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Uses and Abuses of the Past: An Ethno-History of Islamic Legal Texts

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ABSTRACT

The past is the most important element in the meanings of Islam and its law, but the existing literature has rarely addressed the ways in which Muslims make sense of their past. How and why does the past matter so much for Muslims? Within their past, is it the seventh century that matters for them the most, once it comes to Islamic law, or is it some later period? If the latter, why is that so? This article addresses these questions through an ethno-historical study on the Shāfiʿī Muslims of the Indian Ocean littoral. I argue that a *textual longue-durée* of Islamic law is what matters to the Muslims more than the scriptures from seventh-century Arabia, or even than the foundational texts of Islamic law from the eighth or ninth centuries. This textual longue-durée is a product of millennium-long legalistic engagements by Muslims not only from Arabia, but also from 'peripheral' places like India and Indonesia. Through juridical and ethical discourses and debates in religious spheres, a rich reservoir of premodern texts is constantly invoked in the mosques, madrasas, markets, and mass media in order to better sustain religious piety and the legal system.

1. INTRODUCTION

'Live as a European not as a 7th century savage' wrote one reader in response to the Swiss court's ruling that Muslim girls should swim with boys in the mixed school swimming lessons. 'Good ruling', wrote another reader: 'If Muslims don't like western democracies who believe male and females are equals, . . . then they should stay in their 7th century countries.'[1] These are not just spectacular comments; rather they echo a wider popular sentiment often expressed in headlines related to Muslims. Even a PowerPoint presentation by the Federal Bureau of Investigation's (FBI) Law

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1 For the news and comments, see <http://www.independent.co.uk/news/world/europe/switzerland-muslim-swimming-pool-school-mixed-lessons-ruling-girls-boys-echr-a7518981.html> accessed 07 July 2017.

Enforcement Communication Unit describes Islam as a religion that 'transforms [a] country's culture into 7th-century Arabian ways'.[2]

More striking than the contexts of these statements is the power of their slogans. It emphasizes the notion that the Muslims live following the seventh-century rules in social, cultural, legal, ethical, and economic realms. There is a common pattern in this insinuation. The trope of the seventh-century comes with regard to Islam and Muslims in discussions about law, as in the comments on a court verdict and as in the address of the FBI presenter to a law enforcement team. In a similar vein, the Somali-born Dutch-American author Ayan Hirsi Ali writes in her recent book, in a chapter grippingly titled 'Shackled by Sharia: How Islam's Harsh Religious Code Keeps Muslims Stuck in the Seventh Century': 'We must demand that Muslim citizens abjure sharia practices and punishments that conflict with fundamental human rights and Western legal codes. Moreover, under no circumstances should Western countries allow Muslims to form self-governing enclaves in which women and other supposedly second-class citizens can be treated in ways that belong in the seventh century.'[3]

The metonymy of the seventh-century and Sharia serves as a recurrent rebuke for Muslims being non-compatible with the laws of the twenty-first century. The majority of Muslims would disagree with these statements as much as with the whole idea of going back to the seventh century. They all want to live as everyone else, yet following the prescriptions of Islam as much as possible. Indeed, it is true that the seventh-century followers of the Prophet Muhammad present an ideal Islamic community for them. But their entanglements with Islam and Sharia have expanded ever since so enormously and have complemented it with a rich scholarly and juridical tradition that sought creative ways to adapt Islamic teachings to their respective places and periods. This process of making sense of Islam in their immediate contexts has produced a rich textual tradition that confronted, negotiated, and rearticulated the understanding of Islam in Arabia in the seventh or eighth centuries. Particularly in Islamic law, hundreds of new texts have been produced with this target in mind, often criticizing the early foundational scriptures. Thus, in the course of Islamic history it was not the prescriptions of Quran and Hadiths that mattered most but rather the scholarly extractions from them of meanings adaptable to particular contexts which made more sense to the community at large. The scholars who did this were often communicating, compromising, encountering, renewing and rejecting the views of earlier scholars, their texts and their judgements. All these engagements happened among Sunni Muslims mostly standing within the theoretical frameworks of a particular legal school, predominantly Ḥanafism, Shāfiʿīsm, Mālikīsm, and Ḥanbalīsm. These schools produced a rich tradition of Islamic scholarly and textual genealogies, in which scholars wrote comments on previous texts, which were based on even earlier texts, and those in turn on texts going back to the eighth or ninth century. They were presented in the form of commentaries, super-commentaries, super-super-commentaries, abridgements, translations, and poetic versions and this large

2 Spencer Ackerman, 'FBI "Islam 101" Guide Depicted Muslims as 7th-Century Simpletons' <https://www.wired.com/2011/07/fbi-islam-101-guide/>; for the original document, see <https://www.wired.com/images_blogs/dangerroom/2011/07/Cultural-Interviewing-Interrogation-PowerPoint1.pdf> both links accessed 07 July 2017.

3 Ayaan Hirsi Ali, *Heretic: Why Islam Needs a Reformation Now* (Harper Collins Publishers 2015) 152.

corpus of texts is what matters to the Muslims in the contemporary world, more than the original scriptures of the Quran or Hadith from the seventh century.[4] This article explores the uses of these texts by Muslims in their everyday lives in order to understand how they find meanings in them and justifications from them in the world of Islam in the Middle East, South and Southeast Asia, and East Africa, or in the Indian Ocean littoral that binds these regions and their communities together historically and culturally.

Before discussing this we shall consider a related theoretical-cum-theological issue with regard to Muslims and the seventh century. While all the above Islamophobic comments were trying to attach the Muslims with the seventh century, an argument to which the majority of Muslims would disagree, there is a section in the community that *does* want to go back to the seventh century by negating the rich scholarly and intellectual tradition of Islam. In Islamic circles they are known as Salafis or Wahhabis, but more widely they are known as 'Reformists', in line with the Christian reformers who made similar claims to reject the intermediary canonical traditions of Catholicism. A strong section among them argues that the Muslims should go back to the seventh century in all realms of their life, not only in religious rituals but also in everyday lifestyle and cultures. They argued that the original form of Islam lay in seventh century ideals and frameworks, and the legal schools followed by the majority of Muslims should be rejected. Rashīd Riḍā, one of the most renowned Salafi thinkers of the twentieth century, identified himself with Salafism and its inherent rejection of this long tradition thus: 'I am a Salafi Muslim; I do not blindly follow any particular religious scholar and am not a partisan of any particular *mujtahid*.'[5] Such people are particularly obsessed with the earliest scriptures of Islam written in or ascribed to the seventh century, whereas most Muslims follow later juridical traditions beginning in the ninth and stretching to the twentieth century.[6] That long and rich past of more than a millennium stands as an opulent repository for Muslim scholarly engagements in their meaning-making process of what are Islam and its law for their present lifestyle.

The anthropologist Talal Asad has conceptualized this process of dealing with the past through scholarly discourses as *the Islamic discursive tradition*. It 'includes and relates itself to the founding texts of the Qur'an and the Hadith' and 'is simply a tradition of Muslim discourse that addresses itself to conceptions of the Islamic past and future, with reference to a particular practice in the past'. He says that the history of a given practice necessitates an Islamic scholar to instruct its 'correct form and purpose'. It calls for discourses which are unequivocally related:

4 To give just an example, consider part of this answer from Hamza Yusuf, an American Islamic scholar, to a question on how one should understand Quran and what should be one's personal relationship with it: 'One thing that you have to completely set aside is that you cannot get rulings from the Quran. It is absolutely haram to use the Quran as a book of fiqh (law), unless you are a mujtahid. You have to learn the fiqh from fuqahā (jurists). And that is very important.' <https://www.facebook.com/ZaytunaCollege/videos/10155424786124253/> accessed 07 July 2017.

5 Henri Lauzière, *The Making of Salafism: Islamic Reform in the Twentieth Century*, 96.

6 On the broader and deeper histories of Salafi engagements with Islamic textual corpus, see Roel Meijer (ed), *Global Salafism: Islam's New Religious Movement* (Hurst 2009); Jonathan Brown, *The Canonization Of Al Bukhārī And Muslim: The Formation and Function of the Sunni Hadith Canon* (Brill 2007) 300–34.

> conceptually to *a past* (when the practice was instituted, and from which the knowledge of its point and proper performance has been transmitted), and *a future* (how the point of that practice can best be secured in the short or long term, or why it should be modified or abandoned) through *a present* (how it is linked to other practices, institutions and social conditions).

Accordingly, a practice becomes Islamic 'because it is authorised by the discursive traditions of Islam, and so is taught to Muslims' and therefore 'orthodoxy is crucial to all Muslim traditions'.[7]

But recently Shahab Ahmed in a posthumous book has called this conceptualization problematic as it stands closer to a Salafi line of thought which adheres to the idea that 'the original is the authentic' and axiomatically claims that 'true and authentic Islam is to be identified by distinguishing it from the human and historical accretions of Islamic culture and society'. He writes about Asad's thesis:

> . . . what he is effectively doing is calling for us to identify as the relevant and constitutive discursive tradition/Islam those texts and practices by which the practitioners of the discursive tradition engage with scripture to prescribe (or to resist) orthodoxy. By this criterion, those texts and practices whose engagement with Divine Revelation is not bound up in a dynamic of orthodoxy become *ipso facto* something less than 'proper Muslim action' . . . even when those texts and practices, as a matter of historical fact, were absolutely central to 'the formation of moral selves, the manipulation of populations (or resistance to it), the production of appropriate knowledges'.[8]

Ironically, Robert Gleave, a historian of Islamic law, identifies Ahmed's book as a whole as a product of Wahhabism/Salafism:

> I do not think he could have written this book without Wahhabism. I think Wahhabism inspired him to write this book . . . . By admitting the paradox in the six things at the beginning of the book, he has bought the Wahhabi argument that these are paradoxical . . . whereas in the premodern period you do not find these as paradoxes. You do not find people obsessing in the same way. You have an acceptance of diversity which he recognises in the book, but his promotion of these paradoxes is a modern [Wahhabi] promotion.[9]

The past is thus is a hotbed for Islam, Islamists, Islamicists, and Islamophobes which circumscribe the seventh century, particularly once it comes to Sharia. The ways in which Muslims in contemporary world have developed their sense of their past is

7 Talal Asad, *The Idea of an Anthropology of Islam* (Center for Contemporary Arab Studies Georgetown University 1986) 14–15.

