

From Religious Edict to Legal Debate: The Journey of Fatwas

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Abstract

This article embarks on a comprehensive exploration of the preamble of Bharat being secular and democratic republic which provide us the guarantee of the liberty of faith alongwith the freedom of expression incumbents several challenges in the diverse landscape of Bharat , the delicate balance between religious freedom and secular law is paramount alongside safeguarding cultural and humanitarian rights while ensuring harmony amongst its various cultural and religious communities, under such diversified complexities this article would try to make understand the need and balance of Fatwas upsurgence of such underscores the need for a comprehensive legal framework to address religiously motivated coercion and uphold the principles of religious freedom, principle of right to speech, right to belief, individual autonomy, and equal protection under the law. Elucidating the aforesaid contentions, the author tried in exploring the legal implications of unsolicited fatwas and examine potential strategies for safeguarding the rights of individuals and preserving the integrity of the Indian legal system.

INTRODUCTION

The Constitution guarantees the right to freedom of religion under Article 25 which ensures every individual has the right of freedom to profess, practice, and propagate his beliefs which is subjected to public order, morality and health. Furthermore, Article 21 guarantees the right to life and personal liberty, encompassing dignity, privacy and autonomy within this legal framework, individuals have the right to seek guidance on religious matters, which includes fatwas, historically they play a vital role in providing legal advice and counseling on ritual and ethical matters within Muslim communities.

The origin of Fatwa can be seen in Quran sura 4.127 and 4.176, significantly benefit the Modern courts with their ability to provide expedited justice to marginalized Muslim populations as fatwa is a response to specified asked questions or inquiries related to Islamic law such system often operates within Muslim communities and are equipped with a thorough understanding of Islamic law and cultural norms. Resulting, individuals within these communities may find quicker resolution to their legal disputes related their personal law or

family disputes without going for the lengthy and complex legal processes. However, operation of such also poses potential conflicts which may arise when the decisions infringe upon the fundamental rights or are perceived to be discriminatory, particularly against women within Muslim communities also along with constitutional guarantees of individual rights of other sects, particularly under Article 21 of the Constitution. Moreover, there is a risk that decisions made by Sharia courts may not provide adequate protection for individual rights, especially when they deviate from the legal framework embarked in the Constitution which could raise concerns about the potential for parallel legal systems to undermine the principles of equality and justice. Fatwa being the major part of Shariyat or Shariya law which is also termed as Islamic law, which derives its sources principles from primary roots such as Islam's sole sacred book Quran which is regarded as literal words of Allah's, which was delivered to Prophet Muhammad serves as the ultimate guide for Muslim community which consists divine revelations and teachings central to Islamic faith and practice, another source is the traditions or customs of the Prophet or Sunnah "the words along with actions and assertions of Prophet which includes the everyday sayings and utterances of Muhammad along with his acts, tacit consent, and acknowledgments of statements and activities. It also includes the words, deeds and acknowledgments of the twelve Imams and Fatimah, (Muhammad's daughter), who are believed to be infallible¹. Another source is Hadith which comprises the sayings, actions and approvals of Prophet Muhammad, which were meticulously recorded by his companions and subsequent scholars over time. Such compilations served as invaluable sources for understanding Islamic teachings, beliefs, and practices. Scholars often reach consensus on matters not merely explicitly addressed in the Quran or Hadith along with the process known as Ijma, as scholars analyze existing texts, principles, and precedents to derive guidance on contemporary issues which reflects

the collective wisdom and interpretation within the Islamic tradition, providing practical solutions and guidelines for Muslims worldwide. It underscores the adaptability of Islamic jurisprudence, ensuring relevance and applicability across diverse cultural and societal contexts while upholding core Islamic principles. The process of analogical reasoning considering Islamic jurisprudence with legal principles from existing rulings to new situations based on similarities termed as Qiyas, which allows scholars to derive legal rulings for contemporary issues not explicitly addressed in a primary source like Quran and Hadith. It exemplifies the dynamic nature of Islamic jurisprudence in interpreting and adapting to changing contexts.

Now with such understanding we got to know the majority sources from where Fatwa can be issued by the Muslim Scholars now extension of such is to understand by whom such fatwas can be issued and referring to such, the legal opinions or rulings issued by Islamic scholar or jurist, known as muftis, in response to specified asked questions or inquiries related to Islamic law (Sharia), and such act of issuing Fatwa is called ifta², Muftis acted as independent scholars in the classical Islamic system³. Fatwas play a crucial role in Islamic jurisprudence as they provide guidance on matters ranging from personal conduct to business transactions and family law.

Historically Fatwas have served pivotal functions within the Shari'a system as functioned as a means of disseminating information about Islam, providing legal counsel to Muslim communities, and offering guidance on matters of ritual and ethics along with serving as a resource for courts of law, offering expert opinions on intricate aspects of Islamic law in response to inquiries from judges, additionally fatwas have contributed to the elaboration of substantive Islamic law. This has been achieved notably through a genre of legal literature wherein author-jurists compile fatwas from distinguished

1 Ayatullah Morteza Mutahhari, *Jurisprudence and its Principles*, translated by Salman Tawhidi, ed. Laleh Bakhtiar, Tahrike Tarsile Qur'an. ISBN 0-940368-28-5.

