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Confronting Challenges & Guiding The Future

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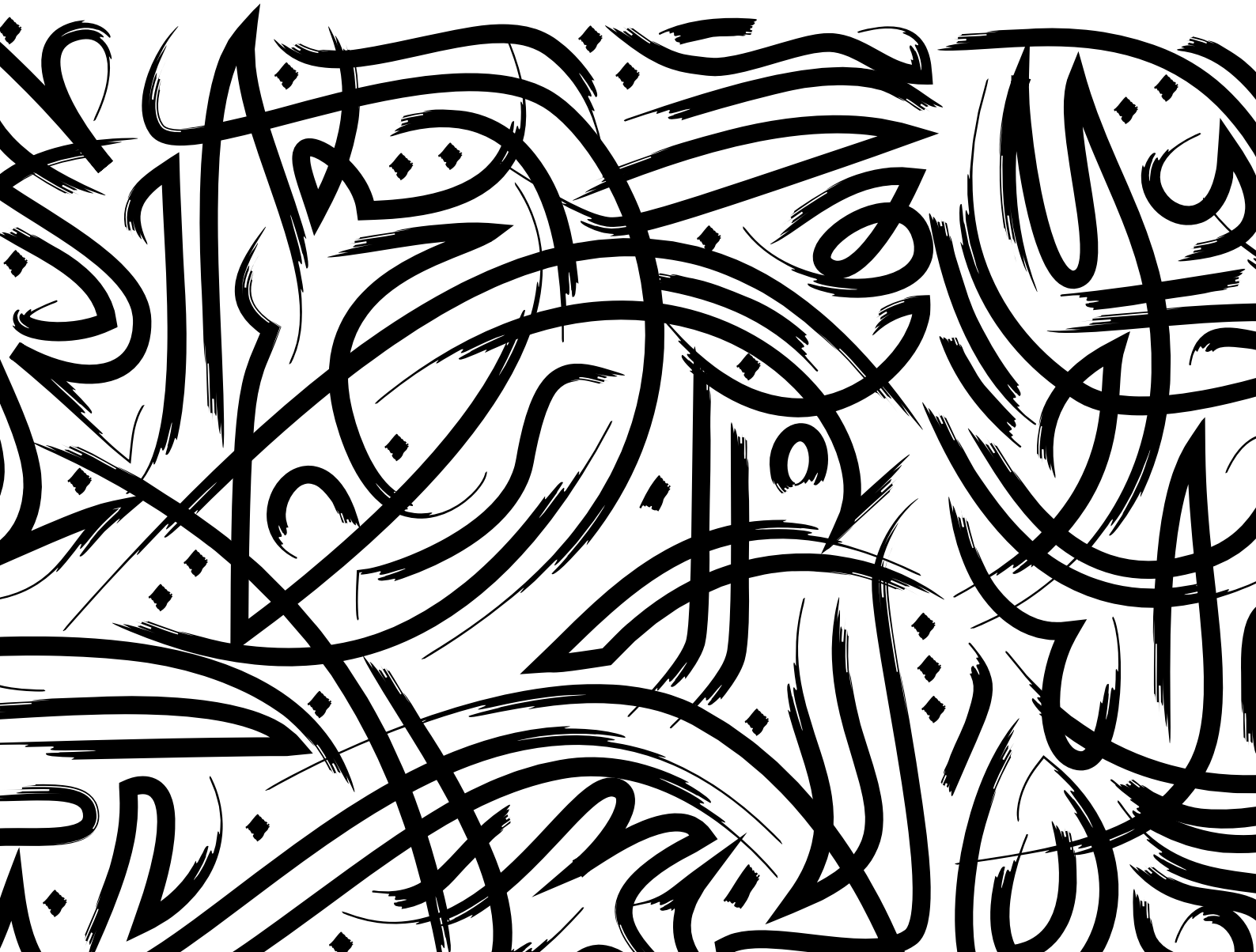

Introduction by Imam Suhaib Webb

The SWISS community proudly presents its Fall Journal for 2024. This year has presented a multitude of challenges and opportunities for Muslims around the world. In particular, those of us who affirm and believe that a crucial key to confronting the dangers the Ummah faces is a Pan-Islamic response to global hegemony, which continues to harm Muslims.

The Power of Knowledge

At the forefront of this response is knowledge. Our history is one that places knowledge and wisdom above all else. Understanding the significance of this heritage, we have carefully curated a selection of articles written by scholars from diverse fields and cultures. These contributions aim to demonstrate the universality and continuity of learning within the Islamic tradition.

This Seasons Selections

The articles included in this edition are meant to highlight the rich tapestry of Islamic scholarship. By presenting a wide range of perspectives, we hope to illustrate how knowledge transcends cultural and geographical boundaries, serving as a beacon of guidance for Muslims everywhere.

In addition to the scholarly articles, we have provided answers to common questions that English-speaking Muslims ask. These insights aim to provide clarity and guidance on contemporary issues, fostering a deeper understanding of Islamic teachings in the current context.

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CONCLUSION

As we embark on this journey of exploration and learning, we invite you to engage with the articles and resources in this journal. Together, let us continue to prioritize knowledge and wisdom, ensuring that the legacy of Islamic scholarship remains vibrant and impactful for generations to come.

Imam Suhaib Webb
Safar 3, 1446 AH
Istanbul

Political Issues & Muslim Minorities

Mawlana Khalid Saifullah al-Rahmani[1]

INTRODUCTION

The discourse on Muslim minorities is a critical topic within Islamic jurisprudence, especially in the contemporary context where Muslims find themselves living as minorities in various non-Muslim majority regions. This article, titled "Political Issues & Muslim Minorities," seeks to elucidate the unique challenges and considerations faced by Muslim communities residing in such contexts. By examining the fundamental Shari'ah concepts related to issuing fatwas (Islamic legal rulings) for Muslim minorities, the article explores the variations in rulings based on shariah proofs, legal maxims, differing conditions and environments. The analysis also delves into the necessity of balancing Islamic principles with the practical realities of living in non-Islamic states, offering a nuanced understanding of how Islamic jurisprudence can be applied to support and guide Muslim minorities effectively. SWISS hopes that this will encourage Muslims to use their political voice, organize and work to heal a fractured world.

Defining Muslim Minorities[2]

By "Muslim minorities," we mean Muslims residing in regions where the majority population is non-Muslim, and the proportion of Muslims is statistically small. This applies whether the government system is democratic, dictatorial, or monarchical. It also does not matter whether Muslims are citizens with nationality or refugees residing in those areas.

A minority community typically experiences diminished political influence and a reduced impact on governance. The political conditions and their repercussions affect their daily lives across various issues and dimensions. Thus, it becomes necessary to contemplate the rulings pertaining to muslim-minorities and focus on their current situations. Before delving into the subject, I must address specific fiqh related concepts so that certain considerations will rest at forefront of this article.

Fundamental Shari'ah Concepts Related to Issuing Fatwa[3]

Immutable Rulings: Rulings established by unequivocal or explicit texts, which the shariah has not abrogated, cannot undergo any modification or change. These rulings remain constant until the Day of Judgment. However, exceptions may apply under special circumstances and rare cases such as necessity, compulsion, and dire needs in certain environments and regions for specific individuals or groups for a determined period.

Consensus-Based Rulings: Rulings that have been unanimously agreed upon by scholars (ijma') are considered definitive and not open to ijtihad (independent reasoning) or modification. These are akin to laws established by the immutable rulings. This is based on the saying of the Prophet Muhammad ﷺ: "My Ummah will not agree upon an error" (Sunan Ibn Majah, Book of Trials, Chapter on the Black Flag, Hadith No. 3950). And the verse from the Qur'an: "And whoever opposes the Messenger after guidance has become clear to him and follows other than the way of the believers - We will give him what he has taken and drive him into Hell, and evil it is as a destination." (An-Nisa: 115).

Disputed Rulings: These are legal rulings where scholars have differed, and which are based their differences over a text's indications, analogy (qiyas) and ijtihad. There is leeway in this type of ruling for the Mufti to shift from one opinion to another based on circumstances and needs. Such differences allow for flexibility and provide mercy for the Ummah.

Variation in Rulings: Islamic rulings vary according to people's conditions and environments. For example, the rulings for healthy individuals differ from those for the sick, and the rulings for the young and strong differ from those for the elderly and weak. Similarly, in some cases, the rulings for men and women are not the same, nor are those for residents and travelers. There are also differences between the rulings for the wealthy, the poor, and the destitute. These variations are based on the principles of ease and the removal of hardship.

[1] Khalid Saifullah Rahmani, born in November 1956, received his primary education at home and studied for two years at Qasim al-Uloom al-Hussainia School. He graduated from Rahmani University in Monger and then from Darul Uloom Deoband, completing the Dars-e-Nizami course in 1975. He specialized in Islamic Sharia and jurisprudence at Imarat Sharia Patna, studying under renowned scholars such as Anzar Shah Kashmiri, Mahmood Hasan Gangohi, and Muhammad Salim Qasmi. He also benefited from his uncle, the notable jurist Qazi Mujahidul Islam Qasmi.

In 1978 ,Rahmani began teaching at Darul Uloom Sabeel-us-Salam in Hyderabad and was appointed its director in 1979 .He taught there for 22 years and went on to establish the Islamic Higher Institute in Hyderabad .He also contributed to founding various other educational institutions ,including Sabeel-ul-Falah and Madrasa-tul-Falihat in Darbhanga ,Noor-ul-Uloom in Andhra Pradesh ,and Madrasa Taleem-ul-Quran for girls in Karnataka.

Rahmani has served on the Legal Council of the All India Muslim Personal Law Board and was elected its General Secretary in 2021. He is a member of the International Islamic Fiqh Academy and the governing body of Darul Uloom Nadwatul Ulama .Additionally ,he writes a column titled» Shama Farozan «for the Friday edition of the daily newspaper Munsef in Hyderabad and edits the quarterly journal »Bahth-o-Nazar «,an Islamic jurisprudence publication initiated by Mujahidul Islam Qasmi.

[2] I asked the inventor of the term ,the late Dr .Taha Jabir al-Awani, studying in his home in Egypt .He said" ,If I should have chosen a different adjective .Minority implies weakness and it is not inclusive .It doss not include converts from the majority".

[3] I heard from Dr .Amru Weridani that fatwa means clarity/clarification .Hence ,it is the clarification of a shariah ruling.

An Objective of Islamic Law

One of the objectives of Islamic law is to prevent people from following their desires and to save them from unnatural burdens and difficulties they cannot bear. Considering this spirit and nature of Islamic law, it is essential to recognize the differences between the rulings for Muslim majorities and minorities. In a state where the majority is Muslim and the governance is in their hands, the application of Islamic law differs from a state where Muslims are a minority. This distinction must be acknowledged and understood in the context of fiqh for Muslim minorities.

