

RELIGIOUS AUTHORITY, *IFTĀ'* CULTURE, AND SECTARIANISM IN MODERN PAKISTAN

The Impact of Its Intra-Islamic Pluralism

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Abstract

This article seeks to provide an overview of the interrelationship between religious authority, Iftā' culture and sectarianism in Pakistan. This overview includes a discussion of the decentralised and fragmented state of religious authority in the country and the prevailing fatāwa-delivery practices and its shaping factors the most important of which is madhhab pluralism. We argue that what we term "war of the fatāwa" further degenerated into sectarian violence. In viewing the interrelationship between religious authority, fatāwa issuance and sectarianism in the country this article identifies the madrasas as the best group actor to illustrate its dynamics. We also argue that collective fatwā would be the best answer to the problems generated by sectarian fatāwa. In the conclusion of the article, we emphasise that there are two main issues related to the Iftā' culture in Pakistan that need to be urgently addressed. One is the issue of authoritative fatwā delivery, which pertains to the qualification and expertise of the muftī and the merit of the fatwā issued. The other is the issue of the separation of powers between muftīs and judges and of their respective professional and social standing. The two issues need to be viewed as part of the larger problem posed by Pakistan's intra-Islamic pluralism.

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Introduction

The foundation of Pakistan in 1947 as an Islamic republic is rather well-known, especially in the Muslim world. But not many people outside the country are familiar with the religious character of its society and its religious institutions. Pakistan, the only Muslim nuclear power, is a predominantly Muslim country, but within its Muslim populace itself we could clearly observe an ethnic and religious pluralism of some sort. Whereas in some Muslim-majority countries such as Malaysia the cultural diversity is primarily multi-religious in character, Pakistani cultural diversity, however, is quite different in nature in that it arises largely from its intra-Islamic pluralism both in ethnic and theological terms. The kind of intra-Islamic pluralism that characterises contemporary Pakistani society is complex and precarious, comprising as it does diverse religious groups in terms of both theological beliefs (schools of *kalām*) and schools of jurisprudence or religious law and ethics (*fiqh*). It could be observed over the decades that this intra-Islamic diversity has been a source of numerous problems and challenges to this nation-state, especially in the area of governance of which the religious is an outstanding dimension. One important issue in the area of religious governance that has resulted from the social impact of this peculiarly Pakistani intra-Islamic diversity pertains to the lingering contentions on the meaning of religious authority, its role, and its institutionalisation in society. A closely related issue concerns the deliverance of *fatāwa* (sing: *fatwā*) or the issuance of Islamic legal opinions that are recognised by the State.

The main aim of this article is to present a critical study of the prevailing *fatāwa*-delivery system and practices in Pakistan. This system is studied in the light of the decentralised and fragmented state of religious authority in the country that is attributable to a number of factors, some of which are briefly discussed below. But quite clearly, the status of Pakistan as a multi-*madhhab* state as indicated in our above introductory remarks is by far the most problematic of these

factors. This demographic and cultural status raises the deeply challenging issue of intra-Islamic pluralism and whether or not Pakistani Muslims are addressing it in an enlightened and effective manner. In a multi-*madhhab* state, it is only to be expected if issues of religious authority would surface every now and then to harass the political and religious establishment. How the development of the *fatāwa* system features itself in such a state would be a good indicator of the state of health of its religious authority.

Religious Authority and *Iftā'* Tradition in Islam

Scholars generally agree that the idea of religious authority has many dimensions. It is quite common for scholars to refer to three aspects of religious authority. First, religious authority in relation to society; second, religious authority in relation to the State; and third, religious authority in relation to ethics and morality. Our main concern in this article is with *Iftā'*, the *fatāwa* issuance system, which is found to be related to religious authority understood in all the three senses. The focus is on the institutions of *mufīī*, '*ulamā'*', and legal-ethical experts (*fuqahā'*), all of whom are viewed as religious authorities with separate but related formal roles in the issuance of *fatāwa*. In Islamic law, as Hallaq observes, "authority – which is at once religious and moral but mostly epistemic in nature – has always encompassed the power to set in motion the inherent processes of continuity and change".³ To say that authority is "mostly epistemic in nature" means that it is based on knowledge. However, in the case of religious authority it needs to be understood at two levels. On the first level is religious authority as an institution, and on the second level in the form of an individual expert. In discussing decentralisation of religious authority, it is thus necessary to address it at both levels, clarifying whether or not this idea is a meaningful one.

In Islam, the Quran and the Prophet's Sunnah are viewed as the two highest religious authorities at all times in all the three respects earlier mentioned. However, on matters not made specific or

³ Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge University Press, 2001), ix.

explicit in these two sources, religious authority understood as a distinct source of legislation, will reside with the ‘*ulamā*’ and scholars in the form of *ijtihād* and *ijmā*’ because they will have to develop new laws with the passage of time. The concept of decentralisation of religious authority in Islam is expressed in this Quranic verse: “O you who believe! Obey Allah and obey the Messenger and those of you who are in authority (*ulu’l-amr*).”⁴ This verse presents in a hierarchical order the divine, the prophetic, and *ulu’l-amr* authorities as the most fundamental in Islam’s social order. Exegetes generally interpret *ulu’l-amr* to mean guardians of the community embracing both knowledge and governance authorities.

The Prophet (ﷺ) himself delegated powers to his governors, including on issues of religious authority. Delegating powers is a major aspect of decentralisation, especially if this concerns the institutionalisation of authority and power. In a well-known *ḥadīth*, the Prophet asked his companion Muaz bin Jabal what he would do when faced with a matter that requires his decision. Muaz replied that he would consult the Quran. When the Prophet asked him, what if he could not find the answer there, he replied “the Sunnah of the Prophet”. When the Prophet further pressed him what if the answer is not there as well, Muaz replied that he would use his own opinion. The Prophet was happy to hear Muaz’s answers and embraced him. This *ḥadīth* is often cited by scholars to support independent decision by subordinates on matters of governance and administration not explicitly stated by superiors. There is another *ḥadīth* narrated by Abu Huraira in *Ṣaḥīḥ Bukhārī* in which the Prophet said, “Whoever obeys me, obeys Allah, and whoever disobeys me, disobeys Allah, and whoever obeys the ruler I appoint, obeys me, and whoever disobeys him disobeys me”.

