

The Evolution of Fatwa-making and Diversity of Fatwas

Shanon Shah

What is a fatwa?

In Islam, it is a legal pronouncement on a specific matter, issued by a religious legal specialist. It is usually issued at the request of an individual or a judge to settle matters in which fiqh (Islamic jurisprudence) is unclear. A scholar who is capable of issuing fatwas is called a mufti.

How are fatwas formulated?

In the pre-modern days of Islam, muftis acted as legal consultants to both judges and private citizens. The fatwas from leading muftis were recorded and circulated for reference and further study. The fatwas generally took the form of a hypothetical and impersonal opinion, and the names of the actual parties involved were substituted with fictitious names. Common names to refer to male parties were Amir and Zaid, for women they were Hind or Zainab. This is similar to the usage of John Doe or Richard Doe in English common law.

Thus, a party armed with a favourable fatwa could present their case in court, where the fatwa could be cited to provide a very persuasive authority. However, fatwas were never binding on the court. Nevertheless, a very strong fatwa sometimes allowed for a case to be settled out of court.

However, in the modern era, the mechanics of issuing fatwas differs from state to state, based on how the role of the mufti in these states has evolved over history.

How has the role of the mufti evolved over history?

Even though the office of the mufti in the pre-modern days of Islam was limited to the role of legal consultation, the position of mufti was a very distinguished one. Muftis commanded the respect of the highest rulers of the land. Even so, it is recorded that muftis were also very thorough about observing and upholding their impartiality as legal consultants. One mufti, Dzmeali, did not even allow the people who sought his opinions to see him. Instead, he would suspend a basket from his window so that the public could place their questions there and then collect his responses the next day in the same manner.

In the modern era of the nation-state, Muslim states have chosen to institutionalise the office of the mufti. Hence, today, a state-appointed mufti is effectively the state's official mufti. This has several political and religious ramifications. One way to comprehend this is to look at the differences in the roles of state muftis in different Muslim countries.

Syria

The mufti of the Republic heads the Higher Council of Ifta' (issuing fatwas). This Council is responsible not only for issuing and registering fatwas but also for administering the religious sector as a whole: Mosques, religious schools and the religious cultural institutions of the Republic. This includes the hiring and firing of staff. However, matters related to waqf are placed under the Ministry of Awqaf, with the Minister being the highest authority in the Sunni religious sector. The Minister has the power to promote members of the Higher Council of Ifta'.

The mufti of the Republic is an elected office, but the electoral procedures have been changed time and again. Historically, the office of the mufti was vacated only when the incumbent mufti had passed away or had been dismissed by the State. The Ministry of Awqaf has since asserted its influence by listing potential candidates for state mufti for selection by the Council of Ministers. The mufti has no relation to the courts, and is more likely to have a career in teaching and preaching. The mufti is also not very involved in the actual preparation of fatwas, since most fatwas are prepared by the Amin al-Fatwa.

Lebanon

In 1955, a law was passed instituting the Sunni Muslim religious administration in independent Lebanon. This secured for Sunnis absolute independence from the state, since the law effectively enabled the setting up of an institution with legislative powers over Sunni religious and internal affairs. Hence, a new and powerful Supreme Legal Council was formed with the participation of all Sunni Ministers, ex-Ministers, and Members of Parliament, headed by the mufti of the Republic.

Several other provisions in the 1955 law gave considerable powers to the mufti of the Lebanese Republic, and once elected, it became very difficult to remove him from office. Hence, the mufti became akin to a Sunni politician of considerable influence. The mufti was effectively elected by

the Sunni community at large, not just the ulama. The office of the mufti became very politically charged at one stage. In fact, one of the muftis, Hasan Khalid, was assassinated in 1989. A new law was then passed reducing the number of people who could elect the mufti. Since then, Sunni politicians have been trying to present a non-Islamist version of Sunni Islam to the public via the office of the mufti. On the other hand, the Lebanese state has since demonstrated little interest in reviving a strong mufti. Like the Syrian mufti, the Lebanese state mufti does not issue many fatwas. Fatwas are issued mostly by the Amin al-Fatwa. There are other non-state religious leaders who are consulted by the Sunnis of Lebanon in matters related to fiqh.

