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What Is Practised: Fundamentals And Applications - Selected Models

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Abstract:

This research aims to shed light on one of the practical aspects of jurisprudence in the Maliki school in the Islamic West, commonly referred to as "what is practiced" (ما جرى به العمل). It is also known as the jurisprudence of current practice and operational jurisprudence. In this school, it has become customary to prefer the opinion that is practised over others, even if these opinions are known or sound, provided that the necessary conditions are met, in order to maintain the stability of rulings among the public. Thus, this research provides a foundation for this principle, accompanied by practical examples that demonstrate its effectiveness in addressing contemporary issues. The research concludes that what is practiced is a type of purposive reasoning that reinforces established rules that combine textual sources with attention to their underlying spirit.

Keywords: What is practised, current practice, judiciary, weak opinion.

1. Introduction:

"What is practised"(ما جرى العمل به) is a prominent manifestation of the doctrinal ijtihad in which the Maliki scholars of the Maghreb excelled. The term "Maliki of the Maghreb" encompasses jurists from North Africa and Al-Andalus; for example, Al-Baji is considered a Maghrebi, although he was Andalusian, and Al-Wansharisi is also considered a Maghrebi, although he was from Algeria. They established this principle and derived rulings (nawazil) from it in order to ensure the stability of legal rulings and to reduce the confusion caused by conflicting fatwas within the same region. During their time, legal rulings achieved an unprecedented level of stability and consistency.

A review of later works on judicial rulings, fatwas and contemporary issues reveals a remarkable emphasis on this principle (Rimili, 2016, 581). Its implementation dates back to the fourth century AH (Hajjawi, 1995, 2/464). The first to clearly establish it was Ahmad al-Hilali in his book *Nur al-Basar fi Sharh Khutbat al-Mukhtasar*, and his ideas were organised by the poet al-Ghalawi in his poem "Bouthliyah" (Al-Asri, 1996, 12). It gained widespread recognition in the fifth century (Raisouni, 1430 AH, 24-27), initially limited to transactional matters before expanding to all areas of jurisprudence, leading to a continuation of scholarly works thereafter (Al-Jidi, 1982, 344).

The importance of this topic is that it highlights a fundamental principle of the Maliki school that is often overlooked, despite its long-standing contribution to the enrichment of fatwas and jurisprudence. It can also provide contemporary solutions, as it is fundamentally concerned with achieving benefit and preventing harm. So the core question is: To what extent can what is practised contribute to solving people's problems in terms of fatwa and justice? This raises further questions, the most important of which are: What are the criteria for adopting what is practised? What regulates this process? Consequently, this research aims to establish the principle and apply it through selected examples that demonstrate its impact and effectiveness. It is based on a method of incomplete inductive analysis, tracing the scientific material in its historical and recent contexts, as well as on an analytical approach, particularly in clarifying the practical aspect. In order to achieve this, the discussion focuses on the following essential elements, while maintaining brevity where necessary.

2. The concept of what is practised:

2.1 Definition of what is practised:

"What is practiced" is a theory that emerged from the Maliki judges and muftis as a documented judicial approach that represents an ijtihad in the rulings stipulated in the school's legal texts. This approach may lead them to deviate from established texts or prevailing opinions in order to fulfil the objectives of Islamic law, particularly the welfare of the people. Thus, judicial practice may differ in certain details from what is prescribed in the jurisprudential books (Ben Ashour, 1982, 73).

Scholars, both ancient and modern, have defined its limits in different ways, with some restricting it to the actions of judges and others extending it to all jurists. Abu al-Shata al-Sanhaji limited it to the rulings of judges and defined it as "the ruling of the judges" (Abu al-Shata, 2008, 2/396). Omar al-Jidi clarified this by stating: "Judicial decisions and their consensus do not mean that everything decided by a judge is what is practised" (Al-Jidi, 342). Similarly, Abdul Kabir al-Madghari stated: "Judges may rule on a contemporary issue by following a weak opinion that contradicts the known and preferred views, driven by a specific necessity, with judicial stability and practice" (Al-Madghari, 1996, 115). This was also referred to by Abdullah bin Bayyah, who stated: "What is meant by what is practised is what the judges have acted and ruled on, so it is included in what is practised" (Bin Bayyah, 115).

