# Balancing Orthodoxy and Flexibility: Substantive and Accommodative Approaches to Women's Rights in Qaradawi's Fiqh

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## Abstract

The initiation of the minority *fiqh* concept for Muslims in countries with a non-Muslim majority is like a coin with two sides. On one side, it is seen as a threat to the established schools with their structured and well-defined methodologies, as it is often suspected of involving *talfīq*—combining opinions from various schools by selecting the most lenient fatwas. On the other hand, this concept represents an intellectual innovation aimed at helping minority Muslims remain committed to the principles of sharia amid a reality that does not fully support their religious practices. This paper critically investigates whether Qaraḍāwī adheres to a consistent methodology he designed, specifically whether he remains faithful to the principles he espouses or deviates by selectively borrowing opinions across schools. Taking some of his fatwas contained in his book entitled *Fī Fiqh al-Aqalliyyāt al-Muslimah* as the main object, this study argues that Qaraḍāwī, although, does *talfīq* in his fatwa by borrowing opinions from several ulama or schools, he consistently adheres to the methodology he established. This approach offers a legal framework that is accommodative yet rich in pragmatic nuances, resulting from a consistent synthesis of various opinions. Furthermore, on a broader scale, this concept provides a framework that balances flexibility with orthodoxy.

## Abstrak

Inisiasi gagasan fikih minoritas bagi umat Muslim di negara-negara dengan mayoritas non-Muslim ibarat koin dengan dua sisi. Di satu sisi, konsep ini dianggap sebagai ancaman bagi mazhab-mazhab yang memiliki struktur dan metodologi yang sudah mapan, karena kerap kali dicurigai mengandung unsur *talfīq* —menggabungkan pendapat dari berbagai mazhab dengan memilih fatwa yang paling ringan. Namun, di sisi lain, gagasan ini merupakan inovasi intelektual yang berupaya menjembatani Muslim minoritas agar tetap dapat berkomitmen pada prinsip-prinsip syariah di tengah realitas yang tidak sepenuhnya mendukung praktik keagamaan mereka. Tulisan ini bertujuan untuk mengkaji secara kritis apakah Qaraḍāwī konsisten dalam menerapkan metodologi yang ia rumuskan sendiri, khususnya apakah ia tetap berpegang pada prinsip-prinsip fikih minoritasnya atau justru hanya mengambil dan meminjam pendapat dari berbagai mazhab. Dengan mengambil beberapa fatwa yang terdapat dalam bukunya, *Fī Fiqh al-Aqalliyyāt al-Muslimah,* sebagai objek utama, artikel ini menunjukkan bahwa meskipun Qaraḍāwī melakukan *talfīq* dengan meminjam pendapat dari berbagai ulama atau madzhab, dia tetap berpegang pada metodologi yang ia bangun. Pendekatan ini menawarkan panduan hukum yang akomodatif namun juga penuh dengan nuansa pragmatis sebagai hasil dari sintesis berbagai pendapat yang dilakukan secara konsisten. Selain itu, dalam lingkup yang lebih luas, konsep ini menawarkan sebuah kerangka yang dapat menyeimbangkan antara fleksibilitas dengan ortodoksi.

**Introduction**

The long debate on *fiqh al-aqalliyyāt* initiated by several scholars, especially Yūsuf al-Qaraḍāwī, continues to this day. This topic is indeed interesting, resulting in both pro and contra sides emerging. A group of scholars, particularly those from the Middle East with a more progressive mindset, tend to support this idea and continue to develop it. On the contrary, those who oppose it criticize and ridicule it, ranging from the lack of objectivity of a mufti implementing this *fiqh* methodology to accusations that this *fiqh* model is illegal and tends to make Muslims in the West liberal.

Besides that, the process of issuing fatwas in *fiqh al-aqalliyyāt*, which tends to ignore the established methods in the four schools, has become the main focus of criticism from certain groups. Most of those who adhere strictly to the process of *ijtihād*, whose principles and foundations were laid down by the Imāms of schools, believe that scholars or muftis do not need to create new fatwas, but rather only need to uncover them based on the existing methods. The method of inferring a *ḥukm* is considered very sophisticated and solid, with its own rationalization, from the four schools. Therefore, scholars like Qaraḍāwī who attempt to formulate a new foundation in the *fiqh al-aqalliyyāt*, are considered unnecessary in the realm of *fiqh*. Furthermore, it turns out that after the emergence of numerous fatwas related to the issues of Muslims as minorities in the West, Qaraḍāwī 's process of deriving legal rulings is considered to have many flaws and lacks credibility.

The topic of *fiqh al-aqalliyyāt* is not new anymore in the global discussion and it has already developed and produced many findings. Several studies focus on this jurisprudence with conditions in the West and other predominantly non-Muslim areas. These include Alexandre Caeiro who focuses on the European Council for Fatwa and Research's project of developing a *fiqh* of minorities through the production and dissemination of fatwas for Muslims in Europe, examining its role in creating an Islamic counter-public and its relationship with the European public discourse (Caeiro, 2010). Bakare Najimdeen presented the multicultural milieu of Muslims in the West and urged to create a new form of *fiqh* (Najimdeen, 2014). Sumeyra Yakar uncovered the existing connection between the non-Muslim American context and the application of Islamic law for the protection of the dual identities of Muslim minorities (Yakar & Yakar, 2021). Asif Mohiuddin explored the concept of *fiqh al-aqalliyyāt* and its context-specific jurisprudence and how it is debated and contested in Europe (Mohiuddin & Bin Borham, 2022). Abdurrohman Kasdi et al. who present the condition of Papuan Muslims in their land as a minority (Kasdi et al., 2021).

