CHAPTER-FOUR

A Case Study of *Al-Fatāwā al-Tātār Khāniyah*
Fatāwā-i-Tātārkhanī, one of the earliest Arabic Fatāwā collections of Medieval India may be considered the most notable contribution of the Sultanate period to the Fiqh literature. It was compiled in thirty volumes at the instance of Khān-i-Āzam Tātār Khān (d. 808 AH/ 1397 AD), a learned noble of Sultan Firuz Shah’s period (1351-1388 AD) who showed keen interest in the promotion of learning especially Islamic jurisprudence.

The work, which was completed in 777 AH/ 1375 AD, is generally ascribed to Alim b. Ala Indrapati (d. 786 AH/ 1384 AD). But keeping in view of its voluminous nature it would be more correct to say that it was compiled by a committee of Ulamā headed by the learned jurist. According to some modern writers this Fatawa was also known as Zād al-Safar and Zād al-Muṣāfir. But the fact is that it became popular by its original name. The work has actually established a good tradition of compilation of Fiqh works through a board of scholars, which got further development in the Mughal period and resulted in the compilation of Fatāwā-i-‘Alamgīrī, which was a monumental work on Fiqh compiled by a select committee of Ulama at the instance of Aurangzeb.

1 Afif pp. 390-92, See also, Badauni, Muntakhab al-Tawārikh, Calcutta, 1968, 1/267-69, 274.
The *Fatāwā-i-Tātārkhanī* is a very comprehensive work discussing the main and subsidiary problems in a very detailed way and pointing out differences of opinion among jurists of different school as well as among jurists of the Hanafi school itself. As a preparatory steps for compiling the *Fatāwā-i-Tātārkhanī* all the *Fatawā* and *Fiqh* works available in Delhi were collected and placed at the disposal of the scholars who were selected for this purpose. While giving legal opinion or verdict of the earlier jurists the compiler have taken special care of citing the well-known *Fiqh* works especially of Hanafi School. Though the *Fatāwā* is not arranged in the traditional form of *Istiftā* and *Fatwā* but at several places first of all, questions are raised and then their answers are given.

Of a large number of works quoted in the *Fatawa*, the important ones are *al-Nawazil* and *Khazanatul-Fiqh* of Abul-Lais Samarqandi (d. 393 AH/1002 AD). *Al-Fatāwā al-Ṣughrā wa'l Kubrā* of ʿUmar b. ʿAbdul Aziz (popularly known as Al-Sadar al-Shahīd) (d. 536 AH/1141 AD), *al-Fatāwā al-Nasafiyah* of Najmuddin al-Nasafi (d. 537 AH/1142 AD), *al-Khulasah* of Tahir b. Ahmad al-Bukhārī (d. 542 AH/1147 AD), *Al-Multaqīṭ* and *Jāmiʿ al-Fatāwā* of Naṣiruddin Samarqandi (d. 556/1160 AD), *al-Fatāwā al-ʿItabiyah* of Abū Naṣr

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4 Afif pp. 391-392.
5 *Al-Fatāwā Al-Tātārkhanīyah*, II/217, III/196, IV/77, 196, 214, 222-223.
6 For introduction of the sources see the preface of the Editor (Qazi Sajjad Husain) in the first volume of the *Fatāwā-i-Tātārkhanī*, Majlis Dairatul Maarif al-Usmāniya, Hyderabad, 1984, pp. 37-50.
Itabi (d. 556 AH/1160 AD), al-Fatawā al-Sirājiyyah of ʿAlī b. ʿUṣmān Aushi (d. 569 AH/1173 AD), Fatāwā Qāżī Khān of Fakhruddin Hasan b. Mansur Uzjandi (d. 592 AH/1195 AD), al-Fatawā al-Zahīriyyah of Zahīruddin Bukhārī (d. 619 AH/1222 AD), al-Muḥtār al-Burḥānī of Burhanuddin b. Tajuddin (d. 616 AH/1219 AD) and al-Fatawā al-Ghiyāṣiyah of Daud b. Yusuf al-Khatib.

