From the Fiqh of Minority to Cosmopolitan Fiqh
An Analysis

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Abstract

[The convergence of Muslims in Europe and America from different Muslim majority societies conjures the idea of a multicultural milieu. The West has indeed become a crossroad of civilizations and cultures and such intersection is explicable for a cosmopolitan fiqh reflective of all the Muslims. The convergence of Muslims of different Madhhabs, cultural and social background in the West does not simply delineates the universality and homogeneous ground, but it also nicely presents the laboratory for the mixture of all Madhhabs that have long divided the Muslims. Bridging the past and the present is the golden aim of cosmopolitan fiqh and presenting Islam as a comprehensive faith reflecting on the entirety of life. Cosmopolitan fiqh can be yet an avenue for Muslims to showcase their worth and extent to which they can contribute in the societies they are part of. – Eds.]

The phraseology of fiqh of minority simply conjures the state of being marginalized and being unsecured to visibly exhibit one’s religiosity. If we accept the argument that being minority has nothing to do with number instead it is a state of incapacity, therefore a majority can circumstantially become minority. In the backdrop of the above, the concern of Muslim intellectuals should transcend finding solution for Western or European Muslims, rather concerted effort should be tailored at developing comprehensive, dynamic and yet cosmopolitan fiqh that will address the issues facing Muslims regardless of their location. A cosmopolitan fiqh delineates the universal value of Islam as opposed to the narrow context of minority fiqh.

There has been an apparent advocacy for jurisprudential mechanism to address the fundamental issues confronting Muslims communities in the edge of Islam. Undoubtedly, the intellectual rigour surrounding the fiqh of minority has received considerable yet appreciable intellectual appraisal and contribution, although not exculpable from certain degree of criticism.

European Council for Fatwa and Research (ECFR) and many of its kinds in Western societies have shown considerable degree of commitment to the notion of fiqh of minorities, supposedly shoulders a moral obligation and solidarity with non-Muslims in the edge of the Muslim world.¹ Dina Taha believes the notion of fiqh of minorities is yet

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novel paradigm “using the notion of Ummah, and its related concepts, to establish religious basis and justifications for Muslims’ positive integration in their society. Such paradigm does not only reflect the commitment to the Ummah message but also signifies the importance of all individuals practicing their own rights and fulfilling their own duties.”

In similar token, during its fifth AMSS annual conference, Anas Al-Shaikh-Ali argues for a comprehensive engagement of Shariah scholars and social scientists “in the wider public arena” aimed at forging a “comprehensive methodology of minority fiqh,” that constructively uses the past for innovative present and future. Anas’s argument concurs with Taha Jabir al-Alwani’s position on the need for a composite discussion among Muslims from all spectrums. Islam according to Taha has no recognition or acknowledgement for the institution of priesthood and monopoly by certain segment of the Muslim community over jurisprudential authority. In turn, no special persons or institution can claim divine custodianship of Islam. Anas Al-Shaikh-Ali summed up what might necessarily inform the need for a fiqh that addresses the concerns of Muslims facing insecurity with particular reference on religious convenience. According to him the edge in Islam brings forth the challenges and dilemmas of exactly what falls into the bracket of lawful and unlawful. Should Muslims in the edge of Islam; deal with banks, insurance companies, or mortgage; work in restaurants or supermarkets that sell wine or serve pork; to apply for citizenship from the ‘non-Muslim’ country of residence, especially if the oath of citizenship involves adherence to its monarchy, constitution, or military service; to participate in a ‘secular political system’ by joining a political party, support certain (non-Muslim) candidates, or run for elections; to greet non-Muslims, congratulate them on their festivals, or attend their weddings or funerals; to accept a marriage or divorce ceremony or court ruling from a non-Muslim judge or based on the ‘non-Muslim law’, and so on.