2 Jocelyn Hendrickson, *The Princeton Encyclopedia of Islamic Political Thought*, "Fatwa," in Gerhard Böwering, Patricia Crone eds. (Princeton University Press, 2013), ISBN 978-0691134840.

3 Muhammad Khalid Masud & Joseph A. Kéchichian, "Fatwā. Concepts of Fatwā," in *The Oxford Encyclopedia of the Islamic World*, ed. John L. Esposito, (Oxford University Press, 2009).

muftis and incorporate them into legal texts.⁴ During pre-modern era, legal education held a central position in Islamic societies. A select group of legal scholars held authority in interpreting Sharia law across various domains, including religious rituals and financial matters. It was customary for qualified jurists to disseminate their knowledge through teaching or issuing fatwas. The archetypal mufti was envisioned as an individual of scholarly distinction and impeccable character. As such, muftis were typically accorded great reverence and deference in line with these expectations.

Typology of Fatwas

Fatwas, being familiar term to the global aspect, often got misconstrued without an appreciation of the nuanced categorization, which can be said as al-ahkam al-khamsa, or the five rulings. The classification often insights into the degrees which are permissible within the Islamic jurisprudence. The first category, Farḍ or Wājib⁵, encompasses actions or duties which are deemed obligatory for every Muslim of the world. The obligations shall be paramount, constituting essential components of Islamic practice. Conversely, Mustahabb or Mandūb actions, categorized as Meritorious but if omitted do not incur sin. This category underscores the encouragement for individuals to engage in spiritually enriching deeds voluntarily, without strict obligation. Thus, if a person does not have any intention to do Mustahabb acts and abandons them, he is not sinful⁶, Mubāḥ⁷, the third category, encompass matters that are Voluntary or Optional, aligning it with the concept of halal, or what is

permissible in Islam reflecting the diverse aspects of the conduct of a person including food, work, and relationships that are acceptable within Islamic Jurisprudence. The Islamic property law reflected the concept of Mubāḥ as to those things which have no owner. It is similar to the concept *res nullius* used in Roman law and common law⁸. In continuation of the contrast of the categorization, Makruh⁹ actions are classified as explicitly forbidden or discouraged or disliked by the prophet. Interpretation of Makruh work could vary across different Islamic schools¹⁰, but the underlying principle emphasizes spiritual refinement beyond mere compliance. Lastly the actions which are considered as Ḥarām¹¹, or forbidden by the Muslims, interprets as a prohibition across all Muslims of the certain acts which are strictly prohibited due to their inherently sinful nature, underscoring the gravity of transgression within Islamic schools¹² of law.

Interplay of Global and Local Fatwas

The Versatility of Islamic jurisprudence across diverse socio-cultural contexts characterized by the convergence between global and local fatwas, The Oran fatwa which was issued in 1504 to address the crisis that occurred when Islam was prohibited in Castile in 1500–1502 and Muslims in the realm were required to convert and conform to Christianity¹³, as by permitting typically prohibited acts which got the necessity for their survival¹⁴. Such fatwas offer

4 Ahmad S. Dallal & Jocelyn Hendrickson, "Fatwā. Modern usage," in *The Oxford Encyclopedia of the Islamic World*, ed. John L. Esposito, (Oxford University Press, 2009).

5 Anki, "Fard in Islam: Understanding Its Meaning and Significance" *Religions Facts*, July 27, 2023 available at <http://religionsfacts.com/fard-in-islam-understanding-its-meaning-and-significance>. (Last visited on 6th March 2024).

6 Darul Ifta Birmingham, "The Meaning of Mustahab," December 1, 2020, available at: <http://daruliftabirmingham.co.uk/home/the-meaning-of-mustahab/Fatwa ID: 04622> (last visited on March 6, 2024).

7 Hans Wehr & J. Milton Cowan, *A Dictionary of Modern Written Arabic*, 3rd ed., p. 81 (Spoken Language Services, 1976).

8 Stanley N. Katz (ed.) *The Oxford International Encyclopedia of Legal History*, (Ersilia Francesca, Possession. Yad in Islamic Law, Oxford University Press, 2009).

9 Mū'il Yūsuf 'Izz al-Dīn, *Islamic Law: From Historical Foundations to Contemporary Practice*, p. 98 (Edinburgh University Press, 2004), ISBN 9780748614592.

10 Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd ed., pp. 285, 278, 287, 288 (Islamic Texts Society, 2005), ISBN 978-0946621828).

11 Mohammad Taqi al-Modarresi, *The Laws of Islam*, Enlight Press, ISBN 978-0994240989, available at: <http://ijtihad-net.com/new-released-the-laws-of-islam-by-ayatollah-modarresi-pdf/> (last visited on March 10, 2024).

12 *Supra* note 10.

13 L. P. Harvey, *Muslims in Spain, 1500 to 1614*, p.60 (University of Chicago Press, Chicago, 2005). ISBN 978-0-226-31963-6.

14 Devin Stewart, "The Identity of 'the Mufti of Oran', Abū l-'Abbās Aḥmad b. Abī Jum'ah al-Maghrawī al-Wahrānī,"



detailed relaxations of Sharia requirements, enabling Muslims to navigate challenging circumstances while preserving their religious identity¹⁵. This concept unveils the principle of Taqiyya¹⁶, a precautionary dissimulation or relaxation of religious belief and practice for survival purposes¹⁷ demonstrates the capacity to evolve in response to changing circumstances, fostering resilience and ensuring the continuity of religious practice amidst diverse challenges. These fatwas outline instructions for fulfilling ritual prayers, charity and ablution, while also addressing situations requiring violation of Islamic law, such as worshipping as Christians, committing blasphemy, or consuming prohibited substances like pork and wine¹⁸ showcases the flexibility of Islamic legal interpretation in addressing the multifaceted realities confronted by Muslim communities.

