

# **Violations of the Shafi'is to the Malikis in the book “Nihaayat al-Muttalib fi Derayat al-Madhab” by Imam al-Juwayni - may God Almighty have mercy on him - (d. 478) in the chapter on usurpation (A comparative study)**

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## **Abstract**

Praise be to God, who favored us with the grace of Islam, and prayers and peace be upon the master of the prophets and messengers, his family and companions, and after:

This research refers to the issues in which the Shafi'is disagreed with the Malikis, and among them was the Imam of the Two Holy Mosques al-Juwayni - may God Almighty have mercy on him - in his book “Nihayat al-Muttalib”, where he mentioned the disagreement with the Malikis in the book of usurpation, and it contains two issues. And as a conclusion, the first topic was a brief translation of the life of Imam Al-Juwayni - may God Almighty have mercy on him - personal and scholarly.

## **Introduction**

Praise be to God, and prayers and peace be upon our master Muhammad, his family, companions, and those who followed him. The study of jurisprudence is one of the most important disciplines. Because it is linked to the pillars of the Islamic religion, it is renewed with the renewal of daily life and with the renewal of times, as it is one of the greatest needs and interests of people.

Importance of the topic:

1- Explanation of the disagreement mentioned by the Imam of the Two Holy Mosques Al-Juwayni - may God Almighty have mercy on him - with the imams of the schools of thought, mentioning the sayings of the jurists,

comparing them, and clarifying the most correct of them.

2- The impact of irregularities in understanding the sayings of the imams and explaining and discussing their evidence.

Reasons for choosing the topic:

1- The status of the imam of the Two Holy Mosques al-Juwayni - may God Almighty have mercy on him - among the jurists.

2- The importance of irregularities, as they correct the error and fill the defect, if any.

3- Knowing the opinions of the four jurists with whom the schools of jurisprudence are associated, they left a great wealth of jurisprudence, which their students devoted to

studying, and the study of violations has a great impact in explaining that.

4- Serving the Islamic religion by understanding the dissenting saying and clarifying the most correct of the dispute.

Difficulties: One of the difficulties encountered in this research is how to present the statements of scholars. Because I am new to writing on the topic of violations.

### **Research Methodology:**

1- In my study, I presented the saying of the Shafi'is mentioned by Imam al-Juwayni - may God Almighty have mercy on him - in "Nihaayat al-Muttalib", then the saying of the Malikis who mentioned the disagreement with them, then the rest of the schools of jurists.

2- Identified by strange words, if any.

3- I mentioned the reason for the disagreement between the Shafi'is and the Malikis.

4- The sources are mentioned at the end of the research.

The research plan required that it be divided into an introduction, two sections, and a conclusion. As for the introduction, this is it.

As for the first topic: a brief translation of the life of Imam al-Juwayni - may God have mercy on him - and there are two requirements:

The first requirement: the personal life of Imam al-Juwayni - may God Almighty have mercy on him -.

The second requirement: the scientific life of Imam al-Juwayni - may God Almighty have mercy on him.

The second topic: Shafi'i violations of the Malikis in the chapter on usurpation, and there are two demands:

The first requirement: the necessity of mortgaging without taking possession

The second requirement: if the mortgagor and the mortgagee differ in the amount of the mortgage, then the saying is the saying of whom.

And a conclusion in which I showed the most important findings, and then mentioned the sources and references.

The first topic: a brief translation of the life of Imam Al-Juwayni - may God Almighty have mercy on him -.

The first requirement: his personal life.

First: His name and title: He is Abu al-Ma'ali Abd al-Malik bin Abdullah bin Yusuf bin Abdullah bin Yusuf bin Muhammad bin Hayawayh, al-Juwayni al-Nisaburi, al-Shafi'i, al-Ash'ari, and he was called the Imam of the Two Holy Mosques due to his neighborhood in Makkah for four years.

Second: His birth: The Imam of the Two Holy Mosques was born in "Jain"<sup>2</sup>, and there was a difference of opinion on the date of his birth. It was said: He was born in Muharram in the year 419 AH, and it was said: He was born in the year 417 AH, and it was said: He was born in the year 410 AH, and the most correct opinion is that he was born in the year 419 e; Because he died in the year 478 AH at the age of 59 years, and whoever died in the year 478 AH will be born in the year 419 AH <sup>3</sup>.

