

Breaking of wudu by touching females

QUESTION

I came across the following in an email attachment. I would like to know if Shafi'i fuqaha hold this view. Also what is the reasoning behind it? Jazak Allahu chairman!

Here is the excerpt from the email attachment (attributed to Dr. Zakir Naik).

Imam Shafi'i said that when a women touches a man who is in a state of wudhu, the wudhu of the man breaks. However, this ruling of Imam Shafi'i contradicts the authentic saying of the Prophet. Narrated Aishah: The Prophet (may peace be upon him) kissed one of his wives and went out for saying prayer. He did not perform ablution. (Sunan Abu Dawood Vol. 1 Chapter No. 70 Hadith No. 179)

Thus this particular teaching of Imam Shafi'i contradicts the authentic saying of the Prophet. So I reject this specific ruling of Imam Shafi'i who himself said, "If I say something, then compare it to the Book of Allah and the Sunnah of His messenger; if it agrees to them, then accept it, and that which goes against them, then reject it and throw my saying against the wall." This is a saying of ash-Shafi'ee-rahimaullah. See Al-Majmoo' of an-Nawawee (1/63).

Thus by rejecting this particular teaching of Imam Shafi'i which contradicts the authentic hadith, I am practically a better follower of Imam Shafi than those who call themselves "Shafi'i".

ANSWER

The excerpt which you quote is very significant in that it bespeaks of a tendency that is at once welcome and worrisome. It is welcome on account of the fact that it indicates a desire to live as close as possible to the Qur'an and the Sunnah; but worrisome since it initially oversimplifies matters of considerably complexity, and subsequently develops into the passing of judgement by persons that, if truth be told, are vastly unqualified for that task.

In asserting as he does that the hadith cited is authentic, and that Imam al-Shafi'i is guilty of contradicting it, the good doctor—if it is indeed he who is the author of the excerpt—has certainly overstepped the boundaries of his expertise. It would be easy enough to accept without question a ruling of authenticity by some scholar or the other, but that in itself would be an act of blind imitation—the very same unquestioning taqlid which is so strongly condemned by the opponents of madhahib.

AUTHENTICITY

It appears to escape his attention that the authenticity of the hadith which he cites has been questioned by the greatest of hadith scholars. Aside from Imam Shafi'i the authenticity of this hadith has been called into question by a number of eminent muhaddithin, both on the basis of the identity of the 'Urwah who narrates the hadith from Sayyidah 'A'ishah *radiyallahu 'anha*, at times on grounds of a problem with continuity in the chain between the narrator Habib ibn Abi Thabit and 'Urwah. Many of the muhaddithin were of the opinion that this 'Urwah is not the

famous 'Urwah ibn al-Zubayr, the nephew and pupil of Sayyidah 'A'ishah, but an unknown person known as 'Urwah al-Muzani; and quite a few were of the persuasion that Habib did not hear this hadith from 'Urwah. It has even been suggested by some experts that one of the narrators confused the hadith of kissing not invalidating the fast, with kissing not invalidating wudu. Here follows a list of hadith critics and their criticism against this hadith:

al-Bukhari: His student al-Tirmidhi states: I heard Muhammad ibn Isma'il [al-Bukhari] declaring this hadith as weak. He said: Habib ibn Abi Thabit [one of the narrators in the chain] did not hear [hadith] from [his purported source] 'Urwah. (*Jami' al-Tirmidhi* no. 86)

Yahya ibn Sa'id al-Qattan: He denounced two of Habib ibn Abi Thabit's narrations as "akin to nothing". This hadith one of the two. (cited by Abu Dawud, *al-Sunan* no's. 179-180)

al-Tirmidhi: After narrating the hadith he states: Our companions (i.e. the scholars of hadith) have abandoned the hadith of 'A'ishah on this issue because it is not authentic due to the state of its chain of narration. (*Jami' al-Tirmidhi* no. 86)

Yahya ibn Ma'in: When asked by his pupil 'Abbas al-Duri about the status of Habib ibn Abi Thabit he declared him as a reliable narrator, but pointed at two of his ahadith as defective. One of the two is this hadith. (cited by al-Bayhaqi, *Ma'rifat al-Sunan wal-Athar* vol. 1 p. 216, al-Dhahabi, *Siyar A'lam al-Nubal* vol. 5 p. 290, and al-Mizzi, *Tahdhib al-Kamal* vol. 5 p. 362)

Abu Hatim al-Razi: Ibn Abi Hatim states: I heard my father say: The hadith of 'A'ishah on not making wudu due to kissing, i.e. the hadith of al-A'mash from Habib from 'Urwah, is not authentic. (Ibn Abi Hatim, *al-Ilal* no. 110)

