Sabīl al-Inṣāf fī Masā'il al-'Usrah wa'l-Nikāḥ

A Critique of AMJA's Marriage Contract & Family Code

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Ramaḍān 1447 AH

March 2026

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Introduction

بِسْمِ اللهِ الرَّحْمٰنِ الرَّحِيْمِ

In the name of God, the Most Merciful, the Most Compassionate

A Scholarly Announcement and Index of Responses to the Assembly of Muslim Jurists of America's (AMJA) *Family Code for Muslim Communities in non-Muslim Societies*

All praise is due to God, Lord of all the worlds. Blessings and peace be upon our master Muḥammad ﷺ, and upon his family and all his Companions.

To proceed:

In light of what has appeared in some of the document issued by the *Assembly of Muslim Jurists of America* (AMJA) concerning matters of personal status—namely, issues that conflict with what has been firmly established by the consensus of the Ummah, or that contravene the texts of the Sacred Law and the statements of the scholars—we have, by the grace of God and through His enabling, prepared within Project *Iḥyā'* a collection of rigorously documented scholarly responses addressing the most prominent of these issues. This has been done out of concern to clarify the truth, sincere counsel to the Ummah, and protective jealousy for the rulings of the noble Sharīʿah.

This file contains four responses, arranged as follows:

1. **First Issue: The Amount of the Divorce Consolatory Gift (*Mutʿat al-Muṭallaqah*)**
   A critical study of what is stated in the AMJA file regarding guidelines for determining the amount of the consolation gift, and an exposition of how these guidelines conflict with the consensus of the Ummah and the texts of the Sharīʿah. (p. 6)

2. **Second Issue: The Document's Stance on Adherence to a Legal School (*Madhhab*) and Following the Four Legal Schools**
   A methodological analysis of the document's discourse on liberation from the madhhabs, together with a discussion of claims of expansiveness, and a clarification of the parameters of valid independent legal judgment (*ijtihād*) as established by the scholars. (p. 18)

3. **Third Issue: The Ruling Concerning Spouses When the Wife Embraces Islam While the Husband Remains a Disbeliever**
   A discussion of what is stated in the document regarding considering the marriage suspended without annulment, and a clarification of the correct legal ruling in accordance with the textual evidence and the consensus of the early generations. (p. 28)

4. **Fourth Issue: The Question of Prohibition of Marriage through Adult Breastfeeding**[1]
   A response to what appears in the chapter on "Children's Rights" concerning the expansion of the scope of breastfeeding beyond the age of nursing, and a clarification of the established legal position on the issue. (p. 53)

In conclusion, we ask God Most High to make this work purely for His noble countenance, to benefit the Muslims through it, to grant us adherence to the truth, and to protect us from error and caprice.

[1] Tr: Breastfeeding in Islam renders the breastfed a child of the woman who nursed them, making them unmarriageable kin to the woman, her husband, her forebears, and her descendants, **on condition that they are nursed before two lunar years of age**. Breastfeeding that establishes prohibition and through which unlawfulness is confirmed has been a matter of scholarly disagreement regarding its number. According to the Mālikīs, the Ḥanafīs, and one narration from the Ḥanbalīs, prohibition is established by both a small and a large amount of breastfeeding—**even a single suckle of milk**. According to the Shāfiʿīs, and according to the sound view among the Ḥanbalīs, breastfeeding does not establish prohibition except with **five full (satiating) suckles of milk.**

First Problem:
The Amount of the Consolatory Gift at Divorce

The AMJA document states:

> Guidance to Arbitrators Regarding Mutʿah Amounts (Non-Exhaustive).
>
> Mutʿah is not only intended to provide emotional support to the wife after divorce but also serves as an expression of appreciation for her, and as financial support to help ensure her stability — especially in later stages of life and in light of the weakened social support structures in our times.
>
> In determining the appropriate mutʿah, arbitrators shall consider, among other relevant factors:
>
> A. The length of the marriage.
>
> B. The total savings of both Parties, ensuring fairness (recognizing that any right of mut'ah aims to preserve the Wife's dignity, not to halve the Husband's wealth);
>
> C. Any sacrifices or interruptions to the Wife's career or education for the benefit of the family.
>
> D. The cause of separation.
>
> E. The Parties' age and retirement status; and
>
> F. The Parties' current and future earning capacities, with an upward adjustment if the Wife is unable to work.[2]

In the name of God. All praise is due to God, and blessings and peace be upon the Messenger of God ﷺ. To proceed:

Before clarifying the intent of the divorce consolation gift and its purpose, it is necessary to define *mutʿah*, for judgment of a matter is contingent upon its proper conception.

Mutʿah: Linguistically and Technically Defined

Linguistically, the letters *mīm*, *tā'*, and *ʿayn* form a sound root indicating benefit.[3]
As for its technical meaning in the Sacred Law, it is—as stated by Imām Ibn ʿArafah al-Mālikī—*that which the husband is commanded to give the wife by virtue of his divorcing her*.[4]

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[2] *AMJA Marriage Contract with Legally Binding Prenuptial Agreement*, Assembly of Muslim Jurists of America, p. 32. https://share.google/cOlYK3WFFJ8DD2qPg
[3] *Muʿjam Maqāyīs al-Lughah* (5/293).
[4] *Sharḥ Ḥudūd Ibn ʿArafah* (p. 183).

Shaykh al-Islām Zakariyyā al-Shāfiʿī said: *It is a term referring to the wealth which a man is obligated to pay his wife upon separating from her.*[5]
Thus, it is a designation for what the husband gives the woman due to divorce.

The AMJA document states:

> Mutʿah is not only intended to provide emotional support to the wife after divorce, but also serves as an expression of appreciation for her, and as financial support to help ensure her stability — especially in later stages of life and in light of the weakened social support structures in our times. (p. 32)

The upshot of their statement, therefore, is that the purpose of the divorce consolation gift is:

1. Emotional support for the wife
2. An expression of appreciation for her
3. Financial support to ensure her stability

Before commenting on their statement, I will cite the words of the jurists regarding the purpose of the divorce consolation gift.

Ibn Rushd al-Jadd said in *al-Muqaddimāt*: "The consolation gift was only prescribed for the divorcing husband as a means of soothing the woman's heart for the pain that befalls her due to divorce, and as a consolation for her over the separation."[6]

Al-ʿAllāmah al-Dasūqī says in his marginal commentary on *al-Sharḥ al-Kabīr* by Imām al-Dardīr, regarding the phrase "to mend her heart":

That is, from the pain that occurs to her as a result of the separation.[7]

The scholar Ibn Shās—cited by al-Mawwāq—stated that it is, "to mend the woman's heart from the shock of divorce."[8]

Al-Khirshī stated that, "the consolation gift is what the husband gives his divorced wife in order to repair the pain that has afflicted her due to separation."[9]

ʿAlī Abū al-Ḥasan al-Shādhilī, the author of *Kifāyat al-Ṭālib al-Rabbānī*, after clarifying the ruling of the divorce consolation gift as being *a consolation for separation and a soothing of her soul*, explained the reason for not granting the consolatory gift to a woman who initiates separation through *khulʿ*, stating: "[This is] because she has paid some of her wealth in order

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[5] *Asnā al-Maṭālib fī Sharḥ Rawḍ al-Ṭālib* (3/219).
[6] *Al-Muqaddimāt al-Mumahhidāt* (1/548).
[7] *Al-Sharḥ al-Kabīr* by Shaykh al-Dardīr, with *Ḥāshiyat al-Dusūqī* (2/425).
[8] *ʿAqd al-Jawāhir al-Thamīnah fī Madhhab ʿĀlim al-Madīnah* (2/485); and *Al-Tāj wa-l-Iklīl li-Mukhtaṣar Khalīl* (5/411).
[9] *Sharḥ al-Khirshī ʿalā Mukhtaṣar Khalīl*—with *Ḥāshiyat al-ʿAdawī* (4/87).

to separate from her husband out of aversion to him; thus, there is no pain present that requires alleviation through the granting of the consolatory gift.[10]

Al-ʿAllāmah al-Dardīr said in *al-Sharḥ al-Ṣaghīr*: "It is recommended to give the consolatory gift, which is what the husband gives to the woman he has divorced, in addition to the dower, to mend her heart that was broken from the pain of separation."[11]

Ibn Rushd said in *al-Muqaddimāt*:

> If we say that the consolation gift is meant to console the woman over separation from her husband, then there is no consolation gift in every separation that the woman chooses without any cause attributable to the husband ... Ibn Khuwayz Mandād said: there is no consolation gift for her, because she has chosen divorce. And it is well known that one who chooses separation from her husband neither feels compassion for it nor grieves over it; thus, the husband has no need to console her or soothe her heart.[12]

Shaykh al-Islām Zakariyyā al-Anṣārī al-Shāfiʿī likewise said: "A consolatory gift is therefore obligatory due to the state of alienation (*īḥāsh*)."
Shaykh al-Ramlī explained the nature of this *īḥāsh* in his marginal commentary, stating: "Because divorcing her signals a defect [in her marital status], desires for her consequently diminish; thus, this is remedied by granting the consolatory gift."[13]

Similarly, al-Kāsānī of the Ḥanafī school stated that the Sacred Law ruled for the divorce consolatory gift as, "a form of connection to her—that is, to the wife—and a soothing of her heart for what befell her of the alienation of separation due to the loss of the blessing of marriage".[14]

Thus, the overall objective of the Lawgiver in legislating the divorce consolatory gift is the soothing of the woman's heart, mending her state, and removing the sense of alienation from her. It is therefore legislated for a **human and ethical purpose**, not for a **material or economic objective**. Accordingly, the consolatory gift is not an economic solution legislated to ward off financial harm, nor financial support meant to guarantee the future material stability of the divorced woman, nor a component of her financial entitlements as though the marital relationship were a commercial partnership that has ended with a liquidation of accounts. Nor is it a punishment imposed upon the husband for exercising his right of divorce, for it is inconceivable that the Sharīʿah would legislate a right and then make its exercise a cause for punishment.

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[10] *Ḥāshiyat al-ʿAdawī ʿalā Kifāyat al-Ṭālib al-Rabbānī* (2/89).
[11] *Ḥāshiyat al-Ṣāwī ʿalā al-Sharḥ al-Ṣaghīr* (= *Bulghat al-Sālik li-Aqrab al-Masālik*) (2/616).
[12] *Al-Muqaddimāt al-Mumahhidāt* (1/552).
[13] *Asnā al-Maṭālib fī Sharḥ Rawḍ al-Ṭālib* (3/220).
[14] *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ* (4/11).

Based on this, and after surveying the statements of the jurists regarding the objective behind legislating the consolation gift, it is clear that the reasoning behind AMJA's guidelines for arbitrators in family matters is **unsound**. This is because the foundation from which they proceeded—namely, conceiving of the consolatory gift as material support or an economic guarantee—is false; and whatever is founded upon falsehood is itself false. Since their understanding of the true nature of the consolatory gift is flawed, the rulings and guidelines issued on that basis are likewise incorrect.

One of the clearest indications of this erroneous understanding of the consolatory gift is the statement:

> In determining the appropriate mutʿah, arbitrators shall consider, among other relevant factors:
>
> A. The length of the marriage;
>
> B. The total savings of both Parties, ensuring fairness (recognizing that any right of mut'ah aims to preserve the Wife's dignity, not to halve the Husband's wealth);
>
> C. Any sacrifices or interruptions to the Wife's career or education for the benefit of the family;
>
> D. The cause of separation;
>
> E. The Parties' age and retirement status; and
>
> F. The Parties' current and future earning capacities, with an upward adjustment if the Wife is unable to work.

From where did these criteria and factors arise? Do they have any basis in the books of Islamic jurisprudence according to any of the recognized imams? Or are they merely a response to the influence of modern positive-law systems that are not grounded in the principles of the Sharīʿah and its objectives?

To ascertain this, we will present below the statements of the jurists regarding the **amount of the consolatory gift and the method of determining it**, and then compare what they established with these contemporary criteria. This will make clear the extent of the disparity between a juristic methodology grounded in revealed texts and the objectives of the Sharīʿah, and modern conceptions influenced by positive legal systems.

The Amount of the Divorce Consolatory Gift in Islamic Jurisprudence

No explicit legal text has been transmitted specifying a fixed amount for the consolatory gift. Rather, what has been established is consideration of the husband's state of financial ease or hardship, and recourse to custom and what is deemed customary and appropriate (*al-ʿurf* and *al-maʿrūf*), as God Most High says: *"And provide for them: upon the affluent according to*

his means, and upon the straitened according to his means—provision in accordance with what is customary." (Qurʾān 2:236)

The jurists differed regarding whose financial condition is to be considered when determining the amount of the consolatory gift.

The Ḥanafīs—according to the relied-upon position among them—and the Shāfiʿīs held that the judge assesses the consolatory gift by considering the condition of **both spouses together**. The Ḥanafīs explicitly stated that the financial state of both spouses is taken into account in terms of ease and hardship, as in the case of maintenance. They specified the consolatory gift as consisting of a tunic (*dirʿ*), a head-cover (*khimār*), and a wrap (*milḥafah*), not exceeding half of the customary dower (*mahr al-mithl*), even if the husband is wealthy—because the consolatory gift is its substitute. If the spouses are equal in financial standing, then the obligation is the consolatory gift, because it is prescribed by the Noble Book. If half of the customary dower is less than the consolatory gift, then the lesser amount is obligatory, with the condition that the consolatory gift must not be reduced below five dirhams, even if the husband is poor. Al-Karkhī considered the condition of the wife, and this was the position chosen by al-Qudūrī. Al-Sarakhsī considered the condition of the husband, and this is deemed to be the correct position in [Marghinānī's] *al-Hidāyah*.

As for the Shāfiʿīs, they stated that consideration is given to the condition of both spouses—meaning what accords with the husband's financial situation, along with matters such as her lineage and characteristics that are considered in determining the customary dower. It was also suggested that the condition of the husband is taken into account, due to the apparent meaning of the verse; alternatively it was said that consideration is given to the condition of the wife, since the consolation gift is akin to a substitute for the dower; finally, some held that the minimum amount that is valid as a dower is what needs to be respected.

It is recommended that the consolatory gift not be less than thirty dirhams or its equivalent, and it is recommended that it not reach half of the customary dower. If it does reach or exceed it, it remains permissible. Al-Bulqīnī and others said: it should not exceed the customary dower as an obligation. This applies when the judge determines the amount of the consolation gift; however, if the spouses mutually agree upon its amount, it is not stipulated that it must not exceed the customary dower.

As for the Mālikīs and the Ḥanbalīs, they considered the consolatory gift in line with the circumstance of the divorcing husband (in terms of affluence or hardship)—*"upon the affluent according to his means, and upon the straitened according to his means"*—in line with the verse, in contrast to marital maintenance, which is assessed based on the condition of both spouses. The Ḥanbalīs stated that the highest form of the consolatory gift is a servant if the husband is affluent, and the lowest is clothing if he is poor—namely, a tunic and a head-cover or the like—based on the statement of Ibn ʿAbbās (may God be pleased with them both): *"The highest form of the consolation gift is a servant; then below that is maintenance; then below that is clothing."*

The clothing was restricted to that which suffices her for prayer, since that is the minimum requirement in terms of clothing.[15]

It is mentioned in the Ḥanafī works that some scholars objected to restricting the consolatory gift to a tunic, head-cover, and wrap, saying: this applies in their lands; as for our lands, it is appropriate that more than this be obligatory, because women wear more than three garments. Thus, an additional lower garment (*izār*) and shoes (*mikʿab*) should be added.

I say: some contemporaries have relied upon texts such as these and consequently referred the amount of the consolatory gift entirely to custom, founding upon this the permissibility of compensating a woman with hundreds of thousands [of dollars] in wealthy environments. This understanding is incorrect. For although the scholars acknowledged the relevance of custom in matters of this nature where the Law has not specified an exact amount, it remains **restricted within the reality of the consolatory gift itself**. It is not permissible, under the pretext of custom, to strip the consolatory gift of its true nature and transform it into long-term financial compensation lasting decades, or into a share of the husband's savings accumulated over the years of marriage. This constitutes a distortion of the true nature of the divorce consolatory gift.

For this reason, scholars cautioned—immediately following such statements—that the implication of custom is consideration of what a woman wears when she goes out, according to each land. Thus, the role of custom in determining the **amount** operates **within the reality of the consolatory gift**, not absolutely. Hence they said: if both spouses are wealthy, then she is entitled to more luxurious clothing; if both are poor, then less; and if they differ, then the middle. We should reflect upon this.[16]

Custom (ʿUrf) and Its Effect on the Change of Rulings

Moreover, although custom does play a role in many rulings—especially in matters left unspecified, in interpreting expressions, or in issues that are not precisely delimited—as al-Ṭurṭūshī (God have mercy upon him) said: *"Everything that the Lawgiver has not specified precisely is referred back to custom,"* this is **not absolute**. Rather, custom must be governed by controls and conditions.

Among these controls is that the custom must not be corrupt; otherwise, it constitutes corruption in religion. For the Prophet ﷺ said: *"Whoever introduces into this matter of ours that which is not from it, it is rejected."*

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[15] Ibn ʿĀbidīn's marginalia (*Radd al-Muḥtār*, Aleppo ed.) (3/110); *Al-Sharḥ al-Kabīr* by al-Dardīr with *Ḥāshiyat al-Dusūqī* (2/425); al-Zurqānī's commentary on *Mukhtaṣar Khalīl* with *Ḥāshiyat al-Bannānī* (4/262); al-Kharashī on *Mukhtaṣar Khalīl* with *Ḥāshiyat al-ʿAdawī* (4/87); *Ḥāshiyat al-ʿAdawī* on *Kifāyat al-Ṭālib al-Rabbānī* (2/89); *Mughnī al-Muḥtāj* (4/399); *Sharḥ al-Muntahā* by Ibn al-Najjār (9/228); *Sharḥ al-Muntahā* by al-Buhūtī (3/27, ʿĀlam al-Kutub ed.); and *al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah* (36/96).
[16] Ibn ʿĀbidīn's marginalia (*Radd al-Muḥtār*, Aleppo ed.) (3/110).

Acting upon custom without restriction—when that custom is corrupt—leads to the abrogation of the Sharīʿah in the name of custom and habit. Among the gravest manifestations of corruption is the unlawful appropriation of another's wealth, as is seen in some judicial systems where a divorced woman is granted half of a man's savings, or something close to that, without right. Declaring lawful every wrongdoing and corruption that people have become accustomed to and familiar with, under the claim that it is a prevailing custom, ultimately leads to distortion.

