

My Love and My Choice^{*}

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Part I: The Supreme Sunni Way of Life and the Honourable Hanafi School of Law

Among the Muslims the framing of laws has always been the preserve of the religious leaders, men distinguished for their extreme devoutness and piety. The qualities prized most in religious people are detachment from worldly matters, aloofness, strictness in the performance of duties, unawareness of public affairs and dislike of the followers of other religions. All these are qualities adverse to social progress. People characterized by an excess of these qualities, especially if they are inborn in them, are unable to understand the requirements of a developing civilization. For all the veneration such people rightfully enjoy because of their holiness and purity, they can offer little guidance to men and women in the conduct of their mundane affairs. Who can deny the exalted rank of godly men like Junaid Baghdadi, Ma'ruf Karkhi, Shibli, and Dawud Ta'i; but one cannot imagine them in the role of legislators. Even the *mujtahids* who framed personal and public laws under the title of *Fiqh*, although no anchorites like these holy men, did not know enough about mundane matters to legislate about them. That explains why some of their laws are so rigid and unimaginative as to be difficult of enforcement. For example, Shafi'i and some other *mujtahids* maintain that no one but a reliable man can be a witness to a marriage, that a neighbour has no right of preemption, that it is impermissible to sell gifts, that the testimony of *dhimmis* is not admissible in any circumstances, and that if a Muslim kills hundred of innocent *dhimmis*, he is not punishable for this. Laws of this kind are simply not workable.

Abu Hanifah was alone among his contemporaries in combining religious piety with an understanding of worldly needs, and especially the needs of a growing society. Because of the legal references constantly made to him, he had become acquainted with thousands of complicated questions concerning human relations. His consultative council was to all intents and purposes a supreme court, which had decided hundreds of thousands of cases. It virtually had an official status and was consulted by State functionaries. Most of his disciples and associates, who numbered hundreds, were people holding judicial posts. To crown all, he was a born jurist with a flair for the finer points of law and an intuitive appreciation of its operation in human affairs. A good illustration of this is provided by the following incident narrated by most of the historians who have written about him.

One day Abu Hanifah called on Qadi Abi Laila and found him engaged in hearing a case. The plaintiff alleged that the defendant had defamed him by calling his mother an adulteress. The *Qadi* inquired of the defendant, who also was present in court, what he had to say in his defence. Abu Hanifah, intervening, said to the *Qadi* that the suit was not yet ready for being heard and advised him to ask the plaintiff if his mother was alive, because, if she was, she should also join the suit and be either personally present or authorize the plaintiff in writing to represent her. On the *Qadi* questioning him

accordingly, the plaintiff stated that his mother was dead. The *Qadi* thereupon wished to proceed with the hearing. Abu Hanifah intervened again and suggested that the plaintiff be asked whether he had any brothers and sisters, because if he did, they should also be joined to the suit. There were a number of further questions which Abu Hanifah caused the *Qadi* to put to the plaintiff. After these questions had been answered, Abu Hanifah declared that the case was ripe for hearing and advised the *Qadi* to proceed with the examination of the plaintiff. It is clear from this account that, but for Abu Hanifah's intervention, the *Qadi* would have proceeded with the case in a manner no better than the rough-and-ready manner in which the common people settle their disputes. Abu Hanifah desired the case to be heard in accordance with the proper judicial procedure, an essential requirement which was that all the persons who could claim to be aggrieved by the cause of action should be parties to the suit so that it should not be necessary for the court to adjudicate severally upon a number of claims arising from the same facts.

I will now deal with those special features of Hanafi *Fiqh* which exalt it above all other systems of *Fiqh*.

The first and foremost distinguishing mark of Hanafi *Fiqh* is that it bases laws upon expediency and beneficialness. There have been two schools of thought in Islam from the very beginning in regard to prescriptions of the *Shariah*. According to one of them, they are purely devotional, that is to say, there is no expediency or benefit implied in them. For instance, wine drinking and debauchery are reprehensible simply because the *Shariah* has prohibited them, while charity and almsgiving are praiseworthy simply because the Lawgiver has enjoined them - intrinsically none of these acts is either good or bad. Shafi'i is inclined to subscribed to this school of thought, and perhaps that is the reason why Abu'l-Hasan Ash'ari, the founder of *kalam* among the Shafi'ites, based his system upon it.

According to the second school of thought, all rules of the *Shariah* have their origin in expediency, even though the common people do not understand this in the case of some of them. This doctrine has been the subject of much controversy because of prominent authorities ranging themselves on opposite sides in regard to it. The controversy, however, was not justified, since the expediency and purpose of all important enjoinders have been stated in the Qur'an itself. In rejoinders to the unbelievers, the Qur'an always explains the rationale of its directives. For example, it says about prayer that it saves one from immoral and forbidden acts; about fasting that it leads to piety; about jihad, that it is intended to end disruption. There are similar explanations and hints here and there in the Qur'an about other acts commanded by it.

Abu Hanifah subscribed to the doctrine of the rationality and beneficialness of the rules of the *Shariah* and made it a postulate of all his *Fiqh* propositions. It is owing to this that of all the systems of *Fiqh*, the Hanafi system is most in accord with rational principles. Tahawi, who was both a *muhaddith* and a *mujtahid*, has written a book on this subject under the title of *Sharh Ma'ani al-Athar*, in which he stresses the necessity of proving *Fiqh* propositions with the aid of both Qur'anic text and rational argument. He deals with every aspect of *Fiqh* and, although exhibiting a creditable impartiality, [and even though] he disagrees with Abu Hanifah on some questions, he proves by arguments worthy of a *mujtahid* that on most questions, Abu Hanifah's stand was in accord with both Traditions and reason. Muhammad b. al-Hasan also has employed rational argument on most questions in his *Kitab al-Hujaj*.

Both these books have been published and are available for anyone interested to consult.

Even Shafi'ites and others do not deny that Abu Hanifah's *madhhab* is in conformity with reason. Indeed, it was not to be expected that they would deny this, maintaining as they do that the further the prescriptions of the *Shariah* are removed from reason, the better. Thus Razi, discussing *Zakat*, says that Shafi'i's standpoint on it is more correct than Abu Hanifah's because it is far removed from reason and analogy, *Zakat* being a purely devotional duty needing no rational justification.

The fact that, unlike his contemporaries, Abu Hanifah favoured the principle of rationality was due to a special reason. The other doctors who applied themselves to the systematization of *Fiqh* began their education with that subject. Abu Hanifah, on the other hand, began his education with *Kalam*, application to which sharpened his intellect and increased his power of reasoning. As the Mu'tazilah and others with whom he engaged in debates followed the principle of rationality, he had to do the same in contending with them. This exercise made him realize that every prescription of the *Shariah* was consonant with reason. When he turned to *Fiqh* later on, he brought the same approach to bear on its problems. A comparison of the formulations of the Hanafi system of *Fiqh* with those of other systems clearly shows this approach as the distinguishing feature of the former. Not to speak of mundane matters, even in matters pertaining to worship, which in the view of literal-minded people have nothing to do with reason, the rules framed by Abu Hanifah are eminently rational.

