



SAMASTA'S METHODOLOGY OF *IFTĀ'*:  
AN ANALYTICAL STUDY OF SELECTED *FATĀWĀ* ON  
MARRIAGE AND DIVORCE

BY

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A dissertation submitted in fulfilment of the requirement for  
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## ABSTRACT

Despite the fact Samasta Kerala Jam‘iyyat al-‘Ulamā’ (founded in June 26, 1926) is the foremost Islamic organization with the largest number of followers in south India, its consequential contributions has drawn very little research attention in the academia and has remained unstudied in the field of Islamic studies in India and beyond. So far, no significant study has been conducted on the Samasta’s methodology of *iftā’* though it has issued thousands of *fatāwā* in the span of almost nine decades. Realizing this fact, this thesis focuses on the Samasta *Fatwā* Committee (SFC) and its methodology of *iftā’*. Using analytical and critical methods, the study scrutinizes the activities of Samasta scholars and their methodology of *iftā’* based on manuscripts of *fatāwā*, publications and interviews with *muftūn*. In addition, the study analyzes and evaluates a group of selected *fatāwā* of the SFC with special focus on *fatāwā* issued on marriage and divorce. Thus, the researcher aims at examining the implementation of methods on the *fatāwā* and their legal bases. The study notices that the SFC maintains absolute reliance on traditional authoritative legal texts of the four classical schools of Islamic law in finding the rulings of *Sharī‘ah* on issues posed to them. Given that the majority of Kerala Muslims are followers of Shāfi‘ī School, the primarily used references by SFC are two sources: *Tuḥfat al-Muḥtāj* of Ibn Ḥajar al-Ḥaytamī and the *Nihāyat al-Muḥtāj* of al-Ramlī. To sustain the complete comprehension of the issues with a yearning to uphold the unity of Muslims in particular localities, the SFC consults with concerned experts and strictly follows certain precautionary measures in the cases related to *waqf*, apostasy, marriage, divorce and other notable matters. The present study has proven that the SFC is not simply performing the duty of a *muftī* in Kerala but it plays dynamic roles with profound impact on society. The analysis of selected *fatāwā* reveals that the SFC formulates its *fatāwā* very carefully while considering the situations of *mustaftī* with very clear and direct sentences. All the *fatāwā* are crafted meticulously in line with the rulings derived by the classical scholars of the four schools of Islamic law.

## ملخص البحث

على الرغم من أن "جمعية العلماء لعموم كيرالا" (سمستا) (التي تأسست في 26 يونيو 1926) أكبر منظمة إسلامية ولها أكبر عدد من الأتباع في جنوب الهند، إلا أن إسهاماتها لم تلق الاهتمام الكافي من قبل الباحثين الجامعيين وظلت خارج نطاق الدراسات الإسلامية في الهند وخارجها. فليس هنا أية دراسة ذات شأن عن منهج الإفتاء عند هذه الجمعية مع أنها قد أصدرت الآلاف من الفتاوى فيما يقارب تسعة عقود. و إدراكا لهذه الحقيقة، تقوم هذه الأطروحة بدراسة تحليلية عن لجنة الفتوى لجمعية "سمستا" ومنهجيتها الإفتائية. وتستخدم هذه الدراسة المنهجين التحليلي والنقدي للتدقيق في أنشطة علماء جمعية "سمستا" ومنهجيتهم في الإفتاء بناء على المخطوطات من الفتاوى والمطبوعات والمقابلات مع المفتين. وبالإضافة إلى ذلك، تقوم الدراسة بتحليل الفتاوى المختارة لهذه اللجنة وتقومها مع التركيز على الفتاوى المتعلقة بقضايا الزواج والطلاق. وقد لاحظ الباحث أن لجنة الفتوى في جمعية "سمستا" تعتمد اعتمادا كليا على كتب المذاهب الأربعة لمعرفة الأحكام الشرعية على القضايا المطروحة عليهم. ونظرا لكون الغالبية العظمى لمسلمي ولاية كيرالا يتبعون المذهب الشافعي، فقد احتلت بعض مراجع الفقه الشافعي مثل تحفة المحتاج لابن حجر الهيتمي ونهاية المحتاج للرملي الصدارة في الاستخدام عند هذه اللجنة. وحرصا على الإحاطة بالجوانب المختلفة للقضايا المطروحة وتمسكاً بوحدة المسلمين، فإن لجنة الفتوى تتشاور مع الخبراء المعنيين وتتبع بدقة بعض التدابير الاحترازية في القضايا المتعلقة بالوقف، والردة، والزواج والطلاق والمسائل البارزة الأخرى. أثبتت هذه الدراسة أن لجنة الفتوى بجمعية "سمستا" لا تؤدي مجرد واجب المفتي فحسب، ولكنها تلعب أدوارا حيوية في توجيه المجتمع. وقد بينت الدراسة أن الفتاوى المختارة قد تمت صياغتها بدقة فائقة مع مراعاة أحوال المستفتين بحيث جاءت الفتاوى في جمل واضحة وقصيرة ودقيقة وموافقة لأحكام مستمدة من تراث العلماء في المذاهب الأربعة.

## APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh and Uşūl al-Fiqh).

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Muhammad Amanullah  
Supervisor

I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh and Uşūl al-Fiqh).

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Dean, Kulliyah of Islamic  
Revealed Knowledge and  
Human Sciences

## DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Sayyed Mohamed Muhsin

Signature .....

Date .....

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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*To my two eyes, mom and dad, who helped me to see the world,  
trained me how to love and live, and inspired me to seek the knowledge*

***Sayyidat Zuharah Beevi and Sayyid Alavi Koya Thangal.***

*"My Lord! bestow on them Your Mercy as they brought me up (when I was) small."*

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## LIST OF ABBREVIATIONS

s.a.w	<i>Ṣallā Allāh ‘Alayhi Wasallam</i>
r.a	<i>Raḍiya Allāh ‘Anhu</i>
Samasta	Samasta Kerala Jam‘iyyat al-‘Ulamā’
SFC	Samasta <i>Fatwā</i> Committee

## TRANSLITERATION TABLE

ء	'	خ	kh	ش	Sh	غ	Gh	ن	N
ب	B	د	D	ص	ṣ	ف	F	هـ	H
ت	T	ذ	dh	ظ	ḏ	ق	Q	و	W
ث	Th	ر	r	ط	ṭ	ك	K	ي	Y
ج	J	ز	z	ظ	ẓ	ل	L		
ح	ḥ	س	s	ع	ʿ	م	M		

Short Vowels	
ـَ	a
ـِ	i
ـُ	u

Long Vowels	
ا + ـَ	ā
ي + ـِ	ī
و + ـُ	ū

# CHAPTER ONE

## INTRODUCTION

The issuance of *fatwā* has a cardinal role to play in the Islamic jurisprudence and it deserves a great concern of deep study based on its growth and adaptability to cope up with every time and place throughout the history. Literally the word '*fatwā*' means an answer or opinion<sup>1</sup> and as a term it is "disclosure of a *Sharī'ah* ruling on the basis of proofs to the one who asked about it". As Islam is deemed as a comprehensive framework of human life, people are ordained to regulate all spheres of their life as directed by Allah the most high and traditions of the Prophet Muhammad (s.a.w.). As much as the graph of developments increases, the pool of issues, most of them directly affect the common people, deepens and the duties of jurists become heavier to identify which are allowed in Islam and which are not.

As far as Indian Muslims are concerned, they enjoy the freedom to maintain, adhere to and disseminate their religious rulings, though they are a minority. Moreover, they have already a number of well-established Islamic institutions and organizations endeavouring in full swing with a wide variety of programs. Among those, Samasta<sup>2</sup> Kerala Jam'iyat al-'Ulamā' (S.K.J.U, widely known as 'Samasta') has much coverage of importance given the fact that it has been leading majority of Kerala Muslims for last 85 years and it concerns Islamic jurisprudence largely as well as people depend upon it for *fatāwā* and other purposes in their wide variety of religious and social affairs.