In a state founded on and governed by religious principles, as was the case with the polity of Medina under the Prophet’s leadership, ideally speaking, there should exist a harmonious and dynamic balance between centralisation and decentralisation of religious authority. This ideal balance was to be observed in the prophetic era of Islam and, with expansion of its territorial rule, on a grander scale during the rule of the four rightly-guided Caliphs that

⁴ The Quran, 4:59.

followed it. The core of the authority, which was essentially religious, was centralised in the person of the Prophet viewed as the supreme legislator. But the illustrative example of the Prophet delegating authority to Muaz affirms the necessity of decentralisation of authority in certain forms and under certain circumstances. In the modern Muslim world, with a steep decline in political ethics and religious understanding of modernity and its challenges, especially in the post-colonial era, the balance was lost between centralisation and decentralisation of political and religious authority. There was excessive centralisation at the expense of decentralisation, resulting in endless political and religious feuds and conflicts. The loss of the balance also resulted in the spread of sectarianism of both political and religious nature. In the light of these developments, centralisation and decentralisation have become important national issues in many Muslim countries.

Fatwā is a well-known Arabic term, meaning legal opinion and verdict by a competent authority⁵. The term *istiftā*, which is etymologically related to *fatwā* means seeking legal opinion⁶. A *fatwā* may deal with a social, political, or ritual matter⁷, and it literally means 'opinion'. It is associated with *ra'y* (opinion), which is not definite unlike the first three primary sources of Islamic law and legal opinions established in Islamic jurisprudence, namely the Quran, Sunnah and *ijmā'* that are viewed as definite and unequivocal. A *fatwā* is generally understood as a legal judgment that is issued by qualified jurists on the basis of the above three sources of Islamic law. The giving of a *fatwā* or legal opinion is called *iftā*. The verbal forms of *Iftā'* occur in the Quran in various places. For example, in *Surah al-Nisā'*, verse 127 says:

"They ask thy instruction (yastaftūn) concerning the women. Say: Allah doth instruct you (yuftikum) about them: and (remember) what hath been rehearsed unto

⁵ C. Glasse, *The Concise Encyclopaedia of Islam* (London: Stacey International, 1991).

⁶ M. K. Masud, "Concepts of *Fatwā*," in B. Lewis, Ch. Pellat, and J. Schacht, *The Encyclopaedia of Islam*, Vol. II (Netherlands, 1983), 866.

⁷ P. Bannerman, *Islam in Perspective: A Guide to Islamic Society, Politics and Law* (New York: Routledge, 1988), 248.

you in the book, concerning the orphans of women to whom ye desire to marry, as also concerning the children who are weak and oppressed: that ye stand firm for justice to orphans. There is not a good deed which ye do, but Allah is well acquainted therewith."⁸

In the above verse, the derivative verb *yastaftūn* means "they are seeking an edict or judgment", which in this case was from the Prophet himself and about women. The verb *yufṭī* means "he delivers the judgment" that is sought, referring here to the Prophet conveying God's own judgment. The verse thus provides scriptural evidence of prophetic precedence in the practice of issuing religious edicts or legal judgments. In the light of this prophetic precedence, some scholars consider *fatwā* as the fifth source of law after the Quran, Sunnah, *ijmā'* and *qiyās*, while some others consider it as a part of *Qiyas*. However, from the epistemological point of view, the real issue about *fatwā* is the authoritative standing of its source in terms of knowledge at its command. In other words, the issue is about who can provide on the basis of knowledge the best collective voice or opinion on a particular issue facing society. This is what Hallaq has emphasised when he maintains that the essence of authority is epistemological in nature.

Generally, there are three main reasons why *fatāwa* have been issued in Muslim societies. First, there is a genuine need of them arising from divisive societal issues. Second, political-motivated reasons. Third, dictated by personal interests. Presently, these three reasons are very common. *Fatwā* issuance is a broad field of concern, since it pertains to various domains of human life. The practice of having a government-appointed *muftī* (opinion giver) to issue *fatāwa* justifying government policies has been a major subject of criticism by contemporary reformist Muslim movements. However, many of these modern movements often allow individuals without the requisite legal training to issue *fatāwa*. Their followers may consider such edicts as binding but the jurists or the rest of the Muslim community do not recognise them as legitimate juristic opinions⁹.

⁸ A. Y. Ali (trans.), *The Holy Quran: Text, Translation and Commentary* (Lahore: Ashraf Publishers, 1938).

⁹ B. Messick, & D. S. Powers (eds.), *Islamic Legal Interpretation: Muftis and their*

Strictly speaking, a *fatwā* is to be issued by competent religious scholars on the basis of solid evidence and sound reasoning. Our analysis of the *fatāwa* issued in Pakistan shows that they are not legally binding irrespective of who issued them. One good reason for this is that some of these *fatāwa* are questionable regarding their religious merits and soundness. Anyway, individuals may approve or reject a *fatwā* based on their own personal opinions.

