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FIQH AL-AQALLIYYAH AND MUSLIM MINORITIES IN A NON-MUSLIM COMMUNITY

Kazeem Adekunle Adegoke

ABSTRACT

This study researches into the legal theory of fiqh al-aqalliyyah and Muslim minorities in a contemporary non-Muslim community. In order to achieve this objective, the paper examines the fiqh al-aqalliyyah, its legal position in Islamic jurisprudence, its legal instruments and its applicability to lessen the physical, social, financial and emotional hardships or difficulties encountered by Muslim minorities who find themselves in an unfamiliar non-Muslim environment. Research method used in this study is expository, descriptive and analytical in order to showcase the applicability of fiqh al-aqalliyyah in the modern legal theory within the context-specific and needs-based neo-ijtihād legal rulings for Muslim minorities. Conclusively, the paper makes findings that context-specific and needs-based neo-ijtihād legal rulings of fiqh al-aqalliyyah is still viable in this contemporary period to arrest juridicial challenges facing the Muslim minorities in non-Muslim communities. Also neo-ijtihād exercise of fiqh al-aqalliyyah from a competent Islamic jurist and legal theorists of a particular society is meant for that society only and should not be given general or universal application so as not to cause confusion in the context-specific and needs-based jurisprudential response. Finally, the study recommends that Muslim minorities should make use of the Islamic jurists and

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legal theorists' neo-Ijithād exercise of fiqh al-aqāliyyah which are peculiar to their environment in procuring solutions to some of the contemporary Islamic jurisprudential challenges facing them in the non-Muslim community.

**Keywords:** Fiqh al-Aqāliyyah, neo-Ijithād, Muslim minorities, Context-specific and Needs-based legal rulings, legal maxims, non-Muslim community

**INTRODUCTION**

*Ummah* as a community of Muslim minorities amidst non-Muslim majorities is being misunderstood as monolithic from religious perspective in the contemporary time whereas in the first ever-existent Muslim community in Madinah under the leadership of Prophet Muhammad and rightly-guided caliphs, Muslim minorities successfully co-existed with non-Muslim majorities. From the time immemorial, several individuals have suffered a lot at the hands of various non-Muslim communities across the globe through the application and imposition of their non-Islamic legal rulings on their personalities. Any refusal attempt from the Muslim minorities against the un-Islamic legal authority always met with stiff opposition and persecution from the concerned non-Muslim communities in the Arabian peninsula. The pages of history are full of maltreatment and persecution faced by the first generation of Muslims at the hand of Arabian pagans in the non-Muslim community of Makkah and its environs. Severe persecutions came upon the less-privileges and slaves among the early Muslims in the Arabian Peninsula. Contemporary Muslim minorities are not totally free from discrimination and subjugation as a result of various un-Islamic legal authorities of non-Muslim communities imposed on them. Some of these legal authorities of non-Muslims are in contrary with socio-cultural, economic and religious standard of the Muslims. It is not out of tune to point out that Shariah does not go against the idea of Muslim’s residing in a non-Muslim community if the occasion or situation demands for it. Such an occasion or situation may either be for business, tourism, expatriated reason, education, health, consulate or ambassadorial reason which will require the Muslim to stay in a secular community which is dominated by non-Muslims. Islamic jurisprudence does

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2. Haykal, M. H, *The Life of Muhammad* (USA: American Trust Publication, 1935), 90-91. Also see Nadwi, A.A.H, *Muhammad Rasulallah* (India: Academy of Islamic Research and Publication, 1979), 112.

3. Ali, M. B & Sudiman, M. S. S. Sudiman, 'Muslims Living in Non-Muslim Lands: Contesting Muhammad Saeed Al-Qahtani's Argument on Hijrah-al-Wala' wal Bara' Nexus,' *Journal of Islamic Studies and Culture*. vol. 7/2 (2019): 102.
not become an obstacle that imposes psychological difficulties on Muslims in their co-existence with non-Muslims in the non-Muslim community as a result of the fear that they would not be able to practice their religion as expected. What is germane in this context is that any community chosen by Muslims as a domiciled geographical location calls for the Muslims' attention to make the appropriate adjustments and accommodations of their faith in such a society without infringing on fundamental tenet of his or her religion. Thus, a specific-context and need-based Islamic jurisprudence come in to rescue the Muslim minorities from the embarrassment. As the saying goes 'the necessity brings new invention'. Hence, the need for developing a new form of fiqh, popularly known as 'fiqh al-aqalliyah' comes up as a result of the increasing needs and demands placed on Muslim minorities residing in the non-Muslim community. It is on this line that this study aims at examining the fiqh al-aqalliyah, its legal position in Islamic jurisprudence, its legal instruments and its applicability to lessen the physical, social, financial and emotional hardships, difficulties and problems encountered by Muslim minorities who find themselves in an unfamiliar non-Muslim community.