Sufyan al-Thawri: This hadith was mentioned to Yahya ibn Sa'id, and he said: Sufyan al-Thawri amongst all men knew this matter best. He claimed that Habib did not hear any [hadith] from 'Urwah. (cited by al-Daraqutni, *al-Sunan* vol. 1 p. 139) He also stated that the 'Urwah from whom Habib narrates the hadith is not 'Urwah ibn al-Zubayr, but the unknown 'Urwah al-Muzani. (cited by Abu Dawud, *al-Sunan* no's. 179-180)

al-Daraqutni: In his *Sunan* Imam al-Daraqutni points out the defects of all the various versions of the hadith. He also points out how the hadith of invalidating fasting came to be confused with the hadith of invalidating wudu. (al-Daraqutni, *al-Sunan* vol. 1 pp. 135-145)

al-Bayhaqi: After pointing out the defects in the chain of the hadith he states that the authentic version of the hadith concerns the invalidation of fasting, but that some unreliable narrators reshaped it into the invalidation of wudu. He also states that had the hadith about invalidating fasting been authentic, he would certainly have followed it. (al-Bayhaqi, *al-Sunan al-Kubra* vol. 1 pp. 126-127)

DIVIDED OPINION

The above does not mean, however, that there has been consensus upon the weakness of the hadith. Other experts (eg. Ibn 'Abd al-Barr) were of the opinion that the hadith is passably authentic. Serious students of the subject would know that the process of authentication does not always lead to clear and unambiguous outcomes. While it is quite true that it often yields an unequivocal result, either of authenticity or otherwise, it is equally true that there sometimes ensues a situation of divided opinion, with some scholars accepting, and some rejecting authenticity. The present hadith happens to be one such case.

The difficulty of passing decisive and unambiguous judgment on the authenticity of this particular hadith can well be gauged from the fact that even the late Shaykh al-Albani fell victim to equivocation on the issue. In his *Da'if Sunan Abi Dawud* (p.16) he lists the hadith as unauthentic; while in *Sahih Sunan Abi Dawud* (p. 36) and *Da'if Sunan al-Tirmidhi* (no.75) he takes the diametrically opposite view. One cannot help wondering how the good doctor was able to make an absolutely decisive judgement on this hadith when even al-Albani appears to have been unsure.

CONTRADICTION

From the aforementioned it becomes clear that the charge of contradicting the hadith which is leveled against Imam al-Shafi'i is based upon nothing but blind acceptance of one opinion in a disputed case. Imam al-Shafi'i was most certainly aware of the hadith, but like al-Bukhari, al-Tirmidhi, Sufyan al-Thawri, Abu Hatim al-Razi, Yahya ibn Sa'id and others, he was not convinced of its authenticity, and therefore he made a conscious and informed decision not to employ it to restrict the generality of Allah's words in the verse of wudu: *or you touched women*. (5:6) Thus, in step with eminent fuqaha of the Sahabah such as Sayyiduna 'Abdullah ibn Mas'ud and Sayyiduna 'Abdullah ibn 'Umar *radiyallahu 'anhum*, he asserted that this verse covers even a man's act of kissing his wife, and as such this act would render his wudu invalid.

THE SHAFI'I MADHHAB AND HADITH

Imam al-Shafi'i's well-documented instruction to abandon his madhhab in favour of authentic hadith has always been a matter of special pride for the fuqaha of his madhhab, and while similar statements have been recorded from the other imams as well, it was amongst the Shafi'i fuqaha more than anyone else that this instruction blossomed into practical application.

However, they understood well enough that this instruction was conditioned by a number of parameters. Had the author of this excerpt actually consulted Imam al-Nawawi's *al-Majmu' Sharh al-Muhadhdhab* which he cites as his source for Imam al-Shafi'i's statement, he would have found a full discussion of these parameters. Imam al-Nawawi states:

What al-Shafi'i states here does not mean that anyone who sees an authentic hadith can say, "This is the [proper] view of al-Shafi'i," and [can therefore proceed to] practice upon its apparent [meaning]. It is only for one who possesses the ability of *ijtihad* within the madhhab... or something close to it. [Furthermore] it is subject to the condition that one be reasonably convinced that al-Shafi'i was not aware of the hadith or did not know it to be authentic. This [level of knowledge] can only be [acquired] after perusing all of al-Shafi'i's works, a similar amount of works of his immediate students, and other similar works. This is a difficult condition, and few are those who fulfil it. The condition which we mentioned was stipulated only because [it is known that] al-Shafi'i desisted from practising upon many ahadith which he saw and knew, due to the fact that he had evidence which indicated that those ahadith were somehow impugned, abrogated, particularised, or subject to interpretation.

