
The Evil Consequences of
Tagleed, Hizbiyyah
and *Partisanship*



PART 5

The Formation of Madhabs & Deriving Rulings

By

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The Evil Consequences of Taqleed, Hizbiyyah and Partisanship

Part 5 – The Formation of Madhabs & Deriving Rulings

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*Alhamdulillahilahi Rabbil A'lamin, Wasalatu Wasalam Ala Rasoolillahil Karim,
Wa, Ba'd*

2) Ok the scholars state that the laypeople can take a ruling without understanding the reasoning behind it from a reputable scholar, isnt that similar to what the madhabs have done, ie the pious predecessors with their methodologies have derived rulings for all thinkable and unthinkable topic areas?

ANSWER

Part 2

Allamah Shami for instance says the Hanafi madhab issued a fatwa 17 times based on the statement and derivation of Shaikh Zafar in opposition to the statements, derivation and ijtihaad of Imam Abu Haneefah, Imam Shaybani and Qadhi Abu Yusuf. *(Refer to Shami 1/71)*

Did not the Hanafi madhab abandon the established position of the madhab in certain issues, for example the issue of the lack of information of the lost husband in which the Hanafi madhab issued a ruling based on the Maliki madhab and at times the Hanafi madhab left their own madhab for the statement and ijtihaad of Ibn Abi Layla.

It is also know that Imam Abu Haneefah very clearly said, "It is unlawful for anyone to give a fatwa based on my statement if they do not know my evidence." (*Meezan al-Kubra* 1/58, *Rasm al-Mufti* 1/29,32)

Abu Laith Samarqandi Hanafi cites that Qadhi Abu Yusuf and Shaikh Zafar also said the same, ie "It is not halal for anyone to give a fatwa based on our statements if they do not know where we got this from (ie the evidence)" (*Fatawa an-Nawazil* pg.381)

The Imam himself, Abu Haneefah said, "It is unlawful for a person to issue a verdict based on my statement if he does not know my evidence." (*al-Mizaan al-Kubra* 1/58 of Sha'arani) Therefore when the evidence becomes known, how is this taqlid???

For example Qadhi Abu Yusuf once bathed in such a bath area and led the Friday prayer, later he found out the the well the water was supplied from had a dead mouse in it, upon this he said, "So we take the statement of our brothers from the people of Madinah that when the water is equal to 2 qullas it is not impure." (*Fatawa al-Bazaziyyah* cited from *Hujjatullah al-Balighah* 1/159 of Shaikh Shah Waliullah Dehalwi)

Some of the eminent Hanafi personalities have differed with this. For example they said, if a muqallid Qadhi (judge) issues a verdict in opposition to the fatwa of the imam of the madhab, it is unworthy to be

acted upon. Similarly when the Qadhi issues a verdict based on a weak statement of the madhab it will still not be worthy to be acted upon, so therefore how is it correct to act upon a statement of another madhab.

(Refer to Durr ul-Mukhtar with Radd al-Mukhtar 1/76)

Others however on the other hand have shown some leniency and said if the Qadhi is a Mujtahid then his verdict which opposes the madhab can be acted upon based on ijtihaad. *(Refer to Durr al-Mukhtar 1/85 and 5/404)*

Allamah Tahawi Hanafi also discusses this and brings the statement of Shaikh Kamal who said that an individual referring to another madhab based on evidence and ijtihaad is sinful and worthy to be reprimanded, then how about the individual who refers to another madhab without evidence or ijtihaad then he will be more worthy of sin and punishment. *(Refer to Tahawi 2/417)*

So even if an individual wanted to do Taqlid and the evidence came to him according to some of the statements and principles outlined above, he will still be sinful and liable for punishment. How fair and sane is this? Is this not pushing people away from following the Quran and the Sunnah.

This obligation of following the book and the Sunnah is a great obligation which has been ordained and commanded in the Quraan. It is also in the core aspect and root of a Muslim to follow the Quran and the Sunnah but here any such chances and options are severed by saying the people are sinning and are likely to be punished.

So it is not sufficient to rely alone on the derivation and interpretation of a madhab and this more so applicable for current day issues. This is why the Deobandi Hanafi scholar Muhammad Yusuf Binnouri said (about his Fiqh), *"Without doubt with regards to the situations encountered and faced in the current day, they cannot be resolved and answered according to our old Fiqh."* (refer to the monthly journal *Bayyinat* vol.3 issue.35)

We guess the question here is, why is this just limited to the 4 madhabs and not to other scholars. This is essentially one of the main problems, derivation of Fiqh has been restricted and constricted to just 4 madhabs and then on top of that even those rulings are ambiguous, as no one is sure whose ijtihaad it is.

