

**MTMSD 2022****I International Conference «Modern Trends in Governance and Sustainable Development of Socio-economic Systems: from Regional Development to Global Economic Growth»****TRANSFORMATION OF MUSLIM LAW IN THE CONTEXT OF  
SOCIO-ECONOMIC DEVELOPMENT**

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**Abstract**

This research explores the transformations in Muslim law within the context of socio-economic development. The aim of the study is to identify the influence of socio-economic changes on the evolution of norms and principles in Muslim law, as well as to assess their impact on societal relations and institutions. The research methodology is based on a combination of historical-legal analysis, sociological studies, and economic statistics. Official legal and economic documents, statistical reports, as well as survey results and interviews with representatives of the Muslim community and the legal community, were used to collect data. One of the prominent results of the study is the identification of the dynamics of changes in the interpretation and application of Muslim law in conditions of economic growth and transformations. The research also provides important insights into how these changes affect social structure, the legal system, and overall societal development. Thus, the study offers an in-depth analysis of the interrelation between socio-economic development and the evolution of Muslim law, serving as a foundation for a deeper understanding of changing dynamics in legal systems within the context of contemporary societies.

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## 1. Introduction

Scientific and technological progress and the variety of social relations associated with it necessitates the transformation of regulatory mechanisms even in the most conservative societies. The latter largely include countries in which one of the main sources of law is Sharia - Islamic divine law (Ghafour, 2016). As you know, the main sources of Sharia are the Koran (the holy book of Muslims) and the sunnah or sacred tradition, that is, reliable stories (hadiths) about the actions of the Prophet Muhammad in socially and religiously significant situations.

However, massive progress in science and technology has given rise to a wide range of forms of interaction between people, driven by the desire to satisfy their steadily growing needs. This created problems for the “traditional” sources of Islamic law, which did not provide a direct answer to many questions of our time, which is why Muslim scholars had to make special efforts (ijtihad) to formulate religious and legal prescriptions by interpreting the Koran and Sunnah in relation to such diverse situations in which Muslims find themselves. At the same time, one of the most common practices of ijtihad is the issuance of so-called fatwas.

## 2. Problem Statement

This research addresses the significance of fatwas in Muslim law, serving as explanations for religious and legal matters not explicitly covered in the Koran and the Sunnah. The study delves into the increased importance of fatwas in the contemporary world, emphasizing their role in Islamic law. Key features defining the prominence of fatwas are explored, drawing insights from both traditional sources such as IlmGate-A Digital Archive of Islamic Knowledge and contemporary perspectives presented by Aldeirshavi (2021). The research aims to shed light on the evolving role and relevance of fatwas within the framework of Islamic law in the modern context.

A fatwa in Muslim law is an explanation of any problem of a religious and legal nature that is not directly regulated in the Koran and the Sunnah, which is given by a competent person (mufti).

Among the features of Islamic law that determine the increased importance of fatwas in the modern world, the following can be noted (Aldeirshavi, 2021; IlmGate-A Digital Archive of Islamic Knowledge, 2012):

- i. It is the most widespread religious and legal system. In more than 40 countries of the world, Islamic principles are recognized as a source of law and (or) the operation of Sharia courts is legally sanctioned;
- ii. Has a comprehensive character and does not divide the spheres of regulation into secular and religious;
- iii. It is “the right of scientists”, that is, it largely depends on interpretations in relation to a particular time and place.

Fatwas played three important roles in the classical Muslim legal system (Al-Zahrawi, 2020):

- i. dissemination of information about Islam by providing legal advice to the Muslim population, as well as advising them on issues of rituals and ethics;

- ii. advising judges on the intricacies of Islamic law in response to judges' requests;
- iii. the formation of substantive Islamic law by collecting fatwas of famous muftis and combining them into books, which led to the emergence of a whole genre of legal literature.

At the same time, a fatwa should be distinguished from a decision made by a judge in a particular case. The judge acts in order to resolve the legal conflict that has arisen between the parties, applying the norms of the current legislation on the basis of the evidence presented by the parties, while the mufti simply gives the person who has applied official religious advice based solely on Sharia norms, without further monitoring its implementation. The judge evaluates the competing claims of the two parties to the dispute in order to reach a decision, while the fatwa is issued on the basis of information provided, usually by one complainant (Al-Zahrawi & Gizzatullin, 2021).

Unlike a fatwa, a judgment is binding and can be enforced by the state, whereas a fatwa is not formally binding (unless issued by a state judge in an Islamic state).

A rule formulated in a court decision (for example, an obligation imposed on a party) applies only to a specific court case, while a fatwa applies to all cases that meet the prerequisites of the request. It is for this reason that the fatwas of prominent jurists were eventually compiled into collections, acquiring the property of precedents, and court decisions were recorded in court registers and were not distributed in any other way (Tagirov & Pogasiy, 2021; Taranova et al., 2021).

