AL-SHĀFI’Ī’S CONTRIBUTION TO ḤADĪTH WITH AN ANNOTATED
TRANSLATION OF HIS WORK JIMĀ‘AL-‘ILM

BY
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JUNE 1996
IN THE NAME OF ALLĀH
THE COMPASSIONATE, THE MERCIFUL

DECLARATION

I, THE UNDERSIGNED, HEREBY DECLARE THAT THIS THESIS IS WRITTEN BY MYSELF AND ANY REFERENCES MADE TO THE SOURCES ARE DULY ACKNOWLEDGED

ABDUL KARIM ALI
ACKNOWLEDGEMENTS

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Special thanks are due to the Government of Malaysia and University of Malaya whose financial support has enabled me to undertake this research.

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I am deeply indebted to members of my family, especially my parents Hj. Ali Said and Zabiah @ Esah Omar who have been an inexhaustible source of hope and inspiration. And also to my family-in-law particularly my late father-in-law Hj. Mukhtar Mohd and Hajjah Aminah Hj. Awang and Che Omar and his family.
Last but certainly not least, I dedicate this thesis to my beloved wife, Ruhana Hj. Mukhtar and my children Izzatillah Abdul Hakim and Farah Mawaddah who have been the main source of strength. Their boundless patience gave me the courage to overcome hardship and finish my work.
This thesis is a study of al-Shafi'i's contribution to hadith in general and a study of his book *Jimá‘ al-'Ilm* in particular. For this reason, the thesis falls into two parts. Part One focuses on al-Shafi'i's attitude to hadith and to the views of his contemporaries on the subject, while Part Two consists of an annotated translation of *Kitāb Jimá‘ al-‘Ilm*.

After a general introduction, Part One divides into eight chapters. Chapter One deals with al-Shafi'i's life and travels. Chapter Two is a discussion of al-Shafi'i's role in the formulation of Islamic law, while Chapter Three assesses the position of hadith in this formulation. Chapter Four gives an outline of al-Shafi'i's writings about hadith, while Chapters Five, Six, Seven and Eight deal respectively with his views on the concept of "the sunnah of the Prophet", the acceptability of *khabar al-wáhid* ("isolated traditions"), mursal hadiths, and the problem of seeming differences between hadiths (*ikhtiláf al-hadith*).

Part Two consists of two chapters: the first (Chapter Nine) is a detailed introduction to al-Shafi'i's *Kitāb Jimá‘ al-‘Ilm*, while the second (Chapter Ten) is an annotated translation of the work.
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### DECLARATION


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PART ONE: AL-SHĀFIĪ AND ḤADĪTH
INTRODUCTION

The development of Islamic law reached its peak during the end of the ‘Abbasid caliphate, particularly during al-Ma'mūn’s reign. Four existing Sunnī madhhab were founded during this period. One of their founders was Muḥammad b. Idrīs al-Shāfī‘ī (150H-204H). He is considered to be a central figure in the development of the science of ṭuṣūl al-fiqh and his contribution to its formulation is well appreciated in most literature on ṭuṣūl al-fiqh.

Al-Risālah for instance, one of al-Shāfī‘ī’s famous works, is credited with being a pioneering work in this field. Al-Risālah deals with fundamental issues with regard to ṭuṣūl al-fiqh and it elucidates elements necessary to mujtahids in deriving rulings. These elements are the Qurān, sunnah, ijma', qiyās, ikhtilāf, qawl al-Ṣaḥābah, nāsīkh and mansūkh and others. This great work has led many scholars to elaborate on and explain it in more detail (sharh). In recent years, Khalil I. Semaan has translated a part of the book on nāsīkh and mansūkh into English under the title ash-Shāfī‘ī’s Risālah: Basic Ideas, while Majid Khadduri has rendered the whole of al-Risālah into English under the title Islamic Jurisprudence- Shāfī‘ī’s Risāla.

Many authors have tried to study al-Shāfī‘ī’s life and analyse his views on

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various aspects of Islamic jurisprudence. Western scholars such as Ignaz Goldziher,3
Duncan B. Macdonald,4 Joseph Schacht,5 W. Heffening,6 Nicolas P. Aghnides,7 N. J.
Coulson,8 John Burton9 and others have examined his views. Schacht for instance,
devotes his Origins of Muhammadan Jurisprudence to the study of al-Shāfi‘ī. This
study mainly discusses the position of ḥadīth in early Islam up to al-Shāfi‘ī’s time.
The discussion of al-Shāfi‘ī’s views on ḥadīth dominates this book.

Muslim scholars have also conducted several researches on al-Shāfi‘ī. Ahmad
Hasan for example, discussed different issues of Islamic law and in most cases refers
to al-Shāfi‘ī’s views. He did this in his two books, The Early Development of Islamic
Jurisprudence10 and Analogical Reasoning in Islam.11

Abdul Hamid b. Hj. Othman in his PhD thesis entitled "Shāfi‘ī and the
Interpretation of the Role of the Qur’ān and the Ḥadīth" analyses in detail al-Shāfi‘ī’s
point of view regarding the two primary sources of law, i.e. the Qur’ān and the sunnah

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3 See I. Goldziher, Muslim Studies (Muhammedanische Studien). Transl. into English by C. R. Barber and

4 See Duncan B. Macdonald, Development of Muslim Theology, Jurisprudence and Constitutional Theory.
Lahore, 1972.


6 W. Heffening, "al-Shāfi‘ī", E.I.


9 John Burton, The Sources of Islamic Laws—Theory of Abrogation. 1990. Edinburgh; An Introduction the

10 Ahmad Hasan, The Early Development of Islamic Jurisprudence. 4th ed. Islamabad (Pakistan): Islamic
Research Institute, 1988.

of the Prophet, while a recent study by Ahmad Hakim entitled *Muḥammad ibn Idrīs al-Shāfīʿī and His Role in the Development of Islamic Legal Reasoning* describes al-Shāfīʿī as having a central role in the development of Islamic law, whose legal theory is based on two principles: an insistence on following the Qurʾān and *ḥadīth* and a restriction on the use of reason. It also demonstrates that al-Shāfīʿī established the hierarchy of the four sources of law: the Qurʾān, *ṣunnah*, *ijmāʿ* and *qiyyās*.


The above works mainly relied on classical biographical references such as Ibn Abī al-Ḥāṭim's *Ādāb al-Shāfīʿī wa Manāqibuh*, al-Bayhaqī's *Manāqib al-Shāfīʿī*, Ibn Ḥajar al-ʿAsqalānī's *Tawālī al-Taṣīs*, Ibn ʿAbd al-Barr's *al-Intiqāʾ fī Fadāʾīl al-Aʾimmah al-Fuqahāʾ al-Thalāthah* and others.

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As far as al-Shafi'i's contribution to Islamic jurisprudence is concerned, some higher institutions of learning have shown their appreciation of his contribution by organizing seminars. For instance, there were two international seminars on al-Shafi'i held in recent years in Malaysia. They were organised respectively by the University of Malaya together with the Department of Islamic Affairs, Kuala Lumpur and by the International Islamic University, Selangor, Malaysia. In these seminars, al-Shafi'i's views on various aspects of law were discussed.

Having provided a brief survey of work done on al-Shafi'i, it is worth noting al-Shafi'i's contribution to hadith. Prior to al-Shafi'i's establishment of the new madhhab, the disagreement between the ahl al-ra'y and the ahl al-hadith was quite serious. Reports show that the ahl al-hadith, despite their emphasis on narrating hadith (but as claimed by the ahl al-ra'y, that they did that without knowing reasons behind certain issues), were unable to have a balanced discussion with the ahl al-ra'y. In other words, the ahl al-hadith was inferior to the ahl al-ra'y. The presence of al-Shafi'i in this environment helped the ahl al-hadith to have a good counter argument and defeat them. Thus he was called nāṣir al-sunnah. His eclectic approach

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16 Al-Sībaṭ citig Ibn 'Abd al-Barr, Jāmiʿ Bayān al-ʿIlm, vol. II, p. 12 says that it was reported that one of the ahl al-hadith had written down a ḥadīth without having understood or thought about it. And when he was asked about a problem, he was stunned as if he was a slave (mukātab). According to al-Sībaṭ, a few examples given do demonstrate that some of ahl al-hadith understood hadith literally, without thinking of the real meaning of it. See Muṣṭafā al-Sībaṭ, al-Sunnah wa Mākānatuhā fī al-Tashrīʿ al-Islāmi. 2nd ed., 1978. Dimashq: al-Maktab al-İslāmi, pp. 406-7.

to this matter made the *ahl al-ra'ly* appreciate the importance of *ḥadīth* more widely, as well as making the *ahl al-ḥadīth* pay attention to the importance of using *qiyaṣ* (analogical reasoning) in deriving rulings.

With regard to al-Shāfi‘ī’s contribution to *ḥadīth*, most authors believe that his most significant one is that *ḥadīth* in general, and *khabar al-wāḥid* in particular have been recognised in formulating such rulings. Thus, it is no wonder that he was called the defender of *the sunnah* (nāṣir al-sunnah/al-ḥadīth). In fact, al-Shāfi‘ī’s role in this matter was to re-inforce their acceptance. This phenomenon resulted from the existence of a fraction of the Muslim community at that time who either rejected all *ḥadīths* or rejected *khabar al-ḥāṣṣah* (*khabar al-wāḥid*) as mentioned in *Jimā‘ al-ḥa‘l*. The appearance of the collections of *ḥadīth* or *al-kutub al-sittah*, i.e. those of al-Bukhārī (194-256), Muslim (204-261), Ibn Mājah (207-273), al-Tirmidhī (209-279), Abū Dāwūd (202-275) and al-Nasā‘ī (215-302) is claimed to be linked in al-Shāfi‘ī’s role in establishing the authority of *ḥadīth* and the concept of the *sunnah* of the Prophet. Before al-Shāfi‘ī’s time, books of *ḥadīth*, for instance, *al-Muwatta* of Mālik b. Anas contained not only *ḥadīth* of the Prophet, but also *āthār* of Companions and Successors. But the later collections contain only *ḥadīth* of the Prophet. Al-Shāfi‘ī’s principle is that *ḥadīth* or *sunnah* of the Prophet is *sui generis*, and needs no other sayings from either Companions of Successors to confirm it. According to him, once a *ḥadīth* of the Prophet has been definitely confirmed as coming from the Prophet, it
cannot be abandoned or set aside because of the existence of other ṣāḥīḥ which opposed it.

There are some specific reasons why this study has been chosen. Malaysia's background in terms of her religious environment has pushed the author to study in depth the history of Islamic law and especially al-Shāfi‘ī's views on hadīth. Not only do Muslims in Malaysia belong to the Shāfi‘ite madhhab, it is in fact the official madhhab suscribed to in Malaysia. Furthermore, from the end of 1980 up to the present day there emerged a movement called "ahl al-Qur'ān", led by Kassim Ahmad who believes only in the Qur'ān. Thus he rejects the hadīths of the Prophet because according to him the Qur'ān is sufficient. His book, Hadis: satu penilaian semula (Hadith: an Evaluation) has caused controversy among Muslims in Malaysia. This controversy affected the author so much so that he decided to pursue further research on this subject.

Most of the study on al-Shāfi‘ī focuses on his achievements in the formation of Islamic law as constituted by usūl al-fiqh, in which hadīth of the sunnah of the Prophet is one of its fundamental sources. Therefore, the aims of this thesis are to study and analyse al-Shāfi‘ī's views on hadīth in its different aspects, and in particular, to analyse one of al-Shāfi‘ī's writings on usūl al-fiqh, kitāb Jimāz al-Ilm. This analysis will be presented together with an annotated translation of Jimāz al-Ilm.

This study will be divided into two parts. Part One mostly covers al-Shāfi‘ī's
views on various aspects of *hadīth*, while Part two focuses on *Jimār al-Ilm*, providing a detailed introduction to this work together with an annotated translation of it.
CHAPTER ONE: AL-SHAFITI’S BIOGRAPHY AND TRAVELS

1.1 Biography of al-Shafit

Muhammad b. Idris al-Shafit (150-204H) was a mujtahid and a mujaddid (reformer) of the second century of the Hijrah1 and the founder of the Shafite madhab, the third in the chronology of existing madhahib. A study of his biography would need thorough investigation for reports on him are scattered in Islamic classical books. One of the difficulties which arises is how to reconcile the seemingly contradictory reports on his life, especially pertaining to the date and the details in his life chronology.

Al-Masudi (d.345) is regarded as the first historian who wrote on al-Shafit,2 whose later biographies are principally based on old manaqib works such as that of Dawud al-Zahir (d.270), al-Sajj (d.307), Ibn Abi Hatim (d.327) and others.3 However, one modern author considered the Manaqib of Ibn Abi Hatim al-Razi to be the earliest and the most accurate biography of al-Shafit.4 Al-Nawawi,5 on the other hand, claimed that al-Bayhaqi’s Manaqib is the most complete and accurate

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3 Ibid., p. 252.


account which describes all matters concerning al-Shāfī‘ī.

Al-Shāfī‘ī’s full name is Muḥammad b. ʿAbdās b. ʿUthmān b. Shāfī‘ī b. al-Sā‘ib b. ʿUbayd b. ʿAbd Yazīd b. Hāshim b. Muṭṭalib b. ʿAbd Manāf. He was of the Prophet’s kin; one of ʿAbd Manāf’s sons (Hāshim) was the Prophet’s ancestor.⁶ Thus al-Shāfī‘ī belonged to the Hāshimī tribe of the Quraysh which is directly connected to the Prophet.

Al-Shāfī‘ī was born in the year 150H and died in Egypt in the year 204H.⁷ However, there are contradictory reports about his birthplace. Some say that it was Ghazzah, while others claim it to be ʿAsqalān. The majority of his biographers were inclined, however, to accept it as Ghazzah. By way of attempting to reconcile the conflicting reports, they interpreted that both Ghazzah and ʿAsqalān were in Palestine and were near to each other.⁸ It is also possible that when Ghazzah is mentioned, it is meant the village, with ʿAsqalān being the town.

After his father’s death, al-Shāfī‘ī’s mother took him to Palestine where he lived with the Yamanī tribe to which her ancestors belonged. Later, she travelled to

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⁷ Al-Nawawī, Ṭahdhib al-Asmāʾ wa al-Lughāt. vol. I. p. 252. According to some reports al-Shāfī‘ī was born in the year that Abū Ḥanīfah died, while others say that he was born on the same day that the latter died. Perhaps such authors endeavoured to interpret “the day” to mean the time and not the day per se as such. (See Yāqūt, Muʿjam al-Udābā’ p. 368; Ibn Khallikān, Wafayāt al-Aʿyān. Ed. Susanna Diwald. 1986. Beirut: n.p., p. 165; Ibn Ḥajar, Tawālīl; p. 53); Al-Nawawī, Ṭahdhib. p. 45. Al-Masʿūdī mentioned that al-Shāfī‘ī was 54 years old when he died which was during the caliphate of al-Maʾmūn (al-Masʿūdī, Murūj al-Dhahab wa Maʿādīn al-Jawhar. 1973, Beirut: Dār al-Andalus, vol.III. p. 346).

⁸ Yāqūt, Muʿjam al-Udābā’. vol. VI. p. 368.
Makkah with al-Shāfi‘ī when he was ten years old.9

1.2 Historical Life of al-Shāfi‘ī

1.2.1 Al-Shāfi‘ī in Makkah

As a child, al-Shāfi‘ī was very intelligent, bright, and always very keen to learn. He began his studies with the learning of the Qur'ān and had fully committed it to memory at the early age of seven.10 One of his Qur'ān teachers was Ismā‘īl b. Qaṣṭānṭīn.11 Following his early childhood which was devoted to learning, al-Shāfi‘ī afterwards frequented the mosque to learn ḥadīth12 and participate in ‘ulamā‘s discourses.

He also spent a substantial period of time staying with the tribe of al-Hudhayl, in the desert outside Makkah, to acquire refined Arabic for which the tribe was renowned.13 As a result, he was excellent in the language and its poetry, as well as the tales (akhbār) and history of the Arabs. He was even able to compose poetry himself.14

Al-Shāfi‘ī studied fiqh and ḥadīth under leading traditionists (muḥaddith) and

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12 Al-Bayhaqī, Manāqib al-Shāfi‘ī. p. 92.

13 Yaqūt, Muḫjam al-Udāb. p. 369 states that al-Shāfi‘ī stayed with the tribe for seven years whereas it was twenty years according to al-Baghdādī, Tārīkh Baghdaḍ, vol. II., p. 63.

14 Ibid.
lawyers (faqīh) of Makkah, such as Sufyān b. ʿUyaynah, Muslim b. Khālid al-Zanjī, Saʿīd b. Sālim, Dāwūd b. ʿAbd al-Rahmān al-ʿAṭtār, and ʿAbd al- Majīd b. ʿAbd al-ʿAzīz b. Abī Rawād. He soon exhausted all the sources of legal knowledge available in Makkah and was authorised by his teacher, al-Zanjī, to give fatwās at the age of fifteen.

1.2.2 Al-Shāfiʿī in Madīnah

Although he was certified as qualified to give fatwās by his teacher, he desired further legal training and set out to study under the leading jurist of the Ḥijāz, Imām Mālik b. Anas (d. 179H). Mālik was the most authoritative scholar on fiqh and hadīth in Madīnah. Al-Shāfiʿī was well-prepared and memorised the al-Muwatta’ of Mālik prior to meeting him. This impressed his new teacher and he remained there until his teacher died in the year 179H.

In Madīnah, he not only studied under Mālik, but also under Ibrāhīm b. Abī Yahyā, Ibrāhīm b. Saʿd al-Anṣārī, ʿAbd al-ʿAzīz b. Muḥammad and others.

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16 Ibn Ḥajar, Tawālī al-Taʿāṣīs, p. 52.


18 Ibn Ḥajar, Tawālī al-Taʿāṣīs, p. 73.


20 He was one of the Muṭṭazilah. Al-Fakhr al-Rāzī said: “They agreed that Ibrāhīm b. Yahyā was a Muʿtazilī, and this does not endanger Shāfiʿī’s reputation because he took only fiqh and hadīth from him, not usūl al-dīn (see Abū Zahrah, al-Shāfiʿī Ḥawātih wa ʿAsruh ʿArāʾiḥ wa Fiqhuh. 1948. Cairo: Dār al-Fikr, p. 39). Al-Bayhaqī reports that al-Shāfiʿī criticized him for humāq (foolishness). There are reports of al-Shāfiʿī and Ibrāhīm b. Yahyā apparently contradicting each other. At one time he is credited with title thiqah and at another time as mudallis al-hadīth. See al-Bayhaqī, Manāqib al-Shāfiʿī, vol. I, pp. 532-3.
During that period, al-Shāfi'ī met the leading jurist of Egypt, al-Layth b. Sa'd while the latter was studying under his teacher, Mālik. They might have had discussions on various matters.²²

1.2.3 Al-Shāfi'ī in Yaman (179-184H)

After Mālik's death in 179H, al-Shāfi'ī went to Yaman as judge and gained a good reputation for being just. His appointment took place after the visit to Madīnah of the governor of Yaman who, at the suggestion of some Quraysh, appointed al-Shāfi'ī to the post. However, al-Shāfi'ī was not spared jealousies from among some circles and he was alleged to have supported the 'Alid movement against the 'Abbāsid dynasty. He was brought to the Caliph Hārūn al-Rashīd but was released and pardoned partly due to his eloquent response to the caliph's questions.²³

1.2.4 Al-Shāfi'ī in Baghdad (184-186H)

Political enmity brought al-Shāfi'ī from Yaman to Baghdād, the centre of the 'Abbāsids' administration. Here, he was able to collaborate with Muḥammad b. ハウスan


²² Ibn Abī Ḥātim, p.39; Ibn Ḥajar. p. 57. Up to this point, al-Shāfi'ī already knew of the different patterns of thoughts of the different teachers of the different regions such as Makkah, Madīnah and Egypt (al-Layth).

al-Shaybani's circle which was to have a great impact on his legal reasoning. We are told that he took an active part in discourses and arguments with Hanafi jurists, that he strenuously defended Malik's position and that he seemed to have earned the reputation of being the upholder of hadith in his relentless efforts in establishing the supremacy of the hadiths.

Al-Shafi'i studied under Abu Hanifa's disciple, Muhammad b. Hasan al-Shaybani and had lengthy deliberations with him. He was said to have copied a huge number of books of the people of 'Iraq which are described as being as many as a camel-load. At this point of time, al-Shafi'i knew thoroughly the opinions and thoughts of Abu Hanifa, then the most authoritative jurist in 'Iraq through studying under his disciple, Muhammad b. al-Hasan al-Shaybani and the latter's school of thought as well as having mastered the fiqh of Malik. He also studied under Waki b. al-Jarrah, Hammam b. Usama al-Hashimi al-Kufi, 'Abd al-Majid al-Basri and others.

Al-Shafi'i was also well-versed in the thought of two schools, Madinah and Kufah. In other words, he knew the distinction between the madrasah of ahl al-hadith

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24 Majid Khadduri, p. 12.
26 Up to this point, al-Shafi'i considered himself as a follower of Malik. Cf. al-Bayhaqi, Manaqib al-Shafi'i. vol. I., pp. 182-3.
28 Ibn Abi Hatim, Adab al-Shafi'i. p. 33.
29 Shubban, Usuli al-Fiqh. p. 65.
and the *madrasah* of *ahl al-ra'y.*

It was then that al-Shāfi‘ī started composing books and commenced the teachings of his own methodology, neither 'Irāqī nor Ḥijāzī but a combination of both. He was indeed an eclectic jurist.

1.2.5 Al-Shāfi‘ī in Makkah (186-195H)

In the year 186H, al-Shāfi‘ī returned to Makkah, the place where his early life began, and preoccupied himself with teaching. His teachings, however, revealed unexpected differences with Mālik, for his thorough grasp of Mālikī and Ḥanafī legal opinions had made him aware of the different approaches.

He stayed here for about nine years, devoting his time to teaching and deliberating with other scholars especially during the pilgrimage season. A new *madhhab* or school of thought was then founded which combined the two different thoughts of *ahl al-hadīth* and *ahl al-ra'y.* This was the culmination of his journeys to the different regions and his learning under the various teachers of the different schools.

1.2.6 Al-Shāfi‘ī's Second Visit to Baghdaād (195-197H)

In 195H, al-Shāfi‘ī revisited Baghdaād, this time as a learned man and the

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30 It is said that his earlier works for instance *al-Ḥujjah* and others was influenced by the ’Irāqī approach, i.e. al-Shaybānī’s method.


34 This new *madhhab* attempted to reconcile between the *ahl al-hadīth* and the *ahl al-ra'y.*
leader of a new madhhab. His legal reasonings had matured, and his stature as a jurist had grown sufficiently to allow him to follow an independent line of legal speculation.

In the short time in which he stayed there, al-Shāfīʻī expounded his method of ʻusūl. One of his disciples in ʻIrāq, al-Karbāsī said, "we did not know what is the Qur'ān, the sunnah and the ijmāʻ before this, until al-Shāfīʻī came to us. He explained what is the Qur'ān, sunnah and ijmāʻ.\textsuperscript{35}

It is said that al-Shāfīʻī composed his first book on ʻusūl al-fiqh, i.e. al-Risālah at the request of ʻAbd al-Rahmān b. Mahdī.\textsuperscript{36}

1.2.7 Al-Shāfīʻī Returns to Makkah and Goes to Egypt

After two years in Baghdad, al-Shāfīʻī returned to Makkah for a short stay and then went back again to Baghdad for several months. Then he left Baghdad for Egypt.\textsuperscript{37} It is not quite clear as to why he made this move. Some authorities suggested that while in Baghdad, al-Shāfīʻī attached himself to ʻAbd Allāh b. Mūsā, who invited him to settle in Egypt. We are also told that the Caliph al-Maʿmūn offered him the position of a judge, but he declined it.\textsuperscript{38}

During the five years he lived in Egypt, al-Shāfīʻī totally devoted his time to teaching. He started his teaching at the Mosque of ʻAmr b. al-Āṣ and divided the

\textsuperscript{35} Abū Zahrah, al-Shāfīʻī. p. 145.

\textsuperscript{36} Al-Bayḥaqī, Manāqib al-Shāfīʻī. vol. 1. pp. 230-4.


\textsuperscript{38} Al-Bayḥaqī, Manāqib al-Shāfīʻī. p. 38; Ibn Hajar, Tawālīf al-Ta'ṣīs. p. 84.
teachings into categories, such as Qur'an, Ḥadīth, 'Arabic and others. We are told that his leading disciples such as al-Rabī b. Sulaymān al-Murādī (d.270H), al-Buwayṭī (d.231) and al-Muzanī (274H) were in the habit of writing down his spoken words, and that al-Shāffī would correct the texts as they were read aloud before him. This explains the reason for the accuracy of al-Shāffī's discourse which has come down to us.

1.2.8 Al-Shāffī's Death

Al-Shāffī died at the age of fifty five years in the end of Rajab, 204H, in Fustat and was buried in the vault of Banū 'Abd al-Ḥakam, near the mountain of al-Muqattam. As far as the cause of his death is concerned, there are apparent contradictory reports about it. The first is that he died of serious intestinal illness (bawāsījr) which had kept him frail and ailing during the later years of his life. The second is that he died after being attacked by the followers of Fityān.

Concerning the second report, there was in Egypt, Fityān b. Abī al-Samḥ, one of the followers of the Mālikī school, who had many munāzarāt with al-Shāffī. One day they had a munāzarah on bayr al-ʿabd al-marhūn. They both held differing views and it was reported that Fityān lost in the argument. In another report, the followers of Mālik in Egypt became angry when al-Shāffī wrote a book against Malik (khilāf

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39 Al-Najjār, Introduction to al-Umm, p. (zay).
40 Ibn Abī Hātim, 'Adāb al-Shāffī, p. 71; Ibn Ḥajar, Tawālī al-Ta'sīs, p. 71; al-Bayhaqī, Manāqib al-Shāffī, p. 49.
41 Yāquṭ, Mu'jam al-Udābā', pp. 394-5; Ibn Ḥajar, Tawālī al-Ta'sīs, p. 56.
Malik) and tried to assault al-Shafi’. This event led to the governor al-Sarī b. al-Hakam ordering Fityān to be beaten. After that event, some of Fityān’s extremist supporters attended al-Shafi’s halaqah (circle) and attacked the latter when he was alone. It was claimed that, after the incident, al-Shafi remained ill until he died. However, most authors consider it more probable (tarjih) that al-Shafi died because of intestinal illness (bawāsir).

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CHAPTER TWO: AL-SHĀFI‘Ī’S ROLE IN THE FORMULATION OF ISLAMIC LAW

2.1 Al-Shāfi‘ī and Uṣūl al-Fiqh

It is widely claimed that al-Shāfi‘ī was the first person to systematise *uṣūl al-fiqh*.1 However, this claim has been challenged by the Shi‘ah and the followers of the Ḥanafī school of thought, who argued that scholars preceding al-Shāfi‘ī had already dealt with the subject.

This needs proper investigation. One might suspect that the respective claimants were motivated by *madhhab* chauvinism.2 For instance, the Shi‘ah and the followers of the Ḥanafī madhhab claimed that their leaders were the founders and pioneers of *uṣūl al-fiqh*. Al-Sayyid Ḥasan al-Ṣadr3 of the Shi‘ah claimed that Muḥammad al-Bāqir (57-115H)4 and his son, Ja‘far al-Ṣādiq (83-149H)5 laid the

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2 One exception to this is the opinion of a contemporary scholar Muḥammad Abū Zahrah who, although a Ḥanafī follower, acknowledges al-Shāfi‘ī’s contribution and believes the latter should be credited with regard to *uṣūl al-fiqh*. See M. R. ‘Uthmān, ”al-Shāfi‘ī Wādī ‘Ilm al-Uṣūl”, p. 41.


5 Al-Ḥasanī, p. 233.
foundations of the science of ḥul al-fiqh. This was challenged by Muhammad Abū Zahrah in his Uṣūl al-Fiqh who refuted the claim for lack of substantial evidence.  

As regards the Hanafī madhhab, Ahmad Hasan and Abū al-Wafā' al-Afghānī claimed that prior to al-Shāfi‘ī, Abū Yūṣuf (d. 182H) and Muḥammad b. Ḥasan al-Shaybānī, both disciples of Abū Ḥanīfah, were already engaged in the science of ḥul al-fiqh. Al-Afghānī said,

"the first man to write or compile (ṣannafa) the science of ḥul al-fiqh as far as we know was Abū Ḥanīfah al-Nu‘mān. [For instance] he elucidates the methodologies of istinbāt in his 'Kitāb al-Ra‘y'. He was followed by his two disciples, Abū Yūṣuf Ya‘qūb b. Ibrāhīm al-Anṣārī and Muḥammad b. Ḥasan al-Shaybānī, then followed by Muḥammad b. Idrīs al-Shāfi‘ī."  

In defending his theory, Ahmad Hasan refers to Ibn al-Nadīm’s Fihrist in which the latter lists the books written by Abū Yūṣuf and al-Shaybānī which were among the lists of books on ḥul al-fiqh. He further argues that the term 'ḥul al-fiqh' had been

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6 Abū Zahrah, Uṣūl al-Fiqh. p. 11.


used by Abū Yūsuf in his criticism of the scholars of Syria for their ignorance of *uṣūl al-fiqh*. According to Ahmad Hasan, the above reports indicate that scholars preceding al-Shāfīī and some other jurists had formulated the principles of law before him. Thus, the theory that al-Shāfīī was the first legal thinker who pioneered *uṣūl al-fiqh* appears to be incorrect and this needs to be explained.

The term *'uṣūl al-fiqh'* or *'uṣūl'* before al-Shāfīī's time did not carry its present connotation and nor had it acquired the technical meaning of the science dealing specifically with the sources of the law as defined by al-Shāfīī. For example, Ibn al-Nadîm reports that Abū Yūsuf was the author of works on *uṣūl*. However, he immediately mentions that these books dealt with subjects such as prayer, fasting, sales and others. Similarly al-Shaybānī is also alleged to have written books on *uṣūl*, but they are immediately followed by prayer, alms tax and so on.

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16 There are works of al-Shaybānī that seem to have dealt with *uṣūl al-fiqh*. They are *Kitāb Ijtihād al-Ra’y, Kitāb al-Istiḥsān* and *Kitāb Uṣūl al-Fiqh*. See Ibn al-Nadīm, *al-Fihrist*. p. 288.

17 Ibn al-Nadīm, p. 287.
2.2 Al-Shafi‘i’s Achievement in Formulating the Principles of Islamic Jurisprudence

Schacht,18 Coulson19 and others acknowledged that al-Shafi‘i had contributed greatly to Islamic jurisprudence. They regarded him as "the father of Muslim jurisprudence" or "the master architect of jurisprudence". His contribution to jurisprudence has been compared by his biographers to the work of Aristotle on logic and to that of al-Khalil b. A‘mnd on prosody (‘aruf).20

However, in the opinion of Hallaq,21 al-Risalah was not the best work ever written on usul al-fiqh. There are reasons as to why he believes so. Firstly, there was no such work in usul al-fiqh proper in the ninth century following the death of al-Shafi‘i. This means that there was a gap between the eighth and the tenth century. Hallaq argues that if al-Risalah was a very important book in usul al-fiqh, there should have been commentaries or even criticism from those who disagreed with al-Shafi‘i’s formulation. Apparently, he argues, commentaries of al-Risalah only appeared in the tenth century.

However, such an argument does not imply that the al-Risalah was unimportant. It most probably indicates that the work was not yet widely known, for Ibn Qutaybah in his Ta’wil Mukhtalaf al-Hadith mentioned al-Shafi‘i only once.

20 Cf. Muhammad Abu Zahrah, al-Shafi‘i, p. 179.
Besides, Abu 'Ubayd did not mention al-Shāfī at all whereas his and Ibn Qutaybah's work were among the important ones produced after al-Shāfī.

Norman Calder, in his Studies in Early Muslim Jurisprudence agrees with Hallaq's theory. He further adds that al-Shāfī's achievement in uṣūl al-fiqh was not unrecognised by Muslim authors but also had no tangible effects on juristic thought, perhaps before the beginning of the fourth century of Hijrah.  

2.3 Terms Ibdā', Waqf, Ta'sīs and Ikhtirā (Innovation, Pioneering, Founding and Inventional)

There is concern about the terms used to describe al-Shāfī's contribution and his achievement in uṣūl al-fiqh. He is always described as the founder and pioneer of uṣūl al-fiqh. Some scholars, like al-Būṭī  do not agree totally with the use of such terms for he deems them inaccurate and improper. Instead, he suggests terms like tadwīn, kitābah and taṣnīf (compilation, writing).

Al-Būṭī's suggestion arises because he claims al-Shāfī was not the first to mention uṣūl al-fiqh. He argues that the usage of the term uṣūl al-fiqh had begun right
from the early days of Islam. According to him, al-Zarkashi\textsuperscript{25} reported that Ibn ʿAbbās held to the principles of ʿunmūm and khusūs, while others held fast to dalālat al-mafhūm. Moreover the ḥadīth of Muʿādh b. Jabal\textsuperscript{26} was said to have explicitly indicated the hierarchical order of these arguments in Islam.\textsuperscript{27}

Before al-Shāfiʿī, scholars had already used ʿuṣūl al-fiqh to extrapolate rulings. However, they did not lay down the general rules (qānūn kullī).\textsuperscript{28} Thus, when people before Aristotle, Khalīl b. ʿAḥmad and al-Shāfiʿī\textsuperscript{29} mentioned the subjects of deriving rulings, they were discussing them on the basis of ideas and thought rather than its mechanisms. So, to a certain extent, the criticisms advanced by al-Būṭī and others seem to be quite correct, but it was al-Shāfiʿī who systematised the science of ʿuṣūl al-fiqh and put it in written form, thus ensuring that specialists would not commit mistakes in deriving rulings (istinbāṭ).\textsuperscript{30}


\textsuperscript{26} The ḥadīth of Muʿādh b. Jabal is a well-known legal ḥadīth in the literature of Islamic jurisprudence. It lays down the guidelines for Muslims to derive rulings (hukm) in certain given circumstance. The hierarchical order of the proofs is the Qurʾān, the sunnah of the Prophet, and the ījāḥād.


\textsuperscript{28} M. F. ʿUthmān, "al-Shāfiʿī Wāḏī", p. 33.

\textsuperscript{29} To trace the position of ʿuṣūl al-fiqh in the early days of Islam see M. F. ʿUthmān, "al-Shāfiʿī Wāḏī ʿIbn al-ʿUṣūl", pp. 26-32; Badrān, Abū ʿAynayn Badrān, ʿUṣūl al-Fiqh al-Islāmi. pp. 5-11.

\textsuperscript{30} Al-Būṭī, p. 1.
CHAPTER THREE: THE POSITION OF HADĪTH

3.1 *Hadīth* in Islamic Law

Basically, the sources of Islamic law can be divided into two categories. First, the agreed and undisputed sources such as the Qurʾān, the *sunnah*, *ijmāʿ* and *qiyyās*. Second, the dispute among scholars as to whether certain other concepts can be used as a source of Islamic law. These sources included such things as *Istiḥsān*, *Maṣaliḥ Mursalah*, *Istiṣḥāb*, *ʿUrf*, *Sharʿ man Qablanā*, *Qawl al-Šāḥābah* and *Sadd al-Dhariʾah*.

As a matter of fact the *sunnah* of the Prophet hierarchically becomes the second important source after the Qurʾān as seen in the *ḥadīth* of Muʿādh b. Jabal and ʿUmar's letter to Shurayḥ b. Qāqā. In this connection, al-Shāfiʿī clarifies this statement stating that the *sunnah* would only be the decisive argument when it is definitely confirmed as coming from the Prophet.

Throughout his works, al-Shāfiʿī on many occasions mentions the position of the *sunnah* in relation to the Qurʾān. It is obviously clear that the role of the *sunnah* is no more than an elucidation and explanation of the Qurʾān. In the *Risālah*, the details of these roles are discussed at length.

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3.3.1 The Role of Sunnah

The *sunnah* of the Prophet plays an important role in expounding Sharī'ah, in particular its relation with the Qur'ān. In this regard, al-Shāfi'i divides the roles of *sunnah* into five categories.4 Below are some examples.

3.1.1.1 Sunnah Explains the Qur'ān

With regard this role, al-Shāfi'i cites al-Qur'ān, *al-Mā'idah*: 6,

"when you stand up for the prayers, wash your faces and your hands up to the elbows, and wipe your heads and your feet up to the ankles; and if you are polluted (*jumuban*) purify yourselves".

This verse clearly demonstrates the requirement of *wuqūf* and how to perform it. Again, it clarifies that *janābah* necessitates *ghusl* (major bath).

However, there are a few questions which need to be answered. *Al-Mā'idah*: 6 does not indicate the number or frequency which is sufficient for washing the face and other parts. What is the minimum number of times of washing? And are the ankles and elbows included as parts which are required to be washed? In this regard, the Prophet's *sunnah* gives clear guidance to Muslims. According to al-Shāfi'i, it is derived from the Prophet's deeds that the minimum washing of the face and other parts is once. For, he argues, the Prophet established different *sunnahs* for that matter. At one time, he did wash only once, and on another occasion three times.5

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4 See the discussion of *al-Risālah* in Chapter Four.

5 *Al-Risālah*, p. 162-3.
Ibn 'Abbās reported that the Prophet made his *wuqūf* by washing or wiping once (*annahu tawādqa' marratan marratan*). In another hadīth, the Prophet acted slightly differently.ʿAmr b. Yaḥyā one day asked ʿAbd Allāh b. Zayd to show him how the Prophet made his *wuqūf*. "The Prophet washed his hands twice, then rinsed his mouth (*maḏmada*) and sneezed three times. He washed his face three times and then washed his hands up to the elbows twice. Then he wiped his head with his hands starting from the forehead and then from the back of his head up to his neck (*qafā*). Then he brought his hands back to the point from which he started. And finally, he washed his feet". These different actions imply that the minimum washing which is sufficient is once. Washing three times for each of the required parts of the body is an option.

3.1.1.2 *Sunnah* and Abrogation

Amongst the most significant of al-Shafīʿī’s theories in Islamic jurisprudence is the theory of *naskh* (abrogation). The Qurʾān, according to him, can be only abrogated by Qurʾān, not by *sunnah*, because the later is subordinate to the former in terms of expounding what the Qurʾān has.

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8 *Al-Risālah*. p.29.

9 *Al-Risālah*. p. 106.
In order to defend the theory, he adduces a number of Qur'ānic verses to show that the Prophet was incapable of substituting any laws given by Allāh, and also to demonstrate that the abrogation of Qur'ān would not happen except by another similar verse of the Qur'ān.

Again, in the theory of naskh, the sunnah of the Prophet would not be abrogated by Qur'ān, but by sunnah itself. In other words, al-Shāfi‘ī endeavours to establish the concept of equivalence (mithl) of naskh. This means that only the similar strength of proof can abrogate. The ones which are either of higher or lower proof cannot abrogate others.

The abrogation of verses in Qur'ān did happen as indicated by the sunnah. Evidence of this can be found in many places in the Qur'ān, but what about the sunnah?

This question arises because there is doubt as to whether people can find an abrogating sunnah after the Prophet's demise. Although some people say that such sunnah might have been abrogated, the abrogating sunnah cannot be traced. Al-Shāfi‘ī rejects the possibility of such a case happening, because once the abrogation of a certain sunnah takes place, another sunnah will have been instituted by the Prophet.

Having established the theory of equivalence, al-Shāfi‘ī sticks to it. He rejects the possibility that sunnah (which is lower compared to the Qur'ān) is ever abrogated

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10 *Al-Risālah*, p. 107; Yūnus: 15.
12 *Al-Risālah*, p. 108.
by Qur'ān. If an earlier *sunnah* is abrogated, the Prophet as commanded by Allāh will institute another *sunnah*, indicating to people that the later *sunnah* is a new ruling which abrogates the earlier one.\(^{14}\) Thus, we would like to show some cases where *sunnah* indicates that certain verses (or rulings) of the Qur'ān are considered as abrogated and abrogating.

**a. The Qur'ān, al-Muzzammil: 1-20**

After mentioning Allāh's order of *qiyyām al-layl* of a certain amount of the night, al-Shāfi\(^{17}\) says that it is evident from the Qur'ān that the commandment of doing *qiyyām al-layl* of whatever amount has been abrogated by the verse "*fatahajjad bihi nāfilatan lak*". As far as this āyah is concerned, there are two possible interpretations.\(^{15}\) By referring to the *sunnah* of the Prophet, it is found that there is no obligatory *ṣalāt* except the five daily prayers. Therefore, only five *ṣalāt* are obligatory to Muslims. Others which were *wājib* are abrogated by this requirement. This is on the basis of the verse "*fatahajjad bihi nāfilatan lak*". It abrogates the imposition of *qiyyām al-layl*.\(^{16}\)

There is a *ḥadīth* which corroborates this as related by Ṭalḥah b. ‘Ubayd Allāh.\(^{17}\) A beduin of Najd asked the Prophet about Islam. In reply, the Prophet mentioned five daily *ṣalāt* as one of the requirements. Then that beduin asked whether

\(^{14}\) *Al-Risālah* p. 110.

\(^{15}\) *Al-Risālah* p. 115.

\(^{16}\) *Al-Risālah* pp. 115-6.

\(^{17}\) This *īsmād* is Mālik - Abū Suhayl b. Mālik - his father.
there were other prayers which are imposed upon him to which the Prophet replied in negative, except if he could perform optional ṣalāt voluntarily.\textsuperscript{18}

Again, ʿUbādah b. al-Ṣāmit reported that the Prophet said: "five ṣalāt which Allāh has prescribed upon His creatures. He who performs them without negligence, Allāh has promised to cause him enter into jannah".\textsuperscript{19}

b. Punishment of Zinā

The Qurʾān, al-Nisā': 15 and 16 indicate that the punishment for those who were involved in adultery (zinā) is ḥabs (detention in custody) and adhā (punishment). However, this hadd punishment is abrogated by the verse of the Qurʾān, al-Ḥur.: 2 (al-zāniyayn wa al-zāni fajlidū kull wāhid minhum miʿat jaldah). It clearly shows that that hadd for those who are involved in zinā is flogging with a hundred lashes. A question arises here about this punishment for there is a difference between adultery (zinā muḥṣan) and fornication (zinā ghayr muḥṣan).

With reference to this issue, the sunnah of the Prophet elucidates that a hundred lashes are applicable to those who are not married (ghayr muḥṣan- al-zāniyayn al-bikrayn).\textsuperscript{20} This is derived from a hadith of ʿUbādah b. al-Ṣāmit that the Prophet said:

\textsuperscript{18} Al-Risālah. p.116.

\textsuperscript{19} It is related by Mālik in Muwāyaʾ Rāwawayt Yahyā (I: 144-45) Mālik -Yahya b. Saʿīd - Muḥammad b. Yahyā b. Ḥibbān - ibn Muhayriz - ʿUbādah.

It is also related by Abū Dāwūd (I: 534) on the authority of al-Qaʾnabī - Mālik. This is categorised as ṣahih by Ibn ʿAbd al-Barr and others. See al-Risālah. note. pp. 117.

