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Islam, Alcohol and Identity: Towards a Critical Muslim Studies Approach

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Abstract

Grounded in a critical Muslim studies approach, this paper offers a new understanding of the Ḥanafī position on alcohol, following major public debates on the alcohol question sparked by prominent members of al-Azhar University (Egypt) in 2012. Close textual analysis of a range of primary sources in Arabic and Urdu are foundational to the paper, as are the categorisation and contextualisation of Ḥanafī discourse. This is all but a starting point, however, for an argument that constitutes a radical break from conventional Islamic studies, seen as “normal science”, in its critique of hegemonic discourses which have essentialised Islam on the basis of specific ontic manifestations such as the prohibition of alcohol.

Keywords: *khamr*, *nabīdh*, Ḥanafīs, *madhhab*, ontic, ontological, intoxication, Barelvī, Deobandī

No feature of Islam could exhaust what Islam means. Only an understanding of Islam that emphasised the ontic would be reducible to a set of its key features, but because Islam is an ontological category for Muslims such a reduction is unsustainable. (Sayyid 2014: 110)¹

I. The Big Story

In early 2012, within the context of major discussions on the future of constitutional law in Egypt and Tunisia following the Arab Spring, a major storm erupted in Egypt over comments made about alcoholic beverages by Shaykh Sa‘d al-Dīn Hilālī, the head of Comparative Jurisprudence (*al-Fiqh al-Muqāran*) at al-Azhar University, which aired live on the popular television programme, *Al Qahera al Youm* (Cairo Today).² Hilālī, spurred on by popular talk show host, ‘Amr Dīb, explained Abū Ḥanīfa’s position on alcoholic beverages: wine from grapes and dates, said Hilālī, is considered by Abū Ḥanīfa to be absolutely prohibited, as per the view of all other schools of law in Islam; Abū Ḥanīfa’s view on alcohol made from other than these two fruits is that they are permissible to drink up until the point of intoxication (*‘ilā ḥadd al-sukr*).³ The reaction of ‘Amr Dīb is a sight to behold; and despite the calm demeanour of Hilālī throughout the hour-long conversation, the fact is that he had taken a discussion normally the preserve of scholars and advanced students of Islamic law to the general public: he had broken the code of the old boys’ club. What may appear as a simple act of disclosure, however, seems to have had behind it something far more profound. In reproducing a forgotten interpretative contingency vis-à-vis alcoholic beverages, the Shaykh had at one fell swoop thrown open the very question of what marks Muslimness apart from other identities, insofar as the prohibition of alcohol is perceived as the preeminent marker of what constitutes the category Muslim.

¹ We would like to thank Salman Sayyid, Claire Brierley and Sofia Rehman for sharing valuable insights that have significantly improved this paper. We would also like to thank the two peer-reviewers for their valuable comments.

² The full discussion is available from: <https://www.youtube.com/watch?v=SiH07rbxczQ>. [10 November 2017].

³ Throughout this paper, “narrow prohibition”, which has been adopted from Najam Haider (2013), is used to describe the prohibition of *khamr* only, to the exclusion of other alcoholic beverages. This usage is contrasted with “general prohibition”, the position of all schools bar the Ḥanafīs, which considers all varieties of alcoholic beverage as prohibited (*ḥarām*).

Courting controversy, as Shaykh Hilālī did on this occasion, often involves reductionism, over-simplification, and even distortions of truth, willful or otherwise. A principal aim of this paper is therefore to unpack more fully, by way of close textual analysis, the detailed contours of the Ḥanafī school’s position on alcoholic beverages. And while an enquiry of this kind will no doubt interest scholars and general readers alike, the over-arching purpose of this paper goes beyond the immediate concerns associated with what is fundamentally a juridico-theological question. Our enquiry into the Ḥanafī school’s position on alcohol suggests the futility of any attempt to define Islam on the basis of an essential and exclusive matrix of rules; more specifically in the context of this paper, we seek to demonstrate that Islam is an ontological category for Muslims, and that essentialising Islam on the basis of specific ontic manifestations such as the prohibition of alcohol would be to reduce Islam—such a reduction, in the words of Sayyid, cited in the epigraph, is unsustainable. This paper can be seen, therefore, as an intervention grouped under the rubric of critical Muslim studies, the agenda for which is set out by Sayyid (2014: 16) in the following terms: “Critical Muslims Studies...refers to a field of investigations into matters associated with Muslims which are framed by three related epistemological stances. It is characterised by systematic enquiries that are post-positivist, post-Orientalist and decolonial”. Our approach is post-positivist insofar as we seek, through a recovery of an alternative discursive perspective on alcohol prohibition, to shift the focus of research into matters Islamicate from ontic to ontological enquiries.⁴ Additionally, we take a post-Orientalist step by taking into account Ḥanafī legal discourses from the post-18th century Indian-

⁴ A number of studies have in recent years taken up the issue of alcohol in Islam, especially as discussed in Ḥanafī jurisprudence, but have done so to buttress over-arching theories of what constitutes Islam, Islamic law, Muslimness, and so, own rather than for any intrinsic value that a close reading of the alcohol question might generate. The late Shahab Ahmed (2016:57-58), whose knowledge of Islam, Islamicate languages and range of scholarly interests is perhaps unrivalled in contemporary Islamic Studies, managed to miss the mark in his description of the juristic debate, incorrectly asserting that all schools of Islamic law prohibit alcohol in all its forms, and appears to accept the view that alcohol prohibition is one of the distinctive marks of the Muslim world. Behnam Sadeghi (2013:135-136) briefly discusses an assumed Ḥanafī reversal on alcoholic beverages to support his thesis on the provenance, nature and historical development of Islamic law, suggesting that it was motivated by the need of the School to gain the acceptance of other Muslims. Najam Haider (2013: 85) argues, like Sadeghi, that the Ḥanafī

Islamicate context, avoiding thereby an Arab-centrism which characterises much of the scholarship on Ḥanafī law to-date. This shifting of the lens is both long overdue and may be justified on the basis of demographic weight, and on the basis of the relocation of the powerbase of the Ḥanafī school from Baghdad to Delhi.

The paper begins by setting out a range of texts in translation, categorising and contextualizing the Ḥanafī position on alcoholic beverages (Section II). We then examine the debate in the Indian Ḥanafism, which reveals a convinced and robust legal doctrine which is nevertheless ambivalent about the suitability of alcohol for the believing community (Section III). In the final part of the paper (Section IV), an explanation of the theological rationale for the persistent and enduring defence of non-*khamr* alcoholic beverages by Ḥanafī jurists is offered.

II. Alcoholic Beverages in Ḥanafī Jurisprudence

The almost totemic prohibition on alcohol drinking as “the normative Muslim position” is as embedded in the imaginary of Muslims as it is non-Muslims. Ibn Rushd’s opening discussion on *khamr* is the extent of what most will know about the relationship of Muslims to alcohol:

With respect to *khamr*, [Muslim jurists] are agreed about its prohibition in small or large quantities, I mean, that which is derived from grape juice [...] They agreed that the amount which intoxicates is prohibited. The majority of the jurists of Ḥijāz, as well as the majority of the traditionists, maintained that small and large amounts of intoxicating liquor are prohibited (Ibn Rushd *trans.* Khan Nyazee 2000: 571).

By the expression “Ḥijāzīs”, Ibn Rushd refers to the Shāfi’īs, Mālikīs and Hanbalīs; it is worth mentioning that Shi’īs and Zaydīs also adopted this position. The supporting evidences used by these doctrinal schools are presented in detail by Haider (2013) and so need not be repeated here. But it is important to read beyond this, for in subsequent lines Ibn Rushd reveals

School ultimately moved to prohibit all intoxicants in the sixth/twelfth century. He also puts forward an explanation for this supposed shift, which he roots in increasing pressure exerted on the Ḥanafīs by the Mālikīs and Shāfi’īs. He does not base his findings on a comprehensive survey of the Ḥanafī legal tradition, which explains sweeping generalisations and ultimately misrepresentation of Ḥanafī jurisprudence.

that “the Irāqīs” took a very different position with respect to intoxicating beverages that were not *khamr*, disrupting thereby any attempt to claim a homogenous Muslim position on alcohol.⁵ Ibrāhīm al-Nakha^cī, Sufyān al-Thawrī, Ibn Abī Laylā, Shurayk, Ibn Shubrama, Abū Ḥanīfa, and the remaining jurists of Kufa, as well as the majority of the jurists of Baṣra, we are told, “maintained that what is prohibited in all the remaining beverages (that is, besides wine derived from grape juice) is intoxication itself and not the substance (of the beverages)” (Ibn Rusd *trans.* Khan-Nyazee 2000: 571).⁶ The only surviving jurisprudential school of these is that of Abū Ḥanīfa. It is to the doctrine of his school, then, that we now turn for insight into Irāqī-Kūfian jurisprudential thinking on alcoholic beverages. The examination of Ḥanafī jurisprudence is divided based on the specific resources which are used to frame discussions: the first part examines the Ḥanafī arguments anchored in scriptural texts (*naṣṣ*), characterises what we might label the age of paleo- Ḥanafī thought; the second examines arguments anchored in a hermeneutic of reconciliation (*tawfiq al- āthār*), characterizes what we might call the formative period; the third is anchored in a legalism that typifies a new age of bureaucratic mentality that can be located specifically in the 12th century onwards.

