

Food Security: The Critical Discourse on Gelatine for Muslims in South Africa

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Abstract

The Muslim Judicial Council SA (MJC SA) is the central Muslim religious institution in the Western Cape and has pioneered the consumer discourse on *ḥalāl* (permissible) consumption in South Africa. The discursive discourse of what constitutes *ḥalāl* and *ḥarām* (not permissible to consume) has provoked a variety of responses and was the cause of the establishment of other *ḥalāl* certifying authorities in South Africa, like the South African National Halaal Authority (SANHA). The genres of *fatāwā* (singular *fatwā*, refers to the formation of a legal opinion) constitute the distinctive nature of twentieth century discursive discourses and debates within the *ḥalāl* industry in South Africa. Contentious *fatāwā* such as the beef saga in 1970, mechanical slaughtering, the recital of the basmalah, and the discourse on gelatine were the cause of many controversies which had a direct impact upon the *ḥalāl* industry in the country. These *fatāwā* were the outcomes of exploring new methods within Islamic legal frameworks on how *ḥalāl* is viewed, thereby shifting the discourse into a realm of robust debates. This was preceded by the discursive traditions of previous *fiqh* scholars. This discursive discourse relied on reframing classical *fiqh* by adding a contemporary character to it. This article explores the critical debates of gelatine *fatāwā* between the MJC and SANHA which has divided the *ḥalāl* industry in South Africa and Muslim consumers over the past three decades. The gelatine *fatāwā* discourse is considered one of the most contentious issues today amongst leading *ḥalāl* certifying authorities in South Africa. This article provides a historical background which traces the formation of the gelatine *fatwā*, and offers clarity and insight to some of the key issues in this debate.

Key Words: Muslim Judicial Council of SA (MJC), *fatwā*, *ḥalāl*, *ḥarām*, gelatine.

Introduction

The MJC SA is the first organized *ḥalāl* certifying authority in South Africa. According to Imām Yasin Harris, Director of the Halaal Trust of the MJC SA (MJCHT), and Moulanā Yusuf Karaan, the *Muftī* (jurist consult) of the MJC SA, the MJC SA is the first organized *ḥalāl* certifying authority in the world, established in 1945 and officially registered as a *ḥalāl* authority in 1986. (Harris and Karaan Interview, 2012).

The MJC SA can be considered as the *marjī'* (reference, or source to follow) for *ḥalāl* certification in South Africa based upon its pioneering and institutionalising of the *ḥalāl* industry and for adopting a *wasatīyyah* (moderate/middle path) approach to *ḥalāl* certification. The latter approached influenced the organisation to explore a broader scope of legal frameworks within various *madhāhib* (school of jurisprudence) on *ḥalāl*. The *fatāwā* on gelatine of the MJC SA demonstrate that *taqlīd* (moving from one *madhhab* to another *madhhab*) and the impact of modernisation are not viewed as two conflicting concepts, but can be assimilated; and *fiqh* can be adapted to a rapidly changing world.

Ḥalāl certifying authorities in South Africa, according to Tayob, “render a valuable service to the Muslim consumers”, he also notes that some authorities have “used a rigid interpretation of textual evidence ...” (Tayob, 2012:49). Awais Rafudeen similarly suggests that *ḥalāl* organizations play the role of “cultural intermediaries”, which according to him also represent how “certain competitive authorizing discourses within tradition cultivate specific outlooks on halaal”. Within such discourses, according to Rafudeen “not all readings of halaal in Islamic law are equal”. He suggests that it is within “the internal logic of an authorizing discourse that we need to locate some of the other underlying factors that drive these organizations’ approach [es] to matters of halaal.” (Rafudeen, 2012: 137-138).

The complexities within the *ḥalāl* discourse place the consumer at the centre of the disputes among the *ḥalāl* certifying industries in South Africa. This article examines in detail the contentious issue of gelatine which have been the subject of numerous disputes between MJCHT and other religious institutions. The article also deals with the interpretation of Islamic law and issuing *fatāwā* as a discursive tradition in the formation of a legal opinion.

Contextual and Theoretical Framework

The MJC SA is predominantly inclined towards the *Shāf'ī madhhab* (school of legal thought). Occasionally, they incorporate the views of other *madhāhib* (sing. *madhhab*) and legal scholars within the parameter and scope of the codification of Islamic law. Over the past seven decades, the MJC SA has shifted from a conservative orthodoxy to a more moderate position that includes a broader scope of *madhāhib* positions. They have adapted their legal opinions to one that is inclusive of other *madhāhib*. Lubbe asserts that adaptation may occur by exploring the views of various scholars or when new situations arise. In his PhD thesis entitled “The Muslim Judicial Council – A descriptive and analytical investigation”, Lubbe investigates the history of the MJC and their Islamic philosophy since their establishment in 1945. Lubbe noted that the MJC was very progressive by integrating the views of Islamic scholars from various *madhāhib* into the formation of their legal opinions. They understood from the beginning that they functioning in a Muslim minority country and are influenced by prevailing circumstances. The Islamic codification of laws, its reviews, legal rulings, and *fatāwā* are enacted to accommodate these circumstances (Lubbe, 1989:70-73). The discourse on gelatine in the South African Muslim community has been subjected to the same legal framework of *fatāwā* and to the relationship between the codification of Islamic law and modernisation in South Africa which is discussed in this paper.

Taqlid has allowed the MJC SA to operate within the broad scope of the legal framework of Islamic Law and to incorporate the best opinion on a given matter. Wael Hallaq asserts that:

The *taqlid* of later jurist was of the best type, so to speak, for it involved the production of the masters' opinion through careful reasoning and interpretation that at times were qualitatively superior to those the master produced. This *taqlid*, therefore, is an intellectual independent affirmation of authority and in no way involves blind adherence to the legal doctrines of the masters. It is preeminently of the methodological type, having nothing to do with the acceptance *fiqh* conclusions at face value... *taqlid* maintained a positive image since they amounted to an assertion about affiliation and loyalty to the school. For no school, in the first place, could have come into existence and survived without this doctrinal loyalty. (Hallaq, 2009:113).

The MJC SA believes that if it wants to be relevant, it must be prepared to incorporate the views of different *madhābīb*. Talal Asad asserts that change is part of life, and that Islam can be relevant and contemporary:

We can look into the contemporary Islamic revival as an attempt to retrieve the Islamic tradition that can be adapted and linked to modernity as if it were a case that could be experimented with and examined as a whole by the Islamic world today. Moreover, it is an attempt to form ways of resistance and struggle not only with the West but with the Islamic history as well. (Asad, 2000:255).

The modern concept of *fiqh al-wāqī`* (contextual understanding and application) allows Muslims to find an alternate view during a specific time and space, and to return to the original ruling once the restrictive bar is lifted. Ibn Qayyim al-Jawzī asserts that a *mufīī* must understand the prevailing circumstances of society which may be influenced by local customs and traditions. The legal rulings may vary and change from time to time and place to place as the need arises. He asserts that:

“Indeed a jurist must understand people’s propensity ... in addition to their customs and traditions. Religious edicts (*fatāwā*) change with the change of time, place, customs and circumstances and all of this is from the religion of God...” (Al-Jawzi, n.d:157).

By understanding the above, it can be said that the MJC has remained true to the practice of preceding *‘ulamā’* (scholars) by remaining relevant according to the context of the time, having factored changes in modern society, thus creating a discursive *fatwā* discourse. This has contributed to integrating Islam into a secular country, such as South Africa, and normalising the role and place of Muslims as minority citizens of South African society. The life of Imām Shāfi`ī can be cited as an example of this discursive tradition when he traveled from the centre of the caliphate, Baghdād, to settle in what is now Egypt. While in Egypt he revised many of his views that he previously held. (Al-Aytah, 1999:9). When Imām Shāfi`ī left the shores of a predominately Muslim community where Islam was thriving and settled in an emerging Muslim community, he understood that the prevailing living conditions in Egypt were different to Baghdād. Hence some of his *fatāwā* changed.

