Are Muslims Obligated to Engage in Holy War?

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Are Muslims Obligated to Engage in Holy War?

Beverly Moran* & Rahimjon Abdugafurov**

ABSTRACT

In the early twenty-first century, some—Muslims and non-Muslims alike—believe that Islam requires Muslims to engage in holy war or Jihād. This article concludes that this early twenty-first century notion that Muslims are obligated to wage holy war is based on a failure to appreciate that Jihād was never a universally agreed upon concept in Islam nor was there ever a universal obligation to participate in Jihād. In order to support the assertion that Muslims are not obligated to engage in holy war, this article looks to canonical texts from the Ḥanafi School of Islamic Law from the ninth through the fourteenth century CE. These texts are called Fatwā collections because they compile legal opinions on a wide variety of matters. The first observation that the article presents is that some of these canonical Fatwā collections do not even address the question of Jihād while other Fatwā collections treat Jihād in at least three different ways. Thus the article demonstrates that the earliest Muslim legal scholars of the Ḥanafi School did not share a uniform understanding of what constitutes holy war nor did they agree on who is obligated to become a holy warrior. Indeed, the article concludes that early legal scholars especially disagreed on the obligation to engage in Jihād and on who qualifies to call for Jihād. Hence it is false to claim that Muslims are obligated now (or have ever been obligated) to engage in Jihād.

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I. INTRODUCTION

Although world events put a lie to the claim of one unified Muslim world, scholars and laymen alike reify terms like Muslim world, Islamic world, and Sharia as if these phrases accurately capture abstract meanings completely divorced from diversity and easily shared across space, time, language, and culture. Among all the misunderstood phrases surrounding Islam, no word is used so casually and knowingly as Jihad.

This article uses early Islamic Fatwa collections to demonstrate that at the dawn of Islamic Law Islamic jurists were not in accord on the meaning of Jihad. Thus the article concludes that there has never been an obligation for Muslims to engage in holy war or to become holy warriors precisely because there is no uniform understanding, much less appreciation, of Jihad in Islamic Law.

II. FATWA COLLECTIONS

During his life, the Prophet Muhammad answered his followers’ questions and his answers were Islamic Law. After the Prophet’s death, the faithful needed a different means of deriving legal rules for their daily life and religious practice: hence the birth of Islamic Law.

By the tenth century CE, Islamic jurists generally agreed that legal opinions begin with the Qur’an so that opinions based on the Qur’an have higher standing than those based on inferior evidence. If the Qur’an is silent, then the jurist turns to the traditions of the Prophet Muhammad, also known as Hadith. When the Qur’an and Hadith were unclear or silent,

1 Fatwa collections presented in this article illustrate Peter Mandaville’s explanation of how ideas, words, and theories, change as people carry them from one place to another. Mandaville explains how a theory may take on new meanings that differ from earlier meanings as old ideas collapse into local notions in the new location. Peter Mandaville, Transnational Muslim Politics: REIMAGINING THE UMMA 83–84 (2001).
2 Muhammad Sallam Madkur, INTRODUCTION TO ISLAMIC LAW (Beverly Moran & Rahimjon Abdugafurov trans., 2007).
3 The Hadith are classified based on their authenticity. The most authentic prophetic tradition has an isnad (a complete chain of informants relating directly back to of the Prophet). Traditions that lack a
Islamic jurists developed other sources to support their legal opinions. This process of deriving legal rules using sources other than clear statements from the Qur’an and Hadith is called Ijtihād or utmost effort. Ijtihād describes the jurist’s creative use of approved evidentiary sources to produce a legal opinion.4

Fatwā in Islamic Law is an opinion from a jurist to a believer issued at the believer’s request.5 Some Fatwās survive for centuries, while others emerge as Muslims ask their religious leaders for answers on matters unheard of in past generations. Authors, their scribes, or students, often compile Fatwās into collections. These Fatwā collections are not uniform in form, subject matter, or length. Rather, Fatwā collection writers employ creativity in compiling their works. Some Fatwā collections employed in this study are comprised of several volumes (up to twenty) while others are Mukhtasār (concise) Fatwā books condensed into one volume. Jihād is not absent from some collections because of the collection’s size. Jihād is sometimes covered in a one-volume collection and ignored in a larger work.