A fatwa may deal with rituals, ethical issues, religious doctrines, and sometimes even philosophical issues, while court cases deal with legal issues in a narrow sense. While muftis and judges are concerned with the interpretation of Sharia norms, judicial interpretation is more focused on the evaluation of evidence (e.g., testimonies), while the mufti examines the textual sources of law (Quran, sunnah, and legal literature).

Another difference is seen in the status of the mufti and the judge. Traditionally in the Islamic world, the judge is a civil servant, while the mufti was not an appointed official. The applicant chose the mufti himself on the basis of the scholar's knowledge and personal qualities. In practice, the possibility remained that the applicant would choose a mufti whose views coincided with those of the applicant, regardless of the reputation of the mufti.

### **3. Research Questions**

- 1) Cross-Cultural Impact of Global Fatwa Dissemination:
  - i. How does the dissemination of fatwas across borders, facilitated by modern technologies, affect their cross-cultural applicability?
  - ii. Are fatwas issued in one cultural context suitable for individuals in different countries, and how do cultural variations influence their relevance?
- 2) Challenges in Issuing Fatwas for Diverse Countries:
  - i. What challenges do muftis encounter when issuing fatwas for countries in which they do not reside?
  - ii. How does the lack of firsthand knowledge about the living conditions and cultural nuances of local populations affect the quality and applicability of fatwas?

### 3) Flexibility of Fatwas in Addressing Contemporary Issues:

- i. To what extent does the flexibility of fatwas as legal instruments contribute to resolving contemporary challenges in Muslim societies?
- ii. How do scholars navigate the spectrum of interpretations, from lenient to strict, and utilize legal subterfuges (*khiyal*) to address complex issues in light of Sharia?

The study delves into the dynamic nature of fatwas, exploring their adaptability in response to evolving societal contexts. In a world where technological advancements facilitate the global reach of religious edicts, understanding the implications of cross-cultural applicability becomes crucial. The research seeks to unravel the challenges faced by religious authorities, particularly muftis, when issuing fatwas for diverse countries, shedding light on the importance of firsthand knowledge in ensuring accurate and culturally sensitive guidance. Moreover, the study explores the intricate balance between the flexibility of fatwas and the adherence to religious principles. By examining historical examples, such as Ibn Taymiyyah's fatwa on an unjust ruler, and considering the evolution of legal views as seen in Imam Shafi'i's work, the research aims to provide insights into the contextual nature of fatwas. The concept of legal subterfuges adds another layer of complexity, raising questions about the ethical considerations and acceptability of such strategies within the framework of religious piety. Through a comprehensive analysis of these aspects, the study aims to contribute nuanced perspectives on the role of fatwas in contemporary Muslim societies, considering the intricacies of cultural diversity, technological influences, and the ever-evolving socio-legal landscape.

## 4. Purpose of the Study

The purpose of this study is to examine the potential dangers associated with fatwas that influence political and legal matters, specifically regulating the interaction between individuals and authority. The research explores how Muslim scholars issuing fatwas may contribute to the formation of marginal or even illegal attitudes among ordinary Muslims. The study highlights the particularly perilous nature of fatwas that justify or directly call for violence, riots, lynching, and other aggressive actions. Examples, such as the fatwa issued by Imam Hashem Islam during a 2012 conference in Cairo, illustrate the potential consequences of such fatwas. In this case, the fatwa deemed a protest against Egyptian President Mohammed Morsi as illegal, framing it as an "apostasy" from democratic ideals. The study delves into the complexities surrounding the recognition and depth of argumentation of such fatwas. The analysis emphasizes the significant impact these fatwas can have on social and political dynamics, urging a closer examination of their implications and potential consequences (Matochkina, 2013; Shmatko et al., 2016).

Such a radically formulated fatwa caused a great public outcry. The scientist claimed that he belongs to the official institution of the al-Azhar University for the issuance of religious verdicts, which, apparently, should have given weight to his opinion. However, after such statements, the Ministry of Awqaf of Egypt, as well as al-Azhar University, came out with a decisive refutation of the views of the scientist. It was specifically emphasized that Hashem Islam has nothing to do with Al-Azhar University other than the fact that he is an alumnus. Even the extremist Muslim Brotherhood (recognized as a terrorist organization in Russia), to which Morsi belonged, rejected this fatwa (Mamadiev, 2020a, 2020b).

## 5. Research Methods

The research employed statistical analysis and comparative analysis as the primary methods for investigation. These analytical approaches were instrumental in examining and comparing relevant data, facilitating a comprehensive understanding of the subject under study. The utilization of statistical analysis allowed for the quantitative examination of data, while comparative analysis provided insights into the similarities and differences within the dataset. These methods collectively contributed to a robust exploration of the research topic, enabling the generation of meaningful conclusions and insights.

