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TOAEP



## Religion, Hateful Expression and Violence

Morten Bergsmo and Kishan Manocha (editors)



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**Front cover:** Segment of the painting ‘St. Yves Administering Justice’ by Maestro di Sant’Ivo (1405–1410), the original of which can be seen in Galleria dell’Accademia in Florence (one block from where the project-conference took place). St. Yves (1253–1303), patron saint of lawyers, turns his attention to the poor and victimized. Similarly, religious leaders should protect victims of hate speech by their members or in the name of their community.

**Back cover:** Detail of the ancient pietra serena frame of the entrance to the CILRAP Bottega in Via San Gallo in Florence. Diametrically opposed to hateful expression (the topic of this book), the hand-carved surface is a loving expression of the meticulous work of the stone mason. The modest pietra serena stone has been quarried from hills outside Florence for centuries. All volumes in this Publication Series display a picture of publicly accessible ground (or frame that leads to the ground) on the back cover. Photograph: © CILRAP 2022.

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# How Should Responsible Religious Leaders React to Hate Speech in Their Community?

Mohamed Elewa Badar and Rana Moustafa Essawy\*

## 27.1. Introduction

While religious leaders were commonly referred to as inciters of hatred, their significant role as human rights actors has been receiving increased attention in the last decade. In 2012, the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence – a result of four regional expert workshops organized by the United Nations (‘UN’) Office of the High Commissioner for Human Rights (‘OHCHR’) in 2011 – articulated three core responsibilities for religious leaders in combatting hate speech:

- (a) Religious leaders should refrain from using messages of intolerance or expressions which may incite violence, hostility or discrimination;
- (b) Religious leaders also have a crucial role to play in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech; and
- (c) Religious

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leaders should be clear that violence can never be tolerated as a response to incitement to hatred (for example, violence cannot be justified by prior provocation).<sup>1</sup>

Building on that, faith-based and civil society actors working in the field of human rights gathered in Beirut on 28 and 29 March 2017. This resulted in the formulation of 18 commitments by which the participating religious actors have undertaken to take actions to combat hate speech that constitutes incitement to discrimination, hostility and violence. Among those actions, religious leaders have pledged to: (i) revisit religious interpretations that appear to condone or trigger hate speech; (ii) stand up for the rights of all persons belonging to minorities; (iii) publicly denounce all instances of advocacy of hatred that incites to violence, discrimination or hostility; (iv) monitor interpretations, determinations or other religious views that manifestly conflict with universal human rights norms and standards; and (v) refine the curricula, teaching materials and textbooks.<sup>2</sup>

It is the purpose of this chapter to concretize those actions and to sketch out other measures that could be used by religious leaders in combatting hate speech within their communities. This will be done through a commonsensical approach, which observes the various roles assumed by religious leaders, deducing the measures that they could use to combat hate speech. It is necessary to emphasize in this context that this chapter will focus on religious leaders in Muslim communities, owing to the authors' religious identity. Nevertheless, we share the Beirut participants' deep conviction that "all respective religions and beliefs share a common commitment to upholding the dignity and the equal worth of all human beings",<sup>3</sup> and thus we believe that the internal measures suggested in this chapter can be generalized to be used by religious leaders belonging to other religions.

Before sketching out the internal measures that could be used by religious leaders to combat hate speech in Muslim communities, it is necessary to clarify that the rights and duties in Islámic law originate in the *Qur'án* and in the authentic *Sunnah* of the Prophet of Islám (the Prophet Muḥammad).

Islámic law (*Shari'ah*) is rooted in the political, legal and social structures of all Islámic states and is the standard of governance in all Islámic

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<sup>1</sup> Annex to the Report of the UN High Commissioner for Human Rights on the Expert Workshops on the Prohibition of Incitement to National, Racial or Religious Hatred, UN Doc. A/HRC/22/17/Add.4, 11 January 2011 (<https://www.legal-tools.org/doc/oymwge/>).

<sup>2</sup> OHCHR, 18 Commitments on "Faith for Rights", 29 March 2017 (<https://www.legal-tools.org/doc/qp9nv2/>).

<sup>3</sup> OHCHR, Beirut Declaration on "Faith for Rights", 29 March 2017 (<https://www.legal-tools.org/doc/k178m1/>).

nations.<sup>4</sup> Often considered by both Muslims and Orientalists as the archetype of the Islámic way of life, it has been described as the core and kernel of Islám itself.<sup>5</sup> Other commentators, however, critique what they consider to be the over-emphasis placed on the legal foundations of the Islámic religion, and do not believe Islám was meant to be as much of a law-based religion as it has often been portrayed to be.<sup>6</sup> In any case, Islámic law, one of the world's recognized legal systems,<sup>7</sup> is a particularly instructive example of a 'sacred law' and draws such significant contrast with other legal systems that its study is imperative to adequately appreciating the full range of possible legal phenomena.<sup>8</sup>

Islámic law, like Roman law, used to be a 'jurist law', a product of neither legislative authority nor case law, but rather a creation of the classical jurists who elaborated on the sacred Islámic texts.<sup>9</sup> This changed, however, with the advent of Islámic codification in the mid-nineteenth century, transforming it into a 'statutory law' promulgated by a national territorial legislature.<sup>10</sup>

Islámic law has evolved over many centuries of juristic effort into a subtle, complex and highly developed reality which, not necessarily monolithic, is reflective of the pluralistic nature of human society.<sup>11</sup> Such complexity does not, however, make Islámic law indeterminable<sup>12</sup> and the diverging legal opinions contained therein might be viewed as "different manifestations of the same divine will" which form "a diversity within unity".<sup>13</sup> Seventy-five per cent of the legal conclusions attributed to the four Sunní schools of Islámic law – namely, *Hanafi*, *Maliki*, *Shafi'i* and *Hanbali* – are identical, while the remaining

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<sup>4</sup> See Hamid Enayat, *Modern Islamic Political Thought*, University of Texas Press, 1982; Albert Hourani, *Arabic Thought in the Liberal Age: 1798–1939*, Cambridge University Press, 1983; Wael B. Hallaq, *A History of Islamic Legal Theory: An Introduction to Sunní Uṣūl-al Fiqh*, Cambridge University Press, 1997, p. 202.

<sup>5</sup> Joseph Schacht, *An Introduction to Islamic Law*, Clarendon Press, 1964, p. 1.

<sup>6</sup> Mohammad Hashim Kamali, *Shari'ah Law: An Introduction*, Oneworld Publications, 2008, p. 18.

<sup>7</sup> See René David and John Brierley, *Major Legal Systems in the World Today*, Free Press, 1978, p. 421.

<sup>8</sup> Schacht, 1964, p. 2, see *supra* note 5.

<sup>9</sup> Aharon Layish, "The Transformation of the *Shari'ah* from Jurists' Law to Statutory Law", in *Die Welt des Islams*, 2004, vol. 44, no. 85, p. 86; see also Farooq A. Hassan, "The Sources of Islamic Law", in *Proceedings of the American Society of International Law Annual Meeting*, 1982, vol. 76, no. 65, p. 65.

<sup>10</sup> *Ibid.*, p. 86.

<sup>11</sup> Mashood A. Baderin, *International Human Rights and Islamic Law*, Oxford University Press, 2005, pp. 32–33.

<sup>12</sup> *Ibid.*, pp 32–33.

<sup>13</sup> *Ibid.*, p. 431, referring to Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Islamic Texts Society, 1991, p. 169 and Hallaq, 1997, p. 202, see *supra* note 4.

questions and variances within a single family of explainers of the *Qur'án* and the prophetic *Sunnah* are traceable to methodological differences in understanding or authenticating the primary textual evidence.<sup>14</sup>

Islámic law, like other legal systems, has its 'sources' (*'al-másádir'*); it also has its 'guiding principles' (*'al-úṣūl'*) that dictate the nature of its 'evidence' (*'al-adillah'*); it equally employs the use of 'legal maxims' (*'al-qáwa'id al-fiqhiyyah'*) and utilizes a number of underlying 'objectives' (*'al-maqásid'*) to underpin the structure of its legal theory.<sup>15</sup> For example, the doctrine of *máshlahah* is considered to be fundamental to the enduring realization of Islámic ideals. Directly translating to 'benefit' or 'welfare', the doctrine pursues the objectives of promotion of human welfare and prevention of harm, both in the sense of ensuring the collective well-being of the Muslim community and in the sense of protecting the human rights of its individual members.<sup>16</sup> Ash-Shahátibí conceives the doctrine in three hierarchical categories; at the top, indispensable – or fundamental – benefits (*'dárúriyyát'*): the protection of life, religion, intellect, family and property; supplemented by necessary benefits (*'hajíyyat'*), those which make life tolerable but are not indispensable to the endurance of society; and finally, improvement benefits (*'tahsíníyyat'*) which ameliorate the enjoyment of life.<sup>17</sup>

The doctrine of *máshlahah* provides the "basis of rationality and extendibility of Islamic law to changing circumstances (and also) as a fundamental principle of the universality and certainty of Islámic law".<sup>18</sup> As pronounced by Kamali:

The doctrine of *maṣlahah* is broad enough to encompass within its fold a variety of objectives, both ideal and pragmatic, to nurture the standards of good government and to help develop the much-needed public confidence in the authority of statutory legislation in Muslim societies. The doctrine of *maṣlahah* can strike balance between the highly idealistic levels of expectation from the government on the part of the public and the efforts of the latter to identify more meaningfully with Islam.<sup>19</sup>

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<sup>14</sup> Ahmad ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law 'Umdat al-Salik*, Nuh Ha Mim Keller (ed. and trans.), Amanat Publications, Ellicott City, 1994, p. vii.

<sup>15</sup> Gavin Picken (ed.), *Islamic Law*, 4 vols., Routledge, London, 2010.

<sup>16</sup> Baderin, 2005, pp. 42–43 see *supra* note 11.

<sup>17</sup> See *ibid.*, p. 44.

<sup>18</sup> Muhammad Khalid Masud, *Shatibi's Philosophy of Islamic Law*, Islamic Research Institute, Islamabad, 1995, p. viii.

<sup>19</sup> Mohammad Hashim Kamali, "Have We Neglected the Shariah Law Doctrine of *Maṣlahah*", in *Islamic Studies*, 1988, vol. 27, no. 4, pp. 287–288.

The term ‘Islámic law’ encompasses the entire system of law and jurisprudence associated with the religion of Islám. It is comprised of two parts, namely, the primary sources of law (*Shari’ah* in the strict legal sense) and the subordinate sources of law, that is, the methodology used to deduce and apply the law (Islámic jurisprudence, or ‘*fiqh*’).<sup>20</sup> *Shari’ah* translates literally to ‘pathway’,<sup>21</sup> and its original articulation and implementation denoted the road to the watering place or path leading to the water, that is, the way to the source of life.<sup>22</sup> It governs all public and private behaviour, as well as legal aspects.<sup>23</sup> The word ‘*Shari’ah*’ occurs once in the *Qur’an*: “Thus, We put thee On the (right) way [*shari’atan*] Of Religion: so follow Thou that (Way) and follow not the [whimsical] desires [*hawā*] of those who know not [or ‘have no knowledge’]” (*Qur’an*, 45:18).<sup>24</sup>

*Shari’ah* is derived directly from the *Qur’an* and the *Sunnah*, which are considered by Muslims to be of divine revelation and thus comprise the immutable part of Islámic law, while *fiqh* was produced from human reasoning. Zahraa discusses the sacrosanctity and exhaustiveness of the divine revelation:

Muslim jurists throughout history have not been concerned with establishing a particular field or science or even theory – to them, the divine sources are comprehensive enough to encompass any possible human action, conduct or transaction.<sup>25</sup>

However, it is important to note the belief of the *Shi’ah* – in contrast to that of the *Sunní* – that divine revelation continued to be transmitted after the Prophet’s death, by means of their recognized religious leaders (‘*Imáms*’),<sup>26</sup> whose infallible pronouncements are thus considered to be part of divine revelation.<sup>27</sup>

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<sup>20</sup> Baderin, 2005, pp. 32–34, see *supra* note 11. Some scholars use the terms Islámic law, *Shari’ah* and *fiqh* interchangeably; for example, Kamali considers *Shari’ah* to also include *fiqh*; see Kamali, 2008, p. 1, *supra* note 6; see also *ibid.*, pp. 287–288.

<sup>21</sup> Irshad Abdal-Haqq, “Islamic Law: An Overview of its Origin and Elements”, in *Islamic Law and Culture*, 2002, vol. 7, no. 4, referring to Abdur Rahim, *The Principles of Islamic Jurisprudence*, Kitab Bhavan, New Delhi, 1994, p. 389.

<sup>22</sup> Francis Robinson, *Atlas of the Islamic World Since 1500*, Phaidon Press, Oxford, 1982, p. 320.

<sup>23</sup> Abdullah S. Alarefi, “Overview of Islamic Law”, in *International Criminal Law Review*, 2009, vol. 9, no. 707, pp. 707–8; Schacht, 1964, pp. 1–5, see *supra* note 5.

<sup>24</sup> This chapter uses the English translation of the *Qur’an* by Abdullah A. Yūsuf ‘Alī, Lahore, 1937, unless otherwise noted.

<sup>25</sup> Mahdi Zahraa, “Characteristic Features of Islamic Law: Perceptions and Misconceptions”, in *Arab Law Quarterly*, 2000, vol. 15, no. 168, p. 171.

<sup>26</sup> Kamali, 2008, p. 88, see *supra* note 6.

<sup>27</sup> *Ibid.*, p. 88.



For Muslims, the *Qur'án* is the embodiment of the words of God as revealed to the Prophet Muḥammad through the angel Gabriel. It is the seminal source of Islámic law, in which all other sources are rooted.<sup>28</sup> However, far from being a textbook of jurisprudence, it is rather a book of guidance on all aspects of the life of every Muslim:<sup>29</sup> “We have sent down to thee the Book explaining All things, a Guide, a Mercy, And Glad Tidings to Muslims” (*Qur'án* 16:89).

The *Qur'án* comprises more than six thousand verses (*‘ayat’*).<sup>30</sup> There is a lack of consensus among jurists as to how many consist of legal subject-matter, with differing methods of classification employed for determining what constitutes a legal verse – estimates range from 80 up to 800 verses.<sup>31</sup> The legal verses are not confined to their own separate chapter (*‘súráh’*) but are scattered throughout the *Qur'án*, enunciated alongside verses about belief, general behaviour, the nature of existence or the history of bygone peoples. A particular judgement may occur on multiple occasions and in different styles, deepening and broadening a believer’s understanding of the reiterated rule.<sup>32</sup>

The *Qur'án* is an indivisible whole, a guide to be accepted and followed in its entirety.<sup>33</sup> It was revealed incrementally over a period of 23 years, culminating with the demise of the Prophet Muḥammad in 632 CE. To properly understand its legislation, one must take into consideration the *Sunnah* as well as the circumstances and the context that existed at the time of the revelation. According to the common understanding of Muslims, the secondary source of Islámic law comprises the sayings and practices of the Prophet Muḥammad, or the *Sunnah*, collected in *ḥadīth*.<sup>34</sup> While the *Qur'án* is believed to be of manifest revelation, that is, the direct words of God conveyed to the Prophet Muḥammad through the angel Gabriel, the *Sunnah* falls into the category of internal revelation, that is, concepts inspired by God but conveyed through the Prophet Muḥammad’s own words.<sup>35</sup>

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<sup>28</sup> Alarefi, 2009, pp. 709–10, see *supra* note 23.

