

Recent Ḥanafī Fatāwā in the British Context

Introduction

The word ‘*Muftī*’ has been introduced into the English language, and British way of life in general for that matter, due to the indigenous Muslims whose home is Britain after their economic-migrant forefathers established themselves several decades ago. A mufti serves the community by answering religious questions put to him/her by issuing *fatāwā* (legal edicts); this is the classical definition of the role in political-majority Muslims’ states (*Dār al-Islām*) who assisted in the smooth administration of the state, hence other individuals fulfilled the roles of judges, *imāms*, *faqīs* etc. In 22nd century Britain the situation is much different hence a mufti is required to wear many hats, (both literally and metaphorically!) he is usually the local *imām*, a social counsellor, adjudicator, advisor, teacher, community leader and spokesperson and even a dream interpreter!

Generally, the questioner (*mustaftī*) is a member of the Muslim community, however there are a substantial number of requests from organisations who deal with Muslims, for instance, family law solicitors, *waqf* (trusts) institutes and public bodies, like educational institutes and HM Prisons. The questions can take all forms of correspondence from an informal chat in the corridor of a mosque, a text message on a mobile phone to a letter-headed request from a recognised organisation.

This paper is split into two parts the first deals with the questions posed within Britain to a British born and raised mufti, whereas the second part investigates in detail the inherent flexibility within the Ḥanafī Law School to allow *fatāwā* to be issued in order to facilitate Muslims to integrate within a multicultural society like Britain.

PART 1

Research Methodology and Results

To understand the *fatāwā* issued in Britain a mufti from a large city with a substantial Muslim population was selected for this study. The correspondences he received were filtered so those which met the following criteria were selected; they had to be in the written format and not anonymous and received within one calendar year. Two hundred such requests were received and are presented in Table 1 below, in such a manner to allow subject and gender of questioner analysis. The subject title is open to debate as it is based on an approximate gathering of similar questions and is to a certain extent subjective, likewise there is a considerable overlap between various subjects; having said that questions were grouped under headings with due diligence and thought, which would facilitate reasonable analysis. Most of the subject titles are self-explanatory however some require explanation; hence for the sake of completion each one is detailed after the table.

Table 1. Subject vs. Gender of Questioner

Subject	Male	Female	TOTAL	% Of Qs
Source Texts	10	2	12	6.0%
Waqf Institutes	6	0	6	3.0%
Inheritance	9	1	10	5.0%
Marriage Issues	2	22	24	12.0%
Dietary	3	2	5	2.5%
Taqlid	6	2	8	4.0%
Hereafter	4	6	10	5.0%
Women's Rights	0	9	9	4.5%

Contracts	4	1	5	2.5%
Employment	2	0	2	1.0%
Relationships	1	2	3	1.5%
Ritual Worship	10	26	36	18.0%
Medical	1	5	6	3.0%
Women's Hair	6	6	12	6.0%
Ḥayḍ & Pregnancy	2	18	20	10.0%
Muslim/Non-Muslim	3	1	4	2.0%
'Aqīda	5	3	8	4.0%
Entertainment	0	5	5	2.5%
Misc.	10	5	15	7.5%
TOTAL	84	116	200	

Source Texts – clarification of verses of the Qur’ān or Ḥadīth.

Waqf Institutes – organisations that are religious trusts for community use, for instance Mosques and Madrasas.

Inheritance – division of a Muslim’s estate and wealth after his/her death.

Marriage Issues – predominantly to deal with marriage breakdown, ultimately resulting in Ṭalāq.

Dietary – rulings of various foodstuffs.

Taqīd – accepting the principles/methodologies of one of the four original jurists; Abū Ḥanīfa, Mālik, Shāfi’ī and ibn Ḥanbal.

Hereafter – description of events and destinations following this life.

Women’s Rights – rulings clarifying what women are entitled to.

Contracts – transactions between two parties.

Employment – rulings on various jobs/careers.

Relationships – rulings on casual relationships between men/women.

Ritual Worship – clarification and detailing methodology of various types of acts of worship.

Medical – rulings on advancements in Medicine, for instance cosmetic surgery.

Women’s Hair – rulings on length/style.