This confrontation not only illustrates the inherent versatility of Islamic law but also undermines its relevance in contemporary contexts, where Muslims commandeer through increasingly dissimilar and tries to interconnect with western civilization maintain their cultural and religious realm at par stands as a testament to the enduring relevance and dynamism of Islamic jurisprudence in addressing the ever-evolving challenges faced by Muslim communities in safeguarding their religious identity and legal principles. Significantly during 1989 a legal and religious controversy erupted when Ayatollah Ruhollah Khomeini, the Supreme Leader of Iran, which is an Islamic state issued a fatwa ordering for the death of British Indian author Salman Rushdie¹⁹ over his novel "The Satanic Verses" as it was deemed blasphemous by many Muslims for the portrayal of Islamic themes. On 14 February 1989 Khomeini's decree, marked a rare instance of a religious edict calling for the assassination of a private citizen, transcending international borders directly resulted in the clash between freedom of expression and religious sensitivities which

igniting a global debate and raised a critical legal question about the jurisdiction of religious decrees, the limitation of free speech, and the international community's response to instigation of hostility based on religious grounds. Rushdie was placed under British police protection manifesting the palpable hazards occurred by the fatwa. Rushdie's affair underscores the complex confluence between lay legalities and cleric commands which challenged the international legal system capacity to navigate conflicts involving global religious sentiments and the fundamental rights of individuals. Despite after 33 years of such fatwa Rushdie was even attacked near around 2022 by some radicals on the basis of that fatwa only which enumerates to highlight the importance of treating people equally with logic and mind.

Tracking the international conversation sparked by the Khomeini's Fatwa, another significant development in the realm of it unfolded on July 2005 in Indonesia by the Indonesian Ulema Council (MUI) which is a semi-official Islamic clerical body, issued a controversial fatwa against religious pluralism, liberalism, and secularism²⁰. This decree targeted the reformist trends in Islam which we have seen in the Oran Fatwa when they were in minority or were facing confrontation from the Christians now have changed with the time and location as other reformations had gained popularity across the Indonesian population which challenged the traditionally moderate Islamic stance of the nation. The MUI's fatwa sparked considerable the tension between traditionalist and reformist interpretations of Islam in a that country which is known for its religious diversity therefore, representing in a significant ideological shift which asserts more conservative stances on religious matters and directly impacting the socio-political discourse in Indonesia. This incident can make us understand about the powerful role fatwas can play in shaping societal norms and legal interpretations within Muslim-majority countries and raises pertinent

27 Al-Qanṭara 266 (2007).

15 Al Quran: Sura 16:106.

16 R. Strothmann & Moktar Djebli, TAKIYYA, in *Encyclopaedia of Islam*, vol. 10, p. 134, 2nd ed., Brill

17 Al Quran: Sura 3:28.

18 Supta note 13 at 61-62.

19 *Supra*.

20 Moch Nur Ichwan, "Towards a Puritanical Moderate Islam: The Majelis Ulama Indonesia and the Politics of Religious Orthodoxy," in Martin van Bruinessen (ed.), *Law Developments in Indonesian Islam: Explaining the 'Conservative Turn'*, p.1 (ISEAS Publishing, Singapore, 2013).

questions about the considerable authority of religious bodies to influence secular laws and policies insuring to treat all people with diversities with equality. This case underscores the ongoing global dialogue regarding the balance between religious freedom and the rights of individuals in diverse societies resonating the comprehensive hurdles faced by the worldwide legal system in aligning Islamic injunctions with global human rights standard.

In a noteworthy development during 2008, the Indian Ulama from the Darul Uloom Deoband, which is a pillar of global Islamic education issued a significant fatwa against terrorism which firmly stated that the killing of innocent people or civilians is haram (forbidden)²¹. This statement was notably impactful as it was coming from a seminary with extensive influence among Muslims in South Asia and beyond. Furthermore, if we compare the stance of Indonesian fatwa with this fatwa it is with a clarifying stance on the issue of the jihad in Kashmir as the fatwa states that there is no jihad in such context as according to the fatwa, “any state that ensures the freedom of religion, as India does, cannot be a legitimate target of jihad”, which is a profound statement on the compatibility of Islamic teachings with the principles of non-violence and peaceful coexistence in a pluralistic society. The declaration from the Darul Uloom Deoband represents a pivotal moment in the discourse of Islam and terrorism providing a clear censure of violence and strengthening the message of peace and tolerance to live within a non-Islamic state, it also serves as an essential reference point in discussions on the role of fatwas in addressing contemporary issues, the injunction of Darul Uloom Deoband against terrorism accentuates the potential for intellectuals to shape perceptions and practices concerning critical issues like terrorism, serenity and interfaith unity, both within the Muslim community and in the extensive global framework.