Some scholars have extended the concept of what is practised to include actions beyond those of judges (Murabitin, 2022, 179). Imam al-Hajjawi argued that "the adoption of a weak or unusual opinion in contrast to the preferred or known opinions is valid for reasons of necessity, custom or other grounds" (Hajjawi, 2/464). This view is in line with Abdul Salam al-Asri who stated: "If one of the judges rules or one of the muftis gives a fatwa based on one of the opinions of the scholars of the school, even if it is weak or neglected, it is because that judge or mufti chose that opinion for a specific reason, taking into account the circumstances of the case and the conditions of the litigants and those seeking fatwas, which relate to their customs and traditions" (Al-Asri, 1996 p.7

He elaborated on the definition, specifying those to whom it applies, namely judges and muftis (Murabitin, 179), and illustrated some of its justifications, such as custom and tradition. A similar definition was given by Abdullah bin Bayyah: "The acceptance of a weak opinion in justice or a fatwa from a trustworthy scholar at a certain time and place in order to achieve a benefit or avert harm, which may be in accordance with custom or the opinion of those in authority" (Bin Bayyah, 114).

From the definitions given, we can deduce the following:

- The essence of practice is a judicial or legal decision that deviates from the preferred or known view within the school.

- It is supported by justifications such as custom or necessity.

- Continuity and stability in the application of the decision are required for it to serve as a precedent (Murabitin, 179).

Finally, we conclude that the application of what is practised is essentially based on the premise that the mufti or judge recognises that an issue is debated between two opinions within the school: a known or preferred opinion and a weak, unusual or neglected one. It is established that issuing a fatwa based on a weak or unusual jurisprudence is not permitted by consensus, unless there is a compelling justification (Al-Hilali, 2007, 134). However, jurists may find that adhering to the known or preferred opinion would cause harm or fail to achieve any benefit. Therefore, they resort to ruling on the basis of the weak or unusual opinion, justifying their deviation by referring to the general principles and objectives of Islamic law (Al-Madghari, 26-27). Subsequently, judges and muftis may agree to issue fatwas based on this reasoning as long as the justification for deviating from the preferred opinion remains valid. This continuity in rulings gives the decision the status of precedent and obligation, since "what is practised, rather than what is known, is preferred in application and is not neglected" (Al-Hilali, 134).).

2.2 What is Practiced as a Model of Purposive Ijtihad:

"What is practiced" serves as a principle by which the application of textual sources is emphasised without neglecting their underlying spirit, which is aimed at achieving benefits and averting harms. The rationale for deviating from the preferred or known opinion to another is always linked to the following considerations:

- Public interest (Maslaha): The preference arising from the consideration of public interest requires a qualified person to make such judgements. This is because consideration of the public interest is typically associated with the prevention of harm; the two are not analogous to custom and tradition, as they require mastery of the underlying principles. Not every perceived interest is considered valid in the eyes of Islamic law. If the realisation of a public interest coincides with a non-preferred opinion, it is likely that the proponent of the known opinion, had he been aware of the changed circumstances, would have accepted the alternative view (Jwan, 33).

- Blocking the Means (Sadd al-Dhara'i): This refers to the prevention of harm (Al-Hilali, 85) and aims to avoid confusion for those who follow religious rulings by closing the door on conflicting fatwas and disputes in matters of faith (Al-Jidi, 363-366). It also seeks to minimise the disorder and confusion among the general public caused by different fatwas (Bay, 2011, 560). Al-Wansharisi states: "In any case where the scholars of the school have two opinions, it is preferable to adhere to one of them, even if it is the less favoured opinion, in order to avoid confusion or the risk of following different paths, as deviating from it leads to disorder among the public and opens the door to disputes" (Al-Wansharisi, 1981, 1/322).

- Considering the necessity: In the Maliki school, it is stated that needs can assume the status of necessities (Hajjawi, 2/466). This principle seeks to facilitate and alleviate hardship, especially when the need is well established and clear (Al-Shatibi, 1/520, 3/198). The practice continues until the need is removed, at which point a return to the previous position is justified (Yas'id Sha'ib, Badash Boubakr, 394).

The concept of what is practised often leans towards this interpretation and serves as one of its justifications, provided that its guidelines are taken into account (Muwafiq, 2015, 63).

