* norms. The chapter highlights the collective *ijtihād* that inform his

positions, drawing on the Majlis-i Taḥqīq-i Masā'il-i Ḥādira, a *fiqh* collective led by his father and Yūsuf Binnorī (d. 1977) for the leading *muftī*s of Pakistan. It also addresses internal disagreements within the Deobandī community, where critics including the scholars of Binnorī Town challenged his approach.

Despite these debates, 'Uthmānī's method remains distinctly Deobandī, rooted in a lineage of authority going back to Gangohī, Thānawī, and his father, Muḥammad Shafī'. His approach draws on their advice, which permits departures from the *madhhab* on single issues of public need, especially in financial matters. This stance is further informed by his lived experience with senior Pakistani scholars of the Majlis-i Taḥqīq, who collectively worked to eliminate interest. The ongoing debates underscore the tension between textualism and 'Uthmānī's flexible, need-based interpretation, ultimately highlighting his commitment to a practical yet tradition-bound Deobandī jurisprudence.

This thesis concludes by emphasising the pivotal role that individual *muftī*s play in shaping the evolution of Islamic jurisprudence within the *madhhab*. Through an in-depth analysis of Taqī 'Uthmānī's work, it becomes evident that legal change is often driven not by collective consensus alone but by the distinctive engagement of individual jurists with their intellectual heritage. By focusing on 'Uthmānī as an individual jurist, the study reveals the juristic inclinations and proclivities—his *fiqhī mizāj*—that inform his approach to the law. In examining his practice of *ijtihād* within the *madhhab*, this thesis highlights how 'Uthmānī navigates the tension between adhering to established Ḥanafī norms and exercising lower-level forms of *ijtihād* like *takhrīj*, *tarjīḥ*, and *tamyīz* to address contemporary challenges. Even at the foundational level of *naql*, where a *muftī* transmits and applies traditional legal discourse to current contexts, there is significant scope for nuanced legal innovation. The various case studies of this thesis demonstrated 'Uthmānī's ṣmeticulous application of established Ḥanafī norms to a contemporary context, extending the *madhhab*'s principles to address new realities while preserving its integrity. These examples highlight how, even within the structured framework of *taqlīd*, individual jurists like 'Uthmānī can drive meaningful legal evolution through a careful and nuanced engagement with their tradition.

Through our analysis, 'Uthmānī's *fiqhī mizāj* becomes discernible as one marked by cautious deliberation, a deep reliance on authoritative scholarly backing, and a pragmatic outlook that informs his legal reasoning. His caution is evident in his preference for positions strongly supported by established precedents within the Ḥanafī *madhhab*. Rather than pursuing novel interpretations or radical departures from tradition, he meticulously grounds his legal opinions in the work of previous scholars, ensuring that his rulings remain anchored in the established legal framework. This cautious approach is reinforced through his frequent recourse to collective *ijtihād*

and consultation with authoritative figures such as Thānawī and Ibn ʻĀbidīn, whose works he draws upon to lend weight and legitimacy to his decisions. Thānawī, in particular, emerges as a central influence on ʻUthmānī's jurisprudence, shaping both his method and practice of law. This reliance on authoritative scholarly backing allows ʻUthmānī to navigate complex contemporary issues while maintaining fidelity to his Ḥanafī-Deobandī affiliation. Even when engaging in legal innovation, he ensures that his stances are securely rooted within the established norms of the *madhhab*, reflecting a careful balance between tradition and adaptation.

Moreover, his pragmatism is evident in his drive to actualise Islamic law in Pakistan, most notably through his efforts in Islamic finance, such as the establishment of Meezan Bank. Unlike scholars who primarily engage in theoretical debates, ʻUthmānī's approach is distinguished by his determination to translate legal theory into practical solutions, ensuring the relevance of the Ḥanafī *madhhab* in contemporary contexts. However, his pragmatism is not unbounded; it is carefully applied, particularly in areas like finance and state-level legal implementation, where the need to actualise Islamic law is most pressing. Even in these contexts, his approach remains firmly rooted within traditional scholarly boundaries, ensuring that his legal innovations align with the established principles of the *madhhab*.

This thesis offers a comprehensive examination of how contemporary *ijtihād* operates within a *madhhab* framework, shedding light on the complex interplay between tradition and adaptation in Islamic law. By analysing the work of Taqī ʻUthmānī, this research contributes to a deeper understanding of how individual jurists drive the ongoing evolution of the Ḥanafī *madhhab*, demonstrating that meaningful legal change can occur even within the structured boundaries of *taqlīd*. Ultimately, this study underscores the importance of individual scholarly agency in navigating the challenges of the modern world while remaining anchored in Islamic tradition.

Dedicated to my estemeed father, Shuruj Miah,
for his financial, emotional, and spiritual
investment in me.

To my esteemed mother,
for the upbringing and care, which have made
me the person I am today.

আমার শ্রদ্ধেয় পিতা, মোঃ সুরুজ মিয়াকে
উৎসর্গ করলাম,
আমার প্রতি তার আর্থিক, মানসিক এবং
আত্মিক সহায়তার জন্য।
আমার শ্রদ্ধেয়া মাতা, পিয়ারা বেগমকে, যার
লালন পালন এবং যত্ন আমাকে আজকের
মানুষ বানিয়েছে।

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accomplishment is a tribute to each of you, a reflection of the collective strength and sacrifices of our family.

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Transliteration, Abbreviations and Dates

Arabic	Symbol	Arabic	Symbol
ا	a, ā	ط	ṭ
ب	b	ظ	ẓ
ت	t	ع	‘
ث	th	غ	gh
ج	j	ف	f
ح	ḥ	ق	q
خ	kh	ك	k
د	d	ل	l
ذ	dh	م	m
ر	r	ن	n
ز	z	و	w, ū
س	s	ه	h,
ش	sh	ء	’
ص	ṣ	ي	y, ī,
ض	ḍ		

Abbreviations

s.	singular	pl.	plural
d.	died	b.	Ibn (son of)
c.	circa	r.	ruling reign from
Q.	Qur’an verse		

This thesis predominantly follows the Library of Congress transliteration style, with some modifications. The *tā’ marbūṭa* is represented as a ‘t’ only when it appears in the middle of a compound word; otherwise, it is not transliterated. For example: *al-Ḥīlat al-Nājiza*, *Idārat al-Ma‘ārif,* ‘*illa, ḥikma*. This approach ensures that the Arabic transliteration remains closer to its pronunciation. Similarly, *alif maqṣūra* will be represented as ‘ā’, indistinguishable from an *alif mamdūda*. For example, the *alif maqṣūra* in *fatwā.*

I have chosen to transliterate ‘*ulamā*’ as ‘*ulamā* (without the ’ to represent the final *hamza*) as a stylistic choice, as the former resembles a quoted word. Additionally, words commonly used in English appear without diacritics. These include, but are not limited to, Qur’an, Hadith, Sharia, and Halal. Furthermore, commonly recognised English names that appear within Arabic or Urdu constructions will be transliterated, such as "Karachi" in Dār al-‘Ulūm Karāchī. Moreover, the word “Allah” will be used without diacritics when referring to God. However, in names such as ‘Abd Allāh or Shah Walī Allāh, the word "Allah" will retain diacritics, as these names are transliterated directly from Arabic.

As this thesis primarily engages with Arabic sources, with some Urdu references, Arabic transliteration is prioritised. Urdu words are generally transliterated through Arabic conventions, with some adaptations for Urdu-specific elements. For instance, connecting words are transliterated as in *dars-i niẓāmī* and *fikr-o naẓar*.

Qur'anic verses are translated according to Taqī 'Uthmānī's *The Meanings of the Noble Qur'an*, published by Karachi's Quranic Studies Publishers in 2010. While the academic standard often favours translations such as that of M. A. S Abdel Haleem for their clarity and fluency in English idioms, this thesis focuses on 'Uthmānī's juristic ideas and methodologies. Therefore, it is important to capture the Qur'anic text as interpreted and translated by 'Uthmānī himself. Although his English translation may not always be the clearest in idiomatic expression, it remains faithful to his interpretative lens, which is crucial for understanding the broader context of his legal reasoning.

Dates in this thesis are presented in the Ḥijrī/Common Era format for all dates through to the thirteenth/nineteenth century, with the final instance being Ibn 'Ābidīn's death in 1252/1836, as he represents the last significant pre-modern figure within the Ḥanafī legal tradition. Beyond this point, only CE dates are used, as *ḥijrī* dates become less relevant.

Introduction

In the landscape of contemporary Islamic jurisprudence, Muḥammad Taqī ʻUthmānī (b. 1963) stands as a pivotal figure. His profound influence spans from Pakistan to the highest echelons of global Islamic finance. This thesis examines the life and work of this seminal Pakistani Muslim jurist whose career encapsulates the complexities and dynamism of modern Islamic legal thought. ʻUthmānī rose to prominence under President Zia-ul-Haq's era of Islamisation, serving on the Council of Islamic Ideology (1977-1980), Federal Shariat Court (1980-82) and the Shariat Appellate Bench of the Supreme Court (1982-2002), where he played a crucial role in integrating Islamic principles into the Pakistani legal system. Since 1983, ʻUthmānī has represented Pakistan at the Organization of Islamic Corporation's (OIC) Islamic Fiqh Academy and has headed Sharia boards for major global banks, including HSBC and Citi Bank. ʻUthmānī currently serves as principal and head *muftī* at Dār al-ʻUlūm Karāchī, one of Pakistan's preeminent Deobandī institutions, editor of its influential journal *al-Balāgh*, and chairs the Sharia Board at the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), which sets accounting and Sharia standards across twenty-three Muslim countries.

This thesis examines the output of Taqī ʻUthmānī as a jurist operating within the Ḥanafī *madhhab*, one of the four schools of Sunni law. Central to this study is the role of the individual *muftī*, who, while grounded in the collective doctrines of the *madhhab*, operates within its framework to address contemporary issues and push for legal innovation. Critically, even within the strictest adherence to *madhhab* traditions, individual proclivities, institutional affiliations, and education influence the *muftī* who commandeers the legal change. In studying ʻUthmānī's notably vast and expansive juristic oeuvre, I focus on his legal methodology, *fatāwā* (sing. *fatwā*, legal *responsa*), and juristic output to explore his attempts at legal innovation and *ijtihād* – juristic exertion and discretion to arrive at new legal opinions. As the central figure in the international Deobandī movement, a revivalist tradition originating in late nineteenth-century India noted for its legal conservatism and strict *madhhab* adherence, ʻUthmānī's jurisprudence reflects a sophisticated synthesis of legal innovation and faithful adherence to the *madhhab*'s traditional framework of interpretation. Subsequently, my thesis prioritises the nuances of *ijtihād fī l-madhhab*, i.e., juristic innovation within an established *madhhab*, and in doing

so, challenges the perceived juxtaposition between legal conservatism and innovation within *madhhab*-based approaches.

The discourse surrounding contemporary *ijtihād* in contemporary Islamic studies has largely ignored *madhhab*-based approaches to legal innovation. While there is agreement among scholars that the interpretation and implementation of the law can be creative and innovative, including from within the *madhhab*, few studies of legal innovation have looked beyond the wider *madhhab* towards the specific contributions of key individuals. Through Taqī ʻUthmānī, as a *muftī* operating within a single *madhhab*-based framework, I demonstrate the dynamic interplay between steadfast adherence to traditional jurisprudential guidelines and adaptive responses to contemporary challenges; I argue that while the *madhhab* allows for flexibility, the individual jurist is the primary agent for legal change.

As background to this analysis on ʻUthmānī's contributions, this introductory chapter will explore how *ijtihād* has been historically framed and practised within the *madhhab* tradition, the modernist challenge against it, and the Deobandī counter-narrative, situating these debates primarily within colonial India and post-colonial Pakistan.

Ijtihād: Traditional *Fiqh* and the Modernist response

The four *madhhabs*, or legal schools within Sunni Islam, have been the cornerstone of Islamic jurisprudence since their establishment in the 9th and 10th centuries.[1] The *madhhabs,* named after their eponymous founders,[2] are not just collections of legal rulings but represent guilds or doctrinal schools

[1] For a historical study on the development of the Sunni legal schools, see: Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th C.E* (Leiden: Brill, 1997); Wael Hallaq, *The Origins and Evolution of Islamic Law* (New York: Cambridge University Press, 2005). For focused studies on the development of the Ḥanafī *madhhab,* see: Salman Younas, "The Ḥanafī school: a study of its social and legal dimensions, 189/805-340/952" (PhD diss., University of Oxford, 2018); Nurit Tsafrir, *The History of an Islamic school of law: The Early Spread of Hanafism* (Cambridge: Harvard University Press, 2004); Melchert, "The Early Ḥanafiyya and Kufa," *Journal of Abbasid Studies* 1, no. 1 (2014): 23-45; Ya'akov Meron, "The Development of Legal Thought in Hanafi Texts." *Studia Islamica* 30 (1969): 73-118; Guy Burak, *The Second Formation of Islamic Law* (New York: Cambridge University Press, 2015).

[2] The orthodox Sunni *madhhab*s are four: the Ḥanafī *madhhab*, named after Abū Ḥanīfa (d. 150/767); the Mālikī *madhhab*, named after Mālik b. Anas (d. 179/795); the Shāfiʻī *madhhab* named after al-Shāfiʻī (d. 204/820); and the Ḥanbalī *madhhab,* named after Aḥmad b. Ḥanbal (d. 241/855).

with their own comprehensive methodologies for interpreting Islamic law.[3] Consequently, a *madhhab* denotes the totality of legal doctrines adopted by the *madhhab*'s eponym and the geographically and generationally diverse groups of jurisprudents that belong to the school. Critically, juristic membership of the guild entails *taqlīd* or adherence to the *madhhab*'s legal precedents and doctrines and carrying out juristic activity according to its regulations. Therefore, a jurist who enters the guild inherits a vast body of legal doctrine. Jurists explain, clarify, support, disagree or provide new legal applications to the inherited tradition of the school. Thus, as a totality of legal doctrine, the *madhhab* is developed, discussed, and re-defined across generations and locations.[4]

Taqlīd is underpinned by a clear social logic: it ensures consistency within the law, enabling guild members to apply legal principles uniformly across varied circumstances.[5] Conversely, the discretionary nature of *ijtihād* could lead to inconsistent judgments within the same jurisdiction and potentially open the door to governmental interference in religious matters.[6] Most importantly, as legal practice developed after the 9th and 10th centuries, juristic activity was generally monopolised by adherents of these schools.[7] For scholars working from these *madhhab*s, legal applications entailed directing all juristic efforts to engage with *madhhab* discourse,[8] disregarding outsider opinions, and crucially, not appealing to the higher *ijtihād* of exploring the sources of law, the Qur'an and Sunna (the Prophetic tradition), for legal guidance. Schacht writes:

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[3] Guilds is the term preferred by George Makdisi, while Hallaq prefers doctrinal schools. See: George Makdisi, "The Guilds of Law in Medieval Legal History: An Inquiry into the Origins of the Inns of Court" *Cleveland State Law Review* 34 (1985): 3-16; Hallaq, "From regional to personal schools of law? A reevaluation." *Islamic Law and Society* 8, no. 1 (2001): 1-26.

[4] In this sense, the *madhhab* can, therefore, be described as a discursive tradition. Norman Calder has successfully demonstrated this through an explication of how debate and development took place through the generations using the example of a single doctrine. see Norman Calder, "Law" in: *History of Islamic Philosophy*, eds. Sayyed Hossein Nasr and Oliver Leaman (London: Routledge, 1996): 979-998.

[5] Mohammad Fadel, "The social logic of *taqlīd* and the rise of the *Mukhataṣar*." *Islamic Law and Society* 3, no. 2 (1996): 193-233.

[6] Sherman Jackson, "Ijtihād and Taqlīd: Between the Islamic legal tradition and autonomous western reason" in: *Routledge Handbook of Islamic Law*, eds, Khaled Abou El Fadl and Said Fared Hassan (London: Routledge, 2019): 255-272.

[7] Coulson writes: "Henceforth every jurist was an "imitator" (*muqallid*), bound to accept and follow the doctrine established by his predecessors", in Noel James Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964): 80.

[8] Melchert notes that these discursive traditions of the *madhhab* became the second main constitutive element of the schools of Sunni law, in: Melchert, "The relation of Ibn Taymiyya and Ibn Qayyim al-Jawziyya to the Ḥanbalī school of Law" in: *Islamic Theology, Philosophy and Law: Debating Ibn Taymiyya and Ibn Qayyim al-Jawziyya*, eds. Birgit Krawietz and Georges Tamer (Berlin: De Gruyter, 2013): 146.

> Under the rule of *taklīd* as it was finally formulated, the doctrine[s of law] must not be derived independently from Koran, *sunna*, and *ijmā'*, but it must be accepted as it is being taught by one of the recognised schools.[9]

For Schacht, there was a so-called 'closing of the gate of independent reasoning' in the tenth century, which was vehemently rejected by later scholars.[10] In response, some historians argued that the door of *ijtihād* never closed as scholars capable of *ijtihād* existed "at nearly all times"[11] and that, crucially, *ijtihād* was used to develop law within the schools.[12] By this argument, while first-order or higher *ijtihād*, i.e., interpretations from the Qur'an and Sunna, has long been limited or restricted, other forms of *ijtihād* within the *madhhab* continued to provide solutions to changing circumstances.[13] For example, *muftī*s, entrenched in their social realities, were the primary actors in adapting the law for changing social exigencies. These adaptations were governed by discursive engagement with the inherited tradition and internal *madhhab* regulations guiding interpretation.[14] The primary manifestation of the *muftī*'s innovation is through *fatāwā*, a term that transcends its simple translation as 'legal responsa' to signify the nuanced interplay of tradition, interpretation, and contemporary application in

[9] Joseph Schacht, *An Introduction to Islamic Law* (London: Oxford University Press, 1964): 71.

[10] Ibid., 69-70. In the mid-twentieth century, the view that the doors of *ijtihād* had closed were prevalently held by many Western historians of Islamic law. For an interesting discussion about the development and the near-institutionalisation of this idea among Western historians, see: Shaista Ali-Karamali and Fiona Dunne, "The ijtihad controversy." *Arab Law Quarterly* 9 (1994): 241-7. Nevertheless, this idea was rejected by Muslim modernists of the same period. For the works of Pakistani modernists who have rejected the closing of the gates of *ijtihād*, see: Shāh Muḥammad Ja'far Phulwārwī, *Ijtihādī Masā'il* (Lahore: Idārat-i Thaqāfat-i Islāmiyya, 1959): 26-34; Khurshid Ahmad, *Marriage Commission Report X-Rayed: A study of the family law of Islam and a critical appraisal of the modernist attempts to reform it* (Karachi: Chirag-e-rah Publications, 1959): 40-41; Fazlur Rahman, "Ijtihād in the Later Centuries" in: *Islamic Methodology in History* (Islamabad: Islamic Research Institute, 1964): 149-174.

[11] Hallaq, "Was the gate of ijtihad closed?" *International journal of Middle East studies* 16, no. 1 (1984): 4, 18-20.

[12] The nature of *ijtihād* and *taqlīd* are a central theme in Sherman Jackson's scholarly works. For the development of his thoughts, and crucially, his disagreements with Hallaq on classifying *ijtihād* within the *madhhab*, see: Jackson, "Ijtihād and taqlīd". See also: Fadel, "The social logic of taqlīd"; Ahmed Fekry Ibrahim, "Rethinking the *Taqlīd–Ijtihād* Dichotomy: A Conceptual-Historical Approach." *Journal of the American Oriental Society* 136, no. 2 (2016): 285-303.

[13] Watt also articulated this distinction in discussing the so-called "closing of the gates". He argued that there are two forms of *ijtihād*: *ijtihād* in engaging with primary sources of law, and *ijtihād* within the *madhhab*, and the "closing of the gates" can only be applied to the former. See: William Montgomery Watt, "The Closing of the Door of Igtihad" in: *Orientalia Hispanica*, eds. Jose M. Barral (Brill: Leiden, 1974): 678.

[14] The *madhhab* would have hermeneutical principles, institutional regulations, and hierarchies within the *madhhab* to allow jurists to differentiate and prioritise the plurality of its opinion. Within the Ḥanafī school, these methods are called *rasm al-muftī* as we shall see in Chapter 3.

Islamic law. With time, the *fatwā*s of prominent *muftī*s would be included in legal manuals, canonised as part of the discursive tradition for other guild members to engage with.[15]

Taqlīd and *madhhab*-based approaches dominated classical Islamic legal practice and were further entrenched during the Ottoman period, where the Ḥanafī *madhhab* was established as the official *madhhab* of the empire. Under the office of the Shaykh al-Islām,[16] the Ottomans developed a fully professionalised hierarchy of state-appointed *muftī*s, judges, and juristic experts who formulated, informed, and administered the law at all provisional levels,[17] even advising the Sultan.[18] This framework governed most of the Middle East and was the juristic practice inherited by the nineteenth-century reformers. Similarly, in the Indian subcontinent, *madhhab*-based juristic discourse was well-established, with dozens of legal compendia associated with imperial authority dating back to the medieval period, demonstrating robust engagement with the broader Ḥanafī tradition when authoring its opinions.[19]

While the *madhhab*-based approach to law remained predominant in the pre-modern era, particularly in the Ottoman lands, Central and South Asia, the modern period witnessed a significant challenge against the *madhhab*-based tradition. By the late nineteenth century, encounters with colonial powers and the realities of European imperial hegemony amidst the decline of Muslim political power forced introspection among Muslim intellectuals, who sought to engender unprecedented levels of

[15] Schacht, *An Introduction to Islamic Law*, 74-5. Hallaq articulates this process of legal change in great detail, see: "The Jurisconsult, the Author-Jurist and Legal Change" in: *Authority, Continuity and Change in Islamic Law.* (Cambridge: Cambridge University Press, 2004): 166-235. Interestingly, even Schacht who called the *madhhab* system rigid, appreciated the innovation of the *muftī*s in adapting the law to the current circumstances, noting that it was "no less creative […] than that of their predecessors". See: Schacht, *An Introduction to Islamic Law*, 73.

[16] The office was first established in the fifteenth century with Mullā Fānnārī (d. 834/1431) regarded as the first *Shaykh al-Islām.* The powers of the office were further entrenched in the following centuries, right until the nineteenth century Tanzimat Period: See: Erhan Bektas, *Religious Reform in the Late Ottoman Empire: Institutional Change and the Professionalisation of the Ulema* (London: I. B Tauris, 2023): 17-35.

[17] For a thorough discussion on the organisational structure of this bureaucracy of scholars, see: Richard Repp, "The Structure of the Ottoman Learned Hierarchy to 1600" in: *The Mufti of Istanbul: a Study in the Development of the Ottoman Learned Hierarchy* (London: Ithaca Press, 1986): 26-72. See also: Burak, *The Second Formation of Islamic Law*.

[18] Bektas, *Religious Reform in the Late Ottoman Empire*, 17.

[19] Zafarul Islam formulates a list of twelve prominent *Fatāwā* collections dating after the *Ghiyāthiyya*, many of which are alleged to have been commissioned by the ruling elite or are ascribed to them. *Fatāwā Ghiyāthiyya*, written by Dāwūd b. Yūsuf al-Baghdādī, was dedicated to the Sultan at the time, Ghiyāth al-Dīn Balbān (r. 1266-86). See: Zafarul Islam, "Origin and Development of Fatawa Compilation in Medieval India." *Studies in History* 12, no. 2 (1996): 223-241. See discussion on Chapter 2 also.

adaptability to new circumstances.[20] In the global Islamic Muslim world, new kinds of legal revisionism were spearheaded by eminent public intellectuals, such as Jamāl al-Dīn al-Afghānī (d. 1897), Muḥammad ‘Abduh (d. 1905), Rashīd Riḍā (d. 1935). These scholars called for a return to the Qur’an and the Sunna as primary sources, demanding renewed and more direct *ijtihād* and bypassing the centuries-old *madhhab* framework, which they viewed as a barrier to reformation. These modernist critiques condemned the traditional *madhhab* system as rigid and stagnant, as it stripped away the dynamism found in principles of *ijtihād* or *maṣlaḥa* (public benefit).[21] According to the modernist reading, the *madhhab* and the prominence of *taqlīd* had caused the intellectual and spiritual decline of the Muslim empires, impeding the ability of Muslim societies to respond effectively to the challenges posed by colonial domination and modernity. The reform agenda, therefore, called for a return to the roots of Islamic thought and practice: to abandon *taqlīd* and embrace *ijtihād*.[22]

While the reformist wave spread across the Arab world, parallel discussions on *ijtihād* and *taqlīd* were taking place in the subcontinent, most notably through Sir Sayyid Aḥmad Khān (d. 1898).[23] Like his Arab counterparts, Khān blamed *taqlīd* for the decline of Muslim political power, once lamenting in a letter to his disciple, Muḥsin al-Mulūk:

> If the people do not abandon *taqlīd* and do not seek true enlightenment from the Qur’an and Hadith, challenging the *madhhab* tradition with the realities of our time, Islam will become non-existent in India.[24]

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[20] For detailed insight into the reform project of these modernist reformers, see: Armando Salvatore, “The Reform Project in the Emerging Public Spheres” in: *Islam and Modernity: Key Issues and Debates*, eds. Muhammad Khalid Masud, Salvatore Armando and Martin van Bruinessen (Edinburgh: Edinburgh University Press, 2009): 185-205.

[21] Fazlur Rahman provides a stimulating summary of the major intellectual contributions of the three modernists, as well as Sir Sayyid. See: Rahman, “Classical Modernism and Education” in: *Islam and Modernity: Transformation of an Intellectual Tradition* (Chicago: University of Chicago Press, 1982): 43-83.

[22] ‘Abduh describes his life-long reform project, stating: “I raised my voice to call towards two major matters. First, to emancipate thought from the shackles of *taqlīd*, and [instead to] the understanding of the religion like the predecessors (*salaf*) of the Muslim community.” In: Rashīd Riḍā, *Tārīkh al-Ustādh al-Imām Muḥammad Abduh*, 3 vols. (Cairo: Dār al-Fadīlat, 2006): 1: 11.

[23] For an introduction to Islamic modernism in the Indian Sub-Continent, See, Rahman, “Muslim Modernism in the Indo-Pakistan Sub-Continent.” *Bulletin of the School of Oriental and African Studies, University of London* 21, no. 1/3 (1958): 82-99; Riffat Hassan, “Islamic Modernist and Reformist Discourse in South Asia” in: *Reformist Voices of Islam: Mediating Islam and Modernity*, ed. Shireen Hunter (Armonk, New York: M. E. Sharpe, 2009): 159-186.

[24] Sayyid Ross Masud, *Khuṭūṭ-i Sar Sayyid*, Available online from *Rekhta.org*: https://www.rekhta.org/ebooks/khutoot-e-sir-syed-ahmad-khan-sir-syed-ahmad-khan-ebooks?pageId=04DFCD58-A12E-4164-A151-

Khān believed that nothing has harmed Islam as much as *taqlīd*.[25] Unbound by legal tradition or the *madhhab*, Khān held several untraditional views on legal epistemology and hermeneutics and initiated an educational reform movement to address the needs of Muslims, founding the Muhammadan Anglo-Oriental College at Aligarh in 1875, a college modelled after Oxbridge to train the next generation of thought leaders.[26] Elsewhere in Delhi, another group emerged who not only regarded *taqlīḍ* as unlawful,[27] but *shirk* also (polytheism, the greatest sin in Islam).[28] This was the group known as the Ahl-i Ḥadīth, centred around Ṣiddīq Ḥasan Khān (d. 1890) and Nazīr Ḥusayn al-Dihlawī (d. 1902), who had a notable teaching tenure spanning five decades at the Madrasa-i Raḥīmiyya, ravaged and destroyed during the Mutiny, profoundly inspiring thousands of scholars towards Ahl-i Ḥadīth thought.[29]

In response to these developments in Islamic thought in late nineteenth-century India, Dār al-'Ulūm Deoband was founded in 1886 by a group of scholars, which included Qāsim Nanotawī (d. 1880) and Rashīd Aḥmad Gangohī (d. 1905), to reassert the prominence of the *madhhab* tradition. The Deoband *madrasa* was established to represent traditionalism, guided by the Ḥanafī legal school and the Māturīdī theological school.[30] Their legal methodology upheld *taqlīd* and juristic activity within

2C2F70A43898&targetId=&bookmarkType=&referer=&myaction=&websiteId=0&sourceRef= (accessed 13 August 2021): 72.

[25] Alṭāf 'Alī Ḥālī, *Hayāt-i Jāwed*, 2 vols. (Delhi: Shāyi' Karda Anjuman-i Taraqqī, 1939): 2: 473. Refer to 2: 467-8 and 2: 473-4 for more criticisms of *taqlīd* and practitioners of *taqlīd*.

[26] Initially, Sir Sayyid set up the journal, *Taḥzīb al-Akhlāq* in 1870, as a key expeditor of his educational reform. In the objectives of this monthly journal, engendering refinement (*tahzīb*) and nobility (*shā'istagī*) in the practices, morals and character of Indian Muslims was the major objective, see: Muḥammad Ismā'īl Pānīpatī, *Maqālāt-i Sar Sayyid*, 10 vols. (Lahore: Majlis-i Taraqqī-i Adab, 1962): 10: 33-51. This particular article highlights Sir Sayyid's imagined community of Indian Muslims modelled after the English gentleman. Some of these aims were fulfilled when the Muslim Anglo-Oriental College was formed. See: David Lelyveld, "The Cambridge of India" in: *Aligarh's First Generation: Muslim Solidarity in British India* (Princeton: Princeton University Press, 1978): 217-227. As we learn from the articles of *Taḥzīb al-Akhlāq*, much of Sir Sayyid's vision for this university is directly inspired by Oxbridge. See: Pānīpatī, *Maqālāt*, 10: 154-61.

[27] They viewed *taqlīd* as unlawful, but also ontologically unfounded in Islamic scripture. As Nazīr Ḥusayn writes: "In short, *taqlīd* is not established from a single Qur'anic verse or a Hadith and nor has any Imām permitted others to do *taqlīd* of their positions. Many good articles have been written on the invalidity of *taqlīd* […] please refer to them." In: Nazīr Ḥusayn al-Dihlawī, *Fatāwā Nazīriyya*, 3 vols. (Lahore: Ahl-i Ḥadīth Academy, 1971): 1: 164. See also, idem, *Mi'yār al-Haqq* (Lahore: Maktaba-i Nazīriyya, 1965).

[28] al-Dihlawī, *Fatāwā Nazīriyya*, 1: 168; Ṣiddīq Ḥasan Khān, *Jalb al-Manfa'at fī l-Dhab 'an al-A'imma al-Arba'at.* Trans. Muḥammad A'zamī (Maunath Bhanjan, Maktabat al-Fahīm, 2009): 147.

[29] See: Rahmatullah, "Contribution of Nawab Siddique Hasan Khan to Quranic and Hadith Studies" (PhD diss., Aligarh Muslim University, 2015): 108-9; Bashir Ahmad Khan, "The Forgotten Soul of the Resistance Movement: Maulana Syed Mohammad Nazir Hussain Muhaddith Dehlavi (1220/1805-1320/1902)." *Proceedings of the Indian History Congress* 60 (1999): 507-20.

[30] In defining the Deobandī movement, Sahāranpūrī describes their group as: followers of Imām Abū Ḥanīfa in substantive law (*furū'*), Imāms Abū l-Ḥasan al-Ash'arī and Abū Manṣūr al-Māturīdī in creed, and affiliates to the

madhhab regulation, advocating caution in deviating from established legal norms. While Aligarh denigrated the utility of *taqlīd* and the Ahl-i Ḥadīth deemed it a religious innovation and impermissible, the elders of Deoband held *taqlīd* of an established legal school as religiously binding.[31]

At the core of these tensions is a hermeneutic conflict in interpreting Islam and its sources. Should Islamic injunctions be interpreted through its traditional *madhhab* framework, or should one look beyond the *madhhab* and direct one's efforts to the original sources of law for changing circumstances? As the political landscape shifted with the partition of India and the creation of Pakistan, these hermeneutic tensions were exported into the post-colonial state as the Deobandī '*ulamā* and the modernists differed on the interpretation of Islam that the new nation will be based upon.[32] 'Uthmānī's father, Muftī Muḥammad Shafī' 'Uthmānī (d. 1976), was among the few leading Deobandī authorities that backed the Muslim separatist cause, migrating from Deoband to post-colonial Karachi in 1947, to assist the constitutional deliberations of the country.[33] While Muḥammad Shafī' enjoyed government association during this period,[34] the ensuing 1956 constitution of Pakistan deepened the political strife

"unadulterated" Sūfī orders of the Naqshbandīs, Chishtīs, Qādirīs and Suhrawardīs. Interestingly, their legal affiliation is mentioned first. See: Khalīl Aḥmad Sahāranpūrī, *al-Muhannad 'alā l-Mufannad*, ed. Muḥammad b. Ādam al-Kawtharī (Amman: Dār al-Fatḥ, 2004): 41.

[31] The Barelwī movement is another revivalist trend that emerged in late nineteenth-century India, led by Aḥmad Riḍā Khān (d. 1921) in response to what they perceived as deviations from traditional Sunni practices. The Barelwīs and Deobandīs have long-standing disagreements, primarily centred around theological disputes concerning certain Ṣūfī practices and beliefs. Nevertheless, both movements adhere to the Ḥanafī *madhhab* and practice law according to its framework. Like the Deobandīs, Aḥmad Riḍā Khān authored treatises against the Ahl-i Ḥadīth, arguing for the necessity of *taqlīd shakhṣī*. See: Aḥmad Riḍā Khān, "al-Nahy al-Akīd ʿan al-Ṣalāh Warā' ʿĀdī al-Taqlīd," in: *Fatāwā Riḍawiyya*, 30 vols. (Lahore: Riḍā Foundation, n.d.): 647-722, esp. 703-9. Since the Barelwīs and the Deobandīs share the same stance on this matter, the Barelwī movement is not a focus of this section. For further reading on the Barelwī movement, see: Usha Sanyal, *Devotional Islam and Politics in British India: Ahmed Riza Khan Barelwi and His Movement, 1870-1920* (Delhi: Oxford University Press, 1996); idem, *Ahmad Riza Khan Barelwi: In the Path of the Prophet* (Oxford: Oneworld, 2012); SherAli Tareen, *Defending Muḥammad in Modernity* (Notre Dame: University of Notre Dame Press, 2020).

[32] See: Muhammad Qasim Zaman, "Modernism and its Ethical Commitments" in: *Islam in Pakistan: A History* (Princeton: Princeton University Press, 2018): 54-94.

[33] For decisive support of the '*ulamā* in the Muslim League separatist cause, see: Venkat Dhulipala, *Creating a new Medina* (Cambridge: Cambridge University Press, 2015).

[34] Muhammad Shafī' served on the Ta'līmāt Board, directly reporting to the sub-committee on Consultations and Powers. This sub-committee, in turn, was accountable to the Basic Principles Committee, the key commission tasked with drafting proposals for Pakistan's first Islamic constitution. For the members of the Ta'līmāt Board, its recommendations and the reception of its recommendations by the Sub-Committee on Constitutions and Powers, see: Leonard Binder, *Religion and Politics in Pakistan* (Berkeley: University of California Press, 1961): 155-183; Saeeda Riaz Ahmad, "Influence of Religion on Politics in Pakistan 1947-1956." (MA diss., Durham University, 1968): 78-95.

of the country between the '*ulamā*, secularists and modernists; most critically, it sidelined the '*ulamā* from any significant role in shaping public discourse.[35]

Taqī 'Uthmānī's intellectual contributions to Pakistani political life, as an outsider during Ayub Khan's regime and as an insider during Zia-ul-Haq's dictatorship, alongside his career pioneering global Islamic finance, can be understood through this hermeneutical conflict. This conflict, defined by the tension between traditionalist adherence to *madhhab*s and the modernist push for a direct return to the sources of law, has defined much of contemporary Islamic legal discourse. As a product and renewer of the Deobandī legacy, 'Uthmānī's work demonstrates the capacity of *madhhab*-based jurisprudence to innovate while maintaining doctrinal fidelity. This thesis uncovers the intricate ways in which Taqī 'Uthmānī has navigated these complex waters, contributing significantly to the theoretical and practical aspects of Islamic jurisprudence. By examining his extensive body of work, this study challenges the stereotypical binary of unbounded *ijtihād* as innovative, and traditionalist *madhhab* activity as stagnant, demonstrating that 'Uthmānī embodies an alternative path to renewal and innovation within the *madhhab* framework.

Contribution to the field

Even Schacht, noted for his criticism of the Islamic legal tradition and its alleged stagnation, notes that the efforts of *madhhab*-based jurists to adapt the law to new circumstances were "no less creative […] than that of their predecessors [i.e., the early generations of *mujtahid*s]".[36] My research thoroughly demonstrates this notion of 'creativity', exploring how Taqī 'Uthmānī, a *muftī* entrenched within the Deobandī tradition of strict *taqlīd* to a particular *madhhab,* addresses the complexities of modernity. This includes navigating the multifaceted challenges of a post-colonial world where legal and cultural landscapes are continuously shaped by both global influences and local exigencies. By

[35] Ali Usman Qasmi, "God's Kingdom on Earth? Politics of Islam in Pakistan, 1947-1969." *Modern Asian Studies* 44, no. 6 (2010): 1197-1253. For detailed insight on this political turmoil from a government insider, see: Syed Muhammad Zafar, *History of Pakistan, Reinterpreted* (Lahore: Manzoor Law Book House, 2019): 177-187.
[36] Schacht, *An Introduction to Islamic Law*, 73. Fazlur Rahman shares a similar thought in: *Islam and Modernity*, 32, 71.

examining both the hermeneutical and epistemological underpinnings of 'Uthmānī's juristic methodology and dissecting his most ground-breaking legal verdicts, this thesis illuminates the practice of contemporary *madhhab*-based *ijtihād* and 'Uthmānī's position as a *muftī* initiating legal change within the *madhhab*. This approach enriches our understanding of the dynamic capabilities within the *madhhab*, emphasising the underexplored contributions of individuals to the ongoing discourse in traditional Islamic legal theory and practice.

As noted above, a sustained analysis of a traditionalist figure, in juristic methods and practice, is notably absent in the current academic literature. While there has been considerable attention paid to historic modernist figures like 'Abduh[37] and Sir Sayyid,[38] and even contemporary reformists such as Javed Ghamidi (b. 1952) of Pakistan,[39] their calls for reform and direct *ijtihād* involve bypassing traditional *madhhab* structures rather than working through them. This focus is also echoed in the theoretical contributions of scholars like Fazlur Rahman,[40] Tariq Ramadan,[41] and Khaled Abou El Fadl,[42] who advocate for a renewal of Islamic jurisprudence in response to the perceived decline of Muslim societies, largely proposing solutions that transcend *madhhab* affiliations. These scholars advocate a vision of Islamic law, compatible with modern exigencies but operating outside of the *madhhab* through appeals to *ijtihād* or *maṣlaḥa* to blend opinions across *madhhab*s (*talfīq and takhayyur*).[43] The academic landscape shows a notable scarcity in analysing *muftī*s who engage in *madhhab*-based jurisprudence.

[37] Malcolm Kerr, *Islamic Reform: The Political and Legal Theories of Muhammad 'Abduh and Rashīd Riḍā* (Berkeley: University of California Press, 1966); Oliver Scharbrodt, *Muhammad 'Abduh: Modern Islam and the Culture of Ambiguity* (London: Bloomsbury Publishing, 2022); Aswita Taizir, "Muhammad Abduh and the Formation of Islamic Law" (MA diss., McGill University, 1994).
[38] Yasmin Saikia and Muhammad Raisur Rahman (eds.) *The Cambridge Companion to Sayyid Ahmad Khan*. (Cambridge: Cambridge University Press, 2019); Christian Troll, *Sayyid Ahmad Khan: a reinterpretation of Muslim theology* (Delhi: Vikas Publishing House, 1978).
[39] Sadaf Aziz, "Making a sovereign state: Javed Ghamidi and 'enlightened moderation." *Modern Asian Studies* 45, no. 3 (2011): 597-629.
[40] Rahman, "Islam and Modernity".
[41] Tariq Ramadan, *Radical reform: Islamic ethics and liberation* (New York: Oxford University Press, 2009).
[42] Khaled Abou El Fadl, *Speaking in God's name: Islamic law, authority and women* (London: Oneworld Publications, 2014).
[43] The practice of *talfīq* and *takhayyur* in contemporary Islamic legal practice is discussed in detail in Chapter 4, under: "Departure from the *madhhab* to another due to an urgent need or public predicament."

As such, my thesis fills a significant gap in current scholarly discourse by offering a detailed, individual-centric analysis of how *madhhab*-based jurisprudence can continue to evolve through the work of a single *muftī.* The *madhhab* is an entity, a guild, but it is the individual *muftī* who commandeers legal change, serving as the critical point of encounter between the *madhhab* and society. Of course, the *muftī*'s primary vehicle for innovation and *ijtihād* is their juristic output and *fatāwā*. In line with the perspective that "Like the *muftī*s, the *fatwā*s stand between theory and the world,"[44] the study emphasises how the practice of *ijtihād* through the crafting of *fatwā*s projects a specific interpretation of Islam. 'Uthmānī's rich context—his writings, background, and influences—deeply inform the nuances of his *ijtihād*.

A central part of this individual-centric study is uncovering 'Uthmānī's *fiqhī mizāj*, the juristic inclinations and proclivities that shape his approach to the law. *Fiqhī mizāj* encompasses the biases, preferences, and priorities that influence how a jurist navigates the *madhhab*'s discourse and responds to societal needs. By examining the causes 'Uthmānī champions and the interpretative tendencies that define his legal reasoning, this thesis reveals how his unique *fiqhī mizāj* reflects his personal approach to the law. Therefore, our exploration of method, *fatāwā* and juristic output intends to delineate 'Uthmānī's approach to *ijtihād*, reflecting a dialogue between his Ḥanafī-Deobandī affiliations and societal needs. This thesis does not attempt to reconstruct social histories or delve deeply into the broader ethical order imparted by his *fatāwā*; instead, it offers a comprehensive insight into his practice of *ijtihād* and jurisprudential innovation, and how this *fiqhī mizāj* underpins his engagement with contemporary challenges.

Shaham's study on Yūsuf al-Qaraḍāwī (d. 2022) provides a solid foundation for what such an analysis might look like. This work stands out for its in-depth exploration of juristic method and output, situating al-Qaraḍāwī's work within the broader narrative of Islamic reformism in Egypt and the decline of *'ulamā* authority. Through this holistic approach, Shaham offers decisive insights into al-Qaraḍāwī's *ijtihād* project, highlighting *his maṣlaḥa*-focused incorporation of diverse opinions to resolve modern

[44] Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian state: Muftis and fatwas of the Dār al-Iftā* (Leiden: Brill, 1997); 19.

quandaries, no matter how marginal.[45] Similarly, Fareeha Khan's study of Ashraf 'Alī Thānawī (d. 1943) is another noteworthy effort, which insightfully situates his *al-Ḥīlat al-Nājiẓa,* a nuanced work on Muslim marital law within his Deobandī heritage, addressing the impact of colonial changes to Muslim family law. Her analysis highlights Thānawī's strategic adaptation of the Ḥanafī *madhhab*, demonstrating his jurisprudential flexibility amid strict *taqlīd*.[46] Both studies, while representing scholars of different methodologies, offer a *muftī*-centric insight into the interpretation and implementation of Islamic law. Yet, crucially, they are constrained by a limited selection of case studies. My thesis adopts a similar focus on a single scholar but offers an examination of 'Uthmānī's juristic output across a broader spectrum of issues, highlighting his role in spearheading jurisprudential innovation within the Ḥanafī *madhhab*.

This thesis also contributes to the evolving academic discourse on *fatwā* production and the navigation of modernity by jurists from varied intellectual traditions. While several compelling studies have illustrated the nuances of *fatwā* issuance and the adaptability of jurists, focused exploration of a pure *madhhab*-based approach remains underdeveloped. *Islamic Legal Interpretation: Muftis and their Fatwas* (1996) stands as a foundational work, demonstrating the evolving institution of the *fatwā* and the *muftī*'s crucial role in bridging legal interpretation with evolving social contexts.[47] This anthology offers insights through twenty-six *fatwās* from *muftī*s across various schools of law and theology, showcasing the historic transformation of the *fatwā* from the pre-modern non-binding rulings of individuals to modern institutions of state-managed, seminary-run or councils of *fatwā.* However, while individual *fatwā*s offer diverse insights, they provide limited information about a jurist's broader scholarly endeavours, their interactions, and influences; a single *fatwā* is insufficient for making definitive statements about their legal approach. In contrast, by examining a range of *fatwā*s, this thesis allows for a more comprehensive understanding of 'Uthmānī's jurisprudential contributions and the dynamics of his legal reasoning.

[45] Ron Shaham, *Rethinking Islamic Legal Modernism: The Teaching of Yusuf al-Qaradawi* (Leiden: Brill, 2018).
[46] Fareeha Khan, "Traditionalist Approaches to Sharī'ah Reform: Mawlana Ashraf 'Ali Thānawi's Fatwa on Women's Right to Divorce" (PhD diss., University of Michigan, 2008).
[47] Muhammad Khalid Masud, Brinkley Messick, and David Powers, *Islamic Legal Interpretation: Muftis and their fatwas* (Cambridge: Harvard University Press, 1996).

In addition to adopting a *muftī*-centric approach and analysing a broad spectrum of *fatwā*s, this thesis explores how modern '*ulamā* engage with complex social and institutional networks that underpin their legal influence. This multifaceted examination allows a deeper understanding of the dynamics shaping 'Uthmānī's jurisprudential contributions. For instance, Skovgaard-Petersen's examination of Egypt's *Dār al-Iftā*' and al-Atawneh's study of Saudi-Wahhābī state *fatwā* institutions highlight the complex role of religious authorities in balancing traditional values with contemporary demands. These studies underscore how religious institutions shape state policies while responding to pressures for modernisation, often revealing the ambivalent relationship of the '*ulamā* to the state and the public as they strive to maintain their religious authority and influence over the social order.[48]

This type of analysis is furthered in *Modern Islamic Authority and Social Change* (2018), edited by Masooda Bano, which examines how four traditional Islamic institutions—al-Azhar, Saudi Salafism, Deobandī *madrasa*s, and Turkey's Diyanet—respond to the pressures of modernity, and how their socio-economic and political contexts influence their ability and willingness to adapt.[49] Notably, these institutions use various methodologies: scholars of al-Azhar evoke the expansive axioms of *fiqh al-wāqi'* (the law of the current realities) and *maqāṣid al-sharī'ah* (the higher objectives of the Sharia) to adapt Islamic law, while Turkish scholars integrate Islamic and Western frameworks to develop a new language of legal practice. Conversely, the authors argue that Deobandī and Saudi Salafī establishments exhibit 'selective pragmatism', adapting in areas like economics while resisting broader social change.

This anthology highlights the complex interplay between tradition and modernity within Islamic jurisprudence, revealing how these institutions strategically adapt to maintain relevance and authority in a rapidly changing world. However, some of the intellectual traditions described, most notably Azhar reformism and Wahhābism, represent an adaptive framework to legal change as they are

[48] Skovgaard-Petersen, *Defining Islam for the Egyptian state*; Muhammad Al-Atawneh, "Wahhābī Legal Theory as Reflected in Modern Official Saudi Fatwās: Ijtihād, Taqlīd, Sources, and Methodology." *Islamic Law and Society* 18, no. 3-4 (2011): 327-355; idem, *Wahhābī Islam facing the Challenges of Modernity: Dār al-Iftā in the Modern Saudi State* (Leiden: Brill, 2010). This theme is present in al-Atawneh's studies, though, it is particularly pertinent in Egypt, as the *'ulamā* in Skovgaard-Petersen's study strive to maintain religious and moral order of society.

[49] Masooda Bano (ed.) *Modern Islamic Authority and Social Change, Volume 1: Evolving Debates in Muslim Majority Countries* (Edinburgh: Edinburgh University Press, 2018).

not bound by a single *madhhab*, thus allowing for greater flexibility in navigating legal tradition to resolve legal questions. In contrast, my thesis on ‘Uthmānī focuses on a scholar from a tradition characterised by its strict adherence to *madhhab* regulations; thus, it provides a unique perspective on how innovation and adaptation can occur within a more rigid *madhhab*-based framework that imposes more significant interpretational restriction.

Subsequently, this thesis also contributes to the underexplored field of Deobandī *fatwā* production, which has thus far received limited attention or has been primarily focused on single-issue *fatwā*s, such as Thānawī’s *al-Ḥīlat al-Nājiza* which has been studied by numerous scholars.[50] Two studies on Deobandī *fatwā* production are noteworthy, both of which scrutinise pre-independence *fatwā*s from Dār al-‘Ulūm Deoband’s *Dār al-Iftā*’. Khalid Masud analyses *fatwā*s addressing new social phenomena like cinemas, loudspeakers, and banknotes, anchoring his discussion in the interplay between *taqlīd* and *ijtihād*. This focus reveals a deliberate adherence to the letter of the law, as the Deobandī *muftī*s strive to reconcile traditional jurisprudence with modern exigencies through their unwavering dedication to Ḥanafī precedents and legal norms.[51]

Conversely, Moosagie’s study, while reviewing similar *fatwā*s responding to social circumstances, is limited in its critique of Deobandī approaches to law. Moosagie argues that the *muftī*s, especially later *muftī*s like Muḥammad Shafī‘, are led by their preconceived ideas, gathering ‘disparate’ pieces of evidence to ratify ‘weak’ rulings that justify these preconceived ideas.[52] Moosagie’s approach highlights the pitfalls of studying single-issue *fatwā*s in isolation and has two significant flaws. First, Moosagie does not engage the broader Ḥanafī tradition in which these views are articulated, missing

[50] Cf: Masud, “Apostasy and Judicial Separation in British India” in: *Islamic Legal Interpretations: Muftis and their Fatwas*, eds. Muhammad Khalid Masud, Brinkley Messick, and David Powers (Cambridge, MA: Harvard University Press, 1996): 193-203; Ali Altaf Mian, “Surviving modernity: Ashraf 'Alī Thānvī (1863-1943) and the making of Muslim orthodoxy in colonial India” (Ph.D. diss., Duke University, 2015); 233-60.
[51] Masud, “Trends in the Interpretation of Islamic Law as Reflected in the Fatāwā Literature of the Deoband School” (MA diss., McGill University, 1969).
[52] Mohammed Allie Moosagie, “Trends in the Justificatory Force of the Fatāwā of the Deobandī Muftī” (PhD diss., University of Capetown, 1995): 211. Moosagie critiques Shafī’s positions on taking injections while fasting and wearing English hats. On the first *fatwā*, Shafī‘s adherence to the letter of the law, a hallmark of Deobandī jurisprudence, is ignored as Moosagie does not engage with broader Ḥanafī discourse which firmly establishes his stance. In the second, Moosagie fails to recognise key technical terminology, and neglects ‘Uthmānī’s lengthier piece on imitation, despite Shafī‘ directing the reader towards it, rendering Moosagie’s critique of this *fatwā* as an ad-hoc compilation of evidence, unwarranted and baseless. See: Muḥammad Shafī‘ ‘Uthmānī, *Imdād al-Muftīn* (Karachi: Dār al-Ishā‘at, 2001): 812-3.

the underlying nuance and richness. Second, Moosagie overlooks that these *fatwā*s are meant for a general populace and, thus, does not consult the more detailed jurisprudential analyses these scholars have conducted elsewhere, especially when they point the reader to their lengthier justifications.[53]

In contrast, my thesis offers a holistic insight into 'Uthmānī's jurisprudence by integrating theory with practice and looking at diverse sources. This includes a synthesis of primary, context-rich Urdu resources written for local contexts (both methodological treatises and *fatāwā*) and 'Uthmānī's more sanitised Arabic work for international audiences, ensuring a comprehensive understanding of 'Uthmānī's legal thought, though more broadly, contributing to the discourse on Deobandī *fatwā* production. Ultimately, as these existing studies are confined to Deobandī *fatwā*s issued before Indian independence, they overlook the post-colonial context and the accelerated societal and technical changes of the late twentieth century that have given rise to intricate challenges and corresponding innovative responses. My study of 'Uthmānī addresses this gap, shedding light on the dynamic and evolving nature of Islamic jurisprudence in response to the societal and technological changes of late modernity.[54]

Further to the criticisms mentioned above, this analysis can also be applied to the few existing pieces on Taqī 'Uthmānī. A common trend is the lack of engagement with 'Uthmānī's broader juristic oeuvre to offer comprehensive and holistic insights into his approach to law. 'Uthmānī is often studied as a side figure in a broader narrative, or single texts are studied without recourse to his broader discourse. Aamir Bashir's study of the intra-Deobandī debate on Islamic banking in Pakistan is one such work.[55] Bashir focuses on legal reasoning and chronicles the back-and-forth between a collective of Deobandī jurists and Taqī 'Uthmānī about the legitimacy of the Islamic banking sector. Central to

[53] See above footnote.
[54] By late modernity, I refer to Giddens' conceptualisation of an era marked by heightened reflexivity and the transformative impact of technological advancements on daily life. This new epoch of modernity also has societal implications; see Beck's *Risk Society*, which addresses the dominance of technological and environmental risks and Bauman's conceptualisation of *Liquid Modernity*, characterised by the ever-changing nature of social forms and institutions. Cf: Anthony Giddens, *Modernity and Self-Identity: Self and Society in the Late Modern Age* (Stanford: Stanford University Press, 1991); Ulrich Beck, *Risk Society: Towards a New Modernity* (London: Sage Publications, 1992); Zygmunt Bauman, *Liquid Modernity* (Cambridge: Polity Press, 2000).
[55] Aamir Bashir, "Private *Muftī*s in a Postcolonial State: A Study of Legal Reasoning Among Deobandī Ḥanafīs in Contemporary Pakistan" (PhD diss., University of Chicago, 2022).

these debates is the construction of authority when initiating legal change, which Bashir highlights as crucial, especially when innovative positions extend beyond the strict *madhhab* dictates to include insights from other *madhhab*s. Bashir also highlights the role of education in shaping legal reasoning, particularly for matters requiring a grasp of technical concepts and proficiency in English and social sciences, detailing how educational variances influence the nuances in scholarly debates. By offering a comprehensive analysis of ‘Uthmānī's juristic oeuvre, my thesis builds on these insights to provide a deeper understanding of his approach to legal change and innovation.

Christopher Pooya Razavian and Zill-i Humā's respective studies on Taqī ‘Uthmānī also suffer from this lack of thorough engagement with his broader juristic writings and deeper consultation of the *madhhab* discourse to situate his contributions. Notwithstanding, Razavian does offer an insightful addition to the understanding of ‘Uthmānī's methodology to legal change, tracing the major themes and arguments in *Uṣūl al-Iftā’ wa Ādābuhū*. Razavian argues that ‘Uthmānī, as a “conservative textualist”, significantly contributes to *fatwā*-production by adhering to traditional jurisprudence while addressing contemporary issues, suggesting that textual rigidity does not mean inflexibility.[56] Nevertheless, the study lacks a detailed interrogation of the underlying texts, the intricacies of Islamic legal theory, the scholarly authorities involved, or broader questions about *madhhab* engagement. As Skovgaard-Petersen observes, *fatwā*s can reflect various aspects, such as social histories or the moral universe of scholars.[57] Razavian's work appears to fall into the latter category, using a few case studies to construct ‘Uthmānī’s ethical and moral commitments. In contrast, my thesis explores the complexities of *madhhab*-based law and *ijtihād*, examining ‘Uthmānī's major works and a broad range of case studies to identify legal change and innovation within a textualist *madhhab*-based approach.

Zill-i-Humā's PhD thesis on ‘Uthmānī’s *Takmila Fatḥ al-Mulhim*, a six-volume completion of Shabbīr Aḥmad ‘Uthmānī’s unfinished commentary on Ṣaḥīḥ Muslim, also offers invaluable insights

[56] Christopher Pooya Razavian, “Deoband’s Conservatism: The Dār al-Iftā’, Nadwatul Ulama and *Muftī* Muhammad Taqi Usmani” in: *Modern Islamic Authority and Social Change, Volume 1: Evolving Debates in Muslim Majority Countries*, eds. Masooda Bano, *Modern Islamic Authority and Social Change, Volume 1: Evolving Debates in Muslim Majority Countries* (Edinburgh: Edinburgh University Press, 2018): 244-268.
[57] Skovgaard-Petersen, *Defining Islam for the Egyptian State*, 19-21.

into ‘Uthmānī’s literary contributions.[58] Despite its strengths in exploring the major themes and trends in this text, most notably ‘Uthmānī’s Hadith analysis and *ijtihādī* contributions, the thesis has limitations. Humā’s reliance on Urdu translations limits the integration of ‘Uthmānī’s broader juristic oeuvre. For instance, while she notes ‘Uthmānī’s acceptance of the evidential strength in the Shāfi‘ī-Ḥanbalī position that buyers and sellers can renege on contracts if they remain in the same physical setting,[59] she overlooks his Arabic discussions opining and defending the Ḥanafī stance as more practical for modern contexts.[60] While Humā's work is valuable as a focused study of a single text, my research aims to offer a more holistic examination of ‘Uthmānī’s entire oeuvre, incorporating both his Urdu and Arabic works to understand his juristic methodology and contributions comprehensively.

Chapter Summaries

This thesis is divided into three parts. Part I introduces the thesis, laying the foundational context for the subsequent discussions.

Chapter 1, titled "Taqī ‘Uthmānī: His Life and Works," traces the life of Muftī Taqī ‘Uthmānī, including his formative years under the influence of his father Muḥammad Shafī‘, his orientation within the Deobandī movement, the influence of the work of Ashraf ‘Alī Thānawī, and his personal engagement with the conflicting Islamic modernist ideas of Fazlur Rahman. The narrative highlights how ‘Uthmānī’s traditionalist upbringing combined with the Islamic mission of Pakistan shaped his contributions to global Islamic jurisprudence and finance, positioning him as a pivotal figure in integrating Islamic principles with contemporary economic challenges. The chapter shows how, as the son of one of Pakistan’s most prominent scholars, ‘Uthmānī skilfully bridged traditionalist discourse with modern issues, leveraging his education at Dār al-‘Ulūm Karāchī with his advanced degrees from secular universities. Through his prolific writing and strategic political engagements alongside leading

[58] Zill-i Humā, “Takmila Fatḥ al-Mulhim: Manhaj Ka Taḥlīlī Jā’iza” (PhD diss., University of Punjab, 2016).
[59] Ibid., 666-8.
[60] Muḥammad Taqī ‘Uthmānī, *Fiqh al-Buyū‘,* 2 vols. (Karachi: Maktaba Ma‘ārif al-Qur’ān, 2015): 1: 63-66.

'ulamā, 'Uthmānī rose within Pakistan's Islamic judiciary and gained international acclaim as a pioneer in Islamic finance.

Thereafter, Part II focuses on the critical epistemic and methodological points that ground 'Uthmānī's juristic practice. In Chapter 2, I explore Deobandī views on *taqlīd shakhṣī*, a principle which demands adherence to a single *madhhab* for all, a foundational methodological principle in Deobandī legal thought. This chapter traces the lineage of *taqlīd* from 'Uthmānī's intellectual predecessors, including his father and Thānawī, back to the founders of the Deobandī movement, situating 'Uthmānī's commitment to legal traditionalism within its intellectual context. The discussion focuses on 'Uthmānī's *Taqlīd Kī Shar'ī Haysiat*, in which he builds on the scholarly groundwork laid by predecessors such as Gangohī and Nanotawī, adding rigorous academic scrutiny and broader historical perspectives. By invoking authoritative figures like the Shāfi'ī authority al-Nawawī (d. 676/1277) and addressing counterarguments with scholarly precision, 'Uthmānī defends the necessity of adhering strictly to one *madhhab* to safeguard Sharia and connects this practice to a broader Islamic scholarly tradition. This chapter offers vital historical and intellectual background to understanding 'Uthmānī's conservative and tradition-bound approach to Islamic law.

In Chapter 3, I study 'Uthmānī's exploration of the hermeneutic principles within the Ḥanafī *madhhab,* known as *rasm al-muftī* (the *muftī*'s task), focusing on how these principles facilitate minor *ijtihād*. This chapter examines 'Uthmānī's *Uṣūl al-Iftā' wa Ādabuhū*, an elaboration of Ibn 'Ābidīn's (d. 1258/1836)[61] canonical paradigm which emphasises the procedural standards that guide *muftī*s in navigating inherited *madhhab* discourse. 'Uthmānī articulates a model of *ijtihād* from within the *madhhab* framework that allows for juristic innovation and discretion without forsaking *madhhab* precedents. By categorising juristic activity from minor discretion to substantial legal interpretation, the chapter illustrates the dynamic capacity of traditional Islamic jurisprudence to address contemporary challenges while adhering to the foundational principle of *taqlīd shakhṣī.* 'Uthmānī's approach upholds

[61] Ibn 'Ābidīn, author of *Radd al-Muḥtār*, was a Damascene Ottoman and served in a number of positions within the imperial religious hierarchy, including a stint as the deputy *muftī* of Tripoli. For biographical details, see: 'Abd al-Razzāq b. Ḥasan al-Bīṭār, *Ḥilyat al-Bashar fī Tārīkh al-Qarn al-Thālith 'Ashr*, ed. Muḥammad Bahjat al-Bīṭār (Beirut: Dār Ṣādir, 1993): 1335-7.

the continuity of *ijtihād*, demonstrating how a *muqallid muftī* (a jurist adhering to a *madhhab*) can engage fluidly with the vast scholarship of the *madhhab*, advocating a structured yet adaptable framework for legal interpretation and innovation. This approach allows for a spectrum of juristic discretion, supported by Ḥanafī procedural standards that guide *muftī*s in balancing tradition with the nuanced application necessary for contemporary issues.

Chapter 4, our last chapter on method, focuses on 'Uthmānī's methodological framework for departing from the established legal norms of the *madhhab* in response to societal changes and legal necessities. This involves discussions about changes to custom (*'urf*), underlying legal causes ('*ilal*), public predicaments (*'umūm al-balwā*) and ultimately, legitimate instances in which one may depart to another *madhhab* for a legal opinion. 'Uthmānī extensively references the works of Ibn 'Ābidīn, his conduit to the historical depth of Ḥanafī scholarship, and Thānawī, who anchors his methodologies within broader Deobandī thought. This chapter, the culmination of methodological discussions in 'Uthmānī's work, underscores his essential epistemic and hermeneutic boundaries, demonstrating his commitment to a jurisprudence that is both rooted in tradition and adaptive to modern challenges. Critically, through the use of Thānawī's method and practice to *madhhab* departures, 'Uthmānī leverages a prominent Deobandī jurist to inform his method, forging a path that respects his Ḥanafī-Deobandī affiliations, while addressing contemporary issues.

'Uthmānī's method significantly shapes his approach to *fatwā*-writing. As such, Part III of this thesis considers practical case studies that illustrate the theoretical concepts discussed in previous chapters. Through these case studies, we explore 'Uthmānī's practice of *ijtihād* through real-world application of Ḥanafī principles as he dynamically interacts with traditional *madhhab* dictates and modern queries.

Chapter 5 reviews the first volume of 'Uthmānī's four-volume *fatwā* collection, *Fatāwā 'Uthmānī,* exploring 'Uthmānī's function as a *muqallid muftī* within the Ḥanafī *madhhab*. It emphasises the capacity for legal innovation and change, even within traditionally rigid areas of Islamic law, such as rituals and acts of worship, which is the core subject matter for this volume. Through detailed analyses of his legal opinions on diverse issues—from the correct method of prostration to Friday

prayers in prison—it illustrates ‘Uthmānī's skilled use of *naql* (rule transmission) and *taḥrīr* (critical examination of *madhhab* discourse) to extend and advance *madhhab* norms for contemporary needs. Through his responses, ‘Uthmānī functions as a conduit between the *madhhab* discourse and the contemporary needs of the Muslim community, skilfully commandeering legal change within the *madhhab*. This chapter also highlights his strategic engagement with seminal figures like Ibn ‘Ābidīn and Thānawī, reflecting his deep reverence for historical Ḥanafī scholarship while also asserting his own unique juristic perspective.

Chapter 6 explores ‘Uthmānī's most expansive *fatwā,* on the subject of contentious occupations and unlawful wealth, showcasing *taḥrīr* as a critical juristic tool to facilitate *ijtihād* within the *madhhab*. This chapter offers a deep dive into the dual processes of *ijtihād* through *naql*, revealing how ‘Uthmānī’s meticulous integration of *madhhab* discourse with a keen understanding of contemporary issues allows him to formulate nuanced and relevant legal opinions. The discussion emphasises the varying levels of *ijtihād and* explores ‘Uthmānī's deliberate and measured juristic temperament, which consistently underscores his cautious and respectful engagement with the *madhhab* tradition. Furthermore, the chapter addresses a Jamiat Ulama-e-Hind conference where over a hundred Deobandī scholars from across India debated the subject matter of this *fatwā*. The lively discussions showcased diverse opinions within Deobandī thought, emphasising the dynamic and evolving nature of Islamic jurisprudence. This gathering highlighted the celebration and critique of ‘Uthmānī’s contributions, underscoring his role in the ongoing discourse and the challenges of achieving consensus within the *madhhab,* even among scholars of the same sub-school.

Chapter 7 marks a culmination of ‘Uthmānī’s practical engagements with the Ḥanafī *madhhab,* spotlighting his pioneering efforts in crafting Sharia-compliant financial products. Unlike conventional juristic responses to pre-existing circumstances or questions, ‘Uthmānī’s approach involves originating contracts that are meticulously designed from the ground up to comply with Islamic jurisprudence and cater to the needs of an interest-free economy. This chapter showcases how he creatively harnesses Ḥanafī principles to construct profitable financial models like mark-up sales (*murābaḥa*) and

diminishing partnerships (*al-sharikat al-mutanāqiṣa*), as well as new legal norms such as the judicial enforceability of commercial promises and introducing ethical financial penalties.

The conclusion synthesises the major themes explored throughout the thesis, with a particular focus on Taqī ʻUthmānī's *fiqhī mizāj*, i.e., the juristic inclinations and tendencies that inform his work. The thesis demonstrates how ʻUthmānī's cautious and principled approach to jurisprudence is deeply rooted in his Deobandī heritage and the teachings of his key mentors, such as his father and Ashraf ʻAlī Thānawī. By adopting an individual-centric perspective on legal change within the *madhhab*, the thesis uncovers how ʻUthmānī's juristic decisions are influenced by his personal biases, priorities, and the socio-political context in which he operates. This focus on the individual reveals the nuances of ʻUthmānī's juristic tendencies and illustrates the broader potential for legal change and innovation within Islamic jurisprudence when examined through the engagement of a single jurist with tradition and contemporary issues.

Part I: Taqī ‘Uthmānī

Chapter 1: Taqī ʻUthmānī: His Life and Works

This chapter explores the biography and contributions of the Deobandī jurist, Muftī Taqī ʻUthmānī, from his early years in a newly established Pakistan to his rise as a leading figure in global Islamic scholarship and jurisprudence. Born into a family deeply embedded in the religious and political fabric of Pakistan, his father, Muftī Muḥammad Shafīʻ, was a prominent religious leader who played a significant role in garnering support among Indian Muslims for the Muslim League, thereby influencing the push for separatism within India. This unique heritage profoundly influenced ʻUthmānī's educational and professional trajectory.

ʻUthmānī was educated at Dār al-ʻUlūm Karāchī, a seminary his father founded, where he later became vice-principal and the editor of its journal, *al-Balāgh*. ʻUthmānī has authored over a hundred books in Arabic, Urdu, and English, addressing complex issues in Islamic jurisprudence, finance, and broader societal issues, offering traditionalist Islamic scholarship for contemporary global and local challenges. Unlike other Deobandī traditionalists, ʻUthmānī pursued higher education at Pakistani universities, earning a bachelor's degree in English, Political Science, and Economics, an LLB, and a master's in Arabic.

While previously an *ʻulamā*-outsider in government circles, he rose to prominence under President Zia-ul-Haq, serving on the Council of Islamic Ideology (1977-1980), Federal Shariat Court (1980-82) and the Sharia Appellate Bench of the Supreme Court (1982-2002), significantly influencing the integration of traditionalist Islamic principles within Pakistan's legal system.[62] His tenure was highlighted by his role as a presiding judge in the landmark 1999 Supreme Court decision that upheld the ban on interest, previously declared repugnant to Sharia by the Federal Shariat Court in 1991.

[62] For a robust study on the 'network' of religious state institutions in Pakistan, see: Sarah Holz, *Governance of Islam in Pakistan: An Institutional Study of the Council of Islamic Ideology* (Eastbourne, Sussex Academy Press, 2022). See also: Riaz Hassan, "Islamization: An analysis of religious, political and social change in Pakistan." *Middle Eastern Studies* 21, no. 3 (1985): 263-284; Afrasiab Ahmed Rana, Syed Muhammad Shahid Tirmazi, Kulsoom Fatima, Muhammad Amin Ud Din, Imtiaz Ahmad, and Fiza Zulfiqar, "The Juridical Contribution of the Federal Sharīʿat Court (FSC) In the Islamization of Laws in Pakistan: A Study of Leading Cases." *Al-Qanṭara* 9, no. 4 (2023): 91-104.