Fatwā production has its own method with topics usually divided into Kitābs (literally books, but equal to chapters). Within each chapter or Kitāb, there are one or more Bābs (literally doors) or sections. Each Bāb is dedicated to a subtopic that is relevant to its Kitāb, and within each Bāb there are often several Faṣls (subsections) which discuss themes related to the Bābs. Hence, authors connect chapters, sections, and subsections thematically so that a typical Fatwā collection might be organized as Kitāb (chapter), Bāb (section), and Faṣl (subsection).

Some Fatwā collections depart from the usual method of organizing opinions that generally requires the author to replicate an earlier work’s structure. Instead of incorporating all the sections found in earlier works, later authors sometimes limit their own Fatwā collections to a single topic or just a few topics. ‘Ala al-Dīn Abu Bakr b. Mas‘ūd al-Kasānī (died 587/1191) is one example of an author who focused on only some topics fully proven isnād are subject to doubt and may be rejected as distorted or fraudulent.

4 The methods used by Islamic jurists to perform Ijtihād include:
- Ijma’ or community (If a community of Muslim scholars unanimously agrees upon a legal question, this agreement rises to the level of Qur’an and Hadith);
- Qiyās (a method of deriving law through analogy);
- Istīhsān or making a decision based on what is good for the community at large;
- Maslahah al-mursalah or a common good;
- ‘Urf or a local tradition;
- Shar’iun min qablin or laws of religions before Islam (of Judaism and Christianity);
- Madhhab Sahabi or opinions of the companions of the Prophet; and
- ‘Ard i or preventing evil.

5 DEEB AL-KHIDRAWI, DICTIONARY OF ISLAMIC TERMS 396 (2004) (Fatwā is “a formal legal opinion. A religious or judicial sentence pronounced by a Mufti or Qadi.”).
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contained in earlier Fatwā collections while dropping other topics entirely. When later authors make these sorts of edits to earlier works, their changes indicate departures from early legal scholars’ attitudes towards the topics discussed in a Fatwā collection.6

Most Fatwā collections cover Jihād under the Kitāb known as Siyar. Siyar is the plural form of the word Sīyrah. In a legal context, Siyar refers to the distance passed while performing an act, such as travelling in non-Muslim lands or engaging in Maghāzī (military incursions into non-Muslim lands).7 Siyar is sometimes translated as a campaign against the enemy. Jihād is often a Bāb within the Kitāb known as Siyar along with other Bābs covering sub-topics such as Maghāzī, the taxation of non-Muslims, religious conversion, apostasy, and rebellion.

Unlike, for instance Roman Catholic or Eastern Orthodox Christianity, Islam lacks a central body whose legal opinions are binding on all Muslims.8 In the absence of religious hegemony, numerous legal opinions often appear on the same question. Conflicts in legal opinions not only exist between different Madhhabs (Islamic schools of thought), but within the same school. The absence of a single institution that can produce legal opinions binding on all Muslims is an important point for Jihād. For example, recently, forty Saudi Arabian jurists produced a Fatwā commanding all Muslims to a holy war against the Russian and Iranian forces supporting Bashar al-Assad in Syria.9 These Saudi jurists belong to the minority Wahhabi or Salafi faction. Their Fatwā cannot bind all Muslims.

III. MADHHABS

The word Madhab derives from the root dha-ha-ba which, when used as a verb, means to go in a certain direction. Thus, the noun Madhab indicates the legal way or method that particular Muslims follow when performing prayers, making marriage contracts, and the like. Each Muslim’s Madhab comprehensively navigates his or her spiritual and corporeal actions.

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6 For more information on the structure of Fatwā collections, see Wael Hallaq, From Fatwā to Furu’: Growth and Change in Islamic Substantive Law, 1 ISLAMIC L. & SOC’y 29 (1994).
8 Attempts to create such institutions or bodies took place in the early days of Islam but they never worked. See Robert Crews, For Prophet and Tsar: Islam and Empire in Russia and Central Asia 33–39 (2006).
Until recently, a Madhhab was similar to a state within the United States in that a state controls the laws within its geographic jurisdiction always subject to the greater law of the entire United States, i.e., the U.S. Constitution. Thus, just as an Oklahoma citizen would probably not ask a California lawyer for an opinion on Oklahoma law, a Muslim from a group that follows one Madhhab would not seek a legal opinion from an Imam (Islamic Jurist) from a different Madhhab.