An Islamic state may make a *fatwā* legally binding and then enforce it. The problem, however, is that religious opinion is split as to whether adherence to *fatāwa* can be made compulsory. A *fatwā* is distinct from *qadā* (“judicial ruling”). Its authority is discretionary and its status depends upon the credibility of the person or institution issuing it, while *qadā* is obligatory and enforceable. Although some jurists consider obedience to *fatwā* obligatory, others such as Sheikh Abdel Mohsen al-Obeikan¹⁰ claim that the decisions of the official *iftā* authority are not binding, whether on citizens or the state. He further pointed out whereas a judge’s verdicts must be followed, a *mufī* can only elaborate on his legal Islamic judgement without being able to bind people to his *fatwā*¹¹. According to John L. Esposito, “A final source for the incorporation of custom in law was the *fatwās* (opinions) of *mufītīs* (legal consultants). A *fatwā* is an opinion on a point of law rendered by a *mufī* in response to a question submitted to him by a private individual or by a *qādī*”¹². Unlike Malaysia where *fatwā* is legally binding¹³ and it can become law with the approval of

Fatwās (Cambridge: Harvard University Press, 1996); see also W. B. Hallaq, “*Fatwā*,” in *Encyclopaedia of the Modern Middle East and North Africa*. 2004. Retrieved December 08, 2013 from Encyclopedia.com: <http://www.encyclopedia.com/doc/1G2-3424600948.html>.

¹⁰ Sheikh Abdel Mohsen al-Obeikan was Advisor of Saudi King Abdullah. He held several positions, such as Judiciary Lieutenant, Inspector and Advisor at the Ministry of Justice and a consultant in the Royal Diwan with the rank of Minister (2009 to 2011).

¹¹ S. Al- Obeikan, *Daily Asharq al-Awsat*, July 9, 2006, <http://www.aawsat.net/>

¹² J. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), 128.

¹³ N. Saat, “‘Deviant’ Muslims: The Plight of *Shias* in contemporary Malaysia,” In B. Platzdasch & J. Saravanamuttu (eds.), *Religious Diversity in Muslim Majority States in Southeast Asia: Areas of Toleration and Conflicts* (Singapore: Institute of Southeast Asian Studies, 2014), 365.

the Islamic Religious Council (IRC),¹⁴ the *fatwā* is not binding in Pakistan as it is in Indonesia.¹⁵

Religious Authority in Pakistan: Centralisation and Decentralisation Issues

In discussing religious authority and its centralisation-decentralisation issues in Pakistan, there are six major functional groups to be observed. These are the army, the politicians, the scholars, the clerics, the academics, and the intellectuals. In terms of common interests and goals, these functional groups may be regrouped as [1] scholars and clerics (*‘ulamā*), [2] politicians and military, and [3] intellectuals and academics. Each of the three groups is known to exert influence over the masses. All groups are known to have their own spheres of authority and influence, but scholars and clerics are generally viewed as a more credible authority among the general masses compared to the other two groups. Their good standing in the community placed them in a privileged position to play the role of peacemakers. However, this group is rather polarised due to *madhhab* diversity. There are two major Muslim religious communities in Pakistan, namely *Sunnis* and *Shias*. The two communities have deep-rooted differences on issues of theological (*imāmah*) and political (*khilāfat*) authority.¹⁶ With these differences, legislating centralisation and decentralisation of religious authority that would transcend schools of jurisprudence could prove difficult though not impossible. This has proved in the past to be a more difficult task in the *Sunni* community. The more real issue, however, is that there had been only poor attempts at such legislations.

Interestingly, from its foundation until the 1970s inter-*madhhab* harmony in Pakistan was perceived to be quite remarkable. It was quite common then to find *Sunni-Shi’a* and

¹⁴ N. A. Shah, *Islamic Law and the Law of Armed Conflict: The Armed Conflict in Pakistan* (New York: Routledge, 2011), 14.

¹⁵ N. Katjasungkana and S. Wieringa, *The Future of Asian Feminisms: Confronting Fundamentalisms, Conflicts and Neo-Liberalism* (Cambridge Scholars Publishing, 2012), 329.

¹⁶ P. Crone and M. Hinds, *God’s Caliph: Religious Authority in the First Centuries of Islam* (Cambridge University Press, 1986).

Sunni-Ahl al-Ḥadīth intermarriages. Due to these intermarriages, sectarian religious differences were lessened to some extent and the religious authorities were working together under the common state missionary agency.¹⁷ *Islamic* scholars and '*ulamā*' then were more unified and they were viewed as a consolidated and integrated entity in the country. They were often consulted to arbitrate in all kinds of disputes. Moreover, they were respected for their piety and scholarly status. The '*ulamā*' were used to having scholarly debates with the scholars of other religions, and not just with their own religious fellows. However, harmony among the '*ulamā*' appeared to have been shattered after greed for power emerged among the religious authorities and overwhelmed them. They began to use their authorities and powers for personal, political and sectarian doctrinal gains. They tried to gain power through politics.¹⁸

Stratification started among the '*ulamā*' in the 1980s when many sectarian issues began to surface. During the decades *Sunnis* and *Shi'as* were seen attacking each other on jurisprudential matters and other doctrinal issues. Jurisprudential differences became politicised. As a result, denominational separatism and antagonism became more visible among the religious authorities of the two schools of thought. Each religious group tried to fortify itself against the other. Its leaders succeeded in making their followers unite for the empowerment of their own sects, beliefs and doctrines. Another negative effect of this unification attempt, which itself is sectarian-motivated, was the spread of their sectarian beliefs among the ordinary people. As a result, the social positions of the partisan leaders increased in stature. The use of politics and religion to protect their own social positions, doctrines and beliefs seemed to be the order of the day. They justified their politics as a religious obligation.

¹⁷ See Canada: Immigration and Refugee Board of Canada, Pakistan: The consequences of a Shia-Sunni inter-religious marriage, including the treatment of the couple and their children (October 2003 - May 2005), 25 May 2005, PAK100048.E, available at: <https://www.refworld.org/docid/440ed7432.html> [accessed 21 January 2022].

¹⁸ See Angel M. Rabasa, Cheryl Benard, Peter Chalk, C. Christine Fair, Theodore Karasik, Rollie Lal, Ian Lesser, and David Thaler. "Islam and Politics in Pakistan," in *The Muslim World After 9/11*, 1st ed., 247–96. RAND Corporation, 2004. <http://www.jstor.org/stable/10.7249/mg246af.15>.