Ḥayḍ and Pregnancy – issues relating to menstruation, conception, pregnancy, birth and breast-feeding.

Muslim/Non-Muslim – rulings on relationship between Muslims and those of another or no faith.

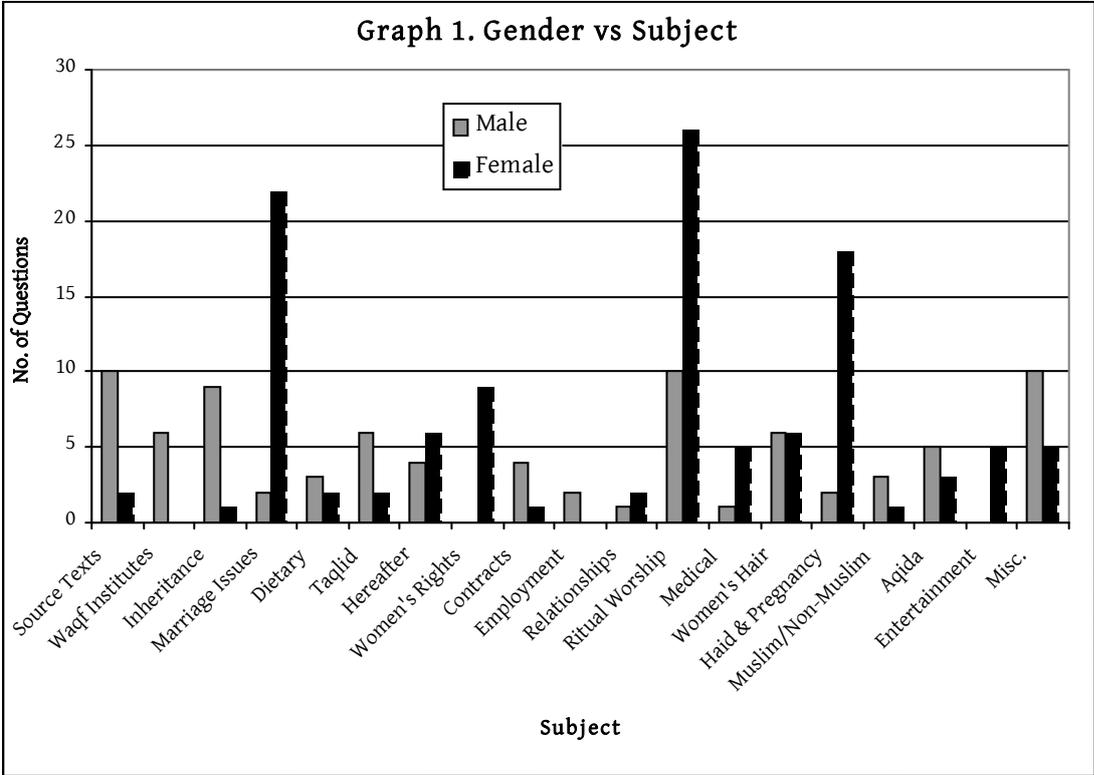
‘Aqīda – tenets of faith.

Entertainment – rulings on various past-times, hobbies, games and sports

Analysis of Data

One can observe that women asked slightly more questions than males which could be due to the fact that men generally pose questions directly to scholars as they are usually male and are available in Mosques and *Madrasas* that men tend to visit more frequently than women. However, it is not excessively different (84 and 116, respectively) which suggests relative equal access to a scholar by writing for both genders, similar level of knowledge and similar interest to seek God’s rulings as interpreted by the Ḥanāfī Law School on a particular matter, hence of similar religiosity; the average number of questions posed by men on each subject was 4.42 and 6.11 for women. Questions were predominantly asked about Ritual Worship (36) that made up 18% of the total, followed by Marriage Issues (24, 12%) and *Ḥayḍ* and Pregnancy (20, 10%). These three subjects were the highest due to the large number of female questioners as 66 of the 116 *istiftās* posed were regarding these subjects. Hence, it becomes apparent that women generally asked about a relatively smaller

number of subjects in larger numbers whereas men asked a similar number of questions over a wider subject range (See Graph 1 below).



