

The Problem of Religious Guidance among Indian Muslims: A Forward-Thinking Proposal

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Abstract

The Indian Muslim community faces a paradox, marked by the presence of religious leaders without a clear path forward. The article identifies a lack of guidance, particularly in matters of faith, as numerous Ulema offer conflicting *fatwas*, stemming from a flawed Ifta methodology. Tracing the historical evolution of *fatwa* issuance, the 19th-century shift in India, influenced by the East India Company's trade-focused policies, led to an abundance of independent Ulema. This article explores the historical evolution of Ifta in Islam, with a focus on India. It reviews the transition to formal *fatwa* institutions, compares practices across regions, and proposes centralizing *fatwa* authority through a high central council in India, offering recommendations for reform. The absence of a centralized authority for *fatwa* issuance in India results in a chaotic scenario. To address this, the author proposes a structured solution: establishing a high central council of diverse Ulema and intellectuals. This council would delegate responsibilities for religious and social issues to ensure uniformity in *fatwa* decisions nationally. However, the article underscores that councils alone are ineffective without legal enforcement authority. This article will show: 1) Abundance of Guidance and Contradictory *Fatwas*; 2) Evolution of *Fatwa* Issuance in Islamic History; 3) Current State of *Fatwa* Issuance and Recommendations for Reform. Additionally, it advocates reevaluating the concepts of '*Dar al-Islam*' and '*Dar al-Harb*' in the context of India's identity. The author suggests a Parliament-recognized Council to issue *fatwas*, aligning with democratic principles and reflecting shared ownership among India's diverse Muslim population.

Keywords: *Fatwa, Ifta, Islam, Mufti, Ulama.*

Abstrak

Komunitas Muslim India menghadapi paradoks yang ditandai dengan kehadiran para pemimpin agama tanpa kejelasan arah ke depan. Artikel ini mengidentifikasi kurangnya panduan, khususnya dalam masalah keimanan, karena banyak ulama yang memberikan *fatwa-fatwa* yang bertentangan, yang berasal dari metodologi Ifta yang cacat. Menelusuri evolusi sejarah penerbitan *fatwa*, pergeseran abad ke-19 di India, yang dipengaruhi oleh kebijakan East India Company yang berfokus pada perdagangan, menghasilkan banyak ulama independen. Artikel ini mengeksplorasi sejarah evolusi Ifta dalam Islam, dengan fokus di India. Laporan ini meninjau transisi ke lembaga-lembaga *fatwa* formal,

membandingkan praktik-praktik di seluruh wilayah, dan mengusulkan sentralisasi otoritas *fatwa* melalui dewan tinggi pusat di India, serta menawarkan rekomendasi untuk reformasi. Tidak adanya otoritas terpusat dalam penerbitan *fatwa* di India mengakibatkan skenario yang kacau. Untuk mengatasi hal ini, penulis mengusulkan solusi terstruktur: membentuk dewan tinggi pusat yang terdiri dari beragam ulama dan intelektual. Dewan ini akan mendelegasikan tanggung jawab atas isu-isu agama dan sosial untuk memastikan keseragaman dalam pengambilan keputusan *fatwa* secara nasional. Namun, artikel tersebut menggarisbawahi bahwa dewan saja tidak akan efektif tanpa adanya otoritas penegakan hukum. Artikel ini akan menampilkan: 1) Banyaknya Pedoman dan *Fatwa-Fatwa* yang Bertentangan; 2) Evolusi Penerbitan *Fatwa* dalam Sejarah Islam; 3) Status Penerbitan *Fatwa* Saat Ini dan Rekomendasi Reformasi. Selain itu, mereka juga menganjurkan evaluasi ulang konsep '*Dar al-Islam*' dan '*Dar al-Harb*' dalam konteks identitas India. Penulis menyarankan Dewan yang diakui Parlemen untuk mengeluarkan *fatwa*, yang sejalan dengan prinsip-prinsip demokrasi dan mencerminkan kepemilikan bersama di antara populasi Muslim India yang beragam.

