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Context in Faith-Based Peacemaking: An Islamic Perspective

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CONTEXT IN FAITH-BASED PEACEMAKING: AN ISLAMIC PERSPECTIVE

Abbas Aroua
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1. Introduction

The term ‘context’, which etymologically derived from the Latin verb *contexere* (to weave together), refers to the internal structure and the surrounding conditions, circumstances, time and setting that help to explain, clarify and give meaning to a word, text, utterance, statement or speech. In the Islamic tradition, several scholars, including ‘Abd Al-Qāhir Al-Jurjānī¹ (1009–1078) and Sirāj Ad-Dīn As-Sakkākī² (1160–1229), developed the science of meanings (*ilm al-maāni*). They introduced the concepts of ‘*naẓm*’ (the construction of speech) and ‘*maqām*’ (the contextual situation), or ‘*muqtadhā al-hāl*’ (what the situation requires). Modern pragmatics refer to ‘linguistic/textual context’ and ‘situational/historical context’³. The scope of context is broader, making it useful for interpreting not only texts and speeches, but also images, sequences, ideas, events, attitudes and behaviours.

In a conversation, context depends not only on the speaker (their background and the environment in which they are speaking), but also on the listener. Dan Sperber and Deirdre Wilson consider the context as a “set of premises used in interpreting an utterance”. For them, “a context is a psychological construct, a subset of the hearer’s assumptions about the world. It is these assumptions, of course, rather than the actual state of the world, that affect the interpretation of an utterance.”⁴ Sperber and Wilson continue to explain that “a context in this sense is not limited to information about the immediate physical environment or the immediately preceding utterances; expectations about the future, scientific hypotheses or religious beliefs, anecdotal memories, general cultural assumptions, beliefs about the mental state of the speaker, may all play a role in interpretation.”⁵

In peace mediation, the mediator’s primary role is that of a “listener”. They must pay great attention to what the conflict parties say and how they express it. Therefore, in any peace mediation process, it is essential to understand the context that concerns the conflict parties and the general setting, as well as the mediator. If the mediator has difficulty understanding the contextual elements related to the parties in conflict, for example if they have different worldviews, mediation advisers may be required to help bridge the understanding gap⁶. As the conflict parties, the mediator and the surrounding environment all interact and evolve during the mediation process, context is not static but rather dynamic. Therefore, context analysis must be updated regularly.

Despite the importance of context in mediation, there is often not enough effort made to understand it properly within its broad scope. According to peace mediator Julian Hottinger^{*7}, context is often the most challenging aspect of conflict to address and is frequently overlooked. He defines context as the environment in which the conflict takes place. This consists of the factors that shape the conflict, rather than the issues that will be addressed directly in the process. Therefore, failing to consider the context leads to an inadequate conflict analysis and an inappropriate approach to conflict transformation. Lakhdar Brahimi and Salman Ahmed emphasised the importance of understanding the context for mediation processes, stating that an “ignorance-based decision-making process is [...] the original sin of mediation.”⁸

Understanding the context is important not only for mediation, but also for other conflict transformation approaches, such as adjudication and arbitration processes. As noted by the Law Teacher, “legislation can include words that have more than one meaning, or words whose meaning changes depending on its context”; and the judges “have a measure of discretion and creative power in the manner in which they interpret legislation”⁹. Jonathan Crowe, who has addressed the role of contextual meaning in judicial interpretation, considers that “contextual meaning is necessarily prior to any more restricted form of textual interpretation”¹⁰, while Aishwarya Pratap Singh emphasised¹¹ the importance of the knowledge of “social context” in adjudication. Alana Frederick and Kevin Newsom argue that “because it is the people’s interpretive perspective that matters, judges should interpret statutory text in accordance with the way citizens understand it. Ordinary people understand language in context. So, [...] any justifiable interpretive methodology is necessarily contextual.”¹² Understanding context is as important for arbitration as it is for adjudication. According to Audley Sheppard, “an arbitrator should also be perceptive and understand the [...] context of the dispute and human nature.”¹³

