

# CHILD PHYSICAL CUSTODY LAW IN ISLAMIC JURISPRUDENCE: AN ANALYTICAL STUDY IN THE CONTEXT OF FOUR SCHOOLS OF THOUGHT

NAHIDA BIBI<sup>1</sup>, DR. BADSHAH REHMAN<sup>2</sup>, DR. MARYAM NOREEN<sup>3</sup>, BAKHT MINA SUGHRA<sup>4</sup>, FAWAD KHAN<sup>5</sup>, SADAF PARVEEN<sup>6</sup>,

<sup>1</sup> M.Phil Scholar, Department of Islamic Studies, University of Malakand, Chakdara, Dir Lower

<sup>2</sup> Assistant professor, Department of Islamic Studies, University of Malakand, Chakdara

<sup>3</sup> Lecturer, Department of Islamic Studies, Women University Mardan

<sup>4</sup> Lecturer, Department of Islamic Theology, Islamia College Peshawar

<sup>5</sup> Lecturer Islamic Studies, Edwards College Peshawar

<sup>6</sup> Lecturer, Department of Islamic Studies, University of Malakand, Chakdara

Corresponding email: nahidabibi.aziz@gmail.com

## Abstract:

*Physical custody of the child has become a major problem in our society nowadays because whenever the divorce takes place after the birth of the children, the children custody case hangs in the courts for years, each of the parent tries to keep them in her/his custody. Islam declares the right of legal custody to the father forever, but it declares women more entitled to physical custody, such as mother, then grandmother etc. it has also made a specific order for the entitled women, and has also determined a limit for this custody. It has fixed times for the termination of custody of both the boy and the girl child. Then the four famous Sunni Masaliks (Schools of thought) that are Hanafi, Maliki, Shafi'i and Hanbalah differ in the details of these legal points, all of which will be reviewed in this article. We will keep in view two famous books of Sunni comparative jurisprudence in the arrangement and explanation of these legal issues, although I have referred to the primary books of these schools for reference.*

**Keywords:** Child Custody, Islam, Jurisprudence, four Schools of thoughts

## Islam and the Four Schools of thought

Islam is the largest religion in the world after Christianity. It is the fastest growing religion in the world. Muslims believe that the religion of Islam was revealed by Allah to the Prophet Muhammad (peace be upon him), which he and his followers have spread throughout the world through preaching Islam, and it is the first religion in the world in terms of the implementation of the rulings of Allah, most of its followers consider it necessary to follow it. And almost all Islamic countries follow Islamic laws in their family matters, even many non-Islamic countries resolve the family matters of minorities according to their religious law- since there are different schools of thought in the interpretation of Islamic rulings. Among them, four famous Masaliks (Schools of thought) of Ahl al-Sunnah (Sunni Sect) are compiled and also practiced in most of the Islamic countries; these well-known Schools of thought are Hanafic, Maliki, Shafee and hanbalic Schools of thoughts of Islamic jurisprudence. So we will try to analysis the Islamic law of the child Physical Custody in the light of the jurisprudence of these four schools of thought.

## Child custody:

Child custody is a legal term regarding guardianship which is used to describe the legal and practical relationship between a parent or guardian and a child in that person's care. Child custody consists of legal custody, which is the right to make decisions about the child, and physical custody, which is the right and duty to house, provide and care for the child<sup>1</sup>.

Lega dictionary web says: A decision by the court as to which parent will have the care, custody, and control of a child. Custody may be assigned to one parent, or to both parents jointly<sup>2</sup>.

Child custody is called "Al-Hazana" in the Arabic language, and this term is present in the Islamic law books..



*Al Hzanah* (Custodianship) is the protection of one who is not independent in his affairs, his upbringing, and his oversight from what destroys or harms him. The Decisions about child custody typically arise in proceedings involving divorce, annulment, separation, or parental death<sup>3</sup>.

