

**Contextual development of the Hanafi  
*madhhab*: implications for UK Muslims  
sending *zakat* abroad & the eight  
*zakat*-eligible categories**

**By Dr Mamnun Khan  
April 2018 (updated 2019)**

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# Contextual development of the Hanafi *madhhab*: Implications for UK Muslims sending *zakat* abroad & the eight *zakat*- eligible categories

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In the name of Allah, the Most Merciful, the Most Gracious

## 1. Executive Summary

*Zakat* is the third pillar of Islam, invoked alongside *salah* 82 times in the *Qur'an*. However, the awareness of *zakat* as an institution remains poor among British Muslims. While this is partly due to the wider problem of religious illiteracy and crisis of intellect that typifies Muslim communities, more specifically, it is also due to the ethnocentric and overly-restricted way in which the Hanafi *madhhab* is interpreted. In the greater interest of the Muslim public and contextualised development of the Hanafi *madhhab*, this paper recommends that British Muslims adopt a balanced approach to paying their *zakat* by giving more to reputable UK-based institutes that focus on distributing *zakat* in the UK. *Zakat*-collecting institutions, in turn, should adopt a strategy of distribution in a balanced way in accordance with the eight *zakat* categories listed in the *Qur'an*. To avoid confusing the public about the role and distribution of *zakat* and to maximise its impact, *zakat*-distributing institutions should collaborate by pooling *zakat* funds, follow a contextualised standard, and distribute it transformatively. Finally, this paper urges British Muslims to take well thought-out *zakat*-eligible funding proposals to *zakat* institutions as vehicles for delivering *zakat*.

## 2. Introduction and purpose of paper

There is a great deal of inertia in the payment of *zakat* in British Muslim communities. According to some estimates, the value of the *zakat* collected by charity organisations in the UK stood at around £20m<sup>2</sup> in 2017, most of which was collected during Ramadhan. While estimates vary, it is likely that this is no more than 20% (£100m) of the total *zakat* due on UK Muslims. It's possible that about another 10% (£10m) is sent abroad through personal connections and mosques. Of all the *zakat* collected in the UK, it is estimated that 95%-98% of it currently goes abroad, and only 2%-5% (c. £2m-£5m/year) is spent in the UK. To put all of this in some context, the total remittance going from the UK to Bangladesh and Pakistan was nearly £2.2 billion in 2017.<sup>3</sup>

This apathy is further exacerbated by misunderstandings and misconceptions about *zakat*. These misconceptions include, amongst others: *zakat* being treated as a "charity" as opposed to a compulsory 2.5% payment on disposable income above the *nisab* threshold; *zakat* is seen as payable only during Ramadhan; *zakat* is to be paid "hand to mouth" only and not institutionally according to the eight-categories in the *Qur'an*; *zakat* is only for the "poor and needy" and not for advancing scholarship for example; *zakat* is only due on gold and not necessarily other assets like shares and goods for sale; and the belief that the husband is liable to pay the *zakat* due on the wife's gold/silver/jewellery etc.

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<sup>1</sup> The original paper was written in April 2018 in response to my article "UK *zakat* belongs in the UK."

<sup>2</sup> See: <https://www.economist.com/britain/2018/02/08/charities-eye-a-muslim-wealth-tax>

<sup>3</sup> *Remittance flows worldwide in 2017*, [www.pewglobal.org/interactives/remittance-flows-by-country/](http://www.pewglobal.org/interactives/remittance-flows-by-country/), 3 April 2019.

This paper seeks to clarify some follow-up in response to my original article<sup>4</sup> which later formed part of a chapter in the book *Being British Muslims*,<sup>5</sup> in which I argued that “UK *zakat* belongs in the UK.” Questions are a great way of learning, a virtue which Allah teaches and the Prophet embodied, and I am grateful to the person for advancing their questions. The response below is my own and does not constitute an attempt to provide a legal edict. I have written in my capacity as a student and thinker critically engaged in the public realm. While writing, it became clear that a robust debate is needed in the UK for broader questions around the contextual development of the Hanafi *madhhab*, of which the issue of *zakat* is a good example. I thus resolved to take a more detailed look at the issue, hoping that the resulting paper will stimulate robust discussion, and encourage Muslims to spend their *zakat* in the UK, and ultimately be witnesses to the value of *zakat* itself. I also hope that having read this paper, UK-based charities start prioritising local distribution of *zakat* and spend more of the UK *zakat* in the UK.

The paper is divided into six sections, or “contentions,” which contain, by verbatim, the questions in response to my original article. Each contention is then following by a detailed answer. Where possible, I have cited sources but I have not been exhaustive. To keep the discussion focussed, I have not sought to expand on the subject matter beyond what I have deemed is most relevant, and is based on the assumption that the reader has some prior familiarity of the Hanafi *madhhab*.

### 3. CONTENTION 1

[You say that] “Muslims saw it as just another type of *sadaqah* (charity)...” [but, yet] The *Qur’an* refers to *Zakat* as “*sadaqah*” (9:60, 9:103), as do many of the jurists [so, why is it so interesting to emphasise this point]?

#### RESPONSE 1

Yes, that’s true, but the point I am making here is a different one. Despite *zakat* being the third obligatory pillar of Islam, most people aren’t aware that it’s a distinct type of *sadaqah* with its own specific role in society. *Zakat* is an explicit form of: (1) mandatory; (2) means tested; (3) time-bound; (4) calculated expenditure for the one’s wealth (subject to qualifying criteria e.g *nisab*, maturity etc.); and (5) It has specific spending categories, as the *Qur’an* states: “...only for the poor (*fuqara*) and for the needy (*masakin*) and for those employed to collect [*zakat*] (*‘amilin*) and for bringing hearts together [for Islam] (*muallafat qulubuhum*) and for freeing captives [or slaves] (*riqab*) and for those in debt (*gharimin*) and for the cause of Allah (*fi sabi lillah*) and for the [stranded] traveller (*ibn sabil*) - an obligation [imposed] by Allah. And Allah is Knowing and Wise” (*Qur’an*, 9:60).

Beyond reciting this *ayah* or knowing about *zakat* as one of the five pillars of Islam, most people are none the wiser about the eight purposes of *zakat* listed in the *Qur’an* and *hadith*, or about assets they hold which may be subject to *zakat* e.g. shares or loans they’ve given out or rental property they’ve invested in etc. This level of disregard for *zakat*, as one scholar bluntly noted, shows that there is “at least an enormous ignorance about *zakat*” (*Fiqh al-Zakah*).

When Allah speaks about *zakat* using the word *sadaqah*, scholars are clear that He is referring to the obligation of *zakat* and not referring to voluntary (*mandub/nawafil*) acts of charity in which all other types of *sadaqah* can be classified with the exception of *sadaqah al-wajiba* (paid as a result of a vow taken) and *sadaqah al-fitr* (payment prior to *Eid al-Fitr* equivalent in monetary terms to a minimum amount of one *sa’* (four double handfuls) of food, grain or dried fruit for each member of the family). In the examples of *sadaqah al-wajiba* and *sadaqah al-fitr*, both words (“*sadaqah*” and “*al-wajiba*”/“*al-fitr*”) are always used together in order to maintain specificity. The fact that commentators of the *Qur’an* (*mufassirin*) and

<sup>4</sup> <http://islamicate.co.uk/keep-your-zakat-at-home/>, published on 31<sup>st</sup> March 2018.

<sup>5</sup> Mamnun Khan, *Being British Muslims: Beyond Ethnocentric Religion and Identity Politics*, 2019, pp. 97-100.

jurists (*fuqaha*) interchangeable use *zakat* and *sadaqah* isn't surprising.<sup>6</sup> This is because individual *zakatable* assets (e.g. sheep, livestock etc.) can also be given away as voluntary *sadaqah* too, and hence the use of the term "*sadaqah*" for *zakat* is entirely consistent with both linguistic and legal usage.

To summarise, saying that Muslims often view "*zakat* as just another type of *sadaqah* (charity)..." is justified on grounds that ordinary Muslims are:

- 1) Typically unaware of the eight categories of distribution; and
- 2) Mistakenly conceive of *zakat* as charity with non-specific objectives.