Whoever understands the reality of religion and recognizes that it is a divine ordinance knows that the Sharīʿah is the authority over custom, and that it is the Sharīʿah whose rulings must be followed and adhered to—not the reverse. Moreover, custom is accorded the status of a stipulation, and what is commonly known by custom is like a stipulated condition; however, this is **on the condition** that it does not contradict the Sharīʿah and does not lead to distortion of its meanings. For this reason, even a contractual condition, if it violates the Sacred Law, is not valid to be fulfilled, as the Prophet ﷺ said: *"The Muslims are bound by their conditions, except a condition that makes lawful what is unlawful or makes unlawful what is lawful."*[17]

This demonstrates that consideration of custom is not unrestricted, but rather constrained by the controls and rulings of the Sharīʿah.[18] It is also confined to the *reality of the matter* in which the people's custom is being considered. Thus, custom in the matter of the divorce consolatory gift differs from custom in maintenance, and both differ from custom in the dower (*mahr*), for each of these has its own distinct reality, which may not be exceeded without departing from its true nature.

Based on what has preceded, it becomes clear that the estimation of the divorce consolatory gift in Islamic jurisprudence is well-defined in both its reality and its legislative purpose, as is evident from the statements of the jurists—unlike contemporary independent judgments (*ijtihādāt*) that have been influenced by modern positive-law conceptions. The juristic texts, despite differences among the schools, concur that the consolatory gift is a **symbolic grant**, intended to mend the woman's heart and eliminate psychological alienation. It is not material compensation for the duration of the marriage or for financial losses. Therefore, its estimation is not determined by measures of income, earnings, or savings, but rather by the scale established by the Sharīʿah, as set out in the noble verse:

"And provide for them: upon the affluent according to his means, and upon the straitened according to his means—provision in accordance with what is customary; a duty upon those

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[17] Narrated by **Sunan al-Tirmidhi**, no. **1352** Al-Tirmidhī said: *ḥadīth ḥasan ṣaḥīḥ.*
Narrated by **Sunan Abī Dāwūd**, no. **3594** (with similar wording)
Narrated by **Sunan Ibn Majah**, no. **2353.**

[18] *Ishkāliyyat al-Amwāl al-Muktasabah Muddat al-Zawjiyyah: Ruʾyah Islāmiyyah* by Shaykh Muḥammad al-Tāwīl, publications of the Association of ʿUlamāʾ Graduates of al-Qarawiyyīn (Fez), pp. 39–41, 71.

who excel in good."
[Q. 2:236]

Accordingly, transforming the consolatory gift into a massive financial obligation that extends for years or is assessed in the hundreds of thousands [of dollars] constitutes a clear contradiction of the reality and objective of the legislation—something that none of the recognized imams of jurisprudence ever held.

What Is the Ruling on a Woman Taking These Large Sums from a Man Under the Label of a "Consolatory Gift (*Mutʿah*)"?

Answer: It is **not permissible**. This is established by sound proofs and decisive evidence from the Book, the Sunnah, and the consensus of the Muslim community (*Ummah*). This is based on the following evidences:

First: God Most High says:

"For men is a share of what they have earned, and for women is a share of what they have earned."
[Q. 4:32]

This is an explicit text indicating that the earnings of men belong to men, and the earnings of women belong to women, and that each gender is exclusively entitled to its own earnings. The verse is general and encompasses husbands and wives as well as others. Even if it was revealed for a specific reason, the principle in legal theory is that *consideration is given to the generality of the wording, not to the specificity of the cause.*

Second: God Most High says:

"And that man shall have nothing except what he strives for." [Q. 53:39]
"No soul earns except against itself." [Q. 6:164]
"God does not burden any soul beyond its capacity. For it is what it has earned, and against it is what it has acquired." [Q. 2:286]

These verses are general with respect to all worldly and otherworldly earnings, as Ibn Ḥazm (God have mercy upon him) stated. This is further supported by the legal-theoretical principle that *the generality of persons necessitates the generality of states, times, and places.*[19] All of these texts indicate the confinement of each person's earnings to himself alone, exclusively his, with no one else sharing in them.

They are formulated in a manner of restriction through negation and affirmation[20]: *"No soul earns except against itself,"* and *"Man shall have nothing except what he strives for."* With

[19] عموم الأشخاص يستلزم عموم الأحوال والأزمنة والأمكنة

[20] الحصر بالنفي والإثبات

this restriction and emphasis, no room remains for anyone to covet seizing the earnings of another or sharing in them—whether through marriage or otherwise.[21]

Third: Another evidence is among the things necessarily known to be part of the religion (*maʿlūm min al-dīn bi'l-ḍarūrah)*,[22] namely, the prohibition of consuming people's wealth unjustly. God Most High says:

"O you who believe, do not consume one another's wealth unjustly, except that it be trade conducted by mutual consent."
[Q. 3:29]

Fourth: It is established in the sound Sunnah that the Prophet ﷺ said:
"Every Muslim is inviolable to another Muslim: his blood, his wealth, and his honor."[23]
He ﷺ also said:
"Indeed, God has made your blood, your wealth, and your honor sacred, like the sanctity of this day of yours, in this month of yours, in this land of yours."[24]
And he ﷺ said:
"The wealth of a Muslim is not lawful except with his willing consent."[25]

These texts are general and include husbands and wives. They indicate that the wealth of one spouse is not lawful for the other except with his or her consent and contentment. A husband does not willingly consent to his [divorced] wife sharing in his wealth and savings.

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[21] *Ishkāliyyat al-Amwāl al-Muktasabah Muddat al-Zawjiyyah: Ruʾyah Islāmiyyah* by Shaykh Muḥammad al-Tāwīl, publications of the Association of ʿUlamāʾ Graduates of al-Qarawiyyīn (Fez), p. 4.

[22] Tr: A matter is considered thus if it:

1. Is **established decisively** by the Qur'an, mass-transmitted Sunnah, or consensus
2. Is **universally known** among Muslims, scholars and laypeople alike
3. Is **practiced openly and continuously** in the Muslim community
4. Is **not subject to legitimate scholarly disagreement**
5. Can be known **without formal study**

Examples Include:
Foundational beliefs

- The oneness of Allah
- The prophethood of Muhammad ﷺ
- The obligation to believe in the Qur'an

Obligatory acts

- The obligation of the five daily prayers
- The obligation of fasting Ramadan
- The obligation of *zakah*
- The obligation of *ḥajj* for those able

Prohibitions

- The prohibition of *zinā* (fornication/adultery)
- The prohibition of *khamr* (intoxicants)
- The prohibition of *ribā* (usury/interest)
- The prohibition of murder and theft

These are matters that no Muslim living in a Muslim society can plausibly deny out of ignorance.

[23] Sahih Muslim no. 2564, Tirmidhi no. 1927.

[24] Sahih al-Bukhari, no. 1739, Sahih Muslim, no. 1679.

[25] Musnad Ahmad no. 20172, Sunan al-Dāraqutnī no. 2885, al-Sunan al-Kubrā no. 11347.

Fifth: Among the evidences as well is what has been established by recurrent practical transmission (*tawātur maʿnawī*)[26] and operative consensus(*ijmāʿ ʿamalī*)[27]: that men used to divorce their wives during the time of the Prophet ﷺ, yet it has never been transmitted—ever—that any divorced woman demanded from her husband the wealth he had accumulated before or after marriage, nor that they divided any portion of his savings with him. Rather, each woman was given that by which her heart would be soothed and her feelings mended, as an act of honour, and a gift. The Prophet ﷺ never commanded that a divorced woman be given that which would sustain her against the vicissitudes of time until her death.

If it is said: *Why should such measures not be permitted under the heading of "public interest (maṣlaḥah),"* as Dr. Ḥātim al-Ḥājj argues? For he holds that reassuring a woman regarding her economic future in the event of divorce ensures persuading her to remain at home to care for her family, husband, and children—thereby preserving the religion of the family; and preservation of religion takes precedence over other objectives and is more emphatic than preserving the husband's wealth.[28]

The response: Juristic consideration of public interest (*istiṣlāḥ*)—that is, ijtihād based on benefit—is limited to *unrestricted interests (al-maṣāliḥ al-mursalah)* **for which no legal proof has come either affirming or negating them**. But what we are dealing with here is not of that category, because the **decisive proofs cited above establish the prohibition of taking the husband's wealth without right, and that it constitutes consuming people's wealth unjustly**. Accordingly, this cannot be considered a valid interest; rather, it is an invalidated interest that the Lawgiver has nullified.

Even if we were to concede—purely hypothetically—that it was among the unrestricted interests for which no proof has come affirming or negating them, it would still be conditioned on not being an illusory interest, such that it is outweighed by greater interests or entails attendant harms.

Among the most prominent harms is that this measure would cause husbands to refrain from divorce, which God has legislated and made an exit from many problems, out of fear of having their wealth seized. This would lead to falling into infidelity and forbidden relationships, or to the escalation of marital problems for which the Lawgiver designated lawful divorce as the solution.

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[26] Tr: Recurrent practical transmission (*tawātur maʿnawī*) is the mass transmission of a meaning or practice through numerous independent reports or actions, such that certainty is attained even though the exact wording differs.

[27] Tr: Operative consensus (ijmāʿ ʿamalī) is the binding agreement of the Muslim community—especially scholars—established through continuous, uncontested practice rather than explicit verbal declaration.

[28] Ḥātim al-Ḥājj, "Changing Conditions and Customs and Their Effect on Fatwā in Family-Law Rulings, with Applications to Qiwāmah and the Consolation Gift of Divorce," paper presented to the 20th Conference of Imams, Assembly of Muslim Jurists of America (AMJA), Houston (USA), 2024, p. 36.

Another of its harms is that it discourages men from entering marriage in the first place, thus encouraging celibacy, alienating people from married life. It turns marriage into a gateway to aversion and corruption. Men's distaste to marriage inevitably results in the spread of spinsterhood and widowhood among women, which opens the door wide to forbidden relationships for both genders. Furthermore, among its harms is that it ignites the fires of discord within households over trivial—and sometimes fabricated—causes. It may encourage some wives to employ both lawful and unlawful means to provoke their husbands and drive them toward divorce. At that point, divorce—by virtue of this *ijtihād*—transforms from something frightening that threatens a woman's future into something worth dreaming about, and into an economic project brining wealth and money.

What we have outlined is the religion of God which His Messenger ﷺ conveyed to his Ummah, and upon which the practice of Muslim men and women has continued thereafter—content with God's judgment and decree, not disputing it nor deviating from it. God Most High says in Sūrat al-Nisāʾ:

"But no—by your Lord—they do not truly believe until they make you judge concerning that over which they dispute, then find within themselves no discomfort from what you have judged and submit in full submission."
[Q. 3:65]

Second Problem: AMJA's Stance on Madhhab Adherence and Following the Four Schools

In the name of God. All praise is due to God, and blessings and peace be upon the Messenger of God ﷺ

This paper addresses two questions.

The first: Does *madhhab*-based *taqlīd*—i.e., following one of the four juristic schools—necessarily entail rigidity and constriction upon the Ummah?

The second: What are the parameters governing *talfīq* (patching together opinions) and departing from one's juristic school, whether in practice, or when issuing a legal judgment (*fatwā*)?

The Assembly of Muslim Jurists of America's (AMJA) *Personal Status Code*, prepared by Dr. Ṣalāḥ al-Ṣāwī, states:

> These codes did not restrict Muslims abroad, to one specific juristic school (madhhab) which could overburden them, and limit them in a matter that the Sharia had provided flexibility in. Rather, considering the strength of the evidences and the outweighing benefits were behind its choices from our rich juristic heritage. This stems from its belief that Allah – the Glorified and Exalted – did not allot decisive proofs for every ruling in the Sharia. Instead, He made them speculative as a form of leniency for the liable individuals! At the same time, this code did not pick the unusual views and the unjustifiable concessions of each madhhab but treaded a middle path in the matter as best it could, seeking to uphold the decision which the Assembly previously concluded in its Charter of Honor regarding the protocol of giving fatwa (religious edicts). Therein, it was decided to, "Direct the layman to the customary, moderate position from the scholarly views, while avoiding the odd and unusual positions.[29]

This approach to dealing with fiqh—one that is based on rejecting madhhab adherence under the claim of avoiding rigidity and clinging to evidence—is among the effects of the reformist school associated with Shaykh Muḥammad ʿAbduh and his student Rashīd Riḍā, and those who followed them among the pseudo-intellectuals of this age. They imagined that

[29] Document: "The Assembly's Family Code for Muslim Communities in North America (Arabic version)," the American Fiqh Assembly—Islamic Council of the Assembly (AMJA). Online access: https://www.amjaonline.org/declaration-articles/the-assemblys-family-code-for-muslim-communities-in-north-america-ar

abandoning the juristic schools would constitute support for the primary sources of evidence and a means of unifying the Ummah after its division into four schools. What they failed to realize, however, is that the imams of the schools and their followers are precisely those who *served* the evidence—understanding it in light of the texts of the Sharīʿah and its objectives—and who regulated fatwā and ijtihād in accordance with the principles and rules of the discipline, such that their fiqh became an extension of the fiqh of the Companions, the Successors, and those who followed them with excellence.

Moreover, those who rejected madhhab adherence did not achieve what they claimed of unifying the Ummah upon a so-called "madhhab of evidence." Rather, their position led to fragmenting it into thousands of madhhabs—equal in number to every superficial pretender who claims ijtihād for himself. Thus, the Ummah was torn apart after having been upon four disciplined schools, into thousands of disparate approaches and unstable opinions, all under the slogan of rejecting rigidity and blind imitation (*taqlīd*) and following the evidence.

So, is madhhab adherence—and the commitment of the individual Muslim and the Muslim community to a single school in most of their transactions and acts of worship—truly a form of rigidity and constriction, as some portray it?

It must be understood that linking adherence to the juristic schools and commitment to one of the four madhhabs with rigidity and constriction is a discussion that misses the point of dispute. For the real discussion can only take place after acknowledging that Islamic polities throughout history were governed by these schools. The Ottoman Caliphate, for example, administered the caliphate according to the Ḥanafī school, while the rulers of the Maghrib relied on the Mālikī school in administering their lands. In addition to this, endowments (*awqāf*) were what financed the educational system and contributed to resolving problems of poverty, and it was the juristic schools that organized their functioning and safeguarded them. Is there, then, an Islamic alternative to these schools? That is the real question.

The claim that the juristic schools are no longer capable of keeping pace with the lives of Muslims is the greatest "lie" in the history of contemporary Islamic culture. Its true intent is that the juristic schools constitute the sole real competitor to colonial law, and that removing them necessitates clearing the way for that law to dominate Islamic lands.

Yes—this law's true competitor is the juristic schools, foremost among them the Ḥanafī school, whose imam, Abū Ḥanīfah, received the greatest share of distortion, precisely because it was the official school of the caliphal state. In this context, we can understand the motive behind publishing his biography in isolation—extracted from *Tārīkh Baghdād* by al-Khaṭīb al-Baghdādī—before the book itself was published in full, wherein there is serious disparagement of his person and probity. Likewise, we understand the motive behind publishing the book *al-Radd ʿalā Abī Ḥanīfah*, extracted from the *Muṣannaf* of Ibn Abī Shaybah, many years before the complete *Muṣannaf* was published.

The Mālikī school was also distorted by accusing it of lacking evidence, because it was the school that governed the lands of the Maghrib. As for Imām al-Shāfiʿī, the reason for distorting him was that he was the first to author independent works to regulate the principles of legal derivation—foremost among them his immortal book *al-Risālah*. Imām al-Shāfiʿī was the first to think systematically about fortifying the Sharīʿah against intruders, and about safeguarding *ijtihād* and acting upon probabilistic evidence. The scholars of the four schools followed him in this, until the age of Orientalism illuminated for the *Manār* school[30] the path toward dismantling the foundations of the Sharīʿah and rendering them "fluid," responsive to the requirements of modernity. Thus, no proof is intrinsically stronger than another, no opinion weightier than another, and no principle—of whatever type—possesses sanctity. Everything is suitable to debate over, and at the same time inherently unsuitable in itself as proof (!!); there is no preference or hierarchy among proofs or opinions.

As for the Ḥanbalī school, the issue of its distortion was different. It was instrumentalized as a "harmful" school, presented as the school of Sunnah in law and creed, and Shaykh Ibn Taymiyyah and his student Ibn al-Qayyim were portrayed as among its pillars. When Rashīd Riḍā published *al-Mughnī* by Ibn Qudāmah, he made Ibn Taymiyyah an arbiter over some of the author's statements.

This school made modernist values its reference point in ijtihād—indeed, its ultimate reference. One of the primary objectives of the leaders of this school was to remove the juristic schools from courts and legislative institutions, on the grounds that they entrench *taqlīd* and rigidity. This is not an inference or an analysis; rather, it is explicitly stated by the major figures of this school, foremost among them its original founder, Shaykh Rashīd Riḍā (God have mercy upon him). One can consult the *Maktabah al-Shāmilah*, filter *Majallat al-Manār*, and search—for example—for the word "civilization," to find numerous texts to this effect. Among the clearest of these texts is Rashīd Riḍā's statement in an article in *al-Manār*:

> *There is nothing in our religion that conflicts with contemporary civilization—whose benefit is agreed upon among advanced nations—except some issues of usury. I am prepared to reconcile true Islam with everything the Ottomans require to advance their state from what the Europeans tried before them and other matters, but on the condition that I not commit myself to any of the madhhabs; rather, to the Qurʾān and the authentic Sunnah.*

[30] Tr: The Manār school (*al-Madrasah al-Manāriyyah*) was a modern Sunni reformist current associated primarily with Muhammad Abduh and his student Rashid Rida, and named after the journal Al-Manar, founded in Cairo in 1898. Emerging in response to colonial domination and perceived intellectual stagnation, it sought to reconcile Islamic orthodoxy with modern conditions through renewed ijtihād, ethical rationalism, and direct engagement with the Qurʾān and Sunnah. Abduh emphasized the harmony of revelation and reason and advocated legal reform within Sunni parameters, while Riḍā increasingly developed a more textualist and politically oriented vision, especially regarding the caliphate. The Manār school thus functioned as a bridge between late classical Sunni scholarship, Islamic modernism, and later Salafi and Islamist movements in the twentieth century.