Muslims who are part of a strong and influential minority, especially in regions where they have to rely on the non-Muslim majority for their affairs and governance, cannot be equated with Muslims living in Islamic countries. Recognizing this, jurists have differentiated between Dar al-Islam (the abode of Islam) and Dar al-Harb (the abode of war) in many rulings, directing certain legal opinions specifically to Muslims residing in Dar al-Islam, such as the rulings on hudud (fixed punishments) and qisas (retribution). Thus, adjustments and changes may be necessary in matters of ijtihad (independent reasoning) due to the changing times, conditions, and environments. This principle is reflected in the established maxim found in the Majallah (Ottoman Civil Code): "Legal rulings do not remain unchanged with the changing of times" (Article 39).

The renowned Maliki jurist, Al-Qarafi, stated:

> "Applying rulings based on customs, while those customs have changed, is against the consensus and shows ignorance in religion. Every ruling in the Shariah that depends on customs changes with the change in customs. This does not require a new ijtihad but follows the established consensus of the scholars. For example, if it is customary to deal with a certain currency, we apply it, but if customs change, we adapt the ruling to the new customary currency. This applies to all transactions, bequests, oaths, and other aspects of fiqh that rely on customs. When customs change, the rulings also change" (Al-Furuq, Vol. 1, p. 110).

Balancing the Shariah

The Shariah, distinguished by moderation, balance, and fairness, does not allow individuals to become captives of their whims, pursuing immoral desires and corrupt practices. Nor does it impose unbearable burdens on people. Thus, jurists have established important principles and rules in this regard, which are well-known among scholars. These principles assist Muslims seeking to balance their lives between heathenry and irrational religiosity.

Some of these principles include:

- Necessities permit the forbidden: In extreme situations, normally prohibited actions may become permissible.
- No harm and no reciprocating harm: Harm should neither be inflicted nor reciprocated.
- Harm is to be removed as much as possible: Efforts should be made to eliminate harm to the greatest extent.
- Specific harm is endured to prevent general harm: Lesser harms are tolerated to prevent greater harms.
- The lesser of two harms is to be chosen: When faced with two harmful options, the one with lesser harm should be selected.
- Hardship brings ease: When situations become difficult, the Shariah provides ease.
- When matters become constrained, they expand: Tight circumstances call for leniency.
- Preventing harm takes precedence over achieving benefit: Avoiding harm is prioritized over gaining benefits.
- Minor failings are overlooked to achieve major benefits: Small harms are tolerated to realize greater benefits.

Residency in a Non-Islamic State

It is widely accepted that the Prophet Muhammad ﷺ did not favor Muslims living among disbelievers. He said:

> "I disassociate myself from any Muslim who resides among the polytheists." They asked, "O Messenger of Allah, why?" He replied, "Their fires should not be visible to one another" (Sunan Abu Dawud, Book of Jihad, Hadith No. 2645).

Similarly, he said:

> "Whoever joins the polytheists and lives with them is like them" (Sunan Abu Dawud, Book of Jihad, Hadith No. 2787).[4]

Current Realities

Ideally, Muslims should reside in countries where they form the majority, allowing them to grow in number and influence. However, the reality is that Muslims living in non-Islamic countries face significant challenges, including racial discrimination, nationalism, and geopolitical divisions, making it nearly impossible to migrate to Islamic countries and obtain citizenship there.

Today, Muslims suffering from oppression and injustice in their home countries often seek refuge in places like the United States and Europe, where they can more easily obtain citizenship. Meanwhile, Islamic countries have closed their doors to persecuted and vulnerable

[4] The use of this hadith here is problematic. The context of the hadith shows that its implications are exclusive to its context, not the masses of Muslim who live abroad.

Muslims, leaving them with limited options. Despite these challenges, the presence of Muslims in non-Islamic countries serves important interests for Islam and the Muslim community. It facilitates the spread of Islamic teachings globally, resulting in many individuals from other faiths embracing Islam. Additionally, Muslims living in these countries contribute economically to Islamic nations through trade, investment, and remittances, supporting economic development and international commerce.

During the Prophet's era, settling in Medina was easy and practical due to the favorable conditions for Muslims and their freedom to practice their religion. In contrast, today's global landscape is shaped by democratic systems of governance, republican regimes, and states not bound by any particular religion. These governments allow citizens to freely practice their religions, including their personal affairs and transactions. Consequently, it is not permissible to categorically prohibit Muslims from residing in non-Islamic countries or deny them the right to do so. These principles and considerations must be taken into account when examining and addressing the political, social, and economic issues of Muslim minorities, both theoretically and practically.

Muslim Participation in Elections and Membership in Political Parties with Non-Muslims

The participation of Muslims in parliamentary elections and legislatures, the establishment of political parties, and membership in non-Islamic political parties are contemporary issues and new challenges in political jurisprudence. Consequently, it is not possible to find direct fatwas or opinions from early jurists regarding these matters, necessitating ijtihad (independent reasoning) based on Islamic principles and the overarching objectives of Sharia.

The participation of Muslims in parliamentary elections encompasses multiple dimensions, including political, social, and religious aspects. It involves the right of Muslims to express their opinions, contribute to decision-making processes, and engage in societal governance in accordance with Islamic values and ethics. The opinions of later scholars on this matter also vary; some permit it while others prohibit it. This is because the juristic opinions of scholars generally pertain to the events that occurred during their times and are related to the circumstances and contexts of their contemporary environments. In addressing these issues and contemporary challenges, it is essential to rely on the established principles and foundations derived from the Qur'an and Sunnah, which have the capacity to provide solutions to all new issues and matters in any era. These principles serve as keys to unlocking complexities, and jurists throughout history have consistently applied them to contemporary circumstances.

It is noteworthy to consider three important principles when determining the ruling on these contemporary issues:

1. **The current systems of governance in the world generally fall into three categories:** monarchy, dictatorship, and electoral democracy. In a monarchy, governance is inherited; when a king dies, one of his children or family members becomes the new ruler.
2. **A dictatorship involves seizing power and maintaining control through coercive force.** The term "coercive emirate" mentioned by jurists refers to a state ruled solely by the ideas and opinions of one person. In both these systems, the source of laws is not derived from the people's participation.
3. **The third method of governance is through elections, where every citizen has an equal right to vote, regardless of their knowledge, intelligence, awareness, or other qualifications.** This electoral method emphasizes quantity over quality, numbers over standards, and the majority over merit. This democratic system of governance has been practiced in most parts of the world since the 17th century.

In Islam, the purpose of electing governments is to appoint a group of individuals responsible for the state, delegating governance to those who are qualified to manage and coordinate state affairs and to enact laws related to civil and administrative matters. However, it is crucial to note that the ultimate source of legislation is Allah Almighty. As Allah says, "The command is for none but Allah" (Yusuf: 40). And He also says, "Surely, His is the creation and the command" (Al-A'raf: 54).

A nation that delegates the authority to determine what is lawful and unlawful to its scholars, leaders, and clergy, has made them lords besides Allah. The right to legislate what is good and evil and to decree what is lawful and unlawful belongs solely to the Lord of all, as He says: "They have taken their rabbis and their monks as lords besides Allah, and also the Messiah, son of Mary, while they were commanded to worship none but one God. There is no deity except Him. Exalted is He above whatever they associate with Him" (At-Tawbah: 31). And Allah addresses the Prophet ﷺ: "O Prophet, why do you prohibit [yourself from] what Allah has made lawful for you, seeking the approval of your wives? And Allah is Forgiving and Merciful" (At-Tahrim: 1). Therefore, the political system in Islam is based on election and choice, but it differs from the republican system prevalent in this era. The representatives and leaders in an Islamic governance model must adhere to the principles and laws derived from Sharia, ensuring that governance aligns with the ethical and moral framework set forth by Islam.

Furthermore, in an Islamic state, the populace does not have the right to legislate and establish laws except concerning administrative and organizational matters. The source of legislation in Islam is the Lord of humanity, not humans themselves. The contemporary democratic system, which is based on the sovereignty of the mass-

es, does not fundamentally align with Islamic principles.

If Muslims find themselves in a state where the sovereignty and political power are not in their hands, and the majority is non-Muslim, or in a state with a Muslim majority but where religious authorities cannot implement and apply Islamic laws and teachings, what should they do? They should strive to align the political system with Islamic requirements as much as possible.

The wisdom of the Sharia provides us with guidance on dealing with such situations. The Islamic legal tradition recognizes that the rules of necessity and choice differ. In times of need and compulsion, certain prohibitions may be temporarily permitted. Allah says: "But whoever is forced by necessity, neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful" (Al-Baqarah: 173). Similarly, one who faces coercion and threats to their life may temporarily utter words of disbelief to save their life, as Allah says: "Whoever disbelieves in Allah after his belief, except for one who is forced [to renounce his religion] while his heart is secure in faith, but those who [willingly] open their breasts to disbelief, upon them is wrath from Allah, and for them is a great punishment" (An-Nahl: 106). Thus, the political system in Islam is founded on election and consultation, differing from the contemporary republican system, as the representatives must conform to Sharia principles and ensure governance in alignment with Islamic ethics.

Additionally, removing hardship is a fundamental principle of Islamic law. Allah says, "There is no blame upon the blind, nor any blame upon the lame, nor any blame upon the sick" (Al-Fath: 17). As an example, migration was obligatory for Muslims during the time of the Prophet ﷺ, but those who were unable to migrate were excused, and Allah revealed leniency and forgiveness for them. Allah says, "Except for the oppressed among men, women, and children who cannot devise a plan nor are they directed to a way. For those, perhaps Allah will pardon them, and Allah is ever Pardoning and Forgiving" (An-Nisa: 98-99).

Given such rulings, jurists have always relied on the principle that the rulings of necessity and normal circumstances differ. Among the notable scholars, Imam Al-Shafi'i (may Allah have mercy on him) stated, "What is permissible in cases of necessity is not permissible otherwise." He also said, "Necessities may permit what is otherwise forbidden." This principle is encapsulated in the legal maxim, "Necessities permit prohibitions." The reality is that when Muslims are a minority in a country, and political power is not in their hands, they will not be able to fully implement Islamic laws and teachings.

Addressing specific fiqh (jurisprudence) issues for Muslim minorities:

In situations where Muslims cannot adopt a specific political stance or adapt to prevailing financial, economic, and social conditions, it is crucial to provide them with ease and flexibility. As established in Islamic jurisprudence, "When matters become constricted, they expand." Sheikh Mustafa Ahmad Al-Zarqa elaborates on this principle: "If a temporary necessity arises for an individual or a group, or an exceptional circumstance occurs, making the original ruling difficult or burdensome, it is eased and expanded as long as the necessity exists. This is the meaning of 'when matters become constricted, they expand.'"

Moreover, one of the established principles in fiqh is that when faced with two harms, one should choose the lesser harm. Jurists have expressed this concept in various ways, such as:

- When two harms conflict, the greater harm is avoided by committing the lesser harm.
- The more severe harm is removed by the less severe harm.
- One chooses the lesser of two evils.
- The principle of "specific harm is tolerated to prevent general harm" applies here.