<sup>29</sup> Muhammed S. El-Awa, “Approaches to Shari’a: A Response to NJ Coulson’s A History of Islamic Law”, in *Journal of Islamic Studies*, 1991, vol. 2, no. 143, p. 146.

<sup>30</sup> 6239 verses, M. Cherif Bassiouni, *The Shari’a and Post-Conflict Justice*, 2010, p. 15; 6235 verses, Kamali, 2008, see *supra* note 6; 6666 verses, Abdal-Haqq, 2002, p. 27, see *supra* note 21.

<sup>31</sup> There are 80 legal verses according to Coulson, 120 according to Bassiouni, 350 according to Kamali, 500 according to Ghazali, 800 according to Ibn al-‘Árabí, while according to Shawkani any calculation can only amount to a rough estimate.

<sup>32</sup> El-Awa, 1991, p.146, see *supra* note 29.

<sup>33</sup> Kamali, 2008, p. 22, see *supra* note 6.

<sup>34</sup> El-Awa, 1991, p. 153, see *supra* note 29.

<sup>35</sup> Kamali, 2008, p. 18, see *supra* note 6.

The *Sunnah* complements the *Qur'án* as a source for understanding the divine will, as the *Qur'án* itself explicates: “take what the Apostle [or ‘Messenger’] Assigns to you, and deny Yourselves that which he Withholds from you [or ‘has forbidden to you’]” (*Qur'án* 59:7).

The *Qur'án* authorizes the Prophet Muḥammad to take legal decisions in response to the developments in the Muslim community and delegates to him the task of explaining the judgements of the *Qur'án*:<sup>36</sup>

Judge thou between them by what God hath revealed and follow not their vain desires (*Qur'án* 5:49);

But no by thy Lord they can have no (real) Faith until they make thee judge in all disputes between them and find in their souls no resistance against thy decisions but accept them with the fullest conviction [or ‘complete submission’] (*Qur'án* 4:65).

Where an issue is not specifically addressed in either the *Qur'án* or the *Sunnah*, the Prophet mandated the exercise of sound reasoning to reach a judgement.<sup>37</sup> When appointing a judge to Yemen, the Prophet asked him:

“According to what shalt thou judge?” He replied: “According to the Book of Allah. And if thou findest nought therein? According to the *Sunnah* of the Prophet of Allah. And if thou findest nought therein? Then I will exert myself to form my own judgement.” [The Prophet replied] “Praise be to God Who had guided the messenger of His Prophet to that which pleases His Prophet.”<sup>38</sup>

This concept of using reason to determine a matter of law (*‘ijtihād’*) is the essence of *‘uṣūl al-fiqh*, a legal method of ranking the sources of law, their interaction, interpretation and application.<sup>39</sup> The result of this method is *fiqh*, which literally means human understanding and knowledge, developed by means of deduction in applying the prescriptions of the *Shari‘ah* in real or hypothetical cases.<sup>40</sup> As such, it does not command the same authority as that of the *Shari‘ah* and its employment lacks uniformity among the *Sunni* and *Shi‘ah* traditions, who adopt differing scholarly and methodological approaches.<sup>41</sup>

In the formative period of Islāmic law, the science of *‘uṣūl al-fiqh* did not yet exist as a branch of intellectual endeavour in its own right and the sources

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<sup>36</sup> El-Awa, 1991, p. 147, see *supra* note 29.

<sup>37</sup> Abdal-Haqq, 2002, p. 35, see *supra* note 21.

<sup>38</sup> Said Ramadan, *Islamic Law Its Scope and Equity*, 2nd ed., P.R. Macmillan, London, 1970, p. 75.

<sup>39</sup> Kamali, 1991, p. 469, see *supra* note 13.

<sup>40</sup> Kamali, 2008, pp. 40–41, see *supra* note 6.

<sup>41</sup> Bassiouni, 2010, p. 10, see *supra* note 30.

of Islámic law were not determinatively hierarchized.<sup>42</sup> With time, the *Qur'án*'s primacy over the *Sunnah* became almost universally recognized, followed next in the hierarchy by '*ijma*' and *qiyas*, the two main proofs of law attained through human reasoning.

When the *Qur'án* and the *Sunnah* do not provide an answer on an issue, learned jurists must reach a consensus of opinion ('*ijma*'), a practice established by the companions of the Prophet ('*aṣ-Ṣāḥabah*').<sup>43</sup> '*Ijma*' is a rational proof of *Shari'ah* and, due to its binding nature, in theory it mandates absolute and universal consensus; however, in practice, it has often also been claimed for rulings reached through majority consensus.<sup>44</sup>

*Qiyas* is the application of a *Shari'ah* value or ruling from an original case to a new case, not found in the *Qur'án*, the *Sunnah* nor a definite '*ijma*', on the grounds that the new case has the same effective cause as the original one.<sup>45</sup> An example of *qiyas* is the extension of the prohibition of wine to a prohibition of any drug that causes intoxication, because the prevention of intoxication is the effective cause of the original prohibition.<sup>46</sup> Other methods include *is istihsan* ('equity' in Islámic law), *máshlahah mursalah* ('considerations of public interest'), '*urf*' ('custom') and *istiṣḥab* ('presumption of continuity').<sup>47</sup>

There are two primary classifications of interpretative methods in the contemporary Islámic legal system. The traditionalist approach adheres strictly to the original interpretations of the *Shari'ah* enunciated in the tenth century, while evolutionists employ flexibility in their interpretation, situating the *Shari'ah* within its current context, evolved to cater to contemporary issues of the world. Baderin has previously advocated for the expedience of the aforementioned legal doctrine of *máshlahah*, as "a veritable Islamic legal doctrine for the realization of international human rights within the dispensation of Islamic law",<sup>48</sup> one that contains the "seeds of the future of the *Shari'ah* and its viability as a living force in society".<sup>49</sup> The scope for this compatibility between Islámic law and

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<sup>42</sup> Jonathan E. Brockopp, "Competing Theories of Authority in Early Maliki Texts", in Bernard G. Weiss (ed.), *Studies in Islamic Legal Theories*, Brill, Leiden, 2002, p. 3.

<sup>43</sup> Abdal-Haqq, 2002, p. 55, see *supra* note 21.

<sup>44</sup> *Ibid.*, pp. 228–29.

<sup>45</sup> Kamali, 1991, p. 264, see *supra* note 13. The '*Ulama*' (Muslim jurists) are in unanimous agreement that the *Qur'án* and the *Sunnah* constitute the sources of the original case, but there is some disagreement as to whether '*ijma*' constitutes a valid source for *qiyas*, see Kamali, 1991, p. 268, see *supra* note 13.

<sup>46</sup> *Ibid.*, p. 267.

<sup>47</sup> Kamali, 1991, p. 267, see *supra* note 13.

<sup>48</sup> Baderin, 2005, p. 43, see *supra* note 11.

<sup>49</sup> Kamali, 1988, p. 288, see *supra* note 19.

international human rights law depends upon which interpretative approach is adopted, with the more flexible evolutionist approach undoubtedly more amenable to the harmonization of both legal traditions.<sup>50</sup>

Having provided a brief introduction to Islámic law, this chapter will be divided into five sections. Section 27.2. seeks to clarify the notion of ‘religious leaders’ in Islám to which we are referring. Section 27.3. will provide an overview of freedom of speech and its limitations in Islámic law. Section 27.4. intends to examine the source in Islámic law that obliges religious leaders to combat hate speech, and how Islámic law empowers those leaders in that respect. Based upon the role of religious leaders in their communities, Section 27.5. will sketch out internal measures and informal sanctions by which religious leaders are equipped to fight hate speech. Finally, Section 27.6. will address the various challenges that could undermine the efficacy of measures adopted by religious leaders and seeks to present solutions to those challenges.

### **27.2. Identifying Religious Leaders in Islám**

The term ‘religious leaders’ in this chapter refers to persons who have some type of religious authority in the sense of – as sketched by Gudrun Krämer and Sabine Schmidtke – having the “ability (chance, power, or right) to define correct belief and practice, or orthodoxy and orthopraxy, respectively; to shape and influence the views and conduct of others accordingly; to identify, marginalize, punish or exclude deviance, heresy and apostasy and their agents and advocates”; to “define the canon of ‘authoritative’ texts and the legitimate methods of interpretation”.<sup>51</sup>

In that respect, it is worth noting the difficulty in determining where religious authority lies in Islám. Unlike Christianity, there is no ordained clergy in Islám.<sup>52</sup> In the words of A. Kadir Yildirim, “Islam does not have a centralized hierarchical institution to establish the orthodoxy for its adherents”.<sup>53</sup> Rather, there is a proliferation of actors who claim the right to exercise some form of religious authority.<sup>54</sup> While there are various terms used to refer to those actors

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<sup>50</sup> Baderin, 2005, p. 44, see *supra* note 11.

<sup>51</sup> Gudrun Krämer and Sabine Schmidtke, “Religious Authority and Religious Authorities in Muslim Societies: A Critical Overview”, in Gudrun Krämer and Sabine Schmidtke (eds.), *Speaking for Islam: Religious Authorities in Muslim Societies*, vol. 100, Brill, Social, Economic and Political Studies of the Middle East and Asia Series, 2006, pp. 1–14.

<sup>52</sup> Unlike *Shi’ah* clergy in Iran. See on that, Eric Hooglund and William Royce, “The Shi’i Clergy of Iran and the Conception of an Islamic State”, in *State, Culture, and Society*, 1985, vol. 1, no. 3, pp. 102–117.

<sup>53</sup> A. Kadir Yildirim, “The New Guardians of Religion: Islam and Authority in the Middle East”, Rice University’s Baker Institute for Public Policy, March 2019, p. 9.

<sup>54</sup> See also Krämer and Schmidtke, 2006, p. 12, see *supra* note 51.

(for example, ‘*ulama*’, ‘*Imám*’, ‘*Sheikh*’, ‘*Faqih*’), a discussion of these terms is outside the scope of this chapter, as there is a lack of consensus on what each term denotes in terms of competence.<sup>55</sup>

Having said that, and building on the qualities elaborated below in Adel Maged’s chapter,<sup>56</sup> religious leaders responsible for combatting hate speech, for the purposes of this chapter, can be grouped into two categories: the first category includes individual religious leaders and the second category includes religious leaders who act as part of a formal institution<sup>57</sup> or who act as part of an informal group.<sup>58</sup> While individual religious leaders – not affiliated to any formal or informal group<sup>59</sup> – do not possess as many tools for combatting hate speech as religious leaders in the second category, their inclusion in this chapter is warranted, particularly as empirical research has found that they can have similar or even more legitimacy than actors affiliated with religious institutions, thus necessitating their inclusion in the responses to hate speech.<sup>60</sup>

One last point needs to be addressed in the context of identifying religious leaders in Islám. It concerns the extent to which the role of women could be considered among those religious leaders charged with combatting hate speech. Women have long been excluded from the right to claim religious authority in

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<sup>55</sup> For a brief discussion of those terms and their usages, see Michele Brignone, “Religious Authorities in Islam”, Fondazione Oasis, 3 March 2017.

<sup>56</sup> See Chapter 29 of this anthology titled “The Role of Al-Azhar Alsharif in Combating Extremism and Hate Speech in Light of International Instruments”.

<sup>57</sup> A formal institution refers to either an institution vested by some type of religious authority by virtue of law, or an institution established according to the law with the objective of exercising some type of religious authority. An example for the former is the Al-Azhar institution in Egypt which is – according to Article 7 of the Egyptian Constitution – the “main authority for religious sciences, and Islamic affairs. It is responsible for preaching Islam and disseminating the religious sciences and the Arabic language in Egypt and the world” (Constitution of Egypt, 10 January 2015, Article 7 (<https://www.legal-tools.org/doc/632f2f/>)). An example of the latter is Muhammadiyah Ulama in Indonesia which is a non-governmental organization established with the objective of spreading the values and teachings of Islám. Another example is the Islam Presentation Committee in Kuwait, a non-governmental organization with the mandate of presenting Islám and training preachers.

<sup>58</sup> Projects such as ‘Generating Respect for Humanitarian Norms’ tend also to include this wide spectrum of religious leaders in studying the role of religious leaders in inducing compliance with international humanitarian law during armed conflicts. For the project’s study on religious leaders and influence, see The Generating Respect Project’s web site.

<sup>59</sup> Examples of that are Amr Khaled and Moustafa Hosny, who are Egyptian television preachers not affiliated to any specific group.

<sup>60</sup> See Yildirim, March 2019, p. 9, see *supra* note 53; see also Nathan J. Brown, “Official Islam in the Arab World: The Contest for Religious Authority”, Carnegie Endowment for International Peace, 11 May 2017. For the different types of legitimacy possessed by religious leaders, see Ioana Cismas, *Religious Actors and International Law*, Oxford University Press, 2014, pp. 55–58.

Muslim communities.<sup>61</sup> However, the reason behind that is not the existence in Islámic law of a prohibition to proclaim women as eligible to exercise religious authority. On the contrary, the *Qur'án* allows women to practice religious authority, reflected in *Allah's* saying, “[t]he Believers, men And women, are [friends and] protectors, One of another: they enjoin What is just [or ‘good’], and forbid What is evil” (*Qur'án*, 9:71).

Throughout history, women have held religious authority and played different roles as transmitters of the Prophet Muḥammad’s sayings (*‘ḥadīths’*), his traditions, and his authoritative reports of his deeds.<sup>62</sup> They have also been judges and scholars of Islámic jurisprudence (*fiqh*). Nevertheless, an account of all those women remains largely unknown.<sup>63</sup> The decline in female religious leadership owes primarily to the social perception of the role of women in Muslim societies,<sup>64</sup> which in turn had an impact on the understanding of the Islámic concept of *Qiwamah*, that is arguably defined as men’s custodianship over women.<sup>65</sup> For example, according to Asma Afsaruddin,

jurists and theologians by the fifteenth century had decided that leadership of prayer of mixed congregations was not an

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<sup>61</sup> A problem that seems to be shared by other non-Muslim religious communities. See on that Aleksandra Sandstrom, “Women Relatively Rare in Top Positions of Religious Leadership”, Pew Research Centre, 2 March 2016.

<sup>62</sup> See on that Muhammad Z. Siddiqi, *Ḥadīth Literature: Its Origins, Development & Special Features*, Islamic Texts Society, Cambridge, 1993, pp. 117–124. For a comprehensive study on the role of women in society during the Prophet Muḥammad’s lifetime, see ‘Abd al-Ḥalim Abú Shuqqáh, *Tahrir al-Már’ah fī ‘Áshr ar-Risalah*, 6 vols., Dar el Qalam, 1990 (in Arabic). See also Mohammad Akram Nadwi, *Al-Muhaddithat: The Women Scholars in Islam*, Interface Publications, Oxford, 2007.

