

The Essence, Requirements and Accountability of Issuing Fatwas

In the Name of Allah, the Most Gracious, the Most Merciful

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Abstract: This article provides a comprehensive overview of the meanings, stages of development, and classifications of fatwas. It delineates the distinctions between a fatwa and a judicial ruling issued by a qadi, and details the qualifications necessary for a mufti. Additionally, it includes insights from the Companions and Tabi'un on the responsibilities and ethical considerations involved in issuing a fatwa.

Keywords: fatwa, mufti, ifta, istiftah, madhab, mujtahid, muqallid, prophet, Companion, Tabi'un, ayah, hadith, halal, haram, mustahabb, makruh.

In Arabic, the term «fatwa» denotes a «response to an inquiry» [6:20], encompassing both Sharia-related queries and other subjects. This term is utilized in this context across various verses in the Holy Quran.

And (one day) the King said, «I dreamt of seven fat cows eaten up by seven skinny ones; and seven green ears of grain and (seven) others dry. O chiefs! Tell me the meaning of my dream if you can interpret dreams». (Surah Yusuf, Ayah 43);

(He said), «**Joseph, O man of truth, explain to us about seven fat cows eaten by seven (that were) lean, and seven green spikes (of grain) and others (that were) dry – that I may return to the people; perhaps they will know (about you) ».** (Surah Yusuf, Ayah 46);

(The Queen) said, «**O eminent ones, advise me in my affair. I would not decide a matter until you witness (for) me».** (Surah An-Naml, Ayah 32).

In these verses, the word «fatwa» is used to mean an answer to an inquiry not related to Sharia rulings [11:8]. The Prophet (*peace be upon him*) also used the word «fatwa» in many hadiths in this sense. For example, the Messenger of Allah (*blessings and peace of Allah be upon him*) said: «The most reckless of you in issuing fatwas is verging to enter Hell-fire». (Hadith narrated by Imam Darimi).

In contemporary usage, scholars define «fatwa» as a response to a religious inquiry. The term «religious» in this context broadly covers all aspects of faith, as a mufti addresses not only jurisprudential questions but also issues related to Islamic Sharia, the interpretation of hadiths, and their chains of transmission. Islamic scholars categorize fatwas into three distinct types:

A) Tashri'iy fatwa - this is an answer to a question or an explanation of a Sharia ruling during the time of the Prophet (*peace be upon him*). Such a fatwa, based on the verses of the Quran, comes from Allah, while those based on hadiths come from the Prophet (*peace be upon him*). Examples of this can be found in the following verses:

And they request from you, [O Muhammad], a (legal) ruling concerning women. (Surah An-Nisa, Ayah 127);

They ask you for a ruling, (O Prophet!). Say, «Allah gives you a ruling regarding those who die without children or parents». (Surah An-Nisa, Ayah 176);

They ask you (O Prophet!) about the phases of the moon. Say, «They are a means for people to determine time and pilgrimage». (Surah Al-Baqarah, Ayah 189);

They ask you (O Prophet!) regarding the spoils of war. Say, «Their distribution is decided by Allah and His Messenger. So be mindful of Allah, settle your affairs, and obey Allah and His Messenger if you are (true) believers». (Surah Al-Anfal, Ayah 1);

“Indeed, Allah has heard the argument of the woman who pleaded with you (O Prophet!) concerning her husband, and appealed to Allah. Allah has heard your exchange. Surely Allah is All-Hearing, All-Seeing» (Surah Al-Mujadila, Ayah 1). This verse was revealed when the female Companion Khawla bint Tha’labah faced the situation where her husband declared zihar (inchoate divorce).

An example of a formal fatwa based on hadiths is the following narration: Ibn Abbas (*may Allah be pleased with him*) reported: «A woman came to the Prophet (peace be upon him) and asked: ‘My mother vowed to perform Hajj but died before fulfilling it. Can I perform Hajj on her behalf?’ The Prophet (*peace be upon him*) replied: «Yes, perform Hajj on behalf of your mother»»

A woman from the tribe of Juhaina came to the Prophet (*may Allah be pleased with him*) and said, «My mother had vowed to perform Hajj but she died before performing it. May I perform Hajj on my mother’s behalf? » The Prophet (*peace be upon him*) replied, «Perform Hajj on her behalf». (*narrated by Imam Bukhari*).

This type of fatwa ceased with the departure of the Prophet (*peace be upon him*) from this world [12:217].