An Argument from Tradition (*āthār*)⁷

⁵ Why is *khamr*, especially as red wine, to be shunned by Muslims? We propose that the prohibition against wine (Q.5.90) hinges on the role of wine in heathen/pagan worship, hence the juxtaposition of *khamr* with *maysir* (a game of chance), altars (*anṣāb*) and divining arrows (*azlām*).

⁶ Ibn Qutayba (d. 276/889), Kufian jurist and ḥadīth scholar, should also be listed among the Irāqians who took the view of narrow prohibition. While he was never the founder of a school, he is one of the preeminent authorities of early Islam. In his book on alcoholic beverages (Kitāb al-ashriba), he states clearly his preference for narrow prohibition. In the concluding section of his book we read: “That which inebriates in large quantities is disliked (*makrūh*) in small quantities; the Prophet (peace and blessings be upon him) warned against it as a disciplinary measure. Therefore, it is laudable and rewardable if one avoids it; if however one drinks it, there is no blame on him, God willing!” (1999: 128).

⁷ The reader will find the typology of alcoholic beverages in Ḥanafī jurisprudence in the appendix a useful aid for understanding the many varieties of beverage which are mentioned in the texts that follow.

One of the earliest advocacies set out in Islamic jurisprudential literature in support of the permissibility of alcoholic beverages is found in *Kitāb al-āthār* of the great Kufian jurist, Muḥammad b. Ḥasan al-Shaybānī (d. 189/806). In several sections, the first of which is entitled *Bāb al-ashriba wa l-anbidha wa l-shurb qā'imān wa mā yukrahu fi l-sharāb—Chapter on Alcoholic Beverages and Wines and Drinking Standing and Rebukable [Mannerisms] Concerning Drinking*, al-Shaybānī transmits fifteen *ḥadīths* that are, in all probability, a polemical challenge to contemporary jurists peddling the doctrine of absolute prohibition. Most of the statements are reported through chains that commence with Abū Ḥanīfa (d. 150/767)—al-Shaybānī's esteemed teacher—and are concluded in virtually every case with, "...this is our view, and it is the doctrine (*qawl*) of Abū Ḥanīfa". The first of the fifteen is also perhaps the one which would have startled prohibitionists the most: reported by Abū Ḥanīfa, the tradition is of a Sulaymān al-Shaybānī, who reports that Ibn Ziyād (governor of Kufa during the reigns of Mu'awiya I and Yazīd I, d. 67/686), once informed him about an occasion when he was at the home of Ibn 'Umar, the son of the famously austere Companion of the Prophet, 'Umar b. al-Khaṭṭāb. The two had been fasting and the time for breaking the fast had come upon them. Incredibly, Ibn 'Umar offered Ibn Ziyād an alcoholic drink to break his fast with, which his guest duly accepted. Ibn Ziyād, we are told, became significantly inebriated (*akhadha fīhi*). The following morning, having almost not made it back to his home the night before because of the strength of the brew, Ibn Ziyād returned to Ibn 'Umar to enquire as to the nature of the drink served to him the night before. Ibn 'Umar explained that he had given his guest no more than dates and raisins (*mā zidnāka 'ala 'ajwa wa zabīb*) (Al-Shaybānī 2008: 699-700). This *ḥadīth* serves two purposes for al-Shaybānī: primo, to underscore the doctrine of general permissibility; secondo, to challenge the by now widely held view that dates and raisins were not to be mixed.

The role of Ibn ʿUmar in this tradition is remarkable since many of the *ḥadīths* which mandate general prohibition are reported by him, especially those collected by al-Bukhārī in the *Jāmiʿ al-ṣaḥīḥ*.⁸ Furthermore, Ibn ʿUmar is one of the most important sources of law for the Medinese school, which in the 9th century constituted the main opposing faction, along with al-Shāfiʿī (d. 820), of Abū Ḥanīfa and his *madrasa*. Furthermore, the *isnād* Mālik <Nāfiʿ <Ibn ʿUmar, as highlighted by Schacht (1967: 176), was particularly revered, especially by al-Shāfiʿī. It is even more remarkable, therefore, that the second tradition in this section of *Kitāb al-āthār* has the *isnād* Abū Ḥanīfa <Nāfiʿ <Ibn ʿUmar.

In the following section of *Āthār*, titled *Chapter on Strong Beer (al-nabīdh al-shadīd)*⁹, which seems to be a response to opponents who are arguing that the beverages drunk by the Prophet and his Companions were never alcoholic, there is a very interesting statement reported on the authority of Abū Ḥanīfa, from his master, Ḥammād. It is in fact an anecdote told by Ḥammād, who explains how he reneged from his initial position of abstention after visiting the home of the venerated jurist of Kufa, Ibrāhīm al-Nakhaʿī (d. ca. 96/717). Ḥammād had visited Ibrāhīm to partake in a meal; Ibrāhīm served him more than he had bargained for, requesting from either his wife or his servant a goblet of alcohol (*nabīdh*), which he duly set before his guest. It being after the meal, this was probably presented to Ḥammād as a digestif. Whatever the occasion, Ḥammād politely refused the drink. Ibrāhīm was not well-pleased and so, in order to assuage Ḥammād, narrated a tradition on the authority of ʿAlqama, who reported that ʿAbdullāh b. Masʿūd would drink alcohol (*nabīdh*) after meals. With no doubt in his mind about the stature of Ibn Masʿūd, Ḥammād needed to hear no more and unwaveringly shared in the drink with his host (Al-Shaybani 2008:703).

⁸ See *ḥadīth* #5575, #5579, #5581 and #5588 in al-Bukhārī (2008).

⁹ *Nabīdh* is a comprehensive designation for non-*khamr* intoxicating drinks, several kinds of which were produced in early Arabia, such as *mizr* (from barley) and *bitaʿ* (from honey). See P. Heine, “*Nabīdh*”, in: *Encyclopaedia of Islam, Second Edition*, Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. Consulted online on 20 March 2018 http://0-dx.doi.org.wam.leeds.ac.uk/10.1163/1573-3912_islam_SIM_5702.

That early Muslims were using alcohol as a digestif is also attested by a subsequent *ḥadīth* in *Kitāb al-āthār* reported on the authority of Abū Ḥanīfa via Abū Ishāq al-Sabīʿī and ʿAmr b. Maymūn al-Awadī, to ʿUmar b. al-Khaṭṭāb: ‘The Muslims have a camel for food, the neck of which belongs to the House of ʿUmar! And the meat of this camel is not digested in our stomachs except with the help of strong alcohol (*al-nabīdh al-shadīd*)’ (*ibid*: 705). Al-Shaybānī lends his support, adding that it was a tradition which informed Abū Ḥanīfa’s jurisprudence.

A Hermeneutic of Reconciliation

Abū Jaʿfar al-Ṭaḥāwī (d. 321/933) is not only one of Islam’s foremost legal minds, he is also the author of the most widely accepted articulation of Sunni orthodoxy, known as the *ʿal-Aqīda al-Ṭaḥāwīyya*. In the preamble to his *Sharḥ Maʿānī al-Āthar*, al-Ṭaḥāwī states that his principal motivation for writing what posthumously proved to be the most sophisticated and thorough apology for Ḥanafī jurisprudential thought was to salvage the Prophetic *Sunna*: ‘A knowledgeable companion of mine has requested that I record in writing those received traditions (*āthār maʿthūra*) of the Messenger of God which relate to legal judgments (*aḥkām*) that the people of deviance and weak-mind (*ahl al-ilḥād wa l-ḍaʿfa*) have erroneously taken to be contradictory because of: 1) their lack of knowledge regarding the abrogating (*nāsikh*) and the abrogated (*mansūkh*); and 2) their lack of knowledge concerning what must be put into practice from these [traditions], as testified by the Clear Book (*al-Kitāb al-nāṭiq*) and the agreed-upon *Sunna*’ (Al-Ṭaḥāwī 2001: 1.7). In essence, al-Ṭaḥāwī means to say that the failure to develop a proper hermeneutic to accommodate conflicting or contradictory *āthār* has led to the rejection of some—and perhaps even many—soundly-transmitted traditions. Specific individuals and

groups are not identified, but it is obvious that he means by this many early and contemporaneous masters—al-Bukhārī and other *Ṣiḥāḥ* authors are no doubt embraced by this statement.¹⁰ The statement's tone is obviously very bold, and al-Ṭaḥāwī is not always successful at doing what he sets out to. Notwithstanding this, it is clear from the *Sharḥ* that he is an ardent Ḥanafī who will mobilise all of his artillery in defence of his School's doctrines and praxis.