Men were clearly in the majority in the following subjects; source texts, *waqf* institutes, inheritance, *taqlid*, contracts, and employment whereas women were posing significantly higher quantity of questions than men in the following topics; marriage issues, women's rights, ritual worship, medical, *hayd* and pregnancy and entertainment. The reasons for the spread of data could be due to the fact that men tend to administer religious institutes and are generally more likely to be involved in business deals and employment; likewise as the eldest son in the family the man would be responsible for dividing his late father/mother's wealth.

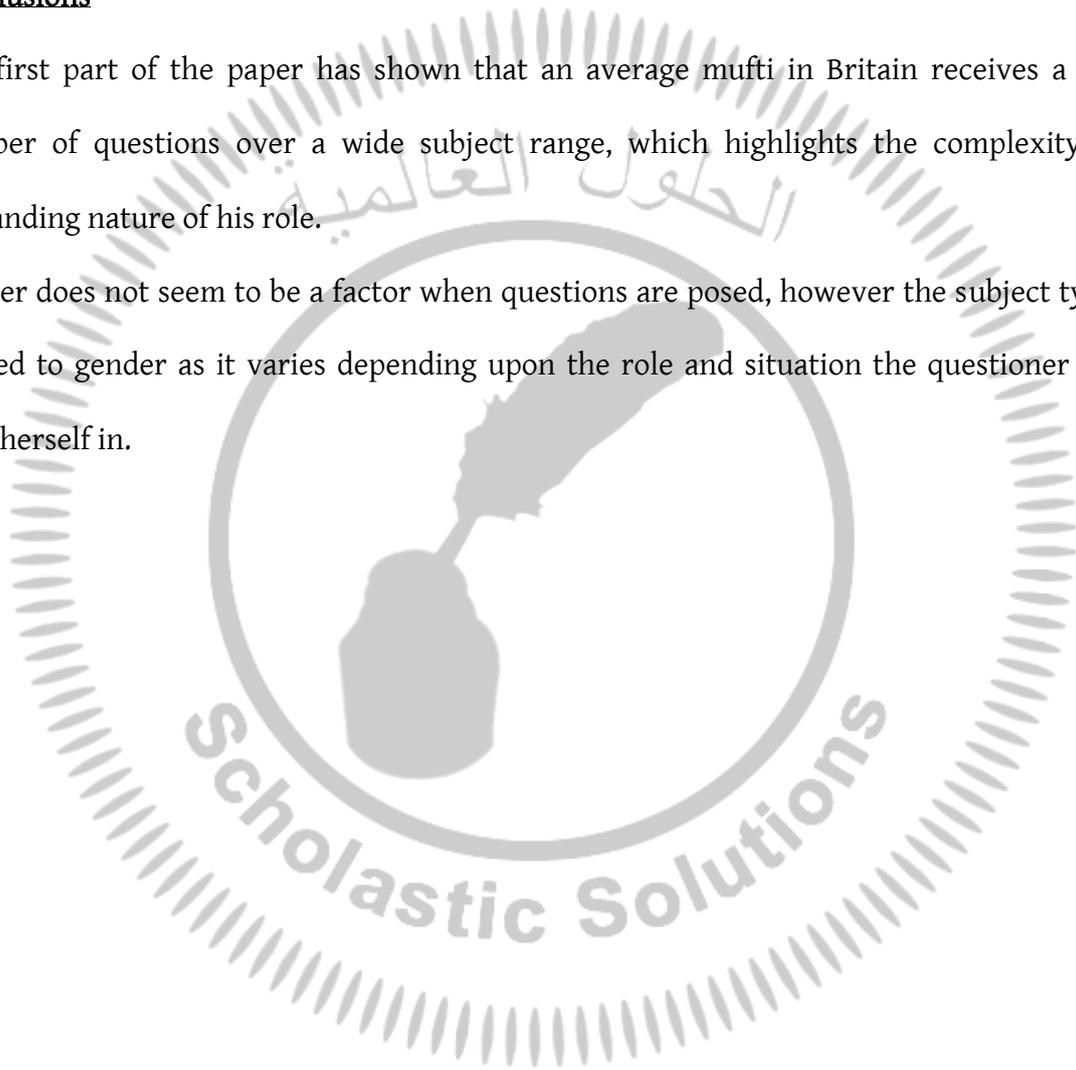
With respect to the women-majority subjects one finds that generally speaking Muslim families tend to be patriarchal and can on occasions not tend to the rights of those who are

under the dominant male's authority, especially wives and daughters, hence a significant number of questions under a number of subjects (marriage issues and women's rights) deal with this injustice by seeking a religious-sound legal document in order to challenge the status quo.