- Custom: This is one of the most important foundations on which the principle of practice is built. The texts of later scholars of the school consistently indicate that custom is an important factor in determining preference. Two key factors that change people's customs and traditions are the decay of time and the corruption of moral integrity, as well as the scarcity of goodness (Hajjawi, 4/300). In addition, the emergence of new systems - social, economic and legal - often requires changes that fulfil the objectives of Islamic law (Yas'id, Badash, 2022, 392).

2.3 Guidelines for Ijtihad according to what is practised:

- Qualities of the One Who Applies the Evidence: The application of what is practised requires a broad understanding of the sources of evidence, areas of consensus, areas of disagreement and the foundations of deduction. A comprehensive understanding of the texts of the school, its narrations, opinions, and the ijtihad of those associated with it are essential qualities found only in those to whom God has granted the rank of ijtihad. Therefore, Al-Shatibi stated: "The consideration of weak opinions or others is a matter for the jurists who engage in ijtihad" (Al-Shatibi, 4/73).

Thus, the one who possesses the qualities of a jurist is capable of distinguishing rulings. The person qualified to apply what is practised must be aware of the areas of consensus, agreement and disagreement (Al-Shatibi, 4/73) as well as the objectives of Islamic law. There may be a strong evidence prohibiting a particular action alongside a weaker one, and acting on the stronger evidence may impose hardship on the obligated individual without achieving the intended benefit. Conversely, if the weaker evidence is implemented, the benefit may be realised. In such cases, the jurist may opt for the weaker evidence if the supporting circumstances outweigh the strength of the stronger evidence, making the weaker opinion more favourable (Muwafiq, 63).

Therefore, it is required that the individual who applies what is practised be knowledgeable about the affairs of his people (Al-Jidi, 149) and familiar with their customs and traditions (Al-Hilali, 137). They must have legal skills and a nuanced understanding so that as their circumstances change and their customs evolve, the ruling will also change according to its underlying justification (Al-Hilali, 137; Yas'id Sha'ib, Badash Boubakr, 396).

Scholars have debated whether the determination of what is practised requires the testimony of a single scholar or judge, or whether it can be confirmed by the testimony of trustworthy witnesses based on different opinions (Al-Asri, 153). It is recognised that the strict determination of what is practised is a precaution for the religion of God and a countermeasure against faulty imitation (Al-Raisouni, 31). The agreed scope of this practice must be substantiated in a way that strengthens its credibility, as it stands in contrast to the known or preferred opinions.

It follows that they have established the need for a sound transmission that conveys certainty. Whenever there is doubt about its authenticity, one should not abandon the issuance of fatwas based on the known or preferred opinion in favour of the weak or unusual one. This is because adherence to what is practised is a matter of transmission on which a legal ruling is based, and therefore it must be established by reliable evidence (Al-Jidi, 360).

Characteristics of the evidence for what is practised:

The shift from the preferred opinion to the weaker one must be justified. Accordingly, they have established:

1. Establishment of the practice: The practice must be confirmed to be valid according to the chosen opinion (Abu al-Shata, 337).

2. Knowledge of its place: It must be understood whether this practice is general or specific to certain regions. If the place or time of the practice is unknown, it cannot be applied to the intended context because places and times have their own peculiarities (Al-Hilali, 132).

3. Understanding the reason for the deviation: It must be clear why they deviated from the known opinion to its opposite, focusing on the prevailing benefit, accepted custom or means of prevention. It is essential that this practice is in accordance with the laws of Islamic law, even if it is unusual, and this can only be the case if it falls under an established legal principle (Jwan, 109).

2.4 Characteristics of the Principle:

The jurisprudence based on what is practised is characterised by features that have contributed significantly to the development of the jurisprudence of current practice (fiqh al-majariyat). The most important characteristics include:

- Realism: This allows for immediate responses to emerging issues in society as it relates to matters that have actually occurred (Haji, 1999, 55). It introduces a form of ijtihad that addresses the challenges facing society. This realistic approach clarifies the objectives of this

jurisprudence. Although fatwas and judicial rulings may be influenced by temporal factors, they are still based on ancient jurisprudential texts and take into account the extent to which they achieve the goals of legal implementation, thereby establishing a truly practical jurisprudence.

- Flexibility: This characteristic serves as a boundary between rigidity, which can lead to stagnation, and dynamism, which can push things beyond their limits. By adhering to the preferred and known opinions without change or renewal, flexibility mitigates the risks of doctrinal rigidity. The application of necessity, the consideration of custom and the pursuit of the public interest allow for the smooth implementation of decisions (Benani, 2023).