Internationally, ‘Uthmānī’s expertise in Islamic finance has not only put him on the boards of major global banks but also at the forefront of several international Islamic councils.

Utilising primarily his memoirs and other biographical sources, this chapter outlines ‘Uthmānī’s life, detailing the educational influences and key contributions that shaped his perspectives and his significant contributions to Islamic jurisprudence. In focusing on ‘Uthmānī’s legal thought and juristic practice and providing an individual-centric insight into legal change within the *madhhab* framework, this chapter offers the key biographical and contextual background that underpins the thesis. Notwithstanding the potential historical inaccuracies or apparent biases inherent to autobiographies, his personal narrative and motivations will be instrumental in understanding his juristic outlook and inclinations.

The Deoband era 1943-48

Muḥammad Taqī ‘Uthmānī was born on 3rd October 1943 in Deoband, a town in the United Provinces of British India distinguished for its prominent *madrasa*. The ‘Uthmānīs, tracing their lineage to the third Caliph, ‘Uthmān b. ‘Affān[63] had settled in Deoband a century before the establishment of the Dār al-‘Ulūm seminary.[64] ‘Uthmānī’s grandfather, Muḥammad Yāsīn, an early alumnus,[65] taught Farsi and Maths at the Dār al-‘Ulūm until his death in 1936, while his father, Muḥammad Shafī‘, enjoyed a distinguished 27-year teaching career at the seminary, including two stretches as its chief *muftī* (*ṣadr muftī*).

[63] ‘Uthmānī, “Yādein,” *Al-Balāgh,* November 2017, 23. As such, the ‘Uthmānī family claimed *Ashrāf* nobility. See: Imtiaz Ahmad, "The Ashraf-Ajlaf Dichotomy in Muslim Social Structure in India." *The Indian Economic & Social History Review* 3, no. 3 (1966): 268-278.

[64] Hāfidh Karīm was the first to settle in Deoband. While exact details on his life history are unknown, his name is marked on foundational stone of a mosque in Deoband, dated to 1183 AH/1776-70 CE. For details on their ancestry, see: Muḥammad Shafī‘ ‘Uthmānī, *Mere Wālid Mājid awr Unke Mujarrab ‘Amaliyyāt* (Karachi: Idārat al-Ma‘ārif, 2005): 11-17; Muḥammad Rafī‘ ‘Uthmānī, *Hayāt-i Muftī-i Āzam* (Karachi: Idārat al-Ma‘ārif, 2005): 11-19.

[65] Muḥammad Yāsīn was a classmate of Ashraf ‘Alī Thānawī, see: Muḥammad Shafī‘ ‘Uthmānī, *Mere Wālid Mājid,* 29.

While ‘Uthmānī retains vivid memories of his four-year childhood in Deoband, his formative years were shaped amidst the backdrop of political activism and demand for Pakistan. In his home, where poetry thrived – his brother was a poet, and his sisters were lovers of the literary arts – pro-Pakistan poetry echoed.[66] As a lisping infant, ‘Uthmānī would recite:

> If you wish for freedom, join the Muslim League
>
> Uphold the flag of brotherhood and overcome the world of disbelief.[67]

He would chase pro-Pakistan rallies that would pass his house, chanting “Long live Pakistan” (*Pākistān Zindabād*).[68] Ultimately, Pakistan would shape his life. In 1947, his father, Muḥammad Shafī‘, relocated the family from Deoband to Karachi, uprooting them to start anew in this fledgling post-colonial Muslim nation. As one of the most prominent ‘*ulamā* advocating for Pakistan, Muḥammad Shafī‘ would take on government advisory positions to advise on the Islamic aspects of the country's first constitution. It is important to consider that this emphasis on Pakistan might be a retrospective interpretation of his childhood. His family’s migration, his father’s early involvement in drafting the constitution, and ‘Uthmānī’s efforts, both within and outside government favour, in contributing to the legal and social discourse of Pakistan, suggest a deeply held belief that the state is the essential vehicle for implementing Islamic law.

Nevertheless, during this period and while Taqī ‘Uthmānī was still a child, his father was deeply involved in political activism for Pakistan’s creation. In March 1943, following the guidance of his *shaykh* Ashraf ‘Alī Thānawī (d. 1943),[69] Muḥammad Shafī‘, alongside a contingent of scholars including Shabbīr Aḥmad ‘Uthmānī and Ẓafar Aḥmad ‘Uthmānī, resigned from the Dār al-‘Ulūm in

[66] ‘Uthmānī, “Yādein” *Al-Balāgh*, January 2018, 18-20.
[67] Ibid., 20.
[68] Ibid., 22. Taqī recounts that when Pakistan was finally established, the house was filled with excitement and joy. He writes that, in his mind at the time, he pictured Pakistan as a grand building with a vast hall, proudly displaying the Pakistani flag on its wall.
[69] Thānawī was a leading second-generation Deobandī scholar and the Ṣūfī shaykh of ‘Uthmānī’s father, Muḥammad Shafī‘. One of the major themes of this thesis is Thānawī’s enduring influence on ‘Uthmānī’s jurisprudence. For studies on Thānawī see: Zaman, *Ashraf Ali Thanawi* (Oxford: Oneworld, 2007); Mian, “Surviving modernity”; Barbara Metcalf, *Perfecting Women: Maulana Ashraf ‘Alī Thanawi's Bihishti Zewar: A Partial Translation with Commentary* (Berkeley: University of California Press, 1990).

March 1943 to champion the Pakistan cause.[70] This resignation marked a turbulent period up to India's partition, with Deobandī *'ulamā* divided. While many supported Ḥusayn Aḥmad Madanī and the Indian Congress favouring a united India, a notable faction led by Ashraf 'Alī Thānawī supported Pakistan.[71]

Thānawī passed away shortly after, and Muḥammad Shafī' continued his legacy, authoring pivotal works during the lead-up to the 1945-46 elections.[72] Most notably, *Ifādat-i Ashrafiyya dar Masāil-i Siyāsiyya,*[73] which invoked the late Thānawī's authority, and *Congress awr Muslim League Ke Darmiyān Shar'ī Fesla*. These works articulated a clear theological position for supporting the League over the Congress. His statement from the latter, "Supporting Congress is supporting disbelief," became a slogan that profoundly influenced the electorate in critical constituencies like Muzaffarnagar and Saharanpur.[74] Concurrently, Shafī' was an early member of Shabbīr Aḥmad's Jamiat Ulama-e-Islam (JUI), which advocated for an Islamic nation modelled after Medina,[75] demanding greater *'ulamā* involvement in governance. The JUI was received well by the Muslim League, such that upon

[70] As Venkat Dhulipala contends, the support, theological justifications, and campaigning of this Thānawī contingent proved instrumental and critical for the success of the Muslim League. Thānawī officially backed the League in 1935, resigning from Deoband to his ancestral village in Thāna Bhāwan. Until his death in 1943, Thānawī engaged others to attempt the reformation of the Muslim league and to counter Congress-support, which included clashes against Ḥusayn Aḥmad Madanī. See: Munshī 'Abd al-Raḥmān Khān, *Sīrat-i Ashraf* (Multan: Idārat Nashr al-Ma'ārif, 1956): 559-615; Dhulipala, *Creating a new Medina*, 83-114.

[71] An incredible resource to gauge this public confusion is Zakariyya Kandehlewī's *al-I'tidāl fī Marātib al-Rijāl,* authored in 1938. Kandehlewī, the most senior hadith teacher at *Maẓāhir al-'Ulūm* in Saharanpur, was sent a short letter detailing seven questions about the political climate. In sum, the letter asked that Madanī and Thānawī are such major figures, so which one should a person follow? Kandehlewī's response has been published in 250 pages. *Maẓāhir al-'Ulūm* is a sister-branch of Dār al-'Ulūm Deoband, thus this question suggests an appeal to the highest authority outside the Deoband. The length and depth of the response demonstrates that this was a real cause of confusion for the people, such that a high authority had to intervene to offer reassurance. See: Muḥammad Zakariyya Kandehlewī, *al-I'tidāl fī Marātib al-Rijāl* (Deoband: Ittiḥād Book Depot, n.d.): 13. See also, Metcalf, "Maulana Husain Ahmad Madani and the Jami'at 'Ulama-i-Hind: Against Pakistan, against the Muslim league" in: *Muslims against the Muslim League,* eds. Ali Usman Qasmi and Megan Eaton Robb (Delhi: Cambridge University Press, 2017): 35-65.

[72] The Muslim League leadership viewed this election as a referendum to rally people and demonstrate a clear mandate for Pakistan. Dhulipala discusses the varying opinions during this election, including the various criticisms and counter-criticisms made by Congress and Muslim League members and supporters from the *'ulamā*. See: Dhulipala, Creating a New Medina, 389-461.

[73] Muḥammad Shafī' 'Uthmānī, "Ifādat-i Ashrafiyya dar Masā'il Siyāsiyya" in: *Jawāhir al-Fiqh* (Karachi: Maktaba Dār al-'Ulūm Karāchī, 2010): 5: 227-8.

[74] This is recalled by Muḥammad Rafī' alongside anecdotes of praise from the constituency campaign manager. The First Prime Minister of Pakistan, Liaquat Ali Khan, stood in this seat. Muḥammad Rafī' 'Uthmānī, *Hayāt-i Muftī-i Āzam*, 136.

[75] Dhulipala makes this claim in *Creating a New Medina,* which is challenged in: Hasan Hameed, "Arguing Pakistan in Late Colonial India: The Political Thought of Shabbir Ahmad Usmani." *Modern Intellectual History* (2024): 1-26.

independence, Shabbīr Aḥmad ‘Uthmānī was honoured by Jinnah to hoist the national flag,[76] highlighting his pivotal role in establishing Pakistan.[77]

This is critical foregrounding. The idea of Pakistan presented an opportunity to establish a state governed by Islamic law, where the role of the *‘ulamā* was rightfully restored since colonial imposition. Ultimately, the separatist cause succeeded and Shafī‘ migrated from Deoband to Pakistan, with young Taqī ‘Uthmānī spending only four and a half years in his ancestral home in Deoband.[78] As ‘Uthmānī’s recollections, like the pro-Pakistan poetry recited in the household or his lisping of ‘Long live Pakistan,’ primarily stem from his autobiography, the accuracy of these accounts might be questioned. However, this point is somewhat moot, as these narratives reveal how he constructs his identity and legacy. Whether entirely factual or not, they frame Pakistan and his family’s struggle for Muslim separatism as central to his formative years, shaping the values and commitments that would define his later juristic thought.

Religious Education

Taqī ‘Uthmānī’s formal religious learning began in 1952 when his father, Muḥammad Shafī‘, established Dār al-‘Ulūm Karāchī.[79] The seminary operated a *dars-i niẓāmī* syllabus structured over eight years. Taqī began his studies at eight years old, graduating at sixteen in 1960; his brother Muḥammad Rafī‘ ‘Uthmānī (d. 2022), six years his senior, was in the same class.[80] Their studies

[76] ‘Uthmānī, “Yādein” *Al-Balāgh*, February 2018, 15.
[77] As Zaman writes: “Though he died just over two years after the establishment of Pakistan, no religious scholar has enjoyed the stature Shabbir Ahmad `Usmani did in the new state.” In: Zaman, *Islam in Pakistan*, 95.
[78] ‘Uthmānī retells a vivid account of the train journey from Deoband to Karachi, and his first impressions whilst living there, See: ‘Uthmānī, “Yādein” *Al-Balāgh*, February 2018, 16-23.
[79] A very brief history of the Dār al-‘Ulūm, see: Muḥammad Rafī‘ ‘Uthmānī, “History” in: *Introducing Darul-‘Uloom Karachi,* Azizur Rahman (Karachi: Darul-Uloom Karachi Public Information Department, n.d.): 3-8. This book was produced by the seminary with detailed information about its institutional make-up. It discusses the seminary’s constitution, lists its current leaders and trustees as well as the various teaching programmes and departments within the seminary.
[80] ‘Uthmānī would share a life-long partnership with his brother Muḥammad Rafī‘; they would complete their *dars-i niẓāmī* and *iftā’* studies together, and after their father’s death, would collectively take on the responsibility of running Dār al-‘Ulūm Karāchī. Until his death in 2022, Rafī was the head *muftī* and at the Dār al-‘Ulūm, with Taqī ‘Uthmānī serving as his deputy. Rafī’s six-volume *fatāwā* collection was published as the institutional *fatwā* collection of the Dār al-‘Ulūm, see: Muḥammad Rafī‘ ‘Uthmānī, *Fatāwā Dār al-‘Ulūm Karāchī*, eds. I‘jāz Aḥmad Ṣamdānī, Ṭāhir Iqbāl and Sulṭān Maḥmūd, 6 vols. (Karachi: Idārat al-Ma‘ārif, 2015).

included a year of Farsi studies, followed by seven years of advanced Islamic studies in Arabic. Figure 1. lists the subjects covered, illustrating a comprehensive education in Persian, Arabic literature, logic, Islamic law and legal theory, hermeneutics and Hadith studies.

Subject	***No.***	***Name of texts***
Persian syntax	2	*Aḥsan al-Qawā ʻid, Inshā'-i Fārigh*
Persian literature	4	*Gulistān, Bustān, Tarjamatayn, Man Lā Budd Minh*
Qur'ān recitation (*tajwīd*)	1	*Jamāl al-Qurʻān*
Arabic syntax	7	*Hidāyat al-Nahw, Naḥwmīr, Sharḥ Miʻat ʻĀmil, Arabī ka Muʻallim, al-Naḥw al-Wāḍiḥ, al-Kāfiya, Sharḥ Jāmī*
Arabic morphology	3	*ʻIlm al-Ṣīgha, Panj Ganj Mīzān-o Munshāʻib*
Arabic literature	6	*Durūs al-Adab, Mufīd al-Ṭālibīn, al-Nafḥat al-ʻArab, Maqāmāt Ḥarīrī, Dīwān al-Mutanabbih, Dīwān Ḥammāsa*
Arabic rhetoric	3	*al-Balāgha al-Wāḍiḥa, Talkhīṣ al-Miftāḥ. Mukhtaṣar al-Maʻānī*
Logic	7	*Taysīr al-Manṭiq, Mirqāt, Sharḥ Tahdhīb, al-Quṭbī, Sullam al-ʻUlūm, Mullā Ḥasan, Maybadhī*
Astronomy	1	*Taṣrīḥ fī Tashrīḥ al-Aflāk*
Islamic law (*fiqh*)	5	*Nūr al-Īḍāḥ, Mukhtaṣar al-Qudūrī, Kanz al-Daqāʻiq, al-Ḥidāya, al-Sirājī*
Islamic legal theory	4	*Uṣūl al-Shāshī, Nūr al-Anwār, Ḥuṣāmī, al-Tawḍīḥ wa l-Talwīḥ*
Theology	2	*Sharḥ Aqāʻid al-Nasafiyya, al-Ḥuṣūn al-Ḥamīdiyya*
Hadith	10	*Mishkāt al-Maṣābīḥ, Sahīḥ al-Bukhārī, Ṣaḥīḥ li -Muslim, Sunan al-Tirmidhī, Sunan Abī Dāwūd, Sunan Nasāʻī, Sunan Ibn Māja, Muwaṭṭa' Mālik, Muwaṭṭa' Muḥammad, Shamā'il al-Tirmidhī*
Hadith methodology	1	*Nukhbat al-Fikr*
Exegesis	2	Quran Translation*, Tafsīr al-Jalālayn*
Exegetical methodology	1	*al-Fawz al-Kabīr*

Figure 1: Taqī 'Uthmānī's curriculum at Dār al-'Ulūm Karāchī: Key Texts and Subjects[81]

'Uthmānī distinguished himself early, scoring an unprecedented fifty-five out of fifty in an exam, a testament to his academic qualities.[82] After graduating from the *dars-i niẓāmī* syllabus, Taqī initiated formal training to become a *muftī*, enrolling at the seminary's *Takhaṣṣus fī l-Iftā'* program, a specialist course in deriving and authoring *fatwās* (*iftā'*). The 'Uthmānī brothers were the first students to undertake this training at the Dār al-'Ulūm under the personal tutelage of their father and Rashīd Aḥmad Ludhiyānwī. Ludhiyānwī had introduced him to research and *fatwā* writing during his *dars-i*

[81] This curriculum was extracted from 'Uthmānī's memoirs: See: 'Uthmānī, "Yādein," *Al-Balāgh,* June-2018-May 2019.

[82] Exams were marked out of fifty, but on occasion, examiners gave out discretionary marks above fifty to mark the excellence of an exam paper. 'Uthmānī scored full marks thirty-six times in sixty-nine exams, sixteen of which were discretionary marks above fifty. Fifty-five remains the highest discretionary mark given to any student in Dār al-'Ulūm history. See: 'Uthmānī, "Yādein," *Al-Balāgh*, May 2019, 31.

niẓāmī study. However, the specialisation course was personalised vocational training involving an in-depth study and application of Ḥanafī law, with students answering questions from the public. The mentorship of a senior *muftī* guided them in writing *fatwā*s. Taqī recalls:

> Our father would say that merely learning specific rulings from legal references does not induce the capability of *fatwā*. Instead, the art of *fatwā* is a particular proclivity that is acquired through the extended companionship and supervision of an expert *muftī*.[83]

A significant third influence on 'Uthmānī's *iftā*' education was the late Ashraf 'Alī Thānawī. Though Thānawī had passed away decades prior, his balance and legal acumen had profoundly influenced Muḥammad Shafī'. Hence, Taqī's training involved lengthy study of Thānawī's *Imdād al-Fatāwā* to internalise his methods of argumentation, deduction, and extrapolation. Taqī's answers would have to be cross-checked against the *Imdād*, with each idiosyncrasy and divergence closely analysed.[84]

Shafī' also instilled a second Thānawīan value in Taqī: caution in *ijtihād* through consultation with contemporaries. Shafī' was a research assistant to Thānawī's historical *al-Ḥīlat al-Nājiza* (1931) project. The absence of an Islamic court in the colonial period left many aspects of Muslim family law in disarray, leading some Muslim women to seek the dissolution of undesirable marriages at British courts, claiming apostasy.[85] After four years of dedicated research, consulting with scholars in India and Malikī scholars in the Ḥijāz, *al-Ḥīlat* offered some critical *ijtihādī* contributions to address this colonial context, most notably, legitimising informal Sharia councils to undertake the role of courts.[86] This same caution was epitomised by the *Majlis-i Taḥqīq-i Masā'il-i Ḥāḍira* (Gathering for Researching Contemporary Issues), a monthly council of the three major seminaries of Karachi to

[83] 'Uthmānī, "Yādein" *Al-Balāgh*, March 2020, 19.
[84] Ibid.
[85] Khalid Masud lists a number of courts cases which attest to this, where Muslim female plaintiffs applied for dissolution of marriage based on their apostacy. He writes: "Briefly speaking, most of the judgements in these cases stress that according to Islamic law apostasy per se is sufficient legal ground for the dissolution of Muslim marriage, regardless of the real motive of the apostate to renounce her faith or not." In Masud, *Iqbal's reconstruction of Ijtihad*. (Lahore: Iqbal Academy, Pakistan, 1995): 158.
[86] The Jamī'āt Ulama-e-Hind would begin a campaign around this *fatwā* which culminated in the Dissolution of Muslim Marriages Act (1939) which enshrined in law that apostacy is not sufficient for the dissolution of marriage in the colonial courts. For a study on this *fatwā* and its historical impact, see: Masud, "Apostasy and Judicial Separation in British India"; Khan, "Traditionalist Approaches to Sharī'ah Reform".

discuss contemporary legal quandaries.[87] Thānawī had long advised that one should consult their teachers, contemporaries, and when none available, one's students, when authoring *ijtihādī fatwā*s for *istiṣwāb* — affirmation of agreement.[88] This need led to Taqī and Rafī' being asked to sign the *ijtihādī fatwā*s of the Majlis, despite being students. This was a life-long process in Shafī's juristic practice, teaching the brothers a crucial lesson: if one is to depart from the long-held opinions of the *madhhab*, they should not act alone. If they cannot find support from past scholars, they should seek it from contemporaries.[89]

A final noteworthy aspect was 'Uthmānī's Western education. Alongside his *iftā'* training, he pursued Western education, balancing teaching and *iftā*' duties and earning his matriculation and intermediate qualifications. He then obtained a Bachelor's of Oriental Learning in English, Political Science, and Economics from Punjab University (1963-66), an LLB from S.M Law College (1966-69), and a Master's in Arabic from Punjab University (1972).[90] In later life, this education equipped him to be a judge and draft legal amendments in English, but initially, he studied these subjects to counter the modernist Muslim intelligentsia dominating public discourse.[91] None were more influential than Fazlur Rahman Malik (d. 1988), an Oxford-educated PhD who had captivated President Ayub Khan.

Taqi 'Uthmānī, Fazlur Rahman and the Response to Pakistani Modernism

'Uthmānī's post-*dars-i-niẓāmī* studies in the 1960s coincided with a critical juncture in Pakistan's political history, as General Ayub Khan's Islamic modernist agenda introduced challenges that 'Uthmānī had to reconcile with his Deobandī traditionalism. The 1949 Objectives Resolution laid the ideological foundation for Pakistan, emphasising the need to enable Muslims to practice their faith in

[87] The three seminaries were: Dār al-'Ulūm Karāchī, Dār al-'Ulūm New Town, founded by Yūsuf Binnorī, and Ashraf al-Madāris, founded by Rashīd Ludhyānwī, which would later be called Dār al-Iftā' wa l-Irshād.
[88] 'Uthmānī, "Mere Wālid Mere Shaykh," *al-Balāgh,* July 1979, 409.
[89] Ibid., 57.
[90] 'Uthmānī describes his western learning experiences in: "Yādein" *al-Balāgh*, March-April 2020.
[91] 'Uthmānī writes: "My real objective was to become informed of Western thought on one hand, and in understanding the liberal mindset, deliver the religious message to those brought up in Western thought that have had no access to traditional religious learning." In: 'Uthmānī, "Yādein" *al-Balāgh*, March 2020, 24.

accordance with the teachings of the Qur'an and Sunna.[92] However, debates persisted on whether this 'Islam' was defined by the *'ulamā'*s tradition-based law or by modernists advocating *ijtihād* and broader Islamic ethics.[93] The ensuing decades saw governments propose and discard successive drafts of an 'Islamic' constitution. The 1956 constitution deepened tensions between the *'ulamā*, modernists, and secularists, sidelining the former's role and aggravating the political strife between West and East Pakistan.[94]

Ayub Khan's martial law and presidency in 1958 marked the beginning of bold modernist reforms.[95] In 1962, Ayub Khan appointed Fazlur Rahman as the Chair of the Central Institute of Islamic Research (later the Islamic Research Institute or IRI).[96] President Khan established the Institute as part of the Government of Pakistan to research and define "Islam in terms of its fundamentals in a rational and liberal manner".[97] Rahman became the President's "primary source of innovative ideas and policies",[98] using Western historical-critical methods to revise traditional views and practices, leading to numerous controversies and public clashes with leading *'ulamā*. Such views included arguing for the permissibility of commercial interest, family planning, and mechanical slaughter. Most controversial were his views on Prophetic agency in the revelation of the Qur'an, which caused public outrage, calls of heresy and blasphemy, and a summer of protests in 1968, leading to his eventual resignation in September of that year.

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[92] Zafar Ishaq Ansari (ed). "The Objectives Resolution." *Islamic Studies* 48, no. 1 (2009): 90. This article also reproduces several speeches from the resolution's introduction to the Constituent Assembly, underscoring the diverse yet intricate endorsement by *'ulamā* (Shabbir Aḥmad 'Uthmānī), modernists, and secularists.

[93] These conversations were not unique to Pakistan, but across the post-colonial Muslim world, intellectuals sought to blend their Islamic legal heritage with modernity, inspiring legislative reforms in countries like Syria, Egypt, Morocco and Iraq. See: See: Coulson, *A History of Islamic Law*, 202-217.

[94] See: Zafar, *History of Pakistan*, 177-187.

[95] For a summary of Ayub Khan's modernist initiatives as President, see: Sarfraz Husain Ansari, "Forced modernization and public policy: A case study of Ayub Khan era (1958-69)." *Journal of Political Studies*, 18 (2011): 45-60.

[96] Khan initially joined the Institute as a visiting scholar in 1961 but had become disillusioned in the leadership direction of then Chair, I. H Qureshi. Rahman wrote a letter to the President, complaining to him about the institute's stagnation, and the policies he would implement to improve its direction. Khan intervened, appointing Rahman as its new director in 1962. See: Megan Brankley Abbas, "Between Western Academia and Pakistan: Fazlur Rahman and the fight for fusionism." *Modern Asian Studies* 51, no. 3 (2017): 748-9.

[97] Fazlur Rahman (ed). "Introducing the Journal, *Islamic Studies* 1, no. 1 (1962): 1.

[98] Ansari, "Forced modernization and public policy," 53.

Fazlur Rahman's political influence during this period shaped 'Uthmānī's formative learning experiences, warranting a look into the key developments of Rahman's prominence. Rahman's own recollections of this period are indicative of these ongoing public sparring matches between himself and prominent Deobandī scholars.[99] Taqī 'Uthmānī was also involved in this process, penning numerous critiques of Rahman's opinions. Before exploring Taqī's responses, it is crucial first to outline Fazlur Rahman's philosophical divergence from the traditional legal framework, highlighting the epistemological nature of these debates and the significance of 'Uthmānī's interventions.

Rahman believed that the Hadith literature was an unreliable source of law. He argued that the early community of Companions did not appeal to the Prophet's explicit acts and sayings for legal inspiration. Instead, based on their internalised knowledge of the Qur'an and the Prophet's actions and sayings, they ruled on how they thought the Prophet would advise or react to newly arising situations. These personal *ijtihād*s would be integrated into an organic and ever-expanding idea of Sunna through the process of community consensus (*ijmā'*).[100] Later Hadith literature that emerged in the second century, however, misunderstood this, treating these personal *ijtihād*s as explicit actions and sayings from the Prophet.[101]

Due to this fundamental critique of the Islamic legal tradition, Rahman's ideas on *ijtihād* and modernism were far more radical than his contemporary modernists.[102] While he agreed that the *madhhab*s and the codification of the law, particularly in the medieval period, solidified the stagnation of the legal tradition,[103] he believed that stagnation is "inherent in the bases on which Islamic law was founded".[104] For Rahman, the legal dynamism of the early community was stripped away due to the

[99] Rahman, "Some Islamic Issues in the Ayyūb Khān Era" in: *Essays on Islamic civilization presented to Niyazi Berkes*, ed. Donald Little (Leiden: E. J. Brill, 1976): 284-302.
[100] Ibid.
[101] For a fuller treatment of Rahman's ideas on the nature of Hadith, see: "From Sunnah to Hadith" in: *Islamic Methodology in History* (Islamabad: Islamic Research Instuitute, 1964): 27-84. This paper was first published in *Islamic Studies.*
[102] The Institute of Islamic Culture in Lahore, also operating in this period, exemplifies a moderate strand of modernism, with works like Jafar Shāh Phulwārwī's *Ijtihādī Masā'il* showcasing its approach to *ijtihād*. See: Phulwārwī, *Ijtihādī Masā'il,* 1-25. Khalifa Abdul Hakim, a key figure at the Institute and secretary of the Marriage Commission, was inspired by Iqbal's thoughts on *ijtihād*, which are echoed through the Commission's report. See: Ahmad, *Marriage Commission Report X-Rayed*, 33-97. For the Commission's methodology, see: Ibid., 46-51.
[103] Rahman, *Islam and Modernity,* 31-39.
[104] Ibid., 26.

formalisation of the Hadith in the second century and the legal theory that developed from it.[105] Thereafter, legal applications were centralised through appeals to explicit texts and analogical reasoning (*qiyas*) based on those texts, thus, stunting the "orderly growth" of Islamic law of the early communities.[106]

Rahman's *ijtihād* project sought to return to the *ijtihādī* methods of the Companions to study the total teaching of the Qur'an and Sunna, understanding their unfolding historical and inner meanings, and systematically arranging values in order of priority.[107] He believed that the Qur'an offers general principles, and the Sunna is the embodiment of those principles as concrete legal applications; therefore, they must be studied to extrapolate the underlying general principles which will form the basis of new legal applications.[108] Most critically, literal quotations from the Qur'an or Hadith were secondary; the primary significance behind revelation is its "moral-social purposes and objectives".[109]

Turning now to 'Uthmānī, he actively criticised Rahman's influence, reaffirming the traditional views of the '*ulamā* in contrast to the state-endorsed perspectives of Rahman. For example, while teaching Hadith at Dār al-'Ulūm Karāchī, he dissected Rahman's concepts of Sunna and Hadith, challenging his modernist interpretations.[110] 'Uthmānī was between nineteen and twenty years of age during this period, having completed specialist *iftā'* studies in 1962. Through his role as editor of *al-Balāgh,* he vehemently opposed Rahman's stances in six editorials, representing the authority of one of these most prominent seminaries in Pakistan.[111]

[105] Ibid.
[106] Ibid.
[107] Ibid., 23.
[108] Ibid., 20.
[109] Ibid., 19.
[110] 'Uthmānī, "Yādein" *Al-Balāgh*, February 2020, 11-12.
[111] Interestingly, even Rahman himself refers to Muḥammad Shafī' as the "most revered religious authority in Pakistan", In: Rahman, "Some Islamic Issues," 295. Therefore, *al-Balāgh*, as the institutional journal of Shafī' 'Uthmānī's *madrasa*, represents the authority of Pakistan's leading scholar. Taqī 'Uthmānī's six editorial articles are: *Islam awr Jiddat Pasandī* (1967, Islam and Modernism), *Islām awr Ṣan'atī Inqilāb* (1968, Islam and the Industrial Revolution), *Waqt ka Taqāza* (1967, The needs of our Time), *Taḥqīq ya Taḥrīf* (1967, Research or distortion?), *Islām kī nayī Ta'bīr* (1967 Islam's new Interpretations), *'Ulamā' awr Pāpā'iyyat* (1968, the 'Ulamā and Papacy). These articles were reproduced in: 'Uthmānī, *Islām awr Jiddat Pasandī* (Karachi: Maktaba Dār al-'Ulūm Karāchi. 2002): 7-71.

In one article, *Taḥqīq ya Taḥrīf* (Research or Distortion), ‘Uthmānī condemned Rahman’s work at the IRI as a distortion of the religion.[112] He argued against what he saw as two major assumptions underpinning Rahman’s ideas: that thirteen centuries of legal tradition are antiquated and need radical changes and that adopting Western ideas is crucial for Muslim survival.[113] ‘Uthmānī launches a scathing critique of Rahman's controversial views on commercial interest, insurance, family planning, and polygamy.[114] ‘Uthmānī argues that the first two could be resolved through sincere explorations of the legal tradition, while Rahman's views on family planning and polygamy showed an uncritical acceptance of Western ideals.[115]

Additionally, in *Islām ki Nayī Ta’bīr* (New Interpretations of Islam), ‘Uthmānī criticised Rahman's methodology as selective and biased, arguing that research starting with preconceived ideas could justify anything from the Islamic tradition, even the Christian Trinity, if one magnifies obscurity and disregards what is clear-cut. He applies this critique to Rahman's ideas, such as permitting the consumption of meat slaughtered without God's name. ‘Uthmānī accuses Rahman of disregarding God’s clear-cut imperatives in: “Do not eat that (meat) over which the name of Allah has not been pronounced” (Q. 6: 121) and giving preference to an obscure narration with sketchy authenticity.[116] ‘Uthmānī saw this as hermeneutic gymnastics, restating the importance of Islamic hermeneutic principles in crafting legitimate opinions. Just as statutory interpretation governs the interpretation and application of the laws of a country, the Islamic legal tradition has, for over 1300 years, developed its own hermeneutic principles that guide interpretation. Accordingly, ‘Uthmānī rejects new interpretations that do not conform to these laws of interpretation, branding such departures as distortions.[117]

Rahman's political capital and prolific output ignited discourse on Islamic law and modernity in Pakistan. As noted above, this period was pivotal for ‘Uthmānī, whose retorts to Rahman’s outputs served to refine and reaffirm his traditionalist commitments. ‘Uthmānī championed the depth and

[112] ‘Uthmānī, *Islām awr Jiddat Pasandī,* 39-40.
[113] Ibid., 40.
[114] Ibid., 43-5.
[115] Ibid.
[116] Ibid., 56-7.
[117] Ibid., 55.

flexibility of Islamic law, asserting its relevance in the modern world, and indeed in the governance of Islam in Pakistan, despite tensions between modernists and traditionalists. This engagement also informed ‘Uthmānī’s engagement with Western learning. His responses reference Western sources, such as lucid historical discussions on the Protestant Reformation and the intellectual development of rationalism, as well as appeals to Malthusian theory, statutory interpretations, the Kinsey Reports, Britannica Encyclopaedia, and Paton's *Jurisprudence*, to name a few. Rahman’s political capital forced ‘Uthmānī, as a young scholar, to broaden his intellectual horizons while reinforcing his traditionalist stance, allowing him to draw new insights from the Islamic tradition and apply them to contemporary issues.

Rise to the Supreme Court

While ‘Uthmānī was a political outsider during Zulfiqar Ali Bhutto’s presidency (1971-79), he was actively involved in shaping the religious discourse of the era. As the son of the unofficial[118] ‘Grand Muftī of Pakistan’ and editor of *al-Balāgh*, coupled with his studies in English, ‘Uthmānī’s reputation among the *‘ulamā* of Pakistan was exceptionally high. He crafted a robust Islamic counter-narrative to the Pakistani People's Party's socialism through detailed *al-Balāgh* editorials, articles, and collaborative work with the *Majlis-i Taḥqīq*.[119] Additionally, during the significant Khatm-e Nubuwwat movement in 1974, which aimed to classify the Aḥmadī group as a non-Muslim minority, Taqī authored a pivotal 200-page report that informed the National Assembly debate and subsequent constitutional amendment.[120] His efforts underscored the political influence and diligent activism of the *‘ulamā* despite their outsider status.

[118] In Pakistan, the title of Grand Muftī (Muftī-i A‘ẓam) is not an officially state-recognised position as it is in some other countries. Instead, the title is informally contested between various religious groups, notably the Deobandīs and Barelwīs. Among Pakistani Deobandīs, Muḥammad Shafī‘ ‘Uthmānī was acknowledged as the Grand Muftī of Pakistan.

[119] Muḥammad Shafī’s health declined significantly during this period; he was bedbound after suffering a heart attack in 1972 and passed away in 1976. In his stead, Taqī and Rafī‘ ‘Uthmānī represented him at the Majlis. See: ‘Uthmānī, “Yādein” *Al-Balāgh*, October 2020, 23-24.

[120] Thirty-eight National Assembly members from all Islamic political parties in Pakistan introduced this constitutional amendment following a local conflict in Chenab-Nagar and ensuing protests. The Majlis Tahaffuz

During the military dictatorship of General Zia-ul-Haq (1977-88), which initiated a program of Islamization, Taqī ʻUthmānī transitioned from an outsider to a prominent insider in the political landscape. His rise began with his appointment to the Council of Islamic Ideology (CII), tasked with policy recommendations. Zia established several panels to push policies through Parliament; ʻUthmānī was on the panel that implemented the controversial Hudood Ordinances (1979), prescribing Islamic cardinal and corporal punishments.[121] He drafted the initial CII report on Hudood and helped translate it into English.[122] Later, Zia appointed ʻUthmānī to the Federal Shariat Court (FSC), which could declare laws repugnant to Sharia.[123] He briefly served before moving to the Shariat Appellate Bench (SAB) of the Supreme Court from 1982-2002. Citizens could petition the FSC to review laws, but ultimate authority rested with the SAB, which upheld FSC judgments.

Even after Zia's demise, ʻUthmānī continued on the SAB, playing a crucial role in a historic 1999 decision on commercial interest. In 1991, the FSC declared interest unlawful under Sharia, setting a timeline to eliminate all interest in Pakistan. In 1993, a coalition of Pakistani banks challenged this decision, arguing that interest and the Qur'anic *ribā* were not identical. The 1999 Appellate Court upheld the FSC's decision, with ʻUthmānī juristic expertise analysing each appeal claim against his

Khatm-e Nubuwwat, led by Yūsuf Binnorī and represented by prominent Pakistani *ʻulamā* groups, provided scholarly support. The Majlis designated Taqī ʻUthmānī to author the essential report for the Assembly members. Taqī details this extensively in: ʻUthmānī, "Yādein," *Al-Balāgh*, October 2020, 23-29; November 2020, 17-24. This report was published as: ʻUthmānī, and Samīʻul al-Ḥaqq Akorwī, *Qādiyānī fitnat awr millat-i Islāmiyya ka mawqif* (London: Khatm-e Nubuwwat Academy, 2005). For a detailed examination of the national sentiment during this period, as reflected in newspaper articles, parliamentary minutes, and pro and anti-Aḥmadī journal articles, see: Tahir Kamran, "The making of a minority: Ahmadi exclusion through constitutional amendments, 1974." *Pakistan Journal of Historical Studies* 4, no. 1 (2019): 55-84.

[121] This was a hugely controversial introduction of capital and corporal punishment for the offences of stealing, adultery, rape, and alcohol. There were a number of high-profile cases that received international media coverage, such as the Zafran Bibi case. Sisters Asma Jahangir and Hina Jilani led a passionate campaign against the Hudood Ordinances. They argued that the laws discriminated against women, particularly in terms of the evidentiary requirements for rape victims. For their comprehensive critique, which details the impact of the ordinances on women's rights, see: Asma Jahangir and Hina Jilali, *The Hudood Ordinances: A Divine Sanction?* (Lahore: Sang-e-Meel Publications, 2003).

[122] See ʻUthmānī's memoirs for his recollections of his appointment and the activities he undertook in: ʻUthmānī, "Yādein," *Al-Balāgh*, April–July 2021, esp. the June 2021 edition for his role in drafting and translating the report into English.

[123] The FSC, much to the dismay of the President, declared the Zina Offence which ordered the stoning to death as repugnant to Islam. According to Sadakat Kadri, the President replaced some of these judges with "more like-minded judges" like ʻUthmānī. See: Sadakat Kadri, *Heaven on Earth: a journey through Shari'a law* (New York: Farrar, Straus and Giroux, 2013): 229. ʻUthmānī recalls the 1981 judgement in his memoirs when discussing his appointment to the FSC but does not describe a causal relationship in: ʻUthmānī, "Yādein," *Al-Balāgh*, August 2021, 18.

interpretation of Islamic law.[124] This fulfilled a lifelong ambition of his late father. However, following Musharraf's takeover via martial law, the momentum stalled; ‘Uthmānī was dismissed from the SAB, and new judges were appointed to review the 1999 judgment, eventually repealing and returning the case to the FSC.[125]

International Prominence and Pioneering Islamic Finance

In the 1980s and 1990s, ‘Uthmānī's international stature grew as he joined a number of important international scholarly committees and chaired Sharia boards at leading banks. His rise was organic, marked by his domestic reputation for prolific output in English, Urdu, and Arabic. His scholarly output earned recommendations from scholars and influential figures, consistently boosting his career opportunities and, crucially, elevating his international profile. For instance, his adeptness in writing led many scholars to advocate for him to author the Khatm-e Nubuwwat report in 1974, a recommendation that further expanded his opportunities for international engagement in South Africa.[126] Similarly, his contributions to drafting the Hudood Ordinances led to invitations to assist similar revisions in Sudan.[127] Moreover, his six-volume commentary on *Ṣaḥīḥ Muslim*, entitled *Takmila Fatḥ al-Mulhim*,[128] earned the admiration of ‘Abd al-Fattāh Abū Ghudda, his father’s friend, earning ‘Uthmānī a professorship offer at Muhammad bin Saud University in 1979, on the recommendation of

[124] Taqī’s contributions have been published in: ‘Uthmānī, *The Historical Judgement on Interest Delivered in the Supreme Court of Pakistan* (Karachi: Idaratul-Ma’arif, n.d.) We will explore some of Taqī’s salient arguments in Chapter 7. For a comprehensive study on the 1999 Appellate Judgement, alongside the necessary historical background and context, see: Akhtar Hamid, "Islamic Law on Interest: The 1999 Pakistan Supreme Court Rulings on Riba." *World Bank Legal Review* 1 (2003): 393-432.

[125] ‘Uthmānī, "Yādein," *Al-Balāgh*, November 2021, 27-30.

[126] Between 1982-5, there was an ongoing litigation in South Africa between the Lahore Aḥmadiyya Community and a few Sunni Muslim groups that had declared them as non-Muslims, and thus undeserving for Muslim licenses to raise funds. See: Ali Qadir, "How Heresy Makes Orthodoxy: The Sedimentation of Sunnism in the Ahmadi Cases of South Africa", *Sociology of Islam* 4, no. 4 (2016): 345-367. ‘Uthmānī took three trips to South Africa to assist the Sunni organisations involved with this case. He recalls his first visit in: ‘Uthmānī, *Jahān-i Dīdah* (Karachi, Idārat al-Ma‘ārif, 1989) 553-72.

[127] In 1986-7, ‘Uthmānī took part in a scholarly committee led by Muṣṭafā al-Zarqā’, advising the Sudanese government of Sadiq al-Madhi on *Ḥudūd* and interest-abolishing laws. See: ‘Uthmānī, "Yādein," *Al-Balāgh*, February 2022, 15-19.

[128] *Fatḥ al-Mulhim* is Shabbīr Aḥmad ‘Uthmānī’s commentary on *Ṣaḥīḥ Muslīm*, which he was unable to complete before his death. Taqī ‘Uthmānī later finished this work, naming it *Takmila Fatḥ al-Mulhim*, meaning "the Completion of *Fatḥ al-Mulhim*." The complete set, including both *Fatḥ al-Mulhim* and its *Takmila*, is published in 12 volumes. For further discussion on *Takmila Fatḥ al-Mulhim*, see the forthcoming “Selected Biography” section of this chapter.

Abū Ghudda. Ultimately, his initial international appointment as Pakistan's delegate to the Organization of Islamic Cooperation's International Islamic Fiqh Academy (IIFA) in 1984, was through a personal recommendation from President Zia-ul-Haq.[129]

While Taqī had previously been invited to consult or deliver speeches at international conferences, The Fiqh Academy was Taqī's first international appointment, offering him lengthy association with some of the great juristic names of the Arab world, namely Abū Ghudda, Bakr Abū Zayd, Muṣṭafā al-Zarqā', and Yūsuf al-Qaraḍāwī.[130] At these conferences, 'Uthmānī would routinely be assigned to the drafting committee, which discussed and drafted the conference resolutions.[131] For nine years, 'Uthmānī served as a Vice President of the Academy, and at one point, 'Uthmānī was offered the Secretary-General position, a great honour for Pakistan, as declared by 'Uthmānī's foreign office contacts.[132] Having solidified a reputation for himself at the Fiqh Academy, 'Uthmānī was offered a position on the Sharia board at Faysal Bank, through the recommendation of al-Qaraḍāwī and Prince Muhammad bin Faysal Al-Saud.[133]

Subsequently, he would chair the Sharia boards at several leading banks: Meezan Bank as it successfully expanded into Pakistan, Luxembourg-based Robert Fleming, Citi Islamic Bank, and HSBC, where he oversaw the restructuring of financial products in compliance with Sharia law.[134]

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[129] The Organization of Islamic Cooperation (OIC) began as a transnational body of Muslim-majority countries, and its International Islamic Fiqh Academy (IIFA) in Jeddah, serves as its forum for Islamic scholars to deliberate over the major contemporary issues, analysed through the lens of Islamic law. The first IIFA conference took place in 1985, and it has become a source of global Islamic legal guidance. All fifty-seven member-states of the OIC nominated a scholar to represent their country, and 'Uthmānī was nominated by President Zia al-Haqq to represent Pakistan, see: 'Uthmānī, "Yādein," *Al-Balāgh*, February 2022, 19-21; idem, *Jahān-i Dīdah,* 9-15. See also: Muhammad Ata Al Sid, "The Islamic Fiqh Academy: A Modern Attempt at an Islamic Legal Unity and at Aligning the Ummah with the Shari'ah." *International Islamic University Law Journal* 1, no. 2 (1989): 125-138. For a discussion on the IIFA and the Muslim World League's Islamic Fiqh Council, Mecca, see: Ghazala Ghalib Khan, "Methodological Approach of Fiqh Academies towards Contemporary Islamic Financial Issues." *Journal of Law & Sociocultural Studies* 1, no. 2 (2021): 129-144.

[130] 'Uthmānī, *Jahān-i Dīdah,* 9-15.

[131] 'Uthmānī, "Yādein," *Al-Balāgh*, March 2022, 16.

[132] 'Uthmānī, "Yādein," *Al-Balāgh*, April 2022, 15. Due to bladder and prostate related issues, alongside the heaviness felt by departing from Karachi to permanently relocate to Jeddah, 'Uthmānī declined the offer.

[133] 'Uthmānī, "Yādein," *Al-Balāgh*, May 2022, 24. This was 'Uthmānī's first appointment with an Islamic bank; This part of his memoirs details his involvements at the bank, alongside internal disagreements he had with some of the dictates of the Sharia board of its umbrella company, the pioneering Dār al-Māl al-Islāmī (DMI), which is a financial institution founded by the princes of Saudi Arabia, the United Arab Emirates and Bahrain. For more on the DMI, see: Delwin Roy, "Islamic banking" *Middle Eastern Studies* 27, no. 3 (1991): 431-2.

[134] 'Uthmānī, "Yādein," *Al-Balāgh*, June–July 2022.

‘Uthmānī recalls consulting for an extensive list of companies in those years.[135] As the original contracts would be in English and the rest of his board would rely on Arabic translations, ‘Uthmānī would analyse the original English contracts and draft and prepare detailed Sharia compliance schemas before moving on to the next company.[136] A pinnacle of his career was his appointment as chairman of the Sharia board at the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) in Bahrain in 1998.[137] Endorsed by al-Qaraḍāwī, ‘Uthmānī played a crucial role in developing standardised Islamic financial practices, guiding the global Islamic financial community towards unified, Sharia-compliant financial standards. The Sharia standards are legally mandatory in a dozen Muslim countries and fully or partially implemented in over twenty-one jurisdictions, and ‘Uthmānī remains the chairman of the Sharia board to this day.

‘Uthmānī’s contributions to Islamic finance are marked by a life-long commitment to eradicating interest (*ribā*) and developing Islamic financial alternatives. In a sense, this built on the legacy of his father, Muḥammad Shafī‘, who had migrated to Pakistan to establish a society founded on comprehensive Islamic principles, with the eradication of interest as a crucial step. ‘Uthmānī had pursued economics at university to deepen his understanding of financial systems, published his first book on interest, and, despite initial reservations, collaborated with global banks to advance his overarching goal of eliminating interest. Ultimately, his work at both local and international levels, through institutions like the AAOIFI, has been pivotal in shaping a financial environment that upholds and propagates the tenets of Islamic finance.

Selected Bibliography

Taqī ‘Uthmānī’s extensive contributions to Islamic scholarship include authored books, editorial works, *fatwā*s, and conference papers across a number of fields of Islamic thought.

[135] ‘Uthmānī, "Yādein," *Al-Balāgh*, July 2022, 20.
[136] Ibid., 20-1.
[137] Initially, ‘Uthmānī joined in 1991 to assist in creating accounting standards for AAOIFI. The Sharia Board, tasked with drafting Sharia standards, was set up in 1998, and ‘Uthmānī remains its chairman to this day. Ibid., 23-6.

Hadith commentaries

‘Uthmānī served as a lecturer in Hadith at Dār al-‘Ulūm early into his career, initially covering Ibn Māja’s Hadith compilation (c. 1962-3) before moving on to Tirmidhī’s work. His lectures were later transcribed into Urdu as *Dars-i Tirmidhī*[138] and *Taqrīr-i Tirmidhī*.[139] Additionally, his lecture notes on *Ṣaḥīḥ al-Bukhārī* were also transcribed and published as a 12-volume collection entitled *In‘ām al-Bārī.*[140] Yet, his *magnum opus* in Hadith studies is *Takmila Fatḥ al-Mulhīm*,[141] which completes Shabbīr Aḥmad ‘Uthmānī’s commentary on *Ṣaḥīḥ Muslim* that only reached the chapter of marriage. This work blends rigorous Hadith analysis with deep engagement with the legal implications of the Hadith, as ‘Uthmānī articulated his views in defence of the Ḥanafī *madhhab*.[142] Notably, this work took eighteen years to complete, spanning from 1976-1994, a period that covered significant developments in ‘Uthmānī’s career. Due to this extensive timeframe, ‘Uthmānī integrated much of his juristic innovation within this commentary, along with deep social analysis, addressing realms such as religious war, governance, political economy, and finance. The *Takmila* is published in six volumes.

Qur’anic Sciences

‘Uthmānī has made significant contributions to Qur’anic studies, producing both English and Urdu translations of the Qur’an, alongside a comprehensive text on Qur’anic sciences entitled, *‘Ulūm al-Qur’ān*, enhancing the accessibility and understanding of Qur’anic teachings.

Fiqh Works

Fatāwā ‘Uthmānī[143] (2012-6), currently available in four volumes, collates *fatwās* from Taqī ‘Uthmānī’s time as an *iftā’* student to his later years. Compiled by Zubayr Ḥaqq Nawāz using the extensive archives at Dār al-‘Ulūm Karāchī, the collection illustrates the dynamic interaction between Islamic law and everyday issues. These *fatwās*, deeply rooted in the Ḥanafī tradition, showcase vibrant

[138] ‘Uthmānī, *Dars-i Tirmidhī,* ed. Rashīd Aḥmad Sayfī, 3 vols. (Karachi: Maktaba Dār al-‘Ulūm Karāchī, 2010).
[139] Idem, *Taqrīr-i Tirmidhī,* ed., Muḥammad ‘Abd Allāh Memon, 2 vols. (Karachi: Memon Islamic Books, 1999).
[140] Idem, *In‘ām al-Bārī,* ed. Muḥammad Anwar Ḥusayn, 12 vols. (Karachī: Maktabat al-Ḥirā’, 2006).
[141] ‘Uthmānī, and Shabbīr Aḥmad ‘Uthmānī, *Fatḥ al-Mulhim ma‘a Takmilat Fatḥ al-Mulhim*, ed. Maḥmūd Shākir, 12 vols. (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 2006).
[142] Zill-i Humā’s PhD thesis rigorously studies these themes, see: Humā, “Takmila Fatḥ al-Mulhim”.
[143] ‘Uthmānī, *Fatāwā ‘Uthmānī,* ed. Zubayr Ḥaqq Nawāz, 4 vols. (Karachi: Maktaba Ma‘ārif al-Qur’ān Karāchī, 2012-6).

debates and real-life applications of jurisprudence, some of which are discussed later in this thesis. Highlights include discussions on issues that have shaped contemporary Islamic discourse in Pakistan, making this collection a vital resource for understanding the practical impact of Islamic law.

His two-volume work *Buḥūth fī Qaḍāya Fiqhiyya Mu'āṣira*[144] (1998) represents three decades of *ijtihād*—studying Islamic law in light of changing circumstances. The work collates articles and papers presented to the Islamic Fiqh Academy, and while primarily focusing on transactional law, they also include discussions on marriage, moonsighting, and other pressing issues. 'Uthmānī articulates his views through the Ḥanafī school but also incorporates perspectives from other *madhhab*s, reflecting the diverse discourse at the Fiqh Academy.

Fiqh al-Buyū'[145] (2015) is another one of 'Uthmānī's significant contributions to contemporary Islamic law. Published in two volumes, it produces a comprehensive study of trade and commerce across the four schools of Islamic law, in light of contemporary changes in the industry, integrating insights from English and French Common Law.

Focusing more on the procedure for issuing *fatwās*, *Uṣūl al-Iftā' wa Ādābuhū*[146] (2011) captures 'Uthmānī's methodological insights after a five-decade career as a *muftī*. Initially lecture notes for teaching Ibn 'Ābidīn's *Sharḥ 'Uqūd Rasm al-Muftī*, 'Uthmānī transformed these into a comprehensive guide that addresses major modern methodological questions that challenge traditional *fatwā*-writing, such as appeals to God's higher objectives (*maqāṣid*) and local customs (*'urf*), adapting to changing times, and switching between *madhhabs*. This book marks a significant contribution to Islamic jurisprudential methodology within the Ḥanafī *madhhab* and will be studied in Part II.

Miscellaneous Works

'Uthmānī has served as the editor of *Al-Balāgh* since its inception in 1967, where he regularly authors the editorial section, *zikr-o fikr*. Over the decades, his editorials have addressed various challenges faced by Pakistani society, especially those related to the practical and ideological aspects of establishing an

[144] Idem, *Buḥūth fī Qaḍāyā Fiqhiyya Mu'āṣira,* 2 vols. (Karachi: Maktaba Ma'ārif al-Qur'ān, 2010).
[145] Idem, *Fiqh al-Buyū',* 2 vols. (Karachi: Maktaba Ma'ārif al-Qur'ān, 2015).
[146] Idem, *Usūl al-Iftā' wa Ādābuhū* (Damascus: Dār al-Qalam, 2014).

Islamic system of governance. Following the Deobandī tradition of educating the public through books, magazines, and epistles,[147] 'Uthmānī's editorials offer traditionalist perspectives on the major public debates of the time, aiming to elevate public piety and enhance religious consciousness among the masses. Due to his unique educational background, 'Uthmānī's editorials combined religious principles with Western learning, providing nuanced perspectives to his readership. His editorials have been compiled into several influential books, reflecting on diverse topics such as the establishment of Islamic laws (*Nifāz-i Islām awr Uske Masā'il*[148]), modernism (*Islam awr Jiddat Pasandī*[149]), political issues (*Islām awr Siyāsat-i Ḥāḍir*[150]), economic systems (*Hamāra Mu'āshī Niẓām*[151]) and educational reforms (*Hamārā Ta'līmī Niẓām*[152]). These publications offer in-depth analyses and insights into the socio-political and religious fabric of contemporary Muslim society.

Conclusion

Taqī 'Uthmānī's life and scholarly endeavours can be understood as a commitment to realising the vision of living in a nation governed comprehensively by Islamic law and its principles, a concept deeply rooted in his family's history and aspirations. His father, Muftī Muḥammad Shafī', was pivotal in advocating for Pakistan's creation as a nation rooted in these principles. This foundational vision influenced 'Uthmānī's academic pursuits and professional trajectory. During the regime of President Zia-ul-Haq, 'Uthmānī saw significant strides toward embedding Islamic principles in governance, in which his scholarly contributions were well-received. His influence extended internationally as he pioneered Islamic finance, helping to craft the international frameworks that integrate Sharia compliance with modern financial systems.

[147] See: Brannon Ingram, *Revival from below: The Deoband movement and global Islam* (Oakland: University of California Press, 2018): 92-115.
[148] Idem, *Nifāz-I Islām awr Uske Masā'il* (Karachi: Maktaba Dār al-'Ulūm Karāchī, 2002).
[149] Idem, *Islam awr Jiddat Pasandī.*
[150] Idem, *Islām awr Siyāsat-i Ḥāḍir* (Karachi: Maktaba Dār al-'Ulūm Karāchī, 2008).
[151] Idem, *Humāra Mu'āshī Niẓām* (Karachi: Maktaba Dār al-'Ulūm Karāchī, 2002).
[152] Idem, *Hamārā Ta'līmī Niẓām* (Deoband: Zamzam Book Depot, 1995).

‘Uthmānī’s ascent in the religious and academic arenas was organic yet notably facilitated by his father's prominent position as the ‘Grand Muftī of Pakistan’. ‘Uthmānī was a uniquely placed scholar: alongside his rigorous religious training, his education in Western disciplines, particularly in economics and the common-law tradition, equipped him with a distinctive ability to articulate traditionalist thought with scholarly precision and integrate it with contemporary knowledge. This blend of expertise set him apart from other ‘*ulamā*. Furthermore, his familial connection provided him with unparalleled access to a network of leading ‘*ulamā* who recognised his intellectual talents from a young age. His scholarly contributions and intellectual rigour earned him the respect and admiration of esteemed scholars such as Yūsuf Binnorī and ‘Abd al-Fattāḥ Abū Ghudda, whose endorsements facilitated his rise to national and international prominence.

The influences on ‘Uthmānī’s intellectual development were multifaceted. His father's legacy instilled a profound reverence for the Islamic legal tradition. Yet it was Ashraf ‘Alī ‘Thānawī's methodologies, particularly in moving beyond the Ḥanafī *madhhab* and his pragmatism in transactional law, that offered ‘Uthmānī a model of balanced, adaptable juristic activity. Thānawī’s influence will be further elaborated in this thesis. Interestingly, however, ‘Uthmānī's engagements with Fazlur Rahman and other modernists were also crucial in defining his vision of Islamic law in the modern state. Rahman's progressive interpretations of Islam challenged ‘Uthmānī to articulate and reinforce a traditionalist perspective that respects the rich heritage of Islamic jurisprudence while addressing modern societal challenges. These interactions deepened his commitment to jurisprudence that is accessible and relevant to the global Deobandī community.

Part II: Method

Chapter 2: Deoband's *Taqlīd Shakhṣī* and Taqī 'Uthmānī

Part II of this thesis focuses on the methodological foundations that underpin Muftī Taqī 'Uthmānī's juristic practice. This chapter will focus on 'Uthmānī's writings on *taqlīd shakhṣī,* the foundational principle of his jurisprudence, which demands that all – both the jurist and the ordinary Muslim – adhere to a single *madhhab.* Crucially, 'Uthmānī's position on *taqlīd shakhṣī* did not begin with him; instead, his position is firmly rooted in the intellectual tradition of Dār al-'Ulūm Deoband. In fact, there is a clear intellectual genealogy tracing back from his father, Muḥammad Shafī', to his teachers, Muftī 'Azīz al-Raḥmān 'Uthmānī (d. 1928) and Mawlānā Ashraf 'Alī Thānawī (d. 1943), to their mentors, Mawlānā Ya'qūb Nānotawī (d. 1884) and Mawlānā Rashīd Aḥmad Gangohī (d. 1905), the founding members of the seminary.

This inherited Deobandī tradition passed down a specific emphasis on *taqlīd* and the traditional interpretative framework of the Ḥanafī *madhhab* to meet the biggest challenge to their scholarly authority and Islamic legal practice in general: British colonialism. Not only did Anglo-Muhammadan Law standardise Islamic law in such a way that rendered the role of the traditionally trained *muftī* or judge (*qāḍī*) redundant, but British interference also meant that the '*ulamā* could not uphold and administer the law to the Muslim masses. In addition, various revivalist groups emerged during this period that severely challenged the scholarly authority that the '*ulamā* yielded.[153] Thus, Deobandī forebears such as Gangohī, Ya'qūb Nānotawī and Thānawī looked within their legal tradition for sources to deal with the new arising social challenges of colonial India. In a similar vein, Thānawī's

[153] Since the late nineteenth century, the development of Anglo-Muhammadan law phased out the role of the *'ulamā* in administering Islamic law in India. The British regarded the discretionary nature of *ijtihād* in the *madhhab*-law tradition as inconsistent and arbitrary, beginning a process of uniformisation through translations so British judges could administer Islamic law. Despite this encroachment, the '*ulamā* held minor roles as advisors and registrars or retained positions in local councils. After the rebellion, the judicial system was wholly restructured between 1862 and 1872. Translations of al-Marghīnānī's a*l-Hidāya* and the *al-Sirājī*, an inheritance text, allowed Islamic law to be fully interpreted and applied by British judges, rendering the role of the '*ulamā* obsolete. Hallaq, *Sharī'a: Theory, Practice, Transformations* (New York: Cambridge University Press, 2009), 371-383. Scott Alan Kugle, "Framed, blamed and renamed: the recasting of Islamic jurisprudence in colonial South Asia." *Modern Asian Studies* 35, no. 2 (2001): 257-313, esp. 300-302. Uma Yaduvansh, "Decline of the Qazis (1793-1876)." *The Indian Journal of Political Science* 28, no. 4 (1967): 216-228.

protégé, Shafī‘ ‘Uthmānī, would also resort to traditional Ḥanafī resources in legal applications. The Deobandīs saw themselves as the preservers of a Ḥanafī juristic practice rooted in India since the medieval period.

With this in mind, this chapter discusses Taqī’s arguments for *taqlīd shakhṣī* - primarily through *Taqlīd ki Shar‘ī Haysiat* (1963, ‘The Religio-legal Status of *Taqlīd’*) alongside other texts - but considers these contributions as one iteration within a long line of Deobandī treatises on *taqlīd shakhṣī,* stretching back to the founders of Deoband. From lines of argumentation to the citing of common examples and pre-modern precedents, this work is replete with consistent and observable ideas examined and inherited by the scholastic generations of Deoband. Thus, in exploring Taqī’s predisposition to *taqlīd* and the Ḥanafī school, the conversation becomes necessarily embedded within a broader discussion surrounding the Deobandī revival mission in colonial India and the role *taqlīd* played in preserving the scholarly tradition as it has been practised for centuries.

This chapter foregrounds ‘Uthmānī’s jurisprudence within the Deobandī juristic lineage and the broader context of Ḥanafī juristic practice in South Asia. By studying Deobandī elaborations on *taqlīd shakhṣī* and ‘Uthmānī’s inheritance and development of this discourse, I explore the doctrinal lineage that informs ‘Uthmānī’s jurisprudence. This chapter begins by contextualising the Deobandī movement within the challenges of British colonialism and internal revivalist movements, emphasising its mission to preserve India’s long-established Ḥanafī heritage. Subsequently, I examine the evolution of *taqlīd shakhṣī* arguments among Deobandī elders, from the seminary’s founders through to Muḥammad Shafī‘ ‘Uthmānī, highlighting how the core Deobandī argument, that *taqlīd shakhṣī* is necessary for ensuring the integrity of religious law and that religious practice is guided by submission and not one’s desires, was adapted over generations. Finally, this chapter assesses Taqī ‘Uthmānī’s scholarly contributions to these debates, positioning them as a continuation and refinement of this inherited intellectual tradition.

Traditionalism in South Asian Islam: Deoband's Preservatory Mission

To appreciate the Deobandī insistence on *taqlīd* and Taqī 'Uthmānī's place within this discourse, it is crucial to understand the preservatory mission of Dār al-'Ulūm Deoband. While scholars have chronicled the broad history of Dār al-'Ulūm Deoband, this section specifically focuses on their efforts to preserve the traditional Islamic legal practice that has thrived in India since the medieval period. The *madrasa* was founded by six traditionally trained scholars in 1886, almost a decade after the failed Mutiny of 1857.[154] The British response to the Mutiny was brutal and decisive. Delhi was devastated, with significant loss of life and destruction of Islamic heritage – historical mosques, major *madrasa*s, and libraries - leaving the *'ulamā* in a state of shock. Mughal rule had ceased, and administration was entirely handed over to the British Raj.[155]

Delhi, the last centre of the Perso-Islamic culture of the Mughal empire, was a melting pot of Islamic discourse. The founders of Deoband were instructed by scholars at the vanguard of the traditional line of Ḥanafī scholarship: Mawlānā Mamlūk 'Alī, the head of oriental studies at the Delhi College,[156] and Ṣadr al-Dīn Āzurda, the highest-ranking Ḥanafī *muftī* in Delhi.[157] At Madrasa-i Rahīmiyya, its most prominent teacher, Nazīr Ḥusayn Dehlawī, influenced a generation of scholars to question the authority of the *madhhab*s, advocating for critical engagement with the sources of law.

[154] The early history of Deoband and the first institutional groups and committees are recorded in: Farhat Tabassum, *Deoband Ulema's Movement for the Freedom of India* (New Delhi: Jamiat Ulama-i-Hind, 2006): 44-7. See also: Sayyid Maḥbūb Riḍawī, *Tārīkh Dār al-'Ulūm Deoband*, 2 vols. (Deoband: Maktaba-i Dār al-'Ulūm Deoband, 1980). Metcalf's monograph on the history of Deoband is widely regarded as the authoritative source on the subject. See: Metcalf, *Islamic Revival in British India: Deoband, 1860-1900* (Princeton: Princeton University Press, 2014). See also, Ingram, *Revival from Below,* 31-54.

[155] For a brief history of the events leading up to the rebellion, and the political and territorial decline of the Mughal Empire, see: Ramesh Chandra Majumdar, *The Sepoy Mutiny and the Revolt of 1857* (Calcutta: Calcutta Oriental Press, 1957): 1-38; Tara Chand, "The decline and fall of the Mughal empire" in: *History of the Freedom Movement in India, Volume One* (Delhi: The Publications Division, Ministry of Information and Broadcasting, 1961): 45-69. Notably, the name of this event is politically contested, with many in India referring to it as the "First War of Independence". See: Ronald Allan Geaves, "India 1857: A Mutiny or a War of Independence? The Muslim Perspective" *Islamic Studies* 35, no. 1 (1996): 25-44.

[156] Nūr al-Ḥasan Kandehlwī, *Ustādh al-Kull: Mamlūk 'Alī Nānotawī* (Kandala, Hazrat Mufti Ilahi Bakhsh Academy, 2009).

[157] Āzurda rose to the ranks of the rank of Ṣadr al-Ṣudūr and Muftī of Delhi. This position meant that he posed as a mediator between the Mughals and the East Indian Company for matters of Islamic law. See: 'Abd al-Raḥmān Parwāz Iṣlāhī, *Muftī Sadr al-Dīn Āzurda* (Delhi: Maktaba-i Jāmi'ā Limited, 1977): 20-22. Iṣlāhī dates this appointment to c. 1827 though demonstrating some caution in this that it is possible that he was rising the ranks during this period also. According to Swapna Liddle, Āzurda was appointed to this role by 1841; though again, a precise date is not mentioned. See Swapna Liddle, "Azurda: Scholar, Poet, and Judge" in: *The Delhi College: Traditional Elites, the Colonial State, and Education before 1857*, ed. Margit Pernau (New Delhi: Oxford University Press, 2006): 125-144. esp. 127.

Dehlawī, known as the "Shaykh of the Shaykhs", would influence Siddiq Hasan Khan, credited as the founder of the Ahl-i Ḥadīth movement.[158] In the aftermath of the Mutiny, the Delhi College, Āzurda's Dār al-Baqā' *madrasa* near the Red Fort, and the Rahīmiyya were ransacked, looted, and destroyed.[159]

In response to this major catastrophe, the founders of Deoband turned inward to preserve their religious traditions, migrating to towns surrounding Delhi, such as Deoband and Saharanpur.[160] As Metcalf describes, "their sole concern was to preserve the religious heritage – the classic role of the *'ulamā* from the post-'Abbasid centuries on".[161] The traditionalist heritage of India was under threat; their major heritage centres were ransacked in the aftermath of the Mutiny, the British imperial order encroached on their religious authority – through educational and legal reforms – and the Islamic reform groups of the period called for open *ijtihād.* The founders established Dār al-'Ulūm to preserve the rich traditionalist history – the Ḥanafī school of law and the Māturīdī school of theology – which had dominated the religious classes in the Indian subcontinent and to create the next generation of traditionalist thought-leaders. The ensuing curriculum of Deoband combined influences from significant learning centres: the law and methodological works of Firangī Maḥall in Lucknow, the Hadith influences of Shah Walī Allāh and the Raḥīmiyya, logic from Faḍl-i Ḥaqq Khayr Ābādī's (d. 1861) *madrasa* in Khairabad, and the curriculum of the Delhi College.[162]

The central point is that Deoband was established to safeguard the rich tradition of juristic practice that had flourished since the medieval period, introduced to India by Central Asian Muslim leaders with a Ḥanafī-Māturīdī focus, extending back to the Delhi Sultanate.[163] In fact, over a dozen *fatwā* collections and legal compendia of Ḥanafī law have been written in India, going as far back as

[158] Khan, "The Forgotten Soul of the Resistance Movement," 507-20. For a history of the Ahl-i Ḥadīth, see: idem, "Ahl-i-Hadith Movement in Northern India, 1857-1947 A.D" (PhD diss., University of Kashmir, 1987).
[159] William Dalrymple effectively conveys the looting, loss, sadness, and melancholy of the sack of Delhi through first-hand accounts. His use of letters, particularly those of the famous poet Mirza Ghālib, brings the emotional depth of the events to life. See: William Dalrymple, *The Last Mughal: The Fall of Delhi, 1857* (London: Bloomsbury, 2006): 454-464, esp. 463.
[160] Metcalf, *Islamic Revival in British India*, 85.
[161] Ibid., 11.
[162] According to Riḍawī, the curriculum at Deoband was influenced by the first three madrasas. Nūr al-Ḥasan Kandehlwī also posits that the Delhi College had an impact on the initial curriculum, cf: Riḍawī, *Tārīkh Dār al-'Ulūm Deoband*, 2: 268; Nūr al-Ḥasan Kandehlwī, "Dār al-ʿUlūm Deoband awr Maẓāhir al-ʿUlūm Sahāranpūr kā Sab se Pehlā Niṣāb-i Taʿlīm." *Aḥwāl o-Āthār Kandala*, n.v., n.i. (2008): 93.
[163] Islam, "Origin and Development of Fatawa Compilation in Medieval India," 224.