<sup>63</sup> See on that, Roja Fazaeli, “Female Religious Authority in Muslim Majority Contexts: Past Examples and Modern State-Initiatives”, in Adele Bardazzi and Alberica Bazzoni (eds.) *Gender and Authority Across Disciplines, Space and Time*, Palgrave Macmillan, Cham, 2020, pp.195–219. For a historical account for female religious authority, see also Mirjam Künkler and Devin J. Stewart, *Female Religious Authority in Shi’i Islam: Past and Present*, Edinburgh University Press, 2021.

<sup>64</sup> See, for example, Tamer Koburtay, Tala Abuhusseini and Yusuf M. Sidani, “Women Leadership, Culture, and Islam: Female Voices From Jordan”, in *Journal of Business Ethics*, 2023, vol. 183, pp. 347–363. The authors noted that “understanding women’s societal and leadership role is not restricted to variances in textual interpretations. The nature of early Muslim societies, and how they evolved historically, has had a significant impact on how women’s role developed and changed”.

<sup>65</sup> Yusuf M. Sidani, *Muslim Women at Work: Religious Discourses in Arab Society*, Palgrave Macmillan, Cham, 2018, pp. 64–65.

appropriate role for women and that virtuous women best exercised their virtue within the confines of their homes.<sup>66</sup>

The practice of religious authority by women was arguably resisted as it challenged the popular stereotype that women were subordinate to men.<sup>67</sup>

Recent developments have witnessed an increase in female religious leadership. This growth, as Hilary Kalmbach highlights, is “inherently linked to larger social, religious, and political changes that have impacted Muslim communities since the early twentieth century”.<sup>68</sup> An increasing number of Muslim states have allowed the training of women in various roles of religious authority.<sup>69</sup> For example, the year 2006 witnessed the first class of female religious guides (*‘Murshidat’*) to graduate from a programme hosted by the Moroccan Ministry of Religious Affairs.<sup>70</sup> Much of their work would take place in mosques in the form of structured classes comprising literacy classes and *Qur’anic* recitation classes.<sup>71</sup> The *Murshidat* are also empowered to conduct counseling sessions with women regarding their social and psychological needs or other religious matters.<sup>72</sup> They are also part of religious opinion (*‘Ifta’*) committees.<sup>73</sup>

Albeit with challenges, women are increasingly accepted as *fatwá* givers (authentic interpreters of Islámic sources), religious educators and *imáms*.<sup>74</sup> In light of the foregoing, the term ‘religious leaders responsible for combatting hate

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<sup>66</sup> Asma Afsaruddin, “Literature, Scholarship, and Piety: Negotiating Gender and Authority in the Medieval Muslim World”, in *Religion & Literature*, 2010, vol. 42, nos. 1–2, p. 117.

<sup>67</sup> Britta Frede, “Female Islamic Knowledge in Africa: A Forgotten Story”, Fondazione Oasis, 30 November 2020.

<sup>68</sup> Hilary Kalmbach, “Introduction: Islamic Authority and the Study of Female Religious Leaders”, in Masooda Bano and Hilary Kalmbach (eds.) *Women, Leadership, and Mosques: Changes in Contemporary Islamic Authority*, Brill, Leiden, 2012, p. 1.

<sup>69</sup> Although women were allowed to be educated in religious institutions as early as the 1950s, barriers stood in their way to becoming religious scholars or exercise some other form of religious authority. See Hilary Kalmbach, “Female Mosque Leadership and Islamic Authority in Syria and Further Afield”, in *Travail, Genre et Sociétés*, 2012, vol. 27, no. 1, p. 77.

<sup>70</sup> Brown, 2017, p. 10, see *supra* note 60.

<sup>71</sup> Meriem El Haitami, “Restructuring Female Religious Authority: State-Sponsored Women Religious Guides (*Murshidat*) and Scholars (*‘Alimat*) in Contemporary Morocco”, in *Mediterranean Studies*, 2012, vol. 20, no. 2, p. 229.

<sup>72</sup> *Ibid.*, p. 229.

<sup>73</sup> *Ibid.*, p. 230. For examples in other countries, see the monograph in Bano and Kalmbach, 2012, see *supra* note 68.

<sup>74</sup> Women prayer leaders (*imáms*) however, remain rare. See Rachel Rinaldo, “How a Growing Number of Muslim Women Clerics Are Challenging Traditional Narratives”, *The Conversation*, 7 June 2017. Rachel noted that “many Muslims in Indonesia and elsewhere believe that women can be prayer leaders only to all-female congregations. Women-only mosques are still unusual, as in most Muslim societies, women pray at home or in a special section of the mosque. The only place with a long tradition of Muslim women who lead prayers is China”.

speech' in this chapter is to be understood to comprise not only male religious leaders but female leaders as well.

Having clarified what the term 'religious leaders' denotes in this chapter, the following section provides an overview of freedom of speech in Islám and its limitations, before turning to tackling the sources in Islám for empowering religious leaders to combat hate speech, as well as the tools and measures available to them in their fight against hate speech.

### 27.3. An Overview of Freedom of Speech in Islám and Its Limitations

Notably, human freedom is regarded by Islám as both a right and a gift; this formulation entails the right to practise freedom of speech. Some Muslim scholars have gone as far as to argue that individualism and free choice are primary values of the *Qur'ánic* view of mankind.<sup>75</sup> Muslim intellectuals commonly cite in support the *Qur'ánic* verse: "Every man's fate We have fastened On his own neck : On the Day of Judgment We shall bring out For him [or 'each person'] a scroll [or 'record'], Which he will see Spread open."<sup>76</sup>

Indeed, without this specific freedom, human beings would not be able to learn, to express their views, to expose evil or wrongdoing, or to warn others of danger. One *Qur'ánic* verse even invites doubters to question the holy text via speech: "And if ye are in doubt as to what We have revealed [...] then call your witnesses or helpers (if there are any) besides God if your (doubts) are true."<sup>77</sup>

Yet untrammelled freedom can turn into a licence and even, at times, into an evil itself. Acknowledgement of this truth is repeated in many guises throughout the sources of the *Qur'án*, the *hadíths*, the *Sunnah*, in practice, and in Muslim tradition through the ages.

Hate speech constitutes an abuse of free speech and as such, it is condemned by normative Islám. From an Islámic perspective, hate speech can be understood as the rhetoric that aims to degrade the honour of other humans and distort their image, and that instigates the recipients of such rhetoric to discriminate against them and to despise or harm them morally or physically, irrespective of the method in which it is formed or the medium by which it is represented, whether through provocation, allusion, writing, drawing, or any other form.<sup>78</sup>

Clearly, hate speech causes offence; yet offence alone is arguably not a sufficient cause in fathoming the notion of hate speech. Some contemporary Muslim scholars amplify this point, with a warning that:

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<sup>75</sup> Professor Abdul S. Kassem, "The Concept of Freedom in the Quran", in *American Journal of Contemporary Research*, 2012, vol. 2, no. 4, pp. 165–173.

<sup>76</sup> *Qur'án*, 17:13–14.

<sup>77</sup> *Qur'án*, 2:23.

<sup>78</sup> Ahmed Y. Al-Karalah, *Khitab al-Karahiya*, "Hate Speech", *Al-Ghad*, 13 December 2013.



the context in which hate speech takes place as well as its consequences which could harm groups or individuals, become important in determining whether to regulate hate speech. Historical evidence indicates that when danger posed by hate speech is “clear and present”, it may have been too late to deal with its consequences.

It is also latterly wrapped up, it can be argued, in culture wars and exacerbated by social media.<sup>79</sup> Turan further shows how Islám is not alone in feeling that it suffers hate speech from others, citing Catholic complaints to the European Commission on Human Rights. He reminds readers that there is a fine line between hate speech and free speech; yet, if unchecked, “hate speech can unleash violent conflict, and historically has proven its capacity to trigger genocides.”<sup>80</sup>

An adequate understanding of the principles of *Shari‘ah* on freedom of expression inevitably brings us into contact with the conditions of human society and its vision of the types of freedom it could visualize and accept. Although it is true that Islám has not been shaped by the dictates of social reality, it has, nevertheless, taken into consideration both the reality and the potential of the society in which it came into being.<sup>81</sup>

### 27.3.1. On the Arabic Terminology of Freedom of Expression

Contemporary Muslim intellectuals – as observed by Kamali – are not consistent in the use of terminology in relation to freedom of expression. For example, while some utilize the terms of ‘*hurriyyat ar-rá’y*’, literally ‘freedom of opinion’, and ‘*hurriyyat al-qáwl*’, literally ‘freedom of speech’, other writers, however, have utilized alternative terminology such as ‘*hurriyyat at-tafkír*’, literally ‘freedom of thought’, ‘*hurriyyat at-ta‘bír*’, literally ‘freedom of expression or interpretation’, and ‘*hurriyyat ar-rá’y*’ and ‘*hurriyyat ar-rá’y wat-ta‘bír*’, which specifically means freedom of opinion and expression.<sup>82</sup> To summarize his point, Kamali goes on to explain how the latter phrase is more preferable:

thought is a hidden phenomenon and a mental activity which is communicated in words, and until then, thought which has not been expressed in words, remains outside the concern of law. It is the external manifestation of thought which we refer to as ra’y (opinion). To use the phrase *hurriyyat al-ra’y wal-ta‘bír* is thus

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<sup>79</sup> Mustafa O. Turan, “Drawing the Line: Blasphemy, Hate Speech and Freedom of Expression”, Muslim Political Participation and Human Rights, 17 September 2012.

<sup>80</sup> *Ibid.*

<sup>81</sup> Mohammad Hashim Kamali, *Freedom of Expression in Islam*, Islamic Texts Society, Cambridge, 2010, p. 15, “Preliminary Remarks”.

<sup>82</sup> *Ibid.*, p. 5.

preferable as it leaves no doubt that the thought, idea or opinion at issue has been expressed and communicated.<sup>83</sup>

Moreover, Kamali provides some examples of other writers who use various terms to illustrate this topic. For example, ‘Abd al-Ḥamīd Mutwallī uses *ḥurriyyat ar-rá’y* and *ḥurriyyat ar-rá’y wat-ta’bír*, while Muhammad Kamīl Laylah prefers the term *ḥurriyyat ar-rá’y*. Furthermore, ‘Abd al-Wahīd Wafī uses *al-ḥurriyyah al-fikriyyah*, literally ‘freedom of thought’, while ‘Abd al-Qádir ‘Udah and Sayyid al-Sabīq tend to use the term *ḥurriyyat at-tafkír*.<sup>84</sup> It is common for these writers to distinguish freedom of expression from freedom of religion. In specific terms, these are ‘*ḥurriyyat at-tadayyun*’ (literally ‘freedom of religion’), ‘*ḥurriyyat al-‘aqidah*’ (literally ‘freedom of belief’), and ‘*al-ḥurriyyah ad-díniyyah*’ (specifically meaning ‘religious freedom’). However, it is generally acknowledged that freedom of expression in Islám is effectively complementary to freedom of religion. It is therefore perceived as an extension and a logical consequence of the freedom of conscience and belief which the *Shari‘ah* has validated and upheld.<sup>85</sup>

### 27.3.2. Seeking a Balance

Muslim scholars have long debated how to strike the right balance between guaranteeing the right to speak freely and the duty to mind one’s tongue and to cause no damage. Within this rubric, the sin of ‘*fitnah*’ (‘sedition’, ‘unrest’, ‘undermining of a rule of law’) is a key element in determining how and where to impose protective limits on free speech. Likewise, there are times when the value of free speech clashes with other core Islámic values. Kamali contends that sometimes,

expressing a true opinion or even telling the truth may fail to achieve a good purpose. The speaker is, therefore, urged to be mindful of the end result [...]. *Sunnah* permits silence in regard to the truth or even allows the telling of a white lie if it would serve a higher objective, such as saving a person from imminent danger.

Thus, the greater good of preserving life and a just cause may triumph over the general requirement of truth-telling and not dissimulating (‘*táqqiyah*’).<sup>86</sup> One of the most reliable sources in *Shafi‘i* jurisprudence, ‘The Reliance of the Traveller’, devoted a chapter to the importance of holding one’s tongue in Islám.<sup>87</sup> According to one *ḥadīth*, the Prophet said: “Whoever believes in

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<sup>83</sup> *Ibid.*, pp. 5–6.

<sup>84</sup> *Ibid.*, p. 6.

<sup>85</sup> *Ibid.*, p. 6.

<sup>86</sup> *Ibid.*, p. 68.

<sup>87</sup> Naqīb al-Misri, 1994, pp. 726–776, see *supra* note 14.

Allah and the Last Day, let him say what is good or remain silent.”<sup>88</sup> In another *ḥadīth*, when the Prophet was asked “O Messenger of Allah, which of the Muslims is best?”, he said: “He who the Muslims are safe from his tongue and his hand.”<sup>89</sup>

The aim of this section is to examine what Islámic law and moral precepts, as derived from the *Qur’án*, have to say on setting the right balance between free speech and its limitations; and what one can do regarding imposing legal restraints on abuse of free speech, beyond moral restraints.

Given that the focus of the present study is ‘hate speech’, one should acknowledge that the topic concerns Islámic thought in two principal ways. Firstly, there is hate speech directed against Muslims. Secondly, we see hate speech promulgated by Muslims (or people who purport to be speaking in the name of Muslims) against other Muslims, or against non-Muslim members or institutions of the societies in which they live. The focus of this section will be primarily on the second category.

### 27.3.3. An Overarching Legal Perspective

First, it is necessary to define what Islámic law identifies as abuses of free speech, encompassing, *inter alia*, hate speech. Islámic law and thought, as understood from its primary sources, include the tools with which to both identify, and combat hate speech. This is true even of cases where the accused may claim that he or she is speaking out ‘in defence of Islám’. Such a claim on its own does not imply veracity. Indeed, if proven false, the ‘defendant’ could be subject to further charges of ‘lying’ – another infraction of free speech. To support that charge, note the *Qur’anic* quote: “truly God guides not one Who transgresses and lies.”<sup>90</sup>

Similarly, we can read another *Qur’anic* verse: “And cover [or ‘mix’] not Truth with falsehood nor conceal the Truth when ye know (what it is).”<sup>91</sup>

Lying, similar to backbiting, is considered a grave sin; both charges are often, and rightly so, levelled against purveyors of hate speech.

Kamali has identified the following seven areas which together constitute abuse of free speech: Public Utterance of Hurtful Speech (‘*al-jáhr bil-sú’ min al-qáwl*’), Slandorous Accusation (‘*Qádhf*’), Libel (‘*Iftirá*’), Insult (‘*sabb*’ or ‘*shatm*’), Cursing (‘*la’ n*’), Attribution of Disbelief to a Muslim (‘*Takfír al-muslim*’), and Sedition (‘*fitnah*’).<sup>92</sup> Centuries earlier, the great theologian, jurist and

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<sup>88</sup> al-Bukhári, Book 73, *ḥadīth* 70.

