



Fatwa and its Role in the Islamic Contemporary Society

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ABSTRACT

Islamic society and the world at large face unprecedented new issues that need immediate attention by Shari'ah scholars. The issues require Shari'ah scholars to exercise their own ijtihad in issuing fatwa whether it is collective or independent ijtihad especially in things related to fiqh of transactions (*Fiqh al-Muamalat*) such as business transactions, Islamic economy, Islamic finance, Agricultural produce in relation to genetically modified organs (GMO), medication, military, globalization etc. One of the main challenges in issuing fatwa in this contemporary society is that the scholars have to come up with rulings that are Shari'ah compliant and meet global needs. To address this issue, it requires the scholars to have mastery skills in both turath (classical knowledge) and contemporary knowledge in Islamic fatawa of the preceding scholars of this Ummah. Besides that, they are supposed to be updated with the current issues globally due to the advancement of technology.

This research is a theoretical qualitative study aimed at evaluating the efforts of the scholars in fatwa making process by examining the challenges faced over time in relation to contemporary issues. The study will also examine the origin of Fatwa in Islam, its legality, conditions and qualifications of a mufti; the person qualified to deliver fatwa.

Keywords: *Fatwa, Mufti, contemporary society, the predecessor*

Introduction

Fatwa is an Islamic ruling on a point of Islamic law that is issued by a recognized scholar based on sound evidence. However, these rulings are sometimes influenced by period and place. Fatwa plays essential role in Islamic society as it serves as a life to the society for its sustainability. Different countries have different approach to Shari'ah governance in Islamic issues, depending on the nature and peculiarity of each country. There are countries with a complete and independent Islamic Shari'ah systems hence provision of fatwa is managed by the government under the guidance of grand Mufti; the scholar entitled to provide fatwa, while other countries do not operate under a full-fledged Islamic Shari'ah system due to their pluralistic nature. However, among them, some have a distinct legal framework for the provision of fatwa. The presence of this legal framework renders an opportunity to provide fatwa to minority Muslims.

The fatwa provided in countries with minority Muslims enables them to practice Islam correctly without creating religious conflicts in society. Thus, the paper will deliberately discuss the role and power of fatwa in solving religious problems in the society. In doing that therefore, the paper at the beginning would look at the concept of Fatwa from the early period of Islam. After that, a discussion will be followed on the nature of Islamic Fatwa in contemporary society in comparison to the past days of Islam. This will enable the paper to ascertain the gap realized between the two periods; past periods and contemporary days while delivering fatwa. Finally, the paper will end with the conclusion.

1.0 Definition of 'Fatwa'

Literally the word Fatwa is derived from the Arabic root *f-t-y*, which has several meanings such as youth, clarification and explanation¹

Technically, It's giving informing about the Shari'ah ruling, or the questioner's response to the Shari'ah ruling for a certain behavior or action²

Generally, Fatwa is a formal ruling or interpretation on a point of Islamic Law Shari'ah given by a qualified legal scholar known as Mufti. Fatwas or fatawa are usually issued in response to questions from individuals or Islamic courts. Albeit they are considered as authoritative but generally are not treated as binding judgments hence a person who finds a fatwa not convincing, he/she is free to seek opinion.

1 . Annjaari (undated) Muujam alwaseeth, Dar Ada'wah for distribution, vol-2, Pg 673 – 674.

2. Wahabah Mustapha Zuhayl. (2006), Al-Wajeez fi Usul Al-fiqh. 2nd edition, Dar Al-khair for publishing and distribution, Damascus - Syria, Vo1-2, pg 377.

1.3. Legal status of 'Fatwa'

The root source of the Legality of Fatwa in Islamic Law Shari'ah as explained before originates from both Qur'an and Sunnah. In Qur'an, the word Fatwa has appeared in nine verses. In these verses, each word appears in a form of a question inquiring an explanation to difficult issues that need elaborations and clarifications. These questions are either related to religious matters or general issues. Example in Surat A-Nnisaa, there are two verses inquiring an explanation in religious matters as follow, Allah says, "They ask your legal instruction concerning women..."³ and in the second verse, Allah says, "They ask you for a legal verdict. Say: "Allah directs (thus) about Al-Kalalah..."⁴. Three verses are found in Surat Yusuf with the meaning of the interpretation of the dreams. In the first verse, Allah says: "... Thus is the case judged concerning which you both did inquire?"⁵ In the second verse, Allah says: "... notables! Explain to me my dream, if it be that you can interpret dreams."⁶ And the last verse, Allah says: "(He said): "O Yusuf, the man of truth! Explain to us seven fat cows whom seven lean ones were devouring..."⁷ And in Surat Kahf, it appears in one verse in general meaning, Allah says: "...And consult not any of them (about the people of the Cave)"⁸ in this verse, the question appears in a state of prohibition meaning don't ask hence Imam Albaydhawy in the interpretation of this verse is that he should not ask anyone of them a guiding question from their story⁹. These are some of the few verses incubated the legislation of the fatwa in Islamic law Shari'ah'. In Sunnah, there are plenty of evidences but the following examples suffice. Wābisah ibn Ma'bad (may Allah be pleased with him) reported: I came to the Messenger of Allah (may Allah's peace and blessings be upon him) and he said: "Have you come asking about righteousness?" I replied in the affirmative, so he said: "Consult your heart, for righteousness is what your soul and heart feel at ease with, whereas sin is what your soul and heart feel uneasy with even if people keep on giving you their opinions in their favor."¹⁰ Another last sample of hadith is "Whoever gave fatwa without knowledge, the sin of that is on the one who gave fatwa..."¹¹ These and many other evidences not mentioned are the root cause of the legislation of Fatwa in Islam.

In addition to that, Allah has also encouraged people to ask and inquire about things not known to them, Allah says, "... Ask people of dhikr if you don't know"¹² From this verse, it's vivid to note that the statement "ask people of dhikr" simply proves that Allah wants people to be inquisitive to matters or issues which seem not to be clear to them.