Fatāwā Ghiyāthiyya, a compendium of Ḥanafī law dedicated to Sultan Ghiyāth al-Dīn Balbān (r. 1266-86). Interestingly, many of these prominent legal compendia are alleged to have been commissioned by the ruling elite or are ascribed to them.[164] These legal compendia demonstrate engagement with the broader Ḥanafī tradition, as they engaged with the *madhhab*'s authorities when authoring new juristic opinion. For example, *Fatāwā Tātar Khāniyya,* a comprehensive thirty-one-volume compendium written by 'Ālim b. al-'Alā' al-Ḥanafī (d. c. 786/1384-5),[165] frequently cites Ibn Māza's *Muḥīṭ al-Burhānī* (d. 616/1219),[166] Qāḍīkhān al-Ujzandī's (d. 592/1196)[167] *Fatāwā*, and Ṭāhir al-Bukhārī's (d. 542/1147)[168] *Khulāsat al-Fatāwā*.[169] In reference to the *madhhab* as a guild, these compendia, alongside scores of independent Ḥanafī *fatāwā* collections, *fiqh* commentaries and marginalia, were contributions within the guild, utilising and engaging with inherited *madhhab* discourse to resolve some of the most pressing socio-economic issues of their time.[170] For example, *Fatāwā Firūz-i Shāhī*, written during the reign of Sultan Firūz Shāh Tughlaq (r. 1351-88), demonstrates the various socio-economic issues the *Fatāwā* was attempting to respond to, from the pre-Islamic marital custom of *nichhāwar* to local bills of exchanges, known as *hundi*, and the Sultan's price fixation policy.[171]

While the Ḥanafī *madhhab* was dominant among scholars in India, the region lacked the professionalised civil service of '*ulamā* found in Ottoman territories, which systematised the administration of Islamic law within the empire. These Indian *fatāwā* collections and legal compendia

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[164] Ibid., 226-231.

[165] 'Ālim b. al-'Alā' al-Indarbatī (Indarpatī in Indian pronunciation), author of *Fatāwā Tātārkhāniyya*, was a jurist that lived during the reign of Delhi Sultan, Firūz Shah (r. 1351-58) For biographical details, see: 'Abd al-Ḥayy al-Ḥasanī, *Nuzhat al-Khawāṭir wa Bahjat al-Masāmi*', 8 vols. (Beirut: Dār Ibn Ḥazm, 1999): 2: 170.

[166] Burhān al-Dīn Ibn Māza, grandson of Burhān al-A'imma and nephew of al-Ṣadr al-Shahīd, was a Transoxianan Ḥanafī jurist, famed for his *al-Muḥīṭ al-Burhānī*. This legal compendium is most noteworthy due to its heavy consolidation and reference to proceeding authorities from Transoxiana. For biographical details, see: 'Abd al-Ḥayy al-Lakhnawī, *al-Fawā'id al-Bahiyya fī Tarājim al-Ḥanafiyya* (Cairo: Dār al-Sa'āda, n.d.): 205-7.

[167] Qāḍīkhān was a Transoxianan Ḥanafī jurist, born in Uzkand in the Ferghana region of Transoxiana. For biographical details, see: Abū l-'Adl Qāsim Ibn Quṭlūbughā, *Tāj al-Tarājim*, ed. Muḥammad Khayr Ramaḍān Yūsuf (Damascus: Dār al-Qalam, 1992): 151-2.

[168] Ṭāhir b. Aḥmad al-Bukharī is a Transoxianan jurist who studied under Qāḍīkhān. For biographical details, see: al-Lakhnawī, *al-Fawā'id al-Bahiyya*, 85.

[169] Islam, "Origin and Development," 226-27.

[170] Ibid., 233-4. This article lays the groundwork for Islam's more detailed monograph on the subject, where the legal compendia of the Sultanate period and their authors' responses to socio-economic challenges are explored in greater depth. See: idem., *Fatāwā Literature of the Sultanate Period* (New Delhi, Kanishka Publishers, 2005). Additionally, 'Abd al-Ḥayy al-Ḥasanī lists scores of such legal works, written independently, outside of the imperial order. See: al-Ḥasanī, *al-Thaqāfat al-Islāmiyya fī l-Hind* (Cairo: Hindāwī, 2014): 101-111.

[171] Islam, *Fatāwā Literature of the Sultanate Period,* 58, 61-3.

served as the necessary reference points for the '*ulamā* employed as judges and *muftī*s across India. This emphasis on creating authoritative and relevant legal references for imperial judges and *muftī*s is most evident in the intent behind the *Fatāwā 'Ālamgīrī* project. To standardise Mughal judicial practice upon the Ḥanafī *madhhab,* Aurangzeb commissioned 500 scholars to consolidate the intergenerational discourse of the Ḥanafī *madhhab* to produce authoritative legal norms of the *madhhab* for imperial judges to consult.[172] *Fatāwā 'Ālamgīrī* represents the pinnacle of *madhhab*-based legal production in India, authored at the height of Mughal rule, before the advent of British colonialism. The scholars involved in the *Fatāwā* project hailed from across the Indian subcontinent. While '*ulamā* from Delhi and the surrounding areas in northern India dominated, the scholars of the *Fatāwā* also came from as far east as Bihar and as far west as Sindh and Lahore (in modern-day Pakistan), such that geographical diversity ensured that "no localised clique dominated the [interpretive] work".[173]

Even as the empire began to decline, this Ḥanafī heritage persisted, eventually narrowing to Delhi and its surrounding towns in Northern India.[174] Robinson refers to the culture of the Muslim ruling classes and noble people as the Perso-Islamic culture: this was the dominant culture in Delhi and the surrounding rural towns.[175] One of the defining features of this culture was the transmission of Islamic knowledge, most notably Ḥanafī legal practice and Māturīdī rational sciences.[176] Most notably, Lucknow's Firangī Maḥall, a seminary endowed to a family of religious scholars by Aurangzeb in 1694, would produce the *dars-i niẓāmī* syllabus. By the eighteenth and nineteenth centuries, this syllabus

[172] For the importance of *Fatāwā 'Ālamgīrī* in the Aurangzeb administration, see: Alan Guenther, "Hanafī Fiqh in Mughal India: The Fatāwā-i 'Alamgīrī" in: *India's Islamic Traditions, 711-1750,* ed. Robert Eaton (New Delhi: Oxford University Press, 2003): 209-230; Masud, "Religion and State in Late Mughal India: The Official Status of the Fatawa Alamgiri." *LUMS Law Journal* 3, no.1 (2016): 32-50. See also: Jamal Malik, *Islam in South Asia* (Leiden: Brill, 2020): 260-4.
[173] Guenther, "Hanafī Fiqh in Mughal India," 216-8. Quote from pp 218.
[174] Metcalf notes these surrounding rural towns, or *qasbah*s of the upper doab region as centres of imperial influence as leading religious leaders, zamindars and courtiers had settled in these towns. This includes Deoband, Saharanpur, Kandhala, Nanautah. In: Metcalf, *Islamic Revival in British India*, 63.
[175] Francis Robinson, *The 'Ulama of Farangi Mahall and Islamic Culture in South Asia* (London: Hurst Publishers, 2001): 11-12.
[176] Ibid., 13-14, 17.

became the standard across Indian seminaries, training generations of Ḥanafī-Māturīdī *muftī*s and imperial judges.[177]

The Deobandīs sought to preserve this long-standing Indian tradition of Ḥanafī juristic practice, and this is most evident in the *fatāwā* they produced, which demonstrate a precise adherence to the *madhhab,* authoring their legal opinions within its regulations.[178] In analysing the earliest Deobandī *fatāwā* collections, namely Gangohī's *Fatāwā Rashīdiyya*, Thānawī's *Imdād al-Fatāwā* and Sahāranpūrī's *Fatāwā Maẓāhir al-'Ulūm,* one recognises an explicit reliance on seminal Ḥanafī references in evidencing their legal positions. A large proportion of legal edicts are evidenced through quotes from al-Marghīnānī (d. 593/1197),[179] Ibn 'Ābidīn, Ibn Nujaym (d. 970/1563),[180] and other Ḥanafī authorities.[181] These are the same legal authorities considered in the Indian *fatāwā* collections from the medieval period.

Consider the *fatāwā* collection of 'Azīz al-Raḥmān 'Uthmānī, which was published and collated as the institutional *fatāwā* collection of the Deoband seminary. Although 'Azīz al-Raḥmān authored *fatwā*s without citing specific *madhhab* precedent, he predominantly relied on citations from Ibn 'Ābidīn and al-Ḥaṣkafī (d. 1088/1677)[182] to resolve legal questions. Additionally, for those opinions

[177] Ibid., 22-23. Robinson's monograph details the intricacies of the Niẓāmī syllabus and its pivotal role in the continuity of Ḥanafī scholarship in South Asia. For a detailed insight into the texts studied as part of the syllabus and its focus on Ḥanafī-Māturīdī legal and theological texts, see: 42-55. Such was the prominence of the *dars-ī niẓāmī* syllabus, Malik describes it as "state-legitimising", in: Malik, *Islam in South Asia,* 297.

[178] Masud, "Trends in the Interpretation of Islamic Law," 54-80.

[179] Al-Marghīnānī was a Transoxianan Ḥanafī jurist, born in Ferghana. His *al-Hidāya* forms the major jurisprudential substance of the *dars-i niẓāmī* syllabus and has been included in the curriculum since the time of Mullā Niẓām. See: Robinson, *The 'Ulama of Farangi Mahall,* 48. For biographical details on al-Marghīnānī, see: Ibn Quṭlūbugha, *Tāj al-Tarājim*, 206-7.

[180] Zayn al-Dīn Ibn Nujaym, author of *al-Baḥr al-Rā'iq,* a commentary of al-Nasafī's (d. 710/1310) *Kanz al-Daqā'iq,* and *al-Ashbāh wa l-Naẓā'ir,* was a famous Ḥanafī jurist who lived and passed away in Ottoman Egypt. He studied with the leading scholars of his time, including Shihāb al-Dīn al-Shilbī (d. 937/1540), who authored super marginalia on al-Zayla'ī's *al-Tabyīn al-Ḥaqā'iq*. For biographical details, see: Najm al-Dīn Muḥammad b. Muḥammad al-Ghazzī, *al-Kawākib al-Sā'ira bi -A'yān al-Mi'at al-Āshira*, ed. Khalīl al-Manṣūr, 3 vols. (Beirut: Dār al-Kitāb al-'Ilmiyya, 1997): 3: 137-8.

[181] I conducted a study of the "Chapter[s] of Purity (*Kitāb al-Ṭahāra*)" of each of these *fatwā* collections and compiled a list of the sources cited by the authors. See Appendix 2 for the findings. In Thānawī and Sahāranpūrī's edicts, these references are regularly cited within the text to explain and evidence their positions. In the *Rashīdiyya,* we recognise that Gangohī habitually offers legal responses without citing references. I have found a handful of instances where Gangohī cites an external authority in his legal positions – that being, Ibn 'Ābidīn. Sporadically, Gangohī closes off certain responses with the statement "as in the books of fiqh" (*kamā fi kutub al-fiqh*).

[182] Al-Ḥaṣkafī, author of *al-Durr al-Mukhtār,* served as the *muftī* of Damascus. For biographical details, see: Khayr al-Dīn b. Maḥmūd al-Zirkilī, *al-A'lām*, 8 vols. (Beirut: Dār al-'Ilm li l-Malāyīn, 2002): 6: 294-5.

that appear without citations, the retrospective referencing by the editor demonstrates that his positions align with established legal norms from the *madhhab*.[183] Similarly, in Muḥammad Shafī‘ ‘Uthmānī’s *Imdād al-Muftīn*, which compiles the *fatwā*s he wrote as chief *muftī* of Deoband, one also observes wholesale engagement with terse and lengthy passages of *madhhab* discourse to derive legal opinion.[184]

Another frequent form of citation visible in these early Deobandī *fatāwā* collections is the absence of explicit citations, where norms are articulated without referencing specific sources. This practice is consistent from Gangohī to ‘Azīz al-Raḥmān ‘Uthmānī. Historically, omitting references or the legal principle being applied in an edict was common in *fatwā* literature, especially when a *muftī* operates within a *madhhab* framework. Since such answers would conform to the dominant opinion within the school, citing sources was deemed unnecessary.[185] Within the colonial context, there was an additional concern. As Thānawī notes, providing citations or disclosing the legal reasoning behind *fatwā*s could lead to colonial judges misappropriating them.[186] By withholding such details, the Deobandī *muftī*s sought to maintain the authority of Islamic law within their scholarly circles, resisting external interference.

Moving forward, one observes evident forms of continuity between these early Deobandī *fatāwā* texts and the Indian *fatāwā* collections of the medieval and pre-modern periods. In their exclusive citing of Ḥanafī references and insisting on staying within the remit of the *madhhab* as far as possible, the Deobandīs cling on to the forms of authority of the pre-modern age, preserving how juristic activity proliferated in the sub-continent for centuries, and amidst the challenges of the colonial age, the Deobandīs sought to preserve this heritage. A key component of their preservatory mission was *taqlīd shakhṣī,* that both scholars and the general Muslim masses must adhere to a single *madhhab* for

[183] See: Zafīr al-Dīn, “Muqaddima” in: ‘Azīz al-Raḥmān ‘Uthmānī, *Fatāwā Dār al-‘Ulūm Deoband*, compiled by Muḥammad Amīn Pālanpūrī, 18 vols. (Deoband: Maktaba-i Dār al-‘Ulūm Deoband, n.d.): 140-141.
[184] For a clear example of Shafī’s deep engagement with *madhhab* precedents, see: Shafī‘ ‘Uthmānī, *Imdād al-Muftīn*, 247-262.
[185] Hallaq, *Authority, Continuity and Change in Islamic Law*, 89-90.
[186] Muḥammad Zayd Maẓharī Nadwī, *Fiqh Ḥanafī ke Uṣūl-o Ḍawābiṭ: Muntakhab az Ma’wā‘iẓ-o Malfūẓāt Ḥakīm al-Ummat Thānawī* (Karachi: Zam Zam Publishers, 2003): 45-6. Nadwī is the preeminent scholar on Thānawī and has produced numerous texts by extracting Thānawī's advice from his extensive works, compiling and organising them by topic. This is one such work which compiles Thānawī’s advice on *uṣūl al-fiqh*.

legal opinion. As the Perso-Islamic culture of the ruling classes and nobility had ceased, and British cultural and political hegemony ensued, *taqlīd* served as a foundational pillar to ensure the integrity of Islamic practice and the rightful position of the *'ulamā* in guiding religious practice.

On Deobandī *Taqlīd*

Having discussed the preservatory intent behind the Deobandī movement, we will now turn to the legal justifications they advocate for *taqlīd shakhṣī.* This shift from a broad historical overview to a detailed examination of juristic reasoning will elucidate how the Deobandī elders sought to anchor their doctrinal stances within the Islamic legal tradition. The focus of this section will diverge from Taqī 'Uthmānī; instead, it will analyse the writings on *taqlīd shakhṣī* chronologically, from the works of the founders of Deoband to Muḥammad Shafī' 'Uthmānī, a third-generation Deobandī. This chronological analysis will trace the evolution and nuances of their argumentation, generation to generation, thus situating Taqī 'Uthmānī's integration and expansion of these ideas.

Zeeshan Chaudri's research into Deobandī *taqlīd* stands as the most authoritative, as it examines the expression of *taqlīd shakhṣī* through the writings of the first two generations of Deobandī elders.[187] Chaudri's study includes the writings of founders, Nānotawī and Gangohī, and scholars at the vanguard of the second generation: Anwar Shāh Kashmīrī (d. 1933), Ashraf 'Alī Thānawī, and 'Ubayd Allāh Sindhī (d. 1944). Chaudri uncovers a clear inherited standard on *taqlīd*. While the first and second generations differed in the level of sophistry and complexity in their argumentation, fundamentally, they maintained and developed a core argument about the integrity of religious law and submission. Both generations necessitated *taqlīd shakhṣī* for its logistical and pragmatic use, ensuring that religious practice is efficiently organised, consistent and applicable for the *'ulamā* and, significantly, the lay Muslims.

[187] Zeeshan Ahmed Chaudri, "Demarcating the Contours of the Deobandi Tradition via a Study of the 'Akābirīn from 1900-1960" (PhD diss., School of Oriental and African Studies, University of London, 2020): 61-84.

In the writings of Nānotawī and Gangohī, appeals to legal technicalities and scripture are less frequent; instead, they make rational arguments to mandate *taqlīd shakhṣī* upon scholars and laypeople. Nānotawī calls upon the parable of the doctor-patient relationship. Generally, people understand that they should follow the prescriptions of a single doctor. One may opt for a new doctor at certain stages but often do so wholeheartedly; they must not mix and match prescriptions. Such is the status of *taqlīd,* where one adheres to a single school in all matters or moves to another school wholeheartedly, like al-Ṭaḥāwī (d. 321/933), a former-Shafi'ī turned Ḥanafī.[188] Gangohī takes a similar view, writing that *taqlīd shakhṣī* safeguards fundamental public interests (*maṣlaḥa*) that the Sharia has demanded, namely systematising religious practice and repelling the possibility of chaos and desires driving religious observance.[189] Gangohī appeals to the historical compilation of the Qur'an under Caliph 'Uthmān (r. 644-656), where Muslims were united upon a single transmission of the Qur'an to avoid the chaos and confusion that ensued from the public misunderstanding of the seven dialects (*aḥruf*) of the Qur'an. Likewise, adhering to a single school prevents confusion from the multiplicity of legal opinions. Subsequently, *taqlīd shakhṣī* is not necessitated directly by scripture (*wājib li 'aynihī)*; nevertheless, it becomes necessary for external reasons (*wājib li ghayrihī*), i.e., to negate this harm to the Sharia and to grant uniformity and consistency to Islamic practice.[190] Notably, neither Nānotawī nor Gangohī attempted to analyse scripture or juristic precedent; as these writings were responses to lay Muslims, the necessity of *taqlīd shakhṣī* was argued through more straightforward means.

Despite the use of technical language and complex legal reasoning, the writings of the second generation retain similar ideas.[191] With specific reference to Thānawī, the necessity of *taqlīd shakhṣī* is

[188] Muḥammad Qāsim Nānotawī, *Taṣfiyat al-'Aqā'id* (Delhi: Dār Maṭba'-i Mujtabā'ī, n.d.): 37. Al-Ṭaḥāwī was one of the great Ḥanafīs of the ancient period. He was born in Egypt and was first initiated into the Shafī'ī *madhhab* before changing to the Ḥanafī *madhhab*. For biographical details, see: Ibn Quṭlūbughā, *Tāj al-Tarājim*, 100-2.
[189] Rashīd Aḥmad Gangohī, *Fatāwā Rashīdiyya* (Karachi: Dār al-Ishā'at, 2003): 87.
[190] Ibid.
[191] For the sake of brevity, only Thānawī will be discussed here. For the views of Anwar Shāh Kashmīrī, a high-ranking stalwart of the second generation, see: Muḥammad Anwar Shāh Kashmīrī, *Fayḍ al-Bārī 'alā l-Ṣaḥīḥ al-Bukhārī*, 6 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 2005): 1: 459. For Kashmīri, each legal school is built upon epistemological principles that characterise the school with an internal logic, such that each verdict necessarily entails harmony and continuity with these principles. Therefore, mixing and matching views from across the schools entails intellectual inconsistency as the epistemological principles of each case will contradict each other. Thus, consistency and continuity mandate sticking within the confines of a single school. Though novel and unlike the arguments raised in this section, this argument appeals to the consistency and organisational hypothesis inherent within each Deobandī response discussed in this section.

understood from the demarcation of two forms of obligations: (i) objective obligations mandated directly by the Qur'an and Prophetic tradition (*wujūb al-dhāt*), and (ii) prerequisites of obligations that become necessary to fulfil an objective obligation (*muqaddimāt al-wujūb*).[192] Thānawī contends that while the compilation of the Qur'an and Hadith literature was not mandated by scripture, it is a prerequisite for preserving Islamic knowledge, which is an objective obligation. Thus, the prerequisite becomes necessary to fulfil an objective obligation. In a similar vein, religious practice is navigated by five objective obligations firmly established by scripture:

1. Religious practice must be performed in submission to God alone. Sincere intentions are necessary.
2. One's desires cannot drive religious practice.
3. One must abstain from practices that have a strong possibility of harming one's faith.
4. One must not oppose the consensus of the Muslim scholars (*ijmā'*) by opting for 'unorthodox' positions.
5. One must not transgress the boundaries of religious injunctions.[193]

These five obligations drive religious practice, and the free market of religious opinion is detrimental to upholding these obligations. Thānawī thus concludes that *taqlīd shakhṣī* is a necessary prerequisite to ensure these obligations are upheld.[194] *Taqlīd shakhṣi* ensures that religious practice is performed in submission to God alone instead of seeking out 'unorthodox' legal opinions to comply with pre-conceived desires. One notices a strong theme from these two generations of scholars. While the technical language and form of argumentation varied due to the target audience of each respective response,[195] *taqlīd shakhṣī* is seen as a necessary logistical tool to systematise religious practice,

[192] Ashraf 'Alī Thānawī, *al-Iqtiṣād fī l-Taqlīd wa l-Ijtihād* (Karachi: Qadīmī Kutub Khānā, n.d.): 33-4. Thānawī also uses the term *wujūb bī l-ghayr*, necessary for external reasons – the term used by Gangohī.
[193] Ibid., 41-47. Thānawī cites nine Hadith to establish these five principles.
[194] For the comprehensive exposition of Thānawī's argument, which methodically employs Hadith examples and analytical deductions, refer to Ibid., 33-54.
[195] Thānawī's *al-Iqtiṣād* was written as a technical treatise on *taqlīd* while the founder's responses were letters to the public. Thānawī also discusses the *ijtihād* in this treatise, arguing that while *ijtihād* is not an impossibility in an absolute sense, no such person exists that can derive an entire body of legal doctrine from scripture alone. Instead, Thānawī contends that *ijtihād* in its minor forms–as rule verification (*taṣḥīḥ*), new preponderances (*tarjīḥ*) and extrapolation (*takhrīj*) from existing *madhhab* discourse–exists and prospers. See: Thānawī, *al-Iqtiṣād*, 64. As we shall demonstrate in Chapter 3, 'Uthmānī upholds a similar position.

providing consistency in application and avoiding the public malaise caused by the diversity of legal opinion. This theme is evident in the founders' writings and built upon by the likes of Thānawī through sophistry and legal technicalities.

Having seen an observable trend among the first two generations, let us consider the writings of Muḥammad Shafī' - Thānawī's disciple, Taqī's father and one of the leading jurists of the third generation. Muḥammad Shafī's treatise on *taqlīd* was initially written as a *fatwā* in 1916, which was reformatted and published as a treatise in an institutional journal of Deoband in 1936.[196] Shafī' begins his treatise by citing the Qur'an, which mandates asking a specialist for religious opinion when one does not know. Shafī' refers to this as *taqlīd muṭlaq*, i.e., this is a command to perform *taqlīd* of any specialist; the Qur'an does not stipulate any conditions to this *taqlīd*. Therefore, if the Qur'an does not stipulate a condition, how does one further qualify *taqlīd* to argue that one must adhere to the doctrines and opinions of a single *madhhab* and disregard other opinions?

In response, Shafī' writes that both *taqlīd muṭlaq* and *taqlīd shakhṣī* existed in the time of the Prophet's Companions and their successors, citing precedents wherein one strictly adhered to the views of one single Companion. For example, Shafī' cites a report where the companion, 'Amr b. Maymūn (d. 74-5/693-5) recalls that he remained steadfast to the legal opinions of Mu'ādh b. Jabal (d. 18/639) until he passed away, thereafter committing to the legal opinions of Ibn Mas'ūd (d. 33/653) until Ibn Mas'ūd passed away.[197] Similarly, Shafī' cites an occasion when the Muslims of Medina belligerently refused to depart from the view of Companion Zayd b. Thābit (d. 45/665), when Companion Ibn 'Abbās (d. 68/687) offered them his legal opinion. These precedents of Companions and their successors remaining steadfast upon the views of a single scholar demonstrate that *taqlīd shakhṣī* was not alien to the early Muslim community.

[196] In 1916, Shafī' 'Uthmānī was instructed by his teacher, Muftī 'Azīz al-Raḥmān 'Uthmānī on writing a response to a query on *taqlīd shakhṣī,* culminating in a lengthy treatise. Shafī' would then edit this article twice, once in 1939 for the *al-Muftī* Journal, and again in 1975 in preparation for the publishing of his *Jawāhir al-Fiqh*, a compilation of Shafī's most pressing legal treatises. I highlight to draw attention to the fact that this treatise represents Shafī's views as a student, as a Muftī of the *Dār al-Iftā'* at Dār al-'Ulūm Deoband, and in his later life in Karachi.

[197] Shafī' 'Uthmānī, *Jawāhir al-Fiqh,* 2: 29.

However, Shafī‘ contends that times have moved beyond the lofty status of this golden generation. Shafī‘ writes that in the third century of Islam, after the formation of the legal schools, corrupt attitudes of certain Muslims led to individuals seeking dispensation and regulating religious practice by their desires, rendering religion a game.[198] Shafī‘ bolsters his argument by appealing to Ibn Taymiyya (d. 728/1328), who Shafī‘ notes as a leading authority to the *ghayr muqallidūn* (those that do not adhere to a *madhhab*, i.e., the Ahl-i Ḥadīth). Ibn Taymiyya addresses a situation where individuals selectively choose opinions from different *madhhab*s to sidestep the definitive consequence of uttering three divorces, which would usually annul the marriage. Ibn Taymiyya describes this cherry-picking as "impermissible by the consensus of the *umma* (religious community)," as it trivialises religion, opening the door for personal whims to dictate what is lawful and unlawful.[199]

Subsequently, to ensure that religious practice is guided by submission to God rather than submission to one's desires, Shafī‘ writes, "the public interest of the Sharia (*maṣlaḥat-i sharī‘a*) demands that people are prohibited from *taqlīd muṭlaq,* and everyone is united upon *taqlīd shakhṣī*".[200] This argument is in line with that of the elders discussed previously. Like Gangohī, Shafī‘ also describes 'Uthmān's compilation of the Qur'ān as an example of how the multiplicity of opinion resulted in corruption and disunity, which was eliminated by uniting the people upon one standard. The evocation of *maṣlaḥa*, the fear of relegating religion to the seeking of dispensations and corruption, and the example of Qur'anic compilation are all arguments that Shafī‘s elders have made. Shafī‘ complements his treatise with three articles as addenda: Nānotawī's letter on *taqlīd*, an unpublished article from Gangohī which responds to Ahl-i Ḥadīth objections to *taqlīd shakhṣī*, and an article from Shabbīr Aḥmad 'Uthmānī on examples of *taqlīd shakhṣī* from the early Muslim community.[201] In sum, Shafī's treatise connects the arguments of his predecessors as one, representing a standard on *taqlīd shakhṣī* which is demonstrably inherited from the first and second generation of the Deobandī elders. From the

[198] Ibid., 2: 25.
[199] Ibid., 2: 26.
[200] Ibid., 2: 24.
[201] Ibid., 2: 33-58.

repetition of argumentation to the addenda, it is fair to represent Shafī's efforts as a summary of the previous Deobandīs.

It is, nevertheless, imperative to note that these Deobandīs stand at odds with many of their Ḥanafī predecessors. These Ḥanafīs agree that a Ḥanafī scholar should stay within the *madhhab* for personal worship, as they have given preponderance to it, and acting contrary to one's preponderance would amount to serving one's desires. As for the layperson, while a weak position suggests that they should also practice within a single *madhhab*,[202] most of the major references of the Ḥanafī *madhhab* state that "a layperson has no specific *madhhab*" (*laysa lahū madhhab mu'ayyan*). Instead, a layperson is only obligated to ask a scholar and take their opinion, be that a Ḥanafī in one matter and a Shāfi'ī in another. Therefore, this position imposes only *taqlīd muṭlaq* upon lay Muslims, rather than *taqlīd shakhṣī,* and it is opined by prominent Ḥanafī jurists, e.g. Ibn al-Humām (d. 861/1456),[203] Ibn Nujaym,[204] and al-Shurunbulālī (d. 1089/1658).[205] This position is also the view of Shāh Walī Allāh (d. 1762),[206] a revered Indian scholar that Deobandīs cite as an intellectual forefather.[207] Despite being seminal references in the Ḥanafī tradition, these scholars differ from the scholars of Deoband on *taqlīd shakhṣī*. While *taqlīd shakhṣī* can be supported through an isolated position in the Ḥanafī school, it is ironic that these Deobandīs conduct *ijtihād* by attempting to reanalyse source material and precedent

[202] See the case-law cited by Muḥammad Amīn Ibn 'Ābidīn, *Radd al-Muḥtār 'alā l-Durr al-Mukhtār* (Karachi: H. M. Saeed, n.d.): 5: 481. The H. M. Saeed edition is a reprint of the renowned Bulaq edition, which has long been circulated and widely accessible in the subcontinent. This is the version that most Deobandī scholars of the past have relied upon.

[203] Kamāl al-Dīn Muḥammad b. 'Abd al-Wāḥid Ibn al-Humām, *Fatḥ al-Qadīr,* 10 vols. (Beirut: Dār al-Fikr, n.d.): 7: 257-8. Kamāl Ibn al-Humām, author of *al-Fatḥ al-Qadīr,* a commentary of *al-Hidayā* with a particular Hadith focus, was the leading Ḥanafī scholar in Mamluk Cairo; he was born in Alexandria where his father served as a *qāḍī*. He studied in Cairo and taught at the Manṣūriyya *madrasa*. He also studied under the leading Hadith scholars of the time including al-Aynī, Walī al-Dīn al-'Irāqī, Ibn Ḥajar al-'Asqalānī (d. 852/1449). For biographical details, see: Muṣṭafā b. 'Abd Allāh Ḥājī Khalīfa, *Silm al-Wuṣūl ilā Ṭabaqāt al-Fuḥūl*, ed. Maḥmūd al-Arnā'ūṭ. 6 vols. (Istanbul: Makatabat Irsīkā, 2010): 3: 182.

[204] Zayn al-Dīn b. Ibrāhīm Ibn Nujaym, *al-Baḥr al-Rā'iq Sharḥ Kanz al-Daqā'iq*, 8 vols. (Beirut: Dār al-Kitāb al-Islāmī, n.d.): 2: 90-1.

[205] Ḥasan b. 'Ammār al-Shurunbulālī, "al-'Iqd al-Farīd li Bayān al-Rājiḥ min l-Khilāf fī Jawāz al-Taqlīd, ed. Khālid al-'Arūsī." *Riyadhalelm.com,* From (accessed 22 August 2021). Al-Shurunbulālī, author of numerous Ḥanafī texts including *al-Marāqī al-Falāḥ* and *Imdād al-Fattāh*, was an Ottoman jurist from Cairo. He studied at al-Azhar. For biographical details, see: al-Zirkilī, *al-A'lām,* 2: 208. Both *al-Marāqī* and *Imdād* are commentaries on his primer *Nūr al-Īḍāh,* which has been included in the curriculum at Dār al-Ulūm Deoband since 1952. See: Bashir, "Private Muftīs in a Postcolonial State," 372.

[206] Shāh Walī Allāh al-Dihlawī, *'Iqd al-Jīd fī Aḥkām al-Ijtihād wa l-taqlīd* (Cairo: al-Maṭba'āt al-Salafiyya, n.d.).

[207] For a robust articulation of the intellectual lineage from Shāh Walī Allāh and the *'ulamā* of Deoband, see: 'Ubayd Allāh Sindhī, *Shāh Walī Allāh awr unka Falsafa* (Lahore: Sindh Sagar Academy, 1982).

from the early Muslim community rather than engage with the existing body of literature in the Ḥanafī school.

Taqī's *Taqlīd Kī Shar'ī Haysiat*

We now turn to Taqī 'Uthmānī's *Taqlīd Kī Shar'ī Haysiat* (first published in 1963, republished in 1976),[208] in which we see a repetition of many of the arguments and references analysed in this chapter. Like his father before him, Taqī begins by evidencing both *taqlīd muṭlaq* and *taqlīd shakhṣī* in the early Muslim community, before determining that *taqlīd shakhṣī* is the only viable option which remains due to the immense organisational benefit it provides religious practice. Quoting Ibn Taymiyya's consensus (*ijmā'*), Taqī argues that all scholars forbid cherry-picking religious opinions and dispensations to suit one's desires.[209] Taqī furthers that throughout Islamic history, renowned jurists have brought forth isolated opinions that break the consensus of Muslim scholarship – from the permissibility of anal sex, short-term marriages, music, and even for a suitor to see prospective spouses naked.[210] As he sees it, since the early Muslim community, a severe decline of religiosity occurred, creating the conditions for some to bend religious practice to conform to their desires, "creating a *madhhab* founded by desires and Satan".[211] Thus, due to this severe threat to religious practice, *taqlīd muṭlaq* had to be abandoned in favour of adhering to a single *madhhab* for religious opinion.

[208] The monograph initially appeared as an article in the *Fārān* monthly journal in 1963. It provoked responses from notable figures within the Ahl-i Ḥadīth community, including a series of articles by Muḥammad Ismā'īl Salafī and a critical treatise by Sayyid Mas'ūd Aḥmad of Jamaat-ul-Muslimeen, an organization aligned with Ahl-i Ḥadīth. In *Taqlīd Kī Shar'ī Haysiat,* 'Uthmānī repurposed his original article, integrating substantial rebuttals and evidence to address these criticisms. Cf: Muḥammad Ismā'īl Salafī, *Tehrīk-i Āzādī-i Fikr awr Shāh Walī Allāh* (Gujranwala: Jāmi' Masjid Mukarram, 2016): 227-293; Sayyid Mas'ūd Aḥmad, *Al-Taḥqīq fī Jawāb al-Taqlīd* (Karachi: Jamā'at al-Muslimīn, 1996). *Taqlīd Kī Shar'ī Haysiat* can be split into four sections. The first part examines evidence from the Qur'an and Prophetic tradition, which detail the permissibility of *taqlīd*. The second section deals with examples of *taqlīd muṭlaq* and *taqlīd shakhṣī* from the time of the companions, thereafter, deducing that *taqlīd shakhṣī* remains the only viable option for the current times. In the third section, Taqī considers the different levels of *taqlīd* according to one's status of knowledge, and the last section offers rebuttals to objections raised against Taqī's initial treatise.

[209] 'Uthmānī, *Taqlīd Kī Shar'ī Haysiat* (Karachi: Maktaba Dār al-'Ulūm Karāchī, 2017): 63.

[210] Ibid., 68.

[211] Ibid.

While we have previously observed this line of argumentation, Taqī supports his argument with pre-modern precedent, hitherto unseen in Deobandī treatises on *taqlīd*. Taqī appeals to the Shāfi'ī *madhhab,* citing one of their most prominent jurists, al-Nawawī (d. 676/1277). Taqī cites a passage from al-Nawawī that follows the 'religious decline' argument. Al-Nawawī argues that the decline of religiosity since the early Muslim community opens up the likelihood of demoting religious practice to an open market of choice regulated by one's desires – thus mandating lay Muslims to choose and adhere to a single *madhhab*.[212] Herein, al-Nawawī declares this opinion as the most authoritative opinion of the school. Taqī constructs a compelling narrative arc by grounding his argument in authoritative pre-modern precedent, thus resolving the undercurrents of '*ijtihād*' present in the elders' arguments. Taqī writes:

> When the jurists realised that religiosity was steadily decreasing and desires overcame the people, they passed the *fatwā* that due to this organisational benefit (*maṣlaḥat-i intiẓāmī*), *taqlīd shakhṣī* will be opined, and *taqlīd muṭlaq* will be abandoned. This is not a religio-legal (*shar'ī*) ruling but an organisational one.[213]

Taqī cites "the jurists" as having declared *taqlīd muṭlaq* obsolete, leaving *taqlīd shakhṣī* as the remaining viable option. While his Deobandī predecessors made the same argument, it was not evidenced explicitly in pre-modern scholarship. Through al-Nawawī, Taqī situates the 'religious decline' argument centuries before Deoband, incorporated as an authoritative doctrine in one of the major *madhhab*s. For Taqī, *taqlīd shakhṣī* is not considered through scripture but regarded as religiously binding for ensuring the systematisation of, and submission to, religious opinion.

Furthermore, Taqī discusses how this necessity applies to lay Muslims and scholars, especially when encountering a Hadith that opposes the authoritative position of the *madhhab*.[214] The lay Muslim

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[212] Ibid., 66-7. For the original quote see, Yaḥyā b. Sharaf al-Nawawī, *al-Majmū' Sharḥ al-Muhadhdhab*, 9 vols. (Beirut: Dār al-Fikr, n.d.): 1: 55; Herein, al-Nawawī discusses that the most authentic opinion of the Shāfi'ī school is that a layperson must also adopt a *madhhab* and follow it in all matters.

[213] 'Uthmānī, *Taqlīd kī Shar'ī Haysiat*, 66.

[214] The source texts, i.e, *Taqlīd kī Shar'ī Haysiat*, Thānawī's *al-Iqtiṣād* etc., discuss this topic with reference to the Hadith contradicting the opinion of 'the Imām', i.e., Abū Ḥanīfa. For narrative continuity, the authoritative opinion of the *madhhab* is better suited in this case, as the view of the *madhhab* can align with the opinions of Abū Ḥanīfa's two students: Abū Yūsuf (d. 181/798) and Muḥammad b. Ḥasan al-Shaybānī (d. 189/805). The process of deriving authoritative opinions and position of 'the two masters' in the Ḥanafī *madhhab* will be discussed in Chapter 3.

cannot depart from the *madhhab* position as they cannot situate that specific Hadith in context with other revelatory sources.[215] This would apply to most scholars unless one is an expert scholar (*mutabaḥḥar ʿālim*) and has considered the specific case law from all its constituent parts, thereby concluding that the official position of the *madhhab* opposes the demands of a particular Hadith. Here, Taqī advances Thānawī's "path of moderation" by citing a complete three-page passage.[216] Thānawī writes that the expert scholar may uphold the *madhhab* opinion without blame if they are not entirely convinced that the *madhhab* position contradicts the Hadith but cannot reconcile between the two. Similarly, if the expert scholar's research into this single issue leaves no recourse for the *madhhab* position, they can also follow their research without any blame. Lastly, suppose there is scope in interpreting the *madhhab* position in accordance with the Hadith and acting according to one's research will create discord in the local community. In that case, the expert scholar is recommended to act contrary to their research and uphold the *madhhab* position.

Taqī's section of *taqlīd*, as it applies to different categories of people, demonstrates the rigour he is attempting to summon in his treatise. Taqī regularly departs from his Deobandī predecessors in the systematic nature of his argumentation, covering all potential pitfalls in his arguments. In places, ʻUthmānī fortifies the positions of his predecessors. For example, the Qur'anic compilation story provided by Muḥammad Shafīʻ and Gangohī both lacked a level of academic nuance on the object of ʻUthmān's unification, which is subject to academic debate from within classical Islamic scholarship. Taqī makes a note of the various opinions on the matter, concluding that regardless of the dispute on the object of unification – be that a written script or dialect of the Qur'an – ʻUthmān did disregard and burn early Qur'anic copies, uniting the Muslim community upon a single standard. Thus, the example still stands.[217] Similarly, Taqī repeats the various examples of *taqlīd shakhṣī* from the early Muslim community that his predecessors made, replete with dedicated responses to objections received from

[215] ʻUthmānī, *Taqlīd kī Sharʻī Haysiat*, 87.
[216] For Taqī's full quotation from Thānawī, see ʻUthmānī, *Taqlīd kī Sharʻī Haysiat*, 105-108.
[217] Ibid., 77-9.

them.[218] Additionally, Taqī dedicates an entire section in his treatise responding to specific objections from detractors, referencing their arguments – from the alleged claim that the *madhhab* law is polytheism or unlawful veneration to even arguments that suggest *taqlīd* demands intellectual stagnation.[219]

All in all, *Taqlīd Kī Shar'ī Haysiat* operates as both a robust argument for and defence *of taqlīd shakhṣī,* maintaining observable patterns of argumentation, textual references, and even pre-modern precedent from his Deobandī predecessors. Taqī's intellectual inheritance on this matter is distinctive and unmistakable as a clear scholarly standard that followed from Muḥammad Shafī', Thānawī, and Gangohī. Furthermore, Taqī goes beyond his predecessors by synthesising their arguments into a more systematic and comprehensive framework, addressing potential objections with thoroughness and precision. In doing so, he elevates the discourse on *taqlīd shakhṣī*, offering a nuanced and fortified stance that underscores the continued relevance and necessity of this practice in contemporary Islamic jurisprudence.

Conclusion

Through our discussion on the Deobandī insistence of *taqlīd shakhṣī*, this chapter has situated Taqī 'Uthmānī's traditionalist Ḥanafī juristic activity as an inheritance of the established Deobandī heritage. The Deobandīs saw themselves as the preservers of a legal tradition that had existed, thrived, and dominated in India in the medieval and pre-modern periods. Indian jurisprudents have long operated within the Ḥanafī school, engaging with its discourse and authoring opinions within *madhhab* regulation. These Ḥanafī jurists utilised *madhhab* discourse to respond to changing circumstances while remaining consistent and committed to the scholastic tradition that preceded them. A cursory study of

[218] For instance, for 'Uthmānī and his Deobandī elders, the previously mentioned case where the People of Medina adhered to Zayd's position despite Ibn 'Abbās offering a differing opinion serves as an example of *taqlīd shakhṣī.* Muḥammad Ismā'īl Salafī challenged this interpretation, to which 'Uthmānī provided a detailed rebuttal. See: Ibid., 45-47.
[219] Ibid., 14-16.

the *fatāwā* compilations of the early Deobandīs suggests that the tradition-bound, textualist and trepidatious inter-*madhhab ijtihādī* approach of the Deobandīs characterises Ḥanafī legal production, as it had occurred in India for centuries. In the post-Rebellion era, the authority of this tradition was threatened both by the colonial judiciary and emerging revivalist groups, leading to Deoband's efforts to preserve the *madhhab* tradition. They insisted upon *taqlīd shakhṣī,* which formed a foundational pillar in their religious discourse to maintain the integrity and harmony of religious law and practice.

The Deobandīs mandated *taqlīḍ shakhṣi* for all, i.e., for the lay Muslim and the scholar alike to adhere to a single *madhhab*. From founders Gangohī and Nānotawī to Taqī 'Uthmānī, the son of a third-generation Deobandī, we have observed the same lines of argumentation snowballing generation after generation with sophistry, technicalities, and additional pre-modern precedent. While both *taqlīd muṭlaq* and *taqlīd shakhṣī* existed in the time of the Companions and their successors, the Deobandī elders contend that religiosity has declined. Therefore, the Deobandīs necessitated *taqlīd shakhṣī* upon all due *to maṣlaḥat-i sharī'a* – it safeguards the public interest of the Sharia immeasurably by organising religious practice, deterring people from seeking dispensations to comply with their pre-conceived desires.

With reference to *Taqlīd Kī Shar'ī Haysiat,* Taqī's inheritance on the *taqlīd shakhṣī* is evident. Taqī's writing departs from his predecessors in affording extensive academic rigour to the arguments of his predecessors – covering pitfalls and answering the objections raised by the detractors. Critically, by quoting al-Nawawī and referencing the Shāfi'ī position which obliges all to choose a single *madhhab*, Taqī creates a narrative arc which extends *taqlīd shakhṣī* beyond the Deoband school, proving that the 'religious decline' hypothesis is not exclusive to the Deobandīs.

As we expand our view to consider the broader aims of this thesis, highlighting 'Uthmānī's heritage within the Deobandī framework and, by extension, the enduring Ḥanafī tradition of the region, we affirm 'Uthmānī's jurisprudence as a modern extension of this longstanding tradition. Like the scholars behind significant legal texts such as the *Ghiyāthiyya* and *Firūz-i Shāhī*, or the collective efforts behind the *'Ālamgīrī,* Indian Ḥanafī jurists have historically resolved the major socio-economic

quandaries of their age by engaging with *madhhab* discourse, authoring opinions according to *madhhab* regulation. This chapter presents ‘Uthmānī’s efforts within this South Asian continuum of Ḥanafī legal scholarship, not merely contextualising his work but setting the stage for a detailed examination in Part III, where we shall see his active role in adapting and advancing *madhhab* discourse tradition to meet the demands of the modern era.

Chapter 3: *Rasm al-Muftī* and Juristic Discretion

Following our exploration of Taqī ʻUthmānī's position on *taqlīd shakhṣī*, this chapter turns to the concrete methodologies that inform ʻUthmānī's juristic practice. This chapter will concentrate on *rasm al-muftī* (the *muftī*'s task), which prescribes procedural rules for the *muqallid* jurist, i.e., *madhhab*-adhering jurist, to navigate the *madhhab*'s discourse. The procedural rules of *rasm al-muftī* form a component of a broader genre of Islamic legal hermeneutics known as *adab al-muftī* (ethics for *muftī*s), which inform practising *muftī*s and jurists on the ethics of the profession.[220] Importantly, these manuals form an essential component of juristic practice across all four Sunni *madhhab*s. These texts establish frameworks of authority and precedent that guide jurists through the intricacies of internal *madhhab* disagreements to formulate legal opinions. As described by al-Azem, this genre of legal hermeneutics is a defining characteristic of the Sunni *madhhab*-law tradition.[221]

This chapter will focus on ʻUthmānī's treatment of *rasm al-muftī* in his methodological monograph, *Uṣūl al-Iftāʾ wa Ādabuhū* (first published in 2011). This text offers a contemporary expansion on *Sharḥ ʻUqūd Rasm al-Muftī* (The commentary on The Couplets on the Muftī's task), written by the late Ottoman Ḥanafī, Ibn ʻĀbidīn (d. 1258/1836).[222] This manual is the preeminent text on procedural norms within the Ḥanafī *madhhab*, taught at Dār al-ʻUlūm Deoband since 1965[223] and equally revered in both Middle Eastern and Barelwī circles.[224] The central focus of this chapter is on

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[220] For academic discourse on *adab al-muftī*, see: Masud, "Islamic Legal Interpretation," 15-26; idem, Adab al-Mufti: The Muslim understanding of values, characteristics, and role of a mufti" in: *Moral Conduct and Authority: The Place of Adab in South Asian Islam*, ed. Barbara Metcalf (Berkeley: University of California Press, 1984); 124-151; Calder, "Al-Nawawī's Typology of Muftīs and Its Significance for a General Theory of Islamic Law." *Islamic Law and Society* 3, no. 2 (1996): 137-64; Alexandre Caeiro, "The Shifting Moral Universes of the Islamic Tradition of Iftā': A Diachronic Study of Four Adab al-Fatwā Manuals." *Muslim World* 96, no. 4 (2006): 661-85.

[221] Talal Al-Azem, *Rule-Formulation and Binding Precedent in the Madhhab-Law Tradition: Ibn Quṭlūbughā's Commentary on the Compendium of Qudūrī* (Leiden: Brill, 2016): 1

[222] Ibn ʻĀbidīn's *Uqūd Rasm al-Muftī*, and its *Sharḥ* have been translated and annotated in English. See: Calder, "The ʻUqūd Rasm al-Muftī of Ibn ʻĀbidīn" *Bulletin of the School of Oriental and African Studies* 63, no. 2 (2000): 215-228; Muhammad Ali al-Fijawi, "Principles of Issuing Fatwa (Usul al-ifta) in Ḥanafī Legal School: An Annotated Translation, Analysis and Edition of Sharḥ ʻUqūd Rasm al-Muftī of Ibn ʻĀbidīn al-Shāmī" (PhD diss., International Islamic University of Malaysia, 2012).

[223] Bashir, "Private Muftīs in a Postcolonial State," 374-5.

[224] Cf: the commentaries by Jordanian Ḥanafī researcher Ṣalāh Abū l-Ḥāj, Dean of the Faculty of Ḥanafī Jurisprudence at World Islamic Sciences and Education University in Jordan, and the commentary of Pakistani Barelwī scholars, Imtiyāz Qādirī and Muḥammad Ṣiddīq Hazārwī: Ṣalāḥ Abu al-Ḥāj, *Isʿād al-Muftī ʿalā Sharḥ ʿUqūd Rasm al-Muftī li Muḥammad Amīn Ibn ʿĀbidīn* (Beirut: Dār al-Bashā'ir al-Islāmiyya, 2015); Muḥammad

‘Uthmānī’s nuanced positioning of juristic discretion, which he views on the spectrum of *ijtihād*, as an integral component of juristic practice, even among the mere *muqallid* jurist. This discussion crucially delineates how such jurists, traditionally seen as mere transmitters of established legal norms, actively shape *madhhab* discourse. In our broader thesis focus on the subtleties of *ijtihād* within the *madhhab* framework (*ijtihād fī l-madhhab*), this chapter articulates the theoretical underpinnings that guide ‘Uthmānī’s approach to innovation in the *madhhab*-based system.

This chapter will be split into two sections. The first section will analyse ‘Uthmānī’s writings on *ijtihād* and juristic discretion within the *madhhab* framework, particularly his discourse on a spectrum of *ijtihād*, ranging from direct engagements with revelatory sources to nuanced intra-*madhhab* deliberations and preponderance. It particularly engages with a distinctive category of scholar identified by ‘Uthmānī: the low-ranking transmitter of *madhhab* precedent (*nāqil al-madhhab*), who, while not possessing higher discretionary powers, is pivotal in contextualising historical *madhhab* scholarship for contemporary application. The second section will explore the ‘fourth-level’ discretion available to this jurist, looking at ‘Uthmānī’s summary of *rasm al-muftī* to highlight the procedures this jurist should adhere to.

This discussion informs many corollary debates. Firstly, it challenges the binary perception of *ijtihād* and *taqlīd,* demonstrating that *muqallid* scholars engage in a spectrum of *ijtihād,* from higher-level interpretation of revelatory sources to minor discretionary adjustments necessitated by practical legal considerations. Secondly, ‘Uthmānī’s explication of the fourth-level jurist is an interesting addition to the spectrum of *ijtihād.* Despite being a transmitter of juristic precedent, this fourth-level jurist recognises the circumstances in which the law is to be applied, thus exercising “a form of *ijtihād* that will continue until the Day of Judgement”.[225]

Imtiyāz Qādirī, *Dars-i ‘Uqūd Rasm al-Muftī* (Karachī: Idārat-i Fayzān-i Ridā, 2010); Muḥammad Ṣiddīq Hazārwī, *Sharḥ ‘Uqūd Rasm al-Muftī* (Lahore: Maktaba-i Āl Hazrāt, n.d.). Additionally, *Sharḥ ‘Uqūd* is also on the official curriculum for Tanzeem-ul-Madaris Ahl-e Sunnat, an umbrella organisation of 15000 Barelwī *madrasa*s in Pakistan, see: Tanzeem ul Madaris Ahle Sunnat, “Tafṣīl Awrāq al-Imtiḥān Shahādat al-Takhaṣṣuṣ fī l-Fiqh: al-Sanat al-Ūlā”, *tanzeemulmadaris.com*, from: https://tanzeemulmadaris.com/Contents/Nisab/Takhsus-Nisab/TakhsSus-Nassab-after-2016.pdf (accessed 22 June 2024)

[225] ‘Uthmānī, *Uṣūl al-Iftā’*, 192.

Taqī ʻUthmānī on *Ijtihād*

A common theme in *adab al-muftī* literature is that the discourse often begins by addressing *ijtihād* and its levels, as demonstrated in the esteemed works of Ibn Ṣalāḥ (d. 643/1245) and al-Nawawī of the Shāfiʿī *madhhab*, and Ibn Ḥamdān (d. 695/1296) from the Ḥanbalī school.[226] In this tradition, ʻUthmānī's *Uṣūl al-Iftā',* a commentary on Ibn ʻĀbidīn's *Sharḥ 'Uqūd Rasm al-Muftī,* begins with a critical engagement of the *Ṭabaqāt al-Fuqahā'* (The taxonomy of jurists) authored by revered former Ottoman Shaykh al-Islām, Ibn Kamāl Pāshā (d. 940/1534).[227] This taxonomy ranks Ḥanafī scholarship into seven levels, from the eponym and his immediate students to later scholars, according to their level of *ijtihād.* By drawing from Ibn Kamāl's *Ṭabaqāt,* ʻUthmānī forwards a novel understanding of *ijtihād* within the *madhhab*.

The rationale behind the *Ṭabaqāt* is that when faced with internal disagreement, the *Ṭabaqāt* allows the Ḥanafī jurist to rank opinions based on the level of *ijtihād*, and thus authority, of the opinion-giver.[228] Ibn Kamāl's first rank is assigned to the *mujtahid fī l-sharʿ*: the individuals who extrapolate law directly from the four sources of law. This is the category of the eponyms of the four *madhhab*s: Abū Ḥanīfa, al-Shāfiʻī, Mālik b. Anas, and Aḥmad b. Ḥanbal. Scholars of this high rank do not follow anyone in legal methodology (*uṣūl*) or legal extrapolations (*furūʿ*). The second rank is that of the

[226] In the Shāfiʻī *madhhab*, Ibn Ṣalāh's (d. 643/1245) *Adab al-Muftī wa l-Mustaftī* and al-Nawawī's *Ādab al-Fatwā wa l-Muftī wa l-Mustaftī* are well-regarded. Ibn Ḥamdān's (d. 695/1285) *Ṣifat al-Fatwā wa l-Muftī wa l-Mustaftī* is an equally revered manual from a Ḥanbalī perspective, while al-Qarāfī's (d. 684/1285) *al-Iḥkām fī Tamyīz al-Fatāwā 'an l-Aḥkām* is a well-known text among the Mālikīs. Cf: ʿUthmān b. ʿAbd al-Raḥmān Ibn al-Ṣalāḥ, *Adab al-Muftī wa l-Mustaftī*, ed. Muwaffiq ʿAbd Allāh ʿAbd al-Qādir (Medina: Maktabat al-ʿUlūm wa l-Ḥikam; ʿĀlam al-Kutub, 1986); al-Nawawī, *Ādāb al-Fatwā wa l-Muftī wa l-Mustaftī*, ed. Bassām ʿAbd al-Wahhāb al-Jābī (Damascus: Dār al-Fikr, 1988); Aḥmad b. Ḥamdān b. Shabīb Ibn Ḥamdān, *Ṣifat al-Muftī wa l-Mustaftī*, ed. Muṣṭafā b. Muḥammad Ṣalāḥ al-Qabbānī (Riyadh: Dār al-Ṣumayʿī, 2015); Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī, *Al-Iḥkām fī Tamyīz al-Fatāwā ʿan al-Aḥkām wa Taṣarrufāt al-Qāḍī wa l-Imām*, ed. ʿAbd al-Fattāḥ Abū Ghuddah (Beirut: Dār al-Bashā'ir al-Islāmiyyah, 1995).

[227] Burak, in his study of the *Ṭabaqāt al-Fuqahā'* genre among leading members of the Ottoman imperial intelligentsia, comments that Ibn Kamāl's treatise formed the "harbinger of the genre," initiating a systematic approach to cataloguing the intellectual and jurisprudential lineages that solidified the legal doctrines and scholarly authority within the Ḥanafī school, thereby reinforcing its foundational role in the Ottoman legal system. Burak, *The Second Formation,* 73, 65-100. Ibn Kamāl Pāshā served as Shaykh al-Islām of the Ottoman empire during the reign of Suleiman I (r. 1494-1566). For biographical details, see: al-Ghazzī, *al-Kawākib al-Sā'ira,* 2: 108-9.

[228] This is the very mission statement of Ibn Kamāl's *Ṭabaqāt,* quoted by Ibn ʻĀbidīn in: *Sharḥ 'Uqūd Rasm al-Muftī* (Karachi: al-Bushrā, 2010): 9. A significant number of the jurists mentioned across these ranks are also featured in Ya'akov Meron's study, which explores the evolution of legal thought in Ḥanafī texts, providing additional scholarly context. See: Meron, "The Development of Legal Thought in Hanafi Texts," 73-118.

mujtahid fī l-madhhab. These are the companions of the eponyms like Abū Yūsuf (d. 181/798) and al-Shaybānī (d. 189/805), companions of Abu Ḥanīfa. They are capable of extrapolating rules from the sources of law but still follow their teacher's legal methodology, differing only in their extrapolations. The third rank is assigned to the *mujtahid fī l-masā'il.* These scholars cannot depart from the eponym's methodology and extrapolations but follow the eponym's methodology to extrapolate rulings that have not been previously discussed. Ibn Kamāl lists al-Ṭaḥāwī (d. 321/933), al-Karkhī (d. 340/952),[229] al-Ḥalwānī (d. 448/1056),[230] al-Sarakhsī (d. 483/1090),[231] and Qāḍīkhān as scholars of this rank. [232]

The fourth rank is that of the *aṣḥāb al-takhrīj*, the practitioners of *takhrīj*, such as al-Jaṣṣāṣ (d. 370/981). Ibn Kamāl describes *takhrīj* as rule verification, i.e., while scholars of this rank do not practice higher *ijtihād,* their superior grasp of the *madhhab* and its sources enables them to verify the correct opinion of the *madhhab* in cases of dispute.[233] The *aṣḥāb al-tarjīḥ,* the practitioners of *tarjīḥ* (preponderance), are scholars of the fifth rank: those who assign preponderance to internal *madhhab* disputes by using statements such as "this is the most correct view," "this [view] is the clearest," "this [view] is easier upon the people," and so forth. Ibn Kamāl assigns al-Qudūrī (d. 427/1037)[234] and al-Bābirtī (d. 786/1384)[235] to this category.[236] The sixth rank is assigned to scholars that distinguish between opinions (*aṣḥāb al-tamyīz*), assigning them to categories which include strong, weak, or among the *ẓāhir al-riwāya*, the highest source of tradition within the Ḥanafī *madhhab*.[237] This rank is given to

[229] Abū l-Ḥasan al-Karkhī, an Abbāsid jurist from Baghdad, was a foundational figure in the development of the Ḥanafī *madhhab*, such that Melchert argues that the Ḥanafī *madhhab* took the form of a guild after al-Karkhī's efforts. For biographical details, see: Muḥammad b. Aḥmad al-Dhahabī, *Siyar A'lām al-Nubalā'*, ed. Shu'ayb al-Arna'ūṭ, 25 vols. (Beirut: Mu'assisat al-Risāla, 1985): 15: 426. See also: Melchert, *The Formation of the Sunni Schools of Law*, 116-36.

[230] al-Ḥalwānī, the teacher of al-Sarakhsī, was at the heart of Ḥanafīsm in Transoxiana. For biographical details, see: Ibn Quṭlūbughā, *Tāj al-Tarājim*, 189-90; Lakhnawī, *al-Fawā'id al-Bahiyya*, 95-7.

[231] al-Sarakhsī was a transformational figure in Ḥanafī jurisprudence in Transoxiana. He studied under Shams al-A'imma al-Ḥalwānī, and taught Burhān al-A'imma 'Abd al-'Azīz Ibn Māza. For biographical details, see: al-Lakhnawī, *Fawā'id al-Bahiyya*, 158.

[232] 'Uthmānī, *Uṣūl al-Iftā'*, 10.

[233] Ibid., 11.

[234] al-Qudūrī was a Ḥanafī jurist from Abbāsid Baghdad; according to Meron, his *Mukhtaṣar* initiated the classical period of the *madhhab*. For biographical details, see: Ḥājī Khalīfa, *Silm al-Wuṣūl*, 1: 200.

[235] For biographical details on al-Bābirtī, author of al-'*Ināya*, a commentary of al-Marghīnānī's *al-Hidāya*, see: al-Lakhnawī, *al-Fawā'id al-Bahiyya*, 195.

[236] Ibid.

[237] For a study on the development of the *ẓāhir al-riwāya*, see: Younas, "Authority in the Classical Ḥanafī School: The Emergence & Evolution of Ẓāhir al-Riwāya." *Islamic Law and Society* 29, no. 1-2 (2021): 58-122.

the authors of the trusted manuals of law: al-Nasafī (d. 710/1310),[238] al-Ḥaṣkafī and al-Maḥbūbī (d. 747/1346-7).[239] The final rank is for *muqallid* scholars incapable of the above, such that "they cannot differentiate between skinny and fat, right from left".[240]

These seven categories describe the varying levels of *ijtihād* practised by the different ranks. The first rank is associated with *ijtihād* in its maximal form – deriving an entire body of law and doctrine from the sources of law. While scholars of the second and third ranks do not compile an entire body of doctrine, they still practice a higher form of *ijtihād* by engaging directly with the sources of law in a selected number of cases. According to Ibn Kamāl, the second and third rank utilise the legal methodology of the eponym to guide their higher *ijtihād*. As for ranks four, five and six, they are *muqallid* jurists and do not engage with the sources of law; instead, they perform minor *ijtihād* through engagement with *madhhab* precedents. Overall, Ibn Kamāl's *Ṭabaqāt* provides a taxonomy of scholarship within the *madhhab*, allowing jurists to uncover the seniority and authority of a *madhhab* opinion-giver.

Ibn Kamāl's *Ṭabaqāt* served as a foundational treatise, often cited verbatim by Ottoman Ḥanafī biographers. Notable scholars such as Ṭāshkubrī-zāde (d. 967/1561) and al-Tamīmī (d. 1010/1602) draw from this work to establish scholarly authority and ranking within the *madhhab*.[241] While 'Uthmānī draws from the *Ṭabaqāt* as well, he makes some significant revisions which delineate a more dynamic and responsive *ijtihād* framework. Firstly, 'Uthmānī criticises Ibn Kamāl's placement of Abū Yūsuf and al-Shaybānī in the second rank, arguing, through citations to 'Abd al-Ḥayy al-Lakhnawī (d. 1886) and Shāh Walī Allāh, that they should be considered independent *mujtahid*s that ascribe themselves to the eponym (*al-mujtahid al-muṭlaq al-muntasib*). While they are aligned to Abū Ḥanīfa

[238] Abū l-Barakāt al-Nasafī, author of *Kanz al-Daqā'iq* and the *uṣūl* text, *al-Manār*, was a Transoxianan scholar. For biographical details, see: al-Lakhnawī, *al-Fawā'id al-Bahiyya,* 101-3.
[239] al-Maḥbūbī, author of *Sharḥ al-Wiqāya* and otherwise known as Ṣadr al-Sharī'a al-Aṣghar, was a Transoxianan jurist who studied under his father, the great Ṣadr al-Sharī'a who was seminal in the development of Ḥanafī jurisprudence in Transoxiana. For biographical details, see: al-Lakhnawī, *al-Fawā'id al-Bahiyya,* 109-10. *Sharḥ al-Wiqāya* was taught as a part of the early *dars-i niẓāmī* syllabus of Mullā Niẓām, see: Robinson, *The 'Ulama of Farangi Mahall,* 48.
[240] Ibn 'Ābidīn, *Sharḥ 'Uqūd,* 12.
[241] Aḥmad b. Muṣṭafā Ṭāshkubrī-zāde, *Ṭabaqāt al-Fuqahāʾ* (Amman: Maṭbaʿat al-Zahrāʾ, 1961): 8; ʿAbd al-Qādir al-Tamīmī, *al-Ṭabaqāt al-Saniyya fī Tarājim al-Ḥanafiyya*, ed. ʿAbd al-Fattāḥ Muḥammad al-Ḥilūw, 4 vols. (Riyadh: Dār Rifāʿī, 1983): 1: 33.

on foundational epistemological questions, the two Ḥanafī masters depart from Abū Ḥanīfa in both legal methodology and extrapolations, and thus, 'Uthmānī assigns them with almost maximal juristic independence.[242]

'Uthmānī's second criticism questions the functionality of the *Ṭabaqāt.* The *Ṭabaqāt* posits levels of *ijtihād* associated with personalities; thus, some scholars are considered to be from *aṣḥāb al-takhrīj,* while others are not. Al-Azem's conceptualisation of the institutional guild system and its accompanying ranks further demonstrates the historical association of *ijtihād* with scholars and personalities.[243] In contrast, 'Uthmānī presents a more fluid and malleable version of *ijtihād* by shifting the focus from personalities to juristic activity. Therefore, the question transitions to the activity conducted by a particular scholar rather than the rank they embody. Consequently, 'Uthmānī suggests that while some roles are mutually exclusive – such as *mujtahid* and *mujtahid fī l-madhhab* – others are forms of juristic activity that a single scholar can carry out.[244] For example, 'Uthmānī presents al-Ṭaḥāwī as a *mujtahid fī l-masā'il* who also practised *takhrīj* and *tarjīḥ*.[245] 'Uthmānī notes the criticisms on the *Ṭabaqāt* due to the placement of certain scholars, such as al-Lakhnawī, who questions the placement of al-Ḥalwānī, al-Sarakhṣī and Qāḍīkhān above al-Jaṣṣāṣ despite al-Jaṣṣāṣ being much earlier and practising higher levels of *ijtihād.* 'Uthmānī suggests that these criticisms are moot, as one can look past these criticisms if these ranks are seen holistically through the lens of juristic activity. For example, al-Jaṣṣāṣ practised *taqlīd* of the Ḥanafī school but also performed varying levels of *ijtihād* – from the higher level of *ijtihād* in single issues to *takhrīj*.[246] Thus, one should look at the discretion they exercised

[242] 'Uthmānī, *Uṣūl al-Iftā'*, 118-20. There are numerous definitions for the *mujtahid muntasib* which 'Uthmānī deliberates over, ultimately, opining with Shāh Walī Allāh's definition.
[243] Similar to the taxonomy of the *Ṭabaqāt*, Talal Al-Azem describes the *madhhab* as an institutional guild with distinct ranks: the *mujtahid* (master) capable of first-order legal opinion-making, high-ranking *muqallid*s (fellows) capable of second-order opinion-making (*ijtihād fī l-masā'il*), regular fellows capable of third-order law manipulation (*taṣḥīḥ* or *tarjīḥ*), and associates, who cannot engage in legal opinion-making or law manipulation. Al-Azem, *Rule-Formulation and Binding Precedent*, 119-20. Though, importantly, al-Azem describes second-order opinion making as *takhrīj*, which differs from the definition of *takhrīj* put forth by Ibn Kamāl Pāshā. Through Ibn Kamāl's discourse, what al-Azem is describing would be referred to as *ijtihād fī l-masā'il.*
[244] 'Uthmānī, *Uṣūl al-Iftā'*, 122.
[245] Ibid., 122-3.
[246] Ibid., 123.

rather than assign an immovable rank, as single scholars are likely to practice varying degrees of *ijtihād*.[247]

In sum, 'Uthmānī's analysis of the *Ṭabaqāt* reconceptualises *ijtihād* and juristic activity. Fundamental to the shift of focus from personalities to juristic activity is 'Uthmānī's placement of ranks three, four, and five under the umbrella category of *ijtihād* from within the *madhhab* (*ijtihād fī l-madhhab*). Therefore, 'Uthmānī's newly developed rankings are: (i) *al-mujtahid al-muṭlaq* – the highest level of *ijtihād*, which involves independently deriving a body of legal doctrine from the sources of law directly, (ii) *al-mujtahid al-muṭlaq al-muntasib* – one who has also reached this highest level of *ijtihād* but follows the master-jurist eponym in fundamental epistemological issues, and (iii) *al-mujtahid fī l-madhhab* – expert *muqallid* jurists who perform first, second and third-order *ijtihād* from within the *madhhab*.[248] Their juristic activity can range from higher *ijtihād* in single issues using the methodology of the eponym (*ijtihād fī l-masā'il*) or *takhrīj* and *tarjīḥ.* 'Uthmānī notes that jurists, other than these higher-level jurists, primarily serve as transmitters of opinions (*nāqil*) of the various *mujtahid*s above them. While 'Uthmānī is not explicit with this, it appears that jurists of the sixth rank, the *aṣḥāb al-tamyīz,* are assigned to this category.

'Uthmānī's revisions to the *Ṭabaqāt* are an interesting departure from this specific Ḥanafī tradition and call to question the very utility of the *Ṭabaqāt.* If one suggests that these middle ranks are fluid and malleable, can one construct a hierarchy of scholarship? If so, what does that mean for the rest of the *rasm,* which is somewhat dependent upon categorising opinions based on the authority of the opinion-giver? 'Uthmānī leaves these questions unanswered.[249]

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[247] Ibid., 123-5; esp. 125.