They claimed to follow Prophetic and sacred politics (*siyāsāt shīwa-e paghēambarān*) with the hope that people would not object to their behaviours. These politically-oriented religious figures were also impacted by religious-political ideologies from outside Pakistan. The politics of Iran and Saudi Arabia and their fundings influenced their respective supporters in the country.¹⁹ These developments helped empower their own respective denominations in Pakistan. Independent of higher religious authorities and not answerable to any, they emerged as warlords. Some of them became militants. However, low-income groups and the poorer classes were adversely affected by their misguided politico-religious ideologies and activities. Members of these groups were recruited to become violent and extremist members of militant groups and organisations so that they could protect the militant leaders. They were indoctrinated with extremist and fanatical beliefs²⁰ which further inflamed sectarianism and jeopardised attempts at legitimate decentralisation.

Wisely conceived and planned and justly executed, decentralization could help save Pakistan from the fragmentation and disintegration of religious authorities. A just decentralisation would be the right response to separatism and misplaced provincialism, just as it would be the right answer to over-centralisation. However, the Communist lobby in the country, which was known to be operating from India,²¹ exploited the issue of decentralisation to foment separatism in various areas of Pakistan, specifically in Baluchistan and NWFP (now KPK) provinces. There is strong reason to believe that local religious authorities were involved with separatist elements, which have direct relation with the country's Communist lobby. Although, the '*ulamā*' of that time denounced Communism as a system of *kufir* (heresy) and called a Communist a *kāfir* (infidel), many people appeared to be drawn to the Communist approach because of their pro-decentralisation views. The Communists tried to

¹⁹ A. Rana, *A to Z of Jihadi Organization in Pakistan* (Lahore: Mashal Books, 2004).

²⁰ For a general study on indoctrination pattern shared by militant movements, see Elizabeth Paluck "Reducing Intergroup Prejudice and Conflict Using the Media: A Field Experiment in Rwanda," *Journal of Personality and Social Psychology* 96 (2009); 574-87. DOI: 10.1037/a0011989.

²¹ "Need we commit suicide?", *The Dawn*, June 3, 1978.

gain sympathy and support of the religious-minded people for their political struggle by telling them that Islam favoured decentralisation. Using this pretext, they urged the people to oppose the central government. They succeeded in influencing some people, who mistakenly thought that the Federal government had infringed upon their rights.

Notwithstanding the negative exploitation of decentralisation by groups like the Communists, decentralisation is indispensable to the institutionalisation of religious authority in Pakistan, which is a linguistically, ethnically, and culturally diverse country. However, to prevent its exploitation by opportunistic groups, local religious authorities need to have a better understanding of Islamic social teachings. Until now, no mechanism or institution exists that would enable the '*ulamā*', *muftīs*, scholars and leaders to be well trained in religious governance. According to Hussain, "These religious actors had no 'ecclesiastical system'".²² In the absence of such an institution Pakistan has to face many sectarian issues leading to target killings, bomb blasts even in mosques, and lawlessness. But with proper training for the religious authorities, it is possible to control the lawlessness and sectarian killings that frequently occur among *Sunnīs* and *Shi'as* and other minorities.

Since Pakistan is a multi-*madhhab* country, it is difficult for it to grant the status of a dominant religious authority to a single school of thought. No single *madhhab* can aspire or declare to be the sole legitimate religious authority. The complexity of this issue is not new, but has been around since the period of British-India. In our view, there could never be any consensus or unity on religious matters. However, it is paramount that two institutions of the country should belong to the State; one is the Ulama Council and the other *Dār al-Ifṭā'* (House of *Fatāwa* Legislation). All national and international religious issues should be discussed by the *muftīs* and '*ulamā*' or legal experts within the framework of these two institutions. Any person who issues a *fatwā* on his personal discretion that threatens public peace can be questioned by the National *Dār al-Ifṭā'*. These institutions should be entirely free from any political,

²² Asaf Hussain, *Elite Politics in an Ideological State: The Case Study of Pakistan* (London: Dawson, 1979), 73.

private or sectarian pressure or affiliation. Moreover, these institutions should be established at lower levels so that the process of institutional decentralisation could take place and issues could be tackled at the regional level. A good guide to be followed by *Dar al-Iftā'* is the principle of *usūl al fiqh* that 'whenever benefit outweighs harm permission is granted, and whenever harm outweighs benefit, prohibition is recommended.'²³

***Iftā'* Culture in Pakistan: Political, Legal and Religious Determinants**

The following section attempts to provide a more detailed discussion of Pakistan's *Iftā'* system, particularly its mechanism and procedures for regulating the issuance of *fatāwa*, its ideological and legal frameworks, and issues of their religious legitimacy and authority. These issues have a great bearing on the numerous conflicting *fatāwa* that were issued by various religious organisations, groups, and individuals. In particular, this section addresses both the *Sunni* and *Shi'a fatāwa* on violence. Also explored in this section are the kind of ideological influences and deviationist practices that impact the practice of *fatwā* issuance.

Iftā' culture in Pakistan has a long history that can be traced back to the early Moghul period. In the history of Islam in the Indian subcontinent, there were jurists who projected their knowledge beyond the limits of the *madrāsas* to discuss the affairs of the Islamic community. During the Sultanate period from 1206 to 1526 *fatāwa* were issued by learned jurists. The *muftī* was considered as a *Maūlawī* (learned), an honorary title of distinction, and conferred the title of *Shaykh-ul-Islam*.²⁴ His authority was well recognised. Under

²³ M. K. Mas'ud, B. M. Messick & D. S. Powers (eds.), *Islamic Legal Interpretation: Muftis and Their Fatwas* (Harvard University Press, 1996, 2005).