Indeed the value of Fatawa-i-Tatarkhani lies in its detailed explanation of the legal problems, giving full discussion of juridical differences and quoting legal opinion of jurists along with their sources. Its importance may be realized from the fact that in later period it came to be referred not only by the Indian authors but also writers of the Arab World such as Al-Bahr al-Rāʾiq and Al-Ashbāh waʾl-Nazāʾir written by Ibn-i-Nujaim Misrī (d. 969 AH/1561 AD) and Al-Durr al-Mukhtār of Muhammad ʿĀlīuddin al-Ḥāṣkafī (d. 1088 AH/1677 AD)9.

Importance of the Fatawā is also evident from the fact that its summary was prepared by a Syrian scholar Ibrahim b. Muhammad al-Halbi (d. 1549 AD) in the first half of the 16th century AD. This summary known as Muntaqā al-Abhur may be considered as a source of introduction of the Fatawā in the Arab world10. But the fact is that

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10 Kashf al-Zunun, II/947.
it was known to the Arab scholar much before that as we come to know that a manuscript of this *Fatāwā* is preserved in the library of *Khadyū Miṣr* which had date of scribing as 862 AH/1454 AD

The manuscripts of this monumental work are preserved in different libraries including *Kutubkhanah Pir Muḥammad Shah* of Ahmadabad (d. 1749 AD), *Sālārjung Collections*, Hyderabad, Oriental Public Library Patna, *Kutubkhanah Khadyu Misr*, Kutubkhanah Asifiyah, Hyderabad, Kutubkhanah, Riyasat Rampur, British Museum London. But in complete form its manuscripts are available only in the *Kutubkhanah Pir Muhamad Shah* of Ahmadabad. Uptil now its five volumes have been published from *Dairah al-Māārif*, Hyderabad. My present study is based on the published volumes.

It is important that in the very first volume of the work the etiquettes and principles of seeking legal opinion (*Istiftā*) and that of giving the same have been thoroughly discussed and the essential qualifications of a *Muftī* have been fully explained. According to the compiler of this *Fatawā* apart from having a deep knowledge of *Qurān*, *Hadīs* and *Fiqh* a *Muftī* must be aware of the legal opinion of the earlier *Ulama* along with their sources and should know behavior and mutual dealing of the people and that of school of jurisprudence of a *mustaftī* (questioner). So that he may easily examine the queries

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12 These volumes were published in 1984-89 under the financial grant of Ministry of Education, Government of India.
and give response to them\textsuperscript{13}. The \textit{Fatawa} states that a \textit{Mufti} should issue the \textit{Fatwa} in accordance with the opinion of the earlier learned jurists of Hanafi School. In this connection he should give preference to the opinion of Imam Abu Hanifa and then to his close disciples in accordance with their position in the Hanafi School. Secondly a \textit{mufti} is required to issue his \textit{Fatwā} without any worldly return. Moreover, it is not lawful to show favour to the \textit{Sultan}, nobles and wealthy people or to give any consideration to a questioner because of his high status in the society. It is also required for a \textit{mufti} to read the questions carefully and seek clarification from the \textit{mustaftī} if there is any confusion. The compiler was also of the opinion that a young person who fulfils all the necessary conditions of a \textit{mufti} is entitled to issue \textit{Fatwa} as it is confirmed that Ibrahim Nakhir (d. 95 AH/ 713 AD) had started giving \textit{Fatwa} while he was only 16 years old\textsuperscript{14}.

The first volume of this \textit{Fatāwā} is related to purification (\textit{Tahārat}) including ablution, bath, purification with dust (\textit{Tayammum}). The second volume of this \textit{Fatāwā} deals in details with the four primary obligations of Islam and the related issues. The third and fourth volumes contained detailed discussion on different aspects of family law including marriage, maintenance, fosterage and divorce. Moreover, the \textit{Fatāwā} has also taken into consideration the

\textsuperscript{13} \textit{Ai-Fatawa al-Tatarkhaniyah}, 1/84.
issues of marriage and divorce in relation to non-Muslims. In course of discussion about the above matters some interesting problems were also taken up by the Fatāwā. For example in discussion about the prayer, the Fatāwā takes up the issue of its performance on animal and boat (Al-Ṣalāt ʿalaʾl-Dabbah and al-Safinah) during the journey\textsuperscript{15}. It was explained that all the obligatory prayer should be offered on the ground after making the animal in standing position, while the non-obligatory prayer may be offered on the back of the animal\textsuperscript{16}. While starting prayer on the back of the animal one is required to face Qiblah if easily possible, otherwise the prayer should be started facing the direction to which the animal turns. Similarly in performing prayer on animal one should bow down for Ruku and Sajdah just by the movement of his head and will not take any support for offering Sajdah. With regard to the prayer on boat the Fatawa records the opinion of Abū Hanifa that it should be performed in sitting position if the boat is moving, otherwise it may be offered while standing. The traveler on the boat is not allowed to offer Salat simply with the movement of head and hand. He is required to face the Qiblah throughout the prayer as far as possible\textsuperscript{17}. In the same context an interesting problem has been