\textsuperscript{20} Al-Risālah. p. 129.
"take from me, take from me. Indeed Allāh has made a solution for them; a virgin with a virgin [is to be flogged] hundred lashes and to be expelled one year (taghrīb ‘ām), a married man with a married woman [is to be flogged] hundred lashes and to be stoned (rajm)"

From this hadīth, it is obvious that the hadd punishment of a hundred lashes is applied to bikrayn hurayyn, but it does not apply to thayyibayn. Instead, rajm (stoning) is applicable to thayyibayn hurayyn. This conclusion is derived from the sunnah of the Prophet in the case of Mā'īz b. Mālik al-Aslāmī and the case of a woman from the Aslāmī's tribe. The Prophet himself in the case of Mā'īz stoned the former who was involved in zīnā and did not flog him. Again, the Prophet in the case of the woman who was also involved in adultery, for which there was no evidence against her except her confession, asked Unays b. al-Ḍahhāk al-Aslāmī to implement the rajm punishment if she admitted to being involved in adultery.21

c. Abrogated and Abrogating Verses which Are Indicated by Sunnah

The Qur'ān, al-Baqarāh: 180 and 240 have two possibilities. Either (i) they verify the provision of waṣīyyah (bequest) for parents, relatives and wife-husband and corroborate the provision of inheritance (mīrāth) together with waṣīyyah, or (ii) the verses of mīrāth are considered as abrogating the provision of waṣīyyah to the above mentioned groups.

21 Al-Risālah. p. 132.
Al-Shāfi‘ī’s method of verification stresses that if there are different possibilities of interpretation available, it is inevitable that we seek indications of what is more likely, firstly in the Qur’ān and then followed by sunnah.22

With regard to this matter, al-Shāfi‘ī refers to a ḥadīth “lā waṣiyyah li wārith” which the Prophet was claimed to have said during ‘ām al-fath (the year of victory) or in the sermon of farewell pilgrimage (ḥajjat al-wadā‘), which al-Shāfi‘ī classifies as a mutawātir lafzī ḥadīth (transmission of many from many).23 Therefore, on the basis of this ḥadīth, he concludes that the verses of mārāth abrogate the provision of waṣiyyah to parents and partners (husband or wife).

However, as far as the isnād of the above ḥadīth is concerned, al-Shāfi‘ī himself once admitted that it was a khabar munqatī.24

3.1.1.3 Sunnah Restricts the General Sense of the Qur’ān

Verses 11, 12 and 76 of al-Nisā’ are considered as the basis for inheritance in Islam. The inheritors as the Qur’ān mentions are general. By the indication of sunnah, not all of inheritors are entitled to inherit. There are certain conditions to be fulfilled. Criteria as deduced from the sunnah are,

i. both beneficiary (wārith) and benefactor (muwarrith) must be of the same religion;

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23 Al-Risālah. p. 192.
ii. both must be residents of dār al-Muslimīn or of states who have treaties with the Muslims;

iii. both must be free men (hurr) in Islam;

iv. the wārith must not be the murderer of the muwarrith.

All these particulars which need to be fulfilled first by the inheritors in order to be eligible for inheritance are derived from the sunnah of the Prophet. The authority of the ḥadīth is as follows:


b. Ibn ʿUyayn - Ibn Shihāb - Sālim - ʿAbd Allāh. The Prophet said: "He who sells a slave (man) while the latter has his own property, then his property will be owned by the seller unless the buyer stipulates otherwise".

c. Mālik - Yahyā - Saʿīd - ʿAmr b. Shuʿayb, the Prophet said: "A murderer inherits nothing" (lays li qātil shay').

3.2 THE POSITION OF ḤADĪTH BEFORE AL-SHĀFIṬI’S TIME

The discussion of the position of ḥadīth prior to al-Shāfiṭi’s time will be presented in stages. They are as follows.

3.2.1 The Position of Ḥadīth in the Prophet’s Time

The Prophet has a special previlege in the eyes of the Muslim community. In his life time, he was the only authentic source of law are the Qurʾān and his
hadith/sunnah. Other than these are subject to the Prophet's verification. For instance, in the absence of any rulings either from the Qur'an or hadith, Companions in such cases would exercise their *ijtihād* to seek out the most appropriate ruling. And then, when they went to the Prophet, they would tell him what had happened. The Prophet, in this situation would confirm whether their *ijtihād* was right or wrong.

During this time, the *hadīth* of the Prophet constituted an approved source of law. Upon sending Mu‘ādh b. Jabal to Yaman, the Prophet asked him: "How are you going to judge the matters? He said, "I will judge according to Allāh's Book". Then the Prophet asked again, "what are you going to do if you find nothing in Allāh's Book?". Mu‘ādh replied: "I will judge in accordance to the *sunnah* of Allāh's Messenger". The Prophet asked: "what would the situation be like if there is nothing either in Allāh's Book nor in the *sunnah*?". Mu‘ādh replied, "I will try to do my best to form an opinion (*ajtahidu*) and spare no pains". Upon hearing this answer, the Prophet was very satisfied.24

Having cited the above *hadīth*, it is clear that the sources of law at that time were the Qur'ān, *sunnah* and *ijtihād*.

There are many ways in which the Companions received *hadīths* from the Prophet. They may have directly heard from the Prophet himself, or the ones who were absent may have asked those who were present in the Prophet's circle.

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3.2.2 The Position of Ḥadīth in the Time of the Companions

During this period, compiling the sunnah or ḥadīth of the Prophet did not gain as much attention from the Muslims as the Qurʾān did. This could easily be understood for there had apparently been contradictory ḥadīths of the Prophet as regards the writing down of his ḥadīth. Some reports allowed Muslims to record them in writing while others disallowed this.

A few cases reported by the Companions revealed the prevalence of a negative attitude even towards the narration of ḥadīth. For instance, ʿUmar b. al-Khaṭṭāb was reported to have detained three Companions, i.e. Ibn Masʿūd, Abū al-Dardāʾ and Abū Masʿūd al-Anṣārī for narrating too many ḥadīth from the Prophet. His measure was

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25 As far as writing down ḥadīth in the early year of Islam is concerned, most authors believe that ḥadīths were only transmitted orally. However, this common understanding is challenged by al-ʿAẓamī in his Studies in Early Ḥadīth Literature. 2nd. ed. Indiana: American Trust Publication, 1978. He proves that ḥadīths were already documented in early Islam. Reports of al-ʿAwāʾil show that Companions like ʿAbd Allāh b. ʿAmr b. al-ʿAṣ, ʿAlī b. Abī Ṭalib and others had saḥīḥahs. See also Muhammad Hamīdullāh, The Earliest Extant Work on the Ḥadīth: Saḥīḥah Hamādhān ibn Munabbih. Tran. into English Muhammad Rahimuddin. 10th ed. 1979; ʿAbd al-Muṭṭiʿ Amīn Qalʿuṭī, His Introduction to al-Sunan al-Maṭḥūrah li al-Shafiʿī. 1986. Beirut: Dār al-Maʿrifah, p. 15.


27 Abū Zahrah, al-Shafiʿī, p. 66.

applied to ensure that the people were not confused between the Qur’ān and the hadīth of the Prophet.29

On the other hand, the sunnah is very important for making certain decisions. The common practice was to find a ruling first in the Qur’ān. If nothing was available, one is permitted to have recourse to the sunnah or subsequently exercise ijtihād. Many occurrences showed that prominent Companions like Abū Bakr, ʿUmar, ʿAlī and their likes asked others about hadīth from the Prophet.30 The case of a grandmother’s right to inheritance (mirāṭh al-jaddah) is very significant.31 Abū Bakr was not aware of any provision allocated to a grandmother either in the Qur’ān or the Sunnah. It was one of the Companions, al-Mughirah, who brought to his attention that the Prophet had allocated a one-sixth share to her.

It was also common practice among the Companions to ask for witnesses prior to accepting a hadīth. In the said case of mirāṭh al-jaddah, Abū Bakr requested a witness to support al-Mughirah. ʿUmar did the same in the case of istiḍhan (asking permission to enter one’s house by saying al-salām ʿalaykum). These instances did not indicate that Abū Bakr and ʿUmar doubted the ʿadālah and credibility of the hadīth narrator, but they resorted to witnessing as a verifying method. ʿAlī’s practice, however, was different. He instead asked the narrators to swear an oath.

29 ʿUmar was reported by Qaraẓah b. Kaʿb to have warned his troop in Irāq not to narrate too many hadīth from the Prophet for his fear that the people were not good in reciting the Qur’ān. He, therefore, warned them not to further burden the people with the hadīth. See Muhammad al-Khudari Bek, Tārīkh al-Tashrī, p. 91.


31 See Chapter Five: Khabar al-Wāhid below.
The *sunnah* of the Prophet itself formed a basis for *ijtihad* or deriving rulings. The Companions were unanimously agreed on the need to adhere to it if they were convinced of the trustworthiness of the narrators. In any case, they would first look for clear rulings in the Qur'ān. If there were one, they would issue judgement on the basis of Qur'ānic source. If the Qur'ān was silent, they would refer to the *sunnah* of the Prophet, and failing to discover it, they would ask whether or not anyone was aware of any judgement made by the Prophet.\(^\text{32}\)

In the case of nothing found from these two principal sources, Companions would exercise their *ijtihad*.\(^\text{33}\) For instance, upon his appointment of Shurayh as a *qādi* at Kūfah, 'Umar was reported to have addressed him saying,\(^\text{34}\)

"Look at what is obvious to you from the Qur'ān and do not ask anyone else about it. What is ambiguous to you, follow the *sunnah* of the Messenger of Allāh. [However] what is not clear to you from the *sunnah*, apply your reasoning (*ijtihad al-ra'y)*."\(^\text{35}\)

### 3.2.3 The Position of *Ḥadīth* in the Time of the *Ṭabīʿin*

Among outstanding features during this period are:

i. the spreading of *ḥadīth* transmission,

ii. the falsification of *ḥadīth* from the Prophet, and

\(^\text{32}\) Abū Zahrah, *al-Sha'afi*. p. 64.

\(^\text{33}\) In issuing *fatwās*, some Companions preferred to exercise their *ijtihad* rather than narrating *ḥadīth* from the Prophet. By doing so, they hoped they would not unintentionally misreport the Prophet. See Abū Zahrah, *al-Sha'afi*. p. 65.


iii. the conflict between *ahl al-ḥadīth* and *ahl al-ra'īy*.

The majority of the Companions during this period held to the view that the *sunnah* is complementary (*mukmilah*) to the Qur'ān. It was ʿUmar b. ʿAbd al-ʿAzīz who in year 100 of the Hijrah realised the necessity for the compilation of the *sunnah* of the Prophet. He who feared the loss of the Qur'ān was equally worried that *ḥadīth* (*ʿilm*) would be lost by the death of the ʿulamāʾ.

3.2.4 The Position of Ḥadīth in the Time of the Ṭābiʿī Ṭābiʿīn

By this time, the disagreement between the *ahl al-ra'īy* and the *ahl al-ḥadīth* became obvious and serious. This phenomenon was discussed previously in the Introduction of this thesis.

3.3 Ḥadīth in the Attitude of the Ancient Schools

The attitude of the ancient schools toward *ḥadīths* will be discussed below.

3.3.1 Madīnan School

Mālik is reported to have held to *munqatī*, *mursal*, *mawqūf* *ḥadīths* and ʿ*amal ahl al-Madīnah.* Al-Shāṭibī in *al-Muwāfaqāt* mentions Mālik' views on *ḥadīth* as well as the *fuqahāʾ* of Ḥijāz. Mālik is reported to have rejected some *ḥadīths* as contradicting the Qur'ān, other *ḥadīth* or general principles (*aṣl kullī*, e.g. *raf al-ḥaraj* (lifting the difficulty)). As far as *khabar al-wāḥid* is concerned, al-Shāṭibī cited Ibn

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al-‘Arabî that Mâlik had two views on it. He would follow a *khabar al-wâhîd* if it is supported by other principles (*qâ’idah*). If there is only *khabar al-wâhîd* in a given case, he would not take it into consideration.

As far as contradiction between *hadîth* and other principles is concerned, Mâlik, for example rejected the *hadîth* of *wulûgh al-kalb* (the dog’s lick) claiming that it opposes two principles. One of them is the Qur’ân37 in which Allâh orders Muslims to eat what the dogs had caught.

According to Mâlik, the ‘*amal ahl al-Madinah* is given precedence over *qiyyâs* and even over sound *hadîths* if their ‘*ulamâ’* have agreed upon a certain case. And also ‘*amal* of ahl al-Madinah is given priority over *khabar al-wâhîd*. The reason for this is that ‘*amal* in their eyes is in the position of transmission of many from many. If *khabar al-wâhîd* contradicts it, according to their preferred opinion, it will be *mansûkh*.38

3.3.2 The Iraqi School

Owing to the wide-spread falsification of *hadîths* during this period, scholars had difficulty in deriving rulings, for the falsification made it more difficult to scrutinize sound *hadîths* and to take them as a basis for arguments and for deriving

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legal rulings. This phenomenon, argues Muḥammad al-Khuḍarī Bek, led to the questions of:

i. is sunnah a source (ašl) of Islamic jurisprudence, complementing the Qur’ān?

And if so,

ii. What are the means to verify and rely on?

In his writings, such as Jimā‘ al-‘Ilm, al-Shāfi‘ī alluded to the existence of a group of anti-traditionists who rejected all the hadīth. They, the so-called ahl al-Qur’ān, relied only on the Qur’ān.⁴⁰

They seem to reject akhbār because they do not engender definite knowledge given the possibility of error and forgetfulness on the part of its narrators. They do not repudiate the sunnah of the Prophet as the precedent of the Prophet. In fact, if it were to come through ways which engender definite knowledge, for instance sunnah mutawātirah, they would accept it.

As far as Abū Ḥanīfah is concerned, he in most cases holds to qiyās al-ra‘y and restricts the scope for sunnah. He would not accept it except upon the fulfilment of certain conditions and would subject it to thorough investigation. For instance, hadīth should be well known among thiqāt, or it is related from ‘āmmah and the fuqaha of the cities should be agreed upon on its i‘lam and none of the Companions should oppose that hadīth.⁴¹

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There were fewer hadiths of the Prophet available in Irāq than in the Hijāz. Despite this fact, they still needed to be scrutinized due to the spread of forged hadiths created by proponents of the different schools of thought such as the Mu‘tazilah, the Shi‘ah, the Murji‘ah and others. Therefore, Abu Ḥanīfah takes a cautious approach to accepting hadiths. He accepts hadiths on strict conditions and prefers to practise qiyās and istihlās (juristic preference) rather than follow hadiths whose validity he doubts.

In this respect, al-Shāfī‘ī disagree with Abu Ḥanīfah. The latter in certain cases contradicts what al-Shāfī‘ī understands to be the sunnah of the Prophet because certain hadiths had not yet reached him. According to al-Shāfī‘ī, if those hadiths reached his followers, it is compulsory for them to refer to the hadiths and there is no excuse for abandoning them.

As far as the method in deriving rulings is concerned, Abu Ḥanīfah is reported to have said: “I follow the Book of Allāh, and then the sunnah of His Prophet. If there is no answer to the matter in question in either of them, I follow one of the Companions' decisions restricting myself to them. But when the matter is only dealt

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42 This phenomenon begins in the year 41H up to the early second century of Hijrah and the phase is classified by Muhammad al-Khuḍarī Bek as the third stage of tashrī‘ which also includes the younger Companions (Sīghār al-Saḥabah) and those Successors who met them. See Muhammad al-Khuḍarī Bek, Tāʾrīkh al-Tashrī‘ al-Islāmī, p. 114.


44 Nahrawī, p. 190.

45 Al-Bayhaqī, Manāqib al-Imām al-Shāfī‘ī, p. 12; Ahmad Nahrawī, Al-Imām al-Shāfī‘ī, p. 191. Al-Bayhaqī mentioned several cases in which Abū Yusuf and Muhammad b. al-‘Hasan refer back to the sunnah, such as the case of waqf, takbir fi al-‘ṣādiq, sahīm al-fāris etc.
with by Ibrāhīm, al-Sha'bī, Ibn Sīrīn, al-Ḥasan or others, I will apply my own ijtihād as they did".46

Abū Ḥanīfah also holds to the authoritativeness of mursal ḥadīths if they are transmitted and narrated by reliable and trustworthy persons.47

3.3.3 Ahl al-Kalām

Before we begin with ahl al-kalām with regard their view on ḥadīth, it is noteworthy to define first the word "al-kalām". Kalām, literally means "word", "speech", but quickly acquired senses of "conversation, discussion, controversy".48 While ʿilm al-kalām is defined as the science which is concerned with firmly establishing religious beliefs by adducing proofs and with banishing doubts.

3.3.3.1 Ahl al-Kalām in al-Shāfīʿī’s Writings

Regarding the term ahl al-kalām which appears several times in al-Shāfīʿī’s writings, particularly Jimāʿ al-ʿIlm, scholars are uncertain as to the actual addressee. Ahl al-kalām in this discussion are those whom al-Shāfīʿī mentions in Jimāʿ al-ʿIlm who reject the akhbar altogether, namely, khabar al-khaṣṣah and khabar al-ʿāmmah.

According to Abū Zahrah49 and Muḥammad al-Khuṭarī Bek,50 ahl al-kalām who


49 Abū Zahrah, al-Shāfīʿī. p. 155.
appears in Jīmāʾ al-ʿIlm are most probably the Muʿtazilah. To support their thesis, they adduce proofs that al-Shāfīʿī had ascribed those people, i.e. ahl al-kalām, who rejected the akhbar to Baṣrah. And Baṣrah at that time was a centre of ahl al-kalām. They were also known as the opponents of ahl al-ḥadīth. In his Taʿwil Mukhtalaf al-Ḥadīth, Ibn Qutaybah mentions that amongst ahl al-kalām were al-Jāhiz, al-Nazzām and others, who had accused ahl al-ḥadīth of narrating contradictory ḥadīths and those which contradict logic and reasons.

In his Origins of Muhammadan Jurisprudence, Joseph Schacht is very firm about ahl al-kalām. To him, ahl al-kalām in al-Shāfīʿī’s term is used for the Muʿtazilah. They were also known in Ibn Qutaybah’s term as ahl al-naẓar wa al-qiyaṣ, meaning adherents of systematic reasoning, rationalists. And again in al-Masʿūdī and al-Ashʿarī, the term are known respectively as ahl al-baḥṭh wa al-naẓar and mutakkalimūn.

According to Schacht, those who reject all ḥadīths are the same as the ahl al-kalām, which is al-Shāfīʿī’s term for the Muʿtazilah. Again, Schacht elaborates that those

54 Ibn Qutaybah, Taʿwil Mukhtalaf al-Ḥadīth. passim; Schacht, The Origins. p. 128.
who reject all **hadiths** are the extreme wing of the anti-traditionists,\(^{56}\) while the moderate wing is represented by those who reject the *khabar al-khāṣṣah*. It is not surprising, therefore, that in some literature we do find that some of the al-Muʿtazilah accept *khabar al-wāḥid*.

Regarding the extreme wing, their arguments against **hadiths** and in favour of the Qur'ān as they appear in *Jimāʾ al-ʾIlm* are that the (i) the Qur'ān explains everything\(^{57}\) and (ii) the Qur'ān must not be interpreted in the light of **hadiths**; no individual authority for the **hadiths** is reliable, and a man may challenge traditions without becoming an unbeliever. On this basis, they rejected all **hadiths**.\(^{58}\)

Furthermore, according to al-Shāfīʻi's opponents, there are two schools of thought among his companions (ahl al-kalām):

i. some confined themselves strictly to the Qur'ān,\(^{59}\)

ii. others accepted only explanatory **hadiths** on subjects mentioned in the Qur'ān.

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57 Al-Nahl: 89.


59 The rejection of all **hadiths** is also attributed to the extremist Rawāfid and the Muʿtazilah sects, al-Nazzāmīyyah. See al-Suyūṭi, *Miftah al-Jannah*. p. 3; al-Sibāʻi, *al-Sunnah wa Makānatuhā fi al-Tashriʻ al-Islāmi*. pp. 149, 151.
In other aspects, *ahl al-kalām* demand that in order for ḥadīth to be accepted it must be transmitted by many from many (*mā rawāh al-kāffah ‘an al-kāffah*) or widely spread (*khabar al-tawātur*).\(^{60}\)

And as far as the moderate wing of *ahl al-kalām* is concerned, their views on *khabar al-wāhid* can be found next in the discussion of the Muʿtazilah's view on ḥadīth.

### 3.3.3.2 Al-Shāfiʿī and Individual Members of the Muʿtazilah

If the thesis that the term "*ahl al-kalām*" in al-Shāfiʿī's writings refers to the Muʿtazilah seems correct, it is worth noting individual members of the Muʿtazilah who had a relationship with al-Shāfiʿī. This relationship is seen in terms of discussions and *mujādalah* that took place between them. Watt, in his *Formative Period of Islamic Thought* lists the following individuals who had disputes with al-Shāfiʿī.\(^{61}\)

i. Ḥafs al-Fard.

According to Watt, it is difficult to date the dispute between Al-Shāfiʿī and Ḥafs al-Fard.\(^{62}\) The disputes are about *al-kalām*,\(^{63}\) in particular regarding the creation of the Qurʾān. The severe disagreement between them in this matter caused al-Shāfiʿī to accuse Ḥafs al-Fard of being an unbeliever. This might be the possible explanation for al-

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Shāfi‘ī’s dislike in engaging himself in *kalām*. In a famous anecdote, he said it is better for a servant (‘*abd*) to meet his God with all sins apart from *shirk* than to get involved in *kalām*. He is also reported to have said that if one makes mistakes in such and such, they would say you are wrong; but in *kalām* if one makes mistakes they would say that you are unbeliever.64

ii. Sufyān b. Sakhtān.

He is reported to have helped the Hanafite ُIsā b. Abān to write a book against al-Shāfi‘ī.65

iii. Ibn ُUlayyah.

He had a dispute with al-Shāfi‘ī.66 Al-Baghdādī reports that the disagreement between them were on the validity of *khabar al-wāhid*. Details of disagreement can be referred to in Chapter Nine: Introduction to *Kitāb Jimā‘ al-‘Ilm*.

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Bishr al-Marṣī was the one who was very close to the Caliph al-Ma'mūm. He had discussions (munāzarāt) with al-Shafī'ī both on kalām and jurisprudence.67

Having mentioned individuals of the Mu'tazilah who were involved in the discussion with al-Shafī'ī, it is worth noting one of the reasons that drove al-Shafī'ī to leave Baghdad for Egypt. It was because he was dissatisfied with the environment he lived in where the Caliph al-Ma'mūn who had subscribed himself to the ideas and doctrines of the Mu'tazilah attempted to force others to embrace them.69

3.3.3.3 The Mu'tazilah's Views on Jurisprudence

The Mu'tazilah were a famous group of theologians/rationalists in early Islam. Their doctrines in theology are more important than in jurisprudence. Therefore, it is very difficult to find in details their point of views on the Qur'an, sunnah, ijmā' and qiyyās. On the other hand, their views are discussed more by others rather than in their own writings.

According to Nyberg, among the characteristic features of the al-Mu'tazilah at the beginning of Abbasid caliphate is that they were in serious disagreement with ahl al-hadīth.70 And among al-Mu'tazilah dogmatics are (i) apologetic (ii) strictly Qur'ānic; the

68 Sha'bān Muḥammad Ismā'īl, Usūl al-Fiqh. p. 71.
69 Abū Zahrah, al-Shafī'ī. p. 27.
70 H. S. Nyberg, "al-Mu'tazila". p. 789.
Qur'ān is the only source of theological denomination (asma') and of the precepts of religion (ahkām) (iii) polemical (iv) speculative and (v) intellectual.

According to Qādī ʿAbd al-Jabbār, there are three types of evidence (adillah); i) reason (ʿaql), ii) the Qur'ān and iii) sunnah. This hierarchical order is totally different from that of other Muslims. Normally, the usūlī scholars accommodate the Qur'ān and sunnah in the first place followed by ījmāʿ and qiyyās. Having said that, ʿAbd al-Jabbār has justified why he did so. According to him, by putting reason in the first place, the good and bad things can be differentiated. And moreover, by reason it is known that both the Qur'ān and sunnah are ʿhujjah. So, in the view of ʿAbd al-Jabbār as Muʿtazilah thinker view in general, reason (ʿaql) is very important as a tool in dealings with the religious matters. In fact, they have won the battle against the enemies of Islam such as Zanādīqah by using reason and logic in their debates and mujādalah.

3.3.3.4 The Muʿtazilah's View On Ḥadīth

Regarding the Muʿtazilah's views on ḥadīth, Muṣṭafā al-Sibāṭī asks the following questions,
i. what is the Mu'tazilah's view concerning the authority (ḥujjīyyah) of both mutawatir and āḥād hadīths,

ii. do they reject both of them, or

iii. do they accept the authority of mutawātir and reject the authority of khabar al-wāḥid?

In reply, he quotes i) al-Āmidī that Abū al-Ḥusayn al-Mu'tazilī was among those who declared that khabar al-wāḥid should logically be accepted, whereas al-Jubbā'ī and a group of al-Mutakallimīn say that khabar al-wāḥid does not logically give the authority.

ii) al-Suyūṭī in al-Tadrib, that 'Alī al-Jubbā'ī would not accept a khabar if it had transmitted by a single trustworthy transmitter, unless it had been consolidated by other trustworthy transmitter, or supported by the zāhir of the Qur'ān or the zāhir of another khabar, or it was spread [well known] among Companions or most of them held it.

iii) Ibn Ḥazm that all Muslims accept (ijmā') khabar al-wāḥid of a trustworthy (thiqah) from the Prophet from the early days of Islam. This phenomenon applied to every group such ahl al-sunnah, al-Khawārij, Shi'ah, al-Qadariyyah, until the theologians of the Mu'tazilah made it a heresy after the hundredth year of the Hijrah and opposed this ijmā'. In another place, Ibn Ḥazm says that al-Mu'tazilah rejected the authority of khabar al-wāḥid and that "all of the Mu’tazilah and Khawārij say that khabar al-wāḥid does not engender definite knowledge (‘ilm)".

iv) Abū Mansūr al-Baghdādī and al-Rāzī state that the al-Nazzāmiyyah (a group of the Mu’tazilah) rejected the authority of mutawātir and khabar al-wāḥid.
3.4 The Conflict Between *Ahl al-Ḥadīth* and *Ahl al-Raʿy*

Prior to al-Shāfiʿī's time, Muslims were generally divided into two groups, the *ahl (aṣḥāb) al-ḥadīth* and the *ahl al-raʿy*. This phenomenon had started from the time of the Companions. In the absence of a *ḥadīth* in any given case, their methods of deriving rulings differed. *Ahl al-raʿy* would exercise their *raʿy* or *ijtihād* but, when a relevant *ḥadīth* for a case was made available to them which seemed to contradict their previous judgement, they would, without hesitation, revert to the meaning of the *ḥadīth*. On the contrary, the *ahl al-ḥadīth* in similar circumstances would not apply their *raʿy* unless desperate.

Disagreements between the *ahl al-ḥadīth* and the *ahl al-raʿy* which became obvious in the time of the *tābiʿīn* became more glaring during the periods of the *tābiʿ al-tābiʿīn* and the establishment of the *madhāhib*. Reports of al-Bayhaqī in *Manāqib al-Shāfiʿī* and of Ibn Abī Ḥātim al-Rāzī in *Ādāb al-Shāfiʿī wa Manāqibuh* indicate how the *ahl al-ḥadīth* prior to al-Shāfiʿī's time were unable to entertain a balanced discourse over the supremacy of the *ahl al-raʿy*.

Through his reputation, al-Shāfiʿī had had an important role in bridging the gap. That is why in formulating the principles of *uṣūl al-fiqh* he emphasizes the importance of

the sunnah of the Prophet and also qiyās. By doing so, the gap between the ahl al-hadīth and the ahl al-ra'y was reduced.79

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CHAPTER FOUR: AL-SHĀFI‘Ī’S WRITINGS ON ḤADĪTH

In this chapter, al-Shāfi‘ī’s writings on ḥadīth will be divided into two categories. The first category is his writings on ḥadīth as classified as an usūl al-fiqh treatment, in which the importance of ḥadīth or sunnah is seen as a source that constitutes Islamic law. The second is his writings on ḥadīth as seen as a collection of hadīths.

It is crucial to analyse al-Shāfi‘ī’s works on ḥadīths in order to understand his thoughts about them through his various writings. The title of "the defender of sunnah" which was given to him reflects his writings.

4.1 Al-Shāfi‘ī’s Writings about Ḥadīth as Usūl al-Fiqh

Al-Shāfi‘ī’s writings which fall into this category are al-Risālah, Jimā‘ al-ʿIlm, Ikhtilāf al-Ḥadīth and Ikhtilāf Mālik wa al-Shāfi‘ī. These four books will be treated as briefly as possible by summarising related issues on ḥadīth.

4.1.1 Al-Risālah

There are two versions of al-Risālah; the old (qādimah) and the new (jadīdah). The old Risālah was composed by al-Shāfi‘ī in Makkah1 on the request of ʿAbd al-Rahmān b. Mahdī (135-198H), when the latter asked him to compose a book

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1 Ahmad Muhammad Shākir, His Introduction to al-Risālah, p. 11 citing al-Fākhr al-Rāzī, Manāqib al-Shāfi‘ī, p. 57, that he contends that al-Risālah was firstly composed in Baghdād. Then, al-Shāfi‘ī rewrote it when he was in Egypt.
expounding the meaning of the Qur'an, the acceptance of *akhbār*, the authority of *ijmāʿ* and *nāsikh* and *mansūkh* of the Qur'an and the *sunnah*.²

The present and existing version of *al-Risālah* is believed to be al-Shāfiʿī's dictation (*imlāʾ*) to al-Rabīʿ. This statement is derived from textual evidence found in *al-Risālah* itself.³ This work is recognised as the first written manual about *uṣūl al-fiqh* as well as *uṣūl al-ḥadīth*.⁴

In *al-Risālah*, al-Shāfiʿī gives a great deal of attention to ḥadīth or *sunnah* of the Prophet because of its paramount importance in Islamic jurisprudence. He mentions on many occasions that the verified *sunnah* is on the same level as the Qur'an as the primary source of Islam. Moreover, in many places, he explains that the *sunnah* of the Prophet is the explainer (*mubayyin, shārīḥ*) of the Qur'an, for most of the Qur'ānic verses are in general terms and need to be explained. This explains why al-Shāfiʿī argues that the Qur'an needs the *sunnah* of the Prophet in terms of expounding what is ambiguous in it.

The major topics of ḥadīth al-Shāfiʿī discussed are as follows;

i. the role of the *sunnah* of the Prophet,⁵

ii. 'ilāl (weaknesses) of ḥadīths,⁶

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iii. *khabar al-wāḥid*,

iv. *al-hujjah fi tathbīt khabar al-wāḥid*, and

v. *mursal hadīths*.

i. **The Role of the Sunnah of the Prophet**

Among the roles of the *sunnah* is *bayān* (explicit expounding). Under the term *bayān*, al-Shāfi‘ī highlights certain roles played by the *sunnah*. Prior to expounding the role of the *sunnah*, at the very beginning al-Shāfi‘ī cites verses of the Qur'ān which indicate that the Prophet must be followed by Muslims. Obedience to the Prophet means obedience to Allāh. Having established this ground, he continues to elaborate the role of the *sunnah* of the Prophet. There are at least five roles/positions of the *sunnah* in relation to the Qur'ān.

i. It clarifies the *mujmal* of the Qur'ān. For instance, the *sunnah* of the Prophet clarifies the *mujmal* obligations in the Qur'ān such as *ṣalāt* and others and explains it in detail, such as the number of *raka‘āt*, its time etc.

ii. It clarifies the general things which are intended to be general, or the general things which are intended to be particular (*khāṣṣ*).

iii. It supports and corroborates the obligations which already exist in the Qur'ān.

iv. It comes with new rulings which are not mentioned in the Qur'ān.

v. It indicates the abrogated and abrogating rulings.

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7 *Al-Risālah*. pp. 369-400.
8 *Al-Risālah*. pp. 401-470.
ii. The 'Ilal (Weaknesses) of Ḥadīths

In this discussion, al-Shāfī‘ī mentions many types of the apparent differences among Ḥadīths. The method of approaching this matter is also mentioned in his Ikhtilāf al-Ḥadīth. For details, refer to Chapter Eight on the Science of Ikhtilāf al-Ḥadīth.

iii & iv. Khabar al-Wāḥid and Its Arguments

The personal characteristics of the transmitters of Ḥadīths are very important in the science of Ḥadīth, for the acceptability of their Ḥadīths depends whether or not they are reliable and trustworthy persons. Al-Shāfī‘ī outlines in al-Risālah the personal qualities of the transmitters. The ḍadālah of transmitters is given priority.

As far as khabar al-wāḥid is concerned, al-Shāfī‘ī discusses it in a great detail. Arguments in favour of it are documented. These justifications as to why khabar al-wāḥid must be accepted in Islam derive from the Qurʾān, the sunnah of the Prophet, qiyās and the sīrah of the Companions and Successors.

v. Mursal Ḥadīths

As far as mursal Ḥadīths are concerned, al-Shāfī‘ī lays down certain conditions before they are accepted as a source of law. Details of this discussion can be found in Chapter Seven: Al-Shāfī‘ī and Mursal Ḥadīths.

4.1.2 Kitāb Jimā‘ al-ʿIlm
The significance of this work is linked to the existence of certain groups in the second century of the Hijrah who rejected the entire body of hadīths or repudiated a part of them, i.e. khabar al-wāhid.

It lays out al-Shāfi‘ī’s discussions with his opponents in detail. Evidence and arguments in favour of hadīths are advanced by al-Shāfi‘ī, both against those who rejected all hadīths or those who rejected only khabar al-wāhid.

For a detailed introduction to this work, refer to Chapter Nine: Introduction to Kitāb Jimā al-Ilm.

4.1.3 Ikhtilāf al-Hadīth

As far as kitāb Ikhtilāf al-Hadīth is concerned, Muḥammad al-Khudārī suggests that this Ikhtilāf al-Hadīth of al-Shāfi‘ī is the most important work for defending the sunnah of the Prophet in general and khabar al-wāhid in particular.10

Ikhtilāf al-Hadīth can be divided into two parts. The first part is an introductionary section discussing various issues related to hadīth. It begins with expounding the position held by the Prophet as derived from the Qur‘ān. That is, Muslims are obliged to obey whatever the Prophet enjoins or withholds and accept his hadīths. The obedience to the Prophet after his death is by accepting hadīths from him.

To justify the acceptance of *hadīths* in general and *khabar al-wāḥid* in particular, he produces various proofs to show that as long as the transmitters of *hadīths* are reliable, the acceptance of *hadīths* is compulsory for Muslims.

For instance, he mentions that many cases in early Islam where Companions did something or refrained from it are based on *khabar al-wāḥid*. These cases include the changing of the *qiblah*, the banning of wine, kissing during Ramadān, the confession of adultery before Unays al-Aslamī and ʿUmar’s changing of his opinions [such as *diyat al-asābiʿ, diyat al-ṣāqilah, diyat al-ṣanīn, jizyat al-Majūs* and *taʿlān*].

He also talks about *bayān*. General and particular in the Qurʾān are treated briefly in this *Ikhtilāf al-Ḥadīth*, not as he did in *al-Risālah*. The abrogating and abrogated verses in the Qurʾān are given. The principle is that the Qurʾān can only be abrogated by the Qurʾān. The *sunnah* of the Prophet is subordinate to the Qurʾān. 12

At the end of the introductory section,13 al-Shāfiʿī gives general principles with regard to apparent contradictory *hadīths*. *Hadīths* of the Prophet are classified as Arabic speech in which sometimes general terms are intended to be general and other times particular, in addition to other things. If it is possible to use two *hadīths* together, they should be used together. One of them would not suspend another *hadīth*. There are abrogating and abrogated *hadīths* such as the *ḥadīth* on the changing of the *qiblah* from Bayt al-Maqdis to Masjid al-Ḥarām. The basis to


12 *Ikhtilāf al-Ḥadīth*. p. 56.

13 *Ikhtilāf al-Ḥadīth*. p. 64.
determine which one is nāsīkh (abrogating) and which one is mansūkh (abrogated) is based on ḥadīths (reports) from the Prophet, a saying or time (date) which indicates that one of them comes after another. In this case, the later ḥadīth is considered as nāsīkh.

In the second part, al-Shāfīʿi brings together many ḥadīths which apparently contradict each other. Al-Shāfīʿi is believed to have solved many ambiguous cases where ḥadīths are seemingly contradictory. Below is a list of cases which al-Shāfīʿi treats in this part.

There are for example apparent contradictions within the category of the mubāḥ ("what is permitted"): recitation in the prayer, recitation of tashahhud, ṣalāt al- wirk, fasting on ʿĀshūrā', times at which prayers are mākrūḥ, the eating of a ḍabb, ǧizyah, women going out to the Mosque, taking a bath on Friday, the marriage of a virgin woman, a man's gift to his child, the selling of mukuṭab, sacrificed animals (ḍahayā), washing feet or wiping, raising hands in prayers, doing prayer alone, ṣalāt al-khwaf, the prayer of solar or lunar esclipe, the meat of sacrifice, muʿrāh marriage, shufah, weeping for a deceased, talking during prayer, recitation of qimūṭ in prayers, a man who proposes marriage on the top of another's proposal, fasting and ifṭār based on sighting of the hilāl, the divorce of a menstruating woman, exchanging fresh dates for dried ones, daʿwā wa bayyināt and others.
4.1.4 IKHTILĀF MĀLIK WA AL-SHĀFI‘I

There are two main points with regard to al-Shāfi‘ī’s contention against Mālik in *Ikhtilāf Mālik wa al-Shāfi‘ī*. First, al-Shāfi‘ī rejects the validity of Madīnan claims to have *ijmā‘* on several matters. Al-Shāfi‘ī attempts to remove that claim as an authoritative basis of argumentation. Secondly, al-Shāfi‘ī champions the authority of *khabar al-wāḥid* and argues that *ijmā‘* based on deduction from other sources of law and on other types of *ijtihād* is not sufficiently strong to reject *khabar al-wāḥid* which opposes it.

**Background of the Work**

There are some possible reasons for the appearance of *Ikhtilāf Mālik wa al-Shāfi‘ī*. The first is Fityān's disagreement with al-Shāfi‘ī in Egypt as shown in Chapter One. Second, there were followers of Mālik in Andalus with whom al-Shāfi‘ī disagreed over their method of argument. According to al-Shāfi‘ī, the majority of people in their argument argue on the authority of the Prophet by saying "the Apostle of Allāh [may Allāh bless him and grant him peace] says so and so". While, the followers of Mālik in Andalus argued on the authority of Mālik by saying, "Mālik said so and so". Furthermore, al-Shāfi‘ī argues that Mālik is a human being who

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sometimes makes mistakes and errors. This most probably led him to write a book against Malik. Third, according to al-Shafi‘i, when he came to Egypt, he only knew that Malik contradicted sixteen hadiths. However, when he studied the matter again, he found that Malik argued by holding the asl but put aside the far‘ and the other way round. This is supported by al-Rabi‘i as a genuine reason for the composition of the work. And this is clear from the beginning of the introduction of this work.

In the beginning of this work, al-Shafi‘i provides a minimum requirement for a hadith of the Prophet to carry weight in Islam. The minimum is that a reliable and trustworthy person relates from a reliable and trustworthy person (thiqah) until it reaches the Prophet.

It also lays down the principles of hadith. According to him, once a hadith is definitely confirmed as coming from the Prophet, it cannot be abandoned except in the case where there is another hadith contradicts it. Again, the method of solving the seeming differences of hadith is given.

4.2 Al-Shafi‘i’s Collections of Hadiths

There are only two works in this category. They are al-Musnad (Tartib al-Musnad) and al-Sunan al-Ma’thurah.

18 Cf. Abū Zahrah, al-Shafi‘i. pp. 29-31
20 Al-Shafti, Kitab Ikhtilaf Malik wa al-Shafi‘î. p. 191.
22 Ibid.
4.2.1 Musnad al-Shafi'i

This Musnad is ascribed to al-Shafi'i. However, there is a dispute whether or not he himself compiled it or it is the work of his followers. Those who incline to believe that this musnad is of al-Shafi'i's compilation argue that the content of hadiths is taken from al-Umm.

On the other hand, others argue that this musnad is not al-Shafi'i's compilation, but it was compiled by Abü al-Abbās al-Asamm as he heard it from some of al-Shafi'i's disciples.

Hadiths mentioned in the Musnad are not the only ones related by al-Shafi'i nor those he used as argument in making judgement. They are also not hadiths which are contained in his earlier works. Rather, it is just a part of many hadiths which have been chosen by al-Asamm. The selected ones are in fact some of the most important hadiths.

4.2.2. Al-Sunan al-Ma'thirah

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This work of ḥadīth bears slightly different titles. According to manuscripts available as shown by ʿAbd al-Muṭṭāb ʿAblīn Qalʿajī, there are at least four different titles. They are,

i. Kitāb Sunan al-Shafīʿī,27

ii. Kitāb al-Sunan al-Maʿthurah,28

iii. Kitāb al-Sunan29 and

iv. al-Sunan al-Maʿthurah.30

This al-Sunan al-Maʿthurah was related by Abū Jaʿfar al-Ṭahāwī al-Ḥanafī on the authority of Ismāʿīl b. Yaḥyā al-Muzānī.

It consists of seven parts in one volume. The ḥadīths are arranged in accordance to the subject of fiqh. Chapters on fiqh in this work can be classified as follows: ṣalāt, qunūṭ, al-ṣatḥah, ṣiyām, zakāh, ʿudhiyyah, ʿiḍayn, jihād, bayʿah, buyūʿ, nikāh, safar and others.

This al-Sunan has approximately six hundreds ḥadīths.


27 This manuscript is preserved in Dār al-Kutub al-Miṣriyyah (276) ḥadīth.

28 This manuscript is preserved in Maktabat al-Khazanah al-ʿAmmah in al-Ribāṭ.

29 This manuscript is preserved in Dār al-Kutub al-Miṣriyyah (724) ḥadīth.

30 This manuscript is preserved in Dār al-Kutub al-Miṣriyyah (1534).

31 Al-Ṭahāwī is the author of Ikhtilāf al-Fuqahāʾ, al-Shurūṭ, Maʿānī al-ʿĀthār, Aḥkām al-Qurʾān, al-ʿAqīdah etc.
CHAPTER FIVE: THE CONCEPT OF THE SUNNAH OF THE PROPHET

5.1 Al-Shafi’i’s Concept of Prophetic Sunnah (Sunnat al-Nabi)

5.1.2 General Discussion

There are many discussions in modern literature regarding the concept of the \( \textit{sunnah} \) of the Prophet or the term \( \textit{sunnah} \) itself. Analysis of the term \( \textit{sunnah} \) based on early literature leads to different findings.

Western scholars such as Schacht and Margoliouth held that there was no such original concept of a \( \textit{sunnah} \) of the Prophet. To them, the concept was a later development. Schacht disagrees with al-Shafi’i who defined \( \textit{sunnah} \) as the model behaviour of the Prophet and the latter’s direct connotation of \( \textit{sunnah} \) as the \( \textit{sunnah} \)

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of the Prophet. According to Schacht, sunnah is nothing more than precedent, way of life. Goldziher has shown that this originally pagan term was taken over and adapted by Islam, and Margoliouth has concluded that sunnah meant originally the ideal or normative usage of the community, and only later acquired the restricted meaning of precedents set by the Prophet.

Schacht argues that the concept of the sunnah of the Prophet emerged first in Kūfah in connection with the back-projection of doctrine applied as a means of securing greater authority for local practices. He believes that the Madīnans used this concept only rarely.

