

## A Proposal for Updating Fatwa Issuing Mechanism in Financial Matters

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### ABSTRACT

The rapid and unprecedented progress in the field of science and technology has ushered in innovations affecting virtually every facet of life. Prior to the era of globalization, all kinds of financial issues were perceived as having singular dimension, solvable within the confines of their respective fields. However, in contemporary times, multifaceted aspects characterize nearly every such issue. For instance, the initiation of a marriage contract may prompt concerns about the medical checkup of the contracting parties. Similarly, advancements in medical science, such as the introduction of test tube baby treatments, present challenges regarding Shariah compliance in both non-Muslim and Muslim-majority countries. Financial matters undergo a similar transformation, evolving from individual transactions to intricate series of contracts within contracts. Addressing these complexities within the framework of Shariah law poses challenges, raising questions about the preparedness of scholars from traditional madrasas to navigate contemporary financial intricacies. This study seeks to analyze these multifaceted aspects, aiming to propose a methodology for issuing Shariah-compliant fatwas in the context of the finance industry in Pakistan.

**Keywords:** fatwa, Islamic finance, financial transaction, Islamic law, shariah compliance, muftis

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## **1. Introduction**

The history of *iftā* and *Muftis* in Pakistan is as old as the Madrassa's History. They the *Muftis* actually are the graduates of the religious educational institutions and playing a vital role to guide the general public in their daily life's issues relating to all aspects having concern with religious domain. It is unanimously accepted that changing in time, place and circumstances lead to change in the religious consultation (*Fatwa*) and hence requires the one capable to rightly, aptly and adequately derive *shar'ī* consultation (*Fatwa*) from the religious text according to the changing of time, place and circumstances which make Islamic *shar'īah* fit to be acted upon *shar'īah* compliance in all the ages. This emphasizes the need of religious educational Institutions.

Based on guaranty given in the Constitution of Pakistan, 1973 that the government must facilitate *ribā* free economy according to the financial principles of *shar'īah*<sup>1</sup>, In 80s it has been witnessed that on the name of *ribā*-free economy a new market was introduced by the name of "Islamic Banking" in Pakistan which not only became popular in Islamic countries but also got popularity in non-muslim countries, even the conventional banking sectors also started opening Islamic Banking windows. Provision of *ribā*-free economy is one of the basic responsibilities that the Constitution of Pakistan puts on the government of all the times, resultantly where Judiciary, legislation and other Constitutional Institutions and organs strived hard to facilitate people of Islamic Republic of Pakistan with *ribā*-free economy, *Dār ul Iftā* and *Muftis* also strived hard to provide resource persons appointed as "*Mufti/Shariah Advisor*"<sup>2</sup> working for the bank to supervise all the transactions done by the Islamic Banks according to the general principles of Islamic finance. Now, the financial transaction conducted by the Islamic banks are not so simple that two men are

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1 Sadaf Aziz, *The Constitution of Pakistan: A Contextual Analysis*, Constitutional Systems of the World (Oxford ; Portland, Oregon: Hart Publishing, 2018). Article 38

2 The Supreme Court of Pakistan also has ordered in its decision that "*Shar'īah Board for scrutiny and evaluation of Board's procedures and products and for providing guidance for successfully managing the Islamic economics.*" (PLD 2000 SC 225).

signing the contract deed onto to one and the contract is completed, rather it requires to know and understand those rules and regulations which govern banking sectors. Furthermore, being acquainted with the basic documents<sup>1</sup> that deals with Islamic banking sectors especially and financial issues in general and understanding of higher objectives<sup>2</sup> of Shariah involved in financial matters is also most important in order to achieve the goal of Islamic financial institutions.

A 40 years' time span of the commencement of Islamic financial institutions in Pakistan is, if not more enough, then at least it is suitable to make at least 50% financial transaction Islamized but still the public is doubtful about the legitimacy of such institutions, as the sameness of transactions, terms and procedure is found in both the banking sectors i.e. Islamic and conventional.

It is the main responsibility of religious institutions to produce such capable resource persons, who not only have religious background, but also know the rules and regulation which govern the banking sectors and must understand the higher objectives of financial transaction in Islam so that they may be able to drive an apt decision over every financial transaction.

The objective of this research is to present a comprehensive exploratory and analytical study about the basics and minimum criteria and curriculum of the methodology of issuance of *Fatwa* regarding finance industry, so that a logical change in the curriculum of religious institutions may be proposed according to the market practice so that capable *muftis* may pass out from religious institutions who may in their individual capacity or working in any *dār ul iftā* guide people and financial institutions

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1 Like shariah Standards, banking laws, ordinance of SECP and alike documents which monitor financial issues

2 Shariah objectives are those objectives for which the shariah actually has been revealed. Ibn Qayyam Al joziah, *I'lam al-Muwaqqin an Rabb al-'Alamin*, vol. 4, 3 vols. (dār Ihyaa al-turāth, 1992). (All the financial issues which safeguard these objectives are shariah compliant and not otherwise. The researcher).

to run the affairs of the institutions in accordance with the financial injunctions given in shariah.

## **2. Research Objectives:**

This research focuses on the following research objectives:

- To analyze the role of Muftī to make the affairs of the financial industry irrepugnant to Islam.
- To critically examine the basic criteria for Muftī's qualifications to be appointed as *Mufti*
- To propose a methodology for finance industry for *muftis* based on basic documented and practical evidence.

