229013 - She had many fatwas available to her and chose the one she felt most comfortable with

the question

I know that the ordinary Muslim does not have the knowledge to examine the evidence for two views and determine which view is most likely to be correct, and he has no choice but to ask a scholar whose knowledge he trusts. But what that means is that he should not check his heart at all (and see how he feels) or use his mind or intellect to see where it may lead him if he reads the evidence of all sides. I have the habit of not asking just one shaykh, because there are some trustworthy shaykhs who may have strict and harsh views that are not based on any proper understanding of real-life situations. So I resort to examining the evidence of both sides, such as one who says that all Islamic groups are outside of the saved group. Therefore I am relying on two things: 1. following evidence and 2. relying on the principle that ease is one of the aims of sharee'ah. Sometimes I ask a question and receive an answer that I find too lenient, so I ask someone who is more strict, and if he gives me an answer based on clear evidence from the Qur'an and Sunnah, I follow his view, and vice versa. Sometimes I ask a question and get an answer that I find very strict and harsh, so I ask another shaykh, and if his opinion is easier (and supported by evidence), I follow it. An example of that is the view that a prayer does not have to be repeated if the worshipper omits one of the conditions of prayer out of ignorance, because the Messenger (blessings and peace of Allah be upon him) did not instruct anyone to repeat prayers in which mistakes had been made out of ignorance. Moreover this also entails hardship, because every once in a while I find out about a mistake that I used to make in the prayer, out of ignorance, so do I have to make up for the prayers in every case, and will I have to spend the rest of my life making up prayers?

My question is:

Is what I am doing correct, which is the idea that the ordinary Muslim should follow convincing evidence if he has some doubts about some fatwa that he has been given, and he should keep away from fatwas that are clearly very strict, because ease is one of the aims of sharee'ah? To

explain further, the examples I gave above about the choice of view that I follow is because there is hardship in the opposite view, are as follows: not repeating prayer because of having omitted one of its prerequisites out of ignorance; not regarding as a disbeliever one who listens to people mocking the religion when he does not approve of their actions; and covering the feet with the socks when praying, without making the abayah long enough to cover the feet, so that I can move more easily.

Detailed answer

Praise be to Allah.

Firstly:

The danger that all people must avoid – whether they are scholars or ordinary Muslims – is choosing on the basis of whims and desires and that which suits their wishes, and deliberately choosing fatwas on the basis of which the Muslim may be trying to break free from all restrictions and be excused from all obligations, or from obligations that are contrary to his own desires, or that are difficult for him to do, even if there is only the slightest hint of difficulty. That is because his nafs (self) is inclined towards evil, and it seeks and desires it.

Anyone who is like this is in grave danger, because the likely outcome for such a person is that he is going to free himself from the commands and prohibitions ordained in sharee'ah, because the desires of the nafs know no limits. Therefore if whims and desires become the standard that governs his choice of fatwas, then in that case he will start finding legitimate reasons to follow his whims and desires, at which point it will become difficult to treat the problem and find a remedy. Allah, may He be exalted, says (interpretation of the meaning):

"And I free not myself (from the blame). Verily, the (human) self is inclined to evil, except when my Lord bestows His Mercy (upon whom He wills). Verily, my Lord is Oft-Forgiving, Most Merciful"

[Yoosuf 12:53]

“and follow not your desire for it will mislead you from the Path of Allah”

[Saad 38:26]

“But as for him who feared standing before his Lord, and restrained himself from impure evil desires and lusts.

Verily, Paradise will be his abode”

[an-Naazi‘aat 79:40-41].

Ibn Qayyim al-Jawziyyah (may Allah have mercy on him) said:

It is not permissible for the mufti to choose whatever view or opinion he likes without examining which view has the stronger evidence or without paying attention to examining the evidence and, rather, to be content, when choosing a view, with the mere fact that this was the view of some imam or was the view adopted by a certain group, and thus he chooses whatever he wants of options and views, so that whenever he sees a view that is in harmony with what he wants and which suits him, he chooses it, so that what he wants and what suits him becomes the criterion, on the basis of which he regards one view as more likely to be correct than others. This is haraam according to the consensus of the ummah.