#### **Custody requirements:**

The requirement of custody is to protect the child in custody, to keep him from what harms him, and to bring him up so that he may grow, and that is by doing what is right for him, and taking care of him, provide him with food and drink, wash his clothes, anoint him, and take care of his sleep and wakefulness<sup>4</sup>.

#### **People who are entitled to Physical custody and their order:**

The men and women both are entitled to it, except that women are given priority over men, because they are more compassionate, kindhearted and gentle, and they are more appropriate and more appropriate for the upbringing of the young. But the men are given priority in legal custody, because they are more able to protect, maintain and establish the interests of the young.<sup>5</sup> and the custody of the child is for the parents if there is no separation between them. If they separate, then the physical custody is for the mother of the child in the jurisprudence of all four school of thoughts, as it was mentioned in *Al-Mustadrak* on the authority of Abdullah bin Amro, that a woman said to Prophet: O Messenger of God, this is my son, my belly was his container, my breasts were his milkskin, and my lap was his protection place, and his father divorced me and wanted to take him away from me. The Messenger of God, may God's prayers and peace be upon him, said to her: "You are more entitled to him as long as you are not married<sup>6</sup>. Each School of thought has its own way of arranging the beneficiaries of custody after the mother, and who entitles when they are equal in entitlement. The custody does not pass from the beneficiary to the next beneficiary unless the beneficiary forfeits his right to custody or it forfeits due to an impediment.

The order for those who are entitled in different schools of thought is as follows:

#### **Hanafic law**

The Hanafic say that the mother's mother follows the mother in custody if the mother's custody is forfeited due to an impediment, then the father's mother and as high as she goes, then the sister, then the maternal sister, then the paternal sister, then the daughter of the sister, then the daughter of the maternal sister, then the maternal aunts, the half-maternal aunts who share the mother, then who half maternal aunts who share the father only, then the daughter of paternal sister, then the daughters of the brother, then the daughters of maternal brother (who share only mother), then the daughters of paternal brother (who share only father). then the paternal aunts, then the paternal half-aunts who share mother only, then paternal half aunts who share father only, then the mother's aunt, then the father's aunt, then the paternal aunts of the mothers and fathers, then the male relatives in the order of inheritance, first of all the father, then the grandfather, then the full brother Then paternal brother, then the sons of brother in this order as well, then the uncle, then his sons.

And if many relatives entitled together, the most God-consciousness, then the older, then if it is not agnate, the right of custody transfers to those with male relatives if they are *Mahram*. The maternal grandfather is preferred. if they are equal, the most well-wisher of them, then the most pious of them, then the oldest of them<sup>7</sup>.

#### **Maliki law:**

The Malikis are of the view that the one who is most entitled to custody after the mother is the mother's mother, then the mother's grandmother, and whoever is from the mother's side takes precedence over whoever is from the father's side. Then Full maternal aunt, than half-maternal aunt (the maternal aunt who share mother only), then full maternal aunt of the mother, then half maternal aunt (who share mother only) of the mother, then half maternal aunt (who share father only) of the father, then the paternal aunt of the mother, the paternal grandmother as high she goes. Then after the paternal grandmother, custody goes to the father, then the full sister, then the maternal sister, then the paternal sister, then the paternal aunt, then the father's paternal aunt in the order mentioned, then the father's maternal aunt.



Then, after that, there was a difference of opinion in precedence between daughter of brother and daughter of sister, then the guardian (the person whom the father of child appoints as his representative at the time of death), then the brother, then the paternal grandfather, then the nephew (son of brother), then the paternal uncle, then the paternal cousin, then the supreme guardian<sup>8</sup>.

