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Burhān al-Sharī'ah's «al-Muḥīṭ al-Burhānī»

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In 1967 I paid a visit to the well-known Shaykh of the village Garhi Afghānan, a few miles off from Taxila near Rawalpindi. Maw-lana Muḥammad A'zam, the present Shaykh, received my companions and myself with kindness and generosity and showed us the personal collections of his fore-fathers in about five thousand volumes including a number of manuscripts. Hurriedly I looked through the well-preserved volumes of the library and stopped at the volume of al-Muḥīṭ al-Burhānī. I enquired about the remaining parts of the work which consisted of four big volumes in all. I read the colophon and carefully noted down its number and other particulars. Meanwhile, the Shaykh several times drew my attention to a number of his own valuable manuscripts which were commentaries of the Ṣaḥīḥ Bukhārī and other works of Ḥadīth and Tafsīr which were not rare. Before I, however, took the leave of the Shaykh, I obtained his consent to allow the Institute to take a film of the work al-Muḥīṭ. It was only in 1970 that the Institute could prepare its microfilm for its library.

The Author - His Origin and Achievements⁽¹⁾

— 1 —

al-Faqīh Burhān al-Sharī'ah Burhān al-Dīn Abū'l-Ma'ālī Maḥmūd b. Aḥmad b. 'Abd al-'Azīz b. Māzah al-Ḥanafī al-Marghīnānī hailed from the ruling family of 'Umar Māzah I., a Turkish family of Turkistan,

¹ For his biography see the following:

a. Abū'l-Ḥasanāt Muḥammad 'Abd al-Ḥayy, *Fawā'id al-Bahīyyah*, ed. Cairo, 1324 H. pp. 24, 98, 149, 189 and 205;

b. Ismā'īl Pāsha, *Hadiyyah al-'Arifin*, ed. Istanbul, 1371 H. vol. II p. 404.

celebrated as the Chiefs of 'Ali Burhān who ruled over a considerable portion of Bukhāra and the cities of Transoxiana from A.H. 450 to 604/1058-1207.

A number of the descendants of the family achieved name and fame not only for their power and pelf but also for their rare scholarship in various branches of knowledge, mystic experience and human qualities. Before dealing with the life and works of Burhān al-Sharī'ah, a brief resumé of the academic achievements and exemplary character of some of his near relations may not be out of place here:

1. Tāj al-Dīn al-Ṣadr al-Sa'īd Aḥmad b. 'Abd al-'Azīz, father of Burhān al-Sharī'ah, known for his piety and rare insight in Law and Fiqh was Qāḍi of the High Court. He was an eminent student of the great jurist Shams al-A'immah Abū Ḥanīfah al-Aṣghar Bīkr b. Muḥammad al-Zaranjī (d. 512/1118), and the teacher of the author of the well-known book on Fiqh, al-Hidāya, Imām 'Ali b. Abī Bakr al-Farghānī al-Marghīnānī (d. 593/1196). He was admired for his saintly qualities; and people took pride in paying homage to his grave for a few centuries.

2. Ḥusām al-Dīn al-Ṣadr al-Shahīd Abū Muḥammad 'Umar b. 'Abd'il-'Azīz, uncle of Burhān al-Sharī'ah, was famous for his learning and jihād. He fell a martyr in a combat with the infidels at Samarqand. He enjoyed great respect as a Mufti among the people of his age and was known as "Ra'īs al-Fuqahā" and "Ustādh al-Asātidhah". His works on Fiqh, al-Fatāwā al-Ṣughrā, al-Fatāwā al-Kubrā and al-Muntaqā fi'l-Fiqh were ready references for ages.

