

أصول الإفتاء وآدابه لمفتي تقي عثمانى مع شرح عقود رسم المفتي لابن عابدين في اللغة الإنكليزية

مع الإفادات من دروس الأستاذ مفتي حسين كدوديا ومن دروس لؤي الخليلي الحنفي ومن دروس مفتي رضاء الحق ومن الكتاب "إسعاد المفتي" للدكتور صلاح أبي الحاج ومن الكتاب "الفتح الرباني" لمحمد هارون بن محب الرحمن ومن الكتاب "المذهب الحنفي" لأحمد بن محمد النقيب ومن الكتاب "ناظورة الحق" لشهاب الدين المرجاني ومن الكتاب "أسباب عدول الحنفية عن الفتيا بظاهر الرواية" للؤي الخليلي الحنفي و"آپ فتوى کیسے دیں" لمفتي سعيد بالنبوري و"فتویٰ نویسی کے رہنما اصول" لمفتي سلمان منصوربوري ويليہ نصائح أستاذنا مفتي إبراهيم ديسائي

“The Principles of Iftā and its Etiquettes” by Justice Muftī Taqī ‘Uthmānī Ṣaḥīb with the “Commentary of ‘Uqūd Rasmi Muftī” by Ibn ‘Abidīn Al Shāmī in the English Language

With Notes Added From:

The Lectures of Muftī Ḥusain Kadodia Ṣaḥīb

The Lectures of Lu‘ay Al Khalīlī

The Lectures of Muftī Radhā’ Al Ḥaq Ṣaḥīb

***Is‘ād Al Muftī* by Doctor Salāḥ Abul Ḥāj**

***Al Faṭḥ Al Rabbanī* by Muḥammad Harūn ibn Muḥibbur Raḥmān**

***Al Madhab Al Ḥanafī* by Aḥmed ibn Muḥammad Al Naqīb**

***Nāẓūrah Al Ḥaq* by Shihābud Dīn Al Marjānī**

***Asbāb ‘Udūl Al Hanafiyyah ‘Anil Futyā Bi Zāhir Al Riwāyah* by Allāmah Lu‘ay Al Khalīlī**

***Āp Fatwā Keisei Dei?* by Muftī Saeed Palanpurī Ṣaḥīb**

***Fatwā Naweisī Kei Rehnumā Usūl* by Muftī Salmān Mansurpūrī Ṣaḥīb**

Followed by

Some Advices from my Teacher Mufti Ebrahim Desai Sahib

Table of Contents

Key Words and their Connotations.....	7
Introduction to Uṣūl Al Iftā by Muftī Ḥusain Kadodia Ṣāhib.....	9
The Prints of Sharḥ ‘Uqūd Rasmil Muftī	12
Fatwā and its Importance (الفتوى وخطورها)	14
The Meaning of Fatwā (الفتوى في اللغة والإصطلاح)	14
Types of Fatwā.....	15
The Difference between a Fatwā and a Decree of a Judge (الفرق بين الإفتاء والقضاء).....	18
The Fear of the Previous Scholars towards giving Fatwā (تحيب السلف للفتيا)	18
The Methodologies of the Ulamā of the Past in Issuing a Fatwā (مناهج الفتوى في عهد السلف)	29
Fatwā during the time of the Prophet Sallallāhu Alaihi Wasallam (الفتوى في عهد النبي صلى الله عليه وسلم).....	29
The Methodology of the Ṣaḥābah and Tabi’ūn in Giving a Fatwā (منهج الصحابة والتابعين في الإفتاء)	31
Fatwā during the Time of the Ṣaḥābah (الفتوى في عهد الصحابة).....	33
Fatwa during the Time of the Companions of the Ṣaḥābah (الفتوى في عهد التابعين)	35
The Imāms of Fatwā in the age of the Tabi’ūn (أئمة الفتوى في عهد التابعين)	41
The Reasons behind the Differences between the Ṣaḥābah, the Tabi’ūn and the Fuqahā	43
(أسباب اختلاف الصحابة والتابعين والفقهاء).....	43
The Codification of Jurisprudence (تدوين الفقه).....	48
The Jurists of Hadith and the Jurists of Analogy (أصحاب الحديث وأصحاب الرأي).....	49
The Emergence of the Different Schools of Fiqh (ظهور المذاهب الفقهية)	53
Why can we not do taqlīd of a Ṣaḥābī?.....	59
How should one decide which school of Fiqh to follow?.....	60
Conclusion.....	60
The issue of an <i>Alim</i> (عالم) who is worthy (أهل) of looking (نظر) into evidences (أدلة).....	60
The levels of Taqlid according to Mufti Taqi Uthmani Sahib	67
The Categorisation of the Fuqaha (طبقات الفقهاء).....	69
The Levels of the Hanafi Fuqaha (طبقات فقهاء الحنفية)	69
Ibn Kamal’s Mistakes in his Categorisation	80
Ibn Kamal’s First Mistake	80
As pointed out by Allamah Marjani (d.1306 AH) in ‘Nazuratul Haq’ and Allamah Abdul Hayy Al Lucknawi (d.1304 AH) in his introduction to ‘Al Jamī’ Al Saghir’ and his ‘Umdah Al Ri’ayah’	80
Solution to Ibn Kamal’s (d.940 AH) First Mistake.....	86
Ibn Kamāl’s Second Mistake	86
Solution to Ibn Kamāl’s (d.940 AH) 2 st Mistake	87

Ibn Kamal's Third Mistake	87
Why did Ibn Kamal make this mistake?.....	88
Solution to Ibn Kamāl's 3 rd Mistake	90
A Statement from Ibn Abidīn (d.1252 AH) regarding the difference between the categories Mujtahid Fil Madhab, Mujtahid Fil Masail, Sahib Al Takhrij, Sahib Al Tarjih and the category Sahib A Naql.....	91
The Levels of the Shafi'i' Fuqahā (طبقات فقهاء الشافعية)	97
A closer look at Ma Wara Al Nahr:.....	134
The Levels of the Hanafi Masail (طبقات مسائل الحنفية)	136
Zāhir Al Riwayah (ظاهر الرواية) or Masāil Al Usūl (مسائل الأصول)?	139
Al-Mabsūt (المبسوط) (also known as Al Asl (الأصل)):	141
Al Jami' Al Saghir (الجامع الصغير).....	151
The Six Masail of Al Jami' Al Saghir (الجامع الصغير):	154
In these Six Masail of Al Jami' Al Saghir (الجامع الصغير), do we take the view of Imam Abu Yusuf or the view of Imam Muhammad?.....	154
Al Jāmi' Al Kabīr (الجامع الكبير).....	155
Al Ziyādāt and Ziyādāt Al Ziyādāt (الزيادات وزيادة الزيادات)	157
Al Siyar Al Saghir (السير الصغير).....	159
Conclusion on the Books of Zāhir Al Riwayah (ظاهر الرواية).....	164
Ruling of the Masāil of Zāhirur Riwayah (ظاهر الرواية)	165
Masāil Al Nawādir (مسائل النواذر).....	165
Al Muntaqa by Hakim Al Shahid:	168
Ruling of Masāil Al Nawādir (مسائل النواذر).....	168
Masail Al Fatawa Wal Waqiat (مسائل الفتاوى والواقعات).....	173
The Hanafi Books of Fiqh and How They Presented the Zahir Al Riwayah (ظاهر الرواية), Masail Al Nawadir (مسائل النواذر) and Masail Al Fatawa Wal Waqi'at (مسائل الفتاوى والواقعات)	175
Shah Waliullah's (d.1176 AH) Categorisation of the Masail of the Hanafi Mathab	177
(تقسيم الشيخ ولي الله الدهلوي)	177
The Conditions required to be a Mufti (شروط المفتي).....	182
Maturity & Sanity of Mind of a Mufti	182
Knowledge of a Mufti	183
How much knowledge is required before a person can be a Mufti?.....	183
Is it necessary for a Mufti to know the evidences of his Imam? (هل يشترط للمفتي بمذهب أن يعرف دليله؟)	185
Necessary requirements when a Mufti who is a Muqallid relates the Fatwa of his Imam (ما يشترط للمفتي المقلد عند نقل فتوى الإمام).....	186

When there is only one view in a Mas'alah (إذا كان في المسألة قول واحد)	195
A Mufti who is a Muqallid must give Fatwa upon the view that the <i>As-hab Al Tarjih</i> (أصحاب الترجيح – Scholars Worthy of Giving Preference) have given preference to	202
(يفتي المفتي المقلد بما رجحه أصحاب الترجيح)	Error! Bookmark not defined.
A Mufti must rely upon the Reliable Texts (يعتمد المفتي على الكتب المعتبرة في المذهب)	204
What are the reasons due to which a text becomes unreliable?	206
Apparent Preference and Indicative Preference (الترجيح الصريح والترجيح الإلزامي)	215
The Different Phrases of (صيغ الترجيح)ترجيح	Error! Bookmark not defined.
Recognising the Principles of Choosing the Correct Preference (معرفة المرجحات) (ترجيح)	Error! Bookmark not defined.
When no Preference (<i>Tarjih</i>) is found for any view (إذا لم يوجد ترجيح لقول من الأقوال)	Error! Bookmark not defined.
The Reverse Meaning is considered in the Statements of the Fuqahaa	Error! Bookmark not defined.
(المفهوم المخالف معتبر في عبارات الفقهاء)	Error! Bookmark not defined.
The Conditions for giving a Fatwa upon the Weak or Defaced Opinions of the Madhab (شروط الإفتاء بالروايات الضعيفة والمرجوحة)	Error! Bookmark not defined.
The Mas'alah of Semen	237
The Mas'alah of Blood	237
To Give Fatwa on another Mathab (الإفتاء بمذهب آخر)	240
An Introduction to Giving Fatwa upon another Mathab (التمهيد)	240
To give Fatwa on another Mathab due to Necessity or Public Need	240
(الإفتاء بمذهب آخر لضرورة أو حاجة عامة)	240
The Ruling of Talfiq (حكم التلفيق)	245
Have Ibn Al Hummam and Ibn Amir stated that <i>Talfiq</i> (تلفيق) is permissible?	245
A Summary of the Discussion on Talfiq (تلفيق):	247
Examples of adopting two different Madhabs in <i>two</i> different Masail (subsidiary issues – مسائل):	247
Hadrat Thanwi's view	248
Example of when Talfiq will be permissible according to Hadrat Thanwi:	248
Examples of when Talfiq will not be permissible according to Hadrat Thanwi:	248
To give Fatwa upon another Mathab due to the strength of evidence	249
When a Judge gives a ruling contrary to his Madhab (إذا قضى القاضي بغير مذهبه)	252
Will a subsequent consensus annul a previous difference of opinion?	256
When the Validity of the Actual Procedure of the Court Case itself is one in which Ijtihad is Possible	257
For a Mas'alah to be one in which Ijtihad is Possible, is it necessary for there to be a difference of opinion in the Mas'alah in the time of the Sahabah and Tabi'un?	258
Issuing a Decree upon a View that is Outside of the Four Schools of Thought	260
Is it Necessary for a Judge to be Wary of a Difference of Opinion?	262

When a Judge who is a Muqallid issues a Decree that is Contrary to the Opinion of his Madhab	262
The Command of the Ruler or Leader in a Mas'alah in Which Ijtihad is Possible	264
Changing a Ruling Due to the Changing of Time (تغير الأحكام بتغير الزمان)	265
Changing a Ruling due to the absence of a Reason (علة) upon which the Ruling was Based (تغير الحكم بتغير العلة)	266
The Difference between a Reason/Cause and the Wisdom	266
The Wisdom may assist in Discovering the Cause	268
Conclusion	269
The Objectives of Shari'ah (Maqasid Al Shari'ah)	270
The Causes of Shari'ah Rulings	272
Changing a Ruling due to a Change in the Norm (تغير الحكم بتغير العرف)	273
(Including a summarisation of <i>Nashrul Arf Fi Binai Ba'dil Ahkam Alal Urf</i> by Ibn Abidin)	273
Changing a Ruling due to Need and Necessity (تغير الأحكام بالضرورة والحاجة)	290
Allamah Hamawi's Categorisation of the Various Situations of a Human Being	291
A Necessity (Al Darurah – الضرورة)	292
Muhammad Tahir Al Atasi's Categorisation of the Prohibited Actions	292
A Need (Al Hajah – الحاجة)	294
Changing a Ruling for Purposes of Prevention (تغير الأحكام لسد الدرائع)	297
Evidence of the Consideration of a 'means' to sin in Shari'ah	297
The Laws of Iftā and its Methodology (أحكام الإفتاء ومنهجه)	303
An Introduction to the Laws of Iftā and its Methodology (التمهيد)	303
When is it necessary (wajib) to give a Fatwā? (متى يجب الإفتاء؟)	303
When will giving a Fatwa be considered impermissible? (متى يحرم الإفتاء؟)	304
Refusal to give a Fatwa (الإمتناع عن الفتوى)	307
To Revoke a Previous Fatwa (الرجوع عن الفتوى)	311
Laws pertaining to revoking a Fatwa (أحكام نقض الفتوى بعد الرجوع عنها)	312
Laws pertaining to how the Mufti should inform the Questioner regarding the Revocation of the Fatwa	314
(إعلام المفتي بالرجوع عن الفتوى)	314
Ruling with regards to Compensation upon a Mufti who has made a Mistake	314
(حكم الضمان على المفتي المخطئ)	314
Taking a Fee for a Fatwa (الأجرة على الإفتاء)	315
The Methodology of Ifta (منهج الإفتاء)	316
Understanding and Comprehending the Question	316
(تصور الصورة المسؤول عنها)	316
Al Takyif Al Shari' (التكليف الشرعي)	319

Giving a Fatwa based on Principles and Maxims (الجواب على أساس العمومات أو النظائر)	320
The Etiquettes of Giving a Fatwa (آداب الإفتاء)	322
Etiquettes of Writing a Fatwa (آداب كتابة الفتوى)	332
Etiquettes of a Mufti (آداب المفتي في نفسه)	332
Rulings Pertaining to Asking a Question (أحكام الإستفتاء)	342

[illegible]

Key Words and their Connotations

Translator's Preface

All praise is for Allah the Almighty, and May He send peace and salutations upon our beloved master Muhammah, his family, his companions, and all those who follow him with conviction.

To continue,

With the grace of Allah the Almighty

Introduction to Uṣūl Al Iftā by Muftī Husain Kadodia Sāhib

All praise is for Allah the Almighty, and May He send peace and salutations upon our beloved master Muhammad, his family, his companions, and all those who follow him with conviction.

To continue,

Where did Uṣūl Al Iftā come from?

We know that Uṣūl Al Fiqh came from the statements of the Mujtahidīn and the Masā'il (subsidiary issues) of the Mujtahidīn. Hence, it can definitively be said that Uṣūl Al Fiqh is established from the A'immah of a Madhab.

But, where did Uṣūl Al Iftā come from? Who decided that we should give Fatwā in a certain manner?

To put it simply, Uṣūl Al Iftā can never be said to be established from the Imāms of a Madhab because the codification of Uṣūl Al Iftā took place when later Fuqahā and Mujtahidīn in a Madhab found multiple views in the Madhab and were faced with the question: which view should we give Fatwā upon? Therefore, it's impossible for it to have come from the Imāms of a Madhab, because, of course, each Imām would say, "take my view".

Uṣūl Al Iftā is a natural progression of a Madhab (school of thought); a progression that must occur in order for the Madhab (school of thought) to develop.

Initially, the Mujtahidīn in a Madhab (school of thought) were the ones who were giving Fatwā. Considering their abilities, these Mujtahidīn were able to apply their Ijtihād when giving a Fatwā.

Later on, however, a time came when the number of these Mujtahidīn began to decline, and, soon came a time when it was no longer the Mujtahidīn who were giving a Fatwā. So, the Fuqahā had to have a set of principles (Uṣūl) based upon which they would give a Fatwā. In a single Mas'alah, they had to decide which view they should give Fatwā upon and the reasons behind such a decision.

At times, a scholar would develop a certain view in Uṣūl Al Iftā and then another scholar would differ with him, the Fuqahā would then choose one of these two views and this would become the official view of that Madhab in Uṣūl Al Iftā.

Just in like in Fiqh, the Muftā Bihī view developed by the Imāms of the Mathab adopting a certain view, in Uṣūl Al Iftā also, the Uṣūl were developed by the scholars of a Madhab. Now, is it possible to trace at which point Fatwā started to be given on a certain view? For example, what is the Muftā Bihī view on the time for Zohar? Can we exactly pinpoint exactly when it became established that Imām Abū Ḥanīfah view became the Muftā Bihī? The problem is that these Masā'il only became properly codified around the 400th Hijri, so for hundreds of years, Fatwās were being given and we have no record as to who was giving Fatwā on what view, even after 400th Hijri, so many books are not found. So, you can't exactly specify who the first person was to state that the Fatwā shall now be given on this view.

In the same manner lies in *Uṣūl Al Iftā*, you can trace all these *uṣūl* back to earlier books, but you can't say "this person set down this *uṣūl*". It was something that the scholars in general adopted, yes, you can pinpoint who the first person was to put it down in a book or the first person to put it down in a book that we have today, but was he the first person to come with that *uṣūl*? This we do not know.

So *Uṣūl Al Iftā* is something that developed over time. Now, because it wasn't something that was codified from the beginning, very few scholars wrote on the topic. The Shafi'i's began writing much earlier than the Hanafis; Ibn Salaah wrote in *Uṣūl Al Iftā* and many others such as Imām Nawawī built on his work. But, most of these writings were based around the etiquettes of Fatwā, but yes, they did mention some *Uṣūl* as well.

As for the Ḥanafīs, the Fuqahā tackled the *Uṣūl Al Iftā* in their books in usually one of three places. Some would tackle it at the start of their book such as Qadhi Khan. Qadhi Khan has made a chapter at the start of his book titled:

فصل في رسم المفتي

“Chapter in the etiquettes of a Mufti”

Some of the other Fatawa books such as *Al Hawi Al Qudsi* would tackle it right at the end of the book in a chapter labelled:

كتاب الجامع

“The chapter of compilation”

Or something similar.

Other books such as *Al Qunyah* would have a chapter in their *Kitabul Hazr Wal Ibahah* (كتاب الحظر والإباحة) section labelled:

آداب المفتي

“Chapter of the etiquettes of a Mufti”

However, these were special chapters created for *Uṣūl Al Iftā*; otherwise many other books discuss the *Uṣūl Al Iftā* under chapters such as:

كتاب القضاء

“The chapter on judicial rulings”

Or in books such as:

أدب القاضي

“The etiquettes of a Judge”

Other books will have the *Uṣūl Al Iftā* scattered all over the book when they discuss the reasons as to why one view is preferred, an example is *Fatāwā Qādhī Khān* (فتاوى قاضيخان).

Another example is *Al Taṣhīḥ Wal Tarjīḥ* (التصحيح والترجيح) of ‘Allāmah Qāsim ibn Qutlūbugah wherein he displays which view is the preferred view and then gives the reasons as to why it is the preferred view citing principles from the principles of *Iftā*.

As for books written specially on the field of the principles of *Iftā*, there are very few. *Rasmul Muftī* (رسم المفتي) of Ibn ‘Abidīn is the most famous one. However, many people think that he somehow created the principles of *Iftā*, in reality, he has just taken what was in the previous books and putting it into a treatise (*risālah*).

There are atleast two other books written on *Uṣūl Al Iftā* before Ibn ‘Abidīn Raḥimahullah. The first one is very detailed but I do not know who the author is. With that being said, it is not close to being as detailed as Ibn ‘Abidīn Raḥimahullah’s book. The second one was written by Muḥammad Faqīh Al ‘Ayni and is not so detailed. Both are very different from *Rasmul Muftī* (رسم المفتي); *Rasmul Muftī* (رسم المفتي) does not cover etiquettes of a *Fatwā*; whilst those two cover etiquettes of a *Fatwā*.

Now, all the sources of Ibn ‘Abidīn Raḥimahullah’s work are the books mentioned earlier such as *Fatāwā Qādhī Khān* (فتاویٰ قاضیخان) and *Al Taṣḥīḥ Wal Tarjīḥ* (النصحیح والتجیح), as well as all the Ḥanafī books of Fiqh where *Uṣūl Al Iftā* are mentioned or discussed. This book of Ibn ‘Abidīn Raḥimahullah is definitely the most important book in Ḥanafī *Uṣūl Al Iftā*. This is why every Dārul Iftā teaches this book.

Dr. Ṣalāḥ Abul Ḥāj, in his work on *Sharḥ ‘Uqūd Rasmi Muftī* (شرح عقود رسم المفتی), laments the lack of attention paid to this book in the Arab world.

With Fiqh, you must learn the principles of Iftā. Hence, along with Fiqh, you must gain knowledge of what is the preferred view for Fatwā.

The Prints of Sharḥ ‘Uqūd Rasmi Muftī

The original print of *Sharḥ ‘Uqūd Rasmi Muftī* (شرح عقود رسم المفتی) was in the *Majmū’ Rasāil of Ibn ‘Abidīn* (مجموع رسائل ابن عابدین). Ibn ‘Abidīn Raḥimahullah wrote the treatise in 1243 AH, approximately 10 years before he passed away. It was printed around 1280 AH by Muḥammad Abu Al Khair Raḥimahullah, who was the son of the nephew of Ibn ‘Abidīn Raḥimahullah, Aḥmed ibn ‘Abdīl Ghanī. Then an old Indian copy was made wherein they wrote out the Muḥammad Abu Al Khair copy and added on two commentaries, one by Muftī Muẓaffar Ḥusain of Maẓāhirul Ulūm and the other by Muftī Athar Ḥusain.

A few years ago, Muftī Sa’id Pālanpūrī (may Allah prolong his shadow over us) wrote ‘*Āp Fatwā Keisei Dei?*’ (آپ فتویٰ کیسے دے؟), he wrote brief biographies of the individuals mentioned in the book, though his biographies contain many errors.

However, I was really impressed with the way that he understood the book. For example, there are certain parts of the book that are very difficult to understand such as the discussion of Ibn Nujaym’s claim that a Fatwā should always be given upon Imām Abū Ḥanīfah Sahib’s view, I sat with this part for weeks trying to understand it and the only person who I found to have understood very well was Muftī Sa’id Ṣāḥib who explains this difficult part quite well.

Then there is an edition of the book with Muftī Rafī’ ‘Uthmānī Ṣāḥib’s footnotes. However, the text (*matn*) has added on over fifty errors to the original print. As for his footnotes, some are beneficial whilst others do not make a lot of sense.

After this, there is Muftī Abū Lubābah’s edition. He typed out the book and added on Muftī Muẓaffar Ṣāḥib and Muftī Athar Ṣāḥib’s footnotes as well as his own footnotes. But to properly correct the book, he would have had to go to the original manuscripts of the book and then go back to all the manuscripts that Ibn ‘Abidīn refers to in his book, which he did not do.

There is also a book by the name of *Dars Sharḥ Uqūd Rasmi Muftī* (درس شرح عقود رسم المفتی) by Muftī Ḥammādullah, it is a good book for examples.

Approximately four years ago, a new edition came out by Maktabah Dārul Ḥaḍārah and Dārul Ṣidīq with a research (*taḥqīq*) in which the researcher (*muḥaqqiq*) used a manuscript of the book. Due to the fact that he used a manuscript, he corrected a number of errors that were found in the original book. Hence, this edition is by far the best edition of the book.

Finally, there is a commentary of *Sharḥ ‘Uqūd Rasmi Muftī* (شرح عقود رسم المفتی) by Dr. Ṣalāḥ Abul Ḥāj, a Palestinian scholar who has moved to Jordan. Dr. Ṣalāḥ Abul Ḥāj studied in ‘Irāq and is a prolific writer. He mentions that he used three different manuscripts; however, all three are easily available from the internet and are not actually very reliable. But the bigger problem is that he claims that he compared all three manuscripts, but it seems that

all he did was that he used the manuscripts wherever he found the text to be confusing, he did not use the three manuscripts for the entire book. Therefore, he made cursory comparison (*Isti'nās* - استثناس) with the three manuscripts and did not make thorough comparison (*Muqābalah* - مقابلة) with the three manuscripts. I know this because I have the three manuscripts and there are parts which the manuscripts would have helped to correct from the original print, yet Dr. Ṣalāh Abul Hāj did not correct them.

Dr. Ṣalāh Abul Hāj has also recorded the footnotes of Muftī Rafī Uthmānī Ṣāhib into his commentary, including the incorrect footnotes of Muftī Rafī Uthmānī Ṣāhib.

In truth, Dr. Ṣalāh Abul Hāj has a very good library of manuscripts. He also has a very good library of Ḥanafī books that were worked on in 'Irāq but still haven't been printed. For example, he has a fifty-two volume edition of Al Muḥīt Al Burhānī that was worked on years ago. Hence, for some of the books that Ibn 'Abidīn quotes, it's clear that Dr. Ṣalāh Abul Hāj had a copy of the book in his library, however, for some reason he chose not to revert to these books in order to find the original quote.

However, Dr. Ṣalāh Abul Hāj feels that the Ḥanafī Madhab had a stance in Fiqh that was in concurrence with the Fuqahā; however, Ibn Al Hummām (d.861 AH) changed this stance of Fiqh to make it in concurrence with the Muḥaddithīn by giving preference (*tarjih*) to views that seemed to be the preferred view according to the Muḥaddithīn. After this, Ibn Nujaym and Ibn 'Abidīn followed Ibn Al Hummām (d.861 AH).

The scholars of the Indian sub-continent were especially firm on following a mode of Fiqh that is in concurrence with the Muḥaddithīn as they believed that it is our responsibility to follow a Madhab that is supported by the Qur'ān and Ḥadīth and may be easily defended from the Qur'ān and Ḥadīth.

Dr. Ṣalāh Abul Hāj disagrees with this completely and feels that we should revert to the view of the Fuqahā that came before Ibn Al Hummām and consider the preferences (*tarjihāt*) that they gave.

Fatwā and its Importance (الفتوى وخطورها)

The Meaning of Fatwā (الفتوى في اللغة والإصلاح)

A Fatwā is pronounced as 'Fatwā' (فَتْوَى) (with a Faṭḥah on the letter Fā. It has been said that it can be pronounced as 'Futwā' (فُتْوَى) with a Ḍammah on the letter Fā as mentioned in *Tāj Al 'Arūs*. However, 'Fatwā' (فَتْوَى) with a Faṭḥah on the letter Fā, is the more correct and more famous pronunciation) and 'Futyā' (فُتْيَا).

The plural form of both words is 'Fatāwā' (فَتَاوَى) and 'Fatāwī' (فَتَاوِي). Both of these plural forms are commonly used in the statements of the scholars.

The linguistic definition of 'Fatwā' and its derivatives:

'Fatwā' (فَتْوَى) and 'Futyā' (فُتْيَا) are used much like the infinitive form of the words: أَفَى (he gave a Fatwa) – يَفِي (he gives a Fatwa) – إِفَاء (to give a Fatwa).

The linguistic definition of 'Fatwā' and its derivatives is: to answer a question (irrespective of whether the question is pertaining to Shar'ah or not).

Examples:

- 1) Allah the Almighty records the statement of the King of *Miṣr* (مِصْر), who said:

يَا أَيُّهَا الْمَلَأُ أَفْتُونِي فِي رُؤْيَايَ إِن كُنْتُمْ لِلرُّؤْيَا تَعْبُرُونَ

"O eminent ones, give me a Fatwā (an answer) regarding my dreams if you are capable of interpreting dreams"

[Surah Yusuf, verse 43]

- 2) Allah the Almighty records the statement of the Queen of Sabā (سَبَأ), Bilkīs, who said:

يَا أَيُّهَا الْمَلَأُ أَفْتُونِي فِي أَمْرِي

"O eminent ones, give me a Fatwā (an answer) in my affair"

[Surah Al Naml, verse 32]

- 3) Allah the Almighty mentions what one of the three prisoners said to Prophet Yūsuf 'Alayhis Salām:

يُوسُفُ أَيُّهَا الصِّدِّيقُ أَفْتِنَا فِي سَبْعِ بَقَرَاتٍ سِمَانٍ...

"Oh Yūsuf the truthful one, give us a Fatwa (an answer) with regards to seven large cows..."

[Surah Yusuf, verse 46]

'Fatwā' in terminology:

In all of the above examples, the derivatives of the word 'Fatwā' have been used in the meaning of 'answering a question'.

After this, the word 'Fatwā' and its derivatives were specifically used to mean to 'answer a question pertaining to Sharī'ah'.

The Qur'ān and Aḥādīth are replete with examples of the word 'Fatwā' and its derivatives being used for this meaning:

- 1) Allah the Almighty says:

وَيَسْتَفْتُونَكَ فِي النِّسَاءِ قُلِ اللَّهُ يُفْتِيكُمْ فِيهِنَّ

"And they ask you the Fatwā regarding women. Say to them, 'surely Allah will give you a Fatwā with regards to them'."

[Surah Yusuf, verse 43]

- 2) Allah the Almighty says:

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ

"They request from you a Fatwā. Say, "Allah gives you a Fatwā concerning one having neither descendants nor ascendants (as heirs)"."

[Surah Al Nisa, verse 176]

- 3) The Prophet Sallallahu Alayhi Wasallam said:

أَجْرُكُمْ عَلَى الْفُتْيَا أَجْرُكُمْ عَلَى النَّارِ

"The most fervent amongst you in giving a Fatwā is the most adamant amongst you to enter the Hellfire"

Accordingly, the word 'Fatwā' is defined in legal terminology as:

The answer to a question pertaining to Dīn.

One should note that the words 'pertaining to Dīn' have been used in the definition instead of 'pertaining to Sharī'ah' as a Muftī does not only answer questions regarding the laws of Sharī'ah. Rather, at times, he answers questions related to 'Aqīdah, or the meaning of a Ḥadīth, or the modality of its chain of narration, or other Masāil related to Dīn.

Types of Fatwā

The word 'Fatwā' has three meanings:

- 1) *Al Fatwā Al Tashrī'iyah* (الفتوى التشريعية)

It is a Fatwā which Allah the Almighty has given either through the Qur'ān or Aḥādīth in response to a question or incident that occurred during the time of the Prophet Ṣallallāhu 'Alayhi Wasallam.

The Fatwā given then became a part of the Sharī'ah.

However, this type of Fatwā ended when divine revelation upon the Prophet Ṣallallāhu 'Alayhi Wasallam came to a close.

Examples:

Qur'an:

1) Allah the Almighty says:

وَيَسْتَفْتُونَكَ فِي النِّسَاءِ قُلِ اللَّهُ يُفْتِيكُمْ فِيهِنَّ

“And they (the Ṣaḥābah) seek from you (Oh Muḥammad) a Fatwā that concerns women. Tell them, “Allah will give you a Fatwā with regards to them””

[Ṣurah Al Nisā, Verse 127]

2) Allah the Almighty says:

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ

“And they (the Ṣaḥābah) seek a Fatwā from you (Oh Muḥammad). Say, ‘Allah shall issue a ruling (verdict) to you concerning a *kalālah* - a person who leaves neither an ascendant (parents or grandparents) nor a descendent (children or grandchildren)”

[Ṣurah Al Nisā, Verse 176]

3) Allah the Almighty says:

يَسْأَلُونَكَ عَنِ الْأَهْلَةِ قُلْ هِيَ مَوَاقِيتُ لِلنَّاسِ وَالْحَجِّ

“They (the Ṣaḥābah) ask you (Oh Muḥammad) about the new moons (why it waxes and wanes), tell them, ‘these are a means for people to determine time (months) and the Hajj’”

[Ṣurah Al Nisā, Verse 189]

4) Allah the Almighty says:

يَسْأَلُونَكَ عَنِ الشُّهُرِ الْحَرَامِ قِتَالٍ فِيهِ قُلْ قِتَالٌ فِيهِ كَبِيرٌ وَصَدٌّ عَنْ سَبِيلِ اللَّهِ وَكُفْرٌ بِهِ وَالْمَسْجِدِ الْحَرَامِ وَإِخْرَاجُ أَهْلِهِ مِنْهُ أَكْبَرُ عِنْدَ اللَّهِ وَالْفِتْنَةُ أَكْبَرُ مِنَ الْقَتْلِ

“They (the Ṣaḥābah) ask you (Oh Muḥammad) about warfare in the sacred months (Dhul Qa’dah, Dhul Hijjah, Muḥarram and Rajab). Say, ‘Warfare in these months is a grave matter (major sin), but to prevent (others) from Allah’s way (Islām), to disbelieve in Him, (to prevent people from) the Masjidul Ḥarām and to expel its people from it (as the Mushrikīn did to the Prophet Ṣallallāhu ‘Alayhi Wasallam and the Ṣaḥābah) is a far greater sin in the sight of Allah. And corruption (especially polytheism and causing mischief in religion) is worse than killing”

[Ṣurah Al Baqarah, Verse 217]

5) Allah the Almighty says:

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْعَفْوَ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ

“They (the Ṣaḥābah) question you about (the permissibility of) liquor and gambling. Say, ‘in both is great sin (because of their ill effects) and some benefits (little) for man; but the sin is far greater than their usefulness’. And they ask you what (how much) they ought to spend. Say, ‘(spend) that

which is easy (extra wealth that exceeds your needs)’. In this manner (as He has made the above clear to you) Allah makes clear to you His revelation so that you may reflect”

[Ṣurah Al Baqarah, Verse 219]

6) Allah the Almighty says:

يَسْأَلُونَكَ عَنِ الْأَنْفَالِ قُلِ الْأَنْفَالُ لِلَّهِ وَالرَّسُولِ فَأَتَقُوا اللَّهَ وَأَصْلِحُوا ذَاتَ بَيْنِكُمْ وَأَطِيعُوا اللَّهَ وَرَسُولَهُ إِنْ كُنْتُمْ مُؤْمِنِينَ

“They (the Ṣaḥābah) ask you (Oh Muḥammad) about the spoils of war (about who will receive what portion of the spoils after the Battle of Badr). Say, ‘the spoils of war are for Allah and His Messenger (for them to distribute it justly among the soldiers). So fear Allah (deal justly), correct your mutual relationships and obey Allah and His Messenger (the Sharī‘ah) if you are (true) Muslims”

[Ṣurah Al Anfāl, Verse 1]

7) Allah the Almighty says:

قَدْ سَمِعَ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي زَوْجِهَا وَتَشْتَكِي إِلَى اللَّهِ وَاللَّهُ يَسْمَعُ تَحَاوُرَكُمَا إِنَّ اللَّهَ سَمِيعٌ بَصِيرٌ

“Allah had certainly heard the speech of the lady who debated with you (Oh Muḥammad) concerning her husband and who complained to Allah. Allah was listening to your discussion. Verily Allah is All Hearing, All Seeing”

[Ṣurah Al Mujādalah, Verse 1]

Hadīth:

Imām Al Bukhārī Raḥimahullāh narrates from Ḥaḍrat Ibn ‘Abbās Raḍiyallāhu ‘Anhu who said:

أَنَّ امْرَأَةً جَاءَتْ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ إِنَّ أُمِّي نَذَرَتْ أَنْ تَحُجَّ فَمَاتَتْ قَبْلَ أَنْ تَحُجَّ أَفَأَحُجُّ عَنْهَا؟ قَالَ نَعَمْ! حُجِّي عَنْهَا

“A woman once came to the Prophet Ṣallallāhu ‘Alayhi Wasallam and said, ‘Indeed my mother made an oath of performing Hajj, but she died before performing Hajj, should I perform Hajj on her behalf?’ He (the Prophet Ṣallallāhu ‘Alayhi Wasallam) replied, ‘Yes! Perform Hajj on her behalf”

1) *Al Fatwā Al Fiqhiyyah* (الفتوى الفقهية)

It is an answer given by a *Faqīh*, not for a specific situation, but rather, as a ruling for a general question or as a ruling to a hypothetical situation.

This is a form of Fatwā used by a *Faqīh* who is creating and codifying the Masāil of Fiqh. Hence, he thinks of Masāil which have not yet occurred, deduces their ruling from the evidences of the Sharī‘ah, and then compiles these Masāil and their rulings in a book form or a leaflet.

Example:

A *Faqīh* may provide an answer for the question:

“What is the ruling if a man says to a woman “you are free?””

The question is a general question and not in reference to a specific situation.

2) *Al Fatwā Al Juz'iyah* (الفتوى الجزئية)

It is an answer given in response to a certain situation by applying a general ruling to a specific situation.

Example:

A Muftī may provide an answer for the question:

"Zaid has passed away and has left his parents, his wife, a son and a daughter. How should we distribute his wealth?"

On most occasions when the word 'Fatwā' is used, it is a reference to this type of Fatwā. Although, at times it may be a reference to the second type of Fatwā; *Al Fatāwā Al Fiqhiyyah*.

The Difference between a Fatwā and a Decree of a Judge (الفرق بين الإفتاء والقضاء)

There are four major differences between a Fatwā and a decree of judge:

- 1) A Fatwā clarifies the stance of Sharī'ah in regards to a Mas'alah, i.e. is it permissible (Mubah) or preferable (Mustahab) or necessary (Wajib) or destestable (Makruh) or forbidden (Haram)? Hence, in a Fatwā, the questioner is not physically bound to follow the answer of the Muftī. However, the decree of a judge is physically binding upon the individuals involved in the decree.
- 2) A Fatwā will be answered according to what is asked by the questioner; a Muftī is not required to know the reality of the situation by demanding evidence. Rather, he will assume the facts relayed by the questioner to be the reality of the situation.

This is why a Muftī usually writes in his Fatwā: *"the ruling for the situation mentioned in the query is..."*¹ In a Fatwā, it is not necessary to know the the exact details of the situation.

- 3) A Fatwā shall be issued in regards to rulings such as permissible (*Mubāh*), preferable (*Mustahab*), necessary (*Wājib*), destestable (*Makrūh*), forbidden (*Ḥarām*), etc. As for the decree of a judge, it will not involve a ruling pertaining to an action being permissible (*Mubāh*), preferable (*Mustahab*), necessary (*Wājib*), destestable (*Makrūh*), forbidden (*Ḥarām*), etc. This is because labelling an action as preferable or detestable is an endorsement or discouragement respectively for the action without any binding force. On the contrary, a decree of a judge will be a binding ruling that an action must be performed or must be avoided.
- 4) A Fatwā will not always pertain to matters of Fiqh; at times, a Fatwā will involve issues relating to 'Aqīdah, Ḥadīth, social matters, etc. A decree of a judge on the other hand will always pertain to matters of Fiqh and will not pertain to matters of 'Aqīdah etc. except in some cases (such as apostasy).

The Fear of the Previous Scholars towards giving Fatwā (تحيب السلف للفتيا)

Imām Al Nawawī Raḥimahullah (d.676 AH) has stated in the introduction to his book, *Sharḥ Al Muḥadḍab* (شرح المهذب):

¹ A Muftī may also write "according to the information you have provided..."

إِعْلَمَنَّ أَنَّ الْإِفْتَاءَ عَظِيمُ الْخَطَرِ قَدِيرُ الْمَوْعِدِ كَثِيرُ الْفَضْلِ لِأَنَّ الْمُفْتِيَ وَارِثُ الْأَنْبِيَاءِ صَلَوَاتُ اللَّهِ عَلَيْهِمْ وَسَلَامُهُ وَقَائِمٌ بِفَرْضِ الْكِفَايَةِ وَلَكِنَّهُ مُعَرَّضٌ لِلْخَطَرِ وَهَذَا قَالُوا الْمُفْتِيَ مُوقَّعٌ عَنِ اللَّهِ سُبْحَانَهُ وَتَعَالَى

“Know that the [post of] Iftā is incredibly serious, and, of great reward. This is because a Muftī is an inheritor of the Prophets, May Allah’s peace and salutations be upon them, and he is fulfilling a collective obligation (*Fardh Kifāyah*). However, it [the post of Iftā] is a dangerous post; this is why they say, ‘A Muftī holds a signature from Allah, the Glorified, the Exalted.’

It is necessary for a Muftī to recognise the gravity of the post of Iftā and to recognise that it is not a platform for one to display his personal opinions or give a ruling according to his intellect or innate desires. Rather, it is to elaborate the various commandments and rulings of Sharī’ah that Allah has ordained upon his servants in their individual and collective lives, commandments and rulings which their success in this world and the hereafter is dependent upon.

It is sufficient to understand the seriousness and gravity of the post of Iftā to know that it involves one assuming the responsibility of being the deputy of Allah the Almighty and His Prophet Ṣallallāhu ‘Alayhi Wasallam. Such a deputy is required to elaborate the rulings of Sharī’ah and provide a ‘signature’ from the Lord of the heavens, the earth, and the universe. This has been mentioned by Imām Al Nawawī Raḥimahullah (d.676 AH) and Ibn Al Qayyim Raḥimahullah (d.751 AH).

Ibn Al Qayyim Raḥimahullah (d.751 AH) said:

وَإِذَا كَانَ مَنْصَبُ التَّوْقِيعِ عَنِ الْمُلُوكِ بِالْمَحَلِّ الَّذِي لَا يَنْكُرُ فَضْلُهُ وَلَا يُجْهَلُ قَدْرُهُ وَهُوَ مِنْ أَعْلَى الْمَرَاتِبِ السَّنِّيَّاتِ فَكَيْفَ يَمْتَصِبُ التَّوْقِيعَ عَنْ رَبِّ الْأَرْضِ وَالسَّمَوَاتِ؟ فَحَقِيقٌ بِمَنْ أُقِيمَ فِي هَذَا الْمَنْصَبِ أَنْ يَعِدَّ لَهُ عِدَّتَهُ وَأَنْ يَتَأَهَّبَ لَهُ أَهْبَتَهُ وَأَنْ يَعْلَمَ قَدْرَ الْمَقَامِ الَّذِي أُقِيمَ فِيهِ وَلَا يَكُونُ فِي صَدْرِهِ خَرَجٌ مِنْ قَوْلِ الْحَقِّ وَالصَّدَقِ بِهِ فَإِنَّ اللَّهَ نَاصِرُهُ وَهَادِيهِ وَكَيْفَ وَهُوَ الْمَنْصَبُ الَّذِي تَوَلَّاهُ بِنَفْسِهِ رَبُّ الْأَرْبَابِ فَقَالَ تَعَالَى "وَيَسْتَفْتُونَكَ فِي النِّسَاءِ" قُلِ اللَّهُ يُفْتِيكُمْ فِيهِنَّ وَمَا يُتْلَى عَلَيْكُمْ فِي الْكِتَابِ" وَكَفَى بِمَا تَوَلَّاهُ اللَّهُ تَعَالَى بِنَفْسِهِ شَرَفًا وَجَلَالَةً إِذْ يَقُولُ فِي كِتَابِهِ "يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ" وَلِيَعْلَمَ الْمُفْتِيَ عَمَّنْ يُنُوبُ فِي فَتْوَاهُ وَلِيُوقِنَ أَنَّهُ مَسْئُولٌ عَدَا وَمَوْفُوفٌ بَيْنَ يَدَيْ اللَّهِ

“If holding the position of being a signatory on behalf of kings is a position the merit of which cannot be denied and the stature of which cannot be unknown, and it is from amongst the highest positions, then how [high] is the position of being a signatory on behalf of the Lord of the earth and heavens? Thus, it is appropriate for the one who is appointed this position that he prepares for it properly, maintains his alertness, and knows the position which he has been given, and he should not find a problem in his heart from speaking the truth and ruling according to it. For indeed, Allah is his helper and his guide, and why not? For this is a position that the Lord of the lords Himself has assumed. Thus, the Almighty says, ‘they ask you [a Fatwā] regarding women, tell them that Allah shall give you [a] Fatwā regarding them and [regarding] what has been recited to you from the book’. It is enough for the dignity and grandeur of something that Allah the Almighty Himself has done it, for He says in His book (Qur’an), “they ask you [a Fatwa], say, Allah shall give you [a] Fatwā regarding a *kalālah* - a person who leaves neither an ascendant (parents or grandparents) nor a descendent (children or grandchildren)’. A Mufti should know whom he is deputising when issuing a Fatwā, he should fear that he shall be questioned tomorrow and shall be made to stand before Allah”

The words of the Prophet Ṣallallāhu ‘Alayhi Wasallam are sufficient for one to understand the importance of Iftā:

أَجْرُكُمْ عَلَى الْفَتْيَا أَجْرُكُمْ عَلَى النَّارِ

“The most eager amongst you to issue a Fatwā is the most eager amongst you to enter the Hellfire”

There are many other accounts which demonstrate the fear that the scholars of the past had towards issuing a Fatwā and how they would avoid issuing a Fatwā as much as possible.

Ibn ‘Abdil Bar Raḥimahullah (d.463 AH) has recorded in his book, *Jāmi’ Bayān Al ‘Ilm Wa Faḍlih*, with his chain of narration to ‘Uqbah ibn Muslim Raḥimahullah that he said:

صَحِبْتُ ابْنَ عُمَرَ أَرْبَعَةً وَثَلَاثِينَ شَهْرًا فَكَثِيرًا مَا كَانَ يُسْأَلُ فَيَقُولُ لَا أَدْرِي ثُمَّ يَلْتَفِتُ إِلَيَّ فَيَقُولُ أَتَدْرِي مَا يُرِيدُ هَؤُلَاءِ؟ يُرِيدُونَ أَنْ يَجْعَلُوا ظُهُورَنَا جِسْرًا لَهُمْ إِلَى جَهَنَّمَ

“I accompanied Ibn ‘Umar for thirty-four months, on many occasions he would be asked a question to which he would say, ‘I do not know’. After this, he would turn to me and say, ‘Do you know what these people desire? They desire to make our backs a bridge [which they may stand on] for their journey towards the Hellfire”

Al Khatīb Al Baghdādī Raḥimahullah (d.463 AH) states in his book, *Al Faqīh Wal Mutafaqih*, under ‘the chapter of warning one from rushing to issue a Fatwā for fear of making a mistake’:

قَالَ اللَّهُ تَبَارَكَ وَتَعَالَى "سَتُكْتَبُ شَهَادَتُهُمْ وَيُسْأَلُونَ" وَقَالَ تَعَالَى "لَيَسْأَلَنَّ الصَّادِقِينَ عَنْ صِدْقِهِمْ" وَقَالَ تَعَالَى "مَا يَلْفُظُ مِنْ قَوْلٍ إِلَّا لَدَيْهِ رَقِيبٌ عَتِيدٌ" وَكَانَتِ الصَّحَابَةُ رِضْوَانُ اللَّهِ عَلَيْهِمْ لَا تَكَادُ تُفْتَى إِلَّا فِي مَا نَزَلَ ثِقَةً مِنْهُمْ بِأَنَّ اللَّهَ تَعَالَى يُوفِّقُ عِنْدَ نَزُولِ الْحَادِثَةِ لِلْجَوَابِ عَنْهَا وَكَانَ كُلُّ وَاحِدٍ مِنْهُمْ يُوَدُّ أَنْ صَاحِبَهُ الْفَتَى

“Allah the Almighty, the Blessed, has said, ‘their testimony will be recorded and they will be questioned’, and the Almighty has said, ‘That He may question the truthful regarding their truth’, and the Almighty has said, ‘Man does not utter any word except that with him is an observer prepared [to record]’. The Sahabah, may Allah be pleased with them, would not issue a Fatwā except if an incident were to occur as they had conviction that Allah the Almighty would inspire the answer to them if an incident were to occur, each of them wished that his companion would suffice him from issuing a Fatwā”

After this, Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Al Barā ibn ‘Āzib Raḍiyallāhu ‘Anhu that he said:

لَقَدْ رَأَيْتُ ثَلَاثَ مِائَةٍ مِنْ أَهْلِ بَدْرٍ مَا مِنْهُمْ مَنْ أَحَدٍ إِلَّا وَهُوَ يُحِبُّ أَنْ يَكْفِيَهُ صَاحِبُهُ الْفَتَى

“I have seen three-hundred individuals who participated in the battle of Badr, I did not find a single one of them except that he preferred for his companion to take the responsibility of answering a Fatwā”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Imām Shāfi‘ī Raḥimahullah (d.204 AH) that he said:

مَا رَأَيْتُ أَحَدًا جَمَعَ اللَّهُ فِيهِ مِنْ آلَةِ الْفَتْيَا مَا جَمَعَ فِي ابْنِ عُيَيْنَةَ أَسَكَتَ عَنِ الْفَتْيَا مِنْهُ

“I have not seen anyone in whom Allah has gathered the ability to issue a Fatwā like that which He has gathered in Ibn ‘Uyaynah stay as silent as Ibn ‘Uyaynah does from issuing a Fatwā”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Sufyān ibn ‘Uyaynah Raḥimahullah that he said:

أَعْلَمُ النَّاسِ بِالْفَتَوَى أَسْكَنُهُمْ فِيهِ وَأَجْهَلُ النَّاسِ بِالْفَتَوَى أَنْطَقُهُمْ فِيهِ

“The most knowledgable people in issuing a Fatwā are those who remain the most silent in it and the most ignorant in issuing a Fatwā are those who remain the most vocal in it”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Bishr ibn Al Ḥārith Raḥimahullah that he said:

مَنْ أَحَبَّ أَنْ يُسْأَلَ فَلْيَسْ بِأَهْلِ أَنْ يُسْأَلَ

“Whoever wishes that he be asked [a Fatwā] is not worthy of being asked [a Fatwā]”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from ‘Atā’ ibn Sāyib Raḥimahullah (d.136 AH) that he said:

أَذْرَكْتُ أَقْوَامًا إِنْ كَانَ أَحَدُهُمْ يُسْأَلُ عَنِ الشَّيْءِ فَيَتَكَلَّمُ وَإِنَّهُ لَيَرْعَدُ

“I have met such people that if one of them were to be asked regarding something (related to Dīn), they would tremble whilst answering”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Ash’ath that he said regarding Muḥammad ibn Sūrīn Raḥimahullah (d.110 AH):

كَانَ إِذَا سُئِلَ عَنْ شَيْءٍ مِنَ الْفَقْهِ الْحَلَالِ وَالْحَرَامِ تَغَيَّرَ لَوْنُهُ وَتَبَدَّلَ حَتَّى كَأَنَّهُ لَيْسَ بِالذِّي كَانَ

“When he (Muḥammad ibn Sīrīn Raḥimahullah (d.110 AH)) would be asked a question from the field of ḥalāl and ḥarām in Fiqh, his complexion would change and his state would alter such that he would not remain as he was earlier”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from one of the students of Imām Mālik Raḥimahullah (d.179 AH) that he said:

وَاللَّهِ إِنْ كَانَ مَالِكٌ إِذَا سُئِلَ عَنْ مَسْأَلَةٍ كَأَنَّهُ وَقَفَ بَيْنَ الْجَنَّةِ وَالنَّارِ

“I swear by Allah, [Imām] Mālik was such that if he were to be asked a Mas’alah, [he would behave] as though he is standing between heaven and hell”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Muḥammad ibn Al Munkadir Raḥimahullah that he said:

إِنَّ الْعَالِمَ بَيْنَ اللَّهِ وَبَيْنَ خَلْقِهِ فَلْيَنْظُرْ كَيْفَ يَدْخُلُ عَلَيْهِمْ

“Surely an ‘Alim is a mediator between Allah and his creation, so be careful as to how you approach them (i.e. the creation)”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Ḥaḍrat ‘Abdullah ibn ‘Umar Radhiyallāhu ‘Anhumā that he said:

إِنَّكُمْ تَسْتَفْتُونَنَا اسْتِيفَاءً قَوْمٌ كَأَنَّا لَا نُسْأَلُ عَمَّا نُفَتِّحُكُمْ بِهِ

“Surely you [people] ask us questions that would be asked by a group of people who have assumed that we shall not be questioned [by Allah] regarding our answers”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Imam Abū Ḥanīfah Raḥimahullah (d.150 AH) that said:

مَنْ تَكَلَّمَ فِي شَيْءٍ مِنَ الْعِلْمِ وَتَقَلَّدَهُ النَّاسُ وَهُوَ يَظُنُّ أَنَّ اللَّهَ لَا يَسْأَلُهُ عَنْهُ كَيْفَ أَفْتَيْتُ فِي دِينِ اللَّهِ؟ فَقَدْ سَهَّلَتْ عَلَيْهِ نَفْسَهُ وَدِينَهُ

“Whoever speaks regarding knowledge, and the people follow him, while he believes that Allah shall not question him [by asking] “how did you give Fatwā in the Dīn of Allah?” Then surely his nafs (innate disposition) and his Dīn have become easy upon him (i.e. he has underestimated the power of these two things)”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) that he said:

لَوْلَا الْفَرْقُ مِنَ اللَّهِ أَنْ يُضَيِّعَ الْعِلْمَ مَا أَفْتَيْتُ أَحَدًا يَكُونُ لَهُ الْمَهْنَةُ وَعَلَيَّ الْوِزْرُ

“Were it not for the fear of Allah that knowledge would be lost, I would have not given a Fatwā to anyone; its (Fatwā) ease is for him and its (Fatwā) consequences are upon me”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Muḥammad ibn Wasī’ Raḥimahullah that he said:

أَوَّلُ مَنْ يُدْعَى إِلَى الْحِسَابِ يَوْمَ الْقِيَامَةِ الْفُقَهَاءُ

“The first people to be called for reckoning on the day of resurrection shall be the Fuqahā”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Sufyan ibn ‘Uyaynah Raḥimahullah that he said:

يُغْفَرُ لِلْجَاهِلِ سَبْعُونَ ذَنْبًا قَبْلَ أَنْ يُغْفَرَ لِلْعَالِمِ ذَنْبٌ وَاحِدٌ

“Seventy sins of an ignorant person shall be forgiven before one sin of a knowledgeable person is forgiven”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration that Ibn Khaldah Raḥimahullah said to Rabī'ah ibn Abī 'Abdir Raḥmān Raḥimahullah:

إِنِّي أَرَى النَّاسَ قَدْ أَحَاطُوا بِكَ فَإِذَا سَأَلَكَ الرَّجُلُ عَنْ مَسْأَلَةٍ فَلَا يَكُنْ هَمَّتَكَ أَنْ تُخْلِصَهُ وَلَكِنْ لَتَكُنْ هَمَّتَكَ أَنْ تُخْلِصَ نَفْسَكَ

“Surely I see the people are all around you. So when a person asks you a question, do not let your concern be that you free him [from his problems], rather, let your concern be that you free yourself.”

Al Khatīb Raḥimahullah (d.463 AH) has recorded from Imām Mālik Raḥimahullah (d.179 AH) that he said regarding Ibn Hurmuz Raḥimahullah:

أَنَّهُ كَانَ يَأْتِيهِ الرَّجُلُ فَيَسْأَلُهُ عَنِ الشَّيْءِ فَيُخْبِرُهُ ثُمَّ يَبْعَثُ فِي إِثَرِهِ مَنْ يَرُدُّهُ إِلَيْهِ فَيَقُولُ لَهُ "إِنِّي قَدْ عَجَلْتُ فَلَا تَقْبَلْ شَيْئًا مِمَّا قُلْتُ لَكَ حَتَّى تَرْجِعَ إِلَيَّ قَالَ وَكَانَ قَلِيلًا مَنْ يُفْعَى مِنْ أَهْلِ الْمَدِينَةِ

“That a man would come to him and ask him a question, so he (Ibn Hurmuz) would inform him [of the answer], then he would send someone to bring the questioner back after which he would say, ‘Surely I rushed [the answer], so do not accept anything that I have said until you return to me’,

Imam Malik Raḥimahullah (d.179 AH) then remarked:

وَكَانَ قَلِيلًا مَنْ يُفْعَى مِنْ أَهْلِ الْمَدِينَةِ

“And [surely] very few of the people of Madinah would issue a Fatwā”

Imām Mālik Raḥimahullah (d.179 AH) then said:

وَلَيْسَ مَنْ يَخْشَى اللَّهَ كَمَنْ لَا يَخْشَاهُ

“And he who fears Allah is not like the one does not fear Him”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from Imām Mālik Raḥimahullah (d.179 AH) that he said:

مَا عَلِمْتُ فَقُلُّهُ وَذَلَّ عَلَيْهِ وَمَا لَمْ تَعْلَمْ فَاسْكُتْ عَنْهُ وَإِيَّاكَ أَنْ تَتَقَلَّدَ لِلنَّاسِ قِلَادَةً سُوءٍ

“That which you know, say it and guide [others] towards it, as for that which you do not know, stay silent regarding it, and beware of becoming an evil following for the people”

Ibn Ṣalāḥ Raḥimahullah (d.643 AH) has narrated in his book, *Adab Al Fatwa*, from Abū Saʿīd ‘Abd Al Salām Raḥimahullah, also known as Al Suḥnūn Raḥimahullah; the Imām of the Malikīs and the compiler of the *Al Mudawanah* that he said:

أَشَقَى النَّاسِ مَنْ بَاعَ آخِرَتَهُ بِدُنْيَاہُ وَأَشَقَى مِنْهُ مَنْ بَاعَ آخِرَتَهُ بِدُنْيَا غَيْرِهِ

“The most wretched of people is the one who sells his Hereafter for his world, and the individual who is more wretched than him is the one who sells his Hereafter for someone else’s world”

After recording this, Ibn Ṣalāḥ Raḥimahullah (d.643 AH) states:

فَفَكَّرْتُ فِيمَنْ بَاعَ آخِرَتَهُ بِدُنْيَا غَيْرِهِ فَوَجَدْتُهُ الْمُفْتِيَّ يَأْتِيهِ الرَّجُلُ قَدْ حَنَثَ فِي أَمْرَاتِهِ وَرَقِيقِهِ فَيَقُولُ لَهُ لَا شَيْءَ عَلَيْكَ فَيَذْهَبُ الْحَانِثُ فَيَمْتَنِعُ بِأَمْرَاتِهِ وَرَقِيقِهِ وَقَدْ بَاعَ الْمُفْتِيَّ دِينَهُ بِدُنْيَا هَذَا

“I contemplated regarding the individual who sells his Hereafter for someone else’s world, and I found it in a Mufti towards whom a man comes and says that he has broken an oath in [not engaging in intercourse with] his wife, so he (the Mufti) then tells him, ‘There is nothing upon you’, so the individual who broke his oath goes away and approaches his wife and servant. In this manner, the Mufti has sold his Hereafter for that person’s world”

After mentioning these various quotations, Al Khatīb Raḥimahullah (d.463 AH) states:

قَالَ مَنْ حَرَصَ عَلَى الْفَتْيَا وَسَابَقَ إِلَيْهَا وَتَابَرَ عَلَيْهَا إِلَّا قَلَّ تَوَفُّيْهُ وَاضْطَرَبَ فِي أَمْرِهِ وَإِنْ كَانَ كَارِهًا لِذَلِكَ غَيْرُ مُؤَثِّرٍ لَهُ مَا وَجَدَ عَنْهُ مَنُودُوحَةً وَأَحَالَ الْأَمْرَ فِيهِ عَلَى غَيْرِهِ
كَانَتْ الْمَعُونَةُ لَهُ مِنَ اللَّهِ تَعَالَى أَكْثَرُ

“There are very few people who are adamant upon issuing Fatwa and compete towards it and clamour upon it except that their abilities decrease and they become confused. [On the other hand] if a person is forced into the field of Fatwa without preferring it over the other alternatives available to him, and he delegates the matter to others, then he shall receive more help from Allah the Almighty”

As evidence for his statement, Al Khatīb Raḥimahullah (d.463 AH) presents the following narration of the Prophet Sallallahu Alayhi Wasallam:

لَا تَسْأَلِ الْإِمَارَةَ فَإِنَّكَ إِنْ أُعْطِيتَهَا عَنْ مَسْئَلَةٍ وَكَلْتَ إِلَيْهَا وَإِنْ أُعْطِيتَهَا عَنْ غَيْرِ مَسْئَلَةٍ أُعِنْتَ عَلَيْهَا

“Do not ask for leadership, for if you are granted it (leadership) by asking for it, then it shall be [thrown] upon you. [However], if you are granted it (leadership) without asking for it, then you shall be assisted in it”

Imām Al Nawawī Raḥimahullah (d.676 AH) has recorded from ‘Abd Al Raḥmān ibn Abī Laylā Raḥimahullah that he said:

أَدْرَكْتُ عِشْرِينَ وَمِائَةً مِنَ الْأَنْصَارِ الصَّحَابَةِ يُسْأَلُ أَحَدُهُمْ عَنِ الْمَسْئَلَةِ فَيَرْدُّهَا هَذَا إِلَى هَذَا حَتَّى تُرْفَعَ إِلَى الْأَوَّلِ

“I met one-hundred and twenty Sahabah from the Anṣār, one of them would be asked a question and each one would delegate it to the other until the question would return to the first individual”

In another narration, ‘Abd Al Raḥmān ibn Abī Laylā Raḥimahullah said:

مَا مِنْهُمْ مَنْ يُحَدِّثُ بِحَدِيثٍ إِلَّا وَدَّ أَنْ أَخَاهُ كَفَاهُ إِيَّاهُ وَلَا يُسْتَفْتَى عَنْ شَيْءٍ إِلَّا وَدَّ أَنْ أَخَاهُ كَفَاهُ الْفَتْيَا

“Not one of them would narrate a Ḥadīth except that he would wish that his brother would narrate it instead and not one of them would be asked a question except that he would wish that his brother would suffice him [in answering the question]”

Al Khatīb Raḥimahullah (d.463 AH) has recorded with a chain of narration from ‘Umair ibn Sa’ūd who said:

سَأَلْتُ عُلْقَمَةَ عَنْ مَسْأَلَةٍ فَقَالَ اأَنْتَ عَيْبِدَةَ فَسَلْهُ فَأَتَيْتُ عَيْبِدَةَ فَقَالَ اأَنْتَ عُلْقَمَةُ أَرْسَلَنِي إِلَيْكَ فَقَالَ اأَنْتَ مَسْرُوقًا فَسَلْهُ فَأَتَيْتُ مَسْرُوقًا فَسَأَلْتُهُ فَقَالَ اأَنْتَ عُلْقَمَةَ فَسَلْهُ فَقُلْتُ عُلْقَمَةُ أَرْسَلَنِي إِلَيْكَ قَالَ فَاتِ عَبْدَ الرَّحْمَنِ بْنِ أَبِي لَيْلَى فَأَتَيْتُ عَبْدَ الرَّحْمَنِ بْنِ أَبِي لَيْلَى فَسَأَلْتُهُ فَكَرِهَهُ ثُمَّ رَجَعْتُ إِلَى عُلْقَمَةَ فَأَخْبَرْتُهُ قَالَ كَانَ يُقَالُ أَجْرُ الْقَوْمِ عَلَى الْفَتْيَا أَذْنَاهُمْ عِلْمًا

“I asked ‘Alqamah a question, he replied, ‘Go to ‘Abīdah and ask him’, so I went to ‘Abīdah who said to me, ‘Go to ‘Alqamah’, I replied, ‘Alqamah sent me to you’, ‘Abīdah said, ‘[Then] go to Masrūq and ask him’. So I went to Masrūq and I asked him, he replied ‘Go to ‘Alqamah and ask him’, I said, ‘Alqamah sent me to ‘Abīdah and ‘Abīdah sent me to you’, Masrūq replied, ‘Go to ‘Abdul Raḥmān ibn Abī Laylā’. I then went to ‘Abdul Raḥmān ibn Abī Laylā and asked him and he gave a ruling of detestability. After this, I returned to ‘Alqamah and informed him [of what had occurred], he responded, ‘The individual most eager to answer a Fatwā from amongst the people has the least knowledge from amongst them’.”

Imām Al Nawawī Raḥimahullah (d.676 AH) has narrated from Ibn Mas’ūd Raḍiyallāhu ‘Anhu and Ibn ‘Abbās Raḍiyallāhu ‘Anhumā that they said:

مَنْ أَفْقَى عَنْ كُلِّ مَا يُسْأَلُ فَهُوَ مَجْنُونٌ

“Whosoever gives an answer for every question that he is asked is insane”

Imām Al Nawawī Raḥimahullah (d.676 AH) has narrated from Al Sha’bī Raḥimahullah, Al Ḥasan Raḥimahullah and Abil Ḥusayn Raḥimahullah that they said:

إِنَّ أَحَدَكُمْ لَيُفْتَى فِي الْمَسْأَلَةِ وَلَوْ وَرَدَتْ عَلَى عُمَرَ بْنِ الْخَطَّابِ جَمَعَ هَا أَهْلُ بَدْرٍ

“Surely some of you answer questions that are such that if they were to be presented to ‘Umar ibn Al Khattāb, he would have gathered the participants of the battle of Badr for them (i.e. in order to answer them)”

Imām Al Nawawī Raḥimahullah (d.676 AH) has narrated from Sufyān ibn ‘Uyaynah Raḥimahullah and Suḥnūn Raḥimahullah that they said:

أَجَسُرُ النَّاسِ عَلَى الْفُتْيَا أَقْلُهُمْ عِلْمًا

“The most eager of people to answer a Fatwā has the least knowledge from amongst them”

Imām Al Nawawī Raḥimahullah (d.676 AH) has narrated from Imām Shāfi‘ī Raḥimahullah (d.204 AH) that he was once asked a question to which he did not answer, when asked as to why he did not answer the question, Imām Shāfi‘ī Raḥimahullah (d.204 AH) said:

حَتَّى أَذْرِي أَنَّ الْفَضْلَ فِي السُّكُوتِ أَوْ الْجَوَابِ

“[I remain silent] until I know which is better for me; to remain silent or to answer the question”

Imām Al Darimī Raḥimahullah (d.255 AH) has placed a chapter in the introduction to his *Al Sunan*, titled:

بَابُ مَنْ هَابَ الْفُتْيَا وَكَرِهَ التَّنَطُّعَ وَالتَّبَدُّعَ

“The chapter regarding those who feared [issuing a] Fatwā and disliked innovation”

In this chapter, Imām Al Darimī Raḥimahullah (d.255 AH) has narrated from ‘Allāmah Zubayd Raḥimahullah (d.122 AH) that he said:

مَا سَأَلْتُ إِبْرَاهِيمَ (يَعْنِي النَّخَعِيَّ رَحِمَهُ اللَّهُ تَعَالَى) عَنْ شَيْءٍ إِلَّا عَرَفْتُ الْكَرَاهِيَةَ فِي وَجْهِهِ

“I did not ask him Ibrāhīm (Al Nakha‘ī Raḥimahullah) except that I recognised displeasure on his face”

Imām Al Darimī Raḥimahullah (d.255 AH) has narrated from ‘Umar ibn Abī Zā‘idah Raḥimahullah that he said:

مَا رَأَيْتُ أَحَدًا أَكْثَرَ أَنْ يَقُولَ إِذَا سُئِلَ عَنْ شَيْءٍ لَا عِلْمَ لِي بِهِ مِنَ الشَّيْءِ

“I have not seen anyone utter the words ‘I do not have knowledge of it’ when asked a question more than Al Sha‘bī”

Imām Al Darimī Raḥimahullah (d.255 AH) has narrated from Ibn ‘Awn Raḥimahullah that he said:

كَانَ الشَّعْبِيُّ إِذَا جَاءَهُ شَيْءٌ اتَّقَى وَكَانَ إِبْرَاهِيمُ يَقُولُ وَيَقُولُ وَيَقُولُ

“Al Sha‘bī was such that if anything (a question) came to him, he would be fearful [of answering it], and Ibrāhīm would answer and answer and answer.”

Imām Al Darimī Raḥimahullah (d.255 AH) states:

قَالَ أَبُو عَاصِمٍ "كَانَ الشَّعْبِيُّ فِي هَذَا أَحْسَنَ حَالًا عِنْدَ ابْنِ عَوْنٍ مِّنْ إِبْرَاهِيمَ

“Abū ‘Āsim states, ‘According to Ibn ‘Awn, in this matter, Al Sha‘bī was in a better position than Ibrāhīm”

Imām Al Darimī Raḥimahullah (d.255 AH) has narrated from Ja‘far ibn Iyās Raḥimahullah that he said:

قُلْتُ لِسَعِيدِ بْنِ جُبَيْرٍ مَا لَكَ لَا تَقُولُ فِي الطَّلَاقِ شَيْئًا؟ قَالَ مَا مِنْهُ شَيْءٌ إِلَّا قَدْ سَأَلْتُ عَنْهُ وَلَكِنِّي أَكْرَهُ أَنْ أَجِلَّ حَرَامًا أَوْ أُحَرِّمَ حَلَالًا

“I said to Sa‘īd ibn Jubayr, ‘What is with you? You do not discuss the issue of divorce at all’, he (Sa‘īd ibn Jubayr) replied, ‘There is nothing from it (the issue of divorce) except that I have been asked regarding it, however, I do not like to make ḥalāl that which is ḥarām or make ḥarām that which is ḥalāl”

Ibn ‘Abdīl Bar Raḥimahullah (d.463 AH) has narrated from Ibn ‘Awn Raḥimahullah that he said:

كُنْتُ عِنْدَ الْقَاسِمِ بْنِ مُحَمَّدٍ إِذْ جَاءَهُ رَجُلٌ فَسَأَلَهُ عَنْ شَيْءٍ فَقَالَ الْقَاسِمُ لَا أَحْسِنُهُ فَجَعَلَ الرَّجُلُ يَقُولُ إِنِّي دُفِعْتُ إِلَيْكَ لَا أَعْرِفُ غَيْرَكَ فَقَالَ الْقَاسِمُ لَا تَنْتَظِرْ إِلَى طُولِ حَبِيبِي وَكَثْرَةِ النَّاسِ حَوْلِي وَاللَّهِ مَا أَحْسِنُهُ فَقَالَ شَيْخٌ مِّنْ قُرَيْشٍ جَالِسٌ إِلَى جَنْبِهِ يَا ابْنَ أَخِي! الزَّمَمَهَا فَوَ اللَّهُ مَا رَأَيْتُكَ فِي مَجْلِسٍ أَنْبَلَ مِنْكَ الْيَوْمَ فَقَالَ الْقَاسِمُ وَاللَّهِ لَأَنْ يُقَطَعَ لِسَانِي أَحَبُّ إِلَيَّ مِنْ أَنْ أَتَكَلَّمَ بِمَا لَا عِلْمَ لِي بِهِ

"I was by Al Qāsim ibn Muḥammad when a man came to him and asked him regarding something, Al Qāsim replied, 'I do not know it properly', so the man began to say, 'I was sent to you, I do not know anyone besides you [who can answer my question]'. Al Qāsim replied, 'Do not look at the length of my beard and the abundance of people around me, I swear by Allah, I do not know it properly', so an old man from the tribe of Quraish sitting next to him (Al Qāsim ibn Muḥammad) said [to the man], 'Oh nephew! Hold firmly to him (Al Qāsim ibn Muḥammad), for I have not seen you in a nobler gathering than this gathering today'. Al Qāsim said, 'I swear by Allah, it is more beloved to me for my tongue to be cut than for me to speak regarding that which I have no knowledge'

Many such incidents have been narrated from Imām Mālik Raḥimahullah (d.179 AH) which display the fear that he had of issuing a Fatwā. Qāḍī 'Iyād Raḥimahullah (d.544 AH) has related these incidents with great detail.

We shall present a few of these incidents:

'Abdul Raḥmān Al 'Umarī Raḥimahullah said:

قَالَ لِي مَالِكٌ "رُبَّمَا وَرَدَتْ عَلَيَّ الْمَسْأَلَةُ تَمْنَعُنِي مِنَ الطَّعَامِ وَالشَّرَابِ وَالنُّوْمِ"

"[Imām] Mālik said to me, 'At times, a Mas'alah is presented to me that prevents me from eating, drinking and sleeping'"

Ibn Al Qāsim Raḥimahullah said:

سَمِعْتُ مَالِكًا يَقُولُ "إِنِّي لَأَفْكُرُ فِي مَسْأَلَةٍ مُنْذُ بَضْعِ عَشْرَةِ سَنَةٍ فَمَا اتَّفَقَ لِي فِيهَا رَأْيٌ إِلَى الْآنِ"

"I heard [Imām] Mālik saying, 'Indeed I have been pondering over a Mas'alah for close to ten years, I have not been able to conclude a view for it until now'"

Ibn Maḥdī Raḥimahullah said:

سَمِعْتُ مَالِكًا يَقُولُ رُبَّمَا وَرَدَتْ عَلَيَّ الْمَسْأَلَةُ فَأَسْهَرُ فِيهَا عَامَةً لَيْلِي

"I heard [Imām] Mālik saying, 'At times, a question is presented and I spend the majority of the night in [researching] it'"

Ibn 'Abdil Ḥakam Raḥimahullah said:

كَانَ مَالِكٌ إِذَا سُئِلَ عَنِ الْمَسْئَلَةِ قَالَ لِلسَّائِلِ انصَرِفْ حَتَّى أَنْظُرَ فِيهَا فَيَنْصَرِفُ وَيَتَرَدَّدُ فِيهَا فَقُلْنَا لَهُ فِي ذَلِكَ فَبَكَى وَقَالَ إِنِّي أَخَافُ أَنْ يَكُونَ لِي مِنَ السَّائِلِ يَوْمَ وَيَوْمٍ

"When [Imām] Mālik would be asked a question, he would say to the questioner, 'Leave [me] until I have looked into it'. The questioner would turn away and [Imām] Mālik would begin to ponder over the question, [upon seeing him like this] we would ask him [why he is pondering over such a simple question], so he would cry and say, 'Indeed I fear that there happens to be a questioner [asking] from me on a day, and what a day! (The day of judgement)'"

Ibn 'Abdil Ḥakam Raḥimahullah adds:

كَانَ مَالِكٌ إِذَا جَلَسَ نَغَسَ رَأْسَهُ وَيُحَرِّكُ شَفَتَيْهِ بِذِكْرِ اللَّهِ وَلَمْ يَلْتَفِتْ يَمِينًا وَشِمَالًا إِذَا سُئِلَ عَنْ مَسْئَلَةٍ تَغَيَّرَ لَوْنُهُ وَكَانَ أَحْمَرَ بِضُفْرَةٍ فَيَصْفُرُ وَيُنَكِّسُ رَأْسَهُ وَيُحَرِّكُ شَفَتَيْهِ ثُمَّ يَقُولُ مَا شَاءَ اللَّهُ وَلَا قُوَّةَ إِلَّا بِاللَّهِ فَرُبَّمَا يُسْأَلُ عَنْ خَمْسِينَ مَسْأَلَةً فَلَا يُجِيبُ مِنْهَا فِي وَاحِدَةٍ

"When [Imām] Mālik would sit, he would lower his head and move his lips in the remembrance of Allah and he would not move to the right and left. [But] when he would be asked a question, his complexion would change; he was of a reddish complexion and so he would become yellow, he would lower his head, move his lips and then

say [the words], ‘Whatever Allah wills and there is no power except with Allah’. At times, he would be asked fifty questions and he would not answer a single one of them”

Some of Imām Mālik Raḥimahullah (d.179 AH)’s students said:

لَكَأَمَّا مَالِكٌ وَاللَّهِ إِذَا سُئِلَ عَنْ مَسْأَلَةٍ وَافَتْ بَيْنَ الْجَنَّةِ وَالنَّارِ

“By Allah, when [Imām] Mālik would be asked regarding a Mas’alah, it (his behaviour) was as though he is standing between heaven and hell”

Musā ibn Dāwūd Raḥimahullah said:

مَا رَأَيْتُ أَحَدًا مِنَ الْعُلَمَاءِ أَكْثَرَ أَنْ يَقُولَ "مَا أَحْسَنُ" مِنْ مَالِكٍ

“I have not seen any scholar utter the words, ‘I do not know it properly’ as much as [Imām] Malik”

Ibn Maḥdī Raḥimahullah said:

سَأَلَ رَجُلٌ مَالِكًا عَنْ مَسْأَلَةٍ وَذَكَرَ أَنَّهُ أُرْسِلَ فِيهَا مِنْ مَسِيرَةِ سِتَّةِ أَشْهُرٍ مِنَ الْمَغْرِبِ فَقَالَ لَهُ أَخْبِرِ الَّذِي أَرْسَلَكَ أَنَّهُ لَا عِلْمَ لِي بِهَا قَالَ "وَمَنْ يَعْلَمُهَا؟" قَالَ "مَنْ عَلَّمَهُ اللَّهُ" وَسَأَلَهُ رَجُلٌ عَنْ مَسْأَلَةٍ اسْتَوْدَعَهُ إِياَهَا أَهْلُ الْمَغْرِبِ فَقَالَ "مَا أَذْرِي! مَا ابْتَلَيْنَا بِهِ الْمَسْأَلَةَ فِي بَلَدِنَا وَلَا سَمِعْنَا أَحَدًا مِنْ أَشْيَاخِنَا تَكَلَّمَ بِهَا وَلَكِنْ تَعَوَّدُ فَلَمَّا كَانَ مِنَ الْعَدِ جَاءَهُ وَقَدْ حَمَلَ ثِقْلَهُ عَلَى بَعْلَةٍ يَقُودُهَا فَقَالَ "مَسْأَلِي!" فَقَالَ "مَا أَذْرِي مَا هِيَ؟" فَقَالَ الرَّجُلُ "يَا أَبَا عَبْدِ اللَّهِ! تَرَكْتُ خَلْفِي مَنْ يَقُولُ لَيْسَ عَلَى وَجْهِ الْأَرْضِ أَعْلَمُ مِنْكَ" فَقَالَ مَالِكٌ غَيْرُ مُسْتَوْحِشٍ "إِذَا رَجَعْتَ فَأَخْبِرْهُمْ أَنِّي لَا أَحْسِنُ" وَسَأَلَهُ آخَرُ فَقَالَ "يَا أَبَا عَبْدِ اللَّهِ! أَجِبْنِي" فَقَالَ "وَيْحَكَ أَتُرِيدُ أَنْ تَجْعَلَنِي حُجَّةً بَيْنَكَ وَبَيْنَ اللَّهِ؟ فَأَحْتَاجُ أَنَا أَوَّلًا أَنْ أَنْظُرَ كَيْفَ خَلَاصِي ثُمَّ أُخْلِصُكَ"

“A man once asked [Imām] Mālik a Mas’alah and mentioned that he had been sent from a distance of six months’ travel from the west. He (Imām Mālik) replied, ‘Inform the one that has sent you that I have no knowledge of this Mas’alah’, the man inquired, ‘And who knows this Mas’alah?’ He replied, ‘he whom Allah has taught [this Mas’alah to]’. A person once asked him (Imām Mālik) a Mas’alah which the people from the west [of the Muslim world] had sent him with, he (Imām Mālik) replied, ‘I do not know it! We have not been faced with this Mas’alah in our city nor have we heard any of our teachers discuss it, however, you may return [to us when we know the answer]’. The next day, the man came to him whilst having packed his load onto his camel and whilst holding its reigns, he exclaimed, ‘My Mas’alah!’ He (Imām Mālik) replied, ‘I do not know it’. The man shouted, ‘Oh Abū ‘Abdillah! I have left behind me a people who say that there is no one on the face of this earth more knowledgeable than you’. Imām Mālik calmly replied, ‘When you return, tell them I am not good [at answering questions]’. Another person once said to him (Imām Mālik), ‘Oh Abū ‘Abdillah! Answer me!’ He (Imām Mālik) responded, ‘What is wrong with you? Do you wish to make me the evidence between you and Allah? I myself need to look at how I may save myself, only then shall I save you”

Ibn Abī Ḥāzim Raḥimahullah said:

قَالَ مَالِكٌ إِذَا سَأَلَكَ إِنْسَانٌ عَنْ مَسْأَلَةٍ فَأَبْدَأْ بِنَفْسِكَ فَأَخْرِجْهَا

“[Imām] Mālik said, ‘When a person asks you regarding a Mas’alah, then begin with yourself and protect yourself”

Khālīd ibn Khirāsh Raḥimahullah said:

قَدِمْتُ مِنَ الْعِرَاقِ عَلَى مَالِكٍ بَارِعِينَ مَسْأَلَةً فَمَا أَجَابَنِي مِنْهَا إِلَّا فِي خَمْسٍ وَقَالَ مَالِكٌ سَمِعْتُ ابْنَ هُرْمُزٍ يَقُولُ يَنْبَغِي أَنْ يُورَثَ الْعَالِمُ جُلَسَاءَهُ قَوْلَ "لَا أَذْرِي" حَتَّى يَكُونَ ذَلِكَ أَصْلًا فِي أَيْدِيهِمْ يَفْرَعُونَ إِلَيْهِ فَإِذَا سُئِلَ أَحَدُهُمْ عَمَّا لَا يُرَوِّى قَالَ لَا أَذْرِي

“I came from ‘Irāq to [Imām] Mālik with forty questions, he did not answer any of them except five, Mālik [then] said, ‘I heard Ibn Hurmuz say, “it is appropriate for a knowledgeable person to teach his students the words ‘I do not know’ until the words become a principle in their hands which they [are not afraid to] use, so when one of them is asked a question which he does not know, he says, ‘I do not know’””

Ibn Wahb Raḥimahullah said:

كَانَ مَالِكٌ يَقُولُ فِي أَكْثَرِ مَا يُسْأَلُ عَنْهُ لَا أَدْرِي

“[Imām] Mālik would answer the majority of the questions that were asked of him with the words “I do not know””

‘Umar ibn Yazīd Raḥimahullah said:

فَقُلْتُ لِمَالِكٍ فِي ذَلِكَ فَقَالَ يَرْجِعُ أَهْلُ الشَّامِ إِلَى شَامِهِمْ وَأَهْلُ الْعِرَاقِ إِلَى عِرَاقِهِمْ وَأَهْلُ مِصْرٍ إِلَى مِصْرِهِمْ ثُمَّ لَعَلِّي أَرْجِعُ عَمَّا أَفْتَيْتُهُمْ بِهِ

“So I probed [Imām] Mālik regarding this (i.e. why he constantly says, ‘I do not know’), so he said, ‘The people of Shām will return to Shām and the people of ‘Irāq will return to ‘Irāq and the people of Miṣr will return to Miṣr, then it is possible that I revert from the Fatwā that I issued to them”

‘Umar ibn Yazīd Raḥimahullah states:

فَأُخْبِرْتُ بِذَلِكَ اللَّيْثُ فَبَكَى وَقَالَ "مَالِكٌ وَاللَّهِ أَقْوَى مِنَ اللَّيْثِ" أَوْ نَحْوَ هَذَا

“So I informed Al Layth [ibn Sa’d] of this (i.e. what Imām Mālik had said). Al Layth [ibn Sa’d] began to cry and he said, ‘I swear by Allah; Mālik is better than Al Layth’ or he said something similar to this”

Ibn Wahb Raḥimahullah said:

سَأَلْتُ مَالِكًا فِي ثَلَاثِينَ أَلْفَ مَسْأَلَةٍ نَوَازِلَ فِي عُمُرِهِ فَقَالَ فِي ثُلُثِهَا أَوْ شَطْرُهَا أَوْ مَا شَاءَ اللَّهُ مِنْهَا "لَا أَحْسِنُ وَلَا أَدْرِي"

“I asked Mālik regarding thirty-thousand Masail which had occurred during his age, he replied to a half of them or a third of them or that which Allah willed from them [with the words], ‘I do not know it properly’, and, ‘I do not know”

Some of the students of Imām Mālik said:

إِذَا قُلْتَ أَنْتَ يَا أَبَا عَبْدِ اللَّهِ "لَا أَدْرِي" فَمَنْ يَدْرِي؟ قَالَ "وَجُحَكَ مَا عَرَفْتَنِي؟ وَمَا أَنَا؟ وَأَيُّ شَيْءٍ مَنَرَلَنِي حَتَّى أَدْرِي مَا لَا تَدْرُونَ؟ ثُمَّ أَخَذَ يَحْتَجُّ بِحَدِيثِ ابْنِ عُمَرَ يَقُولُ "لَا أَدْرِي" فَمَنْ أَنَا؟ وَإِنَّمَا أَهْلَكَ النَّاسَ الْعُجْبُ وَطَلَبَ الرِّئَاسَةَ وَهَذَا يَضْمَحِلُّ عَنْ قَلِيلٍ"

“If you, Oh Abū ‘Abdillah, say, ‘I do not know’, then who knows? He (Imām Mālik) replied, ‘Shame on you! What do you know of me? And who am I? And what is my status such that I know that which you do not know?’ Then he (Imām Mālik) began narrating the Ḥadīth of Ibn ‘Umar as evidence [for his actions] in which Ibn ‘Umar says, ‘I do not know’, [Imām Mālik then said,] ‘So who am I? [To be afraid to say, ‘I do not know’ when Ibn ‘Umar was not afraid to say, ‘I do not know’]. Surely arrogance and a desire to lead have destroyed the people and these [defects] vanish from very few people”

Muṣ’ab Raḥimahullah said:

سُئِلَ مَالِكٌ عَنْ مَسْأَلَةٍ فَقَالَ "لَا أَدْرِي" فَقَالَ لَهُ السَّائِلُ "إِنَّمَا مَسْأَلَةٌ خَفِيفَةٌ سَهْلَةٌ وَإِنَّمَا أَرَدْتُ أَنْ أَعْلَمَ بِمَا الْأَمِيرُ" وَكَانَ السَّائِلُ ذَا قَدَرٍ فَغَضِبَ مَالِكٌ وَقَالَ "مَسْأَلَةٌ خَفِيفَةٌ سَهْلَةٌ؟ لَيْسَ فِي الْعِلْمِ شَيْءٌ خَفِيفٌ أَمَّا سَمِعْتَ قَوْلَ اللَّهِ تَعَالَى "إِنَّا سَنُلْقِي عَلَيْكَ قَوْلًا ثَقِيلًا" فَالْعِلْمُ كُلُّهُ ثَقِيلٌ وَخِصَاصَةٌ مَا يُسْأَلُ عَنْهُ يَوْمَ الْقِيَامَةِ

“[Imām] Mālik was asked a Mas’alah [to which] he said, ‘I do not know’, so the questioner said, ‘Surely it is a simple easy Mas’alah and indeed I only asked it so that I may inform the leader’, and the questioner was of a high status. [Imām] Mālik became angry and said, ‘A simple easy Mas’alah?! There is nothing in knowledge which is simple! Have you not heard the words of Allah Ta’ālā, “Verily! We shall soon cast a weighty (important) word upon you (Oh Muhammad)” so knowledge in its entirety is weighty, especially that which shall be asked regarding on the day of judgement”

Ibn Al Qāsim Raḥimahullah said to Imām Mālik:

لَيْسَ بَعْدَ أَهْلِ الْمَدِينَةِ أَعْلَمُ بِالْبُيُوعِ مِنْ أَهْلِ مِصْرٍ

“There is no one more knowledgeable of transactions (the Masāil of transactions) after the people of Madīnah than the people of Miṣr”

Imām Mālik Raḥimahullah responded:

فَكَيْفَ يَعْلَمُونَهَا؟

“How do they know them (the Masāil of transaction)?”

Ibn Al Qāsim Raḥimahullah said:

مِنْكَ

"[They learnt them] from you"

Imām Mālik Raḥimahullah replied:

مَا أَعْلَمُهَا أَنَا فَكَيْفَ يَعْلَمُونَهَا؟

“I [myself] do not know them (the Masāil of transactions), so how do they know them?”

Al Qa’nabī Raḥimahullah said:

دَخَلْتُ عَلَى مَالِكٍ فَوَجَدْتُهُ بَاكِيًا فَسَأَلْتُهُ عَنْ ذَلِكَ فَقَالَ وَمَنْ أَحَقُّ بِالْبُكَاءِ مِنِّي؟ لَا أَتَكَلَّمُ بِكَلِمَةٍ إِلَّا كُتِبَتْ بِالْأَقْلَامِ وَحُمِلَتْ إِلَى الْأَفَاقِ

“I entered upon Mālik and found him crying, so I asked him regarding this (why he is crying), he replied, ‘And who is more worthy of crying than me? I do not speak a word except that it is written down with pens and is carried to the skies’”

Suhnūn Raḥimahullah said:

إِنِّي لَأَسْأَلُ عَنْ مَسْأَلَةٍ فَأَعْرِفُ فِي أَيِّ كِتَابٍ وَوَرَقَةٍ وَصَفْحَةٍ وَسَطْرٍ فَمَا يَمْنَعُنِي عَنِ الْجَوَابِ فِيهَا إِلَّا كِرَاهَةُ الْجُرْأَةِ عَلَى الْفُتْيَا

“Surely I am asked a question and I know which book, page, side and line it (the answer) is on. Nothing prevents me from giving an answer except that I dislike eagerness in answering a Fatwā”

‘Allāmah Māwardī Al Shāfi’ Raḥimahullah states in *Kitāb Adab Al Dīn Wal Dunyā*:

وَمَا أُنْذِرُكَ بِهِ مِنْ حَالِي أَنِّي صَنَعْتُ فِي الْبُيُوعِ كِتَابًا جَمَعْتُهُ مَا اسْتَطَعْتُ مِنْ كُتُبِ النَّاسِ وَأَجْهَدْتُ فِيهِ نَفْسِي وَكَدَدْتُ فِيهِ خَاطِرِي حَتَّى إِذَا تَهَدَّبَ وَاسْتَكْمَلَ وَكَدْتُ أُعْجِبُ بِهِ وَتَصَوَّرْتُ أَنِّي أَشَدُّ النَّاسِ إِطْلَاعًا بِعِلْمِهِ خَصْرَيْنِ – وَأَنَا فِي مَجْلِسِي – أَغْرَابِيَانِ فَسَأَلَانِي عَنْ بَيْعِ عَقْدَاهُ فِي الْبَادِيَةِ عَلَى شُرُوطٍ تَضَمَّنَتْ أَرْبَعَ مَسَائِلَ وَلَمْ أَعْرِفْ لَشَيْءٍ مِنْهَا جَوَابًا فَأَطْرَفْتُ مُفَكِّرًا وَبَحَائِي وَحَالِيهَا مُعْتَبِرًا فَقَالَ أَمَا عِنْدَكَ فِيمَا سَأَلْنَاكَ جَوَابٌ وَأَنْتَ زَعِمُ هَذِهِ الْجَمَاعَةِ؟ فَقُلْتُ "لَا" فَقَالَا "إِنِّي لَكَ" وَانْصَرَفَا ثُمَّ أَتَيَا مِنْ قَدْ يَتَقَدَّمُهُ فِي الْعِلْمِ كَثِيرٌ مِنْ أَصْحَابِي فَسَأَلَاهُ فَأَجَابَهُمَا مُسْرِعًا بِمَا أَفْنَعَهُمَا فَانْصَرَفَا عَنْهُ رَاضِيَيْنِ بِجَوَابِهِ حَامِدَيْنِ لِعِلْمِهِ... فَكَانَ ذَلِكَ رَاجِعَ نَصِيحَةٍ وَنَذِيرِ عِظَةٍ تَذَلُّ لَهُمَا قِيَادَ النَّفْسِ وَالْخَفَضَ لَهُمَا جَنَاحِ الْعُجْبِ

“From my personal experience, I ask you to take heed of the following [story]: I had written a book pertaining to [the Masail of] transactions, I had gathered in it whatever I could from the various books of the scholars. I worked hard in [compiling] this book and I exhausted myself over it, until when it was properly structured and close to completion, I began to become happy over it and I thought that I had the most intense research with regards to its (the Masail of transactions) knowledge, two Bedouins came to me – and I was in my gathering – and asked me regarding a transaction that they had transacted in the desert upon certain conditions which consisted of four Masail, and I did not know an answer for a single one. So I put my hand over my mouth in contemplation and consideration over my state and their state, then they asked, ‘Do you not have an answer for what we have asked you and you are the leader of this group?’ I replied, ‘No’, they responded, ‘Shame on you’, and walked away. They then went to someone whom many of my students had surpassed in knowledge, so they asked him and he responded immediately with that (an answer) which satisfied them. And so they walked away content with his answer while praising his knowledge...hence this was [for me] an alerting lesson and cautionary advice, the conduct of the innate disposition (nafs) was humbled due to them and the wings of arrogance were lowered due to them”

The Methodologies of the Ulamā of the Past in Issuing a Fatwā

(مناهج الفتوى في السلف)

Fatwā during the time of the Prophet Ṣallallāhu ‘Alayhi Wasallam

(الفتوى في عهد النبي صلى الله عليه وسلم)

The first individual to issue a Fatwā was none other than the leader of the Messengers, the seal of the Prophets, Muḥammad Ṣallallāhu ‘Alayhi Wasallam. The Prophet Ṣallallāhu ‘Alayhi Wasallam’s words were a representation of a Fatwā issued by Allah the Almighty through divine revelation.

The Fatāwā of the Prophet Ṣallallāhu ‘Alayhi Wasallam contained the commandments of Sharī‘ah in a concise manner. In fact, they are the greatest source of the commandments of Sharī‘ah after the book of Allah the Almighty. The Ṣaḥābah would memorise the Fatāwā of the Prophet Ṣallallāhu ‘Alayhi Wasallam and record them in writing as one may study in discussions related to the compilation and collection of Ḥadīth.

During the time of the Prophet Ṣallallāhu ‘Alayhi Wasallam, no other individual would give a Fatwā other than the Prophet of Allah Ṣallallāhu ‘Alayhi Wasallam himself. However, at times, the Prophet Ṣallallāhu ‘Alayhi Wasallam would ask some of the other Ṣaḥābah to issue a Fatwā or judicial decree (القضاء) in order to test their abilities of deducing rulings through *Ijtihād* (الإجتهد) and *Istinbāṭ* (الإستنباط) - extracting a ruling through the evidences of Sharī‘ah.

Examples:

- 1) Ḥākim Raḥimahullah has narrated from Ḥaḍrat ‘Abdullah ibn ‘Amr Raḍhiyallāhu ‘Anhu that he said:

أَنَّ رَجُلَيْنِ اخْتَصَمَا إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ لِعَمْرٍو "أَفْضِ بَيْنَهُمَا" فَقَالَ أَفْضِي بَيْنَهُمَا وَأَنْتَ حَاضِرٌ يَا رَسُولَ اللَّهِ؟! قَالَ نَعَمْ عَلَى أَنْتَ إِنْ أَصَبْتَ فَلَكَ عَشْرُ أَجُورٍ وَإِنْ اجْتَهَدْتَ فَأَخْطَأْتَ فَلَكَ أَجْرٌ

“That two men brought their dispute to the Prophet Ṣallallāhu ‘Alayhi Wasallam, so he said to Amr, ‘Issue a decree between these two’. ‘Amr exclaimed, ‘I should give a ruling between them whilst you are present oh Prophet of Allah?!’ The Prophet Ṣallallāhu ‘Alayhi Wasallam replied, ‘Yes, if you [perform *Ijtihād* (الإجتهد) and deduce a ruling and you] are correct, then you will receive ten rewards, and if you perform *Ijtihād* (الإجتهد) and deduce a ruling that is incorrect, then you will receive one reward”

- 2) Imām Aḥmad Raḥimahullah has narrated from Ḥaḍrat Ma’qil Al Muzanī Raḍhiyallāhu ‘Anhu that he said:

أَمَرَنِي النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ أَفْضِيَ بَيْنَ قَوْمٍ فَقُلْتُ مَا أَحْسَنُ أَنْ أَفْضِيَ يَا رَسُولَ اللَّهِ! قَالَ اللَّهُ مَعَ الْقَاضِي مَا لَمْ يَخْفَ عَمَدًا

“The Prophet Ṣallallāhu ‘Alayhi Wasallam commanded me to issue a decree for a group of people, so I said to him, ‘I do not know how to pass a decree properly oh Prophet of Allah!’ He replied, ‘Allah is with the individual who passes a ruling as long as he does not purposefully neglect this position”

- 3) The Prophet Ṣallallāhu ‘Alayhi Wasallam sent some Ṣaḥābah to the various lands around Madīnah and gave them permission to issue Fatāwā and judicial decrees (القضاء)

Imām Al Tirmidhī Raḥimahullah narrates from the companions of Ḥaḍrat Mu’ādh Raḍiyallāhu ‘Anhu that they said:

لَمَّا أَرَادَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ يَبْعَثَ مُعَاذًا إِلَى الْيَمَنِ قَالَ "كَيْفَ تَقْضِي إِذَا عَرَضَ لَكَ قَضَاءٌ؟" قَالَ أَقْضِي بِكِتَابِ اللَّهِ قَالَ "فَإِنْ لَمْ تَجِدْ فِي كِتَابِ اللَّهِ؟" قَالَ فَبِسُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ "فَإِنْ لَمْ تَجِدْ فِي سُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَلَا فِي كِتَابِ اللَّهِ؟" قَالَ أَجْتَهِدُ رَأْيِي وَلَا أَلُو فَضْرَبَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ صَدْرَهُ فَقَالَ "الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ اللَّهِ لِمَا يَرْضَى رَسُولُ اللَّهِ"

"When the Prophet Sallallāhu 'Alayhi Wasallam decided to send [Ḥaḍrat] Mu'adh [Raḍiyallāhu 'Anhu] to Yemen, he asked, 'How will you rule if you are presented with the need to give a judicial ruling?' He replied, 'I will rule according to the book of Allah'. He (the Prophet Sallallāhu 'Alayhi Wasallam) asked, 'And if you do not find it in the book of Allah?' He (Ḥaḍrat Mu'adh Raḍiyallāhu 'Anhu) replied, 'Then I will rule according to what I find in the Sunnah of the Prophet Sallallāhu 'Alayhi Wasallam'. He (the Prophet Sallallāhu 'Alayhi Wasallam) asked, 'And if you do not find it in the Sunnah of the Prophet Sallallāhu 'Alayhi Wasallam?' He (Ḥaḍrat Mu'adh Raḍiyallāhu 'Anhu) replied, 'I will apply my own mind and I will not falter in this'. The Prophet Sallallāhu 'Alayhi Wasallam then hit him (Ḥaḍrat Mu'adh Raḍiyallāhu 'Anhu) on his chest and said, 'Praise be to Allah! The One who has guided the messenger of the Messenger of Allah to that which pleases the Messenger of Allah'"

This Ḥaḍīth has been the subject of discussion amongst the Muhaddithīn. Some have graded the Ḥaḍīth negatively due to the anonymity of the narrator Ḥārith ibn 'Amr, as well as the anonymity of the individuals that he has narrated from; the individuals being the companions of Ḥaḍrat Mu'adh Raḍiyallāhu 'Anhu. However, the scholars of every generation and every city have accepted it.

Ḥāfiẓ Ibn Al Qayyim Raḥimahullah (d.751 AH) states:

فهذا حديث وإن كان من غير مسمين فهم أصحاب معاذ فلا يضره ذلك لأنه يدل على شهرة الحديث وأن الذي حدث له الحارث بن عمرو عن جماعة من أصحاب معاذ لا واحد منهم وهذا أبلغ في الشهرة عن واحد منهم لو سمي كيف وشهرة أصحاب معاذ بالعلم والدين والفضل والصدق بالحل الذي لا يخفى؟ ولا يعرف في أصحابه متهم ولا كذاب ولا مجروح بل أصحابه من أفاضل المسلمين وخيارهم لا يشك أهل العلم بالنقل في ذلك كيف وشبه حامل لواء هذا الحديث؟ وقد قال بعض أئمة الحديث إذا رأيت شعبة في إسناد حديث فاشدد يدك ه قال أبو بكر الخطيب وقد قيل إن عبادة بن نسي رواه عن عبد الرحمن بن غنم عن معاذ وهذا إسناد متصل ورجاله معروفون بالثقة على أن أهل العلم قد نقلوه واحتجوا به فوقفنا بذلك على صحته عندهم

"Even though this Ḥaḍīth may be narrated from individuals who are unnamed, they are the companions of [Ḥaḍrat] Mu'adh [Raḍiyallāhu 'Anhu]. Hence, this (i.e. the anonymity of these individuals) will not affect the status of the Ḥaḍīth as Ḥārith ibn 'Amr has narrated this from a group of [Ḥaḍrat] Mu'adh's companions, not just from one of them. Hence, this Ḥaḍīth is higher in terms of fame than a Ḥaḍīth with one known narrator. How can this not be when [Ḥaḍrat] Mu'adh's companions were known for their knowledge, piety, excellence, honesty in a way that no one can deny? And it is not known that [Ḥaḍrat] Mu'adh had any companions who were accused of falsities or of being flagrant liars or of any other defect. Rather, his companions were from amongst the most honourable and most noble Muslims, the people of knowledge do not doubt this. How can one doubt this when Shu'bah is the flag bearer of this Ḥaḍīth?! Some scholars of Ḥaḍīth have stated, 'When you see Shu'bah in a chain of narration, then hold onto that chain with both hands'. Abu Bakr Al Khatib has stated, 'And it has been stated that 'Ubādah ibn Nusayy has narrated it from 'Abdul Raḥmān ibn Ghanam who has narrated it from [Ḥaḍrat] Mu'adh [Raḍiyallāhu 'Anhu]. This is a complete chain and its narrators are known as being reliable. Moreover, the scholars have related it (this Ḥaḍīth) and used it as evidence, hence we submit wit this that this Ḥaḍīth must have been authentic according to them"

This Ḥaḍīth is also supported by another authentic Ḥaḍīth found in Ṣaḥīḥ Al Bukhārī and Ṣaḥīḥ Muslim which is narrated from Ḥaḍrat 'Amr ibn Al 'Ās Raḍiyallāhu 'Anhu who states that he heard the Prophet Sallallāhu 'Alayhi Wasallam say:

إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ فَلَهُ أَجْرَانِ وَإِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ أَخْطَأَ فَلَهُ أَجْرٌ

“When a judge issues a decree after applying his mind and he comes to the correct conclusion, then he will receive two rewards. If he issues a decree after applying his mind and he comes to an incorrect conclusion, then he will receive one reward”

The Methodology of the Ṣaḥābah and Tabi’ūn in Giving a Fatwā

(منهج الصحابة والتابعين في الإفتاء)

The sentiment and methodology portrayed in the Ḥadīth of Ḥaḍrat Mu’adh Raḍiyallāhu ‘Anhu are established from the actions of many of the Ṣaḥābah.

The methodology of the Ṣaḥābah when dealing with an issue was always to revert to the Qur’ān. If they did not find the ruling in the Qur’ān, they would revert to the Sunnah. If they did not find the ruling in the Sunnah, they would revert to the consensus of the Muslims. Finally, if they could not find a consensus of the Muslims on a certain issue, they would now apply their own minds in order to deduce the ruling.

Many accounts show this to be the methodology of the Ṣaḥābah:

- 1) Imām Al Darimī Raḥimahullah has narrated in his Sunan that Ḥaḍrat ‘Umar Raḍiyallāhu ‘Anhu wrote to Shurayḥ ibn Al Ḥārith Raḥimahullah:

إِنْ جَاءَكَ شَيْءٌ فِي كِتَابِ اللَّهِ فَاقْضِ بِهِ وَلَا يَلْفَتْنِكَ عَنْهُ الرَّجُلُ فَإِنْ جَاءَكَ مَا لَيْسَ فِي كِتَابِ اللَّهِ فَانْظُرْ سُنَّةَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَاقْضِ بِهَا فَإِنْ جَاءَكَ مَا لَيْسَ فِي كِتَابِ اللَّهِ وَلَا يَكُنْ فِيهِ سُنَّةٌ مِنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَانْظُرْ مَا اجْتَمَعَ عَلَيْهِ النَّاسُ فَخُذْ بِهِ فَإِنْ جَاءَكَ مَا لَيْسَ فِي كِتَابِ اللَّهِ وَلَا يَكُنْ فِي سُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَلَا يَتَكَلَّمُ فِيهِ أَحَدٌ قَبْلَكَ فَاخْتَرِ أَيَّ الْأَمْرَيْنِ شِئْتَ إِنْ شِئْتَ أَنْ تَجْتَهِدَ بِرَأْيِكَ ثُمَّ تَتَقَدَّمَ فَتَقْدَمْ وَإِنْ شِئْتَ أَنْ تَتَأَخَّرَ فَتَأَخَّرَ وَلَا أَرَى التَّأَخَّرَ إِلَّا خَيْرًا لَكَ

“If something arises for which there is a ruling in the book of Allah, issue the decree that the book of Allah provides and nobody should avert you away from it. And if something arises for which there is no ruling in the book of Allah, then look into the Sunnah of the Prophet Ṣallallāhu ‘Alayhi Wasallam and issue the decree that is provided therein. And if something arises for which there is no ruling in the book of Allah nor the Sunnah of the Prophet Ṣallallāhu ‘Alayhi Wasallam, then look into what the people have a consensus upon and issue a decree accordingly. And if something arises for which there is no ruling in the Qur’an nor the Sunnah of the Prophet Ṣallallāhu ‘Alayhi Wasallam and nor has anyone discussed it before you, then choose one of two views; either you apply your own view and present it or you take a step back and decide not to issue a decree; I do not see anything in deciding not to issue a ruling except good for you.”²

- 2) Imām Al Darimī Raḥimahullah has narrated in his Sunan that Ḥaḍrat ‘Abdullah ibn Mas’ūd Raḍiyallāhu ‘Anhu says:

فَإِذَا سُئِلْتُمْ عَنْ شَيْءٍ فَانْظُرُوا فِي كِتَابِ اللَّهِ فَإِنْ لَمْ تَجِدُوهُ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَفِي سُنَّةِ رَسُولِ اللَّهِ فَإِنْ لَمْ تَجِدُوهُ فِي سُنَّةِ رَسُولِ اللَّهِ فَمَا أَجْمَعَ عَلَيْهِ الْمُسْلِمُونَ فَإِنْ لَمْ يَكُنْ فِيمَا أَجْمَعَ عَلَيْهِ الْمُسْلِمُونَ فَاجْتَهِدْ رَأْيَكَ

“And when you are asked regarding something, then look into the book of Allah. If you do not find it in the book of Allah the Exalted, The High, then look into the Sunnah of the Prophet of Allah. If you do not find it in the Sunnah of the Prophet of Allah, then look at what the Muslims have consensus upon. If you do not find it in that which the Muslims have consensus over, then apply your mind”

² Hadhrat Umar Radhiyallahu Ta’ala Anhu also wrote a similar letter to Hadhrat Abu Musa Al Ash’ari Radhiyallahu Ta’ala Anhu.

- 3) Imām Al Darimī Raḥimahullah has narrated in his Sunan that Ḥaḍrat ‘Abdullah ibn Yazīd Raḍiyallāhu ‘Anhu says:

كَانَ ابْنُ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا إِذَا سُئِلَ عَنِ الْأَمْرِ فَكَانَ فِي الْقُرْآنِ أَخْبَرَ بِهِ وَإِنْ لَمْ يَكُنْ فِي الْقُرْآنِ وَكَانَ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَخْبَرَ بِهِ فَإِنْ لَمْ يَكُنْ فَعَنْ أَبِي بَكْرٍ وَعُمَرَ رَضِيَ اللَّهُ عَنْهُمَا فَإِنْ لَمْ يَكُنْ قَالَ فِيهِ بِرَأْيِهِ

“When Ḥaḍrat Ibn ‘Abbās Raḍiyallāhu ‘Anhu would be asked regarding a matter, if it was found in the Qur’ān, then he would rule from it (the Qur’ān). If it was not found in the Qur’ān, but was [found] in the Sunnah of the Prophet Ṣallallāhu ‘Alayhi Wasallam, then he would rule from it (the Sunnah of the Prophet Ṣallallāhu ‘Alayhi Wasallam). If it was not found in it (the Sunnah of the Prophet Ṣallallāhu ‘Alayhi Wasallam), then [he would rule according to what was found in the decrees] of Ḥaḍrat Abu Bakar Raḍiyallāhu ‘Anhu and Ḥaḍrat ‘Umar Raḍiyallāhu ‘Anhu. And if it was not found in it (the decrees of Ḥaḍrat Abu Bakar Raḍiyallāhu ‘Anhu and Ḥaḍrat ‘Umar Raḍiyallāhu ‘Anhu), then he would rule according to his view [by applying his mind].”

- 4) Imām Al Bayhaqī Raḥimahullah has narrated that Ḥaḍrat Maslamah ibn Khālīd Raḍiyallāhu ‘Anhu said to Ḥaḍrat Zayd ibn Thābit Raḍiyallāhu ‘Anhu:

يَا ابْنَ عَمٍّ! أَكْرَهْنَا عَلَى الْقَضَاءِ

“Oh my cousin! I have been forced to become a judge [and give judicial rulings]”

Ḥaḍrat Zayd ibn Thābit Raḍiyallāhu ‘Anhu said:

اقْضِ بِكِتَابِ اللَّهِ عَزَّ وَجَلَّ فَإِنْ لَمْ يَكُنْ فِي كِتَابِ اللَّهِ فَفِي سُنَّةِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَإِنْ لَمْ يَكُنْ فِي سُنَّةِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَادْعُ أَهْلَ الرَّأْيِ ثُمَّ اجْتَهِدْ وَاخْتَرْ لِنَفْسِكَ وَلَا خَرَجَ

“Rule according to the book of Allah, the Exalted, the High. If it is not [found] in the book of Allah, then [look] in the Sunnah of the Prophet Ṣallallāhu ‘Alayhi Wasallam. If it is not in the Sunnah of the Prophet Ṣallallāhu ‘Alayhi Wasallam then summon the people [capable] of analogical deduction and apply *Ijtihād* and adopt a view for yourself. There is no problem in this.”

- 5) Imām Al Bayhaqī Raḥimahullah has narrated from Idrīs Al Awdī Raḥimahullah that said:

أَخْرَجَ إِلَيْنَا سَعِيدُ بْنُ أَبِي بُرْدَةَ كِتَابًا فَقَالَ هَذَا كِتَابُ عُمَرَ رَضِيَ اللَّهُ عَنْهُ إِلَى أَبِي مُوسَى رَضِيَ اللَّهُ عَنْهُ

“Sa‘īd ibn Abī Burdah brought out a letter to us and said, ‘this is the letter of [Ḥaḍrat] ‘Umar Raḍiyallāhu ‘Anhu [that he wrote] to [Ḥaḍrat] Abū Mūsā Raḍiyallāhu ‘Anhu”

Sa‘īd ibn Abī Burdah then read out the letter which had the following words in it:

الْفَهْمُ فِيمَا يَخْتَلِعُ فِي صَدْرِكَ مِمَّا لَمْ يَبْلُغَكَ فِي الْقُرْآنِ وَالسُّنَّةِ فَتَعْرِفِ الْأَمْثَالَ وَالْأَشْبَاهَ ثُمَّ قِسِ الْأُمُورَ عِنْدَ ذَلِكَ وَاعْمُدْ إِلَى أَحَبِّهَا إِلَى اللَّهِ وَأَشْبَهْهَا فِيمَا تَرَى

“Understand that which comes into your heart from that which has not reached you from the Qur’ān and the Sunnah, then recognise [other] similar and analogous [Masāil], then at that point, perform analogical deduction upon [those] issues and rely upon the one that is the most beloved to Allah and the most similar [to one another] in your view”

In conclusion, all of these illustrious Ṣaḥābah practiced the principle mentioned in the Ḥaḍīth of Ḥaḍrat Mu‘ādh Raḍiyallāhu ‘Anhu. This strengthens the Ḥaḍīth of Ḥaḍrat Mu‘ādh Raḍiyallāhu ‘Anhu and proves Ḥāfiẓ Ibn Al Qayyim Raḥimahullah (d.751 AH)’s conclusion to be correct.

Fatwā during the Time of the Ṣaḥābah (الفتوى في عهد الصحابة)

Ḥāfiẓ Ibn Al Qayyim Raḥimahullah (d.751 AH) has mentioned in *I'lām Al Muwaqī'in* (إعلام الموقعين) that the Fatāwā of one-hundred and thirty Ṣaḥābah, including males and females, have been recorded.

The Ṣaḥābah were of three types:

1) Those who issued a lot of Fatāwā

These Ṣaḥābah included:

- Ḥaḍrat 'Umar ibn Al Khattāb Raḍiyallāhu 'Anhu
- Ḥaḍrat 'Alī ibn Abī Ṭālib Raḍiyallāhu 'Anhu
- Ḥaḍrat 'Abdullah ibn Mas'ūd Raḍiyallāhu 'Anhu
- Ḥaḍrat 'Āi'shah Raḍiyallāhu 'Anhu
- Ḥaḍrat Zayd ibn Thābit Raḍiyallāhu 'Anhu
- Ḥaḍrat 'Abdullah ibn 'Abbās Raḍiyallāhu 'Anhu
- Ḥaḍrat 'Abdullah ibn 'Umar Raḍiyallāhu 'Anhu

Ibn Ḥazm Raḥimahullah (d.384 AH) states that if the Fatāwā of these Ṣaḥābah were to be gathered in a book, it would make a huge volume.

Abū Bakr Muḥammad ibn Mūsā ibn Ya'qūb ibn Amir Al Mu'minīn Al Ma'mūn, a great scholar, has gathered the Fatāwā of Ḥaḍrat 'Abdullah ibn 'Abbās Raḍiyallāhu 'Anhu in twenty volumes. Abū Bakr Muḥammad was one of the great scholars of Islam in the field of Ḥadīth.

2) Those who issued an average amount of Fatāwā

These Ṣaḥābah included:

- Ḥaḍrat 'Abū Bakr Raḍiyallāhu 'Anhu
- Ḥaḍrat Umm Salamah Raḍiyallāhu 'Anhu
- Ḥaḍrat Anas ibn Mālīk Raḍiyallāhu 'Anhu
- Ḥaḍrat Abū Sa'īd Al Khudrī Raḍiyallāhu 'Anhu
- Ḥaḍrat Abū Hurayrah Raḍiyallāhu 'Anhu
- Ḥaḍrat 'Uthmān ibn 'Affān Raḍiyallāhu 'Anhu
- Ḥaḍrat 'Abdullah ibn 'Amr ibn Al 'Ās Raḍiyallāhu 'Anhu
- Ḥaḍrat 'Abdullah ibn Al Zubayr Raḍiyallāhu 'Anhu
- Ḥaḍrat Abū Mūsā Al Ash'arī Raḍiyallāhu 'Anhu
- Ḥaḍrat Sa'd ibn Abī Waqqās Raḍiyallāhu 'Anhu
- Ḥaḍrat Salmān Al Farīsī Raḍiyallāhu 'Anhu
- Ḥaḍrat Jābir ibn 'Abdullah Raḍiyallāhu 'Anhu
- Ḥaḍrat Mu'ādh ibn Jabal Raḍiyallāhu 'Anhu
- Ḥaḍrat Ṭalḥah Raḍiyallāhu 'Anhu
- Ḥaḍrat Zubayr ibn Al Awwām Raḍiyallāhu 'Anhu
- Ḥaḍrat 'Abdul Raḥmān ibn 'Awf Raḍiyallāhu 'Anhu
- Ḥaḍrat 'Imrān ibn Ḥusain Raḍiyallāhu 'Anhu
- Ḥaḍrat Abū Bakrah Raḍiyallāhu 'Anhu
- Ḥaḍrat 'Ubādah ibn Ṣāmit Raḍiyallāhu 'Anhu
- Ḥaḍrat Mu'āwiyah ibn Abī Sufyān Raḍiyallāhu 'Anhu

Ibn Ḥazm Raḥimahullah (d.384 AH) states that if the Fatāwā of all these Ṣaḥābah were to be gathered in a book, it would make a very small volume.

- 3) Those who issued very few Fatāwā such that only one or two rulings are narrated from them. If the Fatāwā of these Ṣaḥābah could be gathered in a book after finding all of them, it would make a very small volume

Ḥāfiẓ Ibn Al Qayyim Raḥimahullah (d.751 AH) has then quoted Ibn Ḥazm Raḥimahullah (d.384 AH) who has listed the names of the Sahabah who known to have issued very few Fatāwā.

However, Ḥāfiẓ Ibn Al Qayyim Raḥimahullah (d.751 AH) feels that Ibn Ḥazm Raḥimahullah (d.384 AH) has made an error by considering Ḥaḍrat Māiz Raḍiyallāhu ‘Anhu and Hadhrat Ghāmidīyyah Raḍiyallāhu ‘Anhā as part of this group. Ḥāfiẓ Ibn Al Qayyim Raḥimahullah (d.751 AH) states that it is possible Ibn Ḥazm Raḥimahullah (d.384 AH) considered them to be a part of this group as they admitted to adultery without the permission of the Prophet Ṣallallāhu ‘Alayhi Wasallam; hence they issued a Fatwā for themselves that it is permissible to admit to adultery. Ḥāfiẓ Ibn Al Qayyim Raḥimahullah (d.751 AH) then states that if Ibn Ḥazm Raḥimahullah (d.384 AH) has considered them from amongst this group due to this reason, then he has made a grave error. On the other hand, if this was not his reasoning, it is possible that Raḥimahullah found a few Fatāwā from these two great Ṣaḥābah.

Some of the contemporary scholars have compiled the Fatāwā of the Ṣaḥābah into a book form, some of these books include:

- 1) *Mausu’ah Fiḥi Abī Bakr Al Ṣiddīq* (موسوعة فقه أبي بكر الصديق) by Dr. Muḥammad Rawwās Qal’ah Jī (*Dār Al Nafāis*)
- 2) *Mausu’ah Fiḥi ‘Umar ibn Al Khattāb* (موسوعة فقه عمر بن الخطاب) by Dr. Muḥammad Rawwās Qal’ah Jī (*Maktabah Al Falāḥ*)
- 3) *Fiḥ ‘Umar ibn Al Khattāb Muwāzinan Bī Fiḥi Ash huril Muḥtahidīn* (فقه عمر بن الخطاب موازنا بفقه أشهر المجتهدين) by Dr. Ruway’ī ibn Rājiḥ Al Ruḥaylī (*Jām’iah Umm Al Qurrah*)
- 4) *Fiḥ ‘Umar* (فقه عمر) by Shāh Waliullah Al Dehlawī which has been translated into urdu by Abū Yahyā Imām Khān Nawshahrī
- 5) *Mausu’ah Fiḥ ‘Uthmān ibn ‘Affān* (موسوعة فقه عثمان بن عفان) by Dr. Muḥammad Rawwās Qal’ah Jī (*Jām’iah Umm Al Qurrah*)
- 6) *Mausu’ah Fiḥ ‘Alī ibn Abī Tālib* (موسوعة فقه علي بن أبي طالب) by Dr. Muḥammad Rawwās Qal’ah Jī (*Dār Al Nafāis*)
- 7) *Mausu’ah Fiḥ ‘Aishah Umm Al Mu’minīn Hayatuhā Wa Fiḥuhā* (موسوعة فقه عائشة أم المؤمنين حياتها وفقها) by Sheikh Sa’īd Fāyiz Al Dakhīl (*Jām’iah Umm Al Qurrah*)
- 8) *Mausu’ah Fiḥ ‘Abdillāh ibn Mas’ūd* (موسوعة فقه عبد الله بن مسعود) by Dr. Muḥammad Rawwās Qal’ah Jī (*Jām’iah Umm Al Qurrah*)
- 9) *Fiḥ Anas ibn Malik Jam’an Wa Dirasatan* (فقه أنس بن مالك جمعا ودراسة) by Dr. ‘Abdul Muḥsin Al Manīf
- 10) *Mausu’ah Fiḥ ‘Abdillāh ibn ‘Umar Aṣruhu Wa Ḥayātuhu* (موسوعة فقه عبد الله بن عمر عصره وحياته) by Dr. Muḥammad Rawwās Qal’ah Jī (*Dār Al Nafāis*)

- 11) *Infirādāt Ibn ‘Abbas ‘An Jamhūr Al Ṣaḥābah Fil Aḥkām Al Fiqhiyyah* (انفرادات ابن عباس عن جمهور الصحابة في الأحكام) (الفقهية) by Muḥammad Sa‘īdī Al Rastāqī (*Maktabah Al Furqān*)
- 12) *Mu‘jam Fiqh Al Ṣalāh ‘Itratan Wa Ṣaḥābatan Wa Tābi‘īn* (معجم فقه السلف عترة وصحابة وتابعين) by Sheikh Muḥammad Al Muntaṣir Al Kattānī (*Jām’iah Umm Al Qurra / Maṭābi’ Al Ṣafā Bi Makah Al Mukarramah*)

Fatwā during the Time of the Companions of the Ṣaḥābah (الفتوى في عهد التابعين)

After the Ṣaḥābah had passed, the responsibility of issuing a Fatwā fell upon the early Tābi‘ūn. The early Tābi‘ūn had distributed themselves across the various lands that the Muslims had conquered.

In the first few chapters of *I‘lām Al Muwaqī‘īn* (إعلام الموقعين), Ḥāfiẓ Ibn Al Qayyim Raḥimahullah (d.751 AH) has gathered a huge list of the names of these Tābi‘ūn just as many scholars have written treatises and books outlining the categories of the early Tābi‘ūn.

The Fuqahā from the early Tābi‘ūn were of two types:

- 1) Those whose greater loyalties and occupation lied with Ḥadīth. They did not talk regarding matters pertaining to Fiqh except when it was explicitly found in the Qur’ān and Sunnah.

These scholars did not exert their efforts in extracting rulings for Masāil that had not yet occurred, this was mainly because these scholars did not prefer exploring the field of analogical deduction (Qiyās) and jurisprudential opinion (Ra’y). They feared issuing a Fatwā and performing *Ijtihād* (اجتهاد) except if there was a necessity in which they would be required to give a Fatwā or perform *Ijtihād* (اجتهاد).

These scholars felt that a Muftī or Faqīh should suffice in deducing a ruling for the Masāil that had occurred during his time and had been presented to him. They did not feel it appropriate for a Faqīh to delve into deriving the rulings for various Masāil that had not yet occurred as he is not required to do this.

Examples of Tābi‘ūn who were from this group

- Ibn Shihāb Al Zuhri Raḥimahullah (d.124 AH)

Al Khaṭīb Raḥimahullah (d.463 AH) has narrated from Mūsā ibn ‘Alī Raḥimahullah who states that he asked Ibn Shihāb a Mas’alah, to which Ibn Shihāb replied:

مَا سَمِعْتُ فِيهِ شَيْءٍ وَمَا نَزَلَ بِنَا

“I have not heard anything in it and I have not come across it”

Mūsā ibn ‘Alī Raḥimahullah states:

فَقُلْتُ إِنَّهُ قَدْ نَزَلَ بِبَعْضِ إِخْوَانِكَ

“I said, ‘Indeed, some of your brothers have been faced with it’”

Ibn Shihāb Raḥimahullah (d.124 AH) replied:

مَا سَمِعْتُ فِيهِ شَيْءٍ وَمَا نَزَلَ بِنَا وَمَا أَنَا بِقَائِلٍ فِيهِ شَيْئًا

“I have not heard anything in it and I have not come across it and I will not say anything regarding it”

- Imām Mālik ibn Anas Raḥimahullah (d.179 AH)³

Al Khaṭīb Raḥimahullah (d.463 AH) narrates that Imām Mālik ibn Anas Raḥimahullah (d.179 AH) said:

أَذْرَكْتُ هَذِهِ الْبَلَدَةَ وَإِنَّهُمْ لَيَكْرَهُونَ هَذَا الْإِكْتَارَ الَّذِي فِيهِ الْيَوْمَ

“I have found this city (Madīnah) and surely they detest this delving into (Masāil) that is prevalent in it today”

Evidences Presented by this Group:

This group has presented two types of evidences:

- Statements of the Prophet Ṣallallāhu ‘Alayhi Wasallam
- Statements of the Ṣaḥābah

Statements of the Prophet Ṣallallāhu ‘Alayhi Wasallam:

- ❖ Imām Al Bayhaqī Raḥimahullah narrates in his *Al Madkal Ilā ‘Ilm Al Sunan* (المدخل إلى علم السنن) from Abū Salamah ibn ‘Abd Al Raḥmān Raḍiyallāhu ‘Anhu who states that the Prophet Ṣallallāhu ‘Alayhi Wasallam said:

لَا تَسْتَعْجِلُوا بِالْبَلِيَّةِ قَبْلَ نَزْوِهَا فَإِنَّكُمْ إِذَا فَعَلْتُمْ ذَلِكَ لَمْ يَزَلْ مَنْ يُوفَّقُ وَيُسَدَّدُ وَإِنَّكُمْ إِنْ اسْتَعْجَلْتُمْ بِهَا قَبْلَ نَزْوِهَا تَفَرَّقَتْ بِكُمْ السُّبُلُ هَاهُنَا وَهَاهُنَا

“Do not wish for a calamity to fall upon you before it falls upon you, for if you do not wish for a calamity to fall upon you, there shall always remain ones who shall be granted tawfiq and steadfastness, and if you wish for a calamity to fall upon you before it falls upon you, the paths will become separated upon you, here and there”

- ❖ Imām Al Darimī Raḥimahullah narrates in his *Sunan* from Wahb ibn ‘Amr Al Jumāhī Raḍiyallāhu ‘Anhu who states that the Prophet Ṣallallāhu ‘Alayhi Wasallam said:

لَا تَعْجَلُوا بِالْبَلِيَّةِ قَبْلَ نَزْوِهَا فَإِنَّكُمْ إِنْ لَا تَعْجَلُوهَا قَبْلَ نَزْوِهَا لَا يَنْفَكُ الْمُسْلِمُونَ وَفِيهِمْ إِذَا هِيَ نَزَلَتْ مِنْ إِذَا قَالَ وَفَّقَ وَسَدَّدَ وَإِنَّكُمْ إِنْ تَعْجَلُوهَا تَخْتَلِفَ بِكُمْ الْأَهْوَاءُ فَتَأْخُذُوا هَكَذَا وَهَكَذَا

“Do not hurry a calamity before it befalls you, for surely if you do not hurry it before it befalls you, the Muslims shall not be divided”

³ When Asad ibn Furat came to Madinah from Africa, Ibn Al Qasim and others would ask him to ask Imam Malik a question, they would then tell him that when Imam Malik answers the question, ask him “and what if this event occurs or that event occurs?” Asad ibn Furat states that he would do this until one day, Imam Malik became upset and said, “if you wish to do this [ask such questions], go to Iraq”. So, Asad ibn Furat went to Iraq and studied under Imam Abu Yusuf and Imam Muhammad, he wrote down the knowledge of Imam Abu Hanifah and thus he gained the ability of analogical deductions (الرأي). He then returned to Madinah and visited Ibn Wahab Al Maliki, he said to Ibn Wahab “these are the books/Masail of Imam Abu Hanifah, so give me the rulings for these Masail according to the Maliki Madhab”. However, Ibn Wahab did not feel that it was correct to do so. Ibn Furat then went to Ibn Al Qasim and presented the same request to him, so Ibn Al Qasim gave him a ruling for each Mas’alah according to the view of Imam Malik. The rulings that Ibn Al Qasim gave were gathered in a book titled Al Asadiyyah, which would later on become the Al Mudawwanah.

Wahb ibn ‘Amr Al Jumahī Raḍiyallāhu ‘Anhu then said:

وَأَشَارَ بَيْنَ يَدَيْهِ وَعَنْ يَمِينِهِ وَعَنْ شِمَالِهِ

“And he pointed forwards, and to his right, and to his left”

Statements of the Sahābah:

- ❖ Imām Al Darimī Raḥimahullah narrates from Ḥammād ibn Zayd Al Minqarī Raḥimahullah who states that his father said:

جَاءَ رَجُلٌ يَوْمًا إِلَى ابْنِ عُمَرَ فَسَأَلَهُ عَنْ شَيْءٍ لَا أَذْرِي مَا هُوَ فَقَالَ لَهُ ابْنُ عُمَرَ لَا تَسْأَلُ عَمَّا لَمْ يَكُنْ فَإِنِّي سَمِعْتُ عُمَرَ بْنَ الْخَطَّابِ يَلْعَنُ مَنْ سَأَلَ عَمَّا لَمْ يَكُنْ

“A person once came to Ibn ‘Umar and asked him regarding a thing which I do not know of, so Ibn ‘Umar said to him, ‘Do not ask regarding that which has not yet occurred for surely I heard ‘Umar ibn Al Khattāb curse the one who asks regarding that which has not yet occurred”

- ❖ Imām Al Darimī Raḥimahullah narrates from Ibn Shihāb Al Zuhrī Raḥimahullah that he said:

بَلَّغْنَا أَنَّ زَيْدَ بْنَ ثَابِتٍ الْأَنْصَارِيَّ كَانَ يَقُولُ إِذَا سُئِلَ عَنِ الْأَمْرِ أَكَانَ هَذَا؟ فَإِنْ قَالُوا نَعَمْ قَدْ كَانَ حَدَّثَ فِيهِ بِالَّذِي يَعْلَمُ وَالَّذِي يَرَى وَإِنْ قَالُوا لَمْ يَكُنْ قَالَ قَدْ رَوَاهُ حَتَّى يَكُونَ

“It has reached us that Zayd ibn Thābit Al Anṣārī would say when he would be asked regarding a matter, ‘Has this occurred?’ If they said, ‘Yes, it has occurred’, then he would inform of them that which he knew and viewed, and if they said, ‘It has not occurred’, he would say, ‘Leave it until it occurs”

- ❖ Imām Al Darimī Raḥimahullah narrates from ‘Āmir Raḥimahullah that he said:

سُئِلَ عَمَّارُ بْنُ يَاسِرٍ عَنْ مَسْأَلَةٍ فَقَالَ هَلْ كَانَ هَذَا بَعْدُ؟ قَالُوا لَا قَالَ دَعُونَا حَتَّى تَكُونَ فَإِذَا كَانَتْ تَجَسَّمْنَاهَا لَكُمْ

“‘Ammār ibn Yāsir was asked a question, so he replied, ‘Did this really occur?’ They said, ‘no’, so he said, ‘leave us until it occurs, for when it occurs we shall flock towards you [in order to give you the answer]”

- ❖ Imām Al Darimī Raḥimahullah narrates from Tāwūs ibn Kaysān Raḥimahullah that he said:

قَالَ عُمَرُ عَلَى الْمِنْبَرِ أَخْرِجُ بِاللَّهِ عَلَى رَجُلٍ سَأَلَ عَمَّا لَمْ يَكُنْ فَإِنَّ اللَّهَ قَدْ بَيَّنَّ مَا هُوَ كَائِنٌ

“‘Umar [ibn Al Khattāb] said upon the pulpit “I prohibit for the sake of Allah upon a man that he ask regarding that which has not yet occurred, for indeed, Allah has explained all that is to occur”

- ❖ Al Khaṭīb Raḥimahullah has narrated from Ḥaḍrat ‘Abdullah ibn ‘Umar Raḍiyallāhu ‘Anhu that he said:

يَا أَيُّهَا النَّاسُ! لَا تَسْأَلُوا عَمَّا لَمْ يَكُنْ فَإِنَّ عُمَرَ كَانَ يَلْعَنُ أَوْ يَسُبُّ مَنْ سَأَلَ عَمَّا لَمْ يَكُنْ

“Oh people! Do not ask regarding that which has not yet occurred, for surely ‘Umar [ibn Al Khattāb] would curse or insult the one who asks regarding that which has not yet occurred”

- ❖ Al Khaṭīb Raḥimahullah has narrated from Al Sha’bī Raḥimahullah who narrates from Masrūq Raḥimahullah that said:

سَأَلْتُ أُبَيَّ بْنَ كَعْبٍ عَنْ شَيْءٍ فَقَالَ "أَكَانَ بَعْدُ؟" قُلْتُ لَا قَالَ فَأَجْمَعْنَا حَتَّى يَكُونَ فَإِذَا كَانَ اجْتَهَدْنَا لَكَ رَأْيَنَا

"I asked Ubayy ibn Ka'b regarding something, so he asked, 'Has it occurred?' I replied, 'No', he responded, 'then relieve us from it until it occurs, if it occurs, we shall apply exert ourselves in giving you a ruling'"

- 2) Those who presented themselves for Fiqh and Fatāwā. These Tabi'ūn did not only suffice upon the Ahādīth and statements of the Ṣaḥābah, rather, they performed *Ijtihād* (اجتهاد) in gathering and hypothecating various Masāil until they had a Fatwā or rules of Fiqh for every chapter of Masāil. They took to the task of elaborating upon the rulings of Shari'ah and codifying these rulings to the best of their abilities in a manner that would make it easier for those to rely upon when needed. Thus, they discussed Masāil that had not yet occurred.

In fact, some of these Tabi'ūn compiled their Fatāwā and Fiqh in a book such as Al Sha'bī Raḥimahullah and Al Makhūl Raḥimahullah.

As for the narration and reports of the Ṣaḥābah mentioned above, this group of Tabi'ūn asserted that this was only the precautionary stance of the Ṣaḥābah.

The scholars defended the stance of the second group

The later scholars have defended this stance that was taken by many of the Tabi'ūn, these scholars include:

- Abū 'Abdillāh Al Ḥalīmī Raḥimahullah

Imām Al Bayhaqī Raḥimahullah states in his *Al Madkal Ilā 'Ilm Al Sunan* (المدخل إلى علم السنن):

وَبَلَغَنِي عَنْ أَبِي عَبْدِ اللَّهِ الْحَلِيمِيِّ رَحِمَهُ اللَّهُ أَنَّهُ أَبَاحَ ذَلِكَ لِلْمُتَفَقِّهِهِ الَّذِينَ غَرَضُ الْعَالَمِ مِنْ جَوَابِهِمْ تَنْبِيهِهُمْ وَإِرْشَادُهُمْ إِلَى طَرِيقِ النَّظَرِ وَالْإِرْشَادِ لَا لِيَعْمَلُوا

"It has reached me from Abū 'Abdillāh Al Ḥalīmī Raḥimahullah that he permitted this (delving into deriving rulings for Masāil that had not yet occurred) for those who desire an understanding of Fiqh and the intention of the scholar answering them is to alert them and guide them towards the method of deducing and extracting [rulings], not so that they start acting upon it themselves (i.e. not so that they begin to issue rulings on matters that have not yet occurred)

- Imām Al Bayhaqī Raḥimahullah states after recording the statement of Abū 'Abdillāh Al Ḥalīmī Raḥimahullah mentioned above:

وَعَلَى هَذَا الْوَجْهِ وَضَعَ الْفُقَهَاءُ مَسَائِلَ الْمُجْتَهِدَاتِ وَأَجْرُوا بَارَاءَهُمْ فِيهَا لِمَا فِي ذَلِكَ مِنْ إِرْشَادِ الْمُتَفَقِّهِهِ وَتَنْبِيهِهِمْ عَلَى كَيْفِيَّةِ الْإِجْتِهَادِ

"Based upon this, the Fuqahā have conceptualised many Masāil in which they have performed Ijtihād and have issued their views in them (i.e. these Masāil) due to what this entails from the perspective of guiding an individual who desires an understanding of Fiqh and [the perspective of] alerting him to the method in which Ijtihād may be performed"

Responses provided to the evidences presented by the first group of Tabi'ūn

Al Khaṭīb Raḥimahullah has provided a general response to the evidences presented by the first group of Tabi'ūn. Hence, after mentioning their evidences, Al Khaṭīb Raḥimahullah writes:

فَهَذَا مَا تَعَلَّقَ بِهِ مِنْ مَنَعَ مِنَ الْكَلَامِ فِي الْخَوَادِثِ قَبْلَ نُزُولِهَا وَنَحْنُ نَحِبُّ عَنْهُ بِمَشِيئَةِ اللَّهِ وَعَوْنِهِ أَمَّا كَرَاهَةُ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمَسَائِلَ فَإِنَّمَا كَانَ ذَلِكَ إِشْفَاقًا عَلَى أُمَّتِهِ وَرَأْفَةً بِهَا وَنَحْنُ نَعْلَمُ أَنَّ اللَّهَ عِنْدَ سُؤَالِ سَائِلٍ أَمْرًا كَانَ مُبَاحًا قَبْلَ سُؤَالِهِ عَنْهُ فَيَكُونُ السُّؤَالُ سَبَبًا فِي خَطَرٍ مَا كَانَ لِلْأُمَّةِ مَنْفَعَةً فِي إِبَاحَتِهِ فَتَدْخُلُ بِذَلِكَ الْمَشَقَّةُ عَلَيْهِمْ وَالْإِضْرَارُ بِهِمْ وَهَذَا الْمَعْنَى قَدْ ارْتَفَعَ بِمَوْتِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَاسْتَقَرَّتْ أَحْكَامُ الشَّرِيعَةِ فَلَا حَاطِرَ وَلَا مُبَيِّحَ بَعْدَهُ

“So this is what the first group have clung to in prohibiting one from discussing Masāil before they have occurred. With the will of Allah and His assistance, we response to it [by stating]: as for the dislike of the Prophet Ṣallallāhu ‘Alayhi Wasallam towards questions, then indeed this was his form of compassion towards his Ummah, and gentleness towards them and love for them, and fear that upon the question of a questioner, Allah may prohibit a matter that was permissible before the question was asked, thus the question became the cause of something which was beneficial for the Ummah becoming prohibited, hardship and difficulty could then fall upon them. However, this possibility was lifted with the demise of the Prophet Ṣallallāhu ‘Alayhi Wasallam, and when the rulings of Shari’ah became regimented, thus there is no prohibition or permission to be revealed after this”

Al Khaṭīb Raḥimahullah then responds in detail to each of the evidences presented for the first group of Tabi’ūn:

- 1) The response to the statement of Ḥaḍrat ‘Umar Raḍiyallāhu ‘Anhu wherein he cursed the one who questions regarding that which has not yet occurred was in actual fact a curse upon the one who asks such questions in an intransigent manner and with chicanery, not with a purpose of understanding Fiqh and gaining benefit.

It is for this reason that Ḥaḍrat ‘Umar Raḍiyallāhu ‘Anhu scolded Ṣabīgh ibn ‘Isl, exiled him from the land, and ended his allowance from the public treasury (Baytul Māl) when he asked regarding some of the ambiguous letters (Mutashabihat) of the Qur’ān. Ḥaḍrat ‘Umar Raḍiyallāhu ‘Anhu felt that Ṣabīgh had intentionally asked these questions in order to target the weak Muslims such that they begin to develop doubts and in order to lead people astray by altering the interpretation of the Qur’ān by changing a correct interpretation to a corrupt interpretation.

Such actions have been rebuked by the Prophet Ṣallallāhu ‘Alayhi Wasallam himself. Ḥaḍrat Mu’āwiyah Raḍiyallāhu ‘Anhu said:

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْأَغْلُوطَاتِ

“That the Prophet Ṣallallāhu ‘Alayhi Wasallam prohibited ‘*Al Aghlūṭāt*”

‘Isā states:

الْأَغْلُوطَاتُ مَا لَا يَحْتَاجُ إِلَيْهِ مِنْ كَيْفٍ وَكَيْفٍ

“‘*Al Aghlūṭāt*’ is that which a person is not in need of in any way whatsoever”

Similarly, Ḥaḍrat Thauman Raḍiyallāhu ‘Anhu has narrated from the Prophet Ṣallallāhu ‘Alayhi Wasallam that said:

سَيَكُونُ أَقْوَامٌ مِنْ أُمَّتِي يُغْلِطُونَ فُقَهَاءَهُمْ بِعَضَلِ الْمَسَائِلِ أُولَئِكَ شِرَارُ أُمَّتِي

“Soon, there will be a people from my Ummah who will attempt to trick the Fuqaha with complex questions. They are the worst people of my Ummah”

Ḥaḍrat Ḥasan Al Biṣrī Raḥimahullah said:

شُرَّارُ عِبَادِ اللَّهِ يَنْتَقُونَ شِرَارَ الْمَسَائِلِ يُعْمُونَ بِمَا عِبَادُ اللَّهِ

“The worst of the creation of Allah are those who choose the most difficult questions and misguide the creation of Allah through them”

- 2) The response to the narrations of Ḥaḍrat Zayd ibn Thābit Raḍiyallāhu ‘Anhu, Ḥaḍrat Ubay ibn Ka’b Raḍiyallāhu ‘Anhu and Ḥaḍrat ‘Ammār ibn Yāsir Raḍiyallāhu ‘Anhu is that is that their refusal to respond was based upon their fear of making a mistake, and a fear of the dangers involved with Ijtihād (اجتهاد). Thus, these Sahabah felt that they should discuss these matters only when required, hence when required, Allah would inspire them in choosing the correct answer.

This precaution has also been narrated from Ḥaḍrat Mu’adh Raḍiyallāhu ‘Anhu. Al Khaṭīb Raḥimahullah then narrates from Al Ṣalt ibn Rāshid that he said:

سَأَلْتُ طَاوُسًا عَنْ شَيْءٍ فَأَنْتَهَرَنِي وَقَالَ أَكَانَ هَذَا؟ قُلْتُ نَعَمْ! وَقَالَ اللَّهُ؟ قُلْتُ: اللَّهُ! قَالَ إِنَّ أَصْحَابَنَا أَخْبَرُونَا عَنْ مُعَاذِ بْنِ جَبَلٍ أَنَّهُ قَالَ "أَيُّهَا النَّاسُ! لَا تَعْجَلُوا بِالْبَلَاءِ قَبْلَ نُزُولِهِ فَيَذْهَبَ بِكُمْ هَاهُنَا وَهَاهُنَا فَإِنَّكُمْ إِنْ لَمْ تَعْجَلُوا بِالْبَلَاءِ قَبْلَ نُزُولِهِ لَمْ يَنْفَكِ الْمُسْلِمُونَ أَنْ يَكُونَ فِيهِمْ مَنْ إِذَا سُئِلَ سُدَّ أَوْ قَالَ وَفَّقَ

“I asked Ṭāwūs regarding something so he rebuked me and said, ‘Has this occurred?’ I said, ‘Yes!’ So he asked, ‘You swear by Allah?’ I replied, ‘I swear by Allah!’ He said, ‘Indeed, my companions have informed me from Mu’adh ibn Jabal that he said, “Oh people! Do not rush a calamity before it befalls you and takes from here and there, for indeed, if you do not rush a calamity before it befalls you, then the Muslims shall never be detached from having an individual whom when he is asked, he is guided [to the correct answer]” or he said, “he is inspired””

Al Khaṭīb Raḥimahullah then states:

وَهَذَا فِعْلُ أَهْلِ الْوَرَعِ وَالْمُشْفِقِينَ عَلَى دِينِهِمْ

“This is the practice of the pious and the ones who love their religion”

Evidences presented by this group

Al Khaṭīb Raḥimahullah has outlined the evidences that support the view adopted by this group of Tabi’ūn:

- ❖ Ḥaḍrat Rāfi’ ibn Khadīj Raḍiyallāhu ‘Anhu said:

قُلْتُ يَا رَسُولَ اللَّهِ إِنَّا نَخَافُ أَنْ نَلْقَى الْعَدُوَّ عَدًّا وَلَيْسَ مَعَنَا مَدَى فَتَنْدَبُحُ بِالْقَصَبِ؟ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "مَا أَهَرَ الدَّمَ وَذَكَرْتَ عَلَيْهِ اسْمَ اللَّهِ فَكُلْ مَا خَلَا السِّنَّ وَالطَّفْرَ"

“I said, ‘Oh Messenger of Allah, indeed we fear that we shall meet the enemy tomorrow and we do not have a knife, should we slaughter [our animals] with wood?’ So the Prophet Sallallahu Alayhi Wasallam replied, “That which causes the blood to flow and you have mentioned the name of Allah for it, then eat it except its teeth and nails”

- ❖ Yazīd ibn Salamah Raḥimahullah narrates from his father that he said:

أَنَّ رَجُلًا قَامَ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُولَ اللَّهِ أَرَأَيْتَ لَوْ كَانَ عَلَيْنَا أَمْرَاءُ يَسْأَلُونَا الْحَقَّ وَيَمْنَعُونَا حَقًّا فَنَقَاتِلُهُمْ؟ فَقَالَ الْأَشْعَثُ بْنُ قَيْسٍ فَقَالَ تَسْأَلُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ أَمْرٍ لَمْ يَحْدُثْ بَعْدُ؟ فَقَالَ لَأَسْأَلَنَّهٗ حَتَّى يَمْنَعَنِي فَقَالَ يَا رَسُولَ اللَّهِ! أَرَأَيْتَ لَوْ كَانَ عَلَيْنَا أَمْرَاءُ يَسْأَلُونَا الْحَقَّ وَيَمْنَعُونَا أَثْقَاتِلُهُمْ؟ قَالَ "لَا! عَلَيْكُمْ مَا حُمِّلْتُمْ وَعَلَيْهِمْ مَا حُمِّلُوا"

“That a man came to the Prophet Sallallahu Alayhi Wassalm and he said, ‘Oh Messenger of Allah, do you see if there were leaders upon us who ask us of [their] rights and deprive us of our rights, should we rebel against them?’ So Ash’ath ibn Qays [Radiyahallahu Anhu] said, ‘You are asking the Prophet Sallallahu Alayhi Wasallam regarding a matter that has not yet occurred?’ The man replied, ‘I shall most certainly ask him until he stops me’, he then said (repeated), “Oh Messenger of Allah, do you see if there were leaders upon us who ask us of [their] rights and deprive us of our rights, should we rebel against them?’ He (the Prophet Sallallahu Alayhi Wasallam) replied, ‘No! Upon you are your actions and upon them (the leaders) are their actions”

❖ Al Khaṭīb Raḥimahullah writes:

وقد روي عن عمر بن الخطاب وعلي بن أبي طالب وغيرهما من الصحابة أنهم تكلموا في أحكام الحوادث قبل نزولها وتناظروا في علم الفرائض والحواريث وتبعهم على هذه السبيل التابعون ومن بعدهم من فقهاء الأمصار فكان ذلك إجماعاً منهم على أنه جائز غير مكروه ومباح غير محذور
 “Indeed, it has been narrated from Umar ibn Al Khattab and Ali ibn Abi Talib and others from the Sahabah that they discussed the ruling of matters before they had occurred and they debated in the knowledge of Faraid and inheritance, and the Tabi’um who came after them followed this path, and those who came after them too from the Fuqaha of the various cities. Thus, this was a consensus amongst them that it is permissible and not detestable, and allowed and not prohibited”

The A’immah of Fatwā in the age of the Tabi’ūn (أئمة الفتوى في عهد التابعين)

Both groups of Tabi’ūn utilised the Aḥādīth and statements of the Ṣaḥābah as and when appropriate in their Fatāwā. In every Islāmic city, an Imām rose whose Fatāwā and Fiqh were followed by many people.

In Madīnah, there were the *Fuqahā Sab’ah*, who were:

- 1) Sa’īd ibn Al Musayyib
- 2) Abū Salamah ibn ‘Abd Al Raḥmān ibn ‘Awf (some have mentioned Abu Bakr ibn Abdir Rahman in his place)
- 3) ‘Urwah ibn Zubayr
- 4) ‘Ubaydullah bin ‘Abdillah
- 5) Qāsim ibn Muḥammad
- 6) Sulaymān ibn Yassār
- 7) Khārijah ibn Zaid

Some people have compiled their names in a poem:

أَلَا كُلُّ مَنْ لَا يَقْتَدِي بِأَئِمَّةٍ!

“Know that anyone who does not follow the A’immah!

فَقَسَمَتْهُ صَبْرَى عَنِ الْحَقِّ خَارِجَهُ

“Then his destination is hamful, he is away from the right [path]”

فَخَذَهُمْ عُبَيْدُ اللَّهِ عُرْوَةُ قَاسِمٌ

“So take them (the A’immah); ‘Ubaydullah, ‘Urwah, Qāsim”

سَعِيدُ أَبُو بَكْرٍ سُلَيْمَانُ خَارِجَةُ!

“Sa’īd, Abū Bakr, Sulaymān, Khārijah!”

Ḥāfiẓ Ibn Al Qayyim Raḥimahullah (d.751 AH) states:

إِذَا قِيلَ مَنْ فِي الْعِلْمِ سَبْعَةُ أَبْحُرٍ؟

“When it is asked, ‘what are the seven ships of knowledge?’”

رَوَايَتُهُمْ لَيْسَتْ عَنِ الْعِلْمِ خَارِجَةً

“Their narrations are not away from knowledge”

فَقُلْ هُمْ عُبَيْدُ اللَّهِ عُرْوَةُ قَاسِمٌ

“Say, ‘They are ‘Ubaydullah, ‘Urwah, and Qāsim’”

سَعِيدٌ أَبُو بَكْرٍ سُلَيْمَانُ خَارِجَةٌ

“Sa‘īd, Abū Bakr, Sulaymān, Khārijah”

The other Fuqahā of Madīnah were:

- 1) Nāfi’ Raḥimahullah Raḥimahullah
- 2) Ibn Shihāb Al Zuhri Raḥimahullah
- 3) Al Qādhī Yaḥyā ibn Sa‘īd Raḥimahullah
- 4) Abān ibn Uthmān Raḥimahullah
- 5) Sālim ibn ‘Abdillāh ibn ‘Umar Raḥimahullah
- 6) ‘Alī ibn Ḥussain Zayn Al Ābidīn Raḥimahullah
- 7) Rabī‘ah ibn ‘Abdir Raḥmān Raḥimahullah
- 8) Abū Ja‘far Al Bāqir Raḥimahullah
- 9) Abul Zinād ‘Abdullah ibn Dhakwān Raḥimahullah

In Makah, the Fuqahā were:

- 1) ‘Atā ibn Abī Rabāḥ Raḥimahullah
- 2) ‘Alī ibn Abī Ṭalḥah Raḥimahullah
- 3) Mujāhid ibn Jabr Raḥimahullah
- 4) ‘Amr ibn Dīnār Raḥimahullah
- 5) ‘Abdullah ibn ‘Ubaydullah Raḥimahullah
- 6) ‘Abdul Malik ibn Jurayj Raḥimahullah

In Kufah, the Fuqahā were:

- 1) Ibrāhīm Al-Nakha‘ī Raḥimahullah
- 2) ‘Āmir ibn Shurāḥūl Raḥimahullah
- 3) ‘Alqamah Raḥimahullah
- 4) Al-Aswad Raḥimahullah
- 5) Murrah Al Hamdānī Raḥimahullah
- 6) Sa‘īd ibn Jubayr Raḥimahullah
- 7) Masruq ibn Al Ajda’ Raḥimahullah
- 8) ‘Abīdah ibn ‘Amr Al Salmānī Raḥimahullah
- 9) Shurayḥ ibn Al-Ḥārith Al Kindī Raḥimahullah
- 10) Ibrāhīm ibn Yazīd Al-Nakha‘ī Raḥimahullah

In Baṣrah, the Fuqahā were:

- 1) Al Ḥasan Al Biṣri Raḥimahullah
- 2) Muḥammad ibn Sīrīn Raḥimahullah
- 3) Abul ‘Āliyah Raḥimahullah
- 4) Jābir ibn Zayd Raḥimahullah

5) Qatādah ibn Dimā'ah Raḥimahullah

In Shām, the Fuqahā were:

- 1) Abū Idrīs Al Khawlānī Raḥimahullah
- 2) Mak-hūl ibn Abī Muslim Raḥimahullah
- 3) Rajā' ibn Ḥaywah Raḥimahullah
- 4) 'Umar ibn 'Abdil 'Azīz Raḥimahullah
- 5) Shuraḥbīl ibn Al Samṭ Raḥimahullah
- 6) Qabīṣah ibn Dhuayb Raḥimahullah

In Miṣr, the Fuqahā were:

- 1) Abul Khair Marthad ibn 'Abdillāh Al Yazanī Raḥimahullah
- 2) Yazīd ibn Abī Ḥabīb Raḥimahullah

In Yemen, the Fuqahā were:

- 1) Tāwūs ibn Kaysān Raḥimahullah (d.106 AH)⁴
- 2) Wahb ibn Munabbih Raḥimahullah
- 3) Yaḥyā ibn Abī Kathīr Raḥimahullah

The Reasons behind the Differences between the Ṣaḥābah, the Tabi'ūn and the Fuqahā (أسباب اختلاف الصحابة والتابعين والفقهاء)

Imām Shāh Waliullah Al Muḥaddith Al Dehlawī Raḥimahullah writes in Hujjatullah Al Bāligah:

“Know that Fiqh was not established (مدون) during the blessed time of the Prophet Ṣallallāhu 'Alayhi Wasallam.⁵ Discussions over Masā'il were dissimilar to the discussions that took place over Masā'il amongst these [later] Fuqahā that they elaborate with the utmost effort the requisites, conditions, and etiquettes of all things, in order. Rather, the Prophet Ṣallallāhu 'Alayhi Wasallam would perform wuḍū and the Ṣaḥābah would see him performing wuḍū, they would then take and follow his method of performing wuḍū without differentiating whether this is a requisite or this is an etiquette. Similarly, the Ṣaḥābah did not elaborate that there are six or four requisites of wuḍū, and they (the Ṣaḥābah) did not postulate that a person would perform wuḍū in a non-continuous manner such that they would be able to label it as correct or invalid, except whom Allah willed.

The people would ask the Prophet Ṣallallāhu 'Alayhi Wasallam various questions which he would answer and many people would raise their judicial issues to the Prophet Ṣallallāhu 'Alayhi Wasallam for which he would issue a decree. At times, the Prophet Ṣallallāhu 'Alayhi Wasallam would see something good and praise it, and at other times, he would see something wrong and disapprove of it. Hence, each Ṣaḥābī saw from the worship, Fatāwā, and judicial decrees of the Prophet Ṣallallāhu 'Alayhi Wasallam that which Allah had destined for each of them to see, thus they understood what they saw and remembered it. Also, they recognised a reasoning for each of the events by interpreting the circumstances surrounding the event, thus some considered a certain event to be

⁴ Tawus has narrated from many Sahabah, including: Hadhrat Zayd ibn Thabit, Hadhrat A'ishah, Hadhrat Abu Hurayrah, Hadhrat Zayd ibn Arqam, Hadhrat Ibn Abbas and others. His students include: his son; Abdullah, Imam Al Zuhri, Ibrahim ibn Maysarah, Abu Al Zubair, Abdullah ibn Abi Najih, Hanzalah ibn Abi Sufyan and others.

Ibn Abbas said “I consider Tawus as from the people of Jannah”. Amr ibn Dinar said “I have not seen anyone like Tawus”. He used to perform Hajj many times and therefore he passed away in Makah on 7th Dhul Hijjah.

Tabqat Ulama Al Hadith by Ibn Abd Al Hadi, p.159-160, v.1, Mu'asasah Al Risalah

⁵ Shaykh Muhammad Awwamah writes:

ولما كان القوم معاصرين للتنزيل وأسبابه لم يكونوا بحاجة إلى ما يسمى بالفقه وأصوله فهم يفهمهم وفقهمهم للغة القرآن ومعاشيتهم لأحداث التشريع في غنية عن ذلك

[Shaykh Awwamah, “Ma'alim Irshadiyyah Li Sana'ah Talib Al Ilm”, (Jeddah: Darul Minhaj, 2013), pg. 11-12]

permissible, whilst others considered it to be abrogated due to the various signs and circumstances made apparent to them.

There was no arbiter amongst the Ṣaḥābah except by them finding satisfaction and contentment [that the view chosen is correct] without them paying attention to the method through which they were extracting their rulings, just as we see the Bedouins understand the intentions of one another through their speech amongst themselves. Their hearts gained contentment through specification or indication or subtlety from [the the Prophet Ṣallallāhu ‘Alayhi Wasallam from] an angle that one would not understand.

The time of the Prophet Ṣallallāhu ‘Alayhi Wasallam came to an end and the Ṣaḥābah remained in this state. After this, the Ṣaḥābah spread out into the various cities and each of them became individuals who were followed by the people from all areas. As more events occurred, the Masāil also increased. Accordingly, when they would be asked a question regarding these Masāil, each of the Ṣaḥābah would answer according to what they remembered or had extracted from the life of the Prophet Ṣallallāhu ‘Alayhi Wasallam. If they did not remember a specific ruling or were unable to extract the ruling from the life of the Prophet Ṣallallāhu ‘Alayhi Wasallam, then they would apply their own minds and recognise the reasonings which the Prophet Ṣallallāhu ‘Alayhi Wasallam had based his explicit rulings upon. They would then issue the ruling as they had found it, they were not concerned except with strenuation in corroborating the intended purpose of the Prophet Ṣallallāhu ‘Alayhi Wasallam. It was at this point that a difference of opinion occurred between them.”

After this, Shāh Waliullah discusses the various reasons due to which the Ṣaḥābah differed in the Masāil of Fiqh. These reasons are such that they are not unknown to one who has studied the books of Ḥadīth and their commentaries written by the Muhadithīn and the Fuqahā.

After analysing the methodology of the Ṣaḥābah and the Tabi’ūn that were present at that time, it seems apparent that they exhausted their efforts in finding an evidential text from the Qur’ān or the Sunnah of the Prophet Ṣallallāhu ‘Alayhi Wasallam in all matters that were presented to them, even if that meant that they had to ask someone who was of a lower calibre than them. If they were to find an evidential text from the Prophet Ṣallallāhu ‘Alayhi Wasallam, then they would rely upon it and hold to it with force. Finding an evidential text from the Prophet Ṣallallāhu ‘Alayhi Wasallam would provide them with elation and grant them the comfort of the heart.

Examples of the Ṣaḥābah relying upon an evidential text of the Prophet Ṣallallāhu ‘Alayhi Wasallam:

- 1) A grandmother once came to Ḥaḍrat Abū Bakr Raḍiyallāhu ‘Anhu asking regarding her portion of inheritance from her grandson’s estate. Ḥaḍrat Abū Bakr Raḍiyallāhu ‘Anhu replied:

مَا لَكَ فِي كِتَابِ اللَّهِ شَيْءٌ وَمَا عَلِمْتُ لَكَ فِي سُنَّةِ نَبِيِّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ شَيْئًا فَأَرْجِعِي حَتَّى أَسْأَلَ النَّاسَ

“There is nothing [mentioned] for you in the book of Allah, and I do not know anything [designated] for you from the Sunnah of the Prophet of Allah Ṣallallāhu ‘Alayhi Wasallam, so return back until I have asked the people”

After this, Ḥaḍrat Abū Bakr Raḍiyallāhu ‘Anhu asked the people. Mughīrah ibn Shu’bah then came forward and said:

خَصَرْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَغْطَاهَا السُّدُسَ

“I was present by the Prophet Ṣallallāhu ‘Alayhi Wasallam when he gave her one sixth (1/6th)”

Ḥaḍrat Abū Bakr Raḍiyallāhu ‘Anhu replied:

هَلْ مَعَكَ غَيْرُكَ؟

“Is there anyone with you [to corroborate your statement]?”