If one tries to determine the benefits aimed at by the *Shariah* in prescribing prayer, fasting, *Hajj* and *Zakat* as obligatory duties and what in the light of the benefits should be the modes of performing these duties, one finds that only the modes established by the Hanafi *Fiqh* are appropriate. Prayer, for example, is the name given to a combination of acts, having different degrees of importance in relation to the real object of prayer (namely, the cultivation of humility, expression of devotion, affirmation of God's greatness, invocation of God's grace) and in proportion to the extent to which they are respectively effective in achieving that object. Some of the acts are obligatory and indispensable because in their absence, the object of prayer is defeated. Each of such acts is called a *fard* in the language of the *Shariah*. The other acts only add grace and beauty to the ritual of prayer and their omission does not defeat the object of prayer. Such acts rank lower than acts of the first kind and are called *sunnat* or *mustahab*.

The Prophet did not specify which acts were *fard* and *wajib* and which were *sunnat*. There can, however, be no doubt that all the acts involved in prayer are not of equal importance. That is why the *mujtahids* thought it necessary to grade them and give them separate names. Abu Hanifah did the same, but his grading is superior to that of the other *imams* in that it is more realistic. For example, take the question as to what are the essential ingredients of prayer, that is to say, the acts without which prayer cannot be performed. Now, since in reality prayer consists in the affirmation of submission to God and in humbling oneself before Him, therefore all the *imams* are agreed that *niyyat* (expression of the intention to pray), *takbir* (saying: "God is great"), *qira'at* (reciting Qur'anic passages), *ruku'* (bending down with hands on knees), *sujud* (bowing the head on the ground), etc., which are the best outward forms of submission to God and humbling oneself before Him, are obligatory, and the Lawgiver himself has hinted at that and, in fact, clearly stated it in some places. But some of the *imams* went beyond that

and declared even a particular manner of performing these acts or making these utterances to be *de rigueur*, although it was not intended to be so. Abu Hanifah does not consider the manner to have been prescribed strictly. For example, he thinks that the *takbir-i-tahrimah* (the formula of glorification of God = *Allahu Akbar*) can be uttered in words other than *Allahu Akbar* which have the same meaning, e.g., *Allahu A'zam* or *Allahu Ajall*. Shafi'i thinks that it cannot. Abu Hanifah even maintains that it is permissible to say the *takbir* in Persian. Shafi'i on the other hand, holds that this invalidates the prayer. According to Abu Hanifah, the duty of *qira'at* can be performed by reciting any *ayat* of the Qur'an, while according to Shafi'i, it can be performed only by reciting the *Surat al-Fatihah*. In Abu Hanifah's opinion, a person incapable of reciting the Qur'an in Arabic may recite it in some other language, but Shafi'i rules that out as impermissible.

It should not be concluded from this that Abu Hanifah or any other *mujtahid* fixed the essential element of prayer purely on the basis of reason and analogy. The *imams* have, on the contrary, adduced pronouncements and hints from Traditions in support of these elements, and their arguments are set forth at length in books of *Fiqh*. All that I mean to say is that Abu Hanifah's enunciation's are supported both by pronouncements and hints derived from Traditions by rational arguments, which shows what an insight he had into the inner purpose and justification of *Shariah* prescriptions.

These remarks apply equally to questions relating to *Zakat*. The real motive behind *Zakat* is human sympathy and help of the needy. That is why those who most need and deserve sympathy and help, such as beggars, the indigent, officers administering *Zakat*, the grief-stricken, debtors, travellers, soldiers and self-ransomed slaves, have been declared to be special objects of it. But differences arose on the question of dispensation. Shafi'i thinks that it is obligatory to give *Zakat* to all these categories of recipients at the same time or that, in other words, if even a single category is left out, the duty of *Zakat* is not fulfilled. Abu Hanifah, on the other hand, holds that although *Zakat* cannot be given to anybody outside these categories, the question whether it must be given to all the categories together or may be given to some of them has to be decided with reference to the circumstances. Thus, according to him, the *imam* or ruler may select some of the categories and leave out the others.

Another question on which Abu Hanifah and the other *imams* disagree is that of the mode of giving *Zakat* on domestic animals. According to Abu Hanifah, *Zakat* on domestic animals may be given either in kind or in cash. Shafi'i maintains that it must be given in kind and that, if given in cash, it does not discharge the obligation. This ruling ignores the fact that so far as the object of *Zakat* is concerned, it is immaterial whether an animal or its prices is given away: the Lawgiver Himself made no clear distinction between the two.

Besides these propositions, there are hundreds of questions relating to ritual duties (*'ibadat*) on which Abu Hanifah's enunciation's show that he gave special consideration to the inner purpose and the benefits likely to accrue. I, however, refrain from setting them forth for want of space. This characteristic is more manifest in Abu Hanifah's treatment of secular matters.

The second distinguishing feature of Hanafi *Fiqh* is that it is easier to understand and act upon than the

other systems of *Fiqh*.

The Qur'an says repeatedly: "*God wishes to be gentle, and not strict with you.*" The Prophet declared: "I come to you with a gentle and easy *Shariah*." It is Islam's special pride in comparison with other religions that it is far removed from monasticism, that its ritual is not rigorous, that its enjoinders are easy to understand and act upon.

Hanafi *Fiqh* is superior to its rivals on similar grounds.

So well known is the fact that Hanafi *Fiqh* is easy and liberal that poets and writers often employ it as a proverb. A rather curious example of this is a simile used by Anwari, an obscene and unbridled poet, in which he speaks of "the liberties allowed by Abu Hanifah." The simile occurs in an improper context, but the point it makes is clear. On any question, whether pertaining to the duties of worship or to worldly transactions, one finds Abu Hanifah's precepts easy and gentle and those of the other *imams* difficult and harsh. Let me by way of illustration take the rules regarding theft, laid down in the *Kitab al-Jinayat* (the Criminal Code) and the *Kitab al-Hudud* (the Penal Code).

It is agreed by all authorities that the punishment for theft is cutting off the right hand, but the *mujtahids* in defining theft have laid down certain conditions without the fulfillment of which this punishment cannot be awarded. What effect these conditions have on the rules relating to theft will be clear from the following comparative table, which will also show how easy and consistent with civilized living is Abu Hanifah's *madhhab* as compared with the other *madhhabs*.

A large part of *Fiqh* deals with prohibitions and permissions. In this connection, there are many precepts of the other *imams* which, if they were to be acted upon, would make life unlivable, while Abu Hanifah's precepts are easy to follow. For example, according to Shafi'i, the following acts are impermissible: bathing or performing ablution with water heated on dung-fire; eating out of clay vessels baked on dung-fire; using vessels made of tin, glass, crystal and agate; wearing garments made of wool, sable fur and leather (in which prayer cannot be offered); vessels, chairs and saddles with silver work on them; common sales in which there is no declaration of selling and buying. Abu Hanifah considers all these acts permissible.