3. The grand father of Burhān al-Sharī'ah, 'Abd al-'Azīz b. 'Umar, an eminent student of Imām Sarakhsi, was honoured by the Saljuqid

c. Ismā'īl Pāsha, 'Idāḥ al-Maknūn, ed. Istanbul, 1364. H.

d. Ḥājji Khalīfah, Kashf al-Zunūn, ed. Istanbul, 1362 H.

e. 'Abd al-Qādir al-Qarashi, al-Jawāhir al-Muḍī'ah, Hyderabad/dn. 1332 H pp. 74, 391.

f. Zakī Muḥammad Ḥasan Bek, al-Asrat al-Ḥākimah, Cairo, pp. 319.

g. Faqīr Muḥammad Jilāni, Ḥadā'iq al-Ḥanafīyah, Lucknow, 1326 H, p. 241.

h. Sayyid Ḥāshim al-Nadvi, Tadhkirah al-Nawādir, 1350 H, p. 60.

i. Rāghib al-Ṭabbākh, Tārīkh Ḥalab al-Shahbā, Aleppo, 1343 H, p. 341.

j. Brockelmann, GAL, S. I. p. 642, II. 953.

k. Khayr al-Dīn al-Zirakli, al-A'lam, ed. Cairo 1371 H., Vol. VIII, p. 36.

l. M.S. 'Abdul Quddūs Ḥāshimī, Risālah Fikr-o-Nazar, Islamabad, June 1970, pp. 901-913.

Sultan Sanjār b. Malik Shah with the title "Al-Ṣadr al-Kabīr". The Sultan also appointed him the Chief Qāḍī (Qāḍī al-Quḍāt) of Bukhāra. He was highly respected for his knowledge, excellences and qualities of character, and enjoyed his reputation as "Ustādh al-Fuqahā", both in and around Transoxiana.

4. Burhan al-Sharī'ah's uncle and grand-father, on his mother side, were also eminent jurists and learned scholars who taught scholars like eminent jurist Iftikhār al-Dīn Ṭāhīr al-Bukhārī, author of *Khizānat al-Wāqī'at* and *Khulāṣat al-Fiqh*.

— 2 —

Burhān al-Sharī'ah Maḥmūd, author of *al-Muḥīṭ al-Burhānī*, was born in the distinguished family in 551/1156 at Marghīnān in the district of Farghāna and the province of Transoxiana. He was brought up by his father, Ṭāj al-Dīn al-Ṣadr al-Sa'īd, and received education from him and from other famous scholars at the Madrasah founded by his grand father Burhān al-A'immah 'Abd al-Azīz, a seat of learning and sciences which produced eminent jurists like Ṭāhīr al-Dīn al-Marghīnānī, Fakhr al-Dīn Qāḍī Khān, 'Alī b. Abī Bakr al-Farghānī, author of *al-Hidāyah*, and Rukn al-Dīn al-'Amīdī.

Burhān al-Sharī'ah travelled far and wide in Bukhāra, Samarqand and a number of countries, and studied Islamic sciences with the well-known scholars of the age. When he returned to his homeland he had achieved name and fame for his vast knowledge of Islamic sciences and rare insight in Fiqh, jurisprudence. Besides being a kind and learned teacher he also played the role of a Mufti and judge. His rational and pious approach to the problems soon distinguished him from the learned contemporaries.

Among his prominent students, his son Ṣadr al-Islām Ṭāhīr b. Maḥmūd and the author of *Fatāwā Qāḍī Khān Ḥasan b. Maṣṣūr al-Awzjandī* (d. 593) may be mentioned whose works formed part of the Madrasahs of Transoxiana for a few centuries.

Burhān al-Sharī'ah Maḥmūd died in Bukhāra in 616/1219 (shamsi). His biographers have mentioned only a few works and have given no details of his life. As he devoted himself to teaching and writing fatwas, it is presumed that he must have left behind a number of works. An attempt is, therefore, made to mention a complete list of his works mentioned by his biographers:

1. Al-Muḥīṭ al-Burhānī fi'l-Fiqh al-Nu'mānī, in four volumes.
2. Dhakhīrah al-Fatāwā (al-Dhakhīrah al-Burhāniyyah), in five parts.
3. Tatimmah al-Fatāwā.
4. Sharḥ al-Ziyādāt li'l-Imām Muḥammad b. Ḥasan al-Shaybānī (d. 189).
5. Sharḥ al-Jāmi' al-Ṣaghīr li'l-Imām Muḥammad b. Ḥasan al-Shaybānī (d. 189).
6. Sharḥ Adab al-Qudāt li Abi Bakr Aḥmad b. 'Amr al-Khaṣṣāf (d. 261).
7. Al-Ṭarīqat al-Burhāniyyah.
8. Al-Fatāwā al-Burhāniyyah.
9. Al-Wāqī'āt fi'l-Fiqh.
10. Al-Wajīz fi'l-Fiqh.
11. Al-Tajrīd fi'l- Furū'.