<sup>89</sup> at-Tirmidhí, Book 37, *ḥadīth* 90.

<sup>90</sup> *Qur’án*, 40:28.

<sup>91</sup> *Qur’án*, 2:42.

<sup>92</sup> Kamali, 1991, pp. 166–67, see *supra* note 13.

mystic, al-Ghazali<sup>93</sup> listed five types of “calamities of speech” or ‘*afat al-lisan*’; these are lying, backbiting, acrimony, sycophancy, and unrestricted jocularly.<sup>94</sup>

With respect to hate speech, the most obviously relevant subject areas would appear to be *fitnah* and *takfīr*, which thus warrant a more detailed discussion. Nonetheless, all the other forms of abuse have some bearing on our consideration, depending on the context.

#### 27.3.4. On the Meaning of Slander (‘*Ghibah*’) and Talebearing (‘*Namimah*’)

Slander (*ghibah*) means to mention anything concerning a person that he would dislike, whether about his body, religion, everyday life, self, disposition, property, son, father, wife, turban, garment, gait, movements, smiling, dissoluteness, frowning, cheerfulness or anything else connected with him. However, quoting someone’s words to another in a way that worsens relations between them is considered to be ‘*namimah*’. The prohibition of slander and talebearing is found in the *Qur’ān* and *Sunnah*. *Allah* Most High says: “Nor speak ill of each other Behind their backs [or ‘do not slander one another’]” (*Qur’ān* 49:12), and the Prophet has said: “The talebearer will not enter paradise”. Though unlawful, slander is sometimes permissible for a lawful purpose. Redressing grievances and eliminating wrongdoing are but two of five forms of permissible slander.

Insult and slander accusations, two of the concepts listed by Ghazali and Kamali, appear to be inherent in hate speech. Consider the way hate preachers impugn the reputations of members of society, violate their dignity, and try to persuade others to feel the same. Putatively, Islāmic speakers of hate speech can thus be accused of insult (*sabb*) against others. They may also be guilty of slanderous accusation, or *qādhf*, in that they tarnish the all-important good name of their victim. In a sense, argues Professor Kamali, *sabb* brings a double punishment: first, it is wrong in itself; second, it can bar the sinner of being a future witness.

Similarly, ridicule is condemned as a breach of free speech, as in the *Qur’ānic* quote: “O ye who believe! Let not some men Among you laugh [or ‘ridicule’] at others [...]”.<sup>95</sup>

On the moral plane, the founders of two of the four major Muslim schools of jurisprudence, aṣh-Shāfi‘ī and Ibn Ḥanbal, agree that *qādhf* violates the right of a human. Thus, when hate preachers mock others, Muslims or not, they are insulting their humanity. Moreover, the tone or mode of discourse of extremist speakers would seem to exclude their words from acceptable free speech.

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<sup>93</sup> Britannica, “Al-Ghazali” (available on Britannica’s web site).

<sup>94</sup> Kamali, 2010, p. 122, see *supra* note 81.

<sup>95</sup> *Qur’ān*, 49:11 – cited in Kamali, 2010, p. 118, see *supra* note 81.

Consider the *Qur'án* verse that enjoins believers to “speak fair [or ‘good words’] to the people” (*Qur'án*, 2:83).

Hate preachers persistently aim to promote, or at least exploit, divisions in society. The latter may be defined as *‘fitnah’* (which will be discussed later) or acrimony (*mu’amarát*), something which Ghazali condemned. Allied to these sins is their tendency of backbiting (*ghibah*). Furthermore, libel (*iftirá’*) seems pertinent to hate speech too. The great commentator Ibn Taymiyyah argues that false charges against a chaste man or woman can rebound on the person who makes such charges. Further, if the accused forgives the accuser, no court can impose a punishment. He makes a striking statement of human rights, or *‘háq al-adamí’*: “In all cases of retaliation the personal rights of the defendant and the owner, respectively, take priority (even) over the Right of God.”<sup>96</sup>

The prohibition of Hurtful Speech in Public (*al-jáhr bis-sú’ min al-qáwl*) derives directly from the *Qur’anic* verses 4:148–149 and constitutes one of the most far-reaching rulings on restrictions of free speech. It is worth quoting in full to capture the broad extent of its concerns and the wisdom of its advice:

God loveth not that evil should be noised abroad in public speech [or ‘public utterance of evil speech’] except where injustice hath been done [or ‘by one who has been wronged’]; for God is He who heareth and knoweth all things.

Whether ye publish a good deed or conceal it or cover evil with pardon [or ‘forgive evil’] verily God doth blot out (sins) and hath power (in the judgment of values) [or ‘God is forgiving, omnipotent’].<sup>97</sup>

In the first sentence of the quotation above, we detect a general denunciation of public evil speech, or harsh words; with the important proviso that such speech has merit when it purports to address a wrong.

Regarding hate speech in the modern age, it is worth noting that the word *‘al-jáhr’* can translate as broadcasting, which is easily adapted to the age of television, Internet and social media. The hurtful speech in question may be directed to an individual, a group, or a community at large. Hurtful speech can cover everything from finding fault in others, to promoting obscenity, to indulgent talk about misdeeds or failings. No distinction is drawn between whether the offensive words are true or false, or the end to which they are intended.<sup>98</sup>

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<sup>96</sup> Cited in Kamali, 2010, p. 175, footnote 24, see *supra* note 81.

<sup>97</sup> *Qur’án*, 4:148–149.

<sup>98</sup> There is one exception made: for “one who has been wronged”. In such a case, justice decrees that this person must be given a hearing, no matter the possible ‘offense’ caused, for only that way can one fight against *‘zulm’*, a state of injustice. *Zulm* is also defined as wrongfully

### 27.3.5. *Fitnah*

The general term '*fitnah*' is employed at least sixty times in the *Qur'án*, and can variously include misguidance, temptation, commotion, strife, affliction and torture. In Islámic juridical terms, it tends to imply 'seditious speech which attacks the legitimacy of a lawful government'. It can also imply denying the faithful the ability to practice their faith.<sup>99</sup>

Some may contend that such an apparent contradiction is problematic. One might argue, by contrast, that it shows the flexibility of Islámic religious practice. In the first instance, the interpretation offers tools to fend off *fitnah*-inducing radicalism, sometimes by errant Muslims; and in the second instance, it can be employed to protect Muslim citizens from bigoted, Islámophobic hate speech.

The opposite of *fitnah* ('tribulation') is a well-ordered society. As to what that might mean, the great Muslim philosopher al-Ghazalí suggested that psychological attitude is all-important; one should discipline oneself to promote forbearance ('*hilm*') and good character ('*husn al-khuluq*').<sup>100</sup>

Moreover, the sense of *fitnah* as a necessary, even unavoidable, trial on this earth adds another layer of nuance, which puts the matter into perspective. As the *Qur'án* states: "And Know ye That your possessions And your progeny Are but a trial; And that with God With whom lies Your highest reward".<sup>101</sup>

Amongst other characteristics of *fitnah* is '*shirk*',<sup>102</sup> the false association of other deities with God, or as al-Alusi put it, aggression against and the destruction of religion. Stressing this violent aspect, which all of humanity should oppose, the *Qur'án* states that "oppression (*fitnah*) is worse than killing". One might ask whether extremists' association of a divine authority to unqualified leaders in itself constitutes *shirk*; though this is a topic for further development elsewhere.

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depriving someone of their legal and moral rights, or taking from them for oneself, or giving to another. See Moiz Amjad, "What is "Zulm"?", Understanding Islam, 13 May 2002. Thus, as per the quotation, where *zulm* is proven, the question of justice takes priority over the duty to prevent evil speech. Extremist perpetrators of hate speech often claim to be combating *zulm* in society, whether that society is Muslim, Christian, secular or other. However, by rejecting the right of fellow Muslims to judge their claims, they surely lose the right to substantiate the assertion that they are "fighting for justice".

<sup>99</sup> Kamali, 2010, p. 30, footnote 74, see *supra* note 81.

<sup>100</sup> Kamali, 2010, p. 123, see *supra* note 81.

<sup>101</sup> *Qur'án*, 8:28 and 64:15.

<sup>102</sup> Francis E. Peters, *Islam: A Guide for Muslims and Christians*, Princeton University Press, 2003, p. 205.

*Fitnah* often peaks during times of war. Other commentators condemn *fitnah* as tempting weak Muslims with a superficially easy path. Perpetrators of *fitnah* need not be rebels only; even misguided rulers can be held guilty of this sign. Likewise, rampant corruption that undermines society and communities counts as *fitnah*; as do challenges to lawful governments; and actions that cloud understanding to such an extent that people can no longer advocate the truth.<sup>103</sup> In all of these myriad cases, *fitnah* and hate speech would appear to be close partners.

Returning to *fitnah* in history, the commentator Abu Zahrah amplified the idea that the Kharijites were not, as they claimed, exercising legitimate freedom of expression in pursuit of truth, but were jeopardizing security and threatening the community with destruction.<sup>104</sup> The Kharijites sinned, said subsequent commentators, because they rejected Caliph Ali's choice of arbitration in a dispute (thus flouting the advice of negotiation and peaceful resolution). Furthermore, they falsely claimed that a community could administer its own affairs; said that a major sinner was, by definition, '*kafir*'; rejected the imámate; and charged the Prophet's companions with apostasy.<sup>105</sup>

Conversely, the Mu'tazilí, ultra-rationalists, in the later Abbásid period created their own form of *fitnah* by suppressing the accepted interpreters of faith. Famously, or infamously, they stressed the created nature of the *Qur'án*; in the eyes of more orthodox critics, they suggested it was man-made and not ordained by God. Again, in comparison with Muslims today, those who undermine faith in Islám from a secular perspective may also be akin to creators of *fitnah*; although the charge needs careful proving on a case-by-case basis.

Sometimes the perpetrator of alleged *fitnah* offers a patina of morality. Apparently Abú Dhárr al-Ghaffarí was right to urge people not to acquire gold and silver in excess, yet the governor of Syria expelled him in order to prevent sedition. Subsequent scholars now see al-Ghaffarí as at least partly justified. The above instance arguably illustrates how attitudes and perceptions change over time – here, in regard to the primacy of social justice – while the underlying principles of Islám remain constant.

The *hadíths* sagely note that *fitnah* rears its head precisely at times of leadership succession. Obedience is required, once the leader is declared by election or consensus; disobedience, in older days, was declared to be liable to a death sentence. Clearly, such attitudes sit ill with Muslims today, whether as minorities in the West, or as citizens of Muslim majority states. In the latter cases,

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<sup>103</sup> Kamali, 2010, p. 194, footnote 85, see *supra* note 81.

<sup>104</sup> Kamali, 2010, p. 194, see *supra* note 81.

<sup>105</sup> *Ibid.*, p. 197.

we should also admit that some dictatorial leaders demand total loyalty, even at the expense of human rights. The moral point, though, seems paramount: namely that a state of order and mutual respect is preferable to social anarchy, or *fitnah*.

### 27.3.6. Takfir

‘*Takfir*’ is the category of abuse with which hate speech is most directly associated (the other being *fitnah*). The term denotes the attribution of disbelief, blasphemy or heresy to a Muslim, and is derived from the Arabic word for disbelief (‘*kufir*’). Mainstream *Sunni* Islām condemns Muslims who engage in the practice of *takfir* (‘excommunication’), a right they consider to be held solely by God.<sup>106</sup> In the Islāmic faith, both the *Qur’ān* and the *Sunnah* explicitly condemn this practice, and three *ḥadīths* demonstrate the Prophet’s consideration of such a declaration as a sin. In one such *ḥadīth*, the Prophet cautions Muslims “not to declare a person a disbeliever for committing a sin, and not to expel him from Islam by an action”.<sup>107</sup> Another *ḥadīth* declares that: “If a man says to his brother, ‘O infidel’, it redounds upon one of them”.<sup>108</sup>

Accusations of *kufir* (‘disbelief’) have nevertheless been levelled for centuries by certain Muslim groups against members of their own faith. From the *Khawarij* in the seventh century CE through to the Iraqi insurgency led by Abū Muṣ‘āb al-Zārqa‘wī, to the so called Islamic State of Iraq and Syria (‘IS’) in the twentyfirst century, *takfirism* has been the political weapon of choice.<sup>109</sup> IS liberally discharged it “to license a fratricidal civil war against the Iraqi *Shi’ah* community”.<sup>110</sup> On the surface it draws comparison to the mass excommunication of individuals from the Catholic Church in the middle ages,<sup>111</sup> defined – in the Christian sense – as a “form of ecclesiastical censure by which a person is

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<sup>106</sup> Mohamed Elewa Badar, Masaki Nagata and Tiphane Tueni “The Radical Application of the Islamic Concept of Takfir”, in *Arab Law Quarterly*, 2017, vol. 31, pp. 134–162, pp. 136–139; Ismail ibn Kathir, *Tafsir ibn Kathir*, vol. 3, 2nd ed., Darussalam, 2003, p. 436. According to Ibn Kathir, verse 6:108 of the *Qur’ān* means that *Allah* has forbidden the Prophet Muḥammad and his followers from insulting other religions, as such insults could lead to their followers retaliating in kind.

<sup>107</sup> Abu Dawud, *English Translation of Sunan Abu Dawud*, Nasiruddin al-Khatib (trans.), vol. 3, Darussalam, 2008.

<sup>108</sup> Muhammad ibn Ismail al-Bukhari, *The Translation of Meanings of Sahih Al-Bukhari*, Dr. Muhammad Muhsin Khan (trans.), vol. 8, no. 6103, Kazi Publications Inc., Chicago, 1997, p. 77.

<sup>109</sup> Badar, Nagata, and Tueni, 2017, p. 135, see *supra* note 106.

<sup>110</sup> Shiraz Maher, *Salafi-Jihadism: The History of an Idea*, Hurst & Co. Publishers, 2016, p. 71.

<sup>111</sup> Felicity Hill, “Excommunication and Politics in Thirteenth Century England”, unpublished doctoral thesis, University of East Anglia, 2016, p. 12.



excluded from the communion of believers, the rites or sacraments of a church, and the rights of church membership”.<sup>112</sup>

The devastating consequences of the practice of *takfīr* have been felt across Muslim majority states, as:

From Indonesia to Pakistan, the Levant, the Arabian Peninsula, and across North Africa, militant groups have frequently invoked the doctrine to justify mass casualty attacks against ordinary Muslims – ironically, the very constituency in whose defence they often claim to act.<sup>113</sup>

In the past three decades, the Arab world has witnessed countless *takfīr* campaigns and trials, based upon accusations of apostasy, blasphemy and unbelief, instigated primarily by the Islāmist lobby to coincide “with their demand for the codification and implementation of Islamic law (*sharī‘a*)”.<sup>114</sup> Charges of *takfīr* can be levelled at any individual, regime, or society, regardless of their own profession of belief, on the grounds of their allegedly un-Islāmīc actions, resulting in their being subject to discrimination or even lawful killing.<sup>115</sup> The three forms of *takfīr* must be defined at the outset: (i) *takfīr* of individuals by private persons; (ii) *takfīr* of the state or democracy by private persons or Islāmīst parties; and (iii) *takfīr* of individuals by the state or its judicial or religious institutions.