8 Shahab Ahmed, *What is Islam? The Importance of Being Islamic* (Princeton University Press 2015) 290, 171, 82.

9 Robert Gleave, 'On the Importance of Being Islamic: Shahab Ahmed's *What is Islam?* and the Future of Islamic Studies' paper presented at the workshop, Queen Mary University of London, <https://www.youtube.com/watch?v=4g0kwx5awuw> accessed 07 July 2017.

crushed and overlooked. In all these suggestions we see that the past is the most important element once it comes to the meanings of Islam. Then we are left with the question if the past matters that much for Muslims as has so widely been invoked. If yes, is it the seventh century that matters or later periods? If no, why is it so? I address these questions in this article, not through the lens of Salafis (whom the above FBI presentation compartmentalises as the 'least tolerant' Islamic school of thought, just before the Salafī jihadīs), but through the lens of the Shāfiʿī Muslims (whom it categorises as the 'most tolerant'). I explore how the contemporary Muslims from the Indian Ocean littoral engage with their past and how their rich repository of Islamic textual scholarship lives among them. I argue that a *textual longue-durée* of Islamic law is what matters to the Muslims and not the scriptures from the seventh century, not even the early texts of Islamic law, but texts from five centuries or even a millennium after the rise of Islam. Some of those were written not in Arabia, but in 'peripheral' places like India and Indonesia.

For a better comprehension I take three important Shāfiʿī texts, all written in the premodern period, and I explore their contemporary uses among the Shāfiʿī Muslims in discussions, polemics, debates, and classrooms in their meaning-making processes of their religious existences, identities, and pieties. As any other religious scripture, these texts have been used, abused, and misused by religious scholars, intellectuals, popular writers, translators, entrepreneurs, and critics in a number of different legal engagements of scholarship, teaching, discussing, debating, lawgiving, and writing. I focus on the status of these texts in social, religious, economic, cultural, and educational spheres through a historical-anthropological perspective in order to observe the transformations in the textual longue-durée of Islamic law. The three texts in focus are *Minhāj al-ṭālibīn* of Yaḥyā al-Nawawī (d. 1277), its commentary *Tuḥfat al-muḥtāj* of Ibn Ḥajar al-Haytamī (d. 1561) and its indirect summary *Fatḥ al-muʿīn* of Zayn al-Dīn al-Malaybārī (d. 1583?).

During four to seven centuries after they were written, these texts have been playing crucial roles in different modes of legalist initiatives among the Shāfiʿī and non-Shāfiʿī Muslims and non-Muslims. As the three sources on which the school highly depended and the most important reference points for its followers, those texts have travelled across the worlds of the Indian Ocean and the eastern Mediterranean until the twentieth century. An ethno-historical exploration helps us understand their wide currency among coastal Muslims from South and East Africa to the Middle East and South and Southeast Asia. Historically, Shāfiʿīsm dominated among the Muslims of such distant places from Africa to Asia through networks of Shāfiʿī scholars, jurists, and traders who utilized the affluent maritime routes of the Indian Ocean world in the thirteenth to nineteenth centuries. Although the school was only one among several other Sunni and Shīʿī schools followed in the littoral, the unprecedented conversions along with extensive migrations of Shāfiʿī scholars from the sixteenth century contributed to the dominance of this legal stream. A vigorous circulation of legal ideas and texts along with the scholars of the school provided a shared vocabulary for the 'Indian Ocean Muslims', and the three texts were and are used in all these regions in varying levels.

Here I shed some light on the idiosyncratic aspects these texts acquired, compared to other texts within and outside the Shāfiʿī school. They formed a rich archive

with which Muslims could engage. I investigate the ways of teaching, learning, memorizing, discussing, debating, and rejecting those texts, in order to unravel their status in the present-day Shāfiʿī and non-Shāfiʿī communities. This raises a number of interconnected questions. In the three, is there a hierarchy of usage varying from region to region within the Shāfiʿī world? If yes, how and why? What are the discursive, religious and cultural practices affiliated with the 'survival' of these premodern texts? Above all, how would these contemporary practices enlighten us on the ways in which the Muslims negotiate, encounter, reject and accept their past in the everyday life?

To answer these questions, I depend on multi-cited ethnographical fieldworks I conducted at certain educational centres and legalistic cultures of South Asia (mainly at Malabar and Madras) and Southeast Asia (Jakarta, Aceh and Singapore), and on digital archival materials and secondary literature from and on the Middle East and East Africa. In religious educational centres I have conducted ethno-historical surveys, and traced the dissemination of their records through new media. First I introduce the historical roots and routes of these texts with a brief overview of their composition and dissemination in the Muslim world. I then describe their contemporary uses by looking into pedagogic functions, both in traditional institutions and 'non-institutional' settings, and various other spheres of influence, the personal and collective, organisational, and sectarian realms of the Shāfiʿī Muslims.

2. ROOTS AND ROUTES OF A REPOSITORY: THE SHĀFIʿI TEXTS

In the history of the Shāfiʿī school of Islamic law, the most foundational text is *al-Umm*, written by the eponymous founder of the school Muḥammad bin Idrīs al-Shāfiʿī (d. 820). The title *al-Umm* literally means 'the mother', and indeed it stands as the supreme ancestral mother for future genealogies of texts that the school would produce in the centuries to follow.[10] Two immediate children were its two abridgements, written by Shāfiʿī's students, Ismāʿīl Yaḥyā al-Muzanī (d. 878) and Abū Yaʿqūb al-Buwayṭī (d. 846). Although the abridgement of the latter was initially appreciated by the early followers of the school, it soon became outdated for its great emphasis on the *ḥadīth*s, its apparent disordered structure and the emergence of the Ḥanbalī school.[11] Muzanī's summary took its place and it was widely circulated among the Shāfiʿī scholars in the ninth to the eleventh centuries. It thus attracted several commentaries, super-commentaries, and summaries among which the most elaborate one was *Nihāyat al-maṭlab* written by ʿAbd al-Malik bin ʿAbd Allāh al-Juwaynī (d. 1085), a Persian scholar based in Khurasan. His student Abū Ḥāmid al-Ghazālī (d. 1111), one of the most celebrated scholars of Islamic history, wrote a

10 There is a long debate among the Islamic legal historians on the authenticity and authorship of the *Umm* and Shāfiʿī. The debate seems to have settled by the persuasive source-critical study of Ahmed El Shamsy, 'Al-Shāfiʿī's Written Corpus: A Source-Critical Study' (2012) 132(2) Journal of the American Oriental Society 199–220. He concludes that the *Umm* as available today is an authentic text written by Shāfiʿī himself 'to the extent that a manuscript culture can reproduce a text authentically'. For earlier debates on this, see Joseph Lowry, 'The Legal Hermeneutics of al-Shāfiʿī and Ibn Qutayba: A Reconsideration' (2004) 11(1) Islamic Law and Society 1–41; Norman Calder, *Studies in Early Muslim Jurisprudence* (Clarendon Press 1993).

11 Ahmed El Shamsy, 'The First Shāfiʿī: The Traditionalist Legal Thought of Abū Yaʿqūb al-Buwayṭī (d. 231/846)' (2007) 14(3) Islamic Law and Society 301–41.

book called *Basīṭ* which is said to have been a commentary of his teacher's work.[12] In the course of time, Ghazālī himself wrote a summary for the *Basīṭ* titled *Wasīṭ*, which he then abridged as *Wajīz*, and then again abridged as *Khulāṣa*. All these texts received several progenies as commentaries, super-commentaries, super-super-commentaries and/or summaries. Among them the most noticed one was *Muḥarrar* by Abū al-Qāsim bin ʿAbd al-Karīm Rāfiʿī (d. 1227), another Persian jurist and historian based in the Caspian region.

The quality of the *Muḥarrar* became noticed not exclusively for itself but rather for its abridgement, the *Minhāj al-ṭālibīn* (hereafter *Minhāj*) of Yaḥyā bin Sharaf al-Nawawī. Nawawī wrote the *Minhāj* as he thought *Muḥarrar*'s several arguments and rulings opposed the 'authentic' opinions in the school.[13] He had synthesized a long-standing split among the Shāfiʿī jurists between the Khurasani and Iraqi factions and his *Minhāj* encapsulated his lifetime-project of this synergy.[14] The text attracted a huge appreciation among the literary circles and legal scholars for its language, precision, erudition and approach. It canonized the school through its prioritization and standardization of the school's opinions seen across a vast corpus of texts written after its supreme textual ancestress *al-Umm*. It revolutionized the ways in which the Shāfiʿī law was interpreted, perceived, and transmitted among later Shāfiʿī jurists. For them its methodology and approach provided a modular framework to understand and advance the laws of Islam. Over several generations it became one of the most circulated texts in the Islamic world, with multiple commentaries, super-commentaries, abridgements, translations produced over the centuries and even now. That is why this text has been chosen as the first to focus on, and the other two are extensions of the *Minhāj*.

In the fifteenth and sixteenth centuries there was an unprecedented surge in the commentaries, and several scholars wrote more than one commentary. Out of these textual treasures belonging to the *Minhāj*, I choose *Tuḥfat al-muḥtāj* (hereafter *Tuḥfa*) of Ibn Ḥajar al-Haytamī (d. 1561), for it has been the most noted commentary used by the Shāfiʿī jurists and taken as the most advanced text in that school. Its reception and circulation has to be seen alongside an opposing commentary; it is called *Nihāyat al-muḥtāj* and was written by Ibn Ḥajar's colleague in Cairo, Shams al-Dīn Muḥammad al-Ramlī (d. 1596). The *Tuḥfa* was mostly circulated in the Hijaz, Yemen, South and Southeast Asia, whereas the *Nihāya* was used in Egypt and adjacent areas. By the eighteenth century this divided circulation changed with scholars becoming increasingly mobile.[15] Yet the *Tuḥfa* remains a widely circulated advanced legal text in the Indian Ocean littoral. In the last four centuries it has attracted about forty textual progenies as super-commentaries, summaries, abridgements, poetic versions, etc.

12 Sulaymān ibn Muḥammad Bujayrimī, *Ḥāshiyat al-Bujayrimī ʿ ja Sharḥ Manhaj al-ṭullāb* (Dār al-Kutub al-ʿIlmīyat 2000) 1, 15; Ḥabīb ʿAbd Allāh bin Ḥusayn Bil-Faqīh, *Maṭlab al-īqāz fī al-kalām alā shayʾ min ghurar al-alfāz: bayān li muṣṭalaḤāt al-Shāfiʿīyyat al-fiqhīyya* (Dār al-Muhājir 1995) 34.

