

## **The fatwaa and the fatwaa-giver (the mufti)**

A fatwaa informs about the Shareeah ruling but in a non-binding manner.

Giving a fatwaa is a very serious matter and a lofty position. The mufti is essentially signing on behalf of Allah. He is performing the same role for the Muslim Nation as the Prophet (peace and blessings of Allah be upon him) did in explaining the laws of the Shareeah. The goal of the fatwaa and the seeking of a fatwaa is to take the legally responsible individual from the realm of following desires and whims to that of being a true servant of his Lord.

A person is not qualified to give fatwaas until he possesses the prerequisites of fatwaa-making. These include knowledge of the Book of Allah and its related sciences, knowledge of the Sunnah of the Messenger of Allah (peace and blessings of Allah be upon him) and the ability to distinguish the sound from the weak reports, knowledge of Islamic Legal theory with its maxims and goals, and knowledge of Arabic. The person must have insight into the current circumstances and familiar with the differences of opinion among the jurists. He must be specialized in Islamic Law and Jurisprudence, either through experience or by graduating from a specialized college.

Unless a mufti is specifically requested to give a fatwaa, he may refer the issue to others. He may be driven to do this out of caution and fear of Allah, because he cannot see what is the correct view, because he does not have the time to research it, in order to make the conclusion easier on the one seeking the fatwaa, or for the sake of the benefit of the community and bringing the hearts together.

The default is that a mujtahid (fully qualified scholar) should give the fatwaa. If that is not possible, then it should be handed over to others in order of their qualifications. If it is known that a person is ignorant or immoral and if a person state is not known, then one should not turn to such a person for a fatwaa.

A non-qualified person giving a fatwaa is one of the greatest abominations against Allah and His Messenger. It is from the great sins and a crime against the religion, this world and the Hereafter.

## **The Manners of the One Seeking a Fatwaa**

First, he or she should have a sincere intention to seek the truth.

Second, he or she should present his question in a good fashion, not so concise that it is missing important points nor unnecessarily long. He should explain the matter clearly to the mufti if it is difficult for him to conceive the issue.

Third, he or she should behave kindly during the conversation, listening attentively, not cutting of the mufti, not burdening the mufti if he declines to answer and avoiding false disputation.

Fourth, he or she should choose the most appropriate time, place and setting to ask for a fatwaa.

Fifth, he or she should have good manners and etiquette with the mufti.

## **The Methodology behind giving a fatwaa and its Parameters**

The mufti must understand the reality of the situation and details and also be familiar with its circumstances. He or she should seek all the necessary details and seek the help of specialists in relevant fields in order to make a fatwaa.

The mufti must be careful in giving a fatwaa and protect himself from the influence of desires or group partisanship or bigotry.

The mufti must abide by any issue concerning which there is a clear consensus.

The mufti must follow the strongest view—thus blocking the means to follow what he simply likes or desires and making his ruling subjective.

There is an exemption for following a weaker opinion if that is done to repel a harm or difficulty or to achieve a benefit of union and solidarity. This is true regardless of whether the weaker opinion is easier or harsher than the stronger opinion. This can be done as long as this weaker opinion does not contradict clear evidence from the Quran or Sunnah. Additionally, the attribution of this opinion to its originating mujtahid must be through sound chains. The mufti making such a decision must be one capable of measuring between necessities and needs. The mufti must also restrict this fatwaa to the particular case at hand.

The mufti should concisely state the Shareeah evidences if possible. He should present the reasoning behind the decision if there are multiple possible views or if there is a conflict in views.

An authentic hadith that is definitive in its indication cannot be opposed by anything. It is not allowed to reject it in favor of anybody's view when it has been ascertained that the hadith is sound and there are no strong evidences in conflict with it. This is not an arena for the masses and the like to venture into it.

The mufti should present an alternative for a prohibited act if so feasible, so that the matter is not closed off for the one seeking the fatwaa.

