

AN ASSESSMENT OF THE ETHICAL VALUES OF AL-MUSTAFTI (THE CLIENT) AND ITS IMPLICATIONS TO ISLAMIC EDUCATION IN THE 21ST CENTURY NIGERIA

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ABSTRACT

Fatwa (legal opinion) is a solution proffer to a *Mustafti* (client). This is in order to guide him/her in both his spiritual and mundane lives. The interactions between the *Mufti* (scholar – jurist) and the *Mustafti* which are either face to face or written require some ethical values to be comprehended and acquired by the *Mustafti*. Many occasions especially in public lectures or enlightenment programmes organized in the mosques some audience ask meaningless questions or ask questions on ambiguous matters. Questions of these nature or their likes tend to brew mix-feelings among audience especially where their educational attainment Islamically is low. This paper is an elucidation of the ethical values expected of the client to adhere in the process of his interaction with the *Mufti*, such as solution to laxity in method of approach to problems etc. Similarly, the implications of such requirements to Nigerian society were discussed i.e. addressing the *Mufti* with soft tone and humility.

INTRODUCTION

Jurists in Islamic law are scholars who acquired some special skills for formulating law (*Istinbatul – Hukmi*). These scholars exhibit their entire mental prowess (*Ijtihad*) to bring forth solution to us as a succour to the faithful. The status of such scholars in the community are similitude of a star in the sky, they guide mankind on earth. The serious urge for their guide is more desirous than of food and drink. It is noted that obedience to these scholar- jurist is more imperative than obedience to parents. Ibn Qayyim al-Jauziyyah (d. 676 A.H) reported Ibn Abbas and his

disciples view in affirming this statement where the following verse was cited as an *adlillah* (justification).

O you who believe obey Allah and obey his messenger Muhammad (SAW) and those of you (Muslims) who are in authority (an-Nisai, 4:59).

Ibn Qayyim further reiterated that obedience to scholars precede “obedience to those in authority” (Abubakar, 1997: Vol 1: p7). Allah

(SWT) Has clearly elucidated the role of scholars as custodians of knowledge as stated.

So ask (you O pagan of Makkah) of those who know the scripture (learned men of the Taurat) (Torah) and Injeel (Gospel), if you know not. (an-Nahl, 16:43).

Al-Shatibi (n.d) described the position of *Al-Mufti* (scholar-jurist) as a personality occupying a position of the Prophet (SAW). The Prophet's statement thus justifies this claim.

Indeed scholars are heirs of the Prophets, surely the Prophets are not inherited of Dinar or Dirham but are inherited of knowledge (Al-Mubarakpuri, :1410:1995:7:423).

Al-Shatibi (n.d) further re-affirms from the Qur'an the status of scholars as guiding – light of the society as Allah stated

Of every troop of them, a party only should go forth, that they (who are left

behind) may get instructions in (Islamic religion, and that they may warn their people when they return to them, so that they may beware (of evil). (Taubah, 9: 122).

Fatawa (legal opinion) from *al-Mufti* could be understood from the following perspectives:- speech, action and acknowledgement-wise. These characteristics of responses enables the *Mustafti* to be abreast with knowledge that uplifts his well being.

Al-Khadari (1419/1998) in conceptualizing the *Mustafti*, he described him as an *Ami'*(commoner), a responsible person (*Mukallaf*), shouldered with legislative responsibility. However, his capacity of being able to shoulder responsibility does not qualify him for *Ijtihad*, because if allowed to make *Ijtihad* it could lead to destruction. At his status, he could only ask the scholars and follow their footsteps. Al-Khadari justified his claim by citing the earlier cited verse of al-Nahl (16:43).

So ask (you O pagan of Makkah) of those who know the

scripture (learned men of the Taurat) (Torah) and Injeel (Gospel), if you know not.

Al-Taqlid appears to be a synonymous term used for *Al-Mustafti* or *Ami'*. *Al-Turki* (1419/1998:650) conceived *Al-Taqlid* to mean "accepting a statement from another person without proof". He added that *Taqlid* is accepted only on issues related to *Furu'i* (the branches of the religion) and not *Usul* (the fundamental). These two terms tend to have common characteristics in their scope of operation i.e. following the footsteps of the scholars, accepting fatwa on the branches of the religion and none of them is qualified to give *fatwa*.