#### **Shafi Law**

he Shaafa'is are of the view that the most entitled to custody after the mother is the daughter, then the maternal grandmother as high she goes in mothers side. Then according to the new saying of shafies the custody passes to the paternal grandmother, but the mother's mothers took precedence over the father's mother because of their compassion and because they are stronger in inheritance. Than the paternal grandmother of father, then her mothers. then the mother of the father's grandfather, then her mothers, then the full sister, then the paternal sister - in the the correct saying - then the maternal sister, then the maternal aunts in this order according to the correct view, then the sister's daughter, then the brother's daughter, then the full paternal aunt, then the half paternal aunt (from the father), then the half maternal aunt (from the mother). maternal aunts are given priority over the Paternal aunts

As the Prophet (may God's prayers and peace be upon him) said, as it was narrated on the authority of Al-Bara' bin Azib, on the authority of the Prophet peace be upon him, that he said: The maternal aunt is in the same position as the mother<sup>9</sup>. There are two opinions of shwafi in the right of non maharim females, the moer correct is to affirm the right of custody to them, such as the daughter of the maternal aunt, the daughter of the paternal aunt, the daughter of the maternal uncle, and the daughter of the paternal uncle, because of their compassion for kinship and their guidance to the upbringing of femininity. the 2<sup>nd</sup> saying is that they do not have the right to custody.

As for the custody of men, the Shaafa'is stated that it is right of each Muhrum (unmarriageable) heir according to the order of inheritance, so a father comes first, then a paternal grandfather, as above he goes, then a full brother, then a paternal brother, and so on, as the order of marriage guardianship just as custody is entitled for a non-mahram if he is an inheritor, such as the paternal cousin due to his compassion for guardianship, and the other contrast saying that he has no custody.

If there are many guardians in the same time from male and female then the mother takes precedence, then the maternal grandmother who continue their relationship by females, then the father, and it is said that the maternal aunt and maternal sister take precedence over the father. if they are equal and there are males and females, then the female takes precedence over the male.

And if two of each are equal, as two brothers, two sisters, and two maternal aunts, there will be a draw between them to resolve the dispute<sup>10</sup>.

#### **Hanbali law**

The Hanbalis are of the view that the most entitled to custody after the mother are maternal grandmothers, then the father, then the maternal grandmothers, then the grandfather, then the mothers of the grandfather, , then the full sister, then the maternal sister then the paternal sister, then the full maternal aunt, then the half maternal aunt by mother side, then the full paternal aunt, then the half paternal aunt from mother side, than the half maternal aunt from father side, then his mother's maternal aunt as well, then his father's maternal aunt, then his father's paternal aunt, then his nieces, then his paternal uncles' daughters and paternal aunts' daughters, then his father's paternal uncles' daughters and his father's paternal aunts' daughters. The precedence will be for the full, then who was for a mother (maternal), then who was for a father (paternal). Then the custody goes to the rest of the agnate closest to the nearest. If the child in custody is a female, then custody over her goes to the male relative of her mahrams, even through breastfeeding etc.

As for the order of the men, the first is the father, then the paternal grandfather, even if he goes above, then the full brother, then the paternal brother, then their sons, even if they are descended according to the order of inheritance, then the paternal uncles, then their sons as well, then the paternal uncles of the father, then their sons.



If two or more people who have right of custody come together and are equal, such as two full brothers, the one who is entitled to them shall be selected by drawing lots.

And in every place in which a brother and sister, or an uncle and an aunt, or a nephew and a niece from father side, or a nephew and a niece from mother side meet, the female takes precedence over the male in her rank, because femininity here with equality necessitates superiority<sup>11</sup>.

#### **Requirements / Conditions for custody:**

Custody is one of the mandates and its purpose is to protect and care for the child in custody, and this cannot be achieved unless the custodian is qualified for that, and for this reason the Islamic Scholars specified some conditions that custody is given to those who meet it. These are three types:

General conditions for women and men,

Conditions specific to women,

Conditions specific to men.

#### **I. The general conditions:**

1 - Islam: that is if the child in custody is a Muslim, because there is no guardianship for the unbeliever over the Muslim, and there is the fear that the child in custody may be subject to conflict in his religion. This the opinion of shawafe , hanabila. Hanafis also say this with regard to the female custodian, hanafies and malkies said in female costdian: Islam is not required there unless the woman is an apostate, because she is imprisoned and beaten - as the Hanafis say - so she does not assign herself to custody. As for the non-Muslim woman is like a Muslim woman in getting the right of custody. The Hanafis said: As long as the child in custody does not understand the religion, in that case he will be taken from her and given to the people from the Muslims, but according to the Malikis, if there is fear for him, he will not be taken from her. Rather, the Muslim neighbors will watch over it<sup>12</sup>.