Furthermore, a number of studies has pointed to the ethical dimensions, foundational concepts, and debate of the *fiqh al-aqalliyyāt*. These consist of Andrew, F., March who examines the concept of moral obligation to non-Muslims in Islamic legal thought, specifically within the framework of the "jurisprudence of Muslim minorities" (March, 2009) and internal Islamic debates on the ideal moral, religious, and political approach toward issues of neutrality and justification within non-Muslim liberal democracies (March, 2014). Ralph Gadban offered a succinct examination of their conceptualization of *al-aqalliyyāt al-muslimah* and gave attention to their understanding of da'wa (Ghadban, 2010). Shahrul Hussain examined the suitability of identifying the occident as *dār al-ḥarb* and investigated the modern *fiqh* rationale behind the views of those scholars allowing usury-based mortgages using the *fiqh al-aqalliyyāt* paradigm (Hussain, 2016). Mutaz al-Khateeb described the jurisprudential awareness of the problem of religious minorities by clarifying its contexts, laws, and innovation trends on the one hand, and the problems encountered in trying to restore some historical perceptions (Al-Khateeb, 2017). Shaheen Whyte offered the nuance of *fiqh al-aqalliyyāt* issue through its deliberations and controversies, and the way it is negotiated and debated outside Europe and America (Whyte, 2017). Other studies like Khaled Abou El Fadl reveal the development and

change of jurists' Fatwa across schools from the classical era to the modern era (Abou El Fadl, 1994) and Umar Ryad who offers the root of *fiqh al-aqalliyyāt* that has been attempted from the one early reformist Muslim era (Ryad, 2009).

On the other hand, discussions on the theme of Qaraḍāwī have widely drawn the attention of a lot of Western scholars. Some previous studies from prominent scholars cover Motaz al-Khateeb, who offers the development of the Qaraḍāwī profile to become an authoritative reference of modern *fiqh* (Al-Khateeb, 2009). Jakob Skovgaard-Petersen offered the relationship between Qaraḍāwī and his early institution, Al-Azhar (Skovgaard-petersen, 2009). Marcia Hermansen portrays Qaraḍāwī's influence on the trend of using media for preaching in the contemporary Muslim world (Hermansen, 2013). David H. Warren & Christine Gilmore offer the change of Qaraḍāwī's thought on *fiqh* citizenship especially on *ahl al-dhimmah* status (Warren & Gilmore, 2014). Sami E. Baroudi presents Qaraḍāwī's idea on international relations (Baroudi, 2014). Bettina Graft focuses on Qaraḍāwī and his transformation as a religious authority holder through media (Graef, 2010; Gräf, 2014; Graf, 2023). David L. Johnston offers the approach of Qaraḍāwī's legal theory and the motive behind it (Johnston, 2014). Shaham gives an explanation of Qaraḍāwī and his polemics with neo-*ahl al-ḥadīth* (Shaham, 2015). Uriya Shavit explores the relationship between Qaraḍāwī 's vision, the modern nation-state, and postmodern advanced media technologies (Shavit, 2016). Aaron Rock-Singer studies Qaraḍāwī and his vision of a joint scholarly venture of institution-based preacher education and extra-institutional activism (Rock-Singer, 2016). Shaul Bartal & Nesya Rubinstein-Shemer paint Qaraḍāwī's portrait within the context of the subject of the struggle for Palestine and assesses why he is committed so fervently to the Palestinian course and in a broader context his moderate attitude regarding the Muslim world and his views on relations with other religions and countries (Bartal & Rubinstein-Shemer, 2017). Ron Shaham writes the relationship between Qaraḍāwī's theoretical juristic writing and its application in his legal opinions and connects his work in a wide historical context (Shaham, 2018) and Mahmud El-Wereny presents Qaraḍāwī's concept of *ijtihād* and his jurisprudential methods and instruments to formulate contemporary *ijtihād* (El-Wereny, 2018). Sagi Polka analyses Qaraḍāwī's ideas of moderation to reveal whether his tendency toward between on Liberal stream or the Jihadi-Salafi stream (Polka, 2019). David H. Warren offers articulation, transmission and reconstruction of the Islamic legal tradition (Warren, 2014) and the connections between Qaraḍāwī and his rival projects and the intervention of foreign policies from some Arab countries' authority (Warren, 2021).

Despite the extensive discussions on *fiqh al-aqalliyyāt* and its implications for Muslims in Western contexts, discussions on *fiqh al-aqalliyyāt* of Qaraḍāwī have ignored how the validity of his fatwas through the methodology, approach, and rules he formulated. Previous studies have missed how Qaraḍāwī's process of seeing the problems that exist in the lives of Muslims in the West and formulating them in a fatwa which, if examined systematically and drawn links with general *fiqh* studies whether his fatwas pay attention to many aspects within the limits of *fiqh* rules or hit many of the rules and do not heed the provisions that predecessor jurists have set. As such, this paper will focus on examining Qaraḍāwī's consistency in using sources from the views of scholars or specific schools. This paper attempts to fill the gap by focusing on the consistency of Qaraḍāwī's *ijtihād* process compared to several preceding scholars. Consistency in this study does not refer to exclusive loyalty to one school, because, from the beginning, it has been declared its independence from particular affiliations, but how in considering a scholar's view, whether he pays attention and adheres to all the elements (*arkān*, *shurūṭ*, etc.) that have been determined by the scholar or simply choose some of them.

This article, therefore, seeks to analyze whether Qaraḍāwī maintains a consistent methodology in his *fiqh al-aqalliyyāt*, focusing on whether he abides by principles that he

advocates or diverges by selectively compiling views from different schools. This main issue will be decomposed into three questions, they are: How does Qaraḍāwī's *fiqh al-aqalliyyāt* methodology innovate upon classical jurisprudential methods, particularly in comparison to Sunni schools? To what extent does Qaraḍāwī maintain the validity of religious practices and worship? And what are the practical consequences of Qaraḍāwī's consistency in his methodology toward traditional juristic principles in his *fiqh al-aqalliyyāt* fatwas? Ultimately, this article argues that while Qaraḍāwī firmly engaged in *talfīq* by citing opinions from various scholars or across different schools, it is crucial to highlight that he remained mindful of the structural and fundamental aspects of worship and other religious practices' validity. The consequence is whether such actions are accepted or rejected within a *fiqh* framework.