The practice of each form is underpinned by its own ideology. In the Arab region generally, and in Tunisia particularly, different forms of *takfīr* have been utilized by different radical groups. *Takfīr* of the society, the government or democracy is mainly practiced by *salaḥī* jihādīst movements, such as *Anṣār aṣh-Sharī‘ah* in Tunisia and Libya and *Jabhat an-Nuṣrāh* and *Aḥrār aṣh-Sham* in Syria, who follow the *Wahhābī* ideology. These jihādīst groups, together with *al-Qā‘idah*, renounce democracy as an un-Islāmīc system based upon their genuine belief that the human drafting of legislation and enforcement of law that

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<sup>112</sup> Britannica, “Excommunication” (available on its web site).

<sup>113</sup> Maher, 2016, p. 83 (italic added), see *supra* note 110.

<sup>114</sup> Roswitha Badry, “On the *Takfīr* of Arab Women’s Rights Advocates in Recent Times”, in Camilla Adang, Hassan Ansari, Maribel Fierro and Sabine Schmidtke (eds.), *Accusations of Unbelief in Islam*, no. 4, Brill, Leiden, 2016, p. 354.

<sup>115</sup> Toshihiko Izutsu, *The Concept of Belief in Islamic Theology: A Semantic Analysis of Iman and Islam*, Books for Libraries, 1980, p. 11; Ibrahim Karawan, “Takfīr”, in John Esposito (ed.), *The Oxford Encyclopedia of the Modern Islamic World*, vol. 5, Oxford University Press, 2009, p. 311. On *takfīr* in general, see Adang *et al.*, 2016, *ibid.* On *takfīr* by contemporary extremist militant groups, see Badar, Nagata and Tueni, 2017, pp. 134–162, see *supra* note 106.

occurs within democracy is an usurpation of the role of God, as the ultimate source of power and authority, and thus amounts to *kufir* ('unbelief').<sup>116</sup>

### 27.3.7. The Prohibition of Declaring *Takfir* in the *Qur'án*

As explained in the introductory section of this chapter, the *Qur'án* is considered to be the seminal and most important source of Islámic law. The *Qur'án* is often selectively cited by IS and other groups as justification for declaring *takfir* and issuing punishments to those they deem unbelievers, even where those deemed unbelievers profess to follow the Muslim faith. Such selective citation of *Qur'ánic* verses, however, removes them from their broader contextual background and thus obscures their true meaning.

Understanding the *Qur'ánic* position on *takfir* is the crux of the issue. The term itself is not referenced in the *Qur'án*, yet it is implicitly prohibited. For example, verse 6:108 of the *Qur'án* reads as follows:

Revile not ye those whom they call upon besides God [non-believers] lest they out of spite revile God in their ignorance. Thus have We made alluring to each people its own doings. In the end will they return to their Lord and We shall then tell them the truth of all that they did.<sup>117</sup>

Ibn Kathír interprets verse 6:108 as *Allah* prohibiting the Prophet Muḥammad and his followers from insulting other religions, on the grounds that such insults could prompt retaliation in kind.<sup>118</sup> This prohibition of *takfir* is repeated in other verses, such as 4:94:

O ye who believe! [W]hen ye go abroad in the cause of God, investigate carefully, and say not to anyone who offers you a salutation: "Thou art none of a believer!" Coveting the perishable goods of this life: with God are profits and spoils abundant. Even thus were ye yourselves before, till God conferred on you His favours: therefore carefully investigate for God is well aware of all that ye do.<sup>119</sup>

According to Abbas, *Allah* revealed verse 4:94 following the murder of Mirdas Ibn Nuḥayk al-Fárárí by Usamah Ibn Zayd, both of whom were Muslims.<sup>120</sup> This verse prohibits the killing of any Muslim who has openly

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<sup>116</sup> Joas Wagemakers, "'The *Kāfir* Religion of the West': *Takfir* of Democracy and Democrats by Radical Islamists", in Adang *et al.*, 2016, pp. 329–330, see *supra* note 114.

<sup>117</sup> *Qur'án*, 6:108.

<sup>118</sup> Ibn Kathir, 2003, p. 436, see *supra* note 106.

<sup>119</sup> *Qur'án*, 4:94.

<sup>120</sup> Ibn Abbas, *Tafsír Ibn 'Abbās*, Mokrane Guezou (trans.), Royal Aal al-Bayt Institute for Islamic Thought, Amman, 2007, p. 98.

committed to *Allah* by reciting the *Shahadah* ('There is no god but *Allah*, Muḥammad is the Messenger of *Allah*').<sup>121</sup>

Many *Qur'anic* verses mention unbelievers, yet apostasy is not defined in the *Qur'an*; rather, the Islāmic definition of apostasy has been developed through human effort.<sup>122</sup> This is notwithstanding that, according to the *Qur'anic* verses noted above, only God (and not man) has the right to declare *takfir*, as only God holds the right to decide whether one is a believer or not, a decision made only in the hereafter. Consequentially, *takfir* declarations made by human beings amount to a religious sin under *Shari'ah* law.

Thus, the lack of *Qur'anic* support for the earthly punishment of apostasy by man may be unequivocally asserted, unlike for sins or crimes such as theft or fornication, which are subject to prescribed punishments.<sup>123</sup> Capital punishment for turning away from Islām thus arises from human creative endeavour aimed at criminalizing a sin, which by definition, is only accountable for in the hereafter.

### 27.3.8. The Prohibition of Declaring *Takfir* in the *Sunnah*

The *Sunnah* is considered to be the second source of *Shari'ah*. It consists of a compilation of narratives developed in the centuries following the Prophet's era, collectively known as *Aḥadith* (singular is *hadith*), detailing what the Prophet said, did or approved.<sup>124</sup> Upon his death, the Prophet could no longer directly explain the significance of any particular act or speech<sup>125</sup> and so *Shari'ah* was further developed through the scholarly (re)interpretation of the *Sunnah* in order to address the new situations that inevitably arose.

In respect of *takfir*, the Prophet cautioned Muslims "not to declare a person a disbeliever for committing a sin, and not to expel him from Islam by an action".<sup>126</sup> The Prophet further stated that insulting a believer was "an evil

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<sup>121</sup> The *Shahadah* is a declaration of belief in only one God (*tawḥid*) and an acknowledgement that Muḥammad is his Messenger.

<sup>122</sup> Various scholars have sought to define apostasy; some mediaeval scholars drew up 'apostasy lists'. See Naqib al-Misri, 1994, p. 596, see *supra* note 14; Ibn Qudama, *The Mainstay Concerning Jurisprudence (Al-Umda fi l-Fiqh - Handbook of Hanbali Fiqh)*, Muhtar Holland (trans.), Al-Baz Publishing Incorporated, Fort Lauderdale, 2010, p. 309.

<sup>123</sup> Apostasy is referred to as *riddah* and prescribed punishments as *ḥudūd*. See Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy and Islam*, Ashgate, Aldershot, 2004, pp. 69–87.

<sup>124</sup> Wael B. Hallaq, *An Introduction to Islamic Law*, Cambridge University Press, 2009, p. 16.

<sup>125</sup> Ibn Khaldun, *The Muqaddimah: An Introduction to History*, Franz Rosenthal (trans.), vol. 3, Princeton University Press, 1980, pp. 23–24.

<sup>126</sup> Dawud, 2008, p. 223, see *supra* note 107.

action”;<sup>127</sup> labelling another Muslim a *kāfir* in itself constituted unbelief. The Prophet’s teachings are littered throughout the *aḥadīth*, including in *Ṣāḥīḥ al-Bukhārī*,<sup>128</sup> *Ṣāḥīḥ Muslim*<sup>129</sup> and *Sunann An-Nasa’i*.<sup>130</sup> They elaborate not only the Prophet’s prohibition of *taḳfīr*, but also his consideration of such declarations of excommunication as a sin.

#### 27.4. Sources and Tools for Combating Hate Speech in Islām

Islāmīc tradition has the tools to fight hate speech – including when such speech emanates from within the Muslim community itself. Short of punitive measures, which are often inapplicable in contemporary societies, the battle against hate speech is well served by the principles of ‘*ḥisbah*’ (‘upholding community morals’) and ‘*nāsīḥah*’ (often translated as ‘advice’ or ‘wise counsel’). ‘*Māṣlahah*’, or ‘the public interest’, is a third Islāmīc concept that can be employed in the endeavour.

##### 27.4.1. Ḥisbah

*Qur’ānic* verse 3:104 instructs Muslims to command good and forbid evil (“*al-āmr bil-ma’rūf wan-nahy ‘an al-munkār*”) and is considered as “a cardinal *Qur’ānic* principle which lies at the root of many Islamic laws and institutions”.<sup>131</sup> It is from this verse that the concept of *ḥisbah* is derived. According to al-Ghazalī, the definition of good (‘*ma’rūf*’) or evil (‘*munkār*’) is to be determined with reference to *Shari‘ah*, “in particular to those rules that pertain to the protection of the five values, namely, life, faith, intellect, property and lineage”.<sup>132</sup> The *Maliki* jurist al-Qārāfī outlined the following three conditions to be observed in the implementation of *ḥisbah*, which provide basic guidance to

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<sup>127</sup> Abu A.A.M.H. Ash-Shaibani, Huda Al-Khattab (ed.), *English Translation of Musnad Imam Ahmad bin Hanbal*, Nasiruddin Al-Khattab (trans.), vol. 3, no. 4345, Darussalam, Riyadh, 2012, p. 591.

<sup>128</sup> “If a man says to his brother, ‘O *Kāfir* (disbeliever)!’ Then surely, one of them is such [that is a *kāfir*]”, Al-Bukhari, 1997, p. 77, see *supra* note 108.

<sup>129</sup> “Any man who knowingly attributes himself to someone other than his father is guilty of disbelief. Whoever claims something that does not belong to him is not one of us; let him take his place in Hell. Whoever calls a man a disbeliever (*Kāfir*) or says to him: ‘O enemy of Allah!’ when he is not like that, it will rebound upon him”. Imam Muslim, *Sahih Muslim*, Nasiruddin al-Khattab (trans.), vol. 1, no. 217, Darussalam, Riyadh, 2007, p. 158.

<sup>130</sup> It was narrated from “Abdur Rahman bin ‘Abdullah, from his father, that the Messenger of Allah said: ‘Defaming a Muslim is evildoing and fighting him is *kufr*’”. Al-Nasa’i, *Sunan An-Nasa’i*, Nasiruddin al-Khattab (trans.), vol. 5, no. 4113, Maktaba Dar-us-Salam, Riyadh, 2007, p. 85.

<sup>131</sup> Kamali, 2010, p. 28, see *supra* note 81. The principle of “enjoining what is right and forbidding what is wrong” is reiterated in verse 3:110.

<sup>132</sup> *Ibid.*, p. 33, citing Muḥammad A.H. al-Ghazalī, *Ihya’ ‘Ulūm al-Dīn*, vol. II, 2nd ed., *Dar al-Fikr*, Cairo, 1980, p. 324.

governing the activity of the *'muhtasib'* (the person who bids good or forbids evil): (i) The *muhtasib* must act from a position of knowledge, since an ignorant individual, unsure of his grounds, may neither enjoin good nor forbid evil; (ii) the *muhtasib* must be reasonably sure that their attempts to prevent evil do not give rise to a greater evil; and (iii) the *muhtasib* must act on the basis of an overwhelming probability (*'aẓ-zánn al-ghalib'*) that the attempt to enjoin good or forbid evil will directly achieve the desired result.<sup>133</sup> The second element restricts the implementation of *hisbah* to situations where, in relation to the evil conduct (or crimes) being committed, “the *muhtasib* is in a position to prevent it, or to bring about a change to an on-going situation”.<sup>134</sup> According to al-Qaráfi, the absence of either of the first two conditions renders the *hisbah* illegitimate. On the other hand, the absence of the last condition downgrades the characterization of the *hisbah*, from obligatory (*'wajib'* – an obligation or duty arising from the decisive injunctions of the *Qur'án* and *Sunnah*) to a mere permissibility (*'mubah'*).<sup>135</sup> “Let there arise [*waltakun*] out of you a band of people inviting [or ‘calling others’] to all that is good enjoining what is right [or ‘good’] and forbidding what is wrong [or ‘evil’]; they are the ones to attain felicity [*muflihūn*, or ‘successful ones’].”<sup>136</sup>

Commenting on the above verse, Kamali suggests that “[i]t is best, therefore, if the whole of the community observes *hisbah*, but it may be observed by only some members – men or women or both”.<sup>137</sup> Kamali locates support for this interpretation in the *Qur'anic* verse which states: “The Believers, men And women, are protectors [*awliyā*, or ‘protectors and friends’], One of another: they enjoin What is just [or ‘good’], and forbid What is evil” (*Qur'án*, 9:71).

Reading this verse in conjunction with other *Qur'anic* verses, Kamali concludes:

a successful implementation of *hisbah* requires a collective effort by the entire society. If implementing certain aspects of *hisbah* require an active role to be assigned to women alone, or through co-operation between men and women, then the *Qur'án* authorises this.<sup>138</sup>

Early Muslim jurists were further preoccupied by the debate as to whether *hisbah* is a collective duty (*'fard kafa'i'*), or an individual obligation (*'fard*

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<sup>133</sup> *Ibid.*, p. 28, citing Shihab al-Din al-Qaráfi, *Kitab al-Furuq*, vol. IV, *Maṭba'at Dar Ihya' al-Kutub al-'Arabīyyah*, Cairo, 1346 A.H., p. 255.

<sup>134</sup> *Ibid.*, p. 183.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Qur'án*, 3:104; see also *Qur'án*, 3:110 and 22:41.

<sup>137</sup> Kamali, 2010, p. 30, see *supra* note 81.

<sup>138</sup> Kamali, 2010, p. 30, see *supra* note 81.

'ayni') of each and every Muslim. According to Ibn Kathīr, verse 3:104 asserts that although *hisbah* is incumbent on each member of the 'Ummah', that is, the Muslim community or society as a whole, to the extent of one's ability, the fulfilment of this task falls to a specific segment of the 'Ummah'.<sup>139</sup> It has been argued that *hisbah* becomes an individual obligation, creating a personal responsibility for the individual concerned, in just one situation: "when there is only one person in the entire community, or when a single individual witnesses evil being committed".<sup>140</sup> Thus in all other situations, *hisbah* remains a collective duty of the community as a whole.

The dual characterization of *hisbah* as both rights and duties is recognized in the 1981 Universal Islamic Declaration of Human Rights, under Article 4 "The Right to Justice".<sup>141</sup> Paragraph (c) of this provision explicitly defines *hisbah* as "the right and duty of every person to defend the rights of any other person and the community in general".