2- Puberty: Custody is not entitled to a child because he is incapable of managing the affairs of the child in his custody.<sup>13</sup>

3. Mind: Custody is not entitled to the insane, because these are incapable of managing their affairs and need someone to take care of them, so they should not be entrusted with custody of others, and the four jurists have agreed upon it.<sup>14</sup>

4- Piety/wariness: God-consciousness/God-fearing is necessary for custody. There is no custody of a sinner, because a sinner cannot be trusted. What is meant is the debauchery that leads to the loss of those under custody, such as infamous drinking, theft and adultery. As for the person who is in a unconfirmed condition, custody is given to him. Ibn Abidin said: The conclusion is that if the female custodian is such immoral which leads to lose the child, then her right is forfeited. Otherwise, she is more entitled to him until the son understands the immorality of his mother, and he is removed from her. Al-Ramli said: Unconfirmed person is allowed to be custodian. Al-Dasouki said: The custodian is to be understood as a creditable until it is proven that he is not<sup>15</sup>.

5- The ability to take care of the child under custody: There is no custody for the one who is unable to do so due to old age, or a disease that prevents it, or a disability such as blindness, muteness, or deafness, or the custodian goes out a lot for work or something else and leaves the child lost. All of these have no custody unless they do not have someone to take care of the child in custody and take care of his affairs, in which case their custody does not fall<sup>16</sup>.

6- The Custodian should not have an infectious/contagious disease, or a foul disease that may exceeds its harm to the child in custody, such as leprosy, and tis like disease that exceeds its harm to the child<sup>17</sup>.

#### **II. The conditions for male custodians:**

A - He should be a mahram (A person which is not allowed to marry her in Shariah ) for the child in custody, if the woman under custody is a teenage female. So there is no custody of the cousin because he is not Mahram, and because it is permissible for him to marry her, so he is not trusted with her.

And if the teenage girl has no other than the cousin, then she is assured to stay with a trustworthy woman who is chosen by the cousin, as the Shafi'is and Hanbalis say, or the judge chooses her as

the Hanafis say, if her cousin is not more suitable for her, otherwise the judge will keep her with him, and according to the Malikis, the right of custody is forfeited to a non-mahram.

And the Shaafa'is permitted her to stay with her cousin, if he had a daughter whom he felt ashamed of, so she could be placed with him with his daughter<sup>18</sup>.

B - The Maalikis say in order to give the custody to the male: that he should have some from women who are suitable for custody, such as a wife or a hired woman for that.

### III- The conditions for female Custodians:

A- The custodian should not be married to a stranger for the child under custody, that is, the custodian should be no married or marry a relative of the child, because she will be busy in completion of the right of the husband and cannot take care of the him, and the Prophet (peace be upon him) said: "You are more entitled to him as long as you are not married". So there is no custody for the one who married a stranger for the child under custody, and her custody falls from the time of the contract of marriage according to the Hanafis, Shafa'is and Hanbalis, Malki says it Falls by the time of sexual relation<sup>19</sup>.

B- The custodian should be a Mahram relative of the child in custody, such as his mother and sister, so there is no custody of the daughters of the paternal uncle and paternal aunt and thw maternal uncle and the maternal aunt., and this is according to the Hanafis and Malikis. This is not a condition according to the Shaafa'is and Hanbalis<sup>20</sup>.

C- The custodian should not reside with the child in the house of someone who hates the child under custody and dislikes him.

D- The custodian should not refuse to breastfeed the child if she is qualified for him, and the child needs to be breastfed<sup>21</sup>.

### Status of custody and the rights related to it:

Its Shariah status, that it is obligatory. Because the child under custody may dies by leaving her, so he must be saved from destruction. So it must be spent on him and saved from destruction<sup>22</sup>.