The mufti must adhere to the fundamental principles of giving a fatwaa. In addition to the preceding, this includes: taking into consideration the prevalent customs; not resorting to legal stratagems, especially in those matters that afflict the masses as a whole; following exemptions when the conditions calling for them are present; taking into consideration the necessities and needs of the era that are not in contradiction to the texts or consensus; taking into consideration the new and changing interests of the people; not restricting oneself to one particular *madhhab* (school of fiqh) on every occasion; seeking, if possible, group fatwaas in the general and contemporary issues; verifying that hardships that demand ease are real; giving precedence to ease over being cautious; requiring the masses to follow the established middle view of the statements of the scholars; avoiding the errant anomalous views and notorious strange views; be firmly rooted in the agreed-upon or relied-upon practical fiqh of the majority of the scholars and legal theorists, such as the fiqh of *maqaasid* (recognizing the goals of the law), the fiqh of *tahqeeq al-manaat* (verifying that the purpose of the law is being met), the fiqh of weighing between priorities, the fiqh of understanding the long-run ramifications of an act, the fiqh of exceptions, the fiqh of taking matters step by step, the fiqh of what is fixed and what is open to change, and so on; follow the moderate, agreed-upon methodology of the majority of the scholars concerning all of the above issues.

Differences of opinion among the jurists in and of itself is not a blameworthy matter. It is part of Allah's magnanimity upon this Nation. In a cosmic sense, there is no way to remove it. In fact, in a Shareeah

sense, there is no call to remove it. Some differences though are to be respected and others are not. Even from among the respected differences of opinion, some are strong and others weak. What one must avoid is the zealous attachment to one view and the wrongfully attacking of those who hold opposing views.

## **The Concept of Ijtihad (Juristic Reasoning), Its Realm and Its Prerequisites**

Ijtihad refers to a jurist exerting himself to determine a Shareeah ruling.

The realm of ijthid are all those issues concerning which there is no definitive evidence from an authentic text or clear consensus. There is no sin upon the mujtahid concerning these issues, even if he were mistaken. The mistakes that are forgiven for the mujtahid include those mistakes made with respect to matters of belief and knowledge as well as practical matters.

The ijthid that is considered respectable from a Shareeah perspective is that which has come from one who is qualified to make ijthid and who has followed the proper steps. The slips and mistakes of a scholar are not to be taken into consideration. The scholar's honor should not be attacked as a result of it, in order to protect the Shareeah and its bearers. The standard for a mistake is a view that a scholar holds that no one accepts and follows.

To make ijthid, it is sufficient for an individual to meet the minimum requirements of ijthid, such as knowing Arabic, the texts of the Quran and Sunnah, principles of analogy, principles of deriving laws from the texts, and issues related to abrogation. The mufti must also make certain that he does not give an opinion on an issue that actually violates consensus.

According to the strongest view, it is conceivable for a person to be a mujtahid on only specific issues. It is not necessary for a mujtahid to be qualified in all matters of fiqh.

When there is a pressing need for a fatwaa but there is an absence of mujtahids, it is permissible for a follower (non-mujtahid) to pass on an opinion that he has learned of the fatwaas of the scholars if he understands it properly and if he understands its conditions and parameters.

Weighing between opinions based on ijthid is a relative matter. What may be considered stronger by one jurist may be considered weaker by the other schools of fiqh or the other muftis.

According to the strongest view, it is not sanctioned for a mujtahid to blindly follow somebody else when that opinion goes contrary to what his own ijthid concludes unless he is doing it to ward off some hardship or to meet the needs and interests of the community and the sake of unity.

The default is that one should not rebuke those who hold opposing views when it comes to matters of ijthid. One should not castigate the faith or trustworthiness of those who hold opposing ijthid. At the same time, this does not mean that one may not teach such issues in order to clarify the issue based on the proofs and evidences. Not every issue in which there is a difference of opinion is an issue that is actually open to ijthid. There are some differing views that are incorrect anomalies and not to be considered respectable views. Of course, determining which opinions fall into that category is left to the scholars.

It is not proper to present the varying views of the scholars to the one seeking a fatwaa without also stating which is stronger, as the one seeking the fatwaa may get the impression from this approach that the matter is permissible. However, if the varying views are very close to each other or if the mufti has not been able to decide which of the views is correct and he does not wish to make a conclusion without knowledge and the most that he can do is present the varying views, then he may simply present the views to the one seeking a fatwaa without stating which is stronger. The mufti is only obligatory according to his means and abilities.

