

# “HANAFI” STANCE ON NON-MUSLIM BLASPHEMERS: —PERCEPTION VS. REALITY—

**Work of:** Hanafi Scholars

**Compiled By:** Abul Laith Muhammad Tahir Al Noori

– Faculty Member at Jaamia tun Noor

– Research student at Dar al Noor for Islamic Research.

*Beware of the half truths; you may have gotten hold of the wrong half –*  
*Anonymous*

Recently, I came across some articles regarding the Hanafi stance on *Dhimmi* [1] (ذَمِّي) / (Non-Muslim) blasphemers. These were written in a sequence, on the background of clause 295-C of Blasphemy Laws of Pakistan Penal Code [2].

Several claims were made in those articles based on either a limited study of the subject or may be a misreading of the rulings on this topic.

In order to clarify the ambiguity created, it would be helpful to understand the perceptions of an amateur student/researcher of this topic and the realities pertaining to each one of them in a logical sequence, corroborated with references from the student of Imam Abu-Hanifa himself, as well as from leading Hanafi jurists.

*(Note: The author has written those articles on the premise that non Muslims citizens of Pakistan are “Dhimmis”, which itself is questionable, as the classical “dhimma” contract is no longer enforced, and no separate “jizya” tax is levied from non Muslim citizens. Moreover they enjoy equal rights as per the constitution of Pakistan. Hence, there is a range of opinions among 20th century and contemporary theologians about whether the notion of dhimma is appropriate for modern times, and, if so, what form it should take in an Islamic state. Some modern Hanafi scholars even do not make any legal distinction between a non-Muslim dhimmi and a Muslim citizen for the enforcement of prescribed rights and obligations.*

*Despite all this, the answer to the questions raised in those articles, will be given on the author’s presumption that non Muslim citizens are Dhimmis)*

## **PERCEPTION # 1:**

As per Hanafi School of Islamic Jurisprudence, if a non Muslim [categorized as a *Dhimmi*] commits blasphemy by insulting the Prophet Muhammad (ﷺ) his punishment is different from a Muslim who commits blasphemy in that, he will not be given death sentence.

## **REALITY:**

This is not the case. Instead, as per Imam Abu Hanifa, there is no distinction between a *Dhimmi* and Muslim in awarding the capital punishment.

[1] **Dhimmi:** is a historical term referring to non-Muslim citizens of an Islamic state. The word literally means “protected person”. According to scholars, dhimmis had their rights fully protected, but as citizens in the Islamic state, had certain restrictions, and it was obligatory for them to pay the *jizya* tax, which complemented the *zakat* or alms, paid by the Muslims. Dhimmis were excluded from specific duties assigned to Muslims, and did not enjoy certain political rights reserved for Muslims, but were otherwise equal under the laws of property, contract, and obligation.

[2] **295-C PPC:** use of derogatory remarks etc., in respect of the Holy Prophet (ﷺ) – who ever by words, either spoken or written, or by visible representation, or by any imputation innuendo, or insinuation, directly, defiles the sacred name of the Holy Prophet Muhammad (ﷺ) shall be punished with death, or imprisonment for life and shall also be liable for fine.

The law stipulated death penalty or life imprisonment for defiling the name of the prophet of Islam. The Federal Shariat Court of Pakistan while adjudicating on a case in 1991 struck down the option of life imprisonment and made the death penalty obligatory, along with a fine.

Allama Makhdoom Muhammad Hashim Thattvi (d. 1174 A.H/1761 C.E), one of the most prominent Islamic scholars, Governor and Chief Justice in the history of Sind (Pakistan), wrote a booklet on this same issue centuries ago.

In his work, he quoted some of most reliable Hanafi Jurists of all times, and proved “death sentence” as the trusted and reliable one of the two rulings quoted from Imam Abu Hanifa regardless of the fact that the offender is a Muslim or “Dhimmi”.