## **3. Research Questions**

- 1) What is the existing standard methodology for *fatwa* in finance industry and what ought to be?
- 2) Is the curriculum adopted in religious institutions provide capable resource persons for finance industry?
- 3) Which subjects should *muftis* be taught for finance industry?

## **4. Research methodology:**

To achieve the objectives of the study, analytical and critical methodology would be applied.

## **5. Literature review**

According to the researcher there are books, research works and articles which directly relate to the nature of *fatwa* but not to the methodology of *fatwa* as the topic of this work is purely methodology of *fatwa* and also some valuable work of the scholars available about methodology but it simply states the methodology of *fatwa* in general but the topic of this study is specific as it is about the financial issues

because they are having different nature from medical, family and other issues. Here is a list of valuable works which relate to *fatwa* in general:

A general introduction of the books of *fatwa* in the main stream of hanfi scholars by M. Hamayun Abbas, published in Fikr o Nazar, IRI, as it introduces the books but not methodology.

Books of *fatwa* in the Subcontinent by Farzano Shaheen , a thesis of master level submitted in PU in 1990. Again, this only introduces the books.

An evolution of *fatwa* in the Subcontinent by Dr. Ghulam Yousuf, submitted in Karachi University, in 2000, in this thesis the author historically highlighted the steps of evolution in the field of *fatwa* in the subcontinent.

*Fiqh and ifta* in Pakistan by Mulana *Mufti* M. Zahid, in which the back ground of *fatwa* in the Subcontinent presented especially focused on *fatwa* and legislation.

Ahl e hadith and their efforts in the field of *fatwa* by Abdul Raouf Zafar. The author presented an introduction of the books of *fatwa* in the main stream of ahl e hadith.

*Fatwa* writing in the Subcontinent by Prof. Dr M. Tahir Hakeem a paper presented in a conference held in IRI in 2009 on the topic: جنوبی ایشیا میں قانونی اور فکری ادارے the author covered various aspects in this paper regarding *fiqh al waqi*'.

Methodology of *Fatwa* in the Subcontinent among mainstreams in Pakistan, by Abdul Hameed, a PHD thesis submitted in 2019 in which the researcher compared *fatwas* of three books.

From the mentioned valuable work about *fatwa* and other remarkable work it clearly seems that the topic selected in this study has its space in order to contribute in the field of finance.

## **6. Existing methodology of *fatwa***

Why a new methodology in finance industry is required? is the core purpose of the study which refers us to review the existing adopted methodology by the *muftis* regarding finance industry. Whenever a shariah consultation (Fatwa) is sought from a *mufti*, the steps that he adopts constitute the methodology for him <sup>1</sup>.

Here we need to know the curriculum taught in various religious institutions because a *mufti* adopts methodology based on knowledge that he has learnt from the religious institution with which he has affiliations<sup>2</sup>.

## **7. Religious institutions and curriculum**

### **7.1 Religious institutions**

This is an established fact that religious institutions were founded prior to the partition of the Subcontinent <sup>3</sup> and they were bearing the responsibility of religious, cultural and social education. The graduates of such religious institutions were able to render services as civil servant and religious scholar at the same time <sup>4</sup>. In the 18<sup>th</sup> and 19<sup>th</sup> centuries these institutions have remarkable history as they opened pathways for the people and made them aware about the dangerous propaganda applied by the non-Muslims in the Subcontinent as they also united the Muslims and made them on the same platform against opposition.

After the unexpected results of the freedom war in 1857 the Muslims, who were ruling the Subcontinent since years and now became ruled by the British, thought that a new educational system launched by the British would be dangerous for the Muslim as it would demolish their Islamic, cultural and social identity so they were conscious about it <sup>5</sup>. This fact has been admitted by Sir William Hunter as he says: “Before we

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1 Muṣṭafā Bashīr, *The methodology of research and fatwa Seyad Sābiq and Yousuf Qarḍāvī as example* (dār al fath, Ummān, 1431A.H). p. 96

2 In Pakistan Sunni consisting Hanafi and Ahl e Hadith schools and Ahl-e-Tashayu have impact on social life, and their Madaris’ curriculum and its graduates impact on the social life.

3 Deepak Kumar, “India” *The Cambridge History of Science(4) Eighteenth Century Science Edited by Roy Porter*, n.d. p.669-689

4 Ibid, 679

5 <https://www.minh2003aj.org/urdu/tid/43773/%>;

invaded Subcontinent the educational system of the region was so strong and remarkable which was beneficial from all the aspects and produced such people who ruled Subcontinent, and we planned to demolish that system in order to weaken the Muslims of the region especially their education system so that they would always find ways of stability closed for them”<sup>1</sup>.

After such circumstances the religious authorities resumed all the religious activities to guide people in their daily lives matters especially religious aspects in very hard time and succeeded to unite the Muslims again on their religion, culture and social values. All were done by three main streams namely: Bravelly, Dubandi and Ahle hadith religious institutions <sup>2</sup>.