Shaykh al-Islam Ibn Taymiyyah, in his discussion on this principle, states:

> "When interests and harms, or benefits and harms, conflict or compete, the greater one should be preferred. If achieving the interest or avoiding the harm results in greater harm or loss of a more significant interest, then it should not be pursued and may even be prohibited if its harm outweighs its benefit."

This principle is supported by the example of the Treaty of Hudaybiyyah, where the Prophet ﷺ agreed to return any Muslim who fled from Mecca to Medina, while the Quraysh would not return those who fled from Medina to Mecca. Though it seemed disadvantageous and humiliating to Muslims, it was a lesser harm compared to the greater harm of continued conflict and loss of lives of Muslims in Mecca who were unknown to most Companions. This is highlighted in Allah's words: "And if not for believing men and believing women whom you did not know that you might trample them and there would befall you because of them dishonor without [your] knowledge..." (Al-Fath: 25). When the Muslims later migrated from Mecca, Allah then granted the Prophet ﷺ and the Companions victory over Mecca: "If they had been apart, We would have punished those who disbelieved among them with painful punishment" (Al-Fath: 25). This demonstrates the principle of choosing the lesser harm to avoid the greater harm. Throughout history, jurists and scholars have adhered to this principle in issuing rulings.

The Importance of Jurisprudential Principles in Determining Sharia Rulings

Throughout history, scholars, jurists, and the righteous predecessors have adhered to foundational jurisprudential principles in elucidating Islamic legal rulings. Qadhi Khan al-Uzjandi, a prominent Hanafi jurist, addressed a crucial issue by stating:

> "If one is compelled to perform some of the pillars of prayer while in a state of impurity or without recitation, or to choose between performing the prayer with gestures, they must perform the prayer with gestures. This is the only valid option because performing the prayer with gestures is less severe than performing it in a state of impurity or without recitation. The former is permissible in a state of choice, such as performing voluntary prayers on an animal, while praying in a state of impurity or without recitation is impermissible. Hence, when confronted with two evils, one must choose the lesser of the two" (1).

> In a similar vein, the esteemed Shafi'i jurist al-Bahuti stated: "If a ship is on the verge of sinking, it is obligatory for the passengers to throw some of their belongings overboard as needed. They must throw overboard what they believe will ensure their survival, even if it means discarding all their belongings, to prevent a greater harm with a lesser one. The sanctity of life is greater than the sanctity of property" (2).

These jurisprudential principles are of paramount importance and must be diligently considered in contemporary Islamic thought. It is essential to recognize that the modern democratic system, with its foundational concepts and theoretical basis, is incompatible with the Islamic political theory, which is rooted in the sovereignty of Allah alone. Additionally, the rulings applicable in exceptional circumstances differ significantly from those in ordinary voluntary situations. When faced with two harmful outcomes, and there is no alternative but to choose one, the lesser harm must be selected, thereby opting for the least detrimental option.

Contemporary Scenario: Participation in Elections

In light of these principles, consider the following scenario: The potential harm in participating in elections and casting a vote is that the parliament may enact laws that contradict and oppose Islamic Sharia. This constitutes an indirect participation in legislating non-Islamic laws. On the other hand, voting is a decisive force in the contemporary republican system, determining the political and social status of nations and protecting their rights. If Muslim representatives or members influenced by Muslim votes are present in legislative bodies, not only will national interests of Muslims be served, but some of their religious interests will also be safeguarded. These representatives can at least present the Muslim perspective in parliament, even if they cannot amend or repeal laws.

If Muslims entirely abstain from participating in parliamentary elections and refrain from voting, they lose all weight and value in the state's balance. Their significance in political, national, and economic arenas diminishes. Consequently, there may be no voice to protect their interests or protest the violation of their rights. They might be stripped of some legitimate rights and lose protections guaranteed by existing laws.

This issue can be illuminated by considering the example of Prophet Yusuf (Joseph) as mentioned in the Qur'an, where he requested the King of Egypt to appoint him over the storehouses of the land.

Allah says: "'Appoint me over the storehouses of the land; indeed, I will be a knowing guardian.'" (Qur'an, 12:55).

The king entrusted Yusuf with this responsibility, and Yusuf accepted it. It can be said that the king appointed Yusuf over the entire administration and handed him the reins of governance and financial management. However, as some scholars have pointed out, the governance and authority remained with the king, and Yusuf was appointed specifically over the financial sector, as indicated by the term "storehouses of the land" (Qur'an, 12:55). This interpretation is supported by the views of various scholars

- **Ibn Jarir al-Tabari** explained that Yusuf asked the king to appoint him over the storehouses of Egypt.
- **Fakhr al-Din al-Razi** mentioned that Yusuf asked to be in charge of Egypt's storehouses.
- **Ibn Kathir** stated that Yusuf requested to be in charge of the storehouses of the land.
- **Imam Abu Saud Muhammad bin Muhammad al-Imadi** also interpreted this verse to mean that Yusuf sought to manage the revenues and expenditures.

The significance of this request lies in the fact that Yusuf did not seek control over the entire government. The authority remained with the king, and Yusuf was tasked with managing a specific sector. This example demonstrates the permissibility and wisdom of taking on roles within a system to achieve greater benefits and prevent harm, even if the system is not entirely aligned with Islamic principles.

Forming Political Parties and Participation in Elections

The formation of political parties by Muslims in cooperation with non-Muslims, or choosing membership in existing political parties, is closely linked to the act of voting and casting ballots. Participation in government and access to legislative bodies require these steps and

initiatives. As long as voting and participating in elections and legislative bodies are permissible, forming and joining political parties is also allowed. This is based on the well-established principle that what is necessary to fulfill an obligation is itself obligatory.

Thus, the use of voting rights by Muslims in non-Muslim countries, nominating themselves for elections, and participating in political parties, whether by forming their own or joining existing ones with non-Muslims, is legally permissible in Islam. This does not contradict Islamic principles.

CONCLUSION

The considerations and principles outlined in this article underscore the flexibility and adaptability of Islamic jurisprudence in addressing the unique circumstances faced by Muslim minorities. By recognizing the necessity of tailored rulings that reflect the diverse contexts in which Muslims live, scholars and jurists ensure that the Sharia remains relevant and applicable. The application of these principles, rooted in the Qur'an and Sunnah, facilitates the preservation of Islamic values and ethics while accommodating the realities of contemporary political, social, and economic landscapes. This balanced approach ultimately aims to protect the interests of Muslim minorities, uphold justice, and promote the greater good for the entire Ummah.

And Allah knows best.

Guidelines for Issuing Fatwa (Islamic Legal Opinion)

Dr. Hamdi Subhi Taha[5]

INTRODUCTION

In the practice of daily life, Muslims frequently encounter situations where they are uncertain about the Islamic ruling. The necessity for fatwas (Islamic legal rulings) is ever-present, as they provide guidance on how to navigate these uncertainties in accordance with Shariah. This article, "The Role and Responsibility of the Mufti," explores the significance of fatwas, the esteemed role of the mufti, and the proper approach to issuing fatwas. It underscores the critical need for precise, clear, and well-grounded fatwas to guide Muslims in their worship, transactions, and overall practice of Islam, highlighting the principles that ensure fatwas remain aligned with the core teachings of Islam while addressing contemporary realities.

The Role and Responsibility of the Mufti

INTRODUCTION

Praise be to Allah, Sustainer of the worlds,

In daily life, people encounter various situations and events for which they do not know the Islamic ruling. They require guidance and fatwas to understand the correct legal standpoint. Not every Muslim is a scholar of Islamic jurisprudence, nor is everyone required by Allah to be so. Allah has only obligated a group from every community of believers to acquire deep understanding of religion and to remind others of their responsibilities, as stated in the Qur'an:

> "But why should not there go forth a group from every party among them to become learned in the religion and to warn their people when they return to them that they may beware?" (Surah At-Tawbah, 9:122).

The Need for Fatwa

People constantly need fatwas, as they are essential to them like food and water. Without fatwas, people cannot distinguish between right and wrong in their worship, transactions, and all aspects of life. This ignorance leads to confusion in their practice of religion, causing them to forbid what Allah has permitted or permit what Allah has forbidden, committing sins unknowingly, while thinking they are doing good.

Therefore, Allah has obligated people to seek fatwas and commanded those who do not know the ruling of Allah on a matter to ask those who do. This is clear from His statement:

> "So ask the people of the message if you do not know" (Surah An-Nahl, 16:43).

The Role and Status of the Mufti

A mufti illuminates the path of righteousness for people with their fatwas, steering them away from error and deviation. Hence, the fatwa holds a significant place, and those who issue fatwas have a distinguished status. Allah Himself took on the role of issuing fatwas, as evidenced by the following verses:

> "They ask you for a legal ruling. Say, Allah gives

5 Dr. Hamdi Subhi Taha, born in "Birq al-Izz" village, Dakahlia Governorate, Egypt, on July 18, 1951, memorized the Qur›an and excelled in religious studies from an early age. He ranked first nationwide in secondary school and graduated from the Faculty of Sharia and Law in 1976 with honors. Dr. Taha earned his master›s degree in 1980 and his Ph.D. in Principles of Jurisprudence in 1985, both with high distinction. He has held various academic positions, including professor and head of the Department of Islamic Sharia and the Department of Principles of Jurisprudence at Al-Azhar University. In 2019, he was appointed the general supervisor of the Fatwa Committees at Al-Azhar. Dr. Taha has authored several significant works in Islamic jurisprudence.

you a ruling concerning the Kalalah" (Surah An-Nisa, 4:176),

and

"They ask you concerning women. Say, Allah gives you a ruling about them" (Surah An-Nisa, 4:127).

Moreover, the Prophet Muhammad (peace be upon him) also issued fatwas. Thus, the mufti acts on behalf of Allah and His Messenger when issuing fatwas, holding a position of great honor and virtue.

The Mufti's Responsibility

One who is authorized by a president, king, or prince to sign on their behalf takes pride in such a role. How much greater is the honor for one who signs on behalf of the Lord of the Worlds? The mufti fulfills a communal obligation on behalf of all scholars in the Ummah, as Allah has commanded them to convey their knowledge to those who do not know. Allah says:

"And [mention, O Muhammad], when Allah took a covenant from those who were given the Scripture, [saying], 'You must make it clear to the people and not conceal it.'" (Surah Aal-Imran, 3:187).

Those who conceal knowledge are warned:

"Indeed, those who conceal what We sent down of clear proofs and guidance after We made it clear for the people in the Scripture - those are cursed by Allah and cursed by those who curse" (Surah Al-Baqarah, 2:159).