## 4. CONTENTION 2

"Overwhelming *fiqhi* reasoning established local moonsighting." Can this be backed up? Ibn Abidin and others have said the position of the three madhabs (to the exclusion of the Shafi's) is in favour of global sighting. They say, therefore, the dominant position is of global sighting while local sighting is a minority position.

### RESPONSE 2

The reason for drawing parallels between *zakat* and the UK's moonsighting rupture of the 1990s in the article is simply to make the point that there are important lessons to be learnt. Just like moonsighting,<sup>7</sup> for *zakat*, since 2011 we now have well-established local processes and institutional capability in the UK which we didn't have prior, in light of which it is necessary that we re-examine how we distribute *zakat*.

Yes, it is true that in the classical Hanafi *madhhab* the entire world is considered a single sighting zone (consideration of difference of location – *ikhtilaf al-matali*), and that in the classical Shafi' *madhhab* this is restricted. However, the global sighting principle was never achieved in practice; people did their own local sighting in their own locality throughout history. What earlier Hanafi scholars understood by "global" must not be retro-interpreted through today's idea of globalised telecommunications since it didn't exist then. One reason for this is that other variables relevant to how the global media and information/disinformation flows work would have come into consideration, but since earlier scholars could not have conceived of "global" as we do today, they did not incorporate such variables into their reasoning. In restricting the sighting zone to a reasonable distance of travel, Imam al-Shafi' arguably understood how far news of sighting can practically travel in his time.

Moreover, only evidences to the contrary exist in historical records both in what has been relayed by travellers<sup>8</sup> and also in *hadith* literature. For example, in the narration of Kurayb reported in Sahih Muslim,<sup>9</sup> the Companions of the Prophet witnessed the new Moon of Ramadhan in Shaam a day prior to Companions in Madina, yet despite the news of sighting travelling from Shaam to Madina, come the end of Ramadhan the Companions in Madina continued to keep their fast according to their own sighting for the start of Ramadhan, and defaulted to the principle of a 30-day lunar month. The principle that one goes by their own local sighting has been textually established on this evidence. The same cannot be said about global sighting.

Moreover, there are other factors involved in *fiqhi* reasoning on this issue (*mas'ala*). My intention for bringing them into discussion here is only to illustrate the point that if we want to do *madhhab fiqh* properly, we should look at the fuller and consistent reasoning, including incorporating modern

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<sup>6</sup> See: Al-Marghinani's *Al-Hidayah* vol. 1 for an example of this pattern.

<sup>7</sup> Examples of established bodies with processes for Moonsighting across the UK every month include Wifaqul Ulama ([www.wifaqululama.co.uk](http://www.wifaqululama.co.uk)), ICOUK ([www.moonsighting.org.uk](http://www.moonsighting.org.uk)), New Crescent Society ([www.newcrescentsociety.blogspot.org](http://www.newcrescentsociety.blogspot.org)), as well as individual astronomy enthusiasts and independent groups (e.g. HMNAO).

<sup>8</sup> See: Ibn Jubayr's *Rihla* where he constantly refers to moonsighting to determine the start of the new month.

<sup>9</sup> <https://www.sunnah.com/muslim/13/34>.

developments in *fiqh*, rather than cherry picking points in chaotic appropriation of the historical authority of school-based *fiqhi* reasoning to advance one's own position.

The Hanafi *madhhab* stipulates:

- a) Conditions for negating false/impossible sighting depending on whether sighting happens in clear/or unclear sky. The stringency of these conditions has historically changed from place to place depending on the prevalence of fraudulent sightings etc.
- b) Moreover, astronomical visibility data have now been incorporated as a valid additional test for negating false/impossible sightings. These data points didn't exist 182 years ago at the time of Ibn Abidin (d 1836), but their use has been approved by leading contemporary Hanafi authorities such as Mufti Taqi Usmani, Shaykh Akram Nadwi and many others. This is a good example of how *fiqh* needs to continuously evolve to remain relevant, incorporating and responding to the development of human societies.
- c) You will note that both (a) and (b) are not currently enforced for verifying witness reports in Saudi Arabia. In fact, it is well-documented that historically many false/impossible sightings have been accepted by Saudi Courts making a mockery of eye-witness testimony.
- d) The body of modern Hanafi jurists have given *fatawa* to the effect that people should do their own local moonsighting and not rely on far places like Saudi Arabia. This is the current position of Darul Uloom Deoband, Barelwi ulama, Mufti Taqi Usmani etc.<sup>10</sup> It was also the position of the *fiqh* conference held in Makkah in February 2012 which was attended by the world's leading authorities including Mufti Taqi Usmani in which Motion 6 was passed which stated: "those countries with a Muslim minority who cannot sight the Moon due to some reason then it is necessary upon them to follow the nearest Muslim-majority country or the nearest country with a Muslim community in which the sighting of the Moon is established similar to those Islamic centres and the like."<sup>11</sup>
- e) Compliance to conditions of how news of crescent moonsighting is received from Saudi Arabia in a legally acceptable way is only met for Ramadhan and Shawwal and at no other point in the year, where calendarisation defaults to the Ummul Qura calendar. You will note that the Ummul Qura calendar is based on Moon-birth calculation (which is prior to the time when the Moon is first visible to the naked eye) and, certainly, it is not based on visibility-birth calculations (which reflects visibility by eye and what is most congruent with the phrase "sighting the Moon"). As a result, there is a significant non-compliance to the legal principles of determining the lunar calendar for religious purpose outside of Ramadhan and Shawwal, and ultimately reflects apathy in our communities. I am aware that scholars and activists have written to Saudi authorities requesting changes to the Ummul Qura calendar to make it aligned to visibility sighting calculations, which should help reduce disputes in the UK.

In principle, as I understand, according to the Hanafi *madhhab* (both classical and contemporary), if the above points (a), (b) and (e) are satisfied then arguably there is no legal reason for UK Muslim to not follow easterly countries like Saudi Arabia. However, as explained, those conditions are not currently met. Moreover, it remains to be seen if doing so would in practice lead to unity (locally and nationally), which is a separate matter that requires other factors to be taken into consideration.<sup>12</sup>

## 5. CONTENTION 3

"The Prophet exemplified it as a general principle, and specifically in the example of *zakat* he indicated that *zakat* is to be kept local." According to a narration in *Sahih al-Bukhari*, Mu'adh (RA) would transfer

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<sup>10</sup> For *fatawa* see, [www.moonsighting.org.uk](http://www.moonsighting.org.uk); <http://www.moonsighting.org.uk/en/publications/42-fatawa/208-regional-moon-sighting-fatwa-by-darul-uloom-deoband.html>

<sup>11</sup> Amjad Muhammad (2015), *The Islamic Calendar according to Muslims in the UK*, <http://www.irtis.org.uk/images/Articles/The%20Islamic%20Calendar%20according%20to%20Muslims%20in%20the%20UK%202.pdf>

<sup>12</sup> Mamnun Khan (2015), *Towards a Unified Approach to Crescent Moon Sighting in the UK*, <http://wifaqululama.co.uk/images/pdf/Unified.pdf>

some *zakat* funds of Yemen to Madinah. Transferring *zakat* money has also been reported as the practice of several early Muslims. See: <https://www.basair.net/zakat-purpose-objectives-hanafi-school/>

### RESPONSE 3

Firstly, to clarify, Mu’adh ibn Jabal transferred some<sup>13</sup> *zakat* funds from Yemen to Madinah only because the poor of Madinah were in greater need and it wasn’t all of the *zakat*. It certainly wasn’t like what happens today where only 2-5% of all *zakat* stays in the UK while the rest goes abroad in a highly scattered way. Moreover, these cases weren’t the norm but exceptions based on conditions at the time, and provided there was political union and unity of purpose. Thus, to advance this as an argument for the transference of *zakat* being the norm while discounting conditions like political union, unity of purpose, pooling of *zakat* etc. is inconsistent.