According to the following *ḥadīth* (plural *ḥadīths* or *ahādīth*), believers are encouraged to carry out *hisbah* to the extent of both their own ability and what their circumstances permit. The *ḥadīth* further outlines the (minimum of) three ways of performing *hisbah*:

Whoever among you sees an evil action, let him change it with his hand (by taking action); if he cannot, then with his tongue (by speaking out); and if he cannot, then with his heart (by hating it and feeling it is wrong), and that is the weakest of faith.<sup>142</sup>

Clearly the *ḥadīth* commands physical action, and it is the literal interpretation of this part by groups such as IS which is problematic. The issue lies in the broad interpretation of what is considered 'evil', combined with jihādists' interpretation "which turns *use of the hand* into a strict ideology of hisbah applied to all spheres of life, especially public piety".<sup>143</sup> If 'evil' were interpreted as, for example, an attack on an innocent person, then preventing that physically would pose no problem. However, when 'evil' is interpreted as any deviation from moral rules, even when the effect of such deviation does not go beyond the person themselves, then this defies the *Qur'ānic* stipulation that God should be the only judge in such matters.

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<sup>139</sup> Kathir, 2003, p. 233, see *supra* note 106.

<sup>140</sup> Kamali, 2010, p. 29, see *supra* note 81.

<sup>141</sup> Islamic Council of Europe, Universal Islamic Declaration of Human Rights, 19 September 1981 (<https://www.legal-tools.org/doc/9a9cfe/>).

<sup>142</sup> Muslim, 2007, pp. 143–44, see *supra* note 129.

<sup>143</sup> Seth H. George, "Commanding the Right Islamic Morality and Why It Matters Chaplain", in *Military Review*, 2016, vol. 96, no. 5, pp. 60–67, p. 63.

It has been argued that putting things right (*'taghīyyr'*) with the hand is the prerogative of political authorities, who, it is argued, are implementing the tongue of scholars and the heart of the common people.<sup>144</sup> “This elitist interpretation”, according to Cook and Meijer, “confirms the state’s monopoly of force and the ‘natural’ hierarchical structure of society”.<sup>145</sup>

As a function of the state, *ḥisbah* was instituted from the early Abbasid Caliphate, whereby the ‘Caliph’ or Sultán would appoint a *'muḥtasib'*, that is, the chief of municipal administration and policing with three main functions: policing of markets; monitoring the state of the roads and buildings in the city; and enforcement of public morals.<sup>146</sup> The *muḥtasib* occupied a position between the *qáđí* and the police<sup>147</sup> and generally had to be “a *faqīh* [someone with an understanding of *fiqh* (Islámic jurisprudence)], aware of the rules of Islamic law so as to know what to order and what to forbid”.<sup>148</sup> They had the power to enforce the honouring of debts and to take such other actions that did not require formal hearings or verdicts.<sup>149</sup>

The term *ḥisbah* is mentioned in the *Qur'án* only in the context of a volunteer, thus it is fair to state that by making it an official religious post, the Abbásid Caliph transformed the concept into a political tool to eliminate potential enemies and to portray himself as a defender of the faith.<sup>150</sup> Enforcing *ḥisbah* should not create greater mischief than the one that is to be prevented,<sup>151</sup> the *Qur'án* clearly states in verse 2:256 that there is no compulsion in religion, therefore enforcing Islám upon people by violent means directly contradicts this.

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<sup>144</sup> Michael Cook, *Forbidding Wrong in Islam*, Cambridge University Press, 2003, pp. 3–4 and pp. 11–12.

<sup>145</sup> Roel Meijer, “Commanding Right and Forbidding Wrong as Principle of Social Action: The Case of the Egyptian al-Jama‘a al-Islamiyya”, in Roel Meijer (ed.), *Global Salafism: Islam’s New Religious Movement*, Columbia University Press, 2009, p. 191, citing Cook, 2003, *ibid*.

<sup>146</sup> Sami Zubaida, *Law and Power in the Islamic World*, I.B. Tauris, London, 2003, p. 59.

<sup>147</sup> Knut S. Vikor, *Between God and the Sultan: A Historical Introduction to Islamic Law*, Hurst, London, 2004, p. 197.

<sup>148</sup> Abd al-Rahmān b. Nasr al-Shayzarī, *The Book of the Islamic Market Inspector: Nihayat al-Rutba fi Talab al-Hisbah (The Utmost Authority in the Pursuit of Hisbah)*, Ross. P. Buckley (trans. and ed.), Oxford University Press, 1999, p. 28.

<sup>149</sup> Khaldun, 1980, p. 463, see *supra* note 125.

<sup>150</sup> Ahmed Mansour, Ahl AlQuran, “Hisbah: A Historical Overview”, International Quranic Center, 7 August 2006.

<sup>151</sup> Kamarudin bin Ahmad, “*Wilayat Al-Hisbah; A Means to Achieve Justice and Maintain High Ethical Standards in Societies*”, in *Mediterranean Journal of Social Sciences*, 2015, vol. 6, pp. 201–206, p. 205.

### 27.4.2. The Misuse of *Hisbah*

There are numerous examples of states, extremist groups, and courts using *hisbah* to impose apostasy sentences, such as that declared by the Supreme *Shari'ah* Court of Sudan against al-Amín Dawúd Muḥammad Ṭáhah. The point of interest here is that the litigants used *hisbah* as the grounds for their legal action against Ṭáhah, successfully asking the court to declare Ṭáhah's '*riddah*' ('apostasy') or to consider him as a '*murtad*' ('apostate').<sup>152</sup>

A similar example of the use of *hisbah* in a court was a 1995 Egyptian case involving Náṣr Ḥamid Abú Zayd, a lecturer of Arabic literature at Cairo University. Abú Zayd's promotion was blocked by Dr. 'Abd al-Šábúr Shahín, a member of the review committee, who issued a declaration of apostasy on the grounds that Zayd's work offended Islám.<sup>153</sup> Dr. Shahín's counsel grounded his lawsuit against Zayd in the concept of *hisbah*,<sup>154</sup> and the court acquiesced, acknowledging society's "direct interest in filling a *hisbah* suit".<sup>155</sup>

### 27.4.3. *Náshihah*

*Náshihah* is one of the key tools one could use to combat hate speech, so it seems fit to delve deeper into what this term might mean. '*Náshihah*' is often translated as 'sincere advice' and 'wise counsel'. The dictionary defines the term *náshihah* as "sincere advice, friendly admonition, and friendly reminder".<sup>156</sup> Sheikh Riyád al-Ḥáq stresses a generous intention stemming from the root meanings of purity and wishing well embedded in the word *náshihah*: "The idea of someone advising another is that they have the other person's best interests at heart. They wish well for them and want them to succeed".<sup>157</sup>

Kamali states that *náshihah* is to be distinguished from reprimand (referred to as '*tawbikh*'), in order to avoid any confusion that may be caused from their possible overlap. al-Ghazalí demonstrates that the principal difference between *náshihah* and *tawbikh* is that the former is perceived to be more confidential and courteous, whereas the latter is public and tactless.<sup>158</sup> To further this point, Imám ash-Shafi'í observed that when an individual advises his brother in a

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<sup>152</sup> Mohamed A. Mahmoud, *Quest For Divinity: A Critical Examination of the Thought of Mahmud Muhammad Taha*, Syracuse University Press, New York, 2006, p. 22.

<sup>153</sup> Susanne Olsson, "Apostasy in Egypt: Contemporary Cases of *Hisbah*", in *The Muslim World*, 2008, vol. 98, pp. 95–115, p. 104.

<sup>154</sup> Hussein Ali Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt*, University of Chicago Press, 2012, p. 46.

<sup>155</sup> Cairo Court of Appeals, Case No. 287 of Judicial Year 11, 14 June 1995 in Agrama, 2012, *ibid.*, p. 49 (<https://www.legal-tools.org/doc/dcmm56/>).

<sup>156</sup> Shaykh R. ul Haq, "The Meaning of 'Nasihah'", in *Al Kawthar Academy*, 8 December 2017.

<sup>157</sup> *Ibid.*

<sup>158</sup> Kamali, 2008, p. 34, see *supra* note 6.



confidential manner, he has provided him *nāsīḥah*. However, if he chooses to carry out the same act publicly or openly, he has ridiculed and belittled him and has therefore given him *tawbīkh*. In the words of Kamali:

The essence of *nasīḥah* in Islam is to encourage a vigilant but caring attitude on the part of the believers, who are expected to maintain and protect the moral and religious values of Islam. Thus, the individual is entitled to give sincere counsel to others when he is convinced of the essential benefit of his advice. *Nasīḥah* is generally seen as an integral part of *hīsbah*, with the only proviso being that the emphasis in *nasīḥah* is laid on the first of its twin aspects, namely, enjoining good (*al-amr bi'l-ma'rūf*) rather than forbidding evil. In this way, *nasīḥah* takes for granted the right of every individual to form an opinion or advice in which he or she sees a benefit, and the right to convey it in confidence to others, be it a fellow citizen or a government leader [...]. The centrality of *nasīḥah* to the promotion of good and prevention of evil is once again confirmed in a *Hadīth* in which *nasīḥah* is declared to be the essence of the religion [...]. *Nasīḥah* is also the antidote of *ghībah* (backbiting), in that when Muslim observes a fault on the part of another, or a benefit that he envisages for him, the matter should be communicated between them.<sup>159</sup>

In context, the term *nāsīḥah* is a *Qur'ānic* concept that refers to the purpose and function of the prophethood. Therefore, it is the prophets Noah, Salīd Hud and Shu'ayb who informed their people that they must provide warning, much like a sincere advisor does, as part of their mission. Further to this, the *ḥadīth* provides that *nāsīḥah* is a given right that every Muslim has which consists of, for example, responding to a greeting ('*salam*'). To exercise this right, the *ḥadīth* provides that "when you are asked for *nasīḥah*, then you must give it". To accommodate the right, Imām Aḥmad Ibn Ḥanbal demonstrates that *nāsīḥah* is a collective obligation (*fārḍ kafa'ī*) which is required to be given even where it has not been solicited or asked for.<sup>160</sup>

The first of the two *ḥadīths* both begin with "the right of a Muslim" ('*ḥāq al-Muslim*') and so within this context, *nāsīḥah* in this *ḥadīth* is understood to embody a right that can be claimed, not necessarily an obligation that is required to be fulfilled. In relation to the involvement of *Shari'ah* in this concept, it does not regulate the manner in which *nāsīḥah* is provided, due to its nature of concerning the good conscience and sincerity of the individual.<sup>161</sup> Rather than

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<sup>159</sup> Kamali, 2008, pp. 34–35, see *supra* note 6.

<sup>160</sup> *Ibid.*, p. 34.

<sup>161</sup> *Ibid.*, p. 36.

providing a particular procedure in which *náshīhah* should be followed, the *Sunnah* advocates guidance in which the best form of *náshīhah* can be followed:

- (a) That *náshīhah* must not involve exposing or exploring the privacy and personal weaknesses of people (*tatabbu' al-'áwrát*);
- (b) that it is given in the best possible form, with an awareness of the suitability of the occasion, time and place;
- (c) that it is founded on certainty and not on speculation, estimation, or suspicion;
- (d) that it is given to the extent necessary and that excess is avoided;
- (e) that it is in harmony with the guidance of the *Qur'án* and the *Sunnah*.<sup>162</sup>

Early Islámic history offers instances of the dangers of “rushing to judgement” in cases of public hate speech. For instance, in a liberal treatment of charges, the Caliph ‘Alí accepted that someone who committed apostasy was nonetheless not *kafír*; rather, he should be given sincere advice (*náshīhah*) to correct his error. This follows the *Qur'anic* invocation that argumentation should be conducted with tolerance and courtesy<sup>163</sup> – lessons that might well counter those guilty of hate speech in the present, as fierce punishment may make them more rigid in their wrongful ways.

#### 27.4.4. *Máslaḥah*

Dr. Muhammad Khalid Masud, director of the Appellate Division of the main *Shari'ah* court in Pakistan, has explored the concept of '*máslaḥah*' and its ethical implications in the present. He concludes that the concept has utility beyond *Shari'ah* rulings. In particular, he argues that in facing the broader demands of modern society, and where one finds no clear precedent from the past, including from *Sunnah* and *ḥadīths*, we can employ intellect and analogies beyond the five key stipulations (as listed by Kamali above). He says one should consider the purpose of law and its spirit, rather than just the letter of the law. He further argues that *máslaḥah* and Islámic law can be “applicable and understandable not only for Muslims but also in the globalized world we live in today, especially regarding [questions of] human rights”.<sup>164</sup> Indeed, the *Sunnah* and *ḥadīths* repeatedly commend believers to contribute to fraternity and peace in society. One such text insists that this mode is not confined to Muslims alone. One should

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<sup>162</sup> *Ibid.*, p. 37.

<sup>163</sup> *Qur'án*, 16:125.

<sup>164</sup> “Dr. Muhammad Khalid Masud: The Concept of ‘*Máslaḥah*’ and its Ethical Implications”, Lecture at the Research Centre for Islamic Legislation and Ethics, Doha, 2 December 2015 (available on YouTube).

aim for a world-wide brotherhood where everyone feels safe, under the principle of “promoting good and preventing evil”.<sup>165</sup>

#### **27.4.5. Tools in Islámic Law for Reacting to Hate Speech Against Muslims**

The *Qur’án* itself contains advice on how to react to hate speech: “heed not their annoyances [or ‘annoying talk]”<sup>166</sup> and “when ye hear the signs of God held in defiance and ridicule [or ‘disbelieved in and mocked at’] ye are not to sit with them unless they turn to a different theme”.<sup>167</sup>

Among options for non-judicial opposition to evil, Kamali notes that several *Sunni* commentators recommend the stance of “silent disapproval”. For instance, the well-known Muslim jurist Aḥmad Ibn Ḥanbal advised a follower who knew the *Sunnah*, but was faced with a hostile and ignorant crowd, to speak their truth and then remain silent, rather than indulging in a “hostile exchange”. Conversely, other commentators consider such a passive approach, akin to ‘*táqi-yah*’, as potentially dangerous because heresy and corruption may prevail; in such a situation, few can tell truth from falsehood.<sup>168</sup> As Aḥmad Ibn Ḥanbal averred, when learned persons are the ones promoting such confusion, how can the ignorant hope to find guidance?<sup>169</sup>

Another element to consider is the role of forgiveness when confronted by hate speech, as well as limits to the implementation of forgiveness. The virtue of forgiveness is further amplified in *Qur’ánic* verses 3:134 and 13:43. Moreover, the second part of the famous *Qur’ánic* verse 4:149 encapsulates useful guidance on this question. It reads: “Whether ye publish a good deed or conceal it or cover evil with pardon [or ‘forgive evil’] verily God doth blot out (sins) and hath power (in the judgment of values) [or ‘God is forgiving, omnipotent’]”. According to interpretation, the verse appears to enjoin upon the one who is sinned against a moral duty to forgive, but not necessarily a legal one. This comes in anticipation of the ultimate judge, God, and his cherishing of mercy. These are crucial established parameters for considering the balance between law and morality. The challenge is to identify the point where continuous forgiveness acts as an aid to evil, and not as a means of countering it.