Al-Muḥīṭ al-Burhānī

The importance of the work may be estimated by the fact that the author has collected in this work the problems with their solutions recorded in al-Mabsūṭ, Jāmi' al-Ṣaghīr and Jāmi' al-Kabīr, Siyar al-Ṣaghīr and Siyar al-Kabīr, al-Ziyādāt, al-Nawādir, al-Fatāwā and al-wāqī'āt, in addition to the views and comments of his father and prominent teachers with their arguments, as he himself says:

« ولم يزل العلم موروثاً من أول لآخر ومنقولاً من كابر لكابر حتى انتهى الى جدودي وأسلافي السعداء الشهداء، فكأنهم شرحوا ما بقى من الفقه مجملًا، ... وقد وقع في رأيي ان أتبعهم بتأليف أصل جليل، يجمع جل الحوادث الحكمية والنوازل الشرعية ليكون عرفاً في حال حياتي واحساناً لي بعد وفاتي، وقد انضم الى هذا الرأي الصائب التماس بعض الاخوان، فقابلت التماسهم بالإجابة، وجمعت مسائل المبسوط والجامعين والسيرين والزيادات، والحققت بها مسائل النواذر والفتاوى والواقعات وضممت اليها من الفوائد التي استفدتها من سيدي ومولائي والدي تغمده الله برحمته، وسميت الكتاب بالمحيط »

Manuscript

The copies of this monumental work are available; and the fact that it is referred to by the anthologies of Fatāwā and great works

of Fiqh indicates its popularity and importance as an authentic source of Islamic decisions.

The famous Dā'irah al-Ma'ārif of Hyderabad-Deccan (India) included this book in the list of the works they had proposed to publish. But due to some unavoidable circumstances they have not so far published this work. Their list of rare works prepared by Sayyid Hashim al-Nadvi, in charge of the section, has mentioned the following data about the different copies of the work ²:

1. A complete Ms. of al-Muḥīṭ al-Burhānī written in 1095 H. is preserved in the library of Shaykh al-Islām, al-Madīnā al-Munawwarah.
2. A copy of the above was brought to the library of Mazāhir al-'Ulūm, Sahāranpur (India).
3. An incomplete copy exists in the Aya Sufia, Istanbul, Nos. 1406-1415.
4. Seven parts (almost half) are preserved in the Yeni Jāmi', Istanbul, Nos. 548-554.
5. Volumes 1, 2, 3 are available in the 'Āshir Afendi, Istanbul.
6. Three volumes are in the Ḥamīdiyah, Istanbul, Nos. 556-558.
7. Four volumes are in the Muḥammad Pasha, Istanbul, Nos. 645-648.
8. There are three copies of the work in the Dār al-Kutub, Cairo.
 - (i) written in 1186 H. in four volumes,
 - (ii) another copy consisting of vol. 3 and 4 only,
 - (iii) another copy containing ten parts, but only four parts (2, 3, 5 and 7th) are available.
9. An incomplete copy is in the Riḍā Library, Rampur, India.
10. First volume is also preserved in the Sa'īdiyah, Tonk Estate, Rajputana, India.

The manuscript of Garhi Afghānan preserved in the Fāḍilīyah Library is in excellent condition in 2942 pages of $\frac{16'' \times 10''}{13'' \times 6.5''}$; each

² Tadhkirat an-Nawādir, p. 60.

page containing 35 lines, written in Naskh and sometimes Nasta'liq style. The scribe, Muḥammad ibn Muḥammad of Ustrābad wrote it in the village Albila Nik near Bukhara city at the grave of Khwāja Bahā' al-Dīn Ḥasan Zarfishān at the Rabaṭ Arkanajhā in seventeen months. The writing was completed on the 1st Rabi' al-Thāni, 1182 H/ 15th August 1768. Evidently, the scribe divided the work into two parts, first part containing 887 folios in first two volumes, and the second part containing 584 folios in last two volumes (in all 1471 folios or 2642 pages). The contents of the book have been mentioned on a page preceding page 1, Vol. I as follows:

« هذا دفتر اول محيط برهانی :

۱۸۳	۱۷۵	۳۳		
كتاب العشر	كتاب الزكاة	كتاب السجرات	كتاب الصلوة	كتاب الطهارة
۲۳۵	۱۰۶	۲۵۶	۲۵۳	۱۹۹
كتاب النكاح	كتاب المناسك	كتاب الصوم	باب المعادن	كتاب الحراج
	۴۲۹		۳۱۱	
كتاب الولاء	كتاب المكاتب	كتاب العتاق	كتاب الطلاق	كتاب النفقات
كتاب الاستحسان	كتاب السير	كتاب السرقة	كتاب الحدود	كتاب الايمان
كتاب الاباق	كتاب اللقطة	كتاب اللقيط	كتاب التحري	والكراهة
كتاب الشرقة	كتاب العارية	كتاب الوديعة	كتاب الغصب	كتاب المفقود
كتاب الهبة	كتاب الوقف	كتاب الاضحية	كتاب الذبائح	كتاب الصيد
		كتاب الشفعة (۸۶۹)	كتاب الصرف	كتاب البيوع

On the 1st page Vol. I the writer after preamble says :

« ... قال العبد الضعيف الراجي بفضل الله الخائف من عدله ، المعتمد على كرمه ، محمود بن الصدر الكبير تاج الدين احمد بن الصدر الشهيد برهان الدين عبد العزيز بن عمر رحمهم الله ان معرفة احكام الدين من اشرف المناصب واعلاها ، و النفقة في دين الله من انفع المكاسف (؟) واذكاه ، فحوادث العباد مردودة الى استنباط خواطر العلماء و نوازلهم مربوطة باصابة ضمائر الفقهاء . »

It is, however, surprising that the copy of the 1st volume used by the celebrated Ḥanafī Faqīh of the 19th century of India, Mawlana ‘Abd al-Ḥayy of Lucknow mentions the name of the author as Muḥammad in place of Maḥmūd. The point did not escape the notice of the Mawlana who warned the readers by saying³:

« وهذا كما ترى يرشدك الى ان اسمه محمد وهو خلاف ما اجعت عليه كلمات
اكثرهم من ان اسمه محمود فلتراجع نسخة اخرى والى ان تصنيف ذخيرته بعد
تصنيف محيطه »

It is also obvious that the copy available to Mawlana ‘Abd al-Ḥayy was quite different from the copies mentioned so far.

The second volume of the copy under reference is written in Nasta‘līq and begins from

« القول المكاتين لان عتق الولد ثبت من جميع المكاتين الخ »

The third and the fourth volumes written in Naskh style begin respectively as follows:

جلد ۳ : « وبه نستعين و عليه التوفيق ،

بسم الله الرحمن الرحيم ،

وان شاء ترك ، لان الصفقة تفرقت على المستاجر قبل التمام الخ »

جلد ۴ : « فان مضى الاجنبى بالعيب لا يصح ، ألا ترى ان المضارب لو اقر بذلك
لا يصح ، وهناك رضى رب المال بالعيب صحيح الخ »

Now, the title al-Muḥīṭ is usually associated with the work of Raḍī al-Dīn Muḥammad b. Muḥammad al-Sarakhsī (671 H/1272) who called his works: al-Muḥīṭ al-Kabir, al-Muḥīṭ al-Wasīṭ and al-Muḥīṭ al-Ṣaghīr which were easily accessible in Egypt, Syria and the surrounding countries. Ḥājjī Khalīfah has explained the difference between the work of Burhān al-Sharī‘ah and that of Raḍī al-Sarakhsī by saying:⁴

المحيط البرهاني في الفقه النعماني للشيخ الامام العلامة برهان الدين محمود بن تاج الدين
احمد بن الصدر الكبير برهان الائمة عبد العزيز بن مازة البخاري الحنفى المتوفى سنة ٦١٦

³ Al-Fawā'id al-Bahīyyah fī Tarājīm al-Ḥanafīyyah, Egypt, 1324/1906, p. 206.