In South Africa, given the complexities of *fiqh* differences between Muslims in the Western Cape and those located in other provinces, there are bound to be conflicting interpretations and applications of *fatāwa*, since these communities tend to follow different schools of thought. The MJC during the height of apartheid demonstrates its ability to apply the sacred law of Islam for Muslims as minority citizens, although the limited political rights of Muslims at the time. For example, the debate on the number of *ṭalāqs* that can be issued in one sitting is considered contentious as it is viewed differently by Muslim jurists. Thus, although the *fatwā* issued by the MJC regarding *ṭalāq* may have found support amongst progressive scholars, it was however also met with challenges from and resistance by more conservative scholars in South Africa.

Mufattiin (sing. *Mufṭī*) in South Africa regulate their own *fatāwā* independently and have developed their own standards. In its vein, the MJC has used the tools of *fatwā* to formulate their legal opinion on gelatine, and incorporated an inclusive framework of Islamic law when confronted with *fiqh al-wāqī'*. The MJC SA committed itself since its inception to provide *Shar'iah* solutions in a contemporary context by attempting to meet the continuous challenges of an ever changing modern society.

Literature Review

This article is conceptually informed by theoretical debates on traditional practices in modern society and the impact they have upon custom and change. Dawid Venter suggests that there are adaptation processes that traditional communities experience due to modernization (Venter, 2004:3-7). He asserts that these changes stand at the junction of acceptable traditional norms of society on the one hand, and the effects of modernity on the other. Modernity not only affects the tradition but with time it creates a new tradition. According to Monica Wilson, it is the influences of technology that impact upon traditions and customs of society (Wilson, 1971:14-19).

Modernization is not strange to Islam. Muslims had played a valuable role in finding innovative ways in contributing strategies to bring ease and comfort to humanity. To cite Tariq Ramadan:

We often recall the extraordinary contribution Muslims have made historically to scientific development and progress and emphasize the fact that they – more than any other civilization – have advanced the sciences to a higher level. (Ramadan, 2004:55).

According to Ramadan, for centuries Muslims globally enjoyed a close relationship between markers of Islamic identity and science. He further asserts that it is through the study of *maṣlaḥah* (public interest), *ijtihād* (independent judgment or exerting oneself to arrive to a verdict) and *fatwā* which allows Muslims to retain their Islamic identity (Ramadan, 2004:55).

Asad argues that Islam is a discursive tradition in which *‘ulamā’* are able to find practical answers that are conducive to social change (Asad, 1993:32). He believes that the diverse views of *‘ulamā’* will help society in finding ideal answer. This discursive tradition that is founded on diverse scholarly interpretations is conducive to the creation of a new Muslim identity. He asserts that the role of *‘ulamā’* is central in Islam and that it has evolved over centuries. Asad regards the position and function of *‘ulamā’* in their societies as an indispensable part of Islam and believes that their inability to respond to social changes will have an adverse effect upon the Muslim community.

Muhammad Khalid Masud supports the view that a *muftī* who is an *‘ālim* (pl. *‘ulamā’*) is an indispensable part of a continuously changing society. It is through an *‘ālim* specialized knowledge of Islamic law that allows him to respond to “diverse social and historical settings” (Masud, 1996:3-4). The practice of issuing *fatāwā* allows the *muftī* to address the needs of specific Muslim communities, for which he is required to have knowledge of local traditions and colloquial language. Although his rulings may be nonbinding judgements, he plays an important role in guiding Muslim communities (Ibid).

Bettina Graf and Jakob Skovgaard Petersen urge that *‘ulamā’* “profess their dependence on and commitment to a great Islamic scholarly tradition, of which they consider themselves the contemporary representatives.” (Graf and Skovgaard Petersen, 2009:28). Ramadan contends that Islam has allowed a fine periphery for it to adapt to cultural and social change, though he believes that there is a need for the *‘ulamā’* to have knowledge of what is unchangeable and what is variable in order to face the challenges of modernity and its impact on society. He states:

There is one Islam, and the fundamental principles that define it are those to which all Muslims adhere, even though they may be clothed in Islamic principles, an important margin allowed for evolution, transformation, and adaptation to various social and cultural environments. Western Muslims, because they are undergoing the experience of becoming established in new societies, have no choice but to go back to the beginning and study their points of reference in order to delineate and distinguish what, in their religion, is unchangeable (*thābit*) from what is subject to change (*mutaghayyir*), and to measure from the inside, what they have achieved and what they have lost by being in the West. (Ramadan, 2009:9).

Ramadan suggests that the greatest challenge for Muslims is to preserve the centrality of what is important and to be true to the message of Islam. (Ibid, 2009:61).

Mohammad Zaman has argued that central to the interpretation of Islamic law is the *'ulamā'*. He considers them as the defenders of Islam. Zaman asserts that British colonial rule during the eighteenth and nineteenth century in India marked the beginning of a more focused, professional and specialised role of the *'ulamā'*. In this modern world he believes that it is how the *'ulamā'* respond to its challenges which will set the tone for how Islam is understood and perceived holistically. He asserts that:

What makes the ulama of the modern world worth studying is not merely that they continue to lay claim to and self – consciously represent a millennium-old tradition of Islamic learning, however, their larger claim on our attention lies in the way in which they have mobilized this tradition to define issues of religious identity and authority in the public sphere and to articulate changing roles for themselves in contemporary Muslim Politics. The 'ulama's tradition is not mere inheritance from the past, even though they often argue that that is precisely what it is. It is a tradition that has had to be constantly imagined, reconstructed, argued over, defended, and modified. (Zaman, 2002:10).

Thus, we witness the beginning of this discursive formation in which the *'ulamā'* set the parameters for how they understand Islamic tradition which may vary in its acceptance.

Wael Hallaq opines that Islamic Law is not a stagnant, unchanging monolith that can be exported from one country to another country. Cumulative traditions, life experiences, time and place must be understood in relation to the development and transformation of Islamic Law. Islamic law continuously developed and reproduced to accommodate the practical lives of people at every turn as Hallaq argues:

... understanding the Shari'a of a particular time and place is untenable without coming to terms with its cumulative tradition, for its own history continued to be, at every turn in its life, an integral part of life experience. History not only provided continuity, a recurring experience on a linear progression, but also augmented its totalistic experiences in every moment the Shari'a came to be substantiated in a particular place and time. Its sources, its theoretical and legal principles, and its textual narratives were constantly reproduced and recreated, providing the substrate and subject-matter for its practices and discourses at every turn... For every stage in the Shari'a, both in fact and in doctrine, has contributed to creating, defining and shaping the next. (Hallaq, 2009:17).

Shaykh Yūsuf al-Qaradāwī is one of the religious scholars in the late 20th and early 21st century to respond to contemporary issues by offering practical solutions and is regarded as the leading figure of this discursive tradition. He has been described as a protagonist of Islamic centrism and moderation (Graf and Skovgaard Petersen, 2009:57). Shaykh al-Qaradāwī and his knowledge are compared to traditional *'ulamā'*:

Qaradawi reminds us of the early Muslim scholar such as Imam al-Shāfi'i (d.820), who mastered different branches of knowledge together at the same time. No one can have such vast and diverse knowledge in our age of specialization... Qaradawi is really the last bead of a necklace of such unique scholars. (Graf and Skovgaard Petersen, 2009:57).

The theories cited above will be explored in this article to demonstrate the impact of modernization and globalization on South Africa's the *ḥalāl*

industry. Modernisation and globalisation not only affect the traditional practices of Muslims but also has a direct impact upon the commercial and production sector of the *ḥalāl* industry and are viewed by some as a threat to traditional Islam.

