



APPROACHES TO REFORM OR RENEWAL (TAJDĪD) OF USUL FIQH (ISLAMIC LAW OF JURISPRUDENCE)

By

Muhammad Tahir Yahya*

&

Ismail Danjuma Yusuf**

Abstract

Tajdīd (reform or renewal, a concept in Usul al-fiqh denotes rejuvenation of what has been obliterated in the application of Quran, and *Sunnah* and also cutting off what has surfaced in terms of heresy and unprecedented invention has been perceived from a number of scholarly perspectives. Contemporary Muslim reformist ideology is a hard and diverse phenomenon comprising of a number of discourse and activists with different reform agendas and sentiments. It is observed that incessant attacks and stigma unleashed on reformists and their thoughts is needless. This paper adopts doctrinal method to study *tajdīd* and subsequently reveals that these reformists differ in the manner in which they approached *tajdīd* while allotting to it different hermeneutical positions in their overall approach to Islamic legal theory. It is also found that the major approaches to renewal took the form of rethinking the structural idea of the discipline and or rethinking the content accordingly. This paper, therefore, expands our understanding of the role and usefulness of *tajdīd* and its various approaches to our contemporary space and time.

Keywords: Approaches, Tajdīd, Usul al-Fiqh

1.0 INTRODUCTION

Usul al-Fiqh (sources of law or Islamic jurisprudence) is so crucial that without it, correct application of the pristine Islamic law may be a mirage. It is a sophisticated scheme of research developed by Muslim opinions. It is the solid foundation upon which all branches of Islamic law are grounded¹. In Usul al-Fiqh, a number of legal

* Department of Islamic Law, Bayero University, Kano E-mail: mtyahya.isl@buk.edu.ng

**Department of Islamic Law, Fountain University, Osogbo. E-Mail: yusuf.ismail@fuo.edu.ng

¹ < [PDF] Usul al-Fiqh al-Islami: Source Methodology in Islamic Jurisprudence : Taha Jabir al-Alwani : Free Download, Borrow, and Streaming : Internet Archive > accessed 22 June 2024

theories have been formulated to aid the understanding and application of Islamic law and these theories include *tajdīd* which means reform or renewal.

Reform in Islamic law could involve re-examination of traditional interpretations of texts and applying new approach to address contemporary issues such as human rights and gender equality, crimes and punishments, financial transactions, etc. however, any reform effort would need to carefully consider the diverse perspectives and interpretations within the Islamic legal tradition, as well as cultural and social contexts within the realm of Shari’ah.

This paper discusses some various approaches to the *tajdīd* (reform) of *usul al-fiqh* (Islamic legal theory or Islamic jurisprudence) science. However, due to plethora of literatures, articles and journals found on this aspect of knowledge, the paper seeks to adopt a particular structural arrangement of one of the several styles forwarded by the previous researchers on the aspect of *tajdīd* discourse in order to easily comprehend this current discussion on the same subject matter. Therefore, this piece substantially adopts the structural arrangement of AbdulQadir Khalifah² to chronologically discuss the definition of *usul al-fiqh*, a brief historical account of *usul al-fiqh* which gave birth to reform, conceptual clarifications of the term *tajdīd* and necessities for the *tajdīd*, Afterwards, the various approaches to reform are analysed and conclusion is made accordingly.

2.0 DEFINITION OF USUL AL-FIQH

The term *usul al-fiqh* has a disjunctive (*Ma’na Idafee* or *Tafsilee*) and a conjunctive sense (*Ma’na Laqabee* or *Ijmalee*).³ On the one hand, the disjunctive sense comprises of the words *usul* and *fiqh*. *Usul* (pl. of *asl*) is something from which another thing ‘originates’ or the ‘root’ of something. It is something upon which another thing is constructed i.e. ‘foundation’. It could also mean *masdar* (source).⁴ The literal notion of the word *asl* can be found in the Quran where Allah says:

See you not how Allah sets forth a parable? A goodly word as a goodly tree, whose **root** is firmly fixed and its branches (reach) to the sky (i.e. very high)⁵

The other leg of the term *fiqh*, literally means ‘understanding’ and ‘discernment’.⁶ In this sense, the word *fiqh* and *fahm* are synonymous. It implies deep understanding of Islam in a general way⁷. It could also mean what a prudent person is likely to conclude from obvious evidences. The literal usage is found in the Quran where it says: *So what is (the matter) with those people that they can hardly ‘understand’*

² AM Khalifah, *Tajdid Usul Al-Fiqh ‘inda Al-Doctor Hasan Al-Turabi: (Aradun wa Naqd, Sami lil Tiba’ah wa Al-Nashr, 2020)*

³ S Ali and A Abdullah and A Abdulmuhsin, *Usul A-Fiqh; Al-Muqarrar Al-Khamis* (Al-Kulliyah Al-Arabiyyah Al-Sa’udiyyah, Wazaratul Ma’arif, ND,)

⁴ Ibid

⁵ Quran 14 Verse 24: Al Quran (Tafsir & by Words) is a Quran study application with word by word analysis and translation. It shall be used to translate verses throughout the piece. #GreentechApps (<https://gtaf.org/apps/quran>)

⁶ S Ali and A Abdullah and A Abdulmuhsin, *Usul A-Fiqh; Al-Muqarrar Al-Khamis* (Al-Kulliyah Al-Arabiyyah Al-Sa’udiyyah, Wazaratul Ma’arif, ND,)