The Prophet Muhammad (peace be upon him) also warned against concealing knowledge:

"Whoever is asked about knowledge and conceals it will be bridled with a bridle of fire on the Day of Resurrection." (Hadith)

Knowledge is lost when fatwas are given irresponsibly; they may bring comfort to others, but the burden of error falls upon the mufti. The mufti must also have a sincere intention when issuing fatwas, aiming to clarify Allah's rulings, fulfill the command to explain the truth, and uphold the covenant made with the scholars to reveal the truth to the people and not conceal it.

The Proper Approach to Issuing Fatwas

Below are a set of guidelines for issuing fatwas to people. They will serve a mufti well, acting as a compliance check when he issues his answer.

Avoiding Ambiguous Terms

When a questioner asks the mufti for a ruling, they are inquiring about Allah's judgment on the issue at hand. Islamic rulings (ahkam) are well-defined, well-known, and clear, and scholars have divided them into clear categories:

- obligatory (wajib)
- recommended (mandub)
- prohibited (haram)
- disliked (makruh)
- permissible (mubah)

These five rulings also express themselves through legal principles, causes (asbab), conditions (shurut), impediments (mawani'), valid (sahih), and invalid (fasid) actions.

It is problematic when issuing fatwas to abandon these precise terms and replace them with ambiguous and undefined words like "maybe," "not the best option," "better," or "preferable." These vague terms lead to confusion, turning certainties into uncertainties and vice versa, leaving the questioner unsure about the ruling they are seeking: Is it mandatory, prohibited, recommended, disliked, or permissible?

Adhering to precise terminology that accurately expresses the ruling is crucial to avoid such confusion and maintain clarity in the answer. This is especially important in matters where the ruling has been clearly stated by the scholars as obligatory, prohibited, recommended, disliked, permissible, valid, or invalid. For issues that do not fall into these categories and require the mufti's discretion, it is appropriate for the mufti to use terms like "it is better to do" or "it is better not to do," "permissible," or "not permissible."

A Difference of Opinion Is Not An Evidence

Another practice a mufti should avoid is when the questioner seeks a fatwa to know the ruling they should act upon, and the mufti responds, "there is a difference of opinion" or "there are two views." That does not help them decide the action they should take. The questioner likely knows there is a difference of opinion and asks to know what they should follow. The mufti should decisively provide the ruling that he believes is the strongest and clarify it to remove any doubts, enabling the questioner to act with confidence.

The Pressure of Contemporary Contexts

The current societal pressures that contradict the Shariah of Allah are immense. Some who are associated with Islamic knowledge and hold significant positions in religious discourse in many Islamic countries have succumbed to these pressures. They have permitted practices under the pretext of widespread affliction and the difficulty of change. They have gone to great lengths to find justifications in the texts of Shariah to support their permissive stance, often stretching and twisting the texts to fit their views, failing to achieve their aim. A mufti must be vigilant against the pressure of such societal realities. He must unequivocally declare what Allah has forbidden as "haram" and what He has permitted as "halal."

Although custom, time, place, and circumstances influence fatwas, and it is an established principle among scholars that fatwas may change with these variables,

this principle must be applied judiciously. This is based on narrations that the Prophet Muhammad (peace be upon him) permitted a fasting elder to kiss, but forbade a young fasting person from the same, and that he prohibited the storing of sacrificial meat beyond three days in specific circumstances, but permitted it at other times.

The principle that necessities permit prohibitions and that needs are treated as necessities is well-established. However, taking into account custom, time, place, and pressing circumstances does not justify issuing fatwas that permit what Allah has forbidden or nullifying what He has made obligatory under the pretext of contemporary reality. The fatwa should aim to change the current reality to align with the teachings of Islam, as the Shariah was revealed to reform people and their customs, not to conform to them.

The Clarity and Accessibility of Fatwas

Many questioners have very limited knowledge of Islamic jurisprudence; most are from the general populace, some of whom may struggle with understanding basic issues. Despite this, some who issue fatwas tend to elaborate extensively, explaining everything they know about the topic, including hypothetical scenarios, leaving the questioner confused. The questioner might pick out words they believe to be the answer to their question, which may not be accurate, or they may feel incompetent for not understanding the mufti's complex explanation.

The mufti must provide clear, concise answers that directly address the question asked, without overwhelming the questioner with unnecessary details. The goal is to ensure the questioner leaves with a clear understanding of the ruling related to their inquiry, enhancing their confidence in seeking future guidance. This was exemplified by the Prophet Muhammad (peace be upon him), who gave straightforward answers. When a woman asked about her child's Hajj, he said, "Yes, and you will have a reward." When another woman asked if a woman needs to perform ghusl (ritual purification) if she has a wet dream, he said, "Yes, if she sees water." When another asked about performing Hajj on behalf of her father, he said, "Perform Hajj on his behalf." And when asked about fasting on behalf of her deceased mother, he said, "Fast on behalf of your mother."

Adhering to the Strongest Opinion

A mufti must issue fatwas based on what he believes to be the strongest opinion according to the evidence. Scholars such as Ibn Qudamah, Ibn al-Salah, al-Baji, Ibn Hazm, and Ibn Abidin have agreed that it is not permissible for a mufti to issue a fatwa based on an opinion he considers weak. It is incorrect for a mufti to tell a questioner, "There is a difference of opinion on this issue; you may follow any of them." This approach is flawed because the differences among the respected Imams do not imply that one can choose any opinion without considering the evidence or reasoning. Each Imam has one opinion on each issue, based on their understanding and evidence, and it is the mufti's duty to provide the ruling he believes to be correct based on his knowledge.

The mufti must avoid causing confusion by providing multiple conflicting opinions without clear guidance, as this does not fulfill the responsibility of providing clear and definitive answers.

By adhering to these principles and responsibilities, a mufti ensures that the fatwas issued are accurate, reliable, and beneficial for the questioner. This not only upholds the integrity of Islamic jurisprudence but also helps Muslims navigate their daily lives in accordance with the teachings of Islam. The role of the mufti is thus crucial in maintaining the connection between the divine guidance and the practical application of Shariah in the contemporary world.

Allah knows Best,

The Maliki Position on Custom and Traditions

Dr. Al-Talib bin Al-Mujtaba bin Ankar Al-Shanqiti

INTRODUCTION

Customs and traditions have long played a crucial role in Islamic jurisprudence, particularly within the Maliki school of thought. This article, "The Role of Custom in Maliki Jurisprudence," explores how Imam Malik and subsequent Maliki scholars have integrated customs into their legal framework. By examining the conditions under which customs are considered valid, and how they are reconciled with Sharia texts, the article delves into the complex relationship between tradition and divine law. It also highlights the dynamic nature of legal rulings as they adapt to changing customs and times, emphasizing the importance of scholarly expertise in maintaining the relevance and applicability of Islamic jurisprudence.

The Role of Custom in Maliki Jurisprudence

INTRODUCTION

Custom is considered a foundational source for derivation according to Imam Malik. The Malikis have a long history of recognizing customs and traditions, building many rulings upon them. This is because, in many instances, customs align with the broader public interests, making them a fundamental principle in their school. Therefore, the Malikis have relied heavily on custom and tradition in understanding rulings and have based many

jurisprudential issues on them, whether general or specific customs, whether verbal or practical.

The appreciation for custom assists in understanding the reasons behind rulings, such as the permissibility or restriction of certain actions, the duration of accepted time in cases of forgetfulness, the estimation of maintenance for wives and relatives, their clothing, and what is specific to men or women in terms of assets. It also includes the expressions people use in oaths, contracts, and annulments, as these impact rulings.

The Use of Custom & Its Relationship To Sharia'h

Customs and traditions are acknowledged only when they do not contradict any Sharia evidence. If a contradiction exists, customs are set aside in favor of the Shari'ah. This principle is embodied in the axiom, "Custom is authoritative as long as it does not contradict Sharia." Consequently, jurists from the Maliki school have established specific conditions and regulations to ensure the validity, applicability, and consideration of customs.

A Complex Relationship

The relationship between custom and Sharia sources is intricate and complex. Custom is entirely disregarded when it wholly contradicts Sharia. However, when particular aspects of custom contradict specific aspects of Sharia, the jurist must carefully evaluate and balance them, seeking to harmonize custom with the Sharia text if there is benefit and it is possible. This nuanced relationship imposes significant demands on the scholar, who must act with surgical precision in such cases, matching particulars that function, while dismissing those that contradict the Shari'ah.

Key Conditions for Considering Custom in Maliki Jurisprudence

1. **Consistency and Prevalence:** Custom is only considered if it is consistent and prevalent. Legal theorists state, "Custom is only considered if it is consistent and prevalent."
2. **Non-Contradiction to Sharia:** Custom is disregarded if it contradicts a Sharia evidence or principle.
3. **Non-Opposition to Explicit Terms:** Immutable rulings from the Qu'ran and Sunnah, if the custom contradicts them, those texts nullify the consideration of custom. There is an important legal axiom that states, "If custom conflicts with explicit evidence, the latter prevails."

If custom does not contradict anything mentioned, it is considered valid, isuch as transactions that people are accustomed to for which there is no prohibitive text, as long as they do not involve permitting the prohibited or prohibiting the permitted.

Types of Custom According to the Malikis

The Malikis have divided custom into several categories based on different considerations, such as benefit and harm, generality and specificity, and verbal and physical. For example, custom can be divided into valid and invalid, with the valid custom further divided into verbal and physical. Each of these can then be further divided into general and specific customs.

Dr. Omar Abdul Karim al-Jidi referred to this as the "natural division of custom," which is favored because it encompasses all previous divisions regardless of their different names. Thus, custom can be practically divided into two types: it either contradicts the principles and fixed rulings of Sharia or it does not. If it contradicts them and their unchanging rules, it is considered invalid and must be disregarded. This includes practices such as dealing with usury, trading in alcohol, drinking it, neglecting prayer, and other customs that oppose Islamic legislation.

Custom and Changing Rulings with Changing Customs and Times

Whenever a valid custom changes, the rulings built upon them change accordingly. Al-Maqri narrated the consensus on this matter. Balancing between texts and new customs is a criterion for scholarly expertise and reflects the adeptness of understanding the spirit of Islamic legislation. Al-Nabigha al-Qalaawi summarized this accurately and honestly in "al-Tulihiya," highlighting the well-known practice among Maliki scholars of adhering to customary principles in fatwa issuance, which changes with changing circumstances and times. He also warned against rigid adherence to texts explained by customs, times, and places when those conditions change.

This is supported by Al-Qarafi in "al-Furuq," where he said: "If someone from a different region seeks your opinion, do not respond based on the customs of your region and what is documented in your books. This is the clear truth, and rigidity in adhering to recorded texts undermines religion and shows ignorance of the objectives of Muslim scholars. According to this principle, divorce oaths and statements can be classified. Explicit terms may become implicit, requiring intention, and implicit terms may become explicit, not requiring intention."