An important sector of *Fiqh* connected with the requirements of society is that which deals with transactions between individuals, and it is here that the practical wisdom of the various *mujtahids* can best be judged. Up to Abu Hanifah's time, the legal directions regarding transactions were too primitive to fulfill the needs of a developed society. There were no rules governing contracts, no written documents, no procedure laid down for the adjudication of disputes and the adducing of evidence. Abu Hanifah was the first to introduce all these. Unfortunately, *mujtahids* who came after him, instead of adding to what he had accomplished, reverted to the old-time rough and ready practices, motivated as they were by a deep-rooted bias for unworldliness. A famous traditionist taunts jurists in the following words: "These people think that when a suit is filed regarding a piece of land, it is necessary to state in the plaint its situation, boundaries and legal position, although in the Prophet's time there was no

question of furnishing these particulars." For the traditionist, this is a matter for reproach, but if he had lived in a civilized country and had had something to do with business transactions, he would have known that the things he considers reprehensible are essential to civilized living.

<p style="text-align: center;">Abu Hanifah <i>Thefts which, according to Abu Hanifah, ARE NOT punishable with the cutting off of the right hand:</i></p>	<p style="text-align: center;">Other Schools <i>Divergent views held by the other Imams:</i></p>
Theft of an article valued at less than an <i>ashrafi</i> [a gold coin]	The other imams fix the minimum value at a quarter <i>ashrafi</i> [a gold coin]
A theft committed jointly by a number of persons.	Ahmad Hanbal thinks each of them is liable to have his hand cut off.
Theft of a shroud.	The other imams hold the opposite view.
A theft committed by a non-adult	Malik hold the opposite view.
Theft of a wife's or of a husband's goods.	Malik holds the opposite view.
Theft of the goods of a near relation, e.g., a nephew or a brother.	The other imams hold the opposite view.
A theft committed by refusing to return a thing taken on loan.	The other imams hold the opposite view.
Thefts committed by followers of other religions living under Muslim protection.	The other imams hold the opposite view.
Theft of a copy of the Qur'an.	Shafi'i and Malik hold the opposite view.
Theft of wood or other perishable goods.	The imams hold the opposite view.

Shafi'i does not consider delivery of possession necessary for a gift, does not recognize a neighbour's right of preemption, regards the testimony of unknown persons as inadmissible in transactions, requires witnesses to marriage to be reliable and just and rules out as invalid the testimony of *dhimmi*s in their transactions *inter se*. These things may be practicable in countries still in a primitive state, where

transactions are simple and of an elementary nature, but not in civilized countries, where transactions are variegated and complex and cannot be conducted without a proper determination of the rights of the parties and the nature of the subject matter. Abu Hanifah, realizing this, holds views different from those of Shafi'i, and it was Malik's failure to realize it that evoked from Ibn Khaldun the well-founded remark about his *madhhab*, namely, that it gained currency only in countries which had not made much progress in civilization.

The sagacity and clear sightedness that Abu Hanifah brought to bear upon his formulation of rules relating to secular transactions can properly be gauged only by a detailed examination of some of the chapters into which these rules are divided. But there is no room for that in this short book. I therefore content myself with discussing the rules on marriage, which pertain to both the religious sphere and the secular.

The jurists have included marriage among religious duties, but this is only a technical convention. Because of its intimate connection with the life of the community, marriage is largely a social transaction. One reason why I have selected the rules about marriage, by way of illustration, is that some European writers have described the Hanafi law of marriage as barbarous and inhuman. But I hope to prove that not even the most civilized countries of the world today have fairer and more humane marriage laws than those laid down in Hanafi *Fiqh*. Bentham characterizes the Roman law of marriage as a collection of unjust rules, whereas the Hanafi law of marriage, as I hope to show, is the very antithesis of an unjust dispensation. This may also, incidentally, correct the misconception that Hanafi *Fiqh* is derived from Roman law.

Marriage forms a large part of social life. According to a philosopher, it is the binding force of communities, the root of civilization and the foundation of culture. It can, therefore, well be said that a lawmaker who makes a good exposition of marriage laws has a good insight into the laws that govern civilization. Although Abu Hanifah was not the author of the marriage laws he expounded, these having been laid down in principle by the Lawgiver Himself, yet the perspicacity with which he expounded them and deduced detailed rules from them is the hallmark of a great lawmaker. The Lawgiver's pronouncements were at times mere aphorisms, at times ambiguous statements, at times broad hints, spelling out no details. As a consequence, wide differences arose among the *mujtahids* about their interpretation and application. The way in which Abu Hanifah worked out the details of general statements, removed the ambiguities, clarified the hints, and framed specific rules was a performance which only his unique gift of *ijtihad* was equal to. No other *mujtahid* is his rival in this field.

The following are the broad headings under which he deals with marriage laws:

- 1) The persons between whom marriage is permissible.
- 2) Guardianship for purposes of marriage.
- 3) Stability of the marriage contract.

4) The rights of the parties to a marriage contract.

5) The ritual of marriage.

Restrictions on marriage exist in all religions with slight differences. All religions prescribe certain prohibited degrees, which are more or less the same in all of them and all of which are based on rational considerations. Shah Wali-Allah in the *Hujjat-Allah al-Balighah* and Bentham in *Utility*, advance the same arguments to justify the prohibited degrees. As these are in accord with nature and reason and are clearly stated in the Qur'an, all the *mujtahids* are agreed on the principle underlying them, but they disagree on the details not mentioned in the Qur'anic text. One of the latter is the question whether the prohibition is created by illicit sexual intercourse, which is the subject matter of much controversy between Abu Hanifah and Shafi'i. Shafi'i holds that it is not. For example, a man is not prohibited from marrying a woman with whom his father has had sexual intercourse. In fact, Shafi'i stretches this to the point of saying that a man may even marry his illegitimate daughter. The argument he advances is that, since illicit intercourse is an illegal act, it cannot turn what is lawful into what is unlawful. Abu Hanifah holds the opposite view. According to him, the natural effect of blood-relationship on the relations between men and women is not confined to marriage, and this is the correct view. The principle underlying forbidden degrees does not come into operation specially as a consequence of marriage. It is patently contrary to the laws of Nature to permit marital relations between a man and his own daughter, even if born out of wedlock. This is also true of the concubine of one's father. There are hints about this in the Qur'an, but as I am not concerned with a textual debate, I refrain from citing them.

The second broad question concerns the competence to enter into a marriage contract. This is a very important question, on the decision of which depends the goodness or badness of the institution of marriage to a large extent. According to Shafi'i and Ahmad b. Hanbal, a woman even if she has attained to puberty and maturity is not competent to contract marriage independently and needs a guardian to consent to her doing so. On the one hand, they thus restrict a woman's legal powers to the guardian that he can give her in marriage even against her will. According to Abu Hanifah, a woman who is a major is competent to contract marriage of her own will and can, in fact, on attaining puberty, refuse to be bound by a marriage contracted for her by her guardian during her minority.

This divergence of views stems from a difference of outlook on women's rights. In all religions other than Islam, women have been assigned a low social status and granted rights in a niggardly manner. Among the Hindus and Christians, they have no right of inheritance, which was the case in Arabia itself before Islam. In many other matters they are treated as men's inferiors, but Islam gave men and women equal rights, declaring: "Men are entitled to what they earn by their deeds, and women to what they earn by theirs." Abu Hanifah kept this equality in view in all matters, which is a distinctive feature of his *Fiqh*. For example, according to him, in matters like marriage, divorce and release from the marital bond, women's testimony is of equal value to men's, whereas the other *imams* regard it as unreliable. Even where the latter consider women's testimony as admissible, they impose the condition that two women should corroborate each other, Shafi'i raising the number to four. With Abu Hanifah, a woman's evidence is as reliable as a man's. Abu Hanifah considers women as fit to be appointed *qadis*, whereas

the other *imams* do not. As in these matters, so in marriage, Abu Hanifah concedes to women an independent legal status equal to men's.