⁷ < [What Is Fiqh \(Islamic Jurisprudence\)? \(islammessage.org\)](https://www.islammessage.org/what-is-fiqh/) > accessed 23 June, 2024

any statement?⁸ Equally, the Prophet's statement also reflected the literal meaning of *fiqh* when he says :*If Allah wants to do good for somebody, he makes him **comprehend** the Religion*⁹

On the other hand, the technical term *fiqh* developed gradually with its meaning across the Islamic history.¹⁰ However, it is enough for this piece to pick the definition supplied by Shafi'i school of Islamic Legal thoughts jurists (which is also largely adopted by the Hanbali School) thus: *It is the knowledge of the *ahkām* (legal rules), pertaining to conduct, that have been derived from their specific evidences*¹¹

The above definition narrowed down the meaning of *fiqh* in the sense that the term *al-ilm* (knowledge) brings into our vision the entire field of knowledge, whatever its source or origin. However, knowledge is restricted by the use of the word *ahkām* (rules) which excludes from the definition of *fiqh* the wide understanding of *ilm* that do not pertain to rules. *Ahkām* is further narrowed down to that of *shar'ī* i.e. legal rules relating to belief (*i'tiqad*) and acts (*a'amāl*). *Fiqh*'s definition is further restricted to conduct be it (physical, of the *qalb* or speech). Therefore, the use of the word *amaliyyah* excludes from the meaning of *fiqh*, the knowledge of the *ahkam* with respect to belief. The knowledge is further confined to an acquired one perhaps by *mujtahid*, *faqih* (jurist) and *muqallid* (layman). And lastly, the term *adillah al-tafsiliyyah* (disjunctive text) excludes from the definition of *fiqh* the knowledge of the *muqallid* (layman) because the layman does not acquire his knowledge of *fiqh* directly from specific evidences in the Quran and the Sunnah as does the *mujtahid*.¹²

On the other hand, the conjunctive sense of *usul al-fiqh* is defined as the discipline imparting a knowledge of "the principles of interpretation and of legal reasoning that helps the jurist arrive at the legal rules of conduct."¹³ Furthermore, *Al-Razi* also defined *usul al-fiqh* thus:

(As an expression that includes all the paths (evidences) leading to *fiqh* when these are considered in a broad sense, and for the legal reasoning proceeding from these paths, as well as for the status (skill) of the person undertaking such reasoning)¹⁴

Lastly, *Al-Ghazali* defines *Usul Al-Fiqh* as: *An expression employed for the evidences of these legal rules and for a knowledge of the broad ways in which they reveal such rules and not by a way of specific indication for a specific rule*¹⁵

⁸ An-Nisa:78

⁹ Sahih Al-Bukhari 3116: In-Book Reference: Book 57, Hadith 25, USC-MSA web (English) Reference (Deprecated Numbering Scheme): Vol. 4, Book 53, Hadith 346 (<https://sunnah.com/search?>) accessed on 27 January 2024

¹⁰ The earlier and wider meaning of the term *fiqh* is traced by *Nyazee* in his book cited below: *Nyazee I. A. K. Islamic Jurisprudence (Usul al-Fiqh)*, Adam Publishers & Distributors, New Delhi. 18- 28

¹¹ Ibid P 20

¹² Ibid Pp. 21-25

¹³ Ibid P 40

¹⁴ Translation copied from *Nyazee supra* note 9 at 3

¹⁵ Abu Hamid Al-Ghazali, *Al-Mustasfah* (Dar Al-Kutub Al-Ilmiyyah, 1996),

Throughout these definitions given above, it is clear that *usul al-fiqh* has four major themes and functions namely;

1. Understanding the sources of Islamic law which comprises of primary (Quran, *Sunnah*, *ijma'* and *qiyas*) and secondary sources (*masalih mursala*, *istihsan* 'urf, and so forth)
2. Appreciating ways of deriving legal rules from sources such as the determination of command (*amr*) and prohibition (*nahy*), general ('*aam*) and specific (*khas*) connotations, qualified (*muqayyad*) and absolute (*mutlaq*) expressions, stated (*mantuq*) and implied (*mafhum*) connotations and so forth.
3. Exertion of effort by experts on issues arising (*ijtihad*), with their qualifications and fields of specialization. This is the point where conflict of laws (*ta'arud*) is settled, arguments on evidential preferences (*tarjih*) discussed, and legal verdicts (*fatwa*) issued.
4. Determination of legal responsibilities (*hukm shar'i*) and their various degrees which comprises of legal demands (*taklifi*), declarations (*wad'i*), the Lawgiver (*hakim*), and laws related to the acts (*mahkum fihi*) and subjects (*mahkum alaihi*).

3.0 HISTORICAL ACCOUNT OF USUL AL-FIQH

The history of *usul al-fiqh* is very important to the discussion in order to trace the reason why the discipline evolved in the first place which consequently necessitated a renewal discourse and philosophy. *Usul al-fiqh* is the science of the sources of the *Shari'ah* which was developed with the purpose of providing a set of guidelines by which to regulate *ijtihad*. As the discipline implies, there will be no pressing need of it during the time of the Prophet (SAW) because there is no need for *ijtihad* or guideline to deduct rules from the main source when the Prophet was alive to do that directly.¹⁶ Deriving rules from the sources became prevalent after demise of the Prophet when the Companions will have to employ their *ijtihad* to deduct rules from the primary sources. The methodology for deriving rules from the sources became wider during the time of the *tabiun* due to the spread of Islam across different nations. It is at the latter stage of the *tabiun's* era that shows the crystallization of schools of thoughts where both partisans of *ra'y* and the partisans of Hadith had emerged.¹⁷ As an independent discipline, it can be officially traced back to the writings of *Risalah* by Shafi'i. Shafi'i's decision to outline this discipline was informed by the controversial nature of the advocates of both partisans of *ra'y* and the partisans of Hadith. Kamali describes *Shafi'i's* emergence as an intermediary in this systemic struggle that;

