

A Critical Edition and Study of
Baḍī' al-Niẓām al-Jāmi' bayna kitābay al-Bazdawī wa
al-Iḥkām
by Ibn al-Sā'ātī and its place in the History of Islamic
Jurisprudence
(D. 694 AH / 1294 AD)

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Abstract

A Critical Edition and Study of

Badī' al-Nizām al-Jāmi' bayna kitābay al-Bazdawī wa al-Iḥkām

by Ibn al-Sā'āfi and its place in the History of Islamic Jurisprudence

Jurisprudence is one of the most important subjects of Islamic Studies because it is the means of deducing religious categorisation of human acts and of deducing the rules which regulate human affairs in a just manner. This study attempts to define the nature of Islamic jurisprudence and its historical development as a discipline through the first seven centuries of the Islamic era and somewhat beyond; to produce a critical edition and to study one of the fundamental texts of Islamic jurisprudence: *Badī' al-Nizām al-Jāmi' Bayna Kitābay al Bazdawī wa al-Iḥkām*. This work is of great importance on account of its unifying influence but its text has never received a critical edition or publication.

This thesis consists of two volumes, Volume One is written in English and is divided into three parts.

Part One is confined to the history of Islamic jurisprudence from the inception of Islam, through the various stages of development and until the end of the seventh century *al-Hijra* (1300 AD).

Part Two concerns itself with the development of Islamic jurisprudence where the main focus is to present a reasonably clear picture of the various processes that practitioners in the field of Islamic jurisprudence have followed in order to derive (new) rules.

Finally Part Three deals, through a critical study, with the manuscript entitled *Badī' al-Nizām al-Jāmi' Bayna Kitābay al Bazdawī wa al-Iḥkām* which brings together the two

approaches one due to al-Bazdawī *Uṣūl al-Bazdawī* and the other *al-Iḥkām* due to al-Āmdī. Also, it gives biographical accounts of the three authors, al-Bazdawī, al-Āmdī and Ibn al-Sāʿatī as well as a good description of the *Baḍīʿ al-Niẓām al-Jāmiʿ Bayna Kitābay al-Bazdawī wa al-Iḥkām* manuscript.

Volume Two is an edition of the Arabic text of *Baḍīʿ al-Niẓām al-Jāmiʿ Bayna Kitābay al-Bazdawī wa al-Iḥkām*. This edition is made as concise as possible through a method of comparing a selection of ten manuscripts, one of which is the original and one copied from the original by the author's sister. Moreover, all reference to the verses of the Qurān, Ḥadīth, Poetry and Prose and their practitioners taken from *Baḍīʿ al-Niẓām al-Jāmiʿ Bayna Kitābay al-Bazdawī wa al-Iḥkām*, have been identified with appropriate commentaries.

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I take this opportunity to thank those working in the various oriental manuscript collections housed at Istanbul, Cairo and London.

I have too a debt of gratitude to all those who helped, advised and encouraged me and extended their valuable criticisms during the course of my work and I thank them with all my heart.

Table Of Transliteration

	ء	آ
'	ء	آ
'A	'A	'A
'U	'U	'U
'I	'I	'I

A	.....	ا
B	.....	ب
T	.....	ت
TH	.....	ث
J	.....	ج
H	.....	ح
KH	.....	خ
D	.....	د
DH	.....	ذ
R	.....	ر
Z	.....	ز
S	.....	س
SH	.....	ش
S	.....	ص
D	.....	ض
T	.....	ط
Z	.....	ظ
'	.....	ع
GH	.....	غ
F	.....	ف
Q	.....	ق
K	.....	ك
L	.....	ل
M	.....	م
N	.....	ن
H	.....	هـ
U	.....	و
I	.....	ي

'I ... ع ... 'U ... ع ... 'A ... ع

WI ... و ... WU ... و ... WA ... و ...
YI ... ي ... YU ... ي ... YA ... ي ...

To Intensif, Double, Geminate : ّ
Vowel Point الحركات . To Make Vowless : ْ
الفتح : َ A N ْ A ْ : الضم : ُ O N ْ O ْ : الكسر : ِ I ْ I ْ

CONTENTS

Abstracti

Acknowledgements.....iii

Table Of Transliterationiv

PART ONE

The History Of Jurisprudence

Chapter I Introduction.....1

I.1 The Arabian Peninsula On The Eve Of The Islamic Mission1

I.2 The Persian Empire1

I.3 The Byzantine Empire2

I.4 The Jewish
Community.....2

I.5 The Southern Front3

I.6 The Arabs.....3

Chapter II Jurisprudence During The Era Of The Prophet6

II.1 The Origins Of Theoretical Jurisprudence (Usul Al-Fiqh)6

II.2 The Innovation Of The Prophet In Mecca7

II.3 The Innovation Of The Prophet In Madina8

**Chapter III Jurisprudence During
The Time Of The Rightly Guided Caliphs.....9**

III.1 Jurisprudence During The Reign Of Abū-Bakr9

III.2 Jurisprudence During The Era Of ‘Umar Ibn al-Khaṭṭāb10

III.3 Jurisprudence During The Rule Of ‘Uthmān Ibn ‘Affān.....14

III.4 Theoretical Jurisprudence During The Reign Of ‘Alī Ibn Abī Ṭālib..... ..19

III.4.i The Early Umayyads21

III.4.ii The Party Of ‘Alī24

III.4.iii The Party Of ‘Ā’isha27

III.4.iv The Neutral Party27

Chapter IV Theoretical Jurisprudence During The Ummayad Perio.....30

IV.1 The Early Schools Of Islamic Law31

IV.2 End Of The Oral Tradition45

Chapter V Jurisprudence During The ‘Abbāsīd Period

Until The End Of The 7th Century AH / 1300AD38

V.I Background To The Emergence Of The Main Schools Of Fiqh.40

V.2 The Ḥanafite School Of Law42

V.2.i Development Of Uṣūl al-Fiqh Under The Ḥanafites45

V.2.ii The Development Of The Ḥanafite School Of Law47

V.2.iii The Methodology Of The Ḥanafis (From The Fuqahā’)50

V.2.iv The Method Of Al-Bazdawī51

V.3 The Malikite School Of Law.....	52
V.3.i Malikite Jurisprudence	53
V.3.ii Development Of Uṣūl al-Fiqh Under The Malikites	54
V.3.iii Malikite Indicators Of Law	56
V.4 The Shāfi‘ite School Of Law	58
V.4.i The Foundation Of The Shāfi‘ite School Of Law	60
V.4.ii The Emergence Of The Iraqi Method	62
V.4.iii The Emergence Of The Khorāsānī / Merwazī Method	64
V.4.iv The Unification Of The Khorāsān And Iraqi Shāfi‘ite Methods	65
V.4.v The (Shāfi‘ite) Jurisprudents And Indicators	69
V.5 The Ḥanbalī School Of Law	70
V.5.i The Trial Of Aḥmad Ibn Ḥanbal	72
V.5.ii Uṣūl Al-Fiqh And The Ḥanbalites	75
V.5.iii The Development Of The Methodology Adopted By The Mutakallimūn (Shāfi‘ites)	78
V.5.iv The Compilation Of The Works On Uṣūl Al-Fiqh	82
V.5.v The Conjoining Of The Works Of Uṣūl Al-Fiqh And Its Methodologies.....	85

PART TWO

AN OUTLINE OF THE STUDY OF ISLAMIC JURISPRUDENCE

Chapter I

Introduction.....87

I.1 Jurisprudence During The Time Of The Prophet And His Companions.....87

I.2 The Demands Of A New Era.....87

Chapter II Fundamentals Of The Study Of Islamic Jurisprudence.....89

II.1 The Technical Import Of Fiqh.....89

II.2 Terminology And Definition

II.3 Rules Of Jurisprudence (Aḥkām Al-Sharī‘ah).....92

II.4 The Fiqh Postulates.....99

II.5 The Indicators Of God’s Law And Categorisation.....99

Chapter III Types Of Legal Indicators.....101

III.1 The Qur’ān.....101

III.2 The Sunnah (Tradition) Of The Prophet.....101

III.3 Ijmā‘ (Consensus) As A Proof (Ḥujjah) And As A Source Of Law

III.3.i Ijmā‘ (Consensus) In The Qur’ān.....102

III.3.ii Ijmā‘ (Consensus) In The Sunnah

III.3.iii The Feasibility Of Ijmā‘ (Consensus).....103

III.4 Qiyās (Analogy)

III.4.i Definition Of Qiyās

III.4.ii Varieties Of Qiyās

III.4.iii Constituents Of Analogy (Qiyās)

III.4.iv The Original Ruling (The Ḥukm Al-Aṣl)	109
III.4.v The Analogous Ruling (Hukm al-Far‘)	109
III.4.vi Ascertaining The Cause (‘Illah)	111
III.4.vii Defense Of Analogy (Qiyās)	111
III.4.viii Qur’ānic Evidence In Support Of Analogy	112
III.5 Abrogation (Naskh).....	114
III.5.i Abrogation And Ijmā‘ (Consensus)	117
III.5.ii Abrogation And Qiyas (Analogy)	118
III.5.iii Forms Of Abrogation	118
III.5.iv Naskh Bi Al-Ziyāda (Addition And Abrogation)	119
III.5.v Text Meaning, Implied Meaning (Maṭnūq, Maḥmū) And Abrogation.....	120
III.5.vi Abrogation And Progressive Realisation (Al-Badā‘)	120
III.5.vii Naskh And Taqyīd (Restriction)	121
III.5.viii Naskh And Istithnā‘ (Exception)	122
III.5.ix The Argument For Abrogation	122
III.6 Istidlāl (Inference).....	123
III.6.i Istiṣhāb	123
III.6.ii Varieties Of Istiṣhāb	124
III.7 The Invalid Indicators (According To Āmidī).....	126
III.7.i The Fatwā Of A Single Companion (Madhhab Al Ṣaḥābī).....	126
III.7.ii Revealed Laws Preceding The Sharī‘ah Of Islām (Shar‘ Man Qablanā).....	128
III.7.iii Istiḥsān (Equity In Islamic Law).....	128
III.7.iv ‘Urf (Custom).....	129
III.7.iv.1 Conditions Of ‘Urf	130
III.7.iv.2 The Principal Differences Between ‘Urf And Ijmā‘	131
III.7.iv.3 Types Of Custom	132
III.7.iv.4 Sub Division Of General And Special Type	132
III.7.iv.5 Proof (Ḥujjiyah) Of ‘Urf	133
III.7.v Al Maṣlaḥah Al Mursalah (Unqualified Public Interest).....	133
III.7.vi Opposition To Maṣlaḥah	134
III.8 Sadd Al Dharā‘i‘	134
Chapter IV The Transmission And Authenticity Of Texts.....	138
IV.1 Modes Of Transmission And Authenticity of Narrator (Mustanad al-Rāwī).....	138
IV.2 Classification Of Ḥadīth	139
IV.2.i Fabricated Ḥadīth Report.....	140
IV.2.ii The Mutawātir Ḥadīth (Report).....	140
IV.2.iii The Mashhūr And The Mustafīd Ḥadīth (Report).....	141
IV.2.iv Khabar Al Wāḥid (Solitary Report).....	142
IV.2.v Al-Hadith Al-Mursal.....	144
Chapter V Issues Of Meaning And Interpretation Of Texts.....	146

V.1 Dalālat al Manzūm. (Explicit Indication).....	146
V.1.i The General (‘Āmm) And The Specific (Khāṣṣ)	146
V.1.ii Grammatical Terms Identifying The ‘Āmm	147
V.1.iii Specifying The general. (Takhṣīṣ Al-‘Āmm)	148
V.1.iv Contextual Indicators (Adillah Al Takhṣīṣ)	149
V.1.v Attached Indicators	150
V.1.vi Detached Indicators (Al-Adillah Al-Munfaṣilah)	151
V.1.vii Muṭlaq (Absolute) And Muqayyad (Qualified)	152
V.1.viii Mujmal (Ambiguous) V.1.ix Interpretation Of Clear And Unclear Words	153
V.1.ix Interpretation Of Clear And Unclear Words	155
V.1.x Zāhir And Naṣṣ	155
V.1.xi The Unequivocal (Mufassar) And The Perspicuous (Muḥkam)	156
V.1.xii Unclear Words (Alfāz Ghayr Wāḍiḥa)	158
V.1.xiii Khafī.(Ambiguous) V.1.xv Mujmal (Ambivalent)	158
V.1.xiv Mushkil (Difficult)	159
V.1.xv Mujmal (Ambivalent)	159
V.1.xvi Mutashābih (Intricate)	160
V.1.xvii Ta’wīl. (Allegorical Interpretation)	160
V.2 Texts As Bearers Of Implied Meaning (Dalālat Ghayr Al- Manzūm).....	161
V.2.i ‘Ibārat Al-Naṣṣ:	162
V.2.ii Dalālat Al-Iqtidā’ (Required Meaning)	162
V.2.iii Ishārat Al-Naṣṣ (Alluded Meaning)	163
V.2.iv Dalālat Al-Tanbīh Wa Al-’Imā’	163
V.2.v Construed Implication. (Dalālat Al-Mafhūm)	163
Chapter VI Ijtihād And Taqlīd And Other Methods	165
Of Reaching Verdict (Fatwā).....	165
VI.1 The Definition Of Ijtihād.....	165
VI.2 Proof (Ḥujjiyyat) Of Ijtihād	166
VI.3 Conditions Of Ijtihād	166
VI.4 Classification And Restriction	167
VI.5 Taqlīd.....	169
VI.5.i Types Of Taqlīd	170
VI.5.ii Extent Of Taqlīd	170
VI.5.iii The Elements Of Taqlīd	171
VI.5.iv Subject Of Taqlīd	172
VI.6 Ittibā’ (Submission To The Legal Views Of A School Of Law).....	172
VI.7 The Difference Between Taqlīd And Ittibā’	172
VI.8 Talfiq (Combination Of Views).....	173
VI.9 Ta’arud And Tarjīh (The Weighing Of Conflicting Indicators (Tarjīh)	174
VI.9.i Definition Of Tarjīh	175

VI.9.ii Opposition To Tarjīḥ	176
VI.9.iii Coverage Of Tarjīḥ	179
VI.10 The Fatwā, The Muftī, The Mustaḥṣī And Istiftā'	181
VI.10.i Fatwā	181
VI.10.ii Muftī	182
VI.10.iii Conditions For The Independent Mufti	182
VI.10.iv The Conditions For The Associate Muftī	183
VI.10.v General Rules Concerning The Muftī	184
VI.10.vi Commoner (Mustaḥṣī)	185
VI.10.vii Duties Of The Mustaḥṣī	186
VI.10.viii The Subject Of Istiftā (Consultation)	188

PART THREE

Critique And Editing Of Badī' Al-Niẓām

Chapter I Introduction	191
Chapter II Authors	192
II.1 Al-Bazdawī	192
II.2 Al-Āmidī.....	193
II.3 Ibn al-Sā'ātī.....	199
Chapter III The Manuscript	206
III.1 Authorship and Titles	206
III.2 Description Of the Manuscripts	208
III.3 The Author's Method	216
III.4 Commentaries on Badī' al-Niẓām	224
Chapter IV Conclusion	228

APPENDECES

Appendix I Ḥanafī Compositions In Uṣūl Al-Fiqh

Until The End Of The 7th Century AH / 13th Century AD.....	230
--	-----

Appendix II The most important published works of Mālik.....	232
--	-----

Appendix III The most important Malikite compositions	233
---	-----

Appendix IV Published works of Shāfi'ī.....	237
---	-----

Appendix V The most important Shāfi'ite compositions.....	238
---	-----

Appendix VI The Compositions Of Aḥmad Ibn Ḥanbal	243
--	-----

Appendix VII The most important Ḥanbalite compositions	245
--	-----

Appendix VIII Al-Bazdawī compositions	247
---	-----

APPENDIX IX Amidi's Compositions.....	250
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APPENDIX X Ibn al-Sā'ātī's commentaries and notes made on 'Majma' al-Baḥrayn':	253
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Bibliography	273-----290
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Vol Two Arabic Text

PART ONE

The History Of Jurisprudence

Chapter I

Introduction

Theoretical jurisprudence (Uṣūl al Fiqh) was purely an Islamic phenomenon. It was formed and developed through a number of stages until it became a comprehensive science. The task in this study is to elucidate the various stages of development of Islamic jurisprudence during the first seven centuries of *al-Hijra*.

In this introduction we shall describe the state of the Arabian Peninsula on the eve of the Islamic mission. In chapter II, we shall talk about the emergence of theoretical jurisprudence during the era of the Prophet Muḥammad. Chapter III will deal with the development of Islamic jurisprudence during the period of the four rightly guided Caliphs.

This will be followed by a description of Islamic jurisprudence during the 'Umayyad period in chapter IV. The last chapter of Part One, namely chapter V, will concentrate on Islamic jurisprudence during the 'Abbāsīd period - until the end of the 7th century, al-Hijra (1300 AD)

I.1 The Arabian Peninsula On The Eve Of The Islamic Mission

During the sixth century A.D. the Arabian peninsula was surrounded by two strong empires, the Persian and the Byzantine. Both empires exercised some influence on the state of affairs in the Arabian Peninsula through their relations with the tribes of the region. As a result, two satellite states evolved north of the Arabian peninsula, namely where the Ghassānīds co-operated with the Byzantines and the Lakhmīds with the Persians.

These two tribes carried out the policies of their respective masters. The Ḥijāz region, however, was able to fend off Roman and Persian domination, with the principal tribe of the region, the Quraysh, remaining in control of Mecca.

I.2 The Persian Empire

The Sāssānīd dynasty ruled the Persian empire from 226 A.D. until 651 A.D. Its Kings

embraced Zoroastrianism¹, a religion based on the worship of fire, the symbol of good. Manichaeism², founded by Manichaios Manes, was another creed that flourished in Persia and was considered to be similar to Zoroastrianism. Mazdaism³, was established in the region in 487AD, a creed which acknowledged the principle of light and darkness. But these systems of belief suffered when the Persian empire was defeated by the Islamic forces in 670AD.

I.3 The Byzantine Empire

This Christian empire controlled the Mediterranean basin and the surrounding regions. A number of philosophical schools were established during the period of Byzantine rule, such as the Alexandria school in Egypt⁴, around 200 A.D, which mixed Christianity with Greek philosophy thus producing the neo-Platonic philosophy⁵. Such schools spread Greek philosophy in towns like Nuṣaybīn⁶, Ḥarrān⁷, and Urfā⁸, and involved the translation of a number of works on medical and astrological subjects in Greek. However, Byzantine influence in the region waned gradually with the spread of Islam, particularly during the period of the four Rightly Guided Caliphs when the Byzantines were driven to the area of the Bosphorus where they continued to rule until 1453A.D⁹.

I.4 The Jewish Community

Many Jews had fled the persecution of the Byzantine empire due to their collaboration with Persia, its rival, to settle in the towns of al-Madīna¹⁰, and Khaybar¹¹, while others went as far as Yemen. The Jews, however, could not establish themselves as a viable political or social force in the Arabian Peninsula. In time a state of suspicion obtained between Muslims and Jews which led to the latter's expulsion from Al-Ḥijāz region.

1 A monotheistic religion of ancient Iran founded by Zoroaster in the 6th century BC in which two twin spirits are said to have existed, one of which chose truth and light, the other untruth and darkness.

2 Religious system with Christian, Gnostic and pagan elements, founded in Persia in the 3rd c by Manes (c216-276). The system was based on a supposed primeval conflict between light and darkness.

3 Worship of Ahura Mazda, the good principle in ancient Persian theology.

4 Akin to the schools of Literature and Philosophy of Alexandria, founded in 332BC by Alexander the Great.

5 Neo-Platonism- a synthesis of elements from the philosophies of Plato, Pythagoras, Aristotle, and the Stoics, with overtones of Oriental Mysticism, dominant from the 3rd century AD, down to the closing of the pagans schools by Justinian in 529AD.

6 Close to Mardin in Turkey, a centre of Greek excellence in Syriac times. Close to Syria.

7 South of Urfā, Turkey, location of the Temple of Sin (erroneously called the first university). A centre of Greek learning during Syriac rule.

8 According to local tradition Urfā was the birthplace of Ibrāhīm. Known to the ancient Greeks as Orrhoe, hence the Arabic appellation al-Rahha. An important garrison in Roman times. Also known as Edessa where the great scientific works of late antiquity were translated into Syriac/Aramaic, and then into Arabic after the Muslim conquest.

9 Constantinople, was founded in 324A.D. on the south end of the Bosphorus, as the second capital of the Roman empire by Constantine the Great emperor of Byzantium. The seat of the Byzantine emperors was captured by the Ottoman Turks in 1453 A.D. at the hands of Sulṭān Muḥammad al-Fātiḥ.

10 al-Madīna al-Munawara. Known as Yathrib before Islām, it was the town Muḥammad migrated to in 622AD, where he is buried.

11 Khaybar, a trading centre which attracted the Jews. Located between al-Medina and Tayma'.

I.5 The Southern Front

Prior to the emergence of Islām, Abyssinia and the Yemen conducted hostile policies towards Al-Hijāz. This culminated in the attempted invasion of Mecca in the year of the Elephant¹², by an army led by Abraha al-Ashram¹³. Later, Muslims were granted a haven by Al-Najjāshī¹⁴, the Christian King of Abyssinia. However, this Yemenī -Abyssinian influence to the south of the Arabian peninsula was not as great as the power that was wielded by the Persian and Byzantine powers to the north.

I.6 The Arabs

Before Islam, tribal conflict was rife among the Arabs in the peninsula and the periphery. However, three tribes managed to achieve supremacy over the entire peninsula, namely, the Manādhirah, the Ghassānids, and Quraysh, and each tribe had its own particular rules.

a) The Manādhirah of Lakham: Their ancestry goes back to Qaḥṭān, and they established Al-Ḥīra on the banks of the Euphrates River, near Babylon¹⁵, with the backing of the Persian emperor Sābūr the First in 240 A.D. ‘Amr Ibn ‘Adīy¹⁶, was the first ruler of the Manādhirah, and the last was Al-Nu‘mān Ibn al-Mundhir (the fifth), known as Abū Qābūs - the husband of Hind¹⁷, and addressed thus by the poet Al Nābigha al-Dhubyānī¹⁸.

The Manādhirah played the role of cultural and political mediator between Arabs and the Persians whereby the courts of Al-Ḥīra hosted mutual discussions among poets and delegations¹⁹. The Manādhirah never converted to Zoroastrianism.

Al-Nu‘mān ran out of favour with the Persian emperor Kisrā²⁰, and was imprisoned until his death in 602 A.D. Afterwards the Persians abolished the autonomy of Al-Ḥīra and

12 See Sūrah al-Fil (The Elephant), 105, 1-5. See, al-Mawsū‘ah al-Thaqāfiyya, p648. Also, Sirat Ibn Hishām, v1, p167. Also, Ṭabaqāt Ibn Sa‘d, v1, p62. Also, Tarīkh al-Ṭabarī, v2, p172. Also, Tarīkh al-Islām, al-Dhahabī, v1, p21.

13 A military commander of the Abyssinian army against the Yemenī forces during the 6th century who conquered the Yemen and established Christian temple, Al-Qulays. He attempted to conquer Mecca but failed. He was attacked by an army of flies. See, 12 above.

14 An Abyssinian king, during the era of Muḥammad who offered a refuge to Muslims exiled by Quraysh.

15 Renowned for its hanging gardens, one of the seven wonders of the World.

16 ‘Amr Ibn ‘Adī Ibn Naṣr al-Lakhmī. Resided in al-Ḥīra, where he died after 50 years of rule. See, *Nihāyat al-‘Arab*, v15, p316. See also, *Tarīkh Ibn Khaldūn*, v2, p262. Also, *Al-Kāmil*, Ibn al-Athīr, v1, p122. Also, *al-A‘lām*, v5, p82.

17 Al-Nu‘mān Ibn ‘Amr Ibn al-Mundhir al-Ghassānī. Ruled South Syria and Jordan, 296AD. Died about 323AD. See, *al-A‘lām*, v8, p38.

18 Al-Nābigha al-Dhubyānī Ziyād Ibn Mu‘āwiyya. One of the seven great poets associated with the Mu‘allaqāt. Born 535AD, died 604AD.

19 See, *al-‘iqd al-Farīd*, Ibn ‘Abd -Rabuh al-Andalusī, v 2, PP40-121.

20 Grandson of the first Kisra, the Persian king, died 628AD.

ruled it directly by appointing a Persian ruler. This state of affairs continued until the Muslims conquered Al-Ḥīra in 633 A.D.

b) The Ghassānīds: These tribes were also the descendants of Qaḥṭān, and established an emirate in Al-Shām (Greater Syria) which included Ḥawrān and Al-Balqā"²¹. They co-operated with Byzantium and embraced the Christian faith. Al-Ḥārith Ibn Jibla²² was the most renowned of their kings. Justinian,²³ the Roman emperor, appointed him as king of the Arab tribes in 529 A.D. Jabala Ibn Al-Ayham,²⁴ the last of Ghassānīd kings, converted to Islām in 635 A.D.(14 H) after the conquest of Al-Shām by the Muslim army. Later, Jabala renounced the Muslim creed and fled to Constantinople, where he died in 640 A.D. (20 H).

The Ghassānīd rulers received in their courts Arab poets such as Al-Nābigha al-Dhubyānī²⁵ (died about 604 A.D.) and Al Muraqqash al Akbar²⁶ (died between 550-552 A.D.), 'Alqama al-Fahl²⁷ (died 603AD) and Ḥassān Ibn Thābit al-Anṣārī (died 54AH / 673AD).²⁸ In sum, the Ghassānīds played the role of political and cultural mediator between the Arabs and Byzantium, but they did not succeed in spreading Christianity to Al-Hijāz.

c) The Tribe of Quraysh: The ancestry of this Arab tribe traces back to 'Adnān. It consisted of several sub-tribes connected to Al-Naḍr Ibn Kināna al-'Adnānī²⁹. Quraysh

21 Ḥawrān, situated south of Syria, between the Golan Heights and Druze mountains. Al-Balqa, situated north Jordan.

22 Al-Ḥārith Ibn Jibla al-Ghassānī. Justinian made him king of the Arab tribes in 529AD. Frequently fought against the Lakhmid Mundher. Visited Constantinople in 563AD. His rule lasted approximately 40 years. He died in 570AD. See, *Al-'Arab Qabla al-Islām*, G.Zaydān, v1, p192. See also, *Al-A' lām*, Al-Zirikfī, v2, pp153-154.

23 Justinian, became emperor in 527AD. Born 483AD, died 565AD. Carried out active construction programme for the Byzantine empire and restoring buildings. His supreme achievement was the building of Santa Sophia in Constantinople.

24 *Tarīkh Ibn Khaldūn*, v2, p281. See also, *Futūḥ al-Buldān*, Al-Balādhārī, pp141-142. Also, *Al-A' lām*, Al-Zirikfī, v2, p112.

25 Ziyād Ibn Mu'āwīyya al-Dhubyānī, known as Abu Ummāma, one of the seven great Jahilī poets. See, *Al-Shi'r wa al-Shu'arā'*, p38. See also, *Nihāyat al-'Arab*, v3, p59. Also, *Al-Aghānī*, al-Asfahānī, v11, pp38-41. Also, *Kashf al-Zunūn*, p1048. Also, *al-'umda*, Ibn Rushayq, v1, p63. Also, *Al-A' lām*, al-Zirikfī, v3, pp54-55. Also, *Mu'jam al-Mu'allifīn*, v1, p738.

26 His first name is either 'Awf or 'Amr Ibn Sa'd Ibn Mālīk. A leading Jāhilī poet, born in the Yemen, but lived his life out in Iraq under the rule of the Ghassānīds. See, *Al-Aghānī*, v6, p127. See also, *al-Shi'r wa al-Shu'arā'*, p54. Also, *Mu'jam al-Shu'arā'*, al-Marzabānī, p201. Also, *Al-A' lām*, al-Zirikfī, v5, p95.

27 'Alqama Ibn 'Abda al-Tamīmī, a leading Jahilī poet. See, *al-Shi'r wa al-Shu'arā'*, p58. See also, *Kashf al-Zunūn*, p802. Also, *Mu'jam al-Mu'allifīn*, v2, pp384-385. Also, *Al-A' lām*, v4, p247.

28 A poet whose work spans both the Jāhilī and Islamic eras. A court poet of the Ghassānīds and the Munāḍirah. In Islam, became special poet to the Prophet. Died in Medīna, reputedly at the age of 120 years. See, *Al-Aghānī*, v4, pp134-169. See also, *Al-Iṣābah*, v1, p326. Also, *Kashf al-Zunūn*, p785. Also, *Al-Shi'r wa al-Shu'arā'*, p104. Also, *Mu'jam al-Mu'allifīn*, v1, p530. Also, *Al-A' lām*, v2, pp1750-176.

29 *Al-Kāmil*, Ibn Athīr, v2, p10. See also, *Tarīkh al-Ṭabarī*, v2, p188. Also, *Nihāyat al-'Arab*, v16, p13. Also, *Al-A' lām*, al-Zirikfī, v8, p33. Dates of birth and death unknown.

predominance was achieved by Quṣai Ibn Kilāb Ibn Murrah al-Fihrī al-‘Adnānī³⁰ who defeated the Khuzā‘ah tribe³¹. He subsequently seized Mecca, assumed leadership there and became the custodian of Al-Ka‘ba. Later, this function was assumed by the House of Banī ‘Abd al-Dār Ibn Quṣai³².

The office of providing water to pilgrims was fulfilled by the Banī Hāshim³³. Before Islām(*Jāhiliyya*), Quraysh worshipped idols, then God chose Muḥammad³⁴ to be His prophet to call upon people to embrace Islām. As a result, a few tribesmen of the Quraysh followed Muḥammad, while the great majority rejected the new religion and persecuted its followers.

30 Leader of the Quraysh. Descended from the grandfather of the Prophet. Died in Mecca, and buried in Ḥajūn. See, *Ṭabaqāt Ibn Sa‘d*, v1, pp36-42. See also, *Tarīkh al-Ṭabarī*, v2, p181. Also, *Al-Kāmil*, Ibn al-Athīr, v2, p7. Also, *Sīrat Ibn Hishām*, v1, p42. Also, *al-Rawḍ al-Anif*, v1, p84. Also, *al-A‘lām*, v5, pp198-199.

31 Tribe descended from Qaḥṭān, under the leadership of Khuzā‘a al-Azādī al-Qaḥṭānī. Their territory located between Mecca and Medīna. Part of the tribe migrated to greater Syria. The custodianship of the Ka‘bah remained in the hands of the Khuzā‘a for 300 years until the coming of the Quraysh. See, *Murūj al-Dhahab*, v1, p208. See also, *Al-Muḥabar*, Ibn Ḥabīb, p318. Also, *Mu‘jam Qaba’il al-‘Arab*, Kaḥḥāla, v1, p338. Also, *al-A‘lām*, v2, p304.

32 ‘Abd al-Dār Ibn Quṣai Ibn Kilāb. His father gave him the office of chamberlain of Mecca, which included custodianship of the Ka‘bah. See, *Al-Lubab*, v2, p112. See also, *al-Muḥabar*, Ibn Ḥabīb, p166 and p379. Also, *Al-A‘lām*, v3, p292.

33 Hāshim ‘Abd Munāf Ibn Quṣai, known as ‘Amr. Traded in the Yemen during the winter months, and in Syria in the summer. Born in Mecca 500AD, died in Ghaza, 524AD. See, *Ṭabaqāt Ibn Sa‘d*, v1, p43. See also, *Al-Kāmil*, Ibn al-Athīr, v2, p6. Also, *Tarīkh Ṭabarī*, v2, p179. Also, *Nihāyat al-‘Arab*, v16, pp33-38. Also, *al-A‘lām*, v8, p66.

34 Muḥammad Ibn ‘Abd Allāh Ibn ‘Abd al-Muṭṭalib Ibn Hāshim, from the Quraysh tribe. Born in Mecca 571AD. He received his first revelation 610AD at the age of 43. Migrated to Medina, 16 July, 622AD, the beginning of the Islamic calendar. Died in Medīna, 12 Rabī‘ al-Awwal (7th May, 632AD), 11AH. See, *Sīrat Ibn Hishām*. See also, *al-Sīrat al-Ḥallabiyya*, passim. Also, *Ṭabaqāt Ibn Sa‘d*, v1 and v2, passim. Also, *‘uyūn al-Athār*, Ibn Sayyid al-Nās, v1 and v2, passim. Also, *al-A‘lām*, v6, p219.

Chapter II

Jurisprudence During The Era Of The Prophet

Prophet Muḥammad was born in Mecca in the year 570 A.D. His father died before he was born and his mother³⁵ died before he completed his seventh year. His grandfather ‘Abd al-Muṭṭalib³⁶ took him in to his care, and on Muṭṭalib's death Muḥammad was placed under the care of his uncle Abū Ṭālib.³⁷

It was not until he had reached the age of forty that he received his divine call, and he died at sixty-three, after having spent ten years in Medīna.³⁸

II.1 The Origins Of Theoretical Jurisprudence (Usul Al-Fiqh)

Theoretical jurisprudence was an integral part of Islām from its early days, its oral existence preceding its written record. We know that the subject of theoretical jurisprudence concerns the deeds of man and consists of religious instructions and legal politics tailored especially for man's interests, be it related to matters of worship and the Hereafter, or the livelihood of Muslims, such as the rules of commercial transactions, marriage, and the penal code.

The rules of jurisprudence or the *Aḥkām* of the Sharī‘ah are derived from four principal sources, the Qur’ān, the Sunnah of the Prophet, Consensus of the Prophet's disciples (Ijmā‘), and Analogy (Qiyās). The tools which are used to deduce these rules are called theoretical jurisprudence (*Uṣūl al-Fiqh*).

The basis for the extraction of jurisprudential rules during the life of the Prophet was God's revelation to Muḥammad (*wahy*) and the Muslim tradition (*Sunnah*). Muslims used to ask the Prophet for legal advice (*fatwā*), which he duly issued. But if the *fatwā* was based on the Prophet's personal opinion (*Ijtihād*), then it was subjected to implementation or correction; if there was an urgent need to correct the Prophet's opinion, revelation would follow.

35 Amīna Bint Wahhāb Ibn ‘Abd Munāf, from Quraysh tribe. Died 575AD See, *Ṭabaqāt Ibn Sa’d*, v1, p31 and p58 and p60 and p73. See also, *Tarīkh al-Islām*, al-Dhahabī, v1, p21. Also, *Sīrat Ibn Hishām*, v1, pp53-57. Also, *‘uyūn al-Athār*, Ibn Sayyid al-Nās, v1, p24. Also, *al-A‘lām*, v1, p26.

36 Ibn Hāshim Ibn ‘Abd Munāf al-Qurayshī. One of the leaders of the Quraysh during Jāhiliyya. Born in Medīna, and ruled Mecca between 520AD until 579AD. Died 579AD, See, *Al-Kāmil*, Ibn al-Athīr, v2, p4. See also, *Tarīkh al-Ṭabarī*, v2, p176. Also, *Tarīkh al-Ya‘qūbī*, v1, p203. Also, *Tarīkh al-Khāmis*, v1, p253. Also, *‘uyūn al-Athār*, v1, p40. Also, *Al-A‘lām*, v4, pp154-155.

37 ‘Abd Munāf Ibn ‘Abd al-Muṭṭalib Ibn Hāshim. Used to accompany Muḥammad to Syria on business. Born 540AD, died 620AD. See, *Ṭabaqāt Ibn Sa’d*, v1, p75. See also, *Al-Kāmil*, Ibn al-Athīr, v2, p34. Also, *Tarīkh al-Khāmis*, v1, p299. Also, *Al-A‘lām*, v4, p166.

38 *Al-Shamā’ il al-Muḥammadiyya*, al-Tirmidhī, v1, pp4-5.

A good example of this was the acceptance of money by the Prophet from infidel prisoners of war (resulting from the battle of Badr) to buy their freedom. Although the Prophet sought the counsel of his Companions before the laws of prisoners of war were laid down, God's revelation came to correct the Prophet's judgment, as in the following verses³⁹ :

"It is not for any prophet to have captives until he has made slaughter in the land. You desire the lure of this world and Allāh desires for you the Hereafter, and Allāh is mighty and Wise".

"Had it not been for an ordinance of Allāh which had gone before, an awful doom had come upon you on account of what you took".

The laws adopted at the time of the Prophet are perceived as divine laws. God's revelation in the Qur'ān corrected wrong opinions and set up unprecedented legal laws. The Prophet did not attempt to express a personal opinion if a Qur'ānic statement already existed, and he delayed issuing judgements as he awaited revelation. But, if there was no revelation he then expressed his own opinion, which is endorsed by God's revelation.

It is clear that the sources of theoretical jurisprudence (*Uṣūl al-Fiqh*) at the time of the Prophet, then, constituted the Holy Qur'ān⁴⁰ and Muslim tradition⁴¹. The latter included the sayings, actions and endorsements of the Prophet. In the absence of a clear ruling on a matter derived from these above mentioned sources, the innovator (*mujtahid*) might resort to the application of analogy (*Qiyās*)⁴², when he would rely on his own opinion (*Ijtihād*)⁴³.

II.2 The Innovation Of The Prophet In Mecca

The Meccan stage was distinguished by emphasis on strengthening Islamic beliefs and ideology which starts with the invocation of the *Shahādah*. Muslims were enjoined to pursue a virtuous life and avoid evil. The burial of new born girls was prohibited, as was the killing of other people unless done according to justice; adultery was forbidden and marriage was encouraged, the seizure of other peoples' assets was prohibited and so on.

The Prophet during this period used to consult other Muslims in order to help him reach the best of judgements or *fatawā* on issues not dealt with in the Qur'ān. The Meccan period lasted about thirteen years, ie until the migration to Meḍīna⁴⁴.

39 *Sūrah al-Anfāl*, 8: 67-68.

40 *Muqaddimah*, Ibn Khaldūn, p437.

41 Ibid, p452.

42 Ibid, p454.

43 *Al-Milal wa al-Niḥal*, al-Shahristānī, v2, p28.

44 *Al-Shamā'il al-Muḥammadiyya*, al-Tirmidhī, v1, pp4-6.

II.3 The Innovation Of The Prophet In Madina

The Prophet Muḥammad's leadership of the Muslim community in Madina lasted approximately nine years, and was dominated by focusing on issuing practical rules aimed at educating the new Muslim society. During this period the foundations of the Islamic state were laid down and the relations between Islamic society and non-Islamic communities were defined. This period lasted until the death of the Prophet (11. A.H.)⁴⁵.

Personal reasoning and innovation employed during the time of the Prophet was not confined to him alone, since the Companions were also permitted to arrive at new rules through the process of *Ijtihad*, as the story of Mu'adh Ibn Jabal⁴⁶ shows⁴⁷.

It is said that when the Prophet wanted to send Mu'adh to Yemen, he asked him, "How will you issue a judgement (if an urgent matter arises) and Mu'adh replied, "I will refer to the Qur'an". The Prophet then said, "but supposing you could not find evidence in the Qur'an, what would you do then?". Mu'adh replied, : I will refer to the Prophet's tradition (Sunnah)." Muḥammad then asked him, "And if you could not find anything there?" MU'adh said, "I will reflect and express my own opinion".The Prophet nodded approvingly.

Thus we find that the sources of theoretical jurisprudence, and the appropriate methods to help deduce rules existed from the time of the Prophet, these rules being derived from the Qur'an, the Sunnah and by process of *Ijtihād*. While the innovations of the Prophet were included in Muslim tradition (*Al-Sunnah al-Nabawiyya*), the judgement of the Companions was perceived as being compulsory for those who succeeded them, on condition they were born out of consensus (*Ijmā'*). The real purpose behind such legal processes was to ensure that Islamic jurisprudence mirrored new events, which in turn required the issuing of new rules to organise the Islamic society.

Undoubtedly the first teacher of Uṣūl al-Fiqh was Muḥammad himself. He was the first Qur'an reader, the first explicator of the Qur'an, the first to lay down the Islamic law and from whom the Companions learned the rudiments of Islamic jurisprudence and *Ijtihād*, a legacy that was passed onto succeeding generations of Muslims.

45 *Al-Sīrat al-Nabawiyya*, Ibn Ḥabbān, p127. See also, *Ṭabaqāt Ibn Sa'd*, v1, p154. Also, *Al-Kāmil fī al-Tarīkh*, Ibn al-Athīr, v2, p50. Also, *Sīrat Ibn Hishām*, v2, p101.

46 Mu'adh Ibn Jabal al-Anṣārī. Died, 18AH / 639AD He was a judge, a Ḥadīth specialist. See, *Ṭabaqāt Ibn Sa'd*, v3, p120. See also, *al-Iṣābah*, v3, p106, para 8039. Also, *al-Muḥabbar*, Ibn Ḥabīb, pp286-304. Also, *al-A'lām*, v7, p258. Also, *al-Isti'āb*, 1472.

47 *Talkhīs al-Ḥabīr*, v4, p182. See also, *Al-Taḥṣīl*, al-Armawī, v1, p395. Also, *Al-Burhān*, Al-Juwaynī, v2, p772.

Chapter III

Jurisprudence During The Time

Of The Rightly Guided Caliphs

Muslims' queries during the lifetime of the Prophet were answered by him personally, relying on God's revelation or the Prophet's wisdom. But, after the death of the Prophet in 630 A.D. (11 A.H.) a different era commenced under the leadership of the four rightly guided Caliphs. New events required the laying down of appropriate Islamic rules which were not mentioned in either the Qur'an or the Muslim tradition.

In this respect the four guided Caliphs sought the help of senior Companions in the process of extracting rules. The latter were best placed to explain the Qur'an and provide accounts of the Muslim tradition, possessing, as they did, substantial knowledge concerning the rules which were implemented at the Prophet's time. The principle of consulting (*shūra*) the Companions was often applied during the era of the four guided Caliphs, where adherence to *Shūra* was strict.⁴⁸

III.1 Jurisprudence During The Reign Of Abū Bakr

Abū Bakr⁴⁹ was ranked as the closest of Muḥammad's Companions. He was the first to endorse Muḥammad's prophethood, and he volunteered to accompany the Prophet on his migration (*Hijra*) from Mecca to Madīna. The significance of this latter story was noted in the Qur'an.⁵⁰

Abū Bakr remained at the side of the Prophet in Madīna for 10 years through which he aided him in peace and war, and executed some functions on his master's behalf, such as leading the pilgrimage in 630 A.D. (9 A.H.). When the Prophet fell sick on the eve of his death, he ordered Abū Bakr to lead the Muslims in prayer.⁵¹

When the Prophet died in 632 A.D. (11 A.H.) Muslims pledged their allegiance to Abū

48 *Tafsīr al-Qurṭubī*, v4, p251. See also, *Nayl al-Awṭār*, Al-Shawkānī, v7, p188. Also, *Tarikh 'umar Ibn al-Khaṭṭāb*, Ibn al-Jawzī, pp213-215. Also, *Tarikh ak-Ṭabarī*, v5, p18. Also, *al-Muḥalla*, Ibn Ḥazm, v9, No 1780. Also, *Al-Muhadhab*, Al-Shirāzī, v2, pp311-314.

49 'Abd Allāh Ibn 'Uthmān Ibn 'Amr al-Taymī al-Qurayshī. Born, 573AD. Died, 13AH / 634AD. See, *Al-Iṣābah*, para 4808. See also, *Tarikh al-Ṭabarī*, v4, p46. Also, *Ṣifat al-Ṣafwa*, Ibn al-Jawzī, v1, p88. Also, *Tarikh al-Khamīs*, v2, p199. Also, *al-A'lām*, v4, p102.

50 *Sūrah al-Tawbah*, 9:40.

51 *Tafsīr al-Fakhr al-Rāzī*, v8, p163. See also, *Ṣaḥīḥ Muslim*, Sharḥ al-Nawawī, v11, p95; v12, pp2205-206; v15, pp154-155. Also, *Sunan Abū Dāwūd*, v3, Ḥadīth No 2939. Also, *Fath al-Bārī*, v5, p67, pp268-269. Also, *'Umdat al-Qārī*, v2, p169; v14, p31. Also, *Nayl al-Awṭār*, v6, p30. Also, *Maṣābīḥ al-Sunnah*, v2, p268. Also, *Tarikh al-Ṭabarī*, v3, p154.

Bakr and bestowed on him the title of caliph.⁵² His term ended with his death in 13 A.H. (634 A.D.) after he served for a little over two years.

Abū-Bakr closely upheld the principle of consultation (*shūra*) during his rule, laying down the foundations of the Caliphate.⁵³ But he did not confine the principle of *Shūra* to the Caliphate alone. He extended it to cover consultation with his Companions on related matters in order to deduct legal rules which did not contradict the Qur'ān or the Sunnah of the Prophet. A case in point was his opposition to the apostates which led to a consensus (Ijmā') among senior Muslims to fight the apostates and thus prevent wider disturbances.⁵⁴

Consultation was carried out over issues which did not have clear evidence in the Qur'ān and Muslim tradition, and in explaining vague texts. This innovation or independent reasoning was considered to be, however, mere provisional opinion because any judgments based on innovation was bound to be changed when and if stronger references appeared.

III.2 Jurisprudence During The Era Of 'Umar Ibn al-Khaṭṭāb

'Umar succeeded Abū Bakr as caliph in 634AD by due process of consultation between the Companions and Abū Bakr himself, the latter enjoining that 'Umar succeed him.⁵⁵ 'Umar was born in 584AD and died at the hands of the assassin Abu Lu'lu'ah Fayrūz⁵⁶ in 643AD.

Under 'Umar's leadership the Islamic state expanded its frontiers eastwards to Khorāsān and westwards to Egypt, encompassing within its ambit a rich complex of new peoples, religions, tongues and cultures. As a consequence there arose new socio-political issues with regard to ruling the new territories, necessitating, by process of *Ijtihād*, the

52 The Qur'ān was collected under the aegis of Zayd Ibn Thābit. Zayd Ibn Thābit Ibn al-Ḍaḥḥāk al-Khazraǧī al-Anṣārī, collected pieces of the Qur'ān together during the lifetime of Muḥammad. Sent manuscript of the Qur'ān to Abū Bakr. One of the leading Companions. Born in Medīna, 611AD. Leading faqīh, Qur'ān reader, judge and head of the Inheritance Office. He became governor of Medīna in the absence of 'Umar. Later revised the manuscripts of the Qur'ān and presented them to 'Uthmān. He related some 92 Ḥadīth. Died, 45AH / 665AD, or 51AH / 671AD. See, *Tadhkirat al-Ḥuffāz*, v1, p124. See also, *Mashāhīr 'Ulamā' al-Amṣār*, Ibn Ḥabbān, p29. Also, *Al-Thuqāt*, v3, p135. Also, *Ṣifat al-Ṣafwa*, v1, pp294-295. Also, *Al-Iṣābah*, v1, p561, part no 2880. Also, *Al-Isti'āb*, v1, p188. Also, *Al-'Ibr*, al-Dhahabī, v1, p53. Also, *Sīr A'lām al-Nubalā'*, v2, pp426-441. Also, *Usd al-Ghābah*, v2, p221. Also, *Al-A'lām*, v3, p57. Also, *Al-Aḥkām al-Sulṭāniyya*, Al-Māwardī, p14.

53 *Al-Aḥkām al-Sulṭāniyya*, al-Māwardī, pp4-14. See also, *Umdat al-Qārī*, v14, p221. Also, *Sūrah al-Shūra*, 42:38.

54 *Tarīkh al-Ṭabarī*, v3, pp221-276. See also, *Futūḥ al-Buldān*, Al-Balādhārī, pp103-127. Also, *Musnad Aḥmad*, v1, p13. Also, *Fath al-Bārī*, v7, p96. Also, *Umdat al-Qārī*, v20, p16; v24, pp263-264. Also, *Tafsīr al-Qurṭabī*, v8, p62.

55 *Tarīkh al-Ṭabarī*, v1, section 8, p197.

56 *Al-A'lām*, Al-Zirikfī, v5, pp45-46.

derivation of new legal rules by which these territories could be governed in accordance with the Shari'ah.

During 'Umar's rule we detect the first signs of a *bona fide* school of Fiqh. In accordance with Shari'ah procedure 'Umar Ibn al-Khattāb referred new issues for legal scrutiny to the Qur'an and the Sunnah of the Prophet to seek out a ruling (*hukm*). If no indication could be found therein 'Umar strived, in consultation with the Companions, to formulate a new ruling to cover the new issue. If no consensus (*Ijmā'*) could be reached then 'Umar advised his Companions to reach a considered opinion of their own (*Ijtihād*) through the process of analogy (*Qiyās*).⁵⁷

'Umar was not alone in resorting to *Ijtihād* where no ruling could be found in the Qur'an or the Sunnah of the Prophet⁵⁸ All the Companions indeed frequently resorted to *Ijtihād*⁵⁹ in their quest to arrive at a ruling.

Muhammad had imposed the poll (*jizya*) tax on non-muslims, initially on the Tayma people⁶⁰, allowing them to remain unmolested on their land in return for payment of *Jizya*⁶¹, and Abū Bakr continued this policy during his caliphate.⁶²

'Umar proved more flexible in his handling of the *Jizya* tax. He allowed, for example, by process of *Ijtihād*, the inhabitants of Homs⁶³ to pay tax according to their capacity to afford it,⁶⁴ yet allowed his general in North Syria and Iraq (Al-Jazīra⁶⁵), 'Iyād Ibn Ghanam al-Fihri⁶⁶, to impose on its *Dhimmi* inhabitants a fixed *jizya* at the rate of one dinar, or its worth in commodities such as wheat, oil or vinegar, this imposition deriving from the circumstances which obtained thereby.⁶⁷

We find no mention of the land (*kharāj*) tax during the caliphate of Abū Bakr⁶⁸, but find

57 *I'lām al-Muwaqī'in*, v1, p51.

58 *Tarikh Al-Madhāhib al-Islamiyya*, Abū Zahra, v2, p22. See also, *Tarikh al-Tashrī'*, al-Khudārī, pp87-88.

59 *Tarikh al-Tashrī'*, Al-Sāyis, p80.

60 Tayma is situated between Tabuk in the north and Khaybar in the south, on the edge of the Nafūd desert. See, *The Kingdom of Saudia Arabia*, Edited by Anna Dowson, Stacey International 1977 London p49, 53, 65, 78. See Also, *al-Rawḍ al-Mi'ār*, al-Ḥimyarī, pp146-147.

61 *Futūḥ al-Buldān*, p40.

62 *Ibid*, p71, 124 and 150. See also, *Tarikh al-Ṭabarī*, v3, p406.

63 Located central Syria, formerly Emesa under Roman rule. See, *Guide to Syria*, Afif Bahnassi, pp154-167. See also, *Al-Rawḍ al-Mi'ār*, al-Ḥimyarī, pp198-199.

64 *Tarikh Medīna Dimashq*, Ibn 'Asākir, v1, p510.

65 Located north east Syria, north west Iraq, south east Turkey. See, *Futūḥ al-Buldān*, p174, pp177-178.

66 'Iyyād Ibn Ghanm Ibn Zuhayr al-Fihri, one of the Prophet's Companions, who participated in the conquest of al-Jazīra during the era of 'Umar Ibn al-Khattāb. Died, 20AH / 641AD. See, *al-Iṣābah*, no 6142. See also, *Ṣifat al-Ṣafwa*, Ibn al-Jawzī, v1, p277. Also, *Futūḥ al-Buldān*, p179. Also, *al-A'lām*, v5, p99.

67 *Kitāb al-Kharāj*, Abū Yūsef, p41.

68 *Tarikh al-Ṭabarī*, v3, p406.

it emerging during 'Umar's rule, as a consequence of a conflict which arose between himself and the Mujāhidīn over the description and the distribution of booty gained from the conquered territories.

According to the Mujāhidīn this booty, including land, should be divided amongst themselves,⁶⁹ and they cited in support of their claim sūrah al-Anfāl:⁷⁰

"And know that whatever you take as spoils of war, Lo, a fifth thereof is for Allāh, and for the messenger (for the State) and for the kinsman (who is in need) and orphans and the needy and the wayfarer, if you believe in Allāh and that which We revealed to our slave on the day of discrimination, the day when the two armies meet. And Allāh is able to do all things".

The Islamic military drew an analogy between their situation in Iraq and Syria and the battle of Khaybar (7AH / 628AD). The Prophet considered that booty from this battle should be distributed according to the above quoted verse⁷¹, ie one fifth to the state and the remainder to the Mujāhidīn. The Prophet, however, added later that the people of Khaybar⁷² could retain their land and half of their harvest, with the other half being distributed according to what is stipulated in the Qur'nā.⁷³

The Mujāhidīn argued analogically that the lands of Iraq and Syria should be distributed according to the distribution of booty at Khaybah, as indicated in the above quoted verse. 'Umar, however, refused to countenance this argument; instead he stipulated that the booty won in these lands was to be considered *fay'* (*waqf*), namely, booty gained without fighting.⁷⁴

He stipulated that lands in the new territories should be retained by their owners on payment of a land tax (*kharāj*),⁷⁵ a ruling that 'Umar arrived at through the process reasoning. 'Umar feared that if lands were to be granted to the Mujāhidīn they might tire of *Jihād* and settle on the lands as farmers.⁷⁶

By allowing the original land owners in the newly annexed territories to remain and freely till their land on payment of the *Kharāj* tax, 'Umar avoided unrest and rebellion.⁷⁷ Thus 'Umar reacted to contemporary events by formulating rules derived from various sources other than the Qur'ān and the Sunnah of the Prophet, in consultation with the

69 *Futūḥ al-Buldān*, p25.

70 *Sūrah al-Anfāl*, 8:41.

71 See, *Sunan al-Bayhaqī*, v6, p317.

72 *Bidāyah al-Mujtahid*, v2, p5.

73 *Kitāb al-Kharāj*, Abū Yūsef, pp23-24.

74 *Kitāb al-Kharāj Wa Ṣinā'at al-Kitāba*, Qudāma Ibn Ja'far, pp59-60.

75 *Sunan al-Bayhaqī*, v9, pp135-136.

76 *Kitāb al-Amwāl*, Ibn Zunjawī, v1, p211.

77 *Futūḥ al-Buldān*, p326.

Companions. Through these rules Islamic society could be wisely governed.

Consultation between ‘Umar and the Companions led to a consensus of opinion (Ijmā‘) on certain issues. These Companions included ‘Uthman Ibn ‘Affān, ‘Ali Ibn Abī Ṭālib, Ṭalhah and Mu‘adh Ibn Jabal,⁷⁸ as well as members from the Anṣār, five from the Aws tribe and five from the Khazraj.⁷⁹

The incidence of the *Kharāj* tax, then, provides an example of ‘Umar's legal judgement applied to a new issue in the public's interest. The ‘Ulamā’ endorsed the considered opinion (*Ijtihād*) of ‘Umar and in doing so endorsed his ruling *fatwā* and thus his method of legal reasoning, in what amounts to the beginnings of a definitive school of Fiqh.

Of this al-Sha‘abī⁸⁰ said, 'If the people differed over a matter (which couldn't be resolved) they would look to ‘Umar (for guidance)', as pointed out also by Imām Mujāhid.⁸¹ Ibn Mas‘ūd said, "Umar possessed nine tenths of all learning"⁸², whilst ‘Abd Allāh Ibn al-Musayyib⁸³ placed ‘Umar next in learning to the Prophet. Al-Ṭabarī⁸⁴ remarked that, 'only Ibn Mas‘ūd comes anywhere near to ‘Umar in knowing Fiqh, and to the Caliph he always deferred'.⁸⁵

There were a number of graduates from ‘Umar's school of Fiqh, including Ibn Mas‘ūd

78 *Kitāb al-Amwāl*, Ibn Silām, p61.

79 *Kitāb al-Kharāj*, Abū Yūsef, pp25-26.

80 ‘Amr Ibn Sharāḥīl al-Sha‘abī al-Ḥimyārī. Born , 19AH / 640AD. Ḥadīth and Fiqh specialist, also excelled in poetry. Died, 103AH / 721AD. See, *Tahdhīb al-Tahdhīb*, v5, p65. See also, *Wafiyyāt al-A‘yān*, v1, p244. Also, *Tahdhīb Ibn ‘Asākir*, v7, p138. Also, *Tarīkh Baghdād*, v12, p227. Also, *Ḥiliyyat al-Awliyya*, v4, p310. Also, *Al-A‘lām*, v3, p251. Also, *Mashāḥir ‘Ulamā’ al-Amṣār*, Ibn Ḥabbān, p163, no 750. Also, *Al-Thuqāt*, v5, p185. Also, *Tarīkh al-Thuqāt*, p243. Also, *Al-Kāshif*, v2, p49. *Al-Taqrīb*, v1, p387. Also, *Al-Jam‘*, v1, p473.

81 Mujāhid Ibn Jabr Abū al-Ḥajjāj al-Makkī. Born, 21AH / 642AD. A successor. A notable Qur‘ān reader and expositor. Died, 104AH / 722AD. See, *Ṣifat al-Ṣafwah*, v2, p117. See also, *Mizān al-I‘tidāl*, v3, p9. Also, *Mu‘jām al-Udabā’*, Yāqūt, v6, p242.

82 ‘Abd Allāh Ibn Mas‘ūd al-Hudhālī, one of the leading Companions. A companion of the Prophet. Head of the treasury in Kūfa. Operative in Medīna during the Caliphate of ‘Uthmān. Reputed to have memorised 848 Ḥadīth. Died, 32AH / 653AD. See, *Musnad Aḥmad Ibn Ḥanbal*, v1, pp374-384. See also, *Ṭabaqāt Ibn Sa‘d*, section 3, v1, p106. Also, *Mashāḥir ‘Ulamā’ al-Amṣār*, Ibn Ḥabbān, p29. Also, *Al-Tajrīd*, v1, p334. Also, *Al-Iṣābah*, v2, pp368-370, part no 4955. Also, *Sīr A‘lām al-Nubalā’*, v1, p461.

83 Ibn Zuhayr al-Ḍabbī. An Abbāsīd prince, governor of Egypt under Hārūn al-Rashīd's government, 176AH/792A.D. Died 179AH/ 795A.D. See, *al-Nujūm al-Zāhira*, Ibn Tughri Barādī, v2, p85. See also, *al-Wulāt Wa Kuttāb al-Qudāt*, Al-Kindī al-Maṣrī, p135. Also, *Al-A‘lām*, v4, p137.

84 Muḥammad Ibn Jarīr al-Ṭabarī. Born, 224AH / 839AD. died 310AH / 923A.D. A leading Fiqh specialist, Qur‘ān reader and interpreter, historian and mujtahid. His leading published works include, *‘Akhbār al-Rusul Wa al-Mulūk (Tarīkh al-Ṭabarī)*, *‘Jāmi‘ al-Bayān Fī Tafsīr al-Qur‘ān (Tafsīr al-Ṭabarī)*, *‘Ikhtilāf al-Fuqahā’*, *‘Juz’ Fī al-I‘tiqād’*. See, *Mu‘jām al-Udabā’*, v6, p423. Also, *Tarīkh Baghdād*, v2, pp162-169. Also, *Wafiyyāt al-A‘yān*, v1, pp577-578. Also, *Al-Fihrist*, Ibn Nadīm, v1, pp234-235. Also, *Tahdhīb al-Asmā’ Wa Lughāt*, v1, pp78-79.

85 *I‘lām al-Muwaqī‘in*, Ibn Qayyim al-Jawzīyya, v1, p16.

himself, Zayd Ibn Thābit,⁸⁶ ‘Abd Allāh Ibn ‘Umar Ibn al-Khaṭṭāb⁸⁷ and ‘Abd Allāh Ibn ‘Abbās.⁸⁸

III.3 Jurisprudence During The Rule Of ‘Uthmān Ibn ‘Affān

On his death bed ‘Umar, (he was stabbed by a Persian called Abū Lu’lu’ah in 26 Dhū al-Ḥajja 23 A.H. \ 644 A.D),⁸⁹ ordered six men from the Prophet's Companions to choose a caliph from among themselves, ‘Uthmān Ibn ‘Affān, ‘Ali Ibn Abī Ṭālib, ‘Abd al Raḥmān Ibn ‘Auf, Sa’d Ibn Abī Waqqāṣ, Ṭalḥa Ibn ‘Ubayd Allāh and Al-Zubayr Ibn al-Awām. They consulted each other and elected ‘Uthmān Ibn ‘Affān caliph.