Kata Kunci: Fatwa, Ifta, Islam, Mufti, Ulama

INTRODUCTION

In contemporary India, the Muslim community finds itself navigating a unique conundrum, surrounded by a plethora of leaders yet lacking a clear, unified path. The challenge is not confined to matters of secular leadership but extends into the realm of faith, where a discernible course of action remains elusive (Nooruddin, 2004). Despite the presence of Ulema (Britannica, 2023) and religious institutions in every city and significant town, offering guidance through legal decrees or *fatwas*, this accessibility has given rise to what can be termed as a state of 'abundant guidance' on a national scale (M. Haq, 1972).

The absence of a centralized authority in religious matters has resulted in a landscape where individual *Muftis* (Definition, Meaning & Synonyms, 2020), bound only by their understanding of divine authority, issue *fatwas* independently. This decentralized approach has inadvertently led to a state of confusion rather than providing genuine guidance. The root of the issue lies in the flawed methodology of *Ifta*, where *Muftis* are constrained by the wording of the inquiries presented to them, leaving little room for personal investigation (M. Haq, 1972).

Delving into the historical context, the article explores the evolution of the institution of *Ifta*, tracing its origins from the early days of Islam when

individuals sought guidance from the Sahaba (companions of the Prophet) and later from Imams. With the establishment of Islamic governance and the appointment of qazis, a class of scholars known as *Muftis* emerged to provide legal assistance. However, the advent of the East India Company in the 19th century disrupted this structure, leading to an abundance of *fatwas* from independent Ulema.

The article highlights the paradox of the abundance of *fatwas* in India, juxtaposed with the lack of centralized authority. Unlike many other countries globally, where *fatwas* are issued only through government-approved institutions, India allows individual scholars to independently issue *fatwas*, resulting in a situation described as 'scientific anarchy'.

Acknowledging the need for a re-evaluation of the current state of affairs, the article proposes a nuanced solution the establishment of a high central council comprising Ulema from diverse schools of thought and Muslim scholars and intellectuals. This council would serve as the ultimate authority for issuing *fatwas*, with smaller local councils operating at the regional level. The distinction between the central and local councils is drawn concerning religious rituals and *mamlaat* (commercial and civil matters), ensuring a balanced and contextual approach.

However, the article underscores that the mere formation of councils is not sufficient without the legal authority to enforce decisions. It argues for a re-examination of Islamic political theory, emphasizing the need for a Council duly recognized by the Parliament, capable of issuing *fatwas* with authority.

It outlines a complex situation faced by Muslims in India (M. ul Haq, 1996), particularly concerning the issuance of *fatwas* (formal legal opinions) and the absence of a centralized authority to provide guidance. The author suggests that the current system, where individual scholars can issue *fatwas* independently, has led to confusion and contradictions. Some summary of the key points and potential reviews:

First, Abundance of Guidance: The author points out that there is an abundance of guidance available, with Ulema and institutions offering counsel across India (Akhtar, 2021). However, the accessibility has led to contradictory *fatwas*, creating a sense of chaos rather than clarity.

Second, Historical Context: The author delves into the historical evolution of the issuance of *fatwas*, highlighting the emergence of Muftis during the early

days of Islam and their role in providing legal assistance. The shift towards independent Ulema in the 19th century is emphasized.

Third, Preservation of *Fatwas*: The author questions the presumption that *fatwas* from pre-19th century India might not have been preserved in written form. The argument is that Muslims have generally preserved their intellectual heritage, and there should be records of earlier *fatwas*.

Fourth, Impact of East India Company: The author speculates on how the arrival of the East India Company as traders rather than rulers may have influenced the current state of affairs. The decision not to interfere in religious matters allowed for the proliferation of individual *fatwas*.

Fifth, Global Comparison: The author contrasts the freedom of Ulema in India to issue *fatwas* independently with the more controlled approach in other countries, such as Malaysia and Arab nations. The suggestion is that a centralized authority might bring about more uniformity.

Sixth, Call for Centralized Authority: The author proposes the establishment of a high central council of Muslims, comprising scholars from diverse schools of thought, to address the current chaotic situation. This council would have the authority to issue *fatwas*, and smaller local councils would operate under its framework.

Eight, Seventh, Importance of Executive Power: The author stresses that any council must have the legal authority to enforce its decisions for it to be effective. The absence of executive power has led to the ineffectiveness of previous councils.