...During the latter part of the first and larger part of the second century *Hijrah*, recourse to stray opinion and undisciplined *ra'y* by unqualified individuals in the guise of *ijtihad* was perceived to be threat to the integrity of the *Shari'ah* and a cause, therefore, of concern for the '*ulama'*. Shafi'i was acutely aware of the need

¹⁶ Muhammad Hashim Kamali, *Issues in the Legal Theory of Usul and Prospects for Reform*, (Islamic Research Institute, International Islamic University, 2001)

¹⁷ Al-Qurashi, *Al-Jawahir Al-Mudiyyah*, (Hajar lil Tiba'ah wal nashr wal Tawzi' 1993)

to stem the tide of unregulated *ra'y* and *ijtihad* by means of methodological guidelines designed to ensure their conformity with the letter and spirit of the *nusus*. Two of Shafi'i's distinguished predecessors, Abu Hanifah (d. 150/767) and Malik (d. 179/795) were associated respectively with the *ahl al-ra'y* and *ahl al-hadith*¹⁸

In essence, the above statements tend to get us familiar with the methodological trend of *usul al-fiqh* particularly when it stresses the fact that the science developed comprehensively through critique and reform (*tajdid*) of earlier methodologies made by a latter jurists called *Shafi'i*. It is also a fact from this little historical account that *usul al-fiqh* provides a set of guidelines at a time when *ijtihad* needs to be regulated and legal rules need proper derivation from the source. *Ijtihad* basically seeks to find solutions to new issues emerging without a legal precedent addressing it before. Therefore, the theory of *usul al-fiqh* proposes a methodology by which legal rules can be deduced from the sources of the *Shari'ah*.

4.0 DEFINITION OF *TAJDID*

It is technically noted in the above historical account that the term *tajdid* is not alien to Islamic law discourse notwithstanding that some Islamic scholars are weary and apprehensive of it. These set of scholars argued that *tajdid* should be cautiously imbibed in order to preserve the sanctity of Islamic tradition and traditionalism and that is to hold on tight to the past generational efforts (particularly the immediate three generations to the Prophet's era) who were rated best due to their closeness to the prophetic era. These traditionalist scholars believe that unless one has not been blessed with the full understanding of such classical laws yet, there is no single stone left unturned in *Shari'ah* discourse by the predecessors which so warrants the successors' reform. They are being careful of foreign submissions, surgical violence on sacred laws and influence even if traditional version and conservatism may not have all the answers. On the other hand, the traditionalists' view doesn't go down well with other set of scholars who argued that such sentiment is an underestimation and belittlement of qualified scholarship and erudition which will lead the Muslim *ummah* to stagnation (*rukud*). They believe that the term *tajdid* is narrowly understood by the traditionalists and it's not objectively applied because the true meaning and legality of *tajdid* has been far supported by the saying of the Prophet (SAW) where he said "The Prophet (saw) said: Allah will raise for this community at the end of every hundred years the one who will renew its religion for it". The Arabic word used in the hadith is *man yujaddid laha dinaha*.¹⁹ Therefore, according to the reformists, whenever the Muslim community is weak in its religious endeavor, some of its etiquettes deviating from the right path, Allah will lead the *ummah* to the right direction through *tajdid*.

It is therefore necessary to clarify these term '*tajdid*' literally and technically in order to have a clear picture and comprehension of its import in Islamic law parlance.

¹⁸Kamali M. H.

¹⁹ Sunan Abi Dawud 4291, In-Book Reference: Book 39, Hadith 1: English Translation: Book 38, Hadith 4278 (<https://sunnah.com/search?>) accessed 28 January 2024

5.0 LITERAL MEANING OF *TAJDĪD*

The origin of the word *tajdīd* is derived from the past tense '*jaddada*' which means '*qata'a*' (tr. to disconnect, sever, detach, cut up, suspend, terminate). Arabs will say '*jadadtu al-shay' wa ajudduh jiddan itha qata'athu*' (tr. I disconnected something i.e. I suspended its use). They also say '*hablun jadid 'ay' maqtu*', *milhafatun jadidah hina jaddah al-ha'iq itha qata'aha*' (tr. A clipped rope or having a new blanket scissored or sheared off by a weaver).²⁰ Secondly, *jaddada* could also connote; to renew, refurbish, modernize, rejuvenate, or rebuild. For instance, an Arab speaker will say; *jaddada al-wudu' wal 'ahd* (tr. He renewed his ablution or renewed his promise). They also say; '*amrun jadid 'ay gayr ma'hud*' (tr. A new issue arising from the old i.e. an unfamiliar one).²¹ Another interesting etymological dimension to the term is when one diacritically mark the '*jim*' letter with '*kasra*' (i.e. to be pronounced as '*al-jidd*') it could mean performing *ijtihad* (to strive or exert an effort) on something. An Arabian will say '*talib ilmin mujidd 'ay mujtahid fi tahsilihi*' (tr. A diligent student of knowledge i.e. he is industrious or hardworking in search for it). Another meaning one could discern from the word *al-jidd* is *naqid al-bilah* (tr. reversing rottenness).²² The point of all these literal extrapolations is to tell the reader that there is a seemingly close relationship and linkage of them with the technical meaning of the term *tajdīd*. For instance, if one takes *qata'a* for *tajdīd*, it will mean that *tajdīd* in something is to discontinue what people are familiar with or conservative about, regarding a particular thing, and actually takes them into another dimension different from the earlier one. Likewise, the import of the word *jidd* or *ijtihad* shows that one cannot technically achieve reformation or renewal in something not until one strives, toils and exerts effort to get it or not until a rotten situation is reversed. Finally, on this part, it is important to note that the above literal meanings of the term *tajdīd* connotes bringing out something new from the old and nothing more. In other words, the term *tajdīd* is not to create an absolutely new idea which is entirely foreign to an old version of it, rather it means refurbishing or modernizing something without necessarily deviating from its original objective which it's created for in the first place. That is why the Arabians call every day and night "*al-jadidan*" because they disappear and reappear everyday not because they are technically new as such but renewed with new things and hope that may not be there before.²³