In a significant pronouncement, Darul Uloom Deoband issued a fatwa declaring that “It is unlawful

for Muslim women to do job in government or private enterprises where men and women work together and women have to talk to men frankly and without a veil”²². This underscores the orthodox perspective on gender segregation and modesty within Islamic teachings which demonstrates the wider societal mores prevalent in particular traditional way highlighting the concern about potential moral impropriety or violations of Islamic etiquette that may arise from unrestricted interactions between unrelated men and women in professional settings. Resulting in a sparking criticism and debate that women should have the right to choose their profession and participate fully in the workforce, irrespective of gender-segregated workplace policies which include the advocates for women's rights and promoters of gender equality arguing that such restrictions on women's employment opportunities perpetuate gender discrimination and limit their economic empowerment. This fatwa also raised such important questions regarding the compatibility of orthodox Abrahamic teachings with modern perceptuality of gender equality and workplace diversity underscoring the ongoing tension between adherence to faith & practice and the need to accommodate and accept the evolving social norms and values, particularly regarding gender roles and women's rights, the fatwa from Darul Uloom Deoband reflects a particular interpretation of Islamic teachings on gender segregation highlighting the diversity of perspectives within the Muslim community regarding the role of women in society and the workplace.

During 2013, Bashir-ud-din Farooqi, the grand mufti of Kashmir, issued a fatwa declaring singing as un-Islamic, prompting Kashmir's only all-girls rock band to disband²³. The fatwa was being

21 “BJP all praise for Deoband ‘fatwa’”, *The Hindu*, June 2, 2008, available at <https://web.archive.org/web/20080604100429/http://www.hindu.com/2008/06/02/stories/2008060255231200.htm> (last visited on March 06, 2024).

22 Pervez Iqbal Siddiqui, “Deoband fatwa: It's illegal for women to work, support family,” *Times of India*, May 12, 2010, available at <https://timesofindia.indiatimes.com/india/deoband-fatwa-its-illegal-for-women-to-work-support-family/articleshow/5919153.cms> (Last visited on March 06, 2024).

23 A day after fatwa, Kashmir's all-girl band calls it quits,” *The Times of India*, Feb. 4, 2013, available at <https://timesofindia.indiatimes.com/india/a-day-after-fatwa-kashmir-s-all-girl-band-calls-it-quits/articleshow/18331997.cms> (Lat visited on March 07, 2024).



issued by a prominent religious authority bringing to light the complex interplay between cultural expression and religious interpretation within Muslim communities. "The fatwa reflects a conservative interpretation of Islamic teachings regarding music and entertainment, aligning with traditional views that consider certain forms of singing and musical performance as inconsistent with Islamic principles. From this perspective, singing may be seen as promoting immodesty or distracting from religious obligations, leading religious authorities to discourage or prohibit such activities"²⁴ resulted in controversy and debate both within Kashmiri society as music and singing are integral parts of Kashmiri culture and identity enriching social life and providing a means of creative expression beyond that the fatwa infringed on cultural expression and artistic freedom particularly from young women seeking to pursue their interest. Moreover, the fatwa raised broader questions regarding the authority of religious leaders to dictate and control the cultural norms and practices in pluralistic societies where diverse religious and cultural traditions coexist. It underscores the ongoing tension between religious conservatism²⁵ and cultural pluralism, highlighting the challenges of reconciling competing values and beliefs within contemporary Muslim communities, with this we can understand that the fatwa against singing in Kashmir serves as a poignant example of the complexities surrounding the intersection of religion, culture, individual expression and societal change with the orthodox practices and cultural geographical practices.

It is pertinent to explore into another notable instance specimen over the fatwa, over an individual naming Kamlesh Tiwari, who claimed to be a member of the Akhil Bharat Hindu Mahasabha. During 2015, Tiwari made derogatory remarks regarding the Prophet Muhammad, which triggered significant controversy and backlash resulted him booked under the NSA which was later revoked by the court²⁶. Subsequently, reports emerged of a fatwa

being issued against Tiwari by a local cleric naming Maulana Anwarul Haq, the head Imam of Jama Masjid of Bijnor in Uttar Pradesh²⁷ which aroused heated remonstrations and demands by Muslims for his illegal homicide resulted with the exemplifying the controversial nature of the fatwa and its intersection with freedom of speech and religious tolerance. Tragically, in 2019, Tiwari was brutally assassinated by individuals allegedly motivated by the sentiments expressed in the fatwa²⁸. This occurrence emphasizes the potential repercussions of doctrinal injunctions inciting violence and posing a risk to social solidarity. However, it is crucial to acknowledge the complexities surrounding this case. Despite claims attributing the fatwa to a cleric in Uttar Pradesh, there is a lack of concrete evidence linking the fatwa directly to Darul Uloom Deoband, a renowned Islamic seminary in India. Moreover, debates persist regarding the legality and legitimacy of fatwas issued by clerics and their implications under Indian law. In the global legal scenario, issues have raised regarding the counterbalance between the freedom of expression and the protection of religious sentiments where individuals have their right to express, belief and opinions, such liberty must be in balancing responsibly to prevent harm, incitement to violence or homicide of the individual over their expression. In this realm the case of Kamlesh Tiwari highlight the need for sturdy and legal frameworks and sanctions which helps in upholding the fundamental rights while fostering religious tolerance and social harmony,

nial-era law," *Scroll.in*, Oct 14, 2016, available at <https://scroll.in/article/818717/kamlesh-tiwaris-arrest-for-anti-prophet-remark-shows-india-why-it-needs-to-revisit-colonial-era-law> (last visited on March 16, 2024).