B) Fiqh Fatwa - this type of fatwa is issued by a jurist, an expert in Islamic law, and is not necessarily in response to a specific event but rather aims to clarify jurisprudential matters or address general questions not tied to a particular individual situation. These fatwas are provided by mujtahids, who compile and codify jurisprudential issues into scholarly works. Essentially, mujtahids formulate rulings based on Sharia evidence by analyzing hypothetical, general, or specific legal questions and document their findings in books or treatises.

C) Specific (Juz’iy) Fatwa - this type of fatwa is issued in response to a particular query, drawing on general jurisprudential principles to provide a specific ruling. For instance, addressing the question, «How should the inheritance be distributed among the heirs of a deceased who left behind parents, a wife, one son, and one daughter? » This category of fatwa is widely utilized and commonly issued in practice [11:7-9].

A person who has not studied fiqh under experienced teachers is not permitted to issue fatwas, even if they have studied fiqh books. Moreover, if someone has studied fiqh but has not acquired the skills to distinguish between sources, rules, and reasons for rulings, and cannot differentiate between authoritative books and others, they are also not allowed to issue fatwas [4:253].

The scholars of Islamic jurisprudence (fiqh) in their books have outlined the following conditions for issuing a fatwa:

1. Maturity;
2. Prudence;
3. Knowledge;
4. Experience;
5. Justice;
6. Trust from other scholars.

Prudence and maturity are essential qualities for sound decision-making. In Islamic jurisprudence, it is not mandatory for a mufti to be a man or a free person. Consequently, even a woman or a slave, provided they possess these qualities, is also capable of issuing fatwas.

Ibn Salah (*may Allah have mercy on him*) stated: «Just as a hadith narrator is not required to be a man or a free person, the same applies to a mufti. Additionally, like a hadith narrator, a mufti should be free from influences such as personal relationships, animosity, self-interest, or the desire to avoid harm. This is because a mufti issues fatwas that are not tied to individual cases and are not obligatory. In contrast, the ruling of a qadi (judge) is compulsory and binding».

Knowledge is an essential prerequisite for a mufti. This is evidenced by the verse in Surah Al-A'raf 33: «Say, 'My Lord has only forbidden open and secret indecencies, sinfulness, unjust aggression, associating (others) with Allah (in worship) - a practice He has never authorized—and attributing to Allah what you do not know'».

Allah's Messenger (*may peace be upon him*) as saying: «Verily, Allah does not take away knowledge by snatching it from the people but He takes away knowledge by taking away the scholars, so that when He leaves no learned person, people turn to ignorant as their, leaders; then they are asked to deliver religious verdicts and they deliver them without knowledge, they go astray, and lead others astray».

In another hadith, the Messenger of Allah (*peace and blessings be upon him*), said, «Whoever is given an opinion not based on knowledge, his sin falls upon the one who gave him the opinion».

The necessity of possessing knowledge for issuing fatwas is both clear and self-evident. However, scholars of Usul al-Fiqh hold differing views on the extent of knowledge required for one to be qualified as a mufti. Early scholars and certain jurists have asserted that a mufti must be a mujtahid, one who is capable of independent juristic reasoning. While a muqallid (a follower of a particular madhhab) may adhere to fatwas for personal guidance, they are not authorized to issue fatwas for others.

Hafiz Ibn al-Salah, referencing Shafi'i imams from Mawarannahr, such as Imam al-Halimi, Qadi Abul-Hasan Ruyoni, and others, asserts that a muqallid is not permitted to issue fatwas based solely on imitation of others.

Given the scarcity or absence of mujtahids and the prevailing needs of the time, scholars of Islamic law have allowed individuals who are not mujtahids to issue fatwas based on the rulings (takhrij) derived from the conclusions of madhhab mujtahids [1:315–318].

Sheikh Abu Muhammad al-Juwayni, in his commentary on Imam Shafi'i's treatise, quoted his teacher Abu Bakr al-Kaffal al-Marwazi, stating that an individual who possesses a sound understanding of the methodology and arguments of a madhhab's founder is allowed to issue fatwas, even if they do not fully comprehend all its complex and intricate aspects.

Sheikh Abu Muhammad, however, presents a differing perspective: «An individual who is not well-versed in the details and nuances of a particular madhhab is not authorized to issue fatwas based on that madhhab. Similarly, one who merely compiles the fatwas of a mujtahid without being a scholar in their own right is not permitted to issue fatwas. Nonetheless, if such an individual has thoroughly studied these fatwas, issuing them is deemed permissible».

Ibn Daqiq al-Eid (*may Allah have mercy on him*) stated: «Linking the issuance of fatwas solely to the presence of a mujtahid would lead to significant difficulties and potentially result in individuals acting based on personal desires or engaging in self-governance. However, if a righteous person who comprehends the views of previous imams conveys their rulings to a muqallid, this is deemed sufficient for the muqallid. For the muqallid, such guidance is considered to represent the law of Allah. This approach to fatwa is widely accepted and recognized today».