This paper seeks to bring to light the ethical values expected of a *Mustafti* to acquire. A client is supposed to stand to benefit from the scholars of his community. He at times, loses this opportunity owing to so many factors, among them are absence of linkages between knowledge attainment and imbibement of ethics. A client loses these vital qualities because the objectives for knowledge acquisition is lacking (morality and *Ikhlās* seeking Allah's pleasure). This seldom leads a client to ask questions that would not be valuable to him or disrespectfully ask the

Mufti a question that may even irritate the *Mufti*, thereby losing the benefit of the question. Moral consciousness increases God-fearing in the hearts of believers, some clients intentionally twist questions in order to obtain favourable answers from the *Mufti* who is a respected authority in religious matters. The client seizes a licence to embark on his selfish desires. At times, a client selfishly jumps from one scholar (*Mufti*) to another in a bid to satisfy his whims. Clients of this nature always derive pleasure in asking questions on ambiguous issues, i.e. obtaining unlawful wealth to conduct lawful acts. These and other related issues attract diverse verdicts upon which the client inclines to a verdict that favours him. Such egoistic motivations are unethical.

Sectarian and ideological conflict among the Muslim sects and religious organizations in Nigeria, example *Izala* and *Tariqah* create serious gaps for Unity. Similarly, intolerance and disrespect for truth amongst Muslim followers especially the youth. This vacuum undoubtedly creates ethical dilemmas in the minds of many clients. Such clients – victims always ask questions to justify further a view or principle upheld by either his *Shaykh* (leader) or *Tariqah* (sect) or organization. His questions always widen gaps of understanding, harmony and peace.

This type of client is nothing other than a send-force of his master. These aggressive and ignorant fanatics tend to expose the interest and conflicting position of various Islamic sects and organizations. The need to equip the client Muslims especially the youth among them with Islamic etiquettes to serve as a prerequisite for beneficial *fatwa* in our community is highly imperative.

Social changes in the society are realities. Man as a social being is part of these realities; he struggles to adjust to these impending social changes. Many at times some social changes are accompanied with problems, some of these problems are personal while others are public. Example of these problems are Plan parenthood, interest in the Banking industry, extent of women participation in politics, sex education curriculum, items to be given out for *Zakkat* etc. These modern issues squarely affect the contemporary Muslims communities. The Muslim lay-man who is in dare need of guidance needs some discipline in him to be able to put his problems properly to the professionals in religious guidance so as to relieve him of his problems. Solutions to these problems as a Muslim must be sought from purely Islamic background. Henceforth, questions must be asked so as to

arrive at the solutions from the learned. These cannot be realized without the questioner acquiring and adhering to some ethical values so as to benefit from the answers.

The Following are the Ethical Values Expected from Al-Mustafti

1. Enquiry about the moral and intellectual qualification of the scholar whom *fatwa* is sought from.

Scholars of refute like Al-Khadari (1419/1998) and Al-Uthaimin (1428/2007) implore on the client to properly ascertain whom he could rely upon for *fatwa* (legal counsel). Al-Juwayni acknowledged Al-Baqillani's view as in Al-Shahrazawi (1992) who urged the client to examine the professionalism of the *Mufti*. Al-Ghazzali and Al-Uthaimin, unequivocally described the professional quality as knowledge and justice. The first quality is clearly intellectual while the second is moral. Al-Ghazzali reported that some scholars even felt that it is valid to inquire about his academic status.

In Al-Uthaimin's justification for this condition, he noted that if legal counsels (*fatwa*) could be accepted without scrutiny the religion of Allah could be subjected to undue

concession (*ruhsah*) through all kinds of *fatwa* by either unqualified *Muftis* or morally debased *Muftis* or both. However, under necessity a client may occasionally and consciously ask a less knowledgeable person in the absence of a more knowledgeable person, since *Mufti's* differ in hierarchy, thus a less prominent scholar could be asked. (Al-Shatibi, n.d).