Immediately ‘Uthmān Ibn ‘Affān exercised his newly acquired powers, sending letters to Land Tax (*Kharāj*) collectors saying: " Therefore, Allāh (God) has created people justly, so He would not accept except that which is just. Give people their rights, and demand from them adherence to their duties. Be trustworthy. Be faithful. Do not be unjust to the orphan, or to the one you have pledged to protect."⁹⁰

The Islamic nation became significantly richer during ‘Uthmān's reign (13AH / 634AD-23AH / 643AD). This increase in wealth required new legal rulings. ‘Uthmān, exercising his *Ijtihād*, used the following verse from the Qur’ān as a proof for extending the distribution of wealth for Muslims:

"Say: Who hath forbidden the adornment of Allāh which He hath brought forth for his bondmen, and the good things of His providings? Say: Such, on the day of Resurrection, will

86 See 60 above.

87 Born 613AD. Fighter during the eras of Muḥammad, Abū Bakr, ‘Umar and ‘Uthmān.

A leading Ḥadīth and fiqh specialist. Died, 73AH / 692AD. See, *Ṭabaqāt Ibn Sa’d*, v2, p373; v4, pp142-188. Also, *Nasab Quraysh*, Al-Zubayrī, p350. Also, *Tahdhīb al-Asmā’ Wa al-Lughāt*, v1, p278. Also, *Wafiyyat al-A’yān*, v1, p246. Also, *Al-Tajrīd*, v1, p325. Also, *Sīr A’lām al-Nubalā’*, v3, p203.

88 ‘Abd Allāh Ibn ‘Abbās Ibn ‘Abd al-Muṭṭalib al-Ḥashimī al-Qurashī, born 619AD.

A contemporary and friend of Muḥammad. A leading muftī, linguist, interpreter of the Qur’ān, poet and historian. Published works include, *Tafsīr Ibn ‘Abbās*, resided and died in al-Ṭā’if, 68AH / 687AD. See, *Tarīkh Baghdād*, v1, p175. See also, *Tarīkh al-Islām*, Al-Dhahabī, v2, p266. Also, *Kashf al-Zunūn*, p438, 1226. Also, *Ṭabaqāt Ibn Sa’d*, v5, pp30-35. Also, *Mashāhīr Ulamā’ al-Amṣār*, p28. Also, *Al-Kāmil Fī al-Tarīkh*, Ibn al-Athīr, v3, p206. Also, *al-Iṣābah*, v2, p330, part no 6175. Also, *Sīr A’lām al-Nubalā’*, al-Dhahabī, v3, pp331-359. Also, *Nasab Quraysh*, pp147-149. Also, *Al-Bid’ Wa al-Tarīkh* (al-Balkhī), al-Maqdasī, v5, p109. Also, *Al-A’lām*, v4, p95. Also, *Mu’jam al-Mu’allifīn*, v2, p249. Also, *Al-Tafsīr Wa al-Mufasssīrūn*, al-Dhahabī, pp65-83. Also, *Usd al-Ghābah*, v3, pp192-195. Also, *Tafsīr al-Ṭabarī*, v3, p47; v20, p43. Also, *al-Itqān*, al-Suyūfī, v1, p119, p120; v2, p183, 188, 189. Also, *Al-Madhāhib al-Islāmiyya Fī Tafsīr al-Qur’ān*, pp65-67. Also, *Fajr al-Islām*, p248. Also, *Iyṭhār al-Ḥaqq*, p159. Also, *Wafiyyat al-A’yān*, v2, p567. Also, *Tahdhīb al-Asmā’ Wa al-Lughāt*, al-Nawawī, v2, p111. Also, *Miftāḥ al-Sa’āda*, Ṭash Kubrī Zada, passim. Also, *Manhaj al-Maqāl Fī Taḥqīq Aḥwāl al-Rijāl*, al-Istrabādī, pp206-207. Also, *Muntahā al-Maqāl*, Al-Istrabādī, pp186-188.

89 Abū Lu’lu’ah Fayrūz al-Majūsī from Nahawend. He was a slave to al-Mughīra Ibn Shu’bah. See, *Ṭabaqāt Ibn Sa’d*, v5, p8. Also, *al-Isti’āb*, v2, p423. Also, *al-A’lām*, v4, p195. See also, *al-Bidāyah Wa al-Nihāyah*, v7, p130, pp140-141. See also, *Tarīkh Ibn Khaldūn*, v2, p534, pp543-546.

90 *Tarīkh al-Ṭabarī*, v5, p44.

be only for those who believed during the life of the World.
Thus do We detail Our revelations for people who have
knowledge".⁹¹

Although Muslims tended to accumulate more wealth under 'Uthmān's rule, their earnings invariably came from permissible (*ḥalāl*) sources. The following quotation from Ibn Khaldūn describes accurately the general thinking of the time,

"There is nothing in religion to prohibit the enjoyment of wealth when acquired legally. Muslims were not extravagant in spending their wealth because they did not breach Sharī'ah rules. Wealth helped Muslims to spend money on just causes and do good deeds which would lead them to paradise in the hereafter."⁹²

Under 'Uthmān's leadership new problems arose concerning the administration of cultivated land, as the Islamic state expanded. The selling of these lands was also forbidden.⁹³ 'Uthmān, to appease the soldiers, created a system whereby the lands were left in the hands of the native farmers who were required to submit a percentage (*kharāj*) of their earnings to the treasury and then this money would be passed onto the soldiers.⁹⁴

At the same time 'Uthmān, in response to the changing conditions and in order to derive new rules with which to administer these new lands, created the system of *Iqtā'*. This is where certain land was granted to the Companions, who included al-Zubayr,⁹⁵ Khabbāb,⁹⁶ Ibn Mas'ūd,⁹⁷ and Ibn Yasār.⁹⁸ This development was agreed upon consultation with the Companions.

This system was extended to many other Companions.⁹⁹ Again, the farmers on these lands would submit a percentage of their produce (*kharāj*) to the owner of the land, and the latter would be obliged to submit a percentage to the treasury.¹⁰⁰ Under this system land was allowed to be exchanged, and was also purchased back by the government.¹⁰¹

91 *Sūrah al-A'raf*, 7:32.

92 *Muqaddimah Ibn Khaldūn*, p205.

93 *Tarīkh al-Ṭabarī*, v4, pp31-33.

94 *Kitāb al-Amwāl*, Ibn Silām, p262.

95 Al-Zubayr Ibn Al-'Awwām al-Asadī al-Qurashī. One of the first fighters for Islām, 594AD, slain in the battle of the Camel, 36AH / 656AD. See, *Ṣifat al-Ṣafwā*, v1, p132. See also, *Tahdhīb Ibn 'Asākir*, v5, p355. Also, *Ḥilliyat al-Awliyyā'*, v1, p89. Also, *al-Riyāḍ al-Nādira*, pp262-280. Also, *Al-A'lām*, v3, p43.

96 Ibn al-Aratt Ibn Jandala Ibn Sa'd al-Tamīmī. Died, 37AH / 657AD. A muḥadith. See, *Ḥilliyat al-Awliyyā'*, v1, p143. Also, *al-Iṣābah*, v1, p416. Also, *Ṣifat al-Ṣafwā*, v1, p168. Also, *al-A'lām*, v2, p301.

97 See 82, above.

98 'Ammār Ibn Yāsār Ibn 'Amar al-Kinānī al-Qaḥṭānī. Born 567AD. Slain at the battle of Siffin, 37AH / 757AD. A muḥadith. See, *al-Iṣābah*, biography no 5706. Also, *Tarīkh al-Ṭabarī*, v6, p21. Also, *al-Isti'āb*, v2, p469. Also, *Ḥilliyat al-Awliyyā'*, v1, p139. Also, *Ṣifat al-Ṣafwā*, v1, p175. Also, *Khulāsat Tadhīb al-Kamāl*, p137. Also, *al-A'lām*, v5, p36.

99 *Tarīkh al-Ṭabarī*, v3, p589. See also, *Kitāb al-Kharāj*, Abū Yūsef, p62. Also, *Futūḥ al-Buldān*, Balādhārī, p335. Also, *Sunan al-Bayhaqī*, v6, p145. Also, *Tarīkh Baghdād*, al-Khaṭīb, v1, pp19-20.

100 *Kitāb al-Amwāl*, Ibn Silām, pp261-262.

101 *Tarīkh al-Ṭabarī*, v4, p281.

The fact that this *Iqtā'* system was continued by 'Afi¹⁰² and then the Umayyad government¹⁰³ is testament to 'Uthmān's reasoning (*Ijtihād*) in this matter, an *Ijtihād* which was based on the *Ijmā'* (consensus) of the Companions and himself.

Another issue in which 'Uthmān practised *Ijtihād* related to the matter of divorce. Previously if the husband divorced his wife during a period of sickness and then died, his wife could be left without a penny. 'Uthmān changed this in order to benefit the divorced wife.

A case study was provided by 'Abd al-Rahmān Ibn 'Auf¹⁰⁴, who divorced his wife during a period of sickness from which he died. Uthman ruled that such a divorce was null and void, and duly awarded a quarter of the husband's estate to the wife, on account of the following Qur'ānic line, 'And unto them belongs the fourth of that which you leave if you have no child'¹⁰⁵, a ruling, incidentally, that was based on an *Ijmā'* of the Companions'.¹⁰⁶

Another example of 'Uthmān's *Ijtihād* is his judgement passed on the issue of divorce and marriage concerning a divorced woman and her sister. Would it be possible, 'Uthmān was asked, for a man who divorced his wife to marry her sister during the divorced wife's waiting period (*'idda*) ?

'Uthmān pointed to two verses in the Qur'ān, one of which allows such a procedure, whilst the other forbids it. The first one, which allows the procedure, reads: 'Marry of the woman who seem good to you, two or three or four; and if you fear that you cannot do justice, then one only or that your right hand possess.'¹⁰⁷ The one that forbids the practice, reads : 'And forbidden unto you that you should have two sisters together.'¹⁰⁸ 'Uthmān weighed these two conflicting indicators (*tarjīh*) and decided in favour of the second, the one that forbids.

'Uthmān's rule is noted for his collection of the Qur'ān into one complete work. The

102 Ibid, v3, p589.

103 *Tarīkh Damascus*, Ibn 'Asākir, v2, section 1, p145.

104 Abū Muḥammad al-Zuhri. One of the ten muslims promised Paradise, and one of the famous Shūra six. Fought alongside Muḥammad. Born in Mecca, 580AD. Died 32AH/652AD. See, *Ṭabaqāt Ibn Sa' d*, v 3, pp87-97. Also, *al-Tarīkh al-Kabīr*, al-Bukhārī, v5, p240. Also, *al-Tarīkh al-Ṣaghīr*, v1, pp50-51. Also, *Sīr A'lām al-Nubalā'*, v1, p68. Also, *al-Jarḥ Wa al-Ta'dīl*, v5, p247. Also, *Ḥilliyat al-Awliyyā'*, v1, pp98-100. Also, *al-Isti'āb*, v6, pp68-84. Also, *Usd al-Ghābah*, v3, pp480-485. Also, *al-Iṣābah*, v2, p416. Also, *Ṣifat al-Ṣafwā*, v1, p135. Also, *Al-Jami' Bayna Rijāl al-Ṣaḥīḥayn*, p281. Also, *al-Ma'ārif*, Ibn Qutayba, pp235-240. Also, *al-A'lām*, v3, p321.

105 *Sūrah al-Nisā'*, 4:12.

106 *Ithār al-Insāf*, Ṣibt Ibn al-Jawzī, pp138-139, p169, p179.

107 *Sūrah al-Nisā'*, 4:3.

108 Ibid, 4:23.

compilation of the Qur'ān occurred in three stages, the first during the Prophet Muḥammad's time when the emphasis was on memory involving such Companions as Abū Bakr, 'Umar, 'Uthmān himself, 'Alī, Ṭalḥah,¹⁰⁹ Sa'd Ibn Abī Waqqāṣ¹¹⁰ and others.¹¹¹ Other Companions noted down the pieces of the Qur'ān, including in particular Ubay Ibn Ka'b¹¹² and Zayd Ibn Thābit.¹¹³ Muḥammad, however, did not order these pieces to be collected in one book.

The second stage in the collection of the Qur'ān occurred during Abū Bakr's rule. After the state had lost in the battle of 'Aqrabā',¹¹⁴ 12AH / 633AD, over seventy Companions who had memorised the Qur'ān. At 'Umar's behest Zayd Ibn Thābit¹¹⁵ was given the task of collating material, both from the pieces (on which verses of the Qur'ān were written) and by tapping the memories of the Companions, with the objective of producing a book, the Qur'ān. It was this copy that 'Uthmān inherited from 'Umar.¹¹⁶

The problem during 'Uthmān's era lay with the number of different readings given of this Qur'ān throughout the Islamic world. For example, in Syria the chief reciter of the Qur'ān was Ubay Ibn Ka'b¹¹⁷ whose recital differed from that of 'Abd Allāh Ibn Mas'ūd¹¹⁸ in

109 Ṭalḥah Ibn 'Ubayd Allāh Ibn 'Uthmān al-Taymī al-Qurashī. Born 596AD. He was slain at the battle of the Camel, 36AH / 656AD. See, *Ṭabaqāt Ibn Sa'd*, v3, pp152-161. Also, *Musnad Aḥmad Ibn Ḥanbal*, v1, pp160-164. Also, *Ṣifat al-Ṣafwā*, v1, p130. Also, *Ḥilliyat al-Awliyyā'*, v1, p87. Also, *al-Lubbāb*, Ibn al-Athīr, v2, p88. Also, *al-Muḥabbir*, Ibn Ḥabīb, p355. Also, *al-Jarḥ Wa al-Ta'dīl*, v4, p471. Also, *Mashāḥir 'Ulamā' al-Amṣār*, p25. Also, *al-Iṣābah*, v2, p229. Also, *Usd al-Ghābah*, v3, pp85-89. Also, *Kanz al-'Umāl*, v13, pp198-204. Also, *Sīr A'lām al-Nubalā'*, v1, p23. Also, *al-A'lām*, v3, p229.

110 al-Zuhri. Born 600AD. Fought alongside the Prophet. Founded the city of Kūfa. Died in 55AH / 675AD. See, Also, *Ṣifat al-Ṣafwā*, v1, p138. Also, *Musnad Aḥmad Ibn Hanbal*, v1, pp168-187. Also, *Siyar A'lām al-Nubalā'*, v1, p92. Also, *Ḥilliyat al-Awliyyā'*, v1, pp92-95. Also, *Usd al-Ghābah*, v2, pp290-293. Also, *al-Iṣābah*, v2, pp33-34. Also, *al-Istī'āb*, v2, pp18-27. Also, *al-Ma'ārif*, Ibn Qutayba, pp241-244. Also, *al-Tarīkh al-Kabīr*, al-Bukhārī, v4, p43. Also, *Tarīkh al-Ṣaghīr*, v1, pp99-101. Also, *Ṭabaqāt Ibn Sa'd*, v6, p6. Also, *Mashāḥir 'Ulamā' al-Amṣār*, p26. Also, *al-A'lām*, v3, p87.

111 *Al-Madkhal*, Sha'bān Isma'īl, 1980, Dār al-Anṣār, Cairo. v1, p222.

112 Ubay Ibn Ka'b Ibn Qais Ibn 'Ubayd Abu Mundhar al-Anṣārī al-Najjārī al-Medinī. Fought at the battle of Badr and other battles. Collected pieces of the Qur'ān during the era of Muḥammad as one of the four Anṣār delegated the task. See, *Ṣaḥīḥ al-Bukhārī*, Ḥadīth no 5003. See also, *Ṣaḥīḥ Muslim*, Ḥadīth no 2465. Also, *Sunan al-Tirmidhī*, Ḥadīth no 3796. Head of the Qur'ān reciters. Scholar in Ḥadīth and Qur'ānic recital. Heard recital of Qur'ān from Muḥammad. Mufī during Muḥammad's era. Wrote *Kitāb al-Ṣulḥ* (treaty involving the Christians and the Muslims during 'Umar's reign). Died, 21AH / 642AD. See, *Ṣaḥīḥ al-Bukhārī*, Ḥadīth no 4959, 4960 and 4961. See also, *Ṣaḥīḥ Muslim*, Ḥadīth no 121, 122 and 246, 246, 799. Also, *Sunan al-Tirmidhī*, Ḥadīth no 3795. Also, *al-Muṣannaf*, 'Abd al-Razzāq al-Sun'ānī, Ḥadīth no 20411. Also, *Sīr A'lām al-Nubalā'*, v1, p390. Also, *Musnad Aḥmad*, v5, pp113-144. Also, *Ṭabaqāt Ibn Sa'd*, v3, section two, p59. Also, *Ṭabaqāt Khalīfa Ibn Khayāt*, pp88-89. Also, *al-Ma'ārif*, Ibn Qutayba, p261. Also, *Ṣifat al-Ṣafwā*, v1, p188. Also, *Ḥilliyat al-Awliyyā'*, v1, pp250-256. Also, *Usd al-Ghābah*, v1, p61. Also, *al-Iṣābah*, v1, p26. Also, *al-Istī'āb*, v1, p126. Also, *Tadhkirat al-Huffāz*, v1, p16. Also, *Ṭabaqāt al-Qurrā'*, v1, p31. Also, *Ṭabaqāt al-Huffāz*, p5. Also, *al-Jarḥ Wa al-Ta'dīl*, v2, p290.

113 See 52, above.

114 Battle in Yamāma locale, between the Muslims and the Ridda rebels. Musaylimah the false prophet was slain in this battle. See, *al-Rawḍ al-Mi'jār*, Al-Ḥimyarī, pp419-420.

115 See 52, above.

116 Ibid.

117 See 112, above.

118 See 82, above.

Kūfa. In turn, ‘Abd Allāh Ibn Mas‘ūd differed in his recital from that of the chief reciter in Baṣrah, Abū Mūsā al-Ash‘arī,¹¹⁹ and so on.¹²⁰ Such diverse readings created both religious and political tensions in the Islamic society, particularly in Mecca and Madīna.

‘Uthmān's task, by way of *Ijtihād*, was to produce one copy of the Qur’ān, duplicate it and despatch these copies to the four corners of the Islamic world in order to stem any conflict. A meeting was announced, attended by the ‘Ulamā’ amongst the Companions and they agreed that this was the course to follow. Thus an Ijmā’ was arrived at on the issue.¹²¹

Four men were appointed with the task of producing one copy of the Qur’ān, between 24AH / 645AD and 25AH / 646AD; these were Zayd Ibn Thābit,¹²² ‘Abd Allāh Ibn al-Zubayr,¹²³ Sa‘īd Ibn al-‘Āṣ¹²⁴ and ‘Abd al-Raḥmān Ibn al-Ḥārith Ibn Hishām al-Makhzūmī al-Qurashī.¹²⁵ During the process of copying these four consulted the ‘Ulamā’ amongst the Companions as to the accuracy of the copy, an edition, that incidentally, was not dotted or vowelled.

Eight copies were made and approved of by the ‘Ulamā’ amongst the Companions. Seven copies were despatched to seven capitals of the Islamic world, one being lodged in

119 ‘Abd Allāh Ibn Qais Ibn Sa‘īm al-Ash‘arī al-Qaḥṭānī. Born, 602AD. Became governor of Aden, during Muḥammad's era. Became governor of Baṣrah during ‘Umar's reign, 17AH. Governor of Kūfa during ‘Uthman's and ‘Alī's reigns. Died 44AH / 665AD. A relator of the Ḥadīth. See, *Ṭabaqāt Ibn Sa‘d*, v2, pp244-245. See also, *Sīr A‘lām al-Nubalā’*, v2, p380. Also, *Ḥiliyat al-Awliyyā’*, v1, p256. Also, *al-Tarīkh al-Kabīr*, v5, pp22-23. Also, *al-Istī‘āb*, v3, p979. Also, *al-Iṣābah*, v2, p359; v4, p187. Also, *Usd al-Ghābah*, v3, p367. Also, *Ghāyat al-Nihāyah*, v1, p442. Also, *Ṣifat al-Ṣafwā*, v1, p225. Also, *Mashāhīr ‘Ulamā’ al-Amṣār*, pp65-66. Also, *Tahdhīb al-Kamāl*, p724. Also, *al-‘Ibr*, al-Dhahabī, v1, p52. Also, *al-A‘lām*, v4, p114.

120 *Miftah al-Sa‘āda*, v2, p11.

121 Ibid, v2, pp24-51.

122 See 86, above.

123 ‘Abd Allāh Ibn al-Zubayr Ibn al-‘Awām, a Quraysh cavalryman. Born, Medīna 1AH / 622AD. Participated in the conquest of north Africa. Appointed after Yazīd Ibn Mu‘āwiyya's death to the position of caliph, 64AH / 683AD. over the territories of Ḥijāz, Yemen, Khorōsān, Iraq. Made his capital in Medīna. Killed in Mecca, 73AH / 692AD. A fiqh and Ḥadīth specialist. See, *Al-Kāmil Fī al-Tarīkh*, v4, p135. See also, *Sīr A‘lām al-Nubalā’*, v3, p363. Also, *Tarīkh al-Khamīs*, v2, p301. Also, *Nasab Quraysh*, p237. Also, *Ṣifat al-Ṣafwa*, v1, p322. Also, *Al-Muḥabbir*, p21, 55, 58, 275, 305, 481. Also, *Tarīkh al-Ṭabarī*, v7, p202. Also, *Tarīkh al-Bukhārī*, v5, p6. Also, *Mashāhīr ‘Ulamā’ al-Amṣār*, p55. Also, *Usd al-Ghābah*, v3, p242. Also, *al-Iṣābah*, v2, p309. Also, *Tahdhīb Tarīkh Ibn Asākir*, v7, p396. Also, *Al-Jarḥ Wa al-Ta‘dīl*, v5, p56. Also, *Ḥilliyat al-Awliyyā’*, v1, p329. Also, *Shadharat al-Dhahab*, v1, pp79-80. Also, *al-A‘lām*, v4, p87.

124 Sa‘īd Ibn al-‘Āṣ al-Ummawī al-Qurashī. Born, 624AD. Governor of Kūfa as well as Madīna during ‘Uthmān's and Mu‘āwiyya's reigns. Died 59AH / 679AD. See, *al-Iṣābah*, Biography no 3261. See Also, *Ṭabaqāt Ibn Sa‘d*, v5, p19. Also, *Tahdhīb al-Kamāl*, p497. Also, *al-Istī‘āb*, p621. Also, *Murūj al-Dhahab*, v3, p80. Also, *Al-Muḥabbir*, p55, 150, 174. Also, *Sīr A‘lām al-Nubalā’*, v3, p444. Also, *Tarīkh al-Ṭabarī*, v5, p293. Also, *Usd al-Ghābah*, v2, p391.

125 Born 1AH / 622AD. Died, 43AH / 663AD. See, *Ṭabaqāt Ibn Sa‘d* v5, p5. See also, *al-Tarīkh al-Kabīr*, al-Bukhārī, v5, p272. Also, *al-Tarīkh al-Ṣaghīr*, v2, p73. Also, *al-Muḥabbir*, p67. Also, *Usd al-Ghābah*, v3, p431. Also, *al-Iṣābah*, v3, p66. Also, *al-Istī‘āb*, p827. Also, *Tahdhīb al-Kamāl*, p782. Also, *Mashāhīr ‘Ulamā’ al-Amṣār*, p109. Also, *Tahdhīb al-Tahdhīb*, v6, p156. Also, *Jarḥ Wa al-Ta‘dīl*, v5, p224. Also, *Jamharat Ansāb al-‘Arab*, p145. Also, *al-A‘lām*, v3, p303.

‘Uthmān's home, called Muṣḥaf al-Imām,¹²⁶ with another being reserved for the mosque of the Prophet in Madīna. Another copy was sent to Mecca, one to Baḥrayn, one to Damascus, one to al-Baṣrah and one to Kūfa.¹²⁷

All existing additional material, which recorded the Qur’ān, was ordered to be destroyed, and an order was made to all local rulers to abide by and enforce the correct reading of the now definitive Qur’ān.¹²⁸ The above affords us but one example of *Ijtihād*, whereby ‘Uthmān derived new rules from the issue referred to.¹²⁹

‘Uthmān served Islām creditably, showing his ability in the field of Uṣūl al-Fiqh (jurisprudence), but made various enemies amongst the Hypocrites (Munāfiqūn), the Aetheists (Zanādiqah) and the Gypsies (Al-Zuṭ and Jayābisa).¹³⁰ It was from these latter groups that ‘Uthmān's killer emerged, namely, Sawdān Ibn Ḥimrān al-Murādī,¹³¹ in 35AH / 656AD.¹³²

III.4 Jurisprudence During The Reign Of ‘Aḥī Ibn Abī Ṭālib

The first opposition to the Caliphate arose with the assassination of ‘Uthmān. The centre of the conflict and the abode of the conspirators was in Madīna, which was witnessing a shift from religious government to issues concerning politics. In short the authority of the religious state was challenged by a political development, which undermined the role of the *khalīfa* as defender of the state.¹³³ Politics received short shrift in Islām, being a rational phenomenon¹³⁴ based on worldly interests.¹³⁵ The Caliphate on the other hand concerned itself with both things worldly and religious, the duty of the *khalīfa* being to defend the Sharī‘ah, the law of Islām.¹³⁶

The reign of Abū Bakr, the first Khalif, was noted for the rebellion of a number of tribes against the Islamic state, while ‘Umar, the second Khalif, was assassinated by a rogue Persian¹³⁷ but it is with the assassination of ‘Uthmān that we first notice a conspiracy forming against the state.

It was a time when the Atheists (Zanādiqah) and the Hypocrites (Munāfiqūn) openly expressed their unorthodox opinions. From Islamic sources we learn that ‘Abd Allāh Ibn

126 This copy is now located in Top Kapi Museum, Istanbul. Made out of deer skin.

127 See, *Manāhil al-‘Irfān*, al-Zarkānī, v1, pp248-256. See also, *Tamhīd al-Awā’il*, al-Bāqilānī, p533.

128 Ibid.

129 *Tamhīd al-Awā’il*, pp530-543

130 *Mashāhīr ‘Ulamā’ al-Amṣār*, pp23-24.

131 Ibid, p24.

132 *Kitāb al-Ridda Wa al-Futūḥ*, Sayf Ibn ‘Umar al-Tamīmī, pp130-140; pp309-310.

133 *Muqaddimah* Ibn Khaldūn, p191.

134 Ibid, p190.

135 Ibid.

136 Ibid, p191. (See, *al-Ghiyyāthī*, al-Juwaynī, p22).

137 See, 89 above.

Saba',¹³⁸ reputedly a Jew who converted to Islam, accorded 'Alī Ibn Abī Ṭalīb a religious significance with regard to the latter's claim for the Caliphate. Yet according to some historians, he was a known conspirator who politically duped¹³⁹ certain Companions such as Abū Dharr al-Ghafārī¹⁴⁰ and 'Ammār Ibn Yasar,¹⁴¹ and their sons, Muḥammad Ibn Abi Bakr¹⁴² and Muḥammad Ibn Abī Hudhayfah.¹⁴³ From this vantage point the enemies of Islam grew in strength, engendering fear in Muslim groups.

Each of the three *khalīfas* before 'Alī had received an endorsement, as to the pledge of Allegiance, from the establishment in the form of an *Ijmā'*. This was not the case with 'Alī. When he succeeded to the Caliphate it was in the face of widespread opposition, which extended from al-Hijāz to greater Syria. As a consequence 'Alī was forced to leave Arabia for Iraq, making his capital in Kūfa.¹⁴⁴ Thus there arose at this time political conflict in three capitals, Kūfa, Maḍīna and Damascus.

All the *Ijmā'* which had confirmed the pledge of Allegiance to each of the three rightly guided *khalīfas* were of the *Mutawātir* standard. As for 'Alī, he received a pledge of Allegiance from only Ṭalḥah¹⁴⁵ and al-Zubayr.¹⁴⁶ As a consequence of these political cir-

138 Head of the Saba'iyyah group who believed that 'Alī was God and is now alive in the clouds and that 'Alī manifests himself as thunder, and that Muḥammad would be resurrected. They also believed in the transmigration of souls. See, *al-Bid' Wa al-Tarīkh*, which is reputedly attributed to Aḥmad Ibn Sahl al-Balkhī, but in reality is to be attributed to Muṭahhar Ibn Ṭāhar al-Maqdisī, v5, p129. See also, *Lisān al-Mizān*, v3, p289. Also, *Tahdhīb Tarīkh Dimashq*, Ibn 'Asākir, v7, p428. Also, *al-A'lām*, v4, p88. Also, *Tarīkh al-Ṭabarī* v 4, p340. Also Levi Delavida, The Encyclopedia of Islam, v1, p51. Also, *Tahqīq mawāqif al-Ṣahāba*, Dr Amāḥzūn, v1, pp284 - 317.

139 *Nash'at al-Fikr al-Falsafī Fī al-Islām*, al-Nashār, 8th ed, 1981, Dār al-Ma'ārif, Cairo, v1, p68.

140 Jundub Ibn Junādah Ibn Sufyān Ibn 'Ubayd. A leading Companion. 'Uthmān's reign. Supported a communist theory of sharing the riches amongst the poor. Confined by 'Uthman to the village of al-Rabdhah, near Maḍīna for political agitation. Muḥadith, recollected 281 Ḥadīth in Ṣaḥīḥ al-Bukhārī and Ṣaḥīḥ Muslim. Died, 32AH / 652AD. See, *Ṭabaqāt Ibn Sa'd*, v4, pp161-175. See also, *al-Iṣābah*, v7, p60. See also, *Ṣifat al-Ṣafwa*, Ibn al-Jawzī, v1, p238. *Ḥiliyat al-Awliyyā'* al-Aṣfahānī, v1, p156. Also, *al-Kuna Wa al-Asmā'*, al-Dūlābī, v1, p28. Also, *al-Isti'āb*, Ibn 'Abd al-Barr, v4, p62. Also, *Siyar A'lām al-Nubalā'*, v2, p46. Also, *Mashāḥir 'Ulamā' al-Amṣār*, p30. Also, *al-Thuqāt*, v3, p55. Also, *al-A'lām*, v2, p140.

141 See 98, above.

142 Muḥammad Ibn 'Abd Allāh (Abū Bakr) Ibn 'Uthmān Ibn Āmr al-Taymī al-Qurashī. Born, 10AH / 632AD. In 'Alī's Caliphate he was governor of Egypt, 37AH / 657AD. Killed on Mu'āwīyya's advance into Egypt, 38AH / 658AD. See, *al-Tarīkh al-Kabīr*, al-Bukhārī, v1, p124. See also, *al-Tarīkh al-Ṣaghīr*, al-Bukhārī, v1, p253. Also, *Siyar A'lām al-Nubalā'*, al-Dhahabī, v3, p481. Also, *al-'Ibr*, al-Dhahabī, v1, p44. Also, *Tarīkh al-Ṭabarī*, v5, p94. Also, *Jamhurat Ansāb al-'rab*, p138.

143 Muḥammad Ibn Abī Hudhayfah Ibn 'Utbah Ibn Rabī' Ibn 'Abd Shams. Became illegal governor of Egypt, 35AH / 655AD. Sent battalion to kill 'Uthmān, and strengthened his position under 'Alī's caliphate. Captured by Mu'āwīyya and imprisoned. Died, 36AH / 657AD. See, *al-Tarīkh al-Ṣaghīr*, al-Bukhārī, v1, p81. Also, *Siyar A'lām al-Nubalā'*, al-Dhahabī, v3, p479. Also, *Tarīkh al-Ṭabarī*, v5, p105. Also, *Jamhurat Ansāb al-'Arab*, p77. Also, *al-Iṣābah*, v3, p373.

144 Inhabited from 14AH / 635AD by a group of Companions. Founded as a town in 17AH / 638AH by Sa'd Ibn Abī Waqqās on the order of 'Umar. See, *Nuzhat al-Mustāq*, p120. See also, *Riḥlat Ibn Jubayr*, p211. Also, *al-Rawḍ al-Mi'tār*, al-Himyarī, pp501-502. See, *Mu'jam al-Buldān*, v4, pp490-494.

145 Ṭalḥah Ibn 'Ubayd Allāh Ibn 'Uthmān al-Tamīmī al-Qurashī, born 596AD. A leading Companion. Fought alongside Muḥammad. Fought in the cause of 'Ā'isha in the battle of the camel against 'Alī. Died in this battle, 36AH / 656AD. See, *Musnad Aḥmad Ibn Ḥanbal*, v1, pp160-164. See also, *Sīrat Ibn Hishām*, v2, p80. Also,

cumstances described above, the Muslims divided into four religio-political groups.

III.4.i The Early Umayyads

These were led by Mu'awiya Ibn Abi Sufyan.¹⁴⁷ The Umayyads did not reject outright the Caliphate of 'Afi, but made its acceptance, the making of the pledge of Allegiance, conditional on the handing over by 'Afi, the killers of 'Uthman.¹⁴⁸ These would then be put to death according to the law of retaliation. In short, a life was demanded for a life.¹⁴⁹

As kinsmen of 'Uthman the Umayyads demanded that this condition should be met by process of *Ijtihad* and they used as a basis for this *Ijtihad*, the words of the Prophet, '*al-'Amd Qawd*', i.e, a life is mandatory for a premeditated taking of a life.¹⁵⁰ They also quoted the Qur'an as basis for their *Ijtihad* regarding the matter of retaliation in the case of premeditated murder, thus,

"Oh you who believe. Retaliation is prescribed for you in the matter of the murdered"¹⁵¹

And the words,

"And We prescribed for them therein: The life for the Life, and the eye for the eye, and the nose for the nose, and the ear for the ear, and the tooth for the tooth, and for wounds retaliation. But whoso forgoeth it (in the way of charity) it shall be expiation for him. Whoso judgeth not by that which Allāh has revealed: such are wrong doers"¹⁵²

In further evidence of their *Ijtihad* the Umayyads quoted the following,

"And slay not the life which Allāh has forbidden save with

Ṭabaqāt Ibn Sa'd, v3, pp152-161. Also, *Siyar A'lām al-Nubalā'*, v1, p23. Also, *al-Tarikh al-Ṣaghīr*, al-Bukhārī, v1, p75. Also, *Usd al-Ghābah*, v3, pp85-89. Also, *al-Iṣābah*, v2, p229.

146 Al-Zubayr Ibn al-'Awām Ibn Khuwaylid al-Qurashī. Born, 594AD. Cousin of prophet Muḥammad. Fought alongside the Prophet. Killed in the battle of the Camel, 36AH / 656AD. A muḥadith who related some 38 Ḥadīth. See, *al-Tarikh al-Kabīr*, al-Bukhārī, v3, p409. See also, *Musnad Aḥmad*, v1, pp164-167. Also, *al-Iṣābah*, v1, pp545-546. Also, *Usd al-Ghābah*, v2, pp197-199. Also, *Ṣifat al-Ṣafwa*, v1, p132. Also, *Ḥilyat al-Awliyyā'*, v1, p89. Also, *Ṭabaqāt Ibn Sa'd*, v3, pp70-80. Also, *Dhayl al-Mudhayyal*, al-Ṭabarī, p11.

147 The first Ummayyad Caliph. Mu'awiyya Ibn Abi Sufyan Ibn Ḥarb Ibn Umayya al-Qurashī. Born, 603AD. One of the writers of the Qur'an during Muḥammad's era. An army leader during the era of Abū Bakr. Conquered Lebanon. Became governor of Jordan and Syria during the eras of 'Umar and 'Uthman. A muḥadith, relating over 130 Ḥadīth. One the first mariners in Islām. Conquered Cyprus and blockaded Constantinople, 48AH / 668AD. Made Damascus his capital. Died, 60AH / 680AD. See, *al-Tarikh al-Kabīr*, al-Bukhārī, v7, p326. See also, *Tarikh al-Ṭabarī*, v5, p323. Also, *Siyar A'lām al-Nubalā'*, v3, p119. Also, *Ṭabaqāt Ibn Sa'd*, v3, p32.; v7, p406. Also, *Murūj al-Dhahab*, v3, p188. Also, *Usd al-Ghābah*, v4, p385. Also, *al-Iṣābah*, v3, p433.

148 See, *al-Tarikh al-Shāmil Lil-Medīna*, Dr Abd al-Bast Badr, v1, pp306-307. Also, *Tahqīq mawāqif al-Ṣahāba*, al-Ṭabarī, v1, pp284-487. v2, pp 113 -130.

Also, A literary History Of The Arabs, Cambridge, the University Press, 1969, p335.

149 *al-Idāh*, Ibn al-Jawzī, pp355-362.

150 *Ithār al-Inṣāf*, Sibṭ Ibn al-Jawzī, p388.

151 *Sūrah al-Baqarah*, 2:178-179.

152 *Sūrah al-Mā'idah*, 5:45.

right. Whoso is slain wrongfully, We have given power unto his heir”¹⁵³

In addition to the above, the Umayyads believed that the town of Madīna had been defiled by Uthman's assassination and quoted the words of Muḥammad in this matter. 'In Madīna (criminal acts) are forbidden between 'Ayr and Thūr. Whoever causes such criminal acts, the curse of Allah will be upon him, and that of the Angels and the People.'¹⁵⁴

The basis of the Umayyad's *Ijtihād* was thus derived from the Qur'ān and the Sunnah of the Prophet demanding from 'Alī that the killers of 'Uthmān be handed over to them as a condition of signing the pledge of Allegiance. Otherwise they would pursue the killers as the law of retaliation demanded.

Mu'āwiya¹⁵⁵ then, was supported in his demand to avenge the dead Caliph by the 'Ulamā' amongst the Companions and the Syrian populace. In the meantime 'Alī was trying to drum up support in Egypt, but with limited success. He appointed Qays Ibn Sa'd¹⁵⁶ as governor there and requested the populace to pledge their allegiance to him, a request which the majority acceded to one faction, however, refused.¹⁵⁷

The caliph 'Alī replaced Qays Ibn Sa'd as governor of Egypt by Muḥammad Ibn Abī Bakr¹⁵⁸ in 36AH. The fact that 'Alī's new appointee was so easily removed from his position by Mu'āwiya's candidate, 'Amr Ibn al-'Āṣ,¹⁵⁹ was a direct effect of Mu'āwiya establishing a legal claim to the caliphate at the expense of 'Alī following the battle of Ṣiffīn¹⁶⁰ and the subsequent arbitration decision.

153 *Sūrah al-Isrā'*, 17:33.

154 *Ṣaḥīḥ al-Bukhārī*, v4, p81; v6, pp273-279. See also, *Ṣaḥīḥ Muslim*, Biography ref no 1370. See also, *Fath al-Qadīr*, v4, p81, ref no 1870. Also, *Jāmi' al-Uṣūl*, Ibn al-Athīr, v9, p307. Also, *Mu'jam al-Buldān*, v2, p86; v4, p172. Also, *Tathbīt al-Imāma*, Abū Na'im, al-Aṣbahānī, p188.

155 See 147 above.

156 Qays Ibn Sa'd Ibn 'Ubāda al-Khazrajī. Served Muḥammad in the early days of his rule. Fought alongside 'Alī at the battle of Ṣiffīn. Fled to Tblisī (Taffis), Georgia. Pardoned by Mu'āwiyya. Died, 60AH / 680AD. See, *Tabaqāt Ibn Sa'd*, v6, p52. See also, *Tarīkh al-Ṭabarī*, v4, p546; v5, p162. Also, *Siyar A'lām al-Nubalā'*, v3, p102. Also, *al-Jarḥ Wa al-Ta'dīl*, v7, pp99. Also, *al-Tarīkh al-Kabīr*, al-Bukhārī, v7, p141. Also, *Tahdhīb al-Asmā'*, al-Nawawī, v1, section 2, p61. Also, *al-Iṣābah*, v3, p249.

157 See, *al-Bidāyah Wa al-Nihāyah*, v7, p217.

158 See no 194, above.

159 'Amr Ibn al-'Āṣ Ibn Wā'il Ibn Hāshim al-Sahmī al-Qurashī. Born, 574AD. Appointed governor of 'Umān. Leader of the Islamic army, conquered Egypt and north Syria. Became governor of Egypt. Related 39 Ḥadīth. 'Uthmān removed him from his post, but re-appointed by Mu'āwiyya in 38AH / 658AD. Died, 43AH / 664AD. See, *al-Isṭī'āb*, biography no 1184. See also, *al-Iṣābah*, v3, p1. Also, *Tabaqāt Ibn Sa'd*, v4, p254. Also, *Tabaqāt Khalīfa*, Ibn Khayyāt, biography no 1479702820. Also, *al-Thuqāt*, v3, p265. Also, *Usd al-Ghābah*, v4, p115. Also, *al-Ma'ārif*, Ibn Qutayba, p285. Also, *Tarīkh al-Ṭabarī*, v4, p558. Also, *Mashāhīr 'Ulamā' al-Amṣār*, p93. Also, *al-A'lām*, v5, p79.

160 Occurred 37AH / 657AD, on the banks of the river Euphrates. See, *Mu'jam Mā Ista'jam*, v3, p837. See also, *Kitāb Ṣiffīn*, passim. See also, *al-Rawḍ al-Mi'ṭār*, pp363-365.

The arbitration between ‘Alī and Mu‘āwiyah, 38AH was agreed upon between their respective parties in Iraq and Syria. Both parties agreed to the appointment of two judges to arbitrate, one from the Iraqi side, Abū Mūsā al-Ash‘arī,¹⁶¹ and one from the Syrian side, ‘Amr Ibn al-‘Ās.¹⁶²

The arbitration initially, inconclusively, agreed that both ‘Alī and Mu‘āwiyah should renounce any claim to the caliphate and that the matter of the caliphate should be referred to the *Shūra*. Both ‘Amr Ibn al-‘Ās¹⁶³ and Abū Mūsā¹⁶⁴ aired their views on the matter, but crucially Abū Mūsā first advocated the renunciation.

‘Amr,¹⁶⁵ following Abū Mūsā's renunciation, deferred, arguing that the state should not be left without a leader, because this detracted from the public interest (*maṣlahah*)¹⁶⁶ of the Muslim people, and that therefore Mu‘āwiyah, the only claimant (after ‘Alī had been renounced), should fill the role of caliph. ‘Amr Ibn al-‘Ās had outwitted the devout but politically naive Abū Mūsā.

Thus, due to the political acumen of ‘Amr Ibn al-‘Ās, the early Umayyads won a legal claim to the caliphate for their leader. Thereafter the fortunes of the Umayyads increased¹⁶⁷ while that of ‘Alī's camp correspondingly decreased. Soon after ‘Alī was assassinated by one of the Khawārij.¹⁶⁸ The caliphate passed down to ‘Alī's son, Ḥassan,¹⁶⁹ only to be renounced shortly thereafter in favour of Mu‘āwiyah in 41AH in Jerusalem, known as the year of the Jamā‘ah.¹⁷⁰

Thus we see how the early Umayyads successfully used reasoning (*Ijtihād*) on issues affecting the state, utilising the Qur‘ān, the Sunnah of the Prophet and custom (‘*Urf*) to achieve their end. As a consequence they were able to unite and bring over to their side a

161 See 119, above.

162 See 159, above.

163 See 159, above.

164 See 119, above.

165 See 159, above.

166 See, *al-Bidāyah Wa al-Nihāyah*, v7, pp268-269.

167 The Umayyad Caliphate commenced in 41AH / 661AD.

168 al-Khawārij. A group of Shi‘ites. Fought ‘Alī at Nahrawān, after which ‘Alī was assassinated. The Khawārij consists of ten groups. Muḥakimiyya, al-Azāriqa, al-Shabībiyya, al-Najdiyya, al-Ibādiyya, al-Ṣufriyya, al-Ḥarūriyya, al-Khamriyya, al-Ṣafidiyya, al-Sharāh. See, *al-Tanbīh Wa al-Radd*, Abū al-Ḥussein al-Malī, pp62-69. See also, *al-Farq bayna al-Furaq*, pp72-109. Also, *Maqālāt al-Islāmiyyīn*, v1, pp167-182. Also, *al-Milal Wa al-Nihāl*, pp114-137. Also, *Ṣaḥīḥ Muslim*, v2, pp740-750. Also, *Ṣaḥīḥ al-Bukhārī*, Ḥadīth ref no 344, 3610, 4351, 4667, 5058, 6163, 6931, 6933, 7432, 7562.

Killed 40AH / 660AD. See, *Lisān al-Mizān*, Ibn Ḥajar, v3, p439. See also, *al-Nujūm al-Zāhira*, v1, p120. See also, *Ṭabaqāt Ibn Sa‘d*, v3, p23. See also, *al-A‘lām*, v3, p339.

169 Abū Muḥammad al-Ḥashimī al-Qurashī. The fifth caliph. Born 3AH / 624AD, the oldest of ‘Alī's sons. Died 50AH / 670AD. See, *al-Iṣābah*, v1, p328. See also, *Usd al-Ghābah*, v2, p9. Also, *al-Kāmil Fī al-Tarīkh*, v3, p182. Also, *Ṣifat al-Ṣafwa*, v1, p319. Also, *al-Jarḥ Wa al-Ta‘dīl*, v3, p19. Also, *Mashāhīr ‘Ulamā’ al-Amṣār*, pp24-25. Also, *Ḥilyat al-‘Ulamā’*, v2, p35. Also, *Tarīkh Baghdad*, v1, p138.

170 See, *al-Bidāyah Wa al-Nihāyah*, v8, pp16-19. Also, *Kitāb Duwal al-Islām*, al-Dhahabī, v1, pp33-34.

number of the Companions, the Successors and the ‘Ulamā’ in support of their campaign to avenge ‘Uthmān's assassination.

III.4.ii The Party Of ‘Aḥī

After the death of ‘Uthmān, various groups of Muslims turned to ‘Aḥī and pledged their allegiance to him. Ṭalḥah¹⁷¹ and al-Zubayr¹⁷² offered their allegiance on request that they be made governors of Baṣrah¹⁷³ and Kūfa respectively, but ‘Aḥī refused.

Others bided their time before pledging their allegiance to see what direction developments would take, these included ‘Abd Allāh Ibn ‘Umar,¹⁷⁴ Sa’d Ibn Abī Waqqās,¹⁷⁵ Ṣuhayb al-Rūmī,¹⁷⁶ Zayd Ibn Thābit,¹⁷⁷ Muḥammad Ibn Maslamah,¹⁷⁸ Salamah Ibn Sallamah Ibn Waqsh al-Ashḥālī al-Anṣārī,¹⁷⁹ and Usāmah Ibn Zayd.¹⁸⁰

On assumption of the caliphate ‘Aḥī appointed his governors for the various capitals, but these were not universally accepted. The Syrians rejected, for example, his candidate for Damascus, supporting in his place their own candidate Mu‘āwiyah Ibn Abī Sufyān, whilst the Kufans rejected another candidate in favour of their own man Ṭulayḥah Ibn Khuwaylid,¹⁸¹ emphasising that there would be no pledge of Allegiance (to ‘Aḥī) until ‘Uthmān had been avenged.¹⁸² Some Baṣrans refused to pledge their allegiance also, as did a faction from Egypt.¹⁸³

‘Aḥī responded belligerently, determined to confront the Umayyads and all those who

¹⁷¹ See 109, above.

¹⁷² See 95 above.

¹⁷³ Founded during the era of ‘Umar, 14AH / 635AD. Located in the south of Iraq. Famous for its dates. See, *Ṣaḥīḥ Muslim*, v2, p386. See also, *Mu‘jam al-Buldān*, v1, pp430-440. Also, *al-Rawḍ al-Mi‘tār*, ppq105-108. Also, *Tarīkh al-Ṭabarī*, v3, passim.

¹⁷⁴ See 87, above.

¹⁷⁵ See 110, above.

¹⁷⁶ Ṣuhayb Ibn Sinān Ibn Mālik, born 592AD. Fought alongside Muḥammad at Badr and Uhud. Reputed to have related some 307 Ḥadīth. Died 38AH / 659AD. See, *al-Iṣābah*, v2, p195. See also, *Usd al-Ghābah*, v3, p30. Also, *Ṭabaqāt Ibn Sa’d*, v3, p161. Also, *Mashāḥīr ‘Ulamā’ al-Amṣār*, p41. Also, *Ḥilyat al-Awliyyā’*, v1, p151. Also, *Ṣifat al-Ṣafwa*, v1, p169. Also, *Siyar A‘lām al-Nubalā’*, v2, pp17-26.

¹⁷⁷ See 52, above.

¹⁷⁸ al-Awsī al-Anṣārī. A Companion of the Prophet. Born, 589AD. Died 43AH / 663AD. See, *al-Iṣābah*, biography no 7808. See also, *al-Tanbīh Wa al-Ishrāf*, al-Mas‘ūdī, p209, p218, 219. Also, *al-Akḥbār al-Ṭiwāl*, al-Daynawarī, p131. Also, *Majma‘ al-Zawā‘id*, v9, pp319-320. Also, *al-A‘lām*, v7, p97.

¹⁷⁹ Abū ‘Awf. Fought alongside Muḥammad at Badr, died 45AH / 665AD. See, *al-Iṣābah*, v2, p65. Also, *Usd al-Ghābah*, v2, p428. Also, *al-Ma‘ārif*, Ibn Qutayba, p263. Also, *Mashāḥīr ‘Ulamā’ al-Amṣār*, p40.

¹⁸⁰ Abū Yazīd. Born 615AD. Died in 54AH / 674AD. Related some 128 Ḥadīth. See, *al-Iṣābah*, v1, p31. See also, *Usd al-Ghābah*, v1, p79.

¹⁸¹ Supporter of the Ummayyad cause for avenging ‘Uthmān. See, *al-Bidāyah Wa al-Nihāyah*, v7, p217. See also, *Tarīkh Ibn Khaldūn*, v2, p577.

¹⁸² See, *al-Bidāyah Wa al-Nihāyah*, v7, p217.

¹⁸³ Ibid.

refused to pledge allegiance. Despite a plea made by his son Ḥasan,¹⁸⁴ that such conflict would lead to the death of Muslims, ‘Alī organised his army for conflict. ‘Alī's aim to unite the disparate Islamic state, he maintained, was a holy aim that overrode the loss of muslim blood, and that this was the basis for his *Ijtihād*.

‘Alī's army, lacking numerous Madīnans who refused to join his campaign, reached Baṣrah and there encountered, in what is known as the battle of the Camel in 36AH,¹⁸⁵ the army of ‘Ā’isha, Abū Bakr's daughter.¹⁸⁶ It was during this battle that a substantial number of the Companions lost their lives.¹⁸⁷ Shortly after there occurred the battle of Ṣiffīn,¹⁸⁸ followed by the arbitration decision that went so badly for ‘Alī,¹⁸⁹ only for him to be then confronted by the Khawārij.¹⁸⁹

‘Alī's caliphate can be described as a time of political upheaval, when verbal conflict descended into the violence of the battlefield with Muslim killing Muslim. Yet, every faction fought their corner by invoking evidence from the Qur’ān and the Sunnah to support their *Ijtihād*.

Following the battle of the Camel¹⁹⁰ between ‘Alī and ‘Ā’isha¹⁹¹, and the battle of Ṣiffīn¹⁹² between ‘Alī and Mu’āwiyya, the supporters of ‘Alī divided into the following groups.

a) Those who remained aloof from the Muslim conflict¹⁹³.

b) Those who fell under the leadership of ‘Abd Allāh Ibn Saba’,¹⁹⁴ including the killers of ‘Uthmān. These could be described as radical Shi’ites opposed to orthodox Islām, who pursued methods other than orthodox with regard to the formulation of principles of Islamic jurisprudence.

184 See 169, above.

185 See *I’lām al-Muwaqī’īn*, v1, p18.

186 *al-Bidāyah Wa al-Nihāyah*, v7, pp218-239.

187 Ibid, v7, pp239-262.

188 Ibid, v7, pp262-269.

189 See 168, above. See also, *al-Bidāyah Wa al-Nihāyah*, v7, pp269-302.

190 See, *al-Bidāyah Wa al-Nihāyah*, v7, pp218-221. See also, *Tarīkh Ibn Khaldūn*, v2, pp579-594.

191 ‘Ā’isha Bint al-Khaṣifa Abī Bakr. Born in Mecca, 613AD. Married the Prophet, 2AH. The most learned woman of her time in the fields of literature and religion. Said to have related 2210 Ḥadīth. Died 58AH / 678AD, in Medīna. See, *Al-Ijāba*, al-Zarkashī, passim. See also, ‘Ā’isha Wa al-Siyāsa, Sa’īd al-Afghānī, passim. Also, ‘Ā’isha, *Umm al-Mu’minīn*, Zāhiyya Qadūra, passim. Also, *Al-Iṣābah*, part no 701. Also, *Tabaqāt Ibn Sa’d*, v8, p39. Also, *A’lām al-Nisā’*, v2, p760. Also, *Tarīkh al-Khamīs*, v1, p475. Also, *Ṣubḥ al-A’sha*, v5, p435. Also, *Ḥilliyat al-Awliyyā’*, v2, p43. Also, *al-A’lām*, v3, p240. Also, *Miftāḥ al-Sa’āda*, v1, p73, p217; v2, p14, 18, 22, 55, 66, 348, 349, 383, 385, 533; v3, p54, 92, 119, 149, 158, 174, 192, 250, 292, 348, 358, 364, 369, 387. Also, *I’lām al-Muwaqī’īn*, v1, p17.

192 See, *al-Bidāyah Wa al-Nihāyah*, v7, pp239-258. See also, *Tarīkh Ibn Khaldūn*, v2, pp597-607.

193 See, *al-Bidāyah Wa al-Nihāyah*, v7, pp221-222. See also, *Tarīkh Ibn Khaldūn*, v2, pp575-582.

194 See 138, above.

The Shi'ites interpretation of the Qur'ān was too loose for the orthodoxy¹⁹⁵. They rejected genuine Ḥadīth for the fabricated version,¹⁹⁶ refuted the Ijmā' of the Companions¹⁹⁷ and Qiyās¹⁹⁸ and accepted progressive realization (*Badā'*)¹⁹⁹ in place of Abrogation(*Naskh*).²⁰⁰

‘Alī opposed such groups and had many of them killed,²⁰¹ but was unable to control the trend.²⁰²

The Khawārij,²⁰³ were intent on continuing their struggle against the Umayyads despite ‘Alī's declaration of a truce following the result of the arbitration.

As a consequence they seceded from ‘Alī's generalship, withdrew from Kūfa and waged war against him. They declared him an unbeliever, invoked the Qur'ān against him (by way of allusion),²⁰⁴ and called on him to repent and fight the true enemy, the (early) Umayyads. ‘Alī adhered to his truce, calling the arbitration itself not a sin, as did the Khawārij, but declaring it a result of a wayward *Ijtihād*.²⁰⁵

The two opposing groups met at Nahrawān²⁰⁶ where ‘Alī defeated the Khawārij. Thereafter the Khawārij attempted assassination on Mu'āwiyya,²⁰⁷ ‘Amr Ibn al-‘Āṣ²⁰⁸ and ‘Alī, succeeding only in the latter case.

The Khawārij accepted the Qur'ān as the principal source of Islamic jurisprudence, the sunnas of Abū Bakr and ‘Umr, but rejected the sunnas of ‘Uthmān and ‘Alī, as well as opposing Ijmā'. They were noted for introducing unorthodox ideas into Islām,²⁰⁹ which

195 See, *al-Tafsīr Wa al-Mufasssīrūn*, M. Ḥussein al-Dhahabī, dār al-Kuttub al-Ḥadītha, Cairo, 1961, v2, passim.

196 See, *Minhāj al-Sunnah*, Ibn Taymiyya, v1, p13. Also, *Ikhtisār 'Ulūm al-Ḥadīth*, p109. Also, *Lisān al-Mizān*, v1, p10. Also, *al-Sunnah Qabl al-Tadwīn*, al-Khaṭīb, p205. Also, *al-Mawḍū'āt*, Ibn al-Jawzī, v1, p31. Also, *Tanzīh al-Sharī'ah al-Marfū'*, Ibn Iraq, v1, pp134-137; v2, pp30-38. Also, *Tadhkirat al-Mawḍū'āt*, al-Hindī, p7. Also, *al-Bā'ith al-Ḥathīth*, Ibn Kathīr, p93.

197 The Shi'ites accept Ijmā' (kindred consensus) relating to the Prophet's family on the side of ‘Alī only. See, *Kifāyat al-Uṣūl*, Muḥammad Kāzum al-Khorāsānī al-Shī'ah, pp302-304. Also, *Mabādi' al-Wuṣūl*, al-Ḥilfī al-Shī'ah, pp190-197. Also, *I'lām al-Warā Bi A' lām al-Huda*, al-Ṭubrusī al-Shī'ah, pp 140 - 145.

198 See, *Mabādi' al-Wuṣūl*, al-Ḥilfī al-Shī'ah, pp214-216.

199 See, *al-Iḥkām*, Āmidī, v3, pp101-104.

200 See, Abrogation section 5), chapter III, part Two.

201 See, *al-Tanbīh Wa al-Radd*, al-Maḥḥī, pp29-33. See also, *al-Farq Bayna Furaq*, p233. Also, *al-Milal Wa al-Niḥal*, v1, p174.

202 See, *al-Tanbīh Wa al-Radd*, al-Maḥḥī, p30. See also, *Maqālāt al-Islāmiyyīn*, Al-Ash'arī, v1, pp86-89. See also, *al-Farq bayna al-Furaq*, p21, p233. Also, *al-Milal Wa al-Niḥal*, v1, pp174-192. See also, *al-Tanbīh Wa al-Radd 'Alā Ahl al-Ahwā' Wa al-Bida'*, Abū al-Ḥussein al-Maḥḥī, pp29-48

203 See 168, above.

204 See, *al-Bidāyah Wa al-Nihāyah*, v7, pp169-170.

205 Ibid.

206 A small town, near Baghdād. See, *al-Rawḍ al-Mi'tār*, pp582-583. Also, *Mu'jam Mā Ista'jam*, al-Bakrī, v4, p1336. Also, *Nuzhat al-Mustāq*, al-Idrīsī, p202.

207 See 147, above.

208 See 159, above.

209 See, *Ṣaḥīḥ Muslim*, v2, pp740-750. Also, *Ṣaḥīḥ al-Bukhārī*, passim. Also, 168, above.

necessarily fell, not within the remit of Islamic jurisprudence, but outside it.

III.4.iii The Party Of 'Ā'isha

The death of 'Uthmān in Medīna created an atmosphere of tension among the Banū Umayya there. On hearing of the formal acceptance of 'Alī, their enemy, as caliph, they fled the town for Mecca where 'Ā'isha was leading the Ḥajj ceremony.

She²¹⁰ chose the occasion to deliver a sermon calling for avenging 'Uthmān, slain in the sacred month of Dhū al-Ḥajja,²¹¹ on the grounds that upholding the law on retaliation was a matter of public interest (*Maṣlahah*).

In consequence an army was formed consisting of some 3,000 men, 1000 of whom were cavalrymen, to oppose the army of 'Alī. 'Ā'isha was joined in her quest by the two prominent Companions Ṭalḥah²¹² and al-Zubayr,²¹³ the same two men who months before had begged 'Alī for the positions of governor for Baṣrah and Kūfa respectively.

The battle of the Camel²¹⁴ in Baṣrah, (46)36AH / 606AD ended in defeat for 'Ā'isha, and some 10,000 men, including Ṭalḥah and al-Zubayr²¹⁵. 'Ā'isha was despatched to Medīna, forgiven by 'Alī and even honoured by Mu'āwiyya when he acceded to the caliphate.

III.4.iv The Neutral Party

This is the party who refused to be drawn into the inter-muslim conflict, involving 'Alī on one side,²¹⁶ 'Ā'isha²¹⁷ and Mu'āwiyya from the Banū Umayyad,²¹⁸ on another. One of the more prominent members of the Neutral party was 'Alī's son, al-Ḥassan Ibn 'Alī Ibn Abī Ṭalib.²¹⁹ He was the one who urged his father to desist from conflict but to no avail.²²⁰

The drumming up of an army proved at first difficult for 'Alī. The people of Medīna refused to join him in his military quest, as was the case with 'Abd Allāh Ibn 'Umar Ibn al-

210 See, *al-Bidāyah Wa al-Nihāyah*, v7, pp218-219.

211 Sacred months. Muḥarram. Rajab. Dhū al-Qa'dah, Dhū al-Ḥajja. Fighting is forbidden during these four months.

212 See 109, above.

213 See 95, above.

214 See, *al-Bidāyah Wa al-Nihāyah*, v7, pp234-237.

215 Ibid. See also, 95, and 191, above.

216 See 192, above.

217 See 191, above.

218 See 147, above.

219 See 169, above.

220 *al-Bidāyah Wa al-Nihāyah*, v7, p217.

Khaṭṭāb²²¹ and his sister Ḥaṣṣah.²²² She would have fought on ‘A’isha's side²²³ but was prevented from doing so by her brother. Instead Ibn al-Khaṭṭāb returned to Madīna refusing to be drawn into the conflict.