²⁴ In modern-day Pakistan, the title is granted to someone who had a complete grasp of Islamic classical and modern sciences and, in addition, was recognised worldwide for his Islamic religious services. Moreover, he was considered a moderate propagator of Islam by the majority of the four schools of law. The title, however, was not given by either himself or only his followers, or by the government. Instead, he had been called *Shaykh al-Islam* by popular acclaim. The present holders of the title are Dr. Muhammad Tahir-ul-Qadari and Mufti Sheikh Muhammad Taqi Usmani.

different dynasties, the *muftīs* served under the patronising policies of the governments within the monarchical framework. It is true that in the earlier centuries, *muftīs* played a more important role than judges. But their role had changed with the passage of time. During the nineteenth century, it was more common for *madrasas* to issue *fatāwa* rather than individual religious scholars. A *muftī*'s influential position diminished during the independence movement. At the individual level, however, the *muftī* was still recognised as a religious authority by the people, especially on social issues. Our study shows that at the individual level the appreciation of a *muftī* is greater than the religious authority of *Dār al Iftā'*. Generally speaking, it was a *muftī*'s credentials and strong public reputation that gave more respect to *Dār al Iftā'*. Goodson was wrong when he claimed that extremism, Kalashnikovisation (weaponisation), and militancy started in Pakistan due to the failure of the judicial system.²⁵ *Muftīs* and *qādīs* (judges) have been part of the same judicial system for centuries.

Modern *Iftā'* culture in Pakistan began upon its establishment as an independent nation-state. It developed under new political, legal and religious conditions. The national ideology of independent Pakistan was clearly defined since the first day of the Resolution of Pakistan in 1940. Pakistan was the first modern state to be established on an Islamic ideological basis. With a vast distance of 1,200 miles separating its western and eastern parts, its best hope for national unity was placed on the Islamic ideology of the state to overcome the country's linguistic, ethnic, and geographical differences. Thus, the great attention that was given to the Council of Islamic Ideology. This Council serves primarily as the national consultative body regarding the regulation of the legal system. However, it is just an advisory body²⁶.

²⁵ G. Larry, "Foreign Policy Gone Away: The Kalashnikovization and Talibanization in Pakistan," in C. Baxter and Charles H. Kennedy, (eds.), *Pakistan 2000* (Karachi: Oxford University Press, 2001).

²⁶ John Esposito, *The Oxford Encyclopaedia of the Modern Islamic World*, vol. 2 (Oxford University Press, 1995), 9.

Nonetheless, this Council has an impact on judges and Islamic jurists. There are three key components within the Hanafi-based legal system that are to be advocated before the judges (*qādīs*): the *muftī*, the Attorney General and the Public Prosecutor. As for the *muftī* he only provides a non-binding opinion (*fatwā*), interpreting the Quran, Sunnah, and *ijmā*, and explaining the lawfulness or illegality of a particular case. The impact of the *muftī* on Pakistan's legal system, however, has been great. It could be said that the approximation in Islamic law to the weight of precedent cases in common law may be found in the non-binding *fatāwa* rather than in the decisions of judges.

During the military rule of President Zia-ul-Haq (1978-1988), there was a visible increasing role of *muftī* and 'ulamā' in the government sector. A number of them were appointed to the Federal Shariah Court as jurists, juris-consultants and *qādīs*. Moreover, they were given equal professional status and privileges in various institutions such as Pakistan's courts and its army, though different in status from *muftīs* of the state. For this reason, it was not possible for them to issue *fatwās* at the national level. Although Zia's administrative move gave recognition to the role of *muftī* and 'ulamā' at the national level, it did not have a significant impact, especially in terms of contributing to the enhancement of 'ulamā'-*umara*' partnership in modern nation and *ummah* building. The administrative move had consequences that raised the issue of the nature and scope of that partnership generally and the relation between the state's power and the *muftī*'s authority in particular. For the state's affairs to be effectively managed, the Islamic dictate is that there should be a clear harmonious relation between 'ulamā' and rulers viewed as partners in the protection of religion. Looking back to Zia's decade in power, spheres of religious and political authority could have been more clearly defined. As Islamic governance itself would insist, there should have been checks and balances to ensure transparency and accountability. Unfortunately, there was no oversight and supervision to place checks on them. Owing to the absence of regulation, the state lost the spirit of moderation and the 1990s proved painful and irksome. Until now, there is no regulative method.

Undeniably, the role of *muftī* in Pakistan is embedded in consultation and legislation as well. *Muftī* chairs some governmental and non-governmental institutions; for example, *Rūīet-e-Hilāl* Committee (Moon Sighting Committee) is chaired by *Muftī* Muneeb-ur-Rehman (b. 1945), who was appointed by a government board. Another is Islamic Banking and Finance, headed by *Mufti* Muhammad Taqī Usmani²⁷ (b. 1943). The Religious Board of *Mudāraba*²⁸ is a governmental institution. The Federal Shariah Court and the Shariah Appellate Benches operate and function as state institutions. The Islamic Ideology Council is a prominent institution in Pakistan that provides consultation and advice to the State and cooperates with the Religious Ministry as previously mentioned.

The Attorney General, the second component of the legal system, is the Chief Legal Advisor of the government upon the consent of the President of Pakistan. The third component is the Public Prosecutor, who is a legal professional and recognised by the courts. In particular, he deals with substantive and procedural laws. According to our study, the *muftī*'s *fatwā* is more relevant to the legal system and the society at large, because he fills a niche being both a teacher and a judge. However, in line with tradition he is expected to issue his *fatwā* by referencing the *masādir* (sources) and *marāj'* (references) that had accumulated up to the eleventh century *Hijriyyah*, and not depending only on recent *fatāwa*, because it is important for *muftīs* and judges to follow the precedents.