In Islamic contexts, religious scholars may act as conflict transformation practitioners or as advisers in peace processes, particularly when dealing with worldview conflicts¹⁴. In any case, they

^{*} Hottinger introduces the “Actors, Content, Context, Process” (ACCP) framework which provides a clear way to organise knowledge about conflict by offering insights into four categories: actors, content (or issues), context, and process.

must be experts in Islamic jurisprudence (*fiqh*), with a sound capacity of interpretation of the religious texts, and be able to provide the conflict parties or the mediators with options that align with Islamic law while taking the context into account. By doing so, and through their interaction with the parties in conflict or the mediators, they alter the setting and induce a change in the context themselves, in a way that favours conflict resolution.

This contribution highlights the importance of Islamic scholars understanding the context when issuing a legal ruling (*fatwā*), or assuming a peacemaking role in general, whether as judges, ombudsmen, arbitrators or mediators, or acting as advisers. The paper presents the role of religious scholars as peacemakers, emphasising that they require the capacity for *ijtihād* to issue a *fatwā*, regardless of the role they assume. It then lists the requirements of the *fatwā*-making process, focusing particularly on the need for contextual knowledge, which is also necessary in other processes such as adjudication, arbitration, and mediation.

2. The Role of Religious Scholars as Peacemakers

According to the Prophet Muhammad, “Scholars are the heirs of the prophets. The legacy of the prophets is not money, but knowledge. Those who acquire it are fortunate.”¹⁵ This highlights the importance of the prophetic knowledge inherited by scholars, who must use it appropriately. In the Islamic tradition, knowledge must be translated into useful action. Scholars must therefore be aware of their societal duties and play their part in peacemaking and fostering social cohesion. Throughout history, genuine Muslim scholars have not only issued *fatwās* (Islamic legal rulings) but have also promoted and protected human rights by defending the victims of injustice, particularly those oppressed by rulers. They have engaged in civic action by encouraging good behaviour and discouraging bad behaviour. They have transformed conflicts by mending bonds between individuals and groups.

As shown in Diagram 1, scholars play a multifaceted role in peacemaking, ranging from issuing legal rulings (*Iftā'*) to undertaking adjudication (*qadhā'*), arbitration (*tahqīm*), mediation (*wasāta*) and ombudsmanship (*hisba*).

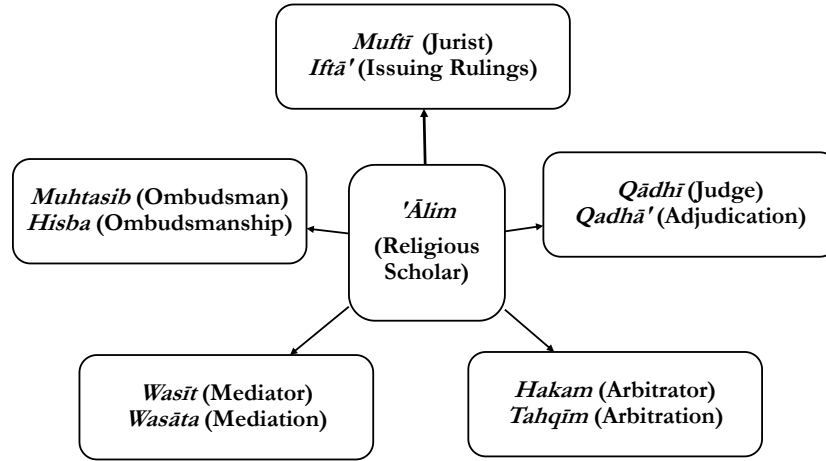


Diagram 1. Multifaceted role of religious scholars as peacemakers

2.1. The Religious Scholar as a Qādhī, Hakam or Wasīt

In the Islamic tradition, the *qādhī* (judge) is appointed by the supreme political authority, and has the power to make legally binding judgements, which are enforced by the state's law enforcement agencies. By contrast, the *hakam* (arbitrator) is appointed by the conflicting parties by mutual agreement. Although the arbitrator's award has limited enforcement power, it is still considered binding because the conflicting parties agree in advance to comply with it. Unlike the *qādhī*, the *hakam's* jurisdiction is limited to civil matters and he cannot rule on criminal law.