[248] First-order *ijtihād* involves direct engagement with the revelatory sources (Qur'an and Sunna). In absolute *ijtihād,* a mujtahid interacts with these sources using their own methodology. Conversely, *ijtihād fī l-masā'il* involves engaging with the same sources but through the methodology of one's Imām. Despite the methodological difference, both are considered first-order because they engage directly with the Qur'an and Sunna. Second-order *ijtihād* refers to a jurist's interaction with the opinions of Abū Ḥanīfa and his early students, which falls within the domain of *takhrīj*. Third-order *ijtihād* involves engaging with broader *madhhab* discourse, typically in the domain of *tarjīḥ*

[249] While al-Lakhnawī presents criticisms of the *Ṭabaqāt,* he maintains its utility by providing a functional re-organisation of the ranks to five levels. al-Lakhnawī, "al-Nāfi' al-Kabīr li man Yuṭāli' al-Jāmi' al-Saghīr" in: Muḥammad b. Ḥasan al-Shaybānī, *al-Jāmi' al-Saghīr* (Karachi: Idārat al-Qur'ān, 1999): 8-9.

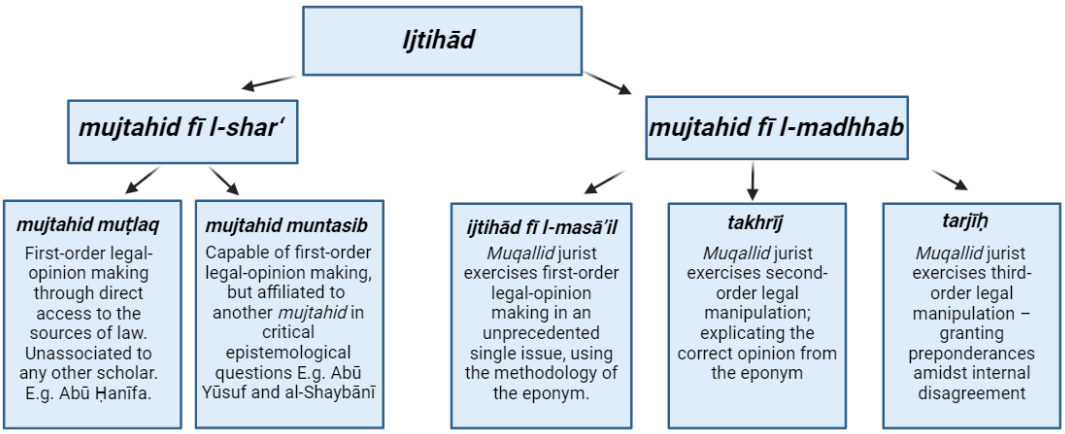

Figure 2. 'Uthmānī's theorisation of Ijtihād

Interestingly, 'Uthmānī also discusses the juristic discretion practised by the *nāqil*. The practising *muqallid muftī,* who adheres to the *rasm*, exercises a fourth level of discretion by utilising individual judgement when applying *madhhab* scholarship to a particular matter. 'Uthmānī posits that these individuals are not *muftī*s in the truest sense, as the classical understanding of the term demands that a *muftī* is a *mujtahid* (either an independent *mujtahid* or a *mujtahid* from within the *madhhab* tradition).[250] Nevertheless, this fourth-level jurist, as a transmitter of juristic precedent from the *madhhab* (*nāqil al-madhhab*), possesses six core competencies. First and foremost, they demonstrate an expert ability to research and verify opinions within the *madhhab*, adeptly identifying and correcting misattributions that may have been perpetuated in later scholarly works.[251] Second, this jurist had studied and trained under an expert scholar. 'Uthmānī contends that each *madhhab* has its own idiosyncrasies, internal logic, and terminologies. Therefore, training under an expert scholar is necessary; mere individual research would not suffice. Third, the jurist can navigate the *madhhab*, using the *rasm* to distinguish the preponderated views of the *madhhab.* This is a fundamental skill as the jurist must have the tools to differentiate between good and bad opinions within the school.[252]

[250] 'Uthmānī engages in a lengthy discussion to establish this point. See: *Uṣūl al-Iftā'*, 183-7.
[251] Under this point, Ibn 'Ābidīn's *Sharḥ* lists several famous examples of mistakes in attribution which had been repeated by later scholars; thus, creating a chain of misattribution. Ibn 'Ābidīn clarifies these misattributions, pointing out that *muftī*s cannot rely upon a single book for a *fatwā*; they must be able to research and verify positions from within the *madhhab* tradition. 'Uthmānī, *Uṣūl al-Iftā',* 188-90. As we shall observe in Part III, the ability to explore *madhhab*, examine its intergenerational discourse, and extract its most forthright opinion is often called *taḥrīr al-madhhab*.
[252] Ibid., 190-91.

The following three core competencies reflect the researcher's ability to apply and contextualise historical *madhhab* scholarship. This fourth-level jurist thoroughly understands the context in which the laws are to be applied, contextualising *madhhab* scholarship to changing circumstances. 'Uthmānī contends that while scholars operating at this level do not practice the higher levels of *ijtihād*, this contextualisation still requires genuine juristic expertise (*malaka fiqhiyya*),[253] a minor though not insignificant form of *ijtihād*. Most significantly, it is gained through expert tutorship and training under a teacher.[254]

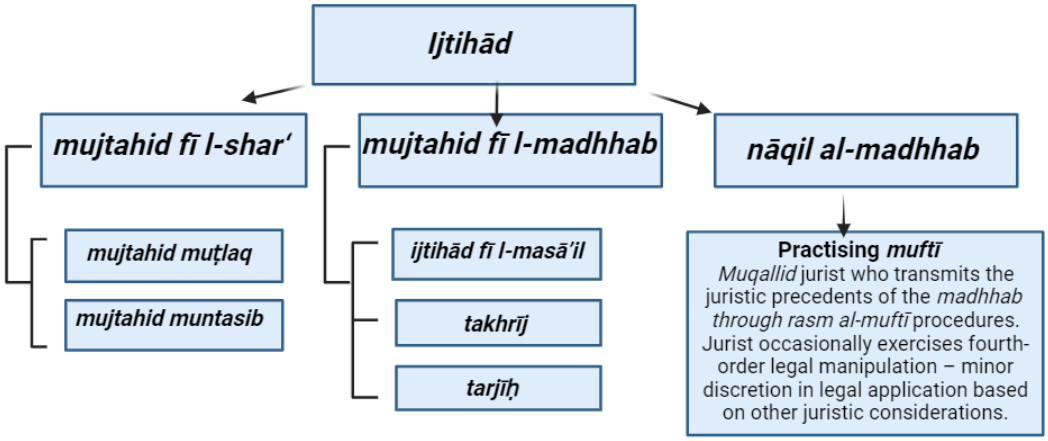

Figure 3. The juristic discretion of the practising muqallid muftī

This additional discussion presents an amendment to 'Uthmānī's theorisation of *ijtihād*. While this fourth-level jurist cannot carry out higher levels of *ijtihād*, they exercise a minor form of juristic discretion through their ability to navigate historical *madhhab* scholarship and apply those precedents to current circumstances. It is important to note that while the jurist retains the ability to contextualise, their research and understanding of the *madhhab* is guided by *rasm al-muftī,* which will be analysed next. For 'Uthmānī, operationalising juristic discretion and its levels is foundational for the procedures of *rasm al-muftī*, as the *rasm* hinges upon the scholar's juristic discretion. While the fourth-level jurist is mandated to stay within *madhhab* preponderances and authentications, albeit with some discretion in contextualisation, the jurist who has reached the levels of *ijtihād* from within the *madhhab* has greater scope for innovation and departure from those precedents.

[253] Ibid., 191.
[254] Ibid., 194-7.

‘Uthmānī on *Rasm al-Muftī*

Having discussed ‘Uthmānī’s conceptualisation of *ijtihād* and, crucially, the position of the *muqallid* jurist who has the capacity of fourth-level discretion despite his low ranking, we now turn to the procedural rules that guide this fourth-level jurist’s rule discovery: *rasm al-muftī.* This *muftī* is tasked with transmitting the authoritative opinions and rules of the *madhhab* accurately, objectively, and without being driven by ulterior motives. Objectivity is fundamental to the *rasm*: the *muqallid muftī* should not be guided by selective reading or research fuelled by their own agenda.[255] It is important to note that ‘Uthmānī’s treatment of *rasm al-muftī* does not deviate from Ibn ‘Ābidīn’s *Sharḥ ‘Uqūd*. Rather, ‘Uthmānī repurposes Ibn ‘Ābidīn’s work into eleven core procedures but, crucially, emphasises juristic expertise (*malaka fiqhiyya*) as pivotal in guiding the circumstances where a jurist may apply discretion. Before turning to ‘Uthmānī’s contributions, let us briefly highlight *rasm al-muftī* in the Ḥanafī *madhhab*.

Historically, Ḥanafīs offered procedural guidelines for prepondering between disagreements in the *madhhab* in voluminous *furū‘* and *fatāwā* works, either as a foreword or amidst the text itself.[256] This rarely took place in a single-issue format in the classical period. For example, the first usage of the term *rasm al-muftī* is found in the foreword to Qāḍīkhān’s *Fatāwā,* where he discusses how one should preponderate over differing opinions from Abū Ḥanīfa and his students.[257] Similarly, Ibn Quṭlūbughā’s (879/1474) contribution, which is a seminal development to the genre, also appears as a foreword to a commentary on al-Qudūrī’s *Mukhtaṣar*.[258]

[255] Both Ibn Quṭlūbughā and Ibn ‘Ābidīn raise this matter as the very first point in their respective treatises. See: Ibn ‘Ābidīn, *Sharḥ ‘Uqūd,* 8-9; Ibn Quṭlūbughā, *al-Taṣḥīḥ wa l-Tarjīḥ ‘alā Mukhtaṣar al-Qudūrī,* ed. Ḍiyā’ Yūnus (Beirut: Dār al-Kutub al-‘Ilmiyya, 2002): 127-8.
[256] While an exhaustive genealogy of Ḥanafī *adab al-muftī* discussions is beyond our scope, refer to Osman Beyder’s study, which explores the evolution of Ḥanafī *adab al-muftī* discussions, dating as early as Abū al-Layth al-Samarqandī (d. 373/984) to Ibn ‘Ābidīn. See: Osman Beyder, " Hanefi fetva usulü literatürü ve bedreddin eş-şuhâvî'nin" et-tirâzu'lmüzheb" adli fetva usulünün değerlendirilmesi." *Bilimname* 29, no. 2 (2015): 211-229.
[257] Ḥasan b. Manṣūr al-Uzjandī Qāḍīkhān, *Fatāwā Qāḍīkhān*, ed. Sālim Muṣṭafā al-Badrī, 3 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 2009): 9.
[258] Ibn Quṭlūbughā, *al-Taṣḥīḥ wa l-Tarjīḥ ‘alā Mukhtaṣar al-Qudūrī.* For a comprehensive study of this work, see: al-Azem, *Rule Formation and Binding Precedent*.

As Calder suggests, specialist discussion for advising *muftī*s and their juristic activity are a late development in Islamic juristic writing.[259] Before Ibn ʻĀbidīn, we note two Ottoman contributions to this genre as stand-alone pieces: al-Shahāwī's (d. 1092/1681) *al-Ṭirāz al-Madhhab*,[260] and Faqīh al-ʻAynī's (d. 1148/1725) *Risāla fī Adab al-Muftī*.[261] While Calder's observations regarding stand-alone pieces are valid, that is not to say that these scholars single-handedly conjured these guidelines. Instead, these scholars narrate quotes and passages from more extensive passages from *furūʻ* and *fatāwā* works, which inform preponderance and rule discovery.[262]

Ibn ʻĀbidīn provides two critical entries to this genre, a seventy-four-couplet poem entitled, ʻ*Uqūd Rasm al-Muftī,* and its explication, *Sharḥ*. These texts describe both the ethics (*adab*) of *fatwā*-giving and procedures (*rasm*) of rule discovery as a poem. In the *Sharḥ,* Ibn ʻĀbidīn provides a lengthy expansion on his poem, and while the discussions are slightly disorganised, Ibn ʻĀbidīn provides the method, theory and context of navigating *madhhab* scholarship for the active function of *fatwā*-giving. Originally lecture notes on *Sharḥ ʻUqūd,* ʻUthmānī's *Uṣūl al-Iftāʼ* provides clarity, organisation, and deeper investigation into the issues raised by Ibn ʻĀbidīn. In the section assigned for *rasm al-muftī*, ʻUthmānī evokes eleven principles in summarising the major procedures of *Sharḥ ʻUqūd.* This section will encapsulate and re-order some of the major themes in his *rasm al-muftī* chapter.

First, ʻUthmānī engages with the opinions of Abū Ḥanīfa; namely, what should the jurist do when there are two variant opinions attributed to Abū Ḥanīfa, or when Abū Yūsuf and al-Shaybānī disagree with Abū Ḥanīfa? ʻUthmānī writes that the default position of a *muqallid* jurist is to follow the preponderances of the *aṣḥāb al-tarjīḥ.* ʻUthmānī writes, "it is necessary (*wājib*) for the *muqallid muftī*

[259] Calder, "The ʻUqūd rasm al-muftī of Ibn ʻĀbidīn," 218.
[260] Badr al-Dīn Muḥammad al-Shahāwī, *al-Ṭirāz al-Madhhab fī Tarjīḥ al-Ṣaḥīḥ min l-madhhab*, ed. Ḥaqq al-Nabī al-Azharī (Hawally: Dār al-Ḍiyāʼ, 2013). A short biography on al-Shahāwī is available from his contemporary al-Muḥibbī (d. 1111/1699) in: Muḥammad Amīn b. Faḍl Allāh al-Muḥibbī, *Khulāṣat al-Athar fī Aʻyān al-Qarn al-Ḥādī ʻAshar,* 4 vols. (Beirut: Dār Ṣādir, n.d.): 4: 463-4.
[261]Muḥammad Faqīh al-ʻAynī, *Risālat fī Adab al-Muftī,* ed. ʻUthmān Shāhīn (Beirut: Dār Ibn Ḥazm, n.d.). Interestingly, during the same period, a Ḥanafī *adab al-muftī* manual was authored by al-Dastināʻī (c. 999) within the Safavid empire, a formidable religious and political rival to the Ottomans. A critical edition of this epistle is available in: Şenol Saylan, "Muhammed Ed-Destinâî'nin Âdâbü'l-Müftîn Adlı Risâlesi: İnceleme Ve Tahkîk." *Trabzon İlahiyat Dergisi* 6, no. 1 (2019): 245-270.
[262] Some of the most oft-cited references in these epistles include: Qāḍīkhān, Ibn Qutlūbughā, al-Ūshī's (d. 575/1179) *Fatāwā Sirājiyya*, al-Ghaznawī's (d. 593/1197) *al-Ḥāwī al-Qudsī,* al-Tumurtāshī's (d. 939-1006) *Munyat al-Muftī* and selected passages from Ibn al-Nujaym's *al-Baḥr al-Rāʼiq.*

to follow their preponderances, even when the preponderated view is the position of Abū Ḥanīfa or any one of his students".[263] 'Uthmānī quotes a large section from Ibn 'Ābidīn on the rationale behind this. The *mujtahid* has independent insight into legal evidences and sources, and thus can verify and authenticate the positions of the *madhhab* independently. Lower-ranking scholars do not have that ability and, thus, must transmit the findings of their superiors when authoring a *fatwā.*[264] If no such preponderance exists, the *muqallid muftī* must take the view of Abū Ḥanīfa. On the other hand, a *mujtahid* from within the *madhhab* is not restricted to the position of Abū Ḥanīfa. Instead, they should opt for the opinion that their research leads them towards. Similarly, if two opinions are attributed to Abū Ḥanīfa, one must establish which is the latter position and issue any *fatwā* based on that. If one cannot establish the latter position or preponderance from Abū Ḥanīfa, 'Uthmānī quotes Ibn 'Ābidīn that one should opt for the preponderance of Abū Yūsuf, then al-Shaybānī, then Zufar (d. 158 /774-775) and then Ḥasan b. Ziyād (d. 204/819-820).[265] While 'Uthmānī does not describe this explicitly, it appears that this procedure is only to be followed by the *muqallid muftī.* The *mujtahid* from within the *madhhab* is capable of independently verifying and authenticating opinions in the school and is, therefore, not restricted by these procedures.

The next grouping of procedures concerns navigating the *madhhab* and sifting through internal disagreement. 'Uthmānī first directs the reader towards the reliable books (*al-kutub al-mu'tabara*) of the *madhhab*, writing that a *muqallid muftī* must rely solely on the reliable books. Herein, a list of books that have been deemed unreliable is repeated. For example, books like Ibn Nujaym's *al-Ashbāh wa l-Naẓā'ir* are considered unreliable for *fatwā* due to the ambiguity and complexity of the text. Similarly, books whose authors are unknown or doubtful[266] or are known to transmit non-preponderate opinions

[263] 'Uthmānī, *Uṣūl al-Iftā'*, 207.
[264] Ibid., 206-7.
[265] Ibid., 199. Zufar and Ḥasan were high-ranking students of Abū Ḥanīfa and the two masters. See: Melchert, "The Early Ḥanafiyya and Kufa," 23-45. The procedure described above appears fairly standard, having been repeated by the various contributors to *rasm al-muftī* – from al-Ghaznawī (d. 593/1196), al-Shahāwī to Ibn 'Ābidīn. See: al-Shahāwī, *al-Ṭirāz al-Madhhab*, 87-9; Aḥmad b. Maḥmūd al-Ghaznawī, *al-Ḥāwī al-Qudsī*, 2 vols. (Beirut: Dār al-Nawādir, 2011): 2: 562.
[266] 'Uthmānī makes a very interesting addition herein, stating that *al-Fatāwā al-'Azīziyya* is not reliably established from Shāh 'Abd al-'Azīz (d. 1239/1823) and therefore cannot be relied upon for *fatāwā*. Interestingly, this text contained a seminal *fatwā* which branded colonial India as *dār al-ḥarb* (an abode of war), thus necessitating Muslims to rebel and fight. See: *Uṣūl al-Iftā'*, 217. For the historical significance of this *fatwā*, see: Metcalf, *Islamic Revival*, 47-52.

are also deemed unworthy. While ‘Uthmānī closely follows Ibn ‘Ābidīn, he also makes additions. For example, ‘Uthmānī adds that one must resort to *fiqh* texts for *fatwā* as they have been written for a juristic purpose, thus containing all the relevant qualifications and discussions, as opposed to Qur’anic exegeses or Hadith commentaries that will avoid the juristic nuance necessary for *fatwā* references.[267]

After learning about the books to read, the *rasm* also describes navigating the various levels of internal disagreement. Some statements of preponderance are more impactful than others. ‘Uthmānī’s taxonomy suggests “upon this is the practice of the *umma*” (*‘alayhi ‘amal al-umma*) as the strongest statement of preponderance. Thereafter, “upon this view is the *fatwā*” (‘*alayhi al-fatwā*),” “by this [view], *fatwā* is given” (*bihī yuftā*), then “this is authentic” (*huwa l-ṣaḥīḥ*) and “this is the most authentic” (*al-aṣaḥḥ*).[268]

Thereafter, ‘Uthmānī repeats Ibn ‘Ābidīn’s nine axioms (*qawā‘id*) of preponderance. Some of these include taking explicit statements of preponderance over implicit preponderance,[269] the opinion of Abū Ḥanīfa or the manifest tradition (*ẓāhir al-riwāya*) over that which is not, or *istiḥsān* (juristic preference) over *qiyās* (clear analogy). Some axioms are subject-specific, such as opting for the opinion in the interests of the endowment or the poor in matters of almsgiving.[270] Nevertheless, ‘Uthmānī transmits an exceptional rejoinder after listing these various axioms. He writes that these axioms are not all-encompassing and do not apply to all situations.[271] Instead, the *muqallid muftī* must judge the situation and apply these axioms with discretion. Thus, he might find that one axiom is used while another is overlooked due to other considerations like public predicament (*‘umūm al-balwā*) or the possibility of further evil (*sadd al-dharāi‘i*). ‘Uthmānī writes:

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[267] ‘Uthmānī, *Uṣūl al-Iftā’*, 208-18.
[268] Ibid., 223-4. Herein, most *rasm* commentators transmit a difference of opinion on the dominance of “this is the most authentic” (*al-aṣaḥḥ*) over “this is authentic” (*al-ṣaḥīḥ*). After transmitting the opinions on this matter, ‘Uthmānī suggests that there is no all-encompassing rule in this matter, and much of it is dependent on the context of the two statements. All other statements, ‘Uthmānī writes, such as “this is the relied upon view” (*huwa l-mu‘tamad*), this is the most direct view (*al-awjah*) and so forth, are on the same level.
[269] Some books preponderate opinions through an argumentative method or by only citing preponderate opinions without stating, “this is the preponderate view.” These are implicit preponderances.
[270] ‘Uthmānī, *Uṣūl al-Iftā’*, 225-6.
[271] Ibid., 226.

> The instruction, in such matters [of competing axioms], is consigned to the juristic disposition (*madhāq*) and juristic expertise (*malaka fiqhiyya*) of the authentic *muftī,* which will enable them to opt for a position among conflicting preponderances […] The determinant in all of this is juristic expertise, which one employs with the fear of God, not enjoyment and following one's desires. This expertise cannot be achieved without the tutelage of other experts.[272]

While 'Uthmānī maintains the relevance of Ibn 'Ābidīn's procedures, he also positions juristic discretion at the heart of juristic activity, even when juristic research is navigated by procedures and rules. The practising *muqallid muftī*, limited in his *ijtihādī* abilities, can exercise this fourth-level discretion to identify the most appropriate laws for legal application. 'Uthmānī repeats this point for a jurist who cannot find any preponderances on a particular matter. While he transmits the various procedures listed by Ibn 'Ābidīn, such as a general instruction to follow the manifest tradition or taking the position of Abu Ḥanīfa in matters of ritual worship or siding with Abū Yūsuf in court-related matters, 'Uthmānī maintains that these rules are not all-encompassing for all situations, appealing to the possibility of juristic discretion.[273] In both places, 'Uthmānī mentions that the ability to judge situations and use discretion is attained through lengthy practice, companionship, and tutoring under expert *muftī*s.[274] Thus, while knowledge of the *madhhab* and following the *rasm* is essential for a jurist, 'Uthmānī presents tutorship and training under experts as the cornerstone for juristic expertise.

Additionally, an important dimension of *malaka fiqhiyya* is the fear of God. *Muftī*s are not merely academics or lawyers; they are arbiters and interpreters of the faith tradition, bearing the immense responsibility of ensuring that God's law is applied faithfully. This requires acting with deep God-consciousness (*taqwā*). In Thānawī's approach to Islamic law, this is captured through *dhawq*, or intuitive cognition, which integrates an intangible Ṣūfī element into the practice of law.[275] This element underscores the weighty burden on a *muftī*'s shoulders in interpreting God's faith. As 'Uthmānī emphasises, such a disposition is absorbed through prolonged companionship with one's teachers.

[272] Ibid., 227.
[273] Ibid., 230.
[274] Ibid., 231.
[275] Zaman, *Ashraf Ali Thanawi*, 87-90.

In sum, the fundamental task for the practising *muqallid muftī* is to transmit the opinions and norms of the *madhhab* accurately, with procedures like the *rasm* offering a hermeneutic to navigate and contextualise the varying opinions within the *madhhab* discourse. *Muqallid muftīs*, trained expertly, may occasionally exercise discretion when faced with internal disagreements. Ibn ʻĀbidīn's *Sharḥ ʻUqūd* offers several axioms available for preponderance; through these, ʻUthmānī posits that circumstances may drive the *muftī* to consider one axiom over another due to the relevance or applicability of the position. In ʻUthmānī's explanation of *ijtihād*, this fourth level of discretion is crucial to maintaining the relevance and applicability of the law. The *muqallid* jurist requires expert training to understand the circumstances of the question, research and accurately transmit the norms of the *madhhab*, and, where internal disagreement persists, utilise discretion in their selection of one position over another. As ʻUthmānī argues, this is an unavoidable "form of *ijtihād* that will persist until the Day of Judgement".[276]

Conclusion

The open or closed status of the gate of *ijtihād* is a significant question surrounding traditionalist and modernist approaches to Islamic legal practice. ʻUthmānī provides an interesting contribution to this discussion, focusing on the role of *ijtihād* from within the *madhhab* framework. ʻUthmānī argues that the 'closed gate' position is greatly misunderstood. He argues that the gate for first-order legal opinion-making never closed. However, while the gate is open, no one can walk through it fully.[277] This means that individual scholars can perform *ijtihād*, even at the highest level, but only on single issues; they cannot compile an entire body of jurisprudence to cover all issues, like the eponyms of the *madhhab*. Nevertheless, *ijtihād* within the *madhhab* continues to thrive and has never ceased. The ongoing practices of *takhrīj*, *taṣḥīḥ*, *tarjīḥ*, and *tamyīz* ensure the law's vitality and consistency.[278] ʻUthmānī

[276] ʻUthmānī, *Uṣūl al-Iftā'*, 192.
[277] ʻUthmānī, *Fiqhī Maqālāt*, ed. Muḥammad ʻAbd Allāh Memon, 6 vols. (Karachi: Memon Islamic Publishers, 2012): 5: 214.
[278] Ibid., 5: 210.

highlights many scholars, such as Ibn al-Humām, Ibn ʻĀbidīn, Shāh Walī Allāh, and al-Lakhnawī, who have significantly contributed to this enduring tradition.[279]

His epistemological framework, one which mandates *taqlīd shakhṣī* for the jurist and layperson, does not necessitate stagnation and, rather, allows for juristic creativity. Herein, one does not need to engage with revelatory sources to resolve contemporary juristic issues; instead, the vast scholarship of the *madhhab* is a sufficient source for this engagement. Thus, one can remain a *muqallid* and still practice juristic innovation and discretion. *Takhrīj*, *tarjīḥ* or even minor fourth-level discretion in juristic application are forms of *ijtihād* that contemporary jurists can apply today. ʻUthmānī's application of these forms of *ijtihād* from within the *madhhab* in resolving contemporary juristic issues will be explored in Chapters 5 and 6.

This chapter focused on the inner workings of this theory. By refocusing the *Ṭabaqāt* through the lens of juristic activity, ʻUthmānī presents a fluid category of the *muqallid* jurist who practices *ijtihād* from within the *madhhab.* This jurist engages with *madhhab* scholarship and juristic precedent and exercises juristic discretion; this discretion can range from first-order *ijtihād* on single issues to third-order preponderance between conflicting positions. ʻUthmānī's addition of the fourth level of discretion provides another possible form of *ijtihād* in the contemporary world. Critically, there is a barrier to entry to this fourth-order legal manipulation. This jurist – the practising *muqallid muftī*, must be able to navigate historical *madhhab* scholarship expertly, guided by the procedures of the *rasm*, and understand the contemporary circumstances and context in which these precedents are to be applied. This requires genuine juristic expertise (*malaka fiqhiyya*) and is gained through tutorship and training under expert *muqallid muftī*s.

ʻUthmānī presents the possibility of *ijtihād* and juristic discretion within a traditionalist framework, guided by procedures of the tradition (the *rasm*) and taught by jurists of the tradition. The next chapter will provide further depth to ʻUthmānī's *madhhab*-based approach to *ijtihād.* Having established a theory of fourth-level discretion, ʻUthmānī expands on when and how a *muqallid* jurist

[279] Ibid., 5: 212. This position is very similar to Thānawī's position on *ijtihād*, see: Thānawī, *al-Iqtiṣād*, 64.

may depart from authoritative *madhhab* norms due to alternative juristic considerations. Herein, we look at ‘Uthmānī’s methodological guidance on custom (*‘urf*), necessity and need (*ḍarūra, ḥāja*), and even on how to depart from the *madhhab* altogether and adopt a position from another *madhhab.*

Chapter 4: Departing from *Madhhab* Norms and Precedents

Continuing from the last chapter, the fundamental task for the *muqallid muftī* is to accurately transmit the *madhhab*'s authenticated opinions and juristic precedents. As discussed previously, these jurists, though expertly trained and competent, do not possess the capabilities of higher-level *ijtihād* and thus maintain a commitment to the binding precedents of the *madhhab*. Taqī 'Uthmānī states:

> The foundation for a *muqallid muftī* is that they write a *fatwā* (legal edict) based on the *madhhab* of their Imām, according to the rules we have described from *'Uqūd Rasm al-Muftī.*[280]

Notwithstanding the *muqallid muftī*'s *ijtihādī* limits and commitment to the *madhhab*, their training delivers expertise in applying the law, often contextualised through the questioner's needs and other competing legal principles. This expertise in legal application can range from granting preponderance to a denounced opinion to even seeking an opinion from another *madhhab*. This chapter describes the occasions and principles that allow the *muqallid muftī* to depart from *madhhab* precedents. 'Uthmānī devotes large parts of *Uṣūl al-Iftā' wa Ādābuhū* carefully detailing the boundaries and regulations for departing from *madhhab* precedents, which will be the basis for this chapter.

This is the third and final chapter of this thesis to explore 'Uthmānī's methodology for authoring *fatwā*s. This chapter is divided into two parts. The first part will study three legal principles that allow departure from authoritative *madhhab* precedent due to changes in time and place. This includes societal changes that render underlying legal causes (*'illa*) obsolete, changes in custom (*'urf*), and changes wherein adherence to the authoritative opinion demands undue difficulty and hardship (*ḥāja* and *ḍarūra*). The second part will discuss 'Uthmānī's description of departing from the *madhhab* and opting for the view of another *madhhab* due to specific legal considerations. Both parts, bound together, inform us of 'Uthmānī's broader thoughts on how legal change, through minor forms of *ijtihād,* may occur from within the *madhhab* system. Herein, 'Uthmānī demonstrates the pragmatic yet restricted parameters in which juristic creativity can continue to take place while abiding by legal tradition and *taqlīd*. Examples from 'Uthmānī's juristic oeuvre will be described to clarify how he has

[280] 'Uthmānī, *Uṣūl al-Iftā',* 243.

used these abstract guidelines in practice.

Part 1: Departure from authoritative *madhhab* opinions due to changes in time and place

'Uthmānī evokes three methodological principles that allow circumstances and social realities to effect a change in juristic position. These are changes to legal causes (*'illa*),[281] custom (*'urf*),[282] and such changes which demand technical necessity (*ḍarūra*) or an urgent need (*ḥāja*)[283] to depart from *madhhab* precedent. The technical definitions and necessary conditions of these principles will be mentioned in their place. Such principles are regularly evoked in modern and contemporary Islamic law-making; for instance, the methodological works of Yūsuf al-Qaraḍāwī (d. 2022), a preeminent Egyptian jurist of recent times, employ similar concepts when articulating a contemporary procedure for legal change in *fatwā*s.[284] In *Uṣūl al-Iftā'*, 'Uthmānī's approach applies a rigorous and cautious reading of Ḥanafī legal methodology, allowing for limited yet functional scope for justifying departure from *madhhab* dictates.

Societal changes that render underlying legal causes (*'illa*) obsolete

The first doctrine 'Uthmānī discusses is how changes to the underlying legal cause of a rule can allow for departure from the established *madhhab* precedent. 'Uthmānī maintains that rulings can change based on the changes in time and place. However, this form of legal change does not extend to all rulings;

[281] In Islamic legal theory, an '*illa* (effective legal cause) is the foundation of *qiyās* (analogical reasoning) as one applies the '*illa* of a known case to a new case, due to a shared '*illa* between them. See: Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 1997): 84-94; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2013): 265-305.

[282] Cf: Ayman Shabana, "Customary implications in Islamic law: The development of the concept of 'urf in the Islamic legal tradition" (PhD diss., University of California, Los Angeles, 2009); Kamali, *Principles of Islamic Jurisprudence,* 369-384.

[283] The first four chapters of Safian's thesis on *ḍarūra* presents a comprehensive understanding of *ḍarūra* and *ḥāja* in traditional Islamic legal theory and its application in positive law, see: Yasmin Hanani Mohammad Safian, "Necessity (Dārūra) in Islamic Law: A study with special reference to the Harm Reduction Programme in Malaysia" (PhD diss., University of Exeter, 2010). For a short essay, see: Yvon Linant de Bellefonds, "Ḍarūra". In P. Bearman (ed.), *Encyclopaedia of Islam New Edition Online (EI-2 English),* (Brill, 2012) doi: https://doi.org/10.1163/1573-3912_islam_SIM_1730

[284] Yūsuf al-Qaraḍāwī, *Mawjibāt Taghayyur al-Fatwā fī 'Aṣrinā* (Doha: Ittihād al-'Ālamī li l-'Ulamā' al-Muslimīn, 2007).

it only applies to a few.[285] 'Uthmānī establishes this matter by first distinguishing between *'illa*, i.e. the effective legal cause that underpins a ruling, and *ḥikma*, i.e., the philosophical-legal wisdom of a particular juristic position.[286] In Islamic law, *shar'ī* rulings are based upon establishing effective causes; the law is enacted when the effective cause is found. A ruling may have a specific benefit or higher objective it aims to provide. Still, this benefit does not need to be present for the verdict to be enacted.[287]

'Uthmānī extends that established juristic opinion can change based on changes in time and place, but only if that particular ruling was based on an effective cause that is no longer present. 'Uthmānī offers only one concrete example of this in practice. The early Ḥanafīs wrote that selling water for crop irrigation is unlawful. The effective legal cause ('*illa*) underpinning this ruling was that measuring the amount of water sold was impossible, thus necessitating ambiguity (*jahāla*) in the sale, which is forbidden. However, as this effective cause does not apply to contemporary times, the sale of such water is now permissible.[288]

'Uthmānī grants little independent authority (*ḥujjiya*) to legal wisdoms in affecting a ruling. This position contrasts with the growing number of contemporary jurists who argue for the efficacy of the *maqāṣid al-sharī'a* (the objectives of the Sharia) as deciders in legal matters. Pre-modern jurists have understood the objectives of the Sharia as five: preserving religion, life, wealth, lineage, and human intellect.[289] These are often referred to as the five necessities (*al-ḍarūrāt al-khams*); that which safeguards these five necessities is known as a *maṣlaḥa* – a matter of public interest and well-being,

[285] 'Uthmānī, *Uṣūl al-Iftā',* 286.
[286] Ibid., 286-290.
[287] Ibid., 286. For a cross-*madhhab* perspective on the differences between '*illa* and *ḥikma*, see: Kamali, *Principles of Islamic Jurisprudence*, 274-277.
[288] 'Uthmānī, *Uṣūl al-Iftā',* 287.
[289] Jasser Auda, *Maqāṣid Al-Sharī'ah as philosophy of Islamic law* (Richmond: International Institute of Islamic Thought, 2007): 4. See 9-24 for a succinct summary of contributions to the *maqāṣid* legal genre from pre-modern to contemporary times, noting some of the most renowned contemporary *maqāṣid* contributors.

and thus deserving of legal weight. From al-Ghazālī (d. 505/1111)[290] to al-Shāṭibī (d. 790/1388),[291] there is meaningful discussion across pre-modern scholarship about whether these objectives are independently authoritative.[292] However, contemporary *maqāṣid* scholars have renewed this debate, accepting and extending the pre-modern *maqāṣid* theory of al-Shāṭibī and others to include new objectives and afford the *maqāṣid* independent hermeneutic value to overrule previously held legal positions, and even scriptural texts.[293]

Through his exposition of legal causes and the changing of times, 'Uthmānī critiques a trend among certain 'contemporary modernists' (*al-mu'āṣirīn al-mutajaddidīn*) who view the *maqāṣid* as fundamental to God's instructions. In these cases, certain jurists allow for reanalysing rulings if

[290] Abū Ḥāmid al-Ghazālī writes that anything which serves the five necessities is a *maṣlaḥa* (interest); nonetheless, entrenched within the broader Ash'arī theology on the human understanding of God's wisdom and intention, Ghazālī writes that a *maṣlaḥa* must be situated within scripture to be considered valid. As such, if a *maṣlaḥa* is declared within scripture, one can extend this *maṣlaḥa* as a legal cause for analogical reasoning (*qiyās*). Thus, the *maṣlahā* of affecting the intellect is expressed within the prohibition of alcohol. This can now be extended to other such intoxicants. As for public interests that are unattested in scripture (*maṣlaḥa mursala*), Ghazālī writes that they can be used to establish the five necessities if they are somewhat supported by scripture. See: Muḥammad b. Muḥammad al-Ghazālī, *al-Mustaṣfā min 'Ilm al-Uṣūl* (Beirut: Dār al-Kutub al-'Ilmiyya, 1993): 173-176. Wael Hallaq argues that Ghazālī's treatment of *maṣlaḥa* in the *Mustaṣfā'* represents an uncontroversial "minimum doctrine" to avoid criticism and controversy. Hallaq alleges that Ghazālī's elaboration in *Shifā' al-Ghalīl*, written earlier in his career when he was teaching and studying the law and issuing *fatwā*s, is far less conservative and more imaginative than that which is elaborated in the *Mustaṣfā'.* See: Hallaq, "Uṣūl al-Fiqh: Beyond Tradition." *Journal of Islamic Studies* 3, no. 2 (1992): 188-191. See also: Felicitas Opwis, *Maṣlaḥah and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Leiden: Brill, 2010): 65-87.

[291] Abū Isḥāq al-Shāṭibī's contribution to *maṣlaḥa* as a basis in *uṣūl al-fiqh* is well-regarded among modern and contemporary reformers for providing a comprehensive framework for legal reform. In short, al-Shāṭibī argues that the five necessities are universal and definite sources of law in matters of necessities, needs and improvement; thus, they can be used in legal opinion-making without requiring concrete revelatory text. Al-Shāṭibī arrives at this conclusion by reflecting upon the epistemic reasoning behind the definitive status of mass-transmitted Prophetic narrations (*mutawātir* Hadith). A single-transmitted narration may be probable to doubt, but with a vast number of transmitters, that narration reaches definitive status. Similarly, the legal wisdom of safeguarding life may appear once and probable to doubt. However, as these necessities are established from a summation of divine injunction, they become "mass-transmitted". See: Ibrāhīm b. Mūsa al-Shāṭibī, "al-Muqaddimāt" in: *al-Muwāfaqāt,* ed. Mashhūr Āl Sulaymān, 8 vols. (Cairo: Dār Ibn 'Affān, 1998): 1: 3-169, esp. 27-37. For a thorough discussion of al-Shāṭibī's theory, alongside its associated implications and entailments, see: Hallaq, *A history of Islamic legal theories,*162-206. See also: Ahmad Al-Raysuni, *Imam al-Shatibi's theory of the higher objectives and intents of Islamic law* (Richmond: The International Institute of Islamic Thought, 2005). To see al-Shāṭibī's *maqāṣid* theory in practice, and extended for contemporary bio-ethical dilemmas, see: Aasim Padela, "Maqāṣidī Models for an "Islamic" Medical Ethics: Problem-Solving or Confusing at the Bedside?" *American Journal of Islam and Society* 39, no. 1-2 (2022): 72-114.

[292] Felicitas Opwis' monograph on *maṣlaḥa* presents one of the most comprehensive expositions of pre-modern ideas of *maṣlaḥa.* See: Opwis, *Maṣlaḥah and the Purpose of the Law.*

[293] If we consider the aforementioned al-Qaraḍāwī, he argues that the five necessities are individualistic and that pluralistic values, such as freedom, equality, brotherhood, and human rights, should also fall within the necessities of the Sharia, as these values enable a flourishing Muslim society and state. See: al-Qaraḍāwī, *Dirāsat fī Fiqh Maqāṣid al-Sharī'a* (Cairo: Dār al-Shurūq, 2007): 27. For the influence of al-Shāṭibī and al-Ṭūfī on twentieth-century reformers, see: Opwis, "Maṣlaḥa in Contemporary Islamic Legal Theory", *Islamic Law and Society* 12, no. 2 (2005): 182-223.

changes to time and place have rendered them untenable or validate an alternative course of action.[294] ‘Uthmānī determines that such interpretations pervert the differences between effective legal causes and legal wisdoms and their effect on deciding legal matters. ‘Uthmānī expends a considerable effort to highlight these differences, submitting several examples to solidify his position. For example, consuming alcohol is unlawful; the effective cause for the unlawfulness is for a drink to be alcohol, and the legal wisdom is to preserve human intellect. Suppose one drank minimal alcohol and their rational faculties remained intact; this would not impact the ruling. If a drink is alcoholic, consuming it is unlawful – even if the aim of the law is not found. Therefore, the declaration of unlawfulness depends on its effective cause, not its philosophical-legal higher objective.[295]

To clarify the point further, ‘Uthmānī evokes the example of a traffic light. The law states that one must stop at a red light. This is the effective cause – one must stop when the traffic light displays red. While this has been instituted for the safety of road users and pedestrians (the higher objective), the law is still in place if that higher objective is missing. Suppose a vehicle is at a traffic light with no other vehicles or pedestrians around them: the driver cannot evoke this higher objective to justify running a red light. Instead, he is legally obligated to stop at the red light, even in a typical case where lives are not at risk. He will be prosecuted or fined by the authorities for not doing so.[296]

This explanation interacts with ‘Uthmānī’s philosophy on the nature of truth. Only through revelation can one discern the realities of the world, and pure intellect cannot achieve this.[297] ‘Uthmānī uses the language of objective truth against those who speak the language of *maṣlaḥa* and *maqāṣid al-sharī‘a* and hold these ideals as the purpose of religious activity. ‘Uthmānī posits that some scholars believe that Muslims have been instructed to follow these objectives; the rulings and explicit revelatory texts (*naṣṣ*) are secondary vehicles for these higher objectives and can thus be rearranged to establish

[294] ‘Uthmānī, *Uṣūl al-Iftā’*, 289.
[295] Ibid., 287.
[296] ‘Uthmānī, *Uṣūl al-Iftā’*, 287. ‘Uthmānī has deployed this analogy in varying points in his career. I have first found this example in a 1983 article written for an international conference held in Algeria. This analogy is also repeated in his report towards the 1999 Supreme Court Judgement to deem interest unlawful. This analogy can also be found in an *al-Balāgh* article written in 2009. Cf: idem, “Manhajiyyat al-Ijtihād fī ‘Aṣr al-Ḥāḍir” in: *Maqālāt al-‘Uthmānī,* 2 vols. (Karachi: Maktaba Ma‘ārif al-Qur’ān, 2014): 1: 261-2; idem, *The Historical Judgement on Interest*, 66; idem, *Fiqhī Maqālāt*, 215-6.
[297] ‘Uthmānī, *Uṣūl al-Iftā’*, 291. ‘Uthmānī articulates his ideas on reason and revelation in: *Islām awr Jiddat Pasandī*, 7-19.

these objectives.[298] 'Uthmānī counters these arguments by pointing to the subjectivity of any such lofty objectives (*maqāṣid fadfādat*), stating: "public interests and objectives are vague and pompous terms".[299] Notwithstanding the firm belief that God will not establish any ruling without human benefit, individual minds cannot accurately establish those reasons if God or the Prophet have not professed them. Thus, granting superiority to unexpressed subjective higher objectives over expressed rulings is inconceivable. As 'Uthmānī writes, "a public interest (*maṣlaḥa*) is that which God and his Messenger have proclaimed as a public interest".[300] 'Uthmānī confers proposed public interests or *rationes legis* that oppose the Qur'an or the Prophetic tradition as desires.[301]

'Uthmānī's criticism is embodied by his young self's traditionalist critique of the hermeneutical approach of Fazlur Rahman Malik, whose critical influence during Ayub Khan's presidency, as detailed in Chapter 1, prompted 'Uthmānī's retort. In Rahman's epistemology, the moral-social purposes and objectives of scripture were fundamental; 'literalist' engagement while shutting oneself from the higher objectives of scripture is to deliberately undermine the very intentions behind scripture.[302] Therefore, in discussions regarding bank interest and the Qur'anic prohibition of *ribā* (usury), Rahman argued that abolishing bank interest would contradict the spirit of cooperation demanded by the Qur'an and Sunna.[303] Interestingly, 'Uthmānī's distinction of *'illa* and *ḥikma* is repeated in his report towards the 1999 Supreme Court of Pakistan's judgement on usury when the appellants argued that the forbidden *ribā* of the Qur'an is unjust to the poor, while modern loans with bank-interest can be a source of hope. Therefore, the appellants argued that modern bank interest should be permitted.[304]

Equally, *maqāṣid* and *maṣlaḥa* form a critical part of al-Qaraḍāwī's jurisprudence.[305]

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[298] Ibid., 290.
[299] Ibid., 291.
[300] Ibid., 292.
[301] Ibid.
[302] Rahman, *Islam and Modernity*, 19-20.
[303] Rahman, "Ribā and Interest" *Islamic Studies* 3, no. 1 (1964): 37-41.
[304] Akhtar Hamid, "Islamic Law on Interest: The 1999 Pakistan Supreme Court Rulings on Riba" in: *The World Bank Legal Review, Volume 1: Law and Justice for Development*, ed. Rudolf Van Puymbroeck (Leiden: Brill, 2003): 404-6. 'Uthmānī's response highlights the misunderstanding between *'illa* and *ḥikma*, while also arguing that bank-interest is unjust due to the fictitious growth of money it enables and the significant booms-and-busts it causes in the economy. This argument can be found in: 'Uthmānī, *The Historical Judgement on Interest*, 66-82.
[305] al-Qaraḍāwī, *Dirāsat fī Fiqh Maqāṣid al-Sharī'a*; Shaham, *Rethinking Islamic Legal Modernism*, 89-107.

‘Uthmānī and al-Qaraḍāwī enjoyed a close relationship through their many collaborations at various scholarly forums and positions on Islamic financial institutions; nevertheless, their methodological approaches to the same legal principles are markedly different.[306] In al-Qaraḍāwī’s *maqāṣid* framework, *maqāṣid* can be decisive in transactions and habits, but *maqāṣid* cannot overturn scripture in matters of worship.[307] Al-Qaraḍāwī argues that the scripture should be examined holistically, through which not only can the higher objectives of non-worship be ascertained, but they must be ascertained so that jurisprudence can be developed and reexamined.[308]

Critically, al-Qaraḍāwī’s hermeneutics blur the lines between *‘illa* and *ḥikma*. For instance, his comprehensive analysis of Hadith literature on the beard suggests that the Prophet established the beard, along with other directives, to mark physical and moral distinctions between Muslims and non-Muslims. Al-Qaraḍāwī continues that as this objective is not foundational, adherence to it is not obligatory but recommended.[309] Similarly, al-Qaraḍāwī declares that the Prophet forbade women from travelling without a chaperone for safety concerns. In modern contexts where travel is safe, this prohibition does not apply.[310] Conversely, ‘Uthmānī’s positions on both examples are precise and legalistic. Regarding unchaperoned travel, the Hadith is explicit; the prohibition is upheld where the legal cause is found, i.e., a woman travelling the legal distance without a chaperone, even if her journey is for the obligatory pilgrimage.[311]

While it may not be evident, ‘Uthmānī’s position is undoubtedly a response to the proliferation of *maqāṣid* jurisprudence emerging from Egypt, within which al-Qaraḍāwī sits at the forefront.[312] ‘Uthmānī’s thoughts in *Uṣūl al-Iftā’* on the epistemic relationship between scripture and human

[306] In an appraisal, forwarded to al-Qaraḍāwī for his seventieth birthday, ‘Uthmānī admits this much, writing that while he is in awe of his juristic capabilities, there is much that they disagree on, but calls this a natural phenomenon in matters of *ijtihād.* See: ‘Uthmānī, “Faḍīlat al-Duktūr Yūsuf al-Qaraḍāwī” in: *Yūsuf al-Qaraḍāwī Kalimāt fī Takrīmihī wa Buḥūth fī Fikrihī wa Fiqhihī*, ed. ‘Abd al-‘Aẓīm al-Dīb (s.l.: Nādī al-Shabāb, n.d.): 71. Interestingly, in a foreword to ‘Uthmānī’s *Takmilat Fatḥ al-Mulhim*, al-Qaraḍāwī reinforces the same message that there is great respect and admiration between the two scholars, although they differ on certain issues. See: al-Qaraḍāwī, “Taṣdīr” in: ‘Uthmānī and ‘Uthmānī, *Fatḥ al-Mulhim ma‘a Takmilat Fatḥ al-Mulhim*, 7: 11-15.
[307] al-Qaraḍāwī, *Dirāsat*, 200-2.
[308] Ibid., 147.
[309] Ibid., 155-7.
[310] Ibid., 166.
[311] ‘Uthmānī, *Buḥūth*, 1: 323.
[312] Bano, *Modern Islamic Authority*, 55-126; Skovgaard-Petersen, *Defining Islam for the State*, 227-290; Shaham, *Rethinking Islamic Legal Modernism*, 65-88.

reasoning were directly transposed from his address at an annual international conference held by the Egyptian Supreme Council of Islamic Affairs in 2010. The conference focused on *maqāṣid* and modern applications, and it took place one year before the publication of *Uṣūl al-Iftā'*.[313] 'Uthmānī's *Uṣūl al-Iftā'* offers guidance to navigate the pitfalls that burden *fatwā*-writing in the contemporary age. Therefore, part of the project of guiding contemporary *fatwā*-issuance involves rejecting the growing trend of *maqāṣid*-based jurisprudence, which proliferates among the traditionally trained *'ulamā*-classes of a particular region. In his address in Cairo, 'Uthmānī maintained that it is impossible to definitively ascertain the objectives of the Qur'an and Sunna if God or the Prophet have not professed it. Therefore, higher-level wisdoms discovered through subjective human endeavour cannot repeal the objective instructions of the Qur'an and Sunna.[314]

Departure from authoritative *madhhab* opinions due to changes in custom (*'urf*)

In 'Uthmānī's examination of societal changes that justify departures from established legal norms, custom (*'urf*/*ta'āmul)* is the second doctrine under discussion. Since 'custom can be a legal decider (*al-'ādatu muḥakkama*)' is a legal maxim found in many methodological treatises across the *madhhab*s,[315] 'Uthmānī offers a summary of Ḥanafī discussions on this maxim. As with the discussion of *'illa*, 'Uthmānī attempts to limit its hermeneutic scope.

'Uthmānī identifies two forms of custom: customary vernacular (*'urf lafẓī*) and customary practice (*'urf 'amalī*). While juristic considerations for customary vernacular are relatively straightforward,[316] customary practice is an area of methodological controversy. Relying on Ibn

[313] 'Uthmānī, *Maqālāt al-'Uthmānī*, 1: 331-3.
[314] Ibid., 1: 332-3. Though 'Uthmānī does not reference him, Thānawī addresses a similar argument by contrasting the clear texts of revelation—the Qur'an and Sunna—against the speculative arguments of *ḥikma* when discussing the differences between '*illa* and *ḥikma*. See; Nadwī, *Fiqh Ḥanafī ke Uṣūl-o Ḍawābiṭ*, 46-48.
[315] This maxim is considered among the six universal maxims of Islamic law (*al-qawā'id al-fiqhiyya al-kulliya).* See: Ibn Nujaym, *al-Ashbāh wa l-Naẓā'ir* (Beirut: Dār al-Kutub al-'Ilmiyya, 1999): 79-89. For a study of the history and development of the Islamic legal maxims, see: Fawzy Shaban Elgariani, "Al-Qawā'id al-Fiqhiyyah (Islamic Legal Maxims): Concept, Functions, History, Classifications and Application to Contemporary Medical Issues" (PhD diss., University of Exeter, 2012): 116-206; Luqman Zakariyah, *Legal Maxims in Islamic Criminal Law: Theory and Applications* (Leiden: Brill, 2015).
[316] In Ḥanafī jurisprudence, when customary usage assigns a specific meaning to a word, this meaning is recognised in legal contexts. Historical *madhhab* discourse includes numerous examples of this, such as when

‘Ābidīn’s famous treatise on ‘*urf*,[317] ‘Uthmānī writes that customary practice which opposes explicit revelatory text (*naṣṣ*) must be rejected. Dealing with usury, drinking alcohol and men wearing gold and silk are among the examples Ibn ‘Ābidīn mentions as prohibited actions which have become customary and widespread. These customs will be rejected and have no hermeneutic value in overriding established prohibitions. ‘Uthmānī comments that these prohibited activities, as well as all others, were custom at the time of revelation. Revelation came to guide humanity by expunging ungodly and unlawful customs. Therefore, cultural norms cannot be put forward to permit them, for they are customary now, as they were then.[318]

Now, ‘Uthmānī lists a few occasions wherein changes to customary practice can cause a change in established *madhhab* precedent. First, if the legal cause (*‘illa*) of an explicit revelatory text is based on the customs of the people of the time, changes to that custom incur changes to the law due to the cessation of the underpinning legal cause. For example, numerous Prophetic narrations permit passers-by to eat from the fruit trees of others. It is reported that the Prophet permitted the one entering a walled garden to eat from its fruit but condemned taking it away. On a surface level, these traditions contradict general religious injunctions that prohibit utilising another’s wealth without prior permission. However, ‘Uthmānī transmits that these traditions were based on local customs, where people were lenient with travellers and passers-by. As this custom has ceased, the law will no longer be applicable.[319]

Similarly, if changes to the custom nullify the legal cause in a single issue, the law of that single issue will change. For example, it is prohibited to purchase an item which entails such ambiguity that it allows for the possibility of dispute. Therefore, while using the *ḥammām* (Turkish baths)

Ḥanafī jurists saw that the phrase "I have left you" evolved to be synonymous with "divorce," leading jurists to treat this phrase as an explicit statement of divorce. ‘Uthmānī notes that while widespread linguistic customs apply universally, regional customs affect legal interpretations only within those specific regions. See: ‘Uthmānī, *Uṣūl al-Iftā’*, 298.

[317] Ibn ‘Ābidīn’s treatise, *Nashr al-‘Urf*, has been studied in great detail by Wael Hallaq in: *Authority, Continuity and Change in Islamic Law*, 219-233. Similar to the conclusions made herein, Hallaq describes a tension in Ibn ‘Ābidīn’s binding to the authoritative dictates of the *madhhab* and the demands of custom. Nonetheless, the breadth of opinion within the *madhhab* allows for law manipulation; thus, the *madhhab* is not a hindrance to evolution or legal creativity. See also: Al-Fijawi, “The Importance of Considering Custom (‘*urf*/‘*ādāt*) In Issuing Fatwa *(iftā’)* In Ibn ‘Ābidīn’s Sharḥ Uqūd Rasm al-Muftī.” *Journal of Islam in Asia* 14, no. 1 (2017): 268-288.

[318] ‘Uthmānī, *Uṣūl al-Iftā’*, 300.

[319] Ibid., 301-3.

involves some ambiguity over the amount of water one uses, its widespread customary nature means that its ambiguity is acceptable.[320] A third occasion where customary practice can play a deciding role is in matters without explicit judgment; this novel matter resembles both a prohibited and permissible matter. If customary practice exists in such a matter, the side of permissibility will be granted preponderance.[321] 'Uthmānī presents the example of purchasing made-to-order goods (*istiṣnā'*). One can conceptualise such a transaction as a sale or an employment contract. While the transaction appears to be legally problematic as it involves buying a non-existent good, which is prohibited, conceptualising this arrangement as an employment contract is far less controversial. Due to the widespread customary practice, the early Ḥanafīs permitted the buying of made-to-order goods.[322]

'Uthmānī writes, as a fourth scenario, that if a law is based on the people's circumstances, the law will change if those circumstances change. Historically, the *madhhab* assumed a default upstandingness on behalf of witnesses in non-corporal and non-capital punishment cases. Later Ḥanafīs preferred the position of Abū Yūsuf and al-Shaybānī that a witness's upstanding nature must be verified.[323] The *madhhab* norm changed because widespread corruption and vice became common.[324]

This discussion produces a necessary clarification. While 'Uthmānī does not clearly delineate these positions, it appears custom is being considered in two different circumstances. First, one considers custom in parallel with revelatory sources to study and understand their underlying legal causes. For example, one contextualises the traveller's permission to eat from the fruit trees of others as a custom. As Ibn 'Ābidīn explains, while custom cannot supersede revelation, it can affect the subsequent derivative laws extrapolated from revelation, so long as there is prevalent customary

[320] Ibid., 304.
[321] Ibid., 308.
[322] Ibid.
[323] This change in official ruling can be found as early as al-Sarakhsī (d. 483/1090); al-Marghinānī (d. 593/1197) solidified this change, stating "the *fatwā* is upon the two masters in this time and age" in: 'Alī b. Abī Bakr al-Marghīnānī, *al-Hidāyā fī Sharḥ Bidāyat al-Mubtadī*, ed. Ṭalāl Yūsuf, 4 vols. (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, n.d.): 3: 118; Muḥammad b. Aḥmad al-Sarakhsī, *al-Mabsūṭ*, 30 vols. (Beirut: Dār al-Ma'rifa, 1993): 16: 88.
[324] 'Uthmānī, *Uṣūl al-Iftā'*, 309-10. Accordingly, 'Uthmānī upholds this position in his theories of implementing Sharia in Pakistan, posing cross-examination as a possible contemporary vehicle to verify the upstanding nature of witnesses. 'Uthmānī, *Ḥudūd Ordinance: Aik 'Ilmī Jā'iza* (Karachi: Bayt al-Kutub, n.d.): 19.

practice therein.[325] Therefore, the Ḥanafīs permitted using the *ḥammām* or made-to-order goods, despite the analogical alignment between these transactions and revelatory prohibitions. Second, one considers custom when practising preponderance (*tarjīḥ*) within *madhhab* positions. Thus, while Abū Ḥanīfa argued for default uprightness in witnesses, his two students maintained that there should be a verification process. It is through the changes in time and place that the later Ḥanafīs preponderated the position of the two masters.

'Uthmānī's methodology on custom closely adheres to Ibn 'Ābidīn's treatise on *'urf*. 'Uthmānī acknowledges customary practice as a valid legal hermeneutic, but only when a ruling has been decided or partly decided by customary considerations. Customs, on their own, cannot repeal scriptural injunctions. Nevertheless, 'Uthmānī urges *muftī*s to work within those restricted parameters and facilitate for the people. He extends this by quoting large portions from Ibn 'Ābidīn. In his epistle on custom, Ibn 'Ābidīn cites various examples of historic Ḥanafī precedents which considered custom as a legal decider. He writes:

> These examples and others like them are clear evidence that the *muftī* does not have an absolute rigidity upon the statements within the books of *ẓāhir al-riwāya* (the Manifest Traditions from Abū Ḥanīfa), without consideration of the times and its people. Otherwise, he will squander numerous rights, and his harm will be greater than his benefit.[326]

Compounded with 'Uthmānī's characterisation of custom as one of the most critical tools in the *muftī*'s toolbox,[327] 'Uthmānī warns the *muftī* of complacency with their duties. As 'Uthmānī argues through Ibn 'Ābidīn, jurists decided certain legal rules based on changes in their times; *muftī*s of new eras must update those precedents if their assumed customs are inapplicable.[328] An example that embodies this method is 'Uthmānī's signed verdict for eating on tables and chairs, in which he argued that eating on tables and chairs is intrinsically permissible. There were *fatwā*s from Deobandī elders who declared

[325] Ibn 'Ābidīn, *Nashr al-'Urf Fī Banā' Ba'ḍ al-Aḥkām 'alā l-'Urf* (Bharuch: Maktaba-i Fahīm, 2019): 38-40.
[326] 'Uthmānī, *Uṣūl al-Iftā'*, 311. Ibn 'Ābidīn, *Nashr al-'Urf*, 81.
[327] 'Uthmānī, *Uṣūl al-Iftā'*, 296.
[328] Ibid., 312.

that eating on tables and chairs was impermissible or undesirable as it was the practice of disbelievers.[329] However, this judgement is contextualised to a specific time, i.e., it refers to the practice of the alien colonisers, when Indians – Muslim and Hindu – would eat on the floor and eating on tables was specific to these outsiders. Eating on tables is now considered universal across most societies and not restricted to any one group or religious community, and as such, this extrinsic impermissibility is inapplicable.[330]

Critically, operating within the limited parameters still requires expertise and competency. One must have competent insight into the law, its sources, and clauses to declare whether its basis is custom or revelatory sources. 'Uthmānī cites Ibn 'Ābidīn to conclude his discussion, which indicates that often, these underlying causes and principles are unwritten and thus rely upon training from an expert teacher.[331] This is a central thread weaving through 'Uthmānī's views on contemporary *ijtihād*: expertise necessitates studying and lengthy companionship with other experts. Within these methodological boundaries and parameters, a non-*mujtahid muftī* can still practice essential forms of *ijtihād*. While it is a lower form, these forms of *ijtihād* maintain the adaptability and development of the law and, as 'Uthmānī contends, will survive until the Last Day.[332]

Departure due to perceived necessity (*ḍarūra*) and urgent need (*ḥāja*)

Necessity (*ḍarūra*) and urgent need (*ḥāja*) are common legal concepts evoked in the writings

[329] Several Deobandī elders have discussed the ruling on eating on tables and chairs. Thānawī writes that this is impermissible due to its imitation of the British. The next generation of elders, Maḥmūd al-Ḥasan Gangohī (d. 1996) and Rashīd Aḥmad Ludhiyānwī (d. 2002), write that this is discouraged as it is against the Prophetic method of eating; and can be deemed impermissible if one does so in imitation of non-Muslims. Rashīd Ludhiyānwī was an influential *fiqh* teacher to Taqī in his formative years. Yūsuf Ludhiyānwī, an influential Pakistani scholar and elder to Taqī, also discourages this practice. As the customs of the English, Yūsuf posits that this practice should be avoided. See: Thānawī, *Imdād al-Fatāwā*, ed. Muḥammad Shafī' 'Uthmānī, 6 vols. (Karachi: Maktaba Dār al-'Ulūm Karāchī, 2010): 4: 465; Maḥmūd al-Ḥasan Gangohī, *Fatāwā Maḥmūdiyya,* 25 vols. (Karachi: Maktaba-i Jāmi'a Fārūqiyya, n.d.): 18: 78-9; Rashīd Aḥmad Ludhiyānwī, *Aḥsan al-Fatāwā*, 10 vols. (Karachi: H.M. Saeed Company, n.d.): 8: 121; Yūsuf Ludhiyānwī, *Āp ke Masā`'il Awr Un kā Ḥal,* 8 vols. (Karachi: Maktaba-i Ludhiyānwī, 2011): 8: 381-2.

[330] Dār al-Iftā', Darul Uloom Karachi, "33309:220" *archive.org*, November 2013. From: https://ia801001.us.archive.org/14/items/Jamia-Darul-Uloom-Karachi-Fatawa-Collection/Eating-On-Table.pdf [Accessed 01 December 2022].

[331] 'Uthmānī, *Uṣūl al-Iftā'*, 312.

[332] Ibid., 192.

of contemporary jurists.[333] 'Uthmānī's guidance on this topic offers reflections that he suggests are absent or severely muddled in previous methodological treatises. These two legal concepts are established from the Qur'an, wherein God prohibits the consumption of pork and carrion, further stating: "Whoever is compelled by necessity, neither seeking pleasure nor transgressing, there is no sin on him" (Q. 2: 174).[334] Based on these verses, the Islamic legal tradition has developed historical discussions under various legal maxims such as "Necessity can permit forbidden actions" (*al-ḍarūrāt tubīḥ al-maḥdhūrāt*) and "Difficulty demands ease" (*al-mashaqqat tajlib al-taysīr*). These discussions determine the boundaries where severe practical challenges and necessities can affect rulings of prohibitions and obligations.

'Uthmānī offers concise and targeted guidance on navigating these discussions, putting forth a hermeneutic to navigate these historical discussions for contemporary usage.[335] In contemporary discussions, 'Uthmānī alleges that the central confusion surrounds the interchangeability of necessity and urgent need in legal verdicts and speech despite their clear terminological distinction. As 'Uthmānī recalls, by citing al-Jaṣṣāṣ and other Ḥanafī jurists, necessity (*ḍarūra*) refers to a situation wherein one's life or limb is threatened.[336] Second, 'Uthmānī proceeds that the threat to life and limb must be imminent, such that a person believes, through dominant opinion, that destruction is imminent. Third, there must be no permissible means to repel this threat. Fourth, a person cannot inflict harm on another – thus, extreme compulsion cannot justify killing another individual. 'Uthmānī commits that if these conditions are met, forbidden actions can become permitted – such as eating or drinking forbidden food when life is threatened. Necessity, as therein defined, is limited to matters of life and death only.[337]

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[333] As noted in the coming passage, 'necessity' was cited in the most controversial and prominent judgement of the European Council of Fatwa and Research: the permissibility of an interest-based mortgage to fund one's first residential home in Europe. Necessity is also a key doctrine in al-Qaraḍāwī's *maqāṣid* approach, see: al-Qaraḍāwī, *Mawjibāt Taghayyur al-Fatwā,* 83-8; 93-96.

[334] The Qur'an repeats this message in: Q. 5: 3, 6: 145, 16: 115.

[335] One notes that *Uṣūl al-Iftā'* was initially written as a supplementary text for the *fatwā*-training courses in Darul Uloom Karachi. As *al-Ashbāh wa l-Naẓā'ir* is taught on the course wherein this lengthy discussion is found, the omission of these lengthier discussions is not noteworthy. In fact, *Ashbāh* is a staple in most Deobandī *fatwā*-training courses, and as such, 'Uthmānī is only motivated to make sharp and concise points which guide practical application for *fatwā*-giving. For the curriculum of the *Iftā'*-training course at Darul Uloom Karachi, see: Darul Uloom Karachi, "Takhaṣṣuṣ fi l-Iftā" *darululoomkarachi.edu.pk,* [no date]. From: https://darululoomkarachi.edu.pk/?page_id=5480 [Accessed 01 December 2022].

[336] 'Uthmānī, *Uṣūl al-Iftā'*, 314.

[337] Ibid., 315.

As for an urgent need (*ḥāja*), this refers to difficulty and constriction, which does not harm life or property. Urgent needs are categorised as either universal, i.e. affecting the wider public, or specific, i.e. involving only a select group of people.[338] Similar to necessity, both categories can affect a legal ruling and demand ease, though ʻUthmānī contends:

> I have not found anyone in the legal manuals who has clarified the difference between necessity and urgent need in impacting a legal position.[339]

ʻUthmānī furthers that there are two circumstances in which urgent need affects a ruling. The first circumstance is when the Qur'an or Sunna professes a need to qualify a ruling. For example, Muslim men are prohibited from wearing silk beyond embellishing a small amount, equivalent to four fingers.[340] Nonetheless, the Prophetic tradition permits silk in battle or for dermatological sickness due to its need. The second circumstance is when a legal ruling is not explicit in the revelatory sources and is thus subject to scholarly dispute (*mujtahad fīh*). In matters of urgent need, a verdict of permissibility can be preponderated. As for matters explicitly prohibited from scripture, such as pork and carrion, an urgent need will not affect its prohibition unless it reaches the level of technical necessity.

A recurring theme in ʻUthmānī's methodological guidance and legal verdicts is this distinction between definite matters explicitly stated within the revelatory sources (*qaṭʻiyyāt*/*manṣūṣ ʻalayh*) and verdicts wherein there is scholarly dispute (*mujtahad fīh*). A Qur'anic verse may be subject to interpretation; however, definitive matters (*qaṭʻiyyāt*) are Qur'anic verses or prophetic traditions that only allow for a single meaning. As there is no room for another interpretation, its meaning is clear and indisputable, affording the highest level of legal responsibility and accountability.[341] However, in

[338] Ibid., 317.
[339] Ibid.
[340] This is the authoritative position in the Ḥanafī and Shāfiʻī schools and can also be found in the Ḥanbalī and Mālikī schools. See: Wizārat al-Awqāf wa l-Shu'ūn al-Islāmiyya, Kuwait, *Mawsūʻat al-Fiqhiyya al-Kuwaytiyya*, 45 vols. (Kuwait: Wizārat al-Awqāf wa l-Shu'ūn al-Islāmiyya, 1983): 17: 208-9.
[341] These discussions can be found throughout the genre of Islamic legal methodology (*uṣūl al-fiqh*), wherein the proof-status of revelatory evidence is ranked in relation to the definitive or speculative nature of its transmission and interpretation. The Qur'an and mass-transmitted prophetic traditions are definitive in their transmission (*qaṭʻiyy al- thubūt*); if their purport is definitive, such that it only allows for a single interpretation, they are deemed definitive in interpretation also (*qaṭʻiyy al-dalāla*). This is the highest form of revelatory evidence and thus establishes the highest form of instruction: obligations and prohibitions. The prohibition of alcohol, pork, usury or the obligation of prayers and the charity-tax (*zakat*) are established by this tier of revelatory evidence. For the grading of revelatory evidences and their technical definitions, see: Abū l-Hāj, *Maṣār al-Wuṣūl ilā ʻilm al-Uṣūl*

matters of scholarly interpretive dispute, an urgent need may be invoked to facilitate dispensations. As I discuss in Part Two, ‘Uthmānī develops a sophisticated hermeneutic for qualifying a ‘need’ for departing from one *madhhab* to another. Critically, conflicting opinions within the four *madhhab*s occur due to scholarly disputes in interpreting the underlying revelatory text; thus, dispensations may be justified in such matters. Nevertheless, granting dispensation in indisputable definitive matters is invalid.

