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 Šafi’i 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.’ 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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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 Hanafism, Shafi’ism, Malikism, and Hanbalism. 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, supersuper-commentaries, abridgements, translations, and poetic versions and this large

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. 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. Rashid Ri′dā, 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.' 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. 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 faqahā (jurists). And that is very important.’ <https://www.facebook.com/ZaytunaCollege/videos/10155424786124253/> accessed 07 July 2017.


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 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

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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 Salafi jihadis), but through the lens of the Shafi‘i 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 Shafi‘i texts, all written in the premodern period, and I explore their contemporary uses among the Shafi‘i 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 Minhaj al-talibin of Yahyā al-Nawawī (d. 1277), its commentary Tuhfat al-muhitaj of Ibn Hajar al-Haytami (d. 1561) and its indirect summary Fath al-mu‘in of Zayn al-Dīn al-Malaybāri (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 Shafi‘i and non-Shafi‘i 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, Shafi‘ism dominated among the Muslims of such distant places from Africa to Asia through networks of Shafi‘i 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 Shī‘i schools followed in the littoral, the unprecedented conversions along with extensive migrations of Shafi‘i 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 Shafi‘i 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 Shafi’i and non-Shafi’i communities. This raises a number of interconnected questions. In the three, is there a hierarchy of usage varying from region to region within the Shafi’i 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 Shafi’i Muslims.

2. ROOTS AND ROUTES OF A REPOSITORY: THE SHAFI’I TEXTS
In the history of the Shafi’i school of Islamic law, the most foundational text is al-Umm, written by the eponymous founder of the school Muhammad bin Idris al-Shafi’i (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 Shafi’i’s students, Isma’il Yahya al-Muzani (d. 878) and Abu Ya’qub al-Buwayti (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 hadiths, its apparent disordered structure and the emergence of the Hanbalı school.11 Muzani’s summary took its place and it was widely circulated among the Shafi’i scholars in the ninth to the eleventh centuries. It thus attracted several commentaries, super-commentaries, and summaries among which the most elaborate one was Nihayat al-matlab written by ‘Abd al-Malik bin ‘Abd Allah al-Juwayni (d. 1085), a Persian scholar based in Khurasan. His student Abu Hamid al-Ghazali (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 Shafi’i. The debate seems to have settled by the persuasive source-critical study of Ahmed El Shamsy, ‘Al-Shafi’i’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 Shafi’i 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-Shafi’i and Ibn Qutayba: A Reconsideration’ (2004) 11(1) Islamic Law and Society 1–41; Norman Calder, Studies in Early Muslim Jurisprudence (Clarendon Press 1993).

book called *Baṣīt* 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 *Baṣīt* titled *Wasīt*, 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 *Muharrar* by Abū al-Qāsim bin ʿAbd al-Karīm Rāfīʿī (d. 1227), another Persian jurist and historian based in the Caspian region.

The quality of the *Muharrar* became noticed not exclusively for itself but rather for its abridgement, the *Minhāj al-tālibin* (hereafter *Minhāj*) of Yahyā bin Sharaf al-Nawawī. Nawawī wrote the *Minhāj* as he thought *Muharrar’s* several arguments and rulings opposed the ‘authentic’ opinions in the school.\(^{13}\) He had synthesized a long-standing split among the Shāfīʿi 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 Shāfīʿi law was interpreted, perceived, and transmitted among later Shāfīʿi 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 *Tuhfat al-muḥtāj* (hereafter *Tuhfa*) of Ibn Hajar al-Haytamī (d. 1561), for it has been the most noted commentary used by the Shāfīʿi 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 Hajar’s colleague in Cairo, Shams al-Dīn Muhammad al-Ramlī (d. 1596). The *Tuhfa* 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 *Tuhfa* 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.


\(^{13}\) Nawawī, *Minhāj al-tālibin* wa ʿumdat al-mufīn, ed Muhammad ʿAbd al-Shāhīn (Dar al-Minhāj 2005) 64.