This is like what was narrated by al-Qaadi Abu’l-Waleed al-Baaji from one of the people of his time – who set himself up to issue fatwas: he used to say: What I promise my friend is that if he asks me for a ruling or a fatwa, I will choose for him the view of some mufti that suits him.

He [Abu’l-Waleed] said: Someone I trust told me that he had an issue and wanted a fatwa concerning it [asking on behalf of someone else], so some of the muftis gave him a fatwa that could be harmful to him, and the man concerned was absent. When he came, he asked them himself, and they said: We did not know that this fatwa was for you. So they gave him another fatwa that suited him. He said: There is consensus among the Muslim scholars, those whose views are counted with regard to consensus, that (choosing what suits one) is not permissible. Maalik (may Allah have mercy on him) said, concerning the difference of opinion among the Sahaabah

(may Allah be pleased with them): Some of them got it wrong and some of them got it right, so you have to examine their views and figure out the right answer.

To sum up, it is not permissible to choose views or issue a verdict concerning a religious issue on the basis of whims and desires, choosing on the basis of what you prefer and what suits you, so that a person chooses the view that suits him or suits the view of the one whom he wants to appease, then he adopts it, gives verdicts on that basis, rules in accordance with it, and rules against his enemy and gives him a verdict to the opposite effect. This is the worst of evildoing and the greatest of major sins. And Allah is the One Whose help we seek.

End quote from I'laam al-Muwaqqi'een (4/162)

This idea was referred to in the books of the scholars under the heading of: the prohibition on seeking out concessions, because seeking here is deliberate, i.e., one is actively looking for concessions, motivated by whims and desires, for the purpose of finding a way and being able to go along with one's desires, and trying to free oneself from the rulings. This is what is not allowed and is prohibited.

Sulaymaan at-Taymi said:

If you were to adopt the concessions and odd verdicts of every scholar, you would end up behaving in the most evil manner.

Abu 'Umar ibn 'Abd al-Barr commented on that as follows:

This is consensus, and I do not know of any difference of opinion. Praise be to Allah.

End quote from Jaami' Bayaan al-'Ilm wa Fadlihi (2/927)

Imam an-Nawawi (may Allah have mercy on him) was asked:

Is it permissible for one who is following a particular madhhab to follow a different madhhab concerning some issues when doing so may be more beneficial for him, or to seek out concessions?

He replied:

It is not permissible to seek out concessions.

End quote from Fataawa an-Nawawi (p. 235)

Imam ash-Shaatibi (may Allah have mercy on him) said:

If the accountable person were to seek out the concessions given by various madhhabs concerning any issue he is faced with, and he were to seek out every view that suits his whims and desires, then he would be drifting away from the path of righteousness and would get carried away in following whims and desires, and he would be going against what is well-established by the Lawgiver, and he would be turning away from what is given precedence by the Lawgiver.

End quote from al-Muwaafaqaat (3/123)

Secondly:

But if the ordinary Muslim examines the evidence presented by the mujtahid scholars and muftis, and takes into consideration the issue of extraordinary hardship to which one of the opinions may lead, then a particular conviction developed in him because of what he read of the comments and explanations given by the scholars, and because of their quoting a great deal of evidence to support some of their views, then in that case there is nothing wrong with him following the view of which he is convinced, within the guidelines mentioned above.

Moreover, in that case, there is nothing wrong with following what he chooses, even if it is the most lenient view, because he has not chosen the most lenient view on the basis of whims and desires. Rather he has chosen it within the framework of legitimate shar'i guidelines, and that is what he felt at ease with on the basis of convincing evidence and on the basis of thinking positively of Islamic laws and regulations, that it should not put undue and extraordinary hardship on people. He has not deliberately intended to seek out concessions or find a way of avoiding religious duties.