Muslim authors believe that the sunnah of the Prophet already existed in early Islam. On the other hand, western scholars argue that the concept of Prophetic sunnah is absent in the Qur'ān. Only 'the sunnah of God (sunnat Allāh)' and 'the sunnah of the predecessors (sunnat al-awwalīn)' are mentioned in the Qur'ān. To this, Ansari and Ahmad Hasan argue that though the sunnah of the Prophet per se is not mentioned, the essence of the concept is clearly stated in the Qur'ān for it testifies to the conduct of the Prophet as conduct par excellence.

3 Schacht, The Origins, p. 58.
4 Goldziher, Muslim Studies. vol. II, p. 25.
5 Ahmad Hasan, Early Development, pp. 69ff., 75.
"Certainly you have in the Messenger of Allāh a good example (qudwah hasanah)".8

One of the earliest uses of this expression is attributed to ʿUmar who was reported to have explained the functions of his officials as consisting the instruction of the people in their religion and in the sunnah of their Prophet.9 An epistle written by al-Ḥasan al-บาشري (d. 110H)10 to the Umayyad Caliph ʿAbd al-Malik b. Marwān (65-86H) also contains the expression sunnah of the Prophet.11

5.1.3 The Authority of the Prophet’s Sunnah

It is characteristic of al-Shāfī to begin his writings by explaining what it means to follow the Prophet (ittiḥāṣ al-Rasūl).12 He does so in order to establish a concrete foundation for discussion. His methodical approach, however, differs according to his different audience or opponent. For instance, when he discussed this matter with the ahl al-kalām (rationalists) or the so-called ahl al-Qur’ān, he would provide evidence from the Qur’ān, since the ahl al-Qur’ān would not accept anything but the Qur’ān and it would be irrelevant to adduce a piece of evidence from the

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8 Al-ʿAjzā: 21.
10 His full name is al-Ḥasan b. Abī al-Ḥasan Yasār al-บาشري, Abī Saʿīd. One of Successors. See al-Suyūṭi, Ṭabaqāt al-Ḥuffaz. p. 28.
12 This is evident in his writings like al-Risālah, Ikhtilāf al-Ḥadīth, Jmāʿ al-ʿIbn, Ikhtilāf Mālik wa al-Shāfī and others.
hadīth, for the fundamental arguments between the two are different. Therefore, in order to proceed with the discussion and to convince his audience, al-Shāfi‘ī pursues the basis of his arguments according to situational needs. This kind of argumentation appears in Jimā‘ al-‘Ilm, in which his opponents are the ahl al-kalām. Al-Shāfi‘ī cites three Qur’ānic verses to prove to his opponents that the obligation to follow the Prophet is derived from the Qur’ān itself. These are,

i. "But no, by thy Lord, they can have no [real] faith until they make thee judge in all disputes between them, and find in their souls no resistance against your decisions, but accept them with the fullest conviction".14

ii. "He who obeys the Apostle, obeys Allāh".15

iii. "Then, let those beware who withstand the Apostle's order, lest some trial befall them, or a grievous penalty be inflicted on them".16

From the above verses, it is established that the commandment to follow the injunctions given by the Prophet is derived from the Qur’ān itself. Yet, how does one obey and follow the Prophet after his death? On this point, al-Shāfi‘ī argues that the sole way is to accept the hadīth from the Prophet. Therefore, the acceptance of the sunnah or the hadīth from the Prophet is incumbent upon each and every Muslim.17

Throughout his life, al-Shāfi‘ī worked to reinforce the authority and superiority of the sunnah of the Prophet. During that period, rationalist (theological) movements

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14 Al-Ahzāb: 24.
15 Al-Nisā‘: 80.
16 Al-Nūr: 63.
17 Jimā‘ al-‘Ilm. p. 23.
especially the Mu'tazilah were at their peak. The most obvious doctrine held by the Mu'tazilah is the supremacy of reason. In this respect, al-Shafi'i worked to formulate a hierarchical order of proofs in which revelation, i.e. the Qur'an and hadith are given priority over consensus opinion and reasoning. In his writings, al-Shafi'i gave priority to the hadith or the sunnah of the Prophet and his most significant contribution to hadith is the acceptance of hadith as whole, and particularly isolated traditions (khabar al-wāhid), for most of the hadiths are in the form of khabar al-wāhid.

Through his books on usūl like al-Risālah, Jimal al-'Ilm, Ikhtilāf al-Ḥadīth and Ikhtilāf Malik wa al-Shafi'i, there are at least two principles concerning the authority of the sunnah of the Prophet which can be deduced.

i. No consideration is given to an opinion which contradicts the sunnah of the Prophet.\(^{19}\)

ii. No one is considered a proof (ḥujjah) beside the Prophet.\(^{20}\)

Having mentioned these, I shall examine in some details their application by al-Shafi'i in his writings.

His insistence on the authoritativeness of the sunnah of the Prophet leads al-Shafi'i to formulate a principle in order to arrive at a systematic argumentation and consistent results. As an illustration, in any given circumstances, there may be hadiths or sunnahs of the Prophet and āthār from the Companions or Successors which apparently contradict each other. While one jurist may hold the sunnah of the Prophet,

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18 Abū Zahrah, al-Shafi'i. p. 124.


20 "lays fī aḥad ḥujjah maʿ al-Nabī, al-Risālah. paras. 1601-3; Ikhtilāf Malik. pp. 192, 262."
another may prefer the āthār. The resulting opinion may differ, for each person has his own preference with regard to the evidence available. Al-Shāfi‘ī attempts to reconcile such inconsistency or disagreement.

According to al-Shāfi‘ī, when a ḥadîth is related by trustworthy authority (‘adl and thiqah) and certified as coming from the Prophet, it must be accepted and cannot be rejected unless there is another ḥadîth that contradicts it.21 Ḥadîths from the Prophet are sui generis (self validating) and do not need āthār to make them more sound or to strengthen them.22 If āthār of the Companions and Successors are present in a case where a sunnah of the Prophet already existed, whether they support or oppose it, the sunnah of the Prophet must prevail.

5.1.4 When Āthār Contradict the Sunnah of the Prophet

As stated earlier, al-Shāfi‘ī emphasizes that the sunnah of the Prophet is self-validating (aṣl fī dhātih) and the presence of āthār whether of the Companions or the Successors will not add further strengthen to it.23 Questions arise as to what happens if āthār seem to contradict the sunnah of the Prophet. In such a case, according to al-Shāfi‘ī, the existence of āthār has no weight or significance. To a certain extent, this principle is in disagreement with Malik’s method in terms of the acceptability of

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22 Ikhtilāf Mālik wa al-Shāfi‘ī, p. 262.

23 Ikhtilāf Mālik, p. 192.
established practice (al-amr ʿindanā, al-amr al-mujtamaʿ alayh ʿindanā etc) and his preference for the āthār of Companions or Successors. As far as this is concerned, al-Shāfīʿī devotes the whole of Ikhtilaf Mālik wa al-Shāfīʿī to disputing with al-Rabīʿ as a representative of Mālik's madhhab, criticizing the latter for relating ḥadīths in some ḥadīths and abandoning or neglecting them in others.

Selective cases will be given here to demonstrate how al-Shāfīʿī sticks to his principles.

5.1.4.1 Touching the Penis

Does touching the penis invalidate ṭudūʾ? Al-Shāfīʿī and the Mālikites hold that someone who touches his penis has to do ṭudūʾ. Their evidence is the ḥadīth of Busrah bint Ṣafwān, that she heard the Prophet saying,

"When one of you touches his penis, he should do ṭudūʾ".26

Some others like the Ḥanafītes hold a contrary view based on an unknown (majhul) ḥadīth, as claimed by al-Shāfīʿī and āthār of Companions,28 that such

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25 Al-Shāfīʿī, Kitāb Ikhtilaf Mālik wa al-Shāfīʿī, pp. 191-329.
26 Ikhtilaf Mālik. p. 192. This ḥadīth is reported by Mālik - ʿAbd Allāh b. Abī Bakr - ʿUrwah - Marwān - Busrah bint Ṣafwān. For details of the ḥadīth of mass al-dhakar see Abū Dāwūd, (tahārah), no. 69, Nasāʾi, (tahārah) no. 117, (ghusl) 30, Muwatta, (tahārah) 58, Bukhārī, (ʿilm) 53, (ṣalāh) 9, (hajj) 21, Tirmidhī, (tahārah) 61.
incident does not invalidate wudū'. So, in this case, al-Shāfī'ī adheres to the hadīth of Busrah instead of other āthār for he holds that once a hadīth is confirmed as definitely coming from the Prophet, no other saying will affect it.\(^{29}\)

5.1.4.2 Raf al-Yadayn in Prayer

As far as raising the hands (raf al-yadayn) in prayer is concerned, al-Shāfī'ī holds a view based on the hadīth\(^{30}\) that a worshipper should raise his hands up to his shoulders three times in the first rak'ah, and two times in other rak'ahs. In the first rak'ah, one should raise the hands when one starts the prayer (takbīrat al-ihram), when one bends to do ruku' and when he rises from ruku'. For other rak'ahs, it should be only two raisings of the hands i.e. when bending to do ruku' and when rising from ruku'. So, according to al-Shāfī'ī, only during these parts in the prayer we are recommended to raise hands, whereas during others such as performing sujūd or starting second rak'ah, we are not.

Al-Rabī'ī expresses a contrary view that raising the hands is recommended only at the beginning of the prayer, not at any other part. Here, as in many places in Ikhtilāf Mālik wa al-Shāfī'I, al-Shāfī'ī criticizes his opponent for neglecting or abandoning hadīths related by Mālik from the Prophet and from Ibn 'Umar.

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\(^{29}\) Ikhtilāf Mālik, p. 192.

\(^{30}\) Reported by Mālik - Ibn Shihāb - Sālim - ʿAbd Allāh. And the second hadīth was related by Sufyān - Ibn Shihāb al-Zuhrī - Sālim - ʿAbd Allāh b. ʿUmar - ʿUmar. Al-Shāfī'ī claims that the second hadīth is related by many people (bidʿat 'ashar), while the third hadīth was reported by Mālik - Nāfi' - Ibn ʿUmar that he (Ibn ʿUmar) began his prayer by raising two hands up to the shoulders and rose the hands when he woke up from ruku'.
It is related that there was once a munāzarah between Abū Ḥanīfah and al-Awzā’ī concerning this matter. Al-Awzā’ī questioned the former as to why he did not raise his hands during the prayer, when he bent down for ruku and when he rose from ruku since ʾAbd Allāh reported that the Prophet did so. However, Abū Ḥanīfah contended that in his view there was no such valid and sound haddith related from the Prophet in this matter. Both party in the munāzarah cited their respective authorities. Abū Ḥanifah claimed that his authorities, - Ḥammād - ʾAlqamah - al-Aswad - Ibn Masʿūd who transmitted the haddith to the effect that the Prophet did not raise the hands except at the beginning of prayer, were better than al-Awzā’ī’s.

5.1.4.3 Al-Mash ʾalā al-Khuffayn (Wiping the Boots)

Al-Shafi’ī, based on haddiths of the Prophet and āthār of Companions, holds the view that both muqām (non-traveller) and musāfīr (traveller) are allowed to wipe
their boots (khuffayn), whereas al-Rab'ī holds the opinion that this facility is restricted only to a musāfir.35

Al-Shāfi‘ī argues on the authority of al-Mughīrah b. Shu‘bah that in the battle of Tabuk, the Prophet went to the toilet, did wudu' and wiped his boots, and then did his prayer.36 It is also reported that Anas b. Mālik went to Qubā, urinated, did wudu' and wiped his boots and then did his prayer.

5.1.4.4 Doing Ḥajj on Behalf of Others37

A question arises whether or not it is possible for someone to perform ḥajj on behalf of others, such as the father or the mother. Based on the ḥadīth of Ibn ‘Abbās and Ibn Sirīn, al-Shāfi‘ī declares that performing ḥajj on behalf of another is legitimate, because it is clearly mentioned in a ḥadīth of Ibn ‘Abbās that the Prophet was approached by a woman asking about her father's obligation to perform ḥajj but he was unable to make the journey because of old age. The reply given by the Prophet was that she could perform it on behalf of her father.38

However, according to al-Shāfi‘ī's opponent, this was not the practice ('amal) in Madīnah.39 The latter also argues on the authority of Ibn 'Umar that one cannot

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39 Al-Shāfī‘ī, Ikhtilāf Mālik wa al-Shāfī‘ī. p. 211.
perform the *hajj* on behalf of another. This statement is derived from analogical reasoning that fasting (*siyām*) and prayer cannot be done by others. On this basis, al-Shāfi‘ī’s opponent comes to the conclusion that this *hukm* is also applicable to *hajj*.

To counter this, al-Shāfi‘ī argues that the opinion or *āthār* of someone other than the Prophet is of no weight or value and does not merit any consideration in judgements the moment it is explicitly opposing the *sunnah* of the Prophet.

He also advances his argument that one application of the Shari'ah, such as *ṣalāt*, *siyām* or others, cannot be compared to another. Therefore, according to al-Shāfi‘ī, it is obviously wrong for someone to make judgements prohibiting the performing of *hajj* on behalf of another, simply based on the grounds of analogical reasoning.

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41 *Ikhtilāf Malik*. p. 212; *Jima‘ al-‘Ilm*. p. 104
CHAPTER SIX: KHABAR AL-WĀḤID

6.1 Definition

Literally, khabar al-wāḥīd (pl. akhbār al-āḥād) means a tradition or report going back to one single authority. Its synonyms are khabar al-infirād and khabar al-khaṣṣah. However, scholars of ḥadīth have widened the meaning, interpreting khabar al-wāḥīd as what is narrated or reported by one or two authorities from one or two authorities back to the Prophet, or what is narrated by a number less than mutawātir.

Normally, the scholars of ḥadīth divide reports into mutawātir and āḥād. Mutāwatir ḥadīth is that narrated by a group of reliable and trustworthy individuals from a group of trustworthy persons going back to the Prophet. There is no exact number that institutes tawātur. Some say three, some say four while others say twenty. Al-Shafī‘ī himself refuses to specify the exact number of reporters at any particular level of the isnād that make a ḥadīth mutawātir.

However, according to the Ḥanafite scholars, there is a third division of reports, i.e. mashhūr which is a tradition related by one or two Companions from the Prophet.

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4 See al-Shafi‘ī, Jimā‘ al-‘Ilm. pp. 57-8 concerning the number of mutawātir. His opponent fails to convince him in this matter.

but which subsequently becomes *mutawātīr*. In another words, it is in the form of *khabar al-wāḥid* in the first level of *isnād* (chain of transmitters) and becomes *mutawātīr* by the second or third centuries⁶ such as the *ḥadīth* "*innamā al-ʾāʾmāl bi al-niyyāt*" - "actions are judged according to their intentions".

### 6.2 Scholars' Views About *Khabar al-Wāḥid*

Scholars are in disagreement as to whether *khabar al-wāḥid* should be considered as a conclusive proof for judgement in law.⁷

Such disagreement occurs right from the time of the Companion. They would not accept a *sunnah* based on an isolated *ḥadīth* (*khabar al-wāḥid*) unless they were satisfied that it came from the Prophet. Their methods were varied. For instance, Abū Bakr al-Šiddīq did not accept a solitary *ḥadīth* (*khabar al-wāḥid*) until two witnesses testified that they had heard it from the Prophet. Ibn Shihāb al-Zuhī narrates from Qubaysah b. Dhu'ayb that a grandmother came to Abū Bakr asking for her share of inheritance. Abū Bakr said: "I do not find anything for you in the Book of Allāh, and I have not heard that the Messenger of Allāh said anything [about that]". Then he asked around and al-Mughīrah responded that he had heard that the Messenger of Allāh gave to a grandmother one-sixth. Abū Bakr asked, "Do you have someone [to support you]?” and Muḥammad b. Maslamah replied that he had also heard the same.

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Therefore, Abū Bakr gave one-sixth of the share of the inheritance to the grandmother.⁸

'Umar b. al-Khaṭṭāb did the same. Some other Companions such as ‘Alī b. Abī Talib would instead ask the transmitter of a hadīth to swear that he had heard it from the Prophet. In al-Iḥkām fī Uṣūl al-ʿĀhkām,⁹ al-ʿĀmidī mentions that ‘Alī said, "I used to hear a hadīth from the Prophet which God made me benefit from as He wishes. However, if any one narrated to me a hadīth in which there is no benefit for me, I would ask him to swear. Then, if he swears, I will trust him."¹⁰

It seems that the Companions had various methods of verifying before accepting reports related by a single Companion. They asked for witnesses and also a transmitter to swear an oath.

6.2.1 The Khawārij and the Muʿtazilah

They disagreed whether khabar al-wāḥid should be considered a conclusive proof for a legal judgement. They believe that khabar al-wāḥid is not to be accepted as conclusive proof because of the possibility of its falsehood. They argue that there is no practice ('amāl) without knowledge ('ilm) as stated in the Qurʾān,¹¹ which also

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⁸ For hadīths of grandmother’s inheritance (mīrāḥ al-jaddah), see Ibn Mājah, (fārāḍīf) 4; Abū Dāwūd, (fārāḍīf) 5; Muwatta‘, (fārāḍīf) 4-6.

⁹ Al-ʿĀmidī, al-Iḥkām fī Uṣūl al-ʿĀhkām. vol. 1., p. 175.


¹¹ Al-Isrā‘: 26 and al-Najm. 28.
condemns following conjecture. In conclusion, they say that *khabar al-wāḥid* is not a proof for rulings of the *Sharī'ah*, as well as for theological matters.¹²

The Mu’tazilah rationalists [theologians] argue that the Companions such as Abū Bakr, ʿUmar, ʿAlī and ʿĀ‘ishah did not take into account *khabar al-wāḥid*. One example includes Abū Bakr’s decision to give one-sixth of the estate to a grandmother as mentioned earlier.¹³ Their argument is that Abū Bakr did not accept the report of al-Mughārah b. Shu‘bah until it was corroborated by Muḥammad b. Maslamah. Like Abū Bakr, ʿUmar, ʿAlī and others too did not accept *khabar al-wāḥid*.¹⁴

Likewise, the scholars who came after the Companions did not accept *khabar al-wāḥid*. In this regard, al-Shāfi‘i clarified that the motive of the Companions in rejecting *khabar al-wāḥid* was to prove that they were meticulously careful in quoting any *ḥadīth* from the Prophet. Therefore, asking for other witnesses was a method of ascertaining the veracity of the *ḥadīth*. In this regard, it is worthy to cite ʿUmar’s caution to Abū Mūsā: "I do not suspect (tuhmah) you [of narrating falsehood], but it is a *ḥadīth* from the Prophet."¹⁵

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¹³ See chapter three above.


6.2.2 Ahmād b. Ḥanbal, Dāwūd al-Ẓāhirī and Ibn Ḥazm

It is reported that Ahmād b. Ḥanbal, Dāwūd al-Ẓāhirī and Ibn Ḥazm considered *khabar al-wāḥid* as engendering definitive knowledge ('ilm) and a conclusive proof ('amal). They adduce proofs that 'amal is necessarily engendered by *khabar al-wāḥid*. Among them is verse 6 of *al-Ḥujurat*. In this passage, God asks the believers to attest the reliability of those who carry messages. Thus, it can be inferred that a report from a reliable and trustworthy man should be accepted.

It is also reported that the Prophet accepted the report from Salmān concerning *ḥadiyyah* (gift) and *ṣadaqah* (i.e. zakāh), even though he was the only one to report it. The Prophet also accepted the testimony of a bedouin about the appearance of a new moon. In addition, the Prophet sent ‘Alī and Mu‘ādh to teach people about Islam in single authority. To sum up, they believe that *khabar al-wāḥid* does establish both 'ilm and 'amal as is evident from the practice of the Prophet.

6.2.3 The Majority of Mālikites, Ḥanafites, Shāfiʿites and Ḥanbalites

The majority of the followers of the *Sunni* madhhab argue that *khabar al-wāḥid* does give the practice, not the knowledge, because there is no necessary link

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16 Badrān, p. 89.
17 His name is Abū Sulaymān Dāwūd b. ʿAlī b. Dāwūd b. Khalaf al-Asfahānī (d. 270H). He was the first one who to adhere to ḥādir text, holding only the Qurʾān and sunnah, rejecting raʾy al-qiyās. Among his works are *kitāb al-ījmāʿ*, *k. Ibīṭāl al-Qiyās*, *k. Ibīṭāl al-Taqlīd*, *k. Khabar al-Wāḥid* and *k. al-Khabar al-Mujīb li al-ʿIlm*. See Ibn al-Nadīm, al-Fihrist. p. 303.
18 "O ye who believe! If an evil-liver bring you tidings, verify it, lest ye smite some folk in ignorance and afterward repent of what ye did". *Al-Ḥujurat* (49): 6.
19 Badrān, p. 87
between the ‘amal and ‘ilm (knowledge). They argue that positive probability is sufficient in practical affairs and maintain that the conjecture referred to in the Qur‘ān is conjecture on religious belief (‘aqīdah) or theological matters, not practical ones.20

6.3 Al-Shāfi‘ī and Khabar al-Wāḥid

According to al-Nawawī, al-Shāfi‘ī was the first scholar to give a detailed written treatment of khabar al-wāḥid.21 He devotes two chapters of his al-Risālah,22 two-thirds of Jimā‘ al-Ilm23 and the introduction of Ikhtilāf al-Ḥadīth24 to khabar al-wāḥid.

The reason for devoting so much treatment to khabar al-wāḥid may well have been due to the growing ascendancy of the Mu‘tazilah during the latter part of al-Shāfi‘ī’s life. In his promotion of the importance of khabar al-wāḥid, al-Shāfi‘ī was attempting to defend the authority of the sunnah of the Prophet, and limited the use of reason. It is also a fact that most ḥadīths are in the form of khabar al-wāḥid.

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20 Badrūn, p. 91.
22 Al-Risālah deals with khabar al-Khāṣṣah or khabar al-Wāḥid, pp. 369-471.
23 Al-Shāfi‘ī devotes the second chapter of Jimā‘ al-Ilm to dealing with those who reject only khabar al-khāṣṣah.
24 The last of the three books in chronological order in which al-Shāfi‘ī uses the same method to adduce the proofs why khabar al-khāṣṣah or khabar al-wāḥid should be accepted. A repetitive method is obvious in al-Shāfi‘ī’s writings. It could be that he lived in the time when khabar al-khāṣṣah was no longer being accepted. Or it could be that regional practices had undermined the sunnah of the Prophet. Details of this can be found in J. Schacht, The Origins of Muhammadan Jurisprudence.
In the chapter on the *Khabar al-Wāhid* of the *al-Risālah*, al-Shāfi‘ī debates with an unnamed opponent. The discussions are about the authority of *khabar al-wāhid*. There are strict conditions laid down by al-Shāfi‘ī regarding the acceptance of *hadīths*. This includes the acceptance of reports only from reliable men (*thiqāt*). He makes a distinctive comparison between the acceptance of *ḥadīth* and the acceptance of legal testimony (*shahādah*).

In another chapter, i.e. *al-Ḥujjah fi Tathbīt Khabar al-Wāhid*, al-Shāfi‘ī adduces a variety of proofs to show the validity of *khabar al-wāhid* and that its acceptance has had a basis from the early period of Islam. For instance, the Messenger of Allāh used to send a single messenger to Muslim territories as *qādī* (judges) or preacher. If they were not a *hujjah*, the Prophet would not have sent them to the people. As an example, a man came to the people of Qubā’ while they were performing *ṣalāh*. He told them that the direction of the *qiblah* had been changed. Spontaneously, they turned to the new direction. According to al-Shāfi‘ī, this shows that reports of reliable persons should be accepted by Muslims. In *Early Development of Islamic Jurisprudence*, Ahmad Hasan comments that the way al-Shāfi‘ī adduces his arguments does not establish the validity of *khabar al-wāhid*. On the contrary, it proves that *ḥadīth* as a whole must be accepted, not just the *khabar al-wāhid*.

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Al-Shāfi‘ī argues that a *khabar al-wāhid* only constitutes a decisive proof (*ihujjah*) if there is a reliable transmitter (*thiqah*) at every stage of the *isnād*. His reliability is dependent on the following six conditions:

1. that the reporter should have a strong faith;
2. that he should be known for his veracity in transmitting *ḥadīth*;
3. that he must be able to grasp the meaning of what he transmits;
4. that he should pay heed to the exact wording;
5. that he should transmit from memory, and
6. that he should be free from *iadlis*, that is claiming to transmit what he had not in fact heard from the *rawî* he names.

### 6.4 Conditions Laid Down by Madhāhib for the Acceptance of Khabar *al-Wāhid*

There is no agreement among scholars on the conditions for the acceptance of *khabar al-wāhid*. In fact, each school of thought lays down its own conditions.

#### 6.4.1 The Ḥanafites

According to the Ḥanafites, the transmitter of a *ḥadīth* should not have adopted a different practice from the one which he narrated, because he will normally not adopt a practice contrary to his own transmission unless there is a definitive proof of the narration having been abrogated. Accordingly, if he opposes his own transmission,

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the consideration will be on his practice, not his transmission. For that reason, the Ḥanafites reject the hadīth narrated by Abū Hurayrah, "when a dog licks from one of your containers, he should wash it seven times in which one of it should be with sand". They say that it is sufficient to cleanse it three times because the transmitter's practice was contrary to what he transmitted.28

In addition to that, a hadīth should not be contrary to matters of 'umūm al-balwā. 'Umum al-balwā are matters each and every Muslim ought to know, for its ignorance may affect the validity of certain rituals in his daily life. For instance, the touching of the penis with the palms of one's hands invalidates wuḍū'. On the same basis, the Ḥanafites reject the khabar al-wāḥid transmitted by Abū Hurayrah concerning the recitation of the Basmalah aloud.29

Thirdly, a hadīth should not contradict what is stronger than it in terms of conclusive proof, i.e. the Qur'ān, sunnah mutawātirah or mashhūr.

Furthermore, a hadīth should not contradict qiyās and the basic fundamentals of Sharī'ah.

6.4.2 The Mālikites

The Mālikites have only one condition in accepting khabar al-wāḥid, namely, that it should not contradict ijma‘ ahl al-Madīnah and their ‘amal. The justification given by them is that ‘amal ahl al-Madīnah is based on the premise that it comes as

28 Badrān, Usūl al-Fiqh al-Islāmī, p. 95-97; Sha'bān, Usūl al-Fiqh al-Islāmī, p. 64.
29 Abū Hanīfah, Musnad al-Imām Abī Ḥanīfah, pp. 55-6. hadīth no. 99-100. He prefers (tarjih) the hadīth of Hammād - Anas which tells that the Prophet, Abū Bakr and Ḥumar did not say Basmalah aloud.
a general transmission from the Prophet and that the transmission of many is better than the transmission of individuals.30 ‘Amal is considered as a normative concept, while khabar al-wāḥid sometimes contains legal texts which are normative matters and contains unusual or purely personal types of behaviour.31 Therefore ‘amal is given priority over khabar al-wāḥid.

For instance, they deny the validity of khīyār al-majlis which is based on certain ḥadīth for the ‘amal ahl al-Madīnah is contrary to it.32

6.4.3 The Shāfi‘īites

According to al-Shāfi‘ī, for a khabar al-wāḥid to be accepted, it must have reliable isnād (ṣaḥīḥ al-sanad) and have a continuous chain of authorities (muttaṣīl). He does not accept a ḥadīth with an interrupted chain of transmitters such as the mursal ḥadīth,33 unless it has one of the following conditions:34

i. that the mursal ḥadīth is supported by a ḥadīth which is muttaṣīl al-sanad in meaning. In this case, the argument is based on that of the muttaṣīl, not the mursal,

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30 Badrān, p. 99.
33 A mursal ḥadīth is a ḥadīth whereby a Ṣaḥābī is missed from the sanad. A detail of this topic will be discussed later on Chapter Seven: al-Shāfi‘ī and Mursal Ḥadīths.
34 Badrān, pp. 99-100.
ii. that the *mursal hadīth* is strengthened by other *mursal hadīths* accepted by 
*ahl al-ʾilm*,

iii. that the *mursal hadīth* is in agreement with the opinion of Companions,
or

iv. that *ahl al-ʾilm* accept the *mursal*.

If a *mursal hadīth* meets one of these conditions and the transmitters are among the older Successors (*kübār al-tābiʿīn*) who have met many of the Companions, then it will be accepted. For that same reason, al-Shāfiʿī accepts the *mursal hadīths* of Saʿīd b. al-Musayyab and al-Ḥasan al-ʿAṣrī.

### 6.4.4 The Ḥanbalites

As far as Aḥmad b. Ḥanbal’s view is concerned, he did not require any condition in order to accept *khabar al-wāḥid*. However, he just requires the four agreed conditions, i.e. that a transmitter must be mature, Muslim, *ʿadl* and *jabīṭ.*

### 6.5 The Authority of *Khabar al-Wāḥid*

In order to examine what al-Shāfiʿī writes about the authoritativeness of *khabar al-wāḥid* and the necessity for accepting such *hadīths*, it is hereby vital to

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make a comparative study of al-Shafī‘ī’s works al-Risālah,36 Ikhtilāf al-Ḥadīth37 and Jīmā’ al-‘Ilm.38

According to al-Shafī‘ī, the minimum proof for a hadīth to be binding proof upon ahl al-‘ilm is that it is related by one person from another until it reaches the Prophet, or one next to the Prophet. Such a khabar al-wāḥid will not be a binding proof unless certain conditions are fulfilled.39 These are as follows;

i. that those who relate the hadīth must be thiqah (truthworthy) in religion;
ii. that they must be known to be truthful (ṣidq) in their hadīth;
iii. that they must comprehend (‘āqilan) what they transmit;
iv. that they must be conversant with any term which might change (ihālat al-ma‘nā) the meaning of the hadīth;
v. that they must be capable of transmitting the hadīth word for word as they heard it and not merely transmitting its meaning in their own words, for if they transmit only the meaning and are unaware of what might alter the sense, they might unknowingly change the lawful (ḥalāl) into the unlawful (ḥarām). If they transmit word for word there remain no grounds for fearing a change of meaning;

vi. that they should have learned the hadīth by heart (ḥāfiz). If they relate it from memory (ḥifz) and they should have memorized the written text (kitāb) if they relate it in written form; when they share a hadīth with others [of ahl al-ḥifz], that which they relate must agree;

vii. that they must not be guilty of tadlīs, i.e. claiming to relate hadīths from those whom they met without actually having heard the hadīths from them.40

Al-Shāfi‘ī makes some sort of a comparison between accepting khabar al-wāḥid and accepting testimony (shahādah), for the one to whom al-Shāfi‘ī had spoken might be familiar with the procedure of a testimony. That is, when witnesses are considered as trustworthy in the eyes of a judge, their testimonies should be accepted. Thus, to make it clear in his opponent’s mind, al-Shāfi‘ī makes the comparison to deliberate how the authoritativeness of khabar al-wāḥid is to be accepted.

6.6 Proofs of the Acceptability of Khabar al-Wāḥid

In al-Shāfi‘ī’s view, the authoritativeness of khabar al-wāḥid is strong enough not to need comparisons with anything else. Indeed, it is sui generis41 (aṣl fi nafsih), not needing other kinds of proof to make it acceptable. Once it has been firmly established that the khabar al-wāḥid comes from the Prophet, it becomes a binding proof (hujjah) upon Muslims. Thus, it cannot be rejected unless there is an indication

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40 Al-Risālah. paras. 1000-1001.

41 Al-Risālah. paras. 1051, 1166; Ikhtilāf al-Ḥadīth. p. 20.
of it being abrogated or there exists a mistake.\textsuperscript{42} No questions of either "why" (\textit{limā}) or "how" (\textit{kayfa}) should be asked concerning reports from the Prophet.\textsuperscript{43}

When posing the question as to why \textit{khabar al-wāḥid} should be accepted in legal frameworks, al-Shāfi‘\textsuperscript{I} lays down a few sources to prove it. They could be categorised into \textit{ijmā‘}, \textit{ḥadīth}, \textit{qiyaṣ}, the practice of Companions and the \textit{sunnah} of the Prophet.

\textbf{6.6.1 Ijmā‘}

According to al-Shāfi‘\textsuperscript{I}, the people of knowledge\textsuperscript{44} agreed on the necessity of accepting \textit{khabar al-wāḥid} in practical matters. It is said that they accept it and also issue \textit{fatwā} based on it.

\textbf{6.6.2 Ḥadīth}

Al-Shāfi‘\textsuperscript{I} cites a \textit{ḥadīth} which reads as follow;

"God will grant prosperity to a servant of His who hears my words, remembers them, guards them, and hands them on. It might be that a transmitter of \textit{fiq}h is not a \textit{faqīh}, and it might be that a transmitter of \textit{fiq}h may transmit to others are more versed in \textit{fiq}h than himself. The heart of a Muslim will never harbour vindictive feelings against three: sincerity in working for God; faithfulness to Muslims; and conformity to the community of believers-their call will protect [the believers] and guard them from delusion".\textsuperscript{45}

\textsuperscript{42} Ikhtilāf al-Ḥadīth. p. 24.

\textsuperscript{43} Ikhtilāf al-Ḥadīth. p. 21.

\textsuperscript{44} Al-Risālah. paras. 1247-9.

\textsuperscript{45} Al-Risālah. para. 1102.
Al-Shāfi‘ī comments on the above hadith by saying that since the Prophet urged men to listen to his words, guard them, and hand them on, and since the transmitter who hands them is mentioned in the singular, this indicates that the Prophet ordered that no one should transmit anything from him unless proof was established to the person to whom it was transmitted, because what is transmitted is something lawful to be observed or unlawful to be avoided, a punishment to be inflicted, a property to be taken or paid, and an advice in matters relating to religion and worldly life.46

6.6.3 The Practice of the Companions

In al-Risālah, al-Shāfi‘ī gathered together many examples which show that even though a hadith is related by a single person, whether a man or a woman, it becomes a proof for those who hear it, on condition that the transmitters are reliable and trustworthy.

There are several hadiths related by only one person which are used in Islamic jurisprudence. Examples include the hadith of Umm Salamah about kissing during Ramadān, the changing of the qiblah and tahrīm al-khamr (the banning of alcoholic drinks). These demonstrate that hadīths related by a single person were taken as proof by those who heard them. Thus, a person has no right to reject it on the grounds that it is a solitary hadith.

46 Al-Risālah, para. 1103.
To support the *khabar* reported by a single transmitter, al-Shāfi‘ī uses the example of the Prophet's anger with a man who had doubted his own wife's report from Umm Salamah that kissing during the fast was permitted.\(^{47}\)

In another case, Abū Ṭalḥah and others destroyed immediately all their wine when a messenger told them that wine had been forbidden to Muslims. Al-Shāfi‘ī demonstrates that in this case and in others, the Companions did not query the authority of a single transmitter. They did not raise the argument that they would not accept the *hadīth* until many transmitters had related it or they had heard it directly from the Prophet himself.\(^{48}\)

Therefore, when discussing transmitters, al-Shāfi‘ī lays emphasis on their quality. If they are reliable and truthful, their reports should be accepted.

### 6.6.3.1 Cases When Companions Changed Decisions When A *Hadīth* Came to Them.

Al-Shāfi‘ī quotes many occasions where some Companions changed decisions which they had made earlier when a *hadīth* related by a single authority came to their notice. In this regard, a *hadīth* from the Prophet takes precedence whenever it contradicts decisions made based on personal opinion (*ijtihād*). 'Umar b. al-Khaṭṭāb for instance, changed his decision on *diyat al-aṣābi‘* (bloodmoney or compensation that should be paid to the victim whose damages or injury involved the fingers)\(^ {49}\)

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\(^{47}\) *Al-Risālah*. paras. 1109-1111.

\(^{48}\) *Al-Risālah*. paras. 1120-3.

\(^{49}\) *Al-Risālah*. paras. 1160-1171.
when he was about to give a judgement based on his opinion.\textsuperscript{50} Sa\textdegree d b. al-Musayyab reported that 'Umar's initial decision was based on the beauty and the utility of the fingers. However, he changed his mind when he found a letter of 'Amr b. Hazm's family which stipulated that the Prophet had given a verdict of ten camels for each finger.\textsuperscript{51}

Other instances of 'Umar's changing his judgements on the basis of \textit{hadith} from one transmitter are the cases of \textit{diyat al-\textdegree aqilah},\textsuperscript{52} and the taking of \textit{jizyah} (polltax) from the Magians\textsuperscript{53}.

In the case of \textit{diyat al-\textdegree aqilah}, Sufy\textdegree n relates on the authority of al-Zuh\textdegree r\textdegree i, that Sa\textdegree d b al-Musayyab said, "'Umar b. al-Khatt\textdegree b" was saying that \textit{diyay} should be paid to the \textdegree aqilah, and a wife cannot inherit from the \textit{diyay} of her husband; but al-Dahh\textdegree k b. Sufy\textdegree n told 'Umar that the Apostle had written to him ordering him to permit the wife of Ashyam al-Dib\textdegree b\textdegree i\textsuperscript{54} to inherit the \textit{diyay} of her husband. So, 'Umar changed his opinion".\textsuperscript{55}

In the case of the Magians, Ja\textdegree f\textdegree r al-\textdegree S\textdegree d\textdegree i\textdegree q b. Mu\textdegree h\textdegree m\textdegree d b. B\textdegree q\textdegree i\textdegree r said, "Upon mentioning the Magians, 'Umar said: I do not know what we should do with regard to them." Thereupon 6Abd al-Rah\textdegree m\textdegree n b. 6Awf said: "I bear witness that I heard the

\textsuperscript{50} \textit{Al-Ris\textdegree alah}, para. 1175.
\textsuperscript{51} \textit{Al-Ris\textdegree alah}, paras. 1160-1165.
\textsuperscript{52} \textit{Al-Ris\textdegree alah}, paras. 1172-1180.
\textsuperscript{53} \textit{Al-Ris\textdegree alah}, paras. 1182-1186.
\textsuperscript{54} Ashyam al-Dib\textdegree b\textdegree i is a Companion who had mistakenly been killed during the time of the Prophet. See Sh\textdegree k\textdegree r's edition of \textit{al-Ris\textdegree alah}, p. 427.
\textsuperscript{55} Cf. Majid Khadduri, \textit{Islamic Jurisprudence} p. 263.
Prophet said: Follow the same usage with them as you do with the People of the Book (ahl al-Kitāb). In this case, ʿUmar was reported as not having collected jizyah from the Magians except after ʿAbd al-Rahmān b. ʿAwf had told him what the Prophet did.

It is interesting to examine why, in cases of a single transmitter, ʿUmar asked for others who knew those hadiths. In justifying this, al-Shāfīṭī gives three reasons. First, ʿUmar might have been cautious, for even though a khabar al-wāḥid is a proof, a khabar related by two or three persons is better. Second, he might not have known the transmitter, so he suspended judgement before accepting it until someone else has testified to the personality of the transmitter. Thirdly, it might be that ʿUmar would not accept the transmitter's hadith, until he had found someone else whose hadith he would accept.

This statement can be referred to Abū Mūsā's case of isti'dhān in which ʿUmar asked him if he has anyone else to support him.

6.6.4 The Sunnah of the Prophet

Al-Shāfīṭī argues that the Prophet had sent many Companions to different territories to teach them about Islam on the basis that those Companions were thiqāh and truthful in his eyes and in the eyes of those to whom they had been sent. Therefore, if a hadith related by a single Companion is not considered as a proof, the Prophet would not have sent single Companions.

56 Al-Shāfīṭī, al-Risālah, p. 430.
57 Al-Risālah, paras. 1188-1198.
The authoritativeness of one *thiqah* transmitter can be seen in the event of the changing of the direction of the *qiblah*. While the congregation were performing prayer at Qubā', a messenger came to them telling that the direction of the *qiblah* had been changed. They immediately turned to the new direction. Al-Shāfi'i repeats this anecdote frequently emphasising that the Companions did not refuse to accept this *ḥadīth* simply because it was reported to them by only one person, or argued whether it had been reported by numerous people, or even preconditioned that if they had heard it themselves, they would accept it.

Al-Shāfi'i also quotes many Qur'anic passages which showed that Allāh had sent single messengers to certain nations. This demonstrates that they are a proof, and whatever they delivered from God is authentic and authoritative and no one can reject it on the premise that they are single individuals.

### 6.7 The Implication of *khabar al-Wāḥid*

Scholars differ as to whether or not *khabar al-wāḥid* engenders definitive knowledge as is the case with *khabar mutawāṭir*, or just probable knowledge (*ṣann*)? Their views can be divided into three categories.

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6.7.1 Zann

The majority of scholars hold that khabar al-wāḥid does imply a probable knowledge (zann) whether or not it is accompanied by a qarīnah (contextual support).

6.7.2 Definitive Knowledge (‘Ilm)

Most of the ahl al-ḥadīth, and the Zāhirīs hold that khabar al-wāḥid engenders definitive knowledge. It is reported that Ahmad b. Ḥanbal is believed to have held to this view whether or not there is a qarīnah. This report is criticized by Ibn Badrān al-Dawmī al-Dimashqī who says that this notion was wrongly ascribed to Ahmad b. Ḥanbal. In addition, Ibn Qudāmah notes a dispute about the narration of Ahmad concerning this. The majority of Ḥanbalites hold that khabar al-wāḥid does not engender definitive knowledge.

According to al-Ḥafnawi, the most correct view associated with Ahmad b. Ḥanbal is that the latter held that khabar al-wāḥid does engender definitive knowledge. Al-Ḥafnawī further elaborates the second opinion ascribed to the scholar which stipulates that khabar accompanied by qarīnah engenders definitive knowledge,

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63 Al-Ḥafnawi, Dirāsāt Uṣūliyyah fī al-Sunnah al-Nabawīyah. p. 171.
such as reports on the sighting of a new moon (ru'yat al-hilāl) and supported by Qur'ānic verses on the same issue.

Among the proofs substantiated by this group is the event of Qubāʾ and the Qur'ānic verse 6 of al-Hujurat. Referring to al-Hujurat: 6, they argued that this verse definitely shows the acceptance of khabar al-wāḥid is without any verification. If his khabar does not engender definitive knowledge, God will ask the reporter to verify until it brings about definitive knowledge. They argue that the fact that Allāh requires it to be put into practice (camal) necessarily shows the knowledge of its truth.

6.7.3 Definitive Knowledge If Accompanied by Circumstantial Evidence (Qarīnah)

According to some scholars like al-Rāzī, al-Āmidī, Ibn al-Hājib, Ibn al-Subkī and others, that khabar al-wāḥid will engender definitive knowledge if accompanied by qarīnah.

Al-Rāzī says that sometimes qarīnah does engender definitive knowledge. Those who investigate the customary practice ('urf) thoroughly will find that that there were no grounds for arguing the certainty of khabar except by qarīnah.

64 Al-Ḥafnawi, p. 172.
66 Al-Ḥafnawi, Dirāsāt Uṣūliyyah. p. 175.
The preferred notion of al-Āmidī is that khabar al-wāḥid will give definite knowledge if it has been accompanied by qarīnah. According to Ibn al-Ḥajib, khabar al-wāḥid reported by a just person will bring about definite knowledge (fīlm) on condition of an existing qarīnah.

6.8 Khabar al-Wāḥid and Preference

6.8.1 Khabar al-Wāḥid v “Umūm al-Balwā

Is it possible to use khabar al-wāḥid as an argument when it comes to a case which is of general interest or is well known among people?

The majority of usūlī scholars, al-Shāfī’ī and ahl al-hadīth have a view that the acceptance of khabar al-wāḥid and the argumentation concerning it is possible as long as its sanad (chain of transmitters) is correct.

Abū al-Ḥasan al-Karkhī of the earlier Ḥanafites and all of the later Ḥanafites hold the opposite view, i.e. they do not accept it and therefore it does not have any effect in law.