So, Muḥammad ibn Salamah stood up and repeated what Mughīrah had said. Ḥaḍrat Abū Bakr Raḍiyallāhu ‘Anhu then issued this ruling for her.

- 2) ‘Alqamah Raḥimahullah narrates that a group of people once came to Ḥaḍrat ‘Abdullah ibn Mas’ūd Raḍiyallāhu ‘Anhu and said, “Indeed, a man from amongst us married a woman and did not specify a dowry for her and did not have intercourse with her, he then died”, Abdullah replied, “I have not been asked a question more difficult than this question since the death of the Prophet Ṣallallāhu ‘Alayhi Wasallam. So ask someone else”. The people came to him repetitively for a month, they then said to him, “Who should we ask if we can’t ask you? And you are from amongst the great companions of the Prophet Muhammad Ṣallallāhu ‘Alayhi Wasallam in this town, we do not know of anyone besides you”. ‘Abdullah replied, “I shall apply my mind in it, so if it is correct, then it is from Allah alone, He has no partners, and if it is incorrect, then it is from me and from the devil, and Allah and his Prophet are free from it – I feel that she should be given the dowry of the women of her tribe without any deductions or additions, and she shall receive inheritance, and she must sit in the iddah period for four months and ten days.” Abdullah said this in front of a group of people from Ashja’, these people stood up and said, “We bear witness that you have ruled by that which the Prophet Ṣallallāhu ‘Alayhi Wasallam ruled for a woman named Birwa’ Bint Wāshiq”. ‘Alqamah states that ‘Abdullah had never been seen as happy as he was seen on that day, excluding the day that he accepted Islām.
- 3) On his journey to Shām, which had been hit by a plague, Ḥaḍrat ‘Umar Raḍiyallāhu ‘Anhu sought the consultation of the migrants and the helpers on the issue of the plague. Ḥaḍrat ‘Abdul Raḥmān ibn ‘Awf Raḍiyallāhu ‘Anhu, who had been busy with some of his needs, suddenly came and said:

إِنَّ عُنْدِي فِي هَذَا عِلْمًا سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ إِذَا سَمِعْتُمْ بِهِ بِأَرْضٍ فَلَا تَقْدُمُوا عَلَيْهِ وَإِذَا وَقَعَ بِأَرْضٍ وَأَنْتُمْ بِهَا فَلَا تَخْرُجُوا فِرَارًا مِنْهُ

“Surely I have knowledge regarding this issue. I have heard from the Messenger of Allah Ṣallallāhu ‘Alayhi Wasallam say, ‘If you hear of it (a plague) occurring in a city, then do not approach it (the city), and if it occurs in a land and you are in it, then do not flee from it’”⁶

Upon hearing this, Ḥaḍrat ‘Umar Raḍiyallāhu ‘Anhu praised Allah the Almighty and turned away.

Despite making a strenuous effort of looking for evidential texts from the Prophet Ṣallallāhu ‘Alayhi Wasallam in all the questions that were posed to them, there were many instances wherein the Ṣaḥābah had to revert to analogical deduction and Ijtihād (اجتهاد). Hence, at times, a difference of opinion arose amongst them based upon a difference in analogical deduction.

Examples of a difference of opinion based upon a difference in analogical deduction:

⁶ What is the ruling of entering a city knowing that there is a plague spreading in it?

This narration indicates that it is permissible for one intending to enter a city, to avoid knowing doing so upon knowing that there is a plague in it. By not entering the city, he shall not be considered as taking an omen. Rather, it will be considered as one refraining from throwing himself into destruction and preventing the causes of illness. The permissibility of returning is also in order to prevent one from entering the city, becoming ill, and then assuming that it is the plague that caused the illness. Thus, corrupting his belief that Allah the Almighty causes all things to happen.

A group of scholars do hold the view that whilst it is permissible to avoid entering a city in which there is a plague, it is also permissible for the one who has a strong conviction and reliance in Allah to enter the city. As for the narration Abdur Rahman ibn Awf which prohibits entering the city, it is based upon the action being slightly detestable.

It is mentioned in *Al Dur Al Mukhtar*:

وَإِذَا خَرَجَ مِنْ بَلَدَةٍ بِهَا الطَّاعُونَ (أَوْ دَخَلَ) فَإِنْ عَلِمَ أَنَّ كُلَّ شَيْءٍ بِقَدَرِ اللَّهِ تَعَالَى فَلَا بَأْسَ بِأَنْ يَخْرُجَ وَيَدْخُلَ وَإِنْ كَانَ عِنْدَهُ أَنَّهُ لَوْ خَرَجَ نَجَا وَلَوْ دَخَلَ ابْتَلِيَ بِهِ كَرَهُ لَهُ ذَلِكَ

“When he leaves [or enters, Ibn Abidin] a city which is afflicted by a plague, if he has conviction that all things happen with the predetermination of Allah, then there is no problem with this that he leaves and enters, and if he believes that if he leaves, he shall survive [due to leaving the city] or that [he believes] if he enters [the city], he shall be afflicted with it (the plague), then it is detestable for him to do so (i.e. to enter or leave the city)”

(Muhammad Harun, “*Al Fath Al Rabbani*”, (Dhaka: Maktabatul Azhar, 2014), p.166)

- 1) The Ṣaḥābah could not find an evidential text from the Prophet Ṣallallāhu ‘Alayhi Wasallam with regards to whether the grandfather of the deceased would deprive the brothers of the deceased from the inheritance.

Thus, the Ṣaḥābah had to use analogical deduction.

Accordingly, it was the view of a large group of Ṣaḥābah such Ḥaḍrat Abū Bakr Raḍiyallāhu ‘Anhu, Ḥaḍrat ‘Uthmān Raḍiyallāhu ‘Anhu, Ḥaḍrat Mu‘ādh Raḍiyallāhu ‘Anhu, Ḥaḍrat ‘Abdullah ibn ‘Abbās Raḍiyallāhu ‘Anhu, and many other Ṣaḥābah that the grandfather of the deceased would deprive the brothers of the deceased from the inheritance of the deceased.

This group of Ṣaḥābah presented the following verse of the Qur’an as evidence; Ḥaḍrat Yūsuf ‘Alayhis Salām said:

وَاتَّبَعْتُ مِلَّةَ آبَائِي إِبْرَاهِيمَ وَإِسْحَاقَ وَيَعْقُوبَ

“And I followed the religion of my fathers; Ibrāhīm, Ishāq, and Ya’qūb”

Hence, Ḥaḍrat Yūsuf ‘Alayhis Salām labelled his grandfathers, Ḥaḍrat Ibrāhīm ‘Alayhis Salām and Ḥaḍrat Ishāq ‘Alayhis Salām, as his ‘fathers’. Hence, considering that a ‘father’ of the deceased can deprive the brothers of the deceased, the grandfather should also deprive the brothers of the deceased.

Ḥaḍrat ‘Abdullah ibn ‘Abbās Raḍiyallāhu ‘Anhu came to this conclusion by applying an analogy, he said:

يَرِثُنِي ابْنُ ابْنِي دُونَ إِخْوَتِي وَلَا أَرِثُ أَنَا ابْنُ ابْنِي

“My son’s son inherits from me, and not my brothers, and I do not inherit from my son’s son”

The meaning of his statement was that if a grandchild of a deceased deprives the brothers of the deceased from the inheritance of the deceased, surely a grandfather should deprive the brothers too.

On the other hand, Ḥaḍrat ‘Alī ibn Abī Ṭālib Raḍiyallāhu ‘Anhu, Ḥaḍrat ‘Abdullah ibn Mas’ūd Raḍiyallāhu ‘Anhu, Ḥaḍrat Zayd ibn Thābit Raḍiyallāhu ‘Anhu, and other Ṣaḥābah were of the view that the grandfather of the deceased shall inherit from the inheritance of the deceased along with the brothers of the deceased.

This group of Ṣaḥābah applied an analogy which may be understood as part of an interesting story that occurred with Imām Abū Ḥanīfah Raḥimahullah.

Once, Imām Abū Ḥanīfah Raḥimahullah was with Ja’far ibn Muḥammad Al Ṣādiq in Madīnah. So, Hishām ibn Al Ḥakam said, ‘Oh son of the Prophet of Allah! This is Abū Ḥanīfah, a man of analogical deduction’, so Ja’far asked, ‘Why do you consider analogical deduction?’ Imām Abū Ḥanīfah Raḥimahullah replied, ‘from the statement of ‘Alī ibn Abī Ṭālib and Zayd ibn Thābit, when ‘Umar ibn Al Khattāb consulted them regarding whether or not the grandfather of a deceased would deprive the brothers of the deceased from the inheritance of the deceased, ‘Alī said to him, ‘Oh leader of the believers! Do you not see that if a tree were to grow a branch, then two more branches were to grow from this one branch, between these two branches and the tree, which is more close to the one branch?’ Zayd ibn Thābit said, ‘If a stream were to come from a river, then two more streams were to emerge from this one stream, which one be closer to the single stream? The two streams or the river itself?’ So ‘Umar held onto this ruling for the grandfather and brothers of a deceased. This is ‘Alī ibn Abī Ṭālib and Zayd ibn Thābit who performed an analogical deduction for ‘Umar ibn Al Khattāb”

Upon hearing this, Ja’far ibn Muḥammad became quiet. Both examples presented by the two Ṣaḥābah demonstrate that both the grandfather and the brothers of the deceased should get equivalent amounts of the inheritance of the deceased as they are related equivalently to the deceased.

- 2) Imām Mālik Raḥimahullah has narrated from Thawr ibn Zayd Al Daylamī that ‘Umar ibn Al Khattab Raḍiyallāhu ‘Anhu consulted the Ṣaḥābah with regards to the punishment of the one who drinks alcohol. So, ‘Alī ibn Abī Ṭālib said, “We see that you should lash him eighty times, for when a person drinks, he becomes intoxicated, and when he becomes intoxicated, he loses coordination of his speech, and when he loses coordination of his speech, he falsely accuses”, or he said similar to this. Based upon this, Ḥaḍrat ‘Umar Raḍiyallāhu ‘Anhu lashed the one who drinks alcohol eighty times.

It is also important to understand that this did not involve establishing a corporal punishment through analogical deduction which is not permissible according to the Ḥanafī Madhab. Rather, it had been established from the Prophet Ṣallallāhu ‘Alayhi Wasallam that he hit the one who drank alcohol forty times, either with a whip that had *two* edges or with *two* shoes. Hence, the issue that the Ṣaḥābah were faced with was whether to consider the amount that the Prophet Ṣallallāhu ‘Alayhi Wasallam to be forty or eighty in consideration of the item used. Hence, Ḥaḍrat ‘Alī Raḍiyallāhu ‘Anhu gave preference to one possibility (احتمال) over the other through analogical deduction.

The Fuqahā adopted the different views of the different Ṣaḥābah:

The Ṣaḥābah spread across the various lands and taught their followers, the Tabi’ūn, the knowledge of Dīn as they had understood from the Prophet Ṣallallāhu ‘Alayhi Wasallam.

Accordingly, the Tabi’ūn took what they were taught and held onto it. The Tabi’ūn gave preference to what they had learnt from the Ṣaḥābah of *their* city who had taught them the knowledge of Dīn over the statements of the *other* Ṣaḥābah from various other cities.

Shāh Waliullah Al Muḥadith Al Dehlawī Raḥimahullah (d.1176 AH) writes:

“Sa’īd [ibn Al Musayyib] and his companions felt that the people of the Ḥaramain are the most reliable in Fiqh. Thus, their views were based upon the Fatāwā of Ḥaḍrat ‘Abdullah ibn ‘Umar, Ḥaḍrat ‘Aishah, Ḥaḍrat ‘Abdullah ibn ‘Abbās, and the ruling of the judges of Madīnah.

Ibrāhīm [Al Nakha’ī] and his companions felt that the views that Ḥaḍrat ‘Abdullah ibn Mas’ūd and his companions had adopted were the most reliable in Fiqh. Thus, their views were based upon the Fatāwā issued by Ḥaḍrat ‘Abdullah ibn Mas’ūd and the decree and Fatāwā issued by Ḥaḍrat ‘Alī Raḍiyallāhu ‘Anhu, as well as the rulings of Shurayḥ and others from the Fuqahā of Kufā.

Sa’īd ibn Al Musayyib was the tongue of the Fuqahā of Madinah, and the most knowledgeable regarding the judicial decrees of ‘Umar ibn Al Khattāb and the narrations of Abū Hurairah.

Ibrāhīm [Al Nakha’ī] was the tongue of the Fuqahā of Kufā.

Thus, when these two scholars would speak on a matter and they did not attribute it to anyone, then in most cases, it should be attributed to one of the scholars of the past, either explicitly or implicitly.

The respective Fuqahā of their cities flocked to them and took from them the sacred knowledge of Dīn as the two of them had understood it, they then extracted further rulings based upon their rulings. And Allah knows best”.⁷

⁷ Mufti Taqi Sahib has not particularly discussed the reasons behind the difference amongst the Fuqahā in great detail. It therefore seems appropriate to discuss these reasons and to also list the different books written upon this issue. First, we would like to present the various books written in this field:

- 1) *Al Tanbih Alal Asbab Al Latī Awwabat Al Ikhtilaf Bayn Al Muslimin Fi Araihi Wa Madhahibihim* (التنبيه على الأسباب التي أوجبت الاختلاف بين المسلمين في آرائهم ومذاهبهم) by Abdullah ibn Muhammad ibn Al Sayyid Al Batalyawsi Al Andalusi (d.521 AH); this was one of the first books written in this field. Allamah Kawthari writes regarding this book in his introduction to Al

The Codification of Fiqh (تدوين الفقه)

During the time of the Ṣaḥābah and the elderly Ṭābi'ūn, the study of Fiqh was cojoined with the narrating of Aḥādīth.

Accordingly, the narrators of Ḥadīth were of two types:

- 1) Those who focused themselves on narrating Aḥādīth and Āthār in the manner that they had reached them, without delving into the extraction of jurisprudential rulings from them, except on rare occasions.

Batalyawsi's book, *Kitab Al Hada'iq*, (pg. 137) "this book, nobody has written like it in this field despite it being small in size".

- 2) *Raf'ul Malam Ani A'imma Al A'lam* (رفع الملام عن الأئمة الأعلام) by Hafidh Ibn Taymiyyah
- 3) *Al Inṣaf Fi Bayan Asbab Al Ikhtilaf* (الإنصاف في بيان أسباب الاختلاف) by Shah Waliullah Al Dehlavi
- 4) *Asbab Ikhtilaf Al Fuqaha* (أسباب اختلاف الفقهاء) by Abdullah ibn Abdil Muhsin Al Turki
- 5) *Asbab Ikhtilaf Al Fuqaha* (أسباب اختلاف الفقهاء) by Shaykh Ali Al Khafif
- 6) *Athar Al Lugah Fi Ikhtilaf Al Mujaḥidin* (أثر اللغة في اختلاف المجتهدين) by Shaykh Abdul Wahhab Tawilah
- 7) *Athar Al Ḥadīth Al Sharif Fi Ikhtilaf Al A'imma Al Fuqaha* (أثر الحديث الشريف في اختلاف الأئمة الفقهاء) by Sheikh Muhammad Awwamah
- 8) *Ikhtilaf Al A'imma* (اختلاف الأئمة) by Shaykh Muhammad Zakariyyah Kandelwi
- 9) *Ikhtilaf Al Muftin* (اختلاف المفتين) by Shaykh Sharif Hatim ibn Arif Al Awni
- 10) *Dawabit Al Ikhtilaf Fi Mizan Al Sunnah* (ضوابط الاختلاف في ميزان السنة) by Dr. Abdullah Sha'ban

In his book, *Al Tanbih Alal Asbab Al Latī Awjabat Al Ikhtilaf Bayn Al Muslimin Fi Araiḥim Wa Madhahibihim*, Al Batalyawsi presents eight reasons for the difference amongst the Fuqaha:

1. A difference of opinion that occurs when a word holds many possible meanings and interpretation
2. A difference of opinion that occurs over whether a literal meaning or metaphorical meaning should be taken
3. A difference of opinion that occurs with regards to **lfrad and Tarkib**
4. A difference of opinion that occurs whether a general ruling or specific ruling should be taken
5. A difference of opinion in terms of **narration**
6. A difference of opinion that occurs due to application of Ijtihad and Qiyas
7. A difference of opinion that occurs due to application of the laws of abrogation
8. A difference of opinion that occurs with regards to **permissibility**

After Al Batalyawsi's observations, many scholars added or deducted to the reasons for the differences of opinion amongst the Fuqaha that he had put forward.

Dr. Wahbah Zuhayli has presented six simplified reasons for the differences of rulings amongst the Fuqaha, they are:

1. The differences found due to a word in the Arabic language having various meanings
2. The differences found due to differences in **Prophetic narrations**
3. The differences found due to the varying interpretations of the sources of Shari'ah amongst the Fuqaha
4. The differences found due to the differences in basic legal principles
5. The differences found due to their differing approach to analogical deduction
6. The differences found due to their differing approach of solving a contradiction between the evidential texts

Muhammad Harun states that the differences of ruling amongst the Fuqaha are due to six reasons

1. Due to the nature of the Arabic language
2. Due to differences over how an evidential text may be established
3. Due to differences in the understanding of an evidential text
4. Due to differences in basic principles and methods of extracting rulings from the evidential texts
5. Due to differences in the consideration of some of the sources of Shari'ah
6. Due to differences in temperament

Of course, each of the above-mentioned could be sub-categorised further into many more types.

(Muhammad Harun, "Al Fath Al Rabbani", (Dhakah: Maktabatul Azhar, 2014) p.174-176)

Although there are many reasons behind the differences of opinion between the Fuqaha, one of the major causes of this difference is the effect of Ahadith and the principles set out by each jurist for accepting or rejecting a Hadith. Sheikh Muhammad Awwamah has elaborated upon this in his outstanding book, *Athar Al Ḥadīth Al Sharif*. For a complete understanding of this topic, I would advise that one reads this book in detail. I shall, however, present a summarised version of his research here:

- 2) Those who combined between narrating Aḥādīth and extracting jurisprudential rulings from them, such that they would teach their students jurisprudential rulings as well as narrating to them the Aḥādīth that had reached them from their teachers.

After Islām had spread to the various lands, there was a need for the codification of Fiqh which the general and specific masses could revert to when they required knowledge of jurisprudential rulings in their lives.

Accordingly, some Tabi'ūn codified and compiled the Aḥādīth and Āthār that had reached them in an order corresponding to the order of Fiqh.

Examples:

- 1) *Al Abwāb* (الأبواب) written by Al Sha'bī Raḥimahullah (d.104 AH)
- 2) *Al Sunan* (السنن) written by Makhḥūl Al Shāmī Raḥimahullah (d.112 AH/113 AH)

'Allāmah Abū Muḥammad Al Rāmahurmuzī Raḥimahullah (d.360 AH) states that the first person to write and create chapters in Fiqh was Rabī' ibn Ṣabīḥ Raḥimahullah (d.160 AH) in Baṣrah, then Sa'īd ibn Abī Arūbah Raḥimahullah (d.156 AH) also in Baṣrah, then Ma'mar ibn Rāshid Raḥimahullah (d.153 AH) in Yemen, and then Ibn Jurayj Raḥimahullah (d.150 AH) in Makah. He then mentions Imām Mālik Raḥimahullah (d.179 AH) and others.

In this period, Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) wrote Kitāb Al Āthār.

It is said that Ibn Abī Dh'ib Raḥimahullah (d.159 AH) wrote a Muwattā larger than the Muwattā of Imām Mālik Raḥimahullah (d.179 AH).

These scholars were then followed by Sufyān Al Thawrī Raḥimahullah (d.161 AH), Sufyān ibn 'Uyaynah Raḥimahullah (d.198 AH), 'Abdul Razzāq Raḥimahullah (d.211 AH), Abū Bakr ibn Abī Shaybah Raḥimahullah (d.235 AH), and others.

The Scholars of Hadith and the Scholars of Analogy (أصحاب الحديث وأصحاب الرأي)

When the Masāil of Fiqh increased in number, a group of scholars dedicated their efforts in extracting jurisprudential rulings, teaching them, and codifying them. At this point, the scholars split into two groups:

- 1) Those whose greater focus was towards narrating Aḥādīth and Āthār, either with or without paying attention to extracting jurisprudential rulings from them.

These scholars were called Aṣḥāb Al Ḥadīth (أصحاب الحديث).

- 2) Those who dedicated themselves to extracting jurisprudential rulings from the Aḥādīth and Āthār. They did not focus on narrating the Aḥādīth and Āthār to others, except when required in order to provide evidence for a jurisprudential ruling.

These scholars were called Aṣḥāb Al Ra'y (أصحاب الرأي).

Some have mistakenly made the assumption that the Aṣḥāb Al Ḥadīth (أصحاب الحديث) did not consider analogical deduction (*Qiyās*) as a form of evidence in Sharī'ah whilst the Aṣḥāb Al Ra'y (أصحاب الرأي) gave preference to their personal analogical deductions (*Qiyās*) over the evidential texts (*Nuṣūṣ*).

The truth, however, is that each of these groups were given this title in consideration of what they occupied the majority of their time in. Otherwise, all of these scholars gave preference to the evidential texts (*Nuṣūṣ*) of the Qur’ān and Sunnah over analogical deduction (*Qiyās*) and Ijtihad (اجتهاد), even if they differed in their interpretation of the evidential texts (*Nuṣūṣ*).

In particular, many have been deceived by the word *Ra’y* (رأي) in the title of Aṣḥāb Al Ra’y (أصحاب الرأي). Many believe that *Ra’y* (رأي) is a reference to the personal opinions that are based upon one’s intellect. However, the matter is not like this. This is because the word *Ra’y* (رأي) is actually derived from the Ḥadīth of Ḥaḍrat Mu’ādh Raḍiyallahu ‘Anhu mentioned earlier, wherein he said:

أَجْتَهِدُ بِرَأْيِي

“I shall exert myself in coming to a view/opinion”

Accordingly, the meaning of *Ra’y* (رأي) is:

قِيَاسٌ غَيْرُ الْمَنْصُوصِ عَلَى الْمَنْصُوصِ

“To deduce the ruling for that which is not found in the evidential texts (*Nuṣūṣ*) by performing analogical deduction (*Qiyās*) upon that which is found in the evidential texts (*Nuṣūṣ*)”

This is apparent from the letter that Ḥaḍrat ‘Umar Raḍiyallahu ‘Anhu wrote to Ḥaḍrat Abū Mūsā Raḍiyallahu ‘Anhu. Thus, Imām Al Bayhaqī Raḥimahullah (d.458 AH) narrates from Idrīs Al Awdī Raḥimahullah that he said:

أَخْرَجَ إِلَيْنَا سَعِيدُ بْنُ أَبِي بُرْدَةَ كِتَابًا فَقَالَ هَذَا كِتَابُ عُمَرَ رَضِيَ اللَّهُ عَنْهُ إِلَى أَبِي مُوسَى رَضِيَ اللَّهُ عَنْهُ - فَذَكَرَ الْحَدِيثَ وَفِيهِ - أَلْفَهُمْ فِيمَا يَخْتَلِجُ فِي صَدْرِكَ مِمَّا لَمْ يَبْلُغَكَ فِي الْقُرْآنِ وَالسُّنَّةِ فَتَعَرَّفِ الْأَمْثَالَ وَالْأَشْبَاهَ ثُمَّ قَسِ الْأُمُورَ عِنْدَ ذَلِكَ وَاعْمِدْ إِلَى أَحَبِّهَا إِلَى اللَّهِ وَأَشْبَهْهَا فِيمَا تَرَى

“Sa’id ibn Abi Burdah took out a letter for us and said, ‘This is the letter of ‘Umar, may Allah be pleased with him, [that he wrote] to Abu Musa, may Allah be pleased with him – he then mentioned what was written in it and in it was – [use your] understanding in that which flickers in your heart from that which has not reached you from the Qur’an and Sunnah, and recognise the similar and relative matters and perform analogical deduction upon them, and rely upon the most beloved to Allah and most similar [in terms of analogy] in your opinion”

The Aṣḥāb Al Ra’y (أصحاب الرأي) do *not* give preference to their *personal* analogical conclusions over the evidential texts (*Nuṣūṣ*) of the Qur’an and Sunnah.⁸

⁸ The scholars of Ra’y also had immense knowledge of Hadith. This can be better understood through the story of Isa ibn Aban: Isa ibn Iban initially opposed the people of Ra’y. Muhammad ibn Sama’ah states: “Isa ibn Aban would pray Salah with us. I would call him to meet Imam Muhammad. However, he would say:

هَؤُلَاءِ قَوْمٌ يَخَالِفُونَ الْحَدِيثَ

“This is a group of people who oppose Hadith”

Isa knew Ahadith very well. One day, he prayed Fajr Salah with us and it was the day that Imam Muhammad was to have a Majlis (gathering), so I did not leave Isa until he eventually sat in Imam Muhammad’s Majlis (gathering). When the Majlis (gathering) was over, I took him to Imam Muhammad and said to Imam Muhammad:

هَذَا ابْنُ أَخِيكَ أَبَانُ بْنُ صَدَقَةَ الْكَاتِبِ وَمَعَهُ ذِكَاةٌ وَمَعْرِفَةٌ بِالْحَدِيثِ وَأَنْ أَدْعُوهُ إِلَيْكَ فَيَأْتِي وَيَقُولُ إِنَّا نَخَالِفُ الْحَدِيثَ

“This is your nephew Aban ibn Sadaqah Al Katib, he is intelligent and has knowledge of Hadith. I am calling him to you but he says that we oppose Hadith”

Imam Muhammad turned to him and said:

يَا بَنِي؟ مَا الَّذِي رَأَيْتَنَا نَخَالِفُهُ مِنَ الْحَدِيثِ؟ لَا تَشْهَدُ عَلَيْنَا حَتَّى تَسْمَعَ مِنَّا

“Oh my son, what have you seen in us that [makes you think that we] contradict Hadith? Do not give witness against us until you have heard from us”

After this, Isa ibn Aban asked Imam Muhammad questions pertaining to 15 different chapters of Hadith, Imam Muhammad responded to him by informing him which of the Ahadith in those 15 chapters are abrogated and presented many evidential narration and supportive narrations. After leaving the Majlis (gathering), Isa ibn Aban said:

Wakī' ibn Al Jarrāh Raḥimahullah narrates from Imam Abu Hanifah, who has become famous as a leading figure of the Aṣḥāb Al Ra'y (أصحاب الرأي) that he said:

البَوْلُ فِي الْمَسْجِدِ أَحْسَنُ مِنْ بَعْضِ قِيَاسِهِمْ

“To urinate in the Masjid is better than some of their analogical deductions (i.e. the analogical deductions of those who do not rely upon the evidential texts)”

Ḥāfiẓ Ibn 'Abd Al Barr Raḥimahullah has narrated from Al Ḥasan ibn Ṣāliḥ Raḥimahullah that he said:

كَانَ النُّعْمَانُ بْنُ ثَابِتٍ فَهْمًا عَالِمًا مُتَنَبِّئًا فِي عِلْمِهِ إِذَا صَحَّ عَنْهُ الْحَبْرُ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمْ يَعُدَّهُ إِلَى غَيْرِهِ

“Nu'man ibn Thabit was an intelligent scholar, meticulous in his knowledge, when a narration from the Prophet Ṣallallāhu 'Alayhi Wasallam would be authentic according to him, he would turn to anything besides it”

Similarly, there are others who are under the impression that the title Aṣḥāb Al Ra'y (أصحاب الرأي) is specific for the Ḥanafī scholars. This is incorrect. Rather, the title Aṣḥāb Al Ra'y (أصحاب الرأي) was used for a group of scholars who made an effort in extracting the ruling of Shar'ah and postulating and conceptualising various Masail.

Hence, this title has been used for the Fuqahā of the Malikī Madhab. It is for this reason that Ḥāfiẓ Ibn 'Abd Al Barr Raḥimahullah titled his commentary upon Al Muwattā of Imām Mālik Raḥimahullah with the title:

الِإِسْتِذْكَارُ لِمَا تَضَمَّنَهُ الْمُوطَأُ مِنْ مَعَانِي الرَّأْيِ وَالْأَثَارِ

“Istidhkār Limā Taḍammanathul Muwattā Min Ma'āni Al Ra'y Wal Āthār”

“A reminder of that which Al Muwattā contains from the meanings of analogical deduction and reports”

Ibn Qutaybah has made a chapter in his book, Al Ma'ārif, in which he has mentioned the names of the Aṣḥāb Al Ra'y (أصحاب الرأي). He has included the following names as scholars who were part of the Aṣḥāb Al Ra'y (أصحاب الرأي):

- 'Abdul Raḥmān Ibn Abī Laylā Raḥimahullah
- Imām Abū Ḥanīfah Raḥimahullah
- Imām Rabī'ah Al Ra'y Raḥimahullah
- Imām Zufar Raḥimahullah
- Imām Al Awza'ī Raḥimahullah
- Sufyān Al-Thawrī Raḥimahullah
- Imām Mālik ibn Anas Raḥimahullah
- Imām Abū Yūsuf Raḥimahullah
- Imām Muḥammad Raḥimahullah

Ḥāfiẓ Abul Walīd Al Faraḍī Raḥimahullah has described some of the Malikī Fuqahā with the title of Aṣḥāb Al Ra'y (أصحاب الرأي). For example, he states regarding Aḥmad ibn Hilāl ibn Zayd Al Attār Raḥimahullah:

كَانَ حَافِظًا لِلشُّرُوطِ نَبِيْلًا فِي الرَّأْيِ عَلَى مَذْهَبِ أَصْحَابِ مَالِكٍ

كان بيني وبين النور ستر فارتفع عني ما ظننت أن في ملك الله مثل هذا الرجل يظهره للناس

“There was a veil between myself and divine light which has been lifted. I did not think that there was someone in the kingdom of Allah like this man, whom Allah reveals for the people”

After this, he accompanied Imam Muhammad for a very long time, such that he studied Fiqh under him.

(Muhammad Bwenukalin, “Muqaddimah of Al Asl”, (Beirut: Dar ibn Hazm, 2009), pg.22)

“He was a preserver of [the rules of] clauses [in transaction], peerless in Al Ra’y (analogical deduction) based upon the Madhab of the scholars of [Imām] Mālik”

From the above, we have established that the title Aṣḥāb Al Ra’y (أصحاب الرأي) had initially been used for scholars outside of the Ḥanafī Madhab. However, it is also apparent that the openness of the Ḥanafī Fuqahā in extracting rulings and postulating Masāil has made this title almost specific to them.

However, those who did not delve deeply into the evidences of the Ḥanafī Madhab, and saw what they felt was a contradiction between the Ḥanafī rulings and the Aḥādīth that had reached them, assumed that the Ḥanafī Fuqahā had based their ruling upon their intellect alone. This then became widespread upon the tongues of some people such that some sincere Muḥadithīn were also influenced by this incorrect propaganda. Thus, these people specified the title Aṣḥāb Al Ra’y (أصحاب الرأي) for the Ḥanafī Fuqahā and used it to insult the Ḥanafī Fuqahā.

The truth, however, is what Sulaymān ibn ‘Abd Al Qawī Al Tūfī Al Ḥanbalī has said in his commentary upon *Mukhtaṣar Al Rawḍah*:

وَأَعْلَمُ أَنَّ أَصْحَابَ الرَّأْيِ بِحَسَبِ الْإِصْطِفَاءِ هُمْ كُلُّ مَنْ تَصَرَّفَ فِي الْأَحْكَامِ بِالرَّأْيِ فَيَتَنَاوَلُ جَمِيعَ عُلَمَاءِ الْإِسْلَامِ لِأَنَّ كُلَّ وَاحِدٍ مِنَ الْمُجْتَهِدِينَ لَا يَسْتَغْنِي فِي اجْتِهَادِهِ عَنْ نَظَرٍ وَرَأْيٍ وَلَوْ بِتَحْقِيقِ الْمَنَاطِ وَتَقْيِيحِهِ الَّذِي لَا نِزَاعَ فِي صِحَّتِهِ وَأَمَّا بِحَسَبِ الْعِلْمِيَّةِ فَهُوَ فِي عَرَفِ السَّلَفِ عَلِمَ عَلَى أَهْلِ الْعِرَاقِ وَهُمْ أَهْلُ الْكُوفَةِ أَبُو حَنِيفَةَ وَمَنْ تَابَعَهُ مِنْهُمْ

“And know! Indeed, in terms of actual reality, the ‘Aṣḥāb Al Ra’y’ are all those who play a role in deducing ruling using Al Ra’y (analogical deduction). Thus, this includes all of the scholars of Islam, as each of the Mujtahidin cannot suffice in their Ijtihad without some form of analogical deduction, even if it is in just finding the basis of the ruling or rectifying it, both of which are valid without debate. As for the norm of the pious predecessors, it (the title ‘Aṣḥāb Al Ra’y’) is a name used for the scholars of ‘Irāq, and they are the scholars of Kufā; Abū Ḥanīfah and those who followed him from amongst them”⁹

He then mentions the different reasons due to which the Ḥanafīs have left the apparent meaning of some Aḥādīth. He writes:

وَكَثُرَ عَلَيْهِ الطُّغْنُ مِنْ أَيْمَةِ السَّلَفِ حَتَّى بَلَغُوا فِيهِ مَبْلَغًا وَلَا تَطْيُبُ النَّفْسُ بِذِكْرِهِ وَأَبَى اللَّهُ إِلَّا عَصَمْتُهُ بِمَا قَالُوهُ وَتَنَزَّيْهُهُ عَمَّا إِلَيْهِ نَسَبُوهُ وَجُمَلَهُ الْقَوْلُ فِيهِ أَنَّهُ قَطَعًا لَمْ يُخَالَفِ السُّنَّةَ عِنَادًا وَإِنَّمَا خَالَفَ فِيمَا خَالَفَ مِنْهَا اجْتِهَادًا حُجَجٌ وَاضِحَةٌ وَذَلَالٌ صَالِحَةٌ لِأَنَّهُ وَجَّهَهُ بَيْنَ النَّاسِ مُؤْجِدَةً وَقَالَ أَنْ يَنْتَصِفَ مِنْهَا مُخَالَفُوهُ وَلَهُ بِتَقْدِيرِ الْخَطِئِ أَجْرٌ وَبِتَقْدِيرِ الْإِصَابَةِ أَجْرَانِ وَالطَّاعِنُونَ عَلَيْهِ إِمَّا حُسَادًا أَوْ جَاهِلُونَ بِمَوَاقِعِ الْاجْتِهَادِ وَآخِرُ مَا صَحَّ عَنِ الْإِمَامِ أَحْمَدَ - رَضِيَ اللَّهُ عَنْهُ - إِحْسَانُ الْقَوْلِ فِيهِ وَالثَّنَاءُ عَلَيْهِ ذِكْرُهُ أَبُو الْوَرْدِ مِنْ أَصْحَابِنَا فِي كِتَابِ أَصُولِ الدِّينِ وَاللَّهُ - سُبْحَانَهُ وَتَعَالَى - أَعْلَمُ بِالصَّوَابِ

⁹ Ibn Abdil Barr has made a chapter in his book, *Jami’ Bayanil Ilm Wa Fadhliah*, titled “The chapter of extracting opinions from the principles when clear evidence is not found” (باب اجتهد الرأي على الأصول عند عدم النصوص). In this chapter, he has brought many Ahadith and narrations to show that that one should act upon his opinion that he has extracted from the evidences when clear evidence is not found. After this, Ibn Abdil Barr has brought the names of those scholars who are known to have given Fatawa based on the opinions they had extracted.

In fact, you will find that Muhammad ibn Al Harith Al Kushani has mentioned the Ulama of the Maliki Madhab with the title As Hab Al Ra’y (أصحاب الرأي) in his book, *Qudatu Qurtubah* (قضاة قرطبة). Hafidh Abul Walid Al Faradhi has also done the same in his book, *Tarikh Ulama Al Andalus* as has Abul Walid Al Baji in his book *Al Muntaqa*, which is a commentary upon *Al Muawatta*. In fact, Hafidh Ibn Abdil Barr has named his commentary upon *Al Muwatta* with the title *Al Istidhkar Li Madhahib Ulama Al Amsar Fi Ma Tadammanahul Muwatta Min Ma’anil Ra’y Wal Athar*.

(Footnotes upon *Al Raf’ Wal Takmil Fil Jarh Wal Ta’dil*, p.71, *Maktabul Matbu’at Al Islamiyyah*)

“And many insults were hurled at him (Imam Abu Hanifah) from the A’immah of the past until they reached a certain point, and it does not please the soul to discuss them (the insults), and Allah rejected [their insults] except that He declared his (Imam Abu Hanifah) innocence from what they had said, purifying him from what they had attributed to him. The summary of the matter with regards to him is that he did not at all contradict the Sunnah in rebellion, rather, his contradiction of the Sunnah was based upon Ijtihad and clear proof and appropriate and sound evidences, his proofs are present for the people to see, and very few of his detractors have been just towards him. In those places where he has made a mistake [in deducing a ruling], he has received one reward, and in those places where he has made a mistake [in deducing a ruling], he has received two rewards. Those who insult him do so based upon jealousy or ignorance of the methods of Ijtihad. The final view that is authentically established from Imam Ahmad with regards to him (Imam Abu Hanifah) was good remarks and praise for him. Abu Ward from our Fuqaha has mentioned it in his Kitab Usul Al Din. And Allah – the Glorified, the Exalted – knows best”

The Emergence of the Different Schools of Fiqh (ظهور المذاهب الفقهية)

Despite the fact that there were many Fuqahā and Mujtahidīn present during the time of the Tābi’ūn, the majority of them would only answer the questions that were posed to them. They did not intend to elaborate upon jurisprudential rulings in a manner that would resemble a codified set of laws that would cover all areas. Thus, the people of their cities would ask questions pertaining to their day-to-day matters without restricting themselves to the rulings of one particular Faqīh in all of their matters.

It was from the wisdom of Allaht the Almighty that Fiqh would be codified in the form of a law that would encompass all issues such that the growing needs of the people for jurisprudential rulings would be fulfilled, while ensuring that the people are not able to interpret the rulings of Sharī’ah in haphazard manner that would one day lead them to follow their desires.

For this purpose, Allah the Almighty created Fuqahā who would be followed by the people and who elaborated upon the rulings of Sharī’ah during every moment of their lives with an effort that would be unparalleled in all other religions. These Fuqahā dedicated their efforts in performing Ijtihād and extracting the rulings of Sharī’ah from its sources; being the Qur’ān, Sunnah, Ijmā’, and Qiyās (analogical deduction). The students of these Fuqahā then devoted themselves in writing and codifying what they had heard from their teachers in an encompassing book, such as *Al Mudawanah*, which was a compilation of the jurisprudential rulings derived by Imām Mālik. Another example of this is the books of Imām Muḥammad ibn Al Ḥasan which were a compilation of the jurisprudential rulings derived by Imām Abū Ḥanīfah. After this came Imām Al Shafi’ī who wrote and codified his own Fiqh in his book titled *Al Um*. The students of Imām Aḥmad ibn Ḥanbal also compiled his Fiqh by compiling the various narrations from him, those who followed then codified these narrations.

It was in this way that the schools of Fiqh became apparent in a complete manner. Initially, however, the schools of Fiqh were not limited to these four schools, rather, there were a group of distinguished Fuqahā who adopted the same methodology as these four great Fuqaha.¹⁰ However, their Fiqh was not properly written or codified and did

¹⁰ Allamah Marjani discusses the different schools of thought (*Al Mathahib Al Fiqhiyyah – المذاهب الفقهية*) that were established following the *Khairul Qurun* (خير القرون):

1. The school of Sufyan Al Thawri (d.161 AH)
Hafidh Al Thahabi mentions that Bishr Al Hafi (d.227 AH) used to follow the school of Sufyan Al Thawri. Imam Ghazali (d.505 AH) also indicates that after the school Imam Ahmed ibn Hanbal (d.241 AH), the school of Sufyan Al Thawri (d.161 AH) had the most followers.
2. The school of Abu Thawr Ibrahim ibn Khalid Al Kalbi (d.240 AH)
Al Hafidh Abul Abbas Al Hasan ibn Sufyan Al Nasawi (d.303 AH) used to give Fatwa according to the school of Abu Thawr (d.240 AH). Junaid ibn Muhammad Al Baghdadi (d.297 AH) also used to give Fatwa according to the school of Abu Thawr (d.240 AH).
3. The school of Dawud Al Zahiri (d.270 AH)
Abu Muhammad Ruwaym ibn Muhammad Al Baghdadi Al Zahid (d.303 AH) used to give Fatwa according to the school of Dawud Al Zahiri (d.270 AH).

not spread as much as the four schools. Thus, though these other schools of Fiqh may have gained mention in specific books that were written to gather the different views of the Fuqahā on a certain issue, they are not practically found today in their complete form.

Accordingly, by the will of Allah the Almighty, the people sufficed upon these four schools of Fiqh.

The people who followed these four schools of Fiqh then spread across the various lands.

Geographical Locations of the Four Schools of Thought

The Ḥanafīs

The Ḥanafīs were initially in ‘Irāq, and then spread all across ‘Irāq. In fact, it became the Madhab of the courts of the Abbasid Caliphate as Imām Abū Yūsuf was made the judge of judges (قاضي القضاة) during the reign of Hārūn Al Rashīd. From ‘Irāq, the Ḥanafī Madhab spread to the majority of the Islāmīc lands specifically Transoxianna, Turkey, India, and Sidh.

The Ḥanafī Madhab was also the official Madhab of the Ottoman Empire, this meant that their laws were based upon the Ḥanafī Madhab.

The Mālikīs

The Mālikīs are mostly found in Morocco, Algeria, Tunisia, Libya, Upper Egypt, Sudan, Bahrain, and Kuwait.

The Shāfi’īs

The Shāfi’īs are mostly found in Egypt, Syria, Malaysia, and Indonesia.

The Ḥanbalīs

The Ḥanbalīs are mostly found in the Arab countries.

The Issue of Taqlīd and Following a School of Fiqh/Madhab (مسألة التقليد والتمذهب)

From an early age, the people would ask the scholars those Masāil that they needed to know in their lives. This is because the general masses were not capable of extracting the rulings of Sharī’ah from its sources. Hence, it was necessary for them to revert to someone who had knowledge of the rulings of Sharī’ah. This was also the command of Allah the Almighty:

فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ

“So ask those who have knowledge if you do not know”

[Surah Al Nahl, verse 43]

-
4. The school of Muhammad ibn Jarir Al Tabari (d.310 AH)
Abul Faraj Mu’afi ibn Imran Al Naharawani (d.390 AH) used to follow the school of Muhammad ibn Jarir Al Tabari (d.310 AH)
 5. The school of Abu Bakr Muhammad ibn Ishaq ibn Khuzaimah Al Naysaburi (d.311 AH)
Abu Muhammad Da’laj ibn Ahmad Al Sijzi (d.351 AH) used to give Fatwa according to the school of Abu Bakr Muhammad ibn Ishaq ibn Khuzaimah Al Naysaburi (d.311 AH)
 6. The school of Baqi ibn Makhlad Al Qurtubi (d.276 AH)
 7. The school of Ishaq ibn Rahwayh (d.238 AH)

(Sihabet Din Al Marcani, “Nāzūratul Haq” (Beirut: Dar Al Fath,), p.138-139.)

A Muftī had always been considered a reliable source for the rulings of Sharī'ah due to his knowledge and his consciousness of Allah the Almighty, thus the people would not demand evidence for the rulings that a Muftī would provide. This, infact, is the very definition of Taqlīd, for Taqlīd is defined as:

الْعَمَلُ بِقَوْلِ الْغَيْرِ مِنْ غَيْرِ مَعْرِفَةٍ دَلِيلِهِ

“To act upon the view of another individual without knowing his evidence”

However, during the righteous ages (*khairul qurūn*), the people did not confine themselves to asking only one Muftī in such a way that they would not permit one to ask another Muftī. Nonetheless, the people did have specific affinities with particular scholars from their cities such that they would rely upon these scholars on most occasions and would revert to them for most if not all of their issues.

An example of this is found in the narration of Ṣaḥīḥ Al Bukhārī wherein Imām Al Bukhārī has narrated from 'Ikrimah that the people of Madīnah asked Ḥaḍrat 'Abdullah ibn 'Abbās Raḍiyallāhu 'Anhu if it is permissible for a woman who begins menstruating after *Ṭawāf Al Ziyārah* to return to her home before performing *Ṭawāf Al Widā'*. Ḥaḍrat 'Abdullah ibn 'Abbās Raḍiyallāhu 'Anhu replied that it is permissible for her to return home and leave out her *Ṭawāf Al Widā'*.

However, the people of Madīnah replied:

لَا نَأْخُذُ بِقَوْلِكَ وَنَدَعُ قَوْلَ زَيْدٍ

“We shall not take your view and leave the view of Zayd”

In Al Ismā'īlī's narration of Ṣaḥīḥ Al Bukhārī, the people of Madīnah replied:

لَا نُبَالِي أَفْتَيْنَا أَوْ لَمْ تُفْتِنَا زَيْدُ بْنُ ثَابِتٍ يَقُولُ لَا تَنْفَرُ

“We do not care whether you give us a Fatwā or not, Zayd ibn Thābit says that she must not leave”

In Al Ṭayālīsī's narration of Ṣaḥīḥ Al Bukhārī, the people of Madīnah replied:

لَا تُتَابِعُكَ يَا ابْنَ عَبَّاسٍ وَأَنْتَ تُخَالِفُ زَيْدًا

“We shall not follow you, oh Ibn 'Abbās, when you are contradicting Zayd”

This was due to the fact that the people of Madīnah had a reliance upon Ḥaḍrat Zayd ibn Thābit Raḍiyallāhu 'Anhu.

Eventually, Ḥaḍrat Zayd ibn Thābit Raḍiyallāhu 'Anhu changed his view when he heard of the Ḥadīth of Ḥaḍrat Ṣafiyyah Raḍiyallāhu 'Anhā. Imām Muslim has narrated from Ṭawūs Raḥimahullah that he said:

كُنْتُ مَعَ ابْنِ عَبَّاسٍ إِذْ قَالَ لَهُ زَيْدُ بْنُ ثَابِتٍ تُفْعِي أَنْ تَصَدَرَ الْحَائِضُ قَبْلَ أَنْ يَكُونَ آخِرُ عَهْدِهَا بِالنِّبْتِ؟ فَقَالَ ابْنُ عَبَّاسٍ إِمَّا لَا فَسَلْ فَلَانَةَ الْأَنْصَارِيَّةِ (وَالظَّاهِرُ أَنَّهَا أُمُّ سُلَيْمٍ كَمَا فِي رَوَايَةِ الْبُخَارِيِّ) هَلْ أَمَرَهَا النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ؟ قَالَ فَرَجَعَ زَيْدُ بْنُ ثَابِتٍ إِلَى ابْنِ عَبَّاسٍ يَضْحَكُ وَهُوَ يَقُولُ مَا أَرَاكَ إِلَّا قَدْ صَدَقْتَ

“I was with Ibn 'Abbās when Zayd ibn Thābit said to him, ‘you issue a Fatwā that it is permissible for a menstruating woman to leave before making a final farewell with the Ka’ba (*Ṭawāf Al Widā'*)?’ So Ibn Abbas replied, ‘If you say no, then ask that Ansārī woman, (it seems that this woman was Umm Sulaym as mentioned in the narration of Al Bukhārī) “Did the Prophet Ṣallallāhu ‘Alayhi Wasallam give her a command [in this regard]?’” So Zayd ibn Thābit returned to Ibn 'Abbās [after having asked Umm Sulaym] while laughing and saying, ‘I do not see you except that you are right’”

When Ḥaḍrat Zayd ibn Thābit Raḍiyallāhu 'Anhu changed his view to it being permissible for a woman who begins menstruating to return home before performing *Ṭawāf Al Widā'*, the people of Madīnah also followed Ḥaḍrat Zayd ibn Thābit Raḍiyallāhu 'Anhu in changing their view.

Another example is found in that which has been narrated by Imām Aḥmad ibn Ḥanbal Raḥimahullah from Abū Idrīs Al Khawlānī Raḥimahullah who said:

أَتَيْتُ مَسْجِدَ أَهْلِ دِمَشْقَ فَإِذَا خَلْقَةٌ فِيهَا كُحُولٌ مِّنْ أَصْحَابِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ (وَفِي رِوَايَةٍ كَثِيرٍ بَنُ هِشَامٍ: فَإِذَا فِيهِ نَحْوُ ثَلَاثِينَ كُفْهًا مِّنْ أَصْحَابِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ) وَإِذَا شَابَّ فِيهِ أَكْحَلُ الْعَيْنَيْنِ بُرَاقُ الثَّنَائَا كُلَّمَا اخْتَلَفُوا فِي شَيْءٍ رُّدُّهُ إِلَى الْفَقَى فَقَى شَابَّ قَالَ قُلْتُ لَجَلِيسٍ لِّي مَن هَذَا؟ قَالَ هَذَا مُعَاذُ بْنُ جَبَلٍ وَفِي رِوَايَةٍ أُخْرَى إِذَا اخْتَلَفُوا فِي شَيْءٍ أَسْنَدُوهُ إِلَيْهِ وَصَدَرُوا عَنْ رَأْيِهِ

“I came to the Masjid of Damascus and I found a group of youngsters who were from amongst the companions of the Prophet Ṣallallāhu ‘Alayhi Wasallam (in the narration of Kathīr ibn Hishām, it states: “I found a group of roughly 30 youngsters from amongst the companions of the Prophet Ṣallallāhu ‘Alayhi Wasallam”) and I found a youngster amongst them, he had black eyes and beaming front teeth, every time the people would differ in an issue, they would revert the matter to the youngster, so I said to the one sitting next to me, ‘Who is this [youngster]?’ He replied, ‘This is Mu’adh ibn Jabal!’”. In another narration, [the person said], ‘When they (the people) differ over an issue, they direct it towards him and follow his opinion’

There are many examples of such incidents.

The upshot is that many of the laymen in the early stages of Islām had a scholar that they relied upon and whose Fatāwā they gave preference to over the Fatāwā of others. There were also many who did not suffice with asking their questions to only one individual, this was because a school of Fiqh had not been established at this point in time, thus there was no harm for them to ask whomsoever they wished, even if the individual was someone whom they did not refer to very often.

In this age, there was no fear of people choosing the views which were according to their desires when a difference of opinion was found in a particular Mas’alah, this was because it was very difficult for a questioner to know the view of another Muftī without asking him due to the fact that a single scholar’s Fiqh had not yet been codified.

However, after this age, the four schools of Fiqh were codified and books were written for each school of Fiqh. Eventually, these schools of Fiqh became regimented such that one would be able to follow one school of Fiqh in all of the Masāil that one could be presented with. Thus, the views of these schools of Fiqh became known to the people, hence, if one were now to be permitted to follow whichever view he pleases, it would lead to one following his desires, not Sharī’ah.

There is no doubt that each of these Fuqahā did not adopt a view except that it was based upon a strong evidence, and not upon their personal desires. Hence, considering that each view was based upon an evidence, it was permissible for another Faqīh to adopt or reject the view that the earlier Faqīh had adopted based upon a stronger evidence that he had found from the sources of Sharī’ah. However, a layman is not capable of comparing the various views of the Fuqahā in consideration of the evidences found in Sharī’ah, thus if a layman was allowed to choose between the various view, he would do so based upon his personal desires and not in consideration of the evidences of Sharī’ah.

Furthermore, each of these schools of Fiqh have a specific system which they follow. This means that there are many Masāil found in a school of Fiqh that are connected to other Masāil. So, if a ruling of a school of Fiqh were to be taken in one Mas’alah and left in another connected Mas’alah, it would lead to a corruption of the system by which the school of Fiqh runs and would lead to a precarious situation known as Talfīq, which is not considered permissible according to most scholars.

It is indeed difficult for a layman to understand the intricacies of Sharī’ah, thus if it was made permissible for the general masses to choose the rulings that they wish, it would lead to a corruption in the rulings of the noble Sharī’ah. It is at this point that there is a need for one to adopt a school of Fiqh, not because the Imām of the school of Fiqh is someone who himself is worthy of being obeyed, God forbid, rather, it is because the follower (*Muqallid*) has more reliance upon the Imām’s knowledge of Sharī’ah and its evidences than upon others, or it is because the follower (*Muqallid*) finds it easier to recognise the rulings of one school of Fiqh than the rulings of other schools of Fiqh.

It is through this following of a school of Fiqh that the general masses may systematically follow the rulings of Sharī'ah, without following their whims and desires. This is all in consideration of the fact that the scholars have rebuked the one who chooses from the opinions of the scholars based upon his personal desires.

Hāfiz ibn Hajar Al 'Asqalānī (d.882 AH) Raḥimahullah has recorded in *Al Talkhīṣ Al Ḥabīr* (التلخيص الحبير) that Ma'mar ibn Rāshid Raḥimahullah said:

لَوْ أَنَّ رَجُلًا أَخَذَ يَقُولُ أَهْلُ الْمَدِينَةِ فِي اسْتِمَاعِ الْغِنَاءِ وَإِتْيَانِ النِّسَاءِ فِي أَذْبَارِهِمْ وَيَقُولُ أَهْلُ مَكَّةَ فِي الْمُنْعَةِ وَالصَّرْفِ وَيَقُولُ أَهْلُ الْكُوفَةِ فِي الْمُسْكِرِ كَانَ شَرَّ عِبَادِ اللَّهِ

“If a person takes the view of the people of Madīnah in the issue of listening to music and having intercourse through the anal passage, and took the view of the people of Makah in the issue of Muṭ'ah, and took the view of Kūfā in the issue of drinking alcohol, then he is the worst of the servants of Allah”

Hāfiz Ibn Taymiyyah Raḥimahullah (d.728 AH) states in his Fatāwa:

وَنَظِيرُ هَذَا أَنْ يَعْتَقِدَ الرَّجُلُ ثُبُوتَ شُفْعَةِ الْجَوَارِ إِذَا كَانَ طَالِبًا وَعَدَمَ ثُبُوتِهَا إِذَا كَانَ مُشْتَرِيًا فَإِنَّ هَذَا لَا يَجُوزُ بِالْإِجْمَاعِ وَكَذَا مَنْ بَنَى عَلَى صِحَّةِ وَلَايَةِ الْفَاسِقِ فِي خَالِ نِكَاحِهِ وَبَنَى عَلَى فَسَادِ وَلَايَتِهِ فِي خَالِ طَلَاقِهِ لَمْ يَجْزِ ذَلِكَ بِإِجْمَاعِ الْمُسْلِمِينَ وَلَوْ قَالَ الْمُسْتَفْهِيُ الْمَعْنَى أَنَا لَمْ أَكُنْ أَعْرِفُ ذَلِكَ وَأَنَا مِنَ الْيَوْمِ أَتَزَوَّجُ ذَلِكَ لَمْ يَكُنْ لَهُ ذَلِكَ لِأَنَّ ذَلِكَ يَفْتَحُ بَابَ التَّلَاعُبِ بِالذِّينِ وَفَتْحَ الدَّرِيعَةِ إِلَى أَنْ يَكُونَ التَّخْلِيلُ وَالتَّخْرِيمُ بِحَسَبِ الْهَوَاءِ

“An example of this is that a person establishes the right of preemption (*Shuf'ah*) when he is the one demanding the right of preemption (*Shuf'ah*), however, when he is the individual buying the item, he does not establish the right of preemption (*Shuf'ah*). Surely, this [attitude] is not permissible by consensus. Similarly, if one holds the opinion that a corrupt individual may be a guardian (*Walī*) at the time of his marriage (*Nikāh*) but does not hold this opinion when he gives a divorce, then this [attitude] is [also] impermissible by a consensus of the Muslims. If a specific questioner says, ‘I did not know that and I shall follow that from this day onwards’ (i.e. change the rulings he is required to follow), it will not be permissible for him to do so as this will open the doors for one to play with religion, and it will open the path for ḥalāl and ḥarām to be determined according to one’s desires”

Imām Al Nawawī Raḥimahullah (d.676 AH) states in his *Al Majmū' Sharḥ Al Muḥadḍah* (المجموع شرح المذهب):

وَوَجْهُهُ أَنَّهُ لَوْ جَازَ اتِّبَاعُ أَيِّ مَذْهَبٍ شَاءَ لَأَفْضَى إِلَى أَنْ يُلْتَقِطَ رَحْصَ الْمَذَاهِبِ مُتَّبِعًا هَوَاهُ وَيَتَخَيَّرَ بَيْنَ التَّخْلِيلِ وَالتَّخْرِيمِ وَالْوُجُوبِ وَالْجَوَازِ وَذَلِكَ يُؤَدِّي إِلَى الْخِلَالِ رِنَقَةٍ التَّكْلِيفِ بِخِلَافِ الْعَصْرِ الْأَوَّلِ فَإِنَّهُ لَمْ تَكُنِ الْمَذَاهِبُ الْوَافِيَةُ بِأَحْكَامِ الْحَوَادِثِ مُهَذَّبَةً وَعُرِفَتْ فَعَلَى هَذَا يُلْزَمُهُ أَنْ يَجْتَهِدَ فِي اخْتِيَارِ مَذْهَبٍ يَقْلُدُهُ عَلَى التَّعْيِينِ

“The reason for this is that if it was permissible for one to follow whichever school of Fiqh he wishes [at any moment]; it would lead to him following the concessions of each school in accordance to his desires and he shall choose between ḥalāl and ḥarām, necessity and permissibility, this would lead to a dissolution of the chains of the obligations of Sharī'ah. This is in contrast to the early age [of the Ṣaḥābah, Ṭābi'ūn, Ṭab'u Ṭābi'ūn], for indeed, at that time, the schools of Fiqh did not encompass the rulings of all the Masā'il that had occurred in a codified manner such that they (the rulings) were known [to everyone]. Based upon this, it is necessary for a person to perform Ijtihād in choosing a school of Fiqh which he should specifically follow”

'Allāmah Ibn Khaldūn Raḥimahullah (d.808 AH) states in his *Al Muqaddamah* (المقدمة):

وَوَقَفَ التَّقْلِيدُ فِي الْأُمُصَارِ عِنْدَ هَؤُلَاءِ الْأَرْبَعَةِ وَدَرَسَ الْمُقْلِدُونَ لِمَنْ سِوَاهُمْ وَسَدَّ النَّاسُ بَابَ الْخِلَافِ وَطَرَفَهُ لَمَّا كَثُرَ تَشَعُّبُ الْإِصْطِلَاحَاتِ فِي الْعُلُومِ وَلَمَّا عَاقَ عَنِ الْوُصُولِ إِلَى أَيْ رُتْبَةِ الْإِجْتِهَادِ وَلَمَّا خَشِيَ مِنْ إِسْنَادِ ذَلِكَ إِلَى غَيْرِ أَهْلِهِ وَمَنْ لَا يُوثِقُ بِرَأْيِهِ وَلَا بِدِينِهِ فَصَرَّحُوا بِالْعِزِّ وَالْإِعْوَازِ وَرَدُّوا النَّاسَ إِلَى تَقْلِيدِ هَؤُلَاءِ كُلِّ مَنْ اخْتَصَّ بِهِ مِنَ الْمُقْلِدِينَ وَحَظَرُوا أَنْ يَتَذَاوَلَ تَقْلِيدُهُمْ لِمَا فِيهِ مِنَ التَّلَاعُبِ وَلَمْ يَبْقَ إِلَّا نَقْلُ مَذَاهِبِهِمْ وَعَمِلَ كُلُّ مُقْلِدٍ بِمَذْهَبٍ مِنْ قَلْدِهِ مِنْهُمْ بَعْدَ تَصْحِيحِ الْأُصُولِ وَاتِّصَالِ سَدِيدِهَا بِالرَّوَايَةِ لَا تَحْصُولُ الْيَوْمَ لِلْفِقْهِ غَيْرُ هَذَا وَمَدَّعَى الْإِجْتِهَادِ لِهَذَا الْعَهْدِ مَرْدُودٌ مِنْكَوْصٍ عَلَى عَقِبِهِ مَهْجُورٌ تَقْلِيدُهُ وَقَدْ صَارَ أَهْلُ الْإِسْلَامِ الْيَوْمَ عَلَى تَقْلِيدِ هَؤُلَاءِ الْأَئِمَّةِ الْأَرْبَعَةِ

“*Taqīd* (following a school of Fiqh) came to a pinnacle from all ages to these four scholars and the followers [of these four scholars] erased all others besides these [four scholars] and the people closed the doors of dispute and all of its pathways. When the divide in the terminologies of knowledge increased, and when it was difficult to

reach any level of Ijtihād, and when it was feared that it (Ijtihād) would be assigned to those who were not worthy of it and those whose views and religion are not relied upon, then they (the scholars) announced their weakness and inability, and they reverted the people to follow these [four scholars]; any one of them which the followers may choose. And they (the scholars) prohibited that they (the four scholars) are followed alternately as this constitutes [making an] amusement [of religion]. And nothing remained except copying their views. And every follower [of a school of Fiqh] acted according to the view of the one whom he had followed after establishing the preferred principles [of that scholar] and ensuring that the chain of narration for the view is a connected chain. In this day and age, there is no achievement in Fiqh besides this. The one who claims [the ability of] Ijtihād in this day and age shall be rejected and sent back on his heels, he shall not be followed. Indeed, the Muslims in this day and age have become [unified] upon following these four scholars”

Shāh Walīullah Raḥimahullah states in *Al Inṣāf Fī Bayān Asbāb Al Ikhtilāf* (الإِنصاف في بيان أسباب الاختلاف):

إِعْلَمُ أَنَّ النَّاسَ كَانُوا فِي الْمِائَةِ الْأُولَى وَالثَّانِيَةِ غَيْرَ مُجْمَعِينَ عَلَى التَّقْلِيدِ لِمَذْهَبٍ وَاحِدٍ بَعِيْنِهِ وَبَعْدَ الْمِائَتَيْنِ ظَهَرَ فِيْهِمُ التَّمَذُّبُ لِلْمُجْتَهِدِيْنَ بِأَعْيَانِهِمْ وَقَالَ مَنْ لَا يَعْتَمِدُ عَلَى مَذْهَبٍ مُّجْتَهِدٍ بَعِيْنِهِ وَكَانَ هَذَا هُوَ الْوَاجِبُ فِي ذَلِكَ الزَّمَانِ فَإِنْ قُلْتَ كَيْفَ يَكُونُ شَيْءٌ وَاحِدٌ غَيْرُ وَاجِبٍ فِي زَمَانٍ وَاجِبًا فِي زَمَانٍ آخَرَ مَعَ أَنَّ الشَّرْعَ وَاحِدٌ... قُلْتُ الْوَاجِبُ الْأَصْلِيُّ هُوَ أَنْ يَكُونَ فِي الْأُمَّةِ مَنْ يَعْرِفُ الْأَحْكَامَ الْفُرْعِيَّةَ مِنْ أَدْلَتِهَا التَّفْصِيلِيَّةِ أَجْمَعَ عَلَى ذَلِكَ أَهْلُ الْحَقِّ وَمَقْدَمَةُ الْوَاجِبِ وَاجِبَةٌ إِذَا كَانَ لِلْوَاجِبِ طَرِيقٌ مُتَعَدِّدَةٌ وَجِبَ تَحْصِيلُ طَرِيقٍ مِنْ تِلْكَ الطَّرِيقِ مِنْ غَيْرِ تَعْيِينٍ وَإِذَا تَعَيَّنَ لَهُ طَرِيقٌ وَاحِدٌ وَجِبَ ذَلِكَ الطَّرِيقُ بَخْصُوصِهِ... وَعَلَى هَذَا يَنْبَغِي أَنْ الْقِيَاسَ وَجُوبَ التَّقْلِيدِ لِإِمَامٍ بَعِيْنِهِ فَإِنَّهُ قَدْ يَكُونُ وَاجِبًا وَقَدْ لَا يَكُونُ وَاجِبًا

“Know that the people in the first and second century were not unanimous upon following a specific school of Fiqh (Taqlīd). After the second century, the notion of following the school of a specific Mujtahid became apparent amongst them, and there were very few who did not rely upon the school of a specific Mujtahid, and this was what was necessary in that age. If you ask, ‘How can a single thing *not* be necessary (*Wājib*) in an age and *be* necessary (*Wājib*) in another age even though the Sharī’ah is one?’ . . . I say, ‘The principal necessity (*Al Wujūb Al Aṣlī*) is that there must be someone in the Ummah who knows the rulings of Masāil and their evidences in detail. The people of truth have a consensus upon this [principal necessity]. Accordingly, fulfilling a necessary act (*Wājib*) is also necessary (*Wājib*). Thus, when a necessary act (*Wājib*) has many pathways, then it is necessary (*Wājib*) to adopt one of these pathways without specification, however, when there is only specific pathway [available], then this pathway shall be specified . . . based upon this, analogical deduction would demand that to follow a specific Imām is at times necessary (*Wājib*), and at times, not necessary (*Wājib*)”

Shāh Waliullah Raḥimahullah adds in *Hujjatullāh Al Bāligah* (حجة الله البالغة):

إِنَّ هَذِهِ الْمَذَاهِبَ الْأَرْبَعَةَ الْمُدَوَّنَةَ الْمُحَرَّرَةَ قَدْ أَجْمَعَتِ الْأُمَّةُ أَوْ مَنْ يُعْتَدُّ بِهِ مِنْهَا عَلَى جَوَازِ تَقْلِيدِهَا إِلَى يَوْمِنَا هَذَا وَفِي ذَلِكَ مِنَ الْمَصَالِحِ مَا لَا يَخْفَى لَا سِيَّمَا فِي هَذِهِ الْأَيَّامِ الَّتِي قَصُرَتْ فِيْهَا الْهَمَمُ جَدًّا وَأُشْرِبَتِ النَّفُوسُ الْهَوَى وَأَعْجَبَ كُلُّ ذِي رَأْيٍ بِرَأْيِهِ

“Indeed, these four codified and organised schools of Fiqh, the Ummah or those who are relied upon are unanimous to this day upon the permissibility of following (Taqlīd) them.

Even though there were many Mujtahidin Fuqahā who had spread across the various Muslim lands, it was from the will of Allah the Almighty that their schools of Fiqh would not be codified in a proper manner like the schools of the four scholars. These four schools of Fiqh became indisputably attributed to the four Fuqahā. The students of these four Fuqahā who would study, analyse, and extract rulings from these schools of Fiqh also increased. This did not happen for the other schools of Fiqh.

Shāh Waliullah Raḥimahullah writes in *Al Inṣāf Fī Bayān Asbāb Al Ikhtilāf* (الإِنصاف في بيان أسباب الاختلاف):

وَبِالْجُمْلَةِ فَالتَّمَذُّبُ لِلْمُجْتَهِدِيْنَ سِرٌّ أَهْمَهُ اللَّهُ تَعَالَى الْعُلَمَاءُ وَجَمْعُهُمْ عَلَيْهِ مِنْ حَيْثُ يَشْعُرُونَ أَوْ لَا يَشْعُرُونَ

“In conclusion, following a school of Fiqh of the Mujtahidīn was a mystery which Allah put into the hearts of the scholars and unified them upon it whether they realised it or not”

It is based upon this that the scholars say, "It is necessary for a non-Mujtahid to follow one of these four schools of Fiqh and to not follow any other school of Fiqh".¹¹

Shāh Waliullah Raḥimahullah writes in *'Iqd Al Jīd Fī Ahkām Al Ijtihād Wal Taqlīd* (عقد الجيد في أحكام الاجتهاد والتقليد):

إِعْلَمَنَّ أَنَّ فِي الْأَخْذِ بِهَذِهِ الْمَذَاهِبِ الْأَرْبَعَةِ مَصْلَحَةً عَظِيمَةً وَفِي الْإِعْرَاضِ عَنْهَا كُلِّهَا مَفْسَدَةٌ كَبِيرَةٌ وَنَحْنُ نُبَيِّنُ ذَلِكَ بِوُجُوهِ

"Know that in adopting one of these four schools of Fiqh, there is great benefit, and in completely moving away from it, there is a great evil, and we shall elaborate upon this through various reasons"

Why can we not follow (Taqlīd) the jurisprudential rulings of a Ṣaḥābī?

Imām Al Nawawī Raḥimahullah writes:

وَلَيْسَ لَهُ التَّمَذُّبُ بِمَذْهَبٍ أَحَدٍ مِنَ أَيْمَةِ الصَّحَابَةِ رَضِيَ اللَّهُ عَنْهُمْ وَغَيْرِهِمْ مِنَ الْأَوَّلِينَ وَإِنْ كَانُوا أَعْلَمَ وَأَعْلَى دَرَجَةً مِمَّنْ بَعْدَهُمْ لِأَنَّهُمْ لَمْ يَتَفَرَّغُوا لِتَدْوِينِ الْعِلْمِ وَضَبْطِ أَصُولِهِ وَفُرُوعِهِ فَلَيْسَ لِأَحَدٍ مِنْهُمْ مَذْهَبٌ مُهَدَّبٌ مُحَرَّرٌ مُقَرَّرٌ وَإِنَّمَا قَامَ بِذَلِكَ مَنْ جَاءَ بَعْدَهُمْ مِنَ الْأَيْمَةِ النَّاحِلِينَ لِمَذَاهِبِ الصَّحَابَةِ وَالتَّابِعِينَ الْقَائِمِينَ بِتَمْهِيدِ أَحْكَامِ الْوُقُوعِ قَبْلَ وَقُوعِهَا النَّاهِضِينَ بِإِصْحَاحِ أَصُولِهَا وَفُرُوعِهَا كَمَا لِكِ وَأَيُّ حَيْثُفَةٍ وَغَيْرِهَا

"It is not permissible for him (a Muslim) to adopt the school of Fiqh of any of the A'immah of the Ṣaḥābah, may Allah be pleased with them, and those besides them from the early scholars (Tābi'ūn), even though they were more knowledgeable and of a higher status than those who came after them. This is because they did not free themselves to codify knowledge and to compile its principles and Masāil, thus not one of them has a codified and organised school of Fiqh. Indeed, this (codifying and organising a school of Fiqh) was carried out by those who came after them from amongst the A'immah that ascribed themselves to the views of the Ṣaḥābah and Tābi'ūn, and who took the responsibility of deducing the rulings of Masāil before they had occurred, and undertook the responsibility of elaborating upon their principles (i.e. the principles of the rulings) and their subsidiary issues, such as [Imām] Mālik and [Imām] Abū Ḥanīfah, and others"

In fact, Hāfiẓ Al Munāwī Raḥimahullah has narrated from Hāfiẓ At-Dhahabī Raḥimahullah that he said:

وَجِبَ عَلَيْنَا أَنْ نَعْتَقِدَ أَنَّ الْأَيْمَةَ الْأَرْبَعَةَ وَالسُّفْيَانَيْنِ وَالْأَوْزَاعِيَّ وَذَاوَدَ الطَّاهِرِيَّ وَإِسْحَاقَ بْنَ رَاهُوَيْهِ وَسَائِرَ الْأَيْمَةِ عَلَى هَذِي وَلَا التَّبَاتِ لِمَا تَكَلَّمَ فِيهِمْ بِمَا هُمْ بِرِئُوسٍ مِنْهُ وَالصَّحِيحُ وَفَاقًا لِلْجَمْعِ أَنَّ الْمَصِيبَ فِي الْفُرُوعِ وَاحِدٌ وَلِلَّهِ تَعَالَى فِيمَا حُكِّمَ عَلَيْهِ أَمَارَةٌ وَأَنَّ الْمُجْتَهِدَ كُفِّ بِإِصَابَتِهِ وَأَنَّ مُحْطَطَهُ لَا يَأْتِمُ بَلْ يُؤْجَرُ فَمَنْ أَصَابَ فَلَهُ أَجْرَانِ وَمَنْ أَخْطَأَ فَاجْرُ نَعَمْ! إِنْ قَصَرَ الْمُجْتَهِدُ أَوْ اتَّفَقَا وَعَلَى غَيْرِ الْمُجْتَهِدِ أَنْ يُقْلَدَ مَذْهَبًا مُعَيَّنًا... لَكِنْ لَا يَجُوزُ تَقْلِيدُ الصَّحَابَةِ وَكَذَا التَّابِعِينَ كَمَا قَالَ إِمَامُ الْحَرَمِيِّ مَنْ كُلِّ مَنْ لَمْ يَدُونْ مَذْهَبُهُ فَيَمْتَنِعُ تَقْلِيدُ غَيْرِ الْأَرْبَعَةِ فِي الْقَضَاءِ وَالْإِفْتَاءِ لِأَنَّ الْمَذَاهِبَ الْأَرْبَعَةَ انْتَشَرَتْ وَتَحَرَّرَتْ حَتَّى ظَهَرَ تَقْلِيدُ مُطْلَقِهَا وَتَخَصُّصُ عَائِلَتِهَا بِخِلَافِ غَيْرِهِمْ لَا نَقِرَاصِ اتِّبَاعِهِمْ وَقَدْ نَقَلَ الْإِمَامُ الرَّازِيُّ رَحِمَهُ اللَّهُ تَعَالَى إِجْمَاعَ الْمُحَقِّقِينَ عَلَى مَنْعِ الْعَوَامِ مِنْ تَقْلِيدِ أَغْيَانِ الصَّحَابَةِ وَأَكْبَارِهِمْ

"It is incumbent upon us to believe that the four A'immah, the two Sufyans (Sufyān Al Thawrī and Sufyān ibn 'Uyaynah), [Imām] Al Awza'ī, [Imām] Dāwūd Al Zahirī, [Imām] Ishāq ibn Rāhwayh, and all the scholars were upon [true] guidance and there is no turning towards the one who says regarding them that which they are free from. The correct view, in conformity with the majority, is that there is only one correct view in these Masail. But Allah the Almighty has kept a determination in that which he has commanded, and the Mujtahid is obligated to reach this determination, and the one (Mujtahid) who errs [in reaching this determination] shall not be sinful, rather, he shall be rewarded. Hence, the one who reaches this determination shall receive two rewards, and he who errs receives one reward. Yes! If a Mujtahid is negligent, then he shall be sinful by consensus, and it is upon a non-Mujtahid to follow a specific school of Fiqh...however, it is not permissible to follow [the jurisprudential rulings

¹¹ A question may be raised regarding the statement found in Al Bahr Al Raiq in which Ibn Nujaym Raḥimahullah writes:

وقد علم من هذا أن مذهب العامي فتوى مفتيه من غير تقييد بمذهب ولهذا قال في "الفتح" الحكم في حق العامي فتوى مفتيه

"Indeed, it is known from this that the view of the layman is whatever Fatwa the Mufti gives him without him following any specific Madhab, this is why it is mentioned in Al Fath [Al Qadir], 'the ruling for a layman is the Fatwa of a Mufti'"

However, Mufti Husain Kadodia Sb explains that this was in regards to those areas wherein the general laymen do not follow any specific Madhab. There are many places like this in this day and age too, such as various parts of Egypt, wherein the laymen simply follow whatever a Mufti tells them. They do not follow any of the four schools of thought.

of] the Ṣaḥābah and similarly the Ṭābi'ūn, as has been said by Imām Al Ḥaramayn with regards to [following] any individual (Mujtahid) whose school of Fiqh was not codified, thus it is impermissible to follow a school of Fiqh outside of the four schools of Fiqh in judicial decrees and Fatawā. This is because the four schools of Fiqh have spread and have become codified, such that its absolutes have been confined and its generalities have been specified, contrary to those other than them, due to their followers becoming extinct. Indeed, Imām Al Rāzī, may Allah have mercy upon him, has recorded a consensus of the [scholars who were] researchers that the layman must be stopped from following [the jurisprudential rulings of] the Ṣaḥābah and the Ṭābi'ūn"¹²

How one should decide which school of Fiqh to follow

Shāh Waliullah writes *Al Inṣāf Fī Bayān Asbāb Al Ikhtilāf* (الإنصاف في بيان أسباب الاختلاف):

فَإِذَا كَانَ إِنْسَانٌ جَاهِلٌ فِي بِلَادِ الْهِنْدِ أَوْ فِي بِلَادِ مَا وَرَاءَ النَّهْرِ وَلَيْسَ هُنَاكَ عَالِمٌ شَافِعِيٌّ وَلَا مَالِكِيٌّ وَلَا حَنَبَلِيٌّ وَلَا كِتَابٌ مِنْ كُتُبِ هَذِهِ الْمَذَاهِبِ وَحَبَّ عَلَيْهِ أَنْ يُقَلِّدَ لِمَذْهَبٍ أَيْ حَنِيفَةً وَيَجُزُّ عَلَيْهِ أَنْ يَخْرُجَ مِنْ مَذْهَبِهِ لِأَنَّهُ حِينَئِذٍ يَخْلَعُ رِبْقَةَ الشَّرِيعَةِ وَيَبْقَى سُدًى مُهْمَلًا بِخِلَافِ مَا إِذَا كَانَ فِي الْحَرَمَيْنِ فَإِنَّهُ مُتَيَسِّرٌ لَهُ هُنَاكَ مَعْرِفَةُ جَمِيعِ الْمَذَاهِبِ وَلَا يَكْفِيهِ أَنْ يَأْخُذَ بِالطَّنِّ مِنْ غَيْرِ تَقَرُّعٍ وَلَا أَنْ يَأْخُذَ مِنَ أَلْسِنَةِ الْعَوَامِ وَلَا أَنْ يَأْخُذَ مِنْ كِتَابٍ غَيْرِ مَشْهُورٍ كَمَا ذَكَرَ كُلُّ ذَلِكَ فِي النَّهْرِ الْفَاتِيحِ شَرْحَ كَنْزِ الدَّقَائِقِ

“When there is a layman in the cities of greater India or in the cities of Transoxianna and there is no Shafi’i scholar or Mālikī scholar or Ḥanbalī scholar, and there is no book from the books of these schools of Fiqh, then it is necessary upon him to follow the school of [Imām] Abu Hanifah, and it is forbidden for him to leave his (Imam Abu Hanifah) school of Fiqh, because in such a case, he shall [eventually] abandon the chains of Shar’ah and shall become a useless derelict. This is contrary to if he is in the Ḥaramayn (Makah and Madinah), for it is easy for him to recognise all the schools of Fiqh over there, and it is not enough for him to logically take that which is not reliable or to take that which is upon the tongues of the laymen or to take that which is found in an unknown book, as has been mentioned in *Al Nahr Al Fā’iq Sharḥ Kanz Al Daqāiq*”

Conclusion

The upshot of the above is that our sole purpose is to follow the rulings of Shar’ah as revealed in the Qur’ān and Sunnah. Hence, considering that it is usually not easy for a non-Mujtahid to extract these rulings, either due to a lack of understanding or because the evidential texts of the Qur’ān and Sunnah hold more than one meaning or because the evidences of the Qur’ān and Sunnah are seemingly contradicting one another, a non-Mujtahid should take the view of a Mujtahid that he relies upon more than his reliance upon other people, or he should take the view of a Mujtahid whose views have become well-known amongst the people, this is what is meant by *Taqlīd Al Shakṣī*.

The issue of a scholar (عالم) who is worthy (أهل) of looking (نظر) into evidences (أدلة)

It does not contradict the notion of following a school of Fiqh, however, for a deeply knowledgeable scholar who is able to rigorously look into the evidences of a specific Mas’alah to take a view contrary to his Madhab in that specific Mas’alah, not in compliance with his desires, but rather, based upon the evidences that have been made apparent to him of that specific Mas’alah.

It is based upon this that many Ḥanafī Fuqahā have given a Fatwā in many Masāil upon a view that contradicts the view of Imām Abū Ḥanīfah Raḥimahullah (d.150 AH). For example, the Mas’alah of crop-sharing (*Muzāra’ah*), the

¹² A subordinate to this question is the question: “why can we not do Taqlēd of the other Mujtahideen in some of their views that have reached us?”

The answer to this question is that the views of these Imams were not maintained in every generation and therefore have not reached us in an authentic and established manner. Hence, the answer as to why we cannot do Taqlīd of the other Mujtahids is not because they are not worthy of being followed, but rather, their views have not reached us in an authentic and established manner.

(Siḥabet Din Al Marcani quoting “Al Taqrīr” of Ibn Amir Al Haj, “Dar Al Fath”, (Amman: Dar Al Fath,), pg.136.)

Mas'alah of taking remuneration for teaching the Qur'ān, and the Mas'alah of giving an option for the one who has been deceived (*Khiyār Al Maghbūn*), and other well-known Masāil.

This is due to what the scholars have mentioned that Taqlīd of a specific Imām is not a command of Sharī'ah within itself; rather, it is a Fatwā given in order to maintain a system in one's religion and to prevent evils such as following of one's desires and making amusement out of religion.

Muftī Taqī Sāhib states that on many occasions, he heard his father, Muftī Muḥammad Shafī' Raḥimahullah quote the statement of Sheikh Al Hind Al Imām Maḥmūd Al Ḥasan Raḥimahullah:

إِنَّ تَقْلِيدَ مَذْهَبٍ مُّعَيَّنٍ لَيْسَ حُكْمًا شَرْعِيًّا فِي نَفْسِهِ وَلَكِنَّهُ فَتْوَى أُصْدِرَتْ لِتَنْتَظِمَ بِهِ أُمُورَ الدِّينِ

"Indeed, following the rulings (Taqlīd) of a specific school of Fiqh is not a command of Sharī'ah within itself, rather, it is a Fatwā given in order to maintain a system in one's religion"

Shaykh Ashraf 'Alī Al Thānwī Raḥimahullah said in some of his advices:

سو ہم تقلید شخصی کو فی نفسہ فرض یا واجب نہیں کہتے، بلکہ یوں کہتے ہیں کہ تقلید شخصی میں دین کا انتظام ہوتا ہے اور ترک تقلید میں بے انتظامی ہوتی ہے

"So we do not say that *Taqlīd Al Shakṣī* is Farḍ or Wājib within itself, rather, we say that by performing *Taqlīd Al Shakṣī*, a system is maintained in one's religion, and by leaving *Taqlīd [Al Shakṣī]*, there is no system in one's religion"

It is understood from these statements that as long as the scholar is safe from following his desires, then there is no harm for a scholar who is worthy of looking into evidences to take a view which is stronger in terms of evidence.

Shaykh Rashīd Aḥmad Gangohī Raḥimahullah writes:

اسی واسطے تقلید غیر شخصی کو فقہاء نے کتابوں میں منع لکھا ہے مگر جو عالم غیر شخصی کے سبب مبتلا ان مفاسد مذکورہ نہ ہو اور نہ اسکے سبب سے عوام میں بیجان ہو اسکو تقلید غیر شخصی اب بھی جائز ہے

"It is due to these problems [such as following of one's desires] that the Fuqahā have not permitted *Taqlīd Ghayr Al Shakṣī* (following more than one Imām in the rulings of Fiqh) in their books. However, if a scholar is able to avoid the problems that arise due to *Taqlīd Ghayr Al Shakṣī* and by performing *Taqlīd Ghayr Al Shakṣī* he does not create mayhem amongst the general masses, then it is permissible for him to perform *Taqlīd Ghayr Al Shakṣī* even now"

In another place, Shaykh Rashīd Aḥmad Gangohī Raḥimahullah writes:

الغرض بعد ثبوت اس امر کے کہ یہ مسئلہ اپنے امام کا خلاف کتاب و سنت کے ہے ترک کرنا ہر مؤمن کو لازم ہے اور کوئی بعد وضوح اس امر کر اس کا منکر نہیں مگر عوام کو یہ تحقیق ہی کیونکر ہو سکتا ہے

"Thus, if it is established for a person that the view of his Imām contradicts the Qur'ān and Sunnah, then it is necessary for all believers to leave this view, and if such an event were to occur, no individual would reject this response. However, how will the general masses ever come to realise this [that the view of the Imam contradicts the Qur'ān and Sunnah]?"

The Shaykh of our Shuyūkh, Shaykh Ashraf 'Alī Al Thānwī Raḥimahullah has explained this Mas'alah in an impartial manner and with complete equanimity. Thus, there is no harm in presenting his statement in its entirety here with a translation:

جس طرح تقلید کا انکار قابل ملامت ہے اسی طرح اس میں غلو و جمود بھی موجب مذمت ہے۔ اور تعیین طریق حق کے (لئے) اوپر ثابت ہو چکا ہے کہ تقلید مجتہد کی اس کو شارع و بانی احکام سمجھ کر نہیں کی جاتی بلکہ اسکو مبین احکام اور موضع شرائع و مظہر مراد اللہ و رسول اعتقاد کر کے کی جاتی ہے۔ پس جب تک کوئی امر منافی اور رافع اس اعتقاد کا نہ پایا جاوے اس وقت تک تقلید کی جاوے گی اور جس مسئلے میں کسی عالم و سبع النظر ذی الفہم منصف مزاج کو اپنی تحقیق سے یا کسی عامی کو ایسے عالم سے بشرطیکہ متقی بھی ہو بشہادت قلب معلوم ہو جاوے کہ اس مسئلے میں راجح دوسری جانب ہے تو دیکھنا چاہئے

کہ اس مرجوح جانب میں بھی دلیل شرعی سے عمل کی گنجائش ہے یا نہیں؟ اگر گنجائش ہو تو ایسے موقع پر جہاں احتمال فتنہ و تشویش عوام کا ہو مسلمانوں کو تفریق کلمہ سے بچانے کیلئے اولیٰ یہی ہے کہ اس مرجوح جانب پر عمل کرے۔ دلیل اس کی یہ حدیثیں ہیں:

حضرت عائشہ رضی اللہ عنہا سے روایت ہے کہ مجھ سے ارشاد فرمایا رسول اللہ صلی اللہ علیہ وسلم نے کہ "تم کو معلوم نہیں کہ تمہاری قوم یعنی قریش نے جب کعبہ بنایا ہے تو بنیاد ابراہیمی سے کی کر دی ہے۔" میں نے عرض کیا "یا رسول اللہ! پھر آپ اسی بنیاد پر تعمیر کر دیجئے۔" فرمایا کہ "اگر قریش کا زمانہ کفر سے قریب نہ ہوتا تو میں ایسا ہی کرتا۔" روایت کیا اسکو بخاری و مسلم نے ترمذی اور نسائی اور مالک نے۔ ف: یعنی لوگوں میں خواجہ تشویش پھیل جاوے گی کہ دیکھو! کعبہ گر دیا اسلئے اس میں دوت اندازی نہیں کرتا۔ دیکھئے! باوجودیکہ جانب راجح یہی تھی کہ قواعد ابراہیمی پر تعمیر کر دیا جاتا مگر چونکہ دوسری جانب بھی یعنی ناقص رہنے دینا بھی شرعاً جائز تھی گو مرجوح تھی آپ صلی اللہ علیہ وسلم نے خوف فتنہ و تشویش اسی جانب مرجوح کو اختیار فرمایا۔ (نیز) حضرت ابن مسعود رضی اللہ عنہ سے روایت ہے کہ انہوں نے (سفر میں) فرض چار رکعت پڑھی کسی نے پوچھا کہ "تم نے حضرت عثمان رضی اللہ عنہ پر (قصر نہ کرنے میں) اعتراض کیا تھا پھر خود چار پڑھی؟" آپ نے جواب دیا کہ خلاف کرنا موجب شر ہے۔ اس حدیث سے بھی معلوم ہوا کہ باوجودیکہ ابن مسعود (رضی اللہ عنہ) کے نزدیک جانب راجح سفر میں قصر کرنا ہے مگر صرف شر اور خلاف سے بچنے کے لئے اتمام فرمایا جو جانب مرجوح تھی مگر معلوم ہوتا ہے کہ اسکو بھی جائز سمجھتے تھے۔ بہر حال! ان حدیثوں سے اس کی تائید ہو گئی کہ اگر جانب مرجوح بھی جائز ہو تو اسی کو اختیار کرنا اولیٰ ہے۔

اور اگر اس جانب مرجوح میں گنجائش عمل نہیں بلکہ ترک واجب یا ارتکاب امر ناجائز لازم آتا ہے اور بجز قیاس کے اس پر کوئی دلیل نہیں باقی جاتی اور جانب راجح میں حدیث صحیح صریح موجود ہے اس وقت بلا تردد حدیث پر عمل کرنا واجب واجب ہو گا اور اس مسئلے میں کسی طرح تقلید جائز نہ ہو گی کیونکہ اصل دین قرآن و حدیث ہے اور تقلید سے یہی مقصود ہے کہ قرآن و حدیث پر سہولت و سلامتی سے عمل ہو جب دونوں میں موافقت نہ رہی قرآن و حدیث پر عمل ہو گا۔ ایسی حالت میں بھی اسی پر سب سے رہنمائی تقلید ہے جسکی مذمت قرآن و حدیث و اقوال علماء میں آئی ہے چنانچہ حدیث ہے۔

حضرت عدی بن حاتم سے روایت ہے کہ "میں حضور صلی اللہ علیہ وسلم کے حضور میں حاضر ہوا اور آپ کو یہ آیت پڑھتے سنا جاسکتا ترجمہ یہ ہے کہ (اہل کتاب نے اپنے علماء اور درویشوں کو رب بنا رکھا تھا خدا کو چھوڑ کر) اور ارشاد فرمایا کہ "وہ لوگ انکی عبادت نہ کرتے تھے لیکن وہ جس چیز کو حلال کہہ دیتے وہ اسکو ترمذی نے۔ مطلب یہی ہے کہ ان کے اقوال کو جو یقیناً انکے نزدیک بھی کتاب اللہ کے خلاف ہوتے مگر انکو کتاب اللہ پر ترجیح دیتے۔ سو اسکو آیت اور حدیث میں مذموم فرمایا گیا اور تمام اکابر محققین کا یہی معمول رہا کہ جب انکو معلوم ہو گیا کہ یہ قول ہمارا یا کسی کا خلاف حکم خدا اور رسول صلی اللہ علیہ وسلم کے ہے فوراً ترک کر دیا۔ چنانچہ حدیث میں ہے۔ نمید انصاری سے روایت ہے کہ کسی نے ابن عمر سے کچھوے کے کھانے کو پوچھا انہوں نے آیت قل لا اجد الخ پڑھ دی (جس سے استنباط کرنا حکم حلت کا تھا) ایک معمر آدمی انکے پاس بیٹھے تھے انہوں نے کہا کہ میں نے ابو ہریرہ رضی اللہ تعالیٰ سے سنا ہے کہ رسول اللہ صلی اللہ علیہ وآلہ وسلم کے سامنے کچھوے کا ذکر آیا تو آپ نے یہ فرمایا کہ "مجملہ خباثت کے وہ بھی غیبت ہے۔" ابن عمر نے فرمایا کہ "اگر یہ بات رسول اللہ صلی اللہ علیہ وآلہ وسلم نے فرمائی ہے تو حکم یوں ہی ہے جس طرح حضور صلی اللہ علیہ وسلم نے فرمایا" روایت کیا اسکو ابو داؤد نے۔ اور علماء حنفیہ بھی ہمیشہ اس عمل کے پابند رہے۔ چنانچہ جواب شبہ چہارم ہم میں ان حضرات کا امام صاحب کے بعض اقوال کو ترک کر دینا مذکور ہو چکا ہے جن سے مصنف ذمی کے نزدیک ان حضرات پر تعصب و تقلید جامد کی اس تہمت کا غلط ہونا متیقن ہو جاوے گا جس کا منشا اکثر پر بلا درایت نظر کرنا ہے۔ اور مقصد سوم میں ایسی نظر کا غیر معتمد علیہ ہونا ثابت کر دیا گیا ہے۔ لیکن اس مسئلے میں ترک تقلید کے ساتھ بھی کسی مجتہد کی شان میں گستاخی و بدزبانی کرنا یا بدل سے بدگمانی کرنا کہ انہوں نے اس حدیث کی مخالفت کی ہے جائز نہیں کیونکہ ممکن ہے کہ انکو یہ حدیث نہ پہنچی ہو یا بسند ضعیف پہنچی ہو یا اسکو کسی قریبہ شرعیہ سے مائل سمجھا ہو اس لئے وہ معذور ہیں اور حدیث نہ پہنچنے سے ان کے کمال علمی میں طعن کرنا بھی بدزبانی میں داخل ہے کیونکہ بعض حدیثیں اکابر صحابہ رضی اللہ عنہم کو جب کا کمال علمی مسلم ہے کسی وقت تک نہ پہنچی تھیں مگر انکے کمال علمی میں اسکو معجب نقص نہیں کہا گیا چنانچہ حدیث میں۔ عبید بن نمیر سے حضرت ابو موسیٰ کے حضرت عمرؓ پاس آنے کی اجازت مانگنے کے قصے میں روایت ہے کہ حضرت عمر رضی اللہ عنہ نے فرمایا کہ "رسول اللہ صلی اللہ علیہ وسلم کا یہ ارشاد مجھے مخفی رہ گیا مجھے بازاروں میں جا کر سودا سلف کرنے نے مشغول کر دیا" روایت کیا اسکو بخاری نے۔ اسی طرح مجتہد کے اس مقلد کو جس کو اب تک اس شخص مذکور کی طرح اس مسئلے میں شرح صدر نہیں ہوا اور اسکا اب تک یہی حسن ظن ہے کہ مجتہد کا قول خلاف حدیث نہیں ہے اور اس گمان سے اب تک اس مسئلے میں تقلید کر رہا ہے اور حدیث کو رد نہیں کرتا لیکن وجہ موافقت کو مفصل سمجھتا بھی نہیں تو ایسے مقلد کو بھی بوجہ اس کے کہ وہ بھی دلیل شرعی سے متمسک ہے اور اتباع شرع ہی کا قصد کر رہا ہے برا کہنا جائز نہیں۔

اسی طرح اس مقلد کو اجازت نہیں کہ ایسے شخص کو برا کہے کہ جس نے بعد مذکور اس مسئلے میں تقلید ترک کر دی ہے کیونکہ ان کا یہ اختلاف ایسا ہے جو سلف سے چلا آیا ہے جس کے باب میں علماء نے فرمایا ہے کہ اپنا مذہب ظنا صواب محتمل خطا اور دوسرا مذہب ظنا خطا محتمل صواب ہے جس سے یہ شبہ بھی دفع ہو جاتا ہے کہ جب سب حق ہیں تو ایک ہی عمل کیوں کیا جاوے؟ پس جب دوسرے میں بھی احتمال صواب ہے تو اس میں کسی کی تضلیل یا تفسیق یا بدعتی و ہابی لقب دینا اور حسد و بغض و عناد و نزاع و غیبت و سب و ستم و طعن و لعن کا شیوہ اختیار کرنا جو قطعاً حرام ہیں کس طرح جائز ہو گا؟

البتہ جو شخص عقائد یا جماعت میں مخالفت کرے یا سلف صالحین کو برا کہے وہ اہل سنت والجماعت سے خارج ہے کیونکہ اہل سنت و جماعت وہ ہیں جو عقائد میں صحابہ رضی اللہ عنہم کے طریقے پر ہوں اور یہ امور ان کے عقائد کے خلاف ہیں لہذا ایسا شخص اہل سنت سے خارج اور اہل بدعت و ہوی میں داخل ہے۔ اسی طرح جو شخص تقلید میں غلو کرے کہ قرآن و حدیث کو رد کرنے لگے ان دونوں قسم کے شخصوں سے حتی الامکان اجتناب و احتراز لازم سمجھیں اور مجادلہ متعارفہ سے بھی اعراض کریں

“Just as denying the concept of following a school of Fiqh (Taqlīd) is worthy of rebuke, having extravagance in it and stagnation upon it is also worthy of rebuke. In identifying the correct stance, we have elaborated above that following the school of Fiqh (Taqlīd) of a Mujtahid is not done with the belief that the Mujtahid is the law-giver and creator of rulings, rather, [it is done] with the belief that he is one who elaborates the rulings of Shari’ah and explains the Shari’ah, and shows what Allah and His Messenger intended. Thus, as long as something which opposes and lifts this belief is not found, we can continue following the school of Fiqh (Taqlīd) of a Mujtahid. Accordingly, if in a Mas’alah, a scholar with a vast insight, incredible intellect, and impartial disposition through his research, or a layman based upon such a scholar’s research – upon the condition that the layman is Allah-conscious – gains complete satisfaction through a testimony of his heart that the correct view is another view (one that the Mujtahid has not adopted), then we need to see that does the non-preferred opinion (the opinion of the Mujtahid) have a Shari’i evidence to support it such that there may be leeway in acting upon it? If so, then where there is a fear of creating chaos and confusion amongst the masses [by differing with the Mujtahid’s opinion], it is better to act upon this non-preferred opinion (the opinion of the Mujtahid) in order to avoid creating a division amongst the Muslims. The evidence for this is the following Aḥādīth:

- 1- Ḥaḍrat ‘A’ishah Raḍiyallāhu ‘Anha narrates that the Prophet Ṣallallāhu ‘Alayhi Wasallam said, “Do you know that when your tribe remade the Ka’bah, they fell short in making it equivalent to the size that Ḥaḍrat Ibrāhīm had made it?” So I said, “Oh Prophet of Allah! Why don’t you add it to the current structure?” He replied, “If it was not for the fact that the age of disbelief (*kufr*) has only recently left the Quraish, I would have rebuilt the structure”. Bukhārī, Muslim, Tirmidhī, Nasai’ī, and Mālik have narrated this.

Conclusion: the Prophet [Ṣallallāhu ‘Alayhi Wasallam] meant that by doing such a thing, the general masses would become unnecessarily confused and [would] say, “Look! He has destroyed the Ka’bah”. This is why I will not rebuild the Ka’bah.

Look at this! Despite the fact that the preferred stance would have been to rebuild the Ka’bah to the structure of Ḥaḍrat Ibrāhīm ‘Alayhis Salām, considering that leaving the Ka’bah in its current state would also have been permissible although non-preferred, the Prophet adopted the non-preferred stance in order to avoid mayhem and confusion.

- 2- It is narrated from Ḥaḍrat ‘Abdullah ibn Mas’ūd Raḍiyallahu ‘Anhu that he once prayed four Rak’ah Ṣalāh whilst travelling. Someone asked, “You raised an issue with Ḥaḍrat ‘Uthmān Raḍiyallahu ‘Anhu (when he did not pray two Rak’ah whilst travelling)? And you pray four Rak’ah yourself?” He replied that to differ with one another is contrary to the dictates of Sharī’ah.

Conclusion: this story also indicates that despite the fact that praying two Rak’ah whilst travelling was the preferred opinion of Ḥaḍrat ‘Abdullah ibn Mas’ūd [Raḍiyallahu ‘Anhu], but in order to prevent mayhem and division, he prayed the full four Rak’ah, which was the non-preferred opinion according to him, though it too was permissible according to him.

In summary, these narrations support the notion that if a non-preferred opinion is permissible, and by adopting it, one may prevent mayhem and confusion, then it is better to adopt this non-preferred opinion.

But if this non-preferred opinion cannot be acted upon, i.e. it is necessary (*Wājib*) to avoid it and by doing it, one is considered to have carried out an impermissible action, and there is no evidence that supports it through analogical deduction, and there is an explicit authentic Ḥadīth supporting the preferred opinion, then in such a case there is no doubt that it will be necessary to act upon the authentic Ḥadīth, and there is no scope for following the view (Taqlīd) in such a scenario. This is because the basis of Dīn is the Qur’ān and Ḥadīth, and the purpose of following a school of Fiqh (Taqlīd) is to follow the Qur’ān and Ḥadīth in a simplified manner, thus if they contradict one another, then the Qur’ān and Ḥadīth shall be followed. To stay adamant upon following the ruling dictated by following the view (Taqlīd) in such a scenario is the precise form of ‘following’ (Taqlīd) which has been criticised by the Qur’ān, Ḥadīth, and the scholars. Thus, it is mentioned in a narration narrated by ‘Adī

ibn Ḥātim [Raḍiyallahu ‘Anhu] who said, “I was in the presence of the Prophet Ṣallallāhu ‘Alayhi Wasallam and I heard the Prophet pray the following verse [of the Qur’ān], the translation of which is, ‘The people of the book had made their scholars and dervishes their gods besides the real god’, the Prophet then said, “These people (people of the book) did not worship them (the scholars and dervishes), rather whatever they (the scholars and dervishes) said was ḥalāl, they believed to be ḥalāl and whatever they (the scholars and dervishes) said was ḥarām, they believed to be ḥarām” - Tirmidhī has narrated it.

The meaning of this is that the people of the book gave preference to the statements of these scholars and dervishes that clearly contradicted the book of Allah. Thus, this practice has been labelled as detestable in the Qur’ān and Ḥadīth, and it has been the attitude of the erudite researchers that when they recognised that this view of ours or this view of such a person completely contradicts the command of the Prophet Ṣallallāhu ‘Alayhi Wasallam, then they would leave this view. Thus, it is narrated from Numaylā Al Anṣārī who said that someone asked Ḥaḍrat Ibn ‘Umar Raḍiyallahu ‘Anhu regarding the eating of turtles, he replied by quoting the verse of the Qur’ān, ‘Say! I do not find in that which has been revealed to me anything which prohibits food upon the eater except that which...’ Ḥaḍrat ‘Abdullah ibn ‘Umar Raḍiyallahu ‘Anhu was ruling in favour of it being permissible. However, there was an old man sitting next to Ḥaḍrat ‘Abdullah ibn ‘Umar [Raḍiyallahu ‘Anhu], the old man said, ‘I have heard Ḥaḍrat Abū Hurayrah Raḍiyallahu ‘Anhu mention that the issue of turtles was mentioned in front of the Prophet Ṣallallāhu ‘Alayhi Wasallam, the Prophet Ṣallallāhu ‘Alayhi Wasallam said, ‘It is filth from amongst filth’. Ḥaḍrat ‘Abdullah ibn ‘Umar Raḍiyallahu ‘Anhu said, “If the Prophet Ṣallallāhu ‘Alayhi Wasallam did indeed mention what this man has mentioned, then it is as the Prophet Ṣallallāhu ‘Alayhi Wasallam has said’ - Abū Dāwūd has narrated this.

The Ḥanafī scholars have also remained adamant upon this position. Thus in the answer to the fourth question, we have mentioned how some Ḥanafī scholars left some of the views of Imām Abū Ḥanīfah. This demonstrates to an unprejudiced individual that the accusation that the Ḥanafī scholars were partisan and overzealous in following a school of Fiqh (Taqlīd) – which is usually caused by a lack of knowledge of the evidences of Sharī‘ah and is usually discarded - is incorrect. Nonetheless, even when leaving the following of a school of Fiqh (Taqlīd) in such a Mas’alah, one should remember that to bad-mouth or insult or to have incorrect thoughts with regards to a Mujtahid; i.e. that he opposed a Ḥadīth, is impermissible. It is possible that the Ḥadīth he has opposed had not yet reached him or had reached him through a weak chain of narration or he interpreted it differently due to reasons apparent to him, for this reason he is excused. Also, by this Ḥadīth not reaching them, it is blasphemous to claim that they lacked knowledge. This is because there were some Aḥādīth that did not reach the elderly Ṣaḥābah whom everyone accepts to have had immense knowledge and these Aḥādīth not reaching them did not decrease their status of knowledge in any way.

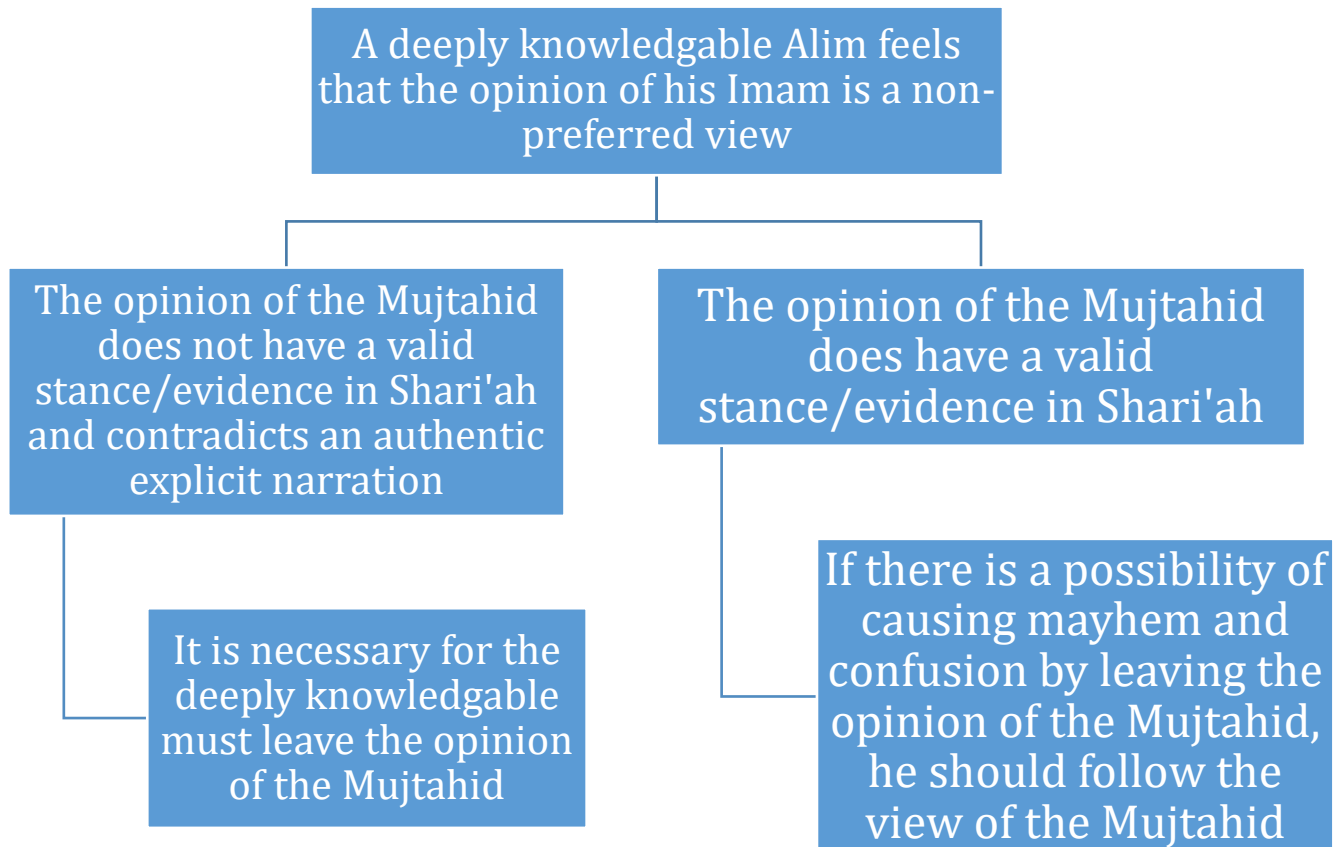
Accordingly, in the story narrated by ‘Ubayd ibn ‘Umayr of Ḥaḍrat Abū Mūsā Raḍiyallahu ‘Anhu seeking permission when visiting Ḥaḍrat ‘Umar Raḍiyallahu ‘Anhu, Ḥaḍrat ‘Umar Raḍiyallahu ‘Anhu said, ‘I was unaware of this statement of the Prophet Ṣallallāhu ‘Alayhi Wasallam, visiting the shops and carrying out transactions has distracted me’ - Imam Bukhari has narrated this.

Similarly, the follower (*Muqallid*) of a Mujtahid who is not yet satisfied - unlike the individual above - that the Mujtahid’s view opposes the Ḥadīth, and he still has a good thought of the Mujtahid and has thus continued to follow him, and does not reject the Ḥadīth but does not clearly understand how he is following the Mujtahid, then due to the fact that such an individual is also holding onto an evidence of Sharī‘ah and is wishing to follow Sharī‘ah, he should not be rebuked or insulted. Likewise, it is not permissible for this follower (*Muqallid*) to insult the individual who, due to the reasons mentioned above, has left the following (Taqlīd) of the Mujtahid in a certain Mas’alah. This is because the difference of opinion between the two individuals is the same as that which existed between the predecessors, in which the scholars held the view that their own opinions are corrects with the possibility of being incorrect whilst the opinions of others are incorrect with the possibility of being correct. This stance also discounts the accusation that if all the opinions are correct, then why act upon only one?

Considering that the other opinions could also be correct, how could it be permissible to adopt an attitude of hatred and jealous towards the opposing view and to hat, insult, mock, curse, or backbite the opposite view or to label it as corruption, or innovation, or Wahabism?

Nevertheless, if one adopts an opposing view in the Islāmic beliefs or contradicts the consensus, or insults the pious predecessors, then he is no longer a part of the Ahl Al Sunnah Wal Jamā'ah. This is because the Ahl Al Sunnah Wal Jamā'ah are those who follow the Ṣaḥābah in their Islāmic beliefs, thus by contradicting these Islāmic beliefs, one will no longer be a part of the Ahl Al Sunnah Wal Jamā'ah and will be labelled as a person of innovation and [a person] of desire. Similarly, if one who becomes extreme in the issue of following a school of Fiqh (Taqlīd) such that he begins to reject the Qur'ān and Ḥadīth, then it is imperative to stay away from such people as much as possible, and should also avoid engaging them in a debate."

Shaykh Ashraf 'Alī Al Thānwī Raḥimahullah's stance may be summarised as follows:



It is established through the above that to adopts the views of a specific school of Fiqh and to follow the school of Fiqh (Taqlīd) of a specific Mujtahid is not for any other purpose except so that the individual who is unable to comprehend contradicting evidences (which require Ijtihād) may correctly carry out the commands of Sharī'ah that are found in the Qur'ān and Sunnah. This is why the scholars have explicitly mentioned that there is no need to follow a school (Taqlīd) in one's Islāmic beliefs and in those commandments which have been mentioned explicitly in the Qur'ān or Sunnah, such as the obligation of Ṣalāh, Ṣawm, Zakāh, and Ḥajj, and the prohibition of alcohol, pigs, interest, lying, deceiving, and oath-breaking and other rulings in which there is no scope for Ijtihād, and the evidences do not hold any other possible meanings.

Similarly, following a school of Fiqh (Taqlīd) is not that the followers of the school of Fiqh (*Muqallid*) do *not* contradict the view of the Imām in *any* of his Masā'il. For example, it has been narrated by Imām Al Ṭaḥāwī Raḥimahullah, who was a follower of the Ḥanafī school of Fiqh that he said:

كَانَ أَبُو عُبَيْدِ بْنِ حَرْثُومَةَ يُدَاكِرُنِي بِالْمَسَائِلِ فَأَجِبُهُ يَوْمًا فِي مَسْئَلَةٍ فَقَالَ لِي "مَا هَذَا قَوْلُ أَبِي حَنِيفَةَ" فَقُلْتُ لَهُ "أَيُّهَا الْقَاضِي! أَوْ كَلِمَا قَالَهُ أَبُو حَنِيفَةَ أَقُولُ بِهِ؟" قَالَ "مَا ظَنَنْتَكَ إِلَّا مُقَلِّدًا" فَقُلْتُ لَهُ "وَهَلْ يَقْلِدُ إِلَّا عَصِي؟" فَقَالَ لِي "أَوْ غَيٍّ" فَطَارَتْ هَذِهِ الْكَلِمَةُ بِمِصْرَ حَتَّى صَارَتْ مَثَلًا

"Abū 'Ubayd ibn Ḥarbūyah would discuss Masā'il with me, so one day I answered a Masa'alah, due to which he said to me, 'This is not the view of [Imām] Abū Ḥanīfah', I replied 'Oh judge! Do I say everything that [Imām] Abū Ḥanīfah has said?' He said, 'I did not think of you except as a follower (*Muqallid*)'. So I said to him, 'and who follows (does Taqlīd) except a zealot?' He said, 'or a foolish person'. This statement [of mine] then became famous in the city until it became a symbol"

The intention of Imām Al Ṭaḥāwī Raḥimahullah in the incident above was to show that it does not contradict the following (Taqīd) of a Madhab for a scholar of the calibre of Imām Al Ṭaḥāwī Raḥimahullah to adopt a view other than the view of the Imām of his school of Fiqh in a few Masāil, otherwise, such a scholar would be a zealot.

The levels of Taqlid

In consideration of the discussion above, we may conclude that ‘following’ (Taqlīd) may be of different stages.

Stage	Type	Individual	Ruling
1	<i>Taqlīd Al ‘Āmmī</i> (تقليد العامي)	<p>A <i>Āmmī</i> (عامي) is an individual who does not have an in depth study of the Qur’ān and Sunnah, nor the different branches of knowledge related to the Qur’ān and Sunnah. He is also known as a layman.</p> <p>It is possible to add to this category those who have graduated from the modern-day Madrasahs and Islāmic universities and have not yet grasped the ability to compare different jurisprudential views in light of the Qur’ān and Sunnah.</p>	They must follow the Imām of a specific Madhab in all Masāil. The view of the Imām is equivalent to an evidence of Sharī‘ah in their favour and it is not permissible for them to hold the opinion that the view of their Imām is against the Qur’ān and Sunnah based upon their opinion. This is because they do not know the intricacies required to make such a claim.
2	<i>Taqlid Alim Mutabahir</i> (تقليد عالم متبحر)	<p>An <i>Alim Mutabahir</i> (عالم متبحر) is an individual who has not reached the level <i>Ijtihād</i> (اجتهاد) completely, however his:</p> <ul style="list-style-type: none"> ➤ Knowledge of the sciences of the Qur’ān and Sunnah ➤ His deep research into the Madhab of his Imam, and ➤ His long study of Fiqh and Iftā under an expert teacher, <p>Have given him a strong ability to look into the evidences behind a jurisprudential ruling.</p>	<p>He will follow his Imām in the majority of Masāil. However, if he finds a view of his Imām to be clearly contradictory to an evidential text, and after spending a great amount of time researching the issue, he does not find anything to contradict that evidential text, then it is permissible for him to leave the view of his Imām based upon the evidential text, as explained in the discussion provided by Shaykh Ashraf ‘Alī Al Thānwī Raḥimahullah.</p> <p>Similarly, If such a scholar were to find that the ruling of his Imām in a certain Mas’alah creates great difficulty upon the general masses, and there is a general need for this difficulty to be removed by adopting a view of one of the other three Madhāhib, then it is permissible for him to issue a Fatwā and act upon the view of the Imām of the other Madhab and not the view of his own Imām, as the Ḥanafī scholars have done in the Mas’alah of a woman whose husband is missing (<i>Zawjah Al Mafqud</i> – زوجة المفقود). However, in Masail of this nature, wherein there is a general difficulty upon the people in following the view of the Imām of the Madhab, the scholar should not rely upon his own solution that the view of</p>

			another Madhab should be adopted, rather the scholar should consult the other scholars of his time and should not issue a Fatwā upon the view of another Madhab until a panel of deeply knowledgeable scholars approve of such a motion.
3	<i>Taqlīd Mujtahid Fil Madhab</i> (تقليد مجتهد في المذهب)	This individual may be a <i>Mujtahid Fil Madhab</i> (مجتهد في المذهب), <i>Mujtahid Fil Masail</i> (مجتهد في المسائل), <i>Sahib Al Tarjih</i> (صاحب الترجيح) or <i>Sahib Al Takhrij</i> (صاحب التخريج)	This is an individual who follows the Imām in his principles, however, he has a certain level of Ijtihād (اجتهاد) in the subsidiary Masāil (الفروع) and peripheral Masāil (النازل).
4	<i>Taqlīd Mujtahid Muṭlaq</i> (تقليد مجتهد مطلق)	This individual is the Imām of a Mathab	<p>Even though this individual is independent in extracting the jurisprudential rulings of Sharṭah, he is also required to perform a certain level of ‘following’ (Taqlīd). Thus, such an individual must look into the views of the Ṣaḥābah and Ṭabī’ūn and hold onto their views when elaborating upon the Qur’ān and Sunnah.</p> <p>This is because, at times, a ruling for a Mas’alah may not be explicitly mentioned by the Qur’ān and Sunnah. However, there may be a ruling issued for the Mas’alah by a Ṣaḥābī or Ṭabī’ī, hence this Mujtahid must give preference to this ruling of a Ṣaḥābī or Ṭabī’ī over his own opinion.</p> <p>An example of this is how Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) would take the view of Ibrāhīm Al Nakhaṭī Raḥimahullah, and how Imām Al Shafi’ī Raḥimahullah (d.204 AH) would take the view of Ibn Jurayj Raḥimahullah, and how Imām Mālik Raḥimahullah (d.179 AH) would take the view of one of the seven Fuqaha of Madinah.</p> <p>Ḥāfiẓ Ibn Al Qayyim Raḥimahullah (d.751 AH) said:</p> <p>وَلَا يُنَافِي اجْتِهَادُهُ تَقْلِيدَهُ لِعَبَرِهِ أَحْيَانًا فَلَا تَجِدُ أَحَدًا مِنَ الْأَيِّمَةِ إِلَّا وَهُوَ مُقَلِّدٌ مَنْ هُوَ أَعْلَمُ مِنْهُ فِي بَعْضِ الْأَحْكَامِ وَقَدْ قَالَ الشَّافِعِيُّ رَحِمَهُ اللَّهُ وَرَضِيَ عَنْهُ فِي مَوْضِعٍ مِنَ الْحُجَجِ "قُلْتُ تَقْلِيدًا لِعَطَاءٍ"</p> <p>“And it does not contradict their [ability of] Ijtihad that they followed others (Taqlīd) at times, for you will not find a single scholar except that he followed others (Taqlīd) in certain Masail of someone more knowledgeable than himself. Thus, Imām Al Shafi’ī said after giving a certain ruling in the Masail of Hajj, ‘I said it following (Taqlīd) the view of Ata’”.</p>

The Categorisation of the Fuqahā (طبقات الفقهاء)

Ibn Kamāl Bāshā Raḥimahullah (d.940 AH) has mentioned in his treatise, *Waqful Banāt* (وقف البنات), that it is necessary for a Muftī to know the state of the Faqīh upon whose view he is issuing a Fatwā. This means that he must be wary of the knowledge that the Faqīh possesses of the Madhab and its applications (*Al Dirāyah* - الدراية)¹³, while also being wary of the level of the Faqīh from the categories of the Fuqahā and who the Faqīh has taken his understanding of the Madhab from (i.e. his teachers – *Al Riwayah* (الرواية)).

This is necessary as it allows a Muftī to differentiate between two contradictory views and give preference to one of them.

The Levels of the Ḥanafī Fuqahā (طبقات فقهاء الحنفية)

Before commencing our discussion on this issue, it is important to note that we shall refer to the word *A'immaḥ* in our categorisation. The word *A'immaḥ* is a reference to Imām Abū Ḥanīfah Raḥimahullah (d.150 AH), Imām Abū Yūsuf Raḥimahullah (d.182 AH), Imām Muḥammad Raḥimahullah (d.189 AH), Imām Zufar ibn Hudhayl Raḥimahullah (d.159 AH), Imām Hasan ibn Ziyad Raḥimahullah (d.204 AH) and the other students of Imām Abū Ḥanīfah Raḥimahullah (d.150 AH).

We shall now begin our discussion on the categorisation of the Ḥanafī Fuqahā.

¹³ The word *Al Dirāyah* (الدراية) in the Hanafi Mathab comes for two meanings:

- 1) Knowledge of evidences (دلائل)
- 2) Knowledge of the workings and applications of the Mathab

Ibn Kamāl Bāshā Raḥimahullah (d.940 AH) has devised the levels of the Ḥanafī Fuqahā in his treatise, *Waqful Banāt* (وقف البنات)¹⁴, in the following manner¹⁵:

Type	What can they do?	Individuals
<i>Al Mujtahid Fil Shar’/AL Mujtahid Al Muṭlaq</i> (المجتهد في الشرع) (مجتهد مطلق)	They establish principles and extract rulings directly from the evidences without <i>completely</i> following anyone. ¹⁶	1) Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) 2) Imām Mālik Raḥimahullah (d.179 AH) 3) Imām Al Shafi’ī Raḥimahullah (d.204 AH) 4) Imām Aḥmad ibn Ḥanbal Raḥimahullah (d.241 AH)
	<u>In their personal opinion:</u> They may differ with Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) in some of his rulings, but in most cases ¹⁷ , they do not differ with Imām	1) Imām Abū Yūsuf Raḥimahullah (d.182 AH) 2) Imām Muḥammad Raḥimahullah (d.189 AH)

¹⁴ The categories of the Hanafi Fuqahā were originally mentioned by Ibn Kamāl (d.940 AH) in this treatise. They have then been compiled in a separate treatise by the name of *Risalah Fi Tabqatil Mujtahideen* (رسالة في طبقات المجتهدين), whether Ibn Kamal (d.940 AH) took the categories and put them in a separate treatise or somebody else did it, this is unknown.

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasmil Mufti)

¹⁵ Muhammad Harun discusses whether there are 6 types (طبقات) or 7 types (طبقات). Allamah Abdul Hayy mentions in the introduction of *Umdah Al Ri’ayah* (عمدة الرعاية) that there is no contradiction between the two. Those who state that there are 6 types have not counted the *Mujtahid Mutlaq* (مجتهد مطلق) and those who have stated that there are 7 types have counted the *Mujtahid Mutlaq* (مجتهد مطلق). However, Allamah Haskafi has erred in his discussion on this subject by stating:

قد ذكروا أن المجتهد المطلق قد فقد وأما المقيد فعلى سبع مراتب مشهورة

Hence, there will only be 7 types of Fuqahaa if we *include* the *Mujtahid Mutlaq* (مجتهد مطلق).

(Muhammad Harun, “*Al Fathul Rabbanī*”, (Dhakah: Maktabatul Azhar, 2014), p.259.)

¹⁶ They may take some principles from other people, but they do not completely follow anyone.

(Lecture of Mufti Husain Kadodia Sahib – Usul Al Ifta Wa Adabuhu)

¹⁷ In their personal opinion, they have, at times, differed with Imam Abu Hanifah in various Masail and principles. ‘Allamah Marcani Rahimahullah writes:

<p><i>Al Mujtahid Fil Madhab</i></p> <p>(المجتهد في المذهب)</p>	<p>Abū Ḥanīfah Raḥimahullah (d.150 AH) in his principles. In their personal opinion, they may also adopt a view that has not been adopted by any of the A’immah of the Madhab. This is based upon the evidences that are apparent to them. These views that contradict the views of the A’immah of the Madhab will be labelled ‘personal opinions’ (<i>tafarrudat</i>). Fatwa cannot be given upon their ‘personal opinions’ (<i>tafarrudat</i>).¹⁸</p> <p><u>As for issuing a Fatwā, this may be of three types:</u></p> <ol style="list-style-type: none"> 1. If there is a consensus of opinion between the A’immah of the Madhab in a Mas’alah, they must issue a Fatwā according to that opinion 1. If there is a difference of opinion between Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) and the other A’immah of the Madhab in a Mas’alah, they may give preference (<i>Tarjīh</i>) to one of the 	
--	--	--

ثم إن قوله في الخصاف والطحاوي والكرخي "لا يقدرّون على مخالفة أبي حنيفة لا في الأصول ولا في الفروع" ليس بشيء فإن ما خالفوه من المسائل لا يعد ولا يحصى ولهم اختيارات في الأصول والفروع وأقوال مستنبطة بالقياس والمسموع واحتجاجات بالمنقول والمعقول على ما لا يخفى على من تتبع كتب الفقه والخلافات والأصول

“Then his (Ibn Kamal Basha Rahimahullah) with regards to Al Kassaf, Al Tahawi and Al Karkhi [that] ‘they are not able to contradict [Imam] Abu Hanifah in his principles or Masail’ is incorrect. For indeed, those Masail in which they have contradicted him are innumerable and incomprehensible. And they have their own opinions in principles, Masail, and views, which have been extracted through analogical deduction, and narration, and they have their evidences based upon evidential texts and analogical deduction, such that it is is not hidden upon the one who researches the books of Fiqh, and differential opinions, and principles”

(Marcani, “Nazurah Al Haq” (Istanbul, Dar Al Hikmah, 2012), pg.202)

Accordingly, in his personal opinion, a *Mujtahid Fil Madhab* (such as Imam Al Tahawi Rahimahullah (d.321 AH), Al Kassaf Rahimahullah (d.261 AH), and Al Karkhi Rahimahullah (d.340 AH)) may at times contradict the Imam in his Masail or his *principles*. However, these personal opinions of theirs shall not be considered when issuing a Fatwa, unless their view coincides with one of the views of the A’immah of the Madhab. This also applies to a Mujtahid Fil Masail, however, a Mujtahid Fil Masail does not contradict the *principles* of the Imam at all, even in his personal opinion.

(Translator)

¹⁸ A prime example of this is Imam Al Tahawi. There are many Masail in which Imam Al Tahawi has adopted his own personal opinion which does not concur with the view of Imam Abu Hanifah, Imam Abu Yusuf, Imam Muhammad, Imam Zufar, or Imam Hasan ibn Ziyad. An example of this is the Mas’alah of accepting the testimony of one who claims to have seen the moon of Ramadan on a cloudy night. Imam Al Tahawi clearly mentions that it is not necessary for the individual to be a reliable person, rather, the testimony of a wretched person (*fāsiq*) shall also be accepted.

(Translator)

	<p>opinions based upon the evidences (<i>Adillah</i>) of Sharī'ah, but they cannot issue a Fatwā on their personal opinion.</p> <p>2. If there is <u>no opinion</u> from the A'immah of the Madhab in a Mas'alah, they may extract their own ruling from the evidences (<i>Adillah</i>) whilst maintaining the principles of the Imām, the ruling they extract will then be considered the view of the Madhab in that Mas'alah.</p>	
	<p><u>In their personal opinion:</u></p> <p>They may differ with Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) in some of his rulings, but they do not differ with Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) in his principles. In their personal opinion, they may also adopt a view that has not been adopted by any of the</p>	<p>1) Imām Al Kaṣāf (d.261 AH) 2) Imām Taḥāwī (d.321 AH)¹⁹ 3) Imām Al Karkhī (d.340 AH)²⁰</p>

¹⁹ **Footnote 1:**

Salaah Abul Haaj has quoted Allamah Lucknawi as stating that Imam Tahawi should be considered a *Mujtahid Muntasib* (مجتهد منتسب) as he has gone against the Imam in his principles (usul) and Masail. Allamah Lucknawi then states that if Imam Tahawi was to be denied the status of *Mujtahid Muntasib* (مجتهد منتسب), he would most definitely be granted the status of *Mujtahid Fil Madhab* (مجتهد في المذهب). However, Salaah Abul Haaj gives preference to the view that he was a *Mujtahid Fil Madhab* (مجتهد في المذهب) as the majority of his principles and Masail (furu') are according to the Mathab of Imam Abu Hanifah. (Salah Abul Haj, "Is'ad Al Mufti", (Beirut: Dar Al Bashair Al Islamiyyah, 2015), pg.268.)

Footnote 2:

As mentioned under footnote 16, 'Allamah Marcani also feels that Imam Al Tahawi was not a follower of Imam Abu Hanifah Rahimahullah (d.150 AH). Thus, he has made a chapter in Nazurah Al Haq titled:

مطلب في أن الطحاوي ليس بمقلد وإنما وافق رأيه رأي أبي حنيفة

"Objective: in showing that Al Tahawi was not a follower (Muqallid), rather, his view coincided with the view of [Imam] Abu Hanifah"

However, this is incorrect, as although Imam Al Tahawi may at times have given preference to the view of Imam Abu Yusuf and Imam Muhammad, he has not regularly adopted a view that is not in accordance with the views of any of the A'immah of the Madhab. For the few times that he has done this, we shall consider that to be his personal opinion (*tafarrud*) and not one that we are permitted to issue a Fatwa upon except in cases of necessity. As for his differences with the Imam in his principles, this is also not a common occurrence, rather, he has contradicted Imam Abu Hanifah Rahimahullah (d.150 AH) in a few of his principles, not many.

(Translator)

²⁰ Imam Kassaf (d.261 AH), Imam Tahawi (d.321 AH) and Imam Karkhi (d.340 AH) could be moved to the category of *Mujtahid Fil Mathab* (مجتهد في المذهب).

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasmil Mufti)

<p style="text-align: center;"><i>Al Mujtahid Fil Masāil</i></p> <p style="text-align: center;">(المجتهد في المسائل)</p>	<p>A'immah of the Madhab. This is based upon the evidences that are apparent to them. These views that contradict the views of the A'immah of the Madhab will be labelled 'personal opinions' (<i>tafarrudat</i>). Fatwa cannot be given upon their 'personal opinions' (<i>tafarrudat</i>).</p> <p><u>As for issuing a Fatwā, this may be of three types:</u></p> <ol style="list-style-type: none"> 1. If there is a consensus of opinion between the A'immah of the Madhab in a Mas'alah, they must issue a Fatwā according to that opinion. 2. If there is a difference of opinion between Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) and the other A'immah of the Madhab in a Mas'alah, they may give preference (<i>Tarjīh</i>) to one of the views based upon the evidences (<i>Adillah</i>) of Sharī'ah, but they cannot issue a Fatwā on their personal opinion. 3. If there is <u>no opinion</u> from the A'immah of the Madhab in a Mas'alah, they may extract their own rulings from the other Masāil of the Imām whilst maintaining the principles of the 	<ol style="list-style-type: none"> 4) Imām Halwānī (d.456 AH)²¹ 5) Shamsul A'immah Al Sarakhsi (d.438 AH)²² 6) Imām Fakhr Al Islām Al Bazdawī (d.482 AH) 7) Imām Qāḍī Khān Raḥimahullah (d.592 AH)
---	--	--

²¹ After looking at the different discussions regarding the name "Halwani", one comes to the conclusion that the name may be pronounced Halwani (خلواني) or Halwa'i' (خلوائي). However, the name cannot be pronounced as Hulwani (خلواني). He was the great scholar from Bukhara – in modern day Uzbekistan.

His notable teachers include: Imam Abu Ali Al Nasafi

His notable students include:

1. Shamsul A'immah Al Sarakhsi
2. Imam Fakhrud Din Al Bazdawi
3. Sadrul Islam Abul Yusr Al Bazdawi
4. Jamalud Din Ahmad ibn Abdir Rahman
5. Shamsul A'immah Al Zaranji

²² Shamsul A'immah Sarakhsi was the great Hanafi scholar from Khurasan – modern day border between Iran and Turkmenistan. (Salah Abul Haj, "Is'ad Al Mufti", (Beirut: Dar Al Bashair Al Islamiyyah, 2015), pg.262.)

	Imām, the ruling they extract will then be considered the view of the Mahab in that Mas’alah.	
<i>Sāhib Al Takhrīj</i>	<p><u>In their personal opinion:</u></p> <p>They may differ with Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) in some of his rulings but, in most cases, they do not differ with Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) in his principles. In their personal opinion, they may also adopt a view that has not been adopted by any of the A’immah of the Madhab. This is based upon the evidences that are apparent to them. These views that contradict the views of the A’immah of the Madhab will be labelled ‘personal opinions’ (<i>tafarrudat</i>). Fatwa cannot be given upon their ‘personal opinions’ (<i>tafarrudat</i>).</p> <p><u>As for issuing a Fatwā, this may be of five types:</u></p> <ol style="list-style-type: none"> 1. If there is a consensus of opinion between the A’immah of the Madhab in a Mas’alah, they must issue a Fatwā according to that opinion. 2. If there is a difference of opinion between Imam Abu Hanifah and the other A’immah of the Madhab in a Mas’alah, they may give preference (<i>Tarjīh</i>) to one of the views based upon the evidences 	1) Imām Abū Bakr Al Jaṣāṣ Al Rāzī Raḥimahullah (d.370 AH) ²⁵

²⁵ Imam Abu Bakr Al Razi (d.370 AH) should be a *Mujtahid Fil Mathab* (مجتهد في المذهب) or at least a *Mujtahid Fil Masail* (مجتهد في المسائل)

(Lecture of Mufti Husain Sahib – Usul Al Ifta Wa Adabuhu)

Allamah Lucknawi has stated that Abu Abdillah Al Jurjani (d.398 AH), who was the student of Abu Bakr Al Razi and the teacher of Imam Al Quduri, was from amongst the Sahib Al Takhrīj (صاحب التخریج).

(Muhammad Harun, “Al Fath Al Rabbani”, (Dhaka: Maktabatul Azhar, 2014), p.267.)

(صاحب التخریج) ²³	(<i>Adillah</i>) of Sharī'ah ²⁴ , but they cannot issue a Fatwā on their personal opinion.	
------------------------------	---	--

²³ The word Takhrij linguistically means “to extract from something”. According to the scholars of Usul, it has three possible connotations:

1- Takhrij Al Usul Minal Furu’

This is to extract the principles of the A’immah by studying their views in various Masail. To achieve these principles, a researcher must carefully study all of their views in various Masail until he feels satisfied to claim that an Imam had a certain principle.

Considering that the A’immah did not write a specific book in which they formally wrote down their principles and reasonings, the later Hanafi Fuqaha were required to research the views of the A’immah and extract the principles of each Imam. After extracting these principles, they added the principles that are explicitly established from the A’immah. After this, they codified these principles into books – many believe that this is the manner in which Usul Al Fiqh Al Hanafi came into inception.

Shah Waliullah adds that the *majority* of what is found in Usul Al Fiqh Al Hanafi such as Usul Al Bazdawi books are not explicitly mentioned from the A’immah. Rather, they are Usul extracted from the views of the A’immah in various Masail.

2- Takhrij Al Furu’ Minal Usul

This is to extract the view of the A’immah in a certain Mas’alah from the principles that have been recorded from them.

3- Takhrij Al Furu’ Minal Furu’

This is to extract the view of the A’immah in a certain Mas’alah by categorising the Mas’alah with other Masail of similar nature in which a view is recorded from the A’immah.

As for Takhrij Al Furu’ Minal Usul and Takhrij Al Furu’ Minal Furu’, it is known that the A’immah could obviously not have issued a ruling for every single Mas’alah that could occur in the future. Thus, those Hanafi Fuqaha who had the capability were now required to extract rulings for the Hanafi Madhab based upon the principles recorded from the A’immah or views recorded from the A’immah in other Masail of a similar nature. The majority of the Masail and views found in the Hanafi books are of this nature; Takhrij Al Furu’ Minal Usul and Takhrij Al Furu’ Minal Furu’. The Ulama who participated in this great service of Takhrij Al Furu’ Minal Usul and Takhrij Al Furu’ Minal Usul greatly assisted the development of the Hanafi Madhab. Sheikh Abu Zuhrah Rahimahullah states:

نما المذهب الحنفي بالإستنباط والتخريج نموًا عظيمًا... أنه جاء بعد تلاميذه طائفة أخرى عنيت باستنباط علل الأحكام وتطبيقها على ما يجد من الوقائع في العصور وإنهم بعد أن استنبطوا علل الأحكام التي قامت عليها فروع المذهب جمعوا المسائل المتجانسة في قواعد شاملة

(Muhammad Al Naqib, “Al Madhab Al Hanafi”, (Riyad: Maktabah Al Rushd, 1998), p.132.)

²⁴ Although they are capable of looking into the evidences for giving preference (ترجيح), Mufti Husain Sahib mentions that in most cases, they have taken the view preferred by the Hanafi scholars before them. Hence, when the author of Al Hidayah says وهو الصحيح, in most cases, he has not said this after looking into the evidences. Rather, he has taken the preference of the Hanafi scholars that came before him.

(Translator)

	<p>3. They are not capable of looking into the evidences (Adillah) of Sharī'ah to establish a view <u>that would be considered the view of the Mathab</u></p> <p>4. However, they may elaborate upon an ambiguous view of those mentioned above according to their knowledge of the principles of the Madhab and through application of analogical deduction (<i>Qiyās</i>)</p> <p>5. If there is <u>no opinion</u> from the A'immah of the Madhab in a Mas'alah, they may extract their own rulings from the other Masāil of the Imām whilst maintaining the principles of the Imām, the ruling they extract will then be considered the view of the Madhab in that Mas'alah.</p>	
<p><i>Sāhib Al Tarjīh</i>²⁶</p> <p>(صاحب الترجيح)</p>	<p><u>In their personal opinion:</u></p> <p>They may differ with Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) in some of his rulings but, in most cases, they do not differ with Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) in his principles. In their personal opinion, they may also adopt a view that has not been adopted by any of the A'immah of the Madhab. This is based upon the evidences that are apparent to them. These views that contradict the views of the A'immah of the Madhab will be labelled 'personal opinions' (<i>tafarrudat</i>). Fatwa cannot be given upon their 'personal opinions' (<i>tafarrudat</i>).</p> <p><u>As for issuing a Fatwā, this may be of four types:</u></p>	<p>1) Imām Al Qudūrī (d.428 AH)²⁸</p> <p>2) 'Allāmah Murghīnānī (d.593 AH)</p>

²⁶ The scholars from the category of *Mujtahid Fil Madhab* (مجتهد في المذهب), *Mujtahid Fil Masail* (مجتهد في المسائل), *Sahib Al Takhrij* (صاحب التخریج), and *Sahib Al Tarjih* (صاحب الترجيح) may collectively be called 'scholars worthy of giving preference' (أصحاب الترجيح).

(Translator)

²⁸ Imam Quduri should be in the category of *Mujtahid Fil Madhab* (مجتهد في المذهب).

(Lecture of Mufti Husain Kadodia Sahib – Usul Al Ifta Wa Adabuhu)

	<ol style="list-style-type: none"> 1. If there is a consensus of opinion between the A'immah of the Madhab in a Mas'alah, they must go with that opinion 2. If there is a difference of opinion between Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) and the other A'immah of the Madhab in a Mas'alah, they may give preference (Tarjīh) to one of the views based upon the evidences (<i>Adillah</i>) of Sharī'ah ²⁷, but they cannot give Fatwā on their personal opinion 3. They are not capable of looking into the evidences (Adillah) of Sharī'ah to establish a view <u>that would be considered the view of the Madhab</u> 4. They are not capable of looking into the other Masāil of the Imam in order to establish a view <u>that would be considered the view of the Madhab</u> 	
	They differentiate between the views of the <i>Zāhir Al Riwāyah</i> (ظاهر الرواية) of the Madhab, the views of <i>Al Nawādir</i> (النواذر) of the Madhab, and the weak views of the Madhab.	<ol style="list-style-type: none"> 1) 'Allāmah Tāj Al Sharī'ah Al Maḥbūbī (d.672 AH)³⁰ 2) 'Allāmah Mawṣilī (d.683 AH) 3) 'Allāmah Sa'ātī (d.694 AH) 4) Ḥāfiẓ Al Dīn Al Nasafī (d.710 AH)³¹

²⁷ Although they are capable of looking into the evidences for giving preference (ترجيح), Mufti Husain Sahib mentions that in most cases, they have taken the view preferred by the Hanafi scholars before them. Hence, when the author of *Al Hidayah* says وهو الصحيح, in most cases, he has not said this after looking into the evidences. Rather, he has taken the preference of the Hanafi scholars that came before him.

(Translator)

³⁰ Allamah Taj Al Shari'ah should be in the category of Sahib Al Tarjih (صاحب الترجيح)

(Lecture of Mufti Husain Kadodia Sahib – Usul Al Ifta Wa Adabuhu)

³¹ Hafidh Al Din Al Nasafi (d.710 AH) should be in the category of *Sahib Al Tarjih* (صاحب الترجيح) if not higher.

(Lecture of Mufti Husain Kadodia Sahib – Usul Al Ifta Wa Adabuhu)

<p style="text-align: center;">Şāhib Al Tamyīz</p> <p style="text-align: center;">(صاحب التمييز)²⁹</p>	<p>They may also look at the different views that the scholars worthy of giving preference (<i>Aṣḥāb Al Tarjih</i>) have given preference to and come to an overall conclusion.</p>	<p>5) ‘Allāmah Zayn Al Dīn Ibn Nujaym (d.970 AH) 6) ‘Allāmah Haskafi (d.1088 AH)</p>
--	---	--

Hafizud Din Al Nasafi (d.710 AH) wanted to write a commentary on Al Hidayah and so he approached Tajus Sharee’ah, who was one of the most senior Alim of the time. Tajus Sharee’ah told him that he does not have the ability to do so. So instead, Al Nasafi wrote a primer called ‘Al Wafi’, after writing it, he wrote a commentary to it by the name of ‘Al Kafi’. In ‘Al Kafi’, he paid a lot of attention in pointing out all the mistakes that are found in Al Hidayah. Hence, the commentators of Al Hidayah who came after Al Nasafi, they will quote ‘Al Kafi’ which corrects the mistakes of Al Hidayah. Hence, the tarjeeh of Al Nasafi is of a higher level than the author of Al Hidayah. He was a master of all sciences; he wrote Al Manar in Usool Fiqh and Tafseerul Nasafi (the manner in which he teach Jalalayn in our Darse Nizami, for a long period of time, the Arabs would teach Tafseerul Nasafi in the same manner. The bear minimum level that he should be given is *Sahib Al Tarjih* (صاحب الترجيح)).

(Lecture of Mufti Husain Kadodia Sahib – Usul Al Ifta Wa Adabuhu)

²⁹ All the Fuqahaa who came after those who were capable of giving preference (الترجيح) in the Mathab (أصحاب الترجيح) will fall into this category, irrespective of how knowledgable they are/were. This includes Ibn Abideen (d.1252 AH), Ibn Nujaym (d.970 AH) and even the Ulama of the Indian subcontinent such as Allamah Kashmeeri. If any of these scholars give preference (الترجيح), their preference (الترجيح) does not hold any weight in the Mathab as this is beyond their jurisdiction.

(Lecture of Mufti Husain Sahib)

Hafizud Din Al Nasafi (d.710 AH) wanted to write a commentary on Al Hidayah and so he approached Tajus Sharee’ah, who was one of the most senior Alim of the time. Tajus Sharee’ah told him that he does not have the ability to do so. So instead, Al Nasafi wrote a primer called ‘Al Wafi’, after writing it, he wrote a commentary to it by the name of ‘Al Kafi’. In ‘Al Kafi’, he paid a lot of attention in pointing out all the mistakes that are found in Al Hidayah. Hence, the commentators of Al Hidayah who came after Al Nasafi, they will quote ‘Al Kafi’ which corrects the mistakes of Al Hidayah. Hence, the tarjeeh of Al Nasafi is of a higher level than the author of Al Hidayah. He was a master of all sciences; he wrote Al Manar in Usool Fiqh and Tafseerul Nasafi (the manner in which he teach Jalalayn in our Darse Nizami, for a long period of time, the Arabs would teach Tafseerul Nasafi in the same manner. The bear minimum level that he should be given is *Sahib Al Tarjih* (صاحب الترجيح)).

(Lecture of Mufti Husain Kadodia Sahib – Usul Al Ifta Wa Adabuhu)

<p style="text-align: center;"><i>Ṣāhib Al Wayl</i>³²</p> <p style="text-align: center;">(صاحب الويل)</p>	<p>They are those who follow those that are not capable of any of the above and mention any view of the Madhab that they find. So Allah’s curse be upon those who follow such Fuqahā. ³³</p>	<p>By referring to those who are not capable of any of the above, Ibn Kamāl Bāshā Raḥimahullah (d.940 AH) is referring to the authors of those books of fatwa that are unreliable such as the author of <i>Qunyah Al Munyah Li Tatmīm Al Ghunyah</i> (قنية الحنية لتتميم الغنية) and the author of <i>Jāmi’ Al Rumūz</i> (جامع الرموز)</p>
---	---	--

³² This last category is not really a category of Fuqahaa. It is a category of those followers (Muqallideen) who follow what is written in the unreliable books.

(Lecture of Mufti Husain Sahib – Sharh Uqud Rasm Al Mufti)

³³The original statement of Ibn Kamal Basha was: فالويل لهم ولمن قلدهم كل الويل – ‘a complete curse be upon them and those who follow them’, this seems to be a curse upon the authors of the unreliable books such as the author of Al Qunyah, Al Zahidi and the author of Jamiur Rumooz, Al Quhistani as well as their followers. However, Ibn Abideen realised that the blame should not be upon these authors for not reaching the level of those above them, hence he changed the phrase to: فالويل لمن قلدهم كل الويل – ‘a complete curse be upon those who follow them’, here the curse has been directed towards those who follow the views related by these unreliable authors knowing well that their books are unreliable.

(Lecture of Mufti Husain Sahib – Sharh Uqud Rasm Al Mufti)

Although many scholars have recorded this categorisation of the Ḥanafī Fuqahā without any objections, there were a group of scholars who felt that Ibn Kamāl Bāshā Raḥimahullah (d.940 AH) has made some errors in his categorisation. We shall discuss these errors and their solutions in detail.

Ibn Kamāl Bāshā Raḥimahullah (d.904 AH)'s Mistakes in his Categorisation

Ibn Kamāl Bāshā Raḥimahullah (d.904 AH)'s First Mistake

As pointed out by Allamah Marjani Raḥimahullah (d.1306 AH)³⁴ in his *Nāzūratul Haq* and 'Allāmah 'Abdul Hayy Al Lucknawī (d.1304 AH) in his introduction to *Al Jāmi' Al Saghīr* and his *'Umdah Al Ri'āyah*

Ibn Kamāl Bāshā Raḥimahullah (d.940 AH)'s first mistake may be understood in three simple points:

- He has put Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH) in the category of *Mujtahid Fil Madhab* (مجتهد في المذهب)
- A *Mujtahid Fil Madhab* (مجتهد في المذهب) cannot differ with the Imām in his principles (*Uṣūl*)
- Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH) have differed with Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) in his principles

Proof that Ibn Kamāl Bāshā Raḥimahullah (d.940 AH) has made a mistake:

1. Imām Al Ghazālī Raḥimahullah (d.505 AH) states in his book, *Al Mankhūl* (المنحول):

إِثْمًا خَالَفَا أَبَا حَنِيفَةَ فِي ثُلَاثِي مَذْهَبِهِ

“Surely they have gone against Abū Ḥanīfah in two-thirds of his Madhab”

2. Imām Al Nawawī Raḥimahullah (d.676 AH) has recorded in his *Tahdhīb Al Asmā* from Imām Al Ḥaramayn 'Allāmah Abul Ma'ālī Al Juwaynī Raḥimahullah (d.478 AH) that he said:

كُلُّ مَا اخْتَارَهُ الْمُزَنِيُّ أَرَى أَنَّهُ تَخْرِيجٌ مُلْحَقٌ بِالْمَذْهَبِ لَا كَأَيِّ يُوسُفَ وَمُحَمَّدٍ فَإِثْمًا يُخَالِفَانِ أَصُولَ صَاحِبَيْهِمَا

“All that [Imām] Al Muzanī has adopted is a Takhrīj (extraction) which is [still] attached to the Madhab, unlike [Imām] Abū Yūsuf and [Imām] Muḥammad, for surely they have gone against the principles of their Imām”

3. 'Allāmah Marjānī Raḥimahullah (d.1306 AH) writes:

وَحَالُهُمْ فِي الْفِقْهِ وَإِنْ لَمْ يَكُنْ أَرْفَعَ مِنْ مَالِكٍ وَالشَّافِعِيِّ فَلَيْسُوا بِدُونِهِمَا وَقَدْ اشتهَرَ فِي أَقْوَاهِ الْمُوَافِقِ وَالْمُخَالِفِ وَجَرَى مَجْرَى الْأَمْثَالِ قَوْلُهُمْ "أَبُو حَنِيفَةَ أَبُو يُوسُفَ" بِمَعْنَى أَنَّ الْبَالِغَ إِلَى الدَّرَجَةِ الْقُصْوَى فِي الْفَقَاهَةِ أَبُو يُوسُفَ

“Although their (Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH)) statuses in Fiqh are not higher than Imām Mālik and Imām Al Shafi'ī, they are certainly not lower.

Their statement, 'Abū Ḥanīfah, Abū Yūsuf' has become famous upon the lips of the supporters and detractors and it has passed as an example, the meaning of the statement being that the individual who has reached the farthest level in jurisprudential understanding is Abū Yūsuf”

³⁴His name is actually spelt as Şihabetdin Märcani.

Question: so what *were* Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH)?

Answer: they were both a *Mujtahid Muntaṣib* (مجتهد منتسب)

‘Allāmah Lucknawī Raḥimahullah (d.1304 AH) states:

فَأَحَقُّ أَنْ يُقَالَ إِنَّهُمَا مُجْتَهِدَانِ مُسْتَقِلَّانِ وَقَدْ بَلَغَا مَرْتَبَةَ الْإِجْتِهَادِ الْمُطْلَقِ إِلَّا أَنَّهُمَا لِحَسَنِ تَعْظِيمِهِمَا لِأُسْتَاذِهِمَا وَفَرَطِ إِجْلَالِهِمَا لَهُ أَصْلًا أَصْلَهُ وَتَوَجُّهًا إِلَى نَقْلِ مَذْهَبِهِ
وَأَنْتَسَبَا إِلَيْهِ

“The truth of the matter is for it to be said that they (Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH)) were independent Mujtahidīn, they had reached the level of complete Ijtihād. However, due to their great respect for their teacher (Imām Abū Ḥanīfah Raḥimahullah (d.150 AH)) and their absolute awe for him, they upheld his principles and focused on spreading his Madhab, and they attributed themselves to it”

Thus, it is as though ‘Allāmah Lucknawī Raḥimahullah (d.1304 AH) has made Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH) from amongst the category of *Mujtahid Muntasib* (مجتهد منتسب) and not the category of *Mujtahid Fil Madhab* (مجتهد في المذهب).

Question: what is a *Mujtahid Muntaṣib* (مجتهد منتسب)?

Answer: it is a complete separate category of Fuqahā which Ibn Kamāl Bāshā Raḥimahullah (d.940 AH) has not mentioned. However, many others have mentioned this category. However, the scholars have differed over the connotation of the word *Mujtahid Muntaṣib* (مجتهد منتسب); thus there are three views as to the meaning of a *Mujtahid Muntasib* (مجتهد منتسب):

1) The view of ‘Allāmah ‘Abdul Hayy Lucknawī Raḥimahullah (d.1304 AH):

He is in reality a *Mujtahid Fi Al Shar’* (مجتهد في الشرع) (Mujtahid Mutlaq - مجتهد مطلق) and does not follow (Taqlīd) of anyone in his Masail or principles (*Uṣūl*). Rather, he attributes himself to another *Mujtahid Fi Al Shar’* (مجتهد في الشرع) out of awe and respect. Such people are titled: *Mujtahid Muntasib* (مجتهد منتسب) and the individual that they follow is labelled: *Mujtahid Mustaqil* (مجتهد مستقل).

This would mean:

Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH) are *Mujtahid Fi Al Shar’* (مجتهد في الشرع) who have attributed themselves to another *Mujtahid Fi Al Shar’* (مجتهد في الشرع); Imām Abū Ḥanīfah Raḥimahullah (d.150 AH). Hence, Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH) are known as *Mujtahid Muntasib* (مجتهد منتسب) and Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) is known as a *Mujtahid Mustaqil* (مجتهد مستقل).

2) The view of Ḥāfiẓ Ibn Ṣalāḥ Raḥimahullah (d.643 AH) - as recorded by Imām Al Nawawī Raḥimahullah (d.676 AH)

A *Mujtahid Muntasib* (مجتهد منتسب) is in reality a *Mujtahid Fi Al Shar’* (مجتهد في الشرع). However, he attributes himself to a *Mujtahid Mustaqil* (المجتهد المستقل) – an independent Mujtahid) as he follows the method/path (طريق) adopted by the *Mujtahid Mustaqil* (المجتهد المستقل) – an independent Mujtahid) in his application of *Ijtihād* (اجتهاد). Hence, their views are similar in most masail, but **not** because the former follows (*Taqlīd*) of the latter.

Abū Ishāq Al Isfirāīnī Raḥimahullah (d.418 AH) elaborates upon this view by stating:

إِنَّمَا صَارُوا إِلَى مَذْهَبِ الشَّافِعِيِّ لَا تَقْلِيدًا لَهُ بَلْ لَمَّا وَجَدُوا طَرَفَهُ فِي الْإِجْتِهَادِ وَالْقِيَاسِ أَسَدَ الطَّرِيقِ وَلَمْ يَكُنْ لَهُمْ بُدٌّ مِنَ الْإِجْتِهَادِ سَلَكُوا طَرِيقَهُ فَطَلَبُوا مَعْرِفَةَ الْأَحْكَامِ بِطَرِيقِ الشَّافِعِيِّ

“Indeed, they (the *Mujtahid Muntasib* (مجتهد منتسب) of the Shāfi’ī Madhab) turned to the Madhab of [Imām] Al Shāfi’ī, not by following (Taqlīd) of him, rather, they found his method of Ijtihād and analogical deduction (Qiyās) the most correct and they did not find a parallel for [his] Ijtihād, so they adopted his method, thus they recognised ruling according to the method of [Imām] Al Shāfi’ī”

Similarly, Abū ‘Alī Al Sinjī Raḥimahullah said:

اتَّبَعْنَا الشَّافِعِيَّ دُونَ غَيْرِهِ لِأَنَّا وَجَدْنَا قَوْلَهُ أَرْجَحَ الْأَقْوَالِ وَأَعَدَلَهَا لَا أَنَّا قَلَدْنَاهُ

“We have imitated [Imām] Al Shāfi’ī and none besides him as we found his view to be the most preferred view and most just view, not because we followed

The upshot of this view is that a *Mujtahid Muntasib* (مجتهد منتسب) attributes himself to a *Mujtahid Mustaqil* (المجتهد المستقل – an independent Mujtahid) because in the majority of Masāil, the Ijtihād of the latter concurs the Ijtihād of the former. The reason as to why the *Mujtahid Muntasib* (مجتهد منتسب) attributes himself to the *Mujtahid Mustaqil* (المجتهد المستقل – an independent Mujtahid) is not because the *Mujtahid Muntasib* (مجتهد منتسب) follows the *Mujtahid Mustaqil* (المجتهد المستقل – an independent Mujtahid) in his principles (Uṣūl) or Masāil.

This is also the view adopted by ‘Allāmah Jalāl Al Dīn Al Suyūṭī Raḥimahullah (d.911 AH). ‘Allāmah Jalāl Al Dīn Al Suyūṭī Raḥimahullah (d.911 AH) then states:

فَبَيْنَ الْمُسْتَقِلِّ وَالْمُطْلَقِ عُمُومٌ وَخُصُوصٌ فَكُلُّ مُسْتَقِلٍّ مُطْلَقٌ وَلَيْسَ كُلُّ مُطْلَقٍ مُسْتَقِلًّا

“There is a relationship of generality and specification (*‘Umūm wa Khuṣūṣ*) between a *Mujtahid Fi Al Shar’* (مجتهد في الشرع) and *Mujtahid Mustaqil* (المجتهد المستقل – an independent Mujtahid). For every *Mujtahid Mustaqil* (المجتهد المستقل – an independent Mujtahid) is a *Mujtahid Fi Al Shar’* (مجتهد في الشرع), but not every *Mujtahid Fi Al Shar’* (مجتهد في الشرع) is a *Mujtahid Mustaqil* (المجتهد المستقل – an independent Mujtahid)”

This would mean:

Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH) are *Mujtahid Fi Al Shar’* (مجتهد في الشرع) who follow the method/path (طريق) of Ijtihād of another *Mujtahid Fi Al Shar’* (مجتهد في الشرع); Imām Abū Ḥanīfah Raḥimahullah (d.150 AH). Hence, Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH) are known as *Mujtahid Muntasib* (مجتهد منتسب) and Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) is known as a *Mujtahid Mustaqil* (مجتهد مستقل).

3) The view of Shaykh ‘Abdul Wahhāb Al Sha’rānī Raḥimahullah (d.973 AH)

Shaykh ‘Abdul Wahhāb Al Sha’rānī Raḥimahullah (d.973 AH) writes:

وجميع من ادعى الإجتهد المطلق (يعني في العصور المتأخرة عن الأئمة المتبوعين) إنما مراده المطلق المنتسب الذي لا يخرج عن قواعد إمامه كابن القاسم وأصبع مع مالك وكمحمد وأبي يوسف مع أبي حنيفة وكالمزني والربيع مع الشافعي

“All those who claims Ijtihād Muṭlaq (i.e. from the ages after the age of the followed A’immah), indeed they intended [Ijtihād] *Muṭlaq Muntasib* (مطلق منتسب) in which one does not leave the principles of his Imām, such as Ibn Al Qāsim and Aṣbagh with Imām Mālik, and Muḥammad and Abū Yūsuf with Abū Ḥanīfah, and Al Muzanī and Al Rabī’ with Al Shafi’ī”

In the above statement, it is understood that Shaykh ‘Abdul Wahhāb Al Sha’rānī Raḥimahullah (d.973 AH) considered a *Mujtahid Muntasib* (مجتهد منتسب) to be an individual who follows the principles of his Imam like a *Mujtahid Fil Madhab* (مجتهد في المذهب), as did Ibn Kamāl Bāshā Raḥimahullah (d.940 AH). Interestingly however, Shaykh ‘Abdul Wahhāb Al Sha’rānī Raḥimahullah (d.973 AH) still considers these individuals to be *Mujtahid Fi Al Shar’* (مجتهد في الشرع) as well.

It is possible that the intended meaning of Shaykh ‘Abdul Wahhāb Al Sha’rānī Raḥimahullah (d.973 AH)’s sentiments have been elaborated by Shāh Waliullah Al Dehlavī Raḥimahullah (d.1176 AH) in his book, *Al Inṣāf Fī Bayān Asbāb Al Ikhtilāf* (الإنصاف في بيان أسباب الاختلاف).