\textsuperscript{14} Ibid, 1/83-84.
\textsuperscript{15} A good discussion on the same issue may also be seen in Fatawa Ghiyasiya, compiled by Shaikh Daud b. Yusuf al-Khatib, Al-Matba al-Amiriya, Bulaq, Etypt, 1322 AH, p. 38.
\textsuperscript{16} Al-Fatāwā al-Tātārkhāniyah II/39.
\textsuperscript{17} Ibid, II / 44.
discussed that whether an Imam traveling in one boat could lead the prayer for those traveling in another boat. According to the Hanafi jurists it is not legal as the gap between the two boats may be filled up by several small boats\(^{18}\). In the same context it has also been discussed that a person undertaking a long journey on boat is not entitled to get the status of resident even with the intention of staying on the boat for more than fifteen days, because the boat is not a place of residence.

In reference to the \textit{Jumu'ah} prayer, the \textit{Fatâwâ} has taken up many important issues including traveling on Friday and has given the opinion of different jurists about this issue. In the opinion of the Hanafi jurists there is no harm in traveling before \textit{Jumu'ah} prayer if there is no apprehension of missing the prayer. According to Imâm Mâlik traveling in mid-noon is not allowed, while Imâm Shafi'i considered traveling on Friday unlawful from the morning itself\(^{19}\). This discussion also shows that how in controversial matters the \textit{Fatâwâ} has given points of the jurists of different Schools. It is notable that in reference to the \textit{Imamat} of minor Hâfiz in the \textit{Tarâwih} prayer, the \textit{Fatâwâ} simply quotes the opinion of the Ulama of Khurasan and Iraq without any reference to their school. While the former consider it lawful, according to the latter it is not permissible.

\(^{18}\) Ibid, II / 45.
\(^{19}\) Ibid, II / 75.
The compiler of this Fatāwā followed the Īlāmā of Khurāsān. Apart from referring to certain traditions he has also quoted Fatāwā-i-Qāzpī Khān in support of his viewpoint.

Nikāh (marriage) Talāq (divorce) and Nafaqah (maintenance) are the important issues of the family life of the Muslims which have been discussed in detail in the Fatāwā-i-Tātārkhānī and difference of opinion among the jurists about these issues have been also taken into account. In the very beginning of the discussion it was explained that Nikāh is obligatory (Farz) for those persons who cannot control their sexual desires and it is non-obligatory (Mandūb and Mustahab) for those who can control them. As a matter of fact it is generally accepted opinion of the Muslim that Nikāh is sunnah as it has been clearly stated in some of the traditions of the Prophet (S.A.W.).

The Fatāwā has also discussed the use of the Persian words or terms for Nikāh, Talāq and related matters and it is evident from the discussion that the Hanafi jurists have liberal view about this issue as they considered it permissible and legally valid.

The condition of Shahādat (witness for the validity of Nikāh) is an important issue about which different opinions of the jurists are given in this context. Hanafi jurists consider it as essential condition.

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20 Ibid, II / 666.
21 Ibid, II / 579.
23 Fatāwā-i-Tātārkhānī II/580-581.
for validity of Nikāḥ. In view of the Maliki jurists publicity (Iʿlān) of Nikāḥ is legally more important than the witness. An interesting question responded to in the Fatāwā is whether it is necessary for the witness to understand the meaning of the sentences pronounced at the time of the Nikāḥ. The Fatawa states that if there is any witness from among the Indian (Hindiyin) and Turkish (Turkiyin) person who is unable to understand the meaning of the sentences uttered at the time of the Nikāḥ nor he can explain them, this Nikah would not be valid. It is also notable here that the Fatāwā took note of solemnizing of marriage through letter (Al-Risālah). According to the compiler, this is lawful because the letter stands for verbal declaration from the person concerned. To establish this point he makes reference to the Prophet's marriage with Umme Salmah (R.A.) as the proposal for the same was sent through letter. But such Nikāḥ would be lawful when the contents of the letter are read in presence of the witness. The Kafāʿat (equality in the spouses with regard to certain aspect of life required by Islamic law) is an important issue relating to Nikāḥ and it has been much debated issue among the jurists of different periods. According to this the Kafāʿat may be considered with regard to Islām, Taqwā and diyānāt (piety
and faithfulness to religion) Nasab (family background) Māl (wealth), Ḥurriyat (freedom), Ḥirfat (profession) ʿAql (sanity)⁷⁸.