## **Concerning Combining Fiqh Schools' Views and "Juristic Exemptions"**

"Juristic exemptions" refers to ijtihaads found in fiqh schools that permit a matter while they are other ijtihaads that prohibit the same matter. This is permissible [to follow] if the ijtihaad is considered respectable. Thus, the ijtihaad must have come from someone capable of performing ijtihaad, there is some need to follow it and it is not a means to an impermissible goal. If all of those conditions are fulfilled, the one following such an "exemption" may feel at rest with such a course of action.

It is permissible to combine between the opinions of various fiqh schools when necessary, when needed, when impossible to avoid or due to some valid excuse. This could be by combining two separate issues for one individual, for two individuals each of which will follow a separate school on the same issue, or for one individual on one issue as long as it does not lead to fraud or violating the intent of the Lawgiver.

The prohibited combining of fiqh schools is that which is done out of caprice, what leads to violating a consensus, what nullifies the ruling of a judge, what nullifies what a follower has done concerning one event or what leads to a violation of the intent of the Lawgiver. For example, it would not be permissible for a person to get married without the presence of a guardian or of witnesses and also without announcing the marriage. That would lead to a secret marriage that all are agreed upon is unacceptable. Similarly, fraudulent acts would be impermissible, such as a person invoking the right of preemption for himself when it is in his favor and then denying that right for others when it is against his interests.

Administrative matters fall into the realm of possible Shareeah options. The ijtihaad concerning it is going to be based on weighing between benefits and harms. The people should consult with another in a positive fashion and acquiesce to the majority opinion in order to avoid any conflict, as long as that decision does not violate a definite Shareeah ruling.

## **Changes in Fatwaas**

A change in fatwaas refers to a mujtahid changing his ruling from one to another in order to repel hardship, to fulfill Shareeah benefits, due to the weakness of evidence or due to a change in the perception of the issue as a result of a change in time, place or situation. The mujtahid is the one who will make the final determination based on the reality of the situation and what is mandatory. In his ijtihaad, he must keep in mind the goals of the Shareeah and the ramifications of the actions of the individuals in order to achieve the justice, mercy and completeness of the Shareeah.

The default concerning the definitive, affirmed Shareeah rulings is that there is no change to occur to them, as there can be no abrogation of such rulings after the time of the Prophet (peace and blessings of

Allah be upon him). When the scholars speak about a change due to changes in time and place, they are speaking about fatwaas or rulings in general.

Fatwaas can only change when they are concerning laws that are related to rational justification, such as those based on interests or customs, when changes occur. Time and place do not in themselves require a change in rulings.

A fatwaa cannot be considered sound until it takes into consideration the time, place, circumstances, intentions, customs, state and ends. Every fatwaa that is based on a legal cause that is related to time, changing benefits, or specific customs will change when its parameters change. A fatwaa will not be sound until the state of the one seeking the fatwaa, his intention, language and customs of his people are understood.

When the mujtahid is invoking the principles of changing a fatwaa, he must never be neglectful of the reality that the Shareeah rulings are constant and, at the same time, when applying Shareeah rulings to a particular situation, he must not be neglectful of the principles of changing a fatwaa.

The principle that a fatwaa is to change with time, place and circumstances is a great tool in guiding fatwaas and having them remain within the facilitations of the Shareeah and adhering to its commands.

## **The Non-Scholarly Masses and what is incumbent upon them regarding Muftis Holding Divergent Views**

The non-scholarly individual is the one who has not attained enough knowledge of fiqh to guide him in matters. As such, it is incumbent upon him to follow those whom he trusts among the muftis.

The non-scholarly individual does not actually have a school of fiqh. His or her school of fiqh is whatever is given by the mufti. However, the non-scholarly person may follow a specific school of fiqh in general in his acts of worship. If that is the case and a new situation arises for which he needs a fatwaa, it is not mandatory upon him to seek a fatwaa from that school that he usually follows.