Shāh Waliullah Al Dehlavī Raḥimahullah (d.1176 AH) writes that a *Mujtahid Muntasib* (مجتهد منتسب) is an individual who lies between the level of *Mujtahid Fi Al Shar’* (مجتهد في الشرع) and *Mujtahid Fil Madhab* (مجتهد في المذهب);



Shāh Waliullah Al Dehlavī Raḥimahullah (d.1176 AH) then elaborates further by stating:

A *Mujtahid* (مجتهد) is of two types:

- A *Mujtahid Fi Al Shar’* (مجتهد في الشرع):

This is also of two types:

1. A *Mujtahid Mustaqil* (مجتهد مستقل): He has four qualities:
 - i. He has the ability to choose his own principles from which Masāil will be derived
 - ii. He gathers the Aḥādīth and Āthār, and deduces rulings from them whilst marrying the contradictory Aḥādīth and giving preference to some Aḥādīth over others, as well as specifying a meaning for Aḥādīth which have multiple meanings
 - iii. He creates Masāil for which an answer has not been provided from the scholars of the three righteous ages (*Khairul Qurūn*) and provides the rulings to these Masāil
 - iv. He is given acceptance from Allah
2. A *Mujtahid Muntasib* (مجتهد منتسب):

He is an individual who follows a *Mujtahid Mustaqil* (مجتهد مستقل) in his first quality. However, he has his own methods for the other qualities.

▪ *A Mujtahid Fil Madhab* (مجتهد في المذهب):

He is an individual who follows a *Mujtahid Mustaqil* (مجتهد مستقل) in his first and second quality. However, he has his own methods for the other two qualities.

Mufti Taqi Sahib elaborates upon Shah Waliullah's (d.1176 AH) explanation by stating:

A Mujtahid Muntasib (مجتهد منتسب) is:

An individual who follows those principles of the Imām which are his rudimentary principles of extracting rulings from the evidences of Shar'ah and are clearly and explicitly mentioned by him.

Example:

- A principle of the Imām with regards to the legal standing of a *Mursal* (مرسل) narration
- A principles of the Imām when giving preference to narrations; for example, whether or not the reliability of the narrators or the jurisprudential abilities of the narrators should be considered when giving preference to some narrations over others.

However, he differs with his Imām in his more intricate principles, the majority of which are not explicitly mentioned by him. Rather, the scholars of principles (*Uṣūl*) have extracted this 'principle' of the Imām based upon the rulings he has given in various Masāil.

Example:

- A principle that a literal meaning (*Ḥaqīqī*) and metaphorical meaning (*Majāzī*) cannot be meant at the same time
- A principle that the metaphorical meaning (*Majāzī*) is secondary to the literal meaning (*Ḥaqīqī*) in speech and ruling

Thus, the majority of Masāil in which Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH) have differed with Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) are Masāil of this type; wherein the principles of the Imām for those Masāil are intricate and in most cases, are not explicitly mentioned by him.

A Mujtahid Fil Madhab (مجتهد في المذهب) is:

An individual who does not contradict any of his Imam's principles. Rather, he simply deduces new Masail from the evidences (نصوص) using the principles of the Imam. At times, their personal opinion may contradict the opinion of the Imam, but they will never contradict the Imam in his *principles*.

After understanding the above discussion, the reasons behind 'Allāmah Marjānī Raḥimahullah (d.1306 AH) and 'Allāmah Lucknawī Raḥimahullah (d.1304 AH)'s disapproval of Ibn Kamāl Bāshā Raḥimahullah (d.940 AH)'s categorisation are apparent.

Solution to Ibn Kamāl Bāshā Raḥimahullah (d.904 AH)’s First Mistake

Muftī Taqī Ṣāhib suggests that Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH) should be moved to a separate category known as *Mujtahid Muntasib* (مجتهد منتسب) instead of *Mujtahid Fil Madhab* (مجتهد في المذهب).

After this, we could move Imām Al Ṭaḥāwī Raḥimahullah (d.321 AH) into the category of *Mujtahid Fil Madhab* (مجتهد في المذهب), he is worthy of this acclaim as we have gleamed from the incident that took place between him and Al Qāḍī Abū ‘Ubayd ibn Ḥarbūyah Al Shāfi’ī which has been mentioned earlier in the discussion upon following a school of Fiqh (*Taqlid*).

Similarly, Ibn Al Hummām Raḥimahullah (d.861 AH) and Abul Ḥasan Al Karkhī Raḥimahullah (d.340 AH) should be moved to the category of *Mujtahid Fil Madhab* (مجتهد في المذهب).

Also, Ḥāfiẓ Al Dīn Al Nasaḥī Raḥimahullah (d.710 AH) should also be moved to the category of *Mujtahid Fil Madhab* (مجتهد في المذهب) as many Ḥanafī Fuqahā have mentioned that he was from the category of *Mujtahid Fil Madhab* (مجتهد في المذهب). Such was his calibre, that it has been said, “A *Mujtahid Fil Madhab* (مجتهد في المذهب) has not been found after Al Nasaḥī”, as recorded in *Sharḥ Al Taḥrīr* (شرح التحرير) and *Sharḥ Musallam Al Thabūt* (شرح مسلم الثبوت). ‘Allāmah Marjānī Raḥimahullah (d.1306 AH) has also preferred the view that Ḥāfiẓ Al Dīn Al Nasaḥī Raḥimahullah (d.710 AH) should be considered from the category of *Mujtahid Fil Madhab* (مجتهد في المذهب).

This is for the Ḥanafī Madhab.

For the Shāfi’ī Madhab, Imām Abū Ishāq Al Marwazī Raḥimahullah and Imām Al Ghazālī Raḥimahullah would fit in the category of *Mujtahid Fil Madhab* (مجتهد في المذهب).

For the Mālikī Madhab, Abū Bakr ibn Al ‘Arabī Raḥimahullah and Ibn ‘Abd Al Barr Raḥimahullah would fit in the category of *Mujtahid Fil Madhab* (مجتهد في المذهب).

For the Ḥanbalī Madhab, Yūsuf ibn ‘Abd Al Hādī Raḥimahullah and Ibn Rajab Al Ḥanbalī Raḥimahullah would fit in the category of *Mujtahid Fil Madhab* (مجتهد في المذهب).

Ibn Kamāl Bāshā Raḥimahullah (d.904 AH)’s Second Mistake

Some of these categories, such as *Mujtahid Fi Al Shar’* (مجتهد في الشرع) and *Mujtahid Fil Madhab* (مجتهد في المذهب), are distinct from one another. However, there are other categories which are not distinct from one another. Thus it is possible for a single individual to fit into more than one of these non-distinct categories. These non-distinct categories are *Mujtahid Fil Masāil* (مجتهد في المسائل), *Ṣāhib Al Takhrīj* (صاحب التخرīj), and *Ṣāhib Al Tarjīḥ* (صاحب الترجيح).

Solution to Ibn Kamāl Bāshā Raḥimahullah (d.904 AH)'s Second Mistake

Muftī Taqī Ṣāḥib states that the solution to this mistake is to state that these categories are not categories of individuals, rather, they are titles that an individual could have. The meaning of this is that the titles of the Fuqahā may be divided into these three types, however, it is not impossible for an individual to have all three titles or some of them. The analogy of this is how the scholars are divided as being from amongst the Mufasirūn (exegesists), or Muḥadithūn (scholars of Hadith), or Fuqahā (jurists), or Mutakallimūn (theologian), yet at times a person may be worthy of all of these titles. In such a case, a person is a Mufasirūn (exegesists) in recognition of his involvement with the field of Tafṣīr, he is a Muḥaddith in recognition of his involvement with the field of Ḥadīth, he is a Faqīh in recognition of his involvement with the field of Fiqh, and he is a Mutakallim (theologian) in recognition of his involvement with the field of ‘Ilm Al Kalām (theology). In the same manner, it is possible for a person to be a *Mujtahid Fil Masāil* (مجتهد في المسائل) as well as be worthy of being called a *Ṣāḥib Al Tarjih* (صاحب الترجيح) or *Ṣāḥib Al Takhrīj* (صاحب التخریج).

It is for this reason that the scholars have considered Imām Abū Ja’far Al Ṭaḥāwī Raḥimahullah (d.321 AH) as from amongst the *Mujtahid Fil Masāil* (مجتهد في المسائل), whilst others have considered him as from amongst the *Ṣāḥib Al Takhrīj* (صاحب التخریج).³⁵

Ibn Kamāl Bāshā Raḥimahullah (d.904 AH)'s Third Mistake

(As pointed out by ‘Allāmah ‘Abdul Ḥayy Al Lucknawī Raḥimahullah (d.1304 AH) and ‘Allāmah Marjānī Raḥimahullah (d.1306 AH))

Ibn Kamāl Bāshā Raḥimahullah (d.904 AH) has put some individuals in an incorrect category. Hence, some of these errors include:

- 1) He has put Imām Al Kassāf Raḥimahullah (d.261 AH) and Imām Al Ṭaḥāwī Raḥimahullah (d.321 AH) in the category of *Mujtahid Fil Masail* (مجتهد في المسائل), such that they are not able to contradict the Imām in his Masāil or principles.

This stance is rejected if one studies their views and opinions narrated in the books that contain Ḥanafī Masāil. Thus, they have at times, contradicted the views and opinions of the Imām. Accordingly, they should be considered a part of the category of *Mujtahid Fil Madhab* (مجتهد في المذهب).

³⁵ An individual of a category is able to do all the actions of the categories below him. However, this individual is not capable of performing the actions of the categories that are above him. Hence, if Ibn Kamal (d.940 AH) has labelled a person as *Mujtahid Fil Masail* (مجتهد في المسائل) and that individual also behaves as a *Sahib Al Tarjih* (صاحب الترجيح) that does not mean that this person is part of 2 categories. Rather, this means that he is a *Mujtahid Fil Masail* (مجتهد في المسائل) who is capable of giving preference (ترجيح) to a view, as the category of *Sahib Al Tarjih* (صاحب الترجيح) lies below the category of *Mujtahid Fil Masail* (مجتهد في المسائل).

In summary, a jurist is put into the category that shows the limit of his capabilities. Hence, Ibn Kamal (d.940 AH) has not made a mistake here.

(Lecture of Mufti Husain Kadodia Sahib)

Note:

Mufti Husain Sāḥib's statement is important to understand. Later on, we will discuss preferences given to a view by the *As-hab Al Tarjih* (أصحاب الترجيح). It is important to know that the *As-hab Al Tarjih* (أصحاب الترجيح) are not only the scholars who fit into the category of *Sahib Al Tarjih* (صاحب الترجيح), rather, the *As-hab Al Tarjih* (أصحاب الترجيح) are all those scholars who fit into the category of *Sahib Al Tarjih* (صاحب الترجيح) as well as the categories above the category of *As-hab Al Tarjih* (أصحاب الترجيح).

Muftī Taqī Šāhib states that Ibn Al Hummām Raḥimahullah (d.861 AH) should also be a part of the category of *Mujtahid Fil Mathab* (مجتهد في المذهب).³⁶

- 2) He put Imām Al Ḥalwānī Raḥimahullah (d.456 AH), Shamsul A’immah Al Sarakhsī Raḥimahullah (d.483 AH), Fakhr Al Islām Bazdawī Raḥimahullah (d.482 AH) and Imām Qāḍī Khān Raḥimahullah (d.592 AH) in the category of *Mujtahid Fil Masail* (مجتهد في المسائل) while putting Imām Abū Bakr Al Rāzī Raḥimahullah (d.370 AH) in the category of *Šāhib Al Takhrīj* (صاحب التخرīj). Imām Abū Bakr Al Rāzī Raḥimahullah (d.370 AH) should at the very least be on par with the above mentioned Fuqahā, if not above them.
- 3) He has put Imām Qāḍī Khān Raḥimahullah (d.592 AH) in the category of *Mujtahid Fil Masail* (مجتهد في المسائل) while putting Imām Qudūrī Raḥimahullah (d.428 AH) and ‘Allāmah Murghīnānī Raḥimahullah (d.593 AH) below him. As for Imām Qudūrī Raḥimahullah (d.428 AH), he was more knowledgeable than Imām Qāḍī Khān Raḥimahullah (d.592 AH). As for ‘Allāmah Murghīnānī Raḥimahullah (d.593 AH), he was equal in knowledge to Imām Qudūrī Raḥimahullah (d.428 AH) if not more knowledgeable than him.³⁷

Why did Ibn Kamāl Bāshā Raḥimahullah (d.904 AH) make this third mistake?

‘Allāmah Marjānī Raḥimahullah (d.1306 AH) has put forward a lengthy reasoning behind why Ibn Kamāl Bāshā Raḥimahullah (d.904 AH) put the Fuqahā in the wrong categories. He states:

لما كان الغالب على فقهاء العراق السداجة في التجاني عن الألقاب الهائلة والأوصاف الحامفلة والتحاشي عن الترفع وتنويه النفس وإعجاب الحال تدينا وتصلبا وتورعا وتادبا كما كان الغالب عليهم الحمولة والإجتنا عن ولاية القضاء وتناول الأعمال السلطانية... فكانوا يذهبون مذهبهم في الإكتفاء بالتمييز عن غيرهم بأسماء ساجدة يبتذلها العامة ويمتهنها السوق من الإنتساب إلى الصناعة أو القبيلة أو القرية أو المحلة أو نحو ذلك كالحصاف والجصاص والقُدوري والثُلجي والطحاوي والكرخي والصيمري فجاء المتأخرون منهم على مناهجهم في الإكتفاء بما وعدم الزيادة عليها في الحكاية عنهم

³⁶ Ibn Al Hummam (d.861 AH) should not reach a level higher than *Shahib Al Tarjih* (صاحب الترجيح); many think that Ibnul Hummam was a master in Hadith. Yes, Ibn Al Hummam (d.861 AH) was a master of many fields, but not a master in Hadith. He came much later than the period in which narrating Ahadith was common. People tend to look at his *Fathul Qadeer* (فتح القدير) and think that he was a master in Hadith; the reality is that the majority of his discussions on Hadith in *Fathul Qadir* (فتح القدير) have been taken from Allamah Zayla’i’s *Nasbur Rayah* (النصب الراية). Allamah Sakhawi, who was a student of Ibnul Hummam, praised Ibnul Hummam in *Ad Daw’ul Lami’* (الضوء الاعم) as being as a master of many fields of knowledge, but remarked that his knowledge of Hadith was weak.

(Lecture of Mufti Husain Sahib)

³⁷ Allamah Anwar Shah Kashmiri has written in Faydh Al Bari:

وقاضي خان أرفع رتبة من صاحب "الهداية" قال العلامة القاسم بن قطلوبغا في كتاب "الترجيح والتصحيح" أنه من شيوخ صاحب "الهداية" ومن أجله علماء الترجيح

Muhammad Harun states that he has not seen in the books available to him of the biographies of the Hanafi Fuqaha in which Qadi Khan has been considered one of the teachers of Allamah Abu Bakr Ali Al Murghinani. Rather, their statements indicate that they were contemporaries, Allamah Qurashi writes in *Jawahir Al Mudi’ah*:

صاحب الهداية أقر له أهل مصر بالفضل والتقدم كالإمام فخر الدين قاضي خان مع الإمام زين الدين العتاي

In fact, a portion of Allamah Qurashi’s biography on Allamah Abu Bakr Ali Al Murghinani indicates that he was more knowledgeable than Qadi Khan; Allamah Qurashi writes:

وفاق شيوخه وأقرانه وأذعنوا له كلهم ولا سيما بعد تصنيفه لكتاب الهداية وكفاية المنتهى

As elaborated by Mufti Taqi Sahib, Allamah Lucknawi has also disagreed with the view that Allamah Abu Bakr Ali Al Murghinani is of a lower calibre than Qadi Khan. Thus, he writes:

شأنه ليس أدون من قاضي خان

However, Allamah Lucknawi then writes:

وعده من المجتهدين في المذهب إلى العقل السليم أقرب

(Muhammad Harun, “Al Fath Al Rabbani”, (Dhakah: Maktabatul Azhar, 2014), p. 298)

وأما الغالب على أهل خراسا ولا سيما ما وراء النهر في القرون الوسطى والمتأخرة فهو المغالاة في الترفع على غيرهم وإعجاب حالهم ... فلقبوا بالألقاب النبيلة ووصفوا بالأوصاف الجليلة مثل شمس الأئمة وفخر الإسلام وصدر الشريعة واستمر الحال في أخلافهم على المنوال ... فإذا ذكروا واحدا من أنفسهم بالغوا في وصفه وقالوا الشيخ الإمام الأجل الزاهد الفقيه ونحو ذلك وإذا نقلوا كلاما من غيرهم فلا يزيدون على مثل قولهم قال الكرخي والجصاص وربما يقتدى بهم من عداهم ممن يتلقى منهم الكلام فيظن الجاهل بأحوال الرجال ومراتبهم في الكمال وطبقات العلماء ودرجات الفقهاء ظن سوء فيأخذ في الإستدلال بنباهة الأوصاف على نباهة الموصوف فيحمله ذلك على الإنكار بما عداهم واستخفاف رجال الله سواهم وقد كان ابن كمال على ولاية عمل الإفتاء من جهة الدولة فأحوجه ذلك إلى مراجعه كتب الفتاوى والإكتار من مطالعة ما فيها من في تحصيل إربه التخلص عن ركيه ووقع نظره فيما سار به أهل ما وراء النهر من رفع أنفسهم والوضع من غيرهم فانتزع إليهم

“Considering that the overwhelming attitude amongst the Fuqahā of ‘Irāq was to maintain simplicity, which was that they avoided giving themselves stupendous agnomens and lavish qualities, and that they refrained from pride, self-praise, and self-acclaim in their methodology and practice, based upon their devoutness, dedication, piety and respect. Similarly, it was their overwhelming attitude of refraining and avoiding the post of being a judge and carrying out services for the monarch ... thus they (the Fuqahā of ‘Irāq) adopted a method of sufficing upon their names being distinguished from others with simple names which the general masses use and the market-traders wear out, simple names that would be related to a profession or tribe or village or area or something similar, such as Al Kassāf, Al Jassās, Al Qudūrī, Al Thalījī, Al Ṭahawī, Al Karkhī, and Al Ṣaymarī. Then the later Fuqahā of ‘Irāq came, and they also sufficed upon these names and did not add anything to these names when quoting them.

As for the overwhelming attitude of the Fuqahā of Khurāsān, especially Transoxianna in the middle and latter ages, it was to exaggerate in elevating themselves above others and to be proud of themselves ... thus they used noble agnomens for themselves and exalted qualities such as Shamsul A’immah, Fakhr Al Islām, Ṣadr Al Shar’ah, and this attitude remained in those that followed these scholars who hailed from this area ... thus when they (the later Fuqahā of Khurāsān) would mention a scholar from their area, they would exaggerate in describing him and would say “Al Shaykh, Al Ajal, Al Zāhid, Al Faqīh”, and other similar titles, and when they (the later Fuqahā of Khurāsān) would mention a scholar who was not from their area, they would not add anything (i.e. they would not add any extra titles), and would simply say “Al Karkhī, Al Jassās”, etc. Seeing this attitude of theirs, at times, other later Fuqahā who were not from Khurāsān would also begin to do the same (i.e. use lofty titles for the Fuqahā of Khurāsān and simple titles for those who were not from Khurāsān). Thus, an ignoramus would have a negative thought [of the Fuqahā who were not from Khurāsān] in terms of their status, and their level amongst the scholars, and their category amongst the Fuqahā, thus he (the ignoramus) would deduce that the described individual is sublime due to his extravagant description, this would lead him to deny those other than these Fuqahā [of Khurāsān] and would lead him to belittle the other men of Allah the Almighty.

Indeed, Ibn Kamāl was given the responsibility of the post of Iftā from the state, this meant that he had to look into the books of Fatāwā and rigorously study them until he had reached the objective of the load given to him. Thus, his sight fell upon how the Fuqahā of Transoxianna elevated themselves and belittled others, and he felt attracted towards them”³⁸

³⁸ ‘Allamah Lucknawi has also mentioned that the Fuqaha of ‘Iraq had simplicity in their agnomens, in which they sufficed in attributing themselves to a work or place or tribe or village, while the Fuqaha of Khurasan and Ma Wara Al Nahr were extravagant in labelling themselves with lofty titles. ‘Allamah Lucknawi then writes:

قال أبو عبد الله القرطبي في "شرح أسماء الله الحسنى" قد دل الكتاب والسنة على المنع من تركية الإنسان نفسه قال علماءنا ويجري هذا الجرى ما كثر في الديار المصرية وغيرها من بلاد العرب والعجم من نعتهم أنفسهم بالنعوت التي تقتضي التركية والثناء كركي الدين ومحي الدين وعلم الدين وشبه ذلك - انتهى - وفي "تنبيه الغافلين" لحي الدين النحاس عند ذكر المنكرات فمنها ما عمت به البلوى في الدين من الكذب الجاري على الألسن وهو ما ابتدعوه من الألقاب كمحي الدين ونور الدين وعضد الدين وغيث الدين ومعين الدين وناصر الدين ونحوها من الكذب الذي يتكرر على الألسن حال النداء والتعريف والحكاية وكل هذا بدعة في الدين ومنكر - انتهى - قلت هذا إذا لم يكن من وصف به أهلا له أو كان أهلا وأراد به تركية نفسه

In short, ‘Allāmah Marjānī Raḥimahullah (d.1306 AH) has claimed that Ibn Kamāl Bāshā Raḥimahullah (d.904 AH) was overly-impressed and bedazzled by the honourific titles that the Fuqahā of Khurāsān had given to themselves. This then lead to an error in judgement when categorising the Fuqahā of the Madhab.

Solution to Ibn Kamāl Bāshā Raḥimahullah (d.904 AH)’s Third Mistake

Muftī Taqī Ṣāḥib states that if we were to consider these categories as titles and not a form of classification, as mentioned earlier, it could remove the issue raised by ‘Allāmah Marjānī Raḥimahullah (d.1306 AH) and ‘Allāmah Lucknawī Raḥimahullah (d.1304 AH). Thus, we would say that Ibn Kamāl Bāshā Raḥimahullah (d.904 AH) put an individual in the category of *Sahib Al Takhrīj* (صاحب التخریج) knowing well that he is a *Mujtahid Fil Masāil* (مجتهد في المسائل) due to the fact that these categories are, in reality, titles. Hence, if an individual with two titles becomes famous with one of them; this does not eradicate the other title.

Accordingly, by putting Imām Qudūrī Raḥimahullah (d.428 AH) and ‘Allāmah Murghīnānī Raḥimahullah (d.593 AH) as from amongst the *Ṣāḥib Al Tarjīḥ* (صاحب الترجيح), it does not mean that Ibn Kamāl Bāshā Raḥimahullah (d.904 AH) did not consider them to be from amongst the *Mujtahid Fil Masāil* (مجتهد في المسائل). Rather, he put them in the category of *Sahib Al Tarjīḥ* (صاحب الترجيح) as their books were famous for the various preferences (*Tarjīḥ*) that they gave to the differing views of the Madhab. This, of course, did not mean that they were not capable of being a *Mujtahid Fil Masāil* (مجتهد في المسائل).

A More Appropriate Version of Ibn Kamal’s Categorisation

Category	Name
<i>Al Mujtahid Al Mutlaq Al Mustaqil</i> (المجتهد المطلق)	➤ Imam Abu Hanifah Rahimahullah (d.150 AH)
<i>Al Mujtahid Al Mutlaq Al Muntasib</i> (المجتهد المنتسب)	➤ Imam Abu Yusuf Rahimahullllah (d.182 AH) ➤ Imam Muhammad Rahimahullah (d.189 AH)
<i>Al Mujtahid Fil Madhab</i> (المجتهد في المذهب)	➤ Abu Bakr Al Iskaf ➤ Muhammad ibn Sama’ah ➤ Abu Sulayman Al Jawzjani ➤ Abu Hafs Al Kabir ➤ Imam Al Kassaf ➤ Imam Al Tahawi Rahimahullah (d.321 AH) ➤ Imam Al Karkhi ➤ Imam Abu Bakr Al Jassas Al Razi (d.370 AH) ➤ Imam Al Quduri (d.428 AH)
<i>Al Mujtahid Fil Masāil</i> (المجتهد في المسائل)	➤ Imam Al Halwani ➤ Shamsul A’immah Al Sarakhsi ➤ Fakhrul Islam Al Bazdawi
<i>Sāḥib Al Takhrīj</i> (صاحب التخریج)	➤ Abu Abdillah Al Jurjani

<p><i>Sāhib Al Tarjīh</i></p> <p>(صاحب الترجيح)</p>	<ul style="list-style-type: none"> ➤ ‘Allamah Mahbubi Taj Al Shari’ah ➤ ‘Allamah Mawsili ➤ Ibn Al Sa’ati ➤ Hafiz Al Din Al Nasafi (d.710 AH) ➤ Al Kurdi Al Bazazi ➤ Zahir Al Din Al Bukhari ➤ ‘Uthman Al Zayla’i ➤ Ibn Al Hummam
<p><i>Ṣāhib Al Tamyīz</i></p> <p>(صاحب التمييز)</p>	<ul style="list-style-type: none"> ➤ ‘Allāmah Zayn Al Dīn Ibn Nujaym (d.970 AH) ➤ ‘Allāmah Haskafi (d.1088 AH) ➤ Ibn Abidin ➤ ‘Allamah Anwar Shah Kashmiri

A Statement from Ibn Abidīn (d.1252 AH) regarding the difference between the categories *Mujtahid Fil Madhab* (مجتهد في المذهب), *Mujtahid Fil Masāil* (مجتهد في المسائل), *Ṣāhib Al Takhrīj* (صاحب التخرīj), *Ṣāhib Al Tarjīh* (صاحب الترجيح) and the category *Ṣāhib A Naql* (صاحب النقل)

Ibn ‘Abidīn Raḥimahullah (d.1252H) has written in his *Sharḥ ‘Uqud Rasm Al Muftī* (شرح عقود رسم المفتي) that in terms of the *capability to give preference (Tarjīh) when there are differing view amongst the Aimmah of the Madhab*, a *Mujtahid Fil Madhab* (مجتهد في المذهب), *Mujtahid Fil Masāil* (مجتهد في المسائل), *Ṣāhib Al Takhrīj* (صاحب التخرīj), and *Ṣāhib Al Tarjīh* (صاحب الترجيح) are equal.

The difference lies in the *Ṣāhib Al Tamyīz* (صاحب التمييز). This is because a *Ṣāhib Al Tamyīz* (صاحب التمييز) is not capable of giving preference (*Tarjīh*) to the differing view amongst the Aimmah of the Madhab. Thus, the *Ṣāhib Al Tamyīz* (صاحب التمييز) is required to follow the preferences (*Tarjīh*) given by the *Mujtahid Fil Madhab* (مجتهد في المذهب), *Mujtahid Fil Masāil* (مجتهد في المسائل), *Ṣāhib Al Takhrīj* (صاحب التخرīj), and *Ṣāhib Al Tarjīh* (صاحب الترجيح) and give Fatwā according to the view that they have given preference to.

Ibn ‘Abidīn Raḥimahullah (d.1252H) writes:

وَإِنَّ مَنْ عَدَاهُمْ يَكْتَفِي بِالْقُلِّ فَإِنَّ عَلَيْنَا اتِّبَاعَ مَا نَقُلُوهُ لَنَا عَنْهُمْ مِنْ اسْتِنْبَاطَاتِهِمْ غَيْرِ الْمَنُصَّوَصَةِ عَنِ الْمُتَقَدِّمِينَ وَمَنْ تَرْجِيحَاتِهِمْ وَلَوْ كَانَتْ لِعَيْرِ قَوْلِ الْإِمَامِ....لَا نَهْمُ لَمْ يُرْجَحُوا مَا رَجَحُوهُ جُزْأً وَإِنَّمَا رَجَحُوا بَعْدَ إِطْلَاعِهِمْ عَلَى الْمَاخِذِ كَمَا شَهِدَتْ مُصَنَّفَاتِهِمْ بِذَلِكَ

“Indeed those other than them (*Mujtahid Fil Madhab*, *Mujtahid Fil Masāil*, *Ṣāhib Al Takhrīj*, and *Ṣāhib Al Tarjīh*) shall suffice by quoting [them; i.e. those other than the *Mujtahid Fil Madhab*, *Mujtahid Fil Masāil*, *Ṣāhib Al Takhrīj*, and *Ṣāhib Al Tarjīh* shall suffice by quoting the *Mujtahid Fil Madhab*, *Mujtahid Fil Masāil*, *Ṣāhib Al Takhrīj*, and *Ṣāhib Al Tarjīh*]. Surely it is upon us to follow that which these individuals (*Ṣāhib Al Tamyīz*) have recorded from them (*Mujtahid Fil Madhab*, *Mujtahid Fil Masāil*, *Ṣāhib Al Takhrīj*, and *Ṣāhib Al Tarjīh*) for us, recordings such as their deductions of those rulings which the early Fuqahā have not discussed and recordings such as their preferences (*Tarjīh*) [of a view], even if it is not the view of the Imām ... this is because they (*Mujtahid Fil Madhab*, *Mujtahid Fil Masāil*, *Ṣāhib Al Takhrīj*, and *Ṣāhib Al Tarjīh*) did not give preference (*Tarjīh*) haphazardly, indeed, they gave preference (*Tarjīh*) after researching the sources as you have witnessed through [reading] their books”

Hence, Ibn ‘Abidīn Raḥimahullah (d.1252H) is stating here that if there is a difference of opinion between the A’immah of the Madhab, we will take the view that the *Mujtahid Fil Madhab* (مجتهد في المذهب), *Mujtahid Fil Masāil* (مجتهد في المسائل), *Ṣāḥib Al Takhrīj* (صاحب التخریج), and *Ṣāḥib Al Tarjīḥ* (صاحب الترجيح) give preference (*Tarjīḥ*) to, even if this view is not the view of the Imām of the Madhab; Imām Abū Ḥanīfah Raḥimahullah (d.150 AH), i.e. the view that they give preference to is the view of one of the other A’immah of the Madhab such as Imām Abū Yūsuf Raḥimahullah (d.182 AH) and Imām Muḥammad Raḥimahullah (d.189 AH).

On the contrary, Zayn Al Dīn Ibn Nujaym Raḥimahullah (d.970 AH) holds the view that we should choose the view of the Imām Abū Ḥanīfah Raḥimahullah (d.150 AH) for Fatwā in all scenarios wherein there is a difference of opinion between the A’immah of the Madhab, even if the *Mujtahid Fil Madhab* (مجتهد في المذهب), *Mujtahid Fil Masāil* (مجتهد في المسائل), *Ṣāḥib Al Takhrīj* (صاحب التخریج), and *Ṣāḥib Al Tarjīḥ* (صاحب الترجيح) give preference (*Tarjīḥ*) to a view contrary to Imām Abū Ḥanīfah Raḥimahullah (d.150 AH)’s view.

He writes:

إِنَّهُ لَا يُفْقَى بِقَوْلِ الْمَشَايخِ بِخِلَافِ قَوْلِ الْإِمَامِ بَلِ الْفَتْوَى عَلَى قَوْلِ الْإِمَامِ دَائِمًا وَإِنْ خَالَفَهُ الْمَشَايخُ

“Indeed, Fatwā shall not be given according to the views of the *Mashāikh* (*Mujtahid Fil Madhab*, *Mujtahid Fil Masāil*, *Ṣāḥib Al Takhrīj*, and *Ṣāḥib Al Tarjīḥ*) if they give preference to a view that is not the view of the Imām (Imām Abū Ḥanīfah Raḥimahullah (d.150 AH)). Rather, Fatwā shall be upon the view of the Imām in all cases, even if the *Mashāikh* (*Mujtahid Fil Madhab*, *Mujtahid Fil Masāil*, *Ṣāḥib Al Takhrīj*, and *Ṣāḥib Al Tarjīḥ*) contradict it.”³⁹

We shall analyse the view of Zayn Al Dīn Ibn Nujaym Raḥimahullah (d.970 AH) in detail shortly.

The Various Titles of Fuqahā Found in the Ḥanafī Fiqh books and their References⁴⁰

Title	Reference
<i>Al Ākhirayn</i> (الآخرين)	It is a reference to Imam Abu Yusuf and Imam Muhammad
<i>Al Aimmah Al Thalāthah</i> (الأئمة الثلاثة)	It is a reference to Imam Abu Hanifah, Imam Abu Yusuf and Imam Muhammad
<i>As-hābunā</i> (أصحابنا)	It is a reference to one of the following: <ul style="list-style-type: none"> Imam Abu Hanifah, Imam Abnu Yusuf and Imam Muhammad Imam Abu Yusuf and Imam Muhammad The scholars of the Hanafi Mathab in general
<i>Al Imam</i> (الإمام):	It is a reference to Imam Abu Hanifah
<i>Al Imamul A’zam</i> (الإمام الأعظم)	It is a reference to Imam Abu Hanifah
<i>Al Imam Al Thani</i> (الإمام الثاني)	It is a reference to Imam Abu Yusuf
<i>Al Imam Al Rabbani</i> (الإمام الرباني)	It is a reference to Imam Muhammad
<i>Al Thalith</i> (الثالث)	It reference to Imam Muhammad
<i>Al Thani</i> (الثاني)	It is a reference to Imam Abu Yusuf
<i>Al Hasan</i> (الحسن)	It is a reference to Imam Hasain ibn Ziyad
<i>Al Khalaf</i> (الخلف)	Some Hanafi scholars have stated that this is a reference to those scholars who came between the time of Imam Muhammad and the time of Imam Halwani

³⁹ Ibn Nujaym (d.970 AH) has broken his own rule many times in *Al Barur Raiq* (البحر الرائق).

(Lecture of Mufti Husain Sahib)

⁴⁰ (*Al Madhabul Hanafi* by Ahmad Al Naqib, p.312-329, v.1, *Maktabah Al Rush*)
(*Al Fawaid Al Bahiyyah* by Abdul Hayy Al Lucknawi, p.308-)

<i>Khuwahir Zadah</i> (خواهر زاده)	It is on most occasions a reference to one of the following: <ul style="list-style-type: none"> ▪ Muhammad ibn Al Husayn Al Bukhari also known as Bakr Khuwahir Zadah ▪ Muhammad ibn Mahmud Al Kardari
<i>Al Daqaiq</i> (الدقائق)	Allamah Qurashi states that it is a title of many scholars but is mostly a reference to Abu Ali Al Razi
<i>Al Zahid</i> (الزاهد)	It is a title of many scholars but is genenerally a reference to Ahmad ibn Muhammad Al Zahid
<i>Al Salaf</i> (السلف)	Some Hanafi scholars have stated that this is a reference to those jurists who came between the time of Imam Abu Hanifah and the time of Imam Muhammad
<i>Shamsul A'immah</i> (شمس الأئمة)	It was a title of many scholars including: <ul style="list-style-type: none"> ▪ Imam Halwani ▪ Imam Muhammad ibn Abdis Sattar Al Kurduri ▪ Imam Muhammad al Awzjandi ▪ Imam Bakr Az Zaranjari ▪ Imam Al Kazzar ▪ Imam Bayhaqi However, if the phrase is used in general, it is a reference to Imam Sarakhsi.
<i>Shaykhul Islam</i> (شيخ الإسلام)	It is usually a reference to one of the following scholars: <ul style="list-style-type: none"> ▪ Ali ibn Muhammad Al Isbijabi as stated by Allamah Qurashi ▪ Abu Bakr Khuwahir Zadah as stated by Ibn Abidin
<i>Al Shaykhayn</i> (الشيخين)	It is a reference to Imam Abu Hanifah and Imam Abu Yusuf
<i>Al Sahibayn</i> (الصاحبين)	It is a reference to Imam Abu Yusuf and Imam Muhammad
<i>Sahibul Mathab</i> (صاحب المذهب)	It is a reference to Imam Abu Hanifah
<i>Sadrus Shari'ah</i> (صدر الشريعة)	It is a reference to one of the following: <ul style="list-style-type: none"> ▪ Ahmad ibn Ubaydullah Al Mahbubi also known as Sadrus Shari'ah Al Akbar and Sadrus Shari'ah Al Awwal ▪ Ubaydullah ibn Mas'ud Al Mahbubi also known as Sadrus Shari'ah Al Asghar and Sadrus Shari'ah Al Thani Ahmad ibn Muhammad Al Naqib states that when Sadrus Shari'ah is mentioned in general, it is a reference to Ubaydullah ibn Mas'ud Al Mahbubi.
<i>Al Tarfayn</i> (الطرفين)	It is a reference to Imam Abu Hanifah and Imam Muhammad
<i>Ammatul Masha'ikh</i> (عامة المشايخ)	It is a reference to the majority of the Hanafi scholars
<i>Al Ulama' Al Thalathah</i> (العلماء الثلاثة)	It is a reference to Imam Abu Hanifah, Imam Abu Yusuf and Imam Muhammad
<i>Ulama'una</i> (علمائنا)	It is a reference to Imam Abu Hanifah, Imam Abu Yusuf and Imam Muhammad
<i>Indahu</i> (عنده)	If there is no intended name before it, then it is a reference to Imam Abu Hanifah
<i>Indahuma</i> (عندهما)	If there are no intended names before it, then it is a reference to Imam Abu Yusuf and Imam Muhammad
<i>Fakhrul Islam</i> (فخر الإسلام)	Many scholars were given this title but it is usually a reference to Ali ibn Muhammad Al Bazdawi (d.482 AH)
<i>Al Fadali</i> (الفضلي)	It is a reference to Abu Bakr Muhammad ibn Al Fadhl Al Kumari (d.381 AH)
<i>Al Kirmani</i> (الكرماني)	It is a reference to Qiwanud Din Al Kirmani (d.747 AH)
<i>Al Kamal</i> (الكمال)	It is a reference to Ibnul Hummam (d.861 AH)
<i>Abu Layth Al Samarqandi</i> (أبو ليث السمرقندي)	It is a reference to one of the following: <ul style="list-style-type: none"> ▪ Nasr ibn Sayyar (d.294 AH) also known as Al Hafidh ▪ Nasr ibn Muhammad (d.373-393 AH) also known as Al Faqih

	<ul style="list-style-type: none"> Ahmad ibn Umar (d.552 AH) also known as Al Majd <p>Ahmad ibn Muhammad Al Naqib states that when Abu Layth Al Samarqandi is mentioned in general, it is a reference to Nasr ibn Muhammad (d.373-393 AH)</p>
<i>Al Muta'akhirin</i> (المتأخرين)	<p>There are two views in this regard:</p> <ul style="list-style-type: none"> It is a reference to those who did not meet the three Imams of the Mathab; Imam Abu Hanifah, Imam Abu Yusuf and Imam Muhammad It is a reference to those who came after the 300th Hijri It is a reference to those scholars who came after Shamsul A'immah Al Halwani until the time of Hafiz Al Din Al Bukhari⁴¹
<i>Al Mutaqadimin</i> (المتقدمين)	<p>There are two views in this regard:</p> <ul style="list-style-type: none"> It is a reference to those who met the three Imams of the Mathab; Imam Abu Hanifah, Imam Abu Yusuf and Imam Muhammad. <p>Ahmad ibn Muhammad Al Naqib states that this seems to be the more apparent view.</p> <ul style="list-style-type: none"> It is a reference to those who came before the 300th Hijri
<i>Al Muhaqiq</i> (الحقق)	It is a reference to Ibn Al Hummam
<i>Al Mashaikh</i> (المشايخ)	It is a reference to those Hanafi scholars who did not meet Imam Abu Hanifah. At times, the word is used as a reference to the Hanafi scholars of Transoxiana, specifically Bukhara and Samarqand
<i>Zahir Al Din</i>	<p>This is a title used for five individuals:</p> <ul style="list-style-type: none"> Ali ibn Abd Al Aziz ibn Abd Al Razzaq Al Murghinani (d.506 AH); he is the father of the mother of the author of Khulasah Al Fatawa. He is commonly referred to as <i>Zahir Al Din Al Kabir</i>. Al Hasan ibn Ali ibn Abd Al Aziz Al Murghinani (d.); he is the son of the individual mentioned above, he is also the teacher of the author of <i>Al Hidayah Sharh Bidayah Al Muftadi</i> and the teacher of Imam Qadi Khan Muhammad ibn Ahmad ibn Umar Al Bukhari (d.619 AH); he is the author of <i>Al Fatawa Al Zahiriyah</i> Ahmad ibn Isma'il; he is famously known as Al Zahir Al Tumurtashi Ahmad ibn Ali ibn Abdil Aziz; he is famously known as Al Zahir Al Balkhi Abdul Rashid; he is famously known as Al Zahir Al Walwalji
<i>Al Jassas</i>	Abu Bakr Al Razi (d.370 AH) ⁴²
<i>Al Hasan</i>	Al Hasan ibn Ziyad Al Lu'lu'i' (d.204 AH)

⁴¹ ('Allamah Lucknawi Rahimahullah, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1419 AH), pg.326.)

⁴² The author of Al Jawahir Al Mudiyyah, 'Allamah Qurashi, states that once an individual argued with him that the name Al Jassas mentioned in the Hanafi books is not the same as Abu Bakr Al Razi due to the statement:

وهو قول أبي بكر الرازي والخصاص

"And it is the view of Abu Bakr Al Razi and Jassas"

However, 'Allamah Qurashi explains that this is an error in writing. Otherwise, when the word Al Jassas is used in general in the Hanafi books, it is a reference to Abu Bakr Al Razi.

(Al Qurashi Rahimahullah, 'Al Jawahir Al Mudiyyah', (Lebanon: Darul Kutub Al Ilmiyyah, 2005), pg.58-59.)

[illegible]

--	--

The Levels of the Shafi'i' Fuqahā (طبقات فقهاء الشافعية)⁴³

Similar to how the Ḥanafī scholars have categorised their Fuqahā into seven categories as discussed earlier, the Shafi'i' scholars have also categorised their Fuqahā into five categories as elaborated by Ḥāfiz Ibn Al Ṣalāḥ Raḥimahullah (d.643 AH).

Level	Type	What can they do?
1	Mujtahid Mutlaq Al Mustaqil (المجتهد المطلق المستقل)	Ḥāfiz Ibn Al Ṣalāḥ Raḥimahullah (d.643 AH) writes, "They are independent (<i>Mustaqil</i>) in extracting Shar'i' rulings from the Shar'i' evidences without following (<i>Taqlid</i>) or attributing themselves to a Madhab." By using the word 'independent' (<i>Mustaqil</i>), Ḥāfiz Ibn Al Ṣalāḥ Raḥimahullah (d.643 AH) has removed the <i>Mujtahid Mutlaq Muntasib</i> (مجتهد مطلق منتسب) from this category.
2	Mujtahid Mutlaq Muntasib (المجتهد المطلق المنتسب)	They have been discussed earlier in the quote of Imām Al Nawawī Raḥimahullah (d.676 AH) that has been narrated by Abū Ishāq Al Isfirānī Raḥimahullah (d.418 AH), which is that a <i>Mujtahid Mutlaq Muntasib</i> (مجتهد مطلق منتسب) is someone who is attributed to Imām Al Shafi'i' Raḥimahullah (d.204 AH) because he follows the method/path (طريق) of Imām Al Shafi'i' Raḥimahullah (d.204 AH) in performing Ijtihād. Thus, his Ijtihād coincides with the Ijtihād of Imām Al Shafi'i' Raḥimahullah (d.204 AH), he has not followed (<i>Taqlid</i>) Imām Al Shafi'i' Raḥimahullah (d.204 AH).

⁴³ Allamah Ahmad ibn Alawi Al Shafi'i' has made 6 categories for the Shafi'i' Fuqaha in his *Al Fawaid Al Makkiyyah Fi Ma Yahtajuhu Talabah Al Shafi'iyyah*:

- 1- *Mujtahid Mustaqil* such as the four Imams
- 2- *Mutlaq Muntasib* such as Imam Al Muzani
- 3- *Ashabul Wujuh* such as Imam Qaffal and Abu Hamid Al Ghazali
- 4- *Mujtahidul Fatwa* such as Allamah Rafi'i' and Imam Nawawi
- 5- *Nazarun Fi Tarjih Ma Ikhtalafa Fihi Al Shaykhan* such as Allamah Isnawi
- 6- *Hamalah Fiqh*: this category contains many other categories

He then states that the Shafi'i' Fuqaha have stated that it is permissible to do Taqlid of the first 4 categories. As for the final two categories, there has been a practising consensus (الإجماع الفعلي) that one takes their views and preferences wherever it is appropriate to do so.

Ahmad ibn Ahmad Al Qalyubi states:

إِنْ قَدَرَ الْمُجْتَهِدُ عَلَى التَّرْجِيحِ دُونَ الْإِسْتِنْبَاطِ فَهُوَ مُجْتَهِدٌ الْفَتْوَى وَإِنْ قَدَرَ عَلَى الْإِسْتِنْبَاطِ مِنْ قَوَاعِدِ إِمَامِهِ فَهُوَ مُجْتَهِدٌ الْمَذْهَبِ أَوْ عَلَى الْإِسْتِنْبَاطِ مِنَ الْكِتَابِ وَالسُّنَنِ فَهُوَ الْمُطَّلَقُ

"If a Mujtahid is capable of giving preference, but is not capable of extracting rulings, then he is a *Mujtahidul Fatwa*. If he is capable of extracting rulings from the principles of his Imam, then he is a *Mujtahidul Madhab* (*Ashabul Wujuh*). If he is capable of extracting rulings from the Qur'an and Sunnah, then he is a *Mujtahid Mutlaq*" (*Al Fawaid Al Makkiyyah Fi Ma Yahtajuhu Talabah Al Shafi'iyyah Minal Masail Wa Al Dawabit Wal Qawaid Al Kulliyyah*, p.128, *Darul Faruq*)

		<p>Imām Al Nawawī Raḥimahullah (d.676 AH) has mentioned in his introduction to <i>Sharḥ Al Muḥadḥab</i> (شرح المذهب) that some of the Shafiʿī Fuqahā who fall into this category are:</p> <ol style="list-style-type: none"> 1) Imām Al Muzani Raḥimahullah (d.264 AH) 2) Imām Abū Thawr Raḥimahullah 3) Imām Ibn Al Mundhir Raḥimahullah <p>However, Ḥāfiz Ibn Al Ṣalāḥ Raḥimahullah (d.643 AH) mentions, “To deny that these Fuqahā did not at all follow another Mjtahid (Taqlīd) in any way whatsoever is incorrect, except if we were to say that their knowledge encompassed the knowledge of Ijtihād Mutlaq and that they succeeded in achieving the level of an <i>Mujtahid Mutlaq Mustaqil</i> (مجتهد مطلق مستقل), however, this is not the case based upon what is known about the statuses of these Fuqahā or the majority of these Fuqahā.”</p> <p>Ḥāfiz Ibn Al Ṣalāḥ Raḥimahullah (d.643 AH) then writes, “The Fatwā of a <i>Mujtahid Mutlaq Muntasib</i> (مجتهد مطلق منتسب) will be considered equivalent to the Fatwā of a <i>Mujtahid Mutlaq Mustaqil</i> (مجتهد مطلق مستقل), it shall be acted upon and shall be considered in establishing a consensus or a difference of opinion”.</p> <p>However, even if we were to take Ḥāfiz Ibn Al Ṣalāḥ Raḥimahullah (d.643 AH)’s view that these Fuqahā followed (Taqlīd) Imām Al Shafiʿī Raḥimahullah (d.204 AH) in some way, then too, this should not deny them the position of a <i>Mujtahid Mutlaq</i> (مجتهد مطلق) as mentioned in our quote from from Ibn Al Qayyim.</p>
3	<p><i>Mujtahid Muqayyad/ Aṣḥab Al Wujūh Wal Ṭuruq</i></p>	<p>A <i>Mujtahid Muqayyad</i> (مجتهد مقيد) independently strengthens the Madhab of the Imām by deducing rulings using the evidences of Sharīʿah, however, he does not contradict the principles established down by the Imām. This is known as <i>Al Takhrīj</i> (تخريج).</p> <p>Ḥāfiz Ibn Al Ṣalāḥ Raḥimahullah (d.643 AH) states, “It is from his qualities that he is knowledgeable in Fiqh, well-acquainted with the principles of Fiqh, has a deep understanding of the evidences of rulings, has foresight of the methods of analogical deductions, has a complete ability to perform <i>Al Takhrīj</i> (تخريج) and extract rulings, is analytical in adding to the Madhab of his Imām that which is not recorded from him while considering the Imām’s principles and compendiums, he does not stray even slightly away from following the Imām (Taqlīd) due to the fact that there is a deficiency in some aspects of his knowledge which are considered in order for one to become a <i>Mujtahid Mutlaq Mustaqil</i> (مجتهد مطلق مستقل), such as a deficiency in the knowledge of Ḥadīth or the knowledge of Arabic linguistics; these are the two most common fields in which a deficiency is found in the <i>Mujtahid Muqayyad</i> (مجتهد مقيد). He will also take the statements</p>

	<p>(المجتهد المقيّد / أصحاب الوجوه والطرق)</p>	<p>of the Imām as a basis and extract rulings from them just as the <i>Mujtahid Mutlaq Mustaqil</i> (مجتهد مطلق مستقل) extracts rulings from the evidences of Sharī'ah. At times, he will pass by a ruling for which his Imām has presented an evidence, this individual will suffice on this evidence and will not begin to search to find if there are contradictory evidences to the evidence presented by his Imam, as he does not fulfil the requirements for this capability. These are the qualities of the <i>Ashab Al Wujūh Wal Ṭuruq</i> (أصحاب الوجوه والطرق) in the Madhab. The majority of the Fuqahā of our Madhab were of this type.”</p> <p>Ḥāfiz Ibn Al Ṣalāḥ Raḥimahullah (d.643 AH) has then mentioned a few important points with regards to the <i>Mujtahid Muqayyad</i> (مجتهد مقيّد) / <i>Ashab Al Wujūh Wal Ṭuruq</i> (أصحاب الوجوه والطرق):</p> <ol style="list-style-type: none"> 1- The <i>Mujtahid Muqayyad</i> (مجتهد مقيّد) / <i>Ashab Al Wujūh Wal Ṭuruq</i> (أصحاب الوجوه والطرق) may hold the position of a <i>Mujtahid Mutlaq Mustaqil</i> (مجتهد مطلق مستقل) in deducing rulings and giving Fatwā in a certain Mas'alah or a certain chapter of Fiqh 2- One of the duties of a <i>Mujtahid Muqayyad</i> (مجتهد مقيّد) / <i>Ashab Al Wujūh Wal Ṭuruq</i> (أصحاب الوجوه والطرق) is to perform <i>Al Takhrīj</i> (تخريج). <p>Question: What does <i>Al Takhrīj</i> (تخريج) mean?</p> <p>Answer: <i>Al Takhrīj</i> (تخريج) has two meanings:</p> <ol style="list-style-type: none"> 1) When there is no view from the Imām on a Mas'alah, this individual will extract a ruling for the Mas'alah from the evidences of Sharī'ah according to the temperament of the Imām; such as if he finds an evidence that fulfils the conditions of his Imām and is such that his Imām would have used it as evidence, then he may use it and issue a ruling in accordance to that evidence. The view chosen will be labelled as a <i>Wajh</i> (وجه). <p>It is possible that in one Mas'alah, one <i>Mujtahid Muqayyid</i> has a different <i>Wajh</i> (وجه) from another <i>Mujtahid Muqayyad</i> (مجتهد مقيّد). Each <i>Mujtahid Muqayyad</i> (مجتهد مقيّد) has used a different evidence as each one has chosen for his ruling the evidence which he feels fits the temperament of the Imām.</p>
--	--	--

		<p>2) When two opposite views are found for two separate Masāil from the Imām, and any one of the two Mas’alah could be used to deduce the ruling of the situation one is presented with, this individual will choose one of the two Mas’alahs upon which he will base the ruling for the present situation; the Mas’alah chosen will be labelled as <i>Al Mukharraj</i> (المخرج).</p> <p>Example:</p> <p>He is presented with a Mas’alah for a slave girl.</p> <p>A ruling for a similar Mas’alah for a slave boy is found from the Imām of the Madhab. Hence, he does <i>Al Takhrīj</i> (تخريج) for the Mas’alah of the slave girl that he has been presented with on the Mas’alah of the slave boy that is found from the Imām of the Madhab.</p> <p><u>The condition for this <i>Al Takhrīj</i> (تخريج):</u></p> <p>There is no difference between the <i>Al Mukharraj</i> (المخرج) Mas’alah and the Mas’alah that he has been presented with. If it is possible for him to find a difference between the <i>Al Mukharraj</i> (المخرج) Mas’alah and the Mas’alah that he has been presented with, then it is not permissible for him to do <i>Al Takhrīj</i> (تخريج) on that Mas’alah.</p> <p>Question: If a layman followed the view adopted by individuals of this group in the situations mentioned above, will he be considered a follower (<i>Muqallid</i>) of the Imām or the individual of this group?</p> <p>Answer: Imām Al Ḥaramayn Al Juawynī Raḥimahullah (d.478 AH) and Ḥāfiz Ibn Al Ṣalāḥ Raḥimahullah (d.643 AH) state that he will be considered a follower (<i>Muqallid</i>) of the Imām. However, Imām Abū Ishāq Shīrāzī Raḥimahullah states that he will be considered a follower (<i>Muqallid</i>) of the individual of this group.</p>
4	<i>Faqīh Al Nafs</i> (فقيه النفس)	<ul style="list-style-type: none"> ▪ He assists in establishing the evidences for the views of his Imām, compares the views of the Imām, and gives preference (<i>Tarjīh</i>) to a view over the other ▪ They apply analogy of a Mas’alah found in the Madhab or clearly mentioned in the Madhab upon a Mas’alah not found in the Madhab or not clearly mentioned in the Madhab
		<ul style="list-style-type: none"> ▪ They relate the views of the Imām and the Mujtahidīn that came after him in their Fatāwā ▪ If they cannot find this, then they apply basic analogy of a Mas’alah mentioned in the Madhab upon the present Mas’alah ▪ If this is also not possible, then they will try to fit the present Mas’alah under a known principle of the Madhab

5	<p><i>Faqīh Al Nafs Ḍa'īf Fī Taqrīr Adillah Al Madhab Wa Taḥrīr Aqsiyatihi</i></p> <p>(فقيه النفس ضعيف في تقرير أدلة المذهب وتحرير أقسيته)</p>	
---	---	--

Imām Zufar ibn Hudhayl

Birth

He was born in 110 AH. Hafiz Abu Nu'aym Raḥimahullah writes that Imam Zufar's father lived in Isfahan during the rule of Yazid ibn Al Walid, his father had three sons; Zufar, Harthamah, and Kawthar.⁴⁵

His teachers (those he narrated Ahadith from)

His teachers include:

- 1) Al A'mash Raḥimahullah
- 2) Isma'il ibn Abi Khalid Raḥimahullah
- 3) Imam Abu Hanifah Raḥimahullah (d.150 AH)
- 4) Muhammad ibn Ishaq Raḥimahullah
- 5) Hajjaj ibn Artat Raḥimahullah

His students (those who have narrated Ahadith from him)

His students include:

- 1) Hassan ibn Ibrahim Al Kirmani Raḥimahullah
- 2) Aktham ibn Muhammad Raḥimahullah
- 3) Abd Al Wahib ibn Ziyad Raḥimahullah
- 4) Abu Nu'aym Al Mula'ī Raḥimahullah

⁴⁴ Muhammad Harūn mentions the different individuals who have written books on the biographies of the Hanafi Fuqaha, some of them are:

- Sheikh Abdul Qadir Al Qurashi (d.775 AH) wrote *Al Jawahir Al Muzīyah Fi Tabqat Al Hanafiyyah* (الجواهر المضية في طبقات الحنفية)
- Allamah Najmud Deen Tarsusi (d.758 AH) wrote *Wafayat Al A'yan Fi Mathab Al Nu'man* (وفيات الأعيان في مذهب النعمان)
- Allamah Ibn Daqmaaq Al Qahiri (d.809 AH) wrote *Nazmul Juman Fi Tabqat Ashab Imamina Al Nu'man* (نظم الجمان في طبقات أصحاب إمامنا النعمان)
- Allamah Ayni (d.855 AH) wrote a book which Allamah Qasim ibn Qutlubugah (d.879 AH) summarised and then named *Taj Al Tarajim* (تاج التراجم)
- Allamah Ibn Shahnah (d.890 AH) wrote *Kitab Tabqat Al Hanafiyyah* (كتاب طبقات الحنفية)
- Allamah Ibn Tuloon (d.953 AH) wrote *Al Ghurf Al Aliyyah Fi Tarajim Muta'akhiril Hanafiyyah* (الغرف العلية في تراجم متأخري الحنفية)
- Allamah Ibnul Hanaee (d.979 AH) wrote *Tabqat Al Hanafiyyah* (طبقات الحنفية)
- Allamah Mahmood ibn Sulayman Al Kufi (d.990 AH) wrote *Kata'ib A'lam Al Akhyar Min Fuqaha Min Mathab Al Nu'man Al Mukhtar* (كتائب أعلام الأخيار من فقهاء مذهب النعمان المختار)
- Allamah Taqiud Deen Al Tameemi (d.1010H) wrote *Al Tabqat Al Saniyyah Fi Tarajum Al Hanafiyyah* (الطبقات السنية في تراجم الحنفية)
- Mullah Ali Al Qari (d.1014 AH) wrote *Al Athmar Al Janiyyah Fi Asma' Al Hanafiyyah* (الأثمار الجنية في أسماء الحنفية)
- Allamah Abdul Hayy Al Lucknawi (d.1304 AH) wrote *Al Fawa'id Al Bahiyyah Fi Tarajum Al Hanafiyyah* (الفوائد البهية في تراجم الحنفية)
- Allamah Zafar Ahmed Usmani (d.1394 AH) wrote *Al Imam Abu Hanifah Wa Ashabuhu Al Muhadithun* (الإمام أبو حنيفة وأصحابه المحدثون)

(Muhammad Harun, "Al Fathul Rabbani", (Dhaka: Maktabatul Azhar, 2014), p.256.)

⁴⁵ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.39.)

- 5) Al Nu'man ibn Abd Al Salam Al Taymi Raḥimahullah
- 6) Al Hakam ibn Ayyub Raḥimahullah
- 7) Malik ibn Fudayk Raḥimahullah ⁴⁶

Many of his students were his companions and colleagues as he did not live long enough to specifically narrate Ahadith to young students.⁴⁷

Scholarly Praise for Imam Zufar ibn Hudhayl

Abu Nu'aym Al Mulaṭṭi Raḥimahullah said:

كان ثقة مأمونا وقع إلى البصرة في ميراث له من أخته فتشبت به أهل البصرة فلم يتركوه يخرج من عندهم

“He was strong and reliable, he came to Basrah in order to collect his inheritance from his sister, so the people of Basrah held onto him and did not allow him to leave them”⁴⁸

Yahya ibn Mu'in Raḥimahullah said:

ثقة مأمون

“He was strong, reliable”⁴⁹

Imam Hasan ibn Ziyad Raḥimahullah said:

كان زفر وداد الطائي متواخين فأما داود فترك الفقه وأقبل على العبادة وأما زفر فجمعهما

“Zufar and Dawud Al Ta'i'i were contemporaries. As for Dawud, he left Fiqh and turned towards worship, and as for Zufar, he combined the two”⁵⁰

Abu Nu'aym Raḥimahullah said:

كنت أمر على زفر فيقول تعال حتى أغربل لك ما سمعت

“I would pass by Zufar, so he would say to me, ‘Come! So that I may correct for you that (Aḥādīth) which you have heard”⁵¹

Hafiz Al Dhahabi Raḥimahullah said:

هو من بحور الفقه وأدكياؤ الوقت تفقه بأي حنيفة وهو أكبر تلامذته وكان ممن جمع بين العلم والعمل وكان يدري الحديث ويتقنه

“He is from the oceans of Fiqh, and the geniuses of his time, he studied Fiqh under [Imām] Abū Ḥanīfah and is his eldest student, and he combined knowledge and worship, and he knew Ḥadīth and was proficient in it”⁵²

The sincerity of Imam Zufar ibn Hudhayl

An incident between Imam Zufar Raḥimahullah and Abd Al Wahib ibn Ziyad Raḥimahullah demonstrates the sincerity of Imam Zufar Raḥimahullah. Abd Al Wahid ibn Ziyad Raḥimahullah states:

⁴⁶ (Hafiz Al Dhahabi Raḥimahullah, “Siyar A'lam Al Nubala” (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.39.)

⁴⁷ (Hafiz Al Dhahabi Raḥimahullah, “Siyar A'lam Al Nubala” (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.39.)

⁴⁸ (Hafiz Al Dhahabi Raḥimahullah, “Siyar A'lam Al Nubala” (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.39.)

⁴⁹ (Hafiz Al Dhahabi Raḥimahullah, “Siyar A'lam Al Nubala” (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.39.)

⁵⁰ (Hafiz Al Dhahabi Raḥimahullah, “Siyar A'lam Al Nubala” (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.39.)

⁵¹ (Hafiz Al Dhahabi Raḥimahullah, “Siyar A'lam Al Nubala” (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.40.)

⁵² (Hafiz Al Dhahabi Raḥimahullah, “Siyar A'lam Al Nubala” (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.39.)

لقيت زفر رحمه الله فقلت له صرتم حديثا في الناس وضحكة قال وما ذاك؟ قلت تقولون "ادروا الحدود بالشبهات" ثم جئتم إلى أعظم الحدود فقلتم تقام بالشبهات قال وما هو؟ قلت قال رسول الله صلى الله عليه وسلم "لا يقتل مسلم بكافر" فقلتم يقتل به - يعني بالذمي - قال فإني أشهدك الشاعة أي قد رجعت عنه

The criticism of Ibn Sa'd Raḥimahullah

While Imam Zufar Raḥimahullah has been praised by many scholars, Ibn Sa'd Raḥimahullah has criticised Imam Zufar Raḥimahullah by writing:

ولم يكن في الحديث بشيء

"And he was nothing in [the field of] Hadith"⁵³

Hafiz Al Dhahabi Raḥimahullah retorts by writing:

قلت قد حكم له إمام الصنعة بأنه ثقة مأمون

"I say, 'The Imam of the field (i.e. Yahya ibn Mu'in) has labelled him as 'strong, reliable'"⁵⁴

Death

He passed away in 159 AH.

Imām Abū Yūsuf

Name

His name was Ya'qub ibn Ibrahim ibn Habib ibn Hubaysh ibn Sa'd ibn Bujayr ibn Mu'awiyah Al Ansari Raḥimahullah.

Sa'd ibn Bujayr was a Sahabi, whose mother's name was Habtah. He participated in the battle of the trenches and other battles.⁵⁵

Birth

He was born in 113 AH.⁵⁶

His teachers (those he narrated Ahadith from)

His teachers include:

- 1) Hisham ibn Urwah Raḥimahullah
- 2) Yahya ibn Sa'id Al Ansari Raḥimahullah
- 3) Ata' ibn Sa'ib Raḥimahullah
- 4) Yazid ibn Abi Ziyad Raḥimahullah
- 5) Abu Ishaq Al Shaybani Raḥimahullah
- 6) Ubaydullah ibn Umar Raḥimahullah
- 7) Al A'mash Raḥimahullah
- 8) Hajjaj ibn Artat Raḥimahullah

⁵³ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.41.)

⁵⁴ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.41.)

⁵⁵ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

⁵⁶ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

9) Abu Hanifah Raḥimahullah

His students (those who have narrated Ahadith from him)

His students include⁵⁷:

- 1) Yahya ibn Mu'in Raḥimahullah
- 2) Ahmad ibn Hanbal Raḥimahullah
- 3) Ali ibn Al Ja'd Raḥimahullah
- 4) Asad ibn Furat Raḥimahullah
- 5) Ahmad ibn Mani' Raḥimahullah
- 6) Ali ibn Muslim Al Tusi Raḥimahullah
- 7) Amr ibn Abi Amr Al Harrani Raḥimahullah
- 8) Amr Al Naqid Raḥimahullah

His students who studied Fiqh under him

These students include⁵⁸:

- 1) Imam Muhammad ibn Al Hasan Raḥimahullah
- 2) Mu'alla ibn Mansur Raḥimahullah
- 3) Hilal Al Ra'y Raḥimahullah
- 4) Muhammad ibn Sama'ah Raḥimahullah

Studying under Imam Abu Hanifah

Imam Abu Yusuf Raḥimahullah accompanied and studied under Imam Abu Hanifah Raḥimahullah for seventeen years. Initially, Imam Abu Yusuf Raḥimahullah's father commanded Imam Abu Yusuf Raḥimahullah to work labour due to his poverty. However, Imam Abu Hanifah Raḥimahullah gave Imam Abu Yusuf Raḥimahullah one-hundred dirhams and said:

الزم الحلقة فإذا نفذت هذه فأعلمني

"Ensure to join the (my) gathering [of knowledge], and when this [money] is used up, let me know"

Imam Abu Yusuf states that after a few days, Imam Abu Hanifah gave me another one-hundred dirhams.⁵⁹

Scholarly praise for Imam Abu Yusuf

Yahya ibn Mu'in Raḥimahullah said:

ما رأيت في أصحاب الرأي أثبت في الحديث ولا أحفظ ولا أصح رواية من أبي يوسف

"I have not seen in the Ashab Al Ra'y a stronger person in Hadith and with more collection and authentic narration than [Imam] Abu Yusuf"⁶⁰

Imam Ahmad ibn Hanbal Raḥimahullah said:

⁵⁷ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

⁵⁸ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

⁵⁹ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

⁶⁰ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

كان أبو يوسف منصفا في الحديث

“[Imam] Abu Yusuf was just in Hadith”⁶¹

Hilal Al Ra’y Rahimahullah said:

كان أبو يوسف يحفظ التفسير ويحفظ المغازي وأيام العرب كان أحد علومه الفقه

“[Imam] Abu Yusuf had memorised exegesis and laws of warfare and history, one of his fields of knowledge was Fiqh”⁶²

Ibn Abi Rahimahullah said:

لا بأس به

“There are no problems with him”⁶³

Imam Al Nasai’i’ Rahimahullah said:

وأبو يوسف ثقة

“And Abu Yusuf was strong [in narration]”⁶⁴

Imam Abu Hatim Rahimahullah said:

يكتب حديثه

“His narrations may be written”⁶⁵

Hafiz Al Dhahabi Rahimahullah said:

بلغ أبو يوسف من رئاسة العلم ما لا مزيد عليه وكان الرشيد يبالي في إجلاله

“[Imam] Abu Yusuf reached a mastery of knowledge for which there is no exceeding, and [Harun] Al Rashid used to extenuate his praises”⁶⁶

Imam Ahmad ibn Hanbal Rahimahullah said:

أول ما كتبت الحديث اختلفت إلى أبي يوسف وكان أميل إلى المحدثين من أبي حنيفة ومحمد

“When I initially began to write Hadith, I would frequently visit [Imam] Abu Yusuf, and I was inclined towards the Muhadithin from Abu Hanifah and [Imam] Muhammad”⁶⁷

Piety of Imam Abu Yusuf

⁶¹ (Hafiz Al Dhahabi Rahimahullah, “Siyar A’lam Al Nubala” (Beirut: Mu’assasah Al Risalah, 2001), v.8, pg.535.)

⁶² (Hafiz Al Dhahabi Rahimahullah, “Siyar A’lam Al Nubala” (Beirut: Mu’assasah Al Risalah, 2001), v.8, pg.535.)

⁶³ (Hafiz Al Dhahabi Rahimahullah, “Siyar A’lam Al Nubala” (Beirut: Mu’assasah Al Risalah, 2001), v.8, pg.535.)

⁶⁴ (Hafiz Al Dhahabi Rahimahullah, “Siyar A’lam Al Nubala” (Beirut: Mu’assasah Al Risalah, 2001), v.8, pg.535.)

⁶⁵ (Hafiz Al Dhahabi Rahimahullah, “Siyar A’lam Al Nubala” (Beirut: Mu’assasah Al Risalah, 2001), v.8, pg.535.)

⁶⁶ (Hafiz Al Dhahabi Rahimahullah, “Siyar A’lam Al Nubala” (Beirut: Mu’assasah Al Risalah, 2001), v.8, pg.535.)

⁶⁷ (Hafiz Al Dhahabi Rahimahullah, “Siyar A’lam Al Nubala” (Beirut: Mu’assasah Al Risalah, 2001), v.8, pg.535.)

Muhammad ibn Sama'ah Raḥimahullah said:

كان ورد أبي يوسف في اليوم مئتي ركعة

"[Imam] Abu Yusuf's practice was [to perform] two-hundred Rak'ah (nafl Salah) daily" ⁶⁸

Yahya ibn Yahya Al Tamimi Raḥimahullah states:

سمعت أبا يوسف عند وفاته يقول كل ما أفتيت به فقد رجعت عنه إلا ما وافق الكتاب والسنة وفي لفظ إلا ما في القرآن واجتمع عليه المسلمون

"I heard [Imam] Abu Yusuf say at the time of his death, 'All that I have issued a Fatwa for, I revert from it except that which concurs with the Qur'an and Sunnah' – and in another narration – 'except that which is in the Qur'an and the Muslims are unanimous upon it'" ⁶⁹

Some of his wise quotes

Bishr ibn Al Walid Raḥimahullah states:

سمعت أبا يوسف من طلب المال بالكيمياء أفلس ومن طلب الدين بالكلام تزندق ومن تتبع غريب الحديث كذب

"I heard [Imam] Abu Yusuf say, 'Whosoever desires money through [studying] chemistry shall be bankrupt, and whosoever desires religion through [studying] theology shall become a hypocrite, and whosoever looks for the peculiar Ahadith shall be considered a liar'" ⁷⁰

Bakkar ibn Qutaybah Raḥimahullah states that he heard Abul Walid Raḥimahullah say:

لما قدم أبو يوسف البصرة مع الرشيد اجتمع الفقهاء والحدثون على بابه فأشرف عليهم وقال أنا من الفريقين جميعا ولا أقدم فرقة على فرقة قال وكان قاضي الآفاق ووزير الرشيد وزميله في الحج

"When [Imam] Abu Yusuf came to Basrah with [Harun] Al Rashid, the Fuqaha and Muhadithun gathered at his doorstep, so he came to them and said, 'I am entirely a part of both groups, and I do not consider one group ahead of the other group', and he was the judge of the horizon and the minister of [Harun] Al Rashid and his companion in Hajj" ⁷¹

Bish ibn Al Walid Raḥimahullah states:

سمعت أبا يوسف يقول العلم بالخصومة والكلام جهل والجهل بالخصومة والكلام علم

"I heard [Imam] Abu Yusuf say, 'knowledge of polemics and theology is ignorance and ignorance from polemics and theology is knowledge'" ⁷²

Death

He passed away in 182 AH at the age of 69. ⁷³

⁶⁸ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

⁶⁹ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

⁷⁰ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

⁷¹ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

⁷² (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

⁷³ (Hafiz Al Dhahabi Raḥimahullah, "Siyar A'lam Al Nubala" (Beirut: Mu'assasah Al Risalah, 2001), v.8, pg.535.)

Imām Muḥammad ibn Al Ḥasan Al Shaybānī

Imām Ḥasan ibn Ziyād

Name

His name was Hasan ibn Ziyad Al Lu'lu'i'.⁷⁴

His Teacher

Imam Abu Hanifah Rahimahullah (d.150 AH) was his teacher of Fiqh.

His Students

The students who studied Fiqh under him include⁷⁵:

- 1) Muhammad ibn Sama'ah Raḥimahullah
- 2) Muhammad ibn Shuja' Al Thalji Raḥimahullah
- 3) Ali Al Razi Raḥimahullah
- 4) Umar ibn Mahir; the father of Imam Al Kassaf Raḥimahullah

His Books

He has written Al Mujarrad and Al Amali.

Biography

Imam Hasan ibn Ziyad Raḥimahullah was not only a Faqih, but an intellectual genius. Yahya ibn Adam Raḥimahullah said:

ما رأيت أفقه من الحسن بن زياد

"I have not seen anyone with a better jurisprudential ability than Hasan ibn Ziyad"⁷⁶

In 194 AH, He was appointed as a judge in Kufa after Hafs ibn Ghiyath Raḥimahullah. His love for the Sunnah was such that he would clothe his slaves with the same clothes that he would wear himself.⁷⁷

Criticism of Hasan ibn Ziyad

It is mentioned in Mizan Al I'tidal:

روى أحمد بن أبي مریم وعباس الدوري عن يحيى بن معين كذاب وقال محمد بن عبد الله بن ثمر يكذب على ابن جريج وكذا كذبه أبو داود فقال كذاب غير ثقة وقال ابن المديني لا يكتب حديثه وقال أبو حاتم ليس بثقة ولا مأمون وقال الدارقطني ضعيف متروك وقال محمد بن حميد الرازي ما رأيت أسوأ صلاة منه

Death

⁷⁴ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.79.

⁷⁵ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.79.

⁷⁶ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.79.

⁷⁷ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.79.

He passed away in 204 AH.⁷⁸

Muḥammad ibn Muqātil

He was a student of Imam Muhammad Raḥimahullah and was the Qadhi of Ray.⁷⁹

Abū Sulaymān Al Jawzjānī

Name

His name was Musa ibn Sulayman Al Jawzjani.

Agnomen

His agnomen was Abu Sulayman Al Jawzjani.

Biography

He studied Fiqh under Imam Muhammad and was considered one of Imam Muhammad Raḥimahullah's most important students. He wrote the books of Zahir Al Riwayah from Imam Muhammad Raḥimahullah, as well as one of the books of Al Nawadir from Imam Muhammad Raḥimahullah, and the book, Al Amali by Imam Abu Yusuf Raḥimahullah.⁸⁰

Mu'allā ibn Manṣūr

Name

His name was Mu'alla ibn Mansur Al Razi.

Agnomen

His agnomen was Abu Yahya Al Razi.⁸¹

Biography

He was an important student of Imam Muhammad Raḥimahullah and was a companion of Abu Sulayman Al Jawzjani Raḥimahullah. He has narrated a book of Al Nawadir from Imam Muhammad and Al Amali from Imam Abu Yusuf Raḥimahullah, as well as other books from the A'immah of the Madhab.⁸²

He was very pious and had a high status in the field of Hadith.⁸³

Scholars he has narrated Ahadith from

⁷⁸ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.79.

⁷⁹ Jawahir Al Mudi'ah, p.378, Darul Kutub Al Ilmiyyah

⁸⁰ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.284.

⁸¹ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.284.

⁸² Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.284.

⁸³ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.284.

Mu'alla ibn Mansur has narrated Ahadith from the following luminary scholars⁸⁴:

- Imam Malik ibn Anas Raḥimahullah
- Al Layth ibn Sa'd Raḥimahullah
- Hammad ibn Sulayman Raḥimahullah
- Sufyan ibn Uyaynah Raḥimahullah

Scholars who have narrated Ahadith from him

The following scholars have narrated Ahadith from Mu'alla ibn Mansur Raḥimahullah⁸⁵:

- Ali ibn Al Madini Raḥimahullah
- Imam Al Bukhari Raḥimahullah outside of his Al Jami' Al Sahih
- Imam Abu Dawud Raḥimahullah
- Imam Al Tirmidhi Raḥimahullah
- Imam Ibn Majah Raḥimahullah

Abū Bakr Al Iskāf

Al Jurjani

Abū Ḥafs Al Kabīr

Name

His name was Ahmad ibn Hafs.

Teachers

Death

He passed away in Bukhara in Muharram in 217 AH.

Muḥammad ibn Samā'ah

Muhammad ibn Sama'ah Raḥimahullah (d.233 AH) was a student of Imam Abu Yusuf (d.182 AH) and Imam Muhammad (d.189 AH).

Teachers

His teachers include luminaries such as Layth ibn Sa'd Raḥimahullah and Al Musayyab ibn Sharik Raḥimahullah.⁸⁶

⁸⁴ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.284.

⁸⁵ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.284.

⁸⁶ Siyar A'alam Al Nubala, p.646, v.10, Mu'assasah Al Risalah

Books

He has written many books in the field of Fiqh.⁸⁷

Scholarly praise

Ibn Mu'in Raḥimahullah states:

لَوْ أَنَّ الْمُحَدِّثِينَ يَصْدُقُونَ فِي الْحَدِيثِ كَمَا يَصْدُقُ ابْنُ سَمَاعَةَ فِي الْفَقْهِ لَكَانُوا فِيهِ عَلَى نَهَائِهِ

“If the narrators of Hadith were to be as honest in Hadith as Ibn Sama’ah is in Fiqh, they would reach great heights”⁸⁸

Ahmad ibn Atiyyah Raḥimahullah states:

كَانَ وَرْدُهُ فِي الْيَوْمِ مِائَتَيْ رَكْعَةٍ

“His daily routine involved [praying] 200 rak’ah [Salah]”⁸⁹

Muhammad ibn Imran Raḥimahullah states:

سَمِعْتُهُ يَقُولُ مَكُنْتُ أَرْبَعِينَ سَنَةً لَمْ تَفْتِنِي التَّكْبِيرَةُ الْأُولَى إِلَّا يَوْمَ مَاتَتْ أُمِّي فَصَلَّيْتُ خَمْسًا وَعِشْرِينَ صَلَاةً أُرِيدُ التَّضْعِيفَ

“I heard him (Muhammad ibn Sama’ah (d.233 AH)) say: “forty years have passed and I have not missed the first Takbir [of Salah] except the day that my mother passed away. [In order to cover up for this] I prayed the Salah 25 times in order to gain the reward of praying with congregation”⁹⁰

Death

He passed away in 233 AH at the age of 103.⁹¹

Al Kaşāf

[Book/s to use: *Ahkam Al Awqaf*]

Name

His name was Abu Bakr Ahmad ibn Amr ibn Muhayr Al Shaybani.

Teachers

Imam Kassaf Raḥimahullah was not only a great Faqih, he was also a recognised Muhaddith. Imam Al Dhahabi Raḥimahullah records that Imam Al Kassaf Raḥimahullah narrated Ahadith from the following individuals:

- Wahb ibn Jarir Raḥimahullah
- Abu Amir Al Aqadi Raḥimahullah
- Al Waqidi Raḥimahullah
- Abu Nu’aim Raḥimahullah

⁸⁷ Loc. cit

⁸⁸ Loc. cit

⁸⁹ Loc. cit

⁹⁰ Loc. cit

⁹¹ Op. cit (p.647, v.10, *Mu’assasah Al Risalah*)

- Amr ibn Asim Raḥimahullah
- Arim Raḥimahullah
- Muslim ibn Ibrahim Raḥimahullah
- Al Qa'nabi Raḥimahullah

There are more individuals that Imam Al Kassaf took Ahadith from as Imam Al Dhahabi states after recording these names:

وخلق كثير

“And many others”

Allamah Qasim ibn Qutlubugah Raḥimahullah adds the following individual that Imam Al Kassaf has narrated Ahadith from:

- Abu Asim Al Nabil Raḥimahullah
- Abu Dawud Al Tayalisi Raḥimahullah
- Musaddad Raḥimahullah

He then writes:

وجماعة

“And a group of scholars”⁹²

Muhammad ibn Ishaq Raḥimahullah, the author of Al Fihrist, states:

كَانَ فَاضِلًا صَالِحًا فَارِضًا خَاسِبًا عَالِمًا بِالرَّأْيِ مُقَدِّمًا عِنْدَ الْمُتَهَدِّينَ بِاللَّهِ حَتَّى قَالَ النَّاسُ هُوَ ذَا يُخَيِّي دَوْلَةَ أَحْمَدَ بْنِ أَبِي دَاوُدَ وَيُقَدِّمُ الْجُهْمِيَّةَ

He wrote a book titled ‘Al Kharāj’ for the Abbasid caliph, Al Muhtadi Billah. However, when Al Muhtadi was killed, Imam Al Kassaf Raḥimahullah’s house was pillaged and some of his books were destroyed.

Books

Imam Al Kassaf wrote many book including:

- *Al Ḥiyal*
- *Al Shurūt Al Kabīr*
- *An abridgement of Al Shurūt Al Kabīr*
- *Al Raḍā’*
- *Adab Al Qādhī*
- *Al Aṣīr Wa Aḥkāmuh*
- *Aḥkāmul Waqf*
- *Dhar’ul Ka’bah Wal Masjid Wal Qabr*

His Piety

Imam Al Dhahbi Raḥimahullah writes:

وَيَذْكُرُ عَنْهُ زُهْدٌ وَوَرَعٌ وَأَنَّهُ كَانَ يَأْكُلُ مِنْ صَنْعَتِهِ رَحِمَهُ اللَّهُ

“[Stories] of his piety and Allah consciousness have been recorded. He used to eat from his own earnings. May Allah have mercy upon him”

⁹² Taj Al Tarajim by Qasim ibn Qutlubugah, p.97 (Damascus: Dar Al Qalam, 1992)

Death

Hafidh Al Dhahabi Raḥimahullah records that he passed away at the age of approximately 80 in 233 AH in Baghdad. Qasim ibn Qutlubugah Raḥimahullah, however, writes that he passed away in 261 AH.⁹³

Abū Ja'far Al Hinduwānī

Abu Ja'far Al Tahawi

Al Karkhi

Hākim Al Shahīd

[Book/s to use: *Al Kafi*, *Al Muntaqa*]

Abū Bakr Al Jassās Al Rāzī

Name

His name was Ahmad ibn Ali Abu Bakr Al Razi.

Agnomen

Al Jassas.⁹⁴

Birth

He was born in the year 305 AH.⁹⁵

Teachers

He studied under the following illustrious scholars:

- 1) Abul Hasan Al Karkhi Raḥimahullah ⁹⁶
- 2) Abu Sahl Al Zajjaj Raḥimahullah, the author of Kitab Al Riyadah

Biography

He entered Baghdad in 325 AH during his teenage years⁹⁷, and studied under Al Karkhi Raḥimahullah. He then left for Al Ahwaz, after which he soon returned to Baghdad. After returning, upon the instruction of his teacher Al Karkhi Raḥimahullah, he travelled to Naysapur with Al Hakim Al Naysapuri Raḥimahullah. Al Karhi Raḥimahullah passed away while Al Jassas Raḥimahullah was in Naysapur, and so, in 344 AH, he returned to Baghdad.⁹⁸

⁹³ Loc. cit

⁹⁴ (Al Tamimi, "Al Tabqat Al Saniyyah", (Riyad: Dar Al Rifa'i', 1983), v.1, pg.412.)

⁹⁵ Qasim ibn Qutlubugah, Taj Al Tarajim, (Damascus: Dar Al Qalam, 1992), p.96

⁹⁶ Qasim ibn Qutlubugah, Taj Al Tarajim, (Damascus: Dar Al Qalam, 1992), p.96

⁹⁷ (Al Tamimi, "Al Tabqat Al Saniyyah", (Riyad: Dar Al Rifa'i', 1983), v.1, pg.412.)

⁹⁸ (Al Qurashi Rahimahullah, 'Al Jawahir Al Mudiyyah', (Lebanon: Darul Kutub Al Ilmiyyah, 2005), pg.58-59.)

During his stay in Baghdad, he was asked to become the judge of judges on many occasions, but he refused.

Abu Bakr Al Abhari Rahimahullah states:

خاطبني المطيع على قضاء القضاة وكان السفير في ذلك أبو الحسن بن أبي عمرو الشراي فأبيت عليه وأشرت بأبي بكر أحمد بن علي الرازي فأحضر للخطاب على ذلك وسألني أبو الحسن بن أبي عمرو معونته عليه فخطب فامتنع وخلوت به فقال لي "تشير علي بذلك" فقلت "لا أرى لك ذلك" ثم قمنا إلى بين يدي أبي الحسن بن أبي عمرو وأعاد خطابه وعدت إلى معونته فقال لي "أليس قد شاورتك فأشرت علي أن لا أفعل" فوجم أبو الحسن بن أبي عمرو من ذلك وقال تشير علينا بإنسان ثم تشير عليه أن لا يفعل!! قلت نعم إمامي في ذلك مالك بن أنس أشار على أهل المدينة أن يقدموا نافعا القارئ في مسجد رسول الله صلى الله عليه وسلم وأشار على نافع أن يفعل لأنه يحصل له أعداء وحساد فكذلك أنا أشرت عليكم به لأني لا أعرف مثله وأشرت عليه أ لا يفعل لأنه أسلم لدينه

Students

His students include⁹⁹:

- 1) Abu Bakr Ahmad ibn Musa Al Khwarizmi Rahimahullah
- 2) Abu Abdillah Muhammad ibn Yahya ibn Mahdi Al Faqih Al Jurjani Rahimahullah, the teacher of Imam Al Quduri
- 3) Ahmad ibn Muhammad ibn Umar Rahimahullah
- 4) Muhammad ibn Ahmad ibn Al Tayyib Al Kamari Rahimahullah

Books

Abu Bakr Al Jassas has written many valuable books in the Hanafi Madhab. They include¹⁰⁰:

- 1) *Ahkam Al Qur'an*
- 2) *Sharh Mukhtasar Al Karkhi*
- 3) *Sharh Mukhtasar Al Tahawi*
- 4) *Sharh Al Jami' Al Saghir*
- 5) *Sharh Al Jami' Al Kabir*
- 6) *Sharh Al Asma' Al husna*
- 7) *Kitab Fi Usul Al Fiqh*
- 8) *Jawabat Al Masail*
- 9) *Al Manasik*

Scholarly praise

Al Khatib Al Baghdadi Rahimahullah said:

كان مشهورا بالزهد والورع

"He was well-known for his asceticism and piety"¹⁰¹

Al Khatib Al Baghdadi Rahimahullah also said:

لأبي بكر تصانيف كثيرة مشهورة ضمها أحاديث رواها عن أبي العباس الأصم النيسابوري وعبد الله بن جعفر بن فارس الأصبهاني وعبد الباقي بن قانع القاضي وسليمان بن أحمد الطبراني وغيرهم

⁹⁹ (Al Qurashi Rahimahullah, 'Al Jawahir Al Mudiyyah', (Lebanon: Darul Kutub Al Ilmiyyah, 2005), pg.58-59.)

¹⁰⁰ Qasim ibn Qutlubugah, Taj Al Tarajim, (Damascus: Dar Al Qalam, 1992), p.96

¹⁰¹ (Al Tamimi, "Al Tabqat Al Saniyyah", (Riyad: Dar Al Rifa'i', 1983), v.1, pg.412.)

Death

He passed away in Baghdad in Dhul Hijjah in 370¹⁰² at the age of 65.¹⁰³ His Janazah Salah was led by Abu Bakr Al Khwazrizmi Raḥimahullah.¹⁰⁴

Abul Layth Al Samarqandi

Name

His name was Nasr ibn Muḥammad ibn Ibrāhīm Al Ḥattāb Al Samarqandī Al Tawzī Al Balkhī.

Some have stated that he had been given the name, Nasr ibn Muhammad ibn Ahmad. This is the name as ‘Allamah Ziraqli has recorded it.¹⁰⁵

Agnomen

His agnomen was ‘Al Faqīh’ (الفقيه) and ‘Imām Al Hudā’ (إمام الهدى)¹⁰⁶.

Birth

The exact birth date of Abū Layth Al Samarqandī is unknown.

Teachers

Abū Layth Al Samarqandī's teachers include:

- 1) Al Faqīh Abū Ja'far Al Hinduwāwī Raḥimahullah ¹⁰⁷
- 2) His father, Muḥammad ibn Ibrāhīm Al Tawzī Raḥimahullah
- 3) Muḥammad ibn Al Fadhl Al Balkhī Al Mufasssir Raḥimahullah
- 4) Al Khalīl ibn Aḥmad Al Qadī Raḥimahullah

Students

Abū Layth Al Samarqandī's students include:

- 1) Lukman ibn Hakīm Al Farghanī Raḥimahullah, he is the individual who has narrated most of Abu Layth Al Samarqandī's books
- 2) Aḥmad ibn Muḥammad Abu Sahl Raḥimahullah
- 3) Muḥammad ibn Abdur Raḥmān Al Zubayrī Raḥimahullah

Books

Abū Layth Al Samarqandī has authored a plethora of book.

They include:

¹⁰² Qasim ibn Qutlubugah, Taj Al Tarajim, (Damascus: Dar Al Qalam, 1992), p.96

¹⁰³ Qasim ibn Qutlubugah, Taj Al Tarajim, (Damascus: Dar Al Qalam, 1992), p.96

¹⁰⁴ Qasim ibn Qutlubugah, Taj Al Tarajim, (Damascus: Dar Al Qalam, 1992), p.96

¹⁰⁵ Allāmah Zarqālī, *Al A'lām*, (Darul Ilm Lil Malāyīn), v.8, p.27

¹⁰⁶ Allamah Lucknawi, “Al Fawa'id Al Bahiyyah”, (Karachi: Idaratul Qur'an, 1998) pg.290.

¹⁰⁷ Allamah Lucknawi, “Al Fawa'id Al Bahiyyah”, (Karachi: Idaratul Qur'an, 1998) pg.290.

Allamah Ziraqlī mentions that this book is not very large.

Allamah Abdul Hayy Al Lucknawī Raḥimahullah comments that he has read *Bustān Al Arifīn* (بستان العارفين), *Tanbīh Al Ghāfilīn* (تنبيه الغافلين), and *Khizānah Al Fiqh Fiqh* (خزانة الفقه). He states that he found all of them to be of immense benefit.¹¹⁴

Residence

Abū Layth Al Samarqandī Raḥimahullah resided in the city of Samarqand. Samarqand was one of the most famous cities of Transoxiana (*Mā Warā' Al Nahr* – ما وراء النهر).

Samarqand is found in modern day Uzbekistan.

Death

There is a difference of opinion over the date of his death. Ḥāfiz Al Dhahabī Raḥimahullah, in his '*SiyarA'lām Al Nubalā'*' (سير أعلام النبلاء) has preferred the opinion that Abū Layth Al Samarqandī Raḥimahullah passed away in 375 AH, while 'Allamah Qurashi Raḥimahullah - the author of *Al Jawahir Al Mudiyyah*, 'Allamah Tashkapri Zadah

¹⁰⁸ Allamah Lucknawī, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.290.

¹⁰⁹ Allamah Lucknawī, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.290.

¹¹⁰ Allamah Lucknawī, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.290.

¹¹¹ Allamah Lucknawī, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.290.

¹¹² Allamah Lucknawī, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.290.

¹¹³ *Al A'lām* by Allāmah Ziraqlī (p.27, v.8, Darul Ilm Lil Malāyīn)

¹¹⁴ Allamah Lucknawī, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.291.

Raḥimahullah - the author of *Madīnatul Ulūm*¹¹⁵, ‘Allamah Ziraqli Raḥimahullah ¹¹⁶, and Al Kafawi Raḥimahullah ¹¹⁷ have all preferred the opinion that he passed away in 373 AH.

Qasim ibn Qutlubugah Raḥimahullah has recorded his death date as 11th Jamadil Ukhrah 393 AH.¹¹⁸

Shamsul A’immah Al Halwānī

Name

His name was Abu Muhammad Abdul Aziz ibn Ahmad ibn Nasr ibn Salih Al Bukhari Al Halwani. Hafidh Al Dhahabi has recorded his name with the title ‘Al Halwa’i’ instead of ‘Al Halwani’.

Agnomen

His agnomen is Shamsul A’immah (شَمْسُ الْأَئِمَّةِ) – ‘the Sun of the scholars’.

Scholarly praise

He resided in Bukhara and was considered the leading Hanafi scholar of his time in Bukhara. Hafidh Al Dhahabi Raḥimahullah states:

إِمَامٌ أَهْلُ الرُّأْيِ بِتِلْكَ الدِّيَارِ

“He was the Imam of the *Ahl Al Ra’y* in those cities”

Teachers

His notable teachers include:

- Al Qadhi Abu Ali Al Husayn ibn Al Khadar Al Nasafi Raḥimahullah
- Abdur Rahman ibn Husayn Al Katib Raḥimahullah
- Abu Sahl Ahmad ibn Muhammad ibn Makki Al Anmati Raḥimahullah
- Muhammad ibn Ahmad Gunjar Al Hafidh Raḥimahullah
- Salih ibn Muhammad Raḥimahullah

Students

Many students studied under Shamsul A’immah Al Halwani. They include:

- Shamsul A’immah Abu Bakr Muhammad ibn Ahmad ibn Abi Sahl Al Sarakhsi Raḥimahullah, Shamsul A’immah studied Fiqh under Shamsul A’immah Al Halwani
- Fakhrul Islam Ali ibn Muhammad ibn Al Husayn Al Bazdawi Raḥimahullah
- Sadrul Islam Muhammad ibn Muhammad ibn Al Husayn Al Bazdawi Raḥimahullah
- Al Qadhi Jamal Al Din Abi Nasr Ahmad ibn Abdir Rahman Raḥimahullah
- Shamsul A’immah Abu Bakr Muhammad ibn Ali Al Zaranjari Raḥimahullah
- Abu Bakr Muhammad ibn Al Hasan ibn Mansur Al Nasafi Raḥimahullah

Death

¹¹⁵ Allamah Lucknawi, “Al Fawaid Al Bahiyyah”, (Karachi: Idaratul Qur’an, 1998) pg.290.

¹¹⁶ *Al A’lām* by Allāmah Zarqalī (p.27, v.8, *Darul Ilm Lil Malāyīn*)

¹¹⁷ Allamah Lucknawi, “Al Fawaid Al Bahiyyah”, (Karachi: Idaratul Qur’an, 1998) pg.291.

¹¹⁸ *Taj Al Tarajim* by Qasim ibn Qutlubugah, p.310 (Beirut:Darul Qalam,1992)

Abul Ala Al Faradhi Raḥimahullah records his death in Shaʿban of the year 456 AH.

Allamah Abdul Aziz Al Nakhshabi Raḥimahullah records his death 452 AH.

Mulla Ali Al Qari Raḥimahullah (d.1214 AH) records his death in 448 AH.

Allamah Samʿani Raḥimahullah records his death in 448 AH or 449 AH.

Abul Ala Al Faradhi Raḥimahullah states that he passed away in Bukhara whilst Ali ibn Hibatillah Al Baghdadi (d.475-489 AH) records that Shamsul Aʿimmah Al Halwani moved to a place called 'Kash' near the end of his life and passed away there.

His body was then carried to Bukharah and buried there. Allamah Samʿani records that he is buried in a place called 'Klabath' (كلاباذ).

Shamsul Aʿimmah Al Sarakhsi

[Book/s to use: *Al Mabsut*]

Name

His name was Muhammad ibn Ahmad ibn Abi Sahl Abu Bakr Al Sarakhsi.

Agnomen

His agnomen was Shamsul Aʿimmah.

Attribution to Sarakh

Shamsul Aʿimmah Raḥimahullah was born in Sarakh, which was an old city from the cities of Khurasan.

Teachers

His main teacher was Imam Shamsul Aʿimmah Abdul Aziz Al Halwani Raḥimahullah, under whom he studied Fiqh.

Students

His main students include¹¹⁹:

- 1) Burhanul Aʿimmah Abdul Aziz ibn Umar Raḥimahullah (the grandfather of the author of Al Muḥit Al Burhani)
- 2) Mahmud ibn Abdil Aziz Al Awzjandi Raḥimahullah (the grandfather of Qadi Khan)
- 3) Rukn Al Din Masʿud ibn Al Hasan Raḥimahullah
- 4) Uthman ibn Ali ibn Muhammad Al Baykandi Raḥimahullah

His Books

He has written many accepted books in the Hanafi Madhab. They include¹²⁰:

- 1) Al Mabsut; this is a very important book in the Hanafi Madhab. The entire book was written by the students of Shamsul Aʿimmah Al Sarakhsi who would write what he would mention to them from his memory while he was in a prison in Awzjand. His cell was at the bottom of a pit and thus his students would sit at the top of the pit and write down what he would mention from the pit.

¹¹⁹ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.206.

¹²⁰ Allamah Lucknawi, "Al Fawa'id Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.206.

- 2) Sharh Al Siyar Al Kabir; this book was also written from the same prison cell. However, when he reached the chapter of *Bab Al Shurut* (the chapter of conditions), he was freed. He then moved to Farghanah and completed relating the book to students.
- 3) Sharh Mukhtasar Al Tahawi
- 4) A book in Usul Al Fiqh

Death

It is said that he passed away in 490 AH. Some, including 'Allamah Tashkupri Zadah Raḥimahullah, have said that he passed away in 500 AH.¹²¹

Mulla Ali Al Qari Raḥimahullah has recorded his death date as 438 AH.¹²²

Fakhrul Islām Al Bazdawī (d.482 AH)

Name

His name was Ali ibn Muhammad ibn Abdl Karim ibn Musa Al Bazdawi. ¹²³

Agnomen

His agnomen was Fakhrul Islam.

Birth

He was born in 400 AH. ¹²⁴

Books

He has written many books. They include¹²⁵:

- 1) Al Mabsut
- 2) Sharh Al Jami' Al Kabir
- 3) Sharh Al Jami' Al Saghir
- 4) A large book in Usul Al Fiqh famously known as Usul Al Bazdawi
- 5) An exegesis of the Qur'an which is said to be in one-hundred and twenty parts

Death

He passed away in 482 AH and his coffin was carried to Samarqand.¹²⁶

Ṣadr Al Shahīd

¹²¹ Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.206.

¹²² Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.207.

¹²³ Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.162.

¹²⁴ Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.162.

¹²⁵ Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.162.

¹²⁶ Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.162.

[Book/s to use: *Sharh Al Jami' Al Saghir*]

Name

His name was 'Umar ibn Abd Al Aziz ibn Mazah.¹²⁷

Agnomen

His agnomen was *Sadr Al Shahid Husam Al Din*.¹²⁸

Death

He passed away in 536 AH.¹²⁹

Sirāj Al Dīn Al Awshī

[Book/s to use: *Fatawa Sirajiyah*]

Alā Al Dīn Al Kāsānī (d.587 AH)

[Book/s to use: *Bada'i' Al Sana'i'*]

Name

His name was Abū Bakr ibn Mas'ūd ibn Aḥmad Alā'ud Dīn.

Attribution of Kāsān

Allāmah Sam'ānī Raḥimahullah has mentioned that 'Kāsān' was a city found in Al Shash.

Hafiz Al Dhahabi Raḥimahullah mentions in *Mushtabah Al Nisbah* (مشتبه النسبة) that the name of the city is actually 'Qāsān' (قاسان), however, its people refer to it as 'Kāsān' (كاسان). He states that it is a large city in Turkistan.

Teachers

His most notable teacher was Alā'ud Dīn Muḥammad ibn Aḥmad Al Samarqandī Raḥimahullah, the author of *Tuḥfah Al Fuqahā* (تحفة الفقهاء).

Students

His notable students include:

- His son, Maḥmūd ibn Abī Bakr Al Kāsānī Raḥimahullah
- Aḥmad ibn Maḥmūd Al Ghaznawī Raḥimahullah, the author of *Al Muqaddamah Al Ghaznawiyah* (المقدمة) and *Al Hawi Al Qudsi* (الحاوي القدسي); he became the teacher of Al Kasani Raḥimahullah's gathering after his demise.

Books

Mullā Alī Qarī Raḥimahullah mentions that he authored the following books:

¹²⁷ Qasim ibn Qutlubugah, "Taj Al Tarajim", (Damascus: Dar Al Qalam, 1992), p.218

¹²⁸ Qasim ibn Qutlubugah, "Taj Al Tarajim", (Damascus: Dar Al Qalam, 1992), p.218.

¹²⁹ Qasim ibn Qutlubugah, "Taj Al Tarajim", (Damascus: Dar Al Qalam, 1992), p.218.

- 1) *Badāi'us Sanāi'* (بدائع الصنائع); a commentary of his teacher's book, *Tuḥfah Al Fuqahā* (تحفة الفقهاء)
- 2) *Al Kitāb Al Jalīl* (الكتاب الجليل)
- 3) *Al Sultān Al Mubīn Fi Usūl Al Dīn* (السلطان المبين في أصول الدين)

Marriage

He married Alā'ud Dīn Muḥammad ibn Aḥmad Al Samarqandī Raḥimahullah's daughter, Fātimah. Fātimah had memorised her father's book, *Al Tuḥfah* (التحفة), and many of the nobles of the Byzantine Empire wanted her hand in marriage.

However, when Al Kāsāni Raḥimahullah wrote his commentary upon *Al Tuḥfah* (التحفة), *Badāi'us Sanāi'* (بدائع الصنائع), he presented it to Alā'ud Dīn Raḥimahullah who was immensely pleased with the commentary. Out of happiness, Alā'ud Dīn gave his daughter's hand in marriage to Al Kasani Raḥimahullah.

The people of the time would say regarding Al Kasani,

شرح كتابه وتزوج ابنته

“He wrote a commentary upon his (Alā'ud Dīn's) *Al Tuḥfah* (التحفة) and married his daughter”.

Death

He passed away in 587 AH and was buried in Aleppo (حلب) near the grave of his wife.

Ibn Al Adim states that he heard Diya' Al Hanafi say, “I was by Al Kasani's side as he was passing away, he began to recite Surah Ibrahim, as he reached the verse “Allah keeps firm those who believe, with the firm word (يُثَبِّتُ اللَّهُ)”, his soul departed. He was buried in Aleppo near his wife and any supplication made at their grave is found to be accepted.”

Qāḍī Khān (d.592 AH)

[Book/s to use: *Fatawa Qadhi Khan*, *Umdatul Mufti*]

Name

His name was Ḥasan ibn Maṣṣūr ibn Abil Qāsim Shamsul A'immah Maḥmūd ibn 'Abd Al Azīz Al Awzjandī Al Farghani.

Agnomen

Although his most well-known agnomen is Qaḍī Khān, he was also referred to as Abul Mafākhir, Abul Maḥāsin, and Fakhr Al Dīn.

Teachers

Qaḍī Khān studied under:

- 1) Ibrahim ibn Isma'il ibn Abi Nasr Al Saffari Raḥimahullah
- 2) Zahir Al Din Abul Hasan Ali ibn Abd Al Aziz Al Murghinani Raḥimahullah

Books

Qaḍī Khān's books have been given great acceptance in the Hanafi Madhab. They include:

- 1) *Fatawa Qadhi Khan*
- 2) *Sharh Al Jami' Al Saghir*
- 3) *Sharh Al Ziyadat*
- 4) *Sharh Adab Al Qadhi*

Death

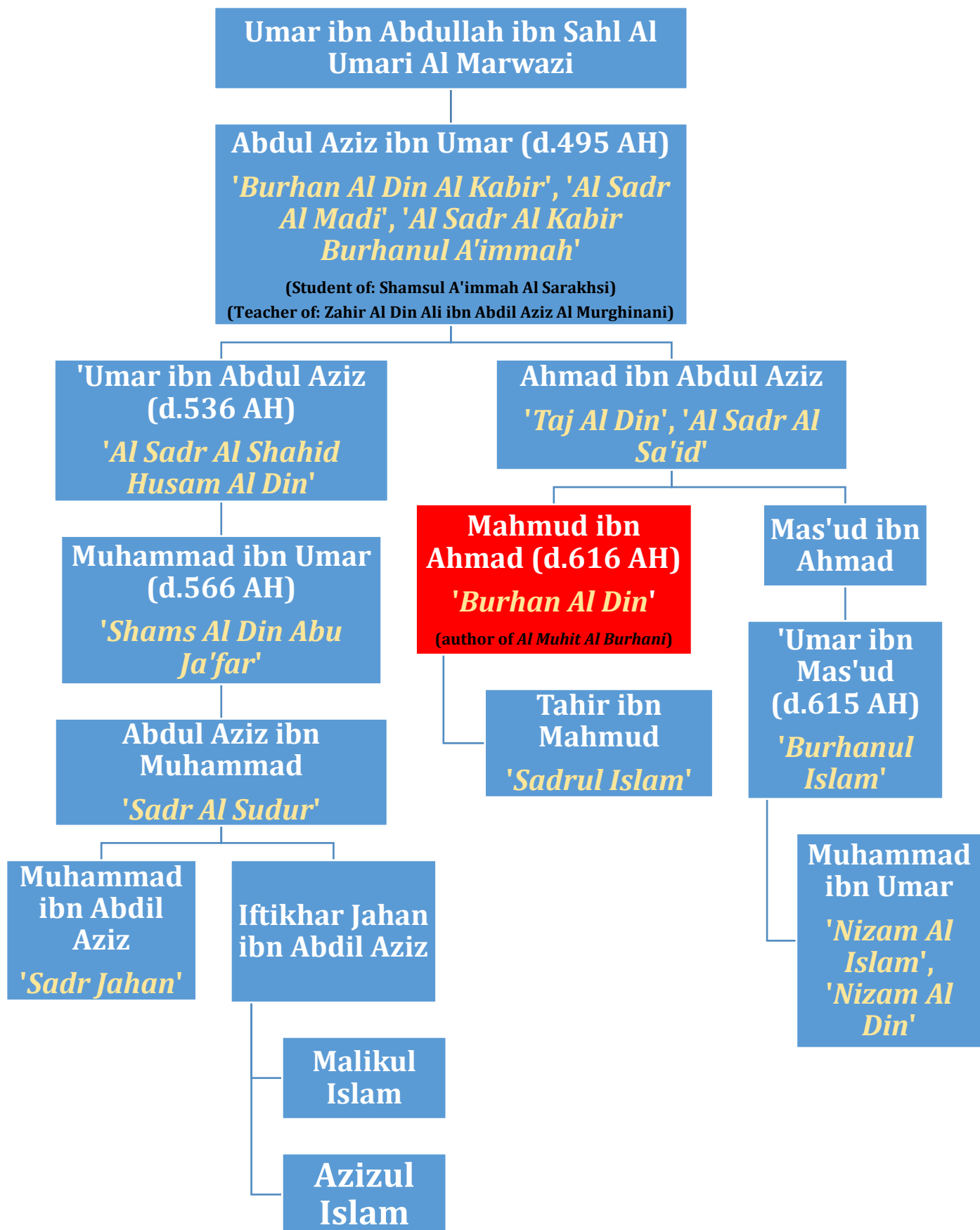
He passed away on the 15th night of Ramadan in 592 AH.

'Alī Al Murghīnānī

[Book/s to use: *Al Hidayah*, *Mukhtarat Al Nawazil*, *Al Tajnis Wal Mazid*]

Burhān Al Dīn Maḥmūd ibn Aḥmad Al Bukhārī

Family Lineage



Tāhir ibn Ahmad ibn 'Abd Al Rashīd Al Bukhārī

Name

His name was Tahir ibn Ahmad ibn Abdul Rashid ibn Al Husayn Iftikhar Al Din Al Bukhari.

Teachers

His main teachers included:

- 1) His father, Qiwan Al Din Ahmad Raḥimahullah
- 2) Hammad ibn Ibrahim Al Saffar Raḥimahullah
- 3) His maternal uncle, Zahir Al Din Al Hasan ibn Ali Al Murghinani Raḥimahullah. In fact, Tahir ibn Ahmad Raḥimahullah was the last person to study under Zahir Al Din Al Hasan ibn Ali Al Murghinani.
- 4) Qadi Khan Raḥimahullah

Books

He has written many books, they include:

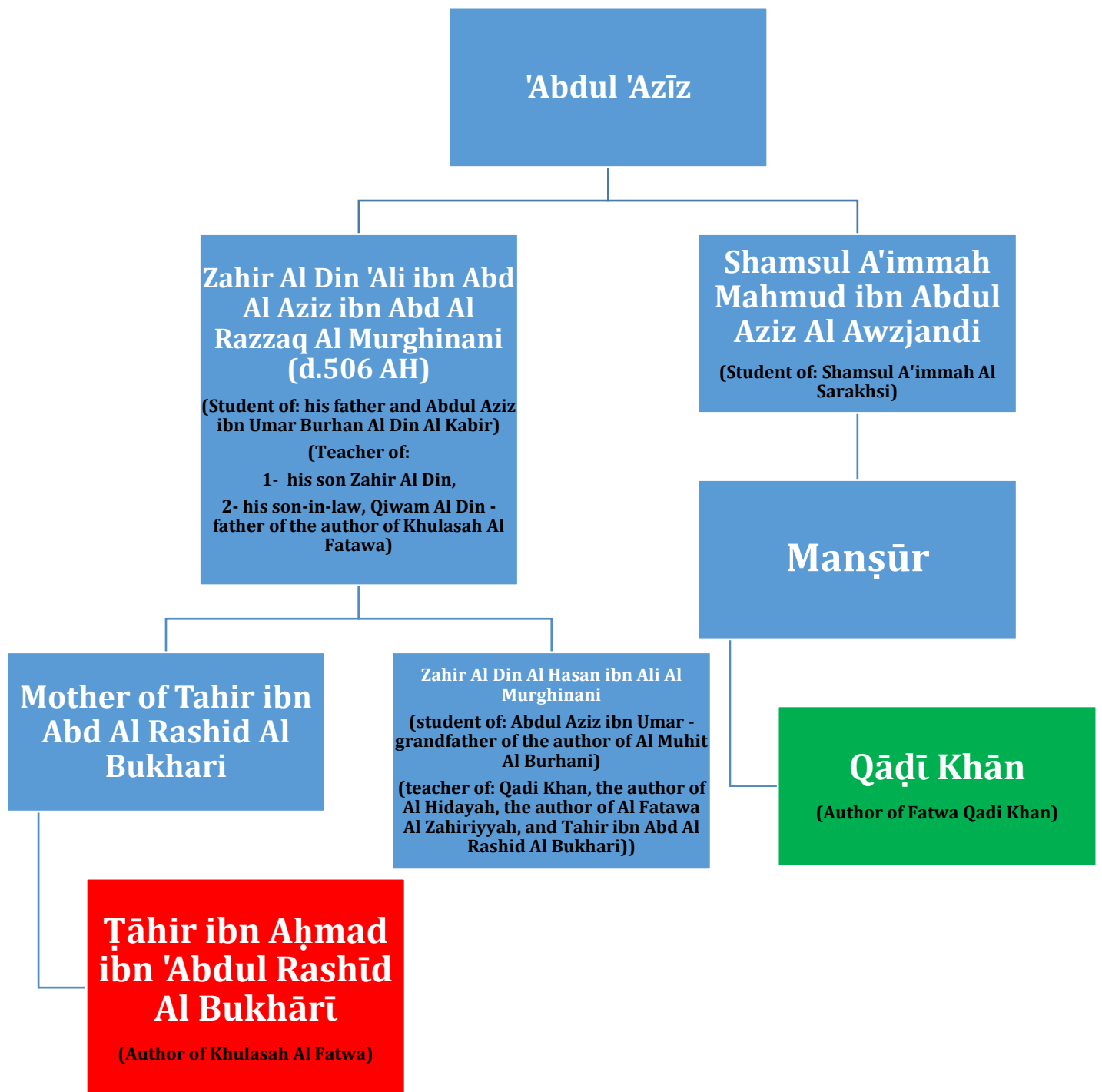
- 1) *Al Nisab*
- 2) *Al Waqiat*
- 3) *Khulasah Al Fatawa*; this book is a summary of what he has written in *Al Nisab* and *Al Waqiat*. ‘Allamah Lucknawi Raḥimahullah states that he has read *Khulasah Al Fatawa* and found it to be:

كتاب معتبر عند العلماء معتمد عند الفقهاء

“A considerable book according to the book, relied upon by the Fuqaha”

Relation to Qadi Khan

Tahir ibn Ahmad ibn Abdul Rashid Raḥimahullah and Qadi Khan Raḥimahullah were related:



Death

Although Ibn Al Hana'i' Raḥimahullah has mentioned his death date as 542 AH, this is incorrect. For indeed, Tahir ibn Ahmad Raḥimahullah passed away after the 600th Hijri, this is because he regularly quotes the author of Al Muhit Al Burhani and Qadi Khan in his book, Khulasah Al Fatawa. In Khulasah Al Fatawa, he refers to Qadi Khan Raḥimahullah as 'Al Ustadh' at times, and at times with 'Al Qadi Al Imam'.

Mahmūd Al Maḥbūbī (Tāj Al Sharī'ah)

[Book/s to use: *Al Wiqayah*]

Name

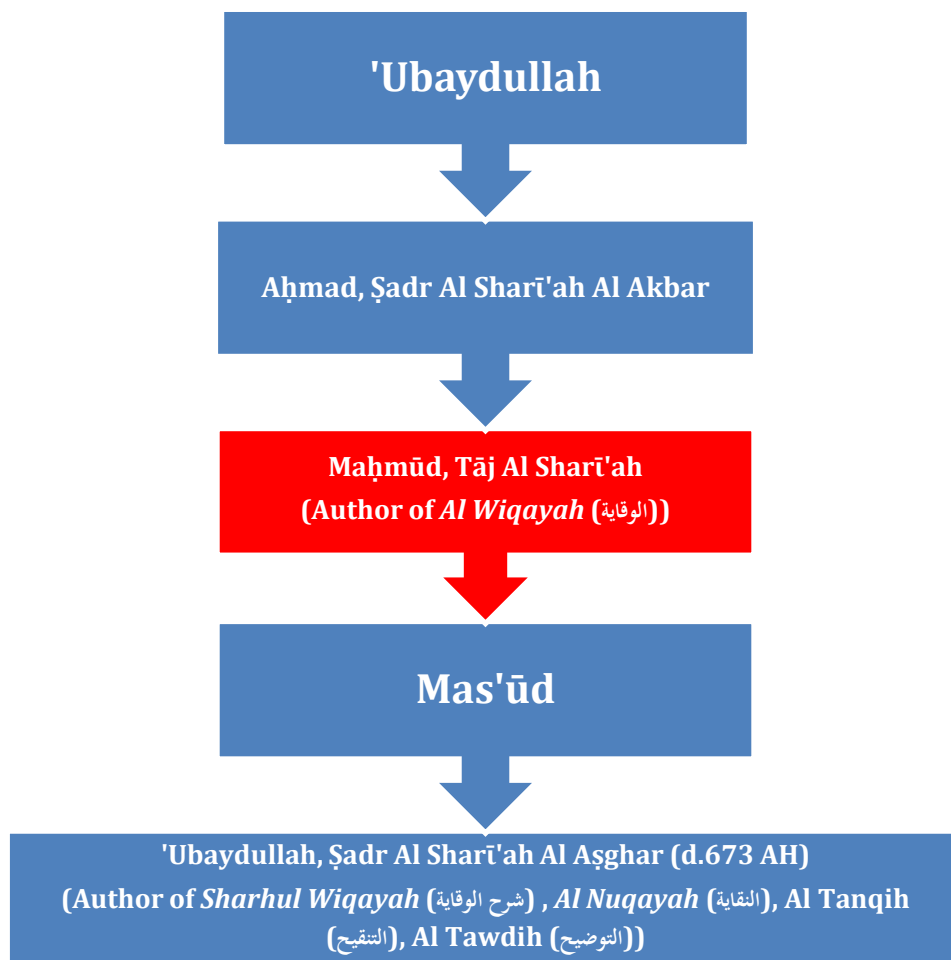
His name was Maḥmud ibn Aḥmad ibn ‘Ubaydillah ibn Ibrāhīm. He was also known as Tāj Al Sharī’ah. His father was Ṣadr Al Sharī’ah Al Akbar Aḥmad ibn ‘Ubaydillah.

Books

Tāj Al Sharī’ah Raḥimahullah was the author of *Wiqāyah Al Riwāyah* (وقاية الرواية) – also known as *Al Wiqāyah* (الوقاية), a selection of the Masāil of *Al Hidāyah* (الهداية), which he wrote for his grandson; Ṣadr Al Sharī’ah Al Aṣghar, ‘Ubaydullah ibn Mas’ūd ibn Maḥmūd Raḥimahullah.

Ṣadr Al Sharī’ah Al Aṣghar, ‘Ubaydullah ibn Mas’ūd ibn Maḥmūd Raḥimahullah, wrote a commentary of *Al Wiqāyah* (الوقاية) and named it *Sharḥ Al Wiqāyah* (شرح الوقاية). Ṣadr Al Sharī’ah Al Aṣghar Raḥimahullah also wrote an abridgement of *Al Wiqāyah* (الوقاية) and named it *Al Nuqāyah* (النقاية).

Family Lineage



'Ubaydullah ibn Mas'ud, Sadr Al Shari'ah Al Asghar

Husain ibn 'Alī Al Saghnāqī (d.710 AH)

[Book/s to use: *Al Nihayah Sharhul Hidayah*]

Teachers

His teachers include:

- 1) Hafidh Al Din Muhammad ibn Muhammad ibn Nasr Raḥimahullah
- 2) Muhammad ibn Muhammad Al Maymarghi Raḥimahullah

Books

Allamah Saghnaqi's books include:

- 1) *Al Nihayah Sharh Al Hidayah*; it is the first commentary ever written upon Al Hidayah
- 2) *Sharh Muntakab Al Husami*
- 3) *Sharh Al Tamhid*; it is a commentary upon Abul Mu'in Al Nasafi's Al Tamhid

'Uthmān ibn 'Alī Al Zayla'ī' (d.743 AH)

[Book/s to use: *Tabyin Al Haqaiq*]

Name

His names was Uthman ibn Ali ibn Mihjan ibn Musir.¹³⁰

Books

He has written an important commentary upon Kanz Al Daqaiq titled Tabyin Al Haqaiq.

Death

He passed away in Ramadan in 743 AH.

'Ubaydullah ibn Mas'ūd (Ṣadr Al Sharī'ah Al Saghīr)

Name

His name was 'Ubaydullah ibn Mas'ud ibn Mahmud ibn Ahmad ibn Ubaydullah.

Agnomen

His agnomen was Ṣadr Al Sharī'ah Al Asghar

Books

Ṣadr Al Sharī'ah Al Asghar, 'Ubaydullah ibn Mas'ūd ibn Maḥmūd Raḥimahullah, wrote a commentary of *Al Wiqāyah* (الوقاية) and named it *Sharḥ Al Wiqāyah* (شرح الوقاية). Ṣadr Al Sharī'ah Al Asghar Raḥimahullah also wrote an abridgement of *Al Wiqāyah* (الوقاية) and named it *Al Nuqāyah* (النقاية).

He also wrote a very important book in the principles of Fiqh by the name of *Al Tanqīḥ* (التنقيح); he then wrote a commentary on this book and named it *Al Tawdīḥ* (التوضيح).

Sa'd Al Dīn Al Taftāzāni Raḥimahullah has written a commentary on *Al Tawdīḥ* (التوضيح) by the name of *Al Talwīḥ* (التلويح); *Al Talwīḥ* (التلويح) is considered one of the best books written on Usul Al Fiqh.

¹³⁰ Taj Al Tarajim by Qasim ibn Qutlubugah, p.204 (Damascus: Dar Al Qalam, 1992)

Death

He passed away in 747 AH.

Ibn Al Hummām (d.861 AH)

[Book/s to use: *Fathul Qadir*]

Ibrāhīm Al Ḥalabī (d.861 AH)

Name

His name was Ibrahim ibn Muhammad ibn Ibrahim Al Halabi Al Hanafi.

His Studies

He was one of the elderly respected scholars of the Ottoman Empire. He was born in Aleppo, after studying under the scholars of Aleppo, he travelled to Egypt. In Egypt, he studied Hadith, Tafsir and Usul. Finally, he came to Constantinople – modern day Istanbul - and resided there.

His Piety

It is said that he would never be seen except in his home or in the Masjid. When he would walk, he would lower his gaze. Not a soul heard him speak ill of others and nobody ever felt that he is taking pleasure from this world.

His Books

He has written an important set of books in the Hanafi Madhab:

1) Multaqa Al Abhur

A Fiqh book which is considered to be one of the reliable texts (Al Mutun Al Mu'tabarah) of the Hanafi Madhab.

2) Ghunyah Al Mutamalli Sharh Munyah Al Musalli

A commentary written upon Allamah Kashagri's famous book on the Masail of Salah, Munyah Al Musalli. This commentary is one of the most widely accepted books pertaining to the Masail of Salah according to the Hanafi Madhab.

3) Al Raḥs Wal Waqs Li Mustahil Al Raqs

A short treatise written upon the issue of music and dancing.

Death

He had reached over 90 years of age at the time of his death.

Mullā Kusrow (d.885 AH)

Name

His name was Muhammad ibn Faramuz.¹³¹

Agnomen

His agnomen is Mulla Kusrow.

Teachers

He studied under Burhan Al Din Haydar Al Harawi, who was one of the students of Sa'd Al Din Al Taftazani.¹³²

Students

His students include¹³³:

- 1) Yusuf ibn Junayd
- 2) Hasan Shilbi ibn Muhammad Shah Al Fanari
- 3) Hasan ibn Abd Al Samad Al Sāmsuni

Biography

He was a teacher at his brother's institute, Madrasah Shah Malik, during the reign of Sultan Murad Khan. He was then made a judge during the reign of Sultan Muhammad Khan ibn Murad Khan. When Mulla Khidr Bayk passed away, Sultan Muhammad Khan made him the judge of Constantinople.¹³⁴

Books

He has written many books, they include¹³⁵:

- 1) *Ghurar Al Ahkam*
- 2) *Durar Al Hukkam Sharh Ghurar Al Ahkam*
- 3) *Murqatul Usul*
- 4) *Miratul Usul Sharh Mirqatul Usul*
- 5) *Hashiyah Alal Talwih*
- 6) *Hashiyah Tafsir Al Baydawi; this is only footnotes for the first juz of Tafsir Al Baydawi*
- 7) *Risalah Fil Wala*

Death

He passed away in 885 AH in Constantinople. He was then moved to Prusa.¹³⁶

Badr Al Dīn Al 'Aynī (d.885 AH)

Name

His name was Mahmud ibn Ahmad ibn Musa ibn Ahmad ibn Husayn ibn Yusuf ibn Mahmud.

Agnomen

His agnomen was Badr Al Din.

¹³¹ Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.240.

¹³² Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.240.

¹³³ Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.241.

¹³⁴ Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.240.

¹³⁵ Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.241.

¹³⁶ Allamah Lucknawi, "Al Fawaid Al Bahiyyah", (Karachi: Idaratul Qur'an, 1998) pg.241.

Birth

He was born in Egypt in

Ibn Kamal Basha

The Title 'Basha'

'Allamah Lucknawi has explained that the title 'Basha' is used as a display of respect for the scholar of the Byzantine lands.

Ibn Nujaym (d.970 AH)

[Book/s to use: *Al Bahrur Raiq, Rasāil Ibn Nujaym*]

Aḥmad ibn Muḥammad Al Shilbī (d.1021 AH)

Hasan ibn 'Ammār Al Shurunbulālī (d1069 AH)

Muḥammad ibn 'Alī Al Ḥaṣḥafī (d.1088 AH)

Aḥmad ibn Muḥammad Al Ṭaḥṭāwī (d.1231 AH)

Ibn 'Abidīn (d.1252 AH)

[Book/s to use:

Raddul Muhtar,

Minhatul Khaliq,

Tanqihul Fatawa Al Hamidiyyah,

Majmu' Rasail]

'Abdul Ghanī Al Ghunaymī Al Maydānī (d.1298 AH)

'Allāmah 'Abdul Ḥayy Al Lucknawī (d.1304 AH)

'Allāmah Ṣihabetdin Mārcanī (d.1306 AH)

Name

His name was Shihab Al Din Harun ibn Baha Al Din ibn Subhan ibn Abd Al Karim ibn Abd Al Tawwab ibn Abd Al Ghani ibn Abd Al Quddus ibn Yadash ibn Yadgar ibn Umar Al Marjani.

Al Marjani is an attributon to Marjan, which was a village within Qazan, the capital of Tatarstan, which is one of the republics of modern-day Russia.

Birth

He was born in 1233 AH in the village Yapinji, one of the villages of Qazan.

Study of Knowledge

Initially, Al Marjani Rahimahullah studied under his mother and father. His father, Baha Al Din, had studied Sahih Al Bukhari in Bukhara and had returned to Yapinji as a teacher. Thus, he studied in his father's institute under various luminary scholars of the time. The books he studied initially were:

- In Nahw; Mulla Jami
- In Fiqh: Mukhtasar Al Wiqayah and Sharh Al Wiqayah
- In Ilm Al Kalam; Sharh Al Aqaid Al Nasafiyyah
- In Mantiq: Sharh Al Shamsiyyah
- In Usul Al Fiqh: Al Tawdih and Al Talwih

However, it is said about him that his desire for knowledge was such, that from a young age he had begun to read various treatises and books that were available in his father's library.

He achieved such profound knowledge that at the tender age of 17, he was made a teacher at his father's institute. However, his methodology of teaching was somewhat revolutionary as he made various changes to the teaching methods in vogue in father's institution.

AL Marajni Rahimahullah also paid close to attention to non-Islamic fields of knowledge such as astronomy, geography, and history. He had access to many history books due to the many orientalist who had translated many of the historical works into Russian. He gained such a mastery of history that he was able to point out errors made by Ibn Khaldun.

In the year 1254, he set off for Bukhara to further his studies of Shari'ah. In Bukhara, he studied under Mirza Salih A'lam ibn Nadir. However, he was not pleased with the methodology of the teaching in Bukhara as he found that they did not pay much attention to the sciences of Qur'an and Hadith. In a few years, he moved to the grand Madrasah of Bukhara known as Kukaltash. However, he would spend the majority of his time in the library, even during class time, he would sit in the library and read books on his own. In order to make ends meet, he would teach the students of Qaraqul during the winter days.

After spending six years in Bukhara, he travelled to Samarqand in the pursuit of knowledge. There, he enrolled in the Madrasah of Shirdar. He benefitted from Qadi Abu Sa'id Abdul Hayy. In the two years he spent in Samarqand, he approximately twenty books cover-to-cover including books such as Fath Al Qadir, Al Itqan, and many other important books.

He then returned to Bukhara and studied in the Madrasah Mir Arab. In the following year, he began teaching at the Madrasah and taught there for five years. These five years were spent in studying and teaching. He wrote many books in Bukhara and entered the circles of Tasawwuf under the great Shaykh, Abdul Qadir ibn Niyaz.

Return to Qazan

After studying for eleven years, Al Marjani Rahimahullah returned to Qazan. He then became an Imam in Qazan and taught a plethora of students. It is said that sixty-five students were enrolled in the institution that he was teaching in. However, after spending twenty-two years in Qazan, the jealousy of the surrounding scholars almost made him want to move to Baghdad. Nonetheless, he remained in Qazan and, after recognising his talents, the wealthy residents of Qazan bought a land for him upon which he built his own institution. This new institution became one of the greatest intellectual colleges at the time.

In the final few years of his life, he performed his Hajj. On his way to Makah, he travelled to Istanbul and Egypt and benefitted from many of the scholars there.

Al Marjani Rahimahullah spent the final eight years of his life maintaining his institution, before he departed from this temporary abode.

Accolades

He has written approximately thirty books including Nazurah Al Haq, Al Fawa'id Al Muhimmah and Haqqul Ma'rifah.¹³⁷

Muftī Maḥmūd Hasan Gangohī

[Book/s to use: *Fatawa Mahmudiyyah*]

Muftī 'Abdul Raḥīm Lājpūrī

[Book/s to use: *Fatawa Rahimiyyah*]

Muftī Rashīd Aḥmad Ludhiyānwī

[Book/s to use: *Ahsanul Fatawa*]

Muftī Rashīd Aḥmad Gangohī

[Book/s to use: *Fatawa Rashidiyyah*]

¹³⁷ (Yilmiz/Anjaqar, "Introduction to Nazurah Al Haqq", (Istanbul: Dar Al Hikmah, 2012), pgs.15-51.)

Ma Wara Al Nahr (Tansoxianna) and *Khurasan*



A closer look at Ma Wara Al Nahr (Transoxianna):



Some noteworthy places:

1 - Samarqand	4 - Awzjand (Uzjen)
2 - Bukhara	
3 - Tirmidh	

[A closer look at Khurasan:](#)



Some noteworthy places:

1 - Balkh
2 - Sarakh
3 - Naysapur

The Levels of the Hanafī Masāil (طبقات مسائل الحنفية)

Just as the Ḥanafī Fuqahā have categorised the Fuqahā of the Madhab into separate categories, they have also categorised their Masāil into different categories. This is so that when a contradiction is found between the rulings in a Mas’alah, a Muftī may choose the ruling which is of a higher category and avoid giving preference to a non-preferred view over a ruling of a higher category.

Ibn ‘Abidīn Raḥimahullah has discussed in his *Sharḥ ‘Uqūd Rasmil Muftī* (شرح عقود رسم المفتي) and his introduction to *Al Dur Al Mukhtār* (الدر المختار) that there are three categories of Masāil of the Ḥanafī Mathab:

1) *Zāhir Al Riwayah* (ظاهر الرواية) (also known as *Masāil Al Usūl* (مسائل الأصول))

These are Masāil narrated from the A’immah of the Madhab such as Imam Abu Hanifah¹³⁸, Imam Abu Yusuf, Imam Muhammad (they are referred to as *Al Ulama Al Thalathah*), Imam Zufar, Imam Hasan ibn Ziyad, other individuals who also studied jurisprudence under Imam Abu Hanifah are also added to this list. More commonly, however, *Zahir Al Riwayah* (ظاهر الرواية) are those Masail which have been narrated from the three A’immah; Imam Abu Hanifah (d.150 AH), Imam Abu Yusuf (d.182 AH), Imam Muhammad (d.189 AH).¹³⁹

These Masail of *Zāhir Al Riwayah* (ظاهر الرواية) are found in Imam Muhammad’s (d.189 AH) six books¹⁴⁰:

¹³⁸ Did Imam Abu Hanifah author any books himself? Allamah Kawthari writes in بلوغ الأماني (p. 18-19) that some of the books that the previous scholars have mentioned as the from the works of Imam Abu Hanifah are:

1. *Kitab Al Ra’y* (كتاب الرأي) (Ibn Abil Awaam mentions this)
2. *Kitab Ikhtilaf Al Sahabah* (كتاب إختلاف الصحابة) (Abu Asim Al Amiri and Mas’ud ibn Shaybah)
3. *Kitab Al Jami’* (كتاب الجامع) (Abbas ibn Mus’ab mentions this)
4. *Kitab Al Siyar* (كتاب السير)
5. *Al Kitab Al Awsat* (الكتاب الأوسط)
6. *Al Fiqh Al Akbar* (الفقه الأكبر)
7. *Al Fiqh Al Absat* (الفقه الأبسط)
8. *Kitab Al Alim Wal Muta’allim* (كتاب العالم والمتعلم)
9. *Kitab Al Rad Alal Qadriyyah* (كتاب الرد على القدرية)
10. *Risalah Ila Uthman Al Batti* (رسالة إلى عثمان البتي)

¹³⁹ The editor of *Al Asl* (الأصل), Allamah Muhammad Bwenukalin, states: “Imam Muhammad mentions in this book (*Al Asl* (الأصل)) the views of his two teachers, Imam Abu Hanifah and Imam Abu Yusuf, and in many his places, his own view. On rare occasions, he mentions the views of Imam Zufar, Ibn Abi Laylah, Sufyan Al Thawri and the people of Madinah”. Salah Abul Haaj asserts that this statement of Allamah Muhammad Bwenukalin indicates that Imam Hasan ibn Ziyad is not mentioned in the books of *Zahir Al Riwayah* (ظاهر الرواية).

(*Is’ādul Mufti* p.316 *Darul Bashāir Al Islamiyyah*)

¹⁴⁰ There is a difference of opinion between the Hanafi Fuqahaa over the number of books that compose the *Zahir Al Riwayah* (ظاهر الرواية):

- 1) Allamah Abdul Hayy Lucknawi has recorded a view in his introduction to *Al Hidayah* that the books of *Zahir Al Riwayah* (ظاهر الرواية) are 3; الأصل, and الزيادات. Naeem Ashraf has stated that this was the view of Meer Jaan Al Hyderabadī. (This view is extremely weak)
- 2) The books of *Zahir Al Riwayah* (ظاهر الرواية) are 4

The Fuqahaa who have adopted this view now differ over the names of these 4 books:

- According to Allamah Itqani, Allamah Babarti and Qadhi Zadah, they are: *Al Asl* (الأصل), *Al Jami’ Al Kabir* (الجامع الكبير), *Al Jami’ Al Saghir* (الجامع الصغير), *Al Ziyadat* (الزيادات),

1. *Al Mabsūt* (المبسوط)
2. *Al Jāmi' Al Saghīr* (الجامع الصغير)
3. *Al Jāmi' Al Kabīr* (الجامع الكبير)
4. *Al Ziyādat and Ziyadat Al Ziyadat* (الزيادات وزيادة الزيادات)

➤ According to Allamah Jurjani and Muhammad Ali Al Thanwi, they are: *Al Asl* (الأصل), *Al Jami' Al Kabir* (الجامع الكبير), *Al Jami' Al Saghir* (الجامع الصغير), *Al Siyar Al Kabir* (السير الكبير)

(This view is weak as *Al Ziyadat* (الزيادات) is an established book of the *Zahir Al Riwayah* (ظاهر الرواية))

- 3) According to Allamah Ibn Kamal Basha, Allamah Tashkūpri Zādah, Allamah Ibnul Hanai' (in one view), Allamah Taqiud Din Al Tameemi, Allamah Biree Zadah, Allamah Hamawi, Abdul Wali ibn Abdillāh Al Maghribi Al Dimyati, Imam Al Kafawi and the author of *Al Mudmarat*, the books of *Zahir Al Riwayah* (ظاهر الرواية) are 5; *Al Asl* (الأصل), *Al Jami' Al Kabir* (الجامع الكبير), *Al Jami' Al Saghir* (الجامع الصغير), *Al Ziyadat* (الزيادات), *Al Siyar Al Kabir* (السير الكبير)

The researchers of Nazuratul Haq have stated that the statements of Burhan Al Din Al Bukhari (d.616 AH) indicate that he was also of this view.

Note: Mufti Husain Sahib, Allamah Luayy Al Khalili, and Muhammad Bwenukalin have also given preference to the view that the books of *Zahir Al Riwayah* (ظاهر الرواية) are 5, considering that *Al Siyar Al Saghir* (السير الصغير) is actually a part of *Al Asl* (الأصل). The researchers of Nazuratul Haq have preferred this view stating that *Al Siyar Al Saghir* (السير الصغير) is actually the chapter *Al Siyar* found in *Al Asl* (الأصل). It was only considered a separate book once Imam Muhammad wrote *Al Siyar Al Kabir* and thus a differentiation was needed between it and the chapter *Al Siyar*, found in *Al Asl* (الأصل).

The researchers of Nazuratul Haq have presented two evidences that indicate *Al Siyar Al Saghir* as being a part of *Al Asl*:

- Imam Qudūri has quoted *Al Siyar Al Saghir* (السير الصغير) in his commentary upon *Mukhtasar Al Karkhi* (مختصر الكرخي) When this quotation is compared to what Imam Muhammad has written in the chapter of *Al Siyar* (السير) in *Al Asl* (الأصل), the quotation matches exactly with what is written in the chapter of *Al Siyar* in *Al Asl* (الأصل).
- Hakim Al Shahid has written an abridgement of *Al Asl* (الأصل) named *Al Kafi*. In *Al Kafi* (الكافي), he has labelled the (abridged) chapter of *Al Siyar* (السير) with the name *Kitab Al Siyar Al Saghir* (السير الصغير)

In his commentary upon *Sharh Uqud Rasmil Mufti*, titled *Is'adul Mufti*, Dr. Salah Abul Haj has provided three more evidences that indicate *Al Siyar Al Saghir* as being a part of *Al Asl*:

- The author of *Kashfuz Zunun* has related from the books *Al Manthurah* who states:
الْكُتُبُ الَّتِي هِيَ ظَاهِرُ الرِّوَايَةِ لِمُحَمَّدٍ خَمْسَةٌ الْجَامِعُ الصَّغِيرُ وَالْمَبْسُوطُ وَالْجَامِعُ الْكَبِيرُ وَالزِّيَادَاتُ وَالسِّيَرُ الْكَبِيرُ
"The books of *Zahirur Riwayah* of Imam Muhammad are 5; *Al Jami' Al Saghir*, *Al Mabsut*, *Al Jami' Al Kabir*, *Al Ziyadat* and *Al Siyar Al Kabir*"
- When Allamah Burhan Al Din Al Bukhar discusses his method in his book, *Al Muhit Al Burhani*, he states:
جَمَعْتُ مَسَائِلَ الْمَبْسُوطِ وَالْجَامِعَيْنِ وَالسِّيَرِ وَالزِّيَادَاتِ وَأَخَفْتُ بِهِ مَسَائِلَ التَّوَادِرِ
"I have gathered the *Masail* of *Al Mabut*, the two *Al Jami'* (*Al Jami' Al Saghir* and *Al Jami' Al Kabir*), *Al Siyar* and *Al Ziyadat*. I have them added to this the *Masail Al Nawadir*"
Hence, Allamah Burhan Al Din Al Bukhari did not mention *Al Siyar Al Saghir* as a separate book.
- Allamah Tashkūpri Zādah has not mentioned *Al Siyar Al Saghir* as from amongst the *Zahir Al Riwayah*

- 4) According to Allamah Ibn Nujaym, Allamah Ibnul Hanai' (in one view), Allamah Tahtawi, Allamah Ibn Abideen, Allamah Lucknawi, Muhammad Bakheet Al Muti'i', Abu Zuhra, Mufti Amimul Ihsaan, Al Qasmi, Mufti Taqi Usmani, Muhammad Mahrus Al Mudarris and Ahmed Al Naqib, the books of *Zahir Al Riwayah* (ظاهر الرواية) are 6; *Al Asl* (الأصل), *Al Jami' Al Kabir* (الجامع الكبير), *Al Jami' Al Saghir* (الجامع الصغير), *Al Ziyadat* (الزيادات), *Al Siyar Al Kabir* (السير الكبير), *Al Siyar Al Saghir* (السير الصغير).

(Summarised from '*Asbabu Udoodil Hanafiyyah Anil Futya Bi Zahirir Riwayah*' p.49 - p.55 *Darul Fath*)

5. *Al Siyar Al Saghir* (السير الصغير)

6. *Al Siyar Al Kabir* (السير الكبير)

They are called *Zāhir Al Riwayāyah* (ظاهر الرواية) as these books have been recorded from Imam Muhammad (d.189 AH) through strong and reliable chains.¹⁴¹ Considering that these books (mostly) contain the views of Imam Abu Hanifah, Imam Abu Yusuf, and Imam Muhammad himself, it means that the views mentioned in the *Zāhir Al Riwayāyah* (ظاهر الرواية) are established as the views of Imam Abu Hanifah, Imam Abu Yusuf, and Imam Muhammad either through *tawatur* (تواتر) or *istifadah* (استفاضة)¹⁴² and a chain of narrators who are all reliable.

2) *Masail Al Nawadir* (مسائل النواذر)

They are those Masail which are narrated from the A'immah of the Madhab (Imam Abu Hanifah, Imam Abu Yusuf, Imam Muhammad, Imam Zufar, and Imam Hasan ibn Ziyad) but are **not** found in the six books of Imam Muhammad which compile the Masail of *Zāhir Al Riwayāyah* (ظاهر الرواية).

Rather, these Masail are either found in Imam Muhammad's following books:

1. *Al Kaysāniyyāt* (الكيسانيات)¹⁴³

2. *Al Hārūniyyāt* (الهارونيات)¹⁴⁴

3. *Al Jurjāniyyāt* (الجرجانيات)¹⁴⁵

4. *Al Riqiyāt* (الرقيات)

¹⁴¹ This means that the Masail are narrated from Imam Muhammad (d.189 AH). In these Masail, Imam Muhammad will mention the view of Imam Abu Hanifah, Imam Abu Yusuf, and his personal opinion. *Occasionally*, he will also mention the views of the other A'immah of the Madhab such as Imam Zufar and Imam Hasan ibn Ziyad.

¹⁴² Ibn Abidin uses the word *Mashurah* (مشهورة)

¹⁴³ These are Masail that Imam Muhammad made his student, Muhammad Ali Abi Amr Sulayman ibn Shuayb, write down. They are also referred to as *Al Amali* (الأمالى).

(*'Al Fathul Rabbani'* p.316 *Maktabatul Azhar*)

¹⁴⁴ These are Masail that Imam Muhammad gathered during the time of Harūn Rashīd

(*'Al Fathul Rabbani'* p.316 *Maktabatul Azhar*)

¹⁴⁵ Allamah Tashkabri Zadah has stated in *Miftah Sa'adatil Mutaqin* (مفتاح سعادة المتقين) and Allamah Tahtawi in his *Hashiyah* state that these are Masail that Imam Muhammad wrote in Jurjan. However, Allamah Ismaeel Basha and Allamah Kawthari have stated that there are Masail that Ali ibn Salih Al Jurjani narrates from Imam Muhammad.

(*'Al Fathul Rabbani'* p.317 *Maktabatul Azhar*)

(These books are not referred to as *Zāhir Al Riwayah* (ظاهر الرواية) as they have **not** been narrated from Imam Muhammad through authentic, established, and clear narrations like the *Zāhir Al Riwayah* (ظاهر الرواية)¹⁴⁶)

Or they are found in the books of the other A'immah, such as:

5. *Al Mujarrad* (المجرد) (narrated from Imam Hasan ibn Ziyad (d.204 AH))¹⁴⁷

6. *Al Amālī* (الأمالي) (narrated from Imam Abu Yusuf (d.182 AH))¹⁴⁸

Or they are found in books that have narrated from the different A'immah of the Madhab in separate chains of narrations, such as:

7. *Al Nawadir Bi Riwayah Ibn Sama'ah* (النوادر برواية ابن سماعة) (narrated from the A'immah of the Mathab by Muhammad ibn Sama'ah (d.233H))

8. *Al Nawadir Bi Riwayah Al Mu'allah ibn Mansur* (النوادر برواية المعلي بن منصور) (narrated from the A'immah of the Madhab by Mua'lla ibn Mansoor (d.211H))

3) *Al Fatāwā Wal Wāqī'āt* (الفتاوى والواقعات)

They are those rulings which have been extracted by the later Mujtahidin (Mujtahid Fil Madhab) when they were faced with Masail for which they could not find a ruling from the A'immah of the Madhab.

We shall now discuss the important aspects of each of these three categories of Masail. Before we proceed, however, there is a pertinent issue that needs to be discussed.

***Zāhir Al Riwayah* (ظاهر الرواية) or *Masāil Al Usūl* (مسائل الأصول)?**

Question: is there any difference between *Zāhir Al Riwayah* (ظاهر الرواية) and *Masāil Al Usūl* (مسائل الأصول)?

Answer: there are two views in this regard:

- 1) **Most Hanafi Fuqahā:** *Zāhir Al Riwayah* (ظاهر الرواية) and *Masāil Al Usūl* (مسائل الأصول) are two words used for the same meaning; there is no difference between the two. They are *both* used as a reference to the six books of *Zāhir Al Riwayah* (ظاهر الرواية) mentioned above.

¹⁴⁶Allamah Kawthari states that they have been narrated from Imam Muhammad through *Khabar Wahid* (خبر واحد) rather than *Khabar Mashur* (خبر مشهور) or *Khabar Mutawatir* (خبر متواتر)
(*'Al Fathul Rabbani'* p.317 *Maktabatul Azhar*)

¹⁴⁷ These are Masail that Muhammad ibn Ibraheem ibn Jaysh heard from Muhammad Shuja' who narrated it from Hasan ibn Ziyad. Muhammad ibn Shuja' has written a commentary upon it.
(*'Al Fathul Rabbani'* p.317 *Maktabatul Azhar*)

¹⁴⁸ These are Masail in which Imam Abu Yusuf would sit in a gathering and his students would write down the Masail that he mentions. Allamah Kashmiri states in *Faydul Bari* (فيض الباري) that Yahya ibn Mu'in and Imam Muhammad would sit in these gatherings. Allamah Isma'il Basha states in *Kashf Al Zunun* (كشف الظنون) that it is over 30 volumes.
(*'Al Fathul Rabbani'* p.318 *Maktabatul Azhar*)

2) **Ibn Kamāl Pāshā Rahimahullah (d.940 AH) mentions in his commentary upon *Al Hidāyah Sharh Bidāyah Al Muḥtadī* (الهداية شرح بداية المبتدي) that there is a difference between *Zāhir Al Riwāyah* (ظاهر الرواية) and *Masāil Al Usūl* (مسائل الأصول):**

It seems that the difference between the two according to him is that the *Masāil Al Usūl* (مسائل الأصول) is that which is found in Imām Muḥammad's (d.189 AH) six books mentioned above, while *Zāhir Al Riwāyah* (ظاهر الرواية) is a view which has been narrated from one of the A'immah of the Madhab - regardless if it is narrated from Imam Muhammad or another Imam of the Madhab - through an authentic chain of narration and the Muḥtadīn who came after them gave Fatwa upon it. Hence, a Mas'alah mentioned in *Al Nawādir* (النوادر) *could* be *Zāhir Al Riwāyah* (ظاهر الرواية) according to him.

Ibn Kamāl Pāshā Rahimahullah (d.940 AH)'s evidence:

Shamsul A'immah Al Sarakhsi Rahimahullah (d.438 AH) has mentioned that the view of the *Zāhir Al Riwāyah* (ظاهر الرواية) is that a woman is not required to perform Hajj until she is able to afford the expenses of her Mahram.

In *Al Muḥit Al Burhani* (المحيط البرهاني) and *Al Dhakhirah* (الذخيرة), it has been mentioned that the narration of Imam Hasan ibn Ziyad from Imam Abu Hanifah is that if a woman is able to afford her own expenses and the expenses of her Mahram, then it is necessary for her to perform Hajj.

Therefore, it seems apparent that by referring to the view of *Zāhir Al Riwāyah* (ظاهر الرواية), Shamsul A'immah Al Sarakhsi (d.438 AH) was referring to the narration of Imam Hasan ibn Ziyad from Imam Abu Hanifah. Narrations of Imam Hasan ibn Ziyad are not found in the *Masāil Al Usūl* (مسائل الأصول) books, rather, the narrations of Imam Hasan ibn Ziyad are found in the *Al Nawādir* (النوادر) books. It therefore seems that Shamsul A'immah has used the words *Zāhir Al Riwāyah* (ظاهر الرواية) for a narration found in the *Al Nawādir* (النوادر) books. Accordingly, the words *Zāhir Al Riwāyah* (ظاهر الرواية) can be used to describe a narration found in books other than the books of *Masāil Al Usūl* (مسائل الأصول), and hence, there is a difference between *Zāhir Al Riwāyah* (ظاهر الرواية) and *Masāil Al Usūl* (مسائل الأصول).

Ibn Abidīn Rahimahullah (d.1252 AH)'s response to Ibn Kamāl Rahimahullah (d.940 AH):

Ibn 'Abidin Rahimahullah writes that the narration of Imam Hasan ibn Ziyād Rahimahullah (d.204 AH) must have been narrated by Imām Muḥammad (d.189 AH) in his *Masāil Al Usūl* (مسائل الأصول) books as well. Hence, it is possible that the view of Imam Abu Hanifah mentioned above has been narrated by Imam Hasan ibn Ziyad in the books of *Al Nawādir* (النوادر) while Imam Muhammad has also narrated it in the books of *Masāil Al Usūl* (مسائل الأصول).¹⁴⁹

¹⁴⁹ Ibn Abidin's statement here is conjecture. This is because *Kitab Al Manasik* of Al Asl (الأصل) is missing (مفقود), therefore, there is no way one can verify the claim of Ibn Abidin that Imam Muhammad has also mentioned the view narrated by Imam Hasan ibn Ziyad.

Thus, Shams Al A'immah Al Sarakhsi (d.438 AH) referred to *Zāhir Al Riwāyah* (ظاهر الرواية) in respect of what is found in the *Masāil Al Usūl* (مسائل الأصول) whilst the author of *Al Muhit Al Burhani* (المحيط البرهاني) referred to the narration of Imam Hasan ibn Ziyad in respect of what is found in the books of *Al Nawādir* (النوادر).

As for why the author of *Al Muhit Al Burhani* (المحيط البرهاني) referred to the narration of Imam Hasan ibn Ziyad found in the books of *Al Nawādir* (النوادر) and not the narration of Imam Muhammad found in the *Masāil Al Usūl* (مسائل الأصول), this is because Imam Muhammad has narrated more than one view from Imam Abu Hanifah in this Mas'alah in the books of *Masāil Al Usūl* (مسائل الأصول). Hence, in order to avoid confusion, the author of *Al Muhit Al Burhani* (المحيط البرهاني) referred to the narration of Imam Hasan ibn Ziyad found in the books of *Al Nawādir* (النوادر) even though it is one of the narrations recorded by Imam Muhammad in the *Masāil Al Usūl* (مسائل الأصول). This is why the author of *Al Muhit Al Burhani* (المحيط البرهاني) writes:

وَاضْطَرَبَتِ الرِّوَايَاتُ عَنْ مُحَمَّدٍ رَضِيَ اللَّهُ عَنْهُ

“The narrations from Imam Muhammad Radiyallahu Anhu [in this Mas'alah] are conflicting”

Hence, the view that Shamsul A'immah Al Sarakhsi (d.438 AH) has referred to as the *Zāhir Al Riwāyah* (ظاهر الرواية) could have been one of these conflicting narrations of Imam Muhammad found in the *Masāil Al Usūl* (مسائل الأصول).

Al-Mabsūt (المبسوط) (also known as Al Asl (الأصل))¹⁵⁰:

Al Mabsut (المبسوط) was the first of the six books of *Zāhir Al Riwāyah* (ظاهر الرواية) to be written. It is also referred to as *Al Asl* (الأصل) – which literally means ‘the foundation’ – as it was the first of the six books to be written and because it is the largest, most important, and most detailed of the six books. Also, it is a source for the other books of *Zāhir Al Riwāyah* (ظاهر الرواية).

Hājī Khalīfah (d.1067 AH) has stated in *Kashf Al Zunun* (كشف الظنون):

وَلِلْإِمَامِ مُحَمَّدٍ الشَّيْبَانِيِّ الْمُتَوَفَّى سَنَةَ تِسْعٍ وَثَمَانِينَ وَمِائَةٍ مَبْسُوطٌ أَلْفُهُ مُفْرَدًا فَأَوَّلًا أَلْفَ مَسَائِلِ الصَّلَاةِ وَسَمَّاهُ "كِتَابَ الصَّلَاةِ" وَمَسَائِلَ الْبَيْعِ وَسَمَّاهُ "كِتَابَ الْبَيْعِ" هَكَذَا "الْإِيمَانُ" وَ"الْإِكْرَاهُ"... ثُمَّ جُمِعَتْ فَصَارَتْ مَبْسُوطًا وَهُوَ الْمُرَادُ حِينَئِذَا وَقَعَ فِي الْكِتَابِ قَالَ مُحَمَّدٌ فِي كِتَابِ فَلَانٍ

“And for Imam Muhammad Al Shaybah who passed away in 189 AH is [a book titled] [Al] Mabsut that he wrote in sections, thus, he first wrote the Masāil of Salāh and labelled it *Kitāb Al Salāh* (كتاب الصلاة), then the Masāil of transactions and labelled it *Kitab Al Buyū'* (كتاب البيوع), and like this [the Masail of] Oaths and [the Masail of]

¹⁵⁰ *Al Usul* (الأصول) is the books of *Masail Al Usul* (مسائل الأصول) and *Al Asl* (الأصل) is Imam Muhammad's book, *Al Mabsut* (المبسوط).

It is unlikely that Imam Muhammad (d.189 AH) is the one who named the book as *Al Asl* (الأصل) or *Al Mabsut* (المبسوط). Rather, this was a name given to the compilation later on. As for who gathered the various chapters/Kitabs of *Al Asl*, it is unknown if this was Imam Muhammad or his students who have narrated the Masail of the book. Muhammad Bwenukalin prefers the view that it was the student who compiled the chapters/Kitabs.

(Muqaddimah of *Al Asl* by Muhammad Bwenukalin, p.44, Dar Ibn Hazm)

Coercion. Then, all [of the books]¹⁵¹ were amalgamated and it became *Al Mabsūt* (المبسوط). This is what is meant when it is written in a book, ‘Muhammad said in so and so book’” (i.e. when the Fuqaha write in their books, for example, [Imam] Muhammad said in *Kitab Al Mudarabah* or [Imam Muhammad said] in *Kitab Al Ma’dhun* it is a reference to these sections of *Al Mabsūt* (المبسوط)”) ¹⁵²

¹⁵¹ These various books that Imam Muhammad first wrote are known as *Al Usul* (الأصول). When they were compiled together, the compilation was labelled *Al Asl* (الأصل)

¹⁵² From amongst these different Kitabs that were gathered to make *Al Asl* (الأصل), there are some Kitabs whose attribution to Imam Muhammad have been scrutinised. These include

▪ **Kitab Al Hiyal**

Abu Layth Al Samarqandi has recorded in *Uyun Al Masail* that Abu Sulayman Al Jawzjani was asked “will you not narrate *Kitab Al Hiyal* to us?” He replied: “they have lied upon Muhammad, he does not have a *Kitab Al Hiyal*, and every *Kitab* that Imam Muhammad has, I have narrated it to you except a book that he wrote for the king, if only he had not done that!” He was then asked “who wrote *Kitab Al Hiyal*?” He replied “some scribes from Baghdad”.

(Uyun Al Masail by Abu Layth Al Samarqandi, p.205, Darul Kutub Al Ilmiyyah)

Abu Sulayman also used to say that *Kitab Al Hiyal* was forged by individuals and falsely attributed to the Imams of the Madhab in order to disgrace them and create faults within them.

However, Abu Hafs Al Kabir held the view that *Kitab Al Hiyal* is correctly attributed to Imam Muhammad. Abu Hafs has narrated the *Kitab* from Imam Muhammad. Also, Hakim Al Shahid has also made a chapter on *Kitab Al Hiyal* which indicates that the *Kitab* is a part of *Al Asl*. Shamsul A’immah Al Sarakhsi has also defended the view that the *Kitab* is attributed to Imam Muhammad and has vehemently defended the usage of *Al Hiyal*.

The *Kitab Al Hiyal* that we have in the current *Al Asl* print is narrated by Muhammad ibn Harun Al Ansari from Imam Muhammad. However, Muhammad Bwenukalin states that there is another narration of this *Kitab* from Imam Muhammad for which the narrator is unknown. This second narration is found in a book which has been printed with the title *Kitab Al Makharaj Fil Hiyal* with the research (*tahqiq*) of Joseph Shakht in 1930 AD.

Muhammad Bwenukalin is also inclined towards the view that *Kitab Al Hiyal* is a part of *Al Asl* and is correctly attributed to Imam Muhammad.

▪ **Ikhtilaf Abi Hanifah Wa Ibn Abi Layla**

Imam Abu Yusuf has written a book titled *Ikhtilaf Abi Hanifah Wa Ibn Abi Layla*. However, Imam Muhammad has narrated portions of this book from Imam Abu Yusuf in some of the chapters of *Al Asl*. Imam Muhammad then adds some of his personal additions to these portions. Although some have speculated as to whether these portions may be attributed to Imam Muhammad as a part of *Al Asl*, it seems that these portions are a part of *Al Asl*. Hakim Al Shahid has made a chapter with the title *Ikhtilaf Abi Hanifah Wa Ibn Abi Layla* in his *Al Kafi* and Shamsul A’immah Al Sarakhsi has explicitly mentioned that Imam Muhammad has narrated these portions from Imam Abu Yusuf and has made additions to them.

▪ **Kitab Al Rada’**

Kitab Al Rada’ is present in the prints of *Al Asl* that we have. However, it is not found in *Al Kafi* of Hakim Al Shahid. Shamsul A’immah Al Sarakhsi has discussed whether this *Kitab* is in fact recorded from Imam Muhammad. He states that some Fuqaha hold the view that it is not from the statements of Imam Muhammad, whilst the majority hold the view that it is from amongst the statements of Imam Muhammad and is a part of *Al Asl*. However, it was written in the early period of Imam Muhammad’s life, thus considering that there were many *Kitabs* that Imam Muhammad wrote which Imam Muhammad did not perform a second-reading for, it seems that *Kitab Al Rada’* was one of those books which Imam Muhammad wrote and did not look through a second time, or he possibly looked through it a second time but decided not to change any of its contents as majority of the *Masail* mentioned in it had been discussed in *Kitab Al Nikah*. Accordingly, the writing style of *Kitab Al Rada’* is slightly different to the other *Kitabs* as *Kitab Al Rada’* was written by Imam Muhammad when he was young, and he did not change its contents when performing a secondary read of all his *Kitabs*. It seems that Hakim Al Shahid did not make a separate chapter for this *Kitab* in his *Al Kafi* as he had already discussed the *Masail* pertaining to it in his *Kitab Al Nikah*. Nonetheless, when Shamsul A’immah Al Sarakhsi wrote his commentary upon *Al Kafi*, he made a separate chapter for *Kitab Al Rada’*.

(Muhammad Bwenukalin, “Muqaddimah Al Asl”, (Beirut: Dar Ibn Hazm, 2012), pg.66.)

How was *Al Asl* was compiled?