**Method**

This paper employs a qualitative methodology, combining a literature study with a socio-legal approach that integrates legal analysis and sociological perspectives. Critical Discourse Analysis (CDA) is also utilized to explore both explicit and implicit structural relationships of dominance, discrimination, power, and control as reflected in language. The study primarily draws on Qaraḍāwī's works, particularly his fatwas concerning the lives of Muslim minorities, supplemented by secondary sources to provide depth and context to the discussion**.**

**Qaraḍāwī Juristic Renewal toward Other Schools**

Qaraḍāwī was born in 1926 in Egypt, and two years later, his parents died, leaving him an orphan. After receiving a classical education at his village kuttāb and the Azhar Institute in Tanta, he went on to the Faculty of Theology at Azhar University in Cairo in 1949. But then he switched to the Faculty of Arabic and graduated in 1953 as the best graduate. In 1973, Qaraḍāwī earned his doctorate from Al-Azhar University for his dissertation on *zakāh* despite graduating long before that. It was also in the same year that he was appointed director of the Department of Islamic Studies at the newly established College of Education at Qatar University. This program was later transformed into the Faculty of Sharia in 1977-1978, and he served as dean for several terms. In addition, at Qatar University he also established the Centre for Sunna and Sira Studies in 1980 (Graf, 2013: 222–223).

In his youth, he admired Hasan al-Bannā, the founder of the Egyptian Muslim Brotherhood and listened to many of his speeches in the 1940s until he was eventually influenced by the Muslim Brotherhood's ideology and joined the movement in 1943 (Baroudi, 2014: 3). When still a young scholar at al-Azhar, he was commissioned to participate in a project to provide introductory texts on Islam to Muslims living in Europe and America, as well as to non-Muslims (Shavit, 2022: 343). Some of the figures who influenced Qaraḍāwī's life and thought are Abū Ḥamīd al-Ghazālī, Ibn Taymiyyah, Ibn al-Qayyim, Azhar figures such as Maḥmūd Shalṭūt, Muhammad Abdullāh Darāz, etc., and Muslim Brotherhood figures such as Ḥasan al-Bana, Sayyid Sābiq, Sayyid Quṭb, etc. (al-Deeb, 1996: 22). Qaraḍāwī is a scholar who actively advocates awareness of *ijtihād* and avoids fanaticism in a particular school of thought.

Qaraḍāwī, in his various works, always lists the methodology he employs to derive fatwas. The methodology of legal deduction (*manhaj istinbāṭ al-ḥukm*) could be described as the stages and rules that scholars must follow to arrive at a probable and speculative (*ẓannī,*) sharia ruling (al-Ṭarābulsī, 2010: 62). Within the framework of *uṣūl al-fiqh*, and ignoring the statement of the method he mentions in his work of *Fī Fiqh al-Aqalliyyāt al-Muslimah*, Qaraḍāwī's method can be seen as both accommodative and pragmatic. Accommodative, as utilizes all the tools of *uṣūl al-fiqh*, both agreed upon (*muttafaq 'alaihā*) and disputed

(*mukhtalaf fīhā*) within the four Sunni schools—and pragmatic, as the intended fatwas are crafted to align with the specific needs of Muslims residing in non-Muslim majority regions.

This means Qaraḍāwī employs all potential sources of postulates, such as the Quran, Hadith, *ijmāʿ*, *qiyās*, *istiḥsān*, *maṣālih al-mursalah*, *sadd al-dharāʾiʿ*, *istiṣḥāb*, *qawl al-ṣaḥābī*, *al-sharʿ man qablanā*, *urf*, etc (Ladmia, 2018, vols. 629–630). Beyond the primary principles of legal deduction, Qaraḍāwī does not detail the hierarchy of sources or methods employed in fatwa derivation. He refrains from emphasizing rational tools such as *istiḥsān* (juridical preference) or *maṣālih al-mursalah* (public interest), nor does he prioritize *qiyās* (analogical reasoning) from the views of the Companions, as practiced in the Hanafi school. He similarly does not allocate special significance to the scholars of Medina, unlike Malik, nor does he strictly require the Companions' opinions to align with the Quran and Hadith, as seen in the Shafi'i school, which also rejects *istiḥsān*. Furthermore, he does not prefer *al-ḥadīth al-mursal* or *al-ḥadīth al-ḍaʿīf* over *qiyās*, as is common in the Hanbali school (al-Khafif, n.d: 258–267).

However, Qaraḍāwī exhibits a tendency similar to that of many founding scholars of the madhabs, who employ the *qawl al-ṣahābī* (opinions of the Companions) as a source of evidence. This approach not only stems from his background as a Salafist but also reflects his self-perception as a *mujtahid* with a scholarly stature comparable to the founders of the madhabs.

In Qaraḍāwī's book of *Fatāwā Muʿāṣirah* there is a certain part telling his attitude toward the other four madhabs. In the chapter "*ʿAmal Bimā Yukhālif Madhāhib Arbaʿah*" (worship contrary to the four schools), he gives his view that the four Imāms (Imām Mālik, Imām Abū Ḥanīfah, Imām Shāfiʿī, and Imām Ibn Ḥanbal) are just like other *mujtahid*s and are not sacred. They do not claim to be infallible when conducting *ijtihād*, distinguishing them as they endeavor to uncover various *fiqh* issues that are part of *ijtihād*. As we know, if their *ijtihād* is correct, they will receive two rewards, but if it is wrong, they only receive one reward. Furthermore, he gives the example of Imām Shafi'i who had two madhabs, the *qawl qadīm* (former thought) and *qawl jadīd* (later thought), which proves that their *ijtihād* is not rigid and allows for change. Additionally, in Qaraḍāwī's view, no evidence obligates following a specific school. Therefore, following a certain school or its Imām has no legal implications, whether obligatory or recommended. In fact, the statement that someone is obligated to follow a school is rejected (al-Qaraḍāwī, 1990:111–113).

