

THE CREATIVE MUFTĪ: IBN °ĀBIDĪN (d. 1252 AH / 1836 CE)

The eminent thirteenth century /early–nineteenth century Damascene scholar Muḥammad Amīn ibn °Umar ibn °Abd al-°Azīz, better known as Ibn °Ābidīn al-Shāmī especially in South Asian Ḥanafite circles, was an °Alid *sayyid* descended from Ismā°īl ibn Ja°far al-Şādiq. Born in 1198 AH /1784 CE in al-Qunawāt quarter of the city of Damascus he took his early education in the Shafi°ī legal school, then adopted the Ḥanafī juridical school. Under the leading Ḥanafī Shaykhs Shākir al-°Uqqād al-°Umarī and Sa°īd al-Ḥalabī he studied inheritance law & mathematics, legal theory, the Ḥadīth disciplines, Qur°ān exegesis, mysticism (*taşawwuf*), as well as various rational disciplines (*°ulūm °aqlīyah*).

In Ottoman Syria three legal schools were present, the Shāfi°ite, Ḥanafite and a minority of Ḥanbalīs; yet the Ḥanafite school was officially favored in the Ottoman judiciary. Historically the most widespread and numerous juridical school in Islam was the Ḥanafī school established by Abū Ḥanīfah in the 2nd /8th century in Iraq, and which later spread among the Turkic population of central Asia, India, China and Ottoman lands. Ibn °Ābidīn acquired a thorough competence in the authoritative classics of Ḥanafī jurisprudence including *al-Durr al-Mukhtār* of °Alā° al-Dīn al-Ḥaşkafī (d. 1088 /1677). Ibn °Ābidīn served as Deputy Muftī under Shaykh Ḥusayn al-Murādī the Muftī of Ottoman Damascus. Inquiries on legal problems were addressed to him from various provinces, and he became a prominent authority for resolving conflicts of opinion in judicial opinions (*fatāwā*) achieving fame in his own lifetime.

18TH CENTURY OTTOMAN DAMASCUS & THE ROLE OF MUFTĪ

Ibn °Ābidīn stood at the juncture between the long traditional heritage of Islamic jurisprudence and the emerging modern era. He played an important role in the province of Damascus ruled by the Ottomans since the sixteenth century. Its geographic and strategic location and size added to its political significance as the most important Syrian province. It linked lines of

communication and routes of trade between East and West – Iraq, Iran and the Mediterranean coast – and North and South – between Anatolia and Northern Syria, Egypt and Arabia, occupying a central intersection of international trade. The importance of long distance commerce may be appreciated when we remember that 18th century Damascus was already drinking West Indian Coffee, rather than the Yemeni product.¹ Damascus also had the permanent honor and responsibility of administering and conducting the annual Syrian Pilgrimage to Mecca in the Hijaz.

Under the Ottoman sultans during the eighteenth and nineteenth centuries Damascus was the seat of a *Wālī* (also termed *Pāsha* or *Wazīr*), the only administrator in the province appointed directly by the central Government in Istanbul. The *Wālī* directed an administrative council (*dīwān*), and a consultative divan comprised of leaders of the military corps, the judiciary including the Hanafī chief Judge and the Ḥanafī Muftī, the head of the syndicate of the Prophet’s descendants (*Naqīb al-Ashrāf*), as well as leading religious scholars (*‘ulamā’*) and notables (*a‘yān*). The Judicial administration and courts in the province was headed by the Ḥanafī Qāḍī, who was the only non-Arab foreigner within the scholarly circles of Damascus.

The office of the Muftī was under the authority of the Ottoman judicial administration, yet the Muftī played a significant role – perhaps more important than the Qāḍī. Legal decisions taken by the Qāḍī were often little more than an authentication of the reasoned rulings supplied by the Muftī. The office was normally held by an outstanding member of the local scholar-authorities. In the first half of eighteenth century Damascus, the prominent ‘Imādī family furnished a number of Muftīs; and in the second half of that century the office was dominated by the al-Murādī family. The candidate for muftī was selected by nomination by the *‘ulamā’*, and his name was submitted to *Shaykh al-Islām*, the highest religious authority in Istanbul, for

¹ George Koury, *The Province of Damascus 1783-1832* (Michigan: University Microfilms International, Dissertation Information Service, 1970) p.142; Albert Hourani, *The Fertile Crescent in the eighteenth century. A vision of History: Near Eastern and other essays*, (Beirut: Khayats, 1961) p. 65. Many details provided here are drawn from these two works, as well as the study by Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus 1190-1350*, Cambridge studies in Islamic Civilization, (Cambridge University Press, 1994).

approval and official appointment. Unlike the Qāḍī, the Muftī could hold his position for life unless removed due to political or administrative reasons.