To further this, ‘Uthmānī offers a commentary of the legal axiom “a need can reach the level of necessity, be that a universal or specific need (*al-ḥajat tanzilu manzalat al-ḍarūra ‘āmmatan kānat aw khāṣṣat*)”. ‘Uthmānī studies the examples offered under this axiom and purports that the jurists have never evoked this axiom to offer dispensations on indisputable definitive matters of revelation. Applying this axiom to definitive matters from revelation “leads to dismantling the shackles of the Sharia”[342] since taking this definition would allow even the specific needs of a distinct group of people to undermine established truths.

As for the intended objective of this legal axiom, a study of the examples include rent and employment contracts (*ijāra*), made-to-order goods, and commission contracts (*ju‘āla*).[343] Thus, as a need for these contracts persisted, jurists permitted them despite the analogical alignment with prohibited actions, i.e., the sale of a non-existent item or ambiguity over the countervalues in a transaction. ‘Uthmānī alleges that revelatory texts or custom supports these submitted examples; thus, their permission is justified.[344] Aside from the polemical “dismantling the shackles of the Sharia,” a

(Amman: Dār al-Fatḥ, 2016): 84-6. For the philosophical underpinnings of this distinction, as it relates to legal responsibility and accountability, see: Muḥammad b. Muḥammad Ibn Amīr al-Ḥāj, *al-Taqrīr wa l-Taḥbīr ‘alā l-Taḥrīr*, 3 vols. (Beirut: Dār al-Kutub al- ‘Ilmiyya, 1983): 1: 17-23. For a robust English discussion with examples to distinguish between definitive and speculative verses, see: Kamali, *Principles of Islamic jurisprudence*, 27-37.

[342] ‘Uthmānī, *Uṣūl al-Iftā’*, 318.

[343] I have conducted a study on the seminal *qawā‘id fiqhiyya* texts wherein this axiom is discussed: *al-Ashbāh wa l-Naẓā’ir* by Ibn al-Mulaqqin (d. 804/1401), al-Suyūṭi (d. 911/1505), Ibn Nujaym, and al-Zarkashī’s (d. 794/1392) *Manthūr*. I have found ‘Uthmānī’s claim to be accurate as I have not uncovered any precedent wherein this axiom was used to legitimise what is known definitively from revelation. The examples submitted in these texts discuss unclear transactions – the sale of an item as a deposit, made-to-order goods, or a commission-based contract – where analogical alignment with prohibited actions exists. These are not matters definitively decided upon by revelation. See: Muḥammad b. ‘Abd Allāh al-Zarkashī, *al-Manthūr fī l-Qawā‘id al-Fiqhiyya*, 3 vols. (Kuwait: Wizārat al-Awqāf al-Kuwaytiyya, 1980): 2: 24-5; ‘Umar b. ‘Alī Ibn al-Mullaqin, *al-Ashbāh wa l-Naẓā’ir*, 2 vols. (Cairo: Dār Ibn ‘Affān, 2010): 2: 32-4; Jalāl al-Dīn ‘Abd al-Raḥmān al-Suyūṭī, *al-Ashbāh wa l-Naẓā’ir* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1983): 88-9; Ibn Nujaym, *al-Ashbah*, 78-9.

[344] ‘Uthmānī, *Uṣūl al-Iftā’*, 318.

literal rendering of this axiom entails two logical objections. Firstly, there would remain no distinction between legal necessity and need, as they would merge into one meaning.[345] Secondly, genuine examples of legal necessity, such as the permission to eat pork under duress wherein damage to life or limb is imminent, the permission given is temporary and time-bound. In contrast, the examples submitted by the jurists under this axiom are timeless permissions for made-to-order goods, for example. Thus, the jurists do not appear to intend a literal rendering of this axiom.[346]

'Uthmānī's engagement with interest-based mortgages for residential homes perfectly embodies the methodology prescribed here. Influential Islamic legal bodies, such as the European Council of Fatwa and Research (ECFR), have offered verdicts that a conventional mortgage for one's first residential home is permitted under the guises of necessity and minority *fiqh* (*fiqh al-aqalliyyāt*).[347] Minority *fiqh*, popularised by al-Qaraḍāwī and the ECFR, was a key motivator for this verdict. This doctrine recognises the unique religious needs of Muslims residing as religious minorities, addressing those needs by reinterpreting revelatory texts and legal precedents, seeking dispensation through the evocation of perceived necessity (*ḍarūra*), customary practice (*'urf*), and the higher objectives of the Sharia.[348] Critically, in putting forward their case, the European Council submits the aforementioned legal maxim: "a need can reach the level of necessity, be that a universal or specific need".

In contrast to this more expansive approach, 'Uthmānī's traditionalist rendering argues that the Qur'an prohibits usury, and thus, all forms of usury are unlawful. Its permissibility can only be sanctioned under technical legal necessity, i.e., a threat to life or limb wherein there are no permissible

[345] Ibid., 319.
[346] Ibid.
[347] European Council of Fatwa and Research, "The Fourth Ordinary Session of the European Council of Fatwa and Research" *e-cfr.org*, October 1999. From: https://www.e-cfr.org/blog/2017/11/04/fourth-ordinary-session-european- council-fatwa-research/ [Accessed 21 November 2022]. This verdict remains controversial. Uriya Shavit's field study among a Muslim community in Stockholm describes the divide this opinion continues to cause. See: Uriya Shavit, "A Fatwa and Its Dialectics: Contextualising the Permissibility of Mortgages in Stockholm," *Journal of Muslims in Europe* 8, no. 3 (2019): 335-358.
[348] Notwithstanding the existing disagreements on a definition, this is the definition I devised from my reading of the literature. See: Haytham al-Haddad, "A critical analysis of selected aspects of Sunni Muslim minority fiqh, with particular reference to contemporary Britain" (PhD diss., School of Oriental and African Studies, University of London, 2010): 16; Iyad Zahalka, "Fiqh al-Aqalliyyāt: Methodology and Implementation in the Field of Personal Standing" in: *Sharī'ā in the Modern Era: Muslim Minorites Jurisprudence* (Cambridge: Cambridge University Press, 2016): 62-107; Dina Taha, "Muslim Minorities in the West: Between Fiqh of Minorities and Integration," *The Electronic Journal of Islamic and Middle Eastern Law* 1 (2013): 1-36.

means to avoid the prohibition.[349] Therefore, mortgages and other interest-based loans can only be permitted if they fall under this technical threshold; otherwise, God's prohibition must be upheld.[350] As for the legal maxim, as described previously, 'Uthmānī's study of legal discussions on it reveals that a literal understanding of this maxim is untenable – it is not capable, nor allegedly intended, to repeal definitive matters of revelation.

'Uthmānī's study of the legal treatises on necessity and need focuses on the technical distinction between the two legal concepts. 'Uthmānī determines that definitively prohibited matters can only be legislated in times of genuine necessity – where life and limb are under imminent threat. Unless these matters have been qualified by revelation, as in the case of silk in battle, these are the indisputable shackles of the Sharia. If the matter is subject to scholarly dispute, matters of urgent need can offer dispensation upon people – be that a specific or universal need. For example, circumstances of need in a matter of scholarly dispute allow the possibility of departing from one's *madhhab* to another, as elaborated in Part Two. In furthering this discussion of indisputable matters and those subject to scholarly disagreement, 'Uthmānī presents allowing mortgages or interest-based loans as a perfect example demonstrating the legal distinction between necessity and urgent need.

Part One of this chapter has examined 'Uthmānī's guidelines for three doctrines: societal changes that render underlying legal causes obsolete, changes in custom, and changes wherein adherence to the authoritative opinion incurs undue difficulty and hardship. Through our analysis, 'Uthmānī's caution and respect for the legal tradition are evident as he investigates traditional legal methodology to demarcate the epistemological parameters in which positions of minor *ijtihād* must be articulated. These parameters include a traditional understanding of effective legal causes, epistemic questions on truth, and the degree of certainty afforded by certain revelatory sources. Critically,

[349] 'Uthmānī, *Uṣūl al-Iftā'*, 319.
[350] Much of 'Uthmānī's career in Islamic finance is built upon this key pillar: usury is not permitted under any circumstances unless there is an imminent threat to life and limb. As debt financing and interest is the cornerstone of the global financial market, developing an alternative model is essential to further a Muslim nation. For 'Uthmānī's philosophical musings on neoliberal economics following the 2008 Financial Crisis, see: 'Uthmānī, *Causes and Remedies of the Present Financial Crisis from an Islamic Perspective* (Karachi, Quranic Studies Publishers, n.d.).

‘Uthmānī does not extend beyond traditional Ḥanafī methodology on these principles. Instead, his writing is evidently dialectical; there is often an interlocutor or typified position that ‘Uthmānī uses to demonstrate how others have strayed. From the ‘pompous’ philosophies of alleged *maqāṣid* to the overextended necessity argument in contemporary positions on residential mortgages, these discussions allow ‘Uthmānī to distinguish contemporary legal trends and offer readers disciplined guidance to navigate these ideas. ‘Uthmānī encourages *ijtihād* and for contemporary jurists to facilitate for ordinary Muslims; however, he also calls upon traditionalist-minded contemporaries to reflect on the boundaries and limits of these ‘misquoted’ legal doctrines.

Part 2: Authoring *fatwā*s that depart from one’s *madhhab* to another

There is, in ‘Uthmānī’s thought, another *ijtihādī* device available to the *muqallid muftī*: valid circumstances wherein jurists can depart from their chosen *madhhab* to another. While ‘Uthmānī upholds the necessity of adhering to a single *madhhab*, he acknowledges departure from the *madhhab* on single issues due to specific circumstances as a valid form of minor *ijtihād*. Critically, while previous discussions on custom, perceived necessity, and urgent need have a rich history in the pre-modern scholarly manuals that ‘Uthmānī frequently consults, pre-modern guidance on departing from one's chosen *madhhab* to another is sparse. Even in the case of Ibn ‘Ābidīn’s *Sharḥ ‘Uqūd Rasm al-Muftī,* which serves as the skeleton for *Uṣūl al-Iftā’*, there is no clear exposition discussing the boundaries of basing *fatwā*s on precedents of another *madhhab*.[351]

Nevertheless, the *madhhab* tradition contains several references where individual scholars saw it necessary to move away from the *madhhab* position, thus authoring rulings based on precedents of another *madhhab* due to an urgent need. For example, Ibn ‘Ābidīn refers to al-Bazzāzī (d. 827/1424),[352]

[351] Ibn ‘Ābidīn’s *Sharḥ* includes a lengthy discussion on the consequences of a judgement where the judge rules according to another *madhhab*, but guidance for the *muftī* is absent. Ibn ‘Ābidīn, *Sharḥ ‘Uqūd Rasm al-Muftī*, 90-92.

[352] al-Bazzāzī, author of *Jāmi‘ al-Wajīz* (otherwise known as *Fatāwā Bazzāziyya*) was a contemporary of al-Fannārī, famously debating him. Ṭashkubrī-zāde notes: “He [al-Bazzāzī] excelled on him in jurisprudence (*furū‘*) and he [al-Fannārī] excelled over him in legal methodology (*uṣūl*) and all other sciences.” In: Ṭāshkubrī-zāde, *al-Shaqā’iq al-Nu‘māniyya fī ‘Ulamā’ al-Dawlat al-‘Uthmāniyya* (Beirut: Dār al-Kitāb al-Arabī, 1975): 21.

who authored a *fatwā* based on the positions of the Mālikī school when considering the case of the '*āyisa*, a divorced woman of non-menopausal age who is experiencing an absence of menstruation. The Ḥanafī school posits that the divorcee must observe a waiting period of three complete menstrual cycles before she can remarry. Thus, a woman who has not experienced a menstrual cycle for an extended period must wait for three menstrual cycles. Due to the difficulty in this ruling and an urgent need to depart from it, al-Bazzāzī ruled that the Mālikī position should be taken: if nine months pass and a menstrual cycle has not occurred, her waiting period will cease.[353] While such examples are present in the Ḥanafī literature, the methodological boundaries are not spelt out beyond evoking an urgent need to depart from the *madhhab* position.

'Uthmānī aims to provide methodological guidance on valid occasions on departing from one's *madhhab* to another when authoring a *fatwā*. 'Uthmānī offers two broad conditions which allow this dispensation: first, occasions of urgent need (*ḥāja*) and public predicament (*'umūm al-balwā*),[354] and second, the *muftī*'s conviction of the epistemological or evidential strength of the other position. An analysis of 'Uthmānī's methodological guidelines follows.

Departure from the *madhhab* to another due to an urgent need or public predicament.

In matters of urgent need or public predicament, 'Uthmānī justifies departing from the *madhhab* by evoking historical examples where Ḥanafī jurists have adopted positions from another *madhhab* after perceiving difficulty in the Ḥanafī position. 'Uthmānī highlights the acceleration of global commerce and industrialisation, which has created various financial products and market forces that demand Muslim participation. 'Uthmānī declares:

> It is befitting that a *muftī* accommodates the people by upholding the positions of greater ease in matters of public predicament, be that position from his own *madhhab* or another *madhhab* from the four.[355]

Significantly, 'Uthmānī's perspective here is shaped by his Deobandī heritage. As early as 1979, he

[353] Ibn 'Ābidīn, *Radd al-Muḥtār*, 4: 295-6.
[354] For a brief introduction on the status of '*umūm al-balwā* in Islamic legal theory, see: Wizārat al-Awqāf, *Mawsū'at al-Fiqhiyyat al-Kuwaytiyya*, 31: 6-10.
[355] 'Uthmānī, *Uṣūl al-Iftā'*, 245.

recalled his father, Muḥammad Shafī‘, relating an incident where Rashīd Aḥmad Gangohī counselled Thānawī that issuing a *fatwā* based on the opinion of another *madhhab* was permissible when addressing a collective need. Shafī‘ added that Thānawī recognised contemporary transactions as a significant area where this approach was necessary.[356] It is important to note that in 1979, when ‘Uthmānī made these statements, he was primarily a jurist in Pakistan, without holding any international positions at scholarly councils or Sharia boards, underscoring the authenticity of his recounting without any retrospective influence.

‘Uthmānī upholds that an urgent need or public predicament justifies departure from one's *madhhab* to another, provided that five conditions are met.[357] First, the need must be urgent, and the predicament must be public. It must not be the experience of a single individual or a mere impression of difficulty. Second, the *muftī* must confirm the urgency of this need. This is attained by consulting other *muftī*s and experts in the necessary field. Herein, ‘Uthmānī promotes his idea of collective *ijtihād*: individual *muftī*s should not go out on their own limb; instead, they should come together and issue a collective position. Critically, there is strength in a verdict if a collective group of *muftī*s declare that the issue at hand is a public predicament.[358] Third, the *muftī* must conduct thorough research on their target *madhhab*. ‘Uthmānī suggests that it is better to resort to the scholars of the target *madhhab,* as they would be expertly trained in the *madhhab*’s idiosyncrasies and legal terminology.[359]

Fourth, the *muftī* must not opt for isolated opinions that break the consensus of Muslim scholarship.[360] As mentioned in our *taqlīd* chapter, Islamic scholarship has witnessed renowned scholars coming forth with quirky and isolated positions that break consensus. The *muftī* cannot resort to such opinions. The exposition under this fourth condition should be interpreted in conjunction with the declaration above: “be that the position of his own *madhhab* or another *madhhab* from the four”.[361] Though it is not explicitly stated herein, it appears that ‘Uthmānī is attempting to restrict the *muqallid*

[356] ‘Uthmānī, “Mere Wālid Mere Shaykh,” 419. For Thānawī's account of seeking Gangohī's permission to appeal to opinions from other *madhhab*s in transactional matters, see: Nadwī, *Fiqh Ḥanafī ke Uṣūl-o Ḍawābiṭ,* 159-60.
[357] ‘Uthmānī, *Uṣūl al-Iftā’,* 246-7.
[358] Ibid., 246.
[359] Ibid.
[360] Ibid.
[361] Ibid., 245.

muftī to the four *madhhab*s only. This is an important point of variation between ʻUthmānī and his contemporaries of different persuasions. For example, the aforementioned al-Qarāḍāwī is much more radical in his approach, arguing that Muslim scholars should not be restricted to the *madhhab*s, but should consider the entire expanse of the Islamic legal tradition to accommodate ease, even if those opinions are isolated.[362] Al-Qarāḍāwī utilises this approach in many of his most controversial positions, such as legitimising Muslims inheriting from non-Muslim relatives by invoking permissive statements from particular Companions, thus going beyond the prohibition of the four *madhhab*s.[363]

ʻUthmānī's fifth and final condition declares that the *muftī* must take the position from the other *madhhab* with all the necessary clauses and preconditions to avoid *talfīq* (condemned merging of *madhhab*s).[364] ʻUthmānī defines *talfīq* as the merging of opinions from two *madhhab*s, such that the action in question would not be valid according to both. For example, one adopts the Ḥanafī position that touching a woman does not necessitate renewing one's ablutions (in contrast to the Shāfiʻī position) and then adopts the Shāfiʻī position that bleeding does not necessitate renewal (in contrast to the Ḥanafī position). By merging both positions, the resulting opinion is not valid in either the Ḥanafī or Shāfiʻī school, as both *madhhab*s require the person to renew their ablutions.[365] Therefore, when resorting to another *madhhab*, the *muftī* should ensure that the position of the target *madhhab* is taken in its entirety, with all the relevant clauses and conditions, thus ensuring *talfīq* does not take place.[366]

ʻUthmānī's subsequent rejoinder to historical discussions on *talfīq* is presented thereafter to clarify his fifth condition.[367] Notwithstanding the evidence ʻUthmānī submits that some Ḥanafīs deemed *talfīq* valid, ʻUthmānī sides with the position of "the majority of later scholars of the four

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[362] al-Qaraḍāwī, *Fī Fiqh al-Aqalliyyāt al-Muslima* (Cairo: Dār al-Shurūq, 2001): 57.
[363] Ibid., 57-60. Al-Qaraḍāwī applies the same methodology in his position on shaking hands with the opposite gender in: al-Qaraḍāwī, *Fatāwā al-Mar'at al-Muslima* (Beirut: Mu'assisat al-Risāla, 1995): 49-61.
[364] For a study on *talfīq* and its broader impact on legal reform or distorting the Sharia, especially among pre-modern Ḥanbalīs and Ḥanafīs, see: Birgit Krawietz, "Cut and Paste in Legal Rules: Designing Islamic Norms with Talfiq." *Die Welt Des Islams* 42, no. 1 (2002): 3-40.
[365] ʻUthmānī, *Uṣūl al-Iftā'*, 249. Ahmed Fekry Ibrahim refers to this form of *talfīq* as *talfīq* proper, as this represents a pre-modern and modern understanding of the term. Ibrahim notes that many Western historians mistakenly conflate the term *talfīq* with all forms of departures from one's *madhhab*. See: Ahmed Fekry Ibrahim, *Pragmatism in Islamic law: A Social and Intellectual History* (Syracuse: Syracuse University Press, 2015): 167-9.
[366] ʻUthmānī, *Uṣūl al-Iftā'*, 248.
[367] Ibid., 249-57.

schools" that *talfīq* is invalid.[368] This position is the preferred view, according to 'Uthmānī, as the position of permissibility leads to rendering religious practice a plaything driven by one's desires, which the consensus of Muslim scholars has forbidden.[369] However, if a *muftī* authors a *fatwā* according to another *madhhab* on one matter, this does not necessitate that the *muftī* must now uphold every opinion from this *madhhab*. Instead, one must remain consistent with a single *madhhab* only for that particular case (*bāb*). For example, adopting the Shāfi'ī position to wipe on less than a quarter of the head for ablutions and then adopting the Ḥanafī position by not reciting the Opening Chapter (*al-Fātiḥa*) in congregational prayer does not entail *talfīq* as ablutions are one entity and prayer is another.[370] Therefore, when a *muqallid muftī* takes a position from another *madhhab*, he must uphold all the relevant clauses and qualifications in that particular case to avoid *talfīq*. However, they are not bound by the target *madhhab* in other matters.[371]

While Ibn 'Ābidīn is silent in providing these methodological guidelines, the influence of Thānawī's *al-Ḥīlat al-Nājiza* is evident as it appears to be the blueprint for 'Uthmānī's conditions. During the British colonial administration, one of the most pressing needs of Thānawī's era was the lack of official Sharia courts at which Indian Muslims could attend to matters of personal law. Thānawī rules on the legitimacy of non-official Sharia arbitration councils to act as Muslim judges in the absence of a Sharia court. This legal opinion was taken from the Mālikī *madhhab*, guided and informed by the Mālikī experts in the Ḥijāz, and gained attestation (*istiṣwāb*) from over fifty Indian scholars.[372] Thānawī only lists two conditions to justify departing from the *madhhab* tradition. He writes that the

[368] Ibid., 255. Ibrahim puts forth a similar position, arguing that while there were certain Ḥanafī voices that permitted the practice of *talfīq*, the late Ottomans were staunchly against *talfīq*. See: Ibrahim, *Pragmatism in Islamic Law*, 105-127, 171.
[369] 'Uthmānī, *Uṣūl al-Iftā'*, 255.
[370] Wiping the head (*masḥ*) is an obligation in ritual ablutions. The Ḥanafīs mandate that at least a quarter of the head is wiped over, while the Shāfi'īs mandate wiping over a part of the head, even a few hairs. Likewise, the Ḥanafīs do not obligate reciting the *Fātiḥa* (Opening Chapter) in units of prayers, while the Shāfi'īs do. 'Uthmānī explains that upholding a mix of these positions does not necessitate *talfīq,* as prayer and ritual ablution are separate cases. For the different *madhhab* opinions on *maṣḥ,* see: Wahba b. Muṣṭafā al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuhū*, 10 vols. (Damascus: Dār al-Fikr, n.d.): 1: 374. For the different *madhhab* opinions on the necessity of the *Fātiḥa*, see: ibid., 1: 813-4.
[371] Ibid., 256-7.
[372] For the list of scholars that signed *al-Ḥilat al-Nājiza*, see: Thānawī, *al-Ḥīlat al-Nājiza* (Deoband: Maktaba-i Raḍī, 2005): 23-25. This text also reproduces the letters of agreement by the leading scholars from this list, see: 327-383.

need to depart must be pressing, and invalid *talfīq* must not be practised.[373] 'Uthmānī references Thanāwī's explanation of invalid *talfīq* in *Uṣūl al-Iftā'*, right down to the submitted examples in delineating invalid *talfīq*.[374] This direct borrowing is also coupled with implicit borrowing. Two of 'Uthmānī's remaining three conditions – consulting contemporaries to confirm the urgency of the need and consulting scholars of the target *madhhab* – have also been borrowed from the actions of Thānawī.

As 'Uthmānī's training as a *muftī* entailed a detailed study of Thānawī,[375] the influence of Thānawī's cautious and conservative departure from *madhhab* precedents came to serve as an important guide. It is essential to acknowledge that the inclination to move beyond the *madhhab* in matters of public predicament and specifically within transactional matters, is rooted in a lineage of Deobandī advice, from Gangohī to Thānawī, Thānawī to Muḥammad Shafī', and from Muḥammad Shafī' to Taqī 'Uthmānī.

In the broader context of modern Islamic law, borrowing opinions from another *madhhab*, or *takhayyur*, as it is often known in modern Islamic discourse,[376] has been routinely practised, most evidently in efforts of post-colonial states across the Middle East to codify personal status laws. The resulting laws concerning marriage, divorce and inheritance in countries like Egypt, Syria, Iraq, Tunisia, Jordan and Morocco often draw from different *madhhab*s, and at times even to isolated positions, to codify laws for these Modern Muslim nations.[377] Importantly, these laws do not merely include *takhayyur* but also use *talfīq* as a legal stratagem, i.e., the merging of cross-*madhhab* opinions on one subject matter in such a way that creates contradictions in both *madhhabs*.[378] The nineteenth and twentieth century saw several scholars, including Jamāl al-Dīn al-Qāsimī (d. 1914), Muḥammad

[373] Ibid., 36-8.
[374] 'Uthmānī repeats Thānawī's examples verbatim also, in: *Uṣūl al-Iftā'*, 257-8. Thānawī's example of invalid *talfīq* is for someone to perform ritual ablutions without adhering to the Qur'anic order (of face, hands, hair, then feet) and then wiping less than a quarter when wiping one's head. The Shāfi'ī *madhhab* obligates the Qur'anic order for ritual ablutions, while the Ḥanafī's obligate wiping at least a quarter of one's head. Thus, with this fusion of *madhhab* opinions, ritual ablution is invalid according to both schools. As for valid *talfīq*, wiping less than a quarter of one's head (in contravention to the Ḥanafī *madhhab*) and not reciting the Opening Chapter behind the imam of Prayer (in line with the Ḥanafī position) is not necessarily an issue as these are two different actions (*bāb*). See: Thānawī, *al-Ḥīlat,* 38.
[375] As detailed in the "Religious Education" section of Chapter 1.
[376] Ibrahim, *Pragmatism in Islamic Law,* 180.
[377] Coulson, "Neo-ijtihād"; Hallaq, *Sharī'a: Theory, Practice, Transformations*, 459-73.
[378] Aly Abdulrahman Ahmed, "Dilemma of applying Islamic sharia'a through takhayur and talfiq principles in the modern Egyptian legal system," (MA diss., American University in Cairo, 2016).

Sa'īd al-Bānī (d. 1933), Rashīd Ridā (d. 1935), Muḥammad Bakhīṭ al-Muṭī'ī (d. 1935) advocating for the validity of *talfīq*.[379] In fact, this remains the position of the state *Dār al-Iftā'* of Egypt.[380] Nevertheless, the key point here is that contemporary jurists continue to adopt more liberal approaches to legal reform and *taqlīd*.

Conversely, the Deobandī perspective, which operates within a system of strict *taqlīd shakhṣī,* prioritises caution and conservatism. Like Thānawī, and as we shall see with 'Uthmānī in later chapters, departures from the *madhhab* are only legitimised through building consensus within their class of jurists. In contrast to more radical forms of legal pragmatism, such as *takhayyur* in personal status laws or al-Qaraḍāwī's appeals to isolated opinions, and the use of *talfīq*, Taqī 'Uthmānī's Deobandī approach is distinctly conservative. Departures from the *madhhab* to an authoritative position in the remaining three schools are valid only if there is a public need legitimised by groups of scholars, and *talfīq* is deemed invalid as per the dominant traditionalist discourse.

Departure from the *madhhab* to another due to the evidential strength of the other position

'Uthmānī writes that it is permissible for a non-*mujtahid* expert of the *madhhab*, knowledgeable of its epistemological and evidential sources and learned in the Qur'an and Sunna, to depart from the *madhhab* position if he perceives greater evidential strength in another position. This procedure was highlighted in our analysis of 'Uthmānī's *Taqlīd kī Shar'ī Haysiat* as Thānawī's "path of moderation".[381] In this section of *Uṣūl al-Iftā',* 'Uthmānī heavily references passages from Ibn 'Ābidīn. For example, there is a famous and often misunderstood statement from Abū Ḥanīfa, "If a Hadith is authentic, then that is my position (*idhā ṣaḥḥa l-ḥadīth fa huwa madhhabī*)." 'Uthmānī submits Ibn 'Ābidīn's interpretation of this statement. Ibn 'Ābidīn argues that this statement relates to those who have expert

[379] Ibrahim, *Pragmatism in Islamic Law,* 170-177. Importantly, Ibrahim challenges the common conception that advocates of *talfīq* are a modern phenomenon, arguing instead that these scholars draw upon debates from Mamluk and Ottoman periods that argued for its validity.
[380] Razavian, "Deoband's Conservatism," 248.
[381] 'Uthmānī repeats his verbatim citation of Thānawī in *Uṣūl al-Iftā',* also offering an Arabic translation of his Urdu citation: in: *Uṣūl al-Iftā',* 88-96.

insight into the revelatory sources (*ahl al-naẓr fī l-nuṣūṣ*). Nonetheless, Ibn ʻĀbidīn further qualifies this license by stating that this target position must align with an opinion from the *madhhab*.[382] Notwithstanding their expert insight into revelation, this jurist is not a *mujtahid* and thus cannot depart from the *madhhab* completely. Nonetheless, finding that alternative position within the *madhhab* should not prove too difficult, as Abū Yūsuf and al-Shaybānī are known to have opposed Abū Ḥanīfa in a significant percentage of the overall doctrinal corpus.[383] Thus, it is more than likely that the target position will be found within the *madhhab*.

Ibn ʻĀbidīn makes a further addition which reflects the historic institutional nature of the Ottoman *muftī*,[384] distinguishing between departing from the *madhhab* for individual worship and for *fatwā*-writing as a *muftī*. Ibn ʻĀbidīn writes that these expert jurists can act upon another *madhhab*'s position if their research and insight drive them to it; however, they must pass their *fatwā*s based on the Ḥanafī position. This is because the questioner is querying the position of the Ḥanafī school, not the opinion of that particular jurist.[385] Being a non-*mujtahid*, this jurist does not retain personal authority in *fatwā*-giving; instead, they reflect the institution of the Ḥanafī school and must, therefore, pass judgment based on the institution. ʻUthmānī writes that this understanding implies that if the *muftī* declared to the questioner that they will pass judgment based on another *madhhab*, this would be valid.[386]

As I conclude this section, it is essential to note that this particular issue might evoke emotional sentiment among the Deobandī school, who are typified in their *taqlīd* of the Ḥanafī *madhhab*. By referencing Ibn ʻĀbidīn, a respected Ḥanafī stalwart, and Thānawī as a Deobandī elder, ʻUthmānī provides a pragmatic yet cautious procedure in which one may depart from the Ḥanafī *madhhab*. Questioning the evidential strength of the Ḥanafī school is a contentious matter in these contexts, where

[382] ʻUthmānī, *Uṣūl al-Iftā'*, 260. Ibn ʻĀbidīn, *Sharḥ 'Uqūd,* 34-5; esp. 35; see also 88-89.
[383] ʻUthmānī quotes al-Ghazālī, who held the view that Abū Yūsuf and al-Shaybānī opposed Abū Ḥanīfa in a third of the total *madhhab* corpus. ʻUthmānī, *Uṣūl al-Iftā'*, 114. These opinions often align with the views of the other *madhhab*s. As such, the departing position is likely to be found within the *madhhab*.
[384] For a description of the institutionalisation of the Ḥanafī *madhhab* under the Ottomans, see: Burak, *The Second Formation*.
[385] Ibn ʻĀbidīn, *Sharḥ 'Uqūd*, 88-9.
[386] ʻUthmānī, *Uṣūl al-Iftā'*, 262.

historically, the Ahl-i Ḥadīth and other groups have vehemently taken on this task. Writing within this context as a Deobandī – a school whose leading figures have traditionally taken on the position of defenders of the Ḥanafī *madhhab* – ‘Uthmānī’s mode of argumentation is insightful. In discussing the first three doctrines of this chapter, ‘Uthmānī writes comprehensively, and his authorial voice is clear, focusing on the wholesale themes from the Ḥanafī tradition. For this contentious matter, ‘Uthmānī provided a closer reading of these two indisputable authorities, often citing extensive verbatim passages. In doing so, he carefully navigated the line between what is acceptable and what is not.

Conclusion

After three chapters discussing ‘Uthmānī’s methodology, we conclude this section with critical findings. ‘Uthmānī’s *Uṣūl al-Iftā’* offers a cutting addition to the broader Ḥanafī *rasm al-muftī* genre due to its engagement with contemporary Islamic legal trends and movements. Throughout the analysis presented in these few chapters, ‘Uthmānī’s engagement offers answers to the following question: to what degree can one stay within the boundaries of the Ḥanafī *madhhab* and remain adaptable and relevant for the major needs of the religious community?

While ‘Uthmānī upheld the obligation of *taqlīd shakhṣī* like his Deobandī elders, he saw the evident demand for minor *ijtihād* to solve societies’ most pressing legal problems. His description of *ijtihād* with levels – from the first-order legal opinion making of the *madhhab* eponyms to the fourth-order law manipulation open to *muqallid muftī*s – presents a fluid spectrum of *ijtihād* and *taqlīd* being practised hand-in-hand, and not in opposition. ‘Uthmānī presents how legal creativity is intended and will continue to proliferate despite being within the bounds of legal tradition. For example, the breadth of opinion and internal *madhhab* disagreement in the Ḥanafī school allows for several methods of law manipulation. Specifically, ‘Uthmānī described legal manipulations as minor forms of *ijtihād*, noting their vital importance for *muqallid* jurists to maintain the adaptability and relevance of the law. Critically, this creativity can even extend to the fourth-level jurist who primarily transmits the *madhhab*. Despite this, their expert juristic focus and training allow them to contextualise *madhhab* precedents.

Nonetheless, the fourth-level jurist must operate within certain boundaries as he does not retain higher juristic capabilities. This chapter focused on ‘Uthmānī’s guidance for contextualising *madhhab* precedents and norms. Critically, the discussion developed in *Uṣūl al-Iftā’* far exceeds previous epistles on *rasm al-muftī*. This is due to ‘Uthmānī’s lucid guidance for the traditionalist who is navigating the number of methodological pitfalls that sit in between the continuum of *taqlīd* and *ijtihād*, burdening contemporary legal opinion-making. From debates on the changing of custom, the higher objectives of the law, and alleged evidential weakness in one’s *madhhab* position, to name a few, ‘Uthmānī presents these traditional axioms and doctrines as cornerstones for the creativity and adaptability of traditional law. Critically, ‘Uthmānī sustains that these doctrines have clear hermeneutical boundaries. The most critical discussions highlighted in this section include elucidating key hermeneutic and epistemic questions. For example, ‘Uthmānī elaborates on the traditional understanding of effective legal causes and epistemic questions on the certainty afforded by different forms of revelation.

The epistemological nature of these criticisms is worth noting. *ʿUrf*, *maqāṣid*/*maṣlaḥa*, and *ḥāja* cannot supersede what God and His Messenger have explicitly stated. It seems that the only instances where dispensations can be taken are: (i) when technical necessity (i.e., a threat to life and limb) is present, thereby justifying time-bound departures from explicit scriptural commands, or (ii) when the matter is debated within the *madhhab*s (*mujtahad fīh*). In such cases, guided by Thānawī’s *al-Ḥīlat al-Nājiza*, a careful framework for borrowing opinions from another *madhhab* is presented. Through his analysis, ‘Uthmānī offers a comprehensive evocation of the traditional dictates of these quoted doctrines and, where possible, chastises its misuse.

In sum, *Uṣūl al-Iftā’* offers a detailed methodological insight into *madhhab* adherence, offering the Ḥanafī traditionalist the necessary interpretive tools to study, navigate and innovate from within the *madhhab*. ‘Uthmānī’s careful analysis of traditional *madhhab* doctrine and rule-discovery methodology is noteworthy due to its lucid interaction with contemporary methodological discussions. The following chapters will offer a thorough exposition of ‘Uthmānī’s methodology in practice.

Part III: Juristic Practice

Chapter 5: ‘Uthmānī, the Transmitter of *Madhhab* Doctrine

Having established the methodological foundations of ‘Uthmānī’s jurisprudence, Part III of this thesis explores the practical application of this jurisprudence through specific case studies. This part begins by examining his role as a *muqallid muftī* within the Ḥanafī *madhhab*. From his early initiation into *fatwā* issuance at seventeen, ‘Uthmānī has demonstrated a lifelong dedication to Islamic jurisprudence. In our endeavour to dissect and underscore ‘Uthmānī’s juristic activity, a close study of his *fatāwā* is essential to observe his juristic methodology in practice. ‘Uthmānī’s *fatāwā* are rich intellectual resources, offering direct insight into his deep engagement and interpretation of the Ḥanafī *madhhab* and his underlying juristic inclinations.

Considering the breadth and longevity of ‘Uthmānī’s practice of *fatwā*-giving, which covers nearly six decades, a single analysis of his entire corpus is not feasible. Consequently, Part III of this thesis concentrates on a selection of ‘Uthmānī’s published work. This particular chapter concentrates on the first volume of his four-volume *fatwā* collection, *Fatāwā ‘Uthmānī* (published in parts between 2012-16). The *fatāwā* in the collection *Fatāwā ‘Uthmānī* are arranged by chapter, collated from the archives of the *Dār al-Iftā*’ at Dār al-‘Ulūm Karāchī. Therefore, the *fatwā*s are drawn from the entirety of ‘Uthmānī’s career, from his early days as an *Ifta*’ student at the *madrasa* (c. 1958-60) to his tenure as deputy chief *muftī* (*nā’ib muftī*).[387] The first volume encompasses topics of worship (‘*ibādāt*) - from ritual purity to funeral rites - areas of *madhhab* doctrine that are conventionally rigid and closely adhered to. Therefore, our analysis offers a concise yet meaningful representation of ‘Uthmānī’s juristic practice from within the *madhhab*. By showcasing ‘Uthmānī’s nuanced craftsmanship as a *muftī,* the chapter asserts that juristic creativity can persist where one might not typically expect it, and this

[387] Muḥammad Zubayr Ḥaqq Nawāz, “Pesh Lafz” in: ‘Uthmānī, *Fatāwā ‘Uthmānī*, 38-9. Following the passing of his brother Muḥammad Rafī‘ in 2022, ‘Uthmānī assumed the position of chief *muftī* (*sadr muftī).* However, at the time the *Fatāwā* were published, ‘Uthmānī served as the deputy chief *muftī.*

innovation underscores the role of the fourth-level jurist, the *muqallid muftī*, in commandeering legal change within the *madhhab*.[388]

Using textual analysis in examining his *fatāwā,* we probe into ‘Uthmānī’s legal reasoning, thematic concerns, and interpretative tendencies. This rigorous analysis of the text can elucidate ‘Uthmānī’s distinct approach to Islamic jurisprudence, his adept navigation through complex legal issues, and his skilful application of Ḥanafī principles. The intricacies of the *fatāwā* themselves, their thematic consistency, the style of argumentation, and their alignment with the principles of the Ḥanafī school of thought are all factors which contribute to the richness of ‘Uthmānī’s jurisprudential legacy. Therefore, a textual analysis of the *fatāwā* can provide a granular understanding of his work and the underlying principles that inform it. By focusing on the individual *muftī* as a prism for understanding legal change within the *madhhab*, the personal inclinations and biases of the *muftī* become a core component of this thesis. Therefore, by analysing ʿUthmānī’s *fatāwā*, his *fiqhī mizāj*—i.e., the juristic inclinations that inform his legal approach—becomes more discernible.

This chapter is organised into sections for a structured and thorough exploration of this work, each addressing a salient theme in the *fatāwā.* We begin with an exploration of ‘Uthmānī’s first *fatwā* on the congregational night prayers of Ramadan. This *fatwā* is significant for its content and insights into his early approach to juristic matters, emphasising the significance of methodological rigour. Next, we assess ‘Uthmānī’s practice of *naql*, transmitting the precedents of the *madhhab*, the foundational task for the *muqallid muftī.* This section establishes that *naql* can embody various forms and explores how ‘Uthmānī’s practice of *naql* not only replicates legal norms but also subtly extends *madhhab* doctrine. Lastly, we investigate ‘Uthmānī’s rigorous and methodical examination of intergenerational *madhhab* disputes to uncover the *madhhab*’s most forthright and authoritative position to transmit. Historically, this form of *naql* is often known as *taḥrīr al-madhhab*, examining the *madhhab*.[389] We

[388] See Masud, Messick, and Powers, *Islamic Legal Interpretation: Muftis and their fatwas*; Hallaq, *Authority, continuity and change in Islamic law*; David Powers, *Law, society and culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press, 2002); Haim Gerber, *Islamic Law and Culture, 1600-1840* (Leiden: Brill, 1999).

[389] *Taḥrīr al-madhhab* is a term widely recognised in Islamic jurisprudence, referring to the process of critically analysing and examining *madhhab* discourse to refine and clarify the rules of the *madhhab*. While not a term

uncover how *taḥrīr* can serve as a principal vehicle for individual discretion, facilitating the potential for nuanced *ijtihād* within the *madhhab.*

Critically, within both *naql* and *taḥrīr* lies the potential for dynamic legal interpretation. While the role of individual reasoning and juristic expertise may be more forthright in *taḥrir*, *naql*, often seen as mere transmission, holds the potential to influence and evolve *madhhab* doctrine also. This underscores the point that even within the perceived constraints of established legal schools, in subject matter considered unmoving and rigid, there exists a rich tapestry of interpretive possibilities, demonstrating the adaptability and resilience of the *madhhab* framework in the hands of adept jurists like 'Uthmānī. Importantly, through 'Uthmānī's practice of individual discretion, deeply rooted in *taqlīḍ*, we see a symbiotic relationship between *taqlīd* and *ijtihād*, tradition and innovation, highlighting that, within the context of the *madhhab*, both can co-exist, influence, and enrich each other.

Methodological consistency

As discussed previously, *Rasm al-Muftī* and other such procedures of rule-discovery in the Ḥanafī *madhhab* advise jurists on navigating *madhhab* discourse and articulating its opinions. 'Uthmānī's very first *fatwā*, dated April 1959, was written in response to a Deobandī elder Ḥusayn Aḥmad Madanī (d. 1957), and it demonstrates his *rasm al-muftī* inspired methodological precision, harmoniously applying the doctrines of the *madhhab* while authoring *fatāwā*. This early *fatwā* by 'Uthmānī, despite his youth, underscores his commitment to articulating Ḥanafī opinions according to the *madhhab*'s established procedural norms. Even when faced with differing opinions from a prominent Deobandī, 'Uthmānī projects that authentically representing the *madhhab* and articulating its opinions necessitates adhering to its procedures of rule discovery.

explicitly used by 'Uthmānī himself, his juristic activities align with this scholarly practice, which is common across all major Islamic legal schools. For example, Ibn 'Ābidīn routinely uses the operative term ḥ-r-r to describe the scholarly activities of certain scholars such as, "as examined by *al-Baḥr* [*al-Rā'iq* of Ibn Nujaym]," (*kamā ḥarrara fī l-Baḥr*) in: *Radd al-Muḥtar*, 2: 556.

Madanī's *fatwā* was published in 1953 in *al-Jam'iyya*, a journal based in Delhi.[390] Herein, Madanī opined that all forms of congregational voluntary prayer were permitted on the nights of Ramadan. Herein, Madanī interpreted *qiyām al-ramaḍān*, the night prayers of Ramadan, which were precluded from the general impermissibility of congregational voluntary prayers, to include all voluntary prayers in the nights of Ramadan. Therefore, Madanī cites various authorities, from Ḥanafī references like Ibn 'Ābidīn and Ibn al-Humām to Hadith references such as Ibn Ḥajar, to demonstrate the preclusion of *qiyām al-layl* from this general impermissibility.[391] Madanī aims to permit Muslim communities to offer *tahajjud* – a voluntary night prayer conventionally offered at the latter portions of the night – in congregation during Ramadan, as these texts permit *qiyām al-layl*.[392]

'Uthmānī posits that Madanī's position conflicts with the widespread interpretation of the *madhhab* and lacks the methodological rigour necessary to harmonising its precedents. The *madhhab* traditionally understood *qiyām al-layl* to refer to the *tarāwīḥ*, a twenty-unit prayer offered after *'Ishā'* in Ramadan. 'Uthmānī asserts that except for *tarāwīḥ*, the rain prayer, and the prayer offered during eclipses, publicly announcing congregational voluntary prayers is prohibitively disliked (*makrūh taḥrīmī*) and must be avoided.[393] 'Uthmānī cites al-Kāsānī ((d. 587/1191), who writes:

> If one offers *tarāwīḥ* and then intends to pray again, they should pray alone and not in congregation, for the second offering will be a general voluntary prayer, and a general voluntary prayer in congregation is prohibitively disliked.[394]

[390] 'Uthmānī reproduces Madanī's entire *fatwā* within his response. See: 'Uthmānī, *Fatāwā 'Uthmānī,* 1: 446-8.
[391] Ibid., 1: 446-7.
[392] Ibid., 1: 448.
[393] Ibid., 1: 448. In juristic practice within the Ḥanafī school, prohibitive dislike infers impermissibility. In the Ḥanafī school, *makrūh taḥrīmī*, or prohibitive dislike, is used to infer severe dislike nearing on unlawful (*ḥarām*). The legal theorists have often explained the difference between *ḥarām* and *makrūh taḥrīmī* in being established through different forms of evidences: definitive evidence from the Qur'an and mass-transmitted narrations infer *ḥarām* status, while more speculative evidences infer *makrūh taḥrīmī* status. See: Shams al-Dīn Muḥammad b. Ḥamza al-Fannārī, *Fuṣūl al-Badāi'i fī Uṣūl al-Sharāi'i.* ed. Muḥammad Ḥusayn Ismā'īl, 2 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 2006): 1: 244. Nonetheless, in juristic practice, the jurists attribute an action to prohibitive dislike to imply impermissibility, and this has been used in this translation. For a definition of *makrūh taḥrīmī* from the perspective of practical jurisprudence, see: Ibn 'Ābidīn, *Radd*, 1: 639; al-Zuḥaylī, *al-Wajīz fī Uṣūl al-Fiqh al-Islāmī*, 2 vols (Damascus: Dār al-Khayr, 2006): 1: 301-4.
[394] 'Uthmānī, *Fatāwā 'Uthmānī*, 1: 449. Al-Kāsānī, author of *al-Badāi'i al-Ṣanāi'i*, was a leading Ḥanafī authority, born in Kashan in the Ferghana region of Transoxiana, and passed away in Aleppo. He was the son-in-law of al-Samarqandī (d. c. 540/1145-6) author of *Tuḥfat al-Fuqahā'*. For biographical details, see: Ibn Quṭlūbugha, *Tāj al-Tarājim*, 327-9.

A similar precedent is quoted from *Fatāwā Hindiyya* and al-Bazzāzī's *Fatāwā*.[395] Additionally, 'Uthmānī quotes Ṭāhir al-Bukhārī's (d. 542/1147) *Khulāṣat al-Fatāwā*: "If one exceeds twenty in congregation, it would be prohibitively disliked according to us on the basis that voluntary prayers in congregation are prohibitively disliked".[396] The texts clearly indicate that while twenty units of *tarāwīḥ* are acceptable as a congregational prayer, exceeding this in the number of units or another form of prayer is not. Madanī's assertion that all voluntary prayers during the night can be offered in publicly announced congregation contradicts established *madhhab* precedent.

Next, 'Uthmānī quotes Ḥanafī stalwarts to undermine Madanī's presumptions on the term *qiyām al-layl*. 'Uthmānī argues that the understanding of the jurists is that *qiyām al-layl* specifically refers to *tarāwīḥ*. To establish this, he quotes al-Bābirtī's commentary on *al-Hidayā*: "The Chapter of the Prayer of the Month of Ramadan (*qiyām shahr ramadān*): Tarāwīḥ is mentioned in this chapter on its own due to its specificity which general voluntary prayers do not contain".[397] 'Uthmānī finalises his analysis by quoting Deobandī scholars Gangohī and Thānawī, both of whom transmit a similar position that voluntary prayers, beyond the *tarāwīḥ*, are impermissible to be offered in a publicly announced congregation.

'Uthmānī's very first *fatwā* is a prime example of the *muqallid muftī'*s task. *Fatwā*s, as representations of the *madhhab*, should attempt to engage with and harmonise the totality of its doctrine. Despite citing Ibn 'Ābidīn and Ibn al-Humām on *qiyām al-layl*, Madanī's *fatwā* lacks the methodological rigour needed to integrate *qiyām al-layl* within the *madhhab*'s framework and its legal precedents, which offer a specific interpretation of the matter. In fact, Madanī recalls Gangohī's *fatwā* and deems it the non-preponderate position (*marjūḥ*),[398] but one questions the framework in which this preponderance was made. In contrast, 'Uthmānī's approach demonstrates a thorough engagement with the precedents and discussions of the *madhhab*, striving for a comprehensive understanding of its doctrine. Madanī's opinion, due to its limited engagement with the *madhhab*, stands as an individual

[395] 'Uthmānī, *Fatāwā 'Uthmānī*, 1: 449.
[396] Ibid.
[397] Ibid., 451.
[398] Ibid., 445

scholarly opinion, removed from the scholarly authority of the Ḥanafī *madhhab.* In contrast, ‘Uthmānī is firmly rooted in the *madhhab* with an interpretation mirrored by other high-ranking Deobandīs.

To conclude, ‘Uthmānī’s response to Madanī’s *fatwā* highlights the critical necessity of deeply engaging with the established discourse of the *madhhab* when formulating opinions that represent it. Individual perspectives may vary, but to genuinely represent the *madhhab*, one must exhaust its established discourse and idiosyncrasies to situate the *madhhab*’s discourse. This deeper engagement ensures fidelity to the *madhhab*’s principles and reinforces its relevance and dynamism.

The variation in *naql*: from norm replication to contextual application

Naql, the crucial task of transmitting the *madhhab*’s authoritative precedents, lies at the heart of authoring *fatāwā* within the *madhhab* as a *muqallid muftī*. ‘Uthmānī upholds that this is the foundational task for the *muqallid muftī*; as they do not hold the personal authority or juristic ability to carry out higher levels of *ijtihād* in legal opinion-making, they must uncover and transmit the opinions of the *madhhab*. Consequently, ‘Uthmānī positions himself as a *muqallid muftī*, and *naql* emerges as the predominant form of juristic engagement in *Fatāwā ‘Uthmānī*. This section aims to delineate the key themes that underpin ‘Uthmānī’s practice of *naql* and the variety of forms it embodies, shedding light on its intricate relationship with *taqlīḍ* and *ijtihād*, tradition and legal innovation. Critically, transmitting the norms of the *madhhab* involves more than just blind replication; it serves as the foundational basis for embedding historic *madhhab* discourse within contemporary issues, thereby facilitating both adherence to tradition and adaptability in response to new challenges. Through this lens, we explore how ‘Uthmānī, even while deeply rooted in the practice of *naql*, initiates legal change in the *madhhab*, offering a nuanced understanding of the seminal role of *naql* in the ongoing evolution of jurisprudence within the *madhhab*.

(i) *Naql* as norm replication

Investigating ‘Uthmānī’s practice of *naql* reveals that mere replication of the *madhhab*’s norms often comes to the fore, particularly in matters pertaining to rituals and worship, where personal circumstances usually bear minimal influence on the law. Typically, these questions take a similar form: the questioner will ask about a specific aspect of the law, and ‘Uthmānī responds with the black-letter law. For example, when queried about the etiquette of moving across the path of an individual engaged in prayer, ‘Uthmānī offers a simple response. He asserts that if the worshipper is praying in a large open area, it is permissible for another person to walk in front of them. However, the passerby must maintain a sufficient distance so that if the worshipper were to look towards his place of prostration, the specific spot where their hands and forehead would touch the ground, they would not be able to see the person walking by.[399] In concluding his ruling, ‘Uthmānī edifies, ‘due to what is detailed in *Radd al-Muḥtār,* (*limā fī radd al-muhtār*)’ and then cites the legal precedent from *Radd al-Muḥtār,* Ibn ‘Ābidīn’s commentary upon al-Ḥaṣkafī’s *al-Durr al-Mukhtār*, which affirms his understanding.[400]

This method of transmission prompts a significant inquiry: is ‘Uthmānī the author of these opinions, or is he primarily a transmitter and translator, producing Ibn ‘Ābidīn’s Arabic jurisprudence into Urdu? This question probes deeper into the nature of ‘Uthmānī’s engagement with the *madhhab*’s norms and his role within it as a *nāqil* (transmitter). This transmission-translation dynamic is a dominant theme in *Fatāwā ‘Uthmānī* and is repeated often. For example, a question is raised about the legality of offering voluntary prayers before and after offering the dawn prayer (*fajr*). ‘Uthmānī affirms the questioner’s understanding; once the designated time for the dawn prayer begins, offering voluntary prayers is not permissible.[401] This constraint also applies to performing voluntary prayers after completing the dawn prayer. After elucidating the law in Urdu, ‘Uthmānī reverts to Arabic:

[399] 1: 427.
[400] Ibid.
[401] Ibid., 1: 437.

> As described in *al-Durr al-Mukhtār*: 'Likewise the ruling of the impermissibility (*karāha*) of all general voluntary and necessary prayers not tied to a specific time (*li-ghayrihī*)[402] […] after the break of dawn except its sunnah prayer, due to the period being occupied for it [i.e., *fajr*].[403]

'Uthmānī thus declares that the questioner's understanding is correct, but the writing style highlights the intricacy of the transmission-translation interplay. These responses highlight the multifaceted process of *naql*, specifically the interpretation of jurisprudential nuance and sophistry, translation, and the effective communication of *madhhab* doctrine. This citation to *al-Durr al-Mukhtār*, dense with jurisprudential technicalities, appears within an Urdu *fatwā* intended for the lay questioner. However, it also serves a dual purpose as an offhand citation, to signpost the more in-depth legal discussions for scholars of the *madhhab*. In this vein, 'Uthmānī's practice of simple norm replication operates as an essential bridge, connecting the *madhhab*'s complicated juristic discourse and vast legal history to contemporary questioners, and it highlights the role of the *muftī* as a mediator in this process.

(ii) Transmitting the *madhhab*'s norms without citations

The forms of *naql* practised by 'Uthmānī are not limited to explicit citation and transmission of *madhhab* precedents. Indeed, 'Uthmānī consistently performs *naql* without citing specific legal texts, wherein the underlying precedent is assumed to be self-evident within the Ḥanafī framework. 'Uthmānī is not unique in this practice; the omission of legal precedent, and even legal justification, can be observed in several Deobandī *fatwā* collections.[404] By adopting this approach, 'Uthmānī reveals a profound depth of juristic insight and intimate knowledge of the *madhhab* in translating its precedents into practical guidance.

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[402] In Ḥanafī jurisprudence, the period designated for the dawn prayer (*fajr*) is specifically reserved for its obligatory and voluntary units of prayer, thereby forbidding voluntary or necessary prayers not tied to a specific time. This understanding is substantiated by various Prophetic traditions. However, this prohibition does not extend to prayers made necessary through vows to take place during this period. *Wājib li-ghayrihī* has been translated allegorically to transmit the subtle jurisprudential nuance submitted in this short citation. A clearer exposition of this discussion can be found in al-Shilbī's marginalia on al-Zayla'ī's *Tabyīn al-Ḥaqā'iq*, see: Fakhr al-Dīn 'Uthmān b. 'Alī al-Zayla'ī, *Tabyīn al-Ḥaqā'iq fī Sharḥ Kanz al-Daqā'iq*, 6 vols. (Cairo: Maṭba'āt al-Kubrā al-Amīra, n.d.,): 1: 97.

[403] 'Uthmānī, *Fatāwā*, 1: 437. See ff. 393 of this thesis for the translation of *karāha* as impermissibility.

[404] See Appendix 1.

Consider the following example to understand ʻUthmānī's *naql* without citation in practice. An imam leading prayer makes a mistake in reciting verse Q. 2: 105, reading "The People of the Book who disbelieve and the idolators (*wa l-mushrikīn*)," instead of "Neither those People of the Book who disbelieve nor the idolators (*wa la l-mushrikīn*)." The questioner asks ʻUthmānī about the status of such a prayer, and ʻUthmānī responds simply: "Prayer is valid in this situation, and there is no need to repeat it".[405] Curiously, the underpinning legal discussion reveals a convoluted array of differing viewpoints among the early and later Ḥanafīs. Ibn ʻĀbidīn explored the legal tradition on this matter, synthesising the opinions of *madhhab* jurists and offering a comprehensive schema, and ultimately highlighted a significant clause in such discussions: the existence of a major distortion (*taghyīr fāḥish*) in the meaning of the recited verse.[406] The variation for the case in question is slight; omitting the "lā" particle removes the double negative rhetoric device in the verse, though the message remains intact. Due to the absence of a major distortion, ʻUthmānī opined that this mistake in recitation is acceptable, and the prayer remains valid. While ʻUthmānī's *fatwā* lacks legal elaboration, it is reasonable to assume that he draws upon Ibn ʻĀbidīn's legal insights due to the extensive reliance upon *Radd al-Muḥtār* throughout his *fatāwā* collection.

This is a crucial point of significance. It is evident that ʻUthmānī's primary access to the Ḥanafī school is through Ibn ʻĀbidīn and his *Radd al-Muḥtār*. As mentioned previously, *Radd al-Muḥtār* is a supercommentary on al-Ḥaṣkafī's *al-Durr al-Mukhtār*, which, in turn, is a commentary on al-Tumurtāshī's (d. 1004/1598) *Tanwīr al-Abṣār*,[407] and Ibn ʻĀbidīn is often called the last verifier (*khatimat al-muḥaqqiqīn*) of the Ḥanafī *madhhab* due to his exhaustive efforts in *Radd al-Muḥtār*.[408] In

[405] ʻUthmānī, *Fatāwā,* 1: 430

[406] For Ibn ʻĀbidīn's thorough examination of the competing opinions and discourse on the matter of recitation mistakes in prayer, see: Ibn ʻĀbidīn, *Radd al-Muḥtār,* 1: 630-34; esp. 1: 632 which reads: "If one misses a word from a verse and its meaning does not change – such as missing the second *sayyi'at* [in Q. 42: 40] when reading 'The recompense of evil is evil like it' (*wa jazā' sayyi'atin sayyi'atun mithluhā*) – prayer will not be invalidated." As we study *taḥrīr – madhhab* examination – in the forthcoming section, this particular five-page study exemplifies the *taḥrīr* ʻUthmānī is imitating.

[407] al-Tumurtāshī was an Ottoman jurist born in Gaza. He also authored *Minaḥ al-Ghaffār,* which is frequently cited in Ibn ʻĀbidīn's *Radd al-Muḥtār*. For biographical details on al-Tumurtāshī, see: Ḥājī Khalīfa, *Silm al-Wuṣūl*, 3: 155.

[408] Ibn ʻĀbidīn is known as 'the last verifier' of the *madhhab* due to the sheer expanse of engagement and consolidation of the *madhhab* in *Radd al-Muḥtār*. For a comprehensive study on Ibn ʻĀbidīn and detailed biographical information about the sources cited in his *Radd*, see: Lu'ayy b. ʻAbd al-Ra'ūf al-Khalīlī, *La'āli l-Maḥār fī Takhrīj Maṣādir Ibn ʻĀbidīn*, 2 vols. (Amman: Dār al-Fatḥ, 2010).

the selection of *fatāwā* studied for this chapter, ‘Uthmānī cites *Radd al-Muḥtār* nearly 100 times. Conversely, the second most cited pre-modern authority, Ibn Nujaym, is cited only eleven times.[409] Although ‘Uthmānī had access to a variety of Ḥanafī texts, as evidenced in his first *fatwā,* among them al-Sarakhsī’s *al-Mabsūṭ,* al-Kāsānī’s al-*Badāi‘i al-Sanāi‘i,* Ṭāhir al-Bukhārī’s *Khulāṣat al-Fatāwā,* Qāḍīkhān’s *Fatāwā,* Ibn al-Humām’s *Fatḥ al-Qadīr* and al-Bābirtī’s *‘Ināya* to name a few,[410] his predominant point of reference in the Ḥanafī school is *Radd al-Muḥtār*.

As we discussed in Chapter 2, reliance on *Radd al-Muḥtār* is a clear intellectual standard within Deobandī *fatwā* writing, where Deobandī *muftī*s would utilise *Radd al-Muḥtār* as a lens into *madhhab* discourse. For example, during an initial investigation of the chapters of purity from Thānawī’s *Imdād,* ‘Azīz al-Raḥmān ‘Uthmānī’s *Fatāwā Dār al-‘Ulūm Deoband*, and Sahāranpūrī’s *Fatāwā Maẓāhir al-‘Ulūm*, works authored by distinguished second-generation jurists, the citations to *Radd al-Muḥtār* overwhelmingly surpass those of all other Ḥanafī texts. For example, ‘Azīz al-Raḥman ‘Uthmānī cites *Radd* eighty-seven times, while Thānawī cites it ninety-two times in our small selection size.[411] In effect, the *Radd* was the only reference for these jurists, and other citations were a drop in the ocean.[412] It is unequivocal that ‘Uthmānī, and many Deobandī *muftīs*, engaged with the *madhhab*’s doctrines through the lens of *Radd al-Muḥtār*.

(iii) Extending *madhhab* doctrine through *naql*

The common perception might be that *naql,* as a practice of transmitting the *madhhab*’s established norms, suggests a static replication of law. However, this view overlooks the nuanced role of *naql* in fostering legal adaptability and innovation within the *madhhab* framework. Crucially, *naql* serves as a mechanism for contextualised application of the law, facilitating legal innovation within the *madhhab*. Importantly, the role of the *muftī* is essential in this process as they practice *naql* to commandeer the

[409] See Appendix 2.
[410] We learn this in ‘Uthmānī’s *fatwā* on congregational night prayers in Ramadan, studied in the previous section.
[411] See Appendix 1.
[412] For instance, in the same section of the *Imdād*, *Fatāwā ‘Ālamgīrī* was the second most-referenced law manual at a mere four citations. See Ibid.

ongoing evolution of jurisprudence within the *madhhab*. Through the deft interplay of *madhhab* text and questioner's context, 'Uthmānī expands *madhhab* precedent to incorporate new and novel circumstances.

Numerous examples can be cited to demonstrate 'Uthmānī's extension of *madhhab* precedent through *naql*. One particularly striking example involves a question from a soldier in a hierarchical structure that often keeps travel plans and movements classified from low-ranking personnel. Consequently, these soldiers may be stationed at various barracks without any foreknowledge of the duration of their stay. This liminal state affects the soldier's prayer status, specifically in being categorised as a "traveller." In the Ḥanafī school, individuals are considered travellers when they have travelled a particular distance and intend to stay at that location for less than fifteen days; such travellers must shorten their prayers. The soldier seeks guidance on how to approach prayer and traveller status when they are unaware of their duration of stay at a given barracks. 'Uthmānī applies the *madhhab* precedent that until the soldiers are assured that they will remain for less than fifteen days, they should continue to shorten their prayers, even if they remain in this liminal status for several months.[413] This ruling extends the Ḥanafī discussion of the leader (*matbū'*) and follower (*tābi'*) to modern soldiers and officers; that if the leader intends residency and the follower does not know the leader's intentions, he remains a traveller until he learns of it.[414]

Another series of notable cases involve the status of certain imams. The Ḥanafī school maintains that an open sinner (*fāsiq*) must not lead prayers; prayer behind such an imam is valid but severely disliked (*makrūh*). The *Fatāwā* dedicates an entire subsection to updating the open-sinner status to modern phenomenon. 'Uthmānī applies the open-sinner status to one who regularly speaks vulgarities[415] or shaves his beard.[416] Though admittedly mundane, these examples highlight the role of the *muftī* in pioneering the ongoing evolution of *madhhab* doctrine. The *madhhab* exists as an inherited totality of doctrine, and the *muftī*, like 'Uthmānī, accesses the divine law through this discursive

[413] 'Uthmānī, *Fatāwā*, 1: 504.
[414] Ibn 'Ābidīn, *Radd*, 2: 133-4.
[415] 'Uthmānī, *Fatāwā*, 1: 399.
[416] Ibid., 1: 393-4.

tradition, extending it to contemporary life. The *muftī* looks within the *madhhab*, not scripture, to rule on novel occurrences, harmonising *madhhab* texts with contemporary contexts. Indeed, this form of *naql*-based *madhhab* extension is a form of lower-level *ijtihād* available to the *muqallid muftī,* providing continuity and facilitating evolution within the *madhhab*'s precedents and legal norms.

Our last variation of *naql* in 'Uthmānī's *fatāwā*, a variation closely related to extending *madhhab* doctrine and the role of the *muftī*, is *naql* for dispute resolution in community-related issues. Due to their role in guiding religious practice among communities, *muftī*s are frequently sought out to address complex community-related issues. This essential task lies at the core of the *muftī*'s role as an arbitrator on matters of law, providing expert guidance and solutions. *Fatāwā 'Uthmānī* encompasses a broad spectrum of such *fatāwā*, ranging from inquiries about the conduct of a controversial imam who has been causing unrest among community elders[417] to questions on emerging social phenomena sweeping through Pakistan.[418] In each instance, 'Uthmānī engages in the intricate process of *naql*, using his expertise to analyse the situation, apply *madhhab* precedents, and provide practical solutions to resolve community-related issues.

Let us now explore an example of this form of *naql* in practice. 'Uthmānī receives a question about the status of Friday prayers (*ṣalāt al-jumu'a*) in Amrot Sharif, a renowned village in Northern Sindh. This village is significant as it houses a *madrasa* established by Mawlānā Tāj Maḥmūd, where Ubaydullāh Sindhī once taught.[419] The Ḥanafī *madhhab* states that Friday prayers are valid in a town and large village (*qaryat kabīr*) but not in a small village (*qaryat ṣaghīr*). The questioner, a teacher in a local *madrasa* and imam appointed by locals to lead Friday prayers, raises concerns about Amrot Sharif. Despite being a small village, Friday prayers had been established in the village for generations

[417] One specific *fatwā* stands out, where community leaders from a Deobandī congregation in Zhob, Balochistan sought 'Uthmānī's insight to ascertain the legitimacy of their imam. This inquiry arose due to a succession of 'unconventional' theological and juridical pronouncements voiced from the pulpit that caused rifts within the mosque attendees. Both factions reached out to 'Uthmānī, laying out their perspectives, and yearning for his juridical and pragmatic counsel to mend this communal discord. See: 'Uthmānī, *Fatāwā*, 1: 386-92.

[418] 'Uthmānī consistently addressed societal dynamics and religious debates that surfaced in Pakistan. One such *fatwā* offered a comprehensive ten-page position articulating the illegitimacy of wiping on cotton socks during ritual ablutions (*wuḍū*'), in response to 'Alā' al-Dīn Mawdūdī and his followers. See: 'Uthmānī, *Fatāwā*, 1: 337-47.

[419] Tahir Kamran, "Ubaidullah Sindhi as a Revolutionary: A Study of Socialist Activism in Deobandi Islam" in: *Muslims and Capitalism*, ed. Beatrice Hendrich (Koln: Ergon-Verlag, 2018): 154.

under the leadership of Deobandī elders like Maḥmūd and his descendants.[420] Listing the number of households and shops that inhabit the village, the questioner seeks clarification on whether Amrot Sharif meets the necessary conditions to establish Friday prayers.

'Uthmānī responds that it would be difficult to classify Amrot Sharif as a large village. 'Uthmānī adds that in the Ḥanafī *madhhab*, one can only establish Friday prayers in a small village if the Muslim leader gives permission, a provision inapplicable in Pakistan. 'Uthmānī contends that the distinction between a small and large village is not defined by fixed criteria, but *'urf*, local custom. In local custom, 'Uthmānī maintains that a large village is known as a *qaṣba*, characterised by a market that meets daily necessities, a larger population, streets, governmental courts, a local administrative body (*tehsīl*) or police stations.[421] As Amrot comprises eighty houses, six shops, no post office and large agrarian land that separates families from one another, it would not meet these requirements. 'Uthmānī concludes, "No possible angle for the validity of Friday prayers there can be seen".[422] 'Uthmānī advises the questioner to share the *fatwā*s of the elders (Thānawī's *Imdād al-Fatāwā,* Rahmān's *Fatāwā Dār al-'Ulūm Deoband* and others) and explain the situation to his congregation. If he fears acrimony within the community, 'Uthmānī suggests that the questioner should refrain from leading the prayers; instead, he should join the prayer as a congregation member, offering it as a voluntary prayer (*nafl*), thereafter performing the midday prayer (*ẓuhr*) individually.[423]

Within Muslim communities, sacred law serves as moral guidance, reflecting the spiritual commitment of ordinary Muslims to their faith. As Muslims grapple with major community disputes, they seek advice, clarification, and the authority of the *muftī* to resolve them. Islamic law finds its essence in the lived experiences of ordinary Muslims, and it is the *muftī* who assumes a central role in accessing the law and providing guidance to the community, shaping the trajectory of their religious practice.

[420] 'Uthmānī, *Fatāwā*, 1: 515.
[421] Ibid., 1: 516.
[422] Ibid.
[423] This is because the Friday prayers is a substitute for the obligatory *Ẓuhr* (midday) prayer. Therefore, the questioner is advised to pray Friday prayers as a voluntary prayer, and to perform the *Ẓuhr* prayer later.

In studying ‘Uthmānī’s practice of *naql* and the variations it embodies, I demonstrate the role of the *muftī* in accessing, assessing, and applying the inherited precedents of the *madhhab* to contemporary contexts. The examination of diverse case studies further illustrates the varied forms and contexts of *naql* employed by the *muftī*, showcasing its instrumental role in driving the evolution of the *madhhab*. Through *naql*, ‘Uthmānī extends the boundaries of *madhhab* precedent, addressing complex community issues and providing guidance on legal matters. His expertise in interpreting and translating the *madhhab* allows for adapting its doctrines to the modern context. The *muftī* serves as the conduit between the text, *madhhab* precedent, and context (the lived experiences of the Muslim community). *Naql*-based *ijtihād* allows the *muftī*, like ‘Uthmānī, to pioneer the evolution of *madhhab* doctrine, ensuring its adaptability and relevance. Despite the imagery of dogma and stagnation, *naql* and its various forms showcase the dynamic nature of the *madhhab*; when skillfully utilised by the jurist, it stands as a pivotal mechanism to drive the *madhhab*’s evolution.