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<sup>1</sup> Muḥammad bin Mukram bin Manzūr, *Lisān al-'Arab* (Beirut: Dār Ṣādir, 711AH), v15, p147.

<sup>2</sup> Samasta is a word in Malayalam language means "all". It is the first word of the full name of the organization as Samasta Kerala *Jam'iyat al-'Ulamā* (All Kerala '*Ulamā*' organization). Now, the term "Samasta" is used widely to denote this organization. So in this study, the researcher will use the word "Samasta" to refer to this organization.

Founded in June 26, 1926; Samasta is an authoritative religious organization of *Sunnī* scholars in Kerala, a Southern Indian state, where Islam was propagated much earlier than the other parts of the country. It should be highlighted that Samasta leads the largest number of Muslim population in South India and it is widely known as the pioneer of Islamic education in Kerala. At present it manages a platform of about ten thousand primary educational institutions, i.e. *madāris* consisting of eleven hundred thousand students and eighty-five thousand registered teachers.<sup>3</sup> The contributions of Samasta scholars in order to defend *Sharī‘ah* and *fiqh* in its full spirit are widely appreciated. The supreme council of Samasta consisting of forty prominent scholars of the time is called *Mushāwarah*. A *fatwā* committee was formed from within *Mushāwarah* to deal with queries of the mass by issuing *fatwā* and it has been accepted by a large number of people as an authoritative source of *Sharī‘ah*. The scholars of Samasta as well as the majority of laymen of Kerala are followers of the Shāfi‘ī School of Islamic law. The wide array of the works of Samasta scholars and the studies about them are written in the local language named Malayalam. Because of this feature of language barrier, the activities and contributions of Samasta scholars drew less research attention in the academia and remained unfocused in the milieu of Islamic studies in India and beyond.

At this juncture, an analytical appraisal of Samasta’s methodology of *iftā’* focusing on its contributions towards *fiqh* and *uṣūl al-fiqh* would be valuable for *ummah* especially for students of Islamic jurisprudence. The study about the methodology of *iftā’* would be followed by an analysis of selected *fatāwā* on marriage and divorce, which are most common familial issues asked by laymen to *muftūn*.

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<sup>3</sup> Samasta Kerala Islam Matha Vidyabhyasa Boarad, *Samasta Kerala Jam‘iyyat al-‘Ulamā’* (Chelari: Samasta Kerala Islam Matha Vidyabhyasa Boarad, 2014).

## STATEMENT OF THE PROBLEM

As mentioned earlier, because of the boundary of language, significant scholarly accomplishments in Islamic jurisprudence by erudite scholars of Samasta, those needed to be explored as a part of knowledge and perpetuation of heritage, are isolated from studies and researches. To the best of the knowledge of the researcher, although thousands of *fatāwā* have been issued by Samasta scholars during the period of last nine decades, not even a single study has been conducted on their *fatāwā*. An analytical study of Samasta's methodology of *iftā'* would highlight the contributions of Samasta scholars in Islamic jurisprudence and shed light on their organized methods at the time of *iftā'*. Moreover, since majority of Indian Muslims are *Hanafīs* it would be beneficial to correct the misunderstanding of some people by realizing that there is fertile ground for *Shāfi'īmadhhab* in Kerala. Issues related to marriage and divorce are very common but a bit complicated, which are often raised in diverged forms to *mufitūn*. That is why the present research has opted for marriage and divorce as a case study. Focusing on the contributions of Samasta scholars towards the Islamic jurisprudence, an analytical study of the methodology of *iftā'* of Samasta followed by a case study on the *fatāwā* of marriage and divorce will be conducted in the present research.

## RESEARCH QUESTIONS

This research aims to answer the following questions:

- 1) What are the intellectual background of Samasta scholars and their jurisprudential contributions in south India?
- 2) What is the methodology of *iftā'* applied by Samasta *Fatwā* Committee in Kerala?