This requisite level of knowledge is underscored by the practice of the Companions' wives, who relied on their husbands to relay the teachings of the Messenger of Allah (*peace be upon him*) on issues such

as menstruation and other matters. Similarly, Ali (*may Allah be pleased with him*) demonstrated this approach by sending Miqdad ibn al-Aswad (*may Allah be pleased with him*) to elucidate the issue of pre-seminal fluid (madhi).

In the present day, this principle remains applicable, as while it was once possible to consult the Prophet (*peace be upon him*) directly, today a muqallid cannot access the former imams directly. Contemporary scholars concur that even if the conditions for ijтиhad are not fully met, the rulings of judges remain authoritative. When it is stated that a muqallid may issue fatwas, it means that they are not authorized to render independent rulings but are permitted only to convey the fatwas of their imam [11:178].

Ibn Salah (*may Allah have mercy on him*) explains: «The assertion that a muqallid cannot issue fatwas means that the muqallid does not provide their own judgment but rather relays the fatwa of their respective imam. Consequently, while muqallids who perform the role of issuing fatwas are referred to as muftis, they are not true muftis in the sense of independent juristic reasoning. Instead, they are fulfilling the functions of muftis by conveying the established rulings of their imam».

The method employed by a muqallid in issuing fatwas involves stating: «The Hanafi madhab holds this position on the matter», or «This is the view of the madhab», and so forth. Consequently, if a mufti is recognized for providing fatwas in accordance with the Hanafi or Shafi'i madhab, it is not necessary to repeatedly specify the madhab each time when responding to inquiries.

According to Ibn Amir Khodja, scholars of Usul al-Fiqh are in consensus that a mufti should ideally be a mujtahid. Nevertheless, even if an individual is not a mujtahid but has memorized the rulings of others, they cannot be regarded as a true mufti. When addressing inquiries, they should relay the rulings of mujtahids such as Abu Hanifa (*may Allah have mercy on him*) in a manner akin to narration. In contemporary practice, it is observed that most responses to questions are not actual fatwas but rather the transmission of the established views of mujtahids.

The imitation of a muqallid of a mujtahid can be classified into two types: It must either be supported by a sanad (chain of transmission) directly linking back to the mujtahid on the specific issue, or it should be based on well-established sources, such as the writings of Imam Muhammad and other recognized mujtahids, which are considered authoritative and widely accepted. Imam Razi has similarly articulated these views [2:312].

Imam Abu Hanifa and other mujtahids stated: «A fatwa should not be issued based on our statements until the source of our derivation is known». Ibn Abidin (*may Allah have mercy on him*) offers two interpretations of this statement in his commentary. The first interpretation is that it pertains to an absolute mujtahid, and imitation of such a mujtahid is permissible only if the evidence employed by the imam is clearly identified.

Secondly, this principle also applies to a mujtahid who conducts ijтиhad within the framework of a specific madhab and is cautioned against formulating new interpretations that exceed the scope of their imam's teachings. It is permissible for them to do so only if they have a comprehensive understanding of the imam's evidence on the issue. This is because new interpretations cannot be made without grasping the underlying evidence and rationale. There is no conflict between these two interpretations, and thus, both may represent the intended objectives of the mujtahids.

In practice, only a mujtahid is qualified to issue fatwas, whether they are an absolute mujtahid or one working within a specific madhab. An individual who is not a mujtahid within the madhab cannot be considered a genuine mufti. According to scholars such as Ibn Salah, Ibn Khumam, and others, such imitators (muqallids) are merely responsible for conveying the fatwas of the imam rather than issuing their own.

Several key distinctions exist between a fatwa and a qadi's judicial decision:

A) A fatwa solely provides religious rulings regarding permissibility (ja'iz), recommended actions (mustahabb), obligatory actions (wajib), undesirable actions (makruh), or prohibition (haram). There is

no requirement to act upon a fatwa based on emotional responses or pressures. In contrast, a qadi's ruling is binding and must be adhered to, even if it involves enforcement.

B) A fatwa is issued in response to a specific inquiry, with the mufti providing a religious ruling based on the assumption that the question accurately reflects the reality of the situation. It is not the responsibility of the mufti to verify the actual circumstances of the query. Consequently, the mufti states: «The ruling concerning the presented question is...». The question itself does not need to align with the actual state of affairs.