In the same context, Sheikh Ibn Arafa al-Warghami, as quoted by Ibn Farhun in his book "al-Tabsira," said: "Rigid adherence to the fiqh texts without considering people's circumstances and customs, and variations in time, is misleading and causes misguidance." Allah Almighty said: "Hold to forgiveness, enjoin what is good, and turn away from the ignorant" (Al-A'raf: 199). Such texts, urging the consideration of custom and adherence to it, are abundant in Maliki literature, both in theoretical and practical books like documents, contracts, and judicial writings, which discuss customary practices.

Some Issues of Custom According to the Malikis

There are many issues in Maliki jurisprudence that are based on custom and tradition, making it difficult to enumerate and list them all. Here, we will mention some examples to illustrate this point. The Malikis have specified these issues, exemplifying the various types of custom and tradition in terms of their validity and whether they are verbal or physical, prior to, concurrent with, or subsequent to the arrival of the text, and other considerations. Here, I will list these issues, occasionally indicating the category they fall into as previously explained. Thus, we provide these issues as examples of the principle discussed:

1. **Oaths and Exceptions:** The Malikis interpret this as referring specifically to oaths made by Allah's name, as this is the recognized oath in Sharia custom. Thus, customs can specify general Sharia principles.
2. **General Terms and Property:** The general term "dabbah" (beast) being used to refer to a specific animal is an example of a verbal custom that specifies the general meaning. If the use of a term has evolved to the point where its original meaning is abandoned or nearly abandoned, then its second meaning prevails when used. This is applied to technology and inventions.
3. **Customary Usage of Terms:** If people's custom is to refer to wheat as "food" and a general prohibition against usury in food is issued, it would apply to wheat due to customary usage. This is an example of a practical custom that predates the general text. It is reported that Imam Malik considered this custom to specify the general statement in the Quran: "Mothers shall breastfeed their children for two complete years, for those who wish to complete the nursing period" (Al-Baqarah: 233). A noblewoman is not obligated to breastfeed her child because this was the prevailing custom among the Arabs.
4. **Food Transactions and Prohibitions:** If there is a prohibition against selling food for food with disparity, and it became customary to sell some types in such a manner and this custom was approved during the Prophet's time and continued after, this custom would evict the general prohibition.
5. **Oaths and Practical Custom:** If people were not familiar with fish meat and someone swore not to eat meat, he would not be considered to have broken his oath by eating fish according to the majority of Maliki scholars, based on practical custom. However, Al-Qarafi, Khalil ibn Ishaq, and Al-Wansharisi held that he would be considered to have broken his oath by eating fish, as Khalil stated in his Mukhtasar.
6. **Bread Types and Oaths:** If someone swore not to eat bread and their custom was to eat wheat bread, they would not be considered to have broken their oath by eating barley bread according to the majority view. However, Al-Qarafi and those who agreed with him held that they would be considered to have broken their oath by eating barley bread, even if they had never eaten it before, because practical custom or habitual practice does not specify the generality in their view.
7. Clothing and Oaths: If a king swore not to wear clothes and his custom was to wear brocade, and he always referred to it as clothes, he would not be considered to have broken his oath by wearing brocade or other types of clothes according to the majority view. However, Al-Qarafi, who claimed a consensus on this, and those who followed his opinion held that he would be considered to have broken his oath, as practical custom does not specify and limit the general term to brocade alone. Sheikh Halullu considered the consensus mentioned by Al-Qarafi to be complex, as he stated in "al-Diya' al-Lami' Sharh Jam' al-Jawami'": "What Al-Qarafi narrated as consensus is not correct, and the prevalent view is specification and restriction by custom, even if it is an action."

CONCLUSION

The examples provided demonstrate the depth and nuance in the Maliki approach to custom and tradition, underscoring the need for scholars to carefully consider them in their legal rulings. Custom, when not in contradiction with Sharia, serves as an important tool in the development and application of Islamic law, particularly within the Maliki school. By integrating customs that align with the broader objectives of Sharia, scholars ensure that the law remains relevant and applicable to the changing circumstances and needs of the community. This dynamic interaction between tradition and divine law highlights the sophistication and adaptability of Islamic jurisprudence.

Allah knows Best,

Does Usul al-Fiqh Need An Update (PART ONE)

Sh. Mawlud al-Sariri

INTRODUCTION

The field of Usul al-Fiqh serves as the foundation of Islamic jurisprudence, shaping the principles and methodologies that guide legal interpretations and rulings. However, as the world evolves and presents new challenges, the question arises: does Usul al-Fiqh require an update to address contemporary issues? In this article, part one of a series, Sh. Mawlud al-Sariri explores the dynamic tension between maintaining the stability of Islamic law and implementing necessary reforms. By examining the historical development of Usul al-Fiqh and its relevance in today's rapidly changing world, Sh. al-Sariri invites

readers to consider whether the traditional frameworks are sufficient or if a modernized approach is needed to ensure justice and relevance in the modern era.

A Discussion On Reviving Usul al-Fiqh

In our current era, there is a widespread discourse on the necessity for scholars of Islamic jurisprudence to challenge traditional jurists and the ancient methodologies established for the study of fiqh (Islamic jurisprudence) and its principles (Usul al-Fiqh). This revival encompasses all matters related to deriving rulings, building upon, or applying those rulings, the conditions that ensure a rulings compliance, their specific subjects, that are derived using foundational principles, and systematically structured through human reasoning.

The proponents of this call for renewal, who widely discuss and publish on the subject, argue that such an endeavor is essential, citing several points:

Judicial Monopoly

One of their arguments is that jurists have monopolized the examination of Islamic legal matters since the inception of the discipline of fiqh. They have dominated the study of its texts and principles, the definition of legal terminologies, and the establishment of ijtihad (independent reasoning) rules to be followed when deriving legal rulings from their sources. Additionally, they have set the conditions for ijtihad and the methodology for interpreting religious texts. This monopoly by jurists, they argue, was neither appropriate nor permissible, as it usurped a general right. The examination of religious texts and the intellectual effort to understand and derive rulings from them is a right that belongs to every individual in the community, regardless of their level of expertise in Islamic sciences.

According to this perspective, these jurists are seen as having unjustly usurped a position that belongs to the community and have monopolized religious authority without legitimate grounds. They have obstructed people from exercising this right by establishing complex conditions and stringent qualifications for ijtihad that many scholars, let alone laypeople, find impossible to meet. These stringent conditions and qualifications required to be deemed a mujtahid (one who exercises ijtihad) have led to a disconnection between the study of religious texts and the broader Muslim community, that

has resulted in traditional jurists monopolizing the interpretation of Islamic law without contest.

Inflexibility & Arthritis

And there is more: Reformists not only accuse the classical Islamic jurists of monopolizing the right of religious interpretation but also of l rigidness and inflexibility. Ancient scholars adhere strictly to outdated principles and do not consider other methodologies, as they are unfamiliar with them. Their rigidity is further exacerbated by their opposition to anyone attempting ijtihad through different methods, labeling such individuals as deviant or misguided due to those traditional scholars' ignorance and limited understanding of the true nature of religious matters.

Scripture is Limited & Limiting

In the context of sources and methods, reformers claim that the rules and principles used to derive legal rulings from the Quran and Sunnah are antiquated and irrelevant, as they were suitable for past times and outdated contexts. The conditions of contemporary society and its needs have significantly changed, making these old principles inadequate and irrelevant. Therefore, all such (ancient) frames should be discarded except for those that prove their relevance.

A Focus On Words

Furthermore, the traditional method employed by past jurists and scholars in deriving rulings from texts—focusing on the literal meanings of words and constructing rulings based on those meanings—is unproductive. This approach dulls the senses, stifles intellectual growth, and limits the understanding of religious matters to one narrow perspective, neglecting the broader range of potential insights because strictly adhering to the literal meanings of religious texts and ignoring their underlying purposes and wisdom prevents benefiting from the full scope of their guidance and applying them appropriately in contemporary contexts. This deprives us of significant knowledge and the benefits brought by religion.

Limiting Ijtihad

Reformists also blame classical scholars for limiting the employment of ijtihad, which those classica scholars restricted by invoking the principle of "blocking the means to harm (sadd al-dhara'i), with the intention of preventing those with insufficient scholarly expertise from engaging in ijtihad. This decision needs reevaluation, removing unnecessary restrictions that are not essential for ijtihad.

An Irrational Platitude

Reformists critique the claim by classical legisits that divine revelation (i.e., the Quran and Sunnah) encompasses all necessary legal rulings for all times. This assertion has proven inaccurate in practice, highlighting the necessity of ijtihad in every era. Thus, the absence of ijtihad in any period is evidence of intellectual and jurisprudential stagnation and rot. The use of analogical reasoning (qiyas) has often been misapplied, particularly in matters related to governance and public affairs, such as defining the roles and responsibilities of the ruler and the advisory council. This has led to legal outcomes that promote

injustice, tyranny, and the abuse of power, contrasting with the intended principles of Islamic governance.

In summary, reformists claim that the traditional methodology of usul al-fiqh (principles of Islamic jurisprudence), is disconnected from the realities of life, influenced by formal, ancient, logic, and overly restrictive of intellectual movement. This does not align with the current circumstances of Muslims. Ijtihad should be a quality possessed by all Muslims, allowing each individual to engage in intellectual effort according to their level of knowledge. This personal engagement ensures the correctness of the fatwas they follow, achieved through diligent search and study.

Ancient Fiqh Or Modern Fiqh

The old jurisprudence was based on limited knowledge of the nature of things, universal truths, and social laws. Contemporary Muslims have the potential to understand these aspects better due to the modern advancements and expansion in various sciences. This necessitates a review and rebuilding of Islamic jurisprudence based on contemporary knowledge and insights. New sciences, such as sociology and natural sciences, should be integrated into the study of usul al-fiqh (principles of Islamic jurisprudence). These sciences can guide the mujtahid (jurisprudent) in fully comprehending the subjects of their ijtihad and uncovering aspects that may be overlooked without the aid of these sciences, while some lesser-emphasized principles of jurisprudence should be reconsidered for deriving legal rulings for new issues, as they have proven to be fertile and productive sources.

In short: These are the primary reasons for the necessity of renewal in the fundamentals of jurisprudence claimed by the reformists, as understood within my scope of knowledge.

A Response To These Claim & Praiseworthy Reform

It is undeniable that some of these reasons are genuine and stem from a deep understanding of Islamic jurisprudence and its conditions. Hence, I will address them in greater detail later in this text. Others, however, are baseless and often come from those who lack knowledge of Sharia and its methodologies. I will discuss them in the order they were mentioned and examine their validity.

First Reason: The Claim that Jurists Have Usurped the Right to Interpret Sharia, Which Belongs to the Entire Ummah

Anyone with even a basic understanding of Sharia sciences can see that this statement is nonsensical. How can the interpretation of Sharia be usurped as if it were a piece of land or similar tangible property? The interpretation of Sharia involves exerting effort and expending energy to acquire knowledge of Sharia, to understand its issues thoroughly, and to engage in ijtihad (independent reasoning). Who can prevent any of us from doing this, except for an unjust ruler or a tyrant oppressor? Many of these jurists themselves suffered greatly under such repression and injustice, as is well-documented in historical texts, and today, most of the great scholars of Islam, are underserved, ignored for exibitionlists and suffer from neglect and political abuse.