The analogy between states and Madhhabs starts to break down in the new world of global connectivity where seeking and offering legal opinions has changed because of cyberspace. Today an American Muslim may ask for a Fatwā from an Egyptian Imam, as territorial boundaries melt away in the face of the World Wide Web. Thus, the concept of Madhhab and legal jurisdictions has blurred.

In the beginning of Islam, there were numerous legal schools. As time passed, some Madhhabs became famous while others faded. Today there are four recognized legal schools within Sunni Islam each named after the original founder: Ḥanafī, Ḥanbalī, Mālikī, and Shāfīi. While statistics differ, usual estimates place Sunni Muslims at 90 percent of the world’s muslim population followed by about 9.5 percent Shī‘ah. Within the division of Sunni Muslims, approximately 45 percent are Ḥanafīs, followed by 28 percent Shāfī‘īs, 15 percent Mālikīs, and 2 percent Ḥanbalī.¹⁰ There are over five divisions within Shī‘ah Islam as well. These Sunni and Shī‘ah schools differ on legal, doctrinal, and theological grounds. To be clear, this article is limited to conflicts regarding holy war within the Ḥanafī School. The Ḥanafī School represents the largest single group of Muslims by Madhhab.¹¹

IV. WHAT IS JIHĀD?

Despite the Western emphasis on Jihād as a military campaign, Jihād is in fact an immensely complicated concept. The word Jihād comes from the three-letter root ja-ha-da meaning to make an effort.¹² The most important Jihād is the effort to discipline one’s Nafs (animal self) that urges the soul toward worldly pleasure.¹³ Nevertheless, in this article, we limit our discussion to Jihād as a military campaign either in defense of one’s homeland, or in the form of an aggressive war for domination known in contemporary Western thought as “spreading Islam by the sword.”

¹¹ Id. at 28.
¹² See Section II of this article for a discussion of Ijtihād.
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V. Hanafi Legal School

The Hanafi Madhhab is one of the four legal schools of Sunni Islam, and is the legal school for close to half the world-wide Muslim population. The founder of the Hanafi school is Nu'man b. Thabit b. Zuhair b. Marzuban (born 80/699, died 150/767), also known as Imam A'zam or Abu Hanifah. Our goal here is to introduce one important contribution that Abu Hanifah made to Islamic law that is crucial to our discussion of Jihad: the distinction between Fard and Wajib.

Abu Hanifah divided all human activity into seven categories:

1. Fard – an action that is obligatory for all Muslims (such as praying and fasting) that every Muslim must perform in order to call oneself a Muslim. Scholars divide Fard actions into two subcategories: obligations demanded of each individual and community obligations. The terms are Fard ‘ayn (an obligation required of everyone individually) or Fard Kifayah (a collective duty of the Muslim community).

2. Wajib – an action that is secondary in obligation to a Fard obligation. Although scholars consider the act obligatory, the failure to do the act does not eject a Muslim from the religious community. For example, additional prayers might be prized, or even required, but the failure to perform additional prayers is not grounds for expulsion from the faith.

3. Mustahabb/Sunnah – an action that brings reward to any Muslim although the failure to do the act does not make the person a sinner. For example, although growing a beard is a good thing, not having a beard is not grounds for shame.

4. Halal – permissible, permitted. For example, Muslims are permitted to eat Halal meat.

5. Mubah – an action that is without reward or punishment; neutral.

6. Makruh – an action that is frowned upon.

7. Haram – an action that is prohibited and sinful.

Abu Hanifah’s distinction between Fard obligations and Wajib obligations is not accepted by other Sunni Madhhabs. Rather, the Hanbalis, Malikis, and Shafi’is Madhhabs use the terms Fard and Wajib interchangeably as synonyms. In contrast, Hanafi legal scholars classify obligations with

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14 AL-KHUDRAWI, supra note 5, at 399.
15 Id. at 522–23 (2004).
16 JOSEPH SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 121 (1982).
17 Id.
absolute textual proof from the Qurʾān or Hadith as Fard and obligations based on Ijtihād, rather than on a textual proof, as Wājib. The key is that when an obligation is not derived from Qurʾān or Hadith the evidence supporting the obligation is of a secondary nature and thus, according to the Ḥanafi School, the failure to perform the obligation cannot exclude a person from the Muslim community.