In Pakistan, the private *madrasas* are a powerful social force wielding much both religious and political influence in society. According to one independent estimate, there are about 20,000 *madrasas* operating under various boards.²⁹ Especially prominent are the *madrasas* of the Barelvis (*Tanzeem Madāris Ahl al-Sunnah wa'l-Jamā'ah*), Deobandis (*Wafāq al-Madāris al-'Arabia*), *Shi'as*

²⁷ A former Judge of the Shari'at Appellate Bench of the Supreme Court of Pakistan (1982-2002), Sheikh Usmani is the intellectual head of the Deobandi School of Islamic learning.

²⁸ *Mudaraba* is a financial contract in which the investor entrusts money to a financial manager, where they share profits and losses in an agreed manner.

²⁹ "The United States Commission on International Religious Freedom Report 2011," in P. Seib (ed.), *Religion and Public Diplomacy: Global Public Diplomacy* (Palgrave Macmillan Series, 2013).

(*Wafāq al-Madāris Shi'a*), and *Ahl al-Ḥadīth (Wafāq al-Madaris al-Salafīa)*. Seventy-five percent of these *madrasas* belong to and are managed by the Barelvis and Deobandis, both *Sunnis*. The managing boards of these *madrasas* often issue their respective *fatāwa* separately from each other. But on the issue of violence, it was very unusual for the representatives of the various schools of thought to sit down together and issue a collective (joint) *fatwā*. The *fatwā* issued against violence by the *Mili Yakjehti* Council (Council of National Unity) was an unusually rare but welcome one! Often one board would issue a *fatwā* on certain matters and then the *fatwā* is submitted to another board for rectification. This shows that guidance in the issuance of *fatwā* is standardised within the state and in compliance with the tenets of Islam and not compromised by any sectarian agenda. This practice would entail scrutiny of *fatwā* and judge the credibility and impartiality of the scholars. Ideally, there should be one body or unit that would address all issues including the burning issue of violence, containing the representatives of all *madhhab* (schools of law) and major religious groups. A collective *fatwā* can yield many fruitful social outcomes. In this way, from both political and religious viewpoints, intellectuals, Islamic scholars and administrators would be able to sit under one roof to discuss the issue.

The majority of Pakistanis belong to the *Hanafī madhhab*. Most *mufītīs* issue *fatāwa* according to the interpretations of this school whether about religious, social or political affairs.³⁰ In Pakistan, as in many other parts of the Muslim world, people prefer to follow a *mufītī* who belongs to their own school of thought, and believes in the same interpretation of religious doctrines. They do not believe in a *mufītī* who has a different interpretation of Islam even though he is from the same school of thought. The Barelvis and the Deobandis, for example, both belong to the Hanafi school of law but since their interpretations of certain religious doctrines are different,

³⁰ Mufti Sheikh Muhamad Taqi Usmani, for example, has written *fatwās* over a period of forty-five years, which have been published in four large volumes. See *The Muslim 500: The World's 500 Most Influential Muslims 2021* (Amman: The Royal Islamic Strategic Studies Centre), 77.

they do not accept each other's religious authority and *fatāwa* on certain issues.

A Muslim jurist and certainly a *muftī* may issue a *fatwā* in Pakistan because it is just a legal opinion; it is not mandatory to obey or act upon it. *Muftīs* play the role of teacher and judge, often mediating between contending positions of the *madrasas* and the sharīa courts. A *muftī* is a very influential figure, especially in Muslim countries where there is a Sultanate system of government or an autocratic form of government or where people strongly adhere to Islam, like Pakistan, Brunei Darussalam, and Indonesia. We observe that the *muftī*'s role in Pakistan has a huge impact on the people. Quite often, to help diffuse political and religious crises engulfing the country, *muftīs* have to give *fatāwa* of a political nature, for example, to draw a line as to whether Pakistan should be rightist or leftist in its ideological orientation. Such *fatāwa* have divided the *muftīs*, notwithstanding the existence of a National Islamic Ideology Council to oversee *fatāwa* issuance. Politically-motivated *fatāwa* are quite common in Pakistan and other parts of the Muslim world. At the national and even international level, the nature and scope of the *fatāwa* is to a large extent determined by the relationship between *muftīs* and the government of the day. For example, on the issue of whether a Muslim State could make an alliance with a non-Muslim state, Masud contends that *muftīs* in the Arab and the rest of the Muslim world "representing various governments, issued *fatwās* providing Islamic validation for and justification of the policies advocated by their respective political leaders."³¹

War of *Fatāwa* and the Inflaming of Sectarianism and Violence

There have been divisive and fateful *fatāwa* in pre-partitioned India. A good example was the *fatwā* issued declaring British India as a *dār al-ḥarb* (abode of war), and Hindustani Muslims were accordingly asked to migrate towards Afghanistan which was then regarded as *dār al-amn* (abode of security). Only three or four '*ulamā*' endorsed this *fatwā*, while the majority of them disapproved of it. As a sign of the seriousness of the issue, Hanafi, Shafie and Maliki *muftīs* of

³¹ Masud, Messick, and Powers, eds., *Islamic Legal Interpretation*.

Mecca delivered a counter-*fatwā* affirming that the country would remain an abode of Islam (*dār al-Islām*).³² But because of the “minority” *fatwā*, some twenty thousand³³ Indian Muslims who obeyed it endured a great deal of suffering in the course of their migration to Afghanistan.

Another example, in the name of united Hindu-Muslim nationalism that had taken shape during the British colonial era, some ‘*ulamā*’ issued a *fatwā* prohibiting cow-slaughtering during *Eid al-Adha* celebration whereby they changed the word ‘*baqārah*’ (cow) to ‘*shāt*’ (goat) to appease the Hindu community.³⁴ Other ‘*ulamā*’ and *muftīs* understandably opposed such a *fatwā*. They issued another *fatwā* defending the traditional practice of cow-slaughtering. The two examples of *fatwā* tell us how *muftīs* and religious authorities got embroiled in the past in *fatwā* controversies. These controversies shattered Muslim unity and caused many repercussions for ordinary citizens.