Furthermore, who exactly is meant by the term "jurists"? Are they the diligent and distinguished scholars of Islamic jurisprudence, or are they those who exploit religion for personal gain, flattering those in power, and bending religious texts to please them?

If by "jurists" these critics mean the diligent, prominent scholars of Islamic jurisprudence who are zealous in protecting the sanctities of Allah, then these scholars universally abhor blind imitation (taqlid). Some even declared it forbidden and considered it an innovation in the religion of Allah.

However, those who attack the scholars and esteemed jurists of the Ummah are not concerned with the truth of their accusations. Their aim is to confuse Muslims, undermine the respect and authority of scholars in the eyes of the people, weaken educational institutions, and create an environment where they can spread their own misguided ideas without opposition.

Consider the example of Nasr Hamid Abu Zayd, who slandered Imam al-Shafi'i by claiming that he (Imam al-Shafi'i) collaborated with the Umayyads willingly and contentedly. This absurd accusation elicited laughter and ridicule among scholars who know that the Umayyad dynasty fell 18 years before Imam al-Shafi'i was born; the Umayyad state ended in 132 AH, while Imam al-Shafi'i was born in 150 AH. The baseless accusations made by these individuals against the leaders of Islam are akin to the slander propagated by Nasr Abu Zayd regarding Imam al-Shafi'i and the Umayyads. Such serious accusations require conclusive evidence, yet these critics base their allegations on their own diseased imaginations, driven by malice and a desire to please their masters. This is not the place to delve into this subject extensively, but I mention it to highlight the relevance of this issue to our current discussion. The attacks on the scholars of Islam and the false accusations leveled against them are part of the same phenomenon, regardless of the different forms, era and manifestations it may take.

As for the complaints about those who flatter and exploit religion for personal gain, if this is who the critics mean by "jurists," then their criticism is misplaced. These individuals are not truly engaged in the scholarly examination of Sharia rulings; they are merely opportunists. It is important to note that those referred to as jurists in this context, who are characterized by flattery, are few in number, while the vast majority of scholars and jurists are genuine and dedicated to their craft. The Ummah should think well of them.

Second Reason: The Claim that Jurists Have Become Stagnant with Outdated Principles

Is there truly such a thing as outdated principles in Islamic jurisprudence and its foundations? How can they be described as outdated, and what evidence is there to support the claim that they are no longer suitable for developing new jurisprudential rulings?

I will address these issues in detail in the future, since this idea demands its own study..

Third Reason: The Claim that the Methodology of Past Jurists and Legal Theorists in Deriving Jurisprudential Rulings from Texts is Ineffective

This claim is overly broad when made in the context of specific accusation. The criticized methodology, according to these detractors, is essential for extracting rulings from texts and is unavoidable. Every form of speech, no matter how it is presented, conveys its intended meanings through the implications and connotations of its words. Understanding these requires knowledge of the linguistic context, the figurative use of language, and the circumstances under which certain expressions are used.

Understanding any text—whether divine or human—necessitates examining the indications, requirements, implications, and contexts of its words. Islamic legal texts from the Qur'an and Sunnah are interpreted according to established principles laid out by the scholars of the Ummah. These principles are documented in the books of usul al-fiqh (principles of Islamic jurisprudence) and are classified under the study of linguistic indications.

While human texts are also interpreted in a similar manner, they are subject to the limitations of human nature, such as forgetfulness, ignorance, limited understanding, and the tendency to intend meanings that differ from the apparent words. Despite these limitations, the same principles apply to understanding human speech within the bounds of these human characteristics, and everyone recognizes the limitations imposed by human nature on interpreting speech.

Thus, any statement made about the jurists' methods being ineffective is unfounded. The methodologies employed by the scholars of the Ummah are comprehensive and account for the complexities of language and context.

If examining Sharia terms and divine texts to understand their meanings is flawed, then by what means can we comprehend the contents of the Book of Allah and the Sunnah of His Messenger, including their rulings, obligations, news, admonitions, and other aspects? If there is another method, what is it? If the claim is not that but rather that the jurists' method is inadequate and should be replaced with a better one, then what is this superior method?

If the intent is to eliminate the authority of the text in favor of the authority of interests, what are these interests, and how do we recognize them? Every interest has a corresponding detriment. What benefits one person may harm another. As the saying goes, "One man's misfortune is another man's gain." Whose interests and harms should be the standard for measuring benefits and detriments universally?

If it means disregarding the texts of revelation entirely, what would we become then? Abandoning the texts means following the directives of those who advocate for abandoning Allah's revelations, essentially replacing divine guidance with the words of misguided individuals. What a catastrophe that would be.

Fourth Reason: The Claim that Literal Interpretation of Texts Prevents Utilization of Their Objectives

Firstly, literal interpretation of texts does not completely prevent consideration of their objectives. There is nuance here. Only the literalists (Zahirites) adhere strictly to the apparent meanings without regard for other causes and objectives. The rest of the scholars do consider these factors. They extract rulings from texts while considering the objectives, and each case is judged individually. I will discuss this further when addressing viable theories for jurisprudential application, Insha'Allah, and when discussing the features of renewal in the following chapter.

Fifth Reason: The Claim that the Conditions for Ijtihad are Excessive and Unnecessary

It is self-evident and a basic principle in the natural order that everything requires its prerequisites to be fulfilled. Anyone who claims that some of the conditions set by scholars for ijtihad (independent reasoning) are unnecessary must specify which conditions are being referred to. Once specified, these conditions can be re-evaluated, and we can attempt ijtihad without them. The truth of this matter will then become evident to all.

As for the argument that setting these conditions has led to the closure of the door of ijtihad, it is important to note that the conditions for ijtihad are not meant to prohibit it but to ensure the necessary level of competence. The conditions are essential for reaching the required level of expertise, not for preventing qualified individuals from engaging in ijtihad. In fact, the conditions for ijtihad have become more stringent over time due to the complexities of contemporary issues. I will elaborate on when I address how to balance interests, Insha'Allah.

Sixth Reason: The Claim that the Qur'an and Sunnah Contain All Necessary Jurisprudential Rulings

This statement has been affirmed by many scholars, including Al-Juwayni, who mentioned it in his book "Al-Burhan." He said: "The definitive and conclusive opinion among us is that no incident is devoid of a ruling from Allah, derived from the principles of Sharia. The basis that applies to all incidents is qiyas (analogy) and

the various forms of reasoning and inference related to it." This statement of Imam al-Haramaim clarifies the meaning of the claim above: that the Quran and Sunnah are the sole evidence of rulings, that some people ridicule because they do not understand its significance or scope, but understand it in a shallow myopic way.

Imam Ibn Hazm also mentioned it in his book "Al-Ihkam fi Usul al-Ahkam": "There is no incident that someone can say, 'This is obligatory,' except we respond: 'If you bring evidence of its obligation from the Qur'an, the authentic words of the Messenger of Allah (peace be upon him), or consensus, or an explicit text, then obedience is mandatory. It is obligatory to follow such directives, and whoever denies this obligation is considered a disbeliever. If someone claims the obligation without any textual evidence or consensus, he is lying, and such a statement is not obligatory. Similarly, if someone declares something as forbidden, we say to him: if you bring evidence from the text or consensus prohibiting it, then it is indeed forbidden, and obedience is required. Whoever seeks to make it permissible in this case is sinful, lying, and disobedient. However, if there is no textual evidence or consensus prohibiting it, then it is not forbidden."

I ask, Is there any action in the world that falls outside of this framework? It is clear that the textual evidence, explicit or implicit, encompasses every ruling that has occurred or will occur until the Day of Judgment. There is no scenario that falls outside these three types of rulings. By Allah's grace, this is the correct understanding.

The foundation of the normative position is based on the hadith narrated by Thalaba Al-Hushni, which states: "Allah has imposed obligations, so do not neglect them; He has set limits, so do not transgress them; He has prohibited certain things, so do not violate them; and He has kept silent about some things out of mercy for you, not out of forgetfulness, so do not seek them out."

Undoubtedly, anyone who reflects on the words of the scholars supporting this view: there are explicit scriptural injunctions, just as there are those that are inferred, will not see a contradiction between this view and the practice of ijtihad (independent reasoning). Ijtihad is used to derive these rulings from the Book of Allah and the Sunnah of His Messenger, as is qiyas. Therefore, whoever thinks that this view prohibits ijtihad, and limits deriving religious rulings to the sacred texts exclusively, has a weak understanding.

The Seventh Reason: The Misapplication of Qiyas (Analogical Reasoning) in Matters of Governance

As I mentioned in the first section, the question is raised about how Qiyas (analogical reasoning) may have contributed to the emergence of unjust rulers who transgressed the limits set by Allah, oppressed the people, and spread corruption on earth, thereby leading to the destruction of both land and people through their immorality and tyranny.

If the intention is to suggest that jurists employing Qiyas paved the way for rulers to act tyrannically and oppressively, then this claim requires clear evidence. It does not seem that revolts such as that of jurists like Ibn al-Ash'ath or the stances of notable scholars and judges like al-Thawri, Tawus, al-Hasan al-Basri, al-Harith ibn Miskin, Ibn Abd al-Salam, Ibn al-Hajib, and al-Nawawi against the rulers of their time are unknown to those who have studied Islamic history.

However, if the intention is to suggest that early Islamic jurisprudence does not contain detailed legal rulings to regulate governance, impose restrictions on rulers to prevent injustice, ensure accountability, and uphold the public interest in accordance with the religion of Allah, then this is accurate. It appears that early jurists might have assumed that people would naturally choose the most pious and suitable leaders, and obviously, a righteous and pious person would not need external constraints as they would be self-restrained by their piety and righteousness.

If the people erred in their choice and the leader turned out not to be as they had believed, it would be the duty of the influential community members to depose him. This has indeed occurred repeatedly in Islamic history, though not always in the ideal manner prescribed by Sharia. The reliance of jurists on the piety and righteousness of leaders is evident in some of their legal opinions, which might have been suitable in the era those opinions were formulated. However, in the present time, this reliance must be re-evaluated due to the corruption of intentions and the malignancy of inner dispositions. Hence, on this issue, reform is warranted inline with the limits and norms laid out by the Shari'ah.

The Eighth Reason: The Necessity of Ijtihad for Every Muslim

Every Muslim should engage in ijtihad to the best of their ability. This was a call made persistently by Imam Ibn Hazm, who reiterated it in his book "Al-Ihkam," expressing strong disapproval of blind imitation (taqlid) and those who advocate for it, and urging for the practice of ijtihad, which he considered essential for true understanding and application of Islamic principles. He emphasized that it is obligatory for every Muslim, male or female, regardless of their status, even if they are lay people to engage in ijtihad.