The narrations of *Al Asl* have reached us through Mutawatir or Mashur chains of narration. This is because Imam Muhammad would narrate the *Masail* of Zahir Al Riwayah to a class of students. With regards to *Al Asl*, this was done either in the form of an *Imla* (إملاء) with Imam Muhammad reciting from the chapter of *Al Asl* that he had written, or in the form of an *Imla* (إملاء) with Imam Muhammad reciting from his memory and his students writing the *Masail*. We have stated this as it is known that the style of writing in *Kitab Al Rada’* of *Al Asl* demonstrates that Imam Muhammad himself wrote the chapter at a young age. As for the other chapters, Imam Muhammad may have written some of them and then narrated them in class, or he simply narrated them in

Al Khatīb Baghdādī Raḥimahullah (d.463 AH) has narrated from Abu Ali Al Hasan ibn Dawud Raḥimahullah that he said:

فَخَرُّ أَهْلِ الْبَصْرَةِ بِأَرْبَعَةِ كُتُبٍ مِنْهَا كِتَابُ "الْبَيَانِ وَالتَّبْيِينِ" لِلْجَاهِزِ وَ"كِتَابُ الْحَيَوَانِ" لَهُ وَ"كِتَابُ سَبْيُونَهُ" وَكِتَابُ خَلِيلٍ فِي "الْعَيْنِ" وَنَحْنُ أَهْلُ الْكُوفَةِ نَقْتَنَحِرُ بِسَبْعَةِ وَعِشْرِينَ أَلْفَ مَسْأَلَةٍ فِي الْحَلَالِ وَالْحَرَامِ عَمِلَهَا رَجُلٌ مِنْ أَهْلِ الْكُوفَةِ يُقَالُ لَهُ مُحَمَّدُ بْنُ الْحَسَنِ قِيَاسِيَّةً عَقْلِيَّةً لَا يَسْعُ النَّاسُ حَقْلَهَا

“The pride of the people of Basrah is with four books; they are: the book *Al Bayan Wal Tabyin* by Al Jahiz, *Kitab Al Haywan* by the same author, *Kitab Al Sibwayh* [by Sibwayh], and the book of Khalil in Al Ayn. We (as in the people of Kufa) pride ourselves with the 27,000 Mas’alah regarding halal and haram which were written by a man from amongst the people of Kufa who is known as Muhammad ibn Al Hasan, [his Masail are] analogically deduced and logical and are such that it is not possible for the people to be unaware of them”¹⁵³

This is what Imām Al Muzanī Raḥimahullah (d.264 AH) also indicated towards when he was asked regarding Imam Muhammad and replied by stating:

أَكْثَرُهُمْ تَفَرُّعًا

“He postulated the largest number of Masail from amongst them (the Hanafī Fuqaha)”¹⁵⁴

Allamah Zahid Al Kawtharī Raḥimahullah (d.1371 AH) states:

أكبر ما وصل إلينا من كتب محمد هو كتاب "الأصل" المعروف بالمبسوط وهو الذي يُقَالُ عَنْهُ أَنَّ الشَّافِعِيَّ كَانَ حَفِظَهُ وَأَلَّفَ (الْأُمَّ) عَلَى مُحَاكَاةِ (الأَصْلِ) وَأَسْلَمَ حَكِيمٌ مِنْ أَهْلِ الْكِتَابِ بِسَبَبِ مِطَالَعَةِ الْمَبْسُوطِ هَذَا قَائِلًا هَذَا كِتَابُ مُحَمَّدٍ الْأَصْغَرِ فَكَيْفَ كِتَابُ مُحَمَّدٍ الْكَبِيرِ (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ) وَهُوَ فِي سِتَّةِ مَجْلَدَاتٍ وَكُلُّ مَجْلَدٍ مِنْهَا نَحْوُ خَمْسِمِائَةِ وَرَقَةٍ يَرُويهِ جَمَاعَةٌ مِنْ أَصْحَابِهِ مِثْلُ أَبِي سَلِيمَانَ الْجَوْزَجَانِيِّ وَمُحَمَّدِ بْنِ سَمَاعَةَ التَّمِيمِيِّ وَأَبِي حَفْصٍ الْبُخَارِيِّ

“The largest [book] that has reached us from the books of [Imam] Muhammad is the book *Al Asl* (الأصل), also known as *Al Mabsut*, it is said regarding it that [Imam] Al Shafi’i memorised it and wrote *Al Umm* (الأم) using *Al Asl* (الأصل) as a template. A wise man from the people of the scripture became a Muslim due to reading *Al Mabsut* (المبسوط); saying, “This is the book of your smaller Muhammad, so how [spectacular] must be the book of your greater Muhammad (Sallallahu Alayhi Wasallam)?” The book is in six volumes, each volume is approximately five-hundred pages. A group of his (Imam Muhammad) students have narrated it such as Abu Sulayman Al Jawzjani, Muhammad ibn Sama’ah Al Tamimi, and Abu Hafs Al Kabir Al Bukhari”¹⁵⁵

class from his memory and his students wrote them. A question that arises at this point is that anyone who has read *Al Asl* will quickly notice that the format of the Masail is in question and answer format, thus who is the individual asking the question? Mufti Husain Kadodia Sahib states that during his meeting with Muhammad Bwenukalin, the Turkish scholar who researched the current edition of *Al Asl*, Muhammad Bwenukalin stated that he felt it was Imam Muhammad himself who was simultaneously asking the questions as well as the answers.

(Translator)

¹⁵³ Muhammad Haroon discusses how the majority of the Masail in *Al Asl* (الأصل) are actually narrated directly from Imam Abu Hanifah or through his student. Imam Muhammad simply gathered these Masail in an exceptional manner which helped to establish the Hanafi Mathab.

(Muhammad Harun, “*Al Fathul Rabbani*”, (Dhaka: Maktabah Al Azhar, 2014) pg.326)

¹⁵⁴ The entire quote is found in *Tarikh Baghdad*; Ja’far ibn Yasin says “I was by Al Muzani and a man came to him asking about the people of Iraq, he asked “what do you say regarding [Imam] Abu Hanifah?” He replied “he is their leader”. The man asked “And Abu Yusuf?” He replied “he is the one who followed the Hadith the most from amongst them”. The man asked “And Muhammad ibn Al Hasan?” He replied “he compiled the largest number of subsidiary issues from amongst them”. The man asked “And Zufar?” He replied “he had the best ability for analogical deduction from amongst them”.

(*Muqaddimah of Al Asl* by Muhammad Bwenukalin, p.28, Dar Ibn Hazm)

¹⁵⁵ Muhammad Haroon states that perhaps Allamah Kawthari said this due to Imam Shafi’i’s statement as recorded by Imam Bayhaqi in *Tarikh Baghdad*:

Imam Muhammad's Method in *Al Asl* (الأصل)

Imam Muhammad (d.189 AH) has mentioned his methodology in presenting the views of the three A'immah of the Hanafi Madhab; Imam Abu Hanifah, Imam Abu Yusuf, and Imam Muhammad himself, at the start of his book. Thus, he states:

قَدْ بَيَّنْتُ لَكُمْ قَوْلَ أَبِي حَنِيفَةَ وَأَبِي يُوسُفَ وَقَوْلِي وَمَا لَمْ يَكُنْ فِيهِ خِلَافٌ فَهُوَ قَوْلُنَا جَمِيعًا

"I have mentioned to you the view of [Imam] Abu Hanifah, [Imam] Abu Yusuf and my view. If I do not record a difference of opinion, then we are unanimous upon the view"¹⁵⁶

'Allamah Zahid Al Kawtharī Raḥimahullah (d.1371 AH) describes the methodology of Imam Muhammad Raḥimahullah (d.189 AH) in *Al Asl* (الأصل) by stating:

وطريقته في الكتاب سرد الفروع على مذهب أبي حنيفة وأبي يوسف مع بيان رأيه في المسائل ولا يسرد الأدلة حيث تكون الأحاديث الدالة على المسائل بمتناول جمهور الفقهاء من أهل طبقته وإنما يسردها في مسائل ربما تعزب أدلتها عن علمهم فلو جردت الآثار من هذا الكتاب الضخم تكون في مجلد لطيف

"His method in the book is to present Masail according to the views of [Imam] Abu Hanifah, [Imam] Abu Yusuf, as well as mentioning his personal view in these Masail. He does not present evidences when the Ahadith indicating

حَمَلْتُ عَنْ مُحَمَّدِ بْنِ الْحُسَيْنِ وَقَرَّ بِخِي كِتَابَا

However, there are apparent differences between the two kitaabs. For example, *Al Um* (الأم) is filled with evidences and reasoning unlike *Al Asl* (الأصل). Nevertheless, it is possible that *Al Asl* (الأصل) had a general impression on Imam Shafi's *Al Um* (الأم) just as Imam Malik took an impression from Imam Abu Hanifah's Masail as mentioned by Ibn Abil Awaam in his kitab *Fadhail Abi Hanifah* (فضائل أبي حنيفة) and Allamah Saymari in his kitab *Akbar Abi Hanifah Wa Ashabuhu* (أخبار أبي حنيفة وأصحابه). In fact, Ibn Al Jawzi writes in his kitab *Al Muntazam* (المنتظم) that Imam Shafi' asked Imam Muhammad to give him respite over the books he had borrowed from him and said:

قل للذي لم تر عين من رآه مثله
حتى كأن من رآه قد رأى قبله
العلم ينهى أهله أن يمنعوه أهله
لعله يبذله لأهله لعلّه

Imam Tahtawi relates in his Hashiyah:

روي أن الشافعي استحسن "مبسوط الإمام محمد" فحفظه

Allamah Kawthari also mentions that Imam Shafi' is not known to have written a book before he met with Imam Muhammad. In fact, Imam Shafi' states:

أَمِنَ النَّاسَ عَلَيَّ فِي الْفَقْهِ مُحَمَّدُ بْنُ الْحُسَيْنِ

Allamah Kawthari has stated that the books *Al Mudawanah* (المدونة), *Al Um* (الأم) and *Al Hujjah* (الحجة) were written through the inspiration provided by Imam Muhammad's kitaabs.

(*Al Fathul Rabbani*, p.327, *Maktabatul Azhar*)

¹⁵⁶ One would have to acknowledge that this principle of Imam Muhammad (d.189 AH) is found in the majority of his book and not in its entirety. There are certainly areas where Imam Muhammad (d.189 AH) has not recorded any difference of opinion whereas a difference of opinion does exist. Also, Imam Muhammad (d.189 AH) wrote this principle at the start of *Kitab Al Salah*, thus the question arises as to whether it applies to the entire book or just *Kitab Al Salah*. This is because there is no evidence that Imam Muhammad (d.189 AH) himself compiled all the different *Kitabs* of *Al Asl* (الأصل). Even if it is an established methodology, it can only be applied to *Al Asl* (الأصل), it cannot be applied to the other books of *Zahirur Riwayah* contrary to the general statement that Qasim ibn Qutlubugah has recorded from Ibnul Hummam which is:

مَا لَمْ يَخْلُ مُحَمَّدٌ رَضِيَ اللَّهُ عَنْهُ فِيهِ خِلَافًا فَهُوَ قَوْلُهُمْ جَمِيعًا

"Wherever [Imam] Muhammad, may Allah be pleased with him, does not record a difference of opinion, then it is a unanimous opinion"

(Lecture of Mufti Husain Kadodia Sahib)

towards the Masail are known to the majority of the Fuqaha of his time, rather, he presents evidences for those Masail which they (the majority of Fuqaha of his time) do not know the evidences of. Thus, if the evidences found in this book were to be gathered, they would make a small volume book”

Narrations of *Al Asl* (الأصل)

There are many narrations of *Al Asl* (الأصل) (the narrations have reached the level of *tawatur* or *istifadhah* as mentioned earlier) which have been narrated by the students of Imam Muhammad Raḥimahullah.

However, the most famous narrations of *Al Asl* are:

1. The narration of Abu Sulayman Al Jawzjani Raḥimahullah (d.211 AH – d.220 AH)

This is the most famous narration¹⁵⁷ of *Al Asl* (الأصل). Many of the Masail¹⁵⁸ found in *Al Asl* (الأصل) are in question and answer format in which the Masail are actually the answers provided by Imam Muhammad Raḥimahullah for the questions posed by Abu Sulayman Al Jawzjani Raḥimahullah¹⁵⁹, while other Masail are mentioned separately by Imam Muhammad Raḥimahullah.

¹⁵⁷ The word ‘narration’ here means that they sat in the lecture of Imam Muhammad and recorded that which Imam Muhammad narrated Masail from his memory or from his book.

(Translator)

¹⁵⁸ The majority of the the *Masail* found in the manuscripts that we have found are from the narrations of Abu Sulayman Al Jawzjani and Abu Hafs Al Kabir. It thus follows that the majority of Masail found in the copy of *Al Asl* that is in print today are from the narrations of Abu Sulayman Al Jawzjani and Abu Hafs Al Kabir. In fact, Hakim Al Shahid made these two narrations the basis for his abridgement of *Al Asl*, titled *Al Kafi*. In his commentary upon *Al Kafi*, Shamsul A’immah Al Sarakhsi also relied upon these two narrations.

There are, however, many other narrations of *Al Asl* (الأصل), they include:

1. The narration of Hisham ibn Ubaydillah Al Razi

This narration contained a lot of contradictions (*idtirab* – اضطراب). This is why Abu Bakr Al Razi (d.370 AH) did not prefer to have *Al Asl* (الأصل) read to him through the narration of Hisham ibn Ubaydillah Al Razi.

2. The narration of Muhammad ibn Sama’ah Al Tamimi (d.233 AH)

Abu Bakr Al Razi (d.370 AH) preferred the narrations of Abu Sulayman Al Jawzjani and Muhammad ibn Sama’ah. This indicates that the narration of Muhammad ibn Sama’ah existed at that time, it is no longer found today.

The narrations of Hisham ibn Ubaydillah Al Razi and Muhammad ibn Sama’ah are not found in the Manuscripts that are found today.

(Muqaddimah of *Al Asl* by Muhammad Bwenukalin, p.74, Dar Ibn Hazm)

There are many manuscripts of *Al Asl* (الأصل) in existence today, but they are all the same. This means that we don’t have a different copy of narration for each chapter of *Al Asl* (الأصل). If a copy is found of one chapter narrated by Abu Hafs Al Kabir, then we have not found the narration of Abu Sulayman Al Jawzjani for the same chapter even though we know that Abu Sulayman has also narrated that chapter. For example, the copy of *Kitabus Salah* that we have in *Al Asl* (الأصل) today is only narrated by Abu Sulayman Al Jawzjani; we have not found Abu Hafs Al Kabir’s narration of that chapter.

In *Al Kafi* (الكافي), Hakim Al Shahid *does* indicate to a difference between the different copies of *Al Asl* (الأصل) of one chapter which means that Hakim Al Shahid had access to the different narrations of one chapter. On most occasions, Hakim Al Shahid gives preference to the narration of Abu Sulayman Al Jawzjani. The difference in narrations is also discussed in *Al Mabsut* (المبسوط) by Shamsul A’immah Al Sarakhsi (d.438 AH) and *Al Muhit Al Burhani* (المحيط البرهاني) by Burhanud Din Al Bukhari (d.616 AH).

(Lecture of Mufti Husain Sahib)

¹⁵⁹ Mufti Husain Kadodia Sahib states that during his meeting with Muhammad Bwenukalin, the Turkish scholar who researched the current edition of *Al Asl*, Muhammad Bwenukalin stated that he felt it was Imam Muhammad himself who was simultaneously asking the questions as well as the answers.

2. The narration of Abu Hafs Al Kabir Al Bukhari Raḥimahullah

Prints of *Al Asl* (الأصل)

Al Asl (الأصل) has been worked on by Maulana Abul Wafa Al Afghani Raḥimahullah and Dr. Majid Al Khadduri in which he has researched the different manuscripts of the book. This version of *Al Asl* (الأصل) has been printed multiple times, but the amount that has been printed is only 16 chapters (*kitab*s) of the book, whereas *Al Asl* (الأصل) has 53 chapters (*kitab*s) as mentioned by Ibn Al Nadim Raḥimahullah in his *Al Fihrist* (الفهرست).¹⁶⁰

Commentaries of *Al Asl* (الأصل)

Many Hanafi Fuqaha have written commentaries on *Al Asl* (الأصل), these scholars include¹⁶¹:

- a. Bakr Khuwāhir Zādāh Raḥimahullah (d.483 AH)¹⁶² who wrote *Al Mabsūt Al Kubrā* (المبسوط الكبرى)¹⁶³

(Translator)

¹⁶⁰ The current print of *Al Asl* (الأصل) printed by Dar Ibn Hazm is a good edition. The editor has done a good job. However, even after collecting all the manuscripts, there are still some parts of *Al Asl* (الأصل) that are missing. These parts are:

1. *Kitāb Al Sajadāt* (كتاب السجادات);

This is a chapter that comes from the earlier Hanafi books which covers issues such as the ruling for a person who missed a Sajdah in Salaah or missed two Sajdahs in Salaah, and so on.

2. *Kitāb Al Manāsik* (كتاب المناسك)

3. *Kitāb Adab Al Qādhī* (كتاب أدب القاضي)

4. *Kitāb Al Ashribah* (كتاب الأشرية)

5. *Ikhtilāf Abī Hanīfah Wa Ibn Abī Laylah* (اختلاف أبي حنيفة وابن أبي ليلى)

Some of these missing parts are found partially in *Al Kāfi* (الكافي) of Hakim Al Shahid. This is why in the old edition of *Al Asl* (الأصل) they took these missing parts from *Al Kāfi* (الكافي) of Hakim Al Shahīd and added it to *Al Asl* (الأصل). This is because *Al Kāfi* (الكافي) of Hakim Al Shahīd is in reality an abridgement of *Al Asl* (الأصل).

(Lecture of Mufti Husain Sahib)

¹⁶¹ Although people claim that many commentaries of *Al Asl* (الأصل) have been written, many are in fact commentaries of *Al Kāfi* (الكافي) by Hakim Al Shahid. This is because *Al Kāfi* (الكافي) is sometimes referred to as '*Al Asl*' due it being an abridgement of *Al Asl* (الأصل). For example, *Al Mabsut* (المبسوط) by Shamsul A'immah Al Sarakhsi (d.438 AH) is a commentary of *Al Kāfi* (الكافي) by Hakim Al Shahid, despite this, it is sometimes referred to as *Sharh Al Asl* (شرح الأصل).

(Lecture of Mufti Husain Sahib)

¹⁶² Ibn Abidin refers to the books with the name *Al Mabsut Al Kabir*. It is also referred to as *Al Mabsut Al Bakri*.

(Lecture of Mufti Husain Sahib)

When the title 'Shaykh Al Islam' (شيخ الإسلام) is mentioned in general in the Hanafi books, it is a reference to Bakr Khwahir Zadah.

(Lecture of Mufti Husain Sahib)

¹⁶³ The book is also sometimes referred to with the name '*Al Mabsut Al Bakri*' (المبسوط البكري).

(Lecture of Mufti Husain Sahib)

The commentary of Bakr Khwahir Zadah is not found today

b. Imām Al Halwāni Raḥimahullah (d.448 AH)¹⁶⁴ who wrote *Al Mabsūt* (المبسوط)

In *Khulasah Al Fatawa* (خلاصة الفتاوى), wherever the words ‘*Nuskhah Shaykhul Islām*’ (نسخة شيخ الإسلام – the copy of Shaykhul Islam) or other similar phrases are found, it is a reference to the commentaries written upon *Al Asl* (الأصل) by such scholars.

Al Kafi of Hakim Al Shahid Raḥimahullah (الكافي للحاكم الشهيد)

(Muqaddimah of Al Asl by Muhammad Bwenukalin, p.117, Dar Ibn Hazm)

¹⁶⁴ Allah knows best if his commentary really exists. There are two identical copies in Turkey of a commentary of Al Kafi of Hakim Al Shahid titled *Al Mabsut* (المبسوط), which is absolutely huge. It would easily reach 20 volumes if it was to be in print. However, both are missing the front page which is the introduction by the author. It does however state at the start of each part: “This is the *Al Mabsut* of Shamsul A’immah Al Halwani” (هذا ميسوط شمس الأئمة الحلواني). However, it is difficult to confirm this. It is a very detailed commentary of *Al Kafi* and is actually much better than Shamsul A’immah Al Sarakhsi’s commentary. There are also supposedly many other commentaries written on *Al Kafi* (الكافي) of Hakim Al Shahid; it is said that Fakhrud Din Al Bazdawi also wrote a commentary, there is a manuscript of it found but the book doesn’t seem to have been written by him. It is said that Faqih Abu Layth Al Samarqandi also has a commentary on *Al Kafi* (الكافي) of Hakim Al Shahid. Accordingly, Shamsul A’immah Al Halwani does have a commentary upon Al Kafi, as for whether or not he has a commentary upon Al Asl too, this is unknown.

(Lecture of Mufti Husain Sahib)

Ali ibn Muhammad ibn Isma’il Al Isbijabi Al Samarqandi (d.535 AH) and Nasir Al Din Al Samarqandi (d.556 AH) have also supposedly written commentaries upon *Al Asl*.

(Is’adul Mufti, p.331, Darul Bashair Al Islamiyyah)

Imam Hakim Al Shahid Raḥimahullah has written an abridgement of *Al Asl* (الأصل) titled *Al Kafi* (الكافي).¹⁶⁵ The book is sometimes referred to as *Al Mukhtasar*.¹⁶⁶

¹⁶⁵ Footnote 1

However, many Fuqaha such as Ibn Abidin in *Sharh Uqud Rasmil Mufti* and Mufti Taqi Uthmani Sahib in *Usul Al Ifta Wa Adabuhu* have stated that *Al Kafi* is an abridgement of all the books of *Zahir Al Riwayah*; this is incorrect.

This view that *Al Kafi* of Hakim Al Shahid is an abridgement of the books of *Zahir Al Riwayah* has been recorded by Ibn Abidīn who quotes Ibn Nujaym. The researchers of Nāzūratul Haq state that it is possible Ibn Nujaym made this error when he found Ibn Al Hummam as stating:

الكافي للحاكم وهو مجموع كلام محمد رحمه الله في كتبه

“The *Al Kafi* of Hakim, it is a compilation of the statements of Imam Muhammad in his books”

Hence, by reading the word كتبه (“his books”), Ibn Nujaym misunderstood this to mean the books of *Zahir Al Riwayah*. Accordingly, it seems that Ibn Nujaym was the first individual to make this error and others followed in suit.

Note: Ibn Al Hummam’s statement is originally the statement of Hakim Al Shahid, who states:

قَدْ أَوْدَعْتُ كِتَابِي هَذَا مَعَانِي مُحَمَّدِ بْنِ الْحُسَيْنِ فِي كُتُبِهِ الْمَبْسُوطَةِ وَمَعَانِي جَوَامِعِهِ الْمُؤَلَّفَةِ مَعَ اخْتِصَارِ كَلَامِهِ وَحَذَفِ الْمُكَرَّرَاتِ مِنْ مَسَائِلِهِ

“I have filled this book with the meanings (statements) of Imam Muhammad in his detailed books and the meanings (statements) of his compiled writings whilst summarising his statements and removing the repetitions”

Hence, Hakim Al Shahid stated that his book is an abridgement of كتبه المبسطة – i.e. Imam Muhammad’s detailed books. This phrase is actually a reference to *Al Asl*. As mentioned earlier, *Al Asl* is a compilation of many detailed books such as *Kitab Al Salah*, *Kitab Al Zakah*, etc. These books then became the *chapters* of *Al Asl*.

Question: what is meant by the word الجوامع (compiled) in Hakim Al Shahid’s statement جوامعه المؤلفة (“his compiled writings”)?

Footnote 2:

Muhammad Bwenukalin has also mistakenly labelled *Al Kafi* as an abridgement of all the books of *Zahir Al Riwayah* in his study upon *Al Jami Al Saghir* (*Al Jami’ Al Saghir*, Beirut: Dar Ibn Hazm, 2011, p.6) and his study upon *Al Asl*. In his study upon *Al Jami Al Saghir* (*Al Jami’ Al Saghir*, Beirut: Dar Ibn Hazm, 2011, p.6), he asserts that Hakim Al Shahid has referred to *Al Jami’ Al Saghir* as one of his sources.

(Translator)

Footnote 3:

It should also be understood that although *Al Kafi* is an abridgement of *Al Asl*, it is not only an abridgement of *Al Asl*, rather, at times, he quotes other Fuqaha, such as Imam Al Tahawi. For example, with regards to the Mas’alah of accepting the testimony of sighting the moon of Ramadhan from a person who is an unreliable person (either a Fasiq or a Mastur), the view of Imam Al Tahawi was that the testimony of an unreliable person (either a Fasiq or a Mastur) shall be accepted, i.e. the testimony of a wretched person (Fasiq) and a person of unknown reliability (Mastur) shall be accepted. However, Ibn Abidin states that by using the words ‘unreliable person’, Imam Al Tahawi was referring to a person of unknown reliability (Mastur). He also states that Imam Al Tahawi’s view is supported by *Zahir Al Riwayah*. He supports this claim by quoting Ibn Al Hummam who has quoted a statement found in *Al Kafi* of Hakim Al Shahid, the statement found in *Al Kafi* as Ibn Abidin has recorded it from Ibn Al Hummam is:

وتقبل شهادة المسلم والمسلمة عدلا كان الشاهد أو غير عدل

“The testimony of a Muslim man or woman shall be accepted whether they are reliable or unreliable”

Thus, based upon Ibn Abidin’s assumption that *Al Kafi* is an abridgement of *Zahir Al Riwayah* only, he assumes that Imam Al Tahawi’s view is supported by *Zahir Al Riwayah*. However, this is not the case, the actual statement found in *Al Kafi* of Hakim Al Shahid is:

قال الطحاوي شهادة المسلم والمسلمة عدلا كان الشاهد أو غير عدل

“Al Tahawi has said, ‘The testimony of a Muslim man or woman shall be accepted whether they are reliable or unreliable’”

Therefore, Hakim Al Shahid is actually quoting Imam Al Tahawi himself. This tells us two things:

- The view of Imam Al Tahawi with regards to the permissibility of accepting the testimony of an unreliable person is not a part of *Zahir Al Riwayah* as assumed by Ibn Abidin
- *Al Kafi* of Hakim Al Shahid is not only an abridgement of *Al Asl*, rather, at times, it may contain quotes from other Fuqaha, such as Imam Al Tahawi

As for Ibn Abidin’s view that by using the words ‘unreliable person’, Imam Al Tahawi was referring to a person of unknown reliability (Mastur), this does not seem to be apparent from Imam Al Tahawi’s statement. Rather, Imam Al Tahawi allowed the view of any ‘unreliable person’; whether that person is wretched person (Fasiq) or a person of unknown reliability (Mastur).

(Translator – as understood from the Lectures of Mufti Husain Kadodia Sb on *Rad Al Muhtar*)

¹⁶⁶ It also seems that Hakim Al Shahid did not properly summarise *Al Asl* in his *Al Kafi* and made many errors in his abridgement. Hence, Allamah Ibn Nujaym records in *Al Ashbah Wal Nazair*:

Shamsul A'immah Sarakhsi Rahimahullah (d.438 AH) then wrote a commentary upon *Al Kafi* (الكافي) of Hakim Al Shahid, titled *Al Mabsut* (المبسوط).

The commentary of Shamsul A'immah Sarakhsi Rahimahullah (d.438 AH) is of such a calibre that Imam Al Tarsusi states:

لَا يُعْمَلُ بِمَا يُخَالِفُهُ وَلَا يُرَكَّنُ إِلَّا إِلَيْهِ وَلَا يُفْتَى وَلَا يُعُولُ إِلَّا إِلَيْهِ

“That which contradicts it shall not be acted upon and shall not be looked at. Fatwa shall not be given and attention shall not be given except to that which is in it (Al Mabsut by Shamsul A'immah Sarakhsi Rahimahullah (d.438 AH))”

Allamah Taqi Al Din Al Tamimi Rahimahullah writes in *Tabaqat Al Saniyyah*, in praise of Al Mabut by Shamsul A'immah Sarakhsi Rahimahullah (d.438 AH):

عَلَيْكَ بِمَبْسُوطِ السَّرْحَسِيِّ إِنَّهُ

“Hold onto the Al Mabsut of [Imam] Sarakhsi for it is”

هُوَ الْبَحْرُ وَالْدُّرُّ الْقَرِينُ مَسَائِلُهُ

“An ocean and its Masail are like shining jewels”

وَلَا تُعْتَمَدُ إِلَّا عَلَيْهِ فَإِنَّهُ

“And do not rely upon anything besides it”

يُجَابُ بِإِعْطَاءِ الرِّغَائِبِ سَائِلُهُ

“For it replies by giving you what you seek”

Allamah Hibatullah Al Ba'li Rahimahullah writes in his commentary upon Al Ashbah Wal Nazair:

لَمَّا رَأَى فِي كُتُبِ مُحَمَّدٍ مُكَرَّرَاتٍ وَتَطَوُّيَاتٍ خَلَّسَهَا وَحَذَفَ مُكَرَّرَهَا فَرَأَى مُحَمَّدًا رَحِمَهُ اللَّهُ تَعَالَى فِي مَنَامِهِ فَقَالَ لِمَ فَعَلْتَ هَذَا بِكُتُبِي؟ فَقَالَ لِأَنَّ فِي الْفُقَهَاءِ كَسَالًا فَحَذَفْتُ الْمُكَرَّرَ وَذَكَرْتُ الْمَقَرَّرَ تَسْهِيلًا فَغَضِبَ وَقَالَ قَطَّعَكَ اللَّهُ كَمَا قَطَّعْتَ كُتُبِي فَأَبْتَلِي بِالْأَتْرَاكِ حَتَّى جَعَلُوهُ عَلَى رَأْسِ شَجَوْتَيْنِ فَتَقَطَّعَ بَصْفَيْنِ رَحِمَهُ اللَّهُ تَعَالَى

“When he (Hakim Al Shahid) saw repetitions and long discussions in the books of Imam Muhammad, he summarised it and removed the repetitions. So, he saw Imam Muhammad Rahimahullah in his dream, Imam Muhammad asked “why did you do this with my books?” Hakim replied “because the Fuqaha have become lazy, so I removed the repetitions and I summarised the discussions in order to make it easy for them”. Imam Muhammad became infuriated and said “may Allah cut you into pieces just as you have cut my books into pieces”. Hence, when the Turks attacked, they put Hakim Al Shahid’s head upon a [?] and he was cut into two pieces, may Allah have mercy upon him”¹⁶⁶

It should be noted that even if the story above is true, it is incorrect to state that Hakim Al Shahid summarised all the books of Imam Muhammad, rather, he only summarised *Al Asl* and titled his summarisation, *Al Kafi* (الكافي).

In summarising *Al Asl* (الأصل), at times, Hakim Al Shahid has summarised an entire page found in *Al Asl* (الأصل) into one or two lines in his *Al Kafi* (الكافي).

Mufti Husain Sahib states that after comparing the manuscripts of *Al Kafi* with *Al Asl*, he came to the conclusion that Hakim Al Shahid’s *Al Kafi* is a very poor abridgement of *Al Asl*. At times, he has completely misunderstood the Mas’alah that Imam Muhammad has presented.

Al Kafi of Hakim Al Shahid (d.334 AH) has not yet been printed. However, Allamah Muhammad Bwenulakin is researching it and, insha’Allah, it should be in print soon.

(Lecture of Mufti Husain Sahib)

"المَبْسُوطُ" لِلْإِمَامِ الْكَبِيرِ مُحَمَّدُ بْنُ مُحَمَّدٍ بْنِ أَبِي سَهْلٍ السَّرَخْسِيِّ رَضِيَ اللَّهُ عَنْهُ أَحَدِ الْأَيَّامَةِ الْكِبَارِ الْمُتَكَلِّمِ الْفَقِيهِ الْأُصُولِيِّ لِمَنْ تَمَسَّ الْأَيْمَةَ عَبْدَ الْعَزِيزِ الْحُلَوَائِيَّ رَضِيَ اللَّهُ عَنْهُ وَخَرَّجَ بِهِ حَتَّى صَارَ أَنْظَرَ أَهْلَ زَمَانِهِ وَأَخَذَ فِي التَّصْنِيفِ وَأَمْلَى "المَبْسُوطُ" نَحْوَ خَمْسَةِ عَشَرَ مَجْلَدًا وَهُوَ فِي السَّجَنِ بِأَوْزْجَنْد بِكَلِمَةٍ كَانَ فِيهَا مِنَ النَّاصِحِينَ تُوْفِّي فِي حُدُودِ سَنَةِ أَرْبَعَمِائَةٍ وَتِسْعِينَ

"The 'Al Mabsut' is by the great Imam, Muhammad ibn Muhammad ibn Abi Sahl Al Sarakhsi, may Allah be pleased with him, one of the great scholars, a theologian, Faqih and scholar of Usul. He accompanied and studied under Shamsul A'immah Abdul Aziz Al Halwani, may Allah be pleased with him, and after completing his studies, he became the most accomplished scholar of his time and began to write books. He related (*Imla* - إملأ) Al Mabsut which is approximately 15 volumes, whilst he was in imprisoned in Awzjand for giving some advice to the ruler [which he did not like]. He passed away in 490 AH."¹⁶⁷

At this point, it is important to emphasise that *Al Mabsut* (المبسوط) is a commentary upon *Al Kafi* (الكافي) by Hakim Al Shahid. *Al Kafi* (الكافي) is also referred to as *Al Mukhtasar* – literally meaning 'The Summary' - as it is a summary of *Al Asl* (الأصل) by Imam Muhammad. Hence, Shamsul A'immah Al Sarakhsi writes at the beginning of *Al Mabsut* (المبسوط):

فَرَأَيْتُ الصَّوَابَ فِي تَأْلِيفِ شَرْحِ الْمُخْتَصَرِ

"I felt that it would be correct to write a commentary upon *Al Mukhtasar*"

Allamah Khairud Din Al Ramli, upon reading the above-mentioned statement, has made the error of assuming that *Al Mukhtasar* is not the same as *Al Kafi* (الكافي). However, as discussed earlier on, *Al Mukhtasar* is actually an alternative name for *Al Kafi* (الكافي). This is why Allamah Itqani regularly refers to *Al Kafi* (الكافي) with the statement:

قَالَ الْحَاكِمُ الشَّهِيدُ فِي مُخْتَصَرِهِ الْمُسَمَّى بِـ "الْكَافِي"

"Hakim Al Shahid states in his *Al Mukhtasar* titled *Al Kafi*..."

Books in the Hanafi Madhab titled *Al Mabsut* (المبسوط)

There are many books in the Hanafi Madhab that are titled *Al Mabsut*. They include:

- 1) *Al Mabsut* by Imam Abu Yusuf (d.182 AH)
- 2) *Al Mabsut* by Imam Muhammad (d.189 AH), known as *Al Asl*
- 3) *Al Mabsut* by Imam Jurjani¹⁶⁸
- 4) *Al Mabsut* by Khuwahir Zadah
- 5) *Al Mabsut* by Shamsul A'immah Al Halwani

¹⁶⁷ (*Al Ashbah Wal Nazair*, p.443, *Al Maktabah Al Tawfiqiyyah*)

Shamsul A'immah Al Sarakhsi's commentary upon *Al Kafi* titled *Al Mabsut* also contains a book written by Imam Muhammad titled *Kitab Al Kasb*, Al Sarakhsi has written a commentary upon *Kitab Al Kasb* and has added it to his *Al Mabsut*. (*Muqaddimah of Al Asl by Muhammad Bwenukalin*, p.36, *Dar Ibn Hazm*)

¹⁶⁸ This seems to be the same as *Al Asl* by Imam Muhammad, but through the narration of Imam Jurjani (*Lecture of Mufti Husain Sahib*)

- 6) *Al Mabsut* by Abul Yusr Al Bazdawi
- 7) *Al Mabsut* by Fakhrud Din Al Bazdawi
- 8) *Al Mabsut* by Nasir Al Din Al Samarqandi¹⁶⁹
- 9) *Al Mabsut* by Abu Layth Al Samarqandi (d.370 AH)¹⁷⁰

However, when the name *Al Mabsut* is mentioned in general, it is a reference to the *Al Mabsut* by Shamsul A'immah Al Sarakhsi.

[Al Jami' Al Saghir \(الجامع الصغير\)](#)

It seems as though Imām Muhammad (d.189 AH) wrote this book¹⁷¹ after *Al Asl* (الأصل). Hence whatever is found in *Al Jami' Al Saghir* (الجامع الصغير) shall be given preference over *Al Asl* (الأصل) as stated by Ibn Nujaym.¹⁷²

'Allamah Abdul Hayy Al Lucknawi Rahimahullah (d.1304 AH) has recorded in the introduction to his commentary upon *Al Jami' Al Saghir* (الجامع الصغير) a statement of Shamsul A'immah Al Sarakhsi Rahimahullah (d.483 AH), who said:

كان سبب تأليف محمد أنه لما فرغ من تأليف الكتاب طلب منه أبو يوسف أن يؤلف كتاباً يجمع فيه ما حفظ عنه مما رواه له عن أبي حنيفة رحمهم الله تعالى فجمع ثم عرض عليه فقال نعماً حفظ إلا أنه أخطأ في ثلاث مسائل فقال أنا ما أخطأت ولكنك نسيت الرواية وذكر علي القمي أن أبا يوسف مع جلالة قدره كان لا يفارق هذا الكتاب في حضر ولا في سفر وكان علي الرازي يقول "من فهم هذا الكتاب فهو أفهم أصحابنا ومن حفظ كان أحفظ أصحابنا وإن المتقدمين من مشايخنا كانوا لا يقلدون أحداً القضاء حتى يمتحنوه فإن حفظه قلده القضاء وإلا أمره بحفظه وكان شيخنا الحلواني يقول إن أكثر مسائله مذكورة في المبسوط وهذا لأن مسائل هذا الكتاب تنقسم إلى ثلاثة أقسام: قسم لا يوجد لها رواية إلا ههنا وقسم يوجد ذكرها في الكتب ولكن لم ينص فيها أن الجواب قول أبي حنيفة أم غيره وقد نص ههنا في جواب كل فصل على قول أبي حنيفة وقسم أعاده ههنا بلفظ آخر واستفيد من تغيير اللفظ فائدة لم تكن مستفادة باللفظ المذكور في الكتاب ومراده بالقسم الثالث ما ذكره الفقيه أبو جعفر الهندواني في مصنف سماه "كشف الغوامض"

"The reason behind why [Imam] Muhammad wrote this book is that when he finished writing the book [Al Asl (الأصل)], [Imam] Abu Yusuf wanted him to write a book which compiled what he had memorised from those Masail which he (Imam Abu Yusuf) had narrated to him (Imam Muhammad) from [Imam] Abu Hanifah Rahimahullah. So, Imam Muhammad compiled the Masail and presented them to him (Imam Abu Yusuf). [Upon seeing them] he (Imam Abu Yusuf) remarked, 'he has remembered well except that he he has erred in three Masail'. He (Imam Muhammad) responded, 'I have not erred, rather, you have forgotten what you have narrated'. Ali Al Qummi states that [Imam] Abu Yusuf, despite his great status, would not leave this book whether at home

¹⁶⁹ This book is not found today
(Lecture of Mufti Husain Sahib)

¹⁷⁰ This book is not found today
(Lecture of Mufti Husain Sahib)

¹⁷¹ *Al Jami' Al Saghir* (الجامع الصغير) has been printed with the research (*tahqiq*) of Allamah Muhammad Bwenukalin (the same scholar who has researched *Al Asl* (الأصل)). Many of its commentaries are available in the form of pdfs.

(Lecture of Mufti Husain Sahib)

¹⁷² There are just a few Masail wherein the ruling of *Al Asl* (الأصل) is different to the ruling of *Al Jami' Al Saghir*.

(Lecture of Mufti Husain Sahib)

or in a journey. Ali Al Razi would say, 'Whoever understands this book is the most understanding of our scholars, and whoever memorises this book has memorised the most from our scholars, indeed our early scholars would not appoint anyone to become a judge until they had tested him [using this book], if he memorised it (this book), they would appoint him as a judge, otherwise they would command him to memorise it'. Our teacher, Al Hawlani, used to say, 'the majority of its Masail are found in Al Mabsut (المبسوط) (also known as Al Asl (الأصل)), this is because the Masail of this book separate into three categories:

- 1- A category of those Masail for which a view [from the A'immah of the Madhab] is not found except in this book.
- 2- A category of those Masail which are mentioned in other books, however, it has not been mentioned elsewhere whether the view presented is the view of [Imam] Abu Hanifah or someone else, whereas in this book, it is mentioned in the answer to every Mas'alah that the view mentioned is the view of [Imam] Abu Hanifah.
- 3- A category of those Masail which [are mentioned in other books, however, they] are repeated here with a different wording. This different wording allows us to extract that which we could not extract from the other books.

The third category is a reference to those Masail which have been mentioned by Al Faqih Abu Ja'far Al Hinduwani in a book which he has titled Kashful Ghawamid."

Allamah Al Lucknawi Rahimahullah (d.1304 AH) writes:

قال قاضيخان في شرحه: "اختلفوا في مصنف الجامع الصغير قال بعضهم من تأليف أبي يوسف ومحمد وقال بعضهم هو من تأليف محمد فإنه حين فرغ من تصنيف المبسوط أمره أبو يوسف أن يصنف كتابا ويروي عنه فصنف ولم يرتب وإنما رتبته أبو عبد الله الحسن بن أحمد الزعفراني الفقيه الحنفي" وقال فخر الإسلام البزدوي في شرحه: "كان أبو يوسف يتوقع من محمد أن يروي كتابا عنه فصنف هذا الكتاب وأسنده عن أبي يوسف عن أبي حنيفة فلما عرض على أبي يوسف استحسنته وقال حفظ أبو عبد الله إلا في مسائل أخطأ في روايتها فلما بلغ ذلك محمدا قال حفظتها ونسي وهي ست مسائل واعتمد مشايخنا رواية محمد" وفي غاية البيان شرح الهداية لأمر كاتب الإتقاني في باب الأذان: "ذكر محمد في الجامع الصغير أبا يوسف باسمه دون كنيته حتى لا يكون وهم التسوية في التعظيم بين الشيخين لأن الكنية للتعظيم وكان محمد مأمورا من جهة أبي يوسف بأن يذكره باسمه حيث يذكر أبا حنيفة رحمهم الله تعالى فعن هذا قال مشايخنا ببخارا: من الأدب أن لا يدعو بعض الطلبة بعضهم بلفظ "مولانا" عند أستاذهم احترزا عن التسوية في التعظيم بين الأستاذ والتلميذ" وفيه "إنما سمي المبسوط "أصلا" لأنه صنفه محمد أولا ثم صنف الجامع الصغير ثم الجامع الكبير ثم الزيادات" وفي شرح شمس الأنمة السرخسي للسير الكبير: "إن آخر تصانيفه هو السير الكبير وقبله صنف السير الصغير

"Qadi Khan has mentioned in his commentary, 'They (the Fuqaha) have differed over the authorship of *Al Jami' Al Saghir*, some of them said, 'It is from the books of Abu Yusuf and Muhammad', and some of them said, 'It is from the books of Muhammad'. Indeed, when he (Imam Muhammad) finished writing *Al Mabsut* (also known as *Al Asl* (الأصل)), [Imam] Abu Yusuf commanded him to write a book which he (Imam Muhammad) would narrate from him (Imam Abu Yusuf). So, he wrote it, but did not structure it, rather, it was structured by Abu Abdillah Al Hasan ibn Ahmad Al Za'farani Al Faqih Al Hanafi'. Fakhrul Islam Al Bazdawi said in his commentary, '[Imam] Abu Yusuf was anticipating from [Imam] Muhammad that he narrate a book from him, so he wrote this book and narrated [its Masail] from [Imam] Abu Yusuf who narrated [them] from [Imam] Abu Hanifah. When the book was presented to [Imam] Abu Yusuf, he liked it and said, 'Abu Abdillah has remembered [well] except a few Masail in which he has erred in its narration', when this reached Muhammad, he said, '[Rather] I remembered them and he has forgotten'; these are six Masail in which the Fuqaha have relied upon Imam Muhammad's narration.'" It is mentioned in *Ghayah Al Bayan Sharh Al Hidayah* by Amir Katib Al Itqani in the chapter of Adhan, "[Imam] Muhammad has mentioned Abu Yusuf by his name (Ya'qub) and not his agnomen (Abu Yusuf) in *Al Jami' Al Saghir* so that there is no similarity in respect between the two scholars (Imam Abu Hanifah and Imam Abu Yusuf), for indeed an agnomen is used for respect and [Imam] Muhammad had been commanded by [Imam] Abu Yusuf to refer to him by his name wherever [Imam] Abu Hanifah Rahimahullah is mentioned. It is based upon this that the Fuqaha of Bukhara say, 'It is from respect that students avoid calling other students with the words 'Maulana' when their teachers are present to avoid creating a similarity in respect between the teacher and the student'. He (Al Itqani) also mentioned, 'Indeed, *Al Mabsut* (المبسوط) is called *Al Asl* (الأصل) as [Imam] Muhammad wrote it first, then he wrote *Al*

Jami' Al Saghir (الجامع الصغير), then *Al Jami' Al Kabir* (الجامع الكبير), then *Al Ziyadat* (الزيادات)". It is mentioned in the commentary of *Al Siyar Al Kabir* (السير الكبير) written by Shamsul A'immah Al Sarakhsi, 'Indeed, his final book was *Al Siyar Al Kabir* (السير الكبير), and before it he wrote *Al Siyar Al Saghir* (السير الصغير)'."

Commentaries on *Al Jami' Al Saghir* (الجامع الصغير):

A lot of Hanafi Fuqaha gave a great service to the Hanafi Madhab by making commentaries, footnotes, and abridgements of the book *Al Jami' Al Saghir* (الجامع الصغير).

The following Fuqaha have written commentaries upon *Al Jami' Al Saghir* (الجامع الصغير):

- 1) Imam Al Tahawi (d.321 AH)
- 2) Imam Abu Bakar Al Jassas (d.370 AH)
- 3) Imam Abu Amr Al Tabari (d.340 AH)
- 4) Imam Zahir Al Din Al Balkhi (d.553 AH)
- 5) Imam Qadhi Khan (d.592 AH)
- 6) Imam Sadr Al Shahid (d.536 AH)¹⁷³
- 7) Imam Abu Nasr Al Attabi (d.580 AH)
- 8) Imam Abu Layth Samarqandi (d.373 AH)
- 9) Imam Fakhrul Islam Bazdawi (d.482 AH)
- 10) Imam Qadhi Isbijabi (d.480 AH)
- 11) Imam Abu Ja'far Al Hindwani (d. 362AH)
- 12) Imam Abul Hasan Al Karkhi (d.340 AH)
- 13) Allamah Abul Hayy Al Lucknawi (d.1304 AH)¹⁷⁴

'Allamah Abdul Hayy Al Lucknawi has enumerated all of the known commentaries with the biography of each author in the introduction to his commentary upon *Al Jami' Al Saghir* (الجامع الصغير). May Allah grant him the best of rewards.

¹⁷³ This commentary has been printed.
(Lecture of Mufti Husain Sahib)

¹⁷⁴ This commentary has been printed.
(Lecture of Mufti Husain Sahib)

The Six Masail of *Al Jami' Al Saghir* (الجامع الصغير):

Al Jami' Al Saghir (الجامع الصغير) is the one book that Imam Abu Yusuf verified to a huge degree.

Allamah Itqani records from Fakhrul Islam Al Bazdawi who states:

"الْجَامِعُ الصَّغِيرُ" لَمَّا عُرِضَ عَلَى أَبِي يُوسُفَ رَضِيَ اللَّهُ عَنْهُ اسْتَحْسَنَهُ وَقَالَ حَفِظَ أَبُو عَبْدِ اللَّهِ إِلَّا مَسَائِلَ خَطَأَهُ فِي رَوَايَتِهَا فَقَالَ مُحَمَّدٌ رَضِيَ اللَّهُ عَنْهُ أَنَا حَفِظْتُهَا وَلَكِنَّهُ نَسِيَ

"When *Al Jami' Al Saghir* (الجامع الصغير) was presented to [Imam] Abu Yusuf, may Allah be pleased with him, he showed a great liking towards it and said: "Abu Abdillah (Imam Muhammad) remembered [the Masail that I narrated to him] except some Masail in which he has erred in narrating them [from me]". So [Imam] Muhammad, may Allah be pleased with him, said: "[rather] I have remembered them [correctly] and he is the one who has forgotten."

Hence, there are six Masail in *Al Jami' Al Saghir* (الجامع الصغير) over which there is a difference of opinion between Imam Muhammad and Imam Yusuf. Imam Muhammad has stated that Imam Abu Yusuf narrated the Masail as recorded in *Al Jami' Al Saghir* (الجامع الصغير), however, Imam Abu Yusuf states that he did not narrate these Masail to Imam Muhammad.¹⁷⁵

In these Six Masail of *Al Jami' Al Saghir* (الجامع الصغير), do we take the view of Imam Abu Yusuf or the view of Imam Muhammad?

- 1) **Some scholars:** we should take the view of Imam Abu Yusuf

Reason: The book is a collection of his Masail. Therefore, if he denies any of its content, he should know best

- 2) **Majority the scholars:** We should take the view of Imam Muhammad

Reasons:

- a. According to the principles of Hadith, if a narrator forgets his narration, then the narration will not become void as long as the individual narrating from that narrator is a reliable narrator

This answer is incorrect as Imam Abu Yusuf did not 'forget' the narration; he claims that he narrated it 'differently'.

- b. Imam Muhammad is claiming *adamantly* that he heard these six Masail from Imam Abu Yusuf, this *adamance* tells us that he must have heard them directly from Imam Abu Hanifah as well
- c. It is possible Imam Muhammad mentioned these six masail according to the principle of Imam Abu Hanifah, not Imam Abu Yusuf.
- d. In these six masail, Imam Muhammad has applied *istihsan* (استحسان) and Imam Abu Yusuf has applied analogical deduction (قياس), hence *istihsan* (استحسان) is given preference over analogical deduction (قياس)

¹⁷⁵ This is an example of Man Haddatha Wa Nasiya (من حدث ونسي).

It seems that Imam Muhammad Rahimahullah (d.189 AH) wrote this book after writing *Al Jami' Al Saghir* (الجامع الصغير).¹⁷⁶ It is a unique book which has confused even the most celebrated scholars due to its subtlety and complex Masail.

'Allamah Akmal Al Din Al Babarti Rahimahullah (d.786 AH) states:

هو كاسمه لجلال مسائل الفقه جامع كبير قد اشتمل على عيون الروايات ومتون الدرايات بحيث كاد أن يكون معجزا ولتمام لطائف الفقه منجزا شهد بذلك بعد إنفاذ العمر فيه واردوه ولا يكاد يلم بشيء من ذلك عادوه ولذلك امتدت أعناق ذوي التحقيق نحو تحقيقه واشتدت رغبتهم في الإعتناء بحل لفظه وتطبيقه وكتبوا له شروحا وجعلوه مبينا مشروحا

"It is, like its name, for a great number of Masail of jurisprudence, a Jami' Kabir (great compiler), it contains fountains of narrations and statements of expertise, such that it has come close to becoming inimitable, and it has accomplished the subtleties of Fiqh; testimony has been given to this by its traversers after spending their lives in [studying] it, and its enemies have hardly been able to criticise it. It is for this reason that the necks of the researchers have lengthened towards researching it, and their desires have intensified towards succeeding in solving its words, and they wrote commentaries for it, and they elaborated and expounded upon it"

Imam Muhammad ibn Shuja' Al Thalji Rahimahullah said:

ما وضع في الإسلام كتاب في الفقه مثل جامع محمد بن الحسن الكبير ... مثل محمد بن الحسن في الجامع الكبير كرجل بنى دارا فكان كلما علاها بنى مرقاة يرقى منها إلى ما علاه من الدار حتى استتم بناءها كذلك ثم نزل عنها وهدم مراقبها ثم قال للناس شأنكم فاصعدوا

"A book has not been written in Islam in the field of Fiq like Al Jami' Al Kabir of Muhammad ibn Al Hasan...the example of Muhammad ibn Al Hasan in Al Jami' Al Kabir is like that of a man who builds a house, and each time he climbs it, he builds a staircase using which he climbs to a higher part of the house, until he has finished building it like this, then he comes down and breaks its staircases, and then he says to the people, '[This is] yours now, so climb it'"

'Allamah Muhammad Zahid Al Kawthari Rahimahullah said, after recording the statement of Muhammad ibn Shuja' Al Thalji Rahimahullah:

والحق أن هذا الكتاب آية في الإبداع ينطوي على دقة بالغة في التفريع على قواعد اللغة وأصول الحساب خلا ما يحتوي عليه من المضي على دقائق أصول الشرع الأغزر فلعلة ألفه ليكون محكا لتعرف نباهة الفقهاء وتيقظهم في وجوه التفريع يحال العقل في فهم وجوه تفريعه في ذلك إلى أن تشرح له وهو كما قال ابن شجاع أولا وآخرا إلا أن مراقبي الكتاب أعيدت إلى أبواب الكتاب كما يظهر من شرحي الجمال الحصري على الجامع الكبير حيث يقول في صدر كل باب من أبواب الكتاب: أصل الباب هذا وبني الباب على كذا فبذلك سهلت معرفة وجوه التفريع جدا

"The truth is that this book is an insignia of creativity, it comprises of meticulous and far-reaching methods of extracting rulings from the principles of grammar and mathematics, besides that which it contains from the deep principles of the noble Shari'ah. Thus, it is possible that he wrote it so that it may serve as an arbitrator in deciding the calibre of intellect of the Fuqaha and so that it may alert them to the methods of extracting rulings, methods which are such that it is impossible for the mind to understand them without elaboration. And it (the book) is like how Ibn Shuja' has described it from start to finish, except that the 'staircases' of the book are the chapters of the book as is apparent from the two commentaries written upon Al Jami' Al Kabir by Al Jamal Al Hasiri wherein he says at the start of every chapter from the chapters of the book, 'The principle of this chapter is

¹⁷⁶ Only one print of *Al Jami' Al Kabir* (الجامع الكبير) exists; an edition with the research (*tahqiq*) of Maulana Abul Wafa Al Afghani printed in 1356 AH. Said Bakdash was planning on working on this book.

this and he has based the chapter upon so and so', in this way, it has become a lot easier to recognise the methods of extracting rulings [adopted by Imam Muhammad]"

Imam Abu Bakr Al Razi Rahimahullah (d.370 AH) states in his commentary upon Al Jami' Al Kabir:

كنت أقرأ بعض مسائل من الجامع الكبير على بعض المبرزين في النحو (يعني أبا علي الفارسي) فكان يتعجب من تغلغل واضع هذا الكتاب في النحو

"I used to pray some of the Masail of Al Jami' Al Kabir in front of some of the prominent scholars of grammar (i.e. Abu Ali Al Farisi), and they would be surprised by the complexity of the author of the book in grammar"

In Muharram 615 AH, Jamal Al Din ibn Ubaydillah Rahimahullah wrote a letter to Al Qadi Sharaf Al Din ibn Unayn in which he said:

كنت منذ زمن طويل تأملت كتاب الجامع الكبير لمحمد بن الحسن رحمه الله وارتقم على خاطري منه شيء والكتاب في فنه عجب غريب لم يصنف مثله

"I contemplated over the book Al Jami' Al Kabir by [Imam] Muhammad ibn Hasan Rahimahullah for a long time, after which a portion of the book stuck to my mind, the book is a unique and extraordinary in its field, nothing like it has ever been written"

Shamsul A'immah Al Sarakhsi Rahimahullah (d.438 AH) would say:

من أراد امتحان المتبحرين في الفقه فعليه بأيمان الجامع

"Whoever wishes to test those that are deeply engrossed in Fiqh, he should test them using the chapter of oaths in Al Jami' Al Kabir (الجامع الكبير)"

Al Jami' Al Kabir (الجامع الكبير) has been narrated from Imam Muhammad from a group of his students. The famous narrators of this book are:

1. Abu Sulayman Al Jawzjani
2. Abu Hafs Al Kabir
3. Ali ibn Ma'bad ibn Shaddad (d.218 AH)
4. Hisham ibn Ubaydillah Al Razi
5. Muhammad ibn Sama'ah (d.233 AH)

Due to the complex Masail of the book and the difficulty in understanding them, many Fuqahā have written commentaries upon it, they include:

1. Imām Abū Ḥazim Abdul Ḥamīd ibn Abdil Azīz Al Sakunī (d.292 AH)
2. Imām Alī ibn Musa Al Qummī (d.305 AH)
3. Imām Aḥmad ibn Muhammad At Tahawī (d.321 AH)
4. Imām Abū Amr Aḥmad ibn Muhammad At Tabarī (d.340 AH)
5. Imām Abū Bakr Aḥmad ibn Alī Al Jassās Al Rāzī (d.370 AH)
6. Imām Abū Layth Naṣr ibn Muḥammad Al Samarqandī (d.373 AH)
7. Imām Muḥammad ibn Alī, commonly known as Ibn 'Abdak Al Jurjānī (d.347 AH)

8. Imām Ḥalwānī (d.449 AH)
9. Shamsul A’immah Al Sarakhsī (d.483 AH)
10. Imām Fakhrul Islām Al Bazdawī (d.482 AH)
11. Imām Sadr Al Shahīd Umar ibn Abdil Azīz ibn Māzah Al Bukhārī (d.536 AH)
12. Imām Burhānud Dīn Maḥmūd ibn Aḥmad ibn Mazah Al Bukhārī (author of *Al Muḥīṭ Al Burhānī* (الخيطة البرهاني) (d.616 AH)
13. Imām ‘Alā Al Dīn Muḥammad ibn Abdil Ḥamīd Al Samarqandī (d.552 AH)
14. Imām Abu Ḥamid Aḥmad ibn Muḥammad Al Attabī Al Bukhārī (d.586 AH)
15. Imām Qādhī Khān (d.592 AH)
16. Imām Alī Al Murghīnānī (author of *Al Hidayah* (الهداية) (d.593 AH)
17. Imām Jamālud Dīn Maḥmūd ibn Aḥmad Al Ḥasīrī Al Bukhārī (d.636 AH)

***Al Ziyādāt and Ziyādāt Al Ziyādāt* (الزيادات وزيادة الزيادات)**

Both *Al Ziyadat* (الزيادات) and *Ziyadat Al Ziyadat* (زيادات الزيادات) were written as a completion to *Al Jami’ Al Kabir* (الجامع الكبير).

In his introduction to the book *Sharh Ziyadat Al Ziyadat* (شرح زيادات الزيادات), Maulana Abul Wafa Al Afghani quotes Imam Qadhi Khan Rahimahullah who said:

لأنه لما فرغ من تأليف الجامع الكبير تذكر فروعاً لم يذكرها فيه فصنف كتاباً آخر ليذكر فيه تلك الفروع وسماه "الزيادات" ثم تذكر فروعاً أخرى فصنف كتاباً آخر ليذكر فيه تلك الفروع الأخرى وسماه "زيادات الزيادات" فقطع عن ذلك ولم يتمه

“Indeed, when he (Imam Muhammad) finished writing *Al Jami’ Al Kabir*, he remembered a few Masail which he had not mentioned in it (*Al Jami’ Al Kabir*). So he wrote another book in order to mention those Masail in it, and he named it ‘*Al Ziyadat*’, he then remembered some more Masail, so he wrote another book in order to mention these extra Masail in it, and he named it ‘*Ziyadat Al Ziyadat*’. However, he stopped writing it

Thus, considering that this book is a completion of *Al Jami' Al Kabir* (الجامع الكبير), it follows that its style does not differ from the style of *Al Jami' Al Kabir* (الجامع الكبير) in discussing deep Masail and exploring various hypothetical Masail.¹⁷⁷¹⁷⁸

It is narrated that once, when Imam Abu Yusuf finished exploring a few intricate hypothetical Masail in one of his sittings in which he would dictate Masail, he said:

يَشُقُّ تَفْرِيعُ هَذِهِ الْمَسَائِلِ عَلَى مُحَمَّدِ بْنِ الْحَسَنِ

“Postulating such Masail is difficult for Muhammad ibn Al Hasan”

When Imam Muhammad heard of this, he wrote *Al Ziyadat* (الزيادات) to serve as an evidence that such Masail, in fact even more intricate Masail, are not difficult for him to postulate.

Some have raised questions over the complexity involved in the postulating of some of the Masail of this book, as some of the Masail are such that they would scarcely ever occur. However Shamsul A'immah Al Sarakhsi has explained the reasoning behind this by stating:

فَإِنْ قِيلَ لِمَاذَا أُورِدَ هَذِهِ الْمَسَائِلُ مَعَ تَيَقُّنِ كُلِّ عَاقِلٍ بِأَنَّهَا لَا تَقَعُ وَلَا يَحْتَاجُ إِلَيْهِ؟ قُلْنَا لَا يَتَهَيَّأُ لِلْمَرَّةِ أَنْ يَعْلَمَ مَا يَحْتَاجُ إِلَيْهِ إِلَّا بِتَعْلَمَ مَا لَا يَحْتَاجُ إِلَيْهِ فَيَصِيرُ الْكُلُّ مِنْ جُمْلَةٍ مَا

يَحْتَاجُ إِلَيْهِ لِهَذَا الطَّرِيقِ وَإِنَّمَا يَسْتَعِدُّ لِلْبَلَاءِ قَبْلَ نَزْوِلِهِ

“If it is asked, “why did he present Masail which every intellectual knows with certainty that they shall never occur and will never be needed?” We say that it is not possible for one to know that which he needs [currently] except by learning that which he does not [yet] need, thus, due to this, he is in need of all of it, and indeed, one prepares for a calamity before it arrives”

Considering that this book is an addendum, it does not cover all the chapters of Fiqh. The majority of its Masail are pertaining transactions.

A group of Hanafi Fuqaha have written commentaries on this book, they include:

1. Imam Muhammad ibn Sama'ah (d.233 AH)
2. Imam Abu Nasr Al Attabi (d.580 AH)
3. Imam Burhanud Deen ibn Mazah (d.616 AH)
4. Imam Tajud Deen Al Kardari (d.562 AH)
5. Imam Abu Hafs Sirajud Din As Sindhi (d.773 AH)
6. Imam Shamsul A'immah Al Halwani (d.449 AH)

¹⁷⁷ The actual book *Al Ziyadat* (الزيادات) is missing (مفقود). We have the commentary of Qadhi Khan (d.592 AH) in print. However, Qadhi Khan's (d.592 AH) commentary does not differentiate between the original text of *Al Ziyadat* (الزيادات) and his commentary.

(Lecture of Mufti Husain Sahib)

Muhamman Bwenukalin mentions that Imam Shamsul A'immah Al Sarakhsi (d.483 AH)'s commentary upon *Ziyadat Al Ziyadat* was published with the name 'Al Nukat' in 1378 AH with the research (*tahqiq*) of Maulana Abul Wafa Al Afghani.

(Muqaddimah of Al Asl by Muhammad Bwenukalin, p.35, Dar Ibn Hazm)

¹⁷⁸ Muhammad Bwenukalin mentions that *Al Ziyadat* was written as an addition to the Masail that Imam Muhammad had missed out in *Al Asl* and his other books in general.

(Muqaddimah of Al Asl by Muhammad Bwenukalin, p.34, Dar Ibn Hazm)

7. Imam Shamsul A'immah Al Sarakhsi (d.483 AH)

8. Imam Jurjānī (d.397 AH)

9. Imam Qadhi Khan (d. 592 AH)

The book and its commentaries were precious assets to the libraries of knowledge. Mufti Taqi Sahib's nephew, Shaykh Muhammad Qasim Ashraf took on the task of researching (*tahqiq*) *Sharh Al Ziyadat* (شرح الزيادات), a commentary of *Al Ziyadat* (الزيادات), written by Qadi Khan Rahimahullah with an effort that is appreciated. The commentary has been printed in six volumes with excellent annotations as well as a thorough research and verification of its various manuscripts. He has also added a beneficial introduction to the book in which he has discussed Imam Muhammad Rahimahullah and his books, Imam Qadi Khan Rahimahullah and his books, and *Al Ziyadat* (الزيادات) and its manuscripts, in a manner that has allowed this hidden treasure to be accessed by the scholars. May Allah grant him the best of rewards and grant him blessings in his age, knowledge, and works.

From amongst the measers of the book, *Sharh Al Ziyadat* (شرح الزيادات) is that Imam Qadi Khan Rahimahullah begins the commentary of each chapter by first presenting the principles upon which Imam Muhammad Rahimahullah has based the Masail of that chapter. Thus, making it easy for students such as ourselves to understand the Masail and where they have been derived from.

[Al Siyar Al Saghir \(السير الصغير\)](#)¹⁷⁹

The topic of this books is warfare.¹⁸⁰ It is said that it a summary of the book that Imam Abu Hanifah dictated in the field of warfare to his many great students including:

1. Imam Abu Yusuf (d.182 AH)

2. Imam Muhammad (d.189 AH)

¹⁷⁹ As mentioned earlier, Al Siyar Al Saghir is actually a part of Al Asl. It has also been mentioned that in Hakim Al Shahid's abridgement of Al Asl named Al Kafi, the chapter of Al Suyar has been labelled Kitab Al Siyar Al Saghir. The researchers of Nazuratul Haq have mentioned that Mahmud Ahmed Ghazi (may Allah be pleased with him) has compiled a book with the name Kitab Al Siyar Al Saghir Li Imam Muhammad. The book has been presented as Al Siyar Al Saghir of Imam Muhammad whereas in reality it is the chapter of Kitab Al Siyar Al Saghir of Al Kafi by Hakim Al Shahid. Hence, the book compiled and published by Mahmud Ahmed Ghazi (may Allah be pleased with him) with the name Kitab Al Siyar Al Saghir Li Imam Muhammad is actually an abridgement of Imam Muhammad's Al Siyar Al Saghir and not the actual Al Siyar Al Saghir.

On the other hand, Majid Khaduri has published a book Kitab Al Siyar Wal Kharaj Wal Ushr Min Kitab Al Asl Al Ma'ruf Bi Al Mabsut in which he has gathered the chapters Al Siyar, Al Kharaj and Al Ushr of Al Asl. The researcher of this book, however, did not realise that the chapter of Al Siyar in Al Asl is the actual Al Siyar Al Saghir. Therefore, he mistakenly laments that the book Al Siyar Al Saghir of Imam Muhammad is missing not realising that Al Siyar Al Saghir is the chapter of Al Siyar in Al Asl.

(Nazuratul Haq by Marjani p.168 Dar Al Fath)

¹⁸⁰ The word 'Al Siyar' (السير) is the plural of 'Seerah' (سيرة) which linguistically means: 'a pathway that is adopted in matters'. In Shari'ah, it is specific to the way in which the Prophet Sallallahu Alayhi Wasallam conducted himself in warfare as mentioned in Al Hidayah (الهداية). However, the question arises as to why 'Al Saghir' is not written in feminine form - 'Al Saghirah' - considering that the word 'Al Siyar' (السير) is plural, the author of Al Mughrib, Al Mutarrizi – who was also a Mu'tizilite – states that this is because the actual wording is: Kitabu Al Siyar Al Saghir (كتاب السير الصغير). However, the 'Kitabu' (كتاب) was dropped; hence the 'Al Saghir' is actually an adjective (sifah – صفة) of 'Kitabu' (كتاب). There are many other books of this nature, for example: *Al Sunanul Kabir* (السنن الكبير) and *Al Mawduatul Kabir* (الموضوعات الكبير).

(Lecture of Mufti Husain Sahib)

3. Imam Zufar ibn Hudhayl
4. Imam Asad ibn Amr (d.189H)
5. Imam Hasan ibn Ziyad
6. Imam Hafs ibn Giyath
7. Imam Afiyah ibn Yazid
8. Imam Hammad ibn Abi Hanifah

And other students and great scholars.

Each of the students narrated this book from Imam Abu Hanifah and made additions to it. They also structured and ordered it differently, so much so that each of the differently structured books were attributed to the student, and not Imam Abu Hanifah.

None of these books have reached us except *Al Siyar Al Saghir* (السير الصغير) of Imam Muhammad. Imam Hakim Al Shaheed has presented the entire *Al Siyar Al Saghir* (السير الصغير) in his book, *Al Kafi* (الكافي).

Shamsul A'immah Al Sarakhsi (d.438 AH) wrote a commentary on *Al Siyar Al Sagheer* (السير الصغير) in his *Al Mabsut* (المبسوط). He states in at the end of the tenth volume of *Al Mabsut* (المبسوط), which he wrote at the bottom of a pit in prison:

انتهى شرح السير الصغير المشتمل على معنى أثر بإملاء المتكلم بالحق المنير المحصور لأجله شبه الأسير المنتظر للفرج من العالم القدير

“This is the end of the commentary upon *Al Siyar Al Saghir* which contained profound ideas of the dictates of a speaker of the efulgent truth, one who is confined due to it (the truth) like a prisoner, one who awaits his freedom from the All-Knowing, All-Powerful”

Dr. Mahmud Ahmad Ghazi has researched the book and has published it based upon numerous hand-written manuscripts of the book. He has also translated the book into English and has written an introduction for it. May Allah grant him the best of rewards. The book has been printed in Islamabad by the publisher Idarah Al Buhuth Al Islamiyyah.

[*Al Siyar Al Kabir* \(السير الكبير\)](#)¹⁸¹

¹⁸¹There are a few Fuqahaa who did not consider *Al Siyar Al Kabir* (السير الكبير) as one of the books of *Zahir Al Riwayah* (ظاهر الرواية).

Muhammad Haroon mentions that these Fuqahaa are:

1. Allamah Tashkabri Zadah in his book *Miftah Al Sa'adah* (مفتاح السعادة)
2. Allamah Babarti (d.786 AH) in his book *Al Inayah* (العناية)
3. Allamah Jurjani in his book *Al Tafri'at* (التعريفات)
4. Allamah Ibnul Hummam (d.861 AH) in his book *Fath Al Qadir* (فتح القدير)
5. Allamah Qadhi Zadah in his book *Nataij Al Afkar* (نتائج الأفكار)
6. Allamah Tameemi in his book *Al Tabqat Al Saniyyah* (الطبقات السنية)

However, the majority of scholars have adopted the view that *Al Siyar Al Kabir* (السير الكبير) is one of the books of *Zahir Al Riwayah* (ظاهر الرواية). These Ulama include:

1. Mullah Ali Al Qari in *Dhayl Jawahir Al Mudiyyah* (ذيل الجواهر المضية)
2. Ibn Nujaym in *Al Bahr Al Raiq* (البحر الرائق)

This was the last of the six books of *Zahir A Riwayah* (ظاهر الرواية) that Imam Muhammad wrote as has been mentioned by Shamsul A'immah Al Sarakhsi (d.438 AH) in his introduction to his commentary upon the book.¹⁸²

He also mentions that what prompted Imam Muhammad to write this book is that when the book *Al Siyar Al Saghir* (السير الصغير) fell into the hands of Abdul Rahman ibn Amr Al Awza'i, the scholar of Sham, he asked, "who has written this book?", it was said to him, "Muhammad Al Iraqi" to which he remarked:

3. Allamah Tahtawi in *Hashiyah Maraql Falah* (حاشية مراقي الفلاح)
4. Ibn Abideen in *Raddul Muhtar* (رد المختار)
5. Allamah Lucknawi in *Al Nafi' Al Kabir* (النافع الكبير)
6. Shaykh Muhammad Bakheet Al Muteei' in *Irshad Ahl Al Millah Ila Ithbat Al Ahallah* (إرشاد أهل الملة إلى إثبات الأهلة)
7. Shaykh Abdul Fattah Abu Ghuddah in *Fath Bab Al Inayah* (فتح باب العناية)

('Al Fathul Rabbani' p.314 Maktabatul Azhar)

¹⁸² The book *Al Siyar Al Kabir* (السير الكبير) is lost (مفقود). However, a commentary of it written by Shamsul A'immah Al Sarakhsi (d.438 AH) exists in print. Nonetheless, there are two flaws found in this commentary:

1. It is incomplete
2. It does not differentiate between the original text and the commentary

Shamsul A'immah Al Sarakhsi's commentary upon *Al Siyar Al Kabir* (السير الكبير) is the only access we have to *Al Siyar Al Kabir* (السير الكبير). There are a few prints of it; one is the old print by Moulana Abul Wafā Afghānī, then there is Salah Al Din Al Munaji's print which is a much better print, in fact, Sheikh Abu Zahra made research (tahqiq) on one volume of Salah Al Din Al Munaji's print. There are many manuscripts of this commentary, but in all the manuscripts, the same problem exists; Shamsul A'immah Al Sarakhsi did not differentiate between the actual text of *Al Siyar Al Kabir* (السير الكبير) and his commentary, and we don't have any manuscripts of *Al Siyar Al Kabir* (السير الكبير), therefore, we are unable to separate the actual text of *Al Siyar Al Kabir* (السير الكبير) from Shamsul A'immah Al Sarakhsi's commentary. So, the people who published the commentary made Ijtihad and attempted to differentiate between the actual text and its commentary. The problem is that they have definitely made errors in their Ijtihad as at times they have put a certain statement as part of the actual text of *Al Siyar Al Kabir* (السير الكبير), whereas it should be a part of Shamsul A'immah's commentary, and vice versa. For example, in the actual text of *Al Siyar Al Kabir* (السير الكبير), it mentions that women should not rise horses. Thereafter, the current prints show that the text of *Al Siyar Al Kabir* (السير الكبير) is:

لقوله صلى الله عليه وسلم لعن الله الفروج على السروج

Hence, the current prints put this Hadith as part of the actual text of *Al Siyar Al Kabir* (السير الكبير). Now, the implication of this is that there is a principle; if a Mujtahid used a certain narration as evidence, it means that the narration is worthy of being used as evidence according to that Mujtahid. So, if this narration were to be taken as the actual text of *Al Siyar Al Kabir* (السير الكبير), then it would mean that according to Imam Muhammad, the narration is Sahih or Hasan (i.e. worthy of being used as evidence). The issue is that according to the Muhadithin, the narration mentioned is a fabrication. Hence, one would now question whether this narration is a part of the actual text of *Al Siyar Al Kabir* (السير الكبير).

If we open up Muhit Al Burhani, Allamah Tahir Al Din Al Bukhari quotes *Al Siyar Al Kabir* (السير الكبير) from the beginning of the chapter and the portion that he quotes does not have this narration in it, indicating that this narration is actually part of Shamsul A'immah Al Sarakhsi's commentary.

(Lecture of Mufti Husain Sahib)

There are two other commentaries upon *Al Siyar Al Kabir* (السير الكبير):

- 1) A commentary written by Shamsul A'immah Al Halwani
- 2) A commentary written by Al Hasiri

(Muqaddimah of Al Asl by Muhammad Bwenukalin, p.34, Dar Ibn Hazm)

Allamah Munib Ayntabi (d.1238 AH) has written a commentary upon Allamah Sarakhsi's commentary upon *Al Siyar Al Kabir* (السير الكبير), titled Taysir Al Masir Fi Sharh Al Siyar Al Kabir.

(Muqaddimah of Al Asl by Muhammad Bwenukalin, p.34, Dar Ibn Hazm)

وَمَا لِأَهْلِ الْعِرَاقِ وَالتَّصْنِيفِ فِي هَذَا الْبَابِ؟ فَإِنَّهُ لَا عِلْمَ لَهُمْ بِالسِّيَرِ وَمَعَازِي رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَصْحَابِهِ كَانَتْ مِنْ جَانِبِ الشَّامِ وَالْحِجَازِ دُونَ الْعِرَاقِ فَإِنَّهَا
مُحَدَّثَةُ الْفَتْحِ

“What do the people of Iraq have to do with writing in this field? For indeed they have no knowledge of the field of Al Siyar. The battles of the Prophet Sallallahu Alayhi Wasallam and his companions took place in Sham and Hijaz, not in Iraq, for indeed it (Iraq) was only recently conquered”

When news of Al Awza'i's comments reached Imam Muhammad, he became infuriated, and dedicated himself in writing this book.

It is related that when Imam Al Awza'i' read the book, he said:

لَوْلَا مَا ضَمِنَهُ مِنَ الْأَحَادِيثِ لَقُلْتُ إِنَّهُ يَضَعُ الْعِلْمَ مِنْ عِنْدِ نَفْسِهِ وَإِنَّ اللَّهَ عَنِ جِهَةِ إِصَابَةِ الْجَوَابِ فِي رَأْيِهِ وَصَدَقَ اللَّهُ الْعَظِيمُ وَفَوْقَ كُلِّ ذِي عِلْمٍ عَلِيمٌ

“If it were not for the fact that he has filled it with Ahadith, I would say that he has made up this whole field [of Al Siyar] himself, indeed, Allah has given him the ability to give the correct answer through his views and surely Allah the Almighty has said the truth [in his words]: “above every being of knowledge there is a [more] knowledgeable one”¹⁸³

After this, Imam Muhammad ordered for the the book to be written in sixty folders and be lifted upon a carriage and taken to the door of the caliph. It was said to the caliph, “Indeed, Muhammad has written a book which has been bought on a carriage to our door”. The caliph was impressed by the book and considered it to be a source of pride for his age. Every time the caliph would read the book, he would be more impressed with the book, such that he sent his children to the gathering of Imam Muhammad Rahimahullah so that they may listen to this book from Imam Muhammad himself. Isma'il ibn Tawbah Al Qazwini was the caretaker of the children of the caliph and would join them during their lessons in order to protect them as a bodyguard. Thus, he also heard the book from Imam Muhammad.

Coincidentally, none of the individuals who had heard the book from Imam Muhammad remained except Isma'il ibn Tawbah and Abu Sulayman Al Jawzjani. The two then narrated this book from Imam Muhammad to others.

Shamsul A'immah Al Sarakhsi has mentioned in his introduction that Imam Muhammad did not mention Imam Abu Yusuf's name at all in this entire book. Whenever he needed to refer to Imam Abu Yusuf in a chain of narration, he has written:

أَخْبَرَنِي الثَّقَةُ

“A reliable individual informed me”

¹⁸³ This story is completely baseless. This is because Imam Al Awza'i' passed away in 157 AH. Imam Muhammad was born in 132 AH and passed away in 189 AH. *Al Siyar Al Kabir* (السير الكبير) is the last book that Imam Muhammad wrote in the field of Fiqh. If this story were to be considered true, it would mean that Imam Muhammad wrote this book before 157 AH. It would also mean that Imam Muhammad did not write any book after 157 AH till 189 AH.

Similarly, Abu Hafs Al Kabir has narrated the majority of Imam Muhammad's books. However, near the end of Imam Muhammad's life, Abu Hafs Al Kabir left Imam Muhammad and therefore did not narrate any more books from Imam Muhammad. *Al Siyar Al Kabir* was one of those books that Abu Hafs Al Kabir did not narrate, thus indicating that Imam Muhammad wrote the book near the end of his life, which was certainly after the death of Imam Awza'i'.

As for the supposed claim of Imam Awza'i' that the Prophet Sallallahu Alayhi Wasallam and his companions were not involved in any battles in Iraq, Moulana Abul Wafa Al Afghani explains that this claim is also baseless. For example, Hadhrat Khalid ibn Al Walid Radhiyallahu Anhu, Hadhrat Sa'd ibn Abi Waqqas Radhiyallahu Anhu and many other Sahabah participated in wars that took place in 'Iraq. In fact, many Sahabah actually settled in Kufah, and our Fuqaha studied under these Sahabah. Accordingly, it seems that the entire story is false.

(Lecture of Mufti Husain Sahib)

After this, Shamsul A'immah has related a few stories to show that animosity had developed between the two.¹⁸⁴ However, Shaykh Zafar Ahmad Uthmani Rahimahullah has refused to accept these stories, rather, he has attributed them to the inventions of detractors. He states:

استخرجوا من اختلافهم الناشئ عن الأجهاد الصحيح أباطيل مختلقة عليهم ليضعوا عن شأنهم بنقل الطعن عن بعضهم في بعض وكذا ما حكى من أسباب استحكام
النفرة بينهما كما في مقدمة المبسوط للسرخسي باطل مختلق عليهما فقد كان شأنهما أرفع وأجل من أن ينسب إليهما أمثال هذه الأباطيل نعوذ بالله من شر من وضعها
“They (the detractors) extracted from their (Imam Abu Yusuf and Imam Muhammad) differences of opinion - that were based upon Ijtihad - false inventions so that they may diminish their status by recording [supposed] insults each of them made for the other. Similarly, all that has been related as the cause of animosity between them such as [that which has been recorded] in the introduction of *Al Mabsut* by Al Sarakhsi is also an invalid fabrication. For indeed, their status was higher and more grand for falsities such as these to be attributed to them. We seek refuge in Allah from the evil of the one who fabricated them”

With that being said, it seems apparent - based upon what Shamsul A'immah Al Sarakhsi has mentioned that Imam Muhammad did not mention Imam Abu Yusuf by his name - that something did occur between the two, even though the stories that have been related in this regard are such that one cannot imagine them to have been perpetrated by even a pious Muslim, never mind the like of Imam Abu Yusuf and Imam Muhammad.

It is possible that there is another reason that Imam Muhammad did not mention Imam Abu Yusuf's name, this reason could be that which Ibn Nujaym Rahimahullah has mentioned:

كل تأليف لحمد بن الحسن موصوف بـ "الصغير" فهو باتفاق الشيخين أبي يوسف ومحمد بخلاف الكبير فإنه لم يعرض على أبي يوسف
“Every book of Muhammad ibn Al Hasan which is described as ‘*Al Saghir*’ (i.e. it has Al Saghir in its name) is [such that the contents are] agreed upon between the Shaykhayn; [Imam] Abu Yusuf and Muhammad, in contrast to Al Kabir (i.e. his books which have Al Kabir in their name), for indeed it was not presented to Abu Yusuf”¹⁸⁵

Ibn Amir Al Haj has also mentioned this in his commentary upon *Munyatul Musalli*, titled *Halbatul Majalli*. He writes:

إِنَّ مُحَمَّدًا رَضِيَ اللَّهُ عَنْهُ قَرَأَ أَكْثَرَ الْكُتُبِ عَلَى أَبِي يُوسُفَ رَضِيَ اللَّهُ عَنْهُ إِلَّا مَا كَانَ فِيهِ اسْمُ الْكَبِيرِ فَإِنَّهُ مِنْ تَصْنِيفِ مُحَمَّدٍ رَضِيَ اللَّهُ عَنْهُ كَالْمُضَارَّةِ الْكَبِيرِ وَالْمَزَارَعَةِ الْكَبِيرِ
وَالْمَأْدُونِ الْكَبِيرِ وَالْجَامِعِ الْكَبِيرِ وَالسِّرِّ الْكَبِيرِ

“Indeed, [Imam] Muhammad, may Allah be pleased with him, recited the majority of his books to [Imam] Abu Yusuf, may Allah be pleased with him, except those books which have the word ‘*Al Kabir*’ in their title, for these books have been solely authored by [Imam] Muhammad, may Allah be pleased with him, for example: *Al Mudarabah Al Kabir*, *Al Muzara'ah Al Kabir*, *Al Ma'dhun Al Kabir*, *Al Jami' Al Kabir*, and *Al Siyar Al Kabir*”

In summary, *Al Siyar Al Kabir* (السير الكبير) was one of the first books written in the field of state law, and the rulings of warfare and treaties, in such detail and explanation at a time when international relations did not have a recognised and codified law.

¹⁸⁴ Muhammad Bwenukalin mentions that Imam Abu Yusuf indicated to Harun Al Rashid that he should make Imam Muhammad the Qadhi (judge) of Raqqa. However, Imam Abu Yusuf did not consult Imam Muhammad before making this suggestion. Thus, Imam Muhammad was bought from Kufa to Raqqa not knowing the reason behind his travels. This incident became a cause of dissonance between the two great scholars.

(Muqaddimah of Al Asl by Muhammad Bwenukalin, p.31, Dar Ibn Hazm)

¹⁸⁵ Ibn Nujaym has mentioned: “every book of Imam Muhammad ibn Al Hasan - May Allah be pleased with him – that is described as ‘*Al Saghir*’ (الصغير) is a book, the contents of which have been approved by Imam Abu Hanifah (d.150 AH) and Imam Abu Yusuf (d.182 AH) contrary to those books described as ‘*Al Kabir*’ (الكبير), for these books were not presented to Imam Abu Yusuf (d.182 AH)”.

(Al Bahrur Raiq,

Conclusion on the Books of *Zāhir Al Riwayah* (ظاهر الرواية)¹⁸⁶

We have now discussed the six books known as *Zahir Al Riwayah* (ظاهر الرواية).

The Books *Kitab Al Athar*, *Al Muwatta*, and *Al Hujjah Ala Ahlil Madinah* of Imam Muhammad

There are three other books of Imam Muhammad Rahimahullah that some scholars have considered as equivalent to the books of *Zahir Al Riwayah* (ظاهر الرواية), due to their fame and importance. These three books are:

- 1) *Kitab Al Athar* (كتاب الآثار),
- 2) *Al Muwatta* (الموطأ)¹⁸⁷,
- 3) *Al Hujjah Ala Ahlil Madinah* (الحجة على أهل المدينة)

However, although these books are similar to the books of *Zahir Al Riwayah* (ظاهر الرواية) in the sense that they were all written by Imam Muhammad and that they became known amongst the scholars, these books were not written for the purpose of elaborating upon the Hanafi Madhab and its rulings.

The first two books, *Kitab Al Athar* (كتاب الآثار) and *Al Muwatta* (الموطأ), were written for the purpose of narrating Ahadith and Athar. As for the jurisprudential rulings found in these books, they have been written secondary to the Ahadith and Athar.

The third book, *Al Hujjah Ala Ahlil Madinah* (الحجة على أهل المدينة), was written for the purpose of discussing differences of opinion.

As for the books of *Zahir Al Riwayah* (ظاهر الرواية), they were written with the principle purpose of presenting the rulings of the Hanafi Madhab, thus they became they were relied upon for recognising the views of the Hanafi Madhab.

It is possibly due to this reason that the Hanafi Fuqaha have not at all mentioned these three books; not as a part of *Zahir Al Riwayah* (ظاهر الرواية) and nor a part of *Al Nawadir* (النوادر). These three books would not be considered from *Al Nawadir* (النوادر) as they have been narrated from Imam Muhammad through many chains, unlike *Al Nawadir* (النوادر). These three books would not be considered a part of *Zahir Al Riwayah* (ظاهر الرواية) either, as they

¹⁸⁶ Allamah Abdul Hayy Lucknawi relates from Allamah Kafawi that *Al Muntaqa* (المنتقى) by Hakim Al Shaheed and Al Kafi (الكافي) also by Hakim Al Shaheed should be a part of the *Zahir Al Riwayah* (ظاهر الرواية) Masail. However Ibn Nujaym quotes Hakim Al Shaheed as saying that he gathered the Masail of *Al Nawadir* (النوادر) when writing *Al Muntaqa* (المنتقى). Hence, there is no way that *Al Muntaqa* (المنتقى) could be considered a part of the Masail of *Zahir Al Riwayah* (ظاهر الرواية). Allamah Marjani has stated that books written by the *Mujtahid Fil Madhab* (مجتهد في المذهب) to gather the views of Imam Abu Hanifah should also be counted as part of the Masail of *Zahir Al Riwayah* (ظاهر الرواية). He further states this to be the reason behind the phrase "المؤمن كالنصوص" – 'the reliable texts are like the evidential texts'. Muhammad Haroon feels that those books written by the later scholars who majority of the times only relate the view of *Zahir Al Riwayah* (ظاهر الرواية) should also be added to the Masail of *Zahir Al Riwayah* (ظاهر الرواية).

(*'Al Fathul Rabbani'* p.315 *Maktabatul Azhar*)

Note: Mufti Husain Sahib does not necessarily agree with the view mentioned above.

¹⁸⁷ Muhammad Haroon states that some have labelled this book as *Muwatta Imam Muhammad* (موطأ إمام محمد). This is the famous name of this kitaab. However, others have labelled the book as *Muwatta Malik Bi Riwayah Imam Muhammad* (موطأ مالك برواية إمام محمد). This is the correct name as stated by Taqi Al Din Al Nadwi and Muhammad ibn Alawi Al Maliki.

were not written with the purpose of presenting the views of the Hanafi Madhab, unlike the books of *Zahir Al Riwayah* (ظاهر الرواية).

However, it does seem that their status is above that of the books of *Al Nawadir* (النوادر), thus what is written in these three books shall be accepted except that which contradicts the six books of *Zahir Al Riwayah* (ظاهر الرواية).

Ruling of the Masāil of Zāhir Al Riwayah (ظاهر الرواية)

Allāmah Tarsūsī and Ibn Abidīn (d.1252 AH) have stated that Fatwa shall be issued on the view mentioned in the *Zāhir Al Riwayah* (ظاهر الرواية) by default, even if the scholars who are worthy of giving preference (أصحاب الترجيح) have not formally given preference to the view. However, if the scholars who are worthy of giving preference (أصحاب الترجيح) have given preference to a view other than the view found in the *Zāhir Al Riwayah* (ظاهر الرواية), then the view found in the *Zāhir Al Riwayah* (ظاهر الرواية) shall be left.¹⁸⁸

If there are multiple views from the A'immah of the Madhab within the *Zāhir Al Riwayah* (ظاهر الرواية), then we shall take from them the view that scholars who are worthy of giving preference (أصحاب الترجيح) have given preference to. If none of the scholars who are worthy of giving preference (أصحاب الترجيح) have given preference to any of these views, then the view found in the later book of *Zāhir Al Riwayah* (ظاهر الرواية) shall be considered while also considering the different means of giving preference (*Murajjihat*) shall be considered which we shall discuss soon under Principle 9.

Masāil Al Nawādir (مسائل النوادر)

The *Masāil Al Nawādir* (مسائل النوادر) are those Masāil that have been narrated from the A'immah of the Madhab in books other than the books of *Zahir Al Riwayah* (ظاهر الرواية).

The *Masāil Al Nawādir* (مسائل النوادر) are of two types:

- 1) Those Masail which have been narrated from Imam Muhammad (d.189 AH) in his books other than the books of *Zahir Al Riwayah* (ظاهر الرواية). They are not considered *Zahir Al Riwayah* (ظاهر الرواية) as unlike the books *Zahir Al Riwayah* (ظاهر الرواية), these Masail have *not* been narrated through strong, apparent, and authentic chains of narration from Imam Muhammad (d.189 AH).

¹⁸⁸ Allamah Lu'ayy Al Khaleeli has written a book outlining the reasons due to which the Hanafi Fuqahaa may move away from giving Fatwa according to what is in the *ظاهر الرواية*, the main reasons he states are:

- 1) Common practise (عرف)
- 2) Need and necessity (الضرورة والحاجة)
- 3) To create ease and remove difficulty (التيسير ورفع الحرج)
- 4) The expertise of the individual whose view is adopted for Fatwa in that specific field (خبرة من يعدل إلى قوله)
- 5) Widespread severe difficulty (عموم البلوى)
- 6) For precautionary reasons (الإحتياط)
- 7) Strength of evidence according to the Fuqahaa worthy of giving preference (الأقوى حجة عند أهل الترجيح)

(The contents page of '*Asbabu Udoolil Hanafiyyah Anil Futya Bi Zahirir Riwayah*')

Examples of Books of this Type:

1. *Al Kaysaniyat* (الكيسانيات)¹⁸⁹:

It is attributed to Sulayman ibn Shu'ayb Al Kaysani (d.278 AH) who was from the companions of Imam Muhammad.¹⁹⁰

2. *Al Hārūniyāt* (الهارونيات): it was written during the time of Harun Rasheed or upon Harun Al Rashid's request¹⁹¹

3. *Al Jurjāniyāt* (الجرجانيات): it was written in a place called Jurjan or the Masāil that Ali ibn Salih Al Jurjāni narrated from him¹⁹²

¹⁸⁹ Muhammad Bwenukalin mentions that the book is also called *Al Amali* (الأمالى)

(Muqaddimah of Al Asl by Muhammad Bwenukalin, p.36, Dari Ibn Hazm)

¹⁹⁰ This is what you will find in all the books of biography. But how could Sulayman ibn Shu'ayb Al Kaysani who was born in 185 AH and passed away in 278 AH be a companion of Imam Muhammad who passed away in 189 AH? Rather, his father, Shu'ayb Al Kaysani was from the companions of Imam Muhammad. Hence, it seems that the book is actually the narrations of Shu'ayb Al Kaysani from Imam Muhammad and his son, Sulayman, has narrated it from his father. But everywhere you will look, you will see it directly attributed to Sulayman ibn Shu'ayb Al Kaysani (d.278 AH). The only way it can be directly attributed to Sulayman is if we considered that it was a habit in those times for people to bring their small children to lessons of Hadith in order to gain ijazah. Hence, it's possible that he his father bought him to the lessons of Imam Muhammad (d.189 AH). Even still, there is no way that he can be classified as a *companion* of Imam Muhammad (d.189 AH). Only a small portion of *Al Kaysāniyāt* (الكيسانيات) is in existence today found in the library of Hyderabad.

(Lecture of Mufti Husain Sahib)

Muhammad Bwenukalin has also considered Shu'ayb ibn Sulayman from amongst the students of Imam Muhammad and Imam Abu Yusuf. Bwenukaline then writes:

روى عن محمد مسائل النوادر

"He narrated from Imam Muhammad the Masail of Al Nawadir"

(Muqaddimah of Al Asl by Muhammad Bwenukalin, p.20, Dari Ibn Hazm)

Muhammad Bwenukalin indicates that *both* Sulayman ibn Shu'aib and his father, Shu'aib Al Kaysani, narrated the Masail from Imam Muhammad (d.189 AH).

(Muqaddimah of Al Asl by Muhammad Bwenukalin, p.36, Dari Ibn Hazm)

Ahmad ibn Muhammad Al Naqib has also attributed this book to Sulayman ibn Shu'aib Al Kaysani. Some have said that it is the name given to the Masail that Imam Muhammad compiled in Kaysan, however, Allamah Tashkapri Zadah states that this is incorrect. It has also been said that the actual name of these Masail is *Al Kaysāniyāt* (الكيسانيات), in reference to a man named Kayyan for whom Imam Muhammad wrote these Masail.

(Al Mathabul Hanafi by Ahmad Al Naqib, p.331, v.1, Maktabah Al Rushd)

¹⁹¹ There is currently so sign of the book anywhere

(Lecture of Mufti Husain Sahib)

Muhammad Bwenukalin seems to indicate that the name *Al Haruniyyat* (الهارونيات) is derived from a person named Harun, not necessarily Harun Rashid.

(Muqaddimah of Al Asl by Muhammad Bwenukalin, p.36, Dari Ibn Hazm)

¹⁹² There is currently so sign of the book anywhere

(Lecture of Mufti Husain Sahib)

Ahmad ibn Muhammad Al Naqib states that it is possible that Imam Muhammad compiled the book in Jurjan and one of his students from Jurjan then narrated the book from him.

(Ahmad Al Naqib, "Al Madhabul Hanafi", (Riyad: Maktabah Al Rushd,), p.358, v.1.)

4. *Al Riqiyāt* (الرفيات): it is the Masail that Imam Muhammad narrated in the city of Raqqa (a city in modern day Syria)¹⁹³

2) Those Masail which have been narrated from the A'immah of the Madhab in a book that is not attributed to Imam Muhammad (d.189 AH).

Examples:

1. *Al Amali* by Imam Abu Yusuf (الأما لي لأبي يوسف)¹⁹⁴

An *Al Amālī* (الأما لي) as explained by Ibn Abidin (d.1252 AH) is when a teacher sits with his students around him. He then relates the knowledge that Allah has blessed him with whilst his students write down his statements. After a while, the various notes are compiled into one book which is then labelled *Al Amālī* (الأما لي) or *Al Imlā'* (الإملاء). The Shafi'i's refer to this as *Ta'liqah* (تعليقة).

2. *Al Mujarrad* by Hasan ibn Ziyad (المجرد للحسن بن زياد)¹⁹⁵

3. *Riwayah Ibn Sama'ah* (رواية ابن سماعة):

This is a collection of narrations of certain Masail narrated by Ibn Sama'ah (d.233 AH) from some of the A'immah of the Mathab

4. *Riwayah Mu'alla ibn Mansur* (رواية معلى بن منصور):

Muhammad Bwenukalin has given preference to the view that *Al Jurjaniyyat* is labelled such as it contains the Masail narrated by Ali ibn Salih Al Jurjani from Imam Muhammad.

(Muqaddimah of *Al Asl* by Muhammad Bwenukalin, p.36, Dari Ibn Hazm)

¹⁹³ There is currently no sign of the book anywhere

(Lecture of Mufti Husain Sahib)

Imam Muhammad came to Raqqa with Harun Rashid, who made him a Qadhi (judge) in Raqqa. It has also been said that *Al Riqiyat* are the Masail that Muhammad ibn Sama'ah narrated from Imam Muhammad in Raqqa. Again, Ahmed ibn Muhammad Al Naqib states that it may be both situations that occurred.

(Ahmad Al Naqib, "*Al Madhabul Hanafi*", (Riyad: Maktabah Al Rushd,), p.358, v.1.)

¹⁹⁴ It is currently lost (مفقود). In *Kashfuz Zunoon* it states that this book is meant to be 300 volumes. However, when they mention 'volume' in the earlier books, they are referring to a Juz'e Hadeethi (جزء حديثي) of the book, which is around 20 pages of the books we have today.

(Lecture of Mufti Husain Sahib)

¹⁹⁵ The book is missing; there are a few references to it found in the footnotes of a manuscript of *Al Asl* (الأصل) found in Al Azhar.

(Lecture of Mufti Husain Sahib)

This is a collection of narrations of certain Masail narrated by Mu'alla ibn Mansur (d.211 AH)¹⁹⁶ from some of the A'immah of the Madhab¹⁹⁷

Examples of Masail Al Nawadir (مسائل النواذر):¹⁹⁸

- 1) Hasan ibn Ziyad has narrated from Imam Abu Hanifah (d.150 AH) that it is permissible for a person to perform the stoning of the devil before *Zawal* on the 12th of Dhul Hijjah if he wishes to return to Makkah quickly
- 2) Abu Ismah has narrated from Imam Abu Hanifah that he considered it permissible to give Zakah to the Banu Hashim in this day and age, even though it was prohibited in the times prior to this. Similarly, it has also been narrated in the *Masail Al Nawadir* (مسائل النواذر) from Imam Abu Hanifah (d.150 AH) and Imam Abu Yusuf (d.182 AH) that it is permissible for some of the Banu Hashim to give their Zakah to other individuals of Banu Hashim. This is contrary to what is found in the *Zahir Al Riwayah* (ظاهر الرواية) that it is impermissible to give them Zakah in any circumstance.

Al Muntaqa (المنتقى) by Hakim Al Shahid:

Al Muntaqa (المنتقى) is a book written by Hakim Al Shahid in which he gathered the *Masail of Al Nawadir*. Hakim Al Shahid says:

نَظَرْتُ فِي ثَلَاثِ مِائَةِ جُزْءٍ مِثْلَ الْأَمَالِي وَنَوَادِرِ ابْنِ سَمَاعَةَ حَتَّى انْتَقَيْتُ كِتَابَ الْمُتَنَقِّي

"I looked in 300 books such as Al Amali and Nawadir Ibn Sama'ah until I compiled the book Al Muntaqa"¹⁹⁹

The book is very beneficial, however, it is not found today.

Ruling of Masāil Al Nawādir (مسائل النواذر)

There are two important views with regards to the ruling of the *Masail Al Nawadir* (مسائل النواذر):

- 1) The view of the majority of scholar
- 2) The view of 'Allamah Kashmiri

The view of the majority of scholars:

¹⁹⁶ Mu'allah ibn Mansur was the companion of Abu Sulayman Al Jawzjani, but he was younger than him in age. He has narrated from Malik, Layth ibn Sa'd, and others. From amongst those who have narrated from are Ali ibn Al Madini and Imam Al Bukhari. All six authors of the Sihah Sittah (صحيح الستة) have narrated from him. He resided in Baghdad. The Abbasid caliph, Al Ma'mun Al Rashid asked him to become the Qadhi (judge), but he refused.

(Muhammad Bwenukalin, "*Muqaddimah of Al Asl*", (Beirut: Dar Ibn Hazm,), p.20)

¹⁹⁷ Although it is said that *Riwayah Mu'allah ibn Mansur* (رواية معلق ابن منصور) is a collection of narrations of certain masail, it actually has masail of the chapters of Fiqh. There is only one manuscript of *Riwayah Mu'allah ibn Mansoor* which is found in Turkey. A research (*tahqeeq*) of it has been made by *Ummul Qura* and a scholar from Turkey.

(Lecture of Mufti Husain Sahib)

¹⁹⁸ As mentiond above, from the *Masail Al Nawadir*, only the *Al Kaysaniyyāt* (الكيسانيات) and *Riwāyah Mu'allāh ibn Mansūr* (رواية معلق) are found today.

¹⁹⁹ (Ibn Nujaym Rahimahullah, "*Al Ashbah Wal Nazair*", (Makah: Maktabah Nizar Mustafa Al Baz, 1997), v.2, pg.421.)

The ruling of the *Masail Al Nawadir* (مسائل النواذر) will depend upon two scenarios:

1. Scenario 1: a view is found for the Mas'alah in the *Zahir Al Riwayah* (ظاهر الرواية)
2. Scenario 2: a view is not found for the Mas'alah in the *Zahir Al Riwayah* (ظاهر الرواية)

Ruling for Scenario 1:

The practiced upon principle according to the Hanafi Fuqaha is that they take the view found in *Zahir Al Riwayah* (ظاهر الرواية) and do not take the view of *Masail Al Nawadir* (مسائل النواذر) if it contradicts the view of *Zahir Al Riwayah* (ظاهر الرواية) except in a few Masail.

The view found in the *Zahir Al Riwayah* (ظاهر الرواية) will be given preference over the view found in the *Masail Al Nawadir* (مسائل النواذر) in all Masail except those in which the scholars worthy of giving preference (أصحاب الترجيح) give preference to the view of the *Masail Al Nawadir* (مسائل النواذر).²⁰⁰ This principle has already been understood from the statement of Ibn 'Abidin and Allamah Tartusi mentioned above in the discussion of the ruling of the Masail of *Zahir Al Riwayah* (ظاهر الرواية).

Examples of Scenarios wherein the scholars worthy of giving preference have given preference to the view of Masail Al Nawadir over the view of Zahir Al Riwayah:²⁰¹

- 1) **The Mas'alah:** A woman becomes an apostate

The view mentioned in *Zahir Al Riwayah* (ظاهر الرواية):

²⁰⁰ Can the view of *Zahir Al Riwayah* (ظاهر الرواية) and *Masail Al Nawadir* (مسائل النواذر) ever be combined? Allamah Kashmeeri believes this to be possible. He states in *Fayd Al Bari* (فيض الباري) that a Sajdah becomes Wajib upon a person who reads an ayah of Sajdah. The view of *Zahir Al Riwayah* (ظاهر الرواية) is that this is *Wajib Ala Tarakhi* (واجب على التراخي) whereas the view of *Masail Al Nawadir* (مسائل النواذر) is that it is *Wajib Alal Fawr* (واجب على الفور). Hence, Allamah Kashmeeri states that the *Zahir Al Riwayah* (ظاهر الرواية) view may be taken for a person who is mindful whilst the view of *Masail Al Nawadir* (مسائل النواذر) may be taken for one who is neglectful. **(Al Fathul Rabbani p.320 Maktabatul Azhar)**

It is also important to realise that the Fuqaha have stated that it is not permissible to attribute anything found in the *Masail An Nawadir* (مسائل النواذر) to any of the three Imams except if there is a complete chain or the statement found is mentioned in a famous Fiqh which the people have accepted **(Nāzūratul Haq p.166 Dar Al Fath)**

²⁰¹ Allamah Lu'ayy Al Khaleeli has written a book outlining the reasons due to which the Hanafi Fuqahaa may move away from giving Fatwa according to what is in the *ظاهر الرواية*, the main reasons he states are:

- 1) Common practise (عرف)
- 2) Need and necessity (الضرورة والحاجة)
- 3) To create ease and remove difficulty (التيسير ورفع الحرج)
- 4) The expertise of the individual whose view is adopted for Fatwa in that specific field (خبرة من يعدل إلى قوله)
- 5) Widespread severe difficulty (عموم البلوى)
- 6) For precautionary reasons (الإحتياط)
- 7) Strength of evidence according to the Fuqahaa worthy of giving preference (الأقوى حجة عند أهل الترجيح)

(The contents page of 'Asbabu Udoolil Hanafiyyah Anil Futya Bi Zahir Riwayah')

She will be forced to revert to Islam and renew her marriage with her husband.

The view mentioned in Masail Al Nawadir (مسائل النواذر):

She will be made into a servant and will be considered a spoil of war (فِيء – fay'). Thus, she will be a part of the *Baytul Mal* (بيت المال). The husband shall then be able to purchase her from the *Baytul Mal* (بيت المال) or the Islamic government may give her to him if he is worthy of accepting a spoil of war (فِيء – fay').

Fatwa:

The scholars who are worthy of giving preference (أصحاب الترجيح) have given preference to the view of the *Masail Al Nawadir* (مسائل النواذر) and have stated:

من تصفح أحوال نساء زماننا وما يقع منهن من موجبات الردة مكررا في كل يوم لم يتوقف في الإفتاء برواية النواذر

“Whoever has had a cursory look at the state of the women in our times, and that which they perpetrate perpetually on a daily basis from the dictates of apostasy, would not hesitate in issuing a Fatwa in accordance with the view of *Al Nawadir*”

However, Mufti Taqi Sahib states that Mufti Shafi Rahimahullah has mentioned that in this day and age, it is difficult to act on either view; hence we will have to issue a Fatwa that the Nikah does not break when a woman becomes an apostate, as was the view adopted by the Fuqaha of Bukhara and Samarqand²⁰²

2) The Mas'alah:

A person makes a promise (نذر) known as *Nadhr Al Lajaj* (نذر اللجاج). A *Nadhr Al Lajaj* (نذر اللجاج) is when a promisor makes a promise dependent upon an event that the promisor does not wish to occur. For example, he says, “If I drink alcohol, then upon me is a fast for a month”.

The view mentioned in Zahir Al Riwayah (ظاهر الرواية):

If the event upon which the promise (نذر) has been made dependent occurs, it is necessary for him to fulfil the promise (نذر). The promisor shall have no other choice.

The view mentioned in Masail Al Nawadir (مسائل النواذر):

If the event upon which the promise (نذر) has been made dependent occurs, the promisor shall have a choice between fulfilling the promise (نذر) and giving a *kaffarah* (كفارة). This is also the view of Imam Al Shafi'i' Rahimahullah and Imam Muhammad Rahimahullah.

Fatwa:

²⁰² 'Allamah Tahir Al Bukhari writes:

وإذا ارتدت المرأة قال مشايخ بلخ رحمهم الله منهم أبو حفص وأبو القاسم الصفار ردتا لا يؤثر في افساد النكاح ولا تؤمر بتجديد النكاح حسما لهذا الباب عليهن والقاضي يجسها قدر ما يرى حتى ترجع وتسلم وإليه كان يميل الحاكم الشهيد ومن مشايخ سمرقند رحمهم الله أفق هكذا أو إسماعيل الزاهد من مشايخ بخارا رحمهم الله كان يفني هكذا وعامة علماء بخارا رحمهم الله يقولون كفرها يعمل في افساد النكاح لكنها تجبر على النكاح مع زوجها وهذه فرقة بغير طلاق بالإجماع

Ibn Al Hummam Rahimahullah (d.861 AH) has stated that the scholars who are worthy of giving preference (أصحاب الترجيح) have given preference to the view of the *Masail Al Nawadir* (مسائل النواذر). The authors of the *Al Mutun Al Mu'tabarah* (the Reliable Texts – المتون المعتبرة) have also chosen the view of the *Masail Al Nawadir* (مسائل النواذر).

3) **The Mas'alah:**

Is it a condition for the decree of a judge (قاضي) to be valid that the decree is given in a city (مصر)?

The view mentioned in Zahir Al Riwayah (ظاهر الرواية):

It is a condition for the validity of the decree of a judge that the decree is given in a city.

The view mentioned in Masail Al Nawadir (مسائل النواذر):

It is *not* a condition for the validity of the decree of a judge that the decree is given in a city.

Fatwa:

The scholars who are worthy of giving preference (أصحاب الترجيح) have given preference to the view of the *Masail Al Nawadir* (مسائل النواذر) as related by Ibn 'Abidin from Muhammad Al Kurdi Al Bazazi Rahimahullah.

4) **The Mas'alah:**

A person gives testimony that a woman made an admittance of something in front of him. However, the woman was wearing a veil when the testimony was given.

The view mentioned in Zahir Al Riwayah (ظاهر الرواية):

It is necessary for the one who gives testimony that a woman made an admittance of something in front of him to have seen her face when giving the testimony.

The view mentioned in Masail Al Nawadir (مسائل النواذر):

It is not a condition for the one who gives testimony that a woman made an admittance of something in front of him to have seen her face when giving the testimony.

Fatwa:

The scholars who are worthy of giving preference (أصحاب الترجيح) have given preference to the view of the *Masail Al Nawadir* (مسائل النواذر).

Ruling for Scenario 2:

If a view for a Mas'alah is not found in the *Zahir Al Riwayah* (ظاهر الرواية), and a view for the Mas'alah is found in the *Masail Al Nawadir* (مسائل النواذر), the view of the *Masail Al Nawadir* (مسائل النواذر) will be taken **upon the condition** that it does not contradict the principles established in the *Zahir Al Riwayah* (ظاهر الرواية).

Ibn Nujaym Rahimahullah writes:

المسألة حيث لم تذكر في ظاهر الرواية وثبتت في رواية أخرى تعين المصير إليها

“If a Mas'alah is not mentioned in *Zahir Al Riwayah*, and a view is established in another narration, then it shall be given credence”

However, if there is no view from the A'immah of the Madhab in the *Zahir Al Riwayah* (ظاهر الرواية), and there are multiple views from the A'immah in the *Masail Al Nawadir* (مسائل النواذر), then we shall consider the view that the scholars worthy of giving preference (أصحاب الترجيح) give preference to, along with the different means (Murajjihat) of preference which we shall discuss shortly.

Also, if there is no view from the A'immah of the Madhab in the *Zahir Al Riwayah* (ظاهر الرواية), and there are multiple views from the A'immah in the *Masail Al Nawadir* (مسائل النواذر), and there is no preference from the scholars worthy of giving preference (أصحاب الترجيح), then we shall consider the different means of giving preference (Murajjihat) that shall be discussed shortly.

Example of Scenario 2:

The Mas'alah:

The congregational Salah for Zuhr Salah and Jumu'ah Salah begins when a person who is praying his four Sunnah of Zuhr Salah or Jumu'ah Salah completes the Sajdah of his third Rak'ah. What should he do?

The view mentioned in *Zahir Al Riwayah* (ظاهر الرواية):

No view is found.

The view mentioned in *Masail Al Nawadir* (مسائل النواذر):

He should complete the fourth Rak'ah of his Sunnah Salah, and then join the congregational Salah.

Fatwa:

The scholars who are worthy of giving preference (أصحاب الترجيح) have taken this view of the *Masail Al Nawadir* (مسائل النواذر). Therefore, Fatwa shall be given upon it.

There are many examples of this scenario, which you may find in the book *Al Muhit Al Burhani* (المحيط البرهاني) – as we shall discuss soon insha'Allah.

The view of Allamah Kashmiri (d.1304 AH):

Shaykh Badr Alam and Shaykh Ahmad Rada Al Bijlawri has mentioned that ‘Allamah Kashmiri stated in his lessons that whether a view is found in the *Zahir Al Riwayah* (ظاهر الرواية) or not, the view that is more consistent with the Ahadith found on that Mas’alah shall be given preference, even if this view is found in the *Masail Al Nawadir* (مسائل النواذر).

If New Copies of the Books of the *Masail Al Nawadir* (مسائل النواذر) are Found Today

Ibn Amir Al Haj Al Halabi Rahimahullah has written:

لو وجد بعض نسخ النواذر في زماننا لا يحل عزو ما فيها إلى محمد ولا إلى أبي يوسف لأنها لم تشتهر في عصرنا في ديارنا ولم تتداول. نعم! إذا وجد النقل عن النواذر مثلاً في كتاب مشهور معروف كالحداية والمبسوط كان ذلك تعويلاً على ذلك الكتاب

“If some of the copies of the books of *Al Nawadir* are found in our times, it is impermissible to attribute what is in them to [Imam] Muhammad or [Imam] Abu Yusuf, as they (these copies) have not become well-known in our times and in our area and are not used by everyone. Yes! If a reference to *Al Nawadir* is made, for example, in a famous book such as *Al Hidayah* or *Al Mabsut*, then this [shall be attributed to the A’immah] due to the reliance upon these [famous] books”²⁰³

***Masail Al Fatawa Wal Waqiat* (مسائل الفتاوى والواقعات)**

Ibn Abidin (d.1252 AH) defines the *Masail Al Fatawa Wal Waqiat* (مسائل الفتاوى والواقعات) as those rulings which the later Mujtahidin (in the Madhab), who came after the A’immah of the Madhab, deduced when they were asked regarding those Masail for which they could not find a view from the A’immah of the Madhab.

These Mujtahidin (in the Madhab) who deduced these rulings were the students of Imam Abu Yusuf (d.182 AH) and Imam Muhammad (d.189 AH) and the students of their students. These students are many in number and the place to find out more about them is the books written upon the categories and biographies of the Hanafi Fuqaha and the books written in the field of history.

Examples of the students of Imam Abu Yusuf and Imam Muhammad whose rulings are considered a part of this category:

- 1) Isam ibn Yusuf Al Balkhi (d.210 AH)
- 2) Ibrahim ibn Rustum Al Marwazi (d.211 AH)
- 3) Muhammad ibn Sama’ah
- 4) Abu Sulayman Al Jawzjani (d.post 200 AH)

²⁰³ This statement is actually the statement of Ibn Al Hummam in Fath Al Qadir. Ibn Al Hummam stresses that it is important for a Mufti, who is not a Mujtahid, to only attribute a view to the A’immah of the Madhab in one of two cases:

- 1- He has a chain of narration for the view to the A’immah of the Madhab
- 2- The view is found in one of the famous books of the Madhab, such as the books of Imam Muhammad

Ibn Al Hummam writes:

قد استقر رأي الأصوليين أن المفتي هو المجتهد فأما غير المجتهد ممن يحفظ أقوال المجتهد فليس بمفت والواجب عليه إذا سئل أن يذكر قول المجتهد كأبي حنيفة رحمه الله على جهة الحكاية فإنه لا يفتي إلا المجتهد وهو الفقيه فعرف أن ما يكون في زماننا ليس بفتوى بل نقل كلام المفتي ليأخذ به المستفتي وطريق نقله كذلك عن المجتهد أحد أمور:

- 1- إما أن يكون له سند فيه إليه
- 2- أو يأخذه من كتاب معروف تداولته الأيدي نحو كتب محمد بن الحسن ونحوها من التصانيف المشهورة للأئمة المجتهدين المعروفين بالفقه والعدالة والثقة في الرواية لأنه بمنزلة الخبر المتواتر عنهم أو المشهور

Ibn Al Hummam then adds:

Examples of the students of the students of Imam Abu Yusuf and Imam Muhammad whose rulings are considered a part of this category:

- 1) Muhammad ibn Salamah Al Balkhi (d.278 AH)
- 2) Muhammad ibn Muqatil Al Razi (d.248 AH)
- 3) Nusair ibn Yahya (d.268 AH)
- 4) Abul Nasr Muhammad ibn Sallam (d.305 AH)²⁰⁵

Considering that the *Al Fatawa Wal Waqi'at* (الفتاوى والواقعات) contain many Masail which have not been mentioned by the A'immah of the Madhab, we find that the Masail found in *Al Fatawa Wal Waqi'at* (الفتاوى والواقعات) are of four types:

1. These Mujtahidin (in the Madhab) have deduced the ruling using the evidences of the Qur'an and Sunnah based upon the principles of the Madhab (the role of a *Mujtahid Fil Madhab* (مجتهد في المذهب)).
2. These Mujtahidin (in the Madhab) have deduced the ruling by applying analogy on another Mas'alah in which a view is found from the A'immah of the Madhab (the role of a *Mujtahid Fil Mas'alah* (مجتهد في المسألة)).
3. There are some views recorded for the Mas'alah from the A'immah of the Madhab and so these Fuqaha give preference to one view over the others (the role of a *Sahib Al Tarjih* (صاحب الترجيح)).
4. There is a view found for the Mas'alah from the A'immah of the Madhab, however, these Fuqaha give preference to a completely different view due to reasons (*Asbab*) that are apparent to them – such as necessity.

Ibn Abidin Rahimahullah writes:

وقد يتفق لهم أن يخالفوا أصحاب المذهب لدلائل وأسباب ظهرت لهم

“At times, they may contradict the A'immah of the Madhab due to indications and reasons made apparent to them (such as necessity, etc.)

An example of these scholars giving preference to a completely different view:

The A'immah of the Madhab have stated that taking a fee for teaching the Qur'an is impermissible. However, the Mujtahidin (in the Madhab) who have written the *Al Fatawa Wal Waqi'at* (الفتاوى والواقعات) have ruled that it is permissible to take a fee for teaching the Qur'an due to necessity.

²⁰⁴Abu Sulayman Al Jawzjani is the most common narrator of the books of *Zahir Al Riwayah* (ظاهر الرواية). After him, Abu Hafs Al Kabeer is the most common narrator of the books of *Zahir Al Riwayah* (ظاهر الرواية).

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

²⁰⁵In *Usul Al Ifta Wa Adabuhu* and some prints of *Sharh Uqood Rasmi Mufti*, this name has been written as Abul Nasr Al Qasim ibn Sallam, this is incorrect.

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

The first of the books to **gather** the Masail found in the *Al Fatawa Wal Waqi'at* (الفتاوى والواقعات) of the above mentioned Fuqaha were:

- *Kitab Al Nawazil* (كتاب النوازل) by Abu Layth Samarqandi (d.294 AH)²⁰⁶
- *Majmu' Al Nawazil Wal Hawadith Wal Waqi'at* (مجموع النوازل والحوادث والواقعات) by Ahmad ibn Musa Al Kashi (d.550 AH)²⁰⁷
- *Al Waqi'at* (الواقعات) by Allamah Natifi (d.446 AH)
- *Al Waqi'at* (الواقعات) by Sadr Al Shahid (d.536 AH)²⁰⁸
- *Al Tajnis Wal Mazid* (التجنيس والمزيد) by Allamah Ali Murghinani (d.593 AH)

The Hanafi Books of Fiqh and How They Presented the Zahir Al Riwayah (ظاهر الرواية), Masail Al Nawadir (مسائل النواذر) and Masail Al Fatawa Wal Waqi'at (مسائل الفتاوى والواقعات)

There were two ways in which the Masail of Zahirur Riwayah (ظاهر الرواية), Masail Al Nawadir (مسائل النواذر) and Masail Al Fatawa Wal Waqiat (مسائل الفتاوى والواقعات) were gathered in the books of the later scholars:

²⁰⁶It is the first book that gathers the Masail found in the *Al Fatawa Wal Waqi'at* (الفتاوى والواقعات). It is a very good book and there are manuscripts of it that are available. For each Mas'alah, it records the names of the Mujtahid Fil Madhab who gave that ruling. It is a very good book for tracing a Mas'alah in the Hanafi Mathab, for example the Mas'alah of the prohibition of women cutting their hair; some assume that this view originally came from Allamah Zahidi in *Al Qunyah*, however, if one were to look in *Al Nawazil* (النوازل), he would find that the prohibition has been narrated from Abu Bakar Al Iskaaf who was the student of the student of Imam Muhammad and was one of the early scholars who were *Mujtahid fil Mathab* (مجتهد في المذهب).

From the earlier Hanafi Fuqaha, Allamah Abu Layth provided a great service in compiling Masail of the early Fuqaha. He also has a book named *Uyunul Masail* (عيون المسائل) which is a collection of the Masail found in the *Al Nawadir* (النواذر). This is very useful considering that very few books of *Al Nawadir* (النواذر) are found. He also has another very good book by the name of *Khizanatul Fiqh* (خزانة الفقه), it's a Fiqhi primer written before Allamah Saghdī's *Al Nutaf fil Masail* (النتف في المسائل) but in a similar manner to it, it is a very good book for teaching. Sadly, hardly any work has been done on *Khizanatul Fiqh* (خزانة الفقه). There is one good print of *Uyūnul Masail* (عيون المسائل) and *Khizanatul Fiqh* (خزانة الفقه), both in one book, in Baghdad with a tahqeeq made by Salah Al Nahi; however, it's been out of print for years. After this, Darul Kutubul Ilmiyyah have thier edition which is of course not a very good edition.

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

²⁰⁷Al Kashi used Abu Layth Al Samarqandi's *Al Nawazil* (النوازل) in writing *Majmu' Al Nawazil* (مجموع النوازل).

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

²⁰⁸He was the uncle of the author of *Al Muhit Al Burhani* (الحيط البرهاني) His name was Husamud Din Umar ibn Abdil Aziz. He was martyred whilst fighting against the Tatars. He has written many books in the Hanafi Mathab. He was the Allamah of his time. He was a scholar under whom many of the major Hanafi Fuqaha studied. His father taught Allamah Murghinani (d.593 AH) and Imam Qadhi Khan (d.592 AH) amongst others. When the name *Al Waqiat* (الواقعات) is mentioned in general, it is a reference to this book even though *Al Waqiat* (الواقعات) is a whole field. Although his nephew is the author of *Al Muhit Al Burhani* (الحيط البرهاني) his nephew did not study under him, this is a mistake made by many including Allamah Lucknawi. This is impossible considering that Sadrus Shaheed passed away in 536 AH and his nephew was born in 550 AH.

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

- 1) They were presented without differentiation or order. i.e. the Mas'alah was mentioned after which the different views on the Mas'alah were presented without outlining which view is found in *Zahir Al Riwayah* (ظاهر الرواية) or *Masail Al Nawadir* (مسائل النواذر) or *Masail Al Fatawa Wal Waqiat* (مسائل الفتاوى والواقعات).

Books of this type:

- *Fatawa Qadi Khan* (فتاوى قاضيه خان) by Imam Qadi Khan (d.592 AH)
- *Khulasah Al Fatawa* (خلاصة الفتاوى) by Imam Tahir Al Bukhari²⁰⁹

- 2) They were presented in an order through which one could differentiate between the view of the *Zahirur Riwayah* (ظاهر الرواية) and *Masailun Nawadir* (مسائل النواذر) and *Masailul Fatawa Wal Waqiat* (مسائل الفتاوى والواقعات).

Books of this type:

- *Al Muhit Al Ridawi* (الخيطة الرضوي) by Radi Al Din Sarakhsi (d.571 AH) – as stated by Ibn Abidin Rahimahullah

Ibn Abidin mentions that in this book, the author mentions the view of *Zahir Al Riwayah* (ظاهر الرواية) first, then the view of *Masail Al Nawadir* (مسائل النواذر) and then the view of *Masail Al Fatawa Wal Waqiat* (مسائل الفتاوى والواقعات).²¹⁰

This is what Ibn Abidin Rahimahullah has mentioned with regards to the *Al Muhit Al Ridawi* (الخيطة الرضوي) by Radi Al Din Sarakhsi (d.571 AH). However, it seems that Ibn Abidin did not have access to this book, or the *Al Muhit Al Burhani* (الخيطة البرهاني) written by 'Allamah Burhan Al Din Al Bukhari. The reality that became apparent after *Al Muhit Al Burhani* (الخيطة البرهاني) written by 'Allamah Burhan Al Din Al Bukhari was published was that this quality of order and differentiation in presenting the views found in a Mas'alah is actually true for the book *Al Muhit Al Burhani* (الخيطة البرهاني) written by 'Allamah Burhan Al Din Al Bukhari, and not *Al Muhit* by Radi Al Din Al Sarakhsi. Indeed, Imam Burhan Al Din writes in his introduction to his *Al Muhit Al Burhani* (الخيطة البرهاني):

²⁰⁹You will find in most places that Tahir Al Bukhari passed away in 542 AH. However, this is completely incorrect. In fact, he passed away after 600 AH. His *grandfather* passed away in 542 AH.

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

²¹⁰ In this book, Radi' Al Din Al Sarakhsi first mentions the Masail of *Al Asl* (الأصل), he then mentions the Masail of *Al Nawazil* (النوازل) without properly differentiating between the two. After this, he mentions the Mas'alas found in any other books of *Zahirur Riwayah* (ظاهر الرواية) or *Al Nawadir* (النواذر) by stating: for example: "It is written in Jami' Saghir..." (وفي الجامع الصغير). So this is really the differentiation that he made; he put the Masail of the other books of *Zahirur Riwayah* (ظاهر الرواية) and books of *Al Nawadir* (النواذر) separately to the Masail of *Al Asl* (الأصل) and *Al Nawazil* (النوازل). However, the Masail of *Al Asl* (الأصل) and *Al Nawazil* (النوازل) seem to be mixed up. Nonetheless, he does say that I have started off with the Masail of *Al Asl* (الأصل), then the Masail of *Al Nawazil* (النوازل) – because the Masail of *Al Nawazil* (النوازل) are more or less derived from *Al Asl* (الأصل) – then he mentions the Masail found in the other books of *Zahirur Riwayah* (ظاهر الرواية) or books *Al Nawadir* (النواذر).

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

وجمعت مسائل المبسوط والجامعين والسير والزيادات وألحقت فيها مسائل النوادر والفتاوى والواقعات وضممت إليها من الفوائد التي استفدتها من سيدي مولاي والدي تغمده الله تعالى بالرحمة والدقائق التي حفظتها من مشايخ زماني وفصلت الكتاب تفصيلا وجنست المسائل تجنيسا

“I gathered the Masail of Al Mabsut (Al Asl), and the two Jami’ (Al Jami’ Al Kabir and Al Jami’ Al Saghir), and Al Siyar, and Al Ziyadat, and I added to them the Masail Al Nawadir and [Masail] Al Fatawa Wal Waqiat, and I [then] added to them the beneficial points which I understood from my master, my mentor, my father, may Allah shower him with mercy, and [I added to it] the intricate details that I had memorised from the Fuqaha of my time, and I elaborated upon the book clearly, and I separated the Masail clearly”

The researcher of this book, Mufti Taqi Sahib’s nephew, Shaykh Na’im Ashraf states that he came across a copy of *Al Muhit Al Ridawi* (الحيط الرضوي) by Radi Al Din Sarakhsi (d.571 AH), he then states:

طالعت بعض المواضع منها فوجدت المسائل فيها ممزوجة غير مرتبة خلاف ما سمعت ورأيت في كلام بعض المشايخ أنهم ذكروا أن رضي الدين السرخسي ورتب المسائل فدر أولا مسائل ظاهر الرواية ثم النوادر والفتاوى والواقعات بل وجدت هذه الميزة تماما في الحيط البرهاني

“I saw various parts of it, and I found the Masail [of the book] to be admixed without proper order, contrary to what I had heard and seen from the statements of some Fuqaha where they had mentioned that Radi Al Din Sarakhsi had structured Masail such that he had placed [the Masail of] *Zahir Al Riwayah* first, then [the Masail of] *Al Nawadir*, and then the [Masail of] *Al Fatawa Wal Waqiat*. Rather, I found this quality in its entirety in *Al Muhit Al Burhani*”

Alhamdulillah, the book *Al Muhit Al Burhani* (الحيط البرهاني) has been published with his research, thus the matter was found just as Shaykh Na’im had mentioned.

Shah Waliullah’s (d.1176 AH) Categorisation of the Masail of the Hanafi Mathab

(تقسيم الشيخ ولي الله الدهلوي)

Shah Waliullah (d.1176 AH) has categorised the Masail of the Hanafi Mathab into four categories:

- 1) A view found in the *Zahir Al Riwayah* (قسم تقرر في ظاهر الرواية)

Ruling: It will be accepted in all circumstances, whether it follows the principles or not. It is for this reason that you see authors such as Al Hidayah take the liberty of explaining the differences within the Masail of his book, *Al Tajnis Wal Mazid*.

- 2) It is a irregular narration (narrated through weaker chains unlike *Zahir Al Riwayah* (ظاهر الرواية)) from Imam Abu Hanifah and his two students (هو رواية شاذة عن أبي حنيفة وصاحبيه)

Ruling: It will not be accepted unless it follows the principles of the Madhab, there are many examples in Al Hidayah and other books in which preference has been shown to an irregular narration (narrated through weaker chains unlike *Zahir Al Riwayah* (ظاهر الرواية)) due to evidence supporting it.

- 3) It is a view extracted by the later Fuqaha (*Mujtahid Fil Madhab*, *Mujtahid Fil Masail*, and *Sahib Al Takhrij*) that the majority of the Fuqaha have agreed upon (هو تخريج المتأخرين اتفق عليه جمهور الأصحاب)

Ruling: Fatwa will be given upon it in all circumstances.

- 4) It is a view extracted by the later Fuqaha (*Mujtahid Fil Madhab*, *Mujtahid Fil Masail*, and *Sahib Al Takhrij*) that the majority of the Fuqaha have not agreed upon (هو تخريج المتأخرين لم يتفق عليه جمهور الأصحاب)

Ruling: The Mufti will analyse it by comparing it with the principles and maxims of the Madhab which have been mentioned by the earlier Fuqaha, if the view concurs with the principles, the Mufti will take it, otherwise, he will leave it.

‘Allamah Abdul Hayy Lucknawi (d.1304 AH) has recorded this categorisation of Shah Waliullah. He then states:

لعلك تنظن من هذا البحث أنه ليس كل ما في الفتاوى المعتبرة المختلفة كخلاصة والظهيرية وفتاوى قاضي خان وغيرها من الفتاوى التي لم يميز أصحابها بين المذهب والتخريج وغيره قول أبي حنيفة وصاحبيه بل منها ما هو منقول عنهم ومنها ما هو مستنبط الفقهاء ومنها ما هو مخرج الفقهاء فيجب على الناظر فيها أن لا يتجاسر على نسبة كل ما فيها إليهم بل يميز بين ما هو قولهم وبين ما هو مخرج بعدهم ومن لم يميز بين ذلك وبين هذا أشكل الأمر عليه ألا ترى في مسئلة العشر في العشر في بحث الحياض فإن الفتاوى مملوؤة باعتباره والفتوى عليه مع أنه ليس مذهب صاحب المذهب وإنما مذهبه كما صرح به محمد في الموطأ وقدماء أصحابنا هو أنه لو كان الخوض بحيث لا يتحرك أحد جوانبه بتحريك الجانب الآخر لا يتنجس بوقوع النجاسة فيه وإلا يتنجس ومن لم يتفطنه وظن أنه مذهب صاحب المذهب تعسر عليه تأصيله على أصل شرعي معتمد عليه

“You have probably understood from this discussion that not everything found in the various reliable books of Fatawa such as Al Khulasah (Khulasah Al Fatawa), [Fatawa] Al Zahiriyyah, Fatawa Qadi Khan, and other books of Fatawa which do not differentiate between the [view of the A’immah of the] Madhab and the [views] extracted [by the later Fuqaha] is the view of [Imam] Abu Hanifah and his two students. Rather, some of that which is found in these [books] is established from them (the A’immah of the Madhab) while some of it has been *deduced* by the [later] Fuqaha and some of it has been *extracted* by the [later] Fuqaha. Thus, it is incumbent upon the onlooker that he does not rush in attributing all that is in these [books] to them (the A’immah of the Madhab). Rather, he should distinguish between that which is their (the A’immah of the Madhab) view and that which has been extracted by those who came after them. The matter shall become difficult for the one who does not differentiate between that (the view of the A’immah) and this (the view of the later Fuqaha); do you not see the Mas’alah of 10 by 10 in the discussion on reservoirs? For indeed, the [books] of Fatawa are filled with consideration [of the 10 by 10 view] and Fatwa is issued upon it despite the fact that it was not the view of the Imam of the Madhab, rather, his view, as explicitly mentioned by [Imam] Muhammad in Al Muwatta and by the earlier Fuqaha, was that if the reservoir is such that one part of it does not move by moving another part of it, then the water [in the reservoir] shall not become impure by impurity falling in it, otherwise, it shall become impure. He who does not understand this, and assumes that it (the 10 by 10 view) is the view of the Imam of the Madhab shall find it difficult to fit it (the view) under a reliable principle of Shari’ah”

After this, ‘Allamah Lucknawi has mentioned another categorisation for the Masail of the Hanafi Madhab, this categorisation is in terms of the strength of Shari’ah evidence for each Mas’alah. He then mentions that if it becomes apparent for a deeply knowledgeable person that the view of his Imam contradicts an authentic Hadith, then he should act according to the Hadith, this shall not take him away from Taqlid. Indeed, this is only found in the one who has the capability of looking into the evidences of Shari’ah and we have mentioned the conditions for this and its etiquettes in the discussion on Taqlid.

As for a Hanafi Mufti who is a Muqallid and is not capable of looking into the evidences of Shari’ah, it is incumbent upon him to follow the rules set out by Ibn Abidin in his *Sharh Uqud Rasm Al Mufti*.

The Various Titles of Books Found in the Hanafi Fiqh books and their References

There are many titles given to the various books in the Hanafi Madhab, these titles include:

Title	Reference
Al Asl	It is a reference to Al Mabsut of Imam Muhammad
Al Kitab	It is a reference to the Al Mukhtasar written by Imam Al Quduri

Zahir Al Madhab	It is a reference to the Masail of Zahir Al Riwayah
Al Usul	It is a reference to the Masail of Zahir Al Riwayah
Ghayr Zahir Al Riwayah	It is a reference to “Al Amali”, Al Nawadir, Al Riqiyyat, Al Haruniyyat, and Al Kaysaniyyat
Al Mabsut	It is a reference to the Al Mabsut by Shamsul A’immah Al Sarakhsi ²¹¹
Al Mutun Al Arba’ah	It is a reference to a collection of four books: <ul style="list-style-type: none"> ➤ Al Mukhtasar by Imam Al Quduri ➤ Wiqayah Al Riwayah by Mahmud ibn Ahmad Al Mahbubi (d.673 AH) ➤ Kanz Al Daqaiq by Abul Barakat Hafiz Al Din Al Nasafi (d.710 AH) ➤ Majma’ Al Bahrain by Ibn Sa’ati (d.694 AH)
Al Mutun Al Thalathah	It is a reference to a collection of three books: <ul style="list-style-type: none"> ➤ Al Mukhtasar by Imam Al Quduri ➤ Al Wiqayah Al Riwayah by Mahmud ibn Ahmad Al Mahbubi (d.673 AH) ➤ Kanz Al Daqaiq by Abul Barakat Hafiz Al Din Al Nasafi (d.710 AH)
Al Muhit	It is a reference to Al Muhit Al Burhani. However, in some books, it may be a reference to Al Muhit Al Ridawi by Radi Al Din Al Sarakhsi, which is also known as Al Muhit Al Sarakhsi.
Al Kafi	At times it is used as a reference to Al Kafi by Hakim Al Shahid, while other times it is used as a reference to Al Kafi Sharh Al Wafi by Hafiz Al Din Al Nasafi. The one possible way to differentiate between the two is that Hafiz Al Din Al Nasafi passed away in 710 AH. Therefore, books that quote Al Kafi before this time shall generally be referring to Al Kafi by Hakim Al Shahid.

The Various Letters Found in the Hanafi Fiqh books and their References

Letter	Found In	Reference To
أ	Mikhzan Al Fiqh by Musa ibn Musa Al Almasi	Ghurur Al Ahkam by Mulla Kusrow Rahimahullah (d.885 AH)
ب	Waqi’at Al Husami by Al Sadr Al Shahid Rahimahullah	Al Fatawa by Abu Bakr Al Kumari Rahimahullah
	Kashful Haqaiq by Abdul Hakim Al Afghani	Al Bahr Al Ra’iq by Ibn Nujaym Rahimahullah (d.970 AH)
	Al Fatawa Al Ghiyathiyyah by Dawud ibn Yusuf Al Khatib Rahimahullah	Majmu’ of Muhammad ibn Abi Al Qasim Al Baqqali Rahimahullah
بد	Manzumah of Ibn Wahban	Bada’i’ Al Sana’i’ by ‘Allamah Kasani Rahimahullah
بش	Manzumah of Ibn Wahban	Sharh Mukhtasar Al Tahawi by Abu Bakr Al Razi
ت	Al Qunyah Al Munyah Li Tatmim Al Ghunyah by Najm Al Din Al Zahidi	Al Waqi’at by Al Natifi
	Kashf Al Haqaiq by Abdul Hakim Al Afghani	Nataij Al Afkar by Qadi Zadah
تف	Manzumah of Ibn Wahban	Tatimah Al Fatawa by Burhan Al Din Al Bukhari

²¹¹ It is important to understand this point. While it may seem obvious, there is a Mas’alah mentioned in Rad Al Muhtar in Kitab Al Sawm. The Mas’alah is pertaining the issue of when an individual sees the moon for Ramadan outside of the city and gives testimony to the judge that he has seen the moon for Ramadan. Ibn Abidin quotes the author of Al Nihayah who quotes ‘Al Mabsut’ to say that the testimony shall be accepted. Ibn Abidin then quotes the ‘Al Muhit’ who states that it is mentioned in ‘Zahir Al Riwayah’ that the testimony shall be accepted. Ibn Abidin then writes:

ففيه التصريح بأنه ظاهر الرواية وهو كذلك لأن "المبسوط" من كتب ظاهر الرواية أيضا

“In this (i.e. the statement of ‘Al Muhit’) is an explicit mentioned that it (i.e. the view that his testimony shall be accepted) is the ‘Zahir Al Riwayah’ and indeed it is like this, as ‘Al Mabsut’ is from the books of Zahir Al Riwayah as well”

(Ibn Abidin Al Shami Rahimahullah, “Raddul Muhtar”, (Damascus: Dar Al Thiqaafah Wal Turath, 2000), v.6, pg.241)

Thus, Ibn Abidin saw the quote of Al Nihayah in which he has quoted ‘Al Mabsut’ and assumed that this is a reference to the ‘Al Mabsut’ of Imam Muhammad. Nonetheless, the view is a part of Zahir Al Riwayah and is the accepted view of the Madhab. However, the statement of ‘Al Mabsut’ quoted in Al Nihayah is the statement of Shamsul A’immah Al Sarakhsi and not the statement of Imam Muhammad as Ibn Abidin has understood it.

جس	Al Qunyah Al Munyah Li Tatmim Al Ghunyah by Najm Al Din Al Zahidi	Al Ajnas by Al Natifi
	Manzumah of Ibn Wahban	Al Tajnis Wal Mazid by Ali Al Murghinani
جص	Al Qunyah Al Munyah Li Tatmim Al Ghunyah by Najm Al Din Al Zahidi	Al Jami' Al Saghir by Imam Muhammad
جك	Al Qunyah Al Munyah Li Tatmim Al Ghunyah by Najm Al Din Al Zahidi	Al Jami' Al Kabir by Imam Muhammad
جم	Manzumah of Ibn Wahban	Al Jami' Al Kabir by Imam Muhammad
حق	Manzumah of Ibn Wahban	Al Hawi Al Qudsi by Ahmad ibn Muhammad Al Ghaznawi Rahimahullah
خ	Mikhzan Al Fiqh by Musa ibn Musa Al Almasi	Al Mukhtar Lil Fatwa by Al Mawsili Rahimahullah
خا	Manzumah of Ibn Wahban	Khizanah Al Akmal Fil Furu by Yusuf ibn Ali Al Marjani
خف	Manzumah of Ibn Wahban	Khulasah Al Fatawa by Tahir Al Bukhari Rahimahullah
در	Kashf Al Haqaiq by Abdul Hakim Al Afghani	Al Dur Al Mukhtar by Al Haskafi Rahimahullah
ذ	Al Fatawa Al Ghiyathiyyah by Dawud ibn Yusuf Al Khatib Rahimahullah	Dhakhirah Al Fatawa by Burhan Al Din Al Bukhari Rahimahullah
رن	Manzumah of Ibn Wahban	Al Rawdah by Al Natifi Rahimahullah
ز	Al Qunyah Al Munyah Li Tatmim Al Ghunyah by Najm Al Din Al Zahidi	Al Ziyadat by Imam Muhammad
	Kashf Al Haqaiq by Abdul Hakim Al Afghani	Kanz Al Daqaiq by Hafiz Al Din Al Nasafi Rahimahullah
	Al Fatawa Al Ghiyathiyyah by Dawud ibn Yusuf Al Khatib Rahimahullah	Najm Al Fiqh by Al Zandawisati
ش	Al Fatawa Al Ghiyathiyyah by Dawud ibn Yusuf Al Khatib Rahimahullah	Either Al Shamil Fil Fiqh by Isma'il ibn Al Husayn Al Bayhaqi (d.402 AH)) or Al Shamil Fil Fiqh by Umar ibn Ishaq Al Ghaznawi Rahimahullah (d.773 AH)
طس	Manzumah of Ibn Wahban	Sharh Mukhtasar Al Tahawi by Al Isbijabi (d.535 AH)
ظ	Al Fatawa Al Ghiyathiyyah by Dawud ibn Yusuf Al Khatib Rahimahullah	Al Fatawa Al Zahiriyah by Zahir Al Din Al Murghinani (d.506 AH)
ع	Waqi'at Al Husami by Al Sadr Al Shahid Rahimahullah and Al Fatawa Al Ghiyathiyyah by Dawud ibn Yusuf Al Khatib Rahimahullah	Uyun Al Masail by Abu Layth Al Samarqandi Rahimahullah (d.373 AH)
عن	Manzumah of Ibn Wahban	Uyun Al Masail by Abu Layth Al Samarqandi Rahimahullah (d.373 AH)
ف	Kashful Haqaiq by Abdul Hakim Al Afghani	Fathul Qadir by Ibn Al Hummam (d.861 AH)
فتخ	Al Qunyah Al Munyah Li Tatmim Al Ghunyah by Najm Al Din Al Zahidi	Fatawa Khuwahir Zadah by Abu Bakr Khuwahir Zadah (d.
فخ	Manzumah of Ibn Wahban	Fatawa Al Khasi by Yusuf ibn Ahmad Al Khawarizmi Rahimahullah (d.592 AH)
فص	Manzumah of Ibn Wahban	Kitab Al Fusul by Al Asrushni Rahimahullah (d.632 AH)
فظ	Manzumah of Ibn Wahban	Al Fatawa Al Zahiriyah by Zahir Al Din Al Murghinani
فق	Manzumah of Ibn Wahban	Fatawa Qadi Khan by Qadi Khan
ق	Mikhzan Al Fiqh by Musa ibn Musa Al Almasi	Lataif Al Isharat by Ibn Qadi Samawinah

قر	<i>Manzumah of Ibn Wahban</i>	Sharh Mukhtasar Al Quduri by Najm Al Din Al Zahidi
قن	<i>Manzumah of Ibn Wahban</i>	Al Qunyah Al Munyah Li Tatmim Al Ghunyah by Najm Al Din Al Zahidi
ك	<i>Kashful Haqaiq</i> by Abdul Hakim Al Afghani	Al Kifayah Sharh Al Hidayah by Jalal Al Din Al Khawarizmi Rahimahullah
كنز	<i>Manzumah of Ibn Wahban</i>	Tabyin Al Haqaiq Sharh Kanz Al Daqaiq by Al Zayla'i
م	<i>Jami' Al Mudmarat Wal Mushkilat</i> by Yusuf ibn Umar Al Kaduri	Al Manafi; which is most probably Al Manafi' Fi Fawaid Al Nafi' by Ali ibn Muhammad Al Ramishi Rahimahullah (d.666 AH)
مب	<i>Manzumah of Ibn Wahban</i>	Al Mabsut by Shamsul A'immah Al Sarakhsi Rahimahullah (d.483 AH)
مح	<i>Manzumah of Ibn Wahban</i>	Al Muhit; which is most probably Al Muhit Al Burhani by Burhan Al Din Al Bukhari Rahimahullah (d.616 AH)
ن	<i>Waqi'atul Husami</i> by Al Sadr Al Shahid Rahimahullah and <i>Al Fatawa Al Ghiyathiyyah</i> by Dawud ibn Yusuf Al Khatib Rahimahullah	Al Nawazil by Abu Layth Al Samarqandi Rahimahullah (d.373 AH)
	<i>Mikhzan Al Fiqh</i> by Musa ibn Musa Al Almasi	Uyun Al Masail by Abu Layth Al Samarqandi Rahimahullah (d.373 AH)
نت	<i>Kashful Haqaiq</i> by Abdul Hakim Al Afghani	
ه	<i>Jami' Al Mudmarat Wal Mushkilat</i> by Yusuf ibn Umar Al Kaduri and <i>Mikhzan Al Fiqh</i> by Musa ibn Musa Al Almasi	Al Hidayah Sharh Bidayah Al Muftadi by Al Murghinani
ها	<i>Kashful Haqaiq</i> by Abdul Hakim Al Afghani	Al Hidayah Sharh Bidayah Al Muftadi by Al Murghinani
هد	<i>Manzumah of Ibn Wahban</i>	Al Hidayah Sharh Bidayah Al Muftadi by Al Murghinani
و	<i>Waqi'atul Husami</i> by Al Sadr Al Shahid Rahimahullah and <i>Al Fatawa Al Ghiyathiyyah</i> by Dawud ibn Yusuf Al Khatib Rahimahullah	Al Waqi'at by Al Natifi
وخ	<i>Manzumah of Ibn Wahban</i>	Kitab Al Waqf by Al Kassaf
ي	<i>Jami' Al Mudmarat Wal Mushkilat</i> by Yusuf ibn Umar Al Kaduri	<i>Al Yanabi'</i> ; which is most probably Al Yanabi' Fi Ma'rifah Al Usul Wal Tafari' Sharh Mukhtasar Al Quduri by Muhammad/Mahmud Al Rumi (he was alive in 616 AH)
	<i>Kashful Haqaiq</i> by Abdul Hakim Al Afghani	<i>Tabyin Al Haqaiq Sharh Kanz Al Daqaiq</i> by Al Zayla'i
	<i>Al Fatawa Al Ghiyathiyyah</i> by Dawud ibn Yusuf Al Khatib Rahimahullah	<i>Al Fatawa</i> by Abu Bakr Al Kamari Rahimahullah

Eleven Principles Understood From Uqud Rasmi Mufti

(تلخيص قواعد رسم المفتي)

Principle 1: The Conditions required to be a Mufti (شروط المفتي)

لا يجوز الإفتاء لمن لم يتعلم الفقه لدى أساتذة مهرة وإنما طالع الكتب الفقهية بنفسه كما لا يجوز الإفتاء لكل من تعلم الفقه لدى الأساتذة حتى تحصل له ملكة يعرف بها أصول الأحكام وقواعدها وعللها ويميز الكتب المعتبرة من غيرها

“It is not permissible for one who not studied Fiqh under expert teachers and has merely researched the books of Fiqh on his own to issue a Fatwa, just as it is impermissible for anyone who has studied Fiqh under expert teachers to issue a Fatwa until he has gained an ability with which he is able to understand the principles of the rulings [of Shari’ah] and its compendiums and its reasons and he is able to differentiate the reliable books from other books”

Ibn Abidin (d.1252 AH) has related the above ruling from the Fatawa of Ibn Hajar Al Haytami. What Ibn Abidin Rahimahullah has mentioned is related to the requirements needed to be a legitimate Mufti. These requirements have been explained by the Fuqaha in their books. The summary of what they have explained is that there are six conditions required in a Mufti:

1. Maturity
2. Sanity of mind
3. Knowledge
4. Experience
5. Trustworthiness
6. Acceptance from the Ulama

We shall now discuss some of these requirements with some detail.

Requirements needed to be a Mufti (شروط أهلية المفتي)

Maturity & Sanity of Mind of a Mufti

It is necessary that a Mufti is mature and has a sane mind.²¹² These are two general qualities which are necessary for the validity of any important action.

²¹² What is the requirement in terms of piety for an individual to be a Mufti?

Abu Layth Al Samarqandi records in Fatawa Al Nawazil:

سئل أبو نصر عن الفتوى قال بلغني عن محمد بن الحسن أنه سئل متى يحل للرجل أن يفتي قال لو كان صوابه أكثر من خطايه

“Abu Nasr was asked regarding [issuing a] Fatwa, he said, ‘it has reached me from Muhammad ibn Al Hasan that he was asked, “When is it permissible for a man to issue a Fatwa?” He replied, “When his righteousness is more than his wickedness””

(Abu Layth Al Samarqandi, “Fatawa Al Nawazil”, (Manuscript: Al Azhariyyah), pg. 268)

This view has also been recorded by Ibn Shihnah from Al Multaqat, he writes:

مسألة لا يصير الرجل أهلاً للفتوى ما لم يكن صوابه أكثر من خطئه وذلك لأن صوابه متى كثر غلب والمغلوب في مقابلة الغالب ساقط كذا في الملتقطات

“A Mas’alah: a person shall not become worthy of issuing a Fatwa until his righteousness is more than his wickedness, this is because when his righteousness increases, it overpowers, and the overpowered is not considered in comparison to the overpowering, as has been mentioned in the Al Multaqat”

(Ibn Shihnah, “Lisan Al Hukkam”, (Bierut: Darul Fikr, n.a.), pg.219)

The Fuqaha have explicitly mentioned that it is *not* necessary for a Mufti to be a free person or a male. Hence a servant or female can become a Mufti if they fulfil the other conditions of being a Mufti. Ibn Salah Rahimahullah writes:

ولا يشترط في المفتي الحرية والذكورة كما في الراوي وينبغي أن يكون كالراوي أيضا في أنه لا تؤثر فيه القرابة والعداوة وجر النفع ودفع الضرر لأن المفتي في حكم من يخبر عن الشرع بما لا اختصاص له بشخص وكان في ذلك كالراوي لا كالشاهد وفتواه لا يرتبط بها إلزام بخلاف القاضي

“It is not a condition in a Mufti that he be a free individual or a male as is the case with a narrator of Hadith.

However, it is appropriate for a Mufti to behave like a narrator of Hadith in the sense that he is not affected by relationships or enmity or the desire for benefit or the desire to avert harm, this is because a Mufti is in the ruling of the one informs on behalf of the Shari’ah without any preferential treatment towards any individual, and he is like a narrator of Hadith in this, not like a witness. His Fatwa shall not be enacted with force, unlike the decree of a judge”

Ibn Salah compares a Mufti to a narrator of Hadith; hence, much like a narrator of Hadith, a Mufti may give a Fatwa to a close relative or he may give a Fatwa that benefits himself, unlike a witness.

Knowledge of a Mufti

It is a condition for a Mufti to have knowledge (علم).

Allah the Almighty says:

قُلْ إِنَّمَا حَرَّمَ رَبِّي...وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لَا تَعْلَمُونَ

“Say! Indeed my Lord has prohibited...that you say upon Allah that which you do not know”

[Surah Al A’raf, verse 33]

The Prophet Sallallahu Alayhi Wasallam said:

مَنْ أُفْتِيَ بِغَيْرِ عِلْمٍ كَانَ إِثْمُهُ عَلَى مَنْ أْفْتَاهُ

“Whoever is given a Fatwa without knowledge, then his sin is upon the one who issued the Fatwa to him”

[Sunan Abi Dawud, the chapter of precaution in issuing a Fatwa]

How much knowledge is required before a person can be a Mufti?

There is a long discussion amongst the scholars of *Usul* over this issue.

The early scholars stipulated that a Mufti must be a Mujtahid.²¹³ A group of Fuqaha have mentioned that amongst the conditions of being a Mufti is that the Mufti is a Mujtahid. Thus, it is impermissible for a Muqallid to issue a Fatwa to someone else, it is only permissible for him to perform his own actions through Taqlid.

²¹³ Ibn Al Mubarak said:

قيل لابن المبارك متى يجوز للرجل أن يفتي قال إذا كان بصيرا في الرأي عالما بالأثر

“It was said to Ibn Al Mubarak, ‘when is it permissible for a man to issue a Fatwa?’ He replied, ‘when he has intuition in analogical deduction and has knowledge of the narrations (Ahadith)’”

(Abu Layth Al Samarqandi, “Fatawa Al Nawazil”, (Manuscript: Maktabah Al Azhariyyah), Waraqah: 271, Side: Alif)

Ibn Shihnah has recorded a consensus of the Fuqaha on this issue. He writes in *Lisan Al Hukam*:

وأجمع الفقهاء أن المفتي يجب أن يكون من أهل الإجتihad

“And the Fuqaha have held a consensus that it is necessary (wajib) for a Mufti to be from amongst the scholars who are capable of Ijtihad”

(Ibn Shihnah, “Lisan Al Hukkam”, (Beirut: Darul Fikr, n.a.), pg. 218)

Hence, Hafiz Ibn Salah has recorded from Al Imam Al Halimi, the Imam of the Shafi'i' Fuqaha of transoxianna and Qadhi Abul Mahasin Al Ruyani, the author of Bahr Al Madhab, and others, may Allah have mercy upon them, that it is not permissible for a Muqallid to issue a Fatwa in matters in which he has performed Taqlid.

Eventually, the Fuqaha became lax in this issue due to the needs of the time, and due to the scarcity of the Mujtahidin, or rather, their disappearance. Thus, the later Fuqaha gave permission for a non-Mujtahid to issue a Fatwa by extracting the answer from the Madhab of a Mujtahid. Shaykh Abu Muhammad Al Juwayni relates in his commentary upon the Al Risalah of Imam Al Shafi'i' from his teacher, Abu Bakr Al Qaffal Al Marwazi, that it is permissible for one who has memorised the Madhab and texts of an Imam who holds a Madhab to issue a Fatwa according to it (the Madhab), even if he does not know the intricacies and in-depth realities of the Madhab.

However, this was opposed by Shaykh Abu Muhammad who said that it is impermissible for him to issue a Fatwa based upon another individual's Madhab when he is not a complete master of that Madhab; such that he knows the intricacies and in-depth realities of the Madhab, just as it is impermissible for a layman who has gathered the Fatawa of various Muftis, to issue a Fatwa according to what he has gathered. Indeed, if he is a complete master of that Madhab, then it is permissible for him to issue a Fatwa in accordance to it.

Hafiz Ibn Al Qayyim Rahimahullah has related a difference of opinion in this manner too. He has then given preference to the view that it is permissible for a non-Mujtahid to issue a Fatwa when there is a need and in the absence of a Mujtahid scholar.

'Allamah Ibn Daqiq Al Id Rahimahullah states, "To confine the issuance of a Fatwa to a Mujtahid can lead to great difficulty, or it can lead to allowing the creation to follow their desires, thus the preferred view is that if the narrator who is narrating from the early Imams is trustworthy and able to understand the statement of the Imam relates this statement to a Muqallid, then this shall be sufficient. This is because, by adopting this method, the layman shall be convinced that the command given to him is the command of Allah. Indeed, a consensus is found in our age upon the permissibility of this form of Fatwa. This is whilst knowing that with regards to the Masail of menstruation, the wives of the Sahabah would have reverted to whatever their husbands would have narrated to them from the Prophet Sallallahu Alayhi Wasallam. This is what Ali Radiyallahu Anhu did when he sent Miqdad ibn Al Aswad in the story of seminal fluid. In our case, this is even more apparent, as reverting to the Prophet Sallallahu Alayhi Wasallam was possible at that time, whereas for a Muqallid to now revert to the A'immah of the past is difficult. Indeed, the people are unanimous upon the validity of the decrees of the judges even though the conditions of Ijtihad are not found in them in this day and age".

However, it is important to note that the meaning of the permissibility for a Muqallid to issue a Fatwa is that he is a transcriber of the Fatwa of his Imam; he himself is not a *Mufti*.²¹⁴ Ibn Al Salah said, "The view of those who have said that it not permissible for one to give a Fatwa in this manner (as a Muqallid), the meaning of this is that he should not issue the Fatwa in the same manner as that which he speaks of his own volition, rather, he should attribute the Fatwa to someone else, and he should relate the Fatwa from the Imam whom he follows (Taqlid). So based upon this, those individuals who have performed Taqlid whom we have considered from amongst the categories of a Mufti are, in reality, not from amongst the Muftis. Rather, they stand in place of the Muftis and deliver on behalf of them, and so they are considered from amongst them. Their approach to Fatawa should be that they say, "The Madhab of Al Shafi'i' is so and so" or "the stance of his Madhab is so and so" or similar words to this. If a person does not attribute the Fatwa to his Imam sufficing with the fact that the current state is so clear that he does not need to explicitly mention [that he is quoting the Shafi'i' Madhab, then there is no problem with this".

The meaning of Ibn Salah's final statement is that when a Mufti is known to issue a Fatwa upon a specific Madhab, for example the Hanafi Madhab or Shafi'i' Madhab, then there is no need for him to explicitly mention this every single time.

²¹⁴ A Muqallid will be a Mufti in a metaphoric (مجازي) meaning

Ibn Al Hummam and his student, Ibn Amir Al Haj, have discussed in great detail the issue of whether a Muqallid can issue a Fatwa. The conclusion that Ibn Amir Al Haj has finally come to is the same conclusion that Ibn Salah came to. Ibn Amir writes, "In the commentary of Al Hidayah written by the author (Ibn Al Hummam), after relating that it has been mentioned that a Fatwa should not be given except by a Mujtahid, he (Ibn Al Hummam) writes, 'Indeed, the view of the scholars of *Usul* has held that a Mufti is one who is a Mujtahid. As for a non-Mujtahid who knows the views of the Mujtahidin, he is in reality not a Mufti, it is incumbent upon him when he is asked a Fatwa that he mentions the view of a Mujtahid such as Imam Abu Hanifah as a form of reference. Thus, it is known that what occurs (i.e. the answers written by the scholars) in this day and age is not in reality a Fatwa, rather, it is the quotation of a Mufti (a Mujtahid), which the questioner may take (act upon). The manner in which it (the Fatwa) is quoted from a Mujtahid is in one of two ways:

- 1- Either it has a chain of narration leading to the Mujtahid
- 2- Or he has taken the view from a famous book which the people use, such as the books of [Imam] Muhammad ibn Al Hasan and other famous books of the Mujtahidin. This is because the views found in such books are equivalent to an indisputably established (Mutawatir) or famously established (Mashur) narration from the Mujtahidin. Al Razi has mentioned similar to this."