By embodying current jurisprudence, the Maliki scholars of the Maghreb affirmed the ability to accommodate diverse viewpoints within the school, resulting in a rich body of ijtihad that kept pace with new developments. This opened up new horizons for the followers of the school. As a culmination of these efforts, the school's theorists established an operational methodology based on the principles and general foundations of Islamic law (Al-Shuqouri, 2004, 162). They demonstrated that the jurisprudence of current practice has unique subjective and objective characteristics that give it remarkable flexibility. This flexibility allowed the school to flourish and continue in a period marked by stagnation and closure (Benani, 2023).

- Addressing Emerging Issues: The reliance of the Maliki school in the Maghreb on the principles of Imam Malik - particularly the public interest (mursala maslaha) and the blocking of means (sadd al-dhara'i) - has been crucial in defining what is practised. This foundation has enabled jurists to respond to various contemporary issues, contributing to a rich and evolving body of jurisprudential knowledge. This truth is supported by the compilation of case law texts that have accompanied the development of current jurisprudence, including notable works such as:

- The Comprehensive Guide to Issues of Rulings and Jurisprudence by Ibn Batal al-Batliyousi (d. 402 AH)

- The Case Studies of Ibn Bushtayr by Ahmad ibn Said al-Lakhmi (d. 516 AH)

- The Hidden Pearls in the Case Studies of Mazunah by Abu Zakariya (d. 883 AH)

- The Beacon of Guidance in the Answers to the Questions of the People of Fas by Burhan al-Din al-Kurani (d. 1101 AH)

These works presented Maliki ijtihad in fatwa and judicial matters and illustrated the methodology for dealing with temporal and spatial conditions within the school (Benani, 2023). They facilitated the accommodation of many contemporary issues that were difficult to reconcile with the preferred and known opinions, ultimately enabling a form of ijtihad that prevented harm and promoted benefit.

- Local character: A prominent feature of current jurisprudence is that it does not float in the abstract, but is defined by specific places, times and issues based on the events that underlie it. This is clearly reflected in the titles of books that refer to issues in specific cities, such as The Practices of Fas and The Practices of Qurtuba. This suggests that local characteristics dominate

these case studies. As a result, the fatwas of current practices differ from those of previous imams due to changes in place and time. The fatwas and rulings of current practices are directly related to the realities of people's lives, which increases their acceptance (Al-Rafi, 2004, 137).

3. Practical Models:

This section will discuss some selected models based on the reason for preference, considering two aspects. The first aspect is the preference given to custom, particularly as it relates to changes in rulings due to the influence of time and place. The second aspect involves cases grounded in the pursuit of public interest or the prevention of harm. These models were chosen because they continue to be practiced in some regions of our country to this day.

3.1 Preference for the Weaker Opinion Based on Custom:

The Moroccan Malikis have, in some instances, opted to deviate from the well-known or preferred opinion in the school, considering the established customs in their regions that serve the interests of the people. Notable practical examples include:

3.1.1 Provisioning the Bride (Al-Shawar):

Al-Shawar refers to the preparation made by a father for his daughter at the time of her wedding or what a woman brings to her husband upon marriage (Al-Jidi, 432).

In Fes, it has been customary for a wealthy father to provision his daughter according to the amount given by the husband as her dowry. This means the father adds the same amount he has determined for his daughter's dowry and is obliged to provide this additional amount in cases of dispute with the husband during or after the marriage.

This is a specific custom in the city of Fes, even though the original ruling in Islamic law does not obligate a woman's guardian to provide this, as the dowry is a compensation for the marital relationship, not for the benefit of the wedding preparations (Miyara, 2000, 1/176).

The obligation in the marriage contract can be based on verbal agreement or customary practice. The former applies before and after the marriage is consummated, during the lifetime of the obligated party or after their death. The latter, however, states that if the husband has not yet entered into the marriage, the father is not compelled to provision his daughter with his wealth. If the husband has entered into the marriage and the preparations have been made, the father is obliged to provide this additional amount if a dispute arises while he is alive; if he dies, the obligation ceases (Al-Sijilmasi, 1/13). The father may choose to act if he believes it is in her best interest, as perceived by the community; otherwise, he is not obligated to provide anything. This practice exemplifies a change in fatwa based on specific local customs influenced by changes in places and traditions (Al-Rimili, 2016, 589-590), which is also relied upon in some regions of Algeria.