It is interesting that according to the Fatawa ʿAql included those things which may be examined for Kafaat, while generally this does not find mention in other Fiqh works. It is also noteworthy that in view of the situations that prevailed in those days India, the Fatāwā has also made it clear that convert or new Muslim is to be considered kufū (equal) to another convert irrespective of their family background and caste to which they belonged before this conversion⁷⁹. There is difference of opinion with regard to the meaning of the wealth to be examined under the Kafāʿat in case of husband. According to the Ḥanafi jurists it means that he is able to pay Mahr (dower) to wife and he can make arrangement for her residence, food and dress known as Dast-i-Paimānī in those days³⁰.

The Fatāwā-i-Tātārkhanī has also discussed many issues relating to Zimmīs (protected non-Muslim subject of Muslim state) and it has taken into consideration the cases arising out of conversion of one or two members of their family to Islam. In its discussion about the provisions of family law the Fatāwā took up a number of their cases. For example if a Zimmī wants to marry a Zimmīyah who was divorced by an unbeliever (kāfir) the passing of

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⁷⁸ Ibid. III/57.
⁷⁹ Ibid. III/58.
³⁰ Ibid III/59.
‘Iddat (the period of probation) is not required for their marriage and the Qāżī would not prevent them from having their relationship as husband and wife. According to the Fatawa if non-Muslim wife submits her complaints in the court of the Qāţī, the Qāţī would ensure that her rights are protected. In case, a non-Muslim marries two sisters (which is not illegal according to their religion) then he gives divorce to one of them and embraces Islam along with another wife their marriage would be considered lawful. In case of difference of religion of the Zimmi people, marriage among them is permissible. The Fatawa states that if a non-Muslim had five wives and he accepts Islam or his wives also embraces Islam along with him their marriage would be dissolved in case he married all of them in a single sitting. But if his marriage with them had taken place at different times, he would retain first four wives and would separate the fifth one. This is the view of Abū Hanifah. According to Imām Abū Yūsuf and Imam Shāfi‘ī the husband is at liberty to choose any four from among the five wives.

The cases of conversion were not unusual in medieval India. Such cases also created legal problems required to be solved in the light of Islamic jurisprudence. For example what would be Shariat’s

31 Ibid III/172.
32 Ibid.
33 Ibid III/ 173, 175.
34 Ibid III/ 175.
attitude in case husband embraced Islam and his wife continued to follow her old religion or vice versa. Taking note of such cases the *Fatāwā* states that the fundamentals of Islam would be presented before the non-Muslim partner if he or she accepts this their marriage would be considered lawful, otherwise separation would be made between them. But in case husband becomes Muslim and wife remains as *Kitābiyah* (i.e. Jew or Christian) there would be no effect on their position as husband and wife. It means that the *Fatawa* considered marriage of a Muslim with a *Kitābiyah* lawful.

The jurists have different opinion about triple divorce (saying *Talaq* three times in one sitting). The compilers of the *Fatāwā-i-Tatarkhani* have supported the Hanafi point of view that it (though not desirable) is lawful. It may be effected either by pronouncing the word *talaq* or other word of similar meaning. The use of the Persian words such as *Talaq maikunam* (I divorce you) three times would be effective in this connection. In the same way if a wife says to her husband give me divorce three times and the husband says your are divorced it would be considered triple divorce. In the same context the *Fatāwā* has also discussed the important issue of *Tafwīz-i-Talaq* (delegating right of divorce to wife). Under this provision of law a husband authorizes wife to secure divorce if he fails to fulfill his

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36 Ibid III/ 181-182.
37 Ibid III / 287.
responsibilities. This authority may be given to the wife by saying Amroke be yadeke (your matter is in your hand)\textsuperscript{38}. It may be also done by pronouncing similar other words such as Ikhtarte or Inshête (You are authorized or if you want)\textsuperscript{39}. As regard the maintenance (nafqah) for a wife according to this Fatāwā it is the responsibility of husband to take care of it and provide her lodging, fooding and dress. It is interesting that with regard to the dress this Fatawa lays down that the husband is bound to provide it in accordance with the requirements of the seasons (summer and winter).