FIQH AL-AQALLIYYAH: WHAT DOES IT MEANS?

The term 'fiqh al-aqalliyah' is a combination of two words name: 'fiqh' and 'aqalliyah'. The word 'aqalliyah' is derived from Arabic weak verb 'qalla' which linguistically means 'he became small, little, few or less significant in number or quantity'. Thus, aqalliyah literally means smaller number, numerical inferiority or minority. Technically, aqalliyah could be defined as a small group of people who are of different race or faith to most of the people in majority in the same community or country where they reside. With this understanding, fiqh al-aqalliyah simply means Islamic jurisprudence of minority. In the context of this study, fiqh al-aqalliyah is referring to neo-Ijtihad based Islamic jurisprudence of Muslim minorities residing in a non-Muslim community. Fiqh al-Aqalliyah is one of the modern developments in Islamic jurisprudence which has been thoroughly discussed through the lens

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4 Parrey, T.S., 'The Legal Methodology of 'Fiqh al-Aqalliyya' and Its Critics: An Analytical Study,' Journal of Muslim Minority Affairs, vol. 32/1 (1998): 89.
5 Cowan J.M., Hans Wehr Dictionary of Modern Written Arabic (U.S.A.: Spoken Language Service, Inc., 1976), 782.
6 Cowan J.M., Hans Wehr Dictionary of Modern Written Arabic, 783.
7 Oxford Wordpower. Qāmis Aksfūr al-Hadith li al-Darsi Lugāḥ al-Inkīlīzīyyah (Oxford: Oxford University Press, 1998), 477.

https://ejournal.um.edu.my/index.php/IJS/article/view/29795/13011
of context-specific and needs-based neo-ijtihād legal rulings in the light of situational Islamic jurisprudence (fiqh al-waqt).  

**KINDS OF CONTEMPORARY NON-MUSLIM COMMUNITY**

Non-Muslim community is a geographical and political boundary in which there is a great number of non-Muslims in population which their conduct of affairs is derived from the non-Islamic legal principles. The non-Muslim community is divided into two namely, purely-secular non-Muslim community and religiously-inclined non-Muslim community.

1. **Purely-Secular Non-Muslim Community**

The purely-secular non-Muslim community is a community that gives no recognition to any form of religious beliefs. In other words, such a community wholeheartedly adopted a secular life standard and eventually become hostile to religion and any form of belief. As a result of this development, religion is given no role to play in the people’s private and public affairs. The people’s private and public conduct of affairs is based on secular legal ruling in operation in such community. The best samples of the purely-secular non-Muslim communities are purely-secular non-Muslim communities operating in most of the European countries such as United States of America, Russia, France, Germany et cetera.

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8 The technical term minority fiqh itself was coined by Jabir Taha Al-Alwani in 1994 when the Fiqh Council of North America, under his presidency, issued a fatwa (legal opinion) allowing American Muslims to vote in American elections. For more clarification see; Dudereja, A & Rane, H., *Islam and Muslims in the West: Major Issues and Debates* (Switzerland: Palgrave Macmillan, 2019), 212. Also see Fishman, Shammai, ‘Fiqh al-Aqalliyyat: A Legal Theory for Muslim Minorities,’ *Research Monographs on the Muslim World*, vol. 1/2 (Washington, DC: Hudson Institute, 2006) and Al-Alwani, Taha, *Towards a Fiqh for Minorities: Some Basic Reflections* (Herndon: International Institute of Islamic Thought, 2003).

9 Adegoke, K.A., ‘The Influence of Religion on the Concept of Secularism in Nigeria,’ *Ilorin Research, the Journal of Postgraduate Students Association, University of Ilorin, Nigeria*, vol. 5/1 (2004): 101.