Unlike the *qādhī* (judge) and the *hakam* (arbitrator), whose role is to make decisions concerning the conflicting parties, the role of the *wasīt* (mediator) is to facilitate an agreement between them. Therefore, the mediator's role is crucial in enabling the parties to envisage possibilities and uncover options that would allow them, as much as possible, to find a win-win solution.

In all three of their roles, scholars listen to the arguments of the parties involved, review the facts of the case and explore and analyse the surrounding context before issuing rulings or suggesting solutions.

2.2. The Religious Scholar as a Muhtasib

In his 'Al-Muqaddima'¹⁶, 'Abd Ar-Rahmān Ibn Khaldūn (1332–1406) defines the concept of the *hisba* as “a religious function within the

framework of enjoining good and forbidding evil [...] [to] motivate people to promote the public interest in the city.” The *hisba* originated in early Islamic history as a means of monitoring markets to ensure that traders adhered to Islamic standards when buying and selling. This included avoiding fraud and monopolies, ensuring accurate measures and scales, and maintaining cleanliness. Over time, the scope of the *hisba* expanded to cover all sectors of the state and society¹⁷, including the government, the judiciary, religious preaching, mosque administration, education, health and hygiene, construction and architecture, crafts and professions, industry, trade, publishing, and the protection of copyright and patents.

The *muhtasib* is the person who carries out *hisba*. There is a distinction between the *muhtasib*, who is officially appointed by the ruler to carry out this duty, and the *mutatavi*’ who performs *hisba* voluntarily. Ibn Qayyim Al-Jawziyya (Ibn Al-Qayyim, 1292–1350) noted that *hisba* is “a duty for every capable Muslim; it is a collective obligation, and it becomes an individual obligation for the capable one, if not undertaken by the official authority.”¹⁸ In his endeavour to promote the public interest in the city, the *muhtasib* acts as an intermediary between citizens and the various holders of power, including executive, judiciary, economic and even religious authorities. He prevents disputes and resolves conflicts between them. In this sense, he acts as a proactive ombudsman who must be familiar with the context of each case.

2.3. The Religious Scholar as a Muftī

A religious scholar may act as a *muftī* (jurist), making an intellectual effort (*ijtihād*) to address an issue brought to his attention, issuing a legal opinion (ruling) based on Islamic law (*fatwā*). In order to do so, the scholar must be a *faqīh*, an expert in Islamic jurisprudence (*fiqh*). If the issue is raised by individuals or groups who are unable to choose between various options to solve the issue, or by two or more individuals or groups in conflict over a given issue who seek a resolution in line with Islamic precepts, the religious scholar will act as a mediator between individuals or groups, or within individuals and groups confronted by contradictory options and thus creating individual or group dilemmas (micro-conflicts). Unlike a judge’s ruling or, to a lesser extent, an arbitrator’s award, a *fatwā* issued by a scholar is not legally binding. Whether to follow or ignore it is up to the party or parties who requested it. As with an arbitrator’s decision, the persuasive power of a *fatwā* depends largely on the authority of the issuing scholar.

Mastering *fiqh* and having the ability (knowledge and skills) to perform *ijtihad* and make *fatwā* are prerequisites for all other roles that a religious scholar may undertake. Therefore, one can consider the *muhtasib*, the *qādhī*, the *hakam*, or the *wasit* to be, first and foremost, *muftīs*.

In the context of UN secular mediation, the outcome of mediation must be agreed by the conflicting parties and be consistent with international law. According to the United Nations Guidance for Effective Mediation, “consistency with international law and norms contributes to reinforcing the legitimacy of a process and the durability of a peace agreement”¹⁹. Similarly, in faith-based mediation, the outcome must comply with religious law. This highlights the significance of *fiqh* in this type of mediation. Indeed, *fiqh* can help to identify the best *shari'a*-compliant option (BSCO) for resolving a conflict.

