

FATWAS ISSUED BY MISINTERPRETATION OF THE SHARIA, A VIOLATION OF HUMAN RIGHTS: IN THE LIGHT OF THE CASE VISHWA LOCHAN MADAN V UNION OF INDIA

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ABSTRACT

Islamic law has primarily four sources- the Holy Quran, the Sunnath and Hadis, the Ijma and the Qiyas. The Quran, according to Muslim belief, represents the accumulation of the verses revealed by God to Prophet Muhammad. The Quran is aimed at establishing basic standards for Muslim societies and guiding these communities in terms of their rights and responsibilities. The Sunnath and Hadis represent model behavior and is referred to as the tradition and practices of Muhammad. The Ijma is a collective opinion of the Islamic jurists. The Qiyas are the analogical deduction obtained from the above three sources. Together, these make up the Sharia.

Fatwa in Islam is a suggestion or instruction which is issued by an Islamic scholar keeping in view the Sharia and Islamic laws. Usually the right to issue Fatwa is with the scholar on the post of Mufti. Many Islamic institutions have even constituted a separate committee of scholars for the purpose of issuing. One more thing should be clear regarding Fatwas that, these Fatwas are only suggestions, and not Islamic orders or directions. To follow any Fatwa or not entirely depends on individual Muslim. Fatwas are not binding. Muslim clerics from time to time have issued Fatwas relating to economic matters, marriage, women ethics and religious rituals etc.

In 2005, a writ petition was filed in the Supreme Court by Vishwa Lochan Madan in the light of a Fatwa given by Dar-ul-Uloom of Deoband in relation to Imrana's incident. Imrana, a 28

year old Muslim woman; mother of five children was allegedly raped by her father-in-law. The question arose about her marital status and those of her children born in the wedlock with the rapist's son. The Fatwa of Dar-ul-Uloom in this connection reads as follows: "If one raped his son's wife and it is proved through witnesses, or the rapist himself confesses it, Haram Musaharat will be proved. It means that the wife of the son will become unlawful forever to him i.e. the son. The woman whom the father has copulated legally or had sexual intercourse illegally in both ways, the son can't keep physical relationship with her. The Holy Quran says: "Marry not the woman whom your father copulated" The Fatwa has dissolved the marriage and passed a decree for perpetual injunction restraining the husband and wife living together, though none of them ever approached the Dar-ul-Uloom. The area of concern here is not the issuance of Fatwas but the ignorance behind these. Ideally, the Quran prohibits a man from marrying his own mother. But certain clergymen misinterpret the text and use it to subdue the innocent, thus violating human rights.

The research paper aims to bring to light the violation of Human Rights in the name of religion. The researcher intends to gather data by interacting with the members of the Islamic community and also by referring to textbooks, research papers, statutes and case laws.

INTRODUCTION TO ISLAMIC LAW

Islam has a religious code with prescriptions for all walks of life. It has grown into a magnificent system of jurisprudence encompassing all branches of law, both public and private, and covering all legal subjects including huquq-ul-ibad (human rights), siyasa shariya (governance), qaza (administration of justice), muamlat (transactions), jinayat (criminal law) and ahal-us-shakhsiya (personal status).¹ Islamic law has primarily two sources- the Holy Quran and the Sunna. The first and the foremost source of Muslim law is the Holy Quran. According to the Islamic beliefs, the Quran is a sacred book containing divine revelations sent to Prophet Mohammad through the Archangel Gabriel or Jibrail. The Quran is aimed at establishing basic standards for Muslim societies and guiding these communities in terms of their rights and responsibilities. The second basic source is the Hadith and Sunna. The Sunna represents model behavior and is referred to as the tradition and practices of Muhammad. The Quran and the Sunna together make up the Sharia.

The Constitutions in twenty-four Muslim countries of Asia and Africa recognize Islam as the State religion. Some of them mention the Sharia (Islamic Law) as the source for law-making. Muslim personal law covering family relations and succession remains applicable to the Muslims in numerous countries which are either dominated by Muslims or have huge Muslim minority population.

THE CONCEPT OF FATWA

Fatwa in Islam is a suggestion or instruction which is issued by an Islamic scholar keeping in view the Sharia and Islamic laws. A Fatwa is generally issued when a matter of public importance or a personal dispute is referred by a querist to a fatwa giving institution or scholars. Usually the right to issue Fatwa is with the scholar on the post of Mufti. Many Islamic institutions have even constituted a separate committee of scholars for the purpose of issuing. The fatwa is not a “verdict” of any kind but just an expert opinion based on classical sources, which is not binding either on the querist or on anybody else. To follow any Fatwa or not

¹ Tahir Mahmood, *Muslim Law in India and Abroad* 4 (2nd ed. 2016).

entirely depends on individual Muslim. Muslim clerics from time to time have issued Fatwas relating to economic matters, marriage, women ethics and religious rituals etc.