13 Nawawī, *Minhāj al-ṭālibīn wa ʿumdat al-muftīn*, ed Muḥammad Ṭāhir Shaʿbān (Dar al-Minhāj 2005) 64.

14 On the life and contribution of Nawawī, see Fachrizal Halim, *Legal Authority in Premodern Islam: Yaḥyā b. Sharaf al-Nawawī in the Shāfiʿī School of Law* (Routledge 2015).

15 Shifāʾ Muḥammad Ḥasan Hītū (ed), ʿUmar bin Ḥāmid Bā Faraj Bā ʿAlawī, *Fatḥ al-ʿalī bi jamʿ al-khilāf bayn Ibn Ḥajar wa Ibn al-Ramlī*, (Dār al-Minhāj 2010) 16–17.

The third text I focus on is an indirect summary of the *Tuḥfa* entitled *Fatḥ al-muʿīn* (hereafter *Fatḥ*) written by Zayn al-Dīn al-Malaybārī (d. 1583?). He was an Indian jurist and historian, who reportedly studied with Ibn Ḥajar at Mecca. This text has also been circulated widely in the Indian Ocean littoral and has attracted several commentaries, translations, and poetic versions. In nineteenth-century Mecca it attracted four commentators, as many as it did later in South and Southeast Asia. It has often been mentioned in the Shāfiʿī scholarly circles as the standard text or constitution of the school.

The *Minhāj*, the *Tuḥfa*, and the *Fatḥ* have all played crucial roles in different modes of legalistic formulations among Shāfiʿī Muslims, from the world of the eastern Mediterranean to that of the eastern Indian Ocean. The intellectual networks functioning between South and Southeast Asia, the Middle East, and South and East Africa facilitated the mobility of these texts across regional borders, and the use of Arabic as a lingua franca for the scholars and traders of the Indian Ocean littoral in the premodern centuries encouraged the circulation of texts.[16] For Shāfiʿī texts in particular there was a significant demand from the sixteenth century onward due to the increasing predominance of the school among Swahilis, Malays, Malabaris, Maʿbarīs, Jawis, Hadramis, etc.[17] These three texts thus catered for the appetite of Shāfiʿī Muslims over centuries and they became some of the texts on which the school most depended, and also the most important reference points in the everyday lives and practices of the followers in these regions. Of course, there were many more texts used among the Shāfiʿīs in this littoral and beyond, but transregionally these interconnected texts stand out as having a wider reception and recognition.

How do these texts from the thirteenth and sixteenth centuries matter to the Muslims in the twenty-first century? Why and how do they stand as a reservoir from which everyday Islam can process a meaning? To these questions I now turn.

3. LEARNING ISLAMIC LAW: TWO INTERMEDIATE TEXTS

All across the Muslim world, there is a usual method to disseminate Islamic teachings from a primary to an advanced level. Most Muslims receive a primary education through formal or informal channels run by governmental or non-governmental institutions. The texts and ideas that the students learn at these centres form their shared vocabularies, and these become the repository for their religious, theological, and cultural dialogues at a regional or transregional level. Among the Shāfiʿī Muslims of the Indian Ocean littoral in particular such a shared repository emerged from the

16 In the past decade, there have been quite some studies on these intellectual networks of scholars, traders, pilgrims operating between these regions. For example, see Gagan Sood, *India and the Islamic Heartlands: An Eighteenth-Century World of Circulation and Exchange* (Cambridge University Press 2016); Graziano Krätli and Ghislaine Lydon (eds), *The Trans-Saharan Book Trade: Manuscript Culture, Arabic Literacy and Intellectual History in Muslim Africa* (Brill 2011); Ronit Ricci, *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (University of Chicago Press 2011); R Michael Feener and Terenjit Sevea (eds), *Islamic Connections: Studies of South and Southeast Asia* (Institute of Southeast Asian Studies 2009); Azyumardi Azra, *The Origins of Islamic Reformism in Southeast Asia: Networks of Malay-Indonesian and Middle Eastern Ulama in the Seventeenth and Eighteenth Centuries* (University of Hawai'i Press 2004).

17 Mahmood Kooria, 'Cosmopolis of Law: Islamic Legal Ideas and Texts across the Indian Ocean and Eastern Mediterranean Worlds' (PhD diss, Leiden University, 2016).

texts they studied or were introduced to them directly or indirectly at various stages of their educational life. The *Minhāj*, *Tuḥfa*, and *Fatḥ* are some of the most important contributors to this repository, for they are still being taught and learnt among Shāfiʿī Muslims despite their premodern origins. Educational practices related to these texts vary in the Shāfiʿī world according to institutional frameworks, individual priorities, regional approaches to legal studies, and linguistic differences. These aspects influence modes of learning and teaching, approaches towards content, and how those are accommodated to curricula. Many scholars have looked into different nuances of the practices in Islamic learning across the Middle East, South and Southeast Asia, and East and South Africa,[18] although only a marginal connected anthropology of Islamic legal education in the Indian Ocean world has emerged.[19] I briefly address how different places and people approach the same texts in dis/similar ways.

If we categorize the *Minhāj*, *Tuḥfa*, and *Fatḥ* into three levels (introductory, intermediate, and advanced) of texts for learning Shāfiʿīsm, the regions differ in ascribing which text to which division. Linguistic, individual, and spatial criteria determine the pedagogical choices. It certainly has to do with the institutional, traditional and non-traditional prioritisation that a teacher (and by extension, his/her collective) makes for the horizontal, vertical, spatial and timely conveniences. Evolutions in Islamic educational practices arising from various social, political, and economic backgrounds determine the contextual acceptance that these texts find in particular regions.

Related to this we have to refrain from thinking of 'Islamic educational centres' as a monolithic category, for they appear differently across the Indian Ocean world. In Yemen we have *miʾlamat* at the primary level and *ribāṭ* in the advanced level. In Southern India the corresponding terms are *paḷḷi-dars* and *arabic-college*, and the latter will admit students without having first been taught in the former. There is another type called *madrasa* which integrates primary and secondary education. In Southeast Asia there are *pesantrens*, *pondoks*, *dayah*, *ma'had* and *madrasa* and there it is hard to distinguish them clearly because different regions use the same names for different levels of education. In East and South Africa the madrasas and masjids are the corresponding terms. In Egypt they are called *kuttab* and *jamiʾat*. All these terms are *not* just regional variations or translations of any particular Islamic educational practice or structure. Each name connotes different social, historical and religious particularities and situations. But to address each one with its local name would be

18 For example, see Robert Launay (ed), *Islamic Education in Africa: Writing Boards and Blackboards* (Indiana University Press 2016); Goolam Vahed and Thembisa Waetjen, *Schooling Muslims in Natal: Identity, State, and the Orient Islamic Educational Institute* (KwaZulu-Natal Press 2015); Eka Srimulyani, *Women from Traditional Islamic Educational Institutions in Indonesia: Negotiating Public Spaces* (Amsterdam University Press 2012); Roman Loimeier, *Between Social Skills and Marketable Skills: The Politics of Islamic Education 20th century Zanzibar* (Brill 2009); Shamil Jeppie, *Language, Identity, Modernity: The Arabic Study Circle of Durban* (HSRC Press 2007); Yoginder Sikand, *Bastions of the Believers: Madrasas and Islamic Education in India* (Penguin 2005); Dhofier Zamakhsari, *The Peasantren Tradition: The Role of the Kyai in the Maintenance of Traditional Islam in Java* (Arizona State University 1999).

19 Iza Hussin, *The Politics of Islamic Law* (Chicago University Press); Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (University of California Press 1993).

confusing than clarifying. Instead I use the terms primary, secondary, higher, and advanced.

At the primary level plenty of works are used for studying Islamic law. These works provide a general understanding of basic rituals, rules, obligations, and prohibitions without going into the argumentative and discursive aspects of Shāfiʿīsm as a legal school. They discuss mainly the *ʿibādāt* (rituals including prayers, fasting, almsgiving, and pilgrimage), a quarter of the usual Shāfiʿī/Islamic legal discourses. What textbooks are used at this level depends on regional institutions or individuals. The traditional texts found in South and Southeast Asia are *Mutafarrid*, *Arkān al-ṣalāt* and *Safīnat al-najāt*. All these texts are in Arabic, but the majority of students did not understand Arabic at that stage, so the main learning process involved understanding the meaning and memorising the actual text. Some attempts have been made to translate the books into vernacular languages together with additional commentaries. Some regions have printed their own textbooks and circulated them free of charge, or sold them in mass. Such initiatives, as well as the whole administration of primary religious education in the Indian Ocean rim, are managed either by state-funded educational ventures (as in Indonesia, Malaysia, and Yemen), non-governmental organisations (the madrasas of Malabar are run by organisations like Samasta Kerala Jamʿiyyat al-ʿUlamāʾ and All India Sunni Jamʿiyyat al-ʿUlamāʾ), or individual initiatives (most paḷḷi-darses, ōttupaḷḷis, dayahs or pesantrens are run by individuals or small committees).

At the secondary level two texts come under our focus, the *Minhāj* and the *Fatḥ*. It is interesting how these two texts find themselves 'in the same pot' despite their legalistic, intellectual, stylistic, historical and cultural differences. In Yemen, Egypt and Somalia, just after the Quran-school, the students start with the *Minhāj*. They memorize the entire text, which is considered as one of the *maḥfūẓāt*, a text to be memorized, and they may also do the same with the *Mukhtaṣar* of Abū Shujāʿ. Brinkley Messick has expounded on how students went to the *hazr* once they graduated from their primary education in Qurʾān schools (*mi'lamat*).[20] At the same brilliant memorising of Qurʾān, they also memorized the most important legal texts, along with one or two significant texts of grammar, theology, and hadith. Regarding the acceptance and use of the *Minhāj* in the Yemeni educational system in the nineteenth and twentieth centuries, he provides a detailed picture, one which portrays the text's journey across the Shāfiʿī cosmopolis. It was often the first text that a student of Shāfiʿīsm had to study after the initial stage of memorizing the Qurʾān and many students learned it from their parents itself. This we see in the introductory words to a biographical entry about a Yemeni scholar:

> The learned scholar and man of letters, the bright and sagacious ʿAbd al-Raḥmān, son of ʿAlī, son of Nājī, al-Ḥaddād, the Shāfiʿī, the Yemeni, the Ibbi, was born in the town of Ibb in the year 1293 [1876] and received instruction from his father, in Shāfiʿī jurisprudence [beginning with] *Minhāj*.[21]

20 Messick, ibid chapter 4.

21 MuḤammad ibn MuḤammad Zabārah, *Nuzhat al-naẓar fī riǰāl al-qarn al-rābiʿ ʿashar* (Markaz al-Dirāsāt wa-al-AbḤāth al-Yamanīyah 1979) 347–48—cited in Messick, *The Calligraphic State*, 20.