The function of the Muftī was to render his considered legal opinion *fatwā* regarding any legal issue presented to him by the Qāḍī, or raised by any concerned individual. Such a *fatwā* required the Muftī to exercise his juridical expertise in the history and consensus of jurists over the centuries. The Qāḍī would then pronounce his decision concurring with the opinion of the Muftī, since the Muftī had the support of local ‘*ulamā*’ as well as the people, so the Qāḍī had to accept his *fatwā*. Refusal to accommodate might arouse the opposition of the populace and could result in his own removal. The Ḥanafī Muftī of Damascus had an assistant referred to as *amīn al-fatāwā* or *amīn fatāwā Dimashq*, who held the same qualifications and training as the Muftī. Besides assisting the Muftī, he also acted as his authorized representative. His considered response to legal questions was regarded to be as valid as those of the Muftī himself.

IBN °ĀBIDĪN IN 19TH CENTURY DAMASCUS

After the demise of the *Wālī* As°ad Pāsha al-°Aẓm who governed Damascus from 1156–72 / 1743–58, Syria experienced an era of unstable governance. This instability itself is understandable when seen that Ibn °Ābidīn spent his lifetime from 1784 to 1836 under twenty seven successive Ottoman governors. It is obvious that the constant changes of governors impacted on every aspect of life – political, economic, and social. The negative impact was not due to Syrian provincial administration alone, but was also prompted by changes in the central government in Istanbul and its relation with Europe. The Venetians, Dutch, Portugese, French, and British were granted concessions to conduct trade and commerce under the Sultans and provincial *Wālīs*, and introduced major innovations in business practices and lifestyle. The negative and positive response of locals to foreign methods and lifestyles resulted in the appearance of new issues which were dealt with first by the religious scholars and muftīs who played special roles in various administrative councils as mentioned above.

Under these dramatically changing circumstances Ibn °Ābidīn served as the

amīn al-fatāwā under Muftī Husayn al-Murādī in Damascus whose responsibility was to provide reasoned opinions to the governor, and to assist the Qāḍī by means of legal resolutions through the offices of the Ḥanafī Muftī, while at the same time voicing the interests of the populace.

HIS WORK AND CONTRIBUTION

Ibn ʿĀbidīn’s legal writings were either commentaries (*Ḥawāshī*) or monographs (*rasāʾil*) treating specific topics of Law. Among his most famous works is *Radd al-Muḥtār ʿalā l-Durr al-Mukhtār – Sharḥ Tanwīr al-Abṣār*, also known as *Ḥāshīyah Ibn ʿĀbidīn*. This is considered a basic source-book by the present day Ḥanafī Legal School, being the largest and best known of all his works. He died before its completion, so the remaining sixth part was finished by his son ʿAlāʾ al-Dīn (d. 1306 /1888) and later another extension was done by ʿAbd al-Qādir al-Rāfiʿī (d. 1312 /1894). Ibn ʿĀbidīn intended this work to be a digested compendium of earlier major compilations of Ḥanafī Law and therefore to stand alone as a comprehensive summary of his School’s jurisprudential methods, opinions and rulings.

Ibn ʿĀbidīn also produced many important *fatāwā* relating to contractual transactions, a field of *sharīʿah* practice which now occupies a prominent place in contemporary Islamic banking and finance. In his *Radd al-Muḥtār* Ibn ʿĀbidīn compiled the opinions of Ḥanafī legal scholars relevant to freshly occurring legal issues, and responded to legal queries posed to him, while maintaining links to the classical works. He traced the main sources of previous jurists, corrected their mistakenly referenced citations, and verified the authenticity of their opinions. He encouraged Ḥanafī jurists to acquire the rectified reasonings of his School, instead of studying *fiqh* without learning which opinions are preferred and which are secondary or less than sound. This level of verification is likely to save jurists from imitation and indiscriminate following, and opens up before them the path of *ijtihād*.

With this creative approach Ibn ʿĀbidīn challenged his contemporaries for whom the fame of a scholarly text or accepting the precedent of a scholar was valid argument in making legal judgments. His carefully crafted method demonstrates that he was not only interested to respond to solicitations of

fatāwā in his day, but was also concerned with the attitude of legal scholars entrusted with the important task of effectively serving the *fatwā*-granting institution. Ibn ʿĀbidīn’s time saw the close of the classical era, which convinced novice jurists to ignore well considered *ijtihād* by relying for solutions to freshly arising matters on a number of famous works by earlier scholars of their School. Ibn ʿĀbidīn took these ʿulamāʾ to task. He initiated the discussion of the underlying principles of deriving *fatwās* and the requisite tools needed to serve this important Islamic institution. These two overriding concerns led him to another genre of writing known as *rasāʾil* which served a similar role as academic research papers and monographs in scholarship today.

Ibn ʿĀbidīn produced thirty-one monographs on a wide variety of topics and issues relevant to both the principles of deriving a *fatwā*, as well as specific and detailed legal solutions. He undertook to explain certain intricate issues in expansive detail which could not be integrated into his response to specific questions, or on issues not explicated by scholars before him. For example, after providing brief treatments in his *Radd al-Muhtār* he refers to his full-blown discussion in the form of a separate monograph. These treatises were first published in Istanbul with his work ʿUqūd al-Laʾālī fī al-Asānīd al-ʿAwālī in 1287 AH/1870 CE and 1325/1907, and in Damascus in 1301/1883. All these treaties have been compiled and published together as a book entitled *Majmūʿat Rasāʾil Ibn ʿĀbidīn*.