In the post-colonial era, bearing in mind Pakistan’s complex intra-Islamic pluralism, poorly managed intra-Islamic sectarian conflicts have often degenerated into extremism and violence. Sectarian *fatāwa* helped fuel the conflicts, especially on issues of *kufir* and violence. Animosity between Sunni Deobandis and Shi‘as worsened during the Zia era. Over the past two decades, these two religious groups have had exchanges of *fatāwa* of *kufir* (excommunication) mainly as a result of external influences. Every difference that separated them was increasingly politicised, whether it was purely social or religious. Issuing *fatāwa* acted as a handy weapon for the warring sides in the selfish desire for reaping political gains from religious differences. In this war of *fatāwa* Pakistani Shi‘as were morally and economically backed by Iran.³⁵ On the other side, with their *madrasas* funded by Saudi Arabia³⁶, the Sunni

³² J. Iqbal, *Islam and Pakistan’s Identity* (Lahore: Vanguard Books, Ltd., 2003).

³³ S. Zaidi, *The Emergence of Ulema in the Politics of India and Pakistan 1918-1949: A Historical Perspective* (Pine Lake Road, Press Club, 2003).

³⁴ J. Alam, *Government and Politics in Colonial Bihar* (New Delhi: A Mittal Publication, 2004).

³⁵ M. Ahmad, “Shi‘i Political Activism in Pakistan,” *Studies in Contemporary Islam* 5 (1-2), Spring-Fall (2003): 64.

³⁶ Imtiaz Gul, *Pakistan Before and After Osama* (New Delhi: The Lotus Collection,

Deobandis were seen as being more arabicised by their opponents. The *Shi'a*-Deobandi *Sunni* exchanges of *kufr fatāwa* was not to be confined to them. The sectarian war spread beyond their turfs so as to engulf Deobandi-Barelvi relations as well. The largest sect in Pakistan is the Barelvi-*Sunnis* who account for fifty to seventy percent of the population.³⁷ The Barelvis were opposed by the Deobandis on many issues. According to Faisal's report, the Deobandis' *madrāsas* were and still are supported by the Saudis.³⁸ The Barelvis and the Deobandis both issued *fatāwa* of infidelity against each other, notwithstanding their common *Sunni* positions.

On the issue of violence, up to now, all *fatāwa* are against it. No *fatwā* was issued that favoured violence. It was unanimously condemned in the country, directly or indirectly. Both Barelvi and Deobandi *Sunnis* and *Shias* issued *fatāwa* against violence. The Barelvis have adopted an open stance against violence. They have condemned and rebutted violence in unequivocal terms. Deobandi *madrāsahs* have rejected unjust violence, bloodshed, murder and plunder. The *Shias* in turn absolutely denounce and refute violence, whether it is political or religious. One of the most extensive and also most well-known *fatwās* on violence to have come from Pakistan was issued by Muḥammad Ṭahīr ul Qadrī (b. 1951), a scholar turned politician. The English version of the *fatwā*, which was widely praised in the West, was published as a book in London in 2011 with a foreword by John Esposito.³⁹ It was officially endorsed by Al-Azhar University in Cairo, Egypt.

Additionally, and quite significantly, nearly fifty *mufīīs* of the *Sunni Ittehad Council* (SIC) issued a *fatwā* condemning violence in Pakistan. This collective *fatwā* maintains that, according to Islam, suicide is forbidden, and in the light of the Quran and Sunnah, the

Roli Books Pvt. Ltd., 2012), 161.

³⁷ A. Khan, *Barelvi activism against terrorism*. <http://crss.pk/downloads/reports/research-reports/BarelviActivism-against-against-Terrorism.pdf>, 2009.

³⁸ F. Devji, "Accounting for Al-Qaeda," In F. Volpi (ed.), *Political Islam: A Critical Reader*, 2011, 318. See also, S. V. Nasr, "Saudi time bomb?" *PBS Interview*, 25 Oct, 2001, www.pbs.org/wgbh/pages/frontline/shows/saudi/interviews/nasr.html. Accessed on 20 Feb 2010.

³⁹ See Muhammad Tahir ul Qadri, *The Fatwā on Terrorism and Suicide Bombings* (London: Minhaj-ul-Quran, 2011).

killing of foreign guests in the country is the worst crime. Moreover, in that *fatwā*, drone strikes on innocent civilians are called violations of international laws and acts of brutality. A dozen or so other regional and local religious parties and many other *Sunni* ‘*ulamā*’ of Pakistan backed the *fatwā*. They also urged other religious groups and parties to denounce violence and support the *fatwā*, which condemned violence in the most categorical manner.⁴⁰ One of the objectives of the collective *fatwā* was to inspire other religious parties to be united on the issue of violence, putting aside all petty disputes among them. The *fatwā* further declared that the Pakistani soldiers who had lost their lives in the war against terrorism were considered as martyrs. Such a well-intentioned *fatwā* should have been welcome by all Pakistanis as the threshold of a new consciousness in the country of the need to foster inter-*madhhab* harmony but instead, apparently for extreme sectarian reasons, a small minority of religious leaders did not support the *fatwā*. In a social environment emotionally charged with sectarianism, conflicting *fatāwa* can easily generate dissension and friction in society. In the process, people’s confidence in religious authorities becomes shaky and fragile. A collective *fatwā* could help reverse trends towards increasing sectarianism. But the challenge mounted by the minority *fatwā* has to be addressed, since its proponents too contend that their actions and deeds comply with the Quran. The danger coming from opponents of the collective *fatwā* is real, especially from those who have indulged in violence and seek to legitimise it. They may resort to violence to undermine the effectiveness of the collective *fatwā* as the alternative to sectarian *fatāwa*.