The position of the *Aimma al-mujtahidin* of the major schools of Sunni law is that *zakat* is to be kept local.<sup>14</sup>

School of law	Opinion
Hanbali	<b>Preference is to disburse all of the <i>zakat</i> to the poor of one’s locality.</b> It is <b>not permissible to transfer it to a location where prayer is to be shortened</b> [if one travelled to it]; though if one does so it suffices – unless there are no poor persons in the land, in which case he is to distribute it in the land closest to him (Al-Hajjawi, <i>Zad al-Mustaqni</i> ).
Shafi’	<b>If the eight categories are found in the place where <i>zakat</i> is collected, it is prohibited and invalid to transfer the <i>zakat</i> elsewhere</b> - except if it is being distributed by the head of state, in which case he may transfer it to another place (Ibn Naqib, <i>Umdat al-Salik</i> ).
Maliki	<b>Transferring <i>zakat</i> is impermissible</b> , except if there is a pressing need to do so (al-Bassam, <i>Tawdih al-Ahkam min Bulugh al-Maram</i> ).
Hanafi	See below

With this clarification, I’d like to take a closer look at the specifics of the Hanafi *madhhab* on this *mas’ala*, according to which the starting position is this: “It is disapproved (*makruh*) to send *zakat* of one place/land to another” (al-Quduri, al-Hidaya, al-Thanawi, *Fiqh us-Sunnah* vol. 3, Nadwi vol. 2 etc.). This disapproval from the outset establishes a default position. The question this poses is: why should adherents of the Hanafi *madhhab* commit themselves to an act of subservience to Allah in a manner that scholars of the school have unanimously disapproved (*makruh*), even if the act is permissible?

We can then look for conditions in which the disapproval may be lifted and evaluate the relevant factors in light of current contexts to check the extent to which they would constitute valid grounds for lifting the disapproval. Such conditions are mentioned in various Hanafi *fiqh* texts, which I shall attempt to evaluate below.

#### 1) When there is a surplus of *zakat* after meeting the needs of one’s own locality.

It is estimated that 98% of the UK’s *zakat* currently goes abroad. The 2-5% (c. £2-5m) that is spent in the UK goes nowhere near to meeting the needs of the impoverished among the 3 million British Muslims (c. 5% of the UK population), which is projected to increase to 6.5 million by 2050 (c. 9.7%). Some of the major reasons for this are briefly listed below and others are outlined later in the paper.

<sup>13</sup> The amount of *zakat* transferred by Mu’adh ibn Jabal is not clear, but I have assumed “some” in line with Mufti Zameelur Rahman’s article citing *Fath al-Bari*.

<sup>14</sup> Taken from: Shaykh Surkheel Sharif, *Zakat: Helping the Needy at Home or Just Abroad?*, The Humble “I”, 9 Feb 2015. See also *Fiqh al-Zakat* of Shaykh Yusuf Qaradawi.

1. There are thousands of destitute Muslim families and women every year, as a result of domestic abuse, divorce, lack of awareness/delays in receiving state welfare benefits, unemployment, conversion to Islam, old age etc.
2. Hundreds of maktabs (afterschool Islamic studies classes) struggle to achieve quality and scale because the funding model isn't in place. For example, if prices were to increase to fund quality, parents would be unable to afford it.
3. Around 3000 Muslim children come into foster caring every year, many of whom are put into non-Muslim households because of a shortage of foster carers.
4. Islamic scholarship is yet to truly inspire Muslims in the British experience to achieve a moral, Godly plane.
5. There is a need to provide emergency support in exceptional tragedies like Grenfell Tower where there is failure of state and local authority etc.

## 2) When there are relatives in need of *zakat* in other places.

At the last census in 2011, roughly 47% of British Muslims were born in the UK.<sup>15</sup> By 2018 this has tipped over the 50% mark, which has meant that, arguably, the Muslim population of the UK ought to be considered overall to be second and third generation. For this segment, it is increasingly an exceptional situation rather than the norm as it was for the first generation to have close relatives (in need of *zakat*) in the countries of their parents/grandparent's origin. Even for the first generation, most of their elderly relatives abroad have passed away. Others have come over to the UK or are no longer eligible for *zakat*. For the fourth generation, by 2050, there will be even fewer close relatives abroad, and still fewer with whom they maintain familial relations. There may be pockets of Muslims where this is not the case, reflecting the immigration histories of people from different parts of the Muslim world, but for the vast majority of British Muslims arguably this is already the case in 2018.

Giving *zakat* to multinational charities which spend *zakat* abroad is highly to fulfil this condition (relatives in need of *zakat* in other places) since they don't distribute the *zakat* specifically to one's relatives.

Thus, the objective of maintaining familial bonds among impoverished relatives abroad, which is one of the main reasons for sending *zakat* to other places according to the Hanafi *madhhab*, is not met.

## 3) When there are people needier in a distant place than in one's locality.

Seeing death and devastation in war-torn areas or the aftermath of natural disasters immediately compels us to help those affected. This is of course a sign of a human heart. However, there is still a need to attend to issues of responsibility and accountability towards those in need within the UK. The statistics around poverty in British Muslim communities, I would argue, emphatically dispels the myth that there are few or no poverty-stricken Muslims of the UK in need of *zakat*.

1. The scale of poverty within Muslim communities typically does not make it into the press so much, so we don't get a full sense of the scale of the problem. However, the reality is that many Muslims rely on welfare benefits to make ends meet. Austerity measures and generally Muslims coming from the lowest socio-economic groups means that they have higher than average propensity for poverty and crime. As the Muslim population grows in the UK over time, these problems are likely to persist and perhaps worsen in absolute volume terms. Hence, the idea that Muslims aren't in need of *zakat* in the UK compared to elsewhere is highly questionable on this point alone.
  - a. According to 2017 data, ethnic minorities (both overall and when segmented into Black/Pakistani/Bangladeshi etc.) have higher rates of unemployment and are more likely to be arrested, charged, prosecuted and imprisoned.<sup>16</sup>

<sup>15</sup> *Census 2011: Muslims in Britain*, <http://www.brin.ac.uk/2013/census-2011-muslims-in-britain/>

<sup>16</sup> Source: <https://revisesociology.com/2017/08/30/ethnicity-and-inequality-in-the-uk-2017/>

- b. 33% of all ethnic minorities (BME) of the UK are Muslim, of which 63% are Asian, most of whom will come from a Hanafi background and live in majority Hanafi communities.<sup>17</sup>
- c. As at 2016, 50% of Bangladeshi households were considered to be in poverty, 46% for Pakistani and 40% for Black and African.<sup>18</sup>
- d. Currently, over a third of Pakistani men and over half of Bangladeshi men are paid below the Living Wage (based on the “real cost of living”). The London Living Wage is currently £10.20 per hour and £8.75 per hour outside of London.<sup>19</sup> Even by a measure of the Minimum Wage (£8.21 at 1 April 2019 for 25 and over group), by 2020 there will be approx. >10% of the working population who will be on the Minimum Wage<sup>20</sup> – many of whom will be Muslim.
- e. Studies also show that there is a significant correlation between inequality and debt. Twice as many individuals living in households in the lowest total wealth quintile are in financial debt compared with those living in households in the highest wealth quintile (46% compared with 23%).<sup>21</sup>

While these definitions of poverty don’t necessarily amount to individuals becoming eligible for *zakat*, the point of stating them here is to illustrate that there is already a large pool of Muslims who struggle to make ends meet and therefore have a higher propensity to become *zakat* eligible. The situation is likely to get worse over time with the predicted rise in income inequality and lack of progress on social mobility.