Custody requires wisdom, alertness, attention, patience, and good manners, to the extent that it is hated for a person to curse a child during his upbringing, just as he hates to curse himself, his servant, and his wealth<sup>23</sup>, because the Prophet(peace be upon him) said: "Do cruse yourselves, And do not curse your children, and do not curse your servants, and do not curse your wealth, do not agree with God at an hour in which a thing is asked, and he responds to it."<sup>24</sup>

Right to custody: The jurists did not agree on the issue of determining the holder of the right of custody. there is a difference of opinion among the jurists<sup>25</sup>.

It was said: Custody is a right for the custodian, which is the opinion of the Hanafis and the Malikis. Because he has the right to forfeit his right, even without compensation, and if custody was a right for someone else, it would not be forfeited by dropping him.

And it was said: It is the right of the child under custody, so if he drops it, it falls.

The scholars said that custody is related to three rights together: the right of the Custodian, the right of the child, and the right of the father or whoever takes his place for legal custodian. If it is possible to join these rights, the chance must be given to this adjustment, and if they conflict, the right of the child should be given precedence over others. From this the following provisions derive:

1 - The female custodian is obliged to take custody of the child, if she is appointed, and there is no other woman.

2 - The custodian should not be forced into custody if she is not obliged to do so. Because custody is her right, and there is no harm to the child due to the presence of other maharims relatives.

3 - If a woman is divorced from her husband on the condition that she leaves her child with the husband, then the divorce according to the Hanafis is valid and the condition is invalid; Because this is the right of the child, to be with his mother as long as he needs her.

4 - It is not permissible for the father to take the child from the holder of the right to physical custody, and give him to someone else, except after Shariah justification<sup>26</sup>.

### Transfer of Physical Custody:

The mother is the person which is most entitled to custody of the child if the requirements are fulfilled, If the mother is not one of those who have custody due to the loss of all or some of the





conditions in her, or she is denied custody, then she is like non-existent and custody passes to the one who follows it, and thus custody shifts from the nearest to the farthest in entitlement<sup>27</sup>.

**Giving the child the option of custody:**

The Shaafa'is and Hanbalis are of the view that the child in custody should be given the choice between his father and mother if they dispute. He will be given whichever one he chose. If they agree that he should be in the custody of one of them that is permissible, and according to the Shaafa'is, the choice remains, even if one of them forfeits the right before the choice and there is no difference in the giving choice between the male and the female child. According to the Hanbalis, the boy is given the choice if he has reached seven years of age and is of sound mind. Because it is the age in which the shariah commanded him to perform prayer. The Shaafe determined it by distinguishing between eating alone and drinking alone, and they did not consider reaching the age of seven as a limit. If he passed seven years without distinction he remained with his mother. There is no difference in this between males and females.

The Hanbalis differentiate between males and females, so the boy is given the option when he reaches seven years of age, but the girl will be in the custody of his mother, If she reaches the age of seven, until she reaches puberty, and after she reaches puberty, she will also be obligatory with the father until the wedding, even if the mother donates her custody to her; Because the purpose of custody is protection, and the father is the best guardian of it, because she is betrothed by him, she must be under his gaze<sup>28</sup>.

And the choice in custody is conditional on being free from destruction, so if he knows that he chooses one of them to enable him to be free for forbidden affairs and he hates the other as he would force him to do in terms of etiquette then it is not act according to his choice. Because it is based on his bad desire/ lust, so it will waste him. It is also conditional on showing the Judge his knowledge of the reasons for the choice. The proof for choice is the hadith of the prophet which was narrated by Abu Hurairah who said: A woman came to the Prophet (peace be upon him) and said: My husband wants to take my son away, and he has given me water from the well of Abu 'Anaba and has benefited me. The Prophet, may God bless him and grant him peace, said: This is your father and this is your mother, Take the hand of which one you want, so he took his mother's hand, and she went with him off with him<sup>29</sup>. And the other proof is the Omar's judgment like this.