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2 Taha, “Fiqh of Minorities and the Integration.”
3 Al-Shaikh-Ali, keynote speech.
4 Al-Alwani, Towards A Fiqh for Minorities.
5 Auda, “Rethinking Islamic Law for Minorities.”
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Be that as it may, fiqh of minority does not simply attempt to resolve imminent socio-economic and political matters, but it characterises itself as a narrow fiqh devoid of the broad and transcendent Qur’anic vision. Categorically speaking, this is no attempt to shatter all effort and enterprise surrounding the fiqh of minority; instead an attempt to enunciate and elucidate the degree of importance presented by the edge for further research. The edge is increasingly becoming the platform for the reincarnation of Islamic jurisprudence as practiced during the pristine and golden epoch of the Prophet Muhammad (SAW), a period uncharacterised by jurisprudential divide as in the multiplicity of Madhhabs.

Prior to the demise of the prophet, Muslims were bounded by a single and dynamic fiqh, perhaps the existence of variety of Madhhabs was a slim imagination. The demise and displacement of the Sahaabah to different adjacent and far-flung environs spawned the emergence of Madhhabs. The convergence of Muslims from different part of the world in the West presents the platform to returning to the era of a single and dynamic yet cosmopolitan fiqh free from all forms of fanaticism and sectarianism.

If the spread of Islam beyond the shore of mainland Islam was responsible for the development of fiqh (Madhhabs) to answer emerging questions in the newly developed Muslim community, therefore the convergence of Muslim in the West present an unprecedented arena where Muslims from different parts of mainland Islam can have a mutual intercourse and more importantly the blending of their different Madhhabs. Such dispositions thus enhance the argument for a cosmopolitan fiqh, which looks beyond jurisprudential divide.

The convergence of Muslims in Europe and America from different Muslim majority societies conjures the idea of a multicultural milieu. The West has indeed become a crossroad of civilizations and cultures and such intersection is explicable for a cosmopolitan fiqh reflective of all Muslims. In this context, the notion of cosmopolitan fiqh instead of Fiqh al-Aqaliyyat or the Islamic jurisprudence of Muslim minorities should find a place not as a branch (Furu’ al-Fiqh) of fiqh, instead a unique usul. Cosmopolitan fiqh induces the re-construe of the classical differentiation of dar ul-Islam and dar ul-harb. The idea of religious or cultural minority is not confined alone to Muslims in West, but a similar fate of Muslim elsewhere. Although the notion of minority does not necessarily insinuate a numerical weakness, rather a philosophical and sociological connotation for diaspora in a foreign country ‘society’, ‘context’, ‘polity’ or under ‘non-Muslim rule’.

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6 Ibid.
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Islamic history as enunciated by Bulliet depicts how the edge in Islam rather than the centre has been ground, where new ideas emerge and eventually integrated with the mainstream. Such argument is complemented by Mustafa Cerić, who holds that "the periphery of Islam cannot understand why the centre is slow in addressing so many contemporary problems that appear on the road to the moral, political, and economic development of the Ummah." Hence, the concern of the edge is beyond being the periphery of Islam but more interested in the overall progress of the Muslim community, and therefore the call for a universal precept that could address Muslim issues irrespective of their location.

**Cause for Cosmopolitan Fiqh**

The Muslims in today’s edge of Islam numerically stand no comparison with Muslims in the centre. But the dynamism, creativity and adaptability of the edge cannot be understated. The edge of today shares degree of similarities with the Muslims in Madeenah, where gradual conversion and acceptance of Islam led to the formation of Muslim community. Although, Islam derives its origin from Makkah, but legal revelations never came to the Prophet till the formation of a community in Madeenah. The relocation and migration of Muslim converts to Madeenah added to the need of legal revelations. It logically means that nascent Muslim community historically prompt the need for jurisprudence to resolving pre-existing and newly emerging issues.