The chapter on alcoholic beverages in the *Sharḥ* must have been a devastating blow for the agenda of the traditionists and all jurists of non-Ḥanafī persuasion, who were invariably prohibitionist on the question of alcohol, especially the Shāfi'īs; indeed for them the blow must have been redoubled, for the *Sharḥ* presents a sophisticated critique of their legal doctrine on alcohol by an ex-Shāfi'ī. And although not yet canonised, al-Bukhārī's *Jāmi' al-ṣaḥīḥ* and Muslim's *al-Musnad al-ṣaḥīḥ* would both have been directly challenged by the *Sharḥ* since it highlights the partiality of both for their failure to report the full range of soundly-transmitted traditions relating to alcoholic beverages.

The section in al-Ṭaḥāwī's *Sharḥ* on alcoholic beverages has three primary aims: 1) to set out the full-range of traditions on alcoholic beverages; 2) to isolate (uncooked) grape wine as the only prohibited alcoholic beverage; and 3) to demonstrate the robustness of the Ḥanafī position, specifically the position of Abū Ḥanīfa, on alcohol. The task required of al-Ṭaḥāwī the crafting of a hermeneutic framework seldom encountered in early jurisprudential literature.

Al-Ṭaḥāwī begins by asking the question, what is the prohibited *khamr*? The response of almost all non-Ḥanafī jurists to this question was by now clearly formulated: anything that has the capacity to inebriate is *khamr*, whatever its source may be. Indeed to non-Ḥanafīs the very question would have seemed absurd. Their position, however, was secure only for as long as the proverbial elephant in the room was ignored: in this case a corpus of traditions that

¹⁰ This may be surmised from the fact that al-Ṭaḥāwī includes in each chapter of the *Sharḥ* relevant and indicative ḥadīths collected by the *Ṣiḥāḥ* authors.

clearly granted permission to Muslims to consume a wide range of alcoholic, potentially inebriating, beverages made of non-grape sources. The first is the tradition of ʿĪsa, who reports that his father sent him to Anas b. Mālik for a need; ʿĪsa saw that Anas had with him a strong *ṭilā*. Here al-Ṭaḥāwī provides commentary: *ṭilā* is a beverage which inebriates in large amounts—yet despite this Anas did not consider it to be *khamr* (Al-Ṭaḥāwī 2001: 4.6). According to al-Ṭaḥāwī, ‘It is therefore clear from what we have described that *khamr*, according to Anas, was not from every intoxicating beverage; it was rather only from certain beverages’ (*ibid*: 4.6). In further support of this notion, al-Ṭaḥāwī then quotes another tradition, this time on the authority of ʿAbdullāh b. ʿAbbās, which sets apart *khamr* from other intoxicating beverages in very clear terms: ‘*Khamr* is prohibited for its substance (*bi-ʿayni-hā*) but only that amount which intoxicates [is prohibited] in every other beverage (*wa l-sukr min kullī sharāb*)’ (*ibid*: 4.7). Al-Ṭaḥāwī again provides an explanatory note: ‘It is clear from [the tradition of Ibn ʿAbbās] that things besides *khamr* which are prohibited to drink at the point of intoxication are [in fact] permissible to drink in lesser quantities which do not cause intoxication. The judgment for these things is [the same] as the judgement for *khamr* before it was prohibited’ (*ibid*: 4.7).

This is an emotive account: al-Ṭaḥāwī, who here represents the Ḥanafī School, sets out a signally conflicting position on alcohol to the position of the prohibitionists. He goes further than this: rather than reject outright the traditions which seemingly challenge his doctrine on alcohol, he takes as given their validity, since they at the very least represent the views of the opposing camp, for which he demonstrates utmost respect; he therefore proceeds with a careful dissection of them, seeking wherever possible to harmonise between them and traditions permitting alcohol. The traditions he selects for analysis were widely cited by prohibitionists—they are traditions which would be familiar to many Muslims today, as they are quoted *ad nauseum* by contemporary supporters of absolute prohibition.

The first of them is the report of Abū Hurayra, transmitted with multiple chains, according to which the Prophet said: ‘*Khamr* is from these two trees alone: the vine and the date-palm’.¹¹ The tradition broadens the scope of *khamr* to include date wine as well as grape wine. Al-Ṭaḥāwī suggests three ways this tradition can be harmonised with the view of the Ḥanafis—that only wine from grapes is *khamr*. The first hermeneutic possibility is that the statement of the Prophet does not encompass both trees but only one of them: in this case, the sole referent of the prohibition is the vine. The Qur’an (8: 130) is cited in support: ‘O Jinn and Men, did not come from you all messengers?’ Al-Ṭaḥāwī points out that ‘the messengers are from men [only] and not jinn.’ A tradition of ‘Ubāda b. al-Ṣāmit is also cited, in which the Prophet explained to the companions who had pledged the oath of allegiance at ‘Aqaba that corporal punishment is an expiation for anyone who commits the crimes of associationism, theft or adultery; al-Ṭaḥāwī again suggests that this statement is qualified: ‘We all know that someone who commits associationism (*shirk*) is never forgiven, even if he is punished.’ It is through an inter-textual approach that al-Ṭaḥāwī is able to exclude non-grape alcohols from a general pronouncement.

The second hermeneutic possibility is that the Prophet did in fact mean both trees together but only that which is fermented from them both is to be counted as *khamr*. This, according to al-Ṭaḥāwī, is the view of Abū Ḥanīfa, Abū Yūsuf and Muḥammad al-Shaybānī, as it relates to fermented raisins and dates. The last hermeneutic possibility suggested by our jurist is also the one he clearly favours, since it links nicely with the tradition of Ibn ‘Abbās above: what is meant by the ‘*khamr* of grapes’ is the very juice itself, after it has been through the process of fermentation; as for the ‘*khamr* of dates’, it is the point at which date juice begins to cause inebriation (*ibid*: 4.4). In this way, al-Ṭaḥāwī is able to neutralise the efficacy of this

¹¹ This is reported by Muslim (*Al-Kutub al-Sitta* 2008), *ḥadīth* #5142 and #5143.

tradition, thus preserving the status of narrow prohibition to grapes alone; and these three hermeneutic possibilities are equally applicable to what is known as the hadith of ʿUmar, which is narrated by his son, ʿAbdullāh: ‘I heard ʿUmar on the pulpit of the Prophet saying: “O people! Indeed the prohibition of *khamr* descended at a time when it was [made] from five: dates, grapes, honey, barley and wheat; indeed *khamr* is that [beverage] which clouds the mind (*al-khamr mā khāmara l-ʿaql*)”’ (*ibid*: 4.5).

Concluding his discussion on the scope of the term *khamr*, al-Ṭaḥāwī makes the following defiant remark: ‘Therefore we are witnesses by God that grape juice, once fermented, is prohibited; we will not be witnesses by Him, however, that other beverages besides, when fermented, are also prohibited. This is because, in the case of *khamr*, we are sure of its prohibition in the Qur’an. However, we cannot say the same of other beverages. Therefore *khamr* is prohibited in large and small quantities, whereas other kinds of drink are only prohibited when they [begin to cause] inebriation—in all other cases they are permitted. This is our view (i.e. the view of the Ḥanafīs), and it is the position of Abū Ḥanīfa, Abū Yūsuf and Muḥammad (al-Shaybānī), may God have mercy on them all. The only exception to all of this is the case of fermented raisins and dates [when they are mixed], since this [combination] was disliked by them (*karihū*)’ (*ibid*: 4.7). The statement is very poignant, because it illustrates that there is more al-Ṭaḥāwī wants to prove than simply a legal argument: he is, above and beyond mere legalism, seeking to salvage what he believes is a marker of Sunnī Islam.¹²

In the subsequent section al-Ṭaḥāwī asks, what amount of *nabīdh* is prohibited? By asking this question al-Ṭaḥāwī is taking a stand against jurists who peddle the view that all

¹² The force of this declaration can be understood more fully when one considers the position of al-Ṭaḥāwī within Sunnī Islam. In the introduction to his translation of al-Ṭaḥāwī’s creed, Hamza Yusuf (2007: 22) clarifies al-Ṭaḥāwī’s standing: “It is however the distinction of Imām al-Ṭaḥāwī’s creed to have gained the widest acceptance, as it is embraced even by the less speculative Ḥanbalī school that generally censured the more capacious schools of Imām al-Ashʿarī and Imām al-Māturīdī.” In elucidating upon al-Ṭaḥāwī’s methodology, Yusuf (2007: 23) states, “Al-Ṭaḥāwī relies on the authority of such illustrious men as Abū Ḥanīfa, whose creed is the basis of his own treatise. The text was accepted by the Muslims, and especially used by those who adhere to the Ḥanafī school.”

alcoholic beverages are legally speaking *khamr* because of their potentially inebriating power. In this discussion, he demarcates all non-grape-based alcohols as a separate category from grape-based alcohols, terming the former as *nabīdh*. In support of this taxonomy, he cites two traditions in particular which form the foundation of the argument supporting general prohibition: the first is the ḥadīth of Ibn ʿUmar: ‘Every intoxicant is *khamr*, and every *khamr* is prohibited’; the second, the ḥadīth of ʿĀmir b. Saʿd: ‘I forbid you [even] a small amount of that which inebriates in large quantities’. There are tens of traditions listed by al-Ṭaḥāwī of the same vein. Astonishingly, our jurist concludes that the traditions, despite their number and clarity, are not conclusive, since they could imply, as understood by the advocates of general prohibition, that all alcohol is forbidden, and they could imply that alcohol is prohibited only at the point at which it causes intoxication. There is a need, argues al-Ṭaḥāwī, for supporting evidence which might resolve the ambiguity—evidence which he goes on to furnish in abundance.