The defining features of the Manār school—and those who followed them, whether in a restrictive or expansive manner—constitutea deconstructive methodology that dissolves the stability of legal determinations, rendering them fluid and perpetually adjustable to the demands of modernity. Within such an approach, no proof is inherently stronger than another, no juristic opinion carries greater weight, and no principle—of whatever category—retains intrinsic authority. All evidences become equally open to contestation, yet simultaneously deprived of decisive force in themselves. Preference collapses into equivalence; hierarchy into flatness. In effect, the normative architecture of law is leveled: proofs lose gradation, opinions lose rank, and principles lose sanctity, leaving a field in which everything is debatable, but nothing is binding. Even weak or fabricated reports are adopted if they accord with modernity, while sound, mass-transmitted reports are set aside when necessary.[31]

Parameters Governing *Talfīq* and Departing from One's Juristic School in Practice or Fatwā

The established practice among the vast majority of the Islamic Ummah, after the codification of the four juristic schools, has been to follow one of these schools and adhere to it. These schools are: the school of Imām Abū Ḥanīfah, the school of Imām Mālik, the school of Imām al-Shāfiʿī, and the school of Imām Aḥmad—may God be pleased with them all. There is nothing in the Sacred Law that prevents a *muqallid* (one who follows a school) from committing himself to one of these four schools and never departing from it. Nor is there anything that prevents a *muqallid* from moving from one school to another.

Shaykh al-Islām Imām Ibn Ḥajar al-Haytamī (God have mercy upon him) said in *al-Fatāwā al-Fiqhiyyah al-Kubrā* (4/289):

> Al-Shāfiʿī, Abū Ḥanīfah, Mālik, Aḥmad, and the rest of the imams of the Muslims are upon guidance from their Lord. May God reward them on behalf of Islam and the Muslims with the best and most complete reward, and gather us among their ranks. Since all of them are upon guidance from God Most High, there is no blame upon one who directs another to adhere to any of the four schools—even if it differs from his own school and conviction—because he has directed him to truth and guidance.

Accordingly, what is preferable for one who has committed himself to a specific school is that he does not depart from it—neither in practice nor in issuing fatwā. Departure is permitted when there is a need, such as when hardship would befall him or the one seeking fatwā. Shaykh al-Islām Imām Ibn Ḥajar al-Haytamī (God have mercy upon him) said in *al-Fatāwā al-Fiqhiyyah al-Kubrā* (4/316): "It is permissible for him—meaning the muftī—to issue fatwā

[31] This reply is a lightly adapted quotation from the book *Lā Jadīd fī Ḥukm Baqāʾ al-Muslimah Taḥta Zawjihā Ghayr al-Muslim* by Shaykh Prof. Dr. al-Nājī Lamīn, Professor of Fiqh and Uṣūl at Dār al-Ḥadīth al-Ḥasaniyyah.

according to his own school and contrary to it, provided he knows what he is issuing fatwā about in its proper manner, and attributes it to the imam who held that view."

Summary of the Conditions for Departing from One's School

First: The school being followed must be codified, so that the *muqallid* attains certainty that the issue in which he is following belongs to that school.

Second: The *muqallid* must observe the conditions stipulated by the imam being followed in that particular issue.

Third: He must not follow the concessions (*rukhaṣ*) of the scholars. Shaykh al-Islām Imām al-Nawawī (God have mercy upon him) said in *al-Majmūʿ* (1/55):

> If it were permissible to follow whichever school one wished, it would lead to selectively picking the concessions of the schools in pursuit of one's desires, choosing between permissibility (*taḥlīl*) and prohibition (*taḥrīm*), obligation (*wujūb*) and allowance (*jawāz*). This would result in the unraveling of the bond of legal responsibility.

Fourth: Departing from the school must not result in prohibited *talfīq*.

Fifth: There must be a genuine need to depart from the school. It is essential to distinguish between the *muqallid*'s need to depart from his school and the muftī's need. The *muqallid* adheres to the fatwā of the muftī, who may depart from his school due to a general need.

A *muqallid*'s departure from his school in a particular issue is not considered liberation from his school altogether, because he may encounter hardship or constraint that is alleviated by following one of the recognized schools. Through examination, we find many issues within the internal discourse of a given school that direct the *muqallid* to follow another school as a facilitation. Among these are what some of our Shāfiʿī imams mentioned: that a small quantity of water is not deemed impure unless it changes—by following Imām Mālik (God have mercy upon him). Al-Bājūrī (God have mercy upon him) said in his marginal commentary on *Sharḥ Ibn Qāsim* (1/34): "There is latitude in this."

Another example, as stated by Ibn ʿAjīl al-Yamanī al-Shāfiʿī, concerns three issues in zakāh in which fatwā is given contrary to the school, by way of taqlīd: transferring zakāh, giving it to a single category, and giving the zakāh of one person to a single individual (*Ḥāshiyat al-Jamal ʿalā Sharḥ al-Manhaj* 4/97). Whoever wishes to explore this further may consult the books of fiqh and fatwā, where he will find ample scope for departing from one's school—whether as guidance for the questioner, as fatwā, or as judicial ruling.

The Issue of *Talfīq* Between Juristic Schools

As for *talfīq* between juristic schools—meaning that a *muqallid* combines two opinions such that a third opinion results, which neither of the two imams holds—such as one who wipes

less than a quarter of his head in wuḍūʾ by following al-Shāfiʿī, and then touches his wife without invalidation by following Abū Ḥanīfah: the majority of scholars hold that his act of worship is invalid. This is because he has performed an act of worship whose validity is not upheld by any of the imams he followed or whose opinions he adopted.

Shaykh al-Islām Imām Ibn Ḥajar al-Haytamī (God have mercy upon him) said (*al-Fatāwā al-Fiqhiyyah al-Kubrā* 4/326):

> It is stipulated that there be no *talfīq* if he wishes to combine it with, or add to it, following another imam—because it has been established that *talfīq* in taqlīd, such as following Mālik (God have mercy upon him) in the non-impurity of the dog and al-Shāfiʿī (God be pleased with him) in wiping part of the head, is unanimously impermissible.

Imām al-Bulqīnī—and after him the scholar Ibn Ziyād al-Yamanī—distinguished between *talfīq* within a single case and *talfīq* across two different cases. The first is prohibited, whereas the second is permissible.

The verifying scholar Ibn Ziyād (God have mercy upon him) said in his *Fatāwā*, in the chapter on judiciary matters:

> What is understood from their statements on *taqlīd* is that the invalidating form of combination is only prohibited when it occurs within a single case—such as one who performs wuḍūʾ and touches [his wife] by following Abū Ḥanīfah, and then performs cupping by following al-Shāfiʿī, and then prays: his prayer is invalid due to the agreement of both imams on the invalidity of his purification. This is unlike a case where the combination occurs across two separate cases, for what appears is that this does not invalidate the taqlīd—such as when a Shāfiʿī follows Abū Ḥanīfah regarding facing the direction of the qiblah, and does not wipe a quarter of the head; his prayer is not invalid, because the two imams do not agree on the invalidity of his purification, since the disagreement pertains to a particular circumstance.

Zayn al-Dīn al-Malībārī (God have mercy upon him) said, "I have seen in the fatwās of al-Bulqīnī that which indicates that combining across two cases is not invalidating."[32]

Conclusion: Permissible *Talfīq* Is Subject to Conditions

In sum, *talfīq* is permissible subject to certain conditions:

[32] *Fatḥ al-Muʿīn*, p. 615.

First: The combined opinion must not contradict consensus, an explicit text of definitive indication, or manifest analogy—such as one who marries without a dower, a guardian, or witnesses; for this is a scenario held by no one.

Second: It must not result in a form that neither of the two imams holds in a single case—such as one who wipes less than a quarter of his head by following the Shāfiʿīs and does not intend wuḍūʾ by following the Ḥanafīs.

Third: There must be a compelling need that calls for *talfīq*. If it is merely due to personal desire or evasion of legal responsibility, it is impermissible.

Fourth: It must not conflict with the objectives of the Sharīʿah, namely: the preservation of religion, life, intellect, lineage, and wealth.

Accordingly, It is permissible for a *muqallid* of one of the four juristic schools to remain following his school without departing from it—and this is **preferable, better, and more precise**. It is also permissible for him to move to another school, even without a specific necessity, **on the condition** that he adheres to the conditions and parameters of that school in the issue at hand. *Talfīq* between the juristic schools and the opinions of the *mujtahids* is permissible if the aforementioned conditions are met. A *muqallid* may encounter constriction or hardship in a particular case with no outlet except *talfīq*, especially in matters of financial transactions. In such cases, it is permissible for the *muftī* to employ *talfīq* in fatwā according to what he sees as realizing and fulfilling the needs of those legally responsible, and it is permissible for the questioner to act upon the composite ruling. God Most High knows best.[33]

Shaykh Taqī al-ʿUthmānī stated that issuing fatwā according to another school is not permissible except upon the fulfillment of a set of conditions, as follows:

> **First:** The need must be severe, and the affliction genuinely widespread in reality—not merely imagined.
>
> **Second:** The *muftī* must be certain of the pressing need, and this is achieved by consulting other scholars of fatwā and experts in the relevant field. It is preferable that he not rush to issue a fatwā independently, but rather—so far as possible—join his fatwā with that of other scholars, especially if he intends to publish the fatwā widely.
>
> **Third:** He must verify and ascertain with great precision the school according to which he intends to issue fatwā. It is preferable that he consult scholars of that school and not suffice with encountering a single issue in one or two books, because each

[33] This fatwā is from the General Iftāʾ Department of Jordan (14 May 2024): "Guidelines for Talfiq and Departing from One's Madhhab" (Fatwā no. 3875). Retrieved from the Jordanian Iftāʾ Department: https://aliftaa.jo/research-fatwas/3875/

school has its own terminology and distinctive methods, the true intent of which may only be grasped by those experienced with them.

Fourth: The adopted view must not be among anomalous opinions that contradict the majority of the Ummah's jurists, and one which they have denounced.

In sum: Issuing fatwā according to another school is permissible when these conditions are met in a **specific issue** due to **severe hardship that cannot be borne**, a **real need that cannot be dispensed with**, or **widespread affliction**—so as to remove hardship, lift difficulty, and fulfill need.[34]

The Ruling on Following the Madhhabs of the Companions

Many proponents of anti-madhhabism, and those who raise slogans such as "fiqh founded on evidence" and "the preponderant view," cite scattered statements attributed to some of the Companions (may God be pleased with them) and use them as a pretext for departing from the four juristic schools. Is it permissible, then, to depart from the four schools—especially from what they agree upon—under the claim of following the Companions, who are of greater rank and more precise understanding?

The verifying scholars are agreed that laypeople may not attach themselves to the individual madhhabs of specific Companions (may God be pleased with them). Rather, they must follow the schools of the imams who investigated, examined, systematized chapters, laid out the configurations of issues, and addressed the positions of the early generations.[35]

This does not entail that the Companions—may God be pleased with them—are inferior to the *mujtahids*; rather, they are far greater and more exalted in rank. However, their madhhabs are not reliably transmitted and firmly established as are the madhhabs of the imams who have followers. Therefore, adhering to the four imams became necessary, because their schools spread and unfolded to the point that the restriction of their unrestricted statements, the specification of their general statements, the clarification of their conditions, and other such matters have now taken place. As for others, fatwās have been transmitted from them in isolation; they may have had a clarifying complement (*mukammil*), a restriction, or a specification—had their statements been fully unfolded and their madhhabs completely transmitted, that would have become apparent.

Nonetheless, a group of scholars held that it is permissible to follow a Companion. It may be said that there is no real disagreement between the two groups: if the Companion's madhhab is established with certainty, then following it is permissible by agreement; otherwise, it is

[34] Muḥammad Taqī al-ʿUthmānī, *Uṣūl al-Iftāʾ wa Ādābuh* (Damascus: Dār al-Qalam, 1st ed., 2014), p. 244.
[35] al-Juwaynī, *al-Burhān fī Uṣūl al-Fiqh*, previous reference (2/177).

not—not because a Companion may not be followed, but because his madhhab has not been firmly established.[36]

Ibn Ḥajar al-Haytamī transmits in *al-Tuḥfah* that the relied-upon view is the permissibility of following any of the four imams—and others among the *mujtahids*—but he restricted this to one whose madhhab has been preserved in the specific issue to be followed, such that it has been codified with its conditions and all other relevant considerations. He further stated that the consensus reported by several scholars on **prohibiting** following the Companions is to be understood as applying to cases where this condition is absent.[37]

Among what prevents a non-*mujtahid* from following a Companion as well are: the possibility that the Companion subsequently retracted his view; or the possibility that consensus later formed after his view upon another position—at which point it would not be valid to follow him, since consensus is a proof after disagreement just as it is a proof *ab initio*. Another reason is that the chain of transmission of a Companion's statement may not meet the conditions of authenticity required for acceptance, unlike the four madhhabs, which are codified, preserved, and transmitted through mass transmission (*tawātur*). Another impediment is that a new case may differ from the case about which the Companion issued a fatwā; mapping cases onto cases is among the most delicate aspects of fiqh and among those most prone to error.[38]

Conclusion

The obligation upon Muslims is to adhere to the path of truth by following one of the four juristic schools. This is the path upon which scholars proceeded generation after generation, for it preserves the religion, regulates ijtihād, and restrains pseudo-*mujtahids* who corrupt fiqh while imagining they are doing good. God Most High preserved the Sharīʿah through adherence to these schools, due to the firm principles and disciplined methodologies of derivation they contain. In committing to them lies greater good for the Ummah than floundering amid claims of *ijtihād* without qualification or tools—and protection from prohibited *talfīq* and juristic anarchy.

Adherence to a single school is not rigidity upon the statements of men, as some portray it, nor is it a turning away from evidence. Rather, it is adherence to a sound scholarly methodology established by the imams of the religion—upon which the landmarks of fiqh were built and by which the affairs of the Ummah remained upright for long centuries across

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[36] al-Zarkashī, *Tashnīf al-Masāmiʿ bi-Jamʿ al-Jawāmiʿ*, previous reference (3/444); al-Barmāwī, *al-Fawāʾid al-Saniyyah fī Sharḥ al-Alfiyyah*, previous reference (5/2114); and Ibn Amīr al-Ḥājj, *al-Taqrīr wa-l-Taḥbīr ʿalā Kitāb al-Taḥrīr*, previous reference (3/354).

[37] Ibn Ḥajar al-Haytamī, *Tuḥfat al-Muḥtāj fī Sharḥ al-Minhāj* with the marginalia of al-Sharwānī and al-ʿAbbādī (10/109), ed. committee of scholars, published by al-Maktabah al-Tijāriyyah al-Kubrā (Egypt), 1983.

[38] al-Zarkashī, *al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*, previous reference (8/339).

the Islamic world. In adhering to it there is unity of word, safeguarding of the Sharīʿah, regulation of fatwā, and conformity to the practice of the Ummah.

May God send blessings, peace, and barakah upon our master Muḥammad ﷺ, and upon his family and all his Companions.

Third Problem: The Ruling Concerning Spouses When the Wife Embraces Islam While the Husband Remains upon Disbelief

It is stated in Chapter Four, under ***The Women Forbidden for Marriage***:

> **Article 42:** If a woman becomes Muslim, but her husband remains upon other than Islam, it becomes unlawful for them to have marital intimacy, though the marriage remains suspended throughout the '*iddah* period. If he embraces Islam, then their marriage continues. If he refuses, she is given the choice between dissolving the marriage in order to become lawful for other suitors, and legal measures are taken to enable her to do that, or she can choose to be patient in anticipation of him embracing Islam. Once he embraces Islam, she can return to him with a new marriage contract. All of this stands on the condition that he does not have intimacy with her throughout this period, since he is foreign to her.

It is also stated in Chapter Four, under *Annulment*:

> **Article 181:** The marriage contract is annulled when there surfaces that which prevents its continuity in the Sharia, such as either spouse apostatizing from Islam, or when the woman embraces Islam and her husband refuses Islam until her '*iddah* [waiting period][39] expires.[40]

What, then, is the ruling if the woman embraces Islam while her husband remains upon disbelief? Is she given a choice between annulling the marriage and remaining patient while awaiting her husband's embracing Islam, as the first text appears to indicate? Or is there only

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[39] Tr: *'Iddah* is the fixed waiting period a woman must observe after divorce or widowhood before remarriage is permitted. It serves to:

- **Ascertain pregnancy** (protection of lineage),
- **Allow reconciliation** in revocable divorce,
- **Honor the previous marriage bond**, especially after death.

When ʿiddah applies and its duration

- **Divorce (non-pregnant):**
  Three menstrual cycles (or three lunar months if not menstruating).
- **Divorce (pregnant):**
  Until childbirth.
- **Death of husband:**
  Four months and ten days, whether consummation occurred or not.
- **Marriage not consummated:**
  No ʿiddah after divorce.

[40] Document: "The Assembly's Family Code for Muslim Communities in North America (Arabic version)," the American Fiqh Assembly—Islamic Council of the Assembly (AMJA). Online access: https://www.amjaonline.org/declaration-articles/the-assemblys-family-code-for-muslim-communities-in-north-america-ar

one option—namely, annulment of the marriage—as the second text appears to state? And if we were to say that she is given a choice, and she opts to remain patient and await her husband's Islam, would she, during this waiting period, remain his wife and treat him as spouses treat one another?

Here there is a contradiction between the two texts. The first is explicit in stating that she is given a choice between annulling the marriage and remaining patient while awaiting the husband's Islam, whereas the second is explicit in annulling the marriage. Such contradiction is unbecoming of a religious body that presents itself as an authority in issuing fatwā—particularly in a document written to function like a constitution to which families would refer for guidance and adjudication.

Moreover, if the woman were to choose to await her husband, would the relationship between them be that of spouses? All of this constitutes ambiguity in a matter that calls for clarification and detailed exposition.

In this study—God willing—we will answer the question of the ruling concerning a woman who embraces Islam while remaining with a disbelieving husband, irrespective of the position adopted by this religious body.

What Is the Ruling on a Woman Who Embraces Islam Remaining Under the Authority of a Disbelieving Husband?