He explained how a layperson should practice ijtihad, stating: "If a layperson encounters a situation requiring a religious ruling, he should ask a scholar. If the scholar responds that this is the command of Allah and His Messenger, the layperson should accept it and is not required to investigate further. If the scholar says it is his own opinion or the opinion of a specific jurist, or becomes angry or remains silent, it is forbidden for the layperson to follow his ruling. The layperson must seek

another scholar who will provide the ruling based on the commands of Allah and His Messenger. This ensures the layperson is following the true Islamic ruling and avoids any deviation."

Shaykh Al-Fulani mentioned something similar in his book "Iqaz Himam Uli Al-Absar," referring to Imam Ibn Daqiq al-Eid, who, during his final illness, wrote extensively against taqlid (blind imitation) and emphasized the importance of ijtihad.

The Ninth Reason: The Perceived Shortcomings of Usul al-Fiqh

Critics argue that the traditional methodology of usul al-fiqh inherited from previous generations does not meet contemporary needs because it was developed in isolation from real-life contexts and influenced by classical logic. This claim requires thorough examination and clear illustration of how qiyas (analogical reasoning) relates to real-life situations and how it can be adapted to address them effectively.

There is no doubt that there is a similarity between ancient logic and qiyas in terms of form and structure, but is this similarity sufficient to prove that qiyas fails to achieve its intended purpose? That needs investigation and proof.

The Tenth Reason: Limited Knowledge of Natural and Social Sciences in Classical Fiqh

This is an important consideration. If it is true that classical Islamic jurisprudence is based on limited knowledge of the nature of things, cosmic realities, and social laws, then it is necessary to review and identify the areas where this is evident.

The Eleventh Reason: The Rigidity and Constraints of Qiyas in Fiqh

Qiyas in fiqh is precise and bound by conditions that limit the scope of legal inquiry. These conditions are scientific and based on the nature of the subject matter. Anyone who has a better methodology should present it.

The Twelfth Reason: The Integration of New Sciences into Usul al-Fiqh

The emergence of new sciences should be incorporated into the study of usul al-fiqh to aid in more accurate and profound derivation of legal rulings. This is essential as it helps in bringing benefits and preventing harm, and in applying texts to contemporary issues correctly.

The Thirteenth Reason: The Reassessment of Certain Principles in Usul al-Fiqh

Some principles in usul al-fiqh have proven beneficial and therefore must be reassessed. This will be discussed further when addressing the theoretical frameworks that need reevaluation.

Section Two

QUESTIONS & ANSWERS

All praise is due to Allah, and may peace and blessings be upon our beloved Prophet Muhammad, his family, his companions, and all who follow them. We present here seven questioned people asked over the last year. We choose these questions because of their prevelance, hoping they provide Imams, teachers and chaplins with helpful answers.

Question One: Prayers In A Language Other Than Arabic

Question: What is The Ruling On Praying In A Language Other Than Arabic?

Answer: Islamic legal scholarship extensively debates the permissibility of performing prayers in non-Arabic languages. This discussion is deeply rooted in the interpretation of specific Quranic verses and prophetic narrations (hadiths), leading to varied juristic viewpoints.

1. Quranic Foundations:

• A considerable number of jurists reference the verse

"إِنَّا أَنزَلْنَاهُ قُرْآنًا عَرَبِيًّا لَعَلَّكُمْ تَعْقِلُونَ"

"Indeed, we revealed it: the Arabic Quran, so you will think." Quran (43:3)

to assert the necessity of Arabic in prayer, suggesting that the divine message's comprehension is tied to its Arabic revelation

Imam Abu Hanifa, however, interprets the more inclusive verse

"فَاقْرَءُوا مَا تَيَسَّرَ مِنَ الْقُرْآنِ"

"Recite whatever is easy for you from the Quran."

as allowing for prayer in any language if Arabic recitation is beyond a person's ability.

2. Key Hadiths Informing the Debate:

• The hadith

"لاَ صَلاَةَ لِمَنْ لَمْ يَقْرَأْ بِفَاتِحَةِ الْكِتَابِ"

"There is no prayer without al-Fatiha." (Al-Bukhari 756 and Muslim 394)

is pivotal for those advocating Arabic exclusivity in prayers, emphasizing Al-Fatiha's central role.

• Conversely,

"إِذَا قُمْتَ إِلَى الصَّلاَةِ فَكَبِّرْ، ثُمَّ اقْرَأْ مَا تَيَسَّرَ مَعَكَ مِنَ الْقُرْآنِ"

"When you start your prayer then say Allahu Akbar, and then read whatever is easy for you from the Quran." (Al-Bukhari 757, Muslim 397)

supports the notion of linguistic flexibility in prayer for those who struggle with Arabic, according to Imam Abu Hanifa's interpretation.

Juridical Perspectives

1. The Hanafi Position

• There is a section in a reliable Hanafi text that elucidates Abu Hanifa's stance, allowing for non-Arabic recitation under specific conditions, highlighting the Quran's revelatwion in Arabic as a foundational aspect of this discussion. تبيين الحقائق شرح كنز الدقائق(1/110)

2. Ibn Qudama'a View

• Reflecting a more conservative interpretation, Ibn Qudama, and by extension, Imam al-Shafi'i, advocate for the indispensability of Arabic in Quranic recitation during prayer, emphasizing the intrinsic connection between the Quran's message and its language.

3. Maliki Considerations

• Al-Kharshi, in his commentary on "Mukhtasar Khalil," outlines the Maliki approach, which is generally restrictive of non-Arabic prayers for those proficient in Arabic but allows exceptions for those who are not, demonstrating a pragmatic approach to worship.

What To Say At A Minimum

Often new Muslims: non-Arabic speakers, can feel overwhelmed by things. This is not novel! Even the early Arab new-Muslims felt challenged. The narration reported by Rafa'a bin Rafi' in Abu Dawud's collection provides important guidance:

"إِذَا قُمْتَ إِلَى الصَّلَاةِ، فَإِنْ كَانَ مَعَكَ قُرْآنٌ فَاقْرَأْ بِهِ، وَإِلَّا فَاحْمَدِ اللَّهَ، وَهَلِّلْهُ، وَكَبِّرْهُ"

"When you stand for prayer, if you have the Qur'an with you, then recite it; otherwise, praise Allah, glorify Him, and magnify Him."

This hadith emphasizes adaptability in worship practices, offering alternatives for those unable to recite in Arabic, thus underscoring the importance of sincerity and effort in religious observance.

However, as with a dispensation, this concession is temporary, and barring an serious issues that would prevent a person from learning the prayers in Arabic, a new-Muslim must invest in learning the prayer and some short chapters of the Quran in Arabic. You embraced Islam, not vice versa!

CONCLUSION

The discourse on non-Arabic prayers within Islamic jurisprudence reflects a rich tapestry of interpretive traditions, legal reasoning, and scholarly debate. While a significant portion of Islamic scholarship upholds the primacy of Arabic for the performance of prayers, rooted in the Quran's linguistic essence and the prophetic guidance, there is notable flexibility afforded by certain juridical positions for individuals who face linguistic barriers. This flexibility, particularly evident in the Hanafi school and partially accommodated by the Maliki and Shafi'i interpretations under specific conditions, highlights the inherent adaptability of Islamic jurisprudence to the varied circumstances of the Muslim faithful.

The emphasis on intention (niyyah) and effort (ijtihad) within the Islamic tradition further underscores the religion's focus on the inner state of the worshipper, recognizing the validity of an individual's sincere attempt to engage with divine guidance, even when faced with linguistic challenges. This aspect of Islamic jurisprudence serves to accommodate the spiritual needs and realities of a diverse global Muslim population, ensuring that the essence of prayer—communication with the Divine—is accessible to all, irrespective of linguistic proficiency.

In conclusion, the scholarly discourse on the legitimacy of non-Arabic prayers in Islamic jurisprudence reveals a dynamic interplay between textual fidelity, linguistic integrity, and pragmatic compassion. It showcases the depth of Islamic legal thought and its capacity to bridge the gap between divine commandments and human circumstances, thereby facilitating a more inclusive and understanding approach to religious practice.

Suhaib Webb

Question Two: The Term Qadim & Theology

Some passionate Muslims have contested the use of the term "pre-eternity" (Ar. Qidam) by many Muslim theologians, claiming it's not a designated name of God and hence inappropriate because God's names are specified by revelation.

This objection is weak for two reasons:

1. **Hadith Evidence:** Abdullah ibn Amr ibn al-'As reported a hadith where the Prophet Muhammad, upon entering the mosque, would say,

قال أعوذ بالله العظيم وبوجهه الكريم
وسلطانه القديم من الشيطان الرجي

"I seek refuge with Allah the Great, with His Noble Face, and His Eternal Dominion from the accursed devil."

This hadith, which mentions God's "Eternal Dominion," signifies an attribute without beginning, applicable not just to God's dominion but essentially to God Himself.

2. **Theological Clarification:** The term "pre-eternity" is not claimed to be one of God's names that would require textual specification (tawqifiyya); rather, it's an attribute. There's no issue in attributing this quality to God as long as it doesn't imply imperfection and

is agreed upon by Muslims in its meaning.

The flexibility in using qualities to describe God was practiced by some of the Salaf (early generations of Muslims). Imam al-Tahawi, about a thousand years ago, articulated in his creed about Allah:

قَدِيمٌ بِلَا ابْتِدَاءٍ دَائِمٌ بِلَا انْتِهَاءٍ

"He is pre-eternal without beginning,
everlasting without end."

Thus, Imam al-Tahawi utilized these descriptions without any notable objection.

Suhaib Webb

Question Three: Did Early Muslims Destroy Churches

Question: I know you lived in Egypt. Is it true that Islam oppressed Christians there and destroyed their churches?

Answer: That is incorrect. Historians note that most of the ancient churches in Cairo were built during the era of the Companions of the Prophet ﷺ, such as the Church of St. Mark in Alexandria between the years (39 AH) and (65 AH).

During the governorship of Muslim ibn Mukhlid over Egypt between the years (47 AH) and (68 AH), the first church in Fustat was built in the Haret Al-Rum. Additionally, Abdul Aziz ibn Marwan, when he established the city of Helwan, allowed the construction of a church there and permitted some bishops to build two monasteries.

The renowned historian Al-Maqrizi mentioned in his book 'Al-Mawaiz wal-I'tibar bi Dhikr al-Khitat wal-Athar' (4/374, Dar Al-Kutub Al-Ilmiyya) many examples of the churches of the People of the Book, then stated: [All the mentioned churches in Cairo were newly built during the Islamic era without any dispute.]

Churches that were destroyed by the overzealous were rebuilt by the state in coordination with religious scholars:

> Abu Amr Al-Kindi narrated in his book 'Al-Wulaat wal-Qudaat' (p. 100, Dar Al-Kutub Al-Ilmiyya): [When Musa ibn Isa was appointed as the governor of Egypt by the Commander of the Faithful Harun Al-Rashid, he permitted the Christians to build the churches that Ali ibn Suleiman had demolished. All these churches were rebuilt with the consultation of Al-Layth ibn Saad and Abdullah ibn Lahi'ah, who said that it was part of the country's development. They argued that most of the churches in Egypt were built during the Islamic era, in the time of the Companions and their followers."