Regarding some of his strange and different fatwas compared to the opinions of other scholars, it appears that it is based on his understanding of the status of a fatwa. He concludes that the level of strangeness of a fatwa or law is relative (*amr nisbī*). A law that feels strange and unpopular in one community may have the possibility to be popular in another. Also, a law that is not used in a certain period or era may be applied at another time. On the contrary, the truth of a fatwa is not related to the number of its followers and a strange fatwa is not related to the small number of people who practice it. To strengthen his argument, Qaraḍāwī quotes the words of Ibn Mas'ūd when his companions ask him about some of his attitudes and opinions that did not align with the majority of people, "*al-jamāʿah mā wāfaqa al-ḥaqq wa in kunta waḥdak*" (The majority do not approve the truth, even if you are alone) (al-Qaraḍāwī, 1990: 117–119).

Among the principles adopted and emphasized by Qaraḍāwī in the *fiqh al-aqalliyyāt* is the freedom of a mufti to take sources of evidence and reasoning without being confined and limited to only one school. Furthermore, the reference should not only be limited to the level of the Imām of the school but should also refer to the broader sharia, which includes Imāms who are not acknowledged or recognized in their school as well as the scholars from companion generation whose rank should be higher than the scholars of the subsequent generations (al-

Qaraḍāwī, 2001: 57). Thus, he called for expanding sources of argumentation, which was not only limited to the level of schools and their successors ulama but extended even to the early generations.

In his *fiqh al-aqalliyyāt*, Qaraḍāwī employs some principles when considering the issuance of fatwas in specific cases. Also, he takes some arguments from sources that are actually the same as *fiqh* in general, but he emphasizes the need for a novel perspective on these sources. Some of the principles he uses are the employment of divine sources, prophet hadith, and earliest scholars, which potentially opened a huge portion of leniency for Muslims in contemporary matters rather than later scholars. Also, sometimes, he employs Quranic texts only without hadith if they seem contradictory. Qaraḍāwī could leave major opinions by considering the reality faced by current Muslims. Furthermore, Qaraḍāwī always emphasizes the use of *istiḥsān*, *istiṣlāḥ*, etc., with attention to the purposes of Sharia (*maqāṣid al-sharīʿah*) and their balance with textual evidence, and the duty of a mufti to analyze changes in fatwas according to the place, time, and conditions. Qaraḍāwī quotes from Ibn Jauzi's book, *Iʿlām al-Muwaqqiʿīn ʿan Rab al-ʿĀlamīn* and considers it an important reference, emphasizing that if a matter does not align with justice, mercy, benefit, and wisdom, then it is not from sharia (al-Qaraḍāwī, 1996).

Qaraḍāwī has extensively covered the idea of *taysīr al-fiqh* (making *fiqh* easy), which is a crucial component of *fiqh al-aqalliyyāt*, in his book *Taysīr al-Fiqh li-l-Muslim al-Muʿāṣir fī Ḍaw' al-Qur'ān wa al-Sunnah*. The book is divided into three sections: "Towards Easy Contemporary *fiqh*," "The Methodology of easy *fiqh*," and "*Fiqh* of Knowledge." The first section, which is further divided into two main chapters, "Making *fiqh* More Easily Understood" and "Making *Fiqh* Easy in Practice and Implementation," describes and evaluates easy *fiqh*. The first chapter illustrates how Muslims who are overwhelmed with daily responsibilities and, in the age of technology, with information, might make *fiqh* more understandable. Qaraḍāwī emphasizes his adherence to "Greater *fiqh*"—the belief that *fiqh* permeates all aspects of life, as seen in the Muslim Brotherhood's doctrine, and that the essence of *fiqh* calls for more than merely adhering to precedents set by earlier generations. The norms of jurisprudence in various sectors are the emphasis of the second chapter of *Taysir al-Fiqh*, which is intended to make it easier for Muslims to practice their religion. Qaraḍāwī emphasizes that simple *fiqh* does not seek to establish a new Sharia or to allow actions that are prohibited. Qaraḍāwī also notes that the jurisprudence of the Prophet's companions' generation inclined toward leniency rather than the strictness typified by later generations (Hassan, 2019).

The question is, is the methodology adopted by Qaraḍāwī truly new compared to the established methodologies in the intellectual tradition of Islam, or does he just compile and choose what he thinks it can approve? The existence of the four primary sources used by Qaraḍāwī is certainly agreed upon by scholars of the four schools. However, in other cases, such as *maṣālih al-mursalah*, there are jurists who reject its use in argumentation, such as the Hanafi school and Imām Ghazālī and the use of *istiḥsān*, which is primarily applied only by the Maliki and Hanafi schools. Similarly, in the inclusion of *maqāṣid al-sharīʿah* values, groups like the Ẓāhiriyyah tend to focus only on the literal texts and ignore the intended purpose of the postulates. Qaraḍāwī seems to use various sources and applied tools, none of which are unanimously agreed upon by scholars, with the intention of supporting his methodology in formulating his concept of minority *fiqh*. In reality, all of this is not something completely new, but rather the use of various argumentation tools employed by scholars that could have been inspired a lot by Ibn al-Qayyim's book, which allows a *mujtahid* to use all the additional tools in *uṣūl al-fiqh* (Johnston, 2014: 49).

In addition, Qaraḍāwī's *fiqh al-aqalliyyāt* is deeply nuanced with the influence of Ghazzali's thought (al-Khateeb, 2009), Muhammad Abduh, and Rashid Rida by making it a point to stick to the utilitarian camp and the traditions of the Salafi movement (Parray, 2012: 92). This study favors al-Alwany's view that *fiqh al-aqalliyyāt* is so advanced in terms of its methodology that it represents a high-quality *fiqh*. This facilitates the connection between sharia law and the conditions of the group and its place of residence even though it seems more suitable to be included in the branch of *fiqh* in general (Parray, 2012: 103–104). This *fiqh*, apart from not being made a separate part of other branches of *fiqh* and does not introduce a wholly new in his methodology but it should be acknowledged that Qaraḍāwī has produced "a method necessary to restructure and rehabilitate legal ideas", as borrowed from Hallaq's term. In addition, this discussion agrees with the argument of Parray (2012: 102–103) Qaraḍāwī employs and highlights several legal tools in his *fiqh al-aqalliyyāt*; however, the legal derivation methods he applies are far more intricate than these elements alone suggest.