6.0 TECHNICAL MEANING OF *TAJDĪD*

Most of the technical understanding of the term *tajdīd* are obviously found in the writings of the contemporary scholars with modernism ideology. Some of their understanding of the term shall be presented as follows:

²⁰ Ibn Al-Manzur, Madatu '*Jaddada*': *Lisan Al- 'Arab*, (Abdullahi Ali Al-Kabir (eds), Dar Al-Ma'arif); English Translation: *Mu'jam Al-Ma'any li Kulli Rasmin Ma'ana (Arabic - English)*

(<https://play.google.com/store/app/developer?Almaany.com+dictionary>) accessed on 28 January 2024

²¹ Ibid

²² Ibid

²³ Ibid

1. According to Muhammad Shams Al-Haqq: *tajdīd* is the rejuvenation of what has been obliterated in the application of Quran, and *Sunnah* and also cutting off what has surfaced in terms of heresy and unprecedented invention²⁴
2. According to Abu ‘A’laa Al-Maududi; *tajdīd* in its real sense, is a term used to mean refining Islam from a tarnished state of ignorance and polishing its face until it shines like a sun without a gloomy cloud²⁵
3. Al-Qardawi defines: *tajdīd* is a situation where by you seek to revert to what has been the case on the very day it emerges and becomes manifest wherein it reveals its pure and time-honored sense as if it is new and that would happen by consolidating its cracks, rebuilding its impairments, and mending its slits until it reverts to its closest original form²⁶
4. Mahmud Al-Tahhan said the meaning of *tajdīd* as outlined in the *sunnatic* provisions is the explanation of obliterations in the scriptural milestones while stimulating people to work with it and quashing heresy and its proponent and reverting the Muslims to the original garland of earlier Muslims²⁷.
5. According to Muhammad ‘Abid Al-Jabiri: the real and the required *tajdīd* is to find scholarly solutions to what is contemporarily posed to us regarding issues unknown to our past, finding satisfactory solutions with inherent Islamic feature which is capable of driving us forward to a way of surmounting challenges of our time and contributing towards fruitful accomplishment²⁸
6. Lastly, Al-Turabi also defines: *tajdīd* as the revitalization of the meanings of the rightful religion in the people’s hearts, then embarking upon religious realities for uplifting the commitment to rules of conduct as prescribed, and also confronting what has descended unexpectedly upon religion in terms of heresies that tends to dominate the religion regarding some of the wrong previous practices or ambiguous apologetic expressions of the past that is unfit for the present and then exert scholarly efforts to re-examine the religion in its evolutionary outfit²⁹.

Therefore, when both literal and technical definitions are carefully observed, it can be conclusively summarized that *tajdīd* is nothing but to return to the foundation or main source through some methodological tools and scholarly ways to erase what has been holding back this foundation in terms of flaws and passivism caused by human conducts and faulty assumptions, in order to revert to initial purity of purpose which is able to surmount time, place and any customary challenges. Consequently, it can also be observed that *tajdīd* is not to embark on what has no basis at all or has no foundation before now and call it novelty of thinking. Rather it is a systemic return to the rich original heritage which has been jettisoned, ignored and abandoned by the people due to some certain causes or influences which has no bearing with the pure source. These influences caused the religion to be unable to perform its expected responsibility with regards to its presentation and dealing with it in order to answer the exigencies of our time. Interestingly, this basic

²⁴ Azim Aabadi S. A. *‘Awn Al-Ma’bud* (1st ed.) (Dar Al-Kutub Al-Ilmiyyah, 1990)

²⁵ Abu A’la Al-Maududi *Mujaz Tajdid Al-Din*, (Dar Al-Shihab 1988)

²⁶ Al-Qardawi M. Y. *Min Ajli Sahwatīn Rashida* 1st ed. (Muassasah al-Risalah, 1998)

²⁷ Al-Tahhan M. *Maḥmūm Al-Tajdid* 2 ed. (Maktabah Al-Turath, 1986)

²⁸ Al-Jabiri M. A. *Wujhatu Nazar*, (Markaz Dirasatul Wahdah Al-‘Arabiyyah, 1992)

²⁹ Al-Turabi H. *Tajdid Al-Fikr Al-Islami* 1 ed. (Qastantiniyyah, Dar Al-Ba’ath, 1990)

misunderstanding of *tajdīd* is cleared by Qardawi by citing example with someone trying to renovate a building, it is not necessary for him to demolish it completely all in the name of reform. Rather its main form, nature and features shall be maintained while renovating the dismantling areas, beautifying its access point and facilitating other necessary aspect of dilapidations.³⁰ Furthermore, Muhammad Murah argued that what needs renewal shall comprise of the following components:

- a. It must have been an already established occurrence and reality, which people have previous knowledge of it and are familiar with.
- b. It is affected or influenced unexpectedly by conversion, distortion and indolence.
- c. It should be returned back to its pure and original understanding.
- d. It should be engaged with scholarly efficiency, persistence and devotion.³¹

Therefore, looking at the seriousness and delicate exercise of *tajdīd*, it is not meant for every tom, dick and harry, and whoever wants to engage in it must possess some certain qualities which is close to the qualities of the Prophets and prophet hood, having an intellectual and sincere mind, with powerful vision, sense of judgment and impartial conception, having capability to think without being bullied, endowed with courage and guts to compete in this aberrant time, and having capacity and viable competence to lead discussions and do *ijtihad* with his mind at home with the Islamic tenets and tenacities.³² It is also important not to confer this duty on a single person and personalities but to make it a communal duty involving more than one person in a particular century in so far they are *mujtahidun* living on evidence, affirmers of the religion, with ability to return uncertainties (*mutashabihat*) back to certainties (*muhkamat*), having the capacity to extract facts from detailed particulars, and from stated principles (*mantuq*) to the implicative ones (*mafhum*).³³

7.0 VARIOUS APPROACHES TO TAJDĪD (RENEWAL OR REFORM) OF USUL AL-FIQH

Generally, there are two major categories calling for renewal of this discipline. However, if one intends to break it down extensively, there are three major categories calling for the renewal. The two general categories approach renewal basically through; 1) The form or structure of *usul al-fiqh* (*shakl usul al-fiqh*); 2) The content or substance of *usul al-fiqh* (*madmun usul al-fiqh*). The extensive category, on the other hand, revolves around the content only. The above approach to the renewal of content is further divided into two namely: partly renewal of some aspect of the discipline (*madmun mawadi'u usuliyyah makhsusah*) and holistic renewal of the contents of the discipline (*madmun usulil fiqh umuman*). The general and specific categories shall be discussed accordingly:

7.1 FIRST APPROACH: RENEWING THE FORM OR STRUCTURE OF USUL AL-FIQH (TAJDĪD SHAKL USUL AL-FIQH)

³⁰Al-Qardawi M. Y. *supra* note 28 at 8

³¹Murah M. *Al-Muslim Al-Mu'asir fi Islamiyyatil Ma'arifah* (Masters Dissertation, Amir AbdulQadir University, Qastantiniyyah, 1995) 13-14

³²Al-Mawdudi, note 27 at 8

³³Al-Manawi, *Fayd Al-Qodir* (.Dar Al-Fikr, 1972)

This approach calls for a random overhaul and modification of the general structure of *usul al-fiqh* discipline, particularly against how the previous *usuli* experts presented it, in such a way that the reform will imbibe a new pattern or arrangement. The proponents of this approach try to refurbish the core shape or form of *usul al-fiqh* discipline in a simple format without paying attention to the overhaul and modification of the contents. Examples of this methodology shall be seen in some of the following writings:

1. Sheikh Muhammad Al-Khudri: In his *usul al-fiqh* book, he took a new dimension in presenting the forms of *usul al-fiqh* without touching the content. Although he relied on previous experts on *usul* but added topics on objectives of Sharia (*ilmul maqasid*) to the earlier form. He emphasized his reliance on works like *usul Al-Bazdawi*, *Shuruh Ibn Al-Hajib*, *Tanqih Al-Usul of Qadi Ubaidullah*, and *Sharh Al-Isnawi ala Al-Minhaj lil Baydawi*.³⁴
2. Al-Ustaz Abdul Wahab Khallaf: adopted in his book '*Ilm Usul Al-Fiqh*' a new, effective and simple method of appreciating the subject matters of *usul al-fiqh* without amending the substance. Particularly, he contributed to the field by doing a comparative study between Islamic law and statutory laws (*usul al-qanun al-wad'i*). He argued that it is very necessary in our modern time to comparatively analyse our various enactments with the Islamic law in order to come up with a viable sense of application in practice.³⁵ Muhammad Abu Zahra's approach is very much the same with *Khallaf's* as it also shows in his book a simple and apt way of approaching the subject matter of *usul al-fiqh* differently but without changing its substance.³⁶
3. Dr. Jamaluddeen 'Atiyyah: tries to innovate in the form and structure of this discipline in order to fit the modern trend of presentation particularly in his categorization of sources of law into: (a) transmitted (*naql*); such as *kitab*, *sunnah* and *shar' man qablana*, (b) authorities (*ulul amr*); such as *ijma'* and *ijtihad* (c) situational facts and considerations (*awda' al-qa'imah*); such as *urf* and *istihab*. He brought many other innovations to the structural arrangement of *usul al-fiqh* which this piece cannot present due to space and time.³⁷
4. Dr. Muhammad Zakiyy AbdulBarr: intends to simplify the previous structural ambiguities and difficulties when he tries to put it in form of statutory provisions and each provision with sub sections and classifications that will entice a modern reader to grab it quickly and effectively.³⁸

These and many more, are some of the samples outlined for the modification of the formation and structural arrangement of *usul al-fiqh* without actually altering the main substance. The proponents thought of this approach because they notice difficulty and unwarranted technicalities in the earlier structure of the discipline and hence their call for structural renewal.