Taḥrīr al-madhhab: rigorous examination of the *madhhab*

The domain of *naql* is well understood; the jurist studies and transmits the *madhhab*’s opinions. However, what if the dominant opinion is unclear amidst the intergenerational dialogues within the *madhhab*, or the tradition does not answer a particular legal question? What does the jurist transmit if there is nothing to transmit? There are numerous such cases in *Fatāwā ‘Uthmānī*, and ‘Uthmānī deals with them through the process of *taḥrīr*, the rigorous examination of the totality of *madhhab* doctrine to uncover the most forthright precedent to transmit. In the following analysis, I study examples of *taḥrīr* in the *Fatāwā* to underscore how ‘Uthmānī navigates unchartered waters of the *madhhab* when the conventional sources do not offer clear or explicit legal norms. These examples highlight the exacting efforts and scholarly acumen required to establish the *madhhab*’s legal norms and the centrality of individual reasoning, *ijtihād*, in upholding its principles to address novel legal challenges.

(i) Defining a delayed act in prayer

The first case under review exemplifies ‘Uthmānī’s nuanced approach to *taḥrīr* of the *madhhab* when faced with conflicting positions from its leading jurists. The *madhhab* contends that if one delays a foundational act of prayer (*rukn*), the additional prostration of forgetfulness (*al-sadjat al-sahw*) becomes necessary, which one must perform before ending their prayers. However, there is debate in defining the length of such a delay. The questioner is unable to reconcile discourse from within the *madhhab,* specifically, the rules of Ibrāhīm al-Ḥalabī (d. 956/1549-50).[424] Al-Ḥalabī states that during the necessary sitting action in between the second and third units of prayer, the mere act of prolonging this sitting beyond its necessary supplication obligates the prostration of forgetfulness. According to this understanding, one has delayed standing for the third unit of prayer, which is a foundational act.[425] Unlike other texts of the *madhhab,* al-Ḥalabī makes no effort to quantify the ‘delay’. To reconcile this judgment within *madhhab* discourse, ‘Uthmānī thoroughly examines the *madhhab*’s discourse on this matter.

Firstly, ‘Uthmānī offers a direct comment from a famous gloss on al-Ḥalabī’s text, Dāmād Afendī’s (d. 1078/1667) *Majma‘ al-Anhur*:

> They have differed in quantifying ‘prolonging’. Some say that the extension of a letter or statement [amounts to a delay] and the author [al-Ḥalabī] inclines towards this position. Others have quantified prolonging as equivalent to a foundational act (*rukn*); this is the authentic position, as mentioned in the majority of books.[426]

A foundational act of prayer includes standing, but in its shortest form, it includes prostration and bowing. ‘Uthmānī continues that a foundational act has been further qualified by other authorities,

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[424] Ibrāhīm al-Ḥalabī authored several texts in the Ḥanafī *madhhab* including *al-Multaqā al-Abḥur* and *Ghunyat al-Mutamallī*. He was born in Aleppo and passed away in Constantinople, and among his famous teachers were al-Suyūṭī (d. 911/1505) and Ibn Ḥajar al-Haytamī (d. 974/1566), seminal figures in the Shāfi‘ī *madhhab* and Sunni Hadith scholarship. For biographical details, see: Ḥājī Khalīfa, *Silm al-Wuṣūl*, 1: 46-7.

[425] ‘Uthmānī reproduces the entire quotation from al-Ḥalabī, in: *Fatāwā,* 1: 491. As background to this ruling, in between the second and third unit of prayer, the Ḥanafīs mandate a sitting period, prescribed with a single supplication (the *tashahhud*). This example debates the implications of exceeding beyond this single supplication by accident, therefore, delaying one’s entry into the third unit of prayer. This is just one example of how one can delay a foundational act of prayer; there are many others.

[426] ‘Uthmānī, *Fatāwā*, 1: 491-2. Dāmād Afendī Shaykhī-zāde, author of *al-Majma‘ al-Anhur*, was an Ottoman jurist, who held official positions within the judiciary of the military. For biographical details, see: al-Zirkilī, *al-A‘lām,* 3: 332.

namely al-Ṭaḥṭāwī (d. 1231/1816), who suggests that this must involve a foundational act of prayer in its Prophetic form. As reciting three incantations in glorifying God (*tasbīḥ*s) is considered the Prophetic form of prostration or bowing, al-Ṭaḥṭāwī quantifies the time of delay as the time required to recite three incantations.[427] In line with this reasoning, should one prolong their sitting for less than the time required to utter three incantations, an additional prostration of forgetfulness is not necessary.

However, as one expects, variations in *madhhab* opinions lead to variations in preponderance. Al-Ḥaṣkafī writes that should a person prolong their sitting and recite, "O God, send salutations on Muhammad" (*allāhumma ṣalli ʻalā Muḥammad*), the *muftā bihī* position necessitates the additional prostration for delaying the standing.[428] As stated in the *rasm al-muftī* chapter, the adage *muftā bihī* is attached to an opinion to denote its highest form of relevance and authority when authoring a *fatwā*.[429] ʻUthmānī lays out three primary opinions on what constitutes a 'delay': first, the mere act of delaying itself without qualification; second, a delay that is qualified to the duration required to establish a foundational act of prayer. The latter is further subdivided into two interpretations: a) the duration of three incantations, and b) the recitation of a single line of prayer. These positions are all upheld by renowned *madhhab* authorities, with strong words of preponderance; not least, the adage of *muftā bihī* attached to the latter position.

To solve this conundrum, ʻUthmānī appeals to Ibn ʻĀbidīn's research, which introduces a parallel text to contextualise the discourse.[430] Ibn ʻĀbidīn points toward Ḥanafī discussions about the Shāfiʻī permission to perform a short pause of relaxation (*jalsat al-istirāḥa*) after odd units of prayer. Ibn ʻĀbidīn continues that whatever is recommended by the Shāfiʻīs as a duration for this pause, the Ḥanafīs recommend abandoning it. Critically, it is not necessary to abandon this pause. This implies that a 'delay' of this duration is acceptable in the *madhhab* and can be extended to all postures in the prayer. ʻUthmānī cites another comment from Ibn ʻĀbidīn, which elaborates on this position further:

[427] ʻUthmānī, *Fatāwā*, 1: 492. Al-Ṭaḥṭāwī was a jurist from Ottoman Egypt who studied in al-Azhar. al-Ṭaḥṭāwī authored a supercommentary on al-Ḥaṣkafī's *al-Durr al-Mukhtār*, and as such, is heavily featured and referenced by Ibn ʻĀbidīn. For biographical details, see: al-Zirkilī, *al-Aʻlām*, 1: 245.
[428] ʻUthmānī, *Fatāwā*, 1: 492.
[429] See "Uthmānī on *Rasm al-Muftī*" in Chapter 3.
[430] For the full discussion, refer to: Ibn ʻĀbidīn, *Radd*, 1: 469.

"if one observes it [pause of relaxation] according to their [Shāfiʿī] *madhhab*, there is nothing wrong with it, according to us".[431]

ʿUthmānī concludes that these texts clarify that the Ḥanafīs have precluded this duration of delay, i.e., the recommended duration of pause of relaxation according to the Shāfiʿī school. Therefore, should one 'delay' a foundational act wherein their pause is less than the Shāfiʿī recommendation for the pause of relaxation, this delaying is acceptable, and an additional prostration of forgetfulness is not mandated. ʿUthmānī falls somewhat short in his analysis; had he clarified the Shāfiʿī recommended duration, further insights on potential reconciliation or preponderance to one of the *madhhab*'s opinions would become more forthright. Nevertheless, the *taḥrīr* of this *fatwā* demonstrates ʿUthmānī's awareness of the broader Ḥanafī discourse but fundamentally establishes Ibn ʿĀbidīn's role in guiding ʿUthmānī through *madhhab* discourse. The questioner sought out ʿUthmānī to offer clarity amidst the varying *madhhab* opinions; herein, juristic style and interpretative methods come to the fore. ʿUthmānī's practice of *taḥrīr* demonstrates his proficiency in synthesising varied intra-*madhhab* opinions to propose a harmonised position within the Ḥanafī framework. In this respect, ʿUthmānī's deference to Ibn ʿĀbidīn as the authoritative and deciding source underscores the lens through which ʿUthmānī views the complexities of the Ḥanafī school. It is evident that for ʿUthmānī, Ibn ʿĀbidīn is not just a point of reference but the foundational beacon of clarity and authenticity, a reverence mirrored by many of his Deobandī elders.

(ii) Prostrations on the forehead and not the nose

Equally, it is crucial to focus on another pivotal influence in ʿUthmānī's jurisprudence: Thānawī. Thānawī's enduring influence on ʿUthmānī is particularly evident in *Fatāwā ʿUthmānī*. Most notably, even in ʿUthmānī's independent examination of the *madhhab*, Thānawī's intellectual legacy is unmistakable. Consider the following example. A question on prayer is posed: when prostrating in prayer, is it necessary for the nose and forehead to touch the ground, or does the forehead alone suffice?

[431] Ibid., 1: 493.

The questioner, Ḥakīm Akhtar, founder of Ashraf al-Madāris, a prominent *madrasa* in Karachī, highlights the confusion caused by a difference of opinion between Thānawī's *Beheshtī Zewar* and a *fatwā* from Rashīd Aḥmad Ludhiyānwī, 'Uthmānī's *fiqh* teacher.[432] Thānawī writes that placing the nose on the ground is not mandatory (*wājib*),[433] while Ludhiyānwī opines that it is, such that its omission necessitates repeating the prayer.[434]

'Uthmānī responds that the difference among these Deobandī stalwarts originates from a difference of opinion within the Ḥanafī law manuals themselves. Herein, this disagreement emerges from the three Ḥanafī masters: Abū Ḥanīfa opined that if one suffices on either the nose or the forehead, then the prostration is valid, while Abū Yūsuf and al-Shaybānī ruled that sufficing with one part is invalid unless one has an excuse.[435] The succeeding generations of scholarship engaged with this matter, with *fatwā* and preponderance granted to either side. Ibn al-Humām contributed to this discussion seminally; through a detailed interwoven discussion of Hadith and Ḥanafī legal methodology, Ibn al-Humām reconciled the positions of the Ḥanafī masters, positing that sufficing with one is, indeed, prohibitively disliked.[436] He writes, "it is not farfetched that Abū Ḥanīfa would have opined this" (*lā yab'ud an yaqūla bihī Abū Ḥanīfa*).[437] This interpretation found favour among later Ḥanafīs, particularly Ibn Nujaym of *al-Baḥr al-Rā'iq*[438] and his brother Sirāj al-Dīn (d. 1005/1596), author of *al-Nahr al-Fā'iq*.[439]

'Uthmānī does not reference these historical discussions, instead beginning his analysis from *al-Baḥr al-Rā'iq*. Therein, several texts are listed, including al-Kasānī's *al-Badāi'i* and al-Mawṣilī's (d.

[432] For the full question and answer: 'Uthmānī, Fatāwā, 1: 369-71.
[433] Thānawī, *Beheshtī Zewar Mukammal* (New Delhi, Islamic Book Store, n.d.,): 96.
[434] Ludhiyānwī, *Aḥsan al-Fatāwā,* 3: 21.
[435] For an early articulation of this difference, refer to al-Qudūrī's (d. 428/1037) *al-Tajrīd* in: Aḥmad b. Muḥammad al-Qudūrī, *al-Tajrīd,* ed., Muḥammad Sirāj and 'Alī Jumu'a Muḥammad. 12 vols. (Cairo: Dār al-Salām, 2006): 2: 534.
[436] Ibn al-Humām, *Fatḥ al-Qadīr,* 1: 303-4.
[437] Ibid., 1: 304
[438] Ibn Nujaym, *al-Baḥr,* 1: 335-6.
[439] Sirāj al-Dīn 'Umar b. Ibrāhīm Ibn Nujaym, *al-Nahr al-Fā'iq Sharḥ Kanz al-Daqā'iq*, 3 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 2002): 1: 215-6. For biographical details on Sirāj al-Dīn Ibn Nujaym, see: al-Zirkilī, *al-A'lām,* 5: 39.

683/1284) *al-Ikhtiyār*,[440] which deem prostration with the forehead alone as valid without any dislike. ‘Uthmānī contrasts this with other texts, such as *Fatāwā ‘Ālamgīrī,* which deems such prostrations valid but prohibitively disliked (*makrūh taḥrīmī*).[441] Nevertheless, Ibn Nujaym opines that the position of prohibitive dislike is stronger, writing:

> It is disliked to suffice on either one of them, be that the nose or the forehead, and it (the dislike), unqualified, refers to prohibitive dislike […] Thus, the position of without dislike is weak (*dha‘īf*).[442]

Commenting here, ‘Uthmānī relates Ibn ‘Ābidīn’s engagement in *Radd al-Muḥtār* that the most plausible position (*ashbah*) presupposes that placing both forehead and nose is necessary, and thus, sufficing with just one is prohibitively disliked.[443] ‘Uthmānī writes that Ludhiyānwī has relied upon this understanding from *Radd al-Muḥtār*. Nonetheless, Ibn ‘Ābidīn’s *Minḥat al-Khāliq*, his marginalia on *al-Baḥr al-Rā’iq*, infers a different position.[444] Therein, Ibn ‘Ābidīn cites a long passage from Sirāj al-Dīn Ibn Nujaym, which lists various Ḥanafī authorities that have taken the permissive opinion. i.e., that sufficing on the forehead alone is valid without dislike. After citing this passage from *al-Nahr*, Ibn ‘Ābidīn writes:

> The opinion of the text [i.e., al-Nasafī’s *Kanz al-Daqā’iq*], “It is prohibitively disliked [sufficing] on one of them”, dismisses what is said in the *Nahr*, for it is invalid to interpret it as light dislike for abandoning prostration on the forehead alone. However, the discussion of interpreting the dislike as seeking to discourage an act without absolute prohibition (*ṭalab al-kaff ṭalban ghayr jāzim*) will follow.[445]

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[440] Born in Mosul, al-Mawṣilī was an Abbāsid Ḥanafī jurist who enjoyed a moderately successful career as a teacher and jurist. At one point, he was appointed as a judge in Kufa, and taught law at the Jamī‘ Abū Ḥanīfa in Baghdad. For biographical details, see: al-Lakhnawī, *al-Fawā’id al-Bahiyya*, 106-7.

[441] In the Ḥanafī *madhhab*, necessity (*wājib*) and prohibitive dislike (*makrūh taḥrīmī*) are direct opposites of one another, i.e., it is necessary to abstain from prohibitive dislike, and prohibitively disliked to abstain from a necessary act. As Ibn ‘Ābidīn writes in *Radd*, 2: 430: “Abstaining from an unlawful (*ḥarām*) act is obligatory (*farḍ*), and it is necessary (*wājib*) to abstain from a prohibitively disliked (*makrūh taḥrīmī*) act”. Therefore, this citation from the ‘Ālamgīrī infers that placing the nose on the ground while prostrating is a necessary (*wājib*) act as it is necessary to abstain from prohibitive dislike.

[442] Ibn Nujaym, *Baḥr,* 1: 336.

[443] ‘Uthmānī, *Fatāwā*, 1: 370.

[444] Ibid.

[445] Ibn ‘Ābidīn, “Minḥat al-Khāliq ‘alā l-Baḥr al-Rā’iq” in: Ibn Nujaym, *Baḥr,* 1: 336.

‘Uthmānī infers from the last statement that Ibn ‘Ābidīn is inclining towards the lesser position, that omitting the nose while prostrating is valid with slight dislike. The phrase “seeking to discourage an act without absolute prohibition” is a phrase used within the *uṣūl al-fiqh* literature to refer to the lesser dislike, *karāhat tanzīh.*[446] Consequently, ‘Uthmānī alleges that one should understand the general term of dislike to mean the lesser dislike. ‘Uthmānī argues that as Ibn ‘Ābidīn wrote *Minḥat* after the *Radd,* this is his final position.[447] Interestingly, while ‘Uthmānī implies Ibn ‘Ābidīn’s subsequent work, *Minḥat al-Khāliq*, aligns with Thānawī’s perspective, Ibn ‘Ābidīn writes that the subsequent elucidation of this position “will follow.” ‘Uthmānī does not cite further discussions from Ibn ‘Ābidīn for solid substantiation, thereby casting doubt on his assertiveness in validating Thānawī’s position. Instead, he concludes that this inference from Ibn ‘Ābidīn supports Thānawī’s view, and this is Ibn ‘Ābidīn’s final position, though the position of *Radd* is more precautionary.[448]

This *fatwā* offers several insights. While the more permissive position can be evidenced by the *madhhab,* high-ranking authorities such as Ibn al-Humām, the Ibn Nujaym brothers, and Ibn ‘Ābidīn’s *Radd* all solidify the view that both forehead and nose must be placed on the ground. As ‘Uthmānī used individual discretion to conclude the discussion, certain juristic inclinations become clearer. It is easy to read this *fatwā* as a defence of Thānawī. While the conclusion highlighted the precaution in Ludhiyānwī’s view, the authorial voice throughout the *fatwā* is strongly in favour of Thānawī’s position. For example, ‘Uthmānī begins the historical discussion of this internal disagreement, stating: “Generally, the *fiqh* texts state that which is in *Beheshtī Zewar*”.[449] This is not apparent from the seminal texts of the later Ḥanafī tradition; in fact, Ludhiyānwī’s position is well-evidenced by the *Radd* and would thus appear to be the most apparent position for Deobandī Ḥanafīs. ‘Uthmānī’s examination of the *madhhab* could have taken many different turns, but the sustained focus in justifying the position in *Beheshtī Zewar* suggests a bias towards Thānawī’s view. Another glaring matter to note is ‘Uthmānī’s reliance upon Ibn ‘Ābidīn. Deobandī reliance upon Ibn ‘Ābidīn’s works has been documented above.

[446] al-Zuḥaylī, *al-Wajīz fī Uṣūl al-Fiqh al-Islāmī,* 1: 301. A notable modern exploration of classical and premodern Islamic legal theory (*uṣūl al-fiqh*).
[447] ‘Uthmānī, *Fatāwā,* 1: 371
[448] Ibid.
[449] Ibid., 1: 370

For ‘Uthmānī, Ibn ‘Ābidīn emerges as a final reference to *madhhab* discourse. However, critically, when a matter is left undecided or unclear by Ibn ‘Ābidīn, ‘Uthmānī often resorts to Thānawī for answers.

These two instances underscore how ‘Uthmānī’s legal reasoning is significantly shaped by the intertwined contributions of Ibn ‘Ābidīn and Thānawī. ‘Uthmānī’s jurisprudential approach resides in a dynamic space, bridging the gap between pre-modern doctrine and contemporary interpretation. Rooted in Ibn ‘Ābidīn’s foundational navigation of the Ḥanafī tradition, ‘Uthmānī also finds inspiration and clarification through the modern insights of Thānawī. This dual influence shapes ‘Uthmānī’s scholarship in a nuanced yet discernible way. Most notably, in instances where the classical and pre-modern traditions leave questions unanswered or areas of interpretation grey, ‘Uthmānī leans into Thānawī’s perspectives for further elucidation. In doing so, ‘Uthmānī situates himself at the intersection of this ongoing dialogue, drawing from both classical and contemporary voices to craft a harmonious yet forward-looking interpretation of the *madhhab*, thereby exemplifying its ongoing dialogic nature.

(iii) Friday prayers in Prisons

In these aforementioned examples of *taḥrīr,* the scholarly legacies of Ibn ‘Ābidīn and Thānawī echo the loudest. Nonetheless, these examples examine the *madhhab* to uncover its unspoken peculiarities within well-discussed legal phenomenon. ‘Uthmānī routinely uses *taḥrīr*, as a juristic practice, to further minor *ijtihād* by extending the *madhhab*’s legal norms in matters that the *madhhab* is silent on. This process is most demonstrable in the question of offering Friday prayers (*ṣalāt al-jumu‘a*) in prisons.[450] A certified opinion of the *madhhab* dictates that, for Friday prayers to be valid, general permission (*idhn al-‘ām*) to attend must be granted to the masses. Thus, prisons, airports, and other such places offer a legal conundrum where access to the masses is restricted. ‘Uthmānī’s intimate relationship with the *madhhab*’s sources allows him to examine this position in detail.

Firstly, ‘Uthmānī writes that this position is not found in the *ẓāhir al-riwāya* and thus cannot be attributed dependably to the Ḥanafī masters. Directly quoting al-Kāsānī, ‘Uthmānī establishes that

[450] Ibid., 1: 523-8.

this view is found in the *nawādir* – the second, though less established, source of legal doctrine in the *madhhab*.[451] ʻUthmānī cites this position as: "that the general public are granted general permission, such that no one from whom Friday prayers are valid [e.g., men as opposed to women and children that are not mandated to perform Friday prayers] is prevented from entering the locations wherein it is prayed".[452] However, some later scholars have disagreed on the nature of the general permission; they argue that this does not mean that every adult male must be permitted to enter this prayer space. Instead, by citing examples of military fortresses, these scholars argue that its people must be given access to the prayer space and closing it off to outsiders is valid. Ibn al-Humām upholds this position, as does Ibn ʻĀbidīn, who cites Dāmād Afendī:

> There is nothing wrong with that which occurs in some fortresses, i.e., closing the gates in fear of enemies or due to an old custom upon the entering of the prayer time, as general permission is designated for its local people (*al-idhn al-ʻām muqarrar li-ahlihī*). However, it would be better not to do this [close the gates], as mentioned in *Sharh ʻUyūn al-Madhāhib*.[453] The *Baḥr* and *Minaḥ* [al-Ghaffār by al-Tumurtāshī] oppose this position, though that which we have discussed is preferable.[454]

ʻUthmānī highlights this text to demonstrate that 'general permission' for restricted-access locations, such as fortresses, applies to its people; so long as the insiders are allowed to attend Friday prayers, the condition for 'general permission' is met. ʻUthmānī strengthens his argument by appealing to al-Shurunbulālī's discussion of Friday prayers in fortresses.[455] Responding to the detractors, al-Shurunbulālī posits that Friday prayers in fortresses do not exclude anyone; there are numerous congregations throughout the city, and the people prevented from the fortresses' congregation will not miss out on the prayer. Had this been the only congregation in the entire city, the argument to prevent

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[451] Ibid., 1: 525.
[452] Ibid.
[453] This is a lesser known Ḥanafī law manual written by ʻAbd al-Raʾūf Ibn Mullā ʻArab, otherwise known as Arabzāde (d. 1009/1600), entitled *Fayḍ al-Mawāhib fī Sharḥ ʻUyūn al-Madhāhib*. The author was an Ottoman scholar of moderate institutional success. A brief biography of Arabzāde can be found in: Ḥājī Khalīfa, *Silm al-Wuṣūl*, 2: 276
[454] Ibid., 1: 525-6. For the full quotation and subsequent discussion, see: Shaykhī-zāde ʻAbd Allāh b. Muḥammad Dāmād Afendī, *Majmaʻ al-Anhur fī Sharḥ Multaqā al-Abḥur*, 2 vols. (Beirut: Dār Iḥyāʻ al-Turāth al-ʻArabī, 1910): 1: 166.
[455] Ibid., 1: 526.

others holds water; otherwise, as al-Shurunbulālī posits, "there are easier, less complicated options available than climbing up to the fortress, even if it was open".[456] 'Uthmānī extrapolates a central tenet from al-Shurunbulālī: that the existence of multiple congregations in the locality means that restricting access to a congregation is inconsequential; chiefly, those that are restricted are not prevented from praying. In conjunction with the previous point, prayers in these restricted areas would be valid so long as its inhabitants are granted 'general permission' to attend its Friday prayer. In the example of the fortress, its inhabitants are the army officers and other personnel that live within its compound.

'Uthmānī adds that there must be a reason for restricting access, such as a defensive or organisational objective.[457] Therefore, establishments that do not meet this threshold, such as personal living quarters, will not be valid places for Friday prayers unless free access is given to outsiders. 'Uthmānī uses this interpretation to quell objections that arise from certain texts; this includes:

> Suppose the Sultan prays in the citadel,[458] and the people are with the Sultan's leaders in the congregational mosque. If the Sultan opened his gates and permitted the public to enter the citadel, the [Friday] prayer would have been valid, and the prayer would have been established in two locations. If he does not open the doors and prays with his army, the prayer of the Sultan will be invalid, while the prayer of the masses will be valid.[459]

In conjunction with the discussions from Ibn 'Ābidīn and al-Shurunbulālī, 'Uthmānī attempts to find harmony between the texts. In his decision, there are two congregations taking place: one for the masses, where the public are offering prayers in the major congregational mosque, and another in the Sultan's private quarters. 'Uthmānī writes that this text, specifically the reference to opening and closing the

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[456] Ibid. For the full discussion, see: Ḥasan b. 'Ammār al-Shurunbulālī, *Marāqī al-Falāḥ Sharḥ Nūr al-Īḍāḥ*, ed., Na'īm Zarzūr (Beirut: al-Maktabat al-'Aṣriyyat, 2005): 194.

[457] 'Uthmānī, *Fatāwā,* 1: 525.

[458] 'Uthmānī repeats the word 'Fahandarat' i.e, f-h-n-d-r, which is found in numerous editions of Kāsānī's *al-Badāi'i al-Ṣanāi'i*, namely, the Dār al-Ḥadīth and Bulāq edition. The editor of the Dār al-Ḥadīth edition writes that the manuscripts reads "q-h-n-d-w," though there is no forthright meaning for such a word. See: Abū Bakr b. Mas'ūd al-Kāsānī, *al-Badāi'i al-Ṣanāi'i,* ed. Muḥammad Tāmir, 10 vols. (Cairo: Dār al-Ḥadīth, 2005): 2: 217. The clearest and most appropriate term in this context appears to be q-h-n-d-z, in reference to large fortresses. As Yāqut al-Ḥamawī (d. 626/1229) writes in *Mu'jam al-Buldān*, the influential geographical text documenting the histories of cities and villages across the Muslim empire: "By origin, it refers to a fortress or citadel in the centre of a city. This term is used specifically by the people of Khorasan and Transoxiana. Most refer to it as q-h-n-d-z, which is an Arabic rendering of '*kohandaz*', which means an old fortress". See: Yāqūt b. 'Abd Allāh al-Ḥamawī, *Mu'jam al-Buldān*, 7 vols. (Beirut: Dār al-Ṣādir, 1995): 4: 419.

[459] This is a citation from Kāsānī's, *al-Badāi'i al-Ṣanāi'i,* 2: 217.

gates, implies that the Sultan's prayer is taking place in his private quarters with his entourage while the masses pray elsewhere.[460] Consequently, this text can be interpreted as such: Friday prayers offered in private gatherings require public permission; in this example, public permission was not granted, and an exclusive entourage offered their Friday prayers in one location, isolated from the masses.

By examining and interpreting the disparate texts of the *madhhab*, 'Uthmānī extends *madhhab* doctrine. He concludes that Friday prayers at prisons, airports and any similar facility where access is restricted due to security or another organisational concern are valid, so long as its local people, prisoners, or holidaymakers and staff, are given general permission to enter and pray. By tackling the delicate issue of Friday prayers in spaces of restricted access, 'Uthmānī demonstrates the possibility of minor *ijtihād* within the broader Ḥanafī tradition, even in subject matter typically understood to be rigid and unmoving. Critically, this minor *ijtihād* took place through meticulous *taḥrīr*, reflecting a deep understanding of the sources but also underscoring the dynamic nature of Ḥanafī jurisprudence. Far from being a static tradition, 'Uthmānī demonstrates how to utilise the internal disagreements and nuances of the *madhhab* to commandeer legal change. Through this process, 'Uthmānī both proposes solutions to contemporary legal challenges and enriches discourse within the *madhhab*, extending pre-modern ideas of fortresses and citadels to modern prisons. His methodical rigour demonstrates the adaptability and resilience of the Ḥanafī framework, emphasising that doctrinal rigidity is not an inherent characteristic but rather a limitation imposed by insufficient scholarly engagement.

Conclusion

This chapter provided a detailed examination of Taqī 'Uthmānī's approach to jurisprudence within the Ḥanafī *madhhab*, focusing on the *fatāwā* featured in his seminal work, *Fatāwā 'Uthmānī*. Most notably, this chapter emphasised the multifaceted juristic practices of *naql*, *madhhab* transmission, and *taḥrīr*, *madhhab* examination, and how these practices subtly inform legal transformation in the *madhhab*. These practices demonstrate an intricate relationship between *taqlīd* and *ijtihād*, as they serve as

[460] 'Uthmānī, *Fatāwā,* 1: 526.

instruments to both preserve and revitalise legal doctrine within the *madhhab*. For instance, the application of *naql*, often considered a conservative mechanism and mere norm replication, emerges in ‘Uthmānī's hands as a dynamic and interpretative tool to extend *madhhab* doctrine. Whether that involves extending the classification of traveller status to modern military personnel or the deft and meticulous examination of *madhhab* doctrine to extend the concept of general permission to contemporary prisons, this chapter uncovered that operating within the *madhhab* does not mandate purely preservationist activity. When executed with sufficient scholarly dexterity, both *naql* and *taḥrīr* can prove to be evolutionary mechanisms to drive legal change.

Through our close examination of the first volume of *Fatāwā ‘Uthmānī,* several observations were furthered. One of the key highlights is the central role of the *muftī* in commandeering legal innovation within the *madhhab.* While some might underestimate the impact of *naql* and *taḥrīr* as 'minor' juristic activities, ‘Uthmānī’s work serves as a compelling counterargument. His elucidations are far from mechanical regurgitations of existing law; instead, they are enriched by a delicate equilibrium between reverence for established legal precedents and contemporary exigencies. For instance, the issue of general permission for Friday prayers in restricted locations like prisons underscores how ‘Uthmānī utilises the *madhhab* not as a rigid set of rules but as a dynamic toolkit. The *muftī* transcends the title of a mere transmitter of legal precedent but as an agent of law, meticulously crafting legal solutions that are both rooted in tradition and relevant to modern circumstances.

Critically, the subject matter of this chapter focussed on acts of worship (‘*ibādāt*) and not transactional law (*mu‘āmalāt*). It is commonly assumed that the law governing acts of worship is rigid and unchangeable, while transactional law – whether financial or social – is flexible and can adapt to evolving circumstances. The adaptability displayed by ‘Uthmānī demonstrates the possibilities for juristic creativity within the *madhhab,* even in acts of worship. *Fatāwā ‘Uthmānī* reveals that the inherited tradition of the *madhhab,* which includes centuries of intergenerational discourse and internal disagreement that often extends to the very first Ḥanafī masters, is a dynamic framework capable of evolving and adapting to the needs of the time. The limitations, if any, are not imposed by the *madhhab* itself but arise from the narrowness of a jurist's scholarly engagement. ‘Uthmānī’s consistent tackling

of intricate issues—ranging from ritual purity to funeral rites—shows that the *madhhab* is not a straitjacket but a rich tapestry of interpretative possibilities waiting to be explored by an adept jurist.

Of course, the deftness with which ‘Uthmānī navigates the vast sea of Ḥanafī jurisprudence illustrates how a nuanced understanding of one's legal tradition can serve as a powerful means for innovative reasoning. For example, his methodical differentiation between the more authoritative *ẓāhir al-riwāya* and the less established *nawādir* when assessing precedent concerning general permission for the Friday prayers showcases a grasp of the *madhhab*'s internal complexities and how knowledge of these internal idiosyncrasies can be used to further legal argumentation. This competency enables him to craft well-reasoned legal opinions that uphold the tradition’s integrity and methodological rigour while addressing contemporary challenges. Conversely, when examining ‘Uthmānī's response to Madanī on the issue of congregational night prayers in Ramadan, we find that the absence of methodological rigour results in arguments that lack credibility within the *madhhab*'s established framework. This underscores the critical importance of methodological consistency for formulating sound legal opinions, a criterion met by ‘Uthmānī but noticeably absent in Madanī's reasoning.

Furthermore, our study of *Fatāwā ‘Uthmānī* highlighted the role of the *muftī* in guiding communities. The *muftī* is the vital bridge, linking the intricate depths of the *madhhab*'s vast legal history to contemporary concerns. They emerge as the arbiters of the sacred law, blending *madhhab* text with the lived experiences of the faithful. Such harmonisation is not a mere academic exercise but a living endeavour that demands a deep understanding of legal texts and a keen sensitivity to current contexts. ‘Uthmānī’s nuanced handling of issues, such as the question from Amrot Sharif on Friday prayers, exemplifies this role. His approach illuminates how the *muftī* functions as a conduit between *madhhab* precedent, the established text, and the unfolding context, capturing the lived experiences of the Muslim community. This dual engagement ensures that Islamic law is not just revered in tradition but remains relevant and resonant in action.

Perhaps the most groundbreaking discovery of this chapter is an evident component of ‘Uthmānī's *fiqhī mizāj*: the targeted engagement with key figures like Ibn ‘Ābidīn and Thānawī in

navigating *madhhab* discourse. They serve as the prism through which ‘Uthmānī views the Ḥanafī tradition, inspiring his interpretations and thereby bringing a unique subjectivity to his jurisprudence. The meticulous efforts undertaken to validate Thānawī’s stance on prostrations, in contradiction to the own teacher, Ludhiyānwī, despite the apparent weight of *madhhab* discourse favouring Ludhiyānwī, reveals ‘Uthmānī’s biases. This selectiveness enriches our understanding of ‘Uthmānī’s juristic work by contributing an additional layer of complexity that signifies both deference to the Ḥanafī past through Ibn ‘Ābidīn but also an assertion of individuality. It offers a window into the *muftī*'s personal scholarly trajectory, revealing personal inclinations and shedding light on the nuanced ways scholars within the Deobandī tradition can access, interpret, and engage with their intellectual heritage. While there is a discernible institutional reliance on Ibn ‘Ābidīn within the broader guild of Deobandī legal practitioners, ‘Uthmānī's pronounced emphasis on Thānawī offers a glimpse into the juristic inclinations that inform his approach to the law,

To conclude, this chapter demonstrated that Taqī ‘Uthmānī stands as a testament to the resilience, adaptability, and dynamism of Islamic jurisprudence. His jurisprudential practices not only challenge the notion that Islamic legal traditions are stagnating but also highlight the role of the *muftī* as a linchpin in the ongoing development of Islamic law. Through his selective engagement with seminal figures within the *madhhab*, ‘Uthmānī adds texture and depth to the tradition, ensuring its relevance and vitality.

Chapter 6: *Naql*-based *Ijtihād* Examined: Unlawful Wealth and Contentious Occupations

In our exploration of Taqī ‘Uthmānī’s jurisprudential contributions, we have uncovered various subtle forms of *ijtihād*, such as the thorough examination (*taḥrīr*) of *madhhab* discourse for legal opinion, or the expansion of *madhhab* doctrines to address unprecedented legal scenarios. We contend that these practices are not exclusive to ‘Uthmānī; instead, they reflect an inherent capability within *madhhab* law for subtle legal evolution, with the *muftī* playing a pivotal role in commandeering this progression. This chapter explores this theme by examining a single-issue legal treatise – possibly the lengthiest in ‘Uthmānī’s body of work – to analyse the processes of *ijtihād* within the *madhhab* and elucidate his most distinct and forthright juristic tendencies, revealing the unique *fiqhī mizāj* that his contributions encapsulate.

The treatise under study appears in ‘Uthmānī’s *magnum opus*, *Fiqh al-Buyū‘* (2015), a comprehensive study integrating Islamic law with modern trade and finance, including insights from English and French Common law. This particular treatise concerns the ethical complexities of salaries, income, and wealth exchange in a global economy, primarily driven by interest. This interest-based economy creates a conundrum: it creates an abundance of unlawful wealth in interest payments and counter-values in legally contentious and invalid business transactions. As the non-Islamic financial system dominates globally, Muslims working in various sectors face dilemmas, whether individuals selling alcohol in ordinary supermarkets or analysts at major international banks. ‘Uthmānī’s extensive eighty-page treatise, the longest edict in *Fiqh al-Buyū*‘, investigates these intricate issues, providing a thorough analysis relevant to numerous occupations and professions.

This treatise exemplifies *ijtihād* through *naql*. *Ijtihād* through *naql*, or *naql*-based *ijtihād,* consists of transmitting the *madhhab*’s legal norms, often involving a thorough examination of *madhhab* discourse to establish its most authoritative legal precedent and contextualising the precedent with the questioner’s context. In the hierarchy of *ijtihād*, *naql* occupies the lowest tier, representing the domain of the *muqallid muftī*. Despite this, it plays a crucial role in guiding the adaptive application of

the law. Through *naql*, *muftī*s of the *madhhab* adapt to changing circumstances, balancing tradition with practical needs.

As demonstrated previously, this juristic practice was observed in ʻUthmānī's *taḥrīr* in establishing Friday prayers in prisons. However, this treatise goes further, highlighting the challenges of applying *naql*-based *ijtihād* in modern settings, particularly the extensive knowledge required to understand and interpret the 'on-ground realities' (*al-wāqiʻ*) accurately. It compels us to examine the nuanced roles of individual reasoning and discretion in a *muftī*'s task of transmitting the *madhhab*'s legal norms. In this chapter, I highlight the dual process required to transmit laws effectively, i.e., a profound grasp of the on-ground realities (the context) and an exhaustive exploration of the *madhhab* to determine the authoritative norm for application (the text). This chapter will explore the intricacies of both sides of this text-context process.

Additionally, the treatise offers a glimpse into the ever-evolving landscape of legal discourse within the *madhhab* framework. In September 2023, the subject of this treatise became the focal point of intense debate among over a hundred Deobandī scholars. This vigorous discussion unfolded at the eighteenth *fiqh* conference of Jamiat Ulema-e-Hind, which saw broad representation from all regions across India, from Assam in the east to Tamil Nadu in the south.[461] Notably, while ʻUthmānī himself was absent, his treatise was prominently featured in the debates, eliciting widespread endorsement and critical scrutiny. The reception of ʻUthmānī's work in this forum underscores his significant influence within transnational Deobandī circles. Yet, more importantly, it illustrates that the discourse on such complex issues remains fluid and open-ended, even when addressed by a jurist of ʻUthmānī's recognition. The analysis of the conference reflects the dynamic, participatory nature of Islamic law, where continuous dialogue, driven by a communal interest for deeper understanding and precision, is a hallmark of its adaptable character.

This chapter is categorised into two parts. The first part focuses on ʻUthmānī's treatise on unlawful wealth and contentious occupations. This section is further divided: initially, it examines

[461] Jamiat Ulama-e-Hind, *Talkhīṣ-i Maqālāt: Atārwān Fiqhī Ijtimāʾ, Mōwzūʻ: Māl-i Ḥarām se Mutaʻalliq Chand Gor-i Ṭalab Umūr* (New Delhi: Idārat al-Mabāḥith al-Fiqhiyya, Jamʻiyyat ʻUlamā' Hind, 2022): 2-6.

‘Uthmānī’s intricate jurisprudential framework, meticulously unpacking and harmonising the multilayered intergenerational discourse of the *madhhab* to present a coherent legal schema. This schema is followed by practical applications, where ‘Uthmānī addresses real-world professions and financial scenarios, demonstrating the practical implications of his legal analysis. The second part of the chapter offers a critical analysis of ‘Uthmānī’s findings. It begins by addressing the challenges in understanding the on-ground realities of these issues, then moves to an examination of the discussions and conclusions from the Jamiat Ulema-e-Hind’s *fiqh* conference. This section contrasts ‘Uthmānī’s work with contemporary perspectives, highlighting the difficulties and intricacies of modern application.

By analysing this treatise, its implications on knowing the ‘on-ground reality’ and its reception at the conference, we explore the bi-partite intricacies of *naql*-based *ijtihād*, exploring the importance of legal conceptualisation for effective contemporary Islamic jurisprudence. Our journey through these themes seeks to underscore the vitality of traditional *madhhab* law and the opportunity for individual discretion afforded to the *muftī* operating within a traditional *madhhab*.

Part 1: The treatise on unlawful wealth and contentious occupations

The treatise on unlawful wealth and contentious occupations follows a notable trend observed in many of ‘Uthmānī’s most critical juristic treatises, including “The Laws of Animal Slaughter”[462] and “The Laws of Selling Rights,”[463] to name a few. As seen in these works, a complicated legal schema is developed by thoroughly exploring the internal disagreements within the *madhhab*. By developing the schema, ‘Uthmānī proceeds to verify the compliance of the contemporary legal issue with the law, perhaps offering recommendations and judgements to ensure compliance of the matter.

[462] ‘Uthmānī, “Aḥkām al-Dhabā’iḥ wa l-Luḥūm al-Mustawrada” in: *Buḥūth fī Qaḍāyā*, 1: 369-435. This treatise was initially written for the 1997 annual conference of the International Islamic Fiqh Academy, but has since been published separately and translated into English. For the English translation refer to: ‘Uthmānī, *Legal Rulings on Slaughtered Animals*, trans. Abdullah Nana (Karachi, Maktaba-e-Darul-Uloom, 2005).
[463] ‘Uthmānī, “Bay‘ al-Ḥuqūq al-Mujarrada” in: *Buḥūth fī Qaḍāyā*, 1: 83-119.

‘Uthmānī’s investigation of contentious occupations includes working at alcohol and haram-food serving restaurants, banks, and insurance companies as case studies, accentuating the legal implications of wages from such employers and how other Muslims may transact with such employees. Central to such legal implications is determining the sources of the employer’s income – whether purely lawful, unlawful, or a mixture of both. For example, a restaurant may have income generated from lawful sources, e.g., the sale of Halal food, alongside income generated from the sale of alcohol, which is an unlawful source. In surveying the *madhhab*, ‘Uthmānī develops a schema to uncover four distinct scenarios of unlawful wealth. Given the extensive nature of ‘Uthmānī’s treatise, the following analysis will selectively trim certain aspects for brevity while inquiring into other areas more comprehensively. The resultant schema will be used by ‘Uthmānī for later legal applications.

The schema

1. A complete account of unlawful wealth

The first form, ‘Uthmānī discusses, is a complete account of unlawful wealth, such as stolen money, bribes, interest, or gains from invalid transactions.[464] This wealth cannot be rightfully owned; the holder is obligated to return it to the rightful owner, their heirs, or the poor if the owner cannot be located.[465] Furthermore, the impurity of this wealth transfers from person to person if one receives it, knowing that it is unlawful for its holder. ‘Uthmānī cements this position by referencing Ibn ‘Ābidīn, who writes that if inheritors are aware of the unlawful nature of their inheritance, they are forbidden from using it before it is rightfully compensated or donated.[466] ‘Uthmānī applies this principle universally to all forms of unlawful wealth.

2. Unlawful wealth which has been altered by its holder

[464] ‘Uthmānī uses the term *māl al-maghṣūb*, i.e., stolen wealth, but by this he refers to all forms of unlawful wealth. ‘Uthmānī, *Fiqh al-Buyū‘,* 2: 1007.
[465] Ibid.
[466] Ibid., 2: 1008.

Another form of unlawful wealth is one that has been altered by the holder. For example, suppose that a person steals a sheep, then slaughters and cooks it; the original stolen item has been altered by the thief. 'Uthmānī posits that the Ḥanafī position is that the thief becomes the owner of this new product, though they are not permitted to benefit from it until they compensate the original owner.[467] 'Uthmānī notes an early, but ultimately sidelined, opinion from Ḥasan and Zufar, students of Abū Ḥanīfa, endorsing the use of such products without condition. This view, however, was overruled by subsequent Ḥanafīs, who prioritised juristic preference (*istiḥsān*) over analogical reasoning (*qiyās*),[468] a method previously observed when studying the *rasm al-muftī*.[469]

Additionally, 'Uthmānī untangles the complicated subject of transacting with and gaining profits from unlawful wealth. Al-Karkhī (d. 340/952), an early Ḥanafī authority, took a unique stance, arguing that if the stolen money is indicated in the sale, or one points to the stolen note or hands over the stolen note first and transacts with that note, all profits from this sale are impermissible. Outside these two scenarios, transacting with the stolen note is valid, and its profits are lawful.[470] For al-Karkhī, this is an extension of the established Ḥanafī doctrine that cash-money (*nuqūd*) cannot be designated or specified. It is an interchangeable means of value that becomes indistinguishable from other money once mixed into one's account. Therefore, in the two scenarios where al-Karkhī prohibits the profits, the thief specifies that stolen note for the transaction, either physically through indication or by handing the note to the seller and conceptualising the transaction with that note in mind. This action has designated the stolen note, bringing forth the impurity of the wealth into the transaction and subsequent profits.[471] Al-Karkhī's view found favour among later Ḥanafīs, most notably, al-Ḥaṣkafī, who declared that *fatwā* should be given based on al-Karkhī's view due to need and the widespread existence of unlawful wealth.[472]

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[467] Ibid., 2: 1017.
[468] Ibid., 2: 1018.
[469] See Chapter 3
[470] The legal manuals describe this as five scenarios of transaction; I have summarised this by focusing on the 'unlawful' methods of transaction. See: 'Uthmānī, *Fiqh al-Buyū',* 2: 1010-12.
[471] Ibid., 2: 1015-6.
[472] Ibn 'Ābidīn, *Radd al-Muḥtār*, 5: 235. The statement that that *muftī*'s should author *fatwā*s according to al-Karkhī's view due to the widespread nature of unlawful wealth can be found as early as Ibn Māza (d. 616/1219),

Nevertheless, ‘Uthmānī adds a caveat to al-Karkhī’s stance, suggesting that al-Karkhī permitted such profits, but only after one has compensated the rightful owner.[473] While ‘Uthmānī acknowledges that the law manuals do not stipulate this condition, he argues that this condition is implied for two reasons. Firstly, the Qur’an and the Prophetic tradition prohibit the consumption of usury (*ribā*).[474] ‘Uthmānī argues that this interpretation of al-Karkhī renders the Qur’anic message meaningless as the consumption of usury will not occur unless one transacts peculiarly by declaring notes and coins as accumulations of interest.[475] Secondly, ‘Uthmānī argues that the discussions on al-Karkhī’s view are always preceded by the legal norm that stolen profits become permitted after compensation.[476] Therefore, ‘Uthmānī argues that the format and chapter-context of the legal texts allude to this condition. This is an interesting form of *ijtihād* wherein *madhhab* doctrine is extended to refine the legal norm more distinctly.

Despite these *ijtihādī* endeavours to refine al-Karkhī’s position, ‘Uthmānī does not adopt it. Instead, ‘Uthmānī adopts the position of the *ẓāhir al-riwāyā* that all profits gained from the unlawful money will be unlawful, even if the rightful owners are compensated. ‘Uthmānī writes that this view is the chosen position of Abū Bakr al-Iskāf (d. 333/944), a similarly early reference, as well as al-Marghīnānī and al-Kāsānī.[477] Despite the adages of preponderance (*mukhtār*) and *fatwā* attached to al-Karkhī’s position by later Ḥanafīs, ‘Uthmānī reverts to *ẓāhir al-riwāya,* for his position as it is the more cautious opinion; ‘Uthmānī posits that al-Karkhī’s opinion can be taken in times of extreme difficulty, but not as the doctrine for *fatwā*.[478]

3. Unlawful wealth which has been commingled with lawful wealth

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who reports this view from uncle, al-Ṣadr al-Shahīd (d. 536/1141), a contemporary to al-Kāsānī and an equally seminal Ḥanafī reference from Transoxiana. See: Maḥmūd b. Aḥmad b. ‘Abd al-‘Azīz Ibn Māza, *Dhakhīrat al-Burhāniyya*, ed. Abū Aḥmad al-‘Ādilī, 15 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 2019): 8: 85. For the vitality of the Ḥanafī Transoxianan scholarship and its key role in the development of the Ḥanafī *madhhab*, see: al-Azem, *Rule Formulation and Binding Precedent*, 61-82.

[473] ‘Uthmānī, *Fiqh al-Buyū‘,* 2: 1012.

[474] See “The foundational principle” in Chapter 7, for some of the arguments uses to establish the prohibition of usury/interest.

[475] Ibid., 2: 1013.

[476] Ibid., 2: 1014.

[477] Ibid., 2: 1011. al-Marghīnānī writes: “Our scholars opine that the profits will not be lawful for him in any state: before or after compensating the liability” in: *al-Hidāya*, 2: 98-9.

[478] ‘Uthmānī, *Fiqh al-Buyū‘,* 2: 1016.

The third type of unlawful wealth is central to later discussions on occupations and income. This is unlawful wealth, i.e., cash and monies, commingled with wealth earned lawfully. An employer in the occupations under discussion is most likely to have a commingled account of wealth: some lawful and some unlawful. ‘Uthmānī further subdivides commingled wealth into four types. First, commingled wealth in which the lawful and unlawful have been kept distinct. For example, one pool of money may hold all the lawful wealth, while unlawful wealth is separated into another. In a transaction, if this person states that this is from his lawful sources, one can accept this. If this information is not known, one will consider the majority of his income; if the majority is unlawful, it is impermissible to transact with this person and accept their wealth.[479] ‘Uthmānī evidences this through Ibn Nujaym’s *al-Ashbāh wa l-Naẓā’ir*:

> If most of the wealth of the gifter is lawful, there is no issue in accepting his gift and eating from his wealth unless he clarifies that this is from unlawful sources. If the majority of his wealth is unlawful, one cannot accept or eat from it until he says, “It is lawful, I have inherited it, or I have borrowed it”.[480]

Second, commingled wealth from multiple sources of unlawful wealth. For example, stolen money and interest payments reside in a collective pool of money. According to Abū Ḥanifā, which ‘Uthmānī cites as the *muftā bihī* position, upon the mixing of the unlawful wealth, the holder becomes the owner of the entire amount.[481] They must compensate the rightful owners, and it is not permissible for the holder to benefit from this amount until compensation. Nevertheless, as they own this wealth, subsequent trades using this wealth are valid. This process is often called consumption (*istihlāk*), i.e., that the cash-money is consumed through commingling.[482] On the other hand, Abū Yūsuf and al-Shaybānī have argued that the money remains in the ownership of its rightful owner, and thus, subsequent sales or gains are impermissible.[483]

Third, wealth from lawful and unlawful sources has been commingled indiscriminately, though the amount of each is known. For example, indiscriminately mixed notes reside in a collective pool, but

[479] Ibid., 2: 1021.
[480] Ibid. See also: Ibn Nujaym, *al-Ashbāh wa l-Naẓā’ir*, 96.
[481] ‘Uthmānī, *Fiqh al-Buyū‘,* 2: 1023.
[482] Ibid.
[483] Ibid.

from which one knows that £100 is lawful and £40 is unlawful. Based on Abū Ḥanīfa's principles of consumption (*istihlāk*), upon mixing the wealth, the holder becomes its owner and is obligated to compensate the rightful owner.[484] 'Uthmānī quotes Ibn 'Ābidīn to establish this ruling:

> *al-Durr al-Mukhtār* states: "If stolen wealth is commingled with the thief's wealth, such that distinguishing between them is prevented, he becomes liable for it and owns it; though, utilising it before compensating the liability is not permitted." Regarding his [al-Ḥaṣkafī's] statement "with the thief's wealth," this also applies to wealth stolen from another.[485]

'Uthmānī explains that should a person mix unlawful money with lawful money, they are not permitted to use the unlawful wealth, which must be compensated to the rightful owner. However, as both sources are commingled, one can use this collective pool according to their lawful wealth. For example, if one lawfully owns £100 and commingles this pool with a stolen note of £20, they are permitted to use up to £100. They are not permitted to use the remaining £20, and this must be returned to its rightful owner.

'Uthmānī uses this understanding to springboard one of his most controversial opinions, one that repudiates the views held by many prominent contemporary Deobandī *muftī*s. Their position states that when an employer has commingled wealth, undistinguished from one another, one will look at the dominant source to establish lawfulness, i.e., if unlawful wealth and income are dominant, transacting or working for this employer is impermissible and vice versa.[486] 'Uthmānī repudiates this view, arguing that this only applies to the first form of commingled wealth. In examining the *madhhab*'s discourse on this matter, 'Uthmānī argues that only when the lawful and unlawful are kept distinct will one consider the dominant source to determine lawfulness.[487] When commingled wealth is mixed indiscriminately, one will transact with them based on the amount of lawful wealth they possess. This means that should a company have £10,000 of lawful revenue, transacting with them within this range would be valid, even if the dominant source of the company's revenue is unlawful.

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[484] Ibid., 2: 1031.
[485] Ibid., 2: 1031; For original quote, see: al-Ḥaṣkafī, "al-Durr al-Mukhtār," in: Ibn 'Ābidīn, *Radd al-Muḥtār*, 6: 191.
[486] 'Uthmānī, *Fiqh al-Buyū'*, 2: 1031.
[487] Ibid., 2: 1032.

‘Uthmānī presents six Ḥanafī precedents to cement his position. Firstly, he analyses the aforementioned text from Ibn ‘Ābidīn, specifically the phrase: “he [the thief] becomes liable for it and owns it (*ḍaminahū wa malakahū*); though, utilising it before compensating the liability is not permitted”. Here, the subject is the stolen wealth; therefore, the subsequent legal designation, i.e., impermissibility to use the wealth, only applies to the stolen wealth. Nothing implies that this will also transfer over to lawful wealth. ‘Uthmānī argues further that should the unlawfulness transfer to lawful wealth, then this cannot be harmonised with the legal rationale behind the prohibition.[488] One is not permitted to benefit from unlawful wealth as it has been taken from the original owner without their permission.[489] Unlawful wealth cannot be utilised as the rightful owner has not permitted it. This legal cause does not apply to lawful wealth; thus, the inability to transact cannot extend to it.[490]

‘Uthmānī presents further evidence to fortify his interpretation, such as the reference from the *Tātarkhāniyya*: “one steals a *kurr,*[491] mixes it with his own *kurr*, and then sells half of the common pot, this is permissible”.[492] ‘Uthmānī writes that neither the lawful nor unlawful sources are dominant here, and yet benefiting based on the total lawful quantity is permitted. Another quote from *Tātarkhāniyya* reads: “one steals ten Dīnārs and throws a single Dīnār with it. He then gives a man a Dīnār, this is permitted. Then he gives another, this is not”.[493] This precedent further clarifies the matter, as here, the majority of the total pot is unlawful, yet the transaction based on the lawful quantity was permissible. Therefore, gifting a single Dīnār was permitted, but another was not. In both examples, the law did not scrutinise the lawfulness of the dominant source; instead, it permitted transacting based on lawful amounts. ‘Uthmānī extends this further by examining a legal discussion from al-Ḥaṣkafī:

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[488] Ibid., 2: 1032.
[489] See Ibid., 2: 1024-6 for a thorough discussion of this rationale, specifically in contrast to the invalid sale (*bay‘ fāsid*). Here, while the sold item must be returned to the seller in such an instance, benefitting from it, in the meantime, is permissible due to the permission of its original owner.
[490] Ibid., 2: 1032.
[491] A pre-modern Arabic term for a large capacity-measurement, used when selling grains and loose foodstuffs. For more on the Islamic system of capacity measurements, their relative calculations, and their proliferation through the classic and medieval Islamic world, see: Ulrich Rebstock, “Weights and measures in Islam” in: *Encyclopaedia of the history of science, technology and medicine in non-western cultures*, ed. Helaine Selin (Berlin: Springer, 2008): 2255-67.
[492] ‘Uthmānī, *Fiqh al-Buyū‘,* 2: 1033.
[493] Ibid., 2: 1034.

> If the Sultan commingles usurped wealth with his own, he becomes its owner. Zakat is necessary for it [the lawful wealth], and it will be inherited. This is because commingling is a form of consumption (*istihlāk*) if differentiation is not possible, according to Abū Ḥanīfa. His [Abū Ḥanifā] position is the most appropriate position for *fatwā* (*arfaq*) as wealth is seldom free of usurped wealth. This applies when he has wealth other than that which has been consumed through commingling, kept separate through which he can fulfil his dues. Otherwise, there is no zakat upon him, just as if the whole amount was unlawful.[494]

This discussion positions Abū Ḥanīfa's principles of money and consumption within 'Uthmānī's interpretation; if one mixes unlawful wealth into his own, the entire pot does not become unlawful. Upon mixing, one becomes the owner of the unlawful wealth; however, liabilities towards the original owner are obligated. Nevertheless, the lawful amount remains as it is - this should be calculated, and accordingly, it can be inherited or gifted, and one's obligations of Zakat remain upon that amount. 'Uthmānī spells this out even further with a comparable precedent: should the Sultan, whose wealth is mixed, bequeath an amount to the poor, it will be permitted for him to take his portion, provided that there is enough remaining in the Sultan's estate to fulfil the rights of his debtors.[495] Most notably, Abū al-Layth al-Samarqandī reports this ruling, attributing this view to Abū Ḥanīfa and, thus, presenting this view with higher authority.[496] This clause is established as debts take precedence over bequests in Islamic inheritance law. However, the broader narrative 'Uthmānī is building through this series of interwoven *madhhab* precedents is seminal. As in the other submitted precedents, the law does not scrutinise the dominant source of wealth.

Finally, and in keeping with his usual form in contentious Ḥanafī disagreements, 'Uthmānī appeals to Thānawī to reinforce his position. Concerning a family where household expenses are taken from a collective pool, Thānawī was asked about the ruling for the son who contributes through permitted sources, while his brother and father contribute through money received from bribes: would eating the family meal be permitted? Thānawī responded that it would be permissible, as the mixing of the wealth amounts to consumption of it, through which possession is established.[497] 'Uthmānī argues

[494] Ibid., 2: 1035; Ibn 'Ābidīn, *Radd*, 2: 290-1.
[495] 'Uthmānī partially quotes this in: *Fiqh al-Buyū',* 2: 1036; The broader context is taken from 'Uthmānī's original source, see: Niẓām al-Dīn al-Burhānfūrī, *al-Fatāwā Hindiyya*, 6 vols. (Beirut: Dār al-Nawādir, 2013): 6: 135.
[496] Ibid.
[497] Thānawī, *Imdād al-Fatāwā*, 4: 148.

that this response assumes that the questioner's contributions to the collective pool would have been a minority as both father and brother contribute through unlawful sources. Nonetheless, the questioner was permitted to benefit from this collective pool of resources, according to his contribution to it.[498] In sum, if one interacts with this third form of commingled wealth (mixed indiscriminately but with the amounts of lawful and unlawful known), they will be permitted to take and transact with this wealth according to the lawful amount. 'Uthmānī argues that the dominant source will not be scrutinised despite the widespread opinions on such a verdict. We will revisit this particular discussion when discussing the Jamiat's *fiqh* conference.

The fourth and final form of commingled wealth is when lawful and unlawful wealth is commingled indiscriminately in a collective pool, and the ratio of lawful to unlawful wealth is unknown. Herein, transacting with such a person would be permitted if they do not explicitly state that it is unlawful. 'Uthmānī makes an additional clause that one should use their dominant opinion also. For the holder, this would mean that their dominant opinion deduces that they are using money from the lawful amount; for the recipient of gifts, inheritance, or trade from such a person, they deduce that this counter-value is from the lawful amount. 'Uthmānī supports this position with eight references. One such reference states:

> Abū al-Layth [al-Samarqandī] said: the scholars have differed in taking a stipend from the Sultan. Some have said this is permitted as long as he does not know it was given from unlawful sources. Muḥammad [al-Shaybānī] said: we adopt this position [for *fatwā*] so long as he does not know that anything is unlawful explicitly, and this is the opinion of Abū Ḥanīfa and his companions.[499]

Unless an explicit directive informs one that this wealth is unlawful for certain, accepting it as a transactional counter-value or gift is permissible, though one should also employ their dominant opinion.[500] It is interesting to note that while 'Uthmānī did not submit this as evidence, Thānawī had

[498] 'Uthmānī, *Fiqh al-Buyū'*, 2: 1036.
[499] Ibid., 2: 1040. 'Uthmānī references this quote from *Fatāwā 'Ālamgīrī;* for original quote, see: al-Burhānfūrī, *Fatāwā Hindiyya,* 5: 342.
[500] 'Uthmānī, *Fiqh al-Buyū'*, 2: 1041.

adopted a similar position in advising a teacher whose salary comes from the government (lawful) and Zakat donations which, due to his non-poor status, would be unlawful for him to consume.[501]

4. Profits gained from unlawful wealth

The fourth form of unlawful wealth is the profits gained from unlawful wealth; this may encompass cash received from leasing a stolen good or receiving profits from an investment paid through unlawful wealth. In the Ḥanafī *madhhab*, upon compensating the rightful owner of the wealth, the holder is granted ownership over the unlawful wealth and all things associated with it, such as the profits. However, according to Abū Ḥanīfa and al-Shaybānī, it is impermissible to utilise the profits; it must be given in charity. 'Uthmānī upholds this as the preferred position (*mukhtār*); however, returning it to the original owner is also permitted and should be attempted first.[502]

As referenced from al-Marghīnānī and others, 'Uthmānī argues that one would be able to use this money on themselves if they have no other money but unlawful wealth.[503] Here, they are legally poor, for they have no rightfully owned wealth and are valid recipients of charity until they meet the necessary threshold to transcend 'poor' status.[504] Nonetheless, if they are rich, the authorities may permit them to use this money as a loan, fully accounted for, to be paid back to the poor.[505] Due to the absence of Islamic legal authorities, 'Uthmānī argues that righteous jurists may undertake this task, referencing the Mālikī-Ḥanafī understanding of the Muslim Sharia Council (*jamā'at al-muslimīn*), which was so prominent in Thānawī's *al-Ḥīlat al-Nājiza*.[506]

By carefully articulating *madhhab* precedent and granting preponderance within its legal framework, 'Uthmānī thus develops a complicated legal schema by detailing these forms of unlawful

[501] Thānawī, *Imdād,* 4: 147.
[502] 'Uthmānī, *Fiqh al-Buyū',* 2: 1044.
[503] Ibid.
[504] In Islamic law, the *niṣāb* is the threshold used to quantify one as legally 'rich', thus financial capable in the eyes of the law, necessitating Zakat and forbidding one as a recipient of charity. The threshold differs depending on the type of wealth, for example, twenty *dīnār*s (gold coins) meet the *niṣāb* threshold, while 200 *dirham*s (silver coins) meet the *niṣāb* threshold. For a detailed account of the *niṣāb* thresholds in the four schools of Sunni law, see: al-Zuḥaylī, *al-Fiqh al-Islāmī,* 3: 1799, 1820-22, 1890-93, 1918-29.
[505] 'Uthmānī, *Fiqh al-Buyū',* 2: 1045.
[506] Ibid., 2: 1047-8, esp. 1047. Due to the ubiquity of unlawful wealth, 'Uthmānī theorises this loan-giving capacity within the remit of contemporary Muslim legal councils.

wealth. Fundamentally, there are critical disagreements among the Ḥanafī masters which interact with these broader discussions, most notably in the matter of consumption and the designation of cash-money. Through his engagement with the *madhhab*, ‘Uthmānī demarcates several clear juristic principles.[507] Then, having laid out the framework, ‘Uthmānī turns to applying the law to the on-ground reality. These cases will be analysed in the forthcoming section.

Contentious occupations: employment at alcohol-serving restaurants and banks

In applying this carefully constructed schema, ‘Uthmānī lays out two central questions. The first is the question of the lawfulness of transacting with an establishment that sells alcohol, be that a restaurant, hotel, or airline company, and of working for such establishments. ‘Uthmānī notes that these establishments would either fall under the third or fourth category of commingled wealth: both lawful and unlawful wealth are commingled indiscriminately, but under the third category, the amount of lawful-to-unlawful is known, while under the fourth, it is not.[508] Consider a restaurant that falls under the third category: grocers will transact with it, or employees will consider salaries from it, based on the lawful wealth it possesses.[509] This means that it is permissible so long as their respective counter-values, a counter-value in trade or one’s salary, are within the range of lawful wealth. On the other hand, if the restaurant falls under the fourth category, grocers or employees will use their dominant opinion to ascertain whether their counter-values fall within the restaurant’s lawful range.[510]

Once the question of salaries is resolved, a secondary question is introduced: is the job-activity permitted, and how does this impact wages? For example, cleaning toilets is unproblematic, whereas pouring or selling alcohol is prohibited. ‘Uthmānī writes that income from purely permitted job-activity is permissible, whereas income from purely impermissible activity is not.[511] As for work which involves both the permissible and the impermissible, this falls under the third category of commingled wealth.

[507] ‘Uthmānī concludes his final discussion by summarising these discussions into eight succinct and comprehensive laws, see: Ibid., 2: 1052-5.
[508] Ibid., 2: 1056.
[509] Ibid
[510] Ibid.
[511] Ibid.

While ‘Uthmānī maintains that such work is impermissible and must be abandoned,[512] he deliberates over the purity of the income gained from this work. ‘Uthmānī suggests that a specific precedent on this matter could not be found from the Ḥanafī tradition, instead appealing to Ibn Qudāma (d. 620/1223), the Ḥanbalī luminary.[513] Ibn Qudāma advises that in wage labour, which includes prohibited activity – specifically, one is contracted to carry two baskets, one of which is stolen – the transaction and labour for the stolen basket is voided. The validity of the wage labour for carrying the non-stolen basket will only be valid if the price for carrying each basket is known.[514]

‘Uthmānī opines that a similar procedure should be applied to the income when working for alcohol-serving restaurants, banks, insurance companies, and so forth. If the wage-labour for each activity is known, it falls within the third category of mixed wealth, i.e., one can use, and others can interact with this wealth according to the lawful amount. If the wage-labour is not specified in those terms, ‘Uthmānī offers the same prescription of the third category, though the technicalities differ. Wage-labour, which includes lawful and unlawful activity where the wage for each activity is unknown, is an invalidated employment contract. Nonetheless, the employee is due the market rate (*ajr al-mithl*) for the lawful activity conducted.[515] Therefore, the wage packet becomes the third category, in which benefit from the income is permitted based on the lawful amount. One notes that while ‘Uthmānī is reinforcing a position that aligns with his deft articulation of the Ḥanafī *madhhab,* he is unwilling to profess his position without some support, even if it comes from a Ḥanbalī.

Subsequently, ‘Uthmānī theorises the same injunction for one working in a bank; as banks have both lawful and unlawful sources of income, taking a salary or transacting with the bank based on the lawful amount is permitted. However, for bank employees, the foundational question revolves around the job-activity of their profession. Employment is unlawful if one’s job-activity entails direct engagement with interest or unlawful transactions. Such activities include, according to ‘Uthmānī:

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[512] Ibid.
[513] Ibid. Ibn Qudāma was born in Palestine during the crusades, and died in Damascus where he would spend most of his career as a teacher. He is one of the most forthright authorities in the Ḥanbalī *madhhab*. For biographical details, see: al-Dhahabī, *Siyar A‘lām al-Nubalā’*, 22: 165-73.
[514] ‘Uthmānī, *Fiqh al-Buyū‘*, 2: 1057.
[515] Ibid., 2: 1058.