This practice continued up to the late twentieth century, as Messick's ethnographical expositions demonstrate. He provides a detailed account of the process of memorization and its role in the pedagogical traditions of Islam and Yemen. Shāfiʿī students mostly learned the *Minhāj* by heart together with the *Mukhtaṣar* of Abū Shujāʿ, although the latter was less central in many places in the course of time. Thus all over the Indian Ocean rim Yemen's educational realm stands out as the place where the *Minhāj* enjoyed prominence for so long. Precisely because of this, we see many students from other parts of the rim coming to Yemen and studying the *Minhāj* exclusively. In Ḥaḍramawt, ʿAbd al-Raḥmān bin Muḥammad bin Ḥusayn al-Mashhūr (d. 1902) taught *al-Mughnī*, *Fatḥ al-Wahhāb*, and the *Minhāj*, and many East African students such as the renowned ʿAbd Allāh Bā Kathīr learned these texts with him.[22] Only in Ḥaḍramawt do we notice the simultaneous presence of many specialists of the text. There were more than ten specialists at a time, and many students ventured to study the same text with most of them.[23]

It took more than a year to memorize the *Minhāj* entirely. Once they have finished memorizing often a celebration follows in the institute, home and village. In Somalia, the celebration involves a recitation ceremony. A video footage online shows the girls who had completed the *Minhāj* reciting one part as a group to a large audience of parents, teachers and, the public. They recite the text one after another through a microphone as in a performative art. Wearing the traditional dress for female scholars, one of them starts reciting one or two lines rhythmically, the whole group then immediately 'sings' along in chorus the following line. Meanwhile, she hands over the microphone to the next girl who follows in the same style and rhythm. This goes on until the whole group has recited portions of the text or a teacher interrupts. A distinguished guest is invited to this ceremony to honour and appreciate the students.[24]

This memorisation process often involves no critical study of the text. That comes later, mostly either mediated through other commentaries on the text. At that stage the intermediate texts like the *Fatḥ* come in, but not always. In Egypt for example the *Fatḥ* is not found in the present curricula, though it was taught there earlier. Regarding the *Fatḥ* being critically taught in the Yemeni *ribāṭ*s, Sayyid ʿUmar bin Ḥāmid al-Jīlānī provides an anecdote of his father's experience from his student-life. His teacher would take particular passages of the text and would ask critical questions to the students in order to motivate them to think and research by cross-checking other texts of the school.[25]

In contrast to this, in Malabar, Aceh, and Java, the *Minhāj* as such has not historically been studied or memorized, even though there have been new attempts to learn and teach the *Minhāj*. Recently in Java, there is a new trend of learning the *Minhāj*

22 Shaykh Abdallah Salih Farsy, *The Shaf'i Ulama of East Africa, ca. 1830-1970: A Hagiographic Account*, trans, ed and annotated by Randall L Pouwels (University of Wisconsin 1989) 88–90. Abdullah Ba Kathīr studied from him between June 3–mid-August, 1897.

23 ibid 152.

24 <https://www.facebook.com/MHSiyaad/videos/vb.1027489464037696/1251471718306135/?type 2&theater> accessed 07 July 2017.

25 Sayyid 'Umar bin Hamid al-Jilani, *Musharakat fuqaha' Hadramout fi khidmat al-fiqh al-shafi'I,* chapter: 'al-madaris wa al-rawabit fi hadramout'.

thoroughly by dedicating several years to the text through different pedagogic methods of memorization, debates, discussions, and quizzes. This new attention to the text arises in part from the new influx of scholars from the Middle East and Southeast Asia that tend to adapt the Middle Eastern curriculum into the Malay world. This reliance is clear from a report on the graduation of *Minhāj*-students in Yogyakarta: 'If our teacher says *Fatḥ al-muʿīn* is the standard [text] of the national *Kiai*, well the *Minhāj* is the standard [text] of international scholars'.[26] Nevertheless, even when the *Minhāj* as such is not taught in South and Southeast Asia, students would learn two commentaries at a higher/advanced level. In the intermediate level they would study the *Fatḥ*. In Southeast Asia and East Africa, the *Fatḥ* is supplemented or replaced by another widely circulated text. That is *Fatḥ al-qarīb* of Abū ʿAbdullah Shams al-Dīn Muḥammad bin Qāsim bin Muḥammad al-Ghazzī (d. 1512), a commentary on Abū Shujāʿ's aforesaid work.[27] This text has been a major opponent for the *Fatḥ* for a long time and we do see many scholars across the Shāfiʿī world engaging with it thoroughly through teaching, learning, commenting, and interpreting, as Van den Berg notes in his preface of a French translation in the late nineteenth century.[28] However, it has appealed less to the Shāfiʿīs in South Asia where the *Fatḥ* predominates in influence. Before starting with it some institutions in Malabar have introduced a sort of pre-intermediate text that a student must study after the primary level. For that they use an abridgement of the *Fatḥ* called *Khulāṣat Fatḥ al-muʿīn* by Bāva Musliyār or a simplified version entitled *Fiqh al-aṭfāl* by Bahāʾ al-Dīn Muḥammad al-Nadwī.[29] For a number of reasons both these texts are used exclusively by two rival factions of the Muslim community in the region.

Why do the *Minhāj* and the *Fatḥ* come together in the educational spectrum, while the former is assumed to be the more 'classical' text of the school vis-à-vis the *Fatḥ* that is more 'marginal' intermediate text? The answer has multiple layers. Firstly, notwithstanding *Minhāj*'s complexities in meanings and the necessity of a careful reading with an expert, it also is a superficial text that a non-specialist can look through easily. Compared to Nawawī's other texts, it is also precise and complete with a discussion of all major aspects of Islamic law. All these facets help an intermediate student to study a text of Shāfiʿīsm without necessarily defining 'inner meanings' or wordings. Nawawī himself refers to the text's target audience and its pedagogical function vis-à-vis the *Muḥarrar* of Rāfiʿī when he wrote:

26 *'Kalau guru kami mengatakan fathul muin itu standar kiai nasional, nah minhaj itu standar ulama international'* 'Enam Tahun Bersama Minhajut Tholibin' <http://www.almunawwir.com/enam-tahun-bersama-minhajut-tholibin/> accessed 07 July 2017.

27 The full title of *Fath al-qarib* is *Fath al-Qarib al-Mujib fi Sharh Alfaz al-Taqrib*. It is also known as *al-Qawl al-Mukhtar fi Syarh Ghayah al-Ikhtishar* and Sharh Ibn Qasim al-Ghazzi 'ala Matn al-Taqrib'. There are many hashiyas on this text, most importantly the ones by Burhan al-Din al-Birmawi, Shihab al-Din al-Qalyubi, Dawud bin Sulaiman al-Rahmani, Ibrahim al-Bayjuri and Muhammad Nawawi al-Banteni. Abu Shuja's this text also have gathered many more textual descendants apart from the line of *Fath al-qarib*. For a descriptive list, see: MuḤammad ibn Qāsim Ghazzī, *FatḤ al-qarīb al-mujīb fi sharḤ alfāẓ al-Taqrīb aw al-Qawl al-mukhtār fi sharḤ Ghāyat al-ikhtiṣār*, ed Bassām 'Abd al-Wahhāb Jābī (Dār Ibn Ḥazm 2005) 10–15.

28 Van den Berg, *Fath al-Qarîb: la révélation de l'omniprésent; commentaire sur le précis de jurisprudence musulmane d'Abou Chodjâ' par Ibn Qâsim al-Ghazzî* (Brill 1894).

29 Bava Musliyar, *Khulasat Fath al-muʿīn* (SYS Book Stall 1993); Bahāʾ al-Dīn Muḥammad al-Nadwī, *Fiqh al-aṭfal* (Sunni Publications Centre 1998).

> The prolixity of the *Muḥarrar* is an obstacle to it being learnt by heart, except perhaps by some persons who devote themselves exclusively to the study of law, and consequently it appeared to me to compose an abridgment of it, in length not more than about half of the core text, but introducing, if God will, some beneficial valuables.[30]

The language is another important factor in the reception and usage of both the *Minhāj* and the *Fatḥ*. Even though both texts are in Arabic and have partly been accused of ambiguity, Arab students at Yemen and Egypt could easily relate to the *Minhāj* written by an Arab scholar. But the non-Arab students in East Africa, South and Southeast Asia relate to a text written without the complexities of the Arabic of Arabs but with the Arabic of non-Arabs. This links with the criticisms raised in the early-twentieth century by the Egyptian scholars like Rashīd Riḍā against the Arabic of Indian scholars, in comparison with the usual comments among the Indian, Indonesian, or Malaysian Shāfiʿī scholars on the smooth readability of the *Fatḥ*.[31] Despite some groanings of Arab scholars against the *Fatḥ*, it gained easy access among the non-Arab Shāfiʿī followers, for whom the *Minhāj* was a distant text which could be reached only via intermediate stopovers at commentaries, or abridgements like the *Fatḥ* itself.

4. LEARNING ISLAMIC LAW: AN ADVANCED TEXT

The third text on which we focus is the *Tuḥfa* as part of the higher educational curricula of the Shāfiʿī religious institutes. Though many other commentaries on the *Minhāj* could be taught in the secondary or tertiary stages of legal education, the *Tuḥfa* has been widely agreed among the Shāfiʿī scholars as the last text that a student of the school can study. At a higher level, the commentary of Maḥallī (*Kanz al-rāghibīn*, henceforth *Kanz*) has been taught widely.[32] After learning the *Kanz* for two or three years, the students can enrol into the final stage of their education in which the *Tuḥfa* is the prime textbook for law, along with the other major texts of Ḥadīth (such as *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ al-Muslim*), and Qurʾān-exegeses (such as *Tafsīr al-Kashshāf* of Zamakhsharī and *Jāmiʿ al-bayān fī ta'wīl al-Qurʾān* by Abū Jaʿfar Muḥammad al-Ṭabarī). The final stage of Islamic education generally lasts for two or three years and within that duration the students and teachers could only cover particular parts of the *Tuḥfa*, as the students also have to find time for other texts in other disciplines. They therefore make a selection of chapters to be taught. There is no standard norm for which chapters have to be covered, but what I understood from my field-surveys is that most teachers usually prefer to cover the introduction, chapters on purity, and prayer. These themselves require more than a year to teach

30 Nawawī, *Minhāj al-ṭālibīn wa ʿumdat al-muftīn*, ed. Muḥammad Ṭāhir Shaʿban (Dar al-Minhāj 2005) 64. I have partly used EC Howard's translation here, see Nawawī, *Minhaj et Talibin: A Manual of Mohammadan Law according to the School of Shafii*, trans EC Howard (W. Thacker and Co 1914) xi.