Keeping in view of the social conditions of those days, the Fatawa has also taken up the issue of providing maintenance to the servant of the wife. According to the Fatāwā if wife belonged to an affluent or upper class family (Ashrāf) who had servant for her day to day works she is entitled to get maintenance for atleast two servants. In this case also the husband is required to take care of the demands of the seasons while making provision for dress of the servants of his wife\textsuperscript{40}. In case the wife is owner of landed property and asks her husband to pay her servant from her Mahr (dower) her demand would not be accepted\textsuperscript{41}. In case of dispute for payment of maintenance of previous years (Azminah al-Māziyah) Imām Abū Hanīfa held that maintenance of past time would not be considered

\textsuperscript{38} Ibid III/ 340.
\textsuperscript{39} Ibid III / 363.
\textsuperscript{40} Ibid IV/206.
due on the husband and according to Imām Shāfī‘ī he is responsible for the payment of maintenance of the earlier years also\textsuperscript{42}. In case a husband shows negligence in providing maintenance wife is entitled to put his case before the Qāżī who would make the husband bound to give her \textit{nafqah} in the form of monthly or daily allowance or in any other suitable way. But in fixing the amount of maintenance, the financial condition of the husband would be taken into consideration.

In case the husband is unable to pay the maintenance due to his limited resources, the Qāżī may direct the wife to manage her affair through borrowing money from any one and to return back the same when her husband’s financial condition improves\textsuperscript{43}. If husband shows inability to provide maintenance the Qazi may decide for separation between husband and wife. But for such a decision it is necessary that the wife would have presented his case in the court of Qāţī and the latter would have thoroughly examined the economic position of the husband concerned. In the same way separation may be done in case husband is absconding\textsuperscript{44}.

At the end of the discussion it may be concluded that the \textit{Fatāwā-i-Tātārkhanī} has many important features which gives it a distinctive place among the \textit{Fatāwā} literature of medieval India. Though only selective parts of the contents of the \textit{Fatāwā} were

\textsuperscript{11} Ibid IV/205-206.
\textsuperscript{12} Ibid IV/206.
\textsuperscript{13} Ibid IV/214.
studied above but it is quite evident from this, that under each chapter problems have been discussed thoroughly and even minor issues were not left over. It may be realized from the fact that the chapters on Nikāh and Talaq are spread over more than three hundred pages. Secondly, the Fatāwā has given main emphasis on recording the opinion of different jurists about the matter under discussion. Though the Fatāwā gives main focus to the Hanafi points of view, but the opinion of the jurists of other schools specially Shafii are mentioned frequently. It is also a notable aspect of this Fatawa that after recording the opinions of different jurists on a particular issue it finally observes about one of them that this is the select or popular one (Qaul-i-Mukhtār) or this is the opinion according to which Fatawa is given (wa ‘alaih al- Fatwā). It is important to note here that no opinion of the earlier jurists is given without reference to its source. This has not only increased number of sources cited in the work but has also added to its value and reliability. These sources as stated earlier, came under the category of those works which were written from the Hanafi point of view. Even the Shafii or Mālikī point of view were given with reference to the works of the Hanafi Scholars. It is of course, quite surprising that for explaining or solving the legal problems Qurānic verses and Aḥādīş are seldom referred to in this Fatāwā. As a matter of fact, the compilers had

\[\text{Ibid IV:213.}\]
followed the prevalent practice of just referring to the early *Fiqh* works and they did not venture to adopt the path of *Ijtihad* through taking recourse to the primary sources of the Islamic *Fiqh*. Lastly use of *Persian* words and phrases within the *Arabic* texts in the *Fatawa* shows that the compilers have given consideration to the rising popularity of Persian as the spoken and academic language among the Muslims of those days.