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71 Al-Ḥajawi had summarised Abū Ḥanīfah’s view on khabar al-wāḥid as follows. Abū Ḥanīfah actually put khabar al-wāḥid into effect (fīmal) on certain conditions that; a ṭawāf does not practice contrary to his transmission; that it would not be of the ‘umūm al-balwā; that it would not oppose ṣiyād and that its ṭawāf is faqīḥ. If all conditions are fulfilled, Abū Ḥanīfah would take it into account even if the hadīth is ḍaʿīf al-sanad. see al-Ḥajawī, al-Fikr al-Sāmi, vol. I. p. 356.

The first group adduces three pieces of evidence favouring their stand:73

i. that the text of ḥadīth concerning the acceptance of khabar al-wāḥid is muflaq and that there is no difference whether or not it involves a matter of ‘umūm al-balwā.

ii. that there is a consensus of the Companions on putting khabar al-wāḥid into effect on a matter which is of ‘umūm al-balwā. For instance, it is narrated from Ibn ʿUmar that he said, "we have been practising mukhābarah for forty years, we didn't think there was any harm in it until Rāfīʿ b. Khādij told us that the Prophet had forbidden it, therefore we withdrew from it".

The latter group argues that customary practice (ʿādah) does show superabundant transmission of the ‘umūm al-balwā. For instance, if touching the penis was something which invalidated purity (jahārah), the Prophet would have publicized it and would not have restricted it to single individuals. In other words, he would tell it to a number which is unquestionable, like the mutawātir, in order to avoid the invalidity of prayer for example. Therefore, according to them, the fact that this ḥadīth was only transmitted by a single person, despite the fact that it should have been narrated by many people, shows either the transmitter's falsehood, his negligence or the possibility that what he narrated had been abrogated.74

Disagreement on this principle affects many rulings of fiqh. Among these are;

73 Al-Khinn, Athar al-Ikhtilāf, pp. 426-7.

6.8.1.1 Nullifying \textit{Wuḍū’} by Touching Penis

The majority of \textit{fuqahā’}\textsuperscript{75} including al-Shāfi‘ī, Ahmad b. Ḥanbal, Dāwūd al-Ẓāhirī and others hold the view that touching one’s penis with one’s hand nullifies \textit{wuḍū’}.\textsuperscript{76} However, al-Shāfi‘ī restricts the condition to the touching of it with the palms of the hand.

Their argument is based on the \textit{ḥadīth} of Busrah bint Ṣafwān where the Prophet said, "Whoever touches his penis should not do the prayer until he has done \textit{wuḍū’}.

In another narration, she related that she had heard the Messenger of Allāh saying, “and the one who touches his penis shall take \textit{wuḍū’}.”\textsuperscript{77}

The Hanafites hold that touching the penis does not nullify \textit{wuḍū’}, based on the \textit{ḥadīth} of Qays b. Ṭalq b. ‘Alī where he asked the Prophet about whether or not one who touches his penis has to take \textit{wuḍū’}.\textsuperscript{78} The Prophet was said to have replied: "No, it isn’t necessary because [penis] is a part of your body”.\textsuperscript{80} Therefore, they rejected the \textit{ḥadīth} of Busrah bint Ṣafwān because it was a \textit{khabar} reported by a single person on a matter of \textit{‘umūm al-balwā’}.\textsuperscript{81}

To justify this, al-Sarakhsī, in his \textit{Mabsūj}, cites Yahyā b. Ma‘īn that the \textit{ḥadīth} of Busrah is unreliable on the grounds that it is illogical for

\textsuperscript{75} Al-Khinn, \textit{Athar al-Ikhtilāf}, p. 468.


\textsuperscript{77} text "\textit{man massa ḍhakarah fa-lā ṣuṣallī ḥattā yatawaḍa’}”.

\textsuperscript{78} “\textit{wa yatawaḍa’} ṣ\textit{ṣa massa al-dhakar}”.

\textsuperscript{79} Ibn Rushd, \textit{Bidāyat al-Mujtahid}, vol. 1, p. 28.

\textsuperscript{80} Riwayat al-Nasā‘ī wa Ḥamad.

\textsuperscript{81} Al-Khinn, \textit{Athar al-Ikhtilāf}, p. 469.
the Prophet not to have said it in the presence of his great Companions for none of them narrated it. Furthermore, it was narrated by Busrah, a woman, whereas the Prophet was very shy with unmarried woman.\footnote{Al-Khinn, Athar al-Ikhlaš, p. 469 citing Al-Sarakhsi, al-Mabsūf, vol. I, p. 66.}

6.8.1.2 Reciting the Basmalah Not Loud\footnote{For details of disagreement of whether or not basmalah should be recited together with al-Fātiha, see Ibn Rushd, Bidāyat al-Mujtahid, vol. I, pp. 89-90.}

According to al-Shāfi'i\footnote{For instance al-Shāfi'i, al-Sunan al-Ma'thūrah, ḥadīth no. 40-43.}, those who perform prayer wherein al-Fātiha is recited together with other sūrahs have to raise their voice during the recitation of Basmalah (Bismillāh al-Rahmān al-Rahīm) as well as the rest of al-Fātiha. He bases his argument on the ḥadīth of Anas b. Mālik that, "Mu'āwiyah had performed the ṣalāh at Madīnah, in which he raised his voice. After that, he recited Bismillāh al-Rahmān al-Rahīm for Umm al-Qur'ān, but he did not recite basmalah for the sūrah after al-Fātiha until he had finished it, and he did not say the takbīr when he was about [to change the position] until he had finished that ṣalāh. When he gave salām, those of the muhājirīn who heard that shouted at him: O Mu'āwiyah! Did you steal the ṣalāh or have you forgotten? When he performed ṣalāh after that, he recited Bismillāh al-Rahmān al-Rahīm for the sūrah which is after the al-Fātiha, and said takbīr when he intended to perform sujūd".\footnote{Al-Shāfi'i, al-Umm, vol. 1, p. 108; al-Sunan al-Ma'thūrah, p. 138, ḥadīth no. 43.}
There is another hadith related by Qatadah which seems to contradict the above hadith. He says, the fact that the Prophet, Abū Bakr and 'Umar were starting the recitation with al-ḥamd lillāh rabb al-‘ālamīn. This has been interpreted by al-Shāfi‘ī to mean that they started reciting Umm al-Qu‘ān before they recited surahs after it. It does not mean that they were abandoning Bismillāh al-rahmān al-rahīm.86

The Ḥanafites hold, based on many hadiths that the basmalah should be recited silently (s’r).88 One of the hadiths was narrated by Anas, who said: "I performed prayer with the Prophet, Abū Bakr, 'Umar and 'Uthmān. I did not hear any one of them recite Bismillāh al-rahman al-rahim".89 In another version, "I performed prayer behind Abū Bakr, 'Umar and 'Uthmān. They were not raising the voice for Bismillāh al-rahmān al-rahīm".90

They reject the hadith used by al-Shāfi‘ī to support his view because it is a khabar reported by a single person on a matter of 'umūm al-balwā.91

Mālik in al-Muwattā' holds that basmalah should not be recited aloud nor silently. It means that basmalah should not be recited at all in obligatory prayers (salāh maktūbah) based on a hadith of Anas b. Mālik in which he said, "I stood for prayer behind Abū Bakr and 'Umar. All of them did not recite basmalah when about

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86 Al-Umm. vol. I. p. 108.
89 Related by Ahmad and Muslim.
90 Related by Aḥmad and al-Nāṣir.
to start the prayer". However, he allows *basmalah* to be recited in recommended prayers (*nāfilah*). This is according to him the *sunnah* which he found the people of Madīnah followed.  

6.8.1.3 Raising Hands During *Rukūn* And After

According to al-Shāfi‘ī, Abū ʿAbdullāh ʿAbd al-Razzāq, Abū Thawr, al-Zāhirī and the majority of *ahl al-ḥadīth*, those who perform prayer should raise their hands during *rukūn* and after the *rukūn*, the way they do during *takbīrat al-iḥrām*.

Their proof for that is a *ḥadīth* of Ibn ʿUmar who said that, "when the Prophet stood for the prayer, he would raise his hands until they were at the level with his two shoulders, then he said *Allāh Akbar* (*takbīr*). When he wanted to bow (*rukūn*), he raised his hands in the same manner. And when he raised his head from *rukūn*, he also raised his hands, and he said "*samiʿa Allāh liman ḥamidah rabbānā wa laka al-ḥama*".

Abū Ḥanīfah and his disciples hold the view that there is no such raising of the hands except during *takbīrat al-iḥrām*. They based this on the *ḥadīth* of Ibn Masʿūd in which he said that, "I will demonstrate to you how the Messenger of Allāh

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performed the prayer. Then he performed the prayer without raising his hands but only once.97

Mālik holds that one can raise his hands a little bit in the beginning (iftitāh) of the prayer. There is nothing to do with the raising of hands during bowing (khafū) and after rukū.98 He bases his judgement on the basis of hadīths of Ibn ʿUmar99 and Ibn Masʿūd.100

3.8.2 The Conflict Between ʿAmal of Rāwī and His al-Ḥadīth

A rāwī’s practice contradictory to what he transmitted is also a disputed matter among scholars. This is illustrated when a rāwī continues to practise the opposite of what he narrated from a ḥadīth. It would not be any problem if the transmitter practised the contrary prior to his transmission of the ḥadīth, for there is a possibility that he had reverted from what he had practised after he became aware of the ḥadīth.

Those who prefer the ḥadīth rather than the rāwī’s practice argue that the proof would be only to what the Companion had narrated, not to what he had said or done. The reason for this is that his saying or action might be his interpretation or ijtiḥād, whereas, according to al-Shāfiʿī, the narrator’s ijtiḥād does not bind Muslims.

99 The chain of transmitters Mālik - Ibn Shihāb - Ṣālim - Ibn ʿUmar, “that the Prophet when he starts the takbīr of the prayer, he rises his hands up to his shoulders”. See Mālik, al-Mudawwanah al-Kubrā. vol. I., p. 68.
100 The chain of transmitters is Wākī - Sufyān - al-Aswad and ʿAlqamah, they said that Ibn Masʿūd said that “I will demonstrate to you how is the Prophet's prayer. Then he did his prayer without raising his hands except once”. Mālik, al-Mudawwanah al-Kubrā. vol. I., p.69.
He emphasises that he would not abandon the *hadith* because of the practice of such a man, and, in fact if he was the narrator's contemporary, he would argue with the latter.

On the other hand, those who do not accept it argue that if contradiction is a real matter, such as when the *hadith* has been abrogated, the argumentation with it is invalid. From another aspect, however, if the contradictory practice was a result of the narrator's lack of concentration in the *hadith*, or his forgetfulness, his transmission would not be accepted, and he is no longer considered trustworthy. Therefore, his transmission would not be accepted.

6.8.2.1 Marriage Contract Without A Guardian (*Wali*)

As far as a free, virgin and mature women who married herself without a consent of her guardian is concerned, *fuqaha* disagree about its validity.

The majority of *fuqaha* hold that a marriage without a guardian is invalid because of a *hadith* related by c`Ā'ishah in which the Prophet had said, "whenever a woman gets married without the consent of her guardian, her marriage is invalid, her marriage is invalid, her marriage is invalid...". 101

Most Hanafites hold the view that the contract of marriage of a widow (*thayyib*) without a guardian is valid based on a *hadith* that, "a widow is more entitled of her self than her guardian". 102 They reject the *hadith* related by c`Ā'ishah because c`Ā'ishah as the transmitter, had practised the contrary of it. In fact, she had married

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101 See Abū Dāwūd, *(nikāh)* 19; al-Tirmidhī, *(nikāh)* 14; al-Dārimī, *(nikāh)* 11.

off her niece (bint ḥādhā), Hafṣah bint ʿAbd al-Raḥmān to al-Mundhir b. al-Zubayr without the consent of her guardian for the guardian was absent.

6.8.2.2 Washing Containers in Which Dogs Have Licked

How many times should a container be washed to purify (jahārah) it after it has been licked by a dog? The majority of fuqahā' including al-Shafī‘ī and Aḥmad b. Ḥanbal hold the view that it should be washed seven times in which one of them should be of sand. Their argument about the number of washings is based on the ḥadīth of Abū Hurayrah who related that the Prophet said, "when a dog licks one of your containers, he should pour it out, and then wash it seven times".103

In this respect, the Ḥanafites104 require it to be washed only three times instead of seven for they view the hadīth of Abū Hurayrah as having no weight since in their eyes the rāwī, Abū Hurayrah himself practised the contrary. It is reported that Abū Hurayrah washed it just three times.105

According to Mālik, this act of washing the container is unjustifiable (ghayr muʿallalah), for he believes that the water the dog has licked is not najis.106 Thus, according to him, one can use it for wuḍū' and his prayer will be valid. As far as this

is concerned, Mālik acknowledges the existence of that ḥadīth, but he does not know what is the real meaning of it.107

3.8.3 Khabar al-Wāḥid v Qiyās

There arise questions as to whether khabar al-wāḥid takes precedence over qiyās or the other way round in the case when khabar al-wāḥid contradicts qiyās?

Al-Shāfī‘ī, Aḥmad b. Ḥanbal and the majority of ahl al-ḥadīth give preponderance (tarjih) to khabar over qiyās whether a transmitter is knowledgeable (faqīh) or not on condition that he must be reliable and trustworthy. The argument adduced to favour them is what the Prophet said to Mu‘ādh when he sent him to Yemen, "bima taqūfī, qāl bi kitāb Allāh, qāl fa‘in lam tajīd, qāl bi sunnata Rasūl Allāh, qāl fa‘in lam tajīd, qāl ajtahid bi ra‘yī wa lā ālī". It is clear from the above ḥadīth that the position of ʿamal with qiyās is later than the sunnah of the Prophet, without distinguishing between a mutawātir or āḥād, and that the Prophet has confirmed the hierarchical order of the sources of law.

They also put forward the ijmā‘ of the Companions that they will abandon their ijtihād based on qiyās the moment they heard khabar al-wāḥid with regard to a certain matter, for instance, such as Abū Bakr, ʿUmar and Ibn ʿUmar who abandoned their ijtihād when a khabar from the Prophet became available to them.

They also argue that the source of khabar can be relied on because it is a saying of the Prophet in which there is no possibility of a mistake occurring. However,

there is a *shubhah* (ambiguity) in terms of transmission (*naqîl*). If this ambiguity did not exist, then *khabar* would be a decisive proof.

The Hanafites hold that it is not an obligation to apply *khabar al-wahîd* in law if it contradicts *qiyaṣ* and its transmitter is not *faqîh*. According to them if it is a transmission of those who are not knowledgeable on *fiqh*, but they are well-known as just (*ʿadâlah*) and *ṣabîf* such as Abû Hurayrah, Anas b. Mâlik, and their transmissions agree with *qiyaṣ*, their transmission will be acted upon. And if it opposes *qiyaṣ*, it will be abandoned in the case of emergency (*darūrah*).

6.8.3.1 *Muṣarrāh*

*Fuqahāʾ* disagree regarding the value of *muṣarrāh*, and whether if a buyer can detect certain defects, he has the right to return the goods (*khiyâr*)? If we say that he has the right to do so, what thing should he give to the seller instead of the milk he has taken?108

The majority of *fuqahāʾ* hold the view that a buyer has the right to choose whether to continue or to terminate the contract, and he also has to pay one *ṣârîr* of dates instead of the milk. They adduce a proof of a *ḥadîth* related from Abû Hurayrah wherein the Prophet said: "Don't make a *taṣriyah* on camels and sheep, so, he who bought it has two choices (*khayr al-naẓarayn*) after he has squeezed it; if he is

satisfied he may take it, and if he dislikes it, he shall return it together with one ṣār of dates”.

The Ḥanafites hold a different view. To them the buyer has no right to return it because of the defect of the practice of taṣriyah, and it follows, therefore, that he is also not required to pay one ṣār of dates. They reject a ḥadīth of Abū Hurayrah, arguing that it is a khabar al-wāḥid related by him. According to them Abū Hurayrah is unlike Ibn Masʿūd and other Companions who are known as fuqahā'. Therefore they do not take into consideration as to what is related from him which contradicts qiyās.

6.8.3.2 Khiyār al-Majlis

Al-Shāfiʿī, Ḥanbal and the fuqahā' of ahl al-ḥadīth hold that two parties to a contract have a right of khiyār during the contractual session for as long as they have not dispersed. If they have dispersed, the contract will be binding on condition that there is no khiyār al-sharṣ. This view is derived from the ḥadīth related by Ibn ʿUmar that the Prophet said: “If two men make a contract of sale, one of them has a right of khiyār as long as they have not dispersed, they are together [in contract session], and one of them give an option to the other; if they conclude the contract of sale on that condition, the contract of purchase is binding”.

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109 See al-Bukhārī, (buyūt) 64; Muslim, (buyūt) 1; Abū Dāwūd, (buyūt) 47; Nasāʾī, (buyūt) 14; Muwatta', (buyūt) 96.

110 See al-Bukhārī, (buyūt) 19, 22, 42, 44, 46-7; Muslim, (buyūt) 43, 46-7; Abū Dāwūd, (buyūt) 51’ al-Ṭirmidhī, (buyūt) 26; Nasāʾī, (buyūt) 4, 8-10, 82; Ibn Mājah, (tiğārāt) 17; Dārīmī, (buyūt) 15; Muwatta', (buyūt) 89.
Malik, Abu Ḥanīfah and his disciples hold the view that there is no such khyār during the contractual session. If an offer and acceptance happens, then the sale is binding. They do not take this hadīth into account because it is a khabar al-wāḥid which contradicts qiyās.

6.8.4 The Restriction (Takhsīs) of a General Meaning in the Qurʾān by Khabar al-Wāḥid

The question is whether or not it is possible that the generality (ʿumūm) of the Qurʾān can be specialized (takhsīs) by a khabar transmitted by single transmitters?

Al-Juwaynī, in al-Burhān cites three different views, while al-Ghazāli, in his al-Mustasfā records four. In the first view, they believe that the generality of the Qurʾān cannot be specified by a khabar related by a single authority on the basis that the former is indisputed (qafī al-thubūt) in its source, while the nature of the latter is such that it is possible for any mistake to have happened (zānnī al-thubūt). Therefore, by producing this simple analogy, they make a decision that the established and indisputable source, i.e. the Qurʾān, cannot in any way be specified by another source whose nature is arguable, i.e. khabar al-wāḥid. To conclude, according to them the generality of the Qurʾān is superior to khabar al-wāḥid which seems to play a

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112 Among them are the Ḥanafites. see Muhammad Abū Zāhrāh, al-Shāfiʿī; p. 202.
takhsis role. To counter-argue, al-Ghazālī produces four arguments to refute this view.\footnote{113}{See Al-Mustasfā p. 238.}

The second view is that of the fuqahā' who maintain the doctrine that khabar al-wāḥid may specify the general terms in the Qurān. Al-Juwaynī,\footnote{114}{Al-Burhān. vol. 1. p. 426-7.} as well as al-Ghazālī\footnote{115}{Al-Mustasfā. p. 249.} do not mention the name of any person holding the above view. However, al-Juwaynī prefers (tarjih) this view arguing that the ‘amal which is required is based on an outward possibility (zaḥīr muḥtami’il). The reason is that, it is definitely certain that by referring to the Companions’ sīrah, their ‘amal was based on conjecture i.e khabar al-wāḥid transmitted by a reliable person in interpreting (tafsīr) the ambiguities (muqmal) of the Qurān.

Al-Ghazālī puts forward pieces of evidence that the Companions held this view when Abū Hurayrah narrated a ḥadīth that a man cannot be married to a woman and her aunt at the same time, nor does it matter whether the aunt is on her father’s side (’ammah) or on her mother’s side (khālah). So, in their eyes, the ḥadīth of Abū Hurayrah is considered as specifying the verse al-Nisā’:24, "it is allowed to you what is beyond that". It also happened to verses of inheritance where the ḥadīth of Abū Hurayrah which specifies that it would not be possible for murderer, slave and those who are of different religion (ahl al-millatayn) to inherit. After giving instances which support this group, he criticises the above arguments that they had abandoned the generality of the Qurān just merely on the grounds of the saying of transmitter.
However, according to him, it might be that in their eyes the transmitter's report is correct based on circumstantial evidence (qarınah) and proofs other than merely his ownsaying.\footnote{116}{Al-Mustasfā. p. 249.}

Al-Qaḍī Abū Bakr al-Bāqillānī holds that there should be a suspension of judgement (waqf)\footnote{117}{Al-Juwaynī, al-Burhān. vol. I. p. 428; Al-Ghazālī, al-Mustasfā. p. 249.} if a khabar contradicts the expression of the Qur'ān. The reason given is that while the source of khabar has some sort of conjecture (zann), the meaning of the generality of the Qur'ān too is open to conjecture. Therefore, the meaning of the Qur'ān is similar to the source of khabar in terms of contradiction. According to him, the suspension of judgement would only take place in the disputed position and the rest of the general expression of the Qur'ān should proceed.\footnote{118}{Al-Juwaynī, vol. I. p. 327.}

According to al-Shāfī‘ī in his al-Risālah, takhsīs of the generality of the Qur'ān by khabar al-wāḥid is possible in any case. He lists about seven cases in which the generality of the Qur'ān is specified by khabar. For instance, the Qur'ān, al-Nisā': 11-12, states the share of every one of ashāb al-furūḍ (individuals whose share of inheritance has been prescribed). According to him,\footnote{119}{Al-Risālah. para. 216.} these two verses are general, and then were specified by the khabar that the murderer of the deceased and those of different religions are excluded from inheritance.

The same also happens in the case of flogging (jald). According to the Qur'ān, al-Nūr: 25, those who commit adultery (zinā) would be flogged a hundred lashes...
regardless of whether they are unmarried (bikr) or not (muḥṣan). As far as married persons are concerned, the Prophet, instead of flogging, stoned a married person who committed adultery. This shows that the penalty of a hundred lashes is particularly prescribed to unmarried persons.\textsuperscript{120}

\textsuperscript{120} Al-Risālah paras. 225-7; see also Abū Zahrah, al-Shāfi‘ī, p. 202.
CHAPTER SEVEN: AL-SHĀFI‘Ī AND MURSAL ḤADĪTHS

7.1 Definition of Mursal

Broadly speaking, ḥadīth in terms of its isnād (chain of transmitters) can be divided into two categories: uninterrupted (muttaṣil) and interrupted (munqatī'). An uninterrupted ḥadīth is a ḥadīth whose isnād is continuous from later authorities up to the ultimate source, the Prophet. The transmitters are from among the tābi‘īn- the šaḥābah- the Prophet.

On the other hand, an interrupted ḥadīth1 is a ḥadīth whose isnād has been interrupted, such that a later authority relates directly from the Prophet without quoting any intermediate authorities.

Mursal is in fact a kind of munqatī’ ḥadīth.2 It is defined as a ḥadīth in which one or more of narrators were omitted between them up to the Prophet.3 In other words, mursal in the technical terminology denotes a ḥadīth related by a tābi‘ directly from the Prophet in which the Companions, who are the authorities immediately prior

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1 Muhammad ʿAjjaṯ al-Khaṭṭīb in his Uṣūl al-Ḥadīth- ʿUlūmuh wa Muṣṭalahuḥ categorises daʿīf ḥadīth into two categories. First, an interrupted sanad, and second an uninterrupted sanad. The first kind is the mursal, munqatī, muʿaḏḏal, and mudallās. Whereas the second kind is the muḍāṣaf, muṣṭarib, maqīth, shādīḥuḥ, munkar, maʿrīḵ and mafrūḥ. [See Muhammad ʿAjjaṯ al-Khaṭṭīb, Uṣūl al-Ḥadīth. 3rd. ed. Dimashq: Dar al-Fikr, 1975. pp. 337-348.


to the Prophet are omitted, such as a ṭābīʾ, regardless of his seniority⁴ attributed directly to the Prophet the latter sayings, deeds or tacit approval (taqrīr).⁵

The omission of the Companion in the isnād has a great effect in hadīth criticism or 'ilm al-jarḥ wa al-ta’dīl. The fundamental principle by which such a hadīth would be accepted in the eyes of ahl al-hadīth, is for the transmitter (rāwī) in the first place, to be ʿadl. In other words, if a transmitter of such a hadīth is known, those who are interested in this discipline could make a judgement as to whether he is ʿadl or not. On the contrary, a mursal hadīth lacks one of its intermediate narrators and the missing personality could be unknown (majhūl). Therefore, this hadīth will be suspended before it being either accepted or rejected.⁶

There are a number of reasons why such a rāwī is omitted from the authorities from whom the hadīth is related. It may be that if the rāwī is mentioned, he will not be accepted, or that a later rāwī may not like to narrate the hadīth from the earlier rāwī.⁷

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⁴ Al-Khatīb, Uṣūl al-Hadīth, p. 337.


7.2 Are Mursal Ḥadīths A Decisive Argument?

The above statement is crucial for discussions among scholars that will finally determine whether or not it has an effect on Muslim law. The question is, whether or not mursal ḥadīth is a decisive argument since some scholars accept it, while others do not.

As a focus of study, al-Shāfī’ī neither accepts nor rejects it totally. There are, according to him, reservations to be observed prior to the acceptance of such a mursal ḥadīth. To him, only marāṣil (sing. mursal) of kibār al-Tābī‘īn (older successors) will be accepted. The reason why he distinguishes between kibār al-tābī‘īn and the others is the former's less possibility of ihālah (changing the meaning). He claims that none of the mursal other than those of the kibār al-tābī‘īn has been accepted for a number of reasons.

Shākir, a contemporary scholar disagrees with al-Shāfī’ī regarding the acceptance of mursal, whether or not it is of kibār al-tābī‘īn. This disagreement is basically due to the presence of unknown authority in the isnād. He justifies this by saying that the authority in mursal is an unknown (majhūl) whether he is ‘adl or not, whereas the principle in ‘ilm al-ḥadīth, is that such a ḥadīth will only be a proof when the ‘adālah of the transmitter is known. Otherwise, the ḥadīth will be rejected. To him, this principle is applicable to all kinds of munqati’.11

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8 Abū Zahrah, al-Shāfī’ī Hayātuh wa ‘Aṣruh-Årā’uh wa Fīqhuh, p. 227
9 Al-Risālah, para. 1286.
10 Al-Risālah, para. 1277.
In his *al-Iḥkām fī Uṣūl al-Ḥalām*, Ibn Ḥazm strongly rejects *mursal* hadiths and vehemently attacks those who accept them.\(^{12}\)

As far as scholars' views about the acceptability of *mursal* are concerned, their views can be divided into three categories.\(^{13}\)

i. *Mursal* is a very weak *ḥadīth* (*ṣaʾīf mutlaqan*) and it does not constitute a proof. This view is held by the majority of *ahl al-ḥadīth*, jurists as well as al-Khaṭīb al-Baghdādi,\(^{14}\) al-Nawawī, Ibn Ḥazm\(^{15}\) and others.

ii. It is acceptable and carries weight (*ḥujjah*) in jurisprudence for as long as the *mursil* (the *rāwi* who practises *irsāl*) is reliable and trustworthy. This view is attributed to Mālik, Abū Ḥanīfah\(^{16}\) Aḥmad b. Ḥanbal, Ibn al-Qayyim, Ibn Kathīr\(^{17}\) and others.\(^{18}\)

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Muḥammad 'Ajzā' al-Khaṭīb in *Uṣūl al-Ḥadīth* mentions that there are about ten points of views among scholars concerning *mursal* hadith. However, he states that the popular views are only three. See *Uṣūl al-Ḥadīth-ULUūmuh wa Muṣṭalāhuh*. p. 338.


The majority of scholars hold that *mursal* hadiths are considered as a decisive proof on certain conditions. They are for instance al-Shāfi‘i, al-Bayhaqī, al-Baghdādi, and others.¹⁹

### 7.3 Al-Shāfi‘i’s Attitude Towards Mursal

Al-Shāfi‘i is reported to have cited a *mursal* hadīth, which he claims none of the scholars has accepted. But he qualifies that this hadīth is not confirmed as definitely coming from the Prophet. The hadīth is as follows;

"Sufyān informed us, from Muḥammad b. al-Munkadir, that a man came to the Prophet and said: O Apostle of God, I have property (māl) and family and also my father. However, he wants to take my property to feed his family. Then the Apostle of God said: you and your property belong to your father".²⁰

Even though al-Shāfi‘i’s judgement on Muḥammad b. al-Munkadir as appears in this isnād is that he is a very reliable person, he is reluctant to accept the latter hadīth because the narrator from whom al-Munkadir related is unknown to him.²¹

Al-Shāfi‘i highlights another hadīth in order to show that it is rejected because of it being *mursal*.²² "A trustworthy person (thiqah)²³ informed us, from Ibn Abī Dhi‘b from Ibn Shihāb that the Apostle of God commanded a man who laughed during the

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²⁰ *Al-Risālah*. paras. 1290-1299.
²¹ *Al-Risālah*. para. 1290-1297.
²² In *Manāqib al-Shāfi‘i*, there is a statement which clearly indicates al-Shāfi‘i’s strong objection to the acceptance of *munqatî* hadīth (mursal). In other words, *munqatî* hadīth would not be a proof (*hujjah*). See al-Bayhaqī, *Manāqib al-Shāfi‘i*. vol. I. p. 493.
²³ Shākir citing al-Zayla‘i*, *Nasab al-Rāyah*. vol. I, p. 52, that the *thiqah* (reliable person) in this isnād is Yahyā b. Ḥisān. See *Al-Risālah*. p. 469, note no. 2.
prayer to repeat his *wuḍū’* and *ṣalāh‘*.

It is obvious that Ibn Shihāb did not relate the above *ḥadīth* directly from the Prophet, because he was a *tābi‘*.

Al-Shafī‘i’s view on the *mursal* *ḥadīth* can be described as moderate one. He neither accepts nor rejects it. There are some reservations before such a *mursal* *ḥadīth* is recognised. Principally al-Shafī‘i does not accept *mursal* as a proof in jurisprudence. He shows this in his *al-Risālah*. It is understandable that in most of his works, he emphasizes the paramount importance of the continuity of *isnād* and the reliability and trustworthiness of *ḥadīth* transmitters as shown in the case of the *mursal* above wherein the integrity of the transmitters is not known. However, there is room for *mursal* to be accepted by al-Shafī‘i if certain conditions are fulfilled.

In this respect, al-Shafī‘i divides *munqatī* *ḥadīth* or *mursal* into two categories. First, *mursal* of senior *tābi‘īn* whose narration is mostly originated from the Companions and second, *mursal* of junior *tābi‘īn* whose narration is mostly taken from the *tābi‘īn*.

24 *Al-Risālah*, paras. 1299-1300.


26 It is surprising that such a scholar as al-Khaṭīb al-Baghdādī in his *al-Kifāyah* mentions that al-Shafī‘i is one of those who reject *mursal* without substantiating the former’s position. Such a statement is confusing. If al-Baghdādī had referred to *al-Risālah*, he would not have made such statement. See al-Khaṭīb al-Baghdādī, *al-Kifāyah*. p. 48. The same also happens to Muhammad ʻAjjāj al-Khaṭīb in his *Uṣūl al-Ḥadīth-ʻUlūmuh wa Muṣṭalahaḥ*. p.338.

27 There is another *mursal*, *Mursal al-Ṣaḥābah*. There is no polemic about it, because it is generally accepted that all the Companions are *‘adl*.

28 Al-Shafī‘i does accept *mārāsīl* of junior *tābi‘īn*. For details of the reasons see *al-Risālah*. p. 367.
7.4 Mursal of Senior ṭābi‘īn

In *al-Risālah*, al-Shāfi‘ī lays down a few conditions before *mursal* of senior ṭābi‘īn is taken into consideration. They are:

i. the *mursal* is supported by a more reliable *ḥadīth* with a continuous *išnād*;²⁹

ii. another *mursal* is related by another ṛawī on the authorities of other than the former *mursal*’s shuyūkh;³⁰

iii. it is supported by the opinion of the Companions (*qawl al-Ṣahābī*);³¹

iv. the *mursal* has been approved by the ‘ulamā‘ and a number of them are known to have relied upon it;³²

v. it is known of the ṛawī who practises *irsāl* that he would not relate it from those who have a weakness or other.³³

According to al-Shāfi‘ī, if one of the above conditions corroborates the *mursal ḥadīth*, it will be accepted and become an argument. On the other hand, if none of the above-mentioned conditions exists, the *mursal* would have no value in the eyes of al-Shāfi‘ī. The conditions which he laid down have a significance. A hierarchical order indicates the level of the *mursal*’s authenticity. For example a *mursal* supported by other *muttaṣīl ḥadīth* is better than other *mursals*.³⁴

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³⁰ *Al-Risālah*. p. 462.

³¹ *Al-Risālah*. p. 462.

³² *Al-Risālah*. p. 463.

³³ *Al-Risālah*. p. 463.

As far as the first condition is concerned, scholars criticize the way al-Shāfi‘ī puts it. According to them, what will constitute an argument is the hadīth with continuous isnād that supports the mursal. Therefore, it is meaningless for al-Shāfi‘ī to put that condition.35

It is also relevant to mention here regarding the hadīth of al-yamīn ma‘ al-shāhid as cited by al-Shāfi‘ī in al-Umm.36 After producing the hadīth with its full isnād, some of his contemporaries attack him claiming that his argument is a mursal hadīth. In counter-attack, al-Shāfi‘ī argues that if the hadīth of al-yamīn ma‘ al-shāhid is considered as a mursal hadīth, there is yet another hadīth with continuous isnād which supports the former.37

According to al-Ḥajawī,38 al-Shāfi‘ī is considered the first jurist who refutes or attacks the acceptance of mursal hadīth as an argument. This is opposed to Mālik b. Anas, al-Thawrī and their contemporaries who used it as arguments. Al-Ḥajawī bases his allegation on reference to the epistle of Abū Dāwūd to the people of Makkah.39

35 Kamali Mohammad Hashim, Principles of Islamic Jurisprudence, pp. 100-1.


37 Al-Shāfi‘ī, al-Umm. vol. VII. p. 7.


7.5 Scholars' Views About al-Shafi'i's Attitude Towards Mursal\textsuperscript{40}

Having elaborated what al-Shafi'i has mentioned about \textit{mursal \textit{hadith}}, one might question oneself regarding al-Shafi'i's viewpoint on \textit{mursal}. Does it constitute an argument or does al-Shafi'i accept \textit{mursal} in determining rulings in Islamic jurisprudence?

There is no consensus among scholars regarding the above matter. Their views on the subject can be divided into three categories;

i. They believe that al-Shafi'i does not accept \textit{mursal} and does not consider it as an argument, regardless of whether they are \textit{marāṣīl} of \textit{kibār al-tābī'in} or of \textit{ṣīghār al-tābī'in}.\textsuperscript{41}

ii. Some\textsuperscript{42} postulate that he would accept only the \textit{marāṣīl} of Ibn al-Musayyib. This is inferred from his statement, "a \textit{mursal} of Sa'id b. al-Musayyib is a sound one (\textit{ḥasan}) in our view".\textsuperscript{43}

\textsuperscript{40} Al-\\n\textsuperscript{41}Al-Ghazālī, \textit{al-Musta\textsuperscript{s}a\textsuperscript{g}a}. p. 134 cites the views of Abū Ḥanīfah, Mālik and the majority of those who accept \textit{mursal}, whereas it is refuted by al-Shafi'i. Naḥrawi holds that al-Shafi'i does not accept \textit{mursal} or put it into \textit{a\textsuperscript{m}al}, and does not consider it as an argument. He derives this from the word "we prefer" (\textit{a\textsuperscript{h}hab\textsuperscript{b}a\textsuperscript{d}}). see Naḥrawi, \textit{al-Imām al-Shafi'i}, pp. 368-369; al-Nawawī, \textit{Ṣaḥīḥ Muslim bi Sharh al-Nawawī}. vol. 1., p. 30.

\textsuperscript{42} Naḥrawi, p. 366; Muhammad al-Khuţārî Bek, \textit{Uṣūl al-Fīqh}. p. 229.

\textsuperscript{43} Ibn Abi Ḥātim al-Rāżī, \textit{Ādāb al-Shafi'i}, p. 232; al-Shafi'i, \textit{Mukhtār ar-Munāzīr (bab al-ribā)}. Al-Shafi'i in another place mentions that "\textit{mursal} of Ibu al-Musayyib in our views is a decisive proof (\textit{ḥujjah})", al-Sayrawān, \textit{His Introduction to al-Marāṣīl li Abî Dāwūd}. p. 34 citing al-Shafi'i.
They believe that al-Shafi'i would not put mursal into effect (ʿamal) unless it is narrated by reliable transmitters like Ibn al-Musayyib for ḥadīths of Ibn al-Musayyib are considered as musannad ḥadīth, or unless there is a supporting ḥadīth. In this case, the combination of mursal and supporting ḥadīth will constitute an argument.45

The different views about al-Shafi'i’s perception on mursal resulted from words or terms whose expressions are vague and interpretable, such as that of, "we prefer to accept his mursal".46

In my opinion, al-Shafi'i does accept or put mursal into effect (ʿamal). Firstly, it is meaningless for him not to accept it because he has laid down pre-conditions for its acceptance. Though it is within our knowledge that he basically rejects mursal, the fact that he has laid down the conditions suggests that he also accepts it.

Secondly, the phrase "we prefer to accept his mursal" shows a tendency to accept rather than to reject them.

Thirdly, a cross-reference to his writings shows that there are several instances where he applies mursal as an argument or uses it as a supporting argument.47

Fourthly, al-Shafi'i himself admits that he several times produces specimens of the interrupted ḥadīth (munqatī'). This, however, does not necessarily mean that he relates munqati' ḥadīths for he claims that he had heard all those ḥadīths in the

44 Al-Shafi'i accepts the marāṣil of Ibn al-Mussayib, because he deduces the latter’s ‘ādah is that he only relates from a trustworthy person. See Ibn Abi Ḥātim al-Rāzī, Ḧadīth al-Shafi'i wa Manāqibuh. p. 232-3.
46 Al-Risālah. p. 464, "wa ṣadū waṣīdat al-dālā'īl bi ṣāḥibat ḥadīthūh bimā waṣāfū al-ḥarbūn 'an naqba al-mursalāh".
form of muttaṣil or mashhūr.⁴⁸ He justifies this by clarifying that he tries to avoid writing down hadīth which he is not well versed in. It is also due to the loss of some of his books.

⁴⁸ Al-Risālah. p. 431.
CHAPTER EIGHT: THE SCIENCE OF IKHTILĀF AL-ḤADĪTH

8.1 Definition

Ikhtilāf al-ḥadīth is a science in which the so-called contradictory ḥadīths are reconciled (tawfiq) or gathered together (jamā'). This reconciliation and harmonization could be done by means of specifying the general (takhṣīṣ al-ʿāmm) or taqyīd al-muṭlaq or by considering the differences of events. It also explains (bayān) and interprets (taʿwīl) the ambiguities surrounding the Prophetic traditions whilst not contradicting other ḥadīths.

Kitāb Ikhtilāf al-Ḥadīth of al-Shafī‘ī is considered the oldest manual dealing with the subject. However, it does not encompass all apparent contradictory ḥadīths. He only mentions some ḥadīths and tries to elucidate ways to reconcile them as a guideline for those who came after him.

Through his Ikhtilāf al-Ḥadīth, al-Shafī‘ī demonstrates his expertise on the science of ḥadīth. He is considered as the pioneer who explored in detail the status of apparently contradictory ḥadīths and their reconciliation. Through his writings, al-

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1 This science is also called Mushkil al-Ḥadīth, Taʿwīl al-Ḥadīth, Taṣfīq al-Ḥadīth. All of these connote the same subject. See al-Khatib, Muhammad al-ʿAjjaj, Uṣūl al-Ḥadīth. p. 283.

2 Al-Khūlī, Muhammad ʿAbd al-ʿAzīz, Miṣfāh al-Sunnah, Beirut, 1990, p. 159; al-Khatib, Muhammad ʿAjjaj, Uṣūl al-Ḥadīth ʿUlūmuh wa Muṣṭalahuh. p. 283.

3 Al-Khatib, Muhammad ʿAjjaj, p. 283; Ibn Khaldūn, al-Muqaddimah. pp. 63-5.

4 Al-Khatib, pp. 284-5.

Shafi' lays down guidelines on how to overcome these apparent contradictions. In *al-Risālah* and especially *Ikhtilāf al-Ḥadīth*, he devotes the whole corpus to solving the phenomena. His guidelines are as follows:

i. If two *ḥadīths* are applicable at the same time, both should be used. If that is impossible, consideration should be given as to whether one of them has been abrogated.

ii. *Ikhtilāf* resulted from both *ḥadīths* carrying indifferent rulings (*mubah*).

iii. *Ikhtilāf* between two *ḥadīths* is where there is no indication as to which one is the abrogating and which is the abrogated *ḥadīth*. If both are of the same stature (sound), consideration should be given to the one which is closer to the meaning of the Qur'ān, the *sunnah* or *qiyaṣ*. Al-Shafti emphasizes that the soundness of a *ḥadīth* is the yardstick in harmonizing between contradictory *ḥadīths*. By the above formula, he successfully solves many problems pertaining to apparent contradictory *ḥadīths*.

Below are some examples of how al-Shafti applies his harmonizing interpretation in reconciling related problems.

### 8.2 Eating the Meat of Sacrifices (*akl luhūm al-udhhiyyah*)

Apparently, there are many *ḥadīths* which seem to contradict each other on this subject, whether those who offer immolation are allowed to eat its meat or not.

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There is a *hadith* related by al-Zuhri - Abū 'Ubayd mawla Ibn Azhar says,

"I celebrated (attended) 'Id with 'Ali. I heard 'Ali was saying, "none of you should eat/consume the meat of his sacrifices after three [days]"."\(^8\)

On the other hand, there is a *hadith* from Anas b. Mālik who says,

"We slaughtered (sacrificed) our animals as Allāh wished, then we took the rest of it on our journey to Basrah".\(^9\)

Al-Shāfi‘ī in this connection argues that the *hadith* of 'Ali which prohibits Muslims from eating the meat of a sacrifice after three days was abrogated by the *hadith* of Anas b. Mālik. According to him a report of this abrogation had not reached 'Ali.

### 8.3 Nikāh Al-Mu‘āḥ

As far as nikāh al-mu‘āḥ (temporary marriage) is concerned, there is severe disagreement between the sunnís and the shí‘is about its legitimacy. The sunnís declare it *harām* for it has been abrogated, while the shí‘is\(^10\) argue that the nikāh is still valid.

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\(^8\) See Muwatta', *(a'fāl)* 26, Bukhārī, *(a'fāl)* 16, Tirmidhī, *(a'fāl)* 13.

\(^9\) See Bukhārī, *(a'fāl)* 124, Tirmidhī, *(zuḥd)* 74; Nasā’ī, *(ṣayd)* 35.


In this controversy, al-Shāfi‘i cites two apparently contradictory hadiths to demonstrate his case. He adduces a hadith of ‘Alī b. Abī Ṭālib who said to Ibn Ābbās:

"The Apostle of Allāh banned nikāh al-muw‘āh and the meat of donkeys".\(^{12}\)

On the contrary, al-Shāfi‘i also cites a hadith of Ibn Mas‘ūd as follows,

"We were battling together with the Apostle of Allāh and our wives were not with us. Then, we intended to emasculate our testicles (khasī), but the Apostle of Allāh prohibited us. [As an alternative], he allowed us to marry a woman for a certain period by providing something [mahr: dowry]".\(^{13}\)

From these two hadiths, al-Shāfi‘i endeavours to apply his harmonizing interpretation method. He analyzes the hadith of Ibn Mas‘ūd and finds that there is no mention of date to indicate whether the incident took place before or after the battle of Khaybar. He therefore concludes that the hadith of ‘Alī regarding the banning of nikāh al-muw‘ah abrogates the one related by Ibn Mas‘ūd. The hadith of ‘Alī implies that nikāh al-muw‘ah is declared unlawful (harām) forever.