3. The Making of Fatwā

3.1. The Process

As shown in Diagram 2, the process of making an Islamic legal ruling (*fatwā*) involves an input, an output and a ‘machinery’ that transforms the input into the output. The input consists of three elements: (1) the objectives of law (*Maqāsid Ash-Sharia*); (2) the sources of law (*Masādir Ash-Sharia*), and (3) the context (*As-Siāq*). The principles of jurisprudence (*Usūl Al-Fiqh*) represent the mechanics that process the input data to produce a *fatwā*; Haroon Sidat²⁰ calls this the “legal architecture” or the “juridical grammar”. These principles concern the methodology and system of rules used to derive rulings from the sources, including defining and declaratory rulings. Therefore, a scholar who is eligible to issue a *fatwā* and capable of performing *ijtihad* must master the objectives of law, the sources of law, the context and the principles of jurisprudence. He must be able to answer the following questions when producing a legal ruling: *why* it is required, *how* to derive it, *which* specific ruling to select in principle and *when* to apply it²¹.

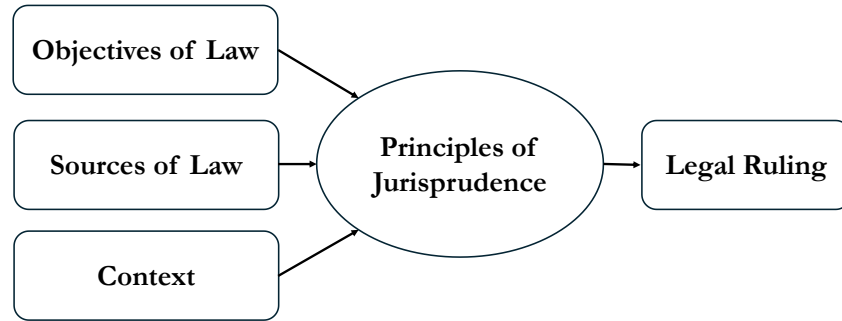


Diagram 2. The process of making an Islamic legal ruling (*fatwā*)

3.2. The Objectives of Law

Ibn Taymiyya (1263–1328) considers that “the *shari’a* came to bring about and perfect benefits, and to prevent and minimize harms.”²² In his work ‘*Al-Muwāfaqāt*’ (The Congruences of the Sources of the Divine Law), Abū Ishāq Ash-Shātibī (1320–1388) wrote: “What is established is that we have determined from the *shari’a* that it was instituted for the welfare and interests of people.”²³ According to Ibn Al-Qayyim, “the *shari’a* is founded and built upon wisdom and the interests of humankind in this life and the hereafter. It is entirely justice, entirely mercy, entirely benefit, and entirely wisdom. Therefore, any matter that departs from justice to oppression, from mercy to cruelty, from benefit to harm, or from wisdom to absurdity is not part of the *shari’a*, even if it is introduced into it through interpretation.”²⁴ Ibn Al-Qayyim emphasised the central role of justice in divine law: “God Almighty sent His messengers and revealed His books to establish justice for humankind, and it is the justice on which the earth and the heavens are based. If the signs and manifestations of justice appear in any way, it is God’s law and religion.”²⁵

The process by which the objectives of law are derived from the Qur’ān and the prophetic tradition (Sunna) is a matter of *ijtihād*. Early scholars such as Abu Hamid Al-Ghazālī (1058–1111) and Abū Ishāq Ash-Shātibī (1320–1388) proposed the five classical objectives of preserving religion, life, intellect, lineage and wealth. Later scholars, including Muhammad Al-Tāhir Ibn ‘Āshūr (1879–1973), Yūsuf Al-Qaradhāwī (1926–2022) and Rāchid Al-Ghannouchi (1941–) expanded these to include preserving justice, mercy, freedom, moderation, equality, cooperation, and human dignity.