- 3) What is the legal basis and justification of selected *fatāwā* of Samasta on the issues of marriage and divorce?

## **RESEARCH OBJECTIVES**

This research is intended to achieve the following objectives:

- 1) To identify the intellectual background of Samasta scholars and their contributions to Islamic jurisprudence.
- 2) To find out the methodology applied by Samasta *Fatwā* Committee in Kerala
- 3) To assess the legal basis and justification of the selected *fatāwā* of Samasta on the issues of marriage and divorce.

## **SIGNIFICANCE OF THE STUDY**

Some of the major factors which make this research significant are as follows:

- 1) Although thousands of *fatāwā* have been issued by Samasta scholars during the period of last 89 years, not even a single study has been conducted on *fatāwā* of Samasta scholars, which is the fact that makes this research very pertinent.
- 2) The tendency of assessing the various aspects of *fatwā* has increased in the university researches and it has produced some exceptional findings in the growth of Islamic legal interpretation. Since Samasta holds an authoritative method for issuing the *fatāwā*, this research will add certain promising contributions to the existing studies.
- 3) This study examines the development, role and impact of an Islamic organization in a secular country, keeping in harmony with rules of the

country and customs of the people of other religions. In addition, it sheds light on the interreligious debates which took place among the different streams of Muslim community in Kerala.

- 4) Issues in marriage and divorce are increasing and the debate on the Islamic family law turns more turbulent in the contemporary world. Therefore, a study on the stand and *fatāwā* of Samasta on different cases related to marriage and divorce would be appreciated in many respects.
- 5) This work is also relevant, given the fact that the researcher belongs to Kerala; he knows well the native language, the role and trend of these scholars.

#### **SCOPE OF THE STUDY**

Obviously, the *fatāwā* of Samasta are a huge collection, hence it would not be possible to investigate all of them within the scope of this research. The period of *iftā'* that this study will look into is thirty years; from 1983 to 2013 since it will bring the latest issues and *fatāwā* to the area of analysis. Moreover, there would be an analytical study of ten *fatāwā* from marriage and divorce in order to find out their legal basis and justification.

#### **METHODOLOGY OF THE RESEARCH**

This study is a qualitative research which consists of library works and field study.

The methods that will be used in this research are as follows:

- 1) Analytical and critical Methods:
  - a) Analysis: This study will conduct an analysis of the activities of Samasta especially on their efforts in the area of *iftā'* in order to find

the methodology of *iftā'* of the Samasta *Fatwā* Committee. For this purpose, manuscripts of *fatāwā*, biographies of scholars, works related to their contributions, books related to educational, political and social ambiance of Kerala, theses, articles, news papers, databases and internet resources will be used as references.

b) Critical approach: This method is used to examine and assess the authenticity and suitability of the methodology used by Samasta scholars in Kerala after conducting a study on the classical and contemporary works on *fatwā* along with an investigation of the features of Kerala Muslims and the socio-cultural environment of South India.

c) Evaluation: This research will conduct an evaluative study of the selected *fatāwā* of Samasta on marriage and divorce in order to elucidate their methodology and legal basis.

2) Interview: The researcher will conduct interviews with the chairman and convenor of Samasta *Fatwā* Committee to collect the authentic and first-hand information regarding the methodology of *iftā'* of Samasta.

## **LITERATURE REVIEW**

Observing that this research ought to be conducted on the analytical study of the methodology of *iftā'* of Samasta, the review of written books, articles, compilations of *fatāwā*, theses and journals are very pertinent. The introduction about Samasta and biographies of scholars of Samasta has been published by local and national authors, which are helpful to get an overall understanding about their lives, views and

contributions. Nevertheless, these works are insufficient in terms of presenting analytical study on the methodology of *iftā'* of Samasta.

Some of the noteworthy works that have been done on Samasta include the following.