Commenting on another related hadith which was related by al-Rabi‘ b. Sabrah, al-Shāfi‘i interprets it as having some possibilities. One possible interpretation is that if the hadith originates from the Prophet, it indicates that the Prophet had initially permitted nikāh al-muw‘ah, but later declared it unlawful until the day of judgement.

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\(^{12}\) Al-Shāfi‘i, Ikhtilāf al-Hadith, p. 215; Abu Ḥanīfa, Musnad al-Imām Abī Ḥanīfah, p. 132 says on the authority of Nāfi‘ - Ibn ‘Umar that the Messenger of Allāh in the year of Khaybar's battle has banned the meat of donkeys and mu‘at al-Nisā‘.

\(^{13}\) Al-Shāfi‘i, Ikhtilāf al-Hadith, p. 215.
Otherwise if the *hadīth* does not come from the Prophet and at the same time there is no indication that the *hadīth* of ‘Ali abrogated the *hadīth* of Ibn Mas‘ūd or other *hadīths* allowing *muḥāICH*, the validity of the al-Rabī’s *hadīth* is questionable based on the evidence from the Qur‘ān, the *sunnah* and *qiyyās*.

Those who hold that *nikāh al-*muḥāICH* is permitted argue that the banning took place in the year of Khaybar.14 This is derived from the *hadīth* of ʿAbd al-ʿAzīz b. ‘Umar that says people practised *muḥāICH* during the year of victory (ʾām al-ʾafah). However, al-Shāfi‘ī refutes them by indicating that the *hadīth* of the year of victory is clearer than that of ‘Ali’s in forbidding *muḥāICH* forever.15

8.4 Tashahhud

Concerning *tashahhud*, a slightly variant reading might cause one to conclude that the recitation of *tashahhud* is *mukhtalaf*. For instance, ʿUmar recites it as follows,


Ibn ʿAbbās is reported to have said that the Prophet taught the Companions how to recite *tashahhud* as he taught them a *sūrah* of the Qur‘ān. The wording is exactly

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similar to the ones recited by 'Umar. However, there is no prefix 'al added to al-
salām.\(^{17}\)

According to al-Shāfi‘ī, there are slight differences of letters (ḥurūf) between
the transmission of the people of Baṣrah and that of Kūfah. These differences are not
to be considered as contradictory. This could be that the Prophet had taught the
tashahhud both in public and to individuals. So each of them memorized wordings
which slightly differ from one another. In terms of its meaning, there is not much
difference because what the recitation principally means is to glorify Allāh and to pray
to Him to bless (salām and ṣalawāt) the Prophet.

8.5 Ghusl al-Jum‘ah

There is a ḥadīth\(^{18}\) reported by Abū Sa‘īd al-Khudrī that the Prophet said;

‘Ghusl yawm al-jum‘ah wājib ‘alā kull muḥtalim’.\(^{19}\)

‘taking a bath on Friday is obligatory for every mature person’.

It is also reported\(^{20}\) from Ābd Allāh b. ‘Umar that the Prophet said:

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\(^{17}\) Al-Risālah. p. 269; Ikhtilāf al-Ḥadīth. p. 70.

\(^{18}\) The authority of this isnād is Mālik - Ṣafwān b. Sulaym - ‘Atā‘ b. Yasār - Abū al-Khudrī. See al-
Risālah. p. 302; Ikhtilāf al-Ḥadīth. p. 149.

\(^{19}\) Al-Risālah. p. 302; Ikhtilāf al-Ḥadīth. p. 149; Mālik, al-Mudawwah al-Kubrā. vol. 1., p. 146.

\(^{20}\) The isnād is Ibn ‘Uyaynah - al-Zuhrī - Sālim - Ibn ʿUmar.
‘he who attends the jum’ah prayer should take a bath’

From the above-mentioned hadiths, it is literally understood that taking a bath on Friday is a compulsory act upon those who attend the jum’ah prayer. However, al-Shafi'i seems to disagree with the literal interpretation.

According to him, the Prophet’s commandment to take a bath before Friday prayer denotes two possible interpretations. The most probable interpretation is that it is wājib. That means that jum’ah prayer will be invalid unless one takes a bath. This is similar to the invalidity of the purification of janābah without a major bath (ghusl).

On the other hand, it could also be interpreted that it is compulsory to take a bath in respect of it being for the sake of optional, moral and physical cleanliness.

Al-Shafi'i prefers the second interpretation basing it on circumstancial evidence between 'Umar and 'Uthmān. While 'Umar was giving his khutbah, 'Uthmān came without having had a bath except wudū’. The fact that 'Uthman had not taken a bath and that 'Umar did not insist on him doing so indicates that both of them

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21 Al-Risālah, pp. 302-3; Ikhtilaf al-Hadīth, pp. 148-9. For details see Bukhāri, (jum’ah) 2-3, 5-6, 12, 26, (ādhdhān) 161, (shahādāt) 18; Muslim, (musāfirīn) 26, 27, (jum’ah) 1-2, 4, 6-8; Abū Dāwūd, (tahārah) 127, 828; Muwatta’, (jumu’ah) 2, 4, 5.

22 Al-Shafi'i, in Ikhtilaf al-Hadīth introduces this case by citing two verses of the Qur’an i.e. al-Mā’idah: 6 and al-Nisā’: 43. By doing so, he is convinced that the sunnah of the Prophet shows that wudū’ is imposed when hadath (impurity) happens, while the second verse shows that wudū’ is generally for hadath and Allah’s order upon those who are in janābah to purify themselves (ghusl) is an evidence that ghusl is only imposed for janābah unless the Prophetic sunnah indicates otherwise.

This premise is to establish the argument that an obligatory bath is only imposed for those with janah, not others i.e., those who are going to attend the Friday prayer. [see Ikhtilāf al-Hadīth, p. 148.]
understand Prophet's order of taking bath as a recommendable act (ahabb), not an obligation.23

Al-Shāfi‘ī is not alone in this opinion.24 However, Ahmad Muḥammad Shākir argues that al-Shāfi‘ī’s approach to the matter by interpreting an implicit text without substantiating any reason (sabab) or evidence is inadequate.25

23 Ikhtilāf al-Ḥadīth. p. 150.

24 Ibn ‘Abd al-Barr, Mālik and Ibn Qutaybah also share the opinion that wājib in the ḥadīth does mean wājib as an obligation (fard), but it is interpreted as wājib in terms of a recommendable act as was done by the Prophet. See Ibn Qutaybah, kitāb Ta’wil Mukhtalaf al-Ḥadīth. p. 251.

25 Shākir in his note to al-Risalah, p. 306.
PART TWO: AL-SHĀFIĪ'S KITĀB JIMĀʾ AL-ʾILM
CHAPTER NINE: INTRODUCTION TO KITĀB JIMĀ‘ AL-‘ILM

9.1 Introduction to Jimā‘ al-‘Ilm

According to al-Nawawī, al-Shāfi‘ī wrote or dictated1 to his disciples about 113 books. These are mainly about tafsīr al-Qur‘ān, ʿilm al-fiqh, ʿilm usūl al-fiqh, history, Arabic literature and others.2 One of such writings is Kitāb Jimā‘ al-‘Ilm.3 Jimā‘ al-‘Ilm can be classified under the subject of usūl al-fiqh, since it deals with topics like hadīth, qiyās, ijmā‘, ikhtilāf, ijtihād and others which are the essential components of Islamic jurisprudence.

It is not known whether al-Shāfi‘ī wrote Jimā‘ al-‘Ilm himself or dictated it to his disciples in Egypt. It was transmitted to us by his most famous disciple in Egypt, al-Rabī‘ b. Sulaymān al-Murādī (174-270H).4 Since this work is not dated as was the convention of the medieval period, the only way to ascertain when this work was written is by using cross-references among al-Shāfi‘ī’s writings. There are passages in the Jimā‘ al-‘Ilm in which al-Shāfi‘ī refers to his Risālah5. In the year 198H, al-Shāfi‘ī composed his al-Risālah at the request

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3 This book was edited by Aḥmad Muḥammad Shākir in 1940, and by Aḥmad Muḥammad ʿAbd al-ʿAzīz Zaydān in 1985.
5 See Jimā‘ al-‘Ilm. paras. 62 and 103.
of 'Abd al-Rahmān b. Mahdī.⁶ This point of view has been supported by Schacht.⁷ Therefore, it is clear that the *Jimā' al-'Ilm* was written in Egypt after the composition of *al-Risālah*, i.e. after 198H when al-Shāfī'ī came to settle in Egypt on 28th Shawwāl 198H.⁸

There is another book by al-Shāfī'ī that deals with ḥadīth. This is *Kitāb Ikhtilāf al-Ḥadīth*. Chronologically, this *Ikhtilāf* was composed after the *Jimā'*, since in *Ikhtilāf al-Shāfī'ī* refers to it.⁹

The *Jimā'*, is not a new idea of al-Shāfī'ī's. Indeed, he had already dealt in the *Risālah* with with the authority of ḥadīth in general and khabar al-wāḥid (isolated tradition) in particular. He gives priority in his writings, especially in *Risālah*, *Jimā' al-'Ilm*, *Ikhtilāf al-Ḥadīth* and *Ikhtilāf Mālik wa al-Shāfī'ī* to the argumentation about khabār al-wāḥid. He adduces evidence and proofs to strengthen his point of view. He asserts that once a ḥadīth or sunnah is confirmed from the Prophet, a Muslim must accept it without questioning why or how.

Even though al-Shāfī'ī has dealt with the above matter in his previous books, his reassertion of his stand on khabar al-wāḥid clearly indicates that he was committed to the authority of ḥadīth and to refute the doctrine of those who rejected the authority of the ḥadīth in general, or repudiated specifically the validity of khabar al-

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⁷Schacht, *The Origins of Muhammadan Jurisprudence*. appendix I (chronology of al-Shāfī'ī's writings). According to Shākīr, all books which exist until today were composed by al-Shāfī'ī in Egypt. [see *Introduction to al-Risālah*. p. 9]


⁹Al-Shāfī'ī, *Kitāb Ikhtilāf al-Ḥadīth*. pp. 37 and 54. He also refers here to *al-Risālah* (*Kitāb*), p. 64.
khāṣṣah (i.e. khabar al-wāḥid). However, it should be noted that the Jimāʾ is not a carbon copy of the Risalah. In the Jimāʾ he expands on matters which he has mentioned in the Risālah and he mentions briefly in the Jimāʾ what he has already given at length in the Risālah.¹⁰

9.2 Sources

The only available manuscript of Kitāb Jimāʾ al-ʿIlm is the one which is preserved in Dār al-Kutub al-Miṣriyyah (no. 732-fiqh Shāfiʿ). So far it is the only manuscript that has been found after a thorough investigation. According to the editor of the edition printed by Amīriyyah and Dār al-Maʿārif,¹¹ its condition is very bad, while Shākir who also consulted the manuscript found it worse than described by the earlier editor.¹²

There are several editions of Jimāʾ. Among them are;

i. that printed on the margin of kitāb al-Umm by al-Bulāq al-Amīriyyah press in 1326H.

ii. that on the margin of al-Umm by Dār al-Maʿārifah press, no date.


¹⁰ Ahmad Muḥammad Shākir, Introduction to Kitāb Jimāʾ al-ʿIlm. p. 7.

¹¹ Muḥammad Zuhr; al-Najjar notes this description in al-Umm. vol.VII, p. 284.

iv. The latest edition, that of Muḥammad Ḧamd b. ʿAbd al-ʿAzīz Zaydān, 1984/1405H.\textsuperscript{13}

9.3 Methodology

In studying the text of Jimāʾ al-ʿIlm, I have made use of the above printed works by comparing them with one another, since I was unable to procure the manuscript from Cairo.

In my study of the text, I have tried to trace the development of al-Shafiyyī’s thought on ḥadīth through information scattered in works he wrote both before and after the Jimāʾ. By doing so, I was trying to establish the link between al-Risālah, Jimāʾ and Ikhtilāf al-Ḥadīth as these are the most important sources from which one can establish al-Shafiyyī’s opinion on ḥadīth.

9.4 Opponents

Al-Shafiyyī, in his writings, makes masterly use of the form of a dialogue with opponents usually unnamed\textsuperscript{14}. Jimāʾ also uses this form.

The opponents with whom al-Shafiyyī conducted a dialogue and discourse in the Jimāʾ are unknown. However, in the introduction of Jimāʾ, al-Shafiyyī states that those


\textsuperscript{14} Heffening, "al-Shafiyyī," The Encyclopaedia of Islam, p. 253.
who do not accept akhbār or hadīths from the Prophet are ahl al-kalām and some jurists.\textsuperscript{15}

Later authorities suggest that the opponents who rejected all kind of hadīths are ahl al-kalām\textsuperscript{16} generally and the Muʿtazilah specifically. Al-Shāfiʿi clearly states these groups were from Basrah, and Basrah was a centre of ahl al-kalām, including the Muʿtazilah.\textsuperscript{17} They were known as opponents of ahl al-hadīth (anti-traditionists).

Al-Khuṭārī for example, concludes that most probably these opponents were the Muʿtazilah.\textsuperscript{18} He further strengthens his point of view by quoting Ibn Qutaybah's kitāb Mukhtalaf al-Hadīth where the latter states that the ahl al-kalām had accused the ahl al-hadīth of narrating akhbār which seem to be contradictory.\textsuperscript{19}

However, Muḥammad Abū Zahrah\textsuperscript{20} seems to oppose that point of view by saying that the opponents were most likely znādiqah and some of the Khawārij, as mentioned by “Abd al-Rahmān b. Mahdī.\textsuperscript{21} This view is supported by the fact that Zanādiqah, Khawārij, and Azāriqah\textsuperscript{22} maintain the doctrines that i) there is only one
obligatory *raka'ah* in prayer in the morning and one in the evening, ii) they rejected the punishment for stoning (*rajm*) at the adulterer, for they relied only on the Qur'ān and did not accept *hadīths* of the Prophet which clarify and explain what is mentioned in the Qur'ān.

### 9.4.1 The Rejection of *Hadīths*

As far as the rejection of *hadīths* is concerned, al-Shāfi'ī lists at least three different doctrines held by various groups. These doctrines are,

i. rejecting *hadīths* altogether,

ii. rejecting *hadīths* that are not explanation of the Qur'ān,

iii. accepting all *hadīths* in principle but rejecting some *akhbār al-āhād*.

As far as the first doctrine is concerned, it is believed that Khawārij, Zanādiqah and some Mu'tazilah held this point of view. The reason why they do was that they were sceptical about transmitters of *hadīths* in terms of accuracy of the Prophet's *hadīths* and mistakes and errors made by them.

This led them solely to rely on the Qur'ān, for the transmission of it is guaranteed from any mistake and error. Having believed that the Qur'ān is the sole source of laws, the Khawārij were led to hold that there is no stoning (*rajm*) punishment applied to adulterers; that the thief's hand should be amputated up to the

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shoulder and other matters, since they did not accept *hadīths* concerning those matters.

The second doctrine i.e. rejecting *hadīths* that are not explanation of the Qur'ān, implies two possibilities. First, *hadīths* seem likely to be rejected. For, if *hadīths* either *mutawātir* or *āhād* are not in agreement with the meaning of the Qur'ān, they will reject them. Second, *hadīths* will not establish any ruling unless there is a basis in the Qur'ān. In the sense that the Qur'ān is a primary source in Islam. Therefore, they reject rulings derived from *hadīth* which do not exist in the Qur'ān such as the banning of the meat of donkeys and others.

The third doctrine i.e. rejecting *akhbār al-āhād*. For this doctrine, see chapters Three and Six.

As far as al-Shāfi‘i’s opponent is concerned, the only one who has mentioned the personality of an opponent in Egypt is Nyberg, who suggests that the Mu‘tazilah leader in Egypt, Ibn ‘Ulayyah, had a disputation with al-Shāfi‘ī, and so probably was one of the Mu‘tazilah whose dialogue has been recorded in the *Jimā‘*.

As has been elaborated before, there are two theories applicable to the *Jimā‘*. Most authors agree that the *ahl al-kalām* whom Shāfi‘ī was addressing were the

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26 Ibn al-Nadīm mentions Ibn ‘Ulayyah’s works as follows: *kitāb al-Tafsīr, kitāb al-Tahārah, kitāb al-Salāh* and *kitāb al-Manāsik*. 
Mu’tazilah. On this basis it would seem appropriate to identify the people to whom al-Shāfi‘ī may have referred to.

One of those persons suggested was Ibn ʿUlayyah.27 He was one of the ahl al-kalām who believed in the createdness of the Qur’an,28 and was one of the Mu’tazilites of Baṣrah who later settled in Egypt.

The debate (mujadalāt) between al-Shāfi‘ī and Ibn ʿUlayyah29 may have taken place both30 in Baghdād and Egypt.31 Biographical references about al-Shāfi‘ī, such as in al-Khatib al-Baghdādi’s Tārīkh Bagdhād, al-Bayhaqī’s Manāqib al-Shāfi‘ī, Ibn Abī Ḥātim’s Ādāb al-Shāfi‘ī wa Manāqibuh and Ibn ʿAbd al-Barr’s al-Intiqa‘ demonstrate that the mujadalāt between them was about the validity of khabar al-wāḥid (tathbīt ḥujjiyyat khabar al-wāḥid).

The subject of disputation as recorded in previous books is likely to be similar to that of Jimā‘ al-ʿIlm, i.e. tathbīt ḥujjiyyat khabar al-wāḥid. In the beginning of the

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30 If we accept the date of Ibn ʿUlayyah’s death as stated by al-Ḥajawī in al-Fikr al-Sāmi; i.e. in the year 193H, there will be a problem, because biographical references show that al-Shāfi‘ī went to Egypt in the year 198/9H. Moreover, comparing al-Bayhaqī, Manāqib al-Shāfi‘ī. vol. I, p. 211ff and al-Khatīb al-Baghdādi, Tārīkh Bagdhād. vol VI, p. 26 it seems that munāẓarat between al-Shāfi‘ī and Ibn ʿUlayyah took place in Egypt. So, if we rely on al-Ḥajawī, there will be a gap of time, and the discussions would not have happened beyond by that time Ibn ʿUlayyah had already passed away.

31 Ibid.
Jimā'ī, al-Shāfi'i illustrates that ahl al-kalām were widely divided about the validity of khabar al-wāḥid. Thus, it may well be the case that one of the people whom al-Shāfi'i was addressing in the Jimā' was Ibn 'Ulayyah.

On one occasion, Ibn 'Ulayyah had attended a study circle (ḥalāqah) led by al-Shāfi'i. This circle was attended by many people, including Ahmad b. Ḥanbal, al-Husayn al-Qallās and a group of ahl al-ḥadīth. In this circle, al-Shāfi'i was presenting a lecture on khabar al-wāḥid. In other words, he had a discourse on that subject with Ibn 'Ulayyah. One of the audience questioned al-Shāfi'i as to why he gave priority to Ibn 'Ulayyah, a heretic (mubtadī'), whereas there were important people who attended his lecture. In reply, al-Shāfi'i justified what he had done by saying that his argument with Ibn 'Ulayyah was more useful than a discussion with the others. This seems a fair reply because no one else in the audience except Ibn 'Ulayyah queried or rejected the validity of khabar al-wāḥid.

The discussion of the validity of khabar al-wāḥid is reported as follows. Al-Shāfi'i asks Ibn 'Ulayyah about the proof (ḥujjah) because the latter considers only ījmā' as proof (ḥujjah). Al-Shāfi'i then asks Ibn 'Ulayyah if he accepts a khabar transmitted by a single reliable person (khabar al-wāḥid al-'adl) according to his

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32 Al-Shāfi'i, Jimā' al-Ilm, p. 12.

33 Al-Husayn was one of al-Shāfi'i's prominent disciples in memorising ḥadīth. See al-Subkī, Ṭabaqāt al-Shāfiyyah al-Kubrā, vol. II, p. 127.

34 Al-Bayhaqi, Manāqib al-Shāfi'i, vol. I, p. 211.
theory of *ijmāʿ* as being the only proof. The narrative goes on to suggest that Ibn Ḥajar al-ʿUshayrī does not consider *ijmāʿ* as the only proof. The narrative goes on to suggest that Ibn ʿUlayyah was unable to provide a satisfactory answer to this question.35

ʿAbd Allāh b. Sāliḥ,36 the secretary (kātib) of al-Layth37 has also reported a discussion between al-Shāfiʿī and Ibn ʿUlayyah in connection with the validity of *khabar al-wāḥid*. They were in al-Shāfiʿī’s circle (majlis) in which he was delivering a lecture on the validity of *khabar al-wāḥid* from the Prophet. As was commonly practiced at that time, they wrote down what their teacher said. At the end of the lecture, they brought what they had written from al-Shāfiʿī’s lecture to Ibn ʿUlayyah, one of Abū Bakr al-Ṣiddīq’s disciples. The author adds that the latter had study circles in Egypt at Bāb al-ʿḌawālīl.

They started reading in front of Ibn ʿUlayyah what they had taken down from al-Shāfiʿī. Immediately, he started vehemently to attack the content of al-Shāfiʿī’s lecture, and tried to refute it. They wrote down Ibn ʿUlayyah’s arguments against al-Shāfiʿī’s views. They then returned to al-Shāfiʿī and read to him the argument of Ibn ʿUlayyah. According to ʿAbd Allāh b. Sāliḥ, al-Shāfiʿī rejected and refuted the arguments put forward by Ibn ʿUlayyah. Al-Shāfiʿī then said: Ibn ʿUlayyah is astray (*ḏāll*), sitting in front of Bāb al-ʿḌawālīl (the gate of stray animals), and he leads people astray.

35 *Manāqib al-Shāfiʿī*: vol. 1. p. 211.
In *Ta'rikh Bagdhād*, al-Jawārī is quoted as saying that al-Shāfi‘ī opposed Ibn "Ulayyah in every matter. How far this statement is correct or not cannot be ascertained. However, it is obvious from the above two stories that al-Shāfi‘ī and Ibn "Ulayyah were together and tried to refute each other and the topic of their discussion in each case was the validity of *khabar al-wāhid*.

It is also reported that Ibn "Ulayyah cooperated with "Isā b. Abān in writing a book against al-Shāfi‘ī trying to refute him.

There were others of the Mu‘tazilah sect who had disputes and debates with al-Shāfi‘ī. These people were concerned about theological matters rather than jurisprudence. Among them were Ḥafṣ al-Fard, Bishr al-Marīsī, Sufyān b. Sakhtān and others. Thus it could be suggested that Ibn "Ulayyah represents the opponents who appear in *Kitāb Jimā‘ al-‘Ilm*.

As the previous discussion reveals, Ibn "Ulayyah seems to be one of the people with whom al-Shāfi‘ī had a discussion in *Jimā‘ al-‘Ilm*. Therefore, in order to prove the above statement, I have established that there are similarities in the discussion between *Jimā‘ al-‘Ilm*, al-Bayhaqī's *Manāqib* and al-Baghdādī’s *Ta'rikh Bagdhād*. For the latter clearly mentions the opponent's name. Thus, the theory put forward that Ibn "Ulayyah was one of the opponents in *Jimā‘* can be relied on.

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In the *Jimār*, the opponent describes *ʿilm* (knowledge) as of different kinds. Among them are what *ʿāmmah* (many people) have transmitted from *ʿāmmah, kitāb* which can be interpreted into different possible meanings, *ijmār* *al-muslimīn* (the consensus of Muslims), *ʿilm al-khāṣṣāh* (knowledge (ḥadīth) possessed by specialists) and *qiyaṣ*. The most remarkable statement adduced by him is that "*ijmār* is a proof against any thing, because it is impossible that a mistake can occur in it." This statement could be interpreted in the broad sense that *ijmār* is a gauge by which the validity of other proofs is measured. For instance, a *khabar* would be accepted or rejected by relying on an existing *ijmār*. If there is an *ijmār* that they accept such a *khabar*, he would accept that *khabar*. It is the other way round if there were disagreements among *ahl al-ʿilm* on the acceptance of a *khabar*. According to him, it would be a mistake to accept such a *khabar* if the Muslims disagreed on it, and his doctrine stated that proof (*hujjah*) would not be established on a matter where there is the possibility of a mistake.

According to al-Shāfiʿī, the view held by the opponent seems to invalidate *akhbār*, and at the same time to confirm the *ijmār*, because the opponent believes that their *ijmār* is a proof irrespective of whether there is a *khabar* or not, and their disagreement is not a proof irrespective of whether there is a *khabar* or not. This

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42 Para. 187, "wa al-ijmār ʿujjah ʿalā kull shay', li annahu lā yumkin fih al-khaṭa`".
43 As far as *ijmār* is concerned, there is a discussion about who is *ahl-ʿilm* whose *ijmār* will be a *hujjah*. Are they *fuqahāʾ* or *ahl al-kalām*, see *Jimār*. pp. 53-4.
44 *Jimār*. para. 192.
45 *Jimār*. para. 193.
statement produced by al-Shāfī’ī resembles what happened between him and Ibn ‘Ulayyah as reported in biographical references.\(^{46}\) In this context, al-Shāfī’ī is reported to have asked [as recorded in Manāqib al-Shāfī’ī\(^{47}\)] Ibn ‘Ulayyah concerning khabar al-wāḥid al-‘adl whether he rejects it on the basis of ijmā’ or not, since the latter's belief is that ijmā’ is a proof against every thing as shown before.

To sum up, the dialogues in Jimā’ al-‘Ilm concur well with what has been recorded by al-Bayhaqī and al-Baghdādī concerning tathbīt khabar al-wāḥid. Therefore, Ibn ‘Ulayyah seems to be one of the opponents in kitāb Jimā’ al-‘Ilm.

A perusal of Jimā’ reveals that al-Shāfī’ī had a discussion with more than one opponent. In certain places, he refers to the opponent as jamā‘ah (a group of people), ba‘d (some of). So, it would be inaccurate to describe Ibn ‘Ulayyah as the only opponent, because Jimā’ deals with different topics. However, this might be correct in terms of the topic tathbīt khabar al-wāḥid.

9.5 The Dispute Between ‘Abd al-Ghani b. ‘Abd al-Khāliq and Others

Do the Mu‘tazilah of Baṣrah reject sunnah as decisive proof?\(^{47}\) As far as Jimā’ al-‘Ilm with regard to the opponents to whom al-Shāfī’ī had discussions with is concerned, there are different views about it. The first view is that they are the Mu‘tazilah. This idea is shared by Muḥammad al-Khuḍari,\(^{48}\) Muḥammad Abū

\(^{46}\) For instance, al-Bayhaqī, Manāqib al-Shāfī’ī, vol. 1. p. 211.


\(^{48}\) Tārīkh al-Tashrī‘ al-Islāmī, pp. 155.
Zahrah, Muṣṭafā al-Sibā‘ī, al-Subki, al-Sā‘is and others. The second view is that of ʿAbd al-Ghanī ʿAbd al-Khaliq who does not accept the above view. Al-Khuḍārī as a representative and others give a positive response to the above question.

The following is a summary of al-Khuḍārī’s arguments: There is a group who repudiate sunnah altogether, and rely solely on the Qur’an. This statement is inferred from the ḥalāl. From the discussion of the ḥalāl, he concludes that this group only reject akhbār which do not engender definitive knowledge (ʿilm) because of the possibility of a mistake and forgetfulness in the transmitters; they do not repudiate the sunnah as such. This means, that if a sunnah is confirmed through a way that engenders definite knowledge, such as sunnah mutawātirah, they will accept it.

In the meantime, he makes a statement which can be understood to mean that there is a group who reject the sunnah as such, and a group who repudiate that part of the sunnah which is not an explanation of any Qur’ānic text.

In the conclusion, al-Khuḍārī attempts to identify those personalities whom al-Shāfī‘ī does name, as belonging to Baṣrah. And analogically, he concludes that this group belongs to the Muʿtazilah, because at that time Baṣrah was a centre for theological (rationalists) movements and they were known as adversaries to ahl al-hadīth. Therefore, according to him, the Muʿtazilah is the most likely to be the the group referred to. To strengthen his hypothesis he refers to Ibn Qutaybah’s Taʾwil Mukhtalaf al-Ḥadīth.

49 Abū Zahrah, al-Shāfī‘ī. pp. 64ff.
According to 'Abd al-Ghanî, he does not find any word or expression of al-Shâfiî or the opponents themselves which shows that some leaders of the Mu'tazilah reject a decisive proof of sunnah as such. However, they reject it because it has not been absolutely established as coming from the Prophet in the way that the Qur'ân has. For that reason, according to him, they reject both khabar al-wâhid and tawâtûr hadîths because neither of them engender definitive and certain knowledge, whether the hadîth explains the Qur'ân or independently establishes a ruling which is not existed in the Qur'ân.

As far as the rejecting of tawâtûr hadîths is concerned, al-Shâfiî's opponent has been convinced by the arguments mentioned by al-Shâfiî, admits that his companions hold two views. The first group does not accept hadîth. Thus, this group does not accept the number of raka'ahs in ṣalâh which has been confirmed by tawâtûr hadîths.

As far as the rejection of mubayyin hadîth is concerned, the opponent has mentioned earlier that the Qur'ân is qafî al-thubût and those who reject one single letter of it are infidel, whereas making distinction between its expressions (alfâz) by akhbâr which are zannî al-thubût, does not make those who deny them infidel. Logically, if acting according to either tawâtûr or mubayyin hadîths is impossible, it is even more impossible either by khabar al-wâhid or an independent khabar which establishes new rulings.

53 'Abd al-Ghanî, pp. 36, 246.
From the above elaboration, ̆Abd al-Ghani strongly advocates that they reject khabar altogether. That is, they should reject it because it has the possibility of being mistaken, or forgetfulness and falsehood on the part of its transmitters, even though they have reached the number of tawātur. ̆Abd al-Ghani strongly denies that they reject sunnah as such, because if they were contemporaries with the Prophet, heard his saying or saw his deeds, they would make sunnah as decisive argument.

According to ̆Abd al-Ghani, al-Khuḍarī had acknowledged that the opponent does not deny sunnah as an argument. However, by referring to the wordings used by opponents clearly show that there are two trends of thought; it seems that one of them does not accept khabar in which there is bayān in the Qur'ān. In that sense, Abd al-Ghani totally disagrees with al-Khuḍarī in that veiw, because, if the opponent maintains the view that khabar is not a decisive argument except for the Qur'ān, for the latter is sufficient argument. So, there is no need for other arguments in explaining these rulings.

As far as sunnah is concerned, it is not a genuine argument, nor mubayyinah or a khabar which establishes an independent ruling, as understood by al-Khuḍarī. On the contrary, ̆Abd al-Ghani argues that sunnah is in fact a decisive argument (ḥujjah), however it is impossible for anyone who did not see the Prophet to confirm it as definitely coming from him because of the possibility of transmitters' mistakes and falsehood which may happen in any khabar even if it is mutawātir. In this case, sunnah will not constitute any ruling, and one should rely on the Qur'ān, the reliable

54 ̆Abd al-Ghani, p. 260.
thing that can be certain. The expression "wa f. Kitāb Allāh al-bayan- and there is a bayān in the Qur'ān" means that the bayān that we are required to follow is in the Qur'ān only. As far as the bayān of the sunnah is concerned, adhering to it does not bind us because of the impossibility of it being certain.

One might notice that al-Shāfi‘ī mentions a few passages of the Qur'ān which confirm the authority of sunnah. The reason why he did so was due to the idea that the opponent was particularly arguing about that. 'Abd al-Ghani responded by saying that al-Shāfi‘ī intended that as an introduction to confirm the obligation to accept the khabar, and depend upon the transmission of reliable persons (thiqāt). He does this firstly to confirm that the authority of the sunnah applies not only to those who are contemporary with the Prophet, but also to those who come after them until the Day of Judgement. Then he clarifies that it is illogical that Allāh should impose the acceptance of the sunnah on those who came after the Companions, then leave it without any means to enforce it. He makes a clear statement that there is no other way except transmission (riwāyah).

'Abd al-Ghani raises a question from the conversation between al-Shāfi‘ī and his opponent, that there is no such indication of sunnah as a decisive argument based on his words "Idh kunta lam tushāhidhu"-"for you haven't seen him". This statement shows that the opponent admits and recognises sunnah as a decisive argument, if he has witnessed the Prophet or heard his sayings. Al-Shāfi‘ī tries to demonstrate that khabar al-khāṣṣah and khabar al-‘āmmah takes the place of eyewitnesses (mushāhadah).
"Abd al-Ghanî strengthens his point by referring to al-Shâfi’î’s statement in the beginning of Jimâ’ al-Ilm, "thumm tafarrag ahl al-kalâm fî tathbîṭ al-khabar ‘an Rasûl Allâh-then ahl al-kalâm divided about tathbîṭ al-khabar from the Apostle of Allâh". For this statement, a question arises whether it is possible or not to confirm the khabar as coming from the Prophet, and not the question of sunnah as a decisive argument or not.

According to "Abd al-Ghanî, by observing words used by al-Shâfi’î, it is clear what he meant. Al-Shâfi’î, when he turns to talk about the sunnah as a decisive argument, does not express it by the word khabar. Instead he uses the word sunnah or the command or deeds of Prophet. And whenever he wants to talk about the way of transmission (tariq), he expresses it by using the term "khabar from the Messenger of God".

In conclusion, "Abd al-Ghanî says that if we accept that the opponent rejects the authority (hujjīyyah) of the sunnah, he will not be belong to the Mu‘tazilah, which is the opposite of al-Khuḍârî’s findings. These findings, he claims, are based on classical books such as the books on Usûl, tawhîd or firaq (sects). According to him, nothing in those books mentions that any of the Mu‘tazilah reject the authority of sunnah. He refers to Abû Mansûr al-Baghdâdî’s Usûl al-Dîn where it is mentioned that al-Nazzâm assumed that there is no hujjah in khabar mutawâţîr, since a falsehood might happen in it. According the Nazzâmiyyah, it is possible that the ummah might agree upon a mistake. This statement, according to "Abd al-Ghanî, does not signify that the Nazzâmiyyah and others were rejecting the authority of the sunnah as such. On the contrary, it is evident that they accept the authority of it when they justify the
rejection of mutawātir because of the possibility of falsehood in the reporters. They doubt the way it comes (jarīq) from generation to generation, not as a ḥadīth from the Prophet.

9.6 Discourses (munāzarah) Between al-Shāfi‘ī and Muḥammad b. Ḥasan al-Shaybānī

As mentioned earlier, it seems that al-Shāfi‘ī’s opponent inJimā‘ al-‘Ilm might be more than one person. Therefore, I have tried to relate some similar issues found inJimā‘ al-‘Ilm and bibliographical references to show that al-Shaybānī could have been involved in Jimā‘. Para. 248 of the Jimā‘ could be similar to the munāzarah between al-Shāfi‘ī and Muḥammad b. Ḥasan al-Shaybānī as recorded by al-Bayhaqī.55 The subject-matter was about the credibility of their companions in issuing fatwās.

It has been reported that after al-Shāfi‘ī had copied a large number of books56 from Muḥammad b. Ḥasan’s collection when he visited Irāq, and studied them in depth, he is reported to have quoted a ḥadīth on every case where he disagreed with al-Shaybānī’s view.57 It is reported that al-Ḥujjah or al-Mabsū, are allegedly written against the Ḥanafi madhhab.58

57 That is why al-Shāfi‘ī was called “Nāṣir al-Sunnah” because at that time ahl al-ra’y or particularly the Ḥanafite madhhab were in a stronger position than ahl al-hadīth and ahl al-hadīth could not defend certain doctrines argued by ahl al-ray. The arrival of al-Shāfi‘ī in Baghdad or Irāq was a victory for them. It is reported that al-Shāfi‘ī asked al-Shaybānī’s secretary to compile and copy all of al-Shaybānī’s books. One day, ahl al-hadīth sought al-Shāfi‘ī’s help to defeat ahl al-ray’s argument. Having acquired related materials of the Ḥanafite madhhab, it was an easy task for al-Shāfi‘ī to find mistakes and refute their argument.
In fact there were many discussions that took place between al-Shāfi‘ī and al-Shaybānī on various topics.

9.6.1 Munāzārat on Ḥadīth

The most important discourse which took place between al-Shāfi‘ī and al-Shaybānī concerns the judgement on the basis of one witness and an oath of the plaintiff. Many books quote this dispute. It also appears in al-Umm. However, surprisingly, there is no such discussion recorded in Kitāb al-Radd ʿalā Muḥammad b. al-Ḥasan.


According to al-Shaybānī, there is no such addition allowed to the Qur’ān (‘adam jawāz al-ziyādah ʿalā al-Qur’ān). By holding this principle, al-Shaybānī rejects the testimony of one single witness and an oath of the plaintiff. He emphasizes that

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59 Al-Umm. vol. VII. pp. 3-43.
60 Al-Shāfi‘ī, Kitāb al-Radd ʿalā Muḥammad b. al-Ḥasan. in the margin of al-Umm. vol. VII, pp. 206-333. This book is about diyya, gissa between slave and freeman, women’s bloodmoney (‘aqd), jamān, injuries in bodies, compensation (arsh) etc.
the Qurʾān cannot be overruled by *khabar al-wāḥid*. Therefore, he condemns *ahl al-Madīnah* for narrating the above *khabar*, because he believes that holding the doctrine, will allow additional rulings over the Qurʾān. An additional ruling over the Qurʾān would mean abrogation (*naskh*), and according to him the Qurʾān cannot be abrogated by *khabar al-wāḥid* because of the differences of strenght; the former is *qaṭī al-thubūt* and the latter is *zanni al-thubūt*. In other words, a *ḥadīth* cannot contradict the laws derived from the Qurʾān. If this happens, according to al-Shaybānī, that *ḥadīth* becomes invalid by itself.

The conflict rests on the Qurʾānic premise that a testimony is based on two men, or a man and two women. According to al-Shaybānī, if the doctrine of one single witness and an oath is valid, it would be an addition to what is in the Qurʾān.

The discourse on the above matter is as follows:

**Al-Shāfiʿī:** Is it confirmed, that an addition (*ziyādah*) to the Qurʾān based on *khabar al-wāḥid* is not allowed according to your view?

**Al-Shaybānī:** Yes.

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64 Al-Ḥajawī, p. 4.


66 For details of arguments adduced by al-Shāfiʿī in relation to *al-Shāhīd wa al-yāmin* and how he refutes al-Shaybānī's arguments see *al-khilāf fi al-Yāmin maʿ al-Shāhīd* in *al-Umm*. vol. VII. pp. 7-12.

67 *Al-Baqarah*: 282, "And call to witness, from among your men, two witnesses. And if two men be not [at hand] then a man and two women, of such as ye approve as witnesses."

68 *Ahl al-ḥadīth* are reported to have a *munāzarah* with Bishr b al-Ghiyāth al-Marīsī regarding the judgement based on one witness and an oath of plaintiff. They were able to defeat al-Marīsī's arguments by using a book on *al-yāmin maʿ al-shāhīd* given by al-Shāfiʿī. Al-Marīsī is reported to have said that those arguments were familiar to him from a man of Makkah, i.e. al-Shāfiʿī. See Yāqūt, pp. 383-4.
Al-ShaficI: So why is wasiyyah (bequest) to the inheritor (warith) disallowed by the Prophet's saying "No bequest to the inheritor (lā wasiyyah li al-warīth)", whereas Allāh says "it is prescribed for you, when one of you approacheth death, if he leave wealth, that he bequeath unto parents and near relatives in kindness."

It is reported that al-Shaybānī could not provide a satisfactory answer.

It is reported that al-ShaficI highlighted cases in which judgements made by al-Shaybānī contradicted the Qur'ān. Al-ShaficI asks why al-Shaybānī accepts the testimony of a midwife (qābilah) where it clearly goes against the Qur'ānic text which demands two witnesses, or a man and two women. Al-Shaybānī, in defence of his judgement replied that Ālī b. Abī Talib had approved such testimony. In contrast, al-ShafiI points out that such a statement was wrongly ascribed to Ālī b. Abī Talib.

Al-ShafiI claims that al-Shaybānī made a mistake by rejecting one witness along with the plaintiff's oath, because it is a sunnah of the Messenger of Allāh, al-khulafa' and a doctrine held by the judges of Madīnah. In this case, al-ShafiI criticizes al-Shaybānī because when faced with this case, he uses his opinion (ra'y) and at the same time rejects a sunnah. Al-ShafiI says that judgements in Islam are

69 Al-Baqarah: 180.
70 Al-Ḥajawi, p. 386-7.
71 Al-Bayhaqī, Manāqib. vol. I. pp. 124-5; in another place, al-Shafii is reported have said that "al-shahādah wa al-yamīn" is not a strange thing because the Prophet gave a verdict on it, as well as Abū Bakr, 'Umar, 'Ālī [in Irāq] and Shurayh. See al-Subki, Ṭabaqāt. vol II. p. 124.
72 In Bayhaqī's Manāqib al-Shafii, the word al-khulafa' is replaced with 'Ālī b. Abī Ṭalib, and Madīnah with al-Hijāz. See al-Bayhaqī, Manāqib. vol. I. p. 115
73 Ibn Abī Ḥātim, Adāb al-ShafiiI. p. 166.
based on what Allâh and the Prophet have laid down. So, if someone opposes the Prophet's decision, he is in fact opposing the Qur'ân.\textsuperscript{74}

Those who reject the hadîth about "al-yamîn ma' al-shâhid" argue that it is mursal and mursal hadîths are not accepted by them as a legal source. This objection is answered by al-Shâfi'î in al-Umm where he says that this judgement is not based on a mursal hadîth, but derived from a hadîth related by Ibn 'Abbâs and confirmed as coming from the Prophet.\textsuperscript{75}

Al-Shâfi'î quotes many cases\textsuperscript{76} where the judgement made by al-Shaybânî or the Hanafite madhhab is based on a single witness. This is to show their inconsistence.

\textbf{9.6.2. "The Term Ahl al-Madînah"}

Al-Shâfi'î had corrected the misunderstanding of al-Shaybânî regarding the term ahl al-Madînah. Al-Shaybânî wrote a book\textsuperscript{77} in order to refute ahl al-Madînah which, in his terminology refers to Mâlik. In this context, al-Shâfi'î makes clear to al-Shaybânî that ahl al-Madînah was not Mâlik alone; there were many other 'ulamâ’ and Mâlik was only one of them.\textsuperscript{78} Then al-Shaybânî clarifies his condemning of ahl al-Madînah or Mâlik. He was not condemning the place (al-Madînah) or an

\textsuperscript{74} Yàqût, Irshâd. p. 374.

\textsuperscript{75} Al-Shâfi'î, al-Umm. vol. VII. p. 7.

\textsuperscript{76} For details, see al-Subkî, Tabaqât al-Shâfîyyah al-Kubrâ. vol. II. pp. 122-4; Yàqût, Irshâd al-Arib ilâ Ma'rîfât al-Adîb. vol. VI. p. 373.

\textsuperscript{77} This book might be kitâb al-İyyah 'alâ Ahl al-Madînah by al-Shaybânî.

\textsuperscript{78} Ibn Abî Hâtim, Adâb al-Shâfî'. p. 111; al-Bayhaqî, Manâqib al-Shâfî'. vol. I. pp. 113-4, 121.
individual (Malik), but he was attacking a judgement derived from "al-shāhid wa al-yamīn".