While many criticize Qaraḍāwī's method, some appreciate its application in Muslim life. One of those who supports it is Najimdeen, as he expresses in his article entitled "From the *Fiqh* of Minority to Cosmopolitan *Fiqh* An Analysis". In his writing, he proposes cosmopolitan *fiqh* to replace minority *fiqh*. Conceptually, cosmopolitan *fiqh* has similarities to the minority *fiqh* advocated by Qaraḍāwī and its methods. According to Najimdeen, it is time for scholars to encourage Muslims to return to a pure, non-fanatic, and non-sectarian era of flexibility, where Muslims are not divided along the lines of differences in schools. Therefore, with the existence of cosmopolitan *fiqh*, it will naturally eliminate the presence of other schools, each with their own way of thinking, understanding evidence, and principles. Najimdeen argues that Qaraḍāwī should go beyond finding solutions for Muslims in the West or Europe; rather, a joint effort should be designed to develop comprehensive, dynamic, yet cosmopolitan *fiqh* that addresses the problems Muslims face regardless of their location. Furthermore, the ease that is the main foundation of minority *fiqh* due to the presence of cause and necessity, becomes the basis of cosmopolitan *fiqh* without requiring difficulty or general affliction (Safian, 2016: 53).

The renewal that Qaraḍāwī brought in *fiqh* was based on principles that he believed were urgently needed in the contemporary era. In his works, he always encourages Muslims to pay attention to several main principles in religion, such as reviving the spirit of *ijtihād* and rejecting *taqlīd*, applying *fiqh al-maqāṣid* in determining the law, and providing convenience for Muslims. In addition, he emphasized the importance of a moderation approach and avoiding extremism, applying *fiqh al-wāqiʿ*, and adhering to the da'wa method taught by the Quran (al-Qurashi, 2016: 15). Some of his fatwas written in his book of *Fī Fiqh al-Aqalliyyāt al-Muslimah* demonstrate these principles, such as his fatwa on a woman converting to Islam while her husband remains in his original religion, which is rich in nuances of *ijtihād* and goes against the majority of existing fatwas. He argues that this justification will likely attract many Western women to embrace Islam without needing to leave their families who remain in their original religion, thereby aligning with the goals of Sharia. Furthermore, the shift in his fatwa and views regarding purchasing houses through an interest-based scheme (*ribā*)—which he previously prohibited—reflects a more flexible and moderate approach, considering contemporary social conditions. In fact, many of his fatwas exemplify his independent legal reasoning and demonstrate his resistance to the attitude of *taqlīd.*

Some things, such as the concept of *maqāṣid* and the rejection of *taqlīd*, are not new. However, his ideas that emphasize reality (*fiqh al-wāqiʿ*) and flexibility for Muslims with minority status under the pretext of emergencies provide a solution that goes beyond the rigidity of classical jurisprudence based on sharia postulates and continuous *fiqh* literature. Furthermore, his courage to offer a more context-sensitive approach, considering the changing

sociopolitical and cultural situation, provides a more dynamic and seemingly pragmatic nuance. This renewal challenges the hegemony of classical jurisprudence which is more static and confined to rigid methods. However, it is also undeniable that in each school, there are minor opinions of their jurist that are different from the mainstream.

## Reviewing Qaraḍāwī's Fatwas in *Fiqh al-Aqalliyyāt*

The discussion seeks to examine and analyze some of the fatwas issued by Qaraḍāwī, both in his book *fi Fiqh al-Aqalliyyāt al Muslimah* or *al-Qarārāt wa al-Fatāwā al-Ṣādirah ʿan al-Majlis al-Aurūbī li-l-Iftāʾ wa al-Buḥūth* (a collection of decision and fatwas from the European Council for Fatwa and Research) with the aim of revealing how Qaraḍāwī's *ijtihād* actually forms, does he carry out *talfīq* in general by choosing the opinion that is most beneficial to minority Muslims, or even in practice he also mixes up several opinions of scholars or Imāms in one case by choosing conditions and pillars so that it can make it easier for minority Muslims to worship.

In general, in his work, Qaraḍāwī emphasizes conveniences that need to be applied to Muslim life, especially those related to worship. He reasoned that in the current era, convenience and ease in worship are preferred because this practice was recommended by the Prophet and carried out by his companions. Therefore, in many cases, he often applies *ijtihād intiqāʾī* (selective *ijtihād*) by exploring all jurist opinions, from among the companions, the Successors (*Ṭābiʿīn*), later generations, and up to the Imāms, then chooses one that according to him can approve and strengthen his opinion. However, what makes the difference is that *ijtihād intiqāʾī* is usually accompanied by the aim of *tarjīḥ* (election of the strongest), but in *fiqh al-aqalliyyāt*, Qaraḍāwī prioritizes the element of *taysīr* (ease) among all the existing opinions.

The first case is the fatwa regarding a female convert whose husband has not embraced Islam (al-Qaraḍāwī, 2001: 105). Qaraḍāwī explains that the majority of scholars have issued a fatwa stating that their relationship is invalid and they must be divorced. However, he then quotes Ibn al-Qayyim's work that, apart from the majority opinion, there are nine different viewpoints on this issue, which can be broadly categorized into two: divorcing or not divorcing. Qaraḍāwī himself tends to take the stance of three fatwas that allow converted Muslim women to remain with their non-Muslim husbands. The first opinion is by Alī ibn Abī Ṭhālib, saying that the husband has rights over his wife as long as they are in that country (*dār al-hijrah*). The second opinion, by 'Umar ibn al-Khaṭṭāb, states that the wife can choose to stay or separate. The third opinion, by al-Zuhrī, states that the marriage continues as long as it is not dissolved by the authorities (government).

Visibly, Qaraḍāwī's position is to combine three opinions, which, although resulting in the same outcome of allowing a Muslim convert woman to remain with her non-Muslim husband, differ in their emphasis on authority in terms of the men's side, the women's side, and the government. However, these three opinions are also statements made by the companions and the successors, which has been a subject of debate among contemporary scholars due to the fact that they are mostly not binding (*ghayr muqayyad*) and only presented in a general and non-detailed manner (*mujmal dūna mufaṣṣal*). The consequence of this is the lack of definitive conditions and pillars to specifically determine the validity or invalidity of a worship practice.

