Fiqh al-Aqalliyat

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Islamic Law and Muslim Minorities

Presently, more than one third of the world's Muslims are living as minorities in non-Muslim countries, a fact which has posed challenges not only for the host countries but also for the Muslims themselves. Most Muslims perceive Muslim minorities as an integral part of the larger Muslim community, *umma*. Many insist that Muslims must be governed by Islamic law, often that of the country of origin. Home countries are expected to offer human, political, and financial resources in order for the minorities to live Islamically. This perception is quite problematic: on the one hand, it implies that while the Muslims have been living in these countries for three generations, their presence is seen as transitory – it cannot conceive of Muslims living permanently under non-Muslim rule; while on the other hand, this perception tends to imagine Muslim minorities as colonies of the Muslim world. Apart from the question of whether Muslim countries are in a position to play the role described above, other serious questions are raised for the future of the Muslim minorities.

Notwithstanding the ambiguity of this position, some Muslim jurists continue to treat Muslim minorities today as did the medieval jurists, who regarded them as those left behind after the non-Muslim occupation of Muslim lands. They presume that eventually these Muslims would have to re-migrate back to Muslim countries. In the meantime, they must protect their religious and cultural identity by isolating themselves from their host societies. An example of this perception is *Muslim Minorities, Fatawa Regarding Muslims Living as Minorities* (London: Message of Islam, 1998) by the late Shaykh Ibn Baz and Shaykh Uthaymeen, two influential Saudi muftis. The book explains that preservation of faith and strict obedience to the laws of Islam are the foremost duties of all Muslims, including those living as minorities. *Muslim Minorities* shows awareness of the difficulties of Muslims living as minorities and advises them to be patient. However, 'if it is not possible to gain a livelihood except by what Allah has forbidden, namely through the mixing of men and women, then this livelihood must be abandoned' (p. 75). It discourages Muslims from marrying non-Muslim women (29f.), forbids them to greet Christians at Christmas or other religious festivals (83), and allows them to go to non-Muslim courts (for registration of divorce) only if it is done according to Islamic law (74). *Muslim Minorities* generally does not allow a departure from the old laws. In some circumstances, where some concessions are suggested, they are only transitory and subject to general provisions of Islamic law, for example, transmission of pictures and service in non-Muslim armies.

Obedience to Islamic law in this sense necessarily requires community organization in a particular manner and the services of legal experts for that purpose. This is often not possible without the help of the majority Muslim countries. The book, therefore, repeatedly appeals to scholars and preachers to visit Muslim minorities, even though, in the words of one inquirer, '[v]isiting countries of disbelief is prohibited.' Ibn Baz advises the Muslim rulers and the wealthy 'to do what they can to save the Muslim minorities with both money and words. This is their duty.' The two muftis are quite obviously restrained by the methodology as well as the worldview of the old laws to the extent that they still use the term 'enemy countries' (e.g. p. 39) for the abode of Muslim minorities. Certainly Ibn Baz was not using the term in the literal sense. It is the compulsion of analogical reasoning to measure the modern situation in terms of the old categories of 'House of Islam' and 'House of War'.

Modern Muslim jurists disregard this methodological compulsion and treat the situation of Muslim minorities as exceptional cases that require special considerations. They approach the whole range of questions relating to laws about food, dress, marriage, divorce, co-education, and relations with non-Muslims, etc. in terms of expediency. Consequently, a whole set of new interpretations, often divergent, appeared. Some other jurists stressed the need for new, especially formal sources. Various rules of Islamic jurisprudence, e.g. common good, objectives or spirit of law, convenience, common practice, necessity, and prevention of harm, which were invoked sparingly, gained significance as basic principles of Islamic legal theory. These opinions were published in the form of fatwas and did not constitute part of regular Islamic law texts.[1] It is only recently that treatises have begun to appear on the subject.

Jurisprudence of minorities

Despite the growing volume of the literature on Muslim minorities, many Muslims in the West, especially in the United States, feel that the existing legal debates have failed to address their problems adequately. In 1994, the North American Fiqh Council announced a project to 'develop *fiqh* for Muslims living in non-Muslim societies'. Yusuf Talal DeLorenzo, Secretary of the Council, explained that Islamic law for minorities needed an approach different from the traditional rules of expediency. He illustrates this approach with several examples. For instance, instead of traditional unilateral divorce by the husband, the new *fiqh* favours termination of marriage only through the court system.[3] Taha Jabir al-Alwani, Chairman of the Council, was perhaps the first to use the term *fiqh al-aqalliyat* (1994) in his fatwa about Muslim participation in American secular politics. Some Muslims in America hesitated to participate in American politics because it meant alliance with non-Muslims, division of the Muslim community, and submission to a non-Islamic system of secular politics as well as giving up the hope of the US becoming part of *dar al-Islam*. They asked the Council for a fatwa. Alwani in his fatwa dismissed these objections and argued that the American secular system was faith neutral, not irreligious. He distinguished conditions in countries that have Muslim majorities from those where Muslims are in minority. The two contexts are quite different and entail different obligations: 'While Muslims in Muslim countries are obliged to uphold the Islamic law of their state, Muslim minorities in the United States are not required either by Islamic law or rationality to uphold Islamic symbols of faith in a secular state, except to the extent permissible within that state.'[4]