Rather we call upon ordinary Muslims to follow this path, and we do not prefer for the ordinary Muslim to follow the view of one who gives him fatwas and to accept whatever fatwas he hears from him. Rather we urge him to research, reflect and think, and to try to learn more about how to research shar'i matters and increase his knowledge of Islam. But he should do that on the basis of knowledge and with the help of the scholars, without trying to do research independently and come up with new views, or criticising the scholars and going against their opinions.

Imam an-Nawawi (may Allah have mercy on him) said:

If he sees different fatwas from two muftis, then there are five scenarios according to our companions:… The fifth scenario is that he should choose, and he may choose whatever view he wants. This is the most correct view according to Shaykh Abu Ishaaq ash-Shiraazi and al-Khateeb al-Baghdadi, and it was narrated by al-Mahaamili at the beginning of al-Majmoo' from most of our companions. It was also the view favoured by the author of ash-Shaamil in cases where one thinks equally well of both muftis. … What appears to be the case is that the fifth view is the most correct, because the ordinary Muslim is not qualified to engage in ijtihaad; rather what he must do is follow the view of a scholar who is qualified to engage in ijtihaad, and he has done that by following the view of whichever of them he chooses.

End quote from al-Majmoo' (1/56)

As it is the case that the scholars allowed the one who seeks a fatwa to follow the view of whoever he wants, provided that he is a faqeeh who is qualified to engage in ijtihaad, and that he does not follow his whims and desires, then it is more appropriate to say that it is permissible to follow the view which the ordinary Muslim feels comfortable following because of its strong evidence and because he is convinced of it.

The Shaafa'is narrated from al-'Allaamah Ibn Daqeeq al-'Eid that he regarded this type of choice between two muftis as permissible, provided that one feel at ease with following that particular view, and provided that he does not think that that person would be toying with the religion or being too lenient. The evidence for that condition is the hadith: "sin is that which wavers in your

heart.” This clearly indicates that with regard to that which wavers in your heart, doing it is a sin.

End quote from al-Bahr al-Muheet (8/377).

It says in al-Maswaddah fi Usool al-Fiqh (p. 518):

Even if it is permissible for the ordinary Muslim to follow the view of whomever he wants, what we understand from the statements of our companions and others is that it is not permissible to seek out concessions (and odd views) only. Ahmad narrated a similar view from the early generations and spoke of it. ‘Abdullah ibn Ahmad narrated that his father said: I heard Yahya al-Qattaan say: if a man chose every concession so that he follows the scholars of Madinah with regard to listening to singing, and he follows the view of the scholars of Kufah with regard to nabeedh, and he follows the scholars of Makkah with regard to mut‘ah (temporary marriage), he would end up becoming an evildoer. End quote.

Moreover, the permissibility of following the easier view becomes clearer if the opposite view could cause a great deal of difficulty or extraordinary hardship, and there is no evidence for that view that is clear and unambiguous that the accountable person can see, or no proof reached him at all concerning this issue, or with regard to the proof and evidence of different views it is not possible to determine which view is more likely to be correct. If the accountable person has decided to check for himself and find out which view has stronger evidence, or if the various views are contradictory and he does not have any evidence to suggest that one view is stronger than another, then in that case there is no blame on him if he chooses one of the two views on the basis of which is easier, or on the basis of warding off hardship, because warding off hardship is an significant shar‘i principle, and there are many shar‘i texts that point to it in general terms.

You may also find more information in the following questions: 105721 and 224164

We should point out here that the three issues that you mentioned in your question have been answered on our website:

In fatwa no. 193034 we have explained that if a woman failed to cover her feet when praying, she

does not have to make up previous prayers.

In fatwa no. 153367 we explained that it is better for a woman to cover her feet with a long garment, but it is acceptable instead to cover her feet by wearing socks that cover the entire foot.

In fatwa no. 149104 we explained that whoever listens to mockery of Islam and approves of it has fallen into apostasy. But in the case of one who listens to it but hates it in his heart, we have not come across any scholar who describes such a person as a disbeliever, even though he incurs sin if he is able to oppose it or denounce it but does not do so.

And Allah knows best.