Is it necessary for a Mufti to know²¹⁵ the evidences of his Imam? (هل يشترط للمفتي بمذهب أن يعرف دليله؟)

It has been recorded from Imam Abu Hanifah (d.150 AH) and others from amongst the Mujtahidin of the Madhab:

لَا يَحِلُّ لِأَحَدٍ أَنْ يُفْتِيَ بِقَوْلِنَا حَتَّى يَعْلَمَ مِنْ أَيْنَ قُلْنَا

"It is not permissible for anyone to issue a Fatwa upon our view without knowing the reasoning behind the view"²¹⁶

However, Ibn Abidin (d.1252 AH) has mentioned two possible connotations of the statement in reference:

- 1) The statement is directed towards a *Mujahid Mutlaq* (مجتهد مطلق). Hence, a *Mujahid Mutlaq* (مجتهد مطلق) cannot follow the view of another Imam (i.e. another individual) in a Mas'alah until he knows the evidence behind the view.
- 2) The statement is directed towards a *Mujtahid Fil Madhab* (مجتهد في المذهب). Hence, a *Mujtahid Fil Madhab* (مجتهد في المذهب) cannot extract new Masail and new rulings based upon a view of his Imam until he finds out the evidence of that view upon which he is basing the new Masail and new rulings. This is apparent, for indeed extracting new Masail and new rulings based upon a view is not possible without knowing the evidence and reasoning behind the view upon which the new Masail and new rulings shall be based.

It is apparent that there is no contradiction between both possibilities and thus, both meanings could have been intended.

²¹⁵ Ibn Abideen has explained in Sharh Uqood that the meaning of 'knowing' here means the action of knowing whether a certain evidence has any contradictory evidences; this would require an in depth knowledge of evidences which only a Mujtahid is capable of. This is what is meant by 'knowing the evidence of the Imam/Mujtahid'. As for knowing that the Imam/Mujtahid has deducted so and so ruling using so and so evidence, there is no benefit in this.

²¹⁶ Abu Layth Al Samarqandi has recorded this view from the A'immah of the Madhab. He writes in Fatawa Al Nawazil:

سمعت الفقيه أبا جعفر قال سمعت أبا بكر أحمد بن محمد بن سهل القاضي عن حمد بن سهل عن عصام بن يوسف قال قدمت الكوفة فوجدت أربعة من أصحاب أبي حنيفة منهم زفر بن الهذيل وأسد بن عمر وعافية بن يزيد وآخر كلهم ذكروا عن أبي حنيفة أنه قال لا يحل لأحد أن يفتي بقولنا ما لم يعلم من أين قلنا

The reasoning behind these two possibilities is that a Mufti in reality is a Mujtahid – either *Mujahid Mutlaq* (مجتهـد مطلق) or *Mujtahid Fil Madhab* (مجتهـد في المذهب) – as we have discussed earlier. Thus, Imam Abu Hanifah and the A’immah of the Madhab could not have intended a Mufti who is not a Mujtahid as a Mufti who is not a Mujtahid is not really a Mufti, rather, he is a transcriber of the Fatwa of his Imam, as mentioned by Ibn Salah and Ibn Al Hummam.

Requirements needed when a Mufti who is a Muqallid relates the Fatwa of his Imam (ما يشترط للمفتي المقلد عند نقل فتوى الإمام)

When a Mufti who is not a Mujtahid records the view of his Imam, then his recording should not be reckless. Rather, he requires knowledge, astutemess, and a jurisprudential ability without which he cannot stand as a Mufti.

He requires these three qualities in the following six points:

- 1) It is necessary for him to properly check the view of a Mujtahid, and ensure that what he attributes towards him is authentic. Thus, at times, mistakes are found in recording a view from the Mujtahid. Ibn Abidin has given many examples of such mistakes taking place. The Mufti should be able to differentiate between the views that have erroneously been attributed to the Imam and the views that have rightly been attributed to him. At times, one book erroneously attributes a view to the Imam and the rest of the books copy what is written in this book.

Ibn Abidin Rahimahullah writes:

وقد يتفق نقل قول في نحو عشرين كتاباً من كتب المتأخرين ويكون القول خطأ خطأ به أول واضح له فيأتي من بعده وينقله عنه وهكذا ينقل بعضهم عن بعض
 “At times, it so happens that a single view in close to twenty books has been copied from the books of the later Fuqaha, whereas the view is a mistake made by the first individual to record the view, thus those who came after him copied it and like this, they copied this incorrect view from one another.”

Ibn Abidin laments that this problem may be exacerbated if the scholars of the time are unwilling to accept that the book they are relying upon has an error in it. He relates that he once issued a Fatwa regarding Waqf in accordance to what he found in the majority of the reliable Hanafi books. However, this Fatwa was contrary to what was written in *Al Dur Al Mukhtar* (الدر المختار). Hence, when Ibn Abidin’s Fatwa came into the hands of a group of Muftis in the country, a group of Muftis responded by writing a Fatwa according to what was written in *Al Dur Al Mukhtar* (الدر المختار) next to Ibn Abidin’s Fatwa. In fact, some of them added the following sentence:

إِنَّ هَذَا الَّذِي فِي الْعَلَانِي هُوَ الَّذِي عَلَيْهِ الْعَمَلُ لِأَنَّهُ غُمْدَةُ الْمُتَأَخِّرِينَ وَإِنَّهُ إِنْ كَانَ عِنْدَكُمْ خِلَافُهُ لَا نَقْبَلُهُ مِنْكُمْ

“Surely this, what has been written in *Al ‘Ala’* is the acted upon view as it (*Al Durrul Mukhtar* (الدر المختار)) is the pride of the later scholars. Indeed, if you have by you that which is contradictory to it, then we shall not accept it from you”²¹⁷

Ibn Abidin laments that if only these Muftis had seen the footnotes written by Ibrahim Al Halabi upon *Al Dur Al Mukhtar* (الدر المختار), they would have realised that the Fatwa given in *Al Dur Al Mukhtar* (الدر المختار) is an error.

²¹⁷ In our age, it seems that this is now found with Ibn Abidin’s book, *Raddul Muhtar* (رد المختار). Hence, very few Ulama of our time accept that there are errors in *Raddul Muhtar* (رد المختار) as well.

Ibn Abidin then presents some examples of how a single view may be found in many books – despite the view being an error – as each author copied the view from the author that came before him.

Examples erroneous attributions to the Hanafi Madhab:

▪ **Error:**

The author of *Al Sirājul Wahāj* (السراج الوهاج) and *Al Jawharah Al Nayyirah* (الجمهرة النيرة), Abu Bakr Al Haddad (d.800 AH), has mentioned that the view of the Hanafi Madhab is that it is permissible to hire a person to **recite** the Qur'an for a fee. Many Fuqahā who followed, such as the author of *Al Bahr Al Rā'iq* (البحر الرائق), copied this view into their books as the opinion upon which Fatwa should be given (*Mufta Bihi*) despite it being an error. In fact, many of the Fuqahā went on to state that it is permissible to hire a person to **perform** any form of worship whilst others went on to state that it is permissible to hire a person to perform Hajj based upon the Mas'alah mentioned above.

Correction:

The correct view according to the Hanafi Madhab is that it is impermissible to hire a person to **teach** the Qur'an, for a fee.

In fact, it is clearly established from Imam Abu Hanifah (d.150 AH), Imam Abu Yusuf (d.182 AH) and Imam Muhammad (d.189 AH) that hiring a person to perform an act of worship for a fee is impermissible.

However, the Fuqaha who came after them, who were also *Mujtahid Fil Madhab* and *Mujtahid Fil Mas'alah* and *Sahib Al Takhrij* and *Sahib Al Tarjih*, such as Muhammad ibn Sallam²¹⁸ (d.305 AH), Abu Layth Al Samarqandi (d.373 AH), Imam Sarakhsi (d.438 AH), Allamah Al Walwalji (d.540 AH)²¹⁹, Allamah Tahir Al Bukhari, Allamah Murghinani (d.593 AH), Taj Al Shari'ah, Qadhi Khan (d.592 AH) and others, gave Fatwa upon the permissibility of hiring a person to **teach** the Qur'an for a fee. This was due to necessity and out of the fear that not doing so shall lead to a decline in Qur'anic studies and shall have an adverse affect upn the Din.

The Fuqahā who followed felt that this necessity is also found for the Mu'adhin who gives out the Adhan and the Imam who leads the Salah. Hence, the Fuqaha who followed such as Allama Zayla'i', Allamah Babarti (d.786 AH) and Muhammad ibn Muhammad Al Akizah stated that it is permissible for a Mu'adhin and Imam to also take a fee for their services due to the necessity and out of fear that not doing so would lead to a decline in volunteers for Adhan and Imamah; this would adversely affect the Din.

The later Fuqahā also extended this permissibility of accepting a fee for those who **teach** other books of Din.

In all of the above situations, the Fuqaha have considered necessity and the fear of an adverse effect upon the Din and have therefore given a concession for a fee to be taken for some acts of worship.

²¹⁸He was from the Mashaikh of Balkh and a grand student of Imam Muhammad as he studied under Abu Hafs Al Kabeer.
(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

²¹⁹ لا بأس للمسلم من أخذ الأجرة على تعليم القرآن في هذا الزمان صيانة للقرآن
الفتاوى الولوالجية للولوالجي ت540هـ (319/2) دار الكتب العلمية

Nevertheless, hiring a person to **recite** the Qur'an for a fee remains *impermissible* as there is no necessity to pay a person to **recite** the Qur'an as there is no fear of harm afflicting Din in not paying a person to **recite** the Qur'an.²²⁰ If one *does* take a fee for reciting the Qur'an, he shall gain no reward for his recitation. Accordingly, the analogy of hiring a person to **perform** Hajj for a fee is also incorrect.²²¹

▪ **Error:**

The author of *Al Fatawa Al Bazaziyyah* (الفتاوى البزازية) has stated that the view of the Hanafi Madhab is that the repentance of the one who swears at the Prophet Sallallahu Alayhi Wasallam shall be rejected.²²²

He has based this upon what had been mentioned by Hafiz Ibn Taymiyyah in his *Al Sarim Al Maslul* (الصارم المسلول).

Hence, many Fuqaha, such as Ibnul Hummam (d.861 AH), Mulla Kusrow (d.885 AH)²²³, Muhammad Al Quhistani (d.950 AH), Zaynud Din ibn Nujaym (d.970 AH), Muhammad Al Tumurtashi (d.1004 AH), Umar ibn Nujaym (d.1005 AH), Hasan Al Shurunbulali (d.1069 AH), Khairud Din Al Ramli (d.1081 AH), Maulana Abdul Haleem (d.1088 AH) and the Hanafi Ulama of the Ottoman empire, copied this view into their books as the opinion upon which Fatwa is given (*Mufta Bihi*).

Correction:

²²⁰In Sharh Uquod Rasmil Mufti, Ibn Abideen (d.1252 AH) quotes Qadhi Khan (d.592 AH) as stating "surely to take remuneration in lieu of *dhikr* (remembrance of Allah) prevents one from being worthy of accepting reward". Ibn Abideen then states that Ibnul Hummam has also mentioned a statement similar to this in *Fathul Qadir* with regards to a Mu'adhin who takes a fee for Adhan. In reality, Ibnul Hummam (d.861 AH) has actually quoted Qadhi Khan (d.592 AH) by stating:

وفي فتاوى قاضيخان المؤذن إذا لم يكن عالماً بأوقات الصلاة لا يستحق ثواب المؤذن

"It is mentioned in Fatawa Qadhi Khan that if a Mu'adhin is unaware of the times of Salaah, he shall not be considered worthy of gaining the reward of giving Adhan"

After this, Ibnul Hummam (d.861 AH) remarks:

ففي أخذ الأجر أولى

"and so (in the situation where the Mu'adhin does not know the times of Salaah) the Mu'adhin shall most definitely not be considered worthy of gaining the reward of giving Adhan if he takes a fee for giving Adhan"

Hence, both Qadhi Khan (d.592 AH) and Ibnul Hummam (d.861 AH) are discussing the Mas'alah of a Mu'adhin who does not know the times of Salaah. Ibn Abideen's quotations may mislead one to think otherwise.

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

²²¹Ibn Abideen (d.1252 AH) has written a detailed treatise on this issue by the name of *Shifa'ul Aleel Wa Ballul Ghaleel Fi Butlanil Wasiyyah Bil Khatmat Wat Tahaleel* (شفاء العليل وبل الغليل في بطلان الوصية بالختامات والتهاليل) in which he explains that it is impermissible to pay/accept a fee for **reciting** the Qur'an. In this treatise, he explains that the habit of paying individuals a fee to **recite** the Qur'an had become so common in his time that the Ulama were afraid to speak out against it. He expresses concern that although he is writing a treatise on this topic; nobody will be prepared to listen to what he is saying. Some have said that his student, the author of *Al Lubab* – Allamah Maydani, has written a refutation of Ibn Abideen's treatise on this issue.

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

²²²Ibn Abideen (d.1252 AH) states that Fatawa Al Bazaziyyah has referenced *Al Shifa* (الشفاء) by Qadhi Iyaad. In reality, Fatawa Al Bazaziyyah has quoted the statement found in *Al Shifa* (الشفاء) without referencing the book.

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

²²³ He is the author *Durar Al Hukkam Sharh Ghurar Al Ahkam*. It was the most famous book that used to be taught during the time of the Ottoman Empire. In fact, many Ottoman 'Ulama wrote footnotes upon it. Isma'il Al Nablusi, the father of Abdul Ghani Al Nablusi, wrote a detailed commentary on it titled *Al Ihkam Sharh Durar Al Hukkam*, it is in 12 volumes – Ibn Abidin quotes it extensively in *Rad Al Muhtar* with the name 'Sharh Shaykh Isma'il Al Nablusi Ala Sharh Al Durar', this indicates that it's a commentary upon the commentary of *Durar Al Hukkam* which is incorrect.

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

The correct view according to the Hanafi Madhab is that the repentance of the one who swears at the Prophet Sallallahu Alayhi Wasallam shall be accepted, as stated by Imam Abu Yusuf (d.182 AH) in *Kitaabul Kharaj* (كتاب الخراج), Imam Tahawi (d.132 AH) in *Mukhtasar Al Tahawi* (مختصر الطحاوي), Abu Bakar Al Jassas in *Sharh Mukhtasar Al Tahawi* (شرح مختصر الطحاوي), Allamah Isbijabi in his *Sharh Mukhtasar Tahawi* (النتف في الفتاوى),²²⁵ and Allamah Saghdi (d.461 AH)²²⁴ in *Al Nutaf Fil Fatawa* (النتف في الفتاوى).

▪ **Error:**

Mullah Kusrow (d.885 AH) in *Durar Al Hukkam* (درر الحكم), Ibn Malik in his *Sharh Al Majma'* (شرح المجمع), Muhammad Al Tumurtashi (d.1004 AH) in *Tanwir Al Absar* (تنوير الأبصار), and Allamah Khair Al Din Al Ramli (d.1081 AH) in his *Al Fatawa Al Khayriyyah* (الفتاوى الخيرية) have all stated that if a person who has taken an item in collateral (المرتهن) for a debt that is owed to him claims that the item is lost, then he will be liable to pay compensation of the value of the item unless he presents **evidence (برهان)** that the item is genuinely lost (without negligence) regardless of whether item has a high value or a low value.²²⁶

Correction:

The correct view according the Hanafi Madhab as stated by Allamah Shurunbulali (d.1069 AH) in his footnotes upon *Durar Al Hukkam* titled *Hashiyah Al Shurunbulali* and the author of *Al Haqaiq*²²⁷ is that the one who took the item on collateral will be liable of the lessor in price between the debt and item. This means that there are three possible situations each with a different ruling:

1. The price of the item (on the day that the collateral was given) is equal to the debt given

Ruling: The debt will be settled and neither party can seek recompense from the other party

2. The price of the item (on the day that the collateral was given) is less than the debt

Ruling: The individual who took the collateral may ask for his debt minus the price of the item

3. The price of the item (on the day that the collateral was given) is more than the debt

²²⁴Allamah Saghdi was the teacher of Shamsul A'immah Al Sarakhsi. He was born in the Sughd Province.
(Muhammad Harun, "Al Fath Al Rabbani", (: Maktabatul Azhar, 2014), p.407.)

²²⁵ Ibn Abideen (d.1252 AH) has written a detailed treatise on this issue by the name of 'Tanbih Al Wulat Wal Hukkam 'Ala Ahkam Shatim Kharil Anam Aw Ahadi Ashabih Al Kiram Alayhis Salah Wal Salam' (تنبيه الولاة والحكام على أحكام شاتم خير الأنام أو أحد أصحابه الكرام عليه (وعليهم الصلاة والسلام)

²²⁶At this point, Ibn Abideen (d.1252 AH) has mentioned that Khairud Din Al Ramli (d.1081 AH) has incorrectly stated that if a person who has taken an item in collateral (المرتهن) for a debt that he is owed claims that the item is lost, then he will be liable to pay compensation of the item unless he presents **evidence (برهان)** that the item is genuinely lost (without negligence) regardless of the price of the item. He then states that Khairud Din Al Ramli (d.1081 AH) has also mentioned that if said individual presents **evidence (برهان)** that the item is genuinely lost (without negligence), then he will not be liable to pay any compensation, however, Khairud Din Al Ramli (d.1081 AH) has not mentioned this.

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

²²⁷Al Haqa'iq is a commentary of Hafidhud Din Al Nasafi's *Al Manzumah* (المنظومة). It was written by Abu Hamid Mahmood ibn Muhammad Al Ifsinji (d.670 AH).

(Lecture of Mufti Husain Kadodia Sahib – Sharh Uqud Rasm Al Mufti)

Ruling: The debt will be settled and the individual who took the collateral is not liable to pay the price of the item extra to the amount of debt given

- 2) The Fuqaha have a unique style. At times, the Fuqaha may mention a view that may seem unconditional (مطلق), whereas they have intended something conditional (مقيد) with the conditions having been mentioned elsewhere or they are supposed to be known to the reader, thus by studying books alone, it may lead one to something other than his purpose.

As for the one who studies the books under an expert teacher, he will be aware of such occurrences and thus, he will not make a mistake. Accordingly, studying the Arabic language alone shall not be enough. Rather, one must learn to become a Faqih under an expert teacher.

Also, as mentioned above, it is entirely possible for one scholar to erroneously attribute a view to a Madhab. This erroneous view may then be copied by others into their books. Therefore, solely relying upon the books is not enough. Rather, one must study under a teacher so that the erroneous attributions to a Madhab may also be discovered.

Ibn Abidin quotes the Fatawa of Ibn Hajar Al Haytami Al Makki who was asked:

سُئِلَ فِي شَخْصٍ يَقْرَأُ وَيُطَالِعُ الْكُتُبَ الْفِقْهِيَّةَ بِنَفْسِهِ وَلَمْ يَكُنْ لَهُ شَيْخٌ وَيُقْنِي وَيَعْتَمِدُ عَلَى مُطَالَعَتِهِ فِي الْكُتُبِ فَهَلْ يَجُوزُ لَهُ ذَلِكَ أَمْ لَا؟

“[Ibn Hajar] was asked regarding a person who prays and revises the books of Fiqh through self-study and he does not have a teacher, this person gives Fatwa and relies upon his revision of the books, is it permissible for him to do this?”

Ibn Hajar replied:

لَا يَجُوزُ لَهُ الْإِفْتَاءُ بَوَاحٍ مِنَ الْوُجُوهِ لِأَنَّهُ عَامِيٌّ جَاهِلٌ لَا يَدْرِي مَا يَقُولُ بَلِ الَّذِي يَأْخُذُ الْعِلْمَ مِنَ الْمَشَايخِ الْمُعْتَبَرِينَ لَا يَجُوزُ لَهُ أَنْ يُقْنِيَ مِنْ كِتَابٍ وَلَا مِنْ كِتَابَيْنِ بَلْ قَالَ النَّوَوِيُّ رَضِيَ اللَّهُ عَنْهُ وَلَا مِنْ عَشْرَةٍ فَإِنَّ الْعَشْرَةَ وَالْعَشْرِينَ قَدْ يَعْتَمِدُونَ كُلُّهُمْ عَلَى مَقَالَةٍ ضَعِيفَةٍ فِي الْمَذْهَبِ فَلَا يَجُوزُ تَقْلِيدُهُمْ فِيهَا بِخِلَافِ الْمَاهِرِ الَّذِي أَخَذَ الْعِلْمَ عَنْ أَهْلِهِ وَصَارَتْ لَهُ فِيهِ مَلَكَةٌ نَفْسَانِيَّةٌ فَإِنَّهُ يُمَيِّزُ الصَّحِيحَ مِنْ غَيْرِهِ وَيَعْلَمُ الْمَسَائِلَ وَمَا يَتَعَلَّقُ بِهَا عَلَى الْوُجُوهِ الْمُعْتَدِّ بِهِ فَهَذَا هُوَ الَّذِي يُقْنِي النَّاسَ وَيَصْلُحُ أَنْ يَكُونَ وَاسِطَةً بَيْنَهُمْ وَبَيْنَ اللَّهِ عَزَّ وَجَلَّ وَأَمَّا غَيْرُهُ فَيَلْزَمُهُ إِذَا تَسَوَّرَ هَذَا الْمَنْصَبَ الشَّرِيفَ التَّعَرُّيْرَ الْبَلِغَ وَالزَّجْرَ الشَّدِيدَ الرَّاجِحَ لَأَمْتَالِهِ عَنْ هَذَا الْأَمْرِ الْقَبِيحِ الَّذِي يُؤَدِّي إِلَى مَفَاسِدَ لَا تُحْصَى وَاللَّهُ جَلَّ جَلَالُهُ أَعْلَمُ

“It is not permissible for him to give Fatwa in any way whatsoever as he is a regular ignorant person who does not know what he is saying. In fact, it is not permissible even for the one who takes knowledge from the reliable teachers to give a Fatwa from one book or two books, in fact, Imam Nawawi may Allah be pleased with him says [it is] not [permissible] even from 10 books as at times 10 to 20 books relay one weak view of the Madhab, hence it is not permissible to blindly follow them. On the contrary, if an expert takes knowledge from the people of knowledge and gains an innate capability in knowledge, and indeed he is able to differentiate the correct from the incorrect and he knows the Masail and that which is related to the Masail in a complete manner, then it is this individual who can give the people a Fatwa and is capable of being a bridge between them and Allah, the Greatest, the Most High. As for all other individuals who assume this coveted position, it is necessary for them to be seriously punished and severely scolded in a manner which serves as a warning to others from carrying out this abhorrent act which leads to innumerable problems. And Allah, Great is His Glory, knows best”

- 3) At times, different views may be narrated from a single Mujtahid. The Muqallid Mufti must be able to establish the view that has been given preference, either by checking how the view has been narrated from the Imam and its fame in the Madhab or by finding the preference (*Tarjih*) given by the scholars who are worthy of giving preference (أصحاب الترجيح) based upon the strength of the evidence supporting the view.

Thus, it is necessary for a Mufti, even if he is simply copying the view of the Fuqaha, that he thoroughly checks and searches for the preferred view.

Ibn Abidin Rahimahullah (d.1252 AH) has quotes Allamah Khairud Din Al Ramli as saying:

وَلَا شَكَّ أَنَّ مَعْرِفَةَ رَاجِحِ الْمُخْتَلَفِ فِيهِ مِنْ مَرْجُوهِهِ وَمَرَاتِبِهِ قُوَّةٌ وَضَعْفًا هُوَ نَهَايَةُ آمَالِ الْمُشْتَمِرِينَ فِي تَحْصِيلِ الْعِلْمِ

“And there is no doubt that recognising the preferred opinion from the non-preferred opinions where there is a difference of opinion and recognising the levels of each preferred opinion in terms of weakness and strength is the ultimate goal of the determined seeker of knowledge”

- 4) It is not enough for a Mufti, even if is copying the view of the Fuqaha, that he knows the preferred opinion recorded from the Mujtahid of the Madhab. Rather, he must be able to apply this view to the situation that he has been presented with. For this, it is necessary to have a correct understanding a jurisprudential ability, for although a Mufti might not be a Mujtahid in deducing the rulings of Shari’ah he will have no choice but to exercise some form of Ijtihad; which is the Ijtihad of specifying the question that he has been asked under a ruling and applying the ruling to it.

This form is Ijtihad is one that will last until the Day of Resurrection.

Imam Al Shatibi Rahimahullah has elaborated upon this form of Ijtihad in some detail. We shall present his statement here in verbatim due to the benefit found in it.

Imam Al Shatibi Rahimahullah writes:

“Ijtihad is of two types:

1. An Ijtihad that cannot come to an end until obligation towards the commands of Allah comes to an end, which will only occur on the Day of Resurrection
2. An Ijtihad that may end before the end of the world

As for the first type of Ijtihad, this is an Ijtihad related to *Tahqiq Al Manat* (تحقيق المناط). There is no difference amongst the Ummah that it is accepted.

The meaning of it (*Tahqiq Al Manat* (تحقيق المناط))²²⁸ becomes apparent when a ruling of Shari’ah is established through its Shari’i’ evidence, however, there is still a decision to be made as to *where* the ruling should apply.

For example:

1. Allah the Almighty says:

وَأَشْهَدُوا ذَوِي عَدْلٍ مِّنْكُمْ

“And the reliable [witnesses] from amongst you give testimony”

[Surah Al Talaq, verse 2]

²²⁸ *Tahqiq Al Manat* (تحقيق المناط) is when one applies his mind to see whether an established ruling of Shari’ah *can be applied* in a certain situation.

We know the meaning of 'reliable' in Shari'ah. However, we need to specify who holds this quality of 'reliability', for the people are not all equal in terms of reliability, rather, they differ greatly.

Thus, when we apply our mind upon [the notion of] 'reliability', we find that the people are of three types in terms of reliability:

- **Group 1:** Definitely reliable
- **Group 2:** Might or might not be reliable
- **Group 3:** Definitely not reliable

This second group is the difficult one, in which it is necessary to exert effort in coming to a conclusion [with regards to whether he is reliable or not], this is a form of Ijtihad. Hence, a judge will be required to make this Ijtihad in every witness.

2. Similarly, if one were to make a bequest that $\frac{1}{3}$ of his wealth is given to the poor. Then there is no doubt that there are three types of people:

- **Group 1:** They have nothing and therefore, they are definitely a poor person and shall receive wealth from the bequest
- **Group 2:** They might or might not be termed as a poor person
- **Group 3:** They do not need wealth and they are not poor, even if they do not own the *nisab* amount

And so, with regards to the second group, it will be seen; are the laws of poverty are prevalent upon him or the laws of affluence?

The same could be applied to the obligation of maintenance upon one's wives and close relatives, as he (a judge) will be required to assess the state of the maintainer and the maintained, and the state of the time, and other matters which cannot be constrained by enumeration.

Hence, in the above Masail, Taqlīd will not be enough. This is because Taqlīd can only be performed once the basis (المنطلق) of a ruling in which one has performed Taqlid is established, and here the basis (المنطلق) of the Mas'alah has not been established as each situation from the situations presented are separate in their own right, and a similar situation to them does not exist, or even if it does exist in reality, then it has not been presented to us. Thus, there is a need for some form of Ijtihad.

In the same way, if we managed to establish that the Mas'alah that we are presented with is the same one for which the Madhab has provided a ruling and then another similar Mas'alah arises, it would require Ijtihad to deduce whether this second Mas'alah is the same as the first Mas'alah. Hence, every situation will have some factor that will make different from others.

In conclusion, one is required to exercise Ijtihad to apply a general established ruling of Shari'ah to a specific situation.

- 5) A Fatwa may change depending upon the person asking for the Fatwa and depending upon his or her personal specific situation, or, after recognising the basis of the ruling it may change depending upon the common practice and the state of the time, as we shall discuss shortly Insha'Allah.

- 6) Many new Masail are found in every age, and many of them are found in our times in a specific manner based upon the fact that the style of living has changed to a great degree from what was common during the time of the Mujtahdin of the past. Thus, these new Masail are not explicitly mentioned in their books such that the ruling may be copied directly from them. Rather, in recognising its ruling, a Mufti in our time is required to either fit it under a general ruling that they have issued or through analogical deduction and extraction upon other similar or comparable Masail. Indeed, this is a delicate task which requires a powerful foresight and a correct understanding of the principles of Shari'ah.

In view of the above six points, it is necessary for a Mufti, even if he is a Muqallid, to maintain foresight in all of these matters. Surely, a foresight such as this cannot simply be achieved by researching books and learning the Masail and rulings of jurisprudence, rather, it requires a jurisprudential endowment²²⁹ and experience, both of which are rarely achieved except by training and practicing in this field under an expert teacher.

It is for this reason that the scholars say:

ليس كل من قرأ الكتب الفقهية أهلاً للإفتاء حتى يكون قد تدرب على الإفتاء بصفة مستقلة وشهد له العلماء بأنه أهل للإفتاء

“Not every individual who reads the books of Fiqh is worthy of issuing a Fatwa until he has properly practiced the field of Ifta in a specialised manner and the scholars give testimony that he is worthy of issuing a Fatwa”²³⁰

It is related from Imam Malik Rahimahullah that he said:

ليس كل من أحب أن يجلس للحديث والفتيا جلس حتى يشاور فيه أهل الصلاح والفضل وأهل الجهة من المسجد فإن رآه لذلك أهلاً جلس وما جلست حتى شهد لي سبعون شيخاً من أهل العلم أنني موضع

“Not all who wish to sit to narrate Ahadith or issue a Fatwa do so until they have sought the consultation of the righteous and the pious and the respectable members of the Masjid, then if they see him worthy of it, he would sit. I did not sit until seventy of my teachers from amongst the scholars gave testimony that I am worthy of it”

Ibn Wahab Rahimahullah said:

جاء رجل يسأل مالكا عن مسألة فبادر ابن القاسم فأفتاه فأقبل عليه مالك كالمغضب وقال له "جسرت على أن تفتي يا عبد الرحمن" يكررها عليه "ما أفتيت حتى سألت هل أنا للفتيا موضعاً؟ فلما سكن غضبه قيل له "من سألت؟" قال "الزهرى وربيعه الرأي"

“A man came to Imam Malik with a Mas’alah. [Before Imam Malik could respond] Ibn Al Qasim immediately came forward and answered the question, so Malik turned to him angrily and said, ‘You have become bold enough to issue a Fatwa oh Abd Al Rahman?!’ He continued repeating this, ‘I did not issue a Fatwa until I asked [others] whether I am worthy of issuing a Fatwa’ [he continued]. When his anger came down, it was asked of him, ‘who did you ask?’ He replied, ‘Al Zuhri and Rabi’ah Al Ra’y”

Ibn Abidin quotes the Fatawa of Ibn Hajar Al Haytami Al Makki who was asked:

سُئِلَ فِي شَخْصٍ يَفْرَأُ وَيُطَالِعُ الْكُتُبَ الْفَقْهِيَّةَ بِنَفْسِهِ وَلَمْ يَكُنْ لَهُ شَيْخٌ وَيُفْتِي وَيَعْتَمِدُ عَلَى مُطَالَعَتِهِ فِي الْكُتُبِ فَهَلْ يَجُوزُ لَهُ ذَلِكَ أَمْ لَا؟

²²⁹ Mufti Taqi Sahib’s statement that intuition is necessary in order to give a Fatwa is substantiated through a quote of ‘Abdullah ibn Al Mubarak that has been recorded by Abu Layth Al Samarqandi, Abu Layth writes:

قيل لابن المبارك متى يجوز للرجل أن يفتي قال إذا كان بصيراً في الرأي عالماً بالأثر

“It was said to Ibn Al Mubarak, ‘when is it permissible for a man to issue a Fatwa?’ He replied, ‘when he has intuition in analogical deduction and has knowledge of the narrations (Ahadith)’”

(Abu Layth Al Samarqandi, “Fatawa Al Nawazil”, (Manuscript: Maktabah Al Azhariyyah), Waraqah: 271, Side: Alif)

²³⁰ Hazrat Thanwi has also stated in *Al Hilah Al Najizah* (p.35 – Darul Isha’at):

نیز یہ بھی ضروری ہے کہ فتویٰ دینے والا شخص ہو جس نے کسی ماہر استاذ سے فن کو حاصل کیا ہو اور اہل بصیرت اس کو فتنہ میں مہارت تامہ حاصل ہونے پر شہادت دیتے ہیں

“[Ibn Hajar] was asked regarding a person who prays and revises the books of Fiqh through self-study and he does not have a teacher, this person gives Fatwa and relies upon his revision of the books, is it permissible for him to do this?”

Ibn Hajar replied:

لَا يَجُوزُ لَهُ الْإِفْتَاءُ بِوَجْهِ مِنَ الْوُجُوهِ لِأَنَّهُ عَامِيٌّ جَاهِلٌ لَا يَدْرِي مَا يَقُولُ بَلِ الَّذِي يَأْخُذُ الْعِلْمَ مِنَ الْمَشَايخِ الْمُعْتَبَرِينَ لَا يَجُوزُ لَهُ أَنْ يُفْقِيَ مِنْ كِتَابٍ وَلَا مِنْ كِتَابَيْنِ بَلْ قَالَ النَّوَوِيُّ رَضِيَ اللَّهُ عَنْهُ وَلَا مِنْ عَشْرَةٍ فَإِنَّ الْعَشْرَةَ وَالْعَشْرِينَ قَدْ يَعْتَمِدُونَ كُلُّهُمْ عَلَى مَقَالَةٍ ضَعِيفَةٍ فِي الْمَذْهَبِ فَلَا يَجُوزُ تَقْلِيدُهُمْ فِيهَا بِخِلَافِ الْمَاهِرِ الَّذِي أَخَذَ الْعِلْمَ عَنْ أَهْلِهِ وَصَارَتْ لَهُ فِيهِ مَلَكَتٌ نَفْسَانِيَّةٌ فَإِنَّهُ يُمَيِّزُ الصَّحِيحَ مِنْ غَيْرِهِ وَيَعْلَمُ الْمَسَائِلَ وَمَا يَتَعَلَّقُ بِهَا عَلَى الْوَجْهِ الْمُعْتَدِّ بِهِ فَهَذَا هُوَ الَّذِي يُفْقِي النَّاسَ وَيَصْلُحُ أَنْ يَكُونَ وَاسِطَةً بَيْنَهُمْ وَبَيْنَ اللَّهِ عَزَّ وَجَلَّ وَأَمَّا غَيْرُهُ فَيَلْزِمُهُ إِذَا تَسَوَّرَ هَذَا الْمَنْصَبَ الشَّرِيفَ التَّعَرُّفَ بِالْبَلِيغِ وَالرَّجْزَ الشَّدِيدَ الرَّاجِحَ لِأَمثَالِهِ عَنْ هَذَا الْأَمْرِ الْقَبِيحِ الَّذِي يُؤْدِي إِلَى مَفَاسِدَ لَا تُحْصَى وَاللَّهُ جَلَّ جَلَالُهُ أَعْلَمُ

“It is not permissible for him to give Fatwa in any way whatsoever as he is a regular ignorant person who does not know what he is saying. In fact, it is not permissible even for the one who takes knowledge from the reliable teachers to give a Fatwa from one book or two books, in fact, Imam Nawawi may Allah be pleased with him says [it is] not [permissible] even from 10 books as at times 10 to 20 books relay one weak view of the Madhab, hence it is not permissible to blindly follow them. On the contrary, if an expert takes knowledge from the people of knowledge and gains an innate capability in knowledge, and indeed he is able to differentiate the correct from the incorrect and he knows the Masail and that which is related to the Masail in a complete manner, then it is this individual who can give the people a Fatwa and is capable of being a bridge between them and Allah, the Greatest, the Most High. As for all other individuals who assume this coveted position, it is necessary for them to be seriously punished and severely scolded in a manner which serves as a warning to others from carrying out this abhorrent act which leads to innumerable problems. And Allah, Great is His Glory, knows best”

Al Khatib Al Baghdadi Rahimahullah said:

يَنْبَغِي لِإِمَامِ الْمُسْلِمِينَ أَنْ يَتَصَفَّحَ أَحْوَالَ الْمُفْتِينَ فَمَنْ كَانَ يَصْلُحُ لِلْفَتْوَى أَقَرَّهُ عَلَيْهَا وَمَنْ لَمْ يَكُنْ مِنْ أَهْلِهَا مَنَعَهُ مِنْهَا... وَأَوْعَدَهُ بِالْعُقُوبَةِ إِنْ لَمْ يَنْتَهِ عَنْهَا... وَالطَّرِيقُ لِلْإِمَامِ إِلَى مَعْرِفَةِ حَالِ مَنْ يُرِيدُ نَصْبَهُ لِلْفَتْوَى أَنْ يُسْأَلَ عَنْهُ أَهْلُ الْعِلْمِ فِي وَقْتِهِ وَالْمَشْهُورِينَ مِنْ فَقَهَاءِ عَصْرِهِ

“It is appropriate for the leader of the Muslims that he enquires regarding the situation of the ‘Muftis’. Hence, if a ‘Mufti’ is worthy of issuing Fatawa, he should allow him to issue Fatawa. However, if a ‘Mufti’ is not worthy of giving Fatawa, he should prevent him from giving Fatawa...and he should threaten this individual with punishment if he refuses to leave his position...the method through which the leader of the Muslims finds out whether a ‘Mufti’ is worthy of issuing Fatwa is by enquiring from the reliable scholars and acknowledged Fuqaha of that time”

Imam Malik Rahimahullah said:

ولا ينبغي لرجل أن يرى نفسه أهلاً لشيء حتى يستل من هو أعلم منه

“It is not appropriate for a man to see himself as worthy of anything until he has asked someone who is more knowledgeable [as to whether he is worthy of it or not]”

Ibn Abidin records that the author of Munyah Al Mufti has written near the end of his book:

لَوْ أَنَّ الرَّجُلَ خَفِظَ جَمِيعَ كُتُبِ أَصْحَابِنَا لَا بُدَّ أَنْ يَتَتَلَمَذَ لِلْفَتْوَى حَتَّى يَهْتَدِيَ إِلَيْهِ لِأَنَّ كَثِيرًا مِنَ الْمَسَائِلِ يُجَابُ عَنْهُ عَلَى عَادَاتِ أَهْلِ الزَّمَانِ فِيمَا لَا يُخَالِفُ الشَّرِيعَةَ
“If a person memorises all the books of our Fuqahaa, it is still necessary for him to study (under a qualified teacher) in order to give Fatwa. This is because there are many Masail that are answered according to the situation of the people in such a way that the Shari’ah is not opposed”

In light of these statement of the scholars of the past, it is inappropriate for a person to assume a position for issuing Fatawa except if he is given permission for this by his teachers and spiritual guides.

Principle 2:

إِذَا كَانَتِ الْمَسْأَلَةُ لَيْسَ فِيهَا إِلَّا قَوْلٌ وَاحِدٌ لِلْفُقَهَاءِ الْحَنَفِيَّةِ الْمُتَقَدِّمِينَ مِنْهُمْ وَالْمُتَأَخِّرِينَ تَعَيَّنَ الْأَخْذُ بِهِ

“When in a Mas’alah there is only one view of the early and late Hanafi jurists, then Fatwa shall be issued according to it”

Indeed, the categorisation of the Masail of the Hanafi Madhab will only make a difference in those Masail wherein there are differing views mentioned by the jurists of the Madhab. However, when there is only view mentioned by the Hanafi jurists in a Mas’alah, the Fatwa shall be given upon this view (whether this singular view is in the *Zahir Al Riwayah* (ظاهر الرواية) books or *Masail Al Nawadir* (مسائل النواذر) or *Masail Al Fatawa Wal Waqiat* (مسائل الفتاوى والواقعات)).

The only exception is when it is known through intuition that the singular ruling for a Mas’alah was based upon a reason (علة) that is no longer found.

Principle 3:

إِذَا كَانَ فِي الْمَسْأَلَةِ قَوْلَانِ أَوْ رَوَايَتَانِ عَنِ الْإِمَامِ أَبِي حَنِيفَةَ أَخَذَ بِالْآخِرِ مِنْهُمَا أَوْ بِمَا ثَبَتَ اخْتِيَارُهُ مِنْ قِبَلِ الْإِمَامِ وَإِنْ لَمْ يَثْبُتْ مِنْهُ اخْتِيَارٌ عَمِلَ بِمَا اخْتَارَهُ الْإِمَامُ أَبُو يُوسُفَ ثُمَّ بِمَا اخْتَارَهُ الْإِمَامُ مُحَمَّدٌ ثُمَّ بِمَا اخْتَارَهُ زُفَرٌ وَالْحَسَنُ بْنُ زِيَادٍ رَحِمَهُمُ اللَّهُ تَعَالَى أَمَّا إِذَا كَانَ هُنَاكَ اخْتِلَافٌ بَيْنَ اخْتِيَارِ أَبِي حَنِيفَةَ وَاخْتِيَارِ صَاحِبَيْهِ فَإِنْ كَانَ الْمُفْتِي مِنْ أَهْلِ الْإِجْتِهَادِ يَتَخَيَّرُ وَإِنْ لَمْ يَكُنْ مِنْ أَهْلِ الْإِجْتِهَادِ يَأْخُذُ بِقَوْلِ الْإِمَامِ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى

“When there are two views or two narrations in a Mas’alah from Imam Abu Hanifah (d.150 AH), then the latter view shall be taken or the view which he showed preference towards, if a preference is not established from Imam Abu Hanifah (d.150 AH), then we shall take the opinion of Imam Abu Yusuf (d.182 AH), then the opinion of Imam Muhammad (d.189 AH), and then the opinion of Imam Zufar and Imam Hasan ibn Ziyad, as for when there is a difference of opinion between the view of Imam Abu Hanifah and his two students, then if the Mufti is capable of Ijtihad, he shall choose the opinion he wishes to take, and if he is not capable of Ijtihad, then he shall take the view of Imam Abu Hanifah (d.150 AH)”

Ibn Abidin has presented the following line in his Sharh Uqud Rasm Al Mufti:

وَأَعْلَمُ بِأَنَّ عَنْ أَبِي حَنِيفَةَ جَاءَتْ رَوَايَاتٌ غَدَتْ مَنِيفَةً

“Know that there are narrations from Imam Abu Hanifah, which have become very many”²³¹

One may find many narrations or views reported from Imam Abu Hanifah in a Mas’alah, which *at times*, may appear contradictory. One view may be adopted by one of his students whilst another view is adopted by another student. Every view adopted by a student of Imam Abu Hanifah was a narration from Imam Abu Hanifah himself, and, therefore, every single view adopted by the A’immah of the Hanafi Madhab is in actual fact a narration from Imam Abu Hanifah himself.

²³¹ Ibn Abidin has used the Arabic word Manifah - ‘منيفة’. Mufti Rafi’ Uthmani states that this means that there are many contradictory narrations reported from Imam Abu Hanifah. However, Mufti Husain Sahib states that this word does not in any way indicate that the many narrations reported from Imam Abu Hanifah are contradictory. Rather, it simply means that there are many narrations reported from Imam Abu Hanifah.

Ibn Abidin writes:

فَلَمْ يَكُنْ لغيرِهِ جَوَابٌ كَمَا عَلَيْهِ أَقْسَمُ الْأَصْحَابُ

“Nobody [in the Hanafi Madhab] has a completely personal view just as the A’immah have sworn [that every view they have adopted is a narration from Imam Abu Hanifah himself]”

Is there a difference between different views (الأقوال) and different narrations (الروايات)?

Ibn Amir Al Haj Al Halabi explains in Sharh Al Tahrir that a difference in views is not the same as a difference in narrations. This is because a difference in views occurs when a Mujtahid has explicitly mentioned two or more separate views. Whereas, a difference in narrations occurs when those recording from the Mujtahid have recorded two or more separate narrations.

In summary, according to what is mentioned by Ibn Amir Al Haj Al Halabi, a difference in views is caused by the Mujtahid himself, whilst a difference in narrations is caused by those narrating from the Mujtahid. Accordingly, a Mujtahid may have only one view, but multiple narrations. Ibn Amir then quotes Imam Abu Bakr Al Balighi who has mentioned that there are four reasons as to why a difference in narrations from Imam Abu Hanifah may occur:

- 1) The narrator made a mistake in his listening whilst another narrator was correct in his listening; thus creating two or more separate narrations

Example: A Mujtahid may have been asked a question to which he replied “it is not permissible”. However, the narrator did not hear him properly and narrated the Mujtahid’s opinion as “it is permissible”.

- 2) The Mujtahid mentioned a view earlier on in his life. Later on, his view changed. Some of the narrators were aware that his view had changed, whilst others were unaware of this; thus creating two or more separate narrations

After analysing the reasons for a difference in narrations mentioned by Imam Abu Bakr Al Balighi above, Ibn Abidin asserts that the final three reasons involve a difference of opinion caused by the actual Mujtahid. Therefore, it would mean that there is no difference between a view (القول) and a narration (الرواية).

Now, when we are faced with different views from a single Mujtahid, how would we determine which view a Fatwa should be given upon? We shall now discuss this in detail.

Before we begin our discussion, there are two important points to note:

- The rules mentioned below assist in giving preference (ترجيح) to a single view for a Fatwa, but they are only applicable when no form of preference (ترجيح) of a view is found in a Mas’alah from the Fuqaha of the first four categories; *Mujtahid Fil Madhab* (صاحب الترجيح), *Mujtahid Fil Masail* (مجتهد في المسائل), *Sahib Al Takhrij* (صاحب التخریج), *Sahib Al Tarjih* (مجتهد في المذهب).
- The Fuqaha of these four categories do not need to follow the rules mentioned below when giving preference (ترجيح), rather they will give preference (ترجيح) based on the evidences (أدلة) recorded in the Qur’an and Sunnah or other reasons apparent to them.²³²

²³² In his footnotes upon Khulasah Al Fatawa, Allamah Lucknawi has quoted Sirajud Din Al Awshi as someone who has mentioned this. Sirajud Din Al Awshi:

المجتهد يعني من كان أهلاً للنظر في الدليل يتبع من الأقوال ما كان أقوى دليلاً وإلا اتبع الترتيب

- Even when preference is not found, we shall not automatically resort to the rules below. Rather, if one of the views has been mentioned in the Zahir Al Riwayah while the other views have not, it shall be taken, as we shall elaborate soon.

The Rules for deciding which of A'immah's views Fatwa Shall be given upon

Situation 1: when there are two or more narrations from Imam Abu Hanifah in a Mas'alah

This may be of two types:

1. We are able to establish which view came earlier and which view came later

Ruling: the later view shall be considered the preferred view of Imam Abu Hanifah. If there are no views from his two students (Imam Abu Yusuf and Imam Muhammad), then Fatwa shall be given upon this view. If his his two students (Imam Abu Yusuf and Imam Muhammad) also hold a view in the Mas'alah, then we shall have to consider scenario 2.

2. We are unable to determine which view came earlier and which view came later

Ruling: scenario 3 will be considered

Situation 2: when there are two views or more narrations from Imam Abu Hanifah Rahimahullah (d.150 AH) in a Mas'alah and it is established that Imam Abu Hanifah Rahimahullah (d.150 AH) showed preference to one view

This will be of 4 types:

- Imam Abu Yusuf (d.152 AH) and Imam Muhammad (d.189 AH) have adopted the same view as Imam Abu Hanifah Rahimahullah (d.150 AH)

Ruling: The Fatwa must be given upon the view that they have agreed upon. In fact, the Fuqaha of the first four categories must also give Fatwa upon the view that Imam Abu Hanifah (d.150 AH), Imam Abu Yusuf (d.182 AH) and Imam Muhammad (d.189 AH) have agreed upon.

- Imam Abu Hanifah and one his two students (either Imam Abu Yusuf (d.152 AH) or Imam Muhammad (d.189 AH)) have adopted one view whilst the other student has adopted another view

Ruling: The Fatwa must be given upon the view of Imam Abu Hanifah Rahimahullah (d.150 AH)'s view²³³

"A Mujtahid – an individual who is worthy of looking into the evidences – will follow (give preference to) the view that is strongest in terms of evidence. On the contrary, if one is unable to recognise the evidence that is stronger (this includes a non-Mujtahid who is not worthy of looking into the evidences), then he will follow the guidelines provided"

Similarly, 'Allamah Biri Rahimahullah writes in Umdah Dhawil Basair Li Hal Muhimmat Al Ashbah Wal Nazair:

قال علماؤنا إذا كانت الواقعة مختلفا فيها فالأفضل والمختار للمجتهد أن يأخذ بالدلائل وينظر إلى الراجح عنده

"Our scholars have said that when there is a difference of opinion [amongst the A'immah] in a Mas'alah, then the most virtuous and preferred [action] for a Mujtahid is to consider the evidences and look at what is preferred according to him"

[Biri Rahimahullah, "Umdah Dhawil Basair Li Hal Muhimmat Al Ashbah Wal Nazair", (Istanbul: Maktabatul Irshad, 2016), v.1, pg.47]]

²³³ It must be mentioned once again that this is when preference has *not* been given to the lone student's view by the scholars worthy of giving preference, in which case the preferred view shall be adopted, even though Imam Abu Hanifah and the other student have adopted another view.

- Imam Abu Hanifah Rahimahullah (d.150 AH) has adopted one view and his two students (either Imam Abu Yusuf (d.152 AH) or Imam Muhammad (d.189 AH)) have agreed upon another view

Ruling: there are three opinions as to which view the Fatwa shall be given upon:

1. The Fatwa will be given upon the view of Imam Abu Hanifah (d.150 AH) only, irrespective of whether the Mufti is from the first four categories of Fuqaha or not

This was the view of Abdullah ibn Al Mubarak.

2. The Mufti may choose which of the two views he wishes to issue a Fatwa upon, irrespective of whether he is from the first four categories of Fuqaha or not²³⁴

3. If the Mufti is a Mujtahid (i.e. he is from the first four categories of Fuqaha as mentioned by ‘Allamah Biri), he should choose which of the views he wishes to give Fatwa upon. If the Mufti is not a Mujtahid, he must follow the view of Imam Abu Hanifah Rahimahullah (d.150 AH)

This is the correct view as stated by ‘Allamah Walwalji, ‘Allamah Siraj Al Din Al Awshi (d. 575 AH)²³⁵ Ahmad ibn Muhammad Al Ghaznawi, and Qadi Khan.

We had also discussed at the beginning that the Fuqaha of the first four categories are not required to follow the rules discussed in this section as they are permitted to give preference based upon an evaluation of each view in respect of the Qur’an and Sunnah. Accordingly, this third view is indeed the correct view as it demonstrates how the Fuqaha of the first four categories are not bound to give Fatwa upon Imam Abu Hanifah’s view when the other A’immah hold another opinion.²³⁶

- Imam Abu Hanifah (d.150 AH), Imam Abu Yusuf (d.182 AH) and Imam Muhammad (d.189 AH) have all adopted different views and thus there are three views in the Mas’alah

²³⁴ This was the view of Al Kurdi Al Bazazi Rahimahullah, the author of Fatawa Al Bazaziyyah. Ibn Shihnah Rahimahullah writes:#
وإن لم يكن مجتهدا لا يحل له الفتوى إلا بطريق الحكاية فيحكي ما يحفظه من أقوال الفقهاء والمفتي بالخيار إن شاء أفتى بقول الإمام رحمه الله أو بقول صاحبيه رحمهما الله تعالى وعن ابن المبارك رحمه الله تعالى يأخذ بقول الإمام لا غير... كذا ذكره البزاز في جامعه

“And if he is not a Mujtahid, then it is impermissible for him to issue a Fatwa except by method of relation, thus he shall relate what he knows from the views of the Fuqaha (A’immah of the Madhab), and the Mufti shall have a choice, if he wishes he may issue a Fatwa according to the view of Imam Abu Hanifah or according to the view of his two students (Imam Abu Yusuf and Imam Muhammad), may Allah have mercy upon them, and it is narrated from Ibn Al Mubarak, may Allah have mercy upon him, that he should take the view of the Imam (Imam Abu Hanifah) and nobody else...as mentioned by Al Bazzaz (Al Kurdi Al Bazazi Rahimahullah)

²³⁵ ‘Allamah Siraj Al Din Al Awshi writes in Al Fatawa Al Sirajiyyah:

²³⁶ This view has been narrated from as early as 220 AH from the students of Imām Zufar Raḥimahullah. Thus, Abū Layth Al Samarqandī has recorded this to be the view of Shaddād ibn Ḥakīm Al Balkhī (d.220 AH), who was the student of Imām Zufar Raḥimahullah, Abū Layth Al Samarqandī writes:

وقال نصير بن يحيى سألت شداد بن حكيم في مرضه الذي مات فيه إن نزلت بنا نازلة بعدك ونحن نعرف قول أبي حنيفة وأصحابه أيسعنا أن يستعمل به ويفتي به قال نعم قلت فإن اختلفوا قال إن كنت تحسن أن تختار فاختر من كلامهم وإن لم تحسن أن تختار فقول أبي حنيفة أولى لك

“Nuṣayr ibn Yahyā states, ‘I asked Shaddād ibn Ḥakīm during his illness in which he passed away, “if something (a Mas’alah) were to come upon us and we know the view of [Imām] Abū Ḥanīfah and his students, is it permissible for us to use it and issue Fatwā according to it?” He replied, “Yes”, I asked, “and if they have differed amongst themselves?” He replied, “If you have the capability to choose (we can interpret this as those who are from the first four categories of Fuqahā), then choose from their statements, and if you do not have the capability to choose, then the view of [Imām] Abū Ḥanīfah is best for you”

(Abū Layth Al Samarqandī Raḥimahullah, “*Fatāwā Al Nawāzil*”, (Manuscript: Maktabah Fātiḥ Istanbul), Warāqah: 268, Side: Alif)

Ruling: Fatwa shall be given upon Imam Abu Hanifah Rahimahullah (d.150 AH)’s view

Situation 3: when there are two views or more narrations from Imam Abu Hanifah in a Mas’alah and it cannot be established that Imam Abu Hanifah showed preference to one view or there is no view from Imam Abu Hanifah

Ruling:

1. Give Fatwa upon the view that Imam Abu Yusuf (d.182 AH) showed preference towards
2. If Imam Abu Yusuf (d.182 AH) does not have a view or his preferred view is not apparent, give Fatwa upon the view that Imam Muhammad (d.189 AH) showed preference towards
3. If Imam Muhammad (d.189 AH) does not have a view or his preferred view is not apparent, Give Fatwa upon the view that Imam Zufar and Imam Hasan ibn Ziyad showed preference towards

Mufti Taqi Sahib explains the reasoning behind the solutions for the situations provided above:

Reasoning behind the ruling to situation 1:

Imām Abū Ḥanīfah (d.150 AH) adopted one view at the start of his life; he then turned away from this view and adopted another view. Hence, we now have two views from Imām Abū Ḥanīfah, but we know his later view which will be his preferred view.

Similarly, Ibn Abidin mentions that at times, Imām Abū Ḥanīfah (d.150 AH) may have adopted two views and both views are equally valid according to him. This is why they say, “In this Mas’alah, there are two narrations or two views [from Imam Abu Hanifah]”. In such a situation, wherein we are unable to determine which view Imam Abu Hanifah gave preference towards, we may move to situation 3 wherein we give preference to the view of Imam Abu Yusuf, then the view of Imam Muhammad, and then the view of Imam Zufar and Imam Hasan ibn Ziyad.

Reasoning behind the ruling to situation 2 and 3

Every view that the **students** of Imām Abū Ḥanīfah (d.150 AH) have adopted is a view that Imām Abū Ḥanīfah himself contemplated and mentioned. Hence, all the different views of Imam Abu Hanifah’s students are actually different views from Imām Abū Ḥanīfah (d.150 AH) himself. This may be of two types:

- a) We know which view Imām Abū Ḥanīfah (d.150 AH) finally showed preference towards

Solution: situation 2

- b) We do not know which view Imām Abū Ḥanīfah (d.150 AH) showed preference towards

Solution: situation 3

When faced with Situation 3, it is important to know that the students of Imam Abu Hanifah such as Imam Abu Yusuf, Imam Muhammad, Imam Zufar, and Imam Hasan ibn Ziyad did not hold an opinion except that it was a narration from Imam Abu Hanifah himself.

Ibn Abidin has recorded from the author of Al Hawi Al Qudsi that he said:

روي عن جميع أصحابه الكبار كأي يوسف ومحمد وزفر والحسن أنهم قالوا ما قلنا في مسألة قولنا إلا وهو روايتنا عن أبي حنيفة وأقسموا عليه أيماناً غلاظاً فلم يتحقق إذا
في الفقه جواب ولا مذهب إلا له كيف ما كان وما نسب إلى غيره إلا بطريق إجاز للموافقة

“It has been narrated from all of the major students such as [Imam] Abu Yusuf, [Imam] Muhammad, [Imam] Zufar, and [Imam] Hasan that they said, ‘we have not said a view in a Mas’alah except that it is a narration from ourselves to [Imam] Abu Hanifah’, and they swore strong oaths upon this. Thus, a single answer or view is not

established in [Hanafi] jurisprudence except that it belonged to him (Imam Abu Hanifah), and it is attributed to others metaphorically as they have concurred with him (Imam Abu Hanifah) (i.e. they have concurred with one of his narrations)”

Thus, considering that every view that the students of Imam Abu Hanifah have adopted is a view/narration from Imām Abū Ḥanīfah himself, we may feel assured when giving Fatwa upon the view of one of his students knowing that it is also a narration from the Imam himself. Therefore, we take the view of his students beginning with Imam Abu Yusuf.²³⁷

The question that arises is, how is it possible that every view that the students of Imam Abu Hanifah have adopted is a view that Imām Abū Ḥanīfah himself contemplated or mentioned?

This has been explained by ‘Allamah Zahid Al Kawthari that at times, when discussing a Mas’alah, Imām Abū Ḥanīfah would mention all the possible views in a single Mas’alah and their evidences. His students would then adopt one of these possible views. This is how every view that his students have adopted is in actual fact a narration from the Imam himself, as he was the one propagated the possible view by mentioning its evidence.

We shall now present the statement of ‘Allamah Zahid Al Kawthari verbatim due to the benefit that lies in it. He states:

ومنشأ ادعاء أن تلك الأقوال كلها أقوال أبي حنيفة هو ما كان يجري عليه أبو حنيفة في تفقيه أصحابه من احتجاجه لأحد الأحكام المحتملة في مسألة وانتصاره له بأدلة ثم كروه بالرد عليه بنقض أدلته وبترجيحه الإحتمال الثاني بأدلة أخرى ثم نقضها بترجيح احتمال ثالث بأدلة تدريباً لأصحابه على التفقه على خطوات ومراحل إلى أن يستقر الحكم المتعين في نهاية التمحيص ويدون في الديوان في عداد المسائل المحصنة فمنهم من ترجح عنده غير ما استقر عليه الأمر من تلك الأقوال باجتهاده الخاص فيكون هذا المترجح عنده قوله من وجه وقول أبي حنيفة من وجه آخر من حيث إنه هو الذي أثار هذا الإحتمال ودل عليه أولاً وإن عدل عنه أخيراً ومصدق ذلك ما أخرجه ابن أبي العوام عن محمد بن أحمد بن حماد عن محمد بن شجاع سمعت الحسن بن أبي مالك وعباس بن الوليد وبشر بن الوليد وأبا علي الرازي يقولون سمعنا أبا يوسف يقول "ما قلت قولاً خالفت فيه أبا حنيفة إلا وهو قول قد قاله أبو حنيفة ثم رغب عنه" اه وحكى الكردري عن النيسابوري أن أبا يوسف لما ولي القضاء دخل عليه إسماعيل بن حماد بن الإمام وتقدم إليه خصمان فلما جاء أوان الحكم قضى برأي الإمام فقال له كنت تخالف الإمام في هذا قال إنما كنا نخالفه لنستخرج ما عنده من العلم فإذا جاء أوان الحكم ما يرتفع رأينا على رأي الشيخ اه ومثله عن محمد بن الحسن وأخرج ابن أبي العوام عن إبراهيم بن أحمد بن سهل عن القاسم بن غسان عن أبيه عن أبي سليمان الجوزجاني عن محمد بن الحسن قال كان أبو حنيفة قد حمل إلى بغداد فاجتمع أصحابه جميعاً وفيهم أبو يوسف وزفر وأسد بن عمرو وعامة الفقهاء المتقدمين من أصحابه فعملوا مسألة أيدها بالحجاج وتنوقوا في تقويهما وقالوا نسأل أبا حنيفة أول ما يقدم فلما قدم أبو حنيفة كان أول مسألة سئل عنها تلك المسألة فأجابهم بغير ما عندهم فصاحوا به من نواحي الحلقة: يا أبا حنيفة! بلدتك الغربية فقال لهم رفقا رفقا! ماذا تقولون؟ قالوا ليس هكذا القول قال بحجة أم بغير حجة؟ قالوا بل بحجة قال هاتوا! فناظرهم فغلبهم بالحجاج حتى ردهم إلى قوله وأذعنوا أن الخطأ منهم فقال لهم أعرفتم الآن؟ قالوا نعم قال فما تقولون فيمن يزعم أن قولكم هو الصواب وأن هذا القول خطأ؟ قالوا لا يكون ذلك قد صح هذا القول فناظرهم حتى ردهم عن القول فقالوا يا أبا حنيفة! ظلمتنا والصواب كان معنا قال فما تقولون فيمن يزعم أن هذا القول خطأ والأول خطأ والصواب في قول ثالث؟ فقال هذا ما لا يكون قال فاستمعوا واخترع قولاً ثالثاً وناظرهم عليه حتى ردهم إليه فأذعنوا وقالوا يا أبا حنيفة! علمنا قال الصواب هو القول الأول الذي أجبتكم به لعله كذا وكذا وهذه المسألة لا تخرج من هذه الثلاثة الأنحاء ولكل منها وجه في الفقه ومذهب وهذا الصواب فخذوه وارفضوا ما سواه

“The reason for claiming this that each of the views [that the students have adopted] was a view of Imam Abu Hanifah is [based upon] how [Imam] Abu Hanifah would inculcate juristic understanding (Tafaqquh) within his students by presenting evidence for one of the possible rulings in a Mas’alah and supporting it (the ruling) with evidences, then they (the students) would return to refute that view by breaking down its evidences and by giving preference to another possible ruling through different evidences, then they would break this [possible ruling] by giving preference to a third possible ruling with its evidences. This was done in order to train them in

²³⁷Although it is stated here that we take the view of Imam Abu Yusuf in such a scenario, it will be mentioned later on that other factors should also be considered such as what the Mas’alah pertains to. For example: if the Mas’alah pertains to inheritance (ميراث), then we will edge towards the view of Imam Muhammad as you shall see shortly.

juristic understanding step-by-step and in stages until they would settle on a specific ruling at the end of the examination and the ruling would be written in the document amongst a number of other settled rulings. Thus, there were some of them who still preferred another view [in the Mas'alah] through his personal Ijtihad contrary to the ruling they had settled upon, hence this view that he prefers is in some way, his own view, and in some ways, the view of [Imam] Abu Hanifah, in the sense that he was the one who conceptualised that possible ruling and gave evidence for it initially, even though he eventually moved away from it. The evidence of this is that which has been narrated by Ibn Abi Al Awam from Muhammad ibn Ahmad ibn Hammad from Muhammad ibn Shuja' [who said,] 'I heard Al Hasan ibn Abi Malik and Abbas ibn Al Walid and Bishr ibn Al Walid and Abu Ali Al Razi all say, "We have heard [Imam] Abu Yusuf say, 'I have not said a statement in which I have contradicted [Imam] Abu Hanifah except that it was a statement that indeed [Imam] Abu Hanifah [himself] had said, and then had turned away from it'". Al Kardari has related from Al Naysaburi that when [Imam] Abu Yusuf was appointed a judge, Isma'il ibn Hammad ibn Al Imam [Abi Hanifah] came to him and presented two arguing parties to him, when the time came to issue a ruling, he (Imam Abu Yusuf) issued a ruling according to the view of the Imam (i.e. Imam Abu Hanifah). He (Isma'il ibn Hammad) enquired, 'You used to contradict the Imam in this [Mas'alah]?' [Imam] Abu Yusuf replied, 'Indeed, we used to contradict him only in order to extract the knowledge that he had, as for when the time comes to issue a ruling, our view does not precede the view of the teacher'. A similar incident occurred with [Imam] Muhammad ibn Al Hasan. Ibn Abi Al Awam has narrated from Ibrahim ibn Ahmad ibn Sahl from Al Qasim ibn Ghassan from his father from Abu Sulayman Al Jawzjani from Muhammad ibn Al Hasan that he said, '[Imam] Abu Hanifah travelled to Baghdad, and all of his students had gathered, amongst them were [Imam] Abu Yusuf, [Imam] Zufar, Asad ibn Amr, and all of the early jurists from his students. Thus, they had come to a conclusion in a Mas'alah and had supported it with evidence, and they had been rigorous in analysing it, they [then] said, "We shall ask [Imam] Abu Hanifah the moment he arrives". When [Imam] Abu Hanifah came, the first Mas'alah they asked was this Mas'alah, so he answered it with an answer different to the one that they had. So then (the students) voices arose from various parts of the gathering claiming, 'Oh Abu Hanifah! Being away from home has made you mindless', so he said to them, 'Calm down! Calm down! What is your view?' They replied, 'We do not say what you have said'. He asked them, 'Do you say it with evidence or no evidence?' They replied, 'With evidence', he replied, 'Bring it!' He then debated with them and vanquished them with evidences until they accepted his view, and they admitted that they had erred. So he said, 'Do you understand now?' They replied, 'Yes', so he said to them, 'What would you say regarding the one who believes that your [previous view] is the correct view and this view is the incorrect view?' They replied, 'That is not possible, this is the correct view'. So he debated with them until he made them revert to their [previous] view, thus they exclaimed, 'Oh Abu Hanifah! You have oppressed us, even though we were correct'. Upon this he asked them, 'Now what do you say regarding the one who believes that this [second] view is incorrect and the first is incorrect and the correct view is a third view?' They replied, 'That is not possible', he responded, 'Listen carefully'. He then conceptualised a third view and debated with them [over its correctness] until they turned to him, and said while surrendering, 'Oh Abu Hanifah! Teach us'. He responded, 'The correct view was the first view that I told you of, for this reason and this reason...and this Mas'alah does not escape from three possible opinions, and each one has support in jurisprudence and in a school of thought, and this correct view, take it and leave all others"

'Allamah Kawthari then writes:

وهكذا كان تدريبه لأصحابه على الفقه وتمريته على مدارج التفقه فمثله يكون كثير الذكر للإحتمالات في المسائل وقد يترجح عند هذا ما لا يترجح عند ذلك من أصحابه فيكون هو مثير أغلب تلك الإحتمالات فمعظم تلك المسائل الخلافية من تذكير الإمام لأصحابه

"Like this was his method of training his students in jurisprudence and his guiding them of the paths of attaining jurisprudential understanding, thus individuals such as him mention many possible rulings in Masail, and at times, what was unpreferable according to this [student] would become preferable to this [student] from his students. Thus, he would be the one who had conceptualised the majority of these possible rulings. Hence, the majority of these Masail in which there is a difference of opinion are from the Imam who inspired his students [to adopt a different view]"

The summary is that in every Mas'alah, the students of Imam Abu Hanifah adopted one of the possible rulings that were conceptualised by Imam Abu Hanifah. Then, from amongst these possible rulings, the ruling that Imam Abu Hanifah adopted became his view, and the ruling that his students adopted were attributed to them.

Although it has been mentioned at the start of this chapter, it would be important to re-iterate that the above mentioned laws and situations only apply when no form of preference is found from the Fuqaha of the first four categories (*Mujtahid Fil Madhab* (مجتهد في المذهب), *Mujtahid Fil Masail* (المسائل في المجتهد), *Sāhib Al Takhrīj* (صاحب التخرīj), *Sāhib Al Tarjīh* (صاحب الترجيح)) and a ruling is not found in the *Zahir Al Riwayah*. Hence, if the Fuqaha of the first four categories have given preference to one of the views, even if is the view of Imam Zufar, then this view shall be taken, and if preference is not found at all, but a view is found in the *Zahir Al Riwayah*, then the view found in the *Zahir Al Riwayah* shall be taken. Accordingly, the rules mentioned above will apply only when these two solutions are not found.

Principle 4

الْمُفْتِي الْمُقَلِّدُ يُفْتِي بِمَا رَجَّحَهُ أَصْحَابُ التَّرْجِيحِ مِنْ مَشَايِخِ الْحَنْفِيَّةِ وَلَا يَأْخُذُ بِالْأَقْوَالِ الْمَرْجُوحَةِ

“A Mufti who is a Muqallid shall issue a Fatwa according to what the Scholars worthy of giving preference from the Hanafi jurists have shown preference towards and he shall not adopt the unpreferred view”

There is no doubt in what has been mentioned under principle 2 that the principle in the Hanafi Madhab is that when there is a difference of opinion amongst the A’immah of the Madhab, then Fatwa is issued according to the view of Imam Abu Hanifah (when it is found in the *Zāhir Al Riwayah* (ظاهر الرواية)). However, as discussed, the scholars that are worthy of giving preference (أصحاب الترجيح) may give preference (Tarjih) to a view that has been adopted by one of the other A’immah that is contrary to the preferred view of Imam Abu Hanifah.

The reason as to why the scholars worthy of giving preference (أصحاب الترجيح) may give preference (Tarjih) to a view that has been adopted by one of the other A’immah that is contrary to the preferred view of Imam Abu Hanifah has been elaborated by Ibn ‘Abidin Rahimahullah who writes:

اطلعوا على دليل الإمام وعرفوا من أين قال؟ واطلعوا على دليل أصحاب فقد يرجحون أصحابه على دليله فيفتون به ولا يظن بهم أنهم عدلوا عن قوله لجهلهم بدليله فإننا نراهم قد شحنوا كتبهم بنصب الأدلة ثم يقولون الفتوى على قول أبي يوسف مثلاً وحيث لم نكن نحن أهلاً للنظر في الدليل ولم نصل إلى رتبهم في حصول شرائط التفريع والتأصيل فعلينا حكاية ما ينقلونه لأنهم هم أتباع المذهب الذين نصبوا أنفسهم لتقريره وتحريره باجتهادهم

In summary, the scholars worthy of giving preference (أصحاب الترجيح) have two qualities:

- 1- They presented themselves to edit and rectify the Hanafi Madhab
- 2- They are the scholars of Ijtihad who are the intended audience of the statement of Imam Abu Hanifah:

لَا يَحِلُّ لِأَحَدٍ أَنْ يُفْتِيَ بِقَوْلِنَا حَتَّى يَعْلَمَ مِنْ أَيْنَ قُلْنَا

“It is not permissible for anyone to give a Fatwa upon our view until he knows the reasoning behind our view”

Thus, considering that every view of the students of Imam Abu Hanifah is indeed a narration from Imam Abu Hanifah, as elaborated under principle 3, these scholars give preference to the view that has a stronger evidence in their opinion.

It is necessary that a Mufti who is a Muqallid gives Fatwa upon the view that the scholars worthy of giving preference (أصحاب الترجيح) have given preference to in that Masa’alah, regardless if the view they give preference to is the view of Imam Abu Hanifah or the view of his two students; for at times they give preference to the view of

his students, in fact, they have given preference to the view of Imam Zufar²³⁸ in twenty Masail which Ibn Abidin has mentioned and compiled in a poem in Radd Al Muhtar under the chapter of maintenance (*Bab Al Nafaqah*).

Thus, the view that the scholars worthy of giving preference give preference to is given priority over all other views. This is because along with their incredible piety and their adamancy upon the Madhab, they gave preference to a view based upon reasons that were apparent to them such as the strength of the evidence for the view or the needs of the people or the changing of the time and custom, etc. Thus, it is more appropriate to act upon the view that they have given preference to.

Based upon this, it is impermissible for a Muftī who is a Muqallid to give Fatwa upon the view that they have not given preference to (even if it is found in the *Zāhir Al Riwayah* (ظاهر الرواية)) except in a few cases as will shall discuss shortly.

Ibn Abidin (d.1252 AH) has recorded an Ijma' between the Ulamā that it is impermissible for a Muftī to give a Fatwā or for a Qadhī to give a ruling except upon a view which he considers to be the stronger view (if he is a Mujtahid) or upon the view which the Fuqahaa of his Mathab have given preference to (if he is a Muqallid).

Ibn Abidin has quoted Imam Al Nawawī (d.676 AH), Ibn Salaah (d.643 AH), Allamah Qaraḥī (d.684 AH), Abul Walid Al Bajī (d.474 AH) and Ibraheem Al Ya'murī (d.799 AH)²³⁹ who have also related an Ijma' upon this.

However, Ibn Abidin (d.1252 AH) has also related an Ijma' amongst the scholars that it is impermissible for a person to act upon a view that is not considered as the preferred view by the Fuqahaa of the Mathab that he is following.

In support of this claim, he has bought the statement of Imam Nawawi who writes in his book, *Zawaid Al Rawdah* (زوائد الروضة)²⁴⁰:

إِنَّهُ لَا يَجُوزُ لِلْمُفْتِي وَالْعَامِلِ أَنْ يُفْتِيَ أَوْ يَعْمَلَ بِمَا شَاءَ مِنَ الْقَوْلَيْنِ أَوْ الْوُجْهَيْنِ مِنْ غَيْرِ نَظَرٍ وَهَذَا لَا خِلَافَ فِيهِ

“It is not permissible for a Mufti or one who is practising to give a Fatwa or practise (respectively) upon whatever he wishes from two statements or two views without any thought and there is no difference of opinion in this”

Ibn Abidin has also quoted Ibn Salah who has stated:

اعْلَمْ أَنَّ مَنْ يَكْتَفِي بِأَنْ يَكُونَ فَتْوَاهُ أَوْ عَمَلُهُ مُوَافِقًا لِقَوْلٍ أَوْ وَجْهِ فِي الْمَسْأَلَةِ وَيَعْمَلُ بِمَا شَاءَ مِنَ الْأَقْوَالِ وَالْوُجُوهِ مِنْ غَيْرِ نَظَرٍ فِي التَّرْجِيحِ فَقَدْ جَهِلَ وَخَرَقَ الْإِجْمَاعَ

²³⁸The scholars worthy of giving preference (أصحاب الترجيح) have given preference to the view of Imam Zufar in 20 Masail which have been compiled by Ibrahim B̄ri Zadah (d.1099 AH) in his risalah: *Al Qawl Al Azhar Fi Ma Yufta Fihi Bi Qawl Zufar* (القول الأزهري فيما يفتى فيه بقول الإمام زفر)

(Lecture of Mufti Husain Kadodia Sahib)

²³⁹ Ibn Abidin has quoted Ibrahim Al Ya'muri's book, *Tabsirah Al Hukam Fi Usul Al Aqdiyah Wa Manahij Al Hukam* (تبصرة الحكم في أصول القضية ومناهج الحكم) with two different names. At first, he refers to it as *Al Usul Lil Ya'muri* (الأصول لليعمري), a few lines later he refers to it as *Usul Al Aqdiyah* (أصول القضية). Both names are names of the same book of Ibraheem Al Ya'muri.

(Lecture of Mufti Husain Kadodia Sahib)

²⁴⁰ Allamah Rafi'i (العلامة الرافعي) wrote a book called 'Al Aziz' (العزیز), Nawawi wrote an abridgement to this book and named it 'Al Rawdah' (الروضة). He then added extra Masail to this book and named it 'Zawaidul Rawdah' (زوائد الروضة).

(Lecture of Mufti Husain Kadodia Sahib)

“Know that the individual who suffices with having his Fatwa or action in accordance to a statement or view (of the Mathab) and chooses whichever statement or view (of the Madhab) that pleases him without looking into the preferred view has surely become ignorant and blatantly contradicted a consensus”²⁴¹

In summary, it is important for a Mufti to search for the preferred view of his Madhab. It is not sufficient to merely ensure that the Fatwa concurs with a view in the Madhab.

Allamah Qasim ibn Qutlubugah Rahimahullah (d.879 AH) states:

إِنِّي رَأَيْتُ مَنْ عَمِلَ فِي مَذْهَبِ أَيْمَنَّا رَضِيَ اللَّهُ عَنْهُمْ بِالتَّشَهُي حَتَّى سَمِعْتُ مَنْ لَفِظَ بَعْضُ الْقَضَاةِ وَهَلْ تَمَّ حُجْرٌ فَقُلْتُ نَعَمْ اتَّبَاعُ الْهَوَى حَرَامٌ وَالْمَرْجُوحُ فِي مُقَابَلَةِ الرَّاجِحِ
بِمَنْزِلَةِ الْعَدَمِ وَالْتَّرَجِيحُ بِغَيْرِ مُرَجِّحٍ فِي الْمُتَقَابَلَاتِ مُمْنُوعٌ

“Surely I have seen those who act upon the Madhab of our Imam by following their desires. In fact, I heard some of the judges say, ‘Is there anything wrong with it?’ I replied to them, ‘Yes, following your desires is forbidden, and an unfavoured opinion in front of a favoured opinion is non-existent, and to give preference without reason is impermissible’.

Allamah Khair Al Din Al Ramli Rahimahullah (d.1081 AH) states:

وَلَا شَكَّ أَنَّ مَعْرِفَةَ رَاجِحِ الْمُخْتَلَفِ فِيهِ مِنْ مَرْجُوحِهِ وَمَرَاتِبِهِ قُوَّةٌ وَضَعْفًا هُوَ نَهْيُهُ آمَالِ الْمُشَمِّرِينَ فِي تَحْصِيلِ الْعِلْمِ فَالْمَقْرُوضُ عَلَى الْمُفْتِي وَالْقَاضِي التَّنَبُّثُ فِي الْجَوَابِ
وَعَدَمُ الْمُجَازَفَةِ فِيهِمَا خَوْفًا مِنَ الْإِفْرَاءِ عَلَى اللَّهِ جَلَّ جَلَالُهُ بِتَخْرِيمِ حَلَالٍ وَصِدِّهِ وَيَحْرُمُ اتِّبَاعُ الْهَوَى وَالتَّشَهُيُّ وَالْمِيلُ إِلَى الْمَالِ الَّذِي هُوَ الدَّاهِيَةُ الْكُبْرَى وَالْمُصِيبَةُ
الْعَظْمَى فَإِنَّ ذَلِكَ أَمْرٌ عَظِيمٌ لَا يَتَجَاسَرُ عَلَيْهِ إِلَّا كُلُّ جَاهِلٍ شَقِيٍّ

“There is no doubt that recognising the preferred opinion from an unfavoured opinion in a difference of opinion and recognising the levels of the different opinions in terms of strength and weakness is the ultimate goal in achieving knowledge. Hence, it is necessary upon a Mufti and a Qadhi to rigorously check their answers and to avoid rushing the answer with the fear that this may cause one to attribute a lie to Allah the Exalted by making a haram action halaal or vice versa. It is forbidden to follow the desires and whims and to have an inclination towards wealth which is a big [-] and a huge tribulation for surely this (giving a Fatwa or court ruling) is a great matter, none but the ignorant wicked hasten in it”

Principle 5:

يَجِبُ عَلَى الْمُفْتِي أَنْ لَا يَعْتَمِدَ إِلَّا عَلَى الْكُتُبِ الْمُعْتَبَرَةِ فِي الْمَذْهَبِ وَلَا يَعْتَمِدُ بِأَقْوَالٍ مَنْقُولَةٍ فِي كُتُبٍ غَيْرِ مُعْتَبَرَةٍ

“It is necessary upon a Mufti that he does not rely upon anything except the reliable texts in the Madhab and that he does not rely upon the views recorded from the unreliable texts”

Indeed, from amongst the most requirements from a Mufti is that he recognises the reliable texts from the non-reliable texts. The reliable texts in the Hanafi Madhab are those books which the masters from the Hanafi Fuqaha

²⁴¹ Although Ibn Abideen would be correct in stating that it is impermissible for a person to *practise* upon a view that is not considered as the preferred view by the Fuqaha of the Madhab that he is following according to the Hanafi, Maliki and Hanbali Madhabs, it is incorrect to state that the Shafi’ Madhab does not allow an individual to practise upon a view which is not considered as the preferred view by the Shafi’ Fuqaha. Rather, the Shafi’i’ Madhab *allows* an individual to *practise* upon a view which is not considered the preferred view by the Shafi’i’ Fuqaha upon two conditions:

- 1) The view he is practising upon is not an irregular (شاذ) view
- 2) He is not simply following his whims and desires and does not make it a habit i.e. he is callous in his following of a Madhab

Hence, Imam Nawawi and Ibn Salah’s statements may be understood in the context of a person who acts upon any view that he finds by following his desires and makes this a habit.

(Lecture of Mufti Husain Kadodia Sahib)

have relied upon, and have taken with confidence and reliance, and have issued Fatwa in accordance to what is written in them.

Question: what are the 'Reliable Texts' – متون معتبرة?

Answer: They are 6 in total:

1. *Mukhtasar Al Qudūri* (مختصر القدوري) by Imam Al Quduri
2. *Al Mukhtār* (المختار)
3. *Al Nuqāyah* (النقاية) by Allamah Al Mawsili
4. *Al Wiqāyah* (الوقاية) by Burhan Al Shari'ah
5. *Kanzud Daqāiq* (كنز الدقائق) by Hafidh Al Din Al Nasafi
6. *Multaqā' Al Abhur* (ملتقى الأبحر) by Ibrahim Al Halabi²⁴²

A Mufti should not issue a Fatwa according to the view preferred in the unreliable texts.

Question: what are the unreliable texts²⁴³?

Answer: Many Fuqaha have mentioned books which cannot be used for issuing a Fatwa until its source or evidence is known. Ibn Abidin (d.1252 AH) has considered the following books from amongst them:

1. *Jamiur Rumooz* (جامع الرموز)²⁴⁴ by Allamah Quhistani
2. *Al Durrul Mukhtar* (الدر المختار) by Ala'ud Deen Al Haskafi (d.1080 AH)
3. *Al Ashbah Wal Nazair* (الأشباه والنظائر) by Ibn Nujaym (d.970 AH)
4. *Sharh Kanzud Daqaiq* (شرح كنز الدقائق) by Mulla Miskeen
5. *Qunyatul Munyah Li Tatmimil Gunyah* (قنية المنية لتتميم الغنية) by Allamah Zahidi
6. *Al Nahrul Fa'iq* (النهر الفائق) by Umar ibn Nujaym

²⁴² In Usūlul Iftā Wa Ādābuh, the book *Al Muntaqa* (المنتقى) is quoted as being from the reliable texts (متون معتبرة). This is an error. The book *Al Muntaqa* (المنتقى), as discussed earlier, is a book written by Hakim Al Shahid in which he gathered the Masail of Nawadir. Hence, *Al Muntaqa* (المنتقى) is not from the reliable texts (متون معتبرة). The intended book is *Multaqal Abhur* (ملتقى الأبحر) by Ibrahim Al Halabi which is considered one of the reliable texts (متون معتبرة).

²⁴³The unreliable books are at times referred to as *Al Kutubul Ghareebah* (الكتب الغريبة).

²⁴⁴It is a commentary of *Al Nuqayah* (النقاية) which is an abridgement of *Al Wiqayah* (الوقاية).

7. *Sharh Kanzud Daqaiq* (شرح كنز الدقائق) by Allamah Ayni

Others have also added the following kitaabs:

8. *Al Siraj Al Wahaj* (السراج الوهاج) by Abu Bakr ibn Ali ibn Muhammad Al Haddad (d.800 AH)
9. *Al Jawharah Al Nayirah* (الجوهرة النيرة) by Abu Bakr ibn Ali ibn Muhammad Al Haddad (d.800 AH)
10. *Kanzul Ubbad Fi Sharhil Awwad* (كنز العباد في شرح الأوراد) by Ali ibn Ahmad Al Gawri
11. *Khizanatur Riwayat* (خزانة الروايات)
12. *Khulasah Al Kaydani* (خلاصة الكيداني) by Kaydani
13. *Al Hawi* (الحاوي) by Allamah Zahidi (d.658 AH)
14. *Al Fatawa Al Sufiyyah* (الفتاوى الصوفية) by Fadhlullah ibn Muhammad ibn Ayub (d.735 AH)
15. *Fatawa Al Turi* (فتاوى الطوري) by Muhammad ibn Al Husayn ibn Ali Al Turi (he was alive in 1138H)

It is also important to know the reasons behind why a text may become unreliable.

There are six reasons due to which a text becomes unreliable:

- 1) The details regarding the author of the text are unknown

At times, a book is considered unreliable because the author of the book is unknown. Thus, it is not known whether he was a reliable Faqih or someone who has gathered between wet and dry views (i.e. all sorts of views).

Ruling of books of this type:

The ruling of books of this type is that if a view found in the book contradicts what is written in the reliable texts, then it shall be left.

However, if a view is found in the book that is not found elsewhere, then one will stop to see: if it falls under a principle of Shari'ah and does not contradict a principle of jurisprudence, then there is no problem in issuing Fatwa upon the view. However, if it does not fall under a principle of Shari'ah, then it is impermissible to issue a Fatwa upon the view.

Examples:

- *Khulasah Al Kaydani* (خلاصة الكيداني) by Kaydani:

The author of this is unknown. However, it is established that the book has many weak views, despite the fact that the book is common amongst the people of Transoxiana such that it is taught and memorised.

- *Khizanah Al Riwayat* (خزانة الروايات):

The author of this book is unknown. The author of *Kashf Al Zunun* (كشف الظنون) has attributed the book to Qadhi Jakan Al Hindi Al Gujrati. However, the details of this individual are also unknown. In this book too, many unreliable and weak views are found.

- The books of Al Quhistani:

Although his books are common among the people, he is a man whose details are unknown.²⁴⁵ The author of *Kashf Al Zunun* (كشف الظنون), Haji Khalifah, has narrated from Isām Al Dīn that he said, “He was not one of the students of Shaykhul Islām Al Harawī. Rather, he was broker of books during his time. He was unknown to the Fuqaha of his time and gathered all sorts of views in this commentary of his, without any preference or research”.

- *Sharh Kanz Al Daqaiq* (شرح الكنز لملا مسكين) by Mulla Miskin:

It is said that Mulla Miskeen²⁴⁶ was a Faqih from the Hanafi Fuqaha of the people of Harrah and that he lived in Samarqand. We also know that he finished this book in 811 AH. However, we do not know any more than this regarding him.

²⁴⁵ There are a lot of different opinions over Quhistani. Some say that he was not a Faqih, whilst others mention that he was the Mufti of Bukharah. The person who said that Quhistani was not a Faqih was Isamud Din; Isamud Din wrote:

إنه لم يكن من تلامذة شيخ الإسلام الهروي لا من أعاليهم ولا أدانيهم وإنما كان دلال الكتب في زمانه ولا كان يعرف الفقه وغيره بين أقرانه

However, Isamud Din was a contemporary of Quhistani and also wrote a commentary of *Al Nuqayah* (النقاية) which is completely unknown. Hence, after considering all of this and looking at the detail found in Quhistani’s book, *Jamiur Rumuz* (جامع الرموز), one can see that Isamud Din’s criticism is stemming from a personal vendetta.

On the other hand, the book *Jamiur Rumuz* (جامع الرموز), does have issues in the sense that it relies upon many unreliable books, Ibn Abideen took the taraweeh dua’ from Quhistani’s *Jamiur Rumūz* (جامع الرموز). He hardly gives his own preferences. So, you can take from the books as long as he is quoting from a reliable book. Otherwise, labelling the entire book as unreliable is incorrect. In fact, there are many Masail in there that you won’t find anywhere else, such as the issue of when a person must start his salaam in Salaah and at what point he should turn his head. Our general practise is that we start the salaam as we start to turn our head, however, only *Jamiur Rumūz* (جامع الرموز) and Tawāliul Anwār (طوال الأنوار) mention that the actual position of the Madhab is that one shall turn his head completely and then say the salaam. Tawāliul Anwār (طوال الأنوار) quotes a book by the name of Al Haqaiq (الحقائق) which is a commentary of Manzumah Al Nasafi (منظومة النسفي). Now, we have not been able to find anything contrary to this view in our Mathab, hence this view should be considered the view of our Mathab.

(Lecture of Mufti Husain Sahib)

Mulla Ali Al Qari has also quoted Isamud Din’s statement with regards to ‘Allamah Quhistani. He then supports this criticism by stating (Shamul Awarid Fi Dham Al Rawafid, p.394, v.6, Dar Al Lubab):

ويؤيده أنه جمع في "شرحه" هذا بين الغث والسمين والصحيح والضعيف من غير تحقيق وتصحيح وتدقيق فهو كحاطب ليل جامع بين الرطب واليابس في النيل سامحه الله بفضله وكرمه ولا جعلنا ممن زل بقدمه أو قلمه

(Translator)

²⁴⁶ In *Kashfuz Zunūn*, you will find it states that Mulla Miskeen passed away in 954 AH. However, this is a mistake and has actually been added on by the publisher of *Kashfuz Zunoon*. Nobody knows exactly when he was born or when he passed away. Mufti Husain Sahib thinks that he passed away some time after 835 AH. Mulla Miskeen’s name was Mueenud Din Al Harawi and was a Qadhi of Samarqand in Bukharah. We know that he passed away some time after 835 AH because there is a biography in *Tajul Aroos* of Abul Majd Muhammad ibn Ahmad who was born in 818 AH. It is mentioned that Abul Majd moved to Samarqand in 835 AH and it is mentioned that he studied under Mueenud Din Al Harawi; this tells us that Mueenud Din Al Harawi was alive in 835 AH. There is also a manuscript written in 811 AH of his commentary on *Kanzud Daqaiq*, if he passed away in 954 AH, there is no way that a manuscript of his book could be written in 811 AH.

Hence, to claim that the author is unknown is not a valid reason to rule the book as unreliable. In fact, we know more about Mulla Miskeen than we know about other accepted Fuqahaa. Also, the book was not written for the purpose of assisting in Fatwa, it was written to help in understanding the text of *Kanz*. Years ago in Al Azhar, they used to teach this book. In fact, many Ulama of Al Azhar have written commentaries on it and there are numerous footnotes written on the book including some very well-researched ones.

- 2) The author has gathered many weak narrations of the Madhab in the text or he has misquoted Fuqaha or has given preference to views that are not the preferred views of the Madhab.

The meaning of this is that although the authors of these books are known for their knowledge and jurisprudence, however, they have not sufficed in only mentioning the preferred views in this book, rather, they have presented every view or narration that they have found, without proper research or verification.

Ruling of books of this type:

The ruling of books of this type is that if a view found in the book contradicts what is written in the reliable texts, then it shall be left.

However, if a view is found in the book that is not found elsewhere, then one will stop to see: if it falls under a principle of Shari'ah and does not contradict a principle of jurisprudence, then there is no problem in issuing Fatwa upon the view. However, if it does not fall under a principle of Shari'ah, then it is impermissible to issue a Fatwa upon the view.

Examples:

- *Qunyatul Munyah Li Tatmim Al Gunyah* (قنية المنية لتتميم الغنية) by Allamah Zahidi²⁴⁷:

The author of this book, Mukhtar ibn Mahmud ibn Muhammad Abul Raja Najm Al Din Al Zahidi (d.658 AH) was well known as a scholar. He had Mu'tazilite beliefs but followed the Hanafi Madhab in the Masail of Fiqh.

Nonethelss, Allamah Lucknawi states:

كان من كبار الأئمة وأعيان الفقهاء ... وهو مع جلالته متساهل في نقل الروايات

"He was from amongst the great A'immah and the distinguished Fuqaha ... and he was, despite his great calibre, careless in presenting the [various] views [of the Hanafi Madhab]"

In Qunyatul Munyah, Al Zahidi Rahimahullah writes a letter before every Mas'alah which serves as an indication of where the Mas'alah has been taken from. In the introduction to this book, he presents a legend which elaborates upon the references of these letters. In this legend, there are many obscure book which have never been heard of.

Of course, when a Mas'alah is found in Al Qunyah which is taken from a reliable source, then there is no harm in relying upon it.

From amongst the weak views of the Hanafi Madhab that are found in Al Qunyah is the view that it is necessary (*Wajib*) to avoid putting on Kohl on the the day of Ashura. 'Allamah Tahtawi has mentioned in 'the chapter of that which annuls the fast' in his commentary upon Al Durr Al Mukhtar:

هذا لا يعول عليه لأن "القنية" ليست من الكتب المعتبرة

"Attention shall not be paid to this [view] as Al Qunyah is from amongst the unreliable texts"

So, the book itself can be used for understanding Kanzud Daqaiq. It's just best not to use it for Fatwa.

(Lecture of [Mufti Husain Sahib](#))

²⁴⁷His name was Mukhtar ibn Mahmood Al Zahidi. There is no doubt that he records many weak views of the Mathab. So, Al Qunyah is definitely an unreliable book. But, consider it to be something like Al Fatawa Al Hindiyyah; every view in Al Qunyah is taken from another book. So you don't rely on what is written in Al Qunyah, rather you look at the source; if the source is acceptable, you can give Fatwa from it, otherwise not.

(Lecture of [Mufti Husain Sahib](#))

- *Al Hawi* (الحاوي) by ‘Allamah Zahidi (d.658 AH):

This book by ‘Allamah Zahidi (d.658 AH) is known for presenting weak views. It is for this that Ibn Wahban Rahimahullah (d.768 AH) has stated as mentioned by Ibn Abidin Rahimahullah (d.1252 AH) in *Kitab Al Ijarah of Tanqih Al Fatawa Al Hamidiyyah* (تنقيح الفتاوى الحامدية):

إِنَّهُ لَا عِبْرَةَ بِمَا يَقُولُهُ الرَّاهِدِيُّ مُخَالَفًا لِعَبْرِهِ

“Indeed, there is no consideration of that which Al Zahidi has said in contradiction to others”

Besides this, Al Zahidi’s Mu’tazilite beliefs have also affected some of the views that he has presented. For example, he has rejected the view of the author of *Al Hidayah* in the Mas’alah of transferring the reward of an action to another person (إيصال الثواب) and has given preferen to the view that transferring the reward of an action to another person (إيصال الثواب) is impermissible.

Thus, when ‘Allamah Haskafi Rahimahullah discusses the Mas’alah of transferring the reward of an action to another person (إيصال الثواب), he writes:

ولقد أفصح الزاهدي عن اعتزاله هنا

“And indeed, Al Zahidi has announced his Mu’tazilite beliefs here (i.e. in this Mas’alah)”

Ibn Abidin Rahimahullah (d.1252 AH) writes under this:

حيث قال في المجتبى بعد ذكره عبارة الهداية "قلت ومذهب أهل العدل والتوحيد أنه ليس له ذلك الخ" فعدل عن الهداية وسمى أهل عقيدته بأهل العدل والتوحيد لقولهم بوجوب الأصلح على الله تعالى وأنه لو لم يفعل ذلك لكان جورا منه تعالى [العباد بالله]

“As in when he (Al Zahidi) said in *Al Mujtaba* after mentioning the statement of Al Hidayah, ‘I say, the view of Ahl Al Adl Wal Tawhid (the people of justice and oneness) is that it is not permissible for him to do this (i.e. send the rewards of his actions to another person)’. Thus, Al Zahidi refuted the view of Al Hidayah. Also, he labelled the people of his creed, the Mu’tazilites, as Ahl Al Adl Wal Tawhid (the people of justice and oneness) due to their view that it is necessary upon Allah to do that which is good, and that if He does not do this, then this is oppression from Him the Almighty [we seek refuge in Allah]”

- According to some later scholars: *Al Muhīt Al Burhanī* (الخيطة البرهاني) by Burhan Al Din Al Bukhari (d.616 AH)

Although the book *Al Muhīt Al Burhanī* (الخيطة البرهاني) was written by one of the great Hanafi Fuqaha who was considered from amongst the Mujtahid Fil Masail, Ibn Nujaym (d.970 AH) and Ibn Al Hummam (d.861 AH) have claimed that it is impermissible to issue a Fatwa using *Al Muhīt Al Burhanī* (الخيطة البرهاني) as it has gathered between wet and dry views (i.e. all sorts of views).

Allamah Abdul Hayy Lucknawi has also reiterated the sentiments of these two scholars. However, he then writes in *Al Nafi’ Al Kabir* (النافع الكبير):

وَقَدْ وَفَّقَنِي اللَّهُ بَعْدَ كِتَابَةِ هَذِهِ الرِّسَالَةِ الْمُطَالَعَةَ الْمُحِيطِ الْبُرْهَانِي فَرَأَيْتُهُ لَيْسَ جَامِعًا لِلرُّطَبِ وَالْيَابِسِ بَلْ فِيهِ مَسَائِلُ مُنْفَحَّةٌ وَتَفَارِيعُ مُرَصَّصَةٌ ثُمَّ تَأَمَّلْتُ فِي عِبَارَةِ فَتْحِ الْقَدِيرِ وَعِبَارَةِ ابْنِ تَجِيمٍ فَعَلِمْتُ أَنَّ الْمَنْعَ مِنَ الْإِفْتَاءِ لَيْسَ لِكُونِهِ جَامِعًا لِلغَثِّ وَالسَّمِينِ بَلْ لِكُونِهِ مُفْقُودًا نَادِرَ الْوُجُودِ فِي ذَلِكَ الْعَصْرِ وَهَذَا الْأَمْرُ يَخْتَلِفُ بِإِخْتِلَافِ الزَّمَانِ

“Indeed, after writing this treatise, Allah inspired me to study *Al Muhit Al Burhani*, thus I saw that it has *not* gathered between wet and dry views (i.e. all sorts of views), rather, it contains verified Masail and accurate extracted Masail. I then contemplated over the statement of Fathul Qadir and the state of Ibn Nujaym, and I realised that the reason for prohibiting one from issuing Fatwa from it was not because it has gathered between light and heavy views (i.e. all sorts of views), rather, it was because it was not found during that time, and this matter (the reliability of a book) is one that changes with the changing of time”

After understanding this, the later scholars have mentioned this book to be from amongst those books from which Fatwa cannot be issued due to it being a part of the fourth category that is to come, not this category.

However, the reality is that with the favour of Allah the Almighty, this books has been published in our time in twenty-five volumes.

Mufti Taqi Sahib has written that his nephew, the honourable Shaykh Na'im Ashraf, may Allah preserve him, has researched the book by comparison the various handwritten manuscripts which he acquired from various libraries.

Mufti Taqi Sahib has also written that he has read a significant portion of *Al Muhīt Al Burhanī* (المحيط البرهاني) and found that he in all of his chapters, he has first mentioned the Masail of Zahir Al Riwayah (ظاهر الرواية), then the Masail Al Nawadir, and then the Masail Al Fatawa Wal Waqiat in an excellent order. Thus, it is not possible to state that he has gathered between wet and dry views (i.e. all sorts of views). Indeed! The Masail Al Nawadir are found in the book, however, they are completely separated from the Masail of Zahir Al Riwayah, and therefore, the ruling for the Masail Al Nawadir which we have mentioned earlier could be easily applied to the Masail Al Nawadir found in the book, without any doubt or confusion.

Hence, it is appropriate for this book to be considered one of the most important reliable texts.

- *Kanz Al Ubbad Fi Sharh Al Awrad* (كنز العباد في شرح الأوراد) by Ali ibn Ahmad Al Gawri

It is filled with weak views and fabricated Ahādīth which have no consideration according to the Fuqahā nor the Muḥadithūn.

- *Matalib Al Mu'minin* (مطالب المؤمنين)
- *Al Fatawa Al Sufiyyah* (الفتاوى الصوفية)
- *Fatawa Al Turi* (فتاوى الطوري)
- *Fatawa Ibn Nujaym* (فتاوى ابن نجيم) – as mentioned by 'Allamah Lucknawi in *Al Nafi' Al Kabir* (النافع الكبير)
- *Al Ashbah Wal Nazair* (الأشباه والنظائر) by Ibn Nujaym (d.970 AH)
- *Al Durrul Mukhtar* (الدر المختار)

- 3) It has been summarised to such an extent that it may cause confusion in one's understanding of the text (الإختصار المخل بالفهم)

There are some books regarding which there is no doubt over its great rank and the reliability of its author, however, they have been summarised to such an extent that they create confusion in understanding, and therefore, the scholars have mentioned that it is impermissible for a Mufti to issue a Fatwa from these books alone. This does not mean that these books are themselves unreliable, rather, they are unreliable due to their summarisation which is such that a Mufti cannot be confident of avoiding a mistake by relying upon them alone.

Ruling of books of this type:

A Fatwa should not be issued from them except after a deep study, a complete contemplation, and after reading the various commentaries and footnotes written upon the book. Then, if a Mufti is convinced that his understanding of what is written is what has been meant by the author, then at this point there is no harm in issuing a Fatwa from it.

Examples:

- *Al Ashbah Wan Nazair* (الأشباه والنظائر) by Zaynud Deen ibn Nujaym (d.970 AH)²⁴⁸
- *Al Durrul Mukhtar* (الدر المختار) by Alāud Deen Al Haskafi (d.1088 AH)²⁴⁹

Ibn Abidin Rahimahullah writes in Sharh Uqud Rasmil Mufti:

أن الدر المختار والأشباه والنظائر تشتمل على سقط في النقل في مواضع كثيرة وترجيح ما هو خلاف الراجح بل ترجيح ما هو مذهب الغير مما لم يقل به أحد من أهل المذهب وعلى هذا فإن هذه الكتب داخلة في القسم الثاني أيضا

“Indeed, Al Durr Al Mukhtar and Al Ashbah Wal Nazair comprise of weak views in many places, and [they comprise of] preferences (tarjih) towards that which is not the preferred view, in fact, they contain preferences (tajih) towards views that are the view of another Madhab from those views which none from the Fuqaha of our Madhab have mentioned. Based upon this, these books (Al Durr Al Mukhtar and Al Ashbah Wal Nazair) fall into the second category (of reasons behind why a text becomes unreliable) as well”

- *Al Nahrul Fa'iq* (النهر الفائق) by Umar ibn Nujaym

Ibn Abidin quotes Allamah Hibatullah Al Ba'li as stating that Al Nahruq Fa'iq has been summarised to such an extent that it causes confusion in one's understanding of the text (الإختصار المخل بالفهم).

²⁴⁸ AMufti should never give Fatwa from *Al Ashbah Wan Nazair*; it should only be used as a last resort. Even if a Mufti is required to use it, he should check the commentaries of the book and check the original sources that the book is quoting. Checking Hamawi's commentary of *Al Ashbah Wan Nazair* is not enough when resorting to giving Fatwa from *Al Ashbah Wal Nazair*.

(Lecture of Mufti Husain Sahib)

²⁴⁹ Allamah Tahtawi (d.1230 AH) also has a commentary on *Al Durrul Mukhtar*. Contrary to Ibn Abideen's claims, Tahtawi states that Al Durrul is not summarised to such an extent that it would cause confusion. However, I would agree with Ibn Abideen (d.1252 AH) on this issue.

(Lecture of Mufti Husain Sahib)

- *Ramzul Haqaiq Sharh Kanzud Daqaiq* (رمز الحقائق شرح كنز الدقائق) by Allamah Ayni²⁵⁰²⁵¹

At this point, it is important to mention that although Mufti Taqi Sahib continues to mention a fourth reason that a text may become unreliable, in his discussion on this issue in *Sharh Uqood Rasmil Mufti*, Ibn Abideen (d.1252 AH) quotes Hibatullah Al Ba'li (d.1224 AH) as mentioning *only three reasons* for which a text may become unreliable. These three reasons are the three reasons that have been discussed above.

Hibatullah Al Ba'li (d.1224 AH) then quotes Salih Al Jīnī²⁵² (d.1170 AH) who states that the general ruling for an unreliable text is:

إِنَّهُ لَا يَجُوزُ الْإِفْتَاءُ مِنْ هَذِهِ الْكُتُبِ إِلَّا إِذَا عَلِمَ الْمُنْفُولُ عَنْهُ وَالْإِطْلَاعُ عَلَى مَا خِذَهَا

“It is not permissible to give a Fatwa from these (unreliable) texts except if the Mufti finds the source that the (unreliable) text is quoting and reads what is found in the source”

- 4) The text is reliable; however reliable manuscripts of the texts are no longer available

There are some books of Fiqh that were reliable and prevalent during their time. However, their copies have become scarce such that they are not found today except in rare places.

Ruling of books of this type:

It is not appropriate for a Mufti to rush in relying upon these texts. Rather, he must establish through strong evidences that the manuscript he is quoting from is free adulteration and correctly attributed to its author. Thus, if this is established through clear indication and strong evidences, then there is no problem in relying upon it.

Indeed, many old books which had been lost for a long period of time have been found in our times. The publishers then publish them using handwritten manuscripts which they have acquired. Hence, if the printed book has relied upon one manuscript alone which does not have a chain of narration to the author, then it is appropriate to take caution when relying upon these books.

²⁵⁰ Mufti Taqi Sahib has *not* quoted this book in this section. However, Ibn Abideen quotes Allamah Hibatullah Al Ba'li as stating that Al Nahruq Fa'iq has been summarised to such an extent that it causes confusion (الإختصار المخل)

²⁵¹ At times, when a book is deemed as unreliable, nobody wants to touch the book. This is definitely the wrong attitude when it comes to books like Ayni's commentary on *Kanzud Daqaiq*. In fact, the two best commentaries for understanding *Kanzud Daqaiq* are: *Sharh Kanzud Daqaiq* by Ayni and *Sharh Kanzud Daqaiq* by Mulla Miskeen, whereas both books have been deemed unreliable for Fatwa. Hence, if a book is unreliable for Fatwa, it does *not* mean that the book cannot be used at all.

(Lecture of Mufti Husain Sahib)

(Note: Ahmad Al Naqib has also made similar remarks in his *Al Mathabul Hanafi*, p.227, v.1, *Maktabah Al Rushd*)

Allamah Ayni's commentary on *Kanzud Daqaiq*, *Sharh Kanzud Daqaiq*, is an abridgement of Zaylaee's *Tabyeenul Haqaiq*, another commentary on *Kanzud Daqaiq*. Ayni's commentary is not a book written for giving Fatwa. However, it is one of the best books for understanding *Kanzud Daqaiq*.

(Lecture of Mufti Husain Sahib)

²⁵² Šāliḥ Al Jīnī was a scholar from Sham (شام), specifically from Jenin, a city in modern-day Palestine. His chain of narration (سند) was the highest of the time. There's a place in Damascus called Qubbah Al Nasr, it's a small dome under which the highest scholar of the time would be allowed to teach, and Šāliḥ Al Jīnī was granted that position. Ibn 'Abidin (d.1252 AH) made a bequest to be buried next, and so Ibn 'Abidin (d.1252 AH) is buried next to Šāliḥ Al Jīnī in Damascus.

(Lecture of Mufti Husain Sahib)

However, there are some books that the scholars have printed through research and correction by comparing the various handwritten manuscripts which have been acquired from various places. In this case, there is no problem in relying upon such printed books.

An addition to this category

Another category of books that fall under this category are those books for which an *authentic* manuscript is not found. Thus, although these books are prevalent amongst the people, they are, however, filled with mistakes from the compilers of the manuscript and the publishers.

Examples:

- *Al Nawazil* (النوازل) by Abu Layth Al Samarqandi (d.373 AH);
- *Al Binayah Sharhul Hidayah* (البناية شرح الهداية) by Allamah Ayni (d.855 AH);

The manuscripts for these books (in Pakistan) are filled with errors from the publishers which make the book difficult to understand, and at times, the actual meaning changes. Therefore, they should not be relied upon until an authentic manuscripts is found.

5) There is doubt over the attribution of the text to its supposed autho

There are some books that are attributed to those who are recognised in knowledge and jurisprudence, these books are prevalent amongst the people and not scarce. However, the attribution of the book to the supposed author is not certain.

Examples:

- *Al Makharij Wal Hiyal* (المخارج والخيال):

This text has been attributed to Imam Abu Yusuf. The scholars have continuously doubted whether it is really from amongst the books of Imam Abu Yusuf. The correct view is that this book is a fabrication, it is incorrect to attribute it to Imam Abu Yusuf, for indeed its narration from Imam Abu Yusuf are unknown (مجهول), and some of them are prolific liars (كذاب).

‘Allamah Kawthari has mentioned in his footnotes upon *Manaqib Abi Hanifah* written by Hafiz Al Dhahabi:

أنه رواية الكذاب ابن الكذاب محمد بن الحسين بن الحميد عن محمد بن بشر الرقي عن خلف بن بيان رواية مجهول عن مجهول فلا يصح الإعتماد عليه

“That it is a narration of a liar who is the son of a liar, Muhammad ibn Al Husayn ibn Al Humayd, from Muhammad ibn Bishr Al Riqqi from Khalaf ibn Bayan, a narration of an unknown from an unknown. Thus it is incorrect to rely upon it”

- *Al Fatawa Al Aziziyyah* (الفتاوى العزيزية):

This text has been attributed to Shaykh Abdul Aziz Al Dehlawi. However, it was not written by him, rather, it was gathered later on and the individual who gathered the Fatawa is unknown.

Mufti Taqi Sahib has stated that he heard his father say that there are additions to this book that are impossible to attribute to Shaykh Abdul ‘Aziz Al Dehlawi.²⁵³ Accordingly, it is inappropriate to rely upon it until its contents are supported through other means.

- 6) The text was not written with the purpose of mentioning the view of the Madhab in Fiqh. Rather, the focus is Hadith, Tafseer, etc. Due to this, these books attribute towards the Mathab a view that is contrary to the preferred view of the Mathab.²⁵⁴

At times, a book is written in a field other than the field of Fiqh, such as Sufism, ascetism, prayers, exegesis, Hadith, etc. and there are many Masail of Fiqh mentioned in them subordinately, not intentionally. A lot of what is found in these books is contrary to what is the preferred opinion of the Madhab, despite the great status of its authors. Mufti Taqi Sahib states that he has seen this occur many times in Umdatul Qari of Al Ayni, Mirqatul Mafatih of Mulla Ali Al Qari, Mabariq Al Azhar of Ibn Malik, and there are many examples of this in the books of Sufism.

Ruling of books of this type:

They will not be relied upon in those Masail where they have contradicted what is written in the well-known reliable texts which were written with the purpose of compiling the Masail of the Hanafi Madhab.

Examples:

- ‘Umdatul Qāri (عمدة القاري) of Allamah Ayni (d.855 AH); a commentary of Sahih Al Bukhari

An example to show why Umdatul Qari (عمدة القاري) cannot be relied upon for *fatwa*:

‘Allamah Ayni Rahimahullah mentions the view of the Shafi’i’ Madhab that it is permissible according to them to make an tie an Ihram with an ambiguous intention, for which they have used as evidence the story of Hadrat Ali Radiyallah Anhu and Hadrat Abu Musa Radiyallahu Anhu in which they both tied an Ihram while making intention of whatever the Prophet Sallallahu Alayhi Wasallam had made intention of. Thus, according to the Shafi’i’s, it is permissible to do this in this day and age as well, such that a person adorns Ihram with the intention of whatever Zayd has made an intention of. Hence, if Zayd has adorned the Ihram with an intention for Hajj, then this person’s Ihram shall also for an intention of Hajj, if Zayd has adorned the Ihram with an intention for ‘Umrah, then this person’s Ihram shall also for an intention of ‘Umrah, if Zayd has adorned the Ihram with an intention for Hajj and ‘Umrah, then this person’s Ihram shall also for an intention of Hajj and ‘Umrah, and if Zayd has adorned the Ihram without an intention, then this person’s Ihram shall also

²⁵³ Mufti Zafar Ahmad Uthmani Rahmatullahi Alayh has also mentioned this in his Fatawa. He writes:

اس کے بعد شاہ عبدالعزیز صاحب کے فتاویٰ کا حوالہ دیا گیا ہے۔ اولاً صحیح سند کا مطالبہ ہے کہ مضمون نگار سند صحیح متصل اس فتاویٰ مطبوعہ کا شاہ صاحب کا فتاویٰ ہونا ثابت کرے اور بتائے کہ اس کو شاہ صاحب نے جمع کیا ہے یا کسی اور نے اور جامع ثقہ ہیں یا نہیں اور آجکل کے مطابع کا کسی کتاب کو طبع کر کے کسی کے طرف منسوب کر دینا جت نہیں۔ اس فتاویٰ کو جس کسی عالم نے بھی دیکھا ہوگا وہ جانتا ہوگا کہ اس میں قدر رطب ویابس کو بھرا گیا ہے

(Mufti Zafar Ahmad Uthmani, “Imdadul Ahkam”, (Karachi: Maktabah Darul Ulum Karachi, 2009), p.546, v.4.)

Mufti Mahmud Gangohi Rahmatullahi Alayh has also mentioned this in his Fatawa. Hence, he writes:

مطبوعہ فتاویٰ عزیزی میں رطب ویابس کو شامل کر دیا گیا، جس میں مبتدعین وروافض کی تدسیس بھی ہے، موضوع روایات بھی ہیں غلط مسائل بھی ہیں بغیر سوال وجواب کے بھی عبارات ہیں اس لئے جب تک کہ تم معتدہ سے تائید نہ ہو جائے اس پر اعتماد نہیں کیا جاتا۔ تقریباً پچاس مقامات کے متعلق تو میری یادداشت میں کلام و نظر۔ بعض مسائل تو بالیقین روافض کی تائید میں ہیں۔ جس نے حضرت شاہ صاحب کی ”تحفۃ اثناء عشریہ“ کا مطالعہ کیا ہے وہ جانتے ہیں کہ حضرت شاہ صاحب کا مزاج و مذہب کیا تھا۔ اس لئے اس مجموعہ کو یہ کہنا کہ حضرت شاہ صاحب ہی کا ہے صحیح نہیں۔

(Mufti Mahmud Hasan Gangohi, “Fatawa Mahmudiyyah”, (Karachi: Idaratul Faruq, 2008), v.16, p.276.)

²⁵⁴ The question remains with regards to books such as Ahkamul Qur’an of Abu Bakar Al Jassas and Sharh Ma’anil Athar of Imam Tahawi. Ahmad Al Naqib states that these books have a strong connection with the books of Fiqh and are not considered as books written in a completely different field from Fiqh. Hence, it would be fine to carefully take Masail from these books for Fatwa.

(Ahmad ibn Muhammad Al Naqib, “Al Madhab Al Hanafi”, (: Maktabah Al Rushd,) v. 1, p.231.)

be without intention – in which case he will have a choice of converting his intention to an Umrah or Hajj.

After this, ‘Allamah Ayni Rahimahullah writes:

ولا يجوز عند سائر العلماء والأئمة رحمهم الله الإحرام بالنية المبهمة لقوله تعالى "وأتموا الحج والعمرة لله" ولقوله "ولا تبطلوا أعمالكم" ولأن هذا كان لعل رضي الله تعالى عنه خصوصا وكذا لأبي موسى الأشعري

“And it is impermissible according to all the scholars and A’immah, may Allah have mercy upon them, to tie an Ihram with an ambiguous intention due to the Almighty’s statement, ‘And complete Hajj and Umrah for Allah’ and due to His statement, ‘And do not invalidate your actions’, and because this was a special concession for ‘Ali Radiyallahu Anhu, and similarly for Abu Musa Al Ash’ari [Radiyallahu Anhu]”

‘Allamah Ayni has mentioned that the view of all the A’immah, which includes the Hanafi Fuqaha, is that tying an Ihram with an ambiguous intention is impermissible. However, this is contrary to the relied upon opinion according to the Hanafi Fuqaha. The correct view is that to tie an Ihram with an ambiguous and suspended intention is permissible according to the Hanafi Fuqaha, just like Shafi’i’ Madhab. Thus, ‘Allamah Ibn Abidin Rahimahullah (d.1252 AH) quotes the book Lubab Al Manasik:

وتعيين النسك ليس بشرط فصح مبهما وبما أحرم به الغير

“And to specify the [intention] of worship (whether Hajj or Umrah) is not a condition. Thus, an intention is correct if it is made ambiguously or [it is made suspended] upon that [intention] which another person has adorned the Ihram with”

‘Allamah Haskafi Rahimahullah (d.1088 AH) has also mentioned similar to this in the text of Al Durr Al Mukhtar, without mentioning a difference of opinion amongst the Hanafi Fuqaha.

- *Mirqātul Mafātih* (مرقاة المفاتيح) of Mulla Ali Al Qari (d.1014 AH); a commentary of Mishkatul Masabih
- *Mabāriq Al Azhār* (مبارق الأزهار) of Ibn Malik; a book in Tasawwuf

Principle 6:

التَّرجِيحُ مِنْ أَصْحَابِ التَّرجِيحِ قَدْ يَكُونُ صَرِيحًا وَقَدْ يَكُونُ التَّزَامًا فَحَيْثُ لَمْ يُوْجَدْ التَّرجِيحُ الصَّرِيحُ عُمِلَ بِالتَّرجِيحِ الْإِلتِزَامِيِّ وَحَيْثُ وُجِدَ التَّصْرِيحُ فَهُوَ مُقَدَّمٌ عَلَى الْإِلتِزَامِ

“Preference (Tarjih) from the scholars worthy of giving preference may at times be apparent/explicit and may at times be indicative, thus when apparent/explicit preference (Tarjih) is not found, then indicative preference shall be acted upon, and when apparent/explicit preference (Tarjih) is found, it shall be given priority over indicative preference”

We have mentioned that when there are differing views or narration from the A’immah of the Madhab, then Fatwa shall be issued according to the view that the scholars worthy of giving preference have given preference to.

If there is a difference of opinion between the A’immah of the Madhab, the *As-hab Al Tarjih* (أصحاب الترجيح) may give preference (*tarjih*) to one view in one of two ways:

1) Apparent Preference (الصريح): the Faqih worthy of giving preference (صاحب الترجيح) clearly and explicitly gives preference (ترجيح) to one view by stating: “It is the correct view” (هو الصحيح) or “it is the more correct view” (وهو الأصح) or “Fatwa shall given according to it” (وبه يفتى), or “upon it is the Fatwa” (عليه الفتوى), or “it the relied upon view” (وهو المعتمد), or other similar phrases. We shall soon discuss the different levels of these words.

2) Indicative Preference (الإلزامي): the Faqih worthy of giving preference (صاحب الترجيح) indicaticates towards the preferred view, but does not give explicit preference to it

This could occur in one of four ways:

1. The preferred view is mentioned first. Thus, some Fuqaha capable of giving preference (صاحب الترجيح) have taken on the practice of mentioning their preferred view before mentioning the other non-preferred views.

Examples:

- Imam Qadi Khan (d.592 AH), he writes in his Fatawa:

وفيما كثرت فيه الأقاويل من المتأخرين اقتصر على قول أو قولين وقدمت ما هو الأظهر وافتتحت بما هو الأشهر إجابة للطلابين وتيسيرا على الراغبين

“And in that which there are differing views amongst the later scholars, I have sufficed in mentioning one or two views, and I have presented first that [view] which is the clear view, and I have begun with that [view] which is the more famous view, responding to [the call of] the students and simplifying for the seekers”

- Ibrahim Al Halabi has also undertaken the practice the preferred view before the non-preferred views.

Mufti Taqi Sahib states that from studying the practice of Allamah Kasani (d.587 AH), it seems that he has also done the same in most cases in *Bada'i' Al Sanai'* (بدائع الصنائع) – i.e. he presents the preferred view first.²⁵⁵ This is contrary to Ibn Abidin Rahimahullah (d.1252 AH)’s opinion as we shall soon see.

2. The evidence for the preferred view is mentioned last. Indeed, it is the known practice of the books that discuss evidences of views that they mention the evidences of the preferred view at the end of the discussion. They then provide answers to the evidences for the other non-preferred views. Thus, the view for which an evidence is mentioned at the end is the preferred view according to the author.

Shaykhul Islam ‘Allamah Ibn Al Shilbi states in his Fatawa:

الأصل أن العمل على قول أبي حنيفة رضي الله عنه ولذا ترجح المشايخ دليله في الأغلب على دليل من خالفه من أصحابه ويجيبون عما استدل به مخالفه وهذا أمانة العمل بقوله وإن لم يصرحوا بالفتوى عليه إذا الترجيح كصريح التصحيح

“The principle is that action shall be taken upon the view of [Imam] Abu Hanifah, may Allah be pleased with him, it is for this reason that the Mashaikh (scholars who are capable of giving preference (أصحاب الترجيح)) give preference to his evidence in most cases over the evidence of those

²⁵⁵ Allamah Kasani (d.587 AH) has not explicitly mentioned anywhere that this is his style.

who have opposed him from his students, and they provide answers to what his opposition have used as evidence, and this (mentioning Imam Abu Hanifah's evidence and responding to the evidences of his opposition) is an indication that action (Fatwa) is upon his view even if they have not explicitly mentioned that Fatwa is upon it, because [indicative] preference is similar to apparent/explicit preference"

Examples:

- *Al Hidayah* (الهداية) by 'Ali Al Murghinani
 - *Al Mabsut* (المبسوط)
 - The commentaries written upon *Kanz Al Daqaiq* (كنز الدقائق)
 - *Al Kafi Sharh Al Wafi* (الكافي شرح الوافي) by Hafiz Al Din Al Nasafi (d.710 AH)
 - Ibn Abidin Rahimahullah has considered *Bada'i' Al Sanai'* (بدائع الصنائع) as a part of this category
3. Hafiz Al Din Al Nasafi has mentioned a general rule for indicative preference (التصحيح الإلزامي) which is that when three views are recorded for a Mas'alah in a book, then the preferred view shall be the first view or the last view, not the middle view.

He writes:

إذا ذكر في المسألة ثلاثة أقوال فالراجح هو الأول أو الأخير لا الوسط

"When in a Mas'alah, there are three views, the preferred one is the first one or last one, not the middle one"²⁵⁶

4. The evidence for the preferred view is mentioned. This is when the the Faqih who is capable of giving preference (صاحب الترجيح) mentions an evidence (دليل)²⁵⁷ for one view and does not mention it for the other view/s, the view that he mentions an evidence for shall be considered the preferred view of the Madhab according to that Faqih
5. The Faqih who is capable of giving preference (صاحب الترجيح) provides an answer to all the other views except for some the one he considers to be the preferred view. This is when the Faqih mentions various views with their evidences, and then goes on to respond to the evidences of the various views, but does not respond to the evidences of one view, then this is an indicative preference (الترجيح الإلزامي) towards that one view.
6. The view is found in the *Al Mutun Al Mu'tabarah* (المتون المعتمدة). The mention of this view in the *Al Mutun Al Mu'tabarah* (المتون المعتمدة) is sufficient in serving as an indicative preference (الترجيح الإلزامي) towards the view, even if apparent preference (الترجيح الصريح) is not found. This is because the *Al Mutun Al Mu'tabarah* (المتون المعتمدة) were written to mention the preferred view of the Madhab. Thus

²⁵⁶ Ibn Abidin has quoted this view from *Al Mustasfa* which is a commentary written by Hafiz Al Din Al Nasafi of the *Al Manzumah* of Najm Al Din Al Nasafi. However, Ibrahim Biri Zadah has quoted this view from *Al Musaffa* which is an abridgement of *Al Mustasfa* also written by Hafiz Al Din Al Nasafi.

(Ibrahim Biri Zadah, "Umdah Dhawil Basair Li Hal Mubhamat Al Ashbah Wal Nazair", (Istanbul: Maktabatul Irshad, 2016), v.1, pg.57)

²⁵⁷ This is not only

a ruling found in the *Al Mutun Al Mu'tabarah* (المتون المعتبرة) is an indicative preference (الترجيح الإلزامي) to that ruling.

'Allamah Qasim ibn Qutlubugah has written:

ما في المتون مصحح تصحيحا التزاميا

"That which is in the *Al Mutun [Al Mu'tabarah]* has been given an indicative preference"

Many other scholars have also mentioned this.

An Important Rule

Apparent preference (الترجيح الصريح) is given priority over indicative preference (الترجيح الإلزامي)

A hypothetical example of this point:

Opinion A is mentioned in the reliable texts (متون معتبرة), opinion B is not mentioned in the reliable texts (متون معتبرة) but a scholar worthy of giving preference (صاحب الترجيح) gives an apparent preference (الترجيح الصريح) to opinion B.

Opinion B will be considered the preferred (راجح) view upon which Fatwa shall be given as apparent preference (الترجيح الصريح) comes before indicatice preference (الترجيح الإلزامي).

A practical example of this point:

The reliable texts (متون معتبرة) state that a marriage (*Nikah*) without a wali with non-compability (غير كفؤ) will take place, however the wali will have the right to annul the marriage (حق الفسخ). This is an indicative preference (الترجيح الإلزامي) of this view.

In the narration of Hasan ibn Ziyad from Imam Abu Hanifah, Imam Abu Hanifah states that the marriage (*Nikah*) will not take place at all. This narration is not found in the reliable texts (متون معتبرة).

However, the scholars worthy of giving preference (أصحاب الترجيح) have given apparent preference (الترجيح الصريح) to the narration of Hasan ibn Ziyad, that marriage (*Nikah*) will not take place at all and thus the Fatwa shall be given upon this view.

Hence, the rule:

المتون مقدم على الشروح

"The [views expressed in the] Manuals (*Al Mutun*)²⁵⁸ are given preference over [the views mentioned in the] commentaries (*Al Shuruh*)"

²⁵⁸ The early Manuals (mutun) in the Hanafi Madhab include:

- *Mukhtasar Al Tahawi*
- *Mukhtasar Al Karkhi*
- *Al Kafi*
- *Mukhtasar Al Quduri*

After this, the later manuals (mutun) in the Hanafi Madhab were written such as *Al Nuqayah*, *Al Wiqayah*, *Kanzud Daqaiq* and *Multaqal Abhur*. However, Allamah Marjani has praised the early Manuals by stating:

فإنها تصانيف معتبرة وتؤلف متمددة قد تداولها العلماء وتنافس فيها الفقهاء وأولعوا فيها حفظاً وروايةً ودرساً وتفقهاً ودراسةً وشرحاً وتعليقاً

Will only apply when apparent preference (الترجيح الصريح) is not found in the commentaries (*Al Shuruh*) written by the scholars worthy of giving preference (أصحاب الترجيح).

Principle 7:

وَلِلتَّرْجِيحِ الصَّرِيحِ أَلْفَاظٌ بَعْضُهَا أَقْوَى مِنْ بَعْضٍ فَأَقْوَى الصَّيْغِ فِي ذَلِكَ "عَلَيْهِ عَمَلُ الْأُمَّةِ" ثُمَّ "عَلَيْهِ الْفَتْوَى" وَ "بِهِ يُفْتَى" ثُمَّ "الْفَتْوَى عَلَيْهِ" ثُمَّ "هُوَ الصَّحِيحُ" ثُمَّ "هُوَ الْأَصَحُّ" ثُمَّ الصَّيْغَةُ الْبَاقِيَةُ مُتَسَاوِيَةٌ فِي الْقُوَّةِ كَقَوْلِهِمْ "هُوَ الْمُعْتَمَدُ" وَ "هُوَ الْأَشْبَهُ" غَيْرَ أَنَّ صِيغَةَ التَّفْضِيلِ فِيهَا رَاجِحَةٌ عَلَى غَيْرِهَا

“Preference (Tarjih) is expressed in various words, some of which are stronger than others, the strongest words in this are: ‘The action of the Ummah is upon this [view]’, then ‘Upon it is the Fatwa’, then ‘Fatwa is given according to it’, then ‘The Fatwa is upon it’, then ‘It is the correct [view]’, then ‘It is the most correct [view]’, then the remaining words are of equal strength, such as when they say, ‘It is relied upon’, and ‘It is the most appropriate’, except that the

The above may be summarised in the following table:

Level	Words Used
1	عليه عمل الأمة
2	عليه الفتوى
3	به يفتى
4	الفتوى عليه
5	هو الصحيح ²⁵⁹
6	هو الأصح
7	به نأخذ, عليه فتوى مشائخنا, وهو المعتمد, وهو الأشبه, وهو الأوجه

As for the later manuals, Allamah Marjani has been critical of these manuals due to them lacking Ahadith and chains of narration. He also feels that the later manuals are filled with the views of the later Fuqaha. Hence, he states:

وَأَمَّا الْمُخْتَصَرَاتُ الَّتِي جَمَعَهَا الْمُتَأَخَّرُونَ كَ "الْوَقَايَةِ" وَ "الْكُنْزِ" وَ "النُّقَايَةِ" وَغَيْرِهَا فَإِنَّ أَصْحَابَهَا – وَإِنْ كَانُوا عُلَمَاءَ صَالِحِينَ فَضْلًا كَامِلِينَ – لَيْسُوا بِحَدِّهِ الْمَثَابَةِ مِنَ الثِّقَةِ وَالْفَقَاهَةِ مَعَ خُلُقٍ كَلَامِهِمْ عَنْ الْحُجَّةِ وَالْإِسْنَادِ

(Şihabet Din Marcani, “Nazuratul Haq”, (Istanbul: Maktabul Irshad,), p.180.)

²⁵⁹ The jurist of his time, Mufti Rashid Ahmad Ludhianwi writes in Ahsanul Fatawa:

قلت لفظ المختار أكد من لفظ الصحيح لأن الإختيار يستلزم التصحيح والتصحيح لا يستلزم الإختيار

“I say that the word ‘Al Mukhtar’ (The chosen one) is stronger than ‘Al Sahih’ (The correct one), because ‘Al Ikhtiyar’ (choice) necessitates ‘Tashih’ (correctness) whilst ‘Al Tashih’ (correctness) does not necessitate ‘Al Ikhtiyar’ (choice)”

[Ahsanul Fatawa, Karachi: HM Said, 2001, v.3, p.320]

Muhammad Harun states that it cannot be said for Al Mukhtar that it is stronger than Al Fatwa Alayh (Fatwa is upon it). For indeed, the phrase Al Fatwa Alayh is stronger than Al Mukhtar as Ibn Abidin has clearly mentioned:

لفظة الفتوى أكد وأبلغ من لفظة المختار

“The word ‘Al Fatwa’ is stronger and more informative than the word ‘Al Mukhtar’

[Raddul Muhtar, Karachi: HM Said, 2001, v.1, p.490]

(Muhammad Harun, “Al Fath Al Rabbani”, (Dhaka: Maktabah Al Azhar, 2014), p.457.)

Differentiating Between Various Words of Preference

This may be of two types:

- 1) Type 1: There are more than two views from the A'immah of the Madhab in the Mas'alah
- 2) Type 2: There is only one view from the A'immah of the Madhab in the Mas'alah

Type 1: There are more than two views from the A'immah of the Madhab in the Mas'alah

This may be of three types:

- 1- Two or more scholars capable of giving preference have given preference to only one view *or only* one scholar has given preference and he has given preference to only one view

Ruling: this view shall be considered the strongest and Fatwa shall be given upon it, even it is the view of Imam Zufar Rahimahullah.

- 2- Only one scholar has given preference and he has given preference to both views

This may be of three types:

1. He has used a preference involving the word 'Fatwa' for both views

This may be of two types:

- The views involving the word 'Al Fatwa' are of different strengths

Ruling: the view which has been given preference with stronger words shall be considered stronger, for example, if the phrase: **وبه يفتى** (according to it Fatwa is given) is used for one view and the phrase: **عليه الفتوى** (upon it is the Fatwa) is used for the other view, the former shall be considered stronger.

- The views involving the word 'Al Fatwa' are of equal strength

Ruling: If the Mufti knows the dates of the two preferences (such as when the preferences are found in separate books written by the author), the later preference shall be considered the stronger preference. If the dates of the preferences are unknown, then a Mufti shall consider another means (*Murajihat*) of giving preference to one of the two views. These means shall be discussed in the next chapter.²⁶⁰

2. He has used only the word *Al Sahih* for both views or he has only used the word *Al Asah* for both views, and he has not given a preference involving the word 'Al Fatwa'

Ruling: If the Mufti knows the dates of the two preferences (such as when the preferences are found in separate books written by the author), the later preference shall be considered the stronger preference. If the dates of the preferences are unknown, then a Mufti shall consider another means (*Murajihat*) of giving preference to one of the two views. These means shall be discussed in the next chapter.²⁶¹

²⁶⁰ Although Ibn Abidin has actually used the term: **تخير المفتي** – 'A Mufti shall choose', he later explains that this choice will only apply when other means of preference (*Murajihat* – see the next chapter) do not exist. Thus, he writes:

فالمفتي بالخيار ليس على إطلاقه بل إذا لم يكن لأحدهما مرجح قبل التصحيح أو بعده

"And the [notion of the] Mufti choosing is not in general. Rather, this is when no other means of preference (*Murajihat* – see the next chapter) are found for one of the two views either before this preference was given or after it"

²⁶¹ Although Ibn Abidin has actually used the term: **تخير المفتي** – 'A Mufti shall choose', he later explains that this choice will only apply when other means of preference (*Murajihat* – see the next chapter) do not exist. Thus, he writes:

3. He used *Al Sahih* for one of the preferences and *Al Asah* for the other preference
Ruling: the view that has been labelled *Al Asah* shall be considered the stronger view

3- Two or more scholars have given preference and each one has given preference to opposing views

This may be of four types:

1. Some of the scholars have given preference using the word *Al Fatwa* to one view while other scholars have given preference using the word *Al Fatwa* to another view

This may be of two types:

- The views involving the word 'Al Fatwa' are of different strengths
Ruling: the view which has been given preference with stronger words shall be considered stronger, for example, if the phrase: *وبه يفتى* (according to it Fatwa is given) is used for one view and the phrase: *عليه الفتوى* (upon it is the Fatwa) is used for the other view, the former shall be considered stronger.
- The views involving the word 'Al Fatwa' are of equal strength

This may be of two types:

- The scholars who have given preference are of an equal calibre
Ruling: a Mufti shall consider another means (Murajihat) of giving preference to one of the two views. These means shall be discussed in the next chapter.
- The scholars who have given preference are not of an equal calibre
Ruling: the preference (tarjih) of those with a high calibre shall be considered a stronger preference (tarjih).

2. *All* the scholars who have given preference have used only the word *Al Asah* or *all* the scholars who have given preference have used only the word *Al Sahih*, and none of them have given preference using the word *Al Fatwa*

This may be of two types:

- The scholars who have given preference are of an equal calibre
Ruling: a Mufti shall consider another means (Murajihat) of giving preference to one of the two views. These means shall be discussed in the next chapter.
- The scholars who have given preference are not of an equal calibre
Ruling: the preference (tarjih) of those with a high calibre shall be considered a stronger preference (tarjih). For example, in this situation, the preference (tarjih) of Imam Qadi Khan Rahimahullah shall be stronger than the preference (tarjih) of Al Kurdi Al Bazazi Rahimahullah. In fact, 'Allamah Qasim ibn Qutlubugah writes:

إن قاضي خان رضي الله عنه من أحق من يعتمد على تصحيحه

فالمفتي بالخيار ليس على إطلاقه بل ذاك إذا لم يكن لأحدهما مرجح قبل التصحيح أو بعده

“And the [notion of the] Mufti choosing is not in general. Rather, this is when no other means of preference (Murajihat – see the next chapter) are found for one of the two views either before this preference was given or after it”

“Indeed, Qadi Khan, may Allah be pleased with him, is from the forefront of those whose preferences are relied upon”

3. *Some* of them have used the word Al Sahih while *others* have used the word Al Asah, and none of them have given preference involving the word Al Fatwa

Ruling: There is a difference of opinion amongst the scholars as to which of the two opinions shall be considered the stronger preference:

- 1- Ibn Abdul Razzaq states that Al Asah (it is the most correct) will be a stronger preference
- 2- Allama Bīrī narrates from the footnotes of Usūl Al Bazdawī that Al Sahih will be a stronger preference as the opposite of Al Sahih (correct) is Al Khata (incorrect). Therefore by saying Al Sahih (it is correct), it is an indication that the other views are incorrect. Whereas by saying Al Asah (it is the most correct) there is no denial that of the other views being correct

In all of the above rulings, we have used the word ‘strongest’ instead of the word ‘Fatwa shall be given upon it’, this is because in the next chapter, we shall demonstrate how the *words used* by the scholars worthy of giving preference during their preference is actually just *one of the possible reasons* (known as Murajjihat) for giving preference to one view when multiple views have been preferred by the scholars worthy of giving preference.

Type 2: There is only one view from the A’immah of the Madhab in the Mas’alah

It is necessary for a Mufti to issue the Fatwa upon this view. In fact, even the scholars who are capable of giving preference (أصحاب الترجيح) are also required to issue Fatwa upon this view (although they may disagree with the view in their personal opinion which shall be labelled as their *tafarrud* (personal opinion)).

Principle 8:

إِنْ وَجِدَ قَوْلَانِ مُتَعَارِضَانِ عَنْ أَيْمَةِ الْمَذْهَبِ وَقَدْ رُجِّحَ كُلُّ وَاحِدٍ مِنْهُمَا فَإِنْ كَانَ كَلًّا مِّنَ التَّرْجِيحَيْنِ مِنْ رَجُلٍ وَاحِدٍ عَمِلَ بِالْمُتَأَخَّرِ مِنْهُمَا إِنْ عُرِفَ التَّارِيخُ وَإِنْ لَمْ يُعْرَفِ التَّارِيخُ أَوْ كَانَ التَّرْجِيحَانِ مِنْ رَجُلَيْنِ مُخْتَلِفَيْنِ رَجَّحَ الْمُفْتِي أَحَدَهُمَا بِمُرْجَحَاتٍ تَبَدُّو لَهُ فَإِنْ لَمْ يَظْهَرْ لِأَحَدِهِمَا شَيْءٌ مِّنَ الْمُرْجَحَاتِ فَالْمُفْتِي بِالْخِيَارِ وَيَأْخُذُ أَحَدَهُمَا بِشَهَادَةِ قَلْبِهِ مُجْتَنِبًا عَنِ التَّشْهِيِّ وَطَالِبًا لِلصَّوَابِ مِنَ اللَّهِ تَعَالَى

“If two contradictory views are found and preference has been given to each of them, then if both of these preferences are from one scholar, then the later preference shall be taken if the date is known, and if the date is unknown or the preferences have been given by two separate individuals, then a Mufti shall choose one of them based upon the reasonings that are apparent to him, and if none of the reasonings indicate towards choosing one of the views, then a Mufti shall have a choice of choosing one of the two views that his heart testifies towards, while refraining from desires and hoping for correctness from Allah the Almighty”

If there are two different preferences (ترجيح) found in a Mas'alah, then this may be of two types:

- 1) The different preference (*tarjih*) are found from one scholar worthy of giving preference (أصحاب الترجيح)

Solution: we have discussed this in the previous section. However, the summary is that we shall take his final preference (*tarjih*) by looking at the dates on which he wrote his books while also considering the words that he used when giving preference and the other different means of giving preference (Murajjihat).

- 2) The different preference (*tarjih*) are found from different the scholars worthy of giving preference (أصحاب) or they are found from one scholar worthy of giving preference (أصحاب الترجيح) and we can't work out his final preference (*tarjih*)

Solution: use the means of giving preference (Murajjihat) mentioned below to decide which preference Fatwa shall be given upon:

1. Give preference to the preference (*tarjih*) that has stronger words (صريح). This has been discussed in the previous chapter.
2. Give preference to explicit preference (تصحيح صريح) over indicative preference (تصحيح إلتزامي)
3. If one of the views that have been given preference (*tarjih*) is found in the reliable texts (متون معتبرة) and the other one is not, then give preference to the one that is found in the reliable texts (متون معتبرة). Unless, the scholars who are worthy of giving preference (أصحاب الترجيح) who gave preference to the view that is not found in the reliable texts (متون معتبرة) explain why the view mentioned in the reliable texts (متون معتبرة) will not be taken.
4. If the view is mentioned in the Al Mutun Al Mu'tabar (متون معتبرة), it will be given preference to what is mentioned in the commentaries (شروح) and Fatawa. If it is not mentioned in the reliable texts (متون معتبرة),

then the view mentioned in the commentaries (شرح) shall be given preference to what is written in the Fatawa (فتاوى).²⁶²

5. If one of the views that have been given preference (*tarjih*) is found in the *Zahir Al Riwayah* (ظاهر الرواية) and the other one is not, then give preference to the one that is found in the *Zahir Al Riwayah* (ظاهر الرواية).
6. If one of the views that have been given preference (*tarjih*) is the view of Imam Abu Hanifah whilst the other one is the view of Imam Abu Yusuf and Imam Muhammad, then give preference to the view of Imam Abu Hanifah
7. If one of the views that have been given preference (*tarjih*) is the view of the majority of the Mashaikh whilst the other one is the view of a few Mashaikh, then give preference to the view of the majority of the Mashaikh
8. If one of the views that have been given preference (*tarjih*) has been achieved by application of anlogical deduction (قياس) whilst the one has been achieved through Istihsan (استحسان), the view achieved through Istihsan (استحسان) will be given preference
9. If one of the views that have been given preference (*tarjih*) is more applicable to the current times, it will be given preference
10. If one of the views that have been given preference (*tarjih*) is stronger in terms of evidence (دلائل) according to an individual who is worthy of looking at evidence (دلائل), then it will be given preference²⁶³

²⁶² **Example:**

When an Imam has led Salah without wudhu or in the state of major impurity or he has missed a condition or Fard action in Salah, then he is required to inform to the best of his abilities those individuals who he knew had prayed Salah behind him. This is the view preferred in Mi'raj Al Dirayah, a commentary of Al Hidayah by Qiwan Al Din Al Kaki and Al Mujtaba, a commentary of Al Quduri by Najm Al Din Al Zahidi. However, the view preferred in Majma' Al Fatawa, Al Qunyah by Al Zahidi, and Al Hawi by Al Zahidi is that the Imam does not need to inform those who prayed Salah behind him at all. 'Allamah Haskafi has given preference to the view preferred by Qiwan Al Din Al Kaki in Mi'raj Al Dirayah stating:

لكن الشروح مرجحة على الفتاوى

"However, the commentaries are preferred over the Fatawa"

(Ibn Abidin Rahimahullah, "Rad Al Muhtar", (Damascus: Dar Al Thiqaafah Wal Turath, 2000), v.3, pg.632.)

²⁶³ **Example:**

If an Imam recites loudly when he is supposed to recite quietly or recites quietly when he is supposed to recite loudly, then according to the Hanafi Madhab, he is required to perform Sajdah Al Sahwah. The Zahir Al Riwayah indicates that Sajdah Al Sahwah shall become necessary (wajib) if the Imam recites any portion of the recitation loudly or quietly when he is not supposed to. However, Imam Qadi Khan in Fatawa Qadi Khan, 'Allamah Murghinani in Al Hidayah, Ibn Al Hummam in Fath Al Qadir, 'Allamah Zayla'i' in Tabyin Al Haqaiq, and 'Allamah Kashaghri in Munyah Al Musalli have given preference to the view that Sajdah Al Sahwah shall only be necessary when the Imam recites loudly or quietly *equal to the amount required for the validity of Salah* when he is not supposed to. Ibn Abidin states that the reason these scholars gave preference to the other narration is in order to create ease for the Ummah. Thus, Ibn Abidin writes:

وصححو الرواية الأخرى للتسهيل على الأمة

"And indeed, they gave preference to the other narration (that Sajdah Sahwah shall only be necessary when the loudly or quietly *equal to the amount required for the validity of Salah* when he is not supposed to) in order to create ease for the Ummah"

In Sharh Munyah Al Musalli, Ibrahim Al Halabi writes that this view is what is meant by the general view found in Zahir Al Riwayah, He then presents the following evidence; Hadrat Abu Qatadah Radiyallahu Anhu narrates:

أنه عليه الصلاة والسلام كان يقرأ في الظهر في الأولين بأَم القرآن وسورتين وفي الآخرين بأَم الكتاب ويسمعا الآية أحيانا

"That He, Sallallahu Alayhi Wasallam would pray Surah Al Fatihah and two Surahs in the first two Rak'ah of Salah Al Zuhr, and [he would pray] Surah Fatihah in the second two Rak'ah, and he would allow us to listen to a verse every now and then"

11. The view of Imam Abu Hanifah will be taken in the *Masail* pertaining to worship (عبادات)
12. The view of Imam Abu Yusuf will be taken in the *Masail* pertaining to judicial law (قضاء)
13. The view of Imam Muhammad will be taken in the *Masail* of inheritance (ميراث)
14. If one of the views that have been given preference (*tarjih*) is more beneficial to the poor and needy in the issues of Zakah, it will be given preference
15. If the Mas'alah is regarding a supposed act of disbelief carried out by a Muslim, the most lenient view shall be taken (even if it is a weak narration)
16. If one of the views that have been given preference (*tarjih*) is more applicable in removing capital punishment, it will be given preference
17. If one of the views that have been given preference (*tarjih*) is indicating towards prohibition (حرمة) whilst the others are indicating towards permissibility (حلة), the view indicating towards prohibition will be given preference²⁶⁴
18. As mentioned earlier, the rules mentioned under principle 2 may also be used in deciding which preference of the scholars we should give Fatwa upon. Thus, although the rules mentioned under principle 2 cannot be used unless no preference is found from the scholars worthy of giving preference, the moment differing preferences are found from the scholars worthy of giving preference, those rules may be used to choose which preference we should to issue Fatwa upon.

Finally, Mufti Taqi Sahib adds that all these points may be found in a single *Mas'alah*. In such a case, the Mufti must exercise his mind in deducing the most appropriate form of preference (*tarjih*).

After mentioning all of the above, Ibn Abidin concludes that either we consider this latter view to be an interpretation of the view of Zahir Al Riwayah, in which case there would be no cause of concern, or we consider it a separate view. If we consider it a separate view, then we now have two views that have both been given preference. It is now that Ibn Abidin states that the latter view (that Sajdah Sahwah shall only be necessary when the loudly or quietly *equal to the amount required for the validity of Salah* when he is not supposed to) should be chosen for Fatwa as it is supported by the Hadith of Hadrat Qatadah Radiyallahu Anhu. Hence, he writes:

وتأيده بحديث "الصحيحين" وقد قدمنا في واجبات الصلاة عن "شرح المنية": أنه لا ينبغي أن يعدل عن الدراية – أي الدليل – إذا وافقتها رواية

"And the Hadith of Sahihayn (Sahih Al Bukhari and Sahih Muslim) supports it (the latter view), and we have mentioned in [discussion on] the necessary acts of Salah from Sharh Al Munyah: 'That it is impermissible to move away from Al Dirayah – i.e. evidence – when it is supported by a narration [from the Madhab]'"

(Ibn Abidin Rahimahullah, "Rad Al Muhtar", (Damascus: Dar Al Thiqafah Wal Turath, 2000), v.4, pg.483.)

²⁶⁴ Although Mufti Taqi Sahib seems to indicate that the final four points are not found in *Sharh Uqud Rasmil Mufti* (شرح عقود رسم), they actually are found in *Sharh Uqud Rasmil Mufti* (المفتي)

Principle 9:

مَتَى وَجِدْتَ أَقْوَالَ مِنْ أَيْمَةِ الْمَذْهَبِ وَلَمْ يُوجَدْ تَصْحِيحٌ مِنْ أَصْحَابِ التَّرْجِيحِ فِي قَوْلٍ مِنَ الْأَقْوَالِ فَالْوَاجِبُ حِينَئِذٍ اتِّبَاعُ ظَاهِرِ الرِّوَايَةِ وَإِذَا وَقَعَ الْإِخْتِلَافُ بَيْنَ الرِّوَايَتَيْنِ وَكُلُّ وَاحِدٍ مِنْهُمَا ظَاهِرُ الرِّوَايَةِ عَمِلَ بِالْمُتَأَخَّرَةِ مِنْهُمَا زَمَانًا

“When various views are found from the A’immah of the Madhab and no preference (tarjih) is found from the scholars worthy of giving preference for any view from amongst the views, then it is necessary in such an instance to follow the Zahir Al Riwayah, and if there is a difference of opinion and each opinion is found in the Zahir Al Riwayah, then the later opinion (which will be in the later book of Zahir Al Riwayah) shall be acted upon”

If in a *Mas’alah*, **no preference (tarjih)**²⁶⁵ found from any of the scholars worthy of giving preference (أصحاب الترجيح) and the *Mas’alah* is found in *Zahir Al Riwayah* (ظاهر الرواية), then this of 2 types:

- a) Only one view is mentioned for that *Mas’alah* in the *Zahir Al Riwayah* (ظاهر الرواية)

Ruling: Take that *Zahir Al Riwayah* (ظاهر الرواية) view

- b) There is more than one view mentioned for that *Mas’alah* in the different books of *Zahir Al Riwayah* (ظاهر الرواية)

Ruling: The view found in the latest *Zahir Al Riwayah* (ظاهر الرواية) book shall be considered while also giving consideration to the other means of giving preference that shall be discussed below

This tells you that a Mufti must know the order of the *Zahir Al Riwayah* (ظاهر الرواية) books:

- 1) *Al Mabsut/Al Asl* (المبسوط | الأصل)
- 2) *Al Jami’ Al Saghir* (الجامع الصغير)

Note:

Any book that has *Al Saghir* (الصغير) in its name is a book which Imam Muhammad presented to Imam Abu Yusuf who also verified the Masail

- 3) *Al Jami’ Al Kabir* (الجامع الكبير)

²⁶⁵ It is important to note that the rules mentioned below of taking the view found in the latest book of *Zahir Al Riwayah* shall only apply when no preference (tarjih) is found from any of the scholars worthy of giving preference (أصحاب الترجيح). ‘Allamah Biri Rahimahullah writes in *Umdah Dhawil Basair*:

والمقلد يأخذ بالتصنيف الأخير وهو السير إلا أن يختار المشايخ المتأخرون خلافة فيجب العمل به ولو كان قول زفر

“And the Muqallid shall take [the view found in the] final book [of *Zahir Al Riwayah*] and that is *Al Siyar* [*Al Kabir*], except if the Mashaikh (scholars worthy of giving preference) choose (give preference to) a view contrary to it, then it is necessary to act upon it (i.e. the view that they give preference to), even if it is the view of Zufar”

[Biri Rahimahullah, “*Umdah Dhawil Basair Li Hal Muhimmat Al Ashbah Wal Nazair*”, (Istanbul: Maktabatul Irshad, 2016), v.1, pg.47]

Note:

Any book that has *Al Kabir* (الكبير) in its name is a book which Imam Muhammad did *not* present to Imam Abu Yusuf

4) *Al Ziyadat* (الزيادات)

5) *Al Siyar Al Saghir* (السير الصغير)

6) *Al Siyar Al Kabir* (السير الكبير)

Along with checking the dates of the *Zahir Al Riwayah* (ظاهر الرواية) books, Ibn Abideen has mentioned a few other principles which may assist when deducing the *Zahir Al Riwayah* (ظاهر الرواية) mas'alah upon which Fatwa should be given when no preference is found.

Thus, the following are other means of giving preference when differing views are found within the *Zahir Al Riwayah* (ظاهر الرواية) and there is no **no preference (tarjih)** found from any of the scholars who are worthy of giving preference (أصحاب الترجيح):

1. The view of Imam Abu Hanifah will be taken in the *Masail* pertaining to worship (عبادات).
2. The view of Imam Abu Yusuf will be taken in the *Masail* pertaining to judicial law (قضاء).
3. The view of Imam Muhammad will be taken in the *Masail* of inheritance (ميراث).
4. The view supported by evidence (دلائل) shall be taken.
5. If the Mas'alah is regarding a supposed act of disbelief carried out by a Muslim, the most lenient view shall be taken (even if it is a weak narration).
6. If the view is mentioned in the *Al Mutun Al Mu'tabarah* (متون معتبرة), it will be given preference to what is mentioned in the commentaries (شروح) and Fatawa. If it is not mentioned in the reliable texts (متون معتبرة), then the view mentioned in the commentaries (شروح) shall be given preference to what is written in the Fatawa

Principle 11

متى وجدت أقوال عن أئمة المذهب ولم يوجد تصحيح من أصحاب الترجيح في قول من الأقوال ولم توجد قول في ظاهر الرواية بل توجد الأقوال الخارجة من ظاهر الرواية فحينئذ إذا كانت الأقوال موافقة لأصول المذهب يؤخذ منها ما هو راجح بإعتبار المرجحات التي ذكرناها

“When various views are found from the A’immah of the Madhab and no preference (tarjih) is found from the scholars worthy of giving preference for any view from amongst the views and a view is not found in the Zahir Al Riwayah, rather, the views are found in books other than the Zahir Al Riwayah, then in such a case, if the views corroborate with the principles of the Madhab, then one of them shall be given based upon the means of giving preference that we have discussed above”

This statement is clear and does not require an explanation. You may revert to our discussion on the ruling of the Masail Al Nawadir (مسائل النواذر) for further details.

Principle 10:

إِذَا لَمْ يُوجَدْ الرَّوَايَةُ عَنْ أَيْمَةِ الْمَذْهَبِ أَصْلًا وَاخْتَلَفَ الَّذِينَ قَدْ تَأَخَّرُوا يُرَجَّحُ الَّذِي عَلَيْهِ الْأَكْثَرُ مِثْلَ الطَّحَاوِيِّ وَأَبِي حَنْفٍ الْكَبِيرِ وَأَبِي جَعْفَرٍ الْهِنْدَوَانِيِّ وَأَبِي اللَّيْثِ السَّمَرْقَنْدِيِّ وَغَيْرِهِمْ

“When a view is not found from the A’immah of the Madhab at all, and those who followed them have differed amongst themselves, then preference shall be given to that which the majority such as Al Tahawi, Abu Hafs Al Kabir, Abu Ja’far Al Hinduwani, and Abul Layth Al Samarqandi and others have adopted/deduced”

As mentioned in our discussion on the categorisation of the Hanafi Fuqaha, when there is no view recorded from the A’immah of the Madhab (Imam Abu Hanifah, Imam Abu Yusuf, Imam Muhammad, Imam Zufar, and Imam Hasan ibn Ziyad), then the Mujtahid Fil Madhab or Mujtahid Fil Masail may deduce a ruling from the evidences of Shari’ah or the other Masail of the A’immah respectively in a manner that does not contradict the principles of the Madhab, this ruling that is deduced may then be considered the official position of the Hanafi Madhab.

There are two possibilities when these Mujtahidin Fil Madhab and Mujtahidin Fil Masail deduce rulings in those Masail in which there is no view from the A’immah of the Madhab:

- 1) They all deduce the same ruling in the Mas’alah
Ruling: in this scenario, the Fatwa shall clearly be given upon this view that they have all deduced
- 2) They all deduce different rulings in the Mas’alah
Ruling: in this scenario, the Fatwa shall be given upon the view that the majority of the well-recognised jurists such as Imam Al Tahawi, Abu Hafs Al Kabir, Abu Ja’far Al Hinduwani, Abu Layth Al Samarqandi, etc. have adopted

Ahmad ibn Mahmud Al Ghaznawi Rahimahullah writes in Al Hawi Al Qudsi:

وإذا لم يوجد في الحادثة عن واحد منهم جواب ظاهر وتكلم فيه المشايخ المتأخرون قولاً واحداً يؤخذ به فإن اختلفوا يؤخذ بقول الأكثرين ثم الأكثرين ما اعتمد عليه الكبار المعروفون منهم كأبي حفص وأبي جعفر وأبي الليث والطحاوي وغيرهم رضي الله عنهم ممن يعتمد عليه

“And when in a Mas’alah, a clear view is not found from any of them (the A’immah of the Madhab) and the later scholars have discussed it [and deduced] one ruling for it, then it shall be taken [for issuing a Fatwa]. [But] if they (the later scholars) differ, then the view that that the majority of those elderly, well-known, and relied upon scholars have adopted shall be taken [for issuing a Fatwa] such as [the view of] Abu Hafs [Al Kabir] and Abu Ja’far [Al Hinduwani] and Abu Layth [Al Samarqandi] and Al Tahawi, and others, may Allah be pleased with them. Thus, their view shall be relied upon”

Principle 11:

وحيث لم توجد الرواية من أئمة المذهب ولا مقالة من الفقهاء المتأخرين كالطحاوي فحينئذ لينظر المفتي يجد واجتهاد وليخش بطش ربه يوم المعاد

“When a view is not found from the A’immah of the Madhab and nor is a view found from the later scholars such as Al Tahawi, then in such a case, a Mufti should look carefully with Ijtihad and he should fear the punishment of his Lord on the day of judgement”

In the rare scenario wherein there is no view recorded from the A’immah of the Madhab and nor is there a view recorded from the later jurists of the Madhab, then a Mufti should apply his mind very carefully, then with great effort he should deduce a ruling.

Ahmad ibn Muhammad Al Ghaznawi writes:

وإن لم يوجد منهم جواب البتة نصا ينظر المفتي فيها نظر تأمل وتدبر واجتهاد ليجد فيها ما يقرب إلى الخروج عن العهدة ولا يتكلم فيها جزافا لمنصبه وحرمة وليخش الله تعالى ويراقبه فإنه أمر عظيم لا يتجاسر عليه إلا كل جاهل شقي

“And if an explicit view is not found from them (the later scholars such as Al Tahawi and the others) at all, then a Mufti should look with a sight of contemplation, research, and Ijtihad so that he may find that [view] which is the closest in alleviating his soul from this responsibility, and he should not speak haphazardly considering his status and honour, and he should fear Allah the Almighty and seek assistance from Him, for indeed this is a grave matter, not a single individual is adamant in this [matter] except one who is a deviant ignoramus”

However, Ibn Abidin has stated that *only* an individual who understands the methods of jurisprudence can deduce a ruling in such a scenario – this is limited to a Sahib Al Takhrij or Sahib Al Tarjih, both of which are categories in which the Fuqaha have some form of Ijtihad. Even this deduction made by the Sahib Al Takhrij or Sahib Al Tarjih of a ruling must be made after consulting various scholars. As for an individual who is a Muqallid and has studied and understands books such that he is able to find the rulings for Masail if it is mentioned in a book – much like the Muftis of today, such an individual must simply say, “I do not know” and look for an individual who falls in the category of Sahib Al Takhrij or Sahib Al Tarjih in order to send the question to him.