Al-Shahrazawi (1992) respected the absolute nature of such obligation. According to him a client can only inquire about the knowledge that would be of benefit to him. But he could still reach out to the prominent scholars in his environment. Some scholars respected such deep level of inquiry into the curriculum vitae (CV) of the *Mufti*, according to them if a scholar presented his C.V. he has invariably spoken of himself to the client and eulogized himself.

2. The client should be cautious in imitating the passed-away (late) jurists.

This issue is viewed from two perspectives for the client

- i. Al-Shahrazawi (1992) reported that it is not possible for the client (*Ami*) to imitate a scholar that passed-away,
- ii. such client could only follow the verdicts of schools of law

(*Madha'hib al-Fiqhiyyah*).
AbiBakr (1417/1997) on this note related a simile to acceptance of witness in the court of law before the demise of the witness, even though the demise of the witness does not invalidate their witnessing.

3. Ethical expectation of a client in choosing and following any school of law.

On this issue, scholars looked at the case of the client from two perspectives:

- a. the client as an *Ami* is incompetent to adhere to a school of law. Owing to his incompetency to acknowledge and comprehend evidence (*Adillah*). On this ground he is privileged to seek for *fatwa* (legal opinion) from any school of law he wishes. (Al-Shatibi, n.d)
- b. the client should incline to a school of law, in this situation the client perceives his school of law as a school on the right path. He cannot imagine contravening the view of his *Mufti* (jurist). At times *Al-Mustafti* (client) might not have identified with any school of law. In this circumstance some scholars suggested that he should not incline to any particular

scholar/school for followership. Alternatively, others suggested that it is obvious for a client to imitate a scholar absolutely. Such a client, considering his status, i.e. inability to distinguish between complicated cases or to solve problems. Hence, he should imitate a scholar or a school of law. (Al-Shahrazawi 1413/1992)

4. A client's ethical response when confronted with two divergent solutions to a problem.

The following ethical suggestions were proffered by Al-Shahrazawi (1992):

- i. The client should prefer the weightier decision to the lighter, or the client should strive to uphold the strongest legal opinion by identifying the most knowledgeable and pious of the two scholars. Al-Shahrazawi further gave other options that in the event of indecision, the client could ask another scholar whose legal opinion may aid him in acting on any *fatwa* he deems fit.
5. A client is ethically expected to understand that he is obliged to apply whatever he heard from his *Mufti*.

Scholars are of the view that so long as he agrees with the authenticity of the legal opinion of the *Mufti* he should uphold it. Similarly, if a client seeks legal opinion from the only available scholar in the area, he is obliged to accept it.

Abdullahi b. Fudi (d. 1245 A.H/1829CE) as cited by Aliyu (1988), suggested for as *Mustafti* in a situation of urgent need for solution to a problem. He present three guiding principles which the client could be acquainted with, i.e issues that are:

- i. ordered by Allah without ambiguity in the text should be carried out, such issues are good.
 - ii. categorically prohibited by Allah, no good comes out from it, hence it should be avoided.
 - iii. doubtful in the minds of the client, he entertains fear of failing into sin. Hence, he should keep away from such things because of its uncertainty.
6. In the circumstance of recurring of a problem whose legal opinion was earlier sought for.

Scholars guide the *Mustafti* with the following ethical suggestions:

- i. the client is obliged to follow the scholars second view, where

- such view differs from the former
- ii. the client is not obliged to accept the latter differing opinion (*fatwa*), the reason being the case as the same with the former, hence the verdict should be the same. This is the popular view.
7. A client by his status should never ask for any legal opinion (*fatwa*) from himself.

Rather he should rely on what scholars had committed to writing and left behind. The client could do so after authenticating the work as belonging to the scholar.

8. The client must accord due respect to the *Mufti* (legal counsel).

He should be humble when asking question. He should never pose a challenging question unto his scholar. The client should consult the most senior in age and most knowledgeable.

9. The client needs to clarify and make detail the case to the scholar.

This will enable the scholar to explain the case better and profer comprehensive answer to the client. Where the content of *fatwa* is

written, the writing must be legible, concise and free from ambiguity. The client (where necessary) needs to consult a professional scribe who should write down his *fatwa* for him in the correct language. The client should accompany his question with prayer for guidance and success unto the *Mufti*.