And among the rulings of the option: that if the chosen one refuses to sponsor the child in custody, the other person will sponsor him. if the Mother and father refuse, then the grandfather and the grandmother are given the choice.<sup>30</sup>

Also among its rulings is that if the discerning child chooses one of the parents, then chooses the other, it is transferred to him. Because the matter may appear contrary to what he thought, or the condition of the one who chose him first may change unless it appears that the reason for choosing the other is his lack of reason, then he is taken with his mother, even if he has reached the age of puberty, as before the discernment.

Also among the rulings is that if the child in custody chooses both of his parents, there will be a draw between them.

But if he did not choose one of them, then according to the Shaafee, the mother takes precedence; Because it is more companionship for what it was. And according to the Hanbalis: lots should be drawn between them. Because there is no priority at that time for either of them, and it is one saying of the Shafi as well. If the child in custody chose someone other than the one who nominated by lot, it is returned to him, as if he had chosen him initially.

The Hanafis and Maalikis say that the child has no choice, whether male or female, and that the mother has more right to them. The reason why the child is not given a choice according to the Hanafis and Maalikis is: his lack of reason, which leads to his lack of choice. He may choose to be alone and free for playing, so the purpose of the custody is not achieved, which is looking at the children and take care of him.

And the hadiths that indicate that the child is given a choice, in which it is stated that his choice was due to the prayer of the Prophet (peace be upon him) for him that he be guided.

**The end of physical custody:**



It is decided that women are more entitled to custody than men, and that custody over young children begins at birth, but the termination of women's custody of young children in the event of separation of the spouses differs between different schools of thought. Hanafic say: The custody of a woman over the child ends when he starts eating alone, drinking alone, and dressing alone, and they estimated that at seven years, because most people do not need custody at this age.

Custody remains for the female until she reaches puberty by menstruation or wet dreams or age, and this is as in the *zahir al riwayah* books if the custodian is the mother or the grandmother. And other than the mother and the grandmother, they have more right to the little girl until she becomes teenager, and it is estimated at nine years, and it is the fatwa of Ahnaf.

On the authority of Muhammad, the ruling on the mother and grandmother is the same as the ruling on other than them, so the absolute custody of women - either mother or other - over the young girl ends when she reaches nine years<sup>31</sup>.

If the custody of the women expires, the child in custody does not choose whether he is male or female, but rather he is given to the father, because due to his lack of reasoning he chooses the person who has toys, and it has not been reported that the Companions of the prophet have given choice to child gave. The guardianship of the father remains over the young male and female until adulthood. When a boy reaches puberty in good condition he will be given choice between his legal guardian, or his physical custodian, or being alone with himself, as well as the female, if she is a virgin or is a virgin of old age and has an solid opinion, then she chooses as the boy chooses. And if the boy, the non-married woman, or the old virgin are not safe for them, if they are alone with themselves, the legal guardianship of the father remains over them, just as the guardianship remains over the virgin if she is of a young age<sup>32</sup>.

The Maalikis are of the view that women's custody over the male continues until he reaches puberty and his custody ends when he reaches puberty, even if he is sick or insane.

As for the custody of the female, it continues until her marriage and the consummation of the husband with her.

According to the Shaafa'is, custody continues for the child under custody until discrimination age of child, whether it is a male or a female child. If he reaches the age of discrimination - which is estimated at seven or eight years, usually - then he is given the choice between his father and mother. If he chooses one of them, he is given to him, and if he returns and chooses the second, he is transferred to him. Because the condition of the custodian may change, or the opinion of the child under custody may change about him after choosing, unless he does so much that he thinks that it is caused by his lack of discernment, in which case he is assigned to the mother and his choice is revoked.

And if the child under custody refuses to choose, then the mother is more entitled, because she is pity and accompanies to him.

And if the child under custody is insane, he is not given the choice, and custody remains with his mother until he recovers<sup>33</sup>.