‘Abd Allāh Ibn Silām²²⁴ also adopted a neutral stance in the conflict, advising ‘Alī to remain in Madīna. Another neutral was Zayd Ibn Thābit.²²⁵ Thus we see, amidst this internecine conflict, the neutral party striving for an independent judgement (*Ijtihād*), that a Muslim must not kill another Muslim, through the invocation of the Qur’ān, thus arriving at judgements which have sound reasoning. These were sounder in a legal sense, in fact, than that undertaken by the other groups.

Summing up we note the emergence in Islām of two distinct groups, the Ahl al-Sunnah²²⁶ and the sects.²²⁷ The latter itself divided into some 72 factions²²⁸ who were subject to internecine warfare.

These groups show to varying degrees Jewish,²²⁹ Christian, Indian and Persian gnostic influences in their thinking. They believed in the transmigration of souls,²³⁰ promiscuity in the family, communism²³¹ and dissimulation, all of which were anathema to Islām. They also denied the Qur’ān, the Sunnah of the Prophet, Ijmā’ and Qiyās, *adillah* constitute the very essence of Uṣūl al-Fiqh.²³²

Two notable schools of Uṣūl al-Fiqh, the school of Iraq in Kūfa and the school of al-Ḥijāz in Medīna, emerged during the period of the Rightly Guided Caliphs (Khulafā’ al-

221 See *al-Bidāyah Wa al-Nihāyah*, v7, p218.

222 Ḥaṣṣah bint ‘Umar Ibn al-Khaṭṭāb, born 604AD. Married to the Prophet, 3AH / 624AD. Died 45AH / 665AD. Related some 60 Ḥadīth, taken from the Ṣaḥīḥs of al-Bukhārī and Muslim. See, *Ṭabaqāt Ibn Sa’d*, v8, p56. See also, *al-Iṣābah*, v4, p273. Also, *Ṣifat al-Ṣafwa*, v2, p19. Also, *Dhayl al-Mudhayyal*, al-Ṭabarī, p71. Also, *Ḥilyat al-Awliyā’*, al-Aṣbahānī, v2, p50.

223 See 191, above.

224 Abū Yūsuf ‘Abd Allāh Ibn Silām Ibn al-Ḥārith. A faqīh and scholar. Died 43AH / 663AD. See, *al-Iṣābah*, v2, pp320-321. Also, *al-Isti‘āb*, v2, pp382-383. Also, *Uṣd al-Ghābah*, v3, pp176-177. Also, *Ṭabaqāt Ibn Sa’d*, v2, pp352-353. Also, *Mashāḥir ‘Ulamā’ al-Amṣār*, p36. Also, *Ṭabaqāt Khalīfa*, no 8. Also, *al-Tarīkh al-Kabīr*, al-Bukhārī, v5, pp18-19. Also, *al-Tarīkh*, Ibn Mu‘īn, biography no 311. Also, *Siyar A‘lām al-Nubalā’*, v2, p413. Also, *al-‘Ibr*, al-Dhahabī, v1, p51. Also, *Tahdhīb al-Kamāl*, p691. Also, *al-Tahdhīb*, v5, p249. Also *al-Bidāyah Wa al-Nihāyah*, v7, p222.

225 See *al-Fath al-Mubīn*, al-Marāghī, v1, p80.

226 The four definitive schools of law Ḥanafī, Mālīkī, Shāfi‘ī and Ḥanbalī.

227 All of these are out of the bounds of Sunnah. See, 168 and 189, above.

228 See, *Sunan al-Tirmidhī*, Ḥadīth no 2641. See also, *al-Tanbīh Wa al-Radd*, Abū al-Ḥussein al-Mal‘ī, Ramādī, al-Damām, Saudi Arabia, 1994, passim. Also, *al-Furq bayna al-Furaq*, ‘Abd al-Qāhir al-Baghdādī, Maktabat Ṣubayḥ, Cairo, undated, passim. Also, *Maqālāt al-Islāmiyyīn*, Abu al-Ḥassan al-Ash‘arī, 3rd ed, 1980, F. S. Verlag, GMBH, Wiesbaden, passim.

229 See, *Nash‘at al-Fikr al-Falsafī Fī al-Islam*, al-Nashār, v1, p62, p68.

230 Where the soul passes into another body at point of death, held by both Hindus and Budhists. See, Oxford Enc English Dictionary, p1534. Faiths of the World, v2, p905.

231 An Ismā‘iliyya concept.

232 See, *Nash‘at al-Fikr al-Falsafī*, al-Nashār, v1, pp189-198.

Rāshidūn). The latter was headed by ‘Abd Allāh Ibn ‘Umar Ibn al-Khaṭṭāb²³³ His most renowned pupil was Sa‘īd Ibn al-Musayyab.²³⁴

This school confined itself, in deducing rules, to the *Zāhir* of the Qur’ān and the Sunnah of the Prophet, eschewing opinion (ra’y), except in very rare cases, because they insisted that the *Naṣṣ* takes precedence over rational thought.

The Hījāzis criticized the Iraqis for excessive use of opinion when extracting rules since, in their opinion, they can be better achieved by referral to the Qur’ān and the Ḥadīth. According to them there is no need to turn to opinion.

The Iraqis, however, saw the *Aḥkām Shari‘ah* as rational based which has in mind, on application, the interest (*maṣlaḥah*) of the people. They criticized in turn the Hījāzis for not using their intelligence in the derivation of rules, decribing them as inflexible.

The head of the Iraqi school was ‘Abd Allāh Ibn Mas‘ūd al-Hudhālī²³⁵ (died 33AH / 652AD) and his two most renowned pupils ‘Alqama al-Nakh‘ī²³⁶ and Ibrāhīm al-Nakh‘ī.²³⁷ (97AH / 715AD).

Each of the two schools was influenced by a key factor in the methods in Uṣūl al-Fiqh which they adopted. The Hījāzis had a strong Ḥadīth tradition, but the Iraqis had very little at all and were forced, given the diversity of sometimes acute issues which arose out of the metropolitan atmosphere of Kūfa,²³⁸ to extract rules through opinion rather than through referral to the *Naṣṣ*. It is my opinion that the differences between these two schools was not so great as to be irreconcilable. In fact they were unified under Abū Ḥanīfa's²³⁹ direction sometime later.

233 See 87, above.

234 Sa‘īd Ibn al-Musayyib al-Makhzūmī al-Qurashī. Born in Medīna, 13AH / 634AD. The most learned man amongst the Successors, one of the seven renowned Fuqahā’ of Medīna at the time. Ḥadīth and Fiqh specialist. Possessed a remarkable knowledge of ‘Umar and his life. Died in Medīna, 94AH / 713AD. See, *Mashāhīr Ulamā’ al-Amṣār*, p105. See also, *Ṭabaqāt Ibn Sa‘d*, v5, p88. See also, *Al-Thuqāt*, v4, p273. Also, *Wafiyyat al-A‘yān*, v1, p206. Also, *al-Tahdhīb*, v4, p84. Also, *Ṣifat al-Ṣafwa*, Ibn al-Jawzī, v2, p44. Also, *Ḥilliyat al-Awliyyā’*, v2, p161. Also, *Al-A‘lām*, v3, p102. Also, *I‘lām al-Muwaqī‘in*, v1, p18.

235 See 82, above.

236 ‘Alqamah Ibn Qays Ibn ‘Abd Allah Ibn Mālīk al-Nakh‘ī. A successor. Born, during Muḥammad's time, died 62AH / 681AD. See, *Mashāhīr ‘Ulamā’ al-Amṣār*, p161. See also, *Tahdhīb al-Tahdhīb*, v7, p272. See also, *Tarīkh al-Kabīr*, al-Bukhārī, v4, p41. Also, *Tadhkirat al-Huffāz*, v1, p45. Also, *Ḥilliyat al-Awliyyā’*, v2, p98. Also, *Tarīkh Baghdād*, v12, p296.

237 Ibrāhīm Ibn Yazīd al-Nakh‘ī. One of the most prominent Successors. Born in Kūfa, 46AH / 666AD. Considered the best faqīh in Iraq of his time. Died, Iraq, 96AH / 715AD. See, *Ṭabaqāt Ibn Sa‘d*, v6, pp188-199. See also, *Ḥilliyat al-Awliyyā’*, v4, p219. Also, *Mashāhīr ‘Ulamā’ al-Amṣār*, p163. Also, *Sīr A‘lām al-Nubalā’*, v4, p521. Also, *Ṭabaqāt al-Qurrā’*, v1, p29. Also, *Tadhkirat al-Huffāz*, v1, p69. Also, *Al-Tahdhīb*, v1, p177. Also, *Tahdhīb al-Kamāl*, v2, p237. Also, *Al-‘Ibr*, al-Dhahabī, v1, p113. Also, *Shadharat al-Dhahab*, v1, p111. Also, *Al-Bidāyah Wa al-Nihāyah*, v9, p140. Also, *Ṭabaqāt al-Fuqahā’*, al-Shīrāzī, p82. Also, *Al-A‘lām*, v1, p80. Also, *Wafiyyat al-A‘yān*, v1, p25.

238 See no 144, above.

239 See 633, below.

Chapter IV

Theoretical Jurisprudence During The Umayyad Period

The Umayyad caliphate commenced in 41AH / 661AD, after al-Ḥasan Ibn ‘Alī Ibn Abī Ṭālib²⁴⁰ had renounced the caliphate in favour of Mu‘āwiyah Ibn Abī Sufyān.²⁴¹

The Islamic state under Mu‘āwiyah expanded even further and he sent governors out to the peninsula region, to Baṣrah,²⁴² where Ziyād Ibn Abī Sufyān became governor,²⁴³ and to Baḥrayn, as well as to Khorāsān, Sijistān, India and ‘Umān.²⁴⁴

The Umayyad armies raided the Byzantine lands and reached the outskirts of Constantinople²⁴⁵ in 49AH / 669AD. In 51AH / 671AD ‘Uqbah Ibn Nāfi²⁴⁶ conquered North Africa, founding the city of Qayrawān.²⁴⁷ The Greek city of Rhodes²⁴⁸ fell to the Umayyads in 53AH / 673AD, whilst the mountains of Bukhāra²⁴⁹ were conquered in 54AH / 674AD. Samarkand²⁵⁰ was laid siege to and a peace agreement eventually reached between the army and the populace.²⁵¹ The Byzantine lands were breached on a

240 See 169, above.

241 See 147, above.

242 See 173, above.

243 Ziyād Ibn Abīh, the reputed illegitimate son of Mu‘āwiyah. Born 1AH / 622AD. Worked as a copyist for Abū Mūsā al-Ash‘arī. ‘Alī made him governor of Persia. Opposed Mu‘āwiyah on ‘Alī’s death, but the former appeased him and conferred on him a lineage, 44AH / 664AD. Mu‘āwiyah made him governor of Khorāsān, Sijistan, Baḥrayn, ‘Umān and Iraq, where he died 53AH / 673AD. See, *Tarīkh al-Ṭabarī*, v6, p162. See also, *al-Kāmil Fī al-Tarīkh*, v3, p195. Also, *Mizān al-I’tidāl*, v1, p355. Also, *Lisān al-Mizān*, v2, p493. Also, *Tahdhīb Tarīkh Ibn ‘Asākir*, v4, p406. Also, *al-A‘lām*, v3, p53. Also, *Siyar A‘lām al-Nubalā’*, v3, pp494-497.

244 *Al-Bidāyah Wa al-Nihāyah*, v8, p28.

245 See, *al-Tanbīh Wa al-Ishrāf*, al-Mas‘ūdī, pp138-142. Also, *Nuzhat al-Mustāq*, al-Idrīsī, p256. Also, *Āthār al-Bilād*, al-Quzwīnī, p603. Also, *Ṣubḥ al-A‘sha*, v5, p377. Also, *Ṣaḥīḥ Muslim*, v2, p365. Also, *al-Rawḍ al-Mi‘tār*, pp481-483. Also, *Tarīkh al-Dawlah al-‘Alīyyah al-‘Uthmāniyyah*, al-Muḥāmī, pp161-167.

246 Ibn ‘Abd al-Qays al-Ummawī, born 1AH / 621AD. Fought alongside ‘Amr Ibn al-‘Ās in Egypt. Appointed by the same man as governor of North Africa. in 42AH / 662AD. Fought in North Africa up the Sudan border. Appointed as governor by Mu‘āwiyah of North Africa 50AH / 670AD. In 55AH / 674AD he was removed from his post, but was reinstated on Yazīd’s accession to the caliphate, 62AH / 681AD. Conquered Libya and Morocco. Died 63AH / 683AD. (See, *al-Rawḍ al-Mi‘tār*, pp281-282.). See, *al-Bayān al-Mughrab*, v1, p19, pp130-152, pp178-205. See also, *al-Istiṣṣā*, v1, pp36-38. Also, ‘*Uqbah Ibn Nāfi*’, Maḥmūd Khaṭṭāb, passim. Also, *Siyar A‘lām al-Nubalā’*, v3, pp532-534. Also, *al-A‘lām*, v4, p241.

247 See, *al-Istibṣār Fī ‘Ajā’ib al-Amṣār*, p113. Also, *al-Rawḍ al-Mi‘tār*, pp486-487. Also, *al-Bida’ Wa al-Tarīkh*, al-Maqdisī, p224. Also, *al-Masālik Wa al-Mamālik*, al-Bakrī, p24.

248 See, *Mu‘jam Mā Ista‘jam*, v2, p683. See also, *al-Rawḍ al-Mi‘tār*, p278. Also, *al-Bidāyah Wa al-Nihāyah*, v8, p75. Also, Atlas of Maritime History, p21.

249 In Uzbekistan. Once the capital of Khorasan. See, *Nuzhat al-Mustāq*, al-Idrīsī, p213. See also, *Tarīkh al-Ṭabarī*, v 2, pp393-394. See also, *al-Kāmil Fī al-Tarīkh*, v12, p364. See also, *Ṣūrah al-Arḍ*, Ibn Ḥawqal, pp398-404. Also, *al-Rawḍ al-Mi‘tār*, pp82-84.

250 In Uzbekistan. See, *Mu‘jam Mā Ista‘jam*, v3, p754. Also, Index of *Mu‘jam al-Mu‘allifin*, v4, p373. Also, *Nuzhat al-Mustāq*, p214. Also, *Ṣūrah al-Arḍ*, Ibn Ḥawqal, p406. Also, *al-Kāmil Fī al-Tarīkh*, v12, p367. Also, *al-Rawḍ al-Mi‘tār*, pp322-323. Also, *Kharīdat al-‘Ajā’ib*, p31. Also, Britannica Book of the Year, 1994, p746. Also, Islamic Art, David James, p8, 19, 22, 82, 92, 101.

251 *al-Bidāyah Wa al-Nihāyah*, v8, p76.

number of occasions and on several occasions by an army led by Mu'āwīya himself.²⁵²

On Mu'āwīya's death²⁵³ the caliphate was passed down to his son, Yazīd, the prince regent. Yazīd was sufficiently intelligent to maintain the administrative system established by his father.²⁵⁴

Yazīd died and was succeeded by his son Mu'āwīya.²⁵⁵ The latter unfortunately died himself shortly after, whence the issue of the caliphate became a matter for the Shūra. However, succession to the Caliphate continued in the Umayyad clan. The Umayyad caliphate endured until the death of Marwān Ibn Muḥammad²⁵⁶ in 132AH / 750AD, whence the 'Abbāsids overthrew them and appropriated the caliphate themselves.

IV.1 The Early Schools Of Islamic Law

Scattered throughout the Islamic empire, the Companions were eagerly sought out for their knowledge of Islamic issues by the Tābi'īn, (followers) who learnt from them the Islamic sciences, and absorbed their ideas and opinions.

During the Umayyad period the highest concentration of Companions, however, was in Madīna²⁵⁷ where there formed a prominent school which favoured Ḥadīth over opinion (*Ra'y*) in matters of Uṣūl al-Fiqh. This school was headed by 'Abd Allāh Ibn 'Umar Ibn al-Khaṭṭāb.²⁵⁸ Amongst its other predominant members were 'Ā'isha,²⁵⁹ Zayd Ibn Thābit,²⁶⁰ Abū Hurayra,²⁶¹ and 'Abd al-Raḥmān Ibn 'Awf.²⁶²

252 Ibid, v8, p127.

253 See, *al-Bidāyah Wa al-Nihāyah*, v8, p136.

254 *al-Bidāyah Wa al-Nihāyah*, v8, p139.

255 Mu'āwīya Ibn Yazīd Ibn Abī Sufyān. Born, 41AH / 661AD. Died, 64AH / 684AD. See, *Tarīkh al-Ṭabarī*, v7, p16. See also, *al-Kāmil Fī al-Tarīkh*, v4, p51. Also, *Nasab Quraysh*, p128. Also, *al-Bidāyah Wa al-Nihāyah*, v8, p223. Also, *Siyar A'lām al-Nubalā'*, v4, pp139. Also, *Tarīkh al-Khamīs*, v2, p301.

256 al-Qā'im Bi-Ḥaqq Allāh Marwān Ibn Muḥammad Ibn Marwān Ibn al-Ḥakm al-Ummawī. Born, 72AH / 692AD. Conquered Konya, central Turkey, 105AH / 723AD.

Caliph Hishām Ibn 'Abd al-Malik appointed him governor of Azerbaijan and Armenia and north Syria., 114AH / 732AD. Became caliph 127AH / 744AD. See, *al-Nujūm al-Zāhira*, v1, p196, p254, 273, 286, 302, 322. Also, *al-Kāmil Fī al-Tarīkh*, v5, pp119, 158. Also, *Tarīkh al-Ṭabarī*, v9, pp54-133. Also, *al-Akḥbār al-Ṭiwāl*, al-Dinawwārī, p350. Also, *al-A'lām*, v7, pp208-209.

257 See 10, above.

258 See 87, above.

259 See 191, above.

260 See 52, above.

261 'Abd al-Raḥmān Ibn Ṣakhr al-Dawsī. Born, 602AD. Companion of Muhammad. Related some 5,374 Ḥadīth. The Companions and Followers amounting to 800, related those Ḥadīth. Appointed by 'Umar as governor of Bahrayn. A leading mufī of his time. Died 59AH / 679AD. See, *Siyar A'lām al-Nubalā'*, v2, pp578-633. Also, *Ṭabaqāt Ibn Sa'd*, v2, pp362-364; v4, 325-341. Also, *al-Iṣābah*, v4, pp202-211. Also, *al-Isti'āb*, v4, pp202-210. Also, *Usd al-Ghābah*, v6, p318. Also, *Ḥilyat al-Awliyā'*, v1, pp376-385. Also, *Tahdhīb*, v12, pp262-267. Also, *Ṣifat al-Ṣafwa*, v1, p285. Also, *Dhayl al-Mudḥayyal*, al-Ṭabarī, p111. Also, *Mashāhīr 'Ulamā' al-Amṣār*, p35.

262 See 104, above.

Moreover, members of this school of Fiqh, which included the Mālikis, considered the custom (‘*Urf*’) of the people of Madīna and their consensus of agreement (Ijmā‘) to be a principle of Uṣūl al-Fiqh.

In Mecca the Ṭabī‘īn studied under the illustrious ‘Abd Allāh Ibn ‘Abbās²⁶³ and his slave, ‘Ikrimah;²⁶⁴ amongst them were ‘Aṭā’ Ibn Abī Rabāḥ,²⁶⁵ Mujāhid Ibn Jabr²⁶⁶ and Muḥammad Ibn Muslim al-Zuhri.²⁶⁷ The methodologies of the Meccan and Madīnan schools were so similar that they merged into one school, commonly called the Ḥijāziyya. There were two schools of Islamic jurisprudence (Uṣūl al-Fiqh) in Iraq, one based in Kūfa,²⁶⁸ the other in Baṣrah.²⁶⁹ The leader of the Kufan school was ‘Abd Allāh Ibn Mas‘ūd,²⁷⁰ an outstanding scholar and judge. His pupils included Shurayḥ,²⁷¹ ‘Alqamah Ibn Qays al-Nakh‘ī,²⁷² ‘Āmir al-Sha‘bī,²⁷³ al-Aswad Ibn Yazīd Ibn Qays al-Nakh‘ī²⁷⁴ and Sa‘īd Ibn Jubayr.²⁷⁵

The leaders of the Baṣrah²⁷⁶ school of Uṣūl al-Fiqh were Abū Mūsā al-Ash‘arī²⁷⁷ and

263 See 88, above.

264 Abū ‘Abd Allāh al-Barbārī. Born, 25AH / 645AD. A scholar in Qur’ānic interpretation and the history of Jihād. Thought alongside Ibn ‘Abbās. 80 Ṭabī‘īn related what he said. 230 of the followers of the followers related what he said. Died, 105AH / 723AD. See, *Mashāḥir ‘Ulamā’ al-Amṣār*, p134. See also, *Ḥiliyat al-Awliyā’*, v3, p326. Also, *Mizān al-I‘tidāl*, v2, p208. Also, *Tarīkh al-Thuqāt*, p339. Also, *al-Tahdhīb*, v7, p263. Also, *Dhayl al-Mudhayyal*, al-Ṭabarī, p90. Also, *al-Ma‘ārif*, Ibn Qutayba, p201.

265 ‘Aṭā’ Ibn Aslam Ibn Ṣafwān, born in the Yemen, 27AH / 647AD. Raised in Mecca. Became the mufti of Mecca and its leading Muḥadith. A Successor. Died in Mecca, 114AH / 732AD. See, *Tadhkirat al-Ḥuffāz*, v1, p92. See also, *Mashāḥir ‘Ulamā’ al-Amṣār*, p133. Also, *al-Tahdhīb*, v7, p199. Also, *Mizān al-I‘tidāl*, v2, p197. Also, *Tarīkh al-Bukhārī*, v3, p463. Also, *Ḥiliyat al-Awliyā’*, v3, p310. Also, *Tarīkh al-Thuqāt*, p332. Also, *Wafiyat al-A‘yān*, v1, p318. Also, *Taqrīb al-Tahdhīb*, v2, p22. Also, *Nukat al-Hamyān*, p199. Also, *Ma‘rifat al-Thuqāt*, v2, p135. Also, *Al-A‘lām*, v4, p235. Also, *Ṣifat al-Ṣafwa*, v2, p119.

266 See 81, above.

267 Al-Zuhri, Abū Bakr Muḥammad Ibn Muslim. Born 58AH, a Medīnan, died 124AH / 742AD. See, *Ṭabaqāt Khalīfa Ibn Khayyāt*, v1, p261. See also, *Tadhkirāt al-Ḥuffāz*, v1, p108. Also, *Mu‘jam al-Mu‘allifin*, v3, p715. Also, *Al-A‘lām*, v7, p97.

268 See 144, above.

269 See 173, above.

270 See 82, above.

271 Shurayḥ Ibn Ḥanī’ Ibn Yazīd Ibn Ka‘b al-Ḥārithī, from the Yemen, converted to Islām, one of ‘Alī’s generals at the battle of the Camel. Killed in Sijistan, 78AH / 697AD. See, *al-Iṣābah*, biography no 3972. See also, *al-Isti‘āb*, biography no 1175. Also, *Usd al-Ghābah*, v2, p395. Also, *Ṭabaqāt Ibn Sa‘d*, v6, p128. Also, *Ṭabaqāt Khalīfa*, biography no 1065. Also, *Mashāḥir ‘Ulamā’ al-Amṣār*, pp165-166. Also, *Siyar A‘lām al-Nubalā’*, v4, pp107-109. Also, *al-Ibr*, al-Dhahabī, v1, p89. Also, *al-Nujūm al-Zāhira*, v1, p201. Also, *al-Tarīkh al-Kabīr*, al-Bukhārī, v4, p228. Also, *al-A‘lām*, v3, p162.

272 See 236, above.

273 See 80, above.

274 Abū ‘Amr, a leading faqīh, muḥadith and memorizer. A famous scholar of Kūfa, after his teacher ‘Abd Allāh Ibn Mas‘ūd. A follower. Died, 75AH / 694AD. See, *Usd al-Ghābah*, v1, p88. Also, *Siyar A‘lām al-Nubalā’*, v4, pp50-53. Also, *Ṭabaqāt Ibn Sa‘d*, v6, p70. Also, *Ḥiliyat al-Awliyā’*, v2, p102. Also, *al-Isti‘āb*, biography no 53. Also, *Tadhkirat al-Ḥuffāz*, v1, p48. Also, *al-Tahdhīb*, v1, p343. Also, *al-Ibr*, al-Dhahabī, v1, p86. Also, *al-Ma‘ārif*, p432. Also, *Tarīkh al-Thuqāt*, p67.

275 al-Asadī al-Ḥabashī. Born, 45AH / 665AD. Learnt from ‘Abd Allāh Ibn ‘Umr and ‘Abd Allāh Ibn ‘Abbās. Killed Iraq, 95AH / 714 AD. See, *Ṭabaqāt Ibn Sa‘d*, v6, p178. See also, *Ḥiliyat al-Awliyā’*, v4, p272. Also, *al-Ma‘ārif*, Ibn Qutayba, p197. Also, *Tahdhīb al-Tahdhīb*, v4, p11. Also, *Tarīkh Asmā’ al-Thuqāt*, p145. Also, *Tarīkh al-Tabarī*, v8, p93.

276 See 173, above.

277 See 119, above.

Anas Ibn Mālik.²⁷⁸ Their pupils included al-Ḥassan al-Baṣrī,²⁷⁹ Ibn Sīrīn,²⁸⁰ Abū al-‘Āliya²⁸¹ and Qatāda.²⁸² Once again the methodologies of these two schools were so similar as to combine into one to produce a unique school, the forerunner of the Ḥanafīyya school of law.²⁸³

A third school of Islamic law was founded in Egypt under the leadership of ‘Abd Allāh Ibn ‘Amr Ibn al-‘Āṣ,²⁸⁴ and his pupils included Ja‘far Ibn Rabī‘ah,²⁸⁵ Yazīd Ibn Abī Ḥabīb,²⁸⁶ and ‘Abd Allāh Ibn Abī Ja‘far.²⁸⁷ This school tended towards a middle path in its methodology between the Ḥijāzī and the Iraqī schools of law, not only invoking the Qur’ān and the Sunnah of the Prophet for the extraction of rules to deal with new issues, as they presented themselves in the way of incidents, but also resorting to rational reasoning (*Ra’ y*). It is said to be the forerunner of the Shāfi‘ite school of law.²⁸⁸

278 Ibn al-Nadar Ibn Damdam al-Khazraji al-Najjari. Born, 612AD. His mother presented him to Muḥammad as a servant. Lived with Muḥammad until the latter's death. Reputed to have related some 2,286 Ḥadīth. Died 93AH / 712AD. See, *al-Iṣābah*, v1, p71. Also, *al-Isti‘āb*, v1, p108. Also, *Ṣifat al-Ṣafwa*, v1, p298. Also, *Ṭabaqāt Ibn Sa‘d*, v7, p17. Also, *Ṭabaqāt al-Fuqahā’*, al-Shīrāzī, p51. Also, *Mashāhīr ‘Ulamā’ al-Amṣār*, p65. Also, *al-Tahdhīb*, v1, p176. Also, *al-Ma‘ārif*, p308. Also, *al-Tarīkh al-Kabīr*, al-Bukhārī, v2, p27.

279 Al-Ḥassan Ibn Yaṣār al-Baṣrī. Born in Medīna, 21AH / 642AD. Moved to Basrah. Works include, 'Faḍā'il Mecca' in manuscript form based in al-Azhur library, 3:725. He was Imām Of Baṣrah, and a leading faqīh of his day. A Successor but thoroughly acquainted with the Companions, from whom he learnt the Qur’ānic sciences, Fiqh and literature. Died 110AH / 728AD. See, *al-Tahdhīb*, v2, p263. See also, *Taqrīb al-Tahdhīb*, v1, p165. Also, *Mizān al-Itidāl*, v1, p254. Also, *Tarīkh al-Thuqāt*, p113. Also, *Ḥilliyat al-Awliyyā’*, v2, p131. Also, *Mashāhīr ‘Ulamā’ al-Amṣār*, p142. Also, *Amālī al-Murtaḍā*, v1, p106. Also, *Al-A‘lām*, v2, pp226-227.

280 Muḥammad Ibn Sīrīn al-Baṣrī, a leading faqīh and Ḥadīth specialist. Born 33AH / 653AD, Died 110AH / 729AD. See, *Mu‘jam al-Mu‘allifin*, v3, p338.

281 Rufay’ Ibn Mihrān al-Riyāhī. Converted to Islām during the caliphate of Abū Bakr. Died, 93AH / 711AD, Baṣrah. See, *Mashāhīr ‘Ulamā’ al-Amṣār*, p153. See also, *al-Tahdhīb*, v3, p284. Also, *Siyar A‘lām al-Nubalā’*, v4, pp207-213. Also, *Ma‘rifat al-Thuqāt*, v1, p62. Also, *Tarīkh al-Thuqāt*, p161.

282 Qatāda Ibn Di‘āma al-Sadūsī. See Fn 38, above.

283 See 363, below.

284 ‘Abd Allāh Ibn ‘Amr Ibn al-‘Āṣ. Born, Mecca, 616AD. One of the most learned of Companions in the fields of Fiqh, Ḥadīth, said to have related some 700 of them. Participated in the conquests of Syria and Egypt. Resided in Egypt for some time. Governor of Kūfa during Mu‘āwīyya's caliphate. Died 65AH / 684AD. See, *Ṭabaqāt Ibn Sa‘d*, v2, p373; v4, pp261-268; v7, p494. See also, *Sīr A‘lām al-Nubalā’*, v3, p79. Also, *Mashāhīr ‘Ulamā’ al-Amṣār*, p93. Also, *al-Iṣābah*, v2, p351, part no 4838. Also, *Uṣd al-Ghābah*, v3, pp349-351. Also, *Ṣifat al-Ṣafwa*, v1, p270. Also, *Tarīkh al-Bukhārī*, v5, p5. Also, *Al-Bid‘ Wa al-Tarīkh*, (al-Balkhī), al-Maqdaṣī, v5, p107. Also, *Nasab Quraysh*, p411. Also, *al-Ma‘ārif*, Ibn Qutayba, p286. Also, *Al-Muḥabbir*, p293. Also, *Ṭabaqāt al-Shīrāzī*, p50. Also, *Tadhkirat al-Ḥuffāz*, v1, p39. Also, *Shadharat al-Dhahab*, v1, p73. Also, *Al-Tahdhīb*, v5, p337. Also, *Tahdhīb al-Kamāl*, p716. Also, *Tahdhīb al-Asmā’ Wa al-Lughāt*, v1, p281. Also, *Al-A‘lām*, v4, p111.

285 Ibn Shurāḥbīl Ibn Hasna. al-Qurashī. A leading scholar in Egypt. Died after 133AH / 751AD. See, *Mashāhīr ‘Ulamā’ al-Amṣār*, p297. See also, *Al-Tahdhīb*, v1, p175. Also, *al-Thuqāt*, v6, p26. Also, *Siyar A‘lām al-Nubalā’*, v6, p149. Also, *Taqrīb al-Tahdhīb*, v1, p45.

286 Abū Rajā’ Yazīd Ibn Suwayd, client of the Banū ‘Āmr. Born, 53AH / 673AD. A Nubian. A leading faqīh and muḥadith of his time in Egypt. Died 128AH / 745AD. See, *Mashāhīr ‘Ulamā’ al-Amṣār*, p197. See also, *Ḥusn al-Muḥāḍarah*, v1, p299. Also, *al-Jarḥ Wa al-Ta‘dīl*, v9, p267. Also, *al-Thuqāt*, Ibn Ḥabbān, v3, p295. Also, *al-Tahdhīb*, v11, p318. Also, *Siyar A‘lām al-Nubalā’*, v6, pp31-33. Also, *Tadhkirat al-Ḥuffāz*, v1, pp128-129. Also, *al-Tarīkh al-Ṣaghīr*, al-Bukhārī, v2, pp10-11.

287 See, *A‘lām al-Muwaqī‘in*, v1, p21.

288 See, V.4. I, the Shāfi‘ite School Of Law, below.

A fourth school of Islamic law flourished for a while in Syria under the leadership of Mu'adh Ibn Jabal,²⁸⁹ 'Ubadah Ibn al-Ṣāmit²⁹⁰ and Abū al-Dardā'²⁹¹ Their pupils included Makhūl al-Dimashqī,²⁹² Qubayṣa Ibn Dhu'ayb al-Khuzā'i al-Ka'bī,²⁹³ 'Umar Ibn 'Abd Al-'Azīz²⁹⁴ and Rajā' al-Kindī.²⁹⁵

The offshoots of the Syrian school included the Jabrīyya²⁹⁶, established by 'Abd al-Raḥmān al-Awzā'i,²⁹⁷ and flourished under the Umayyads political wisdom, and the Shāmiyūn who excelled in the fields of biography and the history²⁹⁸ of *Jihād*.

The school of Yaman, which restricted itself to matters of Fatwā only, was administered by Ṭā'ūs Ibn Kaysān al-Yamānī²⁹⁹ and his son 'Abd Allāh Ibn Ṭā'ūs³⁰⁰ and 'Abd al-

289 See 81, above.

290 Abū Wafid al-Anṣārī al-Khazraji. Born, 586AD. Associated with Muḥammad. The first judge in Palestine. Died, 34AH / 654AD.

291 'Uwaymir Ibn 'Amr (or Ibn Mālik) Ibn Zayd al-Anṣārī al-Khazraji. Related some 179 Ḥadīth. Muḥammad called him the wise man. A cavalryman. Appointed judge in Damascus by 'Umar. A memoriser of the Qur'ān. Died, 32AH / 652AD. See, *al-Iṣābah*, v3, p45. Also, *Al-Isti'āb*, v4, biography no 1646. Also, *Usd al-Ghābah*, v6, p97. Also, *Ṭabaqāt Ibn Sa'd*, v7, pp391-393. Also, *Siyar A'lām al-Nubalā'*, v2, pp335-354. Also, *Ḥilyat al-Awliyā'*, v1, p208. Also, *Ṣifat al-Ṣafwa*, v1, p257. Also, *al-Tarikh al-Kabīr*, al-Bukhārī, v7, pp76-77. Also, *Mashāhīr 'Ulamā' al-Amṣār*, p83.

292 Makhūl Ibn Abī Muslim Shahrāb. Born in Kabul, raised in Egypt, travelled to Medīna and Iraq, and settled in Damascus. Became a prominent muftī there. A fiqh and Ḥadīth specialist. Died, Damascus, 112AH / 730AD. See, *Al-Tahdhīb*, v10, pp289-292. See also, *Taqrīb al-Tahdhīb*, v2, p273. Also, *Sīr A' lām al-Nubalā'*, v5, p160. Also, *Tadhkirat al-Ḥuffāz*, v1, p101. Also, *Ḥussen al-Muḥāḍarah*, v1, p119. Also, *Ḥiliyat al-Awliyyā'*, v5, p177. Also, *Tahdhīb al-Kamāl*, p1369. Also, *Mizān al-I'tidāl*, v3, p198. Also, *al-Jarḥ Wa al-Ta'dīl*, v8, p407. Also, *Al-A' lām*, v7, p284. Also, *Mashāhīr 'Ulamā' al-Amṣār*, pp183-184.

293 Born, 1AH / 622AD. One of the leading jurists of Madīna. Died, 86AH / 705AD. See, *Mashāhīr 'Ulamā' al-Amṣār*, pp106-107. See also, *al-Iṣābah*, v3, p266. Also, *al-Isti'āb*, biography 2100. Also, *Usd al-Ghābah*, v4, p191. Also, *Ṭabaqāt Ibn Sa'd*, v5, p176. Also, *Siyar A'lām al-Nubalā'*, v4, pp282-283. Also, *al-Iqd al-Thamīn*, v7, p37. Also, *al-Ma'ārif*, Ibn Qutayba, p447. Also, *Tahdhīb al-Asmā'*, al-Nawawī, v2, p56.

294 Abū Ḥafṣ 'Umr Ibn 'Abd Al-'Azīz Ibn Marwān Ibn al-Ḥakm al-Ummawī. Born, 61AH / 681AD. A second generation follower. Appointed governor of Madīna by the Ummayyad caliph Wafid Ibn 'Abd al-Malik. Became minister for Ibn Marwān. Became caliph in Damascus 99AH / 718AD. Died, 101AH / 720AD. See, *al-Tahdhīb*, v7, p475. See also, *Taqrīb al-Tahdhīb*, v2, p59. Also, *Mashāhīr 'Ulamā' al-Amṣār*, p283. Also, *Ṣifat al-Ṣafwa*, v2, p63. Also, *Tarikh al-Ṭabarī*, v8, p137. Also, *Siyar A'lām al-Nubalā'*, v5, pp114-148. Also, *Fawāt al-Wafiyāt*, al-Kuttabī, v2, p105. Also, *Ḥiliyat al-Awliyyā'*, v5, pp253-353. Also, *al-Aghānī*, al-Aṣḥānī, Dār al-Kuttab al-Maṣriyya, v9, p254. Also, *al-Jarḥ Wa al-Ta'dīl*, v3, p122. Also, *Wafiyāt al-A'yān*, v2, p128.

295 Abū al-Meqdām Rajā' Ibn Haywa Ibn Jarwal al-Kindī. Born, 91AH / 709AD, a scholar, copyist for Sulaymān Ibn 'Abd al-Malik. Died, 161AH / 778AD. See, *Mashāhīr 'Ulamā' al-Amṣār*, p287. See also, *al-Tahdhīb*, v3, p267. Also, *al-Thuqāt*, v6, p305. Also, *al-Tarikh al-Kabīr*, al-Bukhārī, v2, p286. Also, *Tadhkirat al-Ḥuffāz*, v1, p111. Also, *Ḥiliyat al-Awliyyā'*, v5, p170. Also, *Wafiyāt al-A'yān*, v1, p187.

296 An Islamic sect, given to Fatalism. See, *Al-Milal Wa al-Niḥal*, al-Shihristānī, v1, pp113-114. Also, *al-Farq Bayna al-Firaq*, al-Baghdādī, p138. Also, *al-Tabṣīr Fī al-Dīn*, al-Isfarāyyīnī, p63. Related 181 Ḥadīth, 6 Ḥadīth in al-Bukhārī and Muslim. See, *al-Iṣābah*, biography no 4488. Also, *al-Muḥabbir*, p270. Also, *Tahdhīb al-Tahdhīb*, v5, p111. Also, *Ḥussen al-Muḥāḍarah*, v1, p89. Also, *Tahdhīb Tarikh Ibn 'Asākir*, v7, p206. Also, *Siyar A'lām al-Nubalā'*, v2, pp511.

297 Ibn 'Amr Ibn Yaḥmid al-Awzā'ī. Born, 88AH / 707AD. Became Imām of Syria. A muḥadith, faqih, interpreter of the Qur'ān. His school influenced as far as Andalus. Died 157AH / 774AD. See, *Mashāhīr 'Ulamā' al-Amṣār*, pp285-286. See also, *Ḥiliyat al-Awliyyā'*, v6, pp135-149. Also, *al-Ma'ārif*, p217. Also, *Ṭabaqāt Ibn Sa'd*, v7, p488. Also, *Wafiyāt al-A'yān*, v3, pp127-128. Also, *Mizān al-I'tidāl*, v2, p580. Also, *Siyar A'lām al-Nubalā'*, v7, pp107-134. Also, *al-Tahdhīb*, v6, p238. Also, *al-Tarikh al-Ṣaghīr*, v2, p124.

298 See, *I'laam al-Muwaqī'in*, v1, p21.

299 Ṭāwūs Ibn Kaysān al-Khawalānī al-Hamadhānī. Born in the Yemen and raised there. One of the leading

Razzāq Ibn Hammām Ibn Nāfi' al-Ḥimyarī.³⁰¹

Several Companions founded a school of Islamic law in Khorāsān,³⁰² similar in its methodology to the Egyptian school, and which was later developed into the Shāfi'ite school of Islamic Jurisprudence there.³⁰³ These Companions included Burayda Ibn al-Ḥusayb Ibn 'Abd Allāh al-Aslamī³⁰⁴ (died in Murv³⁰⁵), al-Ḥakm Ibn 'Amr Ibn Mujada' al-Ghifārī,³⁰⁶ Quthm Ibn al-'Abbās Ibn 'Abd al-Muṭṭalib,³⁰⁷ and Qays Ibn Sa'd³⁰⁸ (died in Tiflis).³⁰⁹ Their pupils would have included 'Atā',³¹⁰ Yahyā al-Khazā'i³¹¹ and 'Abd Allāh

Successors. A fiqh and Ḥadīth specialist. Died in Mecca, approximately 106AH / 724AD. See, *Tahdhīb al-Tahdhīb*, v5, p8. See also, *Mashāhīr 'Ulamā' al-Amṣār*, p198. Also, *Ḥilliyat al-Awliyyā'*, v4, p3. Also, *Wafīyyat al-A'yān*, v1, p233. Also, *Tarīkh al-Thuqāt*, p234. Also, *Ṣifat al-Ṣafwa*, v2, p160. Also, *Taqrīb al-Tahdhīb*, v1, p377. Also, *Al-A'lām*, v3, p224. Also, *al-Jamī' Fī Rijāl al-Ṣaḥīḥayn*, v1, p235.

300 Abū Muḥammad 'Abd Allāh Ibn Ṭā'ūs Ibn Kaysān al-Hamdhanī al-Khawlānī. The second generation of followers. One of the leading faqīh in Yaman, A man of integrity in the matter of Ḥadīth. Studied under his father. Died 132AH / 750AD. See, *Mashāhīr 'Ulamā' al-Amṣār*, p304. See also, *Siyar A'lām al-Nubalā'*, p103. Also, *Tarīkh al-Kabīr*, al-Bukhārī, v5, p123. Also, *Tarīkh al-Ṣaghīr*, v2, p29. Also, *al-Jarḥ Wa al-Ta'dīl*, v5, pp88-89. Also, *al-Tahdhīb*, v5, p267. Also, *Tarīkh al-Thuqāt*, p262. Also, *Tahdhīb al-Kamāl*, pp697-698.

301 Abū Bakr al-Ṣan'ānī, Born, Ṣan'ā', 126AH / 744AD. Studied under his father, Hammām, a second generation follower. A muḥadith. His published works include, '*Al-Muṣannaf*'. Died, 212AH / 827AD. See, *Mizān al-I'tidāl*, v2, p126. See also, *Wafīyāt al-A'yān*, v1, p303. Also, *Tahdhīb al-Tahdhīb*, v6, p310. Also, *Tadhkirat al-Ḥuffāz*, v1, p332. Also, *Kashf al-Zunūn*, p452, 576, 1008, 1712. Also, *Hadiyat al-'Arifīn*, v1, p566. Also, *Idāḥ al-Maknūn*, v1, p285. Also, *Siyar A'lām al-Nubalā'*, v9, pp563-580. Also, *Mu'jam al-Mu'allifīn*, v2, p142.

302 See, *al-Rawḍ al-Mi'ṭār*, pp214-215. Also, *Ṣūrah al-Ard*, Ibn Ḥawqal, pp358-360. Also, *Mukhtaṣar Kitāb al-Buldān*, Ibn al-Faḥḥ, p316.

303 See, 428, above.

304 One of the leading Companions. Fought alongside Muḥammad in the conquest of Khaybar and Mecca. Appointed collector of Zakāt and Ṣadaqāt from his tribe. Died 63AH / 683AD. Related some 167 Ḥadīth. See, *Mashāhīr 'Ulamā' al-Amṣār*, p100. See also, *Ṭabaqāt Ibn Sa'd*, v4, pp241-243. See also, *al-Jarḥ Wa al-Ta'dīl*, v2, p424. Also, *al-Iṣābah*, v1, p146. Also, *Usd al-Ghābah*, v1, p175. Also, *Siyar A'lām al-Nubalā'*, v2, pp469-471. Also, *al-Tarīkh al-Kabīr*, al-Bukhārī, v2, p141. Also, *Dhayl al-Mudhayyal*, al-Ṭabarī, p27. Also, *Tahdhīb al-Tahdhīb*, v1, p432.

305 An ancient town in Khorāsān. Founded by Alexander the Great. See, *al-Rawḍ al-Mi'ṭār*, pp532-534. Also, *Mu'jam Mā Ista'jam*, v4, p1216. Also, *Aḥsan al-Taqāsīm*, al-Maqdisī, pp298-310.

306 Related some Ḥadīth to be found in the Ṣaḥīḥ of al-Bukhārī, died Murv, 50AH / 670AD. See, *al-Iṣābah*, v1, p346. Also, *al-Isṭī'āb*, v1, p356. Also, *Usd al-Ghābah*, v2, p36. Also, *Ṭabaqāt Ibn Sa'd*, v7, p28. Also, *al-Jarḥ Wa al-Ta'dīl*, v3, p119. Also, *al-Tahdhīb*, v2, pp436-437. Also, *Siyar A'lām al-Nubalā'*, v2, pp474-477. Also, *Mashāhīr 'Ulamā' al-Amṣār*, p101. Also, *Ṣifat al-Ṣafwa*, v1, p279.

307 al-Ḥashimī. Cousin of the Prophet. Became governor of Medīna during 'Alī's calphate. Moved to Samarkand during Mu'āwīyya's reign. Conquered some lands in Transoxiana. Died 57AH / 677AD. See, *al-Iṣābah*, v3, p226. See also, *al-Isṭī'āb*, biography no 1304. Also, *Usd al-Ghābah*, v4, p392. Also, *Ṭabaqāt Ibn Sa'd*, v7, p367. Also, *Mashāhīr 'Ulamā' al-Amṣār*, p28, p101. Also, *al-Jarḥ Wa al-Ta'dīl*, v7, p145. Also, *Ansāb al-Ashrāf*, v3, p65. Also, *Siyar A'lām al-Nubalā'*, v3, pp440-442. Also, *Nasab Quraysh*, p27. Also, *al-Tarīkh al-Kabīr*, al-Bukhārī, v7, p194. Also, *al-Tarīkh al-Ṣaghīr*, v1, p142.

308 See 288, above.

309 Tblisi, the modern name. The capital of Georgia. Muslim stronghold during early middle ages. Fell to the Mongols, after the 13th century. AD / 618AH / 1220AD. See, *al-Rawḍ al-Mi'ṭār*, p139. See also, *Nuzhat al-Mushtāq*, al-Idrīsī, p267.

310 'Atā' Ibn al-Sā'ib, see 24, above.

311 Yahyā Ibn 'Uqayl al-Baṣrī, one of the leading Successors, received Ḥadīth from the Companions. See, *Mashāhīr 'Ulamā' al-Amṣār*, p203. Also, *al-Tahdhīb*, v11, p259. Also, *Tahdhīb al-Kamāl*, v3, p1513. Also, *al-Thuqāt*, v5, p528.

Ibn Burayda Ibn al-Ḥuṣayb al-Aslamī.³¹²

IV.2 End Of The Oral Tradition

The end of the Umayyad caliphate coincided with the end of the era of the Companions. Abū al-Ṭufayl,³¹³ for example, died in Mecca in 107AH / 725AD. Sahl Ibn Sa'd³¹⁴ died in Madīna 91AH / 710AD and Anas Ibn Mālīk³¹⁵ died in Baṣrah in 93AH / 712AD.

It is said that approximately 130 Companions³¹⁶ of the Prophet Muḥammad proffered legal opinions (*fatāwā*), 7 of whom³¹⁷ issued the majority of them,³¹⁸ 8 of whom issued approximately one volume each, while the others accounted for the rest.³¹⁹

The Qur'ān, the Sunnah of the Prophet, the Sunnah of the four rightly guided Caliphs and the *Ijtihād* of the Companions (in that order) constituted the sources of Islamic law during the era of the Companions.³²⁰ To summarise their method we can say that in order to extract a rule one must first subject the issue under scrutiny to the Qur'ān. If a rule cannot be found therein, the *mujtahid* consults the Sunnah of the Prophet. If no rule can be extracted from the Sunnah then Qiyās is invoked, whereby the rule extracted must reflect the spirit of the Sharī'ah and bear in mind the *maṣlahah* of the people. Finally, if no rule can be extracted by the above means, the *mujtahid* strived to form a legal opinion of his own through the process of Ijmā' and consultation (*shūra*).³²¹

This method in formulating and upholding the principles of Islamic jurisprudence (Uṣūl al-Fiqh) was followed faithfully by the 'Ulamā'³²² so as not to fall under the influence of

312 Born, 14AH / 635AD. Received his learning from the Companions. Became a judge in Merv. Died 115AH / 733AD. See, *Tabaqāt al-Ḥuffāz*, p40. See also, *Tadhkirat al-Ḥuffāz*, v1, p102. Also, *Tarīkh al-Thuqāt*, p250. Also, *al-Tahdhīb*, v5, p157. Also, *Siyar A' lām al-Nubalā'*, v5, pp50-53. Also, *al-Tarīkh al-Kabīr*, al-Bukhārī, v5, p51. Also, *al-Tarīkh al-Ṣaghīr*, v2, pp139-140. Also, *al-Jarḥ Wa al-Ta' dīl*, v5, p13.

313 'Amr Ibn Wāthilah Ibn 'Abd Allāh Ibn 'Amr al-Laythī al-Kinānī al-Qurashī. Born, 3AH / 625AD. Related 9 Ḥadīth. Muḥadith and the poet of his tribe. Supported 'Afi against Mu'āwiyya but the latter forgave him. See, *Mashāhīr 'Ulamā al-Amṣār*, p64. See also, *al-Iṣābah*, v4, p113. Also, *al-Isti'āb*, biography no 1344. Also, *Usd al-Ghābah*, v3, p96. Also, *Tabaqāt Ibn Sa'd*, v5, p457; v6, p64. Also, *al-Aghānī*, al-Aṣfahānī, v13, p159. Also, *al-Jawāhir al-Muḍiyya*, v2, p426. Also, *Siyar A' lām al-Nubalā'*, v4, pp467-468. Also, *al-Nujūm al-Zāhira*, v1, p243. Also, *al-'Iqd al-Thamīn*, v5, p87. Also, *al-Kunā*, al-Dūlābī, biography no 670.

314 Ḥazin Ibn Sa'd Ibn Mālīk al-Sā'idī, better known as Abū al-'Abbās. One of the famous Companions. Related some 188 Ḥadīth. See, *al-Iṣābah*, v2, p88. See also, *al-Isti'āb*, v2, p664. Also, *Usd al-Ghābah*, v2, p472. Also, *al-Jarḥ Wa al-Ta' dīl*, v4, p198. Also, *al-Tahdhīb*, v4, p252. Also, *Siyar A' lām al-Nubalā'*, v2, pp422-424. Also, *Jamharat Ansāb al-'Arab*, p366.

315 See 278, above.

316 See, *I' lām al-Muwaqī'in*, v1, p9.

317 The seven are: 'Umar Ibn al-Khaṭṭāb, 'Afi Ibn Abī Ṭalīb, 'Abd Allāh Ibn Mas'ūd, Zayd Ibn Thābit, 'Abd Allāh Ibn 'Abbās, 'Abd Allāh Ibn 'Umar and 'Ā'isha.

318 See, *I' lām al-Muwaqī'in*, v1, p9.

319 Ibid, v1, pp10-11.

320 Ibid, v1, p27.

321 Ibid, v1, pp36-85.

322 Known as Ahl al-Ḥaqq and al-Jumhūr. They adhere to the Sharī'ah exactly. They are the opposite of Ahl al-Ahwā', the sects, consisting of 72 groups. See, *Kitāb al-Ta'rīfāt*, al-Jarjānī, p40. See FN 318, above.

those who strayed from the straight path, as was the case with the Shi'ites³²³ and the Khawārij.³²⁴

The era of the Companions was predominantly oral in culture, but towards the end of Umayyad rule learning had taken on a deductive, intellectual character.³²⁵ Information was recorded on paper, edited and collected in books. This included the writing of books and commentaries on Islamic jurisprudence (Uṣūl al-Fiqh) which went hand in hand with the development of schools of law in Islamic society.

323 See 227, above.

324 See 168, and 194-199, above.

325 'Umar Ibn 'Abd al-'Azīz ordered the recording of the Sunnah. See, *Sunan al-Dārimī*, v1, p126. See also, *al-Muḥadith al-Fāsil Bayna al-Rāwi Wa al-Wā'i*, al-Rāmḥurmazī, fol: 4a. Also, *Kitāb al-Amwāl*, Ibn Siḥām, p578. Also, *Taqyīd al-'Ilm*, al-Khaṭīb al-Baghdādī, p105. Also, *al-Jarḥ Wa al-Ta'dīl*, introduction, p25. Also, *Jāmi' Bayān al-'Ilm*, Ibn 'Abd al-Burr, v1, p73; v2, p34. Also, *al-Sunnah Qabl al-Tadwīn*, pp293-382.

Chapter V

Jurisprudence During The ‘Abbāsīd Period

Until The End Of The 7th Century AH / 1300AD

The ‘Abbāsīd Caliphate begins with the pledge of Allegiance to Abū al-‘Abbās al-Saffāh³²⁶ in Kūfa,³²⁷ 135AH. The ‘Abbāsīds strengthened their hold on the caliphate following their victory at the battle of Zāb.³²⁸ They consolidated their position further following the death of the final Umayyad Caliph Marwān Ibn Muḥammad³²⁹ in 132AH.

The territories that fell under the control of the ‘Abbāsīds reached as far as central India and the borders of China in the east, and to banks of the Volga³³⁰ and the Caspian sea to the north. Spain and the south of France, however, remained under the control of the Umayyads.³³¹

The opposition to the Umayyads started in 130AH in Khorāsān³³² under the leadership of Abū Muslim al-Khorāsānī,³³³ with a declaration calling for the house of ‘Alī to assume control of the Caliphate. Gradually, the supporters of the house of ‘Alī cause took control of the east and the north of the Caliphate until they reached Iraq where they occupied Kūfa.³³⁴

However, we note the seeds of the conflict were present amongst the Hāshimītes during

326 ‘ Abd Allāh Ibn Muḥammad Ibn ‘ Alī Ibn ‘ Abd Allāh Ibn al-‘ Abbās Ibn ‘ Abd al-Muṭṭalib al-Hāshimī al-Qurashī. Born, 104AH / 722AD., Ḥumaymiyya in al-Sarāt, between Damascus and Medīna. Raised there. Moved to al-Anbār, Iraq, founded the town of al-Hāshimiyya, Iraq, which he made a capital on the assumption of the caliphate. First caliph to introduce the office of minister in Islām. Nicknamed Saffāh because he often executed his opponents. Died, al-Anbār, 136AH / 754AD. See, *Fawāt al-Wafīyyāt*, v1, p232. See also, *Tarīkh al-Ṭabarī*, v9, p154. Also, *al-Kāmil Fi al-Tarīkh*, v5, p152. Also, *Tarīkh Baghdād*, v10, p46. Also, *al-A‘lām*, v4, p116. Also, *al-Wuzarā’ Wa al-Kuttāb*, al-Jihshiyārī, pp89-95. Also, *Kitāb Duwal al-Islām*, al-Dhahabī, pp91-93.

327 See 144, above.

328 The lesser river Zāb, originating in Anatolia and runs in the Euphrates, Mūşil. Location of the battle. See, *Mu‘jam Mā Ista‘jam*, v2, p691. Also, *Şūrah al-Ard*, Ibn Ḥawqal, p209. Also, *al-Rawḍ al-Mi‘ār*, p280.

329 Marwān Ibn Muḥammad Ibn Marwān Ibn al-Ḥakam al-Umawī. Born 72AH / 692AD. Conquered Konya, Turkey, 105AH / 723AD. During the caliphate of Hishām became governor of Azerbaijan. and Armenia, 114AH / 732AD. Acceded to the caliphate 127AH / 744AD, and remained there until his death. See, *Tarīkh al-Ṭabarī*, v9, pp54-133. Also, *al-Kāmil Fi al-Tarīkh*, v5, pp119-158. Also, *Tarīkh al-Khamīs*, v2, p322. Also, *Kitāb al-Wuzarā’ Wa al-Kuttāb*, pp72-88. Also, *al-Akḥbār al-Ṭiwāl*, al-Dinawwarī, p350. Also, *al-A‘lām*, v7, pp208-209.

330 A river rising in the north west of the USSR and flowing to the Caspian sea at Astrakhan. See, *Travels 18th century Russia*, pp18-21. See also, *Riḥlat Ibn Faḍlān*, passim.

331 See, *Kitāb Duwal al-Islām*, al-Dhahabī, p62, 64.

332 See 303, above.

333 ‘Abd al-Raḥmān Ibn Muslim. Born, 100AH / 718AD. Killed 137AH / 755AD. See, *Tarīkh al-Ṭabarī*, v9, p159. Also, *Tarīkh Baghdād*, v10, p207. Also, *Mizān al-Itidāl*, v2, p117. Also, *Lisān al-Mizān*, v3, p436. Also, *al-A‘lām*, v3, pp337-338.

334 See 144, above.

the early ‘Abbāsīd period involving, on one side, the sons of ‘Alī Ibn Abī Tālib.³³⁵ and the sons of al-‘Abbās Ibn ‘Abd al-Muṭṭalib on the other.³³⁶ Abū al-‘Abbās Al-Saffāh,³³⁷ nevertheless, was able to check the ambitions of both the ‘Alawiyyīn and the substantial number of Umayyad supporters intent on revitalising the Umayyad cause.

On his death, Al-Saffāh,³³⁸ was succeeded by his brother Abū Ja‘far al-Manṣūr.³³⁹ The latter founded Baghdād as the capital for the ‘Abbāsīds.³⁴⁰ The ‘Abbāsīd line continued until the Mongol defeat in 656AH / 1258AD, when the ‘Abbāsīd Caliphate transferred from Baghdād to Egypt³⁴¹ under the auspices of the Mamlukes.³⁴²

We note with interest that the cultural life in Baghdād thrived despite the political upheaval caused by the Mongol occupation,³⁴³ by the continued presence and activities of such scholars as Ibn al-Sā‘atī³⁴⁴ and his like.

335 ‘Abd Allāh Ibn Muḥammad Ibn ‘Alī Ibn ‘Abd Allāh Ibn al-‘Abbās. Born 95AH / 714AD. Man of letters, a faqīh, historian and astronomer. Acceded to the caliphate 136AH / 754AD. All the ‘Abbāsīd caliphs stem from his family line. Died 158AH / 775AD. See, *Tarīkh al-Ṭabarī*, v9, pp292-322. Also, *al-Kāmil Fī al-Tarīkh*, v5, p172 passim until v6, p6. Also, *Tarīkh Baghdād*, v10, p53. Also, *Fawāt al-Wafiyāt*, v1, p232. Also, *al-A‘lām*, v4, p117. Also, *al-Wuzarā’ Wa al-Kuttāb*, al-Jahshayārī, pp96-140. Also, *al-Nibrās*, Ibn Daḥya, pp24-30. Also, *Duwal al-Islām*, pp93-107.

336 ‘Abbās is the uncle of Muḥammad, died 652AD. The ‘Abbāsīd caliphate hails from this family line. The caliphate ran from 750AD to 1258AD in Baghdād. The ‘Abbāsīd caliphate in Cairo began 1265AD until 1517AD. Last ‘Abbāsīd caliph was al-Mutawakkil III (1466-1543AD). See, *al-Mawsū‘ al-Thaqāfiyya*, Dr Ḥussein Sa‘īd, Cairo, 1972, dār al-Sha‘b, (Franklin Finance, New York), pp650-651.

337 ‘Abd Allāh Ibn Muḥammad Ibn ‘Alī Ibn ‘Abd Allāh Ibn al-‘Abbās Ibn ‘Abd al-Muṭṭalib al-Hāshimī al-Qurashī. Born, 104AH / 722AD., Ḥumaymiyya in al-Sarāt, between Damascus and Medīna. Raised there. Moved to al-Anbār, Iraq, founded the town of al-Hāshimiyya, Iraq, which he made a capital on the assumption of the caliphate. First caliph to introduce the office of minister in Islām. Nicknamed Saffāh because he often executed his opponents. Died, al-Anbār, 136AH / 754AD. See, *Fawāt al-Wafiyāt*, v1, p232. See also, *Tarīkh al-Ṭabarī*, v9, p154. Also, *al-Kāmil Fī al-Tarīkh*, v5, p152. Also, *Tarīkh Baghdād*, v10, p46. Also, *al-A‘lām*, v4, p116. Also, *al-Wuzarā’ Wa al-Kuttāb*, al-Jihshiyārī, pp89-95. Also, *Kitāb Duwal al-Islām*, al-Dhahabī, pp91-93.