Research Design and Methodology

A qualitative research design is employed for this study. Using a philosophical lens to examine the discursive tool of *fatāwā*, this study analyses different methodologies applied when interpreting the primary sources of the Islamic tradition. This contributes to an understanding of the classical doctrine of *fatāwā*, its consequences, and requirements. The theories employed by Asad, Ramadan, Zaman, and Qaraḍāwī are used to understand the origins, needs and consequences of these *fatāwā* in relation to the development of the *ḥalāl* industry in South Africa.

An empirical method is used to interpret the *fatāwā* on the *ḥalāl* status of gelatine issued over the past 30 years in South Africa. This will illustrate the basis, reasons and consequences of these *fatāwā*.

The History of the Gelatine Discourse

During the mid-1970's the *ḥalāl* status of gelatine first entered the public discourse in South Africa. In 1977, *Muslim News* feature an opinion piece by Anisha Adams from Cape Town, where she cautioned women to be vigilant when purchasing products containing gelatine. She asserted that gelatine is *ḥarām*, because it is manufactured from bovine hides not slaughtered according to Muslim rites. According to Anisha Adams:

I wish to bring to the notice of the Muslim community that the product known as gelatine is not halal. Here in South Africa gelatine is manufactured from bovine hides. These hides are from animals, many of which are not slaughtered by Muslim rites. Therefore it is understood that the meat and by-products of that animals are not halaal. Muslim women should be careful when purchasing ready prepared packets of instant foods, rice mixtures, puddings and jelly powders as many of these contain gelatine and by the addition of this gelatine it renders the whole product haraam. Overseas gelatine is manufactured from sea-grass or China grass. (Adams, 1977:5).

At the time the Adam's article was published, the MJC had never discussed its *ḥalāl* status before, and thus no clear *fatwā* was available. A possible reason for this is because the number of products containing gelatine was minimal. It was only since the inception of SANHA in 1996 (SANHA, n.d.) that the *ḥalāl* status of gelatine has caused robust debate between MJCHT and SANHA. Following the initial questioning about the permissibility of gelatine products, the MJC conducted its own investigations and thereafter issued a *fatwā* of permissibility. This ruling was later questioned by SANHA, who applied a different, more conservative ruling on the *ḥalāl* status of gelatine in accordance with their own *fiqh* understandings and interpretation of primary sources in determining the scope of permissibility.

These debates have certainly affected the *ḥalāl* industry in general and impacted upon the status of products containing gelatine specifically. Rafudeen is of the view that the historical formation of *ḥalāl* industries has an impact upon the nature of the discursive discourse and the *fatāwā* issued as a result. He is also of the view that if one critically studies these *fatāwā* a clearer perspective on the nature of the methodological approaches behind them emerges. He asserts that:

This discourse is determined by an organization's historical trajectory and it is this discourse that may more properly determine whether an organization is liberal or conservative in its approach. It is in these methodological discourses where the theological differences between the MJC and SANHA mostly reside. (Rafudeen, 2013:151).

Today the confusion around the *fatwā* on gelatine continues to be a focal point amongst the supporters of SANHA even though a clear *fatwā* was issued in this regard by the MJCHT. Gelatine has become an indispensable ingredient in consumable and non-consumable products globally. Thus, its permissibility status is considered an imperative matter for contemporary Muslims. The *wasā'iyyah* approach of the MJC on this issue stands in direct contrast to the more conservative, rigid approach adopted by SANHA. It is at this critical nexus of differing *fiqhī* approaches wherein the Muslim consumer is located.

Transformation of Hide, Bones, Tissues and Bovines into Gelatine

Gelatine is a by-product of the meat industry, produced from the collagen derived from the hides, bones, and connective tissues and bovines. The Qur'an is clear that the swine or pig is an impure animal and that no benefit may be derived from it. There are three distinct verses in the Qur'an which confirm the *ḥarām* status of swine and prohibit its consumption by Muslims.

Indeed prohibited for you are the dead (animals), blood, the meat of the swine and that which has been slaughtered for other than Allah... (Q2:173).

Prohibited for you are the dead (animals), blood, the meat of swine and that which has been slaughtered for other than Allah... (Q5: 3).

Say (oh Muḥammad), I find nothing revealed to me forbidden to consume except that which is dead or blood or the meat of swine, indeed it is impure... (Q6: 145).

The above three verses are explicit in the view that swine is strictly forbidden to consume and that no benefit may be derived from them. Carrion, blood and sacrificial animals slaughtered in the name of gods other than Allah are also prohibited. Imām Nawawī asserted in his *Kitāb al-Majmū'* that all scholars agree that the skin of dogs and swines will remain impure even if it has gone through a chemical change. "Without disagreement (amongst the scholars), the dog and swine and that which comes from it, its skin does not become pure through change ..." (Nawawī, 2001:111).

The *Fatwā* of the MJC SA

According to the *fatwā* that followed the empirical investigations of the Fatwa Department of the MJC, gelatine is prepared in one of the following manners:

- i. The skin is soaked in a lime solution to remove all its impurities. After all impurities like excess pieces of meat, stains of blood and hair have been successfully removed after being soaked in this highly concentrated solution, a chemical reaction takes place which slowly transforms the skin into a neutral substance.

- ii. The bones go through a vigorous cleaning process by removing all excess meat, hair and fatty substances. It is then placed into a highly powerful bone crushing machine which crushes the bones into small fragments and pieces. Thereafter, these small pieces of bones are immersed into a highly concentrated hydrochloric acid solution to remove the potassium chloride.

In both cases, the skin and bones undergo an intense purifying process involving heat, water solution process until they are transformed and changed into a liquid gelatine substance. The liquid gelatine is then transformed into a solid substance which is dried and crushed into granules. This is an irreversible process, chemical process. The end product is transformed into a new product called gelatine.

Today gelatine is used in most products. It is used in consumable products like food and medicines and also non-consumable products like photographic films and lighting. Gelatine is also used as a supplementary source of protein, a bonding agent, stabilizer and emulsifier, to enhance different flavors, used as a salt replacement and a collagen source. (Peta, n.d.). An argument can also be made that gelatine contributes provides to the sustainability of zero-waste use of animal by-products including being more energy efficient and environmentally friendlier (Gelita,n.d.). There are many studies that show that gelatine has numerous medical and health benefits such as its role in increasing healthy body tissues:

... gelatin may help boost collagen levels and support skin elasticity Gelatin contains glutamic acid, which the body can form into glutamine. This substance promote a healthy mucosal lining in the stomach and aid digestion Gelatin contains lysine, which plays a role in muscle and bone health. It helps the body absorb calcium, which helps keep the bones strong and prevents bone loss. (Medical News Today, n.d.)

According to the MJCHT,

Gelatine today is an almost indispensable product with a wide range of uses. Gelatine is used to improve the quality of innumerable foodstuff and medicines. It serves as a supplementary source of protein, as a carrier material, as bonding agent stabilizers and emulsifier. Gelatine is also used as an aid for frothing up flavour enhancement, common salt replacement, clearing of drinks and

as a collagen source in dietetics... The pharmaceutical industries use gelatine in soft and hard medicament capsules, for binding in tablets... As gelatine is so omnipresent nobody in the industrial nations can avoid its assimilations. (Karaan et al., 1997).

Davis Gelatin known as Gelita SA, is situated in Krugersdorp in Gauteng Province. They supplied 95% of South Africa's gelatine during the late 1990's to mid-2000s. Their gelatine was *ḥalāl* certified by the MJCHT. Despite this certification, doubt still remained over Gelita gelatine's *ḥalāl* status amongst SANHA and some '*ulamā*' at the Cape. To this end, on 15 August 1990 the MJCHT invited 12 prominent '*ulamā*' from the Jamiatul Ulama of Transvaal to co-inspect the plant. After a thorough investigation, it was confirmed that no dog, monkey or pig skin were used in the process of making gelatine. Local as well as imported animal skin and bones were used from *ḥalāl* and non-*ḥalāl* slaughtered animals.

