

## **The methodology of Professor Dr. Abdul Hamid Hamad Al-Obaidi (d. 1443 AH) in inferring the disputed sources in his book Al-Said and Al-Taqiyyah in Islamic Sharia**

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### **Abstract**

The study deals with a definition of one of Iraq's professors in comparative jurisprudence, namely Professor Dr. - In his book Hunting and Slaughtering in Islamic Sharia, because of the great importance of these evidences, especially when there is no original evidence agreed upon by the fundamentalists, from the Book, Sunnah and others, so that the mujtahid can reach through it to the appropriate legal ruling, for all new facts and events, especially In light of this tremendous development, and the changes of the era in all fields, and this development does not fail Islamic law to solve everything that arises in our time and beyond, as it is valid for every time, and through this research we see Al-Obaidi's methodology in these important evidences.

### **Introduction**

Praise be to God, Lord of the worlds, and prayers and peace be upon the most honorable of messengers, our master Muhammad, the trustworthy Prophet, and upon his family, companions, and those who follow them in goodness until the Day of Judgment.

Al-Obaidi - may God have mercy on him - is one of the men chosen by God Almighty to carry on their shoulders the manifestation of the features of the Islamic religion, which God Almighty pledged to preserve, saying in His dear book: (Indeed, We have sent down the remembrance, and we are His guardians) 1, and Al-Obaidi's book Hunting and Smartness in Islamic Sharia One of the books that showed many of the jurists' disagreements in hunting and slaughter, and their evidence in the solution

or prohibition of all that is hunted and slaughtered, and since the legal evidence is divided into two parts, including agreed legal evidence, such as the Qur'an for Karim and the Sunnah of the Prophet, and the consensus and analogy that branched out from it, and the other part Subordination evidence in which there is disagreement in terms of inference, and these evidences are no less important than the evidence agreed upon, especially when calamities occur, and these evidences in which there is disagreement was from the methodology of Al-Obaidi - may God have mercy on him - in his book Al-Sayd wa Al-Taqiyyah in Islamic Sharia, and in this research we will show how his approach was In it, and after relying on God, we divided the research after this introduction into two sections and a conclusion, as follows:

The first topic: Al-Obeidi's era, and his personal life, and it contains four demands.

The first requirement: the era of Dr. Al-Obeidi - may God have mercy on him -.

The second requirement: his personal life: his name, birth, lineage, nickname, and birth.

The third requirement: his upbringing, his family, and his death.

The fourth requirement: his sheikhs and students, his efforts and scientific effects.

The second topic: Al-Obeidi's approach - may God have mercy on him - in inferring the legislative sources in which there is disagreement, and there are two demands.

The first requirement: his approach to reasoning by custom.

The second requirement: his approach to inference by companionship.

Then the conclusion, which included the most important results that we reached, and we followed the conclusion with the sources.

Finally, I say: This is what we were able to reach in our research, so what was right in it is from God alone, and what was wrong in it is from ourselves, asking the Lord Almighty to make this work of ours purely for His honorable face, and to write acceptance for it, and may God's blessings be upon the beloved Chosen One And the role model, Al-Mujtaba, and his family and companions, and those who follow his tongue, and greet him abundantly.

The first topic: Al-Obeidi's era and his personal life, and it includes four demands

The first requirement: the era of Dr. Al-Obeidi - may God have mercy on him -

First: The political situation: Al-Obeidi was born - may God have mercy on him - and he

lived eighty-one years of his life during which Iraq went through multiple wars and coups<sup>2</sup>, and among the most important events that Al-Obeidi lived through was the fierce war that began in (1980 AD) between Iraq and Iran<sup>3</sup> and which lasted for eight years, claiming lives and money From both countries, in which Al-Obeidi was affected by preventing him from completing his studies abroad, after banning travel to Iraq<sup>4</sup>.

In the year (1990 AD), the United States of America mobilized more than (33) countries to expel Iraq from Kuwait and destroy its military arsenal<sup>5</sup>, and the subsequent unjust siege on Iraq, as they were denied food and everything that contributes to building the country's infrastructure, and in the year (2003 AD ), the United States of America and its allies occupied Iraq, and overthrew the Baath regime in it.