Conclusions

The first part of the paper has shown that an average mufti in Britain receives a large number of questions over a wide subject range, which highlights the complexity and demanding nature of his role.

Gender does not seem to be a factor when questions are posed, however the subject type is related to gender as it varies depending upon the role and situation the questioner finds him/herself in.



PART 2

The Supermarket and Alcohol

In this part I will discuss the legality of the sale of alcohol by a Muslim living in Britain. In preparation one must be aware that two situations are prominent in its sale, either as the owner of the alcohol or establishment of sale, or as an employee.

It is absolutely clear from the following verses of the Qur'ān, that generally speaking any involvement with alcohol is illegal.

“They ask you concerning alcohol and gambling. Say, ‘ In them there is great sin, and some profit for mankind, but the sin is greater than the profit.’” (al-Baqara 2:219)

“O You who believe, approach not prayers, with a mind befogged, until you can understand all that you say.” (al-Nisā 4:43)

“O You who believe, alcohol, gambling, (dedication of) stones, and (divination by) arrows, are an abomination of Satan’s handiwork. Avoid them so that you may prosper.” (al-Mā`ida 5:90)

“Satan’s plan is to make enmity and hatred amongst you with alcohol and gambling, and to stop you from the remembrance of Allāh and prayer. Will you not then give up?” (al-Mā`ida 5:91)

Similarly there are many Aḥādīth, which clarify the illegality of alcohol, and its effects on the individual who indulges in the trade and/or consumption of alcohol, a few have been quoted in order to illustrate the point.

1) He is cursed by God. The Prophet said, *“Truly Allāh has cursed Khamr (alcohol) and he has cursed the one who produces it; the one for whom it is produced; the one who drinks it; the one who serves it; the one who carries it; the one for whom it is carried; the one who sells it; the one who earns from the sale of it; the one who buys it and the one for whom it is bought.”*

2) He will receive severe punishment in the Fire of Hell. It is related that the Prophet said, “To one who drinks *Khamr* (alcohol) in this world, Allāh will give him the venom of snakes to drink. The venom will be so strong that the flesh of his face will fall off into the pot before he drinks it, and after drinking it, his flesh and skin will rot, to the annoyance of the inhabitants of the fire.

3) All actors in the supply chain of alcoholic products are equally liable. *The one who produced it, the one for whom it was produced, the one who carried it, the one for whom it was carried and the one who earns from the sale of it will share his sin of drinking. Allāh will not accept from these their prayers, their fasting and their Hajj, unless they repent. If they die before repentance, it becomes incumbent upon Allāh to give them to drink from Hell’s molten brass, a sip for each sip they took in this world.*”

As already stated it becomes apparent from these *Aḥādīth* that not only is the drinker transgressing, but also *the one who produced it, the one for whom it was produced, the one who carried it, the one for whom it was carried and the one who earns from the sale will share in his transgression.*

The jurists, based on these sources, have also discussed the legality/illegality of alcohol. It is stated in *Radd al-Muḥtār* that: ‘...it is illegal to take benefit from alcohol even if he is giving it to animals to drink.... it is not permissible to sell it due to the *ḥadīth* from Imām Muslim, ‘Indeed He whom has made its drinking illegal has made its selling illegal.’ (Ibn Abidīn, 1984, Vol. 10, p34)

Furthermore, al-Kāsānī substantiates the view by quoting a *ḥadīth* from Bayhaqī that....‘Abū Hurayra narrates that the Prophet said, ‘O’ People of Madīna, indeed Allāh has without

doubt revealed the illegality of alcohol. So, whoever has heard this verse and with him is some alcohol, then he should not drink it nor sell it.’ (al-Kāsānī, 1997, Vol 6, p437)