338 Ibid.

339 ‘Abd Allāh Ibn Muḥammad Ibn ‘Alī Ibn ‘Abd Allāh Ibn al-‘Abbās. Born, Ḥumaymiyya, 95AH / 714AD. Man of letters, a faqīh and a historian and astronomer. Acceded to the caliphate 136AH / 754AD. All the ‘Abbāsīd caliphs stem from his family line. Died performing the Ḥajj in Mecca, 158AH / 775AD. See, *Tarīkh al-Ṭabarī*, v9, pp292-322. Also, *al-Kāmil Fī al-Tarīkh*, v5, p172 passim until v6, p6. Also, *Tarīkh Baghdād*, v10, p53. Also, *Fawāt al-Wafiyāt*, v1, p232. Also, *al-A‘lām*, v4, p117. Also, *al-Wuzarā’ Wa al-Kuttāb*, al-Jahshayārī, pp96-140. Also, *al-Nibrās*, Ibn Daḥya, pp24-30. Also, *Duwal al-Islām*, pp93-107.

340 See, *Mu‘jam Mā Ista‘jam*, v1, p261. See also, *Ṣūrah al-Ard*, Ibn Ḥawqal, p215. Also, *Tarīkh Baghdād*, v1, pp25-127. Also, *al-Rawḍ al-Mi‘ār*, pp105-112. Also, *al-Kāmil Fī al-Tarīkh*, v9, p330. Also, *Baghdād*, Aḥmad Sūsa, passim.

341 See, *Futūḥ Miṣr*, Ibn ‘Abd al-Ḥakīm, p56. Also, *al-Rawḍ al-Mi‘ār*, pp441-442, p450, pp552-554. Also, *al-Mawsū‘ al-Thaqāfiyya*, Dr Ḥussein Sa‘īd, p750.

342 The Mameluke dynasty founded by ‘Izz al-Dīn Aybak, 648AH/ 1250AD. Ruled over Egypt and Syria until 923AH / 1517AD. See, *al-Mawsū‘ah al-Thaqāfiyya*, p944. See also, *al-Nujūm al-Zāhira*, passim. Also, *Kitāb Duwal al-Islām*, al-Dhahabī, v2, pp153-251.

343 See 495, above. See also, *Tarīkh ‘Ulamā’ al-Mustanṣariyya*, Nājī Ma‘rūf, v1 and 2 passim. Also, *‘Ulamā’ al-Nizāmiyyāt*, Nājī Ma‘rūf, pp21-40.

344 See II.3. Part Three.

V.I Background To The Emergence Of The Main Schools Of Fiqh

The era of the Companions concluded at 107AH / 725AD.³⁴⁵ Some of the first generation of Followers were active during the early ‘Abbāsid period, whereas the era of the second generation of Followers extended approximately from 163AH / 779AD³⁴⁶ to 231AH / 845AD,³⁴⁷ during what we might describe as the early era of ‘Abbāsid rule.

From the activities of this period emerged the leading Mujtahids³⁴⁸ and ‘Ulamā’ in the subjects of Fiqh and Uṣūl al-Fiqh, whose religious principles, one might say, were not compromised by the political developments of the day.

Progress in the development of the science of Uṣūl al-Fiqh continued despite the political fortunes of the Umayyad and early ‘Abbāsid leaders. The fruit of this science (and other sciences) resting on the fate and stemming from the efforts not of one or two men, with regard to the pursuance of *Ijtihād* and research, but to a whole vibrant, intellectual movement that, when fully assessed, will provide us with a clear picture of the history of Uṣūl al-Fiqh during the ‘Abbāsid period.

Several schools of thinking could be recognised during that period, some of them conservative and others more widely deviant from the hitherto prevailing wisdom. These schools can be broadly categorised under the following headings.

a) The Heretic schools These schools were considered to have deviated in their thinking from the true path of the Shaṛī‘ah, introduced unorthodox ideas into Islām, and often distorted the truth. They were said to have interpreted the Qur’ān and Ḥadīth as it suited their doctrines. We mention them briefly only in passing because their role in the history of Uṣūl al-Fiqh was slight.³⁴⁹

b) The Transient schools The leaders of these schools often attained the position of mujtahid and were qualified to issue *fatwas* on the issues which obtained during their

345 The last Companion to die in Mecca was Abū al-Ṭufayl ‘Amir Ibn Wāthilah in 107AH / 725AD. See, *Mashāhīr ‘Ulamā’ al-Amṣār*, p64. Also, *al-Iṣābah*, v4, p113. Also, *Siyar A’lām al-Nubalā’*, v4, p467.

346 Abū al-Hudhayl Ḥuṣayn Ibn ‘Abd al-Raḥmān al-Sulamī. A scholar. See, *Mashāhīr ‘Ulamā’ al-Amṣār*, p179. See also, *al-Jarḥ Wa al-Ta’dīl*, v3, p193. Also, *Tadhkirat al-Ḥuffāz*, v1, p143. Also, *Siyar A’lām al-Nubalā’*, v5, p422. *Mizān al-I’tidāl*, v1, p551.

347 The last of the second generation of Followers was Maṣṣūr Ibn Zādhān, a scholar. Died in Wāsiṭ, Iraq, 231AH / 845AD. See, *Mashāhīr ‘Ulamā’ al-Amṣār*, p279. See also, *Siyar A’lām al-Nubalā’*, v5, p441. Also, *Hilyat al-Awliyā’*, v3, p57. Also, *al-Tahdhīb*, v10, p306. Also, *al-Thuqāt*, p440.

348 The four celebrated Imāms. See, 375, 481, 520, 572, below.

349 *Al-Farq Bayna al-Firaq*, ‘Abd al-Qāhir al-Baghḍādī. *Al-Tanbīh Wa al-Radd*, Abū al-Hussein al-Malī. *Al-Milal Wa al-Niḥal*, al-Shihristānī. *Maqālāt al-Islāmiyyīn*, al-Ash‘arī. *Minhāj al-Sunnah*, Ibn Taymiyya. *Al-Faṣal Fī al-Milal Wa al-Ahwā’ Wa al-Niḥal*, Ibn Ḥazm.

time. They had their adherents but these tended to stray away with the passing of time, often switching to another school with an equally transitory existence. A good example (in Umayyad times) is the school of Ḥassan al-Baṣrī.³⁵⁰ The schools active during the ‘Abbāsid era include the following:

- 1) The school of ‘Abd Allāh Ibn Shubrumah.³⁵¹
- 2) The school of ‘Abd al-Raḥmān al-Awzā’ī,³⁵² whose influence extended from Syria to north Africa and Andalus.
- 3) The school of al-Layth Ibn Sa’d,³⁵³ active in Egypt.
- 4) The school of Sufyān al-Thawrī³⁵⁴ active in Iraq and north Africa.
- 5) The school of Sufyān Ibn ‘Uyaynah in Mecca.³⁵⁵
- 6) The school of Abū Thawr in Iraq.³⁵⁶
- 7) The school of Ibn Rāhawayh in Khorāsān.³⁵⁷
- 8) The school of Dāwūd al-Zāhirī in the Maghreb and Iraq.³⁵⁸ He was influenced by the

350 See 279, above.

351 Abū Shubrumah al-Ḍabbī. Born, 72AH / 691AD, a leading faqīh in Kūfa. A second generation Follower, a contemporary of Abū Ḥanīfa. Died, 144AH / 761AD. See, *Ṭabaqāt al-Fuqahā’*, al-Shīrāzī, p84. See also, *Mizān al-I’tidāl*, v2, p438. Also, *al-Jarḥ Wa al-Ta’dīl*, v5, p82. Also, *al-Tarīkh al-Ṣaghīr*, al-Bukhārī, v2, pp77-78. Also, *Tarīkh al-Kabīr*, al-Bukhārī, v3, p117. Also, *Siyar A’lām al-Nubalā’*, v6, pp347-349. Also, *Tarīkh al-Thuqāt*, p259. Also, *al-Tahdhīb*, v5, p250. Also, *al-Kāmil Fī al-Tarīkh*, v5, p228. Also, *Mashāhīr ‘Ulamā’ al-Amṣār*, p265.

352 See 356, below.

353 Abū al-Ḥarith al-Layth Ibn Sa’d Ibn ‘Abd al-Raḥmān al-Faḥmī. Born, 94AH / 713AD. A leading scholar of Egypt. Died 175AH / 791AD. See, *al-Raḥmah al-Ghaythiyya Fī al-Turjamah al-laythiyya*, Ibn Ḥajar al-Askalānī, passim. See also, *Wafiyāt al-A’yān*, v1, p438. Also, *Tadhkirat al-Ḥuffāz*, v1, p207. Also, *Mizān al-I’tidāl*, v2, p361. Also, *Ḥiliyat al-Awliyā’*, v7, p318. Also, *Tarīkh Baghdād*, v13, p3. Also, *Ṭabaqāt al-Fuqahā’*, al-Shīrāzī, p8. Also, *al-A’lām*, v5, p248.

354 Sufyān Ibn Sa’id Ibn Masrūq al-Thawrī. Born 97AH / 716AD. Died 161AH / 778AD. A Ḥadīth and Fiqh specialist. See, *Wafiyāt al-A’yān*, v1, p210. Also, *Ṭabaqāt Ibn Sa’d*, v6, p257. Also, *Tarīkh Baghdād*, v9, p151. Also, *al-Jawāhir al-Muḍiyya*, v1, p250. Also, *Ikhtilāf al-Fuqahā’*, al-Ṭabarī, p16.

355 Sufyān Ibn ‘Uyaynah Ibn Maymūn al-Hilāfi, born 107AH / 725AD. A muḥadith, interpreter of the Qur’ān and faqīh. A second generation Follower. Died, 196AH / 812AD. See, *Mashāhīr ‘Ulamā’ al-Amṣār*, p235. Also, *Ḥiliyat al-Awliyā’*, v7, pp270-318. Also, *Mizān al-I’tidāl*, v2, p170. Also, *Kashf al-Zunūn*, p439. Also, *Idāh al-Maknūn*, 303. Also, *al-Jarḥ Wa al-Ta’dīl*, v1, p32, p54; v4, p225. Also, *Siyar A’lām al-Nubalā’*, v8, p454. Also, *Tarīkh Baghdād*, v9, p174. Also, *Ṣifat al-Ṣafwa*, v2, p130. Also, *Wafiyāt al-A’yān*, v2, pp391-393.

356 Ibrāhīm Ibn Khālīd Ibn al-Yamān al-Kalbī al-Baghdādī, born 170AH / 786AD. A leading faqīh of his day and muḥadith. A combination of the school of Ḥadīth and the school of Opinion. Followed same doctrine as Ḥanafis. The influence of his school petered out during the 4th century Hijrah. Borrowed ideas from Shāfi’ī. Died 240AH / 854AD. See, *Ikhtilāf al-Fuqahā’*, al-Ṭabarī, p16. Also, *Tarīkh Baghdād*, v6, pp65-69. Also, *Lisān al-Mizān*, v1, p53. Also, *Wafiyāt al-A’yān*, v1, pp3-4. Also, *Tadhkirat al-Ḥuffāz*, v2, p87. Also, *Ṭabaqāt al-Shāfi’iyya*, Ibn Qāḍī Shahbah, v1, pp55-56. Also, *Ṭabaqāt al-Shāfi’iyya*, al-Shīrāzī, p75. Also, *Ṭabaqāt al-Shāfi’iyya*, al-Subkī, v1, pp227-231. Also, *Ṭabaqāt al-Shāfi’iyya*, Ibn Hidāyat, p5. Also, *al-A’lām*, v1, p37. Also, *Mu’jam al-Mu’allifin*, v1, p24.

357 Ishāq Ibn Ibrāhīm Ibn Mukhallad Ibn Ibrāhīm al-Ḥanzalī al-Tamīmi A muḥadith, Qur’ān interpreter and a faqīh. Died 238AH / 853AD. See, *Ṭabaqāt al-Fuqahā’*, al-Shīrāzī, p94. Also, *Kashf al-Zunūn*, p442, p1678, 1685. Also, *Mizān al-I’tidāl*, v1, pp85-86. Also, *Ḥiliyat al-Awliyā’*, v9, pp234-238. Also, *Ṭabaqāt al-Ḥanābilah*, p68. Also, *Tarīkh Baghdād*, v6, p345. Also, *al-A’lām*, v1, p292. Also, *Mu’jam al-Mu’allifin*, v1, p339.

358 Dāwūd Ibn ‘Alī Ibn Khallāf al-Aṣṣahānī, born 201AH / 816AD. Died, 270AH / 884AD. See, *Tarīkh Baghdād*, v8, p369. See also, *Tadhkirat al-Ḥuffāz*, v2, p136. Also, *Lisān al-Mizān*, v2, p422. Also, *al-Jawāhir al-*

Shāfi'ite school. He refuted the use of Qiyās in the derivation of rules, as he did *Ta'wīl* (interpretation) and *ra'y*. He accepted only the literal meaning of the Qur'ān and the Ḥadīth. Hence the appellation of his followers as the *Zāhiriyya*. (Adherents of Phenomenalism). Their bible is *Kitāb al-Iḥkām Fī Uṣūl al-Aḥkām*³⁵⁹ by Ibn Ḥazm.³⁶⁰ The influence of this school spread to Andalusia.

9) The school of Ṭabarī in Iraq.³⁶¹ Influence of this school lasted until the 5th century Hijrah.

These schools, which lacked organization and influence with the governments of the day, proved transitory in effect through their inability to attract good students, who on the whole leaned towards the four established schools of law.³⁶²

c) The Prevailing schools These number four and their adherents were to be found scattered throughout the Islamic world. They adhered to and followed the true path of the Sunnah, deriving (the principles of) Uṣūl al-Fiqh from the Qur'ān and the Sunnah of the Prophet. Then they derived Ijmā' from the Qur'ān and the Sunnah, from which they also derived Qiyās. These four schools are:

V.2 The Ḥanafite School Of Law

This school was called after Abū Ḥanīfa al-Nu'mān Ibn Thābit al-Kābuḍī,³⁶³ who was

Muḍiyya, v2, p419. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shāhbah, v1, pp77-78. Also, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v2, p42. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p76. Also, *Mizān al-I'tidāl*, v1, p321. Also, *Kashf al-Zunūn*, p1839. Also, *Mu'jam al-Mu'allifīn*, v1, p700. Also, *al-A'lām*, v2, p333.

359 Published in Cairo, 1348AH / 1926AD. 2nd Ed, Cairo, 1947; 3rd Ed, 1970. See, *Dhakhā'ir al-Turāth al-'Arabī*, 'Abd al-Jabbār, v1, p94.

360 'Alī Ibn 'Ahmad Ibn Sa'īd Ibn Ḥazm al-Andalusī, born 384AH/ 994AD. A man of letters, a jurisprudent, a muḥadith, a scholastic theologian, logician and philosopher. Died 456AH/ 1064AD. His published works include, '*al-Uṣūl Wa al-Farū'*', '*al-Taqrīb Li- Ḥadd al-Munṭaq'*', '*Mullakhas Ibṭāl al-Qiyās Wa al-Ra'y Wa al-Istiḥsān Wa al-Taqlīd Wa al-Ta'īl*'. '*Risālat al-Jamī'*' Fī Uṣūl al-Islām', '*al-Fuṣal Fī al-Milal Wa al-Ahwā'*' Wa al-Niḥal'. '*al-Nāsikh Wa al-Mansūkh*', '*Marātib al-Ijmā'*', '*al-Nubadh Fī Uṣūl al-Fiqh al-Zāhiri'*', '*Manzūmit Ibn Ḥazm Fī Qawā'id al-Fiqh al-Zāhiri'*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v1, pp94-98. Also, *Mu'jam al-Maṭbū'āt al-'Arabiyya*, Sirkīs, v1, pp85-86. Also, *Kashf al-Zunūn*, passim. Also, *Idāḥ al-Maknūn*, al-Baghdādī, v1, p319, 356; v2, passim. Also, *Lisān al-Mizān*, v4, pp198-202. Also, *Nafḥ al-Ṭīb*, v6, pp202-222. Also, *Mu'jam al-Mu'allifīn*, v2, pp393-394. Also, *al-A'lām*, v4, pp254-255.

361 Abū Ja'far Muḥammad Ibn Ja'fir Ibn Yazīd al-Ṭabarī. Born 224AH / 839AD. Travelled to Baghdād. Historian, interpreter of the Qur'ān, muḥadith, jurist and mujtahid. Died, 310AH / 923AD, Baghdād. See, *Tarīkh Baghdād*, v2, pp162-169. Also, *al-Muntaẓum*, Ibn al-Jawzī, v6, pp170-172. Also, *Kashf al-Zunūn*, passim. Also, *Idāḥ al-Maknūn*, v2, p318, p352. Also, *Hadiyat al-'Arifīn*, v2, pp26-27. Also, *Lisān al-Mizān*, v5, pp100-103. Also, *Ṭabaqāt al-Qurrā'*, Ibn al-Jazrī, v2, pp106-108. Also, *Ṭabaqāt al-Mufasssīrīn*, al-Sayūfī, pp30-31. Also, *al-Wāfi Bi-al-Wafiyāt*, al-Ṣufadī, v2, pp284-287. Also, *al-A'lām*, v6, p69. Also, *Mu'jam al-Mu'allifīn*, v3, pp190-191.

362 See, *al-Madkhal li al-Fiqh al-Islāmī*, Dr 'Abd Allāh al-Dar'an pp131-132.

363 There is a dispute about the origin of Abū Ḥanīfa. Ṭash Kubrī Zada says he hails from either Bābal or Kābul. Another source says that he hails from the Banū Shaybān, an Arab tribe. Another source says that he hails from the Anṣār, Medīna. Another has it that he hails from a line of Persian kings. Another, that he hails from the Banū Taym, Kūfa. See, *Miftāḥ al-Sa'adah*, v2, p180.

born in Kūfa 80AH / 699AD during the Umayyad caliphate and died in Baghdād 150AH / 767AD during the ‘Abbāsīd caliphate. Abū Ḥanīfa was a pious man, not given to materialism or greed for positions of power, and above all was devoted to learning and peace. He rejected a number of positions offered by various caliphs.

He studied Uṣūl al-Fiqh and Ḥadīth under Ḥammād Ibn (Muslim) Abī Sulayman al-Ash‘arī,³⁶⁴ the muftī of Kūfa.³⁶⁵ On the latter's death this office passed down to Abū Ḥanīfa. Abū Ḥanīfa absorbed the knowledge of ‘Umar Ibn al-Khaṭṭāb³⁶⁶ through the teachings of Ḥammād³⁶⁷ who himself studied under the renowned Ibrāhīm al-Nakh‘ī³⁶⁸ who in turn studied under the Companion ‘Umar Ibn al-Khaṭṭāb.³⁶⁹ Likewise Abū Ḥanīfa absorbed the knowledge of Islamic sciences from ‘Alī,³⁷⁰ via the latter's student Nāfi³⁷¹ as he studied the teaching of ‘Abd Allāh Ibn ‘Abbās³⁷² through the latter's student, ‘Ikrimah.³⁷³ This process of learning necessitated for Abū Ḥanīfa constant travel between Syria, Iraq and Arabia.³⁷⁴

Historians recorded that Abū Ḥanīfa³⁷⁵ excelled in the Qur’ānic sciences and the Ḥadīth,³⁷⁶ compiled a musnad,³⁷⁷ and mastered scholastic theology³⁷⁸ before embarking on a study of Fiqh and its principles.

The origins of the Ḥanafite school of law are rooted in the activities of Muḥammad Ibn al-

364 Client of Abū Mūsā al-Ash‘arī, one of the Followers. A leading faqīh of his day. Muḥadith. Died 120AH / 737AD. See, *Mashāhīr ‘Ulamā’ al-Amṣār*, p178. Also, *Tarīkh Asmā’ al-Thiqāt*, p100. Also, *al-Tarīkh al-Kabīr*, al-Bukhārī v2/1/p18. Also, *al-Jarḥ Wa al-Ta’dīl*, v3, p146. Also, *Siyar A’lām al-Nubalā’*, v5, p234. Also, *Ma’rifat al-Thiqāt*, v1, p320. Also, *al-‘Ibr*, al-Dhahabī, v1, p151.

365 See 196, above.

366 See, III.2 Jurisprudence During The Era Of ‘Umar Ibn al-Khaṭṭāb, above.

367 See 364, above.

368 See 237, above.

369 See chapter III. 2. above.

370 See chapter III. 4. above.

371 Nāfi’ Ibn Mālīk Ibn Abī ‘Āmr al-Aṣbaḥī, known as Abū Sahl. One of the Followers. Faqīh and muḥadith. Died, Medīna, 119AH / 737AD. See, *Mashāhīr ‘Ulamā’ al-Amṣār*, p129. Also, *Tarīkh Asmā’ al-Thiqāt*, p323. Also, *Siyar A’lām al-Nubalā’*, v5, p95. Also, *Ma’rifat al-Thiqāt*, v2, p310. Also, *al-Tahdhīb*, v10, p411. Also, *Al-A’lām*, v8, p5.

372 See 88, above.

373 See 264, above.

374 See, *Miftāḥ al-Sa’ādah*, v2, pp189-193.

375 He was contemporary with four leading Companions, namely Anas Ibn Mālīk, died 93AH, ‘Abd Allāh Ibn Awfā Ibn ‘Alqamah Ibn Qays Ibn Khālīd, died 87AH, Sahl Ibn Sa’d al-Sa’īdī, died 91AH, Abū al-Ṭufayl ‘Āmir Ibn Wāthilah, died 107AH. See, *Miftāḥ al-Sa’ādah*, v2, pp175-178.

376 See, *Miftāḥ al-Sa’ādah*, v2, p192.

377 Published in Lucknow, India 1316AH / 1898AD. 2nd ed, Lahore, 1889AD. 3rd ed, Cairo, 1327AH / 1909AD. 4th ed, Hyderabad, 1332AH / 1913AD. 5th ed, Aleppo, 1962AD. Commentaries on the Musnad by ‘Alī al-Qārī al-Hurawī, pub in Lahore, 1312AH / 1894AD. Commentary by Muḥammad Ibn Ḥassan al-Lecknawī, pub India, 1309-1312AH / 1891-1894AD.

378 See, *al-Fiqh al-Akbar*, pub India, Lucknow, 1260AH / 1844AD. 2nd ed New Delhi, 1289AH / 1872AD. 3rd pub Cairo, 1905AD. 4th ed Vienna, German trans, 1915. 6th ed, Ḥamāt, Syria, 1972. 7th ed, Beirut, 1976. See also, *al-‘Ālim Wa Mu’alim*, pub Cairo, 1368AH / 1949. 2nd ed, Hyderabad, 1349AH / 1930. 3rd Aleppo, 1972. Also, *Waṣīyyat Abū Ḥanīfa*, pub Hyderabad, undated. 2nd ed, Alexandria, 1892.

Ḥanifiyya³⁷⁹ who founded a circle for the study of Uṣūl al-Fiqh in Madīna. A neutral, he refused to participate in the internecine Muslim strife.

It is claimed by the Mu'tazilah³⁸⁰ that the two sons of Muḥammad Ibn al-Ḥanifiyya, Abū Ḥāshim³⁸¹ and al-Ḥasan,³⁸² the former in particular, created the doctrine of secession (*I'tizāl*) later reputedly adopted by Wāṣil Ibn 'Atā'.³⁸³ In turn the Shī'ah claimed that Muḥammad Ibn al-Ḥanifiyya³⁸⁴ founded the Kaysāniyya³⁸⁵ and the Mukhtāriyya.³⁸⁶ Furthermore it is said, by the Mu'tazilah again, that al-Ḥasan³⁸⁷ founded the Murj'ites³⁸⁸ and that his favourite student was a certain Ghaylān al-Dimashqī.³⁸⁹ Finally, the Jahmiyya,³⁹⁰ another sect that deviated from the Sunnah, claimed that Ma'bad al-Juhānī³⁹¹ a Qadarite,³⁹² (as opposed to being a Murji'ite)³⁹³ was a pupil of Muḥammad

379 Muḥammad Ibn 'Aḥī Ibn Abī Ṭālib. Born in Medīna, 21AH / 642AD. His mother, Khawla, was the daughter of Ja'far al-Ḥanafi. A renowned scholar. The Kaysāniyya, a Shi'ite sect, believe he never died. Some Shi'ites believe him to be the Mahdī. Died, 81AH / 700AD, and buried in Medīna. See, *Mashāhīr 'Ulamā' al-Amṣār*, p103. See also, *Tarīkh al-Thuqāt*, p410. Also, *Ma'rifa al-Thuqāt*, al-'Ujfi, v2, p249. Also, *Ṣifat al-Ṣafwa*, v2, p42. Also, *Wafiyāt al-A'yān*, v1, p449. Also, *Hilyat al-Awliyā'*, v3, p174. Also, *Ṭabaqāt Ibn Sa'd*, v5, p66. *Siyar A'lām al-Nubalā'*, v4, pp110-129. Also, *Nasab Quraysh*, p41

380 See, *al-Munya*, Ibn al-Murtaḍā p11. see also, *Furaq al-Mu'tazilah*, 'Abd al-Jabbār, p11. Also, *Nash'at al-Fikr al-Falsafī Fī al-Islām*, al-Nashār, v1, p230.

381 'Abd Allāh Ibn Muḥammad Ibn 'Aḥī Ibn Abī Ṭālib. Died, 98AH / 716AD. See, *Siyar A'lām al-Nubalā'*, v4, pp129-130. See also, *Ṭabaqāt Ibn Sa'd*, v5, p327. Also, *al-Jarḥ Wa al-Ta'dīl*, v2, section 2, p155. Also, *Tahdhīb al-Kamāl*, p838. Also, *Tahdhīb al-Tahdhīb*, v6, p16. Also, *Muwaṭṭa' Mālik*, v2, p542.

382 Al-Ḥasan Ibn Muḥammad Ibn 'Aḥī Ibn Abī Ṭālib. Scholar from the Ahl al-Bayt in Fiqh and Ḥadīth. Accepted by the Ahl al-Sunnah. Died, 100AH / 718AD. See, *Siyar A'lām al-Nubalā'*, v4, pp130-131. See also, *Ṭabaqāt Ibn Sa'd*, v5, p328. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p63. Also, *al-Jarḥ Wa al-Ta'dīl*, v1, section 2, p35. Also, *Tahdhīb al-Tahdhīb*, v2, p320. Also, *al-'Ibr*, al-Dhahabī, v1, p122. Also, *al-Ma'ārif*, Ibn Qutayba, p126.

383 Born 80AH / 699AD. Died, 131AH / 748AD.. Became a theologian, poet and advocated unorthodox ideas. He founded the heretic group al-Wāṣiliyya. See, *Hadiyat al-'Arifin*, v2, p499. Also, *Mu'jam al-Udabā'*, v19, pp243-247. Also, *Mizān al-I'tidāl*, v3, p267. Also, *Lisān al-Mizān*, v6, pp214-215. Also, *Mu'jam al-Mu'allifin*, v4, p69.

384 See 379, above.

385 A group of Rawāfiḍ who considered the caliphates of Abū Bakr, 'Umar and 'Uthmān null and void, but not that of 'Aḥī. Consists of 11 factions, all of whom disagree with each other as to the true successor to 'Aḥī. See, *Maqālāt al-Islāmiyyīn*, pp18-23.

386 They believe that al-Mukhtār Ibn Abī 'Ubayd is a prophet, and believe in incarnation and the transmigration of souls. See, *al-Farq Bayna al-Furaq*, p38. See also, *al-Milal Wa Niḥal*, v1, pp147-150. Also, *al-Tanbīh Wa al-Radd*, al-Malī, pp34-35.

387 See 382, above.

388 See, *Fajr al-Islām*, Aḥmad Amīn, pp279-282. Also, *Nash'at al-Fikr al-Falsafī Fī al-Islām*, al-Nashār, v1, pp230-231.

389 Ghaylān Ibn Muslim al-Dimashqī. Executed in Damascus, after 105AH / 723AD.

See, *Maqālāt al-Islāmiyyīn*, al-Ash'arī, pp136-137. See also, *al-Milal Wa al-Niḥal*, v1, p227. Also, *Lisān al-Mizān*, v4, p424. Also, *al-A'lām*, v5, p124.

390 Founded by Jahm Ibn Safwān al-Samarkandī. Executed 128AH / 745AD. Did not believe in Paradise and Hell. See, *Maqālāt al-Islāmiyyīn*, al-Ash'arī, pp279-280. Also, *al-Farq Bayn al-Furaq*, pp199-200. Also, *al-Faṣl Fī Milal Wa al-Niḥal*, v4, pp204-205. Also, *Talbīs Iblīs*, Ibn al-Jawzī, p88. Also, *Mizān al-I'tidāl*, v1, p197. Also, *Lisān al-Mizān*, v2, p142. Also, *al-A'lām*, v2, p141.

391 Ma'bad Ibn 'Abd Allāh Ibn 'Ulaym al-Juhānī al-Baṣrī. First Qadarite in Baṣrah.

Executed 80AH / 699AD. See, *Mizān al-I'tidāl*, v3, p183. See also, *Tahdhīb al-Tahdhīb*, v10, p225. Also, *al-A'lām*, v7, p264.

392 A theological school of early Islām asserting man's free will. See, *al-Ta'rīfāt*, p174. See also, *Maqālāt al-*

Ibn al-Ḥanafiyya.³⁹⁴

I am of the opinion, however, that Muḥammad Ibn al-Ḥanafiyya³⁹⁵ and his two sons³⁹⁶ were not heretics, as has been suggested, but upright, orthodox muslims who never, in their thinking, deviated from the path of the Sunnah, and that such claims, as described above, were propaganda in the hands of the Mu'tazilah³⁹⁷ and the Shī'ah.³⁹⁸

The school of law established by Muḥammad Ibn al-Ḥanafiyya³⁹⁹ was to faithfully adhere to four sources of Uṣūl al-Fiqh, the Qur'ān, the Sunnah, Ijmā' and Qiyās,⁴⁰⁰ where the implementation of the sacred law of Islām was concerned.

Abū Ḥanīfa⁴⁰¹ used the basis created by Muḥammad Ibn al-Ḥanafiyya⁴⁰² as a springboard for the establishment of his own school of law, the Ḥanafites, in which opinion (*Ra'y*) formed a basic part of their doctrine.

Namely that reason (*'aql*) in Islām functions alongside the Qur'ān and the Ḥadīth in the derivation of Sharī'ah rules, but with the *Naṣṣ* taking precedence.⁴⁰³ Or, to be more precise, they agreed on the necessity of having recourse to reason whenever a matter occurs for which there is no specific ruling in the source texts.

V.2.i Development Of Uṣūl al-Fiqh Under The Ḥanafites

Abū Ḥanīfa,⁴⁰⁴ who founded the first school of scholastic theology in the Sunnī mould in Iraq,⁴⁰⁵ described scholastic theology in his book, 'Al-Fiqh al-Akbar'.⁴⁰⁶ On Abū Ḥanīfa's death the development of the school was continued by Abū al-Ḥassan al-Ash'arī⁴⁰⁷ and Abū Manṣūr al-Māturīdī.⁴⁰⁸

Islāmiyyīn, al-Ash'arī, p126., p430, p477, 549. Also, *Nash'at al-Fikr al-Islāmī*, al-Nashār, v1, pp231-233.

393 See 388, above.

394 See 379, above.

395 Ibid.

396 See 381 and 382, above.

397 See 380, above.

398 See 227 and 228, above.

399 See 379, above.

400 'Alī Ibn Abī Ṭālib, an advocate of Qiyās, who made an analogy between drunkenness and slander, thus forbidding both.

401 See 363, above.

402 See 379, above. Also, *Nash'at al-Fikr al-Falsafī*, al-Nashār, v1, p234.

403 See, *Bayān Muwāfaqat Ṣaḥīḥ al-Manqūl Li-Ṣarīḥ al-Ma'qūl*, Ibn Taymiyya, pub Cairo, 1370AH / 1950, passim.

404 See 336, above.

405 See *Nash'at al-Fikr al-Falsafī Fī al-Islām*, al-Nashār, v1, p234.

406 See 378, above.

407 Abū al-Ḥassan 'Alī Ibn Ismā'īl al-Ash'arī al-Baṣrī. Born 270AH / 883AD. Opposed the Mu'tazilah, Shī'ah, the Khawārij and other heretic groups. Died 330AH / 947AD. His published works include, '*al-Ibānah 'An Uṣūl al-Diyyānah*', '*Risālah Fī Istiḥsān al-Khawḍ Fī 'Ilm al-Kalām*', '*al-Luma' Fī al-Radd 'Alā Ahl al-Zaygh Wa al-Bid'*', '*Maqālāt al-Islāmiyyīn*'. See, *Maqālāt al-Islāmiyyīn*. See also, *Tarīkh Baghdād*, v11, pp346-347. See also,

In 'Al-Fiqh al-Akbar'⁴⁰⁹ Abū Ḥanīfa, by way of explanation of the nature of Islamic theology, refuted the unorthodox ideas of the heretical sects. He was the first mutakallim (theologian) to emerge from the Ahl al-Sunnah, and the first to discuss the Muslim faith⁴¹⁰ within a philosophical context.

In 'Al-Fiqh al-Akbar' Abū Ḥanīfa remarked that faith is knowledge and confirmation of Allāh, His holy books, His messengers and their sayings and acts without reservation, a faith which neither exceeds its remit or falls short of it.⁴¹¹ The author makes clear in his work the differences between the true faith of the Ahl al-Sunnah and that of the Mu'tazilah, the Shī'ah and the Khawārij.⁴¹²

We can find other ideas on scholastic theology expressed by Abū Ḥanīfa in 'al-ʿĀlim Wa al-Mutʿalim'⁴¹³ Elsewhere he provided us with his Sunnī orthodox credentials by once again attacking the heretic sects, accusing Jahm Ibn Ṣafwān⁴¹⁴ of denying the characteristics (*ṣifāt*) of Allāh and Muqātil Ibn Sulaymān⁴¹⁵ of the blatant anthropomorphization of Allāh. He also disassociated himself from the Murji'ites⁴¹⁶ in a letter of counsel⁴¹⁷ to 'Uthmān al-Bittī.⁴¹⁸

It is worth noting here that Abū Ḥanīfa mastered the science of scholastic theology before that of Uṣūl al-Fiqh, the latter deriving not only from Arabic linguistics and the Sharī'ah

Kashf al-Zunūn, p208, 440, 838. Also, *Idāḥ al-Maknūn*, v1, passim. Also, *Hadiyat al-ʿĀrifīn*, v, pp676-678. Also, *Tabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shahbah, v1, pp113-114. Also, *Tabaqāt al-Shāfi'iyya*, al-Subkī, v2, p245. Also, *al-Jawāhir al-Muḍiyya*, v1, p353. *Miftāḥ al-Sa'adah*, v1, p229, p390; v2, passim.

408 Muḥammad Ibn Muḥammad Ibn Maḥmūd al-Māturīdī. A Sunnī apologist who fought the heretic groups. Died 333AH / 944AD. His published works include, *Ta'wīlāt Ahl al-Sunnah*, *'al-Tawhīd*, *'Sharḥ al-Fiqh al-Akbar*. See, *Dhakhā'ir al-Turāth al-ʿArabī al-Islāmī*, v2, p802. See also, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-ʿĀrifīn*, v2, pp36-37. Also, *al-Jawāhir al-Muḍiyya*, v2, pp130-136. Also, *Tāj al-Tarājum*, pp43-44. Also, *Miftāḥ al-Sa'adah*, v2, p86, 133, 256, 530. Also, *Mu'jam al-Mu'allifīn*, v3, p692.

409 See 378, above.

410 See, *Nash'at al-Fikr al-Falsafī Fī al-Islām*, al-Nashār, v1, p242.

411 See, *al-Farq Bayna al-Furaq*, al-Baghdādī, p123.

412 See 168, above.

413 See 378, above.

414 See 390, above.

415 Muqātil Ibn Sulaymān Ibn Bashīr al-Azaḍī (the client). Died 150AH / 767AD. Noted for his study of 'Ilm al-Kalām directed against the Ahl al-Sunnah. See, *Maqālāt al-Islāmiyyīn*, pp152-153. See, *Mizān al-I'tidāl*, v2, pp499-500. See also, *Tahdhīb al-Tahdhīb*, v10, pp279-285. Also, *Kashf al-Zunūn*, p459, 1469, 2001. Also, *Miftāḥ al-Sa'adah*, v2, pp58-59, 354-377; v3, p138. Also, *al-Jarḥ wa al-Ta'dīl* v4/1, p354.

416 See 388, above.

417 See, *Waṣiyyat Abū Ḥanīfa*, passim, pub Hyderabad. 2nd Egypt, 1892. 3rd ed, Cairo, 1368AH., Edited by Sheikh al-Islām Muḥammad Zāhid al-Kawtharī.

418 The most outstanding faqīh of Baṣrah during his day. Hails from Kūfa. Collected Ḥadīth from Anas Ibn Mālīk, al-Sha'bī and Shu'bah. A muḥadith of the first degree. From the Ahl al-Ra'y. See, *Siyar A'lām al-Nubalā*, v6, pp148-149. Also, *Mizān al-I'tidāl*, v3, pp456-457. Also, *Tarīkh Asmā' al-Thiqāt*, p203. Also, *Tabaqāt Ibn Sa'd*, v7, p21. Also, *Al-Jarḥ Wa al-Ta'dīl*, v6, p145. Also, *Tahdhīb al-Tahdhīb*, v7, pp153-154. Also, *Tahdhīb al-Kamāl*, p925.

rules but also from scholastic theology itself.⁴¹⁹

The system of Abū Ḥanīfa in the study of Uṣūl al-Fiqh followed the orthodox Sunnī path by first inferring a legal rule from the Qur'ān and then the Sunnah. If that failed, he resorted to the Ijmā' of the Companions. If he couldnot infer a legal rule from that, he chose the proponderant opinion amongst the Companions. Afterwards he resorted to Qiyās, then *Maṣlahah*, then Sadd al-Dharā'i' (blocking the means to evil).

At other times Abū Ḥanīfa would infer a legal rule from Qiyās but if that failed he resorted to *Istiḥsān* (application of discretion in a legal decision), which was often challenged by his followers who produced Qiyās of their own on the same issue. To this Abū Ḥanīfa would reply by invoking *Istiḥsān*, in which he was unrivalled, so as to conclude the issue in his favour.⁴²⁰

One important development in Abū Ḥanīfa's treatment of the Uṣūl al-Fiqh was his tendency to posit hypothetical issues or problems (some 300, 000 it is said, 38,000 of which concerns the matter of acts of devotion, the remainder with everyday transactions)⁴²¹ and foresee legal solutions before these issues actually materialized to the detriment or the puzzlement of the Muslim.⁴²² This practice was undertaken by all the Ḥanafite mujtahids. Abū Ḥanīfa was adverse to devising and employing a legal stratagem to release a petitioner from the dilemma of a rashly undertaken oath.⁴²³

Thus we have a clear picture of the establishment of the Ḥanafite school of Law and an insight into the motives of Abū Ḥanīfa for doing so. Namely, that he might render simple the life of the Muslim with regard to the performance of both religious and worldly acts of devotion, protect the weak and the poor and correct the possible deviations of the strong and the rich, and finally respect the freedom of mankind within the context of the Islamic State administered by the Caliph.

V.2.ii The Development Of The Ḥanafite School Of Law

The development of the Ḥanafite school of law continued after the death of it's founder Abū Ḥanīfa (D150AH / 769AD) under the guidance of the school's adherents who used, for their studies, the basis laid down by Abū Ḥanīfa, and which were undertaken according to the methodology adopted by the Fuqahā', as opposed to that adopted by the Mutakallimīn.⁴²⁴ This basis is well adumbrated in Abū Ḥanīfa's work, 'Kitāb al-Ra'y'.⁴²⁵

419 *Al-Iḥkām*, Āmidī, v1, p9.

420 See, *Manāqib Abū Ḥanīfa*, al-Muwaffaq al-Makkī, v1, p82.

421 *Miftāḥ al-Sa'ādah*, v2, p181.

422 *Al-Khayrāt al-Ḥisān*, Ibn Ḥajar al-Haythamī, p52.

423 See, *I'lām al-Muwaqī'īn*, Ibn Qayyim al-Jawziyya, v4, pp2-42.

424 See chapter v.4 part one below.

425 See, *Uṣūl al-Sirakhsī*, v1, p3.

The students who pursued Abū Ḥanīfa's objectives pertaining to the study of Uṣūl al-Fiqh, include Abū Yūsef Ya'qūb Ibn Ibrāhīm al-Anṣārī⁴²⁶ and Muḥammad Ibn al-Ḥasan al-Shaybānī.⁴²⁷

These were followed by Abū Maṣṣūr al-Māṭirīdī⁴²⁸ who composed a work on Uṣūl al-Fiqh entitled, 'Ma'ākhidh al-Sharā'ī', Abū al-Ḥasan 'Ubayd Allāh Ibn Ḥuseyn al-Karkhī⁴²⁹ who composed a work entitled, 'Uṣūl',⁴³⁰ Al-Karkhī's pupil, Abū Bakr Aḥmad Ibn 'Alī al-Jaṣṣāṣ,⁴³¹ who also composed a work entitled, "Uṣūl",⁴³² Abū Zayd al-Dabūsī,⁴³³ with his two works entitled, 'Taqwīm al-Adillah',⁴³⁴ 'Ta'sīs al-Naẓr',⁴³⁵ and last but not least al-Bazdawī⁴³⁶ with his definitive work, 'Uṣūl'.⁴³⁷ Al-Sirkhasī⁴³⁸ also

426 Ya'qūb Ibn Ibrāhīm Ibn Ḥabīb al-Anṣārī. Born 113AH / 731AD. A pupil of Abū Ḥanīfa, became mujtahid and muḥadith and ḥāfiẓ, faqīh and jurist, mufassar. Became a judge in Baghdād to three 'Abbāsīd caliphs, al-Mahdī, al-Hādī and Hārūn al-Rashīd. Became a chief judge. Died 182AH / 798AD. His published works include, '*Kitāb al-Kharāj*', '*al-Āthār*', '*al-Radd 'Ala Siyar al-Awzā'ī*', '*Ikhtilāf Abū Ḥanīfa Wa Ibn Abū Layla*', '*Abwāb Mukhtāra*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, Abd al-Jabbār, v1, p319. See also, *al-Jawāhir al-Muḍiyya*, v2, p220. Also, *Tarīkh Baghdād*, v14, pp42-262. Also, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-'Arifin*, v2, p536. Also, *al-Fawā'id al-Bahiyya*, p225. Also, *Tājj al-Tarājum*, p60. Also, *Mu'jam al-Mu'allifin*, v4, pp122-123.

427 Muḥammad Ibn al-Ḥasan Ibn Firqad al-Shaybānī. Born 131AH / 748AD, a pupil of Abū Ḥanīfa. Excelled in Fiqh, Ḥadīth and Jurisprudence. Appointed judge by Hārūn al-Rashīd in al-Raqqah, Syria. Died 189AH / 804AD. See, *Bulūgh al-Amānī*, Muḥammad Zāhid al-Kawthārī, passim. See also, *Tarīkh Baghdād*, v2, pp172-182. Also, *Kashf al-Zunūn*, passim. Also, *Idāḥ al-Maknūn*, v1, p115. Also, *Hadiyat al-'Arifin*, v2, p8. Also, *al-Fawā'id al-Bahiyya*, p163. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p114. Also, *Jawāhir al-Muḍiyya*, v2, pp42-44. Also, *Tājj al-Tarājum*, p40. Also, *Lisān al-Mizān*, v5, p121.

428 See 408, above.

429 Abū al-Ḥasan 'Ubayd Allāh Ibn al-Ḥuseyn al-Karkhī. Born 260AH / 874AD. Ḥanafite sheikh there. Died 340AH / 952AD. His published works include, '*Uṣūl al-Karkhī*'. See, al-Imām al-Jaṣṣāṣ, Dr al-Nashmī, pp73-74. See also, *al-Fatḥ al-Mubīn*, v1, pp186-187. Also, *Kashf al-Zunūn*, 563, 570. *Hadiyat al-'Arifin*, v1, p646. Also, *Idāḥ al-Maknūn*, v1, p354. Also, *al-Fawā'id al-Bahiyya*, pp108-109. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p142. Also, *Tājj al-Tarājum*, p29. Also, *Lisān al-Mizān*, v4, pp98-99.

430 Published in Cairo, in conjunction with *Ta'sīs al-Naẓr*, by al-Dabūsī.

431 Abū Bakr al-Rāzī, known as Jaṣṣāṣ. Became leader of the Ḥanafites in Baghdād there after the death of his sheikh Abū al-Ḥasan al-Kharkhī, 340AH / 951AD. Died 370AH / 980AD. His published works include, '*Aḥkām al-Qur'ān*', '*Adab al-Qāḍī*', '*al-Fuṣūl Fī al-Uṣūl*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v1, pp451-452. Also, *al-Fawā'id al-Bahiyya*, pp27-28. Also, *al-Jawāhir al-Muḍiyya*, v1, pp84-85. Also, *Tājj al-Tarājum*, p4. Also, *Tadhkirat al-Ḥuffāz*, al-Dhahabī, v3, pp159-160. Also, *Siyar A'lām al-Nubalā'*, v16, pp340-341. Also, *Kashf al-Zunūn*, passim.

432 Edited by Sa'īd Allāh. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, v1, p452. Edited by 'Agīl Jāsim al-Nashmī. See, *Al-Imām Aḥmad Ibn 'Alī al-Rāzī al-Jaṣṣāṣ*, by Dr 'Agīl al-Nashmī, passim.

433 'Abd Allāh Ibn 'Umar Ibn 'Isa al-Dabūsī al-Bukhārī. Born, 367AH / 978AD Ḥanafite scholar, became judge in Bukhāra, where he died, 430AH / 1039AD. His published works include, '*al-Amad al-Aqṣā*', '*Ta'sīs al-Naẓr*', and '*Taqwīm al-Adillah*'. See, *Kashf al-Zunūn*, passim. See also, *al-Fawā'id al-Bahiyya*, p109. Also, *al-Jawāhir al-Muḍiyya*, v1, p339. Also, *Tājj al-Tarājum*, pp26-27.; p63-64. Also, *al-Lubbāb*, Ibn al-Athīr, v1, p410. Also, *al-Ansāb*, al-Sam'ānī, v2, pp454-456. Also, *Mu'jam al-Mu'allifin*, v2, p266.

434 The manuscript in the Fayz Allah Effendi collection in Millet library, Istanbul, ref no 570. Maṣṣūr Ibn Muḥammad Al-Sim'ānī (d489AH / 1096AD) composed *Qawāṭi' al-Adillah* which is a commentary on *Taqwīm al-Adillah*. The manuscript copy in the same library, ref no 627.

435 First published in Cairo in conjunction with *Uṣūl al-Kharkhī*. 2nd ed by Zakariyya 'Alī Yūsuf, pub in Cairo, 1972. 3rd ed by Dār Ibn Zaydūn, Beirut and Maktabat al-Kuliyāt al-Azhariyya, Cairo.

436 See II.1 Al-Bazdawī, Part Three.

437 Ibid.

438 Shams al-A'imma Abū Bakr Muḥammad Ibn Aḥmad Ibn Sahl al-Sirakhṣī. A renowned Ḥanafite scholar.

composed a work entitled, "Uṣūl".⁴³⁹ The last two named works⁴⁴⁰ in effect became the standard Ḥanafite text books for the students of Uṣūl al-Fiqh.

The method employed by the Ḥanafite scholars (or the Fuqahā') in the field of Uṣūl al-Fiqh was described as deriving the principles of Uṣūl al-Fiqh from applied Fiqh (far').⁴⁴¹ In other words, the basis for Ḥanafite studies of Uṣūl al-Fiqh was derived from the details of previously settled legal issues, and not the other way round. In short, the majority of the Uṣūl were derived from the differing legal pronouncements of the Imams. The Mutakallimīn, in contrast, derived Fiqh from the principles of Uṣūl al-Fiqh.⁴⁴² The Ḥanafī writers invariably began their compositions with a definition of Uṣūl al-Fiqh and then moved on to discuss the *Adillah* (indicators) as instruments of reasoning. Within this context the Ḥanafīs discussed *Ta' ārud* (conflicting indicators), *Tarfīḥ* (the weighing of conflicting indicators) and linguistic issues. They concluded their work with a discussion of the Sharī'ah categorizations of an act and its associated issues.⁴⁴³ The reason for their emphasis on the *Adillah*, as the central component of the discussion, resulted from the fact that the Ḥanafīs, unlike the Mu'tazilis, as we have noted above,⁴⁴⁴ based their study of the Uṣūl on the *Furū'*. This method was reflected in that most prominent of Ḥanafite works, the Uṣūl of al-Jaṣṣāṣ.⁴⁴⁵

In his Uṣūl Al-Jaṣṣāṣ⁴⁴⁶ would raise an issue and then discuss it in concert with other Ḥanafite Fuqahā', countering objections and confirming his argument or principle by recourse to the *Furū'*.

He divided his work into two sections, one which dealt with the derivation of legal rules, beginning with a discussion of the general (*Āmm*), the particular, the ambiguous (*Mujmil*) and the meaning of particles, and concluded with a discussion of the prohibitive.

In the second section he covered the evidence of rules (*Adillah al-Aḥkām*) beginning with the abrogator and the abrogated. Then he studied confirmation of Qiyās and *Ijtihād* and those Uṣūl which are subject to the process of Qiyās. He then dealt with *Shabah*

Died between 483AH and 500AH / 1090AD and 1106AD. His published works include, '*al-Mabsūṭ*', '*Uṣūl al-Sirakhsī*', '*Sharḥ al-Siyar al-Kabīr*', and '*al-Nukat*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, v1, pp569-370. See also, *al-A'lām*, v5, p315. Also, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-'Ārifīn*, v2, p76. Also, *al-Fawā'id al-Bahiyya*, pp158-159. Also, *Tāj al-Tarājum*, pp38-39. Also, *al-Jawāhir al-Muḍiyya*, v2, pp28-29.

439 Edited by Abū al-Wafā' al-Afghānī, pub Cairo, 1372AH / 1953AD.

440 See 436 and 439, above.

441 See, *Uṣūl al-Fiqh*, al-Khudārī, p6.

442 See 424, above.

443 See, *Uṣūl al-Sirakhsī*, v1 and 2, passim. See also, *Uṣūl al-Bazdawī*, passim.

444 See, *Uṣūl al-Fiqh*, al-Khudārī, p6.

445 See 432, above.

446 See 431, above.

(resemblance) and discussed the Ḥanafite *faqīh* al-‘Anbarī in the final part of his book.⁴⁴⁷

V.2.iii The Methodology Of The Ḥanafis (From The Fuqahā’)

The Ḥanafis claim that Abū Ḥanīfa⁴⁴⁸ founded his school of Fiqh on the principles and bases approved by those Companions and Followers who founded the School of Opinion (*ra’y*) in Kūfa.⁴⁴⁹ The latter was to become a centre of excellence for the study of Fiqh, Ḥadīth, the Qur’ānic sciences and linguistics.⁴⁵⁰

Abū Ḥanīfa was not an opinionated man but was content to fully consult his colleagues about the issues of Uṣūl al-Fiqh and Fiqh. Abū Ḥanīfa would raise issues, one by one, and listen to what his colleagues had to say on the matter and then express his own opinion, and then a debate would occur until a conclusion on the matter was reached.

This opinion was invariably scrutinised by Abū Yūsuf⁴⁵¹ before it was entered into category of Ḥanafite Uṣūl, a gradual process which led to the formulation of the canon of the Ḥanafite Uṣūl al-Fiqh.⁴⁵²

According to the Ḥanafites it was Abū Ḥanīfa who first explained the methods of deriving new rules, in his work 'Kitāb al-Ra’y',⁴⁵³ followed in this task by two colleagues Abū Yūsuf⁴⁵⁴ and Muḥammad Ibn al-Ḥassan.⁴⁵⁵ They were succeeded in this task by al-Karkhī,⁴⁵⁶ and then by al-Karkhī's pupil, al-Jaṣṣās.⁴⁵⁷

And so the Ḥanafite compositions on Uṣūl al-Fiqh followed one after the other until we reach the two major works of Abū Zayd Dabūsī⁴⁵⁸ respectively entitled, 'Ta’sīs al-Naẓr'⁴⁵⁹ and 'Taqwīm al-Adillah'.⁴⁶⁰ These two works represent the consummation of this type of composition. Al-Dabūsī's forte was his commentary on Qiyās which he covered extensively in terms of its subject matter, its conditions and principles.⁴⁶¹

Al-Dabūsī was succeeded by al-Sirakhsī⁴⁶² who composed a number of works on Uṣūl

⁴⁴⁷ See 384, above.

⁴⁴⁸ See 374, above.

⁴⁴⁹ See, *Fiqh Ahl al-‘Irāq Wa Ḥadīthahum*, al-Kawtharī, pp36-50.

⁴⁵⁰ Ibid, p52.

⁴⁵¹ See 426, above.

⁴⁵² See, *Fiqh Ahl al-‘Irāq Wa Ḥadīthahum*, al-Kawtharī, p56.

⁴⁵³ See, *Uṣūl al-Sirakhsī*, v1, p3.

⁴⁵⁴ See 426, above.

⁴⁵⁵ See 427, above.

⁴⁵⁶ See 429, above.

⁴⁵⁷ See 431, above.

⁴⁵⁸ See 433, above.

⁴⁵⁹ See 435, above.

⁴⁶⁰ See 434, above.

⁴⁶¹ See, *Muqaddimah Ibn Khaldūn*, p455..

⁴⁶² See 438, above.

al-Fiqh entitled 'Uṣūl al-Sirakhsī'.⁴⁶³ In turn al-Bazdawī⁴⁶⁴ composed his work 'Uṣūl al-Bazdawī'⁴⁶⁵ in which he offered a comprehensive review of the science of Uṣūl al-Fiqh. This was widely commented on by the 'Ulamā'.

Thereafter the Ḥanafite compositions on the subject of Uṣūl al-Fiqh followed a predictable pattern. Works were introduced with a definition of the Uṣūl, then an explanation of the *Adillah*, followed by discussion of *Ta' ārud* and *Tarjīh*, concluding with comment on the Shari'ah rules.

V.2.iv The Method Of Al-Bazdawī

Such, then, was the Ḥanafite system employed in the study of Uṣūl al-Fiqh, a system which was perfected in al-Bazdawī's 'Uṣūl'.⁴⁶⁶ Bazdawī began his work with an introduction to the religious sciences⁴⁶⁷ and then moved onto a discussion of the three principles, the Qur'ān, the Sunnah and Ijmā'.⁴⁶⁸ Here he first acquaints us with the Qur'ān,⁴⁶⁹ then confirms it as the main source of the Shari'ah.⁴⁷⁰ Finally he discussed the linguistic issues pertaining to both the Qur'ān and the Sunnah.

This was followed by a definition of the Sunnah, the supererogatory (*Nafal*), Divine command, duty, and Ḥadīth from the point of its division, its *sanad* (chain of authorities) and *matn* (text).⁴⁷¹ A discussion of *Istiḥsān* (application of discretion in a legal decision), contradicting principles (*Ta' ārud*) and invalidation and amendment (*Jarḥ Wa al-Ta'dīl*) of the character of the *rāwī*, completed this section.⁴⁷²

Al-Bazdawī continued his survey of Uṣūl al-Fiqh with a discussion of Ijmā',⁴⁷³ *Istiḥāb al-Ḥāl* (presumption of continuity),⁴⁷⁴ and Qiyās and *Istiḥsān* together.⁴⁷⁵ This was followed by a comment on *Ijtihād*, its divisions and its conditions,⁴⁷⁶ as well as a coverage of the differences (and the conditions which obtain thereby) between reason (*sabab*) and cause (*'illah*)⁴⁷⁷ with regard to their function within the context of Uṣūl al-Fiqh.

Penultimately al-Bazdawī discussed the role of the rational (*' aql*) and its connection with

⁴⁶³ See 439, above.

⁴⁶⁴ See, chapt II.2. part 3, below.

⁴⁶⁵ See 436, above.

⁴⁶⁶ See 436, above.

⁴⁶⁷ See, *Kashf al-Asrār, Sharḥ Uṣūl al-Bazdawī*, v1, p18.

⁴⁶⁸ Ibid, v1, p19.

⁴⁶⁹ Ibid, v1, p21.

⁴⁷⁰ Ibid, v1, pp21-30.

⁴⁷¹ Ibid, v2, pp360-404.

⁴⁷² Ibid, v3, pp98-109.

⁴⁷³ Ibid, v3, pp226-265.

⁴⁷⁴ Ibid, v3, p377.

⁴⁷⁵ Ibid, v4, pp2-13.

⁴⁷⁶ Ibid, v4, pp14-31.

⁴⁷⁷ Ibid, v4, pp52-78.

capacity (*ahliyya*) of the muslim,⁴⁷⁸ explained the two types of rules (*Aḥkām*) related to the worldly (*Dunyawī*) and the Hereafter (*Ukhwarī*),⁴⁷⁹ and finally touched upon the subject of Fault (*Khaṭʿ*) and Compulsion (*Ikrāh*) and its types.

The Ḥanafite scholars continued writing on the subject of Uṣūl al-Fiqh beyond the end of the 7th century, into the 8th and up to the present day, in the form of books, commentaries, summaries, glossaries and notes. Unfortunately a part of these works are lost to the present day scholar, but other parts can be located through other works on Uṣūl al-Fiqh, many still in manuscript form, scattered in libraries throughout the world. A great many works, though, were published and made available to the student, some edited, others not.⁴⁸⁰

V.3 The Malikite School Of Law

The foundation of this school was attributed to Mālik Ibn Anas Ibn Mālik Ibn ʿĀmir al-Aṣbaḥī,⁴⁸¹ born in 93AH / 712AD in Maḍīna. His life spanned the end of the Umayyad caliphate of Waḥid Ibn ʿAbd al-Malik Ibn Marwān⁴⁸² until the ʿAbbāsīd caliphate of Hārūn al-Rashīd⁴⁸³ in 179AH / 795AD.

Mālik studied under al-Zuhri,⁴⁸⁴ Rabīʿah al-Raʿyī,⁴⁸⁵ ʿAbd al-Raḥmān Ibn Hurmuz Ibn

478 Ibid, v4, pp229-313.

479 Ibid. v4, pp313-401.

480 See, *al-Fath al-Mubīn*, v2, pp96-211; v3, passim.

481 See, *Tadhkirat al-Ḥuffāz*, v1, pp193-198. See also, *Ḥilyat al-ʿUlamāʾ*, v6, pp316-355. Also, *al-Dibāj al-Mudhḥahab*, Ibn Furḥūn, pp11-29. Also, *Ṭabaqāt al-Fuqahāʾ*, pp42-43. Also, *Kashf al-Zunūn*, p1907. Also, *Siyar Aʿlām al-Nubalāʾ*, v8, pp48. Also, *Muʿjam al-Muʿallifīn*, v3, p9.

482 Born, 48AH / 668AD, raised in Damascus. Became caliph after the death of ʿAbd al-Malik Ibn Marwān. Died 193AH / 809AD. See, *Tarīkh al-Ṭabarī*, v8 p37 see Also, *al-Aʿlām*, v8 p121.

483 Hārūn al-Rashīd Ibn Muḥammad al-Mahdī Ibn al-Manṣūr al-ʿAbbāsī. The fifth ʿAbbāsīd caliph, Baghdād. Born 149AH / 766AD. Acceded to the caliphate 170AH / 786AD. A man of letters, a poet, a muḥadith and faqīh. Died 193AH / 809AD. See, *al-Nibrās*, Ibn Dihya, pp36-42. See also, *Tarīkh Baghdād*, v14, p5. See also, *Tarīkh al-Ṭabarī*, v10, pp47-110. Also, *al-Kāmil*, Ibn al-Athīr, v6, p69. Also, *Siyar Aʿlām al-Nubalāʾ*, v9, pp286-295. Also, *al-Aʿlām*, v8, p62.

484 See 267, above.

485 Rabīʿah Ibn Farrūkh al-Taymī. A leading faqīh of his day, mujtahid, muftī. An advocate of opinion (Raʿy). See, *Mashāhīr ʿUlamāʾ al-Amṣār*, pp131-132. See also, *Tadhkirat al-Ḥuffāz*, v1, p148. Also, *Mizān al-ʿItidāl*, v1, p136. Also, *Ṣifat al-Ṣafwa*, v2, p83. Also, *Siyar Aʿlām al-Nubalāʾ*, v6, pp89-96. Also, *al-Tahdhīb*, v3, p258. Also, *Tarīkh Baghdād*, v8, p420. Also, *al-Thuqāt*, v4, p231.

Kaysān⁴⁸⁶ and Nāfi' Mawla Ibn 'Umar⁴⁸⁷ amongst others.⁴⁸⁸ He became a teacher at the age of 17 years after mastering the Qur'ānic sciences and the Ḥadīth.