Ḥammām b. al-Ḥārith is quoted, who says that ʿUmar b. al-Khaṭṭāb was once on a journey when he was brought some *nabīdh*. After drinking some of it he was seen to grimace because of its strength. He called for water, which he used to dilute the beverage before returning to drink (*ibid*: 4.12). In another tradition, ʿUmar is said to have requested *nabīdh* after he was stabbed several times by his assassins; he used the intoxicating *nabīdh* for its anaesthetising property, which provided relief from the pain of his stab wounds. He of course died from these shortly afterwards (*ibid*: 4.12). In another tradition, ʿUmar again is quoted, this time as saying: ‘We drink from this *nabīdh* a drink which breaks down the meat in our stomachs so that it does not harm us.’ The narrator, ʿAmr b. Maymūn then adds that, he drank from ʿUmar’s *nabīdh* and found it to be one of the strongest he had imbibed (*ibid*: 4.12). In a particularly revealing tradition a drunk man is brought to ʿUmar for a flogging. ʿUmar duly metes out the punishment,

after which the man complains that he had only drunk from ʿUmar’s drink. ʿUmar replied rather disinterestedly, ‘So what?’, suggesting that this was no excuse for the man's drunkenness.

That al-Ṭaḥāwī adduces traditions of ʿUmar throughout his discussion on alcohol warrants a comment. It is interesting that ʿUmar is generally not as frequently cited in support of Ḥanafī doctrines as are ʿAli and Ibn Masʿūd (Schacht 1967:31). These two are described by Schacht as the most important authorities of the Iraqians. So why should ʿUmar be cited with greater frequency than is usual in chapters of Ḥanafī law? It is probably the fact that ʿUmar was held by the Mālikīs and Shāfiʿīs as the most important legal authority after the Prophet. In fact, as Schacht notes, ‘The role of ʿUmar as a main authority of the Medinese is explicitly stated in many passages in *Tr. III*, for instance in S. 87: “You reply: If something is related from ʿUmar, one does not ask why and how, and one does not counter it by interpreting the Koran differently.”’ (Schacht 1967:25). There could not therefore have been an authority more useful for al-Ṭaḥāwī’s defense than ʿUmar, at least in his debate with fellow Sunnī jurists. Al-Ṭaḥāwī provides his own explanation: ‘We find ʿUmar b. al-Khaṭṭāb among those who have reported on the authority of the Messenger of God that he said, “Every intoxicant is prohibited.” Yet there has also been reported from him the opinion that small amounts of strong *nabīdh* is permissible’ (Al-Ṭaḥāwī 2001: 4.11). After adducing the many traditions of ʿUmar, numbering no less than nine, al-Ṭaḥāwī concludes by saying: ‘Since we have established on the basis of mentions on the authority ʿUmar that a small amount of strong *nabīdh* is permitted—the same ʿUmar who heard the Prophet say, ‘Every intoxicant is prohibited’—his behavior must surely be an indication that the Prophet meant only to prohibit that part of strong *nabīdh* which causes intoxication’ (*ibid*: 4.13).

After this, Ibn ʿUmar, the other great authority for the Mālikīs and Shāfiʿīs is cited for traditions also permitting the drinking of *nabīdh* up till the point of intoxication. These further reinforce the position of course, but also provide variations of the traditions of ʿUmar, thereby

making any attempt to interpret them away almost impossible. These are too similar as to be worth presenting here. The last is a tradition with variations cited after this on the authority of Abū Mūsā al-Āshʿarī, a tradition which Ibn Rushd also presents in his legal compendium, *Bidāyat al-mujtahid*, as a foundational proof of the Kufians: this tradition one might have expected sooner in the narrative, since it is a tradition from the Prophet. Abū Mūsā said, ‘The Messenger of God sent me and Muʿādh to Yemen. We said, ‘O Messenger of God, there are two drinks there they make from wheat and barley. One of them is called *mizr* (made from maize), the other is called *bitaʿ* (made from honey); which one should we drink?’ He replied, ‘Drink them both but do not get drunk’” (cf. Siddiqui 2012: 96). These traditions could come as a shock for many modern Muslims, particularly the latter, which is a variation of the better-known tradition collected by al-Bukhārī. In his *Jāmiʿ al-ṣaḥīḥ*, the narrative is altogether contradictory: Abū Mūsā says, ‘The Prophet sent me and Muʿādh to Yemen. We said, “O Prophet of God, in that land there is a drink from wheat called *mizr* and a drink from honey called *bitaʿ*.” The Prophet said, “Every intoxicating [drink] is prohibited.”’¹³ How are these contradictory traditions to be received? Both are conversations between the Prophet and Abū Mūsā; however, both cannot represent historical fact. Today, Muslims would have no difficulty in deciding which of them represents the *Sunna*; in the age of al-Ṭaḥāwī the *Jāmiʿ al-ṣaḥīḥ* had not yet attained canonical status, which would make taking a position on one side or the other much more difficult. Why al-Ṭaḥāwī relegates this statement of the Prophet until the end of his discussion may seem unusual but in fact would have been perfectly consistent with the approach of other jurists within his School as well as Mālikī jurists. As Schacht discovers, ‘The attitude of the Iraqians and of the Medinese to legal traditions is essentially the same, and differs fundamentally from that of al-Shāfiʿī [...] both the Iraqians and the Medinese neglect

¹³ Al-Bukhārī (*al-Kutub al-Sitta* 2008), ḥadīth #4344 and #4345; see also the report of Muslim (*al-Kutub al-Sitta* 2008) ḥadīth #5216.

traditions from the Prophet in favour of systematic conclusions from general rules, or of opinions of the Companions' (Schacht 1967: 21).

Legalistic Appraisals

According to Meron (1969:6) the *Tuḥfat al-fuqahā'* of 'Alā' al-dīn al-Samarqandī (d. 539/1144), marks the emergence of a methodical approach in Ḥanafī law which attains a new degree of refinement, with every "Book" and every chapter starting with an enumeration of topics, followed by an orderly discussion of them. We might also consider this as marking a shift to a paradigm of codification of jurisprudential thought, in which legal proofs give way to a quest for typology.

Al-Samarqandī's discussion of alcoholic beverages begins with a list of drinks and their descriptions (Samarqandī 1995: 3.325-326). He then provides the legal judgement (*ḥukm*) for each one. *Khamr* is of course prohibited (*ḥarām*) both in small and large quantities (*qalīluhā wa kathīruhā*); it is impermissible to derive any utility from it, not even for its medicinal qualities; the one who denies this is to be excommunicated, because its prohibition is 'clearly established by a categorical text of the Qur'an (*thabatāt bi-naṣṣ al-Qur'ān*)'; owning or trading it is prohibited; a *ḥadd* punishment of eighty lashes is applied for one who drinks even a small amount of it. There is nothing particularly remarkable here (Samarqandī 1995: 3.327).

The legal ruling, says al-Samarqandī, for *sakar*, *naqī'*, *faḍīkh* and *bādhiq* is one and the same: they are *ḥarām* to drink in both small and large quantities, however their prohibited status is lower than the status of *khamr*—therefore, one who denies that they are prohibited is not excommunicated and one who drinks them in amounts that do not intoxicate is not subjected to the *ḥadd* punishment. Al-Samarqandī points out that there is no unanimity upon these beverages being prohibited: he cites Bishr al-Mursī (d. 228/842), a student of Abū Ḥanīfa, as someone who considered all permissible based on *ḥadīth* traditions. As selling or owning these

drinks, Abū Ḥanīfa considered it permissible whereas Abū Yūsūf and Muḥammad al-Shaybānī considered this *ḥaram*. Al-Samarqandī prefers Abū Ḥanīfa’s opinion, which is rationalised as follows: the traditions regarding these drinks are conflicting with regard to their permissibility; we only say that they are *ḥarām* by way of caution. This should not take away the right of people to trade in them.

The legal ruling for *ṭilā’*, *nabīdh¹* and *nabīdh²* is one and the same: they are permissible in small quantities; only at the point of intoxication are they *ḥarām* and if someone gets inebriated from drinking them, he is subjected to the *ḥadd* punishment. We are told that this is the view of Abū Ḥanīfa and Abū Yūsuf; from Muḥammad al-Shaybānī, two opinions are reported: one is the view that these are prohibited and the *ḥadd* is imposed when someone gets inebriated by them. A second opinion is presented in al-Shaybānī’s own words: ‘I do not prohibit [these] but neither do I drink [them].’ Al-Samarqandī says unequivocally that the correct position is that of Abū Ḥanīfa and Abū Yūsuf, for their conformity with the majority of Companions who also held that to drink these beverages is permissible. He further says that Abū Ḥanīfa held that to believe these drinks are permissible is a mark (*‘alāma*) of the people of the *Sunna* and the *Jamā‘a*, i.e. Sunnī orthodoxy. Concluding his discussion, al-Samarqandī says that alcohol made from wheat, barley, maize, honey, fig and the like are all permissible. Astonishingly, he says that there is no *ḥadd* punishment for drinking these, even if someone gets drunk (Al-Samarqandī 1995: 3.326-8).