C) A fatwa addresses matters related to obligations, prohibitions, permissibility, recommendations, undesirability, correctness, or incorrectness. In contrast, a qadi's judicial decision does not encompass issues of recommendation or undesirability, as recommendations prompt action and undesirability suggest abstention, without creating any obligation for compliance. However, a qadi's ruling imposes a binding obligation on individuals to adhere to the judge's decision.

D) A fatwa encompasses not only issues of fiqh but also matters related to aqidah (creed) and worship. In contrast, a qadi's judicial decisions typically do not address aqidah or worship, except in specific cases where these matters intersect with legal adjudication depending on the circumstances [9:318].

Historical scholars have underscored that issuing fatwas carries significant risk and responsibility, yet it is also viewed as a high virtue. For instance, Imam Nawawi (*may Allah have mercy on him*) remarked: «Understand that the risk associated with issuing a fatwa is considerable, its significance is profound, and its virtue is immeasurable. The mufti is regarded as the inheritor of the Prophet (*peace be upon him*) and bears the responsibility of fulfilling a duty imposed on the Islamic ummah. Hence, scholars assert that «A mufti is one whom Allah has endowed with the authority to issue religious rulings».

In this context, a mufti must be acutely aware of the risks and responsibilities inherent in their role. They should recognize that issuing a fatwa is not a matter of personal opinion or a decision influenced by reason or emotions. Rather, a fatwa represents the elucidation of fiqh laws and principles of worship essential for personal and societal guidance. Allah has established these religious laws and acts of worship to ensure the everlasting well-being of individuals in both this world and the Hereafter.

When issuing a fatwa, the mufti must understand that they are conveying a religious directive from Allah and will be held accountable for their fatwa on the Day of Judgment. The hadith, «**Whoever presumes to issue a fatwa, also presumes towards Hell**», underscores the profound responsibility associated with the act of issuing a fatwa.

Uqba ibn Muslim relates: «I spent thirty-four months in the company of Abdullah ibn Umar (*may Allah be pleased with him*). Frequently, when confronted with a question, he would respond, 'I do not know.' He would then add, 'Do you understand what they seek from us? They want to use us as a bridge to Hell for their own benefit.'»

The Companions were cautious about issuing fatwas. Even when they did provide a fatwa, it was typically concerning issues that had already manifested in reality. They trusted that Allah would grant the correct response to the fatwa-giver when the situation had been concretized. When asked for a fatwa, they often preferred that one of their fellow Companions provide the answer.

Barra ibn Azib (*may Allah be pleased with him*) recounts: «I observed three hundred Companions who participated in the Battle of Badr, and each of them preferred that their peers address the question». Imam Shafi'i (*may Allah have mercy on him*) remarked: «I have not encountered anyone more proficient in the realm of fatwa than Sufyan ibn Uyaynah. Yet, he frequently refrained from issuing fatwas». [14:282]

Sufyan ibn Uyaynah observed: «The more knowledgeable an individual is, the more they tend to remain silent on matters of fatwa. Conversely, those with less knowledge are generally more inclined to speak when issuing fatwas». Bishr ibn Harith remarked: «One who eagerly seeks to be asked about various matters is not worthy of being questioned».

Ato ibn Saib recounted: «I encountered a group of individuals who would visibly tremble when responding to questions».

The renowned Tabi'in Ibn Sirin (*may Allah have mercy on him*), when questioned about issues of fiqh concerning permissibility and prohibition, would change color and appear as if he were standing on the brink of Heaven and Hell. Similarly, a student of Imam Malik (*may Allah have mercy on him*) noted that when Imam Malik was posed a question, he seemed as though he were standing between Heaven and Hell.

Abdullah ibn Umar (*may Allah be pleased with him*) remarked: «You request fatwas from us as if we will not be held accountable for the answers we provide».

Imam Abu Hanifa (*may Allah have mercy on him*) remarked: «Were it not for my fear of Allah concerning the potential misuse of knowledge, I would abstain from issuing fatwas. When I issue a fatwa, its positive outcomes benefit the individual in question, while any resultant sins are borne by me».

Muhammad ibn Waze stated: «On the Day of Judgment, scholars will be the first to face questioning».

Sufyan ibn Uyaynah (*may Allah have mercy on him*) observed: «A single sin committed by a scholar is forgiven only after seventy sins of an unlearned person have been forgiven».

Umar ibn Khald (*may Allah have mercy on him*) advised Rabi' ibn Abu Abdurrahman: «I notice that many people gather around you seeking answers. When responding to inquiries, consider not only the response you provide but also the implications for your own self».