10. It is not ethically encouraged for a client to seek for evidence from a *Mufti*

If he persists on want of evidence on the answer given he could do so on other forum, this is more respectful. However, Al-San'ani as reported by Al-Shahrazawi (1992) opined that a *Mufti* could be approached for want of evidence (*Mahallu al-Shahid*) owing to his competence in knowledge. It is mandatory upon the *Mufti* to provide the client with evidence if he is capable of doing so.

Analysis on the Ethical Values

On enquiry about the *Mufti's* knowledge and morality as an ethical responsibility rested on the client. As ideal as it appears to be, undertaking such responsibility cannot be expected from every client. Considering the status of the client as an *Ami* or *Muqallid* who accepts legal opinion from a superior. His level and power of educational attainment that may enable him

distinguish or ascertain the intellectual competence of a *Mufti* is difficult. Where the categories of the clients are graded according to their intellectual attainment such a task could be vested on him.

Adopting the legal opinion of the scholars that had gone by could not be completely negated. Where their *fatwa* is still valid and reliable it should be upheld. There is no difference between adopting an individual scholar's opinion and that of a school of law. Any legal opinion that is in harmony with the contemporary problems should be whole heartedly accepted.

The issue of a client (*Ami*) adhering or not adhering to any school of law is dependent upon his level of knowledge and the nature of his immediate environment. Shaykh Uthman b. Fodio in his work *Hidayatul al-Tullab* (students guide) has unequivocally stated that, Surely Allah the most high did not obliged anyone neither in His book (Qur'an) nor in the tradition of His messenger adhering to any school of law among the schools of law (Ibn Fudi n.d.: 54). Despite this view, a client that has not attain the level of *Ijtihad* is bound to practice the religion without questioning the whys and hows of everything for a time.

Hence, he should incline to a school of law.

On the situation that the client was given two divergent opinions by two different scholars. For the client to prefer an option to another, he needs to acquire a certain level of knowledge. The best option for him in this circumstance is to choose any *fatwa* of his choice. The idea of choosing a weightier opinion as sign of uprightness is not justifiable, more so, Allah said that "...and has not laid upon you in religion any hardship". (al-Hajj, 22:78).

The relationship between the *Mufti* and *Mustafti* is that of a teacher and his student. Therefore, trust and respect must coexist in their relationship so that the client should reap the value of the *fatwa* given to him.

Recommendations for the Mustafteen in Nigeria

A prosperous nation is known by the high quality of its citizen's educational attainment. Thus this quality is best enhanced where there is good interaction between the educators and the recipients. In this light, no meaningful development intellectually, spiritually and morally can be achieved without having the *Mustafti* knowing his status fully.

His status as an *Ami* who is incapable of taking independent decision on religious matters needs to be acknowledged by him.

- i. The clients in Nigeria need to learn to accord regards to scholars especially during *fatwa* programmes in the radio and television.
- ii. Oral and written questions must be clear from ambiguities, free from creating disorders amongst scholars, especially during Ramadan.
- iii. The *Mustafti* must be honest and humble to his scholar.
- iv. In his wants of evidence for an answer given, the client should show extreme humility and wisdom in his enquiry.
- v. A *Mustafti* should learn to be patient not to be in hurry to become a *Mufti* thereby losing the ingredients of what it takes to be a *Mufti*, such ingredients like search for knowledge by being in touch with the scholars, patience, perseverance, humility and appreciating the efforts of the predecessor.

In this light that the clients (*Al-Mustafteen*) could benefit from the *fatwa* of the scholars in the nation and also be able to be heirs of their scholars' legacies.

CONCLUSION

The role of the jurist in creating a balanced life in the individuals and the community at large is imperative. These scholar – jurists are guiding – light, they extinct the darkness of the heart and kindled the light for its guidance. Hence, the client who is in search of guidance who by his nature cannot emancipate himself from the clutches of ignorance, he needs the guide of the *Mufti* (jurist-scholar). Therefore, the ethical requirements of the *Mustafti* (client) are manuals for smooth and successful interaction between him and the *Mufti*.

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