2. It’s also worth bearing in mind that unless tragedies or TV charity appeals happen at the anniversary date (on complete *hawl*/lunar year) for calculating *zakat*, *zakat* payers would either be paying in advance or in delayed payment. While this is permitted, in practice it complicates *zakat* calculations since it introduces the additional complication of taking into account annualised wealth maturation. This is acknowledged in *al-Hidayah* where Imam al-Marghinani states in the chapter on *zakat*, that “it is difficult to state its [*nisab*] completion during the course of the year.” Moreover, the reactionary nature of making *ad hoc* payments of *zakat* struggles to deliver strategic outcomes since charity organisations are constantly fire-fighting somewhere in the world and rarely have long term (>30 year) commitments required to bring about transformative poverty eradication. *Ad hoc* payments also cause an imbalance in attending to more local *zakat*-applicable priority areas.
3. Tragedies also occur in the UK. Grenfell Tower is a good example of why Muslims need the institutional capability of *zakat*.
4. Lastly, I want to make the point about the need to consolidate bonds between people at the local level in an otherwise very diverse and fragmented set of British Muslim communities. Given the ethno-national and ethno-cultural barriers to a more cohesive intra-Muslim experience, it is imperative that we do everything we can financially to create bonds of affection at home in the UK (“right of the neighbour” argument used by in *al-Hidayah*). Otherwise, without solidarity built upon mutual affection of one another, the future, if historical examples are anything to go by, will likely erode subservience to God and confidence to seek guidance from revelation.

#### 4) If there are religious works/scholarship more deserving of *zakat* in other places.

With the growing issues listed below, I would argue that it has never been so important to invest in Islamic scholarship in the UK from the category of *fi sabi lillah*. In fact, it is more advantageous that Muslims of the West take a lead in advancing the intellectual ground work to help Muslims elsewhere.

<sup>17</sup> Source: 2011 Census.

<sup>18</sup> Source: Joseph Rowntree Foundation: <https://www.jrf.org.uk/report/poverty-ethnicity-labour-market>

<sup>19</sup> Source: <https://www.livingwage.org.uk/calculation>

<sup>20</sup> Source: <http://www.resolutionfoundation.org/publications/low-pay-britain-2017/>.

<sup>21</sup> Source: Office of National Statistics -

<https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/debt/articles/householddebtequalities/2016-04-04>.

1. Passivism and inattentiveness to knowing *how* to be Godly. This breaks down broadly into two areas:
  - a. Many Muslims are socialised into the view that “being Muslim” is just an aspect of their genealogical/ anthropological identity; and
  - b. “Practising Muslims” interpret and live out “being Muslim” through ethno-cultural filters.
2. The growth of anti-Muslim hatred in the UK is well documented, as is the negative media portrayal of Islam and Muslims, which drive hate, lead to unconscious bias and reduce people’s likelihood to proactively address racism. However, much of this is due to a lack of understanding of what Godliness means in a deeper way contextualised to life lived in a Western secular liberal context.
3. Populist Muslim activism has a tendency to project Islam as “outrage culture,” “counter culture,” “protest culture,” “political culture” etc. This is often due to a lack of basic understanding of theology, where the *sirah* of the Prophet isn’t taught contextually and Muslims are caught up in skewed priorities or unreal, unproductive or post-colonial narratives.
4. Lack of confidence/religious literacy among Muslims is pervasive.
5. The domination of identity politics in the public realm.
6. The prevalence of “cognitive dissonance” (yet to be fully researched) and as recently shown (in a study by Yaqeen Institute) of “internalised Islamophobia” and “internalised racism” which are likely to persist in the UK too.<sup>22</sup>

**So how do we reconcile the practice of some early Muslims transferring *zakat* from one place to another?**

Firstly, to clarify, there are many examples of when *zakat* was transferred from one region to another but it was returned:

1. *Zakat* sent from Iraq to Syria was returned by Umar ibn Abdul Aziz;
2. Sa’d ibn Jubayr asked *zakat* to be returned from Makkah to where it came from; and
3. The famous *hadith* on *zakat* of Mu’adh ibn Jabal very explicitly states that “*zakat* should be taken from the rich amongst them (*agh-niya-i-him*) and given to the poor amongst them.”<sup>23</sup>

There is another more critical point here which is that the transference of *zakat* funds in earlier periods was between two area/regions that together formed part of a single polity under where there was a unity of purpose amongst the different governorships about their own respective overarching role and where *zakat* fitted into that. However, today this isn’t the case and instead, what we get is haphazard redistribution across regions by charity organisations that often have little understanding of using *zakat* transformatively, and simply use it as another form of fundraising.

To summarise, in light of these arguments, the Hanafi disapproval for transferring *zakat* from one place to another is very reasonable. However, it is clear that the conditions for lifting the disapproval for the vast majority of British Muslims are not met.

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<sup>22</sup> *Exploring the Faith and Identity Crisis of American Muslim Youth*, <https://yaqeeninstitute.org/en/omar-suleiman/exploring-the-faith-and-identity-crisis-of-american-muslim-youth/>

<sup>23</sup> <https://sunnah.com/bukhari/24/61>

## 6. CONTENTION 4

“The point of *zakat* is to ensure that those who aren’t beneficiaries of commerce or social policy can be attended to in the places in which *zakat* is collected.” Has any pre-modern scholar articulated the “point of *Zakat*” as being such?

### RESPONSE 4:

My reference to “the point” here wasn’t to suggest that it was the only point. Nevertheless, it stands to reason that the point of helping people through acts of giving/*sadaqah* is, to state the obvious, because they’re in need of it in some way, which can logically only happen if they’re not benefitting from social privilege, employment, commerce or the welfare provisions of the state etc. It is well known that “The best of *sadaqah* is that which fulfils the greatest need, or is a means to the greatest benefit.” Consideration of benefit (*maslahah*) for recipients of *zakat* is essential in evaluating the performance and efficiency of *zakat* distribution,<sup>24</sup> where *zakat* if it is institutionally distributed acts as a social security technique for alleviating poverty, based on a membership of being Muslim to Allah.<sup>25</sup>

Earlier Muslims were very aware of the principle of locating the objectives of law, including natural law. Scholars of the Hanafi *madhhab* were prominent among those who realised that good, benefit and ethics are rationally recognisable in the way creation has been created and the role of revelation is, quite simply, to finesse our human qualities.<sup>26</sup> Imam al-Qurtubi (1214-1273), for example, held *zakat* to be fulfilling the needs of Muslims as well as assisting and strengthening Islam.<sup>27</sup> As such, I would question if there is any need for a pre-modern scholar to explicitly state something which is so evidently true. Such uncontextualised reading of *fiqh* is not a *Qur’anic* virtue but, arguably, what remains when there is a narrow understanding of how *to do* scholarship.

In any case, locating the intent of the Law Giver is an important development in the field of *al-maqasid al-shari’ah* where such discussions can be found in the works of Imam al-Juyawni, Imam al-Ghazzali, Imam al-Shatibi etc. This paradigm spawns from the way Allah speaks about how His intent as Law Giver resonates with what is in our interest, if only we took care to ponder (*tadabbur*) over His creation and made proper use of the intellect (*‘aql*) and sense perception.

It is likely that if the likes of Ibrahim al-Nakha’i, Hammad Abi Sulayman, Abu Hanifah, Abu Yusuf, Muhammad al-Shaybani, Zufar al-Hudhayl, Hasan bin Ziyad etc. were alive today and living in the UK, arguably, they would be compelled to factor into their reasoning the impact of the free-rider effect in Muslim majority countries where *zakat* distribution isn’t organised properly, and is, instead, subsidised by Muslims in minority Muslim countries where both Islam struggles to survive and Muslims, by virtue of their faith identity, remain marginalised. Early Hanafi scholars were generally institutionalists in their political philosophy and held close relationships with the state courts. This, one can confidently speculate that they would have disapproved of the status quo where Muslims of the UK send *zakat* abroad.

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<sup>24</sup> Rahmatina A. Kasri, *Maqasid al-Shariah and Performance of Zakah Institutions*, Kyoto Bulletin of Islamic Area Studies, 9 (March 2016), pp. 19–41.

<sup>25</sup> Najmul Islam (1984), *Social Security System of Islam with Special reference to Zakah*, International Centre for Research in Islamic Economics King Abdulaziz University Jeddah - Saudi Arabia. <http://www.zakat.gop.pk/system/files/zakat%20social%20security.pdf>

<sup>26</sup> See: Arnold Yasin Mol, *Rational ethics and Natural Law in classical Islam: Examples from the Hanafi school*, Fahm Institute.

<sup>27</sup> See: Mufti Faraz Adam, *Our Zakat Distribution Strategy – Juristic Evidences and Explanations*, NZF, May 2018.