Given that *Badā’i‘ al-ṣanā’i‘* of ‘Alā’ al-Dīn Abū Bakr b. Mas‘ūd al-Kāsānī (Meron 1969: 82) is based heavily on al-Samarqandī’s *Tuḥfa* it is worth a brief remark here. The chapter on alcoholic beverages is eye-opening. The same drinks listed in the *Tuḥfa* as *ḥarām* are listed as such here: *khamr*, *sakar*, *faḍīkh* and *naqī‘*; the same qualification is stated: no *ḥadd* is imposed on the one who drinks the latter three unless they become inebriated. *Ṭilā’*, *bādhīq*, *munaṣṣaf* and *muthallath* are all permissible up until the last intoxicating cup; *jumhūrī*, *mizr*

and *bita*^c may be drunk without any fear of corporal chastisement, even if one were to drink beyond the point of inebriation. Interestingly, al-Kāsānī argues that there are two ways someone can become inebriated: a *ḥarām* way and a *ḥalāl* way. He also says that the non-Muslim subjects of the Islamic lands—the *Ahl al-dhimma*—are allowed to drink all types of alcohol, including *khamr*, without fear of punishment, even if they become inebriated in the process. Abū Ḥanīfa is quoted as saying that *nabīdh* is never to be prohibited: “Abū Ḥanīfa deemed the permissibility of *al-muthallath* to be from the markers of the Doctrine of the *Sunna* and the Community (*Madhhab al-Sunna wa l-Jamāʿa*). He said by way of clarification: ‘It (this doctrine) is to prefer the two shaykhs (Abū Bakr and ʿUmar), to consider an obligation the circumcision, to deem valid the wiping over the leather socks and not prohibiting *nabīdh* wine because to do so would be to castigate the foremost Companions (may god be pleased with them); withholding from declaring them sinners, and refraining from criticizing them, are from the markers of the *Sunna* and the Community’” (Kāsānī 2003: 6:473-474).

Ḥanafī Law in the Context of Bureaucratic Governmentality

A number of scholars have previously noted a so-called “shift” in Ḥanafī legal thinking on alcohol, which, it is claimed, took place around the 12th century. Najam Haider (2013) is one such scholar. He points to the jurisprudential work of Burhān al-Dīn al-Marghinānī (d. 593/1196) as the turning point. According to Haider, the shift was prompted partly by increasing pressure exerted on the Ḥanafīs by the Mālīkīs and Shāfiʿīs. This claim, however, is not borne out in the literature as will be demonstrated below.

Burhān al-Dīn al-Marghinānī (d. 593/1196), *al-Hidāya*

Al-Marghinānī's commentary on the *Bidāyat al-mubtadī* marks a shift in Ḥanafī jurisprudential thinking on alcohol: for the first time, it would seem, the position ascribed to al-Shaybānī favouring general prohibition is presented on a par with the Ḥanafī position of narrow prohibition. Many of the traditional Ḥanafī arguments in support of narrow prohibition are still presented in the *Hidāya*, and the Shāfi'ī school in particular is targeted in critique which is at times stinging. It is noteworthy that al-Shaybānī's view in support of general prohibition is but a line, and is virtually unsupported by the popular Traditionist arguments in support of general prohibition. What can be inferred, therefore, is that al-Marghinānī is merely making the prohibition of alcohol an option, probably for authorities (although he does not describe it as a fatwa), and certainly for non-State authorities who may be seeking legitimacy for an outright ban of alcohol—teachers, parents, community leaders, and so on.

Al-Marghinānī's list of beverages is typical: *khamr* is by definition the intoxicating drink made of uncooked grapes and dates; it is unconditionally prohibited, and the one found drinking it in large or small quantities is subject to corporal punishment. *Ṭilālbādhiq*, *munaṣṣaf*, *sakar* and *naqīʿ* are all prohibited but their status is not *ḥarām*—it is rather *ḥarām makrūh*, which here implies that the scriptural basis for deeming these prohibited was not of a level of conclusiveness that could permit an outright declaration. The implications of this are that one who is found drinking these beverages cannot be punished unless he has exceeded the legal threshold that would render him *sakrān* (drunk). All other drinks are fine (*lā ba'sa bi-hā*—there is nothing wrong with them), and include alcohols made from wheat, barley, maize and honey. Al-Marghinānī (1999: 2.399) ascribes to Abū Ḥanīfa the view that the category of drinks *lā ba'sa bi-hā* are *ḥalāl* even beyond the legal threshold—in theory, one could get drunk imbibing them without there being any legal implications. This view is not shared by al-Shaybānī, of course, for whom they are all *ḥarām* and could result in eighty lashes for their drinker who exceeds the legal threshold.

Fakhr al-Dīn al-Ḥasan b. Maṣṣūr Qāḍīkhān (d. 593/1196), *Fatāwā Qāḍīkhān*

Qāḍīkhān, contemporary of al-Marghinānī from Transoxania, maintains quite expectedly that *khamr* is *ḥarām* (2009: 3.81-90). All other drinks, however, are treated with varying degrees of tolerance: even when they are prohibited, exceptional production methods can make them *ḥalāl*. *Bādhiq* is one such drink, which, according to Qāḍīkhān, becomes *ḥarām* when fully fermented, with a punishment associated with it whenever it is drunk beyond the legal threshold. However, if it maintains its sweet flavor, it is *ḥalāl* (*ibid.*). *Munaṣṣaf* is fine as well, unless it reaches full fermentation; *Muthallath* is unconditionally *ḥalāl*, although there is a punishment for drinking it to excess, as are *jumhūrī* and *ḥumaydī/bukhtuj* (*ibid.*). From the sources which are non-grape and date, permissibility is once again the default—alcohols from pear and apple are listed, as are the beverages from the *ḥubūb* (wheat, barley and maize). There are no repercussions, according to Qāḍīkhān, for drinking any of these, even if they are imbibed to excess (i.e. beyond the point of intoxication) (*ibid.*).

Al-Shaykh Niẓām, *al-Fatāwā l-Hindiyya/al-Fatāwā al-Ālamgīriyya*

A compendium of Ḥanafī legal opinions commissioned by Mughal Sultan Awrangzīb Ālamgīr (r. 1068-1118/158-1707), this work was compiled under the supervision of Shaykh Niẓām of Burḥanpūr (d. 1089/1678) who oversaw a group of over forty Ḥanafī experts, each of whom contributed to what was a relatively unique project in its time. Despite its title, the text does not fit the usual form of the *fatwa* genre: the opinions collected in it are not those of muftis but rather legal opinions culled from earlier collections of Ḥanafī law, especially the *Hidāya*. It is no surprise, therefore, that the verdict on alcoholic beverages is a virtual replica of al-Marghinānī's discussion. The distinguishing feature, however, is a statement at the end of the survey of alcoholic beverages, a fatwa no less, issued in support of general prohibition:

As for those [alcoholic beverages] which are considered *ḥalāl* according to the majority of scholars, they are *ṭilā* (which is *muthallath*), *nabīdh* of dates and raisins. These are permissible to drink up until the point of intoxication for the purposes of digesting food, medication and to energise oneself for the worship of God; it is not [permissible] for wanton diversion. It becomes *ḥarām* [to drink] at the point at which it causes inebriation. This is the statement of most [jurists]. If someone gets drunk, then the *ḥadd* is applied to him; it is permissible to sell these [drinks] and to insure them against loss, according to Abū Ḥanīfa and Abū Yūsuf; this is also the soundest opinion that has been reported from Muḥammad [al-Shaybānī]. And in a report from him, small and large amounts of these are *ḥarām*, though no *ḥadd* is applied as long as there is no intoxication. This is what is found in the *Muḥīṭ* of al-Sarakhsī. The fatwa in our times is in accordance with [this view] of Muḥammad, such that a person who becomes inebriated from alcoholic drinks made of grains, honey, milk and figs is to be punished; this is because the sinning folk (*fussāq*) congregate for these drinks in our time, with the intention of getting drunk and for wanton diversion (2000: 5.497.)

Unlike al-Samarqandī, who highlights the problem of the veracity of this statement from al-Shaybānī, Niẓām, beyond presenting it as the basis for the fatwa, has nothing more to say.