3.3. The Sources of Law

Islamic law (*shari'a*) is based on a wide range of sources, which are generally categorised as either revelation-based or reasoning-based.

3.3.1. Revelation-based Sources

These are supreme in authority, being rooted directly in divine revelation.

1) *The Qur'an*: The word of God, as revealed to the Prophet Muhammad. As the supreme source of Islamic law, it contains general principles as well as specific rulings on matters of worship (*'ibādāt*), ethics (*akhlāq*) and social conduct (*mu'amalāt*).

2) *The Sunna*: The traditions of the Prophet comprise his sayings, actions and tacit approvals. The Sunna clarifies, explains and supplements the Qur'an.

3.3.2. Reasoning-based Sources

When an explicit ruling cannot be found in the Qur'an or the Sunna, jurists use rational methods to interpret the primary sources and to derive legal rulings. These secondary sources are:

1) *Ijma'* (consensus): The unanimous agreement of qualified Muslim jurists on a particular legal issue at a given time.

2) *Qiyās* (analogical reasoning): The extension of an existing ruling to a new, similar case, based on an underlying reason that is not explicitly addressed in the primary texts.

3) *Istihsan* (juristic preference): The departure from a strict analogy in favour of an alternative ruling that better serves justice, fairness or practical necessity.

4) *Istislah* (public interest): The practice of basing a ruling on considerations of public benefit, particularly in cases where the primary sources are silent.

5) *Istishab* (presumption of continuity): The assumption that an established legal or factual state remains valid unless proven otherwise.

6) *'Urf* (custom): The recognition of common practices and customs within a society as a legitimate basis for legal rulings, provided these practices and customs do not contradict the Qur'an or the Sunna.

7) *Sadd al-Dharāi'* (blocking the means): The prohibition of an otherwise permissible act if it is likely to lead to a forbidden outcome, in order to prevent harm.

3.4. The Context

3.4.1. Importance of Context

For Ibn Al-Qayyim, “context clarifies ambiguity, determines probability, rules out unintended meanings, specifies the general, restricts the absolute, and diversifies signification. It is one of the most important indicators of the speaker's intended meaning. Those who neglect it err in their reasoning and mislead in their argumentation.”²⁶ In one of his major works, *I'lām Al-Muwaqq'een 'An Rabb Al-'Ālameen* (Information for Those who Write on Behalf of the Lord of the Worlds), Ibn Al-Qayyim devoted a chapter to the change and variation of legal rulings (*fatwās*) according to various factors. He began the chapter with the following paragraph: “This is a chapter of immense benefit. Ignorance of it has led to grave errors regarding the *shari'a*, resulting in undue hardship and difficulty, as well as the imposition of obligations beyond human capacity. These are errors that the sublime *shari'a*, which stands at the highest level of human welfare, would never entail.”²⁷

3.4.2. Elements of Context

Ibn Al-Qayyim identified five specific factors that influence *fatwā*:

- 1) *Time*: A *fatwā* that is appropriate for one era may not be suitable for another.
- 2) *Place*: The *fatwā* may vary from place to place as local conditions and needs vary between regions.
- 3) *Circumstances*: The circumstances of an exceptional situation require different *fatwās* to those of a normal situation.
- 4) *Intentions*: The *fatwā* depends on the purpose and objectives of an action.
- 5) *Customs*: The *fatwā* depends on custom and habit, i.e. the prevailing social norms and conventions. *'Urf* (custom) is recognized as a secondary source of Islamic law, provided it does not contradict the Qur'an or the Sunna.