Allah Knows Best,
Suhaib Webb

Question Four: Ruling on a Father Marrying His Daughter Against Her Will

Summary of the Question:
What is the stance on a father forcing his daughter to marry her cousin, whom she does not wish to marry, claiming his guardianship rights over her?

Answer: It is impermissible for a father to force his daughter into marriage under any circumstances. A father's guardianship only extends to facilitating the marriage contract on her behalf, with her explicit consent and after asking for her permission, as a mark of respect for her. Texts clearly mandate that a woman's consent is essential for the marriage contract, and this holds true regardless of whether she is a virgin or not.

For instance, a virgin once approached Prophet Muhammad, peace be upon him, complaining that her father married her off against her will. The Prophet then gave her the choice, effectively allowing her to affirm or annul the marriage. Similarly, in the case of a previously married woman, the Prophet annulled her marriage when her father forced her into it.

Notably, the jurist Ibn Qayyim, may God have mercy on him, argued strongly against the permissibility of a father forcing his daughter into marriage, diverging from his Hanbali school of thought. He notably argued, "If a mature and sensible virgin cannot have her father manage even the smallest bit of her finances without her consent, how can it be permissible for him to degrade her and marry her off to someone of his choice, against her will?"This is tantamount to slavery!

The daughter should assert her right to refuse this marriage, and her mother and family members should support her in opposing her father's unjust actions, as if he were subjecting her to a form of slavery, echoing Ibn Qayyim's views. Especially since the inquiry suggests that this marriage is more like a transaction or trade involving the daughter for the financial benefits from the young man's wealth, including property sold by the girl's father to his brother due to poverty—echoing a time when slave markets were common.

Imam Abu Hanifa's humane jurisprudence is also relevant here, as he rejected all impositions except in cases of public harm. He recognized the manipulative nature of such deals and benefits, advocating against limiting the agency of even the unwise, as long as they are competent adults. He argued that stripping someone of their agency is more harmful than potential reckless spending, as it dehumanizes them and equates them to animals.

In conclusion, I strongly support the daughter's right to marry according to her choice and urge her to resist any undue pressure or accusations of dishonor. This father is in the wrong by his actions. May God have mercy on a parent who supports their child's right to respect and choice.

Dr. Zaynab Abu Fadel

Question Five: Are Juma Greetings Heterodoxy

The Question

Recently, I saw a lecture on YouTube with a man claiming that saying, "jumu`ah mubārak (a blessed Friday)" on Fridays is an innovation? Is that true?

The Answer

Scholars of fatwā (legal opinions) divided acts into worship and customs. Both are central to our faith, and scholars gave each a tremendous amount of attention. For that reason, the first Ph.D. granted at al-Azhar University in the 20's was on Islam and Custom.

Customs and Cultures are Embraced by Islām

Custom is so important that it forms one of the five major axioms of Islamic law. Al-Qādi al- Hussein al-Shāf'i wrote, "Utilization of custom is one of the five principles that Islamic Law rests on."

Imām al-Syūtti mentioned them in Kawkab al-Sāti saying,

بِشَكٍّ الْيَقِينُ لَا يُزَالُ وَإِنَّ كُلَّ ضَرَرٍ يُزَالُ
وَبِالْمَشَاقِ يَجْلِبُ التَّيْسِيرُ وَإِنَّهُ لِلْعَادَةِ الْمَصِيرُ
وَزَادَ بَعْضٌ خَامِسَ الْقَوَاعِدِ أَنَّ أُمُورَ الشَّخْصِ بِالْمَقَاصِدِ

"Certainty does not remove doubt, and Islam removes every harm.
Hardship brings ease and custom (for fiqh) is a reference point
A few added a fifth: that every act of a person is based his intention."

Custom in the Tradition

`Abdullah bin Masūd used to say, "What the Muslims deem as good is good."

In Imām al-Bukhāri's collection of authentic hadīth (saying or tradition of the Prophet ﷺ – peace be upon him), under the chapter on commerce, we find an interesting title for the 95th section:

بَابُ مَنْ أَجْرَى أَمْرَ الأَمْصَارِ عَلَى مَا يَتَعَارَفُونَ بَيْنَهُمْ فِي الْبُيُوعِ وَالإِجَارَةِ وَالْمِكْيَالِ، وَالْوَزْنِ، وَسُنَنِهِمْ عَلَى نِيَّاتِهِمْ وَمَذَاهِبِهِمِ الْمَشْهُورَةِ

Chapter: Where there is no fixed judgement, the traditions and conventions of a community are referred to – Customs and Norms is an Important Part of our Faith

Commenting on this, Imām bin Hajar wrote, "The purpose of this title is to establish the reliance on custom in Islamic law."

That is not to say that any custom is recognized by Islam. For more on that, consult a local scholar or see the books of usūl al-fiqh (principles of Islamic jurisprudence).

The Ruling on Customs and Day to Day Affairs is Permissibility

Imām Ibn Taymiyyah wrote, the foundations of Imām Ahmed's school are two:

3. Customs are permissible unless there is a clear text that forbids them.
4. Acts of worship are forbidden (to invent) unless there is a clear text that allows them.

Then, he defined custom saying, "Customs are habits of people pertaining to food, drink, clothing, transportation, speech and other such normal day to day activities. Thus, they should not be forbidden unless by Allah or his Messenger ﷺ through an explicit text, a general one or a proper analogy. If not, then the general ruling for them is permissibility."

We understood from Ibn Taymiyyah's definition that customs divide into two parts: words and deeds.

Ibn Hajar said, "Custom plays a role in determining the explicit meaning of words." Implying that if a person uses a word that is exclusive to his culture, the known custom is used to determine its implications. For that reason, Imam al-Dardīr noted that the Māliki's coined an axiom, "Customs are like conditions." From the important usage of words are greetings and salutations.

Greetings

Scholars agree that greetings fall under mu`amalāt(day-to-day activities), and they are part of customs that are related to speech. Since the general ruling on customs in permissibility, then greetings that are free of evil are considered permissible. For that reason, when Talha (a great companion of the Prophet ﷺ) greeted K`ab with the good news of the latter's forgiveness, the former was not censured by the Prophet ﷺ, K`ab or the other companions (Allah be pleased with them all).

Based on this important principle and the large number of general texts that encourage us to speak well and be gentle to others, it is a stretch to say that such a greeting in an innovation. Imām al-Sakhāwi noted this in al-Tahina bi al-Shūr wa al-'Ayād (Greetings Upon Months and Holidays) in greater detail.

May Allah bless us with tawfiq (success).
Suhaib Webb

Question Six: Forced Divorce

The Question: I was forced, under threat of assault, to divorce my wife. My question is: Does that constitute a valid divorce?

The Answer: Several religious proofs highlight the invalidity of a divorce under duress. Islam places importance on autonomy, forbidding coercion to ensure that individuals can live healthy lives and make informed choices. Allah says, "There is no compulsion in the faith." (Quran 2:256). The Prophet ﷺ noted that anyone forced to do some-

thing against his will is forgiven, stating, "My community is pardoned for what they do under duress." (Ibn Majah). This applies to sin as well as the impact on contracts.

In the context of a divorce under coercion, the Prophet ﷺ said, "There is no divorce under compulsion." (Abu Dawud and Ibn Majah). From these texts, we understand that coercion is generally prohibited and, in the case of contractual relationships, unless ordered by the state, invalid.

The actions of early pious Muslims support the invalidity of a forced divorce: During Umar's (رضي الله عنه) era, an utilized a rope to ascend trees for honey collection. One day, high in a tree, his wife pulled down the rope, abandoning him, and gave him an ultimatum: divorce or fall. Fearing for his life, he reluctantly divorced her.

Upon presenting their case to Umar, the caliph ruled in favor of the man, contesting the legitimacy of the divorce. Umar's reasoning lay in the principle that a divorce coerced through fear holds no validity.*

The principle of qiyas (analogical reasoning) supports the opinion that divorce under compulsion is invalid. If a person coerced under extreme circumstances can falsely claim disbelief while maintaining faith within, without facing consequences, then a divorce, being of lesser gravity, follows the same logic. This particularly applies when a man's inner conviction contradicts the forced utterance. As a result, most scholars, excluding Imam Abu Hanifa, concur in dismissing a divorce that arises under duress. In his Mukhtasar, Imam Khalil states,"The talaq (divorce) is invalid if he is coerced."

In closing, a coerced divorce is not considered valid. Thus, their marriage remains intact.

Allah knows best,
Suhaib Webb

Question Seven: Gambling On Sports

The Question: What is the ruling on gambling on sports and using gambling apps?

The Answer: Islam permits recreation as long as it bring benefits and avoids harm. However, it's crucial to follow the guidelines set by Sharia to protect our faith, well-being, wealth, time, and the safety of ourselves and others. The Prophet ﷺ was asked if he told jokes. He said, "Yes! But, I don't lie."

Bets & Apps

Betting on sports outcomes, the number of goals, and similar events on social media and apps, where participants pay money and only the winner takes all, is clearly forbidden because it is a form of gambling, and doing it in apps, like Draft Kings, does not change the reality: It is gambling. Gambling i ls haram.

The Ruling of Gambling

Gamblin is unanimously forbidden in Sharia. Allah commands us to avoid it in the Qur'an: "O you who believe, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful. Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?" [Al-Ma'idah: 90-91]

Shariah Definition of Gambling

Gambling is taking people's money unjustly and is a major sin. Al-Qalyubi stated that gambling is forbidden and taking money through it is a major sin. It's also forbidden to engage in any activity that leads to missing prayers or involves obscenity.

Earnings From Gambling

Gambling earnings are considered impure and should be returned to their owners. If that's not possible, they should be used for public benefits to rid themselves of the impurity and avoid its sin. The Prophet Muhammad ﷺ said: "No servant acquires wealth through unlawful means, then spends from it and it is blessed for him, or gives charity with it and it is accepted from him, or leaves it behind except that it will be his provision to the Fire. Indeed, Allah does not erase evil with evil, but He erases evil with good. Indeed, the impure does not erase the impure." [Narrated by Ahmad in his Musnad]. This means unlawful wealth is not accepted by Allah for charity because of its impurity, and leaving it without repentance leads to punishment in the Hereafter.

A Systemic Impact

The harms of gambling are evident from real-life incidents. It often leads to discord, strife, and hatred. The wisdom behind its prohibition is to prevent these negative outcomes. Gambling also affects family income and financial stability, leading to debt, family instability, and many marital problems. The harm and sin of gambling are confirmed both textually and rationally, and that is why Allah ﷻ describes it as {defilement from the work of Satan} in the Qur'an.

I ask Allah to protect us,
Suhaib