Apart from the principle of the equality of the sexes, marriage is a transaction which cannot be dealt with on the analogy of other secular transactions, since it is a relationship which is many-faceted and intended to be lifelong. It is extremely unfair to grant one of the parties to such a relationship no rights at all.

Shafi'i relies on literalist arguments to justify his stand, but Abu Hanifah counters them with stronger arguments of the same kind. If Shafi'i quotes: "There is no marriage without a guardian," Abu Hanifah rejoins with: "A woman is entitled to contract marriage herself rather than through her guardian; the consent of a woman who has come of age is to be obtained." However, this is not the place to go further into the debate.

The third broad question is about the extent to which it is necessary to make the marriage contract stable and enduring. Marriage can be the foundation of civilized life and the binding force of communities only if it is a firm and lasting relationship; otherwise it is only a means of gratifying an animal appetite. Abu Hanifah has kept this clearly in view in laying down rules about the method of performing marriage, fixing the dower, enforcing divorce and giving effect to *khal'* (divorce by the wife).

Abu Hanifah's most important pronouncement in this connection is that so long as the relations between husband and wife are good, divorce is prohibited. Even where he considers it permissible - that is, when there are compelling reasons for it - he prescribes a procedure which leaves room for rectification and revocation. According to this procedure, there must be three divorces at intervals of one month, so that the husband gets ample time to reconsider his decision and, if he so wishes, rescind it, which indeed is *mustahabb* (desirable). If there is no reconciliation during this period, and it is established that none is possible, then there has of necessity to be a divorce. After the divorce, the husband has to pay the wife's dower and her maintenance expenses for three months. The idea behind this is that the wife should have means of subsistence until she can find a new husband. I give below a table showing Abu Hanifah's rules on this subject and those of other *imams*. How important Abu Hanifah considers the marriage contract to be and how solicitous he is to ensure that it remains inviolate under any circumstances will be clear from the table.

Abu Hanifah's Rules	Other Imams' Rules
So long as there are good relations between husband and wife, divorce is prohibited.	According to Shafi'i, it is permissible even then.
It is forbidden to give three divorces at a time, and whoever does so is a sinner.	Shafi'i and Ahman b. Hanbal think that it does not matter.

<p>The amount of dower can in no circumstances be less than ten dirhams. (The idea is to prevent thoughtless divorces, for poor people would not find it easy to pay such an amount.)</p>	<p>According to Shafi'i and Ahmad b. Hanbal, even a habbah is enough (which means that a man may divorce his wife frivolously and subject her to severe hardship).</p>
<p>Consummation of marriage makes payment of the full dower compulsory.</p>	<p>According to Shafi'i, it make only half the dower payable.</p>
<p>Skin diseases (e.g., leucoderma) are no grounds of dissolution of marriage.</p>	<p>According to Shafi'i, they are.</p>
<p>If a man divorces his wife during his last illness and dies during the 'iddat (period of probation), the wife is entitled to inherit from him.</p>	<p>Shafi'i holds that she is not.</p>
<p>A revocable divorce is no legal bar to sexual intercourse; for the marital connection is not broken by a minor misunderstanding or quarrel.</p>	<p>According to Shafi'i it is forbidden as if the divorce were irrevocable.</p>
<p>For the revocation of a divorce, an oral declaration is not necessary. Any act indicative of reconciliation is enough (the idea is to facilitate reconciliation and revocation of divorce).</p>	<p>Shafi'i thinks that a formal declaration is necessary.</p>
<p>No witness to a revocation is required; for it may happen in some cases that no witness may be available during the prescribed period, which may be about to expire, and as a result the divorce may become irrevocable.</p>	<p>Malik considers a witness to be indispensable.</p>

In framing rules of law for marriage, it is extremely necessary to fix the rights of men and women in such a way as to ensure justice between them and see that the equality with men which women enjoy in certain matters is not nullified; for what a woman expects from marriage is happiness and comfort and

not the negation of her inherent rights. It is a special liberal feature of Islam, not paralleled in any other religion, that it has fixed women's rights in the matter of marriage with magnanimity. Abu Hanifah's rules of marriage are *par excellence* inspired by this spirit. It is a result of this that the other *imams*, where they disagree with him, seem to err on the side of injustice.

Let me, by way of illustration, take the question of *khal'*, which is a counterpart of divorce. All the *imams* are agreed that, just as a man has been given the right of divorce, a woman has the right to get a dissolution of marriage for a consideration, that is, on giving something by way of compensation. There is, however, a difference of opinion as to the form of the consideration. Abu Hanifah holds that, if the fault is the wife's in that it is her behaviour which is the cause of estrangement, then she should give the husband by way of compensation a sum equal to her dower and that it would be improper for the husband to demand a higher sum. If, however, the fault lies with the husband, then the wife is entitled to release from the marriage bond without paying any compensation, and it would, indeed, be improper on the husband's part to ask for compensation. Shafi'i and Malik, on the other hand, are of the opinion that the husband may claim as much compensation as he likes and compel the wife to pay it, even if he is in the wrong - which is obviously unjust.

The last broad question is that of the rites of marriage. The rites are intended to achieve two objects: first, verification of the parties' consent and, second, giving publicity to the factum of marriage. Abu Hanifah prescribes rites eminently suitable for the achievement of these objects, *viz.*, first, that the parties should utter such words as clearly signify that they consent to the contract and, second, that the contract should be entered into in the presence of two witnesses. These are simple conditions which can be fulfilled in practically any circumstance. Some other *imams*, however, prescribe conditions so stringent as to be extremely difficult to fulfill. Shafi'i, for example, insists that the witnesses should be just, and the definition of 'just' that the *mujtahids*, and especially Shafi'i, give is such as fits hardly one in a thousand persons. With such a condition imposed, a fully legal marriage would be extremely rare, if not non-existent. Furthermore, Shafi'i and Ahmad b. Hanbal consider it essential for the witnesses to be men; but Abu Hanifah thinks women also to be qualified, which is the more reasonable view. Again, Shafi'i maintains that a verbal formula specifically pertaining to the marriage contract must be used, although there is nothing to be gained by such a formula and the form of words relating to contracts like gift, transfer of ownership, etc., should do.

One more distinguishing characteristic of Hanafi *Fiqh* is the liberal rights it grants to *dhimmis*, that is to say, non-Muslims living under the protection of an Islamic State. Preservation of the rights of *dhimmis* finds mention in many of the Lawgiver's own directives; but since these are directives of a general nature and some other pronouncements of His seem to be at variance with them, they were interpreted in different ways. There is, however, no doubt that Abu Hanifah's interpretation of them is the correct one. Islam ruled over vast territories, in which there lived hundreds of non-Muslim groups, the proper preservation of whose rights was a *sine qua non* of peace and order. No non-Islamic government in history has granted to peoples who were not co-religionists of the ruling race rights as liberal as those granted by Abu Hanifah to *dhimmis*. Europe, which is proud of its systems of law and justice, may boast of such liberality, but can produce no practical example of it. So far as Abu Hanifah's laws relating to *dhimmis* are concerned, they were actually in force under all Islamic governments and were an important

part of the fundamental rights of the subjects. An outstanding example is provided by the treatment accorded to non-Muslims in Harun al-Rashid's vast empire.

