192787 - Is it permissible for the ordinary Muslim to follow a specific madhhab so that he can find a concession?

the question

My madhhab is Maaliki, and I am in love with a girl whom I love very much, in a pure and clean manner that is above any suspicion. Believe me, I love her deeply, but when I thought of proposing to her, I was shocked when they told me that she is my sister through indirect breast-feeding, i.e., she was breast-fed by the woman who breast-fed me. Hence I thought of a way out because of my intense love for her: is it permissible for me to adopt the concession of one of the other madhhabs, such as the Shaafa'i madhhab which stipulates that in order to confirm breast-feeding there must have been five separate feedings and four witnesses, and thus be able to marry her?

Detailed answer

Praise be to Allah.

Firstly:

We have previously stated on our website that the breast-feeding which makes a person a mahram is five breast-feedings or more, because of the hadeeth of the Mother of the Believers 'Aa'ishah (may Allah be pleased with her): Among the things that were revealed of the Qur'an was that ten definite breast-feedings make a person a mahram, then that was abrogated and replaced with five definite breast-feedings. Narrated by Muslim (1452).

We have also mentioned previously on our website that the view that the testimony of a single woman may be accepted as confirmation of breast-feeding is more likely to be correct. That is because of the report narrated by al-Bukhaari (5105) from 'Uqbah ibn al-Haarith (may Allah be pleased with him) who said: I married a woman, then a black woman came to us and said: I breast-fed both of you. I went to the Prophet (blessings and peace of Allah be upon him) and said: I

married So and so, daughter of So and so, and a black woman came to us and said to me: I breast-fed both of you, and she is lying. He turned away from me, so I came to him from the other side and said: She is lying. He said: “How could you keep her as your wife when that woman has said that she breast-fed you both? Leave her (i.e., divorce your wife).”

For more information on the two issues mentioned above, please see the answers to questions no. 804 and 175250

However we should point out here that what is mentioned in the question about the Shaafa‘i madhhab stipulating that there should be four witnesses is not quite correct. Rather the view of the Shaafa‘i madhhab concerning that is that breast-feeding may be proven by the testimony of two men, or a man and two women, or four women.

See: Nihaayat al-Muhtaaj (7/185) and al-Mawsoo‘ah al-Fiqhiyyah al-Kuwaitiyyah (22/254).

Secondly:

The scholars (may Allah have mercy on them) have stated that the ordinary Muslim does not have the right to choose from the madhhabs and opinions of the scholars on the basis of his whims and desires by way of finding a concession.

Ash-Shaatibi (may Allah have mercy on him) said: The ordinary Muslim does not have the right to choose between different views on a particular issue, such as if the scholars differed and there are two opinions, and the ordinary Muslim comes across these two views. Some people may think that the two opinions are the matter of choice, as is the case with regard to expiation, so he follows his whims and desires and that which suits his aims, and leaves that which does not suit him; perhaps he may quote, to support his choice, the view of some later muftis, and strengthen it by quoting the words narrated from the Prophet (blessings and peace of Allah be upon him): “My Companions are like the stars,” which we have already discussed. Even if we assume that it is saheeh, it should be understood as referring to a case where an ordinary Muslim went to a Sahaabi or someone else to ask a question, and followed whatever fatwa he gave him, whether it suits him or not. But if he comes across two different views, then we should say: This case is not what the hadeeth is

referring to, because each of the two scholars (who have these different views) is basing his view on evidence that led him to reach a conclusion different than that to which the evidence of other scholars led, so these two scholars have opposing views. Therefore following one of them on the basis of whims and desires is in fact following whims and desires. We have discussed the seriousness of this approach before. There is no option but to weigh up who has the greater knowledge, and other similar ways. Moreover, the views of these two scholars, for the common folk, are like two proofs for the scholars; just as it is obligatory for the scholars to weigh up two proofs and determine that one is stronger than the other, it is obligatory for the ordinary Muslim to do likewise. If it were permissible to base one's choice on whims and desires in such matters, then it would be permissible for the judge to do likewise, but that is not allowed, according to scholarly consensus.

Moreover, in issues where there are different views, there is a Qur'anic guideline stating that one should not follow whims and desires at all. Allah, may He be exalted, says (interpretation of the meaning): "(And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger" [an-Nisa' 4:59]. There may be two different scholarly views concerning the issue facing the ordinary Muslim, in which case it must be referred to Allah and His Messenger. That means referring to the shar'i evidence, which is furthest removed from following whims and desires, because choosing one of the two views on the basis of whims and desires is contrary to the concept of referring to Allah and His Messenger.

Moreover, that approach will lead to following the easier option among the differing views, without basing that choice on shar'i evidence. Ibn Hazm narrated that there was scholarly consensus that this is an evil and is not permissible.

End quote from al-Muwaafaqaat, 5/79-82

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said: If it were permissible for the ordinary Muslim to follow whoever he wants, then what is indicated by the words of our companions and others is that it is not permissible for him to seek out the easier option at all.

End quote from al-Mustadrak ‘ala Majmoo‘ Fataawa Shaykh al-Islam, 2/258

Based on that, if you were both breast-fed from that woman, and there were five or more breast-feedings, then you are siblings through breast-feeding and it is not permissible for you to marry. In order to prove whether that breast-feeding occurred, the testimony of one woman is sufficient, according to the more correct opinion.

With regard to what you mentioned about your love for the girl, that does not give you the right to transgress the sacred limits of Allah or to seek out concessions or the easiest scholarly view. Rather doing so will divert you from seeking the halaal option. Other women will have what she has, so do not let the Shaytaan mislead you.

And Allah knows best.