It appears however that the doctor, for reasons of his own, preferred to use secondary or tertiary sources where the quotation is given in isolation of its parameters.

One of the most obvious parameters is that the hadith on the basis of which a person decides to abandon Imam al-Shafi'i's view has to be authentic. The contentiousness of the claim of authenticity has already been discussed. Suffice to say here that when Imam al-Shafi'i himself has discarded the hadith as unauthentic (as al-Bayhaqi indicates in *Ma'rifat al-Sunan wal-Athar* vol. 1 p. 215) it is certainly unbecoming of a well intentioned scholar to state that he "rejects" Imam al-Shafi'i's view because the imam "contradicts the authentic hadith".

Another parameter is that the person who abandons the view of the madhhab in favour of the authentic hadith should at least be suitably qualified to do so. There is certainly no intention of withholding anyone from practicing upon authentic ahadith, whether he is personally qualified to do so or whether he merely depends upon the opinion of a suitably qualified scholar other than himself. But when it comes to pointing fingers of criticism at our great mujtahid imams and blatantly accusing them of contradicting ahadith, one would think that an intelligent man would know better than to pit his extremely imperfect grasp of matters against the universally acclaimed erudition of the great imams.

LEAVING THE BOUNDS OF THE MADHHAB

There will inevitably be instances where followers of a particular madhhab come face to face with ahadith to which their madhhab apparently does not conform. What is to be done in such cases? Should the person summarily abandon the teaching of the madhhab in favour of the hadith? Or should he dutifully stick to the madhhab and ignore the hadith?

Neither of these two approaches is free from certain undesirable outcomes. The fuqaha of our madhhab have therefore resolved the issue in a most ingenious manner that addresses both the praiseworthy desire to practice upon the hadith and the apprehension that this may lead to chaotic fiqh. In his introduction to *al-Majmu'* (vol. 1 p. 136) Imam al-Nawawi provides us with the following guidelines:

Any Shafi'i who finds a hadith going against his madhhab should look into the matter [as follows]: If he possesses the complete requirements of ijtihad without restriction, or in that chapter, or [even] in that point [alone], he may independently practice upon [the hadith]. If he does not [possess it] and finds it difficult to go against the hadith, and his search for a valid explanation of the hadith [within his madhhab] does not provide a convincing solution, then he may practice upon the hadith with one condition, which is that another independent [mujtahid] imam other than al-Shafi'i should have practiced upon it. This would then be a valid pretext for him to leave the madhhab of his imam.

It is of interest here to note that all the other major schools of thought have, with varying degrees of moderation, looked upon skin contact between male and female as nullifying wudu. The Hanbalis and Malikis add the condition of deriving pleasure from such contact, while the Hanafis regard only such contact to nullify the wudu whereby there is mutual touching of the sexual organs without penetration. It should be admitted, though, that this position of the Hanafi madhhab is not founded upon the verse that speaks of touching women, but rather upon the contention that such touching almost invariably leads to the emission of fluid, which in itself is factor that nullifies the wudu.

The idea behind following madhahib is not to turn people into prisoners of their madhahib, but rather to facilitate practicing upon the Qur'an and the Sunnah. No madhhab has ever purported to be a replacement for the Qur'an

and the Sunnah, nor can it ever be. The facility that a madhhab provides is that of a systematic approach to the sources of our law, accompanied by the benefit of generation after generation of the best, purest and most capable minds. And even then, there has been recognition of the fact that situations do arise when the follower of a madhhab finds it difficult to practice contrary to the apparent meaning of a hadith that he has come across. Technically speaking, all that is required for a person faced by such a situation is that his practice be based upon the ijtiḥād of a valid mujtahid.

But beyond the technical aspect there is another angle: that of conduct and etiquette. When the situation warrants departure from one's own madhhab and all the requirements are met, this does not mean that one now has a licence to indulge in disparagement of the imam from whose madhhab one has departed in that one particular issue. Never must sight be lost of the fact that one's own minuscule smidgen of pseudo-insight is still aeons away from the knowledge possessed by those paragons of scholarship and virtue. No one who is acutely aware of his own deficiencies would ever descend into using disrespectful language against the mujtahid imams of the Ummah.

The true Shafi'i or Hanafi, therefore, is not only he who is prepared abandon the opinions of Abu Hanifah and al-Shafi'i when he perceives them to be in apparent contradiction to the hadith. At a deeper level it is he who is able to differ with the position of another without sliding into egotism and disparagement.

[Min Tauha Karaan]