27 "Anwarul Haq, Imam of Jama Masjid in Bijnor, who issued fatwa against Kamlesh Tiwari, arrested on rape charges," *Zee News*, Sept 01, 2016, available at https://zeenews.india.com/news/uttar-pradesh/anwarul-haq-imam-of-jama-masjid-in-bijnor-who-issued-fatwa-against-kamlesh-tiwari-arrested-on-rape-charges_1924665.html (last visited on March 17, 2024).

28 "Violent Calls for Death, Fatwas: Story of Murdered Kamlesh Tiwari's Life After Prophet Mohammed Remarks," *Swarajya*, Oct 18, 2019, available at <https://swarajyamag.com/news-brief/violent-calls-for-death-fatwas-story-of-murdered-kamlesh-tiwaris-life-after-prophet-mohammed-remarks> (Last visited on March 17, 2024).

24 Sahih Bukhari, Hadith: 55902, Sahih Ibn Hibban; Al Ihsan, Hadith: 67543, As Sunanul Kubra of Imam Bayhaqi, vol. 10, pg. 221.

25 Quran, Surah Luqman, 31:6.

26 Alok Prasanna Kumar, "Kamlesh Tiwari's arrest for anti-Prophet remark shows why India needs to revisit colo-

the imperatively for the extraordinary dialogue and engagement between religious communities, legal authorities, and civil society to navigate the complexities of religious expression and safeguard against such extremism and violence which hinders the fundamental right of a person i.e. Article 21 which we can understand by the case of Kamlesh Tiwari and Salman Rushdie.

A significant fatwa was issued in Africa regarding homosexuality²⁹ in 2022, reflecting the co-existence of religious interpretation and human rights within the continent issued by religious authorities, sheds light on the complex dynamics surrounding LGBTQ+ rights and Islamic teachings in African societies. The fatwa likely aligns with conservative interpretations of Islamic law prevalent in many African countries where homosexuality is frequently perceived as incongruous with religious doctrines and societal conventions, ecclesiastical authorities may promulgate edicts denouncing homosexuality as transgressive or unethical, referencing religious scriptures and customs that proscribe same-sex affiliations. The issuance or order of this fatwa raised an important question regarding the protection of LGBTQ+ rights and freedom in Africa where LGBTQ+ individuals go through discrimination, persecution, and violence regarding their sexual orientation or gender identity that fatwas against homosexuality contributed to a climate of intolerance and hostility towards LGBTQ+ communities, exacerbating existing human rights challenges it also highlighted the tension between orthodox teachings and international human rights standards, particularly regarding the rights to non-discrimination, equality, and freedom of expression and association. While religious authorities may assert their right to interpret and enforce religious laws, such interpretations must be reconciled with universal human rights principles that protect the dignity and autonomy of all individuals, regardless of sexual orientation or gender identity underscoring the impactful need for dialogue and collaboration between religious leaders, human rights supporters, and authorities of the government

29 "MJC releases fatwa on homosexuality," *Voice of the Cape*, July 5, 2022, available at <https://www.vocfm.co.za/mjc-releases-fatwa-on-homosexuality/> (Last visited on March 17, 2024).

to promote tolerance, understanding, and respect for LGBTQ+ people and their rights in the society with a nuanced approach that acknowledges the cultural traditions and diversity of religious beliefs with upholding the fundamental principles of equality, non-discrimination, and human dignity for all individuals. This fatwa served as a stark reminder of the ongoing challenges faced by LGBTQ+ communities in securing their freedoms and rights in the environment of deeply entrenched religious and cultural beliefs with concerted efforts to promote acceptance, inclusivity and respect for diversity within the society fostering environments where all individuals can live free from discrimination and persecution.

Recently in 2024, Darul Uloom Deoband, one of the largest Islamic seminaries have issued a fatwa endorsing the concept of Ghazwa-e-Hind which sparked a significant controversy as Ghazwa-e-Hind³⁰ is a term which refers to a prophesied battle in Hindustan mentioned in certain Hadiths sourcing to that hadith Darul Uloom Deoband reportedly validated the idea of Ghazwa-e-Hind and glorified martyrdom in the context of invasion over Bharat³¹. This fatwa can particularly cause potential implications for religious harmony and social cohesion in Bharat which garnered a lot of criticism, resulting the intervention of National Commission for Protection of Child Rights (NCPCR) in India, directing the Uttar Pradesh government to take legal action against Darul Uloom Deoband. The directive included registering a First Information Report (FIR) against the seminary, highlighting the serious nature of the issue and the legal repercussions it entailed³². This recent development particularly in pluralistic society like Bharat have even challenged the safeguarding sanctions of

30 Sunan an-Nasa'i, Hadith 31771.

31 Hari Om Mahajan, "Darul Uloom Deoband Issues Fatwa Giving 'Validity to Idea of Ghazwa-e-Hind'," *Indian Defence Review*, February 26, 2024, available at <https://www.indiandefencereview.com/ghazwa-e-hind-fatwa/> (Last Visited on March 18, 2024).