Second: The economic situation: Because of the wars, the economy of Iraq was affected and fluctuated a lot, which led to the people living a difficult life during the periods of their lives. For years, they hardly settled until coups and wars returned, despite the presence of enormous wealth in it, the most important of which is agriculture due to the presence of the Tigris and Euphrates rivers, in addition to that Floating on a sea of oil, so the Iraqi people lived in an economic condition tainted by tides. Agriculture suffered from the dominance of feudalism over it<sup>6</sup>, and most of the oil goes to monopolistic foreign companies, until it was nationalized in July of the year (1972 AD)<sup>7</sup>, and after the Iran war, Iraq came out with great losses <sup>8</sup>, and it was followed by an unjust siege after the invasion of Kuwait, which led to famine for most of the Iraqi people, and hundreds of thousands of deaths because of it, which continued until the occupation of the State of Iraq in (2003 AD)<sup>9</sup>.

Al-Obeidi lived through this difficult period, which led to his being affected like the rest of the Iraqis, but less than them, because he was at that period a teacher at the university, then head of the department there, so he was well off compared to others<sup>10</sup>.

Third: The social situation: Iraqi society is divided into multiple divisions, but it is still a conservative society. Those who did not fall short with him and embraced him and refined his Islamic personality, which reached what it has reached.

The second requirement: his personal life: his name, lineage, nickname, and birth

His birth: Dr. Al-Obeidi was born on (1/7/1940 A.D. 12).

His name is: Abdul Hamid Hamad Shihab Ahmed Abdullah Muhammad<sup>13</sup>.

Lineage: Dr. Abdel Hamid belongs to the Al-Abeed Al-Zubaidi tribe<sup>14</sup>.

His nickname: Babi Abdullah, after his eldest son Abdullah, and Babi Muthanna, after his son Muthanna from his second wife<sup>15</sup>.

The third requirement: his upbringing, his family, and his death

First: His upbringing: Al-Obeidi grew up in a conservative family practicing the profession of agriculture, in its large orchard in Hit<sup>16</sup>, and after his return increased, he worked to help his father Hamad and his uncle Hammoud in their large garden<sup>17</sup>, and he frequented the mosque near their home, drawing close to some of the sheikhs whom he loved and loved since his childhood<sup>18</sup>, and when He completed six years of age, entered school and left agriculture on the orders of his father Hamad, who was keen for his son Abdul Hamid to complete his studies<sup>19</sup>, then moved in the year (1952 AD) with his family to Ramadi<sup>20</sup>, the center of

Anbar Governorate, and after completing the Teachers Institute, he was appointed as a teacher in a school Elementary school, then a director of that school, after which he completed his bachelor's degree in Islamic sciences in the year (1969 AD), after which he moved in the beginning of the eighties to live in Baghdad, after he became a professor in the College of Sharia, and he remained in Baghdad until he traveled to Yemen in the year (2000 AD), then returned In the year (2004 AD) to Iraq, and after that he traveled to Egypt in the year (2005 AD) until he died there, may God have mercy on him.

Second: His Family: We will mention an overview of the Al-Obeidi family, as follows:

His father: Hamad Shihab Ahmed Abdullah Muhammad - may God have mercy on him - had a large orchard of date palms in Hit, from which they received material revenues that sufficed and increased<sup>22</sup>.

His mother: Nofah Khalaf al-Ani, the sister of Hajj Abdullah al-Ani, the father of Sheikh Dr. Abdul Qadir al-Ani<sup>23</sup>, may God have mercy on them all<sup>24</sup>.

His wives: Al-Obaidi Rahma was married to two wives, namely: the first wife: Sujudah Abdullah Al-Ani, his maternal uncle's daughter, the sister of Sheikh Dr. And she gave birth to him: Muthanna, Muhammad, Osama, and three daughters.

His children: He has four sons: Dr. Abdullah, Dr. Muthanna, Muhandis Muhammad, and Osama, and he has six daughters.

His death: He passed away - may God have mercy on him - on Monday (7/3/2022 AD), in the Arab Republic of Egypt.