9.6.3 The Credibility of Imāms

Al-Shaybānī raises the question who is the more knowledgeable of two imāms, Abū ʿHanīfah or Mālik b. Anas? In reply, al-Shāfiʿī argues that Mālik is more knowledgeable on the Qurʾān, sunnah, the opinions of the Prophet's Companions and that Abū ʿHanīfah is better at qiyās. However, according to al-Shāfiʿī, qiyās must be based on those things mentioned earlier. Those who do not know uṣūl properly, will not be able to exercise qiyās correctly. This he refers to Abū ʿHanīfah in comparison to Mālik.

There are also discussions on qiyās applied to ghasb, duʿāt with phrases not in the Qurʾān when performing ṣalāh, qasāmah, salāt al-khawf, marriage between relatives and others.

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79 Ibn Abī Ḥātim, pp. 159, 201, 164-167.
80 Ibn Abī Ḥātim, p. 160.
81 See Kitāb al-Radd ʿalā Muhammad b. al-Ḥasan, in the margin of al-Umm. vol. VII.
82 Ibn Abī Ḥātim, p. 160-3.
83 Ibn Abī Ḥātim, p. 167.
84 Al-Bayhaqī, p. 128.
85 Al-Bayhaqī, p. 137.
Al-Shāfi‘ī says that he found many mistakes throughout the book written by al-Shaybānī against the ahl al-Madīnah.

9.7 Fundamental Ideas of Jīmā‘ al-‘Ilm

Generally, al-Shāfi‘ī’s chief concern in his writings is with the role of the Prophet’s sunnah. Here, he pays further attention to hadīth. Before Jīmā‘, al-Risālah laid down guidelines on usūl al-hadīth. Due to his great concern with hadīth and his contribution to it he was called the defender of the sunnah (nāṣir al-sunnah).

Jīmā‘ al-‘Ilm contains an introduction and four chapters. The first chapter deals with the doctrine of those who reject akhbār entirely. The second is about the doctrine of those who reject khabar al-khaṣṣah (khabar al-wāḥid). The third deals with God’s obligations (farā‘īd), such as ṣalāt, ṣakāt, ṣiyām and others and the last is about the nature of prohibition laid down by the Prophet.

86 It is reported that al-Shāfi‘ī claimed that he found about seventy places where al-Shaybānī’s books contradict the Qur’ān. See al-Bayhaqī, Manāqīb al-Shāfi‘ī. vol. I. p. 125.

87 Ibn Abī Ḥātim, pp. 165-7

88 Abdul Hamīd Othmān, Shāfi‘ī and the interpretation of the role of the Qur’ān and the Ḥadīth. p. 7.

89 In his Risālah, al-Shāfi‘ī laid down the formula as to how to accept the khabar or hadīth, such as the narrator must be reliable, just and its sanad must not be broken.


91 Ahmad Muhammad Shākir, the editor of Jīmā‘, added another chapter-heading on the characteristics of the Prophet’s prohibition (Ṣifat Nahy al-Nabī). He did so to give continuity to the chapter before it.


93 Ibid., pp.46-102.

94 Ibid., pp. 103-124.
9.7.1 The Authority of the Sunnah of the Prophet

In the first two chapters, al-Shafi'i endeavours to put forward the akhbār of the Prophet in its rightful position as a valid source of Islamic jurisprudence. He adduces proofs from the Qur'an against those who repudiate the authority of khabar, by explaining that Muslims have to accept the khabar of the Prophet especially khabar which contains legal rulings.

In Jimā', he produces pieces of evidence from the Qur'an. Among them are,

"it is He who has sent amongst the unlettered (umīyīn) an apostle from among themselves to rehearse (yatlū) to them His signs, to sanctify them and to instruct them in Scripture (al-Kitāb) and al-Ḥikmah."\(^{95}\)

"and recite what is rehearsed (yutlā) to you in your home, of the signs of God and al-Ḥikmah, for God understands the finest mysteries and is well acquainted (with them)."\(^{96}\)

\(^{95}\) Al-Jum'ah: 2

\(^{96}\) Al-Ahzāb: 3.
From these two Qur'anic verses cited, al-Shafi'i in the authority of ahl al-Qur'an before him interprets al-Hikmah which comes together with al-Kitab as the sunnah of the Prophet.

He also cites other verses of the Qur'an. Among others are,

"But no, by thy Lord, they can have no (real) faith until they make thee judge in all disputes between them, and find in their souls no resistance against thy decisions, but accept them with the fullest conviction."

"He who obeys the Apostle, obeys God."

"Then, let those beware who withstand the Apostle's order, lest some trial befall them, or a grievous penalty be inflicted on them."

"So take what the Apostle assigns to you, and deny yourselves that which he withholds from you."

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97 Al-Shafi'i was not the first one who interprets hikmah which is mentioned together with al-Kitab as the sunnah of the Prophet. For, he himself declares that he heard such an interpretation from the authorities of the Qur'an. In reference to Tabari's Tafsir of Qur'an, Q 33: 34 Ayat Allah is interpreted as referring to the Qur'an and al-hikmah as the sunnah of the Prophet. The ultimate authority of this isnad goes back to Qatadah (d. 117/118 A.H.). Therefore, we could say that al-Shafi'i's interpretation in connection with hikmah as the sunnah went back to one of the scholars of the Qur'an, Qatadah.

The isnad of this tafsir (al-Ahzab: 34) as follows: Bishr - Yazid - Sa'id - Qatadah. (al-Tabari, vol. 22. p. 9). See also Imtiaz Ahmad, The Significance of Sunna. p. 110. Al-Shafi'i also produces as his sanad al-Hasan, Qatadah and Yahiya b. Abi Kathir. He also forwards his sanad from al-Miqdam b. Ma'di Karib from the Prophet that he said: "Truly! I was given al-Kitab and its equivalent together. Truly I was given the Qur'an and its equivalent. It is doubted that a hungry man lying on his couch saying: It is only upon you the Qur'an. Whatever you find halal in it, you have to declare it halal. And whatever you find haraam in it, you have to declare it haraam. Truly, a donkey is not permitted for you...." [See al-Suyuti, Jalal al-Din, Miftah al-Jannah fi al-Ihtijaj bi al-Sunnah. pp. 20-1.]


99 Al-Nisâ‘: 65.

100 Al-Nisâ‘: 80.

101 Al-Nûr: 63.

102 Al-Hashr: 7.
These four verses, argues al-Shaфи’I clearly state that Allah imposes upon Muslims to obey and follow (ittibā’) the Prophet103 and his order.104 Muslims have to follow and obey whatever the Prophet declared as commandment (amr) or prohibition (nahy).105 Furthermore, he argues that the only way to implement the obligation laid down by Allah concerning His Prophet is the khabar (ḥadīth) of the Apostle.106

He argues that the general (‘āmm), particular (khāṣṣ), abrogated (mansūkh) and abrogating (nāsikh) passages of the Qur’ān are best expounded by the sunnah or hadīth of the Prophet. In relation to nāsikh and mansūkh, he gives an example of the crucial role of hadīth. The question is whether an āyah on farā‘id (Islamic law of succession/inheritance) had abrogated the bequest to parents or vice versa.107 By accepting the sunnah or khabar, this question is answered, i.e. it is the āyah of farā‘id that abrogated the bequest to parents and not the āyah of bequest which abrogated the farā‘id. Al-Shaфи’I raises the question of how it can be known that the farā‘id’s verses have abrogated the verse about bequest to parents, if we do not accept khabar from the Prophet.

To conclude, his putting forward the authority and validity of khabar al-wāḥid in the eyes of jurists and ahl al-kalām is the great contribution of al-Imām al-Shaфи’I to the hadīth.

103 Ḥimma p. 19.
104 Ḥimma p. 21.
105 Ḥimma p. 21.
106 Ḥimma pp. 21-2.
107 Ḥimma al-‘Ilm pp. 22-23.
9.7.2 *Ijmāʾ*

Al-Shāfiʿī also pays attention to *ijmāʾ*. What is the nature of *ijmāʾ* and its feasibility? Does the consensus of any locality constitute a decisive proof and authority?

According to al-Shāfiʿī, the real *ijmāʾ* is what the entire ummah have reached a consensus upon which is binding upon all Muslims, not the *ijmāʾ* of certain regions such as *ijmāʾ ahl al-Madīnah*.

Al-Shāfiʿī claims that 'the real *ijmāʾ* only happens on basic obligations such *ṣalāt, zakāt, hajj*, prohibition of theft, adultery/fornification, *riba* and others.

As far as *ijmāʾ ahl al-Madīnah* is concerned, al-Shāfiʿī in *Jimc* and elsewhere such as *Ikhtilāf Mālik wa al-Shāfiʿī* forwards his arguments in order to establish that the *ijmāʾ ahl al-Madīnah* does not bind other Muslims, because it is only a consensus agreed by certain ‘ulamāʾ in Madīnah. In this connection, it is worth noting what is said by Ibn Khaldūn in his *al-Muqaddimah* and later authorities. They attempt to correct al-Shāfiʿī’s misunderstanding of the concept of *ijmāʾ ahl al-Madīnah*. For them, *ijmāʾ ahl al-Madīnah* does not bind the entire ummah. But, other regions of Muslims may choose to follow what was agreed by the scholars of Madīnah.

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9.7.3 *Ijtihād*

Concerning *ijtihād* and *qiyyās*, al-Shāfi‘ī mentions several things that are required of a *mujtahid*, namely the knowledge of the Qur‘ān, *sunnah*, *ijmā‘* and *qiyyās*, which he calls *khabar lāzīm* (binding report). No one is allowed to practise *ijtihād* or to use *qiyyās* unless he is knowledgeable. Otherwise, he would be acting arbitrarily.

9.7.4 *Obligations Imposed by Allāh*

As far as the obligations imposed by Allāh are concerned, al-Shāfi‘ī divides them into two categories. The first is when the Qur‘ān explains the details of certain obligations, so it does not need further interpretation or reports from the Prophet to explain it. Second, Allāh laid down certain obligations in the Qur‘ān in general terms and the Prophet will explain what is intended by those obligations in details.

As far as the second category is concerned, *ṣalāt*, *zakāt*, *ḥajj* and others were imposed in the Qur‘ān in general terms. Then, it is the task of the Prophet to explain them in detail such as the number of prayers, *raka‘āt*, *rukū‘*, *sujūd*; the way of performing *ḥajj*; on which property *zakāt* is required and others.

9.7.5 *The Nature of the Prophet’s Prohibition*

The basis of prohibition made by the Prophet is that everything the Prophet forbids is unlawful (*ḥarām*) unless there is an indication to lessen the degree of prohibition from completely *ḥarām*, or whether he intended by it prohibition in certain

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110 *Jimā‘ al-‘Ilm*, p. 43.
things, apart from others, or intended it to be avoided; or he may have been giving instruction on good behaviour and choice.

The degree of prohibition from *ḥaram* to others would be changed on the basis of indication derived from the Prophet or the consensus of Muslims. Al-Shāfi'ī illustrates these prohibitions as follows.

**9.7.5.1 Prohibition Which is Ḥarām**

The Prophet prohibited the exchanging of gold with silver, gold with gold except in the one contract, two sales in one contract, *bayʿ* al-gharar, the marriage of *al-shighār* and *mutʿah*.

**9.7.5.2 Prohibition in Certain Circumstances and Not Others**

This kind of prohibition is solely indicative from the *sunnah* of the Prophet that he prohibited in certain circumstances and not others, for instance making a proposal of marriage to a woman who has been proposed to earlier by another (*al-khitbah al-ʿalā al-khitbah*). There is a *ḥadīth* which clearly prohibits Muslims from making a proposal of marriage to a woman who has been proposed to earlier by another. The *ḥadīth* is as follows, "let none of you make an engagement of marriage in competition with his brother's proposal".

The literal meaning is that *al-khitbah al-ʿalā al-khitbah* is prohibited as *ḥarām*, the first degree of prohibition. However, according to Al-Shāfi'ī, the degree of prohibition is changed for there is a *sunnah* of the Prophet which indicates otherwise.
From the *ḥadīth* of Umm Salamah, it is derived that if a woman has received a proposal of marriage, and has neither agreed to nor rejected the first proposal, it is allowed to others other than the first man to make a proposal to her. For, in the case of Umm Salamah where two Companions, Abū Su fyān and Abū Jahm proposed her, she neither accepted nor rejected them. The Prophet, however, suggested that she should marry Usāmah. From this event, it is clear that the prohibition as stated in the *ḥadīth* is intended for certain circumstances and not others.

9.8 The Significance of the *Jimā‘ al-‘Ikm*

Unlike al-Shāfi‘ī’s encyclopaedic and pioneering corpuses, *al-Umm* and *al-Risālah*, *Jimā‘ al-‘Ikm* does not share their reputation. The fact that only a few scholars have had recourse to this work either by citation or edition bears out the truth of this assertion. However, this does not mean that *Jimā‘ al-‘Ikm* does not have any significance for Islam in general, or for Islamic jurisprudence in particular. The significance of this work can be identified in the following categories.

9.8.1 *Uṣūl al-fiqh*

Most writers categorise *Jimā‘ al-‘Ikm* as being about the science of *uṣūl al-fiqh*. Al-Shāfi‘ī’s writings in *uṣūl al-fiqh* can be listed as follows: *al-Risālah*, *kitāb Ibtāl al-Iṣtiḥsān*, *Jimā‘ al-‘Ikm*, *kitāb Ikhtilāf Mālik wa al-Shāfi‘ī* and others.\(^\text{112}\)


\(^\text{112}\) Ahmad Muhammad Shākīr, *Introduction to al-Risālah*. P. 13 citing al-Zarkashī, Badr al-Dīn, al-Bohr al-Muḥīfī, al-Uṣūl, that al-Shāfi‘ī was the first scholar who wrote on *uṣūl al-fiqh* whose books or treatises are *al-Risālah*, *kitāb Aḥkām al-Qur’ān*, *Ikhtilāf al-Ḥadīth*, *Ibtāl al-Iṣtiḥsān*, *Jimā‘ al-‘Ikm* and *kitāb al-Qiyās*.
In the *Jimāʿ*, al-Shāfīʿī demonstrates the importance of *sunnah/hadīth* as a source of Islamic jurisprudence. The authoritativeness of the *sunnah* was an issue to his interlocutors. The emergence of those who rejected *hadīth* had a great impact on al-Shāfīʿī’s thinking. It explains why al-Shāfīʿī in most of his writings deals with the authoritativeness and the validity of *khabar al-wāḥid* particularly. Not only in the *Jimāʿ* has he done this, but also in *al-Risālah* and *Ikhtilāf al-Ḥadīth*.

He also pays attention to *qiyyās*, *ijmāʿ*, *ikhtilāf* and *ijtihād* as authoritative in addition to *sunnah*.

In retrospect, it is could be said that *Jimāʿ al-ʿIlm* is a summary of *al-Risālah* which is considered the first book to treat *uṣūl al-fiqh* as an independant topic. In other words, at a certain point in *al-Risālah*, al-Shāfīʿī deals at length with ideas in which he deals briefly in *Jimāʿ*, and the other way round.
CHAPTER TEN: AN ANNOTATED TRANSLATION OF JIMĀʾ AL-ŠI’LM

This chapter will provide a full and complete translation of al-Shafi‘i’s work, *Jimāʾ al-ŠI’LM*. The translation aims to help readers especially those who are not conversant with the Arabic language to understand the significance of the work.

It is noteworthy that in rendering the Arabic text into English, the author has made used of the different texts of *Jimāʾ al-ŠI’LM* that are available to him. For ease of reading and to make the text systematic, the author follows Aḥmad Muḥammad Shākir’s paragraph numbering.

In order to draw attention to the significance of the work, the author has attempted to give cross-references to al-Shafi‘i’s other works, mainly *al-Risālah*, *Ikhtilāf al-Ḥadīth*, *Ikhtilāf Mālik wa al-Shafi‘ī* and others. Having done this, it will be appreciated how al-Shafi‘i, in the different works tried to develop more or less the same ideas.
1. Al-Rabî` b. Sulaymān informed us, saying: Muḥammad b. Idrīs al-Shāfi`ī informed us; he said: I never heard anyone to whom the people ascribed knowledge, or who ascribed knowledge to himself contradicting the fact that Allāh has obliged [us] to adhere to the commandment of the Messenger of Allāh and to submit to his ruling (hukm), and that Allāh did not assign to anyone after him anything other than adherence to him; and that no statement is ever binding except on the basis of the Book of Allāh, or the sunnah of His Prophet may Allāh bless him and grant him peace; any (thing) other than the Book of Allāh and the sunnah is subordinate to both of them; and that the demand Allāh imposed upon us and upon our successors and upon our predecessors to accept reports (khabar) from the Messenger of Allāh is one and the same. Nobody disagrees that it is obligatory (fard) and incumbent (wājib) on all to accept khabar from the Messenger of Allāh may Allāh bless him and grant him peace, except a group whose doctrine I shall describe-if Allāh, the High wills.

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2 According to Ahmad Muhammad Shākir in his Introduction to Jimā` al-`Ilm, that the one who narrated this work from al-Rabî` was Abū al-`Abbās al-Asamm, Muḥammad b. Ya`kūb b. Yūsuf b. Ma`qal b. Sinān al-Naysābūrī (247-346H). For Abū al-`Abbās, see al-Dhahābī, Tadhkirat al-Illajz. vol. III., p. 73-5.

2. Muḥammad b. Idrīs al-Shafiʿī said: The *ahl al-kalām* are widely divided about validating (*tathbiʿ*) the *khabar* from the Messenger of Allāh, and others of those whom the *ʿūmmah* associate with *fiqh* are also divided about it.

Some of them have given much weight to *taqlīd* and have paid little attention to *naṣṣ* (thinking), [they have been frequently] careless and have hurried to [gain] the leadership [of others].

3. I will provide you with some examples for each group I know that will indicate other views I have not mentioned-if Allāh, the High wills.

THE ACCOUNT OF THE DOCTRINE OF THE GROUP WHICH REJECT THE AKHBĀR ENTIRELY

4. Al-Shafiʿī may Allāh the High have mercy on him said: Someone who is credited with knowledge of the doctrine of his colleagues said to me: "You are an Arab, and the Qurʾān has been revealed in the tongue" of those of whom you are [a part], and you are more knowledgeable (*adra*) in memorizing the Qurʾān.

In it, there are injunctions of Allāh which He has revealed. If anyone to whom the Qurʾān may have become confusing has doubted concerning one single letter- you would call him to repent, and if he does not repent you will kill him.7

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4 This term (*ahl al-kalām*) appears two times in *Ikhtilāf al-Ḥadīth*. pp. 43, 53.


6 Al-Qurʾān, according to al-Shafiʿī is absolutely Arabic language. Thus, he rejects the opinion of those who hold that the Qurʾān contains both Arabic and non Arabic ('ajam) languages. See *al-Risālah* paras. 127, 131-187.

7 *Al-Risālah*. para. 1261.
And Allāh, the Exalted says about the Qur’ān:

"... (it is) an explanation for all matters".8

Then, how it is possible for yourself or for anyone, concerning anything which Allāh has laid down, to say at one time that the obligation in it is general; at another time that the obligation in it is particular; at another that the order is obligatory; at another to say that the order has an indication (dilālah) in it or, if he wishes, is optional9?

5. Frequently you draw this distinction that a ḥadīth you relate from one man from another from another, or two ḥadīths or three until you reach the Messenger of Allāh may Allāh bless him and grant him peace. However I have found that you and those who followed your doctrine do not exonerate anyone whom you met, nor anyone whom I have met of those whom who you have met, and to whom you give precedence in truthfulness and memorising [of ḥadīth] from error and forgetfulness and making a mistake in his report; rather I have found you saying of more than one of them, "so and so has made a mistake in such and such a ḥadīth, and so and so has made a mistake in such and such a ḥadīth. I have also found you saying, if a man says of a ḥadīth which only a few people know (min ʿilm al-khāṣṣah) and which you have used to declare something lawful or unlawful: "The Messenger of Allāh did not say this". Either you are in error or those who related the ḥadīth to you are in error". You do not call him to repent. You said no more to him than "How shameful is what you say".

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8 Al-Nahl: 89.

6. Is it then possible to make a distinction between any of the laws of the Qurʾān (اَلْحُكَّمَاتُ ٱلْقُرْءَانِ)\textsuperscript{10}, when its outward appearance is one and the same to those who hear it, on the basis of the khabar of those who are as you have described? Do you treat their khabar as you would the Book of Allāh, so that you give and withhold on their basis\textsuperscript{11}?

7. He said: Then I replied: Actually we give only on the basis of certainty (نُسْرَة),\textsuperscript{12} and on the report of truthful men (ذَنَبٍ عَلَى الْعَلَمِ), and on the basis of qiyās (analogy). The justifications of these [three] according to us differ. Even though we give it according to all of them, some of them are more valid than others.

8. He said: Such as?

9. I said: I give [legal judgement] on the basis of a man's admission, on the basis of evidence, on the basis of his refusal to swear an oath (نَفْذُ السَّلَامَةِ) and on the basis of his opponent's oath. Affirmation (قَابِلَةُ الْعَلَى) is stronger than proof, and proof is stronger than refusal to swear and than an opponent's oath. And even though we give [legal judgement] on the same level based on these things, the justifications for them are different.\textsuperscript{13}

10. He said: When you take your stand on accepting their khabar, while affecting them are the matters which you have mentioned, who ordered you to accept their reports and what is your proof (ٌلِقَة) against those who reject them (their khabar)?

\textsuperscript{10} Ikhtilāf al-Ḥadīth. p. 54.

\textsuperscript{11} Ḥadīth specifies the Qurʾān, see al-Risālah. paras. 214-235, 466- 485, 1610-1621.

\textsuperscript{12} For definition of certainty, see this Jīmāʾ al-Ilm para. 169.

\textsuperscript{13} Al-Risālah. para. 1821.
11. Then he (the opponent) continued: I do not accept any of them (i.e. khabar) for there is the possibility of mistake (wahm) in the reporters. I do not accept (anything) except what I call Allāh to bear witness, just as I acknowledge His Book of which no one can doubt a single letter. Is it then admissible that anything should take the place of knowledge (certainty) when it is not?

12. I said to him: Whoever knows the language in which the Book of Allāh and the ahkām of Allāh [have been revealed], [surely] his knowledge of both will lead him to the acceptance of the akhbar of those who are truthful from the Messenger of Allāh, khabar al-khāṣṣah and khabar al-ʿāmmah. [And his knowledge of both will lead him] to distinguish those of the laws of Allāh for whose distinction the Messenger of Allāh has given evidence.14 In that way, he would realize the place of the Messenger of Allāh, since you have not seen him.

13. He said: Yes.

14. I said: You have rejected khabar since you believe in what you are saying!

15. He said: Could you give me an example of this, from matters in which proof can be supporting [for you] about the acceptance of the khabar? Then, if you can show it, it will illustrate your argument more clearly and establish it more firmly against those who contradict you, and will be more acceptable to [the mind of] those who abandon their opinion for yours.

16. I replied: If you follow the path of fairness, it will be clear that in some of what you have said you base your opinion upon grounds which it is necessary for you to

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14 Al-Risālah, paras. 53-9, 269-311.
abandon, and you know that you have remained too long in your negligence of matters of your religion of which you should not be negligent.

17. He said: So, please mention anything if you can produce it?

18. I said: Allāh the Exalted says:

"It is He who has sent amongst the unlettered an apostle from among themselves to rehearse to them His signs (āyātīh), to sanctify them and to instruct them the Book (al-Kitāb) and Wisdom (al-Ḥikmah)."

19. He said: We already know that the Book is the Kitāb of Allāh, but what is al-Ḥikmah?

20. I replied: The sunnah of the Messenger of Allāh may Allāh bless him and grant him peace.

21. He said: Is it not possible [that it means] that he [the Prophet] is teaching/instructing them al-kitāb generally, and (teaching them) al-ḥikmah particularly, and that al-ḥikmah means the ahkām of the Qur'ān?

22. I replied: You mean that he [the Apostle] expounds to them from Allāh, the Exalted as he explained to them all of the basic obligations (farā'īd), such as ṣalāt, zakāt, ḥajj (pilgrimage) and others, so that Allāh has expounded some of His obligations through His Kitāb (Book), and has explained their details through the words of His Prophet may Allāh bless him and grant him peace?

23. He said: That is possible.

15 Al-Jum'ah: 2. Cf. al-Ṭabarānī, Taṣfīr al-Ṭabarānī, vol. 28, p. 94 that ḥikmah is the sunnah of the Prophet.

16 Al-Risālah: paras. 97, 245-257, 305-7.
24. I said: If you accept this opinion, then the question is the same as the one before it, i.e. you will reach knowledge only through a *khabar* from the Messenger of Allah may Allah bless and grant him peace.

25. He said: And if I accept the view that it is a repetition of the words? [i.e. *Hikmah* and *Kitāb* are the same].

26. I said: Which one of them is it best to follow: since *al-kitāb* and *al-hikmah* have both been mentioned [together]: are they two things or just one?

27. He said: It is possible that they may be as you have described; i.e, *Kitāb* and *Sunnah*; so that they are two [separate] things, but it may be that they are one thing.

28. I said: The more obvious of the two things is the better. In the Qur'an there is evidence of what we have said and a contradiction of your belief.

29. He said: And where is it?

30. I said: The word of Allah, the Exalted:

"...and remember what is rehearsed to you in your homes, of the signs of Allah and the *Hikmah*, for Allah is Subtle and Aware".¹⁷

So, He (Allah) informed [us] that two things were rehearsed in their houses.

31. He said: This Qur'an is recited, but how can *al-hikmah* be recited?

32. I said: The meaning of *tilāwah* (recitation) is that the Qur'an and the Sunnah are uttered [just as it (*al-hikmah*) is uttered].

33. He said: This is better evidence than the first that the *Hikmah* is not the Qur'an.

34. And I said: Allāh has enjoined us to follow His Prophet (ittibāʿ Nabiyyih) may Allāh bless and grant him peace.\(^{18}\)

35. He said: Where?

36. I said: Allāh, the Exalted says:

"But no, by thy Lord, they can have no [real] faith until they make thee judge in all disputes between them, and find in their souls no resistance against thy decisions, but accept them with the fullest conviction".\(^{19}\)

37. And (Allāh) the Exalted says:

"He who obeys the Apostle, obeys Allāh".\(^{20}\)

38. And Allāh says:

"Then, let those beware who withstand the Apostle's order, lest some trial befall them, or a grievous penalty be inflicted on them".\(^{21}\)

39. He said: There is nothing better for us to state concerning the Ḥikmah than that (al-Ḥikmah) is the Sunnah of the Messenger of Allāh may Allāh bless him and grant him peace. If some of what our colleagues have claimed was (true) that Allāh has enjoined submission to the rule (ḥukm) of the Apostle of Allāh may Allāh bless him and grant him peace, whereas if the Ḥikmah is some of what He has revealed, those who did not accept (that Ḥikmah meant the sunnah) would still have to be associated

\(^{18}\) Al-Risālah. pp. 73-8; Ikhtilāf al-Ḥadīth. p. 61.

\(^{19}\) Al-Nisā': 65.

\(^{20}\) Al-Nisā': 80.

\(^{21}\) Al-Nūr: 64.
with submission to the rule (*hukm*) of the Apostle of Allāh may Allāh bless him and grant him peace.

40. I said: Allāh has imposed upon us to follow his order, therefore He said: "So take what the Apostle assigns to you, and deny yourselves that which he withholds from you".\(^{22}\)

41. He said: It is obvious in the revelation that there is an obligation upon us that we (should) take what the Messenger of Allāh commands us, and deny ourselves what he prohibits us.

42. He said: I said: And the obligation upon us and upon those who came before us and those who will come after us is one [and the same]?  

43. He said: Yes.

44. Then I said: If it is an obligation upon us to follow the Apostle's order, then do we know certainly that Allāh, whenever He imposes something upon us, has shown us the way to fulfil His obligation?  

45. He said: Yes.

46. I said: Do you find the way to realize Allāh's obligation about following the orders of the Apostle of Allāh, or anyone before you or after you who has not seen the Apostle, except through reports (*khabar*) from the Apostle may Allāh bless him and grant him peace?

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\(^{22}\) *Al-Hashr*, 7.
47. The fact that I can only achieve this through a *khabar* shows that Allāh has required me to accept from the Apostle of Allāh may Allāh bless him and grant him peace.

48. He said: And I also said to him: This is binding upon you in relation to abrogating and abrogated passages of the Qurʿān.\(^\text{23}\)

49. He said: Please mention something about that.

50. I said: Allāh, the High says,

"It is prescribed, when death approaches any of you, if he leave any goods, that he make a bequest to parents and kin".\(^\text{24}\)

51. And (Allāh) says in the matter of inheritance (*farāʾid*):

"And to his (the deceased) parents, a sixth share of the inheritance, if the deceased left children, and if he have no child and the parents are the (only) heirs, then to his mother appertaineth the third; if the deceased have brothers (or sisters), to his mother appertaineth the sixth".\(^\text{25}\)

52. As a result, we have claimed, on the basis of the *khabar* from the Apostle may Allāh bless him and grant him peace that the verse[s] of inheritance (*āyat al-farāʾīd*) has abrogated the judgement of bequests (*waṣiyyah*) to parents and kin.\(^\text{26}\) Now, If we

\(^{23}\) *Sunnah* indicates the abrogated and abrogating passages of the Qurʿān. See *al-Risālah*, paras. 241-2, 376-386; *Ikhtilāf al-Ḥadīth*, p. 64.

\(^{24}\) *Al-Baqarah*: 180.

\(^{25}\) *Al-Nisāʾ*: 11.

\(^{26}\) It is similar to the case of *al-mash* (wiping the boots). It is claimed that mash was abrogated by the Qurʿān (*wudūʾ*) arguing that the imposition of mash was before the imposition of wudūʾ (*al-Māʾidah*). However, according to al-Shāfīʿī, this view cannot be accepted because there is no such narration that the Prophet did not mash after the imposition of wudūʾ. See *Ikhtilāf al-Ḥadīth*, pp. 59-61.
were among those who do not accept the *khabar* and someone said: "The bequest has invalidated the *farā'īḍ*, would we have proof against him except through the *khabar* from the Messenger of Allāh may Allāh bless him and grant him peace?

53. He said: This is similar to the *Kitāb* and the *Ḥikmah*. And the proof in your favour is established that it is incumbent upon us to accept reports (*khabar*) from the Apostle may Allāh bless and grant him peace.

And indeed I have come to the conclusion that the acceptance of reports is compulsory for every Muslim, according to what you have mentioned and what is equivalent to its meaning in the Book of Allāh.

No pride prevents me from showing that I have moved from what I used to think to another opinion, since the proof is clear. Rather I believe that it is my duty to revert from what I used to think to what I now see to be the truth.

54. But what about how you make what is general in the Qur'ān sometimes general, and sometimes particular?

55. I said to him: The language of the Arabs is comprehensive. Arabs may utter something general which they intend to be particular, and this is clear in their expression (*laʃz*). And I do not decide such through any *khabar*, other than a *khabar lāzim* (binding reports). Thus a thing has been revealed in the Qur'ān and been expounded at one time in the Qur'ān, and at another in the *Sunnah*.

56. He said: Then, please mention something of this?

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27 *Al-Risālah* paras. 214-219, 393-415,


57. I said: Allāh, the Exalted says:

"Allāh is the creator of all things".\(^{30}\)

This is produced in speech as general and what is intended is general.\(^{31}\)

58. And He (Allāh) says:

"(O mankind !) We created you from a single (pair), of a male and a female, and made you into nations and tribes, that ye may know each other. The most honoured of you in the sight of Allāh is (he who is) the most righteous of you".\(^{32}\)

Every soul is created from a male and a female. This is general and by it a general meaning is intended.

59. [However], within it there is particularity, for (Allāh) says:

"The most honoured of you in the sight of Allāh is (he who is) the most righteous".\(^{33}\)

However, righteousness (taqwā) and its opposite can be predicated of only those who have reached adulthood and are not mentally handicapped.\(^{34}\)

60. And (Allāh) says:

"O men! Here is a parable set forth! Listen to it. Those on whom, besides God, ye call, cannot create (even) a fly, even if they were all to meet together for the purpose".\(^{35}\)


\(^{31}\) Al-Risālah. paras. 179-180.

\(^{32}\) Al-Ḥujjat: 13. Cf. al-Risālah. para. 188.


\(^{34}\) Al-Risālah. paras. 188-196.

It is certain that not all people in the time of the Apostle may Allah bless him and grant him peace used to call on something (else) besides God, because among them there were believers. So, the verbal form of the speech is general, but only those who were like this were intended.36

61. And (Allāh) says:

"And ask them about the town standing close by the sea when they trangressed on the Sabbath".37

[This communication] shows that the trangressors in (the matter of the Sabbath) are its inhabitants, not the town (qaryah).

62. And I mentioned to him part of what which I wrote in my book38 [i.e. al-Risālah].

63. Then he said: It is all exactly as you have said, but explain to me the general which is not found in the Book of Allāh to be intended to be particular?

64. I said: Allāh has imposed the ṣalāt. Do you not find it to be [obligatory] on people in general?

65. He said: Yes.

66. I said: And do you not find menstruating women to be excluded from it?

67. He said: Yes.

68. And I said: And do you not find [the obligation] of ẓakāt on wealth to be general but find some type of wealth to be excluded from it?

36 Al-Risālah. paras. 203-3.


38 Al-Shafi‘i refers to kitāb; kitāb in this Jimā‘ al-‘Ilm para. 103, as well as in al-Risālah as he called it al-kitāb; kitāb or kitābunā, paras. 96, 418, 420, 573, 625, 709, 954.
69. He said: Yes.

70. I said: And do you not find that the bequest to parents is abrogated by the verses of inheritance?

71. He said: Yes.

72. I said: And (do you not find) the obligation of inheritance to fathers and mothers expressed in general terms, though Muslims do not allow an unbeliever to inherit from a Muslim, nor a slave from a freeman, nor a murderer from his victim, by the *sunnah*?  

73. He said: Yes. We accept some of this.

74. I said: What has showed you this?

75. He said: The *sunnah*, because there is no Qur'anic text concerning this matter.

76. I said: It is clear from the *ahkām* of Allāh in His Book that Allāh (made) it obligatory to obey His Messenger, as is also the position which Allāh has given him as the clarifier (*ibānah*) what Allāh has revealed in terms of whether it is particular or general, abrogating or abrogated?

77. He said: Yes, I maintained the opposite of this until the error of those who embrace that doctrine became clear to me. Concerning this matter, people have followed two *madhhabs*: One of these groups does not accept any *khabar*, and that the explanation is in the Book of Allāh.

78. I said: What does that lead to?

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79. He said: This leads to terrible things. They say that whoever performs anything that could be called 'salāt' and gives the minimum of that which is given the name 'zakāt' has performed what is required of him. There is no limit concerning that, even if he prays only two raka'ahs each day, or every few days! And they say there is no obligation upon anyone about anything which is not in the Book of Allāh.

80. Another [group] said: A khabar is acceptable about anything mentioned in the Qur'ān. They accept something close to their words concerning what is not mentioned in the Qur'ān, and they fall into the same error as the first group, or something close to it. They come to accept a khabar after having rejected it and fail to recognise nāsikh (abrogating) and mansūkh (abrogated), or general and particular khabar.

81. And the mistake (khafa') and erroneous doctrine of these two groups (madhhab) is clear. I do not support either of them.

82. Is there any proof (ḥujjah) for you to declare something permissible that we know with certainty (ihājah) to have been prohibited on the basis of something that we do not know with certainty?

83. I said: Yes.

84. He said: What is it?

85. I said: What is your opinion concerning this man beside me, are his blood and his property inviolable?

86. He said: Yes.

87. I said: And if two witnesses give testimony (shahādah) against him that he killed a man and took his property, and that is what he has here in his hands?
88. He said: I will kill him in retaliation, and I will hand over his property which is in his hands to the heirs of the (murdered) man vouched for by witnesses to be its owner.

89. He said: I said: Is it possible that two witnesses give false and wrong testimony?

90. He said: Yes.

91. I said: How have you made lawful the sacred blood and property guaranteed by what is certain, on the strength of two witnesses, which is not certain?

92. He said: I have been ordered to accept testimony.

93. I said: Do you find a text (naṣṣ) in the Book of Allāh which (says that) you should accept testimony with regard to killing?

94. He said: No, but [I do so] by deducing that I have been ordered to do it for a reason.

95. I said: Is it possible for that meaning to apply to a ruling other than execution, since killing involves a choice between retaliation and blood money (diyāh)?

96. He said: The proof concerning that is that since the Muslims agree that killing can be established by two witnesses, we say that the Qur’ān may support the meaning (implication) which they have agreed upon; and the general body of Muslims will not make a mistake concerning the meaning of the Book of Allāh, even though some of them may do.

97. Then I said to him: I think that you have retreated into accepting khabar from the Apostle may Allāh bless him and grant him peace and ijma‘ is weaker?

98. He said: That is compulsory for me.
99. I said to him: We find then that you have made lawful sacred blood and property guaranteed by what is certain, by testimony which is not certain?

100. He said: I have been ordered to do that.

101. I said: If you have been ordered to do that based on the outward truthworthiness of two witnesses, you accept both of them outwardly, while no one knows the invisible (mughayyab) but Allāh. And we require of the traditionist (muḥaddith) more than we require from the witness (shāhid). We allow many men's testimony, (but) do not accept the ḥadīth of one of them. And we find the evidence of the truth or the error of a muḥaddith from those Ḥuffāz (religious scholars) who know him and (by comparing his words) with the Qur'ān and the sunnah. In this, there is (much) evidence. And this is not possible for testimonies.

102. He said: He continued to draw the distinction which I have described regarding the rejection of khabar, accepting some of it sometimes, and at other times rejecting the like of it, despite the explanation of the error in this which I have mentioned, and (the consequences) entailed for him in reaching differing utterances.

103. In what we have described here, and in the Book [i.e. al-Risālah] preceding this, there is an indication of the proof against them and others.

104. Then he said to me: I have accepted from you that I should accept khabar from the Apostle may Allāh bless him and grant him peace, and I know that the evidence

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40 Al-Risālah. paras. 1158-9, 1004-1100.

41 Al-Risālah. paras. 1000-1002, 1012-3.

42 See the discussion of khabar al-wāḥid and its arguments in al-Risālah. pp. 369-471.
for the meaning of what He intended is through Allāh's requirement to obey him (the Prophet), which you have described.

However, when I have accepted his khabar, I have accepted on the authority of Allāh what the Muslims have agreed upon and have not disputed, and I know what you mentioned, that they only agree -and do not dispute-on a truth, if Allāh, the High wills.

105. What do you think if we do not find an explicit text in the Book of Allāh, the Exalted, nor a report from the Prophet may Allāh bless him and grant him peace on matters which I hear you being asked about and to which you reply by either declaring something wājib (obligatory) or declaring it bāṭil (invalid)? Where do you get the authority to do this? And how can you tell what is correct and what is incorrect? Are you exercising ijtiḥād in seeking some specific object which is not visible to you or are you speaking arbitrarily? Who has permitted you to make lawful or to make unlawful, or to separate (things) without any existent example which you can follow?

If you allow yourself that it would be permissible too for another to say whatever comes into his mind, without any example (mithāl) to follow and without any guideline (‘ibrah) cited against him by which you can know the correct from the erroneous!

106. Explain this if you can provide a proof: if not, your statement of that for which you have no proof will be rejected.

107. Then I said to him: It is not for me or for any ‘ālim (knowledgeble person) to speak about permitting or prohibiting anything, or to take anything from anyone or to
give it to anyone, unless he finds it (written) as a text in the Book of Allāh, a sunnah or ijmā', or in a binding habar (khabar yalzamu).43

108. What is not included in one of these khabars, we are not allowed to say on the basis of our own approval (istihsān),44 nor by what comes into our minds. We can say it only as qiyās (analogy) based on ijtihād required by binding habar.

109. If it were permissible for us to say it without any model such as qiyās by which the correct and the mistaken can be known, it would also be permissible for everyone to say, like us, whatever comes into his mind. But we and the people of our time are obliged not to say anything other than as I have described.

110. Then he said: What I know is that your scope for speaking is restricted unless it is extended by qiyās, as you have described. And I have two questions for you;

111. First: You have to mention the proof that you have authority to practise qiyās, since qiyās, we all know, is like habar, nothing but ijtihād. So how is it restricting for you to speak without qiyās? Please make your answer as brief as you can.

112. I said: Allāh has revealed the Book as a clarification (tibyān) of everything. There are different types of clarification: one of them is where He clarifies His obligations (which He imposes). Another is that which He has revealed in general terms (jumlah) and has enjoined (us) to use ijtihād to seek out (its meaning); and He indicated how it should be sought out by signs which He has created in His servants

43 Al-Risālah. paras. 120, 1468.

44 Al-Risālah. paras. 70, 1456-1468. Istihsān literally means considering onething as good. And in technical term is abandoning qiyās and holding to what is dear to people. See al-Jurjānī, al-To‘rifāt. pp. 18-9.
by which He showed them the manner of seeking out what He made an obligation upon them.

113. Since He has commanded them to seek out that which He has made an obligation upon them, there are two indications- and Allāh knows best- to guide you toward that. One of them is that the seeking out should be undertaken only through something on account of which the searcher will be directed, not that the searcher should seek it out arbitrarily (muta'assifan). The other is that He has charged him to exercise *ijtihād* in the endeavour to attain that which Allāh has commanded him to seek out.

114. He said: Please mention the proof (*dilālah*) for what you have described? 45

115. I said: Allāh, the Exalted says:

"We have seen the turning of thy face to heaven (for guidance, O Muḥammad). And We shall make thee turn (in prayer) towards a qiblāh which is dear to thee, so turn thy face toward (ṣaḥīr) al-Masjid al-Ḥarām (the Inviolable Place of Worship)". 46 And "ṣaḥārahuh" (towards it) means "qaṣād", and that means facing it (tīlqā').

116. He said: Yes [certainly].

117. I said: And He (Allāh) says:

"(And) He it is who hath set for you the stars that ye may guide your course by them amidst the darkness of the land and the sea". 47

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45 *Al-Risālah*. para. 1456.


118. And He said: "And He hath constrained the stars and the day and the night and the sun and the moon to be of service unto you, and He created the mountains and the earth".

119. And He made al-Masjid al-Ḥarām where He placed it in His earth. Then He commanded His servants to turn towards it. Among them are those who can see the Bayt (Ka'bah), and cannot fail to direct themselves correctly towards it, and among them there are those who are absent from it and whose dwelling is far away from its location and so they turn themselves towards it, guiding themselves by the stars, the sun, the moon, the winds, the mountains and the directions from which the wind blows. All of these may be employed in certain circumstances and be used as guidance, to enable one to dispense with others.48

120. He said: This is as you have described, but are you certain that whenever you turn towards (it), you will be correct?

121. I said: As for being certain whenever I turn towards it, I shall hit the mark as far as I have been commanded, and I have not been commanded more than this: - yes.

122. He said: But are you certain that when you turn towards the Ka'bah, you will hit the mark accurately?

123. I said: This is something which I have not been commanded to be absolutely certain about. I have been commanded only to exercise *ijtihād*.

124. And he replied: So what have you been commanded?

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48 *Al-Risālah* paras. 63-8, 104-114, 1336-1349, 1378-1383, 1446.
125. I said: (I have been commanded) to turn towards the al-Masjid al-Ḥarām, and I have done what I have been commanded. No human being knows for certainty the place of the Ka'bah correctly unless he can see it with his own eyes. As for what he is physically distant from, no human being can be certain of that.