## 7. CONTENTION 5

**“There was also an uncontested assumption that *zakat* was only to help the ‘poor’ and ‘needy’ (and nobody else).” But this is the Hanafi position (see above link) - that *zakat* belongs to the poor and needy and nobody else. Wouldn't presenting it in the manner you have effectively exclude the Hanafi position from the discourse? Is this exclusionary discourse justified?**

### RESPONSE 5

#### **The case for using all eight categories of *zakat* by Muslims of the UK.**

Contention 5 is not properly thought-out. The classical Hanafi *madhhab* only discounted the category *muallafat qulubuhum* (those whose hearts are reconciled) based on the argument that the need to strengthen Islam was abrogated after the Prophet's time (I will come onto this point later). Apart from this, the other seven categories were accepted in various guises with some differences of emphasis between scholars of the Hanafi *madhhab*. However, the situation which Hanafi scholars have got into today is not a position of strength but inability to deal with poverty in purposeful way on many levels which I shall now provide insights into.

**a) More research is needed to uncover the links between the evolution in the restricted way *zakat* distribution has come to be understood and applied today and the impact of the historical breakdown of *zakat* as an institution.**

Surveying some Hanafi *fiqh* texts and interpretations from classical/post-classical periods to today, a few observations can be made:

1. There is a general tendency today to minimise the number of *zakat*-eligible categories. For example, in earlier primary texts like al-Quduri, all eight categories are clearly listed (with *muallafat qulubuhum* noted as dropped), but if you look at Moulana al-Thanawi's *Heavenly Ornaments*, only the categories “needy” (*faqir*), “destitute” (*miskin*) and “traveller” are discussed. In other places you can see selective discounting of categories on different grounds.<sup>28</sup> What is evident in all of this is a lack of standardised Hanafi work on the *fiqh* of *zakat* holistically looking at modern questions/issues pertaining to institutional *zakat* distribution relevant to the UK.
2. In *fatwa* databases of large Islamic seminaries there are many highly peculiar and exploitative workarounds suggested for *zakat* distribution. To quote one example, it's been suggested that a wife can pay off the husband's debt with her *zakat* by giving the *zakat* to a poor person whom they convince to pay off the husband's debt in anticipation of immense reward from God.<sup>29</sup> Such edicts are quite prevalent and are tantamount to abusing both the spirit and letter of Islamic law.
3. Similarly, there are overly restrictive *fatawa* prohibiting the use of *zakat* for paying administration costs of *zakat* administration (*'amilin*) on the assumption that only an Islamic government can make this payment, and to do so as wages and not as *zakat* payments. It is also implied that *zakat* charities as administrators are incapable of self-governance or that they are not under the purview of independent oversight and therefore cannot be entrusted with *zakat*<sup>30</sup> (more on these points later).
4. Interestingly, the tendency to reduce the categories of *zakat* is less prevalent in Hanafi *fiqh*-based professional organisations such as Islamic banks which have capability to collect and

<sup>28</sup> 6 categories mentioned here: <https://www.shariahboard.org/fatwa/65>; A *mileen* (*zakat* workers/administration) discounted here:

<sup>29</sup> <http://www.darulifta-deoband.com/home/en/Zakat--Charity/23376>

<sup>30</sup> Mufti Taqi Usmani, *Use of Zakat for Administrative Expenses of Charities* [https://www.albalagh.net/qa/zakat\\_administration\\_expenses.shtml](https://www.albalagh.net/qa/zakat_administration_expenses.shtml).

- distribute *zakat* (e.g. Meezan Bank<sup>31</sup>). However, these are not bona fide *zakat* collectors and only retain the *zakat* element of their client's assets if they have opted into the scheme.
5. The same is true when Governments define *zakat* distribution - they take a more pragmatic and broader view. For example, in Pakistan, under the *Zakat and Ushr Ordinance 1980*, "Institutions" which are classified as being eligible to provide "assistance to the needy, the indigent and the poor particularly orphans and widows, the handicapped and the disabled," are defined as "*deeni madaris*, educational, vocational and social welfare institutions, public hospitals, charitable institutions and other institutions providing health care." Governments of non-Hanafi countries such as Kuwait take a broader approach to using *zakat*.<sup>32</sup>
  6. There have been subtle changes over time in the language and terminology used around *zakat*, such as use of the word "receive" in preference to "distribute" or "collect." Such language usage reflects the non-institutional, privatised way in which Muslims do *zakat* in recent centuries in the Indian Subcontinent where the Hanafi *madhhab* predominates (though it is also endemic elsewhere).
  7. Beyond rhetoric, there is little to no evidence of scholars working towards institutional collection and distribution of *zakat* either through their Government or charity organisations in Muslim countries in their strategy for eradicating poverty. This is the case despite there being "low-hanging" opportunities to improve institutional collection in Muslim countries. For example, *zakat* is not compulsorily collected by Religious Ministry of the Government of Bangladesh into its *Zakah Fund*. Of what it does collect through voluntary contributions is scant.<sup>33</sup> In the case of Pakistan, with state laws for *zakat* collection (*Zakat and Ushr Ordinance, 1980*), use of it is entirely voluntary and most people exempt from having *zakat* deducted from their bank accounts in Ramadhan (due mainly to a culture of mistrusting Government) and prefer to pay individually.<sup>34</sup> From all of this, it is clear that there is a history of inaction pertaining to institutional *zakat* among Muslim laity, scholars and governments in Muslim countries in which a large portion of British Muslims have genealogical roots.
  8. Even for individual distribution, *zakat* is usually treated by scholars (both in the UK and abroad) with low priority, in sermons for example, yet Allah mentions *zakat* alongside *salah* more than He does of Hajj or fasting.

#### **b) Using *zakat* to remove hardship and debt is already accepted by some Hanafi educational institutes in the UK.**

One particular category I want to point out to illustrate the multi-dimensional use of *zakat* to fund student hardship bursaries, particularly in view of the British Muslim community's general unwillingness to prioritise Islamic education spending. This is a good example of mining the *Shari'ah* wisely and rationally to solve problems in our context. If this wasn't already the case, it would certainly call into question the many prominent Hanafi institutes seeking *zakat* donations, presumably in the *fi sabi lillah* ("in the way of God") category, to fund Islamic learning, to support scholars, and thereby indirectly freeing educational institutes from debt.

The argument that scholars and students would credibly fall under "Poor" (*fuqara*) or "Needy" (*masakin*) based on restrictive view seems weak, given that students or scholars could either take out loans, get support from parents, or seek employment elsewhere, as is the norm. Of course, this doesn't necessarily prove anything in and of itself, but it's an interesting observation that some Hanafi scholars of the UK, in favour of their interest, have in practice already adopted a pragmatic position.

<sup>31</sup> Dr Imran Usmani and Bilal Qazi, Meezak Bank's *Guide to Zakah: Understanding & Calculation* <https://www.meezanbank.com/wp-content/themes/mbl/downloads/zakat.pdf>.

<sup>32</sup> See: independent government authority Kuwait *Zakat House*, <https://www.zakathouse.org.kw/indexe.aspx>.

<sup>33</sup> [http://ibtra.com/pdf/journal/v7\\_n2\\_article1.pdf](http://ibtra.com/pdf/journal/v7_n2_article1.pdf).

<sup>34</sup> *Zakat and Ushr Ordinance 1980*, <http://www.zakat.gov.pk/system/files/zakatushr1980.pdf>; Mohammad Hanif, *Of Allah, Charity and Taxes* (June 2017), <https://www.nytimes.com/2017/06/23/opinion/pakistan-ramzan-ramadan.html>.

It is in our strategic interest to recognise the possibilities for legitimate applications for *zakat* to further the cause of learning and scholarship through institutional distribution. The consequence of today's poor knowledge culture may not trigger the sense of regret until we see the results of inaction in the next generation by when it will be too late for our generation to deliver on our responsibilities. Undoubtedly, with social conditions concurrent it can be quite difficult to extract ourselves from it to take a robust look at the problem. The onus is thus on us to proceed on the basis of being rational and proactive. Two examples of novel applications are offered below.