31 Rashīd Ridā, 'Musāb al-Hind wa-l-ʿālam al-islāmī', (1915) 18 *al-Manār* 79–80.

32 It should be noted that the religious educational centres in the Islamic world usually never followed a unified universal curriculum. Each institute, whether it is big or small, followed its own syllabus. Nevertheless, there were some attempts to standardize the curriculum in regional levels, but it never was a huge success gaining currency among all the religious institutes.

and learn. In exceptional cases when time allows, they would also teach chapters on commercial and criminal laws. For the remaining chapters and sections of the text, the teacher gives a licence (*ijāzat li al-tadrīs wa al-iftā'*) to the student to read, to teach, and to give legal rulings based on the text independently.[33] Though the reading would not help the students to teach the *Tuḥfa* again because of time constraints in the curriculum, this *ijāza* helps them provide legal clarifications whenever situations arise in their later career as religious leaders, muftis or judges.

This problem of learning and teaching the *Tuḥfa* partially and not entirely motivated some scholars to design courses exclusively to study the text. Some new institutions were established only for this purpose and a few old institutions built up additional infrastructures. The course was generally for two years. In Malabar I traced three such initiatives and one in Banda Aceh exclusively dedicated to teach the *Tuḥfa*.[34] While the three colleges introduced the course for graduates in their usual syllabus, one college was established only to teach this text. Later on it also started courses for graduation without learning the *Tuḥfa* in its entirety. There are also renowned specialists of the *Tuḥfa* who teach at these institutes. For example, M.T. Abdulla Musliyār has taught in all three institutions of Malabar at different times. He was invited by the respective managements with offers of a higher salary and other prospects. Even such specialized colleges for learning the *Tuḥfa* never manage to finish teaching the text completely. Since the usual duration of the course is two years, this motivated a few other scholars to take more years to finish the text. Under the loosened institutional and curricular structures run by an individual scholar, the *Tuḥfa* is taught without any time limits. This was initiated by Kīḻana Kuññabdulla Musliyār (d. 2000) and followed by Kuññalawī Musliyār and Najīb Mawlawī Mampāṭu. One of my informants closely associated with this study circle told me that usually their syllabus takes almost 10 years to learn the *Tuḥfa* completely, whereas Najīb Mawlawī claims to have taught the entire text within a year to 58 students in 2015–16.

In Malabar, they depend on the 10-volume *Tuḥfa* which contains two supercommentaries of Ibn Qāsim al-ʿĪbādī (d. 1586) and ʿAbd al-Ḥamīd al-Sharwānī al-Dāghistānī (d. 1884). Sayyid Jifrī Muttukkōya, who has been teaching the *Tuḥfa* for the last two decades, says that even if he tries to teach the entire 10 volumes as a batch, he only manages to finish particular chapters from each volume. He prioritizes teaching chapters that have immediate use and relevance, such as the ones on rituals.[35] But he also teaches the chapters on slavery and jihad. I asked why he teaches those topics even after their rulings are no more applicable in secular Indian contexts which prohibit religious war and slavery, and he said: 'Islam has not abolished them; it has only discouraged slavery. Furthermore, if I skip them, the students would not

33 This practice of giving *ijāza* or licence has a long trajectory in Islamic educational history. See, for example, Devin J Stewart, 'The Doctorate of Islamic Law in Mamluk Egypt and Syria' in Joseph Lowry, Devin Stewart and Shawkat Toorawa (eds), *Law and Education in Medieval Islam* (E.J.W. Gibb Memorial Trust 2004) 45–90.

34 Those are: (i) Nandi Darussalam Arabic College, (ii) Yamaniyya Arabic College Kuttikkattur and (iii) Jamia Nuriyya Arabic College, Pattikkad.

35 The chapters he teaches include congregational prayer, funeral prayer, two ʿīd prayers, marriage, divorce, inheritance, endowments, testimonials, jihad, and abode of war.

understand many phrasings by which the author quite often refers back and forth to these chapters'. He always tries to teach the first volume entirely in order to familiarize students with the style and technical terms of the *Tuḥfa*. He claims that he has taught all volumes of the *Tuḥfa* except the fourth and fifth.

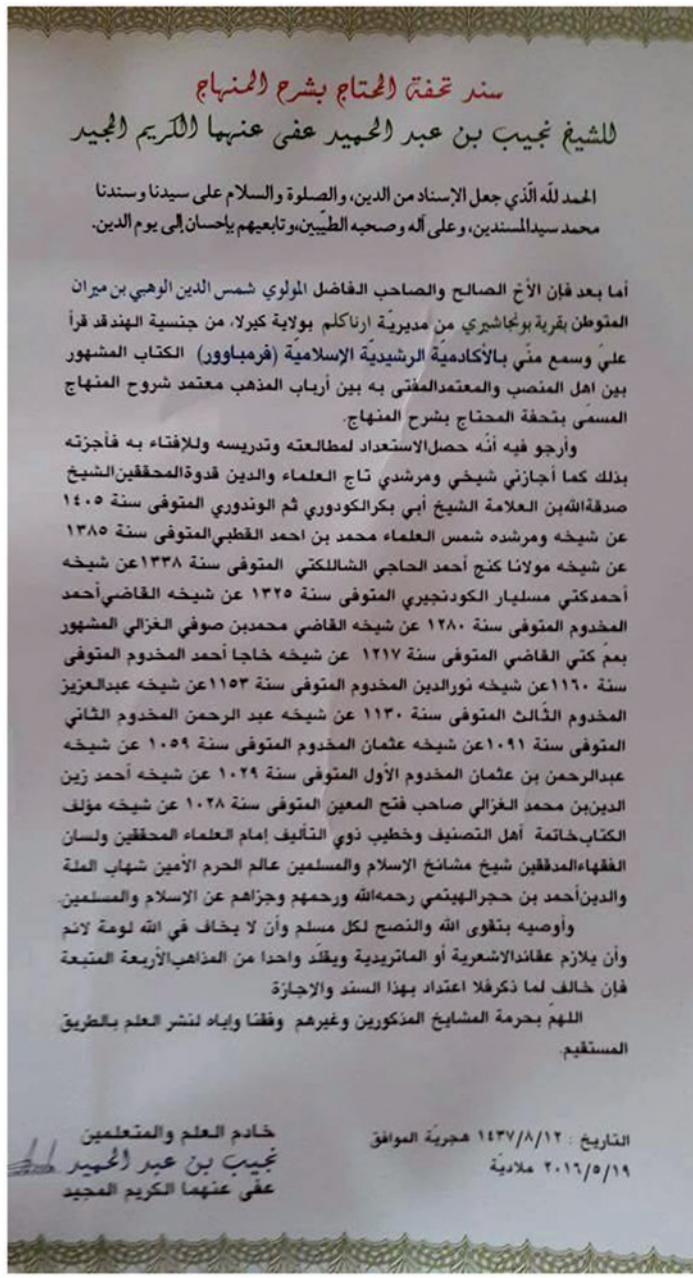
Both in specialized and non-specialized institutes, the teacher of the *Tuḥfa* would be its topmost teacher. Alone s/he can/would teach it, sometime with the help of some teaching assistants. What I found most interesting about these teachers is that they themselves have not studied the *Tuḥfa* in its entirety from an expert. That is a crucial requirement in the Islamic educational traditions: one is able to teach a text only if s/he learns it fully from an authority, or at least s/he gets permission (*ijāza*) to do so. This feature demonstrates the 'untraditional' modes of 'traditional' Islamic educational system in terms of its style and practice, leaving aside for the moment all their other developments assimilating Western models of syllabus organization, annual and biannual exams, classroom settings, etc. Most of these teachers have studied the *Tuḥfa* partially from a specialist and they are very keen on talking about their teachers and the teachers' teachers—the chain of teachers (*silsila* or *sanad*) that often goes back to the author of the *Tuhfa* himself. The Figure 1 provides such a chain of teachers of the *Tuḥfa* delivered by Najīb Mawlawī for his students who completed the entire *Tuḥfa* in 2015–16, and this certificate-cum-chain connects their teacher's chain to Ibn Hajar al-Haytamī via al-Malaybarī, the *Fatḥ's* author.

Those who have graduated from such courses are known as 'the Haytamīs', named after the author Ibn Ḥajar al-Haytamī, and many of them hold prestigious positions in the higher circles of Islamic education, fuqahā-estate and its legalist discourses. Such a specialized course in learning and teaching the text in its entirety is a way to assert the highest legalist knowledge one can acquire through religious education and to encourage upward mobility.

5. FROM UNIVERSITIES TO FEMALE ʿULAMĀʾ

While in the primary, secondary, and higher levels of traditional Islamic education there was a place for the classical Shāfiʿī texts, there has also been a recent upsurge in analysing these texts in the newly growing Islamic universities. In such universities in Indonesia, India, Malaysia and Yemen, there have been many legalistic, linguistic, comparative, literary, and religious studies based on or related to these texts. The *Fatḥ* is a favourite subject for many undergraduate and Masters-level students, as well as works like *Fatḥ al-qarīb*.[36] However, I have not come across any doctoral studies related to any of these texts. This aspect demonstrates the manner in which traditional modes of religious–legalistic education and its textual apparatus finds shelter in the new academic environments and transforms itself to fit into the new continuums. Such a transformation is more commendable in the textual longue-durée of these law-books as to the ways in which the educational settings and pedagogic

36 For example, see Robiatul Adawiyah, 'Analisis Gramatika Terhadap Buku Terjemahan Fath al-Mu'in pada Bab Zakat Karya Syaikh Zainuddin' (Gelar SS, Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2006); Muhammad Najihun, 'Takhrij Kitab Fath al-Mu'in: Sebuah Kajian Analisis Sanad Hadis Bab Wasaiat' (Universitas Islam Negeri Syarif Hidayatullah Jakarta 2002); M Khoas Rudin Sodik, 'Kalimat Efektif dalam Buku Terjemahan *Fath al-Mu'in*: Studi Kasus Bab "Shalat" dan "Adzan"' (Universitas Islam Negeri Syarif Hidayatullah Jakarta 2011).



سند تحفة المحتاج بشرح المنهاج
للشيخ نجيب بن عبد الحميد عفى عنهما الكريم المجيد

الحمد لله الذي جعل الإسناد من الدين، والصلوة والسلام على سيدنا وسندنا محمد سيد المسندين، وعلى آله وصحبه الطيبين، وتابعيهم بإحسان إلى يوم الدين.