> Contracting with interest, either as a taker or giver, the deduction of commissions [of interest-based transactions], involvement in the creation or signing of such contracts, and the collection, payment, or recording of interest within accounts for maintenance purposes, or in management of the bank or one of its branches. The management is responsible for all the bank activities, most of which are unlawful.[516]

'Uthmānī upholds a confident position for those whose job-activity only involves direct involvement in the bank's usurious activities; if this is their only form of wealth, their entire income is unlawful. Others cannot take from the wealth of such an individual in gifts, inheritance, or even sell to them, and this individual must repent and give his wealth to charity.[517] Nonetheless, they can use this unlawful wealth for themselves, either as a charity because they are legally 'poor' or as a loan, the amount of which must be fully accounted for and repaid to the poor.[518] However, if their role also involves lawful job-activity, they are owed wages according to the market rate, and as such, their wage packet falls within the third category of commingled wealth. Conversely, banks also employ many who carry out inoffensive and lawful job-activities that have no relationship with usury or other unlawful transactions. For example, this includes security guards, receptionists, building and maintenance personnel, or professionals responsible for the bank's lawful activities, such as handling deposits and official documentation or issuing cheques, money transfers, or currency exchanges.[519]

Lastly, these institutions give rise to another category of job-activity, such as the software engineer or financial analyst, who is not directly involved in the bank's usurious activities but participates in the bank's profitability, performance, or strategy. While financial analysts may not deal directly with interest, their project management, research, and analytics assist the bank in its usurious activities. This creates a set of technical job-activity-related questions: is the software engineer or analyst assisting in sin?[520] Ḥanafī deliberation on assisting in sin (*iʿāna ʿalā l-maʿāṣī*) is rich and diverse, as disagreement from the three Ḥanafī masters can be found in the *ẓāhir al-riwāya* itself. Case

[516] Ibid., 2: 1064.
[517] Ibid., 2: 1065.
[518] Ibid.
[519] Ibid., 2: 1065-6.
[520] Ibid., 2: 1062. 'Uthmānī references an earlier sub-chapter in *Fiqh al-Buyūʿ* where the matter of 'assisting in sin' is described in detail. 'Uthmānī's position on assisting in sin will follow. See: 1: 186-94 for the full discussion.

studies that have persisted throughout the tradition include selling weapons to the enemy or transporting wine to the winemaker. Due to the wide variety of precedents and subsequent discussions on this matter, Muḥammad Shafī‘, ‘Uthmānī's father, offered an equaliser to abridge the dispute. Through his four-page verbatim citation to his father,[521] ‘Uthmānī consigns the Ḥanafī understanding on this matter to his father’s *taḥrīr,* drawing upon its significant findings to establish a legal opinion for software engineers and analysts.[522]

In his examination of *madhhab* precedent, Shafī‘ organised the case studies of assisting in sin into two categories: active assistance (*i‘āna*) and being a cause for sin (*tasabbub*). Shafī‘ established three forms of active assistance in sin, all of which are unlawful. First, one who transacts, intending to assist in sin, such as selling grape juice with the objective that it is made into wine, or leasing a house so that the renter may sell wine from it. Such a person is sinful due to his objectives and intentions, and this stance is justified by Ibn Nujaym’s *al-Ashbāh*:

> Qāḍīkhān mentions in his *Fatāwā* that the selling of grape juice to the winemaker, if business is intended with its sale, it is not unlawful. If the winemaking is intended, it is unlawful.[523]

Second, the sin is mentioned in the subject matter of the contract to trade itself; thus, one says, “Sell me this grape juice so I may turn it into wine.” This transaction is impermissible because the explicit intentions declared in the offer render the transaction a sin, irrespective of what is done with the grape juice after the sale. In justification, Shafī‘ sided with the two masters, quoting al-Sarakhsī:

> If a Muslim leases a house to a *dhimmī* so that he may sell wine in it, it is not permissible, for it is a sin, and a transaction cannot be enacted upon it. There is no wage for him according to the two masters […] their disclosure of the intentions does not allow for the consideration of another meaning in it [the transaction] and that which they declared is a sin.[524]

A third situation of assisting in sin entails selling an item which has no use except for sin. All three of these transactions entail assisting in sin by the very nature of the transaction itself; Shafī‘ positioned

[521] Ibid., 1: 189-193.
[522] Ibid., 1: 194.
[523] Ibid., 1: 190 and Ibn Nujaym, *al-Ashbāh*, 23.
[524] ‘Uthmānī, *Fiqh al-Buyū‘,* 1: 191.

intentionality (*qaṣd*) as the common denominator for each scenario. In the first example, the intention to assist in sin is manifest and apparent; in the final two cases, the intention to assist in sin is known implicitly from the nature of the transaction; the seller has either declared it from the outset, or there is no option but to use the item for sin. Therefore, bringing forth the intention to sin within a transaction – through buyer declaration or seller intentionality to assist in it – renders the entire transaction unlawful. In these three scenarios, the individual is an active assistant in sin. Therefore, Shafī‘ reasoned that under the rich discourse of precedents in the Ḥanafī tradition – selling grape juice, leasing a house to someone who may or may not sell wine from it or use it as a temple, to name a few – the sin will only be established into the contract if one intends the sin and it is declared within the contract-offer.

Furthermore, Shafī‘ introduced causality (*tasabbub*) to his deliberation. If the sale is not an active ‘assistant’ in sin due to the absence of an active intention or a declaration to sin, but one knows the buyer and their trade, and thus, knows what the sold item will be used for, they become an intimate cause (*sabab qarīb*) to the sin. The sale is valid, but it is prohibitively disliked (*makrūh taḥrīmī*). Therefore, selling weapons to dissidents will be impermissible, even if their intentions to hurt civilians are not declared. Similarly, if an item requires additional labour to be enacted for sin, selling it to such known individuals would be slightly disliked (*makrūh tanzīhī*). For example, according to Shafī‘, selling iron or metals to dissidents represents a distant cause (*sabab ba‘īd*) to the sin.[525] It is important to note that, through the intimate and distant causes, Shafī‘ introduced new terminology to this discussion.

Having quoted the above, ‘Uthmānī applies this typology to the job-activities of software engineers and analysts at banks. For software engineers, if they produce a program designed to assist in usury-based or other unlawful activities, or if the program has no use but this, then this job-activity is unlawful since it falls under active assistance. If they do not intend to assist and the program has other utilities beyond the assistance of unlawful financial activity, the job-activity will be permissible, with slight dislike.[526] Similarly, the job-activity of analysts who conduct research to assist in the bank’s unlawful transactions would fall under active assistance and, thus, unlawful. At the same time, general

[525] Ibid., 1: 193-4.
[526] Ibid., 1: 194.

economic analysis and market insights would be permissible.[527] It is noted that unlawful job-activity also means that accepting the job itself would be impermissible. Therefore, it is suitable to extend ‘Uthmānī’s juristic insights into accepting market-rate compensation for permissible activities.

This concludes Part 1, where we have thoroughly examined ‘Uthmānī’s intricate legal treatise on unlawful wealth and contentious occupations. Through a detailed analysis of his jurisprudential schema, we have explored its practical application to various contemporary professions, including restaurant workers, bank employees, software engineers, and financial analysts. ‘Uthmānī's framework carefully considers the complexities of mixed sources of income, distinguishing between permissible and impermissible job activities within these roles. This schema provides clarity for these specific professions and a versatile framework for understanding the legal implications of other occupations in similar contexts.

Part 2: Analysis

The burdens complicating conceptualisation of the on-ground reality (*al-wāqi*‘)

This case study, extracted from ‘Uthmānī’s rich juristic repertoire, exemplifies *naql*-based *ijtihād* in the contemporary context. It examines the multifaceted individual reasoning and discretion in a *muftī*’s task of implementing *madhhab* legal norms. Critically, the process of *naql*, i.e., transmission, is twofold: a comprehensive understanding of the ground reality and a thorough exploration of the *madhhab* to ascertain the authoritative norm to transmit. Our previous chapter studied the process of *naql* and its potential for legal change, even in subject matter perceived as static. Nevertheless, using this case study as our reference, we explore the two components of *naql*-based *ijtihād* in exacting detail. For example, though central to transmitting legal norms, the process of conceptualising the on-ground reality of law is fraught with challenges.

[527] Ibid., 2: 1066.

A seminal legal maxim from Ibn Nujaym's *al-Baḥr* highlights the centrality of conceptualisation to the process of legal opinion-making: "The ruling of a matter is a subsidiary of its conceptualisation" (*ḥukm al-shay' far' 'an taṣawwurihī*).[528] This maxim contends that the conceptualisation and subsequent understanding of legal subject matter are essential, and its ruling emerges as a consequential product of correct conceptualisation. This maxim is foundational to understanding the contemporary dynamics of *fatwā*-giving. Divergent views among contemporary jurists often originate from different conceptualisations of the subject matter. In questions of technical intricacy or nuance, a certain level of education, social class, access to resources, cultural insights, and practical experience is required. Thus, understanding the subject matter of a legal question is not equally accessible.

'Uthmānī's nuance to bank employment, framed historically against 'Uthmānī's career and the juristic voices that emerged in Pakistan in the 1980s and 1990s in the Zia and post-Zia eras, demonstrates the challenges of transmitting legal norms in modern settings. In this period, some of the most influential Deobandī juristic voices, including 'Uthmānī himself, maintained resolute opposition to bank employment, categorically declaring it unlawful and prohibited. Some of the key voices included Rashīd Aḥmad Ludhiyānwī and Yūsuf Ludhiyānwī, one of the most resonant public voices among the Pakistani Deobandī '*ulamā*.[529] Both scholars issued *fatwā*s prohibiting employment at banks. We can observe a tangible representation of this stance in Rashīd Ludhiyānwī's *fatwā*, penned in the early 1980s. Ludhiyānwī opined that even in the territories of war (*dār al-ḥarb*), employment at banks, insurance companies and other usurious establishments is unlawful.[530] He argued, first, that even in the

[528] Ibn Nujaym, *al-Baḥr al-Rā'iq*, 1: 232.

[529] Qasim Zaman referred Yūsuf Ludhiyānwī as a "media muftī" due to his decade-spanning weekly religious question-and-answer column in *Jang*, Pakistan's foremost Urdu newspaper with the broadest readership. See: Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton: Princeton University Press, 2010): 58. The compilation of these weekly columns yielded a voluminous text, entitled "Aap Kā Masā'il Awr Unka Ḥall." Herein, numerous edicts are recorded denouncing all forms of employment at banks. Interestingly, the ripple effects of these edicts persist even as recently as 2022. For instance, the *Dār al-Iftā*' of Binnori Town, one of Karachi's most influential *madrasa*s, continues to uphold this standpoint of prohibition, referencing Ludhiyānwī. See: Dār al-Iftā', Jāmi'a 'Ulūm al-Islāmiyya, "Bank kā mulāzim kā tankhā kā ḥukm" *banuri.edu.pk*, February 2022. From: https://www.banuri.edu.pk/readquestion/bank-k-mulazim-ki-tankhah-ka-hukum-144307100097/06-02-2022 [Accessed 15 July 2024].

[530] Rashīd Aḥmad Ludhiyānwī, *Aḥsan al-Fatāwā*, 8: 100-1. "Even in lands of war" is used as a condition as, traditionally, Abū Ḥanīfa permitted giving and receiving usury in the lands of war. Nevertheless, Ludhiyānwī does not side with Abū Ḥanīfa, instead, arguing for the comprehensive repugnance of usury. See: Ibid., 7: 20-1.

scripture of non-Muslims, presumably the People of the book, usury is unlawful, and second, that working at such establishments entails assisting in sin, which is unlawful.[531] Ludhiyānwī references al-Kāsānī to validate this stance. Al-Kāsānī presents the case of being employed to transport wine, deliberating on the differing views between Abū Ḥanīfa and the two masters, which al-Kāsānī concludes upon firmly stating, "we opine that this constitutes a sin, and as such, consuming earnings from this act would be impermissible".[532]

Ludhiyānwī's conceptualisation of this legal matter was inferred from al-Kāsānī's reference, i.e., that bank employment necessarily entails assisting in sin and, thus, unlawful. Concurrently, 'Uthmānī echoed a similar position throughout this era, reflected in three distinct *fatwā*s. These edicts, issued over a span of years from the late 1960s to the late 1970s, displayed a progressively stricter tone. Initially, 'Uthmānī had contended that since most of the bank's activities are usurious, working there would be inappropriate (*durust nahīn*).[533] Almost ten years later, his *fatwā* maintained the causative structure of his previous ruling but escalated the matter to impermissibility (*jā'iz nahīn*).[534] Ultimately, in his late 70s edict, the pronouncement was more forthright, declaring: "employment at a bank is unlawful and impermissible by religious law" (*shar'an ḥarām o-nā jā'iz hain*).[535] Returning to legal conceptualisation, 'Uthmānī declared that bank activities are mainly usurious, and thus, unlawfulness must be applied to such employment.

Nonetheless, the first signs of a shift in 'Uthmānī's approach begin to emerge in a *fatwā* penned in the early 2000s, where the nuances of job-activity are examined.[536] One might ponder over the causes of this significant shift in opinion. Importantly, 'Uthmānī has not changed his understanding of *madhhab* doctrine or his process of deriving laws; instead, his evolving perception of the on-ground reality rendered changes to his juristic conclusions. In the intervening years between the late 1970s and the early 2000s, 'Uthmānī had begun his most significant international contributions. In the mid-1980s,

[531] Ibid., 8: 100.
[532] Ibid., 8: 101; al-Kāsānī, *al-Badāi'i,* 6: 8-9.
[533] 'Uthmānī, *Fatāwā 'Uthmānī,* 3: 270.
[534] Ibid., 3: 397.
[535] Ibid., 3: 396.
[536] Ibid., 3: 395.

he became Pakistan's official representative to the prestigious International Islamic Fiqh Academy (IIFA),[537] where he found himself in the company of leading jurists such as Bakr Abū Zayd, Wahba al-Zuḥaylī, 'Abd al-Fattāḥ Abū Ghudda, and al-Qaraḍāwī, to name just a few. In these annual forums, the foremost Muslim jurists from around the globe scrutinised the most pressing contemporary issues. Reflecting on these gatherings, 'Uthmānī's memoirs recount how each resolution was the subject of extensive debate.[538] Financial matters dominated the Academy's resolutions throughout the 1980s and 1990s.[539] This environment would have served as the ideal forum for in-depth discussion and debate, enhancing 'Uthmānī's understanding of the global financial system.

During this period, 'Uthmānī also held advisory roles with leading international banks, beginning with Faysal Islamic Bank in the mid-1980s, followed by numerous consulting positions at leading banks, such as HSBC and Citi Bank.[540] The period spanning from the late 1970s to the early 2000s was transformative for 'Uthmānī. In these intervening years, 'Uthmānī examined some of the most intricate financial challenges, engaged in discourse with a diverse group of prominent scholars, and consulted with major banks, developing an intimate knowledge of the subject matter. Consequently, his conceptualisation of the on-ground reality underwent a significant transformation.

In the practice of *naql*-based *ijtihād*, legal conceptualisation is central. 'Uthmānī is not redefining *madhhab* doctrine, nor is he necessarily in disagreement with his teacher, Ludhiyānwī. Notably, 'Uthmānī once echoed this conceptualisation but has since refined his stance. The act of conceptualising the reality in which the law is to be applied serves as a primary avenue for individual discretion, or perhaps more aptly, variation, within a *fatwā*. Aamir Bashir's analysis of *fatwā*s on Islamic

[537] The Organization of Islamic Cooperation (OIC) began as a transnational body of Muslim-majority countries, and its International Islamic Fiqh Academy (IIFA) in Jeddah, serves as its forum for Islamic scholars to deliberate over the major contemporary issues, analysed through the lens of Islamic law. The first IIFA conference took place in 1985, and it has become a source of global Islamic legal guidance. All fifty-seven member-states of the OIC nominated a scholar to represent their country, and 'Uthmānī was nominated by President Zia al-Haqq to represent Pakistan. 'Uthmānī recalls his experiences of the first few annual conferences in his memoirs, alongside the relationships he maintained with leading members of the organisation. See: 'Uthmānī, "Yādein," *Al-Balāgh*, February 2022, 19-21; idem, *Jahān-i Dīdah,* 9-15.
[538] 'Uthmānī, "Yādein," *Al-Balāgh*, February 2022, 19-21.
[539] For the Islamic Fiqh Academy's resolutions, translated into English, see: Organization of Islamic Cooperation, *Resolutions and Recommendations of the International Islamic Fiqh Academy: Sessions 2-24, Resolutions 1-238* (Jedda: International Islamic Fiqh Academy, 2021).
[540] See "International Prominence and Pioneering Islamic Finance" in Chapter 1.

banking among Pakistani Deobandīs illustrates this complex reality. Jurists occasionally misconstrue each other's perspectives when discussing legal matters, as disparities in their understanding and conceptualisation of the given reality – whether due to language barriers, lack of specialised knowledge, or divergence in cultural and educational backgrounds – obstruct cohesive juristic discourse.[541] Therefore, instrumental to *ijtihād* – whether the *naql*-based approaches examined in this chapter or more radical forms of scriptural interpretation – is a thorough exposition of the legal reality in which the law is to be applied. 'Uthmānī's unique educational background, industry experience, and juristic career make this apparent. More broadly, however, the task of conceptualisation, particularly in the complex world of global finance, invariably incites broader discussion on educational reform, socio-economic barriers such as English language acquisition, and the response of the *'ulamā* in the face of modernity.

Surveying the *madhhab* and applying its authoritative doctrine

If conceptualisation comprises the first ground of individual discretion in *naql*-based *ijtihād*, the second ground pertains to the process of *taḥrīr,* the rigorous examination of the *madhhab* to contextualise its discourse and establish its most authoritative legal norms. The *madhhab* is the culmination of intricate intergenerational discourse, and examining it requires the individual discretion of the jurist to navigate and arrange the variety of its opinion. This section will examine this process in more detail. In previous chapters, we observed 'Uthmānī's practice of *taḥrīr* to apply the *madhhab*'s norms, such as his deft navigation of *madhhab* discourse to establish the meaning of public permission (*idhn al-'ām*). However, the single-issue focus of this chapter allows us to understand the obstacles in establishing a unified position when surveying the *madhhab*.

'Uthmānī's treatise on contentious occupations and unlawful wealth engages with two historical debates. First, the fungibility of money in Ḥanafī discourse and its implications on commingled wealth. Abū Ḥanīfa opined that commingling lawful and unlawful sources of money is a

[541] Bashir, "Private *Muftī*s in a Postcolonial State," 12-20.

form of consumption, granting ownership and necessitating a liability towards the poor or the rightful owner. His students, Abū Yūsuf and al-Shaybānī, disagreed that commingling resulted in ownership.[542] This disagreement has ramifications on a broad range of legal questions, including Zakat and deposits,[543] and extends to the endless number of contemporary businesses that have revenue from lawful and unlawful sources. The second debate concerns assisting in sin, which involves a similar disagreement. Abū Ḥanīfa granted legal separation between such acts; for example, in carrying grape juice to the winemaker, the act of carrying is lawful and is, thus, separated from the action of another agent to turn it into wine. For his two students, there is a consequential relationship between these acts, which amounts to assisting in sin.[544]

The Ḥanafī masters have thus debated the two foundational legal questions this treatise relies upon. It is these early disagreements that lend the potential of legal evolution to the Ḥanafī school, as succeeding generations embrace or critique different sides of the debate, creating the rich *madhhab* discourse that allows for new preponderance and insights. Nevertheless, this diversity leads to challenges in achieving consensus. The Jamiat Ulema-e-Hind's eighteenth *fiqh* conference, mentioned at the beginning of this chapter, exemplified this. Despite their joint Deobandī affiliation, these jurists displayed a spectrum of legal opinions and 'Uthmānī, potentially the most celebrated Deobandī legal mind, was scrutinised by some for his research. The conference demonstrates that legal debate within the Ḥanafī tradition, even among members of the same sub-school, remains an ongoing endeavour.

To highlight this dynamic of legal discourse, let us now turn to the Jamiat's conference. Ninety-seven jurists penned research papers in response to the Jamiat's questionnaire on unlawful wealth.[545]

[542] See: 'Uthmānī, *Fiqh al-Buyū',* 2: 1023.
[543] For discussions on how this disagreement affects legal norms on deposits (*wadī'a*/*īdā'*), see: Ibn al-Humām, *Fatḥ al-Qadīr*, 8: 488.
[544] This example can be found in almost every larger Ḥanafī law manual. For an early reference, which singles out the diverging opinions of the three masters, see: al-Sarakhsī, *al-Mabsūṭ*, 24: 26.
[545] In preparation for the conference, the Jamiat post questionnaires concerning several contemporary quandaries to the leading institutions and scholars of India. The scholars that respond with research papers are then called for the conference. For the summary of the discussions on unlawful wealth, see: Jamiat Ulama-e-Hind, *Talkhīṣ-i Maqālāt*.

The most senior respondents include Zayn al-Islām, a senior *muftī* from Dār al-'Ulūm Deoband,[546] Shabbīr Aḥmad Qāsimī,[547] chief *muftī* of Jāmi'a Qasimiyya in Moradabad, and Salmān Manṣūrpūrī,[548] Qāsimī's former deputy, and recent addition to the faculty at Dār al-'Ulūm Deoband. While the questions posed were independent of 'Uthmānī's treatise, his work was a frequent reference point.

The first question that drew extensive engagement with 'Uthmānī's views centred around the real meanings and implications of al-Karkhī's stance. As mentioned previously, al-Karkhī held that one is permitted to transact with unlawful wealth, so long as the note is not pointed at when initiating the sale or one does not hand the stolen note first, transacting with that note in mind. 'Uthmānī interpreted al-Karkhī within a broader context, situating this ruling within Ḥanafī discussions and broader Qur'anic instructions about usury. In doing so, 'Uthmānī added a pre-condition to al-Karkhī's view that the profits from such transactions are only permissible after compensating the rightful owner. According to 'Uthmānī's *ijtihād,* this is al-Karkhī's unstated but intended condition. Over half of the respondents sided with 'Uthmānī's interpretation of al-Karkhī, including Deoband's senior *muftī,* Zayn al-Islām. The conference summary notably featured a three-page quotation from 'Uthmānī's *Fiqh al-Buyū'.*[549] Equally, a large contingent, which included Qāsimī and Manṣūrpūrī, argued that 'Uthmānī's position "requires evidence from the tradition, and there is no such evidence".[550] This contingent claimed that a closer study of passages where al-Karkhī's position is elaborated bears no mention of any such condition; instead, utilising such profits before and after compensating liabilities appears the same in the texts. This engagement demonstrates the prominence of 'Uthmānī among Deobandī circles and reaffirms that pursuing jurisprudential clarity is a relentless and evolving endeavour, even among the most esteemed scholars of the same tradition.

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[546] According to website of Deoband's *Dār al-Iftā'*, Muftī Zayn al-Islām Qāsimī Ilāhabādī is the fourth-ranked *muftī* of the department. See: Darul Ifta, Darul Uloom Deoband, India, "About" *darulifta-deoband.com*, From: https://darulifta-deoband.com/en/about [Accessed 15 July 2024].

[547] Muftī Shabbīr Aḥmad Qāsimī has written *Fatāwā Qāsimiyya*, a twenty-six volume *Fatāwā* collection written as the institutional *Fatāwā* collection for Jāmi'at Qāsimiyya. See: *Fatāwā Qāsimiyya*, 26 vols. (Deoband: Maktaba-i Ashrafiyya, 2015).

[548] Muftī Salmān Manṣūrpūrī has also written a *Fatāwā* collection, printed in seventeen volumes, entitled *Kitāb al-Nawāzil,* ed. Muḥammad Ibrāhīm Ghāzī Ābādī. 17 vols. (Moradabad, al-Markaz al-'Ilmī li l-Nashr wa l-Taḥqīq, 2014).

[549] Jamiat, *Talkhīṣ-i Maqālāt,* 34-6.

[550] Ibid., 37.

The second matter debated fiercely at the conference was the status of the third category of commingled wealth, where lawful and unlawful wealth are mixed indiscriminately, but the amount of each is known. Challenging the popular position that the dominant source dictates the wealth's lawfulness, 'Uthmānī argued for the permissibility of transacting based on the lawful amount, regardless of its proportion. 'Uthmānī recognises that considering the dominant source is a widespread view; in fact, 'Uthmānī once held this position in a *fatwā* issued in 2003.[551] The attendees of the conference took numerous stances on this matter. The conference summary notes that the large majority, fifty-six respondents, sided with 'Uthmānī's position and, interestingly, repeated all of 'Uthmānī's references and discussion points from his pensive interpretation of Ibn 'Ābidīn[552] to the numerous quotes from *Fatāwā Tātarkhāniyya*.[553]

Conversely, a second contingent of scholars, again headed by Qāsimī and Manṣūrpūrī, emphasised the significance of the dominant source in determining the lawfulness of the commingled wealth. This perspective draws support from various texts, including the *Ashbāh* reference already cited in this chapter:

> If the majority of the gifter's wealth is lawful, there is no harm in accepting his wealth and eating from it so long as it is not clarified that it is unlawful.[554]

This view lacks the necessary legal context for 'Uthmānī and the contingent of fifty-six.[555] They differentiate between the two forms of commingled wealth: one where lawful and unlawful have been kept distinct, and the other where they are mixed indiscriminately. In the former, the majority source is the decisive factor, such as the above example of gift acceptance. Herein, the giftee cannot ascertain the specific origin of the gift and, thus, makes a judgement call based on the wealth's dominant source. On the other hand, the contingent of fifty-six argue that, in cases of indiscriminate commingling, Abū

[551] 'Uthmānī, *Fatāwā 'Uthmānī,* 3: 396-8.
[552] Jamiat, *Talkhīṣ-i Maqālāt,* 52.
[553] Ibid., 50-53.
[554] Ibid., 56.
[555] Ibid., 48-50.

Ḥanīfa's doctrine on consumption and clear texts from the likes of the *Tātarkhāniyya* are explicit that utilising such wealth is permissible, based on the lawful portion.[556]

The final element we will explore in this discourse is the conference's discussions on job-activities and assisting in sin. Interestingly, while 'Uthmānī's position on this matter reinforces his father's research, the two 'Uthmānīs are not mentioned in the conference summary. Instead, a range of equally unique and independent interpretations were submitted to the conference. Many scholars offered distinct interpretations of job-activities, reflecting a wide range of perspectives with each jurist applying their understanding to the realities of these occupations.[557] Especially noteworthy were the detailed analyses of Qāsimī and Manṣūrpūrī, reproduced in the conference summary due to their depth and originality. To appreciate their novelty, a concise analysis of Qāsimī and Manṣūrpūrī's perspectives is instructive.

Qāsimī categorises job activities into distinct scenarios. The first involves employment in sinful acts, established by definitive textual evidence (*naṣṣ qaṭ'ī*), like sex work or selling prohibited items such as alcohol, carrion, or pork. In these cases, both the job activity and the income derived from it are unlawful.[558] A second scenario encompasses jobs involving disliked actions, whether prohibitively (*makrūh taḥrīmī*) or mildly (*makrūh tanzīhī*) disliked, or those that assist in sin. Here, while the action itself may be disliked to varying degrees, the income remains permissible.[559] For instance, activities like singing, shaving beards in opposition to Islamic norms, or photography fall into this category. Qāsimī points out that the person commissioning a beard shave commits a sin; therefore, the barber is assisting in sin, which is prohibitively disliked. Nevertheless, the income is lightly disliked, according to the two masters, and entirely lawful, according to Abū Ḥanīfa.[560] Thus, Qāsimī quotes Ibn 'Ābidīn:

> If one is employed (*ājara nafsahū*) to work in a Church and build it, there is no harm, for there is no sin in the act itself.[561]

[556] Ibid., 49, 50-53.
[557] Ibid., 17.
[558] Ibid., 18.
[559] Ibid.
[560] Ibid., 19.
[561] Ibid., 20; Ibn 'Ābidīn, *Radd al-Muḥtār*, 6: 391.

However, Qāsimī aligns with the two masters, suggesting that the income from such work is only lightly disliked. In contrast, Manṣūrpūrī tilts towards Abū Ḥanīfa's broader principle of legal separation between action and sin. With extracts from Ibn 'Ābidīn's *Radd al-Muḥtār*, Manṣūrpūrī argues that transporting wine to a non-Muslim, for example, is permissible, as the act of transporting, in and of itself, is not sinful.[562] Similarly, he views the act of beard trimming as permissible in isolation, noting that the act of cutting hair is permissible. In fact, sometimes beard trimming is allowed for medical reasons. Hence, Manṣūrpūrī concludes that the income from such an act is lawful.[563]

Muḥammad Shafī' developed a detailed rejoinder to this debate, focussing on the role of intentions and proximity of actions in causing sin. Despite 'Uthmānī's notable influence in other parts of the conference, the attendees largely disregarded this particular perspective. Qāsimī and Manṣūrpūrī, both prominent jurists, inquired into the diverse array of opinions within the *madhhab*, navigating the discourse independently, ultimately aligning more closely with Abū Ḥanīfa's approach. These diverging positions reflect the enduring nature of discourse within the *madhhab*; the three masters themselves held differing views, which were continually re-examined by successive generations. Consequently, jurists like 'Uthmānī, Qāsimī, or Manṣūrpūrī are at liberty to interpret and side with these varied perspectives as they see fit.

Revisiting the dual processes of *naql*, particularly in establishing the *madhhab*'s authoritative legal norms, the Jamiat's conference illustrates the vibrant and evolving landscape of legal discourse within the Ḥanafī *madhhab*. It underscores the critical role of individual discretion and jurisprudential agility in navigating the *madhhab*'s discourse as jurists seek and interpret traditional precedents to tackle contemporary issues. The capacity for varied interpretation came to the fore, particularly in these debates over commingled wealth and contentious job-activities. The conference thus highlighted the dynamic and evolving nature of legal change within the Ḥanafī *madhhab*. Nevertheless, the mere act of 'transmitting' (doing *naql*) of the *madhhab*'s norms proves challenging due to the inherent diversity of

[562] Jamiat, *Talkhīṣ-i Maqālāt*, 22.
[563] Ibid., 22-3. Interestingly, a third opinion is recorded in the conference summary from Mumbai jurists, Muftī Muḥammad Thāqib and Muftī Safwān Aḥmad, who highlight the evidentiary limitations of Qāsimī and Manṣūrpūrī's perspectives. A summary of this response is produced in the conference summary, see: Ibid., 23-7.

opinions within the tradition, even among scholars sharing similar institutional affiliations. The active participation of esteemed jurists, most notably Shabbīr Aḥmad Qāsimī and Salmān Manṣūrpūrī, both leaders of influential *Dār al-Iftā*s and authors of voluminous *fatwā* collections, further deepens this discourse. While uniting with ‘Uthmānī on some aspects, the scholars of the conference present unique interpretations of their own, illustrating the dynamic coexistence of agreement and disagreement among scholars of the same tradition.

These discussions reaffirm the *madhhab*’s intellectual heritage and highlight the ongoing endeavour to harmonise classical jurisprudential discourse with the complex realities of the modern world. Ultimately, this conference offers an opportunity to understand *madhhab* discourse and how, when yielded by the jurist to respond to societal and economic conditions, it maintains its relevance and vitality across generations.

Conclusion

This chapter explored one of ‘Uthmānī’s longest treatises of Islamic law, discussing contentious occupations and incomes. By carefully examining *madhhab* precedent and granting preponderance within its legal framework, i.e., *taḥrīr al-madhhab*, ‘Uthmānī develops a complicated legal schema of unlawful wealth and applies this to contemporary occupations and incomes. Critical was the third category of commingled wealth, where the lawful-to-unlawful amount is known, which plays a central role in determining the lawfulness of earnings from various contentious occupations that involve lawful and unlawful job-activities. Crucially, this position seeks to rectify a widespread opinion among Deobandīs that such scenarios depend on the dominant source of wealth. Additionally, ‘Uthmānī expands on the juristic discussion concerning job-activities, applying historical discussions on assisting in sin to software engineers and bank analysts. His conclusions offer a sophisticated approach to applying traditional Islamic jurisprudence to address contemporary quandaries, illustrating the adaptability and flexibility available to a *muftī* working within the *madhhab*.

Furthermore, ‘Uthmānī’s *fiqhī mizāj* becomes apparent through this analysis. ‘Uthmānī demonstrated varying levels of *ijtihād* from within the *madhhab* in this treatise, from his original interpretation of al-Karkhī to his proficient navigation of *madhhab* precedent to confront the prominent and widespread dominant-source position. As seen through the Jamiat’s conference, ‘Uthmānī’s *ijtihād* found favour among a large proportion of Deobandī jurists; equally, there were several voices that were critical and unconvinced. However, while his research is distinct for its sophisticated originality, it is characterised by consistent notes of caution and deferential respect to the legal tradition.

Despite the expert weaving of *madhhab* precedent and conducting original interpretations to detangle the dominant-source position, ‘Uthmānī deferred to Thānawī to fortify his interpretations. Equally, while ‘Uthmānī’s interpretation of the Ḥanafī *madhhab* allowed for market-rate compensation for employees conducting lawful and unlawful job-activities, he enriches his position through the Ḥanbalī jurist, Ibn Qudāma. Just like his father, who despised offering individual opinions,[564] ‘Uthmānī embodies a respect for tradition and a reluctance to go out on one’s limb when granting permissions. Conversely, in the *ijtihādī* positions that lacked explicit support, like his take on al-Karkhī, ‘Uthmānī employed caution, favouring a cautious curtailment rather than al-Karkhī’s general permissions. ‘Uthmānī does not position himself as a liberal arbiter of law but as a conscientious jurist navigating tradition and legal change. Therefore, his *fiqhī mizāj* presents as careful and cautious, lacking in overt scholarly vanity.

Additionally, this chapter provided a deep dive into the dual processes of *naql*, which is marrying the text with context. One assumes that transmitting legal norms is a routine and uniform task. However, complexities and nuances underpin transmitting traditional legal norms to resolve contemporary legal quandaries. Appropriate conceptualisation of the on-ground reality to which the law must be applied is central to transmitting legal norms. ‘Uthmānī’s evolving position on bank employment illustrates the challenges of appropriate conceptualisation. Through his exposure to major financial institutions and Islamic finance scholarship, ‘Uthmānī developed a sophisticated

[564] ‘Uthmānī, “Mere Wālid,” 408-9.

understanding of bank operations, lending sophistry and nuance to his legal response. Framed against the Pakistani juristic response to bank employment in the 1980s, this treatise highlights the barriers jurists face in conceptualising complex systems. Factors such as specialist technical knowledge, proficiency in English, and internet use significantly influence a jurist's ability to conceptualise and appropriately respond to modern phenomena. This sparks conversations about social class and access within a specific subcontinental context.

Lastly, this chapter illustrates the dynamic and continually evolving nature of jurisprudence within the *madhhab*, particularly illuminated by the diverse perspectives at the Jamiat's conference. The diversity of interpretation and preponderance demonstrated by the *muftī*s of the conference is rooted in the early foundational disagreements of the *madhhab*, which produces the potential for legal evolution in the *madhhab*. Nevertheless, the conference demonstrated that while a plethora of opinions offers greater scope for individual discretion and innovation, it poses challenges in achieving consensus. Ultimately, the rich ongoing discourse of the *madhhab* underscores the vitality of legal scholarship, as the jurist's discretion and jurisprudential adaptability are crucial in responding to the demands of contemporary society. As such, the jurist stands as the chief architect and commander of legal evolution, and his personal qualities - his *fiqhī mizāj*, training, and ability to conceptualise contemporary realities – are the defining forces that shape the law.

Chapter 7: Interest-free Mortgages

In exploring ‘Uthmānī’s juristic output, our third and final chapter studies one of his most significant contributions to contemporary Islamic jurisprudence: developing a framework for interest-free financing. Through active participation in both local discussion and jurisprudence in Pakistan, alongside numerous international conferences with the International Islamic Fiqh Academy, ‘Uthmānī became a formidable figure in the growing Islamic finance industry. His work was both academic and practical, as he applied his jurisprudence in leading banks across the World. This chapter will examine ‘Uthmānī’s contributions towards interest-free financing for residential properties, commonly referred to as “Halal mortgages”.

For ‘Uthmānī, the foundation of Islamic economics is to eliminate interest, as it is a form of usury (*ribā*) which has been prohibited explicitly by the Qur’an. ‘Uthmānī argues that the prohibition of interest is “the most distinctive feature of the Islamic economy that draws the line of difference between Islamic and secular economies”.[565] ‘Uthmānī has been committed to the elimination of interest from a young age, getting involved in public discussions in the 1960s, when constitutional changes in 1956 and 1962 renewed a national debate on commercial interest across Pakistan. During this period, he wrote *Tijāratī Sūd* (Commercial Interest) around 1963,[566] during a time when influential modernists penned widely-circulated permissive treatises, such as Phulwārwī’s *Commercial Interest kī Fiqhī Haysīat* (1959, “The Jurisprudential Status of Commercial Interest”) and Fazlur Rahman’s *Taḥqīq-i Ribā* (1963, “Research on Interest”).[567] His commitment to eliminating interest has been a lifelong journey, with his practical efforts yielding notable results, from his role as a Supreme Court judge during the 1999 Supreme Court case to abolish interest in Pakistan to his engagements with leading financial institutions and banks to develop and audit interest-free financing.

[565] ‘Uthmānī, *The Historical Judgement on Interest*, 70.
[566] This was ‘Uthmānī’s second publication, and he would have been approximately twenty at the time. For background to this publication, see: ‘Uthmānī, “Yādein” *Al-Balāgh*, April 2020, 37.
[567] Cf: Phulwārwī, *Commercial Interest kī Fiqhī Haysiat* (Lahore: Idārat-i Thaqāfat-i Islāmiyya, 1959); Rahman, “Taḥqīq-i Ribā” *Fikr-o Naẓar* 1, no. 5 (1963): 52-100.

Focussing on ‘Uthmānī’s contributions to the International Islamic Fiqh Academy’s 1990 conference, this chapter studies the juristic opinions of ‘Uthmānī in providing alternatives to interest-free financing, with specific reference to alternative home-purchasing options.[568] As in previous chapters, I analyse his argumentation and legal reasoning to explore his juristic insights, application of *ijtihād*, and distinctive *fiqhī mizāj*. However, this case study differs significantly from others as it showcases ‘Uthmānī, not conducting intricate examination of the *madhhab*, but innovatively utilising *madhhab* discourse to craft legal solutions from the ground up. Crucially, by 1990, the Islamic finance market had been steadily developing, and ‘Uthmānī was contributing to this discourse with his distinctive Ḥanafī-Deobandī focus.[569] He is harmonising and pioneering new solutions within the *madhhab* that have not previously been developed in *madhhab* scholarship. ‘Uthmānī creatively extends existing precedents into entirely new territories, constructing and meticulously addressing the resulting juristic challenges and contradictions these financing models introduce. This method exemplifies what al-Qaraḍāwī terms *ijtihād inshā’ī*[570]—creative *ijtihād* without precedent. Though, unlike al-Qaraḍāwī, whose creativity draws on a range of sources, ‘Uthmānī’s innovation is firmly rooted within the discourse of a single *madhhab*.

We begin by revisiting ‘Uthmānī’s fundamental stance on *ribā*, grounded in Islamic jurisprudence and his significant role in the landmark 1999 Supreme Court judgment on interest. This section aims to contextualise his long-standing campaign against conventional interest-based financing

[568] ‘Uthmānī, *Buḥūth fī Qaḍāyā Fiqhiyyat Mu‘āṣira*, 1: 11-48; 233-247. ‘Uthmānī’s *Introduction to Islamic Finance*, written as a reference manual for bankers and lawyers and foundational in the field, lays out his opinions on all the major permissible financial products and models within the Islamic system: ‘Uthmānī, *An Introduction to Islamic Finance* (Karachi: Maktaba Ma‘ārif al-Qur’ān, 2005).

[569] Rodney Wilson, a leading authority on Islamic financial markets, conducted a comprehensive survey of the state of Islamic finance across the Muslim world, examining it country by country. First published in 1990, this study offers essential context for understanding the environment in which ‘Uthmānī was writing. Wilson’s work provides a detailed overview of the financial instruments available at the time, along with the historical development and challenges faced by the Islamic finance industry. See: Rodney Wilson, *Islamic Financial Markets* (London: Routledge, 2012). For a succinct history of Islamic finance until the 1990s, see: Roy, "Islamic banking," 427-456. See also Wilson’s edited anthology, which highlights the political dynamics of Islamic finance, arguing that while Islamic finance has advanced, its growth is still hindered by political and economic factors, such as authoritarian regimes, economic vulnerabilities, and dependency on global powers, particularly the United States. Clement Henry and Rodney Wilson, eds. *Politics of Islamic Finance* (Edinburgh: Edinburgh University Press, 2004): 65. See also: Ibrahim Warde, *Islamic finance in the global economy* (Edinburgh: Edinburgh University Press, 2010); Zamir Iqbal and Abbas Mirakhor, *An introduction to Islamic finance: Theory and practice* (Singapore: John Wiley & Sons, 2011).

[570] al-Qaraḍāwī, *Ijtihād fī l-Sharī‘at al-Islāmiyya* (Cairo: Dār al-Qalam, 1996): 128-131.

systems. Next, we explore ‘Uthmānī’s practical contributions to formulating Halal mortgage structures. This includes a detailed analysis of two financial models: the mark-up sale (*bay‘ mu’ajjal*/*murābaḥa*) and the diminishing partnership agreement (*al-sharikat al-mutanāqiṣa*), and an entirely novel solution to late-payment fees, showcasing his innovative approach to integrating *madhhab* discourse with modern financial needs. Like the previous chapters in Part III, the discussions include ‘Uthmānī’s lucid engagement within the *madhhab* to examine and extend its discourse, with notable *madhhab*-based *ijtihād* conducted on questions such as the judicial enforceability of commercial promises within the Ḥanafī *madhhab*.

Nevertheless, the subjects of this chapter are also areas where ‘Uthmānī borrows opinions and precedents from outside of the *madhhab*. ‘Uthmānī’s juristic conclusions are deeply informed by traditional law and the practical realities of contemporary finance. Therefore, in the last section, I highlight ‘Uthmānī’s pragmatic approach to jurisprudence, including his responses to ‘textualist’ critiques by Pakistani Deobandīs and his reliance on Gangohī, Thānawī, and his father for justification in departing from the *madhhab* for single issues. This high-profile disagreement between ‘Uthmānī and the *Dār al-Iftā*’ at one of Pakistan’s leading Deobandī *madrasa*s provides a nuanced insight into ‘Uthmānī’s *fiqhī mizāj,* his juristic expertise, and the specific approach to Deobandī *fiqh* that he practices.

The foundational principle: *Commercial Interest is Ribā*

The starting point of this chapter is to review the foundational principle: that commercial interest is *ribā* (usury). This principle is the foundation as the need for alternative models is built upon the repugnance of the current financial system. ‘Uthmānī has written on this matter several times; the argument presented here relies upon ‘Uthmānī’s contributions as a judge in the 1999 Supreme Court’s *Historical Judgement on Interest*.

For historical context, in 1991, the Federal Shariat Court (FSC) ruled that interest is unlawful according to the Sharia. This judgement from the FSC (which held the constitutional authority to repeal

'un-Islamic' statutory law) laid out a timeline for eliminating all interest in Pakistan, after which interest in Pakistan would be illegal and unconstitutional. In 1993, a confederate of Pakistani banks brought an appeal case to the Shariat Appellate Bench (SAB), an arm of the Supreme Court of Pakistan. The appellants argued that interest and the *ribā* of the Qur'an are not the same and that the FSC's judgement must be reviewed. The 1999 Appellate Court judgement upheld the FSC's decision, and 'Uthmānī was a seminal member of the Appellate Court, contributing to the juristic discourse within the judgement.[571]

'Uthmānī's position was simple: any increase above the principal amount of debt comprises *ribā* as prohibited by the Qur'an. This understanding conforms with the lexical meanings of *ribā,* i.e., increase, and how the *madhhab*s have operationalised the term. As quoted from al-Jaṣṣāṣ:

> The Ribā of Jāhiliyya [the pre-Islamic period] is a loan given for a stipulated period against an increase on the principal payable by the Loanee.[572]

By this reading, interest is repugnant according to Islamic law and must be abolished. The court heard five major appeal claims, which 'Uthmānī responded to. One such argument reflected on the Qur'anic prohibition of *ribā*, wherein God states:

> O you who believe, do not eat up the amounts required through *ribā* (interest), doubled and multiplied. Fear Allah so that you may be successful (Q. 3: 130).

Some appellants claimed God only prohibits exorbitant or excessive interest rates through the use of 'doubling and redoubling' (*aḍ'āfan muḍā'afa*). If the interest rate is not high, it is not *ribā* and falls outside the Qur'anic prohibition. 'Uthmānī posited that this explanation is highly selective and analyses only a single verse. An objective study of all verses on *ribā* juxtaposed against one another will reveal a different reality.[573] 'Uthmānī analysed the four verses of *ribā*. One such verse discusses usury as one of the major transgressions of Jews, stating: "for charging *ribā* (usury or interest) while they were

[571] For a comprehensive study on the 1999 Appellate Judgement, alongside the necessary historical background and context, see: Hamid, "Islamic Law on Interest: The 1999 Pakistan Supreme Court Rulings on Riba." *World Bank Legal Review* 1 (2003): 393-432.
[572] 'Uthmānī, *The Historical Judgement*, 27.
[573] Ibid., 51

forbidden from it" (Q. 4: 161). While not a clear injunction upon the Muslims, this verse does imply that usury is sinful. In Q. 2: 275-81, God's instruction is explicit:

> Those who take *ribā* (usury or interest) will not stand but as stands the one whom the demon has driven crazy by his touch. That is because they have said: "Sale is but like *ribā*.'', while Allah has permitted sale, and prohibited *ribā*. So, whoever receives advice from his Lord and desists (from indulging in *ribā*), then what has passed is allowed for him, and his matter is up to Allah. As for the ones who revert back, those are the people of Fire. There, they will remain forever. Allah destroys *ribā* and nourishes charities, and Allah does not like any sinful disbeliever. […] O you who believe, fear Allah and give up what still remains of *ribā*, if you are believers. But if you do not (give it up), then listen to the declaration of war from Allah and His Messenger. However, If you repent, yours is your principal. Neither wrong, nor be wronged.

Most notably, the prohibition of *ribā* persists in this verse, without qualification, and usurious activity is declared a war with God and his Messenger. 'Uthmānī extended that the appellants misunderstand the nature of the Qur'an. The Qur'an is not a statutory law book wherein technicalities are defined; rather, the Qur'an is a book of guidance and aims to inspire its readers towards goodness, relying upon rhetorical devices and parables to retain a persuasive value.[574] Therefore, when God says, "Do not take a paltry price for my verses", this does not mean that one is permitted to sell God's verses for an exorbitant fee. This verse emphasises the misdeed of selling out on God's message; the nature of the fee is rhetorical.[575] Similarly, "Do not consume usurious interest, doubled and redoubled" is not a legalistic qualification; it intends to stress the prohibition of interest. Furthermore, a combined study of the verses, particularly Q. 2: 275-81, allows no such technical exclusion.[576]

'Uthmānī proceeded with a comprehensive study of the Prophetic tradition and statements from his companions to eliminate such qualifications. For example, in the Farewell Sermon, the Prophet voided all excess payments beyond one's principal amount of debt; he did not differentiate between exorbitant and small increased liabilities beyond the principal.[577] In another report, the Prophet forbade

[574] Ibid., 53. For more on rhetoric devices in the Qur'an, see: Muhammad Abdel Haleem, *Exploring the Qur'an: Context and Impact* (London: I.B. Tauris, 2017); idem, "Rhetorical Devices and Stylistic Shifts in Qur'anic Grammar" in: *The Oxford handbook of Qur'anic studies*, eds. Mustafa Shah and Muhammad Abdel Haleem (Oxford: Oxford University Press, 2020).
[575] 'Uthmānī, *The Historical Judgement*, 53.
[576] Ibid., 53-4.
[577] Ibid., 54.

accepting a ride from one's debtor unless this was the usual practice before advancing the loan to him.[578] Similarly, several companions stated: "Every loan that derives a benefit (to the creditor) is *ribā*".[579] Therefore, 'Uthmānī argues that qualifying *ribā* as exorbitant interest liabilities is untenable, as it opposes a holistic study of the Qur'an and statements from the Prophet and his companions.

Another claim suggested that the Qur'anic instruction on *ribā* was among the last few verses to be revealed to Muhammad. This being the case, its technical definition or explanation was left ambiguous,[580] and its meaning should only apply to the few commodities explicit in the Prophetic tradition, like no excess in exchanging salt for salt or gold for gold.[581] *Ribā,* therefore, should not be extended to the banking system. 'Uthmānī rejected this claim on several grounds. Firstly, he established from historical precedent that the verses of *ribā* were revealed sometime before the battle of Uḥud (625 CE) – eight years before the Prophet's demise. 'Uthmānī presented an authentic tradition wherein a companion delayed entering Islam due to expecting some interest-bearing payments, but as the battle commenced, he embraced Islam, fought and was martyred. While 'Uthmānī does not give a precise time, this documented story implies that the prohibition of *ribā* was revealed, at the very least, before the battle.[582] 'Uthmānī continued that the Qur'an is not a statutory law book wherein technicalities are defined; instead, it rarely defines terms legalistically and relies upon the common language of the Arabs.[583] Consequently, 'Uthmānī argued that it is theologically invalid to claim that a practical law of the Qur'an is unknown or ambiguous; this implies that God commanded humans to do something beyond their capability, which contradicts his express command (Q. 2: 233). If *ribā* has been prohibited

[578] Ibid., 55.
[579] 'Uthmānī, *The Historical Judgement*, 57-8.
[580] The appellants argued that the verses on *ribā were* from the *mutashābihāt,* the ambiguous verses declared in the Qur'an in: Q. 3: 7: "He is the One who has revealed to you the Book (the Qur'an). Out of it there are verses that are *muḥkamāt* (of established meaning), which are the principal verses of the Book, and some others are *mutashābihāt* (whose definite meanings are unknown)." For a premodern understanding of ambiguous verses in the Qur'an, see: Jalāl al-Dīn 'Abd al-Raḥmān b. Abī Bakr al-Suyūṭī, *al-Itqān fī 'Ulūm al-Qur'ān*, ed. Muḥammad Abū l-Faḍl Ibrāhīm, 4 vols. (Cairo: al-Hay'at al-Miṣriyya, 1974): 3: 3-38.
[581] This is often known as *ribā al-faḍl*; where the Prophet forbade the exchange of certain commodities like gold, silver, salt, barley, wheat and dates, except like for like. For 'Uthmānī's explanation of *ribā al-faḍl*, see: 'Uthmānī, *Fiqh al-Buyū*', 2: 661-2.
[582] 'Uthmānī, *The Historical Judgement,* 12-3; 18-9.
[583] Ibid., 69.

in an unparalleled manner as an open declaration of war with God, it is inconceivable that its definition will be ambiguous to humankind.[584]

The appellants made another claim that the Qur'an prohibited charging interest on consumption loans, as these affected the poor. As for productive or enterprise loans, they did not exist at the time of revelation and are thus precluded from the prohibition. This appeal did not stand academic scrutiny, according to 'Uthmānī, as it confuses the nature of Qur'anic prohibitions. When the Qur'an prohibited alcohol, it did not prohibit only the forms that existed then. Prohibition entails a general principle that includes all the things within those forms. Therefore, this appeal ignores the very nature of scriptural injunction.[585]

Additionally, 'Uthmānī presented numerous examples that established productive loans before and during the time of the Prophet. For example, thousands of people often invested in the major trading caravans that travelled to Syria for trade, some of whom had taken loans to invest in the caravan. 'Uthmānī also points to the Code of Justinian, established in Byzantium in the sixth century, which served to control the rate of interest in the markets.[586] Arabian intermingling with Byzantium through trade routes in Syria was so established that the Byzantium Empire coined the main supply of gold and silver coins throughout the Arab peninsula, which were circulated until 'Abd al-Malik b. Marwān (r. 685-705) coined his own supply of dirhams.[587] Therefore, it does not stand to reason that interest for commercial loans was unknown to the Arabs.

The last argument I will examine interacts with a familiar discussion: the doctrine of necessity (*ḍarūra*). Some appellants acquiesced that interest is, in fact, *ribā* and unlawful. Nevertheless, the nature of the world economy meant that abandoning interest would entail destroying the economic stability of Pakistan, as the country cannot advance without foreign investment. Therefore, they argued that interest should be lawful under the laws governing necessity. 'Uthmānī contends that this is valid argumentation but redundant due to the existing forms of sharia-compliant financing. 'Uthmānī pointed to the three

[584] Ibid., 28-9.
[585] Ibid., 33-4, esp. 37.
[586] Sidney Homer and Richard Sylla, *A History of Interest Rates: Fourth Edition* (Hoboken: Wiley, 2005): 55-57.
[587] 'Uthmānī, *The Historical Judgement*, 41.

decades of advancements in Islamic finance, Islamic banks, and research institutes devoted to developing practicable alternatives.[588] 'Uthmānī pointed to the Islamic Development Bank (IDB) in Jeddah and the president of the bank, who served as an expert for the Appellate court, who submitted:

> The experience accumulated by Islamic banks, in general, and the Islamic Development Bank, in particular, as well as attempts made in a number of Muslim countries to apply an Islamic financial system, indicate that the application of such an Islamic system by any Muslim country, at a national level, is feasible.[589]

Due to the availability of alternatives and the feasibility of going interest-free, 'Uthmānī argued that the argument of necessity is diminished, as necessity can only be advanced when no lawful alternative exists.[590] 'Uthmānī points to the development of Islamic Finance since the 1970s, which disqualifies this argument for necessity. The practicality of going 'interest-free' is a reality, and the FSC *ribā* judgement of 2022 affirmed this position: "During this period of last 20 years, Islamic Banking has become a reality in Pakistan".[591]

The synthesis of these ideas is evident. According to 'Uthmānī, God, the Messenger, His Companions, and the *madhhab*s have consistently understood that any payment exceeding the principal of a debt constitutes *ribā* – a forbidden act, equated with declaring war against God. Connecting this analysis with previous discussions on epistemology, the Qur'anic injunctions unequivocally establish the foundation of Islamic financial activity as rooted in the repugnance and prohibition of interest. 'Uthmānī's extensive career in both theoretical research and practical engagement within Islamic banking, particularly with the International Islamic Fiqh Academy and AAOIFI, is driven by this

[588] For a brief introduction to the major movers and shakers in the industry during this period, see: Wilson, *Islamic Financial Markets*; Roy, "Islamic Banking," 427-433.
[589] Ibid., 105-6.
[590] Ibid., 132.
[591] Federal Shariat Court, Pakistan. Judgment on Riba (Shariat Petition No.30-L of 1991 and all other 81 connected matters relating to Riba/Interest). April 28 2022, pp. 57. From: https://www.federalshariatcourt.gov.pk/Judgments/S-P%2030-L1991%20Riba%20Case-28.04.2022.pdf. Amidst the constant political turmoil in Pakistan, a newly formed Shariat Appellate Bench disbanded the 1999 judgment in 2002, referring the matter back to the FSC for a new investigation. The subsequent FSC judgement of 2022 returned the same judgement, declaring all forms of interest across Pakistan as *ribā*, and thus unlawful. The 2002 Supreme Court Review was re-published by the Islamic Studies journal. See: "Review Judgement on Ribā: The Supreme Court of Pakistan (Sharī'at Appellate Bench)." *Islamic Studies* 41, no. 4 (2002): 705-24.

epistemic stance: the Qur'an's directives are unambiguous and non-negotiable. Consequently, alternative interest-free financial models must be researched and made practical for Muslims.

'Uthmānī and interest-free mortgages

The following section studies some of the interest-free solutions produced by 'Uthmānī. I analyse the juristic models 'Uthmānī develops to reverse the need for the most common usurious transaction: a residential mortgage. As demonstrated in the previous section, 'Uthmānī upholds the impermissibility of interest-bearing mortgages for two fundamental reasons. First, its unlawfulness is established by indisputable evidence from the Qu'ran (*naṣṣ qaṭ'ī/qaṭ'iyyāt*); therefore, its permission cannot be justified as the need for an interest-bearing mortgage does not meet the threshold of technical necessity where life and limb are under imminent threat. Second, alternative financing models are available.

In a paper presented at the 1990 conference of the International Islamic Fiqh Academy (IIFA) in Jedda, 'Uthmānī proposed two sharia-compliant methods of financing a house. Herein, 'Uthmānī recognises shelter as an essential necessity (*al-ḥājat al-aṣliyya*) and the most significant financial hurdle in a person's life. In ideal circumstances, 'Uthmānī argues that the Muslim government should provide housing for its people, though it is possible to make financing profitable.[592] The following section will analyse 'Uthmānī's juristic treatment of some of these alternatives.

(i) The 'Mark-up' Sale – *murābaḥa* and *al-bay' al-mu'ajjal*

The first model presented is the sale of a deferred basis (*al-bay' al-mu'ajjal*), often known as the mark-up sale.[593] Herein, the financier will acquire a property; thereafter, they will sell the house to the client on a deferred basis, and the price of the property will be marked up so that the financier can make a profit. This procedure remains the same, though the transaction's contractual form can change

[592] 'Uthmānī, *Buḥūth fī Qaḍāyā*, 1: 234.
[593] In Islamic banking literature, the juristic model described here is often referred to as *murābaḥa,* as 'Uthmānī argues, *murābaḥa* has a subtle variance in meaning. See, 'Uthmānī, *An Introduction to Islamic Finance,* 65-6.

depending on the circumstances.[594] For example, suppose the financier forwards a loan to build a house. In that case, the contract will be structured as such: the financier will be the primary actor who intends to build a house. Thereafter, he will employ the client as his agent, and they will oversee the building of the house or subcontract it out to another. Critically, the financier remains the owner of the house. Upon completion, the financier will sell the house at a marked-up price to the client in instalments.[595] The same contractual form can be extended when the client forwards a deposit towards the home. The financier and the client become partners in the property, owning the share equivalent to their contribution. Thereafter, the financier sells their share of the property, with a marked-up price, upon instalments.[596]

I use the term contractual form to denote the contractual elements which conceptualise the transaction's structure. The financier makes a profit, but these finer contractual elements ensure it is not usurious benefit. These are separate yet purely legitimate transactions taking place within these legal modalities.[597] In all circumstances, the financier first buys or builds the property; thereafter, he sells it to the client. A legal tension exists as these transactions must be decoupled from one another to avoid the Prophetic prohibition of a transaction within a transaction. The details of this prohibition will be discussed in the forthcoming financial model. Nevertheless, as a consequence of this decoupling, the second transaction to sell the property to the client is not enacted immediately; it is a promise to sell rather than a sale. Does this allow the financier to sell the property to another party or increase the agreed-upon price?

To solve this problem, ‘Uthmānī notes the difference of opinion among the schools on the liabilities of a promise. In the Ḥanafī school, early authorities suggest that promises are not legally enforceable, but fulfilment is merely recommended. For example, al-Sarakhsī and al-Kāsānī uphold this view that, in general circumstances, keeping promises is recommended but not binding.[598] ‘Uthmānī

[594] ‘Uthmānī, *Buḥūth*, 1: 235.
[595] Ibid., 1: 236.
[596] Ibid.
[597] Ibid., 1: 236-7.
[598] al-Sarakhsī, *al-Mabsūṭ,* 4: 132; 21: 29; al-Kāsānī, *al-Badāi‘i al-Ṣanāi‘i,* 7: 163.

also suggests that this view is often attributed to Abū Ḥanīfa.[599] In fact, ʻUthmānī submits that the view of the majority of jurists is that a promise is not enforceable in the courts.[600] To counter this, ʻUthmānī presents the authoritative position of the Mālikī school, where promises are binding and judicially enforceable if the promisee undertakes a task because of it.[601] ʻUthmānī quotes several Mālikī authorities to establish this point, namely, al-Qarāfī (d. 684/1285), Ibn al-Shāṭ (d. 723/1323), and Muḥammad ʻAlīsh (d. 1882).[602] For example, al-Qarāfī writes that statements such as "Destroy your house, and I will give you a loan" or "Get married, and I will give you a loan" become binding because the promisee undertook a task relying upon the good faith of that promise.[603] Ibn al-Shāṭ states that this is the most prominent (*mashhūr*) position of their *madhhab*.[604]

ʻUthmānī observes that there is precedent in the Ḥanafī tradition wherein certain promises become binding, such as the ruling of *bayʻ al-wafāʼ*. This is akin to pawning a security. A person sells a product with the condition that they will repurchase it with that amount. The objective of this transaction is to receive a prompt supply of money upon the security of the sold item. This item becomes the buyer's possession; however, they will keep it as a deposit to be returned to the seller when they pay back their dues. The same question arises: as the owner of the item, can they do as they please with *their* item and renege on the promise? Later Ḥanafīs write that this promise becomes binding due to the needs of the people. ʻUthmānī quotes Qāḍīkhān:

> If one mentions a transaction without a condition but forwards a condition as a mutual promise, the transaction is valid and fulfilling the condition becomes binding. This mutual promise becomes binding due to the needs of the people (*lāzimatan li ḥājat al-nās*).[605]

[599] ʻUthmānī writes this in his lengthier essay on commercial promises in: *Fiqh al-Buyūʻ*, 77-8.
[600] Ibid., 1: 78. Enforceability of an item is usually categorised as judicial (*qaḍāʼan*) and religious (*diyānatan*). Religious enforceability is that one must uphold an obligation; however, the matter cannot be forwarded to the courts. Instead, one should uphold this obligation upon themselves, or they will be held accountable for it in the court of God, i.e., in the Hereafter. Judicial enforceability ensures that a matter can be brought forward to the Muslim court and enforced.
[601] ʻUthmānī, *Buḥūth*, 1: 237.
[602] Ibid., 1: 237-8.
[603] Ibid., 1: 238.
[604] Ibid.
[605] Ibid.

Bay‘ al-wafā’ solves a problem that the people need: access to a quick money supply. Therefore, to uphold this transaction, the promise becomes binding. In that same respect, ‘Uthmānī maintains that the financier cannot renege from their promise. Though two separate transactions occur, the financier’s promise to sell to the client is legally binding and can be enforced in the courts. However, the elaboration in his 1990 article is questionable. While the Mālikī school upholds the judicial enforceability of certain types of promises, the binding promise (*lāzim*) of *bay‘ al-wafā‘* does not necessarily entail that it is enforceable in the courts, according to the Ḥanafī school.

‘Uthmānī’s 1990 paper offers a relatively small glimpse into Ḥanafī discussions on this matter, perhaps due to the forum in which the paper was presented: an international cross-*madhhab fiqh* conference. However, his seventeen-page essay on the judicial enforceability of commercial promises in his *Fiqh al-Buyū‘* offers clearer juristic insight.[606] This essay offers a more dominant Ḥanafī position to develop the judicial enforceability of commercial promises. ‘Uthmānī begins by introducing an early Ḥanafī authority in support of his position. In the commentary of Q. 61: 2, “O you who believe, why do you say what you do not do?” Abu Bakr al-Jaṣṣāṣ writes:

> This indicates that anyone who makes an act of worship, good deed, or a transaction binding upon them must fulfil it; otherwise, it would entail that they say but do not follow through, and God has condemned such a person […] Binding upon one is that which they bind upon themselves like acts that grant them closeness to God, such as oaths. As it relates to humans, [they are] contracts that they enter. […] As for a promise of an action in the future, this is permissible. He should fulfil it when possible.[607]

Herein, al-Jaṣṣāṣ indicates that one must fulfil promises to enter transactions. ‘Uthmānī follows this up with numerous quotations on *bay‘ al-wafā’*, from Ibn Nujaym, al-Ḥamawī (d. 1098/1687), al-Ramalī (d. 1082/1671), and Ibn ‘Ābidīn, all of whom repeat that the mutual promises in *bay‘ al-wafā’* are binding.[608] ‘Uthmānī presents numerous Prophetic traditions condemning one who reneges on

[606] ‘Uthmānī, *Fiqh al-Buyū‘,* 1: 77-94.
[607] Ibid., 1: 82-3.
[608] Ibid., 1: 83-4.

promises,[609] as they are the signs of hypocrisy[610] or that one's faith is incomplete.[611] 'Uthmānī offers these juristic precedents and the various scriptural injunctions to demonstrate the importance of maintaining one's promises.

Nevertheless, these promises are upheld as a matter between a person and God (*diyānatan*). This means that reneging is sinful, and they will be made accountable for reneging by God unless there is an acceptable reason. 'Uthmānī posits that it is not the role of the Islamic judiciary to preside over every promise, for this is not the intent of the Sharia or the Muslim judicial system.[612] However, there are certain circumstances wherein reneging on promises causes actual harm and loss to the promisee; judicial enforcement is justified herein. In global commerce, complicated contracts are agreed upon after lengthy negotiations and often rest upon good faith and promises to carry out or procure expensive prerequisites to fulfil certain aspects of the transaction. The individuals who perform such prerequisites before the enactment of a contract take on greater risk and are therefore exposed to significant detriment if the other party reneges on their commitments, particularly when these good faith practices are not judicially enforceable. The harm is particularly noteworthy for the mark-up sale wherein a mutual promise binds together the decoupled transactions. Should the financier use the contractual form to build a house for the client and then the client backs out of the transaction, the financier suffers financial losses and harm.

In juristic terms, deliberating on these matters requires understanding the on-the-ground reality in which the law is to be enacted, i.e., the *wāqi'*. Due to the apparent harm of an unenforceable promise within these commercial contexts, and relying upon the previous evocation of "mutual promises become binding *because of the need of the people* [emphasis added]," 'Uthmānī opines that promises to transact in the future can become judicially enforceable.[613] As a final piece of evidence, 'Uthmānī submits the

[609] For the scriptural prohibition and condemnation for reneging on promises, see: Ibid., 1: 85-89.
[610] *Ṣaḥīḥ al-Bukhārī*, no. 2749. The Prophet said: "The signs of a hypocrite are three: Whenever he speaks, he tells a lie; whenever he is entrusted, he proves dishonest; whenever he promises, he breaks his promise". 'Uthmānī repeats this narration alongside a few others which repeat its meaning, though with different wording. See: 'Uthmānī, *Fiqh al-Buyū',* 1: 85-6.
[611] *Mishkāt al-Maṣābīh*, no. 35. The Prophet said: "He who is not trustworthy has no faith, and he who does not keep his covenant has no religion".
[612] 'Uthmānī, *Fiqh al-Buyū',* 1: 90.
[613] Ibid., 1: 90-1.

ordinances of the Islamic Fiqh Council of the Muslim World League, wherein commercial promises are made judicially enforceable. The council evokes the legal harm doctrine: "there is no harm or retaliation of harm [in the religion] (*lā ḍarar wa lā ḍirār*)".[614]

Negotiating *madhhab* precedent and juristic extension of the *bay' al-wafā'* precedent to render modern commercial promises as judicially enforceable is a visible practising of *ijtihād*. 'Uthmānī reflects upon *bay' al-wafā'* critically, and the jurists uphold an obligation for one party to fulfil their promises due to the needs of the people. However, the question remains: does this 'binding' imply judicial enforceability? The juristic insight in the 1990 essay and the description in *Fiqh al-Buyū'* offer different assessments. The 1990 essay's argument for judicial enforceability relied upon the authoritative opinion of the Mālikī school for judicial enforceability and the Ḥanafī precedent on the 'binding' nature of *bay' al-wafā'.* Nevertheless, the term *lāzim*, i.e., binding, within the transactional chapters of the legal texts appears regularly, meaning that a transaction becomes obligatory or necessary. In the context of *bay' al-wafā',* a binding promise merely indicates that it is necessary for the buyer, i.e., the pawnbroker, to fulfil his commitment and return the item once the agreed amount is returned to him. However, not all forms of 'binding' entail judicial enforceability. 'Uthmānī's 1990 essay takes this for granted.

In the later *Fiqh al-Buyū',* 'Uthmānī is more intentional in his argumentation. He proceeds similarly, referencing the Mālikī school and, thereafter, the Ḥanafī deliberation on *bay' al-wafā'*. Thereafter, 'Uthmānī turns to the Qur'an and the Prophetic tradition to highlight the importance of upholding one's promises. By first building the foundation of his argument, 'Uthmānī tends to the larger question: can these promises be judicially enforced? No: as 'Uthmānī suggests, promises are necessary to fulfil as an act of religious obedience for which one will be accountable to God, not a worldly judiciary. Nevertheless, 'Uthmānī reflects on the nature of business and the exploitation the lack of judicial enforceability will cause to how global commerce operates. Citing the needs of the people, harm, and the on-the-ground reality of global commerce, 'Uthmānī maintains that there is scope in

[614] Ibid., 1: 92.

judicially enforcing certain commercial promises. The 'harm' is validated by the opinions of the Islamic Fiqh Council, i.e., a large body of Islamic scholars and subject-matter experts. The argument in *Fiqh al-Buyū'* is noticeably Ḥanafī: it attempts to build and extend the binding nature of *bay' al-wafā'* to judicial enforceability. This is explicit *ijtihād*, as existing *madhhab* literature does not extend this far, but 'Uthmānī's caution is telling. Citing the Islamic Fiqh Council is almost an affirmation by a group of scholars that he is not alone in perceiving harm and the need for this position. It is *ijtihād*, backed by a consensus, so that 'Uthmānī does not stray alone in his findings.

Comparing the 1990 paper and *Fiqh al-Buyū'* also answers another pertinent question. Does 'Uthmānī's *ijtihād,* i.e., the judicial enforceability question, entail departing from the Ḥanafī *madhhab*, or is he developing doctrine within the Ḥanafī tradition? The answer is unclear from the 1990 essay since the Mālikī position appears dominant; Ḥanafī literature is engaged mostly to provide secondary support, though laced with unclear assumptions. On the other hand, 'Uthmānī's views in *Fiqh al-Buyū'* are deeply grounded in the Ḥanafī sources. Undoubtedly, *Fiqh al-Buyū's* treatment of promises to transact in the future adds to existing *madhhab* doctrine, entering aspects of judicial enforceability into the *madhhab* where the apparent existing literature did not. By highlighting the modern reality of business and commerce, the harm element highlighted by scholars and subject-matter experts, 'Uthmānī extends the *madhhab*'s "binding due to the needs of the people" to allow for judicial enforceability of commercial promises, such as the mutual promises within the decoupled mark-up sale.