Ninth, Reexamination of Concepts: The author suggests a reexamination of concepts like '*Dar al-Islam*' and '*Dar al-Harb*' to define the identity of the new India. The proposal involves establishing a council recognized by the Parliament, free from Shariah objection, to issue authoritative *fatwas*.

Overall, the author seems to advocate for a more organized and centralized approach to the issuance of *fatwas* in India to address the current state of '*ilmi niraaj*' or 'scientific anarchy.' In conclusion, the article calls for a thoughtful reorganization of the current system, advocating for a balance between centralized authority and local autonomy to bring coherence and

effectiveness to the issuance of *fatwas* in the contemporary Indian Muslim context*.

RESEARCH METHOD

The following method has been applied in this article: 1) The author has conducted a comprehensive literature review on the history of Ifta (the issuance of formal legal opinions) in Islam, particularly focusing on its evolution and the roles of Muftis in different historical periods. He has also analyzed scholarly works, historical documents, and religious texts to understand the changes in the methodology of Ifta over time. 2) Investigation the historical development of Islamic governance in India, exploring the transition from seeking guidance from the Sahaba and Imams to the establishment of formal institutions for issuing *fatwas* has been done. He has also examined the roles of Muftis and the reasons behind the emergence of independent Ulema in the 19th and 20th centuries. 3) The author has researched and compared the current practices of issuing *fatwas* in India with those in other countries, especially focusing on the Middle East and Southeast Asia. He has also explored the legal and institutional frameworks governing the issuance of *fatwas* in different regions. 4) Scrutinize a sample of *fatwas* issued by different Ulema in India to identify contradictions and disparities in their responses. Analyze the wording of *Istifta* (inquiries seeking *fatwas*) (Ahmed, 2010) and assess how Muftis interpret and respond to them. 5) Examine the legal status and authority of existing *Darul Ifta* (Islamic legal advisory bodies) in India. He has also investigated the organizational structure, decision-making processes, and enforcement mechanisms of these institutions. 6) Then he has proposed the solution of centralizing the authority for issuing *fatwas* through a high central council. He has assessed the feasibility, potential benefits, and drawbacks of such a centralization approach. It also includes the investigation of the outcomes and effectiveness of previous councils, such as the one formed by Darul Uloom Nadwatul Ulama, to understand the challenges they faced and why their decisions may not have gained acceptance. He provides recommendations, based on the research findings, for reforming the

* This is an English rendition of the Urdu article '*Hindustani Musalmano ki Dini Rehnumai ka Masla-Ek Tajwiz*' authored by Professor Mushirul Haq

methodology of Ifta in contemporary India, considering the perspectives of Ulema, scholars, and the general Muslim population.

RESEARCH FINDINGS AND DISCUSSION

Currently, a peculiar situation has emerged for the Muslims of India (Husain, 1965; Mujeeb, 2003). Leaders are conspicuously present everywhere, yet a clear path remains elusive. The challenge lies in the fact that even in matters of faith, a definitive course of action is missing (M. Haq, 1973). It is undeniable that in nearly every city, and indeed in every significant town, there exist Ulema and institutions that tirelessly offer counsel to those seeking guidance on religious matters through their legal decrees or jurisprudential judgments (*fatwa*). Nevertheless, this accessibility or convenience has, in a sense, given rise to a condition of 'abundant guidance' at a national scale (B.-Prof. M. Haq, 2004). As all the religious institutions in the country and individual muftis (qualified legal scholars) do not acknowledge any authority beyond God, whose verdict is regarded as ultimate and conclusive, more often than not, a state of chaos ensues rather than genuine guidance (Akhatar, 2023b).

Even without providing specific examples, one can confidently assert that, if necessary, two entirely contradictory *fatwas* can be easily obtained within a single issue. I wish to emphasize that the disparity in these responses is in no way a reflection of the muftis' intentions. Rather, the main issue lies hidden in the current flawed methodology of Ifta (the issuance of formal legal opinions). The Mufti is bound by the wording of the *Istifta* (the inquiry seeking a *fatwa*) (M. Haq, 1973). He is obligated to respond based on the phrasing used in the *Istifta* sent to him. It is not within the purview of a Mufti to assume that he must personally investigate the events described in the *Istifta* before issuing a *fatwa* from his own perspective (Masud, 2009). Is this a deficiency inherent to the Mufti or is it a characteristic intrinsic to the structure of the 'institution' of *Ifta* itself, such that the *Mufti* himself cannot independently assume the role of an investigator? (M. Haq, 1995).