Third: His upbringing: The imam of the two holy mosques, al-Juwayni, was brought up in Nishapur <sup>4</sup> and his upbringing had a great impact on his scientific life, in addition to his going out with the sheikhs to Baghdad, where he met the great scholars, looked, studied, and his acumen appeared, and he was popularly mentioned <sup>5</sup>.

Fourth: His death: He died on Wednesday night after Isha, the twenty-fifth of Rabi` al-Akhir of the year 478 AH, at the age of 59. He was transferred that night to the country, and was buried in his house.

The second requirement: his scientific life

First: His scholarly status: The imam of the Two Holy Mosques al-Juwayni was the most knowledgeable of the later companions of Imam al-Shafi'i at all, and he was unanimously agreed on his imam, and he excelled in all sciences of fundamentals, literature, etc., and he provided sustenance from expanding the phrase what he did not know from anyone else, and he studied the system of Nishapur, and he took up rhetoric with it He used to sit for preaching and debates.

Secondly: His writings: He has many writings that varied in different sciences, including 8:

- 1- "Nihaayat al-Mattalib fi Dirayah al-Madhib"
- 2- "Summarizing the approximation"
- 3- "Guidance"
- 4 - "Ghaniyat al-Mushidrun"

Third: His sheikhs: The Imam of the Two Holy Mosques al-Juwayni - may God have mercy on him - was a student at the hands of quite a few scholars, including:

1- His father, Sheikh Abu Muhammad al-Juwayni Abdullah bin Yusuf bin Muhammad bin Abdullah al-Juwayni al-Nisaburi: He was a pious scholar and ascetic. Al-Risalah), and the Imam of the Two Holy Mosques took jurisprudence from his father, who died in the year 438 AH 9.

2- Mansour bin Ramesh bin Abdullah bin Zaid Abu Nasr al-Nisaburi: A man of shrewd men, he assumed the presidency in Nishapur, and Nishapur was adorned with his justice, his

biography, fairness, and his justice for the subjects and the poor from the darkness, and he is trustworthy in good performance, true to the origins. He died in 427 AH 10.

Fourth: His students: A large number of scholars, including:

1- Sheikh Saad bin Abd al-Rahman al-Faqih Abu Muhammad al-Istrabadhi: He was the imam of the Two Holy Mosques and became one of his specialists, and he was an accomplished imam. He died in the year 490 AH 11.

2- Imam Ahmed bin Muhammad bin Mudhaffar Al-Khawafi, the Shafi'i jurist: He was the most knowledgeable of the people of his time.

The second topic: Shafi'i violations of the Malikis in the book of usurpation.

The first requirement: what is required in the felony on the limbs of the slave 14

There is no disagreement among the jurists that the "felony" 15 is in other than the soul. Firstly?

The jurists differed on this matter, and there are two sayings:

The first saying: It is estimated in the slave as it is estimated in the heat; And it is half of its value, which is the saying of the Shafi'is 18, the Hanafis 19, and the narration of Imam Ahmad 20, the Imamis 21, and the Zaidis 22.

1- It was narrated on the authority of Umar and Ali - may God be pleased with them both - that they said (The wound of a slave is as valuable as the wound of a free man in his blood money)23.

2- By analogy with the heat, in that he is charged, so he must be killed by force and expiation, and therefore he must be considered

a heat rather than a beast because of his many resemblances to a heat<sup>24</sup>.

The second saying: It is not estimated except in "al-Jarrah" 25, the four "al-Muwadafa" 26, "al-Munqala" 27, "the mammumah" 28, and "al-Jaifa" 29, and apart from that, only what is deficient in its value is obligatory. In the old 31, the Hanbalis 32, and the Dhahir 33.

1- Since it is owned, the duty is only according to the decrease in its value, without any increase or decrease; Because it is like a beast in decreasing value and lack of benefit, and this is something that does not require the four wounds 34 .

3- This is because giving a decrease in its price does not involve injustice on the part of the master or the perpetrator. If the calamity is established, the decrease is assessed. Because there is no value in them, and there is no misfortune, defect, or deficiency in them.