Thus, Ibn Abidin quotes Ibn Nujaym who has quoted ‘Allamah Indarpati in Al Fatawa Al Tatarkhaniyyah who has said:

وإن اختلف المتأخرون أخذ بقول واحد فلو لم يجد من المتأخرين يجتهد برأيه إذا كان يعرف وجوه الفقه ويشاور أهله

“And if the later scholars have differed, then the view of one of them shall be taken, and if he does not find a view from the later scholars, then he shall apply Ijtihad using his mind, if he is someone who knows the various methods of Fiqh, and he should also seek counsel of the [other] Fuqaha [in this]”

The sentence ‘he knows the different aspects of jurisprudence’ is a reference to a Sahib Al Takhrij and Sahib Al Tarjih. This is explained by Ibn Abidin as he writes:

فقوله "إذا كان يعرف..." دليل على أن من لم يعرف ذلك بل قرأ كتابا أو أكثر وفهمه وصار له أهلية المراجعة والوقوف على موضع الحادثة من كتاب مشهور معتمد إذا لم يجد تلك الحادثة في كتاب ليس له أن يفتي فيها برأيه بل عليه أن يقول لا أدري كما قال من هو أجل منه قدرا من مجتهد الصحابة رضي الله عنهم ومن بعدهم بل من أيد بالوحي

“Thus his statement ‘if he is someone who knows the various methods of Fiqh’ is evidence to the fact that he who does not know this (i.e. the methods of Fiqh), rather, he has prayed a book or more and has understood it (this is the quality of the majority of the Muftis of today), and has become capable of reverting to a reliable well-known book and finding a Mas’alah in it, then for such a person, if the Mas’alah is not [at all] mentioned in the book, it is impermissible for him to issue a Fatwa according to his own deductions, rather, he should say, ‘I do not know’, just as those who were of a higher calibre than him said, from amongst the Mujtahidin of the Sahabah, may Allah be pleased with them, and those who came after them from amongst those who were assisted with revelation”

This sentiment is also understood from the statement of Imam Qadi Khan who said:

وإن كان المفتي مقلدا غير مجتهد يأخذ بقول من هو أفقه الناس عنده ويضيف الجواب إليه فإن كان أفقه الناس عنده في مصر آخر يرجع إليه بالكتاب ويثبت في الجواب ولا يجازف خوفا من الإفتاء على الله تعالى بتحريم الحلال وضده

“And if the Mufti is a Muqallid who is not a Mujtahid (a Sahib Al Takhrij or Sahib Al Tarjih), then he (a Sahib Al Takhrij or Sahib Al Tarjih) shall take the view of the one who is the most reliable according to him and shall attribute the answer to him, and if the most knowledgeable of people according to him is in another city, then he (a Sahib Al Takhrij or Sahib Al Tarjih) should revert to him by writing, and he should thoroughly check his answer and should not rush for fear of attributing a lie upon Allah the Almighty by making haram that which is halal and vice versa”

Thus, the statement of Imam Qadi Khan Rahimahullah indicates that if the scenario mentioned above occurs, then an individual is a Muqallid but does not understand the various methods of jurisprudence (much like the Muftis of today) should take the view of the most knowledgeable jurist of his time and attribute the answer to him, even if that person is in another city.

In summary, an individual who is a Muqallid but understands the methods of jurisprudence (a Sahib Al Takhrij or Sahib Al Tarjih) can deduce a ruling in such a scenario after consulting the scholars of his time. As for a Muqallid who does not understand the various methods of jurisprudence (much like the Muftis of today), then such an individual should simply say, “I do not know” or take the view of the most knowledgeable jurist of his time, and attribute the answer to him, even if that person is in another city.

However, Ibn Abidin remarks that in almost every single Mas’alah, a view is found in the books from the A’immah of the Madhab or the later scholars. Thus, the scenario we are discussing usually occurs when the individual searching has not looked carefully or is unaware of where the Mas’alah is discussed in the books of Fiqh.

Ibn Abidin adds that one should look for a ruling from the A’immah of the Madhab or the later scholars for the *exact* Mas’alah that he has been presented with. One should avoid sufficing upon finding rulings for *similar* Masail, as there are many *similar* Masail in Fiqh that have *different* rulings. Hence, he writes:

ولا يكتفي بوجود نظيرها مما يقاربها فإنه لا يأمن أن يكون بين حادثة وما وجده فرق لا يصل إليه فهمه فكم من مسألة فرقوا بينها وبين نظيرتها حتى ألفوا كتب الفروق لذلك ولو وكل الأمر إلى أفهامنا لم ندرك الفرق بينهما

“And he should not suffice with finding a similar Mas’alah which resembles this one, for indeed, he cannot be confident that there may be a difference which his mind has not alluded to between this Mas’alah and the Mas’alah that he has found. For how many Masail are there wherein they have made a difference between it and other similar Masail, in fact, they wrote books in order to explain differences. And if the matter was left to our minds, we would not realise the difference between the two.

A Mas'alah



Principle 12:²⁶⁶

إن المفهوم المخالف وإن كان غير معتبر في النصوص الشرعية ولكنه معتبر في عبارات كتب الفقه فيصح العمل بمفهوم عبارات الكتب الفقهية بشرط أن لا يكون ذلك المفهوم المخالف معارضا لصريح العبارات الأخرى

“Indeed, although the reverse meaning is not considered in the evidential texts (Nuṣūṣ) of Shari’ah, they are considered in the statements of the books of Fiqh. Thus, it is permissible to act upon the reverse meaning of the statement found in the books of Fiqh, upon the condition that the reverse meaning does not contradict another explicit statement”

There are few definitions that one must understand before delving into this chapter:

Mantūq (منطوق): That which the words of a statement indicate towards

Mafhum (مفهوم): That which is indicated towards through a statement but not through its words

Mafhum (مفهوم) is of two types:

1) *Mafhum Al Muwafaqah* (مفهوم الموافقة)

It is the element of a statement that indicates through an understanding of linguistics (فهم اللغة) – i.e. without a need for analogical deduction and Ijtihad, that the ruling mentioned in the statement will be applied to that which is *similar* to what is mentioned in the statement although not explicitly mentioned.

Example:

Allah the Almighty says:

فَلَا تَقُلْ لَهُمَا أُفٍّ

“And do not say to them Uff”

[Surah Al Isra, verse 23]

The *Mafhum Al Muwafaqah* (مفهوم الموافقة) of this statement indicates through an understanding of linguistics that the prohibition of saying ‘Uff’ to the parents will also be applied to the act of hitting or swearing at the parents.

Ruling of Mafhum Al Muwafaqah (مفهوم الموافقة):

It is considered in the evidential texts and books of Fiqh by consensus.

2) *Mafhum Al Mukhalafah* (مفهوم المخالفة)

²⁶⁶ Note: my teacher Mufti Husain Sahib, confirmed that the table shown above is an accurate representation of the Uṣūl of Iftā according to the Ḥanafī Madhab.

It is the element of a statement that indicates that the *opposite* of the ruling given for that which is mentioned in the statement will be established for that which is *not* mentioned in the statement.

Example:

We may say:

فِي الْإِبِلِ السَّائِمَةِ زَكَاةٌ

“In grazing she-camels, there is Zakah”

The *Mafhum Al Mukhalif* (مفهوم المخالفة) of this statement is that there will be no Zakaah upon a non-grazing she-camel.

There are five types of *Mafhum Al Mukhalafah* (مفهوم المخالفة):

1. *Mafhum Al Sifah* (مفهوم الصفة)

It is when the reverse meaning is indicated towards by mentioning a quality (صفة) of a described entity (موصوف) mentioned in the statement.

Example:

The statement:

فِي الْإِبِلِ السَّائِمَةِ زَكَاةٌ

The meaning:

“In grazing she-camels, there is Zakah”

The reverse meaning:

“There is no Zakaah upon a non-grazing she-camel”

2. *Mafhum Al Shart* (مفهوم الشرط)

It is when the reverse meaning is indicated towards by mentioning a condition in the statement

Example:

Allah the Almighty says:

وَأِنْ كُنَّ أُولَى حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ

The meaning:

“And if they are pregnant, then spend upon them until they give birth”

The reverse meaning of this statement is that if the divorced women are not pregnant, then the husband is not required to provide for them.

3. *Mafhum Al Ghayah* (مفهوم الغاية)

It is when the reverse meaning is indicated towards by mentioning a limit (غاية) in the statement

Example:

Allah the Almighty says:

وأرجلكم إلى الكعبين

The meaning:

“And [wash] your feet until the ankles”

The reverse meaning is that it is not necessary to wash the feet beyond the ankles.

4. *Mafhum Al Adad* (مفهوم العدد)

It is when the reverse meaning is indicated towards by mentioning a number (عدد) in the statement

Example:

فاجلدوهم ثمانين جلدة

The meaning:

“And lash them eighty times”

The reverse meaning is that the individual shall not be lashed more than eighty times.

5. *Mafhum Al Laqab* (مفهوم اللقب)

It is when the reverse meaning is indicated towards by mentioning a title (اسم جامد) mentioned in the statement

Example:

في الغنم زكاة

The meaning:

“There shall be Zakah in livestock”

The reverse meaning is that there shall not be Zakah in anything besides livestock.

Ruling of the Reverse Meaning in the Qur'an and Sunnah (Mafhum Al Mukhalafah – مفهوم المخالفة):

According to the Shafi'i's, all the types of reverse meanings shall be considered in the evidential texts (*Nuṣūṣ*) except for *Mafhum Al Laqab* (مفهوم اللقب).

According to Hanafis, none of the types of reverse meanings shall be considered in the evidential texts (*Nuṣūṣ*). This means that the evidential text (Nas) itself does not indicate towards the opposite ruling being applied for that which is not mentioned in the statement. Thus, the evidential text (Nas) is silent with regards to that which is not mentioned in the statement. Hence, if an evidence is found which proves that the ruling of something that is not mentioned in the statement is the same as that which is mentioned in the statement, then it shall be acted upon, and if an evidence is found which proves that the ruling of something that is not mentioned in the statement is not the same as that which is mentioned in the statement, then it too shall be acted upon.

Hence, if a certain act is not mentioned in the statement, then it shall stay upon its own original ruling; if this original ruling contradicts the ruling for that which is mentioned in the statement, then the ruling for that which is mentioned in the statement shall not apply to this certain act, not because we have applied the reverse meaning to the statement, rather, because that certain act that has not been mentioned in the statement shall remain upon its original ruling.

An example of this is the statement of the Prophet Sallallahu Alayhi Wasallam:

لا يحل لإمرأة تؤمن بالله واليوم الآخر أن تحب على ميت فوق ثلاثة أيام إلا على زوج أربعة أشهر وعشرا

“It is not permissible for a woman who believes Allah and the day of judgement, to lament the death of anyone for more than three days except [the death] of her husband for four months and ten days”

Thus, the ruling of lamenting upon the death of a husband for a woman has been restricted to a Muslim woman. It is for this reason that the Hanafi Fuqaha have stated that it is not necessary upon a non-Muslim woman or young girl to lament her husband, contrary to the view of the Shafi’i’ Fuqaha.

Ibn Hajr Al Asqalani Rahimahullah has assumed that using this Hadith as evidence, as the Hanafi Fuqaha have done, is to use the reverse meaning as evidence, despite it being contrary to their own principles. The truth is that by using this Hadith as evidence, the Hanafi Fuqaha have not used the reverse meaning as evidence. Rather, the ruling found in the Hadith is directed towards a believing woman, as for a non-Muslim woman or a young girl, the Hadith is silent in their regard. Thus, their ruling shall remain upon the original ruling (before the ruling provided by the Hadith) which is that lamenting is not necessary, because in order to necessitate lamenting, evidence is required, and there is no evidence in their regard.

As for the statements found in the books of Fiqh, the Hanafi Fuqaha have considered the *Mafhum Al Mukhalafah* (the reverse meaning) in these statements.

Question:

Why do the Hanafi Fuqaha consider the *Mafhum Al Mukhalafah* (the reverse meaning) in the books of Fiqh, but not in the evidential texts (Nusus) of Shari’ah?

Answer:

The evidential texts (Nusus) of the Qur’an and Sunnah are based upon deep wisdomous statement, thus at times, some words are mentioned in them as a form of emphasis or encourage or admonishment or advice or reminder, and they are not stringent stipulations.

For example, Allah the Almighty says:

ولا تشتروا بآياتي ثمنا قليلا

“And do not buy in lieu of my verses a small price”

The word 'small' has been added in order to express disgust towards this action. It does not mean that it is permissible to buy the verses of Allah with for a large price.

Similarly, Allah the Almighty says:

ولا تأكلوا الربا أضعافا مضاعفة

“And do not consume usury that is doubled many times”

This verse does not mean that it is permissible to consume usury if it not double the amount given.

As for the books of Fiqh, their purpose was to codify the rulings in the manner of a prescribed law, and there was no emphasis or disgust or any other similar emotions added to them. Thus, it is necessary to consider their *Mafhum Al Mukhalafah* (the reverse meaning). Hence, what is established in their statements through *Mafhum Al Mukhalafah* (the reverse meaning) shall be acted upon, except when the *Mafhum Al Mukhalafah* (the reverse meaning) contradicts the ruling of another explicit statement.

Principle 13:

لَا يَجُوزُ الْعَمَلُ أَوْ الْإِفْتَاءُ بِالرَّوَايَاتِ الضَّعِيفَةِ أَوْ الْمَرْجُوحَةِ إِلَّا لِضَرُورَةٍ تَبْدُو لِمُفْتٍ عَارِفٍ مُتَّبِعٍ

“It is impermissible to act or issue a Fatwa upon the weak or non-preferred opinions, except when there is a necessity which has been acknowledged by a deeply knowledgeable scholar”

We have mentioned earlier that a Mufti who is a Muqallid is required to follow those views and narrations that the scholars who are worthy of giving preference (أصحاب الترجيح) have given preference to. As for that which is found in the books of Fiqh from the various weak views and narrations which the scholars who are capable of giving preference have declared as weak, or their weakness is known through their contents implicitly or explicitly, then it is impermissible to act upon or issue a Fatwa in accordance with these views and narrations.

‘Allamah Qasim ibn Qutlubugah Rahimahullah states:

إن الحكم والفتيا بما هو مرجوح خلاف الإجماع وإن المرجوح في مقابلة الراجح بمنزلة العدم والترجيح بغير مرجح في المتقابلات ممنوع وإن من يكتفي بأن يكون فتواه أو عمله موافقا لقول أو وجه في المسألة ويعمل بما شاء من الأقوال والوجوه من غير نظر في الترجيح فقد جهل وخرق الإجماع

“Indeed, to issue a ruling or Fatwa according to that which is non-preferred is a contradiction of consensus, and indeed, a non-preferred opinion in comparison to a preferred opinion is akin to non-existent, and to give preference (tarjih) without a reason (murajjih) between contradicting views is incorrect. Indeed, he who suffices that his Fatwa or action is in accordance with a (any) view or opinion in a Mas’alah and he acts upon whatever he wishes from the various views and opinion without looking into the preferred opinion has indeed become ignorant and violated the consensus”

However, many scholars have explicitly mentioned that it is permissible to act upon and issue a Fatwa in accordance with a weak view or non-preferred narration in respect of a necessity that demands such a leeway. The summary of their conclusion is that it is impermissible to choose weak views based upon one’s desires. However, if one is afflicted with a demanding need, then it is permissible for him to act upon a weak view or non-preferred narration in his own right.

Ibn Abidin Rahimahullah has mentioned a few examples of such needs in his Sharh Uqud Rasmil Mufti:

The Mas’alah of Semen

The opinion upon which the Fatwa is given in the Hanafi Madhab is that when the semen leaves its original place in the body (the prostate) with lust, then ghusl shall be necessary, regardless of whether lust was found or not when the semen *left* the body. Accordingly, if a man holds his genitals tightly when he feels that semen is about to leave, and waits until his lust has gone, and then allows the semen to leave his body, then ghusl shall be necessary according to Imam Abu Hanifah and Imam Muhammad. Imam Abu Yusuf states that ghusl shall not be necessary except if the lust was present when the semen *left* the body.

The scholars who were capable of giving preference (أصحاب الترجيح) have given preference to the view of Imam Abu Hanifah and Imam Muhammad. Thus, the view of Imam Abu Yusuf shall not be acted upon.

Necessity:

However, if a person is travelling or is a guest at a person’s house who may become suspicious if the guest takes a ghusl, then in such a case, it is permissible to act upon the view of Imam Abu Yusuf.

The Mas’alah of Blood

The view upon which Fatwa is given is that if blood comes out by squeezing a pimple and it flows from the place of the cut, then the wudhu shall break. However, if it does not flow, it shall not break. Flowing in this context means that it moves from the place of the cut.

If the blood rises on the actual cut and becomes swollen and does not move, then it shall not be considered as flowing and will not break the wudhu, even if the blood is more than the actual cut. In such a case, if a man wipes the pool of blood and the blood is such that had he left it, it would have flown, then this wiping shall break the wudhu. However, there is a weak view in this Mas'alah which the author of Al Hidayah has recorded which is that the wudhu will not break. This is an irregular and non-preferred view.

However, Ibn Abidin Rahimahullah has mentioned that it is permissible to act upon this view in times of necessity. He then states that he was once afflicted with *Kay Al Himmasah* (a disease in which the blood flows from the body) and he could not find a way for his Salah to be valid according to the Hanafi Madhab except through extreme difficulty unless he adopted this view, so Ibn Abidin writes:

فاضطرت إلى تقليد هذا القول ثم لما عافاني الله تعالى منه أعدت صلاة تلك المدة

“I was compelled to follow this view, then when Allah the Almighty cured me, I repeated the Salah that I had performed during that period [of illness]”

Similarly, Ibn Nujaym has mentioned various weak views in his discussion on the colours of menstrual blood in Al Bahr Al Raiq. He then writes:

وفي معراج الدراية معزيا إلى فخر الأئمة لو أفتى مفت بشيء من هذه الأقوال في مواضع الضرورة طلبا للتيسير كان حسنا

“And it is [mentioned] in Mi'raj Al Dirayah with reference to Fakhrul A'immah that if one were to issue a Fatwa in accordance with any of these [weak] views in times of necessity, in order to create ease, then it shall be preferable”

After this, Ibn Abidin Rahimahullah writes:

وبه علم أن المضطر له العمل بذلك لنفسه كما قلنا وإن المفتي له الإفتاء به للمضطر فما مر من أنه ليس له العمل بالضعيف ولا الإفتاء به محمول على غير موضع الضرورة

“And from this it is known that a person in desperate need may act upon this in his own right as we have mentioned, indeed, a Mufti may issue such a Fatwa for a person in desperate need. As for that which has passed with regards to it being impermissible for one to practice upon a weak opinion or issue a Fatwa in accordance with it, this is based upon those times that are not the times of necessity”

The summary of what Ibn Abidin Rahimahullah has mentioned is that it is permissible to **act** upon a weak view in two scenarios:

- 1- When there is a necessity or a severe need
- 2- When the Mufti is one who holds some of Ijtihad within the Madhab (i.e. the Fuqaha of the first four categories; *Mujtahid Fil Madhab, Mujtahid Fil Masail, Sahib Al Takhrij, Sahib Al Tarjih*), he may adopt a weak opinion even if there is no necessity. Thus, based upon the strength of its evidence, such a person may give preference to a view which is considered non-preferred view within the Madhab, and so the non-preferred view is the preferred view according to him. This is the interpretation of the statement of Allama Biri when he states:

هَلْ يَجُوزُ لِلْإِنْسَانِ الْعَمَلُ بِالضَّعِيفِ مِنَ الرَّوَايَةِ فِي حَقِّ نَفْسِهِ؟ نَعَمْ! إِذَا كَانَ لَهُ رَأْيٌ

“Is it permissible for a person to act upon a weak view in his own right? Yes! When he is capable of holding an opinion”²⁶⁷

²⁶⁷ The entire statement of 'Allamah Biri is:

تتمة: هل يجوز للإنسان العمل بالضعيف من الرواية في حق نفسه؟ نعم إذا كان له رأي أما إذا كان عاميا فلم أره لكن مقتضى تقييده بذی الرأي أنه لا يجوز للعامة ذلك

This is also the interpretation of the statement of the author of Khizanah Al Riwayat when he states:

الْعَالِمُ الَّذِي يَعْرِفُ مَعْنَى النُّصُوصِ وَالْأَخْبَارِ وَهُوَ مِنْ أَهْلِ الدِّرَایَةِ یَجُوزُ لَهُ أَنْ یَعْمَلَ عَلَیْهَا وَإِنْ كَانَ مُخَالَفًا لِمَذْهَبِهِ

“The scholar who knows the [deep] meanings of the evidential texts (*Nusus*) and the Ahadith, and he is from amongst those who have studied evidences, it is permissible for him to act upon them (the evidences) even if they contradict their own Madhab”

After quoting the statement of ‘Allamah Biri Rahimahullah, Ibn Abidin Rahimahullah writes:

وَتَقْبِیْهُ بِذِي الرَّأْيِ - أَيْ: الْمُجْتَهِدُ فِي الْمَذْهَبِ - مُخْرَجٌ لِلْعَامَّةِ كَمَا قَالَ فَإِنَّهُ يَلْزَمُهُ اتِّبَاعُ مَا صَحَّحُوا لَكِنْ فِي غَيْرِ مَوْضِعِ الضَّرُورَةِ كَمَا عَلَّمَتْهُ آيَاتُهَا

“And by specifying it with a ‘person who is capable of holding an opinion’ - i.e. a scholar who holds a form of Ijtihad in the Madhab – removes the layman (this includes the Muftis of today) as he has said, for indeed he (a layman as well as the Muftis of today) is required to follow what they give preference to, however, [this is only] in times when there is no necessity as you have learnt from what has passed”

To Issue a Fatwa on another Mathab (الإفتاء بمذهب آخر)

An Introduction to Issuing a Fatwa upon another Mathab (التمهيد)

The principle position is that a Mufti who is a Muqallid should not issue a Fatwa except upon his Madhab in a method that is based upon the principles which we have mentioned from Ibn Abidin Rahimahullah's Uqud Ramil Mufti. However, what is necessary to avoid becoming neglectful of that which we have discussed in our discussion on Taqlid and following a Madhab, which is that to follow (Taqlid) a specific Imam is a Fatwa that is issued for the best interests of Shari'ah and in order to close the means to evil; so that the people do not fall into following their desires, for indeed, choosing the leeways provided by the various Madhahib based upon desire and amusement is forbidden.

Otherwise, the reality of the matter is that all the Madhahib of the Mujtahidin are elaborations of the Shari'ah itself, there is no reason for one to insult any of them, as indeed, each Mujtahid has spent the capabilities at his disposal in attaining the purpose of Shari'ah and extracting rulings from it.

Accordingly, the Shari'ah is not confined to the Madhab of one Imam, rather, every Madhab is a part from the parts of Shari'ah, and a path from its paths. Indeed, the Shari'ah that was revealed upon us lies in the midst of these Madhahib. Thus, he who assumes that the Shari'ah is confined in the Madhab of a single Imam is certainly mistaken.

Based upon this, it is at time possible for a Mufti of one Madhab to choose the view of another Madhab in order to act upon it or to issue a Fawa in accordance to it, upon the condition that this is not done based upon one's wishes or that one is following one's desires. Rather, this choosing of a view of another Madhab is permissible in two instances which we shall discuss with some detail in that which is to come.²⁶⁸

The First Situation: To issue a Fatwa on another Mathab due to Necessity or Public Need (الإفتاء بمذهب آخر لضرورة أو حاجة عامة)

The first situation is when there is a necessity or need. This occurs when there is a specific Mas'alah in a Madhab that creates extreme difficulty or there is a real need which one cannot escape from, in this case, it is permissible to act upon the view of another Madhab in order to alleviate the difficulty or to fulfil the need.

Examples:

1) Teacher taking remuneration for teaching the Qur'an

The view of the Hanafi Madhab is that is not permissible to take money in lieu of teaching the Qur'an

Dire Need:

There is a dire need for it to be permissible to take remuneration for teaching the Qur'an, because if it is not allowed, the Qur'an will not be taught by anyone.

²⁶⁸ Hadrat Maulana Rashid Ahmad Gangohi Rahimahullah writes:

مذهب سب حق ہیں۔ مذهب شافعی پر عند الضرورت عمل کرنا کچھ اندیشہ نہیں مگر نفسانیت اور لذت نفسانی سے نہ ہو۔ عذر یا حجت شرعیہ سے ہووے کچھ حرج نہیں سب مذاہب کو حق جانے کسی پر طعن نہ کرے سب کو اپنا امام جانے

"All the schools of thought are upon the truth – There is no harm in acting upon the Shafi'i' Madhab when there is a need, however, it should not be done for carnal reasons and for the pleasure of the innate soul – if it is due to an excuse or a Shari'i' evidence, then there is no problem, all the schools of thought should be accepted as upon the truth, one should not attack anyone [of them], each one [of them] should be considered our Imam"

Maulana Rashid Ahmad Gangohi Rahimahullah, "Fatawa Rashidiyyah", (Karachi: Alimi Majlis Tahfaz Islam, n.a.), pg.93.)

Solution:

The Hanafi Fuqaha have issued a Fatwa upon the Shafi'i' Madhab that it is permissible to take money in lieu of teaching the Qur'an.

2) **A woman who has lost her husband**

The view of the Hanafi Madhab is that a woman is required to wait one-hundred and twenty years if her husband is missing before marrying someone else

Dire Need:

There is a dire need for it to be permissible for a Woman to get married before this period as women are unable to wait this long

Solution:

The Hanafi Fuqaha have issued a Fatwa upon the Maliki Madhab²⁶⁹ that it is permissible for the woman to apply for an annulment of marriage before this period

Another reason that permits one to act or issue a Fatwa upon another Madhab which falls under this reason is widespread difficulty (*Umum-e-Balwa* – عموم بلوى).

Examples:

1) **When a creditor finds a product of the debtor**

The view of the Hanafi Madhab is that if a creditor finds a product of equal value to the debt that belongs to the debtor, he cannot take it unless it is of the same genus of the debt given to the debtor.

Widespread difficulty:

There is widespread difficulty in only permitting the creditor to take the product belonging to the debtor if it of the same genus as the debt, this widespread difficulty is due to the increase of deception and decadence from debtors in this age as mentioned by Ibn Abidin Rahimahullah in *Kitab Al Hijr*.

Solution:

The Hanafi Fuqaha have issued a Fatwa upon the Shafi'i' Madhab that it is permissible for a creditor to take whatever product he finds that is of equal value to his debt that belongs to the debtor, even if it may be of a different genus.

2) **Option of annulling a transaction based upon deception**

The view of the Hanafi Madhab is that if a person is deceived (Gharar) into paying an exorbitant amount of money for a product, then he does not have an option to annul the transaction.

Widespread difficulty:

²⁶⁹وقد صرح ابن مجد أن في تأسيس النظائر وغيره أنه إذا لم يوجد نص في حكم من كتب أصحابنا يرجع إلى مذهب مالك
رد المختار (203/3) دار الفكر

There is widespread difficulty in not allowing the deceived individual to annul the transaction as the abundance of deception has increased.

Solution:

The Hanafi Fuqaha have issued a Fatwa upon the Maliki Madhab that it is permissible for the buyer to annul the transaction if they have been deceived into paying an exorbitant price for a product. This has been expressly mentioned by Ibn Abidin Rahimahullah in his Radd Al Muhtar in the chapter of profit sales (Bab Al Murabaha) and Ibn Nujaym in Al Ashbah Wal Nazair under the compendium: 'difficulty necessitates ease'.

3) **Compensation for opportunity costs of usurped items**

The view of the Hanafi Madhab is that a usurper is not required to pay compensation for the opportunity costs of the usurped item.

Widespread difficulty:

There is a widespread difficulty in not permitting one to demand compensation for the opportunity costs of usurped item as there is an abundance of usurpation in today's times.

Solution:

The Hanafi Fuqaha have issued a Fatwa upon the Shafi'i Madhab with regards to the wealth of an orphan, wealth of Waqf and all forms of wealth that serve as a source of income that it is permissible to demand compensation for opportunity costs in these scenarios. In fact, Ibn Amir Al Haj Al Halabi Rahimahullah has issued a Fatwa allowing one to demand compensation for opportunity costs in all scenarios.

In our times, many financial transactions have become vogue and the needs of the people have increased, especially after the industrial revolution. Additionally, the abundance of financial transactions between various cities and provinces has increased. Therefore, it is appropriate for a Mufti to create ease for the people by taking a view that is the easiest in those matters wherein there is a widespread difficulty, even if the view is the view of another Madhab from within the four Madhahib.

Indeed, this was the advice given by the teacher of our teachers, 'Allamah Rashid Ahmad Gangohi Rahimahullah to his student Shaykh 'Allamah Ashraf Ali Al Thanwi Rahimahullah.

Shaykh 'Allamah Ashraf Ali Al Thanwi Rahimahullah followed this advice in many Masail as can be seen in Imdadul Fatawa. For example:

- 1) He issued a Fatwa upon the Shafi'i Madhab regarding the permissibility of a Salam transaction without the condition that the product must remain in the markets throughout the entire period of the Salam
- 2) He issued a Fatwa upon the Maliki Madhab regarding the permissibility of forming a partnership with the capital being in kind
- 3) He issued a Fatwa upon the Hanbali Madhab regarding the permissibility of forming a silent partnership (المضاربة) with the capital being the usufruct of an animal

Nonetheless, it is necessary that when issuing a Fatwa upon another Mathab due to a dire need or widespread difficulty, five conditions are maintained:

1. If the cause of transition is due to a need, the need must be a dire and severe need. If the cause is due to a widespread difficulty, the widespread difficulty must be real and not imaginary.
2. The Mufti should research the reality of the need by consulting other scholars capable of issuing a Fatwa and by consulting the experts in this field. It is better for him to avoid rushing in issuing a Fatwa on his own, rather, he should try as much as possible to add with it the Fatawa of the other scholars, especially when the Mufti wishes for the Fatwa to spread far and wide.
3. The Mufti should properly research and analyse the Madhab that he wishes to issue a Fatwa in accordance to. It is best for him to consult the scholars of that Madhab. He should not suffice with seeing a Mas'alah in one or two books, for indeed, every Madhab has its own specific terminologies and its own method that is specific to it, and at times, none can understand the true reality of a Madhab except he who has studied and mastered these terminologies and methods.
4. The view taken from the other Madhab should not be a weak view in that Madhab which is such that it contradicts the view of the majority of Fuqaha, and they have rejected it.

Hazrat Abdullah ibn Umar Radiyallahu Anhuma narrated that the Prophet Sallallahu Alayhi Wasallam said:

إِنَّ اللَّهَ لَا يَجْمَعُ أُمَّتِي - أَوْ قَالَ أُمَّةَ مُحَمَّدٍ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى ضَلَالَةٍ وَيَدُ اللَّهِ عَلَى الْجَمَاعَةِ وَمَنْ شَدَّ شُدًّا إِلَى النَّارِ

“Indeed, Allah shall not unify my Ummah – or he said, ‘the Ummah of Muhammad Sallallahu Alayhi Wasallam – upon misguidance, and Allah’s hand is with the group, and he who adopts a singular path shall be made to adopt a singular path towards hellfire”

Similarly, it is narrated from Hazrat Anas ibn Malik Radiyallahu Anhu that the Prophet Sallallahu Alayhi Wasallam said:

إِنَّ أُمَّتِي لَا تَجْتَمِعُ عَلَى ضَلَالَةٍ فَإِذَا رَأَيْتُمْ اخْتِلَافًا فَعَلَيْكُمْ بِالسَّوَادِ الْأَعْظَمِ

“Indeed, my Ummah shall never unify upon misguidance, so if you see a difference of opinion, then follow the largest group”

Indeed, at times, some Fuqaha have adopted a few singular opinion (*tafarrud*) which the majority of the scholars have not adopted, rather, they have rejected it. To be inclined towards one of these singular opinions (*tafarrudat*) in order to create ease and in search of leeways is from amongst those things which the early scholars and later scholars have labelled with disgust.

Imam Al Awza'i' Rahimahullah said:

من أخذ بنواذر العلماء خرج من الإسلام

“Whosoever acts upon the irregular opinions of the scholars has left Islam”

Hafidh Al Thahabi Rahimahullah said:

وَمَنْ تَتَّبَعَ رُحَصَ الْمَذَاهِبِ وَزَلَّاتِ الْمُجْتَهِدِينَ فَقَدْ رَقَّ دِينُهُ كَمَا قَالَ الْأَوْزَاعِيُّ وَغَيْرُهُ: مَنْ أَخَذَ بِقَوْلِ الْمَكِّيِّ فِي الْمُتَعَةِ وَالْكُوفِيِّ فِي التَّبِيدِ وَالْمَدَنِيِّ فِي الْغَنَاءِ وَالشَّامِيِّ فِي عِصْمَةِ الْخُلَفَاءِ فَقَدْ جَمَعَ الشَّرَّ وَكَذَا مَنْ أَخَذَ فِي الْبُيُوعِ الرِّبَوِيَّةِ بِمَنْ يَحْتَالُ عَلَيْهَا فِي الطَّلَاقِ وَنِكَاحِ التَّحْلِيلِ بِمَنْ تَوَسَّعَ فِيهِ وَشِبْهِ ذَلِكَ فَقَدْ تَعَرَّضَ لِلْإِخْلَالِ

“Indeed, he who searches for the leeways provided by the scholars and the mishaps made by the Mujtahidin has made his religion easy, as Al Awza'i' and others have said, ‘He who takes the view of the Makans in the Mas'alah of Mut'ah and the view of Kufans in the Mas'alah of intoxicant drinks and the view of the Medinians

in the Mas'alah of singing and the view of the people of Sham in the Mas'alah of the infallibility of the caliphs, then indeed he has gathered all evil. Similarly, the one who takes the view of the one who makes strategems for interest-bearing transaction and the one who takes the view of the one who is lenient in matters pertaining to divorce and the halalah marriage, and similar things, has prepared himself for escape [from Islam]"

Imam Ahmed ibn Hanbal Rahimahullah said:

لَوْ أَنَّ رَجُلًا عَمِلَ بِكُلِّ رُخْصَةٍ يَقُولُ أَهْلُ الْكُوفَةِ فِي التَّبَيُّدِ وَأَهْلُ الْمَدِينَةِ فِي السِّمَاعِ وَأَهْلُ مَكَّةَ فِي الْمُتَنَعَةِ كَانَ فَاسِقًا

"If a person was to act upon every leeway; the view of the Kufans in intoxicants and the people of Madinah in singing and the people of Makah in Mut'ah, he would be a wretched individual"

Ma'mar Rahimahullah said:

لَوْ أَنَّ رَجُلًا أَخَذَ يَقُولُ أَهْلُ الْمَدِينَةِ فِي السِّمَاعِ - يَعْنِي الْغِنَاءَ - وَإِثْبَانِ النَّسَاءِ فِي أَذْيَارِهِنَّ وَيَقُولُ أَهْلُ مَكَّةَ فِي الْمُتَنَعَةِ وَالصَّرْفِ وَيَقُولُ أَهْلُ الْكُوفَةِ فِي الْمُسْكِرِ كَانَ أَشَرَّ عِبَادِ اللَّهِ تَعَالَى

"If a man were to take the view of the people of Madinah in Al Sama' - i.e. music - and having intercourse with women from their rear, and [he were to take] the view of the people of Makkah in [the Mas'alah] of Mut'ah and money exchange, and [he were to take] the view of the people of Kufah in [the Mas'alah] of intoxicants, then he would be the worst of the worshippers of Allah the Almighty"

Sulayman Al Taymi Rahimahullah said:

لَوْ أَخَذْتَ بِرُخْصَةِ كُلِّ عَالِمٍ - أَوْ قَالَ ذَلَّةِ كُلِّ عَالِمٍ - اجْتَمَعَ فِيكَ الشَّرُّ كُلُّهُ

"If you were to take the leeways of every scholar - or he said, 'the mishaps of every scholar' - then evil in its entirety would be found within you"

Abdul Rahman ibn Mahdi Rahimahullah said:

لَا يَكُونُ إِمَامًا فِي الْعِلْمِ مَنْ أَخَذَ بِالشَّاذِ وَلَا إِمَامًا فِي الْعِلْمِ مَنْ رَوَى عَنْ كُلِّ أَحَدٍ وَلَا يَكُونُ إِمَامًا مَنْ حَدَّثَ بِكُلِّ مَا سَمِعَ

"A person who takes irregular views cannot be an Imam in knowledge, and he cannot be an Imam in knowledge [he] who narrates from everyone, and he cannot be an Imam in knowledge [he] who narrates all that he hears"

If this is what the scholars have stated regarding the adoption of weak views from the great reliable Fuqaha whose understanding of jurisprudence and piety had been attested to by the scholars, then what would be the state of the irregular opinions that emanate from those who have no relation to knowledge and jurisprudence, rather, they say what they say based on their wayward views or their innate desires or upon an alien methodology that does not resemble Islam in any way whatsoever. Thus, it is necessary to take that which is stronger in terms of evidence and stronger in terms of proofs in consideration of the principles of the Islamic Shari'ah, and its noble objectives, and the statements of the mainstream Fuqaha.

5. That Mas'alah must be adopted in the other Madhab entirely, along with all of its considerable conditions. This is in order to avoid performing *Talfiq* (تلفيق) in a single Mas'alah.

It seems appropriate for us to discuss some of the details of *Talfiq* (تلفيق).

The Ruling of Talfiq (حكم التلقيق)

Definition of Talfiq (تلفيق):

The summary of what has on the subject of *Talfiq* (تلفيق) is that *Talfiq* (تلفيق) is generally a term used when the views of *two Madhahib* are adopted in a ***single Mas'alah*** in such a manner that the combination creates a situation which is impermissible according to *either Madhab*.²⁷⁰

Example 1:

An individual takes the view of Imam Abu Hanifah that the touching of a woman does not break wudhu and takes the view of Imam Shafi' that the flowing of blood does not break wudhu. He then touches a woman and allows blood to flow from his body. After this, he prays Salah.

Ruling:

His Salah will not be valid according to either Madhab (according to those who say that *Talfiq* (تلفيق) is impermissible)

Example 2:

Allamah Qarafi states if a Maliki wishes to act upon the Shafi' with regards to the permissibility of performing wudhu without rubbing the parts of wudhu, he should not do so. This is because he will then pray Salah without reciting Bismillah as per the Maliki, whereas reciting Bismillah is a condition according to Imam Shafi'. Hence, he will have performed wudhu in a manner that is not permissible according to the Maliki Madhab and Salah in a manner that is not permissible according to the Shafi's.

Ruling:

His Salah is not valid according to either Madhab (according to those who say that *Talfiq* (تلفيق) is impermissible)

Example 3:

Allamah Qarafi states that a Shafi'i' asked him if it would be permissible for him to act upon Malik view with regards to the permissibility of praying Salah with socks made from pig hair. Allamah Qarafi stated that his Salah would not be valid according to either Madhab as his wudhu would not be valid according to the Maliki Madhab (as according to the Malikis, it is necessary to wipe over the entire head) and his Salah would not be valid according to the Shafi' Madhab (as according to the Shafis, it is not permissible to pray Salah with socks made from pig hair)

Have Ibn Al Hummam and Ibn Amir stated that *Talfiq* (تلفيق) is permissible?

Sheikh Abdul Fattah Abu Ghuddah has stated that Ibnul Hummam (d.861 AH) has stated in *Al Tahrir* (التحرير) and his student, Ibn Ameer Al Haj has stated in his commentary on *Al Tahrir* (التحرير) that *Talfiq* (تلفيق) is permissible and it is not established that the earlier scholars (متقدمين) considered *Talfiq* (تلفيق) to be impermissible.

The statement of Sheikh Abdul Fattah Abu Ghuddah has also been mentioned by others. However, after looking into *Al Tahrir* (التحرير) and Ibn Amir's commentary on *Al Tahrir* (التحرير), one finds that they did not state that *Talfiq*

²⁷⁰ The scholars have a consensus that the action carried out in the situation subsequent to this combination is impermissible. Accordingly, in such a situation, the action carried out contravenes the consensus of the Ulama (خارق للإجماع).

(تلفيق) is permissible. Rather, they gave permission for an individual to perform Taqlid of another Madhab upon the condition that it does not cause *Talfiq* (تلفيق). In fact, Ibn Amir has stated that an individual who searches for the leeways provided by the Ulama is a wicked person (فاسق). Hence, the attribution of the permissibility of *Talfiq* (تلفيق) towards Ibnul Hummam and Ibn Amir is incorrect.

Also, as for the statement that the earlier scholars (متقدمين) did not consider *Talfiq* (تلفيق) as impermissible, this may be answered in two ways:

- 1) The fact that nothing is recorded from the earlier scholars indicating towards its impermissibility does not mean that they did consider it impermissible
- 2) Just as the impermissibility of *Talfiq* (تلفيق) has not been recorded from the earlier scholars, the permissibility of *Talfiq* (تلفيق) has also not been recorded

Sheikh Abdul Fattah Abu Ghuddah has then stated that many books have been written upon the permissibility of *Talfiq* (تلفيق), the best of these is a book written by Ibn Mulla Farrukh by the name of:

الْقَوْلُ السَّادِدُ فِي بَعْضِ مَسَائِلِ الْإِجْتِهَادِ وَالْتَّقْلِيدِ

Ibn Mulla Farukh states in his book that Ibn Nujaym was also of the view that *Talfiq* (تلفيق) is permissible. He then quotes a statement of Ibn Nujaym (d.970 AH) in which he has said:

وَيُمْكِنُ أَنْ تُؤْخَذَ صِحَّةُ الْإِسْتِبْدَالِ مِنْ قَوْلِ أَبِي يُوسُفَ وَصِحَّةُ الْبَيْعِ بِغَبْنٍ فَاحِشٍ مِنْ قَوْلِ أَبِي حَنِيفَةَ بِنَاءً عَلَى صِحَّةِ التَّلْفِيقِ فِي الْحُكْمِ مِنْ قَوْلَيْنِ

“It is possible to take the view of the permissibility of *Istibdalul Waqf* as was the view of Imam Abu Yusuf and the view of the permissibility of a transaction involving a great loss as was the view of Imam Abu Hanifah upon the basis that *Talfiq* between two views is permissible in a single ruling”

He also quotes another statement of Ibn Nujaym (d.970 AH):

وَمَا وَقَعَ فِي آخِرِ (تَحْرِيرِ) ابْنِ الْهَمَامِ مِنْ مَنَعِ التَّلْفِيقِ فَإِنَّمَا عَرَاهُ إِلَى بَعْضِ الْمُتَأَخِّرِينَ وَلَيْسَ هَذَا هُوَ الْمَذْهَبُ

“As for the prohibition of *Talfiq* (تلفيق) which has been mentioned in the final parts of the book, Al Tahrir by Ibnul Hummam, this is a view attributed to the later ‘Ulama of the Madhab and is not the actual view of the Madhab”

The strongest evidence that Ibn Mullah Farrukh has presented is the story in which Imam Abu Yusuf (d.182 AH) led Jumu’ah Salah, after the Salah was over and the people had left, he was told that the well from which he had made ghusl had a dead rat inside. So he said, “We will take the view of our brothers from Madina, surely when water is of two *qullahs*, it does not become impure”.

This is a famous story which has been mentioned by many Hanafi Fuqaha.

Answers to the story of Imam Abu Yusuf (d.182 AH):

- The story does not have a chain of narration
- The view of the people of Madina with regards to water not becoming impure is not confined to two *qullahs*; how could Imam Abu Yusuf not know this?

- Even if we were to say that the story is true, it is more than likely that Imam Abu Yusuf (d.182 AH) will have performed Jumu'ah in a way that would be permissible according to all the Madhahib especially considering that it was Jumu'ah Salah.²⁷¹

Sheikh Abdul Fattah has also claimed that Allamah Tahtawi also preferred the evidences of Ibn Mullah Farrukh as did Abul Sa'ud.

However, in his footnotes on Al Durr Al Mukhtar, Allamah Tahtawi prefers the view of Sheikh Hasan who has written a book upon the impermissibility of *Talfiq* (تلفيق). Hence, Allamah Tahtawi states after recording the view of the scholars who claim that *Talfiq* (تلفيق) is permissible:

وَلَكِنْ كَلَامُ الْعَلَامَةِ نُوحِ أَفْنَدِي فِي رِسَالَتِهِ الْمُتَعَلِّقَةِ بِمَسَائِلِ الْمَسْبُوقِ يُؤَيِّدُ مَا ذَكَرَهُ الشَّيْخُ حَسَنٌ وَأَبُو السَّعُودِ

“However, the statement of Allamah Nuh Affendi in his risalah regarding the Masail of an individual who join the congregational late endorses what has been mentioned by Shaykh Hasan and Abus Sa'ud”

A Summary of the Discussion on *Talfiq* (تلفيق):

- Ibn Nujaym and Ibn Mullah Farrukh believed *Talfiq* (تلفيق) to be permissible
- Ibn Al Hummam's statements indicate that the impermissibility of *Talfiq* (تلفيق) came from the *later* scholars and that *Talfiq* (تلفيق) was considered impermissible by the majority of the *earlier* scholars

Mufti Taqi Sahib states that the view he prefers is of the impermissibility of *Talfiq* (تلفيق). This is because if the doors of *Talfiq* (تلفيق) were to be opened, one would begin to play with the different Madhahib according to his desires.

Note:

It is important to remember the point that was mentioned earlier; *Talfiq* (تلفيق) will only occur if two different Madhahib are adopted in **one Mas'alah (subsidiary issues - مسألة)**. Accordingly, if two different Madhahib were to be adopted in **two different Masail (subsidiary issues - مسائل)**, this would not be *Talfiq* (تلفيق) and would be permissible.

Examples of adopting two different Madhabs in two different Masail (subsidiary issues - مسائل):

- 1) A judge may give a ruling even if one of the parties is not present as per the Madhab of the Malikis, Hanabalīs and Shafīs. However, as for the ruling itself, he may give the ruling according to the Hanafi Madhab.

Mas'alah 1:

The *procedure* of ruling – the Maliki, Hanbali and Shafi' Madhab is adopted

Mas'alah 2:

The *ruling* itself – the Hanafi Madhab is adopted

²⁷¹ The simplest answer that may be given to this story is that Imam Abu Yusuf was a Mujtahid. The laws of *Talfiq* do not apply to a Mujtahid as this may restrict him from performing *Ijtihad*. To state that Imam Abu Yusuf made *talfiq* is synonymous to stating that Imam Shafi'i' and Imam Ahmad ibn Hanbal made *talfiq* by creating an extra view.

- 2) The authors of *Al Fatawa Al Hindiyyah* (الفتاوى الهندية) relate from *Al Thakhirah* (الذخيرة) by Burhan Al Din Al Bukhari:

A judge may accept the testimony of a wicked person (فاسق) in a ruling in during which one of the parties is not present. This is permissible even if the Madhab that allows a ruling without the presence of a party does *not* allow the testimony of a wicked person (فاسق). This is because the procedure of ruling and the state of the witnesses are two separate Mas'alahs.

Mas'alah 1:

The procedure of ruling – the Madhab of the Imams who allow a ruling against a person who is not present is adopted

Mas'alah 2:

The state of the witnesses²⁷²

Shaykh Ashraf Ali Al Thanwi's view

The view of Hazrat Thanwi is that *Talfiq* (تلفيق) is impermissible in **one action**. However, if there are two different **actions**, *Talfiq* will be permissible **even if the Mas'alah is one**.

Example of when *Talfiq* (تلفيق) will be permissible according to Hadrat Thanwi:

If a person wipes less than a quarter of his head during wudhu (as per the Madhab of the Shafi's) but does not pray Surah Fatihah behind the Imam (as per the Madhab of the Hanafis), this will be considered *Talfiq* (تلفيق). However, considering that the two actions (wudhu and Salah) are different actions, both wudhu and Salah will be valid.

This is contrary to Allamah Qarafi's interpretation of *Talfiq* (تلفيق) mentioned above.

Examples of when *Talfiq* (تلفيق) will not be permissible according to Hadrat Thanwi:

- 1) If a person acted upon the Shafi' Madhab and wiped less than a quarter of his head and acted upon the Hanafi Madhab in the same wudhu by not following an order (ترتيب), the wudhu will not be valid as the action of performing wudhu
- 2) If a person touched his wife and then bled, it will not be permissible for him to act upon the Hanafi Madhab for touching his wife and the Shafi Madhab for bleeding as the *action* of breaking wudhu is one. Hence, his wudhu will be considered broken according to both Madhahib.²⁷³

²⁷² One would struggle to explain how this example is not *Talfiq* considering that the state of the witnesses is part of the procedure of ruling. My teacher, Mufti Husain Kadodia Sahib also stated similar in a discussion at the end of class.

(Translator)

²⁷³ My teacher, Mufti Husain Kadodia Sahib mentioned in a discussion at the end of class that Hadrat Thanwi's view does not seem to be the preferred view regarding *Talfiq*. The view of the earlier scholars such as Allamah Qarafi seems to be the more correct opinion.

(Translator)

The International Fiqh Academy of Jeddah have also ruled the following:

“The reality of performing *Talfiq* (تلفيق) between the Madhahib is that a follower (Muqallid) does an action in a single Mas’alah - that contains two issued connected to one another - in a manner that none of the Mujtahid who have been followed have permitted in that Mas’alah.

Talfiq shall be impermissible in the following instances:

- 1) If it leads to one moving to another Madhab based upon one’s desires or if it leads to one moving to another Madhab without meeting the requirements after which moving to another Madhab would be permissible
- 2) If it leads to annulling the decree of a judge
- 3) If it leads to annulling a previous action which was carried out by following a certain Madhab in a certain Mas’alah
- 4) If it leads to opposing the consensus or that which is equivalent to it
- 5) If it leads a person into a state which none of the Mujtahidin consider permissible”

The Second Reason: To give Fatwa upon another Madhab due to the strength of evidence (الإفتاء بمذهب آخر لرجحان دليله)

The second state in which it is permissible to act and give a Fatwa according to the view of another Madhab is when a Mufti, who is a master in his Madhab, and who knows the evidences well, and has a deep understanding of the Qur’an and Sunnah, even though he is not a Mujtahid, finds an authentic narration which is completely authentic and clear in its meaning, and does not find anything contradictory to it except the view of his Imam. In such a case, it is appropriate for the Mufti to take the view of a Mujtahid who has acted upon the Hadith that he has found, as we have elaborated in the discussion on Al Taqlid.

What we have mentioned here is supported by what Ibn Abidin Rahimahullah has recorded in his Sharh Uqud Rasmil Mufti from the commentary of Al Ashbah Wal Nazair by Al Biri Rahimahullah, who has recorded the following statement from the commentary of Al Hidayah by Ibn Shihnah Al Kabir:

إِذَا صَحَّ الْحَدِيثُ وَكَانَ عَلَى خِلَافِ الْمَذْهَبِ عَمِلَ بِالْحَدِيثِ وَيَكُونُ ذَلِكَ مَذْهَبَهُ وَلَا يَخْرُجُ مُقْلِدُهُ عَنْ كَوْنِهِ حَنِفِيًّا بِالْعَمَلِ بِهِ فَقَدْ صَحَّ عَنْ أَبِي حَنِيفَةَ أَنَّهُ قَالَ "إِذَا صَحَّ الْحَدِيثُ فَهُوَ مَذْهَبِي"

“When a Hadīth is Sahih and goes against the Madhab, the Sahih Hadīth shall be acted upon and this will be the Imam’s Madhab. By acting on this Sahih Hadīth, a Muqallid will not leave Taqlīd as it is established that [Imam] Abu Hanīfah said, ‘When a Hadīth is authentic, then that is my Mathab’”²⁷⁴

²⁷⁴ This statement has been used by many as evidence against the concept of Taqlid Al Shaksi. Mufti Rashid Ahmed Ludhiyanwi Rahimahullah has discussed this objection in his Ahsanul Fatawa. He responds by stating:

“This statement of the great Imam Rahimahullah is conditional upon two conditions which are established logically and through texts:

- 1- This command is directed towards a Mujtahid (Mujtahid Fil Madhab, Mujtahid Fil Masail, Sahib Al Takhrij, and Sahib Al Tarjih), this is because to recognise the abrogated and abrogative narrations and the authentic and weak narrations and to give preference or reconcile between contradicting evidential texts is only the task of a Mujtahid
- 2- He [The Mujtahid] must have confidence that the Hadith did not reach Imam Abu Hanifah. If the Hadith did reach Imam Abu Hanifah, yet he did not act upon it, then this is evidence that this narration is not authentic according to Imam Abu Hanifah. He (Imam Abu Hanifah) must have had a stronger form of evidential text in front of him. In such a case, to claim that the Madhab of Imam Abu Hanifah should follow that Hadith (while Imam Abu Hanifah clearly rejected it) is an open falsity

Ibn Abidīn (d.1252 AH) adds the following:

وَلَا يَخْفَى أَنَّ ذَلِكَ لِمَنْ كَانَ أَهْلًا لِلنَّظَرِ فِي النُّصُوصِ وَمَعْرِفَةِ مُحْكَمِهَا مِنْ مَنْسُوخِهَا فَإِذَا نَظَرَ أَهْلُ النَّظَرِ فِي الدَّلِيلِ وَعَمِلُوا بِهِ صَحَّحَ نِسْبَتَهُ إِلَى الْمَذْهَبِ بِكَوْنِهِ صَادِرًا بِإِذْنِ صَاحِبِ الْمَذْهَبِ إِذْ لَا شَكَّ أَنَّه لَوْ عَلِمَ بِضَعْفِ دَلِيلِهِ رَجَعَ عَنْهُ وَاتَّبَعَ الدَّلِيلَ الْأَقْوَى

“And it is clear that this (Ibn Shihnah’s statement) is for those people who are worthy of looking into the evidences and recognising the established verses from the abrogated verses. Hence, when a person who is worthy of looking into the evidences finds an evidence and acts upon it, then it is permissible to consider his view as the view of the Madhab as the view has been permitted by the Imam of the Madhab. The reason for this is that if the Imam was aware of the weakness of his evidence, he would also revoke the evidence and follow the stronger evidence”

However, Ibn Abidīn (d.1252 AH) then states that this new view (that has been found by looking into the evidences) can only be considered as valid if it is actually a view of one of the other A’immah of the Madhab (i.e. the new view that goes against the view of the Imam of the Madhab (Imam Abu Hanifah) **will only be considered valid if it is one of the views of the other A’immah of the Madhab**.²⁷⁵ This is because it is impossible that a person has managed to establish a view from the evidences that one of the A’immah of the Madhab have not adopted. Ibn Abidīn (d.1252 AH) records this statement from Allamah Qasim ibn Qutlubugah who in turn records it from Qadhī Khan (d.592 AH).

Ibn Qadī Samawinah has responded by stating that the new view that has been established by looking at the evidences will be a view of one of the other Mujtahids from the other Madhabs. Therefore, it should not be disregarded on the basis that it is not a view found within the Hanafi Madhab. This is especially considering that the field of Hadith was more established after the A’immah of the Mathab had passed.

Ibn Qadī Samawinah also states that if a Mujtahid feels that his view goes against the view of the A’immah of the Mathab, then it is necessary for him to act upon his own view. The author of *Al Muhit Al Burhani* has stated:

يَجِبُ عَلَى الْمُجْتَهِدِ الْعَمَلُ بِاجْتِهَادِهِ وَحَرَمَ عَلَيْهِ تَقْلِيدُ غَيْرِهِ

“It is necessary for a Mujtahid to act according to his Ijtihad and it is haram upon him to do Taqlid of someone else”

Ibn Abidīn (d.1252 AH) has then stated:

يَجُوزُ لِلْعَالِمِ الَّذِي يَعْرِفُ مَعْنَى النُّصُوصِ وَالْأَقْوَالِ وَهُوَ مِنْ أَهْلِ الدِّرَايَةِ أَنْ يَعْمَلَ لِنَفْسِهِ فِي مِثْلِ هَذَا بِقَوْلِ غَيْرِ إِمَامِهِ وَلَكِنْ لَا يَجُوزُ الْإِفْتَاءُ بِذَلِكَ فِي جَمِيعِ هَذِهِ الصُّوَرِ وَذَلِكَ لِأَنَّ الْمُسْتَفْتِيَّ إِذَا جَاءَهُ يُسْأَلُ عَمَّا ذَهَبَ إِلَيْهِ أَيْمَنُ الْحَقِيقَةِ لَا عَنْ رَأْيِ نَفْسِهِ

“It is permissible for an Alim who knows the evidences and the different views and is from the people of dirayah to act upon the view of another Mujtahid other than his Imam if the view of the other Mujtahid is more apparent to him. However, it is not permissible for him to give Fatwa upon his own view as the questioner has asked for the view of the Hanafi Mathab, not for the personal view of the Mufti”

Mufti Taqi Sahib mentions that Ibn Abidīn’s (d.1252 AH) statement shows that if a Mufti lets the questioner know that the Fatwa he is issuing is not the view of the Madhab, but rather his own personal view, then this should be permissible. Ibn Abidin (d.1252 AH) has related from Qaffal Al Shafi’ that when an individual would come to ask him for a Fatwa pertaining to a financial matter, he would say:

تَسْأَلُنِي عَنْ مَذْهَبِي أَوْ عَنْ مَذْهَبِ الشَّافِعِيِّ رَحِمَهُ اللَّهُ تَعَالَى؟

“Are you asking me regarding my view or the view of Imam Al Shafi’i’ Rahimahullahu Ta’ala?”

(Mufti Rashid Ahmad Ludhyanwi Rahimahullah, “Ahsanul Fatawa” (Karachi: HM Said, 2004), p.67, v.9.)

²⁷⁵ Thus, the ‘new view’ is actually just a preference (*tarjih* – ترجيح) of the view of one of the Imams of the Madhab.

At times, he would say:

لَوْ اجْتَهَدْتُ فَأَدَّى اجْتِهَادِي إِلَى مَذْهَبِ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى فَأَقُولُ مَذْهَبُ الشَّافِعِيِّ رَحِمَهُ اللَّهُ تَعَالَى كَذَا وَلَكِنِّي أَقُولُ بِمَذْهَبِ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى

“If I applied my mind on an issue and this led me to the view of Imam Abu Hanifah, then when giving a Fatwa I would say, “The Madhab of Imam Shafi’ is this, however I concur with the view of Imam Abu Hanifah”

When a Judge gives a ruling contrary to his Madhab (إذا قضى القاضي بغير مذهبه)

When a ruler appoints a judge (Qadhi) and does not confine him to the rulings of a specific Madhab, and the judge is a Mujtahid (whether Mujtahid Fil Madhab, Mujtahid Fil Masail, Sahib Al Takhrij, or Sahib Al Tarjih), and he gives a decree that contradicts the Madhab of others, then his decree shall be valid as long as the Mas'alah is one in which Ijtihad is possible.

Thus, if a Mufti is asked regarding such a decree of a judge, then the Mufti shall respond by validating the decree, even if the decree contradicts the view of the Madhab of the Mufti. Thus, this is the third instance in which a Mufti shall give a Fatwa contrary to the view of his own Madhab.

The Mufti shall do this because the Fuqaha are unanimous that the ruling of a ruler or the decree of a judge surpasses all differences of opinion.

The basis of this is that which has been narrated that Hadrat Umar Radiyallahu Anhu appointed Hadrat Abu Al Darda Radiyallahu as a judge (Qadhi), and two people bought their quarrel to Hadrat Abu Al Darda Radiyallahu Anhu and he ruled in favour of one of them. After a while, the individual against whom the decree had been given met Hadrat Umar Radiyallahu Anhu, Hadrat Umar Radiyallahu Anhu inquired as to what occurred in the court case, the man replied:

قضى علي

“He (Hadrat Abu Al Darda Radiyallahu Anhu) ruled against me”.

Hadrat Umar Radiyallahu Anhu responded:

لو كنت أنا مكانه لقضيت لك

“If I had been in his place, I would have ruled in your favour”.

The man responded by asking:

وما يمنعك من القضاء؟

“What is stopping you from giving such a decree?”

Hadrat Umar Radiyallahu Anhu replied:

ليس هنا نص والرأي مشترك

“There is no evidential text (*Nas*) in this issue [for me to change Hadrat Abu Al Darda Radiyallahu Anhu's decision] and each man has his [own] opinion”.

Similarly, Ibn Abi Shaybah and other have narrated from Al Hakam ibn Mas'ud Rahimahullah who said:

شهدت عمر أشرك الإخوة من الأب والأم في الثلث فقال له رجل قد قضيت في هذه عام الأول بغير هذا قال وكيف قضيت؟ قال جعلته للإخوة من الأم ولم تجعل للإخوة من الأب والأم شيئاً فقال "ذلك على ما قضينا وهذا على ما نقضي"

“I witnessed Umar making the real brothers partners in one third of the inheritance, so a man said to him, ‘Indeed you ruled differently to this last year’, he asked, ‘How did I rule?’ The man responded, ‘You made it (one third of the inheritance) for the maternal brothers and you did not give anything to the real brothers’. Hadrat Umar Radiyallahu Anhu replied, ‘That is according to what we had ruled then, and this is according to what we are ruling now’”

Hence, considering that Hadrat Umar Radiyallahu Anhu did not change or annul his previous decree - even though his view subsequently changed - due to the Mas'alah being one in which Ijtihad is permissible, it is appropriate that a new judge (Qadhi) does not change or annul the ruling of a previous judge (Qadhi).

The wisdom behind this is that the Shari'ah has designated the court of a judge (Qadhi) as a place where disputes are resolved. Thus, it is necessary that disputes are resolved as much as possible. Hence, considering that the Mujtahidin have many differing views in a single Mas'alah, if we were to open the door for a decree of a judge to be changed or annulled by a different judge (Qadhi) based upon these differing views, disputes would remain in the courts indefinitely. Each new judge (Qadhi) would change or annul the decree of a previous judge (Qadhi) based upon his personal preference.

Therefore, considering that it cannot be said with certainty for a view of any of the different Madhahib that it is completely false, it follows that the view according to which the judge issues a decree is given preference over the other views, due to the decree of a judge being such that it removes disputes. Hence, once it has been given preference through the means of the decree of a judge, it shall remain permanently.

The exception to this is when the view according to which the decree is given is a view which completely contradicts the indisputable evidential texts or a consensus. In this case, there is no way of maintaining such a decree as this falls under issuing a ruling in contradiction to that which Allah has revealed.

Nonetheless, there is more detail to the issue which has been discussed in the books of Fiqh with its various types and examples. So we shall discuss this in a little more detail.

Indeed, the king of the scholars Allamah Al Kasani Rahimahullah has discussed this issue. We shall first present his discussion, after which insha'Allah we shall summarise his statements with some elaboration and detail.

Imam Al Kasani Rahimahullah states:

“As for the discussion of that which is consolidated through a decree and that which is broken when it is raised in front of another judge (Qadhi), we say with inspiration from Allah:

The decree of the first judge either occurs in a Mas'alah in which there is an explicit evidential text mentioned in the Qur'an or the indisputable Sunnah or there is a consensus, or his decree occurs in a Mas'alah in which Ijtihad from the evidential texts and analogical deduction is needed for a ruling.

If his decree occurs in a Mas'alah in which there is an explicit evidential text mentioned in the Qur'an or the indisputable Sunnah or there is a consensus, then if his decree is in accordance with this explicit evidential text or consensus, then it shall become permanently valid and it is not permissible for the second judge to annul it. However, if his decree is not in accordance with this explicit evidential text, then it is necessary for the second judge to annul it as the decree is indisputably invalid.

If his decree occurs in a court case in which Ijtihad based upon the evidential texts and analogical deduction is possible in order to deduce a ruling, then either there is a consensus that the case is one in which Ijtihad is possible in order to deduce a ruling or there is a difference of opinion over whether the issue is one in which Ijtihad is possible or not.

If there is a consensus that the issue is one in which Ijtihad is possible, then either the area where Ijtihad is possible is in the actual ruling of the Mas'alah or in the procedure of issuance of the decree.

If the area where Ijtihad is possible is in the actual ruling of the Mas'alah, and the judge (Qadhi) has ruled according to his Ijtihad, then it is not permissible for the second judge (Qadhi) to annul this decree. Rather, the second judge (Qadhi) must maintain the decree of the first judge. This is because there is a consensus that if in a court case, the area where Ijtihad is needed is in the actual ruling of the Mas'alah itself, then the judge (Qadhi) has full authority to issue a decree according to his own Ijtihad. Thus, this decree is one in which there is a consensus upon it being correct. Accordingly, if the second judge changes or annuls this decree, then he has done so through his own volition, hence there is a difference of opinion over whether or not his change or annulment is correct, therefore it is not permissible to change or annul that regarding which there is a consensus upon it being correct with that which there is a difference of opinion over it being correct. Also, the ruling of the second judge (Qadhi) is not supported by indisputable evidence, rather, it is supported through speculative evidence, whereas the ruling of the first judge (Qadhi) is supported by indisputable evidence; which is a consensus that his decree is correct as he has the full authority to issue a decree as he wishes. Hence, it is not permissible to annul that which is established through indisputable evidence with that which is established through speculative evidence. Furthermore, necessity demands that the ruling of the first judge (Qadhi) who acted upon his Ijtihad is acted upon, this is because if it is permissible to change or annul his ruling, then the losing party would raise the dispute with another judge (Qadhi) who would change or annul the ruling of the first judge (Qadhi), the other party would in turn respond by raising the dispute with a third judge (Qadhi) who would change or annul the ruling of the second judge (Qadhi) – and so, the dispute would never come to an end. Thus, disputes are corruption and anything that leads to corruption is also corruption. Thus, if a second judge (Qadhi) [wrongfully] changes or annuls the decree of the first judge (Qadhi), and the dispute is raised in front of a third judge (Qadhi), then the third judge (Qadhi) should annul the decree of the second judge (Qadhi) and maintain the ruling of the first judge (Qadhi). This is because the decree of the first judge (Qadhi) is correct and the change/annulment of it made by the second judge (Qadhi) is incorrect.

If the area where Ijtihad is possible is in the procedure of the ruling, and the judge (Qadhi) has carried out the proceedings according to his Ijtihad, then is it permissible for the second judge to change or annul the decree of the first judge (Qadhi)? For example, if the first judge (Qadhi) rules [in restricting the wealth of a free person or issues a decree] against a party that is not present in the court proceedings, then in this case, it is permissible for the second judge (Qadhi) to change or annul the decree of the first judge (Qadhi) if his Ijtihad leads him to a different conclusion. This is because the decree of the first judge (Qadhi) is not accepted as a valid decree by all scholars, rather it is accepted according to some scholars, and thus its correctness is not agreed upon. Accordingly, it is possible for it to be changed or annulled by another similar decree unlike in the previous scenario, because in that scenario, the ruling of the first judge (Qadhi) was accepted by all scholars as a valid decree and thus its correctness was agreed upon, which meant that that it did not hold the possibility of being changed or annulled. Also, when there is a difference of opinion in a Mas'alah, then a judge can choose one view through his judicial abilities and can make this view correct according to all scholars in ruling through the dispensation of a court – which is permissible according to all scholars. However, when there is a difference of opinion in the actual procedure of a decree, then a new decree can change or annul the previous decree.

This is all when there is a consensus that the court case is one in which Ijtihad is possible. As for when there is a difference of opinion over whether the court case is one in which Ijtihad is possible, such as the sale of an Umm Walid, will the decree of the first judge (Qadhi) be valid such that a second judge (Qadhi) cannot change or annul it? Imam Abu Hanifah and Imam Abu Yusuf hold the view that the decree of the first judge (Qadhi) shall be valid as the Mas'alah of the sale of an Umm Walid is one in which Ijtihad is possible as the Sahabah had a difference of opinion over its permissibility. Imam Muhammad holds the view that the decree of the first judge (Qadhi) shall be invalid as a consensus was found upon its impermissibility after the Sahabah, thus Ijtihad is not possible if there exists a consensus – [one may have recognised that] this difference of opinion is based upon whether a later consensus removes an earlier difference of opinion. According to them [Imam Abu Hanifah and Imam Abu Yusuf], it does not. According to him (Imam Muhammad), it does.

Thus, this would now result in a court case in which there is a difference of opinion over whether or not Ijtihad is possible. Accordingly, if the view of the second judge (Qadhi) is that the court case presented to the first judge (Qadhi) is one in which Ijtihad is possible, then it is not permissible for him to change or annul the decree of the first judge (Qadhi). If his view is that the court case presented to the first judge (Qadhi) is one in which Ijtihad is not possible as a consensus has been found, then he shall not allow the decree and shall change or annul it because according to his view the decree of the first judge has occurred in contradiction to a consensus and is therefore, invalid.

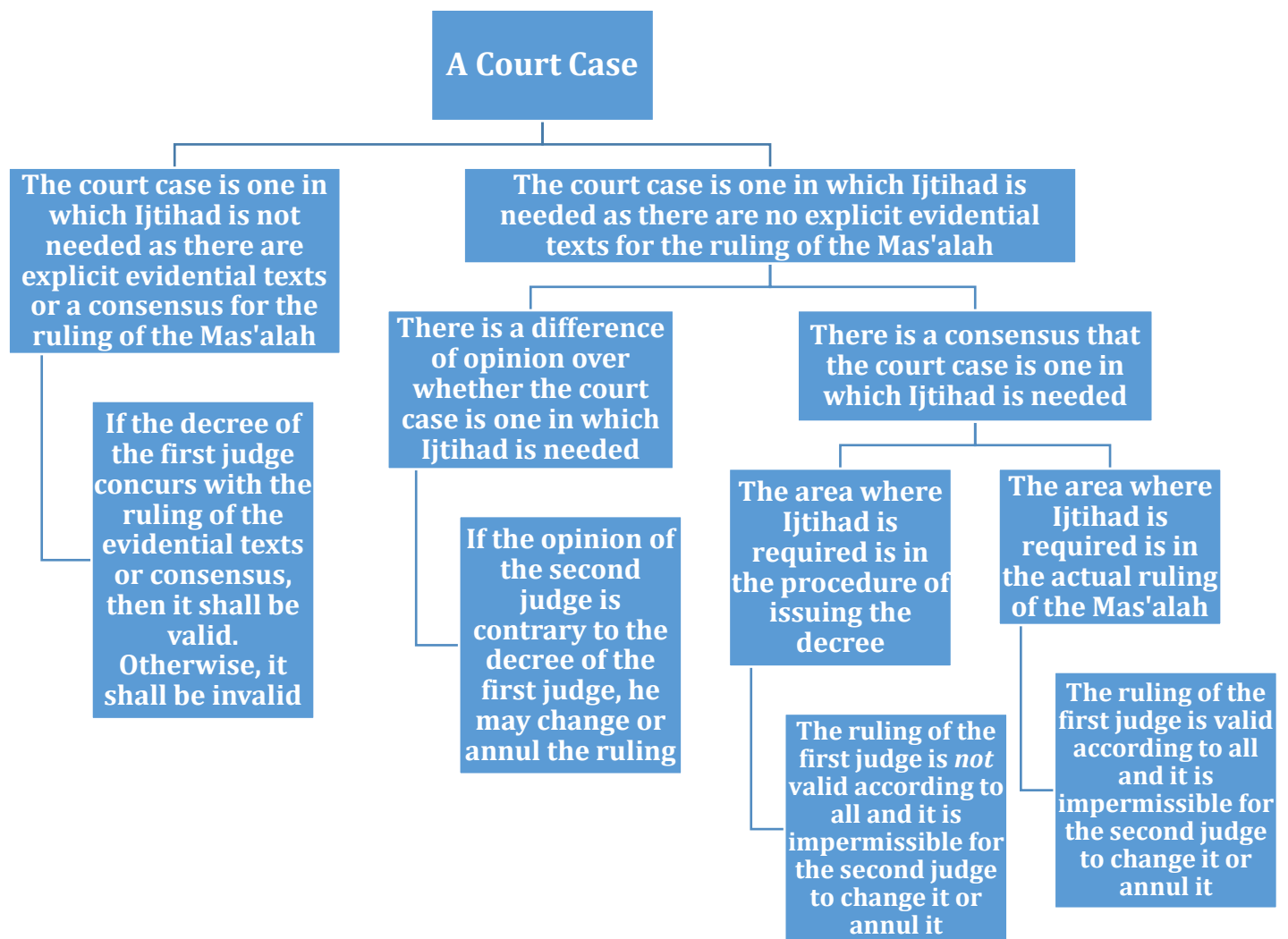
From our Fuqaha, there is one scholar who has elaborated upon the issues of Ijtihad in another manner. He states that if the Ijtihad applied by the first judge (Qadhi) is abominable and odd, then it is permissible for the second judge (Qadhi) to change or annul the ruling of the first judge (Qadhi). However, there is a problem in this [view]. This is because once it is established that Ijtihad is possible in the court case, then there should be no difference between one ruling extracted through Ijtihad and another ruling extracted through Ijtihad, considering that what we have discussed earlier did not differentiate between the two. Hence, it is appropriate for it to remain impermissible for the second judge (Qadhi) to change or annul the decree of the first judge (Qadi) in such a case, because the decree of the first judge (Qadi) is a product of Ijtihad.”

‘Allamah Kasani’s sentiments may be summarised into four points:

- 1) The court case is pertaining to a Mas’alah in which there is a consensus
Ruling: if the decree of the judge concurs with the consensus, it shall be valid. Otherwise, it shall be invalid.
- 2) The court case is pertaining to Mas’alah in which Ijtihad is unanimously possible
Ruling: the decree of the judge (Qadi) shall be valid by consensus.

- 3) The court case is pertaining to Mas'alah in which there is a difference of opinion over whether or not Ijtihad is possible in it
Ruling: the decree of the judge (Qadi) shall be valid if the second judge considers it to be a court case in which Ijtihad is possible, and it shall be invalid if the second judge considers it to be a court case in which Ijtihad is not possible
- 4) The actual procedure is one in which Ijtihad is possible, such as issuing a decree against a party that is not present, or applying the laws of spending-restriction upon a free person
Ruling: the decree shall be valid according to those whose Ijtihad concurs with the Ijtihad of the judge (Qadi) and the decree shall not be valid according to those who hold a different opinion to the judge (Qadi).

The above may be summarised as follows:



Although the explanation for points one and two mentioned in the four-point summary above is clear, the explanation behind points three and four requires some clarification.

[Will a subsequent consensus annul a previous difference of opinion?](#)

In this section we shall discuss the rulings pertaining to a Mas'alah in which there was a difference of opinion during the time of the Sahabah and the Tabi'un and later on a consensus occurred upon one the views.

For example, consider the Mas'alah of selling an *Umm Walad* (a slave woman who has given birth to the child of the master). During the time of the Sahabah, there was a difference of opinion over whether or not it is permissible to sell an *Umm Walad*. Hadrat Umar Radiyallahu Anhu held the view that it is not permissible to sell her. On the other hand, Hadrat Ali Radiyallahu Anhu held the view that it is permissible to sell her. After this, a consensus occurred that it is impermissible to sell an *Umm Walad*.

However, Imam Abu Hanifah and Imam Abu Yusuf hold the opinion that despite the fact that a consensus was found after the time of the Sahabah, this consensus shall not annul the difference of opinion that occurred in the Mas'alah and thus the consensus shall not prevent the Mas'alah from being one in which Ijtihad is possible.

'Allamah Sarakhsi has mentioned the reasoning behind this by stating that the consensus of the Tabi'un does not have the strength to annul the difference of opinion that occurred amongst the Sahabah. Thus, if a judge (Qadhi) rules that the sale of an *Umm Walad* is valid, then his decree shall be valid according to Imam Abu Hanifah and Imam Abu Yusuf as he has applied his Ijtihad in a Mas'alah in which Ijtihad is possible.

As for Imam Muhammad Rahimahullah, he states that the subsequent consensus shall annul the difference of opinion that existed before it. Thus, after a consensus has been found upon one view, the Mas'alah shall no longer remain one in which Ijtihad is possible. Therefore, if a judge (Qadhi) rules that the sale of an *Umm Walad* is valid, then his decree shall not be valid as it contravenes a consensus.

Considering that many of the Hanafi Fuqaha have stated that the ruling of a judge who permits the testimony of a woman in corporal punishment and retribitional killing based upon the view of Shurayh is valid, it seems apparent that the Fatwa is upon the view of Imam Abu Hanifah and Imam Abu Yusuf.

The view of Imam Abu Hanifah and Imam Abu Yusuf is also stronger in terms of evidence, this is based upon what many Fuqaha, including Imam Muhammad himself, have mentioned that the criteria for a Mas'alah to be one in which Ijtihad is possible is that there is ambiguity in its evidence, not the fact that a difference of opinion has occurred in the Mas'alah. It is mentioned in Al Fatawa Al Hindiyyah:

وَفِي الْمُنْتَقَى يُشِيرُ إِلَى أَنَّ الْعِبْرَةَ لِاشْتِبَاهِ الدَّلِيلِ لَا لِحَقِيقَةِ الْإِخْتِلَافِ وَهَكَذَا ذَكَرَ مُحَمَّدٌ رَحِمَهُ اللَّهُ تَعَالَى فِي الْجَامِعِ وَفِي السِّيَرِ الْكَبِيرِ وَهَكَذَا ذَكَرَهُ صَاحِبُ الْأَفْضِيَّةِ صُورَةُ مَا ذُكِرَ فِي السِّيَرِ لَوْ رَأَى إِمَامٌ مِّنْ أُنَمَّةِ الْمُسْلِمِينَ أَنَّ يَقْبَلَ الْجُزْئَةَ مِنْ مُّشْرِكِي الْعَرَبِ وَقَبِلَ جَاوَزَ وَإِنْ كَانَ هَذَا خَطَأً عِنْدَ الْكُلِّ لِأَنَّهُ مُوَضَّعُ الْإِجْتِهَادِ كَذَا فِي الدَّخِيرَةِ

“And that which is in Al Muntaqa indicates that consideration is given to the ambiguity of the evidence, not to the existence of a difference of opinion. Imam Muhammad has also mentioned similar in his Al Jami' and Al Siyar Al Kabir. Sahib Al Aqdiyah has also mentioned similar to this. The example given in Al Siyar is that if an Imam from the A'immah of the Muslims holds the view that he should accept tax from the polytheists of Arabia and he does this, then it is valid even though this is an error according to all, this is because it is a Mas'alah in which Ijtihad is possible. Similar to this is found in Al Dhakirah”

Furthermore, it is not possible for us to state that the view that some of the Sahabah and Tabi'un adopted that was in contradiction to the subsequent consensus was not based upon evidence or that there was no ambiguity in the Mas'alah, for adopting a view without an evidence in a unambiguous Mas'alah is misguidance which is incomprehensible with regards to the best of people; the Sahabah and Tabi'un.

When the Validity of the Actual Procedure of the Court Case itself is one in which Ijtihad is Possible

The fourth point in the four-point summary mentioned is the issue of a decree in which the actual procedure of the court case was one in which Ijtihad is possible. The example of this is to issue a ruling against a party that is not present (*Al Qadhā 'Alal Ghāib* – القضاء على الغائب) or to issue a restriction on spending (*Hijr* – حجر) upon a free person. A decree in which this procedure was adopted will not be valid according to those who hold the opinion that such procedures procure an invalid decree. However, there are two further points that need to be mentioned:

Point 1: we have mentioned in our discussion on the issue of following a school of Fiqh (Taqlid) that Ibn Abidin has mentioned that the later scholars have permitted for a judge to issue a ruling against a party that is not present (*Al Qadhā 'Alal Ghāib – القضاء على الغائب*) when there is a necessity or need. Thus, it is not appropriate to use this example under this discussion as all the Fuqaha are in unanimous agreement that it is permissible to issue a ruling against a party that is not present (*Al Qadhā 'Alal Ghāib – القضاء على الغائب*) due to necessity. Therefore, it seems that the more appropriate example to give for this issue is that which Ibn Abidin has mentioned, which is when, for example, a judge rules in favour of his child or his wife or when the judge is someone who has been punished for falsely accusing a person of adultery, thus in these two scenarios, the validity of the actual procedure of the decree is an issue in which Ijtihad is possible.

Point 2: 'Allamah Kasani has presented this issue in a manner which gives the impression that all the Hanafi Fuqaha are unanimous that when the validity of the actual procedure of the decree is an issue in which Ijtihad is possible, then the decree will not be valid according to those who hold the opinion that such a procedure procures an invalid decree. However, after revisiting the books of the Ḥanafī Fuqaha, it is apparent that they are not unanimous upon this. It is for this reason that Ibn Abidīn writes, "A type [of decree] in which they have differed; which is when the [procedure of the] decree is an issue in which Ijtihad is possible, and it is one in which a difference of opinion is found after the decree has been given, it has been said it (the decree) shall be valid". This statement of Ibn 'Abidīn indicates that there are different opinions over this issue in the Ḥanafī Madhab. 'Allāmah Kāsānī, Imām Qādhī Khān, 'Allāmah Al Zayla'ī, and others are of the opinion that the decree shall not be valid. However, other scholars, such as the grandfather of Ibn Shihnah held the view that the decree is valid as recorded by Ibn Abidīn.

Thus, the difference between the two views is that according to Allāmah Kāsānī, Imām Qadhi Khan, and Allamah Al Zayla'ī, the second judge is not required to maintain the decree of the first judge. However, if he does maintain it, it shall become valid as the second judge has ruled with Ijtihad in an issue in which Ijtihad is possible. On the contrary, Ibn Shihnah's view is that the decree of the first judge shall be valid immediately, without the requirement of a second judge to maintain it.

For a Mas'alah to be one in which Ijtihad is Possible, is it necessary for there to be a difference of opinion in the Mas'alah during the time of the Sahabah and Tabi'un?

Some Hanafi Fuqaha have held the view that the ruling of judge will only be valid if there was a difference of opinion in the Mas'alah during the time of the Sahabah and the Tabi'un. As for if a difference of opinion arose in the Mas'alah after the time of the Sahabah and Tabi'un, then the Mas'alah shall no longer be considered one in which Ijtihad is possible.

Thus, it is mentioned in Al Fatawa Al Hindiyyah from Al Kassaf:

أنه لم يعتبر الخلاف بيننا وبين الشافعي إنما اعتبر الخلاف بين المتقدمين والمراد من المتقدمين الصحابة رضي الله تعالى عنهم ومن معهم ومن بعدهم من السلف

"That he (Al Kassaf) did not consider the difference of opinion between us and [Imam] Al Shafi'i, rather, he considered the difference of opinion between the early scholars, and by 'early scholars' he means the Sahabah - may Allah be pleased with them and with those who were with them and with those who came after them from the pious predecessors"

However, the later Hanafi Fuqaha did not take this view. Thus, Allamah Haskafi writes in Al Dur Al Mukhtar:

وهل اختلاف الشافعي معتبر؟ الأصح نعم. صدر الشريعة.

"Is the difference of opinion of [Imam] Al Shafi'i considered? The most correct view is yes. [as mentioned by] Sadr Al Shari'ah"

At this point, it is important to clarify that some Hanafi books such as Al Dur Al Mukhtar have mentioned regarding numerous Masail in which there is a difference of opinion amongst the four Imams of the four schools of thought that if a judge issues a decree in the Mas'alah according to the Shafi'i' Madhab, the decree shall not be valid. For example, if a judge rules the meat upon which the name of Allah has been purposefully not recited is halal, or if he rules that an oath by a single witness is a sufficient form of testimony, and other such Masail, then his decree shall be invalid. This seems to indicate that in some Masail, a difference of opinion amongst the four schools of thought has not prevented the Mas'alah from becoming one in which Ijtihad is *not* possible.

However, Ibn Abidin Rahimahullah writes:

فما ذكره أصحاب الفتوى من المسائل الآتية التي لا ينفذ فيها قضاء القاضي مبني على عبارة القدوري لا على ما في الجامع (أي الصغير) ومن قال لا اعتبار بخلاف مالك والشافعي اعتمد قول القدوري ومن قال بإعتباره اعتمد ما في الجامع وفي الواقعات الحسامية عن الفقيه أبي الليث وبه أي بما في الجامع نأخذ لكن في شرح أدب القضاء أن الفتوى على ما في القدوري اهـ. ملخصا فقد ظهر أنهما قولان مصححان والمتون على ما في القدوري والأوجه ما في الجامع ولذا رجحه في الفتح

“So that which the scholars of Fatwa have mentioned in the coming Masail in which the decree of a judge is not considered valid is based upon the statement of Al Quduri not upon what is in Al Jami [Al Saghir], and he who has said that there is no consideration of the difference of opinion of [Imam] Malik and [Imam] Al Shafi'i' has relied upon the view of Al Quduri, and he who has considered them (their difference of opinion) has relied upon what is in Al Jami [Al Saghir]. It is mentioned in Al Waqi'at Al Husamiyyah who quotes from Faqih Abu Layth, 'and it is that, i.e. what is in Al Jami' [Al Saghir], that we take. However, it is mentioned in Sharh Adab Al Qada' that the Fatwa is upon what is in Al Quduri'. So it is apparent that they are two views, both of which have been given preference. The Mutun (Hanafi Fiqh Manuals) are upon what is in Al Quduri and the more appropriate is that which is in Al Jami', it is for this reason that it (the view mentioned in Al Jami' Al Saghir) has been preferred in Al Fath (Fathul Qadir)”

Mufti Taqi Sahib states that it seems to him that there is no contradiction between the statement of Al Quduri and that which is in Al Jami' Al Saghir. For the statement found in Al Jami' Al Saghir is:

وما اختلف فيه الفقهاء فقضى به القاضي ثم جاء قاض آخر يرى غير ذلك أمضاه

“And that which the Fuqaha have differed over, if a judge was to rule according to it (i.e. according to one of the views), then another judge came who held a different view, he (the second judge) shall maintain it (the ruling of the first judge)

And the statement of Imam Al Quduri Rahimahullah is:

وإذا رفع إلى القاضي حكم حاكم أمضاه إلا أن يخالف الكتاب أو السنة أو الإجماع بأن يكون قولاً لا دليل له

“And when the ruling of another judge is raised in front of a judge, he shall maintain it, except if it contradict the Qur'an or Sunnah or consensus, such as if it is a view which has no evidence”

Hence, there is not a major difference between the two statements. Indeed, Al Quduri has added the well-known condition that the decree of a judge must not be one which contradicts the Qur'an, Sunnah or Ijma'. There is no doubt that this condition is considered by all the Fuqaha, not just Al Quduri. Imam Al Quduri did not mention a specific Mas'alah in which a decree will not take place upon a certain view, and nor did he mention that a decree which rules meat slaughtered by leaving out Allah's name purposefully to be halal, as invalid, nor did he mention that a decree which permits a testimony with one witness and an oath, to be invalid, or any other Mas'alah for that matter. Rather, Al Quduri simply mentioned a well-known principle. It is apparent that Al Quduri's statement means that a decree shall not be accepted in a Mas'alah in which Ijtihad is not possible or if the decree is incredibly irregular which all the Fuqaha have frowned upon, such as a decree permitting Mut'ah or a one-sided increase in wealth which is sold on spot, etc. It is apparent that Imam Al Quduri Rahimahullah was not referring to the issuance of a decree according to the view of one of the reliable Fuqaha (such as Imam Al Shafi'i'). However, those who came after him added the view of meat which is purposefully slaughtered without Allah's name as being halal and the view that an oath by a single witness is a sufficient testimony, as amongst those views which contradict the Qur'an and Sunnah. Thus, they applied Al Quduri's statement to these Masail and then attributed to Al Quduri the statement that issuing a decree according to these views is invalid. This is despite the fact that we are not able to say that these views (of Imam Al Shafi'i') are in contradiction to the established evidential texts. We have mentioned in the appropriate place that these views are supported by Ahadith.

Even if a difference of opinion is found in the interpretation of these Ahadith, it is not appropriate to attribute to Imam Al Quduri the statement that a decree issued in accordance with these views is invalid.

Issuing a Decree upon a View that is Outside of the Four Schools of Thought

The issue that we shall discuss in this section is that if a judge issues a decree that is not in accordance with any of the view of the four schools of Fiqh, then shall his decree be valid?

Ibn Nujaym's statement seems to indicate that the decree of the judge shall not be valid (i.e. a second judge may change or annul the decree). Ibn Nujaym states:

مما لا ينفذ القضاء به ما إذا قضى بشيء مخالف للإجماع وإن كان فيه خلاف لغيرهم فقد صرح في "التحرير" أن الإجماع انعقد على عدم العمل بمذهب مخالف للأربعة
لأنضباط مذاهبهم وانتشارها وكثرة أتباعهم

"From amongst those things for which a decree shall not be valid is when he (the judge) issues something (a decree) that contradicts the consensus, even if there is a difference of opinion according to those other than them (the four scholars), for indeed, it is explicitly mentioned in Al Tahrir that a consensus has taken place that an action that is contrary to the [views of the] four [scholars] cannot take place, due to the codification of their Madhahib, and their prevalence, and the abundance of their followers"

However, there are three problems with what Ibn Nujaym has said:

- 1) It contradicts that which has been mentioned regarding the view of Imam Abu Hanifah and Imam Abu Yusuf which is that a consensus subsequent to a difference of opinion does not annul the difference of opinion. The apparent statements of the Fuqaha indicate that this view is the accepted view, as we have elaborated earlier.
- 2) In his statement, Ibn Nujaym has relied upon the statement of Ibn Al Hummam in his Al Tahrir. However, Ibn Al Hummam has not said that a decree that is not in accordance with any of the views of the four schools of thought is invalid. Rather, he has mentioned that it is impermissible, in this day and age, to do Taqlid of/follow in a general manner, a Mujtahid other than the Imams of the four of school. This statement does not reflect that the views of the other Mujtahidin (other than the Imams of the four schools of thought) are not considered in making the Mas'alah one in which Ijtihad is possible.

The actual statement of Ibn Al Hummam is:

نقل الإمام في البرهان إجماع المحققين على منع العوام من تقليد أعيان الصحابة بل من بعدهم الذين سبوا ووضعوا ودونوا وعلى هذا ما ذكر بعض المتأخرين منع تقليد غير الأربعة لأنضباط مذاهبهم وتقييد مسائلهم وتخصيص عمومها ولم يدر مثله في غيرهم الآن لأنقراض أتباعهم وهو صحيح

“The Imam has recorded in Al Burhan a consensus of the researchers upon the impermissibility for the layman of following specific Sahabah, rather, [following] even those who came after them from those who researched and placed [laws] and codified [laws], and based upon, some of the later scholars have prohibited one from following anyone (Mujtahid) besides the four scholars due to the Madhahib being codified and their Masail are confined and their generalities are specified, and an example of this is not known in those other than them as their (those other than the four scholars) followers have diminished. And this is the correct view”

Ibn Amir Al Haj writes in the commentary of the statement of Ibn Al Hummam:

وحاصل هذا أنه امتنع تقليد غير هؤلاء الأئمة لتعذر نقل حقيقة مذهبهم وعدم ثبوته حتى الثبوت لا لأنه لا يقلد ومن ثم قال الشيخ عز الدين بن عبد السلام لا خلاف بين الفريقين في الحقيقة بل إن تحقق ثبوت مذهب عن واحد منهم جاز تقليده وفاقا وإلا فلا

“The summary of this is that it is impermissible to follow anyone besides these [four] scholars, due to it being difficult to record their actual views and due to them (views) not being established properly, not because they (the other Mujtahidin) were not worthy of being followed. It is based upon this that Shaykh Izz Al Din ibn Abdil Salam has said, ‘In reality, there is no difference of opinion between the two groups, rather, if a view is [authentically] established from one of them (the other Mujtahidin), then it is permissible to follow it completely, otherwise not”

It is therefore apparent that the statement of Ibn Al Hummam has no connection to the Mas’alah presented by Ibn Nujaym.

- 3) A host of Hanafi Fuqaha have explicitly mentioned that a decree shall be valid if it is in accordance with the view of any Mujtahid of the past, even if it contradicts the position of the four schools of Fiqh. Thus, the four schools of Fiqh are unanimous that the testimony of a woman shall not be accepted in matters relating to corporal punishment (i.e even if the testimony is given by one man and two women, it shall not be accepted). However, it is narrated from Shurayh that he accepted a woman’s testimony if the required individuals for a valid testimony (two men or one man and two women) were found.

Thus, Abul Mu’in Al Nasafi writes in his commentary upon Al Jami’ Al Kabir:

ولو قضى القاضي في الحدود بشهادة رجل وامرأتين نفذ قضاؤه وليس لغيره إبطاله لأنه قضاء في فصل مجتهد فيه

“If a judge were to issue a decree in [the Masail of] corporal punishment based upon the testimony of one man and two women, then his testimony shall be valid, and it is not permissible for someone else to invalidate it, as it is a decree involving a matter in which Ijtihad is possible”

The later Hanafi Fuqaha have held a similar stance. Thus, it is mentioned in Al Fatawa Al Hindiyyah:

والقاضي المطلق إذا قضى بشهادة رجل وامرأتين في الحدود والقصاص وهو يرى جوازه نفذ لأن الاختلاف في حجة القضاء ومن الناس من يجوز ذلك وهو شريح كذا في التارخانية وفي فتاوى القاضي ظهير الدين ولو قضى بشهادة النساء في حد أو قصاص نفذ قضاؤه وليس لغيره أن يبطله إذا طوبى منه ذلك فإنه روي عن شريح وجماعة من التابعين رحمهم الله تعالى أنهم جوزوا ذلك وكذا في الفصول العمادية

“If a general judge were to issue a decree in [the Masail of] corporal and retributational punishment based upon the testimony of a man and two females and he believes this to be valid, then it (the decree) shall be valid, as the difference of opinion lies over the validity of the decree, and there are those from the people (scholars) who validated this such as Shurayh – as mentioned in Al Tatarkhaniyyah, and [it is mentioned] in the Fatawa of Qadi Zahir Al Din, ‘If he were to issue a decree based upon the testimony of women in [the Masail of] corporal or retributational punishment, then his decree shall be valid, and it is not permissible for someone else to invalidate it when this asked to do so, for indeed it is narrated from Shurayh and a group from the Tabi’un, may Allah have mercy upon them, that they permitted this, this is the summary of what is mentioned in Al Fusul Al Imadiyyah”

It is mentioned in Al Dur Al Mukhtar:

ولو قضت (أي المرأة) في حد وقود فرفع إلى قاض آخر يرى جوازه فأَمْضَاهُ ليس لغيره إبطاله خلاف شريح. عيني

“And if she (i.e. a woman) issues a decree in [the Masail of] corporal punishment and retributational punishment, and the matter is raised to another judge who validates it, then it is impermissible for someone else to invalidate it due to the difference of opinion with Shurayh [as mentioned by Al] Ayni.”

All of these statements indicate that the validity of the decree of a judge is not restricted to his issuing of a decree in accordance with the opinions of the four schools of thought. Rather, his decree shall be valid when it concurs with the view of any of the reliable Mujtahidin of the past, upon the condition that the view is established from the Mujtahid in an authentic manner.

Is it Necessary for a Judge to be Wary of a Difference of Opinion?

There are two views in this issue. It is mentioned in Al Fatawa Al Hindiyyah:

قضاء القاضي في المجتهدات نافذ لكن ينبغي أن يكون عالماً بمواضع الخلاف ويترك قول المخالف ويقضي برأيه حتى يصح على قول جميع العلماء وإن لم يعرف مواضع الإجتهد والاختلاف ففي نفاذ قضاءه روايتان والأصح أنه ينفذ كذا في خزنة المفتين

“The decree of a judge in matters in which is possible shall be valid, however, the scholar (judge) should be wary of the difference of opinion, and he may [then] leave the view of the opposition and rule according to his opinion so that it (the decree) may be valid according to all the scholars, and if he is not wary of the areas wherein Ijtihad is possible and the places where there is a difference of opinion, then there are two views with regards to its (the decree) validity, and the more correct view is that it shall be valid – this has been mentioned in a similar manner in Khizanah Al Muftin”

Ibn Abidin has discussed this Mas’alah in great detail in Radd Al Muhtar. He has also mentioned that ‘Allamah Qasim ibn Qutlubugah has written a treatise upon the issue. Ibn Abidin then goes onto present a summary of the treatise and comments that that the treatise is incredibly well-researched. However, the footnotes of ‘Allamah Rafi’i’ on this Mas’alah are more concise and more accurate. Thus, you may read this Mas’alah over there as this is not the place to delve into this Mas’alah.

When a Judge who is a Muqallid issues a Decree that is Contrary to the Opinion of his Madhab

All that has been discussed so far in relation to the validity of a decree in matters in which Ijtihad is possible has been limited to two states:

- 1) The judge is a Mujtahid who has issued a ruling according to his Ijtihad. In this case, the decree shall be valid as discussed above.
- 2) The judge is a Muqallid who has issued a ruling according to the view of his Madhab. In this case too, the decree shall be valid even if the party whom he has ruled against are Mujtahidin whose views contradict the view of the Imam.

The contentious scenario, however, is the following one:

3) The judge is a Muqallid who has issued a ruling in contradiction to the view of his Madhab.

The Fuqaha have mentioned that in such a case, the decree of the judge shall be invalid. However, they have differed over the reasoning behind the invalidity of the decree. The author of Fath Al Qadir, Ibn Al Hummam, states:

فأما المقلد فإنما ولاءه ليحكم بمذهب أبي حنيفة مثلاً فلا يملك المخالفة فيكون معزولاً بالنسبة إلى ذلك الحكم

“As for a Muqallid [who is a judge] who, for example, has been appointed to issue decrees upon the Madhab of Imam Abu Hanifah, he does not own the right to contradict [the Madhab of Imam Abu Hanifah]. Thus, with regards to the decree [that contradicts the Madhab of Imam Abu Hanifah], he shall be considered redundant”

Based upon this reasoning, the decree of a judge, who is a Muqallid, will be considered invalid when it contradicts the view of his Madhab as the leader of the Muslims had appointed him as a judge with the condition that he issues decrees in accordance with the Madhab of Imam Abu Hanifah. Thus, if he issues a decree contrary to his Madhab, then he shall be considered unfit to judge in that case, and so his decree shall be invalid.

However, the reverse meaning of Ibn Al Hummam’s reasoning gives the impression that if the leader of the Muslims has *not* made a condition that the judge, who is a Muqallid, must follow the opinion of his Madhab in his decrees, then the judge is free to issue decrees that contradict the view of his Madhab, in cases wherein Ijtihad is possible.

In his Rad Al-Muhtar, Ibn Abidin has proceeded to dispel this misconception by stating:

قلت وتقييد السلطان له بذلك غير قيد لما قاله العلامة قاسم في تصحيحه من أن الحكم والفتوى بما هو مرجوح خلاف الإجماع وقال العلامة قاسم في فتاواه وليس للقاضي المقلد أن يحكم بالضعيف لأنه ليس من أهل الترجيح فلا يعدل عن الصحيح إلا لقصد غير جميل ولو حكم لا ينفذ لأن قضاءه قضاء بغير الحق لأن الحق هو الصحيح وما وقع من أن القول الضعيف يتقوى بالقضاء المراد به قضاء المجتهد كما بين في موضعه

“I say that it is not necessary for the leader of the Muslims to have put a condition [for the judge to follow his Madhab in his decrees for his decree to be invalid when it contradicts the view of his Madhab i.e. if the decree contradicts the Madhab of the judge who is a Muqallid, the decree shall be invalid regardless of whether or not the leader of the Muslims put such a condition]. [This is] because of what Allamah Qasim has said in his Tashih (Al Tashih Wal Tarjih) that a decree and Fatwa upon that which is rejected is contrary to consensus (Ijma’), and Allamah Qasim said in his Fatawa, ‘It is not for a judge who is a Muqallid to issue a decree upon a weak view, as he is not from the scholars that were capable of giving preference (Ashab Al-Tarjih), thus he should divert from the preferred opinion [of his Madhab], and if he does then it (his decree) shall be invalid as his decree is a decree that contradicts the truth, for the truth is that which is the preferred [opinion of his Madhab]. As for the fact that a weak opinion [in the Madhab] gains strength through the issuance of a decree in accordance to it, then this is referring to the decree of a Mujtahid, as we have discussed in its place”

The statement of Ibn Abidin indicates that the invalidity of the decree of a judge, who is a Muqallid, which contradicts the view of his Madhab is not based upon the fact that he has been commanded by the leader of the Muslims to issue decrees in accordance to a specific Madhab. Rather, the invalidity of such a decree will apply even if the ruler of the Muslims does *not* stipulate such a condition at the time of appointing the judge.

The reason behind the invalidity is that considering that the judge is a Muqallid, he is required to issue a decree according to the preferred opinion of his Madhab.

Furthermore, the ruling of invalidity of the decree mentioned above is applicable when a judge, who is a Muqallid of a specific Madhab and who considers the opinions of that Madhab to be correct, *intentionally* issues a decree upon a view contrary to the view of his Madhab - the opinions of which he considers correct. Then this decree shall be invalid despite the Mas’alah being one in which Ijtihad is possible. This is because by contradicting the view of his Madhab, the decree of the judge who is a Muqallid is considered equivalent to the decree of a judge who is a Mujtahid and who issues a decree contrary to the opinion that he considers to be correct, such a decree shall be invalid according to all three A’immah; Imam Abu Hanifah, Imam Abu Yusuf, and Imam Muhammad, as the judge has ruled in contradiction to what he believes to be the correct opinion, and, therefore, he has followed his desires.

As for when a judge, who is a Muqallid of a specific Madhab, *unintentionally* issues a decree in contradiction to the view of his Madhab, then his decree is valid according to Imam Abu Hanifah. On the other hand, Imam Abu Yusuf and Imam Muhammad are of the view that his decree is still invalid, as he has made an error. The author of Al Hidayah, Allamah Abu Bakr Ali Al Murghinani, has stated that the Fatwa is upon the view of Imam Abu Yusuf and Imam Muhammad. Ibn Al Hummam has also concluded that in this day and age, it is more appropriate to issue a Fatwa upon the view of Imam Abu Yusuf and Imam Muhammad, as one who issues a decree in contradiction to his Madhab does so only for nugatory amusement, and not a genuine reason.

As for when the judge is not a Mujtahid, nor has the leader of the Muslims stipulated that he should issue a decree in accordance with the rulings of a specific Madhab, and nor he does the judge himself do Taqlid of a specific Madhab, then should such a judge issue a decree in accordance with the view of any of the reliable Fuqaha, it seems that his decree shall be valid. This is because it is mentioned in Al Fatawa Al Hindiyyah:

ذكر في شرح الطحاوي وجامع الفتاوى القاضي إذا لم يكن مجتهدا ولكنه قضى بتقليد فقيه ثم تبين أنه خلاف مذهبه ينفذ وليس لغيره نقضه وله أن ينقضه هكذا روي عن محمد رحمه الله تعالى وقال أبو يوسف رحمه الله تعالى ما ليس لغيره أن ينقضه ليس له نقضه

“It is mentioned in Sharh [Mukhtasar] Al Tahawi and Jami’ Al Fatawa that when a judge is not a Mujtahid but has issued a decree by following a Faqih (Mujtahid) and then it becomes apparent to him that it (the decree) is contrary to his (the Faqih/Mujtahid) Madhab, then it shall be valid, and it is impermissible for someone else to invalidate it, [but] he may invalidate it, similar to this has been narrated from [Imam] Muhammad Rahimahullah Ta’ala, and [Imam] Abu Yusuf Rahimahullah Ta’alah has said that what is impermissible for others to invalidate is also impermissible for him to invalide”

This is also because the later Hanafi Fuqaha have permitted for an ignoramus to follow a decree in which the decree given is contrary to the view of his Madhab, as mentioned in Al Hidayah, and they have not restricted him to follow a single Madhab.

Mufti Taqi Uthmani Sahib then states that in the same manner, if a judge is a Muqallid of a specific Madhab, but he is a deeply knowledgeable individual (Alim Mutabahhir – عالم متبحر), then the same rules shall apply that we have mentioned in the discussion on a Mufti who is a Muqallid but issues a Fatwa upon a view that is contrary to his Madhab in some Masail whilst maintaining the conditions that we have mentioned in that chapter – see page 49-50. Thus, if this deeply knowledgeable individual issues a decree in a specific Mas’alah in accordance to a view which he feels to be the correct view and the view is contrary to the opinion of his Madhab, then if he maintains the conditions we have mentioned on pages 49-50, his decree shall be valid. In such a case, in consideration of the fact that he is a deeply knowledgeable individual (Alim Mutabahhir – عالم متبحر) who has based his decree upon his deep intellectual research and understanding, the purpose behind the decree shall not fall under the ambit of what Ibn Al Hummam has termed as ‘nugatory amusement’.

The Command of the Ruler or Leader in a Mas’alah in Which Ijtihad is Possible

All that we have mentioned with regards to the validity of the decree of a judge who has been appointed by the ruler.

The principle in this discussion is that to obey the command of a ruler – in that which does not involve a sin – is necessary. Thus, if the ruler issues a ruling in a matter in which Ijtihad is possible, it is necessary to obey the ruling. It is for this reason that it has been narrated from Imam Abu Yusuf and Imam Muhammad that they performed takbir seven times in the first Rak’ah and six times in the second Rak’ah, despite the fact that they held the view that only six Takbirat are to be added in Eid Salah as was the view of Hadrat Abdullah ibn Mas’ud Radiyallahu Anhu. Ibn Abidin writes:

قال في الظهيرية وهو تأويل ما روي عن أبي يوسف ومحمد فإنهما فعلا ذلك لأن هارون أمرهما أن يكبرا بتكبير جده فعلا ذلك امتثالا له لا مذهبا واعتقادا قال في المعراج لأن طاعة الإمام فيما ليس بمعصية واجبة

“He has said in Al Zahiriyyah, “and this [obeying the command of the leader] is the reasoning behind what has been narrated from Imam Abu Yusuf and Imam Muhammad, for indeed they did that because Harun [Al Rashid] had commanded them to perform Takbirat in accordance with the Takbirat of his grandfather (Abdullah ibn Abbas), and so they obliged due to his command, not on the basis that they held that view or believed it [to be correct]”. He has said in Al Mi’raj, “Because obeying the ruler in that which is not a sin is necessary”

As for a leader who has been appointed by a ruler in a specific region, or an individual appointed as the leader of a battalion, then his command shall hold the same bearing as the command of the ruler. Al Haskafi writes:

وأما الأمير فمضى صادف فصلا مجتهدا فيه نفذ أمره كما قدمناه عن سير التتاخانية

“As for a leader, when he issues a decree in a matter in which Ijtihad is possible, his decree shall be valid as we have presented from the [chapter of] Al Suyar of Al Tatarkhaniyyah”

Ibn Abidin then states:

الذي رأيته في سير التتاخانية قال محمد: وإذا أمر الأمير العسكر بشيء كان على العسكر أن يطيعوه إلا أن يكون المأمور به معصية اه فقول الشارح: "نفيد أمره" بمعنى وجب امتثاله

“What I say in the [chapter of] Al Suyar of Al Tatarkhaniyyah was [the following]: “[Imam] Muhammad has said, “When the leader of the army issues a decree on something, it is upon the army to obey him except if he commands them to do a sin”. Thus, the commentator’s (Al Haskafi) statement “his decree shall be valid” means that his decree is necessary to obey”

Changing a Ruling Due to the Changing of Time (تغير الأحكام بتغير الزمان)

It has been understood from the statements of the Fuqaha that rulings changing with the changing of time. This is not a general principle such that every single ruling of Shari’ah changes with the changing of time, as some liberalists of our time have assumed. Rather, the meaning of this principle is that some ruling change with the changing of time. Indeed, this change in ruling occurs due to one the following four reasons:

1. The ruling was based upon a reason, thus when the reason is no longer found due to a change in time, the ruling shall also change
2. The ruling was based upon the norm and common practise, thus when the norm changes, the ruling also changes.
3. The ruling changes due to severe necessity or widespread difficulty in following the ruling. In this case, the ruling would change only in respect of alleviating the severe necessity or widespread difficulty.

4. The ruling changes as a measure of prevention (*Sad Al Dhari'ah*)

At this point, we wish to explain these four reasons with some details.

Changing a Ruling due to the absence of a Reason (علة) upon which the Ruling was Based (تغير الحكم بتغير العلة)

It is accepted by the Fuqaha that a ruling depends upon its cause ('illah (*raison d'être*)) in regards to whether it should be applicable or not. Thus, if the cause ('illah (*raison d'être*)) is found, the ruling shall apply, and if the cause ('illah (*raison d'être*)) is not found, the ruling shall not apply.

Then, at times, the cause ('illah (*raison d'être*)) behind a ruling is one which is everlasting and does not come to an end, in such a case the ruling shall not change in any age or time. Examples of this include the prohibition of adultery, stealing, drinking of alcohol, and consumption of pork (when one is not starving). Indeed, the cause ('illah (*raison d'être*)) behind these rules is one which is everlasting and does not come to an end.

On the contrary, at times, the cause ('illah (*raison d'être*)) behind a ruling is one which may cease to exist or may change. In such a case, the ruling which is based upon the cause ('illah (*raison d'être*)) shall also cease to exist or shall change.

The Difference between a Reason/Cause and the Wisdom

It is necessary at this point to understand an important principle, which is that a ruling of Shari'ah is based upon its Shar'i cause (*Al Illah Al Shar'iyyah*), and not upon its wisdom (*Hikmah*).²⁷⁶ At times, some people misunderstand this issue. Thus, they assume that the wisdom (*Hikmah*) is the cause behind the ruling, and so the absence of the wisdom (*Hikmah*) instigates a change in the ruling. This is despite the fact that there is an enormous difference between a cause ('illah (*raison d'être*)) and a wisdom (*Hikmah*) which is necessary to elaborate.

The difference between a cause and a wisdom is that the cause is a quality which signals the application of a ruling. Whereas the wisdom (*Hikmah*) is the benefit that is expected to be achieved by following the ruling.

Examples:

1) The Prohibition of Alcohol

The prohibition of drinking is a ruling.

The cause ('illah (*raison d'être*)) for this ruling of prohibition is that the beverage is an alcohol.

The wisdom (*Hikmah*) behind this ruling of prohibition is protect a human being from that which takes away his senses.

Thus, the ruling of prohibition depends upon the cause ('illah (*raison d'être*)) of the ruling. (i.e. that the beverage is an alcohol). Accordingly, whenever a beverage is an alcohol, the ruling of prohibition shall apply. The ruling of prohibition is not based upon the wisdom (*Hikmah*) behind the ruling. Accordingly, if a man is found who does not lose his senses by drinking an alcoholic beverage, this will not remove the ruling of prohibition for him, as the cause of the ruling of prohibition is still found; which is that the beverage is an alcohol.

2) The Concession of Performing Two Rak'ah whilst Travelling

The concession of performing two rak'ah whilst travelling is a ruling.

²⁷⁶ This sentiment echoes the statements of Hadrath Maulana Ashraf Ali Thanwi Rahimahullah who said in his Imdadul Fatawa, under the discussion of lengthening the beard:

اور حدیث خالفوا المشرکین الخ کی نسبت بعض کا یہ کہنا کہ اس زمانہ میں بہت سے مشرک ڈاڑھی رکھتے ہیں، اس لئے ہم ان کی مخالفت کے واسطے ڈاڑھی منڈواتے ہیں ٹھیک نہیں ہے، کیونکہ احکام شرعیہ کے ساتھ جو کبھی کوئی مصلحت مذکور ہوتی ہے وہ کبھی علت ہوتی ہے اور کبھی حکمت ہوتی ہے علت کے ساتھ تو حکم وجود اور عدم دائر ہوتا ہے، لیکن حکمت کے ساتھ حکم دائر نہیں ہوتا یعنی حکمت کے تبدیل سے حکم نہیں بدلتا اور اس فرق کا سمجھنا یہ راہنہ فی العلم کا خاصہ ہے پس خالفوا المشرکین کا مقرون فرمانا بطور حکمت کے ہے بطور علت کے نہیں ہے

(Hadrat Maulana Ashraf Ali Al Thanwi Rahimahullah, "Imdadul Fatawa" (Karachi: Maktabah Darul Uloom Karachi,), v.4, pg.222.)

The cause ('illah (raison d'être)) of this concession of performing two rak'ah whilst travelling is the actual travel itself.

The wisdom (Hikmah) behind this concession is to alleviate difficulty from a traveller.

Thus, the ruling of a concession of performing two rak'ah whilst travelling depends upon the cause ('illah (raison d'être)) of the ruling (i.e. the travel itself). The ruling does not depend upon the wisdom (Hikmah) (i.e. alleviation of difficulty). Accordingly, if a traveller is found who does not experience an iota of difficulty whilst travelling, as is the case with many travellers in our times who travel in aeroplanes and trains, then this will not remove the ruling of concession of performing two rak'ah Salah during his travel, as the cause ('illah (raison d'être)) of the ruling of the concession is still found; which is the travel itself.

In contrast, if a person is experiencing difficulty in performing the full four rak'ah Salah in his home town or city, then the concession of performing two rak'ah Salah shall not apply, as the cause ('illah (raison d'être)) of the concession is not found; which is a travel.

This principle may become clear using a practical example. In this day and age, we see traffic lights at various intervals on the road which at times display a red light, and at times display a green light. This is done in order to control the flow of traffic. Thus, the law ordains each car to halt when the driver sees the red light and allows the car to move when the driver sees the green light.

The command to halt the colour when seeing the red light is a ruling. The cause ('illah (raison d'être)) of this ruling is the red light. The wisdom behind the ruling is to avoid a collision between the oncoming traffic. The command to halt will be depends upon the cause ('illah (raison d'être)) of the command (i.e. the red light). The command does not depends upon the wisdom (Hikmah) (i.e. to avoid a collision). Accordingly, if a car arrives at a traffic light and there are no other cars on the roads, but the light is red, it is necessary for him to halt. This is despite the fact that the wisdom (Hikmah) behind halting, which is to avoid a collision, is not found in this specific scenario.

It has been established through that which we have mentioned that a ruling does not change when the wisdom (Hikmah) behind the ruling is absent in certain scenarios. Rather, the ruling changes when the cause ('illah (raison d'être)) behind the ruling disappears. An example of this which has been mentioned by the Fuqaha is the impermissibility of selling water which is to be used for agriculture. However, the Fuqaha have mentioned that the cause of the impermissibility is that the amount of water is not fully known.

Ibn Al Hummam writes:

ثم بتقدير أنه (أي الشرب) حظ من الماء فهو مجهول المقدار فلا يجوز بيعه وهذا وجه منع مشايخ بخارى بيعه مفردا

"Then, on the basis that it (the right to drink water) is a portion of the water, it is an unknown amount. So, it is impermissible to sell. This is the reason the Mashaikh (scholars) of Bukhara prohibited selling it independently"

The statement of Akmal Al Din Al Babarti Rahimahullah is clearer. He states in Al Inayah:

وإنما لم يجز بيع الشرب وحده في ظاهر الرواية للجهالة لا باعتبار أنه ليس بمال

"Indeed it is impermissible to independently sell the right of drinking water in the Zahir Al Riwayah due to uncertainty [in the amount of water], not because it is not considered as wealth"

In this day and age, there are meters that allow us to measure the amount of water present. Thus, wherever such meters are found, the cause ('illah (raison d'être)) behind the impermissibility of the right of drinking water will no longer be found as the amount of water will no longer be uncertain, accordingly the sale of the right of drinking water shall be valid when it is measured using such meters.

The Wisdom may assist in Discovering the Cause

After this, it is important to understand that even though a ruling is not based upon the wisdom (Hikmah), at times, the wisdom (Hikmah) may assist in discovering the cause ('illah (raison d'être)) behind the ruling, a cause ('illah (raison d'être)) which the Shari'ah has not mentioned.

An example of this is the prohibition of on-spot usury (*Ribal Fadl*). Indeed, the cause ('*illah (raison d'être)*') behind this prohibition has not been explicitly mentioned by the Prophet Sallallahu Alayhi Wasallam. Accordingly, the views of the Fuqaha have differed in extracting the cause ('*illah (raison d'être)*') behind this prohibition of on-spot usury (*Ribal Fadl*).

The Malikis states that the cause ('*illah (raison d'être)*') behind the prohibition is when the products are food that can be stored or when the products are money. They have come to this conclusion based upon the fact that the wisdom (*Hikmah*) behind the prohibition of on-spot usury is that access to a greater sin is blocked (*Sad Al Dhari'ah*). Hence, on-spot usury has been prohibited with the wisdom that it shall prevent one from being involved in the more serious usury, which is the usury prohibited in the Qur'an.

The usury prohibited in the Qur'an is only found in money, such as gold and silver. The Malikis also added to money that which behaves as money, such as wheat, barley, dates, and salt as the people living in the countryside and villages would not usually buy items using gold and silver, rather, they would buy items using whatever foods were convenient for them to access, thus there is no item that does not behave like money except food which can be stored. Accordingly, the Malikis used food that can be stored as the category under which the four items mentioned in the Hadith, other than gold and silver (i.e. wheat, barley, dates, and salt), may fall under. Therefore, the Malikis concluded that the cause ('*illah (raison d'être)*') behind the prohibition of on-spot usury (*Ribal Fadl*) is money or food which can be stored.

In the above example, the Malikis used the wisdom (*Hikmah*) behind the prohibition of on-spot usury to extract the cause ('*illah (raison d'être)*') behind the prohibition of on-spot usury. Thus, the wisdom (*Hikmah*) of the prohibition of on-spot usury was to prevent one from being involved in the more serious usury, this wisdom (*Hikmah*) assisting in extracting the cause behind the prohibition; which is food that can be stored or money. Hence, the prohibition of on-spot usury shall now depend upon the cause ('*illah (raison d'être)*'); which is food that be stored or money. The prohibition of on-spot usury shall not depend upon its wisdom (*Hikmah*).

The same example may be applied to the manner in which the Hanafi Fuqaha have extracted the cause ('*illah (raison d'être)*') of the prohibition of on-spot usury. According to the Hanafi Fuqaha, the cause ('*illah (raison d'être)*') of on-spot usury is volume and weight. They have come to this conclusion based upon the fact that the wisdom (*Hikmah*) behind the prohibition of on-spot usury is that access to a greater sin is prevented (*Sad Al Dhari'ah*). Hence, considering that the wisdom behind the prohibition is the prevention of a greater sin, it is appropriate to base the ruling upon a cause ('*illah (raison d'être)*') that encompasses all other possible causes ('*illah (raison d'être)*') as this is more in line with precaution and prevention. Indeed, weight and volume is a more general and encompassing cause ('*illah (raison d'être)*') than food that can be stored. This is because choosing volume and weight as the cause enlarges the circle of products in which on-spot usury could apply, and considering that the wisdom (*Hikmah*) of the prohibition of on-spot usury is prevention, it would be more appropriate to choose a cause which is more precautionary.

Indeed the qualities which encompasses all six items mentioned in the Hadith prohibiting on-spot usury are weight and volume. It is only in weight and volume that a surplus would become easily apparent. A surplus is not easily identified if the quality considered to be the all-encompassing quality of the six item mentioned in the Hadith is taken to be that the item is countable, this is because countable items differ in size from one another. Similarly, a surplus is also not easily identified if the quality considered to be the all-encompassing quality of the six item mentioned in the Hadith is taken to be that the length or width of the item, this is because items with a length and width greatly differ from one another.

Thus, weight and volume are qualities which are not only a more precautionary cause for on-spot usury (as they encompass more products in which on-spot usury could apply), but they allow a surplus to be easily identified.

In this example too, the Hanafi Fuqaha have used the wisdom (*Hikmah*) behind a ruling to extract the cause of the ruling. However, now that the cause ('*illah (raison d'être)*') has been specified as weight and volume, the ruling of prohibition shall depend upon these two qualities.

Conclusion

In conclusion, a ruling of Shari'ah is based upon its cause ('illah (*raison d'être*)), and not its wisdom or benefit, except that the wisdom (*Hikmah*) and benefit may at times assist in discovering the cause ('illah (*raison d'être*)) of the ruling when the cause ('illah (*raison d'être*)) is not explicitly mentioned by the Shari'ah.

With this, the view of many modern liberalists who propagate that 'the rulings of Shari'ah should be changed based upon its benefits' is proven to be invalid. Indeed, this is a dangerous stance that could lead to a complete abolition of the rulings of Shari'ah. This is because it would be possible for a person to say, "The wisdom behind Salah is to turn our hearts to Allah, considering that my heart has turned to Allah, Salah is no longer obligatory upon me" – as some deviant Sufis say. It would also be possible for a person to say, "The wisdom behind performing Salah in congregation is to create unity and solidarity between the Muslims, now that this has been achieved through other means, there is no need to perform Salah in congregation." – may Allah protect us. Similarly, it would also be possible for a person to say, "Indeed, the wisdom behind the prohibition of eating pork was the filthy manner in which a pig would live in those days, but considering that that in this day and age, we may find a pig that is clean and has been raised in a clean, healthy environment, it is no longer impermissible to eat pork".

You may think of other examples of this nature. There is no doubt that such statements are clear misguidance. We seek refuge in Allah from uttering such words.

The Objectives of Shari'ah (Maqasid Al Shari'ah)

A number of scholars have written books elaborating upon the wisdoms of the rulings of Shari'ah, and their objectives. They did not write these books with the intention that these wisdoms and objectives of the rulings of Shari'ah are the basis of the rulings of Shari'ah at all times without any consideration of the evidential texts of Shari'ah. Rather, their purpose was to elaborate upon the wisdoms behind the rulings that have been mentioned in the evidential texts in such a manner that it would allow one to realise that the Shari'ah has not ordained a single ruling except that there is a benefit in it for the believers, in this world and the hereafter. The purpose of their elaboration was also so that these wisdoms and objectives of Shari'ah may be utilised as a standard when considering whether a permissible action should be carried out or not or in those matters wherein there is no evidential text.

Nonetheless, the Shari'ah and the evidential texts of the Shar'ah are the arbiters in deciding whether something falls within the ambit of the wisdoms and objectives of Shari'ah. An individual's personal intellect or innate desires do not decide what is to be considered a wisdom or objective of Shari'ah. This is because these objectives of Shari'ah, such as protection of life, wealth, honour, etc. are not maintained in all situations and at all times. In reality, the truth is different to this, it is like Imam Al Shatibi Rahimahullah has said:

أَنَّ الْمَنَافِعَ وَالْمَضَارَّ عَامَّتُهَا أَنْ تَكُونَ إِصَافِيَّةً لَا حَقِيقِيَّةً وَمَعْنَى كَوْنِهَا إِصَافِيَّةً أَنَّهَا مَنَافِعٌ أَوْ مَضَارٌّ فِي حَالٍ دُونَ حَالٍ وَبِالنِّسْبَةِ إِلَى شَخْصٍ دُونَ شَخْصٍ أَوْ وَقْتٍ دُونَ وَقْتٍ
"The beneficial and harmful things [for humanity] are in most cases relative, and not actual. The meaning of them being relative is that what may be beneficial or harmful in some instances may not be such in other instances, or what may be beneficial or harmful for some people may not be such for other people, or what may be beneficial or harmful in one time may not be such in another time"

Thus, the arbiter which decides whether something is beneficial or harmful for the people is the Shari'ah of Allah the Almighty. Thus, if an apparent 'wisdom' which seems to be in the best interests of people contradicts a command from the commands of Shari'ah, it is in reality, *not* a wisdom in the best interests of people. Rather, it is the product of one's innate desires, which the Shari'ah has come to eliminate.

Indeed, in our time, some people have emerged who cling onto the word 'Maqasid Al Shari'ah' and wish to put the 'Maqasid Al Shari'ah' before the evidential texts of Shari'ah. Their reasoning being that [according to them] the purposes of the rulings provided by the evidential texts of Shari'ah is to establish some of these wisdoms and elaborate upon these objectives, thus, considering that these 'wisdoms' and 'objectives' are seemingly abandoned by acting upon the plain commands of the evidential texts, [we should leave the plain commands of some of these evidential texts]. For indeed, [according to their assumption] we have been commanded to follow these 'wisdoms' and 'objectives', and not the plain commands of the evidential texts.

Surely, such reasoning cannot lead to anything except a complete breakdown of Shari'ah in its entirety, and the removal of the yoke of Shari'ah obligation from every believer, based upon these assumed or fictitious 'wisdoms' and 'objectives'.

The reality is that all that which Allah, The Glorified, The Exalted, has commanded in our religion, is based upon wisdoms and objectives. There is no one who doubts this. For indeed, Allah, The Glorified, The Exalted, does not command a ruling which is frivolous or harmful to the creation. However, 'wisdoms' and 'objectives' are subjective and ambiguous terms. For each individual who looks into the matters of life will think that a certain aspect is from the objectives and wisdoms of human life, whilst another shall believe that it is not from the objectives or wisdoms of life. Accordingly, the intellect alone which is *not* based upon a divine revelation does not come close to being a standard which may universally be relied upon in outlining these objectives and wisdoms of life.

Continuing further, not all that is assumed to be from amongst the objectives of Shari'ah is held as an objective at all times. Rather, the objectives of Shari'ah have rules and boundaries. For example, the protection of life, there is no doubt that the protection of life is from amongst the most important objectives of Shari'ah. However, one who has committed a murder cannot cling onto this objective of Shari'ah and use it as a means of saving himself from retribitional punishment (*Qisas*). This is the situation with all the objectives of Shari'ah.

Thus, the fundamental question in relation to these objectives is; who is the one who appoints these objectives? And who is the one who outlines the boundaries within which these objectives apply? If we passed on the responsibility of appointing the objectives of Shari'ah to the intellect alone, then the Shari'ah would be left in disarray. For indeed, the Shari'ah has bought precise rulings in matters which the intellect alone cannot be guided to a correct ruling. Thus, if the human intellect itself was considered sufficient in appointing these objectives of Shari'ah, there would not have been a need to send prophets or reveal the heavenly revealed divine books. Therefore, the clear truth is that there is no way of appointing these objectives of Shari'ah and outlining their boundaries except by returning to the evidential texts (*Nusus*) of Shari'ah from the Qur'an and the Sunnah of the Messenger of Allah Sallallahu Alayhi Wasallam.

It is then clear that we cannot place some subjective objectives before the explicit and established evidential texts, whether these evidential texts are from the book of Allah or the statements of His Messenger Sallallahu Alayhi Wasallam. It is also clear that we cannot take these objectives and wisdoms as a fundamental basis of Shari'ah, and we cannot base the evidential texts upon the dictates of these objectives and wisdoms. The reality of the matter is that objectives and wisdoms are extracted *from* the evidential texts, thus whatever Allah and His Messenger appoint as a wisdom, is a wisdom, not what we think to be a wisdom according to our personal views. Indeed, the scholars of Maqasid Al Shari'ah, such as Al Shatibi, Al Ghazali, Al Shaykh Waliullah Al Dehlawi, may Allah have mercy upon them, unanimously agree that the rulings of Shari'ah are based upon its causes (*'illah* (*raison d'être*)), and not upon their wisdoms (*Hikmah*), and that those wisdoms and objectives which contradict the evidential texts of Shari'ah are nothing except that which the noble Qur'an has labelled as *Al Hawa* (الهواء) – innate desires.

Imam Al Shatibi Rahimahullah, who was a pioneer in discussing the Maqasid Al Shari'ah, says:

الشريعة إنما جاءت لتخرج المكلفين عن دواعي أهواءهم حتى يكونوا عباد الله وهذا المعنى إذا ثبت لا يجتمع مع فرض أن يكون وضع الشريعة على وفق أهواء النفوس وطلب منافعها العاجلة كيف كانت وقد قال ربنا سبحانه "ولو اتبع الحق أهواءهم لفسدت السماوات والأرض ومن فيهن"

"The Shari'ah has come to relieve the responsible ones (believers) from the demands of their desires until they become the servants of Allah. When this meaning is established, it cannot come together with the possibility that the Shari'ah has been placed in accordance to the desires of the innate soul, and to achieve its (the innate soul) immediate benefits in any manner possible. Indeed, our Lord, The Glorified, says, 'and if the truth were to follow their desires, the heavens, the earth, and all that is in them would become corrupt'"

'Allamah Shah Waliullah Al Dehlawi Rahimahullah writes:

نعم! كما أوجبت السنة هذه وانعقد عليها الإجماع فقد أوجبت أيضا أن نزو القضاء بالإيجاب والتحریم سبب عظیم في نفسه مع قطع النظر عن تلك المصالح لإثابة المطيع وعقاب المعاصي وأوجبت أيضا أنه لا يحل أن يتوقف في امتثال أحكام الشرع إذا صحت بما الرواية على معرفة تلك المصالح

“Yes! Just as the Sunnah has necessitated this, and a consensus has taken place over it, it has also necessitated that a revelation declaring an obligation or prohibition is a great cause within itself, without looking at those wisdoms, in order to reward the the obedient and punish the sinful ... the Sunnah has also necessitated that it is not permissible to make the obedience to the commands of Shari’ah dependent upon these wisdom while there is an authentic narration”

The Causes of Shari’ah Rulings

It is important to know that the cause (*‘illah (raison d’etre)*) upon which a ruling of Shari’ah is based is of many types which are elaborated in the books of *Usul Al Fiqh*. However, what is of concern to us here is the types of causes with regards to how they are established as a cause (*‘illah (raison d’etre)*). Thus, at times a cause (*‘illah (raison d’etre)*) is mentioned in the noble Qur’an, such as the statement of Allah the Almighty:

فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ

“As for he who is ill from amongst you or he is upon a journey, then he should compensate on other days”

[Surah Al Baqarah, verse 184]

To perform a compensatory fast (Qada) is a ruling issued by the Qur’an. The cause (*‘illah (raison d’etre)*) of this ruling which has been mentioned in the evidential text is illness or travel. The wisdom (*Hikmah*) behind the ruling issued by Allah the Almighty is mentioned later on:

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ

“Allah wishes ease upon you and he does not wish difficulty upon you”

[Surah Al Baqarah, verse 185]

Thus, the cause (*‘illah (raison d’etre)*) of the ruling in this case has been explicitly mentioned by Allah, The Glorified, The Exalted. The wisdom (*Hikmah*) behind the ruling has also been mentioned. The causes (*‘illah (raison d’etre)*) of rulings mentioned in the Qur’an are the strongest causes (*‘illah (raison d’etre)*) in terms of being established as a cause (*‘illah (raison d’etre)*), therefore, the ruling shall be based upon these causes (*‘illah (raison d’etre)*) indisputably and with certainty.

At times, the cause (*‘illah (raison d’etre)*) of a ruling may be mentioned in the noble Prophetic Hadith, such as the the cause (*‘illah (raison d’etre)*) mentioned by the Prophet Sallallahu Alayhi Wasallam for a cat not being impure was:

إِنَّهَا مِنَ الطَّوَافِقِ عَلَيْهِمُ وَالطَّوَافِقَاتِ

“Indeed, they are from amongst those male animals that are ambulant and those female animals that are ambulant”

Indeed, the cause of a ruling mentioned in the Hadith is secondary in terms of the cause (*‘illah (raison d’etre)*) being established, thus it shall be necessary (*Wajib*) to base the ruling upon the cause (*‘illah (raison d’etre)*). However, a single-report is considered speculative (*Zanni*), and therefore the cause (*‘illah (raison d’etre)*) of the ruling in terms of being established through the Hadith shall also be speculative (*Zanni*).

At times, the cause (*‘illah (raison d’etre)*) behind a ruling is not mentioned in the Qur’an or the Sunnah. However, the Fuqaha extract the cause (*‘illah (raison d’etre)*) through the evidences of Shari’ah²⁷⁷. This is of two types:

- 1) **Type 1:** those causes (*‘illah (raison d’etre)*) which the Fuqaha have explicitly mentioned; such as the Hanafi Fuqaha who have stated that the cause of the prohibition of on-spot usury is in products that are weighed and are of the same genus and products that are in volume and are of the same genus, or the Shafi’i Fuqaha who have stated that the cause of the prohibition of on-spot usury is food and cash. Thus, it is then necessary for these Fuqaha to hold firmly to the explicit cause (*‘illah (raison d’etre)*) mentioned in the statements of their Fuqaha.

²⁷⁷ Such as analogical deduction.

From this type is also that which the Hanafi Fuqaha have mentioned that a ruling shall not be made based upon writing, as has been mentioned in the *Al Mutun Al Mu'tabarah*. For example, it is mentioned in *Tanwir Al Absar* and other books that court records do not serve as a proof. Rather, it is necessary to make someone a witness to that which is written in the books. This is to such an extent that the writings of reliable individuals and former judges shall not be accepted in establishing a Waqf. The reasoning that the Fuqaha have mentioned is that the writing of one individual is similar to the writing of another, thus there is no guarantee that fraud has not taken place. This cause ('illah (raison d'être)) of ruling is explicitly mentioned in their statement, hence when this cause is no longer found and there is a guarantee of fraud not occurring, then it is permissible to act according to what is written.

It is for this reason that the Fuqaha have excluded many things from this ruling – which is that it is impermissible to act according to what is written. Hence, they have mentioned that the writings of an agent or a salesclerk or moneychanger may be acted upon and rulings may be given to them based upon the writings. Similarly, the later scholars have mentioned that some governmental documents, such as the record books of the king, are a valid evidence which may be acted upon, as they are not written except with the permission of the king. Then, after a large group of people come together in copying what is written in the document without any negligence such as the addition of something or the removal of something, it is presented to the adjudicator who puts his stamp on it. It is then given to a caretaker to look after it, he writes on it, stamps it, and returns its originals to a safe place with a stamp. Accordingly, there is a certain guarantee that these documents are free from fraud.

- 2) **Type 2:** it is the cause ('illah (raison d'être)) of a ruling which the Fuqaha have not explicitly mentioned, however, it is implicitly understood through their statements. The example of this is what the Fuqaha have mentioned that the *Sajdah Al Tilawah* is not necessary upon one who hears the verse of Sajdah from a parrot or an echo. It is implicitly understood from their statements that the cause of the necessity of *Sajdah Al Tilawah* is: the recitation of a human which performed through an action. Thus, considering that the voice of a parrot is not the recitation of a human being, *Sajdah Al Tilawah* will not become necessary through it. From this, it can be extracted that *Sajdah Al Tilawah* is not necessary when one hears the verse of Sajdah from a recorder, as it is not the recitation of a human being. However, this type of cause of a ruling is the weakest form of causes in terms of being established from Shari'ah, therefore, there is scope for differences in opinion.

Changing a Ruling due to a Change in the Norm (تغيير الحكم بتغيير العرف)

(Including a summarisation of *Nashrul Arf Fi Binai Ba'dil Ahkam Alal Urf* by Ibn Abidin)

At times, the reasoning behind a certain ruling/Fatwa is based upon the norm.²⁷⁸

Thus, wherever and whenever the norm changes, the ruling changes.

This is why the Fuqaha say:

الْعَادَةُ مُحْكِمَةٌ

“norm is a determiner”

The discussions of the Fuqaha on the issue of 'norm' are indeed scattered in a manner which makes the issue of the norm difficult to grasp. Hence, we wish to summarise the discussions on this topic because an understanding of the issue of 'the norm' is required of a Mufti.

Evidence of the Consideration of the Norm

Some scholars have presented the following verse of the Qur'an as evidence for the consideration of the norm:

²⁷⁸ This means that the norm decides whether the reasoning behind the ruling is found or not.

حُذِرَ الْعَفْوُ وَأُمِرَ بِالْعُرْفِ

“Hold to forgiveness and command what is right”

Hazrat Abdullah ibn Mas’ud Radhiyallahu Anhu said:

مَا رَأَى الْمُؤْمِنُونَ حَسَنًا فَهُوَ عِنْدَ اللَّهِ حَسَنٌ

“That which the Muslims [collectively] view as proper is proper in the sight of Allah”²⁷⁹

Definition of a Norm

The word ‘Urf’ is linguistically derived from the word ‘Ma’rifah’ – which means ‘recognition’. It is used to deliver the meaning of ‘a known common practice’ (العادة المعروفة) – ‘a norm’. The question that arises, however, is ‘what is the meaning of a ‘norm’?’

Imam Al Nasafi²⁸⁰ writes *Al Mustasfa Sharh Al Fiqh Al Nafi’*:

الْعُرْفُ وَالْعَادَةُ مَا اسْتَقَرَّ فِي النَّفُوسِ مِنْ جِهَةٍ قَضَايَا الْعُقُولِ²⁸¹ وَتَلَقَّنَهُ الطَّبَاغُ السَّالِمَةُ بِالْقَبُولِ

“Norm and common practice is: that which is embedded into the people with regards to the decisions that their minds make and is accepted by people of sound nature”

Ibn Amir Al Haj Al Halabi writes in *Sharh Al Tahrir*:

الْعَادَةُ هِيَ الْأَمْرُ الْمُتَكَرِّرُ مِنْ غَيْرِ عِلَاقَةٍ عَقْلِيَّةٍ

“Common practice (norm) is that which occurs repetitively without any logical reason”²⁸²

General Norm (العرف العام) and Specific Norm (العرف الخاص)²⁸³

Definition of a General Norm (العرف العام)

A general norm is defined as:

مَا يَجُمُّ سَائِرَ النَّاسِ وَالْبِلَادِ

“That which is found amongst all people in all cities”

Definition of a Specific Norm (العرف الخاص)

²⁷⁹ Some have assumed this narration to be a Hadith from the Prophet Sallallahu Alayhi Wasallam. However, Ibn Abidin quotes Al Ala’i’ who comments that he has not seen it narrated from the Prophet Sallallahu Alayhi Wasallam with any chain whatsoever. (Nashrul Arf Fi Bina’i’ Ba’dil Ahkam Alal Urf, p.)

²⁸⁰ Some of the prints of Usul Al Ifta Wa Adabuhu have ‘Imam Ghazali’ written in place of Imam Al Nasafi. The correct version is ‘Imam Al Nasafi’. Ibn Abidin simply writes *المستصفي* قال في المستصفي, Mufti Taqi Sb thought that this was Imam Ghazali’s *Al Mustasfa*. However, it has now been corrected in the later prints of the book.

(Lecture of Mufti Husain Kadodia)

²⁸¹ Some of the prints of Usul Al Ifta Wa Adabuhu have *من جهة القول* instead of *من جهة قضايا العقول*. The latter is the correct version.

(Lecture of Mufti Husain Kadodia)

²⁸² In Usul Al Ifta Wa Adabuhu, this quote has been quoted from Ibn Al Hummam. However, it is in reality the statement of Ibn Amir Al Haj in his *Al Taqir Wal Tahrir*.

²⁸³ Another norm which has been mentioned by some in this division is: Shari’i’ Norm (العرف الشرعية) – i.e. the norm of the Shari’ah. Hence, at times, a word may have a certain meaning, but the norm of Shari’ah changes the meaning of the word such that in the context of Shari’ah, the meaning of the word will be that which the Shari’ah has ordained.

A specific norm is defined as:

مَا كَانَ مُفْتَصِّرًا عَلَى طَائِفَةٍ مِنَ النَّاسِ أَوْ عَلَى أَهْلِ بَلَدٍ مُخْصُوصٍ

“That which is found amongst a group of people or amongst the people of a certain city”

Division of Norms

A norm may be of two types:

1) Verbal Norm (العرف اللفظي)

This may be of two types:

- General Verbal Norm (العرف اللفظي العام)

Ruling:

It will have an effect and can specify a general statement

- Specific Verbal Norm (العرف اللفظي الخاص)

Ruling:

It will have an effect and can specify a general statement

2) Practical Norm (العرف العملي, also known as Al Ta'amul (التعامل))

This may be of two types:

- General Practical Norm (العرف العملي العام)

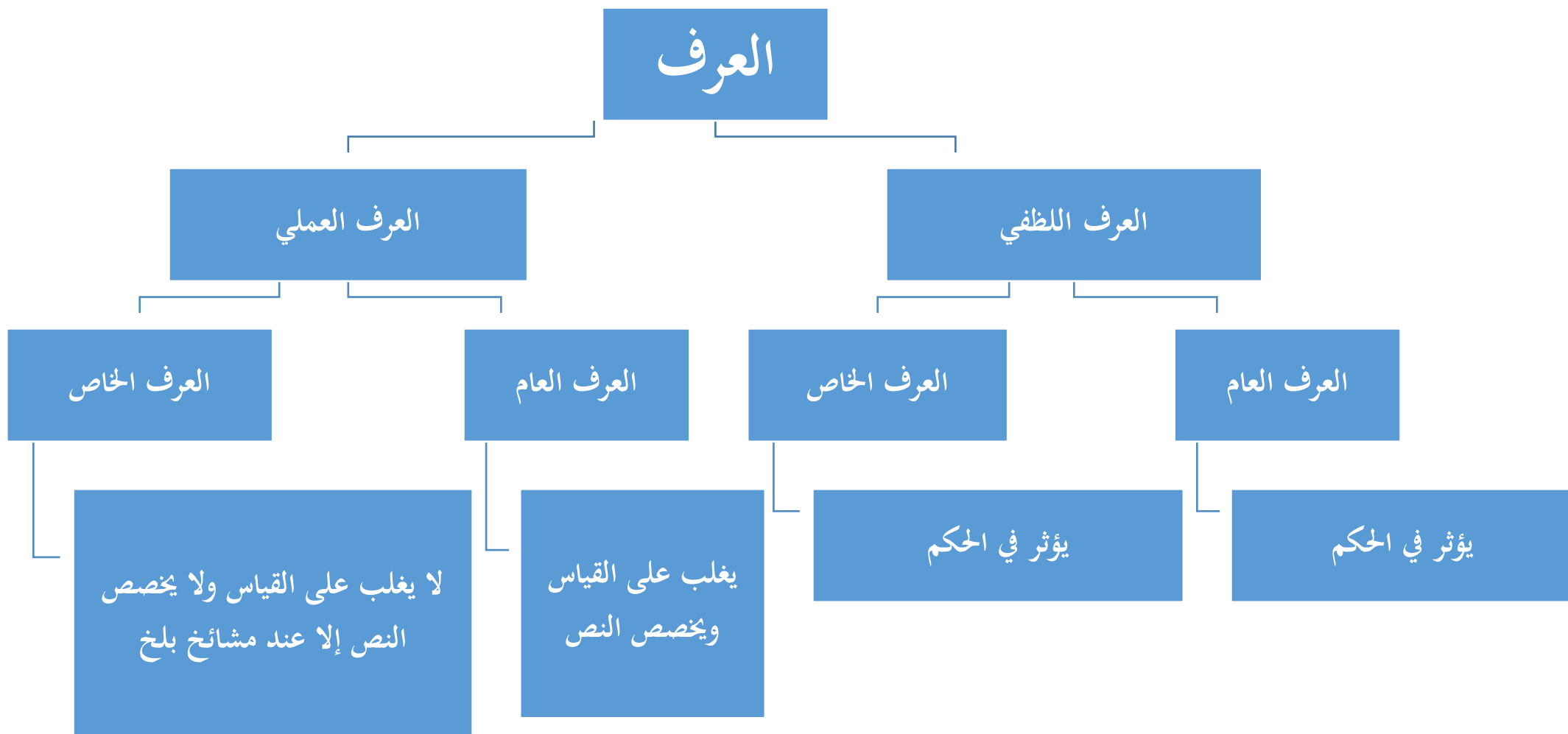
Ruling:

It can be given preference over analogical deduction and is capable of specifying an evidential text

- Specific Practical Norm (العرف العملي الخاص)

Ruling:

- The majority of the Hanafi Fuqaha state that it *cannot* be given preference over analogical deduction and is *not* capable of specifying an evidential text
- The Fuqaha of Balkh state that it can given preference over analogical deduction and is capable of specifying an evidential text



Verbal Norm

Definition of a Verbal Norm

A verbal norm is to use a word or sentence with a specific meaning - specified by the norm - which is such that it contradicts the linguistic meaning of the word or sentence.

A contradiction between the verbal norm and linguistics

If a contradiction occurs between a meaning specified by the norm and a meaning determined by linguistics, preference shall be given to the norm. This is why Fakhru'l Islam Al Bazdawī writes:

تُزَكُّ الْحَقِيقَةُ بِدَلَالَةِ الْإِسْتِعْمَالِ وَالْعَادَةِ

“The literal meaning (which in most cases is the linguistic meaning) is not applied if common usage and norm indicates towards another meaning”

The upshot of this is that if an evidential text contains a word or sentence which has two meanings:

- 1) A meaning which has been specified by the norm found at the time of the revelation of the evidential text
- 2) A meaning which has been determined linguistically

Preference shall be given to the meaning specified by the norm found at the time of the revelation of the evidential text. Accordingly, the ruling provided by the evidential text shall only be applied to the meaning specified by the norm of the word or sentence.

Considering that the intended meaning of the words and sentences of an evidential text shall be considered to be the meaning specified by the norm found *at the time of the revelation of the evidential text*, if the norm changes after the revelation, then the meaning specified by the new norm shall no longer be the intended meaning of the words and sentences of the evidential text.

This is a key point to understand, for at times a word may be found in the evidential text [such as Qur'an or Hadith] which had a meaning specified by the norm found at the time of revelation and was accordingly declared permissible by the evidential text. Later on, however, the norm may change, which also changed the meaning specified by the norm of that exact word, accordingly, a Faqih may declare the meaning of that exact word with a ruling of impermissibility, an onlooker would then assume that the Faqih has openly contradicted the evidential text, whereas in fact, the change in norm has actually changed the meaning of the word, and so the Faqih has issued a ruling of impermissibility for a completely different meaning of the word than the one for which the evidential text has issued a ruling of permissibility.

An Example:

Hazrat Jabir Radhiyallahu Anhu has narrated that the Prophet Sallallahu Alayhi Wasallam said:

الرُّقْبَى لِمَنْ أَرْقَبَهَا

“‘Al Ruqba’ is for the one who gives it as a ‘Ruqba’”

Hazrat Abdullah ibn Abbas Radhiyallahu Anhu has narrated that the Prophet Sallallahu Alayhi Wasallam said:

لَا يَحِلُّ الرُّقْبَى وَلَا الْعُمْرَى فَمَنْ أَعْمَرَ شَيْئًا فَهُوَ لَهُ وَمَنْ أَرْقَبَ شَيْئًا فَهُوَ لَهُ

“‘Al Ruqba’ is not halal, neither is ‘Al Umra’, so he who gives an item to someone as ‘Al Umra’, then it is for him, and he who gives an item to some as ‘Al Ruqba’, then it is for him”

The meaning of these Ahadith is that if a person says:

دَارِي لَكَ رُقْبَى

“My house is an ‘Al Ruqba’ for you”

Then this shall be considered a valid gift, and the house shall permanently belong to the individually to whom the house is given (as long as the conditions of a valid gift are upheld). It is for this reason that the majority of scholars have stated that the word ‘Al Ruqba’ is similar to the word ‘Al Umra’, in the sense that both will result in a complete gift.

However, it has been narrated from Imam Abu Hanifah that the word ‘Al Ruqba’ is an invalid transaction and will not result in a complete gift. Accordingly, the view of Imam Abu Hanifah is that if a person were to say:

دَارِي لَكَ رُقْبَى

“My house is an ‘Al Ruqba’ for you”

The house would remain his and a gift would not occur.

This *apparently* contradicts the evidential text in the form of the Hadith of the Prophet Sallallahu Alayhi Wasallam mentioned earlier.

However, in truth, the ‘Al Ruqba’ which Imam Abu Hanifah considered to be an invalid transaction had a different meaning to the meaning of the ‘Al Ruqba’ found in the Hadith. In the Prophet Sallallahu Alayhi Wasallam’s time, the meaning of ‘Al Ruqba’, specified by the norm of the time, was that it is a transaction in which one individual gifts a house to another individual with the condition that if the individual who has been gifted the item dies before the individual who has gifted the item, then the item shall return to its original owner; the individual who gifted the item. Considering that this condition was an invalid condition, the condition would be annulled and the gift would remain valid as gifts are not invalidated by invalid conditions. Accordingly, the Prophet Sallallahu Alayhi Wasallam said:

مَنْ أَرْقَبَ شَيْئًا فَهُوَ لَهُ

“Whoever is given something as ‘Ruqbah’, then it is for him”

However, during the time of Imam Abu Hanifah, the norm had changed, and so, the new meaning of ‘Al Ruqba’, specified by the new norm of the time, was that it is a transaction in which one individual suspends a gift transaction upon his own death; i.e. he says, “If I die, this item is yours”, hence the gift has been suspended upon an unknown event, unlike its meaning during the Prophet Sallallahu Alayhi Wasallam’s time which was that it is a transaction wherein the gift is transacted but with an invalid condition. It was due to this ‘new’ meaning that Imam Abu Hanifah said that ‘Al Ruqba’ is an invalid transaction.

In explaining Imam Abu Hanifah’s stance on the issue of ‘Al Ruqba’, Allamah Anwar Shah Kashmiri writes:

عِنْدِي أَنَّهُ كَانَ ذَلِكَ هُوَ الْعُرْفُ فِي عَهْدِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَلَعَلَّهُ تَغَيَّرَ فِي عَهْدِ أَبِي حَنِيفَةَ وَالشَّيْءُ إِذَا كَانَ مَبْنِيًّا عَلَى الْعُرْفِ يَتَبَدَّلُ حُكْمُهُ بِتَبَدُّلِ الْعُرْفِ لَا مَحَالَةَ

“I feel that this was the norm in the time of the Prophet Sallallahu Alayhi Wasallam, and it is possible that it (the norm) changed in the time of Imam Abu Hanifah. Inevitably, if something is based upon the norm, its ruling will change if the norm changes”

In summary, the meaning of ‘Al Ruqba’ specified by the norm had changed during the time of Imam Abu Hanifah, as the norm had changed. Therefore, the ‘Al Ruqba’ which Imam Abu Hanifah declared to be invalid was *not* the same ‘Al Ruqba’ which the evidential text declared to be valid.

Consideration of the Verbal Norm in the speech of people

Just as the verbal norm is considered in evidential texts, it is also considered in the speech of the general society. Hence, as mentioned above, the verbal norm may be of two types:

1) A general norm

If the verbal norm is a General Norm, it will be considered amongst all people and all cities.

2) A specific norm

If the verbal norm is a Specific Norm, it will be considered amongst the specific group of people who use that verbal norm.

Allamah Sarakhsi summarises the discussion as follows:

وَالْحَاصِلُ أَنَّهُ إِنَّمَا يُعْتَبَرُ فِي كُلِّ مَوْضِعٍ عُرْفُ أَهْلِ ذَلِكَ الْمَوْضِعِ فِيمَا يُطْلَقُونَ عَلَيْهِ مِنَ الْإِسْمِ أَصْلُهُ مَا رُوِيَ أَنَّ رَجُلًا سَأَلَ ابْنَ عُمَرَ رَضِيَ اللَّهُ تَعَالَى عَنْهُمَا قَالَ إِنَّ صَاحِبًا لَنَا أَوْجَبَ بُدْنَهُ أَفْتَجِرْهُ الْبَقْرَةَ؟ فَقَالَ مِمَّ صَاحِبُكُمْ؟ فَقَالَ مِنْ بَنِي رَبَاحٍ فَقَالَ وَمَتَى أَفْتَنْتَ بَنُو رَبَاحٍ الْبَقْرَةَ؟ إِنَّمَا وَهُمْ صَاحِبُكُمْ الْإِبِلَ!

“The summary is that in every place, the norm of the people of that place shall be considered in that which they mention from words, the basis of this is what has been narrated that a man asked [Abdullah] Ibn Umar, may Allah be pleased with them, that he said, ‘Indeed a companion of ours has made an obligation to slaughter a large animal, will a cow be sufficient?’ So he replied, ‘Where does your companion come from?’ He replied, ‘From Banu Rabah’, he responded, ‘And when did Banu Rabah keep cows? Indeed your companion intended a camel!’”

It is based upon the verbal norm that many rulings on issues pertaining to marriage, divorce, oaths, etc. have been derived.

We will present a few examples below to show how the verbal norm has been considered by the Fuqaha in the speech of people:

Example 1:

If a man says to his wife:

سَرَّحْتُكَ

“I release you”

Then this is an ambiguous (*Kinayah*) term, and thus divorce would not occur except if an intention for divorce was established. However, in many cities, there is a verbal norm that this word serves only as a reference to divorce, accordingly, in these cities, the Fuqaha have ruled that by uttering such a word, divorce shall occur immediately. Considering that this verbal norm is not found amongst all people and all cities, this verbal norm shall be considered a specific norm.

Example 2:

If a man conducts a marriage by saying:

جَوَّزْتُكَ

Instead of:

زَوَّجْتُكَ

Then some Fuqaha have issued a ruling that the marriage will not take place based upon what Allamah Sa'd Al Din Al Taftazani has written in *Al Talwih*, that if a word is uttered not with proper intention, but rather with alteration and adulteration, then it shall not have an actual or metaphorical meaning as there is no relationship between his word and these meaning. Rather it will be considered to be a mistake and will have no consideration in Shari'ah.

However, Allamah 'Ala Al Din Al Haskafi states in Al Durrul Mukhtar:

لو اتفق قوم على النطق بهذه اللفظة وصدرت عن قصد كان ذلك وضعاً جديداً فيصح

“If a group of people collectively utter this term [for marriage], and they use it intentionally [such that it becomes a verbal norm], then this will be a new meaning for the term”

Ibn Abidin Rahimahullah mentions that many of the later scholars gave preference to this view.

Practical Norm (العرف العملي, also known as Al Ta’amul (التعامل))

At times, a practical norm may also change a ruling. However, not every practical norm is considered in Shari’ah.

Ibn Abidin Rahimahullah writes:

إذا خالف العرف الدليل الشرعي فإن خالفه من كل وجه بأن لزم منه ترك النص فلا شك في رده كتعارف الناس كثيرا من المحرمات من الربا وشرب الخمر ولبس الحرير والذهب وغير ذلك مما ورد تحريمه نصا وإن لم يخالفه من كل وجه بأن ورد الدليل عاما والعرف خالفه في بعض أفرادها أو كان الدليل قياسيا فإن العرف معتبر إن كان عاما فإن العرف العام يصلح مخصصا كما مر عن "التحرير" ويترك به القياس كما صرحوا به في مسألة الإستصناع ودخول الحمام والشرب من السقاء

“When the [practical] norm contradicts a ruling of Shari’ah, then if it contradicts the ruling completely, such that [by following the practical norm] one would [completely] leave out an evidential text, then there is no doubt that the norm shall be rejected. For example, if a practical norm were to be found of people carrying out haram actions such as riba, drinking of alcohol, and wearing of silk and gold, which are from amongst those things which have been made haram through evidential text. However, if the [practical] norm does not contradict the ruling of Shari’ah completely such as if the evidential text is general and the norm contradicts some components of this general evidential text or if the ruling has been derived through analogical deduction, then a practical norm will be considered if it is a general practical norm. This is because a general practical norm is capable of specifying evidential text as mentioned in *Al Tahrir* and is also capable of annulling a ruling deduced through analogical deduction, as they (the Fuqaha) have discussed in the Mas’alah of *Al Istisna’*, and the Mas’alah of entering public baths, and the Mas’alah of drinking from a tap”

The types of rulings which do not change by a change in the practical norm

After studying the various Masail which the Fuqaha have based upon the practical norm, it seems to be that if a ruling provided by an evidential text is regarding a matter which does not *depend* upon the practical norm, then a change in the practical norm does not change the ruling provided by that evidential text whatsoever. The example of this is all the haram actions mentioned by Ibn Abidin Rahimahullah above.

An indication that a ruling provided by an evidential text is *not* based upon practical norm is when an evidential text is found prohibiting an act which was prevalent at the time of the revelation of that evidential text. Thus, considering that the evidential text prohibiting the act was revealed even though the act was a practical norm, one can ascertain that the ruling provided by such an evidential text is not based on the practical norm.

Accordingly, if the ruling of an evidential text is such that it does not depend upon the norm, the norm will not have any effect upon the ruling provided by the evidential text. This will then fall under the principle:

الْعُرْفُ غَيْرُ مُعْتَبَرٍ فِي الْمَنْصُوصِ عَلَيْهِ

“The norm is not considered in those rulings which are found in the evidential text”

Based upon this principle, for those rulings declared by the evidential text that do not depend upon the norm, the Fuqaha have rejected a change in ruling based upon a change in the practical norm:

Example 1:

Muhammad ibn Al Fadhl states that the waist is not part of the private parts as it is not considered a private part in the practical norm. However, his view has been rejected as the evidential text clearly mentions the waist. Considering that this ruling provided by the evidential text is not based upon the practical norm, a change in the norm will have no effect upon the ruling declared by the evidential text.

Example 2:

Imam Abu Hanifah and Imam Muhammad have mentioned that it is impermissible to cut the grass of the Haram. Imam Abu Yusuf states that it is permissible for a person in Ihram to cut the grass of Haram. However, Imam Abu Yusuf's view has been rejected as the evidential text clearly mentions that it is impermissible to cut the grass. Considering that this ruling provided by the evidential text is not based upon the practical norm, a change in the norm will have no effect upon the ruling declared by the evidential text.

Example 3:

Imam Abu Hanifah holds the view that all dung (أرواث) is severely impure. This is due to the evidential text explicitly mentioning that all dung is impure. Considering that this ruling provided by the evidential text is not based upon the practical norm, a change in the norm will have no effect upon the ruling declared by the evidential text.

The types of rulings which could change by a change in the practical norm

There are six types of rulings which could change by a change in the practical general norm:

- 1) When the ruling provided by the evidential text found for a Mas'alah is *based upon* the practical norm of that time, then when the practical norm changes, the ruling for this Mas'alah will also change. This is because the reasoning (illah – علة) behind the ruling was the norm of *that* time, thus when the norm changed, the reasoning (illah – علة) behind *that* ruling was no longer found, therefore the ruling changed.