32 "Darul Uloom Deoband Issues Fatwa Giving 'Validity to Idea of Ghazwa-e-Hind'," *News18*, February 22, 2024, available at <https://www.news18.com/india/darul-uloom-deoband-issues-fatwa-giving-validity-to-idea-of-ghazwa-e-hind-8788618.html> (last visited on March 18, 2024).



the law such as Section 121, Section 153A Section 153B and Section 295A of the IPC have particularly raised the concerning offenses against public order, national security, and religious sentiments which was serving as religious guidance within Islamic tradition, the controversy surrounded around the fatwa issued by Darul Uloom Deoband in 2024 highlighted another important implication ongoing dialogue and understanding to navigate the complexities of religious interpretations within the framework of federal government respecting the democratic republic ethos of the independent state.

Convergence of Legal Statutes and Fatwas

The convergence of legal Statues and Islamic Fatwas binds through a complex tussle between Orthodox Islamic teachings and Modern, Progressive and Equal Gender Laws within diverse societies. Fatwas are those non-binding religious opinions issued by Islamic scholars which often intersect with current legal frameworks which often controls the influence over the individual behavior and societal norms. In many cases, fatwas provide guidance on matters not explicitly addressed by statutory law, serving as supplementary sources of moral and ethical guidance³³. "Historically speaking, substantive aspects of Islamic law developed out of the material of fatwas. In the very early stages of Islamic history there were no codified laws to guide people in their religious and social concerns, but the manner in which Muslims received guidance with regards to their religious practice was that they posed their concerns to early proto-jurists in the form of religio-legal questions, which these jurists addressed in the form of fatwas"³⁴. While fatwas wield substantial influence within the Islamic communities their relationship with the Islamic legal norms varies depending on jurisdiction, status of Islam in that country and Interpretation with due course of time. In some contexts, fatwas do carry

legal weighage regarding the family law matters or within their community disputes which they tend to resolve through religious arbitration³⁵but their enforceability can be typically limited to matters governed by Islamic or their customary law which at current times they may not hold the same authority as statutory legislation does have over the matters. In the modern progressive societies, the accommodation of religious practices within legal frameworks must strike a delicate balance between respecting religious freedom and upholding the principles of equality and non-discrimination³⁶. Legal authorities often grapple with reconciling conflicting interpretations of religious teachings with constitutional guarantees of individual rights and freedoms³⁷. Moreover, the globalization of information has facilitated the dissemination of fatwas beyond traditional religious hierarchies³⁸, raising concerns about the potential for conflicting interpretations and legal ambiguity for the present, cultural diverse societies, where diverse religious and cultural traditions coexist with the atheistic mindset of people the convergence of legal statutes and fatwas requires sensitivity, broad mind to accept multiple beliefs and values while respecting each of their existence and peace hood. Despite such minimal challenges the convergence of legal statutes and fatwas offers more opportunities for dialogue and collaboration between religious and legal authorities. By fostering mutual understanding and respect, society can develop mechanisms for accepting religious practices while safeguarding individual rights and promoting social cohesion. Ultimately, the convergence of legal statutes and fatwas underscores the dynamic nature of law and religion in shaping the moral and ethical fabric of society.

³⁵ *Supra*.

³⁶ Steven Kettell "Secularism and Religion," *Oxford Research Encyclopedia of Politics* (2019)

³⁷ Gilles Tarabout "Ruling on Rituals: Courts of Law and Religious Practices in Contemporary Hinduism,"¹⁷ *Open Edition Journals* (2018).

³⁸ Siti Maryam Nazman & Wan Mohd Khairul Firdaus Wan Khairuldin, "Mufti's Office of Federal Territory and Its Contribution in the Dissemination of Fatwas Through Social Media,"¹² *International Journal of academic research in business and social sciences* (2022).

³³ Shaheen Whyte "Are Fatwas Dispensable? Examining the Contemporary Relevance and Authority of Fatwas in Australia,"¹¹ *Oxford Journal of Law and Religion* 3144 (2022).

³⁴ Omer Awass "Fatwa: The Evolution of An Islamic Legal Practice And Its Influence On Muslim Society," *Temple University*,iii (2014).

The Issue of unsolicited Fatwas and Their Impact on Indian Criminal Courts

Not long ago, Bharat is witnessing the emergence of unsolicited fatwas which often infringe upon the freedoms and rights of the citizens which are guaranteed by the Constitution of India, resulting interference with the personal liberties, imposing arbitrary restrictions, or incite violence against individuals who doesn't perceives the sect and claimed to have violated religious norms like blasphemy/Gustakh-E-Rasool. It is also observed that Fatwa has been used as a license to justify an unjust act under the guise of religious rulings especially by those who are not authorized to issue Fatwa or those not possessing sufficient knowledge of Islamic law. In all such cases, Fatwa loses its core objective and becomes the object of chaos in the society³⁹. The judgment of Vishwa Lochan Madan Vs. Union of India⁴⁰ affirmed that fatwa does not have any legal binding force of law in India and therefore it cannot be enforced by any process using coercive methods, which arises doubts about the relevance of Fatwas in modern times as if such is just an opinion then what depicts it as compulsory and which are the factors associates the decision or implantation of such. The impact of such unsolicited fatwas on the state criminal courts is direct contempt towards the state authority, as such challenges the authority of the legal system and undermine the human rights, rights guaranteed under the preamble or Constitution of India, principles of secularism, and the rule of law. Indian criminal courts are tasked with upholding the Constitution and ensuring justice for all citizens, irrespective of their religious beliefs. However, the proliferation of unsolicited fatwa poses significant challenge to the judicial ability to maintain impartiality and enforce legal norms without interference from extrajudicial authorities also creates a hurdle in maintaining the law-and-order situation in the state or prescribed jurisdiction

39 "Critical Analysis of Fatwas Issued for Muslim Women in India," *Heinrich Böll Stiftung India*, February 15, 2011, available at <https://in.boell.org/en/2011/02/15/critical-analysis-fatwas-issued-muslim-women-india> (Last visited on March 20, 2024).