#### **27.5. Internal Measures and Informal Sanctions**

Religious leaders can play an important role in combatting hate speech, by virtue of the multiple roles they perform in their societies. The role of religious leaders

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<sup>165</sup> Kamali, 2008, pp. 169–70, see *supra* note 6.

<sup>166</sup> *Qur’án*, 33:48.

<sup>167</sup> *Qur’án*, 4:140.

<sup>168</sup> Kamali, 2008, p. 159, see *supra* note 6.

<sup>169</sup> *Ibid.*, p. 160.

does not stop at offering interpretations of Islám (*'fatwás'*), but rather they also assume other roles in administering endowments and charities, regulating mosques and prayers, training preachers, supervising Islámic education, and proposing legislations. It is the purpose of this section to sketch a number of measures that religious leaders can implement in those different roles to combat hate speech.

### 27.5.1. Endowments and Charity

Beginning with endowments, the idea of Islámic endowments (*'al-Wáqf'*) is that the owner (mainly of a real estate) gives up his property rights by a permanent and irrevocable legal act, so that the property can no longer be sold or transferred, but rather is repurposed for religious, educational or any other benevolent purposes. There are two kinds of Islámic endowments: the family endowment, where the beneficiary is a particular person or a family member or his descendants; and the public endowment, where the beneficiary is the public, for example, giving up a piece of land to be used for building a hospital or a school. Although originally endowments were private initiatives administered by the donor himself,<sup>170</sup> they are now largely administered by the state's ministry of endowments. It is here that religious leaders are engaged, as the heads of such ministries of endowments. In that respect, religious leaders should ensure that none of the members of the ministry have engaged or continue to engage in hate speech or support extremist ideology. Religious leaders, in their role within ministries of endowments, should verify that an endowment's assets are not used in inciting violence and hate speech, nor that its beneficiaries are involved or have been involved in inciting violence and hatred.

While endowments are somehow centralized by being administered through the ministry of endowments, charities, in the form of almsgiving (*'Zakah'*) and voluntary giving (*'Sádáqát'*), are decentralized, and are thus more prone to being used to finance extremists.<sup>171</sup> Given that religious leaders are key players when it comes to collecting donations and organizing charities, due to

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<sup>170</sup> See Jamal Malik, *Islam in South Asia: A Short History*, Brill, Leiden, 2008, p. 234.

<sup>171</sup> Unlike the situation in the United Arab of Emirates, where the Law No. 3 for the year 2021 has banned the collection – by all means – of donations by individuals and allows only its collection by only certain organizations. For the legislation (in Arabic), see United Arab Emirates, Federal Law No. 3 of 2021 Concerning the Regulation of Fundraising Activities (authors' translation), 21 April 2021 (<https://www.legal-tools.org/doc/12jlk8/>). Moving towards the centralization of the process of collecting donations, the Egyptian Ministry of Endowments adopted in 2013 a decision to ban the collection of donations through mosques to prevent the use of money collected in funding extremists. See Hind Mustafa, "Ba'd Qárar al-Áwqáf bi-man' Jam' at-Tabáru'at – Istikhdam al-Masajid fí Jam' al-Amwal li-Khidmat Fásíl Siyasí Intihak li-Hormatiha", *Ahram*, 3 September 2013. However, full centralization in that context has not yet been achieved in Egypt.

their influence in society, they are thus responsible for ensuring that donations are used for their intended charitable purposes. As such, religious leaders should actively campaign against donating to certain groups known to engage in hate speech and incitement of violence.

As a measure to emphasize the peaceful co-existence of all religions and to combat hate speech, religious leaders should also encourage making donations to non-Muslims. In 2009, Sheikh Muḥammad Ṭāntāwī, the head of Al-Ázhár University (‘Al-Azhar’), issued a *fatwá* that a Muslim is permitted to participate in building a church, and that it is incorrect to depict the building of churches as a sinful act under Islámic law.<sup>172</sup> During the Covid-19 pandemic, the Egyptian Dar Al-Ifta issued a *fatwá* that donations (*ṣádáqát*) are allowed to be directed at non-Muslims.<sup>173</sup>

### 27.5.2. Mosques and Prayers

Mosques can indeed constitute a fertile ground for hate speech to grow and spread if preachers (imáms) holding prayers adhere to extremist ideology. Therefore, an important measure to be implemented by religious leaders is to prevent the access of those preachers to prayers or devotional gatherings. Nevertheless, the implementation of this measure will vary depending on the degree of authority held by religious leaders in appointing and dismissing preachers in mosques. In some countries – for example, Egypt,<sup>174</sup> Tunisia<sup>175</sup> and Morocco<sup>176</sup> – the control and supervision of mosques is retained by the state, and represented by its Ministry of Endowments or the Ministry of Religious Affairs. This has facilitated the dismissal of imáms with extremists ideology and those who have engaged in spreading hate speech against other religious minorities.<sup>177</sup> Additionally, for example in Egypt, the Ministry of Endowments, in collaboration with the Al-Azhar institution, has unified topics addressed by preachers during the

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<sup>172</sup> Issam Saliba, “Egypt: Contribution by Muslims to Build a Church Allowed in Islam”, in *Library of Congress*, 26 August 2009.

<sup>173</sup> Egypt Today Staff, “Egypt’s Dar al-Iftaa: Alms-Giving Permissible for Non-Muslims to Reduce COVID-19 Economic Impacts”, *Egypt Today*, 16 May 2020. A similar *fatwá* was issued when asked whether Muslims are allowed to donate to the UN High Commissioner for Refugees (‘UNHCR’). See on that, UNHCR, “Dar al-Ifta al-Missriyyah, Egypt”, 2 September 2020.

<sup>174</sup> Mena, “Awqaf Minister in Full Control of All Mosques: Minister”, *Egypt Today*, 20 June 2017.

<sup>175</sup> State control over mosques and the appointment of imáms have been controversial. See on that Teije Hidde Donker and Kasper Netterstrom, “The Tunisian Revolution and Governance of Religion”, in *Middle East Critique*, 2017, vol. 26, pp. 137–157.

<sup>176</sup> Control over mosques and the appointment of imáms began in 2003 after the Casablanca terrorist attacks. Brown, 2017, p. 13, see *supra* note 60.

<sup>177</sup> Tarek Radwan, “Egypt’s Ministry of Endowments and the Fight Against Extremism”, Atlantic Council, 23 July 2015.

Friday prayer sermons as a measure to prevent hate speech.<sup>178</sup> When the appointment of imáms is not state-centered, for example in Nigeria,<sup>179</sup> or in Muslim communities in Europe,<sup>180</sup> religious leaders can use their influence on the public and campaign for the appointment of non-radicalized imáms as well as for the dismissal of those who have exhibited extremist ideologies.

### 27.5.3. Media

It is beyond any shadow of a doubt that “the misuse of traditional and social media is an enormous factor in spreading hate speech”<sup>181</sup> and, as a consequence, religious leaders should exert effort to combat hate speech in the media. While religious leaders have no direct control over media content or agendas, they can still play an important role in combating hate speech in the media. Using their influence on their communities, religious leaders can launch campaigns demanding the suspension of those inciting hate speech from access to mass-media. Muslim religious leaders can also take advantage of being consulted by state authorities in many instances to regulate media content. For example, in 2017, the Al-Azhar institution in Egypt exclusively authorized fifty scholars to issue religious *fatwás* in media outlets, and entrusted the oversight of such authorizations in the Egyptian Supreme Council for Media, which is responsible for monitoring the content of media outlets. In response, the Council has threatened to sue channels that do not abide by the list. This measure was adopted in response to the increase in the number of *fatwás* issued that tarnished the image of Islám. In addition to that, religious leaders can play an active role, filing lawsuits against those engaged in hate speech and incitement to violence.

The Egyptian Office of the State *Muftí* (*‘Dar Al-Ifta al-Miṣrīyyah’*)<sup>182</sup> and Al-Azhar have taken the fight against extremism one step further, by establishing an observatory that has as its main objective the combatting of extremist ideology.<sup>183</sup> This observatory monitors, *inter alia*, hate speech and incitement to violence conducted in media outlets, be they traditional or online social

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<sup>178</sup> Egypt, Law No. 51 of 2014, 5 June 2014 (<https://www.legal-tools.org/doc/lekdze/>).

<sup>179</sup> Ismael Saka Ismael and Abdulmumini A. Oba, “Administration of Mosques and Appointment of Imams in Nigeria: Between Islamic Law, Customs, and State Law”, in *Islamabad Law Review*, 2020, vol. 4, iss. 1 and 2.

<sup>180</sup> See generally about imáms in Western Europe, Mohammed Hashas, Jan Jaap de Ruiter and Niels V. Vinding (eds.), *Imams in Western Europe: Developments, Transformations, and Institutional Challenges*, Amsterdam University Press, 2018.

<sup>181</sup> G20 Interfaith Forum Policy Brief, “A G20 Interfaith Forum Policy Brief, Countering Hate speech: Roles of Religion and Culture”, 5 November 2020, p. 5.

<sup>182</sup> See Egypt’s Dar Al-Ifta web site.

<sup>183</sup> See the web sites of the Dar Al-Ifta Observatory and the Al-Azhar Observatory for Combatting Extremism.

media.<sup>184</sup> Members of the observatory, then, condemn those statements and provide counter arguments, delegitimizing those responsible.<sup>185</sup> The observatory also works to document instances of hate speech and incitement to violence that could be beneficial in holding those responsible criminally liable. The establishment of observatories has been praised as an important measure in combatting extremism,<sup>186</sup> such as the Saudi Observatory of Etidal which was established in 2017.<sup>187</sup> Observatories are proactive measures that facilitate responses to hate speech and that can prevent it from escalating to violence.

#### 27.5.4. Legislative Efforts

Religious leaders can have direct or indirect access to legislative bodies in Muslim countries. Thus, they can play an important role in presenting legislative proposals or participate in formulating proposals that aim to combat hate speech. For example, in Egypt, Al-Azhar proposed in 2017 a stand-alone piece of legislation to combat religiously-motivated hate speech. Religious leaders can also launch campaigns in support of draft legislation that aim to combat religion-based hate speech.

#### 27.5.5. Education

Education remains one of the most important measures in combatting hate speech. Religious leaders have a key role to play in that respect, primarily on foot of their influence within their communities. Additionally, religious leaders affiliated to state religious institutions have the privilege of accessing educational systems, either directly in the case of religious schools or indirectly by contributing to decisions around the legal content of religious textbooks taught at schools falling under the umbrella of the state's ministry of education. For example, Al-Azhar in Egypt revised its learning curriculum in 2013, removing

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<sup>184</sup> It has been reported that the Dar Al-Ifta Observatory has monitored "more than 5,500 fatwas worldwide, most of which were deemed to give incorrect or misleading opinions about the relationship between Muslims and Christians in Islām; 70% of the fatwas prohibited Muslims from dealing with non-Muslims and 20% of them strongly advised against it". See Nader A. Foutouh, "The Fight of Egypt's Dar al-Ifta Against Extremism, Islamophobia", *The Arab Weekly*, 2 February 2020.

<sup>185</sup> See, for example, the report issued by Dr. Sháwqí 'Allam, The Grand Mufti of Egypt, *The Ideological Battlefield: Egypt's Dar-al Iftaa Combats Radicalization*, Dar al-Iftaa in Egypt, 2018.

<sup>186</sup> See Dar Al-Ifta, "The UN Praises Dar al-Ifta for Its Efforts in Combating Extremism"; Dar Al-Ifta, "Japanese Ambassador in Cairo Applauds the Efforts of Al-Azhar Observatory", 14 June 2021; see also Press Trust of India, "India to Set up IT Center in Egypt's Al Azhar University", *Economic Times*, 21 December 2017.

<sup>187</sup> Global Center for Combatting Extremist Ideology.

content considered to incite hate and violence against Christians.<sup>188</sup> This revision is to be conducted every three years. Al-Azhar also focuses on Islámic education in ‘*Katatib*’ (places where children learn to memorize and understand the *Qur’án*).<sup>189</sup>

Furthermore, Al-Azhar alumni published a magazine for children entitled ‘The Light’ (‘*an-Núr*’), with the main objective of spreading a moderate version of Islám and its moral values.<sup>190</sup> The Egyptian Ministry of Endowments, on its part, has initiated the International *Áwqáf* Academy to train imáms.<sup>191</sup> Another important measure to be implemented by religious leaders in the educational context is to dismiss those with radical ideology from accessing educational institutions as an instructor.

### **27.6. Challenges to the Effectiveness of Measures Adopted by Religious Leaders**

The significant potential impact of measures adopted by religious leaders in combatting hate speech could nevertheless be undermined, due to several factors. The aim of this section is to identify those challenges and to suggest some thoughts on ways to increase the effectiveness of the role of religious leaders in combatting hate speech within their communities.

One of the challenges to the effectiveness of measures adopted by religious leaders is the fragmentation of the religious authority in Muslim countries. For example, in Egypt, religious authority is exercised across the *Dar Al-Ifta Al-Miṣriyyah*,<sup>192</sup> the Al-Azhar institution, and the Ministry of Endowments.<sup>193</sup> In Saudi Arabia, there is the Commission for the Promotion of Virtue and the Prevention of Vice, the Council of Senior Scholars,<sup>194</sup> and the Ministry of Religious Affairs. While in Morocco, there is the Ministry of Religious Affairs and the Supreme ‘*Ulama*’ Council, the latter headed by the King. This is not to mention that official religious leaders are challenged by individual religious leaders not affiliated to any institution.

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<sup>188</sup> Hisham A. Hellyer, “Country Report: Egypt, in GREASE Religion, Diversity and Radicalization”, in *GREASE*, November 2019.

<sup>189</sup> Reham Mokbel, “Al-Azhar Rethinks Primary School Teaching to Encourage Moderation”, *Al Monitor*, 13 July 2015.

<sup>190</sup> The magazine is published under the auspices of Al-Azhar.

<sup>191</sup> See on that, Ahmed Aleem, “Egypt Launches International Academy for Preachers, Imams”, *Al Monitor*, 24 January 2019.

<sup>192</sup> Dar Al-Ifta was established in 1895 and affiliated to the Ministry of Justice on 21 November 1895 by Decree No. 10. For its role, see Dar Al-Ifta, “About” (available on its web site).

<sup>193</sup> See the web site of the Ministry of *Áwqáf* of Egypt.

<sup>194</sup> It was established by Royal Decree in 1972 under King Faisal. It is vested with the right to produce official religious rulings, or *fatáwá*, within the kingdom.



The fragmentation of religious authority can be detrimental to the effectiveness of measures adopted by some religious leaders without co-operating with the others. For example, in Egypt, the measure of enlisting fifty jurists by Al-Azhar (approved by the Egyptian Supreme Council for Media) as those exclusively entitled to issue *fatwás* was challenged by the Ministry of Endowments, because not one of its members was included on the list. In response, the Ministry presented its own list of preachers who it deemed to have the exclusive authority of issuing *fatwás*.<sup>195</sup> This can have the effect of delegitimizing the measure taken to combat extremism in the eyes of the public, as the lists presented might be perceived as competing for religious authority, while there is no clear criteria for which persons should be included on the list. Similarly, the measure of unifying sermons delivered on Fridays during prayers – implemented by the Ministry of Endowments – was rejected by Al-Azhar.<sup>196</sup> This has raised concerns among the public. Furthermore, it has been reported that a number of leaders explicitly rejected preachers reading the sermons from a written paper by tearing the paper down,<sup>197</sup> revealing the negative effect of non-co-operation between religious leaders in implementing measures in combatting hate speech.