Muḥammad Amīn Ibn ʿAbidīn (d. 1252/1836), *Radd al-muḥtār*

Ibn ʿAbidīn was the Ottoman dynasty’s last great Shaykh al-Islam. His discussion on alcoholic beverages, as set out in his commentary on the *Durr al-mukhtār*, reinforces the position of many Ottoman grand muftis before him:

It is according to the position of Muḥammad (al-Shaybānī) that the fatwa is given. This is also the doctrine of the three imāms (Mālik, Shafīʿī and Aḥmad), based on his statement, upon him be peace, “Every intoxicant is *khamr*, and every intoxicant is *ḥarām*.” This is reported by Muslim. Also, he said, upon him be peace, “Whatever intoxicates in large amounts is forbidden in small amounts.” This is reported by Aḥmad, Ibn Mājah and al-Dāraquṭnī. This opinion has been deemed the soundest by the authors of *al-Multaqā al-Mawāhib*, *al-Kāfiya wa l-Nāhiya*, *al-Miʿrāj*, *Sharḥ al-Majmaʿ*, *Sharḥ Durar al-Biḥār*, al-Qohistānī and ʿAynī, where each said [in one form or another]: the fatwa in our time is according to the position of Muḥammad because of the preponderance of hedonism (*fasād*); some of them rationalized this further by speaking about the way that sinning folk (*fussāq*) gather around these alcoholic beverages intending wanton distraction (*lahw*) and intoxication (*sukr*) (Ibn ʿAbidīn 2003: 10.36).

Interestingly, we are also provided with a definition of drunkenness, or the point at which someone might be deemed drunk (*sakrān*). Echoing the opinion of centuries of Ḥanafī tradition, Ibn ʿAbidīn (2003: 6.74) tells us: “He is drunk (*al-sakrān*) who cannot distinguish a man

from a woman (*lā yufarriq bayna al-rajul wa l-mar'a*), or the sky from earth (*wa l-samā' wa l-arḍ*); it is said also that his speech becomes senseless jabber (*yakhtaliḥ kalāmuhu*).” The conditions under which one can legitimately drink alcohol, up until intoxication, are also set out by Ibn ʿĀbidīn (ibid: 10.35): alcoholic beverages may only be considered *ḥalāl* when used: 1) to aid digestion (*istimrā' al-ṭaʿām*; 2) for medicinal purposes (*tadāwin*); 3) to give one the strength for the worship of God (*al-taqawwīʿ alā ṭāʿat Allāh*). Glossing this last point, he says, “Such beverages might energise a person to stand longer in prayer or aid fasting; they also provide aid in fighting the enemies of God (*li qitāl aʿdā Allāh*).” It is unanimously agreed, Ibn ʿĀbidīn adds, that drinking which results in distraction from one’s duties (*al-lahw*) is *ḥarām*.

Thus completes our exploration of Arabophone Ḥanafism. We now shift the focal point of this paper to India, the second powerbase of the school.

III. From Baghdad to Delhi: Ḥanafism Relocated

The significance of Indian (including Afghanistan and Bengal) Ḥanafism in the debates surrounding the ongoing contestations of orthodoxy within Sunni Islam cannot be downplayed due to three factors: firstly, on account that the living *isnāds* of the canonical Ḥadīth go through Barelwi and Deobandi Sufi networks which originate in Baghdad (and Kufa); secondly, Delhi becomes the centre of Islamic knowledge production in Farsi and Urdu from the 18th century onwards, in addition to Arabic, largely through scholarly output and demographic weight; thirdly, the pronounced Ḥanafī identity which is idiosyncratic to non-Arab lands is palpable in jurisprudential polemics in India. The Ḥanafīs were pitted against the Ahl-i-Ḥadīth movement and with its prominent ideologue Siddiq Hasan Khan (d. 1307/1890) who deemed themselves the defenders of the canonical texts. Amidst the usual minutia of devotional acts and dogmata, the argument of *nabīdh* was once again reignited. Notwithstanding that, Indian Ḥanafism has an interesting internal schism of its own. Since the great reformer Shāh Waliullāh (d.

1176/1762), peripheral polemics, largely doctrinal, led to the split between what would later emerge as the Barelwi and Deobandi fatwa wars.¹⁴ What is of interest is that these warring Ḥanafīs defend the school’s age-old position on *nabīdh* against their Ahl-i-Ḥadīth detractors.

Shāh Waliullūh and the ‘ulamā’ of Faranghī Maḥall played a pivotal role in shaping the popular *Dars-i-Nizāmī* syllabus’ ḥadīth, jurisprudential and theological curricula. Though the Barelwīs and Deobandīs differ on doctrinal issues, both factions rely on the *Dars-i-Nizāmī* primers on dogmata such as *Sharḥ al-‘Aqā’id al-Nasafiyya* of al-Taftāzānī (d. 792/1390) and the *Ma‘ānī al-Athār* of al-Taḥāwī. Often both Barelwī and Deobandī scholars, tend to delve into lengthy discussions in the super-commentaries on such textbooks, especially when they take issue with the wording if it ostensibly seems problematic. This is absent as the section on ‘not prohibiting *nabīdh*’ (*mabḥath lā nuḥarrim nabīdh al-tamar*) in *Sharḥ al-‘Aqā’id* (Al-Taftāzānī: 165) is as it is, without any commentary, thus indicating that the doctrine is established in Sunni orthodoxy and enshrined in the celebrated *Dars-i-Nizāmī*. Yusuf Kandhelwi (d. 1384/1965) puts the authenticity of *Ma‘ānī al-Athār* and its relevance over *Sunan* of Abū Dāwūd, *Jāmi‘* of al-Tirmidhī and *Sunan* of Ibn Mājah (Kandhelwi: 1.63). As discussed earlier in this paper, al-Taḥāwī’s defence of *nabīdh* is elaborated in the *Ma‘ānī al-Athār*. The *Ma‘ānī* is enshrined in the *Dars-i-Nizāmī* alongside the six Canonical works.

The Ḥanafī ‘ulamā’ are confronted with the Māturīdite doctrine of ‘not prohibiting *nabīdh*’, claimed to be an emblem of Ahl al-Sunna and the ḥadīth-centric nature of the *Dars-i-Nizāmī* which prides itself on utilising the six Canonical works, which in turn undermine the very fabric of Ḥanafism.

Some Indian Ḥanafīs have internalised criticisms from the other schools and to use Montgomery Watt’s words ‘influenced by reaction’ as is the case with polemical wranglings.

¹⁴ Keller, Nuh. *Islam, Imān and Kufr*. <http://shadhilitariqa.com/site/index.php?option=com_content&task=view&id=37&Itemid=20>

°Abd al-Ghaffār Lucknowī in his Urdu translation of *Zād al-Wiqāya* of the *Dars-i-Nizāmī* favourite *Sharḥ al-Wiqāya* deemed it necessary to provide a caution (*fā'ida*) after his faithful rendition of the section on *nabīdh al-tamar*. He is seemingly troubled by the position of the text (*matn*) which cannot be easily interpreted away. All too aware that any student of Urdu can understand his translation, lest the students get any ideas, he intervenes by bolstering the position of Mālik, al-Shāfi'ī and Aḥmad with ḥadīth and the dubious position of al-Shaybānī:

Many elders (*mashā'ikh*) have given the fatwa of [Imam] Muḥammad in our times lest the sinning folk (*fussāq*) would abuse this by becoming intoxicated (i.e. drinking irresponsibly). Perhaps these ḥadīth didn't reach Imam-i-A'zam (*shāyad imām-i-a'zam ko ye hadithain nahin pohnchein*) (Lucknowī 2005:2:502).

All too often 'maybe the ḥadīth didn't reach him' (*la'all al-ḥadīth lam yablughu*) is a patronising cliché found in jurisprudential polemics against Abū Ḥanīfa and Mālik and cynically reproduced here. Notwithstanding odd Ḥanafī capitulations, this being the best example of such, the dominant players in the polemics such as Aḥmad Riza Khan (d. 1340/1921) and Ashraf °Alī Thanwī (d. 1362/1943), unequivocally defend the position of their shared school.

The most exhaustive rebuttal of Ahl-i-Ḥadīth criticism of the Ḥanafī school's positions on devotional issues and dietary rules comes in the form of the monumental *I'lā' al-Sunan* by Zafar Aḥmad °Uthmānī Thanwī (d. 1394/1974) which he carefully authored under the guidance of the great Deobandī ideologue Mawlānā Ashraf °Alī Thanwī. This apologetic work bears testimony to the position of the school and the very hypothesis of this article. °Uthmānī dedicates roughly twenty seven pages on the topic of beverages and engages with the arguments put forward by the early masters such as al-Ṭaḥāwī and detractors such as Ibn Ḥajar al-°Asqalānī (d. 852/1449). By way of illustration, the choice of subsection titles very much indicates his overall thesis. In this ḥadīth collection, he begins the book on beverages with the 'chapter on the impermissibility of wine' (*bāb ḥurmat al-khamr*). After adducing evidence from ḥadīth (Aḥmad, Muslim and al-Nasā'ī), °Uthmānī declares that this ḥadīth is an explicit statute (*naṣṣ*)

on the impermissibility of the consumption of wine (*khamr*) and the sale of it. Its impermissibility and it being impure is expressly stated in the Qur'an. To this extent the Muslim community are in agreement, however there are types of beverages the vinous nature of which is debatable (*illā annā fī khumriyyatihā shubha*)" (Al-ʿUthmānī 1997:25-6).