\(^{14}\) On the life and contribution of Nawawī, see Fachrīzal Halim, Legal Authority in Premodern Islam: Yahyā b. Sharaf al-Nawawī in the Shāfīʿi School of Law (Routledge 2015).

The third text I focus on is an indirect summary of the *Tuhfa* entitled *Fath al-mu'allim* (hereafter *Fath*) written by Zayn al-Din al-Malaybâri (d. 1583?). He was an Indian jurist and historian, who reportedly studied with Ibn Hajar 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 Shâfi’î scholarly circles as the standard text or constitution of the school.

The *Minhaj*, the *Tuhfa*, and the *Fath* have all played crucial roles in different modes of legalistic formulations among Shâfi’î 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. For Shâfi’î 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, Mâ’baris, Jawis, Hadramis, etc. These three texts thus catered for the appetite of Shâfi’î 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 Shâfi’îs 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 Shâfi’î Muslims of the Indian Ocean littoral in particular such a shared repository emerged from the

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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 Krâlti 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).

texts they studied or were introduced to them directly or indirectly at various stages of their educational life. The Minhāj, Tuhfa, and Fath are some of the most important contributors to this repository, for they are still being taught and learnt among Shāfī Muslims despite their premodern origins. Educational practices related to these texts vary in the Shāfī 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, although only a marginal connected anthropology of Islamic legal education in the Indian Ocean world has emerged. I briefly address how different places and people approach the same texts in dis/similar ways.

If we categorize the Minhāj, Tuhfa, and Fath into three levels (introductory, intermediate, and advanced) of texts for learning Shāfīism, 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 mi’lamat at the primary level and ribāt in the advanced level. In Southern India the corresponding terms are palli-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 jamī’at. 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


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 Shafi'ism as a legal school. They discuss mainly the 'ibadat (rituals including prayers, fasting, almsgiving, and pilgrimage), a quarter of the usual Shafi'i/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-salāt 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 Jam'iyyat al-‘Ulāma’ and All India Sunni Jam'iyyat al-‘Ulāma’), or individual initiatives (most pālī-dārīs, ottupallis, dayahs or pesantrens are run by individuals or small committees).

At the secondary level two texts come under our focus, the Minhaj 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 Minhaj. They memorize the entire text, which is considered as one of the mahfūzāt, a text to be memorized, and they may also do the same with the Mukhtasar of Abū Shujā‘. Brinkley Messick has expounded on how students went to the hazr once they graduated from their primary education in Qurān schools (mi'lamat).20 At the same brilliant memorising of Qur’ān, 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 Minhaj 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 Shafi’i cosmopolis. It was often the first text that a student of Shafi’ism had to study after the initial stage of memorizing the Qur’ān 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 ‘Abd al-Rahmān, son of ‘Ali, son of Nāji, al-Haddād, the Shafi’i, the Yemeni, the Ibbi, was born in the town of Ibī in the year 1293 [1876] and received instruction from his father, in Shafi’i jurisprudence [beginning with] Minhaj.21

20 Messick, ibid chapter 4.
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. Shāfi‘i students mostly learned the Minhāj by heart together with the Mukhtasar of Abū Shujā’, 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 Ḥadramawt, ‘Abd al-Rahmān bin Muḥammad bin Husayn al-Mashhūr (d. 1902) taught al-Muḥnī, Fath al-Wahḥāb, and the Minhāj, and many East African students such as the renowned ‘Abd Allāh Bā Kathīr learned these texts with him.22

Only in Ḥadramawt 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 Fath come in, but not always. In Egypt for example the Fath is not found in the present curricula, though it was taught there earlier. Regarding the Fath being critically taught in the Yemeni ribāts, Sayyid ‘Umar bin Hāmid al-Jilānī 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


23 ibid 152.