He stated:

أَنَّ السَّابَّ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَجِبُ قَتْلُهُ، وَلَا فَرْقَ فِي ذَلِكَ بَيْنَ السَّابِّ الْمُسْلِمِ وَالَّذِي عَلَى الْمَعْتَدِ مِنْ قَوْلِي الْأَمَامِ أَبِي حَنِيفَةَ، وَهُوَ الْحَقُّ عِنْدَ الْحَنْفِيَّةِ، كَمَا صَرَّحَ بِهِ الْحَمَوِيُّ فِي كَشْفِهِ نَقْلًا عَنْ ابْنِ الْكَيْمَالِ، وَهُوَ الظَّاهِرُ الرَّوَايَةُ، كَمَا تَفِيدُهُ عِبَارَةُ السَّيْرِ الْكَبِيرِ الَّذِي هُوَ آخِرُ الْأَصُولِ كُلِّهَا تَأْلِيْفًا... فَلَا يَنْبَغِي الْعُدُولُ عَنِ الْفَتْوَى بِهِ جُزْأً وَحَتْمًا وَعَلَيْهِ، أَيْ: عَلَى عَدَمِ الْفَرْقِ الْمَذْكُورِ وَإِيضًا عَلَى عَدَمِ قَبُولِ تَوْبَةِ السَّابِّ أَجْمَعَ مُتَأَخِّرًا وَابْتِهَاجًا كَمَا صَرَّحَ بِهِ فِي حَسْبِ الْمُفْتِيِّينَ نَقْلًا عَنْ الْبَحْرِ الْمَحِيطِ وَبِهِ صَرَّحَ فِي مَقَالِيدِ الْإِسْلَامِ نَقْلًا عَنْ هُدَايَةِ السَّعْدَاءِ وَدُسْتُورِ الْحَقَائِقِ!

Summarized points from the above extracts:

- ❖ As per the authoritative ruling quoted in **Al Siyar al Kabeer**— the last one of the six original source books of Hanafi school of Fiqh known as “zahir al riwayah” (by “Imam Muhammad bin al Shaybani”): whether the blasphemer of Prophet Muhammad ﷺ is a Muslim or Dhimmi, there is no difference in the Hanafi stance on the death penalty.
- ❖ It is strictly “not allowed” for any Hanafi Mufti (scholar) to deviate from the above stance while giving fatwa (Islamic ruling).
- ❖ Moreover, there is a consensus (Ijma) of later scholars on this ruling, as well as on non acceptability of the pardon of a repentant blasphemer (as far as the worldly punishment is concerned).

Some of the top jurists quoted in the above mentioned booklet include:

#### 1- Imam Muhammad al-Shaybani (d. 189 A.H / 805 C.E),

A student and disciple of Imam Abu-Hanifa, famously known as “Moharrir al Madhab” (author of the rulings of Hanafi School), is one of the most important writers and compilers of authoritative rulings of Imam Abu Hanifa. His work, collectively known as as zahir al-riwaya, consists of six books.

Any ruling written clearly in these books is considered the fatwa of Imam Abu Hanifa and as per the established principles of ifta (fatwa writing); Hanafi Jurists are bound to follow it, with only six exceptions.

#### 2- Imam abul Abbas Ahmed bin Muhammad Natfi (d. 446 A.H / 1054 C.E)

A 5<sup>th</sup> hijri-century scholar and jurist, author of “Ajnaas al Natfi”

#### 3- Imam Badr ud deen Aeni Hanafi (d. 855 A.H / 1451 C.E)

Is an Imam of Hadith, and Fiqh from 9<sup>th</sup> hijri-century, author of many books including a world famous commentary on “Sahih Al Bukhari”(published in 12 volumes) named “Umdatul Qari”, as well as “Al Binayah” – one of the most frequently referred commentaries on “Al-Hidaya” (published in 13 volumes) in Fiqh.

