

# The Issuing of (medical) Fataawa in the UK - Time for a Multi-Disciplinary Approach

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## Abstract

A major challenge faced by contemporary Muslim scholars is to be able to give religious rulings in their proper context to novel issues which have not been encountered by previous generations while maintaining continuity with the Islamic legal heritage, and also to be able to modify legal rulings of old to modern circumstances, considering current scientific knowledge. Sunni Muslims in the world do not have a supreme judicial-religious authority to give legal religious rulings (fataawa, singular fatawa) in such circumstances and individual Muslim jurists are free to issue legal religious rulings. This can be problematic if the individual Muslim jurist has not fully grasped the correct understanding of the reality of the subject matter in question. This article focuses on 3 such examples from the UK to highlight this problem.

## Introduction

In the major Sunni sect of Islam and to a lesser extent in the Shia minority sect, there is no overall figurehead as there is in the Catholic Church. Due to the absence of such an authority, different rulings may be issued for a particular problem by individual Muslim jurists, known as the fuqaha (plural of faqih) or muftis, or by regional organisations. When there is no clear-cut ruling in the religious texts the Muslim jurists use independent legal reasoning (called ijtiḥad) to derive a religious ruling. Individual religious scholars are free to issue legal rulings on all matters affecting the conduct of the followers of their Faith from such diverse issues such as the start and end of the month of fasting, which medical interventions break one's fast, the permissibility of certain medical procedures such as organ donation, the permissibility of cryptocurrency, and so on, in fact, virtually in every aspect of religious and social life.

Many such matters, either because they have not been encountered by previous generations or because of a new set of circumstances, require a great deal of background

specialist knowledge. It is not possible for one individual to acquire adequate knowledge of such matters as it requires a great deal of investigation and often understanding of novel concepts which one may not be accustomed to doing. Without such background knowledge, that is to say, without the correct understanding of the reality of the subject matter in question, any subsequent legal ruling (referred to as fatawa<sup>a</sup>, the plural being fataawa) on the subject is likely to be erroneous and hence, problematic for the followers of the Faith over time as it becomes apparent that the original fatawa was not constructed on a firm footing.

To illustrate this principle we shall examine three cases, although there are a lot more which could be cited, where a lack of deliberation with appropriate experts has led to the issue of legal rulings which has left the UK Muslims either in confusion and doubt or they have simply not taken the ruling on board.

<sup>a</sup> A fatwā is a legal opinion on a particular issue from a Islamic law perspective given by a qualified jurist called mufti or faqih

## Case 1

On the 28th of December 1986, 21 Muslim scholars signed a declaration under the title of “All Agreed Decision of New Moon” to follow Saudi moonsighting announcements so that the dates for start of Ramadan and the two Eids would be based on the Saudi hilal<sup>b</sup> sighting announcements from Riyadh. Although the intention of those involved in signing the declaration was sincere their methodology of not involving any experts in the field of astronomy in the decision-making process has to be questioned. All the signatories of the 1986 agreement were religious scholars, many were just mosque imams. The end result of the 1986 declaration has, unfortunately, split the UK Muslim community into two camps. So at a time of joy and celebration there are feelings of confusion, doubt and embitterment. Had experts been involved during the decision making process they would have informed the religious scholars that the criteria used to construct the Saudi Umm al-Qura<sup>c</sup> calendar is not based on actual moonsighting. For the majority of the months of the year the Umm al-Qura calendar is at least a day ahead of the actual moon being sighted, and this expectation of hoping to see the new moon crescent as predicted by the pre-calculated Umm al-Qura calendar leads to frequent false sighting of the new moon crescent in the Kingdom of Saudi Arabia. This fact of frequent false sightings has been confirmed by a recent article published by Saudi astronomers in The Observatory Journal (T. Alrefay, 2018)<sup>1</sup> which looked at 27 years of moonsighting reports from the Kingdom of Saudi Arabia.

## Case 2

In 1995 the Ministry of Health (UK) approached the Muslim Law (Shariah) Council UK regarding organ transplantation, who subsequently issued a fatawa stating that organ donation is allowed in Islam. 25 years later the Muslim community is still debating the same issue. Why was the fatawa not accepted by the general Muslim community in the UK? The Muslim Law (Shariah) Council UK did summon a group of scholars and other experts to discuss the matter in detail before issuing their fatawa but there were a number of problems with their approach. The group of scholars who got together did pay a visit to Queen Elizabeth Hospital in Birmingham to try to understand what is involved in organ donation and presumably brainstem death as well because they issued a fatawa on the latter issue as well. It is interesting to note that of the 18 names mentioned in the final ruling, besides the head of the group Dr. M.A. Zakai Badawi most were religious scholars of which 6 were imams from UK mosques and 3

were barristers. The area of specialisation of the 3 barristers is not mentioned nor of any of the Islamic scholars. There were no names of any Muslim medical experts in the field of transplantation mentioned nor brainstem death, and it is difficult to conceive what role the barristers would have played in the decision-making process. What was very disappointing was that the fatawa that was put out provided no details of the competing arguments nor any direct reference to other fatawa which had been issued in the Islamic world. Perhaps this was done so that no mention would be made of the fatawa issued by the Islamic Fiqh Academy of India in 1989 and the late and ex-grand mufti of Pakistan, Muhammad Shafii, both of whom had declared cadaveric organ donation to be impermissible from an Islamic perspective. Furthermore, some of the recommendations made by other notable Islamic institutions around the world, in the context of organ donation, may not have been politically correct to put in the final report. These recommendations include, amongst others, statements such as that organ donation should not be given to anyone who is at war (physically or intellectually) with Islam, and that organs should only be donated to righteous individuals.