1. Paying for full-time students from poor families. This will not only remove their debt burden helping them to break the cycle of structural social mobility barriers in the UK, but also facilitate the study of subjects like sociology, philosophy, anthropology, literature which is, arguably, essential for Muslims in their subservience to God to contextualise and respond to contemporary society in a productive and informed way.
2. Paying to kick-start the much needed Islamic scholarship contextualised to the UK. What holds back graduates of Islamic studies is usually financial insecurity. Most of the best scholars are on a shoe-string budget. However, unless we have our best scholars and thinkers helping us to make Godliness (*taqwa*) relevant through a contextualised reading for us in the UK we will no doubt continue to struggle as a community.

### **c) Using *zakat* for 'amilin (those employed to collect) category is not dependent on Islamic government**

Most Hanafi scholars today discount giving *zakat* the 'amilin category on the assumption that only the Muslim state has the right to pay administrators of *zakat* with *zakat*, in the absence of which it is prohibited.

However, such uncontextualised reading of legal texts is highly problematic. The reality is that the *fiqh* on this *mas'ala* which scholars often refer to was formed in classical and post-classical periods when it was the accepted norm for the state to organise *zakat* collection/distribution through the central entity of the *Bait al-Mal*. With such legally-enforced, institutional arrangement in place, any involvement of unsanctioned non-state actors in the process would have undermined the authority of the leadership/state. The risk of this was great since non-state actors (as bandits or quacks) could in all likelihood justify and fund their existence by usurping the very *zakat* funds which they sought to collect. Historical records show that Muslim societies in pre-modern times fought hard against corrupt individuals and usurpers of markets and endowments (*awqaf*).<sup>35</sup> Hence, in order to maintain security and socio-political order, it was entirely reasonable for scholars, as judges and high-ranking officials of the court system in the classical and post-classical periods, to prohibit non-state actors from attempting to gain access to *zakat* funds in this way.

Moreover, when Allah mentions "collectors" ('amilin) Muslims implicitly understood it at the time as being under the purview of their leadership since it was the Prophet, as leader, who instructed the collectors. This was also the understanding of the Companions. Abu Bakr, for example, in his capacity as leader (*khalif/amirul mu'minin*) waged war against nomadic groups that refused to pay *zakat* because they considered *zakat* to be payable only to the Prophet and not to anyone after his demise. When asked by 'Umar about waging war, Abu Bakr said: "By Allah, I will fight whoever makes a distinction between *zakat*, for the *zakat* is due on property ... except for its due"<sup>36</sup>

Moreover, the fact that the Prophet instructed the Companions to collect *zakat* so that it is brought into a pool and not merely left to the vagaries of individual distribution is instructive for us today. Pooling *zakat* is an established legal way of the Prophet (*Sunnah*), and it was necessary to allow

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<sup>35</sup> See Umer Chopra (2008), *Muslim Civilisation – The Causes of Decline and Need for Reform*.

<sup>36</sup> Reported in the Sahihayn, quoted here from Imam al-Suyuti's *The History of the Khalifahs who took the right way*.

focussed and prioritised *zakat* distribution so that, for instance, the greatest needs could be fulfilled, or the greatest benefit could be realised.

As Muslim societies developed and became structured more bureaucratically, particularly in urban areas, as early as the Umayyad period, the function of collecting *zakat* became a full-time job of officials in different localities. These officials assessed the *zakatable* assets of Muslims and collected the due amounts. There was also the establishment of the office of *al-Ashir* who collected *zakat* from Muslim traders (and *ushri*/land tax) at checkpoints on major trade routes.<sup>37</sup> It was essential to pay them from *zakat* as Allah had already sanctioned, not necessarily because they were already “poor” (*faqir*) or “needy” (*miskin*), but to give them a livelihood without which they would have been forced to look for work elsewhere or subsequently become eligible for *zakat*. It is clear from this that Allah instructed the use of *zakat* for paying *zakat* administrators, and not from a separate source. It was Allah’s intention, arguably, to make *zakat* into is a self-sustaining institution that had the inherent potency to effectively take care of the impoverished among Muslims.

However, our context in the UK today is very different on a number of counts:

1. Apart from countries like Kuwait and Malaysia, there are few governments of majority Muslim countries who enforce the payment or collection of *zakat*. Many socio-political reasons have been put forward to explain how societies have ended up “doing *zakat*” in this way today.<sup>38</sup> By consequence, it has largely relegated *zakat* to a purely private and individual concern, with each *zakat* payer required to voluntarily act in their individual capacity to help the poor and needy. In turn, it has meant that *zakat* has failed to be pooled and used as a systematic tool for solving poverty or investing in areas of society to strengthen Islam. Unfortunately, this is exactly the situation in most Muslim countries, where, typically, we see a gross lack of solutions to welfare problems using God’s guidance in the process. The narrow and restrictive *fiqhi* considerations proffered by many have only hindered Muslims and Allah’s guidance from becoming more relevant to society.
2. Moreover, in the case of UK Muslims, living as minorities in a majority non-Muslim country, the *fiqhi* understanding on this *mas’ala* is not relevant, since there is no *Shari’* requirement for the UK government to manage *zakat*. However, the obligation of *zakat* still remains, and by implication, the obligation to fulfil its role for UK Muslims also remains.
3. Unlike in classical and post-classical periods there were no reputable charity organisations bearing the responsibility of the *Bait al-Mal* to collect and distribute *zakat*. It meant that the *fiqh* at the time did not need to futureproof developments in society or *zakat* administration. Even if for argument we accept that there is an excellent example of an Islamic government/legal system today, the reality is that it would still have to delegate *zakat* administration to an interior/home office/religious ministry/department where people would have to be employed full-time, and whose very function would inevitably mirror the work of reputable *zakat*-focussed charities. Thus, it is possible to draw *Shari’* analogy (*qiyas*) between administrators of *zakat* in classical/post-classical periods and modern day institutions dedicated to *zakat* distribution.
4. On the question of the risk of usurping *zakat* by well-established UK registered charities there are of course many checks and balances based on UK Charities Law, such as the prohibition of profiteering and requirement to publish audited accounts each year showing a breakdown of spend. Moreover, public scrutiny is much more prevalent today than it was in classical/post-classical periods which forces charities, as legal entities, to have greater levels of self-governance and independent oversight. These restrictions significantly mitigate the risk of usurping *zakat* funds by those employed to administer *zakat*.

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<sup>37</sup> Ahmed Habib (2004), *The Role of Zakah and Awqaf in Poverty Alleviation*, Occasional Paper No. 8, Islamic Research and Training Institute/Islamic Development Bank, Jeddah.

<sup>38</sup> See: Abdulhaqq Bewley, *Zakat - Raising a Fallen Pillar*.

5. Moreover, for the UK, it's possible for a well-managed charity organisation to pay its operating costs through Gift Aid.<sup>39</sup> They can also set policies restricting the amount of *zakat* they could have access to for administration spend. Such policies would be accountable to trustees or independent *Shari'ah* advisors, and subjected to public scrutiny in annual published accounts. These measures further mitigate the risk of usurping *zakat* by charities.

**d) Using *zakat* for *muallafat qulubuhum* (“reconciliation of hearts”) is not abrogated but determined by context.**

On the question of using *zakat* for *muallafat qulubuhum* (“reconciliation of hearts”), I follow the opinion of my teacher Shaykh Akram Nadwi (Hanafi) and other authorities. I agree with them that *muallafat qulubuhum* was not “abrogated” but its application is intractably dependent on conditions in society. As such, it is applicable today for us in the UK since Islam and Muslims remain in the lowest socio-economic class (on almost every measure possible), and we find ourselves in a desperate need to reconcile the hearts of:

1. Those who are close to becoming Muslim;
2. Those who are new Muslims;
3. Those who may do harm to Muslims, to whom giving *zakat* stops them from harming Muslims and or aids Muslims flourishing in the UK.

Admittedly, the *Shari'* parameters and test conditions to be adopted for each group has yet to be thoroughly researched and determined by scholars. A few areas have been mentioned such as giving aid to non-Muslim countries, persons, organisations, in support of research, funding media organisations to teach and defend Islam etc. The psycho-philosophical reason (*hikmah*) which some scholars have suggested for Allah specifically listing this category is that there will always be people who will only listen to money, favour and the generosity of others.