(ii) Diminishing Partnership Model (*al-sharikat al-mutanāqiṣa*)

The second financial model advanced in the 1990 paper is the diminishing partnership model (*al-sharikat al-mutanāqiṣa*).[615] For 'Uthmānī, *mushāraka* (joint enterprise) is a 'real and ideal' instrument of Islamic financing.[616] In a *mushāraka* arrangement, different parties enter a joint enterprise as partners, sharing mutual risk in profit and losses, and it is instrumental in creating the asset-backed financing inherent to the Islamic financial system. For 'Uthmānī, the mark-up sale is not originally an Islamic

[615] 'Uthmānī, *Buḥūth*, 1: 239-48.
[616] 'Uthmānī, *An Introduction to Islamic Finance*, 12.

mode of financing but something formulated for the people's needs should the ideal financing models be impractical.[617] In that respect, 'Uthmānī believes that those who criticise mark-up financing as creating the same net result as interest-based financing are somewhat justified in their criticisms.[618] Mark-up financing should only be used in circumstances of need and in full observance of the stipulated conditions within the Sharia.[619] Nevertheless, mark-up financing dominates the Islamic finance market. In 1994-5, eighty-six per cent of the total financing of Islamic Banks in the Middle East was mark-up financing.[620] In 2016, this figure stood at fifty-five per cent of total financing from the eighteen major Islamic banks of countries from the Gulf Cooperation Council.[621]

Under a diminishing partnership model, the property is purchased as a joint venture between the financier and the client, each owning shares of the property equivalent to their contributions to buying the property. Suppose the client forwards a twenty per cent deposit; the house will be jointly owned between them eighty to twenty per cent. Thereafter, the client pays rent to the financier for the share they do not own and buys equity in the house at fixed periods. Over time, as the client acquires more equity in the property, the rental obligations decrease until the property is entirely owned by the client. For this reason, it is known as a diminishing partnership, for as the client acquires equity periodically, the initial shares of the partnership diminish over time. Accordingly, the financier will receive their initial contributions towards the property and earn an addition as rental income.[622]

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[617] Ibid.

[618] Of course, there are some notable differences which 'Uthmānī highlights. Foundationally, mark-up financing is asset-backed; the institution must first buy the asset and then sell the asset with profit, which is a foundational point of difference between the two systems. In conventional banking, money is exchanged for money, and as such, economically detrimental consequences such as fictitious money and bloated markets are possible. In the mark-up model, the financier buys an asset, takes on its risk, and is therefore justified to reap profit for undertaking that risk. See Ibid., 12-14.

[619] Ibid., 14.

[620] Tarik Yousef, "The Murabaha Syndrome in Islamic Finance: Laws, Institutions and Politics" in: *Politics of Islamic Finance,* eds. Clement Henry and Rodney Wilson (Edinburgh: Edinburgh University Press, 2004), 65. This is a fascinating study which posits that as mark-up financing dominates the Islamic finance industry, Islamic finance is very much similar to conventional banking, and can be categorised as a sub-system of conventional finance. Yousef describes the tensions between puritanism and practicality as Islamic governments decide over equity-based Islamic models, and debt-based financing like the mark-up models; and most notably, why debt-based financing prevails.

[621] Mohammad Dulal Miah and Yasushi Suzuki, "Murabaha syndrome of Islamic banks: a paradox or product of the system?" *Journal of Islamic Accounting and Business Research* 11, no. 7 (2020): 1365-7.

[622] 'Uthmānī, *Buḥūth*, 1: 239-40.

‘Uthmānī’s juristic deliberations on this model focus on decoupling the three transactions inherent to this arrangement. First, the initiation of the sale as a jointly owned venture between the financier and client; second, the financier’s share of the property is rented to the client; and third, equity is sold to the client at fixed intervals. These three transactions, done separately, are uncontroversial in all *madhhab*s. All *madhhab*s recognise the first transaction as valid.[623] The second transaction is also legally innocuous. While some scholars, most notably Abū Ḥanīfa, deliberate over leasing a shared item to a third party, ‘Uthmānī posits that the four *madhhab*s allow leasing it to one’s partner.[624] ‘Uthmānī quotes al-Ḥaṣkafī:

> It is vitiated – i.e., a lease agreement – by being jointly owned except if one leases all of their shares or some of it to their partner, for this is valid.[625]

In quoting al-Ḥaṣkafī’s *al-Durr al-Mukhtār*, ‘Uthmānī attempts to comprehensively and succinctly present the Ḥanafī position. Finally, the third transaction is also uncontroversial: a joint-owner can sell their shares to their partner.[626]

However, these transactions must be decoupled and structured as three separate transactions – they cannot be conditional upon each other in a single contract. This is due to the Prophetic prohibition of a transaction within a transaction (*ṣafaqatān fī ṣafaqa*), and this is upheld by all the schools of law.[627] To have all three transactions conditional upon each other in a single contract falls under this prohibition; however, ‘Uthmānī posits that if they are decoupled from each other, held together by mutual promises to transact, this is permissible.[628] To solidify this matter, he presents the juristic texts of *bay‘ al-wafā’*.

‘Uthmānī contends with a closely related objection to this financial model: the consequences of conditions within a sale transaction. For example, notwithstanding *madhhab* nuance, a general principle in the Ḥanafī school is that conditions within a sale can potentially vitiate the contract. As al-

[623] Ibid., 1: 240.
[624] Ibid., 1: 240-1.
[625] Ibid., 1: 241.
[626] Ibid.
[627] Ibid, 1: 242.
[628] Ibid., 1: 242-3.

Sarakhsī writes: "a sale is invalidated by an invalid condition.".[629] Most of 'Uthmānī's elaboration of the diminishing partnership model grapples with this objection to demonstrate that a series of decoupled transactions held together is permitted and will not invalidate the sale. 'Uthmānī presents a reference to Ibn Simāwna (d. 823/1420):

> Similarly, if two agree upon a fulfilment (*wafā'*) before the sale transaction, then they transact without the condition of the fulfilment, the transaction is valid, and there will be no consideration for the previous agreement […] Two individuals make an invalid condition before the transaction, then they transact. The transaction is not invalidated, but it would be invalidated if the conditions were set at the time of the transaction (*law taqārunan*).[630]

This passage indicates that a previously agreed-upon condition not entered into the contract upon sale would not invalidate the sale. Thereafter, 'Uthmānī appeals to an Indian Ḥanafī, Fatḥ Muḥammad Lakhnawī (d. 1909), who posits that a significant number of later Ḥanafīs opined that separate promises to transact, be it before or after the sale, do not corrupt the initial sale transaction, nor do they entail a conditional sale or a transaction within a transaction.[631] Thus, three separate and decoupled contracts would be valid.[632]

One may object that maintaining a condition or promise before and during the transaction is, in effect, the same thing. 'Uthmānī argues that there is a subtle difference. When a condition is mutually agreed upon before transacting, the transaction is executed upon the sale's offer and acceptance. When a sale is made conditional upon something within the contract, the transfer of ownership is not absolute. In the Ḥanafī school, the seller can annul the transaction if the condition is not fulfilled. 'Uthmānī references al-Kāsānī, who discusses conditional sales, such as sales which stipulate the requirement that the seller must deliver the item to their home, commenting:

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[629] al-Sarakhsī, *al-Mabsūṭ*, 4: 13.
[630] Badr al-Dīn Maḥmūd b. Isrā'īl Ibn Simāwna, *Jāmi' al-Fuṣūlayn*, 2 vols. (Bulaq: Maṭba'at al-Azhariyya, n.d.): 1: 236-7. Maḥmūd b. Isrā'īl b. Simāwna was an Ottoman jurist; his father was the *qāḍī* of the Simav Citadel in Kutahya, Turkey. His *Jāmi' al-Fuṣūlayn* is frequently cited by later Ottomans, most notably, Ibn Nujaym and Ibn 'Ābidīn. For biographical details, see: al-Zirkilī, *al-A'lām*, 7: 166-7.
[631] 'Uthmānī, *Buḥūth*, 1: 244-5
[632] Ibid.

> If the seller does not fulfil this from his side, the buyer can annul the sale for the dissolution of the condition or intention behind the sale.[633]

A similar quote is presented from *Fatāwā Hindiyya* and the Ḥanbalī Ibn Qudāma's *al-Mughnī* to demonstrate that this is also a position within other schools.[634] Therefore, such conditional sales are not executed entirely; they remain suspended upon fulfilling the condition. On the other hand, a mutual promise before enacting a transaction results in the execution of the contract in absolute terms. If any party reneges on those promises, as argued previously, they should have judicial recourse available to enforce those arrangements. Nonetheless, the transfer of ownership and the execution of that contract is absolute. ʻUthmānī concludes:

> The sharia-compliant method of the diminishing partnership wherein there is no doubt [in its permissibility] is that three transactions take place on separate occasions, whereby every contract is separate from the other, and one transaction is not made dependent on another transaction.[635]

An important matter to note here is that when ʻUthmānī presented this essay in 1990, these ideas were quite abstract, with only two decades of development within the broader Islamic finance sector. This is important to note due to the heightened capabilities of custom within this particular discussion. In the Ḥanafī school, if a conditional transaction is established in custom, it is permissible. The reasoning behind this can be found within the previously mentioned rules of custom wherein the Ḥanafīs maintain scriptural injunctions but may not analogically extend the entailments of that injunction if there is custom in a comparable activity. Consider the early Ḥanafī precedent of buying copper on the condition that the seller will make a vessel from it.[636] This was a customary type of sale. The scriptural prohibition of a transaction within a transaction is maintained; however, the jurists did not analogically extend that scriptural injunction to encompass this transaction due to the existing custom. In legal terminology, this

[633] Ibid., 1: 246.
[634] Ibid., 1: 245-6.
[635] Ibid., 1: 246.
[636] For a synthesis of the early doctrine on *al-Istiṣnā*ʻ and the example of the copper tableware, see: Ibn Māza, *al-Muḥīṭ al-Burhānī*, ed. ʻAbd al-Karīm Sāmī al-Jundī, 9 vols. (Beirut: Dār al-Kutub al-ʻIlmiyya, 2004): 7: 134-8.

is often known as rejecting the analogical alignment (*qiyās*) for juristic preference (*istiḥsān*).[637] ‘Uthmānī reflects upon this detail when discussing conditions within a sale in *Fiqh al-Buyū‘*.[638]

The juristic theorising here is significant. ‘Uthmānī did not reference these arguments in 1990 as the diminishing partnership was not custom; since it was a product recently theorised, this line of argumentation is unsuitable. Should these principles become customary, a Ḥanafī could reference this to solidify the validity of decoupled transactions. This was not possible in 1990, however. The linchpin in ‘Uthmānī’s argument is the reference to Fatḥ Muḥammad Lakhnawī, who writes that separate transactions, held together by mutual promises before or after the sale, are valid and unproblematic. The juristic activity here is not overtly *ijtihādī* since ‘Uthmānī is not furthering *madhhab* doctrine as was the case in the first financial model. Nonetheless, it contains a vital aspect of *ijtihād*: contextualisation and application of the law to the legal reality. The juristic activity presented navigates and contextualises *madhhab* scholarship to grapple with this proposed financial model. Of course, the contractual form of the diminishing partnership, structured as three separate contracts, is a new formulation within the *madhhab* law and requires harmonisation within its discourse. Fitting this idea within the *madhhab* entails dealing with the juristic consequences of a transaction which contains conditions or pre-arranged mutual promises. Here, where there is no custom for such an arrangement, ‘Uthmānī proposes that decoupling the entire transaction into three separate contracts will be valid and within *madhhab* regulations.

(iii) An alternative to late payment penalties

At the same 1990 conference, ‘Uthmānī presented another paper which included a crucial discussion on a secondary source of usurious gain in the banking sector: penalty fees for late payments. Imposing a financial penalty if one defaults on their payments aligns with the definition of usury, for one would have benefited from an increase upon the agreed amount of debt owed to them. Conversely, without consequences for defaulting on one’s payments, the banking industry will collapse, as it will

[637] ‘Uthmānī, *Fiqh al-Buyū‘,* 1: 511.
[638] Ibid., 1: 505-512.

be in the client's best interest to default if nothing can be imposed upon them. 'Uthmānī criticised some contemporary Islamic banks that enforce penalties on their customers as compensation, whereby defaulters are made to pay compensation for damages incurred by their missed payments. While these banks take steps to ensure this compensation is not overtly usurious, such as only imposing this compensation when actual profit has been missed due to a late payment, 'Uthmānī argued that theorising such late payment fines as not usurious is historically unprecedented and practically untenable.[639] In his memoirs, 'Uthmānī recalls that these procedures were implemented by Faysal Islamic Bank, where he was a member of the Sharia board. He ultimately failed to persuade the Sharia board of their parent company, the Dār al-Māl al-Islāmī (DMI), that such payments were usurious.[640] Notably, the 1990 IIFA resolutions declared such late payment fees as usurious and, therefore, prohibited.[641]

To resolve this quandary, 'Uthmānī presents a novel solution: the contract must demand charity payment upon defaulting. The bank will partner up with goodwill works; the bank cannot own or be a part of the goodwill project or charity. Subsequently, the bank will act as the charities' agent, receiving the money from the defaulter and forwarding it to them.[642] This is not usurious, as the financier does not own, benefit, or have any attachment to the charity. In signing the contract, the client agrees to a self-imposed charity if they default.[643] To solidify this stance on self-imposed charity, 'Uthmānī appeals to the Mālikī school, as 'Uthmānī presents Mālikī texts to attest that these self-imposed oaths are judicially enforceable.[644] In his Ḥanafī justification, 'Uthmānī repeats his arguments on the judicial enforceability of promises due to the needs of the people.[645]

This proposal exemplifies 'Uthmānī's innovative approach to law within the *madhhab* as he modifies existing practices to create compliant solutions that are simultaneously harmonious with scripture, *madhhab* law, and the practical demands of the banking industry. This specific solution to

[639] 'Uthmānī, *Buḥūth*, 1: 39-44.
[640] 'Uthmānī, "Yādein" *al-Balāgh*, June 2022, 29-32.
[641] Organization of Islamic Cooperation, *Resolutions and Recommendations of the International Islamic Fiqh Academy*, 90.
[642] Ibid., 1: 44.
[643] Ibid.
[644] Ibid., 1: 45.
[645] Ibid., 1: 46.

late payment penalties in Islamic banking represents one of his most radical innovations. Unlike diminishing partnership and mark-up sales, which had already been topics of extensive discussion within the industry,[646] this proposal introduces an entirely novel element to Islamic finance. It shows ‘Uthmānī's ability to forge new paths in Islamic jurisprudence by transforming conventional banking practices into models that align with Islamic principles.

Nonetheless, it is essential to recognise the origins of this novel legal solution. ‘Uthmānī’s memoirs reveal that the conception of these ideas was a collaborative effort, taking place within the Majlis-i Taḥqīq-i Masā’il-i Ḥāḍira—a forum of Karachi-based *muftī*s, established by his father and Yūsuf Binnorī, to deliberate over contemporary legal issues and particularly economic challenges.[647] The subsequent report from the Majlis-i Taḥqīq spells out the possibility of utilising Mālikī precedents to establish a self-imposed charity to both avoid usurious late penalties and fulfil a need within the banking industry.[648] This setting underscores the importance of collective *ijtihād* in Islamic jurisprudence, where solutions are not crafted in isolation but through the shared wisdom of seasoned *muftī*s. This approach reflects a deep-rooted educational value imparted to ‘Uthmānī by his father: that robust and credible legal opinions are those backed by collective scholarly input, not those arising from solitary deliberation.

Nevertheless, the concept of Islamic banking is controversial in Pakistan as historically, Deobandī scholars in Pakistan have had an ambivalent relationship with Islamic banking, culminating in a significant dispute in 2008. At this point, the *Dār al-Iftā*’ of Jāmi‘at ‘Ulūm al-Islāmiyya Binnorī Town, one of the leading Deobandī institutes in the country, issued a stern critique of Taqī ‘Uthmānī and his endorsement of Islamic banking practices in Pakistan, challenging both the industry standards and ‘Uthmānī’s juristic conclusions.[649] This public critique ignited a series of technical back-and-forths

[646] For a study, conducted in the 1990s, producing a country-by-country survey of the progress of Islamic Finance in the Middle East, see: Wilson, *Islamic Financial Markets*.
[647] ‘Uthmānī, “Yādein” *al-Balāgh*, June 2022,
[648] Majlis-i Taḥqīq-i Masā’il-i Ḥāḍira, “Bilā Sūd Bankārī” in: Ludhiyānwī, *Aḥsan al-Fatāwā*, 7: 120-1.
[649] This debate among Pakistani Deobandī jurists on Islamic banking is the subject matter of Bashir’s PhD thesis, see: Bashir, “Private Muftīs in a Postcolonial State”. It is noteworthy that Meezan Bank, which positions itself as “The Premier Islamic Bank,” has been a primary target of critique by the ‘*ulamā* of Binnorī Town. The Sharia supervisory board of Meezan Bank is headed by Imrān Ashraf ‘Uthmānī, the son of Taqī ‘Uthmānī, and the bank’s

between ‘Uthmānī and scholars of Binnorī Town; their critique dissected ‘Uthmānī’s juristic details and also raised broader questions about authority and the authenticity of legal stratagems (*ḥiyal*) used in Islamic finance.[650] Some perceived these as mere replications of capitalist structures under an Islamic guise. ‘Uthmānī's memoirs, especially when interpreted as endorsements of Islamic banking by high-ranking Pakistani jurists such as Yūsuf Binnorī, have been contested by Binnorī Town through articles clarifying that these jurists did not approve of the industry practices.[651]

While others have analysed this debate among Pakistani Deobandīs on the legitimacy of Islamic finance,[652] let us briefly review the criticisms of the overt *ijtihād* of this chapter: forced charity and the judicial enforceability of promises. On forced charity, the *muftī*s of Binnorī Town argued that Qur’anic values promote giving the one in hardship time in their debts; the imposition of a payment, even in the form of a forced charity, reinforces the structure of the interest-based economy. On the judicial enforceability of promises, they argued that while some ‘elders’ have argued it is valid, the view of the ‘majority’ is the preponderate position, i.e., that promises cannot be judicially enforced.[653] ‘Uthmānī responded in kind, firstly highlighting the collective support of this position from the Majlis-i Taḥqīq, before deep engagement with the legal justification of his position, much of which is an elaboration of the judicial enforceability of promises which we have seen in his *Fiqh al-Buyū‘* article.[654]

operational model is largely based on his father’s Islamic finance theories. For instance, Meezan Bank adheres to ‘Uthmānī’s principles on self-imposed charities and has established a network of charities aligned for its distribution. See: Muḥammad Imrān Ashraf ‘Uthmānī, *Islamic Finance: Revised and Updated Edition of Meezan Bank’s Guide to Islamic Banking* (Karachi: Qu’ranic Studies Publishers, 2015); Mohammad Ayaz, Khurram Faisal Jamal, and Sadaf Shaheen, “Analyses of Sources and Uses of Charity Fund Account: A Case Study of Meezan Bank” in: *Contemporary Issues in Islamic Social Finance*, eds. Mohi-ud-Din Qadri and Ishaq Bhatti (London: Routledge, 2021): 193-206. See also: Muhammad Hanif, Mahvish Tariq, and Arshiya Tahir, "Comparative performance study of conventional and Islamic banking in Pakistan." *International Research Journal of Finance & Economics* 83 (2012): 1-17.

[650] Cf: ‘Uthmānī, *Ghayr Sūdī Bankārī* (Karachi: Maktaba Ma‘ārif al-Qur’ān, 2009); Rufuqā-i Dār al-Iftā’, Jāmi‘at al-‘Ulūm al-Islāmiyya, *Murawwaja Islāmī Bankārī* (Karachi: Maktaba-i Bayyināt, 2008).

[651] In 2023, a scholar from Binnorī Town wrote an article in *al-Bayyināt* to correct some of the assumptions in ‘Uthmānī’s memoirs, specifically clarifying that certain scholars of the Majlis-i Taḥqīq did not support Islamic finance as ‘Uthmānī’s memoirs imply. Rafīq Aḥmad Bālākotī, “Kuch Hamārī Yādein” *al-Bayyināt,* January 2023, 19-21.

[652] Bashir, “Private *Muftī*s in a Postcolonial State.”

[653] Rufuqā-i Dār al-Iftā’, *Murawwaja Islāmī Bankārī,* 264-285. The authors intricately link both critiques, forced charity and the judicial enforceability of promises, in a cohesive and technical analysis.

[654] ‘Uthmānī, *Ghayr Sūdī Bankārī,* 277-96.

The unfolding disagreement within Deobandī circles underscores 'Uthmānī's pragmatic approach to Islamic finance and *madhhab*-based jurisprudence. By 'pragmatism,' I refer to his ability to engage with the *madhhab*'s discourse, critically examining its positions to identify and advocate for the most suitable application in contemporary contexts. This approach often involves articulating positions that, while firmly rooted in *madhhab* precedent, may not be the most forthright interpretations. This contrasts sharply with the textualism of Binnorī Town scholars; with specific reference to judicial enforceability, the *muftī*s of Binnorī Town adhered more rigidly to *madhhab* interpretations and critiqued 'Uthmānī's broader jurisprudential explorations.[655] Nevertheless, the unfolding disagreement highlights 'Uthmānī's commitment to providing practical and actionable solutions to address pressing financial issues within the Islamic framework. Notably, as early as 1979, 'Uthmānī, then only a local Pakistani jurist, repeated advice from Gangohī to Thānawī, and to Muḥammad Shafī', suggesting that even departing from the *madhhab* on single issues was permissible where there is strong collective need, especially in contemporary transactions, which were areas of particular concern.[656] That same year, 'Uthmānī maintained that working for banks was impermissible.[657] This historical context is crucial as it demonstrates that 'Uthmānī was not having a 'liberal' turn when repeating this advice and that it is not a retrospective interpolation.

Moreover, as 'Uthmānī notes in his response to the 2008 critique, the prevailing sentiment he encountered among leading Pakistani jurists of that time—Muḥammad Shafī', Binnorī, and Rashīd Aḥmad Ludhiyānwī, among others—was a compelling desire to eradicate interest from Pakistan, and to establish an alternative system.[658] As a young student of *Iftā*', 'Uthmānī attended circles at the Majlis-i Taḥqīq with his father. It appears that 'Uthmānī's focus on establishing an interest-free financial system is profoundly influenced by his immersion in a scholarly community that prioritised this goal. As illustrated in our methodology chapters, a recurrent theme throughout 'Uthmānī's writings is the necessity of companionship with expert jurists to attain deep juristic understanding (*malaka fiqhiyya*).

[655] Herein, the '*ulamā* of Binnorī Town prioritised the preponderances of the *madhhab,* adhering strictly to its express statements rather than manoeuvring within its framework as 'Uthmānī does through his extrapolations. See: Rufuqā-i Dār al-Iftā', *Murawwaja Islāmī Bankārī,* 264-285.
[656] 'Uthmānī, "Mere Wālid Mere Shaykh," 419.
[657] 'Uthmānī, *Fatāwā 'Uthmānī*, 3: 396.
[658] 'Uthmānī, *Ghayr Sūdī Bankārī*, 7-8.

This practice of companionship with knowledgeable scholars is not merely academic but a practical strategy to understand how laws are applied and contextualised. Therefore, internalising this broader drive, the elimination of interest becomes the foundational principle of 'Uthmānī's view of Islamic finance. Consequently, due to the advice of his father and this learned impetus to eradicate interest (which can be theorised as a collective need), 'Uthmānī is authorised and legitimated in working within valid legal stratagems, crafting solutions that are in harmony with the letter of *madhhab* law, or even departing from it on single issues.

Critically, 'Uthmānī's approach does not undermine his Deobandī credentials. Understanding Deobandīs as a collective involves recognising certain core doctrines—such as the necessity of *taqlīd shakhṣī* and the heterodoxy of certain Sufi practices and beliefs—that unify its scholars. Beyond these core principles, the elders of Deoband were faculty members of a *madrasa,* each member bringing their own scholarly expertise and perspectives. This diversity is inherent to the nature of any scholarly faculty.[659] If one views 'Uthmānī's juristic practice through this lens, the methodology of his jurisprudence is informed by an authoritative lineage going back to Gangohī, the practices of Thānawī, the teachings of his father, and his learned experiences by interacting with Karachi's most prominent *muftī*s. For 'Uthmānī, his approach to jurisprudence is fundamentally a Deobandī approach, one he has absorbed and learnt from his mentors.

Conclusion

The juristic opinions of this chapter provide a unique perspective on 'Uthmānī's juristic practice. In previous chapters, we observed how 'Uthmānī adeptly manoeuvres within the *madhhab,* extending its legal precedents to new contexts or negotiating terse and complex discourse to derive its most appropriate norms. This juristic activity represents forms of *ijtihād* within the *madhhab*; it examines the *madhhab*'s texts and applies them to contemporary contexts, showcasing juristic

[659] Zeeshan Chaudri's work is invaluable for its in-depth analysis of the variations in scholarship among the elders of Deoband. For an exploration of what constitutes as 'Deobandism' as a collective, see: Chaudri, "Demarcating the Contours of Deoband," 206-235.

creativity, adaptability and the role of the *muftī* in commandeering legal change within *madhhab* discourse. Unlike these earlier cases, the subjects of this chapter are not directly addressed by the *madhhab*; the *madhhab* itself is silent on issues like mark-up sales, diminishing partnerships, the judicial enforceability of promises, or strategies to punish defaulted payments. Nevertheless, 'Uthmānī demonstrates how *madhhab* discourse can be spearheaded to craft and theorise unprecedented legal solutions that align with both scripture and *madhhab* norms.

It is crucial to acknowledge that 'Uthmānī does not develop these solutions in isolation; instead, these topics are deliberated at scholarly conferences attended by scholars from diverse methodological and institutional backgrounds; 'Uthmānī is engaging and refining his ideas through conference debates. Nevertheless, the subtlety lies in how 'Uthmānī performs *ijtihād inshā'ī*, all while adhering to his Deobandī commitment to *taqlīd* and the Ḥanafī *madhhab.* The change in argumentation between the 1990 papers and 2015's *Fiqh al-Buyū'* demonstrates the maturing of his ideas, particularly in reinforcing the Ḥanafī credentials of his argument. While there are consistent appeals to the Mālikī *madhhab,* the Ḥanafī-Deobandī conventions of his argumentation reflect the practical dimensions of his theorising. These models are not mere academic exercises but are being developed to apply in Pakistan, where Ḥanafī adherence is essential.

Considering the Gangohī-Thānawī-Muḥammad-Shafī' consultation of incorporating opinions from outside the Ḥanafī *madhhab*, especially in matters of public predicament, such as transactions, 'Uthmānī positions the borrowing from the Mālikī *madhhab* as uncontroversial. In fact, in addressing criticisms of his departures from the Ḥanafī *madhhab* on single issues, 'Uthmānī frequently references specific instances where Thānawī himself diverged from the *madhhab* to reinforce a particular position.[660] In 'Uthmānī's approach to Islamic finance, the immutable nature of scripture means that commercial interest is forbidden. This foundational principle necessitates the development of viable financial alternatives to eliminate this prohibition from an Islamic economy. Therefore, resorting to the Mālikī *madhhab*, especially in areas where the Ḥanafī school offers tentative support, is a subtle

[660] 'Uthmānī, *Ghayr Sūdī Bankārī*, 286-7; idem, *Fatāwā 'Uthmānī*, 3: 241.

adaption rather than a fundamental shift. However, comparing the 1990 treatises to *Fiqh al-Buyū'*, it is evident that the discussions on judicial enforceability and the conditions within a sale contract have evolved significantly, with the *Fiqh al-Buyū'* sections articulating a robust, refined, and less Mālikī-dependent *Ḥanafī* standpoint. By comparing these two articles with *Ghayr Sūdī Bankārī*, 'Uthmānī's response to the 2008 critique, it becomes evident that the matured Ḥanafī stance in *Fiqh al-Buyū'* is a result of the intra-Deobandī scrutiny 'Uthmānī experienced.

Let us now turn to the specifics of the juristic practice of this chapter. 'Firefighting' is a term I advance to describe 'Uthmānī's jurisprudence in this chapter. In advancing *ijtihād inshā'ī,* 'Uthmānī proposed different financing models that are profitable for the financier while evading and navigating both scriptural injunction and *madhhab* regulation. Nevertheless, such conceptualisations are fraught with internal disagreements and principles from within the *madhhab* that must be harmonised, the so-called 'fires' that must be fought. The two financial modalities, the mark-up sale and the diminishing partnership, involve conceptualising disparate transactions under a single model. The separate transactions are valid independently, but several juristic consequences come to light when combining them. First, can the agreement to transact in the future be reneged if the transactions are decoupled? Second, how are these mutual agreements distinct from conditions in a sale that vitiate the sale contract in normal circumstances?

The first question is handled with notable expertise and creativity. It is a noteworthy example where 'Uthmānī advances existing *madhhab* doctrine to introduce judicial enforceability into certain promises. This is a clear example of *ijtihād* from within the *madhhab*. By reflecting upon the modern reality of business and commerce and the harm element, as highlighted by scholars and subject-matter experts, 'Uthmānī extends the *madhhab*'s declaration that certain promises can be "binding due to the needs of the people" to allow for judicial enforceability of commercial promises. Remnants of *Uṣūl al-Iftā'ī* methodology can be found herein, from the reliance of scholars to quantify harm and difficulty, to restricting juristic activity to precedents within one's *madhhab*. In solidifying this position, 'Uthmānī presents the Qur'an and Prophetic tradition and the prominent position of the Mālikī *madhhab*. This could be enough to justify judicial enforceability for most scholars who are unbound to *madhhab*

allegiance and *taqlīd*. In ‘Uthmānī’s argumentation, these evidences are used as support, but the foundational element of his position is the extension of the *madhhab* position. ‘Uthmānī uses individual discretion on the nature of business, the harm, and *madhhab* precedents which consider the needs of people in a similar transaction.

In the juristic reasoning of the diminishing partnership model, ‘Uthmānī formulates a model, and the subsequent juristic ‘fires’ are discussed and extinguished. Critically, the nature of pre-arranged promises could be objectionable as they imitate conditions within a contract which vitiate the sale contract under normal circumstances. ‘Uthmānī brings forth Ḥanafī precedent to nullify this objection, arguing that to decouple the three contracts within the diminishing partnership, which are held together by mutual promises, will not invalidate the contract as the promises are not made conditional to the individual transactions themselves. The juristic creativity here is not merely extinguishing a ‘fire’ but formulating a new model that provides financing capability and incentivises it for the financier without dabbling in usury. Lastly, the formulation of late-payment penalties is a form of ethical innovation, where a deep understanding of scriptural injunction or *madhhab* regulation is used to envision new morally-sound possibilities. The self-imposed oath or promise to dispense an amount in charity upon defaulting is proposed as a reasonable solution to avoid usurious benefits and still penalises the defaulter. The *ijtihād* of these models, while perhaps less spectacular than explicitly advancing *madhhab* doctrine, remains remarkable. It navigates the legal corpus and imagines new and eccentric solutions to the scriptural and juristic questions that burden the *muftī*’s task.

Conclusion

This thesis has offered individual-centric insight into *ijtihād* and legal innovation within the context of the *madhhab*. It has focused on the *ijtihād*, modes of argumentation, legal reasoning and *fiqhī mizāj* of one of the leading Muslim jurists of the current age: Taqī ʻUthmānī, a renowned Deobandī *muftī*. While he is most well-known for spearheading some of the most pioneering advancements in Islamic finance, this thesis has demonstrated his deft navigation of the discourse of the Ḥanafī *madhhab*. He advances and expands its norms and precedents, allowing for legal innovation and change even in subject matter typically regarded as static and rigid.

The *madhhab* is often understood as a collective approach of jurists or guild members; however, by emphasising the individual dimensions of engagement with the *madhhab* tradition, the narrative of this thesis positioned Taqī ʻUthmānī as a *muftī* at the heart of legal change and innovation from within the *madhhab*. In examining both his methodological treatises and practical legal applications, we have uncovered his major influences, juristic inclinations, and the contextual factors that provide a holistic framework for his juristic approach. By situating his jurisprudence within the broader scope of Deobandī *fatwā* literature and Islamic legal thought, this examination highlights the dynamic possibilities within a *madhhab*-based approach to Islamic jurisprudence and the methods used to address contemporary issues within the framework of *taqlīd shakhṣī.*

This conclusion serves as a synthesis of the various chapters of the thesis, bringing together the insights and analyses to examine a series of broader implications for the study of the *madhhab* and its capacity for legal innovation. Central to this discussion is the concept of *fiqhī mizāj*, i.e., the juristic inclinations and tendencies that inform his work, which has emerged as a key theme throughout the thesis. This thesis has encouraged us to think critically about the role of individual jurists like Taqī ʻUthmānī in shaping and guiding the evolution of the *madhhab*, particularly through the hierarchies of *ijtihād*, the selective drawing from predecessors, and the dynamic engagement with contemporary challenges within the framework of *taqlīd shakhṣī*. This engagement with the *madhhab* reflects the personal juristic priorities, biases, and inclinations of the *muftī* as they navigate the balance between

tradition and innovation. Thus, the conclusion will explore the various elements that constitute this *fiqhī mizāj* and its implications for the broader landscape of Islamic jurisprudence.

Implementing Islam in Pakistan

This thesis showcases an aspect of the modern legacy of Deobandī thought. Much of the existing literature on Deoband has studied either the scholarly contributions of individual elders,[661] the colonial contexts of its traditionalist education,[662] or its network of Ṣūfī shaykhs.[663] Our study of ʻUthmānī demonstrates the new directions of Deobandī thought in the state of Pakistan, where the ʻ*ulamā* under this Islamic Republic have been incorporated into the state regulation of religion. Unlike India, South Africa, or even the United Kingdom, where Deobandīs represent a significant proportion of the Muslim community but operate within a context where religion is largely privatised and the ʻ*ulamā* have limited direct influence on state governance, the situation in Pakistan is different. Under certain governments, Deobandī ʻ*ulamā,* most prominently Taqī ʻUthmānī, have been integrated into the fabric of state regulation, allowing for a more prominent role in the governance and implementation of Islamic principles at the national level.

ʻUthmānī is a Deobandī, both by birth and by intellectual lineage. He received his juristic training from his father, the former chief *muftī* at Dār al-ʻUlūm Deoband. As we have demonstrated in this thesis, his juristic writing has a salient Deobandī character: he upholds *taqlīd shakhṣī*, remains within the Ḥanafī school, navigates through the *madhhab* with Ibn ʻĀbidīn's discourse, and reinforces opinions through Deobandī elders. These are distinct characteristics of Deobandī *fatwā* literature. Though, most critically, ʻUthmānī moved to Pakistan at a young age, where the political dynamics provided unprecedented opportunities for the *ʻulamā*, opportunities that were unavailable in India.

When Dār al-ʻUlūm Deoband was first established in the late nineteenth century, it emerged as a response to British colonial rule. Muslims were no longer the ruling elite, and the *ʻulamā* had no

[661] Cf: Chaudri, "Demarcating the contours"; Khan, "Traditionalist Approaches to Sharī'ah Reform".
[662] Metcalf, *Islamic Revival in British India.*
[663] Ingram, *Revival from Below.*

political favour; they did not govern religious affairs, had minimal role in the administration of Muslim law, and were blamed for the uprising in 1857.[664] Deoband's response to 'colonial modernity' was deliberately counter-cultural: they established the *madrasa* through public donations to avoid being beholden to private donors and the colonial administration; they emphasised revealed sciences (*manqūlāt*), which the colonial administration deemed 'useless'; and they took on the role of the *'ulamā* within a private space, educating and reforming Muslim communities through their books, *fatwā*s, and public speeches.[665] Religion was privatised, and the '*ulamā* positioned themselves as the "stewards of public morality."[666] This dynamic remains in India, as well as in South Africa, where the '*ulamā* operate primarily within the private sphere, guiding religious practice and ethics without direct political power or state involvement.

Pakistan offers an alternative: a sovereign Muslim nation which *can* be built upon the Sharia and guided by the *'ulamā*. For example, in his address at the Constituency Assembly welcoming the Objectives Resolution, Shabbīr Aḥmad 'Uthmānī declared, "the Islamic State means a State which is run on the exalted and excellent principles of Islam".[667] If we read the Report of the Ta'līmāt Board (1950), which advised the Sub-Committee on Constitutions and Powers in drafting the country's first constitution, the *'ulamā* put forth a very pre-modern idea of Muslim governance. One of its key propositions was that the Sharia, interpreted by a 'Committee of Experts on the Sharia', should be the ultimate authority in the country, even binding upon the Head of State.[668]

The political history of Pakistan has been tumultuous, marked by numerous military takeovers and subsequent constitutions, and debates among the secularists, parliamentarians, modernists and the '*ulamā* over the form of 'Islam' to be implemented in the nation. While Taqī 'Uthmānī has experienced political favour and disfavour during these periods, Pakistan still presents a unique opportunity to not only expand *madhhab* law in privatised non-State *Dār al-Iftā*s but also to influence societal norms

[664] Ingram, *Revival from below,* 31-54.
[665] Ibid., 92-115.
[666] Ibid., 26.
[667] Ansari, "The Objectives Resolution," 121.
[668] Binder, *Religion and Politics in Pakistan*, 169-170. For the full recommendations of the Ta'līmāt Board, see: 383-429.

through the application of those laws. This unique context has significantly shaped ‘Uthmānī’s *fiqhī mizāj*, leading him to adopt a pragmatic approach that remains firmly rooted within Deobandī norms of *fatwā* writing and traditionalism, yet leans towards practical solutions that facilitate the application of Islamic principles within the framework of state governance.

‘Uthmānī’s lifelong commitment to eliminating interest and developing alternative interest-free financing can be viewed within the broader ambition of applying Islamic law within this sovereign Muslim nation. As discussed in Chapter 7, the elimination of interest in Pakistan has had a complex history; however, the success of Meezan Bank, an Islamic bank supervised and audited by ‘Uthmānī’s son and one of the largest banks in Pakistan by deposits, demonstrates the practical applicability of these laws. This is not merely theoretical—‘Uthmānī’s pragmatic approach, particularly in financial matters, is contextualised by the opportunities in Pakistan, where the implementation of such laws is a tangible reality. However, as we shall discuss later, the public disagreement between ‘Uthmānī and the ‘*ulamā* of Binnorī Town, as examined in Chapter 7, illustrates that his pragmatism was not universally shared by other Pakistani Deobandīs, highlighting the existence of varied interpretations, even among scholars of the same intellectual lineage.

Legal change and *Ijtihād fī l-madhhab*

One of the key themes of this thesis is the exploration of *ijtihād* within the *madhhab* (*ijtihād fī l-madhhab*), particularly how it operates in the context of *taqlīd*. Taqī ‘Uthmānī, as a *muqallid muftī*, exemplifies adherence to the Ḥanafī *madhhab*’s established norms; nevertheless, his juristic work reveals a dynamic engagement with a range of lower-level forms of *ijtihād* where he acts, primarily as a transmitter (*nāqil*) of the *madhhab*’s legal tradition. Chapter 3 analysed ‘Uthmānī’s conception of *ijtihād* and its hierarchy, encompassing practices such as *takhrīj*, *taṣḥīḥ*, *tarjīḥ*, and *tamyīz*. This thesis further demonstrated that even at the foundational level of *naql*, there is significant scope for legal innovation as the *muftī* navigates between traditional legal discourse and contemporary challenges.

As an individual *muftī* interacting with the *madhhab* and advancing its norms to contemporary problems, ‘Uthmānī exhibits several lower-level forms of *ijtihād.* On the surface, the *fatwā* on Amrot Sharif, discussed in Chapter 5, is an unremarkable position. The questioner, an imam, asks about the status of Friday prayer in this historic village where leading Deobandī elders have previously led Friday Prayers. The conundrum is that Friday prayers cannot be offered in small villages, and the questioner submits a description of the village, including its major amenities. ‘Uthmānī’s response transmitted established legal precedent (*naql*) that such a village falls within the description of a small village and no possible path for validity can be drawn. While this *naql* appears to be the lowest level of legal manipulation, it fortifies the role of the *muftī* as the intermediary between the discourse of the *madhhab* and the community who defer to it. Equally, his *fatwā* on the prayer status of soldiers in their barracks highlighted the subtle form of adaptation within the *madhhab* tradition that grants constancy and continuity to its discourse. These practices of *naql* are lower-level, but they are integral to the *madhhab*’s evolution as the *muftī*, standing between the *madhhab* discourse and the unravelling context, commandeers and advances legal change and innovation.

Taḥrīr al-madhhab, the close examination of the *madhhab*’s discourse to derive its most authoritative and appropriate norm, is a second form of *naql* that ‘Uthmānī regularly applies. This juristic activity is evident in the major treatises and *fatwā*s studied in this thesis, ranging from Friday prayers in prisons (Chapter 5) to issues of unlawful wealth and its implications for contentious occupations (Chapter 6). ‘Uthmānī’s skill in navigating the *madhhab* was particularly evident in the case of unlawful wealth, where he critiqued the ‘dominant-source’ position. A common Deobandī stance holds that if a person or company has commingled lawful and unlawful wealth, their income should be judged based on the dominant source. As shown above, through a series of interwoven precedents and citations, ‘Uthmānī argued against this, advocating instead for assessing transactions based on the lawful portion of the income. The treatise on unlawful wealth provides profound insight into his method of *madhhab* deliberation, revealing the techniques used to interpret texts and apply them to contemporary contexts. We observed various modes of argumentation, in-depth analysis of

madhhab precedent, and numerous related debates that inform the law, ultimately clarifying complex contemporary issues such as those employed by banks.

In 'Uthmānī's practice of *ijtihād inshā'ī* (creative *ijtihād* in matters whether there is no precedent) to craft legal solutions for Islamic finance, we see the full potential of *madhhab*-based jurisprudence. His financial models are exemplary; they explore the intricacies of *madhhab* discourse, scrutinising and prioritising its views to resolve juristic challenges. One particularly innovative solution was his approach to late-payment fees, where he proposed a self-imposed charity; this unique mechanism avoids interest and mitigates financial risk for the financier. The case studies in this thesis demonstrate that legal change, whether through 'simple' legal replication (*naql*), more nuanced *taḥrīr*, or *ijtihād inshā'ī*, depends on the *muftī*'s skill in implementing the law. A competent and dexterous *muftī*, adept at analysing and interpreting the *madhhab*, can extend and adapt laws to new and uncharted areas. Mastery in navigating the *madhhab* and deriving its opinions is fundamental to 'Uthmānī's legal creativity and innovation, though it is only one component among many.

Disagreements with 'Uthmānī's positions have been a salient feature of this thesis. Exploring these disagreements highlights other key components that underscore legal change in the *madhhab.* One reason for these disagreements lies in variances in conceptualising the on-ground reality (*al-wāqi')* of the case. As in the words of Ibn Nujaym, discussed in Chapter 6, "the ruling of a thing is a subsidiary to the proper conceptualisation of it".[669] Many Deobandīs, including 'Uthmānī himself, issued a blanket prohibition on bank employment. However, 'Uthmānī's personal evolution shows that after grasping the intricacies of the banking industry, the nuances of bank employment and job activity become a critical feature of determining permissibility. Herein, the cause of disagreement is not the process of deriving laws; these processes were constant. 'Uthmānī learned English in early adulthood, obtained two bachelor's and master's degrees from Pakistani universities, and spent decades gaining hands-on experience in the Islamic banking industry. Unlike most Deobandī *muftī*s of his era, 'Uthmānī has the unique educational background and the experience to conceptualise bank employment fully. As the

[669] Ibn Nujaym, *al-Baḥr al-Rā'iq*, 1: 232.

world becomes increasingly more technically complex, numerous barriers emerge in conceptualising a legal case. Therefore, in developing a class of dextrous and adept *muftī*s capable of grappling with the complexities of late modernity, conversations about class, education, access to English and the internet become crucial.

Another cause for disagreement noted at various points in this thesis is the discretion exercised by individual jurists. This was particularly evident in the case of assisting in sin (*iʿāna ʿalā l-maʿāṣī*). The *madhhab* discourse on this issue is extensive, with disagreements tracing back to differences between Abū Ḥanīfa and his students. ʻUthmānī followed his father's approach, which intricately organised the *madhhab*'s vast array of opinions and precedent to place intentionality (*qaṣd*) and causality (*tasabbub*) at the heart of discussions about assisting in sin. While we have seen ʻUthmānī conduct intricate *taḥrīr* throughout this thesis, on this subject where his father had undertaken impressive *taḥrīr* and *ijtihād*, ʻUthmānī defers to his father's work.

On the other hand, as discussed in Chapter 6, the *muftī*s at the Jamiat Ulama-e-Hind's eighteenth *fiqh* Conference took alternative stances. For example, Shabbīr Aḥmad Qāsimī and his former deputy, Salmān Manṣūrpūrī, presented divergent views; Qāsimī developed his own complicated schema, while Manṣūrpūrī took Abū Ḥanīfa's more lenient position that created separation between the act and another individual's choice to sin. Crucially, the disagreements within the early *madhhab* become a resource for creative jurisprudence, enabling *muftī*s to select and advocate for the positions they deem most appropriate. This ability to preponderate one view over another highlights the individual discretion and interpretative flexibility that *muftī*s exercise in advancing legal change within the *madhhab*. The *muftī*, as an individual interacting with the *madhhab*, navigates its extensive discourse to author opinions, revealing personal biases, influences, and priorities. Each *muftī*'s approach to the *madhhab* discourse reflects their unique perspective and the causes they champion, especially when faced with complex and varied legal discourse. This illustrates the personal dimensions of legal reasoning and the specific influences that shape the *muftī*'s juristic decisions.

Of course, disagreements also arose, even among Deobandī Hanafīs, due to variations in deriving laws. The public disagreements on Islamic banking between ʻUthmānī and the *muftī*s of

Binnorī Town illustrated this point. The *muftī*s of Binnorī Town opted for a more textualist approach to the *madhhab* discourse, utilising *uṣūl al-iftā'* and primarily chastising 'Uthmānī for departing from the *madhhab* on single issues. In contrast, 'Uthmānī took a more pragmatic approach. Departing from the *madhhab* is not a decision Deobandīs take lightly. For 'Uthmānī, his stance is justified by Gangohī-Thānawī-Shafī' consultation that allows departures in matters of collective need, especially in transactions. His pragmatism in borrowing from the Mālikī *madhhab* for financial models was driven by a commitment to eliminate interest, a goal he saw his Pakistani Deobandī predecessors striving for. His approach was distinctly Deobandī: he drew on consultations from higher Deobandī authorities, internalised the needs and struggles of his Pakistani teachers to abolish interest, and borrowed from another *madhhab* in adherence to the guidelines practised by Thānawī in *al-Ḥīlat al-Nājiza*.

Juristic discretion and *fiqhī mizāj*

In our narrative of the *muftī* as an individual, engaging with and advancing *madhhab* discourse, expertise in the *madhhab* is essential. However, this also includes accurately conceptualising the on-ground facts of each case, exercising individual discretion in influences and priorities, and ultimately, one's *malaka fiqhiyya,* the juristic expertise gained through extensive companionship with experienced jurists and internalising their application methods. This process of internalisation helps determine when to exercise caution, pragmatism, or leniency in legal rulings. For 'Uthmānī, he internalised a lived tradition from his father and from Thānawī, whose *al-Ḥīlat al-Nājiza,* as referenced many times in this thesis, was the most outstanding example of a Deobandī borrowing from another *madhhab*. Therefore, his approach to borrowing opinions from other *madhhab*s is deeply rooted in his reception of Deobandī scholarship. The Deobandī tradition comprises diverse perspectives and scholarly focus, as expected from all scholarly institutions, and 'Uthmānī's juristic expertise reflects the specific strand he inherited from his teachers.

Throughout this thesis, we have described individual discretion as a crucial element of legal change within the *madhhab.* In examining 'Uthmānī's methods and case studies of his juristic opinions, *his fiqhī mizāj* has become discernible. First, 'Uthmānī's juristic influences are evident. He primarily

accesses the Ḥanafī *madhhab* through two key authorities: Ibn ʻĀbidīn, a late Ottoman Ḥanafī scholar, and Thānawī. In the sections on methodology, these figures are pivotal: Ibn ʻĀbidīn's *Sharḥ ʻUqūd Rasm al-Muftī* and treatises on ʻ*urf* form the foundation of ʻUthmānī's procedural rules in navigating the *madhhab*. Equally, in determining when and how to adopt opinions from other *madhhab*s on single issues, Thānawī's guidance is central.

Our exploration of *Fatāwā ʻUthmānī* in Chapter 5 was particularly telling on this point. Within our selected sample, ʻUthmānī cited Ibn ʻĀbidīn's *Radd al-Muḥtār* almost 100 times, with Ibn Nujaym's *Baḥr al-Rāʼiq* coming second among the pre-modern texts, with a mere eleven citations. Thānawī's collective works were cited fourteen times, placing Thānawī as the second most cited authority overall. Having established the sheer volume of citations to Ibn ʻĀbidīn, the disagreement between Rashīd Aḥmad Ludhiyānwī and Thānawī on the correct method of prostration was instructive. Ludhiyānwī posited that the nose and the forehead must be placed on the ground for prostration to be valid. This view is supported by prominent *madhhab* figures such as Ibn al-Humām, Ibn Nujaym, and even Ibn ʻĀbidīn's *Radd al-Muḥtār*, which considers this the most plausible position within the *madhhab*. Conversely, Thānawī maintained that only the forehead was necessary. In defending Thānawī, ʻUthmānī interprets a convoluted passage from Ibn ʻĀbidīn's later work to offer tenuous support to Thānawī. This selective use of *madhhab* sources, especially when *Radd al-Muḥtār*, the principal reference for Deobandī *fatwā*s, contradicts this view, highlighted Thānawī's importance to ʻUthmānī. As seen in the case of unlawful wealth, when ʻUthmānī seeks support from a Deobandī source, it is often Thānawī who is cited.

Caution is another notable feature of ʻUthmānī's *fiqhī mizāj*. This thesis has demonstrated ʻUthmānī's practice of *ijtihād* from within the *madhhab* framework; he is adept at navigating *madhhab* scholarship and extending it to new places, but his approach is cautious. He is not a liberal arbiter of the law, casually researching and opining. His *taḥrīr* of al-Karkhī's stance on profits from unlawful wealth in Chapter 6 illustrated this caution. Al-Karkhī argued that so long as one does not specify the stolen note in one's transaction, either by indicating it while transacting or by pre-emptively handing the seller the note and transacting with that note in mind, proceeds and profits from such stolen wealth

is permissible. ‘Uthmānī’s careful articulation of this position and the implicit conditions al-Karkhī upholds is skilfully executed, yet he still abstains from endorsing this position. Instead, ‘Uthmānī takes the stricter position of the *ẓāhir al-riwāyā* that all profits gained from unlawful wealth are unlawful.

Furthermore, as part of his cautious approach, ‘Uthmānī routinely seeks to justify his positions with other authorities. For example, there is tentative support in the Ḥanafī *madhhab* that a person who undertakes a job that involves lawful and unlawful activities is due a fair wage for their lawful actions. ‘Uthmānī fortifies this interpretation by appealing to Ibn Qudāma, a Ḥanbalī. Equally, when critiquing the dominant source position, ‘Uthmānī’s citations are lengthy and comprehensive, yet he still references Thānawī to fortify his stance, underscoring that other respected scholars share his opinion.

This approach reflects a crucial aspect of ‘Uthmānī’s methodology. He does not like to impose his own positions without support, as such positions lack authority. Scholarly backing, either through precedent or scholarly conferences, provides validation and confirms the scholar’s conceptualisation of context. This value was taught and demonstrated to him by his father, who learned it from Thānawī. Thānawī repeatedly advised Muḥammad Shafī‘ to seek attestation from one’s elders before publishing any new research. If the elders had passed on, he recommended seeking validation from contemporaries and, if necessary, even from one’s students.[670] ‘Uthmānī writes that his father would not deviate from the popular *madhhab* view unless he found support from the early Ḥanafīs or contemporaries to validate his research.[671] ‘Uthmānī embodies these principles, as he ensures that his positions are consistently backed by either traditional precedent, a Deobandī authority or contemporary collective bodies such as the *Majlis-i Taḥqīq* and the international *fiqh* conferences he attends. This collective *ijtihād* (*ijtihād jamā‘ī*) underscores his reserved and cautious approach, demonstrating his unwillingness to assert opinions without the support of authoritative consultation, which is a core aspect of ‘Uthmānī’s *fiqhī mizāj*.

As we conclude this thesis, it is essential to refocus on the central theme: the *muftī* as an individual who engages with inherited *madhhab* discourse while responding to the evolving contexts

[670] ‘Uthmānī, “Mere Wālid,” 408-9.
[671] Ibid., 409.

of their time. To illustrate this, consider the *ijtihād* of al-Bazzāzī (d. 827/1424), an Ottoman Ḥanafī scholar who adopted an opinion from the Mālikī *madhhab* on a case of menstruation law. The Ottoman biographer Ṭāshkubrī-zāde (d. 968/1561) recounts that al-Bazzāzī once debated with al-Fannārī, the first Shaykh al-Islām of the Ottoman Empire, noting:

> He [al-Bazzāzī] excelled over him in substantive law (*furū'*), and he [al-Fannārī] excelled over him in legal methodology and all other sciences.[672]

This high praise indicates that al-Bazzāzī was considered superior in practical legal applications to the highest-ranking scholar of his time. In this *ijtihādī* position, al-Bazzāzī declared: "Regarding the waiting period (*'idda*) of the *'āyisa* [Woman of non-menopausal age that has stopped menstruating], the *fatwā* is upon the opinion of Mālik in our times".[673] While the intricate context and historical background of this position are not fully clear, al-Bazzāzī's decision to depart from the *madhhab*'s norm and adopt a Mālikī opinion for the *'āyisa* was a response to a pressing need of his time. This position received varied feedback; Ibn Simāwna (d. 823/1420) accepted it in *Jāmi' al-Fuṣūlayn*, while it faced harsh criticism from Ibn Nujaym and Ibn 'Ābidīn, who argued that such a ruling could only be established if one receives an official judgment from a Mālikī judge.[674]

This disagreement within the *madhhab* epitomises the individual-centric focus of this thesis. Al-Bazzāzī, a leading scholar of his time, interacted with his contemporary context, applying texts as he deemed appropriate. The historical significance of his works and the personal motivations behind his legal reasoning may not be entirely clear, but his *Fatāwā* were influential enough to be debated by Ottoman Ḥanafīs centuries later.

Similarly, the narrative of this thesis positions Taqī 'Uthmānī as a *muftī* at the forefront of legal change and innovation within the *madhhab*. Through our study, we have explored his contexts, scholarly influences and motivations, alongside the reception of his ideas, providing a holistic insight

[672] Ṭāshkubrī-zāde, *al-Shaqā'iq al-Nu'māniyya*, 21.
[673] Muḥammad b. Muḥammad al-Kardarī al-Bazzāzī, *al-Fatāwā al-Bazzāziyya aw al-Jāmi' al-Wajīz*, ed. Sālim Muṣṭafā al-Badrī, 2 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 2009): 1: 223.
[674] Cf: Ibn Nujaym, *al-Baḥr al-Rā'iq*, 4: 142; Sirāj al-Dīn Ibn Nujaym, *al-Nahr al-Fā'iq*, 2: 476-7; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3: 508-9. Ibn Nujaym and Ibn 'Ābidīn relate Ibn Simāwna's position in their respective discussions.

into his *fiqhī mizāj*. This, in turn, informs us about the personal story behind the *muftī*'s legal change. This, in turn, informs us about the personal narrative behind the *muftī*'s initiation of legal changes within *madhhab* norms. Our exploration has highlighted how 'Uthmānī's particular juristic focus, shaped by the guidance and practices of his teachers and mentors, informs his approach to law as he balances the demands of tradition with the needs of contemporary society. Ultimately, it is the individual jurist, navigating the complexities of inherited traditions and contemporary challenges, who stands at the heart of this ongoing legal evolution.

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Appendixes

APPENDIX 1

References to Ḥanafī jurists and works, as cited in Taqī 'Uthmānī's *Fatāwā 'Uthmānī*
Selection size: Vol 1, pp 311-591.[675]

Author	Name of text	Citations
Ibn ʿĀbidīn (d.1252/1836)	*Radd al-Muḥtār 'alā l-Durr al-Mukhtār*	313, 315, 317, 318-9, 323, 323, 327, 328, 328, 330, 331, 335, 357, 361, 370, 375, 377, 381, 386, 419, 421, 422, 424, 425, 425, 427, 427, 431, 432, 433, 433, 436, 440, 442, 449-50, 459, 467, 473, 474, 485, 485, 489, 491, 493, 493, 494, 501, 501, 502, 503, 512, 514, 515, 518, 521, 524, 533, 533-4, 534, 550, 553, 553, 553, 557, 563, 565, 567, 569, 570, 579, 580, 586, 586 (73 references)
	Minḥat al-Khāliq 'alā Baḥr al-Rā'iq	370, 371 (2 references)
	Tanqīh al-Fatāwā al-Ḥamiddiya	567 (1 reference)
al-Ḥaṣkafī (d. 1088/1677)	*al-Durr al-Mukhtār 'alā Tanwīr al-Abṣār*	314, 324, 335, 366, 374, 408, 408, 421, 437, 441, 473, 492, 492, 497, 507-8, 521, 525-6, 563, 565, 566, 587 (21 references)
'Ashraf 'Alī Thānawī (d. 1943)	*Imdād al-Fatāwā*	314, 333, 440, 452, 465, 500, 502, 511, 512, 514, 565 (11 references)
	Behishtī Zewar	425, 552 (2 references)
	Behishtī Gohar	565 (1 reference)
Ibn Nujaym (d. 970/1563)	*al-Baḥr al-Rāʾiq ʿalā Kanz al-Daqāʾiq*	321, 339, 340, 449, 451, 480, 497, 500, 521, 548, 581 (11 references)
al-Kāsānī (d. 587/1191)	*al-Badāi'iʿ al-Ṣanāi'i*	339, 340, 376, 449, 450, 454, 525, 527, 533, 566 (10 references)
Ibrāhīm al-Ḥalabī (d. 956/1549)	*Ghunyat al-Mutamallī*	328, 377, 378, 378-9, 421, 436, 443, 563, 569, 571 (10 references)
al-Burhānfūrī (d. 1087/1676)	*Fatāwā 'Ālamgīrī*	313, 314, 317, 318-9, 372, 449, 471, 489, 584 (9 references)
al- Taḥṭāwī (d. 1188/1774)	*Taḥṭāwī ʿalā l-Durr al-Mukhtār*	375, 442, 443, 455, 491, 492 (6 references)
	Taḥṭāwī ʿalā l-Marāqī al-Falāḥ	578 (1 reference)
al-Marghīnānī (d. 593/1197)	*al-Hidāya*	321, 325, 527, 587 (4 references)
Qāḍīkhān (d. 592/1196)	*Fatāwā Qāḍīkhān*	323, 496, 451, 454 (4 references)
Dāmad-Afendī (d. 1078/1667)	*Majmaʿ al-Anhur ʿalā Multaqā al-Abḥur*	491, 526, 536, 581 (4 references)
Rashīd Aḥmad Gangohī (d. 1905)	*Fatāwā Rashīdiyya*	365, 532, 451, 452 (4 references)
Muḥammad Shafī' 'Uthmānī (d. 1976)	*Jawāhir al-Fiqh*	371, 554, 555, 558 (4 references)
al-Sarakhsī	*Sharḥ Siyar Kabīr*	580, 580, 581 (3 references)

[675] 'Uthmānī, *Fatāwā 'Uthmānī*, 1: 311-591.

(d. 483/1096)	*al-Mabsūṭ*	454 (1 reference)
al-Jaṣṣāṣ (d. 370/981)	*Aḥkām al-Qurʾān*	340, 343 (2 references)
Ṭāhir al-Bukhārī (d. 542/1147)	*Khulāṣat al-Fatāwā*	328, 449 (2 references)
al-Maḥbūbī (d. 745/1347)	*Sharḥ Wiqāya*	492, 587 (2 references)
al-ʿAynī (d. 855/1451)	*Ramz al-Ḥaqāʾiq ʿalā Kanz al-Daqāʾiq*	473, 474 (2 references)
Al-Bābirtī (d. 786/1384)	*al-ʿInāya ʿalā l-Hidāya*	451, 452 (2 references)
al-Sughdī (d. 461/1068)	*al-Nuṭaf fī l-Fatāwā*	525 (1 reference)
Ibn Simāwna (d. 823/1420)	*al-Jāmiʿ al-Wajīz*	492 (1 reference)
Al-Shurunbulālī (d. 1069/1659)	*al-Marāqī al-Falāḥ*	526 (1 reference)
al-Lakhnawī (d. 1886)	*Majmūʿ al-Fatāwā*	552 (1 reference)

APPENDIX 2

References cited in a select group of Deobandī *Fatwā* Collections.

References to Ḥanafī jurists and works, as cited in Rashīd Aḥmad Gangohī's (d. 1905) *Fatāwā Rashīdiyya*

Selection size: *Kitāb al-Ṭahara* (Chapter on Purity), pp 294-307[676]

Author	Name of text	Citations
No references cited[677]		294, 294, 294, 294, 295, 295, 295, 295, 296, 296, 296, 296, 297, 297, 297, 297, 297, 298, 298, 298, 298, 299, 299, 299, 300, 300, 300, 301, 301, 301, 301, 302, 302, 302, 302, 303, 303, 303, 303, 304, 304, 305, 305. (43 references)

References to Ḥanafī jurists and works, as cited in Khalīl Aḥmad Sahāranpūrī's (d. 1927) *Fatāwā Maẓāhir al-'Ulūm*

Selection size: *Kitāb al-Ṭahara* (Chapter on Purity), pp 75-97[678]

Ibn ʿĀbidīn (d.1252/1836)	*Radd al-Muḥtār 'alā l-Durr al-Mukhtār*	77, 79, 79-80, 84-5, 85, 88*, 88*, 90* (8 references)
al-Ḥaṣkafī (d. 1088/1677)	*al-Durr al-Mukhtār 'alā Tanwīr al-Abṣār*	75, 77 (2 references)
Ibrāhīm al-Ḥalabī (d. 956/1549)	*Ghunyat al-Mutamallī*	91*, 95* (2 references)
al-Marghīnānī (d. 593/1197)	*al-Hidāya*	78 (1 references)
al-Kāsānī (d. 587/1191)	*al-Badāi'iʿ al-Ṣanāi'i*	95 (1 references)

*Here, Sahāranpūrī cites a *fatwā* from Kifāyat Allāh al-Dihlāwī (d. 1952) as evidence of his position, which, in turn, makes several references.

References to Ḥanafī jurists and works, as cited in 'Azīz al-Raḥman 'Uthmānī's (d. 1928) *Fatāwā Dār al-'Ulūm Deoband*

Selection size: First four sub-chapters from *Kitāb al-Ṭahara* (Chapter on Purity)
Vol. 1 pp 102-203[679]

Author	Name of text	Citations
al-Ḥaṣkafī (d. 1088/1677)	*al-Durr al-Mukhtār 'alā Tanwīr al-Abṣār*	102, 103, 106, 107, 107, 111, 111, 112, 113, 115, 118, 120, 121, 121, 123, 126, 131, 136, 140, 143, 147, 148, 150, 151, 155, 158, 159, 161, 162, 166, 174, 175, 178, 181, 183, 185, 189, 197, 197, 199, 201, 201, 201, 201, 202, 202 (45 references)

[676] Gangohī, *Fatāwā Rashīdiyya*, 294-307.
[677] This implies that the *fatwā* was authored without any references. Gangohī did not cite a single source in the entire chapter on purity.
[678] Sahāranpūrī, *Fatāwā Maẓāhir al-'Ulūm*, ed. Sayyid Muḥammad Khālid (Karachi: Maktabat al-Shaykh, n.d.): 75-97.
[679] 'Azīz al-Raḥmān 'Uthmānī, *Fatāwā Dār al-'Ulūm Deoband,* 1: 102-203.

Ibn ʿĀbidīn (d.1252/1836)	*Radd al-Muḥtār ʻalā l-Durr al-Mukhtār*	102, 103, 108, 109, 110, 112, 114, 117, 118, 129, 132, 134, 136, 141, 143, 144, 151, 154, 154, 157, 158, 159, 159, 160, 164, 167, 169, 170, 170, 172, 173, 173, 176, 176, 177, 177, 178, 180, 180, 181, 182, 184, 186 (41 references)
Ibrāhīm al-Ḥalabī (d. 956/1549)	*Ghunyat al-Mutamallī*	116, 133, 157, 168 (4 references)
al-Marghīnānī (d. 593/1197)	*al-Hidāya*	133, 191 (2 references)
Statement "As in the books of fiqh".[680]		111, 115, 129, 157, 163, 189, 198, 104 (8 references)
No references cited		103, 104-5, 105, 105, 106, 106, 107, 108, 108, 108, 108, 109, 110, 110, 111, 111, 111, 122, 122, 113, 113, 114, 114, 115, 115, 115, 116, 116, 116, 116, 117, 117, 117, 118, 119, 119, 119, 120, 120, 121, 121, 122, 122, 122, 123, 124, 124, 124, 124, 125, 125, 125, 126, 126, 127, 127, 127, 127, 128, 128, 128, 129, 130, 130, 130, 130, 131, 131, 131, 132, 133, 133, 134, 134, 135, 135, 135, 135, 137, 137, 137, 138, 138, 139, 139, 140, 140, 140, 141, 141, 142, 142, 142, 142, 143, 145, 145, 146, 146, 146, 147, 147, 147, 148, 148, 149, 150, 151, 152, 152, 152, 153, 154, 155, 155, 156, 160, 160, 161, 161, 162, 162, 163, 163, 163, 164, 165, 166, 166, 167, 167, 168, 168, 168, 169, 169, 169, 170-1, 171, 171, 171, 172, 172, 172, 174, 175, 175, 175, 176, 176, 177, 177, 178, 179, 179, 180, 180, 181, 182, 183, 184, 185, 185, 187, 187, 188, 188, 188, 189, 190, 190, 190, 191, 192-6, 196, 197, 197, 198, 198, 199, 199, 199, 200, 200, 200, 200 (186 references)

References to Ḥanafī jurists and works, as cited in Ashraf ʻAlī Thānawī's (d. 1943) *Imdād al-Fatāwā*

Selection size: *Kitāb al-Ṭahara* (Chapter on Purity), Vol. 1 pp 63-149[681]

Author	Name of text	Citations
Ibn ʿĀbidīn (d.1252/1836)	*Radd al-Muḥtār ʻalā l-Durr al-Mukhtār*	63, 65, 66, 67, 68, 68, 68, 71, 72, 73, 73, 73, 76, 77, 80, 80, 82, 83, 83, 84, 86, 88, 88, 89, 90, 91, 91, 91, 92, 92, 93, 93-4, 94, 97, 99-100, 100-1, 101, 102, 104, 104, 105, 105-6, 106, 110, 112-3, 115, 115, 117, 118, 119, 119, 120, 121-2, 122, 122-3, 125, 131, 132, 133, 135, 137, 140, 140, 141, 142, 142, 143, 147, 148 (71 references)
al-Ḥaṣkafī (d. 1088/1677)	*al-Durr al-Mukhtār ʻalā Tanwīr al-Abṣār*	64, 67, 72, 74, 77, 84, 87, 89, 90, 94, 98, 99, 101, 103, 103, 110, 113, 114, 114, 119, 199, 130, 130, 131, 131, 138, 144, 146, 149 (29 references)
al-Burhānfūrī (d. 1087/1676)	*Fatāwā ʻĀlamgīrī*	69, 109, 112, 134 (4 references)

[680] ʻAzīz al-Raḥmān ʻUthmānī routinely uses the statement *kadhā fī kutub al-fiqh*, i.e., "as in the books of *fiqh*" to signify that the particular opinion of the *fatwā* is a well-known and prominent.

[681] Thānawī, *Imdād al-Fatāwā,* 1: 63-149

Ibrāhīm al-Ḥalabī (d. 956/1549)	*Ghunyat al-Mutamallī*	64, 111, 127, 147 (4 references)
al-Marghīnānī (d. 593/1197)	*al-Hidāya*	74, 81, 109 (3 references)
al-Kāsānī (d. 587/1191)	*al-Badāiʿiʿ al-Ṣanāiʿi*	139, 139 (2 references)
Qāḍīkhān (d. 592/1196)	*Fatāwā Qāḍīkhān*	78 (1 reference)
Ibn Nujaym (d. 970/1563)	*al-Baḥr al-Rāʾiq ʿalā Kanz al-Daqāʾiq*	126 (1 reference)
No references cited		63, 65, 66, 66, 66, 67, 69, 69, 71, 75, 76, 76, 79, 82, 86, 87, 88, 89, 95, 96, 96, 96, 97, 97, 99, 113, 116, 116, 120, 120, 121, 130, 132, 132, 133, 134, 134, 135, 136, 137, 138, 139, 143, 144, 147, 148 (47 references)