#### 4- Sheikh Kamal ud Deen Ibn al Humam (d. 861 A.H / 1457 C. E)

Famous for his work “Fath ul Qadeer” which is a detailed commentary on Al-Hidaya – a world famous book of Hanafi Fiqh, taught almost all over the world in Islamic seminaries, Ibn al Humam is one of the leading Hanafi Jurist and

*Muhaqqiq (Researcher) of 9th hijri-century, who is praised for his critical analysis and research on matters of Fiqh and its principles (Usul).*

**5- Sheikh al Islam Ibn al Kamal Pasha (d. 940 A.H / 1536 C.E)**

*A 10th hijri-century leading Hanafi Jurist, renowned scholar, author of hundreds of books on numerous arts and sciences. During the reign of Suleiman I, in Ottoman Empire, he was appointed as the Sheikh ul Islam, i.e. supreme head of the Muslim scholars, a post which he held until his death.*

**6- Ameer abul Ma-ali Bukhari**

*10th hijri-century jurist, author of "Hasb al Muftien", a book frequently referred in the Fatawa (rulings) of classical Hanafi scholars of Sind.*

*(Manuscript of his book is available in King Faisal Center for Research and Islamic Studies, Riyadh)*

**7- Shah Inayat ullah Qadri (1148 A.H)**

*He is the "Sheikh" (spiritual leader) of famous Sufi Saint of Pakistan "Baba Bullay Shah", 12th hijri-century scholar and author of "Ghayat ul Hawashi" on Hanafi Fiqh.*

**(Note: Relevant lines from their books, along with complete references are presented in Appendix "A")**

**PERCEPTION #2**

Several books have mentioned the fact that "If a dhimmi (non Muslim) commits blasphemy, his contract of dhimma will remain intact". "Al Hidayah" an authentic text on Hanafi Fiqh states that:

"ومن امتنع من الجزية أو قتل مسلماً أو سب النبي عليه الصلاة والسلام أو زنى، بمسئلة لم ينتقض عهده" (الهداية في شرح بداية المبتدي، برهان الدين المرغيناني)

This indicates that, death sentence is not for dhimmis.

**REALITY:**

**"Breach of dhimma contract is different from enforcement of penalties and punishment."**

"Hadd al Qadhaf" is a classic example of this. It is clearly written in the books of fiqh that:

If a Dhimmi accuses a chaste woman of "zina" and could not prove it, he will be punished, but his dhimma contract will remain intact.

Similarly, if a dhimmi kills a citizen in a Muslim state, he will be given capital punishment under the laws of "Qisas"

Because, logically and as per Hanafi fiqh, any person (whether a dhimmi or other), living in a Muslim state is bound to follow the laws of the country, and if he commits any act that is declared unlawful by the legislators of that country, he will be punished like any other citizen.

**• Wrong perception due to Incomplete Research:**

If the author of that article had read the book completely he would not have mistaken.

The same book “Al Hidayah” stated the fact that any Dhimmi found guilty of a punishable crime will be punished.

Here is the original extract from Al-Hidaya:

وإذا دخل حربي دارنا بأمان فزني بذيمة أو زني ذمي بحرية يحد الذمي والذمية عند أبي حنيفة رحمه الله...  
أن الذمي التزمها مدة عمره/أقامته ولهذا يحد حد القذف ويقتل قصاصاً (الهداية في شرح بداية المبتدي، برهان الدين المرغيناني)

Translation: When a “Harbi” enters our country with a protection agreement, and then commits “zina” with a Dhimmi women (OR) If a Dhimmi man commits “zina” with a “Harbi” woman (who came to our state with such an agreement), the Dhimmi man and woman (in these two cases) will be punished as “Hadd” according to Imam Abu Hanifa”

... That the Dhimmi had agreed to obey them (our laws), that is why they will be awarded “Hadd al Qadhif” and will be given death sentence as “Qisas” (according to our laws, if found guilty).