## 7.2 Religious Institutions and their Curriculum

Almost all the Religious Institutions, which represented all the time in the Subcontinent an unrivaled tradition as regard religious education and characterization of the youth, got banned along with *Auqafs* to work in their mandated format with the advent of British by 1857. That was the time when the religious scholars, who were the major stake holders for religious education, contemplated regarding establishment of their own educational system in order to preserve Islamic contents and ethics which would produce *muftis* having potential to meet the requirements of the market and guide people in their routine matters. The major two educational streams remained flowing at parallel basis and many efforts were made to minimize the barrier between the two but all went useless. For the purpose to uniform the educational system after the creation of Pakistan a conference was held in November 1947 <sup>3</sup> but alike other unreached goals the purposes and the objectives of the conference could not be achieved.

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1 B.A.L.L.D W.W.Hunter, *The Indian Musalmans* (California: Sani H. Panhwar, 2015). P. 79

2 Saqib Akbar, *Pākistān Kay Dīnī Masālak*, 1st ed. (Al-Basirah, n.d.). p.84;

3 Ministry of Interior Govt of Pak, *Pakistan Education Conference*, 1983rd ed. (Govt of Pakistan, 1948). P.05

This is a happier news for the religious seminaries that they are independently developing the curriculum for the *dars e nizami*<sup>1</sup> project which comprises textual study of *Quran*<sup>2</sup>, *Sunnah*<sup>3</sup> and their being sources of Islamic Law along with it a major part of classical *fiqh* and its applications on the contemporary newer issues, Arabic literature, Arabic grammar and other supplementary and helping material constitute the greater part of the project which usually produces *Ulama*, *muftis*<sup>4</sup> who are the major stake holder to guide people in their daily life religious matters through *fatwa*. Most of the religious institutions are full time institutions and responsible to cater all the primary facilities required for the pupils however some of the such institutions are the leading institutions as they have most qualified staff having MPhil and PhD degrees which shows that they are playing a vital role in educating the people and providing the competent resource persons like *muftis*.

Having a look over the religious institutions' affiliation with any of the *wifaq*/monitoring boards, it appears that currently five main madrassa systems are working<sup>5</sup> namely:

1. *Wifaq-ul-Madaris Al-Arbiah*<sup>6</sup> : This Board is the monitoring body for Deobandi main stream's madaris which establish in 1959 having main office in Multan. 19491 Madaris are affiliated with this board and about 160000 students graduated from these Madaris.

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1 The educational system adopted in religious institutions called *Dars e Niami*

2 Quran is the primary source for Islamic Law revealed by Allah Almighty on last and final Prophet Muhammad PBUH.

3 The second source of Islamic Law, the sayings, actions and His admission of others acts to be valid or not valid.

4 *Mufti* is a person who is authorized to issue *fatwa* on any religious aspect.

5 In Feb 2021 the then Government approved five new boards which are still developing, The new boards are Ittehadus Madaris Al-Arabia Pakistan for the Deoband school of thought, Ittehad Madaris Al-Islamia Pakistan for Ahle Hadith, Nizamul Madaris Pakistan and Wafaqul Madaris Al-Islamia Al-Rizvia Pakistan for Bareilvi and Majmaul Madaris Taleemul Kitab Wal Hikmat for the Shia school of thought.

6 See <https://www.wifaqulmadaris.org/> this link leads the reader toward the history of this wafaq from its foundation upto date efforts



2. Tanzeem-ul-Madaris Ahle Sunnat <sup>1</sup> : This Board represents the Bralvi main stream in the country having its head office in Lahore.
3. *Wifaq-ul-Madaris Al-salfia* <sup>2</sup> . This board represents Ahle Hadith school of thought and has head office in Faisalabad. Almost 742 Madaris are affiliated with it from their about 35000 disciples have been graduated.
4. Rabitat-ul-Madaris Al Islamia <sup>3</sup> : Jamat e Islamic controls this bord fro Mansoor a place in Laore.
5. *Wifaq-ul-Madaris Al Shia* <sup>4</sup> : this as found in 1959 which monitor religious activities conducted in Shia institutions.

In Pakistan mostly the religious institutions offer sixteen years education having affiliation with one of the above-mentioned boards. The bords performing various responsibilities also award degrees to the graduates after successfully conducting following kinds of examinations:

- 1- Sanaviya Aama : It represents secondary level of education.
- 2- Sanaviya khasa: It stands for higher secondary level of education.
- 3- Aaliah : it shows graduate level of religious education.
- 4- Aalmiya : This is a master level educational certificate or dars e nizami which is equated with MA Arabic and Islamic Studies by the HEC (Higher Education Commission).

### 7.3 Curriculum

#### Subjects of Islamic Law and Islamic Jurisprudence in Shahadat Ul Aalamiyyah Degree

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1 See <https://tanzeemulmadaris.com/>