Strictly adhering to a school of fiqh is neither rejected nor required. There is no harm in someone ascribing himself to one of the four fiqh schools and following its Imam. The student of knowledge is advised to study fiqh according to a particular school without partisanship. He should choose the school for which there are teachers available and references with evidences available. Afterwards, he or she should move forward by studying comparative fiqh and the basis of the different Imams approaches until he or she reaches a level of independent research.

The state could impose a particular fiqh school upon the muftis and students of knowledge in an exceptional situation in order to avoid the confusion of varying opinions and desires. There is no harm as well in codifying the law and making statutes for the judiciary, so that there will not be conflicting rulings in similar cases and also to make it easier to apply the law from the level of the state.

The one seeking a fatwaa must be selective in the choice of a mufti. He or she should take the issue to the one whom they trust of the religious and qualified people. If muftis differ in their verdicts, the non-scholarly individuals should follow the one whom they believe is giving the ruling of Allah. This can be achieved by following the most knowledgeable and righteous. That can be known through status and

fame. Alternately, they could follow the opinion of the majority if they believe that the truth is with the majority and not with the individuals who differ from that majority view.

The majority of the scholars are of the view that it is prohibited to simply follow the easiest view when the muftis differ as that will lead to making the religion based on desires and wants. However, if the muftis seem equal in their religiousness and capabilities and the person does not have the ability to analyze their fatwaas and there would be no harm in him following the easier view, then he may do so.

It is not appropriate for the one seeking a fatwaa to jump from mufti to mufti as that could lead to two pitfalls: Being non-compliant with the requirement of submission to Allah by purposely hunting for easier answers, or being subject to sever doubts and confusion that may lead to despising the worship of His Lord.

A non-scholarly person should not give a fatwaa for another person based on what he knows of an issue as he is unaware of the evidence of the mujtahid and there could be differences between the two cases that he is not aware of. However, he can transmit information that he is certain of concerning general rulings concerning which both the masses and people of knowledge are aware of, such as the basic issues of belief, the pillars of the acts of worship, the basics of etiquette, the clearly forbidden and the like.

## **The Fatwaa of the Heart**

The heart's fatwaa concerns an issue for which there is no Shareeah text or the texts are conflicting and a person cannot determine what is correct or some doubt enters into one's heart, regardless of whether it be concerning the nature of the fatwaa itself or in its application and regardless of whether it be concerning the mufti or the one seeking the fatwaa.

## **Shaadh (Unsound, Anomalous) Fatwaas**

Shaadh Fatwaas are those that combine two qualities: They are errant from the truth and contradict the creation! That is, they contradict an authentic text or a clear consensus.

A mufti can avoid making shaadh fatwaas by not being hasty, consulting with others, being cautious in fatwaa giving, establishing group ijtihaads or by simply saying, "I don't know."

Group ijtihaads, like those found in the fiqh assemblies and fiqh councils, are more likely to reach the correct conclusion. Thus, one must resort to them as much as possible, especially in the new issues or those issues that afflict the masses as a whole. However, such group ijtihaads are not definitive evidence and it is not mandatory that everyone follow them.

## **Fatwaas via Live Media**

Fatwaas via television and live media have some positive and some negative aspects to them.

The positive aspects include: the ease of getting a fatwaa, the spreading of religious knowledge among the people, strengthening the unity of the Muslim Ummah, making it easier for the members of the Ummah and its scholars to connect with one another, making it such that the scholars can become known and increase their influence in the society without them having to travel from place to place. This

is all in addition to the access the scholars and Islamic workers have in getting knowledge of the affairs of the Muslims and what they are facing of challenges and problems in various parts of the world.

The negative aspects include conflicting fatwaas on very similar issues that leads to confusion and chaos, the spreading of shaadh opinions among the people, propagating of heretical ideas and mistaken fatwaas, lack of taking into consideration the circumstances of each particular land and society, and distancing the people from actually having direct contact with the scholars. With respect to television in particular, the details of the ruling are not sufficiently presented due to time restrictions. Furthermore, governments often control the media and steer the contemporary fatwaas according to their wants and desires.

The positives of such connectivity are greater than the negatives. Therefore, the scholars, students of knowledge and Islamic workers should seek to use these modern means of communication while limiting their downside to the best they can.