The *fiqhi* position that has reached us on *muallafat qulubuhum* has come from classical and post-classical Hanafi jurists, whose position was in line with and contextualised to the conditions of their time and place. Such *fiqh* was developed at the time of Umayyad, Abbasid and early-mid Ottoman periods, when Muslims were by far the most dominant group in society - both as minorities and in majority geographies (see table below). This gave them a natural strategic leverage over all other groups which worked to reinforce the leverage that was already inherent to Islam as a civilising force, which, in turn, meant that the effective cause (*'illa*) for *muallafat qulubuhum* was not present.

Jurist	Period	Location	Political context
Abu al-Husayn al-Quduri	907- 973	Iraq	Abbasid rule from 750 followed by Buyuid in 945 until Seljuqs in 1055. Administrative institutions developed by Abbasids were largely retained despite Abbasid weakening and rise of the Buyuid empire which controlled 3 main regions, Fars, Ray and Iraq.
'Ala al-Din al-Kasani	d. 1191	Central Asia	Seljuq dynasty reunited most of the former Abbasid empire, but lacked the same rigour of organisational and institutional capability, and was more decentralised.
Burhan al-Din al-Marghinani	d. 1197		

Today, however, there is no such leverage for British Muslims. Islamic institutes and scholars lack the necessary skills and insight to engage in the political realm, Islamic law is not recognised in British

<sup>39</sup> Gift Aid is a scheme enabling UK registered charities to reclaim tax (25%) on a donation made by a UK taxpayer, effectively increasing the amount of the donation. This injection of money by the Government can be used, and often is used, to fund admin costs. See: *Tax relief when you donate to a charity*, <https://www.gov.uk/donating-to-charity/gift-aid>.

law (beyond perhaps *nikah* contacts and Islamic finance transactions), and possesses little persuasive power to influence social policy and investments to help society flourish. Consequently, God's guidance remains marginalised and unable to meaningfully engage with the big conversations of our time on all manner of social, economic and political questions.

Shaykh Akram Nadwi cites the famous Hanafi jurist Imam al-Kasani's definition in *Bada'i as-Sana'i* that "reconciling people's hearts group only exists when Muslims are weak," and asserts that, "Nowadays, when Islam has again become weak and therefore *zakat* can be given to this group in order to reconcile their hearts to Islam."

At the very least, given the existence of such authoritative views of earlier and contemporary scholars, it cannot be just a *bona fide* "take it or leave it" position of the Hanafi *madhhab*. The integrity of the *madhhab*, I would argue, lies in recognising that: 1) earlier jurists dropped the category because their context warranted it; and 2) crucially, they didn't then overstretch and make it an absolute outcome (*qati'*) for all of time to come. Aside from being a blasé approach to legal thought, it is worth being cognisant of the fact that that seeking congruence and reconciliation of thought (*'aql*), text (*naql*) and context must always exist to embody Godliness in our time.

Below are compelling arguments for the contextual development of the Hanafi *madhhab* on this *mas'ala* in the UK:

1. The suggestion that *muallafat qulubuhum* is abrogated is not a classic case of "abrogation" (*naskh*) of the *Qur'an* by the *Qur'an*. In any case, if for the sake of argument, we accept "abrogation" as an appropriate term, it is at most "abrogation" of the *Qur'an* by the actions of the Companions based on socio-economic and political conditions at the time of Abu Bakr. It is also the case that as an "abrogation" it isn't among the well-known lists of abrogated versus (e.g. by al-Suyuti or Shah Waliyullah). Moreover, many *tafasir* discuss the differences of interpretation of the categories, and explore various matters such as whether the Prophet paid non-Muslims from *sadaqah* funds or war booty (*ghanima*) etc. but the exploration of abrogation has not been presented.
2. The question then is if we were to accept that the category is "abrogated" at the time of Abu Bakr based on conditions in his time, it would be logically equivalent for the possibility for conditions to change such that the "abrogation" is lifted.
3. The convention of scholars issuing *fatawa* according to the dominant view of a school (*mufta bihi*) when there is an existing ruling that is applicable is not a valid argument here. This is because, today's Hanafi position cannot be simply about re-issuing the position of *muallafat qulubuhum* as being "abrogated" (*mansukh*), since the effective cause (*illa*) upon which the ruling of its use depend is itself not applicable to our context in the UK (see below table). Instead, the effective cause (*illa*) is already well-established in the statement of Umar (*al-mansur 'alayh*): "...Indeed, the Prophet used to give you in order to reconcile you to Islam, but today God has strengthened this religion..."<sup>40</sup> Of course, the cause of the strength of Islam may or may not be evident in majority Muslim countries, but the same cannot be said of the UK. This is because the British Muslim community is unique in its context: it is a relatively young, very diverse set of communities with different histories and interests, and faces a unique set of challenges in being among the lowest socio-economic groups, facing a rise in anti-Muslim bias, racism, and unreconciled modernity etc. Contextualisation thus plays a significant role in understanding this *mas'ala*.
4. Between the Sunni schools of law there is no consensus. Imam Malik's view is that *muallafat qulubuhum* has been dropped because there is no need for it but that it can be reinstated by the ruler if there is a need. Imam al-Shafi's view is that it is not "abrogated" even in his time. Imam Abu Hanifah and Imam Ahmed were of the view that it was "abrogated." However, differences of opinion exist among jurists of the Hanafi *madhhab*. For example Imam al-Kasani

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<sup>40</sup> Yusuf al-Qaradawi in *Fiqh al-Zakah*, and Imam al-Kasani refer to it.

has adopted the position more akin to Imam Malik, while others have stated that *muallafat qulubuhum* has been “dropped” without suggesting that it is like an absolute abrogation applicable for all time to come (like the prohibition of alcohol in *Qur’an* 5:90). This was also the opinion of Umar Ibn al-Abdul Aziz.<sup>41</sup>

5. “The action of ‘Umar” in the *hadith* used to justify dropping of *muallafat qulubuhum*, “does not indicate annulment of this category, since those whose hearts were reconciled in a certain era may not be needed in another era. At each time, the determination of the need to reconcile hearts and the specification of individuals to be included is decided by the executive authority according to what benefits Islam and Muslims.”<sup>42</sup>
6. Conditions have changed to the extent that the situation of UK Muslims (see table below) and the experience of Islam generally across the world is not necessarily based on what Allah wants of us, as understood from an in-depth, holistic reading of Allah’s revelation in a manner that is relevant to our time and place.

Conditions at the time Umayyad, Abbasid and early Ottoman periods	Conditions in the UK in 2019?
Islam was perceived and experienced as a civilising force for good, justice and inherently trusted.	People look to Western standards, and Islam is seen as unable to inform and productively co-operative in the public realm. Revelation is increasing seen as a private matter for the mosque, fixed into ritualism and ethno-cultural filters.
A vibrant learning and research culture had a dominating effect.	There is little quality scholarly output that then informs Muslim polity, and there is little investment in research by UK Muslims.
Revelation had a more direct input into society, both in public and private realms.	Muslims are a very small minority, with poor religious literacy and where solidarity is fragmented across ethnic groups.
<i>Zakat</i> was collected through institutional channels and regulated under state law.	<i>Zakat</i> is not collected institutionally, but is left to individual conscience and distribution.
Institutes and standards across all domains of society.	Muslims see <i>‘amal al-salihaat</i> as “doers of good” in a very narrow sense, limited mainly to ritual worship.

7. Given that it is already a legitimate position of other *madhhabs* (*madhahib*) to spend *zakat* only in one’s locality, and that it is a convention in Hanafi *usul* to look to other *madhhabs* for a ruling where deemed appropriate, it would be far more useful of Hanafi scholars to at least recognise that spending a meagre 2%-5% of UK *zakat* in the UK is wholly inadequate. Thus, not doing so, arguably, risks:
  1. Unnecessarily obfuscating Allah’s law;
  2. Unnecessarily narrowing avenues for helping Muslims flourish in the UK; and
  3. Catalysing what is already a phenomenon well underway in the diminution of the authority British scholars trained in the Hanafi *madhhab*.