Al-Dārquṭnī's (d. 385/995) narration from the Prophet which reads "that which intoxicates a lot, a little of it too is prohibited (*mā askara kathīruhu fa qalīluhu ḥarām*)" is all too often used by the other schools during the medieval period and the Ahl-i-Ḥadīth in the contemporary era. In response to this, ʿUthmānī argues:

...we say, we do not reject this ḥadīth, rather it is not explicit statute as you allege, because it is probable that what is implied is that it is prohibited in and of itself (*ḥarām li'aynihi*) rather than intoxication (*dūn sakrihi*), like wine (*khamr*). Therefore it would mean wine is prohibited, in large and small quantities. This interpretation is our express position (*wa hadhā al-ta'wīl huwa al-muta'ayyun 'indanā*) (*ibid*: 28).

After making a lengthy defence of Abū Ḥanīfa's position, ʿUthmānī concludes:

...with this account the sum of the ambiguities regarding Abu Ḥanīfa's position are dispelled, however our elders have ruled on the statement of [Imam] Muḥammad on the issue of intoxicating beverages due to it being closer to the manifest wording of the statutes and piety and far from distraction (*talahhī*) (*ibid*).

What is telling here is a general motif in Deobandi exoteric Sufism, best exemplified in the missionary activities of the Tablighi Jamaat. Whenever spiritual advice or even fatwas are issued on Sharʿīa-silent *mubāḥ* issues, there is a propensity to put forward non-committal platitudes such as 'best to avoid it'. ʿUthmānī continues to comment on two ḥadīth regarding honey mead, beer from wheat and barley:

...the two ḥadīth indicate that honey mead, maize, barley were not known to the Companions as 'wines', otherwise they need not have asked the Prophet after already knowing the prohibition of *khamr*, like they didn't need to ask *khamr* of grapes and dates. This is evidence that these beverages are not *khamr* in the literal sense, rather they have been applied as simile (*wajh al-tashbih*) since they share some qualities with it, especially clouding of the intellect and prohibition of intoxication. Therefore there is no proof from these ḥadīth for he who claims that honey mead and other beers are literally wine." (*ibid*: 32-3).

ʿUthmānī goes on to argue that the Prophet calling these beverages *khamr* was for analogous purposes not for legislation. He brazenly boasts "you have nothing to stand on (*falā ḥujja lakum*

f̄thi)” (*ibid*: 33). ‘Uthmānī highlights the hadith from al-Ṭaḥāwī ‘*khamr* is prohibited in and of itself and intoxication from every other beverage’.

...it is clear from this the error of al-Nasā’ī, al-Daruqutnī and others, whereby they erred in their narration of intoxication (*sakar*) without the letter *mīm* by ‘correcting’ it. The narration without the *mīm* is authentic as Abū Na’īm and others have narrated.

‘Uthmānī explains the hadith ‘*kull muskirin ḥarām wa kull muskirin khamr*’ means:

...every intoxicant is prohibited whether it is actual (*ḥaqīqatan*) or virtual (*ḥukman*). Actual *khamr* is prohibited in large or small quantities. Virtual *khamr* on the other hand is prohibited up to the point of intoxication. Therefore what is meant by the Prophet’s words “all intoxicants”, that all intoxicants, *khamr* and otherwise are *ḥarām*, as for *khamr*, large or small quantities, whereas other beverages the intoxicating amount thereof” (*ibid*: 36).

‘Uthmānī deals with the drinking of ‘strong intoxicating *nabīdh*’ (*al-nabīdh al-shadīd al-muskir*) by the second caliph ‘Umar ibn al-Khaṭṭāb. This has massive implications for Sunni – Shia relations. The Deobandi stance on Twelver Shiism is premised on the assumption that the Shia accuse senior Companions of consuming alcohol. ‘Uthmānī defends ‘Umar’s actions:

Since the permissibility of drinking a small amount of strong *nabīdh* has been established from what we have mentioned regarding ‘Umar, and him hearing the Messenger of God saying “every intoxicant is prohibited”, him drinking this type of *nabīdh* is evidence that what the Messenger of God forbade was the intoxication from it only. It is probable that he heard this as a statement from the Prophet or a position of his own. His position is proof for us, especially if his aforementioned action in the reports indicate it was done in the presence of the Companions of the Messenger of God and none repudiated it. This too indicates they followed him in this. (*ibid*: 41).

‘Uthmānī goes on to say “many dear scholars (*aḥbāb*) do not refer to the books of the folk in this regard and disparage them without knowledge” (*ibid*: 41).

In sum, ‘Uthmānī’s whole discussion is very much like the style of Fakhr al-Dīn al-Rāzī (d. 606/1210), who was notorious for ‘adducing dubious arguments in cash and accruing doubt by interest’ (*yūridu al-shubaha naqdan, wa yurbṭhi nasī’atan*), that is to say he deliberately lost arguments and planted the seeds of doubt on a particular issue by faithfully reproducing ‘heterodox’ views and rebutting them with simply a sentence to say the aforementioned is wrong, and that ‘God knows best’ (see for example al-Rāzī 2000: 140). ‘Uthmānī decon-

structs all arguments except the projection back to Imam Muḥammad and his supposed position. It seems like ‘God knows best’ is a way of hedging all bets. Even Imam Ahmed Riza Khan (1991), the arch-nemesis of the Deoband Seminary, theoretically bolsters the position of his counterparts in his defending the position of Abū Ḥanīfa as being the normative fatwa of the school.

IV. Defending Narrow Prohibition: What’s at Stake?

It is clear that the Ḥanafīs expended a great deal of effort to defend their position on narrow prohibition, even in those texts which gave precedence to the position of al-Shaybanī. In fact they were, and remain, the only school to dedicate a chapter (*kitāb*) in their jurisprudential works to the subject of alcoholic beverages—*Kitāb al-ashriba*, which is thus a hallmark of Hanafī jurisprudence. Other schools—Shāfi‘ī, Mālikī and Ḥanbalī—would at most only discuss alcohol within the subject matter of corporal punishment, *ḥudūd*; this makes sense given that their position was one of general prohibition. This section examines the reasons underlying the Ḥanafī investment in the subject of alcoholic beverages; it explores why the School never relinquished the position, or *madhhab*, of its founder, Abū Ḥanīfa, even in the face of vitriolic criticism of their opponents and often scathing *ad hominem* arguments directed their way.

The theological justifications given by the Ḥanafīs in support of their view on alcohol are available in legal texts and doctrinal tracts. That the discussion of alcohol should be included in the latter genre is hugely significant for it precludes the possibility of change. For Ḥanafīs the permissibility of alcohol was never merely a legal position—it was no less than a marker of Sunnī identity. *Al-‘aqā’id al-Nasafīyya*, the most famous and widely taught Ḥanafī-Māturīdī credo, written by Najm al-Dīn al-Nasafī (d. 537/1142), contains the following declaration: ‘We approve the wiping on the two inner shoes (*al-khuffayn*) on a journey and at one’s

abode; we do not prohibit as unlawful the *nabīdh* of dates (*al-tamr*)’ (Elder 1950: 155-6).¹⁵ In the *Badā’i’* of al-Kāsānī, the doctrine on alcohol is articulated in starker terms, perhaps because of his location in Transoxiana, which tended to towards a more purist form of Ḥanafism than one might meet in Baghdad, Delhi or Istanbul: here we are told that Abū Ḥanīfa’s doctrine was that *nabīdh al-khamr*, literally, date-wine, should not be prohibited, again because to do so would imply that the senior Companions of the Prophet, who were known to have consumed it, were sinning for doing so. Such high stakes; such powerful doctrinal statements. The doctrine constitutes a response to all prohibitionist jurists from among the Mālikīs, Shāfi’īs, Ḥanbalīs and the Shī’a. But it must surely have been directed more specifically at Shī’a opponents, who would require convincing not so much that the traditions in support of alcoholic beverages were authentic—about this the Shī’a were in little doubt—but rather that the Companions who were recorded in the annals of history as having consumed alcohol had religious justification for doing so. In this context the Ḥanafī defence of alcoholic beverages constitutes a Sunnī defence of the Companions, as made plain by the famous quote of Abū Ḥanīfa reported in virtually every Ḥanafi legal text.

The basis for the doctrine of narrow prohibition in almost all places in Ḥanafī law where one meets the discussion of alcoholic beverages rests in stories of prominent Companions and indeed the Prophet himself. Non-scriptural rationalisations are seldom met with; an exception, however, is found in *al-Mabsūṭ*, penned by the last great *mujtahid* of Ḥanafī law, al-Sarakhsī (d. 483/1090):

¹⁵ As though on cue, the creed’s Ash’arī commentator, Sa’d al-Dīn al-Taftazānī (d. 792/1390), attempts to take the sting out of this powerful declaration. He has the following to say: ‘[*Nabīdh*] means that the dates or the raisins are brewed in water and then put in an earthen vessel, until a stinging taste develops in the brew as in *fuqqā*’ [a kind of beer]. It seems as though this [*nabīdh*] had been prohibited at the beginning of Islam when jars (*al-jirār*) were the vessels for wines (*al-khumūr*); then it was abrogated. So then the non-prohibition of *nabīdh* is of the rules of the People of the Approved Way and the Community, which is contrary to the position of the Rawāfiḍ. This [judgment] is different from that which has [to do with *nabīdh* that has] become strong and intoxicating. Many of the People of the Approved Way and the Community took the position that little or much of it is prohibited.’