The Transformation of Animal Skin and Bones into Gelatine – A *Shari`ah* Perspective

The principle which the MJC employed from Islamic law to establish the *ḥalāl* status of gelatine is *al-iṣṭihālah* which refers to change of essence or origin. As explained earlier, the chemical process of making gelatine transforms the animal skin and bones into a completely new end product. This new product is regarded as *ṭāhir* (pure) because of the numerous changes it undergoes, despite the original status of the product.

In arriving at this conclusion the MJCHT applied the primary source of legislation in which 'Abd Allah Ibn 'Abbās reported that the Prophet Muḥammad (saw) said: "If the skin (of an animal) has gone through the process of tanning, then it is pure and clean." (Nawawī, 1997: *Ḥadīth* no. 810).

This report is further supported by an occasion when the Prophet (saw) passed by a dead sheep that was given to a group of people while being alive, as a gift to the servant of Maimūnah. The Prophet Muḥammad (saw) asked them why they were not benefiting from the animal through tanning. They replied that it is not permissible to consume it based on the fact that it died prior to it being slaughtered. The Prophet Muḥammad (saw) said that consuming it is not permissible, they were allowed to benefit from the animal after being tanned. (Nawawī, 1997: *Ḥadīth* no. 804).

Today it is evident that the leather skin products which undergo the vigorous tanning process are widely used by Muslims and Non-Muslims. Broadly speaking, the *ḥalāl* origins or status of the original slaughtering of the animal is not questioned. Imām Nawawī who is a *marjī`* in the *Shāfi`ī* school asserts in his classical work *Kitāb al-Majmū`* that it is permissible to preserve the skin of animals for it to be used. This preservation may be acquired by using the leaves of trees and water. (Nawawī, 2001: Vol.1 –P. 116). It is however important to note that the tanning process during the time of the Prophet Muḥammad (saw) was vastly different from what it is today. A basic purifying solution and procedure was taken directly from the words of Muḥammad (saw) as highlighted by Imām Nawawī. He cites the *ḥadīth* which clearly states that water and leaves of a specific tree (*Al-Qurẓ*) are regarded as purifying agents which affect the product chemically. The Prophet (saw) said: “Is there not in water and al-Qurẓ but that which purifies.” (Nawawī, 2001: Vol.1 –P. 116).

This basic purifying procedure allowed Muslims to use the skins of animals without fear of contamination, affecting the *ḥalāl* status of their food, or even the validity of their prayer. Imām Nawawī further asserts that if the skins of animals have gone through a tanning process they are permissible to use and benefit from. This view is based on the following *ḥadīth*. “If the skins become purified through tanning it is permissible to benefit from it because of the speech of the Prophet (saw): why do you not take its skin and tan it and benefit from it?” (Nawawī, 2001: Vol.1 –P. 116, Nawawī, 1997: *Ḥadīth* no. 804).

The MJCHT applied a process of analogical deduction (*qiyās*) which is regarded as a secondary source of Islamic law, to reach its conclusion that gelatine is *ḥalāl* except when the skin and bones are from swines and dogs. Raw material, like the skin of animals and bones from a *ḥalāl* or non-*ḥalāl* source, is transformed into a new end product known as gelatine.

The question on the permissibility of consuming products which have gone through a vigorous cleaning process and a chemical metamorphosis is discussed in detail in the *Majmū`*. Imām Nawawī cites both views of Imām Shāfi`ī, his old view and his later view. It is also interesting to note that Nawawī also cites the students of Imām Shāfi`ī who disagreed with him. This question is addressed by starting with a discussion about animals which are permissible and impermissible to consume for Muslims. In his initial view, Imām Shāfi`ī opined that it is not permissible to consume that which has gone through a basic process of metamorphosis. In his later view he pronounces that it

is permissible to consume it if the product is derived from animals which are permissible to consume. However, if derived from animals which are not permissible to consume, then it remains not permissible. The later students of Imām Shāfi`ī however declared total permissibility to consume products from animals which are permissible and not permissible to consume on condition that they have undergone a complete metamorphosis.

Imām Shāfi`ī says in his 'old' view that it is not permissible to consume that which has gone through a chemical change of animals which are permissible to consume because the Prophet (saw) said "Consumption of animals which are dead is *ḥarām*". And he says in his "new" view that it is permissible to consume because the skin is regarded as pure. And if it is of animals which are not permissible to consume then its consumption is not permissible because tanning is not stronger than slaughtering, and mere slaughtering does not permit consumption of animals which are not permissible to eat ...And our Sheikh Abū Ḥatim Al-Qazwīnī narrated from al-Qāḍī Abī al-Qāsim ibn Kaj that he narrated another version that it is permissible because tanning is a process for purification. (Nawawī, 2001:121, Ibn Hajjāj, 1997:276).

The legislators of the *Shāfi`iyyah* madhhab were inclined to accept the view that it is permissible to consume products from animals which are not permissible to consume, other than pigs, that which have gone through a chemical process of metamorphosis. These *Shāfi`iyyah* jurists included Al-Qaffāl, Al-Fawrānī, Al-Rawwayanī and Al-Jurjānī etc. (Nawawī, 2001:121).

The *fatwā* issued by the MJC in 1997 on the *ḥalāl* status of two gelatine production plants in Belgium supported the initial position. In addition, it concluded an invitation to some *Mufattiḥ* to inspect the South African plant since they were skeptical and questioning the process of creating gelatine. However, the confusion created by SANHA amongst its own supporters, followers of *Hanafī madhhab* and the business community had a greater impact than the detailed ruling of the *Hanafīyyah* scholars on gelatine. The MJC Fatwa Committee went a step further by citing the view of the student of Imām Abū Ḥanīfah and the legislative principle of *ʿumūm al-balwā* (general affliction or necessity).

The *fatwā* issued for the gelatine plant in Belgium confirmed that there are two intense processes under which the skins and bones undergo to produce gelatine. The MJC Fatwa Committee asserted that:

In our view results in a change of essence (*inqilāb al-haqīqah*) which takes place not once, but twice. For a *fatwā* on the permissibility of the use of this edible gelatine, we rely on the verdict issued by Imām Abū Muḥammad of the *Ḥanafī Madhhab* who rules that due to the *ʿumūm al-baḳwāʾ* the end product will be permissible although the product from which it was transformed was originally unclean and not permissible.” (Karaan et al., 1997).

The *fatwā* included the following legal maxims:

1. And Allah has not made any difficulty for you in your religion.
2. Difficulty allows for ease.
3. When a situation is narrowed (through difficulty), it opens for relief.

This principle employed by the MJCHT is discussed in classical reference works and has been part of the traditional legacy of Islam. According to the *Sharīʿah*, wine and spermatozoa which are normally regarded as *ḥarām*, may become pure, and thus permissible, through a chemical process. This is another precedent that the MJCHT employs to substantiate its view on gelatine. In the Qurʾān clear reference is made to the prohibited status of alcohol: “Oh you who believe, intoxicants, gambling and animals slaughtered for other than Allah are abominations of Satan’s work, refrain from it so that you may be successful.” (Q 5:90).

Further prohibition is found in numerous Prophetic traditions which clearly mention its legal status. One such narration curses anyone who associates with it. The Messenger of Allah (saw) said:

Wine is cursed from 10 perspectives: “The essence of wine in itself, the consumer of it, the wine pourer, the wine seller, the wine buyer, the wine maker, the wine plant, the wine carrier, the place where its sold and the person eating from its profits.” (Al-Qazwīnī, n.d.:*Hadīth*: 3380; Al-Sajastīnī, 1999: *Hadīth* no.3674).

For the application of *qiyās*, the MJC SA relied on an *aṣl* (origin, or precedent) which could be extended to the *far`* (branch or subsidiary) on condition that the affects are the same. In this regard the MJC Fatwa Committee used wine as an *aṣl* and investigated the traditional views regarding it. The Committee explained that when wine, which is regarded as impure and unsuitable for Muslim consumption, undergoes a chemical changing process which breaks down the properties of the intoxicants contained in the wine and changes it into vinegar, either undergoing this change by itself or through the intervention of humans, the end product vinegar is *ḥalāl* and thus permissible for Muslim consumption.