This fatwa stirred a controversy among Muslim scholars. For instance, the Syrian Shaykh Saeed Ramadan al-Buti dismissed Alwani's call for the jurisprudence of minorities as a 'plot to divide Islam'. Amongst other comments he stated: 'We were so pleased with the growing numbers of Muslims in the West, that we hoped that their adherence to Islam and their obedience to its codes will thaw the cold resistance of the deviating Western civilization in the current of the Islamic civilization. But today the call to the Jurisprudence of Minorities warns us of a calamity contrary to our hopes. We are warned of thawing of the Islamic existence in the current of the deviating Western civilization and this type of jurisprudence guarantees this calamity.'[5]

Responding to this criticism, Taha Jabir Alwani explains that *fiqh al-aqalliyat* constitutes an autonomous jurisprudence, based on the principle of the relevance of the rule of *shari^ca* to the conditions and circumstances peculiar to a particular community and its place of residence. It requires information about local culture and expertise in social sciences, e.g. sociology, economics, political science, and international relations. It is not part of the existing *fiqh*, which is a jurisprudence developed as case law. *Fiqh al-aqalliyat* is not a jurisprudence of expediency that looks for concessions. Alwani argues that the categories of *dar al-Islam* and *dar al-harb* are no longer relevant today. The Muslim presence, no matter where, should be considered permanent and dynamic. The term *fiqh al-aqalliyat* gained currency in the Muslim countries as well. Khalid Abd al-Qadir was probably the first to collect the special laws applicable to Muslims living as minorities in his book *Fi Fiqh al-aqalliyat al-Muslimah* (Tarabulus, Lubnan: Dar al-Iman, 1998). Yusuf al-Qaradawi, who has written extensively on the subject, also chose this title for his works much later: *Fiqh al-aqalliyat al-Muslimin, hayat al-muslimin wast al-mujtama^cat al-ukhra* (Cairo: Dar al-Shuruq, 2001) and *Fiqh of Muslim Minorities* (two volumes, 2002–3).[2] This latest book is also announced as a 'progressive *fiqh*', probably with reference to the current debates on the subject and the growing anxiety of Muslims about their minority status in Islamic law.

Another civil rights movement?

Obviously, advocates of *fiqh al-aqalliyat* have yet to answer some very complex questions. First, the term *minority* is quite problematic. Its semantic vagueness conjures up the concept of a sub-nation in a nation-state framework. Religious minority is even weaker than sub-nation or national minority because it is further divided into other aspects like language and culture. Second, the question of minority is very closely connected with other minority situations, e.g. non-Muslim and Muslim minorities in Muslim countries. Most often they are not perceived in the same fashion. Third, the situation of Muslim minorities in the Western countries also differs from the Muslim minorities in non-Western countries, e.g. India. It appears that minorities in these different situations have to develop different sets of jurisprudence, to the extent that the term *minority*, in final analysis, becomes irrelevant.

The problems addressed by *fiqh al-aqalliyat* are not the questions related to Muslim minorities only. They concern questions for the whole Muslim world. Some of these questions are certainly more intense and urgent for Muslims in the West, but ultimately the whole Muslim world has to respond to them. The West is no longer a territorial concept; it is a global and cultural notion that is very much present in the non-Western world also.

The jurisprudence of minorities, especially, in the United States has a further semantic connotation of civil rights. It implies 'help and special treatment for a community left behind'. Instead of absolute equality, it calls for differential equality and protection. This idea has been challenged in the US courts since 1989 and is losing sympathy with jurists. In the wake of the rising Islamophobia, discrimination and harassment of Muslims, and media prejudice, especially after the events of 11 September, there seems to be no sympathy for another civil rights movement. If the Muslims were forced to take this path, *fiqh al-aqalliyat* would not be there to help them because it has been so far concerned only with solving problems of (and within) Islamic law. It has still to work out problems with the local laws. There is perhaps a need for Muslim jurisprudence of citizenship in the framework of pluralism, in order to respond to the current political and legal challenges.

Notes

1. See for an analysis of the early phase of this debate, W.A.R. Shadid and P.S. van Koningsveld, *Political Participation and Identities of Muslims in non-Muslim States* (Kampen, 1996).
2. www.awakeningusa.com/public_html.books/s19.htm
3. John L. Esposito (ed.), *Muslims on the Americanization Path* (1998).
4. Fatwa concerning the 'Participation of Muslims in the American Political Process' (www.amconline.org/newamc/imam/fatwa.html). See also his *Muqaddima fi Fiqh al-aqalliy*at (Introduction to Minorities) (1994).
5. www.bouti.com/ulamaa/bouti/bouti_monthly15.htm (June 2001).

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