

Thaha Jabir al-Alwani & Yusuf al-Qardlawi Founders of Minority Fiqh (FIQH AL AQALLIYAT)

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Abstract: Muslims today are faced with the challenge that the rules (laws) that have developed and been expressed in the Islamic religion on occasion would not fit with the present era. Indeed, there isn't always a unifying theme in the sources of Islamic law. Nonetheless, there are instances when the laws are "inconsistent" with what they ought to be, and this makes them a source of law that we require in the present era. Extremism can occasionally arise as a result of the extreme disparity that exists. The long-winded legislation, according to one side, cannot be changed. We will occasionally live far away from Islam. These Muslims are, therefore, the ones who are impacted by this scenario. As a result, if the fact that they are a minority because of this circumstance, they urgently require a jurisprudence in order to live in harmony with the majority in their surroundings. So, while it does not contravene Islamic law, it also does not conflict with existing non-Muslim traditions or laws that are followed by the majority of people.

Keywords: Fiqh, Islam, Minority, Muslim

I. Thought of Fiqh al Aqalliyat

In 1935, a family from Iraq gave birth to Taha Jabir al Alwani who completed his doctoral studies in 1973 in *usul fiqh*, the best way to qualify as a mufti, and was studied at Al Azhar University in Cairo, Egypt. *Usul fiqh* is the Arabic word for the foundation of Islamic law. Al Alwani was employed as an instructor of Islamic Studies at the Iraqi Military Academy from 1963 to 1969, and he also taught Islamic Law at the al Imam Muhammad bin Sa'ud University in Riyadh, Saudi Arabia, from 1975 to 1985. Subsequently, he relocated to the United States from this center, where he engaged in a variety of academic pursuits. This exceptional change is what suggests al Alwani to be more open about his attitude towards thoughts or all things related to "Westernization", which he poured into the American Muslim society to "be the best in the American community". Moreover, he serves as the leader of the Organization of the Islamic Conference and is a member of the International Fiqh Council in Jeddah, which serves as a hub for Fiqh Councils worldwide (including the North American Fiqh Council) (Islamic Conference Organization).

On the other hand, Yusuf Qardawi is a remarkable person in the Islamic community. He is regarded as a key figure in the international Muslim Scholar Union and has authored numerous works totaling more than a thousand books on diverse Islamic subjects. He advocated for armed resistance by Israel and against the Americans in Iraq in his fatwa. Al Qardawi gained international attention for his contentious trip to London (England), when he suggested the creation of International Councils of Muslim Clergy. He was born in 1926 in Saft-Turab, a village in the State of Egypt. He attended al Azhar University, where he earned his doctorate in 1973, just like Taha Jabir al Alwani. At Egypt's Bureau of Religious Endowments, he served as a missionary (preacher), a teacher at the mosque, and an official representative of the government (*Awqaf*). He relocated to Qatar in 1961, where he established and oversaw a number of Islamic educational establishments. Al Qardawi established the European Council for Fatwa and Research (ECFR) in 1997 with the goal of securing legal protection for Muslim minority in Europe. Al Qardawi outlined the general official rules for *fiqh al aqalliyat* and provided examples and the application in *Fiqh al Aqalliyat al Muslima—Hayat al Muslimin Wasat al Mujtama'at al Ukhra* (*Fiqh al Aqalliyat al Muslima* (Minority Muslim Fiqh—The Life of the Muslim Community in the Middle of other Communities). He took part in the "al-Shari'a wal Hayat" television program as a public personality on the al-Jazeera network (Law and Life in Islam). Along with administering Islamonline.net, a very significant and well-known website, he also manages his own personal website, qaradawi.net.

History of Fiqh al-Aqalliyat

The term *fiqh al-aqalliyat* initially appeared at the beginning of the 1990s. Its founders are Thaha Jabir al-Awani and Yusuf al-Qardlawi. Under Thaha Jabir's direction, the Fiqh Council of North America issued a fatwa in 1994 allowing American Muslims to vote in the presidential election in America, whose candidate was a non-Muslim. This was the year Thaha Jabir first used the term. The European Council for Fatwa and Research (ECFR) was established in 1997 in London by Yusuf Qardlawi with the primary objective of providing Islamic legal services to Muslim minorities in Europe.