10 Adegoke, K.A., ‘The Influence of Religion on the Concept of Secularism in Nigeria,’ 101.
2. Religiously-Inclined Non-Muslim Community

The religiously-inclined non-Muslim community is a community that gives room and recognition to one or many religious beliefs in their geographical domains. In short, such a community is either a uni-religious or multi-religious community which runs the religious practice as private affairs of citizen. The citizens' public conduct of affairs is not sourced from religious belief because religious matter is viewed as individual private affairs which should not interfere with public affairs of individual citizen in a religiously-inclined non-Muslim community. Their constitutional rights are sourced from secular legal ruling inherited from the borrowed secular values of their imperialist masters. The best samples of religiously-inclined non-Muslim communities are Catholic Christian community of Vatican City and Rome, Anglican Christian religiously-inclined non-Muslim community in England, Protestant Christian religiously-inclined non-Muslim community in Germany and Ireland, Jewish religiously-inclined non-Muslim community in Israel, Hindu religiously-inclined non-Muslim community in India, Bhudda religiously-inclined non-Muslim community in some of Asian countries, Confucius religiously-inclined non-Muslim community in China et cetera.

RE-READING Fiqh al-Aqalliyyah and Muslim Minorities in Al-Alwānī's Juristic Opinion

Al-Alwānī, in his reaction to Fiqh al-aqalliyyah and Muslim minorities, called for a Fiqh renewal (tajdīd al-fiqh) and neo-ijtihād to address the unique experiences of Muslim minorities amidst non-Muslim majorities in a given community. He opines that there are some constitutional rights and protections in some religiously-inclined non-Muslim communities which call for religious freedoms in their constitution which are in favour of Muslim minorities as it gives them the rights to freely practice their faith without the fear of discrimination and intimidation in such communities. Al-Alwānī consequently

11 Oloyede, I. O., "Shari‘ah in the North: Concerns of the South: Renewed Controversy Over Shari‘ah Law in Nigeria," in Balogun, I. A. B. (ed.), Islamic Tenets and the Shari‘ah, Nigeria: Sam Bookman Publishers, 146.
12 Adegoke, K.A., 'Dhimma Contract in Sokoto Caliphate of Nigeria and Contemporary Challenges,' Islamic University Multi-Disciplinary Journal, vol. 7/2 (2020): 154.
13 Bryam, M.D., The Many Faces of Religion and Society (New York: Paragon House Publishers, 1985), 35-37.
envisages such a non-Muslim community as an Abode of peace (Dâr al-Salam), Abode of treaty (Dâr al-Sulh) and Abode of religious testimony (Dâr al-Shahâdah) which is quite different from Abode of war (Dâr al-Harb) which is hostile to Muslim minorities. With this understanding, al-Alwâni classifies religiously-inclined non-Muslim community into four namely:

a) The religiously-inclined non-Muslim community which gives recognition to Muslim minorities to freely practice their religion, that is Dâr al-Salam (Abode of peace).

b) The religiously-inclined non-Muslim community which enters into peaceful treaty of religious freedom with Muslim minorities, that is Dâr al-Sulh (Abode of treaty).

c) The religiously-inclined non-Muslim community which is hostile towards Muslim minorities and their religious belief, that is Dâr al-Harb (Abode of war).

d) The religiously-inclined non-Muslim community which transforms itself to Islamic state by its adoption of Islam as a religion and Shariah as its constitution, that is Dâr al-Shahâdah or Dâr al-Islam.

Al-Alwâni contests the legal proposition of some scholars which gives credence to the geographical and territorial distinctions of the Muslim and non-Muslims residing in a single geographical boundary, after all, there is no textual evidence on this proposition in the Quran and Sunnah of the Prophet (SAW). He justifies fiqh al-aqalliyah with the traditional and contemporary methodology of Islamic jurisprudence at one hand and viability of higher objectives of Shariah popularly called maqâsid al-shari‘ah at other hand with universality of Islam as a global and inclusive faith. Consequently, al-Alwâni proposes integration of Muslim minorities with their host non-Muslim communities. To successfully do this, there is need for a competent jurist and legal theorist who can appropriately balance the equation between context-specific values and needs-based rulings for Muslim minorities living in the non-Muslim community where they are faced with new situational challenges that go beyond their basic and traditional socio-religious practices like taking halal food, drinking and marrying non-Muslim women, and modern medical means such as family planning, surrogacy, human cloning, organ transplantation, abortion, test-tube baby, prosthetic surgery, milk banking, genetic counselling and marrying non-Muslim women.