VI. EARY ḤANAFI JURISTS

The compilers of each of the Ḥanafi Fatwā collections show vastly different attitudes towards Siyar and Jihād. The authors discussed here classify an obligation to participate in Jihād in several different ways. In some texts, Jihād is presented as Fard, either Fard Kifāyah (collective duty) or Fard ‘ayn (an individual obligation). Other texts present Jihād as Wājib. A declaration that an action is Wājib places the obligation second in rank after Fard. Thus, not performing a Wājib act does not justify expulsion from the Muslim community, as does failure to perform a Fard act.

Whether an author leaves out the topic of Jihād, or treats Jihād as Fard or Wājib, is an important question because the placement of Jihād as Fard or Wājib, or the absence of any discussion of Jihād at all, reveals the scholar’s attitude toward Jihād. For example, for those later Ḥanafi jurists who designate Jihād as Fard Kifāyah or Fard ‘ayn, the Muslim leader’s role is crucial. Fard Kifāyah is a completely different obligation from Fard ‘ayn. The community’s leader designates who among the community must perform the Fard Kifāyah (collective obligation). In contrast, if a leader declares Jihād as Fard ‘ayn, then the obligation falls on each individual. Hence, even when the action is Fard, a Muslim does not decide whether Jihād is a collective or an individual duty. Instead, the leader of the Muslim state or the community holds the right to declare an obligation to engage in Jihād and whether the obligation is for the community or the individual.

Below are three classifications of Jihād from the early Ḥanafi School:

1. The authors completely ignore Jihād,
2. The authors treat Jihād as Wājib (an obligation derived from secondary sources and inferior in importance), and
3. The authors treat Jihād as obligatory.

Overreaching the entire discussion is the fact that the founder of the Ḥanafi Madhhab, Abu Hanīfah himself declared Jihād as Wājib and neither

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Id.

To some Ḥanafi scholars presented here, Jihād is Fard Kifāyah (collective duty) unless the Muslim community is attacked at which point Jihād becomes Fard ‘ayn (an individual obligation).
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Fard Kifāyah nor Fard ‘ayn.21 Thus, the Ḥanafi Madhhah legal scholars who present Jihād as Fard actually oppose the founder of their own legal school.

Conflicts within Madhhab emerge as concepts like Jihād change meaning and significance over time. Abū Hanīfah, the founder of the Ḥanafi legal school, ruled that Jihād was Wājib because Jihād cannot be supported directly by the holy texts.22 This ruling which presents Jihād as Wājib is provided by many Ḥanafi legal scholars.23 Yet, as centuries passed, later Ḥanafi legal scholars categorized Jihād as Fard Kifāyah or Fard ‘ayn, in opposition to their founder.24 As soon as some scholars moved away from Abū Hanifah other scholars within the Ḥanafi Madhhah noted the conflict between the newer approach and the founder of the Ḥanafi School.25

Today close to half of all Muslims are within the Ḥanafi School and Ḥanafi authors have three distinct views of holy war and holy warriors.26 These facts inform us that Jihād is a complex topic and the obligation to engage in the military form of Jihād is not universal.

A. Jihād Not Mentioned


In al-Jāmi’ al-Saghīr (The Small Collection) Abu Abdullah Muhammad b. al-Ḥasan al-Shaybānī dispenses with the traditional Bāb entitled Siyar and instead names his Bāb “Kharāj” which is usually one section within the chapter Siyar.27 When al-Shaybānī changes the traditional name of the chapter from Siyar to Kharāj (taxes and tributes from non-Muslims) he telegraphs that taxes and tributes from non-Muslims are more important to him than Jihād.28

23 Id. at 131.
24 As noted by BURHĀN AL-DĪN ABU AL-MA’ĀLI MAHMUD B. AHMAD ABĪD AL-’AZĪZ IBN MAZA AL-BUKHĀRĪ in his AL-MUḤĪṬ AL-BURHĀNĪ FI AL-FIQH AL-NU’MĀNĪ 5 (2004).
25 Id.
26 As we summarize in the current work employing several legal texts from the Ḥanafi school.
27 AL-KHUDRAWĪ, supra note 5, at 143.