It was reported by Abū Masʿūd al-Anṣārī, may God be pleased with him, that the Prophet, after requesting a drink on the day of sacrifice (*yawm al-naḥr*) in the year of the Farewell Pilgrimage (*ḥajj al-widāʿ*), was brought *nabīdh* from the watering-place (*siqāya*). When he brought it close to his mouth it led him to scowl and immediately send it back. Al-ʿAbbās, at this point, enquired as to whether it was *ḥarām*. The Prophet [letting actions speak] took it back, called for water, poured it over [the *nabīdh*] and then drank. He then said, ‘If your beverage becomes too over-powering then break its strength (*fa-ksirū mutūnahā*) with water for it has become intense’. This was why he [initially] scowled and returned the drink; but then he feared that people would think that it is *ḥarām* and so he took it back and drank it. This indicates that there is nothing wrong (*lā baʿsa*) with drinking intensified *muthallath*. Let it not be claimed that [the Prophet] scowled because of its acidity; it would hardly be appropriate to give a thirsty pilgrim vinegar to drink. Thus we know that he scowled because of its intensity. There is a deeper symbolism here: *khamr* is promised to the believers in the Afterlife, as God says, ‘and rivers from *khamr*, delicious to its drinkers’ (*wa-anḥārūn min khamrin ladhatin lilshāribīna*) (Q.47:15). It is necessary therefore that there exists in this world a permissible form [*mubāḥ*] of its kind which serves its function (*yaʿmal ʿamalahu*) so that it might be known by direct effect (*bi-l-iṣāba*) just how delicious it will be. This will bring about excitement for it, since what is permissible in this world serves as a model for what has been promised in the abode of the Afterlife. Do you not see that when God promises the believers that they will drink from gold and silver goblets in the Afterlife that he allows them to experience something of its kind—the drinking from goblets made of glass and crystal? To reinforce this point by way of another example: the sacred law (*sharʿ*) has prohibited *khamr* without doubt as a test (*ibtilāʿ*); this purpose can only be realised after [one has] knowledge of how pleasurable [*khamr* is] and so that withholding from it has its [desired] affect [...] the reality of that pleasure cannot become known by way of description (*waṣf*); it can only be known by way of tasting and direct effect. Therefore there must be a permissible drink of the same genus which allows the pleasure to be known by way of experience (*tajriba*). This is how the purpose behind prohibiting *khamr* can be realised. This is also the case for all prohibitions, like adultery and other things. It should be noted that *khamr* is prohibited in both small and large amounts because small amounts of it are never enough. As for these [other] beverages, they have a harshness (*ghilz*) and intensity (*kathāfa*) which means [drinking] small amounts do not lead to drinking large amounts. This is why small amounts of these are permissible, though they are described as intense, and it is [only] that amount which inebriates which is *ḥarām* (Al-Sarakhsī 2000: 12: 4043).

The passage is from one of the most authoritative works in Ḥanafī jurisprudence. In the so-called “Post-Classical age” of Ḥanafī law, *al-Mabsūṭ* remained hugely significant, as attested by the 15th century Ḥanafī jurist, ʿAlāʾ al-Dīn al-Ṭarābulūsī (d. 1440), who apparently said: ‘Whoever memorises *al-Mabsūṭ* and the doctrine of the ancient scholars becomes thereby a *mujtahid*.’ (cf. Jackson 1993: note 33).

V. Conclusion

That the normative Muslim position on alcohol is strict prohibition, in terms of consumption, production, handling and sale, is today a truism. It came, therefore, as a considerable shock to vast numbers of viewers tuning in across the Middle East to the very popular Egyptian religious programme, *Laʿallahum Yafqahoon*, to hear Shaykh Khalid el-Gindi, al-Azhar-trained scholar and highly respected televangelist, proclaiming that only wine made of grapes and dates is prohibited in Islam, and that drinking alcoholic beverages from other sources is permissible until the point of intoxication.¹⁶ El-Gindi is not the first Al-Azhar scholar to take a discussion on alcohol in Islam to the media; in this paper’s introduction, Shaykh Saʿd al-Dīn al-Hilālī’s intervention on the issue is referenced. In fact, El-Gindi, an ally of al-Hilālī, was wading into a debate initiated by his colleague as an act of solidarity. Why scholars like these are taking debates on highly stigmatized subjects usually the preserve of the Islamic seminaries (*mad-rasas*) to the public is not entirely clear and when probed about their own views, El-Gindi and al-Hilālī both maintained that their personal convictions remain in strict conformity with Muslim orthodoxy—i.e. alcohol in all of its forms and variations is absolutely prohibited. Most likely, then, these acts of disclosure are meant to disrupt hegemonic discourses that posit Islam as having but one single, unified position on alcohol.

In similar vein, this paper serves as an intervention aiming to disrupt hegemonic discourses around what it means to be a Muslim. The claim “Muslims prohibit alcohol” has wide currency and is often taken to be the preeminent marker of Muslimness. The evidence adduced in this paper, while taking the lead of illustrious al-Azhar scholars, enables a fuller deconstruction of such generalisations about what Muslims are supposed to think and be by demonstrating

¹⁶ *Laʿallahum Yafqahoon*, aired on the Egyptian DMC Channel. The video is available here: <https://www.youtube.com/watch?v=xubdNU3BdWk>. [15 November 2017].

that the *fiqh* tradition—the ultimate manifestation of Islamicate science—simply does not provide unequivocal support for these assumptions.

In centering the Ḥanafī school of law, the dominant legal tradition in Islam in terms of its institutional longevity, demographic weight and geographic extent, the argument resists attempts to dismiss it on the grounds that we are invoking a marginal interpretation which has no bearing on orthodox notions of what it means to be Muslim. Our critique of claims that Ḥanafī jurists performed a Shaybānic u-turn from the 12th century onwards is a crucial part of the argument. While a *de facto* realignment of the school with the position of the other *madh-habs* does manifest itself via the formulation of a fatwa, which appears in a number of authoritative jurisprudential works from al-Marghinānī onwards, we are the first to argue that this does not constitute an ideological shift; how can it, when Ḥanafīs continue to advocate their unique position through time and space, presenting comprehensive arguments in support opposing the prohibition of non-*khamr* alcoholic beverages. This is best exemplified in the writing of post-18th century Indian Ḥanafī scholars and the demographic weight it holds on contemporary Muslim identity politics.¹⁷

For too long what might be termed “normal science” in Islamic Studies has been content with exploring questions relating to Muslim belief and praxis as part of the fulfillment of one or another form of intellectual curiosity. This paper marks a shift from this status quo by framing a question at the very heart of what it means to be Muslim in a completely new way. The rigour expected in Islamic Studies in terms of close textual excavation and carefully crafted translations are in every sense present here, but these are only the platform to radically new form of investigation, taking the question of alcohol as a case-study, which disrupts the very direction of the conversation currently taking place on what constitutes Muslimness. This said,

¹⁷ On contemporary sectarian identity politics in Sunni Islam, refer to T. Islam, “Scholastic traditional minimalism: a critical analysis of intra-Sunni sectarian polemics”, PhD Thesis, University of Exeter, 2015.

the purpose of this paper is to define the history of a position and it is not concerned with defining what is ultimately *ḥalāl* or *ḥarām*. This will always be the preserve of the Ummah at any one given point in time and place, and Allah knows best.

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Appendix I: Ḥanafī Typology of Alcoholic Beverages

Drink	Source	Description / Method of Production
<i>Khamr</i>	Grapes	The juice of grapes when fermentation without any intervention (i.e. cooking) and foaming occurs.
<i>Bādhiq</i>	Grapes	Cooked grape juice which is reduced to less than two-thirds of its original volume after fermentation; it settles before it reaches boiling point.
<i>Ṭilā' (Muthallath)</i>	Grapes	Grape juice cooked until it is reduced to two-thirds of its original volume; only one third of it remains, and is an intoxicant.
<i>Munaṣṣaf</i>	Grapes	Grape juice which is reduced to a half of its original volume.
<i>Bukhtuj (Abū Yūsufī)</i>	Grapes	<i>Muthallath</i> which has been diluted with water and then allowed to ferment a second time.
<i>Jumhūrī</i>	Grapes	A grape based beverage which has been diluted with water after having been cooked very slightly (the cooking results in its reduction to two thirds of its original volume).
<i>Naqīʿ</i>	Raisins/Dates	Raisins or dates are infused in water until their sweetness is transferred; it is then left to ferment and foam.
<i>Nabīdh¹</i>	Raisins	A raisin infusion which is cooked slightly and left to ferment until it becomes an intoxicant.
<i>Sakar</i>	Dates	Uncooked date infusion which ferments and foams.
<i>Faḍīkh</i>	Dates	Uncooked infusion made from unripe dates which ferments and foams.
<i>Nabīdh²</i>	Dates	A date infusion which is cooked slightly and then left to ferment and foam.