One reason why the growing effort and activity of Muslims in the West should be accorded greater importance lies in the extent to which intellectual activities from the West are increasingly making headways through readership, translations and debates on matters that reflect the concerns and tendency of the wider dar ul-Islam, inclusive of the edge in Islam. A congenial argument supporting the growing role of the edge is further underpinned by the sway of western scholarship (institutions and scholars) on Islamic tendencies in the Muslim majority societies. From Indonesia, Turkey, Pakistan, Iran, Nigeria, and to the birth place of Islam in the Arab world, all have had their share of the emerging trend of thoughts from the edge in Islam.

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7 Bulliet, *The Case for Islamo-Christian Civilisation*, 139-140.
9 Bulliet (a), *Islam: The view from the Edge*.
10 El-Affendi, *The People on the Edge*.
The radiant intellectual disposition glowing out from the edge though faces the crisis of legitimacy as noted by Bulliet. Bulliet’s argument over the crisis of authority in Islam was not satirical of the dearth of institution, rather was polemical on the legitimatization and placement of religious and jurisprudential authority. Taha Jabir al-Alwani and others argued that the authority discourse can be watered down only through a composite effort, involving social scientists, Islamic and Western legal scholars geared at actualizing the project of what we refer to as cosmopolitan fiqh. The debate over crisis of authority further raises the question whether or not the majority has the right to speak for the minority and should Muslim elsewhere pass fatwa for Muslims in specific area. Answers to such tricky questions are not within the purview of this work, though the questions provide ample opportunity to Islamic and non-Islamic researchers to further investigate the issues from all angles of scholarship.

The crisis of authority is often marked as one of the impediments to Muslim community in the West. The portrayal of such crisis comes in form of identity crisis, religious discrepancy, cultural colourisation of faith, being fundamental about traditional Madhhabs and religious allegiance to home countries. The community though have a common foundation as Islam, but occasionally displaying certain degree of non-homogeneity. The bifurcation and sentimentality deprives the Muslim community of a single advocate entrusted to consensually champion the common interest of all within the community. Besides, the institutional crisis arguably explicates the inability of the community to avail similar benefits other faiths enjoy within the purview of state provision for religion groups. A denial of these evident discrepancies and challenges amongst the Muslim communities sabotages progress.

Arguably, the project of cosmopolitan fiqh evince a compelling and convincing antidote, as the crisis calls for a common, understandable and universal fiqh transcending traditional, cultural and national allegiance.

Interestingly, Anas Al-Shaikh-Ali’s analysis offers a different perspective into the debate of legitimacy. Following a rigorous and well documented research that surveyed classical literatures from different school of thoughts, Anas Al-Shaikh-Ali surmised five descriptive criteria for a supposedly Islamic state. The provision of security for religious practice (deen) without fear takes a paramount position within his description. According to him, the provision of security grants the status of authority to the place, where a devout feels free to practice his or her faith without harbouring fear of persecution, estranged, and

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12 Bulliet (a), op.cit.
13 Al-Alwani, Towards A Fiqh for Minorities.
14 Ibid., 5-6.
disenfranchised. From such narrative, authority of Islamic state can only be accorded to a state or place that does not only offer religious freedom but security. Therefore, Al-Shaikh-Alí’s argument fetched us one amongst many answers to the clash of authority between the centre and edge of Islam.

The notion of the edge is a representation and synonymous with Muslims in the West, confronted with the discourse of modernity, whilst struggling to understand, re-read and adapt Shariah into their mundane life. Besides, the emergence of global cities, and the engagement of Muslims within the cosmopolitan cities underpins the call for a cosmopolitan fiqh for the edge on account of its dynamism, creativity and adaptability.\textsuperscript{15} Kettani (1990) enriches our understanding that the idea of edge is not confined to the Western Muslim. His work examines the diversity of Muslim minorities across the world, their normative stage, socio-political organizations, internal differences within the Muslim communities and the tussle between the majority and minority, particularly cultural conflict between the host and the nascent community.\textsuperscript{16}