Hanabila say regarding the boy that he stays with his custodian until he reaches the age of seven. after that If his parents agree that he should be with one of them, that is permissible, because the right to custody of him rests with them. And if they disputed, the judge will give option to him between them, so he will be with whomever he chose from them. Omar decided that. And it was narrated by Saeed and Ali. Abu Hurairah narrated that he said: A woman came to the Prophet (peace be upon him) and said: My husband wants to take my son, and he has given me water from the well of Abu Anaba, and he has benefited me he Prophet said: This is your father, and this is your mother, so take whichever of them you wish. So he took his mother's hand, and she went with him<sup>34</sup>.

In the female Hanabila said, when she reaches seven years of age, she is not given the choice, rather she is obligatory with the father until puberty, and after puberty she is also with him until the wedding, even if the mother volunteers her custody, because the purpose of custody is protection, and the father is more protective of her, but she is betrothed by him, so she must be under his watch.

And the insane, even if it is a female, stays with his mother, even after puberty, because he needs someone to serve him and take care of his affairs, and women are more knowledgeable about that<sup>35</sup>.

### Conclusion:

Islam is practically the largest religion in the world, most of its followers follow Sharia law in their problems, and in the world, religious laws are generally taken care of in family laws, so the One of the complex legal issues of the Muslim is the rulings of physical custody of the child. The different sects are almost the same in this regard, but the four popular schools of thought of Sunni sect are slightly different, almost all the four religions agree that it is very appropriate for women to have the physical custody of a child, up to a certain age in which the difference between male and female. However, after puberty, everyone allowed the sound child to stay with whomever he wanted. All these legal points were discussed in detail in the light of these four Masalik (Schools of thought).