126. He said: Then are you saying that you are correct?

127. I said: Yes, in the sense I have said. I have correctly done what I have been commanded to do.49

128. Then he said: No answer concerning this matter will ever be sound other than the answer you have given.

129. And whoever says, "I have been commanded to be certain that I hit the mark" is asserting that he never prays without being certain that he hits the mark. Yet the Qur'ān indicates, as you have described, that he has been ordered only to turn towards al-Masjid al-Ḥarām. And the turning (tawwajuh) is only an endeavour to discover (ta'akhkhiri) and an ijtihād, not a certainty (ihājah).

130. Then he said: Please mention something other than this, if you have anything. Al-Shāfi‘ī—may Allāh have mercy upon him—said.

131. And I said to him: Allāh, the Exalted says:

"Who of you killeth it of set purpose shall pay its forfeit in the equivalent of that which he hath killed, of domestic animals, the judge to be two men among you known for their ḍālah (probity)".50

49 Al-Risālah. paras. 1336-1349, 1381-1391, 1423-1428.

50 Al-Ma‘idah. 95. cf. al-Risālah. para 118.
132. Concerning the equivalent (mithl), the two shall exercise ijtihād about it, because the characteristics of the animals may vary, since it may be small or big. He has not commanded the two just men to give a judgement on the equivalent other than by ijtihād. He did not make them responsible for making judgment on it until He had first commanded them concerning the equivalent.\textsuperscript{51}

133. And this indicates something like what was indicated by the previous āyah which is prohibited to him- if there is to be ijtihād to find the equivalent, that he should decide by ijtihād other than the equivalent.

In this question of equivalent, he has not been required, nor in the case of qiblah when it is unseen to him, and he is not certain to hit the correct qiblah when he turns to face it, and he is not required to pray wherever he pleases without using ijtihād to seek out what will indicate the qiblah or the [the equivalent of the] wild game (sayd).

134. It [also] shows that it is not permissible for anyone to speak on anything of religious knowledge (ʿilm) except by the use of ijtihād. And ijtihād on this is the same as ijtihād in searching for the Kaʿbah in the qiblah and the equivalent with regard to wild game.

135. Ijtihād is only for those who know the evidence for that from a binding khabar (khabar lāzim), the Qurʾān, sunnah or ījmāʿ, and then seeks it out by the use of qiyaṣ and deduction (istikbat), using part of what I have described, just as he seeks out what is hidden from him concerning the Kaʿbah, and what is unclear to him concerning the equivalent of wild game.

\textsuperscript{51} Al-Risālah, paras. 70-1, 117-9, 1394-1401.
136. As for those who have no skill in this matter, it is not lawful for them to say anything about [legal] knowledge (‘ilm).\(^{52}\)

137. Similar to this is that Allah has stipulated that witnesses should be ‘adl (men of probity), and ‘adālah (probity) is acting in accordance with obedience and understanding in giving evidence. If this appears to be present, we accept the witnesses's evidence although within himself he may be concealing the contrary of that. But we have not been given the task [of knowing] what is concealed, nor are we allowed, if we are not certain that his inward (nature) is the same as his outward appearance, to allow the testimony of any who comes to us, if there are no indication of ‘adālah in him. This indicates what is indicated by the cases before it.

138. It is clear that nobody is allowed to speak about [legal] knowledge without what we have described.

139. He said: Will you show it to me in a way which people will recognise?

140. So I said to him: Yes.

141. He said: What is it?

142. I said: Consider how a garment may vary in its defects, (and also) slaves (raqiq) and other goods; to whom will the judge (hākim) show it to assess it?

143. He said: He will show it only to those who know about it (ahl al-‘ilm bih)

144. I said: [Is it] because their condition differs from the condition of those who are ignorant (ahl al-jahālah), and they know its market price the day they see it, and what may be counted a defect which will lower its value and what will not lower its value?

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\(^{52}\) *Al-Risālah* paras. 1456-1460.
145. He said: Yes.

146. I said: And the other people do not know that?

147. He said: Correct.

148. I said: And their knowledge about it is ijtihad, in that they compare one thing to another, according to the market [price] of the day?

149. He said: Yes.

150. I said: And their comparison (qiyās) is an ijtihad, not a certainty?

151. He said: Yes.

152. I said: And if other intelligent people (ahl al-'uqūl) say, "We shall exercise our ijtihad since you are not certain that those people are right", will you not say to them: "Those people are exercising ijtihad knowingly, but you are exercising it ignorantly, so you are acting arbitrarily"?

153. He said: They will have no other answer. And this is a sufficient answer to establish the proof.

154. I said: And if those who know about it were to say, "Since we are not certain, we will speak about it without employing qiyās, and think about today's price and make a guess about it", they would not have the right to do that?

155. He said: Yes.

156. I said: So one who is no scholar of the Qur'ān or Sunnah or the statements of the 'ulamā', though he is 'āqil, is not permitted to exercise qiyās; rather he must suspend judgement.

157. If it were permissible for a learned man to abandon reasoning by qiyās and ijtihad on the matter, it would also be permissible for ignorant men to speak (about
the matter). Perhaps it would be more excusable for them to speak about it, because the former produces a mistake purposely without any *ijtihād* whereas they produce it in ignorance.

158. He said: Could you give me a proof other than what you have said that the learned men have the right to speak (about the matter)?

159. I said: Yes.

160. He said: Would you please mention it?

161. I said: I do not know anyone who opposes the view that our predecessors in times gone by, and the generations after them, up to the present day, judged and *muftīs* issued *fatwās* on matters concerning which there is no text in the Book and no *sunnah*. And in this, there is a proof (*dalīl*) that they gave verdicts based on *ijtihād*-if Allāh wills.

162. He said: Could you give (proof) for this from a *sunnah*?

163. I said: Yes. ʿAbd al-ʿAzīz b. Muḥammad b. Abī ʿUbayd al-Darāwardī (d. 186/189) informed us, on the authority of Yazīd b. ʿAbd Allāh b. al-Hād (d. 139), on the authority of Muḥammad b. Ibrāhīm al-Taymī (d. 120), on the authority of Busr b. Saʿīd (d. 100), on the authority of Abū Qays (d. 54) the *mawṣūla* of ʿAmr b. al-ʿĀṣ, on the authority of ʿAmr b. al-ʿĀṣ that he heard the Messenger of Allāh may Allāh bless him and grant him peace saying;
"When a judge judges and exercises *ijtihad* and gives a right judgement, he will have two rewards, but if he judges and exercises *ijtihad* and errs in his judgement, he will have one reward".  

164. And Yazīd b. al-Hād said: Then I related (*haddathtu*) this *ḥadīth* to Abū Bakr b. Muḥammad b. "Amr b. Ḥazm (d. 110), and he said: Abū Salamah (d. 104) related the like of this to me on the authority of Abū Ḥurayrah.  

165. [Al-Shāfi‘ī said]: Then he replied: I accept [the *ḥadīth*] which I hear you narrating.  

"When he exercises *ijtihad* and gives a right judgement, he will have two rewards; and when he exercises *ijtihad*, but makes an error, he will have one reward".

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53 *Tariḥ* *Musnad*, vol. II, pp. 176-7.  
54 *Al-Risālah*, para. 1410.
Al-Rabi informed us that: Muḥammad b. Idrīs al-Shāfiʿī said:

166. Another group agreed with us that accepting the validity of khabar from the Prophet may Allāh bless him and grant him peace is obligatory for the ummah, and considered what I have mentioned by way of argument against those who reject khabar to be an argument which they accept and do not like anyone going against it.55

167. Then a group of them spoke to me, both together and as individuals. I cannot remember what each individual said to repeat it now, nor what the group said, or all of the answers I gave, or what was said to me. However I have made an effort to reproduce all their arguments and have set out some of the things I said, and to whom I said them, and I have mentioned some of the things I think they ought to accept. I ask Allāh, Most High for freedom from error and for success given by Him.

168. He said: In general terms, what they said was that no one, whether hukkam (judges) or muftis, can give a fatwā or judge except on the basis of certainty.

169. Certainty (ihāṭah) is everything known to be right in outward and inward reality which is testified to on Allāh’s behalf. They are the Qur’ān, and the sunnah that everyone is agreed on, and every thing which people are agreed on and have no dispute about. Thus, the judgement [for all those things] is similar and we are not


obliged to accept anything from them except what we have said, such as that zuhr prayer is four (raka’āt) since that is not disputed, no Muslim rejects it, and no one can doubt that.

170. I said to him: I do not consider it to be hidden from you or from anyone who is present with you that you cannot find in 'ilm al-khaṣṣah what is found in 'ilm al-āmmah.

171. He said: How?

172. I said: 'Ilm al-āmmah is as you have described; you will not meet anyone among the Muslims without finding knowledge of it in his possession, and no one will reject something of it said by another, as I have described with regard to the basic obligations (farā’īd), number of prayers and similar matters.⁵⁶

173. The ‘ilm al-khaṣṣah⁵⁷ (is) the knowledge (you find) of the predecessors and the successors who came after them, up to those whom you have met. Their opinions and the explanations on matters where there is no text of the Qur‘ān available which they could interpret, are different and obviously at variance, [and they did not have recourse to qiyāṣ] and, where they use qiyāṣ, qiyāṣ admits of disagreement. Where they do disagree, the very least the person who disagrees with them would consider that those who maintain the opposite are mistaken and those who disagree with him will think the same of him. The first level i.e. ('ilm al-āmmah) is not like this.

174. What has been said (on the basis of) *qiyyās* since it is possible for *qiyyās* to be wrong, cannot, in your opinion, be considered a matter of certainty nor would one swear by Allāh that it is all true.

175. And I have mentioned several other things which are binding upon him in my view apart from this.

176. One of those who was present with him said: Leave this discussion (*mas'alah*), for in our view many of the matters which you have raised are against him, although not all of them. I will offer you a new argument, different from what he said.

177. I said: State it.

178. He said: [Legal] knowledge (*'ilm*) is of different kinds: one of them is what the *āmmah* relate from the *āmmah*, which I testify to in the name of Allāh and His Apostle, such as the basic obligations (*farā'id*).

179. I said: This is the first category (*'ilm mugaddam*), concerning which no one will dispute with you.

180. (He continued): Another is verses of the Qur'ān which are open to more than one interpretation, and which there will thus be dispute about. Whenever there is dispute, the text must be accepted according to its literal meaning and in an inclusive sense, and it must never be understood according to an inward meaning, even if it means that, except on the basis of people's consensus on that interpretation (*ta'wil*), if they disagree, it must be accepted in its literal (outward) meaning.58

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58 *Al-Risālah*, paras. 881-2, 923.
181. He said: Another is what the Muslims are agreed upon, and what they say those who came before them were agreed upon, even though they do not say that this is based on a verse of (the) Qur'ān or a sunnah, because, in my view, this agreement may be equivalent to the agreed sunnah, since their consensus would not be derived from personal opinion (ra'y), because personal opinion when it exists, is not something on which one finds agreement.

182. (I said): Please mention to me what is after this.

183. He said: Another kind [of knowledge] is 'ilm al-khāṣṣah. Proof will not be established on the basis of 'ilm al-khāṣṣah unless its transmission is in a way which is secure from error.

184. Then the last of them is qiyyās. Something should not be used as a qiyyās for another unless its start (mubtada'), source (maṣdar) and end- from where it begins to when it ends- are the same, so that it (corresponds) to the meaning of the base (fi ma'nā al-aṣl).

185. Divergence is not allowed in anything that I have described.

186. And all things should be according to their usūl (principles) until the people have agreed by consensus to remove them from their usūl.

187. Consensus (ijmā') is a proof for everything, because it is impossible for error to occur in it.

188. He said: Then I said: As for what you have mentioned about the first kind of [legal] knowledge, as far as transmission by 'awāmm from 'awāmm is concerned; it is as you said.
189. What do you think of the second kind, of which you have said that the ‘awāmm do not dispute concerning it. They agree upon it, and they relate from those who were before them that they agreed upon: Do you know it, so that you can describe it? And do you know these ‘awāmm who transmit from the ‘awāmm? Are they like those of whom you have spoken in relation to basic obligations (farā’īd)? For those people were both the ‘ulamāʾ and men who are not associated with legal knowledge. We do not find in Islam any one of those who are mature and not mentally handicapped who doubts that Allāh has laid down that ṣalat al-zuhr is four [raka‘āt], or is there another interpretation than this?

190. He said: Yes, there is another interpretation than this.

191. I said: Please describe it.

192. He said: This is the consensus of people of knowledge rather than those who do not have knowledge, and it is obligatory to follow them, because they alone have that knowledge and others, and they are in agreement about it. Now, their agreement is a [definitive] proof against those who not have knowledge. But if they disagree they are not proof against anyone, and the truth about the matter on which they disagree must be referred back to qiyās to that on which they are agreed. Whichever I find (agreement or disagreement) tells me about the views of those before them. Thus, if they were agreed for example, I would know that those before them had also been agreed in each generation.

If they were disagreed, then I would know that those before them had also been disagreed in each generation. Now, it is immaterial whether their agreement was because of a khabar which they actually reported or not, since they would not have
been agreed except on the basis of a khabar lāzim (binding report). And, if they disagreed it is immaterial whether they reported a khabar which agreed with some of them or whether they reported nothing, because I will accept only reports on which they are agreed. And as for those khabar over whose acceptance they have differed, it is possible for error to occur in them, and a proof will not be established on a matter that may possibly contain an error.

193. He said: I said to him: This is allowing the annulment of khabar and instituting ijmāʾ, because you claim that their ijmāʾ is a proof, whether there is a khabar about it or not, and that their difference is not a proof, whether there is a khabar about it or not.

194. And I said to him: And who are these scholars (ahl al-ʿilm) who, whenever they reached a consensus, a proof will be established by their consensus?

195. He said: They are those whom the people of a country have recognised as fuqahāʾ (jurists), whose opinion they are satisfied with and whose hukm (judgement) they accept.

196. I said: So, please give an example of those jurists who, if they have agreed unanimously, constitute a proof. Do you think if they are ten, and then one of them is absent, or he is present but does not speak, do you take the opinion of the nine, if they agree, as proof?

197. He said: If I say: No?

198. I said: Do you think if one of them dies, or becomes mentally disordered, do the nine have the right to pronounce?

199. He said: If I say: Yes?
200. If five die, or nine, does the one have the right to pronounce?

201. He said: If I say: No?

202. I said: Whatever you say about it is self-contradictory!

203. He said: Leave this!

204. I said: I have found rationalists (ahl al-kalām) spread through most of the countries, and I have found each group of them taking one of their number to whose doctrine they adhere, and whom they put in the place which you have described; are they included among the fuqahā' from whom a thing will not be accepted until they agree with them, or are they excluded from them?

205. He said: If I say: Indeed they are included among them.

206. I said: If you wish, say so!

207. He said: Then I do say so!

208. (Al-Shafi‘i) said: So, what do you say concerning wiping the boots (al-mash 'alā al-khuffayn)59?

209. He said: And if I say: No one should wipe, because whenever they dispute on something, I refer it to the basic principle (ašl), and the basic principle is ablution (wudū')?

210. I said: And do you say likewise on everything?

211. He said: Yes.

212. I said: Then, what do you say about an adulterer (zānī thayyib); do you stone him?

213. He said: Yes.

214. I said: Why do you stone him? For some of the people, 'ulamā', state that there is no stoning for an adulterer/fornicator (zānīn), on account of Allāh's words: "the adulterer and the adulteress shall each be given a hundred lashes". So, how do you stone him and not refer back to the basic principle (aṣl) that his blood is unlawful until they agree unanimously that it is lawful? Those who adhere to this view argue that he is a (zānīn) adulterer and is thus included in the meaning of the āyāh, and should be given a hundred lashes.

215. He said: If I concede this to you on this, I will be drawn into something which will go far beyond this.

216. I said: Yes.

217. He said: I will not concede this to you on this, but will give you a response which is different from the first.

218. I said: Say it.

219. He said: I do not look to a small number of muftis, but look to the majority.

220. I said: Will you describe the small number to whom you do not look? Will that be if they are less than half of the people, or one third, or one fourth of them?

221. He said: I cannot delimit them, but they are the majority.

222. I said: Are ten bigger than nine?

223. He said: These numbers are very close!

224. I said: Then delimit them as you wish.

60 Al-Nūr: 2.
225. He said: I am not able to delimit them.

226. I said: It seems that you wish to make this statement absolute without any clear limit, for, whenever you hold to an opinion which has been disputed, you say: it is the majority view! And whenever you want to reject an opinion, you say: they are a minority. Would you be satisfied with such an answer from anyone else?

227. Do you see how you have begun to enter into the disunion (tafarruq) which you have condemned?

228. What would you think if all the jurists amounted to ten, and you have claimed that you accept only from the majority, and then six of them speak and agree, and four of them disagree with them, will you not have testified that six of them are correct and four of them are in error?

229. He said: If I say: Yes.

230. I said: Then the four pronounce on another matter, and two of the six agree with them, and four (of the six) disagree with them?

231. He said: Then I will hold to the opinion of the six.

232. I said: So you abandon those who were (previously) right on the basis (of the opinion) of two, and you hold to the opinion of those who were (previously) wrong on the basis (of the opinion) of two, though it was possible for them to be wrong once; yet you reject an opinion which may be subject to error? This is a self-contradictory statement!

233. And I said to him: Consider your statement: "Proof will not be established except on the basis of what the jurists of all countries have agreed to unanimously": Do you find a way to (realize) the consensus of all of them? And the proof will not be
established upon the basis of any one until you meet all of them, or the ṣāmmah relate from the ṣāmmah from each one of them?

234. He said: This cannot come about.

235. I said: If you accept from them on the basis of the transmission of the ḥāṣṣah, then indeed you have accepted what you have condemned. And if you do not accept from each one except on the basis of the transmission of the ṣāmmah, we do not find at the root of your statement that upon which the countries have agreed since you have not accepted the transmission of the ḥāṣṣah, because there is no way to reach it from the outset. They will not meet together for you in one place, and you do not have a khabar from them based on a transmission of the ṣāmmah from the ṣāmmah.

236. I said: I hear that you have followed (qalladta) the traditionists (ahl al-ḥadīth), even though, according to you, they are mistaken in what they believe with regard to accepting ḥadīth; so how can you be sure that they will not be mistaken in the (interpretation) that they have followed for fiqh and have attributed to it?

Then I hear that you have followed those with whom you are not satisfied. Yet the most skilled persons in fiqh in our view and in the view of most traditionists are those who follow ḥadīth most closely; but those (in your view) are the most ignorant of them, because ignorance (in your view) is to accept the khabar al-infirād (solitary khabar)! The same is the case for most of that concerning which they need the jurists, and in which they prefer them, even though the person who can act with absolute equity does not exist in the world!

237. He said: And how does it not exist?
238. He, or one of those who was present with him said: I am saying: I take into account with regard to this only those whose knowledge of fiqh the ahl al-hadîth testify to.

239. I said: There is no country but that among its people there are those of equal merit who are denied from fiqh. They regard them as ignorant, or not lawfully allowed to give a fatwâ, nor is anyone lawfully allowed to accept their pronouncements.

240. And You know the people of every country differ among themselves, and you also know that the people of every country differ from others.

241. Thus we know that among the people of Makkah were those who hardly ever disputed ʿAtâʾs (d. 114) opinion, and those who preferred others to him. After that in Makkah, al-Zinjî b. Khālid (d. 189) gave fatwâs. Among them were those who preferred him in fiqh, and those who inclined to the opinion of Saʿîd b. Sālim (d. 200). The supporters of each of one of the two men used to belittle the other, and went beyond due bounds.

242. And I know that the Madīnans would give preference to Saʿîd b. al-Musayyab (d. 94), but would also reject some of his opinions. Then there appeared among them in our time, Mālik (d. 179). Many of them preferred him, and others were extravagant in belittling his doctrines. I saw Ibn Abî al-Zinād (d. 174) going beyond due bounds in criticising his doctrines. And I saw al-Mughîrah (d. 186) and Ibn [Abî] Hāzim (d. 185) and al-Darâwardî following some of his doctrines, and I saw those who blamed them.

243. And I saw at Kūfah one group (qawm) who inclined to the opinion of Ibn Abî Laylā (d. 184), and criticised the doctrines of Abû Yûsuf (d. 182). And (I saw) others
who inclined to Abū Yūsuf's opinion, and who criticised the doctrines of Ibn Abī Laylā and whatever contradicted Abū Yūsuf. And (I saw) others who inclined to Thawrī's (d. 161) opinion, and others who inclined to the opinion of al-Ḥasan b. Ṣāliḥ (d. 167).

244. And I have heard of other things than I have here described from (other) countries, similar to what I saw of what I have described concerning the divergence of people in the (various) countries.

245. And I saw the people of Makkah agreeing to prefer ʿAṭāʾ to the Successors in knowledge, and some of the Kūfans who agree to prefer Ibrāhim al-Nakhašī (d. 96).

246. Perhaps every group (ṣinfb) of these people who preferred their own leader (ṣāhib) exaggerated the differences between him and his rivals.

247. And we see them to be like this concerning those of the ʿulamāʾ whom they have set up and whom we know.

248. And since the people of the cities (amṣār) have differed to this extent, I heard some of them who give fatwās swearing by Allāh such and such person has no right to give a fatwā, because of his deficiency of intellect and his ignorance! And so and so has no right to remain silent, meaning another of the scholars. And I have seen people of the countries who say: it is not lawful for him to give a fatwā because of his ignorance, meaning the man of whom the other asserted that it is not lawful for him to remain silent, because of his superior knowledge and intellect.

249. And I have found the people of every country to be as I have described them concerning the people of their time.
250. So, how did these people agree, as you claim, on one understanding, or a general understanding, when their opinion or the opinion of most of them is as I have described, and I have heard similar things about those who I haven't seen? If they agree in your favour on several of them, then you make those few people (nafar) ‘ulamā‘; and if they agree on something you accept it?

251. He said: And if they disagree- as you claimed- because of the divergence of their schools of thought (madhāhib), or interpretation, or negligence or envy of each other: then I accept only what they have agreed upon all together.

252. Then one said to him: If they do not agree in your favour on one of them, that he is outstanding (fi ghāyah), then how can you make him an ‘ālim?

253. He said: No, but they agree that he knows something about knowledge.

254. I said: Yes. And they agree in your favour that rationalists (ahl al-kalām) whom you do not include in the number of scholars (‘ulamā‘) also know something about knowledge; so why do you give precedence to these people (i.e. jurists) and leave the rest of them among the majority of these people, i.e. the rationalists (ahl al-kalām)?

255. And I will not brand you and your path as anything other than the path of dissension, and then you add to that the claim to consensus (an ijmā‘).

256. And in your claiming consensus there are several characteristics (because of) which it is obligatory for you, on the basic principles of your school of thought, to abandon claiming consensus for ‘ilm al-khassah.

257. He said: So, is there any consensus?

258. I said: Yes, we praise Allāh- there are plenty in the basic obligations (jumlat al-farā’id) which we are not allowed to be ignorant of, and that consensus is that which,
if you said "the people have a consensus", you would not find around you anyone who
knows anything saying to you that this is not a consensus.

259. This is the way by which those who claim consensus can be declared to be
correct. But only with regard to matters of each one of the ḥudūd al-ṣiḥah, not the
derivatives, nor any other ḥudūd.61

260. As for the consensus which you claim, when you are aware of disagreement in
your own time, and report it from the people of each generation, think about it. Is this
allowed to be consensus?

261. He said: One of your colleagues occasionally claimed consensus on some things,
and I have never heard anyone among them mention his opinion without criticising
it; and that is blameworthy in my view.

262. I said: Why do you blame him and they blame him? Claiming consensus on the
basis of a group (firqah) is more likely to be achieved than your claiming consensus
on the basis of the entire ummah in the world!

263. He said: We blame him only because we find in Madīnah disagreement in every
generation regarding what he claimed as consensus. And consensus cannot occur
except by what I have described, i.e. that nobody opposes it. Perhaps consensus could
be in his view what was supported by the majority, even though a small number
opposes it. But one should [not speak of "consensus"] nor the view of "the majority",
when nothing is related from them. And those from whom nothing is related cannot

61 Al-Risālah. para. 1559.
be described as being in consensus, and equally cannot be described as holding opposing views.\textsuperscript{62}

264. Then I said to him: If what you are saying is as you say, then you must concede even more, because if ijmā' in the sphere of specialists ('ilm al-khāṣṣah) cannot be found in one group, it is even less probable that it can be found in the entire world. 265. And I said: Your statement and the statement of those who believe in consensus is the opposite of consensus.

266. He said: Show me what you have said.

267. I said: If the consensus which existed before you is the consensus of the Companions, or of the Successors, or the generation after them and of the people of your time, you will attribute to them a matter that you call consensus.

268. He said: What is it? Give me an example so that I may know it.

269. I said: It seems that you subscribe to the view that Ibn al-Musayyab was the 'ālim of the people of Madīnah, that 'Aṭā' was the 'ālim of the people of Makkah, that al-Ḥasan (d. 110) was the 'ālim of the people of Baṣra, and that al-Sha'bī (d. 109) was the 'ālim of the people of Kūfah among the Successors: Then you make consensus what these figures unanimously agreed upon.

270. He said: Yes.

271. I said: You assert that they never met in one gathering that you know of, and you have merely deduced their consensus from the transmission of reports from them, and whenever you find them pronouncing on matters about which there is nothing in either

\textsuperscript{62} Ikhtilaf al-Ḥadīth. p. 143.
the Qur'ān or the sunnah, you deduce that they have pronounced on the basis of qiyās, and you say: qiyās is the firm legal knowledge which scholars have agreed is right.

272. He said: I have said so.

273. I said to him: It is possible that they could have said what you did not find either in the Qur'ān or the sunnah, even though they did not mention it. Nor did they mention what they held as a ra'y (opinion). They gave their judgement according to ra'y not qiyās.

274. He said: Even though this is possible, I do not think that they would have known something but omitted to mention it, or that they would have said anything other than on the basis of qiyās.

275. Then I said to him: Because you find that their utterances indicate that they subscribe to the view that qiyās was necessary for them, or is this only something you have supposed, because this is what they ought to do?

276. I said to him: Perhaps qiyās does not mean to them what it means to you?

277. He said: I don't think anything except what I have described to you.

278. Then I said to him: This is what you have narrated from them to the effect that they spoke on the basis of qiyās is an assumption! Then you make the assumption a definitive proof?

279. He said: From where then did you yourself take qiyās, and forbid speaking except on its basis?
280. I said: From a different way than the one from which you take it. And I have written about it elsewhere. 63

281. I said: Those who transmitted to you from them pronounced on what you yourself do not find any khabar for, so you assumed that they said it by qiyās, and you said: whenever I find their deeds agreed upon something, it is a proof (dalīl) of their consensus: Did they transmit to you from them that they said (what they said) on the basis of khabar munfarid?

282. And Ibn al-Musayyab relates from Abū Hurayrah from the Prophet may Allāh bless him and grant him peace something and held that opinion, and from Abū Sa‘īd al-Khadrī something on sarf (the exchange of currency) 64 and held that opinion, but he has opponents who disagree with him from among the ummah.

283. And ʿAṭāʾ relates on the authority of Jābir b. ʿAbd Allāh from the Prophet may Allāh bless him and grant him peace something on mukhābarah and held that opinion, but he has opponents who disagree with him.

284. And al-Shaʿbī relates on the authority of ʿAlqamah (d. 62), on the authority of ʿAbd Allāh, from the Prophet may Allāh bless him and grant him peace on some things and held those opinions, but he has opponents who disagree with him both today and before today.

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63 For further detail of qiyās and ijtihād see al-Risālah. pp. 476-503.

64 Sarf: exchanging of money (thaman) either of the same kind i.e. gold with gold or of the different kind i.e. gold with silver. See al-Tahānawi, Kashshāf Ḥiqqāyat. vol. 1, p. 837.
285. And al-Ḥasan relates on the authority of a man, from the Prophet may Allāh bless him and grant him peace on some things and held those opinions, but he has opponents who disagree with him both today and before today.

286. And they reported to you about them that all their life they were teaching or holding doctrines in which they differed from each other. Thus they were until they died.

287. He said: Yes, indeed they relate this from them.

288. Then I said to him: So you make these people leaders (aʾimmah) in religion, and you assert that those of their deeds which are found to be in consensus are binding on the ʾāmmah to hold to, and yet you relate varying sunnahs from them. And each of them separately accepts the khabar al-munfarid and allows ample room for disagreement. Then you criticise what they have agreed on by consensus about which there is no doubt, and you oppose them in this, and you say: One should not accept isolated tradition (al-khabar ʿalā al-infarād), and one should not disagree, and you suppose that they have used qiyās, and you assert that it is not lawful for anyone to abandon qiyās, and to say anything except according to what he knows.

289. Indeed in this way your doctrine on consensus is the opposite of consensus and according to the fact that you claim that they did not remain in silence about anything they know! Yet they died without one of them saying, as far as we know "consensus".

290. Yet consensus would be the greater part of knowledge (ʿilm) if things were as you claim. Is it not enough reproof of consensus for you that no one has related a claim of consensus from anyone after Allāh’s Messenger may Allāh bless him and
grant him peace, (except in matters on which there is no dispute) except people of your own time?

291. Then he said: Indeed, some of them have claimed it.

292. I said: Do you praise his claim?

293. He said: No.

294. I said: How have you come to enter in the thing that you have blamed into something even worse than what you blamed? Do you not deduce from your way that consensus is to give up claiming consensus? And you do not look carefully at yourself when you say, "this is consensus", when one finds around you among the ahl al-ilm those who say to you: Allah forbids that this is consensus! Rather in what you claim to be consensus, there is actually disagreement in every aspect, in any one place, or among most people from different places whose views we have been told about.

295. He said: And I said to one of those who was present at the discussion: We are leading you to the problem of what is necessary for us and for you with regard to this.

296. He said: And what is it?

297. I said: On what basis do you think the sunnah of the Messenger of Allah may Allah bless him and grant him peace, is confirmed?

298. He said: I subscribe to the first statement which our colleague made to you.

299. Then I said: What is it?

300. He said: He claims that it (the sunnah) is confirmed in one of three ways.

301. I said: Mention the first of them.

302. He said: What the generality of Muslims (khabar al-‘āmmah) relate from the generality of Muslims.
303. I said: Is it like your first statement, such as that the zuhr [prayer] is four raka‘āt?

304. He said: Yes.

305. Then I said: This is something not a single person I know will contest. What is the second way?

306. He said: Tawātur al-akhbār.65

307. Then I said to him: Define for me tawātur al-akhbār in the minimum way that confirms the khabar, and give me an example of it, so that we will know what he says and what you say.

308. He said: Yes, whenever I find these individuals, of the four (prominent jurists)66 whom you take as an example, narrating and agreeing, that the Messenger of Allāh may Allāh bless him and grant him peace prohibited something or made it lawful, I deduce that, because of the distance of their countries, each one of them has accepted the legal knowledge from someone different from the person from whom his colleague accepted it, and that the person who conveyed it to us accepted it from him, and did not accept from his colleague, since their narration from the Messenger of Allāh may Allāh bless him and grant him peace is in agreement, an error is impossible in it.

309. He said: And I said to him: Tawātur al-akhbār would not, in your view, come from four individuals [in the plurals] in one country, even though the people of that

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65 Tawātur al-akhbār literally is continuously recurrent. In technical term, it denotes reports by an indefinite number of people in such a way that precludes the possibility of their agreement to perpetuate a lie. See al-Tahānawi, Kashshāf, vol. 1, pp. 412-3; Mohamad Hashim Kamali, Principles of Islamic Jurisprudence, p. 87.

66 It refers to Ibn al-Musayyab, ʿAtī, ʿAlī al-Hasan and al-Shābī.
country accept from them, until the Madīnans relate from the Madīnans, the Makkans relate from the Makkans, the Baṣrans relate from the Baṣrans, and the Kūfans relate from the Kūfans, with each one of them relating his hadīth from a different one of the Prophet's Companions than the man from whom his colleague relates, and they all together agree unanimously on the narration from the Prophet may Allāh bless him and grant him peace because of the reason which you have described?

310 He said: Yes, because, if they were all in one country, it is possible that they might have come to a secret understanding on a report which would be impossible for them if they were in different countries!

311. Then I said to him: That is a every bad thing to suggest about someone you treat as a leader (imām) in your religion, since you have begun and followed (such a way)!

312. He said: Please mention what charge is found against me in this?

313. Then I said to him: Do you think that if you meet a man (who was present at the battle of) Badr, and they are the ones who are to be given precedence, and whom Allāh has praised in the Qurʿān and then he related to you a khabar from the Messenger of Allāh may Allāh bless him and grant him peace, you would not consider him a proof? And that his khabar would not be a proof against you for what you have described?

Is it not more appropriate that the isolated reports (khabar al-wāḥid) of those who come after them should not be accepted from them because of their being inferior in every virtue, because what is possible with regard to those who are better than them is possible with regard to them and more so.

314. He said: Yes.
315. Then I said: Are you being arbitrary in deciding the soundness (validity) of transmission? Take as an example Abū Salamah (d. 94) in Madīnah relating to you that he heard Jābir b. ʿAbd Allāh relating that the Prophet may Allāh bless him and grant him peace or: that he considered the religious merit of Abū Salamah and considered the religious merit of Jābir. And take as an example al-Zuhri (d. 124) relating to you that he heard Ibn al-Musayyab saying: I heard ʿUmar, or Abū Saʿīd al-Khudrī saying: I heard the Prophet may Allāh bless him and grant him peace. And take as an example Abū ʾIshaq al-Shaybānī (d. 141) saying: I heard al-Shaʿbī, or I heard Ibrāhim al-Taymī (d. 141), one of them saying: I heard al-Barāʾ b. ʿĀzib, or I heard one of the Prophet’s Companions that he named. Or take as an example Ayyūb (d. 131) relating from al-Ḥasan al-Baṣrī saying: I heard Abū Hurayrah or another of the Prophet’s Companions saying: I heard the Prophet may Allāh bless him and grant him peace (saying) permitting something or prohibiting it; Does this establish [a definitive] proof?

316. He said: Yes.

317. Then I said to him: Is it possible in your view for al-Zuhri to misreport from Ibn al-Musayyab, and for Ibn al-Musayyab to misreport from those who were before him? (And is it possible) for Ayyūb to misreport from al-Ḥasan, and for al-Ḥasan to misreport from those who were before him?

318. Then he said: If I said: Yes?

319. I said: It would be necessary for you to accept khabar al-wāhid even though it is possible there is in it an error made by the person whom you met, and the persons who are later than those above him, and those who are above, later than the
Companions of the Prophet may Allah bless him and grant him peace (and it would be necessary for you) to reject *khabar al-wāhid* from the Companions of the Prophet, whereas they are superior to those who came after them. So, you are rejecting the *khabar* because of the possibility of a mistake in reports from the Companions of the Prophet may Allah bless him and grant him peace while they are the best of people, and you accept it from those who are not equal with them in merit! Because each of these people has attributed a definite statement to the person he reports from, and those who are above him have attributed a definite statement from those who are above them, until it goes back to the Messenger of Allah may Allah bless him and grant him peace. So, this is the chain of transmitters (*tariq*) that you have blamed.

320. He said: This would be the case if I said that. But, what would be your opinion if I do admit that this is the case.

321. I said: This is defensible only by withdrawing from the position you previously held, or by abandoning the answer through turning aside or breaking off (the discussion). And turning aside is the less worthy of the two.

322. He said: If I said: I will not accept from one whose *khabar* we confirm except from four separate ways, as I do not accept from the Prophet may Allah bless him and grant him peace except from four separate ways?

323. He said: Then I said to him: This would bind you. Do you say it?

324. He said: If we accept it, this would never exist.

325. Then I said: Yes. And you know that four from al-Zuhrī do not exist, nor three, where al-Zuhrī is the fourth of them, from a man from a Companion of the Prophet may Allah bless him and grant him peace.
326. He said: Yes, but leave this.

327. He said: And I said to him: Those who said "I accept from four, not three"? What do you think if a man said to you "I only accept from five", or another said, "from seventy"? What is your argument against him? And who sets out to you the four?

328. He said: Indeed, I just gave them as an example.

329. I said: Could you delimit those who will be accepted?

330. He said: No.

331. I said: Or you know it, but do not reveal, since it would be embarassing on account of what will follow.

332. And his embarassment was clear for all to see.

333. And I said to him or to some of those present with him: What is the third way that information will be confirmed from the Prophet may Allāh bless him and grant him peace?

334. He said: Whenever one of the Prophet's Companions relates from the Messenger of Allāh may Allāh bless him and grant him peace a judgement (hukm) which he himself goes by and which no one else opposes him, we deduce two things: one of them that he related that khabar in the presence of their group. And secondly, their omission to reject it through a khabar which opposes was due to their knowledge that that was a khabar he reported to them about something that actually happened. Therefore, it was a khabar on the authority of their entire group.

335. I said to him: How rarely have I seen you moving to a new position without you arguing weaker arguments than the one you have abandoned!
336. He said: Please explain to us what you have said.

337. I said to him: Is it possible for one of the Companions of the Prophet may Allāh bless him and grant him peace to relate to one man or a small group of people at Madīnah a ḥadīth that you validate as from the Messenger of Allāh may Allāh bless him and grant him peace, and (is it possible) that he may have come to one of the countries, then related it there to one man or a group, or related it while on a journey, or as he died, to one man or more?

338. He said: If I said: It is not possible that one of them would relate a ḥadīth unless it were well-known among them?

339. I said: Sometimes you find numerous Successors relating a ḥadīth, but they name only one. Were it well-known among them since they heard it from others, they would have named those from whom they had heard it.

340. And sometimes we find them disagreeing on something, on which a ḥadīth has been related from the Prophet may Allāh bless him and grant him peace, with some of them holding a view in accordance with the ḥadīth, and others maintaining the opposite.

341. He said: How do you explain this?

342. I said: If those whose saying contradicts the ḥadīth had heard the ḥadīth from the Prophet may Allāh bless him and grant him peace, they would not say, if Allāh wills the opposite to it.67

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343. And I said to him: Indeed, Ibn `Abbâs and others have related the doctrine "the oath plus the witness (al-yamîn ma` al-shâhid)" from the Prophet may Allâh bless him and grant him peace, and the opposite of it is not recorded from any of the Companions of the Prophet that I know of. Therefore, on your basic principle you are bound to hold (accept) the doctrine and make it ijmâ'.

344. Then some of them said: What he said on this is not our doctrine (madhhab).

345. I said: I always find this attitude in him and others when they address us. We seek help from Allâh.

346. He said: The oath with the witness is an ijmâ' of Madînah.

347. Then I said: No, it is something about which there is dispute. However, we accept a ruling although disputed, when it is confirmed on the authority of the Messenger of Allâh through the chain of transmitters by which it is confirmed.

348. He said: And I said to him: Who are those who whenever their doctrines are in agreement with the khabar, it is to be regarded as valid; and whenever they disagree, you put the hadîth aside because of their disagreement?

349. He said: The Companions of the Prophet may Allâh bless him and grant him peace.

350. (Al-Shâfî`î said): khabar al-khâssah?

351. He said: No.

352. I said: Then, is knowledge acquired from them because of their ijmâ' or ikhtilâf (disagreement) by virtue of a khabar āmmah?

353. He said: If I have not acquired it from khabar āmmah, I look for the ijmâ' of the people of knowledge today: Therefore, when I find that they are not agreed, I deduce
that their disagreement is derived from the disagreement of those who were before them.

354. I said to him: Do you deduce that their *ijmāʾ* is a *khabar* of their entire group?

355. He said: What do you say?

356. I said: I say: It is not possible for anyone to speak until he knows their *ijmāʾ* in the different countries. And he would not have applied the doctrine of those whose land is far or near without a *khabar* of the entire group reported from the entire group.

357. He said: If I said it?

358. I said: Say it if you want!

359. He said: This could be very difficult.

360. Then I said to him: For that reason, it also does not exist.

361. Its contrary is against you in terms of *qiyyās*. When you declare that one person may draw *qiyyās*, as you suppose, then you have allowed *qiyyās*, and it is possible in *qiyyās* that there is a mistake. And you decline to accept the *sunnah* (hadīth), because there could be a mistake on the part of those who relate the *sunnah* (hadīth). So, you allow the weaker and reject the stronger!

362. And I said to some of them: Do you think your doctrine "their *ijmāʾ* is an indication (*ijmāʾushum yadullu*)" if they said to you: what we said -collectively and separately- where we accept the *khabar* on that of the sort which is confirmed in our point of view from those who are before us. And we are agreed that it is permitted to us on a matter where there is no text (*naṣṣ*) or *sunnah* to judge on the basis of *qiyyās*, even though we differ. Do you reject the reports of those concerning whom you have
said that their reports and their agreed actions will be hujjah in one question yet accepted in another?

363. What do you think if one said to you: I follow them in validating the reports of trustworthy persons, even though those reports are isolated, and I accept from them doctrine based on qiyās on which there are no reports. Therefore I let them have disagreement, and I should follow them in each case: is he producing stronger proof, or more appropriate to follow them, or better praise of them, or you yourself?

364. He said: Is this your view?

365. I said: Yes.

366. I said: And what does your doctrine "the ijmāʿ of Companions of the Messenger of Allah may Allah bless him and grant him peace" mean? Do you mean that all of them, or most of them, say the same thing, or do the same action?

367. He said: I do not mean this, and this does not exist. However, when one of them relates a hadīth from the Prophet may Allah bless him and grant him peace and none of them opposes it, that is an indication of their satisfaction with it, and that they recognise that what he said is what happened.

368. I said: Is it not possible that he related a hadīth and they did not hear him, or [is it possible that] he related it while those who heard his hadīth had no knowledge (ʿilm) that what he said was as he said, or was contradictory to what he said? However, it is a duty of the one who is told a hadīth to hear and, if he does not know of any opposing judgement, he should not reject it.

369. He said: This (situation) is possible on the ground you have said. But as for the leading Companions of the Messenger of Allah may Allah bless him and grant him...
peace, it is impossible that one of their transmitters would relate a *hadīth* on a matter, and that they would then omit to oppose it, except on the knowledge (*īlm*) that it was as he said.

370. And he said: Whenever one of their judges gives a verdict, and they do not oppose it, it is knowledge (*īlm*) from them that what he said is correct, and it is incumbent upon them to stand on his judgement.

371. I said: Is it possible that they would believe him because of his outward truthfulness just as they would accept the testimony of two witnesses because of their apparent truthfulness?

372. He said: If I said: No.

373. Then I said: If you say "no" where they have accepted *khabar al-wāḥid* and adhered to it, I know you are ignorant of what we have said. And if you say concerning that whose like is possible that it is not possible, you are ignorant of what is incumbent on you!

374. He said: Then, what would you say?

375. I said: I say: Their keeping silent and their lack of opposition might be on the ground of knowledge of what he said, or it might be without knowledge about it. Their silence might be considered as an acceptance of that (*hadīth*), or it might be considered as suspending judgement (*wuqūf*) about it or that most of them had not heard it, rather than what you have said. And (it is considered) as deduction from them about what they have heard about one who was truthful and reliable according to them.

376. He said: Abandon this.
377. I said to some of them: Do you know that Abū Bakr in his caliphate (*imārah*) divided property (*māl al-fay‘*) \(^{68}\) and gave equal portions to freeman and slave? And he treated the grandfather \(^{69}\) as father in inheritance?

378. He said: Yes.

379. I said: They accepted from him the distribution (of *fay‘*), and they did not oppose him during his life on the matter of the grandfather in inheritance?