Another example confirming Qaraḍāwī's attitude of combining the opinions of two schools in one matter, is related to the fatwa regarding the ruling of performing Friday prayers outside of its designated time, whether it be earlier or later (al-Qaraḍāwī, 2001: 72). In his initial response, Qaraḍāwī states that the majority of scholars believe that the time for Friday prayer is during the time of Ẓuhr prayer, which is from *zawāl* (when the sun is slightly inclined)

until the length of the shadow is equal to the length of the object. It should not be performed before or after this time. In further explanation, Qaraḍāwī quotes the opinion of Hanbali scholars regarding the start of the Friday prayer time, which allows for it to be performed similarly to Eid prayer or at *Sādisa* time (before the sun is inclined; around 11 AM). Additionally, he also considers the view of some Maliki scholars who allow for the postponement of the Friday prayer until before sunset (the disappearance of the red light in the sky). In conclusion, he states that due to emergency situations and necessities, minority Muslims can perform Friday prayer during those times, as long as they inform the entire Muslim community so that they are aware of and agree to perform it at that time.

The last example to be discussed in this paper is Qaraḍāwī's fatwa on the question of "whether it is permissible to marry without a *wālī* and witnesses?" In practice, the Hanafi school does not require a *wālī* for women and they can marry with their own consent, but they still require witnesses. On the other hand, the Maliki school does not require witnesses for marriage, but it does require a *wālī* for a Muslim woman, which can be substituted by someone else from the Muslim community if the *wālī* is deceased or apostatized (al-Qaraḍāwī, 2019: 261). Qaraḍāwī responded by stating that a marriage conducted in the manner described above is invalid and must be repeated. This is because the conditions are not fulfilled and none of the scholars have declared the validity of such practice.

Although in the first case, Qaraḍāwī used some considerations from the companions or the successors that only outlined globally without details, in the last case, he paid attention to the pillars (*arkān*) and conditions (*shurūṭ*) of a case. In his opinions on the various issues, Qaraḍāwī often emphasizes the aspect of urgency in a condition and the urgent need for it. However, he sees in the latest case that there is no urgency in these two aspects, thus requiring validation. Furthermore, although Qaraḍāwī adheres to cross-school freedom, as shown by various considerations in his fatwas, he still pays attention to the valid aspect of worship and the presence of scholars who permit the action in a specific matter. Therefore, in relation to his consistency with one opinion, it can be concluded that with the principle of *al-taḥarrur min al-madhhab* (freedom from any schools), he tends to do *talfīq* with the definition; 1) the freedom to take the opinions of scholars without being limited to one group in a specific problem, and 2) combining several opinions of scholars or schools in seeking a meeting point for the goal he aims to achieve, such as the extension of Friday prayer time and the continuation of marrying non-Muslims as long as it still remains within the main argument of his fatwa and does not violate the rules that would invalidate it.

From the three cases above, we conclude that Qaraḍāwī tends to do *talfīq* in the fatwa issuance process based on other scholars' definitions. However, in Qaraḍāwī's point of view, he has his own arguments regarding *talfīq*. According to him, what he does in many of his fatwas is *tarjīḥ*. He describes it as an effort to examine all accessible views from all schools while avoiding *taqlīd* or mindlessly adhering to one particular school. He also takes issue with the custom of choosing and favoring a fatwa without considering the available proof. He referred to this as *taqlīd*, which he defined as adopting the strongest argument without examining the veracity of the supporting data. Meanwhile, he claims that a *talfīq* accepts a viewpoint without considering the evidence (Safian, 2016: 50). Meanwhile, according to many, the rejection of the practice of *talfīq* is partly based on the fact that its proponents do not have a specific methodology for formulating fatwas (Jamaludin et al., 2024: 64), similar to Qaraḍāwī's situation.

In addition, Qaraḍāwī's position and perspectives on women reflect a consistent stance. His partiality is grounded in his belief that women's issues are urgent and far-reaching, especially in the current era. Given the large role of women in family and community life,

Qaraḍāwī asserts that reforms in society and the family would not be reached without women's reform (al-Qaraḍāwī, 1995). His intense attention to women's issues led him to dedicate two books specifically to them: *Fatāwā al-Mar`ah al-Muslimah* and *Markaz al-Mar'ah fī al-Ḥāyat al-Islāmiyyah*.

## The Portrait of Qaraḍāwī Consistency in His General Jurisprudence Works

Qaraḍāwī is known as a very productive scholar who published many works in various fields of Islamic studies. In the trajectory of his thought development, Qaraḍāwī experienced slight changes in his way of thinking and style of *fiqh*, especially in the 1990s and 2000s. This can be seen from the rules he considered in his *fiqh* thought during that period. Indeed, *Fī Fiqh al-Aqalliyyāt al-Muslimah* is one of the portraits reflecting Qaraḍāwī's work that shows this change.

## Evolution in *Fiqh al-Aqalliyyāt*

At the beginning of his book, Qaraḍāwī meticulously outlines the peculiarities and guidelines of *fiqh al-aqalliyyāt*, highlighting its distinctiveness from other pieces of *fiqh* – even though it is actually part of general *fiqh*. This confirms his unique views that distinguish his approach to understanding and applying the principles of *fiqh* in the context of Muslim minorities. Among the main characteristics of this *fiqh* is that it is intended to connect the universality of Islam with the realities of society so that it will diagnose problems, provide solutions and be based on Sharia propositions which he calls tolerant (al-Qaraḍāwī, 2001: 35–36). According to him, the argument that balances the consideration of the sharia text that is partial (*juz'ī*) with the objectives that are complete (*kullī*), and is not rigidly adhering only to the text of the main source, and paying attention to differences in fatwas based on differences in places, times, customs, and circumstances is a prerequisite for sharia to remain flexible and tolerant. So this will show that contextualizing legal traditions by stating that classical traditions are the result of their own context (Hassan, 2019: 320).