**Difference between Minority and Cosmopolitan Fiqh**

It is not unlikely that question such as how and where to draw demarcation between minority and cosmopolitan fiqh arises. To begin with, the proponents of minority fiqh premise their argument on the principle of al-Darurat Tobih al-Mahzurat (Necessities allow the Prohibited) which evidently addresses and proffers solutions to short-term matters. The new political and social status of Muslims in the West belies a short-term solution rather demands for a long-term if not permanent ruling. Yusuf al-Qaradâwî, one of the founders and advocate of the notion of minority fiqh still subscribes to the classical tendency and idea that Muslims in the West are temporarily there and thus short-term solutions are required.\textsuperscript{17} But a more acclimatized and Westernised Muslims like Tariq Ramadan scorns the idea of minority fiqh rather finds it appalling.\textsuperscript{18} If Islam is jealously portrayed as universal faith, there has never been a time for the expression of that universality on a common geographical location (besides the pilgrimage to Makkah). The convergence of Muslims of different Madhhabs, cultural and social background in the West does not simply delineates the universality and homogeneous ground, but it also nicely presents the laboratory for the mixture of all Madhhabs that have long divided the Muslims. Hence, the outcome from such laboratory will not be less than a dynamic fiqh answering the questions of all Muslims irrespective of their difference and more importantly reiterating the Qur’anic injunction that beseeches

\textsuperscript{15} Ibid., 142.
\textsuperscript{16} Kettani, *Muslim Minorities in the World Today*.
\textsuperscript{17} Taha, op.cit.
\textsuperscript{18} Ibid.
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Muslims to always return to Allah and His messenger amidst discrepancy.

O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best, and most suitable for final determination.  

Besides the growing number of Muslim communities in the West and their increasing demand for greater visibility further deconstruct the classical division of world into the “world of Islam and the other worlds.” Muslims of today are no more confined by such traditional thinking, the reach of Islam and residences of Muslims have far extended the thinking of classic jurists. The global trend of Islam and the significant though scattered Muslim population rather embraces the idea of world of Islam (Alamiyyat al-Islam). The utility of latter is no insinuation to the exaggerated notion that Islamists want to rule the world in general and the West in particular. The notion of alamiyyat al-Islam resonates with the view of cosmopolitan fiqh, an intersection of time and space and a hybrid system crafted from the combination of maqasid al-Sharia and alamiyyat al-Islam. The presence of a cosmopolitan fiqh will not necessarily supplant the idea of Ibn Qayyim al-Jawziyya that “legal rules in any country are made according to the custom of its inhabitants,” but rather complement by saving the energy of scholars from ironing new legal rules for different locality.

Developing a dynamic fiqh as an intersection for Muslims the world over will be constructive and instrumental in addressing the general ‘tendency of backward’ in the world of Islam. Bridging the past and the present is the golden aim of cosmopolitan fiqh and preparation for posterity. The challenges of modernity and humanism brought to the shores of the Muslim societies through the process of Europeanization of the world, account for the present state of affairs in contemporary world of Islam. Thus, in sizeable part of Muslim majority societies these challenges are still imminent on one hand, on the other end, Muslims in West are not exculpated from similar challenges, and therefore logic demands a common remedy for both, this invariably explains the imperative for cosmopolitan fiqh.

20 Fishman, “Fiqh al-Aqalliyyat: A Legal Theory for Muslim Minorities.”
21 Ibid.
Policy Perspectives

The issues of the 20th and 21st centuries are distinctive from that of the medieval and classical Muslim era, when the level of globalization and international tendency were not as interconnected, contagious and proliferated. The development of cosmopolitan fiqh wont simply liberates the Muslims from the shackle of history but will go a long way to unfrozen them from its hold. Unlike a cosmopolitan fiqh that will truly spell out the essence of Islam, minority fiqh “reduces...Islam to the tribal, ethnic, cultural, regional, national, or professional level.”