In the name of God. All praise is due to God, and blessings and peace be upon our master, the Messenger of God ﷺ. To proceed:

The answer is that it is **not permissible** for a woman who has embraced Islam to remain under the marital bond of her non-Muslim husband if he does not embrace Islam. This is established by the Qurʾān, the Sunnah, consensus, and the operative practice of the Ummah in adjudication and fatwā. We shall now set this out, while also responding to the misconceptions and doubts raised by those who differ.

First: Evidence from the Qurʾānic Verses

First proof: The statement of God Most High:

> *Do not marry polytheistic women until they believe. A believing slave woman is better than a polytheistic woman, even if she pleases you. And do not marry [your women] to polytheistic men until they believe. A believing slave man is better than a polytheist, even if he pleases you. Those call to the Fire, while God calls to Paradise and forgiveness by His permission. And He makes His signs clear to the people, so that they may remember.*
> [Q. 2:221]

This verse is specified by the permissibility of a Muslim man marrying a woman from the People of the Book, as stated by God Most High:

> *Today all good things have been made lawful for you. The food of those who were given the Book is lawful for you, and your food is lawful for them. And [lawful for you in marriage are] chaste women from among the believers and chaste women from among those who were given the Book before you, when you give them their bridal due, seeking chastity, not fornication, nor taking secret lovers.*
> [Q. 5:5]

Abū Bakr al-Rāzī al-Jaṣṣāṣ and others narrated from Ibn ʿAbbās that he said: the verse *"Do not marry polytheistic women until they believe"* is arranged in relation to the verse *"and chaste women from among those who were given the Book before you"*, and that women of the People of the Book are excluded from the former [i.e., because Trinitarian Christians are polytheists from one angle].[41] What is meant by a "woman of the Book" is one who adheres to Christianity or Judaism—not merely one who belongs culturally or ethnically to the Christian or Jewish world.

The statement of God Most High—*"And do not marry polytheistic men until they believe"*—remains upon its generality.

Ibn ʿAṭiyyah said regarding the verse *"And do not marry polytheistic men until they believe"*: "The Ummah has reached consensus that a polytheist may not have intercourse with a believing woman in any way, due to the humiliation this entails for the religion of Islam."[42]

Imām al-Rāzī wrote in his *Tafsīr*: "There is no disagreement here that what is intended is all [disbelievers], and that it is not lawful whatsoever for a believing woman to be married to a disbeliever, regardless of the types of disbelief."[43]

Al-ʿIzz ibn ʿAbd al-Salām said in his *Tafsīr*: *"'And do not marry polytheistic men'—this is upon its generality by consensus."*[44]

Ibn Juzayy wrote in *al-Tashīl*: *"'And do not marry polytheistic men'*—that is, do not give your women in marriage to them. Consensus has formed that a disbeliever may not marry a Muslim woman, whether he is from the People of the Book or otherwise. *"*[45]

Ibn Jarīr al-Ṭabarī narrated with his chain from Qatādah and al-Zuhrī regarding the verse *"And do not marry polytheistic men"*: It is not lawful for you to give a Jewish man, a Christian, or a polytheist from other than your religion in marriage.
He also narrated from Ibn Jurayj regarding " *'And do not marry polytheistic men'*—due to [believing women's] nobility—until [these men] believe."

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[41] al-Jaṣṣāṣ, *Aḥkām al-Qurʾān* (ʿIlmiyyah, ed.) (1/402).
[42] *Tafsīr Ibn ʿAṭiyyah* (= *al-Muḥarrar al-Wajīz fī Tafsīr al-Kitāb al-ʿAzīz*) (1/297).
[43] *Tafsīr al-Rāzī* (= *Mafātīḥ al-Ghayb* / *al-Tafsīr al-Kabīr*) (6/413).
[44] *Tafsīr al-ʿIzz ibn ʿAbd al-Salām* (1/213).
[45] *Tafsīr Ibn Juzayy* (= *al-Tashīl li-ʿUlūm al-Tanzīl*) (1/120).

And he narrated from ʿIkrimah and al-Ḥasan al-Baṣrī regarding *"And do not marry polytheistic men until they believe"*: It prohibited Muslim women to the men of the polytheists.[46]

If it is said: the verse is explicit concerning polytheists and therefore does not include the People of the Book—Jews and Christians—the response is that the consensus of the scholars has formed upon the inclusion of the People of the Book within its ruling, and that they are encompassed by this generality. Consensus is decisive proof of the truth and cannot be contrary to reality, for the Ummah does not agree upon error.

This consensus is established in two ways:

First: By explicit textual statements transmitted from a number of scholars, as will be cited from Ibn Juzayy al-Gharnāṭī.

Second: By deriving it implicitly from their agreement upon specifying the women of the People of the Book and excluding them from this generality. Had the generality not applied to the People of the Book, it would not have been valid to specify the women of the Book in the first place—contrary to the consensus [which specifies that it does not apply to such women]. However, after this specification, the generality [of the prohibition] remains upon its general import **with respect to the men of the People of the Book**.

Among what may be used as evidence that Jews and Christians fall under the category of polytheists is the statement of God Most High:

> *The Jews say, 'Ezra is the son of God,' and the Christians say, 'The Messiah is the son of God.' That is their statement from their mouths; they imitate the saying of those who disbelieved before. May God fight them—how they are deluded! They have taken their rabbis and monks as lords besides God, and the Messiah, the son of Mary, while they were commanded to worship only One God—there is no deity except Him. Exalted is He above what they associate.*
> [Q. 9:30–31]

The point of evidence lies at the end of the verse in His statement: *"above what they associate."* The Qurʾān thus characterizes them with *shirk*. *Shirk*, linguistically, means associating one thing with another; and whoever makes ʿĪsā ibn Maryam a son of God has associated him with Him. On this basis, ʿAbd Allāh ibn ʿUmar relied upon the generality of this verse to prohibit marriage to free women of the People of the Book. He said (may God be pleased with him): *"I know of no shirk greater than that one should claim for God a companion and a child."*[47]

Imām al-Rāzī said:

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[46] *Tafsīr al-Ṭabarī* (4/370, al-Tarbiyah wa-l-Turāth ed.).

[47] al-Bājī, Abū al-Walīd Sulaymān b. Khalaf... (d. 474 AH), *al-Muntaqā Sharḥ al-Muwaṭṭaʾ* (3/328), published by Maṭbaʿat al-Saʿādah (Egypt), 1st ed., 1332 AH.

The scholars differed as to whether the term "polytheist" (*mushrik*) encompasses the disbelievers from among the People of the Book. Some denied this, but the majority of scholars hold that the term "polytheist" does indeed include the disbelievers from among the People of the Book—and this is the preferred view. There are several proofs for this.

The first is His statement, Most High: "The Jews say, 'Uzayr is the son of God,' and the Christians say, 'The Messiah is the son of God'" [Q. 9:30], and then He says at the end of the verse: "Exalted is He above what they associate" [Q. 9:31]. This verse is explicit in declaring the Jew and the Christian to be polytheists.

The second is His statement, Most High: "Indeed, God does not forgive that partners be associated with Him, but He forgives what is less than that for whom He wills" [Q. 4:48]. This verse indicates that everything besides *shirk* may, in principle, be forgiven by God. If the disbelief of the Jew and the Christian were not *shirk*, it would follow—by the implication of this verse—that God would forgive it in principle. Since this is false, we know that their disbelief is *shirk*.

The third is His statement, Most High: "They have certainly disbelieved who say: God is the third of three" [Q. 5:73]. This trinity must refer either to their belief in three attributes or to their belief in three distinct entities. The first is false, because the concept of His being Knowing is different from the concept of His being Powerful and from His being Living; and since these three meanings must necessarily be affirmed, affirming three attributes is among the necessities of Islam—so how could the Christians be declared disbelievers for that? Once this is invalidated, it becomes clear that God declared them disbelievers because they affirmed three distinct, independent, eternal entities. This is why they allowed the hypostasis of the Word to indwell in Jesus, and the hypostasis of Life to indwell in Mary. Had these things—which they call hypostases—not been self-subsisting entities, they would not have allowed them to move from one entity to another. It is thus established that they affirm eternal, pre-existent entities subsisting in themselves, which is *shirk* and a claim of multiple deities. Therefore, they are polytheists. And if their inclusion under the term "polytheists" is established, it necessarily follows that the Jew is also included, since no one distinguishes between them.

The fourth is what has been narrated: that the Prophet ﷺ appointed a commander and said: "If you encounter a group of polytheists, invite them to Islam. If they respond, accept it from them. If they refuse, invite them to the payment of jizyah and the contract of protection. If they respond, accept it from them and refrain from [fighting] them." He referred to those from whom jizyah is accepted and with whom

> a covenant is concluded as *polytheists*, which indicates that the *dhimmī*[48] is called a polytheist.[49]

Imām al-Kāsānī (God have mercy upon him) likewise linked the People of the Book to the polytheists by analogy. He said:

> It is not permissible to marry a believing woman to a disbeliever, due to His statement, Most High: "And do not marry polytheistic men until they believe" [Q. 2:221]. Moreover, in marrying a believing woman to a disbeliever there is fear that the believing woman may fall into disbelief, because the husband calls her to his religion, and women, by custom, follow men in what they favour of actions and imitate them in religion. An indication of this occurs at the end of the verse in His statement, Mighty and Majestic: "Those call to the Fire" [Q. 2:221], because they call believing women to disbelief, and calling to disbelief is calling to the Fire, since disbelief necessitates the Fire. Thus, marrying a believing woman to a disbeliever becomes a means that leads to what is unlawful, and is therefore unlawful.
>
> Although the text was revealed concerning polytheists, the operative cause—namely, calling to the Fire—applies to all disbelievers. Therefore, the ruling is generalized by the generality of the cause. Consequently, it is not permissible to marry a Muslim woman to a man from the People of the Book, just as it is not permissible to marry her to an idolater or a Magian. For the Sacred Law has severed the authority of disbelievers over believers by His statement, Most High: "And God will never grant the disbelievers a way over the believers" [Q. 4:141]. Were it permissible for a disbeliever to marry a believing woman, he would thereby have authority over her, and this is not permissible.[50]

The disagreement among scholars over whether to *describe* them as polytheists does not entail disagreement over their inclusion under His statement, Most High: *"And do not marry polytheistic men until they believe,"* given the consensus on the inclusion of the People of the Book within the ruling of this verse.

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[48] Tr: A *dhimmī* (from *dhimmah*, "covenant" or "guarantee") refers, in classical Islamic law, to a non-Muslim subject—typically a Jew, Christian, or other recognized scriptural community—residing permanently under Muslim political authority and granted protection of life, property, and limited communal autonomy in exchange for acknowledging the sovereignty of the Islamic state and paying the *jizyah* tax. The status was regulated within the broader jurisprudence of *ahl al-dhimmah* and entailed both rights and restrictions, often framed as a contractual arrangement of protection.

[49] Fakhr al-Dīn al-Rāzī (d. 606 AH), *Tafsīr al-Rāzī* (= *Mafātīḥ al-Ghayb*) (6/408), Dār Iḥyāʾ al-Turāth al-ʿArabī (Beirut), 3rd ed., 1420 AH.

[50] *Badāʾiʿ al-Ṣanāʾiʿ* (2/271).

Second Proof

The statement of God Most High:

> *O you who believe, when believing women come to you as emigrants, examine them—God knows best their faith. If you know them to be believers, then do not return them to the disbelievers: they are not lawful for them, nor are they lawful for them. And give them what they have spent. And there is no blame upon you if you marry them when you give them their bridal dues. And do not hold to the bonds of disbelieving women; and ask for what you have spent and let them ask for what they have spent. That is the judgment of God; He judges between you. And God is Knowing, Wise.*
> [Q. 60:10]

His statement, Most High *"they are not lawful for them, nor are they lawful for them"*—is a decisive and general text, upon which all scholars have acted.

In the *Tafsīr* of Muqātil it states: *"'They are not lawful for them, nor are they lawful for them'*—meaning: a believing woman is not lawful for a disbeliever, nor is a disbeliever lawful for a believing woman."[51]

Imām al-Shāfiʿī said:

> If the spouses are both idolaters and one of them embraces Islam before the other, then sexual relations are forbidden until the one who lags behind embraces Islam, due to His statement, Most High: *"They are not lawful for them, nor are they lawful for them."*[52]

From the *Tafsīr* of al-Ṭabarī*:*

> *God, exalted is He, said to them: 'If you know them to be believers, then do not return them to the disbelievers; they are not lawful for them, nor are they lawful for them'*—meaning: believing women are not lawful for disbelievers, nor are disbelievers lawful for believing women.[53]

In *Maʿānī al-Qurʾān* by al-Zajjāj: *"*His statement*: "They are not lawful for them, nor are they lawful for them,"* means that believing women are not lawful for disbelievers, nor are disbelievers lawful for believing women."[54]

In the *Tafsīr* of Imām Ahl al-Ḥaqq al-Māturīdī, regarding His statement *"they are not lawful for them, nor are they lawful for them"*, he says: "It is not lawful for a believing woman to marry a disbeliever, nor for a disbeliever to marry a believing woman."[55]

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[51] *Tafsīr Muqātil b. Sulaymān* (4/303).
[52] *al-Umm* by Imām al-Shāfiʿī (5/47, Dār al-Fikr ed.).
[53] *Tafsīr al-Ṭabarī* (23/327, al-Tarbiyah wa-l-Turāth ed.).
[54] *Maʿānī al-Qurʾān wa Iʿrābuh* by al-Zajjāj (5/159).
[55] *Tafsīr al-Māturīdī* (= *Taʾwīlāt Ahl al-Sunnah*) (9/617).

In *Baḥr al-ʿUlūm* by Abū al-Layth Naṣr al-Samarqandī al-Ḥanafī: *"'They are not lawful for them'* means: a believing woman is not lawful for a disbeliever; and 'nor are they lawful for them' means: nor is the marriage of a disbeliever to a Muslim woman lawful."[56]

Al-Qurṭubī al-Mālikī said: *"'Do not return them to the disbelievers; they are not lawful for them, nor are they lawful for them'*—that is, God has not made a believing woman lawful for a disbeliever, nor the marriage of a believer to a polytheistic woman."[57]

Ibn Kathīr said in his *Tafsīr*: "His statement: *'They are not lawful for them, nor are they lawful for them'*—this verse is the one that prohibited Muslim women to the polytheists. In the early period of Islam, it had been permissible for a polytheist to marry a believing woman.[58]

These scholars—and many others from different schools—regard the verse as **general**, not restricted to its immediate occasion of revelation, nor limited to one type of disbeliever over another. If we were to rule that this verse is confined to its specific cause, or to particular disbelievers, then the same could be done with every general verse—since there would be no distinction—and a vast portion of the rulings of the Qurʾān and Sunnah would thereby be lost. This religion was revealed for all worlds, not only for the believers who were present with the Messenger of God ﷺ.

When all of this is added to the previous verses and the transmitted consensuses, it becomes decisively established that **marriage between a disbelieving man and a Muslim woman is unlawful in every form**.

Second: Evidence from the Sunnah

First proof: Ibn Isḥāq said:

> Abū al-ʿĀṣ remained in Mecca, while Zaynab stayed with the Messenger of God ﷺ in Madinah, when Islam separated the two of them. Then, shortly before the Conquest, Abū al-ʿĀṣ set out as a merchant to Syria. He was a trustworthy man, carrying his own wealth and the wealth of men from Quraysh who had entrusted it to him. When he completed his trade and was returning, a detachment of the Messenger of God ﷺ encountered him, seized his wealth, and he escaped from them. When the detachment returned with what they had seized of his wealth, Abū al-ʿĀṣ came under cover of night and entered upon Zaynab, the daughter of the Messenger of God ﷺ, and sought her protection. She granted him protection and he came seeking his property.
>
> When the Messenger of God ﷺ went out for the morning prayer—as related to me by Yazīd ibn Rumān—he said *takbīr* and the people said *takbīr* with him. Zaynab cried out from the women's quarters: "O people! I have granted protection to Abū al-ʿĀṣ ibn al-Rabīʿ."

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[56] *Tafsīr al-Samarqandī* (= *Baḥr al-ʿUlūm*) (3/438).
[57] *Tafsīr al-Qurṭubī* (= *al-Jāmiʿ li-Aḥkām al-Qurʾān*) (18/63).
[58] *Tafsīr Ibn Kathīr* (ed. al-Salāmah) (8/93).

> When the Messenger of God ﷺ finished the prayer, he turned to the people and said: "O people! Did you hear what I heard?" They said: "Yes." He said: "By Him in Whose hand is the soul of Muḥammad, I had no knowledge of any of this until I heard what you heard. Indeed, the least of the Muslims may grant protection on behalf of all of them."
>
> Then the Messenger of God ﷺ departed and entered upon his daughter and said: "O my daughter, honor his lodging, **but let him not have access to you**, for **you are not lawful to him**."[59]

This report was narrated by al-Ḥākim in *al-Mustadrak*[60] and by al-Bayhaqī in *al-Sunan al-Kubrā*[61]. Muḥammad ibn Isḥāq is truthful (*ṣadūq*) but a *mudallis*;[62] however, he explicitly stated hearing (*taṣrīḥ bi'l-taḥdīth*) in this narration, thereby removing the suspicion of *tadlīs*.

Shaykh al-Nājī Lamīn said:

> The wording of this ḥadīth accords with His statement, Most High: *"They are not lawful for them, nor are they lawful for them."* For this reason, the scholars of reports, as well as historians and biographers, transmitted it through Ibn Isḥāq's chain and through other chains as well. Among these is what Ibn Saʿd narrated from his shaykh Muḥammad ibn ʿUmar al-Wāqidī as a *mursal* report,[63] wherein it states: "... When the Prophet ﷺ returned to his home, Zaynab entered upon him and asked him to restore to Abū al-ʿĀṣ what had been taken from him, and he did so. And he commanded her that he does not approach her, for she is not lawful to him so long as he remains a polytheist."
>
> And in a narration cited by Ibn ʿAbd al-Barr in *al-Istīʿāb*—mentioned without a chain—the wording is: "... O my daughter, honor his lodging, but let him not have access to you, for you are not lawful to him." She then said: "He has come seeking his wealth."