Basis of Minority Muslims

Many countries have different histories that led to the development of their Muslim minorities. Three different ways that Muslim minorities have emerged were described by M. Ali Kettani.

1. Despite the fact that Muslims make up the majority in a region, non-Muslim groups dominating Muslim communities' territory renders them ineffectual. The Muslim community, which had been the majority for a very long time due to the non-Muslim community's influence on the populace, was eventually forced to become the minority as a result of their widespread expulsion. A sizable influx of non-Muslim immigrants, however, also occurred.
2. When a Muslim-led government of a nation does not hold power for a protracted period of time or when attempts to propagate Islam are insufficiently successful in making Muslims the majority in the nations they rule. As a result of the fall of several political forces, Muslims in their own country were demoted from being the majority to a minority. For instance, in India and the Balkans, we can observe this.
3. Non-Muslims who are part of non-Muslim communities who convert to Islam constitute the Muslim minority. A new Muslim minority will be created if these new converts to Islam recognize the value of their Islamic values, prioritize those beliefs over other traits, and develop solidarity with others as a result of sharing the same beliefs. Often, immigrants who became believers assemble in one place.

Lexis of Fiqh al-Aqalliyat

The phrases *fiqh* and *aqalliyah* make up the phrase "minority jurisprudence," which translates to "*fiqh al Aqalliyat*" - "Deep knowledge" is the meaning of the term *fiqh* according to its etymology (linguistics). Jurisprudence is a term that refers to the knowledge of Shariah laws that are "*amaliyyah*," or practical, and that are uncovered and discovered via thorough discussions. The Arabic word '*amaliyyah*' is used to convey that law solely addresses *lahiriyah* (human behavior). *Fiqh* therefore excludes topics that fall outside its purview, such as issues of faith or creed. The word "*aqalliyat*" derives from *qallala*, which meaning few as opposed to numerous. According to Taha Jabir al Alawani, the term "*aqalliyah*," which originally meant "minority or group," has political connotations.

The concept of Fiqh al-Aqalliyat

The word "minority" in this context, in Khalid Mas'ud's opinion, is extremely problematic for three reasons:

1. Under the framework of a nation-state, sub-nations are created as a result of the lack of semantic clarity. Due to its much smaller percentage, the religious minority is even weaker than the sub-nation before it;
2. This minority problem is related to the plight of other minorities, such as the predicament of the Muslim minority in a non-Muslim majority country.
3. The position of the Muslim minority in the West differs from that of the Muslim minority in non-West countries like India and China.

It is evident from the aforementioned insufficiency that *fiqh al-aqalliyat* is still one of the categories of *fiqh* that is a component of *fiqh* in general; the only difference is that. The founder of *fiqh al-aqalliyat*, Taha Jabir al-Alawani, stated in his core writings on the subject that there are six (six) major principles to the *ushul fiqh* method used in the discipline:

1. Finding the unity of principles in the Quran and reading it in light of the realities of life and its dynamics. The Qur'an and the Sunnah together constitute a unity that is fully integrated and serves as the foundation for the implementation of Islamic teachings in specific contexts. The Sunnah is therefore considered as a supplement to the Qur'an.
2. The prophetic law can be revoked (cancelled), criticized, and purified of aberrations by the Qur'an (deviations). The goal of this is to standardize references to humanitarian missions.
3. Applying a geographical perspective to the interpretation of the Qur'an. Every country is actually an Islamic country (*dar Islam*), whether from the perspective of how it is now or how it might be in the future because this earth belongs to God and Islam is His religion. Also, we have a responsibility to persuade individuals to convert to Islam because all people are in fact "Muslims," whether we define them as *millat* (religious people) or as *da'wah* (evangelism) people.
4. Taking into account the commandment's universality. If we think that the Qur'an is for all of humanity, then it must be the sole literature that can deal with the myriad natural issues that arise constantly.
5. Appreciate the wisdom of the Qur'an and its superiority to other books. When the Qur'an establishes a general rule, like the fundamental issue of goodness and justice in the relationship (social interaction) between Muslims and others, there

are hadiths or sunnah that run counter to the general rule, like the hadith about congregating on the road and not having to return non-Muslim greetings. -Muslims, then the laws of the Qur'an are applied; the hadith and the sunnah, however, must be takwil; else, the hadith will be disregarded.