V.3.i Malikite Jurisprudence

Mālik was the inheritor of the Ḥijāz school of Ḥadīth founded by 'Abd Allāh Ibn 'Umar Ibn al-Khaṭāb.⁴⁸⁹ He learnt his profession from the school's scholars who included Zayd Ibn Thābit⁴⁹⁰ and 'Abd Allāh Ibn 'Umar Ibn al-Khaṭāb in Madīna, and 'Abd Allāh Ibn 'Abbās⁴⁹¹ in Mecca, just as he benefitted from the works of the renowned seven Fuqahā⁴⁹² who founded a school of Fiqh based on rules exclusively derived from the Qur'ān and the Sunnah.

The activities of the school of Ḥadīth were not restricted to Madīna or to Ḥijāz but extended throughout the Islamic world,⁴⁹³ although it has its roots in Madīna. Mālik laid a foundation for a school of Ḥadīth⁴⁹⁴ which did not only confine itself to the study of Uṣūl

⁴⁸⁶ Known as al-A'raj. Abū Dāwūd al-Medinī. Client of the Benū Hāshim. He collected the Qur'ān and recorded it. Interpreter of the Qur'ān and the Sunnah, muḥadith, historian. Died 117AH / 735AD. See, *Mashāhīr 'Ulamā' al-Amṣār*, p127. Also, *Siyar A'lām al-Nubalā'*, v5, p69. Also, *al-Tahdhīb*, v6, p290. Also, *Ma'rifat al-Thiqāt*, v2, p90. Also, *Tadhkirat al-Huffāz*, v1, p56. Also, *Mir'āt al-Jinān*, v1, p350. Also, *Tarikh al-Thiqāt*, p300. Also, *al-A'lām*, v3, p340.

⁴⁸⁷ Nāfi' Ibn Mālik Ibn Abī 'Āmr al-Aṣḥabī, known as Abū Sahl. One of the Followers. Faqīh and muḥadith. Died 119AH / 737AD. See, *Mashāhīr 'Ulamā' al-Amṣār*, p129. Also, *Tarikh Asmā' al-Thiqāt*, p323. Also, *Siyar A'lām al-Nubalā'*, v5, p95. Also, *Ma'rifat al-Thiqāt*, v2, p310. Also, *al-Tahdhīb*, v10, p411. Also, *Al-A'lām*, v8, p5.

⁴⁸⁸ Nāfi' Ibn Abī Na'im. Sa'īd Ibn al-Musayyab. 'Urwa. Yaḥyā Ibn Sa'īd. 70 sheikhs awarded him with a license to issue fatwas. See, *al-Fath al-Mubīn*, v1, pp112-115.

⁴⁸⁹ Abū 'Abd al-Raḥmān al-'Adawī, born 613AD. Fought alongside Muḥammad at Mecca. and the battle of Khandaq. One of the leading faqīh among the Companions. Mufī for 60 years. Refused offer of Caliphate. Related some 2630 Ḥadīth. Last of Muḥammad's Companions to die, 73AH / 692AD. A pacifist. See, *Ḥiliyat al-Awaliyyā'*, v1, p292; v2, p7. See also, *Ṭabaqāt Ibn Sa'd*, v2, p373; v4, pp142-188. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p49. Also, *al-Iṣābah*, v2, p347. Also, *al-Isti'āb*, biography no 950. Also, *Ṣifat al-Ṣafwa*, v1, p228. Also, *Nukat al-Hamyān*, p183. Also, *Siyar A'lām al-Nubalā'*, v3, p203. Also, *Mashāhīr 'Ulamā' al-Amṣār*, p37. Also, *al-Tarikh al-Kabīr*, al-Bukhārī, v5, p2. Also, *al-Tarikh al-Ṣaghīr*, al-Bukhārī, v1, pp154-155. Also, *al-A'lām*, v4, p108.

⁴⁹⁰ Zayd Ibn Thābit Ibn al-Daḥḥāk al-Khazraǧī al-Anṣārī. Collected the pieces of the Qur'ān together during the lifetime of Muḥammad. Sent manuscript of the Qur'ān to Abū Bakr. One of the leading Companions. Born 611AD. Leading faqīh, Qur'ān reader, mufī, qāḍī of his day, along with the headship of the Inheritance Office. Became governor of Medīna in the absence of 'Umar. Later revised the manuscripts of the Qur'ān and presented them to 'Uthmān. Related some 92 Ḥadīth. Died, 45AH / 665AD, or 51AH / 671AD. See, *Tadhkirat al-Huffāz*, v1, p124. See also, *Mashāhīr 'Ulamā' al-Amṣār*, Ibn Ḥabbān, p29. Also, *Al-Thuqāt*, v3, p135. Also, *Ṣifat al-Ṣafwa*, v1, pp294-295. Also, *Al-Iṣābah*, v1, p561, part no 2880. Also, *Al-Isti'āb*, v1, p188. Also, *Al-Ibr*, al-Dhahabī, v1, p53. Also, *Sīr A'lām al-Nubalā'*, v2, pp426-441. Also, *Uṣd al-Ghābah*, v2, p221. Also, *Al-A'lām*, v3, p57.

⁴⁹¹ See 88, above.

⁴⁹² They are: Sa'īd Ibn al-Musayyab. See, *Siyar A'lām al-Nubalā'*, v4, p217. 'Urwa Ibn al-Zubayr, Ibid, v4, p421. Sulaymān Ibn Yassār, Ibid, v4, p444. Abū Bakr Ibn 'Abd al-Raḥmān Ibn al-Ḥārith, Ibid, v3, p484. Al-Qāsim Ibn Abū Bakr Ibn Muḥammad, Ibid, v5, p53. Khārijah Ibn Zayd Ibn Thābit, Ibid, v4, p437. 'Ubayd Allāh Ibn 'Abd Allāh Ibn 'Utbah Ibn Mas'ūd al-Hudhafi, Ibid, v4, pp475-479.

⁴⁹³ See, *al-Madkhal*, Ismā'īl, v2, p318.

⁴⁹⁴ See, *al-Dihāj al-Mudhahab*, Ibn Firḥūn, p21. Also, *Hujjat Allāh al-Bālighah*, v1, p116, 306.

al-Fiqh, or the extraction of rules from the Qur'ān and the Ḥadīth, as was the case with the Ahl al-Ḥadīth, but also included also a limited reference to opinion (*Ra'y*).

V.3.ii Development Of Uṣūl al-Fiqh Under The Malikites

If an issue arose, requiring a legal solution, the scholars from the school of Ḥadīth would at first refer to the Qur'ān or the Ḥadīth from which a rule might be derived. In the case of the latter one Ḥadīth might be compared with another with regard to its suitability as an indicator from the point of its relator⁴⁹⁵ or its text.⁴⁹⁶ It was through this process that the practice of invalidating (*jarḥ*) and emendation (*ta'dīl*) first emerged,⁴⁹⁷ along with the science of the defects of Ḥadīth.⁴⁹⁸

If no Ḥadīth could be found, the Malikites resorted to the traditions of the Companions, where one tradition would be compared with and weighed against another for its suitability as an indicator, in the knowledge that the traditions of the Companions derive from the traditions of the Prophet. The Malikites, in failing to find a legal solution hitherto would, unlike the adherents of school of Ḥadīth, resort to opinion from which they might derive a rule, as long as, that is, the opinion did not conflict with that held by the Companions and the Followers.

Some Malikites, however, in keeping with the practice of the Ahl al-Ḥadīth, would not go so far as to employ opinion in Uṣūl al-Fiqh nor hypothesize on its issues⁴⁹⁹ for fear of committing errors or being labelled impious.

We can describe Mālik as an apologist of the Ḥadīth school, yet he leaned slightly towards the ideas of the Ahl al-Ra'y. Nevertheless there were times when he remained non-committal and refused to offer an opinion on an issue, even though no solution to it could be found in the Qur'ān, the Sunnah, the traditions of the Companions and the Followers, or in the customs and practices of the people of Madīna, and even though the progressive Malikites were gradually inclined to seek a legal solution to an issue by invoking opinion (*Ra'y*).

By way of contrast, Dāwūd al-Zāhiri,⁵⁰⁰ the arch traditionalist from the school of Ḥadīth, would only accept the literal meanings of the Qur'ān and the Ḥadīth as indicators of the Shari'ah law. Gradually the Zāhiri school waned in terms of its influence and the number

⁴⁹⁵ See, *al-Iḥkām*, Amidī, v2, pp2-112.

⁴⁹⁶ Ibid, v2, p119.

⁴⁹⁷ The invalidation of the character of the relator and its subsequent reassessment. See, *al-Ta'rīfāt*, al-Jurjānī, p75, p147.

⁴⁹⁸ See, Ibid, pp154-155.

⁴⁹⁹ See, *al-Madkhal Fī al-Ta'rīf Bi al-Fiqh al-Islāmī*, Muḥammad Mustapha Shallabī, p187.

⁵⁰⁰ See 358, above.

of its adherents dropped⁵⁰¹ until it disappeared altogether.

The Malikites, even the progressive members, followed the orthodox line in accepting the Qur'ān and the Sunnah as the principal sources of Uṣūl al-Fiqh, followed by the traditions of the Companions and the rules issued by the Ḥijāz school of Ḥadīth, and were united in attacking the atheists and the heretic sects who indulged in fabricating Ḥadīth.

Mālik was adamant that his pupils record in writing⁵⁰² the learning he passed down to them, usually in the form of dictation, recitation or through the copying of material from manuscript form. In this way much material in the way of books has come down to us under the name of *Amālī*. (transmissions).⁵⁰³

The first Malikite tome of any importance on the subject of Fiqh, was the 'Muwaṭṭa' of Mālik.⁵⁰⁴ He was followed by Sufyān al-Thawrī⁵⁰⁵ with his composition entitled, 'al-Jāmi' al-Kabīr,' to be followed by al-Shāfi'ī⁵⁰⁶ with his composition, 'Ikhtilāf al-Ḥadīth'.⁵⁰⁷ These works influenced the Malikites, as is evident in the early Malikite composition entitled 'Al-Mudawwanah'.⁵⁰⁸ The issues concerning Fiqh were dealt with in this latter book by Asad Ibn al-Furāt Ibn Sinān⁵⁰⁹ and later replied to by Ibn al-Qāsim al-Miṣrī.⁵¹⁰ Suḥnūn⁵¹¹ subsequently revised the debate, amending any errors, so that the

⁵⁰¹ 'Alī Ibn Aḥmad, better known as Ibn Ḥazm al-Andalusī was the last Zāhiri of note to comment on Uṣūl al-Fiqh. Born, 384AH / 994AD. Died, 456AH / 1064AD. Learnt and taught the Zāhiri policy by himself because of lack of teachers. See, *Tadhkirat al-Ḥuffāz*, v3, pp321-329. See also, *Lisān al-Mizān*, v4, pp198-202. See also, *Mu'jam al-Mu'allifin*, v2, pp393-394.

⁵⁰² Ibid, p191.

⁵⁰³ 13 books of this type have come down to us in all fields. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v2, p961.

⁵⁰⁴ It was related by Yaḥyā Ibn Yaḥyā al-laythī. Pub in New Delhi, 1216AH / 1801AD, and in Egypt, 1280AH / 1863AD. 3rd ed in Fās, Morocco, 1310AH / 1892AD. 4th ed in Fās, 1318AH / 1900AD. 5th ed pub Lahore, 1889AD. 6th ed Qāzān, formerly the USSR, 1910AD. 7th ed Tunisiyya, 1280AH / 1863AD. 8th ed Cairo, 1339AH / 1920AD. 9th ed Cairo, 1940AD. 10th ed, Cairo, 1950AD. 11th ed, Beirut, 1971. It was also related by Muḥammad Ibn al-Ḥassan al-Shaybānī, pub, Cairo, 1962. 2nd ed 1967, Cairo. 3rd transmission 'Abd Allāh Ibn Maslamah al-Qu' nubī, pub Tunis, 1976. 4th transmission by Ibn Ziyād, pub Beirut, 1980.

⁵⁰⁵ See 354, above.

⁵⁰⁶ See 520, below.

⁵⁰⁷ Related by al-Rabī'ah Ibn Sulaymān al-Jizī. Pub in Cairo, 1321-1326AH / 1903-1908AD, Bulāq ed. 2nd ed, Cairo, 1968-1975. 3rd ed Beirut, 1405AH / 1985AD.

⁵⁰⁸ Pub, Cairo, 1323AH / 1905AD. 2nd Bulāq, 1325AH / 1907AD. 3rd, 1345AH / 1926AD.

⁵⁰⁹ Born 142AH / 759AD. As leader of the Islamic army conquered Sicily in 212AH / 827AD. Died 213AH / 828AD. His works include, 'al-Asadiyya' touching on the Malikite Fiqh. See, *Idāḥ al-Maknūn*, v1, p74. See also, *al-Dibāj al-Mudhdhahab*, v1, pp305-306. Also, *Shajarat al-Nūr al-Zakiyya*, v1, p62. Also, *al-Ikmāl*, Ibn Māqūlah, v4, pp454-455. Also, *Siyar A'lām al-Nubalā'*, v10, pp225-228.

⁵¹⁰ Muḥammad Ibn al-Qāsim Ibn Sha' bān, better known as Ibn al-Qurṭī. Born, 270AH / 883AD, Egypt. Became head of the Malikite school of Law there. Died in Cairo, 355AH / 966AD. See, *al-Dibāj al-Mudhdhahab*, pp248-249. See also, *al-Lubbāb*, Ibn al-Athīr, v2, p254. Also, *Idāḥ al-Maknūn*, v2, p300. Also, *Siyar A'lām al-Nubalā'*, v16, pp78-79. See also, *Mu'jam al-Mu'allifin*, v3, p595. Also, *al-A'lām*, v6, p335.

⁵¹¹ 'Abd al-Sallām Ibn Ḥabīb al-Tanūkhī. Born, 160AH / 777AD. Became a Malikite faqīh in North Africa. A judge in Qayrawān. Died, 240AH / 854AD. See, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, pp132-133. Also, *al-Dibāj al-Mudhdhahab*, Ibn Furḥūn, pp160-166. Also, *Shajarat al-Nūr al-Zakiyya*, p70. Also, *Siyar A'lām al-Nubalā'*, v12, pp63-69. Also, *Mu'jam al-Mu'allifin*, v2, pp146-147.

work rapidly became a text book for the Malikites and was widely commented on.⁵¹²

V.3.iii Malikite Indicators Of Law

Mālik founded his school of law on twenty indicators. These are as follows:

- 1) The Qur'ān.
- 2) The literal meaning of the Qur'ān.
- 3) Counter Implication (in the Qur'ān).
- 4) *Mafhūm al-Muwāfaqah* (implication in the Qur'ān).
- 5) Indication in the Qur'ān.
- 6) The Sunnah.
- 7) The literal meaning of the Sunnah.
- 8) Counter Implication (in the Sunnah).
- 9) *Mafhūm al-Muwāfaqah* (implication in the Sunnah).
- 10) Indication in the Sunnah.
- 11) Consensus.
- 12) Analogy.
- 13) The custom and practise of the people of Medīna.
- 14) The speech of the Companions.
- 15) Application of Discretion in a Legal Decision.
- 16) Blocking the Means to Evil.
- 17) Considerations of Dispute.
- 18) Recommendable.
- 19) Public Interest.
- 20) Revelation before Islam.

In my opinion Mālik leaned towards the orthodox in the matter of Uṣūl al-Fiqh; in doing so he adhered to the traditions of his predecessors amongst the Companions and the Followers in the same field. This necessitated the rejection of any unorthodox or innovative idea, a leaning towards the Hījāzī school of Ḥadīth,⁵¹³ and the avoidance also of hypothesizing on issues relating to the matter of Uṣūl al-Fiqh.

⁵¹² *Al-Muqaddimāt al-Mumahidāt Fī Bayān Rusūm al-Mudawwanah*, Ibn Rushd al-Ḥafīd. Pub Cairo, 1324AH / 1906AD. Ḥājjī Khālīfah mentioned another commentary on '*Mudawwanah*' entitled, '*Sharḥ al-Mudawwanah*', by Abū al-Rūḥ 'Isā Ibn Mas'ūd al-Dulāwī, d744AH / 1342AD. Sanad Ibn 'Inān Ibn Ibrāhīm al-Azaḍī, d541AH / 1146AD, commented on '*al-Mudawwanah*' under the title, '*al-Tirāz*'. Also, another commentary, '*al-Tanbīhāt al-Mustanbaṭah Fī Sharḥ Mushkilāt al-Mudawwanah Wa Mukhtalīṭah*', by al-Qāḍī 'Ayāḍ Ibn Mūsā al-Yaḥṣubī, d544AH / 1149AD. Annotated by Abū 'Abd Allāh Muḥammad Ibn Khalaf al-Wasānī, d485AH / 1092AD. '*al-Mudawwanah*' abridged by 'Abd al-Wahhāb Ibn Aḥmad al-Sha'rānī, d973AH / 1565AD. See, *Kashf al-Zunūn*, p1644. Also, Khalaf Ibn Abū al-Qāsim Ibn Sulaymān al-Qayrawānī al-Barādhi al-Malikī, active 430AH / 1039AD, rectified '*Mudawwanah*', which was in turn abridged by Tāj al-Dīn Aḥmad Ibn Muḥammad al-Iskandarānī, d719AH / 1319AD.

⁵¹³ See 87, above.

In the main Mālik gave precedence to the custom and practices of the people of Madīna, as an indicator of law, over analogy and over the solitary Ḥadīth (*khabar al-Wāḥid*), just as he gave precedence to Public Interest (*Maṣlahah*) and the speech of the Companions over analogy. At the same time he was reluctant to employ application of discretion in a legal decision (*Istiḥsān*) and the recommendable (*Istiḥbāb*) for the purposes of extracting rules.

The Mālikite school of law represented a small shift away from the school of Ḥadīth, in that Mālik, albeit reluctantly, endorsed the use of opinion as an indicator from which a rule of law could be derived. This shift placed the Malikites closer to the Shāfi'ites who occupied the central position between the Ḥanafites (*Ahl al-Ra'y*) and the Ahl al-Ḥadīth. Thus the Malikites found themselves wedged, in matters of policy, between the Shāfi'ites and the Ahl al-Ḥadīth.

The pupils of Mālik passed down their learning throughout the Islamic world. To this day the teachings of the Malikite school of law prevails in countries like Libya, Tunisia, Algeria, Morocco, Mauritania, Sudan and other countries in Africa, excluding Egypt where the Shāfi'ites way prevails.

The Malikite 'Ulamā' wrote many compositions touching on the subject of Uṣūl al-Fiqh, in regions as far as North Africa and Andalusia. The Malikites followed a pattern in the order of their chapters and the treatment of their subject matter, similar to the method adopted by the Mutakallimūn,⁵¹⁴ disregarding the method of the Ahl al-Ra'y,⁵¹⁵ in the order of their chapters and the treatment of their subject matter. This pattern persisted until the appearance of the Malikite al-Shātibī⁵¹⁶ who (in *al-Muwāfaqāt*)⁵¹⁷ fused the two approaches of the Ahl al-Ra'y (Ḥanafites) and the Malikites,⁵¹⁸ explaining the aims of the Sharī'ah and the essence of the Aḥkām al-Sharī'ah which have in mind the protection and the interest of Mankind.

Less well known Malikite compositions on the subject of Uṣūl al-Fiqh that go beyond the end 7th century AH / 13th century AD are too numerous to mention, but these books would have been written in the pattern and would have followed the methodology established by the Shāfi'is.⁵¹⁹

⁵¹⁴ See 424, above.

⁵¹⁵ See 82, above.

⁵¹⁶ Ibrāhīm Ibn Mūsā Ibn Muḥammad al-Shātibī al-Ghurnāfi, muḥadith, faqīh, linguist, jurist, interpreter of the Qur'ān. Died, 790AH / 1388AD. His published works include, '*al-Muwāfaqāt*', '*al-Ifādāt Wa al-Inshādāt*', '*Risālah Fī al-Adab*', and '*al-I'tisām*'. See, *Idāḥ al-Maknūn*, v2, p127. See also, *Mu'jam al-Mu'allifin*, v1, p77. Also, *al-Dibāj*, pp46-50. Also, *al-A'lām*, v1, p75.

⁵¹⁷ 1st edn, pub Tunisia, 1302AH / 1884AD. 2nd edn Qāzān, 1909. 3rd ed Cairo, 1341AH / 1922AD. 4th edn Cairo, 1970.

⁵¹⁸ See, *al-Muwāfaqāt*, v1, p24.

⁵¹⁹ See 516 and 728, above.

V.4 The Shāfi'ite School Of Law

This school of law was founded by Muḥammad Ibn Idrīs Ibn al-‘Abbās Ibn ‘Uthmān Ibn Shāfi‘ al-Qurashī al-Muṭṭalibī, a descendant of ‘Abd Manāf.⁵²⁰

He was born in Ghazza, Palestine⁵²¹ 150AH/767AD during the caliphate of al-Mahdī al-‘Abbāsī.⁵²² He memorised the Qur’ān at the age of 7 years, after which his mother despatched him to the Hudhayl tribe in the desert for a formal bedouin training where he learnt to speak and write classical Arabic and compose poetry.⁵²³

Al-Shāfi‘ī returned to Mecca where he studied the Islamic sciences under Muslim Ibn Khālīd al-Zanjī,⁵²⁴ Sufyān Ibn ‘Uyayna⁵²⁵ and others.⁵²⁶ By the time he moved to Madīna at the age of 20 he was already a qualified muftī and Imām and had memorized the Muwaṭṭa‘⁵²⁷ of Mālīk Ibn Anas⁵²⁸ in anticipation of meeting the great scholar.

In Madīna he continued to learn from its sheikhs there.⁵²⁹ Then he moved to Yemen in search of learning,⁵³⁰ where he mastered the science of physiognomy.⁵³¹ Al-Shāfi‘ī was then summoned to Baghdād by Hārūn al-Rashīd, where he was accused of being a Shi‘ite. It was there that he met the renowned Shaybānī⁵³² who, amongst others, had a great impact on his legal reasoning.

In short Shāfi‘ī studied under many sheikhs, in Mecca, Madīna and throughout the

⁵²⁰ See, *Siyar A‘lām al-Nubalā’*, v10, pp5-99. Also, *al-Jarḥ Wa al-Ta’dīl*, v7, p201. Also, *Hilyat al-Awliyyā’*, v9, pp63-161. Also, *Ṭabaqāt al-Fuqahā’*, al-Shīrāzī, pp448-50. Also, *Ṣifat al-Ṣafwa*, v2, p95. Also, *Tadhkirat al-Ḥuffāz*, v1, pp361-363. Also, *Ṭabaqāt al-Ḥuffāz*, p152. Also, *Ṭabaqāt al-Shāfi‘iyya*, Ibn Hidāyat, pp11-14. Also, *Manāqib al-Shāfi‘ī*, al-Rāzī, passim. Also, *Tarīkh Baghdād*, v2, pp56-73. Also, *al-Tarīkh al-Kabīr*, al-Bukhārī, v1, p42. Also, *al-Tarīkh al-Ṣaghīr*, v2, pp302. Also, *Mu‘jam al-Udabā’*, v17, pp81-327. Also, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-‘Arīfīn*, v2, p9. Also, *Ṭabaqāt al-Ḥanābilah*, al-Farā’, pp204-206. Also, *al-Wāfi Bi al-Wafiyāt*, v2, pp171-181. Also, *Mu‘jam al-Mu’allifīn*, v3, pp116-117.

⁵²¹ South east of Palestine. Location of the grave of Muḥammad's grandfather. Hence the expression Ghazza Hāshim. See, *Mu‘jam Mālsta‘jam*, v3, pp996-997. See also, *al-Rawḍ al-Mi‘tār*, p428.

⁵²² Muḥammad Ibn ‘Abd Allāh. Born 127AH / 744AD. Became caliph 158AH. Died, 169AH / 785AD. See, *Tarīkh al-Ṭabarī*, v10, pp11-21. Also, *al-Kāmil Fī al-Tarīkh*, v6, pp11-27. Also, *Tarīkh Baghdād*, v5, p391. Also, *al-Wāfi Bi al-Wafiyāt*, v3, p300. Also, *al-A‘lām*, v6, p221.

⁵²³ See, *Diwān al-Shāfi‘ī*, pub in Cairo, 1329AH / 1911AD. Ed in Beirut, 1962.

⁵²⁴ A follower, a leading faqīh and Imām of Mecca. Hails from Syria. Died 179AH / 795AD. See, *Ṭabaqāt al-Fuqahā’*, al-Shīrāzī, p48. See also, *Tadhkirat al-Ḥuffāz*, v1, p235. Also, *al-Lubbāb*, Ibn al-Jazrī, v1, p509.

⁵²⁵ See 355, above.

⁵²⁶ See, *Siyar A‘lām al-Nubalā’*, v10, p6.

⁵²⁷ See 503, above.

⁵²⁸ 17 See 481, above.

⁵²⁹ See, *Siyar A‘lām al-Nubalā’*, v10, pp6-7.

⁵³⁰ Ibid.

⁵³¹ Ibid, v10, p40.

⁵³² See 427, above.

Islamic world.⁵³³ In turn he produced some outstanding pupils.⁵³⁴

In time Shāfi'ī became an independent mujtahid, siding in his opinions neither specifically with the Ḥanafis in Iraq nor with the Malikis in Madīna or the traditionists in Ḥijāz. At the same time he embraced the positive aspects of the method adopted by each school, rejecting its negative aspects.

For example, he accepted the *Khabar al-Wāḥid* Ḥadīth as an indication (*dalīl*) or as a proof of Sharī'ah, whereas the Ḥijāzis did not. The Mālikis placed the Ijmā' Ahl Madīna as a proof or as source evidence before that of *Khabar al-Wāḥid* which Shāfi'ī did not agree with. The Ḥanafis placed *Istiḥsān* as an indicator of the law before *Khabar al-Wāḥid*, which Shāfi'ī did not.

The characteristics of the Shāfi'ite school of law became all the more clearer on Shāfi'ī's sojourn in Egypt in 199AH / 814AD where his ideas on Uṣūl al-Fiqh took shape. The ancient historians were of the view that al-Shāfi'ī journeyed to Egypt in search of further learning, which was quite feasible. However, I'm of the opinion that he fled the oppressive regime of Ma'mūn who, on accession to the caliphate, adopted the rationalist philosophy of the Mu'tazilites⁵³⁵ as state doctrine, which, by and large, had the effect of undermining the position of the Ahl al-Sunnah.

Ma'mūn, for example, declared himself a Shi'ite, stipulating further in 211AH / 826AD that the Muslim should revere 'Alī and consider him to be superior to all but the Prophet. By excluding Abu Bakr, Umar and Uthman by implication, Ma'mūn was setting himself up against the Ahl al-Sunnah. He also declared that the mention of the name of Mu'āwiyya was a punishable offence.⁵³⁶

In 212AH / 827AD Ma'mūn implemented the Mu'tazilite doctrine of the Qur'ān as a created phenomenon which ran contrary to the traditionist views held by the Ahl al-Sunnah, that the Qur'ān was uncreated and eternal.⁵³⁷

One must point out here (in parenthesis) that by the time Ma'mūn's order was implemented, Shāfi'ī had formed his ideas on Uṣūl al-Fiqh well before any Greek philosophical ideas or influence had chance to percolate down to him.

⁵³³ See, *Ikhtilāf al-Ḥadīth*, al-Shāfi'ī, pp14-17.

⁵³⁴ Ibid, pp117-119.

⁵³⁵ See, *Kitāb Duwal al-Islām*, al-Dhahabī, v1, pp93-132. See also, *al-Farq Bayna al-Faraq*, al-Baghdādī, p117. Also, *Kitāb Sharḥ al-Uṣūl al-Khamsa*, al-Qāḍī 'Abd al-Jabbār Ibn Aḥmad, passim.

⁵³⁶ *Duwal al-Islām*, al-Dhahabī, v1, p129.

⁵³⁷ Ibid, v1, p130.

V.4.i The Foundation Of The Shāfi'ite School Of Law

In Iraq al-Shāfi'ī composed 'al-Ḥujjah' in order to refute the arguments of the Ahl al-Ra'y. On his return to Mecca from Baghdād, al-Shāfi'ī made a conscious effort to steer the development of his school of law away from the direction chosen by the Malikis and the Hījāzis.

In Mecca he composed 'al-Risālah', in which he adumbrated his system of Uṣūl al-Fiqh. Al-Shāfi'ī then travelled to Egypt and dictated his works to his students there.⁵³⁸ Already the students were acquainted with Shāfi'ī's ideas on Uṣūl al-Fiqh as formulated in Hījāz and Iraq.⁵³⁹ Now they become acquainted with his fresh ideas drawn from his second, important sojourn in Egypt, as expressed in the new 'Risālah'.⁵⁴⁰

In Egypt al-Shāfi'ī absorbed new ideas on the subject of Uṣūl al-Fiqh not available in the East and assimilated them accordingly. It was in Egypt that al-Shāfi'ī attended to the collection of the principles of jurisprudence, organized the basic rules for their application and secured the development of a source methodology by means of which questions of Fiqh may be decided through proper recourse to valid and relevant forms of evidence. It was here that al-Shāfi'ī synthesized the views of the Ḥanafis and that of the Ahl al-Ḥadīth to form a new school of law, which was founded on five indicators:

- 1) The Qur'ān.
- 2) The Sunnah.
- 3) Ijmā'.
- 4) The speech of the Companions.
- 5) Qiyās.

It was 'Abd al-Raḥmān Ibn Mahdī⁵⁴¹ who requested al-Shāfi'ī to compose a work on Uṣūl al-Fiqh (the first of its kind) which might explain the Qur'ān and its import, sound Ḥadīth, Ijmā', the role of the abrogator and the abrogated phrases pertaining to the Qur'ān and the Sunnah.

In response, al-Shāfi'ī composed the 'Risālah' in Mecca and sent it to 'Abd al-Raḥmān Ibn Mahdī.⁵⁴² We know, as indicated above, that this 'Risālah' was revised in Egypt, and it is this latter version which has come down to us.⁵⁴³ The 'Risālah' is divided into three

⁵³⁸ See, *al-Risālah*, al-Shāfi'ī, pp9-15.

⁵³⁹ Ibid, pp6-7.

⁵⁴⁰ See, *Siyar A'lām al-Nubalā'*, v10, p24. See also, *al-Madkhal Li al-Fiqh al-Islāmī*, Dr al-Dar'ān, pp152-153.

⁵⁴¹ Born, 135AH / 752AD. Died, 198AH / 813AD. See, *Manāqib al-Shāfi'ī*, al-Rāzī, p57. Also, *Tarīkh Baghdād*, v2, pp64-65. See also, *Mu'jam al-Udabā'*, v6, pp388-398.

⁵⁴² See 541, above.

⁵⁴³ Bulāq ed (with Kitaab al-Umm), 1325-1326AH / 1903-1908AD. 2nd ed, India, 1889. 3rd ed, Egypt, 1310AH

parts.

The first part⁵⁴⁴ introduces the subject⁵⁴⁵ and covers the topic of *al-Bayān* (perspicuous declaration),⁵⁴⁶ the general,⁵⁴⁷ the particular⁵⁴⁸ and the obvious phrases in the Qur'ān,⁵⁴⁹ as well comment on the religious duties stipulated in the Sunnah,⁵⁵⁰ the command form⁵⁵¹ the abrogator and abrogated phrases⁵⁵² in the Qur'ān and Sunnah.

The second part⁵⁵³ deals with the defects in Ḥadīth,⁵⁵⁴ contradictory transmissions,⁵⁵⁵ the prohibition form,⁵⁵⁶ the prohibitions of the Prophet,⁵⁵⁷ the prohibitions of Allāh, *Khabar al-Wāḥid* (the solitary Ḥadīth),⁵⁵⁸ and a chapter on Knowledge.⁵⁵⁹

The third part covers confirmation of the *Khabar al-Wāḥid*,⁵⁶⁰ Ijmā', its definition and legal authority,⁵⁶¹ Qiyās,⁵⁶² *Ijtihād*,⁵⁶³ *Istiḥsān*,⁵⁶⁴ and on Disagreement (*Ikhtilāf*).⁵⁶⁵ No sooner had Shāfi'ī completed his 'Risālah'⁵⁶⁶ when his followers began commenting on it.⁵⁶⁷ The Shāfi'ite system of deriving Fiqh from the Uṣūl and the subsequently recording of this practice in the many Shāfi'ite compositions, to recount, was based on the method of the Mutakallimīn.

The Shāfi'ites, in this respect, split into two groups, one which adopted the Iraqi method of presenting Uṣūl al-Fiqh and the other which adopted the Khorāsāniyya or Merwaziyya method.

/ 1892AD. 4th ed, Cairo, 1312AH / 1894AD. 5th ed, Cairo, 1321AH / 1903AD. 6th ed, Cairo, edited by Aḥmad Shākir, Cairo, 1940. 7th ed by Muḥammad Kaylānī, Cairo 1969. '*Al-Risālah*', translated by Majid Khadduri, pub by the Islamic Texts Society, Cambridge, 1987.

⁵⁴⁴ See, *al-Risālah*, p5, edited by Aḥmad Shākir.

⁵⁴⁵ Ibid, p7.

⁵⁴⁶ Ibid, p21.

⁵⁴⁷ Ibid, p53.

⁵⁴⁸ Ibid, p56.

⁵⁴⁹ Ibid, p58.

⁵⁵⁰ Ibid, p64 and 117.

⁵⁵¹ Ibid, p82.

⁵⁵² Ibid, p106.

⁵⁵³ Ibid, p204.

⁵⁵⁴ Ibid, p210.

⁵⁵⁵ Ibid, p276.

⁵⁵⁶ Ibid, p307.

⁵⁵⁷ Ibid, p343.

⁵⁵⁸ Ibid, p369.

⁵⁵⁹ Ibid, p357.

⁵⁶⁰ Ibid, p401.

⁵⁶¹ Ibid, p471.

⁵⁶² Ibid, p476.

⁵⁶³ Ibid, p487.

⁵⁶⁴ Ibid, p503.

⁵⁶⁵ Ibid, p560.

⁵⁶⁶ See 543, above.

⁵⁶⁷ These commentaries include, '*Sharḥ Risālah*', Muḥammad Ibn 'Abd Allāh Abū Bakr al-Sayrafi (d330AH / 941AD). See, '*al-Risālah*', p15. By Ḥassan Ibn Muḥammad al-Qurashī Abū Wafid al-Naysabūrī (d349AH / 960AD). By Muḥammad Ibn 'Alī Ibn Ismā'īl al-Qaffāl al-Kabīr al-Shāshī (d365AH / 975AD). By Muḥammad Ibn 'Abd Allāh al-Shaybānī Abū Bakr al-Jawzaqī al-Naysabūrī (d388AH / 998AD). By 'Abd Allāh Ibn Yūsef Abū Muḥammad al-Juwaynī (d438AH / 1046AD). See, '*al-Risālah*', p15.

V.4.ii The Emergence Of The Iraqi Method

Shāfi'ī's practice in Iraq was to dictate his work, particularly 'al-Ḥujjah',⁵⁶⁸ to his students, who would have included Abū Thawr,⁵⁶⁹ al-Karābīsī,⁵⁷⁰ al-Za'farānī,⁵⁷¹ and Aḥmad Ibn Ḥanbal.⁵⁷² These scholarly activities pertained to the old Shāfi'īte school.

In Egypt, Shāfi'ī followed the same peripatetic pattern, handing down information (written from the new perspective of Egypt) to his students such as al-Buwayṭī,⁵⁷³ 'Abd Allāh Ibn Zubayr al-Makkī,⁵⁷⁴ Ḥermalah al-Tujībī,⁵⁷⁵ al-Muznī⁵⁷⁶ and Al-Rabī'ah Ibn

⁵⁶⁸ See, *al-Tanbīh*, al-Shīrāzī, Cairo ed, 1329AH / 1903, p3.

⁵⁶⁹ See 356, above.

⁵⁷⁰ Al-Huseyn Ibn Ali Ibn Yazīd, known as Abu Ali al-Baghdādī al-Karābīsī. A Hanafite, but converted to the Shāfi'ītes later. Muḥadith, faqīh, jurist, scholastic theologian, historian. Died 245AH / 859AD. See, *Ṭabaqāt al-Shāfi'īyya*, al-Subkī, v1, p251. Also, *Ṭabaqāt al-Shāfi'īyya*, Ibn Hidāyat, p6. Also, *Ṭabaqāt al-Shāfi'īyya*, al-Isnawī, p13. Also, *Ṭabaqāt al-Shāfi'īyya*, Ibn Qāḍī Shahbah, v1, pp63-64. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p83. Also, *Tarīkh Baghdād*, v8, p64. Also, *Lisān al-Mizān*, v2, p303. Also, *Kashf al-Zunūn*, p89. Also, *Idāḥ al-Maknūn*, v2, p272. Also, *Mu'jam al-Mu'allifin*, v1, pp629-630. Also, *Tahdhīb al-Tahdhīb*, v2, p359. Also, *Siyar A'lām al-Nubalā'*, v12, p79.

⁵⁷¹ al-Ḥassan Ibn Muḥammad Ibn al-Ṣabāḥ, known as Abū 'Alī al-Baghdādī al-Za'farānī. Shāfi'ī's rawī. A linguist, faqīh, muḥadith, jurist. Taught at the Shāfi'ī schools for 15 years. Died, Baghdād, 260AH / 874AD. See, *Ṭabaqāt al-Shāfi'īyya*, Ibn Hidāyat, p7. Also, *Ṭabaqāt al-Shāfi'īyya*, al-Isnawī, p14. Also, *Ṭabaqāt al-Shāfi'īyya*, Ibn Qāḍī Shahbah, v1, pp62-63. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p82. Also, *Tarīkh Baghdād*, v7, p407. Also, *Tadhkirat al-Ḥuffāz*, v2, p525. Also, *Tahdhīb al-Tahdhīb*, v2, pp318-319.

⁵⁷² Aḥmad Ibn Muḥammad Ibn Ḥanbal al-Shaybānī al-Baghdādī. Born 164AH / 780AD. Imām in Ḥadīth, faqīh, interpreter of the Qur'ān, jurist, historian, the founder of the Ḥanbalite school of law. Died 241AH / 855AD. His published works include, '*al-Ashribah*', '*al-Radd 'Alā Jahmiyya Wa al-Zinādiqah*', '*al-Risālah al-Sanniyya Fī al-Ṣalāt*', '*al-Zuhud*', '*al-'Ilal Wa Ma'rīfat al-Rijāl*', '*al-Farū'*', '*al-Sunnah*', '*al-Musnad*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v1, pp100-101. Also, *Ḥilyat al-Awliyā'*, v9, pp161-233. Also, *Ṭabaqāt al-Ḥanābilah*, pp3-11. Also, *Tarīkh Baghdād*, v4, pp412-423. Also, *Tahdhīb al-Tahdhīb*, v1, pp72-76. Also, *Kashf al-Zunūn*, passim. Also, *Siyar A'lām al-Nubalā'*, v11, pp177- 358. Also, *Ṭabaqāt Ibn Sa'd*, v7, pp354-355. Also, *al-Wāfi Bi al-Wafiyāt*, v6, pp363-369. Also, *Ṭabaqāt al-Shāfi'īyya*, Ibn Qāḍī Shahbah, v1, pp56-58. Also, *Ṭabaqaat al-Fuqaha*, al-Shīrāzī, p75.

⁵⁷³ Yūsuf Ibn Yahyā al-Qurashī. Born, Buwayt, south Egypt, date unknown. A pupil of Shāfi'ī. Mujtahid, faqīh, jurist, muḥadith, muftī. Became head of Shāfi'ī's circle on the latter's death. Fell foul of the Egyptians, particularly the Mu' tazilis there, so the Mu' tazilite caliph, Wathīq, had him transferred to Baghdād where he was imprisoned. Died, Baghdād, 231AH / 846AD. See, *Tarīkh Baghdād*, v14, p299. See also, *Ṭabaqāt al-Shāfi'īyya*, Ibn Qāḍī Shahbah, v1, pp70-72. Also, *Ṭabaqāt al-Shāfi'īyya*, al-Asnawī, p10. Also, *Ṭabaqāt al-Shāfi'īyya*, al-Sibkī, v1, p275. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p80. Also, *Hadiyat al-'Ārifin*, v2, p549.

⁵⁷⁴ Known as Abū Bakr al-Qurashī al-Ḥamīdī al-Makkī. Muftī of Mecca. Imām al-Ḥadīth. Accompanied Shāfi'ī on his journey to Egypt. Taught in Mecca where he dispensed fatwas. Died 219AH / 834AD. Pub works include, '*al-Musnad*'. Pub in Karachi, Pakistan, 1963. See, *Ṭabaqāt al-Shāfi'īyya*, al-Subkī, v1, p263. Also, *Ṭabaqāt al-Shāfi'īyya*, Ibn Hidāyat, p3. Also, *Ṭabaqāt al-Shāfi'īyya*, Ibn Qāḍī Shahbah, v1, pp66-67. Also, *Ḥussen al-Muḥāḍarah*, al-Sayūfī, v1, p196. Also, *Kashf al-Zunūn*, p1418, 1682, 1685. Also, *Idāḥ al-Maknūn*, v2, p481. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p81. Also, *Mu'jam al-Mu'allifin*, v2, p242.

⁵⁷⁵ Ḥermalah Ibn Yahyā Ibn 'Abd Allāh Ibn Ḥermalah, known as Abū Ḥaṣṣ al-Miṣrī al-Tujībī. Born, 166AH / 783AD. Faqīh, jurist, muḥadith, interpreter of the Qur'ān. A colleague of Shāfi'ī. Died 243AH / 858AD. See, *Ṭabaqāt al-Shāfi'īyya*, al-Subkī, v1, pp257-259. Also, *Ṭabaqāt al-Shāfi'īyya*, Ibn Hidāyat, p5. Also, *Ṭabaqāt al-Shāfi'īyya*, al-Isnawī, p13. Also, *Ṭabaqāt al-Shāfi'īyya*, Ibn Qāḍī Shahbah, v1, pp61-62. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p80. Also, *Kashf al-Zunūn*, p1582, 1630. Also, *Mu'jam al-Mu'allifin*, v1, p529.

⁵⁷⁶ Ismā'īl Ibn Yahyā al-Muzanī. Born, 175AH / 791AD, Egypt. A Shāfi'īte mujtahid, faqīh, jurist. Died, Cairo, 264AH / 878AD. His published works include, '*Mukhtaṣar al-Muznī*', Bulāq ed, 1321AH / 1903AD. See, *Tarīkh*

Sulaymān al-Marādī.⁵⁷⁷

This pattern of recording Fiqh and Uṣūl al-Fiqh lost its general character with the appearance of Abū Ḥamid al-Asfarāyīnī, (D406).⁵⁷⁸ He founded the specific Iraqi method in recording Shāfi'ite Uṣūl al-Fiqh. He was followed in this vein by al-Māwardī (D450AH)⁵⁷⁹ as expressed in his work entitled, 'al-Ḥawī', and then by Abū Ṭayyab al-Ṭabarī (450AH),⁵⁸⁰ Abū Ishāq al-Shīrāzī (476AH)⁵⁸¹ Sulaym Ibn Ayyūb Ibn Sulaym al-Rāzī (447AH),⁵⁸² Abū 'Alī al-Bandinījī (425AH),⁵⁸³ and Aḥmad Ibn Muḥammad al-

Baghdād, v14, p300. Also, *Kashf al-Zunūn*, p400, 1635, 2000. Also, *Idāḥ al-Maknūn*, v2, P424. Also, *Hadiyat al-ʿArifin*, v2, p549. Also, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Qāḍī Shahbah, v1, pp70-72. Also, *Ṭabaqāt al-Shāfiʿiyya*, al-Asnawī, p10. Also, *Ṭabaqāt al-Shāfiʿiyya*, al-Subkī, v1, p275. Also, *Ṭabaqāt al-Fuqahāʾ*, al-Shīrāzī, p80. Also, *Muʿjam al-Muʿallifin*, v1, p383.

⁵⁷⁷ Known as Abū Muḥammad al-Miṣrī al-Muadhdhin. Born, Cairo, 174AH / 790AD. The relator of Shāfiʿi's words in Egypt. One the first to dictate the Ḥadīth in Ibn Toulūn mosque, Cairo. Faqīh, muḥadith, jurist, memoriser of the Qurʾān. See, *Ṭabaqāt al-Shāfiʿiyya*, al-Subkī, v1, p259. Also, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Hidāyat, p6. Also, *Ṭabaqāt al-Shāfiʿiyya*, al-Isnawī, p17. Also, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Qāḍī Shahbah, v1, pp65-66. Also, *Ṭabaqāt al-Fuqahāʾ*, al-Shīrāzī, p79. Also, *Tahdhīb al-Tahdhīb*, v3, p245. Also, *al-Aʿlām*, v3, pp14-15.

⁵⁷⁸ Born, Isfarāyīn, near Naysabūr, 344AH / 955AD. Moved to Baghdād, where he carved out for himself an enviable reputation as an outstanding scholar. Died, Baghdād, 406AH / 1016AD. See, *Tarīkh Baghdād*, v4, p368. Also, *Ṭabaqāt al-Fuqahāʾ*, al-Shīrāzī, p103. Also, *Ṭabaqāt al-Shāfiʿiyya*, al-Subkī, v3, p24. Also, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Qāḍī Shahbah, v1, pp172-173. Also, *Kashf al-Zunūn*, p244, 423, 424. Also, *al-Muntaẓam*, Ibn al-Jawzī, v7, p277.

⁵⁷⁹ Born, Baṣrah, 364AH / 975AD. Studied in Baghdād and Baṣrah. Faqīh, jurist, interpreter of the Qurʾān, man of letters, politician. Held many judgeships throughout the Islamic world. Died, Baghdād, 450AH / 1058AD. Published works include, 'al-Aḥkām al-Sulṭāniyya', 'Adab al-Dunyā Wa al-Dīn', 'Adab al-Qāḍī', 'Adab al-Wizārah', 'Aʿlām al-Nubūwah', 'al-Tuhfat al-Mulūkiyya Fī Adāb al-Siyāsiyya', 'Taṣḥīl al-Naẓr Wa Taʿjīl al-Zufr', 'Tafsīr al-Qurʾān' (al-Nukat Wa al-Uyūn Fī Taʾwīl al-Qurʾān). See, *Dhakhāʾir al-Turāth al-ʿArabī al-Islāmī*, 'Abd al-Jabbār, v2, pp805-807. Also, *Tarīkh Baghdād*, v12, pp102-103. Also, *Muʿjam al-Udabāʾ*, v15, pp52-55. Also, *Ṭabaqāt al-Shāfiʿiyya*, al-Subkī, v3, pp303-314. Also, *Ṭabaqāt al-Shāfiʿiyya*, al-Asnawī, p415. Also, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Qāḍī Shahbah, v1, pp230-232. Also, *Ṭabaqāt al-Fuqahāʾ*, al-Shīrāzī, p110. Also, *Kashf al-Zunūn*, p19, 45, 126, 140, 168, 408, 458, 628, 1188, 1315, 1978. Also, *Idāḥ al-Maknūn*, v2, p245. Also, *Hadiyat al-ʿArifin*, v1, p689. Also, *Muʿjam al-Muʿallifin*, v2, p499.

⁵⁸⁰ Born, Āmul, capital of Ṭabaristan, 348AH / 959AD. Studied in Jurjān, Naysabūr, Baghdād. Faqīh, jurist, debator, muḥadith, historian, judge in al-Karkh. Died, Baghdād, 450AH / 1058AD. See, *Ṭabaqāt al-Fuqahāʾ*, al-Shīrāzī, pp106-107. Also, *Ṭabaqāt al-Shāfiʿiyya*, al-Subkī, pp176-197. Also, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Qāḍī Shahbah, v1, pp226-228. Also, *Tarīkh Baghdād*, v8, p358. Also, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Hidāyat, p15. Also, *Kashf al-Zunūn*, p424, 1100, 1257, 1635, 1638. *Muʿjam al-Muʿallifin*, v2, p12.

⁵⁸¹ Born, Fayrūz Ābād, 393-396AH / 1003-1006AD. Studied in Shīrāz, Baṣrah and Baghdād where he resided. Faqīh, jurist, interpreter of the Qurʾān, muḥadith, debator, mufti. Died, Baghdād, 476AH / 1083AD. Published works include, 'al-Tanbīh', 'al-Ṭib al-Rūḥānī', 'Ṭabaqāt al-Fuqahāʾ', 'al-Lumaʾ Fī Uṣūl al-Fiqh', 'al-Muhadhab Fī al-Madhab', 'al-Tabṣīrah Fī Uṣūl al-Fiqh', 'Sharḥ al-Lumaʾ'. See, *Dhakhāʾir al-Turāth al-ʿArabī al-Islāmī*, 'Abd al-Jabbār, v1, p630. See also, *Ṭabaqāt al-Shāfiʿiyya*, al-Subkī, v3, pp88-111. Also, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Qāḍī Shahbah, v1, pp238-240. Also, *Kashf al-Zunūn*, p339, 391, 489, 1100, 1105, 1158, 1562, 1743, 1912, 1977. Also, *Muʿjam al-Muʿallifin*, v1, pp48-49.

⁵⁸² Born, approximately 360AH / 970AD. Man of letters, grammarian, interpreter of the Qurʾān, rhetorician, faqīh, jurist, muḥadith, debator. Taught in Tyre, Lebanon. Died 447AH / 1055AD. See, *Ṭabaqāt al-Shāfiʿiyya*, al-Subkī, v3, p168. Also, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Qāḍī Shahbah, v1, pp225-226. Also, *Ṭabaqāt al-Fuqahāʾ*, al-Shīrāzī, p111. Also, *Tabiʾīn Kadhb al-Muftarī*, p262. Also, *Inbāḥ al-Ruwāt*, al-Qifṭī, v2, pp69-70. Also, *Kashf al-Zunūn*, passim. Also, *Muʿjam al-Muʿallifin*, v1, p777. Also, *Siyar Aʿlām al-Nubalāʾ*, v17, p645.

⁵⁸³ Muḥammad Ibn Hibāt Allah Ibn Thābit, known as Abū Naṣr al-Bandanījī. Born 407AH / 1016AD. Nickname faqīh Al-Ḥaram. Faqīh, jurist, interpreter of the Qurʾān, mufti, muḥadith, debator. Died 495AH / 1102AD. See, *Ṭabaqāt al-Shāfiʿiyya*, al-Subkī, v3, p85. Also, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Qāḍī Shahbah, v1, pp272-273. Also,

Maḥāmaḥ (415AH).⁵⁸⁴

The followers of the Iraqi method in recording Uṣūl al-Fiqh claimed that they were more adept and more reliable than their Shāfi'ite brothers in Khorāsān with regard to transcribing Shāfi'ite texts and in implementing the precepts of the Shāfi'ite school of law.⁵⁸⁵

V.4.iii The Emergence Of The Khorāsānī / Merwazī Method

The formulation of the Khorāsānī method in recording Uṣūl al-Fiqh occurred almost at the same time as that of its sister school in Iraq. It was founded by 'Abd Allāh Ibn Aḥmad al-Marwazī, better known as al-Qaffal al-Ṣaghīr (d417AH).⁵⁸⁶

Muḥammad Ibn 'Abd Allāh (or 'Abd al-Malik) al-Mas'ūdī al-Marwazī (d420AH)⁵⁸⁷ further developed the method, followed in his tracks by 'Abd Allāh Ibn Yūsuf al-Juwaynī (d438AH).⁵⁸⁸ Then came 'Abd al-Raḥmān Ibn Muḥammad al-Fūrānī al-Marwazī (d461).⁵⁸⁹ The Khorāsānis, in turn, claim that their method was superior⁵⁹⁰ to the Iraqi method with regard to the derivation of Fiqh from the Shāfi'is Uṣūl and their subsequent comment on it.

al-Lubbāb, Ibn al-Athīr, v1, p147. Also, *Kashf al-Zunūn*, p575, 1733. Also, *Hadiyat al-'Arifin*, v2, p78.

⁵⁸⁴ Born, 368AH / 978AD. Faqīh, jurist, debator, historian. Died 415AH / 1024AD. See, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v3, pp20-23. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Hidāyat, p44. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shāhbah, v1, pp174-175. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p108. Also, *Kashf al-Zunūn*, passim. Also, *Siyar A'lām al-Nubalā'*, v17, p403. Also, *Mu'jam al-Mu'allifin*, v1, p246.

⁵⁸⁵ See, *al-Majmū'*, al-Nawawī, v1, p112.

⁵⁸⁶ Born, 327AH / 939AD. Faqīh, jurist, muḥadith, muftī, memoriser of the Qur'ān, ascetic. One of the leading Shāfi'ite commentators of his day. Sheikh of the Khorāsānī method in the Shāfi'ite study of Uṣūl al-Fiqh. Died 417AH / 1026AD. See, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shāhbah, v1, pp182-183. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Hidāyat, p45. Also, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v3, p198. Also, *Ṭabaqāt al-Fuqahā'*, al-Shīrāzī, p105. Also, *Idāḥ al-Maknūn*, v2, p188. Also, *Hadiyat al-'Arifin*, v1, p450. Also, *Mu'jam al-Mu'allifin*, v2, p225. Also, *Siyar A'lām al-Nubalā'*, v17, p405.

⁵⁸⁷ Faqīh, jurist, muḥadith, interpreter of the Qur'ān, pharmacist, mujtahid, one of the leading Shāfi'ite scholars of the day. Died after 420AH / 1029AD. See, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v3, pp72-74. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Hidāyat, p46. Also, *Ṭabaqāt al-Shāfi'iyya*, Isnawī, p414. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shāhbah, v1, p216-217. Also, *al-Wāfi Bi al-Wafiyāt*, v3, pp321-322. Also, *Kashf al-Zunūn*, p1635.

⁵⁸⁸ Known as Rukn al-Islām. Faqīh, jurist, muḥadith, interpreter of the Qur'ān, man of letters, debator, muftī, mujtahid. Head of the Shāfi'ites in Naysabūr. Died, Naysabūr, 438AH / 1047AD. See, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v3, pp208-219. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shāhbah, v1, pp209-211. Also, *Ṭabaqāt al-Mufasssīrīn*, al-Sayūfī, p15. Also, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-'Arifin*, v1, p451. Also, *Inbāḥ al-Ruwāt*, v2, p152. Also, *Siyar A'lām al-Nubalā'*, v17, p617. Also, *Mu'jam al-Mu'allifin*, v2, p307.

⁵⁸⁹ Born 388AH / 998AD. Faqīh, jurist, muḥadith, debator, scholar of creeds, mujtahid. Head of the Shāfi'ites in Merv. Died 461AH / 1069AD. See, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v3, pp223-227. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Hidāyat, p56. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shāhbah, v1, pp248-249. Also, *Lisān al-Mizān*, v3, p433. Also, *Kashf al-Zunūn*, p84, 1441. Also, *Siyar A'lām al-Nubalā'*, v18, p264. Also, *Mu'jam al-Mu'allifin*, v2, p108.

⁵⁹⁰ See, *al-Majmū'*, al-Nawawī, v1, p112.

V.4.iv The Unification Of The Khorāsān And Iraqi Shāfi'ite Methods

The Ahl al-Sunnah struggled in their daily lives under the rule of the Buwayhids (334AH / 945AD)⁵⁹¹ who supported the Shi'ites against their doctrinal rivals. Mu'izz al-Dawlah⁵⁹² was their first leader. He removed the 'Abbāsīd caliph al-Mustakfi⁵⁹³ from power and replaced him with al-Muṭi' Lillāh.⁵⁹⁴

The Buwayhids,⁵⁹⁵ in conjunction with the Fātimids⁵⁹⁶ and the Ḥamdḥānids⁵⁹⁷ help propogate Shi'ite doctrine throughout the regions of Iran, Iraq, Syria and Egypt, declaring conjointly, amongst other things, the Companions to be unbelievers.⁵⁹⁸

Mu'izz al-Dawlah, in turn, was removed in a coup engineered by the 'Abbāsīd, al-Qādir Billāh⁵⁹⁹ in 371AH / 981AD, a supporter of the Ahl al-Ḥadīth. He also called on the Mu'tazilah to retract the doctrines considered anathema to orthodox Islam.

At the same time the Ghaznavid ruler, Maḥmūd Ibn Sabaktakīn,⁶⁰⁰ attacked Shi'ah fortresses in and around the city of al-Rayy in 420AH / 1029AD.⁶⁰¹ In the same year al-Qādir Billāh undertook a campaign against the Shi'ites and the heretic sects in the south, declaring only those people associated with the four great Sunnī law schools to be true Muslims.

⁵⁹¹ See, *History of Islam*, Prof Mas'ūd al-Ḥassan, v1, pp335-336.

⁵⁹² Aḥmad Ibn Buwayh al-Sāsānī, born 303AH / 915AD. Died, 356AH / 967AD. See, *Siyar A'lām al-Nubalā'*, v16, p189. See also, *Tajārub al-Umam*, v6, pp146-231. Also, *al-A'lām*, v1, p105.

⁵⁹³ 'Abd Allāh Ibn 'Aḥī. Born, Baghdād, 292AH / 904AD. Slain by the Buwayhids, 338AH / 949AD. See, *Siyar A'lām al-Nubalā'*, v15, p111. Also, *al-Kāmil Fī al-Tarīkh*, v8, pp137-138. Also, *Tarīkh Baghdād*, v10, p10. Also, *al-Nibrās*, p120.

⁵⁹⁴ Al-Faḍl Ibn Ja'far al-Muqtaḍā Billāh. Born, 301AH / 913AD. Died, 364AH / 974AD. See, *Siyar A'lām al-Nubalā'*, v15, p113. Also, *al-Kāmil Fī al-Tarīkh*, v8, pp148-210. Also, *al-Nibrās*, Ibn Daḥyā, p121. Also, *al-A'lām*, v5, p147.

⁵⁹⁵ A Shi'ite power from the heretic Ruwāfiḍ which ruled from 945-1055AD. See, *al-Mawsū'ah al-Thaqāfiyya*, Dr Hussein al-Sa'īd, pp250-251.

⁵⁹⁶ The Fatimids or the Ubaydiyyun.. A Shi'ite heretic state which ruled Egypt from 909-1171AD. The first ruler was 'Ubayd Allāh al-Mahdī. See, *Ibid*, p703.

⁵⁹⁷ A heretic Shi'ite state, deriving from Hamdhān Ibn Hamdhūn, a Mawṣilite. Ruled from 929-1003AD. *Ibid*, p410.

⁵⁹⁸ See, *al-Kāmil Fī al-Tarīkh*, v7, passim.

⁵⁹⁹ Aḥmad Ibn Ishāq Ibn Ja'far. Born, 336AH / 947AD. A scholar and statesman. A faqīh. jurist, muḥadith and judge. Died, 422AH / 1031AD. See, *Siyar A'lām al-Nubalā'*, v15, p127. Also, *al-Kāmil Fī al-Tarīkh*, v9, pp28-143. Also, *al-Nibrās*, p127.

⁶⁰⁰ Yamīn al-Dawlah Abū al-Qāsim Ibn al-Amīr Nāṣir al-Dawlah. Born, 361AH / 971AD. Assumed power 389AH / 998AD. Faqīh, jurist, rhetorician, poet, preacher, debator, a Ḥanafite. Died, 421AH / 1030AD. See, *al-Jawāhir al-Muḍiyya*, v2, p158. Also, *Siyar A'lām al-Nubalā'*, v17, p483. Also, *Sīrah al-Yamīnī*, by Muḥammad Ibn 'Abd al-Jabbār, passim. Pub in Delhi, 1847. 2nd ed, Cairo, 1286AH / 1869AD. 3rd ed Bulāq, 1290AH / 1873AD. 4th ed Lahore, 1300AH / 1883AD. Trans by Reno Lās, London, 1808. See also, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, v2, p683. Also, *al-Kāmil Fī al-Tarīkh*, v9, pp9-139. Also, *al-A'lām*, v7, p171.

⁶⁰¹ Al-Rayy, located between Khorāsān and Ṭabaristan. Conquered by 'Umar. The nisba of al-Rayy is rāzī. See, *al-Rawḍ al-Mi'tār*, pp278-279. Also, *Mu'jam Mā Ista'jam*, v2, p690. Also, *Ṣūrah al-Arḍ*, Ibn Ḥawqal, p321.

In particular he declared the Mu'tazilite doctrine of the created Qur'ān to be blasphemous, warned the populace of the pact which obtained between the Shi'ites and the Jews⁶⁰² and that which obtained between the Crusaders and the Shi'ites, and removed all Shi'ite preachers from their pulpits and replaced them with Sunnī equivalents.

The fortunes of the Ahl al-Sunnah improved under the Seljuk administration in Iraq, dating from 429AH / 1037AD.⁶⁰³ The first Seljuk amīr was Tughrul Beg⁶⁰⁴ whose power base was initially Naysābūr⁶⁰⁵ and Khorāsān.⁶⁰⁶ Jurjān⁶⁰⁷ was then liberated by Tughrul Beg in 433AH / 1042AD, followed by Baghdād from the Buwayhids in 447AH / 1056AD, during which the Buwayhid king, al-Malik al-Raḥīm,⁶⁰⁸ was imprisoned.