<sup>41</sup> Abu Jafar ibn al-Dawdi, *Kitab al-Amwal*.

<sup>42</sup> Yusuf al-Qaradawi, *Fiqh al-Zakah*.

## 8. CONTENTION 6

Another point that can be added is about the following: “One difference perhaps is that while foreign muftis almost unanimously wrote edicts (*fatawaa*) in favour of local moonsighting which, as it so happened, far too many British Muslims simply ignored, for *zakat* there is a tendency for some muftis (both in the UK and abroad) to argue for globalised distribution. It turns out there is inherent self-interest: foreign *zakat* represents a rich source of inward investment to fund foreign madrasahs and orphanages etc.”

He is basically saying muftis give their fatwas based on self-interest not based on thorough research and presenting what they believe to be the position of *Shari'ah*. Could the same not be said about him - he is promoting NZF, he is friends with NZF CEO, so there is obviously self-interest to argue that *zakat* is paid locally - so that NZF workers can fill their pockets with *zakat* money!

### RESPONSE 6

This is a not the case. However, before we go into it, it's worth making the point that a degree of self-interest is quite natural. Self-interest is, after all, on a spectrum just like *eman* (faith) is and must necessarily be involved to drive us (to be self-interested) in subservience to Allah and to crave His help and guidance. Hence, I would argue that one can do *Shari'ah*-based reasoning with thorough research and still have self-interest justifiably involved.

The more pertinent question is, is it reasonable self-interest and does it serve as “just” and “truthful” if it justifies a free-rider<sup>43</sup> effect, while Muslims of the UK struggle with just 2% of *zakat* spend, and Muslims in Muslim countries despite managing significant GDP growth in recent years (Bangladesh – approx. 6% consistently since 1994<sup>44</sup>; Pakistan – approx. 4% since 2011<sup>45</sup>) fail to organise their *zakat* to look after their own communities local to them. Moreover, the pooling of *zakat* for local spending is the only established process that stands up to Islamic legal principles for our context in the UK, and which was acted upon for the most part of Muslim history.

On these questions, I believe the self-interest of sending *zakat* abroad is not justified or expedient, and arguably does more damage than good in the long run on the following grounds.

1. Perpetuates a dependency culture in Muslim countries.
2. Removes the responsibility upon Muslims in their own locality/country to fulfil duties Allah has obligated on them. *Zakat* is an Islamic faith-based institution which is underutilized for poverty reduction in most Muslim countries. Since *zakat* constitutes one of the pillars of Islam, it is logical to assume that policy makers among Muslims should pay serious attention to it. However, sadly, this is not the case for many Muslim countries.<sup>46</sup> Global consciousness, particularly for communities that self-identity as diaspora, often scatters focus from the local to a distant place in which, on account of not living there, they have far less lived awareness and influence in. Yet, the imperative as established by reason, logic and the *Sunnah* is, ordinarily, to look after ones immediate environment (flock) first before venturing out.<sup>47</sup>

Many Hanafi jurists disapprove of giving *zakat* to beggars, not only for respectability reasons, but also because it creates dependency and free-rider effect. To clarify, also, this paper is not arguing that we shouldn't give other forms of *sadaqah* to charitable initiatives abroad, which of course we

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<sup>43</sup> Free-rider effect in this context is that British Muslims pay for poverty in countries where Muslim refuse to organise and solve problems in their own locality despite the potential to do so.

<sup>44</sup> <https://tradingeconomics.com/bangladesh/gdp-growth>

<sup>45</sup> <https://tradingeconomics.com/pakistan/gdp-growth>

<sup>46</sup> Isahaque Ali and Zulkarnain A. Hatta (Jan 2014), *Zakat as a Poverty Reduction Mechanism Among the Muslim Community: Case Study of Bangladesh, Malaysia, and Indonesia*.

<sup>47</sup> <https://sunnah.com/adab/10/1> All articles from websites extracted 9<sup>th</sup> to 19<sup>th</sup> April 2018.

should. Instead, the focus on this paper is on the broader question of how we institutionally and strategically help Muslims of the UK deal with the challenges that they face.

## 9. Reflections on the role of charities in building *zakat* standards

The development of large Muslim charity organisations in the UK since the 1980s has been driven mainly by the growth of the UK's Muslim population, the increase in disposable income of British Muslims and the reduction in personal charitable donations through personal connections in the burgeoning millennial generation.

As these organisations have got bigger and more organised, they have also become more intensely self-promoting to meet ever-growing fundraising targets. Such attitudes have inevitably heralded marketing campaigns that have competitively positioned local versus distant *zakat* distribution using the argument that Muslims in poorer countries are more in need of our *zakat* from the UK. However, as recent campaigns have shown, such an approach confuses and divides British Muslims and drags them into the politics of *zakat* in much the same way that has happened with moonsighting. Charities therefore have a moral obligation to be sensitive to the way they communicate their message.

It's also likely that as awareness of the plight of UK Muslims becomes clearer, there will be greater urgency and demand to spend *zakat* locally. In response, charities that are not already doing so will inevitably have to rebalance the share of *zakat* spent between local and distant.

However, unless the capacity of distribution channels/projects and their quality and scale improve, the transformational potential of spending *zakat* in the UK will remain largely ineffective. Charities that collect *zakat* therefore have a responsibility to work with other organisations to create a greater depth and breadth of projects. Without this, it will difficult to see how more of the UK Muslims *zakat* can be spent in the UK. Alongside this, it is also imperative that charities avoid wastage and duplication of resources not only because *zakat* is a trust (*amanah*) and must be distributed properly and effectively, but because of the risk of corruption and malpractices.

The over-focus on *zakat* by charity organisations in Ramadhan, through marketing campaigns, fundraising events and lectures, as opposed to focusing throughout the year, has the unwitting effect of consolidating some of the misconceptions about *zakat*. It also makes *zakat*-giving reactionary and contingent on the effectiveness of marketing campaigns as opposed to being intrinsic to one's being Muslim to God for the upkeep of society. For example, children should learn about *zakat* and how to discharge the obligation of *zakat* from a young age and get cultivated into the habit of doing so, rather than as a community relying on Ramadhan fundraising campaigns to cajole Muslims into paying *zakat*. While, that's not in itself a bad thing, it certainly isn't a strategic direction Muslim communities should aim for.

On account of these considerations, it's likely that we will over time see an evolution in how we do *zakat* and on what *zakat* is spent as demand and supply sides balance.

Finally, *zakat* has historically gone hand-in-hand with *waqf* endowments in Muslims societies. This is partly because the scope of *zakat* does not cover the wider needs of Muslim, such as, in the case of the UK, building spaces for women in mosques, afterschool Islamic education for children, developing skills and training for women etc. As such, the development of *waqf* endowments will be important in complimenting the role of *zakat*.

## 10. Recommendations

In view of discussions in this paper, we recommend the following:

**Recommendation 1** | British Muslims should pay more of their *zakat* to reputable UK-based institutes that focus on spending *zakat* in the UK.

**Recommendation 2** | *Zakat* institutions should adopt a distribution strategy in a balanced way, proportionate to the needs of Muslims of the UK, in accordance with the eight *zakat* categories listed in the *Qur'an*, distribute more *zakat* in the UK, and rebalance their focus on *zakat* throughout the year.

**Recommendation 3** | *Zakat* institutions should collaborate with each other to bring scale and capacity, and overall see each other as partners in combating poverty and community building, including pooling *zakat* across charities where necessary, follow a broad standard and reframe from aggressive, competitive marketing.

**Recommendation 4** | British Muslims should make well thought-out *zakat*-eligible funding proposals to *zakat* institutions as vehicles for delivering *zakat*.

**Recommendation 5** | Charities should increase capacity for delivering *zakat* funds by (a) supporting *zakat* recipient organisations and (b) developing well thought-out new initiatives of their own.

**Recommendation 6** | British Muslims should seek to create *waqf* endowments with scale and the right governance and strategic objectives so that they can fund and meet the collective needs of British Muslims that are outside the scope of *zakat*.