14 Al-Alwâni, Taha, Towards a Fiqh for Minorities: Some Basic Reflections.
15 Al-Alwâni, Taha, Towards a Fiqh for Minorities: Some Basic Reflections, xxii. See also Adegoke, K.A., ‘The Practice of Ta‘ addâd al-Zawjah under Shari‘ah and Neo-Ithhâd Challenges among the Contemporary Muslims,’ Ilorin Journal of Religious Studies, vol. 1/2 (2011): 47.
RE READING *FIQH AL-AQALLITYAH* AND MUSLIM MINORITIES IN AL-QARADAWI'S JURISTIC OPINION

Al-Qaradawi classified religiously-inclined non-Muslim communities into three namely:  

a) The religiously-inclined non-Muslim community governed by Muslims despite the fact that they are in minorities, that is *Dar al-Islam* (Abode of Islam). The best sample of this is the first-ever *Umrah* Muslim community in Madinah which was founded by Prophet Muhammad.

b) The religiously-inclined non-Muslim community which has entered into diplomatic or peaceful ties with Muslim minorities or the non-Muslim community which is friendly towards Muslim minorities and their religious belief under their domains, that is *Dar al-Suh* (Abode of treaty).

c) The religiously-inclined non-Muslim communities which are at war or hostility with the Muslim minorities, that is *Dar al-Harb* (Abode of war).

The theological rationale behind the *fiqh al-aqallityah* of al-Qaradawi is grounded in the universalism and pan-Islamism of Islam in the Muslim and non-Muslim communities which also calls for competent jurists and legal theorists who can appropriately balance the equation between context-specific values with needs-based rulings for Muslim minorities in the concerned non-Muslim community amidst new jurisprudential challenges facing them which go beyond their basic and traditional religious practices. According to him, in the religiously-inclined non-Muslim communities which has entered into diplomatic or peaceful ties with Muslim minorities, Muslim minorities should see themselves as an integral and inseparable part of the whole Muslim world as well as being part of its indigenous peaceful non-Muslim communities of their domicilility. Unlike al-Alwani, al-Qaradawi does not totally subscribe to the integration philosophy of al-Alwani, instead, he lays more emphasis on the importance of having an Islamic presence in the non-Muslim communities for the purpose of proselytisation and evangelization of Islam (*da'wah*).

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16 Al-Qaradawi, *Y. Fiqh of Muslim Minorities* (Cairo: Al-Falah Foundation, 2003), 6.
17 Whyte, S., ‘Whither Minority Jurisprudence? The Case of *Fiqh Al-Aqallityat* in Australia,’ *Australian Journal of Islamic Studies*, vol. 2/3 (2017): 57.
FIQH AL-AQALLIYYAH AND MUSLIM MINORITIES IN SECULAR NON-MUSLIM COMMUNITIES

The Islamic jurists and legal theorists are divided into two factions on the jurisprudential capacity of *fiqh al-aqalliyyah* in non-Muslim community. Some Islamic jurists and legal theorists like Jabir Taha al-Alwani and Yusuf al-Qaradawi give assent to viability and applicability of *fiqh al-aqalliyyah* in the contemporary period while other Islamic jurists and legal theorists like Hamud Ibn Uqla al-Shu'tayby and ’Abd al-'Aziz Ibn ‘Abd Allâh al-Shaykh among twentieth century Salafis and Wahhabis do not as a result of their doctrine of *al-Walâ’ wa al-Barâ’*.

Those Islamic jurists and legal theorists, who subscribe to *fiqh al-aqalliyyah*, opine that *fiqh al-aqalliyyah* is a kind of jurisprudential exercise which is circumstantial, situational and geographically bounded so as to meet the challenges of the time facing the Muslim minorities in non-Muslim communities in the contemporary period.

*Fiqh al-Aqalliyyah* is well structured and designed by some seasoning contemporary Islamic jurists and legal theorists so as to secure the affairs and rights of Muslims minorities residing in non-Muslim communities where the religion is not given full recognition or where religion does not have a say in their private and public affairs. It is not out of tune to specifically mention at this juncture that the brains behind this theory of *fiqh al-aqalliyyah* is no one rather than the two modern seasoning legal theorists and classically-trained Muslim jurists, Tahâ Jâbir al-Alwâni (d. 2016) and Yûsuf al-Qaradâwî, who invented it as a juristic strategy to address the needs of Muslim minorities in the midst of non-Muslim majorities in a particular community. Both scholars elucidated materials from Islamic foundational sources, the Quran and *Sunnah*, together with well-established legal maxims (*qawā'id al-fiqh*) to legitimize the necessity of context-specific and needs-based legal rulings for Muslim minorities living in the non-Muslim majority communities.

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19 Ali, M.B., ‘*al-Walâ’ wa al-Barâ’* in Wahhabism: From A Tool to Fight Shirk to Takfîr of Muslim Leaders,’ *Journal of Islamic Studies and Culture*, vol. 7/1 (2019): 37.