Two of Ibn ʿĀbidīn’s monographs reached the peak of fame. One is his commentary or *Sharḥ* on his own work ʿUqūd Rasm al-Muftī [Chaplets on Deriving *Fatwā*] in which he interwove seventy poems relating to the principles of deriving reasoned opinions (*iftāʾ*). Studying this treatise is a prerequisite to this day for any scholar working in the muftī’s office in the Indian subcontinent. His second most popular treatise is *Nashr al-ʿurf fī bināʾ baʿd al-aḥkām ʿalā al-ʿurf*, which Ibn ʿĀbidīn wrote specifically on ‘customary practice’ as a follow up on the discussion of *ʿurf* in his *Sharḥ ʿUqūd Rasm al-Muftī*. For Ibn ʿĀbidīn a scholar can only know the ‘public interest’ and ‘necessary requirements’ of people if he knows their customary practice. Contemporary authorities when discussing custom refer to this treatise

frequently, citing Ibn ʿĀbidīn as the authority on this subject.

LEGACY

He passed away at 54 years of age on the 21st of *Rabīʿ al-Thānī* 1252 / 1836, and was buried in the graveyard of al-Bāb al-Ṣaghīr beside the tomb of ʿAlāʾ al-Dīn al-Ḥaṣkafī (the author of *al-Durr al-Mukhtār*). Ibn ʿĀbidīn was described as a tall light-skinned man who wore the attire of the scholars of his time: the *jubbah* and caftan with a white turban coiled around a red *ṭarbush*. He was a devoted Sufi, a man of wide culture and interests, and an eminent figure in his society.

Surveying Ibn ʿĀbidīn’s large output of books and treatises indicates that he wrote on *fiqh*, *uṣūl al-fiqh*, *fatāwā*, as well as *taṣawwuf* and poetry, treating many issues arising in his time reflecting the political, social, and economic reality of Damascus and the Middle East. The topics of his monographs remind us that the creatively effective response of the men of religious learning in each era is necessary if they are earnest to bring about advancement of society and wellbeing of humans. The reasoned and well researched responses of the learned authorities are the blueprint for the architecture of civilisation. Most of his writings were commentaries upon classical *fatāwā* collections and juridical works. Indeed, classical works need re-interpretation in the light of evolving needs of society in every age. Legal issues based on custom, socio-economic realities, public wellbeing, and the requirements of previous societies demand more adequate and effective application in harmony with present conditions.

This type of deliberate reasoned approach demonstrates the universality and moderation of Islam for our present age which may accommodate people at various stages of modernity. Civilisational renewal is not feasible if the intellectual leaders who are the children of their own time (*Ibn al-zamān*) are not intellectually creative and relevant to human needs. Ibn ʿĀbidīn perceived that many ʿulamāʾ of his time were intellectually constrained by misunderstanding the notion of *taqlīd* and failing to search for fresh legal solutions for newly arising issues. To curb this, he refreshed the long forgotten style of writing *fiqh* and *fatāwā* with rectification and careful

deliberation by measuring the cogency of its argument—a style which may be traced back to the origin of legal rulings. *Ijtihād* plays a crucial role in maintaining the *Sharīʿah*'s flexibility and compliancy with contemporary issues and conditions. Measured steps are required to prepare individuals, communities, and institutions for this demanding effort. Ibn ʿĀbidīn's creative style of jurisprudence and deriving reasoned opinions is the unavoidable stepping stone to the door of *ijtihād*.



Works by Ibn ʿĀbidīn: His *Radd al-Muḥtār ʿalā l-Durr al-Mukhtār – Sharḥ Tanwīr al-Abṣār* has been published in Arabic in many editions. One of the best editions appeared in Damascus by Dār al-Thaqāfah wa al-Turāth in 2000. The extensive marginal commentaries and notes in this edition are provided by Dr Ḥusām al-Dīn Ibn Muhammad Ṣāliḥ Farfūr. Recently, a section of *Radd al-Muḥtār* was translated into English by Anas al-Muhsin and Amer Bashir: *The Book of Sales (Kitāb al-Buyūʿ)*, IBFIM.

Majmūʿat Rasāʾil Ibn ʿĀbidīn. Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d.; also Lahore: Suhail Academy.

Critical Studies: Norman Calder translated 70 chaplets of *ʿUqūd Rasm al-Muḥtār* with his analysis: “The *ʿUqūd Rasm al-Muḥtār* of Ibn ʿĀbidīn” *Bulletin of the School of Oriental and African Studies*, vol. 63 /2 (2000) pp. 215–288.

Mohammed Farid Ali, “Principles of Giving Fatwa (*Uṣūl al-Iftāʾ*) in the Ḥanafī Legal School, with an Annotated Translation, Analysis and Edition of *Sharḥ ʿUqūd Rasm al-Muḥtār* of Ibn ʿĀbidīn al-Shamī”. Ph.D. Dissertation, International Islamic University Malaysia, Kuala Lumpur, 2012.

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