

# Darul Ifta Birmingham

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## **Question**

As salamualaikum!

Recently I have read some very unsettling things, which were attributed to the Hanafi Madhab and Imam Abu Hanifah. It would be very beneficial if you could clarify these matters.

The first thing was that when a husband gives three talaqs to his wife, it is permissible and valid for the wife to get married after her iddah to a man who just intends to make her Halal again for the first husband, meaning they basically engage in some kind of Mut'ah marriage.

I also read that Imam Kasani declared anal sex to not be considered zina and the punishment is not enacted upon the perpetrators. The following was quoted:

"And the one who engages in anal-intercourse with a woman or a man will not receive hadd-punishment according to Abu Hanifah, even though it is forbidden, that is because the act of intercourse has not taken place through the (female) genital. Therefore this will not be regarded as zina."

[Badai' As-Sanai (24/15)]

It was also mentioned that Imam Abu Hanifah allowed zina with the disbelieving women in a land which is at war with the muslims. The following was quoted from Imam Suyuti regarding this:

"And His statement: "...nor do they tread on any ground that enrages the disbelievers.." (9:120): This verse was used by Abu Hanifah as evidence for it being permissible to engage in Zina with the harbiyyat in their lands."

["Al Iklil fi istinbat at-tanzil" of Imam Suyuti, Page 145]

Another point of critique was the alleged undermining of the Sahabi Abu Hurairah by Shams ul Aimmah As Sarakhsi. The following was quoted:

"And it is part of our madhhab that we only accept the hadiths of Abu Hurayrah if they do not contradict the conclusion by analogy (al-Qiyas).

However, what contradicts Qiyas, then Qiyas is preferred to him (the statement of Abu Hurayrah), since it has been shown that he was negligent in the tradition. "

[See: "Al-Mabsut" (13/40).]

Then there was also a statement of Imam Schafi'i concerning Imam Abu Hanifah.:

Imām Ash-Shāfidī - may Allāh have mercy on him - said: "I looked at a book by Abū Ḥanīfah with 120 or 130 pages. I found 80 pages in it about ablution and prayer, and found that they (these 80 pages) contradict either the book or the Sunnah of the Messenger of Allah - peace and blessings of Allah be upon him. Or they contradict a statement or there is some inconsistency or they contradict analogy. "

["Ḥilyatu Al-Awliyā'" by Abū Nu'aym (13632)]

I am very confused about these allegations. Barakallahu feekum for your time and effort!

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**In the name of Allah, the Most Gracious, the Most Merciful**

**Answer:**

The Hanafi Madhab was one of the earlier schools of jurisprudence to be developed. It started off being based upon textual evidence from the Quran, Sunnat, agreement of the

scholars and analogy. The Usools or framework of fiqh laws are different from those of hadeeth laws, therefore the early scholars kept their verdicts based upon the laws of fiqh which are laws established upon the finding of evidence and the agreement of logic and the maqsad or objectives of the Shariah.

The scholars who came afterwards such as Imam Ah Shafi' r.a. leaned more towards establishing his judgements based upon Hadeeth rather than analogy,<sup>1</sup> they didn't engage themselves in deep fiqh theologies or debates as the Hanafis were famous for and such debates using the knowledge of Kalaam (Islamic Philosophy) was needed at the time.<sup>2</sup>

We will discuss a few of your concerns that you have listed above keeping in mind that the establishment of Fatwas is the method of knowing the limits of permissibility in Islam through textual and logical evidence, a person's taqwaa will be different as taqwaa leads us to stay away from some permissible things very often, thus there is a difference between Fatwaa and Taqwaa and there is a difference between the science of Fiqh and the science of Hadeeth.

Firstly, if a man secretly entertains his intention of temporary marriage to a woman and the woman is not aware of his intention but agrees to the marriage, then the marriage is still valid because the man's intention was unknown to the woman and she will not be held accountable for what he intended. From her side of the nikkah it will be permissible but he will be sinful, but a marriage cannot take place with one person alone, thus because of Istihsaan (giving the benefit of the doubt) the marriage is allowed. Another angle of looking at this is using the Usool of fiqh which states that "the original consideration of the meaning of words is its apparent meaning"<sup>3</sup>. This law means that the words used in the agreement of nikaah would be the apparent meaning of "I have accepted", therefore there is no stipulation of time in the meanings of these words even though the man may have hidden intentions. The nikkah will be judged based on the words because his intentions will only be known by Allah.

Secondly, fornication and adultery is the unlawful entrance of a man's private part into a woman's private part out of wedlock. Such a sin is against the maqsad of the shariah which enforces the Hifz An nasl (protection of the lineage of mankind).<sup>4</sup> If a man and woman engage in foreplay or anal sex, definitely it will be Haraam and considered as a major sin but the Shariah has not stipulated any physical punishment for it because foreplay and anal sex do not constitute the action of childbirth but may lead towards it. Thus the laws of fiqh may not be applied to stipulate any punishment but the taqwaa of a person should lead him away from this.

The other allegations have already been briefly discussed in the first two paragraphs which define the difference between the Usools of the Shafi' madhab which is known as ahlul Hadeeth (people of Hadeeth) and the madhab of the Ahnaaf which are known as ahlu Rai' (people of logic and analogy).

Only Allah knows best

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<sup>1</sup> Madaaris Usooliya ,pg 20- 22 Shaikh Abdullah bin Yusuf Al Judai

<sup>2</sup> Same as above pg 29-31

<sup>3</sup> Qawaaid Fiqhiyya pg 63

<sup>4</sup> Maqaasid Shariah pg 24

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