The biggest question in this connection is that of murder and retribution for it. In Abu Hanifah's opinion, the blood of *dhimmi*s is equal in sanctity to that of Muslims. He holds that if a Muslim murders a *dhimmi*, he must be put to death in return, and if it is a case of killing in error, then the same blood money must be paid as is payable by a *dhimmi* for killing a Muslim in error.

Razi, in his *Manaqib al-Shafi'i*, jibes at the Hanafis, saying that for them the blood of Abu Bakr has the same value as that of a *dhimmi*, so that if Abu Bakr were to kill a *dhimmi* he would, according to them, be liable to be punished with death. The Hanafis have nowhere put forward this proposition, which has been invented by Razi himself by way of a *reductio ad absurdum*. However, I, as a Hanafi, proudly accept it. For under a just regime, king and beggar, the elect and the rejected, have the same status, and it is a proof of Islam's broad-mindedness that it puts ruler and ruled on the same footing. Razi had no reason to be ashamed of this fact.

Let us look at the precepts and examples of the Companions on this subject. 'Ali said: "The blood of *dhimmi*s is our blood, and *mulct* is payable to them as much as to us." All the other Companions, whether *Muhajirs* or *Ansar*, avowed the same sentiment and acted on it. When 'Umar was wounded, his son 'Ubaid-Allah put two unbelievers to death on suspicion. 'Uthman, as soon as he acceded to the caliphate, sent for the *Muhajirs* and the *Ansar* and consulted with them about this incident. They unanimously declared 'Ubaid-Allah deserving of being put to death.

Abu Hanifah's other laws about *dhimmi*s were similarly generous. They were to have the same freedom to trade as was enjoyed by the Muslims and would be liable to taxes in the same way as the Muslims. The *Jizyah*, which was a poll-tax levied in return for protection, was to be fixed in accordance with each payer's capacity to pay, so that poor *dhimmi*s would be exempt from it and if a *dhimmi* died without paying the *Jizyah* levied on him it would be written off. Disputes between *dhimmi*s about secular transactions would be settled according to their laws. Thus to take an extreme case, if a fire-worshipper married his own daughter, the Islamic government would accept the marriage as valid, since it was in accord with the laws of his community. The testimony of *dhimmi*s would be admitted in law suits between them. *Dhimmi*s would be free to go into the interior of the Ka'bah, settle at Mecca and Medina, enter all mosques without let or hindrance, and build their places of worship anywhere except in new cities founded by Muslims. If they chose to side with the Muslims in wars against hostile infidels, the Muslim commander could trust them and take all sorts of help from them.

There are many other laws framed by Abu Hanifah in respect of *dhimmi*s which show that in all matters he invested them with rights equal to those of Muslims. In fact, in certain matters he carried this liberality beyond the limits of moderation as, for example, on the question as to when a *dhimmi* could be considered to have violated his covenant with the Islamic State and forfeited his status as a citizen of it. He maintained that, unless the *dhimmi*s had a fighting force at their disposal and pitched themselves against the government, they did not forfeit their rights of citizenship. For instance, if a *dhimmi* refused

to pay *Jizyah* or committed adultery with a Muslim woman or spied for infidels or induced a Muslim to abjure Islam or uttered a blasphemy against God or the Prophet, he rendered himself liable to punishment, but would not be considered as a rebel or a traitor and would not forfeit his citizenship rights.

Abu Hanifah and Shafi'i are at variance with each other about some important orders relating to inheritance also. Abu Hanifah's stand is in accord with the clear precepts of the Qur'an. Islam's rules of inheritance, which are different from those of all other legal systems, are inspired by a fine appreciation of human relationships, which is a proof of their being divinely ordained. The principle underlying them is that, in the absence of a bequest, the property of the deceased should devolve upon his natural heirs, in proportion to the degrees of their relationship, which is considered, so to speak, as an implied bequest. Allied to this is the economic principle that it is better for wealth to be distributed among a large number of persons than be concentrated in the hands of a single person or a few persons. These principles seem to have been overlooked by other religions, with the result that their rules of inheritance leave much to be desired. Under Christian law the eldest son is practically the sole heir, the other sons getting only some odds and ends. Among Hindus only sons are entitled to inherit, the father and brother or other relations having no entitlement at all. Islam looked closely and realistically into the claims of various people arising from their relationship to the deceased, and, accordingly, fixed three classes of heirs, namely, *dhawi'l-furud* (close relations or sharers), *'asbat* (residuaries) and *dhawi'l-arham* (distant kindred). All these classes have been clearly mentioned in the Qur'an and the *dhawi'l-arham* have been specially mentioned in the following verse: "*For men there is a share in what is left behind by their parents or close relatives; and in all property left behind by parents and close relatives. And of those who are relatives, some have greater entitlements than others.*"

Abu Hanifah, in framing his rules of inheritance, took all the three classes into consideration, but Shafi'i and Malik left out the *dhawi'l-arham* altogether, so that, according to them, the maternal grandfather, nephews, nieces, etc. are entitled to nothing whatever. They committed the error of treating the *dhawi'l-arham* as a genus and the *dhawi'l-furud* and *'asbat* as its species.

The Qur'an gives many directives about marriage and divorce, on some of which the *mujtahids* disagree with each other. I content myself with mentioning two of the most important.

According to Shafi'i, a woman, even if she has reached the age of discretion, cannot marry without the consent of her guardian, while according to Abu Hanifah, she can. Both of them adduce Qur'anic verses and Traditions in support of their points of view. This is no place to discuss the Traditions; but so far as the Qur'an is concerned, Shafi'i bases his claim on the verse: "*When you divorce your wives and when the probationary period is over, do not prevent them from taking other husbands.*" Shafi'i argues that the words "*do not prevent*" are addressed to guardians, and he concludes from this that the guardians have the right of prevention. In support of this he refers to the occasion for the revelation of the verse describing it thus: "Ma'qal b. Yasar gave his sister in marriage to his paternal uncle's son, who divorced her after a few days, but repented after the probationary period had expired and wished to remarry her, to which she was agreeable. Ma'qal, however, went to her and forbade the new marriage." It was then that the *ayat* was revealed. I could never have believed that Shafi'i had put upon this verse the

construction that he has done, had I not read it in his book with my own eyes. The first question to consider is whether the verse can have the meaning that Shafi'i attaches to it. It is accepted by everybody that the word '*tallaqtum*' (you divorce them) are addressed to husbands, and once this is accepted it follows that the words '*ta-dulu hunna*' must also be addressed to them; for otherwise the sentence would become incoherent, running thus: "O husbands, when you divorce your wives and when the probationary period is over, then, O guardians for marriage, do not prevent them from taking other husbands." Thus constructed, the sentence is undoubtedly ungrammatical and illogical; for in the adverbial clause the husbands are addressed, but in the main clause they are forgotten and it is the marriage guardians who are addressed. This is no way of speaking. Razi, although a follower of Shafi'i, clearly admits in the *Tafsir Kabir*, "This interpretation is quite wrong. God cannot speak in this incoherent manner." Even if we accepted Shafi'i's interpretation, his reasoning would not be complete, for it is not conceivable that persons prohibited from doing a thing should at the same time be permitted to do it.