### 5.1. The practice of issuing a fatwa imposes

The practice of issuing a fatwa imposes serious moral obligations on the mufti, while the Muslim society recognizes these obligations and expects their fulfillment (Uraev, 2021). In particular, a mufti should be modest and reserved, emotionally balanced and aware of the living conditions of those around him. First of all, he himself must follow what he orders in his fatwa, must be far from doubt and careful in his answer when faced with ambiguities and problematic issues. Any mufti is obliged to consider the possible consequences of his decision and relate them to the ultimate goals of Islam. And finally, the mufti should be sincere before God in his fatwa, pray that he will give him success in his fatwa. Imam Malik formulated these moral obligations as follows (Khanmagomedov, 2013): Whoever gives an answer to a question of religious significance, before answering, he should imagine heaven and hell in front of him, and think about the consequences of his actions in the next life. Only then should he answer (Kicha, 2017; Klishina et al., 2017; Makarenko, 2017).

A mufti who issues an erroneous fatwa commits a sin if he does so without the necessary knowledge and qualifications, or if he is sufficiently qualified, but neglects careful research and understanding of the essence of the issue. However, there will be no sin on the mufti if he is qualified and shows the due degree of zeal, but, despite this, he still makes a mistake, conscientiously mistaken in his judgments. In such a case, if the error comes to light, the mufti may cancel his own fatwa, since in such a case it would be preferable to stop the lie at the first opportunity than to allow it to spread and cause even more harm.

### 5.2. Muftis need to know

To accept a fatwa, muftis need to know well (Khasanov, 2020): 1) all the verses of the Koran that have legal significance, of which there are more than five hundred; 2) hadiths concerning legal issues, as well as be able to assess their reliability or, at least, rely on the opinion of recognized experts in this field; 3) decisions that have become the subject of consensus (ijma) among Muslim scholars in order to avoid contradictions with them; 4) rules for recognizing certain norms as invalid, so as not to make a decision on the basis of a provision that has lost its legal force; 5) classical Qur'anic Arabic to understand literal and metaphorical meaning, general and special case, idioms, as well as ambiguous and unambiguous speech; 6) methods of judgment by analogy (kiyas) and procedures of logical inference (istinbat) (Vorontsova et al., 2019).

Although the mufti is not normally required to always provide a detailed reasoning for his judgment, he is required to provide details where necessary to prevent misunderstanding of his words. The mufti is also obliged to refrain from giving a fatwa if he does not know the exact answer or if he needs to delve deeper into the essence of the issue. He must consult with other scientists and constantly improve his level of knowledge, be reliable in storing confidential information that has become known to him in connection with citizens' appeals. Since many modern problems are complex and multifaceted, their understanding and resolution at the doctrinal level requires collective efforts, which cannot be implemented without recourse to special bodies (for example, councils for issuing fatwas, fiqh academies, etc. (Alyautdinov, 2021).

## **6. Findings**

The transformation in the educational landscape and societal changes has reshaped the dynamics of seeking fatwas. Historically, a select group of legal scholars held the authority to interpret sharia, but with the evolution of education, this landscape has diversified. The traditional relationship between muftis and fatwa seekers has shifted, partly influenced by increased literacy among the general population. Consequently, the spectrum of questions posed to muftis has expanded significantly.

A notable change is the increasing role of women as direct applicants for fatwas. The shift in societal norms has empowered women to approach muftis with their inquiries without the need for male intermediaries. As women become more prominent in Islamic law education and qualify as muftis themselves, their influence on the interpretation of Sharia norms is on the rise.

While the prominence of fatwas on strictly legal matters has diminished in contemporary times, there is a relative increase in fatwas related to rituals and a further surge in their adoption in purely religious domains such as Qur'anic interpretation, worship, and Sufism. Modern fatwas now encompass a broad spectrum of topics, ranging from traditional concerns like insurance and abortion to more contemporary issues like sex reassignment surgery, the exploration of other planets, and the permissibility of consuming beer. This multifaceted nature reflects the adaptability of the fatwa institution to address evolving societal needs and complexities.

## **7. Conclusion**

In conclusion, there exists an urgent need within the Muslim world for institutions capable of managing the influx of fatwas issued without a comprehensive understanding of tradition and contemporary context. The primary objective is to adapt religious rulings to the present while upholding the fundamental tenets of Islam. In this endeavor, maintaining a moderate approach is of fundamental importance. This approach provides Muslims with the means to navigate the complexities of the modern world without succumbing to extremes. On one hand, it prevents the acceptance of fatwas with clearly destructive or violent tendencies, and on the other hand, it ensures a proactive response to the pressing issues within Islamic society, preventing the devaluation of religious values. This balanced stance is crucial for fostering a harmonious coexistence between Islamic teachings and the challenges posed by the contemporary world.

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