³⁴ Al-Khudri M. *Tarikh Al-Tashri' Al-Islami* (Dar Al-Kutub Al-'Ilmiyyah, 1985)

³⁵ Abdul Wahab Khallaf, *Ilm Usul Fiqh* 1 ed. (Al-Zahra'u, 1990)

³⁶ Abu Zahrah, *Usul Fiqh*, Al-Qohirah, (Dar Al-Fikr Al-'Arabi, ND)

³⁷ 'Atiyyah J. *Al-Nazariyyah Al-'Ammah li Al-Shari'ah* 1 ed. (Matba'atul Madina, 1988)

³⁸ AbdulBarr M. Z., *Taqnin Usul Al-Fiqh* 1 ed. (Dar Al-Turath, 1989)

7.2 SECOND APPROACH: PARTLY RENEWAL OF SOME ASPECTS (TAJDIÐ FI MADMUM MAWADI' USULIYYAH MAKHSUSAH)

This approach calls for the reformation of some of the subject matters of *usul al-fiqh* in itself which are used in deriving legal rules pertaining to the conduct of the subjects from their specific evidences. According to the proponents of this approach, the main content of *usul al-fiqh* needs to be transformed and not about the structural arrangement alone as proposed by the 1st proponents' approach. However, it is pointed out earlier that the content modification is further divided into two; renewal affecting some part of this science and renewal affecting the science holistically. The partly renewal approach seeks to specialize on transforming the understanding of a particular subject matter affecting the science. Some of the proponents are sampled as follows:

1. Sheikh Abul Mun'im Al-Namr: He emphasizes the need for renewal on the aspect of “*Sunnah*” as one of the sources of *Shariah*. He argued, in his book, that *Sunnah* should be classified into *tashri'iyyah* (legislative) and *gayr tashri'iyyah* (non-legislative). He also discussed the imperativeness of abiding by the Prophet's *ijtihad* on issues. He tried to answer some questions posed in his book that; is it permissible to do *ijtihad* on legal issues that has been settled by the Prophet's *ijtihad* and intervention? What is the legality of re-addressing the Prophetic intervention on natural or customary issues which are substantially influenced by human natural side of the Prophet? All these discussions are tilted towards reforming the ways of deducting evidences from this source.³⁹ This approach is seriously disputed and argued among the scholars on whether to work with his method or not.
2. Dr. Yusuf Al-Qardawi and Sheikh Muhammad Al-Ghazali: Qardawi on the one hand, shed more light on how to deal with *Sunnah* as a source of Islamic law especially the agreed upon reports. He contended that *Sunnah* needs to be treated with an in-depth comprehension and comportment. He argued further that contemporary Muslims need to appreciate the inclusiveness, integration, moderate and the equilibrium approach (otherwise known as *wasatiyyah*) of the Prophet to issues. These attributes and understanding of this source of law will go a long way in tackling the contemporary challenges when one tends to apply. This approach is largely accepted by other scholars as it goes beyond authenticating reports from the Prophet through the science of men (*ilm rijal*) but goes further to add up to this by looking into the inherent nature of the Prophet SAW himself when tackling issues.⁴⁰ Muhammad Al-Ghazali was the first to point out what Qardawi has proposed in terms of dealing with the *Sunnah* appropriately. He discusses *Sunnah* between hadith and *fiqh* scholars and rejuvenated some jettisoned methodologies in authenticating and applying hadith accordingly.⁴¹
3. Dr. Ahmad Hamd: took on establishing evidence (*hujiyyah*) with consensus (*ijma'*). He argued that can it be assumed that the study of *ijma'* is beneficial when observed from the scholarly perspective wherein decisions on legal rules, establishment of

³⁹ Al-Namr A. M. *Al-Sunnah wa Al-Tashri'* (Dar Al-Kutub, ND)

⁴⁰ Al-Qardawi M. Y. *Kaifa Nata'amal Ma'a Sunnah* (Dar Al-Kutub, 1991)

⁴¹ Jum'ah A. *Qadiyyatu Tajdid Usul Al-Fiqh, Hawliyya Kuliyya Al-Dirasah Al-islamiyya*, (Matba'ah Hussein Al-Islamiyyah, 1992)

laws and enactments are permanently adopted and taken as a source of Islamic law while it is applied just like its earlier application in the time of the Companions (RA). Or rather it will be merely studied for theoretical purposes and excluding its practical application. So it is based on this challenge that Dr. Ahmad calls for renewal of the understanding of *ijma'* in order to suit our modern challenges. He introduced, amidst other innovative discussions, the classification of *ijma'* into permanent and temporary *ijma'*, general and specific, compelling and optional *ijma'*. He later recommended that for us to achieve the practical application of *ijma'* there is need to look into political perspective of the affected community, differences in ideological and psychological makeup of the jurists involved and lastly to look at the Muslim minorities.⁴²