Meanwhile, specific considerations that significantly shape this *fiqh* highlight fundamental differences that other *fiqh* may not own, such as the use of the primary source – the Quran. In his explanation, notably, he even states that to get a fatwa for minorities, hadith may not be used by only guiding the text of the Quran because of its universality over the hadith which is, in some conditions, its role only as an explanation and detailing of the rules of the Quran (al-Qaraḍāwī, 2001: 37). In addition, the condition under which fatwas for minority groups can be issued in a divergent form from other fatwas is the situation of Muslims who are marginalized and powerless in terms of politics, social, and economic. Essentially, if Sharia is applied in a region where Muslims are a minority but hold a strong position as a community, then *fiqh al-aqalliyyāt* can not be applied and returns to the common fatwa.

## Contrasting with Qaraḍāwī's Other Works

However, does this become the defining characteristic of *fiqh al-aqalliyyāt* compared to other *fiqh*? If we look at his other works, indeed, *fiqh al-aqalliyyāt* has special rules that are considered before it is issued, but, in fact, it is no different from some of his fatwa books that are not addressed to minority groups. One of these books, *Fatāwā Mu'āsirah*, the result of a question-answer program about Islamic law on TV when he was in Qatar, resembles this pattern. Principles such as abstaining from fanatism and *taqlīd*, advocating ease (*taysīr*) and moderate (*tawassuṭ*), employing robust generalities of the text, and all the tools of *uṣūl al-fiqh*, both agreed upon (*muttafaq ʿalaihā*) and disputed (*mukhtalaf fīhā*) (al-Qaraḍāwī, 2009: 10–26) seem to have similarities with what he applied in *fiqh al-aqalliyyāt*. The sole principle of ʿābid

*al-taṭawwur*, which literally means not being a slave to development or, in other words, allowing everything on the grounds of changing times, is the side of contrast with the previous *fiqh*.

Comparatively, what is slightly different is seen when contrasting his other *fiqh* works that were written earlier, such as the book *al-Ḥalāl wa al-Ḥarām* and the book *Fiqh al-Zakāh*. For the former, its characteristics are predominantly as a *fiqh* handbook that discusses the law thematically. Qaraḍāwī aims with this book to introduce Islam and its teachings in Europe and America. It is an enlightenment for Muslims there to urge them to hold the values of Islam and as a beacon to non-Muslims in Europe and America who know little about Islam, with its missionary and colonial thinking and viewpoints. Importantly, in this book, Qaraḍāwī does not align himself strictly to any one school in the Islamic world and defines his position by choosing selectively the most robust opinion from the differences of opinion among the classic scholars.

As for the latter, Qaraḍāwī outlines in more detail the method he followed in writing the book. The arguments he builds in this book are collected from the main texts and various opinions that exist both classical and contemporary and across schools (Sunni and Shia) and by including sources from either multidisciplinary (*Tafsīr*, *Ḥadīth*, *Uṣūl al-Fiqh*, etc.) or interdisciplinary (history, language, social, economic, and political) (al-Qaraḍāwī, 1973:16–17). He also adheres to the rules of taking the generality of the text as long as there is no specific evidence, respecting *ijmāʿ mutayaqqin* (the case which totally agreed), applying *qiyās* judiciously, and paying attention to *maqāṣid* and societal benefit. Qaraḍāwī also consciously avoids affiliating with a particular school and practicing *taqlīd* as is the case with his other books, deeming this is something newly created, and there was no guidance in the era of the predecessor ulama. These two works also show the level of exhaustive detail and depth of Qaraḍāwī's insight into the study of *fiqh* rendering it among the most widely read books, but this is also Qaraḍāwī's early scholarly trajectory of his work as an international jurist who has not shown his attention and even partiality to minority Muslim groups in the western hemisphere. This indicates that the *fiqh* is likely to represent an older method for Qaraḍāwī.

By undertaking linearity through examples in *Fī Fiqh al-Aqalliyyāt al-Muslimah*, this discussion addresses the issue of cross-religious marriage. In the book *al-Ḥalāl wa al-Ḥarām*, Qaraḍāwī explains the marriage laws between Muslims and non-Muslims. He expounds on the rules regarding the permissibility of Muslim men to marry women of the People of the Book, the prohibition of Muslim women marrying non-Muslim men, including those from the People of the Book, and the absolute prohibition of Muslims, both men and women, from marrying non-Muslims other than the People of the Book (al-Qaraḍāwī, 2012: 212–215).

Qaraḍāwī grounds his argument on the Quranic verses without much referring to the hadith or the opinions of other scholars. The key consideration is the attitude of tolerance towards the different religions of the couple. Islam recognizes other Abrahamic faiths, thus allowing mutual respect within the household. However, rejection and ignoring of Islam by Christians or Jews as the Abrahamic religion, especially if the husband is from the people of the book, can possibly close the door to tolerance and potentially lead to coercion for religious abandonment.

This work is indeed different from *Fī Fiqh al-Aqalliyyāt al-Muslimah,* showing a distinct approach. Although both are written for Muslims in the West, *al-Ḥalāl wa al-Ḥarām* does not provide socio-political and cultural contexts that can provide greater flexibility for Muslims. It does not allow room for divergent opinions from the scholarly consensus or offer leniency.

This issue is also discussed in Qaraḍāwī's *Fatāwā Mu'āsirah*. Although *al-Ḥalāl wa al-Ḥarām* and *Fatāwā Mu'āsirah* both present similar viewpoints, Qaraḍāwī elaborates on this issue differently in the latter book. Instead of relying only on the Quranic verse as in *al-Ḥalāl wa al-Ḥarām*, Qaraḍāwī incorporated the views of most scholars and displayed other distinctive perspectives, such as the opinions of the companion Ibn 'Umar (al-Qaraḍāwī, 1990:, vol. 1: 462–467). After performing *tarjīh* (weighing different views) based on the foundation of the revelation, Qaraḍāwī provides some important notes that Muslims should consider when deciding to marry a woman of the people of the book. These considerations are grounded in his reasoning and are strengthened by the opinions of various scholars.