## **E-currency**

E-currency or Cryptocurrency is a type of currency that is stored electronically that is used as a means for payment without any need for a bank account when doing a transaction.

A problem with cryptocurrency is that they are not recognized by many central banks, they are not accepted by many private banks, they are not secured by many governments, they do not fall under the authority of the government or central bank which leads them to be very volatile, and they are used for illegal purposes.

It is still too early to give a final ruling concerning cryptocurrency, due to the aforementioned reasons and because it is a new issue whose true nature and ends are still obscure to many economists and jurists. One must be cautious about dealing with it. One should intend to be very careful and precautious to the best of one's ability as it is mixed with what appears to be the prohibited speculation quality (*al-gharar al-faahish*).

If one must get involved in it, then it is to be treated like any other currency. When exchanging the same currency, it must be a spot transaction and the amounts must be equal. If the currencies differ, then it must be a spot transaction.

## **Compensating for Inflation in Over-Time Contracts**

The default is that debts are to be paid according to their amounts, not their values. No consideration is given as to whether the value of currency has increased or decreased. It is impermissible to tie them, no matter their source, to the price level.

The true equivalency is not fulfilled simply by shape and form but in the reality and nature of things. The reality of cash is not the piece of paper that it is but it is the purchasing power that it possesses. If that purchasing power is lost, then that piece of paper becomes like any other piece of paper.

If a currency completely loses its value, then the debt is to be repaid according to its value. However, if a currency collapses or has suffered a great loss in its purchasing power, then there is something to be said for repaying it according to its value and not the amount of the currency, in order to avoid harm

and in analogy with disasters and special circumstances. The standard for what would be considered a great loss in value would be determined by custom and convention. In case of dispute, the matter should be turned over to the courts.

## Recommendations

We recommend that the concept of fiqh academies be further developed and they should be invigorated to give more group fatwaas as the need is there. The number of times that they meet also needs to be increased in order to cover new issues in various topics.

There should be an increase in the cooperation among the fiqh academies and councils. They should be cooperation between them and other Dawah institutions to create a channel solely devoted to fatwaas.

The Callers to Islam should also spend more effort around the symbol of fiqh and support the idea of group fatwaas.

There should be warnings against shaadh and deviant fatwaas and those who carry them. They should be commented upon with explanations and refutations in order to protect the religion and to keep them from spreading.

There should be a greater use of social media and the internet in spreading knowledge and sound fatwaas in order to teach the people their faith.

We recommend that those in the lands of Muslim minorities seek fatwaas from the scholars of their lands who have experience in giving fatwaas from the trustworthy people of knowledge with regards to the fiqh of Muslim minorities, as their state and lands have a great influence on many of the rulings wherein they differ from the practices in the lands of the Muslims.

We recommend an increase in the arenas of fatwaas for the general populace. Specific times should be allotted in the programs of the mosques, conferences and Dawah programs to response to the people for the fatwaas. We also recommend that the door be open to a continuous connection to the scholars via the Internet or a toll-free line.

We recommend that Dawah and financial institutions choose appropriate trustworthy references for fatwaas for the perplexing issues before they delve into any project, so that the opinions of the muftis will not later cause them confusion.

We recommended that the righteous and good people financially support the people of knowledge, the fatwaa institutions and fiqh assemblies so that they can continue in their work and so that their messages can be disseminated in the desired fashion.

We recommend that the muftis who are living in America and Europe become very well familiar with Western culture, history and the make-up of its society so that they will be able to provide fatwaas for them that are consistent with the reality and which the hearts and minds of the generation of Muslims, especially the youth, will be willing to accept.

We recommend that the muftis in those lands pay attention to the local languages and learn the means of communication, general principles of the law and principles of public speaking so that their fatwaas may not be a temptation for those who want desire harm for Muslims from among the non-Muslims, or



that it be misconstrued by the Muslims because they did not understand its meaning due to the weakness in communicating meanings.

We advise that the muftis must by necessity be conscious of the fact that the Muslim community is a mixture from various fiqh schools, creedal approaches and various others. The mufti must keep that in mind when presenting any issue, difference of opinion or conclusion so that it will not be a source of confusion and trial for some of the Muslims.