Objectives of 'Fatwa'

The main objective of Fatwa is to respond to the questions of an incident or action asked or inquired by a person. The question is always deemed to be ambiguous to the one who is asking about it hence needs elaboration and clarification especially in religious matters. Most questions are mainly on speculative evidences or proofs which may occur severally due to dynamic changes taking place globally with advancement of science and technology. So the major role of fatwa is to make things clear for those not acquainted to religious matters as being instructed by the Almighty Allah in the Qur'an. Allah says: "... Ask people of dhikr if you don't know"(Qur'an 16:43) most scholars interpret ahil dhikr as the learned scholars of people of the Book (The Jews and the Christians) during the time of the Prophet Muhammad peace and blessings be upon him¹³ but in general, its applicable to all knowledgeable people.

Conditions for 'Fatwa'

Conditions of Fatwa go hand in hand with their pillars as follows:

- a. First pillar – Mufti- This is an Islamic jurist qualified to issue a nonbinding opinion (fatwa) on a point of Islamic law (Shari'ah).

Conditions for a mufti

- Muslim
- Maturity
- Sane

3. Qur'an 4: 127

4. Qur'an 4: 176

5. Qur'an 12: 41.

6. Qur'an 12: 43.

7. Qur'an 12: 46.

8. Qur'an 18: 22.

9. Nasirul-Deen Abu Saeed Abdallah ibn Muhammad albayidhawwy (Undated) Anuari tanzeel wa Assiraar Attaawil, Vol-3, Pg- 475.

10. Abdallah ibn Abdulrahman (1407), Sunan Aldaarumy, 1st edition, Dar Katab Alaraby – Beirut, Vol -2, Pg 320, Ahmad ibn Hambal (undated) Msnad Ahmad, Qurthubah Foundation – Cairo, Vol-4, pg 228.

11. Ahmad ibn Hambal (undated) Msnad Ahmad, Vol-16, pg 460, hadith no 7918, Abu Abdallah Muhammad ibn Yazeed (undated), Sunan ibn Majah, Vol -1, page 12, page 61, hadith no 52.

12. Surat Annakhl: 43, Surat Al-Animbiyaa: 7.

13. Ismail Ibn Omar Ibn Kathir, (1999), Tasir Ibn Kathir, 2nd edition, Dar Thaybah for Publication and Distribution - Kingdom Of Saudi Arabia, Vol- 4, pg 346.

- Knowledge
 - Justice “A’daalat” Here, justice or a’adaalat means spiritual/soul characters that oblige someone to do commands avoid prohibitions and adhere to piety and nobility.
 - Knowledge of the incident.
 - Knowledge of the respondent – the one who asks a question concerning a ruling on a specific thing or action.
 - Knowledge of the situation. 14
 - Applicability of the judgment to the incident.
- b. The respondent especially the one who asks a question concerning a ruling on a specific thing or action.
 - c. The subject matter questioned about. It is the issue that occurs or surrounds the person, and is originally speculative and not definitive. And its condition is that the incident has to have taken place otherwise there is no need to give fatwa on theoretical things.
 - d. Depend on primary and secondary sources while giving fatwa.15

ETIQUETTES FOR FATWA

There are several Fatwa etiquettes supposed to be exercised while delivering fatwa. Some of these etiquettes are directly connected to the Mufti; some are related to the respondent while others are connected to the provision of the fatwa itself. In fact, some of these etiquettes reach the point of being obligatory or forbidden. Imam Al-nawawi, may God Almighty have mercy on him, said: “Fatwa is too dangerous, while its position is great with a lot of merits, because the Mufti is the heir of the prophets, peace and blessings be upon them, hence he is exercising faradh kifayah even though he is subjected to error. Ibn al-Munkadr said: “A scholar is between God and his creation/creature, so let him see how he will penetrate them”¹⁶. Some of those etiquettes are as follow:

a. Etiquettes related to the Mufti.

- The intention of his actions should be purely for the sake of Allah while providing fatwa and not for any benefit.
- should be pious.
- Knowledgeable, dignity, tranquil and lenient with patient too.
- His religious devotion should be well known among the people, well-known for the apparent religion with good internal secret. Imam Al-nawawi, may God Almighty have mercy on him, said: “Imam Malik, may God have mercy on him, used to do what was not obliged to people, and he used to say that one cannot be a scholar until he does what is not obliged him to do even though if one leaves it he does not get sin. He used to relate the same story from his Sheikh – Rabi’a”¹⁷.
- He should be a self-jurist, sound mind, sober in thought, correct in temperament and deduction, alert to what is presented to him, away from negligence lest he fall into the traps of the respondents.¹⁸
- He should not give fatwa when his morals have changed, and his heart is preoccupied with what prevents him from meditating, such as anger, hunger, thirst, sadness, predominant joy, sleepiness, boredom, boredom over heat or cold, sickness, defending juvenile, and everything that preoccupies the heart, and prevents moderation.¹⁹
- He should be kind in understanding the question of the questioner, to be broad with him, and to be patient with him, so that he is not fed up with the questioner's ignorance, nor by his persistence, lengthening, or lengthening and repeating the question.²⁰

14. Abu Zakariyyah Yahya ibn Sharaf Annawawy (1408), *Aadab Alfatuwa*, 1st edition, Pg-19, Dar al-Fikr for distribution – Damascus.

15. Wahabah Mustapha Zuhayl. (2006), *Al-Wajeez fi Usul Al-fiqh*. 2nd edition, Vo1-2, pg 380 -394 , Dar Al-khair for publishing and distribution, Damascus - Syria.

16. Abu Zakariyyah Yahya ibn Sharaf Annawawy (1408), *Aadab Alfatuwa wa Almufti wa Almustafti*, 1st edition, Dar al-Fikr for distribution – Damascus. , Pg-13-14

17. Abu Zakariyyah Yahya ibn Sharaf Annawawy (undated), *Al-Majmua’t shereh Al-Muhadhab, Maktabat Al-Masjid A-Nnabawy A- Sharif*, Vol-1, Pg-41.