The fourth requirement: his sheikhs and students, his efforts and scientific effects

First: His sheikhs: Al-Obaidi - may God have mercy on him - always mentions the companions who are bestowed upon him after God in what he has attained of knowledge, among them:

1- Al-Sayyid Fadel: The blind scholar. He was his first teacher who taught him the sciences of Sharia and the Holy Qur'an. Al-Obaidi was greatly influenced by him from his childhood<sup>26</sup>.

2- Sheikh Abd al-Karim al-Dabban <sup>27</sup>, one of the prominent Iraqi scholars in the sciences of Sharia and language, he died - may God have mercy on him - in the year (1993 AD) <sup>28</sup>

3- Sheikh Dr. Abd al-Malik al-Saadi: one of the scholars of Iraq and the Islamic world. He lives in the Hashemite Kingdom of Jordan. May God prolong his life to <sup>29</sup>.

4- Dr. Ahmed Al-Kubaisi: an Islamic preacher, lives in the United Arab Emirates, may God prolong his life <sup>30</sup>.

5- Dr. Hashem Jamil: a scholar of comparative jurisprudence, and a reference in Fatwa <sup>31</sup>. He is still alive and lives in the State of Qatar, may God prolong his life.

6- Dr. Abd al-Karim Zaidan: the supervisor of his dissertation, and considers him a role model.

Secondly: His students: Al-Obaidi had many students, whether when he was a teacher on the staff of education, or on the staff of higher education, and I will mention some of them who I was able to communicate with, as follows:

1- Hajj Khalil Muhammad Rajab al-Kubaisi, one of the notables and merchants of the city of Fallujah.

2- Professor Dr. Hatem Abdullah Shweish: Professor of Comparative Jurisprudence at the College of Islamic Sciences / University of Fallujah, and its dean.

3- Professor Dr. Majeed Saleh Ibrahim Al-Qaisi: Professor of Comparative Jurisprudence at the College of Islamic Sciences / University of Fallujah, and its former dean.

4- Prof. Dr. Ghazi Khaled Al-Rahal: Professor of Jurisprudence at the University of Baghdad, College of Islamic Sciences.

5- Prof. Dr. Mahmoud Bandar: Professor of Jurisprudence at the University of Baghdad, College of Islamic Sciences.

6- Omar Ali Haidar, writer, journalist and researcher interested in Sharia, linguistic, social and educational sciences<sup>33</sup>.

Third: His scientific efforts and effects.

Al-Obaidi's scholarly life was full since he was a teacher in primary school until he became a professor at the university, and even after he was referred to retirement, he used to give lectures on the media level, or on the personal level, according to God Almighty, for those who wanted to increase his knowledge, especially at the end of his life. In Egypt, he remained like that until he fell ill and prevented him from communicating his knowledge to those around him. I will mention below a brief summary of his scientific and educational efforts, as follows:

His writings:

1- Hunting and slaughtering in Islamic law: its origin is a master's thesis, presented by Al-Obeidi, and supervised by Abdul-Karim Zaidan.

2- Intellectual factors in the Islamic world <sup>34</sup>.

3- Guarantee in Islamic Sharia: Its origin is a doctoral dissertation.

His supervision and discussion of theses and dissertations:

Al-Obeidi was fond of supervising master's theses and university doctoral dissertations, so he used to say that he benefited from them more than he benefited from his studies, because of the research and investigation they contain, and the diversity of titles, so he supervised many of them, and he discussed a large number of them<sup>35</sup>.

His media efforts:

Al-Obeidi did not leave room for introducing people to the matters of their religion without participating in it if it was presented to him, and his appearance in a number of religious programs on a number of channels was only one of those areas, and among these programs, the program (Dialogue in Sharia) on Iraq TV, presented by Dr. Khamis al-Dulaimi, and the program (Ifta Hour) on the Al-Rafidain satellite channel, presented by Dr. Ammar Abdel-Ghani, and the program (They Ask About the Prophet, may God's prayers and peace be upon him), presented by Ayman Khaled, on the Peace be upon you, O Prophet channel, and also hosted on the programs of many satellite channels, Among them is the program (Different Opinions), which was shown on Baghdad TV around the year (1997-1999 AD), in which many family and community issues were discussed in the presence of professors from different specializations. On the hearts and ears of the viewers, especially the Ifta Hour program, which was the question and answer between Al-Obaidi and his viewers via direct telephone contact, or through questions posed by the presenter of the programs, and his specialization in comparative jurisprudence had an impact on his presentation of

jurisprudential issues in the manner of inference from the Holy Qur'an and the Prophet's Sunnah, Then he presented the sayings of the jurists and chose the most correct one that he saw from them, <sup>36</sup>.