The presence of Muslims in the West has generated numerous debates among which is the imperative for fiqh al-aqalliyyāt, jurisprudence for the minority. The new home of Muslims in the West raises the tempo of the argument from mere fiqh al-aqalliyyāt to cosmopolitan fiqh. Unlike the different placement of Muslims in the Muslim majority societies, the West rather holds the hybrid ground for Muslims of diverse culture and fiqh to amalgamate. A cosmopolitan or dynamic fiqh drives us back to the pristine, non-fanatical and non-sectarian epoch of flexibility, when Muslims were undivided along the line of differences in Madhhabs. Quite necessarily, a cosmopolitan fiqh will bring forth the reunification of the Madhhabs. Hence, instead of simply fiqh of minority, a cosmopolitan fiqh that resonates with all Muslims taking abode in dār al-amr (abode of solace) should logically be distinctive from what actually manifest in dār al-islām (abode of Islam)

Having a cosmopolitan fiqh refreshes our memory of Imam Malik ibn Anas, who hailed from Madeenah, the founder of Malik jurisprudential school of thought. Malik was cognizant that hadeeth known to the people of Hijaaz does not suffice for all hadeeths of the prophet known by other Muslims elsewhere. His rejection to the plea of Caliph al-Mansoor to have his Magnum opus (hadeeth compilation) use as state religious constitution, sole authoritative and binding legal document, saved the state from blind ignorance.

Ibn Sa’d (d. 845) reports on the authority of Muhammad b. Umar al-Waqidi (d. 822), that Imam Malik narrated the story as follows: When Abu Ja’far [Caliph Mansur] performed Hajj, he called me. I went to see him and we talked. He asked questions and I replied. Then he said, ‘I have resolved to have several copies made of these books that you have composed. I will send one copy each to every Muslim city. I shall order the people to abide by its contents exclusively. I will make them set aside everything else than this new knowledge, because I find

22 Mahdi, “The Rights of Minorities and Their Aims.”
23 Cerić, “Towards a European-Islamic Identity.”
true knowledge in the tradition of Madeenah.’ I said, ‘O Commander of the faithful! Do not do that. Because the people have received various reports, heard several statements, and transmitted these accounts. Each community is acting upon the information they have received. They are practicing and dealing with others in their mutual differences accordingly. Dissuading the people from what they are practicing would put them to hardship. Leave the people alone with their practices. Let the people in each city choose for them what they prefer.’ Mansur said, ‘Upon my life! Had you complied with my wishes I would have ordered so.’

Malik’s disapproval explains the imperative for cosmopolitan fiqh and thus makes it practically imprudent to blindly subscribe to one school of thought as sole authentic. Historically, upon the demise of the prophet, the Sahaabah were reported to have travelled and narrated acquired hadeeths differently amongst the newly dispersed Muslim societies. In a similar trend, during the golden days of Islam and normative period of Islamic jurisprudential schools, scholars and jurists travelled widely to understand and compile hadeeth as foundational tool of fiqh. This however was done within what was generally assumed to be dār al-islām (abode of Islam). The entire picture of what constitute Islamic world is totally changed and more importantly relocation of Muslims from supposedly Muslim majority countries to predominantly non-Muslim societies pushes forth the argument for cosmopolitan fiqh, as Muslims from different Muslim majority countries are now blended as single community in their newly made homes.

Achieving the goal of cosmopolitan fiqh that answers the needs of all Muslims in general and particularly Muslims in the West will demand a return to and re-reading of the Qur’an. Borrowing from the controversial argument of Fazlur Rahman, who sees the Quran not just from its ethical and spiritual context but espouse the view that Muslims have to reckon with the fact that the divine scripture of the Qur’an historically transcends time and space as it addresses timeless issues, people contextually and in-exhaustive for reinterpretation. Hence, for Rahman, the obstinate reflection that fiqh and Islam as seen by the medieval scholars as unchangeable holds no substance. A cosmopolitan