FATWA ISSUING BODIES IN INDIA

The All India Muslim Personal Law Board (here after referred to asAIMPLB) is a private board constituted in 1973 with a motive to adopt suitable changes and strategies for the protection of Islamic Law in India. The Muslim Personal Law (Shariat) Application Act of 1937 provides for the application of Islamic Shariat in India. The Dar-ul-Uloom of Deoband is an Islamic School that also assumes the role of an extra-judicial adjudicatory body. While the dar-ul-Uloom issues Fatwas, the Dar-ul-Qaza acts as a personal law court. The Dar-ul-Uloom and other Muslim seminaries maintain a department known as the Dar-ul-Ifta that houses experts to answer any queries about any of the religious matters. The reply, thus given by the Dar-ul-Ifta is what is popularly known as the Fatwa. The Dar-ul-Uloom of Deoband has been the epicenter of many controversies arising out of the issuance of Fatwas.

Vishwa Lochan Madan v. Union of India

The Vishwa Lochan case is a landmark judgment that sparked the controversy of Fatwas being issued by the Muftis on the insistence of a third party. In 2005, a writ petition was filed in the Supreme Court by Vishwa Lochan Madan in the light of a Fatwa given by Dar-ul-Uloom of Deoband in relation to Imrana's incident. Imrana, a 28 year old Muslim woman; mother of five children was allegedly raped by her father-in-law. The question arose about her marital status and those of her children born in the wedlock with the rapist's son. . The Fatwa of Dar-ul-Uloom in this connection reads as follows: "If one raped his son's wife and it is proved through witnesses, or the rapist himself confesses it, Haram Musaharat will be proved. It means that the wife of the son will become unlawful forever to him i.e. the son. The woman whom the father has copulated legally or had sexual intercourse illegally in both ways, the son can't keep physical relationship with her. The Holy Quran says: "Marry not the woman whom your father copulated" The Fatwa has dissolved the marriage and passed a decree for perpetual injunction

restraining the husband and wife living together, though none of them ever approached the Dar-ul-Uloom.²

Another similar Fatwa was issued by the Ulema, when a 19-year old Muslim woman, was raped by her father-in-law. According to the Fatwa, the father-in-law could have been blamed only if there had been a witness to the case or her husband has endorsed her allegations. The victim was asked to divorce her husband and accept the rapist as her real husband.

The Petitioner in case has alleged that these obnoxious Fatwas were supported by the AIMPLB. It is the petitioner's allegation that the AIMPLB is aiming to establish a parallel judicial system in India. According to the petitioner, adjudication of disputes is primarily the function of the sovereign and that cannot be abdicated or parted with. The petitioner's side of the arguments also include that claims that the activities pursued by the AIMPLB, and other similar organizations like the Shariat Courts in India are absolutely unconstitutional, illegal and illegitimate. The petitioner seeks direction to the Union of India and the States concerned to take effective steps to disband and diffuse all the Shariat courts and the Dar-ul-Qazas. The petitioner also prayed that care must be taken to ensure that the informal courts do not adjudicate any matrimonial disputes under the Shariat law.³

Union of India in its defense has clearly mentioned that Fatwas are not legally binding and they are merely advisory in nature. It further states that the Dar-ul-Qaza does not administer criminal justice and it functions as an arbitrator, conciliator, negotiator or mediator in matters concerning Family Law. The Union of India says that the Dar-ul-Qaza is very similar to an alternative dispute resolution mechanism and thus cannot be perceived as a parallel judicial system. The Dar-ul-Uloom admits issuing the Fatwa in Imrana's case as per Fiqah-e-Hanafi, which is based on the Quran and Hadith but asserts that it has no agency or powers to enforce its Fatwas. It is within the discretion of the persons or parties who obtain Fatwas to abide by it or not. However, the Dar-ul-Uloom claims that God fearing Muslims being answerable to the Almighty, obey the Fatwas, while others may defy them.⁴

² Vishwa Lochan Madan v. Union of India & Ors, AIR 2014 SC 2957.

³ *id.*

⁴ *id.*

The court left the system undisturbed but has made keen observations:

“A fatwas is an opinion, only an expert is expected to give. It is not a decree, nor binding on the court or the State or the individual. It is not sanctioned in our constitutional scheme...We would like to advise the Dar-ul-Qaza or for that matter anybody not to give any response or issue fatwas concerning an individual, unless asked for by the person involved or the person having direct interest in the matter.”⁵

VIOLATION OF HUMAN RIGHTS IN RELATION TO THE ABOVE CASE

The Supreme Court has ruled that Fatwas touching upon the rights of any individual on the insistence of rank stranger is reason enough to cause irreparable damage and therefore would be absolutely uncalled for. It further states that such Fatwas will be in violation of basic Human Rights.