2 See <http://www.wmsp.edu.pk/>

3 See <https://rabtatulmadaris.com.pk/>

4 See <https://wmshia.com/>

Degree	Year	<i>Wifaq</i> ul Madaris Arabia <sup>1</sup>	<i>Wifaq</i> ul Madaris Salfiya <sup>2</sup>	Rabitat ul Madaris <sup>3</sup>	Tanzeem ul Madaris <sup>4</sup>	<i>Wifaq</i> ul Madaris Shiya <sup>5</sup>
Shadat ul Aalmiyyah (M.A)	1 <sup>st</sup> year	Hidayah Vol.III & IV	<ul style="list-style-type: none"> <li>• Bidayat ul Mujtahid (Marriage and Divorce)</li> <li>• Al wajeer fi usool al <i>fiqh</i> (From Preamble to Ijma)</li> </ul>	Hidayah Vol.IV (Kitab al shufa)	<ul style="list-style-type: none"> <li>• Hidayah Vol.IV (part 4)</li> <li>• Al Tozeeh (preamble)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Fiqh</i> Istidlal Vol.III</li> <li>• Usool al <i>fiqh</i> lil Muzaffar Vol.II (1st half)</li> </ul>
	2 <sup>nd</sup> year	No <i>Fiqh</i> & Usoolul <i>Fiqh</i> subject at this level	<ul style="list-style-type: none"> <li>• Bidayat ul Mujtahid (Ijarah, Musharkah, Qiraz)</li> <li>• Al wajeer fi usool al <i>fiqh</i></li> </ul>	No <i>Fiqh</i> & Usoolul <i>Fiqh</i> subject at this level	No <i>Fiqh</i> & Usoolul <i>Fiqh</i> subject at this level	<ul style="list-style-type: none"> <li>• <i>Fiqh</i> Istidlal Vol. IV</li> <li>• Usool al <i>fiqh</i> lil Muzaffar Vol.II (Second half)</li> </ul>
Shadat ul Aaliyyah (B.A)	1 <sup>st</sup> year	Hidayah Vol.1 Husami (from Preamble to Qiyas)	<ul style="list-style-type: none"> <li>• <i>Fiqh</i> al Sunnah (Kitab al nikah )</li> <li>• Usool al shashi (Till Haroof maani)</li> </ul>	<ul style="list-style-type: none"> <li>• Hidayah Vol.1 (Al-taharah-Al-Nikah) &amp; Hidayah Vol.II (Al-Nikah-</li> </ul>	<ul style="list-style-type: none"> <li>• Hidayah Vol. 1</li> <li>• Husami (from preamble to Qiyas)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Fiqh</i> istidlal Vol.1</li> <li>• Usool al <i>fiqh</i> lil Muzaffar Vol.1</li> </ul>

1 See <https://www.wifaqulmadaris.org/downloads/nisab/NisabBnin.pdf>

2 See <http://www.wmsp.edu.pk/>

3 See <http://www.rabatulmadaris.com.pk/ur/syllabus.php>

4 See <https://tanzeemulmadaris.com/SylabusMain.aspx>

5 See [https://wmshia.com/uploads/misc/updated\\_nasaab.pdf](https://wmshia.com/uploads/misc/updated_nasaab.pdf)

				Al-waqaf) • Husami		
	2 <sup>nd</sup> year	Hidayah Vol.1 Al Tozeeh (Preamble)	<ul style="list-style-type: none"> <li>• Hidayah Vol.1 (one fourth)</li> <li>• Usool al shashi (Till Haroof maani)</li> </ul>	<ul style="list-style-type: none"> <li>• Hidayah Vol.III Kitab al Baye</li> <li>• Al Tozeeh</li> </ul>	<ul style="list-style-type: none"> <li>• Hidayah Vol.III (part 4) adb al qazi and Bayu</li> <li>• Noor al anwar</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Fiqh</i> istidlal Vol.II</li> <li>• Usool al <i>fiqh</i> lil Muzaffar Vol.II</li> </ul>
Shadatul sanviyyah Khasa F.A	1 <sup>st</sup> year	<ul style="list-style-type: none"> <li>• Kanz al Daqaiq (except inheritance)</li> <li>• Usool al shashi</li> </ul>	<i>Fiqh</i> al Sunnah Al- Taharah	<ul style="list-style-type: none"> <li>• Kanz al Daqaiq</li> <li>• Usool al <i>fiqh</i></li> </ul>	<ul style="list-style-type: none"> <li>• Qadoori</li> <li>• Usool al Shashi</li> </ul>	Tozeeh al masail (Till kitab al ariya)
	2 <sup>nd</sup> year	<ul style="list-style-type: none"> <li>• Sharh Waqayah last two volumes</li> <li>• Noor al anwar (from preamble to Qiyas)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Fiqh</i> al Sunnah Prayer</li> <li>• Usool al <i>Fiqh</i></li> </ul>	<ul style="list-style-type: none"> <li>• Sharh Waqayah</li> <li>• Noor al Anwar</li> </ul>	<ul style="list-style-type: none"> <li>• Hidayah Vol.1</li> <li>• Noor al Anwar (Quran, Sunnah&amp; Ijma)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Fiqh</i> share al Islam (al ibadat)</li> <li>• Al mojiz fi Usool al <i>fiqh</i></li> </ul>
Shadatul Sanviyyah Aamah	1 <sup>st</sup> year	No <i>fiqh</i> and Usool <i>fiqh</i> subjects	No <i>fiqh</i> and Usool <i>fiqh</i> subjects	Noor al idah	No <i>fiqh</i> and Usool <i>fiqh</i> subjects	Tozeeh al masail (Till kitab al salat)
	2 <sup>nd</sup> year	Qadoori	No <i>fiqh</i> and Usool <i>fiqh</i> subjects	Qadoori	Qanoon e Shariat (Prayer)	Tozeeh al masail (Till kitab al Nikah)