⁴ Kashf al-Zunūn, ed. Istanbul 1362/1943, Vol. II, column 1619 and 1620.

و هو ابن اخي الصدر الشهيد حسام الدين في مجلدات، ثم اختصره وسماه الذخيرة، وكثيرا ما يغالط الطلبة فيظنون ان صاحب المحيط البرهاني الكبير ايضا رضى الدين محمد بن محمد السرخسي وليس كذلك، اوله: « الحمد لله خالق الاشباح بقدرة وفالق الاصباح برحمته » الخ، قال ابن الحنائي تتبعته ترجمته في كتب الطبقات فلم أظفر، و اجماعنا يفرقون بين المحيطين، فيقولون للكبير المحيط البرهاني وللصغير المحيط السرخسي، »

This is strange that Hājji Khalīfah mentions Muḥiṭ of al-Sarakhsī in ten volumes and al-Muḥiṭ al-Raḍawī in four volumes under Shams al-A'imma al-Sarakhsī whose al-Mabsūṭ fi'l-Furūc in thirty volumes is a well-known printed work. The Muḥiṭ of al-Sarakhsī has not thus far seen the light of the day; nor has it ever been mentioned by his biographers⁵.

In this age of reforms and innovations when the western culture, law and other sciences have eclipsed the Eastern culture and other rational and legal pursuits, Islam and its followers having been no exception, it is a healthy sign that the followers of Islam have reawakened to assess their own achievements and success as against those of other nations of the world. The revolution brought about by Islam about fourteen centuries back had in no time turned the table against the two most formidable nations of the age, the Romans and the Iranians. With the slogan of Islam (surrender to Allah) the nomads of Arabia rose to the leadership of the world, became the torch-bearers of art and civilization, and inspired all those who yielded to them with fresh vigour and indefatigable spirit so much so that they proved to be the vanguards of the enlightened and ever advancing western world.

Our forefathers experienced the same problems which we face to-day, as they claimed to be the modernists exactly in the same way as the young generation of today claim to be so. Old order, indeed, changes yielding place to new. They, however, never legalized those things which were declared by the Qur'ān and Sunnah unlawful. The wine, adultery, theft, robbery, smuggling, cheating, bribery and all sorts of exploitation etc., which are forbidden in Islam were never deliberately indulged in, committed or allowed by our predeces-

⁵ Shaykh al-Islam 'Alī b. M.b. 'Abd al-Karīm al-Bazdawī is also said to have written a work entitled al-Mabsūṭ in eleven volumes, cf. Al-Fawā'id al-Hanafīyah, p. 124.

sors. But today the followers of Islam all over the world, Pakistan being no exception, have become so much unconscious and unmindful of the Qur'ānic **muḥarramāt** (forbidden objects) due to the political domination of, rather, due to our indulgence in, the western culture and way of living that some of our intelligentsia would not hesitate in interpreting Qur'ānic injunctions and prohibitions in a manner quite contrary to the purports understood, explained and taught by the Holy Prophet, his companions, their followers and the leading learned members of the Ummah. It is surely not a healthy approach to give a new meaning to the fundamentals of Islam just to fit us conveniently in the present westernized society in preference to a meaning unanimously accepted through all these centuries. Just as we cannot alter the usually accepted mood and times of our prayer (Ṣalāt) we cannot declare the **muḥarramāt** (prohibited) of the Qur'ān as ḥalāl (lawful). Yes, the details of our social moral and individual conduct, contract and behaviour which find no specification in the Qur'ān and the Sunnah are no obligations and binding for us. But the society created by Islam must follow the outlines and the commandments and prohibitions indicated by the Qur'ān and illustrated by the Holy Prophet, his companions and their followers if the Muslim society wants today to survive, prosper and attain its ultimate goal. The Mujtahid imāms and the learned of the early ages performed, indeed, a yeoman's service by compiling their works on Fiqh which guide the Ummah how to implement the injunctions and prohibitions of the Qur'ān and the Sunnah and help the society emerge and grow on truly Islamic basis. Works like al-Muḥīṭ al-Burhānī can surely facilitate our task of solving most of the modern legal and social problems in accordance with the teachings of the Qur'ān and the Sunna by employing those methods that once satisfied their advocates in the past.