Imam Dhahabi extorts some beneficial points, his profound words are, *"Oh Muqallid and oh you who think ijtihaad has finished and there is no Mujtahid now! Then there is no benefit in your learning and studying the principles of Fiqh as learning the principles of Fiqh only benefits the Mujtahid. When an individual knows the principles of Fiqh and he still abstains from freeing*

himself from the shackles of taqlid, he does not achieve anything. Rather by studying it further he pushes himself into more difficulty and establishes proofs against himself.. " (cited by Suyuti in *Ar-Radd Ala Min Akhlad Ilal Ardh* pg.153)

He also further expounded on this and said, "A person who only follows one specific madhab is the one who is deficient of firm knowledge, just as the situation was with most of the scholars of our times who are mutassab (ie bigoted)" (*Siyar A'lam an-Nabula* 14/491)

We have already mentioned it is not possible for us to know all the evidence the Imams used to issue their verdicts, it's not a case of understanding the evidences or trying to delve into them. It is however important to now there are appropriate evidences from the Quran and Sunnah to support such or any ijtihaad.

The late Hanafi scholar, Muhamamd Hashim Sindhi said, "It is not established from a single person from amongst the Muqallideen who has claimed that our imams had evidence for every issue. Nor do they have an answer for the contradictory issues and we are not aware of this." (*Dhab Dhababat ad-Dirasaat* 1/281)

As already also mentioned Muhammad Hussain Kawthari Hanafi also said something similar in his own words in his book *Ahqaq al-Haq*. Dear readers does this not show us, based on the numerous

statement quoted above that the Imams did not know or had all the evidences for all of their rulings and ijtehad.

So how fair would it be to say that they derived rulings from the Quran and Sunnah when some of the Imams themselves did not know or did not have all evidences for every ruling.

Another example of this is what relates from the well known and famous student of Qadhi Abu Yusuf, ie Asaam bin Yusuf al-Balkhi. He would differ with Imam Abu Haneefah on a numerous issues. In the issue of Raf ul-Yadain ie the raising of the hands, not only did he differ with Abu Haneefah but also with Qadhi Abu Yusuf and adopted the way of the scholars of Hadeeth (ie raising the hands).

When he was asked as to why he differed with the position of Imam Abu Haneefah, he replied we don't have the depth of knowledge and great insight Imam Abu Haneefah had but we do not have the courage to issue verdicts and adopt positions based on a statement which we do not know the evidence for. (*Refer to Iqaaz al-Humam pg.51-52, al-Bahr ur-Raiq 6/293 and Hujjatullah al-Balighah 1/178, Refer also to Fawaaid al-Bahiyyah of Lucknowi*)

This lead to certain scholars, Imam Ghazali being one of them, to opine that Shaikh Muhammad Shaybani and Qadhi Abu Yusuf differed

with Imam Abu Haneefah in 2/3 of his fatwas and rulings ie ijtihaad. Then the later scholars of the same madhab differed with these rulings of the madhab and the earlier Imams.

Hence when they would issue fatwas or verdicts they would say the fatwa is based on the statement of so and so ie other scholars within the madhab or they would say the fatwa of such and such or so and so has precedence or acceptance in the madhab.

It is apparent these changes, within the madhab would and could only come about based on the evidence the later scholars would present. So when there are such strong and powerful inter differences within a madhab and these differences and complications are accentuated between madhabs and then they have own their inter differences, what guarantee is there with regards to the accuracy and preciseness of the legal rulings and fatawa being disseminated from a madhab or the different madhabs, or being derived accurately from the Quran and Sunnah.

Therefore why not take the safer and more accurate - tried and tested method of just asking the people of knowledge who will give you and evidence and you just follow that. If and when something different comes then accept and change according to the evidence. This method is fool proof and this was the method employed during the first three blessed generations.

Shaikh Izz ud deen Ibn Abdus Salam said, "There is great amazement at the blind following (Muqallid) jurists (fuqaha) who know the weak sources of their imams which they can not clarify or rectify, yet they are still adamant and continue to do taqlid of their Imams and they abandon and leave the position which is supported by the Quran and Sunnah. In doing so they formulate and concoct major false interpretations in defence and in promotion of their Imams." (*Qawaid al-Ahkam* 2/135, also cited by Shah Waliullah in his *Hujatullah* 1/155, in his *Ittihaf* pg.110 and in his *Iqd al-Jeed*, Suyuti in his *ar-Radd Min Akhlad* pg.140, and Allamah Fulani in *Iqaz al-Humam* pg.108)

Allamah Muhammad Hayat Sindhi who was declared to be a Hanafi according to the Muqallideen Ahnaf, he said, "You will see the Muqallideen that they will read the books of Hadeeth, consult them and also deliver lesson on them and this is not that they want to act upon them but only to learn about the evidences of their imam and to explain away the ahadeeth which oppose their Imam. And in doing these taweel at they go beyond bounds and exaggerate and when they even fall short in this or are unable to keep this up they say our imam knows more than us." (*Tuhfatul An'aam* pg.16) and Allamah Fulani also cites this about the Muqallideen in his masterpiece *Iqaz al-Humam* pg.71)

We know all of the above restricts and prohibits a person from following and acting upon the Sunnah and therefore we should have the utmost fervour and zealously to act upon the hadeeth.