أما بعد فإن الأخ الصالح والصاحب الفاضل المولوي شمس الدين الوهبي بن ميران المتوطن بقرية بوخاشيري من مديرية ارناكلم بولاية كيرلا، من جنسية الهند قد قرأ علي وسمع مني بالأكاديمية الرشيدية الإسلامية (فرمباوور) الكتاب المشهور بين اهل المنصب والمعتمد المفتى به بين أرباب المذهب معتمد شروح المنهاج المسمى بتحفة المحتاج بشرح المنهاج.

وأرجو فيه أنه حصل الاستعداد لمطالعته وتدريسه وللإفتاء به فأجزته بذلك كما أجازني شيخي ومرشدي تاج العلماء والدين قدوة المحققين الشيخ صدقة الله بن العلامة الشيخ أبي بكر الكودوري ثم الوندوري المتوفى سنة ١٤٠٥ عن شيخه ومرشده شمس العلماء محمد بن احمد القطبي المتوفى سنة ١٣٨٥ عن شيخه مولانا كنج أحمد الحاجي الشاللكتي المتوفى سنة ١٣٣٨ عن شيخه أحمد كتي مسليار الكودنجيري المتوفى سنة ١٣٢٥ عن شيخه القاضي أحمد المخدوم المتوفى سنة ١٢٨٠ عن شيخه القاضي محمد بن صوفي الغزالي المشهور بمم كتي القاضي المتوفى سنة ١٢١٧ عن شيخه خاجا أحمد المخدوم المتوفى سنة ١١٦٠ عن شيخه نور الدين المخدوم المتوفى سنة ١١٥٣ عن شيخه عبد العزيز المخدوم الثالث المتوفى سنة ١١٣٠ عن شيخه عبد الرحمن المخدوم الثاني المتوفى سنة ١٠٩١ عن شيخه عثمان المخدوم المتوفى سنة ١٠٥٩ عن شيخه عبد الرحمن بن عثمان المخدوم الأول المتوفى سنة ١٠٢٩ عن شيخه أحمد زين الدين بن محمد الغزالي صاحب فتح المعين المتوفى سنة ١٠٢٨ عن شيخه مؤلف الكتاب خاتمة أهل التصنيف وخطيب ذوي التأليف إمام العلماء المحققين ولسان الفقهاء المدققين شيخ مشائخ الإسلام والمسلمين عالم الحرم الأمين شهاب الملة والدين أحمد بن حجر الهيتمي رحمه الله ورحمهم وجزاهم عن الإسلام والمسلمين.

وأوصيه بتقوى الله والنصح لكل مسلم وأن لا يخاف في الله لومة لائم وأن يلازم عقائد الاشعرية أو الماتريدية ويقلد واحدا من المذاهب الأربعة المتبعة فإن خالف لما ذكرفلا اعتداد بهذا السند والإجازة.

اللهم بحرمة المشايخ المذكورين وغيرهم وفقنا وإياه لنشر العلم بالطريق المستقيم.

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٢٠١٦/٥/١٩ ملادية

خادم العلم والمتعلمين
نجيب بن عبد الحميد
عفى عنهما الكريم المجيد

Figure 1. A certificate-cum-chain (*sanad*) of teachers of the *Tuḥfa* delivered by an Indian teacher for his students who completed the entire *Tuḥfa* in 2015–16. This *sanad* connects the student's intellectual lineage to Ibn Hajar al-Haytamī via al-Malaybārī.

patterns and research methodologies changed over place and time while the texts remained the same over several centuries.

All these engagements are a sort of 'formal' learning of these texts, as that functions within a designed curricula, institutional structures and formalities for

admissions, and graduations, or they are either run by a governmental or non-governmental organization. But there are also many 'informal' educational endeavours initiated by independent individuals to teach and study the text, without being affiliated to any 'formal' system or institutions. The mosque-gatherings and individual collectives are good example in this regard. The mosque-gatherings, usually conducted on a special occasion, help the expert of the text to teach it for those who are interested in Islamic law in general. It completely depends on the teacher and respective aspirants, who come from all ages and possess some background knowledge in Islamic law and Arabic language. The teacher has the choice to select the text, and many fuqahā prefer to teach the *Fatḥ* for various reasons (see Figure 2). Whether in South Asia or Southeast Asia, usually this happens in the month of Ramadan. But it also happens in Fridays in the early morning (after the morning-prayer), or in late evenings (after sunset). Nevertheless, in such 'popular' classes the *Fatḥ* is not the only legal text and Islamic law not the only subject of education.

On the other hand, in individual sessions with advanced graduates of Islamic legal studies a teacher will circumambulate around a text that the students choose. The aforementioned case of Kuñ̃alawī Musliyār's *Tuḥfa*-classes is the best example of this. The students interested in learning the text approached a teacher, who is a known as an authority on the text and Islamic law in general. Without any proper course-structure or requirements, the aspirants join the classes and the teacher teaches it as long as there are students. In Jakarta too, Mawlānā Yūsuf remembered such sessions of the *Tuhfa* that the famous Javanese scholar Hāshim Ashʿarī used to conduct two-three decades ago. Yūsuf attended all those classes. Now he teaches the *Fatḥ*, along with many other mystical and theological texts, only in the mosque-sessions. He regrets that there are no students interested in learning the *Tuhfa*.

Another important aspect of institutional and individual entanglements with the texts is the role and space of women as students and teachers. While the Islamic institutional structures have been so much male-centric and have rarely provided a chance for female aspirants to pursue higher education, the situation has been changing lately with many collective attempts of female and male religious scholars.[37] Even before this massive shift in the Islamic world by the end of twentieth century, there were individual male scholars who accommodated female students or a few female scholars who taught male students. Such female expertise was more associated with the transmission of Prophetic traditions and spiritual knowledge, whereas Islamic law remained inaccessible for most of them.[38] In my fieldwork I have seen a few women who studied the texts under my focus in the mid-twentieth century, and all of them were privileged in terms of their immediate relationship to some male Shāfiʿī jurists who were willing to teach them the *Fatḥ*. However, now with the rise of female ʿulamāʾ and female *pesantrens*, especially in Indonesia, there are wider attempts to study and critically engage with the conservative views of most male ʿulamāʾ. Some of them have brought out annotated critical editions for some controversial Shāfiʿī

37 For example, Masooda Bano and Hilary Kalmbach (eds), *Women, Leadership and Mosques: Changes in Contemporary Islamic Authority* (Brill 2012); Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton University Press 2005).

38 Asma Sayeed, *Women and the Transmission of Religious Knowledge in Islam* (Cambridge University Press 2013).

Figure 2. An advertisement in front of a mosque in Singapore of an Islamic law course offered to the public through learning the *Fatḥ* at the mosque.

texts with strong arguments against their male-chauvinistic elements and misogynistic statements.[39] In Banda Aceh, they even study and teach the *Tuhfa* and their

39 For example, see Forum Kajian Kitab Kuning (ed) *Wajah Baru Relasi Suami-Istri: Telaah Kitab 'Uqud al-Lujjayn* (LKiS 2001); Pieternella van Doorn-Harder, *Women Shaping Islam: Indonesian Women Reading the Qur'ān* (University of Illinois Press 2006) 190–91, *passim*.

study-circle is very unique not only in the archipelago but throughout the Shāfiʿī Muslim world. Through learning these texts and reinterpreting several male chauvinistic statements of these classical texts, the female ʿulamāʾ tries to emphasize the gender equality of Islam.

6. BEYOND THE WALLS

Outside the educational institutional frameworks, the *Minhāj*, *Fatḥ*, and *Tuḥfa* play important roles in the Shāfiʿī discursive practices of both scholars and laypersons. The usages of the texts differ depending on the individuals, contexts and customs varying from Sharīʿa courts, fatwas, sectarian debates, and popular preaching. I will analyse each of these in turn.

In the Sharīʿa courts, clearly established and run in the Muslim-majority countries like Yemen, Egypt and Indonesia (exclusively at the province of Aceh), the lawyers and judges depend on Islamic legal texts on a number of different levels and for different purposes.[40] The *Fatḥ*, *Tuḥfa* and *Minhāj* in particular have been used in the Sharīʿa courts of Southeast and South Asia and East Africa since the late nineteenth century. In Southeast Asia, the Dutch colonial government officially recognized religious courts (*priestraad*) in 1882, but before that while the discussions about bringing such courts under the government control were going on, Sayyid ʿUthmān wrote a text in which he clearly advised judges and scholars to use these texts for their rulings based on Shāfiʿī law. Following the predominant views of South and Southeast Asian and Arabian scholars of the school, he prioritized the opinions of Nawawī over the ones of Rāfiʿī and further hierarchized the works of Nawawī in which the *Minhāj* has been ranked highly, just after the *Rawḍa*. He also asked to prioritize the opinions of Ibn Ḥajar and his *Tuḥfa* over Ramlī and his *Nihāya*. Most importantly, he includes his own work into the chain of dependable works of the school, which indicates an attempt from his side to make his work as *the* compendium for judges in the religious courts to be recognized by the government.[41] Within a few years, the *Minhāj* was translated into French and English, and the *Tuḥfa* was translated into Javanese and Dutch by a number of different Dutch and English orientalists and colonial judges and administrators. These translations were often used in the religious courts of the Indian Ocean littoral from East Africa to Southeast Asia as well as in the 'secular' colonial courts in cases in which a Muslim litigant was involved.[42]

In postcolonial South and Southeast Asia and Middle East, the Sharīʿa courts faced different trajectories.[43] While some became informal or stopped completely in

40 For a comparative analysis of the Sharīʿa courts in the Muslim-majority countries, see Jan Michiel Otto (ed), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden University Press 2010).

41 ʿUthmān ibn ʿAbd Allāh ibn ʿAqīl ibn YaḤyá ʿAlawīAl*Kitāb al-qawānīn al-sharʿīyah li-ahl al-majālis al-Ḥukmīyah wa-al-iftāʾīyah: artinya ini kitab segala aturan hukum syari bagi ahli ahli majelis hukm syari dan majelis fatwa syari yaitu yang dekat Rad Agama* (Maktaba ʿArafāt 1881) 14–16; for the chart, see 6.

42 Mahmood Kooria, 'Two "Cultural Translators" of Islamic Law and German East Africa' (2016) 24 Rechtsgeschichte-Legal History: Journal of the Max Planck Institute for European Legal History 190–202.