Muftī Shihāb al-Dīn Aḥmad Koyā Shāliyātī has a huge collection of *fatāwā*, known as “*Al-Fatāwā al-Azhariyyah fī al-Aḥkām al-Shar‘iyyah*”<sup>4</sup>, which deals with a number of his *fatāwā* in diverse affairs including marriage and divorce. Shāliyātī was appointed as a member of *Dār al-Iftā'* under *Latīfiyyah Madrasah* of Vellore in 1926, and he was also selected as a member of Samasta *Mushāwarah* in the same year. He was one of the scholars in Kerala who were able to issue *fatāwā* in four schools of Islamic jurisprudence. He was elected as the formal *muftī* of the state of Nawab ‘Uthmān ‘Alī Khān of Hyderabad. He died in 1955. He has seven important writings on Islamic jurisprudence. The book “*Al-Fatāwā al-Azhariyyah*” is a compilation of his *fatāwā* in jurisprudential affairs and it has been chapterized to various areas such as fasting, marriage and so on. Although present research will not make an analytical study upon his *fatāwā*, this work will be helpful to do a comparison between him and the present scholars of Samasta in the viewpoints upon *iftā'* focusing on *fatāwā* of marriage and divorce.

The book “*Samasta*”<sup>5</sup> written (in Malayalam) by P.P. Muhammed Faizee is a significant work that elucidates the details about the establishment of Samasta, the reasons behind the establishment of the organization, religious ambiance of that time, biographies of important leaders of Samasta, memorable congregations in its history, sub-organizations and so on. This book will be referred in my first chapter which will

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<sup>4</sup> Shihāb al-Dīn Aḥmad Koyā Shāliyātī, *Al-Fatāwā al-Azhariyyah*, (Chaliyam: Dār al-Iftā' al-Azhariyyah, 1993).

<sup>5</sup> P. P. Muhammed Faizee, *Samasta*, (Kottakkal: Prakaham Publications, 2002).

lead a discussion on development and the contributions of Samasta. However, it does not contain a study on *fatāwā* of Samasta scholars and their methodology in *iftā'*. The researcher would like to add the major contributions of Samasta in the area of *fatāwā* and its views on their methods. Hence, the proposed research will analyse the methodology of *iftā'* adopted by Samasta scholars along with a study of *fatāwā* on marriage and divorce.

In his thesis “*Development and Modernization of Religious Education in Kerala; Role of Samasta Kerala Jam'iyat al-Ulama*”<sup>6</sup>, Zubair K. discusses the educational contributions of Samasta in Kerala. This study can be considered as an elaborate authentic report about the Samasta’s role and its contributions in the dissemination of Islamic education in Kerala. Moreover, this study follows an accurate method of academic research. Firstly, it talks about the system of Islamic education, its philosophy and organization. Secondly, it highlights development and evolution of this education in the land of Kerala. In this work, the details of Samasta scholars’ contributions in the area of Islamic jurisprudence and the study of their *fatāwā* and their methodology are not available. This will be covered by the present research as it will focus on the methodology of Samasta in *iftā'* and *fatāwā* on marriage and divorce.

Pinangode Aboobakar has written many books related to Samasta and two of them are largely related to the present research. They are 1) “*vazhiyadayalanganal*”<sup>7</sup> in Malayalam (landmarks) and 2) “*Madrassa Vidhyabhyasa Chattanganal*”<sup>8</sup> in Malayalam (Rules of *Madrasah* Education). The former describes the role and functions of

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<sup>6</sup> Zubair K., “Development and Modernization of Religious Education in Kerala; Role of Samastha Kerala Jam'iyat al-Ulama,” (MPhil thesis, Jawaharlal Nehru University, 2006).

<sup>7</sup> Pinangode Aboobakar, *Vazhiyadayalanganal* (Chelari: Hira Publication, 2009).

<sup>8</sup> Aboobakar, *Madrassa Vidhyabhyasa Chattanganal* (Chelari: Samasta Kerala Islam Mata Vidyabhyasa Board, 2009).