Some scholars are quite aware of the danger. They are often afraid or unwilling to issue *fatāwa* for fear of being killed by pro-violence groups. The case of Mas‘ud Aẓhar was instructive. He approached a scholar for a *fatwā* to support his attempt to establish *Jaīsh-e Muhammad* (The Army of Muhammad), but the scholar Maulāna Yūṣuf Ludhianvi Deobandi,⁴¹ a Deobandi ‘*ālim* refused. He

⁴⁰ “*Fatwā* Endorse against Terrorism: thirty religious parties and endorsement of *fatwā* against terrorism,” *The Dawn* (Lahore, Pakistan, February 6, 2013).

⁴¹ Chishti, A. K. (2010, October 29). *Criminal Silence of Deobandi and Ahl- e*

was later murdered by unknown killers. It is well-known that some *mufītīs* and Islamic scholars who released *fatāwa* against violence have been killed either in target killings or in suicide bombings. Some others, including the earlier quoted Tahir ul Qadri, who issued a lengthy *fatwā* against suicide bombing and terrorism, have received death threats. In condemning the violence, Qadrī's *fatwā* was categorical.

Outside Pakistan, especially in the West, there is great interest in *fatāwa* on violence among academics and policy makers, especially if these *fatāwa* are viewed as having political implications for the West or the Muslim world at large. *Fatāwa* on religious and social issues are usually of little interest to the West, even among academics. Western coverage of *fatāwa* on violence has serious shortcomings that would only tarnish the good image of Islam and Muslims. It generally gives the impression that Pakistani *fatāwa* on violence have all been issued from the Islamic perspective. In reality, there have been wide disagreements among *mufītīs* on the issue of terrorism.⁴² Many *madrāsas* have issued *fatāwa* against terrorism and violence, but in the Western media they are still being blamed for it. They are generally viewed as fertile grounds for religious fanaticism, and espousing violence.⁴³

Conclusion

Part of the problem facing contemporary Pakistan is that there is no independent *fatwā* issuing authority of national stature that could deal with impartiality the contentious issues confronting the country. The contemporary *fatwā* issuance by individuals and organisations point to the very chaotic state of the *Ifīā'* conception, institution, and practices in the country. As it is, *fatwā* issuance is hardly governed by professional ethics. It can clearly be seen that the current practice of each *madrāsa* and each *mufītī* providing its or his own interpretation on various issues has led to misunderstanding and

Hadīth scholars on terrorism. Retrieved from <http://www.lubpak.com/archives>.

⁴² R. Omar, "Term *fatwā* is misused," *Daily News*, Los Angeles, August 04, 2005. See also, S. Robert, "Islam unveiled," *Disturbing Questions about the World's Fastest-growing Faith* (New York: Encounter Books, 2002), 9.

⁴³ "Jamiat issues *fatwā* against terrorism," *The Times of India*, June 03, 2008.

conflicts. There is no agreement among them on practically every serious issue the country is facing; even their own followers often do not obey their *fatāwa*.

There are two main issues related to the contemporary *Ifiā'* culture in Pakistan that need to be reviewed, reorganised, and reformed. First, the issue of the need for an authoritative *fatwā* issuance, which pertains to the professional competence of the *muftī* and the ethical and moral worth of the *fatāwa* being issued. The issue is thus about the qualification and expertise of the *muftī* in question and the merit of the *fatwā* issued as seen from the perspective of the Shariah. The issue is not new in Islam. There have been times in its past history, including during the Mughal period, when the *Ifiā'* culture was based on meritocracy as insisted by Islam. If the enlightened traditional *Ifiā'* model can be restored in spirit if not also in form, then Pakistan can gradually do away with its current *Ifiā'* culture that is ridden with the schism of the clerics, their controversial concepts, wrong interpretations and apostatising practices that have segregated and weakened the *fatwā* institution and the Islamic tradition itself. An enlightened *Ifiā'* culture has no place for half-educated clerics and half-baked *muftīs* who arbitrarily issue their *fatāwa* based on questionable interpretations of Islamic jurisprudence. At the same time, professionalism in *fatwā* issuance and meritocracy-based *Ifiā'* culture could help minimise or even mute criticisms against *fatāwa* from secularists and the westernised sector of the country. It would go a long way towards restoring public trust and confidence in *fatāwa* and respect for the *muftī's* religious authority.

Second, the issue of separation of powers and privileges between *muftīs* and judges (*qādis*), which at present seems blurred. Asaf Hussain's view that the *muftī's* position in relation to the *qādi's* needs more clarity seems understandable.⁴⁴ A fair solution to the issue requires a re-examination of the conception of *fatwā* itself and its domain of authority,⁴⁵ both religious and legal, that would

⁴⁴ Asaf Hussain, *Elite Politics in an Ideological State*.

⁴⁵ H. Agrama, "Ethics, Tradition, Authority: Towards Anthropology of the *Fatwā*," *American Ethnologist* 37 (1), 2010: 2-18. http://www.researchgate.net/publication/227837846_Ethics_tradition_authority_Toward_an_anthropology_of_the_fatwā.

distinguish it from a *qādi*'s authority. To be addressed as well is the issue of the non-binding nature, legally speaking, of a *muftī*'s *fatwā* as contrasted with the legally binding judgment of a *qādi*.⁴⁶ No less important an issue is the wide inequality in the professional and social standing of *muftīs* and judges as reflected in the numerations and privileges they receive.

Admittedly, it would not be an easy task to reform the present *Iftā'* culture, since many factors intertwined – historical, political, socio-cultural, religious, and ethnic – have contributed to its complexity. Since the *Iftā'* problem of Pakistan is rooted in the country's intra-Islamic pluralism, its veritable solution has to be sought as an integral component of the national response to its peculiar variety of pluralism.

⁴⁶ W. B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 1997).