43 Aharon Layish, 'Islamic Law in the Modern World: Nationalization, Islamization, Reinstatement' (2014) 21 Islamic Law and Society 276–307; Rudolph Peters, 'From Jurists' Law to Statute Law or What Happens When the Shari'a is Codified' (2002) 7 Mediterranean Politics 82–95; Wael B Hallaq, *Sharīʿa:*

most parts of Indonesia, its Aceh province and in Brunei Darussalam those acquired new life and functions. Even in some other states of Indonesia and Malaysia the Sharīʿa-influenced bylaws were introduced or continue to be operative. As all these regions are predominantly Shāfiʿī in their adherence to Islamic law, the prime texts they use in these contexts are the ones like the *Fatḥ*, its commentaries, and occasionally the *Tuḥfa*, but hardly ever the *Minhāj*. The Sharīʿa was exclusively reduced to the family laws under the colonial regimes of the British, the Dutch and the French in various Islamic regions and several Muslim countries followed this pattern in the postcolonial world too. Marriage, divorce, inheritance, and endowments became largely an exclusive realm for Islamic law in various countries of the Indian Ocean littoral. Particularly among the Shāfiʿī Muslim countries like Malaysia (following the Muhammadan Marriage Ordinance No. 5 of 1880 and various acts and enactments leading to the *Undang-Undang Keluarga Islam* or 'the Islamic Family Act' of 1983) and Indonesia (*Undang-Undang No. 22 Tahun 1946 Tentang Pentjatatan Nikah, Talak dan Rujuk* or 'Act No. 22 of 1946 on the Registration of Marriage, Divorce and Reconciliation' and similar acts in 1954 and 1974) the Shāfiʿī version of Islamic law continued to be relevant and functional in the everyday lives of Muslims. During and in 'the Compilation of Islamic Law in Indonesia' (*Kompilasi Hukum Islam di Indonesia*) in 1991 the use of Shāfiʿī laws was further enhanced through intensive discussions and extractions among Muslim scholars, lawyers, and judges. The texts under our focus were some of the main sources in most of these enactments, codifications, and their consequent uses in the religious courts. In the Indonesian religious courts, *Fatḥ*'s one commentary *Iʿānat al-ṭālibīn* by Abū Bakr bin Muḥammad Shaṭā al-Dimyāṭī aka Sayyid Bakrī (1850–1893) is found as a frequent reference by the judges.[44] Another commentary on it, *Tarshīḥ al-mustafidīn* by ʿAlawī bin Aḥmad bin ʿAbd al-Raḥmān al-Saqqāf (1839–1916), and *Minhāj*'s one abridgement titled *Manhaj al-ṭullāb* by Zakariyā al-Anṣārī (d. 1520), are also the other most used Shāfiʿī texts from the same textual genealogy under our focus.

In Shāfiʿī clusters where Muslims are a demographic minority, such as in India, Sri Lanka, Singapore, and the Philippines, these texts have been playing roles in the jurisdictions of the secular courts which considered Sharīʿa as a valid source of law to rule on issues related to Muslims. Such countries though established or recognized a separate court based on Sharīʿa (especially in Singapore and the Philippines).[45] Occasionally the secular courts too sought clarifications from the Muslim jurists who sheltered under texts like the *Fatḥ*. The secular states and their judiciaries have

Theory, Practice, Transformations (Cambridge University Press 2009); R Michael Feener, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia* (Oxford University Press 2013).

44 Euis Nurlaelawati, *Modernization Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam University Press 2010) 139–42.

45 On the Sharīʿa courts in Singapore and the Philippines and Qāḍī courts in Sri Lanka, see Noor Aisha Abdul Rahman, 'Traditionalism and its Impact on the Administration of the Muslim Law: the Case of the Syariah Court of Singapore' (2004) 5(3) Inter Asia Cultural Studies 415–32; Isabelita Solamo-Antonio, 'The Philippine Shari'a Courts and the Code of Muslim Personal Laws' in Adam Possamai, James T Richardson and Bryan S Turner (eds), *The Sociology of Shari'a: Case Studies from Around the World* (Springer 2015) 83–101; Saleem Marsoof, *The Quazi Court System in Sri Lanka and its Impact on Muslim Women* (Muslim Women's Research and Action Forum 2011).

validated those methods; in fact, they have been in effect since the colonial regimes which introduced different Sharīʿa acts for their colonial Muslim subjects. Ever since, these countries have been introducing separate family laws for their Muslim minorities (in Sri Lanka, the Muslim Marriages and Divorce Act of 1951; in India, the Special Marriage Act of 1954, following Muslim Personal Law (Shariat) Application Act of 1937 and Dissolution of Muslim Marriage Act of 1939; in Singapore, the Administration of Muslim Law Act of 1966; in the Philippines, the 'Code of Muslim Personal Laws of the Philippines' following the Presidential Decree No. 1083 in 1977), and in several related debates and judicial proceedings the premodern Islamic legal texts are some of the most crucial references.[46]

Beyond the systematic courts of a secular state or Sharīʿa, these texts play crucial roles in the 'individual courts' of muftis, a usual hub for the Muslim community to solve legal disputes and seek legal clarifications and opinions. Fatwas, as those rulings are known, delivered by the *mufti* still appeal to a pious Muslim mass in their everyday lives as long as they seek it. The fatwas are pronounced only when someone asks for it, yet the questioner is not bound to follow that ruling. In most occasions when trivial legal issues arise, the Shāfiʿī scholars in the Indian Ocean rims of South and Southeast Asia depend on intermediate texts like the *Fatḥ* and the *Kanz*. But when a serious or complicated issue comes up, they usually turn to the *Tuḥfa* for solutions. A saying that exists among the Malabari Shāfiʿī scholars is that 'a scholar can find answers in the *Tuḥfa* to any problems whether it is old or new'. Although this is an overstatement, a specialist of the text, M.T. Abdulla Musliyār, told me that if one reads the text more carefully in between its lines and phrases, there would be answers to any modern or post-modern issues. This belief is underpinned with a saying:

> It is a text that has what it has, amusement of meanings.
> If one cannot discern what it has, it is like dog's urine in his mouth.[47]

In other words, only those who are capable of reading and analysing the text *properly* can find the right answers; otherwise s/he will be mistaken and would misguide others. Such popular sayings among the specialists of the text demonstrate their urge to assert excellence within the fuqahā and the Shāfiʿī clusters. This claim of idiosyncrasy is also a tool to establish authority within the cluster to read the text and comprehend its hermeneutics appropriate to the contexts as much as to the school's tradition.

Ceruśśēri Zayn al-Dīn Musliyār (d. 2016), who taught the *Fatḥ*, the *Kanz* and the *Tuḥfa* for more than half a century at various traditional and 'modern' educational centres and was renowned for the most authentic legal clarifications in Malabar, told me that he depended on the *Tuḥfa* whenever a complicated issue came up. Out of his experience of giving fatwas for the past five decades, he strongly believed that at

46 For the original texts of these acts and codes, see <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/> accessed 07 July 2017.

47 Interview with M.T. Abdulla Musliyār on 28 April 2014. He says that he heard this statement in Arabic (*kitāb fīhi mā fīhi, laṭā'if ma'ānīhi, faman lam yadrī mā fīhi ka bawl al-kalb fī fīhi*) from his teacher Kōṭṭumala Ustad.

the end of the day one will find an answer in the *Tuḥfa* to any strange problems. His *fatwa*s, though widely respected in the highly discursive and argumentative Sunni sphere of Kerala, as discussed below, have put him occasionally into trouble. He believed that whatever answer he had given was at the time undoubtedly correct, and it is because his opponents are incapable of reading texts like the *Tuḥfa* or misread them that they dragged him into trouble.

In the first and last few pages of each volume of a manuscript of the *Tuḥfa* kept at Cāliyaṃ Library, a scholar has noted down the *fatwa*s he has delivered referring to the text. It is a copy used by Aḥmad Kōya Shāliyātī (d. 1954), who was a well-known law-giver in the first half of the twentieth century and has worked as a mufti under the Hyderabadi sultan ʿUthmān Ali Khān, Āsaf Jāh VII (r. 1911-1948; titular Niẓām until 1967). In his notes, he cites the questions from litigants, and the answers from the *Tuḥfa* along with the details of the chapter or page-number. Some such side-notes were later publicized by him as small pamphlets or *risāla*s in which the *Tuḥfa* was the main source of reference. The abundance of such writings in the margins and first and last pages indicate how effectively the *Tuḥfa* was utilized as a major reference in law-giving. This manuscript represents a wider pattern of similar practices that existed during the circulations of these manuscripts before and after the popularisation of printing among the Muslims.

In legal debates among the Shāfiʿīs the three texts also have a very significant place. If one cites the *Tuḥfa*, for example, on a debating issue, then it is considered to be the final statement on it. Thus, reading a sentence, sometimes even a phrase or word, from the *Tuḥfa* in a particular debate, and analysing its meaning and connotations in relation to the matter at hand prove highly challenging for both debaters and audience. The best example in this regard can be taken from Malabar when two Sunnī-Shāfiʿī groups, organizationally divided as the APs and EKs,[48] vigorously debated in 2002–03 over the issue of the subject in the wording (*ṣīgha*) of divorce. The issue arose after the above-mentioned Ceruśśēri Zayn al-Dīn Musliyār gave a ruling to a litigant that the divorce would not occur if a person divorced his wife without mentioning the subject. Ceruśśēri was the General Secretary of the EK-group and its executive council approved his ruling, whereas the opposite group challenged the fatwa by saying that the divorce had happened and Ceruśśēri was mistaken. Consequently a huge debate erupted between both factions and each group advocated their opinions using all kinds of media (print, audio, and visual). In this debate, the *Tuḥfa* was a major text that the E.K. group wanted to rely on. As a specialist of the *Tuḥfa*, M.T. Abdulla Musliyār came to the forefront in analysing the meanings of Ibn Ḥajar's stand on whether or not the subject should be mentioned in a formula (*ṣīgha*) of divorce. He quoted a couple of sentences from the *Tuḥfa*, translated phrase by phrase, and analysed it in relation to the question at hand about the subject. He explained this in an open debate between two groups organized at Malappuram, and later on published his analysis along with other evidences as a

48 They are named after the initials of leading scholars of each group: The APs are thus named after **AP** Abū Bakr Musliyār, whereas EKs are after **EK** Abū Bakr Musliyār. Both of them were the leading members of Samasta Kerala Jamʿiyyat al-ʿUlamāʾ, a Sunnī-Shāfiʿī organization established in 1926, until they were divided in 1989 over some political, organizational and legalistic issues.

book.[49] After a decade, he reflected on the debate: 'I had great difficulties in helping the AP-group understand the wordings of the *Tuḥfa* in its eighth volume, the fourteenth page'.