The Ahl al-Sunnah took full advantage during this period of the support for their cause by cleansing the state of Shi'ite doctrine. Tughrul Beg⁶⁰⁹ on his death in 455AH / 1063AD was succeeded by his uncle Alp Arsalān⁶¹⁰ who appointed Nizām al-Mulk as his chief minister.⁶¹¹

Nizām al-Mulk founded ten schools⁶¹² in which study of the Islamic sciences was undertaken from a Shāfi'ite perspective (the most renowned school being in Baghdād,)⁶¹³ at the expense of the heretic sects and the Shi'ites. As a consequence, the Shi'ites retaliated and had Nizām al-Mulk assassinated⁶¹⁴ in 485AH / 1092AD.

⁶⁰² See, *al-Kāmil Fī al-Tarīkh*, v7, p354.

⁶⁰³ Ibid, v7, passim.

⁶⁰⁴ Muḥammad Ibn Mikā'il Ibn Seljuk, known as Rukn al-Dīn al-Sulṭān Abū Ṭālib. Grandson of Seljuk. Entered Baghdād 1056AD as a liberator of the Buwayhids. Crowned king of the Seljuks at Merv in 1037. See, *Kitāb al-Duwal al-Islām*, al-Dhahabī, v1, pp252-267. Died 455AH / 1063AD. See, Ibid, v2, p267. Also, *Siyar A'lām al-Nubalā'*, v18, pp107-112.

⁶⁰⁵ A city in Khorāsān. Conquered by 'Uthmān in 30AH / 650AD. See, *al-Rawḍ al-Mi'tār*, pp588-589. Also, *Ṣūrah al-Arḍ*, Ibn Ḥawqal, p362. Also, *Nuzhat al-Mustāq*, al-Idrīsī, p208.

⁶⁰⁶ Located in Iran. See, *al-Rawḍ al-Mi'tār*, pp214-215. Also, *Ṣūrah al-Arḍ*, Ibn Ḥawqal, pp358-360.

⁶⁰⁷ Located in Khorāsān. See, *al-Rawḍ al-Mi'tār*, pp160-162. Also, *Mu'jam Mā Ista'jam*, al-Bakrī, v2, p375. Also, *Nuzhat al-Mustāq*, al-Idrīsī, p208. Also, *Ṣūrah al-Arḍ*, Ibn Ḥawqal, p324.

⁶⁰⁸ The last of the Buwayhid sultans. See, *Kitāb Duwal al-Islām*, al-Dhahabī, v1, p263.

⁶⁰⁹ See 604, above.

⁶¹⁰ Muḥammad Ibn Shāghrī Beg Dāwūd Ibn Micheal Ibn Seljuk. Born, 420AH / 1029AD. The second of the Seljuk sultans in Persia. Defeated the Byzantines at the crucial battle of Manzikert, 464AH / 1071AD. Died, 465AH / 1073AD. See, *Kitāb Duwal al-Islām*, Dhahabī, v1, p274. Also, *al-Tawfiqāt al-Ilhāmiyya*, v1, p497. Also, *al-Mawsū'*, al-Thaqāfiyya, Dr Ḥussein Sa'īd, p109. Also, *Siyar A'lām al-Nubalā'*, v18, pp414-418. Also, *Atlas Of Maritime History*, Natkiel and Preston, p30.

⁶¹¹ Al-Ḥasan Ibn 'Alī Ibn al-'Abbās. Born 408AH / 1017AD. Taught by his Shāfi'ite father. Muḥadith, Qur'ān memoriser, faqīh. Commissioned the building of a number of hospitals and schools with donations amounting to 600,000 dinars a year. Assassinated 485AH / 1092AD. Published works include, *'Amālī Nizām al-Mulk Fī al-Ḥadīth'*, ed by 'Abd al-Ḥādī Maḥbūbah. See, *Majallat Ma'had al-Makḥḥūṭāt al-'Arabiyya*, v5, 1959, pp349-378. See, *'Ulama al-Nizāmiyyāt Wa Madāris al-Sharq al-Islāmī*, Dr Nājī Ma'rūf, pp9-15. Also, *Siyar A'lām al-Nubalā'*, v19, pp94-97. Also, *al-Kāmil Fī al-Tarīkh*, v10, p70. Also, *Kitāb al-Rawḍatayn*, Abū Shāmāh, v1, p25.

⁶¹² See, *Scholars of the Nizāmiyya*, pp19-76.

⁶¹³ Ibid, pp19-40.

⁶¹⁴ See 611, above.

Nevertheless, despite these drawbacks, the Nizāmiyya system of teaching prevailed, to the extent where there developed a key research methodology in the study of Islamic sciences, and led in particular to the unification of Shāfi'ite studies under one system.

The unification of the two methods in the field of Fiqh and Uṣūl al-Fiqh of the Iraqī and Khorāsānī schools occurred as follows:

a) The Unification Of The Two Methods By The Khorāsānis

The first scholar to attempt this uniting of the two systems in Khorāsān was al-Ḥuseyn Ibn Shu'ayb al-Sinjī. (430AH / 1039 AD).⁶¹⁵ He was followed in this task by al-Juwaynī (478AH / 1085 AD),⁶¹⁶ as expressed in his work, 'al-Nihāyah'. The next attempt was undertaken by 'Abd al-Raḥmān Ibn Ma'mūn al-Mutawallī (478AH / 1085AD),⁶¹⁷ as expressed in 'al-Tatimmah'.

He was followed by al-Ghazzālī (505AH / 1111AD)⁶¹⁸ who undertook the combining of the two methods in 'al-Baṣīṭ', 'al-Waṣīṭ', and 'al-Wajīz'⁶¹⁹ respectively.

b) The Unification Of The Two Methods By The Iraqis

The first Iraqi scholar to attempt the task of bringing together the two said methods of

⁶¹⁵ Studied in Merv and Baghdād. Became head Shāfi'ite faqīh in Merv. Died, between 427-430AH / 1036-1039AD. See, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v3, p150. See also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Hidāyat, p48. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shahbah, pp207-208. Also, *Siyar A'lām al-Nubalā'*, v14, p413.

⁶¹⁶ Born, 419AH / 1028AD. Faqīh, Jurist, scholastic theologian, interpreter of the Qur' ān, man of letters, muftī, preacher, debator. Taught in Naysabūr and Mecca. Became head Imām. Died, Naysabūr, 478AH / 1085AD. Published works include, 'al-Irshād', 'al-Burhān', 'al-Shāmil', 'Shifā' al-Ghalīl', 'al-Ghiyāthī', 'al-' Aqīdhah al-Nizāmiyya', 'Luma' al-Adillah', 'al-Waraqāt'. See, *Dhakhā'ir al-Turāth al-' Arabī al-Islāmī*, ' Abd al-Jabbār, v1, p353. Also, *Ṭabaqāt al-Shāfi' iyya*, al-Subkī, v3, pp249-283. Also, *Ṭabaqāt al-Shāfi' iyya*, Ibn Hidāyat, pp61-62. Also, *Ṭabaqāt al-Shāfi' iyya*, Ibn Qāḍī Shahbah, v1, pp255-256. Also, *Ṭabiyīn Kadhb al-Muftarī*, pp278-285. Also, *Kashf al-Zunūn*, p68, 70, 75, 242, 253, 377, 380, 443, 466, 896, 1024, 1124, 1159, 1541, 1561, 1562, 1641, 1754, 1990, 2005. Also, *Hadiyat al-' Arifin*, v1, p626. Also, *al-Fath al-Mubīn*, v1, pp260-262. Also, *Mu' jam al-Mu' allifin*, v2, pp318-319.

⁶¹⁷ Born 426AH / 1035AD. Faqīh, jurist, debator, scholastic theologian, lawyer. Taught at the Nizāmiyya school, Baghdād. Died 478AH 1086AD. See, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v3, pp223-225. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Hidāyat, p62. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shahbah, v1, pp247-248. Also, *Kashf al-Zunūn*, p1251. Also, *Idāḥ al-Maknūn*, v2, p150.

⁶¹⁸ Born, Ṭabarān, Ṭūs, Khorāsān, 450AH / 1058AD. Studied in Khorāsān, Jurjān and Naysabūr. Appointed as a teacher of the Nizāmiyya college in Baghdād, 484AH / 1091AD. Faqīh, jurist, scholastic theologian, Ṣūfī, philosopher, poet, man of letters, an expert in both the religious and rationalist sciences, muftī. Taught in Damascus, Jerusalem, Alexandria, Mecca, Medīna. Returned to Ṭūs, died there 505AH / 1111AD. Published works total 55 books. See, *Dhakhā'ir al-Turāth al-' Arabī al-Islāmī*, ' Abd al-Jabbār, v2, pp712-724. Also, *Ṭabaqāt al-Shāfi' iyya*, al-Subkī, v4, pp101-182. Also, *Ṭabaqāt al-Shāfi' iyya*, Ibn Hidāyat, pp69-71. Also, *Hadiyat al-' Arifin*, v2, pp79-81. Also, *Ṭabaqāt al-Shāfi' iyya*, Ibn Qāḍī Shahbah, v1, pp293-294. Also, *al-Fath al-Mubīn*, v2, pp8-10. Also, *Mu' jam al-Mu' allifin*, v3, pp671-673.

⁶¹⁹ *Al-Wajīz*, pub Cairo, 1317AH / 1899AD.

dealing with the science of Fiqh and Uṣūl al-Fiqh was ‘Abd al-Wāḥid Ibn Ismā‘īl al-Rūyānī who, for his pains, was slain by Shi‘ites in 502AH / 1108AD.⁶²⁰

He was followed in this task by ‘Abd al-Sayyid Ibn Muḥammad, better known as Ibn al-Ṣabbāgh al-Baghdādī (477AH/1084AD),⁶²¹ and then by Muḥammad Ibn Aḥmad al-Shāshī (507AH/1114 AD).⁶²²

The process of unifying the two methods reached its apogee in the work of ‘Abd al-Kārim Ibn Muḥammad al-Rāfi‘ī (623AH / 1226AD),⁶²³ who drew on the most suitable material from both systems to formulate one Shāfi‘ī method,⁶²⁴ as expressed in his two commentaries on al-Ghazzālī's 'al-Wajīz'⁶²⁵ under the titles 'Al-Sharḥ al-Ṣaghīr' and 'al-Sharḥ al-Kabīr'. Later al-Rāfi‘ī consolidated his views on this unification in a book entitled, 'al-Muḥarrir' drawing strongly on al-Ghazzālī's, 'al-Wajīz'.⁶²⁶

This unification of the two methods assumed a greater clarity with a commentary by al-Nawawī (676AH / 1277AD)⁶²⁷ on 'al-Muḥadhdhab' by al-Shīrāzī,⁶²⁸ entitled 'al-Majmū‘',⁶²⁹ and with a summary by, again, al-Nawawī, of al-Rāfi‘ī's 'al-Muḥarrir' under

⁶²⁰ Born 415AH / 1025AD. Studied under his grandfather and father. Faqīh, Muḥadith, jurist, debator. Died 502AH / 1108AD. See, *Ṭabaqāt al-Shāfi‘iyya*, al-Subkī, p268. Also, *Ṭabaqāt al-Shāfi‘iyya*, Ibn Qāḍī Shahbah, v1, p287. Also, *Kashf al-Zunūn*, passim. Also, *Idāḥ al-Maknūn*, v2, p130. Also, *Hadiyat al-‘Arifīn*, v1, p634. Also, *Mu‘jam al-Mu‘allifīn*, v2, p332.

⁶²¹ Born, Baghdād, 400AH / 1090AD. Faqīh, jurist, theologian. Taught at the Nizāmiyya college, Baghdād. Became a mujtahid of the first degree. Died, Baghdād, 477AH / 1084AD. See, *Ṭabaqāt al-Shāfi‘iyya*, al-Subkī, v3, pp230-237. Also, *Ṭabaqāt al-Shāfi‘iyya*, Ibn Qāḍī Shahbah, v1, pp251-252. Also, *Nukat al-Hamyān*, p193. Also, *al-Jawāhir al-Muḍiyya*, al-Qurashī, v1, pp316-317. Also, *Kashf al-Zunūn*, p104, 389, 1025, 1114, 1129, 1218, 1381, 1501. Also, *Mu‘jam al-Mu‘allifīn*, v2, p151.

⁶²² Known as Fakhr al-Islām, Abu Bakr al-Shāshī. Born 429AH / 1037AD. Taught at the Nizāmiyya college, Baghdād. Became head sheikh there. Faqīh, jurist, man of letters, poet, ṣūfī. Died 507AH / 1114AD. Published works include, *Ḥilyat al-‘Ulamā’*. See, *Ṭabaqāt al-Shāfi‘iyya*, al-Subkī, v4, pp57-61. Also, *Ṭabaqāt al-Shāfi‘iyya*, Ibn Hidāyat, p72. Also, *Ṭabaqāt al-Shāfi‘iyya*, Ibn Qāḍī Shahbah, v1, pp290-291. Also, *Tadhkirat al-Ḥuffāz*, al-Dhahabī, v4, p37. Also, *Siyar A‘lām al-Nubalā’*, v19, p393. Also, *Kashf al-Zunūn*, p401, 690, 1025, 1169, 1635, 1733. Also, *Hadiyat al-‘Arifīn*, v2, p81. Also, *Mu‘jam al-Mu‘allifīn*, v3, p60.

⁶²³ Born, 555AH / 1160AD. Studied under his father. Muḥadith. Shāfi‘ite sheikh in Caspian (Qazwīn). Taught interpretation of the Qur‘ān, Fiqh, debate, literature, poet. Died 623AH / 1226AD. See, *Ṭabaqāt al-Shāfi‘iyya*, al-Subkī, v5, pp119-125. Also, *Ṭabaqāt al-Shāfi‘iyya*, Ibn Hidāyat, pp83-84. *Ṭabaqāt al-Shāfi‘iyya*, Ibn Qāḍī Shahbah, v2, pp75-77. Also, *Fawāt al-Wafiyāt*, v2, pp3-4. Also, *Ṭabaqāt al-Mufasssīrīn*, al-Sayūfī, p21. Also, *Kashf al-Zunūn*, passim. *Hadiyat al-‘Arifīn*, v1, pp609-610. Also, *Mu‘jam al-Mu‘allifīn*, v2, p210.

⁶²⁴ See, *al-Majmū‘*, al-Nawawī, v1, pp108-112.

⁶²⁵ See, *Mu‘allifāt al-Ghazzālī*, ‘Abd al-Rahmān Badawī, passim.

⁶²⁶ Ibid.

⁶²⁷ Born, Nawā, south Syria, 631AH / 1233AD. Studied in Damascus. Faqīh, jurist, muḥadith, logician, scholastic theologian, grammarian. Died, Nawā, 677AH / 1278AD. Published works total 21 books. See, *Dhakhā‘ir al-Turāth al-‘Arabī al-Islāmī*, ‘Abd al-Jabbār, v2, pp887-889. Also, *Ṭabaqāt al-Shāfi‘iyya*, al-Subkī, v5, pp167-168. Also, *Ṭabaqāt al-Shāfi‘iyya*, Ibn Hidāyat, p89. Also, *Ṭabaqāt al-Shāfi‘iyya*, Ibn Qāḍī Shahbah, v2, pp153-157. Also, *Kashf al-Zunūn*, p59, 70, 96, 97, 115, 200, 210, 244, 340, 379, 398, 465, 490, 514, 550, 557, 688, 717, 915, 929, 936, 1039, 1162, 1188, 1613, 1648, 1694, 1833, 1838, 1859, 1873, 1877, 1912, 2025. Also, *Idāḥ al-Maknūn*, v1, p252; v2, p152, 199, 425. Also, *Mu‘jam al-Mu‘allifīn*, v4, p98, 99.

⁶²⁸ See 581, above.

⁶²⁹ Pub Cairo 1344-1348AH / 1925-1929AD. 2nd ed Cairo, 1963-1970.

the title. 'al-Minhāj'.⁶³⁰

Thus we note how the unity of this Shāfi'ite method, employed in deriving Fiqh from Shāfi'ite Uṣūl, was realized before the end of the 7th century AH / 13th century AD, principally within the confines of the Nizāmiyya schools and supported politically by the Seljuks.⁶³¹ This had the effect of promoting the study of Uṣūl al-Fiqh throughout the Islamic world.

V.4.v The (Shāfi'ite) Jurisprudents And Indicators

Certain jurisprudents were wont to infer rules from issues of Uṣūl al-Fiqh using only those indicators that were productive of opinion (*adillah ḡaniyya*),⁶³² whilst others would only use indicators that were productive of knowledge (*adillah qat'iyya*).⁶³³

The first group opined that Fiqh could be derived from the Uṣūl, or a rule inferred, using a *dalīl ḡannī* only, and that what applies to Fiqh, with regard to this inference, applies also to the Uṣūl. The scholars in this group included Fakhr al-Dīn al-Rāzī,⁶³⁴ al-Bayḏāwī,⁶³⁵ and Āmidī amongst others.⁶³⁶

The second group opined that legal solutions to issues of Uṣūl al-Fiqh could only be arrived by using a (*dalīl qat'ī*). This meant that this group were restricted in their search for legal solutions, as opposed to former group which employed both *dalīl ḡannī* and *dalīl qat'ī* indicators.

⁶³⁰ Pub Bulāq, 1295AH / 1878AD.

⁶³¹ See 611, 612, 613, above.

⁶³² See, *al-Iḥkam*, Āmidī, v1, pp147-148.

⁶³³ Ibid.

⁶³⁴ Born, al-Rayy, 543AH / 1149AD. Journeyed to Khawārizm, Khorāsān, Ghazna in search of learning. Faqīh, jurist, interpreter of the Qur' ān, scholastic theologian, man of letters, poet, doctor of medicine, philosopher, debator, preacher in Arabic and Persian. Died, al-Herāt, 606AH / 1210AD. Published works total 18 books, including '*al-Maḥṣūl Fī 'Ilm Uṣūl al-Fiqh*', '*Nihāyat al-'Uqul Fī Dirāyat al-Usul*', '*Ma' ālim Uṣūl al-Dīn*', '*al-Munāẓirāt*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, v1, pp527-529. Also, *Ṭabaqāt al-Shāfi' iyya*, al-Subkī, v5, pp33-35. Also, *Ṭabaqāt al-Shāfi' iyya*, Ibn Qāḍī Shahbah, v2, pp65-67. Also, '*Uyūn al-Anbā*', Ibn Abī Uṣaybi' ah, v2, pp23-30. Also, *Tarīkh al-Ḥukamā*, al-Qifī, pp291-293. Also, *Mizān al-'itidāl*, v2, p324. Also, *Lisān al-Mizān*, v4, pp426-429. Also, *Al-Wāfi Bi al-Wafiyāt*, v4, pp248-259. Also, *Ṭabaqāt al-Mufasssīrīn*, al-Sayūfī, p39. Also, *Mu' jam al-Mu' allifīn*, v3, pp558-560. Also, *al-Fath al-Mubīn*, v2, pp47-49.

⁶³⁵ Born, Azerbaijan, date unknown. Faqīh, jurist, polemicist. Became a judge in Shīrāz. Died, Tabrīz, Iran, 685AH / 1286AD. Published works include, '*Anwār al-Tanzīl Wa Asrār al-Ta' wīl*', '*Minhāj al-Wuṣūl*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v1, pp402-403. Also, *Ṭabaqāt al-Shāfi' iyya*, Subkī, v5, p59. Also, *Ṭabaqāt al-Shāfi' iyya*, al-Isnawī, p100. Also, *Ṭabaqāt al-Shāfi' iyya*, Ibn Qāḍī Shahbah, pp172-173. Also, *Kashf al-Zunūn*, p186, 1032, 1116, 1192, 1273, 1481, 1546, 1698, 1704, 1705, 1854, 1858. Also, *Idāh al-Maknūn*, v2, p569. Also, *Hadiyat al-'Ārifīn*, v1, pp462-463. Also, *Mu' jam al-Mu' allifīn*, v2, pp266-267.

⁶³⁶ See I.2, part three.

The scholars in the latter group included Abū al-Ḥassan al-Ash‘arī,⁶³⁷ al-Bāqillānī,⁶³⁸ ‘al-Minhāj’⁶³⁹ and Abū Ishāq al-Shīrāzī.⁶⁴⁰

The first group were not adverse to using rationalist based arguments in the search for legal solutions to issues of Uṣūl al-Fiqh. As for the second group they were loathe, out of piety, to use rational based arguments and consequently restricted themselves in the search for legal solutions to the use of only *adillah qat‘ iyya* as *bona fide* indicators.

V.5 The Ḥanbalī School Of Law

The founding of the Ḥanbalī school of law is ascribed to Imām

Aḥmad Ibn Muḥammad Ibn Ḥanbal Ibn Hilāl Ibn Asad al-Shaybānī.⁶⁴¹ He was born in Baghdād in 164AH / 780AD, where during his early childhood he learnt the basics of the Islamic sciences, beginning with the memorisation of the Qur’ān at the age of 10. In 179AH / 795AD,⁶⁴² he devoted himself to the study of Ḥadīth under the guidance of ‘Abd Allāh Ibn al-Mubārak Ibn Wāḍih al-Hanzālī.⁶⁴³

At the age of twenty Aḥmad Ibn Ḥanbal embarked on a journey throughout the capitals of Islām in search of Ḥadīth which he collected from the prominent muḥadithūn of the time. These included Sufyān Ibn ‘Uyaynah al-Hilālī,⁶⁴⁴ Qāḍī Abū Yūsef,⁶⁴⁵ Wakī‘,⁶⁴⁶ ‘Abd al-

⁶³⁷ See 407, above

⁶³⁸ Muḥammad Ibn al-Ṭib al-Qāḍī Abū Bakr al-Bāqillānī. Born 338AH/950AD. Died 403AH/1013AD. compositions include, ‘Amālī Ijmā‘ Ahl al-Medīna’, Tamhīd Fī Uṣūl al-Dīn’, ‘al-Muqni’ Fī Uṣūl al-Fiqh’, ‘Kashf al-Asrār’ and ‘Hatak al-Istār Fī Radd ‘Alā al-Bāṭiniyya’. see *Mu‘jam al-Mu‘allifin*, v3, p363. see Also, *al-A‘lām*, v6, p176.

⁶³⁹ See 630, above

⁶⁴⁰ See 578, above

⁶⁴¹ See, *Tarīkh Baghdād*, v4, pp412-423. Also, *Ṭabaqāt al-Ḥanābilah*, pp311. Also, *Tadhkirat al-Ḥuffāz*, v2, pp17-18. Also, *Ḥiliyat al-Awliyā*, v9, pp161-233. Also, *Tahdhīb al-Tahdhīb*, Ibn Ḥajar, pp72-76. Also, *Siyar A‘lām al-Nubalā’*, v11, pp177-358. Also, *Ṭabaqāt Ibn Sa‘d*, v7, pp354-355. Also, *al-Jarḥ Wa al-Ta‘dīl*, v1, pp292-313. Also, *al-Wāfi Bi al-Wafiyāt*, v6, pp363, 369. Also, *Ṭabaqāt al-Shāfi‘iyya*, al-Subkī, v2, pp27-37. Also, *Ṭabaqāt al-Shāfi‘iyya*, Ibn Qāḍī Shahbah, v1, pp56-58. Also, *Ṭabaqāt al-Fuqahā’*, al-Shīrāzī, p75. Also, *Kashf al-Zunūn*, p1392, 1393, 1401, 1422, 1423, 1680, 1844. Also, *Mir‘āt al-Jinān*, al-Yāf‘ī, v2, p132. Also, *Mu‘jam al-Mu‘allifin*, v1, pp261-262.

⁶⁴² *Siyar A‘lām al-Nubalā’*, v11, p183.

⁶⁴³ Born 118AH / 736AD. Faqīh, jurist, muḥadith, interpreter of the Qur’ān, linguists, ṣūfī, grammarian. Died 181AH / 797AD. Pub works include, ‘Kitāb al-Jihād’ and ‘al-Zuhud Wa al-Raqā‘iq’. See, *Dhakhā‘ir al-Turāth al-‘Arabī al-Islāmī*, ‘Abd al-Jabbār, v1, p236. Also, *Ḥiliyat al-Awliyā*, v8, pp162-190. Also, *al-Jawāhir al-Muḍiyya*, al-Qurashī, v1, pp281-282. Also, *Tadhkirat al-Ḥuffāz*, al-Dhahabī, v1, pp253-257. Also, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-‘Ārifin*, v1, p438. Also, *Siyar A‘lām al-Nubalā’*, v8, p378. Also, *Mu‘jam al-Mu‘allifin*, v2, p271.

⁶⁴⁴ See 355, above.

⁶⁴⁵ See 426, above.

⁶⁴⁶ Wakī‘ Ibn al-Jarāḥ Ibn Maṣīḥ al-Ru‘āsī. Born, Kūfa, 129AH / 746AD. Faqīh, jurist, muḥadith, memoriser and interpreter of the Qur’ān, ṣūfī. Refused his appointment of judge by Hārūn al-Rashīd. Died, Fayd, Saudi Arabia, 197AH / 812AD. See, *Ṭabaqāt al-Ḥanābilah*, al-Farā’, pp257-258. Also, *al-Kawākib al-Duriyya Fī Tarājim al-Sādah al-Ṣūfiyya*, ‘Abd al-Ra‘ūf al-Menāwī, v1, p177. Also, *Siyar A‘lām al-Nubalā’*, v9, p141. Also, *Kashf al-Zunūn*, p461, 1423. Also, *Mu‘jam al-Mu‘allifin*, v4, p74.

Rahmān Ibn Mahdī,⁶⁴⁷ Muḥammad Ibn Idrīs al-Shāfi'ī⁶⁴⁸ and others.⁶⁴⁹

The number of Sheikhs Ibn Ḥanbal collected Ḥadīth from, which are duly recorded in his Musnad, numbered many.⁶⁵⁰ Among his pupils⁶⁵¹ we must include al-Bukhārī,⁶⁵² Muslim,⁶⁵³ Abū Dāwūd,⁶⁵⁴ al-Tirmidhī,⁶⁵⁵ Ibn Mājah,⁶⁵⁶ al-Nisā'ī,⁶⁵⁷ al-Shāfi'ī,⁶⁵⁸ al-

⁶⁴⁷ See 541, above.

⁶⁴⁸ See 520, above.

⁶⁴⁹ See, *Siyar A'lām al-Nubalā'*, v11, pp180-181.

⁶⁵⁰ Ibid, v11, p181.

⁶⁵¹ Ibid, v11, pp181-182.

⁶⁵² Muḥammad Ibn Ismā'īl Ibn Ibrahīm Ibn al-Mughīrah al-Ja' fī al-Bukhārī. Born 194AH / 810AD. Muḥadith, faqīh, jurist, interpreter of the Qur'ān, historian. Collected Ḥadīth from all the Muslim world. Died 256AH / 870AD. Pub works include, '*Ṣaḥīḥ al-Bukhārī*', '*al-Adab al-Mufrad*', '*Faḍl Allāh al-Ṣamad Fī Tawḍīḥ al-Adab al-Mufrad*', '*al-Tarīkh al-Kabīr*', '*al-Tarīkh al-Ṣaghīr*', '*al-Du'afā' Wa al-Metrūkūn*', '*Kitāb al-Kuna*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v1, pp370-371. Also, *Tarīkh Baghdād*, v2, pp4-34. Also, *Tahdhīb al-Tahdhīb*, v9, pp47-55. Also, *Ṭabaqāt al-Ḥanābilah*, al-Farā', pp201-203. Also, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v2, pp2-19. Also, *al-Wāfi Bi al-Wafiyāt*, al-Ṣafādī, v2, pp206-209. Also, *Siyar A'lām al-Nubalā'*, v12, pp391-471. *Kashf al-Zunūn*, passim. Also, *Hadiyat al-'Arifīn*, v2, p16. Also, *Mu'jam al-Mu'allifīn*, v3, pp130-131.

⁶⁵³ Muslim Ibn al-Ḥajjāj Ibn Muslim Ibn Ward al-Naysabūrī. Born, 206AH / 810AD. Journeyed throughout the Islamic East in search of learning. Muḥadith, memoriser of the Qur'ān, faqīh, jurist, historian. Died 261AH / 875AD. Pub works include, '*Ṣaḥīḥ Muslim*', '*al-Afrād*', '*al-Tamyīz*', '*Awālī Imām Muslim*', '*Rijāl 'Urwa Ibn al-Zubayr Wa Jamā'*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, v2, pp833-834. Also, *Tarīkh Baghdād*, v13, pp100-104. Also, *Tadhkirat al-Ḥuffāz*, al-Dhahabī, v2, pp150-152. Also, *Ṭabaqāt al-Ḥanābilah*, al-Farā', p246. Also, *al-Tahdhīb al-Tahdhīb*, v10, pp126-128. Also, *Kashf al-Zunūn*, passim. Also *Hadiyat al-'Arifīn*, v2, p431. Also, *Siyar A'lām al-Nubalā'*, v12, pp557-580. Also, *Mu'jam al-Mu'allifīn*, v3, pp851-852.

⁶⁵⁴ Sulaymān Ibn al-Ash' ath, Ibn Ishāq al-Azādī al-Sijistānī, born, 202AH / 817AD. Collected Ḥadīth from all round the Muslim world. Muḥadith, memoriser of the Qur'ān, faqīh, historian. Died, Baṣrah, 275AH / 889AD. Pub works include, '*Sunan Abū Dāwūd*', '*al-Marāsīl*', '*al-Maṣāḥif*', '*Risālah Abū Dāwūd Ilā Ahl Mecca*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v1, pp295-296. Also, *Tarīkh Baghdād*, v9, pp55-59. Also, *Ṭabaqāt al-Ḥanābilah*, Ibn al-Farā', pp118-120. Also, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v2, p48. Also, *Tadhkirat al-Ḥuffāz*, al-Dhahabī, v2, pp152-154. Also, *Kashf al-Zunūn*, passim. Also, *Tahdhīb al-Tahdhīb*, v4, pp169-173. Also, *Siyar A'lām al-Nubalā'*, v13, pp203-221. Also, *Mu'jam al-Mu'allifīn*, v1, pp784-785.

⁶⁵⁵ Muḥammad Ibn 'Isā al-Tirmidhī, born, 210AH / 825AD. A pupil of al-Bukhārī. Journeyed to several Islamic cities in search of learning. Faqīh, muḥadith, debator, historian, jurist and interpreter of the Qur'ān. Died, Tirmidh, Khorāsān, 279AH / 892AD. Pub works include, '*Jāmi' al-Tirmidhī al-Ṣaḥīḥ*', '*al-Shamā'il al-Nabawiyya Wa al-Khaṣṣā'il al-Muṣṭaphawiyya*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v1, p410. Also, *Tadhkirat al-Ḥuffāz*, al-Dhahabī, v2, pp187-188. Also, *Tahdhīb al-Tahdhīb*, v9, pp387-389. Also, *al-Wāfi Bi al-Wafiyāt*, v4, pp294-296. Also, *Kashf al-Zunūn*, p559, 863, 1059, 1440. Also, *Hadiyat al-'Arifīn*, v2, p19. Also, *Siyar A'lām al-Nubalā'*, v13, pp270-277. Also, *Mu'jam al-Mu'allifīn*, v3, pp573-574.

⁶⁵⁶ Muḥammad Ibn Yazīd Ibn Mājah, born 209AH / 824AD. Muḥadith, memoriser of the Qur'ān, interpreter of the Qur'ān, historian, faqīh, jurist. Died, 273AH / 887AD. Pub works include, '*Sunan Ibn Mājah*', and '*Tarīkh al-Khulafā'*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, v1, p233. Also, *Tadhkirat al-Ḥuffāz*, Dhahabī, v2, pp189-190. Also, *Tahdhīb al-Tahdhīb*, v9, pp530-532. Also, *Siyar A'lām al-Nubalā'*, v13, pp277-281. Also, *Kashf al-Zunūn*, p300, 439, 1004, 1405. Also, *Mu'jam al-Mu'allifīn*, v3, 774-775.

⁶⁵⁷ Aḥmad Ibn Shu'ayb Ibn 'Alī al-Nisā'ī. Born 215AH / 830AD. Historian, muḥadith, interpreter of the Qur'ān, Died 303AH / 915AD. Pub works include, '*Khaṣṣā'is Amīr al-Mu'minīn*', '*Alī Ibn Abī Ṭālib*', '*Sunan al-Nisā'ī*', '*Tasmiyyāt Fuqahā' al-Anhu Amṣār Min al-Ṣahābah Fa Man Ba'dahum*', '*Tasmiyyāt Men lem Yarwī 'Ghayrahu Rajul Wāḥid*', '*al-Du'afā' Wa al-Metrūkūn*', '*al-Ṭabaqāt*', '*Faḍā'il al-Qur'ān*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v2, pp876-878. Also, *al-Rawḍ al-Mi'tār*, p579. Also, *Tadhkirat al-Ḥuffāz*, al-Dhahabī, v2, pp241-243. Also, *Hussen al-Muḥāḍarah*, v1, pp197-198. Also, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v2, pp83-84. Also, *Kashf al-Zunūn*, passim. Also, *Mu'jam al-Maṭbū'āt*, al-Sirkīs, pp851-852. Also, *Siyar A'lām al-Nubalā'*, v14, p125. Also, *Mu'jam al-Mu'allifīn*, v1, pp151-152.

⁶⁵⁸ See 520, above.

Ḥasan Ibn Muhammad al-Za‘farānī,⁶⁵⁹ Wakī‘ Ibn al-Jarrāḥ Ibn Ma‘līh al-Ru‘āsī⁶⁶⁰ and others.⁶⁶¹ In time Ibn al-Ḥanbal was to become, amongst the muḥadithūn, the definitive expert on Ḥadīth.

He also qualified as a muftī in the first degree, dispensing his fatwas from al-Khayf mosque⁶⁶² (198AH / 813AD⁶⁶³). Shāfi‘ī remarked of his meeting with Ibn Ḥanbal in Baghdād, 'I have never come across a man so steeped in learning with regard to Knowledge, Fiqh and piety as Aḥmad Ibn Ḥanbal',⁶⁶⁴ declaring him to be a leading authority (*imām*) on Ḥadīth, Fiqh, linguistics, the Qur‘ān, on the matter of poverty and asceticism and on the Sunnah of the Prophet.⁶⁶⁵

It was said, that at times Aḥmad Ibn Ḥanbal would hold public meetings, each one reputedly attended by an audience of some 5000 people. Approximately 500 of them were his students, who would take notes, while the rest listened.⁶⁶⁶ At other times he would hold private tutorials for his family and some chosen ‘Ulamā’.⁶⁶⁷ On other days he would preach in the mosque or hold debates.

However, some critics claimed that Aḥmad was primarily a *muḥadith* who neglected Fiqh, but others dismissed this argument out of hand. The latter claimed that Ibn Ḥanbal used Ḥadīth as a basis for a wider, more comprehensive study of the Islamic sciences, including Fiqh and Uṣūl al-Fiqh, the significance of which the majority of the Fuqahā’ failed to comprehend.⁶⁶⁸ In actual fact, the latter argued, Ibn Ḥanbal became an outstanding *faqīh*, as well as a renowned ascetic and Godfearing man, a competent memoriser of the Qur‘ān,⁶⁶⁹ renowned jurist and interpreter of the Qur‘ān, a skilled debator, polemicist, disputant, muftī, historian, and a fine poet.⁶⁷⁰

V.5.i The Trial Of Aḥmad Ibn Ḥanbal

The doctrine of *I‘ tizāl* (secession) was first propagated by Wāṣil Ibn ‘ Aṭā’.⁶⁷¹ Those

⁶⁵⁹ See 571, above

⁶⁶⁰ Abū Sufyān. Born 129AH / 746AD. Memoriser of the Qur‘ān, muḥadith, faqīh, interpreter of the Qur‘ān, ṣūfī, historian. Died 197AH / 812AD. See, *al-Kawākib al-Duriyya Fī Tarājim al-Sādah al-Ṣūfiyya*, al-Manāwī, v1, p177. Also, *Kashf al-Zunūn*, p461, 1423. Also, *Siyar A‘lām al-Nubalā’*, v9, pp140-169. Also, *Ṭabaqāt al-Ḥanābilah*, al-Farā’, pp257-258. Also, *Ḥiliyat al-Awliyyā’*, v8. p368. Also, *Jawāhir al-Muḍiyya*, v2, p208. Also, *Tarīkh Baghdād*, v13, p466. Also, *Hadiyat al-‘Arifin*, v2, p500. Also, *Mu‘jam al-Mu‘allifin*, v4, p74. Also, *al-A‘lām*, v8, p117.

⁶⁶¹ *Siyar A‘lām al-Nubalā’*, v11, pp181-185.

⁶⁶² Located in the Mina valley, near Mecca. see, *Mu‘jam Mā Ista‘jam*, v2, p526. Also, *al-Rawḍ al-Mi‘ṭār*, p229.

⁶⁶³ See, *Siyar A‘lām al-Nubalā’*, v11, p191.

⁶⁶⁴ Ibid, v11, p195.

⁶⁶⁵ *Ṭabaqāt al-Ḥanābilah*, v1, p5.

⁶⁶⁶ See, *Siyar A‘lām al-Nubalā’*, v11, p316.

⁶⁶⁷ Ibid.

⁶⁶⁸ Ibid, v11, p321.

⁶⁶⁹ Ibid.

⁶⁷⁰ Ibid, v11, pp323-324.

⁶⁷¹ See 383, above.

who adhered to this doctrine, the Mu'tazilah, denied, amongst other things, the attributes (*ṣifāt*) of God⁶⁷² and declared the Qur'ān to have been created,⁶⁷³ as the Jews before them declared the Torah to have been created.⁶⁷⁴ Those Muslims who denied their doctrines were deemed, by them, to be unbelievers.

The general consensus of Sunni opinion was that the Mu'tazilah misinterpreted the meaning of the Qur'ān according to their doctrinal leanings. For example, the presence of the word *lawḥ* (tablet) in the Quranic āyah, 'Nay, it is a Glorious Qur'ān, on a guarded tablet',⁶⁷⁵ denoted, according to the Mu'tazilis, that the Qur'ān was created.⁶⁷⁶

Under Ma'mūn's Caliphate, Mu'tazilah doctrine became state policy,⁶⁷⁷ with leading Mu'tazilites being awarded high posts in government,⁶⁷⁸ such as the appointment of Aḥmad Ibn Faraj (Abī Duw'ād) al-Iyyādī as chief judge in 204AH / 819AD, to give one example.⁶⁷⁹

The Ahl al-Sunnah at first refused to acknowledge that the Qur'ān was created. But once Ma'mūn declared it official policy in 212AH / 827AD⁶⁸⁰ and again in 218AH / 833AD the judges, notaries, the Ahl al-Ḥadīth⁶⁸¹ and even the seven formidable 'Ulamā' of Baghdād,⁶⁸² succumbed and acknowledged the Mu'tazilite doctrine out of fear of dire punishment. All succumbed except the steadfast Aḥmad Ibn Ḥanbal and Muḥammad Ibn Nūh al-'Ijlī,⁶⁸³ the former was arrested at the instigation of Ishāq Ibn Ibrāhīm,⁶⁸⁴ the head of the police in Baghdād. As a consequence, the two scholars were placed in chains and

⁶⁷² *Maqālāt al-Islāmiyyīn*, Abū al-Ḥassan al-Ash'arī, pp157-222.

⁶⁷³ Ibid, pp191-195.

⁶⁷⁴ See, *al-Kāmil Fī al-Tarīkh*, Ibn al-Athīr. Events 240AH / 854AD.

⁶⁷⁵ *Sūrah al-Burūj*, 85:41-42.

⁶⁷⁶ *Tarīkh al-Ṭabarī*, v10, p287.

⁶⁷⁷ 'Abd Allāh Ibn Hārūn al-Rashīd. Born, 170AH / 786AD. Assumed control through the assassination of his brother, Muḥammad al-Amīn, 198AH / 813AD. Died, 218AH / 833AD. See, *Tarīkh Baghdād*, v10, p183. Also, *al-Nibrās*, Ibn Dihyā, pp46-63. Also, *Fawāt al-Wafiyāt*, v2, pp235-239. Also, *Aṣr al-Ma'mūn*, al-Rifā'i, passim. Also, *Hadiyat al- 'Arifīn*, v1, p439. Also, *Siyar A'lām al-Nubalā'*, v10, pp272-290. Also, *Mu'jam al-Mu'allifīn*, v2, p304. Also, *Al-A'lām*, v4, p142.

⁶⁷⁸ See, *Manāqib Aḥmad Ibn Ḥanbal*, Ibn al-Jawzī, p319.

⁶⁷⁹ Born 160AH / 777AD. He became a preacher, a scholastic theologian, a mu' tazilite, a jahmite judge, a defender of the doctrine of the Qur'ān as create. Became chief judge under the caliphates of Mu'tasim and al-Wāthiq. Died 240AH / 854AD. See, *Tarīkh Baghdād*, v4, pp141-156. Also, *Lisān al-Mizān*, v1, p171. Also, *al-Nujūm al-Zāhira*, v2, pp300-302. Also, *Siyar A'lām al-Nubalā'*, v11, pp169-171. Also, *al-A'lām*, v1, p124.

⁶⁸⁰ See, *Tarīkh al-Ṭabarī*, v10, p279.

⁶⁸¹ Ibid, v10, p284.

⁶⁸² They are: Muḥammad Ibn Sa'd. Abu Muslim. Yaḥyā Ibn Ma'īn. Zuhayr Ibn Ḥarb. Ismā'īl Ibn Dāwūd. Ismā'īl Ibn Abī Mas'ūd. Aḥmad Ibn Ibrāhīm al-Dawraqī. See, *Tarīkh al-Ṭabarī*, v10, p286.

⁶⁸³ Young in relation to Ibn Ḥanbal, strong in faith. Died in the Inquisition at 'Ānāt, 218AH / 833AD. See, *Siyar A'lām al-Nubalā'*, v11, pp238-242. Also, *al-Nujūm al-Zāhira*, v2, pp220-222.

⁶⁸⁴ Ishāq Ibn Ibrāhīm Ibn al-Ḥussein Ibn Muṣ'ab al-Khazā'i. Held positions during the caliphates of Ma'mūn, al-Mu'tasim, al-Wāthiq and al-Mutawakkil. Ruled Iraq in Ma'mūn's absence, 215AH / 830AD. As he did during the era of al-Mu'tasim, 218AH / 833AD. Died, 235AH / 850AD. See, *al-Kāmil Fī al-Tarīkh*, Ibn al-Athīr, v7, p17. Also, *Kitāb al-Diyārāt*, p22. Also, *Siyar A'lām al-Nubalā'*, v11, p171. Also, *al-A'lām*, v1, p292.

despatched to Ma'mūn who was on manoeuvres in Ṭarsūs, Turkey.⁶⁸⁵ However, sooner had the two arrived at Aḍanah when news of Ma'mūn's death reached them.⁶⁸⁶

The two prisoners were forthwith sent back to Baghdād by road, via al-Raqqah, Syria. But at 'Ānāt, Iraq, Muḥammad Ibn Nūḥ al-'Ijlī died, leaving just Aḥmad Ibn Ḥanbal alone to face the government's charges and prison in Baghdād.⁶⁸⁷ The scholar's fortunes did not improve with the accession of al-Mu'taṣim in 218AH / 833AD.

After a year in prison Ibn Ḥanbal was released in 219AH / 834AD to debate the issue of the Qur'ān as a created or eternal phenomenon with al-Mu'taṣim himself, but the former proved unyielding in his denial of the Mu'tazilite doctrine and was once again returned to prison.⁶⁸⁸ A year later he received a severe flogging which brought him to the point of death⁶⁸⁹ but still he held his ground.

Al-Mu'taṣim finally released Ibn Ḥanbal. Soon after the caliph died in 227AH / 842AD.⁶⁹⁰ Al-Wāthiq, his successor, although refusing out of fear, to physically punish the scholar as his predecessors had done before him, declared him *persona non grata*.⁶⁹¹ Al-Mutawakkil, for his part, declared the subject out of bounds and forbade all debate on the issue.⁶⁹²

⁶⁸⁵ Located south Turkey on the Mediterranean. Built by Hārūn al-Rashīd, 170AH / 787AD, with seven entrances. Used as a military camp in the West. Occupied by the Byzantines in 352AH / 963AD. Reconquered by the Muslims in 357AH / 968AD. See, *al-Rawḍ al-Mi'ṭār*, pp388-389. Also, *Ṣubḥ al-A'sha*, v4, p133. Also, *Nuzhat al-Mustāq*, p195. Also, *Tajārub al-Ummam*, Miskaway, v2, p201. Also, *Zubdat al-Ḥalab*, Ibn al-'Adīm, v1, p142.

⁶⁸⁶ Or Adhanah. Located in the south of Turkey. Built by Hārūn al-Rashīd, and completed by his son, Muḥammad al-Amīn. Another military camp. Situated by the river Jayhūn. 12 miles from Ṭarsūs. See, *al-Rawḍ al-Mi'ṭār*, p20. Also, *Destination Turkey*, ed by Thomas Goltz, updated by M. Demirsar, pp132-133.

⁶⁸⁷ *Manāqib al-Imām Aḥmad Ibn Ḥanbal*, Ibn al-Jawzī, pp312-316.

⁶⁸⁸ See, *Siyar A'lām al-Nubalā'*, v11, pp238-265.

⁶⁸⁹ See, *Manāqib Aḥmad Ibn Ḥanbal*, Ibn al-Jawzī, pp328-334.

⁶⁹⁰ Abu Ishāq Muḥammad Ibn Hārūn al-Rashīd. Born, 179AH / 795AD. Conquered Amorium, and built the Iraqi town of Samurrā', 222AH / 837AD. Made it the capital of the 'Abbāsīd empire. See, *Fawāt al-Wafiyāt*, v24, pp48-50. Also, *Tarīkh Baghdād*, v3, p342. Also, *Tarīkh al-Ṭabarī*, v11, p6. Also, *al-Kāmil Fī al-Tarīkh*, v6, pp148-179. Also, *al-Nibrās*, Ibn Dihya, pp63-73. Also, *Siyar A'lām al-Nubalā'*, v10, pp290-306. Also, *al-Wāfi Bi al-Wafiyāt*, v5, p139. Also, *al-Akḥbār al-Ṭiwāl*, al-Dīnawarī, p401. Also, *al-Ma'ārif*, Ibn Qutayba, p392. Also, *al-A'lām*, v7, pp127-128.

⁶⁹¹ Hārūn Ibn Al-Mu'taṣim Ibn Hārūn al-Rashīd. Born 200AH / 815AD. A tyrant. An ardent Mu'tazilite. A musician. A man of letters, historian, poet, grammarian and linguist. Died, Samurrā', 232AH / 847AD. See, *Tarīkh Baghdād*, v14, p15. Also, *Tarīkh al-Ṭabarī*, v9, p123. Also, *Fawāt al-Wafiyāt*, v4, pp228-230. Also, *al-Nibrās*, Ibn Dahya, pp733-80. Also, *al-Aghānī*, al-Aṣfahānī, Dār al-Kuttab al-Miṣriyya, v9, pp276-300. Also, *Siyar A'lām al-Nubalā'*, v10, pp306-314. Also, *al-A'lām*, v8, pp62-63.

⁶⁹² Ja' far Ibn Muḥammad al-Mu'taṣim Ibn Hārūn al-Rashīd. Born 206AH / 821AD. Transferred the capital from Baghdād to Damascus, then later moved it to Samurrā'. The first 'Abbāsīd caliph to embrace the Shāfi'ite doctrine. Built the town of al-Mutawakkiliyya, (al-Ja'fariyya) near Samurrā'. Assassinated there in 247AH / 861AD. See, *al-Rawḍ al-Mi'ṭār*, pp300-301. Also, *Fawāt al-Wafiyāt*, v1, pp290-292. Also, *Siyar A'lām al-Nubalā'*, v12, pp30-42. Also, *al-Nibrās*, Ibn Dahya, pp80-85. Also, *al-Kāmil Fī al-Tarīkh*, v7, pp11-29. Also, *Thimār al-Qulūb*, p149. Also, *al-A'lām*, v2, p127.

At the same time al-Mutawakkil, with the help of two Turkish commanders, Waṣīf⁶⁹³ and Bughā the Great,⁶⁹⁴ rid the government of Shī'ah and Mu'tazilah influence,⁶⁹⁵ which prepared the way for the Ahl Sunnah's re-emergence once again as a Muslim presence in 'Abbāsīd politics.⁶⁹⁶ As for Ibn Ḥanbal he remained firm in his resolve to oppose the doctrines of the Mu'tazilis until his death in 12th Rabi'ah al-Awwal 241AH / 1st August, 855AD. It is reputed that over half a million people attended his funeral in Baghdād.⁶⁹⁷

Aḥmad Ibn Ḥanbal composed a number of books which constituted the basis of the Ḥanbalī school of Law, in which he undertook a spirited defence of the Ahl al-Sunnah and a venomous denouncement of the Shī'ah and the Mu'tazilah and their creeds.

V.5.ii Uṣūl Al-Fiqh And The Ḥanbalites

Aḥmad Ibn Ḥanbal outshone the other three renowned Imams where knowledge of Ḥadīth science was concerned.⁶⁹⁸ Islamic Jurisprudence from the Ḥanbalī perspective, based on the following indicators of law, showed this preference:

1) The Qur'ān.

2) The Sunnah, where the speech of the Prophet was given preference over his endorsements and actions. If Ibn Ḥanbal was able to issue a fatwa that was in accordance with the Qur'ān on an issue then he looked nowhere else (for guidance) neither did he refer to an Imām's opinion.⁶⁹⁹

In Ḥanbalite doctrine on Uṣūl al-Fiqh the established Ḥadīth was given preference as an indicator over those Ijmā' which contradict the established Ḥadīth. If the authenticity of the Ḥadīth was confirmed, and it did not contradict the Qur'ān, then the Ḥanbalis placed it in authority over all other indicators, excepting the Qur'ān.⁷⁰⁰

⁶⁹³ Held office of the Chamberlain under Mu'taṣim, Wāthiq, Mutawakkil, al-Muntaṣir and al-Musta'īn. Appointed governor of Aleppo, 247AH / 862AD, by al-Muntaṣar. Died 253AH / 867AD. See, *Siyar A'lām al-Nubalā'*, v14, p496. Also, *Mawsū'at Duwal al-'Ālim al-Islāmī Wa Rijāluha*, Shākir Muṣṭapha, v1, passim. Also, *al-Tarīkh al-Islāmī*, Maḥmūd Shākir, v6, p13. Also, *Fawāt al-Wafiyāt*, v1, p140, 291.

⁶⁹⁴ Appointed head of the 'Abbāsīd army by Mutawakkil to fight the rebels in Taffis (Tiblisi, Georgia), 238-239AH / 852-853AD. Appointed governor of Aleppo by the same caliph, 245-247AH / 859-861AD. Died 248AH / 862AD. See, *Siyar A'lām al-Nubalā'*, v14, p496. Also, *al-Tarīkh al-Islāmī*, Maḥmūd Shākir, v6, p13. Also, *Mawsū'at Duwal al-'Ālim al-Islāmī Wa Rijāluha*, v1, passim; v2, p758, 762. Also, *Fawāt al-Wafiyāt*, v1, p140, 291.

⁶⁹⁵ See, *Siyar A'lām al-Nubalā'*, v11, p293.

⁶⁹⁶ *Manāqib al-Imām Aḥmad Ibn Ḥanbal*, Ibn al-Jawzī, p356.

⁶⁹⁷ See, *Siyar A'lām al-Nubalā'*, v11, pp279-286; pp334-339. Also, W. M. Patton. A. b. H and the Miḥna 218-34 H (Diss), Heidelberg, 1897.

⁶⁹⁸ Abū Ḥanīfa, al-Shāfi'i and Mālik.

⁶⁹⁹ See, *I'lām al-Muwaqī'in*, Ibn Qayyim al-Jawziyya, v1, p23.

⁷⁰⁰ Ibid, v1, p24.

3) The speech of the Companions and the Followers. The Ḥanbalis chose that element of the Companions speech considered closest in authority to the Qur'ān and the Sunnah of the Prophet. Any element of the Companions speech which did not agree with the Qur'ān and the Sunnah was disregarded.⁷⁰¹

4) Ḥadīth Mursal (incompletely transmitted Ḥadīth). Ibn Ḥanbal would infer rules from Ḥadīth Mursal and weak Ḥadīth on issues not found in the Qur'ān, the Sunnah *Mutawātir* and the speech of the Companions.

In the matter of weak Ḥadīth, Ibn Ḥanbal would infer rules from this indicator if it was not considered null or legally disowned or its transmission flawed, or was not contradicted by the speech of the Companions or by an Ijmā', then it was given preference as an indicator over Qiyās.⁷⁰²

5) Qiyās was considered by the Ḥanbalis as the fifth indicator, and was invoked invariably out of necessity,⁷⁰³ and where a rule could not be inferred from the Qur'ān, the Sunnah of the Prophet, the speech of the Companions, the Ḥadīth Mursal and weak Ḥadīth.

6) Ijmā'. Aḥmad Ibn Ḥanbal acknowledged in theory Ijmā' as a proof but distanced himself from its use⁷⁰⁴ on the grounds that it was difficult to prove whether an Ijmā' had occurred or not, given that for Ijmā' to occur there must have been total agreement between the scholars on a particular issue.

Any sign of disagreement,⁷⁰⁵ the logistics of which thwart agreement, invalidated the Ijmā'. For this reason, because of this improbability, Aḥmad Ibn Ḥanbal gave precedence to the Sunnah and the speech of the Companions over Ijmā' as an indicator of the law.⁷⁰⁶

On this basis, if Ijmā' was to be accepted as an indicator in advance of more reliable indicators, then this would have the effect of undermining the authority of the Nuṣṣuṣ. Hence Aḥmad Ibn Ḥanbal's attitude towards Ijmā' as an indicator of the Law.

7) Istiṣhāb (Presumption of Continuity).

The use of *Istiṣhāb* was widespread amongst the Ḥanbalī jurists, more so than employed by the other three schools of Law. They were influenced in this respect by the

⁷⁰¹ Ibid, v1, p25.

⁷⁰² Ibid.

⁷⁰³ Ibid, v1, p26.

⁷⁰⁴ Ibid, v1, p24; v2, p208.

⁷⁰⁵ Ibid, v1, p24.

⁷⁰⁶ Ibid.

concomitant development of contracts and commercial dealings in Islamic society.⁷⁰⁷ *Istiṣḥāb* was divided into Presumption of Original Innocence, Presumption by Description and Presumption of *Ijmā'*.⁷⁰⁸

8) *al-Maṣlaḥah al-Mursalah* (Public interest).⁷⁰⁹

9) *Sadd al-Dharā'i'* (Blocking of the Means to Evil). If the element of public interest (*al-Maṣlaḥah al-Mursalah*) was not in the ascendant in *Sadd al-Dharā'i'* then the Ḥanbalis gave preference to *al-Maṣlaḥah al-Mursalah* over *Sadd al-Dharā'i'*.⁷¹⁰ An example is where a witness or a doctor might view the usually hidden flesh of a woman, forbidden to ordinary Muslim men other than the husband, on the grounds of public interest.⁷¹¹

Here we see how the Ḥanbalis derived their Fiqh from the above Uṣūl, which had the effect of protecting them from deviating in the interpretation of the Law, especially with regard to metaphorical interpretation as opposed to literal, as was the case with the heretic groups, and that this development derived from the basis of the Ḥanbalī school of Law laid down by its founder.⁷¹²

We noted that the Ḥanbalis preference for certain indicators over others marked them out from the Shāfi'is somewhat, but in presenting their arguments they employed a methodology similar to that of the Mutakallimūn,⁷¹³ not that of the Fuqahā' al-Ḥanafīyya.⁷¹⁴

In matters other than methodology, however, we must consider the Ḥanbalis closer to the Hijāzīs⁷¹⁵ than to the Shāfi'is or the Ḥanafis in terms of the development of their school of Law and their adherence, in particular, to the Sunnah and the speech of the Companions and the Followers, after the Qur'ān, as primary indicators of that Law.

In addition to the works by Aḥmad Ibn Ḥanbal there were a number of books, some that recorded the *fatwas* and sayings of Ibn Ḥanbal. The basis and the Uṣūl, which constitute the Ḥanbalī school of Law,⁷¹⁶ were evident in their discussions. A brief list of the most prominent of Ḥanbalī writers on the subject of Uṣūl al-Fiqh active up to the end of the 7th

⁷⁰⁷ Ibid, v1, pp299-302.

⁷⁰⁸ Ibid, v1, pp294-299.

⁷⁰⁹ Ibid, v2, p86.

⁷¹⁰ Ibid, v2, pp98-109.

⁷¹¹ Ibid, v2, p105.

⁷¹² See, *al-Qawā'id wa al-Fawā'id al-Uṣūliyya*, Aḥmad Ibn 'Abbās al-Ba'fī al-Ḥanbalī, known as Ibn al-Laḥām, passim, ed by Muḥammad Ḥamid al-Fiḳī, pub in Cairo, Maktabat al-Sunnah al-Muḥammadiyya, 1375AH / 1955AD.

⁷¹³ See 424, 981 above.

⁷¹⁴ See 515, above.

⁷¹⁵ See 489, above.

⁷¹⁶ See, *al-Madkhal Ilā Madhhab al-Imām Aḥmad Ibn Ḥanbal*, Ibn Badrān, pp126-142.

century AH / 13th century AD will be included in the appendices.

V.5.iii The Development Of The Methodology Adopted By The Mutakallimūn (Shāfi'ites)

The development of Shāfi'i's methodology after the composition of 'al-Risālah'⁷¹⁷ became known as the methodology of the Mutakallimūn. The Shāfi'is, the Malikites and the Ḥanbalites separated Fiqh from Uṣūl al-Fiqh in their debates, after deriving Fiqh from the Uṣūl, and in their *Ijtihād* inclined as much as possible to the use of rational methods when it came to inferring rules (from the *Nuṣūṣ*). In addition, they considered applied Fiqh (*Furū'*) to be subject to the universal juristic principles to which it must conform, unless the applied Fiqh has a special indicator separate from the juristic principles.

The (development of the) methodology, of the Mutakallimūn was characterized by a lack of fanaticism on the part of any of the standard schools of Fiqh who adopted it, (including the Shī'ah and the Mu'tazilah). This methodology endorsed the universal juristic principles, according to which applied Fiqh was derived from the Uṣūl.

In the works which adopted this methodology the authors introduced their subjects with a definition of Logic and language. Then they commenced with a debate on the Sharī'ah rules, followed by comment on the indicators of God's law, followed by a discussion of semantics they penultimately dealt with *Ijtihād* and *Taqīd* (Imitation) and finally concluded with comment on Equilibrium (*Ta'ādul*) and the weighing of conflicting indicators (*Tarjīh*).

After the composition of al-Shāfi'i's⁷¹⁸ 'al-Risālah'⁷¹⁹ most works on Uṣūl al-Fiqh by the Mutakallimūn were confined to commentaries on 'al-Risālah'⁷²⁰ itself and some other juristic issues. This state of affairs continued until the appearance of the Shāfi'ite scholar, Bāqillānī.⁷²¹

Bāqillānī (d403AH / 1011AD), undertook a comprehensive review of the works of Uṣūl al-Fiqh covering the commentary form and other aspects, in a work entitled 'al-Taqrīb Wa al-Irshād'.⁷²² This work was said to have matched the erudition of Shāfi'i's 'Risālah'.

⁷¹⁷ See 720, below.

⁷¹⁸ See 505, above.

⁷¹⁹ See 720, below.

⁷²⁰ Commentary by Muḥammad Ibn 'Abd Allāh al-Ṣayrafī (d330AH / 941AD). Also by Abū al-Wafid Ḥasan Ibn Muḥammad al-Naysabūrī al-Ummawī (d349AH / 960AD). Also by Muḥammad Ibn 'Alī al-Shāshī al-Qaffāl al-Kabīr (d365AH / 975AD). Also by Muḥammad Ibn 'Abd Allāh al-Shaybānī, known as Abū Bakr al-Jawzakī (d388AH / 998AD). Also by 'Abd Allāh Ibn Yūsef al-Juwaynī (d438AH / 1046AD). See, *Kashf al-Zanūn*, p873.

⁷²¹ See 638, above.

⁷²² Ed by Dr 'Abd al-Ḥamīd Abū Zunayd. 1st ed 1993 Mu'assasah al-Risālah.