Al-Samarqandī, another early Ḥanafi scholar does not have a section on Siyar or on its subsections, including Jihād.

B. Jihād is Wājib


Abu Abdullah Muhammad designates Jihād as Wājib. We know about his treatment of Jihād as Wājib through Muhammad b. Ahmad al-Sarakhsī’s (died 490/1096) commentary named Sharḥ Kitāb al-Siyar al-Kabīr on al-Shaybānī’s al-Siyar al-Kabīr. Al-Sarakhsī also gives the names of other scholars such as al-Thawrī and al-Kasānī who viewed Jihād as Wājib. 29

2. Fakhr al-Dīn Ḥasan b. Mansūr al-Uzgāndī al-Farghānī (died 295/907)

Fakhr al-Dīn Ḥasan is originally from a city called Uzgānd in the Fergana Valley of Central Asia. He is imminently famed among Ḥanafi legal scholars. In his Fatāwā Qāḏīkhānī, he writes that Jihād is Wājib and states that waging wars against non-Muslims is not Fard. Such action will become Fard if non-Muslims attack the Muslim lands. 30 The author also provides other scholars’ views in his collection regarding Jihād. 31

3. Abu Ja’far Ahmad b. Muḥammad b. Salāmah al-Ṭahāwī (died 321/933) author of the collection Mukhtaṣar al-Ṭahāwī (Ṭahāwī’s Concise fatwā Book)

Al-Ṭahāwī does not follow the usual way of constructing the Siyar section of his collection. First Al-Ṭahāwī introduces the section by stating that: “Abu Ja’far said: Jihād is Wājib, but Muslims are free of the obligation as long as there is no need for them to engage in military campaigns.” 32 Next, Abu Ja’far Ahmad places his discussion of Jihād in

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29 AL-SARAKHSĪ, supra note 21.
31 Id.
32 ABU JA’FAR AHMAD B. MUḤAMMAD B. SALĀMAH AL-ṬAHĀWĪ, MUKHTAṢAR AL-ṬAHĀWĪ 281 (1950).
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Kitāb al-Siyar wal-Jihād (The Book of Military Campaigns and Holy Wars) rather than in Siyar. Finally, he provides opposing opinions of jurists who designate Jihād as Farḍ ’ayn (individual obligation) or Farḍ Kifāyah (collective duty).

4. Muḥammad b. Ahmad al-Sarakhsī (died 490/1096) author of Sharḥ Kitāb al-Siyar al-Kabīr

In Sharḥ Kitāb al-Siyar al-Kabīr, al-Sarakhsī rules Jihād as Wājib. This author also enlists the views of Abu Ḥanīfa, the founder of the Ḣanafī School, and Abu Abdullah Muhammad b. al-Ḥasan al-Shaybānī (born 132/749, died 189/804) who ruled that Jihād was Wājib.


Al-Bukhārī’s work is compiled in nine volumes with a section on Kharāj right after ‘Ushr and before the book of fasting. This may indicate the importance of Kharāj both for the author and possibly for his time. Al-Bukhārī uses the term Faṣl to divide the topic into eight parts within his section on Kharāj. In other words, al-Bukhārī treats Kharāj as a section on its own rather than as one subsection within Siyar.

Al-Bukhārī starts the subgenre of Siyar with defining Siyar and Jihād. He elaborates on each topic: for example, who should participate in military campaigns, who may be killed, women’s participation in Jihād, Muslims entering a non-Muslim land, captives, allocation of spoils, maintenance of the army, apostasy, and others.

As for the nature of Jihād, al-Bukhārī is a crucial scholar because he already noticed in the thirteenth century the conflict among Ḥanafī legal scholars on the nature of the Jihād and the strength of the obligation to perform Jihād. The first sentence he writes in the beginning of the part on Siyar is an explanation of the nature of Jihād:

Abu Ḥanīfa, may God be pleased with him, said: Jihād is Wājib to Muslims . . . and the expression of the mashāʿikh became conflicted in that regard. Some of them said: Jihād is Wājib to Muslims and if the call falls upon them, it becomes farḍah, and this speaker differed between Wājib and farḍah and this speaker seems to incline toward what Abu Ḥanīfa, may God be pleased with him, said. And the

33 Id.
34 Id.
difference between Wājib and farḍah is obvious . . . .

Al-Bukhārī continues to elaborate on the conflict among legal scholars in terms of the nature of the Jihād. He also uses different Qur’ānic verses and other evidence in his elaborations of the conflict. It is also apparent that as a scholar in the school of Ḥanafī, al-Bukhārī treats Abu Ḥanīfah with special respect and finds his ruling to be true on the nature of Jihād, that it is Wājib and not Fard.  