40 AIR 2014 SC 2957.

both by the Judicial body, Legislative authority and Executive law and order of the state. However, the issuance of fatwas could become the subject of overarching the principles of the Judicial legal system, encompassing secularism and individual rights, ensuring that religious practices do not contravene constitutional protections or disrupt societal harmony.

Fatwa viz a viz Judicial Precedents

Admitting the complex tapestry of Bhartiya Judicial framework, the interplay between fatwas and judicial precedents can often be understood as the need of the broader dialogue between Islamic clerics and Governmental Authority which can be particularly resonant by a pluralistic society like Bharat, where the Constitution enshrines secularism, faith of belief and expression which are the fundamental rights of its citizens, including the right to life and right to religion. The judiciary, as the custodian of these constitutional values has been pivotal in navigating the complex intersections of religious edicts (fatwas) and legal mandates. The quandary emerges when the content of a fatwa intersects with the legal rights of a person which is guaranteed under the Constitution of Bharat, especially with the matters of their personal law, gender equality, and fundamental rights. The Indian judiciary has taken a Sophisticated methodology to this quandary, which can be understood by the series of landmark cases.

In *Shah Bano Begum v. Mohammad Ahmed Khan*⁴¹, the Supreme Court highlighted the preeminence of the statutory law over religious dictates granting Shah Bano maintenance from her husband under the uniform criminal provisions of the Criminal Procedure Code 1973 despite the clerics have ruled against this judgement as it was against the Islamic principles, This judgment not only established a legal precedent but also sparked a broader debate on the implementation of the uniform civil code and the place of Sharia laws within the Bharat legal system.

The case of *Sarla Mudgal, President, Kalyani & Ors. v. Union of India & Ors.*⁴², further helps us to delve into the conflict between personal laws of different

41 AIR 1985 SCC (2) 556.

42 AIR 1995 SCC (3) 635.



religions which asserted the implementation of Article 44 or the need of uniform civil code stating that converting to another religion just for the purpose of remarriage without legally dissolving or divorcing the first marriage would be invalid. This judgment not only underscored the conflicts intrinsic by the coexistence of multiple personal laws but also underscored the judiciary's pivotal role in advocating for a legal framework that transcends religious boundaries.

In *Danial Latifi & Anr. v. Union of India*⁴³, the Court examined the Muslim Women (Protection of Rights on Divorce) Act, 1986 which was passed by the government after the outrage done by the Muslim scholars over the case of Shah Bano for ensuring that the provisions of the act would not infringe upon the constitutional rights guaranteed to Muslim women, which can be seen as manifesting the judiciary's role in aligning with personal laws of Muslims with constitutional values ensuring equal treatment for all.

With the subsequent face the judgement laid down by the Supreme Court in *Shamim Ara v. State of U.P. & Anr.*⁴⁴ Struck down the practice of instant triple talaq or talaq-e-bid'ah highlighting that arbitrary and unilateral divorce by Muslim male through such means cannot be a valid form of divorce under Islamic law, thereby protecting the rights of Muslim women.

Lastly in *Iqbal Bano v. State of U.P. & Anr.*⁴⁵ And *Khursheed Ahmad Khan v. State of U.P. & Ors.*⁴⁶ both are paramount in reemphasizing the obligation and need of statutory laws over the personal laws where practices which are allowed under personal law were found to be in violation of fundamental rights or against the rules of the prescribed work, reinforcing the protective mantle that the judiciary extends over individual liberties against the backdrop of religious dictates.

By comparing and understanding the emphasize of the pivotal role of judiciary with the judgements and ratio decidendi which elucidates the commitment of judicial body for upholding the secular, democratic ethos enshrined in the Constitution of Bharat

ensuring religious practices including those advocated by the fatwas cannot contravene the fundamental rights and liberties guaranteed to every citizen as ruled in the *S. R. Bommai v. Union of India*⁴⁷ "where the Supreme Court upheld the primacy of Article 21 and Article 14 of the Constitution guaranteeing the right to life and personal liberty and the right to equality respectively, upon Article 25 which ensures the freedom of religion emphasizing that while Article 25 guarantees the freedom of religion, this freedom cannot be absolute and must be subject to reasonable restrictions imposed in the interest of public order, morality, and health, or the other fundamental rights enshrined in the Constitution. This ruling underscores the principle that no fundamental right including the freedom of religion would be able to override the core principles of equality and personal liberty enshrined in Articles 21 and 14 of the Indian Constitution by this application of the law the judiciary had served as a guardian against the infringement of individual rights under the guise of religious authority, thereby maintaining a delicate balance between religious freedom and the rule of law in one of the world's most diverse societies."