The *fatwā* further states,

For this reason [of the changes wrought by chemical processes] we seek refuge in the opinion of Imam Muhammad and his *fatwa* of *tabdil al-mahiyat* (change of essence), which is given to save Muslims from a general calamity. Hence the changes which takes place in the bones and skins (originally not slaughtered in the proper way) i.e. transformed from a solid substance into a liquid gelatine substance and then back into solid substance, namely gelatine granules, renders the end product clean and permissible for utilization. An example to substantiate the above view, is the example of the change of wine into vinegar, either of its own accord or through something being added to it. The vinegar becomes clean and permissible for Muslim consumption due to the change of essence which took place. This is so although some of the non-essential properties of both products remain the same, for example, both remain a thin liquid, the chief ingredient of both is grapes and the two products resemble each other in smell.” (Karaan et al., 1997).

In addition to the analogy of wine turning into vinegar as an example to justify the consumption of gelatine, the MJC also cited the manufacturing of some soaps. It maintains that if unclean ingredients are added to it or accidentally fell into it and chemical transformation takes change takes place it will become clean and permissible to use. The *fatwā* issued for the gelatine plant in Belgium also cited references and the views of scholars to help unequivocally establish its position by quoting the original Arabic text and providing a translation for it. The *fatwā* also contained the views of reputable Deoband *‘ulamā’* by

referring to their *fatwā* sources such as Fatāwā Dār al-`Ulūm Deoband. The MJC, by resorting to this strategy, intended to demonstrate that the position of the MJC was in line with both classical sources and contemporary scholars. *Fatāwā* from *Fatāwā Raḥīmāh* were cited to demonstrate that the position of the MJC concurred with that of the student of Imām Abū Ḥanīfah:

And unclean oil becomes clean when made into soap. This is the *fatwā* given to save people from extreme difficulty... And this transformation is a process of cleansing according to Imām Muḥammad and on it fatwa is given due to the general difficulty which is caused by it. I have seen in a commentary on *Maniyyah* which corroborates the first view. It says that many *masa'il* are deduced from it as for example if a man or dog falls into a certain amount of (liquid used for the manufacturing of) soap and becomes transformed into soap, the soap will be clean because of the complete transformation taking place. According to Imām Muḥammad the reason for this verdict is the transformation and change of essence and that *fatwā* is given to avoid involving the *ummah* in difficulty. Also note that ashes of unclean things are not unclean. Similarly, the (ingredients for the manufacturing of) salt in which a donkey or swine fell into [and] become transformed into salt is not unclean, neither does the water of a well become unclean if something unclean fell into it. It also remains clean if afterwards the well becomes completely changed into mud. (*Fatāwā Raḥīmāh*, n.d. Vol.1. p. 301).

Similar cases and examples are also cited in the *fatwā* for the Belgium plant to demonstrate the classical views of scholars regarding when a complete chemical transformation and metamorphosis of a product has taken place. These examples are cited in the *fatwā* for both the Muslim consumer and skeptical `ulamā' to demonstrate that there is a premise for the *fatwā*, thereby substantiating the view of the MJCHT. The examples of impure substances which are considered pure under certain circumstances as cited in the *fatwā* are:

- i. When an animal like a donkey or swine falls into a salt pan before a complete change has taken place.
- ii. A container manufactured from unclean products which has been baked in an oven.
- iii. Soaps made from unclean products and when being used some traces of the unclean product may still be visible.
- iv. Wine when it changes into vinegar and some properties of the wine is still contained in the vinegar.

- v. Blood that is changed into musk.
- vi. The original state of embryo when changed due to fusion of a male sperm and female egg.
- vii. When an unclean well undergoes a complete change after it has been contaminated.

The *fatwā* for the Belgium factory concluded that:

In the production of gelatine, bones and skins are completely transformed, first from its original solid state into a liquid gelatine substance, then from this liquid substance into a solid spaghetti-like substance which is crushed into gelatine crystals. Thus, we conclude that although the skins and bones used for gelatine production are not from animals slaughtered according to *Shari'ah* or by Muslims, and although the skins and bones would not be permissible to consume, the gelatine is permissible for consumption (Karaan, et al., 1997).

In the conclusion it also mentions that this *fatwā* is confined to the two Belgium plants visited by the MJC Fatwa Committee, and that this *fatwā* is not applicable to gelatine plants in South America, North America, or China. If any additional changes take place in the manufacturing of gelatine at the Belgium plant, a new *fatwā* will be required (Karaan, et al., 1997).

The question of the permissibility of gelatine is only confined to animals which are not slaughtered according to Islamic rights. *Ijmā'* (Consensus) has been reached amongst the *'ulamā'* that it is permissible to benefit from the skin of animals which have been slaughtered according to the laws of slaughtering. (*Nawawī*, 200:132).

According to the classical Shāfi'ī view, the chemical process and metamorphosis which the skins undergo after the death of an animal change their state into its original status of purity while the animal was alive. This view is applied to animals except swine and dogs. Imām Nawawī asserts that:

Every animal becomes impure by death, its skin becomes pure through tanning except that of the dog and swine... because tanning returns the original status of the skin and it is permissible to benefit from it like (it is permissible to benefit from the animal) while being alive. Life erodes impurity from the skin like that of tanning. (*Nawawī*, 2001:110).

Imām Nawawī asserts that if the skins of animals become pure through the chemical changing processes, then it is permissible to benefit from the animal products generally without any restriction. (*Nawawī*, 2001:199). He further asserts that this is the consensus view of *Shāfi`ī* scholars. He also cites the views of other scholars as follows:

- i. The skin of dead animals remains impure, and its condition will not change through tanning. This is the view of the Imām Aḥmad ibn Ḥanbal and Imām Mālik.
- ii. The skins of edible animals become pure through tanning. This is the view of al-Awzā`ī, Ibn Mubārak, Abū Dāwūd and Ishāq ibn Rahawī.
- iii. The skins of all animals become pure through tanning except the skins of dogs and swine. This is the view of the *Shāfi`ī* scholars.
- iv. The skins of all animals become pure through tanning except the skin of swine. This is the view of Imām Abū Ḥanīfah.
- v. The skins of all animals become pure through tanning including the skin of dogs and swine. This is the view of the Ahl al-Zāhirah reported by Abū Yūsuf. (*Nawawī*, 2001:112).

SANHA's Refusal to Accept the *Fatwā* of the MJC

SANHA did not accept the gelatine *fatwā* issued by the MJC's Fatwa Department on gelatine. On 18 August 1999 they requested another *fatwā* to support their view and more specifically to rebut the *fatwā* issued by the MJCHT. This was also in response to the *fatwā* that was issued by Muftī Ebrahim Desai, a *Hanaḥī muftī* who supported the view of the MJC. Three months later, on 27th November of 1999, Justice Muḥammad Taqī Usmānī, a world renowned religious scholar from Pakistan, who is regularly consulted by the Deoband '*ulamā'* in South Africa, responded to the query of SANHA on the permissibility of gelatine. He expressed the same view held by the MJC Fatwa Committee. In his response to SANHA, he cited the views of various scholars with their sources. He declared in his *fatwā* the following:

You have asked me about my Fatwa regarding Gelatin addressed to Mufti Ebrahim Desai. The substance of the Fatwa is that the Gelatin acquired from [animal] bones can be held as pure (Taahir) and the Gelatin acquired from the hides of un-slaughtered animals can also be held as pure because [the] chemical process fulfills the requirement of tanning (Dabaghuh)

but there are two points to be kept in mind. This ruling applies only to the animals other than pig. The case of pig is totally different because it is held to be impure ..., my ruling was to extend purity of the Gelatin. Some Fuqaha are of the view that hides of a Halal animal can be used orally after being tanned but the majority of the jurists are of the view that it is not allowed for oral use. The latter view has been preferred by most of the Hanafi jurists. However, some of the Hanafi jurists and a large number of Shaafie jurists have preferred the permissibility of oral use of the hides of Halal animals after Dabaghah. Consequently, the use of Gelatin taken from Halal animals, like cow, should be avoided as far as possible acting on the opinion of the majority of jurists. However, since Imam Shaafie in his latter view has opined it to be Halal and a large number of the Shaafie jurists as well as some Hanafi jurists take is as such, the view of these Fuqaha can be acted upon in the case of genuine needs ..." (Taqī Usmānī, 1999).