And he objected: that the exclusion of discretion from the free is only in the explained, the transmitted, the congregational, and the dry; big mistake Because every felony in the heat has a prescribed penalty, and it is also estimated in the slave, and

The reason for the disagreement on this issue between the Shafi'is and the Malikis:

And the reason for their disagreement in this matter is their disagreement in the analogy of the slave here? Some of them likened it to offerings, and some of them likened it to the heat, so whoever sees that the slave here is likened to the heat; Because he is a Muslim and charged, and in killing him, retaliation and expiation must be imposed. He went to estimate his property as free, and it is half the value, and to this saying went the Shafa'is and those who agreed with them. The saying went to the Malikis and those who agreed with them 37.

The most correct saying: After presenting the sayings of the jurists and explaining and discussing their evidence, it becomes clear, and knowledge is with God Almighty, that the most correct saying is the first saying, and it is the saying of the Shafi'is and those who agree with them, saying: That what is valued for its bribe from the free is also estimated from the slave and it is half of its value; This is because the slave is an obligated person whose condition is in the case of a free person.

The second requirement: the obligation to guarantee the one who opened a cage for a bird, Fitar 38

There is no disagreement among the jurists that if a person opens the door of the cage for a bird, then it flies away immediately after its irritation and alienation guarantees it 39, but they differed as to if a person opened the door of the cage and the bird stopped for a certain period and then flew after that? Does he have a guarantee? Firstly?

The jurists differed on this matter, and there are two sayings:

The first saying: He is not obligated to guarantee, which is the view of the Shafi'is 40, the Hanafis 41, and the Zaidis 42.

Evidence and discussion:

1- By analogy with the imprisoned slave, so if he opens his cage and escapes, he is not liable. Likewise here, if the cage is opened for the bird and it breaks free, he is not liable 43.

2- Because the action of the bird here is attributed to its intention and choice, because when it eats it intends what will benefit it, and for this it has a choice.

And he objected: It is true that the bird is chosen to fly and so is chosen to eat it, but it flew because of fear of the opener of the cage

because the bird by nature is alienated from man, so it was a reason for the bird to reach flight and exit from the cage, and this is similar to the one who sent a prey on the bird of others and killed it, he is guaranteed, and so is here 45. The second saying: He must guarantee, which is the saying of the Malikis 46, and the saying of the Shafi'is 47, the Hanbalis 48, and the Imamis 49.

Evidence and discussion:

1- Because he opened the cage and left the cage, and if he did not open the cage, he would not be able to fly 50.

2- Because he did it with the intent of destroying it, as evidenced by the fact that the bird cannot fly before the cage is opened.

The reason for the disagreement on this issue between the Shafi'is and the Malikis:

And the reason for their disagreement in this matter is their disagreement in the reason that the warranty is initiated here? Did it happen because the cage was opened? Or directly the flying bird?

So whoever says: that the reason for the guarantee here is negated; Because the flight occurred by the action of the bird and its initiation to fly; Because he intended what is useful for him in eating, so his direct flight here is what is intended in the ruling. He said he does not have to guarantee, and to him the Shafi'is and those who agreed with them went. Or after a while, whether he will fly or not, and this is the opinion of the Malikis and those who agreed with them.

The most correct saying: After presenting the sayings of the jurists and explaining and discussing their evidence, it becomes clear, and knowledge is with God Almighty, that the most correct saying is the second saying, which is the

saying of the Malikis and those who agreed with them saying: He must absolutely guarantee whether he is angry or not; This is because simply opening the cage for the bird will alienate the person and he will leave even if he stayed for a certain period and then flew after that, so he was the reason for his exit from the cage; Because the nature of animals repels people, and it is a matter of destroying the money of others, so he must guarantee it.

### Conclusion:

After this scientific tour in this jurisprudential research, I have come to the following results:

1- Imam Al-Juwayni - may God Almighty have mercy on him - is a great jurisprudential figure.

2- The importance of studying violations, as the concept of violations is to fix the error and fill the defect, if any.

3- A felony other than the soul, if it is not possible to bribe it from a free person, then it is not possible to bribe it from a slave.

4- A felony in the soul is estimated by the slave as in the case of a free person, and it is half.

5- Whoever opened the cage for a bird and it broke its fast due to the opening, he is liable; The nature of the aversion of animals to humans.

In conclusion, we ask God Almighty for success and payment, and praise be to Him in the first and the last, and prayers and peace be upon our master Muhammad and his family and companions.

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