3.1.2 The Testimony of the Son with His Father:

It is well-known in the Maliki school that the testimony of a son alongside his father is considered as a single testimony. This is supported by Al-Khalil in his Mukhtasar, where he states, "And the testimony of a son with one father" (Khalil, 2005, 87). However, in Andalusia, the practice diverged from this prevailing opinion, considering the testimony of the son with his father in a single instance—such as in sales or marriage—as two separate testimonies (Al-Jidi, 493-494).

This practice spread and took root in Morocco during the 10th century AH, gaining supporters who defended it, arguing that it was more accommodating for people, provided that the conditions of justice were met for both the father and the son. The judge has the authority to evaluate and discredit witnesses (Al-Raisouni, 42). Many have favored the traditional opinion, considering it the majority view on the matter (Al-Kasani, 6/272; Al-Dusuki, 4/168; Al-Shafiʿi, 7/56; Ibn Qudama, 12, p. 65). This preference is due to concerns that such testimony is prone to suspicion, favoritism, and bias; the fundamental nature of the relationship between parents and children is often emotional, making impartiality rare and fairness difficult to achieve (Al-Raisouni, 42, 46).

3.1.3 Renting Markets as Rental Rather than Tax (Maks):

"Maks"refers to unjust taxes imposed by oppressors, taken from people's wealth without compensation. In pre-Islamic times, it was levied on sellers in the markets, and those who collected it were known as "maks" or "makkas" (Al-Hattab, 1992, 6/19).

Historically, markets were communal properties where people could sell their goods. Imposing the maks on them was considered an injustice, and thus it is prohibited. In this regard, the Prophet Muhammad (peace be upon him) stated, "The collector of maks shall not enter Paradise" (Abu Dawood, 3/93, 2937).

Sheikh Abdul Hamid Ben Badis' Fatwa on Renting Markets

Sheikh Abdul Hamid Ben Badis (may Allah have mercy on him) was asked whether it is permissible to rent markets from the public and charge entry fees for livestock and goods. He responded:

"As for today, the conditions of the markets have changed. The public, who are the owners of the markets and other public spaces, require services for their civil needs, such as cleaning, street lighting, road paving, security organization, and other facilities managed by municipal councils. The municipality administers the markets, which are public property, for the benefit of the public. The public, as the owners of these markets, have appointed representatives and authorized them to manage their properties for their benefit. These representatives, who act on behalf of the public, are members of the municipality. They offer the market for rent through auction, and someone, like Zayd or ʿAmr, rents it. This renter has rented a specific item at a determined price from the representatives of the public, meaning all the elements of a rental contract are fulfilled. Thus, this contract is valid and permissible" (Ben Badis, 1405 AH, 3/260-261).

He clarified that the municipality has the right to sell the benefits of the market for a specified price and duration, and it is permissible for the tenant to continue benefiting from it. Consequently, the renter can charge anyone entering the market for their goods as compensation for using the space for a specified time, which belongs to the market owner.

Some scholars, including the jurist Al-Mouloud Ben Al-Sidqi Al-Hafizi Al-Wartilani, objected to this fatwa, arguing that it contradicts the well-known opinion within the school that what is collected from sellers in the markets is considered **maks** (an unjust tax) and is therefore prohibited. Sheikh Ben Badis responded to this objection in a lengthy article in the newspaper Al-Shihab, explaining that the changing customs in the markets necessitate a change in the ruling.

Sheikh Ben Badis stated that the situation does not apply to market renting and the rental of space for selling goods on market days. He emphasized that the initial contract is between the market owner and the representatives of the public, while the second contract is between the market owner and the individual wishing to sell their goods in the market, both of which are valid rental agreements (Ben Badis, 3/261).

Sheikh Ben Badis considered that the practice, governed by the laws regulating the markets, constitutes a rental agreement because the markets are owned by the municipality, which acts on behalf of the public to collect rights from the sellers. Thus, this practice is categorized as a rental rather than as the prohibited maks(Murabitin, 192).