SANHA did not accept the *fatwā* by Muḥammad Taqī Usmānī and the MJCHT continued to experience interference from SANHA through its perpetual questioning of the MJC's *ḥalāl* certification. Consumers were caught in the debate, unaware that SANHA disputed the *fatwā* issued by the MJC and other reputable international scholars. In a letter to the United Ulama Council of South Africa (UUCSA), a body founded in 1994 with the objective of forming an inclusive forum for mainstream '*ulamā*' formations in South Africa, the Halaal Trust requested that SANHA accepts its *fatāwā* as a valid legal opinion within the Islamic legal framework. The MJC accused SANHA of undermining then and sowing doubt amongst the Muslim consumers.

Imām Yasin Harris also accused SANHA of regarding the *Hanafī* juristic school of law as superior. He also indicated that he has sent numerous correspondences to SANHA, asking them to refrain from their unethical business behavior. In one of these letters he also informed the UUCSA that if SANHA continues with their malicious behavior, the MJCHT will have no choice but to pursue legal action against them. The letter further requested from the UUCSA that they accept the MJC's *fatwā* on gelatine and that they discuss the matter with SANHA. According to the letter of Imām Harris's letter to UUCSA he stated that:

You are ... aware of the fact that since our inception in 1945, our Council has been involved in halaal matters. It is our sincere belief that we have rendered a great service to the Muslim community as far as halaal matters are concerned. However, since the establishment of SANHA, our responsibility, credibility and legitimacy as a halaal certification body has [sic] been undermined due to the direct interference with our certificate holders and their consumable products.

I have therefore written to SANHA, advising them that if they do not stop interfering with our certificate holders or passing adverse remarks about the credibility of our organization, we will initiate legal proceedings against them. I have also written to the constituent bodies of SANHA, stating that I hold them all collectively responsible for the actions of SANHA. I have the distinct impression that the Ulema serving on SANHA are completely in the dark as far as the activities of SANHA are concerned.

I hereby also request your esteemed body to come to some amicable solution to the question of gelatine. In fact this is recommended by the eminent Islamic Scholar Mufti Taki Usmani. We have Fataawa from the following scholars who have accepted the gelatine under our jurisdiction viz:

Mufti Taqi Usmani

Mufti Burhanuddin of India

Moulana Alie Moosajee

Moulana Yusuf Karaan

Sheikh MA Fakier on behalf of the MJC

Jamiatul Ulama of Kwazulu Natal has also accepted Davis Gelatine.” (SANHA’s Report, 2002: 125).

The lobbying of SANHA within UUCSA was considered so influential and overpowering that it dismissed the Halaal Trust’s view that SANHA regarded the *Hanafī madhhab* as supreme, an accusation made by MJCHT. The majority of the constituent members were conservative *Hanafī* followers which may have contributed to render any approach from the Halaal Trust futile, ineffective, and unsuccessful even though UUCSA’s president was from the MJC and belonged

to the Shāfi'ī *madhhab*. The MJCHT disapproved of UUCSA's position and criticized that it was prepared to accept the moon sightings by the MJC, and not its *fatāwā* on *halāl* matters. The position of UUCSA was becoming more evident to the MJCHT. Imām Harris asserted that:

We therefore urge and demand from UUCSA to acknowledge our authority as a halaal certifying body. It would be futile to belong to a national Ulema body who accepts your hilaal matters as well as your contribution to Muslim Personal Law, but fail to acknowledge our halaal certification. (SANHA's Report, 2002:127).

In the same letter the MJCHT provided UUCSA with the names of some manufacturing and production plants certified by the MJCHT who had reported intimidation by and interference from SANHA. Abattoirs and "Airchefs" were particular targeted by SANHA; as the latter provided butchers and supermarkets with meat and the latter who supply airlines with *halāl* food. The names of the companies as listed by the MJCHT in the letter included Meatco – Namibia, EarlyBird, Unilever – Hudson & Knight, Piemans Pantry, Robertsons, Airchefs, Southbakels, Meatlands (Colesberg), Finlar Foods Rainbow Chickens.

Imām Yasin Harris reported that the intimidation included questioning the *halāl* standards of the MJCHT and the *halāl* status of many products. When the MJCHT realised that UUCSA was not going to address the complaint, they turned to Jamiatul Ulama South Africa (formerly the Jamiatul Ulama Transvaal until 1994) for intervention.

On 6 September 2000, the Jamiatul Ulama Transvaal responded to the complaint and stated that it could not attend or deal with specific concerns raised in the letter as the majority of the members affiliated with UUCSA served on SANHA. The Jamiatul Ulama Transvaal also feared that they may be bias and unable to mediate in this sensitive matter. This confirmed the suspicion of the MJCHT about why UUCSA was not prepared to take the concerns of the MJCHT seriously. The Jamiatul Ulama Transvaal confirmed its support for SANHA and stated that:

It is unrealistic to expect UUCSA to deal with the matter without bias, since most members of UUCSA, also form part of SANHA. Members of UUCSA cannot be both the players and the referee at one and the same time. There would almost

certainly be conflict of interest. The correct forum to discuss your grievances is SANHA. We can thus seek to resolve the matter in our capacity as members of SANHA. It is beyond the ambit of the Jamiatul Ulama Transvaal's jurisdiction to instruct SANHA to suspend all discussions with the MJC Halaal Trust certificate holders. SANHA, like all other professional bodies has grievance procedures, which are not necessarily concomitant to taking instructions. The fact that we have suspended Halaal certification as an individual body in favour of a National Halaal certification body, is an obvious indication of our preference. To expect the JUT to advocate MJC Halaal certification would be to defeat the very purpose of SANHA's formation. (SANHA's Report, 2002:127).

In addition to the *ḥalāl* status of gelatine derived from the skin and bones of livestock animals, the MJC Fatwa Committee issued another *fatwā* on gelatine produced from the bones of fish. The *fatwā* cited two *aḥādīth* attributed to Muḥammad (saw) which stated that:

Its water (sea water) is pure (for ritual purification) and its dead (animals) are permissible (for consumption). (Al-Tirmidhī, n.d., *Ḥadīth* 69).

Made permissible for us are two types of dead (animals) and two kinds of blood, as for the two dead animals, fish and locust and as for the two kinds of blood, liver and spleen. (Ibn Majah, 1975, *Ḥadīth* 3314).

The MJC Fatwa Committee used these two *aḥādīth* to prove that any aquatic life used to produce gelatine is permissible. The *fatwā* stated that:

In view of the fact that Rasulullah has said that two dead animals (fish and locust) and two kinds of blood (liver and spleen) are permissible for Muslims, it follows that any fish which dies of its own accord or is killed would be permissible to consume. Now if the bones are used for the production of gelatine, irrespective of whether gelatine is produced as a result of a change in essence taking place with the bones, or whether it is produced as a result of an extraction from the bones, such gelatine would be permissible for consumption by Muslims. Hence any gelatine made from the bones of fish would be permissible to consume.

The MJCHT believes it has proven, after thorough investigation of the juristic views of various *ulamā'* and consulting scientific data, that gelatine is *ḥalāl* for Muslim consumption even though the animal has not been slaughtered in accordance with *sharī'ah*. This view is held by Shāfi'ī scholars and some Ḥanafī scholars as outlined in a pamphlet issued by the MJCHT in 2006.