Shaykh al-Nājī then adds: "It was narrated by the scholars of reports and by historians and biographers, and they did not impugn it, due to its conformity with the text of the Qurʾān and the principles of the Sharīʿah, which do not allow a disbeliever to have authority over a Muslim woman—as Ibn ʿAbbās stated."[64]

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[59] *Sīrat Ibn Hishām* (ed. Ṭāhā ʿAbd al-Raʾūf Saʿd) (2/218).
[60] *al-Mustadrak ʿalā al-Ṣaḥīḥayn* (6/147).
[61] *al-Sunan al-Kubrā* (al-Bayhaqī) (7/301, ʿIlmiyyah ed.).
[62] Tr: **A narrator who practices *tadlīs***—that is, he **conceals a flaw in the chain of transmission** by narrating a ḥadīth in a way that **creates the impression of direct transmission**, when in fact there was an interruption or intermediary.
[63] Tr: A narration in which a member of the second generation (*tābiʿī*) reports directly from the Prophet ﷺ, omitting the Companion (first generation) from the chain.
[64] al-Nājī Lamīn, *Lā Jadīd fī Ḥukm Baqāʾ al-Muslimah Taḥta Zawjihā Ghayr al-Muslim*. Manuscript.

Second proof: The Prophet ﷺ said: *"I disavow every Muslim who resides among a polytheist."*[65]

Imām al-Māwardī said, after citing this ḥadīth:

> *If this is the case, then a Muslim woman is not lawful for a disbeliever under any circumstance—whether the disbeliever is from the People of the Book or an idolater. As for the Muslim man, it is lawful for him to marry women from among the disbelievers who are from the People of the Book—Jews and Christians—as we have mentioned—and unlawful for him to marry others among the polytheists.*[66]

We cite this here specifically based on this jurist's understanding of the Prophet's ﷺ ḥadīth; for had the ḥadīth not encompassed this issue, he would not have reasoned with it.

Third: Evidence from Consensus (Ijmāʿ)

Imām al-Shāfiʿī (God have mercy upon him) said: "God, Mighty and Majestic, has prohibited the women of the believers to the disbelievers. He did not permit even one of them under any circumstance, and the people of knowledge have not differed on this."[67]

Ibn ʿAbd al-Barr (God have mercy upon him) said: "In the Qurʾān, the Sunnah, and consensus is the prohibition of the private parts of Muslim women to disbelievers."[68]

Al-Qurṭubī (God have mercy upon him) said in his *Tafsīr*: "The Ummah has reached consensus that a polytheist may not have intercourse with a believing woman in any way, due to the embarrassment this entails for Islam."[69]

Ibn Qudāmah (God have mercy upon him) said in *al-Mughnī*: "There is a consensus established on the prohibition of marrying Muslim women to disbelievers."[70]

He also said in *al-Mughnī*, commenting on al-Khiraqī's statement *"A disbeliever may not marry a Muslim woman under any circumstance"*:

> As for the disbeliever, he has no guardianship over a Muslim woman under any circumstance, by consensus of the people of knowledge—including Mālik, al-Shāfiʿī, Abū ʿUbayd, and the companions of legal reasoning. Ibn al-Mundhir said: All those whose views we preserve among the people of knowledge have agreed upon this.[71]

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[65] Reported by Abū Dāwūd (2645), al-Tirmidhī (1604), al-Ṭabarānī (2264, 2265), al-Nasāʾī (4780), etc.; also reported by al-Shāfiʿī in *al-Musnad* (p. 202) and *al-Umm* (6/35), al-Bayhaqī (8/130), and Saʿīd (1/2663).
[66] *al-Ḥāwī al-Kabīr* (9/255).
[67] *al-Umm* by Imām al-Shāfiʿī (5/164, Dār al-Fikr ed.).
[68] Ibn ʿAbd al-Barr, *al-Tamhīd* (7/402, ed. Bashshār).
[69] *Tafsīr al-Qurṭubī* (3/72).
[70] Ibn Qudāmah, *al-Mughnī* (Cairo Library ed.) (7/155).
[71] Ibn Qudāmah, *al-Mughnī* (9/377), ed. ʿAbd Allāh al-Turkī & ʿAbd al-Fattāḥ Laḥlū.

Ibn ʿAṭiyyah said in his *Tafsīr*: "The Ummah has reached consensus that a polytheist may not have intercourse with a believing woman in any way, due to the humiliation this entails for the religion of Islam."[72]

The Mālikī scholar al-Lakhmī said in *al-Tabsirah*: "The people of knowledge have unanimously agreed that the marriage of a Muslim woman to a man from the People of the Book is prohibited."[73]

This consensus is general and includes the case in which the wife embraces Islam while her husband remains upon his religion. The scholars have also agreed that if a woman embraces Islam, her non-Muslim husband is not permitted access to her. This consensus is further supported by the statement of the Messenger of God ﷺ to Zaynab: *"O my daughter, honor his lodging, but let him not have access to you, for you are not lawful to him."*

It is not valid to claim a distinction between the initial marriage of a Muslim woman to a non-Muslim, and the case in which she embraces Islam while remaining married to a non-Muslim. Such a claim would amount to an unwarranted specification of the proofs that indicate that a Muslim woman is not lawful for a disbeliever. The default is that these proofs encompass both cases. Thus, whether the woman embraces Islam while under a non-Muslim husband, or she seeks to marry him *ab initio*, the result is the same: a Muslim woman living as a wife with a non-Muslim man. Any claim of distinction therefore requires proof.

The point of disagreement among scholars concerns **the timing of the dissolution of the marriage contract**: does it dissolve immediately upon her embracing Islam, or only after Islam is presented to the husband following her Islam, or is she permitted to wait in hope that he will embrace Islam? A group of scholars have reported consensus that the maximum limit for this is the completion of the waiting period (*ʿiddah*). If her *ʿiddah* ends, he has no claim over her except through a new marriage contract.

Imām al-Shāfiʿī (God have mercy upon him) said:

> I know of no one who differs regarding the case in which the one who remains behind in disbelief does not embrace Islam before the woman's waiting period ends: the marital bond between them is severed. It makes no difference whether the Muslim among them leaves the land of war while the other remains, or whether the one who remains in disbelief leaves, or whether both leave together, or both remain. The land has no effect on prohibition or permissibility; rather, what effects it is the difference of the two religions.[74]

[72] *Tafsīr Ibn ʿAṭiyyah* (= *al-Muḥarrar al-Wajīz*) (1/297).
[73] *al-Tabṣirah* by al-Lakhmī (5/2110).
[74] *al-Umm* by Imām al-Shāfiʿī (5/48, Dār al-Fikr ed.).

Abū Bakr al-Jaṣṣāṣ said: "There is no disagreement among the jurists that she is not returned to him upon the original contract after the completion of three menstrual periods."[75]

Ibn ʿAbd al-Barr also reported consensus in *al-Istidhkār*, saying: "There is no disagreement among the scholars that if a non-Muslim woman embraces Islam and her husband refuses Islam until her waiting period ends, then he has no claim over her except through a new marriage contract."[76]

Ibn Ḥajar said in *Fatḥ al-Bārī*: "No one has held the permissibility of allowing a Muslim woman to remain under a polytheist if his Islam is delayed until after her waiting period ends."[77]

The meaning of this is that no other position has been soundly transmitted from the Companions or others regarding this ultimate outcome. This is what Ibn ʿAbd al-Barr mentioned in *al-Tamhīd*, where he said:

> The scholars have not differed that if a non-Muslim woman embraces Islam and her waiting period ends, then her husband has no claim over her if he did not embrace Islam during her waiting period—except for something narrated from Ibrāhīm al-Nakhaʿī, in which he diverged from the body of scholars and was not followed in it by any jurist except some of the Ẓāhirīs.[78]

Dr. Muḥammad ʿAbd al-Qādir Abū Fāris said:

> No sound report has been transmitted from any scholar, jurist, or exegete permitting a believing woman to continue as the wife of a disbeliever who persists in his disbelief—engaging in marital relations, intimacy, and bearing children from him while she is a believer and he is a disbeliever. Nor has any sound text or report been transmitted permitting the continuation of marital life between a believer and a disbelieving woman who persists in her disbelief and idolatry, such that cohabitation, uncovering, intercourse, and procreation continue after Islam has been presented. Rather, all of them suspend marital life and prohibit conjugal relations immediately upon the Islam of one of the spouses, and conjugal relations do not become lawful again except through the Islam of the other.[79]

Fourth: Evidence from Some Reports of the Companions and the Successors

First report: It was narrated to us by Saʿīd; [he said:] Khālid ibn ʿAbd Allāh narrated to us, from Khālid al-Ḥadhdhāʾ, from ʿIkrimah, from Ibn ʿAbbās, concerning a Christian man who had a Christian wife under him, and she embraced Islam. He said: "They are separated. None

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[75] al-Jaṣṣāṣ, *Aḥkām al-Qurʾān* (Scientific ed.) (3/587).
[76] *al-Istidhkār* (5/521).
[77] Ibn Ḥajar, *Fatḥ al-Bārī* (9/423, al-Salafiyyah ed.).
[78] Ibn ʿAbd al-Barr, *al-Tamhīd* (7/402, ed. Bashshār).
[79] *The Effect of One Spouse Embracing Islam*, Dr. Abū Fāris, Dār al-Waṭan, 1st ed., 2002, p. 27.

but we may possess our women. We have authority over the people, and the people have no authority over us—because God, Mighty and Majestic, says: *'that He may make it prevail over all religion'* [Q. 9:33]."[80]

Ibn Ḥajar said in *Fatḥ al-Bārī*, after mentioning Ibn ʿAbbās's statement that they are separated—and the maxim *"Islam rises and is not risen over"*—that its chain is sound.[81]

Imām al-Bukhārī narrated in his *Ṣaḥīḥ*: ʿAbd al-Wārith, from Khālid, from ʿIkrimah, from Ibn ʿAbbās: "If the Christian woman embraces Islam even a moment before her husband, she becomes unlawful for him."

And Dāwūd narrated, from Ibrāhīm al-Ṣāʾigh: ʿAṭāʾ was asked about a woman from the protected people (*ahl al-ʿahd*)[82] who embraced Islam, then her husband embraced Islam during the waiting period—does she remain his wife? He said: No—unless she chooses that, by a new marriage contract and dower.

Mujāhid said: If he embraces Islam during the waiting period, he marries her.

Al-Ḥasan and Qatādah said regarding two Magians who embraced Islam: they remain upon their marriage; but if one precedes the other and the other refuses, she is separated, and he has no claim over her.[83]

Ibn Ḥajar al-ʿAsqalānī said: As for the report from al-Ḥasan, Ibn Abī Shaybah connected it with a sound chain from him with the wording, "If one of them embraces Islam before the other, then what was between them of marriage has been severed."

And via another sound chain from him with the wording: "She has become separated from him."

As for the report from Qatādah, Ibn Abī Shaybah likewise connected it with a sound chain from him with the phrasing, "If one of them precedes the other with Islam, then he has no claim over her except by a proposal."

He also transmitted from ʿIkrimah, and the letter of ʿUmar ibn ʿAbd al-ʿAzīz, a similar point.[84]

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[80] Saʿīd b. Manṣūr, *Sunan Saʿīd b. Manṣūr* (2/71), report no. 1975, ed. Ḥabīb al-Raḥmān al-Aʿẓamī, al-Dār al-Salafiyyah (India), 1st ed., 1982.

[81] Ibn Ḥajar al-ʿAsqalānī, *Fatḥ al-Bārī* (9/421), indexing by Muḥammad Fuʾād ʿAbd al-Bāqī, al-Maktabah al-Salafiyyah (Egypt), 1st ed., 1390 AH.

[82] Tr: Non-Muslims who live under a binding covenant (*ʿahd*) with the Muslim authority, granting them security of life, property, and religious practice in exchange for compliance with the terms of that covenant. Classically, this category includes:

- ***Ahl al-dhimmah*** – permanent residents under Muslim rule paying jizyah
- ***Ahl al-hudnah*** – groups under a truce or peace treaty
- ***Musta'minūn*** – foreigners granted temporary safe-conduct

All are **legally inviolable** while the covenant remains in force.

[83] *Ṣaḥīḥ al-Bukhārī* (5/2025).

[84] Ibn Ḥajar al-ʿAsqalānī, *Fatḥ al-Bārī*, previous reference (9/421).

Second report: Saʿīd narrated to us; [he said:] Hushaym narrated to us; I was informed by Yūnus and Manṣūr, from al-Ḥasan, that he said: "They are separated."[85]

Third report: In the *Muṣannaf* of Ibn Abī Shaybah it states: Yazīd narrated to us, from Ḥabīb, from ʿAmr ibn Harm, from Jābir ibn Zayd. He was asked about a [non-Muslim] man who was married to a Christian woman; she embraced Islam and her husband refused to embrace Islam. He said: "I hold that they should be separated. If he had consummated with her, then she is entitled to the full dower; and if he had not consummated with her, she returns to him what he had given her."[86]

Fourth report: ʿAbd al-Razzāq narrated from Ibn Jurayj, who said: Ibn Shihāb used to say: "Her husband is given a choice if she embraces Islam before him: if he embraces Islam, she is his wife; otherwise Islam separates between them."

He said: and ʿUmar ibn ʿAbd al-ʿAzīz wrote:

"If she embraces Islam before him, Islam removes her from him, just as a slave woman is removed from a slave man if she is emancipated before him."[87]

Fifth report: He also narrated from Ibn al-Taymī, from his father, from al-Ḥasan and ʿUmar ibn ʿAbd al-ʿAzīz concerning a Christian woman who embraces Islam while her husband is Christian, they said: "Islam divorced her from him."[88]

Sixth report: Imām Mālik narrated in *al-Muwaṭṭaʾ* from Ibn Shihāb that he said:

"It has not reached us that any woman emigrated to God and to His Messenger ﷺ while her husband was a disbeliever residing in the abode of disbelief, except that her emigration separated between her and her husband—unless her husband came as [a converted, Muslim] emigrant before her waiting period ended."[89]

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[85] Saʿīd b. Manṣūr, *Sunan Saʿīd b. Manṣūr* (2/71), report no. 1976, ed. Ḥabīb al-Raḥmān al-Aʿẓamī, al-Dār al-Salafiyyah (India), 1st ed., 1982.

[86] Ibn Abī Shaybah, *al-Muṣannaf* (4/35), report no. 17519, ed. Kamāl Yūsuf al-Ḥūt, publishers: Dār al-Tāj (Lebanon), Maktabat al-Rushd (Riyadh), Maktabat al-ʿUlūm wa-l-Ḥikam (Madinah), 1st ed., 1989.

[87] ʿAbd al-Razzāq al-Ṣanʿānī, *Muṣannaf ʿAbd al-Razzāq* (6/180), report no. 13539, ed. Markaz al-Buḥūth wa-Taqniyat al-Maʿlūmāt, Dār al-Taʾṣīl, 2nd ed., 2013. Tr: This statement is a **juristic analogy (*qiyās*)** used in classical **fiqh** to explain **how a change in legal status can dissolve a marriage** even without divorce. In classical law two slaves may be married. However, if the **woman is freed** but the **man remains a slave** their **legal statuses become unequal**. Thus, the marriage is **dissolved unless she chooses to continue it**. Her **new status (freedom)** gives her **legal independence** incompatible with the former bond. Both cases rest on the same rule:
A marriage contract depends on the continued compatibility of legal status. When that status changes fundamentally, the contract no longer holds.

[88] ʿAbd al-Razzāq al-Ṣanʿānī, *Muṣannaf ʿAbd al-Razzāq* (7/131), report no. 13540, ed. Markaz al-Buḥūth wa-Taqniyat al-Maʿlūmāt, Dār al-Taʾṣīl, 2nd ed., 2013.

[89] Mālik b. Anas, *al-Muwaṭṭaʾ* (narration of Abū Muṣʿab al-Zuhrī) (1/597), report no. 1550, ed. Bashshār ʿAwwād Maʿrūf & Maḥmūd Muḥammad Khalīl, Muʾassasat al-Risālah (Beirut), 1st ed., 1412 AH / 1991.

Seventh report: Ibn Abī Shaybah narrated: Abū Bakr narrated to us; [he said:] ʿAbdah ibn Sulaymān narrated to us, from Saʿīd, from Qatādah, from Mujāhid, who said: "If he embraces Islam while she is in her waiting period, then she is his wife."[90]

Response to the Report That the Prophet ﷺ Returned His Daughter Zaynab to Abū al-ʿĀṣ

Abū Bakr al-Rāzī al-Jaṣṣāṣ said in *Aḥkām al-Qurʾān*:

> If the opponent argues against us with what Yūnus narrated from Muḥammad ibn Isḥāq, from Dāwūd ibn al-Ḥuṣayn, from ʿIkrimah, from Ibn ʿAbbās—that the Prophet ﷺ returned his daughter Zaynab to Abū al-ʿĀṣ ibn al-Rabīʿ upon the first marriage contract after six years, when Zaynab had migrated to Madinah while her husband remained a polytheist in Mecca, and then he returned her to him upon the first marriage [i.e. demonstrating that their marriage was not dissolved]—then it is said: this report cannot be used as proof by the opponent for several reasons.
>
> **First:** He said, *"He returned her after six years upon the first marriage contract."* There is no disagreement among the jurists that she is not returned to him upon the original contract after the completion of three menstrual cycles. It is well known that, in the normal course of events, a woman would not fail to menstruate three cycles over six years. Thus, the opponent's reliance upon this report fails from this angle [alone].
>
> **Second:** What Khālid narrated from ʿIkrimah from Ibn ʿAbbās regarding a Jewish woman who embraces Islam before her husband—that she has full authority over herself—indicates that Ibn ʿAbbās (may God be pleased with them both) held that separation occurs by her embracing Islam. It is inconceivable that he would contradict the Prophet ﷺ in something he himself narrated from him. The scholars have said: when a narrator acts contrary to what he narrated, this indicates that the ruling has been abrogated, for it is not presumed that he knowingly opposed the Messenger of God ﷺ.[91]
>
> **Third:** ʿAmr ibn Shuʿayb narrated from his father, from his grandfather, that the Prophet ﷺ returned his daughter Zaynab to Abū al-ʿĀṣ with a **second marriage contract**. This conflicts with the narration of Dāwūd ibn al-Ḥuṣayn and is preferable. For even if the report of Ibn ʿAbbās were authentic, it merely conveys information that she was his wife after he embraced Islam, without knowledge of a second contract; whereas the report of ʿAmr ibn Shuʿayb conveys information about the occurrence of a new contract after his Islam. The latter is preferable, because the first

[90] *Muṣannaf Ibn Abī Shaybah* (4/107, ed. al-Ḥūt), report no. 18318.
[91] *Tafsīr al-Māturīdī* (= *Taʾwīlāt Ahl al-Sunnah*) (9/622).