Another factor undermining the effectiveness of measures adopted by religious leaders is public concern that those measures would impinge upon their rights, particularly their freedom of expression. For example, in Egypt, Al-Azhar's response to the opinions of Islám El Behairy, a TV host and researcher, about the need to reform the Islámíic discourse within Al-Azhar itself, as well as the sources on which it relies, has been criticized for violating his freedom of expression.<sup>198</sup> Al-Azhar filed a law suit against El Behairy, who was then charged with blasphemy and sentenced to five years in prison (later reduced to one year upon appeal). The rising concern among the public that religious leaders seek to restrict their freedom of expression results in resisting measures adopted to combat hate speech. For example, in Egypt, Al-Azhar's proposal of legislation criminalizing hate speech against religions was rejected on the basis

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<sup>195</sup> Karim El Taki, "Rivalry for Religious Dominance in Egypt", Carnegie Endowment for International Peace, 21 December 2017.

<sup>196</sup> "Al-Azhar Rejects Unified Written Friday Sermons", *Daily News*, 27 July 2016.

<sup>197</sup> «الخطبة المكتوبة»: أئمة «الأوقاف» يلتزمون و«الأزهريون» يرفضون.. والوزير: لن تفرق وحدتنا», *El Watan News*, 6 August 2016.

<sup>198</sup> Egyptian Initiative for Personal Rights, "EIPR Concerned With the Court Verdict Against Islam el-Beheiry, Demands A Suspension of Execution and Warns That the Case is But a Proof of Menace to Freedoms by Agencies Desiring to Act as Guardians to Society", press release, 29 December 2015; Ishak Ibrahim, "Obstacles to Renewing Religious Discourse in Egypt: Reasons and Results", The Tahir Institute for Middle East Policy, 31 October 2019.

that this proposal unduly restricts the freedom of expression, as protected by the Egyptian Constitution and international treaties.<sup>199</sup>

In that respect, religious leaders should – in the first instance – seek to educate themselves on human rights issues.<sup>200</sup> They should also encourage human rights education and training for imáms.<sup>201</sup> Religious leaders could also condition the appointment of imáms in mosques upon their receipt of human rights education. They should address the public and provide justifications for restrictions of freedom of speech in order to increase the legitimacy of measures adopted to combat hate speech and reduce resistance from within their communities to such measures, thereby increasing their effectiveness.

One of the main challenges that significantly undermines the effectiveness of measures implemented by religious leaders to combat hate speech is the involvement of the government – either explicitly or tacitly – in inciting hatred and violence against religious minorities. For example, in 2013, the Egyptian *Shi'ah* Sheikh Hassan Shiḥatah and three of his followers were killed in Zawyat Abú Musallam, Giza Governate. This drastic incident was reported to occur in the wake of months of incitement to hatred and violence against *Shi'ah*.<sup>202</sup> It has also been reported that the then-President Mohamed Morsi tacitly supported incitement against *Shi'ah* by failing to condemn the evocation of inciting speech

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<sup>199</sup> For a discussion on this proposal with a professor at Al-Azhar University, see Rehab Ismail, “Al-Azhar Proposes Law Against Religious Hatred, Violence”, *Egypt Today*, 25 June 2017. For a criticism of this law, see (in Arabic): “Al-Wiṣáyah ad-Díniyyah Laysat Ḥallan al-Mubadarah al-Miṣriyyah”, Tuḥadhír miin Muqṭaráh Qánún Kḥiṭáb al-Karáhiyah al-Muqáddam min Mashyakhat al-Ázhár”, 22 August 2022, Egyptian Initiative for Personal Rights, 22 August 2017.

<sup>200</sup> It has been argued that religious leaders in Egypt receive no training or continuing education once they are placed in positions of responsibility. See Brown, 2017, p. 10, *supra* note 60.

<sup>201</sup> Human rights training programmes have been designed for religious leaders. For example, the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights organized a training for trainers of imáms and community leaders on responding to hate crimes against Muslims, see “Training for Trainers of Imams and Community Leaders on Responding to Hate Crimes Against Muslims”, OSCE, 9–11 November 2013. Furthermore, Turkey has trained through the Rights Education Action Programme faith groups and religious authorities: see Amnesty International, “Human Rights Education Engaging New Target Groups”, May 2010; Habib Toumi, “Qatar Imams Undergo Human Rights Training”, *Gulf News*, 22 June 2011. See as well, The Imam Training Academy of the Foundation of Bangladesh (Joint Learning Initiative on Faith and Local Communities (JLIFLC), “Imam Training Academy of the Islamic Foundation of Bangladesh”); William Watkinson, “Italy to Train Muslim Imams on Country’s Constitution to Improve Integration and Fight Terrorism”, *International Business Times*, 1 November 2017.

<sup>202</sup> Human Rights Watch, “Egypt: Lynching of Shia Follows Months of Hate Speech”, 27 June 2013.

against them during a conference on ‘Egypt-Syria Solidarity’.<sup>203</sup> Furthermore, government agencies failed to take measures against those responsible for inciting hatred against *Shi’ah*.<sup>204</sup> Against this background, measures adopted by Al-Azhar – be it the mere condemnation of the killing incident or the convening of a conference including *Sunni* and *Shi’ah* imáms and scholars – have proved ineffective in reducing incitement to hatred and violence against *Shi’ah*, especially as some of its members and other members affiliated with official religious institutions – at that time – were allegedly involved in inciting hatred against *Shi’ah*.<sup>205</sup>

Another challenge to the effectiveness of measures adopted by religious leaders that warrants highlighting in this chapter is the limited outreach of those measures. Indeed, attempts of religious leaders to respond to online extremism and hate speech by issuing *e-fatwás* and online counter-narratives have been praised for reaching a wider audience. Nevertheless, moving online is arguably insufficient, because interpretations and counter-narratives provided by religious leaders are not accessible to poor people, who have neither Internet access nor the necessary equipment to access those interpretations. Given that people living in poverty are more vulnerable to extremism,<sup>206</sup> focusing on countering extremist ideology online is deficient, undermining the overall effectiveness of measures adopted in combatting hate speech and incitement of violence. Therefore, religious leaders should work on disseminating counter-narratives to interpretations advanced by extremists through means accessible to the various economic classes within their communities.<sup>207</sup>

Counter-interpretations and narratives adopted by religious leaders have also been criticized for having limited impact on extremists themselves, undermining the effectiveness of those measures in reducing hate speech. It has been argued, for example, that the terrorist group *Da’ish*/IS does not browse *fatwá*

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<sup>203</sup> Ryan J. Suto, “Former President Morsi’s Legal Liability for Incitement to Violence”, Atlantic Council, 7 October 2013.

<sup>204</sup> Amnesty International, “Egypt: President Morsi Must Send Clear Message Against Attacks on Shi’ah Muslims”, 24 June 2013.

<sup>205</sup> It has been reported that the Under Secretary of the Egyptian Ministry of Endowments incited violence against *Shi’ah*. See Egyptian Initiative for Personal Rights, “State’s Islam and Forbidden Diversity: Shia and the Crisis of Religious Freedoms in Egypt, 2011–2016, Analytical Report”, June 2016.

<sup>206</sup> See on that, Corinne Graff, “Poverty, Development, and Violent Extremism in Weak States”, in Susan E. Rice *et al.* (eds.), *Confronting Poverty: Weak States and U.S. National Security*, Brookings Institution Press, 2010, pp. 42–89.

<sup>207</sup> The Al-Azhar institution in Egypt has, for example, installed ‘Fatwá Kiosks’ in underground metro stations to offer religious advice to commuters. See on that, “Azhar Opens Fatwá Kiosks in Cairo Metro Station to Counter Terrorism”, *Ahram Online*, 20 July 2017.

and counter-interpretations put forward by the Al-Azhar Observatory for Combatting Extremism.<sup>208</sup> And while the dismissal of imáms with extremist ideology, or their suspension from access to media outlets, can have a deterrent effect, it still can be counter-productive in combatting hate speech. In that respect, it is recommended for religious leaders to establish rehabilitation programmes for members of their group who have engaged in hate speech or who have shown extremist tendencies. The importance of rehabilitation programmes is becoming widely recognized in the context of combatting terrorism and extremism.<sup>209</sup> This is reflected in the resolution adopted by the UN Human Rights Council on the effects of terrorism on the enjoyment of all human rights, where the Council urged:

States to adopt rehabilitation and reintegration strategies for returning foreign terrorist fighters [...] and to adopt a comprehensive approach that includes the development of national centers for counsel and deradicalization [...] and in this regard welcomes the role of the Mohammed bin Naif Counseling and Care Centre in countering terrorist ideologies and activities.<sup>210</sup>

Rehabilitation programmes in the context of counterterrorism are a tool for the deradicalization of terrorists and extremists in the sense “of divorcing a person, voluntarily or otherwise, from their extreme views”.<sup>211</sup> It is acknowledged that religious leaders play a key role in those programmes, particularly in counselling, which is a process of “reeducat[ing] violent extremists and extremist sympathizers through intensive religious debates” with the objective of encouraging extremists to “to renounce ‘terrorist ideologies,’ particularly the doctrine of *Takfir*”.<sup>212</sup> Religious leaders play a key role in raising support among the public for rehabilitation programmes, thus “serving as a nexus between the rehabilitation program and the local community”.<sup>213</sup> This is of paramount significance to helping communities reconcile with the rehabilitated persons and to

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<sup>208</sup> See Reham Mokbel, “Al Azhar Goes Online to Fight Extremism”, *Al Monitor*, 26 June 2015.

<sup>209</sup> For case studies of rehabilitation programmes in different countries, see the Report of the International Peace Institute: Ellie B. Hearne and Nur Laiq, “A New Approach? Deradicalization Programs and Counterterrorism”, International Peace Institute, June 2010, p. 2; Lorenzo Vidino (ed.), *Deradicalization in the Mediterranean: Comparing Challenges and Approaches*, Ledizioni-LediPublishing, Milano, 2018; Angel Rabasa *et al.* (eds.), *Deradicalizing Islamist Extremists*, RAND Corporation, 2010.

<sup>210</sup> UN Human Rights Council, Effects of Terrorism on the Enjoyment of All Human Rights, A/HRC/31/L.13/Rev.1, 23 March 2016 (<https://www.legal-tools.org/doc/cs5gla/>).

<sup>211</sup> See Hearne and Laiq, 2010, p. 2, *supra* note 209.

<sup>212</sup> See Christopher Boucek, “Saudi Arabia’s ‘Soft’ Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare”, in *Carnegie Papers*, 2008, no. 97, p.11.

<sup>213</sup> See Andrew McDonnell, “A Community Approach to Jihadis’ Rehabilitation in Tunisia”, Carnegie Endowment for International Peace, 27 September 2018.

avoid the latter's marginalization and limitation of opportunities, which can drive them back to extremism and which make them more vulnerable to recruitment by terrorists.

Similarly, religious leaders should establish rehabilitation programmes to deradicalize imáms and others engaged in religion-based hate speech. They should also build support for those programmes, so that rehabilitated persons will not themselves encounter hate speech from within their communities.

### 27.7. Conclusion

While the international community increasingly stresses the role of religious leaders in combatting hate speech that constitutes incitement to discrimination, hostility or violence, religious leaders under Islámic law are obliged to act against hate speech. As previously discussed, the source of this obligation lies in the Islámic concept of *hisbah*. In this regard, the pure *ḥadīth* states that:

Whoever amongst you sees an evil, he must change it with his hand.  
If he is not able to do so, then with his tongue. And if he is not able  
to do so, then with his heart, and that is the weakest form of faith.<sup>214</sup>

This *ḥadīth* offers not only a timeless moral compass but also a call to action in the battle against evil – in this case, against hate speech.

“Change with his hand [...] then with his tongue” entails that religious leaders should use the tools available to them – through the different roles they assume in their communities – to combat hate speech. This chapter has attempted to sketch out a number of measures that could be used in that context. Besides interpretations (*fatwás*) and naming and shaming, those measures may include denial of access to mosques; inability to serve on boards or in other capacities in humanitarian or educational institutions of the community; inability to lead prayer or other forms of communal worship; denial of the right to make financial contributions to (certain) funds of the community; and suspension of access to mass-media.

Nevertheless, hate speech is not confined to Muslim communities, but is a common challenge to all communities. As previously stressed, the present authors share the Beirut participants' deep conviction that “all respective religions and beliefs share a common commitment to upholding the dignity and the equal worth of all human beings”.<sup>215</sup> Thus, religious leaders in non-Muslim communities share a similar responsibility in combatting hate speech within their communities.

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<sup>214</sup> “Forty Ḥadīth of an-Nawawi, Ḥadīth 34, 40 Ḥadīth an-Nawawi” (available on the *Sunnah.com.fl* web site).

<sup>215</sup> OHCHR, 2017, see *supra* note 3.

Given that the role of religious leaders in non-Muslim and Muslim communities is relatively similar – as both assume roles in administering endowments and charities,<sup>216</sup> regulating places of worship, training preachers, supervising religious education, proposing legislations and broadcasting religious content – this chapter concludes by expressing the hope that measures sketched above may be generalized and adapted to be applied by religious leaders in non-Muslim communities as well, albeit with consideration of variances between different religions.

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<sup>216</sup> See on that, Gabriel Baer and Miriam Hoexter, “The Muslim Waqf and Similar Institutions in Other Civilizations”, in Michael Borgolte (ed.), *Stiftungen in Christentum, Judentum und Islam vor der Moderne*, Akademie Verlag, Berlin, 2009, pp. 257–280; Julia R. Lieberman and Michal Jan Rozbicki (eds.), *Charity in Jewish, Christian, and Islamic Traditions*, Lexington Books, 2017.

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## **Religion, Hateful Expression and Violence**

Morten Bergsmo and Kishan Manocha (editors)

The focus of this comprehensive anthology is hate speech by religious actors or in the name of religion. Such hate speech has grown in severity, leading to tragic occurrences of violence and acts of terrorism. This has become a challenge of concern to the international community as a whole. The anthology offers in-depth case studies of religion-based or -related hate speech (India, Myanmar and the former Yugoslavia); explanations and discussions of relevant international law, philosophical and religious normative frameworks; expert analyses of factors motivating hate speech in the name of religion (including personality and situational factors, colonial prejudice, abuse of religious themes and exploitation of social influence); and 250 pages of analysis of measures available to assist religious leaders to reduce or prevent hate speech by their members or in the name of their community. The book identifies a variety of formal and informal sanctions or means of disapproval that may be available to religious leaders who seek to reduce hate speech.

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