C. Collective Duty

Note that the authors presented here who either ignore Jihād or treat Jihād as unsupported by direct statements in either the Qur’an or the prophetic traditions are the closest contemporaries to the Prophet who died in 632 CE. Several centuries after the Prophet’s death and the establishment of the Ḥanafī Madhhab, the first Ḥanafī jurist asserted that Jihād was an obligation directly founded on sacred texts.

1. Najm al-Dīn Ibn Ḥafṣ al-Nasafī (died 537/1142), Ṭilbat al-Ṭalabah Fī al-Īṣṭilāḥāt al-Fiqhiyyah (Students’ Requests in Legal Terminologies)

In The Students Request for Legal Terminologies Najm al-Dīn Ibn Ḥafṣ al-Nasafī treats Siyār extensively while also providing a legal dictionary. According to Al-Nasafī, Jihād is Fard Kifāyah (collective duty), in which certain individuals, rather than everyone, participate. Al-Nasafī is one of a few scholars depicted here who supports his views with Qur’ānic verses.


Siraj’s Legal Opinions is the most comprehensive collection presented in this article in terms of precision, content, and extensive coverage of Siyār. Al-Ushī has a separate Book devoted to Siyār covering such topics as the proper usage of military drums, the times of Jihād, manners during war, etc. Al-Ushī outlines the Siyār Kitāb as: (1) Jihād, (2) Captives, (3) Peace, (4) a non-Muslim entering a Muslim land, (5) a Muslim entering non-
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Al-Ushī believes that Jihād is Fard Kifāyah which means it falls only on certain individuals in the community rather than on everyone. Al-Ushī writes

but if the call [for Jihād] is general, in that case [it] will be Fard ‘ayn—required of everyone—and the people of the faith will be called upon men, women, and slaves will go out [to war] without permission from their lords.

Before killing the enemy, al-Ushī writes, the Imām has to offer non-Muslims conversion twice, even after that, “women, children, people with mental disabilities, and the elderly cannot be killed.”

The author also describes Jihād as defense rather than aggression. Jihād is what happens if non-Muslims attack Muslim lands.


The Marvels on Deeds and the Order of the Laws comprises ten volumes with Siyar located close to last as the ninth volume. Al-Kāsānī covers fifteen related subtopics on Siyar ranging from the obligatory nature of Jihād in the section entitled ahl al-jihād (people of the military campaign) to allocation of booty, apostates, and captives.

Al-Kāsānī provides Qur’ānic and prophetic evidence in the beginning of each Faṣl (subsection) and then moves to practical matters, such as the amount of Jizyah or Kharaj or the punishment for a non-Muslim who commits a crime in a Muslim land.

Al-Kāsānī’s views are very similar to al-Ushī’s in terms of the obligatory nature of Jihād as well as what actions are prohibited during Jihād. Al-Kāsānī’s subsections are: (1) Obligatoriness of Jihād, (2) who is obligated to participate in Jihād, (3) what authorizes a religious leader to conduct military campaigns, (4) what is required of conquerors, (5) who may and may not be killed, (6) what is permissible to leave in the land of war, (7) what can be taken to the land of war, and many others.

40 Id.
41 Id. at 291–292.

Burhān al-Dīn Abu al-Hasan ‘Ali comprehensively treats *Siyar* in the fourth volume of the eight volume work. Within the *Siyar* chapter are nine *Babs* (subsections) and six *Fasls*. *Bab istīlā’ al-kuffār* (section on the occupation of the infidels) covers *Jihād*, allocation of funds acquired during the war, Muslim merchants travelling in non-Muslim lands, non-Muslims residing in Muslim lands, female non-Muslims emigrating to a Muslim land on account of marriage, etc.