### References

- [1] [https://en.wikipedia.org/wiki/Child\\_custody](https://en.wikipedia.org/wiki/Child_custody)
- [2] <https://legaldictionary.net/child-custody>
- [3] Abu Malik Kamal bin Al-Sayed Salim, *Sahih Fiqh al-Sunnah and wa adiltuhu wa tawzih al mazahib*, Al-Maktabaha al-Tawfiqiyah, Cairo, 2003: 3/414
- [4] Al-Kasani Alaeddin, Abu Bakr bin Masoud bin Ahmed Al-Hanafî, *Bada'i Al-Sana'i fi Tirtib Al-Shari'a*, Dar Al-Kutub Al-Ilmiyyah, Beirut, second edition, 1406 AH - 1986 AD: 4/40
- [5] *Bada'i' al-Sana'i*: 5/117, Ibn Rushd Abu al-Walid Muhammad ibn Ahmad al-Maliki, *Bidayah tul Mujtahid wa Nihayah tul Muqtasid*, Dar al-Hadith, Cairo, 1425 AH - 2004 AD: (3/ 79). Al-Shirazi Abu Ishaq Ibrahim bin Ali bin Yusuf Al-Shafi'i, *Al-Muhadhdhab*, Dar Al-Kutub Al-Ilmiyyah, Beirut: (3/ 165). Abd al-Rahman bin Ibrahim bin Ahmad al-Maqdisi al-Hanbali, *Al-Uddah Sharh Al-Umdah*, Dar Al-Hadith, Cairo, 1424 AH 2003 AD: (p. 477)
- [6] Al-Hakim Abu Abdullah Muhammad bin Abdullah Al-Nisaburi, *Al-Mustadrak ala Sahihain*, Dar Al-Kutub Al-Ilmiya, Beirut, 1990: (2/ 225)
- [7] Ibn Abdeen, Muhammad Amin bin Umar al-Hanafî, *Hashiyat Ibn Abdeen (Rad al-Muhtar)*, Dar al-Fikr, Beirut, 1412 AH / 1992 AD: (3/ 562-563)
- [8] Al-Adawi Abu Al-Hassan, Ali bin Ahmed al maliki, *hashiah Al-Adawi's al kifayah al talib alrabbani*, Dar Al-Fikr, Beirut, 1414 AH - 1994 AD: (2/ 132)
- [9] Tirmidhi, Abu Issa Muhammad bin Issa, *Sunan al-Tirmidhi*, Dar al-Gharb al-Islami, Beirut, 1998 AD: (3/377)
- [10] Al-Khatib Al-Sherbiny Shams Al-Din, Muhammad bin Ahmad Al-Shafi'i, *Mughni Al-Mutahaj ila marifat mani alfaz alminhaj*, Dar Al-Kutub Al-Ilmiya, Beirut, 1415 AH - 1994 AD: 5/193 -196)
- [11] Ibn Qudamah Abu Muhammad Muwaffaq al-Din Abdullah bin Ahmad Al-Maqdisi Al-Hanbali, *Al-Mughni*, Cairo Library, Cairo, 1388 AH - 1968: (8/246- 247)
- [12] *Bada'us snae'*: 5/121
- [13] Al-Dusqi Muhammad bin Ahmed bin Arafah al-Maliki, *Hashiya al-Dusqi Ala al-Sharh al-Kabeer*, Dar al-Fikr, Beirut: (2/528), *Mughni al-Muhtaj*: 5/195
- [14] *Al-Muhadhdhab fi fiqh al-Imam al-Shafi'i*: (3/ 164) *Hashiyat al-Dasuqi on al-Sharh al-Kabeer*: (2/ 528)
- [15] *Hashiyat al-Dasouki on al-Sharh al-Kabeer*: (2/528), Ibn Abidin 2/633-634, 9, *Mughni al-Muhtaj* 5/195, and *Kashshaaf al-Qinaa'* 5/498)
- [16] *Hashiyat al-Dasuqi on al-Sharh al-Kabeer*: (2/528), and *Kashaaf al-Qinaa'* 5/499
- [17] *Hashia Al-Dasouki Al-Sharh Al-Kabeer*: (2/528), *Kashaaf Al-Qinaa' on the board of persuasion* (5/499)
- [18] *Al-Kashshaf* 5/497
- [19] *Al-Muhadhdhab fi Fiqh al-Imam al-Shafi'i by al-Shirazi* (3/165), *Kashshaaf al-Qinaa'* 5/499, and *al-Mughni* 7/619)
- [20] *Al-Bada'i'* 4/41, and *Mughni Al-Muhtaj* 3/453, 454
- [21] *Mughni AL Muhtaj*: 455-456
- [22] *Al-Mughni*: 612/7., *Kashaaf Al-Qinaa*: 576/5
- [23] *Mughni Al-Muhtaj*: 464/3 .
- [24] Abu Dawud Suleiman bin Al-Ashath Al-Sijistani, *Sunan Abi Dawud*, Dar Al-Risala Al-Alamiya, Edition: First, 1430 AH - 2009 AD: (2/637)
- [25] *Al-Durr Al-Mukhtar and Wa radd Al-Muhtar*: 2/871-875
- [26] *Wahbah bin Mustafa al-Zuhaili*, *Al Fiqh al-Islami wa Adllatuhh*, Dar al-Fikr, Damascus: (10/7297)
- [27] Ministry of Al-Awqaf and Islamic Affairs Kuwait, *Al-Mausua'a al-Fiqhiya Kuwaitiah*, Dar al-Salsil, Kuwait, second edition, 1404 - 1427 AH: (2/ 310)
- [28] *Kashaaf Al-Qinaa'* 5/501
- [29] *Al-Nisa'i Ahmad bin Shuaib bin Ali*, *Sunan Al-Nisa'i*, maktab al matboat al Islamia, Halb, 1406 - 1986 (6/ 185)
- [30] *kashaaf al-Qinaa'* 5/501
- [31] *Almausoah al fiqhiyah al koyitiah*: 17/314
- [32] *Bada'a al sanayee*: 4/42-43, Ibn Abidin: 2/641-642





---

[33] *Mughni Al-Muhtaa* 3 / 356 - 457 - 458 - 459 - 460

[34] *Sunan Al-Nisa'i*: 6/185

[35] *Kashshaf Al-Qina'* 5/501-502-503 and *Al-Mughni* 7/614-616