6. The jurisprudence that we have now is not based on fatwas or legal theories that can constantly be compared to contemporary problems. Due to the fact that the ancient jurists did not live in our period, their inability to understand the issues we face today is a natural occurrence rather than a flaw.

The quote's summary makes it abundantly evident that the usuliyah side of fiqh al-aqalliyat upholds three main arguments, namely:

1. Changing the definition of maqasid al-shari'ah from the notion of al-daruriyat al-khams—which is derived from the concepts of daruriyat, hajiyat, and tahsiniyat—to one that emphasizes righteousness and justice as a general rule.
2. An effort is being made to change the traditionalist jurisprudence's established methodology, which is to base the law hierarchically on the Qur'an, hadith, ijma', and qiyas, with the Qur'an taking precedence, and taking into account circumstances using the doctrine of maslahah and the idea of custom or 'urf.
3. The claim that the Qur'an is universal in its application to humanitarian endeavors in general dissolves the barrier between Muslims and non-Muslims..

Measures in the Determination of Minority Muslim Jurisprudence

1. Minority jurisprudence is viewed as an effort to develop the adaptability of Islamic law when Muslims are in a minority in a nation or when Muslims do not reside in a nation that bases its government on Islam. Minority jurisprudence is the legal system of the defeated and helpless in a social and political environment. The subjects that were questioned during that time of helplessness included picking a non-Muslim leader, the practice of allegedly butchering an animal without reciting the basmallah, the legality of a Muslim selling alcohol while working in a warehouse, extending a hand to non-Muslims, and other topics.
2. Adh-dharuratu tubth almahzhurat is the principle of law that is frequently applied to justify this (emergency conditions allow the attacker to do something prohibited). As a result, fiqh al aqalliyat grounds its claims on the reasoning and methodology of Islamic law as developed by the experts. The idea of advantages and 'urf, which serves as the most fundamental foundation, is frequently employed (tradition). The Quran, hadith, consensus, and qiyas (analogy) should therefore be included in the notion as sources of law determination. In addition, the idea of maqashid ash shari'ah (the fundamental goal of applying Islamic law), which emphasizes the defense of five fundamental interests (dharuriyat al khamsah) at the levels of dharuriyat, hajiyat, and tahsiniyat, is a general principle that emphasizes justice and fairness.
3. In accordance with this way of thought, minority jurisprudence frequently serves as a "emergency measure" in response to a "abnormal" circumstance. By applying this emergency logic, Muslims are then permitted to perform an action that was previously required.

II. Fatwa products in Fiqh al Aqalliyat

Perhaps the only efficient fatwa organization in Europe is the ECFR, which is run by Yusuf al Qardawi. There are three ways to look at this:

1. The process for establishing the law, known as ijihad based on maqashid al shari'ah, is rigorous.
2. The religious authorities involved in it have the academic credentials necessary to render reliable fatwas for Islamic law matters arising in the West. It involves both European and non-European researchers. There are in fact people who reside in non-Western nations.
3. The problems given fatwas or ruled by the ECFR are well documented.

Meanwhile, FCNA, which is also active in discussing and providing answers to the problems of the Muslim minority community, has not yet documented its research in the form of a book, but is still in the form of a digital archive format on its official website. Despite this, some scholars who are involved in it, such as Thaha Jabir al-Alwani and Salah Sultan pour some rulings or views on fiqh al aqalliyat in some of their writings.

The following are some instances of legal cases that have been published by the ECFR board itself and given fatwas, particularly those cited in kita fiqh al aqalliyat written by the board's leader, Yusuf al Qardawi, and one of its members, Bin Bayyah, as well as those reported by FCNA that were partially delivered by the board's former leader, Thaha Jabir al Alwani:

1. The Field of Belief and Ritual Worship

Every religion uses it as their primary area of study. In comparison to other fields, a number of issues in this one are the most delicate, significant, and crucial.