Commentators on the work of Ibn Al-Qayyim identified five additional factors that influence the *fatwā*, based on the numerous detailed examples provided by the author and other Islamic scholars, including Shihāb Al-Dīn Al-Qarāfī (1228–1285), Abū Ishāq Ash-Shātībī and Ibn 'Ābidīn (1784–1836):

- 6) *Inter-individual differences*: The *fatwā* differs according to people's capabilities. What is suitable for the strong may not be suitable for the weak.
- 7) *Necessity and need*: Some *fatwās* change in cases of urgent necessity or pressing need that require alleviation and ease.
- 8) *Achieving benefits and averting harms*: An important guiding principle of Islamic law is “achieving benefits and averting harms”. The *fatwā* must be adapted to meet this requirement.
- 9) *Appearance of new evidence*: The *muftī* is required to review his *fatwā* if he discovers new evidence in Islamic law that was previously unknown to him.
- 10) *Varying levels of understanding and derivation*: Scholars' differing levels of understanding of texts and their different methods of deriving *fatwās* lead to variations in *fatwās*.

Based on this list, the contextual factors affecting the *fatwā* can be grouped into three categories: (a) factors relating to the party seeking the *fatwā* (factors 4 and 6); (b) factors relating to the *muftī* (factors 9 and 10); and (c) factors relating to the general situation (the remaining six factors). Of particular interest are the factors relating to the *muftī*, who may lack the knowledge or the capacity to understand the text and/or the context, and derive a legal ruling from them. The profile of the *muftī* – and, by extension, the *muhtasib*, *qādhī*, *hakam*, or *wasīt* – and their cognitive limitations and possible biases affect the legal opinion of the *muftī*, the judgement of the *qādhī*, the award of the *hakam*, and the mediation outcome of the *wasīt*.

To overcome these limitations and biases, a collaborative approach and teamwork should be prioritised over individual action. Collegiality and interdisciplinarity broaden the knowledge of the issues and the context, widening perspective, and improving comprehension and interpretation. This increases the range of possible rulings and enables the most suitable options to be selected, making the most of *shari'a's* flexibility. This is particularly important when addressing complex issues

such as politics, the economy, finance, medicine and technology. This is what prompted the establishment of *Iftā'* Houses, *Muftī* Offices and *Fatwa* Councils in modern Islamic societies.

The same approach should be favoured for the other peacemaking functions of the Islamic scholars, such as ombudsmanship, adjudication, arbitration and mediation. In these cases, a balanced team would be more readily accepted and trusted by the conflicting parties, particularly if they belong to different families, communities or cultures. For instance, in the case of conflicts between married couples, the Qur'ān advises resorting to team arbitration: "If you fear a breach between the two, appoint one arbitrator from his family and one from hers. If the two wish for reconciliation, God will bring them together. He is all-knowing and all-aware."²⁸

4. Conclusion

Understanding the context is essential to any peacemaking or dispute resolution process. This is particularly true in an Islamic context, when peacemaking is carried out by an Islamic scholar acting as a judge (*qādhī*), arbitrator (*hakam*), mediator (*wasīl*), or ombudsman (*muhtasib*). These roles all rely on an in-depth understanding of Islamic jurisprudence (*fiqh*) and the ability to perform legal reasoning (*ijtihād*), meaning that every scholar in these roles is essentially a jurist (*faqīh* or *muftī*) first and foremost. When a judge makes a judgement, an arbitrator delivers an award, a mediator suggests options, or an ombudsman dictates conduct, complying with Islamic law requires a *fiqhi* process that is no different to the process of making a *fatwā*. They all need not only to master the objectives and sources of Islamic law, but they also need to understand the necessary contextual elements relating to the parties, the broader circumstances, and themselves. Failure to do so will result in the failure of the whole peacemaking process.

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CPI is an independent non-profit organisation, working on violence prevention and peace promotion. CPI aims to enhance theoretical and practical conflict transformation resources and has extensive experience in West Asian and African contexts. CPI promotes a methodology adapted to and accepted by local communities, conflict parties and peace actors. Since 2002, it has developed unique access and networks in the countries where it works. CPI's outlook is inspired by the Andalusian city of Cordoba: a renowned medieval centre of inter-faith dialogue, and by Geneva: a modern centre of international dialogue and exchange between peoples. CPI has Special Consultative Status with the United Nations.