Let me now briefly explain the background of the *ayat*. It was customary for men in pre-Islamic times to prevent their divorced wives from remarrying because of aversion to the idea of their former wives cohabiting with other men. It was to abolish this evil custom that the *ayat* was revealed, and its correct translation is as follows: "O husbands, when you divorce your wives and when the probationary period is over, do not prevent them from marrying their husbands (that is to say, the men whom they wish to marry)." This is the meaning that Abu Hanifah attaches to the *ayat*, and he argues from it that women have an independent right to contract marriage. This argument is confirmed by the word *yankihna*, because in this word, the act of marrying has been ascribed to women and not to marriage guardians.

The second question at issue relates to three divorces. All the four *mujtahid imams* agree that if a man pronounces three divorces at the same time, the divorce becomes finally effective and ceases to be revocable. They, however, disagree with one another as to whether giving divorce in this manner is lawful and permissible. Shafi'i thinks that it is and that God has permitted it. Abu Hanifah considers it prohibited and unlawful, and he also regards a man who gives this kind of divorce as a sinner. His argument is that the method of divorce indicated by God is based on the *ayat*: "*Divorce is twice; then there is either stopping nicely or revoking or repudiating graciously.*" It is only by the method laid down in this *ayat* that divorce can be given lawfully. Some people have raised this objection to Abu Hanifah's stand that if it is not legally permissible to give three divorces at a time, then what is the sense in "repudiating" - that is to say, giving effect to the divorce, especially when Abu Hanifah himself admits that the latter is permissible? This involves a fine point, which this is not the occasion to discuss. However, I may point out that it is one thing for an act to be prohibited and another for it to be effective. For example, it is prohibited for a man to gift his property to his children in unequal shares; yet if an unjust man does so, his gift will be effective.

In concluding the discussion, let me make it clear that I do not claim infallibility or finality for Abu Hanifah's legal pronouncements. He was, after all, only a *mujtahid* and not a prophet, and was therefore liable to commit errors, which in fact he actually did. This is why many of his close disciples have disagreed with him on many questions. On the period of *rada' at* on the apparent or real effectiveness of the *qadi's* decree, on murder by analogy, on the question of the maximum punishment prescribed being necessarily awardable for prohibited-degree marriages, Abu Hanifah's *madhhab* does not admit of a

reasonable interpretation. The same is true in the case of many other questions. My purpose, however, has been to show that Abu Hanifah was as correct in his opinions as it is possible for a *mujtahid* to be.

Part II: Beliefs and Kalam - "People of the Qibla are Mu'mins and None Becomes an Infidel by Omission of Works"

Abu Hanifah was very much attracted to *kalam* in the early part of his educational career. Towards the close of the period of the Companions many new sects arose. Ma'bad al-Juhani introduced the doctrine of *Qadr*. Wasil b. 'Ata, who was a great scholar of Arabic literature and *kalam* and a disciple of Hasan Basri, laid the foundation of *i'tizal*. Jahm b. Safwan founded the Jahmiyyah sect. Several sects of the Kharijites had already come into existence. All these sects were propagating their doctrines in Abu Hanifah's time, and the whole Islamic world rang with religious controversies. The Imam also participated in the controversies for the sake of repudiating the new-fangled doctrines. There can be no doubt that with his extraordinarily keen intellect, he made some subtle contributions, but as his interest in *kalam* soon yielded place to occupation with the problems of *Fiqh*, there is no record available of his debates on *kalam*. However, there are a few tenets all along attributed to him. These bear the stamp of his penetration, originality and wide reach of intellect. We mention some of these, which are very controversial questions among the *muhaddithin*.

To begin with, the Imam does not regard duties and actions as part of faith. It is superfluous today to discuss this point, for even a man of common intelligence today knows that faith means belief, which is a state of mind, while duties and actions are overt exercises of the human organs, the two categories being disparate and incapable of combining or forming part of each other. In the Imam's time however, this was a very debatable point, to which most scholars of the positive disciplines, some original thinkers among them, were opposed.

Up to the time of the Companions, the surface of Islamic beliefs remained smooth and undisturbed. The Arabs were not interested in philosophical hairsplitting and abstruse questions. But about the middle of the Umayyad period, the decline of military power and the development of culture created an interest in intellectual speculation. Debates started about *jabr* (compulsion) and *qadr* (predestination), *tashbih* (comparing God to man) and *tanzih* (keeping God pure), *'adl* (divine justice) and *jaur* (divine tyranny). The debates were initiated by people who were either of *'Ajami* (non-Arab) origin or had come under the influence of *'Ajami* thought. Religious circles, which consisted mostly of Arabs, reacted violently to these new voices, and scholars of *Hadith* and *Fiqh* came into the arena to contend against their heresies. For that purpose they had to adopt some attitude, whether positive or negative, towards the new questions raised; but some of them were carried by their combative ardour beyond the limits of moderation. For example, the Mu'tazili doctrine that the Qur'an was the word of God that came into being with the apostleship of the Prophet of Islam was countered by some *muhaddithin* with the proposition that even the pronunciation of the Qur'an was eternal and uncreated. Dhuhali, who was one of Bukhari's teachers and who has been cited as the authority for many of the Traditions narrated in Bukhari's *Sahih*, got so angry with Bukhari during a discussion on the doctrine that he had him expelled from his class and even went to the length of making it known that anyone associating with Bukhari

would not be permitted to attend his classes. Bukhari believed in the *qidam* (eternity) of the Qur'an, but held that its *qir'at* (mode of recitation) was *hadith* [haadith] (temporal), whereas Dhuhali maintained that it also was eternal.

Extreme views of a similar kind were held on certain other questions too, which it is unnecessary to describe in detail here. In all the debates in which he took part, Abu Hanifah concerned himself with the kernel of the question at issue, combining a rational with a factual approach. One of these questions was the relationship between faith and works. The Murji'ah held that faith and works were two different things and that, given perfect faith, works were of no importance. According to them, if a person sincerely believed in divine unity and the prophethood of Muhammad, but was remiss in performing his duties, he was exempt from punishment. Although the first part of this proposition was correct, the *muhaddithin* mixed up the two parts and totally opposed the proposition. Their opposition gathered strength from the support that it received from a superficial interpretation of some passages of the Qur'an on the subject. This was a question of personal opinion and if it had stopped at that it would not have mattered very much. Unfortunately, however, these worthies went to the extreme of branding those who disagreed with them as sinners and infidels. Sharik, when Abu Yusuf appeared in his court as a witness, declared that he was not willing to accept the evidence of anyone who did not consider the performance of prayers as part of faith.