20 Adegoke, K.A., ‘Neo-İjtihād in the Modern Legal Studies: A Case Study of al-Qaradâwî’s Concept of Neo-İjtihād,’ *International Journal of Fiqh and Usul al-Fiqh*, vol. 4/1 (2020): 115.

21 Al-Qaradâwî, Y., *al-Fiqh al-Islâmî bayna Asâlah wa al-Tajdid* (Qâhrah: Maktabah al-Wahbah, 1997), 1-ff.

22 Whyte, S., ‘Whither Minority Jurisprudence? The Case of *Fiqh Al-Aqalliyyat* in Australia,’ 57.
Both Tahā Jābūr al-Alwānī and Yūsuf al-Qaraḍāwī wrote several materials on the *fiqh al-aqālīyyah*. The former wrote ‘Towards a Fiqh for Minorities: Some Basic Reflections’ while the latter wrote ‘Fiqh of Muslim Minorities’. These *fiqh* materials are highly and essentially need in the contemporary time when there is, on daily basis, a lot of migrations of the Muslim minorities into the non-Muslim metropolitan communities in search of greener pasture or in pursuance of advancement in scientific and technological education. This development prompted some modern day Islamic jurists (*fiqhah* al-*muʾassirin*) and Islamic legal theorists (*usūlīyyin al-*muʾassirin*) to employ renewal of Islamic jurisprudence (*taṣdiq al-ḥiṣn*) so as to deduce Islamic legal theory within the context-specific and situational-need based legal ruling for the modern day Muslim minorities. It is not out of tune to say at this juncture that there are some modern day Islamic jurists and legal theorists who do not subscribe to *fiqh al-aqālīyyah*.

Some of these anti-*fiqh al-aqālīyyah* scholars are Muhammad Khalid Masʿūd, Tariq Ramadan and Mohamed Mestri. Each of them wrote materials on *fiqh al-aqālīyyah* such as Islamic Law and Muslim Minorities, Western Muslims and the Future of Islam and from the Fiqh of Minorities to the Fiqh of Citizenship respectively. The jurisprudential argument of these Islamic jurists and legal theorists is based on the consequential problem which would rise up as a result of application of *fiqh al-aqālīyyah* in the contemporary period such as question of the conceptual understanding of *fiqh al-aqālīyyah*, universal applicability of *fiqh al-aqālīyyah* and status of Muslim minorities in non-Western contexts and at sub-national level as a result of the division of Muslims into different linguistic and ethnic groups.

**LEGAL INSTRUMENTS OF Fiqh al-Aqalliyah**

*Fiqh al-aqālīyyah*, in its practical application, is powered through the legal exercising of some subsidiary sources of Islamic jurisprudence like *maslaḥah*, *istīḥsān*, *istiṣlah* and *maṣāliḥ al-`umūrah*, legal maxims (*qawā'id al-ḥiṣn*), *rukūsah* and *taḥkāyur* modern legal theory on the necessity (*ad-darūrah*) which seek to permit individual Muslim minorities to derive their

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22 Ali, M. B & Sudiman, M. S. S. Sudiman, 'Muslims Living in Non-Muslim Lands: Contesting Muhammad Saeed Al-Qahtani's Argument on Hijrah-al-Walā’ wal Bara’' Nexus,’ 102.
23 Whyte, S., ‘Whither Minority Jurisprudence? The Case of Fiqh Al-Aqālīyyat in Australia,’ 58-59.
24 Whyte, S., ‘Whither Minority Jurisprudence? The Case of Fiqh Al-Aqālīyyat in Australia,’ 60.
own legal rulings in times of hardship and necessity in order to lessen the physical, social, financial and emotional hardships or difficulties facing by Muslim minorities living in an unfamiliar non-Muslim community. It should be rightly mentioned at this juncture that the application of fiqh al-aqalliyyah for Muslim minorities residing in a non-Muslim community is in line with the textual facts from the Quran and Sunnah which go thus:

“And strive for God as He should be striven for. He has chosen [for] you - and has placed no hardship for you in the religion.”

(Surah al-Hajj, 22: 78)

“Allah wishes to lighten your [difficulties] because man was created weak.”

(Surah al-Nisa’, 4: 28)

“Allah intends for you ease, and He does not want to make things difficult for you.”

(Surah al-Baqarah, 2: 185)

Prophet Muhammad (SAW) was reported to have said:

“Facilitate things for people (concerning religious matter), and do not make it hard for them and give them good tidings and do not make them run away (from Islam).”