Bāqillānī was succeeded in this role by his student al-Juwaynī al-Ash‘arī, the Shāfi‘ite.⁷²³ He composed an outstanding work on Uṣūl al-Fiqh entitled, 'al-Burhān'⁷²⁴ in which the methodology of the Mutakallimūn was given its highest expression.

A work of comparative importance to 'al-Burhān' was Ghazzālī's⁷²⁵ 'al-Mustaṣfā'.⁷²⁶ A no less important work on Uṣūl al-Fiqh was Āmidī's⁷²⁷ 'Iḥkām',⁷²⁸ followed in importance by al-Rāzī's⁷²⁹ 'al-Maḥṣūl'⁷³⁰ and then by 'al-Minhāj'⁷³¹ composed by al-Bayḍawī.⁷³² These above mentioned works represented the fundamental basis for studies on Uṣūl al-Fiqh, not only for the Shāfi‘ites, but for the Malikis and the Ḥanbalites as well.

The Mu‘tazilah also adopted the methodology of the Shāfi‘ites in their debates on Uṣūl al-Fiqh, as evidenced in the work of ‘Abd al-Jabbār,⁷³³ entitled 'al-‘Umad'⁷³⁴ and the work of Abū al-Ḥuseyn al-Baṣrī⁷³⁵ entitled, 'al-Mu‘tamad'.⁷³⁶

With Juwaynī's work, 'al-Burhān' we witness a new development in the composition of Uṣūl al-Fiqh, noting how the author was apparently influenced in his work by Aristotle in the field of formal logic, but not until after the era of Bāqillānī⁷³⁷ and Ibn Ḥazm.⁷³⁸

⁷²³ Born, 419AH / 1028AD. Faqīh, Jurist, scholastic theologian, interpreter of the Qur’ ān, man of letters, mufī, preacher, debator. Taught in Naysabūr and Mecca. Became head Imām. Died, Naysabūr, 478AH / 1085AD. Published works include, 'al-Irshād', 'al-Burhān', 'al-Shāmil', 'Shifā' al-Ghālīl', 'al-Ghiyāthī', 'al-‘Aqīdhah al-Nizāmiyya', 'Luma' al-Adillah', 'al-Waraqāt'. See, *Dhakhā'ir al-Turāth al-‘Arabī al-Islāmī*, ‘Abd al-Jabbār, v1, p353. Also, *Ṭabaqāt al-Shāfi‘iyya*, al-Subkī, v3, pp249-283. Also, *Ṭabaqāt al-Shāfi‘iyya*, Ibn Hidāyat, pp61-62. Also, *Ṭabaqāt al-Shāfi‘iyya*, Ibn Qāḍī Shahbah, v1, pp255-256. Also, *Ṭabiyīn Kadhb al-Muftarī*, pp278-285. Also, *Kashf al-Zunūn*, p68, 70, 75, 242, 253, 377, 380, 443, 466, 896, 1024, 1124, 1159, 1541, 1561, 1562, 1641, 1754, 1990, 2005. Also, *Hadiyat al-‘Ārifīn*, v1, p626. Also, *al-Fath al-Mubīn*, v1, pp260-262. Also, *Mu‘jam al-Mu‘allifīn*, v2, pp318-319.

⁷²⁴ Ed by Dr ‘Abd al-‘Aẓīm al-Dīb. pub Qaṭar 1399AH / 1978AD.

⁷²⁵ See 618, above.

⁷²⁶ Ist ed Bulāq, Egypt, 1322-1324AH / 1904-1906AD. 2nd ed Cairo 1356AH / 1937AD.

⁷²⁷ See, 2, chapt II, part three. below.

⁷²⁸ Ist ed Cairo, 1914. 2nd Cairo, 1928. 3rd ed Cairo 1967. 4th ed, Riyādh, 1967, ed by ‘Abd al-Razzāq ‘Afīfī. 5th ed Beirut, 1981.

⁷²⁹ See 930, above.

⁷³⁰ Ed by Tāhā al-‘Alwānī, pub Riyādh, 1979.

⁷³¹ Pub Cairo, 1908. 2nd edn Cairo 1970.

⁷³² See 635, above.

⁷³³ Al-Qāḍī ‘Abd al-Jabbār, Ibn Aḥmad al-Hamadhānī al-Asad Ābādī. A leading Mu‘tazilite. Died 415AH / 1025AD. See, *Ṭabaqāt al-Shāfi‘iyyah*, Ibn al-Subkī, v3, p219. Also see, *Ṭabaqāt al-Mu‘tazilah*, p122. Also, *Ṭabaqāt al-Shāfi‘iyyah*, Al-Asnawī, v1, p354. Also, *Tarīkh Baghdād*, Al-Khaṭīb al-Baghdādī, v11, p113. *Al-‘Ālām*, Ziriklī, v3, pp273-274.

⁷³⁴ Commentary of al-‘Umad by Abū al-Ḥusein al-Baṣrī, ed by Dr ‘Abd al-Ḥamīd Abū Zunayd, pub Medīna, 1410AH / 1989AD.

⁷³⁵ Abū al-Ḥuseyn al-Baṣrī, Muḥammad Ibn ‘Alī al-Tayyib. A Mu‘tazilite. Died 436AH. See, *Wafīyyāt al-‘Āyān*, v1, p687. See also *Al-Wāfi bil-Wafīyyāt*, v4, p125. Also *Al-Bidāyah wal Nihāyah*, Ibn Kathīr, v12, p53. Also *Shadharat al-Dhahab*, v3, p259. Also, *Mir‘āt al-Jinān*, v3, p57. Also *Tarīkh*, Ibn Al-Khaldūn, v3, p187. Also, *Ṭabaqāt al-Uṣūliyyīn*, v1, p237. Also, *The Introduction to Kitāb al-Mu‘tamad*.

⁷³⁶ Ed by Muḥammad Ḥamīd Allāh, Muḥammad Bakr and Ḥassan Ḥanafī, Ist ed Damascus, 1964-1965.

⁷³⁷ See 638, above.

⁷³⁸ See 360, above.

'Al-Burhān' was considered to be the most important of Juwaynī's works on Uṣūl al-Fiqh. In it the author employed a methodology which resembled in form that adopted by the Mutakallimūn from the Ahl al-Sunnah but which, in essence, was independent of it with regard to the use of logic employed therein to explain the principles of Uṣūl al-Fiqh.⁷³⁹

Later generations of jurists studied, abridged and commented on 'al-Burhān' including Al-Ghazzālī in his work 'al-Mankhūl',⁷⁴⁰ as did Muḥammad Ibn 'Alī al-Tamīmī al-Māzarī al-Malikī⁷⁴¹ under the title 'Idāḥ al-Maḥṣūl Min Burhān al-Uṣūl',⁷⁴² as did 'Alī Ibn Ismā'īl al-Abyārī al-Malikī⁷⁴³ under the title 'al-Taḥqīq Wa al-Bayān Fī Sharḥ al-Burhān'⁷⁴⁴ followed by Zakariyya Ibn Yaḥyā al-Maghribī al-Malikī.⁷⁴⁵ The latter compared 'Idāḥ al-Maḥṣūl Min Burhān al-Uṣūl' with 'Al-Taḥqīq Wa al-Bayān Fī Sharḥ al-Burhān', in a work entitled 'Kifāyat Ṭalib al-Bayān Fī Sharḥ al-Burhān'.⁷⁴⁶

Although Al-Juwaynī was the first scholar to employ logic in expressing his views on Uṣūl al-Fiqh, this influence was confined to his introduction to 'Burhān'.⁷⁴⁷ In the remaining pages he resorted to the methodology of the Mutakallimūn, making known his dislike of Aristotle's logic as a harness to the study of Uṣūl al-Fiqh..

Before the fifth century AH, formal logic was not considered an integral part of the live dialectic within which the fundamental principles of Uṣūl al-Fiqh had been forged. With Ghazzālī⁷⁴⁸ we note an acceptance of formal logic (in the introduction to *Mustaṣfā*), although for the reason given above, it did not have a profound impact on actual dialectic.

In 'al-Mustaṣfā', al-Ghazzālī reveals his acceptance of formal logic as an indicator of law in its own right,⁷⁴⁹ claiming in his introduction that knowledge of formal logic was crucial

⁷³⁹ See, introduction to *Burhan*, v1, pp57-58.

⁷⁴⁰ Ed by Dr Muḥammad Hito, 1st edn Beirut, 1970. 2nd edn 1980.

⁷⁴¹ Hails from Māzar, Sicily. Born in al-Mahdiyya, north Africa, 453AH / 1061AD. A mujtahid in Fiqh and jurisprudence. A muftī, jurist, faqīh, an interpreter of the Qur'ān, linguist, grammarian, doctor of medicine, mathematician, man of letters, scholastic theologian. A leading Malikite scholar of his age. Died, Mahdiyya, Tunisiyya, 536AH / 1141AD. See, *Siyar A' lām al-Nubalā'*, v20, pp104-107. See also, *al-Dibāj al-Mudhdhahab*, pp279-281. See also, *Shajarat al-Nūr al-Zakiyya*, pp127-128. Also, *al-Wāfī Bi al-Wafiyāt*, v4, p151. Also, *Wafiyāt Ibn Qunfudh*, pp277-278. Also, *Kashf al-Zunūn*, p557. Also, *Idāḥ al-Maknūn*, v1, p156. Also, *Hadiyat al-' Ārifin*, v2, p88. Also, *Mu' jam al-Mu' allifin*, v3, p525.

⁷⁴² See, al-Juwayni, pp174-175.

⁷⁴³ Born, al-Abyār, East Egypt, 557AH / 1161AD. Faqīh, jurist, scholastic theologian. Died, 618AH / 1221AD. See, *al-Dibāj al-Mudhdhahab*, pp213-214. See also, *Shajarat al-Nūr al-Zakiyya*, p116. Also, *Mu' jam al-Mu' allifin*, v2, p406.

⁷⁴⁴ Manuscript 670, Murād Mullah library, Istanbul.

⁷⁴⁵ Al-Sharīf Abū Yaḥyā al-Ḥassanī. See, *al-Kāfiyya Fī al-Jadl*, p14. See also, al-Imām al-Juwaynī, Dr Muḥammad al-Zuhayfī, p175.

⁷⁴⁶ Manuscript 1397/624, al-Qurawiyīn library, Fās, Morocco. manuscript 807, Hutsma library, Holland.

⁷⁴⁷ See, *al-Burhān*, v1, pp113-158.

⁷⁴⁸ See 618 above.

⁷⁴⁹ See, *al-Mustaṣfā*, v1, pp2-55.

to an understanding and explanation of all theoretical sciences not just to Uṣūl al-Fiqh.⁷⁵⁰ This introduction constituted an abridgement of his work, 'Mi'yār al-'Ilm' or 'Fan al-Munṭaq'.⁷⁵¹

Ghazzālī⁷⁵² underscored his works on Uṣūl al-Fiqh with a knowledge of philosophy, a development which was heavily criticised by traditionalists like Ibn al-Ṣalāḥ⁷⁵³ (d 643 A.H / 1245 A.D) who issued a *fatwa* forbidding use of formal logic in the debate on Uṣūl al-Fiqh, because formal logic led to philosophy and by implication to evil, and therefore was considered deleterious to the Sharī'ah. Its use was considered to be out of bounds to all the Companions, the Followers, the four leading Sunnī Imams, their upright Muslim ancestors and their followers.⁷⁵⁴

Ibn Taymiyya⁷⁵⁵ claimed, for his part, that as a consequence of employing philosophy in their arguments, Ghazzālī,⁷⁵⁶ al-Rāzī⁷⁵⁷ and Āmidī⁷⁵⁸ introduced confusion and doubt into the debate on Uṣūl al-Fiqh.⁷⁵⁹ He considered invalid the use of Aristotle's logic in the debate, declaring the works of Ghazzālī false for this reason.⁷⁶⁰

Those in support of Ghazzālī's⁷⁶¹ logic based methodology included the likes of Āmidī⁷⁶² and Fakhr al-Dīn al-Rāzī,⁷⁶³ and those against included Ibn al-Ṣalāḥ,⁷⁶⁴ Ibn Taymiyya,⁷⁶⁵ and Ibn Qayyim al-Jawziyya.⁷⁶⁶

⁷⁵⁰ Ibid, v1, p10.

⁷⁵¹ 1st ed Cairo, 1927. 2nd ed Cairo, 1961. 3rd ed Beirut, 1964.

⁷⁵² See 618, above.

⁷⁵³ Born, Shahrāzūr, in a village called Sharkhān, near Arbil, Iraq, 577AH / 1181AD. Raised in Mawṣil, studied there, then moved onto Baghdād, Aleppo and Damascus. Muḥadith, interpreter of the Qur' ān, faqīh, jurist, grammarian, historian. Became chief muftī in Damascus, and died there in 643AH / 1245AD. Published works include, " *Ulūm al-Ḥadīth*", " *Fatāwā Ibn al-Ṣalāḥ*". See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v1, p156. Also, *Ṭabaqāt al-Shāfi' iyya*, al-Subkī, v5, p137. Also, *Ṭabaqāt al-Shāfi' iyya*, Ibn Hidāyat, p84. Also, *Ṭabaqāt al-Shāfi' iyya*, Ibn Qāḍī Shāhbah, v2, pp113-115. Also, *al-'Uns al-Jalīl*, Muḥīr al-Dīn al-Ḥanbalī, pp449-450. Also, *Kashf al-Zunūn*, p48, 70, 836, 1100, 1161, 1218, 1219, 1297, 1830, 2008, 2009. Also, *Mu'jam al-Mu' allifīn*, v2, pp361-362. Also, *al-Fath al-Mubīn*, v2, pp63-64.

⁷⁵⁴ See, *Fatāwā Ibn al-Ṣalāḥ*, p35.

⁷⁵⁵ Born, Ḥarrān, 627AH / 1230AD. Became a muftī in Aleppo. Moved to Damascus and settled there. Faqīh, jurist, accountant, astronomer. Died, Damascus, 682AH / 1284AD. See, *al-Dāris Fī al-Madāris*, al-Nu' aymī, v1, pp74-75. Also, *Shadharāt al-Dhahab*, v5, p376. Also, *Fath al-Mubīn*, v2, p83. Also, *Mu'jam al-Mu' allifīn*, v2, p61.

⁷⁵⁶ See 618, above.

⁷⁵⁷ See 634, above.

⁷⁵⁸ See, 727, above.

⁷⁵⁹ See, *Minhāj al-Sunnah*, Ibn Taymiyya, v3, p288.

⁷⁶⁰ See, *Minhāj al-Sunnah. Juhd al-Qarīḥah. Dar' Ta'arūḍ al-'Aql Wa al-Naql. Naqd al-Manṭaq*. Passim.

⁷⁶¹ See 618, above.

⁷⁶² See 727, above.

⁷⁶³ See 634, above.

⁷⁶⁴ See 753, above.

⁷⁶⁵ See 755, above.

⁷⁶⁶ Muḥammad Ibn Abū Bakr Ibn Ayyūb al-Zur'ī al-Dimesḥqī al-Ḥanbalī. Born 691AH / 1292AD. Imprisoned along with his teacher Ibn Taymiyya in Damascus Castle. Released on Ibn Taymiyya's death. Died 751AH / 1350AD. Composer of numerous works, including *I'lām al-Muwaqī'in*, *al-Turuq al-Ḥukmiyya' fī al-Siyāsa al-Shar'iyya*, *Shifā'al-Ghalīl*, *Aḥkām ahl-Dhimma*, *Zād al-Mu'ād*, *Akḥbār al-Nisā*, *Madārij al-Sālikīn*, *Al-*

Ghazzālī⁷⁶⁷ in this respect was considered a pioneer in harnessing formal logic to the study of Uṣūl al-Fiqh. He was for this reason considered a founder of conceptual argument (and verification) based on formal logic in the said field, in the realization that conceptual argument (*Taṣawwurāt*) was rooted in cognition (*maʿrifah*) and that synthetic judgements (*Taṣdīqāt*) was rooted in knowledge (*ʿIlm*).⁷⁶⁸ Thereafter a section of the jurists considered (knowledge of) formal logic as a basic requirement in the process of *Ijtihād*.⁷⁶⁹

V.5.iv The Compilation Of The Works On Uṣūl Al-Fiqh

The first systematic compilation of the most important works on Uṣūl al-Fiqh was achieved by al-Rāzī⁷⁷⁰ in his book, 'al-Maḥṣūl'⁷⁷¹ and the works in question compiled were 'al-Burhān',⁷⁷² 'al-Mustaṣfā',⁷⁷³ 'al-ʿAmd'⁷⁷⁴ and 'al-Muʿtamad'.⁷⁷⁵ This work of al-Rāzī's, however, was marred by reference to too many indicators and a general over-justification of his argument. Several compilers made use of Al-Rāzī's work. The most prominent among them was Sirāj al-Dīn al-Urmawī⁷⁷⁶ who provided a summary of al-Rāzī's 'al-Maḥṣūl'⁷⁷⁷ in his work entitled, 'al-Taḥṣīl',⁷⁷⁸ as did Tāj al-Dīn al-Armawī⁷⁷⁹ in his work, 'al-Ḥāṣil'.⁷⁸⁰

Rūḥ, 'Ighādhāt al-Lahfān', 'Al-Tafsīr al-Qayyīm'. See, *al-Durar al-Kāmina*, v3, pp400-404. See also, *Al-Nūjum al-Zāhira*, v10, p249. Also, *Shadharat al-Dhahab*, v6, pp168-170. Also, *al-Wāfi bil-Wafiyāt*, v2, pp 270-272. Also, *Bughyat al-Wuʿāt*, p25. Also, *Al-Badr al-Tāliʿ*, v2, pp143-146. Also, *Kashf al-Zunūn*, passim. Also, *Idāḥ al-Maknūn*, v1, p271, p422; v2, p540. Also, *Hidāyat al-ʿArifin*, v2, pp158-159. *E.I.* v2, p416. Also, *Muʿjam al-Muʿallifin*, v3, pp164-166. Also, *Muʿjam al-Maṭbūʿāt*, Sirkīs, p222. Also, *Al-Aʿlām*, v6, p56.

⁷⁶⁷ See 614, above

⁷⁶⁸ See, *al-Mustaṣfā*, v1, p11. Also, *Miʿyār al-ʿIlm*. al-Ghazzālī, p39.

⁷⁶⁹ See, *Juhd al-Qarīḥah*, Ibn Taymiyya, p376.

⁷⁷⁰ See 634, above.

⁷⁷¹ See 730, above.

⁷⁷² See 724, above.

⁷⁷³ See 726, above.

⁷⁷⁴ See 734, above.

⁷⁷⁵ See 736, above.

⁷⁷⁶ Maḥmūd Ibn Abū Bakr Ibn Ḥamid Ibn Aḥmad al-Urmawī al-Tanūkhī al-Shāfiʿī, born 594AH / 1198AD. Taught in Damascus. Faqīh, jurist, philosopher, logician, linguist, judge, debator, scholastic theologian, poet, interpreter of the Qurʾān, Died, Kunya. Turkey, 682AH / 1283AD. Pub works include, 'Maṭāliʿ al-Anwār', 'Fī al-Munṭaq Wa al-Falsafa', (1st ed Istanbul, 1303AH / 1884AD, 2nd ed Tehran, 1314AH / 1896AD). 'al-Taḥṣīl Min al-Maḥṣūl', 1st edn Beirut, 1988. See, *Ṭabaqāt al-Shāfiʿiyya*, al-Subkī, v5, p155. Also, *Kashf al-Zunūn*, passim. Also, *Ṭabaqāt al-Shāfiʿiyya*, Asnawī, v5, p155. Also, *Hadiyat al-ʿArifin*, al-Baghdādī, v2, p406. Also, *Muʿjam al-Maṭbūʿāt*, Sirkīs, v1, p427. Also, *al-Sulūk*, al-Maqrīzī, v1, p354. Also, *Mufarrij al-Kurūb*, v4, p247. Also, *Muʿjam al-Muʿallifin*, v3, p801. Also, *introduction to al-Taḥṣīl Min al-Ḥāṣil*, pp15-153.

⁷⁷⁷ See 730, above.

⁷⁷⁸ Ed by Dr ʿAbd al-Ḥamid Abū Zunayd, 1st ed Muʿassasah al-Risālah, Beirut, 1988.

⁷⁷⁹ Muḥammad Ibn al-Ḥussein Ibn ʿAbd Allāh. Faqīh, jurist, judge, naturalist, debator. Taught in the Shaṇfiyya school in Baghdād. Died 655AH / 1257AD. A pupil of al-Rāzī's. See, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Qāḍī Shahbah, v2, p120. Also, *Kashf al-Zunūn*, p1615. Also, *Hadiyat al-ʿArifin*, v2, p126. Also, *al-Sulūk*, al-Maqrīzī, v1, p385. Also, *Muʿjam al-Muʿallifin*, v3, pp252-253.

⁷⁸⁰ Manuscript 473 in Dār al-Kuttab, Cairo. Also, manuscript ref 886, Chester Beatty Library, Dublin.

Later, Al-Qarrāfi⁷⁸¹ (d684AH / 1285AD) drew heavily on the 'Taḥṣīl'⁷⁸² and the 'Ḥaṣīl'⁷⁸³ for his work, 'al-Tanqīḥāt'⁷⁸⁴ (Tanqīḥ al-Fuṣūl).⁷⁸⁵ He followed this with both a commentary on⁷⁸⁶ and a summary of 'Tanqīḥ al-Fuṣūl'.⁷⁸⁷

Al-Qāḍī al-Bayḍāwī,⁷⁸⁸ al-Shāfi'ite, made a compilation of 'al-Maḥṣūl',⁷⁸⁹ 'al-Taḥṣīl' and 'al-Ḥaṣīl'⁷⁹⁰ in his work entitled, 'al-Minhāj'⁷⁹¹ which consisted of an introduction and seven chapters. This work was especially valued by the 'Ulamā for its comprehensive coverage of the Uṣūl al-Fiqh.

Finally, 'Alī Ibn 'Abd al-Kāfi al-Subkī,⁷⁹² a Shāfi'ite, subsequently made a commentary on 'al-Minhāj'⁷⁹³ in his work, 'al-Ibhāj', completed by his son, 'Abd al-Wahhāb,⁷⁹⁴ as

⁷⁸¹ Aḥmad Ibn Idrīs Born, Bahnasah, Egypt, 626AH / 1228AD. Became head of the Malikite school of Law. Faqīh, jurist, interpreter of the Qur' ān, scholastic theologian, grammarian, master of the Rational sciences. Published works include, 'al-Ajwibah al-Fākhīrah', 'al-Aḥkām', 'Anwār al-Burūq Fī Anwā' al-Furūq', 'Sharḥ Tanqīḥ al-Fuṣūl Fī Ikhtisār al-Maḥṣūl', 'al-Furūq', 'Mukhtaṣar Tanqīḥ al-Fuṣūl', 'al-Dhakhīrah', 'al-Qawā'id al-Thalāthūn Fī ' Ilm al-'Arabiyya'. Died, Cairo, 684AH / 1285AD. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v2, pp754-755. See also, *al-Dibāj al-Mudhdhahab*, pp62-67. Also, *al-Manhal al-Ṣāfi*, Ibn Taghrī Barādī, v1, pp215-217. Also, *Shajarat al-Nūr al-Zakiyya*, p188. Also, *Kashf al-Zunūn*, p11, 21, 77, 186, 499, 825, 1153, 1359, 1615. Also, *Idāḥ al-Maknūn*, v1, p72, 127, 135, 161, 206, 732. Also, *Mu' jam al-Mu' allifīn*, v1, p100.

⁷⁸² See 778, above.

⁷⁸³ See 780, above.

⁷⁸⁴ Pub Damascus, date unknown.

⁷⁸⁵ Ibid.

⁷⁸⁶ 1st ed Cairo, 1889. 2nd ed Cairo, 1973.

⁷⁸⁷ Damascus, date unknown. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v2, p755.

⁷⁸⁸ See 635, above.

⁷⁸⁹ See 730, above.

⁷⁹⁰ See 780, above.

⁷⁹¹ See 630, above.

⁷⁹² 'Alī Ibn 'Abd al-Kāfi Ibn 'Alī al-Subkī al-Shāfi'ī, born 683AH / 1284AD. Interpreter of the Qur'ān and reciter. Muḥadith, scholastic theologian, faqīh, jurist, logician, disputant, grammarian, historian, muftī, judge, ṣūfi. Taught in Cairo, became judge in Damascus. Died 756AH / 1355AD. Pub works include, 'al-Ighrīd Fī al-Ḥaqīqa Wa al-Mejāz Wa al-Kināyah Wa al-Ta'rīd', (Riyādh, 1984), 'Takmilat al-Majmū' ' (Cairo, 1348-1352AH / 1929-1931AD), 'al-Tamhīd' (Pub Damascus, 1951), 'Risālah Fī al-Ṣalāh' (Cairo, 1970), 'al-Rafda' (Kuwait, 1984), 'al-Sayf al-Ṣaqīl' (Pub Cairo, 1937), 'Shifā' al-Suqām' (1st ed Cairo, 1315AH / 1897AD). (2nd ed Hyderabad, India, 1952). (3rd ed Cairo, 1970) (4th ed Beirut, 1971). 'Fatāwa al-Subkī' (Pub Cairo, 1937), 'Al-Qawl al-Maḥmūd' (Miltān, India, 1921). See, *al-Mu'jam al-Shāmil Lil Turāth al-'Arabī al-Maṭbū'*, v3, pp151-153. Also, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v6, pp146-227. Also, *al-Durar al-Kāmina*, Ibn Hajar, v3, pp63-71. Also, *Bughyat al-Wu'āt*, al-Sayūfī, pp342-343. Also, *al-Dāris Fī al-Madāris*, v1, pp134-135. Also, *Kashf al-Zunūn*, Passim. Also, *Idāḥ al-Maknūn*, v1, p286; v2, p74, 676, 686. Also, *Hadiyat al-'Ārifīn*, v1, pp720-722. Also, *Mu'jam al-Mu'allifīn*, v2, pp461-462.

⁷⁹³ See 731, above.

⁷⁹⁴ 'Abd al-Wahhāb Ibn 'Alī al-Subkī al-Anṣārī, born 727AH / 1327AD, faqīh, jurist, muḥadith, interpreter of the Qur'ān, muftī, debator, judge, historian, man of letters, poet. Taught in Damascus. A preacher in the Umayyad mosque, Damascus, where he became a judge. Died 771AH / 1370AD. Pub works include, 'Jami' al-Jawāmi' (1st ed Cairo, 1308-1309AH / 1890-1891AD), (2nd ed Cairo, 1938), *Ṭabaqāt al-Shāfi'iyya* (1st ed Cairo, 1906), (2nd ed Cairo, 1929), (3rd ed Cairo, 1964), (4th ed Beirut, date unknown), 'Qā'ida Fī al-Jarḥ Wa al-Ta'dīl' (Aleppo, Syria, 1978), 'Mu'īd al-Ni'am Wa Mubīd al-Niqam' (1st ed Cairo, 1898) (2nd ed Leiden, 1908), (3rd ed Cairo, 1948) (4th ed Beirut, 1983), 'Nayl al-'Ullah Fī Bellah' (1st ed Kuwait, 1986). See, *al-Mu'jam al-Shāmil Lil Turāth al-'Arabī al-Maṭbū'*, v3, pp147-151. Also, *al-Durar al-Kāmina*, Ibn Hajar, v2, pp425-428. Also, *al-Badr al-Ṭālī*, al-Shawkānī, v1, pp410-411. Also, *Kashf al-Zunūn*, passim. Also, *Idāḥ al-Maknūn*, v1, p281. Also, *Hadiyat al-'Ārifīn*, v1, p639. Also, *Mu'jam al-Mu'allifīn*, v2, pp343-344. Also, *introduction to al-Ibhāj*,

did Muḥammad Ibn al-Ḥassan al-Badakhshī,⁷⁹⁵ a Ḥanafite, in his work, 'Mnāhij al-'Uqūl'.⁷⁹⁶ Al-Asnawī⁷⁹⁷ made a commentary of 'al-Minhāj' in his work, ' ',⁷⁹⁸ as did Muḥammad Ibn Yūsuf al-Jizrī⁷⁹⁹ in his work 'Mi'rāj al-Minhāj'.⁸⁰⁰

The next main compiler of works on Uṣūl al-Fiqh was al-Āmidī,⁸⁰¹ who made a compilation of 'al-Burhān',⁸⁰² 'al-Mustaṣfā',⁸⁰³ 'al-'Amd'⁸⁰⁴ and 'al-Mu'tamad'⁸⁰⁵ in his work 'al-Iḥkām'.⁸⁰⁶ This work of Āmidī's was noted for its thorough examination of the four Sunnī schools of law. Like Al-Rāzī, al-Āmidī's work was made use of by later compilers. Thus, Ibn al-Ḥājjib,⁸⁰⁷ a Malikite, abridged the 'Iḥkām' of Āmidī⁸⁰⁸ in a work entitled, 'Al-Mukhtaṣar al-Kabīr'⁸⁰⁹ followed by a summary of the latter entitled 'Mukhtaṣar

pp6-22.

⁷⁹⁵ Jurist, logician, faqīh. Died, 922AH / 1516AD. Pub works include, 'Sharḥ al-Shamsiyya Fī al-Munṭaq', 'Sharḥ al-Badakhshī (Manāhij al-'Uqūl)', pub Cairo with Sharḥ al-Isnawī and 'al-Minhāj' by al-Bayḍāwī. See, *Kashf al-Zunūn*, p1063. Also, *Mu' jam al-Mu' allifin*, v3, p159.

⁷⁹⁶ Ist ed Cairo, date unknown. Pub with *Nihāyat al-Sūl* by Asnawī.

⁷⁹⁷ 'Abd al-Raḥīm Ibn al-Ḥassan Ibn 'Afi al-Isnawī, born Isna, south Egypt, 704AH / 1305AD. Historian, interpreter of the Qur'ān, faqīh, jurist, linguist, prosodist, grammarian. Taught in Cairo, died 772AH / 1307AD. Pub works include, 'al-Tamhīd Fī Takhrīj al-Farū' 'Alā al-Uṣūl', ed by Dr Hito, pub Beirut, 1980. 'Tabaqāt al-Shāfi' iyya', pub Baghdād, 1970-1971. 'Al-Kalemāt al-Muhimmah', pub Jerusalem, 1985. 'Al-Kawkab al-Durī', pub Amman, 1985. 'Nihāyat al-Sūl Fī Sharḥ Minhāj al-Uṣūl', Ist ed Cairo, 1317AH / 1918AD. 2n edn Cairo, 1343-1345AH / 1924-1926AD. 4th edn Beirut, 1982. See, *al-Mu' jam al-Shāmil Li-Turāth al-'Arabī al-Matbū'*, v1, pp68-69. Also, *al-Durar al-Kāmina*, Ibn Ḥajar, v2, p354, 356. Also, *Bughyat al-Wu'āt*, al-Sayūfī, pp304-305. Also, *al-Badr al-Tālī'*, al-Shawkānī, v1, pp352-353. Also, *Ḥussen al-Muḥāḍarah*, al-Sayūfī, v1, pp242-246. Also, *Kashf al-Zunūn*, passim. Also, *Idāh al-Maknūn*, v1, p138, 379; v2, p609, 610, 653. Also, *Hadiyat al-'Ārifin*, v1, p561. Also, *introduction to al-Tamhīd*, pp19-40. Also, *Mu' jam al-Mu' allifin*, v2, pp129-130.

⁷⁹⁸ Pub with the commentary by Badakhshi, Cairo, date unknown. 3 vols. Pub with *al-Taqrīr*, Ibn Amiir al-Haaj, Cairo, 1924. Pub, Cairo, 1927. Beirut, 1982.

⁷⁹⁹ Born, Jazirat Ibn 'Umr, south east Turkey, 637AH / 1239AD. Studied in Syria and Egypt. Faqīh, jurist, scholastic theologian, grammarian, rhetorician, logician, doctor of medicine, mathematician, poet, interpreter of the Qur' ān, man of letters. Died, Cairo, 711AH / 1312AD. See, *Tabaqāt al-Shāfi' iyya*, al-Subkī, v6, p31. Also, *al-Durar al-Kāmina*, v4, pp299-300. Also, *Ḥussen al-Muḥāḍarah*, al-Sayūfī, v1, p314. Also, *Kashf al-Zunūn*, p92, 1616, 1879. Also, *Hadiyat al-'Ārifin*, v2, p142. Also, *Tabaqāt al-Shāfi' iyya*, Ibn Qāḍī Shahbah, v2, pp235-236. Also, *Mu' jam al-Mu' allifin*, v3, p783.

⁸⁰⁰ Ed by Dr Sha'bān Ismā'īl. Ist ed Cairo, 1993.

⁸⁰¹ See, 727, above.

⁸⁰² See 724, above.

⁸⁰³ See 726, above.

⁸⁰⁴ See 734, above.

⁸⁰⁵ See 736, above.

⁸⁰⁶ See 727, above.

⁸⁰⁷ Ibn al-Ḥājjib, Uthmān Ibn 'Umar Born, Isnā, south Egypt, 570AH / 1174AD. Excelled in the Qur' ānic sciences, jurisprudence, Fiqh, grammar, prosody. Taught in Cairo, Damascus and Alexandria. Became head of the Malikite school of Law. His published works include, 'al-Idāh Fī Sharḥ al-Mufaṣṣal', 'al-Shāfiyya', 'al-Kāfiyya', 'Muntahā al-Wuṣūl Wa al-Amal Fī 'Ilmay al-Uṣūl Wa al-Jadl', 'Mukhtaṣar al-Muntahā', 'al-Qaṣīda al-Muwashshaha', 'Sharḥ al-Wāfiyya Nazm al-Kāfiyya'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, 'Abd al-Jabbār, v1, pp82-84. Died, Alexandria, 646AH / 1249AD. See, *Tabaqāt al-Qurrā'*, Ibn al-Jazrī, v1, pp508-509. See also, *Bughyat al-Wu'āt*, al-Sayūfī, p323. Also, *Kashf al-Zunūn*, p162, 212, 351, 593, 1020, 1134, 1370, 1374, 1427, 1539, 1625, 1735, 1774, 1806, 1853. Also, *Hadiyat al-'Ārifin*, v1, pp654-655. Also, *Shajarat al-Nūr al-Zakiyya*, p167. See, *al-Dibāj al-Mudhdhahab*, p189. Also, *Tabaqāt* Ibn Qunfudh, pp319-320. Also, *Ḥussen al-Muḥāḍarah*, al-Sayūfī, v1, p456. Also, *Siyar A' lām al-Nubalā'*, v23, pp264-266. Also, *Mu' jam al-Mu' allifin*, v2, pp366-367.

⁸⁰⁸ See 806, above.

⁸⁰⁹ See 807, above.

al-Muntaha'⁸¹⁰ which proved a favourite with students of Uṣūl al-Fiqh, due to its accessibility. Its reputation reached both the far east and the far west of the Islamic empire. It was widely commented on and praised,⁸¹¹ not least by 'Aḍud Allāh Wa al-Dīn al-īyī⁸¹² who commented on the 'Mukhtaṣar al-Muntaha'.⁸¹³

V.5.v The Conjoining Of The Works Of Uṣūl Al-Fiqh And Its Methodologies

It becomes clear on investigating the works of Uṣūl Fiqh which have come down to us that they had been composed according to different methodologies. The 'Ulamā attempted to fuse and combine these methodologies into one, or combine the works themselves into more manageable compilations, a process that continued until the end of the seventh century A.H. / thirteenth century A.D., when it reached its perfection in the work of Ibn al-Sā'atī,⁸¹⁴ entitled 'Baḍī' al-Niẓām'.⁸¹⁵ Here the methodology adopted by the Hanafite al-Bazdawī, as expressed in his 'Usul', was successfully conjoined with the methodology adopted by the Shāfi'ite Āmidī, as expressed in 'al-Iḥkām'. Similarly, Aḥmad Ibn Kamāl al-Dīn Aḥmad Ibn Ni'mah⁸¹⁶ (d 694 A.H / 1294 A.D) combined study of the 'Maḥsūl' of al-Rāzī⁸¹⁷ with the 'Iḥkām' of al-Āmidī.⁸¹⁸

The two methodologies of the Ḥanafis and the Mutakallimūn were given expression independently of one another until Ibn al-Sā'atī⁸¹⁹ combined them in his work 'Baḍī' al-Niẓām',⁸²⁰ in effect a discussion of and a comparison between the 'Iḥkām'⁸²¹ of Āmidī,⁸²² a Shāfi'ite and the 'Uṣūl' of Bazdawī,⁸²³ a Ḥanafite. 'Baḍī' al-Niẓām' itself constitutes a resurgence in the compilation of works on Uṣūl al-Fiqh, which above all confirms the principles of Uṣūl al-Fiqh through their application in Islamic society by the

⁸¹⁰ Pub Istanbul, 1326AH / 1908AD.

⁸¹¹ See, *Muqaddimah Ibn Khaldūn*, p456.

⁸¹² 'Aḍud Allah al-Qāḍī 'Abd al-Raḥmān Ibn Aḥmad Al-īyī. Died 756AH / 1355AD. See, *Bughyat al-Wu'āt*, p296. See also, *Miftāḥ al-Sa'adah*, v1, p169. Also, *Al-Durar al-Kāmina fī A'yān al-Mi'at al-Thāmina*, v2, p322. Also, *Ṭabaqāt al-Shāfi'iyyah*, Ibn al-Subkī, v6, p108. Also, *Ṭabaqāt al-Shāfi'iyyah*, Ibn Qāḍī Shāhbā, v3, pp27-29, no 594. Also, *Ṭabaqāt al-Shāfi'iyyah*, Al-Asnawī, p341. Also, *Al-Badr al-Ṭālī* Al-Shawkānī, v1, p326. Also, *Shadharat al-Dhahab*, v6, p174. Also, *Mu'jam al-Mu'allifin*, v5, 119. Also, *Al-A'lām*, Al-Ziriklī, v3, p295. Also, *Mu'jam al-Muṭbu'āt*, Sirkīs, v2, p1331.

⁸¹³ Pub Istanbul, 1307AH / 1889AD.

⁸¹⁴ See, section3, chapt I, part 3. below.

⁸¹⁵ See, chapt II, part 3 passim.

⁸¹⁶ Born, Jerusalem, 622AH / 1225AD. Studied Jerusalem, Damascus and Cairo. Appointed sheikh of the Shāfi'ites. Linguist, polemicist, calligraphist, muftī, preacher, poet, judge. Died, Damascus, 694AH / 1295AD. See, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shāhbah, v2, pp160-162. Also, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v5, p7. Also, *al-Manhal al-Ṣāfi*, v1, pp212-214. Also, *Idāḥ al-Maknūn*, v1, p172. Also, *Bughyat al-Wa'āt*, al-Sayūfī, pp127-128. Also, *al-Faṭḥ al-Mubīn*, v2, p96.

⁸¹⁷ See 730, above.

⁸¹⁸ See 806, above.

⁸¹⁹ See 3, chapt II, part three, below.

⁸²⁰ See chapter III, part three.

⁸²¹ See 728, above.

⁸²² See 727.

⁸²³ See1, chapt II, part three.

leading Sunnī mujtahids of the day.

‘Ubayd Allāh Ibn Mas‘ūd al-Maḥbūbī, better known as Ṣadr al-Sharī‘ah,⁸²⁴ (d 747 A.H / 1346 A.D) followed in the footsteps of Ibn al-Sā‘atī. He composed a work entitled ‘Tanqīh al-Uṣūl’,⁸²⁵ in which the author compares the ideas present in the ‘Uṣūl’ of Bazdawī,⁸²⁶ with those present in the ‘Maḥṣūl’⁸²⁷ of al-Rāzī⁸²⁸ and those present in the ‘Mukhtaṣar’ of Ibn al-Ḥāḥib.⁸²⁹ This was followed by the author’s commentary on ‘Tanqīh al-Uṣūl’ entitled ‘al-Tawḍīḥ Fī Ḥall Ghawāmuḍ al-Tanqīh’.⁸³⁰

After this period, towards the end of the seventh century A.H / thirteenth century A.D there emerged a new school whose task was to compile and comment on the most relevant methodologies employed in the branch of Uṣūl al-Fiqh. The activities of this school prevailed until this century.⁸³¹

⁸²⁴ ‘Ubayd Allāh Ibn Mas‘ūd Ibn Maḥmūd Ibn Aḥmad al-Maḥbūbī al-Bukhārī. Scholar in philosophy , Uṣūl al-Fiqh and natural sciences. His published works include, ‘*al-Tanqīh Fī Uṣūl al-Fiqh*’, ‘*al-Tawḍīḥ*’, ‘*Sharḥ al-Tanqīh*’, ‘*Sharḥ al-Wiqāyah*’ (by his grandfather, Maḥmūd. See, *Miftaḥ al-Sa‘āda*, v2, p240.), ‘*al-Nikāyah Mukhtaṣar al-Wiqāyah*’ Died Bukhārā 747AH / 1346AD. See, *al-Fawā’id al-Bahiyya*, pp109-112. Also, *al-Jawāhir al-Muḍiyya*, v2, p365. Also, *Kashf al-Zunūn*, p419, 496, 1047, 1270, 1971, 2011, 2021. Also, Mu‘jam al-Mu‘allifin, v2, p355. Also, al-A‘lām ,v4, pp197-198. Also, *Tarīkh al-Adab al-‘Arabī*, Brockelman, v6, passim. Also, *Miftaḥ al-Sa‘āda*, v1, p62; v2, p162, 170.

⁸²⁵ *Tanqīh al-Uṣūl*, commented on by the same author under the title, ‘*Al-Tawḍīḥ Lil-Tanqīh*’. The latter was commented on by Sa‘d al-Dīn al-Taftāzānī al-Shāfi‘ī entitled. ‘*Sharḥ al-Talwīḥ ‘Alā al-Tawḍīḥ*’. Ist ed Teheran, 1282AH / 1865AD. 2nd ed Istanbul 1304AH / 1886AD. 3rd ed Cairo, 1322AH / 1904AD. 4th ed Cairo 1324AH / 1906AD. 5th ed Cairo 1327AH / 1909AD. 6th ed Cairo 1327AH / 1909AD. 7th ed Cairo 1357AH / 1938AD. See, al-Mu‘jam al-Shāmil Li-al-Turāth al-‘Arabī al-Maṭbū‘, v1, pp251-252.

⁸²⁶ See 436, above.

⁸²⁷ See 730, above.

⁸²⁸ See 634, above.

⁸²⁹ See 810, above.

⁸³⁰ See 825, above.

⁸³¹ ‘Abd al-Wahhāb Ibn ‘Alī al-Subkī (d771AH / 1371AD). Composed a work entitled ‘*Jamī‘ al-Jawāmi‘*’, pub Cairo, 1890-1891. Muḥammad Ibn ‘Abd al-Wāḥid al-Siwāsī, known as Ibn Hummām (d861AH / 1457AD). He composed a work which united the methodologies of the Ḥanafis and the Shāfi‘is in his work entitled ‘*al-Taḥrīr*’, pub Cairo 1351AH / 1932AD.

PART TWO

AN OUTLINE OF THE STUDY OF ISLAMIC JURISPRUDENCE

Chapter I

Introduction

The aim of PART TWO, is to present a clear picture of the various processes that practitioners in the field of Islamic jurisprudence, from the beginning of Islam to the 7th century AH, 13th century AD, have followed in order to derive (new) rules. To that extent, PART TWO gives an outline of development of Islamic jurisprudence dealing mainly with the source material, issues, modes of representation, the principles and evidence. It consists of five chapters. Chapter I is the introduction. Chapter II outlines the Fundamentals of the Study of Islamic Jurisprudence, and Chapter III gives some idea about the types of legal indicators that form the basis of Islamic Jurisprudence. Chapter IV deals with the Transmission of Texts and Chapter V tackles issues of Meaning and Interpretation of Texts. The last chapter in PART TWO, namely, Chapter VI, describes Ijtihād And Taqlīd And Other Methods Of Reaching Verdict, which includes the weighing of conflicting indicators.

I.1 Jurisprudence During The Time Of The Prophet And His Companions

The first Muslims received guidance in matters of religion directly from the Prophet. That took the form of rules (Ahkam) conveyed by word of mouth and exemplified by the lifestyle of the Prophet himself. Thus, derivation of new rules during the time of the Prophet was a straightforward process. There were the continual revelations of Allāh dispensing guidance (in the form of the Qur'ān), and failing this Muslims were to be guided by the wisdom of the Prophet and thereafter by the counsel of the Companions.

The majority of Companions, after the death of the Prophet, memorized the Qur'ān and the Sunnah and relied on their memory when asked to deliver a judgement regarding an issue, using the Qur'ān and the Sunnah as sources for the derivation of new rules. They never referred, or were able to at the time, to written texts.

I.2 The Demands Of A New Era

After the era of the Companions, Islām went through a period of vast expansion. Diverse peoples with their own languages were absorbed by the new religion and the old oral

culture made way to the written. Here the jurists and the mujtahids harnessed their knowledge of linguistic principles to explain the grammatical sciences, syntax and so on, as well as formulate the principles of Fiqh which they derived from the Companions and their Followers.

In addition, the transmitted traditions of the Sunnah needed verification through an investigation of the ways of transmission and the probity (‘*Adālah*’) of its transmitters. This is vital so that the truthfulness of the account can be verified. Then knowledge of the abrogating and abrogated traditions was required, along with a study of the meaning of words.

The writings on Uṣūl al-Fiqh from the time of the first century AH / seventh century AD leading up to the seventh century AH / thirteenth century AD were diverse and scattered in terms of content and method. From then onwards efforts were made to combine these diverse approaches. This was best exemplified by Ibn al-Sā‘ātī in ‘*Badī‘ al-Nizām*’, an innovative and comprehensive work.

Ibn al-Sā‘ātī’s method in composing and commenting on Uṣūl al-Fiqh was imitated by most scholars in later periods when studies in Uṣūl al-Fiqh levelled off in terms of innovation, when the jurist, requiring sources from which he might derive new rules, turned conservative in his scholarly conduct.

He who scrutinizes the works of Uṣūl al-Fiqh will find the jurist fully acquainted with his subject and able to define and explain Uṣūl al-Fiqh in terms of its development, history, its issues and the sources from which Uṣūl al-Fiqh is derived. He will also find him acquainted with the sister subjects of scholastic theology, philosophy and the linguistic sciences which bore a relation to the study of Uṣūl al-Fiqh, as well as able to explain the principles of Uṣūl al-Fiqh in terms of concepts and synthetic judgements (*taṣḍīqāt*).

The jurists studied the indicators (*adillah*) of God’s law and divided them into two sections, as follows:

- 1) The authentic *adillah*. Namely, the Qur’ān, the Sunnah, Ijmā‘ and Qiyās.
- 2) The disputed indicators. Namely, *Istidlāl*, i.e. deduction, and the indicators listed under this category.

The jurists also explained the conditions of *Ijtihād* (reasoning), *Ifta‘* (issuance of a *fatwā*) and *Taqīd* (imitation), as well as clarifying the methods employed in *Tarjīh* (the weighing of conflicting indicators) on every day issues with regard to their equality or contrariness.

Chapter II

Fundamentals Of The Study Of Islamic Jurisprudence.

II.1 The Technical Import Of Fiqh

The difference between Fiqh and Uṣūl al Fiqh is that the former concerns itself with knowledge of the detailed rules (*Aḥkām*) of Islamic law in its various branches, whilst Uṣūl al Fiqh is concerned with methods that are applied in the deduction of such rules from their sources.

Fiqh, as the 'Ulamā' see it, is knowledge of the laws of obligation (*Aḥkām al Taklīf*). Namely where a *faqīh* has to know the difference between a definitive proof (*qat' ī*) from a speculative one (*ẓannī*), in order that he may arrive at the correct deduction, the *dalīl* being an indication in the Sources (Uṣūl) from which a practical rule of Sharī'ah or a *Hukm* is deduced. For example, the clear injunctions of the Qur'ān and *Mutawātir* Ḥadīth are all (*qat' ī*) in respect of both transmission and meaning.

A solitary Ḥadīth (*Aḥad*) on the other hand is of speculative authenticity and therefore falls under the category of speculative proofs. As such, it cannot be subjected to analogy (*Qiyās*) because a *Qiyās*, in order to be valid, must be founded on an established *Hukm* of the Qur'ān, the Ḥadīth of the Prophet, or Consensus (*Ijmā'*). *Qiyās* is not considered one of the transmitted proofs (*Adillah al Naqliyya*) rooted in the Qur'ān, the Ḥadīth or *Ijmā'* whose authority is binding and independent of any rational justification that might exist in their favour⁸³².

The doctrine of the branches, or applied Fiqh, can be divided into three sections:

- 1) The science of what is permissible in Islām ('*Ilm al Mashrū'*)
- 2) Knowledge of what is permissible through the texts and the Uṣūl al Fiqh which expounds the indications and methods by which the rules of Fiqh are deduced from their sources.
- 3) Application of Rules (*Mashrū'iyah* -legality).

⁸³² *Al-Burhān*, v1, p85.

II.2 Terminology And Definition⁸³³

The term '*Uṣūl al Fiqh*' is used in Arabic to denote the area of scholarship in Islamic Jurisprudence. It is a genitive construction which consists of two parts: 'uṣūl' and 'al-Fiqh'. The first part of this construction '*uṣūl*' is the plural form of the Arabic noun '*aṣl*' which means fundamental, root, origin, or source. The second part, 'al-Fiqh' denotes "(the) understanding". Thus the genitive construction '*Uṣūl al-Fiqh*' as a whole means "the fundamentals of understanding (Islamic law)".

Fiqh denotes knowledge of something. Hence the first form verb, first person singular past tense: *Faqihitu al Ḥadīth* (I have learnt the Ḥadīth), later to be associated with knowledge of the Sharī'ah. The bearer of such knowledge is given the title of *Faqīh* (jurist)⁸³⁴, plural *Fuqahā'*. Hence also the second and fourth forms transitive: *Faqqaha* and *Afqaha*: to teach *fiqh* is to presuppose a mastery of the subject⁸³⁵. We note also the intransitive fifth form, *Tafaqqaha*, to devote oneself to the study of Fiqh, seen as synonymous with: *Li-Yatafaqqahū fī al-Dīn*⁸³⁶, namely devoting oneself to the study of the religion of Allāh.

It is said of Fiqh that it represents a means by which it is possible to attain a knowledge of something hidden, through reference to a known source or knowledge. In this sense, Fiqh is a more specialized term than knowledge ('*Ilm*')⁸³⁷. Also, Fiqh is a term synonymous in meaning with an understanding of the scholastic theology ('*Ilm al Kalām*') and its concepts⁸³⁸.

Scholarship in Islamic jurisprudence has traditionally concerned itself with the study of four fundamentals. The first fundamental '*aṣl*' is referred to in Arabic as '*dalīl*', ie. evidence. The Arabic word '*dalīl*' refers to a single evidence whereas its plural, '*adillah*', denotes several pieces of evidence.

Evidence in Islamic jurisprudence is sought in four primary sources: the Qur'ān, the tradition of the Prophet Muḥammad, (ie. 'Ḥadīth' and 'Sunnah' which mean the Prophet's sayings and conduct, respectively), the consensus of opinion and analogy.

⁸³³ *Al-Iḥkām fī Uṣūl al-Aḥkām*, Sayf al-Dīn al-Āmidī, v1, pp7-14. See also, *Kashf al-Asrār*, Al-Bukhārī, v1, pp7-19. Also, *al-Mu' tamad*, Abū al-Ḥussein al-Baṣrī, v1, pp6-11. Also, *al-Baḥr al-Muḥīṭ*, Al-Zarkashī, v1, pp15-114. Also, *Al-Maḥṣūl fī ' Ilm Uṣūl al-Fiqh*, Fakhr al-Dīn al-Rāzī, v1, pp78-82. Also, *al-Wuṣūl ilā al-Uṣūl*, Ibn Burhān, v1, pp47-56. Also, *Al-Burhān*, al-Juwaynī, v1, pp1-5. Also, *Iḥkām al-Fuṣūl fī Aḥkām al-Uṣūl*, al-Bājī v1, pp45-69. Also, *al-Ta' rifāt*, al-Jurjānī, p28.

⁸³⁴ *Mujmal al-Lughah*, v 2, p703.

⁸³⁵ *Al-Qāmūs al-Muḥīṭ*, v 4, p291.

⁸³⁶ The *Qur'ān*: Text, Translation and Introduction by Muḥammad Marmaduke Pickhall: Dār al-Kitāb Allubnanī, Beirut, 1970. Sūrah al-Tawbah, Ayah 122.

⁸³⁷ *Mufradāt al-Rāghib*, Al-Aṣfahānī, p384.

⁸³⁸ *Anīs al-Fuqahā'*, p308.

Consensus of opinion is referred to in Arabic as *Ijmā'*. The degree of consensus and the group among whom consensus is considered will be discussed later. Analogy, on the other hand, is denoted in Arabic by the word '*qiyās*'. Again, the method of applying analogy and the areas of its application will be discussed later.

The second fundamental in the study of Islamic Jurisprudence is referred to in Arabic as '*al-Rujhān*'. This term means the preponderance or predominance of a certain way of thinking. It is by '*al-Rujhān*' that one can distinguish the literal text (*ḥaqīqī*) from the metaphorical (*majāzī*) through *Aṣl*.

The third fundamental in this study is referred to as '*al-Qā'i da al- Mustamirra*' (enduring principle). Literally the term means the principle that applies in certain enduring circumstances where deviation from a rule is allowed. Technically the principle is designed for unavoidable deviation from a rule '*Aṣl*'.

The fourth fundamental is '*ṣūrat-al-Maqīs*' (Analogy)⁸³⁹ which constitutes the means by which to judge the soundness of a principle (*Aṣl*) with an equivalent (subsidiary) principle.

We refer to *Aṣl* as used in *Qiyās*: namely to discover something from that which is known, through the process of reasoning from parallel cases with *Aṣl* (original case), *far'* new case and '*illa* (cause) forming the key elements of the deductive process⁸⁴⁰.

We also refer to *Aṣl* in the sense that the method of deduction best suited to obtaining the (*ḥukm Shar'i*) of a particular problem must derive from the *Uṣul* (al-Fiqh)⁸⁴¹. Evidence (*Dalīl*) for instituting a ruling must be rooted in one (*Aṣl*) of the four roots of Fiqh⁸⁴². Knowledge (*Ilm*) derives from *Aṣl*⁸⁴³. *Aṣl* can sometimes take the meaning of the *Hukm* (ruling) on which it was based, as well as being synonymous with *Dalīl*⁸⁴⁴.

The issue to which *Qiyās* is applied, the *Furū'*, must have an '*illa* (cause) in common with the original *Hukm* (ruling) in which an *Aṣl* is inherent. Thus one might term such an *Aṣl* as *maḥall al Hukm*, as the location of the *Aṣl*.

Through evidence (*Dalīl*) one can reach and attain an insight into or knowledge of an idea⁸⁴⁵, the most important evidence being rooted in the Qur'an.

⁸³⁹ See 845, above.

⁸⁴⁰ *Iḥkām al-Fuṣūl*, p52.

⁸⁴¹ *Al-Ta'rifāt*, p28.

⁸⁴² *Qawāṭil' a l-Adillah*, fol 2b.

⁸⁴³ *Kitāb al-Hudūd fī al-Uṣūl*, Ibn Furak, No 125.

⁸⁴⁴ *Al-Ṭdāh Li-Qawānīn al-Iṣtilāh*, fol 14a.

⁸⁴⁵ *Ibid*, fol 7a.

The source (*Aṣl*) from which transmitted proofs (*Adillah Naqliyya*) derive, i.e. The Qur'ān, the Ḥadīth, and Ijmā' must show a chain of authorities (Isnād) going right back to the Prophet himself. The *Adillah Naqliyya* possess an authority and binding force independent of any rational justification, unlike Uṣūl (sources) which are not considered as definitive proofs, namely Qiyās, *Istiḥsān* (considering something as good), *Istiṣlāḥ* (considering something as suitable) and so on⁸⁴⁶.

These rational proofs (*Adillah 'Aqliyya*) are founded on reason and need to be justified through analogy (Qiyās). Qiyās, for its part, in order to be valid, must be founded on an established *Hukm* of the Qur'ān, the Ḥadīth of the Prophet or Ijmā' (consensus)⁸⁴⁷.

II.3 Rules Of Jurisprudence (*Aḥkām Al-Sharī'ah*)

These relate to actions which are regarded as permissible (*Mubāḥ*) or commendable (*Mandūb*), or forbidden (*Muḥarram*), prohibited (*Maḥzūr*), reprehensible (*Makrūh*), obligatory (*Wājib*) and so on as deduced from the texts in the way of commands (*Awāmir*) and prohibitions (*Nawāḥi*). But one must look to the wording of the text in question, its subject matter and other supportive evidence to ascertain whether a command (*Amr*), say, either conveys obligation or implies a recommendation (*Nadb*) or even a mere permissibility (*Ibāḥah*) and not an obligation (*Wujūb*).

Where the value of the definitive (*Qat'ī*) proof is ambiguous, the *faqīh* must resort to supportive evidence in the sources or to intellectual endeavour (*Ijtihād*) to determine the true meaning of the text⁸⁴⁸.

Fiqh then, is knowledge of the rules of jurisprudence (*Aḥkām al Sharī'ah*), in its various branches, these rules being deduced from the evidence (*adillah*) of *Sharī'ah*⁸⁴⁹. From this, a *faqīh* can identify lawful action (*Ḥalāl*) from an unlawful one (*Ḥarām*), or distinguish in the matter of command between an obligation (*Wujūb*) and a recommendation (*Nadb*), and in the matter of prohibition (*Nahy*) between illegality (*Taḥrīm*) and abomination (*Karāḥa*) and so on⁸⁵⁰.

Āmidī makes it clear from the outset that an understanding of the command or prohibition is not so much rooted in the linguistic form of the imperative, as in the text or the subject matter of the command or prohibition and other supportive evidence from which a precise rule of jurisprudence (*Sharī*) can be determined.

⁸⁴⁶ *Miftāḥ al-Wuṣūl*, p7.

⁸⁴⁷ *Ibid*, p155.

⁸⁴⁸ *Al-Mu'tamad*, v1, pp4-5.

⁸⁴⁹ *Sharḥ Al - Tyjī*, 'Ala Ibn al-Ḥajīb, v1, p5.

⁸⁵⁰ *Sharḥ Rawḍat al-Nāzir*, v1, p19.

Āmidī's opinion represented the majority view amongst the Ulamā', although some thought that the imperative form alone was sufficient to convey, in the case of command ('*Amr* ') (for example) an obligation (*Wujūb*), rather than a recommendation (*Nadb*) or even a mere permissibility (*Ibāḥa*), and in the case of forbidding (*Nahy*) an abomination (*Karāḥah*) instead of a prohibition (*Tahrīm*). This latter view was held by the *Mu'tazilah*, known as the rationalists, who saw speech as a phonic phenomenon, so identifying command with a linguistic form.

Āmidī, however, saw the imperative form *If'al* (i.e. do) as being identifiable with a meaning, a mental content, through which vehicle God wills that certain acts be commanded without necessarily willing these acts to occur, or rather that God wills that we ought to act in a particular way. In short, it is not what we should do and should not do but what we ought and ought not to.

In this scheme of thought, where God is seen as the omnipotent figure having, in the predestined sense, mapped out the fates of man, Āmidī could never accept the Mu'tazilis definition of a command as the willing of an act (*Irādat-al-Fi' l*). Rather, he uses the expression, "a calling for an act" (*Ṭalab-al-Fi' l*) which represents a mental disposition, finding expression in vocal language (*Kalām al Nafs*) not through a calling out loud.

In the case studies where a command signifies an order (*Amr*), a threat (*Tahdīd*), or a permission (*Ibāḥa*), these are all taken to be literal meanings (*Ḥaqīqa*). But the ulama differ in opinion as to whether the *If'al* form signifies both imposition of obligation (*wujūb*) and recommendation (*Nabd*), as literal meanings, or that it might be a homonym, denoting different meanings; or that the same form signifies imposition of obligation only, and that recommendation (*Nadb*) and all other meanings are non-literal (*Majāzī*) or that the form is a (*Ẓāhir*) signifier of recommendation (*Nadb*); or that suspension of judgement is made (by some jurists) on what exactly the *If'al* form is a signifier of.

As for Āmidī, he sees the *If'al* form as no more and no less than a *Ẓāhir* signifier of the command. If imposition of obligation (*Wujūb*), recommendation (*Nadb*) or permissibility (*Ibāḥa*) is implied, then this must be found in the contextual clues.

A literal meaning (*Ḥaqīqa*) stripped of its contextual clues ('Āriya 'An al Qarā'in), is a meaning which occurs immediately to the mind of the hearer. It is a meaning that arises immediately (*Mubādara*), or a meaning triggered off in the mind of the hearer without triggering off any other meaning.