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 Minhaj-students in Yogyakarta: ‘If our teacher says Fath al-mu’in is the standard [text] of the national Kiai, well the Minhaj is the standard [text] of international scholars’. Nevertheless, even when the Minhaj 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 Fath. In Southeast Asia and East Africa, the Fath is supplemented or replaced by another widely circulated text. That is Fath al-Qarib of Abū ‘Abdullah Shams al-Din Muhammad bin Qāsim bin Muhammad al-Ghazzī (d. 1512), a commentary on Abū Shuja’ī’s aforesaid work. This text has been a major opponent for the Fath for a long time and we do see many scholars across the Shafi’ī 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. However, it has appealed less to the Shafi’īs in South Asia where the Fath 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 Fath called Khulāṣat Fath al-mu’in by Bāva Musliyār or a simplified version entitled Fiqh al-atfāl by Bahā’ī al-Dīn Muhammad al-Nadwī. 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 Minhaj and the Fath come together in the educational spectrum, while the former is assumed to be the more ‘classical’ text of the school vis-à-vis the Fath that is more ‘marginal’ intermediate text? The answer has multiple layers. Firstly, notwithstanding Minhaj’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 Shafi’ism without necessarily defining ‘inner meanings’ or wordings. Nawawī himself refers to the text’s target audience and its pedagogical function vis-à-vis the Muharrar of Rāfi’ī when he wrote:


28 Van den Berg, Fath al-Qarib: la révélation de l’omniprésent; commentaire sur le préces de jurisprudence musulmane d’Abou Chodja’ī par Ibn Qasim al-Ghazzī (Brill 1894).

29 Bava Musliyār, Khulasat Fath al-mu’in (SYS Book Stall 1993); Bahā’ī al-Dīn Muhammad al-Nadwī, Fiqh al-atfal (Sunnī Publications Centre 1998).
The prolixity of the Muharrar 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 Fath. 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 Ridā against the Arabic of Indian scholars, in comparison with the usual comments among the Indian, Indonesian, or Malaysian Shāfī followers on the smooth readability of the Fath.31 Despite some groanings of Arab scholars against the Fath, it gained easy access among the non-Arab Shāfī followers, for whom the Minhāj was a distant text which could be reached only via intermediate stopovers at commentaries, or abridgements like the Fath itself.

4. LEARNING ISLAMIC LAW: AN ADVANCED TEXT

The third text on which we focus is the Tuhfa as part of the higher educational curricula of the Shāfī religious institutes. Though many other commentaries on the Minhāj could be taught in the secondary or tertiary stages of legal education, the Tuhfa has been widely agreed among the Shāfī scholars as the last text that a student of the school can study. At a higher level, the commentary of Mahalli (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 Tuhfa is the prime textbook for law, along with the other major texts of Ḥadīth (such as Sahīh al-Bukhārī and Sahīh al-Muslim), and Qurʾān-exegeses (such as Ṭafṣīr al-Kashīshāf of Zamakhshāri and Jāmiʿ al-bayān fi taʿwīl 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 Tuhfa, 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

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 (ijāżat 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 Tuhfa again because of time constraints in the curriculum, this ijāż 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 Tuhfa 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 Tuhfa.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 Tuhfa in its entirety. There are also renowned specialists of the Tuhfa 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 Tuhfa 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 Tuhfa is taught without any time limits. This was initiated by Kıλına Kuńnabullu Musliyār (d. 2000) and followed by Kuńnalawi Musliyār and Najib Mawlawi Mampātu. One of my informants closely associated with this study circle told me that usually their syllabus takes almost 10 years to learn the Tuhfa completely, whereas Najib Mawlawi claims to have taught the entire text within a year to 58 students in 2015–16.

In Malabar, they depend on the 10-volume Tuhfa which contains two super-commentaries of Ibn Qasim al-İbādi (d. 1586) and 4ʿAbd al-Hamīd al-Sharwānī al-Dāghistānī (d. 1884). Sayyid Jifrī Muttukkoya, who has been teaching the Tuhfa 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 ijāż 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 Kutikkattur and (iii) Jamia Nuriyya Arabic College, Pattikkad.
35 The chapters he teaches include congregational prayer, funeral prayer, two 'id 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 *Tuhfa*. He claims that he has taught all volumes of the *Tuhfa* except the fourth and fifth.