After the MJCHT reconfirmed the *ḥalāl fatwā* of gelatine, there remained some *ḥalāl* certifiers who rejected this. This prompted the MJCHT to consult renowned *ulamā'* and religious institutions both locally and internationally as SANHA continued to sow doubt amongst certificate holders and consumers.

A special invitation was granted to Moulana Burhanudien of Nadwah al-'Ulamā' in Lucknow, Pakistan to inspect the Davis Gelatine plant in Gauteng to affirm its *ḥalāl* status, according to Imām Harris. Other local and international *ulamā'* and religious institutions which were consulted were:

- i. Sheikh Yūsuf al-Qaraḍāwī from Qatar.
- ii. Majma' al-Fiqh in Jeddah.
- iii. Muftī M Taqī Uthmānī of Pakistan.
- iv. Majlis al-'Ulamā' in Indonesia.
- v. Muftī AK Hoosain from *Channel Islam* in Gauteng, South Africa.
- vi. Dār al-'Ulūm in Newcastle, South Africa.
- vii. Muftī M Ashraf of Dār al-'Ulūm in Springs, South Africa.

The *fatwā* of the MJCHT asserted that:

... our decision to issue a verdict of permissibility of gelatin from Halaal animals was not taken lightly. A lot of thought and consideration of the facts, both jurisprudential and scientific data, as well as the views of men of science had been taken into consideration as well as a lot of reading of reference works before we came to the conclusion. Most definitely, this *fatwā* was not sucked out of our thumbs and we strongly resent the view of some Halaal Authority that goes about spreading the word that bovine gelatin is non-Halaal. That may be a personal view of some people being stubbornly held by them, [which is] by no means a universal view. Our view is that gelatin formed from Halaal animals is Halaal for Muslim consumption and is so even if the skins of bones come from animals not slaughtered in the *Shari'ah* manner of Thabah... (Karaan, 2006).

In order to attribute greater credibility to the MJCHT's *fatwā*, they cited the view of Muftī Abdul Kader Hoosain, a prominent and influential Ḥanafī scholar of Channel Islam International that:

If the gelatine is sourced from halaal animals then it is halaal. If it is sourced from haraam animals and a complete tabdeelul mahiya takes place then it would be halaal. We need to consult with experts in this field regarding tabdeelul mahiya. However, this rule excludes the pig, which is explicitly prohibited in the Noble Quran and no process can purify it. Another issue, which needs to be probed is the gelatine derived from hides of haraam animals. After tanning takes place it is tahir and according to majority of the Shafi'i jurist and some Hanafi scholars it is permissible for consumption. Nowadays, where sweets, chocolates, biscuits etc contain gelatine the fatwa of permissibility should be issued on the basis of umum balwa (general interest) and necessity ... (Karaan, 2006).

The *fatwā* also reiterated view of Muftī Ebrahim Desai. In his *fatwā* he holds the view that gelatine derived from the pig is also regarded as pure. He argued that,

If the gelatine is derived from any part of the animal which can be consumed according to the Shariah, eg. cow, camel, sheep, goat, etc and slaughtered according to Shariah, it will be permissible. If the animal cannot be consumed according to Shariah, or was not slaughtered according to the Shariah, the gelatin from such animals will not be permissible. However, if it undergoes a complete change of metamorphosis (Tabdeel-e-Maahiyat), the gelatin will be permissible. i.e. if metamorphosis takes place in pork gelatine or gelatine derived from an animal not slaughtered according to Shariah, it will be Halaal. If it does not undergo a complete change, it is not permissible to use it or sell it. The income will be Haraam. However, in a state of Idhtiraar (desperation), one will be excused to use it if there is no alternative and prescribed by the Physician. The state of desperation must be confirmed by a reliable Mufti. (Desai, n.d.).

Even though the MJCHT provided evidence and empirical data which it used to derive its ruling, SANHA rejected the view of the Halaal Trust and

declared the products containing gelatine as *ḥarām*. SANHA's view is widely circulated on the World Wide Web. On its website it declares that:

“Majority of the Ulama and the International Halaal certification bodies are of the view that such metamorphic changes do NOT occur and therefore they do not accept this view and have adopted a very holistic position on gelatine and other such ingredients of non-Halaal animal origin used in food production. SANHA's Theological Committee holds the latter view and we reiterate that it is not acceptable to use non-Halaal raw material in the manufacture of food products due to the fact that abundance of Halaal raw material is available and Muslim should not look for technical loopholes (metamorphosis etc) to legitimize the use of raw materials sourced from Haraam animals in food production.” (SANHA, 2012)

The discussion and differences amongst the *'ulamā'* on the permissibility of gelatine continued for a number of years, with Muslim consumers were caught in the middle. In July 2006, SANHA gave a false impression in its *Halaal Gazette*, following the World Halal Conference held in Cape Town in 2005, that there is worldwide support for its position on gelatine. It announced that gelatine derived from non-*ḥalāl* sources was vehemently rejected and that the delegates at the conference supported their view. However, according to Sheikh Achmad Sedick, no full scale discussion took place on this issue at the World Halal Conference in Cape Town in 2005. He asserted that according to Imām Yasin Harris, Dr Muhammad Hawari from Germany presented his paper on gelatine, espousing the view that a complete chemical change takes place in the skins and bones prepared for gelatine, thus making it completely permissible. Dr Hawari held this view for many years, which he presented at the previous World Halal Conference held in Jakarta and Kuala Lumpur. Shortly after the presentation of Dr Hawari, a SANHA delegate presented the view of SANHA by asserting that gelatine derived from non-*ḥalāl* slaughtered animals is *ḥarām*. SANHA gave the distinct impression to the audience that most gelatine are derived from pig skins and pig bones.

At the conference, Imām Yasin Harris objected to this assertion, stating that the plants which are directly under the jurisdiction of the Halaal Trust use skins and bones of cattle, buffalo, poultry, and even skins of fish to produce gelatine. The conference subsequently appointed a committee to conduct

further research on the question of gelatine and to report back at the next World Halal Conference. This is how far the issue of gelatine was discussed according to Imām Harris (Sedick, 2010:66).

The *fatwā* of the MJCHT, the view of the Shāfi'ī jurists, the *fatwā* from different Muslim authorities and individuals globally did not satisfy SANHA. In 2009, MJC SA approached another Islamic authority in India known as Jamiat Ulama–E- Maharashtra headed by Muftī `Abd al-Aḥad only to discover that they held the same view as the MJCHT. The *fatwā* was written in Urdu and translated into English by an approved translator of the Saudi Consulate in Mumbai. The *fatwā* specified that when the material for gelatine have passed through various stages, and the end product is totally transformed into a new product, then it is permissible to use. The Jamiat Ulama-E-Maharashtra states that this process has its validity in the framework of Islamic law and should not be disputed. They further emphasized that when an impure or pure product has undergone a vigorous cleaning and chemical transformation process its end product is permissible for consumption. The *fatwā* further cites similar examples which are often cited in Islamic law and the application of analogical deduction to support the same *fatwā*. The *fatwā* states that:

The way Gelatin is prepared it passes through a multi-step process in which the characteristics and properties of bones are completely changed. This is called Transformation or Change in Fiqhi terminology. When an impure and unclean thing is changed and transformed to the extent that it loses its originality and changed completely, the transformed thing can be used without any hesitation. For instance the semen is impure and unclean [and] when it becomes blood it is still impure and cannot be used, but when it becomes flesh then it is pure and can be used, because the properties have been changed completely. Similarly the musk, as the musk is impure in the form of blood. But it is pure and clean when it becomes musk. Bones of those animals whose meat are not eaten are Haram (not permitted) and cannot be used. But when the bones have been transformed into salt, now the salt is Halal and can be used. Likewise, the impure oil is mixed with soap it is clean and pure on the basis of change and alteration as declared by Imam Muhammad (Rahmatullah Alaih). The soap mixed with impure oil is clean and usable because the impure oil transformed and changed

completely. The change makes unclean and impure thing clean and usable by: Imam Muhammad (Rahmatullah Alaih) and the same judgment is delivered to avoid trouble and day-to-day involvement. The Islamic Fiqh Academy of India has also delivered its judgment after research and several discussions that the Gelatin is clean and permitted to be used. Therefore, there is no problem in its usage in any form. Allah the Al-Mighty has the full knowledge of everything.” (Ahad, 2009).