It was also reported by ‘Â’ishah that she said:

25 Al-Bukhârî, M. I. I. Sahîh al-Bukhârî: Arabic-English (Chapter of Knowledge Hadith 63). (Lubnân: Dâr al-Fikr, 1401), 63.
Whenever two matters were offered to the Prophet (SAW) to choose between them, the Prophet would always choose the easiest one unless it was haram."

Islamic jurists and legal theorists make use of any of the above-mentioned legal sources of Islamic jurisprudence to exempt Muslims from conducting basic and traditional religious practices that would not contradict purely-secular or religiously-inclined non-Muslim community laws or deprive them of the opportunity to actively participate in the lawful activities in Islam such as slaughtering a cow for food in the Hindu community where the cow is taken as sacred and spiritual animal representing their gods. These legal sources are discussed below:

1. Maslaha between Fiqh al-Aqalliyyah and Muslim Minorities

Maslaha literally means benefit, interest or utility. Technically, it means an unrestricted public interest accorded to Muslim minorities in a secular non-Muslim community in the sense of its not have been regulated by Allah SWT in so far as no legal ruling can be found on its validity or otherwise. This consists of considerations which secure a benefit or prevent a harm for Muslim minorities but which are, simultaneously, harmonious with the objectives of Shariah (maqasid al-shari'ah) such as religion, life, property, lineage, intellectual and dignity. Thus, any action which can tamper with this objectives of Shariah (maqasid al-shari'ah) or which can lead to difficulty (dawar) and corruption (mafsadah) in the life of Muslim minorities in a secular non-Muslim community has to be prevented by fiqh al-aqalliyyah through maslaha. This maslaha can be showcased in fiqh al-aqalliyyah through some of the subsidiary legal sources of Islamic jurisprudence such as istihsan, istislah and masalih al-mursalah which are going to be briefly highlighted.

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26 Hanbîl, Ahmad Ibn, Musnad al-Imâm Ahmad Ibn Hanbîl, vol. 6, no. 24593 (Qâhirah: Qurtubah Foundation Press, 1418).

27 Ihsan Yilmaz, 'Micro-Mujtahids and Implementation of Fiqh al-Aqalliyyat,' in Rethinking Islamic Law for Minorities: Towards a Western-Muslim Identity, ed. Jasser Auda (London: Association for Muslim Social Scientists, 2016).

28 Kamali, M.H., Principles of Islamic Jurisprudence (UK: The Islamic Texts Society, 1991), 267.

29 Alrârari, H.H., 'Utilitarianism in Classic Islamic Jurisprudence,' Journal of Islamic Studies, vol. 5/1 (2017): 1.

30 Kamali, M.H., Principle of Islamic Jurisprudence, 276-277.
**Istīślāh:** Istīślāh is derived from Arabic verb 'istaṣlaba' which means to seek for amendment or correction. It literally means an amendment or correction. Technically, it means a method of seeking facility and easiness for Muslim minorities in a secular non-Muslim community public welfare in legal injunction.

**Istihsān:** Istihsān is derived from Arabic verb 'istilhsana' which means to seek for preferable option. It literally means juristic preference or public interest. Technically, it is a method of exercising personal opinion in order to avoid any rigidity and unfairness for Muslim minorities in a secular non-Muslim community that might result from the literal enforcement of the existing law in public.

**Maṣlaḥah Mursalah:** Maṣlaḥah Mursalah means a rule applicable to Muslim minorities in a secular non-Muslim community which has no specific basis in the established law (Quran and Sunnah), whether in favour or against.

2. **Qawā'id al-Fiqhiyyah between Fiqh al-Aqaliyyah and Muslim Minorities**

Qawā'id al-fiqhiyyah literally means legal maxims. Technically, it refers to a body of abstract rules which are derived from the detailed study of the Islamic jurisprudence. In the context of this study, it could be defined as an all-inclusive rule based on legal evidence written accurately in comprehensive words in order to lessen the societal difficulties and hardship of Muslim minorities residing in a non-Muslim community. It is derived from the Quran, Sunnah, Athar of Prophet's companions (sahābah) and their disciples (tabi'īn). The purpose of qawā'id al-fiqhiyyah is to simplify and to assemble the branches of Islamic jurisprudence (furū'ī) and to prove that Islamic jurisprudence leaves no matter untouched irrespective of place, time, condition, situation and circumstance. In fact, qawā'id al-fiqhiyyah would serve as a legal mechanism that would enable Islamic jurists and legal theorists to react to any jurisprudential matter related to new and recent events. The followings are some of the qawā'id al-fiqhiyyah which are explored to bring out fiqh al-aqaliyyah in order to