Civil Society Initiatives and Advocacy Efforts

The discussion of fatwas and its intersection with current legal systems extends far beyond the borders of India as these fatwas can't be solely be historically tracked within the Bhartiya cultural but touching upon a myriad of Islamic traditions and jurisdictions across the globe having legal perspective on fatwas illustrates the varied ways in which different countries navigate the complex terrain between religious edicts and state law, often reflecting broader themes of secularism, religious freedom and human rights. In countries where predominantly Islamic population or a significant Muslim minority, the role and recognition of fatwas can vary dramatically. Nations such as Saudi Arabia and Iran, where Sharia Law is a primary source of legal authority, fatwas play a crucial role in shaping

43 AIR 2001 SCC (7) 740.

44 AIR 2002 SCC (7) 518.

45 AIR 2007 SCC (6) 785.

46 AIR 2015 SCC (8) 439.

47 AIR 1994 SCC (3) 1; AIR (1995) 3 SCC 635.

legal norms and practices⁴⁸ even within these jurisdictions the process of issuing fatwas and their binding nature is subject to rigorous scholarly debate and legal scrutiny reflecting a diverse spectrum of interpretations within Islamic jurisprudence as varies from place and time and condition.

Conversely the current modern or pluralist states with significant Muslim populations, we can take as the United States, the United Kingdom, and some parts of Europe fatwas generally cannot hold legal binding power but they serve as religious guidance for those who choose to adhere with the interpretations of the Islamic clerics. These nations have emphasized over the separation of church (or religion) and state which we term as secularism ensuring that legal judgments are grounded for the public by judicial laws, this separation does not preclude religious arbitration or mediation within communities but it clearly delineates the boundaries between religious advice and state-sanctioned legal decisions. The European Court of Human Rights (ECHR) has also weighed in on the intersection of religious laws which includes articulated fatwas and human rights in case of *Refah Partisi (the Welfare Party) and others v. Turkey*⁴⁹ where the Court examined “the compatibility of Sharia Law with the principles of democracy and human rights as enshrined in the European Convention on Human Rights.” The Court’s judgement in this matter underscored the importance of protecting fundamental rights and freedoms parallelly respecting religious beliefs and practices. Thanking the digital technology which has facilitated the dissemination of fatwas to the global rise beyond their traditional geographic and cultural boundaries has raised a new phenomenon which can be termed as the “online fatwa.” This development raises questions about the authority, interpretation, and impact of religious edicts in the digital age, further complicating the global legal perspective on fatwas as individuals across the world can access

online and the influence of fatwas extends into jurisdictions where their legal status may be unclear or unrecognized depending upon the status of Islam and the historic culture of that state in navigating the global interaction between fatwas and statutory law, international human rights law which is also in itself weak law often serves as a common framework for balancing the right to religious freedom with the protection of individual rights the delicate balance requires ongoing dialogue and engagement between religious scholars, legal practitioners, and policymakers to ensure that respect for religious traditions does not infringe upon the universal rights and freedoms to which all individuals are entitled.

CONCLUSION

As the global landscape continues to evolve the convergence of fatwas and statutory legal systems will remain an evolving and debatable domain, indicating the extensive difficulties and possibilities of incorporating religious diversity within the blueprint of universal human rights and the rule of law the progression of fatwas from religious edicts to legal debates encapsulates the active interplay between religious practices and legal norms in present-day societies as we the trajectory of fatwas from religious edicts to legal debates encapsulates the dynamic interaction between religious practices and legal norms in contemporary societies. As we navigate this complex terrain, several strategies emerge to harmonize religious freedoms with legal safeguards as we have traversed this complex terrain, several approaches emerge to synchronize religious freedoms with legal safeguards. While the concept of fatwa itself can evoke diverse interpretations among Islamic scholars and communities, its implications, as religious edicts, hold significant influence in guiding the conduct of individuals and communities, particularly in matters of personal and civil laws. However, it is imperative to recognize the distinction between the application of fatwas in civil versus criminal laws. As a Muslim if they chose to adhere by the true essence of the Quran then they should be following the Holy Quran as a whole as that’s the guidance which is provided to them and in that particular aspect which they want to

48 Akmal Dawi, “Islamic Fatwas - Are They Laws or Opinions?” *Voice of America*, September 1, 2022, available at <https://www.voanews.com/a/islamic-fatwas-are-they-laws-or-opinions-/6727402.html> (last visited on March 22, 2024).

49 *Refah Partisi (the Welfare Party) and others v. Turkey* Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98.



follow their religious aspect then it must be taken into consideration for the applicability of criminal laws too else the concept can be discarded wholly. Moreover, sturdy jurisprudential structures must be fortified to shield individual liberties and champion the tenets of parity and fairness. Statutory provisions should be instituted to elucidate the standing and enforceability of religious decrees within legal systems, ensuring they do not violate constitutional assurance by cultivating comprehensive educational and enlightenment initiatives can empower individuals to understand the complexities of religious practices and legal rights. By enhancing literacy on both religious and legal fronts societies can mitigate misunderstandings and encourage mutual respect via transparent discourse and conciliation, involved parties can tackle disputable matters, construct pathways of comprehension, and cultivate cooperative resolutions that honor both spiritual convictions and jurisprudential tenets. In this progression from ecclesiastical mandates to judicial discourse, the paramount objective is to foster a society where spiritual liberties are esteemed, legal prerogatives are maintained, and reciprocal comprehension thrives. By endorsing education, conversation and legal protections, we can traverse the intricacies of religious multiplicity while preserving the principles of justice and equality for all.

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