**Subject of Islamic Law and Islamic Jurisprudence in Takhassus fil *Fiqh*/Takhassus fil *Ifta***

Year	Darul Uloom Karachi	Jamia Usmania Peshawar	Markaz Al Tarbiah	Jamia Tafhim ul Quran Mardan	Markaz Taleem o Tahqeeq Islamabad	Tanzeem ul Madaris Ahl e Sunnat
1 <sup>st</sup> year	<ul style="list-style-type: none"> <li>• Muqaddama al Durr al Mukhtar</li> <li>• Usool al Karkhi</li> <li>• Provident Fund</li> <li>• Insurance and Takaful</li> </ul>	<ul style="list-style-type: none"> <li>• Usool al <i>Fiqh</i> (Hukam al Shari, legal capacity)</li> <li>• Objectives of Shariah</li> <li>• Legal Maxims</li> <li>• Islamic Banking</li> <li>• Shariah Standards</li> </ul>	<ul style="list-style-type: none"> <li>• Subul al salam</li> <li>• Al warqat</li> </ul>	<ul style="list-style-type: none"> <li>• Al Wajeez fi Usool al <i>Fiqh</i></li> <li>• Al-Ashbah wa al-Nazair</li> <li>• Al Durr al Mukhtar</li> <li>• Legal Maxims</li> </ul>	<ul style="list-style-type: none"> <li>• Usool al <i>Fiqh</i></li> <li>• Comparative Study of <i>Fiqh</i></li> <li>• Objectives of Shariah</li> </ul>	<ul style="list-style-type: none"> <li>• Al Ashbah wa al Zazair</li> <li>• Al Durr al Mukhtar (al Nikah, talaq)</li> <li>• <i>Fiqh</i> muaamlat (Kitab al bayu al saraf)</li> </ul>
2 <sup>nd</sup> year	<ul style="list-style-type: none"> <li>• Al-Ashbah wa al-Nazair</li> <li>• Al Durr al Mukhtar</li> <li>• Jawahar al <i>Fiqh</i></li> <li>• Imdad al Ahkam</li> </ul>	<ul style="list-style-type: none"> <li>• Comparative Study of <i>Fiqh</i></li> </ul>	Not Applicable		<ul style="list-style-type: none"> <li>• Extension of Lectures on Islamic Banking and Takaful</li> <li>• 50 <i>Fatawa</i> relating to financial matters</li> </ul>	<ul style="list-style-type: none"> <li>• Al Durr al Mukhtar and Radd al Mukhtar</li> <li>• Badai e al Sanaie (wasayah)</li> <li>• Al Durr al Mukhtar (Kitab al Waqaf to al nazar wal lams)</li> </ul>
3 <sup>rd</sup> year	<ul style="list-style-type: none"> <li>• Shariah Standards</li> <li>• Constitution of Pakistan</li> <li>• Practice of 250 <i>fatawa</i></li> </ul>	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

## **8. Discussion about Curriculum**

The curriculum mentioned above contained various subjects throwing lights over many aspects of the people of subcontinent and it is also obvious that according to the need of market such segments were included in the curriculum so that the graduates of a religious institution may guide the people in their daily life issues and it in fact succeeded for the noble purpose but as the current issues have multi dimensions hence differ from that of older issues and need to be solved according to the needs, prerequisite and objectives of the current time. But the curriculum is almost same as was adopted very first time. In the syllabus financial subjects which directly deal with financial issues are not seen except in one of the religious institutions which results conflicts and difference of opinions and this eventually leads to at last ambiguity in financial transactions where clearance about purity or impurity is needed. The shariah advisor which are appointed in banking sectors are the graduates of religious institutions and if they have studied the subjects which have already been mentioned it may not enable him to perfectly solve the financial problems and also the *mufti* working *dar ul ifta* if has been posed question totally financial nature he may also not be eligible to resolve the issue. This is the reason why a new methodology for issuing *fatwa* regarding financial matters is needed, which is the core key point of this article. In the next lines a new methodology is proposed to attain the said purpose.

## **9. Current Financial Issues**

Having a look over the nature of financial issues, shows that the issues are not so simple to be solved like two plus two equals to four rather they are multi aspects like if a financial issue arises it is already of financial nature as well as it may be having touch with another department of the current financial scenario<sup>1</sup>. At then the shariah

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1 Misfar bin Al<sup>1</sup> Qa Ḥṭān<sup>1</sup>, “manhaj istiKhrāj al- a Ḥkām al- fiqhiah le al-nawāzel wa al-mustajiddāt” (Doctorate, Imam Muhammad bin Saood, 2000). p. 644. He says that in the classical books of *fatwa* the authors compiled *fatawas* according to the time, circumstances and capacities of the than time and also of the objectives. Now the issues are such a nature that they are not found in the classical *fiqh* so they need new individual reasoning by a competent *mufti* to resolve them too. And also see <https://islamonline.net/>

scholar along with shariah education and awareness needs to grip over finance department for the sake of resolving issue. Take the example of insurance that the scholar of Islam has to be acquainted with the theoretical and practical procedure of such a transaction which involved insurance. Simply having shariah knowledge would not place him in a position to give a befitting reply to such multi-aspects issue. Again, the shariah law disallows to sell something which is not in the ownership of the seller but how does this ownership exist when all the transaction take place online where an article gets its ownership changed more than one time but the first seller yet has not got it in hand? This is the question. So having knowledge of the noble texts may enable the scholar to view the issue from Islamic aspect but he would remain blind from other side that is online transaction. Same is the case with Islamic modes of finance when they are applied over a good to be bought by the bank on the basis of ijarah (lease), whether the contract fulfills the basic ingredients of ijarah (lease) contract must be analyzed by the *fatwa* issuer in order to cover all the aspects attached to the contract so that the *fatwa* could be issued in a form which reflects shariah supremacy and be accorded to the sublime principle of Islamic finance. The latest example of the *fatwa* about “*apna ghar loan*” scheme where controversial *fatawas*<sup>1</sup> are issued that created confusion among people that also need to be overviewed from an aspect which would make the transaction troubles. So the missing area in the methodology of issuing *fatwa* has to be added and observed when issuing *fatwa*.