The section starts with the legal meaning of *Siyar*. The author first provides a verse from the *Qur’ān* on *Siyyah* and then a tradition from the Prophet on *Jihād* and its status as *farḍ kifāyah*. Al-Marghinānī then provides stipulations on the defense against the enemy as *farḍ ‘ayn*. The author also gives examples on the topic from other *Fatwā* books without any reference but the commentator gives guidance in the footnotes. In this regard, though al-Marghinānī’s *al-Hidāyah* is immensely famous among Sunnis, the author does not offer something new in his work. In other words, it is mostly repetition of earlier legal scholars.


*Conclusions of Evidence in Rectifying Legal Issues* is comprised of two volumes. Makkī al-Rāzī places the subgenre of *Siyar* towards the end of the second volume but treats the topic in seventy-one pages. Al-Rāzī covers many topics related to *Siyar* such as entrance of Muslims into non-Muslim territory and apostasy.

Al-Rāzī’s methodology shows what was important in terms of *Fatwā* production during his time. Having a separate section for the topic of *Siyar* and a subsection on the topic of rebellion (*Baghāt*) signals that rebellion and tribute from non-Muslim lands are important topics during this historical period.

Al-Rāzī also makes a distinction between *Jihād* and fighting non-Muslims. In other words, he is one of the scholars who sees *Jihād* as a military defense. Al-Rāzī starts the section with his view that “*Jihād* is *farḍ ‘ala al-kifāyah*.” If a group from the community participates in *Jihād* then the rest of the community is free of obligation. However, if no one from the

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43 AL-KHUDRAWI, *supra* note 5, at 399.
community participates in *Jihād*, then the entire community has sinned.\(^\text{44}\)

Al-Rāzī writes that children, slaves, women, the blind, crippled, or one-armed are free of any obligation to participate in *Jihād*. However, he repeats the earlier legal scholars’ view that “if the enemy attacks the land, defense becomes *fard* to everyone: a wife goes without her husband’s permission, and the slave without the permission of the master.”\(^\text{45}\)


Ahmad al-Nasafi has a section on the topic of *Siyar* after he provides legal definitions of the term. The first subsection after the opening of the section on *Siyar* concerns booty with the next subsection on the distribution of booty. Ahmad al-Nasafi has separate subsections on tithe, land tax, and the head tax usually imposed on non-Muslims, Apostates and Rebels. These are topics that are often passed over in other collections.

Al-Nasafi’s treatment of *Jihād*, is quite imitative of earlier scholars such al-Ushūrī, al-Nasafi and al-Marghinānī. Even the way he defines the linguistic and legal usages of the term employs similar wordings from earlier books. Al-Nasafi’s original contributions include additions of subsections on distribution of booty, types of taxes, apostasy, and rebellion all of which were helpful to the rulers of his time. Ahmad al-Nasafi does not follow Abu Ḥanīfa in terms of making *Jihād Wājib* but instead designates *Jihād Fard kifāyah* and *Fard ʿayn* so that he falls into the category of legal scholars whom al-Rāzī finds conflict with Abu Ḥanīfa.

**VII. CONCLUSION**

The word *Jihād* appears frequently in the American press. For American audiences, *Jihād* incorrectly implies an obligation to participate in holy war. Almost half of all Muslims follow the *Hanafi* School of *Sunni* Islam. Within that School of Islamic thought, there are three very different attitudes toward who is obligated to engage in *Jihād*, who qualifies to call for *Jihād*, and whether *Jihād* is *Fard, Wājib* or not worth mentioning at all. These differences inform us about the complexity of the topic. There is no single source or authority that supports the idea of a Muslim’s obligation to engage in holy war. Further, because Islam lacks an institution or person who can obligate others, even a religious leader’s call to engage in *Jihād* does not produce a religious obligation under Islamic law.


This article attempts to repudiate the misconception that there is universal agreement on holy war and the obligation to be a holy warrior by demonstrating that early Muslim scholars within the same legal school never agreed on the nature of *Jihād*, whether *Jihād* is an obligatory act required of every Muslim, or if *Jihād* is an obligation that is secondary in rank. These differences in the works of the legal scholars mentioned here support the view that there is no Islamic obligation to engage in holy war or be a holy warrior.