Abu Hanifah always tried to arrive at the truth of a doctrine, irrespective of what person or sect held it. When this debate was reported to him, he declared that, according to him, faith and works were two separate things, on a different footing from each other. Upon this many people called him a *Murji'it*, but he was happy to be called that rather than slur over the truth. Indeed, this title was conferred upon all the *muhaddithin* and *fuqaha'* who were at one with Imam Abu Hanifah on this issue.

This doctrine, though apparently not very imposing, had far-reaching implications. That was why Abu Hanifah professed it freely and frankly. A logical corollary of holding work to be part of faith was the proposition that a man devoid of works could not be a *mu'min* (believer), which was what the Kharijites maintained. Although most *muhaddithin* did not consider such a man to be an infidel, that was only because they overlooked the corollary, despite its being inevitable.

Imam Razi, a great supporter of Imam Shafi'i, discussing in his *Manaqib al-Shafi'i* the charge often made against Shafi'i that he believed in contradictory things, mentions as an instance the objection that while on the one hand he held faith to be combination of profession and practice, he asserted on the other that absence of practice did not turn one into an infidel, although a combination could not remain in existence as such if one of the things combined was absent - which, Razi goes on to say, was why the Mu'tazilah, who believed that works were a part of faith, also maintained that without works, faith could not exist. He answers the objection by saying that the substance of faith is confession and affirmation, while works are the consequences and products of it and that, since things are sometimes metaphorically spoken of in terms of what ensues from them, works have come to be known as faith, from which, according to him, it follows that the absence of works does not necessarily entail the absence of faith.

But this is reading into the proposition a meaning not intended by the proponent; and Razi had to admit this, as is clear from the fact that after giving the answer he adds: "This reply gives the lie to the doctrine." Razi was a follower of the Shafi'i school and an ardent supporter of its founder. Nevertheless, being a man of great discernment, he could not but acknowledge that either works had to be regarded as the products, and not an ingredient, of faith or it had to be conceded that one devoid of works was not a *mu'min*.

There is a piece of writing by Abu Hanifah on this subject, the reasoning of which bears testimony to the incisiveness of his intellect, going as it does to the heart of matter. It was a reply to a letter from 'Uthman Batti, a famous traditionist of the day. The letter, provoked by rumours about the Imam's ideas, was a friendly inquiry. "People call you a Murji'it," 'Uthman had written, "and say that you consider it permissible for a believer to go astray. These imputations have shocked me. Are they true?" The Imam's reply was long. I will content myself with a few excerpts from it. After praising God and the Prophet and thanking 'Uthman for taking a friendly interest in his welfare and reputation, he begins as follows:

"Allow me to remind you that before the Apostle of Allah was assigned his mission, the people were polytheists. He preached to them that there is only one God and asked them to believe in his message. The life and property of anyone who gave up polytheism and adopted Islam became sacred. Then duties were enjoined upon those who had embraced the faith. The performance of these duties was termed *'amal* (action, works). It is to this that God refers in the words: "*Those who had faith and performed good deeds; and those who believed in God and acted virtuously.*" There are several *ayats* of the same kind from which it is clear that the absence of works does not nullify faith, but that the absence of affirmation and belief does. That affirmation and action are two separate things, is also evident from the fact that, while in the matter of affirmation all Muslims are equal, they are graded from the point of view of action; for so far as religion and belief are concerned, they are uniform for all Muslims. God Himself has said: "*I have prescribed the same religion for you as I charged Noah with. What I revealed to you and what I charged Abraham, Moses and Jesus with was to preserve the religion and not to be divided in it.*" You should know that guidance in faith and guidance in works are two different things. You can give the title of *mu'min* to a person who is unaware of duties? Such a person is ignorant so far as duties are concerned, but is all the same a believer in respect of affirmation. God Himself has made these distinctions in the Qur'an. Would you equate a person who refuses to acknowledge God and His Apostle with one who, though a believer, is ignorant of practical duties. Where the duties are specified in the Qur'an it is said, "*God has started this so that you do not go astray,*" and, in another place, "*If one goes astray, let another remind him.*" Again, Moses is reported as saying, "*When I did that, I was one of those who stray.*" In addition to these verses, there are many which clinch the matter. In fact, the other verses are even clearer. Did the title of Amir al-M'uminin given to Hadrat 'Umar and Hadrat 'Ali signify that they were the *amirs* of only those who performed their practical duties? Hadrat 'Ali called the people of Syria, who were at war with him, *mu'mins*. Could there be a greater sin than killing? Would you consider both the killers and the killed to be in the right? If you vindicate one party, namely, Hadrat 'Ali and his supporters, what would you say about the other? Ponder over this and try to understand it.

I assert that all people of the *Qibla* are *mu'mins* and that none of them becomes an infidel by omission of works. He who has faith and also performs his duties is without doubt a *mu'min* and destined for

Paradise. He who is devoid of both faith and works is an infidel and destined for Hell. He who has faith, but omits to act is certainly a Muslim, but a sinful one. It is up to God to punish or forgive him."

The way Imam Abu Hanifah proved his thesis cannot be improved upon. What better argument could there be to show that duties and faith are two distinct things than that Islam at the outset preached faith but prescribed no duties? The Qur'anic verses cited by the Imam furnish manifest proof that his contention was correct; for in all the verses *'amal* has been joined to *iman* by a copulative particle, which could not have been done if the former were considered as being a part of the latter. The copulative "*fa*" in the verse "*man yu'min billahi fa ya'mal salihan*" finally settles the issue.

There are certain Qur'anic verses and Traditions on the basis of which this reasoning could be challenged, but they are not enough to prove the contrary. The *hadith* mostly relied upon is the one which says that a *mu'min*, being a *mu'min*, cannot commit fornication or theft; but this way of expression was only a rhetorical device intended for emphasis, just as one may say about a person that, being a gentleman, he cannot do such and such a thing, which only means that the acts in question do not befit a gentleman. There is no doubt that fornication and theft do not befit a man of faith; and that is all that the *hadith* means; otherwise in Abu Dharr's *hadith* it is clearly stated: "Whoever believes that there is no god but Allah is destined to go to Paradise, even if he is a fornicator and thief."

Increase and Decrease of Faith in Terms of Quality and Quantity

A second question on which Abu Hanifah expressed himself clearly, but has not been correctly understood, is as to whether faith can increase or decrease. The Imam is reported to have said: "Faith neither increases nor decreases." There is no doubt that this is a saying of his, but it has been misinterpreted, not only by *muhaddithin* and Shafi'is, but even by some Hanafis. There can be increase or decrease in faith from two points of view. The first of these is the point of view of quality: from that point of view it may be said that faith can become more or less intense, or that, in other words, faith means certainty of belief, of which there are degrees. When Abraham asked God how He brought the dead back to life, God said, "*You do not yet believe.*" Abraham replied, "*I do believe, but want satisfaction of mind.*" In a number of verses God has clearly spoken of increase in faith; one such statement is "*Zadathum imanan*" (*It increased their faith*). However, the Imam neither affirms nor denies the proposition in this sense; nor was it a moot point in his time. His assertion that faith neither increases nor decreases was intended in another sense, and in that sense it is correct. Those who regard works as part of faith hold that faith increases and decreases quantitatively; a person particular about works is more faithful than a sinner. The *muhaddithin* clearly make this claim and advance various arguments in support of it. Qastalani writes in his commentary on Bukhari's *Sahih*: "Faith is increased by righteous deeds and decreased by sin." The *muhaddithin* as a class express the same opinion in different contexts. It is in the quantitative sense that Imam Abu Hanifah denies increase or decrease in faith. Since he does not believe works to be a part of faith, he holds the quantity of works cannot affect the quantity of faith; and this is the correct position. There is a *hadith* that says: "Abu Bakr enjoys precedence over you people, not because he prays much, and fasts much, but because of that which is in his heart."