4. Dr. Taha AbdulRahman: the major reform recommended by Dr. Taha is on the aspect of public interest (*maslaha*) wherein he calls for new classifications of *maslaha* in order to substitute the former classifications that are well known (i.e. *daruriyyah* (necessities), *hajiyyah* (needs) and *tahsiniyyah* (embellishments) or *Aammah* (universal purposes) and *khassah* (specific purposes) or *mu'tabarah* (taken Islamic features into account), *mulgat* (exclusion from consideration), *mursalah* (textually undefined)). He argued that one has to consider the following 3 factors on *masalaha*: confining the varieties of *maslaha* to the notorious five, categorizing these varieties under ethical values and injecting ethical deeds into every *masalaha*. Based on these factors, *masalaha* is classified differently from what was known before as follows: 1. *Manafi'* (benefits) and *madarr* (harm) values otherwise known as *masalih al-hayawiyyah* (essential *masalih*). This covers values affecting life, health, progeny and property. 2. *Al-Husn* (good) and *Al-Qubh* (repulsive) values otherwise known as *masalih al-'aqliyyah* (rational *masalih*). An example of this is peace and freedom, civility and dialogue. 3. *Salah* (righteous) and *fasad* (corruption) otherwise known as *masalih ukhrawiyyah* (hereafter *masalih*). This covers issues on *ihsan*, mercy, affection, piety and modesty. These new classifications, according to Dr. Taha, tries to achieve better objectives in terms of multitude of values and psychical values.⁴³
5. Dr. Ahmad Hijazi Al-Saqa: in his book, tries to contend the sayings of some scholars that there are rules in the Quran that were abrogated and its application suspended. His main objectives on renewal focused on:
 - a. Establishing that Quran has only abrogated rules related to *Taorat*;
 - b. Abrogating earlier religious laws for the latter is permissible rationally, transitionally and realistically.
 - c. The purpose of revealing the Quran is to mitigate hardships on the subjects with rules pertaining to conduct;
 - d. Quranic verses are coherent (*muhkamah*) and there is no abrogation in them that will warrant applying some and suspending the other;
 - e. Dr. Ahmad finally argued that; except we are saying there is a new Quran in circulation other than the current Quran that was revealed through Angel *Jibril* to

⁴² Hamd A. *Al-Ijma' Baina Al-Nazariyyah wa Al-Tatbiq* 1 ed. (Dar Al-Qalam, 1982)

⁴³ AbdulRahman T. *Tajdid Al-Manhaj fi Taqwim Al-Turath*, (Al-Markaz Al-Thaqafy Al-'Arabi,ND)

the Prophet SAW, discussions on *naskh* or suspension of some part of its application should not have begun in the first place.

Looking at these five issues raised by Dr. Ahmad, one would notice that he is recommending an overhaul or modification of the doctrine *naskh* in *usul al-fiqh*. Unlike the earlier scholars who maintained that there is *naskh* in the Quran, he is suggesting an overhaul and although he is not the first person to dispute the doctrine of abrogation but rather, he has fortified the discussion better.⁴⁴

7.3 THIRD APPROACH: HOLISTIC RENEWAL OF THE CONTENT (TAJDIÐ FI MADMUM ILM USUL AL-FIQH ‘UMUMAN)

There are some contemporary scholars that argued for a total overhaul of the content of the *usul al-fiqh* science or at least revising its subject matters holistically while substituting it with other innovative issues, rules and discussions different from how the earlier scholars arranged and formalized it. Some of the proponents of this approach include:

1. *Majallah Muslim Al-Mu’asir* (The Contemporary Muslim Periodical Journal “Under the Editorship of Dr. Jamal Al-Din ‘Atiyyah): in one of their journal reviews (known as *Majallatul Ijtihad*), published in 1974, they recommended a complete overhaul of subjects like *fiqh* and *usul al-fiqh*. In fact, they made the point that for their committee personally, they have started putting up a write up with the name ‘*Al-Kitabah fi TajdiÐ Usul Al- Fiqh*’ to buttress their point of recommendation.⁴⁵
2. Abdullah Al-Siddiq Al-Gumari: in his book, he tries to bring up certain novelty in *usul al-fiqh* which has not been discussed before. Discussion such as legal signification of conjunction (*dilalat al-Iqtiran*) in primary sources of *Shari’ah* is rejuvenated by Al-Gumari to replace or at least transform the formally known methodologies of establishing *hukm*. Although, *dilalatul iqtiran* is not entirely a new phenomenon in *usul al-fiqh* discussion, but it was jettisoned by the previous scholars because it is not conclusive evidence in itself for establishing *hukm*, according to them. However, it was reconsidered and categorized by Al-Gumari into two; a category that is not agreed upon unanimously and those are conducts conjugated with *waw al-‘atf* (a particle of conjunction “and”) in order to pair or associate the mentioned conducts together in legality, as it is just indicating a general obligation on the surface and not affecting its *hukm*. There is another category of a legal signification of conjunction which is conclusive evidence in a *hukm*. For instance, a situation whereby demand is made for prohibiting two things in a single sentence linked together with a connective particle in between (e.g. prohibiting any intoxicants “and” nonchalance) is conclusive evidence for establishing *hukm* because both acts fall under a specific form of *nahy* linking them together. Another reform recommended is based on abrogation i.e. what should be abrogated in the *ahkam* and what should not. *Al-Gumari* argued that *wajib*, haram and *mubah* can be abrogated, and that *mandub* and *makruh* cannot. He also mentioned that something may be haram and *mubah* twice or many times, e.g. *nikah al-mut’ah*. However, if *wajib* is abrogated, it will never revert to its status quo again.

⁴⁴ Al-Saqa A. H. *La Nusukha fil Quran* 1 ed. (Dar Al-Fikr Al-‘Arabi, 1978)

⁴⁵ ‘Atiyyah J. and Al-Zuhaily W., *Tajdid Al-Fiqh Al-Islami* 1 ed. (Dar Al-Fikr Al-Mu’asir, 2002)

He also faulted the unanimous position of *usuli* scholars regarding the permissibility of abrogating recitation (*naskh al-tilawah*) and argued that it's not permissible and in fact impossible rationally speaking.⁴⁶