Example 1:

Imam Abu Dawud has narrated from Samurah ibn Jundub Radhiyallahu Anhu who states that that the Prophet Sallallahu Alayhi Wasallam said:

إذا أتى أحدكم على ماشية فإن كان فيها صاحبها فليستأذنه فإن أذنه له فليحتلب وليشرب وإن لم يكن فيها فليصوب ثلاثا فإن أجابه فليستأذنه وإلا فليحتلب وليشرب ولا يحمل

Similarly, Imam Al Tirmidhi has narrated from Hadhrat Ibn Umar Radhiyallahu Anhu who states that the Prophet Sallallahu Alayhi Wasallam said:

من دخل حائطا فليأكل ولا يتخذ خبنة

Also, Imam Abu Dawud narrates from the uncle of Abu Rafi' ibn Amr Al Ghifari who said:

كنت غلاما ارمي نخل الأنصار فأتي به النبي صلى الله عليه وسلم فقال يا غلام! لم ترمي النخل؟ قال آكل قال فلا ترم النخل وكل مما يسقط في أسفلها ثم مسح رأسه فقال اللهم أشبع بطنه

Hence, in these Ahadith, the Prophet Sallallahu Alayhi Wasallam permitted one to eat fruit and drink milk without the permission of the owner.

Thus, the Ahadith apparently contradict the narrations of the Prophet Sallallahu Alayhi Wasallam which prohibit one from taking one's wealth without one's permission. These narrations include that which has been narrated by Imam Bukhari from Abdullah ibn Umar Radhiyallahu Anhu that the Prophet Sallallahu Alayhi Wasallam said:

لا يجلبن أحد ماشية امرئ بغير إذنه أوجب أحدكم أن توتي مشربته فتكسر خزانه فينتقل طعامه؟ فإنما تخزن لهم ضرور مواشيهم أطعماتهم فلا يجلبن أحد ماشية أحد إلا بإذنه

The Muhadithin have made lengthy discussions in an attempt to reconcile between these Ahadith, especially Ibnul Qayyim in Tahdhib Al Sunan. However, the best response is to say that the ruling of permissibility of taking fruit lying on the floor and milk for drinking without the owner's permission is based upon the norm of that time. Hence, the owners of livestock and fruit trees would allow travellers and those passing by to take the fruit lying on the floor or milk an animal for drinking. Therefore, there was an implicit permission from such owners for such activities.

Hence, the reason behind the ruling of permissibility for such activities was the practical norm of implicit permission for such activities. Accordingly, if the norm were to change such that the practical norm was not of the implicit permission of such activities, then such activities would be impermissible.

Example 2:

At times, there may occur a difference of opinion amongst the Fuqaha over whether the ruling of a certain evidential text is based upon the norm or that the ruling of the evidential text is not related and does not depend upon the norm.

Thus the Fuqaha who felt that the ruling behind the evidential text was based on the norm changed the ruling when the norm changed. The Fuqaha who felt that the ruling of the evidential text is not related and does not depend upon the norm deduced that the ruling of the evidential text must be precisely followed and cannot be changed by a change in the practical norm.

An example of this is that wheat, barley, dates, and salt were considered from amongst the volume items during the time of the Prophet Sallallahu Alayhi Wasallam; they would be bought and sold in volume. Then the norm changed, and they became from amongst the weighed items as people had begun to sell them by weight. Now, when these items are sold for an item of the same genus, in order for equality to be maintained, is it necessary to measure these items in volume? Or can one consider the change in norm and consider it sufficient to measure these items in weight for the equality to be maintained?

This has been the basis of a difference of opinion between Imam Abu Hanifah, Imam Abu Yusuf and Imam Muhammad.

Imam Abu Hanifah and Imam Muhammad have stated that in order for equality to be maintained, it is necessary for these items to be measured in volume. Equality shall not be maintained if these items are measured and sold in weight. This is because the evidential text has clearly mentioned volume. This is also the view of Imam Shafi'i' and Imam Ahmad ibn Hanbal. These scholars made the exact words of the evidential text the basis and reasoning behind its ruling.

This Mas'alah is also mentioned in our books of Fiqh, in which most of our Fuqaha have given preference to the view of Imam Abu Hanifah and Imam Muhammad. The reasoning behind this is that evidential text is stronger than the norm as it is possible for a norm to be invalid, unlike an evidential text.

However, Imam Abu Yusuf holds that these items may also be sold in weight and equality shall be maintained by doing so. He bases his reasoning upon the fact that the norm has changed. However, the question could arise that even if the norm has changed, how can a change in norm change the ruling of an evidential text? Imam Abu Yusuf responds that the ruling of the evidential text is *based upon* the norm; i.e. the basis of the ruling of the evidential text is the practical norm, which is: "measure of equality according to the practical norm". Hence, the Prophet Sallallahu Alayhi Wasallam specified volume for these items as

this was a measure of equality according to the practical norm of that time. Therefore, when the practical norm of measuring these items changes, i.e. they begin to be bought and sold by weight, then the measure of equality shall also change.

Ibn Abidin summarises Imam Abu Yusuf's view as follows:

فليس في اعتبار العادة المتغيرة الحادثة مخالفة للنص بل فيه اتباع النص وظاهر كلام الحقق ابن الهمام ترجيح هذه الرواية وعلى هذا فلو تعارف الناس ببيع الدراهم بالدراهم أو استقراضها بالعدد كما في زماننا لا يكون مخالفا للنص فالله تعالى يجزي الإمام أبا يوسف عن أهل هذا الزمان خير الجزاء فلقد سد عنهم بابا عظيما من الربا

“So by considering the current reformed norm, there is no contradiction to the evidential text. On the contrary, it is in accordance with the evidential text. The statement of Ibnul Hummam indicates that he gave preference to this view. Based on this, if a people developed a practical norm of selling dirhams for dirham or loaning dirhams by count, as it is found in our time, this will not be contradictory to the evidential text. May Allah the Almighty reward Imam Abu Yusuf on behalf of the people of this age, the best of rewards. For surely, he has closed a huge door of riba from opening upon them”

- 2) The ruling of an evidential text is based upon a reason (illah – علة). This reason (illah – علة) behind the ruling does not exist in the practical norms for some Masail, therefore, in these few Masail, the ruling of the evidential text will not apply as the reason (illah – علة) behind the ruling is not found due to the practical norm.

Example 1:

To enter a public bath for a specified price but for an unknown period of time. Thus, even though the ruling of this Mas'alah should be of impermissibility as there is an uncertain element to the transaction. An uncertain element in a transaction has been prohibited by the evidential text.

However, the reasoning behind the impermissibility of this uncertainty is that it may lead to conflict. Hence, considering that the practical norm is that this transaction does not lead to conflict, the reasoning behind the ruling of impermissibility is no longer found. Accordingly, the transaction will no longer be impermissible.

Example 2:

To ask a person to give you an opportunity to drink water for a specified price but the amount of water to be drunk is not specified. Thus, even though the ruling of this Mas'alah should be of impermissibility as there is an uncertain element to the transaction. An uncertain element in a transaction has been prohibited by the evidential text.

However, the reasoning behind the impermissibility of this uncertainty is that it may lead to conflict. Hence, considering that the practical norm is that this transaction does not lead to conflict, the reasoning behind the ruling of impermissibility is no longer found. Accordingly, the transaction will no longer be impermissible.

Example 3:

The evidential text has prohibited putting conditions in a transaction. This prohibition is found in a Hadith of the Prophet Sallallahu Alayhi Wasallam narrated by Imam Abu Hanifah from Amr ibn Shu'ayb from his father from his grandfather.

However, the Hanafi Fuqaha have stated that if a condition has become a practical norm amongst the merchants, it is permissible to put such a condition in a transaction. For this reason, the Hanafi Fuqaha have permitted the following:

- It is permissible for one to buy shoes with the condition that the seller must attach the laces to the shoes. This is due to the fact that such a condition is a practical norm.
- It is permissible for one to buy cloth with the condition that the seller must convert the leather to sandals

For this reason, Allamah Sarakhsi states:

وإن كان شرطا لا يقتضيه العقد وفيه عرف ظاهر فذلك جائز أيضا كما لو اشترى نعلا وشراكا بشرط أن يحذوه البائع لأن الثابت بالعرف ثابت بدليل شرعي ولأن في النزاع عن العادة

It is also apparent that the reasoning of ‘fulfilling a need’ does not apply in changing a ruling that has been explicitly mentioned by the evidential. Rather, the notion of ‘fulfilling a need’ is considered for those issues whose rulings have been deduced through analogical deduction (qiyas – قياس) upon an evidential text which was based on a reason. Thus when this reason is no longer found in some of these issues due to a change in the practical norm, they will no longer be analogous to the evidential text and thus will have a different ruling.

Thus, Ibn Abidin writes:

إذا لم يفسد المتعارف العقد يلزم أن يكون العرف قاضيا على الحديث قلت ليس بقاض عليه بل على القياس لأن الحديث معلول بوقوع النزاع المخرج للعقد عن المقصود به وهو قطع المنازعة والعرف ينفي النزاع فكان موافقا لمعنى الحديث

Based upon the above, rulings can be deduced for many of the conditions that have become a practical norm in transactions. For example: the condition that the individual who sells refrigerators, air conditioners, or cars is required to look after these items for a period of time or the condition that said individual is required to deliver and install the refrigerator or air conditioner in the house of the buyer.

- 3) At times an evidential text may declare a ruling for a specific issue. The Fuqaha may then establish the same ruling for those issues that are *similar* to this specific issue through analogical deduction or indication of the evidential text (*Dalalah Al Nas*). If in these issues, the practical norm found amongst the people is in violation of the ruling (that has been deduced through analogical deduction or indication of the evidential text (*Dalalah Al Nas*)), then, **at times**, the Fuqaha have considered and given preference to the practical norm.

However, in this situation, the practical norm cannot be given preference over the explicit ruling of the evidential text itself.

Example 1:

The Issue of Qafiz Al Tahan

Imam Daruqutni has narrated from Abu Sa’id Al Kudhri Radhiyallahu Anhu who said:

نهى عن عسيب الفحل زاد عبيد الله وعن قفيز الطحان

The Hanafi Fuqaha and the Shafi’i’ Fuqaha state the reason behind the impermissibility of Qafiz Al Tahan is that it involves paying the worker with his own work. Based on this, they labelled every transaction which involves paying a worker through his own work as impermissible.

Allamah Kasani writes:

“And from it (the conditions of the permissibility of a service transaction) is that a worker must not benefit from his own, if he benefits from his own work, then it will be impermissible as he will be considered to be working for himself and thus, should not be deserved of a wage...it is based upon this that if one hires a person to grind one qafiz of wheat for which he will receive a quarter of the flour that he produces, or one hires a person to grind one qafiz of sesame seeds for which he will receive a specified portion of the sesame oil that he makes, it will be considered impermissible”.

In a similar manner, the Hanafi Fuqaha have considered it impermissible for one to hire an individual to weave some cotton for which he would receive a portion of the weaved item.

The Shafi'i' Madhab is the same as the Hanafi Madhab in this issue.

The view of the Fuqaha of Balkh

Nonetheless, the Hanafi Fuqaha of Balkh, such as Nasir ibn Yahya and Muhammad ibn Salamah, have allowed for a person to his worker with his own work ***based upon the practical norm of their city***. Ibn Abidin writes:

ومشايع بلخ والنسفي رحمهم الله تعالى يجوزون حمل الطعام ببعض الحمول ونسج الثوب ببعض المنسوج (مع أنهم لا يجوزون طحن الدقيق بحصة من المطحون لكونه ممنوعاً في النص بصراحة) لتعامل أهل بلادهم بذلك ومن لم يجوز قاسه على قفيز الطحان والقياس يترك بالتعارف ولئن قلنا إنه ليس بطريق القياس بل النص يتناوله دلالة فالنص يخص بالتعارف...ومشائنا رحمهم الله تعالى لم يجوزوا هذا التخصيص لأن ذلك تعامل أهل بلدة واحدة

When the practical norm can overrule the ruling deduced through analogical deduction or through indication of the evidential text according to Mufti Taqi Sahib

Mufti Taqi Sahib feels that the practical norm can only override a ruling deduced through analogical deduction or indication of the evidential text when the reasoning (illah – علة) behind the ruling (upon which the analogical deduction has been based) declared by the evidential text is not an established reasoning with certainty. Hence, if the Mujtahid Fuqaha differ over the reasoning behind a ruling declared by the evidential text, then if some Fuqaha have chosen a very general reasoning [for purposes of precaution] behind the ruling declared by the evidential text such that many similar issues are given the same ruling based on analogical deduction, then if in some of these issues, the practical norm contradicts the ruling deduced through analogical deduction, then the practical norm may override the ruling deduced through analogical deduction.

Therefore, in the Mas'alah of Qafiz Al Tahan, the Mujtahid Fuqaha have differed over the reasoning behind the ruling of impermissibility declared by the evidential text. The Hanafi and Shafi'i' Fuqaha have chosen the reasoning behind the ruling of impermissibility to be the fact that a worker is paid with his own work, thus the worker is working for himself.

However, the Maliki and Hanbali Fuqaha have chosen the reasoning behind the ruling of impermissibility to be the fact that the wage is uncertain. This is why the Maliki and Hanbali Fuqaha have permitted Qafiz Al Tahan if the wage is certain.

Now, considering that the reasoning behind the evidential text could be either of the two reasonings mentioned, we adopted precaution and chose the more general reasoning; this is the reasoning provided by the Hanafi and Shafi'i' Fuqaha. This is because when a factor indicating towards permissibility and a

factor indicating towards impermissibility are found together, for precautionary reasons, preference is given to the factor indicating towards impermissibility.

Hence, by adopting this general reasoning, many similar issues to Qafiz Al Tahan were also given the ruling of impermissibility through analogical deduction or indication of the text. However, if the practical norm were to consider some of these issues to be permissible, the practical norm may override the ruling of impermissibility that has been deduced through analogical deduction or indication of text.

However, the condition for a practical text to overcome a ruling deduced through analogical deduction or indication of text is that the practical norm must be a general practical norm. A specific practical norm is not sufficient to overcome a ruling deduced through analogical deduction or indication of text.

On the contrary, the Fuqaha of Balkh opine that the practical **specific** norm of their city, which is that people carry out transactions *similar* to Qafiz Al Tahan, is sufficient to overcome the ruling of impermissibility that has been deduced through analogical deduction or indication of text. They base this upon the fact that the Fuqaha have permitted Muzara'ah - which according to analogical deduction is impermissible – based upon the practical norm. The response to this is that the practical norm in Muzara'ah was a practical general norm and not a practical specific norm.

- 4) At times, there is a transaction for which an explicit ruling from an evidential text is not found; not of impermissibility nor of permissibility. the transaction does *resemble* some concepts that are reprehensible. However, when the practical general norm involves such a transaction, then the Fuqaha have deemed the transaction to be permissible.

Example 1: *Al Istisna'*

The ruling for Al Istisna is not found in the evidential texts. As for that which has been narrated that the Prophet Sallallahu Alayhi Wasallam performed Al Istisna' when acquiring a pulpit, this is an inexplicit narration as it does not elaborate if a transaction of Al Istisna took place. Thus it is possible that the pulpit was acquired through a promise agreement.

The transaction of Al Istisna' shares resemblance with Ijarah as well as a sale. The first resemblance would make Al Istisna' permissible whilst the second resemblance would make Al Istisna' impermissible as it would resemble the sale of an item that is non-existent.

The majority of the Fuqaha other than the Hanafi Fuqaha have ruled Al Istisna' as impermissible as it is possible that the manufacturer brings the item himself without manufacturing it. However, the Hanafi Fuqaha have permitted Al Istisna on account of it being a practical general norm.

Imam Burhan Al Din Al Bukhari states:

إن القياس وإن كان يأبى جواز الإستصناع... إلا أنا تركنا القياس وجوزناه بتعامل الناس فإن الناس يعاملون الإستصناع في هذه الأشياء من لدن رسول الله صلى الله عليه وسلم إلى يومنا هذا من غير نكير ورد من الصحابة رضي الله عنهم ولا من التابعين وتعامل الناس من غير نكير ورد من العلماء كل عصر حجة يترك بها القياس ويخص به الأثر

Example 2: *Shirkah Al A'mal and Shirkah Al Abdan*

Shirkah Al A'mal and Shirkah Al Abdan are two transactions for which there is no evidential text explicitly mentioning their permissibility or impermissibility.

Imam Shafi'i has considered both transaction as impermissible as a partnership (Shirkah) must involve a pooling together of the capital, which these two transactions do not do. However, the Hanafi Fuqaha have allowed both transactions on account of them being part of the practical norm.

- 5) At times, a ruling may be based upon the apparent state. Thus, when the apparent state changes due to a change in practical norm, the ruling will also change.

Example 1:

The Fuqaha have mentioned that if after the consummating the marriage, a woman claims that she has not received the immediate dowry, and the husband claims that he has paid the immediate dowry, then the view of the husband shall be taken. This is despite the fact that the woman is rejecting the fact that she has received the immediate dowry and the principal of the Hanafi Madhab is that a ruling is given in favour of the rejector. However, due to the fact that the apparent state is that a woman would not surrender herself to her husband without receiving the immediate dowry, the apparent state supports the claim of the husband. Therefore, the Fuqaha have accepted the claim of the husband.

Considering that this ruling is based upon the apparent state, if the practical norm became such that the apparent state is that a woman would surrender herself to her husband before receiving the immediate dowry, as is the practical norm of today, then we shall accept the claim of the woman on account of the original principle that a ruling is given in favour of the rejector.

Example 2:

According to Imam Abu Hanifah, a judge may rely upon the apparent uprightness of a witness in issues that are not related to capital or retribitional punishment. Thus, according to Imam Abu Hanifah, if a witness is upright in the apparent, there is no need to investigate whether or not he is a reliable witness, except if the opposition make a negative claim regarding his reliability.

However, Imam Abu Yusuf and Imam Muhammad are of the view that every witness must be openly and secretly investigated with regards to his reliability in all issues, whether capital or retribitional punishment, or otherwise.

In explaining this difference of opinion, the author of Al Hidayah, Allamah Murghinani writes:

قيل هذا اختلاف عصر وزمان والفتوى على قولهما في هذا الزمان

“It is said, ‘This is a difference of opinion based upon the age and time, and the Fatwa is upon their view (Imam Abu Yusuf and Imam Muhammad) in this age’”

Ibn Al Hummam writes in his commentary upon Al Hidayah, titled Fathul Qadir:

والظاهر الذي يثبت بالغالب أقوى من الظاهر الذي يثبت بظاهر حال الإسلام وتحقيقه أنه لما قطعنا بغلبة الفسق فقد قطعنا بأن أكثر من التزم الإسلام لم يجتنب محارمه فلم يبق محر التزم الإسلام مظنة العدالة فكان ظاهر الثابت بالغالب بلا معارض

“The apparent that becomes established through prevalence is stronger than the apparent that becomes established through the state of Islam. The elaboration upon this is that when we have said with certainty that wretchedness is prevalent, then we have said with certainty that the majority of people that have accepted Islam have not refrained from its prohibition, thus nothing has remained except their acceptance of Islam which gives the impression of reliability, thus the apparent shall be that which is established through prevalence (which is wretchedness) if there is nothing to contradict it”

- 6) At times, a ruling may be based upon the state of the people (i.e. whether they are upright or wicked). Hence, when the state of the people (a form of practical norm) changes, the ruling changes.

Example 1:

Imam Abu Hanifah is of the view that coercion cannot take place except by the ruler. However, Imam Muhammad is of the view that coercion can take place by someone other than the ruler.

The author of Al Hidayah, Allamah Murghinani writes:

قالوا هذا اختلاف عصر وزمان لا اختلاف حجة وبرهان ولم تكن القدرة في زمنه إلا للسلطان ثم بعد ذلك تغير الزمان وأهله

“They have said, “This is a difference of opinion [that is] dependent upon the age and time, not a difference of opinion based upon evidence, and the power of coercion did not exist in his (Imam Abu Hanifah) time except for the ruler, after this, the time and its people have changed”

Example 2:

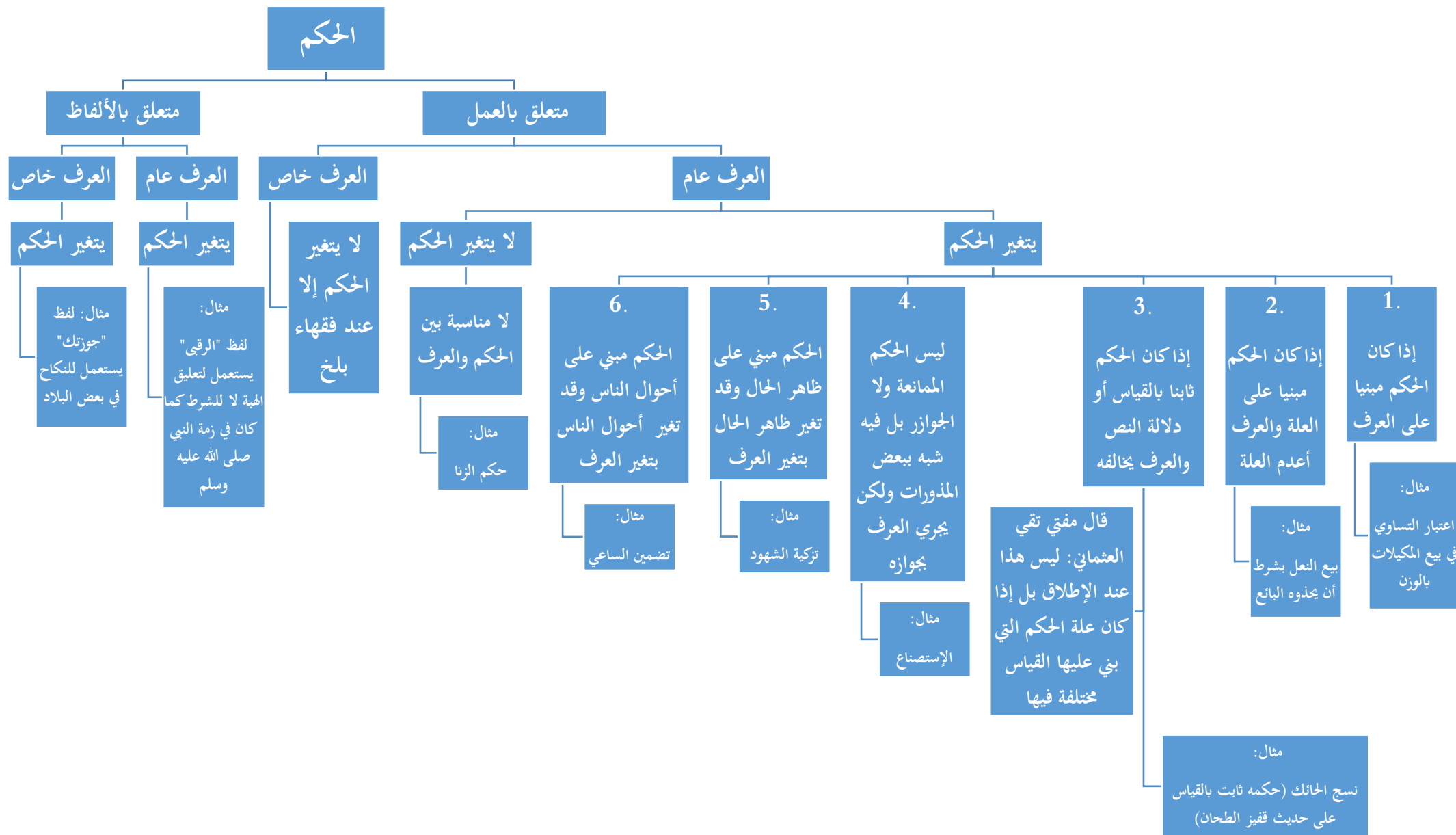
The original ruling of the Hanafi Madhab was that if an individual raised a false complaint regarding someone to the ruler due to which the ruler harmed the person either physically or financially, then the individual who raised the complaint would not be liable, as he was not the direct cause (*Mubashir*) rather, he was the distant cause (*Mutasabbib*).

However, due to the decadence of the time and the preponderance of mischief, Imam Muhammad ruled that the individual who raised the false complaint would also be liable.

Example 3:

If a debtor was refusing to pay the creditor, then it would be permissible for the creditor to take wealth of the **same** genus forcefully from the debtor.

However, after looking at the prevalence of negligence amongst the people, the later scholars ruled that the creditor may forcefully take wealth from the debtor be it from a different genus.



Summary

Allamah Ibn Abidin has written a treatise titled *Nashrul Arf Fi Bina'i' Ba'dil Ahkam Alal Urf* in which he has gathered many Masail which are based upon the norm. Almost all the Masail he has gathered fit under one of the categories mentioned above.

He then writes in this treatise:

فهذا كله وأمثاله دلائل واضحة على أن المفتي ليس له الجمود على المنقول في كتب ظاهر الرواية من غير مراعاة الزمان وأهله وإلا يضيع حقوقا كثيرة ويكون ضرره أعظم من نفعه

“Thus, all of the above are clear evidence that a Mufti must not be stagnant in relying upon the books of Zahir Al Riwayah, without considering the norm of the time. Otherwise, a Mufti may waste the rights of many.”

Ibn Abidin writes in Sharh Uqud Rasmil Mufti:

فإن قلت العرف يتغير مرة بعد مرة فلو حدث عرف آخر لم يقع في الزمان السابق فهل يسوغ للمفتي مخالفة النصوص واتباع العرف الحادث؟ قلت نعم! فإن المتأخرين الذين خالفوا المنصوص في المسائل المارة لم

Changing a Ruling due to Need and Necessity (تغيير الأحكام بالضرورة والحاجة)

The third reason due to which a ruling may be changed is a need or a necessity. The consideration of a need or necessity is supported by Qur'anic text.

Allah Ta'ala says:

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنْزِيرِ وَمَا أُهْلَ بِهِ لِغَيْرِ اللَّهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

“He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.”

[Al Baqarah: 173]

Allah Ta'ala says:

فَمَنْ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرِ مُتَجَانِفٍ لِإِثْمٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

“But whoever is forced by severe hunger with no inclination to sin - then indeed, Allah is Forgiving and Merciful.”

[Al Ma'idah: 3]

Allah Ta'ala says:

قُلْ لَا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنْزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا أُهْلَ لِغَيْرِ اللَّهِ بِهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ رَبَّكَ غَفُورٌ رَحِيمٌ

“Say, "I do not find within that which was revealed to me [anything] forbidden to one who would eat it unless it be a dead animal or blood spilled out or the flesh of swine - for indeed, it is impure - or it be [that slaughtered in] disobedience, dedicated to other than Allah . But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], then indeed, your Lord is Forgiving and Merciful.”

[Al An'am: 145]

Allah Ta'ala says:

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنْزِيرِ وَمَا أُهْلَ لِغَيْرِ اللَّهِ بِهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

“He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit] - then indeed, Allah is Forgiving and Merciful.”

[Al Nahl: 115]

Allah Ta'ala says:

وَمَا لَكُمْ أَلَّا تَأْكُلُوا مِمَّا دُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرِرْتُمْ إِلَيْهِ وَإِنَّ كَثِيرًا لَيُضِلُّونَ بِأَهْوَاءِهِمْ بِغَيْرِ عِلْمٍ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِالْمُعْتَدِينَ

“And why should you not eat of that upon which the name of Allah has been mentioned while He has explained in detail to you what He has forbidden you, excepting that to which you are compelled. And indeed do many lead [others] astray through their [own] inclinations without knowledge. Indeed, your Lord - He is most knowing of the transgressors.”

[Al An'am: 119]

Allah Ta'ala says:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

“And He has not placed upon you in the religion any difficulty.”

[Al Hajj: 78]

Allah Ta'ala says:

لَا يَكْلِفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

“Allah does not charge a soul except [with that within] its capacity.”

[Al Baqarah: 286]

Allah Ta'ala says:

فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ

“So fear Allah as much as you are able.”

[Al Taghabun: 16]

These verses show that Shari'ah has considered the concept of need (الحاجة) and necessity (الضرورة) in many of its rulings. This is to such an extent that Shari'ah has in times of necessity permitted those actions which have been indisputably prohibited.

Allamah Hamawi's Categorisation of the Various Situations of a Human Being

Allamah Hamawi states:

- 1) “A necessity (*Al Darūrah* – الضرورة) is when a person reaches a point where if he does not carry out a prohibited action, then there is a fear of said person dying or coming close to death. This type of situation makes a prohibited action permissible according to the requirement of the necessity.
- 2) A need (*Al Hājah* – الحاجة) is when a person reaches a point where if he does not carry out the prohibited action, then said person will experience difficulty and hardship. An example of this is a person who is hungry, if he does not eat, he shall experience difficulty and hardship.
- 3) A benefit (*Al Manfa'ah* – المنفعة) can be understood by the example of an individual who wishes to eat meat or bread.

- 4) A decoration/desire (*Al Zīnah* – الزينة) can be understood by the example of an individual who wishes to eat sweets and sugar
- 5) A surplus (*Al Fudhūl* – الفضول) can be understood by the example of an individual who gladly eats haram and doubtful items”

In summary, a need, decoration/desire or surplus will in no way affect a ruling. However, a necessity or a need may affect a ruling and so we will discuss these two concepts in further detail.

A Necessity (*Al Darurah* – الضرورة)

Allamah Abu Bakar Al Jassas in his discussion regarding the rulings pertaining to severe hunger (*Al Makmasah* – المخمصة) has defined a necessity (*Al Darurah* – الضرورة) as:

الضَّرُورَةُ هِيَ خَوْفُ الضَّرَرِ بِتَرْكِ الْأَكْلِ إِمَّا عَلَى نَفْسِهِ أَوْ عَلَى عُضْوٍ مِنْ أَعْضَائِهِ

“A necessity (*Al Darurah* – الضرورة) is when one fears that one will be afflicted with harm or one’s body part will be afflicted with harm should one avoid eating [haram]”

Although this definition has been made specific with regards to *eating* haram, it would be possible to consider this definition (i.e. fear of harm afflicting one’s self or one’s limbs) of necessity (*Al Darurah* – الضرورة) when permitting other prohibited actions in the presence of necessity (*Al Darurah* – الضرورة).

In order to establish a necessity (*Al Darurah* – الضرورة), the following conditions must be found:

- 1) There must be a conviction of a fear of one’s life or limb
- 2) The fear of one’s life or limb must be present and not awaited, i.e. a condition which *may lead* to one fearing for one’s life or limb will not be considered a necessity.
- 3) There is no possible way of alleviating the fear through halal means and there is a strong conviction of alleviating the fear through haram means
- 4) The haram means of alleviating the fear must not endanger someone else’s life or limb

When the above are found, a necessity (*Al Darurah* – الضرورة) will be established. In such a case, it will be permissible to carry out a prohibited action in relation to the requirements of the necessity and the principle, ‘necessity relaxes prohibition’, may be acted upon.

Example:

If an individual is hungry such that he fears for his life and does not have any food except haram meat, then it is permissible for such an individual to eat enough haram meat to alleviate the fear of death, not exceeding this. It is permissible for such an individual to eat haram meat because all the conditions to establish a necessity (*Al Darurah* – الضرورة) have been found.

Muhammad Tahir Al Atasi’s Categorisation of the Prohibited Actions

Allamah Muhammad Tahir Al Atasi has categorised the prohibited actions into three categories:

- 1) A forbidden action that becomes permissible in the presence of necessity (*Al Darurah* – الضرورة)

Example:

Eating haram food will become permissible in the presence of necessity (*Al Darurah* – الضرورة), such as when an individual fears for his life or his limb due to severe hunger or is being forced to consume the haram food with the fear that declining to do so will endanger his life or his limb.

The evidence for the permissibility of eating the haram food in the presence of necessity (*Al Darurah* – الضرورة) is found in the Qur'an. Allah the Almighty says:

وَمَا لَكُمْ أَلَّا تَأْكُلُوا مِمَّا دُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرِرْتُمْ إِلَيْهِ

“And why should you not eat of that upon which the name of Allah has been mentioned while He has explained in detail to you what He has forbidden you, excepting that to which you are compelled through [necessity (*Al Darurah* – الضرورة)].”

Hence, considering that compulsion through necessity (*Al Darurah* – الضرورة) is an exception to those things that Allah has forbidden, one may understand that in the presence of compulsion through necessity (*Al Darurah* – الضرورة), a forbidden action no longer remains forbidden.

Implication:

If a forbidden action is such that it becomes permissible in the presence of necessity (*Al Darurah* – الضرورة); if a necessity (*Al Darurah* – الضرورة) is found and the individual does not carry out that forbidden action, then he will be sinful. This is because, in the presence of necessity (*Al Darurah* – الضرورة), the forbidden action has now become permissible. Therefore, refusing to carry out a permissible action to save one's own life or limb is deserved of sin.

- 2) A forbidden action that remains forbidden and does not become permissible in the presence of necessity (*Al Darurah* – الضرورة), however, there is a leeway (*Al Ruksah* – الرخصة) in carrying it out in the presence of necessity (*Al Darurah* – الضرورة)

Examples:

- Destroying the wealth of a Muslim
- Falsely accusing (قذف) another Muslim
- Utter the words of disbelief (كفر)
- To look at a person's private parts

Hence, in the above actions, if a necessity (*Al Darurah* – الضرورة) is found, such that declining to do so will endanger one's life or limb, then there is a leeway (*Al Ruksah* – الرخصة) in carrying out the forbidden action. The forbidden action will not become permissible, rather, in cases of necessity (*Al Darurah* – الضرورة); one will be exonerated from sin if he carries out the forbidden action.

Implication:

If a forbidden action is such that it remains forbidden and does not become permissible in the presence of necessity (*Al Darurah* – الضرورة), however, there is a leeway (*Al Ruksah* – الرخصة) in carrying it out in the presence of necessity (*Al Darurah* – الضرورة); if a necessity (*Al Darurah* – الضرورة) is found and the individual carries out the forbidden action, he will *not* be sinful. However, if he refuses to carry out the forbidden action, then he shall receive reward.

- 3) A forbidden action that remains forbidden and does not become permissible in the presence of necessity (*Al Darurah* – الضرورة), there is also *no* leeway in carrying it out in the presence of necessity (*Al Darurah* – الضرورة)

Examples:

- Killing a Muslim
- To take away the limb of a Muslim
- To commit adultery
- To hit one's parents

Implication:

If a forbidden action is such that it remains forbidden and does not become permissible in the presence of necessity (*Al Darurah* – الضرورة), and there is no leeway in carrying it out in the presence of necessity (*Al Darurah* – الضرورة); if a necessity (*Al Darurah* – الضرورة) is found and the individual carries out the forbidden action, he *will* be sinful.

A Need (*Al Hajah* – الحاجة)

A need (*Al Hajah* – الحاجة) is defined as an act which if not carried out, may cause difficulty or hardship even if this difficulty or hardship does not involve a loss of life or limb.

A need (*Al Hajah* – الحاجة) is of two types:

- 1) *Al Hajah Al Ammah* (الحاجة العامة): it is a need (*Al Hajah* – الحاجة) required by all people or most of them
- 2) *Al Hajah Al Khasah* (الحاجة الخاصة): it is a need (*Al Hajah* – الحاجة) required by a group of people

The Fuqaha have mentioned that an *Al Hajah Al Ammah* (الحاجة العامة) or *Al Hajah Al Khasah* (الحاجة الخاصة) can have the same effect in changing a ruling as a necessity (*Al Darurah* – الضرورة). However, Mufti Taqi Sahib laments that he has not seen anyone clearly distinguish between the effect of a necessity (*Al Darurah* – الضرورة) and the effect of a need (*Al Hajah* – الحاجة).

Mufti Taqi Sahib:

I feel that a need (*Al Hajah* – الحاجة) can have an effect upon a ruling in two instances:

- 1) When the action should clearly be impermissible, however, the Qur'an or Sunnah have explicitly mentioned that the need (*Al Hajah* – الحاجة) should be considered and the action should be considered permissible

Examples:

- Bay' Salam

A Bay' Salam is technically a forward sale and should therefore be impermissible. However, there is a need for Bay' Salam and the Qur'an and Sunnah have explicitly mentioned that this need (*Al Hajah* – الحاجة) should be considered

- Wearing silk during war or illness

Wearing silk is generally considered impermissible for males. However, there is a need for wearing silk during war or illness and the Sunnah has considered this need

- 2) When the action is *not* clearly impermissible from the Qur'an or Sunnah and the ruling of impermissibility has been achieved through Ijtihad (مجتهد فيه)

Example:

A woman uncovering her face

Although uncovering the face is generally considered impermissible for a woman, the impermissibility has not been clearly expressed in the Qur'an or Sunnah. Hence, in times of need (*Al Hajah* – الحاجة) such as giving a testimony in a court case or walking in a large crowd, it would be permissible for a woman to uncover her face.

As for the rulings which have been *clearly* mentioned in the Qur'an or Sunnah, a need (*Al Hajah* – الحاجة) will have no effect upon these rulings.

The Issue of the Maxim: "A need is considered equivalent to a necessity, irrespective of whether the need is general or specific" - الحاجة تنزل منزلة الضرورة عامة كانت أو خاصة

Some Fuqaha have mentioned the maxim "a need is considered equivalent to a necessity, irrespective of whether the need is general or specific". The apparent meaning of this maxim is very broad, such that it has made some people mistakenly assume that a need is effective in permitting some of that which is explicitly and indisputably prohibited, just as how the consumption of dead meat and pork is permitted when there is a dire necessity.

However, what seems apparent after studying the examples that the Fuqaha have mentioned under this maxim is that this broad meaning is not the intended meaning. Otherwise, every indisputably prohibited action would become permissible based upon the fact that a need, be it a specific need, permits this. This will lead to a complete abandonment of the noose of Shari'ah.

Rather, the purpose of this maxim is to mention the wisdom behind some of those rulings that have been established either through the evidential texts or through common practice which contradict the dictates of analogical deduction. Examples of this include forward sales (*Bay' Al Salam*), leasing (*Al Ijarah*), and

manufacturing (*Al Istisna'*), and other similar transactions. Indeed, these transactions are considered permissible despite them apparently contradicting the dictates of analogical deduction; which is that they involve the sale of something which does not exist. However, the Shari'ah has excluded these transactions from the ruling of impermissibility of selling that which does not exist, due to the needs of the people. This indicates that the honourable Shari'ah has taken into consideration the needs of the people in its rulings, thus it has permitted many transaction in order to fulfil their needs.

What we have mentioned becomes clearer through the examples mentioned by the Fuqaha who have discussed this maxim. For indeed, they have not bought an example except that its ruling is found in the Qur'an, Sunnah, or common practice. So, it is evident through this that in order to consider a need equivalent to a necessity in some rulings, it is necessary for an evidence from Shari'ah to be found; such as it being mentioned by an evidential text, or its ruling is established through the norm and common practice. It does not mean that using the maxim, one may establish a ruling which contradicts the clear and indisputable evidential texts.

It seems to this humble servant, may Allah forgive him, that this maxim is a problem for many:

- 1) If we were to take the apparent meaning of this maxim, then there would remain no difference between a necessity and a need, whereas this is contrary to what the majority of scholars have agreed upon
- 2) The legal definition of necessity in jurisprudence provides a concession in prohibited actions, a temporary concession which is limited to the requirements of the necessity. This is expressly mentioned in the words of Allah the Almighty:

غير باغ ولا عاد

“Neither desiring [it] nor transgressing [its limit]”

This is whilst the examples the Fuqaha have given under the maxim of ‘a need shall be considered equivalent to a necessity’ are not temporary. Rather, they are permanent rulings not restricted to a certain time. For example, the permissibility of forward sales (*Bay' Al Salam*), or manufacturing (*Al Istisna'*), etc. Thus, how can it be said that a need is considered equivalent to a necessity in all rulings?!

- 3) The examples which have been mentioned by the Fuqaha under this maxim are all found in an evidential text or they are found in common practice. As for those examples they have mentioned under this maxim which are not found in the evidential texts or common practice, such as the permissibility for a person in need to take an interest-bearing loan, this is restricted to a state of desperation. Therefore, it falls under the legal definition of necessity, not just a need.
Similarly, Ibn Nujaym Rahimahullah (d.970 AH) has mentioned the permissibility of a promisory transaction (*Bay' Al Wafa'*) under this maxim. However, the permissibility of a promisory transaction (*Bay' Al Wafa'*) is, firstly, disputed, and secondly, whoever has considered it permissible has done so upon the basis that a well-known condition amongst businessmen does not make a transaction defective.

It is for these reasons that Shaykh Ahmad Al Zarqa Rahimahullah states in the commentary of this maxim:

والظاهر أن ما يجوز للحاجة إنما يجوز فيما ورد فيه نص يجوز أو تعامل أو لم يرد فيه شيء منهما ولكن لم يرد فيه نص يمنع بخصوصه وكان له نظير في الشرع يمكن إلحاقه به وجعل ما ورد في نظيره واردا فيه

“The apparent is that whatever is permissible due to a need is permissible when there is an evidential text (Nas) permitting it or there is a common practice, or there is nothing is found from either of these however an evidential text (Nas) prohibiting it specifically is not found and there is a similar ruling to it in Shari'ah which this [ruling] may be attached to and make that which has come to permit that ruling applicable to this ruling”

The truth is that the types of needs which play a role in changing some rulings are indeed difficult to encapsulate using concise and accurate guidelines. The influential factor in this regard is one's jurisprudential ability and a

sound sense which cannot be achieved by studying books alone. Rather, it requires for one to practice for a lengthy period in the company of an able jurist who, on one hand, has great proficiency in jurisprudence, and on the other hand, has an understanding of the state of the people. It is for this reason that Ibn Abidin Rahimahullah relates from Munyah Al Mufti:

لو أن الرجل حفظ جميع كتب أصحابنا لا بد له أن يتتلمذ للفتوى حتى يهتدى إليه

“If a man memorises all the books of our Fuqaha, it is [still] necessary for him to study under a teacher on how to issue a Fatwa, until he gains the capability to do so”

Changing a Ruling for Purposes of Prevention (تغيير الأحكام لسد الذرائع)

At times, an action may itself be permissible. However, it is considered impermissible as it may cause one to commit a sinful action. This ability to lead to a sinful action may be stronger in some ages than others and therefore the ruling of this action will change from time to time.

Definition of a ‘means’ (الذريعة) in linguistics:

مَا يُتَوَصَّلُ بِهَا إِلَى شَيْءٍ آخَرَ

“That which is used to get to something”

Definition of a ‘means to sin’ (الذريعة) in Shari’ah as defined by Ibn Rushd Al Maliki (d.595 AH):

هِيَ الْأَشْيَاءُ الَّتِي طَاهِرُهَا الْإِبَاحَةُ وَيُتَوَصَّلُ بِهَا إِلَى فِعْلِ الْمَحْظُورِ

“It is those things which are apparently permissible, however, they have the ability to lead one to commit a sinful action”

Definition of a ‘means to sin’ (الذريعة) in Shari’ah as defined by Al Qurtubi:

الذَّرِئَةُ عِبَارَةٌ عَنْ أَمْرٍ غَيْرِ مَمْنُوعٍ فِي نَفْسِهِ يُخَافُ مِنْ ارْتِكَابِهِ الْوُقُوعُ فِي مَمْنُوعٍ

“A means [to sin] is a phrase used to mean something which is not impermissible in itself, however, it is feared that by performing it, one may commit something that is impermissible”

Evidence of the Consideration of a ‘means’ to sin in Shari’ah

Allah the Almighty says:

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ

“And do not insult those who call to [beings] other than Allah, [as by doing so] they will insult Allah out of enmity and without knowledge”

[Surah Al An’am, verse 108]

Hence, insulting the idols of the polytheists is in itself not reprehensible. However, Allah has prohibited it as it may lead to the polytheists retorting to the insults aimed at their supposed gods by insulting Allah the Almighty.

Types of Means to Evil

There are two types of means to sin:

- 1) The means to sin which have been blocked by the Shari’ah with an evidential text from the evidential texts of Shari’ah, such as as how the Qur’an has prohibited one from cursing the supposed gods of the

disbelievers in the aforementioned verse or how the Prophet Sallallahu Alayhi Wasallam has prohibited on-spot usury as it is a means towards deferred usury – which is the usury prohibited by the Qur'an.

Thus, to avoid these means to sin is necessary due to the evidential text, even *if* in a specific scenario these means do *not actually* lead to sin, however, these means have become prohibited within themselves after the evidential text of the Shari'ah has explicitly prohibited them. Thus, the cause (Illah) behind the prohibition of these means is longer that they are means to evil, rather, the cause (Illah) of their prohibition is the evidential text of Shari'ah. The fact that they are means to evil is a mere wisdom, and, as we have discussed, a ruling is based upon its cause (Illah), not its wisdom.

- 2) The means to sin which have not explicitly been blocked by the Shari'ah, however, they lead to a sin which has been explicitly prohibited by the Shari'ah. It is these paths over which a difference in ruling may occur due to a change in the situation of the time.

The example of this is that Allah, the Glorified, the Exalted, has permitted for the Muslims to marry Christian and Jewish women. Thus, the Almighty says:

اليوم أحل لكم الطيبات وطعام الذين أوتوا الكتاب حل لكم وطعامكم حل لهم والمحصنات والمؤمنات من الذين أوتوا الكتاب من قبلكم إذا آتيتموهن أجورهن محصنين غير مسافحين ولا متخذي أخدان

This day [all] good foods have been made lawful, and the food of those who were given the Scripture is lawful for you and your food is lawful for them. And [lawful in marriage are] chaste women from among the believers and chaste women from among those who were given the Scripture before you, when you have given them their due compensation, desiring chastity, not unlawful sexual intercourse or taking [secret] lovers."

[Surah Al Ma'idah, verse 5]

To marry a Christian or Jewish woman is in itself permissible through the text of the Qur'an. The Qur'an has not mentioned any detestability in this regard. However, when our master, 'Umar Radiyallahu Ta'ala Anhu saw that this was leading to many problems during his time, he stopped people from doing this, to such an extent that he commanded Hadrat Hudhaifah ibn Al Yaman Radiyallahu Anhu to separate from his Jewish wife. Thus, Imam Muhammad Rahimahullah has narrated from Imam Abu Hanifah Rahimahullah who has narrated from Hammad ibn Abi Sulayman who has narrated from Ibrahim Al Nakha'i' who has narrated that Hadrat Hudhaifah ibn Al Yaman Radiyallahu Anhu married a Jewish woman from the [?], so Hadrat Umar ibn Al Khattab Radiyallahu Anhu wrote to him that he should let her go her way (i.e. give her a divorce). Hadrat Hudhaifah inquired from him:

أحرام هي يا أمير المؤمنين؟

"Is it haram oh leader of the believers?"

So Hadrat Umar Radiyallahu Anhu wrote back:

اعزم عليك أن لا تضع كتابي هذا حتى تخلص سبيلها فإني أخاف أن يقتديك المسلمون فيختار نساء أهل الذمة لجماهن وكفى بذلك فتنه لنساء المسلمين

"I stress to you that you do not put this letter of mine away until you have sent her on her way (i.e. divorced her), for indeed I fear that the Muslims shall follow you, and will choose the women of the Christian citizens, and this is a sufficient tribulation for the Muslim women"

Imam Muhammad Rahimahullah then states:

وبه نأخذ لا نراه حراما ولكننا نرى أن يختار عليهن نساء المسلمين وهو قول أبي حنيفة رحمه الله

“It is this view that we take, we do not see it as haram. Rather, we see that he (a Muslim man) should choose the Muslim women over them. This is the view of [Imam] Abu Hanifah Rahimahullah”

Ibn Al Hummam Rahimahullah states:

ويجوز تزويج الكتابيات والأولى أن لا يفعل ولا يأكل ذبيحتهم إلا للضرورة وتكره الكتابية الحربية إجماعا لانفتاح باب الفتنة من إمكان التعلق المستدعى للمقام

معها في دار الحرب وتعريض الولد على التخلق بأخلاق أهل الكفر وعلى الرق بأن تسبى وهي حبلى فيولد رقيقا وإن كان مسلما

“It is permissible to marry Christian and Jewish women, though it is better for him not to. He should not eat their slaughtered animals except when there is a necessity. It is detestable by consensus to marry a Christian and Jewish woman from the Ahl Al Harb as it will open the doors of evil due to the possibility that the relationship may make him want to live with her in Dar Al Harb, and to endanger the child by exposing to him the characteristics of the people of disbelief and by creating the possibility that the child may become enslaved in the scenario that the wife is captured while pregnant, thus she would give birth to a slave, if though he is a Muslim”

‘Allamah Al Dardir has mentioned in Al Sharh Al Kabir that it is permissible to marry a Christian or Jewish woman when there is coercion upon the husband, according to Imam Malik. This coercion becomes more severe when the marriage takes place in a Dar Al Harb.

‘Allamah Shirazi said in Al Muhadhab:

ويكره أن يتزوج حرائرهم وأن يطأ إماءهم بملك اليمين لأننا لا نأمن أن يميل إليها فتفتنه عن الدين أو يتولى أهل دينها فإن كانت حربية فالكرهية أشد لأنه لا يؤمن ما ذكرناه ولأنه يكثر سواد أهل الحرب

“And it is detestable to marry their free women and to have intercourse with their slaves through possession, for we are not confident that he will not be inclined towards her such that she creates corruption in [his] religion or that he befriends the people of her religion, and if she is from amongst the people of Darul Harb, then the detestability is stronger, as there is no confidence that what we have mentioned will not occur and also because it increases the number of the people of Darul Harb”

Ibn Qudamah Rahimahullah states in Al Mughni:

الأولى أن لا يتزوج كتابية لأن عمر قال للذين تزوجوا من نساء أهل الكتاب طلقوهن فطلقوهن

“It is better not to marry a woman from the people of scripture as ‘Umar [Radiyah Anhu] said to the ones who had married women from the people of the scripture, ‘Divorce them’, and so they divorced them”

Thus, in the above quotations, Hadrat Umar Radiyallahu Anhu and the four schools of thought have made detestable that which was permissible and undetestable according to the text of the Qur’an based upon the fact that it is a path to evil. This was the ruling at a time when Islam and the Muslims were in power, so what do you think will be the ruling in this age of ours in which the Muslims have become politically and culturally overpowered. Hence, the fitnah (evil) in marrying Christian or Jewish women in our age is stronger and its results are worse. May Allah save us.

The Fuqaha have exercised this in many Masail on the basis of closing the paths to evil. Other examples of this include:

- The Prophet Sallallahu Alayhi Wasallam permitted for women to perform Salah in the Mosque. In fact it has been narrated from the Prophet Sallallahu Alayhi Wasallam that he said:

“Do not stop the women servant of Allah from visiting the Mosques of Allah”

However, when our master, Hadrat Umar Radiyallahu Anhu saw during his time that this permissibility is leading to fitna (evil), he stopped the women from coming to the Masjid. Hadrat ‘Aishah Radiyallahu Anha said:

لو أدرك النبي صلى الله عليه وسلم ما أحدث النساء لمنعهن المسجد كما منعت نساء بني إسرائيل

“If the Prophet Sallallahu Alayhi Wasallam were to observe what has happened to the women [of our time], he would indeed prohibit them from [coming to] the Masjid, just as the women of Banu Isra’il were prohibited”

This was also based upon what the Prophet Sallallahu Alayhi Wasallam said:

لا تمنعوا إماء الله مساجد الله ولكن ليخرجن وهن تفلات

“Do not stop the women servants of Allah from the Mosques of Allah, however, they should leave [for the Mosque] in a dishevelled state”

In the narration of Hadrat Ibn Umar Radiyallahu Anhuma, the Prophet Sallallahu Alayhi Wasallam said:

لا تمنعوا نساءكم المساجد وبيوتن خير لهن

“Do not stop the women servants of Allah from the Mosques of Allah, and their houses are better for them”

In another narration, the Prophet Sallallahu Alayhi Wasallam said:

صلاة المرأة في بيتها أفضل من صلاتها في حجرتها وصلاتها في مخدعها أفضل من صلاتها في بيتها

“The Salah of a woman in her inner-house is better than her Salah in her house, and her Salah in her room is better than her Salah in her inner-house”

The coming of the women to the Masjid during the Prophet Sallallahu Alayhi Wasallam’s time was something that was permissible, it was not considered preferable. In fact, this permissibility was on condition that there would be no fitna (evil); this is why the Prophet Sallallahu Alayhi Wasallam added the condition that the women can only leave in dishevelled clothing. Thus, when it was feared that the permissibility would lead to fitna (evil), our master Hadrat Umar Radiyallahu Anhu reverted to that which was indisputably more preferable; indeed, this was on the basis of blocking the paths to evil.

A few examples of Sad Al Dhari’ah (blocking the paths to sin) according to the Hanafi Madhab include:

- When a woman marries a man who is not compatible for her (*Ghair Kufu*) without the permission of her guardian (*Wali*), then according to the original position of the Madhab, the marriage will take place, however, the guardian shall have the right to object which would allow a judge to annul the marriage. However, there is also a narration from Hasan ibn Ziyad Rahimahullah that the marriage will not take place at all.

Thus, the later Hanafi scholars issued a Fatwa according to this narration in order to block the path to sin. It is mentioned in Al Dur Al Mukhtar:

ويبقى في غير الكفو بعدم جوازه أصلا وهو المختار للفتوى لفساد الزمان

“And Fatwa shall be given when compatibility [in the marriage] is not found upon the view that it shall not be permissible at all, and this is the preferred view for Fatwa due to the corruption of the time”

- Similarly, the original Hanafi position is that if a woman becomes an apostate – Allah forbid – then her marriage with her husband shall be automatically annulled. She will then be forced to accept Islam once again and re-perform her marriage, if her husband wants to marry her. However, the Fuqaha of Samarqand and Balkh hold the view that some women misuse this ruling as a means of escaping their husbands through apostasy – Allah forbid. Thus, these Fuqaha issued a Fatwa that the marriage of an apostate woman shall remain valid and shall not be automatically invalid; in order to block the path to sin.

Outlining the Actions which are to be considered Paths to Sin is a Matter of Ijtihad

Indeed, the blocking those paths to sin which the Shari’ah has not explicitly mentioned is a matter of Ijtihad, and at times, the view of the Fuqaha differ in this regard. Thus, some of them view some actions as clear paths to committing a prohibited action, this makes them view these actions in the same meaning as a prohibited action, therefore blocking the path to sin, while other do not view the same.

An example of this is the transaction known as Bay’ Al ‘Inah.

Imam Malik Rahimahullah has disliked Bay’ Al ‘Inah and has considered it impermissible in general.

Whereas, Imam Al Shafi’i’ has held the view that it is permissible as long as the conditions of a valid transaction are maintained. This is because Bay’ Al ‘Inah is a transaction and not usury.

The Hanafi Fuqaha have differed over the issue of Bay’ Al ‘Inah. Imam Muhammad Rahimahullah states:

هَذَا الْبَيْعُ فِي قَلْبِي كَأَمْتَالِ الْجِبَالِ ذَمِيمٌ اخْتَرَعَهُ أَكَلَةُ الرِّبَا

“This transaction is like a mountain in my heart, it is [a] vilified [transaction which] the consumers of usury have invented it”

This is whilst Imam Abu Yusuf says:

الْعَيْنَةُ جَائِزَةٌ مَأْجُورَةٌ

“[Bay’] Al ‘Inah is permissible and rewarding”

Imam Abu Yusuf also says:

أَجْرُهُ لِمَكَانِ الْفَرَارِ عَنِ الْحَرَامِ

“It is virtuous because it allows one to escape from haram”

Ibn Al Hummam has then endeavoured to reconcile between the two views, so he says:

تَمَّ الَّذِي يَقَعُ فِي قَلْبِي أَنَّ مَا يُخْرِجُهُ الدَّافِعُ إِنْ فُعِلَتْ صُورَةٌ يَعُودُ فِيهَا إِلَيْهِ هُوَ أَوْ بَعْضُهُ كَعُودِ التَّوْبِ أَوْ الْحَرِيرِ فِي الصُّورَةِ الْأُولَى وَكَعُودِ الْعَشْرَةِ فِي صُورَةِ إِفْرَاضِ الْخُمْسَةِ عَشَرَ فَمَكْرُوهٌ وَإِلَّا فَلَا كَرَاهَةَ إِلَّا خِلَافَ الْأَوَّلَى عَلَى بَعْضِ الْإِحْتِمَالَاتِ كَأَنَّ يَحْتَاجُ الْمُدْيُونُ فَيَأْتِي الْمَسْئُولُ أَنْ يُقْرِضَ بَلْ أَنْ يُبَاعَ مَا يُسَاوِي عَشْرَةَ بِخُمْسَةِ عَشَرَ إِلَى أَجَلٍ فَيَشْتَرِيهِ الْمُدْيُونُ وَيَبِيعُهُ فِي السُّوقِ بِعَشْرَةِ خَالَةٍ وَلَا بَأْسَ فِي هَذَا فَإِنَّ الْأَجَلَ قَابِلُهُ قِسْطٌ مِنَ الثَّمَنِ وَالْقَرْضُ غَيْرُ وَاجِبٍ عَلَيْهِ دَائِمًا بَلْ هُوَ مُنْدُوبٌ فَإِنْ تَرَكَهُ بِمَجَرَّدِ رَغْبَةٍ عَنْهُ إِلَى زِيَادَةِ الدُّنْيَا فَمَكْرُوهٌ أَوْ لِعَارِضٍ يُعَذَّرُ بِهِ فَلَا وَإِنَّمَا يُعْرِضُ ذَلِكَ فِي خُصُوصِيَّاتِ الْمَوَادِّ وَمَا لَمْ تَرْجِعْ إِلَيْهِ الْعَيْنُ الَّتِي خَرَجَتْ مِنْهُ لَا يُسَمَّى بَيْعَ الْعَيْنَةِ

Indeed, Imam Al Shatibi Rahimahullah has researched the issue of Sad Al Dhari'ah in matters of Ijtihad such as this with a robust statement, we shall present some of it due to its benefits. He, Rahimahullah, states:

فإن الذرائع على ثلاثة أقسام

- (1) منها ما يسد باتفاق كسب الأصنام مع العلم بأنه مؤد إلى سب الله تعالى وكسب أبوي الرجل إذا كان مؤديا إلى سب أبوي الساب فإنه عد في الحديث سبا من الساب لأبوي نفسه وحفر الآبار في طرق المسلمين مع العلم بوقوعهم فيها وإلقاء السم في الأطعمة والأشربة التي يعلم تناول المسلمين لها
 - (2) ومنها ما لا يسد باتفاق كما إذا أحب الإنسان أن يشتري بطعامه أفضل منه أو أدنى من جنسه فيتحيل ببيع متابعه ليتوصل بالثمن إلى مقصوده بل كسائر التجارات فإن مقصودها الذي أبيحت له إنما يرجع إلى التحيل في بذل دراهم في السلعة ليأخذ أكثر منها
 - (3) ومنها ما هو مختلف فيه ومساءلتنا من هذا القسم فلم نخرج عن حكمه بعد والمنازعة باقية فيه
- وهذه جملة ما يمكن أن يقال في الاستدلال على جواز التحيل في المسألة وأدلة الجهة الأخرى مقررة واضحة شهيرة فطالعتها في مواضعها وإنما قصد هنا هذا التقرير الغريب لقللة الاطلاع عليه من كتب أهل إكسب الطالب نفورا وإنكارا لمذهب غير مذهبه من غير إطلاع على مأخذه فيورث ذلك حزاة في الاعتقاد في الأئمة الذين أجمع الناس على فضلهم وتقدمهم واحد ربما يكسب الطالب نفورا وإنكارا لمذهب غير مذهبه من غير إطلاع على مأخذه فيورث ذلك حزاة في الاعتقاد في الأئمة الذين أجمع الناس على فضلهم وتقدمهم في الدين واضطلاهم بمقاصد الشارع وفهم أغراضه وقد وجد هذا كثيرا

“Surely, the means are of three types:

- 1- Those [means] which are blocked by consensus such as to insult an idol knowing that it will lead to an insult towards Allah the Almighty and to insult the parents of an individual when this leads to an insult towards the insulter's parents for indeed this has been considered in the Hadith to be an insult from the insulter towards his own parent, and [such as] to dig a well in the path of the Muslims whilst knowing that they will fall in it, and to put poison inside food or drink which it is known that it will be consumed by Muslims
- 2- Those [means] which are by consensus not blocked such as if a human wishes to buy using the food that he has that [food] which is better than it, so he intelligently sells it so that he may earn the money with which he may attain his objective. In fact, all transactions [are like this] for the objective for which they have been permitted is to spend money in [attaining] a product so that he may make more than it
- 3- Those [means] which are disputed, and our situation pertains to these, so we shall not leave this discussion while the dispute still exists in this type”

Conclusion

In summary, the Fuqaha have considered the notion of blocking the path to sin a principle upon which they have based many rulings.

After studying the rulings which are based upon the principle of blocking the path to sin, it seems that the conclusion is:

If a permissible action leads to a prohibited action with certainty or almost certainty, then it shall be ruled that the permissible action is impermissible. This is because whatever leads to a prohibited action is also prohibited.

As for when a permissible action is such that it could to an impermissible action, but not with certainty or almost certainty, then the permissible action shall not be explicitly ruled as impermissible. Rather, a Mufti will adopt an appropriate phrase which stop the questioner from carrying out the permissible action; for example, the Mufti could say, “it is not appropriate for you to...” or “it is appropriate to refrain from...” or “I would not give permission to...” or “I would advise you not to...”, and other similar phrases.

This is also what the Prophet Sallallahu Alayhi Wasallam did when he stopped Hadrat Ali Radiyallahu Anhu from marrying the daughter of Abu Jahl. Thus, the Prophet Sallallahu Alayhi Wasallam said:

فَلَا آدَنُكُمْ لَا آدَنُكُمْ إِلَّا أَنْ يُرِيدَ ابْنُ أَبِي طَالِبٍ أَنْ يُطَلِّقَ ابْنَتِي وَيَنْكِحَ ابْنَتَهُ فَإِنَّمَا هِيَ بَضْعَةٌ مَيِّ يُرِيدُنِي مَا أَرَاهَا وَيُؤْذِنُنِي مَا آذَاهَا

“I will not permit and I will not permit and I will not permit, except if the son of Abu Talib (Hadrat Ali Radiyallahu Anhu) divorces my daughter and then marries his daughter, for indeed she is a part of me, whatever makes her suspicious makes me suspicious and whatever hurts her hurts me”

In another narration, he said:

إِنَّ فَاطِمَةَ مِنِّي وَأَنَا أَتَخَوَّفُ أَنْ تُفْتَنَ فِي دِينِهَا

“Verily, Fatimah is from me, and I fear that [by marrying the daughter of Abu Jahl] it will create tribulations for her in her religion”

However, in the same narration, the Prophet Sallallahu Alayhi Wasallam states:

وَإِنِّي لَسْتُ أُحَرِّمُ حَلَالًا وَلَا أُجِلُّ حَرَامًا وَلَكِنَّ اللَّهَ لَا يَجْتَمِعُ بِنْتُ رَسُولِ اللَّهِ وَبِنْتُ عَدُوِّ اللَّهِ أَبَدًا

“Verily, I do not prohibit that which is halal, nor do I permit that which is haram, rather, I swear by Allah that the daughter of the Messenger of Allah and the daughter of the enemy of Allah can never come together”

Thus, the Prophet Sallallahu Alayhi Wasallam explicitly mentioned that the marriage between Hadrat Ali Radiyallahu Anhu and the daughter of Abu Jahl is not prohibited in itself, however, it is feared that due to it a greatly prohibited action would occur; which is to hurt the Prophet Sallallahu Alayhi Wasallam due to his noble daughter being hurt by having the daughter of Abu Jahl as her fellow wife.

It is also clear from this Hadith that deciding whether a means to sin should be blocked or not shall differ from person to person and from time to time. Thus, the only way to understand this is to develop a jurisprudential capability and sound sense which cannot be achieved except by continuously practicing this field under the supervision of the masters of this field.

The Laws of Iftā and its Methodology (أحكام الإفتاء ومنهجه)

An Introduction to the Laws of Iftā and its Methodology (التمهيد)

We shall discuss in this chapter regarding when it is necessary (wajib) for a Mufti to give an answer and when it is forbidden (haraam) for him to do so. We shall also discuss regarding when he has a right to refuse answering a question and the methodology that is necessary (wajib) for a Mufti to adopt.

When is it necessary (wajib) to give a Fatwā? (متى يجب الإفتاء؟)

The principle is that the service of giving Fatwas is compulsory in a general capacity (*Farḍ Kifāyah* - فرض كفاية) upon a Mufti - who is capable of issuing a Fatwa – when there are other capable Muftis available. Thus, if some of the capable Muftis come forward to issue a Fatwa, then it is not longer necessary on the other capable Muftis to issue a Fatwa.

Imam Al Nawawi Rahimahullah states:

وَإِنْ كَانَ جَمَاعَةٌ يَصْلُحُونَ فَطَلَبَ ذَلِكَ مِنْ أَحَدِهِمْ فَأَمْتَنَعَ فَهَلْ يَأْتِمُّ؟ ذَكَرُوا وَجْهَيْنِ فِي الْمُمْتَنِي وَالظَّاهِرُ جَرَيَانُهُمَا فِي الْمُعَلِّمِ وَهُمَا كَالْوَجْهَيْنِ فِي امْتِنَاعِ أَحَدِ الشُّهُودِ وَالْأَصَحُّ لَا يَأْتِمُّ

“If there is a group of people who are capable of giving Fatwa and one of them is asked for a Fatwa and he refuses, shall he be sinful? The Ulama have mentioned two views on this matter. However, it seems that this difference of opinion is over a teacher who refuses to teach and the two views are the same as the two views regarding a witness who refuses to give a testimony. The correct view is that he will not be sinful”

However, the service of giving Fatwa will become compulsory in an individual capacity (Fard 'Ayn - فرض عين) in the following scenarios:

- 1) If he has been asked a question in a place where there are no other Muftis, and he has the capability of issuing a Fatwa²⁸⁴

Allah Ta'ala says:

إِنَّ الَّذِينَ يَكْتُمُونَ مَا أَنزَلْنَا مِنَ الْبَيِّنَاتِ وَالْهُدَىٰ مِنْ بَعْدِ مَا بَيَّنَّاهُ لِلنَّاسِ فِي الْكِتَابِ أُولَٰئِكَ يَلْعَنُهُمُ اللَّهُ وَيَلْعَنُهُمُ اللَّاعِنُونَ

“Indeed, those who conceal what We sent down of clear proofs and guidance after We made it clear for the people in the Scripture - those are cursed by Allah and cursed by those who curse”

[Surah Al Baqarah, verse 159]

- 2) If he has been asked a question and the questioner is in need of an answer quickly such that it is feared that he will commit a wrong if he is not answered quickly, such as if a person is asked a question regarding a Mas'alah pertaining to Salah, and there is such little time left for Salah that the questioner does not have the time to ask another Mufti, and the Mufti knows the ruling, then the Mufti is required to issue a Fatwa. This is also based upon the verse of Surah Baqarah mentioned in the previous point.

- 3) If a capable person is appointed a Mufti by the leader, then it is necessary on a personal capacity (Fard Ayn) for him to issue Fatawa. This is based upon what Allah the Almighty has said:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ

“Oh you who believe! Obey Allah and obey the Messenger and the leaders amongst you”

[Surah Al Nisa, verse 59]

When will giving a Fatwa be considered impermissible? (متى يحرم الإفتاء؟)

We have mentioned the conditions for being a Mufti in that which has been discussed, and that it is impermissible for anyone to step forward and issue a Fatwa except one who fulfils those conditions, and becomes qualified for the post of a Mufti.

After this, it is impermissible for even a competent Mufti to issue a Fatwa in the following situations:

- 1) When the Mufti is someone who is generally capable of issuing a Fatwa, however, he does not know the answer to the specific question that he has been asked and does not have the capability of extracting the answer, or the [contradicting] evidences have confused him and he is unable to give preference.

This is based upon the narration of the Prophet Sallallahu Alayhi Wasallam in which he said:

الْقُضَاءُ ثَلَاثَةٌ وَاحِدٌ فِي الْجَنَّةِ وَاثْنَانِ فِي النَّارِ فَأَمَّا الَّذِي فِي الْجَنَّةِ فَرَجُلٌ عَرَفَ الْحَقَّ وَقَضَىٰ بِهِ وَرَجُلٌ عَرَفَ الْحَقَّ فَجَارَ فِي الْحُكْمِ فَهُوَ فِي النَّارِ وَرَجُلٌ قَضَىٰ لِلنَّاسِ عَلَىٰ جَهْلٍ فَهُوَ فِي النَّارِ

“Judges are of 3 types; one of them will be in paradise and two of them will be in hellfire. As for the individual who will be in Jannah, it will be an individual who recognised the truth and gave a ruling

²⁸⁴ Abu Layth Al Samarqandi has recorded in Fatawa Al Nawazil:

سئل أبو بكر عن عالم في بلدة ليس هناك أحد أعلم منه هل يسعه أن لا يفتي قال إن كان من أهل الاجتهاد لا يسعه أن لا يفتي قيل وكيف يكون من أهل الاجتهاد قال إن كان يعرف وجوه المسائل وينظر أقرانه لو خالفوه

(Abu Layth Al Samarqandi, “Fatawa Al Nawazil” (Manuscript: Al Maktabah Al Azhariyyah), Waraqah: 270, Side: Alif)

according to it. If an individual recognised the truth and gave a ruling contrary to it, then he will be in the Hellfire and if an individual ruled for the people in ignorance, then he will be in the Hellfire."

In this regard, there is no difference between a Mufti and a judge. Thus, in this situation, it is necessary for them to refrain from issuing a ruling until the ruling becomes apparent, or they should direct the questioner to the other Muftis.

It has been narrated that when Hadrat Ai'shah Radhiyallahu Anha's innocence was revealed, Hadrat Abu Bakr Radiyallahu Anhu kissed her on her forehead. She asked her father:

أَلَا أَعْدَرْتَنِي عِنْدَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ!

"Why did you not defend me in the presence of the Prophet Sallallahu Alayhi Wasallam?!"

Hadrat Abu Bakr Radiyallahu Anhu replied:

أَيُّ سَمَاءٍ تُظِلُّنِي وَأَيُّ أَرْضٍ تُقَلِّنِي إِذَا قُلْتُ مَا لَا أَعْلَمُ؟!

"And which sky would cover me and which earth would hide me if I said that which I did not know?!"

It has been narrated from Urwah Al Tamimi that he said:

قال علي بن أبي طالب رضي الله عنه "وابردها على الكبد! ثلاث مرات قالوا يا أمير المؤمنين وما ذاك؟ قال أن يسأل الرجل عما لا يعلم فيقول الله أعلم

"Hadhrat Ali Radhiyallahu Anhu said, 'Oh the coolness of my stomach!' three times. He was asked, 'oh commander of the faithful, what is that?' He replied, 'that a person is asked regarding that which he has no knowledge and he replies with "I do not know"'"

It has been narrated from Khalid ibn Aslam, who was the brother of Zaid ibn Aslam, that he said said:

خَرَجْنَا مَعَ عَبْدِ اللَّهِ بْنِ عُمَرَ تَمْشِي فَلَاحِقَنَا أَعْرَابِي فَقَالَ أَنْتَ عَبْدُ اللَّهِ بْنُ عُمَرَ؟ قَالَ نَعَمْ قَالَ قَالَ سَأَلْتُ عَنْكَ فَدَلَلْتُ عَلَيْكَ فَأَخْبَرْتَنِي أَتَرْتُ الْعَمَّةَ؟ فَقَالَ ابْنُ عُمَرَ لَا أَدْرِي فَقَالَ أَنْتَ لَا تَدْرِي وَلَا نَدْرِي قَالَ نَعَمْ أَذْهَبَ إِلَى الْعُلَمَاءِ بِالْمَدِينَةِ فَسَأَلْتُهُمْ فَلَمَّا أَذْبَرَ قَبْلَ ابْنِ عُمَرَ يَدِيهِ فَقَالَ نَعِمًا قَالَ أَبُو عَبْدِ الرَّحْمَنِ سُئِلَ عَمَّا لَا يَدْرِي فَقَالَ لَا أَدْرِي" وَذَكَرَ بَاقِيَ الْحَدِيثِ

"We were walking with Abdullah ibn Umar and suddenly a bedouin came to us and asked, 'Are you Abdullah ibn Umar?' Abdullah ibn Umar replied, 'Yes'. The bedouin asked, 'I asked people regarding you and they guided me in your direction, so tell me, does a paternal auntie inherit?' Abdullah ibn Umar said, 'I do not know'. The bedouin exclaimed, 'you do not know and we do not know?!' Abdullah replied, 'Yes, go to the scholars of Madinah and ask them'. When the bedouin turned to leave, Ibn Umar kissed his own hands and said, 'Abu Abdir Rahman spoke very well! He was asked regarding that which he does not know and replied with, "I do not know"', he then mentioned the remainder of the narration"

Ibn Abdil Barr (d.463 AH) has narrated from Abul Hasan Ali ibn Al Hasan who said, 'Salih ibn Ahmad ibn Hanbal reported to us and said, "My father has reported to us and said, 'Muhammad ibn Idris Al Shafi'i' has reported to us and said, "I heard Malik ibn Anas say, 'I heard Ibn Ajlan say:

وَإِذَا غَفَلَ الْعَالِمُ "لَا أَدْرِي" أَصِيبَتْ مَقَاتِلُهُ

"When an Alim forgets the words "I don't know", he has effectively ended his own life"

This is one of the most prestigious chains of narration for there are three A'immah in it narrating from one another; Imam Ahmad from Imam Al Shafi'i, and Imam Al Shafi'i from Imam Malik Rahimahullah.

Similarly, Ibn Abd Al Bar has narrated through his chain of narration from Uqbah ibn Muslim that he said:

صحبت ابن عمر أربعة وثلاثين شهرا فكثيرا ما كان يسئل فيقول "لا أدري" ثم يلتفت إلي فيقول "أندري ما يريد هؤلاء؟ يريدون أن يجعلوا ظهورنا جسرا لهم إلى جهنم"

"I accompanied Ibn Umar for 34 months, there were many occasions on which he would be asked [a question] to which he would reply, 'I do not know', he would then turn to me and say, 'do you know what these people desire? They desire to make our backs a bridge for their journey to the hellfire'"

It has been narrated from Al Athram, the student of Imam Ahmad ibn Hanbal that he said:

سمعت أحمد بن حنبل رحمه الله تعالى يكثر أن يقول لا أدري

"I heard Ahmad ibn Hanbal, may Allah the Almighty have mercy upon him, say, 'I do not know' many times"

It has been narrated from Al Haytham ibn Jamil that he said:

شهدت مالكا سئل عن ثمان وأربعين مسألة فقال في اثنتين وثلاثين مسألة "لا أدري" وربما كان يسئل عن خمسين مسألة فلا يجيب في واحد منها وكان يقول "من أجاب في مسألة فينبغي قبل الجواب أن يعرض نفسه على الجنة والنار" وسئل مالك عن مسألة فقال "لا أدري" فقيل "هذه مسألة خفيفة سهلة" فغضب وقال "ليس في العلم شيء خفيف"

"I witnessed Malik being asked forty-eight questions, for thirty-two questions he replied with, 'I do not know', he would be asked fifty questions and would answer a single one and would say, 'whoever answers a question, it is appropriate for him to present himself before heaven and hell before answering', Malik was once asked a question to which he replied, 'I do not know', it was said to him, 'this is a simple and easy Mas'alah', so he became angry and said, 'there is nothing in knowledge that is simple'."

In summary, it is impermissible for a Mufti to feel shy to utter the words, 'I do not know' in such Masail.

- 2) When issuing a Fatwa may be based on one's desires and one's inclination towards the questioner, such that he overwhelmingly feels that he will be lenient and indulgent with the questioner.

Allah the Almighty says:

يَا دَاوُدَ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ فَاحْكُم بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوَىٰ فَيُضِلَّكَ عَنْ سَبِيلِ اللَّهِ إِنَّ الَّذِينَ يَضِلُّونَ عَنْ سَبِيلِ اللَّهِ لَهُمْ عَذَابٌ شَدِيدٌ يَوْمَ نُسْأَلُوا يَوْمَ الْحِسَابِ

"O Dawood, we have made you a vicegerent on earth, so judge between people with truth, and do not follow the selfish desire, lest it should lead you astray from Allah's path. Surely those who go astray from Allah's path will have a severe punishment, because they had forgotten the Day of Reckoning"

It is written in *Al Iqna Fi Madhab Al Imam Ahmad*:

وَيَحْرُمُ الْحُكْمُ وَالْفَتْيَا بِالْهَوَىٰ إِجْمَاعًا وَلِيَحْذَرِ الْمُفْتِي أَنْ يُبِيلَ فِي فُتْيَاهُ مَعَ الْمُسْتَفْتَىٰ أَوْ مَعَ خَصْمِهِ

"It is haram by consensus to give a ruling or Fatwa according to one's desires, a Mufti must also fear from being inclined towards the questioner in his question or his audience"

- 3) If the Mufti is in such a state that it prevents him from fulfilling the rights of a Fatwa that are upon him such as contemplation and thorough research

The evidence for this is that which has been narrated by Imam Bukhari Rahimahullah from Hadrat Abu Bakrah Radiyallahu Anhu that the Prophet Sallallahu Alaihi Wasallam said:

“A judge should never issue a ruling between two parties whilst in the state of anger”

It is for this reason that the scholars have said that it is appropriate for a Mufti to ensure not to give a Fatwa when his heart is occupied with anger or fear or lust or any other feeling which takes him away from soundness. Extreme sadness and extreme happiness shall also be considered similarly.

Thus, if he is in a state which is overpowering the soundness of his thoughts, then it is necessary for him to refrain from issuing a Fatwa until he returns to his normal state. Similar to this is when he is feeling sleepy or he is hungry or extremely ill or he is in burdensome heat or severe coldness or he is holding back from relieving himself.

Abstinence from Issuing a Fatwa (الإمتناع عن الفتوى)

It is not necessary for a Mufti to answer every question that is put in front of him at all times. Rather, he should answer when he sees a benefit in answering, and he is confident that it will not cause any evils (*fitna*). Thus, it is appropriate for him to abstain from issuing a Fatwa in the following circumstances:

- 1) When a Mufti fears that the questioner will incite corruption (*fitna*) after receiving the answer or he feels that answering the question will lead to huge problems or that he will use the Fatwa for other means. This is because refraining from evil is more important than performing virtuous actions.

Allamah Ajuri states:

وإذا سئل عن مسألة فعلم أنها من مسائل الشغب ومما يورث بين المسلمين الفتنة استعفى منها ورد السائل إلى ما هو أولى به على أرفق ما يكون

“When one is asked a question that is controversial and will cause corruption between the Muslims, then he should refrain from answering it and should direct the questioner to someone who is more worthy of answering it in the most appropriate manner”

- 2) When the question is regarding a matter that should not be delved into as it is from that which is not of one’s concern and there is no benefit in terms of knowledge of knowing the answer

It has been narrated from Hadrat Ibn Abbas Radiyallahu Anhu that he said:

مَا رَأَيْتُ قَوْمًا كَانُوا خَيْرًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَا سَأَلُوهُ إِلَّا عَنْ ثَلَاثِ عَشْرَةِ مَسْأَلَةٍ حَتَّى قَبِضَ كُلُّهُمْ فِي الْقُرْآنِ... وَمَا كَانُوا يَسْأَلُونَ إِلَّا عَمَّا يَنْفَعُهُمْ

“I have not seen a people better than the companions of the Prophet Sallallahu Alaihi Wasallam; they did not ask him anything except thirteen questions until he passed away. All of these questions are in the Qur’an...and they would not ask except regarding that which benefitted them”

It has been narrated that the Prophet Sallallahu Alaihi Wasallam said:

هَلَكَ الْمُتَنَطِّعُونَ

“The ‘Mutanatti’un’ have perished”

Some of the comentators of Hadith have stated that the word ‘Mutanatti’un’ means those who ask unnecessary questions and those who ask questions regarding issues which do not concern them, and those who relentlessly ask questions obscure question which rarely occur.

The scholars of the past disliked that the laymen continuously ask questions regarding those matters which they do not need to know in their lives. Thus, it is appropriate for a Mufti to avoid encouraging such questions, and to guide them to ask that which concerns them.

Ahmad ibn Hibban Al Qati'i; Rahimahullah:

دخلت على أبي عبد الله (يعني الإمام أحمد رحمه الله تعالى) فقلت أتوضأ بماء النورة؟ قال لا أحب ذلك فقلت أتوضأ بماء الباقلاء؟ قال ما أحب ذلك قال ثم قمت فتعلق بثوبي وقال ايش تقول إذا دخلت المسجد؟ فسكت فقال ايش تقول إذا خرجت من المسجد؟ فسكت فقال اذهب فتعلم هذا

"I came to Abu Abdillah (i.e. Imam Ahmad [ibn Hanbal] Rahimahullah), so I asked him, 'Should I do wudhu with lime water?' He replied, 'I do not prefer this', I asked, 'Should I do wudhu with beanwater?' He replied, 'I do not prefer this'. Then, [as] I stood up, he [suddenly] held onto my clothes and said, 'What do you pray when you enter the Masjid?' I stayed silent, he asked, 'What do you pray when you leave the Masjid?' I remained silent, so he said, 'go and learn this [first]'."

In this story, Imam Ahmad ibn Hanbal meant to inform the individual that performing wudhu with limewater or beanwater is a rare occurrence which at times, the questioner does not need to know the solution to, so he rebuked him for delving into this while being ignorant of that which he required five times a day; the Sunnah supplication upon entering and leaving the Masjid.

Imam Ahmad ibn Hanbal was once asked the following question regarding Gog and Magog:

أمسلمون هم؟

"Will they be Muslims?"

He replied:

أحكمت العلم حتى تسأل عن ذا؟

"Have you understood [the required] knowledge such that you are asking regarding this?"

He was once asked a question pertaining to the issue of mutual cursing (Li'an). He replied:

سل رحك الله عما ابتليت به

"Ask, may have Allah have mercy upon you, regarding that which concerns you"

Ibn Abidin (d.1252 AH) has stated:

يكره الجدل في أن لقمان وذا القرنين وذا الكفل أنبياء أم لا، وينبغي أن لا يسأل الإنسان عما لا حاجة إليه كأن يقول كيف هبط جبريل وعلى أي صورة رآه النبي صلى الله عليه وسلم وحين رآه على صورة البشر هل بقي ملكاً أم لا؟ وأين الجنة والنار ومتى الساعة ونزول عيسى؟ وإسماعيل أفضل أم إسحاق وأيهما الذبيح؟ وفاطمة أفضل أم عائشة أم لا؟ وأبوا النبي كانا على أي دين؟ وما دين أبي طالب؟ ومن المهدي إلى غير ذلك مما لا تجب معرفته ولم يرد التكليف به

"It is detestable to delve into whether or Hadharat Luqman and Zhul Qarnain and Zhul Kifl were prophets or not. And it is advisable that a human does not ask regarding that which does not concern him such as asking "how did Jibreel descend?" "In what form did the Prophet Sallallahu Alaihi Wasallam see him?"

"When he saw him in human form, did Jibreel remain an angel?" "Where are Jannah and Jahannam?"

"When is the Day of Judgement? And when will Hadhrat Isa Alayhis Salaam descend back to earth?" "Was Hadhrat Ismail Alayhis Salaam of higher status than Hadhrat Ishaaq Alayhis Salaam?" "Which one of them was taken to be slaughtered by Hadhrat Ibrahim Alayhis Salaam?" "Is Hadhrat Fatima more virtuous or Hadhrat Ai'shah?" "What religion were the parents of the Prophet Sallallahu Alayhi Wasallam following?"

"Did Abu Talib die as a Muslim or not?" "Who is Imam Mehdi?" and questions such as these which are not necessary and the answers of which are not required"

- 3) When the question is regarding an issue which is beyond the intellect and understanding of the questioner, and he does not require it in his practical life, such as question pertaining to the unexplained verses (Mutashabihat) or the in-depths discussions of theology (Ilm Al Kalam) or those Masail in which a ruling cannot be given with certainty.²⁸⁵

Hadrat Ali Radhiyallahu Anhu said:

خَدِّثُوا النَّاسَ بِمَا يَعْرِفُونَ أَتُحِبُّونَ أَنْ يُكَذَّبَ اللَّهُ وَرَسُولُهُ؟!

“Inform the people regarding that which they understand, would you like that Allah and his Prophet be rejected?! (By informing them regarding that which they do not understand)”

‘Allamah Al Qurafi Rahimahullah writes:

وينبغي للمفتي إذا جاءته فتيا في شأن رسول الله صلى الله عليه وسلم أو فيما يتعلق بالربوبية يسأل فيها عن أمور لا تصلح لذلك السائل لكونه من العوام الجلف أو يسأل عن المعضلات ودقائق أصول الديانات ومتشابه الآيات والأمور التي لا يخوض فيها إلا كبار العلماء فلا يجيبه أصلاً ويظهر له الإنكار على مثل هذا ويقول له اشتغل بما يعينك من السؤال عن صلاتك وأمر معاملتك

“It is appropriate for a Mufti when a question comes to him regarding the status of the Prophet Sallallahu Allayhi Wasallam or regarding the Lordship [of Allah], he is asking in it regarding matters that are not appropriate for the questioner due to him being from amongst brusque laymen or he is asking puzzling questions or regarding the deep principles of halal and haram and or regarding the unexplained or other matter which are such that only the elderly scholars are permitted to delve into, then the Mufti should not answer him at all and should express displeasure at him upon such things and [the Mufti] should tell him, ‘occupy yourself with what concerns you such as a question regarding your Salah or [a question regarding] matters pertaining to your day-to-day dealings”

Ibn Al Shafi’i, a scholar who was appointed to the post of a judge in Halb, asked Imam Ahmad ibn Hanbal regarding the state of those who have passed away from the children of the polytheists and the Muslims in the Hereafter (i.e. what will happen to them), he replied:

هذه مسائل أهل الزيغ مالك وهذه المسائل؟

“These are the questions of the people of misguidance, what benefit is there for you in these questions?”

Similarly, Sufyan Al Thawri was once asked regarding the children of the polytheists who pass away (i.e. what will happen to them), he shouted at the questioner and said:

يا صبي! أنت تسأل عن ذا؟

“Oh child! You ask me regarding this?!”

Mufti Taqi Sahib writes that when my father, Mufti Muhammad Shafi Rahimahullah, would get questions of this sort, he would answer with the Hadith of the Prophet Sallallahu Alaihi Wasallam:

مِنْ حُسْنِ إِسْلَامِ الْمَرْءِ تَرْكُهُ مَا لَا يَخْنِيهِ

“It is from the beauty of one’s faith that he leaves that which does not concern him”

Mufti Taqi Sahib then writes that he found a narration that confirmed that one of Imam Malik’s esteemed students, Ziyad ibn Abdur Rahman Al Qurtubi, did the same with one of the kings of the time.

Thus, Imam Qadi Iyad has relates:

²⁸⁵ Not answering such a question is supported

قال حبيب كنا جلوسا عند زياد فأثابه كتاب من أحد الملوك فمدّه مدّة أي بل قلمه بلة من الحبر فكتب فيه ثم طبع الكتاب ونفذ به الرسول فقال زياد أتدرون عما سأل صاحب هذا الكتاب؟ سأل عن كفتي ميزان الأعمال يوم القيامة أمن ذهب هو أم من ورق؟ فكتبت إليه حدثنا عن ابن شهاب قال قال رسول الله صلى الله عليه وسلم "من حسن إسلام المرء تركه ما لا يعنيه

"Habib said, 'we were sitting by Ziyad when a letter came to him from one of the kings, so he stretched it out with one stretch, i.e. he wet his pen slightly from the inkpot and wrote on it, then he stamped the letter and sent it back with the messenger. Ziyad said, "Do you know what the person who sent this letter asked me? He asked me regarding the balance of the scales of the day of judgement, are they from gold or silver? So I wrote to him: I narrate from Ibn Shihab who said that the Prophet Sallallahu Alayhi Wasallam said, 'it is from the beauty of a man that he leaves that which does not concern him'"

- 4) It has been narrated from some Fuqaha that they prohibited a Mufti from answering questions pertaining to events that have not yet occurred. Indeed, we have mentioned at the start of this book the statements of the scholars of the past who disliked discussing Masail which had not yet occurred, and the differences of opinion in this matter. We also mentioned there that it is appropriate to limit answering such questions to those students who wish to understand jurisprudence (Tafaquh). As for the laymen, it is not appropriate to encourage them to ask such questions.

- 5) When the ruling to a question depends upon the common practice of a specific city or people, and the Mufti does not know the common practice of that city or people. Ibn Salah Rahimahullah writes:

لا يجوز له أن يفتي في الأيمان والأقارير ونحو ذلك مما يتعلق بالألفاظ إلا إذا كان من أهل بلد الالفاظ بها أو منزلا منزلتهم في الخبرة بمراداتهم من ألفاظهم وتعارفهم فيها لأنه إذا لم يكن كذلك كثر خطؤه عليهم في ذلك كما شهدت به التجربة

"It is not permissible for him (the Mufti) to issue a Fatwa in the Masail of oath and admittance and other similar Masail which are related to words, except when he is a resident of the city where the questioner resides or he is equivalent to them in knowing the meanings of their words and their common practice in their usage of words. This is because when he is not like this (i.e. he is not a resident of the place nor does he know the common practice of their words), he will make many mistakes [in his Fatawa issued] to them as experience has shown"

- 6) Imam Al Shatibi has mentioned that from amongst the reasons that it becomes detestable to answer a question is when the question is from amongst the difficult and malevolent questions, similar to the captious questions prohibited in the Hadith
- 7) When the questioner asks regarding the reasoning behind a Shari' ruling when the Shari' ruling is with regards to the acts of worship, for which a meaning cannot be understood through intellect, such as if a questioner asks as why there are three raka'ah for Maghrib Salaah.
- 8) Imam Al Shatibi Rahimahullah has mentioned that from amongst these reasons, one is when the question is regarding the conflict that took place between the Sahabah

Umar ibn Abdil Aziz Rahimahullah was once asked regarding the battle of Siffin, he replied:

تِلْكَ دِمَاءُ كَفَّ اللَّهُ عَنْهَا يَدَيَّ فَلَا أُجِبُ أَنْ يُلَطِّخَ بِهَا لِسَانِي

"Those are bloods that Allah prevented my hands from reaching, so I do not wish to stain my tongue with them"

- 9) Imam Al Shatibi Rahimahullah has mentioned another reason which is when the question is intransigent, confrontational, and such that the answer will be used to gain the upperhand in a dispute.

Allah the Almighty says:

وَمِنَ النَّاسِ مَنْ يُعْجِبُكَ قَوْلُهُ فِي الْحَيَاةِ الدُّنْيَا وَيُشْهَدُ اللَّهُ عَلَى مَا فِي قَلْبِهِ وَهُوَ أَلَدُّ الْخِصَامِ

“And amongst men there is one whose words, in this life attracts you, he even makes Allah his witness on what is there in his heart, while he is so stiff-necked when quarelling”

The Prophet Sallallahu Alayhi Wasallam said:

أَبْغَضُ الرِّجَالِ إِلَى اللَّهِ تَعَالَى الْأَلَدُّ الْخِصِمُ

“The most detested man in front of Allah is the one who is stiff necked when quarelling”

After this, Imam Al Shatibi Rahimahullah writes:

هذه جملة من المواضع التي يكره السؤال فيها ويقاس عليه ما سواها وليس النهي فيها واحدا بل فيها ما تشتد كراهيته ومنها ما يخف ومنها ما يحرم ومنها ما يكون محل اجتهاد

“This is a summary of those moments wherein it is disliked to ask a question, and other similar moments may be analogically deduced from it, and the gravity of the prohibition is not equal in all of them, rather, some of them are more detestable than others while others are less detestable, some of them are forbidden while others are arenas for Ijtihad”

To Revoke a Previous Fatwa (الرجوع عن الفتوى)

It is necessary for a Mufti to revoke a Fatwa if it is made apparent to him that the Fatwa he had given was incorrect. A Mufti should not feel ashamed or shy from doing this.

‘Allamah Baghawi narrates that Hadhrat Umar Radhiyallahu Ta’ala Anhu wrote to Abu Musa Al Ash’ari:

لَا يَمْنَعُكَ قَضَاءُ قَضِيَّتِهِ ثُمَّ رَاجَعْتَ فِيهِ نَفْسَكَ فَهَدَيْتَ لِرُشْدِهِ أَنْ تَنْقُضَهُ فَإِنَّ الْحَقَّ قَدِيمٌ لَا يَنْقُضُهُ شَيْءٌ وَالرُّجُوعُ إِلَى الْحَقِّ خَيْرٌ مِنَ التَّمَادِي فِي الْبَاطِلِ

“Nothing should stop you from breaking a ruling that you gave and then realised to be incorrect and you were guided to the correct answer as the truth is everlasting, nothing can end it. Reverting to the truth is better than remaining intransigent upon falsehood”

Laws pertaining to revoking a Fatwa (أحكام نقض الفتوى بعد الرجوع عنها)

There are technically three situations that could apply here:

- Imam Al Nawawi Rahimahullah writes:

إذا أفتى بشيء ثم رجع عنه ولم يكن عمل بالأول لم يجز العمل به وإن كان عمل قبل رجوعه فإن خالف دليلاً قاطعاً لزم المستفتي نقض عمله ذلك وكذا إن نكح بفتواه واستمر على نكاح بفتواه ثم رجع لزمه مفارقتها

“If he (the Mufti) issues a Fatwa regarding something and then revokes it, and he (the questioner) has not yet acted upon the Fatwa, then it is not permissible for him (the questioner) to act upon it. If he has acted upon it before it was revoked, then if the it (the revoked Fatwa) contradicted an indisputable evidence [of Shari’ah], then it is necessary for the questioner to cancel [the effect of] his action, similarly if he has married someone based upon that Fatwa and has continued the marriage based upon that Fatwa, then it is necessary for him to separate from her (i.e. his wife)”

The evidence for this is that which has been narrated by Imam Al Bayhaqi and others:

أن رجلاً من بني شخ من فزاره تزوج امرأة ثم رأى أماً فأعجبته فاستفتى ابن مسعود عن ذلك فأمره أن يفارقها ويتزوج أمها فتزوجها فولدت له أولاداً ثم أتى ابن مسعود المدينة فسأل عن ذلك فأخبر أنها لا تحل له فلما رجع إلى الكوفة قل للرجل إنها عليك حرام إنما لا تنبغي لك مفارقتها

“That a man from Banu Shakh from Fizarah married a woman, he then saw her mother and liked her. So he asked [Abdullah] Ibn Mas’ud regarding this who told him that he should divorce his wife and marry her mother. Thus, he married her mother and she gave birth to many of his children. Then, [Abdullah] Ibn Mas’ud came to Madinah and asked regarding this, he was informed that she is not permissible for him. When he returned to Kufa, he said to the man, ‘she is forbidden upon you, she is not appropriate for you, divorce her”

Al Khatib writes:

لعل ابن مسعود رضي الله عنه تعالى عنه تأول فتواه قول الله تعالى “فإن لم تكونوا دخلتم بها فلا جناح عليكم” أن الإستثناء راجع إلى أمهات النساء وإلى الرئائس جميعاً

“It is possible that [Abdullah] Ibn Mas’ud Radiyallahu Anhu interpreted his Fatwa with the interpretation that the exception in the words of Allah the Almighty, ‘If you have not had conjugal relations with them, then there is no problem [in marrying them]’, applies to the mothers of the women as well as their daughters”

- When the Mufti is a Mujtahid who has revoked a Fatwa, Imam Al Nawawi Rahimahullah writes:

وإن كان (الأمر المرجوع عنه) محل اجتهاد لم يلزمه نقضه لأن الإجتihad لا ينقض الإجتihad وهذا التفصيل ذكره الصيمري والخطيب وأبو عمرو واتفقوا عليه ولا أعلم خلافه وما ذكره الغزالي والرازي ليس فيه تصريح بخلافه

“And if it (the matter in which he has revoked his Fatwa) was in an issue in which Ijtihad is possible, then it is not necessary for him (the questioner) to cancel the effects of the Fatwa as a new Ijtihad cannot cancel an old Ijtihad. This detail has been discussed by Al Saymari and Al Khatib and Abu Amr (Ibn Salah) and they have agreed upon this, I do not know of anything contrary to this, and what Al Ghazali and Al Razi have mentioned does not explicitly contradict this”

The evidence for this is what has been narrated from Hakam ibn Mas’ud who said:

شهدت عمر أشرك الإخوة من الأب والأم مع الإخوة من الأم في الثلث فقال له رجل قد قضيت في هذه عام الأول بغير هذا قال وكيف قضيت؟ قال جعلته للإخوة للأم ولم تجعل للإخوة من الأب والأم شينا فقال ذلك على ما قضينا وهذا على ما نقضي

“I witnessed ‘Umar [Radiyahallahu Anhu] make the brothers from a mother and father (real brothers) partners with the brothers from a mother (maternal brothers) in one third, so a man said to him, ‘You issued a ruling in this one [matter] in the first year contrary to this’, he (Hadrat ‘Umar Radiyahallahu Anhu) asked, ‘and what ruling did I give?’ He replied, “You specified it for the brothers from a mother (maternal brothers) and you did not specify anything for the brothers from a mother and brother (real brothers), so he said, ‘that was what we decreed then and this is what we decree now’.”

- When the Mufti is a Muqallid of a Mujtahid and he issues a Fatwa upon a view which he thinks is the view of him Imam, and it is then made apparent that the view of his Imam is contrary to it, and his previous Fatwa does not contradict an indisputable evidence of Shari’ah, then if the previous Fatwa concurs with the view of a Mujtahid of the past - even if it is contrary to the view of his Imam - then Ibn Al Qayyim states that the ruling of this shall be the same as that of a Mujtahid who has changed his view. Thus, the effects of the previous Fatwa which the questioner has acted upon shall not be cancelled. Ibn Al Qayyim writes:

فلو تزوج بفتواه ودخل ثم رجع المفتي لم يحرم عليه إمساك امرأته إلا بدليل شرعي يقتضي تحريمها ولا يجب عليه مفارقتها بمجرد رجوعه ولا سيما إن كان إنما رجع لكونه تبين له أن ما أفتى به خلاف مذهبه وإن وافق مذهب غيره

“So if one were to get married based on his Fatwa and have intercourse with her, and then the Mufti revokes his Fatwa, it is not forbidden for him (the questioner) to keep his wife except with a Shar’i evidence which demands that she becomes forbidden, and it is not necessary upon him to separate from her simply based upon his (the Mufti) revocation, especially when he has revoked the Fatwa because it has become apparent to him that what he gave Fatwa upon was contrary to his Madhab, even though it concurred with another Madhab”

However, Ibn Salah has mentioned contrary to Ibn Al Qayyim’s statement. Thus, according to him, even though the previous Fatwa did not contradict an indisputable evidence of Shari’ah, the effect of the previous Fatwa shall still be cancelled if it does not follow the view of his Imam, regardless of whether it followed the view of another Mutjahid or not. Ibn Salah writes:

وإذا كان يفتي على مذهب إمام فرجع لكونه بان له قطعاً مخالفة نص إمامه وجب نقضه وإن كان في محل الإجتihad لأن نص مذهب إمامه في حقه كنص الشارع في حق المجتهد المستقل

“When he gives a Fatwa according to the Madhab of an Imam and then revokes it when it made apparent to him that he has contradicted the statement of his Imam with certainty, then it is necessary to cancel it (the effects of the Fatwa), even if it is in a matter in which Ijtihad is possible. This is because the statement of his Imam for him is like the evidential text of Shari’ah for a Mujtahid Mustaqil (as he is a Muqallid of his Imam)”²⁸⁶

As for when the questioner shall be required to cancel the effects of a Fatwa in the scenarios in which he is required to do this, Ibn Salah writes:

أما إذا لم يعلم المستفتي برجوع المفتي فحال المستفتي في علمه كما قبل الرجوع

“As for when the questioner does not know that the Mufti has revoked the Fatwa [that he was given], then the state of ²⁸⁷

²⁸⁶ The rulings of this section may be summarised as follows:

The Mufti issues a Fatwa in a matter and then revokes. Shall the effects of the revoked Fatwa be cancelled?

The matter in which the revoked Fatwa was issued may be of two types:

- 1- The ruling in the matter is one which is indisputably established in Shari’ah and the revoked Fatwa contradicted this indisputable ruling of Shari’ah
Ruling: the effects of the revoked Fatwa shall be cancelled
- 2- The in the matter is *not* one which is indisputably established in Shari’ah. Rather, Ijtihad is possible in the matter. This may be of two types:

Laws pertaining to how the Mufti should inform the Questioner regarding the Revocation of the Fatwa (إعلام المفتي بالرجوع عن الفتوى)

It is necessary for a Mufti to inform the questioner if a Fatwa is revoked if the questioner has not yet acted upon the ruling. Similarly, if the questioner has acted upon the ruling, then the Mufti needs to inform the questioner if the effect of the ruling needs to be cancelled according to the details discussed in the previous chapter.

Khatib Al Baghdadi has narrated:

أن الحسن بن زياد اللؤلؤي رحمه الله تعالى استفتي في مسألة فأخطأ فلم يعرف الذي أفتاه فاكترى مناديا ينادي أن الحسن بن زياد استفتي يوم كذا وكذا في مسألة فأخطأ فمن كان أفتاه الحسن بن زياد بشيء فليرجع إليه فمكث أياما لا يفتي حتى وجد صاحب الفتوى فأعلمه أنه قد أخطأ وأن الصواب كذا وكذا

“Hasan ibn Ziyad Al Lu’lui, May Allah the Almighty have mercy upon him, was once asked a question and gave the wrong answer. However, he could not find the individual who had asked him the question, so he asked an announcer to announce, ‘Hasan ibn Ziyad was asked a question on so and so day regarding such and such Mas’alah, but he made an error in the answer. So whoever received an answer from Hasan ibn Ziyad, please revert to him’. Hasan then spent a few days not answering any questions until he found the individual who had asked him the question, he then informed him that he had made a mistake and explained to him the correct answer”

Ruling with regards to Compensation upon a Mufti who has made a Mistake (حكم)

(الضمان على المفتي المخطئ)

When a questioner acts upon a Fatwa which led to the destruction of something, and it is then revealed that the Fatwa was a mistake, and that the Fatwa contradicted an indisputable evidence of Shari’ah (Qat’r), then Hafidh Ibn Salah has related from Abu Ishaq Al Shirazi that he will be liable if he was worthy of issuing a Fatwa, but will not be liable if he was not worthy of issuing a Fatwa. This is because by reverting to someone who was not worthy of issuing a Fatwa, the questioner is at fault, thus he will be liable for his own loss. As for when he reverts to a Mufti who is worthy of issuing a Fatwa, then the questioner is at no fault as he has reverted to a Mufti who is worthy of issuing a Fatwa, rather, the Mufti is at fault.

However, Imam Al Nawawi Rahimahullah writes:

كذا حكاه الشيخ أبو عمرو وسكت عليه وهو مشكل وينبغي أن يخرج الضمان على قولی الغرور المعروفين في باب الغصب والنكاح وغيرهما أو يقطع بعدم الضمان إذ ليس فس الفتوى إلزام ولا إلقاء

- The Mufti was a Mujtahid whose view on the Mas’alah has changed and he has therefore revoked his previous ruling
Ruling: the effects of the previous Fatwa shall not be cancelled
- The Mufti was a Muqallid who mistakenly issued a ruling in contradiction to the view of his Imam, although his ruling does concur with the view of another Mujtahid of the past
Ruling: Ibn Al Qayyim states the effects of the previous Fatwa shall *not* be cancelled while Ibn Salah states that the effects of the previous Fatwa *shall* be cancelled, as for a Muqallid, contradicting the view of his Imam is like contradicting the view of an indisputable evidence of Shari’ah for a Muqallid

(translator)

²⁸⁷The incorrect Fatwa given by the Mufti in such a scenario will not mean that the children born due to the incorrect Fatwa are illegitimate. Rather, the Fatwa will only be considered invalid to follow once the questioner knows that it is incorrect.

Ibn Abidin states in Raddul Muhtar (672/9 – Darul Thiqaifah):

ما في النهر وبه لا يظهر أن الوطاء في النكاح الأول كان حراما وأن في الأولاد خبثا لأن القضاء اللاحق كدليل النسخ يعمل في القائم والآتي لا في المنقضي اه أي لأن ما مضى كان مبنيا على اعتقاد الحل تقليدا لمذهب صحيح وإنما العمل بخلافه بعد الحكم الملزوم كما لو نسخ حكم إلى آخر لا يلزم منه بطلان ما مضى ومثله ما لو تغير رأي المجتهد وكذا لو توضأ حنفي ولم ينو وصلى به الظهر ثم صار شافعيًا بعد دخول وقت العصر يلزمه إعادة الوضوء بالنية دون ما صلاه به

“This is what Shaykh Abu Amr (Ibn Salah) has related and he has remained silent upon, but it is [a] problematic [opinion] and it is possible that liability of compensation may be applied upon those known deceitful people who issue such rulings in the Masail of appropriation and marriage and other chapters. Or we say with certainty that there will be no liability of compensation [upon the Mufti], as there is no compulsion or force in a Fatwa”

The Masail of a Mufti revoking a Fatawa discussed above have been mentioned and agreed upon by Ibn Nujaym as well. However, Ibn Nujaym firmly mentions that the Mufti shall not be liable for any compensation should his Fatwa lead someone to destroy something. He writes:

وإن أتلّف بفتواه لا يغرم ولو كان أهلاً

“And if something is destroyed based upon his Fatwa, he shall not be liable, even if he was worthy of issuing a Fatwa”

Taking a Fee for a Fatwa (الأجرة على الإفتاء)

It is necessary (*wajib*) upon a Mufti to not demand a fee for giving a Fatwa.

Ibn Abidin Rahimahullah (d.1252 AH) has recorded from *Sharh Al Wahbaniyyah* that it is impermissible to take a fee for a Fatwa that is given verbally. However, it is permissible to take a fee for a Fatwa that is given in writing, although it is better not to.

Imam Al Nawawi writes:

المختار للفتوى أن يتبرع بذلك ويجوز أن يأخذ عليه رزقا من بيت المال إلا أن يتعين عليه وله كفاية فيحرم على الصحيح ثم إن كان له رزق لم يجز أخذ أجرة أصلا وإن لم يكن له رزق فليس له أخذ أجرة من أعيان من يفتيه على الأصح كالحاكم واحتال الشيخ أبو حاتم القزويني من أصحابنا فقال له أن يقول يلزمي أن أفتيك قولا وأما كتابة الخط فلا فإذا استأجره على كتابة الخط جاز

“The preferred view for Fatwa is that he (a Mufti) should do it without remuneration, and it is permissible for him to take some wealth for this from the Bayt Al Mal, except if it becomes necessary upon him to issue a Fatwa (as there are no other Muftis) and he has sufficient [wealth], then it is forbidden for him [to take wealth from the Bayt Al Mal] according to the correct view.

Furthermore, if he takes wealth [from the Bayt Al Mal], it is not permissible for him to take remuneration at all, and if he does not have wealth [from the Bayt Al Mal], then it is not permissible for him to take remuneration off notable people that he issues a Fatwa to such as the ruler according to the most correct view. [However,] Shaykh

Abu Hatim Al Qazwini from our jurists has found a loophole and has said, ‘he (a Mufti) may say, “it is necessary for me to give you a verbal Fatwa, as for writing, then no (i.e. I am not required to write it for you)”, thus when he (the questioner) hires him to write it (the Fatwa), then it (remuneration) is permissible”

However, the remuneration for writing the Fatwa should not exceed the standard amount charged for such a service according to common practice. For whatever remuneration exceeds the standard amount charged for such a service according to common practice will be considered in lieu of the actual Fatwa and not in lieu of the service, which is impermissible.

It is mentioned in Al Dur Al Mukhtar:

يستحق القاضي الأجر على كتب الوثائق قدر ما يجوز لغيره كالمفتي فإنه يستحق أجر المثل على كتابة الفتوى لأن الواجب عليه الجواب باللسان دون الكتابة باليد ومع ذلك الكف أولى

“A judge is eligible to receive remuneration for writing legal documents equal to the amount that another individual [doing a similar job] would be eligible to receive. Similar to him is a Mufti, for he is also eligible to receive normal (according to common practice) remuneration for writing a Fatwa. This is because it is necessary

for him to answer [a question] using his tongue (i.e. verbally), not through writing with his finger (i.e. it is not necessary for him to *write* a Fatwa), even then, it is better for him to refrain”

Imam Al Nawawi Rahimahullah states:

قال الصيمري والخطيب "لو اتفق أهل البلد فجعلوا له رزقا من أموالهم على أن يتفرغ لفتاويهم جاز" أما الهدية فقال أبو مظفر السمعاني "له قبولها بخلاف الحاكم فإنه يلزم حكمه" قال أبو عمرو "ينبغي أن يحرم قبولها إن كانت رشوة على أن يفتيه بما يريد كما في الحاكم وسائر ما لا يقابل بعوض" قال الخطيب "وعلى الإمام أن يفرض لمن ينصب نفسه لتدريس الفقه والفتوى في الأحكام ما يغنيه عن الإحتراف ويكون ذلك من بيت المال ثم روى بإسناده أن عمر بن الخطاب رضي الله عنه أعطى كل رجل ممن هذه صفته مائة دينار في السنة

“[Imam] Al Saymari and Al Khatib [Al Baghdadi] have said, ‘if the people of a city come together and make an allowance for him (the Mufti) from their wealth that he frees himself for issuing Fatawa for them, then it is permissible”. As for gifts, Abu Muzaffar Al Sam’ani states, ‘he (a Mufti) may accept it, contrary to a judge, for his (a judge) decree is binding”, Abu Amr said, ‘it is more appropriate [to say] that it is impermissible to accept it (the gift) if it is a bribe that he (the Mufti) gives him (the questioner) a Fatwa according to what he (the questioner) wishes as is the case with the judge and all other occupations in which have no remuneration’. Al Khatib said, ‘it is upon the ruler to fix a portion [of wealth] for the one who takes up the responsibility of teaching jurisprudence and issuing Fatawa in the rulings of Shari’ah such that it suffices him from needing to work [another occupation], and this should be from the Bayt Al Mal’, he then narrates with his chain of narration from Umar ibn Al Khattab Radiyallahu Anhu that he gave every man who did this one thousand dinar every year”

The Methodology of Ifta (منهج الإفتاء)

Giving a Fatwa is to apply a general ruling of Shari’ah to a specific situation. Based upon this, there are two stages that a Mufti must traverse in order to reach the correct answer:

- 1) Properly understand and comprehend the question that he has been asked
- 2) To fit the Mas’alah under a general Shar’i’ ruling in what is known in modern-day terminology as *Al Takyif* (التكييف الشرعي)

Understanding and Comprehending the Question (تصور الصورة المسؤول عنها)

Before all else, it is important for a Mufti to understand with a deep understanding the Mas’alah that has been presented to him, and it is important for him to visualise it correctly. This is because the ruling upon a thing is dependent upon its visualisation. Thus, if the Mufti visualises the Mas’alah incorrectly, there is no doubt that he will err in his answer.

Thus, it is not permissible for a Mufti to rush in issuing an answer if there is some ambiguity in the question. Rather, it is necessary upon him to remove that ambiguity by reverting to the Mufti, or through other means, until the form of the Mas’alah becomes apparent in a clear manner.

Considering that a layman questioner does not understand the basis of the rulings of Shari’ah, he may at times mention details in the question that have no effect upon the ruling. It is due to this that the Fuqaha have mentioned that the details presented by a questioner may be of two types:

- 1) Details that are relevant for the ruling of the Mas’alah
- 2) Excessive details that have no influence or effect upon the ruling

Therefore, it is necessary for a Mufti to differentiate between the two, and focus his attention on the relevant details. Imam Al Dabusi Rahimahullah writes:

الأصل عند أبي حنيفة أن من جمع في كلامه بين ما يتعلق به الحكم وما لا يتعلق به الحكم فلا عبرة لما لا يتعلق به الحكم والعبرة لما يتعلق به الحكم والحكم يتعلق به فكأنه لم يذكر في كلامه سوى ما يتعلق به الحكم

“The principle according to [Imam] Abu Hanifah whoever gathers in his statement that which has relevance to the ruling and that which has no relevance to the ruling, then there is no consideration of that which has no relevance to the ruling, and consideration will be given to that which has relevant to the ruling. Thus, it is as though he has not mentioned anything in his statement except that which has relevance to the ruling”

At times, a questioner leaves out that which a correct answer dependent upon, and he mentions other details that have no relevance to the Shari'i ruling, in other words, he mentions excessive stories and does not mention the relevant stories, as many of the laymen do when they ask a question regarding divorce; they mention stories pertaining to the dispute between the two wives but do not mention the actual words that were used to issue the divorce.

In such a case, it is necessary upon a Mufti to require clarification from the questioner, he should ask the questioner to answer the clarifications on the same paper that he presented to the Mufti with his question, then the Mufti should base his answer upon the clarification provided by the questioner.

At times, a questioner may clarify a few important details verbally in front of the Mufti, a Mufti should not suffice on his statement alone, rather, he should give the question paper back to him so that he may complete and add the clarification that he has verbally provided. There is no problem if the Mufti adds the clarified details to the question himself if the questioner would like him to do so.

Mufti Taqi Sahib says that if there is no possibility of adding those details to in the question, then it is possible for the Mufti to begin his answer by writing: “The questioner added the following details verbally, if the matter is as he has said, the ruling is...”. Mufti Taqi Sahib says that he saw his father, Mufti Muhammad Shafi Rahmahullah, do this on many occasion.

At times, a questioner, due to his lack of knowledge, is unable to clarify those details of his question that the Shari'ah ruling depends upon. In such a case, it is appropriate for a Mufti to discover these details through other means. This happens many times in questions pertaining to business transactions that occur between people. For indeed, a questioner will ask regarding these transaction according to his understanding of the transaction, and he will not pay attention to some important aspect of the transaction or he will not recognise the reality of the transaction.

In fact, at times, the questioner will purposefully misportray the reality of the transaction by presenting it in a manner that does not concur with how the transaction really works. In such a situation, the Fatwa of a Mufti shall be given according to what has been asked of him, however, it shall be made famous amongst the people as though it is in relation to a known transaction amongst the people.

It is known that the question presented to the late Shaykh Muhammad Abdah with regards to traditional insurance was also of this nature. When a French man by the name of Morsio Hursel asked him regarding it without presenting it in the correct manner and by making it seem that the issue of traditional insurance is the same as the issue of Mudarabah. So the Shaykh gave a Fatwa on this basis. Then, his Fatwa was spread on a wide-scale that he has permitted traditional insurance.

A similar situation occurred in India in which traditional insurance was presented in a form that was not its real form, then when some of the accomplished jurists issued a Fatwa stating that it is permissible, then this Fatwa to this day has been used by some insurance companies to legitimatise their business practices.

It is therefore appropriate for a Mufti of every age to ensure that he is aware of the reality of these transactions. It is for this reason that it is narrated from Imam Muhammad (d.189 AH) that he used to visit the individuals who would dye clothes and would ask them regarding their trade and dealings and that which occurs between them. He did not do this except for the reason that he may be knowledgeable of the transactions prevalent amongst the people.

There are many occasions upon which a Mufti in our time is asked regarding a transaction that is prevalent amongst the people and is based upon the rules and laws of the country, are they permissible or not? The questioner will describe according to his understanding, but will leave out the important aspects which the Shari'ah ruling depends upon. In these situations, it is appropriate for a Mufti to revert to that law or rule upon which the common practice has been based before he gives a definitive answer. For example, if he is asked regarding the premiums that he pays to his governmental employer which are given to him after he has retired or after his death, then before issuing a Fatwa of permissibility of impermissibility or whether it shall be inherited or not, it is necessary for him to revert to the law or rule upon which those disbursements are based upon such that it may become apparent to him whether it consists of usury or any other prohibited elements in Shari'ah, and if it is permissible, then whether the laws of inheritance shall be applied to it or not.

Issuing a Fatwa Based upon a Clear Ruling of the Fuqaha (الجواب على أساس النقل الصريح)

After a Mufti has properly understood the Mas'alah, then the next important thing to do is to apply a ruling of Shari'ah to it. In most cases, the Mas'alah will be explicitly mentioned in the books of Fiqh; hence it shall become incumbent upon the Mufti to answer exactly according to what has been written in the books of Fiqh. What we have recorded from the rules mentioned in Sharh Uqud Rasmil Mufti shall then apply.

In such situations, Ibn Abidin Rahimahullah (d.1252 AH) states:

وَالْغَالِبُ أَنَّ عَدَمَ وَجْدَانِهِ النَّصِّ لِقَلَّةِ إِطْلَاعِهِ أَوْ عَدَمَ مَعْرِفَتِهِ بِمَوْضِعِ الْمَسْأَلَةِ الْمَذْكُورَةِ فِيهِ إِذَا قَلَّ مَا تَقَعُ حَادِثَةٌ إِلَّا وَلَهَا ذِكْرٌ فِي كُتُبِ الْمَذْهَبِ إِمَّا بِعَيْنِهَا أَوْ بِذِكْرِ قَاعِدَةٍ كَلِيَّةٍ تَشْمَلُهَا

“Usually, a Mufti’s claim that the Mas’alah cannot be found in the books of Fiqh is based upon his lack of research or a lack of understanding of the premise of the question, as it is very rare that a Mas’alah is presented for which there is not a mention in the books of Fiqh either explicitly or implicitly.”

If the Mas’alah is mentioned explicitly in the books of Fiqh, the Mufti’s matter has become very easy. However, if the Mas’alah is not explicitly mentioned in the books of Fiqh, and there is a need to fit the Mas’alah under a **general** ruling of Shari’ah or under a jurisprudential maxim, then if the Mufti is not from amongst those who have an ability to extract rulings and a deep understanding of jurisprudence that is attested to by the scholars of the time, then it is necessary for him to pass this Fatwa onto someone who is more knowledgeable than him from those who have an ability to extract rulings and a deep understanding of jurisprudence that is attested to by the scholars of the time.

With regards to this situation, Ibn Abidin (d.1252 AH) states:

وَلَا يَكْتَفِي بِوُجُودِ نَظِيرِهَا مِمَّا يُقَارَبُهَا فَإِنَّهُ لَا يَأْمَنُ أَنْ يَكُونَ بَيْنَ الْحَادِثَةِ وَمَا وَجَدَهُ فَرْقٌ لَا يَصِلُ إِلَيْهِ فَهَمُّهُ فَكَمْ مِنْ مَسْأَلَةٍ فَرَّقُوا بَيْنَهَا وَبَيْنَ نَظِيرِهَا حَتَّى أَلْفُوا كُتُبَ الْفُرُوقِ لِذَلِكَ وَلَوْ وَكَّلَ الْأَمْرَ إِلَى أَفْهَامِنَا لَمْ تُذَرِكِ الْفَرْقَ بَيْنَهُمَا بَلْ قَالَ الْعَلَامَةُ ابْنُ نُجَيْمٍ فِي (الْفَوَائِدِ الزَّيْنِيَّةِ) لَا يَحِلُّ الْإِفْتَاءُ مِنَ الْقَوَاعِدِ وَالصَّوَابِطِ وَإِنَّمَا عَلَى الْمُفْتِي حِكَايَةُ النَّقْلِ الصَّرِيحِ كَمَا صَرَّخُوا بِهِ (انتهى)

“When presented with a Mas’alah, a Mufti must not suffice with finding a similar Mas’alah in the books of Fiqh as there is no guarantee that [it may so happen that] there is a difference that his mind has not realised between the Mas’alah that he has found in the books and the Mas’alah that he has been presented with. This is because there are many Mas’alahs that look similar but are different in ruling, this is the reason why many have written in the field of *Al Furuq* (الفروق – these are books which show the reasons behind the differences in ruling between two similar Mas’alahs) and if the matter was based upon our understanding, we would never have realised the difference. In fact, Allamah Ibn Nujaym has stated in *Al Fawaid Al Zayniyyah* (الفوائد الزينية): it is not permissible to give a Fatwa from the principles and maxims, rather, it is necessary upon a Mufti to find a clear statement (from the Fuqaha)”

Al Takyif Al Shari' (التكليف الشرعي)

On many occasions, a question presented to a Mufti is an amalgamation of many Masail, each one from a different chapter of jurisprudent. In such a case, it is necessary to apply the ruling of Shari'ah from each chapter to its relevant part in the question. For this, it is necessary to order the rulings according to the demands of the question. Thus, it is necessary upon a Mufti to fragment the question into separate pieces specifying an area of research and investigation for each piece. He should then give these pieces an order in a form that is a logical and natural form. He should then investigate each portion of the question according to that order, without committing himself to the order presented by the questioner.

Example of 'Takyif Al Shar'i'

Question:

Zaid passed away leaving behind his wife, Zaynab, who was pregnant at the time of his death. She then had a miscarriage a month later and married Amr straight away after giving birth. She then gave birth to Bakar nine months later whilst being in the marriage of Amr. Then Amr passed away after making a bequest for Bakar from a third of his wealth. Amr had left a child by the name of Khalid who was born from another wife. Khalid now refuses to give Bakar any part of the inheritance. Should Khalid be forced to give Bakar the third that was made a bequest for him?

Answer:

The answer depends upon:

- Will Bakar be considered Amr's child?

Which depends upon:

- Was Zaynab's marriage with Amr valid?

Which depends upon:

- Did Zaynab's iddah period end when she had a miscarriage?

Accordingly, the first question is:

- Did Zaynab's iddah period end when she had a miscarriage?

The answer to this is that giving birth or having a miscarriage will only end the iddah period when the birth of miscarriage occurs after the baby has taken a human form (which is usually after one-hundred and twenty days), if the birth or miscarriage occurs before the baby has taken a human form, the iddah period shall not end.

Thus, considering that a baby does not usually take a human form in one month, when she had a miscarriage after one month, her iddah period did come to an end.

We may now come to the second question:

- Was Zaynab's marriage with Amr valid?

Considering that Zaynab's iddah period has not yet come to an end, her marriage with 'Amr was a marriage that took place whilst she was in the iddah period of Zayd's death. Thus, we are now required to know the the ruling of marrying a woman whilst she is in her iddah period for another husband. The ruling of such a marriage is that it is defective (Fasid).

This brings us to the final question:

➤ Will Bakar be considered Amr's child?

Although marrying a woman in her iddah period is a defective marriage (Nikah Fasid), we find that kinship (Nasab) shall be still be established in such a marriage if the child is born six months after the time the marriage was conducted or six months after the first conjugal relations (depending upon the difference of opinion). Considering that Bakar was born nine months after the time the marriage was conducted, Bakar shall be considered Amr's son.

Therefore, considering that Bakar is Amr's son, it means that he is eligible for a share from Amr's estate. It also means that a bequest cannot be made for Bakar. Accordingly, the bequest of one-third made for Bakar shall be invalid as there is no bequest for an inheritor. Thus, Bakar cannot claim anything from the bequest. However, he may claim his share of inheritance from Amr's estate.

Giving a Fatwa based on Principles and Maxims (الجواب على أساس العمومات أو النظائر)

When a Mufti is one who has the capability to extract rulings for a Mas'alah and has a deep understanding of jurisprudence that is attested to by the scholars of the time, then it is permissible for him to extract the ruling for the Mas'alah from the general statements of the Fuqaha in the books of Fiqh and other similar generalities, such as principles and maxims.

However, it is necessary for such a Mufti to be aware of the differences that may at times occur between the Mas'alah mentioned in the books and the one he has been asked, as Ibn Abidin has warned.

In this regard, we shall mention two principles which are necessary to pay attention to:

- 1- At times, the Mas'alah mentioned in the statements of the jurists is based upon the common practice and social tendencies of the people of the time of that jurist, this common practice and social tendencies could change, and when it does, it is no longer appropriate to apply the ruling mentioned by that jurist to the Mas'alah that he has been presented with.

Ibn Abidin Rahimahullah:

فهذا كله وأمثاله دلائل واضحة على أن المفتي ليس له الجمود على المنقول في كتب ظاهر الرواية من غير مراعاة الزمان وأهله وإلا يضيع حقوقا كثيرة ويكون ضرره أعظم من نفعه

“These are all examples and clear evidence that a Mufti must not be languid upon what is recorded in the books of Zahir Al Riwayah without consideration of [the state of his] time and his people. Otherwise, he will destroy many rights and his harms shall be greater than his benefit”

- 2- The statement of the jurists mentioned in their books are based upon whatever was possible to have occurred at that time. Thus, at times they have mentioned general words, the apparent of which encompasses the inventions that were made after them. However, these invention did not exist during their time. Therefore, it is not possible for us to say that they have issued a ruling for this new invention also through their usage of general words when mentioning the ruling.

Indeed, the statements of the jurists are restricted to what was possible for them at that time and what their investigation or enumeration allowed at that time. Hence, it is possible that the Fuqaha have used a word according to the possibilities of the state of their time, and they had not imagined what would occur in the coming ages, meaning that their statements did not encompass these new inventions.

At times, it is misunderstood from the generality of their statements that they have issued a ruling for the new inventions we have today. However, they did not intend these new inventions as these new

inventions did not yet exist during their time. Hafiz Ibn Taymiyyah Rahimahullah has indicated towards this as he says:

لأن الصور التي لم تقع في أزمنتهم لا يجب أن تخطر بقلوبهم ليجب أن يتكلموا فيها ووقوع هذا وهذا في أزمنتهم إما معدوم وإما نادر جداً وكلامهم في هذا الباب مطلق عام وذلك يفيد العموم لو لم تختص الصورة المعينة بمكان توجب الفرق والإختصاص وهذه الصورة قد لا يستحضرها المتكلم باللفظ العام من الأئمة لعدم وجودها في زمنهم

“This is because those situations that did not occur during their times, it is not necessary for them to have thought of these situations during their time and then discussed it, and for this and this to have occurred during their time was either impossible or rare. Their statement in this chapter is general and broad, and this gives the ruling of generality unless a specific situation is found which necessitates specification and separation [in ruling], and this specific situation may be one which the speaker - from the A’immah - of the general ruling may not have thought of, as it did not exist during their time”

Examples:

➤ The Mas’alah of the Permissibility of Performing Salah in the Plane

Some of our contemporary scholars have issued a Fatwa stating that it is impermissible to perform Salah in the plane, except for an excuse. They have based their reasoning for this upon the view that prostration (Sajdah) shall not occur, as the jurists have defined prostration as:

وضع الوجه على الأرض

“To put the head on the ground”

Therefore, it is necessary for a Sajdah to be valid that it occurs with the head upon the ground or upon that which is settled on the ground. Whereas a plane that is flying in the sky is not a ground and nor is it settled on the ground; because the plane is not settled in the air and the air is not settled on the ground. This reasoning is based upon the definition provided by the jurists for ‘prostration’.

However, Mufti Taqi Sahib states that he heard his father, Mufti Muhammad Shafi Sahib, related from ‘Allamah Shabbir Ahmad Uthmani Rahimahullah that when the jurists used the word الأرض (ground) in their definition of ‘prostration’, they had not thought of aeroplanes, as they did not exist nor were they imagined during their time. Therefore, when they used the word الأرض (ground), they did not intend to exclude Salah in the aeroplanes, rather, they used the word الأرض (ground) to refer to:

الفرش الذي يسلك عليه الناس ويعتبر موطاً للأقدام

“A flat surface that the people walk on and it is considered a stepping place for the feet”

Considering that during their time, this quality was only found in the الأرض (ground), they defined ‘prostration’ as ‘to put the head on the ground’. However, after the invention of aeroplanes, it became apparent that these very same qualities (flat surface that the people walk on and it is considered a stepping place for the feet) are also found in an aeroplane, and that according to common practice, this flat surface inside the plane is also referred to as الأرض (ground). Thus, it became incorrect to use the word الأرض (ground) in the definition of ‘prostration’ as reasoning for prostration being invalid upon the flat surface of the inside of an aeroplane.

➤ The Mas’alah of Performing Salah using a Mic

Some contemporary scholars have issued a Fatwa stating that it is impermissible to perform Salah using a mic. They have based their reasoning upon the view that to follow the Takbir that is heard from the mic is equivalent to 'learning through something outside of Salah' (Talaqun Minal Kharij), this is because the sound of the mic is not the sound of the Imam.

However, when the Fuqaha used the notion of 'learning through something outside of Salah' (Talaqun Minal Kharij), mics did not yet exist nor could they have been imagined. Thus, it is not possible to claim that they intended to include mics when they used the phrase 'learning through something outside of Salah' (Talaqun Minal Kharij).

It is not possible to use this reasoning to state that the Salah of the one who moves from one posture to another based upon the Takbir that he hears from the mic. This is because the sound of the mic, irrespective of whether it is the voice of the Imam or something else, is a sound that is emitted from an inanimate that does not have a choice, thus the sound cannot be attributed to the object, rather it shall be attributed to the being that caused the sound with choice which is the Imam.

Mufti Taqi Sahib writes that this is what his beloved father Mufti Muhammad Shafi Rahimahullah has written in his *Al Bada'i' Al Mufidah*.

Mufti Taqi Sahib writes that it is best for Mufti to consult other scholars and jurists when Masail of this nature arise, and that he should not rush in issuing a Fatwa in these matters. Rather, he should fear Allah the Almighty in all of this, based upon the statement of the Prophet Sallallah Alayhi Wasallam:

أَجْرُكُمْ عَلَى الْفِتْيَا أَجْرُكُمْ عَلَى النَّارِ

"The most adamant amongst you in answering a question is the most adamant amongst you in entering hellfire"

The Etiquettes of Issuing a Fatwa (آداب الإفتاء)

There are 17 etiquettes that must be maintained when giving a Fatwa:

- 1) Before issuing a Fatwa, a Mufti should turn to Allah the Almighty and should ask Allah the Almighty for guidance in reaching the correct answer.

Ibn Salah states:

روي عن مكحول ومالك رضي الله عنهما أنهما كانا لا يفتيان حتى يقولوا لا حول ولا قوة إلا بالله. ونحن نستحب للمفتي ذلك مع غيره فليقل إذا أراد الإفتاء "أَعُوذُ بِاللَّهِ مِنَ الشَّيْطَانِ الرَّجِيمِ سُبْحَانَكَ لَا عِلْمَ لَنَا إِلَّا مَا عَلَّمْتَنَا إِنَّكَ أَنْتَ الْعَلِيمُ الْحَكِيمُ فَفَهَّمْنَاهَا سُلَيْمَانَ قَالَ رَبِّ اشْرَحْ لِي صَدْرِي وَيَسِّرْ لِي أَمْرِي وَاحْلُلْ عُقْدَةً مِنْ لِسَانِي يَفْقَهُوا قَوْلِي لَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ سُبْحَانَكَ اللَّهُمَّ وَحَنَانُكَ اللَّهُمَّ لَا تَنْسِنِي وَلَا تَنْسِنِي الْحَمْدُ لِلَّهِ أَفْضَلُ الْحَمْدِ اللَّهُمَّ صَلِّ عَلَى مُحَمَّدٍ وَعَلَى آلِهِ وَسَائِرِ النَّبِيِّينَ وَالصَّالِحِينَ وَسَلِّمْ اللَّهُمَّ وَفَقِّنِي وَاهْدِنِي وَسِدِّدْنِي وَاجْمَعْ لِي بَيْنَ الصَّوَابِ وَالْثَوَابِ وَأَعِزَّنِي مِنَ الْخَطَا وَالْحَزْمَانِ. آمِينَ. فَإِنْ لَمْ يَأْتِ بِذَلِكَ عِنْدَ كُلِّ فِتْوَى فَلْيَأْتِ بِهِ عِنْدَ أَوَّلِ فِتْوَا يَفْتِيهَا فِي يَوْمِهِ لَمَّا يَفْتِيهِ فِي سَائِرِ يَوْمِهِ مُضِيفًا إِلَيْهِ قِرَاءَةَ الْفَاتِحَةِ وَآيَةِ الْكُرْسِيِّ وَمَا تيسر فَإِنْ مِنْ ثَابِرٍ عَلَى ذَلِكَ حَقِيقَ أَنْ يَكُونَ مُوَفَّقًا فِي فِتَوَاهِ

"It is narrated from Makhul and Malik, may Allah be pleased with them, that they would not issue a Fatwa until they had prayed, 'There is no power or might except with Allah'. We consider it preferable for a Mufti to pray this along with other [prayers], thus he should pray when he wishes to issue a Fatwa, 'I seek protection in Allah from the accursed devil, Glorified You are, we have no knowledge except what you have taught us. Indeed, You are the All-Knowing. And We made Sulayman understand it (till the end of that verse), he said my Lord open my heart for me and make my matter easy and open the locks from my tongue so that they understand my words, there is no power and might except with Allah, the Most High,

the Most Great, Glorified You are, Oh Allah and Your Affection, do not forget me and do not make me forget, all praise is for Allah, the best of praises, oh Allah, send salutations upon Muhammad and his family and all of the Prophets and pious servants as well as you peace. Oh Allah, inspire me, and guide me, and correct me, and gather for me correctness and reward, and save me from mistake and deprivation.’ Ameen. If he cannot say this for every Fatwa, then he should say it at the time of answering the first Fatwa of the day for all the Fatawa that he is to answer in that entire day, while adding Surah Fatihah and Ayatul Kursi and any other verses that are easy for him. Indeed, he who preserves this is worthy of being inspired in his Fatawa”

Ibn Al Qayyim states that the dua’ a Mufti must make before attempting a Fatwa is:

حَقِيقٌ بِالْمُفْتِي أَنْ يَكْثُرَ الدُّعَاءُ بِالْحَدِيثِ الصَّحِيحِ اللَّهُمَّ رَبَّ جِبْرِئِيلَ وَمِيكَائِيلَ وَإِسْرَافِيلَ فَاطِرَ السَّمَاوَاتِ وَالْأَرْضِ عَالِمَ الْغَيْبِ وَالشَّهَادَةِ أَنْتَ تَحْكُمُ بَيْنَ عِبَادِكَ فِيمَا كَانُوا فِيهِ يَخْتَلِفُونَ اهْدِنِي لِمَا اخْتَلَفَ فِيهِ بِإِذْنِكَ إِنَّكَ تَهْدِي مَنْ تَشَاءُ إِلَى صِرَاطٍ مُسْتَقِيمٍ وكان شيخنا (يعني العلامة ابن تيمية رحمه الله تعالى) كثير الدعاء بذلك. وكانت إذا أشكلت عليه المسائل يقول "يا معلم إبراهيم علمني" ويكثر الإستعانة بذلك اقتداء بمعاذ بن جبل رضي الله تعالى عنه حيث قال لما لك بن يخامر السكسكي عند موته وقد رآه يبكي فقال والله ما أبكي على دنيا كنت أصيبها منك ولكن أبكي على العلم والإيمان اللذين كنت أتعلمهما منك فقال معاذ بن جبل رضي الله تعالى عنه "إن العلم والإيمان مكانهما من ابتغاهما وجدهما أطلب العلم عند أربعة عند عويمر أبي الدرداء وعند عبد الله بن مسعود وأبي موسى الأشعري وذكر الرابع فإن عجز عن هؤلاء فساتر أهل الأرض عنه أعجز فعليك بمعلم إبراهيم صلوات الله عليه

“It is appropriate for a Mufti to pray lots of supplications that are found in the authentic narrations; [such as] ‘Oh Allah! Lord of Jibril and Mikhael and Israfil, creator of the heavens and the earth, knower of the unseen and the seen, you decree between your servants in that which they dispute over. Guide me in that which there is a difference of opinion with your permission, indeed, You guide whom You wish towards the straight path’. Our Shaykh (i.e. Hafiz Ibn Taymiyyah Rahimahullah) would make supplicate many times with this supplication. Whenever he would become confused in any of the Masail, he would say, ‘Oh teacher of Ibrahim! Teach me!’ He would seek help many times in this manner following what Hadrat Mu’adh ibn Jabal Radiyallahu Anhu said to Malik ibn Yukhamir Al Saksaki at the time of his death. He saw Malik ibn Yakhamir Al Saksaki crying, Malik then said, ‘I swear by Allah! I am not crying over the wordly benefit that I gained off you, rather, I am crying over the knowledge and faith that I learnt from you’. Mu’adh ibn Jabal Radiyallahu Anhu said, ‘Indeed, knowledge and faith have their places, whoever searches for them shall find them, seek knowledge from four individuals; from Uwaymir Abu Al Darda, from Abdullah ibn Mas’ud, Abu Musa Al Ash’ari, and he mentioned a fourth. If these individuals are unable [to provide you with knowledge and faith], then the entire world is more unable [to provide you with knowledge and faith]. In that situation, stay steadfast to the teacher of [Hadrat] Ibrahim, May Allah’s salutations be upon him”

It is narrated from Sa’id ibn Al Musayyib that he would rarely issue a Fatwa and he would not say anything except:

اللَّهُمَّ سَلِّمْ بِيَّ وَسَلِّمْ لِيَّ

“Oh Allah! Save me [from evil] and save [others] from me (my evil)”

- 2) It is appropriate for a Mufti to avoid rushing to answer a question if it is asked in a gathering in which there is someone who is more knowledgeable. Rather, he should direct the questioner towards the more knowledgeable individual. The exception to this is when the more knowledgeable individual commands him to issue the Fatwa, it is necessary for him then to answer according to his knowledge.

Ibn Nujaym Rahimahullah writes:

ومن شرائطها حفظة الترتيب والعدل بين المستفتين لا يميل إلى الأغنياء وأعوان السلطان والأمراء بل يكتب جواب السابق غنيا كان أو فقيرا

“And from its conditions is that a Mufti must maintain order and justice amongst the questioners. He should not be inclined towards the rich and the representatives of the kings and leaders, rather, he shall write the answer for the one who came first, whether rich or poor”

- 3) It is appropriate for a Mufti to avoid answering a question until he feels complete satisfaction that his answer is correct. He should not answer if there is some doubt in his heart, even if it is little. He should not be deterred by the persistence of the questioner on wanting the question to be answered quickly. This is the reasoning we may understand behind the view of those who say that it is impermissible to issue a Fatwa whilst walking.

It is narrated that questioners would at times badger Ibn Sallam to answer their questions immediately. They would mention to him that they have come from far away.

Ibn Sallam would reply:

فَلَا نَحْنُ نَادِيْنَاكَ مِنْ حَيْثُ جِئْتَنَا
وَلَا نَحْنُ عَمَيْنَا عَلَيْكَ الْمَذَاهِبَا

“We did not call you from where you were
And we have not blinded you from the exit”

It is narrated Suhnun Al Maliki that a man came to him and asked him regarding a Mas’alah. Suhnun did not reply for three days, so the man said:

أصلحك الله

“May Allah guide you, my question has taken 3 days!”

Suhnun replied:

أصلحك الله مسألتي في ثلاثة أيام

“What should I do? How can I escape your question? The question is difficult with many views and I am scared of this”

The man from Satfurah retorted:

وأنت أصلحك الله لكل معضلة

“And how can a question be hard for you?”

Suhnun replied:

هيهات! ليس يا ابن أخي! بقولك أبذل لك لحمي ودمي إلى النار ما أكثر ما لا أعرف! إن صبرت رجوت أن تنقلب بمسألتك وإن أردت غيري فامض نجاب
عن ساعة

“What?! No way my brother! With your statement I would present my body and blood towards the hellfire. There are many things I do not know. If you have patience, I will revert to you with your answer and if you decide to ask someone else, you will receive your answer immediately”

So the man from Satfurah said:

إنما جئت إليك ولا أبتغي غيرك

“Surely I came to you, I don’t want an answer from anyone else”

Suhnun remarked:

فاصبر عافاك الله

“So have patience, may Allah forgive you”

Suhnun then gave him the answer.

We have already discussed enough stories of the attitude of the scholars of the past in verifying the Fatawa that they would issue and their fear for issuing a Fatwa in general that would prevent a person from rushing in matters pertaining to a Fatwa.

- 4) A Mufti should ensure not to give a Fatwa when his heart is occupied with anger or fear or lust which are from amongst those things that take a person away from the soundness of mind. Similar to this is extreme sadness, extreme happiness, and other similar emotions. Thus, if his emotions are overpowering his judgement, then it is necessary for him to hold back from issuing a Fatwa until his sound judgement has returned. Similar to this is when he is feeling extremely sleepy or hungry or extremely ill or severely hot or intensely cold or he is holding back from relieving himself.
- 5) It is appropriate for a Mufti to bear as much patience as possible with the questioner's rude mannerisms.

The scholars have used the example of the story of Hadrat Dawud Alayh Al Salam, when two parties argued over climbing the Mihrab, and they said to him:

وَلَا تُشْطِطْ

“And do not exceed (the ruling)”

For Haḍrat Dāwūd ‘Alayh Al Salām did not reprimand them for this rude statement. ‘Allamah Alusi Rahimahullah writes:

وفيه من الفظة ما فيه ... وفي تحمل داود عليه السلام لذلك منهم دلالة على أنه يليق بالحاكم تحمل نحو ذلك من المتخاصمين لا سيما إذا كان ممن معه الحق ... والعجب من حاكم أو محكم أو للخصوم نوع رجوع إليه كالمفتي كيف لا يقتدى بهذا النبي الأواب عليه الصلاة والسلام في ذلك بل يغضب كل الغضب لأدنى كلمة تصدر ولو فلتة من أحد الخصمين يتوهم منها الخط لقدرة ولو فكر في نفسه لعلم أنه بالنسبة إلى هذا النبي الأواب لا يعدل - والله العظيم - متك ذباب اللهم وفقنا لأحسن الأخلاق واعصمنا من الأغلاط

“And in this statement there is from harshness whatever there is ... and in it is the forbearance of Dawud Alayhis Salam towards that which came from them, indicating towards [the fact] that it is appropriate for a judge to forbear things like this from disputing parties, especially when he is from amongst those who are upon the correct path...and there is astonishment from a ruler or a judge or one whom disputing parties revert to such as a Mufti, how does he not follow this great Prophet Alayhis Salah Wal Salam in this matter? Rather, he becomes completely angry over the slightest statement even if it a slip of the tongue from one of the disputing parties, this diminishes his status. And if he were to think of himself in comparison to this great Prophet, I swear by Allah, he would not equate to the wings of a fly. Oh Allah! Inspire us to the best of characters and save us from mistakes”

- 6) It is better for a Mufti to begin the answer by mentioned the ruling of the Mas’alah in a clear sentence that the listener or reader may understand. He should not discuss any evidences when mentioning the ruling of the Mas’alah, this is so that the questioner may benefit from the answer straight away. Then, the Mufti should present the evidences, except if the questioner is from amongst the scholars, then there is no harm in beginning by discussing the evidences.

- 7) A Mufti should write the ruling of the Mas'alah in an simple manner which every scholar or layman may understand, except when the questioner is from amongst the scholar in which case there is no problem in adopting a more academic and terminological sentence when mentioning the ruling.

As for the need to mention the evidence for the ruling, then the jurists have differed over this:

- Some of them have held the view that the Mufti is only required to mention the ruling only, and it is not appropriate for him to mention the evidence. This was the view held by Al Mardawi Rahimahullah from amongst the Shafi'i's, Ibn Hamdan from amongst the Hanbalis, and Al Qarafi from amongst the Malikis.

Al Qarafi Rahimahullah writes:

إلا أن يعلم أن الفتيا سينكرها بعض الفقهاء ويقع فيها التنازع فيقصد بذلك بيان وجه الصواب لغيره من الفقهاء الذي يتوهم منازعته فيتهدى به أو يحفظ عرضه هو عن الطعن عليه

"Except if he (the Mufti) knows that the Fatwa shall soon be rejected by other Fuqaha and a dispute shall occur, so he should intend with this (the evidences) to elaborate the reasons behind the correct view to the Fuqaha from whom it is feared that they shall dispute with him, so he should seek to guide them [by providing evidences] or he should [seek to] protect his own respect from insults"

- Some of them have held the view that it is permissible for a Mufti to mention the evidence if it is a clear and short evidential text. As for long analogical deduction and things of this sort, it is not appropriate for a Mufti to mention any of this. This was the view of Al Khatib Al Baghdadi and Ibn Salah Rahimahullah.
- Some of them have held the view that it is preferable for the Mufti to mention, to the best of his ability, the evidence for a ruling and where he has derived his Fatwa from. This was the view of Ibn Al Qayyim Rahimahullah.

What seems to be the correct view is that a Mufti who is not a Mutjahid should mention where he has taken his Fatwa from, this is because, as we have mentioned, he is in reality not a Mufti, rather, he records the Fatwa of a Mujtahid from amongst the Mujtahidin. Thus, it is appropriate for him to mention where he has taken this view of the Mujtahid from, except if it is a view that is commonly known.

Based upon this, if a Mufti *does* decide to mentions the evidence behind the ruling, then he should do so by writing it a complex and academic sentence which only the scholars understand, this is because the laymen are not good at understanding these evidences, and therefore, they fall into doubt.

- 8) It is appropriate for the Fatwa to be short in mentioning the ruling of the Mas'alah and its jurisprudential reference, it should be free from emotionalism, excessive complimenting, and temporary anger, just as it should also be free from brevity that causes confusion or monotonous circumlocution.

There should not be a single word in the answer that is free from some additional benefit, thus a Mufti should avoid long ramblings in his Fatawa and deep discussions on the secrets and wisdom behind a ruling, except if the questioner has asked for this and the Mufti knows that it will be beneficial.²⁸⁸

²⁸⁸ In his counsel (*Wasiyyah*) to his student, Imam Abu Yusuf Rahimahullah, Imam Abu Hanifah Rahimahullah said:

ومن جاءك يستفتيك في المسائل فلا تجب إلا عن سؤاله ولا تضم إليه غيره فإنه يشوش عليك جواب سؤاله

"When someone comes to you asking a Fatwa from you with regards to a question, then do not give him an answer of anything besides his question and do not anything [extra] to it, for indeed that will make you confused with regards to the answer to his question"

(Ibn Nujaym Rahimahullah, "Al Ashbah Wal Nazair", (Makah: Maktabah Nizar Mustafa Al Baz, 1997), v.2, pg.417)

However, Al Qarafi Rahimahullah writes:

ومتى كان الإستفتاء في واقعة عظيمة تتعلق بمهام الدين أو مصالح المسلمين ولها تعلق بولاة الأمور فيحسن من المفتي الإسهاب في القول وكثرة البيان والمبالغة في إيضاح الحق بعبارات السريعة الفهم والتهويل على الجناة والخص على المبادرة لتحصيل المصالح ودرء المفاسد ويحسن بسط القول في هذه المواطن وذكر الأدلة الحاتئة على تلك المصالح الشرعية وإظهار التكبر في الفتيا على ملابس المنكرات المجمع على تحريمها وقبحها ولا ينبغي ذلك في غير هذه المواطن

“When the question is regarding a serious Mas’alah which pertains to an important aspect of Din or the best interest of the Muslims and it has relevance to the rulers, then it is better for the Mufti lengthen his statement and explain in detail and to provide more in elaborating the truth with sentences that are easy to understand, and words that warn the wrongdoers and motivate the achieving of the best interests [of the people] and averting evil, and it is better to expand one’s statement on such occasions and to mention the evidences which motivate those best interest of Shari’ah and to express disapproval in the Fatwa towards those who are engulfed those evil upon which there is a consensus that it is forbidden and wretched. And it is not appropriate to do such a thing [in a Fatwa] on other occasions”

- 9) A Mufti should not use the word ‘haram (forbidden)’ except when the prohibition of the act is established through indisputable evidence. As for those matters in which there is no evidential text or it is a ruling which has been deduced through Ijtihad, he should avoid that word and use words such as ‘impermissible’ or ‘detestable’ depending upon the level of disapproval.

Imam Malik Rahimahullah said:

لم يكن من أمر الناس ولا من مضى ولا من سلفنا الذين يقتدى بهم ويعول الإسلام عليهم أن يقولوا هذا حلال وهذا حرام ولكن يقول أنا أكره كذا وأحب كذا وأما حلال وحرام فهذا الإفتراء على الله أما سمعت قول الله تعالى "قل أريدتم ما أنزل الله لكم من رزق فجعلتم منه حراما وحلالا قل ءالله أذن لكم أم على الله تفترون"

It is not the matter (habit) of the people nor those who have passed and nor those who came before us from those who were followed and Islam depended upon them that they said, ‘this is halal’ and ‘this is haram’, rather, they would say, ‘I disapprove of this’ and ‘I approve of this’. As for [using the terms] halal and haram, this is to attribute a lie upon Allah; have you not heard the words of Allah? ‘Say! Do you see that which Allah has revealed for you from sustenance so you have made from it halal and haram, Say! Did Allah give you the permission to do this or are you lying upon Allah”

Thus, as the verse in the quote shows, halal is that which Allah has considered halal and haram is that which has considered as haram.

- 10) A Mufti should try to consider what is easy upon the people when the evidences are contradictory in those matters which have become a cause for widespread difficulty (Umum Balwa). Sufyan Al Thawri Rahimahullah said:

إنما العلم عندنا الرخصة من ثقة فأما التشديد فيحسنه كل أحد

“Indeed, [true] knowledge according to us is to find a legitimate leeway. As for strictness, every one is good at it”

On the other hand, it is important that he remain wary that he does not begin to create ease in matters wherein there is an evidential text which would lead to an obliteration of the chains of obligation.

- 11) It is important for a Mufti to consult the pious jurists with regards to new Masail for which there is no explicit mention in the Qur’an, Sunnah, or the ancient books of Fiqh. The basis for this consultation is that which has been narrated by Hadrat Ali Radiyallahu Anhu who said:

قلت يا رسول الله! إن نزل بنا أمر ليس فيه بيان أمر ولا نهي فما تأمرنا؟ قال صلى الله عليه وسلم "شاؤروا الفقهاء العابدين ولا تمضوا فيه رأي خاصة"
 "I said, 'Oh Messenger of Allah! If a matter falls upon us for which there is no mention, not a command or prohibition, then what do you command [us to do]?' He, Sallallahu Alayhi Wasallam replied, 'consult with the pious jurists and do not apply a specific individual's opinion in it'"

Al Khatib has narrated this Hadith with his chain of narration with the words:

اجمعوا له العابدين من أمتي واجعلوه شورى بينكم ولا تقضوه برأي واحد
 "Gather the pious [servants] from my nation and make it a topic for consultation between them and do not rule according to one's personal view"

Imam Al Darimi Rahimahullah has narrated from Abu Salamah who said:

أن النبي الكريم صلى الله عليه وسلم سئل عن أمر يحدث ليس في كتاب ولا سنة فقال "ينظر فيه العابدون من المؤمنين"
 "That the noble Prophet Sallallahu Alayhi Wasallam was asked regarding a matter which arises that is not found in Qur'an or Sunnah, he said, 'gather the pious servants from the Believers'"

Seeking consultation has long remained the habit of the four successful caliphs and the pious predecessors. Imam Al Darimi has narrated some examples of consultation amongst them in his Al Sunan.

The matter became such that the some of the Tabi'un disapproved of the one who consumes himself with issuing Fatawa on his own without consulting other. It has been narrated from Abu Husayn that he said:

إن أحدهم ليفي في المسألة ولو وردت على عمر بن الخطاب لجمع لها أهل بدر
 "Surely one of them gives a Fatwa in such a Mas'alah that if it were to be presented to Umar ibn Al Khattab, he would have gathered the participants of [the battle of] Badr [in order to answer it]"

- 12) It is necessary to refrain from issuing an obscure Fatwa which contradicts the position of the mainstream jurists of this nation. Abdullah ibn Umar Radiyallahu Anhu narrated that the Prophet Sallallahu Alayhi Wasallam said:

إِنَّ اللَّهَ لَا يَجْمَعُ أُمَّتِي - أَوْ قَالَ - أُمَّةً مُّحَمَّدٍ - عَلَى ضَلَالَةٍ وَيَدُ اللَّهِ عَلَى الْجَمَاعَةِ وَمَنْ شَدَّ شُدًّا إِلَى النَّارِ
 "Surely Allah will not gather my Ummah or the Ummah of Muhammad upon falsehood and the hand of Allah is upon the Jama'ah (جماعة) and he who is following an irregular path is following the path towards hellfire"

Hadrat Anas ibn Malik Radiyallahu Anhu narrates from the Prophet Sallallahu Alayhi Wasallam that he said:

إن أمتي لا تجتمع على ضلالة فإذا رأيتم اختلافًا فعليكم بالسواد الأعظم
 "Surely, my Ummah shall not gather upon misguidance, so when you see conflict, then upon you is the biggest group (i.e. align yourselves with the largest group)"

There have been irregular personal opinions adopted by some jurists which the mainstream jurists have not accepted, rather, they have disapproved of these irregular personal opinions, and to be inclined towards these irregular personal opinions in order to create ease and to search for a leeway is something that the pious predecessors, from the early scholars to the later scholars, have reviled.

Imam Al Awza'i' Rahimahullah said:

“Whoever takes the rarities of the scholars has left Islam”

Hafiz Al Dhahabi Rahimahullah said:

ومن تتبع رخص المذاهب وزلات المجتهدين فقد رق دينه كما قال الأوزاعي وغيره من أخذ بقول المكيين في المتعة والكوفيين في النبيذ والمدنيين في الغناء والشاميين في عصمة الخلفاء فقد جمع الشر وكذا من أخذ في البيوع الربوية بمن يحتال عليها وفي الطلاق ونكاح التحليل بمن توسع فيه وشبه ذلك فقد تعرض للإنحلال

“Whoever searches and follows the leeways provided by the schools of thought and the mistakes made by the Mujtahidin, he has weakened his religion. Al Awza’i and others have said, ‘whoever takes the view of the Meccans in the Mut’ah [marriage] and the [view of the] Kufans in the nabidh drink and the [view of the] Madinians in singing and the [view of the] people of Sham in considering the caliphs to be infallible, then he has gathered evil. Similarly, the one who in matters pertaining to usury takes the view of those who provide loopholes and in the matters pertaining to divorce and the halal marriage takes the view of those who are lenient and other similar deviances has prepared himself for desertion [of Iman]”

Imam Ahmad ibn Hanbal said:

لو أن رجلا عمل بكل رخصة بقول أهل كوفة في النبيذ وأهل مدينة في السماع وأهل مكة في المتعة كان فاسقا

“If a man acts upon every leeway by taking the view of the people of Kufa in [the issue of] Nabidh and the people of Madinah in Al Sama’ and the people of Makah in Mut’ah, then he is a wicked person”

Ma’mar said:

لو أن رجلا أخذ بقول أهل المدينة في السماع يعني الغناء وإتيان النساء في أدبارهن وبقول أهل مكة في المتعة والصرف وبقول أهل الكوفة في المسكر كان أشر عباد الله تعالى

“If a man takes the view of the people of Madinah in Al Sama’ i.e. singing and anal intercourse, and the people of Makah in the Mut’ah [marriage] and money exchange and the people of Kufa in intoxicants, then he is worst of the servants of Allah the Almighty”

Sulayman Al Taymi said:

لو أخذت برخصة كل عالم – أو قال زلة كل عالم – اجتمع فيك الشر كله

“If you took the concessions provided by each scholar – or he said, ‘the error made by each scholar – then the entirety of evil shall have gathered within you”

Abdul Rahman ibn Mahdi said:

لا يكون إماما في العلم من أخذ بالشاذ ولا إماما في العلم من روى عن كل أحد ولا يكون إماما من حدث بكل ما سمع

“He cannot be an Imam in [the field of] knowledge who takes the irregular opinion, nor can he be an Imam in [the field of] knowledge who narrates from from everybody, and nor can he be an Imam in [the field of] knowledge who narrates everything that he hears”

This is how the scholars of the past viewed irregular opinions that came from great reliable jurists for whom the scholars testified as people of jurisprudential thought and piety, then what do you think the scholars of the past would say regarding the irregular opinion that come from those who have no relation with knowledge and jurisprudence, rather, he says what he says based upon his extreme views or his innate desires or foreign education which has does not stretch to Islam with any connection whatsoever. Thus, it is necessary to take the view that is more preferred in terms of evidence and stronger in terms of evidence while considering the foundations of the Islamic Shari’ah and its noble objectives.

- 13) It is necessary to avoid accepting any kind of pressure, whether internal or external, political or societal, when issuing a ruling of Shari'ah. This is irrespective of whether this pressure is coming from the questioner or society or the government. For indeed, the post of Ifta is to fulfil the obligation of conveying the message of Allah the Almighty, and Allah the Almighty has said regarding the ones who fulfil this obligation:

الذين يبلغون رسالات الله ويخشونه ولا يخشون أحدا إلا الله وكفى بالله حسيبا

“Those who convey the Message of Allah and fear Him, and fear none save Allah. And Sufficient is Allah as a Reckoner.”

Allah the Almighty says:

يا أيها الذين آمنوا من يرتدد منكم عن دينه ففسوف يأتي الله بقوم يحبهم ويحبونه أذلة على المؤمنين أعزة على الكافرين يجاهدون في سبيل الله ولا يخافون لومة لائم ذلك فضل الله يؤتيه من يشاء والله واسع عليم

“O you who have believed, whoever of you should revert from his religion - Allah will bring forth [in place of them] a people He will love and who will love Him [who are] humble toward the believers, powerful against the disbelievers; they strive in the cause of Allah and do not fear the blame of a critic. That is the favor of Allah ; He bestows it upon whom He wills. And Allah is all-Encompassing and Knowing.”

- 14) When the question pertains to the principles of religion or the indisputable evidences of Shari'ah, then it is necessary to bring its evidences from the Qur'an and Sunnah, not from the books jurisprudence alone. This is because Ijtihad or Taqlid is not permissible in the principles of religion, and this is for example questions related to Oneness of Allah, Prophethood, the day of judgement, prohibition of alcohol, prohibition of lying, prohibition of fornication, and other similar principles of religion. As for when the question pertains to the Masail of jurisprudence, then the Mufti shall mention the evidence from the books of Fiqh and there is no problem in sufficing upon this
- 15) When a Mufti is presented with the Fatwa of another Mufti so that he may approve it, then it is necessary for him to firstly look, is the first Mufti someone who is capable of issuing a Fatwa?

If the first Mufti is someone who is *not* capable of issuing a Fatwa, then he should not write his approval on the Fatwa, even if the answer is correct, rather, he should write the answer to the question separately.