"Congratulations on the Day of the People of the Book" is one example in this field. Both in nations where Muslims are in the minority and in those where they are the majority, this issue is always in the spotlight. A German Muslim doctoral candidate who is Muslim also asked this question to the ECFR.

Based on the evidence of the Quran, which is found in Surah 60, al Mumtahanah verses 8 and 9, the response is that it is acceptable to wish the people of the book a happy holiday.

"Allah does not forbid you to do good and act justly towards those who did not fight you because of religion and did not expel you from your land. Indeed, Allah loves those who act justly. Indeed, Allah only forbids you to make as your friends those who fight you because of religion and drive you out of your land, and help (others) to drive you out. And whoever takes them as friends, then they are the wrongdoers."

The two types of engagement with non-Muslims that this verse firmly and clearly teaches, in Yusuf Qardawi's opinion, are to be courteous and fair to those who are not hostile and to avoid making friends with those who are hostile or who fight Muslims. Justice entails protecting their rights, and doing good entails extending some of our rights to them. It is acceptable to wish them a happy holiday because one of the criteria for a good deed is whether it improves the way people interact with one another (what is not permissible in this case is following their religious ritual events).

In terms of general treatment and establishing the law, the People of the Book also hold a unique status that is not shared by any other non-Muslims.

Greetings and observance of the People of the Book holiday are, it is true, completely forbidden by many ulemas. The author of *Iqtidha' al Shirath al Mustaqim Mukhalafah Ahl al Jahim*, Ibnu Taymiyyah, made stern observations on this. When it comes to the prohibition against Muslims continuing their vacations after their own, Yusuf Qardawi voiced his agreement with Ibnu Taymiyyah. The ECFR, led by Yusuf Qardawi, disagrees with the ban on addressing non-Muslims, particularly if those non-Muslims still have close ties to their families, neighbors, or places of employment. Ibnu Taymiyyah's statement, according to Yusuf Qardawi, was appropriate for the time when the fatwa was given, in which he said it.

2. Economic field

Muslim minority communities in the West are immediately affected by economic issues that turn into legal issues. They have presented the ECFR fatwa board with a number of economic issues, one of which is the West's ban on using bank credit to purchase residential real estate.

Given that the Muslim community in the West needs a place to live, this issue becomes essential. Nevertheless, it becomes troublesome when the majority of ulema forbid any transactions that have an aspect of *riba*. But, in light of the fundamental requirements of Muslim minority populations in the West, this issue requires immediate attention and legal certainty.

The majority of Ulama prohibited usury in all of its forms and regarded it as one of the seven major sins that must be avoided, as was known to Yusuf al Qardawi. Yet after witnessing what actually transpired, he came to the conclusion that there was a necessity that may pass for an emergency situation, which under jurisprudential standards constitutes the basis for a prohibition (*al hajatu tanzilu manzilat al dharurah*). This interpretation of Yusuf Qardawi is supported by the views of modern jurists like Muhammad Rashid Ridha and Musthafa al Zarqa as well as the rulings of numerous international fatwa organizations like the Kuwait Fatwa Board, the World Scholars Council, ECFR, and FCNA, all of which reach the same conclusion regarding the question of whether it is acceptable to purchase a home using interest-bearing bank credit (*ribawi*) due to an urgent need. The examination of the advantages and gains that will result in the wellbeing of the Muslim minority in the West is another argument made.

3. Political field

The law of involvement in political issues serves as one illustration of minority jurisprudence in the political sphere. When seen in the framework of *dar al Islam fiqh al siyasah*, it is clear that engaging in political issues is advised in an effort to foster mutual benefit and defend the noble ideals of Islam. The involvement that is being discussed here is involvement in general issues, starting with the most fundamental, such as exercising one's civic and political rights and responsibilities, voting in elections, running for office, etc. If this is considered in the context of Muslims taking part in political activities in Western nations that do not practice Islam, a dilemma arises. The issue of Muslims in the West being able to vote in presidential elections where the candidates are not Muslims is an illustration of a problem, as classical jurisprudence has very strict standards for leadership, including requirements related to religion, personality, knowledge, and other factors. On this issue, ECFR gives the following legal opinion:

1. Political collaboration involves belonging to a community group, supporting a political party, and other activities.
2. The aim of collaboration or political participation is to contribute to protecting the rights, freedom, and self-values of Muslims in the nation.
3. The original law establishes the legal permissibility, sunnah, and obligation of political cooperation for Muslims in European nations based on the Quran's fifth chapter and the second chapter of Al Maidah. "...and help each other in (doing) good deeds and piety, and do not help each other in committing sins and transgressions."
4. Take part in the general election on the terms of abiding by the laws, ethics, and sharia, with the purpose of benefiting and not solely on personal interests.
5. The most important guideline in this political collaboration is to uphold Islamic values like as truthfulness, justice, and responsibility, as well as respect for diversity of opinion and pluralism.
6. As long as the property is deemed capable of generating public benefit, it is acceptable to use it for the general election even if the chosen candidate is not a Muslim.
7. Muslim women and men are equally capable of working together politically.

The ECFR's viewpoint, which is more context-focused and benefit-focused, emphasizes more on the fundamental principles of maqashid al syari'ah. The works of al-Ghazali, al-Mawardi, and al-Farra', among other argumentative literature, are better understood in terms of their goal than in terms of the literal interpretation of the text itself. These texts served as the foundation for classical jurisprudence. The ECFR's point of view is extremely similar to that of FCNA and some modern American Muslim academics, including Muqtadar Khan, who openly backed Obama in the 2008 presidential election by putting the realization of advantages for Muslims in particular and the entire world as the primary consideration.

4. Field of Family Law

A wife's conversion to Islam while her husband maintains his original faith is one of the areas of minority jurisprudence's focus in the area of family law. So, the decision to divorce her husband or not is put to the wife. The context of this question is that there is a psychological conflict because, on the one hand, the majority of academics believe that the wife should file for divorce, while on the other hand, the wife is hesitant to leave the husband she loves and sacrifice children and a family that has developed harmoniously.

The solutions offered by classical jurisprudence to the aforementioned issues are quite varied, but the majority of the community and Ulama' hold that a divorce between the two is necessary. Yusuf Qardawi was persuaded by this to join in issuing the fatwa that a divorce between the two be effected before he was certain that the Muslimah belonged to the Muslim minority in the West. He later altered his mind after learning of this and declared that the wife has the right to reside with her husband based on the benefits that she want to maintain.

Based on some Ulema's beliefs, this viewpoint was created using the tarjih maqashidi approach. Ibn Qayyim's nine (9) viewpoints on the subject were offered by Yusuf al Qardawi:

1. Annulment of marriage following conversion to Islam;
2. Annulment of marriage following the 'iddah period if the wife has been married;
3. The marriage is void if the husband declines to be invited to convert to Islam;
4. If the wife becomes Muslim first and the husband follows, the marriage is dissolved right away. Yet, if the Husband accepts Islam first and the Wife follows after, she is still considered his legal wife. divorce happens with the termination of the 'iddah, whereas jia does not;
5. The wife remains with her husband while patiently waiting for his conversion, even though it takes years to complete;
6. If a wife stays inside his home, the husband has more rights regarding her;
7. Taking into account the 'iddah for a husband-wife pair, which states that if one of them converts to Islam before engaging in sexual activity, the marriage is deemed void. The marriage is still recognized even if he converts to Islam after having sex with his spouse and she does so while still in the state of 'iddah. The marriage is void, however, if the 'iddah expires prior to the spouse converting to Islam;
8. The spouses continue to be wed as long as the Sultan does not divorce them;

9. There is no longer a husband-wife relationship, but the husband and wife continue to live together. Ibnu Qayyim and his teacher, Ibn Taymiyyah, decided that the sixth opinion was the most accurate one, and that the wife should be given the option to remain with her husband even after a number of years in the event that her husband decides to convert to Islam, with the caveat that neither of them should have a husband-wife relationship. Yusuf Qardawi, on the other hand, believed it to be a less correct option because it goes against human psychology and habit to maintain the marriage between a husband and wife, especially when there is still love and affection between the two of them.

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