3. Dr. Muhammad Hussain Al-Jizani: his dimension towards reform can be categorized into three namely:
 - a. Reforming *usul al-fiqh* science holistically;
 - b. Appraising and reforming the well-known *usul al-fiqh* literatures;
 - c. Bringing out the impacts of *usul al-fiqh* for *ahl sunnah wal jama'ah*. The scope of the first category covers the historical review, its development, and stages of synthesizing and compiling books on it. It establishes the basic rules and religious standards upon which Islamic theoretical issues (*masa'il usuliyyah*) depend. It also pays attention to the consolidation of linguistic principles (*qawaid al-usuliyyah*) with scriptural references, transmitted narrations, authentic rational evidences, linguistic evidences and with the support of *maqasid shari'ah* mechanisms. It further reviewed, refined and scrap off unbeneficial discussions in *qawaid usuliyyah*. Scope of the second category covers two issues; the biography, methodology of the author himself on *tajdid* and his critique and criticisms on earlier *usul al-fiqh* literatures and observations on them in terms of errors made. Scope of the third category cover three issues; he calls for further research and examination of books and theses on *usul al-fiqh* science and then reintroducing its impact, reconstructing its structure and subject matters and fine-tuning its knowledge.⁴⁷
4. Dr. Muhammad Dasuqi argues that if *usul fiqh* hope to withstand the test of time and intends to transcend from theory to practice, it has to at least modify and not to demolish its traditionally inherited ways or methods of deducting legal rules. He also cited several examples of what needs to be rejuvenated out of which the following are salient: repealing what is not part of *usul sciences (ilmul usul)*; researching, perfecting and centralizing our discussions more on *maqasid shari'ah*; renewing some basic understanding of evidential sources; synergizing the fundamentals (*qawaid*) with offshoots (*far'*) when and where ever possible. Although some of his recommendations may need further clarification but there is no doubt that he is recommending a holistic renewal of the content of *usul science*.⁴⁸
5. Dr. Muhammad 'Abid Al-Jabiri, Al-Shatibi and Mohammad Hashim Kamali: they might have argued in a different way but their recommendation is virtually connected. The crux of their recommendation borders on allowing *ijtihad* and *maqasid* oriented approach to run their full course in this challenging time. *Kamali* hits the point succinctly that:

The rich legacy of the *usul* methodology can be utilized in a new framework that opens avenues for *ijtihad* and can integrate and unify the *Shari'ah* and statutory legislation within one and the same process. The new *maqasid*-oriented approach to *ijtihad* that is proposed here seeks to open up the scope of *ijtihad* by making the *maqasid* an extension of the theory of *ijtihad*. Since the *maqasid* is

⁴⁶ Jum'ah A. note 43 a

⁴⁷ Al-Jizani M. H. *Ma'alim Usul Al-Fiqh 'inda Ahli Sunnah wal Jama'a* 2 ed. (Dar Ibn Al-Jawzi, Al-Damam, 1998)

⁴⁸ Al-Dasuqi M. *Nahwa Manhajun Jadid li Dirasati Ilm Usul Al-Fiqh* (Dar Al-Thaqafah, 1987)

concerned basically with values and is relatively unencumbered by technicalities, it can help to make the legal theory pragmatic and relevant to the concerns of modern society.⁴⁹

Furthermore, *Kamali* is classified under this heading of a holistic approach to renewal because he also recommended at some point that

...Thus. We propose to retain the basic tools and methods of *usul al-fiqh*, especially with reference to *ijtihad* and *ijma'*, and nearly all of the sub-varieties of *ijtihad*, but propose in the meantime to discard formalism and unwarranted preoccupation with the technicalities of the conventional theory.⁵⁰

The above assertion is quiet the same with some technical views of Shatibi and Al-Jabiri. They believe that most of the understanding of the primary and secondary sources must be reformed and rejuvenated in order not to lead to the narrow application of *ijtihad* which will eventually lead to the misnomer in the contemporary period.⁵¹

8.0 RECOMMENDATIONS AND CONCLUSION

Flowing from the forgoing discourse, this paper recommends as follows:

1. A scholarly dialogue which encourages open discussion among scholars to address contemporary issues and challenges.
2. *Ijthād* (independent reasoning) should be revived and encouraged. This will aid further interpretation of legal texts to address emerging and contemporary trends.
3. Contextualization should be adopted. Experts should consider the historical and cultural contexts of Islamic law and its application in diverse and multifaceted societies.
4. Allowing flexibility and adaptability in legal interpretations to address evolving societal needs

Usul al-fiqh is a discipline that was established by Muslim scholars in order to precisely determine the genealogy of inferences, derivations and clarifying the right phase for it and giving every new event its proper interpretation in the *ahkam*. However, such an assignment should be distant from prejudice and selfish inclinations. It is also a basic fact that the term *tajdīd* does not mean a total demolition of the classical understanding of Islamic legal theory but rather means taking a turn back to the original understanding of it, particularly, the forgotten, suspended or unmindful areas of such law. This lackadaisical attitude consequently led to the crippling of its activeness in this trying time and imputing to the religion what does not belong to it. Those approaching renewal from the angle of a structural adjustment of *usul al-fiqh* have confirmed such assertion as to strict modification of classical understanding of the law and not its total demolition. While those calling for the content renewal, be it partly or holistic, also confirmed the fact that we cannot completely run away from the classical views but rather improve on some of them to suit our current and peculiar challenges as suggested by some reformists especially the most insightful and clairvoyant ones among them. By

⁴⁹ Kamali M. H.

⁵⁰ Ibid

⁵¹ Al-Jabiri M. A., *Wujhatu Nazar*, (Markaz Dirasat Al-Wahdah Al-Arabiyyah, 1992)

following the above recommendations, reform efforts can foster a more adaptive, inclusive and just Islamic legal system that addresses the needs of modern Muslim societies since Shari'ah suits all ages.