fiqh is plausible through a methodic re-reading of Islam through the lens of time and space. The possibility of a cosmopolitan fiqh evidently depends on the degree of tolerance, accommodation and more importantly the idea of pluralism. Muslims in the West are often challenged as holding values having no compatibility with the idea of pluralism. Be that as it may, though the serious but infrequent tussle amongst the Madhhabs further underpins the argument of intolerance. Meanwhile, the pristine Islam of the prophet carries a high degree of tolerance and pluralist tendency. Among the sayings attributed to the prophet, he was reported to have said “difference of opinion in my community is a blessing,” whilst shunning the idea of intolerance, the prophet said “he who calls his brother an infidel is himself an infidel.”

The convergence of Muslims in different Western societies indeed makes them a nation in their own right, though uncharacterized by language, ethnicity and territory, but by tawheed and risalat. The latter are two undeniable social capitals worthy enough to compel Muslims to see reason for a cosmopolitan and dynamic fiqh.

Often times, domestication of religion through cultural influence give different narratives of religious teachings and many a time responsible for religious dichotomy. Cosmopolitan fiqh is not an attempt to obliterate cultural value or undermine cultural integrity, but it prevalence will stitch our patchy unity with tawheed and risalat.

Conclusion

The failure to the realization of a cosmopolitan fiqh will rest on number of reasons among which is the challenge of “inherited jurisprudential culture.” For some scholars tampering with the bequeathed jurisprudential legacy suggest a challenge to the fundamental sources and premises of classical fiqh, and thus heretical. Besides, the Muslim communities in the West are not handicap to making a landmark but rather caught in an intricate web of self and internal exclusion and “without any attempt at discussion.”

It suffices to say that the absence of a common challenge arguably account for the imprudent and perennial battle of ideology between the Sunni and Shia in most part of the Muslim majority societies. Unlike the Muslims at the edge of Islam struggling and striving not just to create a niche, but to be visibly integrated, whilst religiously and socially assimilated, and make themselves understandable to the mainstream, in the Muslim majority societies such challenges are more or less visible.

26 Kalin, “The Sun Rising from the West,” 137.
27 Asani, “On Muslim Knowing the “Muslim” Other,” 185.
28 Iqbal, Reconstruction of Islamic Thought.
29 Ramadan, Western Muslims and the Future of Islam.
The concept of cosmopolitan fiqh generates ideas and solutions in resolving the discourse of integration, ideological diversity amongst Muslims, how best they can possibly and harmoniously settled on same plane, face a common challenge and standing out of storm. September 2011 and similar disturbing events have created defensive situations for Muslims, the theatre appears as if the rest of the world is against the religion of Islam and its adherents. History remains indelible of the valuable legacies of Islamic civilization, a civilization that once illuminate the world in all facets of human endeavors. The heyday reverence for Islam and Muslims was a product of what the Muslims offered the world, and most particularly enlightened the West, when the latter was languishing in backwardness. The retrogression of Muslim civilization and decline of its once powerful empires and states revolves around the discrepancies and gulf between material and intellectual wealth. The restoration of the past glory and the reconnection of material and intellectual wealth are undoubtedly enormous for contemporary Muslims. Such huge and challenging endeavor can best be dissected within the purview of cosmopolitan fiqh, which focus is not limited to religious issues, but equally dwells on matters of mundane, hence the meaning of Islam as a comprehensive faith reflecting on the entirety of life.

Consequently, cosmopolitan fiqh can be yet an avenue for Muslims to showcase their worth and extent to which they can contribute to their new home. Amidst troubling times, one among many ways by which Muslims can prove to the world and the West that (their community) is not a liability to the world and Europe is to assert their worth through intellectual, ideological and constructive development. The growing trend of Islamic finance can yet be constructively utilized to changing negative to positive narrative in the West. Muslims should strategize mechanism to shifting the socio-cultural narrative and discourse to more productive and engaging debate.
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