> reports an apparent state of affairs, while the second reports a newly occurring legal act known to the narrator.[92]

Al-Tirmidhī transmits from Yazīd ibn Hārūn his statement: "The ḥadīth of Ibn ʿAbbās is better in its chain, but practice is upon the ḥadīth of ʿAmr ibn Shuʿayb."[93]

Ibn ʿAbd al-Barr said:

> The story of Abū al-ʿĀṣ must entail one of two possibilities: either Abū al-ʿĀṣ was a disbeliever or he was a Muslim. If he was a disbeliever—and this is certain—then this occurred before the revelation of the obligations and the Islamic rulings concerning marriage, for the Qurʾān, the Sunnah, and consensus establish the prohibition of the private parts of Muslim women to disbelievers. If he was a Muslim, then either Zaynab was pregnant and her pregnancy continued until her husband embraced Islam, in which case the Messenger of God ﷺ returned him to her during her waiting period—yet no report has been transmitted to this effect—or her waiting period had ended, in which case this too would be abrogated by consensus, because the scholars have unanimously agreed that he has no claim over her after the waiting period. So how could this be? Thus, the report of Ibn ʿAbbās regarding the return of Abū al-ʿĀṣ to Zaynab, the daughter of the Messenger of God ﷺ, is a discarded report that may not be acted upon according to all. There is therefore no need to rely upon it.
>
> It is also possible that the phrase "upon the first marriage" means: upon the like of the first marriage with respect to the dower. For it has been narrated by ʿAmr ibn Shuʿayb, from his father, from his grandfather, that the Prophet ﷺ returned Zaynab to Abū al-ʿĀṣ with a new marriage. Al-Shaʿbī likewise states—based on his knowledge of the military campaigns—that the Messenger of God ﷺ did not return Abū al-ʿĀṣ to his daughter Zaynab except with a new marriage contract. This is supported by the foundational principles of sacred law.[94]

Among what Ibn ʿAbd al-Barr stated—transmitting it from a group of scholars—is that the report of Ibn ʿAbbās, even if authentic, is **discarded and abrogated by consensus**, because they do not allow his return to her after the completion of her waiting period. Moreover, the Islam of Zaynab occurred before the revelation of many of the obligatory rulings. It is narrated from Qatādah that this took place before the revelation of Sūrat al-Barāʾah, which severed covenants between the Muslims and the polytheists. Al-Zuhrī said: this occurred before the obligations were revealed. He said:

> Among what indicates that the story of Abū al-ʿĀṣ is abrogated is His statement, Most High: *"O you who believe, when believing women come to you as emigrants, examine them... do not return them to the disbelievers; they are not lawful for them, nor are*

[92] al-Jaṣṣāṣ, *Aḥkām al-Qurʾān* (3/587).
[93] *Sunan al-Tirmidhī* (2/614).
[94] Ibn ʿAbd al-Barr, *al-Tamhīd* (7/402).

> *they lawful for them... and do not hold to the bonds of disbelieving women"* [Q. 60:10]. And the consensus of the scholars that Abū al-ʿĀṣ ibn al-Rabīʿ was a disbeliever, and that it is not lawful for a Muslim woman to be the wife of a disbeliever. God, Mighty and Majestic, said: "And God will never grant the disbelievers a way over the believers." And the Messenger of God ﷺ said to the spouses involved in mutual imprecation: "You have no claim over her."[95]

Abū al-Walīd al-Bājī said in *al-Muntaqā*: "Even if what is narrated from ʿIkrimah, from Ibn ʿAbbās—that he returned her to him upon the first marriage—were established, it could be interpreted as meaning upon the like of the first dower."[96]

It has also been narrated from Ibrāhīm al-Nakhaʿī regarding a Christian man with a Christian wife who embraced Islam while he refused; he said she may remain with him. Abū Jaʿfar al-Ṭaḥāwī al-Ḥanafī said: "This is an anomalous position, with no one concurring with him."[97]

However, there is another narration from Ibrāhīm that is clearer. Muḥammad ibn al-Ḥasan al-Shaybānī narrated: Abū Ḥanīfah informed us, from Ḥammād, from Ibrāhīm, who said:

> If they are Jews or Christians and the husband embraces Islam, then they remain upon their marriage whether the wife embraces Islam or not. If the wife embraces Islam, Islam is presented to the husband; if he embraces Islam, he retains her upon the original marriage; if he refuses, they are separated. If they are Magians and one of them embraces Islam, Islam is presented to the other; if he embraces Islam, they remain upon their original marriage; if he refuses, they are separated.[98]

Muḥammad ibn al-Ḥasan also said in his *Muwaṭṭaʾ*:

> If the woman embraces Islam while her husband is a disbeliever in the Abode of Islam, they are not separated until Islam is presented to the husband. If he embraces Islam, she remains his wife; if he refuses, they are separated, and their separation is an irrevocable divorce (*taṭlīqah bāʾinah*). This is the position of Abū Ḥanīfah and Ibrāhīm al-Nakhaʿī.[99]

Shaykh al-Nājī Lamīn said:

> This wording is detailed, and its chain is as clear as the sun at midday. Muḥammad ibn al-Ḥasan narrated it from his shaykh Abū Ḥanīfah—his second foremost student; Abū Ḥanīfah narrated it from his shaykh Ḥammād, who was the most knowledgeable of

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[95] Ibn ʿAbd al-Barr, *al-Tamhīd* (7/400).
[96] al-Bājī, *al-Muntaqā Sharḥ al-Muwaṭṭaʾ* (3/345), published by Maṭbaʿat al-Saʿādah (Egypt), 1st ed., 1332 AH.
[97] al-Ṭaḥāwī (abridged by al-Jaṣṣāṣ), *Ikhtilāf al-ʿUlamāʾ li-l-Ṭaḥāwī* (2/338), ed. ʿAbd Allāh Nadhīr Aḥmad, Dār al-Bashāʾir al-Islāmiyyah (Beirut), 2nd ed., 1417 AH.
[98] al-Shaybānī, *al-Ḥujjah ʿalā Ahl al-Madīnah* (4/17), ed. al-Sayyid Mahdī Ḥasan al-Kīlānī al-Qādirī, ʿĀlam al-Kutub (Beirut), 3rd ed., 1403 AH.
[99] *Muwaṭṭaʾ Mālik* (narration of Muḥammad b. al-Ḥasan al-Shaybānī) (p. 205), ed. ʿAbd al-Wahhāb ʿAbd al-Laṭīf, al-Maktabah al-ʿIlmiyyah.

people concerning him; and Ḥammād narrated it from his shaykh Ibrāhīm, the inheritor of his knowledge. This example of differing wordings attributed to Ibrāhīm al-Nakhaʿī demonstrates the unreliability of relying absolutely upon unrefined and unrestricted reports from the early generations, and the necessity of returning to what is narrated by scholars knowledgeable in juristic disagreements, the imams of the four schools, and adhering to the decisive texts and established legal principles.

It is firmly established in the texts that a Muslim woman may not be married to a non-Muslim, and it is established in the legal principles that a disbeliever has no authority over a Muslim woman, no guardianship over her, no right to her obedience, and no right to sexual access. The conclusion, therefore, is that **if the wife embraces Islam, she does not remain under her disbelieving husband if he does not embrace Islam—whether he is from the People of the Book or otherwise**. This is a matter of agreement. The disagreement among scholars concerns only the **period** the wife may wait for her husband to embrace Islam, i.e., whether the marital bond is severed immediately upon her Islam, or whether she may wait—if she so chooses—until he embraces Islam; and what the duration of that waiting period is, such that if he does not embrace Islam the contract is dissolved.

However, **all are agreed** that he may not be granted access to her during the waiting period, and **all are agreed** that he may not take her out of the lands of the Muslims even if he does not approach her. In brief, there are **two consensuses** among all scholars in this matter:

1. **If both spouses embrace Islam together, they remain upon their original marriage.**
2. **If the wife embraces Islam, the husband is not permitted access to her unless he embraces Islam.**[100]

Clarifying the Position of the Commander of the Believers ʿAlī ibn Abī Ṭālib, God be well-pleased with him

Ibn Abī Shaybah narrated:

Abū Bakr narrated to us; [he said:] Muḥammad ibn Fuḍayl narrated to us, from Muṭarrif, from ʿĀmir, from ʿAlī God be well-pleased with him that he said:
"If a Christian woman—the wife of a Jewish man, or [the wife] of a Christian—embraces Islam, then he has the stronger right to sexual access (*buḍʿ*) because he has a covenant."

He also narrated: Abū Bakr narrated to us; [he said:] Wakīʿ narrated to us, from Hishām and Shuʿbah, from Qatādah, from Saʿīd ibn al-Musayyib, from ʿAlī that he said:

[100] al-Nājī Lamīn, *Lā Jadīd fī Ḥukm Baqāʾ al-Muslimah...* Manuscript.

"He has the stronger right to her so long as they remain in the Abode of Emigration (*Dār al-Hijrah*)."[101]

Some contemporary writers have argued from these reports that it is permissible for a woman who embraces Islam to remain under the marital bond of her disbelieving husband, and that her Islam has no effect on their marital relationship. Is this inference sound?

The response is that the report narrated by Ibn Abī Shaybah is to be read under the **very headings** he placed it beneath. The report appears in the Book of Divorce under a major heading reading: "What they said regarding the woman who embraces Islam before her husband."[102]

He then listed three subsidiary headings. The first he titled: **"Those who said: separation occurs between them."** Then he titled the second: **"Those who said: if she embraces Islam and he does not embrace Islam, she is not removed from him,"** and under this he transmitted the report of our master ʿAlī and others. The meaning of *"and he does not embrace Islam"* is: **he does not embrace Islam immediately**, as indicated by the fact that Ibn Abī Shaybah then introduced a third heading: **"Those who said: if he refuses to embrace Islam, it is one irrevocable divorce,"** after which he introduced another major heading: **"What they said regarding: if he embraces Islam while she is in her waiting period,"** and under it he included a subheading: **"Those who said: he has the stronger right to her."**

What further clarifies this is that ʿAbd al-Razzāq narrated the report of our master ʿAlī under the heading: "Two Christians: the woman embraces Islam before the man."[103] With this explicit heading in [Musnad] ʿAbd al-Razzāq, the ambiguity is removed.[104]

The upshot of what is reported from our master ʿAlī, God be pleased with him, is: if the spouses are in the Abode of Islam and the wife embraces Islam, then she remains his wife **until** Islam is presented to him. If Islam is presented to him and he refuses, the judge separates them. If the wife embraces Islam and then the husband joins the Abode of War, she becomes separated from him. Likewise, if they are in the Abode of War[105] and the woman embraces Islam and then exits to the Abode of Islam,[106] she becomes separated from him by the separation of the two abodes. If she embraces Islam while both are in the Abode of War and neither of them exits (or one of them) to the Abode of Islam, then he has the stronger right to her **if he embraces Islam before her waiting period ends**; but if her waiting period

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[101] Ibn Abī Shaybah, *al-Muṣannaf* (4/106), first report no. 18307 and second report no. 18308, ed. Kamāl Yūsuf al-Ḥūt, 1st ed., 1989. Tr: **Abode of Emigration (*Dār al-Hijrah*)** is a **land to which Muslims migrate in order to preserve their religion and practice Islam freely when this is not possible in their place of residence.**

[102] *Muṣannaf Ibn Abī Shaybah*, previous reference (4/105).

[103] ʿAbd al-Razzāq, *Muṣannaf ʿAbd al-Razzāq* (6/180), ed. Dār al-Taʾṣīl, 2nd ed., 2013.

[104] al-Nājī Lamīn, *Lā Jadīd fī Ḥukm Baqāʾ al-Muslimah...* Manuscript.

[105] A land not under Muslim authority and not bound by a covenant with Muslims, where Islamic law is not operative and Muslims do not enjoy legal protection as Muslims.

[106] A land in which Islamic law is dominant, and Muslims enjoy security for their lives, property, and religious practice.

ends, then he has no claim over her. This is the position of the proponents of legal reasoning [i.e., the Ḥanafī school] (*aṣḥāb al-raʾy*).[107]

This is how the Ḥanafīs—who transmitted the report of Imām ʿAlī, God be pleased with him, and adopted his fiqh—understood it, and al-Sarakhsī stated explicitly in *al-Mabsūṭ* that consummated marriage is strongly confirmed and does not fall away merely through difference of religion until something further that effects separation is added—namely, the completion of the waiting period.[108]

Thus, the matter is not as some contemporaries have understood—or wished to understand. Rather, the madhhab of Imām ʿAlī, God be pleased with him, is **restricted by the waiting period**, and the understanding of those whose practical chain is connected to the Imām is more deserving of consideration than late, disconnected readings appearing more than fourteen centuries later—especially when those readings conflict with Qurʾān, Sunnah, the consensus of the Ummah, and what has become established in Muslim practice in fatwā and adjudication. Moreover, the Ḥanafī school is the school that took particular care to gather the fatwās and judicial rulings of Imām ʿAlī, God be pleased with him, and its legal foundations were built upon his fiqh and the fiqh of ʿAbd Allāh ibn Masʿūd, God be pleased with them, making it a continuous practical extension.

Even if we grant that the text narrated from Imām ʿAlī, God be pleased with him, in this issue could bear multiple meanings, then his intent cannot be determined properly except through contextual indicators—not from the ambiguous wording alone. Among the strongest indicators that fixes the intended meaning is the inherited practice traced back to the Imām, recorded by his followers among the jurists and maintained in fatwā and adjudication generation after generation.

Clarifying the Position of the Commander of the Believers ʿUmar ibn al-Khaṭṭāb, God be pleased with him

Some contemporaries have cited reports attributed to our master ʿUmar, God be pleased with him, in which the woman who embraced Islam is given a choice to remain with her disbelieving husband. Is their inference sound?

ʿAbd al-Razzāq narrated, from Maʿmar, from Ayyūb, from Ibn Sīrīn, from ʿAbd Allāh ibn Yazīd al-Khaṭmī, who said: "A woman from the people of al-Ḥīrah embraced Islam, while her husband did not embrace Islam. So ʿUmar ibn al-Khaṭṭāb wrote concerning her: 'Give her the choice: if she wishes, she separates from him; and if she wishes, she remains with him.'"[109]

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[107] Ibn al-Mundhir, *al-Ishrāf ʿalā Madhāhib al-ʿUlamāʾ* (5/250), ed. Ṣaghīr Aḥmad al-Anṣārī (Abū Ḥammād), Maktabat Makkah al-Thaqāfiyyah (Ras al-Khaimah, UAE), 1st ed., 2004.

[108] al-Sarakhsī, *al-Mabsūṭ* (5/45), printed at Maṭbaʿat al-Saʿādah (Egypt), reproduced by Dār al-Maʿrifah (Beirut).

[109] ʿAbd al-Razzāq, *Muṣannaf ʿAbd al-Razzāq* (6/180), report no. 10926, ed. Dār al-Taʾṣīl, 2nd ed., 2013.

Ibn Abī Shaybah narrated: Abū Bakr narrated to us; [he said:] Wakīʿ narrated to us, from Yazīd, from Ibn Sīrīn, from ʿAbd Allāh ibn Yazīd al-Khaṭmī: "That ʿUmar wrote that they be given a choice."[110]

Shaykh al-Nājī Lamīn's Response

Shaykh al-Nājī Lamīn said in response to their inference: What is mentioned from ʿUmar ibn al-Khaṭṭāb in Ibn Abī Shaybah and in the *Muṣannaf* of ʿAbd al-Razzāq is governed by the headings under which it was placed. It appears in the *Muṣannaf* of ʿAbd al-Razzāq under the heading: **"Two Christians: the woman embraces Islam before the man,"** and the meaning of this is that the husband's Islam is still required.[111]

Ibn al-Qayyim explained the position of our master ʿUmar, God be pleased with him, saying:

> "It is known by necessity that he only gave her a choice between waiting for him until he embraces Islam—so that she remains his wife as she was—or leaving him. It is also authentically reported from him that a Christian man whose wife embraced Islam was told by ʿUmar, may God be pleased with him: 'If he embraces Islam, she is his wife; and if he does not embrace Islam, they are separated.' He did not embrace Islam, so he separated them. Likewise, he said to ʿUbādah ibn al-Nuʿmān al-Taghlibī, whose wife had embraced Islam: 'Either you embrace Islam, or I will remove her from you.' He refused, so he removed her from him."[112]

ʿAbd al-Razzāq also narrated that he said: al-Thawrī informed us, from Sulaymān al-Shaybānī, who said: "The son of the woman whom ʿUmar separated [from her husband] informed me: ʿUmar presented Islam to him, and he refused, so he separated them."[113]

Even if we suppose that some reports from ʿUmar appear to differ from others, then there is no reason to cling to one over another, because separation from him is authentic and well-established. Saʿīd ibn Manṣūr narrated in his *Sunan* from Khālid ibn ʿAbd Allāh, from al-Shaybānī, from al-Saffāḥ, from Dāwūd ibn Kurdūs, that a woman from Banū Tamīm was married to a man from Banū Taghlib, and she embraced Islam. ʿUmar said: "Either you embrace Islam, or we will remove her from you." He said: "I do not want the Arabs to say that I embraced Islam for sexual access to a woman," so ʿUmar removed her from him.[114]

Ibn Abī Shaybah narrated:

> Abū Bakr narrated to us; [he said:] ʿAbbād ibn al-ʿAwwām narrated to us, from al-Shaybānī, from Yazīd ibn ʿAlqamah: that a man from Banū Taghlib, called ʿUbād ibn al-Nuʿmān, had under him a woman from Banū Tamīm who embraced Islam. ʿUmar

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[110] Ibn Abī Shaybah, *al-Muṣannaf* (4/106), report no. 18309, ed. Kamāl Yūsuf al-Ḥūt, 1st ed., 1989.
[111] al-Nājī Lamīn, *Lā Jadīd...* (p. 87), manuscript.
[112] Ibn al-Qayyim, *Aḥkām Ahl al-Dhimmah* (ʿAṭāyāt al-ʿIlm ed.) (5/193).
[113] ʿAbd al-Razzāq, *Muṣannaf ʿAbd al-Razzāq* (6/180), report no. 10924, ed. Dār al-Taʾṣīl, 2nd ed., 2013.
[114] Saʿīd b. Manṣūr, *Sunan Saʿīd b. Manṣūr* (2/71), report no. 1974, ed. Ḥabīb al-Raḥmān al-Aʿẓamī, 1st ed., 1982.

summoned him and said: "Either you embrace Islam, or I will remove her from you." He refused to embrace Islam, so ʿUmar removed her from him.[115]

This view is famous and well-known from ʿUmar, God be pleased with him. It accords with consensus and with established practice—so how could one abandon it for something merely ambiguous?