Egypt

Unlike state muftis in Lebanon and Syria, the Egyptian mufti is not involved in the administration of religious education, which is the sole preserve of the al-Azhar university. When shariah courts were abolished in 1955, some minor responsibilities of the qadi were transferred to the mufti. The mufti is appointed by the President. For most of the 20th century, there has been a retirement age for state employees, and this has applied to the state mufti also. Hence, Egypt has had a higher turnover of state muftis compared to many other Muslim countries. The structure in Egypt also allows for the state mufti to be promoted to the even higher position of Sheikh of al-Azhar.

However, the mufti of the Republic also provides the state with a means of checking the authority of the Sheikh, should the latter try to assert independent or oppositional power. Given this environment, the mufti actually has to be more articulate in producing and defending his fatwas. The mufti often has to publicly debate his views, since he sometimes has to compete with the Sheikh of al-Azhar for legitimacy.

Malaysia

In Malaysia, the ruler (Sultan) of each state in the Federation appoints the state mufti. The mufti heads the Fatwa Committee in his own state. The mufti is the only religious authority who can advise the Sultan on matters related to hukum syarak. Only the Sultan has the power to dismiss the mufti. The mufti's fatwas carry considerable weight with the general population. Once gazetted these fatwas become legally binding. It is a criminal offence to challenge a gazetted fatwa. The only person who can amend or retract a fatwa is the mufti himself.

Conclusion

The role of the mufti has evolved from that of an impartial, independent legal consultant in the pre-modern era of Islam, to that of a very political office. Hence, the evolution of fatwas can also be seen in this light. In the modern era, the state mufti has often been mobilised by the government in power to legitimise several state policies, many of which would have met great resistance from the general population without the mufti's seal of approval. However, under certain circumstances, the state mufti may be less a representative of the state than an ally of a faction of the regime.

Sometimes, state muftis have also used the state as an instrument to advance their own religious agendas. This is not surprising, given the fact that state muftis often have the budget and authority to hold conferences, publish information, institute policies and influence public opinion on issues where they perceive a threat to the religious status quo.

References:

- Skovgaard-Petersen, J., 'The Typology of State Muftis' in Haddad, Yvonne Yazbeck and Barbara Stowasser (eds.), *Islamic Law and the Challenges of Modernity*, (Oxford: AltaMira Press, 2004)
- Weeramantry, C.G., *Islamic Jurisprudence: An International Perspective*, (Kuala Lumpur: The Other Press, 2001)

Table: Comparing the diversity of fatwas on the same issues

Women as Shariah Court judges

The Fatwa Council of Penang declares that, based on the Shafi'i school of jurisprudence, no woman can ever preside as a Shariah Court judge ¹ .	The Grand Qadi of Sudan's Islamic courts began appointing women as Shariah Court judges from as early as 1970. This judicial decision means fatwas on this matter are moot ² .
--	---

Conversion/Inter-religious Marriage

In the case where a wife has converted to Islam while her husband has not, veteran Islamic scholar Dr Abdullah Yusuf el Gudaie says that their marital status is still valid. He says that there are no explicit textual taboos on it, while	The Fatwa Council of the Federal Territories (Malaysia), states that if both spouses convert to Islam at the same time, or if they both convert within the period of <i>iddah</i> , then they do not have to undertake Islamic marriage rites. Section 51 of the Law Reform (Marriage and Divorce) Act 1976 gives the
--	---

classical scholars also did not achieve consensus on this matter ³ .	non-converting spouse the right to petition for divorce ⁴ . However, there is a lacuna in the laws, because (1) Islamic law in Malaysia does not recognise marriage between a Muslim and a non-Muslim, and yet (2) if the non-converting spouse does not petition for divorce, he/she is considered by the Civil Courts to be married to the converting spouse ⁵ .
---	--

Dress for Muslim women

Sheikh of Al-Azhar Muhammad Sayid Tantawi declares that a non-Muslim country like France has the right to ban the <i>hijab</i> for Muslim women ⁶ .	Sheikh Yusuf Qaradawi opposes the French ban on the <i>hijab</i> in public schools. In a letter to President Jacques Chirac, he said that Muslims feel resentful that France considers the <i>hijab</i> "an aggression on others" ⁷ .
--	--

Smoking

The Fatwa Council of Selangor (Malaysia) initially decides that the smoking tobacco is <i>haram</i> (forbidden). The same Council later amends this fatwa to say that smoking is <i>makruh</i> (discouraged), not <i>haram</i> (forbidden) ⁸ .