Such text-based debates are very vehement among the Malabari Muslims, as elsewhere in the Islamic world. Since the majority of Malabari Muslims follow Shāfiʿīsm as their school, the legalistic debates that happened decades ago had a deep impact in dividing the community into an 'organizational factionalism', and they remain as opponent groups within the frameworks of Shāfiʿīsm, constantly generating opposite viewpoints. The classical example for this 'dividing power of a premodern text' is the debate that happened in the late 1960s on the permissibility of using a microphone for rituals like the call to prayer and Friday sermons. The debate deepened to the extent that the chairperson, who stood against allowing it, quit the Sunnī-Shāfiʿī organization and formed another group, which now continues to function on its own and occasionally comes up with many counterarguments to the legal opinions taken by their old mother organization. While this group is the third opposition to the first one, the second group left the organization in the late 1980s for a number of reasons in which again several juridical disagreements like the permissibility of translating Quran into vernacular language, cooperation of the fuqahā with the Muslim political and reformist groups, etc. had indisputable roles to play. At all the debates, which still continue on occasions on different topics and concerns, ardent enemies of all the three factions use the *Fatḥ*, the *Tuḥfa* and their different super-commentaries as starting points, as well as other texts of the school. What is interesting is that they all agree for the *Tuḥfa* to be the source-text for their debates, even though they differ on interpreting its philological compositions, hermeneutics and contexts. In almost a century-long debate regarding the obligation of *zakāt* for currency-bills, a passage from *Tuḥfa*'s commentary by ʿAbd al-Ḥamīd al-Sharwānī al-Dāghistānī (d. 1884) has been so crucial in the discourses for decades, as well as a sentence from the *Fatḥ* over the virtuousness of collective prayer (*kūṭṭuprārthana*) after the obligatory prayers (*ṣalāt*).[50] In the last case, the debate was not among Shāfiʿīs themselves, but they joined hands together against Salafi scholars who opposed this practice.

The textual debates, with all sorts of physical, intellectual, scholarly permutations dividing Shāfiʿīs into rival groups, represent only one part of the usage of these texts in the discursive tradition of the school. In a less-vehement scenario of the discourses, the texts are invoked also by the same fuqahā in their scholarly and popular preaching. Articles in their mouthpiece-journals, newspapers, magazines, books, and mass conferences are significant sites for such articulations. In the popular writings published in community journals, magazines and newspapers the texts also appear as a common reference that the writers frequently quote on different legalistic, ritualistic problems. After the massive introduction of print among Muslim communities,

49 MT Abdulla Musliyar, *Twalaq Samvadam: Satyavum Mithyayum* (Shamsul Ulama Smaraka Fiqh Centre undated) 38–42.

50 Sharwānī al-Dāghistānī's commentary on Ibn Ḥajar al-Haytamī, *Tuḥfat al-muḥtāj* (Dār al-Kutub al-ʿIlmīyya 1996), 4: 238. The controversial sentence of the *Fatḥ* is: 'ammā al-imām iḏā taraka al-qiyām al-laḏī huwa afdal jaʿala yamīnuh ilā al-maʾmūmīn'. On the long histories and nuances of these debates, see A Najīb Mawlawī, 'Irupatāṃ Nūttāṇṭile śraddhēya Vivādaṅṅaḷ' *Bulbul Daśavārṣikappatippu* (Bulbul Magazine 2001) 180–256.

the invocation of legal textual traditions into different contexts has become a serious socio-religious phenomenon. Printing has produced an enormous amount of socio-cultural and economic products entangled with the legalistic questions as much as ethical, theological, and spiritualistic concerns.[51] A deeper analysis of the usage of the texts I have selected in the stock of Shāfiʿī publications from these groups as well as at the massive annual gatherings would require more space and time. Suffice it to say now that the citation of the *Fatḥ* and the *Tuḥfa* and their several commentaries is one of their several creative ways to assert scholarly and jurisprudential authority on the basis of the premodern texts, and to substantiate their correctness against the opponents who spread the 'wrong' versions of the school and its texts.

Apart from these scholarly undertakings, the texts are also one of the main sources for popular preachers and storytellers to legitimize their narratives, show their knowledge of Islamic legal traditions, grab the attention of the masses for the high culture of Islamic law, and educate them about its complexities. In some of the manuals prepared for popular preachers we see quotes from the *Fatḥ*, its commentaries like the *Iʿāna*, but hardly any from the *Tuḥfa* or the *Minhāj*. But other intermediate Shāfiʿī texts have been quoted. The conflicts between popular preachers and specialist scholars, as explained by Jonathan Berkey in the context of medieval Cairo, are visible in these Shāfiʿī communities too.[52] This is seen especially on the occasions when popular interpretations are made by such speakers in public spheres for particular passages of the texts. The scholars accuse them of ignorance in and unfamiliarity with the nuances of Islamic legal theories and applications as mentioned in these premodern texts.

Various legal writings of Shāfiʿīs in a global spectrum also show how the texts find their ways into trans-communal and transnational discourses too. For example, the Oxford-based Shāfiʿī scholar Shaykh Afifi al-Akiti's noted fatwa against the terrorist attacks in the name of Islam titled *Defending the Transgressed*, written following the London bombings of 2005, uses *Fatḥ*'s commentary *Iʿāna* to validate his arguments. In his other writings too, the same text, and the *Fatḥ* itself, appears as his prime source.

7. CONCLUSION

The journeys of Shāfiʿī legal texts such as the *Minhāj*, *Tuḥfa*, and *Fatḥ* demonstrate how the Muslim community make use of a rich repository of premodern texts in their approaches to Islam and its laws. Standing within the frameworks of Sharīʿa-related jurisprudential practices they prioritize these texts produced over centuries or even a millennium after the advent of Islam over the foundational texts of the school from the ninth century. The foundational texts of Islam or Islamic legal thoughts hardly come into their everyday processes of making out the meaning of Islam and its law. Instead, texts like the *Tuḥfa* and *Fatḥ* written in the sixteenth century and their commentaries from the nineteenth century (Sharwānī's commentary on the

51 Brinkley Messick, 'Madhhab and Modernities' in Peri Bearman, Rudolph Peters and Frank Vogel (eds), *The Islamic School of Law: Evolution, Devolution, and Progress* (Harvard University Press 2005) 163–69.

52 Jonathan Berkey, *Popular Preaching and Religious Authority in the Medieval Islamic Near East* (University of Washington Press 2001).

Tuḥfa and the two commentaries on the *Fatḥ*—the *Iʿāna* and the *Tarshīḥ al-mustafīdīn*—all mentioned above were written in the late nineteenth century) appeal more to Islamic lawyers, judges, scholars, muftis, and debaters. In other words, the past that matters to the Muslims in Islamic legal tradition is not that of the seventh-century Arabia, as the Islamophobic, Islamicist, and anti-Islamic critiques want us to believe. Rather it is chronologically and geographically diverse and stretches from thirteenth-century Damascus, sixteenth-century Mecca and Cairo to sixteenth-century Malabar and nineteenth century Java and Mecca. These texts and their authors have significantly contributed to change the ways in which Islamic laws should be practiced in different contexts. Many commentaries and super-commentaries disagreed with the previous corpora and recontextualized the juridical requirements to befit the new concerns and this process continues well up until present times.

All these texts belong to the long textual *longue-durée* of Shāfiʿīsm in which there are many more similar texts, and together they form a deep reservoir for the Muslim community. They govern the discourses, debates, law-giving, rituals, and practices for them. A proper understanding of this repository would provide a better idea on how the Sharīʿa and its usage matter to the Muslims and how they relate with Sharīʿa in present times. These texts are taught and learned in religious educational centres from the shores of the eastern Mediterranean to the eastern Indian Ocean forming shared vocabularies for the Shāfiʿī legal cosmopolis. Intensifications of such educational institutions since the early twentieth century and utilisation of printing technology for massive reproduction of premodern Islamic texts all have made this textual repository more relevant and powerful in the Islamic world, compared to the previous centuries. Furthermore, the frequent use of these texts beyond the institutional walls in the public intra-sectarian and inter-sectarian debates, law-giving, legal codes and acts clearly indicate how this commentary tradition of Islamic law continues to appeal to an even larger audience in the Muslim world.

Their entanglements with this textual tradition also demonstrate the creative ways through which the followers of Islam endeavour to cater to the changing times and places without moving away from the perceived and received prescriptions. Through a constant commentarial process inside and outside the classrooms, private or public debates, mutual agreements or internal disagreements, they interpret the texts in order to engage with their present concerns and contexts, whether those are of modernity, minority-status, or other economic and social demands. That processual commentarial act helps them revitalize the textual repository as much as the repository rejuvenates them. On the one hand, the Islamophobic critiques mentioned at the beginning of this chapter are inattentive to or unaware of this constant hermeneutical engagement that most Muslims grapple on an everyday basis. On the other hand, the above discussion explicates how the contemporary engagements with the textual tradition by diverse Muslims such as the female ʿulamāʾ question the very foundational notions associated with Islamic authority and orthodoxy in the meaning-making processes of their religion and its rulings. Such manifold critical furtherance of the Islamic past in the present contexts by 'unorthodox' groups stands in contrast to what Talal Asad had assumed about the Islamic orthodoxy in his idea of the discursive tradition, as much as it represents a continuum between premodern and

modern hermeneutical practices of Muslims that Shahab Ahmed conveniently overlooks within his persuasive contradictory framework of Islam.

A deep reservoir of legal texts is thus very important for Muslim learned classes as well as the laity in their everyday sustenance of religion and its law. This store of premodern texts is similar to any other historical archive of today's world. The past and its material are useful for any society to understand from where and how it arose and developed, and to appreciate where it is heading in future. So also the Islamic legal reservoir stands as a meaningful corpus for the Muslim community today. In a similar vein to professional historians making use of archives scientifically, the Muslim jurists too utilize their legal-textual repository in the scientific ways that traditional epistemology demands and allows. Their discourses and debates conducted inside and outside educational institutions cater for the religious piety of a constant audience in the community. The mosques, madrasas, markets, and mass media make rivulets from this premodern reservoir in which ideas and texts flow smoothly to the contemporary landscapes that have been longing for hydration. An ethno-historical approach with an attention to textual sources and resources of the Muslims help us understand the concerns of the community, instead of superimposing judgments upon their legal and theological praxis.