Clarifying the Position of Ibn Taymiyyah and Ibn al-Qayyim, and the Adoption of Their View by Some Contemporaries

Ibn al-Qayyim and his shaykh held the view that if a woman embraces Islam while her husband refuses Islam, then if she wishes she may separate from him, and if she wishes she may remain with him. He then said: *this does not mean that she remains under him while he is a Christian*; rather she waits and remains in expectation, and whenever he embraces Islam, she is his wife—even if she remained in waiting for years.[116]

Ibn al-Qayyim also said, after mentioning opinions from which it might be understood that a Muslim woman remains under her disbelieving husband: *what they intend is that the marital bond remains*, so she is entitled to maintenance and housing, **but he has no access to intercourse with her**.[117]

This view is regarded as abandoned among the scholars and contrary to consensus, because they hold that the end point is the completion of the waiting period (*ʿiddah*), as mentioned earlier. Even so, this view—despite contradicting consensus—is less consequential than what some contemporaries have chosen, namely affirming the continuation of full marital life between them; because those proponents did **not** permit her to live with him as a spouse, and they did not contradict the categorical consensus nor the explicit statement of the Prophet ﷺ to Zaynab, God be pleased with her: *"O my daughter, honour his lodging, but do not allow him access to you, for you are not lawful for him."* As for our contemporaries who relied on what is transmitted from Ibn Taymiyyah and Ibn al-Qayyim (and other statements that might be read as allowing the Muslim woman to remain under the disbelieving husband): did they adhere to those restrictions—prohibiting intercourse and deeming it unlawful—or did they take only one side of it and combine "continuing marriage" with "permitted intercourse" together? Unfortunately, they violated consensus and contradicted explicit Qurʾān and Sunnah texts.

Conclusion

1. Among the defects of anti-madhhabism is relying on unrefined, unrestricted wordings transmitted from some Companions and Successors whenever they align with what one

[115] Ibn Abī Shaybah, *al-Muṣannaf* (4/106), report no. 18303, ed. Kamāl Yūsuf al-Ḥūt, 1st ed., 1989.
[116] *Aḥkām Ahl al-Dhimmah* (1/440).
[117] *Aḥkām Ahl al-Dhimmah* (1/440).

wants, while not returning—when interpreting them—to the scholars who transmitted these wordings, and not adhering to clear legal texts, established legal principles, and the consensus of the overwhelming majority of scholars. The revealed texts establish the prohibition of marrying a Muslim woman to a non-Muslim absolutely, and the legal principles establish that no disbeliever has authority over a Muslim woman, nor guardianship, nor headship, nor any right to her obedience, nor ownership of her sexual access. A categorical consensus has formed upon this, known to the generality of Muslims throughout history.[118]

2. The claim that allowing a Muslim woman to remain under a non-Muslim husband prevents the children from homelessness and loss is an illusory interest, because in the West the state cares for children and protects them even from their own parents. And how can remaining under a non-Muslim husband be an "interest" for her and the children when the husband places wine and pork on the table morning and evening? Is it permissible for a Muslim to sit at a table with wine and pork morning and evening? What "interest" is this? Without doubt it is a modernist interest, not a shariah countenanced one. The shariah countenanced interest for the wife and children lies in texts such as: *"Protect yourselves and your families from a Fire..."*; and *"Command your family to prayer..."*; and the Prophet's ﷺ instruction to his stepson ʿUmar ibn Abī Salamah; and his ﷺ command regarding commanding children to prayer and separating them, when older, in their bed [so as to prevent illicit touching].[119]

3. The conclusion of this study states: if the wife embraces Islam, she does not remain under her disbelieving husband if he does not embrace Islam—whether he is from the People of the Book or otherwise. This is agreed upon. The only disagreement concerns the period she may wait for him: does the bond end immediately upon her Islam, or may she wait if she wishes—and what is the length of that waiting such that if he does not embrace Islam the contract is dissolved? However, all agree that he may not be granted access to her during the waiting period. And all agree that separation occurs because the rulings of Islam affect the marriage, but they differed about its timing.[120]

4. After Imām Fakhr al-Dīn al-Rāzī established that the believing woman may not be married to a disbeliever at all—regardless of the type of disbelief—he made a precise remark about human psychology while commenting on His statement, Most High: *"Those call to the Fire..."* [Q. 2:221]. He said in paraphrase: marriage is a setting for intimacy, love, and affection, and that leads to agreement in aims and desires, and this can cause the Muslim to leave Islam out of compliance with the beloved. If it is said that affection is possible both ways—so the disbeliever might become Muslim as well—then why not permit it? He replied: the likelihood that the Muslim falls into disbelief is weightier, because if the disbeliever becomes Muslim that yields extra reward, whereas if the Muslim leaves Islam that yields tremendous

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[118] *Aḥkām Ahl al-Dhimmah* (1/441).

[119] al-Nājī Lamīn, *Lā Jadīd...* p. 97, manuscript (with slight adaptation).

[120] al-Ṭaḥāwī, *Sharḥ Maʿānī al-Āthār* (7/104); and Ibn al-Qaṭṭān, *al-Iqnāʿ fī Masāʾil al-Ijmāʿ* (2/33), ed. al-Ṣaʿīdī.

punishment; and when an act hovers between potential benefit and grave harm, avoiding harm is required—hence Allah gave precedence to prohibition.[121]

5. Shaykh Sayyid Quṭb, may God have mercy upon him, described the Islamic view of the marital bond and its effect on the soul, emphasizing that marriage is the deepest and most enduring human pledge, requiring unity of hearts—and that unity depends on unity in the deepest inhabitant of the soul: one's creed. Thus, it is forbidden for a Muslim to marry a polytheist woman, and it is forbidden for a polytheist man to marry a Muslim woman, because the bond would be false and weak, not established upon Allah and His way; rather, Islam aims to elevate this bond beyond mere instincts and desires. He further explained why the case of a Muslim woman marrying a man from the People of the Book is prohibited: children follow the father by Islamic law and the wife typically moves into the husband's social world; if a Muslim man marries a woman of the book (*kitābiyyah*), Islam remains dominant, whereas if a Muslim woman marries a man of the book (*kitābī*), she may be isolated and weakened, and her children are attributed to him and follow a religion other than her, whereas "Islam must always be dominant."[122]

And Allah knows best. May Allah send blessings and peace upon our master Muḥammad ﷺ, and upon his family and companions, all of them.

[121] *Tafsīr al-Rāzī* (= *Mafātīḥ al-Ghayb*) (6/413).

[122] Sayyid Quṭb, *Fī Ẓilāl al-Qur'ān*, vol. 1, part 2, pp. 239–241 (Dār al-Shurūq, Cairo, 32nd ed., 2003) (with slight adaptation).

Fourth Problem: The Question of The Prohibition of Marriage Through Breastfeeding an Adult

In Chapter Five, *"**The Rights of Children In Sharaa** [sic]"*, section eight, it states:

> **Article 231:** Adoption, with the changing of a child's identity, is prohibited in the Sharia, but that does not contradict the social responsibility, in all its forms, that is entitled to the orphans and foundlings. This stands irrespective of their identity, and is considered one of the greatest acts of devotion to Allah. To remove the unease of having a foreign (foster) adolescent and adult mixing with the opposite gender members of the foster family, it may be prescribed here to let the foster mother feed the infant during the first two years of life. It may be also exceptionally permitted to feed them with her breastmilk after this age, considering the dire need that exists sometimes.[123]

Is nursing an adult maritally prohibitive in the same way that nursing an infant is? And is there truly "room for consideration" regarding nursing after the two-year period, or does it in fact have no valid consideration at all?

Introduction

In the Name of Allah, praise be to Allah, and prayers and peace upon the Messenger of Allah. To proceed:

Nursing that establishes prohibition is, in its origin, restricted to infants **within the first two years only**. We will now present the evidence for this from the Qurʾān, the Sunnah, and the legal opinions and schools of the scholars.

Evidence One: From the Qurʾān

Allah Most High says:

"Mothers shall breastfeed their children for two complete years, for whoever wishes to complete the nursing."
[Q. 2:233]

Al-Qurṭubī, God have mercy upon him, said in his Tafsīr:

[123] Document: AMJA Family Code (Arabic version). Online access: https://www.amjaonline.org/declaration-articles/the-assemblys-family-code-for-muslim-communities-in-north-america-ar

> Mālik—may Allah have mercy on him—and those who followed him, along with a group of scholars, derived from this verse that **the nursing which establishes prohibition equivalent to lineage is only that which occurs within the two years**, because once the two years end, nursing is complete, and **nursing after the two years is not legally effective [to render the one nursed a "child" of the wetnurse]**.[124]

Imām al-Shāfiʿī said in *al-Umm*: "The mark distinguishing between the infant and the adult is found in the Book of Allah. Allah said: *'Mothers shall breastfeed their children for two complete years for whoever wishes to complete the nursing.'* Thus, Allah made the conclusion of nursing two full years."[125]

Ibn Baṭṭāl said in his commentary on Ṣaḥīḥ al-Bukhārī:

> The proof of the majority is His saying: *'Mothers shall breastfeed their children for two complete years'*, for Allah informed that the completion of nursing is two years. It is therefore known that what occurs after two years is not nursing, because had it been nursing, completion would not be at two years.[126]

Evidence Two: From the Sunnah and the Understanding of al-Bukhārī

Imām al-Bukhārī, God have mercy upon him, had a chapter in the Book of Marriage entitled: "Chapter: Those who say there is no nursing after two years, due to His saying: 'two complete years for whoever wishes to complete the nursing.'"

He then cited the ḥadīth of ʿĀʾishah, God be pleased with her: *"Nursing is only from hunger."* It is well known that Imām al-Bukhārī's jurisprudence appears in his chapter headings—hence the saying among scholars that **"the fiqh of al-Bukhārī lies in his chapter headings."**

He narrated:

> Abū al-Walīd narrated to us, Shuʿbah narrated to us, from al-Ashʿath, from his father, from Masrūq, from ʿĀʾishah, God be pleased with her: "The Prophet ﷺ entered upon her while a man was with her, and his face seemed to change, as though he disliked that. She said: 'He is my brother.' He said: **'Consider who your brothers are, for nursing is only from hunger [i.e., for essential nutrition].'"** [127]

Al-Baghawī said: "This ḥadīth is agreed upon as authentic *".*[128]

Ibn al-Athīr said: "Meaning: that which causes marital prohibition through nursing is only that which nurses from hunger—i.e., the infant. Meaning that **if an adult nurses from a**

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[124] *Tafsīr al-Qurṭubī* (3/162).
[125] *Tafsīr Ibn Kathīr* (1/633) (with slight adaptation).
[126] *Sharḥ Ṣaḥīḥ al-Bukhārī* by Ibn Baṭṭāl (7/197).
[127] *Ṣaḥīḥ al-Bukhārī* (5/1961); also narrated by Muslim (2/1078) and others (al-Ṭayālisī, Ibn Abī Shaybah, Saʿīd b. Manṣūr, Isḥāq b. Rāhawayh, Aḥmad, al-Dārimī, Ibn Mājah, Abū Dāwūd, al-Nasāʾī).
[128] *Sharḥ al-Sunnah* by al-Baghawī (9/83).

woman, that nursing does not make him prohibited to her in marriage, because he did not nurse due to hunger."[129]

Ibn Ḥajar al-ʿAsqalānī said:

> His statement 'from hunger' means that the nursing by which prohibition is established, and by which seclusion becomes lawful, is when the nursling is an infant whose hunger is satisfied by milk—because his stomach is weak and milk suffices him and causes his flesh to grow, such that he becomes like a part of the nursing woman. Thus, it is as if he said: there is no legally effective nursing except that which satisfies hunger.[130]

Al-ʿAdawī al-Mālikī said: "The one who nurses from hunger is the infant. Meaning that **if an adult nurses from a woman, that nursing does not prohibit her**, because he did not nurse from hunger."[131]

Ibn Baṭṭāl said in his commentary on Ṣaḥīḥ al-Bukhārī: "This meaning does not occur in the nursing of an adult, and the Prophet's ﷺ statement 'nursing is from hunger' is decisive in cutting off disagreement regarding this matter."[132]

Evidence Three: Explicit Reports Limiting Nursing to Two Years

Imām al-Dāraquṭnī narrated:

> Al-Ḥusayn ibn Ismāʿīl and Ibrāhīm ibn Dubays ibn Aḥmad and others narrated to us, they said: Abū al-Walīd ibn Bard al-Anṭākī narrated to us, al-Haytham ibn Jamīl narrated to us, Sufyān narrated to us, from ʿAmr ibn Dīnār, from Ibn ʿAbbās, that the Messenger of Allah ﷺ said: **"There is no nursing except what occurs within the two years."**

Al-Dāraquṭnī added: No one connected this narration back to Ibn ʿUyaynah except al-Haytham ibn Jamīl, and he is trustworthy and reliable.[133]

Ibn Kathīr said: "Mālik narrated it in *al-Muwaṭṭaʾ* from Thawr ibn Zayd from Ibn ʿAbbās as a *mawqūf* report.[134] Al-Darāwardī narrated it from Thawr, from ʿIkrimah, from Ibn ʿAbbās and added: *'And whatever is after two years is immaterial.'"*[135]

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[129] *al-Nihāyah fī Gharīb al-Ḥadīth wa-l-Athar* (1/316).
[130] *Fatḥ al-Bārī* by Ibn Ḥajar (9/148, al-Salafiyyah ed.).
[131] *Ḥāshiyat al-ʿAdawī ʿalā Kifāyat al-Ṭālib al-Rabbānī* (2/116).
[132] *Sharḥ Ṣaḥīḥ al-Bukhārī* by Ibn Baṭṭāl (7/197).
[133] *Sunan al-Dāraqutnī* (5/307), ḥadīth no. 4364.
[134] Tr: A narration whose chain stops at a Companion (*Ṣaḥābī*) and is not attributed to the Prophet ﷺ.
[135] *Tafsīr Ibn Kathīr* (ʿIlmiyyah ed.) (1/478).

Saʿīd ibn Manṣūr narrated in his *Sunan* from Ibn ʿAbbās: "Whatever occurs within the two years causes prohibition—even a single suckle—and whatever occurs after two years is immaterial."[136]

Al-Bayhaqī narrated it from Ibn ʿAbbās and added: "And whatever is after two years is immaterial."[137]

Evidence Four: Explicit Prophetic Restriction to Before Weaning

Al-Tirmidhī narrated: Qutaybah narrated to us, Abū ʿAwānah narrated to us, from Hishām ibn ʿUrwah, from his father, from Fāṭimah bint al-Mundhir (the wife of Hishām ibn ʿUrwah), from Umm Salamah, God be pleased with her, who said: The Messenger of Allah ﷺ said: **"No nursing causes prohibition except when it is substantial enough to nourish the child [lit. "fills out" the intestines], and occurs before weaning."**[138]

Al-Tirmidhī added:

> This ḥadīth is ḥasan ṣaḥīḥ, and this is the position of the majority of the people of knowledge among the Companions of the Messenger of Allah ﷺ and others: that nursing does not cause prohibition except what occurs before two years; whatever occurs after two complete years does not prohibit anything.[139]

Ibn Mājah narrated: Ḥarmalah ibn Yaḥyā narrated to us, ʿAbd Allāh ibn Wahb narrated to us, he said Ibn Lahīʿah informed me from Abū al-Aswad from ʿUrwah from ʿAbd Allāh ibn al-Zubayr that the Messenger of Allah ﷺ said: **"There is no nursing except that which fills out the intestines."** Shaykh Shuʿayb said: "This chain is *ḥasan*;[140] ʿAbd Allāh ibn Wahb narrated from Ibn Lahīʿah before his books were burned."[141]

Evidence Five

It is narrated in the *Musnad* of Imām Aḥmad from Ibn Masʿūd (God be pleased with him) that the Messenger of Allah ﷺ said: **"No nursing causes prohibition except that which causes flesh to grow and bone to strengthen."**[142] Shaykh Shuʿayb al-Arnāʾūṭ said: "This ḥadīth is authentic due to its supporting narrations, although its chain is weak due to interruption."[143]

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[136] *Sunan Saʿīd b. Manṣūr* (1/278).
[137] *Maʿrifat al-Sunan wa-l-Āthār* (11/260).
[138] Reported by al-Tirmidhī, ḥadīth no. 1186; also by Ibn Ḥibbān (4224) and al-Ṭabarānī in *al-Awsaṭ* (7513). Shaykh Shuʿayb al-Arnaʾūṭ graded it authentic.
[139] *Sunan al-Tirmidhī* (3/13).
[140] A *ḥasan ḥadīth* is a sound report whose narrators are upright but slightly less precise than those of *ṣaḥīḥ ḥadīth.*
[141] *Musnad Aḥmad* (7/187, al-Risālah ed.).
[142] *Musnad Aḥmad*, ḥadīth no. 4114.
[143] *Musnad Aḥmad* (7/186, al-Risālah ed.).

Evidence Six

Abū Dāwūd al-Ṭayālisī narrated from Jābir that the Messenger of Allah ﷺ said: **"There is no nursing after weaning, and no orphanhood after puberty."**[144] This narration is also reported as a *mawqūf* statement from ʿAlī and Ibn ʿAbbās, may God be well pleased with them. The complete indication from this ḥadīth lies in understanding the following verses:

> *"And his weaning is in two years."* [Q. 31:14]
> *"And his gestation and weaning is thirty months."* [Q. 46:15][145]

Evidence Seven

ʿAbd al-Razzāq narrated with his chain a collection of reports under the chapter heading: **"There is no nursing after weaning"**, among them:

- From ʿAlī, may God be well pleased with him: "There is no nursing after weaning."
- From al-Zuhrī: that Ibn ʿUmar or Ibn ʿAbbās said: "There is no nursing after weaning — i.e., after two years."
- From ʿAmr ibn Dīnār: Ibn ʿAbbās said: There is no nursing after two years.
- From Ibn ʿUyaynah, from ʿAmr ibn Dīnār: Ibn ʿAbbās used to say: "There is no nursing except what occurs within the two years."
- From Maʿmar, from Ayyūb, from Nāfiʿ, from Ibn ʿUmar: "I know of no nursing except what occurs in infancy."
- From Mālik, from Nāfiʿ, from Ibn ʿUmar: "There is no nursing except for one who was nursed in infancy, and there is no nursing for an adult."
- From Mūsā ibn ʿUqbah, from Nāfiʿ: Ibn ʿUmar used to say: "We know of no nursing except what occurs in infancy."
- From Saʿīd ibn al-Musayyib: "There is no nursing except what occurs in the cradle."
- From al-Ḥasan, al-Zuhrī, and Qatādah: "There is no nursing after weaning."
- From Maʿmar, from one who heard ʿIkrimah say: "Nursing after weaning is like flowing water that is merely drunk."
- From Jābir ibn ʿAbd Allāh: A man came to ʿUmar ibn al-Khaṭṭāb, may God be well pleased with him, and said: "My wife nursed my slave-girl in order to make her forbidden to me."