The second topic: Al-Obeidi's approach - may God have mercy on him - in inferring the legislative sources in which there is disagreement

The jurists differed in the adoption of the legislative sources in which there was a difference, such as the approval, the *maslahah al-mursalah* and the companionship, the custom, the doctrine of the Companion and the law before us. , which some call dependent sources of legislation.

And these disputed evidences are divided in terms of their origin into transmission sources such as custom, law before us, and the doctrine of the Companions, and rational sources such as approval, interests sent, and blocking pretexts<sup>37</sup>.

And by browsing the book Hunting and Smartness in the Islamic Sharia of Al-Obeidi, I found that he did not infer evidence in which there is disagreement among the public except from custom and companionship, and in only two places, and below we will shed light on his method in inferring it or some of it, as follows.

The first requirement: his approach to reasoning by custom

Custom is considered a valid argument in the Shari'a rulings that are absolute in the Sharia, so most of the four schools of thought went to the origin of custom work, and they refer to it in jurisprudence in many issues<sup>38</sup>.

Before talking about Al-Obeidi's approach to reasoning with custom, it is necessary to define

custom linguistically and idiomatically, as follows:

Al-'Urf is a language: all the good that the soul knows and is reassured about, and it is contrary to denial<sup>39</sup>.

Convention, idiomatically: that which souls have settled on with the testimony of intellects, and natures have received it with acceptance<sup>40</sup>.

His method of inference:

Al-Obeidi did not infer from the custom except in two places throughout his book, for example:

1- In his preference for the issue of the number of times a surgeon refrains from eating in order to be considered a teacher, Al-Obeidi said: The most correct opinion is the last saying, which is not specifying the times; Because the number requirement has no evidence for it, then he discussed the sayings of other schools of thought, including, the third saying, that whoever stops eating three times is considered a teacher. On the occurrence of learning by it, but the certainty of the three is not appropriate, as it is specified without evidence, likewise, even if it is most likely to be a teacher, then what a person can be reassured about is the saying of the people of experience and the people of custom in that <sup>42</sup>.

2- In his talk about the extent of the state's right to prevent fishing from the sea, Al-Obeidi said: It is very important in this time that the state has territorial waters from the seas adjacent to its lands, which is an international custom agreed upon between them, and the capacity of those water bodies varies, small or large, according to international custom. Or the agreement between neighboring countries, and the state may value it in a way that achieves its interest, even if it is not within the capacity of an international custom previously agreed upon, so some countries estimate it at twelve miles or

more or less, and the state has a kind of jurisdiction over these territorial waters as if it belongs to it<sup>44</sup>.

The second requirement: his approach to inference by companionship

Istihab is one of the most important evidences in which there is a difference of opinion, and because of its importance, Imam al-Razi said about it <sup>45</sup>: "And know that the saying of accompaniment to the situation is an indispensable matter in religion, law, and custom" <sup>46</sup>, and through our follow-up to the book Hunting and Smartness of Al-Ubaydi, we did not find it inferred by accompaniment except once, and before talking about this As an inference, it is necessary to define companionship linguistically and idiomatically, as follows:

Accompanying is a language: derived from companionship, and accompanying a man: invites him to companionship, and everything that is necessary for something has accompanied him, and I accompanied the book and others I carried it my companionship <sup>47</sup>

Istihbab idiomatically: It is the ruling on the establishment of an order in the second time based on its establishment in the first time<sup>48</sup>.

His way of reasoning:

As we mentioned in the introduction to the hadeeth about al-Ubaidi's methodology in inferring by seeking companionship, he did not infer it except once, which is:

In the general rules regarding the permissibility or prohibition of eating animals, and specifically in the tenth rule, Al-Obeidi said: The tenth rule, referring to companionship, if the previous rules do not apply to the animal whose eating ruling is intended, we refer to the original rule of things and we accompany this

principle as long as there is no evidence of The demise of this accommodating ruling<sup>49</sup>.

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