The Fatwa issued in Imrana's case stems out of misinterpretation of the Shariat. The Holy Quran says: “Marry not the woman whom your father copulated”. The Fatwa has dissolved the marriage and passed a decree for perpetual injunction restraining the husband and wife living together, though none of them ever approached the Dar-ul-Uloom. The area of concern here is not the issuance of Fatwas but the ignorance behind these. Ideally, the Quran prohibits a man from marrying his own mother. But certain clergymen misinterpret the text and use it to subdue the innocent, thus violating human rights. The Fatwa violates Imrana's basic Human Rights as well as the fundamental rights guaranteed by the Constitution of India. The researcher finds the doctrine issued by the Dar-ul-Uloom is in violation of Articles 14, 19 and 21.

Article 14 guarantees equality before law. “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” Article 19 guarantees the protection of certain rights regarding freedom of speech. Article 21 states “no person shall be deprived of his life or liberty except according to procedure established by law”

⁵ Tahir Mahmood, *Muslim Law in India and Abroad*_22 (2nd ed. 2016).

The Universal Declaration of Human Rights (UDHR) outlines the basic rights every human is entitled to. The fatwa in this case violates Articles 1, 2, 3, 6, 7, 16 and 25 of the UDHR.

Article 1 states that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2 states that everyone is entitled to all rights and freedoms without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 states that everyone has the right to life, liberty and security of person. Article 6 states that everyone has the right to recognition everywhere as a person before the law. Article 7 states that all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination. Article 16 states that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Article 25 states that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.⁶

Keeping in mind the above legal provisions, it can hereby be determined that Fatwas issued by the misinterpretation of the Holy Quran and the Hadith violates the basic concepts of Human Rights.

⁶ Universal Declaration of Human Rights (1948).

FATWAS IN ISLAMIC COUNTRIES

Islamic Republic of Pakistan has been divided into different sects sans masalik. Each of them has its own madaris that are producing muftis in a greater number who have authority of issuing fatwa in the light of the traditional rulings of their respective Ammah.⁷ Though the legislations in Pakistan falls under the purview of the Parliament, the Council of Islamic Ideology is established to recognize the Shariah validity of law. But the recommendations of this council is not binding. The High Court, Supreme Court and the Federal Shariah Court interpret the Shariah. The many muftis from a number of religious sects are tasked with the duty of issuing Fatwas. These madaris and muftis do not in fact possess expertise in Arabic language nor do they possess the techniques upon which their ancestors issued fatwas.⁸ Such unlimited and unrestricted authority of issuing fatwa in Pakistan has created so many problems for Pakistani people and especially women. For instance a Fatwa was issued in April 2012 in Kohistan against the women of NGOs that they would be forcefully married to the local men if they dared to enter there. Likewise, a fatwa was issued on May 11, 2012, in a mosque in Baluchistan that any women using cell phone will have acid thrown on her face.⁹

In Malaysia, fatwas are an integral part of Islamic Law. Islamic matters and their control thereof vests with the religious leaders (sultans) and the Islamic institutions. The Federal government however has established a co-ordination between these religious leaders and the implementing of the laws in this sphere through the Malaysia Department of Islamic Development “Jabatan Kemajuan Islam Malaysia” (JAKIM). Its main goal is to establish an institution for the management and coordination of fatwas in the country. Broadly, JAKIM serves different roles in Malaysia; to coordinate the Islamic administration in the country; and to adjust and develop the Islamic education in the country. It also serves as an advisory to the Federal Government on Islamic matters in general and fatwas in particular. The JAKIM also ensures that all the approved fatwa are effectively transmitted and well-disseminated to the public at large.¹⁰

⁷ Razi N Fatwa as a Non-State Legal System: A critical Analysis from the Perspective of Pakistani Society, *Journal of Islamic Studies and Culture*, 2014, 7-18.

⁸ *id.*

⁹ Muhammad IM, *Fatwa in Islamic Law, Institutional Comparison of Fatwa in Malaysia and Pakistan : The Relevance of Malaysian Fatwa Model for Legal System of Pakistan*, *Arts and Social Science Journal*.

¹⁰ *id.*

CONCLUSION

The main purpose of this paper is to highlight the violations of rights in the name of religion and law by examining whether these Fatwas follow the prescriptions mentioned in the Quran. Quran has given absolute rights to women in the patriarchal society and uplifted not only their social status but equipped them with the several important rights, for example, right to education, right to work, right to choose her partner in marriage, right to divorce etc. But in spite of this, Muslim women more often does not get these rights in practice and people generalize that it is due to the religion. However, it is vice versa. Quran has given absolute rights to women but society usually under the control of men interest deprived women of all the significant rights enshrined in the holy Quran. Ulema i.e. Muslim clergy played very important role in this respect in the absence of priesthood in Islam, and also lack of knowledge of Quran and Islamic law amongst the Muslims. They denied Quranic rights to women and enforced duties on them in the reverse manner of Quran. They often issues Fatwas on women to take back their rights which Quran granted them. One of the strong reasons behind these misogynist Fatwas are the hegemony of male clergy over issuing Fatwa and absence of female Muftis. Though Quran has set no barriers and even Islamic history witnesses women Muftis but the existing shortcomings demands dynamic change in the current set up.