### **PERCEPTION #3:**

The “*Ijma*” إجماع (universal consensus of scholars of all four Schools of Fiqh) on death penalty for every citizen who commits blasphemy, (regardless of his dhimmi or Muslim status), claimed by contemporary scholars is not real, because there are two different rulings of Imam Abu Hanifa in case of dhimmi blasphemer, as quoted from “*Al-Kharaj*” by Imam Abu Yousuf and “*Al Sarim al Maslul*” by Ibn al Taimiah.

This difference has made *Ijma* impossible.

The contemporary stance on blasphemy was just an error by the author of “Fatawa Al Bazzaziya” who misquoted and misunderstood the Hanafi stance and as a result the later scholars (especially in Pakistan) started calling it an “*Ijma*”.

### **REALITY:**

Again a mistake!

This is a wrong perception made due to lack of knowledge about the definition of “*Ijma*”, its conditions and types, as described in the books of “*Usul al Fiqh*” (Principles of Fiqh).

This has been clearly written and explained in the most trusted books on “Principles of Islamic Fiqh” throughout the history of Hanafi Jurisprudence that:

**Any *Ijma* (consensus) made after a previous difference of opinion, is a valid type of *Ijma*, and known as “*Ijma al Muta-akhirun*” (Ijma by the later people).**

To corroborate this claim, the names and authors of some of the reference books are mentioned below: (see complete extracts in Appendix “B”)

i) “*Kashful Asrar ala Usool al Bazdawi*” (كشف الأسرار على أصول البزدوي)

A commentary written by “Ala ud deen Abdul Azeez Al Bukari” (d. 730 A.H/1330 C.E) on “*Usul al Bazdawi*”—one of the most trusted source of Hanafi principles of fiqh written by “Fakhr ul Islam Al Bazdawi” (d. 482 A.H)

ii) “*At-Talwih fi Kashfi Haqaiq at Tanqih*” (التلويح في كشف حقائق التنقيح)

By: “Allama Sa’ad ud Deen Masood bin Umar at Taftazani” (d. 793 A.H/1390 C.E). He has made many contributions to theology, Islamic jurisprudence, linguistics, rhetoric, logic and literature. His commentaries are "standard books" for students of Islamic theology.

**iii) “Noor ul Anwaar fi Sharh al Manar” ( نورالانوار في شرح المنار )**

A commentary written by “Sheikh Ahmed bin Abu Saeed Jeewan” (d. 1130 A.H) on “*Al Manar*”— a textbook on Usul (principles) by “Hafiz ud deen Abul barakat Abdullah bin Ahmed an Nasafi” (d. 710 A.H), famous in Hanafi seminaries of South Asia.

**iv) “Fawatih ur Rahmoot sharh Musallam us Suboot” ( فواتح الرحموت شرح مسلم الثبوت )**

A book included in curriculum of scholars, written by “*Abdul Ali Muhammad bin Nizam ud deen al Ansari*” (d. 1225 A.H).

Contrary to the erroneous claim by the author of those articles, the Ijma on this matter was established by the scholars and quoted in their books even **before** “*Fatawa Al Bazzaziya*”, whose author “**Muhammad bin Muhammad Al Kardari**” died in 827 A.H/1424 C.E.

- I. “**Qadi Iyad ibn Musa**” (d. 544H / 1149CE) one of the most famous scholars of Maliki law and author of the well-known “*Ash-Shifa*” [3] has stated the Ijma in the same book.
- II. **Tahir bin Ahmed Al Bukhari** (d. 542 A.H / 1147 C.E) stated “Ijma al Muta-akhireen” in his work “*Khulasa tul Fatawa*”

---

[3] *Kitab Ash-shifa bi Ta'rif Huquq al-Mustafa*, ( كتاب الشفاء بتعريف حقوق المصطفى ), is perhaps the most frequently used and commented upon handbook in which Prophet Muhammad's life, his qualities and his miracles are described in every detail. Generally known by its short title, **Ash-Shifa** (meaning "The Healing")