Abu Said Abdussalam commented: «The most unfortunate individual is one who trades their eternal salvation for fleeting worldly gains. Even more grievous is one who sacrifices their eternal well-being for the temporal benefits of others».

Ibn Salah (*may Allah have mercy on him*) remarked: «Those who readily venture to issue fatwas often possess the least amount of knowledge».

Ibn Abbas and Ibn Mas'ud (*may Allah be pleased with them*) asserted: «A person who issues a fatwa on every query is considered foolish».

Sha'bi, Hasan, and Abu Husayn (*may Allah have mercy on them*) observed: «None of you should be complacent about giving fatwas on fiqh issues. If I were to seek a fatwa from Umar ibn al-Khattab (*may Allah be pleased with him*) on this matter, he would convene the people of Badr to deliberate and provide an answer».

Abdurrahman ibn Abu Layla stated: «I met with one hundred and twenty Companions. When they were asked a question, they would refer it to another Companion, ensuring that the questioner ultimately returned to the original Companion».

Imam Shafi'i (*may Allah have mercy on him*) preferred to remain silent when asked a question. When inquired about the duration of his silence, he responded, «Until I ascertain whether remaining silent or providing an answer is more appropriate».

Amr ibn Abu Zubaida commented: «I have not encountered anyone who frequently used the phrase 'I do not have information on this issue' more than Sha'bi».

Abdurrahman Umari reported: «Imam Malik confided in me that he was frequently asked questions to the extent that it interfered with his eating, drinking, and sleeping».

Abdurrahman ibn Qasim reported: «I heard Imam Malik say, 'I have reflected on a question for over ten years and still have not been able to provide the correct answer'».

During the lifetime of the Prophet (*peace be upon him*), the institution of fatwa and the role of mufti were not formally established, as the Prophet (*peace be upon him*) himself directly addressed all inquiries from the Muslim community.

Among the Companions (*may Allah be pleased with them*), only a small number issued fatwas - approximately 140 individuals, despite their total number exceeding 100,000. Of these Companions, seven were particularly renowned for their expertise in issuing fatwas and their contributions to the field of fiqh.

1. Umar ibn al-Khattab;
2. Abdullah ibn Mas'ud;
3. Ali ibn Abi Talib;
4. Zaid ibn Thabit;
5. Aisha bint Abu Bakr;
6. Abdullah ibn Umar;
7. Abdullah ibn Abbas (may Allah be pleased with him) [3:297]

The primary factor driving the evolution of Islamic jurisprudence (fiqh) was the establishment of madhabs. These madhabs represented a departure from the early legal schools, which primarily developed legal opinions in response to specific questions and societal needs, focusing on contemporary issues of social life.

With the formation of the madhabs, there was a shift towards not only addressing immediate societal demands but also systematically regulating legal relationships. The madhabs aimed to comprehensively address both the current needs and potential issues within social life in a methodical manner.

During this period, prominent scholars - known as mujtahids, emerged, contributing to the development and formalization of these schools of thought. To this day, thirteen distinct madhabs have been identified. They include:

1. Hasan ibn Yasir al-Basri (21-110/642-728);
2. Abu Hanifa Nu'man ibn Thabit (80-150/699-767);
3. Abdurrahman ibn Amr al-Awza'i (88-157/707-774);
4. Sufyan ibn Said al-Thawri (97-161/716-778);
5. Layth ibn Sa'ad (94-175/713-791);
6. Malik ibn Anas al-Asbahi (93-179/712-795);
7. Sufyan ibn Uyayna (107-198/725-814);
8. Muhammad ibn Idris al-Shafi'i (150-204/767-820);
9. Isaac ibn Ibrahim al-Ruhayi al-Khanzali (161-238/778-853);
10. Abu Sawr Ibrahim ibn Khalid al-Kalbi (died in 240/854);
11. Ahmad ibn Hanbal (164-241/780-855);
12. Dawud ibn Ali al-Zahiri (201-270/816-884);
13. Muhammad ibn Jarir al-Tabari (224-310/839-923).

These mujtahids were distinguished for their exceptional contributions to issuing fatwas in their respective eras, with followers frequently seeking their guidance on matters of worship, social interactions, and other issues. Over time, only four madhabs - Hanafi, Maliki, Shafi'i, and Hanbali - endured, while the others gradually faded away.

In summary, the practice of issuing fatwas began during the time of the Prophet (*peace be upon him*) and evolved through the era of the Companions and their successors. This process led to the development and formalization of the fiqh madhabs, which systematized and clarified ambiguous

fatwas into a cohesive framework. Subsequently, detailed compilations of fatwas for each madhab were written and codified into scholarly texts.

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