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31 Kamali, M.H., *Principle of Islamic Jurisprudence*, 5.
32 Ahmad, M.M., *al-Qawa'id*, vol. 1 (Saudi Arabia: Islamic Researches Institute, Umm al-Qura University, n.d.), 114.
33 Mishkat, *al-Qawa'id al-Fiqhiyyah (Legal Maxims of Islamic Jurisprudence), A Translated Compilation* (USA: Islamic University of North America (Mishkah), Islamic Studies English Program, 2013), 92-100.
safeguard the public welfare and interest of Muslim minorities residing in a non-Muslim community:

a) al-Mashaqqah Tajlib al-Taysir (Hardship begets Ease)

b) Idhā Dhā al-‘Asī‘a Ḥasbih a Ḥaqqa Ḥasba (When a matter tightens, it will widen and vice-versa)

c) al-Darūrah Tubī‘h al-Mahzūrāt (Necessity renders prohibited matters permissible)

d) al-Darūrah Biqadarīhā (Necessities are with their limit)

e) Ma Ubihā li Darūrah Yuqaddar bi Qadarīhā (Necessities have limits that should not be exceeded)

f) Mā Jāzc li ‘Udhri Batalb bi Zawālih (What becomes legal by a valid excuse, will become illegal when the excuse ends)

g) al-Hājah Tauzil Mauzilah al-Danuha Anūha ilil Qullusali (General or particular need can develop into necessity)

h) Idhā Ta’adhar al-‘Aṣī‘a ilā al-Badal (When the fundamental something is not available, we proceed to alternative)

Fiqh al-Aqalliyah permits that necessitated situation, circumstance and occasion have to be given consideration in the jurisprudential matter as a legal base for the permission of Muslim to engage in what has been originally unlawful under normal situation, circumstance and occasion. There are several proofs from the Quran and prophetic traditions of the Prophet (SAW) in support of gawā‘id al-fiqhīyyah on this regard such as Quran 16: 106 which reads thus:

\[
\text{‘He who disbelieves in Allah after his belief (Imān), except he who is compelled while his heart is at rest on account of faith, but he who opens his breast to disbelief, on these is the wrath of Allah, and they shall have a grievous chastisement.’}
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(Surah al-Nahl. 16: 106)

34 Elesin, A.M.J., ‘Legitimisation of Boko Type of Education within the Framework of the Shari‘ah Principle al-Darūrah Tubī‘h al-Mahzūrāt in Yusuf, B.O,’ Journal of the Nigeria Association of Teachers of Arabic and Islamic Studies, vol. 15 (2012): 51.
"He (Allah) has only forbidden you what dies of itself, and blood, and the flesh of swine, and that over which any other name than that of Allah has been invoked, but whoever is driven to necessity, not desiring, nor exceeding the limit, no sin shall be upon him. Surely, Allah is oft-Forgiving, Most Merciful."

(Surah al-Baqarah. 2: 173)

**RUKHSAH BETWEEN FIQH AL-AQALITYAH AND MUSLIM MINORITIES**

Rukhsah may not be properly understood without proper conception of 'azīmah. 'Azīmah literally means strict legal ruling. Technically, it is a strict legal ruling when such a legal ruling is in its primary and unabated legal force without reference to any attenuating circumstances which may soften its original force or even entirely suspend it. In fact, azīmah is a strict legal ruling (qār) as Allah SWT. the Law Giver had intended in the primary source of Shari'ah (Quran and Sunnah) such as obligations of salāh, zakāh, sawm, hajj, jihād et cetera, which the Law Giver has enjoined upon all competent individual Muslims (mukālaf). For example, the water ablution is the normal command (azīmah) from Allah, the Law Giver when preparing for salāh but ta'whānunum, the dry ablution is the exception and concession (rukhsah) when the water is neither available nor accessible.  

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35. Khallaf, A., *Ilm Usul al-Fiqh* (Kuwait: Dār al-Qalam, 1398AH), 120.