18. The same source, vol-1, page. 41.

19. Taqyudeen Abu Albuqaa Muhammad ibn Ahmad ibn Abdulaziz(1997), *Shereh Al-Kawakib Al-Muneer*, 2nd edition, Maktabat Al- I’bikan, Vol-4, Pg-547.

20. Wahabah Mustapha Zuhayl. (2006), *Al-Wajeez fi Usul Al-fiqh*. 2nd edition, Dar Al-khair for publishing and distribution, Damascus - Syria, Vo1-2, Pg- 395.

- Should avoid tolerance, flippancy and frivolity while delivering fatwa because the position of fatwa in Islam is great and dangerous, so one has to follow footsteps of the salafis (previous Muslim ancestors), for they used to fear delivering fatwa a lot²¹. Imam Ahmad, may Allah be pleased with him, said: If a man fears something, he should not be compelled to say it.

- Should have independent will in the fatwa, so that people are not afraid of it, so that he may not change the ruling out of greed for winning people's attention, or for fear of intimidation.²²

The Historical Concept of *Fatwa* from the early period of Islam

Historically, the concept of fatwa is not new in Islam in fact it is traced back to the period of the Prophets before Prophet Muhammad peace and blessings be upon him. Example of such incidences can be cited in the story of Prophet Yusuf peace be upon him. It quickly occurred while he was in prison with two young prisoners who requested him to interpret their dreams²³. Later on after the two prisoners were set free, one of them became a servant of the king of Egypt, the king too had a dream which was un able to be interpreted by his entourage and needed a more specialized person in dreams to interpret it fortunately this servant heard of the issue and thus requested prophet Yusuf to interpret the dream of the king of which he did²⁴. During the time of Prophet Muhammad (P.b.u.h), his companions used to inquire explanation of everything deemed not understandable to them. This can easily be proved by several recurring questions in the Qur'an²⁵. After the demise of the four guided caliphs, most Muslim scholars distanced themselves from the state hence fatwa became a private activity independent from state intervention and control. The scholars who acted as muftis often responded to people's questions over issues and gave fatwa as a service to the community; they themselves set their professional standards usually without government intervention. They provided pieces of advice over questions of Islamic law and religion that people posed to them and solicited their assistance in court cases or for personal guidance²⁶. Fatwa is not supposed to base its rulings on mere speculation and conjecture. Nor permissible if it goes against the clear text or general consensus (*ijma'*) rather it has to base its rulings on Shari'ah sources. Should there be conflicting views and interpretations in the sources, the mufti should not simply select an undigested position but try to verify and attempt, if possible, preference (*al-tarjih*) in order to establish a preferred position²⁷. A fatwa must be closely informed by the nature of the issue or incident it is addressing, and also verify the correct application of the relevant rules. This is because real life situations and issues are hardly identical and may well involve new and unprecedented elements that require careful consideration²⁸. Example of a real situation may occur in different forms such as a person inquiring from a mufti whether he has to transport a corpse to his country of origin for burial or be buried in the country in which he died. While the expected answer to this as found in most Shari'ah sources even though not agreed upon by all scholars, is the general obligation of burying him in the country in which he died due to the Prophet's saying that restricts the delay of burying a dead person and also reducing expenses. But before issuing a fatwa in this case, it has also to be ascertained whether the act of burying is more expensive than transferring him to his original home or transferring him with a plane is cheaper and convenient in comparison to burying him in the place he died due to slow movement caused by jam especially in the cities of third world countries. Only when all this is determined can a fatwa be issued.

Evidences authorizing fatwa are found in several verses in the Qur'an and Sunna. Some of this scriptural authority is included in Surat al-Nisa' as 4: 127 & 176, where the Almighty Allah gives direction to the Prophet by way of fatwa. In the former verse, it is provided: "They ask you for instruction (*yastaftunaka*) concerning the women. Say Allah does instruct you about them..." similarly the latter verse provides a question concerning inheritance, known as *kalah*: "They ask you for a legal decision. Say: Allah directs you (*yufitikum*) about persons who leave no descendants or ascendants..."²⁹ The few above mentioned verses clearly prove that the Prophet acted as a mufti to his companions in the sense of explaining the guidelines of the Qur'an to them as stated earlier before. A mufti thus becomes a successor to the Prophet in order to explain Allah's laws and their application to the people in the context of the issues they encounter³⁰. In case a petitioner demands for an evidence of averse from the Qur'an or hadith which is simply understood with simple explanation, the mufti is required to comply. Muftis who adhere to a particular school of law, and who are not qualified to derive rulings directly

21. Abu Zakariyyah Yahya ibn Sharaf Annawawy (1405), *Raudhat Al-Ta'alibin*. Al-Maktabat Al-Islamiyyah- Beirut, Vol-11, Pg-110, Taqyudeen Abu Albuqaa Muhammad ibn Ahmad ibn Abdulaziz(1997), *Shereh Al-Kawakib Al-Muneer*, 2nd edition, Maktabat Al- I'bikan, Vol-4, Pg-588.

22. The same source, Vol-4, Pg-588.

23. In this story, Prophet Yusuf met two young prisoners in the prison who requested him to interpret for them their dreams hence the word fatwa appeared in the in last sentence of verse 41 after he had completed to interpret their dreams.

24. The word fatwa also appeared in the interpretation of the dreams of the King of Egypt by Prophet Yusuf Peace and be upon him. This happened after all his priests, the chiefs of his state and the princes were unable to interpret his dreams.(Qur'an 12:43 – 46).

25.Examples of such questions are; "They ask you concerning alcoholic drinking and gambling...." (Qur'an 2:219), "And they ask you concerning menstruation..." (Qur'an 2:222), "They ask you concerning the "*Ruh*" the spirit..." (Qur'an 17:85).

26. Cf., Mohammad Hashim Kamali, "The Johor Fatwa on Mandatory HIV Testing," *IJUM Law journal*, Volume 9, No. 2 (2001), p. 111.