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[144] *Musnad Abī Dāwūd al-Ṭayālisī* (3/322). Also reported by Ibn ʿAdī in *al-Kāmil*; he considered it defective due to Ḥarām, and it has been narrated from al-Shāfiʿī and Ibn Maʿīn that they said: "narrating from Ḥarām is ḥarām (impermissible)." al-Zaylaʿī, *Naṣb al-Rāyah* (3/219).
[145] *Tafsīr Ibn Kathīr* (1/633).

ʿUmar ordered **that the woman be flogged** and **that the man have intimate relations with his slave-girl despite the nursing.** The chain of this narration is authentic.

- From Maʿmar, from al-Zuhrī, from Sālim, from Ibn ʿUmar: A woman nursed her husband's slave-girl in order to make her forbidden to him. He went to ʿUmar and mentioned it to him. ʿUmar said: I adjure you—when you return, strike your wife's back and have intercourse with your slave-girl.[146]

Legal Opinions of the Scholars and Their Schools

Al-Qurṭubī, may God have mercy upon him, said in his Tafsīr:

> Mālik, may God have mercy upon him, his followers, along with a group of other scholars, derived from this verse — *"Mothers shall breastfeed their children for two complete years"* — that **the nursing which causes prohibition equivalent to lineage is only that which occurs within the two years**, because with the completion of two years nursing is complete, and **nursing after two years is not considered legally effective**. This is his statement in the *Muwaṭṭaʾ*, as narrated by Muḥammad ibn ʿAbd al-Ḥakam from him. This is also the view of ʿUmar and Ibn ʿAbbās, and it is reported from Ibn Masʿūd. It is the view of al-Zuhrī, Qatādah, al-Shaʿbī, Sufyān al-Thawrī, al-Awzāʿī, al-Shāfiʿī, Aḥmad, Isḥāq, Abū Yūsuf, Muḥammad, and Abū Thawr.[147]

Ibn Kathīr said in his Tafsīr:

> The majority of the imams held that **nursing does not cause prohibition except what occurs before the two years.** Thus, if a child nurses after reaching that age, it does not cause prohibition... The view that nursing does not prohibit after two years is narrated from ʿAlī, Ibn ʿAbbās, Ibn Masʿūd, Jābir, Abū Hurayrah, Ibn ʿUmar, Umm Salamah, Saʿīd ibn al-Musayyib, ʿAṭāʾ, and the majority. This is the position of al-Shāfiʿī, Aḥmad, Isḥāq, al-Thawrī, Abū Yūsuf, Muḥammad, Mālik, Abū Ḥanīfah, Zufar ibn al-Hudhayl, and al-Awzāʿī. It is also narrated from ʿUmar and ʿAlī.[148]

Ibn Baṭṭāl said in his commentary on Ṣaḥīḥ al-Bukhārī: "The imams of the land are agreed that **the nursing of an adult does not cause prohibition**, and al-Layth and the literalists deviated from the majority."[149]

Ḥarb said:

> I asked Aḥmad: What do you say about nursing after two years?
> He replied: As for me, I say that nursing does not occur after two years. Allah says:

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[146] *Muṣannaf ʿAbd al-Razzāq* (7/391, 2nd ed., Dār al-Taʾṣīl).
[147] *Tafsīr al-Qurṭubī* (3/162).
[148] *al-Umm* by Imām al-Shāfiʿī (5/30).
[149] *Sharḥ Ṣaḥīḥ al-Bukhārī* by Ibn Baṭṭāl (7/197).

> "Mothers shall breastfeed their children for two complete years." When two years have passed, nursing is complete.[150]

Al-Tirmidhī said after narrating the ḥadīth *"No nursing causes prohibition except what splits the intestines and occurs before weaning"*:

> This ḥadīth is *ḥasan ṣaḥīḥ*,[151] and legal praxis is upon this for the majority of the people of knowledge from the Companions of the Messenger of Allah ﷺ and others, i.e., that nursing does not cause prohibition except what occurs before two years; whatever occurs after two complete years does not prohibit anything.[152]

Abū Bakr ibn al-ʿArabī said: "The jurists are agreed that **the nursing of an adult does not cause prohibition**, with the exception of the Mother of the Believers, ʿĀʾishah, may God be well pleased with her, al-Layth, and ʿAṭāʾ."[153]

Ibn Hubayrah said: "[Scholars] are agreed that the nursing of an adult does not cause prohibition."[154]

Badr al-Dīn al-ʿAynī al-Ḥanafī said: "Prohibition is not connected to the mere form of nursing or the presence of milk—as in the case of an adult—by consensus. Rather, it is connected to the growth of flesh and strengthening of bone."[155]

Abū al-Walīd al-Bājī said:

> The statement of Abū Mūsā to the one who asked him about sucking milk from his wife's breast—'I believe that she has become forbidden to you'—was perhaps from those who held that **the nursing of an adult causes prohibition**, which is a view that **no jurist adopted**, and **consensus has formed against it**, along with the fact that Abū Mūsā later retracted from it.[156]

Muḥammad ʿAbd al-Bāqī al-Zurqānī said in his commentary on the *Muwaṭṭaʾ*, commenting on al-Bājī's statement: "Consensus has formed that it does not cause prohibition.
Meaning: The disagreement existed initially, then ceased."[157]

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[150] *al-Jāmiʿ li-ʿUlūm al-Imām Aḥmad – al-Fiqh* (11/43).
[151] Tr: Al-Tirmidhī was the first to formalize ***ḥasan*** as an independent category. He defined it as *one whose narrators are known, whose transmission is not accused, and which is not irregular.*
[152] *Sunan al-Tirmidhī* (3/13).
[153] Ibn al-ʿArabī, *ʿĀriḍat al-Aḥwadhī bi-Sharḥ Ṣaḥīḥ al-Tirmidhī*, ed. Jamāl Marʿashlī, vol. 5 (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1st ed., 1997), p. 78.
[154] *Ikhtilāf al-Aʾimmah al-ʿUlamāʾ* by Ibn Hubayrah (2/204).
[155] *al-Bināyah Sharḥ al-Hidāyah* (5/270).
[156] *al-Muntaqā Sharḥ al-Muwaṭṭaʾ* (4/155).
[157] *Sharḥ al-Zurqānī ʿalā al-Muwaṭṭaʾ* (3/372).

Qiwām al-Sunnah al-Aṣbahānī (Abū al-Qāsim, d. 535 AH) said: "The ḥadīth of Sahlah bint Suhayl is **specific**, and the proof of its specificity is **the consensus of the scholars that the nursing of an adult does not cause prohibition.**"[158]

Ibn al-Qaṭṭān said in *al-Iqnāʿ fī Masāʾil al-Ijmāʿ*: **"All are agreed that there is no nursing after two years."**[159]

This is based on the principle that **it is not a condition for the formation of consensus that no prior disagreement existed**. Rather, once agreement occurs, it becomes binding proof. This is a strong position held by a group of legal theorists, because the evidence indicating that the ummah does not agree upon misguidance are **unrestricted**, and were not conditioned upon the absence of earlier disagreement. Thus, once consensus occurs, infallibility from error is established, conformity is achieved, and opposition becomes impermissible. And Allah knows best.

The Position of the Mother of the Believers ʿĀʾishah, may God be well pleased with her

The Mother of the Believers ʿĀʾishah, may God be well pleased with her —unlike the other wives of the Prophet ﷺ—held that **the nursing of an adult establishes prohibition**, and she acted upon the report of **Sahlah bint Suhayl ibn ʿAmr**.
Sahlah came to the Messenger of Allah ﷺ and said: "O Messenger of Allah! Sālim lives with us in the house, and he has attained what men attain [in terms of puberty] and knows what men know." The Prophet ﷺ said: **"Nurse him, and he will become prohibited to you."**

What, then, is the position of the scholars regarding this view?

The Ḥanafī School

In the Ḥanafī school, it is stated in *Tabyīn al-Ḥaqāʾiq* by al-Zaylaʿī: "Our proof is that **the nursing of an adult has been abrogated** by the statement of the Prophet ﷺ: **'There is no nursing after weaning, and no orphanhood after puberty.'"**[160]

The Mālikī School

In the Mālikī school, it is stated in *al-Tawḍīḥ fī Sharḥ Mukhtaṣar Ibn al-Ḥājib* by the scholar Khalīl: "The majority have understood the ḥadīth as being **specific**.
Al-Bājī said: **Consensus has formed that the nursing of an adult does not establish prohibition.**"[161]

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[158] *al-Taḥrīr fī Sharḥ Ṣaḥīḥ Muslim* (al-Aṣbahānī), p. 287.
[159] *al-Iqnāʿ fī Masāʾil al-Ijmāʿ* (2/15), ed. al-Ṣaʿīdī.
[160] Al-Zaylaʿī, *Tabyīn al-Ḥaqāʾiq Sharḥ Kanz al-Daqāʾiq* with *Ḥāshiyat al-Shalabī* (2/182).
[161] Khalīl, *al-Tawḍīḥ fī Sharḥ Mukhtaṣar Ibn al-Ḥājib* (5/109).

The Shāfiʿī School

In the Shāfiʿī school, Shaykh al-Islām Zakariyyā al-Anṣārī said in *Fatḥ al-Wahhāb*: "Whatever has been reported that appears to contradict this—regarding the story of Sālim—is **specific to him**, and it is also said to be **abrogated**.[162]

The Ḥanbalī School

In the Ḥanbalī school, it is stated in *Kashshāf al-Qināʿ* by al-Buhūtī:

> If the child nurses **after** the two years—even for a moment, even if before full weaning, or completes the fifth suckling entirely after the two years—even for a moment—**prohibition is not established**, because its condition—namely, occurring within the two years—was not fulfilled.
> From this it is also understood that if the fifth suckling began before the completion of two years and the two years elapsed before its completion, what occurred within the two years suffices, just as if it were separated from what came after it.
>
> As for the ḥadīth of ʿĀʾishah—namely, that Sahlah bint Suhayl ibn ʿAmr came to the Prophet ﷺ and said: 'O Messenger of Allah, Sālim, the freed slave of Abū Ḥudhayfah, lives with us in our house, and he has reached what men reach and knows what men know,' so he said: 'Nurse him and he will become prohibited to you'—narrated by Muslim—**this is specific to him alone and not to others**, as a reconciliation between the evidences.[163]

Statements of the Scholars

Abū ʿUmar Ibn ʿAbd al-Barr said regarding the ḥadīth of Sālim: "It is a ḥadīth that was abandoned early on and was not acted upon, nor did the majority receive it with acceptance in its general sense; rather, they understood it as **specific**."[164]

Ḥarb said: "Aḥmad ibn Ḥanbal was asked about the nursing of an adult, and the ḥadīth of Sālim was mentioned to him. He said: Umm Salamah said: this was specific to Sālim alone, and this, in my view, is stronger than the position of ʿĀʾishah."

Ḥarb added: "Isḥāq narrated to us, al-Faḍl ibn Mūsā informed us, from ʿUbayd Allāh, from ʿUbayd Allāh ibn Abī Ziyād, from al-Qāsim ibn Muḥammad, who said: This was merely a concession granted by the Messenger of Allah ﷺ specifically for Sālim."[165]

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[162] Al-Anṣārī, *Fatḥ al-Wahhāb bi-Sharḥ Manhaj al-Ṭullāb* (2/136).
[163] Al-Buhūtī, *Kashshāf al-Qināʿ* (13/84), Ministry of Justice ed.
[164] *al-Istidhkār* (6/255).
[165] *al-Jāmiʿ li-ʿUlūm al-Imām Aḥmad – al-Fiqh* (11/42).

Ibn Kathīr said that the ḥadīth of Sālim, the freed slave of Abū Ḥudhayfah—upon which Lady ʿĀʾishah acted—**is not valid as a general proof**, because it is among the **specific exceptions**, which is the view of the majority of scholars.

The proof of the majority—including the four imams, the seven jurists,[166] the leading Companions, and **all of the wives of the Messenger of Allah ﷺ except ʿĀʾishah**—is what is established in the two Ṣaḥīḥs from ʿĀʾishah, may God be well pleased with her, that the Messenger of Allah ﷺ said: **"Consider who your brothers are, for nursing is only from hunger."**[167]

Ibn al-Mundhir said: "The case of Sālim is not free from being either **abrogated**, or **specific to Sālim**, as stated by Umm Salamah and the other wives of the Prophet ﷺ. And who is more knowledgeable regarding specificity, generality, abrogation, and abrogated rulings than they?"[168]

After mentioning several reports from the Companions indicating that **prohibition does not occur through adult nursing**, al-Sarakhsī said in *al-Mabsūṭ*: **"Thus, these reports establish the abrogation of the ruling of nursing an adult."**[169]

Ibn al-ʿArabī al-Mālikī preferred the position of the majority of scholars over the ḥadīth of Sālim, saying:

> Consideration must be given to the other evidence, which is connected to [God's] statement: 'Your mothers who nursed you'. The term *raḍīʿ* (nursling), in language, refers to a **child**, not an adult—so much so that a child is called a *raḍīʿ* even if he did not nurse, just as food is called food even if it is not eaten. If an adult is not called a nursling, then the woman is not called a nursing mother. This is further supported by the **legal rationale of nursing** *(ʿillah),* which is the presence of partial corporeal identity (*baʿḍiyyah*), and this is conceivable in the infant, because every portion entering his stomach contributes to his growth, whereas this does not occur in an adult. Allah set the **two years** as the boundary that distinguishes what produces growth from what does not."[170]

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[166] Tr: The **Seven Jurists** (*al-fuqahāʾ al-sabʿah*) are the **seven leading legal authorities of Medina** among the **Tābiʿūn** in the first Islamic century. They formed the **core of Medinan fiqh** and are foundational to what later became the **Mālikī legal tradition**. They are: Saʿīd ibn al-Musayyib, ʿUrwah ibn al-Zubayr, Qāsim ibn Muḥammad ibn Abī Bakr, Khārijah ibn Zayd ibn Thābit, Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith, Sulaymān ibn Yasār, and ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah.

[167] *Tafsīr Ibn Kathīr* (1/634).

[168] Ibn al-Mundhir, *al-Ishrāf* (5/119).

[169] al-Sarakhsī, *al-Mabsūṭ* (5/136).

[170] Ibn al-ʿArabī, *ʿĀriḍat al-Aḥwadhī* (5/78).

Summary of the Scholarly Position on the Ḥadīth of Sālim

The scholarly position regarding the ḥadīth of Sālim is therefore one of two:

1. **It is specific**—as evidenced by the fact that all of the wives of the Messenger of Allah ﷺ refused to allow adult men to enter upon them through nursing, and they said: "We do not see what the Messenger of Allah ﷺ commanded Sahlah bint Suhayl except as a concession granted specifically to Sālim alone."
   What is a personal exception for certain individuals due to a reason unknown to us **cannot be analogized**, nor can the established legal principle of the Sharīʿah be abandoned for it.

2. **Or** the nursing of an adult **was once effective**, then later **abrogated** by the numerous reports and evidence that followed.[171]

Final Conclusion

After presenting the statements of the scholars, their schools, and their proofs on this issue, it becomes clear that **the practice of the Ummah has settled, over many centuries, upon the non-establishment of prohibition through the nursing of an adult**.

What the Mother of the Believers ʿĀʾishah, may God be well pleased with her, held—and those few jurists who agreed with her—came to be regarded as a **discarded position**, which the Ummah did not accept nor act upon in later generations. Several scholars have transmitted **consensus** on this matter, and this is not far-fetched once we recognize that **the validity of consensus does not require the absence of prior disagreement**.

So how, after all this, can the American Fiqh Council affiliated to the Assembly of Muslim Jurists of America (AMJA) state that *"It may be also exceptionally permitted to feed them with her breastmilk after this age, considering the dire need that exists sometimes."*?

How can they say this when they have been preceded by the statements of the imams, jurists, successors, Companions, and when **the practice of the Ummah has unanimously settled upon the opposite view**, from the time of the Companions, may God be well pleased with them, the imams of ijtihād, and the jurists of the four legal schools?

Based on sound scholarly methodology, it must be said that **this body—and those who adopt this abandoned view, even if they restrict it to cases of necessity as Ibn Taymiyyah and those after him did—are all refuted by the practice of the Ummah**, which represents the connected transmission and inherited Sunnah from the Companions (may God be well pleased with them) as preserved and implemented in the four authoritative Sunni legal schools.

Closing Statement

[171] *Badāʾiʿ al-Ṣanāʾiʿ* (4/5).

We conclude this response with the words of Imām al-Dhahabī, may God have mercy upon him, who said:

> **A Muslim should seek refuge from tribulations and should not stir up controversy by mentioning strange and anomalous opinions—neither in foundational matters nor in subsidiary rulings. I have never seen benefit result from such activity; rather, it provokes evil, enmity, and resentment.**[172]

And he also said regarding the agreement of the four imams on a ruling and departing from it:

> **It is scarcely possible that the truth lies in opposition to what the four imams of ijtihād have agreed upon. While we acknowledge that their agreement on an issue is not the consensus of the entire Ummah, we nevertheless hesitate to assert that the truth lies in opposing them in a matter upon which they are united.**[173]

And God knows best.

18 Ramaḍān 1447 AH

08 March 2026

[172] *Siyar Aʿlām al-Nubalāʾ* (20/142).
[173] *Siyar Aʿlām al-Nubalāʾ* (7/117).