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1 For example the *fatwa* regarding the shariah compliance is controversial. See: <https://www.banuri.edu.pk/readquestion/islami-bank-sy-muamlaat-karna-144311101729/25-06-2022> ; <https://www.banuri.edu.pk/readquestion/%D8%A7%D8%B3%D9%84%D8%A7%D9%85%DB%8C-%D8%A8%DB%8C%D9%86%DA%A9%D9%88%DA%BA-%DA%A9%D8%A7-%D8%A7%D9%88%D8%B1-%D8%A7%D9%86-%DA%A9%DB%92-%D8%B3%D8%A7%D8%AA%DA%BE-%D9%85%D8%B9%D8%A7%D9%85%D9%84%D8%A7%D8%AA-%DA%A9%D8%B1%D9%86%DB%92-%DA%A9%D8%A7-%D8%AD%DA%A9%D9%85/10-02-2016> , also the transactions being done in the banking sectors as well as in the markets by the individuals the *fatawas* are found controversial like the issue “the difference of price regarding contract on the spot and deferred” see: <https://www.rafiqhtahir.com/play/228> and <https://www.banuri.edu.pk/readquestion/naqd-aur-udhar-kahreed-o-farokht-mn-qeemat-ka-farq-rakhna-144209201931/05-05-2021> . So the current methodology of issuing *fatwa* needs to be updated and improved with such subjects which enable the *mufti* to resolve the current issues.

## **10. Filling the Gap (Proposed methodology of Issuing *Fatwa*)**

Although the curriculum designed in religious institutions has potential to grow up *muftis* capable extracting shariah ruling from the sacred texts and then apply on the newer issues faced by the general public but to make them eligible to interpret Holy texts according to the time and space in order to make shariah Law applicable all the time it is recommended that as the current issues of finance department are multi aspects in nature which need from a *mufti* to acquainted with supportive branches of knowledge without which the given *fatwa* may remain unsatisfactory and incompatible with shariah law. So, the following branches of knowledge are necessary for a *mufti* to grip over them to be befitting person for resolving current financial issues.

### **10.1 Shariah standards**

After knowing that the current issues are of multi aspects the design of curriculum in religious institutions though strongly develop the religious identity of the disciples but natural it does not reflects economic and financial theories adopted in banking sectors and financial industries which needs to be addressed in a comprehensive way that would enable the religious graduates to not only view the religious aspect but also put an eye over the financial nature of that very issue so that the *fatwa* regarding financial mater may come forward in a perfect picture. For this task the curriculum needs to be updated by inserting shariah-standard which is a monitoring constitution and globally got popularity, became famous and adopted by the banking companies in the world, for financial issues run by banking sectors especially and finance industry in common<sup>1</sup>. These standards have a long background to come into this shape of existence, backed by prominent and renowned sharia scholars having masterly grip over finance industry updated by the current financial issues and invoking Islamic heritage of finance and applying over newer issues. These shariah standards, if not all ten at least,

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1 Dr Mahmood Ahmad Ghazi has rightly indicated that in the curriculum of religious institutions must be updated by inserting new subjects like Islamic Finance and others subjects.

the adopted once need to be taught at the higher level or in specialization level in *dar ul ifta* from where do such graduate complete shariah courses and compete in the financial market including banking sectors as shariah advisor and in the religious institutions as *mufti*. So, it is as though as any especial field in the medical science when a medical officer gets specialty in any field and becomes authority for such field alike is the case of *ifta* that in the field of religious matters all are competent but to be authority in the field of finance one must adhere to have abilities to apply shariah code of finance in daily life financial matters and for that he has to study shariah standards as they serve as constitution of finance industry. For instance, if a *mufti* is asked about an issue related to shariah standards but he did not touch the area of these standards he will not be in a position to pass on *fatwa* or give shariah consultation (Fatwa) regarding any financial issue being tabled up in the banking companies or in religious institutions as compare to the one who has gripped over shariah standards.

## **10.2 Objectives of shariah especially of finance**

The relevancy of *usool al-fiqh* with current time and scenario can only be established with the exploring of the higher objectives of shariah <sup>1</sup>, especially financial objective of shariah <sup>2</sup> in the field of finance <sup>3</sup>. Unfortunately, in the Subcontinent when

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1 Objectives of Shariah has become a way and tool to extract shariah rulings from the shariah text. The movement on this subject strongly and successfully started in 20th century under the chair ship of Muhammad Tahir bin Aashoor (1879-1973) which shined this concept given by Imam al-Shavbi and Ghazali and explored newer aspects of the subject and added valuable points and new contents to such subject. The movement again was taken by Dr. Allal Fasi, Dr. Ahmad raisooni, Dr Hamid Al-Alam, Dr. Najatullah Siddiqui, Dr. Yousuf Al-Qardavi and Noor ud Din Al-Khadmi. They opined that these objectives are not only five rather they may rise according to the time and space as stability in justice, Financial stability, eradication of poverty, maintaining law & order are added by them in this subject. See preface of M.T. Manḥūr, *Maqā'id e Shar'at and jad'id islam bankāri wa māliyāt*, 1st ed. (islmaab: Shar'ah Academy, International Islamic University, 2021).