Samasta in Keralites. It also tells the history of disputes of Samasta scholars with other scholars. Moreover, he talks about Samasta's endeavours in order to strengthen the ideology of *Ahl al-Sunnah wa al-Jamā'ah* in Kerala and its influence and reflections upon local people. The latter work discusses one of the most tremendous milestones in the history of Samasta, i.e. *madrasah* system in Kerala along with some other states of India and some other nations, with an account of detailed description of its important features, characteristics and specialities. Now in Kerala, under the guidance of Samasta, there are about ten thousand *madāris* with the capacity of more than one million students and eighty-five thousand teachers. It is noteworthy that it has well-developed system of syllabus and examination procedures. This book is an reference for the contributions of Samasta as a pioneer of Islamic education in Kerala. These two books, however, do not investigate the contributions of Samasta scholars in *fiqh* and their methodology in *iftā'*, which are the main focus of the present research by an analytical approach to the methodology of *iftā'* of Samasta and a study on their *fatāwā* on marriage and divorce.

The book, “*Sathya Saraniyude Charithra Sakhsyam*<sup>9</sup>” published in conjunction with the eighty-fifth annual conference of Samsta Kerala Jam'iyat al-'Ulamā', is counted as an exemplary work which investigates the overall history of Samasta and its great late leaders and significant contributions to the Muslim *Ummah* in Kerala paying special attention to the legacy they practiced. In this book, which runs to more than 1000 pages, there is an outline about the modern thoughts that arose in Kerala making fissures on the wall of Muslim unity. It is also noteworthy that it provides interviews with its leaders that help to grasp the viewpoints of leaders on a wide variety of issues. The article written by Moosakkutty Hasrath entitled “*Fiqh:*

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<sup>9</sup> Samasta Kerala Islam Matha Vidyabhyasa Board, *Sathya Saraniyude Charithra Sakhsyam* (Chelari: Hira Publications, 2012).

*Aradhanakalude karma kandam*” (Islamic Jurisprudence: a guideline of Islamic prayers) is of special mention. In addition, this book comprises some more articles which relate to the present research such as *Fiqhee Rachana: Keraleeya Idapedalukal* (writings on *Fiqh*: interferences of Kerala Muslims) by Bahaudheen Hudawi; *Muslim Lokam: Cheerthu Pidicha Vishunda Pasham* (Islamic world: embraced with holy rope) by P.A Swadiq Faizee Tanur; *Dhesheeyam: Parasparyathinte Parichedham* (National: Explicit Structure of Mutual Relation) by Suhail Hidaya Hudawi; *Kerala Islam Ulpahti Muthal Samasta vare* (From the advent of Islam in Kerala to Samasta) by Mahmood Kooria; *Sangadana: Prameyngal and Theerumanangal* (Organization: Resolutions and Decisions). Besides that, this book comes with some crucial decisions and *fatāwā* on controversial issues of Kerala that led to many debates during those periods. But the details pertaining to the concept of *fatwā* as well as the methodologies of *iftā*’ issued by its scholars are comparatively less. This research would initiate a deep study of their methodology of *fatāwā* with an analysis of selected *fatāwā* on marriage and divorce.

KM Bahauddeen Hudawi makes a deep study on Shāfi‘ī School of Islamic law in India in his book “*The Development and Impact of Shafe-I School of Jurisprudence in India*<sup>10</sup>”. Firstly, he discusses the origin and development of Islamic jurisprudence up to the present level in detail with good discourse on the Muslim law in the early periods in India. Then he talks about the Shāfi‘ī School in India with descriptions of its advent in India and memorable personalities in the decisive way of its past. In the fourth chapter he includes an elaborated study about the eminent scholars of this school in India highlighting their contributions not only in Arabic but also in other languages with the profiles of about forty Shāfi‘ī Scholars. Therefore, the researcher

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<sup>10</sup> Bahaudheen Hudawi, *The Development and Impact of Shafe-i School of Jurisprudence in India*, (New Delhi: Readworthy Publications, 2013).