Both in specialized and non-specialized institutes, the teacher of the *Tuhfa* 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 *Tuhfa* 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 (*ijaza*) 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 *Tuhfa* partially from a specialist and they are very keen on talking about their teachers and the teachers’ teachers—the chain of teachers (*sisila* or *sanad*) that often goes back to the author of the *Tuhfa* himself. The Figure 1 provides such a chain of teachers of the *Tuhfa* delivered by Najib Mawlawi for his students who completed the entire *Tuhfa* in 2015–16, and this certificate-cum-chain connects their teacher’s chain to Ibn Hajar al-Haytami via al-Malaybari, the *Fath*’s author.

Those who have graduated from such courses are known as ‘the Haytami’s’, named after the author Ibn Ḥajar al-Haytami, 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 ‘ULAMĀ’

While in the primary, secondary, and higher levels of traditional Islamic education there was a place for the classical Shāhī 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 *Fath* is a favourite subject for many undergraduate and Masters-level students, as well as works like *Fath al-qarīb*. 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

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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 Fath 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 Fath 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 Kūn īnawī Musliyār’s Tuhfa-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 Hashim Ash‘ārī used to conduct two-three decades ago. Yūsuf attended all those classes. Now he teaches the Fath, 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. 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 Shāfi‘ī jurists who were willing to teach them the Fath. However, now with the rise of female ‘ulamā and female pesantrens, especially in Indonesia, there are wider attempts to study and critically engage with the conservative views of most male ‘ulamā. Some of them have brought out annotated critical editions for some controversial Shāfi‘ī

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).

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

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

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

6. BEYOND THE WALLS

Outside the educational institutional frameworks, the Minhāj, Fath, and Tuhfa play important roles in the Şafi’i discursive practices of both scholars and laypersons. The usages of the texts differ depending on the individuals, contexts and customs varying from Şari’a courts, fatwas, sectarian debates, and popular preaching. I will analyse each of these in turn.

In the Şari’a 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 Fath, Tuhfa and Minhāj in particular have been used in the Şari’a 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 ‘Uthmān wrote a text in which he clearly advised judges and scholars to use these texts for their rulings based on Şafi’i 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 Rāfi’i and further hierarchized the works of Nawawi in which the Minhāj has been ranked highly, just after the Rawda. He also asked to prioritize the opinions of Ibn Hajar and his Tuhfa 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 Tuhfa 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 Şari’a courts faced different trajectories.43 While some became informal or stopped completely in

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40 For a comparative analysis of the Şari’a 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).
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 Shari’-influenced bylaws were introduced or continue to be operative. As all these regions are predominantly Shafi’i in their adherence to Islamic law, the prime texts they use in these contexts are the ones like the Fath, its commentaries, and occasionally the Tuhfa, but hardly ever the Minhaj. The Shari’a 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 Shafi’-i 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 Shafi’-i 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 Shafi’-i 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, Fath’s one commentary I’anat al-talibin by Abu Bakr bin Muhammad Shatii al-Dimyatih aka Sayyid Bakri (1850–1893) is found as a frequent reference by the judges. Another commentary on it, Tarshih al-mustafidin by ’Alawi bin Ahmad bin Abd al-Rahman al-Saqqaf (1839–1916), and Minhaj’s one abridgement titled Manhaj al-tullab by Zakariyya al-Ansari (d. 1520), are also the other most used Shafi’-i texts from the same textual genealogy under our focus.

In Shafi’-i 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 Shari’a as a valid source of law to rule on issues related to Muslims. Such countries though established or recognized a separate court based on Shari’a (especially in Singapore and the Philippines). Occasionally the secular courts too sought clarifications from the Muslim jurists who sheltered under texts like the Fath. The secular states and their judiciaries have

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validated those methods; in fact, they have been in effect since the colonial regimes which introduced different Shi‘a 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 Shi‘a, 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 Shafi‘i scholars in the Indian Ocean rims of South and Southeast Asia depend on intermediate texts like the Fath and the Kanz. But when a serious or complicated issue comes up, they usually turn to the Tuhfa for solutions. A saying that exists among the Malabari Shafi‘i scholars is that ‘a scholar can find answers in the Tuhfa to any problems whether it is old or new’. Although this is an overstatement, a specialist of the text, M.T. Abdulla Musliyar, 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 Shafi‘i 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.