Interestingly, Qaraḍāwī argues that marrying a Jewish woman today is forbidden (*ḥarām*), because it is associated with the *Ḥarbī* (warring enemies), in light of the ongoing conflict with Israel (al-Qaraḍāwī, 1990, vol. 1: 471). This stand is contrary to his fatwa in *Fī Fiqh al-Aqalliyyāt al-Muslimah*, which tends to be lenient. However, the common thread between these works is that they accommodate an evolving socio-political context. *Fatāwā Mu'āsirah* is a collection of fatwas that arose when Qaraḍāwī lived in Qatar, which was in a different situation compared to the West. In this case, Qaraḍāwī also employs the *Maqāsidī* approach, which aims to realize the sharia objectives. Although the conclusions differ, the methodologies in both works share several similarities.

**Methodology and Impact**

Compared to the last two works discussed, the evidence of *fiqh al-aqalliyyāt* difference in its methodology is visible. While Qaraḍāwī's two books involve a rigorous process to find the strongest argument by conducting a process of in-depth examination, analysis, and then selecting the strongest argument (*tarjīh*), *fiqh al-aqalliyyāt* reflects more inclination to seek justification by collecting all the arguments and opinions of *fiqh* across the times and then looking for the possibility of the existence of arguments that allow or excuse doing an unpopular action in a place with a status as a minority. According to Qaraḍāwī, crossing the boundaries of the madhhab is very important for minority *fiqh* (as well as *fiqh* in general) because it provides greater flexibility for muftis in addressing pertinent issues (Shavit, 2022: 345).

Furthermore, alongside upholding the principles of *fiqh al-awlawiyyāt*, *fiqh al-tawāzun*, *fiqh al-wāqi'*, and *fiqh al-taysīr*, Qaraḍāwī also emphasizes that the use of *maṣlaḥa mursala* as supportive element is conditional on the *fiqh al-aqalliyyāt* as long as not contradicting a clear text (Shaham, 2020: 440–441). Qaraḍāwī argues that adopting this opinion is a practical necessity, citing the rules "Necessity makes what is forbidden permissible," "There is no incipient injury or retribution," and "Difficulty begets ease" (Shaham, 2020: 442). Despite in fact, Qaraḍāwī also pays attention to the rules of *fiqh* that have been established by previous scholars who play a role in controlling and systematizing the law in *fiqh al-aqalliyyāt* (Mun'im, 2021: 168). However, this does not prevent other scholars from continuing to criticize him and his *fiqh* (Caeiro, 2017: 56).

Broadly speaking on the methodology pioneered by Qaraḍāwī, This paper concurs with David Johnston's opinion that this methodology which prioritizes the *maqāsid* approach was developed by Qaraḍāwī in the 1990s and 2000s. Interestingly, despite the fact that it is the evolution of earlier methods, the application of this approach to legal theory unaffected his old views as expressed in his fatwas and other writings (Johnston, 2014: 39). Although Qaraḍāwī occasionally changed his views, his works written at the beginning of his career were generally not affected by the changes in his methodology that developed in later years.

**Conclusion**

*Fiqh al-aqalliyyāt* is a concept of *fiqh* that, on the one hand, assists Muslims living in Western or non-Muslim Majority areas, while on the other hand, it poses a challenge to the existence of long-established traditional schools. However, upon further examination, although Qaraḍāwī consistently clarified his methodology in his works, he did not have a singular-fixed method of issuing his fatwas. Instead, Qaraḍāwī only utilizes a broad range of tools from *uṣūl al-fiqh*, both universally accepted (*muttafaq ʿalaihā*) and disputed (*mukhtalaf fīhā*). In his *fiqh al-aqalliyyāt*, Qaraḍāwī applies some principles when considering the issuance of fatwas in specific cases. Also, he takes some arguments from sources that are actually the same as *fiqh* in general, but he emphasizes the need for a novel perspective and approach to these sources. Qaraḍāwī uses various sources, none unanimously agreed upon by scholars, to support his methodology in formulating his concept of minority *fiqh*. In reality, all of this is not something completely new, but rather the use of whole various argumentation tools employed by scholars.

After analyzing several cases in his book *Fī Fiqh al-Aqalliyyāt al-Muslimah*, this article indicates that while Qaraḍāwī did engage in *talfīq* by incorporating opinions from various scholars and across different schools, it is crucial to highlight that he remained mindful of the essential pillars (*arkān*) and conditions (*shurūṭ*) that validate acts of worship and other religious practices. This careful consideration determines whether such actions are accepted or rejected within the framework of *fiqh*. His approach reflects a deliberate caution in maintaining the validity of worship practices and religious activities, avoiding recklessness even in the pressing circumstances faced by Muslims as minorities in Western societies.

Furthermore, this study affirms the evolution of the methodology embraced by Qaraḍāwī which began in the 1990s-2000s. Qaraḍāwī endorsing for not being affiliated with any particular school, was initially more oriented toward finding a strong postulate for his work. However, with the introduction of various *fiqh* concepts such as *taysīr*, *awlawiyyāt*, *wāqiʿ*, etc., Qaraḍāwī shifted toward more lenient opinions, as seen in works like *Fī Fiqh al-Aqalliyyāt al-Muslimah* and *Fatāwā Muʾāsirah*. These books present numerous fatwas that are more progressive and easier. Despite this leniency, sometimes his fatwa can become stricter depending on the context and the *maqāṣid al-sharīʿah* he emphasizes. However, further studies are still required to assess to what extent his latest fatwa is more progressive than the previous and how it influences other Salafis.

In essence, the concept of *fiqh al-aqalliyyāt* promoted by Qaraḍāwī does offer a framework that balances flexibility with orthodoxy. This allows it to address modern realities without undermining traditional Islamic principles. It is undeniable that the pragmatic side of *fiqh al-aqalliyyāt* attracts many Muslims. However, the problem is that the framework remains abstract – lacking a clear and systematic method and relying only on principles – thus leaving room for Muslims to adopt and apply it subjectively and abandon the existing school methods for the reasons of ease and simplicity.

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