27. al-Mawsu'ah al-Fiqhiyyah (Kuwait), "Fatwa," Vol. 32, pp. 33-34.

28. Mohammad Hashim Kamali, *MODERATION IN FATWA AND IJTIHAD: JURISTIC AND HISTORICAL PERSPECTIVES*, DOI:[10.12816/0035262](https://doi.org/10.12816/0035262) pp.Corporus ID: 151891834, pg 4.

29. A reference to fatwa also occurs in surat Yusuf in the explanation of the dreams in the past explanation (12:43 and 46),

30. The prophet said that scholars are prophets' heirs of which they inherit knowledge which is a tool for succeeding them in the provision of fatwa.Abu Darda reported: The Messenger of Allah, peace and blessings be upon him, said, "**The scholars are the successors of the prophets. Verily, the prophets do not pass on gold and silver coins, but rather they only impart knowledge.**" *Musnad al-Bazzar* 10/68

from the textual sources, would be likely to cite an earlier reference work from within the school³¹. Over the centuries, however, several reform movements arose in different parts of the Muslim world that sought to reduce the influence of imitation (taqlid) of prior works³². This position has become even more popular in contemporary times, due mainly to the accelerated pace of socio-economic change and the fact that the nature of issues faced may well relate to new and unprecedented developments in science and technology. When a mufti gives an erroneous fatwa, he falls into sin if he does so without having the necessary knowledge and qualification³³, or else that he is qualified but neglects to investigate and look into the issue carefully. He is not committing a sin, however, if he is qualified and applies himself well but still makes an honest error of judgment. He may revoke his own fatwa if his error becomes known to him, for it is preferable to stop falsehood at an early opportunity than allow it to perpetuate and cause greater harm³⁴. The idea of revoking a former fatwa to a latter one or changing fatwa is basically influenced with many substances including environment, time and also culture and customs too. For example, the Prophet could be asked a question on a given matter with several companions and he would respond to them differently. After his demise, his companions could apply the same methodology; Ibn Abbas was asked by two people if murderer's repentance was accepted and he responded differently to both of them according to situation³⁵. These are some of the examples proving the most commonly expressed notion of the legal maxim; "Fatwa are changeable with changes of time and place"³⁶. This may be especially justified when the original fatwa was based on custom ('urf) or public interest (maslahah) at the time of its issuance. When there is a subsequent change in the underlying evidence of a fatwa, be it a custom or maslahah, then the fatwa based on it would also be liable to change. Further confirmation for this comes from the precedent of Imam Shafi'i, who developed his juristic thoughts in two separate phases. He changed many of the fatawa he had issued in Baghdad after his arrival in Egypt, because of the differences of culture and custom of Egyptian society that had bearings on his earlier fatawa. And due to this, he is known to have established two madhhabs, an Old madhhab (al-qadim) and a New one (al-jadid).

Subsequent changes in a fatwa are most likely to involve preference for that which better secures the higher purposes (maqasid) of Shari'ah. This also underlines a distinctive feature of the difference between the Shari'ah and fiqh. The former sets the higher goals and purposes, whereas fiqh devises ways and means to secure them. Fatwa and ijtihad are the means by which fiqh secures the higher purposes of Shari'ah. The means so applied may be accurate and authoritative, or else liable to speculation and error so that the weakness in them becomes apparent over time. The changeability of fatwa and ijtihad and their openness to subsequent rectification and amendment equips the Shari'ah with the tools to accommodate the changing conditions of society³⁷. Ibn Qayyim al-Jawziyyah relates the above to the principle that, if suppressing an evil leads to another evil greater and more objectionable to God and His Messenger, then it should not be suppressed. Ibn Qayyim al-Jawziyyah argues that a fatwa, is not only liable to change with time and considerations of public interest, but also by reference to the peculiarities of the issue with which a mufti may be faced—what is referred to in Arabic as munasabah (more appropriate) or mula'amah (harmonious). In such circumstances, something that one normally denounces and rejects may be left unchanged if suppressing it is likely to give rise to a greater harm/evil. Then in course of time, when conditions change, the next fatwa is likely to make the change that was earlier not feasible or appropriate to make. Examples that Ibn Qayyim has given in this connection include suspension of the prescribed penalties (hudud) during the year of the drought in the time of 'Umar al-Khattab, and allowing a menstruating woman to continue circumambulation of the Ka'bah during the hajj if she has travelled a long distance for the purpose of pilgrimage. All these exceptions were made for reasons of providing an appropriate response to a new situation and alleviating hardship, which is a higher purpose (maqasid) of the Shari'ah³⁸.

Bureaucratization of Fatwa

This is the official systemization of the fatwa under a given government by dividing its administrative agency or office into bureaus. So the discussion about bureaucratization of fatwa simple means becoming under state control which makes it simple to unify fatwa by employing grand Muft as the centre of the provision of fatwa.

Ibn 'Abidin (d. 1258/1842), one of the most prominent Hanafi jurists in Yemen opined that a head of state should appoint muftis to the remotest regions of his dominion when there is a need for it and when qualified people are not found to perform the task voluntarily. Qualified muftis appointed to be paid from the public treasury for their services. Supervision and monitoring of the Muftis has to be done by the head of state. And whoever proves to be incompetent or who revert all too readily to legal stratagem and tricks (hiyal, pl. of hilah) (i.e. who circumvent or suspend the normal rules of Shari'ah)³⁹.

31. Wahabah Mustapha Zuhayl. (2006), *Al-Wajeez fi Usul Al-fiqh*. 2nd edition, Dar Al-khair for publishing and distribution, Damascus – Syria, Vol1-2, pg 378, Imam Annaway(1405). *Raudhat taalibin*, Distributed by Maktabat Islam in Beirut, vol-11, Pg 111.

32. Muhammad Hashim Kamal: "**Moderation in Fatwa and Ijtihad: Juristic and Historical Perspectives**", ICR 7.3 Produced and distributed by IAIS Malaysia, pg 5.