Cerussi Zayn al-Din Musliyar (d. 2016), who taught the Fath, the Kanz and the Tuhfa 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 Tuhfa 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 Musliyar on 28 April 2014. He says that he heard this statement in Arabic (kitāb fihi ma fihi, latâ‘if ma‘ānīhi, faman lam yadri ma fihi ka bawl al-kalb fi fihi) from his teacher Kottumala Ustad.
the end of the day one will find an answer in the Tuhfa to any strange problems. His fatwas, 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 Tuhfa or misread them that they dragged him into trouble.

In the first and last few pages of each volume of a manuscript of the Tuhfa kept at Cāliyam Library, a scholar has noted down the fatwas he has delivered referring to the text. It is a copy used by Ahmad Koya Shāliyātī (d. 1954), who was a well-known law-giver in the first half of the twentieth century and has worked as a muftī under the Hyderabadite sultan ʿUthmān ʿAli Khān, Āsaf Jāh VII (r. 1911-1948; titular Nizām until 1967). In his notes, he cites the questions from litigants, and the answers from the Tuhfa along with the details of the chapter or page-number. Some such side-notes were later publicized by him as small pamphlets or riśālas in which the Tuhfa was the main source of reference. The abundance of such writings in the margins and first and last pages indicate how effectively the Tuhfa 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 Tuhfa, 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 Tuhfa 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 Sunni-Shāfiʿī groups, organizationally divided as the APs and EKs, vigorously debated in 2002–03 over the issue of the subject in the wording (ṣīgha) of divorce. The issue arose after the above-mentioned Cerūsārī 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. Cerūsārī 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 Cerūsārī 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 Tuhfa was a major text that the E.K. group wanted to rely on. As a specialist of the Tuhfa, 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 Tuhfa, 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 Sunni-Shāfiʿī organization established in 1926, until they were divided in 1989 over some political, organizational and legalistic issues.
book. After a decade, he reflected on the debate: ‘I had great difficulties in helping the AP-group understand the wordings of the Tuhfa 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 Shafi’ism 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 Shafi’ism, 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 Sunni-Shafi’i 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 fuqaha 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 Fatih, the Tuhfa 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 Tuhfa 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 zakat for currency-bills, a passage from Tuhfa’s commentary by ‘Abd al-Hamid al-Sharwani al-Daghistani (d. 1884) has been so crucial in the discourses for decades, as well as a sentence from the Fatih over the virtuousness of collective prayer (kutuprathana) after the obligatory prayers (salat). In the last case, the debate was not among Shafi’is 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 Shafi’i 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 fuqaha 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.

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 Shāfi‘ī 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 *Fath* and the *Tuhfa* 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 *Fath*, its commentaries like the *İ‘ana*, but hardly any from the *Tuhfa* or the *Minhāj*. But other intermediate Shāfi‘ī 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 Shāfi‘ī 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 Shāfi‘īs in a global spectrum also show how the texts find their ways into trans-communal and transnational discourses too. For example, the Oxford-based Shāfi‘ī 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 *Fath*’s commentary *İ‘ana* to validate his arguments. In his other writings too, the same text, and the *Fath* itself, appears as his prime source.

7. CONCLUSION

The journeys of Shāfi‘ī legal texts such as the *Minhāj*, *Tuhfa*, and *Fath* 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 Shari‘a-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 *Tuhfa* and *Fath* written in the sixteenth century and their commentaries from the nineteenth century (Sharwānī’s commentary on the


Tuhfa and the two commentaries on the Fath—the I‘ana and the Tarshih al-mustafidin—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-dureé of Shafi‘ism 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 Shari‘a and its usage matter to the Muslims and how they relate with Shari‘a 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 Shafi‘i 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 ‘ulama’ 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.