The history reveals that during the early days of Islam, there existed no formal institution tasked with issuing *fatwas*. Individuals would turn to the *Sahaba* (Companions of the Prophet) initially, and later to the Imams, seeking

guidance (M. Haq, 1972). However, as time passed, with the establishment of various branches of Islamic governance and the formation of courts by both central and provincial authorities, where *qazis* (judges) were appointed to preside over and adjudicate cases on behalf of the Caliphs, it became evident that the *qazi* need not be intimately familiar with every minutia or facet of a case. Consequently, a class of scholars known as *Muftis* emerged, possessing a meticulous understanding of jurisprudential intricacies. Their primary role was to furnish legal assistance to the *qazis* whenever required. It can be likened to the contemporary practice where every court is equipped with a law library, varying in size, and, similarly, during that era, the *Muftis* served as a portable repository of legal knowledge for the *qazis*. Ulema who were not affiliated with the court lacked the authority to formally issue *fatwas* (M. ul Haq, 1967). There was only one exception to this rule: when even non-judicial Ulema were free to issue a *fatwa*, and that was in the case of a rebellion against the ruling king (Wasey & Ehsas, 2004).

In the annals of Islamic India, we come across numerous distinguished Ulema, but their mention is not limited to being muftis. It was during the nineteenth century, as the East India Company firmly established its presence on this soil and appointed *qazis* with restricted authority in different locales, then people began turning to independent Ulema, untethered from the Company's employ, for seeking guidance (M. Haq, 1995). It is for this reason the abundance of *fatwas* that we have at our disposal from Indian Ulema of the nineteenth and twentieth centuries may perhaps surpass the combined number of *fatwas* found throughout the entire history of Muslim India.

While some may argue that *fatwas* from the pre-nineteenth century might not have been preserved in written form, but from a scholarly and historical perspective, this excuse holds no weight. Muslims have preserved their intellectual heritage throughout every era. In Islamic India, an extensive body of literature spanning various sciences and arts has been composed (M. Haq, 1972). Even if not every work has been preserved, a substantial number remains accessible. Thus, why presume that only the compilation of *fatwas* has vanished? (Shah Abdus, 1994).

We have well preserved almost every single line written by Shah Waliullah with us now. But there must be some reason that why we do not find anything by the name of '*Majmua-e-Fatawa Hazrat Shah Waliullah*,' (the collection of *Fatawa-e-Shah Waliullah*) whereas the *fatwa* of his son Shah Abdul Aziz are present in front of us in two bulky volumes. Similarly, Sheikh Abdul Haq Mohaddis Dehlawi did not leave behind any compilation of his *fatwas*. However, in the 19th century, Miyan Nazir Hussain Mohaddis Dehlawi left his *fatwas* in the form of a thick compilation with us (M. Haq, 1973; Wasey & Ehsas, 2004). This does not mean to imply that before the 19th century, no work was done on the subject of *fatwas* in India. Contrary to this, the *fatwas* of the Sultanate period, known as '*Fatawa-e-Tatarkhaniyah*,' and the '*Fatawa-e-Alamgiri*' of the Mughal era, continue to wield significant authority in both India and the wider Islamic world, representing the enduring contributions of Islamic India. But these two collections of *fatwa* unlike the later collections were compiled by the (Islamic) government (M. Haq, 1973).

I think the situation might have unfolded differently had the East India Company arrived in India as rulers rather than traders. Up until that time, it was customary to disregard the *fatwas* issued by non-judicial Muftis. Therefore, if the company had wanted, they could have compelled people to adhere to the *fatwas* pronounced by the qazis and muftis appointed by the Company, even if they were perceived as unjust. This would have been in line with the Persian saying, "*qahr-e-darvesh bar-jaan-e-darvesh*" (endurance is the only remedy when there's no cure). However, as the Company initially prioritized their trade interests over religious matters, they opted to keep religious courts intact while refraining from imposing any restrictions that might inhibit Ulema from issuing individual *fatwas*. This policy resulted in an accumulation of intellectual wealth, albeit at a substantial cost. Subsequently, the central authority for issuing *fatwas* ceased to exist, and in religious matters, every Ulema began to assert themselves as the ultimate authority.