33Ahmad ibn Hambal (undated) *Msnad Ahmad*, Vol-16, pg 460, hadith no 7918, Abu Abdallah Muhammad ibn Yazeed (undated), *Sunan ibn Majah*, Vol -1, page 12, page 61, hadith no 52. In fact it is haram to deliver fatwa or ijtihad without knowledge. - *Al-Mawsu'ah al-Fiqhiyyah*, Vol. 32, pg. 24.

34. Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*, Vol. 1, pg. 86.

35. Imam Annawayi, *al-Majmu' sharah almuhaddhab*, Vol.1, pg.50.

36. Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in*, Vol. 3, pg. 41 – Ibn Qayyim discusses this under the heading "Change of fatwa and its variation abreast with the change of times, places, conditions, and customs."

37. Muhammad Hashim Kamal: "**Moderation in Fatwa and Ijtihad: Juristic and Historical Perspectives**", ICR 7.3 Produced and distributed by IAIS Malaysia, pg 6.

38. Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in*, Vol. 3, pg 10-14.

39. Muhammad Hashim Kamal, "**Moderation in Fatwa and Ijtihad: Juristic and Historical Perspectives**", ICR 7.3 Produced and distributed by IAIS Malaysia, pg. 8.

More various organizational patterns have emerged and fatwa activity has been regulated by statutory legislation. Although the elaborate bureaucracy associated with the office of the Ottoman Shaykh al-Islam, the chief mufti of the Empire was discontinued after his office being abolished in 1924. That was after the decline of the Ottoman Empire, even though similar institutions were established in other places of Islamic societies such as Egypt, where the office of the Grand Mufti was established in late nineteenth century - although state muftis were not appointed until the mid-twentieth century. Saudi Arabia appointed a state mufti in 1953, Lebanon and Malaysia in 1955, Yemen and Indonesia in 1962 and 1975 respectively. In some institutional contexts, fatwa is more closely associated with religious propagation and guidance (da'wah and irshad) than with legal issues, as the legal affairs of states are often handled by other departments of government and legal professions⁴⁰. The bureaucratization of Fatwa by some states has acquired control of fatwa making activity. This has resulted to certain restrictions, as well as procedural requirements, have been imposed on the freedom of muftis and religious scholars in the issuance of fatwa. Besides that, a positive aspect of this development has led to the development of regulations that offer guidelines on the contemporary relevance of fatwa-making. These developments have also helped restrain those arbitrary fatawa that emanate from questionable sources and often play on people's religious sentiments. Yet the fact that a voluntary and investigative concept has been bureaucratized and placed under the control of the ruling authorities has necessarily restricted the free flow of thought and expression on topical issues of concern to Muslim individuals and societies. The muftis also seem to have been further distanced from the communities they serve; the open access that people earlier enjoyed to their muftis has been inevitably narrowed down⁴¹.

The necessity of Fatwa in the contemporary Islamic Society

The world is dynamic since its creation hence changes are permanent and flexible in order to curb challenges that may face new emerging things into the existence. The essence behind the emergence of new things can be due to environmental changes, cultural changes, civilization, innovation and the most undulating instrument being knowledge and technology. Islam due to its universality and comprehensiveness embraces innovation and ever-ready to regulate things unknown to the past old generations. Qur'an itself was revealed to the Prophet gradually in piece meal so as to solve challenges human beings were facing by then. Fortunately it laid down a roadmap to guide man till he meets his Almighty Allah, Allah says, "We have neglected nothing in the Book..." (Qur'an 6:38)⁴². The Prophet too gave signs indicating the continuity of preservation of laws and keeping people on track and a brace by his famous narration which states that Allah will always send a person who will renew His religion after every century or a hundred years⁴³.

There are many unprecedented issues not experienced by Predecessors (*Salaf*). Fortunately enough, these incidences occupy diverse disciplines and they are not confined in one area of specialization. In the field of medicine, we have seen complicated incidences like transplanting of parts of human bodies, sperms and ovary transmission, test-tube babies etc. In the field of agriculture; global climatic change has affected agriculture forcing scientists to come up with researches with the aim of curbing famine. As a result, they introduced genetic modified organic foods (GMO). While in finance, the development of banking systems and business in general has forced Muslims to come up with Shari'ah compliant commodities that meet global standards. These systems were not in presence during the predecessor periods.

In contemporary times, moderation (*wasatiyyah*) is the most appropriate means to be adopted while delivering fatwa. This is because issues erupting continuously in current situations have never been experienced before by predecessors. For moderation to be effective and consistent in tackling them, fatwa and *ijtihad* has to remain credible and reflect a balanced understanding of the Shari'ah, however, it is essential that they observe the principal Qur'anic message on the middle path of moderation, or *wasatiyyah*, while also remaining free of laxity, neglect, exaggeration and unnecessary strictures. *Wasatiyyah* is characteristically comprehensive and emphasizes the central meaning and message of any concept or phenomenon to which it is applied, in a manner that takes into account all (or most) of that concept or phenomenon's peripheries. Being a divinely-designated attribute of Islam and the Muslim community (Qur'an 2:143), *wasatiyyah* has helped to keep Islam centred on its own essentials, preventing parochial and rigid tendencies from dominating the religion. It has helped advocate a balanced vision of Islam that is inclusive of the interests of both the individual and society, while also keeping in sight its spiritual, rational, and scientific dimensions. *Wasatiyyah* is naturally about striking a middle and conciliatory position between traditional and modernist understandings of Islam, not only for the present generation, but also for those who follow⁴⁴. The mufti and mujtahid are thus advised neither to be extreme nor too lenient. The Prophet (p.b.u.h) has warned the believers that: "People who came before you were met with destruction because of their extremism (al-ghuluww) in the religion."⁴⁵ With reference to legal and fiqhi matters that are open to interpretation through fatwa and *ijtihad*, schools and scholars have often recorded differences of opinion. Credibility, however, is usually attached to the majority (*jumhur*) position. The renowned Maliki jurist, Ibrahim al-Shatibi of Andalus (d. 790/1388), who is highly regarded for his pioneering work on the *maqasid* of Shari'ah, therefore

40. Cf., Muhammad Khalid Masud, Brinkley Messick and David S Powers, "Muftis, Fatawa, and Islamic Legal Interpretation," in Eds. Muhammad Khalid Masud, Brinkley Messick and David S Powers, *Islamic Legal Interpretation: Muftis and Their Fatawa*, Cambridge and London: Harvard University Press, 1996, pg. 27.