3.2 Abandoning the preferred opinion for necessity and necessity: Either for the Public Interest or to Prevent Harm

3.2.1 Abandoning consideration of lineage (قافة):

Qafah refers to the practice of identifying lineage, traditionally associated with those skilled in recognising family ties and ancestry. The Banu Mudlij were particularly recognised in the early Islamic period for their exceptional ability in this area, although this skill is not exclusive to them (Al-Qarafi, 3/126; Al-Jidi, 508).

The legitimacy of relying on qafah is supported by the narration of Aisha (may Allah be pleased with her), who reported that the Messenger of Allah (peace be upon him) entered one day in a cheerful mood and said: “O Aisha, did you not see that Mujazziz al-Mudlaji came to me and saw Usama and Zayd covered with a cloak and their feet exposed? He said: ‘These feet are from the same lineage’” (Bukhari, Book of Succession, Hadith 6770; Muslim, Book of Nursing, Hadith 1459).

Imam Malik is reported to have restricted its use to slaves rather than free women (Al-Qarafi, 3/125). The usefulness of the qafah is evident in determining certain rulings, such as alimony and inheritance, which depend on established kinship.

In recent times, there has been a general practice of forbidding its use because of the lack of people capable of establishing accurate descent. However, Abdul Qadir al-Fasi - who was a later

scholar - claimed to have found individuals in his time who could confirm lineage. This view coincides with that of Ibn Farhun, who argued that there is no contradiction with the authentic hadith because there is no evidence of abrogation or evidence of weakness. Therefore, it should be upheld because qafah is a legal ruling that does not vary based on different customs; it should be applied consistently in different places and times (Al-Jidi, 508-509).

3.2.2 Selling the share:

The term "'which means to clap, as it was customary to clap one ,*تصفيق* comes from "صفقةs hands together during a sale. The concept of selling a share refers to a situation in which one partner sells his entire share of a jointly owned property to an outsider and then informs the remaining partners, giving them the choice of either buying the sold share at the price for which it was sold, or allowing the sale to continue (Al-Jidi, 449).

For example, if several people own a house together, one of them may decide to sell the whole property. The other partners then have the option of either completing the sale or buying the share for themselves and compensating the seller for their share.

The prevailing view in the Maliki school is to prohibit the sale of a share unless certain conditions are met, as stated by Al-Wanshirisi. These include taking the matter to a judge who can force the reluctant partner to sell (Al-Wanshirisi, 5/124). Sheikh Miyara al-Kabir later wrote a work on the sale of shares which allowed it under certain conditions based on the practice in Fès. However, these conditions were not in line with the basic principles of the school and were justified by the frequent disputes arising from joint ownership, although it was noted that they unnecessarily complicated the process with numerous conditions whose sources were not clear (Al-Hajwi, 2/457).

The rationale for allowing the sale of shares is to serve the public interest and prevent harm. If a partner takes the matter to a judge, the process can be lengthy, resulting in lost profits. In addition, selling his share individually may result in losses if the other partners do not compensate him for the loss in value.

However, the practice of later scholars has tended to allow the sale of shares without strictly adhering to the restrictions set by earlier jurists (Tawirak, 2014-2015, 39). Some have concluded that it is the failure to refer the matter to a judge that deviates from the texts, rather than the sale of shares itself, which was mentioned in the works of earlier scholars, even if not explicitly referred to as such (Al-Jidi, 450-456).

4. Conclusion:

- The practice of what is generally accepted is a valid perspective in issuing fatwas and judicial rulings. Its inferential status is exceptional, as the default is to follow the preferred and known opinions. However, deviations from the less preferred or weaker opinions are permissible, provided there is a reasonable justification.

- This approach represents a type of purposive reasoning (maqasid) in Maliki jurisprudence, based on the pursuit of the public interest, the prevention of harm, or the consideration of needs and necessities. It combines adherence to the apparent text with attention to its spirit, ensuring that the essence of the text remains intact within the bounds of legal principles.

- The Malikis' reliance on this principle reflects their adaptability to new circumstances, with the aim of stabilising legal rulings and avoiding conflicts in fatwas within the same region. This has led to a level of consistency and stability in rulings that has not been observed in other schools.

- Jurisprudence based on this principle has provided a framework for addressing many contemporary issues that are difficult to categorise under the preferred and known opinions. This has facilitated the establishment of ijtihad that effectively mitigates harm and promotes benefit in the light of new developments.

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