Shaikh Sha'arani said, "Some of the muqallideen said to me if we come across a hadeeth from Bukhari or Muslim that our Imam never used or acted upon then we also will not act upon them. This is ignorance of the Shariah and the first person who will free himself from these people will be their Imam." (*al-Mizan al-Kubra* 1/10)

It is such thoughts that have led the Muslims to be chained endlessly in the shackles of taqlid. Some of the scholars knew what the truth was with ie in other madhabs but because they were forced and obligated to follow their own madhab, this eventually led them to rejecting the truth.

For example the eminent Deobandi Hanafi Scholar Mahmood al-Hasan said about the issue of 2 departing parties of a transaction that, "The truth and the precedented opinion in this issue is with Imam Shafi but because we are muqallids, the taqlid of our Imam, Abu Haneefah is obligatory upon us." (*Taqrir Tirmidhi* pg.39)

So we ask is this not denying and rejecting the truth knowingly when an individual himself admits and knows what the truth is. The truth is that the later day muqallids are also aware of what the truth is. However they are chained and restricted by these shackles and in this era they cause confusion and attempt to deny taqlid shaksi whereas in reality this is what they really believe in.

Else how is it possible for a scholar who knows the truth but yet he still continues to deny and reject the truth and traverses in his blind taqlid of his Imam. It must also be said the scholars who derived rulings did so based on the general need and not due to the principles and rules of a madhab. They all had their specific principles and if this is the case then this what the non muqallideen and non-madhabi scholars have done and still do.

For example Shaikh Shihab ud deen Hanafi said, *“Every single one of them had their own unique principles (Usool) in which they differed and opposed the principles of Abu Haneefah.”* (*an-Naf'e Kabir* pg.99)

So this shows even though most of the scholars of that era had their own usool and made their own ijtihaad, It does not indicate they concurred and secondly how is this even an argument for taqlid and madhabs.

On the contrary this shows their open mindedness with regards to ijtihaad. Lastly, since they had their own usools and therefore by default their ijtihaad was independent. So it would be safe to say this is totally different to what is being propagated today.

However how about all the occasions in which the scholars within the same madhab differed with the official verdict of the madhab after they did their ijtiḥad or derivations. It is very strange here that all the differences, contradictions and oppositions within the madhabs have been overlooked and overshadowed.

So lets look at another example of how the scholars derived these rulings and what principles they had. It is well known and there is Ijma that the most authentic book after the book of Allaah is The Sahih of Imam al-Bukhari and then the Sahih of Imam Muslim.

So when we know a hadeeth is in these books it is taken and readily accepted. We also know the hadeeth is from the Messenger of Allaah (Sallallahu Alayhi Wasallam) and this is a well known, established and an agreed upon principle. All the scholars of Islam and the scholars of usool are agreed the ahadeeth of the Sahihain have precedence and acceptance.

However the ninth century hanafi scholar Allamah Ibn Humam and his student Ibn Amir al-Haj differed with this principle and understanding and said the readiness to accept was incorrect. (*Refer to their Fath ul-Qadir 1/317-318, 3/183 and at-Taqrir at-Tahrir Fi Sharh Kitab at-Tahrir 3/30*).

The later day hanafis from the likes of Shaikh Abdul Haq Hanafi Dehlawi also expounded on this in there eras and said that such principles and concepts are good for the hanafi madhab as well as the other madhabs. He explained this is because it readily prohibits and halts the acceptance of hadeeth which contradicts and oppose the hanafi madhab. (*Refer to Sharh Safar as-Sa'adat pg.15*)

Allamah Jaza'airi (*in his Taujeeh an-Nazar pg.120*) has severely refuted and reprimanded this idea and said it was from whims and desires and that accepting the narrations from the sahihain is a well established principles which is solid and only those with desires reject this.

The latter day Hanafi Scholar, Shaikh Abdul Hayy Lucknowi has also rebuked the hanafi elders and said accepting narrations from the Sahihain is the way of the Muhaditheen and in fact there is ijma upon this. Only Ibn Humam and Ibn Amir al-Haj and their followers have opposed this. (*al-Ajwabah al-Fadhilah pg.56*). However these corrections are overlooked and ignored.

So the point here is, how would it be possible to derive the rules and issue fatwa fairly and accurately to the best of the mujtahids ability when this is the affair and situation of the principles and usool. Surely the fatawa would have been biased and void of authentic texts and in the bigger picture how reliable would the fatawa be. In addition to this we

would be expected to follow this forever until the rest of our lives as being muqallids we dont have the choice to ask, let alone question.

Why are these opinions and positions not mentioned within the madhab. So we should be fair and mention alongside with the scholars deriving rulings within a madhab then at the same time they have also differed and at times severely at that. A prime example of this is the swearing to the Messenger of Allaah (Sallallahu alayhi Wasallam) and we have cited this in question no.4

By the two who are in need of the Mercy of his Lord,

May Allah forgive us. Ameen

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