The 1995 fatawa of the Muslim Law (Shariah) Council UK failed to win over the UK Muslims. When dealing with a mainly educated population such as the UK Muslims, some details as to how the final conclusion was reached was necessary. Furthermore, applying the principle of informed consent as practised in the NHS, competing arguments for and against organ transplantation must be put forward, rather than a simple final decision. It should also be pointed out that organ transplantation is not a single entity and a single fatawa covering the whole range of organ transplantation shows lack of knowledge of the complexity of the subject.

## Case 3

More recently over the past few years, many mosques and Islamic centres have started publishing information on their Ramadan timetables as to which things break the fast and which things do not. Once again it appears no specialist advice has been sought when compiling such lists with reference to modes of administration of medication and medical interventions. As a result, there is conflicting information on these Ramadan timetables, even though all the mosques involved follow the same school of jurisprudence (Hanafi fiqh)<sup>d</sup>. Some of the mosques and Islamic institutions involved are large and well known, but despite that, the information provided on their Ramadan timetables does not stand up to scrutiny. Some state that a

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<sup>b</sup> *hilal is the Arabic word for new moon crescent*

<sup>c</sup> *Umm al-Qura calendar is a pre-calculated calendar used in the Kingdom of Saudi Arabia and some other Muslim countries. A new lunar month starts if on the 29th day of a lunar month the geocentric conjunction (new moon birth) occurs before sunset and the Moon sets after the Sun*

<sup>d</sup> *One of the 4 Sunni Islamic schools of jurisprudence*

fast is broken by application of medication “to the anus”, “for women to apply medicine to the urinary organs”, “to inject anything into the body and using eyedrops”, “inserting medicine into the ears” and “inject medicine, place them on wounds which eventually gets in.” Other mosques state that these same acts do not break the fast. So, who is right? The problem is that those who have written these statements have not taken the time to try to understand the principles involved in how a fast is invalidated nor taken into consideration current medical knowledge about the human body, some have simply copy and pasted the rulings of classical Muslim jurists without appreciating the reasoning behind these rulings. The classical Muslim jurists outlined the principles in what invalidates a fast. In summary, they all agreed that if an invalidating substance is knowingly and deliberately taken, and it enters into a “cavity” within the body via a “passage” then the fast is invalidated. More details of this principle can be found at <http://bit.ly/medicalfastnullifiers>. However, these jurists disagreed as to what constitutes an invalidating substance, the definition of what a cavity (jawf) and whether the passage needs to be natural or it also includes any artificial passage.

The jurists of the Hanafi school defined an invalidating substance as any substance having a perceptible body and limited the definition of cavity (jawf) to the stomach. Many of the classical books on Islamic jurisprudence which are used as reference in this day and age were written several hundred years ago. Those Muslim jurists of old took into account medical knowledge available to them at their time. Many of those jurists believed that there was a passage from the vagina and from the female urethra to the stomach, and also that there was a passage from the auditory canal to the throat. As our knowledge of the human body has increased immensely over the last several hundred years, we can negate some of these false perceptions of the classical Muslim jurists. Had these classical Muslim jurists been alive today and had access to modern knowledge of the human body their rulings about which modes of administration of medication and which medical interventions invalidate the fast would have been different from their original rulings in many cases. It is sad that many Muslim jurists of our time are not prepared to consult appropriate specialists on such matters before publishing their guidelines for the public.

## Conclusion

We are living in an era where the amount of knowledge and complexity of matters cannot be assimilated by one individual. As the late Sheikh Mustafa al-Zaraqqa stated that individual ijtiḥād by muftis was necessary at one time but now it has become a potential source for damage and should be replaced by collective ijtiḥād. It may be partly naive on the part of individual jurists who either fail to or are reluctant to seek appropriate expert advice prior to issuing

a legal ruling, although there are several other reasons which may contribute to this reluctance. Many religious scholars may feel uncomfortable sitting with experts from other fields of knowledge, and in the vast majority of cases the religious scholars’ knowledge is confined to religious texts, and many are not comfortable discussing matters in the English language. Of course, there is no compulsion on such scholars to issue any fatawa. Individual religious scholars should refrain from issuing fatawa on complex contemporary issues, it should be a multi-disciplinary approach, whereby detailed discussions with appropriate experts is undertaken before any ruling is issued. The source of that expert advice should be clearly stated so that the strength of the fatawa can be assessed by those in a position to do so.

## References

1. T. Alrefay et al., *The Observatory*, vol. 138, no. 1267, Dec. 2018