Regardless, it is now an established fact that no Ulema in the entire country hold central authority, nor does any institution. Every scholar is at liberty to issue a *fatwa*. We acknowledge a *fatwa* only when it aligns with our desired stance. When we do not receive a favorable response (*fatwa*), we

promptly seek the opinion of another mufti. As I pointed out earlier, juxtaposing a single issue with multiple solutions, supported by jurisprudential reasoning, and obtaining two different resolutions is not a difficult task. Moreover, the decision to accept or reject these *fatwa* rests solely on our discretion, as a Mufti or *Darul Ifta* (Islamic legal advisory body) does not possess the authority to enforce their *fatwas* (M. Haq, 1973).

Today, aside from the Indian subcontinent, it is rare to find any other country in the world where Ulema have the freedom to independently issue *fatwas* on social matters. *Fatwas* can only be issued through government-approved religious institutions. While I cannot speak for the entire world, based on my current knowledge, I can assert with confidence that in Malaysia, issuing *fatwas* individually is considered a punishable offense (M. ul Haq, 2011). Even in the Islamic nations of the Arab world, no Ulema possess the authority to issue *fatwas* independently. If individuals seek to expand their knowledge or gain personal insights, they may inquire of the Ulema, but it is only the "Mufti" officially designated by the government who holds the authority to release *fatwas*.

Now, the global community finds itself amidst a period of 'ilmi *niraaaj*,' characterized by a form of 'scientific anarchy.' This is why individuals across the spectrum feel entitled to express their perspectives on Islam. Given this context, the objection raised by our Ulema holds significant merit: not every newcomer should be permitted to weigh in on religious affairs. However, it is equally crucial to contemplate why every Ulema should be afforded the chance to issue *fatwas*.

In present time, especially in the context of India and considering the prevailing situation, it is crucial that we broaden the scope of *ijtihad* (independent reasoning) beyond a limited set of social and economic issues. The correct formation of the central committee of *Darul Ifta* is presently a crucial issue within the realm of *ijtihad*, and it is intricately linked to the functioning of *Ifta*. Where you have to make a wide range of *ijtihad*, then this matter too has been resolved through *ijtihad* as to whether the authority to issue *fatwas* should be entrusted to any centralized body or by allowing each Ulema to exercise this prerogative independently. In my view, the latter option could have disastrous consequences. Without centralizing the authority for issuing *fatwas*, as opposed to granting

independent jurisdiction to any Ulema, we may find ourselves unable to transcend the discord on a national scale.

Hence, I recommend entrusting the authority to issue *fatwas* to a high central council of Muslims. This council should comprise Ulema from diverse schools of thought, possessing profound understanding and expertise in various jurisprudential traditions, additionally, it should include Muslim intellectuals well-versed in contemporary issues, ensuring equal participation. Within this central council's framework, there ought to exist smaller local councils at the regional level across different states. The central council should function as a conduit for delegating the responsibilities akin to *mujtahids*, who engage in independent juristic reasoning. Conversely, the local councils should operate akin to *muftis*, offering guidance specific to their respective regions. The local councils may issue *fatwas* in matters concerning religious rituals, while remaining bound by the decisions of the central council in affairs related to mamlaat (commercial, civil matters, or dealings) (M. Haq, 1973).

We can illustrate this distinction with an example: Imagine a Hanafi Sunni Muslim seeking a religious ruling (*fatwa*) from the local council regarding the practice of washing feet during ablution (*wudu*). According to the Hanafi school of thought, the council must assert that, just as hands and mouth are washed, feet must also be washed for the prayer to be considered valid. Conversely, if the seeker adheres to the Shia school of thought, the council would affirm that simply wiping over the feet suffices for the prayer to be deemed valid. However, when addressing matters such as interest-based loans, life insurance, unit trusts, photography, and other similar social issues, this council will issue *fatwas* based on the decisions of the central council, without taking into account the jurisprudential school of thought of the inquirer.