In 2011, SANHA reaffirmed their position on gelatine by stating that:

Certain Ulama contended that a drastic metamorphic change occurs thereby rendering the impure collagenous tissue into Halaal gelatin protein. Others are of the view that such metamorphic changes does NOT occur and therefore do not accept gelatine from Haraam animal raw material as Halaal. SANHA's Theological committee therefore suggests abstention from gelatine sourced from non-Halaal animals. (SANHA, 2011).

Conclusion

The MJCHT has adopted a generally inclusive *fiqh* methodology within the Islamic theoretical framework of interpretation and analysis. They have adapted to modernization and globalization by adopting a *fiqh al-wāqī'* approach as evidenced by their *fatwā* on gelatine.

After numerous attempts, different *fatāwa* and consultations with various national and international scholars, SANHA continues to reject the *ḥalāl* status of gelatine by the MJCHT,

although some scholars who were consulted were of the same ideological school of thought (*Hanafīyyah*) as SANHA. To date, this matter remains unresolved and SANHA continues to question the gelatine status certified by the MJCHT. Consumers are caught in the middle of the discursive discourse of gelatine and it continues to divide the *ḥalāl* certifiers in South Africa. The MJCHT continues to accuse SANHA of regarding the *Ḥanafi madhhab* superior to the *Shāfi'ī madhhab*. Although UUCSA was established to represent Muslims in South Africa to government as a united body despite in its diversity in representation, it has failed to unite Muslims by respecting

and accepting diverse *fatāwā* especially within the *ḥalāl* industry. Another possible case study in this regard could focus on the recital of the *tasmīyah* according to Imām Yasin Harris. Ultimately, this article helps to provide on and insight into the debate on the *ḥalāl* status of gelatine in South Africa.

References

- Ahad, Abdul, 2009. *Jamiat Ulama-E Muharashtra – Fatwā on gelatine*. Unpublished
- Al-Jawzī, Ibn Al-Qayyim. “*T lām al-Muqi`in `an rabb al-`Alamin.*” Vol. 4 p. 157.
- Al-Qazwīnī, Ibn Mājah, n.d. “*Sunan ibn Mājah.*” Beirut: Dār al-Turāth. *Ḥadīth*. 3380.
- Al-Tirmidhī, n.d. “*Sunan Tirmidhī.*” Beirut: Dār al-Iḥyā’. Book of purification: Chapter 52 *Ḥadīth* 69.
- Al-Sajastānī, Abū Dāwūd, 1999. “*Sunan Abī Dāwūd.*” *Ḥadīth* 3674.
- Asad, Talal, 1993: “*Genealogies of Religion.*” Baltimore: John Hopkins University Press. p. 32.
- Asad, Talal, 2000. “*Al-Sulṭah al-Ḥadīthah wa i`ādāt Tashkīl al-Taqālīd al-Dīniyyah.*” Interview with Sabā Maḥamūd, translated by Muṣṭafā al-Ḥarāzīn, *al-Ijtihād*, no. 47. p. 255.
- Desai, Ebrahim, Undated. *Fatwā on gelatine*. Unpublished.
- Fatāwā Raḥīmah, Durr Mukhtar, n.d. Selection of Fatāwā by *Dār al-`Ulūm* India. Karachi: Dār al-Ishā`ah. Vol.1. p. 301.
- Gelita, n.d. <https://www.gelita.com/en/knowledge/gelatine/what-is-gelatine>. Website accessed on 20 October 2023.
- Graf, Bettina and Skovgaard-Petersen, Jakob, 2009. “*Global Mufti – The Phenomenon of Yusuf al-Qaradawī.*” Columbia: Columbia University Press. p.18-28.
- Hallaq, Wael, 2009. “*Shari`a – Theory, Practice, Transformation.*” New York: Cambridge Univeristy Press. p. 113.

- Ibn Ḥajjāj, Asqalōnī, 1997. *“Sharḥ Ṣaḥīḥ Muslim.”* Beirut: Dār al-Ma`rifah. Vol. 3. p. 276.
- Interview with Imam Yasin Harris and Moulana Yusuf Keraan on 19 July 2012.
- Karaan, Yusuf, Sheikh Amien Fakier, Moulana Taha Karaan, Moulana Abdurahman Hendricks, 1997. MJC SA - *Fatwā on gelatine.* Unpublished.
- Karaan, Yusuf, 2006. MJC SA – *Fatwā on gelatine.* Unpublished.
- Lubbe, Gert Johannes Alwyn, 1989. *“The Muslim Judicial Council – A descriptive and analytical investigation.”* Unpublished thesis. UNISA. p. 70 – 73.
- Masud, Muhammad Khalid, Brinkley Messick, and David S. Powers, 1996. *“Islamic Legal Interpretation: Muftis and Their Fatwas.”* Cambridge, Massachusetts: Harvard University Press. p. 3 – 4.
(Medical News Today, n.d.). <https://medicalnewstoday.com/articles/319124#uses-and-benefits>. Website accessed on 25 October 2023.
- Muslim News, 9th September 1977.
- Nawawī, Abū Zakariyyah Muḥī al-Dīn Ibn Sharf, 2001. *“Kitāb al-Majmū’.”* Vol. 1. p. 111-132.
- Nawawī, Abū Zakariyyah Muḥī al-Dīn Ibn Sharf, 1997. *“Ṣaḥīḥ Muslim.”* *Ḥadīth* 810.
- Peta, n.d. <https://www.peta.org/about-peta/faq/what-is-gelatin-made-of>. Website accessed on 4 August 2016.
- Rafudeen, Auwais, 2012. *“The Orion Cold Storage Saga: Debating Halaal in South Africa.”* *Alternation Special Edition* No 11. p. 137 – 138.
- Ramadan, Tariq, 2004. *“Western Muslims and the Future of Islam.”* New York: Oxford University Press, Inc. p. 9.
- SANHA n.d. <https://sanha.org.za/2012/12/14/gelatine/>. Date accessed: 7 July 2015.
- SANHA n.d. <https://www.sanha.org.za/introduction-to-sanha/>. Website accessed on 8 August 2016.

SANHA's Report, August 2002. Submission of SANHA to the hearing held under the auspices of the United Ulama Council of South Africa in the matter between South African National Halaal Authority and Muslim Judicial Council Halaal Trust. Unpublished. p. 125 – 127.

Sedick, Achmad, 2010. *“Halāl Standards of the Halaal Trust of the Muslim Judicial Council SA.”* Cape Town: DPB Printers & Booksellers cc. p. 66.

Tayob, Shaheed, 2012. *“Consuming, Producing, Defining Halal: Halal Authorities and Muslim Consumers in South Africa.”* University of Cape Town. Unpublished thesis. p. 109.

Taqī Usmānī, Muḥammad, 1999. Fatwā on gelatine. Unpublished.

Venter, D, (ed) 2004. *“Engaging Modernity: Methods and Cases for Studying African Independent Churches in South Africa.”* London: Greenwood Publishing Group. p. 3 - 7.

Wilson, F, Monica, 1971. *“Religion and the Transformation of Society.”* Cambridge: Cambridge University Press. p. 14 – 19.

<https://sanha.org.za/2012/12/14/gelatine/>. Date accessed: July 2015.

Zaman, M. Q, 2002. *“The Ulama in Contemporary Islam – Custodians of Change.”* New York: Princeton University Press. p. 10.

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