2 The Book "**maqā'id e Shar'at**" provides shariah objectives of Finance as to preserve property, social justice, abstaining from hedging, abstaining from illegal outways, observance of the purpose of the contract. And eradication of poverty from the society and offering welfare state systems. These are the shariah objectives behind the financial transaction. The violation of these objectives would lead the transaction null & void.

3 In this regard the book of Dr Tahir Mansoori (as cited above) is the most relevant and helping book. “



discourse of religious institutions come into table talk no work over, from the aspect of general, objective of shariah seems to be done which shows that the aspect special objectives of finance industry has also been left un-done. Though from day one to date religious seminaries review their curriculum to make it up to date but they never bother about exploring objectives of shariah from finance angle. Rather it has been looked down upon since initial stages<sup>1</sup> and after analyzing the objectives of the Shariah it becomes clear that one of the major and high objectives behind the revelation of Shariah is the preserve wealth/property which the Lawgiver has revealed in bold letters as lawful and unlawful things. So much so that He, the Almighty with all his Godly logic and wisdom telegraphically sent rules and formulas to identify the lawful and unlawful transactions without mentioning the minute details of each and every financial transaction for they will get updated with the passage of time so as the time may change from the older time the formulas should actively work and enable religious graduates to make the newer financial transaction compliant to Shariah. The easiest way to know about the shariah ruling of any financial transaction is to check whether it fulfill the shariah objective of finance or not an according the shariah ruling may be decided especially the current financial matters which are of complicated in nature as they have multi aspects so to pass on a comprehensive *fatwa* regarding such issue a competent person should overview the issue and resolve the query from all the aspects for which the objectives of shariah are the back bone to be known. For example, an article not in possession not to be sold and to establish the possession and ownership in physical trade activity it is very easy way but who to establish such possession when the trade activity is taking place digitally? This is the question which

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1 Having a look over the curriculum adopted in religious institutions leads us to say that only in two institutions shariah objectives are being taught and that is not at the initial stages rather they are to be taught at specialization level. Undoubtedly, it is also better to study this subject at specialization level but when it has such importance that no *mufti* is a *mufti* with out knowing the objectives of shariah and the subject of shariah objective is such a subject which is derived from the collection of various versus of the Quran and if it is not studied regularly and also not practiced then to trace out the shariah ruling for any newer issue becomes difficult on the basis of shariah objectives.

needs to be solved in shariah perspective and one of the ways is to know the objective of shariah especially financial objectives and the other is to know how the possession come in to the hand of the seller which is the platform of internet not of the religious scholar. So, such complications must be known by the *mufti* before he passes on *fatwa* on such complicated financial issues.

### **10.3 Shariah maxims related to financial issues**

Passing on *fatwa* about any newer issue is an art but giving *fatwa* about any newer financial issue is a special art which requires from the *mufti* to cover all the aspects that may help him to single out the shariah ruling for such issue. One of the main tools for the said purpose is that the *mufti* should be full of knowledge about those shariah maxims which are directly relevant to financial issues. There are many shariah maxims which support *mufti* to trace shariah ruling for the financial issue. The most important one is the maxim which reads as **“the standard to judge the approval or disapproval is the purpose of the contract not the words and mere apparent shape of such contract”<sup>1</sup>**. Sometimes it seems that the contract is shariah compliant but the purpose for which the contract has been signed reveals that the signed contract violates the purpose determined by the lawgiver<sup>2</sup>. This is the responsibility of a *mufti* which he has to fulfill while passing *fatwa*. So, when he authorizes someone to do some act, he should minutely examine the objectivity of the act or contract specified by the lawmaker but while authorizing some financial contracts he has to see into it that whether the objectives of financial issues have been observed while designing the contract<sup>3</sup>. He should go ahead and pass on *fatwa* if he satisfies that the objectives have not been violated and the science of objectivity of the financial issues will come out

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1 a ʔmad bin Muhammad Zarqāʔ, *Shar ʔ al-Qawāʔid al-fiqhiyah*, (Dar al Qalam, n.d.).

2 In this regard Mulana *Mufti* Taqi Usmani has expressed his sorrow over this aspect by saying that” in Islamic Banking sector only the contract taken into account apparently but not taken on account of its real purpose. Also, Dr Yousuf Al-Qardavi expressed his alike views in his book: *al-qawāʔed al ʔakmah lil muʔāmlāt al-māliyah*. Both the books are very important for the *mufti* to issue *fatwa* regarding financial issues.