Allow me to say at this stage that the establishment of councils alone is not the remedy for our chaotic condition. Any council that lacks the legal authority to enforce its decisions on the public is merely a futile waste of time. Due to the absence of 'executive power', I have witnessed the formation and dissolution of several councils (Akhatar, 2023a). Not long ago, Darul Uloom Nadwatul Ulama also formed a similar council. During the same period, Jamiat Ulama-i-Hind also announced the establishment of a council.

Regarding the authorized council of Jamiat Ulama-i-Hind, I cannot say with certainty. However, the council of Darul Uloom Nadwatul Ulama had also deliberated on some important issues and had published its revolutionary decisions. But since the council did not have the power of enforcement, its decisions could not gain acceptance either in the realm of Ulema or among the public (M. Haq, 1973). Therefore, before the formation of any council, we shall have to open the door to *ijtihad* in "Islamic Political Theory" as well (M. Haq, 1973).

We must reexamine the debate (Parvin & Sommer, 1980) surrounding '*Dar al-Islam*' (the abode of peace) and '*Dar al-Harb*' (the abode of war) in order to define the identity of the new India (M. Haq, 1964). Currently, this issue pertains exclusively to India, devoid of international or pan-Islamic dimensions. It is imperative that the Indian Ulema and Muslim intellectuals take the lead in resolving it. Just as in our historical narrative, amidst evolving circumstances, certain 'institutions' have emerged and faded away, similarly, even today, a new 'institution' may be established, considering the contemporary demands of democracy, to delineate the status of a Muslim individual. Upon careful deliberation, we may come to the realization that India is a realm where there exists neither ruler nor subject, but rather a shared and equal ownership among all (M. Haq, 1995). In such a scenario, it might be plausible to propose the formation of a council duly recognized by the Parliament, devoid of any Shariah objection. This could potentially establish that only decisions made by the accredited council in India hold the authority to issue *fatwas*.

CONCLUSION

In conclusion, the article highlights a perplexing situation faced by Muslims in India, where a multitude of leaders and institutions offer guidance, yet a clear and unified path remains elusive. The author identifies a key challenge in the current flawed methodology of Ifta, the issuance of formal legal opinions, leading to a state of 'abundant guidance' and often contradictory *fatwas*. This, however, is not attributed to the intentions of the Muftis but rather to the inherent limitations of the existing structure.

The historical evolution of the institution of Ifta is explored, noting its absence during the early days of Islam and its later emergence to assist judges in navigating jurisprudential intricacies. The article traces the abundance of fatwas in 19th and 20th-century India to the influence of independent Ulema, untethered from the East India Company's employment, offering guidance to the populace.

The article questions the lack of central authority in the current scenario, with every scholar being at liberty to issue fatwas. This autonomy leads to a situation where individuals selectively acknowledge fatwas that align with their views, resulting in a lack of enforceability for these legal opinions. The author contrasts this with the global norm, emphasizing that in many countries, only government-approved religious institutions can issue fatwas.

Amidst what the author terms as a period of '*ilmi niraaj*' or 'scientific anarchy,' where diverse perspectives on Islam abound, the article recognizes the validity of the Ulema's objection against unqualified individuals weighing in on religious affairs. However, it also underscores the importance of allowing every Ulema the opportunity to issue fatwas.

In proposing a solution to this chaotic situation, the author advocates for a high central council of Muslims, comprising Ulema from various schools of thought and including intellectuals well-versed in contemporary issues. This council would delegate responsibilities akin to *mujtahids* and *muftis* at the central and local levels, respectively. The central council's decisions would be binding on matters related to mamlaat, while local councils could issue fatwas on religious rituals specific to their regions.

The article concludes by emphasizing that the establishment of such councils alone is insufficient without the legal authority to enforce their decisions. It highlights past examples of councils that lacked executive power and calls for a reexamination of 'Islamic Political Theory' to address the unique situation in India. The author suggests the possibility of a Council recognized by the Parliament, free from *Shariah* objections, as a means to centralize the authority to issue fatwas in the country.

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