41. Cf., Mohammad Hashim Kamali, "The Johor Fatwa on Mandatory HIV Testing," *IUM Law journal*, Volume 9, No. 2 (2001), pg. 113.

42. Allah says too, "...And We have revealed the Book (the Qur'an) to you as an explanation of everything, a guidance, a mercy, and good news for the Muslims".(16:89) Ibn Kathir says that this verse shows that all knowledge and everything has been explained in the Qur'an by giving narration of Ibn Mas'ud said: "Allah {made it clear that in this Qur'an there is complete knowledge about everything." The Qur'an contains all kinds of beneficial knowledge, such as reports of what happened in the past, information about what is yet to come, what is lawful and unlawful, and what people need to know about their worldly affairs, their religion, their livelihood in this world, and their destiny in the Hereafter. *Tafsir Ibn Kathir*, Vol.4, pg 594.

43. Sunan Abu Daud,(2009), 1st edition, Vol.6, Dar Risalat al-'alamiyah, hadith no 4291, pg 349.

44. Cf., Tha'ir al-Shimri, *al-Wasaliyyah*, Beirut: Dar al-Kutub al-'Ilmiyyah, 2005/1426, pp. 42-3.

45. Sunan IbnMaja,(2009), 1st Edition, Vol-4, Distributed by Dar Risalat al-'alamiyah, hadith no 3029, pg. 228.

considered it a mark of distinction for a mufti and mujtahid to consider those opinions which the majority supported in the issuance of their own fatwa, verdict and ijthad. In this connection, he quotes the reference in the first surah of the Qur'an, namely al-Fatihah, to 'the straight path' (al-sirat al-mustaqim), which he says is the chosen path of moderation. Hence moderation is a purpose (maqsad) of the Lawgiver and it is expected that all Muslims, especially the learned among them, hold to it and guard against indulgence in excessiveness (such as rejecting the majority) or reductionism. "When the mufti leaves the path of moderation, he also neglects the purpose/maqsad of the Lawgiver, and is likely to invite criticism from the leading 'ulama'."46 The higher purposes of Shari'ah have been classified into various categories, depending on the purpose of the classification and viewpoint of the researcher. In all cases, however, a certain order of priority has been ascertained between the categories that need to be carefully observed in the formulation of fatwa and ijthad. From the viewpoint of their importance, the maqasid have been divided into three categories: essential purposes (daruriyyat), complementary purposes (hajjiyyat), and embellishments (tahsiniyyat). Only the first of these has been further subdivided, namely into the five headings: protection of life, preservation of religion, upholding the integrity of the human intellect, protecting the family, and protecting of lawfully-owned property. These must be safeguarded as a matter of priority, both by individuals and the community, as well as the muftis, 'ulama' and government authorities, all of whom are, in principle, under an obligation to observe and promote them. Al-Qaradawi has written concerning a recurrent theme in the Qur'an and Sunnah, namely bringing ease to the people by removing hardship from them (taysir wa raf' al-haraj). In the event of a choice between an easier and a more difficult fatwa, al-Qaradawi advises that the mufti should try to opt, as far as possible, for the former in order to avoid inflicting hardship on the people – but without, however, compromising on principles. He warns against opting for difficult solutions and scare-mongering in Islamic discourse, inquiry and research, as they only help to turn people away from the path of God⁴⁷. In relation to this Ibn Qayyim said that shari'ah bases its principles on people's benefits in this world and hereafter hence ascribing finality to the fatwa and ijthad of anyone, including the mujtahidun of the past is a great aberration from the Shariah which is due to ignorance and causes unwarranted rigidity and hardship to the people... To facilitate benefit to the people in this world and the next is of the essence of Shariah. Anything which violates the people's benefit (maslahah) and leads them to corruption (mafsadah) has nothing to do with the Shariah, even if it is made out to be a part of it⁴⁸. Imam al-Shatibi observed that all of them are merely different paths to the discovery of truth and gaining of God's pleasure. But, the most preferable amongst them for the mujtahid, or even the imitator (muqallid) who simply follows, is the one that comes closest to the purpose (maqsad) of the Lawgiver, which is the median position of wasatiyyah. This is because the Lawgiver has expressly commended moderation, which is reflected, in turn, by the Sunnah of the Prophet and the practice of his leading Companions. Al-Shatibi concludes with a remarkable statement, saying that the median position is "the greatest [part] of Shari'ah and the mother of the Book – fa'l-wasat huwa mu'zam al-shari'ah wa umm al-kitab."⁴⁹ As seen from most scholars since immemorial times, the middle way of moderation is the norm and principle of Islam. In case any ruling of Shari'ah is found to depart from it, it is most likely due to exceptional conditions, necessity or need based on identifiable causes. The normative position of wasatiyyah must be restored to when exceptional situations come to an end. Currently such exceptional situations are vividly witnessed in different parts of the world in a form of social distancing due to the presence of COVID-19. This has also led to restructure forms of prayers both in Mosques, churches and synagogues. Immediately these exceptional situations are over, normative position of wasatiyyah will be restored to its normal. This is because rationality and Shari'ah stand together in their rejection of both reductionism and excess, exaggeration and neglect. Moderation is identified through rationality ('aql) and human judgment, which are both key to knowledge and understanding. Sound intellect is naturally inclined towards moderation, especially when it is enlightened and well-informed. This also means paying adequate attention to existing bodies of specialized knowledge, including that of the modern disciplines, as well as the differences of opinion amongst the learned making it a reliable way of ascertaining and verifying moderate positions. Rational judgment will not entertain rectifying an extremist position with an extreme remedy, nor an erroneous one through error. Neither will it abandon rationality in favor of emotional indulgence, personal interest or bias⁵⁰.