3 An example may be seen in the book of Dr Tahir Mnasoori at p. 81-81 where only the contract is taken apparently.

by having an overview on the picture of the whole contract and what caused the contractual parties to initiate the contract. It is sometimes appeared that the contract is well designed, excellently articulated and apparently shariah compliant but the person having grip over the science of the objectivity of the financial issues will judge its unauthenticity by its mere being violating such department. Hence, this part of the knowledge must be included in the methodology of the *fatwa* whether issuing *fatwa* on an individual basis or on an institutional basis and the *mufti* must observe it while issuing *fatwa*.

#### **10.4 Law relating to finance especially Islamic bank**

It is also recommended that a *mufti* should know, adhere and practice the law of the land if it is not against the shariah law and he should refer into it in his *fatwa* if a special article available related to the issue he has been asked about as that law has the enforcing authority behind it and would make the *fatwa* stronger. The constitutional law of Pakistan has prescribed the nature of the economy how it should and should not be and one of the articles is that the economy should not be based on interest. It must be according to the principles of Islamic Shariah and shariah law prohibits from signing interest-based contract at both levels like individuals and institutions. Neither do the individuals are allowed to transact interest-based contract nor do the institutions do any interest -based transaction. The law of the land also especially with reference to the banking companies does not allow the banking companies to trade in any field<sup>1</sup>. So, if the banks do trade it goes against the state law and from this initial stage the contract may be declared null and void.

#### **10.5 Observance of Books on Current Financial issues**

Books are always helping material and guide the seeker of truth to the right path. As mentioned earlier that the Shariah Standards must be Infront of a *mufti* while passing *fatwa* as it only guides the *mufti* in financial issues likewise there are hundreds of

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<sup>1</sup> P.L.H Bare Act House, *The Banking Companies Ordinance 1962*, 1st ed. (Pakistan Law House, 2022). Article:09, p.11 (prohibition of Trade)

books written on the current issues of finance must be included in the curriculum in religious institutions at higher level or in specialization for *muftis*<sup>1</sup>. Many encyclopedias have been compiled over the same topic as helpful books for the readers especially for the practicing *muftis* who frequently issues *fatwa* that must be a part of his extra curriculum activities. Here one important point must be clarified that the issues of finance may differ from one country to another country which drive us to say that one should be aware while having a book on the topic that of which country that book represents and then must be aware about the financial framework of that country and get help from such books and if huge differences are found then he should be confined with in those books which discuss the financial matters according to the financial framework where he lives in otherwise he may get misguided and will no longer be benefactor to solve the financial problems.

### **10.6 Visiting and studying helping material**

“If you don’t know, ask the person who is knowledgeable”<sup>2</sup>, this verse of holy book also reveals that the knowledgeable person should be asked about any issues and again this make us to say that if the person does not even know the current financial issue as the framework of finance, law about finance, purpose of the financial transaction he would not be befitting person to be asked about such issues. So, one of the major techniques to boost up the eligibility for being authority in financial matters one should take part in various workshops being held in various educational institutions and then for practice plunge into the finance market like banking sectors and observe the activities taking place in those companies and try to apply the Islamic Commercial Law over those transactions and until a person does not actively and practically participate in such transactions about which he is asked to give *fatwa* he will remain

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1 As for the *muftis* in Pakistan they may refer the financial issues into these especially: The book of Dr. Muhammad Yousuf Al-Qardavi, the book written by Dr M. Tahir Mansoori and the book of Mulana Taqi Usmani etc. as they are written by the experts but it does not bar on *mufti* to look into other relevant books written on the same issue also the books of *fatwa* by given by the Ulemas of Pakistan as they give *fatwa* about the issues faced by the Pakistani people.

2 Al- Qur’ān 16:43

unaware about the purpose of the financial activities taking place in the market. So, internships make a person practically eligible for this purpose he joins an internship. Along with it he must also study the relevant books which are written on Islamic Finance especially written by those who know financial issues theoretically and practically.

## **11. Conclusion**

Religious seminaries though adopted a curriculum which has potential to provide people to guide in religious matters but the current syllabus needs to be amended and inserted relevant and important subjects which make a *mufti* eligible to issue *fatwa* regarding financial matters. The study arrived at the following conclusion:

1- The current adopted curriculum in religious institutions though has potential to provide prominent scholars to guide people in their daily life matters but as it lacks the current reflection with the demand of market that is the reason why such curriculum needs important amendments.

2- The finance market is being governed by shariah standard and run accordingly that is why at the higher level in religious institutions at least adopted shariah standard by the banking sectors are necessary to be taught for issuing *fatwa* regarding banking transaction and also for the transaction being conducted by the individuals.

3- For making the Shariah applicable at all the times and for all the ages it is necessary for religious seminaries to review their curriculum in order to improve it to make it compliance with the demand of market.

4- Shariah standard, Objectives of Shariah, Inspection of the transactions, Shariah Maxims, law of the land regarding finance market and finance are necessary subjects along with madrassa syllabus which provides eligible *muftis* to issue *fatwa* regarding newer financial transaction being done under the umbrella of banking companies as well as by the individuals.

5- Lack of such subjects led us in the last 20 to 30 years to face controversial *fatawas* on the same theme issued by the religious scholars as highlighted in the study.

6- As it is the fact that shariah is revealed in Arabic language and the one who can not understand the meanings of Arabic terms and especially shariah terms he is unable to guide the people rightly alike is the case of current finance market that almost it is written and articulated in English language that is the reason a *mufti* should also know the English language in order to understand the finance accurately and hence issue *fatwa* in compliance with the shariah.

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