Likewise al-Marghīnānī expounds in the recognised Ḥanafī Law book ‘*al-Hidāya*’, ‘It is regarded as a heavy impurity like urine, and this is proved by undisputable evidence (i.e. Qur’ān, Sunna of the Prophet and Consensus of scholarly opinion.’ (al-Marghīnānī, 1999, Vol 2, p493)

Therefore, it becomes absolutely clear that to purchase or sell alcohol would be illegal according to Islamic Law, but what about that individual who is employed on the cash-out as an attendant and serves customers who purchase alcoholic beverages? Does s/he come under the remit of *the one who serves it; the one who carries it* and hence also be regarded as committing an illegal act? Or does Islamic Law take into consideration his position of adhering to a minority faith whilst living in a society, which is not based on Islam?

Ibn Ābidīn has elaborated in his *Radd al-Muḥtār* on a similar matter upon which one can conduct *qiyās* (analogical reasoning); this text is one of the key sources for the relied upon positions of the Ḥanafī Law School, the relevant section has been translated with my comments in [];

“(His saying, ‘It is permitted to repair a church.’)

It is stated in *al-Khāniyya* that if one got hired to work in a church, and he repaired it [then] there is nothing wrong with it, because the sin is not in the actual action itself.

(His saying, ‘and to transport wine for a non-Muslim’)

Zayla`ī said, ‘This is according to him [Abū Ḥanīfa]. His two companions [Abū Yūsuf and Muḥammad al-Shaybānī] said that it is [prohibitively] disliked, because the Prophet (Allāh bless him & give him peace) cursed ten [types of individuals] with regards to wine, and he included amongst them the one who transports it. Abū Ḥanīfa’s reasoning is that the hiring is for transporting [which in] itself is neither a sin nor a reason for it. Rather, the sin only occurs through the action of a willing actor, and drinking is not necessarily brought about by the transportation, because it could be for disposal or to transform into vinegar. Therefore this is similar to being hired to press or cut grapes. As for the *ḥadīth* [no. 3 quoted above], it is interpreted to mean transporting with the intention of sin’

Then, Zayla`ī said, ‘The same difference exists [between Abū Ḥanīfa and his two companions] if he is hired with a vehicle in order to transport upon it wine, or if he is hired to herd pigs. In such cases, the wages are permissible according to Abū Ḥanīfa, and [prohibitively] disliked according to them two.’ [Ibn Abidīn, 1984, Vol. 5. p. 277]

Due to the circumstances the Muslim employee finds himself in Britain then the mufti would issue the *fatwā* on Abū Ḥanīfa’s view, as that flexibility exists due to the necessity of the situation. Hence, the act of scanning items through a checkout is not in itself impermissible, therefore if the person had to scan alcohol or any other Islamically illegal product he would not be in breach of Islamic Law.

Conclusion

In Part 2 it has become apparent that those issues which are clearly and explicitly detailed in the source texts which forbid a certain act then the need and necessity would have to be immense in order for that act to become permissible. However, as in the case above where there is an opportunity to be flexible, due to the varying scholarly opinions available, in order to permit an act which if impermissible may make an average Muslim's life difficult then a mufti has the legal capacity to issue a *fatwā* on that view.

References

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Glossary

‘Aqīda – tenets of faith.

Dār al-Islām – Muslim political-majority state.

Fatwā/fatāwā – legal edict/s.

Faqī – an Islamic scholar who is legally qualified to conduct research and investigate application of theoretical law.

Ḥadīth/Aḥādīth – text including chain of narrators of a statement, act or tacit approval of Prophet Muḥammad.

Ḥayḍ – menstruation/menstrual cycle.

Imām – one who leads prayer in a mosque.

Madrasa – a religious educational institute.

Muftī – an Islamic scholar who is legally qualified to issue *fatwās*.

Mustaftī – one who poses a question to a mufti.

Qiyās – analogical reasoning.

Ṭalāq – divorce.

Taqīd – accepting the principles/methodologies of one of the four original jurists; Abū Ḥanīfa, Mālik, Shāfi‘ī and ibn Ḥanbal.

Waqf – a trust of an item, building or piece of land for the sake of God.