Development of technology and civilization has made fatwa to be necessary, vital and inevitable in the contemporary society. And unlike the previous periods, it has to go with the consensus (ijma') of the learned members of a community in diversity professions, or of the community as a whole, this will help one to arrive to an appropriate balanced opinion and judgment in Islam due to advancement of science and technology as stated before. Notwithstanding a degree of technicality in the detailed formulations of ijma, its inherent strength as a source of law, judgment and moderation can hardly be overestimated. Consensus is normally preceded by consultation (shura), itself a Qur'anic principle of special significance for community affairs. Shura must be solicited from members of the community able to provide a considered opinion on contested issues of public concern. Whenever consultation leads to general consensus not the technical usuli concept of ijma, it becomes an important indicator of balanced and moderate opinion in the determination of issues. Consultation and consensus can take a variety of forms, from relatively informal village, district and municipal councils, to the more organized elected assemblies of parliaments and other government bodies, all of which are acceptable, provided they are genuinely representative and their participants enjoy the freedom to voice their views. Well-moderated judicial positions have been identified by the Shari'ah, and more widely by both general custom ('urf) and what sound-minded people have considered to be moderate. Generally, custom is a recognized source of judgment in Shari'ah, applied to matters not regulated by the clear text. It is also an important indicator by which wasatiyyah can be ascertained on issues of public concern, including financial and customary matters as seen today. Custom and rationality may even take preference over an existing fiqhi position and precedent. With reference to technical issues of a specialized nature pertaining to, for example, applied sciences, it is not always the moderate or average position that is wanting, but one that is correct only in light of the available body of knowledge. This can also perhaps be said with regards to legal and Shari'ah-related matters of a specialized nature, which may have to be determined in the light of relevant evidence. Moderation can also be recognized by referring

46. Al-Shatibi, (1997), al-Muwafaqat fi Usul al-Ahkam, 1st edition, Dar Ibn 'Afan Distributor, Vol-5, pg 276.

47. Hashim Kamali, The Middle Path of Moderation in Islam: The Qur'anic Principle of Wasatiyyah, New York and London: OUP, 2015, pg. 128f.

48. Muhammad b. Abu Bakr Ibn Qayyim al-Jawziyah, IñIÉm al MuwaqqiÑin Ñan Rabb al Ólamin, Distributed by Dar al-Jiil, Beirut (1973), Vol-3, pg.3.

49. al-Shatibi, al-Muwafaqat, (1997), 1st Edition, Dar Ibn 'afan, Vol. 5, pg. 276 -278.

50. Cf., al-Farfur, al-Wasatiyyah, pg. 63.

to the prevailing law such as national charter and constitution or through the benefits which are likely to accrue from a particular opinion or course of action. In case of conflict arising between benefits and harm (masalih wa mafasid), a jurist and mufti may be faced with uncertainties over balancing the two in the light of wasatiyyah. This will oblige him to observe the relevant guidelines of Shari'ah considering the greater benefit that may be involved, even if securing it means tolerating a certain amount of harm. This may place the jurist/mufti in a situation where he has to abandon the side which is decidedly harmful, even if it involves losing out on a possible benefit. Upholding the average mean in this case, as in most other cases of reconciling conflicting interests, also necessitates a careful assessment of the status quo and the likely consequences of departing from it towards a compromise solution that helps to secure the greater benefit. This can be easily illustrated by the restrictions Islamic law imposes on the legal dispositions of an incompetent person (al-safih) through a retraining judicial order, or interdiction (al-hajr). Thus, it is ruled that in regards to contracts and transactions that are amenable to adjustment and repeal, such as sale, lease and hire, the safih is neither totally restricted nor totally free – an intermediate position is taken so that, when such a transaction is attempted by the safih, it is valid subject to the approval (even if obtained after the event) of his or her guardian (wali). A purely harmful transaction, such as giving a gift, is deemed invalid, but one which is deemed beneficial, such as receiving a gift or a share in inheritance, is held to be valid and effective without anyone's approval. This is how the schools and jurists of Shari'ah have tended to take a moderate approach in situations of conflicting interests, which in this case is to protect the personal liberty of the person under interdiction while also protecting their property against squandering and waste⁵¹. Available precedent suggests that when pressing issues of conflicting public and private interests were encountered by the early pioneers of Islam, including the second caliph 'Umar al-Khattab, they attempted a moderate solution through a feasible interpretation of the Qur'an and hadith, or by recourse to consultation (shura) and independent reasoning (ijtihad)⁵².

Laxity and exaggeration are both transgressions that need to be done away with by first, defining the issues, clarifying the available guidelines on them, and then the proper manner of dealing with them. Later on it will be subjected for demarcation between the essential and the optional belonging to the realm of embellishment.

Conclusion and Recommendations

Due to the advancement of civilization, science and technology in the world, we can conclude our research on the necessity of fatwa as the main tool of solving the new unprecedented issues in the contemporary society as follows:

1. Fatwa in respect to the current situations being influenced by dynamic changes as a result of development in both civilization, and science and technology globally has to be taken as an instrument of facilitation that brings ease and helps reconcile people's legitimate needs and convenience governed by Shari'ah principles. Facile declaration of haram with no clear decisive shari'ah evidence to support it should not be allowed. This has been well discussed and justified by Ibn Qayyim al-Jawziyyah, in his book entitled "I'lam al-Muwaqqi'in".
2. This era of science and globalization, fatwa and its issuance procedures has to undergo fresh scrutiny due to new factors prompting it to be inter-disciplinary than it was during the antecedence era.
3. Fatwa should be seen as a permanent and continuous important instrument of wasatiyyah (moderation) in solving new issues that never occurred previously.
4. The language of information for fatwa and the tools towards obtaining that information has to be at par with technology to meet the standards of the youth and women in the society because they are the ones who sometimes find it difficult to cope up with the Islamic laws terming them as outdated.
5. Fatwa has, to all intents and purposes, become a manifestation of official ijtihad, in that muftis are acting much like 'ulama', the traditional repositories and carriers of ijtihad. The lay 'ulama' should still, however, be allowed to influence, not only the muftis, but also parliamentary legislation on religious issues away from official control. Any new guidelines that are deemed necessary to regulate ijtihad should be approved by the 'ulama' themselves.
6. Fatwa issuance should not be limited to specific areas like it is seen nowadays to be nourishing mostly in Islamic banking and finance sector. It has also to be nourished in diversified sectors; agricultural sector, disaster management sector, medical sector, political sector etc.
7. Developments of fatwa issuing organs in Islamic countries have to cooperate with non Islamic countries to harmonize and standardize fatwa due to globalization. These developments are not only likely to help develop a measure of professional supervision of the various other Shari'ah committees, but will also help standardize the substantive and procedural aspects of fatwa issuance in different sectors to comply with Islamic Shari'ah.
8. The bureaucratization of fatwa in countries has to be encouraged in this globalized world. And the bureaus should consist of scholars with different specialization so as to unify fatwa through consensus. This will also help standardize fatwa and minimize conflicts.

51. Cf., 'Abd al-Karim Zaydan, *al-Wajiz fi Usul al-Fiqh*. Beirut: Mu'assasah alRisalah, 1985/1405, 118. See also Tha'ir al-Shimri, *al-Wasatiyyah*, pg. 56.

52. Muhammad Hashim Kamal, "Moderation in Fatwa and Ijtihad: Juristic and Historical Perspectives", ICR 7.3 Produced and distributed by IAIS Malaysia, pg. 16.

9. Lastly, scholars should not ascribe finality to the fatwa and ijihad of anyone, including the mujtahidun of the past. To do otherwise would be to ignore the basic rule that fatwa and ijihad are changeable with the change of times. This has been a common phenomenon throughout all ages of the Islamic history from the era of the Prophet peace and blessings be upon him.

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5. Ahmad ibn Hambal (undated) Msnad Ahmad, Vol-16, pg 460, hadith no 7918, Abu Abdallah Muhammad ibn Yazeed (undated), Sunan ibn Majah, Vol -1, page 12, page 61, hadith no 52.
6. Surat Annakhl: 43, Surat Al-Animbiyaa: 7.
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12. The same source vol-1, page – 41.
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16. The same source. Vol-4, Pg-588, Maktabat Al- I'bikan.
17. In this story, Prophet Yusuf met two young prisoners in the prison who requested him to interpret for them their dreams hence the word fatwa appeared in the in last sentence of verse 41 after he had completed to interpret their dreams.
18. The word fatwa also appeared in the interpretation of the dreams of the King of Egypt by Prophet Yusuf Peace and be upon him. This happened after all his priests, the chiefs of his state and the princes were unable to interpret his dreams.(Qur'an 12:43 – 46).
19. Examples of such questions are; “They ask you concerning alcoholic drinking and gambling...” (Qur'an 2:219), “And they ask you concerning menstruation...” (Qur'an 2:222), “They ask you concerning the “*Ruh*” the spirit...” (Qur'an 17:85).
20. Cf., Mohammad Hashim Kamali, “The Johor Fatwa on Mandatory HIV Testing,” IIUM Law journal, Volume 9, No. 2 (2001), p. 111.
21. al-Mawsu'ah al-Fiqhiyyah (Kuwait), “Fatwa,” Vol. 32, pp. 33-34.
22. Mohammad Hashim Kamali, MODERATION IN FATWA AND IJTIHAD: JURISTIC AND HISTORICAL PERSPECTIVES, DOI:[10.12816/0035262](https://doi.org/10.12816/0035262) pp.Corpus ID: 151891834, pg 4.
23. A reference to fatwa also occurs in surat Yusuf in the explanation of the dreams in the past explanation (12:43 and 46),
24. The prophet said that scholars are prophets' heirs of which they inherit knowledge which is a tool for succeeding them in the provision of fatwa.Abu Darda reported: The Messenger of Allah, peace and blessings be upon him, said, “**The scholars are the successors of the prophets. Verily, the prophets do not pass on gold and silver coins, but rather they only impart knowledge.**” Musnad al-Bazzār 10/68

25. Wahabah Mustapha Zuhayl. (2006), *Al-Wajeez fi Usul Al-fiqh*. 2nd edition, Dar Al-khair for publishing and distribution, Damascus – Syria, Vol-2, pg 378, Imam Annaway(1405). *Raudhat taalibin*, vol-11, Distributed by Maktabat Islam in Beirut, Pg 111.
26. Muhammad Hashim Kamal: “**Moderation in Fatwa and Ijtihad: Juristic and Historical Perspectives**”, ICR 7.3 Produced and distributed by IAIS Malaysia, pg 5.
27. Ahmad ibn Hambal (undated) *Msnad Ahmad*, Vol-16, pg 460, hadith no 7918, Abu Abdallah Muhammad ibn Yazeed (undated), *Sunan ibn Majah*, Vol -1, page 12, page 61, hadith no 52. In fact it is haram to deliver fatwa or ijtihad without knowledge. - *Al-Mawsu'ah al-Fiqhiyyah*, Vol. 32, pg. 24.
28. Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*, Vol. 1, pg. 86.
29. Imam Annawayi, *al-Majmu' sharah almuhammadhab*, Vol.1, pg.50.
30. Muhammad Hashim Kamal: “**Moderation in Fatwa and Ijtihad: Juristic and Historical Perspectives**”, ICR 7.3 Produced and distributed by IAIS Malaysia, pg 6.
31. Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in*, Vol. 3, pg 10-14.
32. Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in*, Vol. 3, pg. 41 - discusses this under the heading “Change of fatwa and its variation abreast with the change of times, places, conditions, and customs.”
33. Muhammad Hashim Kamal, “**Moderation in Fatwa and Ijtihad: Juristic and Historical Perspectives**”, ICR 7.3 Produced and distributed by IAIS Malaysia, pg. 8.
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