If the first Mufti is capable of issuing a Fatwa, then this may be of two types; either his Fatwa is correct or his Fatwa is incorrect. If the second Mufti does not feel his answer to be correct, then he shall write the answer to the question separately.

If second Mufti considers the answer by the first Mufti to be correct, then either the evidence that the first Mufti has used is correct or it is incorrect. If the evidence he has used is incorrect or requires an improvement or change, then, again the second Mufti shall write the answer to the question separately with the correct evidence. If the evidence used by the first Mufti is correct according to the second Mufti, then it is permissible for him to write “The answer is correct” (الجواب صحيح) and then sign it.

- 16) Al Saymari Rahimahullah said:

وينبغي للمفتي إذا رأى للسائل طريقا يرشده إليه أو ينبه عليه يعني ما لم يضر غيره ضررا بغير حق كمن حلف لا ينفق على زوجته شهرا يقول تعطيها من صداقها أو قرضا أو بيعا ثم تبرئها وكما حكى أن رجلا قال لأبي حنيفة رحمه الله تعالى "حلفت أني أطأ امرأتي في شهر رمضان (أي في نهاره) ولا أكفره ولا أعصي" فقال "سافر بها"

“It is appropriate for a Mufti that when he sees an egress for the questioner, then he guides him towards it or he informs him of it, i.e. as long as it does not harm others without any right, for example, for the one

who takes an oath that he will not provide maintenance for his wife, the Mufti may command him to give her money in the form of a dowry or a loan or a transaction, then she may forgive the debt. Just as it has been related that a person said to Imam Abu Hanifah (d.150 AH), 'I have taken an oath to have intercourse with my wife during the days of Ramadhan, but I will not give kaffarah for it and will not commit the sin'

So Imam Abu Hanifah (d.150 AH) said, 'Go on a journey with her in Ramadhan'"

The conclusion is that if a questioner is under great difficulty, then a Mufti shall provide him with a ruling that is in line with Shari'ah which shall grant him a way out his difficulty.

Shamsul A'immah Al Sarakhsi Rahimahullah has proven this by narrating from Abu Jabalah that he said:

سَأَلْتُ عَبْدَ اللَّهِ بْنَ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا فَقُلْتُ إِنَّا نَقْدِمُ أَرْضَ الشَّامِ وَمَعَنَا الْوَرَقُ الْثَقِيلُ النَّافِقَةُ وَعِنْدَهُمُ الْوَرَقُ الْخِفَافُ الْكَاسِدَةُ أَفَنَبْتَاعُ وَرَقَهُمُ الْعَشْرَةَ بِتِسْعَةٍ وَنَصْفٍ؟ فَقَالَ لَا تَفْعَلْ وَلَكِنْ بَعْ وَرَقَكَ بِذَهَبٍ وَاشْتَرِ وَرَقَهُمُ بِالذَّهَبِ وَلَا تُفَارِقْهُ حَتَّى تَسْتَوِيَ وَإِنْ وَتَبَ فَنَبَّ مَعَهُ

"I asked Abdullah ibn Umar Radhiyallahu Ta'ala Anhumah and so I said "we visit the land of Shaam and we have with us weighty and proper coins, whilst they have light counterfeit coins, can we swap 10 of theirs with 9.5 of ours?" "Don't do that" Abdullah ibn Umar said "rather, sell your coins for some gold, then use that gold to buy their coins and do not separate from the gathering until the deal is complete. If he decides to stand up and walk, then you should also walk with him""

Shamsul A'immah Al Sarakhsi Rahimahullah then said:

وفيه دليل رجوع ابن عمر رضي الله عنه عن قوله في جواز التفاضل كما هو مذهب ابن عباس رضي الله عنهما وأنه لا قيمة للجودة في النقود وأن المفتي إذا تبين جواب ما سئل عنه فلا بأس أن يبين للسائل الطريق الذي يحصل به مقصوده مع التحرز عن الحرام ولا هذا مما هو مذموم من تعليم الخيل بل هو اقتداء برسول الله صلى الله عليه وسلم حيث قال لعامل خيبر "هلا بعت تمرك بسبعة ثم اشتريت بسلعتك هذا التمر"

"In this is evidence of Ibn Radiyallahu Anhu reverting from his view of the permissibility of tafadul (extra given or taken by one party in an on-spot exchange of dirham or dinar) as is the view of Ibn Abbas Radiyallahu Anhumah, and that there is no value for the genuineness [of a coin], and that when the answer to a question is apparent to a Mufti, then there is no problem in mentioning to the questioner how he may achieve his purpose while refraining from that which is forbidden, and this shall not be considered as that which is abhorrent such as teaching loopholes [to the questioner], rather, this is to follow the Prophet Sallallahu Alayhi Wasallam when he said to a worker in Khaybar, 'Why do you not sell your dry dates for commodities and then you buy the dry dates using the commodities'"

- 17) If the answer to the question is not apparent to the Mufti or the questioner would like the Mufti to direct him towards someone else, then it is appropriate for a Mufti to direct the question towards someone else who he feels is capable of issuing a Fatwa.

Ibn Al Qayyim Rahimahullah said:

وهو موضع خطر جدا فلينبظر الرجل ما يحدث في ذلك فإنه متسبب بدلالته إما إلى الكذب على الله ورسوله في أحكامه أو القول عليه بلا علم فهو معين على الإثم والعدوان وإما معين على البر والتقوى فلينبظر الإنسان إلى من يدل عليه وليتق الله ربه

"This is an extremely dangerous situation, so a man should be wary of what he does, for either through his direction [of the questioner] he becomes the cause of lies [attributed] to Allah and His Messenger in His rulings or of statements made about them without knowledge. Indeed, he (the Mufti) may assist upon sin and transgression or he may assist upon virtue and piety. So man should be wary of to whom he directs [an individual] and he should fear Allah, his Lord"

Etiquettes of Writing a Fatwa (آداب كتابة الفتوى)

- 1) A Mufti should endeavour to keep his writing tidy when writing a Fatwa. Indeed, a nice handwriting assists in understanding the points made and protects the questioner from confusion. It also has a huge effect in the impact of a sentence. In fact, if he makes his hand writing neat with the intention that it will benefit the questioner, he will be rewarded for this, Insha'Allah.
- 2) It is preferable for the Mufti to answer the question on the same paper that the question was written on and he should try as much as possible not to write the answer on another piece of paper. This is so that the questioner cannot change the question after the answer is given and attribute the answer to his forged question.
- 3) A Mufti should begin the answer with "In the name of Allah, the Most Merciful, the Most Benovelent" (*Bismillah Al Rahman Al Rahim* - بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ), then the praise of Allah, and then salutations upon the Prophet Sallallahu Alaihi Wasallam.
- 4) A Mufti should write in such a way that the answer cannot be manipulated or altered.
- 5) After the answer is written, a Mufti should write "Allah knows best" (وَاللَّهُ أَعْلَمُ). It has been said that if the question pertains to creed (عقائد), a Mufti should write "Allah is the inspirer" (وَاللَّهُ الْمَوْفَّقُ).
- 6) A Mufti should put his clear signature at the end of the answer and should also write down the date on which he wrote the answer.

Etiquettes of a Mufti (آداب المفتي في نفسه)

- 1) An appointed Mufti should maintain appropriateness in his dressing and appearance. This includes all aspects of Shari'ah such as consideration towards purity, cleanliness, covering off the private parts, refraining from silk and gold, refraining from those clothes that in some way exhibit the style of the non-Muslims, and refraining from resembling the non-Muslims.

Allamah Qarafi Rahimahullah has stated:

وينبغي للمفتي أن يكون حسن الزي على الوضع الشرعي فإن الخلق محبوبون على تعظيم الصور الظاهرة ومتى لم يعظم في نفوس الناس لا يقبلون على الإفتاء به والإقتداء بقوله

"It is appropriate for a Mufti that he has a good appearance according to the dictates of Shari'ah, for indeed, the creation are inclined towards predisposition towards one's outer-appearance, and when he is not respected by the people, they will not accept his guidance and will not follow his statements"

- 2) A Mufti should uphold good conduct and should make his actions in accordance with the dictates of Shari'ah, and control his statements in line with the measure of Shari'ah. This is because, due to his status as an elaborator from Allah, he shall be an example for the people in his speech and conduct, thus a huge message shall be delivered through his actions. It will not be enough for his actions to be equivalent to the actions of an average Muslim, rather, it is appropriate for him to be leading in performing worship with those who are **ahead** in their worship, for indeed, the eyes of the people are turned towards him, and the hearts are dependent upon following his conduct.
- 3) A Mufti should endeavour to rectify his inner self and should continuously evoke his pious intention of being a representative of elaboration on behalf of the Prophet Sallallahu Alayhi Wasallam and of fulfilling the promise to Allah the Almighty and of rectifying the state of the chosen Ummah according to the

commands of Allah the Almighty. A Mufti's concern should be to gain the pleasure of Allah the Almighty in all matters, not to achieve the praise of people or to attract attention or prestige, just as it is appropriate for him to remove wretched intention such as gaining a status in the world, or to gain pleasure from the respect of people, or to achieve their praise and commendation, or to gain monetary benefit and haram earnings.

It is also important for him to remedy his heart from those things that sometimes come into someone who holds this position, such as arrogance, pride, and a feeling of superiority over the servants of Allah and resembling the people of virtue and status, and self-gratification over what he is saying and answering. This is especially when he answers in a good manner when those other than fell short of recognising the answer. Ibn Hamdan has recorded from Imam Suhnnun Rahimahullah that he said:

فتنة الجواب بالصواب أشد من فتنة

"The tribulation of correctly answering a question is more powerful than the tribulation of wealth"

- 4) A Mufti should practise the good that he preaches. In fact, some scholars of principle have mentioned that a Mufti's Fatwa will be invalid if he does not practice upon it, in respect of what the questioner knows about the Mufti.

Hence, Imam Al Shatibi Rahimahullah states:

فأما فتياه بالقول فإذا جرت أقواله على غير المشروع وهذا من جملة أقواله فيمكن جريانها على غير المشروع فلا يوثق بها... فإن المفتي إذا أمر مثلاً بالصمت عما لا يعني فإن كان صامتاً عما لا يعني ففتواه صادقة وإن كان من الخائضين فيما لا يعني فهي غير صادقة وإذا ذلك على الزهد في الدنيا وهو زاهد فيه صدقت فتياه وإن كان راغباً في الدنيا فهي كاذبة وإن ذلك على المحافظة على الصلاة وكان محافظاً عليها صدقت فتياه وإلا فلا وعلى هذا الترتيب سائر أحكام الشريعة في الأوامر ومثلها في النواهي فإذا نهي عن النظر إلى الأجنبية من النساء وكان في نفسه منتهياً عنه صدقت فتياه أو نهي عن الكذب وهو صادق اللسان أو عن الزنا وهو لا يزني أو عن التفحش وهو لا يتفحش أو عن مخالطة الأشرار وهو لا يخالطهم وما أشبه ذلك فهو الصادق الفتيا والذي يقتدى بقوله ويقتدى بفعله وإلا فلا لأن علامة صدق القول مطابقتها للفعل بل هو الصدق في الحقيقة عند العلماء ولذلك قال تعالى "رجال صدقوا ما عاهدوا الله عليه" وقال في صده "ومنهم من عاهد الله لئن آتانا من فضله لنصدقن إلى قوله وبما كانوا يكذبون" فاعتبر في الصدق مطابقة القول للفعل وفي الكذب مخالفتة... فإن قيل إن كان كما قلت تعذر القيام للفتوى والأمر بالمعروف والنهي عن المنكر وقد قال العلماء إنه لا يلزم في الأمر بالمعروف والنهي عن المنكر أن يكون صاحبه مؤمراً أو منتهياً... ومن الذي يوجد لا يزل ولا يضل ولا يخالف قوله فعله ولا سيما في الأزمنة المتأخرة البعيدة عن زمان النبوة فالجواب أن هذا السؤال غير وارد على القصد المقرر لأننا إنما تكلمنا على صحة الإنتصاب والإنتفاع في الوقوع لا في الحكم الشرعي فنحن نقول واجب على العالم المجتهد الإنتصاب والفتوى على الإطلاق طابق قوله فعله أم لا لكن الإنتفاع بفواه لا يحصل ولا يطرد إن حصل

"As for his verbal Fatwa, if his [other] statements are not accepted according to Shari'ah, and this [Fatwa] is a part of his statements, then it is possible to consider it (the Fatwa) as also unacceptable in Shari'ah, thus it shall not be relied upon... Indeed, if for example, a Mufti commands [one] to remain silent from that which does not concern him, then if he (the Mufti) is also silent from that which does not concern him, then his Fatwa is truthful, and if he from amongst those who delve into matters that do not concern them, then it (his Fatwa) is untruthful.

If a Mufti gives a Fatwa commanding one to adopt piety in this world and he himself is a pious person, then his Fatwa will be accepted. However, if he has a zeal for this world, then his Fatwa is a lie. If he gives a Fatwa commanding one to establish Salaah and he himself establishes Salaah, then his Fatwa shall be accepted, otherwise it will not be accepted.

The same system shall be applied to all the other commands of Shari'ah, and the same shall apply in the prohibitions [of Shari'ah]. So if he (the Mufti) prohibits one from looking at non-Mahram women and he himself refrains from this, then his Fatwa shall be accepted or he prohibits lying and he himself is a truthful person or [he prohibits] from fornication and he himself does not fornicate or [he prohibits] from indecency and he himself is not indecent or [he prohibits] from mixing with evil people and he himself does not mix with them and whatever is similar to this, then he is truthful in his Fatwa and he is someone

whose statements and actions should be followed, otherwise (i.e. if he does not refrain from the things he prohibits), not (his Fatwa shall not be accepted).

This is because the sign of a person's statements being truthful is that his actions are acting upon his statements. In fact, this is the definition of truthfulness according to the Ulama. This is why Allah Ta'ala says "they are men who were truthful in their promise to Allah" and in opposition to this, He says, 'from amongst them are those who promise Allah, "If You give to us from Your Grace, we shall believe"' until He said 'and for that regarding which they lied'.

Hence, truthfulness has been defined as when the actions of a person are according to his statements and a lie has been defined as when the actions of a person are not according to his statements ... If it said, 'if the matter is as you describe, then it will be difficult to issue a Fatwa or to command what is right and prohibit what is evil and indeed the scholars have said, "Indeed, it is not necessary in commanding what is right and prohibiting what is evil that the individual commanding or prohibiting is one who himself carries out the right or refrains from the evil [respectively]" ... and which person can be found who does not slip up or make a mistake or whose statements do not contradict his actions, especially in these later times, far from the time of Prophet hood?

The answer is that this question cannot be directed to our intended meaning. For indeed, we have been discussing whether the appointment [as a Mufti] or benefit [of a Fatwa] shall be valid in reality, not in terms of Shari'ah. Thus, we say that it is necessary upon a Mujtahid scholar to be appointed [a Mufti] and to issue a Fatwa in general, whether his statements are in accordance to his actions or not, however, the benefit of his Fatwa shall not be achieved [if his statements are not in accordance to his actions] and if it (benefit) is achieved, **then it shall not last**"

However, a question may be raised that if this were the case, it would be very difficult to give a Fatwa or to command good and forbid evil. Also, the Ulama have stated that when commanding good and forbidding evil, it is not necessary that the commander himself is performing good and staying away from the evil.

The answer to this is that the discussion above is not regarding the permissibility or impermissibility of giving Fatwa, rather it is regarding whether or not a Fatwa will have any benefit or not. Hence, if the Mufti practises whatever Fatwa he gives, then his Fatwa will serve to benefit. Otherwise, it will not."

- 5) A Mufti should refrain from doubtful actions and should adopt stricter measures upon himself that are not required for the general masses. Imam Malik Rahimahullah would perform those acts of worship which did not obligate upon others. He would say:

لَا يَكُونُ عَالِمًا حَتَّى يَعْمَلَ فِي خَاصَّةِ نَفْسِهِ بِمَا لَا يُلْزِمُهُ النَّاسَ

"A person will not become a [true] scholar until he practises upon that which is beyond what is necessary for the general masses"

A similar quote is found from Imam Malik Rahimahullah's teacher, Rabi'ah Rahimahullah, as mentioned by Imam Al Nawawi in his introduction to his book, Al Majmu' Sharh Al Muhadhab.

Imam Al Shatibi Rahimahullah writes:

وقد يسوغ للمجتهد أن يحمل نفس من التكليف ما هو فوق الوسط بناء على ما تقدم في أحكام الرخص ولما كان مفتيا بقوله وفعله كان له أن يخفي ما لعله يقتدى به فيه فرما اقتدى به فيه من لا طاقة له بذلك العمل فينقطع وإن اتفق ظهوره للناس نبه عليه كما كان رسول الله صلى الله عليه وسلم يفعل ... ولهذا - والله أعلم - أخفى السلف الصالح أعمالهم لئلا يتخذوا قدوة مع ما كانوا يخافون عليه أيضا من رياء غيره

"It is appropriate, at times, for a Mufti burden himself with obligations that are above average, based upon what has come in the rulings of concessions. However, considering that he is a Mufti with his words and actions, it is appropriate for him to hide that which he may be followed in [by others], thus at times, someone who does not have the capability of doing that action may begin to follow him due to which he will end up quitting the action. If by chance, he (the Mufti) happens to do the act of worship in front of the

people, then he should caution them just as the Prophet Sallallahu Alayhi Wasallam would do. It is for this reason – and Allah knows best – that the pious predecessors would keep their acts of worship hidden, so that the people [who are not capable] do not begin to take them as an example, along with their (the pious predecessors) fear of ostentation, etc.”

Mufti Taqi Sahib mention that he has heard some of his teachers say that Imam Ashraf Ali Al Thanwi would give a Fatwa of permissibility of buying fruits from the market without needing to delve into whether or not they had been bought before they had emerged from the ground or not, but he himself did not eat any of the bought fruits his entire life as the majority of the sellers used to buy the fruits before they had emerged from the ground (قبل الظهور). He did not inform anyone of this; some of his students recognised this from his actions.

- 6) A Mufti should be devoted to acquiring a jurisprudential understanding (Tafaqquh) and should be eager to increase his knowledge. A person should never be satisfied with the knowledge that he has acquired, rather, he should at all times be concerned in acquiring new knowledge. And for this, it is necessary for one to decrease his relationship with worldly things and dedicate himself to knowledge.

Al Khatib Al Baghdadi Rahimahullah narrates with his chain of narration from Malih ibn Waki' that he said:

سَمِعْتُ رَجُلًا يَسْأَلُ أَبَا حَنِيفَةَ يَمْ يَسْتَعَانُ عَلَى الْفَقْهِ حَتَّى يَحْفَظَ؟ قَالَ يَجْمَعُ الْهَمَّ قَالَ قُلْتُ وَبِمَ يُسْتَعَانُ عَلَى حَذْفِ الْعَلَاتِقِ؟ قَالَ بِأَخْذِ الشَّيْءِ عِنْدَ الْحَاجَةِ وَلَا تَرُدُّ

“I heard a man ask Imam Abu Hanifah “how can one gain the ability to learn and memorise Fiqh?” He replied “with great courage” The man asked “how can one end unnecessary relations?” He replied “by taking according to necessity and no more”

Al Khatib Al Baghdadi Rahimahullah narrates from Imam Al Shafi'i' that he said:

لَا يَطْلُبُ أَحَدٌ هَذَا الْعِلْمَ بِالْمُلْكِ وَعِزِّ النَّفْسِ فَيَفْلَحُ وَلَكِنْ مَنْ طَلَبَهُ بِذِلِّ النَّفْسِ وَضَيْقِ الْعَيْشِ وَخِدْمَةِ الْعُلَمَاءِ أَفْلَحَ

“No one searches for this knowledge with a kingdom and respect, and succeeds. Rather, the one who lowers his innate desires and his living standards, and serves the scholars is the one who succeeds”

Al Rabi' ibn Sulayman, the student of Imam Al Shafi'i' said:

لَمْ أَرِ الشَّافِعِيَّ أَكَلًا بِنَهَارٍ وَلَا نَائِمًا بِلَيْلٍ لِإِشْتَغَالِهِ بِالتَّصْنِيفِ

“I never saw Al Shafi' eat during the day or sleep during the night due to his occupation with writing”

Ibn Jama'ah has mentioned this. There are many other similar stories from the lives of the scholars and jurists of the past.

- 7) A Mufti should be ahead of everyone else in worship and performing voluntary acts of worship.²⁸⁹

Abu Qilabah Rahimahullah said:

إِذَا أَخَذْتَ اللَّهَ لَكَ عِلْمًا فَأَخِذْ لِلَّهِ عِبَادَةً

“When Allah gives you knowledge, give to Allah your worship”

Ibn Khaldun Rahimahullah said in the thirty-first chapter of his Al Muqaddimah:

²⁸⁹ A *Faqeeh* (فقيه- jurist) must be an *Abid* (عابد- worshipper)

والسلف رضوان الله عليهم وأهل الدين والورع من المسلمين حملوا الشريعة اتصافا بما وتحقيقا بمذاهبها فمن حملها اتصافا وتحقيقا دون نقل فهو من الوارثين مثل أهل رسالة القشيري ومن اجتمع له الأمران فهو العالم وهو الوارث على الحقيقة مثل فقهاء التابعين والسلف والأئمة الأربعة ومن اقتفى طريقهم وجاء على أثرهم وإذا انفرد واحد من الأئمة بأحد الأمرين فالعابد أحق بالوارثة من الفقيه الذي ليس بعابد لأن العابد ورث بصفة والفقيه الذي ليس بعابد لم يرث شيئا إنما هو صاحب أقوال ينصها علينا في كفايات العمل وهؤلاء أكثر فقهاء عصرنا إلا الذين آمنوا وعملوا الصالحات وقليل ما هم وَالْفَقِيهُ الَّذِي لَيْسَ بِعَابِدٍ لَمْ يَرِثْ شَيْئًا إِنَّمَا هُوَ صَاحِبُ أَقْوَالٍ يَنْصَحُهَا عَلَيْنَا فِي كَيْفِيَّاتِ الْعَمَلِ وهؤلاء أكثر فقهاء عصرنا إلا الذين آمنوا وعملوا الصالحات وقليل ما هم

“And the [pious] predecessors – May Allah be pleased with them – and the scholars of Din and piety from the Muslims carried the Shari’ah with justice and an examination of its views, so whoever carries it with justice and examination, and not just simply citing it, then he is from the inheritors such as the people mentioned in Risalah Al Qushayri. And if both factors (justice and examination) are found for a person, then he is a scholar and a real inheritor, such as the Fuqaha from the Tabi’un and the pious predecessors and the four A’immah, and those who discovered their paths and followed in their stead. And if one factor is found in the A’immah, then the worshipper is more worthy of being an inheritor than the Faqih who is not a worshipper, this is because a worshipper has inherited a quality while a jurist who is not a worshipper has not inherited anything, rather, he is simply a person with various views that he informs us of with regards to how an action should be performed. This is the state of majority of the jurists of our time except those who believe and perform good actions, and they are few”

As for the statement of the Prophet Sallallahu Alayhi Wasallm, “A single jurists is more arduous upon the devil than a thousand worshippers”, then the meaning of ‘jurist’ in this Hadith – if it is authentic – is not the one who has many views, according to the statement of Ibn Khaldun. Rather, it is a man who has a copious share from worship and reverting to Allah the Almighty, although the majority of his occupation is jurisprudence and jurisprudential understanding. And the meaning of ‘worshipper’ whose virtue is less than that of a jurist is one whose efforts are mainly directed towards worship, and he is not simply one who cites views according to the statement of Ibn Khaldun.

It is for this reason, we see many that many prominent jurists would, along with their many commitments to knowledge and jurisprudence, make an effort in worship as well. Thus, it is narrated regarding Imam Abu Yusuf Rahimahullah that after taking the post of a judge, he would perform two-hundred rak’ah Salah every day.

Yahya ibn Sa’id Al Qattan would finish a Qur’an every night for twenty years, for forty years of his life he would be in the Masjid at the time of Zawal. Bundar Rahimahullah aid:

صحبته أكثر من عشرين سنة فلم يذنب قط

“I accompanied him for twenty years, he never sinned even once”

Ibn Jurayj said regarding Ata’ ibn Abi Rabah:

إِنَّهُ لَمْ يَزَلْ فَرَشُ الْمَسْجِدِ فِرَاشَهُ مُدَّةَ عِشْرِينَ سَنَةً وَكَانَ مَجْلِسُهُ مَعْمُورًا بِذِكْرِ اللَّهِ

“The carpet of the Masjid remained his sleeping mattress for twenty years and his gathering would be alive with the worship of Allah”

It is narrated regarding Sa’id ibn Al Musayyib that he did not hear the Adhan for forty years except that he was in the Masjid and that he would continuously fast and performed Hajj forty times.

Hisham ibn Hassan said regarding Muhammad ibn Sirin:

كُنَّا نَسْمَعُ ضِحْكَهُ بِالنَّهَارِ وَبِاللَّيْلِ

“We would hear his laughter during the day and his crying during the night”

This has remained the practice of the scholars and the jurists all the way until the later period. Ibn Abidin Rahimahullah (d.1252 AH) used to complete one Qur’an recitation during every night of Ramadan whilst contemplating upon its meaning and striving in acts of worship, as mentioned by his son in his introduction to *Qurrah Ayn Al Akhyar* (قرة عين الأختيار).

A Student’s Guide to Issuing a Fatwa According to the Hanafi Madhab

An important of Ifta is to know where to look for a Mas’alah. My beloved teacher, Mufti Ebrahim Desai Sahib (Hafidhahullah) records from his teacher and Shaykh, Mufti Mahmud Hasan Gangohi (Rahimahullah) that he said:

اس زمانہ میں مفتی کے لئے کافی ہے کہ اسکو پتا ہو کہ مسئلہ کہاں لکھا ہے

“It is sufficient for a Mufti in this day and age to simply know where the Mas’alah could be found”

In the discussion on the ruling for the Masail of Zahir Al Riwayah, we have indicated towards a fundamental rule for issuing a Fatwa according to the Hanafi Madhab. This is a rule which must be kept in mind at all times:

“By default, Fatwā is given upon the rulings found in the books of *Zāhir Al Riwayah*. However, if the Ḥanafī Fuqahā who were worthy of giving preference gave preference to a view that is contrary to what is found in the books of *Zāhir Al Riwayah*, then Fatwā shall be given upon the view that the Ḥanafī Fuqahā who were worthy of giving preference have given preference to and not the view found in the books of *Zāhir Al Riwayah*.”

After understanding the fundamental rule mentioned above, it is understood that the important books for Fatwā according to the Ḥanafī Madhab are of four types:

- 1) The books of *Zāhir Al Riwayah*
- 2) The books written by the Ḥanafī Madhab who were worthy of giving preference
- 3) The books of *Al Mutūn Al Mu’tabarah* (The Reliable Texts)
- 4) The books written by the later scholars

We shall briefly list these 4 types of books.

The Books of Zāhir Al Riwayah

The books of *Zāhir Al Riwayah* are the books written by Imām Muḥammad (d.189 AH) with the purpose of presenting the rulings of the Ḥanafī Madhab.

They are five in total:

- 1) Al Aṣl (in print)
- 2) Al Jāmi’ Al Ṣaghīr (in print)
- 3) Al Jāmi’ Al Kabīr (in print)
- 4) Ziyādat and Ziyādat Al Ziyādāt (in print)
- 5) Al Siyar Al Kabīr (not in print)

The Books written by the Ḥanafī Fuqahā who were Worthy of Giving Preference

These books include:

- 1) Muntakab Al Fatāwā by Aḥmad Al Khassāf (d.261 AH) (manuscript)
- 2) Al Kāfi by Ḥākim Al Shahīd (d.334 AH) (manuscript)
- 3) Mukhtaṣar Al Karkhī by Imām Al Karkhī (d.340 AH) (manuscript)

- 4) Mukhtaṣar Al Ṭahāwī by Imām Abū Ja'far Al Ṭahāwī (321 AH) (in print)
- 5) Sharḥ Mukhtaṣar Al Ṭahāwī by Abū Bakr Al Jassāṣ Al Rāzī (d.370 AH) (in print)
- 6) Sharḥ Mukhtaṣar Al Karkhī by Abū Bakr Al Jassāṣ Al Rāzī (d.370 AH) (manuscript)
- 7) 'Uyūn Al Masā'il by Abū Layth Al Samarqandī (d.373 AH)²⁹⁰ (in print)
- 8) Fatāwā Al Nawāzil by Abū Layth Al Samarqandī (d.373 AH) (manuscript)
- 9) Al Muqaddimah Al Samarqandiyyah by Abū Layth Al Samarqandī (d.373 AH) (manuscript)
- 10) Khizānah Al Fiqh by Abū Layth Al Samarqandī (d.373 AH) (in print)
- 11) Mukhtalaf Al Riwayah by Abū Layth Al Samarqandī (d.373 AH) (in print)
- 12) Muqaddimah Al Ṣalāh by Abū Layth Al Samarqandī (d.373 AH) (manuscript)
- 13) Sharḥ Al Jāmi' Al Kabīr by Abū Layth Al Samarqandī (d.373 AH) (manuscript)
- 14) Al Tajrīd by Imām Al Qudūrī (d.428 AH) (in print)
- 15) Mukhtaṣar Al Qudūrī by Imām Al Qudūrī (d.428 AH) (in print)
- 16) Sharḥ Mukhtaṣar Al Karkhī by Imām Al Qudūrī (d.428 AH) (manuscript)
- 17) Al Ajnās by Imām Al Nāṭifī (d.446 AH) (in print)
- 18) Kitāb Jumal Al Aḥkām by Imām Al Nāṭifī (d.446 AH) (in print)
- 19) Al Nutaf Fil Fatāwā by 'Alī Al Saghdī (d.461 AH) (in print)
- 20) Sharḥ Mukhtaṣar Al Qudūrī by Aḥmad Al Aqṭa' (d.474 AH) (manuscript)
- 21) Sharḥ Mukhtaṣar Al Ṭahāwī by Imām Aḥmad ibn Maṣṣūr Al Isbījābī (d.480 AH) (manuscript)
- 22) Sharḥ Al Jāmi' Al Saghdī by Imām Aḥmad ibn Maṣṣūr Al Isbījābī (d.480 AH) (manuscript)
- 23) Sharḥ Al Jāmi' Al Saghdī by Imām Al Bazdawī (d.482 AH) (manuscript)
- 24) Sharḥ Al Jāmi' Al Kabīr by Imām Al Bazdawī (d.482 AH) (manuscript)
- 25) Al Mabsūṭ by Shamsul A'immaḥ Al Sarakhsī (d.483 AH) (in print)
- 26) Sharḥ Al Siyar Al Kabīr by Shamsul A'immaḥ Al Sarakhsī (d.483 AH) (in print)
- 27) Al Nukat Sharḥ Ziyādāt Al Ziyādāt by Shamsul A'immaḥ Al Sarakhsī (d.483 AH) (in print)
- 28) Sharḥ Al Jāmi' Al Saghdī by Shamsul A'immaḥ Al Sarakhsī (d.483 AH) (manuscript)
- 29) Sharḥ Mukhtaṣar Al Qudūrī by Abū Bakr Khwāhir Zādah (d.483 AH) (manuscript)
- 30) Khizānatul Akmal by Yūsuf ibn 'Alī Al Jurjānī (d.522 AH) (in print)
- 31) Sharḥ Al Jāmi' Al Saghdī by 'Allāmah Ṣadr Al Shahīd (d.536 AH) (in print)
- 32) Al Manzūmah Fil Khilāfiyyāt by Najm Al Dīn Al Nasaṭī (d.537 AH) (in print)
- 33) Tuḥfah Al Fuqahā by 'Ala Al Dīn Al Samarqandī (d.539 AH) (in print)
- 34) Sharḥ Al Siyar Al Kabīr by 'Ala Al Dīn Al Samarqandī (d.539 AH) (manuscript)
- 35) Al Fatāwā Al Walwālīyyah by 'Abdul Rashīd Al Walwālī (d.540 AH) (in print)
- 36) Al Multaqaṭ Fil Fatāwā Al Ḥanafīyyah by Nāṣir Al Dīn Al Samarqandī (d.556 AH) (in print)
- 37) Al Fiqh Al Nāfi' by Nāṣir Al Dīn Al Samarqandī (d.556 AH) (in print)
- 38) Sharḥ Al Jāmi' Al Saghdī by Al Kardārī (d.562 AH) (manuscript)
- 39) Jawāhir Al Fatāwā by Muḥammad ibn Abd Al Rashīd Al Kirmani (d.565 AH) (manuscript)
- 40) Al Fatāwā Al Sirājiyyah by Sirāj Al Dīn Al Awshī (d.569 AH) (in print)
- 41) Sharḥ Al Jāmi' Al Saghdī by Aḥmad Al 'Attābī (d.586 AH) (manuscript)
- 42) Jawāmi' Al Fiqh by Aḥmad Al 'Attābī (d.586 AH) (manuscript)
- 43) Sharḥ Al Ziyādāt by Aḥmad Al 'Attābī (d.586 AH) (manuscript)
- 44) Badāi' Al Ṣanāi' by 'Alā Al Dīn Al Kāsānī (d.587 AH) (in print)
- 45) Zād Al Fuqahā Sharḥ Mukhtaṣar Al Qudūrī by Imām Muḥammad ibn Aḥmad Al Isbījābī (d.591 AH) (manuscript)
- 46) Sharḥ Al Ziyādāt by Imām Qāḍī Khān (d.592 AH) (in print)
- 47) Fatāwā Qāḍī Khān by Imām Qāḍī Khān (d.592 AH) (in print)
- 48) Sharḥ Al Jāmi' Al Saghdī by Imām Qāḍī Khān (d.592 AH) (manuscript)
- 49) Al Hidāyah Sharḥ Bidāyah Al Muḥtadī by 'Allāmah Abū Bakr Al Murghīnānī (d.593 AH) (in print)
- 50) Mukhtārāt Al Nawāzil by 'Allāmah Abū Bakr Al Murghīnānī (d.593 AH) (in print)
- 51) Al Tajnīs Wal Mazīd by 'Allāmah Abū Bakr Al Murghīnānī (d.593 AH) (in print)
- 52) Al Ḥawī Al Qudṣī by Aḥmad ibn Maḥmūd Al Ghaznawī (d.593 AH) (in print)

²⁹⁰ Hafidh Al Dhahabi has preferred the view that he passed away in 375, whilst Qasim ibn Qutlubugah claims that he passed away in 393 AH.

- 53) Khulāṣah Al Dalāil Fī Tanqīḥ Al Masāil by Ḥusām Al Dīn Al Rāzī (d.598 AH) (in print)
- 54) Sharḥ Al Jāmi' Al Saghūr by Ḥusām Al Dīn Al Rāzī (d.598 AH) (manuscript)
- 55) Al Muḥīt Al Burhānī by Burhān Al Dīn Al Bukhārī (d.616 AH) (in print)
- 56) Khulāṣah Al Fatāwā by Ṭāhir ibn 'Abd Al Rashīd Al Bukhārī (d.post 600 AH) (in print)
- 57) Al Wajīz Sharḥ Al Jāmi' Al Kabīr by Al Ḥaṣīrī (d.636 AH) (manuscript)
- 58) Al Tahrīr Fī Sharḥ Al Jāmi' Al Kabīr by Al Ḥaṣīrī (d.636 AH) (manuscript)
- 59) Al Taysīr Bi Ma'anī Al Jāmi' Al Kabīr by Abū 'Abdillāh Al Khalāṭī (d.652 AH) (manuscript)
- 60) Al Wiqāyah by Maḥmūd ibn Aḥmad ibn 'Ubaydillāh Al Maḥbūbī (d.673 AH) (in print)
- 61) Al Kāfī Sharḥ Al Wāfī by Ḥāfidh Al Dīn Al Nasafī (d.710 AH) (manuscript)
- 62) Al Muṣaffā Sharḥ Munzuūmah Al Khilāfiyyāt by Ḥāfidh Al Dīn Al Nasafī (d.710 AH) (manuscript)
- 63) Al Mustafā Sharḥ Al Fiqh Al Nāfi' by Ḥāfidh Al Dīn Al Nasafī (d.710 AH) (manuscript)
- 64) Fath Al Qadīr by Ibn Al Hummām (d.861 AH) (in print)
- 65) Al Fatāwā Al Bazāziyyah by Muḥammad Al Kurdī Al Bazāzī (d.827 AH) (in print)

Al Mūtun Al Mu'tabarāh (The Reliable Texts)

The *Al Mutūn Al Mu'tabarāh* (Reliable Texts) are books written with the purpose of compiling the views of *Zāhir Al Riwayah*.²⁹¹ They are six in total:

- 1) Mukhtaṣar Al Qudūrī by Imām Al Qudūrī (d.428 AH) (in print)
- 2) Al Mukhtār by 'Abdullah Al Mawṣilī (d.683 AH) (in print)
- 3) Al Wiqāyah by Maḥmūd ibn Aḥmad ibn 'Ubaydillāh Al Maḥbūbī (d.673 AH) (in print)
- 4) Kanz Al Daqāiq by Ḥāfidh Al Dīn Al Nasafī (d.710 AH) (in print)
- 5) Al Nuqāyah by 'Ubaydullah ibn Mas'ūd ibn Maḥmūd Al Maḥbūbī (d.747 AH) (in print)
- 6) Multaqā Al Abhur by Ibrāhīm Al Ḥalabī (d.956 AH) (in print)

The Books Written by the Later Fuqahā

These book include:

- 1) Al Masālik Fil Manāsik by Muḥammad Al Kirmānī (d.597 AH) (in print)
- 2) Kitāb Al Yanābī' Fi Ma'rifah Al Uṣūl Wal Tafārī' by Al Rūmī (he was alive in 616 AH) (manuscript)
- 3) Al Fatāwā Al Zāhīriyyah by Zāhūr Al Dīn Al Bukhārī (d.619 AH) (manuscript)
- 4) Jāmi' Ahkām Al Shighār by Muḥammad ibn Maḥmūd Al Asrūshnī (d.632 AH) (in print)
- 5) Al Muṭabā Sharḥ Al Qudūrī by Najm Al Dīn Al Zāhidī (d.658 AH) (manuscript)
- 6) Qunyah Al Munyah Li Tatmīm Al Ghunyah by Najm Al Dīn Al Zāhidī (d.658 AH) (in print)
- 7) Kitāb Al Manāfi' Fi Fawāid Al Nāfi' by Al Rāmishī (d.666 AH) (manuscript)
- 8) Tuhfah Al Mulūk by Zayn Al Dīn Al Rāzī (d.666 AH) (in print)
- 9) Al Ikhtiyār Li Ta'līl Al Mukhtār by 'Abdullah Al Mawṣilī (d.683 AH) (in print)
- 10) Hāshiyah 'Alal Hidayah by Abū Muḥammad Al Kabbāzī (d.691 AH) (manuscript)
- 11) Majma' Al Bahrain by Aḥmad ibn 'Alī Al Sā'atī (d.694 AH) (in print)
- 12) Niṣāb Al Ihtisāb by 'Umar ibn Muḥammad Al Sanāmī (ca.700 AH-725 AH) (in print)
- 13) Al Fatāwā Al Ghiyāthiyyah by Dāwūd ibn Yūsuf Al Khatīb (ca.700 AH – 800 AH) (in print)
- 14) Al Nihāyah Sharḥ Al Hidāyah by Ḥusain ibn 'Alī Al Saghnāqī (d.710 AH) (manuscript)
- 15) Al Ghāyah Sharḥ Al Hidāyah by Aḥmad Al Sarūjī (d.710 AH) (manuscript)

²⁹¹ اعلم أنه قد اشتهر أن المتون موضوعة لنقل أصل المذهب ومسائل ظاهر الرواية وهذا حكم غالبي لا كلي فإنه كثيرا ما يذكر أرباب المتون مسألة هي من تخریجات المشايخ المتقدمين مخالفة لمسلك الأئمة كمسألة العشر في العشر في باب نجاسة الخوص وطهارته فإنها من تحديدات المشايخ وأصل المذهب خال عن هذا وكذا ما اشتهر أن المتون موضوعة لنقل مذهب الإمام أبي حنيفة فهو حكم غالبي لا أكثر فكتيرا ما ذكروا فيها مذهب صاحبيه إذا كان راجحا كما في بحث السجدة بالجهة والأنف وغيره

- 16) Tabyīn Al Haqāiq by ‘Uthmān Al Zayla’ī (d.743 AH) (in print)
- 17) Sharḥ Al Wiqāyah by ‘Ubaydullah ibn Mas’ūd Al Maḥbūbī (d.747 AH) (in print)
- 18) ‘Uyūn Al Madhāhib by Qiwām Al Dīn Al Kākī (d.749 AH) (in print)
- 19) Mi’rāj Al Dirāyah Sharḥ Al Hidayah by Qiwām Al Dīn Al Kākī (d.749 AH) (manuscript)
- 20) Ghāyah Al Bayān Sharḥ Al Hidāyah by Qiwām Al Dīn Al Itqānī (d.758 AH) (manuscript)
- 21) Al Fatāwā Al Tarsūsiyyah by Najm Al Dīn Al Ṭarsūsī (d.758 AH) (in print)
- 22) Al Manba’ Fī Sharḥ Al Majma’ by ‘Aintābī (d.767 AH)
- 23) Al Fatāwā Al Tātārkhāniyyah by Farīd Al Dīn Al Andarpatī (d.786 AH) (in print)
- 24) Jawāhir Al Fiqh by Ṭāhir Al Khawārizmī (he finished writing the book in 771 AH) (manuscript)
- 25) Al ‘Inayah Sharḥ Al Hidāyah by Akmal Al Dīn Al Bābartī (d.786 AH) (in print)
- 26) Al Jawharah Al Nayyirah by Abū Bakr Al Ḥaddād (d.800 AH) (in print)
- 27) Al Tashīl Sharḥ Latāif Al Ishārāt by Imām Ibn Qādhī Samāwinah (d.823 AH) (in print)
- 28) Jāmi’ Al Fuṣūlayn by Imām Ibn Qādhī Samāwinah (d.823 AH) (in print)
- 29) Fatāwā Qārī Al Hidāyah by Sirāj Al Dīn Abū Hafs ‘Umar (d.829 AH) (in print)
- 30) Al Baḥr Al ‘Amīq by Ibn Ḍiyā Al Makkī (d.854 AH) (in print)
- 31) Sharḥ Al Wiqāyah by Ibn Malak (d.854 AH) (manuscript)
- 32) Al Bināyah Sharḥ Al Hidāyah by Badr Al Dīn Al ‘Aynī (d.855 AH) (in print)
- 33) Ramz Al Haqāiq Sharḥ Kanz Al Daqāiq by Badr Al Dīn Al ‘Aynī (d.855 AH) (in print)
- 34) Minḥah Al Sulūk Sharḥ Kitāb Tuḥfah Al Mulūk by Badr Al Dīn Al ‘Aynī (d.855 AH) (in print)
- 35) Jāmi’ Al Fatāwā by Amīr Al Ḥumaydī (d.860 AH) (manuscript)
- 36) Ḥalbah Al Majallī Sharḥ Munyah Al Muṣallī by Ibn Amīr Al Ḥāj (d.879 AH) (in print)
- 37) Al Taṣṣīḥ Wal Tarīḥ by Qāsim ibn Quṭlūbugāh (d.879 AH) (in print)
- 38) Mujibāt Al Ahkām Wa Wāqī’āt Al Ayyām by Qāsim ibn Quṭlūbugāh (d.879 AH) (in print)
- 39) Durar Al Hukkām by Mullā Kusrow (d.885 AH) (in print)
- 40) Dhakīrah Al ‘Uqbā by Yūsuf Al Tawqātī (d.905 AH) (manuscript)
- 41) Mustakhlaṣ Al Haqāiq Sharḥ Kanz Al Daqāiq by Ibrāhīm Al Qārī (he was alive in 907 AH) (manuscript)
- 42) Sharḥ Manzūmah ibn Wahbān by Ibn Shaḥnah (d.921 AH) (in print)
- 43) Fatāwā Mu’ayyid Zādah by ‘Abd Al Raḥman Al Amāsī (d.922 AH) (manuscript)
- 44) Mawāhib Al Raḥmān by Ibrāhīm Al Ṭarāblisī (d.922 AH)
- 45) Al Is’āf Fī Ahkām Al Awqāf by Ibrāhīm Al Ṭarāblisī (d.922 AH)
- 46) Al Burhān Sharḥ Mawāhib Al Raḥmān by Ibrāhīm Al Ṭarāblisī (d.922 AH)
- 47) Mafātīḥ Al Jinān Sharḥ Shir’ah Al Islām by Ya’qūb ib Sayyid (d.931 AH) (in print)
- 48) Sharḥ Mukhtaṣar Al Wiqāyah by Barjandī (d.932 AH) (manuscript)
- 49) Mikhzan Al Fiqh by Almāsī (d.938 AH) (manuscript)
- 50) Hāshiyah Sa’dī Chalpī by Sa’dī Chalpī (d.945 AH) (manuscript)
- 51) Jāmi’ Al Rumūz by Al Quhistānī (ca. 953 AH) (in print)
- 52) Ghunyah Al Mutamallī Sharḥ Munyah Al Muṣallī by Ibrāhīm Al Ḥalabī (d.956 AH) (in print)
- 53) Al Baḥrur Rāiq by Ibn Nujaym Al Miṣrī (d.970 AH) (in print)
- 54) Natā’ij Al Afkār Fī Kashf Al Rumūz Wal Asrār by Qāḍī Zādah (d.988 AH)
- 55) Majral Anhur ‘Alā Multaqal Abhur by Al Bāqānī (d.1003 AH) (manuscript)
- 56) Al Nahrul Fāiq by ‘Umar Ibn Nujaym Al Miṣrī (d.1005 AH) (in print)
- 57) Fatāwā Al Tumurtāshī by Muḥammad Al Tumurtāshī (d.1007 AH) (in print)
- 58) Mu’in Al Muftī ‘An Jawāb Al Mustaftī by Muḥammad Al Tumurtāshī (d.1007 AH) (in print)
- 59) Minahul Ghaffār Sharḥ Tanwīr Al Absār by Muḥammad Al Tumurtāshī (d.1007 AH) (manuscript)
- 60) Faṭḥ Bāb Al ‘Ināyah by Mullā ‘Alī Al Qārī (d.1014 AH) (in print)
- 61) Hāshiyah Irshād Al Sārī by Mullā ‘Alī Al Qārī (d.1014 AH) (in print)
- 62) Fatāwā Al Askūbī by Bīr Muḥammad Al Qusṭumūnī (d.1020 AH) (manuscript)
- 63) Majma’ Al Damānāt by Abū Yūsuf Al Baghdādī (d.1030 AH) (in print)
- 64) Al Fatāwā Al Ibrāhīmiyyah by Ibrāhīm ibn Ḥasan (d.1047 AH) (in print)
- 65) Hadiyyah ibn Al ‘Ammād by Al ‘Ibād Al ‘Amādī (d.1051 AH) (in print)
- 66) Fatāwā Yahyā Affendī by Yahyā Effendī (d.1053 AH) (manuscript)
- 67) Imdād Al Fattāḥ by Ḥasan ibn ‘Ammār Al Shurunbulālī (d.1069 AH) (in print)
- 68) Sabīl Al Falāḥ by Ḥasan ibn ‘Ammār Al Shurunbulālī (d.1069 AH) (in print)

- 69) Taysir Al Maqāsid by Ḥasan ibn ‘Ammār Al Shurunbulālī (d.1069 AH) (in print)
- 70) Marāqil Falāḥ by Ḥasan ibn ‘Ammār Al Shurunbulālī (d.1069 AH) (in print)
- 71) Hāshiyah ‘Alā Durar Al Hukkām by Ḥasan ibn ‘Ammār Al Shurunbulālī (d.1069 AH) (in print)
- 72) Majma’ Al Anhur Sharḥ Multaqā Al Abhur by Imām Shaykhī Zadah (d.1078 AH) (in print)
- 73) Al Fatāwā Al Khayriyyah by Khayr Al Dīn Al Ramlī (d.1081 AH) (in print)
- 74) Al Fatāwā Al Hindiyyah compiled between 1077 AH to 1086 AH (in print)
- 75) Al Durr Al Mukhtār by ‘Alā Al Dīn Al Ḥaṣḥafī (d.1088 AH) (in print)
- 76) Al Dur Al Muntaqā by ‘Alā Al Dīn Al Ḥaṣḥafī (d.1088 AH) (in print)
- 77) Al Fatāwā Al Anqarawiyyah by Muḥammad Al Anqrawī (d.1098 AH) (in print)
- 78) Al Fatāwā Al As’adiyyah by As’ad Al Madanī (d.1116 AH) (in print)
- 79) Nihāyah Al Murād by ‘Abdul Ghanī Al Nablūsī (d.1143 AH) (in print)
- 80) Al Fatāwā Al Hammādiyyah by Rukn ibn Ḥusām Al Nāghorī (d. na)
- 81) Rashahāt Al Aqlām Sharḥ Kifāyah Al Ghulām by ‘Abdul Ghanī Al Nablūsī (d.1143 AH) (in print)
- 82) Al Fatāwā Al Iqnā’iyyah by ‘Abdul Ḥamīd Al Sibā’ī (d.1220 AH) (in print)
- 83) Hāshiyah Al Taḥṭāwī ‘Alā Marāqil Falāḥ by ‘Allāmah Taḥṭāwī (d.1231 AH) (in print)
- 84) Hāshiyah Al Taḥṭāwī ‘Alā Dur Al Mukhtār by ‘Allāmah Taḥṭāwī (d.1231 AH) (in print)
- 85) Radd Al Muḥṭār by Ibn ‘Abidīn Al Shāmī (d.1252 AH) (in print)
- 86) Tanqīḥ Al Fatāwā Al Hāmidīyyah by Ibn ‘Abidīn Al Shāmī (d.1252 AH) (in print)
- 87) Al Lubāb Fī Sharḥ Al Kitāb by ‘Abdul Ghanī Al Maydānī (d.1298 AH) (in print)
- 88) ‘Umdah Al Ri’āyah Sharḥ Sharḥ Al Wiqāyah by ‘Allāmah ‘Abdul Ḥayy Al Lucknawī (d.1304 AH) (in print)
- 89) Majallah Al Ahkām Al ‘Adliyyah by the scholars of the Ottoman Empire (in print)
- 90) Sharḥ Majallah Al Ahkām by Khālīd Al Atāsī (d.1326 AH) (in print)
- 91) Durar Al Hukkām by ‘Alī Ḥaidar (d.1321 AH) (in print)

An Important Point to Remember

When looking for the ruling of a Mas’alah according to the Ḥanafī Madhab, it is important for one to maintain the order mentioned above; starting with *Zāhir Al Riwayah* and moving down to the books of the later Fuqahā.

Also another important aspect is to keep in mind the books that Ibn Abidin did not have in his possession when writing Rad Al Muhtar. There are at least seven important books that Ibn Abidin did not have in his possession when writing Rad Al Muhtar:

- 1- The six books of Zahir Al Riwayah
- 2- Al Muhit Al Burhani

Whenever Ibn Abidin quotes from these two books, he is in reality quoting another jurist who is quoting what is found in these two books.

Importance of the Fatawa of the Scholars of the Indian Sub-continent

After one has checked all of the above, he should refer to the books written by the Fuqahā of the Indian Sub-continent.

The purpose behind researching the books written by the Fuqahā of the Indian Sub-continent is to compare and analyse the manner in which one has understood the Mas’alah with how the Fuqahā of the Indian Sub-continent understood it.

The Books Written by the Scholars of the Indian Sub-continent

- 1) Fatāwā Rashīdiyyah by Maulānā Rashīd Aḥmad Gangohī (d.1323 AH)
- 2) Imdādul Fatāwā by Ḥaḍrat Thānwī (d.1362 AH)
- 3) Kifāyatul Muftī by Muftī Kifāyatullah (d.1372 AH)
- 4) Fatāwā Khayriyyah by Muftī Khair Muḥammad Jālandhrī (d.1391 AH)
- 5) Imdādul Ahkām by Muftī Zafar Aḥmad ‘Uthmānī (d.1394 AH)

- 6) Jawāhir Al Fiqh by Mufti Muhammad Shafi' (d.1396 AH)
- 7) Fatāwā Maḥmūdiyyah by Mufti Maḥmūd Ḥasan Gangohī (d.1417 AH)
- 8) Muntakabul Fatāwā by Mufti Nizāmud Dīn A'zamī (d.1420 AH)
- 9) Fatāwā Raḥīmiyyah by Mufti 'Abdul Raḥīm Lājpūrī (d.1422 AH)
- 10) Aḥsanul Fatāwā by Mufti Rashīd Aḥmad Ludhiyānwī (d.1422 AH)
- 11) Aap Kei Masā'il Aur Unkā Hal by Maulānā Yūsuf Ludhiyānwī
- 12) Fatāwā Dārul 'Ulūm Deoband
- 13) Maḥmūdul Fatāwā by Mufti Aḥmad Khānpūrī
- 14) Fatāwā Dīniyyah by Mufti Isma'īl Kacholwī

Rulings Pertaining to Asking a Question (أحكام الاستفتاء)

Finally, we would like to present some rulings and etiquettes that are related to a questioner:

- 1) It is necessary that a questioner does not ask a question except to a person whom he knows to be knowledgeable, reliable, and capable of issuing a Fatwa, whether he finds this out himself or he is told by a known trustworthy individual or it is known by the majority of people that the person is someone whom the scholars of the time rely upon. It is necessary for a Mufti to find out as much as possible about the reliability of the Mufti, however, if he is unable to find out whether he is reliable or not, he may suffice on the outward reliability of the Mufti.
- 2) It is permissible to ask any capable Mufti a question, even if there is someone who is more knowledgeable in the city of the questioner. It is not necessary upon a questioner to find the most knowledgeable person from amongst the people.
- 3) If there are two or more different Fatwas from different Muftis on a certain issue, then the questioner should consider the Fatwa of the most knowledgeable and most pious Mufti, if one of them is more pious while the other is more knowledgeable, then it is said that the Fatwa of the more pious Mufti shall be considered. However, the correct view is that the Fatwa of the more knowledgeable Mufti shall be considered. This is what Ibn Nujaym has mentioned.

Ibn Salah has mentioned various views on the issue of different Fatwas from different Muftis. Thus, he states, "When the Fatwas of the Muftis differ from one another, then there is a difference of opinion amongst the scholars:

- Some say that the strictest Fatwa shall be considered, thus one shall take prohibition over permission as it is more precautionous
- Some say that the most lenient Fatwa shall be considered, because the Prophet Sallallahu Alayhi Wasallam was sent with a compassionate and easy religion
- Some say that the questioner shall apply his mind in recognising the more reliable Mufti, thus he will take the view of the Mufti who is the most knowledgeable and most pious

Imam Al Sam'ani Al Kabir has preferred this opinion and [Imam] Al Shafi'i' has also mentioned similar in Al Qiblah

- Some say that the questioner should ask another Mufti and act according to whatever the new Mufti tells him
- Some say that the questioner may choose which Fatwa he wishes to act upon

This was the correct view according Shaykh Abu Ishaq Al Shirazi. The author of Al Shamil (Abd Al Sayyid Al Sabbagh Al Baghdadi Rahimahullah (d.477 AH)) also adopted this view in the situation where the Muftis are equivalent [in calibre].²⁹²

The preferred view, however, is that a questioner should apply his mind and choose the best Fatwa...and when doing this, it is preferable for him to find out which Mufti is the most reliable and then act according to his Fatwa. If he cannot give preference to any one of the Muftis, then he should ask another Mufti and act according to the view that the new Mufti adopts.

However, if this is difficult to do, and the difference amongst the Fatawa is in terms of permissibility and impermissibility, and he has not yet done the action, then he should adopt the view of impermissibility and avoidance, as this is more precautions. But if the Fatawa are similar in every possible way, then we shall give him the choice to choose the Fatwa he wishes to act upon – even though we do not allow him to choose in situations other than this – because [here] there is a necessity and it is a rare situation”

However, Imam Al Nawawi has disagreed with Ibn Salah’s concluding remarks, thus Imam Al Nawawi writes:

وهذا الذي اختاره الشيخ ليس بقوي بل الأظهر أحد الأوجه الثلاثة وهي الثالث والرابع والخامس والظاهر أن الخامس أظهرها لأنه ليس من أهل الإجتihad وإنما فرضه أن يقلد عالما أهلا لذلك وقد فعل ذلك بأخذه بقول من شاء منهما

“This [position] that the Shaykh (Ibn Salah) has adopted is not strong, rather, the more correct view is one of the three views mentioned; the third view, fourth view or fifth view. It seems that the fifth view is the most correct view as he (the questioner) does not have the capability to perform Ijtihad, thus he was required to perform Taqlid of a scholar who does have that capability, and he has done this by taking whichever view he wishes [from the various Fatawa given to him]”

Ibn Al Hummam Rahimahullah writes:

إذا استفتى فقيهين أعني مجتهدين فاختلفا عليه الأولى أن يأخذ بما يميل إليه قلبه منهما وعندي أنه لو أخذ بقول الذي لا يميل إليه قلبه جاز لأن ميله وعدمه سواء والواجب عليه تقليد مجتهد وقد فعل أصاب ذلك المجتهد أو أخطأ

“When he asks two jurists, i.e. Mujtahid jurists, and their rulings differ, then it is best for him to take the view of the one that his heart is inclined towards. [Also,] I feel that if he takes the view of the one that his heart is not inclined towards, then [too] it is permissible as his inclination and lack thereof are equal; it is necessary for him to do Taqlid of a Mujtahid which he has done, whether that Mujtahid is correct or he has made a mistake”

It is apparent that Ibn Al Hummam’s statement of choosing the view which the questioner’s heart is inclined towards applies when the two jurists are equal in knowledge, otherwise, he should choose the view of the more knowledgeable Mufti as we have shown from the statement of Ibn Nujaym Rahimahullah mentioned above.

4) Ibn Nujaym Rahimahullah has mentioned:

إن لم تطمئن نفسه (أي نفس المستفتي) إلى جواب المفتي استحسب سؤال غيره ولا يجب

²⁹² This was also the view of Imam Hasan ibn Ziyad as mentioned by Abu Layth Al Samarqandi in Fatawa Al Nawazil. Abu Layth Al Samarqandi adds that the questioner may choose which Fatwa he wishes to follow when he considers both Muftis equally knowledgeable. As for when he knows one to be more knowledge, he should follow the Fatwa of the more knowledgeable Mufti. Thus, he writes:

قال نصير بن يحيى سألت حسن بن زياد عن رجل أفتاه فقيهان فاختلفا فيه قال يأخذ بقول أيهما شاء قال الفقيه يعي لو كان المستفتي جاهلا فأفتاه مفتيان بقولين مختلفين فإن كان المفتيان في العلم سواء فله أن يأخذ بقول أيهما شاء فإن كان أحدهما أعلم فإنه يأخذ بقول أعلمهما

(Abu Layth Al Samarqandi, “Al Nawazil”, (Manuscript: Fatih Istanbul), Waraqah: 268, Side: Baa.)

“If he (i.e. the questioner) is not satisfied with the answer of a Mufti, then it is preferable for him to ask another [Mufti], but is not necessary for him to do so”²⁹³

Ibn Salah Rahimahullah writes:

والذي تقتضيه القواعد أن نفصل فنقول إذا أفناه المفتي نظر فإن لم يوجد مفت آخر لزمه الأخذ بفتياه ولا يتوقف ذلك على التزامه لا بالأخذ في العمل به ولا بغيره ولا يتوقف أيضا على سكون نفسه إلى صحته في نفس الأمر فإن فرضه التقليد كما عرف وإن وجد مفت آخر فإن استبان أن الذي أفناه هو الأعلم الأوثق لزمه ما أفناه به بناء على الأصح في تعيينه كما سبق وإن لم يستبن ذلك لم يلزمه ما أفناه بمجرد إفتائه إذ يجوز له استفتاء غيره وتقليده ولا يعلم اتفاقهم في الفتوى فإن وجد الإتفاق أو حكم به عليه حاكم لزمه حينئذ

“That which is the upshot of the rules is that we elaborate by stating that when a Mufti gives him (the questioner) a Fatwa, it shall be seen:

1. There is no other Mufti except for the one who has given a Fatwa

Ruling: The Fatwa given by the Mufti must be taken, this will not require for the questioner to have necessitated the Fatwa by action or otherwise. It will also not require for the questioner to be content over the correctness of the Fatwa as he (the questioner) is require to perform Taqlid, as we have understood.

2. There is another Mufti other than the one who has given a Fatwa

This may be of two types:

➤ It is apparent that the Mufti who has given a Fatwa is the most knowledgeable Mufti

Ruling: The Fatwa given by the Mufti must be taken based upon the fact that the most correct Fatwa should be taken, as we have discussed.

➤ It is not apparent that the Mufti who has given a Fatwa is the most knowledgeable Mufti

Ruling: It will not necessary to follow the Fatwa of the Mufti simply based upon the fact that he has given a Fatwa, rather, the questioner may ask another Mufti and perform Taqlid of the other Mufti when he does not know that the other Mufti also hold the same view. However, if the other Mufti also holds the same view or a judge issues a ruling according to the view of the first Mufti, it shall be necessary for the Mufti to follow that view”

5) Ibn Nujaym Rahimahullah has mentioned:

ولو أجب في واقعة لا تتكرر ثم حدثت لزم إعادة السؤال إن لم يعلم استناد الجواب إلى نص أو إجماع

“If he is given an answer regarding an issue that does not recur regularly, then if that issue occurs again, it is necessary for him to ask [the Mufti] again if he does not know the evidential text or consensus that the answer was based upon”

Ibn Salah Rahimahullah writes:

إذا استفتى فأفتي ثم حدثت له تلك الحادثة مرة أخرى فهل يلزمه تجديد السؤال؟ فيه وجهان أحدهما يلزمه لجواز تغير رأي المفتي والثاني لا يلزمه وهو الأصح لأنه قد عرف الحكم والأصل استمرار المفتي عليه

²⁹³ If a questioner has already received an answer from a Mufti, is it permissible for him to ask another Mufti? In Khizanatul Akmal by Yusuf Al Jurjani (d.522 AH), the statement of ‘Allamah Karkhi has been recorded:

وكذلك الرجل استفتى فافته بحلال أو بحرام فإن لم يعزم على ذلك حتى أفناه غيره بطلاق فأخذ قول الثاني وأمضاه في منكوحته ليس له أن يترك ما أمضاه في منكوحته ويرجع إلى ما أفناه الأول وهذا المقلد إذا عزم على ما أفناه لا يسعه أن ينقض ذلك بفتوى أخرى

(Yusuf Al Jurjani, “Khizanah Al Akmah”, (Manuscript: Faydullah Effendi), Volume: 3, Waraqah:290, Side: Alif and Baa)

“If he asks a question and is given an answer, and the incident occurs again, is it necessary for him to ask the question again? There are two views in this regard, one of them is that it is necessary [for him to ask again] due to the possibility that the opinion of the Mufti may have changed, the second is that it is not necessary, and this is the more correct view, as he has recognised the ruling and the principle is that the original ruling is maintained”

6) Ibn Salaah (d.643 AH) writes:

يَنْبَغِي لِلْمُسْتَفْتِي أَنْ يَحْفَظَ الْأَدَبَ مَعَ الْمُفْتِي وَيُجِلَّهُ فِي حِطَابِهِ وَسُؤَالِهِ وَتَحْوِ ذَلِكَ وَلَا يُؤَمِّي يَدَهُ فِي وَجْهِهِ وَلَا يَقُولُ لَهُ مَا تَحْفَظُ فِي كَذَا وَكَذَا؟ أَوْ مَا مَذْهَبُ إِمَامِكَ الشَّافِعِيِّ فِي كَذَا وَكَذَا؟ وَلَا يَقُولُ لَهُ إِذَا أَجَابَهُ هَكَذَا قُلْتُ أَنَا وَكَذَا وَقَعَ لِي وَلَا يَقُلْ لَهُ أَفْتَانِي فَلَانَّ أَوْ غَيْرَكَ بِكَذَا وَكَذَا

“It is appropriate for a questioner to maintain etiquettes with a Mufti and to respect him when talking to him or asking him a question or other similar activities. He should not:

- Point with his finger in front of him
- Ask him ‘what do you remember with regards to so and so?’
- Ask him ‘what is the view of your Imam, Al Shafi’i’, with regards to so and so?’
- Say to him when he answers the question, ‘that’s what I said as well’ or ‘that’s what I thought too’
- Say to him ‘so and so person gave me a Fatwa of so and so’ or ‘someone other than you gave me a Fatwa of so and so’”

7) Ibn Salah Rahimahullah writes:

ولا يسأل المفتي وهو قائم أو مستوفز أو على حالة ضجر أو هم به أو غير ذلك مما يشغل القلب

“He (the questioner) should not ask a Mufti while he (the Mufti) is standing or in a state of shock or in a state of anger or worry or any other state which occupies his mind”

8) Ibn Salah Rahimahullah writes:

لا ينبغي للعامي أن يطالب المفتي بالحجة فيما أفناه به ولا يقول له ولم؟ وكيف؟ فإن أحب أن تسكن نفسه بسماع الحجة في ذلك سأل عنها في مجلس آخر أو في ذلك المجلس بعد قبول الفتوى مجردة عن الحجة وذكر السمعاني أنه لا يمنع من أن يطالب المفتي بالدليل لأجل احتياطة لنفسه وأنه يلزمه أن يذكر له الدليل إن كان مقطوعاً به ولا يلزمه ذلك إن لم يكن مقطوعاً به لافتقاره إلى اجتهاد يقصر عنه العامي

“It is not appropriate for a layman to demand evidence from a Mufti for that which he issues a Fatwa, and he should not say to him, ‘why?’ or ‘how?’ If he wishes to satisfy himself by hearing the evidence, he should ask the Mufti in another meeting or in the same meeting after he has accepted the Fatwa without the proof. Al Sam’ani has mentioned that he (the questioner) shall not be stopped from asking for the evidence as a matter of precaution for himself, and it is necessary for him (a Mufti) to mention the evidence when the evidence is indisputably clear, and he is not required to do this (mention the evidence) when it is not indisputably clear as such an evidence requires an effort [to understand the evidence] which the layman is not capable of.

This is the final section which we wished to present from this book. All praise is to Allah the Glorified, from the beginning until the end. May Allah the Almighty send salutations until the day of judgement upon our leader and master Muhammad, the seal of the Prophets, and upon his family and all of his companions, and upon all those who follow him with conviction.

Short Introductions to the Maliki Madhab, Shafi’i’ Madhab and Hanbali Madhab

Introduction to the Maliki Madhab²⁹⁴

²⁹⁴ The notes for this section have been taken primarily from Ali Al Jumu’ah’s book; *Al Madkhal Ila Dirasatil Mathahibil Fiqhiyyah*.

A Short Biography of Imām Mālik

Basis of the Mālikī Madhab

Imām Mālik has based his Mathab upon 17 evidences:

1. The text of the Qur'ān
2. The apparent meaning of the Qur'ān
3. The opposite meaning of the Qur'ān
4. The understanding of the Qur'ān
5. Recognising the reasoning behind the reasoning behind the text of the Qur'ān
6. The text of the Ḥadīth
7. The apparent meaning of the Ḥadīth
8. The opposite meaning of the Ḥadīth
9. The understanding of the Ḥadīth
10. Recognising the reasoning behind the reasoning behind the text of the Ḥadīth
11. Ijmā' (consensus)
12. Qiyās (analogy)
13. The actions of the people of Madīnah
14. The view of a Ṣaḥābi
15. Al Istiḥsān (
16. Sad Al Tharā'i' (
17. Al Istiḥāb

Understanding the Maliki Madhab

The Maliki Madhab went through three phases:

1) The Emergence Phase

This was the phase in which the foundations of the Madhab were laid out by the Imam of the Madhab. It was also the phase in which the various statements and narrations of the Imam of the Madhab were gathered and formulated in different works.

This phase came to an end with the closure of the 3rd century (300 AH) or with the death of Isma'il ibn Ishaq Al Maliki (d.282 AH).

2) The Development Phase

This was the phase in which various Masail were extracted from the statements and narrations of the Imam of the Madhab, various statements of the Imam of the Madhab were elaborated and preferences (ترجيح) was given to various view within the Madhab.

This phase began after the 3rd century (300 AH) and ended near the closure of the 6th century (600 AH) or by the death of Ibn Shash Al Maliki.

3) The Consistent Phase

This phase began after the 6th century (600 AH) or with the emergence of *Mukhtasar ibn Al Hajib Al Far'i'* and has continued till today.

It was during this phase that commentaries, abridgement and footnotes. This phrase is more well known as the phase in which the positions of the Maliki Madhab were explained. This is because the scholars of this phase agreed that the Ijtihad of the previous scholars would not be left due to new Ijtihad.

The Notable Students of Imām Mālik

1) *Al Hijāziyyūn* (الحجازيون): they included:

- Abū Ḥāzim Salamah ibn Dīnār (d.185 AH)
- Abū Muḥammad Abdul Azīz ibn Muḥammad Al Darāwardī (d.186 AH)
- Ibn Al Nāfi' (d.186 AH); Abdullah ibn Nafi' Al Sā'igh
- Al Mughīrah ibn Abdur Rahman Al Makhzumī (d.188 AH)
- Al Qarrāz (d.198 AH); Ma'n ibn Isā
- Al A'mash (d.202 AH); Abdul Hamīd ibn Abī Uwais
- Ibn Salamah; Muhammad ibn Salamah ibn Hisham
- Al Asghar ibn Nafi'; Abdullah ibn Nafi' ibn Thabit ibn Abdullah ibn Zubayr
- Abū Mus'ab Mutarrif ibn Abdullah ibn Mutarrif Al Madanī
- Al Qa'nabī'; Abdullah ibn Salamah
- Abu Mus'ab Rāwiyul Muwatta (d.242 AH); Aḥmad ibn Al Qāsim

2) *Al Irāqiyyūn* (العراقيون): they include:

- Sulaymān ibn Bilāl Al Qādhī (d.176 AH)
- Ibn Al Mubārak; Abdullah ibn Al Mubārak
- Ibn Mahdī; Abdur Rahmān ibn Mahdī
- Al Walīd ibn Muslim Rāwiyul Muwattā
- Yaḥyā ibn Yaḥyā Al Naysābūrī (d.226 AH)

3) *Al Misriyyūn* (المصريون): they include:

- Ibnul Qāsim Abdur Raḥmān ibn Al Qāsim Al Ataḳī (d.191 AH)

He accompanied Imām Mālik for 20 years and is considered one of his most well-known students

- Ibn Wahb Abdullah ibn Wahb Al Qurashī (d.197 AH)

He accompanied Imam Malik for 20 years and is also considered one of his most well-known students

- Ashab ibn Abdul Azīz ibn Dāwūd (d.204 AH)
- Ibn Abdil Ḥakam (d.214 AH); Abdullah ibn ‘Abdil Ḥakam ibn A’yun
he was buried next to Imām Shāfi’ī

4) *Al Ifrīqiyyūn* (الإفريقيون): they include:

- Shaqarān ibn Alī Al Qayrawānī (d.186 AH)
- Ibn Farrūkh (d.176 AH); Abdullah ibn Farrūkh Al Qayrawānī
- Ibn Ziyād (d.183 AH); Alī ibn Ziyād Al Tūnsī
- Al Bahlūl ibn Rāshid Al Qayrawānī (d.183 AH)
- Ibn Ghānim Al Ru’ayni; Abdullah ibn Umar ibn Ghānim Al Qayrawānī
- Asad ibn Furāt (d.213 AH)

5) *Al Andalusīyyūn* (الأندلسيون): they include:

- Shabtūn Ziyād ibn Abdur Raḥmān Al Qurtubī
- Al Ghāzī ibn Qays Al Qurtubī
- Yaḥyā ibn Yaḥyā Al Qurtubī Rāwiyul Muwatta

His narration of Muwata Imam Malik is the most famous narration

- Isā ibn Dīnār Al Qurtubī

The school of Imam Malik spread in Andalusia due to Isā ibn Dīnār Al Qurtubī and Yaḥyā ibn Yaḥyā Al Qurtubī

Important Scholars of the Mālikī Mathab

- 1) **Ibn Farrūkh (d.176 AH);** Abdullah ibn Farrukh Al Qayrawānī
He is one of the narrators of the *Al Muwatta* of Imam Malik.
- 2) **Sulaymān ibn Bilāl Al Qādhi (d.176 AH)**
He is one of the narrators of the *Al Muwatta* of Imam Malik.
- 3) **Ibn Ziyād (d.183 AH);** Ali ibn Ziyad Al Tunusi
He is one of the narrators of the *Al Muwatta* of Imam Malik.
- 4) **Bahlūl ibn Rāshid Al Qayrawānī (d.183 AH)**
- 5) **Abū Hāzim Salamah ibn Dīnār (d.185 AH):**
He was one of the students of Imam Malik.

6) **Ibn Nāfi' (d.186 AH);** Abdullah ibn Nafi' Al Sa'igh²⁹⁵

He is one of the narrators of the *Al Muwatta* of Imam Malik.

Yahya ibn Mu'in has labelled him a reliable (*thiqah* – ثقة) narrator. Abu Talib states "I asked [Imam] Ahmad ibn Hanbal regarding Abdullah ibn Nafi' Al Sa'igh, he said "he was not a scholar of Hadith, he knew the view of [Imam] Malik and the people of Madinah would give Fatwa upon the view of [Imam] Malik. He did not reach a high level in Hadith".

Ibn Abi Hatim states "I asked my father (Abu Hatim) regarding Abdullah ibn Nafi' Al Sa'igh, so he said "he was not a Hafidh (حافظ), his memory was slightly weak and his written narrations are more reliable".

Abu Zur'ah was asked regarding him, he said "there is no problem with him".

7) **Al Darāwardi (d.186 AH);** Abu Muhammad Abdul Aziz ibn Muhammad Al Darawardi

He is one of the narrators of the *Al Muwatta* of Imam Malik.

8) **Shaqrān ibn Alī Al Qayrāwāni (d.186 AH)**

He is one of the students of Imam Malik.

9) **Al Mughīrah ibn Abdir Raḥman Al Makhzūmi (d.188 AH)²⁹⁶**

He is one of the students of Imam Malik.

His mother's name was Quraybah bint Muḥammad ibn 'Umar ibn Abi Salamah Al Makhzūmi. His agnomen was Abū Hāshim, others have stated that his was Abū Hishām.

His teachers include:

- Imām Mālik ibn Anas
- His father, Abdur Rahman Al Makhzumi
- Muhammad ibn Ajlan
- Abdullah ibn Sa'id ibn Abi Hind

His students include:

- Ibrahim ibn Hamzah Al Zubaydi
- Mus'ab ibn Abdillah Al Zubayri
- Ahmad ibn Abdah
- Abu Mus'ab Al Zuhri
- Ya'qub ibn Humayd ibn Kasim
- His son, Ayyash ibn Al Mughirah

Ibn Abi Hatim states that Abu Zur'ah was asked regarding Al Mughirah ibn Abdir Rahman ibn Al Harith ibn Abdillah ibn Ayyash ibn Abi Rabi'ah who said "there are no problems with him"

Al Zubayr ibn Bakar states "Al Mughirah was the Faqih (jurist – فقيه) of Madinah after Mālik ibn Anas. The leader of the believers, Al Rashid, offered him the post of the judge of Madinah for a fee 4000 dinar, he refused the post. Al Rashid declined his refusal and demanded that he take the post, at which point he (Al Mughirah) said "I swear by Allah, oh leader of the believers, I would prefer for Shaytan to strangle me than for me to take on the post of a judge", Al Rashid responded "there is no going beyond this". Al Rashid then rewarded him with 2000 dinar".

²⁹⁵ *Al Intiqā' Fi Fadḥail Al A'immaḥ Al Thalathah Al Fuqaha*, p.102-103, Darul Bashair Al Islamiyyah

²⁹⁶ *Al Intiqā' Fi Fadḥail Al A'immaḥ Al Thalathah Al Fuqaha*, p.100, Darul Bashair Al Islamiyyah

Ibn Abdil Bar states “the responsibility of Fatwa in Madinah during the finality of Malik’s era and after it was upon Al Mughirah ibn Abdir Rahman, Muhammad ibn Ibrahim ibn Dinar, (Abdul Malik ibn Al Majishun has related this and Ibn Abi Hasim was the third individual in that narration), Uthman ibn Kinanah (he was not an expert in narrating Hadith) and Ibn Nafi”.

10) **Ibn Ghānim Al Ru’aynī (d.190 AH);** Abdullah ibn Umar ibn Ghanim Al Qayrawani

He is one of the narrators of the *Al Muwatta* of Imam Malik.

11) **Ibn Al Qāsim (d.191 AH);** Muhammad ibn Al Qasim Al Misri:

He is arguably the most important scholar of the Maliki Madhab.

It was due to the efforts of Ibn Al Qasim that the Madhab of Imam Malik spread in Misr.²⁹⁷

12) **Shabṭūn (d.193 AH);** Ziyad ibn Abdur Rahman Al Qurtubi

He is one of the narrators of the *Muwatta* of Imam Malik.

13) **Ibn Wahb (d.197 AH);** Abdullah ibn Wahb Al Qurashi

He is arguably the most important scholar of the Maliki school of thought. He accompanied Imam Malik for 20 years.

14) **Al Qazaz (d.198 AH);** Ma’n ibn Isa

He is one of the students of Imam Malik

15) **Al Ghazi ibn Qays Al Qurtubi (d.199 AH)**

He is one of the students of Imam Malik.

16) **Al A’mash (d.202 AH);** Abdul Hamīd ibn Abī Uwais

17) **Ashab ibn Abdil Azīz ibn Dāwūd (d.204 AH):**

He is one of the students of Imam Malik and is considered a major scholar of the Maliki Madhab.

His agnomen is Abu Umar and his title is Ashab. He was born in 140 AH and passed away in 204 AH, 8 days after Imam Al Shafi’i. Imam Al Shafi’i did not meet any of Imam Malik’s students in *Misr* (مصر) except Ashab and Ibn Abdil Hakam.

Ashab was reliable in what he narrated from Imam Malik as well as Layth ibn Sa’d. He also authored a book in Fiqh, which Sa’id ibn Hassan has narrated from him.

18) **Ibn Salamah (d.206 AH);** Muhammad ibn Salamah ibn Hisham

He is one of the narrators of the *Al Muwatta* of Imam Malik.

19) **‘Isā ibn Dīnār Al Qurtubī (d.212 AH)**

He is one of the students of Imam Malik. It is through this student of Imam Malik that the Maliki Madhab became common in Andalusia.

20) **Asad ibn Furāt (d.213 AH)**

He is one of the students of Imam Malik and is considered one of the scholars worthy of giving preference (أصحاب الترجيح) in the Maliki Madhab. His book, *Al Asadiyyah*, is considered one of the earliest books that compiled the views of the Maliki Madhab. He is considered a major scholar of the Maliki Madhab.

²⁹⁷ *Istilahul Madhab Indal Malikiyyah, p.21, Darul Buhuth*

- 21) **Ibn Abdil Ḥakam (d.214 AH);** Abdullah ibn A'yun
He was buried next to Imam Shafi'i'.
- 22) **Al Asghar ibn Nāfi' (d.216 AH);** Abdullah ibn Nafi' ibn Thabit ibn Abdullah ibn Zubayr:
He is one of the students of Imam Malik.
- 23) **Abū Mus'ab Muṭarrif ibn Abdillāh ibn Muṭarrif Al Madanī (d.220 AH)**
- 24) **Al Qa'nabi (d.221 AH);** Abdullah ibn Salamh
He is one of the students of Imam Malik.
- 25) **Asbagh (d.225 AH);** Abu Abdillāh Asbagh ibn al Faraj Al Misri:
He is considered one of the major scholars of the Maliki Madhab
- 26) **Yahya ibn Yahya Al Naysaburi (d.226 AH)**
He is one of the students of Imam Malik.
- 27) **Yahya ibn Yahya Al Qurtubi (d.234 AH)**
He is the most famous narrator of the Muwatta of Imam. He was also one of the prime reasons the Madhab of Imam Malik spread in Andalusia.
- 28) **Ibn Ḥabīb (d.238 AH);** Abdul Malik ibn Habib Al Qurtubi
He has written a book titled *Al Wadihah*. He is considered a major scholar in the Maliki Madhab.
- 29) **Suḥnūn (d.240 AH);** Abu Sa'id Abdus Salam ibn Sa'id Al Tanukhi Al Qayrawani
He gathered the *Al Mudawanah* and is considered a major scholar in the Maliki Madhab.
- 30) **Abū Muṣ'ab Rāwiyul Muwatta (d.242 AH);** Ahmad ibn Al Qasim:
He was one of the students of Imam Malik.
- 31) **Al Utbī (d.254 AH);** Muhammad ibn Ahmad ibn Abdil Aziz Al Qurtubi
He is a major scholar in the Maliki Mathab.
- 32) **Ibn Suḥnūn (d.255 AH);** Muhammad ibn Suhnun Al Qayrawani
He has written *Al Kabir*, *Al Musnad* and a commentary upon the Muwatta of Imam Malik.
- 33) **Ibn Abdūs (d.260 AH);** Muhammad ibn Ibrahim
He has written *Al Majmu'ah* and a commentary upon *Al Mudawwanah*
- 34) **Ibn Al Mawāz (d.269 AH);** Muhammad ibn Ibrahim Al Iskandari
- 35) **Ibn Al Nāzim**
- 36) **Ibn Al Qazāz (d.274 AH);** Ibrahim ibn Muhammad Al Qurtubi
- 37) **Ibn Al Kahalah (d.282 AH);** Sulayman ibn Salim Al Qattan
He has written a famous book known as *Al Sulmaniyyah*
- 38) **Ibn Al Rasafī (d.286 AH);** Ahmad ibn Marwan Al Qurtubi
- 39) **Ibn Waddah (d.287 AH);** Muhammad ibn Waddah ibn Yazid Al Qurtubi
- 40) **Hamdīs (d.289 AH);** Ahmad ibn Muhammad Al Ash'ari

- 41) **Al Kinanī (d.289 AH)**; Yahya ibn Umar ibn Yusuf
- 42) **Al Sawaf (d.291 AH)**; Ahmad ibn Abi Sulayman ibn Dawud
- 43) **Al Malikī Al Misrī (d.298 AH)**; Ahmad ibn Marwan
- 44) **Al Zayyat (d.309 AH)**; Ahmad ibn Musa Al Misri
- 45) **Ibnul Hubab (d.322 AH)**; Ahmad ibn Khalid Al Qurtubi
- 46) **Ibn Al Warraq (d.329 AH)**; Muhammad ibn Ahmad ibn Al Jahm
- 47) **Ibn Al Labbad (d.333 AH)**
- 48) **Ibn Al Ma'thil**
- 49) **Qasim ibn Asbagh Al Bayanī (d.340 AH)**
He is considered a major scholar in the Maliki Madhab.
- 50) **Ibn Al Qurtubī (d.355 AH)**; Muhammad ibn Al Qasim Al Misri:
He has written a book *Al Zahi Fil Fiqh*.
- 51) **Al Qadhī Abdul Wahab ibn Alī ibn Nasr Al Baghdadī (d.363 AH)**
He has written *Al Ma'unah Bi Madhab Alimil Madinah*, *Al Nasr Li Madhab Malik*, *Al Adillah Fi Masail Al Khilaf* and a commentary upon *Al Risalah*.
- 52) **Al Ubbī Al Saghir (d.365 AH)**; Muhammad ibn Abullah Al Abhuri:
He has written footnotes for *Al Mukhtasar Al Kabir* and is also known as Ibnul Kassas.
- 53) **Ibn Al Walīd Al Mut'ī' (d.367 AH)**; Muhammad ibn Abdullah
He assisted in completing *Al Isti'ab*.
- 54) **Ibn Al Tabān (d.371 AH)**; Abdullah ibn Ishaq:
He wrote *Al Nawazil*. It is said that he taught *Al Mudawwanah* 1000 times.
- 55) **Al Abhurī (d.375 AH)**; Muhammad ibn Abdillah Al Abhuri Al Kabir:
He was the leading scholar of the Malikiyyah of Baghdad during his time. He wrote commentaries upon *Al Mukhtasar Al Kabir* and *Al Mukhtasar Al Saghir* of Ibn Abdul Hakam.
- 56) **Al Jallāb (d.378 AH)**; Ubaydullah ibn Al Hasan
He has written *Al Tafrī'* (التفريع) which many Maliki scholars have written commentaries upon.
- 57) **Ibn Abī Zayd Al Qayrawānī (d.386 AH)**; Abdullah ibn Abi Zayd Al Nafzi:
He is known as one of the greatest Maliki scholars. He is known to have structured the Maliki Mathab. He has written *Al Nawadir Wal Ziyadat Alal Mudawwanah* (النواذر والزيادات على المدونة) as well as an abridgement of *Al Mudawwanah* (المدونة). Of course, his most famous book is his *Al Risalah* (الرسالة) upon which many Maliki scholars have written commentaries.
- 58) **Al Barathī't'**; Khalaf ibn Abil Qāsim Al Azdī

He has written *Al Tahthib* which is an abridgement of *Al Mudawanah* (المدونة). He has also written *Mukhtasar Al Wadihah* (مختصر الواضحة). He is a student of Ibn Abī Zayd.

- 59) **Ibn Al Qasar (d.398 AH)**; Ali ibn Ahmad Al Abhuri
He has written *Al Khilaf Al Kabir* (الخلاف الكبير). There is no one in the Maliki Mathab who knew more about the Masail containing differences of opinion.
- 60) **Ibn Abī Zimnīn (d.399 AH)**; Muhammad ibn Abdullah ibn Abi Zimnin Al Qurtubi:
He has written an abridgement for *Al Mudawwanah* (المدونة). He has also written *Al Muntakab min Mash-hurat Kutubul Malikiyyah* (المنتخب من مشهورات كتب المالكية)
- 61) **Ibn Al Makawī Al Ishbīlī (d.401 AH)**
He completed the book *Al Isti'ab* (الإستيعاب) along with Ibn Al Walid Al Muti'i
- 62) **Al Bāqilānī (d.403 AH)**; Muhammad ibn Al Tayyib
- 63) **Al Qabisī (d.403 AH)**; Abul Hasan Ali ibn Muhammad ibn Khalaf Al Mu'afiri
- 64) **Ibn Bashkawal (d.416 AH)**; Muhammad ibn Yusuf ibn Al Fakhar
He has written many books including *Ikhtisar Al Nawadir* (اختصار النواذر).
- 65) **Ibnul Hassar (d.422 AH)**; Abdur Rahman ibn Ahmad
- 66) **Ibn Al Saffar (d.429 AH)**; Yunus ibn Muhammad:
He has written *Al Maw'ib Fi Tafsiril Muwatta* (الموعب في تفسير الموطأ)
- 67) **Abū Thar Al Harawī (d.434 AH)**; Abd ibn Ahmad ibn Al Hafidh Al Kabir:
He has written many books in the field of Hadith.
- 68) **Al Labīdī (d.446 AH)**; Abdur Rahman ibn Muhammad Al Misri
He has written a book in which he covers the Masail of *Al Mudawanah* (المدونة).
- 69) **Ibn Battal (d.449 AH)**; Ali ibn Khalaf ibn Abdul Malik Al Qurtubi
He has written a commentary upon *Sahih Al Bukhari* (صحيح البخاري)
- 70) **Ibn Yunus (d.451 AH)**; Muhammad ibn Abdillāh ibn Yunus Al Tamimi
He is considered one the scholars worthy of giving preference in the Maliki Mathab.
- 71) **Al Suyurī (d.462 AH)**; Abdul Khaliq ibn Abdil Warith Al Qayrawani
He has written footnotes upon *Al Mudawwanah* (المدونة).
- 72) **Ibn Abdil Barr (d.463 AH)**; Yusuf ibn Abdillāh ibn Muhammad ibn Abdil Barr
- 73) **Al Bajī (d.474 AH)**; Sulayman ibn Khalaf Al Qadh
He has written a commentary upon the Muwatta of Imam Malik by the name of *Al Muntaka Sharh Al Muwatta* (المنتقى شرح الموطأ)
- 74) **Al Lakhmī (d.478 AH)**; Ali ibn Muhammad Al Rib'i'

He has written footnotes upon *Al Mudawwanah* by the name of *Al Tabsirah* (التبصرة). These footnotes have been accepted in the Maliki Mathab.

- 75) **Ibn Al Sa'igh (d.486 AH)**; Abdul Hamid ibn Muhammad Al Qayrawani:
He has written very useful footnotes upon *Al Mudawwanah* (المدونة).
- 76) **Al Humaydī (d.488 AH)**; Muhammad ibn Abi Nasr Al Andalusī
He has written *Al Jam' Bayn Al Ṣaḥīḥayn* (الجمع بين الصحيحين)
- 77) **Ibn Al Tila'**; Muhammad ibn Al Faraj
- 78) **Al Haddad (d.497 AH)**; Ali ibn Muhammad Al Khulani
He has written *Al Ishārah* (الإشارة) and its commentary.
- 79) **Al Jīyanī (d.498 AH)**; Al Husayn ibn Muhammad Al Ghasani
- 80) **Al Maziri (d.516 AH)**; Muhammad ibn Abil Faraj Al Saqali
He has written *Al Ta'līq Al Kabīr* (التعليق الكبير)
- 81) **Abū Bakr Al Turshūshī (d.520 AH)**; Muhammad ibn Al Walid
- 82) **Ibn Rushd (d.520 AH)**; Al Qadhi Abul Walid Muhammad ibn Ahmad Al Qurtubi
He has written *Al Bayān Wal Taḥṣīl* (البيان والتحصيل)
- 83) **Ibnul Hāj (d.529 AH)**; Muhammad ibn Ahmad ibn Al Haj:
He was the author of *Al Nawāzil* (النازل).
- 84) **Al Mazirī (d.536 AH)**; Muhammad ibn Ali ibn Umar Al Maziri
He has written *Sharh Al Talqin* (شرح التلقين) and *Idah Al Mahsul Min Burhan Al Usul* (إيضاح المصنوع من برهان الأصول)
- 85) **Abū Bakr ibn Al Arabī (d.543 AH)**; Muhammad ibn Abdillāh ibn Muhammad Al Ashbili
- 86) **Al Qadhī Iyad ibn Musa Al Yahsubī (d.544 AH)**
- 87) **Ibn Rushd (d.563 AH)**; Abul Abbas ibn Abul Walid ibn Rushd
- 88) **Ibn Qurqul (d.569 AH)**; Ibrahim ibn Yusuf
- 89) **Al Matiti (d.570 AH)**; Ali ibn Abdillāh ibn Ibrahim Al Ansari
He has written *Al Nihayah* (النهاية) and *Al Tamam Fi Ma'rifatil Watha'iq Wal Ahkam* (التمام في معرفة الوثائق والأحكام)
- 90) **Ibn Al Qasir (d.575 AH)**
- 91) **Khalaf ibn Abdul Malik Al Ansarī (d.578 AH)**
He has written many books including *Al Silah Wal Fawaid Al Muntakabah*.
- 92) **Ibn Abdil Haqq (d.581 AH)**; Abdul Haq ibn Abdur Rahman ibn Abdil Haq Al Ishbili
He has written *Al Aḥkām Al Kubrā* and *Al Aḥkām Al Sughrā* in the field of Hadith.

- 93) **Ibn Rushd (d.595 AH)**; Abul Walid Muhammad ibn Ahmad ibn Rush
- 94) **Ibn Al Tīn (d.611 AH)**; Abu Muhammad Abdul Wahid ibn Al Tin Al Safaqisi:
He has written a commentary on *Saḥīḥ Al Bukhārī*.
- 95) **Ibn Ata'illah Al Iskandarī (d.612 AH)**; Rashid Al Din Abdul Karim ibn Abdur Rahman ibn Abdillah ibn Ata'illah Al Juthami
He was the companion of Ibn Al Hajib. He has many books in the Maliki Mathab including *Al Taqrib Fi Sharh Al Tahthib* (التقريب في شرح التهذيب).
- 96) **Al Ibyārī (d.618 AH)**; Ali ibn Ismail ibn Ali Al Sanhaji
He has written a commentary upon *Al Burhan Fil Usul* of Imamul Haramayn. He has also written a commentary upon *Al Tahtheeb Fil Mathab*.
- 97) **Al Shalawbin (d.645 AH)**; Umar ibn Ali Al Azdi
- 98) **Al Tarraz (d.645 AH)**; Muhammad ibn Sa'id Al Ansari
- 99) **Ibn Al Hajib (d.646 AH)**; Jamalud Din Uthmanibn Umar ibn Abi Bakr
- 100) **Abul Hasan Al Shāthilī (d.656 AH)**; Ali ibn Abdillah
- 101) **Ibnul Abbār (d.658 AH)**; Muhammad ibn Abdillah ibn Abi Bakr Al Quda'i
- 102) **Ibnul Akhnā'ī (d.658 AH)**; Taqiud Din Muhammad ibn Abi Bakr ibn Isa
- 103) **Ibn Shash (d.661 AH)**; Abdullah ibn Muhammad ibn Shash Al Jufathi
He has written *Al Jawahir Al Thaminah Ala' Mathab Alim Al Madinah*. The Maliki scholars have greatly valued this book.
- 104) **Majdud Dīn Ibn Daqīq Al Id (d.667 AH)**
The father of Taqi Al Din Ibn Daqiq Al Id. He is considered a great scholar from the Maliki Mathab.
- 105) **Al Sarmasahī (d.669 AH)**; Abdullah ibn Abdir Rahman ibn Umar Al Misri
He has written *Nazmud Durar Fi Ikhtisar Al Mudawanah*.
- 106) **Ibn Al Shabbat (d.681 AH)**; Muhammad ibn Ali Al Taurzi
- 107) **Ibn Al Munīr (d.683 AH)**; Ahmad ibn Muhammad ibn Mansur Al Iskandari
He has written many books including footnotes upon the famous book of Tafsir, *Al Kashaf*.
- 108) **Al Qarafī (d.684 AH)**; Ahmad ibn Idris
He has written a very famous book named *Al Thakhirah*.
- 109) **Ibn Al Munīr (d.695 AH)**; Ali ibn Al Munir
He is considered from amongst the individuals considered worthy of performing Ijtihad and giving preference within the Mathab.
- 110) **Ibn Daqīq Al Id (d.702 AH)**; Taqi Al Din Muhammad ibn Ali
He is considered a Mujtahid and a researcher. Some have stated that he was the reviver of the 7th century (Hijri).

- 111) **Ibn Ata'illah (d.709 AH)**; Ahmad ibn Muhammad ibn Abdil Karim
- 112) **Al Kharraz (d.718 AH)**; Muhammad ibn Muhammad Al Sharishi Al Muqri
He has written *Mawrid Al Zam'an Fi Rasm Ahrufil Qur'an*.
- 113) **Ibnul Bannā (d.721 AH)**; Ahmad ibn Muhammad Al Azdi Al Marakishi
- 114) **Ibn Rushayd (d.721 AH)**; Muhammad ibn Umar Al Fihri
He has written a commentary on *Sahih Al Bukhari*. He has also written a very famous book titles *Mi'al 'Ibah*.
- 115) **Ibn Al Shat (d.723 AH)**; Qasimibn Abdillah ibn Muhammad ibn Al Shat
- 116) **Ibn Al Zayyat (d.728 AH)**; Ahmad ibn Al Hasan Al Kula'i
- 117) **Ibn 'Ājurrūm (d.723 AH)**; Muhammad ibn Muhammad ibnDawud:
He is the author of *Al Muqaddamah Al Ajrumiyyah*.
- 118) **Ibnul Haj Al Abdari (d.723 AH)**; Muhammad ibn Muhammad Al Fasi:
He wrote *Al Madkhal*.
- 119) **Ibn Askar (d.732 AH)**; Abdur Rahman ibn Muhammad ibn Askar
He has written *Irshad Al Salik*.
- 120) **Al Rib'r' (d.733 AH)**; Ibrahim ibn Hasan ibn Abd Al Rafi'
He has written *Mu'in Al Hukkam*.
- 121) **Ibn Rashid (d.736 AH)**; Muhammad ibn Abdullah ibn Rashid Al Qafasi
He has written many books in the field of the principles of Fiqh including *Al Shihab Al Thaqib Sharh Mukhtasar Ibn Al Hajib Al Far'i'* and *Al Mathab Fi Dab'i Qawa'idil Mathab*.
- 122) **Al Quwabi' (d.738 AH)**; Muhammad ibn Muhammad ibn Abdir Rahman
- 123) **Ibn Juzzi (d.741 AH)**; Muhammad ibn Ahmad Al Kalbi
He has written many books including *Al Qawanin Al Fiqhiyyah* and *Taqrib Al Wusul*.
- 124) **Al Jazuli (d.741 AH)**; Abdur Rahman ibn Affan
He has written a commentary upon *Al Risalah*.
- 125) **Ibnul Imām Al Tanasī (d.743 AH)**; Abdur Rahman ibn Muhammad ibn Abdillah Abu Zaid Al Tilmasani
- 126) **Al Safaqisi (d.743 AH)**; Ibrahim ibn Muhammad
- 127) **Al Safaqisi (d.744 AH)**; Muhammad ibn Muhammad
- 128) **Ibnul Imām Al Tanasī (d.749 AH)**; Isa ibn Muhammad ibn Abdillah
- 129) **Ibn Abdis Salām (d.749 AH)**; Muhammad ibn Abdis Salam Al Tunusi
He has written *Sharh Jami'il Umahat Ala Ibnul Hajib Al Fari'*.
- 130) **Al Maqrī (d.756 AH)**; Muhammad ibn Muhammad ibn Ahmad Al Qurashi
- 131) **Al Sharīf Al Tilmisanī (d.771 AH)**; Muhammad ibn Ahmad

He has written *Miftah Al Wusul Ila Bina'il Furu' Alal Usul*.

- 132) **Khalīl (d.776 AH)**; Diya' Al Din Khalil ibn Ishaq
He is considered the researcher of the Mathab. He has written a book by the name of *Al Mukhtasar*. Many Maliki scholars have written commentaries upon it.
- 133) **Al Ru'aynī (d.779 AH)**; Muhammad ibn Sa'id Al Andalusi
- 134) **Al Qabab (d.779 AH)**; Ahmad ibn Qasim ibn Abdir Rahman
- 135) **Ibn Marzūq (d.781 AH)**; Muhammad ibn Ahmad Al Tilmisani
- 136) **Ibn Lub Al Gharnāti (d.782 AH)**; Faraj ibn Qasim
He is considered worthy of giving preference in the Maliki Mathab.
- 137) **Ibn Ahmad ibn Muhammad (d.785 AH)**
- 138) **Ibn Mujahid**; Muhammad ibn Ahmad ibn Mujahid Al Ta'i'
- 139) **Ibn Khuwaiz Mindad**; Muhammad ibn Ahmad ibn Abdullah ibn Khuwaiz Mindad
He was a great orator and analytical scholar.
- 140) **Al Shatbī (d.790 AH)**; Ibrahim ibn Ishaq
He has written *Al Muwafaqat*, *Al Isti'sam* and other famous books.
- 141) **Al Qasar (d.790 AH)**; Ahmad ibn Abdir Rahman Al Azdi
- 142) **Ibn Abbad (d.792 AH)**; Muhammad ibn Ibrahim Al Nafzi
He has written a commentary upon *Al Hikam*.
- 143) **Ibn Farhun (d.799 AH)**; Ibrahim ibn Ali ibn Farhun Al Madani
He has written *Tabsiratul Hukam*, *Minhaj Al Ahkam*, *Al Dibaj Al Muthahab Fi A'yanil Mathab* and *Kashfun Niqab Al Hajib An Mustalah Ibn Al Hajib*.
- 144) **Ibn Arafah (d.803 AH)**; Muhammad ibn Muhammad ibn Arafah Al Tunusi
- 145) **Bahram (d.805 AH)**; Bahram ibn Abdillah Al Dumayri
He has written a commentary upon *Mukhtasar Al Khalil*.
- 146) **Ibn Ilaq (d.806 AH)**; Muhammad ibn Ali Al Gharnati
He has written a commentary upon *Mukhtasar Ibn Al Hajib*.
- 147) **Ibn Khaldun (d.807 AH)**; Abdur Rahman ibn Muhammad Al Tunsī
He has written a very famous *Muqaddimah* in the field of history.
- 148) **Al Makudī (d.807 AH)**; Abdur Rahman ibn Ali Al Fasi
- 149) **Ibn Al Khatīb (d.810 AH)**; Ahmad ibn Hunayn Al Qastini:
He has written a commentary upon *Al Risalah* of Abu Zayd.
- 150) **Ibn Asim (d.813 AH)**; Abu Yahya Muhammad ibn Muhammad ibn Muhammad ibn Muhammad
- 151) **Al Aqfahsī (d.823 AH)**; Abdullah ibn Miqdad:

He has written a commentary upon *Mukhtasar Al Khalil*.

- 152) **Al Ubbī (d.828 AH)**; Muhammad ibn Khalaf:
He has written a commentary upon Sahih Muslim by the name of 'Ikmalul Ikmal'. He has also written a commentary on *Al Mudawwanah*.
- 153) **Al Damaminī (d.828 AH)**; Badrud Din Muhammad ibn Abi Bakr
He has written a commentary upon *Sahih Al Bukhari*.
- 154) **Abu Bakr ibn Asim (d.829 AH)**
He has written a very famous book called *Al Tuhfah*.
- 155) **Al Fasī (d.833 AH)**; Muhammad ibn Ahmad
He has written *Shifa'ul Gharam Bi Akhbar Baladil Haram*.
- 156) **Ibn Najī (d.838 AH)**; Qasim ibn Isa Al Tanukhi
He has written a commentary upon *Al Risalah* and *Al Mudawwanah*.
- 157) **Al Barazalī (d.841 AH)**; Abul Qasim ibn Ahmad
He has written *Al Hawi Fin Nawazil*.
- 158) **Al Busatī (d.841 AH)**; Muhammad ibn Ahmad
- 159) **Muhammad ibn Ahmad ibn Al Khatīb (d.842 AH)**
- 160) **Ibn Ammar (d.844 AH)**; Muhammad ibn Ammar ibn Muhammad Al Misri
He has written a commentary upon *Umdatul Ahkam*.
- 161) **Abu Yahya ibn Abī Bakr ibn Asim (d.857 AH)**
- 162) **Al Nuwayrī (d.857 AH)**; Muhammad ibn Muhammad Al Muqri
He has written a commentary upon *Al Mukhtasar* of Ibn Al Hajib.
- 163) **Ibn Al Azraq**; Muhammad ibn Ali Al Gharnati:
He has written a commentary upon *Mukhtasar Al Khalil* (مختصر الخليل).
- 164) **Al Tazī (d.866 AH)**; Ibrahim ibn Ishaq
- 165) **Al Jazulī (d.870 AH)**; Muhammad ibn Zulayman Al Sharif Al Hasani
He has written *Dalail Al Khairat*.
- 166) **Ibn Abbas (d.871 AH)**; Muhammad ibn Abbas Al Abbadi
- 167) **Al Tha'alibī (d.875 AH)**; Abdur Rahman ibn Makhluḥ
- 168) **Hululu (d.875 AH)**; Ahmad ibn Abdir Rahman Al Qarawi
- 169) **Al Jallab Al Tilmisanī (d.875 AH)**; Muhammd ibn Ahmad ibn Isa
- 170) **Al Qalasadī (d.891 AH)**; Ali ibn Muhammad Al Basti
- 171) **Al Sanusī (d.895 AH)**; Muhammad ibn Yusuf Al Hasani

He is a famous scholar in the field of Aqidah. He has written *Al Aqaid Al Kubra*, *Al Aqaid Al Wusta* and *Al Aqaid Al Sughra* famously known as *Ummul Barahin*.

- 172) **Al Laqani (d.896 AH)**; Burhan Al Din Ibrahim ibn Muhammad Al Laqani
- 173) **Al Muwaq (d.897 AH)**; Muhammad ibn Yusuf Al Abdusi
He has written two commentaries upon *Al Mukhtasar* of Khalil. One of the commentaries is very famous, titled *Al Taj Wal Iklil*.
- 174) **Ibn Zikrah (d.899 AH)**; Ahmad ibn Muhammad Al Tilmisani
- 175) **Zarruq (d.899 AH)**; Ahmad ibn Ahmad ibn Muhammad
- 176) **Ibn Marzuq Al Kafif (d.901 AH)**; Muhammad ibn Muhammad
- 177) **Al Qalatawi (d.902 AH)**; Dawud ibn Ali Al Azhari
He has written commentaries upon *Al Mukhtasar* of Khalil, *Al Mukhtasar* of Ibn Al Hajib and upon *Al Risalah*.
- 178) **Al Wansharisī (d.914 AH)**; Ahmad ibn Yahya Al Fasi
He has written *Al Mi'yar Al Mu'arrab*.
- 179) **Ibn Ghazī (d.919 AH)**; Muhammad ibn Ahmad ibn Ghazi Al Miknasi
He is a recognised scholar in the Maliki and known as the seal of the researchers (خاتمة المحققين). He has written *Shifa'ul Ghalil Fi Halli Muqfali Khalil*.
- 180) **Ibn Qasim (d.920 AH)**; Abdur Rahman ibn Muhammad Al Misri
He has written a commentary upon *Al Risalah*.
- 181) **Al Laqanī (d.935 AH)**; Shamsud Din Muhammad ibn Hasan Al Laqani
He has written footnotes upon *Al Mukhtasar* of Khalil.
- 182) **Abul Hasan Al Shathilī (d.939 AH)**; Ali ibn Muhammad ibn Muhammad Al Munufi Al Misri:
He has written a commentary upon *Al Risalah* (الرسالة) by the name of *Kifayah Al Talib Al Rabbani* (كفاية الطالب الرباني)
- 183) **Al Tata'ī' (d.942 AH)**; Muhammad ibn Ibrahim
He has written a commentary upon *Al Mukhtasar*.
- 184) **Al Hattab Al Kabīr (d.945 AH)**; Muhammad ibn Abdur Rahman Al Andalusi
- 185) **Al Laqanī (d.958 AH)**; Nasirud Din Al Laqani Muhammad ibn Al Hasan
- 186) **Al Yusitini (d.959 AH)**; Muhammad ibn Ahmad
- 187) **Al Qusari (d.998 AH)**; Yusuf ibn Muhammad Al Fasi
- 188) **Al Qasar (d.1012 AH)**; Muhammad ibn Al Qasim Al Qaysi
- 189) **Al Sanhuri (d.1015 AH)**; Salim ibn Muhammad

He has written a commentary upon *Al Mukhtasar*.

- 190) **Al Shanawani (d.1019 AH)**; Abu Bakr ibn Isma'il
- 191) **Ibn Ashir (d.1040 AH)**; Abdul Wahid ibn Ahmad Al Ansari
He has written the famous book *Al Murshid Al Mu'in Ala Al Daruri Min Ulumud Din* (المرشد المعين على الضروري من علوم الدين).
- 192) **Al Laqani (d.1041 AH)**; Abul Amdad Burhan Al Din Ibrahim ibn Hasan
He has written footnotes upon *Al Mukhtasar* of Khalil.
- 193) **Mayarah (d.1051 AH)**; Muhammad ibn Ahmad
- 194) **Al Zuraqani (d.1055 AH)**; Muhammad ibn Abdil Baqi ibn Yusuf ibn Ahmad
He has written a famous commentary upon the *Al Muwatta* of Imam Malik and a book in Seerah by the name of *Sharh Al Mawahib Al Ladunniyah*.
- 195) **Al Ajhuri (d.1066 AH)**; Abul Ishar Nurud Din Ali ibn Zaynil Abidīn
- 196) **Mayarah (d.1072 AH)**; Abdullah ibn Muhammad ibn Ahmad
- 197) **Abdus Salam Burhan Al Din Al Laqqani (d.1078 AH)**
- 198) **Al Abdari**; Safiyud Din Abdullah ibn Ali ibn Al Husayn
He has written *Al Basāir Fil Mathab*.
- 199) **Al Zuraqani (d.1099 AH)**; Abdul Baqi ibn Yusuf ibn Ahmad
He has written a commentary upon *Al Mukhtasar*.
- 200) **Al Akhdari (he was alive between 1000thHijri– 1100thHijri)**; Abdur Rahman ibn Muhammad Al Saghīr
- 201) **Al Karshi (d.1101 AH)**; Muhammad ibn Abdillāh
He has written a commentary upon *Al Mukhtasar*.
- 202) **Al Shabrakiti (d.1106 AH)**; Ibrahim ibn Mar'a
He has written a commentary upon *Al Mukhtasar*.
- 203) **Al Yusi (d.1111 AH)**; Al Ḥasan ibn Mas'ūd
- 204) **Al Sa'īdī (d.1112 AH)**; Alī ibn Aḥmad
- 205) **Al Nafarawi (d.1125 AH)**; Aḥmad ibn Ghunaym ibn Sālim
He has written a famous commentary upon *Al Risalah* titled *Al Fawakih Al Dawani*.
- 206) **Jusus (d.1136 AH)**; Abdul Salam ibn Ahmad Al Fasi
- 207) **Al Mansatiri (d.1138 AH)**; Al Sharif Muhammad Zaytunah
- 208) **Ibn Zikrah (d.1144)**; Muhammad ibn Abdur Rahman
- 209) **Mayarah Al Saghir (d.1144 AH)**; Muhammad ibn Muhammad

- 210) **Al Bunani (d.1163 AH)**; Muhammad ibn Abdis Salam Al Fasi
- 211) **Jusus (d.1182 AH)**; Muhammad ibn Qasim
He has written a commentary upon *Al Mukhtasar* and *Al Risalah*.
- 212) **Al Siqat (d.1183 AH)**; Ali ibn Muhammad Al Arabi Al Fasi Al Misri
- 213) **Ubadah (d.1193 AH)**; Muhammad ibn Birri Al Misri
He has written footnotes upon *Shuthur Al Thahab* and *Sharhul Khirashi*.
- 214) **Al Bunani (d.1194 AH)**; Muhammad ibn Al Hasan
- 215) **Al Bunani (d.1198 AH)**; Abdur Rahman ibn Jadillah
- 216) **Al Bunani**; Mustafa ibn Muhammad ibn Abdil Wahid
- 217) **Al Dardir (d.1201 AH)**; Abul Barakat Ahmad ibn Muhammad Al Adawi
He has written *Al Sharhul Kabir Ala Mukhtasar Al Khalil*, *Aqrab Al Masalik*, *Al Sharh Al Saghir*, *Al Kharidah Al Bahiyyah Fi Al Tahwid*.
- 218) **Al Tawudi (d.1209 AH)**; Muhammad Al Tawudi ibn Muhammad Al Talib ibn Sawdah Al Fasi
He has written footnotes upon *Sahih Al Bukhari*.
- 219) **Al Siba'i' (d.1221 AH)**; Salih ibn Muhammad ibn Salih
He is considered one of the scholars worthy of giving preference in the Maliki Mathab.
- 220) **Al Aqbawi (d.1221 AH)**; Abul Khayrat Mustafa
He has written *Takmil Aqrabil Masalik*.
- 221) **Al Tijani (d.1230 AH)**; Ahmad ibn Muhammad ibn Al Mukhtar Al Tijani
- 222) **Al Dusuqī (d.1230 AH)**; Muhammad ibn Ahmad ibn Arafah
He has written footnotes upon *Al Sharhul Kabir* and a very famous commentary upon *Mughnil Labib*.
- 223) **Al Rahunī (d.1230 AH)**; Muhammad ibn Ahmad
He has written footnotes upon Zurqani's commentary of *Al Mukhtasar*.
- 224) **Al Amīr (d.1232 AH)**; Muhammad ibn Muhammad ibn Ahmad ibn Abdil Qadir:
He was a great Maliki scholar from *Misr* (مصر). He wrote *Al Majmu' Fil Mathab*, for which he himself wrote a commentary. It is widely recognised as a book unequalled in quality.
- 225) **Al Darqawī (d.1239 AH)**; Muhammad Al Arabi ibn Ahmad Al Darqawi
- 226) **Al Sawī (d.1241 AH)**; Abul Abbas Ahmad ibn Muhammad Al Khalawati
He has written footnotes upon *Tafsir Al Jalalayn*, *Al Sharh Al Saghir*, *Sharh Al Kharidah Al Bahiyyah* and *Sharh Al Hamziyyah*.
- 227) **Al Idrīs (d.1253 AH)**; Ahmad ibn Idris
- 228) **Al Bulaqī (d.1263 AH)**; Mustafa Al Burulusi
He has written footnotes upon *Sharhul Quwisni Ala' Al Sulam* and has written a book by the name of *Al Sayful Yamani Liman Qala Bihili Sima'il Alat Wal Maghani*.

- 229) **Al Nayfar (d.1277 AH)**; Al Sharif Muhammad Abun Nur ibn Muhammad Al Tunisi
- 230) **Al Nayfar (d.1290 AH)**; Salih ibn Muhammad
- 231) **Ilish (d.1299 AH)**; Muhammad ibn Ahmad ibn Muhammad
He has written a commentary and footnotes upon *Al Mukhtasar*, a commentary and footnotes upon *Majmu' Al Amir*, footnotes upon *Al Sharh Al Saghir* and footnotes upon *Al Aqaid Al Kubra* of Sanusi.
- 232) **Ibnul Kassar Al Abhuri Al Saghir**
- 233) **Hasan Al Adawi Al Hamzawi (d.1303 AH)**
He has written footnotes upon the commentary of Allamah Zurqani upon *Al Mukhtasar Al Khalil*. He has also written *Irshad Al Murid Ila Khulasah Ilm Al Tawhid*, *Bulugh Al Masarat Ala Dalail Al Khayrat* and a commentary upon *Al Shifa*.
- 234) **Al Nayfar (d.1311 AH)**; Tahir ibn Al Sharif Muhammad
- 235) **Al Nayfar (d.1312 AH)**; Muhammad ibn Muhammad
- 236) **Al Hamidi (d.1316 AH)**; Isma'il ibn Musa
He has written footnotes upon *Sharhul Kafrawi Alal Ajrumiyyah* which are well known.
- 237) **Hasan Al Tawil (d.1317 AH)**
Most of the scholars of Al Azhar have studied under him.
- 238) **Al Bunanī (d.1324 AH)**; Fathullah Al Shathili
He has written *Ithaf Ahlil Ināyah Al Rabbāniyyah Fi Ittihād Turuqillah*.
- 239) **Al Kittanī (d.1327 AH)**; Muhammad ibn Abdil Kabir
- 240) **Al Sharnawbi (he was alive in 1340 AH)**; Abu Muhammad Abdul Majid Al Azhari
He has written a commentary upon the *Al Alfīyyah* as well as *Al Risalah* and *Al Arba'in* of Imam Nawawi. He has also written *Mukhtasar Ibn Abi Jamrah*.
- 241) **Al Kittanī (he was alive in 1340 AH)**; Muhammad Abdul Hayy ibn Abdil Kabir
He has written *Fihris Al Faharis*.
- 242) **Al Kittanī (d.1345 AH)**; Al Sharif Muhammad ibn Ja'far Al Kittani
- 243) **Al Nayfar (d.1345 AH)**; Tayyib ibn Muhammad

[The Books of the Mālikī Madhab](#)

The Maliki Madhab went through three phases:

1) The Emergence Phase

Books written during the Emergence Phase

- *Al Muwatta* by Imam Malik
- *Khair Man Zintahu* by Ali ibn Ziyad Al Tunsī Al Abasi (d.183 AH)
- The books of Al Mughirah ibn Abdir Rahman Al Makhzumi (d.186/188 AH)
- *Sima' ibn Al Qasim* by Abdur Rahman ibn Al Qasim (d.191 AH)

- The books of Ziyad ibn Abdir Rahman (d.193 AH)
- The books of Abdullah ibn Wahb (d.197 AH)
- *Al Madaniyyah* by Abdur Rahman ibn Dinar (d.201 AH)
- The books of Ash-hab ibn Abdil Aziz (d.204 AH)
- The books of Abdul Malik ibn Al Majishun (d.212 AH)
- The books of Isa ibn Dinar (d.212 AH)
- The abridgements of Abdullah ibn Abdil Hakam ibn A'yun (d.214 AH)
- The books of Muhammad ibn Salamah (d.216 AH)
- The books of Ahmad ibn Al Mi'dhal
- The books of Ashbag ibn Al Faraj (d.225 AH)
- *Al Dimyatiyah* by Abdur Rahman ibn Abi Ja'far Al Dimyati (d.226 AH)
- The books of Abu Zayd ibn Abil Ghamr (d.234 AH)
- The books of Abdul Malik ibn Habib Al Sulami (d.238/239 AH)
- *Al Mudawwanah* by Suhnnun (d.240 AH)
- *Al Mukhtasar* by Abu Mus'ab Ahmad ibn Al Qasim ibn Al Harith (d.242 AH)
- The books of Al Harith ibn Miskin (d.250 AH)
- *Al Mustakhrajah Minal Asmi'ah (Al Utbiyyah)* by Muhammad ibn Ahmad Al Utbi (d.255 AH)
- The books of Muhammad ibn Suhnnun (d.256 AH)
- *Thamaniyah Abi Zayd* by Ab Zayd Abdur Rahman ibn Ibrahim ibn Isa (d.258 AH)
- The books of Muhammad ibn Ibrahim ibn Abdus (d.260 AH)
- The books of Muhammad ibn Abdillah ibn Abdil Hakam (d.268 AH)
- *Al Mawaziyah* by Ibn Al Mawaz Muhammad ibn Ibrahim (d.269 AH)
- The books of Abu Bakr Muhammad ibn Abi Yahya Zakariyya Al Waqar (d.269 AH)
- *Al Sulaymaniyyah* by Abu Rabi' Sulayman ibn Salim Al Qattan (d.281 AH)
- The books of Qadhi Abu Ishaq Isma'il ibn Ishaq (d.282 AH)
- The books of Yahya ibn Umar Abi Zakariyyah (d.289 AH)

The books of the Maliki Madhab are composed of the Muwatta of Imam Malik and the compilations (*sama'at*) various views that Imam Malik expressed to his students.

These compilations increased as the number of Imam Malik's students increased. However, some of these compilations (*sama'at*), namely the compilations (*sama'at*) of the elderly students of Imam Malik, were more accepted than the other compilations (*sama'at*) of the students of Imam Malik. The most famous of these accepted compilations were:

- The compilation (*sama'at*) of Abdur Rahman ibn Al Qasim
- The compilation (*sama'at*) of Ashab
- The compilation (*sama'at*) of Ibn Wahab
- The compilation (*sama'at*) of Ibn Abdil Hakam
- The compilation (*sama'at*) of Ibn Al Majishun

Thus, the books that gathered these compilations (*sama'at*) are indeed highly valued within the Maliki Madhab as they include the statements of Imam Malik through reliable means as well as the Ijtihadat of the individuals narrating these statements. Hence, every reliable book in the Maliki Madhab will include the compilations of these reliable students of Imam Malik, except that each school within the Maliki Madhab may show a higher inclination and preference to the compilations of certain individuals (from amongst these valuable compilations) over others.

Hence, after Al Muwatta, the Maliki scholars have relied upon 7 books which contain these valuable compilations (*sama'at*). They are titled '*Ummuhatul Madhab Wa Dawawinuhu*' (أمهات المذهب ودواوينه). They are:

1. *Al Muwatta* (الموطأ)

2. *Al Mudawwanah* (المدونة)

Another name used at times to describe *Al Mudawwanah* is *Al Mukhtalithah* (المختلطة). *Al Mukhtalithah* (المختلطة) is actually *Al Mudawwanah* before Suhnun worked on it and properly structured it. Now, the title *Al Mukhtalithah* (المختلطة) is used as a reference for the parts that Suhnun did not structure and work on.

3. *Al Wadihah* (الوضيحة)
4. *Al Utbiyyah* (*Al Mustakhrajah*) (العتبية)
5. *Al Mawaziyyah* (الموازية)
6. *Al Majmu'ah* (المجموعة)
7. *Al Mabsut* (المبسوط)

Al Muwatta

Al Mudawwanah

This book is considered the principle book of the Maliki Madhab after the *Al Muwatta*. It is said:

ما بعد كتاب الله كتاب أصح من موطأ مالك - رحمه الله - ولا بعد الموطأ ديوان في الفقه أفيد من المدونة والمدونة هي عند أهل الفقه ككتاب سيبويه عند أهل النحو وككتاب إقليدس عند أهل الحساب وموضعها من الفقه موضع أم القرآن من الصلاة وتجزئ من غيرها ولا يجزئ غيرها منها

Al Mudawwanah was considered a reliable book according to all the different Madrasahs within the Maliki Madhab. It contained the compilation of Abdur Rahman ibn Al Qasim of the statements of Imam Malik as well as Ibn Al Qasim's additions and analogical deductions which he dictated to his students. Its inception was in Misr but it gained great popularity in Tunisia and Andalusia.

The original book was gathered by Asad ibn Furat, an originally Hanafi scholar who then became a Maliki. Asad ibn Al Furat had gathered Masail from Imam Muhammad, he then presented these Masail to Ibn Al Qasim, who gave a ruling to each Mas'alah according to the Maliki Madhab. The resulting compilation was labelled *Al Asadiyyah*. Accordingly, although the book contained rulings according to the Maliki Madhab, the methodology of the rulings were still in line with the Hanafi Madhab. After this, Suhnun Al Maliki revisited the *Al Asadiyyah* and modified each Mas'alah and ruling such that it was in line with the methodology of the Maliki Madhab. Upon seeing Suhnun's modification, Ibn Al Qasim was impressed and the modified book was named '*Al Mudawwanah*'.

In fact, the *Al Mudawwanah* had a great effect on the Iraqi Madrasah of the Maliki Madhab, even though this effect would only become apparent later on at the hands of Qadhi Abdul Wahhab ibn Nasr.

It is possible to say that there is no other book in the Maliki Madhab that gained as much acceptance as did the *Al Mudawwanah*. In fact, many wrote abridgements, commentaries and footnotes upon the book. It became the manual of law which every Madrasah in the Maliki Madhab reverted to.

Such was the status of this book, that if the word '*Al Kitab*' were to be used in a general term, it would be a reference to *Al Mudawwanah*. It is also referred to as *Al Umm* (الأم - the mother).

Al Wadihah

This was considered a very valuable book according to the Maliki scholars of Andalusia, and although it became eclipsed in Andalusia by *Al Utbiyyah* (*Al Mustakhrajah*), it still remained one of the most important books in the Maliki Madhab. Al Utbi said regarding it:

Al Utbiyyah (Al Mustakhrajah)

This book is considered very highly in the Maliki Madhab. In fact, the Maliki scholars of Andalusia abandoned Al Wadihah in favour of Al Utbiyyah (Al Mustakhrajah). It gained great popularity in Africa, particularly in Tunisia. Such was the status of this book that the Maliki scholars of Tunisia and Andalusia would believe that if after knowing the principles and Sunnah of the Prophet Sallallahu Alayhi Wasallam and after memorising Al Mudawwanah, one does not memorise and learn Al Utbiyyah (Al Mustakhrajah), then he is not one who has deep understanding of knowledge (الراسخين في العلم).

Many Maliki scholars such as Ibn Rushd have relied upon this book.

Al Mawaziyyah

This book is a very large and reliable book in the Maliki Madhab. In fact, Abul Hasan Al Qabisi gave preference to this book over all the other Maliki books.

The Misri scholars of the Maliki Madhab heavily rely upon the compilation (sama'at) and preferences of Ibn Al Mawwaz.

Al Majmu'ah Ala Madhabi Malik Wa Ashabuhu

Ibn Abdus wrote a monumental book and titled it *Al Majmu'ah Ala Madhabi Malik Wa Ashabuhu*. The book has been referred to as:

كِتَابُ رَجُلٍ أَتَى بِعِلْمِ مَالِكٍ عَلَى وَجْهِهِ

“The book of a man who brought the knowledge of [Imam] Malik in its correct form”

A Summary of the Books of the Mālikī Madhab

The most famous book of the Maliki Madhab is *Al Mudawanah* (المدونة) which is known as *Al Um* (الأم) or *Al Mukhtalithah* (المختلطة). It contains the Masāil that Suhnūn ibn Sa'īd compiled from Ibn Al Qāsim from Imām Mālik. It also contains Masāil that reached Ibn Al Qāsim from individuals other than Imām Mālik.

Suhnūn also added in *Al Mudawanah* (المدونة) those Masāil that Ibn Al Qāsim extracted from the principles of Imām Mālik. Suhnūn also added to the Masāil of *Al Mudawanah* (المدونة) evidences which he had heard through his narrations of *Al Muwatta* (الموطأ) and other books of Ḥadīth. He also added his preferred view in the different Masāil. Unfortunately, however, Suhnūn passed away before he could complete *Al Mudawanah* (المدونة).

The people of Qayrawān originally considered the *Al Asadiyyah* (الأسدية) as a source of Mālikī Fiqh. *Al Asadiyyah* (الأسدية) was a compilation made by Asad ibn Furāt from Ibn Al Qāsim. However, Ibn Al Qāsim reverted from many of the Masāil (مسائل - subsidiary issues) that he had reported to Asad ibn Furāt and ordered Asad ibn Furāt to follow that which Suhnūn had compiled.

Thus, the *Al Mudawanah* (المدونة) of Suhnūn became the source of the Mālikī Madhab. This is because it contained the collective Masāil (مسائل - subsidiary issues) of four Mujtahidīn:

- 1) Imām Mālik
- 2) Ibn Al Qāsim
- 3) Asad ibn Furāt

4) Suhnūn ibn Sa'īd

Many scholars wrote commentaries upon *Al Mudawanah* (المُدَوَّنَة). The individuals who wrote a commentary include:

- 1) Al Lakhmī
- 2) Ibn Mihriz
- 3) Ibn Basir
- 4) Ibn Yūnus

Another group of scholars wrote abridgements of *Al Mudawanah* (المُدَوَّنَة):

- 1) Ibn Abī Zayd Al Qayrawānī
- 2) Ibn Abī Zimnīn
- 3) Abū Sa'īd Al Barad'ī; his *Al Tathīb* is relied upon by the people of Africa (أهل إفريقيا)

In a similar manner, Abdul Malik ibn Habib wrote the book *Al Wadihah* which contained the Masail (subsidiary issues – مسائل) he had gathered from his narrations from Ibn Al Qasim and his companions. The book became famous in Andalusia and the people would rely upon it. In fact, Ibn Rushd wrote a commentary upon it.

After this, Allamah Utbi, the student of Ibn Habib, wrote *Al Utbiyyah* in which he gathered Masail that Ibn Al Qasim, Ashab and Ibn Nafi' had heard from Imam Malik as well as that which Yahya ibn Yahya, Asbagh and Suhnun had heard from Ibn Al Qasim. Soon, the scholars accepted *Al Utbiyyah* and left their reliance upon *Al Wadihah*. They began to write commentaries and footnotes upon *Al Utbiyyah*.

When the 400th Hijri came, the leading Maliki scholar of the time was Ibn Abi Zayd Al Qayrawani. He had gathered that which was in *Al Mudawanah*, *Al Wadihah*, *Al Utbiyyah* and all that had been written on these books in his book titled *Al Nawadir*. Thus, Ibn Abi Zayd's *Al Nawadir* gathered the principles and Masail (subsidiary issues – مسائل) of the Maliki Mathab.

The Maliki scholars continued to rely upon these books until approximately mid-way into the 700th Hijri. At this point, the Maliki scholar Ibn Al Hajib wrote *Jami' Al Umahat* (also known as *Al Mukhtasar Al Far'i*) in which he gathered the different Masail of the Maliki Mathab found in the earlier Maliki books. This book was accepted by the majority of the scholars of the time.

Ibn Al Hajib's book gained such acceptance that many began to write commentaries upon it. Ibn Rashid Al Qafasi and Ibn Abdis Salam both wrote a commentary.

However, in the 800th Hijri, Allamah Khalil wrote a commentary upon it titled *Al Tawdiḥ* which was in 6 volumes. In this book, Allamah Khalil relied heavily upon the views of Ibn Abdis Salam. In his commentary, Allamah Khalil also added many other Masail and solved the difficult sentences found in Ibn Al Hajib's book. Thus, it is considered the best commentary upon *Al Mukhtasar Al Far'i* as stated by Al Hattab.

After this, Allamah Khalil wrote an abridgement of *Al Mukhtasar Al Far'i* (المختصر الفرعي) a book famously known as *Mukhtasar Al Khalil* (مختصر الخليل). Since writing this book, *Mukhtasar Al Khalil* (مختصر الخليل) became the most taught book in the Maliki Madhab and was used for giving a Fatwa. It was, and still is, considered the number one book of the Maliki Madhab.

Such was the calibre of Allamah Khalil's book, that Al Nasir Al Laqani who whilst having made many criticisms of the book, said "when Khalil's statement is brought against the statement of another individual, we are the people of Khalil; if he is wrong, we are wrong".

Allamah Khalil gathered the book in his life until *Kitab Al Nikah*, after this, his student completed the book using the rough notes of the author. From the chapter of Qisas onwards, the book has been completed by his student, Bahram.

In his *Al Mukhtasar* (المختصر), Allamah Khalil has not definitively given preference to a single view in the Maliki Madhab on every occasion. This should not be understood as an indication that he did not reach the level of *tarjih* or *ikhtiyar*. Rather, he did this in order to test the students that would read his book and to encourage them to study the evidences and give preferences of their own. Hence, every student accepted this book and used it for studying. Such was the acceptance of this book that it has been translated into the French language.

The Commentaries Written upon *Al Mukhtasar* (المختصر) of Khalil

Many Maliki scholars wrote commentaries upon *Al Mukhtasar* (المختصر) of Allamah Khalil. In fact, the number of commentaries written upon *Al Mukhtasar* (المختصر) of Khalil reaches over 100.

- 1) Allamah Khalil's student, Bahram ibn Abdillāh ibn Abdil Aziz Al Damiri, has written 3 commentaries upon *Al Mukhtasar* (المختصر). Allāmah Hattāb states that Bahrām's *Al Awsat* (الأوسط) became the more popular commentary, whilst *Al Şaghīr* (الصغير) is the well-researched one.
- 2) Abdullah ibn Miqdād ibn Ismā'īl Al Afquhsī, another student of Allamah Khalil, has also written a commentary upon *Al Mukhtasar* (المختصر). It is similar to Bahram's commentary.
- 3) Abdul Khaliq ibn Ali ibn Al Husain - known as Ibn Al Furāt - also wrote a commentary upon *Al Mukhtasar* (المختصر). Ibn Al Furāt was originally a Hanafi scholar who converted to the Maliki Mathab and then studied under Allamah Khalil. When Allamah Khalil passed away, Ibn Al Furāt saw him in a dream, Ibn Al Furāt asked of his predicament to which Allamah Khalil replied "Allah forgave me and forgave all those who sent salutations upon me".
- 4) Al Shams Muḥammad ibn Aḥmad ibn Uthmān Al Busāti wrote *Şifā'ul Ghaḥl Fi Sharḥ Mukhtasar Al Khalīl* (شفاء الغليل في شرح مختصر الخليل). The commentary focuses more upon linguistic discussions than it does upon Fiqhī discussions. From the chapter of Salam till the chapter of Ḥawālah, his student, Abul Qāsim Muḥammad ibn Muḥammad Al Nuwayrī wrote the commentary.
- 5) Al Jamal Yusuf ibn Khalid ibn Nu'aym Al Busāti, the student of Allāmah Khalīl, wrote a commentary titled *Al Kuḥu Al Khalīl Bi Sharḥ Mukhtasar Khalīl* (الكفو الكفيل بشرح مختصر خليل).
- 6) Nūr Al Dīn Alī ibn Abdillāh Al Sanhūrī also wrote a commentary. In this commentary, he provided a response to the many refutations made by Al Busāti in his commentary. Sadly, however, he did not manage to complete this commentary. His student, Abul Ḥasan states "if he had finished it, it would have no comparison".
- 7) Sālīm ibn Muhammad Al Sanhūrī wrote a complete commentary upon *Al Mukhtasar* (المختصر). When the name 'Al Sanhuri' is used in general, it is a reference to this commentary.
- 8) Shaykh Ibrahīm ibn Fā'id ibn Mūsā Al Zawāwi wrote three commentaries upon *Al Mukhtasar* (المختصر):

➤ *Tashīl Al Sabīl Li Muqtaṭifi Azhār Rawdi Khalīl* (تسهيل السبيل لمقتطف أزهار روض خليل)

It is in eight volumes. He quotes Ibn Abdis Salam, Ibn Arafah, Al Tahwdih and others. He completes each chapter with a brief summary using the statements of Ibn Rushd and others.

- *Faydh Al Nayl* (فيض النيل)
- *Tuhfatul Mushtāq Fi Sharḥ Mukhtasar Khalīl ibn Ishāq* (تحفة المشتاق في شرح مختصر خليل بن إسحاق)

9) Ahmad ibn Abdir Rahman Hululu wrote two commentaries upon *Al Mukhtasar* (المختصر):

- *Al Kabīr*

It is filled with many Fiqhi discussions.

- *Al Saghīr*

10) Shaykh Zarūq wrote a commentary upon *Al Mukhtasar* (المختصر). It is not very detailed but has benefit.

11) Shaykh Karīm Al Dīn Al Baramūnī, the student of Al Nasir Al Laqqani, has written footnotes upon *Al Mukhtasar*.

12) Shaykh Al Najīb ibn Muhammad Shams Al Din Al Takdāwi wrote two commentaries upon *Al Mukhtasar* (المختصر):

- *Al Kabīr*

- *Al Saghīr*

13) Shaykh Barakat ibn Muhammad ibn Abdir Rahman Al Hattab wrote a commentary upon *Al Mukhtasar* (المختصر) titled *Al Manhaj Al Jalīl Fi Sharḥ Mukhtasar Khalil* (المنهج الجليل في شرح مختصر خليل)

14) Shaykh Muhammad ibn Muhammad ibn Abdir Rahman Al Hattab wrote a large commentary upon *Al Mukhtasar* (المختصر) titled *Al Mawahib Al Jalil Sharh Mukhtasar Al Khalil* (المواهب الجليل شرح مختصر الخليل). The commentary shows his ability to research, his exquisite memory and his deep understanding of the Madhab. The book is very detailed at the beginning until the chapter of Hajj, after this, the commentary is shorter.

This is why Abu Ali ibn Rahal Al Ma'dani wrote a commentary upon *Al Mukhtasar* (المختصر) beginning from the chapter of Al Nikah. He titled this commentary *Tatimmah Li Sharḥ Al Hattab* (تتمة لشرح الخطاب) – 'A Completion of Al Hattab's Commentary'.

15) Sheikh Dawud ibn Ali ibn Muhammad Al Qalatawi Al Azhari wrote a commentary upon *Al Mukhtasar* (المختصر).

16) Sheikh Abul Hasan Al Shathili Al Munufi wrote a commentary upon *Al Mukhtasar* (المختصر) which he did not manage to complete. He also wrote the book *Shifa'ul Ghalil Fi Sharḥ Lugat Khalil* (شفاء الغليل في شرح لغات خليل).

17) Shaykh Muhammad ibn Ali ibn Muhammad Al Asbuhi Al Gharnati wrote a commentary upon *Al Mukhtasar* (المختصر).

18) Shaykh Muhammad ibn Yusuf Al Abdari Al Gharnati, famously known as Al Mawaq, wrote a commentary upon *Al Mukhtasar* (المختصر) titled *Al Taj Wal Iklil Fi Sharh Mukhtasar Khalil* (التاج والإكليل في شرح مختصر خليل).

In this book, he compared the statements of the author with the narrations of the scholars of the Madhab such as Ibn Rushd, Ibn Shash and Ibn Al Hajib.

Wherever he did not find statements narrated from the scholars of the Madhab, he left the words of the author as they are.

19) Shams Al Din Muhammad ibn Ibrahim Al Tata'i' wrote two commentaries *Al Mukhtasar* (المختصر):

➤ *Fath Al Jalil* (فتح الجليل)

Al Tata'i' has made many errors in this book which Mustafa Al Ramasi has pointed out in his footnotes of the book.

➤ *Jawahir Al Durar* (جواهر الدرر)

20) Al Badr Muhammad ibn Yahya Al Qarafi wrote a commentary upon *Al Mukhtasar* (المختصر) titled *Ata' Allah Al Jalil Al Jami' Li Ma Alayhi Min Sharh Jamil* (عطاء الله الجليل لما عليه من شرح جليل)

21) Yahya ibn Abd Al Salam Al Qusantini Al Ulami has written a simplified commentary upon *Al Mukhtasar* (المختصر)

22) Al Salih Khidr Zayn Al Bahiri has written footnotes upon *Al Mukhtasar* (المختصر) in which he has gathered the commentary of Shams Al Din Al Tata'i' as well as other commentaries.

23) Ahmad Baba Al Tanbakti has written a very detailed commentary upon *Al Mukhtasar* (المختصر). In his commentary, Al Tanbakti has summarised ten other commentaries of *Al Mukhtasar* (المختصر).

24) Ali Al Ajhuri has written 3 commentaries upon *Al Mukhtasar* (المختصر), they include:

➤ Al Saghir

➤ Al Kabir

25) Ibrahim ibn Mar'i' ibn Atiyyah Al Shubrakhiti has written a large commentary upon *Al Mukhtasar* (المختصر)

26) Shaykh Abd Al Baqi ibn Yusuf Al Zurqani has written a very large and important commentary upon *Al Mukhtasar* (المختصر)

Many of the later scholars have written footnotes upon the commentary of Al Zurqani, these footnotes include:

➤ The footnotes of Al Bunani

➤ The footnotes of Shaykh Al Tawudi ibn Sawdah titled *Tali' Al Amani*

- The footnotes of Shaykh Al Amir
- The footnotes of Shaykh Al Rahuni

27) Salih Al Shaykh Muhammad Al Khirashi has written two commentaries upon *Al Mukhtasar* (المختصر)

- Al Kabir
- Al Saghir

This has been printed with the footnotes of Shaykh Al Sa'idi

28) Ahmad Al Zurqani, famously known as Abu Fijlah, has written a commentary upon *Al Mukhtasar* (المختصر)

29) Shaykh Ilish has written a commentary upon *Al Mukhtasar* (المختصر)

30) Muhammad Al Amir Al Kabir has written a commentary upon *Al Mukhtasar* (المختصر) titled *Al Iklil* (الإكليل)

This is a very simple commentary. However, it is of immense benefit as it contains preferences of many Masail.

Terminologies of the Mālikī Mathab

Giving Fatwa from Unreliable Books

Like all the Madhahib, the Maliki scholars are also particular about the books one uses when giving a Fatwa.

Ibn Farhun writes:

كَانَ الْأَصْلُ يَقْتَضِي أَنْ لَا تَجُوزَ الْفَتْيَا إِلَّا بِمَا يَرْوِيهِ الْعَدْلُ عَنِ الْعَدْلِ عَنِ الْمُجْتَهِدِ الَّذِي يُقْلِدُهُ الْمُفْتِي حَتَّى يَصِحَّ ذَلِكَ عَنِ الْمُفْتِي كَمَا تَصِحُّ الْأَحَادِيثُ عِنْدَ الْمُجْتَهِدِ لِأَنَّهُ نَقْلٌ لِدِينِ اللَّهِ فِي الْوُصَفَيْنِ وَغَيْرِ هَذَا كَانَ يُنْبَغِي أَنْ يُحْرَمَ غَيْرُ أَنَّ النَّاسَ تَوَسَّعُوا فِي هَذَا الْعَصْرِ فَصَارُوا يُفْتُونَ مِنْ كُتُبٍ يُطَالَعُونَهَا مِنْ غَيْرِ رِوَايَةٍ وَهُوَ خَطَرٌ عَظِيمٌ فِي الدِّينِ وَخُرُوجٍ عَنِ الْقَوَاعِدِ

“Originally, it seemed appropriate for it to remain impermissible to issue a Fatwa except through a narration narrated by a reliable individual who narrates it from a reliable individual who narrates it from a Mujtahid that the Mufti follows, this would be an authentic Fatwa issued by a Mufti, just as Ahadith are considered authentic according to a Mujtahid. This is because both involve narrating the Din of Allah. It would have been appropriate for all other forms of Fatwa to remain haram, except that people made concessions in this day and age and began issuing a Fatwa from a book they have read without a chain of narration. This is a great danger to Din and a contravention of principles”

Hence, the Maliki scholars also felt that it is not appropriate to give a Fatwa from a book which does not record the view of a Mujtahid with an authentic chain of narration or it is not a book which has become so well-known that its contents are known to be authentic and are free from alteration and adulteration.

Introduction to the Shafi'ī Madhab

Important Books of the Shafi'ī Madhab

Imām Shafi'ī has written four books in the field of Fiqh:

- 1) *Al Um*

This book has been narrated by Imam Al Rabi' ibn Sulayman. It contains the views which Imam Al Shafi'i mentioned whilst he was in Misr.

- 2) Al Imlā
- 3) Al Buwaytī
- 4) Mukhtasar Al Muzanī

'Allamah Qaffal Al Shafi'i' Rahimahullah wrote a commentary upon Mukhtasar Al Muzani titled Al Taqrib. However, the book is not found today. 'Allamah Khallikan states that the Shafi'i' jurists of Khurasan have taken their Shafi'i' jurisprudence from it.

Another commentary written upon Mukhtasar Al Muzani was Al Hawi Al Kabir written by Al Mawardi Al Shafi'i'. It is one of the most detailed books in the Shafi'i' Madhab. Al Mawardi takes special care in mentioning the differences between the Madrasahs of the Shafi'i' Madhab in such a manner that the book has become an encyclopedia of the Shafi'i' Madhab.

After this, Imām Al Haramayn Al Juwaynī (d.478 AH), according to some, summarised the four books in his book, Nihāyah Al Maṭlab. However, the correct view as mentioned Abū 'Abdillāh Al Bāblī and Ibn Ḥajar is that Nihāyah Al Maṭlab is a commentary of Mukhtasar Al Muzanī. It is by far the best commentary of Mukhtasar Al Muzanī and is arguably the most important book in the Shafi'i' Madhab. Al Juwayni was from the jurists of Khurasan, therefore, his book is filled with polemic arguments against the Madrasah of Iraq and jurists of the other three Madhahib.

Imam Al Haramayn Al Juwayni Rahimahullah (d.478 AH)'s book was granted acceptance by Allah the Almighty. Scores of scholars began to write abridgements and commentaries upon the book.

The first individual to write an abridgement of it was Imam Al Haramayn Rahimahullah (d.478 AH) himself.

After this, Imām Al Ghazālī made an abridgement of Nihāyah Al Maṭlab titled Al Basīt. However, he also added to his abridgement from the book Al Ibanah of Al Fawrani.²⁹⁸

He then made an abridgement of Al Basīt and titled it Al Wasīt. He then made an abridgement of Al Wasīt and titled it Al Wajīz. He then made a summary of Al Wajīz and titled it Al Khulāṣah.

Al Wajiz, however, was considered the book that sent shockwaves amongst the Shafi'i' jurists for its brilliance.

Ibn Yunus Al Misri wrote an abridgement of Al Wajiz titled Al Ta'jiz Fi Ikhtisar Al Wajiz.

Imām Al Rafi'i' wrote a book titled Al Muḥarrar. Al Bujayrī states that Al Muḥarrar is an abridgement of Al Wajīz. However, Ibn Ḥajar and Abul Baqā Al Bakrī states that Al Muḥarrar is an independent book, it is only considered an abridgement as its words are very few. In reality, it is not an abridgement of another book.

After this, Imām Al Nawawī made an abridgement of Al Muḥarrar titled Al Minhāj. Shaykhul Islām Zakariyya Al Anṣārī then made an abridgement of Al Minhāj titled Al Manhaj. After this, Muḥammad Al Jawharī made an abridgement of Al Manhaj titled Al Nahj.

There were many scholars who commentaries upon Minhāj Al Ṭālibīn, they include:

- Tuḥfah Al Muḥtāj by Ibn Hajar Al Haytami
- Nihāyah Al Muḥtāj by Al Ramli
- Mughnil Muḥtāj by Al Khatib Al Sharbini

Imam Al Rafi'i' also wrote two commentaries upon Imam Al Ghazali's Al Wajiz:

- A smaller commentary which he did not name

²⁹⁸ , "Al Madhab Al Shafi'i'" (:), pg. 285.

- An incredibly large commentary titled Al Sharh Al Mahmud, however, he only reached until the middle of the chapter of Salah
- A larger commentary titled Al Aziz Sharh Al Kabir; it is also simply referred to as Al Sharh Al Kabir

The book is one of the important books in the Shaf'i' Madhab. In it, Imam Al Rafi'i' has summarised the books of Imam Al Ghazali Rahimahullah, the books of Imam Al Haramayn Al Juwayni Rahimahullah. He has also added to it from the books Al Tadhīb by Imam Al Baghawi, Al Shamil by Ibn Al Sabbagh, Al Ibanah of Al Fawrani, Tajrid of Ibn Kaj, and Al Amali of Al Sarakhsi.

Imam Al Rafi'i' was extremely careful in ensuring that he only recorded what was correct and authentic. The jurists greatly praised Al Sharh Al Kabir and for a long time it was considered the most important book for issuing a Fatwa according to the Shafi'i' Madhab.

Then came Imam Al Nawawi Rahimahullah.

There were two famous abridgements made of Al Aziz:

- Rawdah Al Talibin Wa Umdah Al Muftiyin by Imam Al Nawawi
 - Ibn Al Muqri then made an abridgement of Rawdah Al Talibin Wa Umdah Al Muftiyin titled Rawd Al Talib. Ibn Al Muqri's book was given great acceptance by the Shafi'i' Fuqaha. After this, Shaykhul Islam Zakariyya Al Ansari wrote a commentary upon Rawd Al Talib titled Asnal Matalib. Ibn Hajar made an abridgement of Rawd Al Talib titled Al Na'im. It was a unique book except that it was lost during his lifetime.
 - Ahmad Al Mazjad Al Zabidi also made an abridgement of Rawdah Al Talibin Wa Umdah Al Muftiyin titled Al Ubab. In the abridgement, he also added many important Masail of the Shafi'i' Madhab. Ibn Hajar then wrote a commentary upon Al Ubab titled Al I'ab, except that he did not manage to complete it.
 - Allamah Suyuti also wrote an abridgement of Rawdah Al Talibin Wa Umdah Al Muftiyin titled Al Ghunyah. He also made a poem summarising Rawdah Al Talibin Wa Umdah Al Muftiyin titled Al Khulasah, however, he did not manage to complete it.
 - Ahmad Al Adhra'i' also wrote footnotes upon Rawdah Al Talibin Wa Umdah Al Muftiyin titled Al Tawasut Bayn Al Rawdah Wal Sharh.
 - Similarly, Ibn Al Ammad, and Al Bulqini also wrote footnotes upon Rawdah Al Talibin Wa Umdah Al Muftiyin.
 - Al Asnawi wrote a book titled Al Muhimmat Bi Sharh Al Rawdah Wa Al Rafi'i'. In it, he has corrected many of the statements mentioned by Al Rafi'i' in Al Sharh Al Kabir and Al Nawawi in Rawdah Al Talibin. This book of Al Asnawi was also given acceptance by Allah the Almighty, this is because, although the book was written as a correction of the mistakes made by Al Rafi'i' and Al Nawawi, it played a great role in establishing the correct Shafi'i' position in many Masail. Also, many wrote books in refutation of it, such as Ibn Al Ammad Al Aqfahsi who wrote Al Ta'aqubat Al Muhimmat. Similarly, Al Shihab Al Adhra'i' Rahimahullah wrote Intiqad Al Muhimmat.

- Then, Muhammad Al Zarkashi then wrote an impressive set of footnotes upon Rawdah Al Talibin Wa Umdah Al Muftiyin titled Al Khadim Li Al Rawdah Wa Al Rafi'i', in which he summarised what was written in the other footnotes.
- Abdul Ghaffar Al Qazwini wrote an abridgement of Al Aziz

This commentary is unparalleled. This is because he summarised the essence of the book in a very short abridgement. The people of the time recognised that this abridgement is unique, thus people began to write commentaries and abridgements of it.

Abu Hafs ibn Al Wardi then summarised the book in a poem which the people began to memorise and write commentaries upon. This was until Ibn Al Muqri came, who summarised Al Qazwini's abridgement in a very short poem titled Al Irshad.

A Brief Guide on Usul Al Ifta According to the Shafi'i' Madhab

It is important to understand that there are two Fuqaha that were instrumental in the Shafi'i' Madhab with regards to Fatwa, they were:

- Imam Al Rafi'i'
- Imam Al Nawawi

Together, they are referred to as Shaykhan.

When an individual is presented with a Mas'alah in the Shafi'i' Madhab, the situation may be of two types²⁹⁹:

- Type 1: The individual is worthy of giving preference in the Shafi'i' Madhab
- Type 2: The individual is not worthy of giving preference in the Shafi'i' Madhab

Type 1

The situation may be of four scenarios:

- 1) Imam Al Rafi'i' and Imam Al Nawawi have a view in the Mas'alah

This may be of two types:

1. The views expressed by Imam Al Rafi'i' and Imam Al Nawawi are the same

This may also be of two types:

- The view expressed by both scholars has been labelled as incorrect by all the later scholars

Ruling: the individual must adopt the view that the later scholars have adopted

- The expressed by both scholars has not been labelled as incorrect by all the later scholars

Ruling: the individual must issue the Fatwa upon the view expressed by both scholars

2. The views expressed by Imam Al Rafi'i' and Imam Al Nawawi are different

This may also be of two types:

- The view expressed by both scholars has been labelled as incorrect by all the later scholars

²⁹⁹ Muhammad Al Kurdi Al Madani, "*Al Fawaid Al Madaniyyah*", (Lebanon: Al Jaffan Wal Jababi, 2011), p.38

Ruling: the individual must adopt the view that the later scholars have adopted

- The expressed by both scholars has not been labelled as incorrect by all the later scholars

Ruling:

The individual must issue a Fatwa upon that which he feels to be the correct view between Imam Al Rafi'i's view and Imam Al Nawawi's view, or any of the later Fuqaha such as Ibn Hajar or Al Ramli.³⁰⁰ If there is a factor which gives preference to one of the two views, then this view shall be adopted.

But, if there is no factor which gives to one of the two views, or both views have an equally strong factor giving preference to that view, then the individual shall adopt the view of Imam Al Nawawi.

If Imam Al Nawawi holds many views in the many different books he has written in the Shafi'i' Madhab, then the individual should follow what the later scholars define as the view of Imam Al Nawawi. Nonetheless, the order of reliability of Imam Al Nawawi's views in his books is:

1. The views he expresses in Al Tahqiq
2. The views he expresses in Al Majmu'
3. The views he expresses in Al Tanqih
4. The views he expresses in Al Rawdah
5. The views he expresses in Al Minhaj
6. The views he expresses in Sharh Muslim
7. The views he expresses in Tashih Al Tanbih
8. The view he expresses in Al Nukat

2) Imam Al Rafi'i' and Imam Al Nawawi do not have a view in the Mas'alah

Ruling: the individual must extensively research the books of the earlier scholars and issue Fatwa upon a reliable view of Imam Al Shafi'i' or a view of one of the Ashab Al Wujuh which he has a strong feeling to be representative of the Shafi'i' Madhab.

However, it is not permissible for him to issue a Fatwa upon a weak view of the Shafi'i' Madhab and then attribute it to Imam Al Shafi'i', even if his preference lies towards it.³⁰¹

Question: have Imam Al Rafi'i' or Imam Al Nawawi ever contradicted a clear statement of Imam Al Shafi'i'?

Answer: Imam Al Rafi'i' and Imam Al Nawawi have not contradicted any explicit statements of Imam Al Shafi'i' except in those place where they found another statement from Imam Al Shafi'i' which they felt to be the more correct view. Ibn Hajar writes in Sharh Al Ubab:

"The Muhaqiqin [of the Shafi'i' Madhab] are unanimous that the Mufta Bihi is what they (Imam Al Rafi'i' and Imam Al Nawawi) have said and then what [Imam] Al Nawawi has said. [They are] also [unanimous] upon the fact that Fatwa will not be given according to the view of the one who questions them with a statement from Al Um or the view of the majority or something similar, for surely they were

³⁰⁰ Loc. Cit.

³⁰¹ Muhammad Al Kurdi Al Madani, Op. cit., p.58.

the more knowledgeable of the statements [of Imam Al Shafi'i] and his students than the one who is questioning them".³⁰²

Type 2

This may be of two scenarios:

- 1) Ibn Hajar Al Makki or Al Ramli have a view in the Mas'alah

This may be of two types:

1. The scholars who came after Ibn Hajar Al Makki and Al Ramli have not unanimously agreed that they have erred

Ruling: the individual may adopt whichever of the two views he wishes. 'Allamah Muhammad Al Kurdi mentions that it is not permissible to adopt a view of anyone other than these two scholars if they have a view in the Mas'alah.

2. The scholars have unanimously agreed that Ibn Hajar Al Makki and Al Ramli have erred

- 2) Ibn Hajar Al Makki and Al Ramli do not have a view in the Mas'alah

Ruling: according to 'Allamah Muhammad Al Kurdi, one will follow the following order:

1. Give the Fatwa upon Shaykhul Islam Zakariyyah Al Ansari's view
2. Give the Fatwa upon Al Khatib's view
3. Give the Fatwa upon Ali ibn Yahya according to what he has written in his footnotes upon Fathul Wahhab Sharh Minhaj Al Tullab, a book written by Shaykhul Islam Zakariyyah Al Ansari
4. Give the Fatwa upon Ahmad ibn Qasim Al Abadi's view according to what he has written in his footnotes upon Tuhfah Al Muhtaj Sharh Minhaj Al Talibin
5. Give Fatwa upon the Umayrah's view
6. Give Fatwa upon Al Shabramlisi's view according to what he has written in his footnotes upon Sharh Minhaj Al Talibin
7. Give the Fatwa upon Ali ibn Ibrahim Al Halabi's view
8. Give Fatwa upon Shawbari's view
9. Give Fatwa upon Al Anani's view

The individual has a choice between adopting the view of Ibn Hajar Al Makki or Al Ramli upon the condition that those who followed have not completely rejected their views.

Based upon this, when there is a difference of opinion between Ibn Hajar Al Makki and Al Ramli, there are two groups of Shafi'i' Fuqaha:

- 1) The Shafi'i' Fuqaha of Hijaz, Sham, Hadramawt, Al Akrad, Daghistan, and the majority of the people of Yemen rely upon the view of Ibn Hajar Al Makki
- 2) The Shafi'i' Fuqaha of Misr (مصر) rely upon the view of Al Ramli

Introduction to the Hanbali Madhab

Important Books of the Hanbali Madhab

Mukhtasar Al Kharqi

³⁰² Muhammad Al Kurdi Al Madani, Op. cit., p.40.

Mukhtasar Al Kharqi is a Hanbali Fiqh book which was well-known amongst the early Hanbalis. In fact, no other books was given as much attention in the Hanbali Madhab as Mukhtasar Al Kharqi. Such was the status of this book that Allamah Yusuf ibn Abdil Hadi records in his Al Dur Al Naqi Fi Sharh Alfadh Al Kharqi from Iz Al Din Al Misri:

ضبطت للخرقي ثلاث مئة شرح وقد اطلعنا له على ما يقرب من عشرين

Al Mughni Sharh Mukhtasar Al Kharqi

The greatest commentary written upon Mukhtasar Al Kharqi is the commentary of Muwaffaq Al Din Ibn Qudamah Al Maqdisi. Ibn Qudamah's methodology in this book is that he makes the statement of Al Kharqi the title of the chapter, after which he proceeds to commentate upon the statement. He also adds to the various titles of the chapters as he deems appropriate.

Initially, Ibn Qudamah mentions the various narrations from Imam Ahmad ibn Hanbal on the Mas'alah. Along with this, Ibn Qudamah mentions the view of each of the scholars including the Sahabah and the Tabi'un, and then presents the evidences for some of their views whilst referring where the books where each evidence may be found.

Ibn Muflih said in Al Maqsad Al Arshad:

اشتغل الموفق بتأليف "المغني" أحد كتب الإسلام فبلغ الأمل في إنجائه وهو كتاب بليغ في المذهب تعب فيه وأجاد فيه وجمل به المذهب وقرأه عليه جماعة وأثنى ابن غنيمه على مؤلفه فقال ما أعرف أحدا في زماننا أدرك درجة الإجتهد إلا الموفق وقال الشيخ عز الدين بن عبد السلام ما رأيت في كتب الإسلام مثل "المحلى" و "المجلى" لابن حزم وكتاب "المغني" للشيخ موفق الدين في جودتها وتحقيق ما فيها ونقل عنه أنه قال لم تطب نفسي بالإفتاء حتى صارت عندي نسخة "المغني"

"Al Muwaffaq began writing Al Mughni, one of the books of Islam, it so happened that he reached his goal. It is a profound book in the [Hanbali] Madhab, he worked hard in [writing] it, and he perfected it, and he summarised the [Hanbali] Madhab with it, and a group of studied it under him. Ibn Ghunaymah [also] praised its author and said "I do not know of anyone in our time who has reached the pedestal of Ijtihad except Al Muwaffaq. Shaikh Iz Al Din ibn Abd Al Salam said "I have not seen in the books of Islam [a book] equivalent to excellence and research of 'Al Mahalla' and 'Al Majalla' of Ibn Hazm, and the book 'Al Mughni' by Shaykh Muwaffaq Al Din". It has been related from him [Shaikh Iz Al Din ibn Abd Al Salam] that he said "I don't feel right giving a Fatwa until there is a copy of Al Mughni with me"."