380. He said: Yes, but if I said that they opposed him during his life?

381. I said: (You mean that) he wanted to make a judgement while someone was opposing him?

382. He said: Yes, but I did not say that!

383. (Al-Shafī‘ī) said: After that, ‘Umar came and classified people in the distribution on the basis of kinship and precedence (*sābiqah*), and he excluded slaves from the distribution, and gave both a grandfather and brothers \(^{70}\) a share in inheritance?

384. He said: Yes.

385. I said: And ‘Alī became ruler, and he equalised the distribution?

386. He said: Yes.

387. I said: So, this is on the basis of the reports of *āmmah* from the three of them in your point of view?

388. He said: Yes.

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\(^{68}\) *Al-fay‘* is a property taken from non-believers without having any battle, while *al-ghanīmah* is a property taken from them after having a battle. See al-Tahānawi, *Kashshāf*. vol. II. p. 1103. For the differences between *al-ghanīmah* and *al-fay‘* see al-Shafī‘ī, *Aḥkām al-Qurān*. vol. I, pp. 152-166.

\(^{69}\) *Al-Risālah*. para. 1774.

\(^{70}\) *Al-Risālah*. para. 1773.
389. I said: Say about it what you like.

390. He said: What do you yourself opine with regard to that?

391. I said: I say: In matters on which there is no text of the Qurān nor any sunnah [for a solution to a problem], when the mujtahidūn seek out by ijtihād, everyone is allowed- if Allāh wills- to practise and pronounce (legally) on the basis of what he thinks is right, not on the basis of what you have said. Say whatever you like.

392. He said: If I said: The first practice (of Abū Bakr) is binding upon them. The second and third practices (i.e. ʿUmar and ʿAlī) require to be similar to the first practice, not to contradict it. And if I said: Actually they were disagreeing with Abū Bakr on his practice during his life, that would entail that he (Abū Bakr) was free to proceed with his ijtihād even though it contradicts theirs.

393. I said: Exactly!

394. He said: If I said: I do not acknowledge this from them, and I would not accept it unless I found the ʿāmmah transmitting it from the ʿāmmah, saying that a group of those before us related to us such and such from those who came before them?

395. Then I said to him: We do not know anyone who has a doubt about this, and the contrary has not been related from anyone. Hence, if you do not allow the like of this as being confirmed, what is your proof against anyone who opposes you in all of what you have claimed to be ijmaʿ, when he is saying the same as you said.

396. Then a group of those who attended said: Allāh, the Exalted has blamed disagreement, so we blame it.

397. Then I said to him: Concerning disagreement, are there two hukms or just one?

398. He said: One hukm.
399. I said: Then I will ask you.

400. He said: Please ask.

401. I said: Do you allow any scope for disagreement?

402. He said: No.

403. I said: Do you know any of the great Muslims whom you have met who gave *fatwās*, whether they lived [for long time] or died, and who sometimes disagreed on some matters they reported from those before them?

404. He said: Yes.

405. I said: Say about them whatever you like.

406. If you said: They hold views which they are not allowed to.

407. I said: You have now opposed their agreement.

408. He said: Certainly.

409. He said: Please abandon this!

410. I said: Are they permitted to exercise *qiyās*?

411. He said: Yes.

412. I said: If they exercise *qiyās* and disagree, are they allowed to abandon *qiyās*?

413. He said: If I said: No?

414. I said: Then they say: To which matter should we turn?

415. He said: To *qiyās*.

416. I said: They said: We have done this! Do you explain the *qiyās* I employed other than that he employed?

417. He said: They would not be able to put it forward until they met altogether.

418. I said: (Are they to come from) all regions of the world?
419. He said: If I said: Yes?

420. I said: It is impossible that they meet together. And, even if it were possible, they would disagree.

421. He said: If they met together, and did not disagree?

422. I said: Two men [al-Shāfī‘ī and his interlocutor] met together, and they disagreed. How would it be, therefore, if more of them met together?

423. He said: One will remind the other!

424. I said: They have done, and each of the disputants claims that what he holds is the [correct] qiyyās?

425. He said: If I said: Disagreement is possible in this case?

426. I said: You have claimed that the disagreement of each one of the disputants has two ḥukms, and you have abandoned your doctrine: the disagreement has only one ḥukm?

427. He said: What do you yourself say?

428. I said: Disagreement has two kinds:71

429. If there is a matter on which there is a text with a ḥukm from Allāh or a sunnah of His Messenger, or about which the Muslims are agreed, then not even a single person who knew of any of these [sources] would be allowed to oppose it.

430. If there is a matter on which there is no judgement of any of these [sources], the people of knowledge can apply ijtihād regarding that matter, by seeking a resemblance to one of these three kinds of sources.

71 See also al-Risālah. pp. 560-600.
431. Whenever those who have the right to exercise *ijtihād* have exercised *ijtihād*, they are allowed to make a pronouncement (legal effect) on the basis of that about which they found the indications, in that it is consonant with the Qurʾān or *sunnah* or *ijmāʾ*.

432. If there is an ambiguous matter where two different *hukms* are conceivable, and he exercises *ijtihād*, and his *ijtihād* contradicts the *ijtihād* of another, [then] he is allowed to have one opinion, and the other is allowed to have a different one. But this rarely occurs when it is properly considered.

433. He said: What is your proof for what you have said?

434. I said to him: An inference from the Qurʾān, *sunnah* and *ijmāʾ*.

435. He said: Could you mention the difference between two *hukms* governing disagreement?

436. I said to him: Allāh the Exalted says: "Be not like those who are divided amongst themselves and fall into disputation after receiving clear signs".72

437. And He says: "Those given the Book only divided after clear evidence had come to them".73

438. I think that Allāh blames disagreement in the place in which He establishes proof against them, and does not allow them to [have disputation].

439. He said: I know this, but what is the (other) kind (*wajh*) which reveals to you that it is allowed to have disagreement on what is not found in any text?

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72 *Āl ʾImrān*: 105.

73 *Al-Bayyinah*: 4.
440. I said to him: Allāh has imposed upon men the obligation to turn towards the qiblah of the Sacred Mosque, saying: "From whencesoever thou startest forth, turn thy face in the direction of the Sacred Mosque; that is indeed the truth from thy Lord. And Allāh is not unmindful of what ye do. So from whencesoever thou startest forth turn thy face in the direction of the Sacred Mosque. And wheresoever ye are, turn your face to there".\textsuperscript{74} What would you think if we were on a journey, and disagreed about the direction of the qiblah. I think it most probable that the qiblah is in one direction, and someone else thinks it most probable that it is in another. What is obligatory for us to do [in this matter]?\textsuperscript{75}

441. If you say "the Ka'bah", then that is correct if it is visible, but it is not visible to those at a distance from it. They must seek out which direction it is in as best they can, according to what means there are at their disposal and the strength of certain indications in their minds. When they have done their best, disagreement is allowed to them and each one has performed the obligation which is placed upon him by exercising ījtihād in seeking out the truth which is hidden from him.

442. And I said: Allāh says: "Whom you judge fit to act as witnesses\textsuperscript{76} and He says: "two honest ('adl) men among you".\textsuperscript{77} What do you think of a situation where two

\textsuperscript{74} Al-Baqarah: 149-150.

\textsuperscript{75} Al-Risālah, para. 1680.

\textsuperscript{76} Al-Baqarah: 282.

\textsuperscript{77} Al-Ṭalāq: 2.
witnesses give testimony before two judges in person. These two witnesses are just according to one of the judges, but according to other they are not?

443. He said: The one who says that both of them are 'adl has to accept their testimony, and the one who says they are not 'adl has to reject them.

444. I said to him: This is disagreement?

445. He said: Yes.

446. Then I said to him: I think in that event that you have made two hukms (rules) for disagreement.

447. Then he said: This occurs only in matters which are hidden. And each one, even though he differs in his action and his rules, has performed what is required of him.

448. I said: This is what we say.

449. And I said to him: Allāh the Exalted says: "Which two just men among you [shall judge], as an offering to be brought to the Ka'bah".78 If two just men determine at such a place such a thing, and two other just men at such a place determine more or less than the former, each (of them) has exercised ijtihad and performed what is required of him, even though they differ [in the result].

450. He also says: "As for those wives from whom you fear disobedience, admonish them and send them to beds apart and beat them. Then if they obey you, take no further action against them. Allāh is High, Supreme".79

78 Al-Mā'idah: 95.
79 Al-Nisā': 24.
451. And He says: "If you fear that the two may not be able to keep within the bounds set by Allah, it shall be no offence for either of them if the wife ransom herself".80

452. What would you think if two wives behaved in the same manner, and the husband of one of them feared her disobedience, while the other did not?

453. He said: The one who is afraid is allowed to warn her and stay away from her and to beat her. And the other is not allowed to beat her.

454. And I said: The one who fears that his wife cannot keep Allah's bounds is allowed to take action against her, and the other [who does not fear his wife's disobedience] is not allowed, though their [wives'] actions are the same?

455. He said: Yes:

456. (Al-Shafi‘i) said: He said: If I accepted this, then perhaps someone else would oppose me and you, and would not accept this from us. Therefore, where is the *sumnah* which indicates the possibility of disagreement?

457. I said: 6Abd al-‘Aziz b. Muḥammad informed us on the authority of Yazīd b. 6Abd Allāh b. al-Hād, on the authority of Muḥammad b. Ibrāhīm, on the authority of Busr b. Sa‘īd, on the authority of Abū Qays mawlā of 6Amr b. al-‘Āṣ (on the authority of 6Amr b. al-‘Āṣ) that he heard the Messenger of Allāh may Allāh bless him and grant him peace saying: "When a judge judges and exercises *ijtihād* and gives a right judgement, he will have two rewards, but if he judges and exercises *ijtihād* and errs in his judgement, he will have one reward".

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80 Al-Baqarah: 229.
458. Yazīd b. al-Hād said: I related (ḥaddathu) this ḥadīth to Abū Bakr b. Muḥammad b. ʿAmr b. Ḥazm and he said: Abū Salamah related it to me in this way on the authority of Abū Hurayrah.

459 He said: And what is it?

460. I said: What we have described, that those judges and muftīs until today have disagreed on some of the judgements and fatwās they have given, although they only give judgement and fatwās according to what seems to them permitted. And this is, in your point of view, ʾijmāʾ. How can it be ʾijmāʾ when there is disagreement found in their practices?
Al-Rabî‘ b. Sulaymân informed us that al-Shâfi‘î said:

461. Obligations made by Allâh in the Qur’ân are of two kinds.

462. Firstly, what [Allâh] explains in the Qur’ân the details of certain obligations, so the Qur’ân does not need further interpretation or reports [khabar] [to explain it].

463. The other is where He lays down His obligation in the Qur’ân and explains it on the tongue of His Prophet may Allâh bless him and grant him peace.

464. Allâh confirmed in the Qur’ân the obligatory nature of what the Messenger of Allâh has made obligatory by saying:

"And whatsoever the Messenger gives you, take. And whatsoever he forbids you, abstain from".

465. And by His saying, may His name be blessed,

"But no, by thy Lord: They will not believe until they make you the judge regarding any disagreement among them; then they find in themselves no impediment touching thy verdict, but shall surrender in full submission."

466. And by His saying,

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81 See al-Risâlah. pp. 147-209.
82 Al-Risâlah. para. 52.
84 Al-Hashr: 7.
85 Al-Nisâ‘: 65.
"It is not for true believers—men or women—to make that choice in their affairs if Allāh and His Apostle decree otherwise."86

and other passages in the Qur'ān with this meaning.

467. Therefore, anyone who accepts [something] on the authority of the Messenger of Allāh may Allāh bless him and grant him peace, has accepted it on the basis of what has been laid down by Allāh.87

468. Al-Shāfi‘ī said: The obligatory orders are united in that they are confirmed as laid down. Then, the legal application [of the farā'id] becomes divided as Allāh has divided, and as His Messenger may Allāh bless him and grant him peace did.

469. They were divided as he divided and they were united as he united them. One branch of the sharī‘ah cannot be compared with another.88

470. And the first thing which we shall begin with are the details about the ṣalāt.

471. We find that ṣalāt is obligatory for all mature persons, not mentally ill, but not for menstruating women during their menstruation.

472. Then we find that the obligatory (farīḍah) and voluntary (nāfilah) ṣalāts are in agreement in that it is not allowed to begin either of them without having done ablution with water (wudu‘), whether at home or on a journey, as long as water is available; and by tayammum ("dry" ablution) on a journey if water is not available, or at home [for the same reason], or if a person is sick and unable to perform wudu‘

86 Al-ʿAhzāb: 36.

87 See al-Risālah. paras. 56-87, 96-103, 269-309, 536-541.

88 Cf. Ikhtilāf Mālik. p. 212.
through fear of harm or death because of *wuḍū’, or fear of an illness increasing (getting worse).

473. We find that both obligatory and recommended ṣalāts are in agreement in that they cannot be performed unless in the direction of the Ka‘bah, while the performer is at home or dismounted on the ground.

474. But we find that they are different when they are done by travellers, who perform the recommended ṣalāt while riding on an animal may turn in the direction in which their riding animal is facing [and] make gestures representing *rukū‘ and *ṣujud, but we do not find this [concession] for those performing an obligatory ṣalāt under any circumstances, except in the one instance of fear of attack.

475. We find that if one performs an obligatory ṣalāt when able to stand up, the ṣalāt will be valid only if he is standing. Whereas those who are performing a recommended ṣalāt, may do so sitting.

476. We find that he who performs an obligatory ṣalāt should perform it standing and in the set time; if he cannot [stand], he should perform it sitting. If he cannot sit, he should perform it lying down [and] should prostrate [*ṣujud] if he can, or if he cannot, just gesture.

477. And we find that zakāt is an obligatory act which has some points in common with ṣalāt and some points which differ with ṣalāt. We find that zakāt is an obligation [on some people] and not on others. When it is obligatory, there is nothing but to fulfil what is required whatever the circumstances. It does not vary with excuse as performing the ṣalāt varies with regard to standing or sitting.
478. We find that if a person has property in his hands the like of which is required for paying zakāt, but has a debt equal [to the amount of his property], he is not required to pay zakāt, and nothing is exacted [from him].

The ṣalāt, however does not cease [to be obligatory] whatever the circumstances, and he must perform it in whatever manner he can.

Al-Raʾūf said:

479. Al-Shafīʿī has another opinion. If he is indebted to the sum of twenty dinārs, but also has property equivalent to his debt, he is required to pay zakāt, because Allāh says,

"Take alms from their wealth, so that they may thereby be cleansed and purified".89

For, if he gives these twenty [dinārs] to another, his gift will be valid; if he gives it as ṣadaqah (charitable gift), his ṣadaqah will be valid; and if it perishes, it will be considered as having been his wealth. Since all the laws governing it prove that it is part of his wealth, he must pay zakāt on it on account of the verse.

Al-Shafīʿī, may Allāh bless him said:

480. We find that a woman who has property is not required to pray during the days of menstruation, but zakāt is required of her. And the same applies also to a child and those whose reason is overcome.

[BĀB AL-ṢIYĀM]

Al-Shafīʿī, may Allāh, the High bless him, said:

89 Al-Tawbah: 103.
481. We find that the fast (ṣiyām) is an obligation at a certain time, as the ṣalāt is an obligation at a certain time.

482. Then we find regarding the fast that travellers have been given the concession (rukhyah) to break the fast even though they are able to fast at that stated time. Then, they have to make it later. Ṣalāt, however, is not like this, for no one is given the concession (tarkhiṣ) to delay the ṣalāt from its time to another day. [Furthermore] no one is given the concession to shorten the fast, as one is given the concession to shorten the ṣalāt. Fasting does not vary according to the differences in a person's circumstances as to whether he is sick or in health.

483. We find that if someone has sexual intercourse during Ramadān, and he is able to free a slave he should do so, and if he has sexual intercourse during the pilgrimage, he has to slaughter a she-camel (badanah); and if he has sexual intercourse during the prayer, he has to ask for Allāh's forgiveness, and no atonement (kaffarah) is exacted. Having sexual intercourse in all of these situations is forbidden (muharram). Then, much of intercourse is forbidden with no atonement laid down.

Then we find that if he has sexual intercourse during certain of obligatory types of fasting, such as when making up Ramadān, or by way of kaffarah for killing, or zihār, there is no kaffarah for this. However, he is required to make up a day [i.e. to repeat the day] in all of these cases.

484. We find that unconscious persons and menstruating women are not required to observe either fast or ṣalāt. But when an unconscious man regains consciousness, or a menstruating woman becomes pure they are required to make up the days of fasting they have missed.
There is no requirement for a menstruating woman to make up for the \( \text{ṣalāt} \) [which she has missed]. But in our doctrine, an unconscious man is required to make up the \( \text{ṣalāt} \).

485. I have found that the pilgrimage is an obligation upon a particular category of people, namely those who have the means to go there.

486. Then I found that the pilgrimage is in agreement with the \( \text{ṣalāt} \) on one matter, and in disagreement on other matter.

487. As far as what differs is concerned, he is allowed in \( \text{ṣalāt} \), to wear ordinary clothes, whereas this is forbidden to a pilgrim.

488. A pilgrim is allowed to to speak intentionally, whereas someone who is praying is not allowed to. A man will invalidate his \( \text{ṣalāt} \) [by talking while performing \( \text{ṣalāt} \)], and so cannot continue doing that prayer. He must restart a new prayer instead, but he is not required to pay any kaffārah.

If a person invalidates (\( \text{yufsīdu} \)) his pilgrimage he must nonetheless continue with it even though it is invalid (\( \text{fāsid} \)). He is not allowed to do anything else, but he must perform another one in its place and make an offering.

489. The pilgrimage is imposed at a certain time, and the \( \text{ṣalāt} \) is imposed at a certain time. If a man makes a mistake involving the time, his pilgrimage is invalid.

Then, I found that both the pilgrim and the worshipper have been ordered to begin the \( \text{ṣalāt} \) at a certain time. If he begins before the time, his \( \text{ṣalāt} \) is invalid. If the pilgrim begins [the pilgrimage ceremonies] before the time, his pilgrimage is still valid.
490. I found that the ṣalāt has a beginning and an end. I found its beginning is takbīr and its end is taslīm. And I found that, if he did what invalidates the ṣalāt in between the beginning and the end, it will invalidate all of it.

And I found that the pilgrimage has a beginning and an end, and several divisions after that. Its beginning is ʿihram and the end of its division is casting stones (ramy), shaving the head (ḥilāq) and sacrifice (nahr).

When he has done this, according to our doctrine and the indication of the sunnah, he will abandon all the ʿihram except only having sexual intercourse with women. And according to others, [he will abandon all the ʿihram] except for women, perfume and hunting.

Then I found in this circumstance that if he has sexual intercourse before women become ḥalāl (taḥallul) to him, he has to slaughter a she-camel. However, it does not invalidate (mufsíd) his pilgrimage.

If he does not have sexual intercourse until he has performed ʿawāf of the Kaʿbah, women are permitted to him as is everything else which was forbidden during the ḥajj while he was carrying out the rites of his pilgrimage, including spending the night (baytūlah) at Mina, stoning [the Jamrah] and the farewell ʿawāf, doing all of this in a state of being ḥalāl, having come out of the state of [being] ʿihram for the pilgrimage. However, he cannot do anything in his ʿalāt except in a state of ʿihram for the ʿalāt which persists during the entire prayer.

491. And I found that he has been ordered to do things during the pilgrimage which, if he leaves them out, entails the substitution of a kaffārah, such as sacrifice, fasting, charity (ṣadaqah) and another pilgrimage.
And I found that he has been ordered to do many things in the *salāt*. There are two kinds, either he leaves something fundamental of the *salāt* which invalidates his *salāt*, [in this case] he cannot pay *kaffārah* or other things, but by starting afresh a new *salāt*; or if he leaves another thing commanded, other than the fundamental of *salāt*, he has left the meritorious act, and the *salāt* will be valid, and no *kaffārah* is required of him.

492. Then the pilgrimage has another time, that is circumambulation [of the Ka‘bah] after the sacrifice when women become *halāl* to him. Then this last is followed by leaving Minā (*al-nafar min Minā*), and the farewell [circumambulation]. He is given a choice in leaving, if he likes, he may do so early after two days, or if he likes, he may delay it.

Al-Rabî‘ b. Sulaymān informed us that al-Shāfi‘i said:

493. Ibn ‘Uyaynah informed us through an *isnād* going back to the Messenger of Allāh, may Allāh bless him and grant him peace, that he said:

"Let not people hold to something against my wishes, for I only make permitted what Allāh has made permitted, and I only make prohibited what Allāh has made prohibited".

494. Al-Shāfi‘i said: The *isnād* of this hadīth is interrupted (*munqāṭi‘*). We know very well Ţawūs's (d. 106) *fiqh*. Were this *isnād* confirmed as coming from the Messenger of Allāh may Allāh bless him and grant him peace, in it is evidence according to what I have described, if Allāh wills.

He said, "Let not people hold to something against my wishes (*lā yumsikanna al-nās ‘alayya bi shay‘*), he did not say here; "do not adopt from me (*lā tamassakū ‘annī")*. 
Rather he [the Prophet] has ordered people to hold fast to what is imposed on his authority, and Allāh, the Exalted ordered the same.

495. Al-Shāfīʿī said: Ibn ʿUyaynah informed us on the authority of Abū al-Naḍr (d. 127), on the authority of ʿUbayd Allāh b. Abī Rāfiʿ, on the authority of his father that the Messenger of Allāh may Allāh bless him and grant him peace said:

"Let me not find any of you lying on his bed, who, when an order which I have ordered or forbidden comes to him says: "We do not know this, we follow what we find in the Book of Allāh".90

496. We have been ordered to follow what he has ordered and to avoid what he has forbidden. Allāh has imposed that upon all His creatures in His Book. Nothing is found in people's possession but what they adhere to on the authority of Allāh the High, then on the authority of His Messenger may Allāh bless him and grant him peace, and then through indications.

497. However, his saying- if he said it- "Let not people hold to something against my wishes (lā yamsikann al-nās ʿalayy bi shay)" reveals that the Messenger of Allāh was a model (qudwah). He has, however, special prerogatives which were not allowed to the people although allowed to him, and things which were not forbidden to the people although forbidden to him. Therefore he said, "people should not adhere to everything which is [specifically] imposed on me of the things which were allowed to me or forbidden to me and not to other people. If it is forbidden or it is allowed to me, and not to other people, they should not hold to them.

90 Al-Risālah. paras. 295-6, 622, 1106-7; Tartīb Musnad. vol. I, p. 20.
498. For instance, Allah the High, permitted to him the number of wives which He wished or to marry a woman who had gifted herself to him. Allah says:

"[It is] exclusive to you not for the other believers". 91 No one has the right to say that the Messenger of Allah may Allah bless him and grant him peace simultaneously wed more than four wives, or that he married a woman without a dowry, or he took ṣafi 92 from ghanīmah (spoils). That was exclusively for the Messenger of Allah may Allah bless him and grant him peace, because Allah the High clarified in the Qur'an and through the tongue [word] of His Messenger may Allah bless him and grant him peace that they were exclusively for him, not for others.

499. Allah enjoined him to give his wives the choice either staying with him [as wives] or being divorced. [In this case] no one is allowed to say, "I swear I shall give my wife the choice as Allah the High imposed upon His Messenger may Allah bless him and grant him peace.

500. And this is the meaning of the Prophet's saying- if he said it, "Let not people hold to something against my wishes, for I will not declare lawful except what Allah declared lawful, and I will not prohibit except what Allah has prohibited (lā yumsikann al-nās 'alayy bi shay', fa innā lā uhill lahum illā mā aḥall Allāh, wa lā uḥarrim 'alayhim illā ma ḫarram Allāh)".

91 Al-Ahzāb: 50.

92 ṣafi is something valuable which the Prophet had chosen for himself before the distribution, such as sword, horse or slave woman. See al-Jurjānī, al-Taʿrīfāt. p. 134; al-Tahānawi, Kashshāf. vol. 1, p. 869.
501. In that manner, the Messenger of Allah may Allah bless him and grant him peace acted. And also in that manner He enjoined on him to follow what He revealed to him. And we bear witness that he followed it.

502. Therefore, when there is no revelation (wahy) on any question, Allah the High has imposed through the revelation adherence to His [Prophet's] sunnah. Whoever accepts [the authority of] the Prophet, is doing so by the command of Allah.

503. Allah the High says:

"And whatsoever the Messenger gives you, take. And whatsoever he forbids you, abstain from".93

504. He, the Exalted and the High also says:

"But no, by thy Lord: they will not believe until they make you the judge regarding the disagreements among them; then find in themselves no impediment touching your verdict, but shall surrender in full submission".94

505. We have been informed on the authority of Ṣadāqah b. Yasār, on the authority of ʿUmar b. ʿAbd al-ʿAzīz that he asked [people] at Madīnah, and it was agreed that pregnancy will not be apparent in less than three months.

506. Al-Shāfiʿī said: Allah the Exalted and the High has put His Prophet may Allah bless him and grant him peace vis-a-vis His Book and His religion in that relation which He has explained in His Book.

507. The imposition upon all people is that they have to be aware that the Prophet would not say regarding what Allah has revealed other than on the basis of what He

93 Al-Ḥaṣr: 7.
94 Al-ʿNisāʾ: 65.
has revealed to him, and [that] he would not oppose Allāh's Book, [and that] the Prophet expounded on Allāh's behalf the meaning of what Allāh intended.

508. And the explanation of that can be seen in the Book of Allāh.

509. Allāh the High says:

"And when Our clear revelations are recited unto them, those who do not anticipate the meeting with Us say: "Bring a Qur'ān other than this or change it". Say [O Muḥammad]: "It is not for me to change it of my own accord. I merely follow what is being revealed to me".95

510. Allāh said to His Prophet may Allāh bless him and grant him peace;

"[O Muḥammad] follow that which is revealed to you from your God."96

511. He says the like of this in more than one verse.

512. He the Exalted and the High says:

"Whoever obeys the Apostle obeys Allāh".97

513. He says:

"But no, by thy Lord: They will not believe..."98

514. Al-Shāfiʿī, may Allāh, the High bless him said: al-Darāwardī informed us on the authority of ḍAmr b. [Abī] ṭAmr, on the authority of al-Muṭṭalib b. Ḥanṭab that the Messenger of Allāh said:

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95 Yunus: 15.
96 Al-An'ām: 106.
97 Al-Nisāʾ: 80.
98 Al-Nisāʾ: 65.
"I did not leave anything which Allāh, the High has enjoined on you, but that I have enjoined it on you. And I did not leave anything which He forbids you, but that I have forbidden it to you".  

Al-Rabīʿ informed us saying: al-Shāfiʿī informed us saying:

515. Sufyān b. ʿUyaynah informed us on the authority of Sālim Abū al-Naḍr, on the authority of ʿUbayd Allāh b. Abī Rāfīʿ, on the authority of his father that the Messenger of Allāh may Allāh bless him and grant him peace said:

"Let me not find any of you lying on his bed, who, when an order which I have ordered or forbidden comes to him says: "We do not know this, we follow what we find in the Book of Allāh".

516. Allāh has imposed ʿalāḥ, ʿazāt, ḥajj in general terms in His Book, then the Messenger of Allāh explained the meaning of what Allāh, the High meant in terms of the number of the prayers and its times, the number of bowings (rukūʿ), and prostrations (ṣuṣūd), the way of performing ḥajj, what one should do during ḥajj or avoid, and which property ʿaẓāt is to be taken from and how much and when.

517. Allāh the Exalted and the High says:

"And the male and female thief, cut off their hands".  

518. And He the Exalted and the High says:

"The adulteress and the adulterer shall each one be given one hundred lashes".  

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99 Al-Risālah. paras. 289-306.
100 Al-Maʿādah: 38.
101 Al-Nūr: 3.
519. If we were to follow the Qur'anic text, we would amputate the hands of all those who can be called "thieves". And we would flog all those who can be called "adulterers" one hundred lashes.

520. Since the Prophet may Allah bless him and grant him peace amputated hands for a quarter of a dinār, whereas he did not cut off hands for less, and he stoned two free married adulterers, whereas he did not flog them, we deduce that Allah, the Exalted and the High intended amputation and flogging only for some thieves, not others, and only for some fornicators (zunāh), not others.\textsuperscript{102}

521. A similar case which is no way different is al-mash 'alā al-khuffayn (wiping over boots).

522. Allah the Exalted and the High says:

"O Believers, when you rise to pray, wash your faces and your hands as far as the elbows, and wipe your heads and [wash] your feet to the ankles."\textsuperscript{103}

523. Since the Prophet may Allah bless him and grant him peace wiped his boots (khuffayn), we deduce that Allah's imposition of washing the feet (ghasl al-qadamayn) is required only of some people, not of others. And mash is permitted to those who put boots on after full purification (kamāl al-tahārah) on the ground of the sunnah of the Messenger of Allah may Allah bless him and grant him peace, because he would not wipe [his boots] while the obligation is to wash the feet as well as that he would not withdraw the amputation of hands from some thieves, and the hundred lashes from

\textsuperscript{102} Al-Risālah. paras. 223-7, 332-5, 375-382, 616, 646-9, 682-685, 1619-1920.

\textsuperscript{103} Al-Mā'idah: 6.
some adulterers, when the obligation is to flog [the adulterer] and to amputate [the hands of the thief].104

524. If one goes on to say that some of the Prophet's Companions have narrated that he said; the Qur'an [concerning the obligation of wuḍū'] came earlier than the wiping of the boots, since

525. Al-Mā'idah was revealed before mash which was confirmed in the Ḥijāz during the battle of Tabūk, whereas al-Mā'idah was revealed before that date.

526. If someone should claim that there was a requirement of wuḍū' prior to the wuḍū' in which the Prophet rubbed his boots and there was a requirement of wuḍū' revealed after that which abrogated the wiping of the boots,105

527. let him bring us the imposition of two wuḍū's in the Qur'an. We only know one imposition of wuḍū' [in the Qur'an].

528. If he claims that the Prophet wiped [māsah] before wuḍū' was imposed upon him, he has claimed that the salāt was performed without wuḍū'. We know of no such salāt ever without wuḍū'.

529. Which verse [part] of the Qur'an (kitāb) is earlier than the wiping of the boots (al-mash ʿalā al-khuffayn)?

530. Mash as we have described is deduced from the sunnah of the Messenger of Allāh. All of what the Messenger of Allāh practised [sanna] of Allāh's obligations is similar to what we have described regarding the thief, the fornicator and other cases.

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104 Al-Risālah. paras. 220, 1610-1621; Ikhtilāf al-Ḥadīth. p. 57

105 Ikhtilāf al-Ḥadīth. p. 60.
531. Al-Shafīʿī said: A sunnah never contradicts the Qurʾān, and Allāh, the High is the one who guides (muwaffiq).
THE NATURE OF THE PROPHET'S PROHIBITION

Al-Shafi'i, may Allah, the High bless him said:

532. The basis of prohibition (asl al-nahy) from the Messenger of Allah may Allah bless him and grant him peace is [that] every thing which he [the Prophet] forbids is unlawful (muḥarram), unless there is an indication from him that shows that he prohibited that thing in a sense other than complete prohibition (taḥrīm); either he intended by it prohibition in certain things, apart from others, or he may have intended one to avoid it (tanzīh), or he may have been giving instruction of good behaviour (adab) and option (ikhtiyār).

533. We would draw a distinction between the Prophet's prohibitions on evidence from the Messenger of Allah may Allah bless him and grant him peace alone or a matter which the Muslims do not dispute. We know that all the Muslims would not be unaware of a sunnah, though some of them might be.

534. One thing most of the 'āmmah do not differ about is that the Messenger of Allah forbade as unlawful (taḥrīm), the exchange of gold for silver except hand to hand. He also prohibited the exchange of gold for gold except equal weight for equal weight, hand to hand. And he forbade two contracts of sale in a single contract.

535. We also say so, and the generality [of scholars] ('āmmah) agree with us, that when two persons make an exchange of gold for silver, or gold for gold and do not exchange the price and thing before they leave each other, that the contract is invalid (mafsūkh).

107 There is also a section in al-Risālah which deals with the different kinds of prohibition laid down by the Prophet under the subtitle: Ṣifat Nahy Allāh wa Nahy Rasūlīh, pp. 345-357.
536. Our proof is that when the Prophet may Allāh bless him and grant him peace prohibited this, it became unlawful (muḥarram).

537. When two men make two contracts of sales in one contract of sale, both exchanges are invalid (mafsūkh) as soon as the contract is made. For example of [such an invalid] contract is attempted when [one party says to the other], "I will sell to you on the basis that you sell to me. [This is invalid] because the contract is concluded on the basis of the two parties taking possession from the opposite number of something which is not then in his possession.

538. The Prophet may Allāh bless him and grant him peace forbade contracts involving uncertainty (bayḍ al-gharar). An example of this is when I say to you: This article of mine is yours for ten in cash [now], or fifteen later. This has required him to take possession and [to pay] one of the two prices, for the sale has not been concluded for a known price. There are many aspects involved in the contract of gharar. This will be sufficient for us. The Prophet may Allāh bless him and grant him peace [also] forbade the marriage of shīghār\(^{108}\) and muḥāf (temporary marriage).

539. Whatever a sale concluded for something prohibited, it does not become my possession based on the Prophet's prohibition. Because I have possessed something prohibited (muḥarram) by the means of prohibited transaction. We, therefore apply the prohibitions as the same level if there is no such distinctive indication from the Prophet. So, we declare these things invalid as well as muḥāf and shīghār just as we invalidate two sales in a single contract.

\(^{108}\) This is one type of marriages practiced during the Pagan time which was abolished by Islam. This marriage is illustrated as a man will marry another man's daughter or sister on condition the latter will marry the former's daughter or sister without paying any dowry. See Tartib Musnad, vol. II, p. 9.
540. There are things the Messenger of Allah may Allah bless him and grant him peace prohibited in certain circumstances, so we conclude from his *sunnah* that he intended the prohibition to operate in those precise circumstances. For example Abū Hurayrah relates from the Prophet may Allah bless him and grant him peace that he said, "let none of you make an engagement of marriage in competition with his brother's proposal".  

541. If it were not that proof existed from him, the prohibition in this case would be a prohibition of the first kind [*hārām*]. Therefore, it would be unlawful for the other to make a proposal of marriage if a man had already proposed to that woman.

542. But when Faṭimah bint Qays said; "The Messenger of Allah said to me, "When you have completed the waiting period (*i'ddah*), tell me". When she finished her waiting period, she told him that Mu‘āwiyyah and Abū Jahm had made proposals of marriage to her. Then the Prophet may Allah bless him and grant him peace said: "As far as Mu‘āwiyyah is concerned, he is a vagabond - a poor wretch-who has no property. And as for Abū Jahm, he would not leave his stick from his shoulder. Rather, marry Usāmah b. Zayd". She said: I disliked him. The prophet said, "Marry Usāmah". I married him, then Allah blessed the marriage abundantly, and I was happy with him". [From this report], we deduce that he [the Prophet] did not forbid making a marriage proposal, or a marriage proposal in competition with somebody else; but what he forbade is making a marriage proposal when the woman has already given her consent [to someone else] and the only thing remaining is the marriage contract. If another

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109 *Al-Risālah*, para. 847.
man were to make a proposal of marriage then it would spoil things either for the one who had been accepted, or for the woman or for both of them together.\footnote{Al-Risālah. paras. 847-862.}

And he might spoil the engagement of both of them, and then nothing happens between the woman and the man who is now proposing to marry her.

543. Had Fāṭimah informed him that she had accepted one of them, he would not have made a proposal of marriage to her -Allāh willing- on behalf of Usāmah. However, she informed him about a marriage proposal and sought his advice. Therefore, from her hadīth, there is an indication [proof] that she had neither accepted nor rejected.

544. When a woman is in this situation, it is permissible [to some one else] to make proposal of marriage to her. But, when a woman has accepted the first man and it occurs to her to ask [her guardian] to marry her to that man, she may not be offered a proposal of marriage when she has given consent to a previous offer such that if her wālī gave her in marriage that would result in a lawful marriage.

545. Supposing someone says: Her situation after she has agreed is different from her situation following the proposal but before she agrees. So also her situation when she is proposed to before she agrees differs from her situation before she is proposed to. Similarly, if the proposal is repeated after she had [first] refrained from speaking and kept silent, when silence cannot always be taken as acceptance.

546. No view in my opinion is permissible except what I have mentioned by inference. If it were not for the indication provided by the sunnah, once she has been
proposed to, she would be prohibited to anyone other than the first man who had made a proposal of marriage until that offer was withdrawn.

547. The prohibition of the Prophet may Allāh bless him and grant him peace is divided into two categories.

548. Whatever he prohibited is forbidden except where something happens that makes it permitted (ḥalāl).

If a man happens to do a forbidden thing, it would not make the forbidden permissible. It still remains as originally unlawful, because it did not come through a way which will make it permissible.

549. For example, people's properties are forbidden to others; and women are forbidden to men, unless a man take another's property into his possession by lawful means through a contract of sale (bay‘), or a gift (hibaḥ) or some other means. And women are unlawful except through a valid marriage or legitimate slave ownership (milk yamin).\(^\text{111}\)

550. If a man purchases something in a forbidden sale, the forbidden item he has purchased still remains forbidden, because he has not acted in a way that legitimizes his ownership, and it will not make the forbidden [thing] permissible. If he marries in a forbidden manner, the unlawful woman does not become lawful to him.

551. What I have been forbidden from in terms of doing something with something in my possessoin or in terms of something which is permitted to me and is not the

\(^{111}\) *Al-Risālāh* para. 931.
possesion of anyone else, is a prohibition of choice (nahy al-ikhtiyār), and we are not supposed to commit it.

If someone intentionally commits that action, he is disobedient by doing that action, and is considered to have done other than the preferable (ikhtiyār). However, his property would not be unlawful nor what is permitted to him.

552. It is related from him [the Prophet] that he ordered an eater to eat what is near to him, and not to eat from the top of the dishes (ra's al-tharīd al-ta'am)\textsuperscript{112} and not to sleep (ta'rīs)\textsuperscript{113} on the open road.

If he eats what is not near to him, or the top of dishes or sleeps on the open road, he is sinful by that action which he has committed if he is aware of the Prophet's prohibition, but it does not make those dishes forbidden to him.

553. This is because the food is not the same as the action, and he needs do nothing to make it permissible. The food is ḥalāl, and what is ḥalāl does not become ḥarām for him because of some disobedience regarding eating from the wrong place.

554. Similar to this is the prohibition against sleeping on the open road. The road is permitted to him, but he is considered disobedient by sleeping on the road, and his disobedience does not forbid him from using the road.

555. What I said was, that he will be disobedient [by these actions], if there is proof to the effect that that man knew that the Prophet may Allāh bless him and grant him peace had forbidden them.

\textsuperscript{112} Al-Risālah. para. 949.

\textsuperscript{113} Al-Risālah. para. 950.
Having discussed and analysed al-Shāfi‘ī’s views on hadīth and his work Jimā‘ al-‘Ilm, there are some remarks that could be drawn from this study.

Al-Shāfi‘ī’s ability to establish a new madhhab resulted from his series of travels and studying under different teachers of different approaches. The combination of the school of Hijāz (ahl al-hadīth) and the school of Irāq (ahl al-ra’y) have made al-Shāfi‘ī an eclectic. His madhhab, therefore, pays attention mostly to the Qur’ān and sunnah of the Prophet and restricts the use of qiyyās. Al-Risālah for instance is the outcome of this approach.

The position of hadīth in Islam has passed through different stages. In the beginning of Islam and prior to al-Shāfi‘ī’s time, hadīths were well accepted. But by al-Shāfi‘ī’s time the position of hadīth or the sunnah of the Prophet as a source of Islamic jurisprudence had been challenged by some groups. Jimā‘ al-‘Ilm for example, is a significant evidence for the existence of this phenomenon. Hadīths were either entirely or partly rejected by certain groups. Ahl al-kalām are recognised as a group which repudiated the entire hadīths. Ahl al-kalām in al-Shāfi‘ī’s writings, according to most authors refers to the Mu’tazilah. Other groups are also significant such al-Rawāfiḍ, al-Khawārij and others.

On the other hand, those who rejected a part of the hadīths, i.e. khabar al-wāḥid, are referred to as the followers of fiqhī madhhab. This rejection may be due to their different approach.
Al-Shafi'i has treated these two rejections in his writings. Arguments in favour of hadith as a whole, which should be accepted and proofs in favour of khabar al-wāhid to be recognised and accepted, are well documented in his writings, such as al-Risālah, Jimāl al-'Ilm, Ikhtilāf al-Ḥadīth and Ikhtilāf Mālik wa al-Shafi'i.

The concept of the sunnah of the Prophet (sunnat al-Nabi) is very significant in al-Shafi'i's discussion. His thesis argues that once a hadīth of the Prophet is definitely confirmed as coming from the Prophet, it must be accepted. Whatever others, i.e. the Companions or the Successors, may have said or done which opposes it does not affect it. In other word, athār of others cannot set aside the hadīth of the Prophet. Furthermore it would not strengthen it, even though it agrees with it.

Differences of rulings held by different madhhab are not solely matters of disagreement. Disagreements on the branches of law (furū') resulted from a different approach to the sources of law. An example is the acceptance of khabar al-wāhid. Because of disagreement as to whether or not khabar al-wāhid should be accepted, many different rulings on certain issues have been produced by fuqahā'. The reciting of Basmalah for instance, varies. Some say it loudly and others not. Certain fuqahā' do not accept that the basmalah should be recited aloud for this is opposed to certain principles they held.

Al-Shafi'i was consistent in enforcing the acceptability of hadiths. Throughout his usūlī writings, the importance of hadīth, the obligation to obey the Prophet and the obligation to accept the hadiths of the Prophet, were dominant and lay at the basis of his writings. Jimāl al-'Ilm is an example of this. His consistency on this matter may reflect the fact that of that time, rationalist movements especially the Mu'tazilah who
gave priority to reason (‘aqīl) were dominant and paid no attention to hadīths, claiming that they were contradictory to each other. To correct this misunderstanding, al-Shāfi‘ī sought to adopt his approach, reinforcing his views by the constant use of repetition.

As far as mursal hadīths are concerned, it may be concluded that al-Shāfi‘ī accepted them on certain conditions as laid down in al-Risālah. The acceptability of the mursal hadīths also has contributed to the differences of rulings, since some jurists accept it as an argument, while other do not.

With regard to the seeming differences among hadīths, al-Shāfi‘ī has offered a method of solving this problem. Disagreements among hadīths are not just an absolute disagreement. There are principles to be employed in the conduct of this matter, such as whether or not they are nāsīkh or mansūkh, general or particular or others. Whatever they are, the apparent differences among hadīths may be reconciled according al-Shāfi‘ī’s theory.

As far as Jimā‘ al-‘Ilm is concerned, it is a strong evidence to show that history repeats itself, as a phenomenon that took place in history may happen again. For example, if the rejection of hadīths happened during al-Shāfi‘ī’s time (second century of Hijrah), it may happen again in this century. This phenomenon should not happen in the first place if al-Shāfi‘ī’s theory and proofs are duly understood.

To emphasise this point again, Jimā‘ al-‘Ilm is very important in order to understand the development of Islamic law. If we compare Jimā‘ al-‘Ilm and al-Risālah in terms of contents, the former could be said to be a summary of the latter. However, in certain issues, it discusses points in detail while in certain cases it lays them out briefly.
Having discussed all these, we suggest that further study on al-Shāfi‘ī’s other writings should be undertaken in order to establish his views in greater detail. The author suggests Kitāb Ikhtilāf Mālik wa al-Shāfi‘ī as being a particularly promising field for study.
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APPENDIX

The Text of Jinnā al-Ilm
لا يمكنني قراءة النص арабياً من الصورة المقدمة.
لا يمكنني قراءة النص العربي من الصورة المقدمة.
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