Thus the Imam does not deny that faith can increase or decrease qualitatively but he does deny that it can increase or decrease quantitatively, and this is corollary of his assertion that works are not part of faith.

All Muslims are Equal in Respect to Beliefs The Imam also maintains that faith does not vary in content and that in respect of beliefs, all Muslims are equal; for the articles of faith are the same for all of them. The Companions and common Muslims all believe in divine unity and prophethood; if there is any difference between them it is in the intensity of their belief. The Imam described this, while replying to 'Uthman Batti, in these words: "The dwellers of heaven and earth have the same religion." In support of this he cited the Qur'anic verse: "We have prescribed for you the same religion as Noah was charged with." The Imam's opponents have vehemently accused him of maintaining that his faith was equal to that of Abu Bakr Siddiq. It has not been established authoritatively that he ever made such a claim, but even if he did, it does not matter very much. Who can deny the kind of equality that he claimed? What is surprising, indeed, is that the critics failed to understand a simple thing like this. Khatib Baghdadi has written many pages to repudiate the claim, without appreciating the real significance of it. He has taken umbrage to the mere fact of the Imam's claiming equality for common Muslims with the Companions, having failed to understand that although the latter were on the whole infinitely superior to the former, there are many points of equality between the two.

Although on all such questions, Imam Abu Hanifah had personal opinions of his own, he never branded the opposite opinions as heresies or deviations. Instances of such liberality are rare in Islam after the first century. Nothing has done more harm to Islam than the mutual denunciations of holders of differing opinions. Differences of opinion had, it is true, cropped up as early as the time of the Companions. On the question of the Prophet's Ascension, for example, while 'Abd-Allah b. 'Abbas and many other Companions believed that the Prophet had actually seen God, Hadrat 'A'ishah vehemently opposed this. She also refused to believe that the dead had heard the Prophet speak, just as Amir Mu'awiyah denied the Prophet's bodily journey to Heaven. But such differences of opinion in those days did not lead the holders of the opinions to denounce each other as infidels and heretics. A man said to 'Abd-Allah b. 'Umar: "There are some people who misinterpret the Qur'an and call us infidels. Are they or are they not themselves infidels?" "Nobody can be called an infidel," replied 'Abd-Allah, "until he says that there are two Gods." After the Companions, such differences gained in intensity and gave rise to sharply divided factions. There are many questions of belief and law on which no decisive Qur'anic pronouncement is available, such pronouncements as exist being mutually contradictory, which necessitated deduction and reconciliation of contradictions. This occasioned the exercise of individual judgment, which in turn gave rise to a variety of opinions. Undoubtedly some of these opinions were wrong, but it did not follow from this that they were heresies.

The pity of it was that minds enthused by religious fervour and closed by self-righteousness were unable to tolerate differences of opinion and pitched themselves vehemently against all disagreement. The result was that verdicts of unbelief were bandied about, the care exercised in passing them being in inverse proportion to the religious zeal of those who passed them. Things gradually reached such an impasse that every sect took recourse to invented traditions for proving the charge of aberration and deviation against other sects. One of the traditions invented was a prophetic one to the effect that there

would arise seventy-three sects in the Muslim ummah, of which only one would be destined for Paradise. In order to fulfill the prophecy seventy-three names of sects were fashioned, along with separate traditions in respect of each of them, i.e., "The Qadriyyah are the Magians of this Ummah."

This intolerant sectarianism rent asunder the fabric of Muslim society, deforming all its features - religion, morals, government, culture, civilization. In the midst of this all-pervading destruction there was only one constructive voice, that of Abu Hanifah, declaring aloud, "Of the people of the Qibla there is none whom we consider an infidel." Not much attention was paid to this declaration at the time, but with the passage of time it found increasing credence, until it became one of the valuable principles of the science a kalam, although it is to be regretted that it was not acted upon very much, so that the din of verdicts of heresy never entirely died down.

The Imam had formed this opinion after much reflection, research and practical experience. He was a contemporary of many famous founders of religious schools and had met almost all of them. The Kharijites had their headquarters at Basra, which was quite close to the Imam's home town. Wasil b. 'Ata' and 'Amr b. 'Ubaid, founders and propagators of the Mu'tazilah, were natives of Basra. Then there was Jahm b. Safwan, after whom the Jahmiyyah sect is known. The Imam had met them and acquainted himself with their ideas. Of the sayings attributed to these sects, some were mere fabrications, some had been misinterpreted and some were absurd without being heretical. It was because of this that the Imam declared all adherents of the *Qibla* to be believers. He perceived that all the statements which had aroused a furor and which had become the touchstone of faith were mere verbal quibbles and technical jargon. The most vexing question was that of the eternity of the Qur'an, to which people were attaching almost as much importance as to the declaration of divine unity. Many great religious scholars have said that there were two men who saved Islam during extremely critical times, namely, Abu Bakr Siddiq, who exterminated the apostates of Arabia after the Prophet's death, and Ahmad Hanbal, who during the reign of Mamun al-Rashid persisted in denying the createdness of the Qur'an. In fact, Ahmad Hanbal takes precedence because Abu Bakr had the Companions to support him, while Hanbal was alone.

When somebody is described as reliable and authoritative in books of biography, the greatest proof adduced in support of this is that he regarded calling the Qur'an 'created' as unbelief, although this is merely a point of verbal debate. Those who regarded the Qur'an as created and non-eternal had in mind its words and their pronunciation, both of which are articulated by the Prophet and represent the Qur'an to the common people. Those who regarded it as eternal understood it to be the *kalam* (speech) of God in the sense in which speaking is one of His attributes. There are many statements on this question ascribed to Abu Hanifah, all of them based upon this distinction. For example, answering a question put by a man, he said that Qur'an was non-eternal, because it was not God, and nothing but God is eternal.

To sum up, statements of this kind, not being based upon the text of the Qur'an, cannot be a criterion of faith or lack of faith. The wisdom of Abu Hanifah consists in this: that he prevented the sphere of Islam, whose breadth was described in the words: "Whoever utters the words: 'There is no god but Allah', enters Heaven," from being narrowed down. It is a pity that his opinion was not given due weight. Had it received the consideration it deserved, we should not have heard Ghazali, Muhyi al-Din 'Arabi, the Ghauth al-A'zam and Abu Talib Makki described as unbelievers by the *fuqaha*'. It seems appropriate

here to reproduce the text of Al-Fiqh Al-Akbar by Imam Abu Hanifah (r.a.) as this precisely sets out all the main beliefs of the Sunni-Hanafi school of law (*madhab*).

*** Please note that this article was based upon excerpts from 'Sirat-al-Numan' which is a biography of the life of Imam Abu Hanifah (r.a.) written by Maulana Shibli Nu'mani (r.a.)**