Sale of alcohol by Muslims

The Fatwa Council of Perlis (Malaysia) declares that the sale of alcohol by Muslims to non-Muslims and other Muslims is strictly forbidden ⁹ .	The Egyptian state mufti issues a fatwa declaring that it is permissible for Muslims to sell alcohol in Europe. The mufti based his advice on rulings from the Hanafi school of jurisprudence in Sunni Islam, which effectively allows Muslims in non-Islamic countries to enter into contracts that do not follow the precepts of Islamic law ¹⁰ .
---	--

Sex reassignment surgery

The Fatwa Council of Selangor says that sex reassignment surgery is contrary to Islamic teachings. The Council justifies this by referring to Surah An-Nisa (4:119) ¹¹ .	In Iran , sex reassignment surgery for transsexuals is allowed based on a decision by Ayatullah Imam Khomeini ¹² .
---	--

Status of Shi'as

The Fatwa Council of Penang (Malaysia) denounces Shi'ism as a deviant sect and a threat to national security ¹³ .	A fatwa from Al-Azhar states that Shi'ism is a school of thought that is religiously correct and of the same status as other Sunni schools of thought ¹⁴ .
--	---

Apostasy

The Terengganu Hudud Law on Blasphemy and Apostasy (<i>Irtidat</i> or <i>Ridda</i>) prescribes death and forfeiture of property as the punishment for blasphemy or apostasy by an unrepentant offender ¹⁵ .	The late Mahmud Shaltut, the former Sheikh of Al-Azhar, wrote that many ulama agree that the <i>hudud</i> cannot be established by a solitary <i>hadith</i> and that unbelief by itself does not call for the death penalty. The current Sheikh of Al-Azhar, who was Egypt's former Grand Mufti, Dr. Mohammed Sayed Tantawi, also declared that apostasy is not a capital crime ¹⁶ .
--	---

Male masturbation

The Fatwa Council of Melaka (Malaysia) says that male	The European Council for Fatwa and Research says that masturbation is <i>makruh</i> , but not <i>haram</i> . In other words, it is
---	--

<p>masturbation is <i>haram</i> and it is effectively a criminal act deserving of punishment based on the discretion of the judge. The Council further describes the act as having calamitous and disastrous consequences, and also that it spreads disease¹⁷.</p>	<p>neither a crime nor a sin, but merely discouraged. The Council further states that if masturbation is the only way to allay unbearable sexual anxieties, then it ceases to be a detestable act¹⁸.</p>
---	---

- 1 http://ii.islarn.gov.my/e-fatwa/mufti/fatwa_searehresult.asp?key1D=763
- 2 <http://www.sudan.net/news/press/postedr/158.shmil>
- 3 <http://www.e-cfr.org/eng/article.php?sid=23>
- 4 http://www.e-fatwa.gov.my/mufti/fatwa_search_result.asp?key1D=405
- 5 <http://www.lawasia.asn.au/uploads/images/FLMalaysia.pdf> Malaysia.pdf
- 6 <http://weekly.ahram.org.eg/2004/67241-2.htm>
- 7 http://en.wikipedia.org/wiki/Yusuf_Al-Oaradawit Oa radawi.27sreligious_edicts_.28fatwas.29
- 8 http://ii.islam.gov.my/e-fatwa/mufti/fatwa_search_result.asp?key1D=1147
- 9 http://ii.islam.gov.my/e-fatwa/rnufti/fatwa_sea_rch...result.asp?key1D=985
- 10 <http://www.muslimnews.co.uk/news/news.php?article=10341>
- 11 http://ii.islam.gov.my/e-fatwa/mufti/fatwa_search_result.asp?key1D=1160
- 12 <http://www.safraproject.org/sgi-genderidentity.htm>
- 13 http://ii.islam.gov.my/e-fatwa/mufti/fatwa_warta_view.asp?key1D=531
- 14 http://en.wikipedia.org/wiki/List_of_famous_fatwas
- 15 <http://www.wccpenang.org/loveviewhudud.turn>
- 16 <http://www.sistersinislarn.org.my>
- 17 <http://al-huda.mmu.edu.my/jawapan/baca.php?id=99>
- 18 http://www.e-cfr.org/PDF/eng/Fatwa/Fatwa_e01.pdf