36. Abū Zahrah, M., *Usul al-Fiqh* (Qahirah: Dār al-Fikr al-‘Arabī, 1986), 50.
Kamali is right to have pointed out that *rukhsah* is applicable in any of the following four abnormal or difficult circumstances:  

a) Permitting a prohibited act on grounds of necessity, such as eating the flesh of a carrion or drinking a wine at the point of drought or starvation and extreme famine.

b) *Rukhsah* may occur in the omission of an obligatory act (*wajib*) when conformity with that obligatory act would cause hardship. For instance, shortening of prayer during travel (*qasr*).

c) *Rukhsah* may occur in the area of commercial transactions in the form of validating commercial contracts which would be disallowed in a normal situation. For instance, lease and hire (*ijarah*), advance sale (*bay' al-salam*) and the order for manufactured goods (*istisna*) which are not existent at the time of contract, but they are permitted exceptionally in order to accommodate the public need for such transactions.

d) *Rukhsah* may occur in the form of concessions to the Muslim community from certain rigorous legal ruling which were imposed under previous revelation or secularism.

**TAKHĀYYUR BETWEEN FIQH AL-AQLIYYAH AND MUSLIM MINORITIES**

*Takhāyyur* literally means a modern legal option. Technically, it is a variety of legal rules which leaves individual at liberty to choose the best legal option out of several legal options from different schools of legal thought. Contextually, it is a variety of legal rules which leaves individual at liberty to choose context-specific and needs-based legal rulings for Muslim minorities living in the non-Muslim majority community out of several legal options from different Islamic jurists and legal theorists. In the process of exercising *fiqh al-aqlīyyah* in favour of Muslim minority residing in a purely-secular or religiously-inclined non-Muslim community in the contemporary time, there is an ample opportunity of making use of *takhāyyur* or legal option through *madhhab* legal surfing so as to navigate for appropriate legal rulings in times of necessity and new circumstance. Individual Muslim in a purely-secular or religiously-inclined non-Muslim community has the right to choose an appropriate *madhhab* or legal ruling in times of necessity, hardship.

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37 Kamali, M.H., *Principle of Islamic Jurisprudence*, 340.
38 Kamali, M.H., *Principle of Islamic Jurisprudence*, 321.
and difficulty which will enable them to make swift decisions to resolve minor jurisprudential issues. There are also several proofs from the Quran and prophetic traditions of the Prophet (SAW) which are in support of *takhāyyar* legal option. For instance:

Allah SWT says in Quran:

> And for those who put away their wives by likening their backs to the backs of their mothers (zāhār), then would recall what they said, they should free a captive before they touch each other; to that you are admonished to conform, and Allah is aware of what you do. But whoever has not the means, let him fast for two months successively before they touch each other, then as for him who is not able, let him feed sixty needy ones, that is in order that you may have faith in Allah and His Messenger, and these are Allah’s limits, and the unbelievers shall have a painful punishment."

(Surah Mujādalah, 58: 3-4)

Prophet (SAW) was reported to have said that:

> When anyone of you sees anything that is disapproved, let him change it with his hand; if that is not possible, then with his tongue; and that if that is not possible, then with his heart, though this is the weakest form of faith. "

The results of the study and suggestions obtainable from these aforementioned legal instruments of *fiqh al-aqālīyyah* showcase that *fiqh al-aqālīyyah* could be extended and employed in the modern daily life in non-Muslim community in the acts of obtaining interest-based home loans, adjusting fasting and prayer times, marrying non-Muslim, political participation and

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35 Al-Nawawi, M.A.Y.S., *Matn al-'Arba In al-Nawawiyah fl al-Ahādith al-Sahihah al-Nabawiyyah* (Lajūs, Nijriyyah: Multazim al-'Taba' wa al-Nashr, n.d.), no. hadith 34, 40-41.
military service within the context-specific and needs-based jurisprudential excuses.

CONCLUSION

In this study, we are able to consider and establish the *fiqh aqalliyyah* as one of modern jurisprudential approaches to the methodological utilization of neo-ijtihad to cater for the welfare of Muslim minorities in a non-Muslim community in the contemporary period when the general rule, if applied, would bring hardship and difficulty on them or would make Islamic law inapplicable.

This study observes that:

a) context-specific and needs-based legal rulings of *fiqh aqalliyyah* is still viable in this contemporary period to arrest new jurisprudential challenges facing the Muslim minorities in the non-Muslim communities.

b) Neo-ijtihad exercise of *fiqh aqalliyyah* of a competent Islamic jurists and legal theorists of a particular society is meant for that society only and should not be given general or universal application so as not to misconceive the context-specific and needs-based jurisprudential response.

The study therefore, recommends that Muslim minorities should make use of the Islamic jurists and legal theorists' neo-ijtihad exercise of *fiqh aqalliyyah* which are peculiar to their environment in procuring solutions to some contemporary Islamic jurisprudential challenges facing them in non-Muslim community.

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