Jurists, concerned to articulate the divine categorizations of human acts, strived to

be specific in their definition of the *If 'al* form and the meaning of it, conveyed so as to rely less on contextual clues i.e. having to rely on *Ta'wīl* ,i.e., to comb the context and seek out contextual evidence to either negate or confirm presumptions that the *If 'al* form imparts, be it obligation (*Wujūb*), recommendation (*Nadb*), or mere permissibility (*bāḥa*) from which evidence they might articulate the law.

Āmidī's definition that the *If 'al* form is a (*Zāhir*) signifier for a calling of an act places the onus on the Mujtahid to seek the meaning of the command in the context.

A called for act, however, can only be an act whose performance has priority (*Rujhān*) over non-performance (*Tark*).

If a non-performance is banned (*Mumtani' a*) the act constitutes an obligatory act (*Wājib*). Where the non-performance is not banned then the priority of performance will be due either to some benefit in the Hereafter, in which case the act constitutes a recommendation (*Mandūb*), or to some benefit in the present world, in which case the act constitutes guidance (*Irshād*) ⁽⁸⁵¹⁾.

The early Fuqahā' differed in their opinion as to the function of the command stripped of its contextual clues, namely what the *If 'al* form is a *ḥaqīqa* expression for, when it occurs by itself.

Abū Ishāq al Isfrāyīnī and a number of scholastic theologians (*Mutakallimūn*) ⁸⁵² were of the opinion that a repeated performance of the act was called for: that is, repeated throughout one's lifetime⁸⁵³, except, that is, where the act was inherently non-repeatable, as in the exhortation to convert to 'Islām. Others, under the aegis of Abū Al Ḥusain al Baṣrī, called for a single performance only.⁸⁵⁴ Others, yet again, suspended judgement on the issue.

The numerical superiority of the *If 'al* form in the Qur'ān and the Sunnah of the Prophet presumes a lifelong operativeness of commands over those which signify a calling for a single performance. But is such a repetition called for, as signified by the *If- 'al* form,

⁸⁵¹ *Iḥkām*, Āmidī, v2 pp132-174.

⁸⁵² Al-Jubbā'ī. Chief judge Muḥammad Ibn 'Abd al-Wahhāb Ibn Silām. He was nicknamed Abū 'Ali, a Mu'tazilite. Died 303AH. See *Al-Lubbāb*, v2, p208. See also *Tarīkh Duwal al Islām*, v1, p145. Also *Al-'Ibar*, Ibn Khaldūn, v2, p125. Also *Mu' jam al Buldān*, v3, p41. Also, *Sharḥ al-Uṣūl al-Khamsa*, p43. Also *Mir'āt al-Jinān*, v2, p241.

⁸⁵³ *Iḥkām*, Āmidī, v2, p143.

⁸⁵⁴ Abū al-Ḥussein al-Baṣrī, Muḥammad Ibn 'Alī al -Tayyib. A Mu'tazilite. Died 436AH. See, *Wafīyyāt al A'yān*, v1, p687. See also *Al-Wāfi bil-Wafīyyāt*, v4, p125. Also *Al-Bidāyah wal Nihāyah*, Ibn Kathīr, v12, p53. Also *Shadharat al-Dhahab*, v3, p259. Also, *Mir'āt al-Jinān*, v3, p57. Also *Tarīkh*, Ibn Al-Khaldūn. v3, p187. Also, *Tabaqāt al-Uṣūliyyīn*, v1, p237. Also, *The Introduction to Kitāb al-Mu' tamad*

or not? No, counters Āmidī, who says that one needs a contextual determinant (a verbal noun in this case), beyond the *If'al* form to indicate repetition or the calling of a single act⁸⁵⁵.

There is no doubt, opine the majority of jurists, that the *If'al* form is a *Zāhir* signifier calling for an action to be performed at least once, for a single occurrence is necessary in order for the act to occur at all. But for indications of repetition one must resort to contextual clues, states Āmidī. But does the '*If'al*' form, however, imply repetition of an act when conjoined with a condition (*shart*) ?

We think, here, by way of example of the following expression, 'Pray (when the sun sets)' whereby the condition functions as the occasioning element ('*illah*) behind the rule of law. The implication is, of course, that the Muslim must pray at every sunset and not just at those which he finds expedient.

Or does the *If'al* form imply a repetition of an act when conjoined with an attribute (*Ṣifa*), as in the following expression: "As for the fornicatress and fornicator, flog each of them with a hundred lashes"⁸⁵⁶. the attribute being fornication? Some jurists said such repetition is obligatory, some argue to the contrary⁸⁵⁷.

Then there were those jurists who deemed that the act called for (*Ṭalab al Fi'l*) was to be performed as soon as possible, a delayed performance constituting a transgression. Among those who advocated this practice, we must include the Ḥanafites and the Ḥanbalis, whilst the Shāfi'is, Qāḍī Abū Bakr and Abū Al Ḥusain al Baṣrī and his father Al Jubba'ī⁸⁵⁸ accepted that the act called for could be delayed in performance, but made clear their preference for an immediate performance.

A third group suspended judgement⁸⁵⁹. on the issue, coming down on neither the side of those in favour of immediate performance nor those tolerant of a delayed performance. They are those who considered a delayed performance of an act called for to be a sin, which includes 'Imām al-Haramayn⁸⁶⁰.

⁸⁵⁵ *Al-Iḥkām*, Āmidī, v2, p143.

⁸⁵⁶ *Qur'ān*: Sūrah al-Nūr, Āyah 2.

⁸⁵⁷ *Al-Iḥkām*, Āmidī, v2, pp149-150.

⁸⁵⁸ Al-Jubba'ī. See 854, above

⁸⁵⁹ Al-Wāqifiyyah, a Shi'ite sect. They recognised only two Imams: J a' far al-Ṣādaq and his father, Muḥammad al-Baqr. Also known as the Al-Bāqariyyah and the Ja'fariyyah. See, *Al-Milal wal Niḥal*, v1, pp165-167. Also, *Al-Maḥṣūl*, v2, p113 and p189; v3, p7. Also, *Al Taḥṣīl*, v1, p308

⁸⁶⁰ Imām Al-Haramayn, 'Abd al-Malik Ibn Abi Muḥammad-'Abd-Allah-Ibn Yūsuf al-Juwaynī. He was nicknamed Diyā' al -Dīn. Died 478 AH. See *Wafiyāt al A'yān*, v1, p408. See also, *Ṭabaqāt al-Shāfi'iyyah*, Ibn al- Subkī, v3, pp249-282. Also, *Shadharat al-Dhahab*, v3, p358. Also, *Al-Bidāyah wal Nihāyah*, v12, p128. Also, *Al-Muntaẓam*, v9, p18. Also *Mir'āt al-Jinān*, v3, p123. Also *Tarīkh Duwal al Islām*, v2, p26. Also, *al-Lubbāb*, v1, p256. Also, *Tarīkh Ibn Khaldūn*, v3, p291. Also, *Ṭabīyīn Kadhib al-Muftarī*, p151. Also *Ṭabaqāt al-*

Āmidī's point of view is that the *If'al* form alone as a *Zāhir* signifier calling for an act does not indicate in temporal terms whether that act is to be delayed or performed immediately. For such evidence one must consult the full text.

With regard to the *If'al* form as a *Zāhir* signifier calling for an act is it also, a calling for the non-performance of all the contraries of that act? Again opinion differs on this issue. There were those who said that such a calling for an act necessitated also a calling for the non-performance of all the contraries of that act, as advocated by al-Qāḍī Abū Bakr⁸⁶¹.

There were those who completely denied this to be the case, that the *If'al* form as a *Zāhir* signifies a calling for an act did not amount to a command not to do the contraries of that thing, as opined by the Mu'tazilis who saw the *If'al l* (i.e. do) and *Lā Taf'al* (i.e. do not do) forms as being distinct from each other, one being related to a command, the other to a prohibition. Some Mu'tazilis, however, saw that the calling for an act (from the point of the mental context of the command (*Kalām al Nafs*) was tantamount to a calling for a non-performance of the contraries of that act⁸⁶².

Āmidī preferred the view that such calling implied (rather than signified) a calling for a non-performance of the contraries of the act in question, neither denying the link between the two concepts, nor severing it.

Another point of controversy concerned the situation when the Lawgiver may at times order something which has been prohibited. What then is the nature of a command that follows a prohibition? Does it convey an obligation (*Wujūb*), or a mere permissibility (*Ibāḥa*)? The majority of jurists inclined to the latter opinion, i.e. the removal of a stricture against an act (*Raf' al Ḥaraj 'an al Fi'l*) denoting permission or a non-literal meaning; such as in the Ḥadīth in which the Prophet is reported to have said: "I had forbidden you from visiting graves. Nay, visit them, for it reminds you of the Hereafter"⁸⁶³ or as in the Qur'ānic injunction: "Go hunting" after completion of the

Shāfi'īyyah, Al -Asnawī, v1, p409. Also, *Ṭabaqāt Ibn Hidayat Allah*, p174. Also, *Ṭabaqāt al Shāfi'īyyah*, Ibn Qāḍī Shahbā v1, pp255-256. Also, *Mu'jam al-Buldān*, v2, p193. Also, *Al-Nujūm al-Zāhirah*, v5, p121. Also, *Miftah al- Sa'adah*, v1, p440; v2, p188. Also, *Al-Ansāb*, v3, p430.

⁸⁶¹ Qāḍī Abū Bakr , Muḥammad Ibn al-Ṭayyib al-Bāqillānī , born 338AH / 950AD. Became the leading Ash'arite of his day. His most renowned works include, *I'jāz al-Qur'ān*, *al-Inṣāf*, *al-Tamhīd fī al-Radd 'Alā al-Mulḥidah wa al-Mu'aṭilah wa al-Khawārij wa al-Mu'tazilah*, and *Tamhīd al-Dalā'il*. Manuscripts include, *Manāqib al-A'imma*, *Daqā'iq al-Kalām*, *al-Istibṣār* and *al-Bayān 'An al-Farq Bayna Mu'jizah wa al-Karāmah*. Died in Baghdād, 403AH / 1013AD. See, *Tarikh Baghdād*, v5, pp379-383. See also, *al-Nujūm al-Zāhirah*, v4, p234. Also, *Shadharat al-Dhahab*, *Al-Ḥanbalī*, v3, pp169-170. Also, *Kashf al-Zunūn*, p120, 173, 1485, 1820, 1841, 2042. Also, *Idāḥ al-Maknūn*, v1, p691. Also, *Kunūz al-Ajdād*, Kurd 'Afi, pp207-212. Also, *Mu'jam al-Mu'allifin*, v3, p273. Also, *Tabiyyīn Kadhib al-Muftarī*, pp217-226. Also, *al-A'lām*, al-Ziriklī, v6, p176.

⁸⁶² *Al-Iḥkām*, Āmidī, v2, p159.

⁸⁶³ *Al-Mustasfā*, v1, p83. Also, *Mushkāt al-Maṣābiḥ* v1, p544, Ḥadīth no 1769

pilgrimage⁸⁶⁴.

The Mu'tazilis, however, saw the command as signifier of an act calling for an obligation, as in the Prophet's words: "I forbade you to store away meat of sacrificed animals. Now store it away."⁸⁶⁵ Those who suspended judgement on the matter included the 'Imām al-Ḥaramayn.⁸⁶⁶

But, once again Āmidī does not commit himself with regard to a precise signification of the *If'al* form on this issue. The *If'al* form for him signifies only the calling for an act as its sole literal meaning. Whether obligation or recommendation is implied in a command that follows a prohibition, has to be confirmed with the contextual clues⁸⁶⁷.

Difference of opinion too was voiced in the matter of compensatory performance of the act (*Qaḍā'*), for the initial act that was performed faultily, as in the Prophet's words: "Whoever sleeps through the time of prayer or forgets to pray, let him perform the prayer when he remembers to do so."

Abū Zayd Al Dabūsī deemed the calling for a compensatory performance to be a matter for *Qaḍā'*⁸⁶⁸, whilst the Mu'tazilah held that a fresh command was necessary to establish such a calling⁸⁶⁹.

The matter of *If'al* form signifying a calling for a universal essence (*Al Māhiyya al Kulliyya*)⁸⁷⁰, raises the issue of distinguishing, say, in a command to sell (*Bay'*), between fraudulent and equitable sale, these two terms requiring textual qualifications (*Quyūd*) in order to clarify the distinction between the two. Is the command (*Bay'*) to be applicable to the act in a general way (*'Āmm*) or specific (*Khāṣṣ*) category? Āmidī is of the view that such a command signifies a calling for a universal essence, not for a specific kind of act. Once again, to determine, in the above case, the nature of the sale, one has recourse to the context for a more precise, non-literal meaning⁸⁷¹.

⁸⁶⁴ *Qur'ān*: Sūrah al-Mā'idah, Āyah 2.

⁸⁶⁵ *Ṣaḥīḥ Muslim*, v2, p672, No 106. See also, *Sunan Abū Dāwūd*, v4, p97, no 3698. Also, *Musnad Aḥmad*, v6, p51; v5, p 350, p355, p356, 359; v3, p388. Also, *Sunan Al-Tirmidhī*, v3, p361, no 1054 and no 1510. Also, *Sunan al-Nisā'i*, v4, p89; v7, p234; v8, p310. Also, *Sunan Ibn Mājah*, no 3405. Also, *Muwatta' Mālik*, no 392. Also, *Sunan Ibn al-Jārūd*, p324. Also, *Mukhtaṣar al-Muntahā*, Ibn al-Ḥāḥib, p165. Also, *Tuḥfat al-Tālib*, p37 and 390. Also, *Ikhtilāf al Ḥadīth*, Al-Shāfi'i, pp208-209. Also, *Iḥkām al-Fuṣūl*, p465, p468, p550. Also, *Uṣūl al-Sirakhsī*, v2, p77. Also, *Al-ʿIdāh Li-Qawānīn al-Iṣtilāḥ*, fol 68b. Also, *Al-Mu'tabar*, p205 and p230.

⁸⁶⁶ See 960, above

⁸⁶⁷ *Al-Iḥkām*, Āmidī, v2, pp127-130.

⁸⁶⁸ *Al-Iḥkām*, Āmidī, v1, pp165-166.

⁸⁶⁹ Abū Zayd al-Dabūsī, known as 'Ubayd Allah or 'Abd al-Allah Ibn 'Umr Ibn 'Isā. He was a leading Ḥanafite in Samarkand and Bukhāra. Died 430AH. See, *Al-Jawāhir al-Muḍī'a*, v2, p252. See also, *Al-Fawā'id al Bahiyya*, p109.

⁸⁷⁰ *Al-Iḥkām*, Āmidī, v1, pp166-169.

⁸⁷¹ *Ibid*, v1, pp169-170.

A key issue of polemic to arise amongst the Mu'tazilah concerned the issue where a second command is repeated immediately after the initial one, as in the injunction, "Perform two *Rak'as*, Perform two *Rak'as*", 'Abd al-Jabbār deemed the two commands to mean perform four *Rak'as*, whilst his disciple, Abū al Ḥussain Al Baṣrī⁸⁷², merely saw the second command as reinforcing the first, as in the order given by a master to his slave: 'Isqinī mā' " 'Isqinī mā' " "give me water, give me water".

Āmidī here sides with 'Abd al-Jabbār saying that an added command is a kind of constitutive speech which, in the absence of evidence to the contrary, holds away over the confirmatory.

The matter of *Ijzā'* (execution) which relates to an act that fully satisfies the command so as to rule out the possibility of a further command would constitute *Qaḍā'* (belated performance).

Some companions, a good number of the Mu'tazilah and jurists (*Fuqahā'*) were of the view that an act could constitute an execution (*Ijzā'*) in the second sense, whilst the leading Mu'tazilah 'Abd al Jabbār and his followers opined the opposite view⁸⁷³.

Qaḍā' (belated performance) means a compensatory performance of an act initially performed in a defective manner, in which the *If'al* form is invoked. For example, according to Ḥanafite doctrine, when a person starts a superobligatory fast, (from a position of recommendation) it is obligatory that he completes it. Failure to do so renders him liable to *Qaḍā'*, a belated performance.

But when *Qaḍā'*, means a later (rather than a compulsory) performance where, in such cases, the act is superfluous over and above that commanded initially, then one was required to deny that the act performed in response to that initial command was an execution.

Prohibition (*Nahy*) is defined as a term which demands the avoidance of an act. The typical form for such an order is *Lā Taf'al* (do not do), namely calling for the non-performance of an act, which raises three important issues with regard to the *Lā Taf'al* form⁸⁷⁴.

1) Does the negative command render a legally sound transaction defective (*Fāsid*)?

⁸⁷² Ibid, v1, pp171-172.

⁸⁷³ See 859, above.

⁸⁷⁴ Al-Qāḍī 'Abd al-Jabbār, Ibn Aḥmad al-Hamadhānī al-Asad Ābādī. A leading Mu'tazilite. Died 415AH / 1025AD. See, *Ṭabaqāt al-Shāfi'iyyah*, Ibn al-Subkī, v3, p219. Also see, *Ṭabaqāt al-Mu'tazilah*, p122. Also, *Ṭabaqāt al-Shāfi'iyyah*, Al-Asnawī, v1, p354. Also, *Tarīkh Baghdād*, Al-Khaṭīb al-Baghdādī, v11, p113. *Al-'Ilām*, Ziriklī, v3, pp273-274.

Āmidī's answer is in the negative, namely that the *Lā Taf'al* form is not a *Zāhir* signifier of defectiveness, but not all the 'Ulamā' agree with him⁸⁷⁵.

2) Could it have been possible that the act, which is called on not to be performed, was lawful in the first place? The Companions say it couldn't have been lawful⁸⁷⁶, whilst Abū Zayd Muḥammad Ibn al-Ḥasan and Abū Ḥanīfā say the act was previously lawful.

3) Is the *Lā Taf'al* form a *Zāhir* signifier of a calling for a non-performance indefinitely? Namely, where prohibition requires both immediate as well as repeated compliance.

In 'Iḥkām', Āmidī turns his attention to fifteen issues in all, covering the *If'al* and *Lā Taf'al* forms, i.e. the command and prohibition respectively, and he concludes that according to ('*Urf*) custom of the ('*Uqalā*'), the men of reason, the *Lā Taf'al* form is a signifier calling for a non-performance indefinitely⁸⁷⁷.

II.4 The Fiqh Postulates

The jurists studied the Fiqh postulates and the Sharī'ah categorizations which entails four factors: the *Hākim* (categorizer), *Maḥkūm Fīhī* or *Mukallaḥ Bīhī* (the act categorized), *Maḥkūm 'Alayhī* or *Mukallaḥ Bil-Hukm*, (the agent to whom the categorisation applies) and *Hukm* (the categorization itself).

The jurist explained the nature of the Sharī'ah categorization and its division and its relation to the issues concerned. They clarified the meaning of *Wājib* (obligation), *Fard* (duty), *Mandūb* (commendable), *Maḥẓūr* (prohibited), *Ḥalāl* (lawful), *Ḥarām* (forbidden), *Mubāḥ* (permissible), *Ṣaḥīḥ* (valid), *Bāṭil* (void), 'Azīmah (firmness) and Rukḥṣah (license), which are two different postures vis a vis obligation, not to mention their explanation of the indicators of God's law.

II.5 The Indicators Of God's Law And Categorisation

The jurists divided the indicators of God's law into two categories. The first category comprises the Qur'ān, the Sunnah, Ijmā' and Qiyās (which arises when the occasioning factor, ('*Illah*), behind a rule governing one case is present in an equal degree in another case). These indicators are considered to have been transmitted to us by continuous testimony (*tawwātur*).

The second category comprises other indicators, not transmitted to us by continuous

⁸⁷⁵ *Al-Iḥkām*, Āmidī, v1, p174.

⁸⁷⁶ Ibid.

⁸⁷⁷ Ibid, pp430-450.

testimony and categorised under the heading *Istidlāl*. The principal source for all these indicators is the Qur'ān itself, embracing a plurality of indicators. The Sunnah explains the Qur'ān and its rules, whilst Ijmā', although not emanating from the Prophet, nevertheless is considered valid by virtue of infallibility of source. As for Qiyās and *Istidlāl* these are considered valid indicators but not by virtue of infallibility of source, entailing linkage to the first, but not to the second.

Chapter III

Types Of Legal Indicators.

III.1 The Qur'ān

Islamic jurists begin with an explanation of the Qur'ān in terms of its linguistic and technical meaning, its proof, citing the difference between those verses considered *Muḥkam* (verses which are not abrogated) and those considered *Mutashābih* (a text whose meaning is totally ambiguous).

They then move onto a discussion of its *Tafsīr* (explanation) and its *Ta'wīl* (allegorical interpretation), what words are literal and what words are figurative in meaning.

The Qur'ān is the book containing the speech of God revealed to the Prophet Muḥammad (in Arabic) and transmitted to us by continuous testimony (*tawātur*). Nothing less than *tawātur* is accepted as evidence to establish the authenticity of the variant readings of the Qur'ān.

The Qur'ān as scripture is verbal speech that gives expression to the internal speech of God. It is the manifest revelation (*waḥy ṣāḥir*) conveyed from God to Muḥammad by the angel Gabriel. This is in contrast to internal revelation (*waḥy bāṭin*) which underlie the Ḥadīth of the Prophet. Inspired by God the Prophet in his own words conveys or narrates the concepts sent down to him.

This distinction between manifest and internal revelation and the nature of the relationship between the two, vis-a-vis the miraculousness of the Qur'ān and its inimitability (I'jāz), arises more from the perspective of speculative theology than from theoretical jurisprudence.

III.2 The Sunnah (Tradition) Of The Prophet

Next, Islamic jurists explain the linguistic and technical meaning of the Sunnah. They refer to the sayings, actions and endorsements of the Prophet, penultimately they deal with the infallibility of the Prophets, including Muḥammad, and finally, they treat the example and tradition of the Prophet, what he assents to and disagrees with, explaining in detail his words, actions and endorsements.

The word '*sunnah*' (originally means the beaten path) is the established practice of the community inherited from their forefathers, often used in contrast to the word (*bid'ah*)

(innovation in religion) which is characterised by lack of precedent and is invariably used pejoratively in traditional Islamic circles.

Later, *'sunnah'* came to mean all that is narrated from the Prophet with regard to his acts (*af'āl*), sayings (*aqwāl*) and endorsements (*taqārīr*). Since each saying of the Prophet constituted an act of speaking, and each endorsement an act of endorsing, the sayings and the endorsements of the Prophet tended to be categorised under his acts (*af'āl*) in general.

These acts, where belonging to the category of the obligatory (*wājib*), constitute the clear indication (*adillah*) of the divine law.⁸⁷⁸ Whatever the Prophet authorised concerning the principles of religion, particularly in the area of devotional matters (*'Ibādah*) constitutes general legislation (*tashrī' 'Āmm*). All commands and prohibitions imposed by the Sunnah are, as al Ash'arī reminds us, binding on every Muslim.⁸⁷⁹

As a result of the Prophet's impeccability, his acts are to be considered exemplary and are regarded as part of the Sunnah. This impeccability of the Prophet is expressed in Arabic by the phrase *al-'iṣma 'an al-ma'āṣī*, 'the state of being protected (by God) from committing acts of disobedience.'⁸⁸⁰

III.3 Ijmā' (Consensus) As A Proof (Ḥujjah) And As A Source Of Law

Textual evidence in support of Ijmā' does not amount to a conclusive proof, although we can say that the Sunnah of the Prophet provides a stronger argument than the Qur'ān in favour of Ijmā'.

III.3.i Ijmā' (Consensus) In The Qur'ān

The *sūrah al Nisā'*⁸⁸¹ which requires obedience to God, to his messenger and those who are in charge of affairs, is said to lend support to the infallibility of Ijmā'. The judgement of the latter group, those in charge of affairs (*'ulī al Amr*), must be considered to be

⁸⁷⁸ Ibid, fol 74a.

⁸⁷⁹ *Sharḥ al-Luma'*, Al-Shirāzī, v1, p552.

⁸⁸⁰ *Al-Taḥrīr fī Uṣūl al-Fiqh*, Ibn al-Humām, pp303-304. For further information see, *Ziwā'id al-Uṣūl*, p319. See also, *al-Ṣiḥah, al-Jawārhiri*, v5, p2139. Also, *Al-Miṣbāḥ al-Munīr*, v1, p292. Also, *Tajj al-'Arūs*, v9, p244. Also, *Al-'Udah*, v1, p165. Also, *Al-Iḥkām*, Āmidī, v1, p156. Also, *Uṣūl al- Sirakhsī*, v1, p113. Also, *Jam' al-Jawāmi'*, v2, p94. Also, *Sharḥ al-'Aḍud al-Tyji'*, v2, p22. Also, *Nihāyat al-Sūl*, v3, p4. Also, *Fawātiḥ al-Raḥamūt*, v2, p97. Also, *Irshād al-Fuḥūl*, p33. Also, *Al-Madkhal ilā Madhḥab Aḥmad*, p89 and p199. Also, *Mi'rāj al-Minhāj*, v2, pp5-70. Also, *Ibhāj*, v1, p170. Also, *Uṣūl al-Shāshī*, p268. Also, *al-Baḥr al-Muḥīṭ*, Al-Zarkashī, v1, p222 and p291 and p294; v4, p164; v6, pp109-110. Also, *Iḥkām al-Fuṣūl*, al-Bājī, p309. Also, *Al-Wajīz fī Uṣūl al-Fiqh*, Al-Karamastī, p144. Also, *Al-Maṣqūl*, Al-Kuwayyī, p67. Also, *Sharḥ al-Jalāl al-Maḥallī 'Alā Jam' al-Jawāmi'*, v2, p83. Also, *Al-Taqrīr wal Tah'bīr*, v2, p223. Also, *Sharḥ al-Luma'*, Al-Shirāzī, v1, pp545-564; v2, pp567-662.

⁸⁸¹ *Qur'ān*: ~Sūrah al-Nisā', Āyah 59.

immune from error, for God cannot command obedience to anyone who is liable to commit error.

In matters of jurisprudence, those in charge of affairs were generally recognized as the 'Ulamā', whilst the secular leaders ('Umarā') concerned themselves with worldly matters.

The *ā yah* which has proved controversial in support of the infallibility of the Ijmā', namely, *sūrah al Nisā'*⁸⁸² runs:

"And anyone who splits off from the messenger after the guidance has become clear to him and follows a way other than that of the believers, we shall leave him in the path he has chosen and land him in Hell".

According to al Shāfi'ī, this *sūrah* provides a clear authority for Ijmā', which assumes adherence to the Believers' way to be an obligation (*wājib*); to follow any other is forbidden (*ḥarām*). Yet, for al Ghazālī and al Shawkānī, this *sūrah* did not provide an explicit authority for Ijmā'. For al Āmidī, the Qur'ānic *āyāt* do not provide an explicit authority for Ijmā', since, although they give rise to a probability (*ẓannī*), they do not impart positive knowledge.⁸⁸³

III.3.ii Ijmā' (Consensus) In The Sunnah

The Ḥadīth most frequently cited in support of Ijmā' "my community will never agree on an error", is like most of the Ḥadīth reported by the Companions, a solitary Ḥadīth (*khābar al Wāḥid*) which, although not amounting to definitive proof by itself, collectively are in consonance with the theme of infallibility of the community and its immunity from error. Taken individually such Ḥadīth could be doubted but the infallibility of the *Ummah* is sustained by their collective weight.

III.3.iii The Feasibility Of Ijmā' (Consensus)

The Ijmā' of the Companions is thought to have been pre-eminent in the Muslim community. Some 'Ulamā', Ibn Ḥanbal in particular, thought the Ijmā' of the Companions to be the only valid Ijmā'⁸⁸⁴.

However, several types of Ijmā' (consensus) are recognised and referred to with varying degrees of acceptance by early Islamic Jurists. These types are:

⁸⁸² Ibid, Āyah 115.

⁸⁸³ *Al-Baḥr al-Muḥīṭ*, al-Zarkashī, v4, pp444-451. See also, *Irshād al-Fuḥūl*, al-Shawkānī, pp68-75. Also, *Al-Iḥkām*, Āmidī, v1, pp183-203. Also, *al-Mustasfā*, al-Ghazālī, v1, pp174-175. Also, *Nuzhat al-Khāṭr*, Badrān, v1, pp334-339.

⁸⁸⁴ *Sharḥ al-Kawkab al-Munīr*, Ibn al-Najjār, v2, pp233-237. See also, *al-Musawwada*, Āl Taymiyyah, pp283-292. *Nuzhat al-Khāṭr*, Badrān, pp355-357.

- 1) The Ijmā' of the entire Muslim community, including both scholars and those considered competent among the public (Mukallaf).
- 2) The Ijmā' of the Companions.
- 3) The Ijmā' of Medina (territorially based consensus).
- 4) The descendants of the Prophet (*ahl al Bayt*).
- 5) The first Four Caliphs.
- 6) The two first Caliphs.

The Mu'tazilis dismissed Ijmā' as being unfeasible on the point of achieving unanimity at any given moment, declaring such unanimity be impossible, if only given the differing localities of the Mujtahidīn.⁸⁸⁵

The basis of Ijmā' must be founded in textual authority or *Ijtihād*. As to whether its basis could be found in the secondary proofs of Qiyās and *Maṣlaḥa*, gave rise to three opinions on the matter:

- 1) That Ijmā' may not be founded on Qiyās because Qiyās itself is subject to a variety of doubts.
- 2) Qiyās (in all its varieties) may form the basis of consensus, for Qiyās itself consists of an analogy to an explicit textual ruling (*Naṣṣ*). Ijmā' in this sense, relies not on the personal views of the *Mujtahidūn* but on the *Naṣṣ* of the Sharī'ah.
- 3) Qiyās may form the basis of consensus when the cause ('*illah*') of a Qiyās is clearly stated in the *Naṣṣ*, or when the cause is indisputably obvious. When the '*illah*' is interpreted, reliance on Qiyās is tantamount to relying on an explicit textual ruling.

III.4 Qiyās (Analogy)

The early Islamic jurists studied and discussed Qiyās comprehensively. They explained the conditions of the principal case (*Hukm al-Aṣl*), the '*Illah*' and the novel case (*Far'*). Just as they were adept in discussing the ways of ascertaining the '*Illah*' through a referral to Ijmā', to the implied meaning of the Qur'ān and the Sunnah, to the method of the elimination of alternatives (*Sabr wa Taqṣīm*), through the method of establishing suitability of a particular feature *vis a vis* a known rationale, through deduction (*Ikhālah*), through the method of establishing the similitude of a particular feature, or through the identification of the '*Illah*' on the basis of the co-presence of a rule and a certain feature (*Ithbāt al-'Illah Bi al-Ṭard wa al-'Aks*).

⁸⁸⁵ *Al-Mustasfā*, v1, p173.

In addition, the jurists categorized the Qiyās and its types and listed the objections against the validity of Qiyās as an indicator of the law.

III.4.i Definition Of Qiyās

Qiyās is the exercise of personal opinion based on a textual precedent. It is designed to ensure conformity to the letter and spirit of the Qur'ān and the Sunnah of the Prophet. It is not so much considered by the majority of the Fuqahā' to be a source as a Sharī'ah proof (*hujjah / dalīl*).

Even where this proof was, in terms of its probative value, of a speculative (*ẓannī*) nature, it was on this basis, according to Āmidī, that Qiyās could function as an indicator of the divine law, for we have seen in the preceding pages that it is on such a basis that the majority of law has been formulated. "Considered opinion" states Āmidī "is normative in matters of law"⁸⁸⁶.

The principal aim of Qiyās is to ensure consistency between revelation and reason in the development of the Sharī'ah. Thus whilst Qiyās may be a rationalist doctrine, the use of personal opinion (*ra'y*) here must be subservient to the terms of divine revelation. Qiyās, as a rational approach to the discovery and identification of the objectives of the Lawgiver, constitutes a duty imposed on the Muslim by God to the extent that it has become the fourth source of the Sharī'ah.

But it was precisely this rational approach, which required reasoned evaluation of the *Aḥkām*, that elicited a negative response from such groups as the Sharī'ah⁸⁸⁷, the Zāhiris and the Mu'tazilah. Their argument was that the law must be based on certainty, whilst Qiyās in their opinion was nothing more than speculation and therefore superfluous to the needs of the Mujtahid.

This stance was adopted even in the knowledge that for Qiyās to be valid, one of its principal conditions is that it must show an extension of a Sharī'ah value (derived from the Qur'ān, Sunnah or consensus *Naṣṣ* or *Ijmā'*) from the original case (*aṣl*) to the new case (*far'*), the latter having the same effective cause (*'illah*) as the former, such that Qiyās seeks to extend the same textual ruling to a new case that originates outside the *Naṣṣ*.

In short, they opposed Qiyās in the knowledge that the whole purpose of Qiyās

⁸⁸⁶ *Al-Iḥkām fī Uṣūl al-Aḥkām*, Sayf al-Dīn al-Amidī, v4, pp1-21.

⁸⁸⁷ *Mabāda' al-Wuṣūl ilā 'Ilm Uṣūl*, Al-Ḥassan Ibn Yūsef al-Ḥillī al-Shī'a , p214.

methodology is to ensure that Qiyās in its application does not operate independently of the *Nuṣuṣ*. We shall be covering this matter of opposition to Qiyās as an indicator of the divine law in the section on the defense of analogy, to be discussed below.

Qiyās suggests an equality or close similarity between two things (the *aṣl* and the *far'*) one of which is taken as a criterion (the *aṣl*) for evaluating the other (the *far'*).

III.4.ii Varieties Of Qiyās

Shāfi'ī defined Qiyās as a method of legal reasoning by which a decision is made on the strength of a precedent (*aṣl*), in which a common cause ('*illah*') is applicable⁸⁸⁸. Shāfi'ī viewed Qiyās in terms of the following types:

- 1) Where the case in question, (*far'*), is similar to the *aṣl*.
- 2) Where the case is similar to several precedents then analogy must be applied to the precedent nearest in resemblance and the most appropriate.⁸⁸⁹

Āmidī defined Qiyās as the equivalence between a new case and a principal (original) case, in respect to a rule occasioning factor gleaned from a rule governing the principal case⁸⁹⁰.

According to this definition the Mujtahid adopts the Qiyās as the basis for a rule governing a new case. Qiyās, in this respect, is not something he creates, but rather discovers.

Shāfi'ī jurists have divided Qiyās, according to the weakness or strength of the '*illah*', into three principal types:

- a) Analogy of the Superior (*Qiyās al Awlā*)⁸⁹¹: In *Qiyās al Awlā* the effective cause ('*illah*') in the new case (*far'*) is more obvious than in the old, original case (*aṣl*).

An example of such Qiyās is to be found in Al 'Isrā'⁸⁹² on the matter of treating parents with respect, viz:

"Thy Lord hath decreed, that ye worship none save Him, and (that ye show) kindness to parents. If one of them or both of them attain old age with thee, say not "Fie" unto them nor

⁸⁸⁸ *Uṣūl al-Sirakhsī*, v2, p121.

⁸⁸⁹ *Al-Risāla*, Al-Shāfi'ī, para 487.

⁸⁹⁰ *Al-Iḥkām*, Āmidī, v4, p3.

⁸⁹¹ *Sharḥ al-Luma'*, al-Shīrāzī, v2, p801.

⁸⁹² *Sūrah al-Isrā'*, 17:23.

repulse them, but speak unto them a gracious word".

By analogy, it may be deduced that the prohibition against beating one's parents is even more evident than verbal abuse. Penance (*kaffārah*) for manslaughter (*al-qatl bi al-Khaṭa'*) is by way of analogy (to provide another example of *Qiyās Al Awlā*) applicable to premeditated murder (*Al-qatl al-'Amd*), as the transgression is even more obvious in the latter.

b) Analogy of equals (*Qiyās al Musāwī*): This is where the 'illah is considered equally effective in both the original and the new cases. An example is contained in which it is forbidden to "usurp the property of orphans"⁸⁹³. By way of analogy it is inferred that all other forms of destruction or maladministration which leads to the loss of orphans property is also forbidden.

Another example is found in the Prophet's saying "let not any of you wash your hands in stagnant water"⁸⁹⁴. By way of analogy it is inferred that all other forms of impurity, like urine, are also to be avoided in matters of ablution (before prayer.)⁸⁹⁵

c) The Analogy of the Inferior (*Qiyās Al Adnā*):⁸⁹⁶ The 'illah in this type of *Qiyās* is less effective in the new case (*far'*) than it is in the original (*aṣl*). Here it is not so easy to determine whether the new case (*far'*) falls under the same ruling which applies to the original case (*aṣl*).

An example of this type of *Qiyās* is provided in the matter of usury (*Ribā*), which prohibits exchange of such a commodity as wheat with other commodities unless equal in values and only if delivered at the same time. This rule is extended to apples since both wheat and apples are edible and measurable, but the 'illah here is weaker because apples are not (unlike wheat) regarded as a staple food⁸⁹⁷.

Qiyās has been further divided into two sub-types, namely, obvious analogy (*Qiyās Jalī*) and hidden analogy (*Qiyās Khafī*).

d) Obvious Analogy (Al-*Qiyās Al-Jalī*)⁸⁹⁸

The equation between the *aṣl* and the *far'* in an obvious analogy is considered to be evident with no discrepancy between them.

⁸⁹³ *Sūrah al-Nisā'*, 4:2.

⁸⁹⁴ *Ṣaḥīḥ al-Bukhārī*, Wudū': 68. See also, *Ṣaḥīḥ Muslim*, v1, p162.

⁸⁹⁵ *Sharḥ al-Luma'*, al-Shīrāzī, v2, p803.

⁸⁹⁶ *Al-Baḥr al-Muḥīt*, al-Zarkashī, v5, p38.

⁸⁹⁷ *Ṣaḥīḥ Muslim*, p41, Ḥadīth no 119.

⁸⁹⁸ *Al-Baḥr al-Muḥīt*, al-Zarkashī, v5, p36.

The manumission of slaves provides a pertinent example of Qiyās Jaʿlī. If two persons own a slave and one of them sets the slave free to the extent of his own share, it is beholden on the Imām to pay the other, co-owner his share thus releasing the slave. The ruling is explicit with regard to the manumission of the male slave but by way of analogy the ruling is extended to female slaves, discrepancy in gender being of no consequence.

e) Hidden Analogy (Al-Qiyās Al-Khafī)⁸⁹⁹

The discrepancy between the *aṣl* and the *farʿ* in the hidden analogy, however, is removed not by clear evidence, as in the *Qiyās Jaʿlī*, but by a probability (*zann*). An example is the rule of prohibition of *khamr* being analogically extended to *nabīdh*, (date wine). The discrepancy which exists between the two is that *khamr* is grape wine, whilst *nabīdh* is date wine.

III.4.iii Constituents Of Analogy (Qiyās)

We note from the definitions of Qiyās provided above that it contains four essential elements: The original case (*aṣl*), the new case (*farʿ*), the effective cause (*ʿillah*) and the rule (*ḥukm*). The interaction of these four elements can be best illustrated in the following example of Qiyās, with regard to the rule which explicitly forbids consumption of wine, which is extended by way of analogy to that of forbidding consumption of date wine (*nabīdh*):

<i>Aṣl</i>	<i>Farʿ</i>	<i>ʿillah</i>	<i>Ḥukm</i>
Wine drinking	Consumption of <i>Nabīdh</i>	Intoxication	Prohibition

The *aṣl*⁹⁰⁰ is the subject matter of a ruling. In the example of wine drinking and its prohibition in the Qurʾān the subject matter is wine. *Aṣl* is the original, pre-existing case⁹⁰¹, the one in the light of which the novel case is considered, that most deserves to be regarded as the principal factor in the analogy⁹⁰².

The Qurʾān and the Sunnah of the Prophet constitute the principal sources of Qiyās. But Qiyās can be founded on a rule that is established by consensus (Ijmāʿ). Ijmāʿ, for example, validates guardianship over the property of minors, a rule which has been extended by analogy to authorize the compulsory guardianship (*Wilāyat al Ijbār*) of

⁸⁹⁹ Ibid, v5, pp36-39. See also, *Al-Iḥkām*, Amīdī, v4, p4.
⁹⁰⁰ *Al-Fiqh al-Islāmī wa Adillatuhu*, al-Zuhaylī, v1, p54.
⁹⁰¹ See 840, above.
⁹⁰² *Al-Iḥkām*, Amīdī, v3, p175.

minors in marriage⁹⁰³.

III.4.iv The Original Ruling (The *Ḥukm Al-Aṣl*)⁹⁰⁴

A *ḥukm* is a ruling, such as a command or a prohibition which an analogy seeks to extend to a new case (*far'*). There has been some dispute as to what constitutes the conditions of the *ḥukm al Aṣl* but in general for the *ḥukm* to constitute the valid basis of an analogy, the following conditions must be met.

- a) It must be a practical Shari'ah ruling based on an indicator found either in the Qur'an, the Sunnah of the Prophet or an Ijma'ic text.
- b) The *ḥukm* must be operative, in short it must not have been abrogated. The validity of the *ḥukm* must not be suspect or subject to disagreement or controversy⁹⁰⁵.
- c) The *ḥukm* must be rational in the sense that human intellect is capable of understanding the reason or cause of its enactment, or that the '*illah*' is clearly stated in the text itself.
- d) The *ḥukm* must not be confined to an exceptional situation or particular state of affairs. Qiyas is designed to extend the normal rules of law, not the exceptional.

An example of an exceptional case is the Prophet admitting the testimony of Khuzaymah alone to be equivalent to that of two witnesses, a precedent which is not extendable by analogy⁹⁰⁶.

- e) The law of the text must not represent a departure from the general rules of Qiyas.

Travelling during Ramaḍān, for example, is the cause of concession which relieves the traveller of the duty of fasting. This concession is an exception to the general rule. It may not form the basis of an analogy in regard to other types of hardship. It is not extendable, for example, by way of analogy to socks in the matter of *Wuḍū'* (ablution). The original rule allows the wiping of boots instead of feet, but does not extend to socks.

III.4.v The Analogous Ruling (*Hukm al-Far'*)

The *far'* is an incident or case in which ruling is sought by recourse to analogy.

⁹⁰³ *Uṣūl al-Fiqh*, Abu Zahrah, p181.

⁹⁰⁴ *Al-Iḥkām*, Amīdī, v3, p177. See also, *Sharh al-Luma'*, al-Shīrāzī, v2, p847.

⁹⁰⁵ Ibid, v3, pp196-197.

⁹⁰⁶ *Sunan Abū Dāwūd*, v3, Ḥadīth no 3600.

wherein⁹⁰⁷ the *far'* (new case) must fulfil the following conditions:

- a) The new case must not be covered by a *Naṣṣ* or an *Ijmā'*. It must originate from outside such sources.
- b) The effective cause of analogy must be applicable to the new case (*far'*), in the same way as the original case (*aṣl*).⁹⁰⁸ Where there exists no uniformity or sufficient quality between the two cases then the *Qiyās* is considered invalid or discrepant '*Qiyās ma'a al-Fāriq*'. An example of the latter is the '*illah*' in the prohibition of wine, intoxication. To extend the rule by way of analogy to a beverage which causes insomnia, as in the case of coffee, would not represent a true extension of the original case to the new one due to lack of commonality of cause.
- c) Application of *Qiyās* to a new case must not result in altering the law of the text for this would only mean overruling the text by means of *Qiyās*. Only God can do this through abrogation.

An example, is the offense of making a false defamatory accusation (*qadhf*), which by an explicit *Naṣṣ*, places a permanent bar to admission of the offender's testimony⁹⁰⁹. Once again the Ḥanafis, interpreting the law to the letter, say that such an analogy would overrule the law of the text⁹¹⁰.

According to Al Āmidī,⁹¹¹ the *ḥukm al Far'*, that is the ruling which is to be applied to the new case, should not be included in the *arkān* of *Qiyās*, since it is his view that the *ḥukm al Far'* is the result (or fruit) of *Qiyās*. The *ḥukm* is arrived at the end of the process and therefore should not qualify as a *rukn*⁹¹². But Al Subkī⁹¹³ says that for all intents and purposes the *ḥukm al Far'* is identical with or resembles the *ḥukm* of the original case, a factor which constitutes one of the principal conditions of the *ḥukm al Far'*.

The resemblance between the rules governing the novel case and the original rule in this respect must relate either to essence or with respect to belonging to the same genus⁹¹⁴. It is only through an affinity between the original rule in the analogy and the derived rule, do we arrive at the sense that the purpose is realized through the derived rule is congruent

⁹⁰⁷ *Sharḥ al-Luma'*, al-Shīrāzī, v2, p846.

⁹⁰⁸ *Al-Iḥkām*, Amidī, v3, p230.

⁹⁰⁹ *Al-fiqh al-Islāmī*, al-zuhaylī, v6, p69.

⁹¹⁰ Aghnides, *Muḥammadan Theories*. New York Longmans Green Co, 1916, Reprint Lahore, Premier Book House, 1957. p62.

⁹¹¹ *Al-Iḥkām*, Amidī, v3, pp176-177.

⁹¹² Ibid.

⁹¹³ *Al-Ibhāj*, v3, p41.

⁹¹⁴ *Al-Iḥkām*, Amidī, v3, p230.

with the purpose that is realized through the original rule.

A significant condition of the *ḥukm al Far'* is that the rule which governs that novel case must not be in force before that of the original rule, for in such circumstances the rule in question would necessarily have been in force apart from the '*illah*' behind the original rule, thus invalidating the analogy on one of its most important conditions .

III.4.vi Ascertaining The Cause ('*Illah*)

The '*illah*', is one of the most important requirements (*rukṇ*) of Qiyās. The majority of the jurists (*Fuqahā'*) agree with the general definition of the '*illah*' as an attribute of the *aṣl* which is constant and bears a proper relationship to the law of the text (*ḥu- km*)⁹¹⁵. It may be a circumstance or a consideration which the lawgiver has contemplated in issuing a *ḥukm*. Most of its conditions were accepted unanimously by the *Fuqahā'*, but a number were subject to controversy.⁹¹⁶ Al Zarkashī⁹¹⁷ fully enumerated the conditions of the '*illah*' in '*Baḥr Al Muḥīṭ*', as did Shawkānī in *Irshād al Fuḥūl*⁹¹⁸.

The exercise of ascertaining the cause ('*illah*)⁹¹⁹ behind the original rule presupposes a complex number of different features are involved in the case, but only one of these, as we have seen, can function as an '*illah*'. The rule forbidding the consumption of *Khamr*, for example, numbers several features - intoxication, liquidity, redness, acidity. How does the mujtahid go about determining which of these above mentioned features is the occasioning factor behind the rule?

Al Bayḍāwī⁹²⁰ (d:685AH) postulated nine methods of ascertaining the '*illah*', Al Ghazālī⁹²¹ (d:505AH) six, Al Zarkashī⁹²² (d: 794AH) cited ten, Ibn Al Sā'āfi six⁹²³ whilst Āmidī postulated seven.⁹²⁴

III.4.vii Defense Of Analogy (Qiyās)

The debate surrounding the defense of analogy was conducted on two fronts, on the first one between those who considered analogy to be an authentic indicator of the divine law, which included the majority of the jurists (*Fuqahā'*)⁹²⁵ and those who simply rejected the

⁹¹⁵ Ibid, v3, p176.

⁹¹⁶ Ibid, v3, p185.

⁹¹⁷ *Al-Baḥr al-Muḥīṭ*, al-Zarkashī, v5, pp132-156.

⁹¹⁸ *Irshād al-Fuḥūl*, pp193-194.

⁹¹⁹ *Al-Mustaṣfā*, Al-Ghazālī, v2, pp278-279.

⁹²⁰ *Mi'rāj al-Minhāj*, v2, pp144-177. Also, *Al-Ibhāj*, al-Subkī, v3, pp46-91.

⁹²¹ *Al-Mustaṣfā*, v2, p279.

⁹²² *Al-Baḥr al-Muḥīṭ*, v5, pp205-206.

⁹²³ *Badī' al-Nizām*, fol: 198a.

⁹²⁴ *Al-Iḥkām*, Āmidī, v3, pp279-280.

⁹²⁵ *Al-Iḥkām*, Āmidī, v4, p5.

notion of analogy denying either that it was textually grounded (the *Zāhiris*)⁹²⁶ or on rational grounds that it contradicted some accepted truth (the *Shī'is*), their central argument being that the law must be based on certainty, and not speculation, which they deemed *Qiyās* to be synonymous with. The *Shīah* concerned were of the *Imamiyya* sect; the *Zaydite Shīah* sect accepted *Qiyās* as a proof⁹²⁷.

Then a debate ensued on a second front among those who accepted *Qiyās* to be an indicator of the law but differed in their opinion as to whether, given their acceptance that the indicator status of analogy was textually grounded, the relevant texts were productive of certainty or only of probability. *Āmidī* and *Al Baṣrī* were of the latter view.

The core of the first debate is the possibility, or otherwise of an analogy being considered, (in rational terms) an indicator of the laws and therefore bear the status, if not that of a *maṣḍar*, at least that of *dalīl* or *hujja*. For example, would it not be rational to say that if the Legislator forbids the Muslim to consume wine on the grounds that its intoxicating quality deleteriously affects man's reasoning to conduct himself in an orderly and reasonable manner in society, this rule should, by way of analogy, be extended to include prohibition on other alcoholic beverages which have the same effect?

The deniers of analogy reply that indicators textually grounded which bear on the said case may be already available. These are indicators which by virtue of their divine status outweigh the analogy in probative strength and that these, therefore, must be searched out by the *Mujtahid*.

III.4.viii Qur'ānic Evidence In Support Of Analogy

The standard reference for proof of *Qiyās* is to *sūrah al Ḥashr*⁹²⁸ which enjoins the Muslim to "Consider" (*'I'tabirū*). To 'consider' in the context of the *Surah* means to take into consideration the similitude and comparisons, in short to take into consideration analogy as ordained by God Himself⁹²⁹.

The chief criticism of this invocation by the deniers of *Qiyās* is that the term '*i'tabirū*' does not signify a command (for analogy). To which *Āmidī* responds with the counter argument that it does signify a calling for an act (*talab al-Fi'l*), namely to consider similitude and comparisons or to analogise.

⁹²⁶ *Al-Burhān*, al-Juwaynī, v2, p751.

⁹²⁷ *Nihāyat al-Sawī*, al-Asnawī, v3, pp11-21.

⁹²⁸ *Sūrah al-Ḥashr*, 59:2.

⁹²⁹ *Al-Ihkām*, *Āmidī*, v4, p26.

Ibn Ḥazm, a leading Zāhiri antagonist of Qiyās, citing the Qur'ān, summarizes the argument against Qiyās as follows: The rules of the Sharī'ah are conveyed in the form of commands and prohibitions which are determined by the clear authority of the Qur'ān, Sunnah or Ijmā'. In their absence, the issue falls under the category of the permissible (*mubāḥ*), which itself is established in the Qur'ān,⁹³⁰ Thus there can be no room for analogy in the determination of the *Aḥkām*. Ibn Ḥazm quotes sūras al An'ām, al-Naḥl and al Mā'idah⁹³¹ respectively to dismiss the need for analogy:

"We have neglected nothing in the book"

and

"We revealed the book as an explanation for everything"

and

"This day I perfected your religion for you, and completed
My favour upon you"

There are several Sunnaic passages which the proponents of Qiyās invoke in support of its validity. The belief that Qiyās is a form of *Ijtihād* or exercise of personal discretion (based on authoritative texts) appears to be validated in the Ḥadīth of Mu'adh Ibn Jabal⁹³² to the effect that he would use his discretion in matters of judgement for issues not covered in the Qur'ān, and the Ḥadīth. The deniers of Qiyās emphasize that the above Ḥadīth is not wholly authentic since, as a *khābar al Wāḥid* report, one cannot be certain that the narrative is traceable all the way back to the Prophet.

Qiyās validated by Ijmā' appears too numerous to be discounted as not carrying probative value. Instances of tacit consensus arguing the case for analogy for use in the formulation of the divine law include the decision of Abū Bakr to exact *Zakāh* tax from the Banū Ḥanīfah by force on account of the Prophet doing the same with other groups.

Abū Bakr again drew an analogy between father and grandfather on the matter of inheritance, and 'Umr Ibn al Khaṭṭāb reputedly ordered Abū Mūsa al-Ash'arī to delve for 'similitudes' for purposes of analogy⁹³³.

'Alī Ibn Abī Ṭālib was of the opinion that the penalty of false accusation should be analogically applied to the wine drinker for, "When a person become drunk, he raves, and when he raves he accuses falsely"⁹³⁴.

⁹³⁰ *Sūrah al-Baqarah*, 2:29. *Sūrah al-Mā'idah*, 5:90.

⁹³¹ *Sūrahs al-An'ām*, 6:89, *al-Naḥl*, 16:89, and *al-Mā'idah*, 5:4.

⁹³² *Al-Iḥkām*, Amidī, v3, p28. See also, *Tahdhīb al-Tahdhīb*, v2, p152. Also, *Al-Maḥṣūl fī 'Ilm al-Uṣūl*, Fakhr al-Dīn al-Rāzī, v3, p99. Also, *Al-Tarīkh al-Kabīr*, al-Bukhārī, *Al-Qism al-Thānī*, v1, p275, no 2449. Also, *Sunan Abū Dāwūd* (Hassan's transl), p109, Ḥadīth no 1039.

⁹³³ *Al-Iḥkām*, Ibn Ḥazm, v7, p147.

⁹³⁴ *Irshād al-Fuḥūl*, Al-Shawkānī, p223.

The deniers of analogy resorted to the Companions for evidence in support of their argument, saying that such instances merely amount to an effort to elucidate an obscure meaning of a text, that such elucidation in fact has an unknown textual basis upon which the Companions formulated the rules of law. To which Āmidī replies that such texts referred to would have surely revealed themselves during the course of the argument, and thus he has no qualms about validating Qiyās on that basis⁹³⁵.

III.5 Abrogation (Naskh)

Although abrogation has as its real object a rule of law, not a text as such abrogation remains very much an inter-textual phenomenon. This will become evident in the following discussion on abrogation as defined by the ancient 'Ulamā'⁹³⁶.

Al Fayrūz Ābādī defines *Naskh* linguistically has the meaning of obliteration (*zālah*), as rendered in the literal expression '*nasakhat al rīḥ athar al-māshī*, (i.e., the wind obliterated the footprints), or something to be transformed into something else (*hawwalahu ilā ghayrihi*)⁹³⁷

In general abrogation is seen in terms of change, whereby a previous rule gives way to a new one, a change, that is, of something from one state to another while its essence remains the same. Hence we have the following sūras: ' Verily, we write (*nastansekhu*) all that you do'⁹³⁸ and:

" When we substitute one revelation for another, and God knows best what He reveals, they say "Thou art but a forger" But most of them understand not!"⁹³⁹.

Abrogation is defined also as the rendering invalid that which has previously been valid, replacing it with a new rule⁹⁴⁰.

Thus the above definitions of *Naskh* give rise to two specific concepts, that of obliteration, (*'Izālah*) and that of transfer (*Naql*) or transcription (*Ta' wīl*).

One view held by Al Bāqillānī and Al Ghazālī⁹⁴¹ is that *Naskh* is a homonym (*mushtarak*) and can therefore be taken to mean both obliteration and transfer. The majority view⁹⁴² is that obliteration (*'izālah*) is the primary meaning, while transfer or transcription is the

⁹³⁵ *Al-Iḥkām*, Āmidī, v4, p35.

⁹³⁶ See, *Kitāb al-Mubīn fī Ṭabaqāt al-Uṣūliyyīn*, Al-Marāghī.

⁹³⁷ *Al-Qāmūs al-Muḥīṭ*, al-Fayrūz Ābādī, v1, p281.

⁹³⁸ *Sūrah al-Jāthiyya*, 45:29.

⁹³⁹ *Sūrah al-Naḥl*, 101.

⁹⁴⁰ *Uṣūl al-Bazdawī*, v3, p154.

⁹⁴¹ *Iḥkām*, Āmidī, v3, p102ff.

⁹⁴² *Ibid*, v3, p96.

secondary meaning.

The 'Ulamā' differed as to which of the two meaning was literal (*ḥaqīqī*) as opposed to that which might be figurative (*majāzī*). Such phrases, as '*tanāsukh al Arwāḥ*. (reincarnation), for example, suggest a metaphorical interpretation.

Naskh may also be defined as the suspension or replacement of one Sharī'ah ruling by another, providing that the two following conditions are met:

- a) That the latter Sharī'ah ruling is of a subsequent origin.
- b) That and the two (Sharī'ah) rulings are enacted separately from one another.

Naskh, according to this definition, operates with regard to the rules of Sharī'ah only, thus precluding the application of *Naskh* to rules that are founded in rationality (*'aql*) alone. While abrogation of Sharī'ah rulings has to do with the very basis of the Islamic religion, abrogation of its rules (*Aḥkām*) is the remit of Islamic Jurisprudence⁹⁴³.

The technical definition of *Naskh*, according to Al Bāqillānī⁹⁴⁴, is addressed statement of the Legislator that indicates that a rule of law, established by earlier addressed statement, has become inoperative and does so in such a manner that, were it not for the later (*Nāsikh*) addressed statement, the rule would continue to be operative.

Āmidī's definition is less prolix, namely that *Naskh* is the addressed statement of the Legislator that obstructs the continuing operation of a rule established by means of a preceding statement⁹⁴⁵.

Abrogation applies almost exclusively to the Qur'ān and the Sunnah of the Prophet. There can be no abrogation by Ijmā' (consensus) or Qiyās (analogy) for reasons explained below, abrogation being confined to the lifetime of the Prophet. Thus there can be no abrogation after his death, for there exists no higher authority than the Qur'ān and the Sunnah through which abrogation occurs.

Naskh is not applicable to the perspicuous texts of the Qur'ān and the Ḥadīth of the Prophet, as is evident in the wording of the texts themselves. Abrogations cannot apply to texts which pertain to the attributes of God, belief in the principles of the faith, the doctrine of *Tawḥīd*. Furthermore, rational matters, like being good to one's parents, moral truths (telling lies) are not changeable.

The apologists for the abrogation of a *Mutawātir* (endorsed statement) by a *khabar*

⁹⁴³ *Rusūkh al-Akhbār*, Al-Ja'barī, p129.

⁹⁴⁴ *Iḥkām*, Āmidī, v3, pp147-157.

⁹⁴⁵ *Ibid*, v3, p100.

alWāḥid (solitary statement) claimed an actual instance, however, in the Prophet's injunction to face Jerusalem instead of the *Ka'bah* when in prayer⁹⁴⁶.

Such abrogations were thought controversial because they were seen to take place across categories and, as in the example cited above, as to their authenticity were employed to abrogate stronger texts. An instance of this is found in the abrogation of the Sunnah by the Qur'ān which reversed the order of the Prophet to face Jerusalem with a Qur'ānic injunction to turn towards the *Ka'bah* for prayers⁹⁴⁷. Also the rule that made it obligatory to fast during 'Āshūrā' was abrogated by a later rule that made it obligatory to fast during Ramaḍān⁹⁴⁸.

Al Shāfi'ī would not countenance abrogation across the *Naṣṣ* categories and that, accordingly, abrogation of the Sunnah by the Qur'ān and vice versa was not possible. On the other hand, abrogation of the Qur'ān by a *Mutawātir* (endorsed Hadith) is considered by Shāfi'ī not to be possible, an opinion shared by Aḥmad Ibn Ḥanbal but not by the majority of the *Fuqahā'*, the *Mutakallimūn*, the Ash'aris, the Mu'tazilah and a few Shāfi'īs⁹⁴⁹.

An instance of this kind of abrogation occurs when the Ḥadīth, which provides 'there shall be no bequest to a heir'⁹⁵⁰, abrogates the āyah of bequest in sūrah al Baqarah⁹⁵¹.

For al Shāfi'ī the Qur'ān is self contained in respect to *Naskh*. There is no evidence in the Qur'ān that it can be abrogated by the Sunnah⁹⁵². The text in Sūrah Yūnus⁹⁵³, on the contrary, suggests the opposite, namely:

" Say it is not for me to change it of my own accord. I only follow what is revealed to me"

But this verse retains its effect only on the assumption that revelation is confirmed to the Qur'ān, when it is commonly accepted that the Qur'ān and the Sunnah of the Prophet are considered to be co-equal as repositories of divine revelation.

Only the Qur'ān, according to al Shāfi'ī, can abrogate the Qur'ān, the *Mutawātir* (endorsed) the *Mutawātir*, and the *khavar al Wāḥid* (solitary statement) the *khavar al Wāḥid*.⁹⁵⁴

⁹⁴⁶ Bayt al-Maqdis is situated in Jerusalem, whilst the Ka'ba is located in Mecca.

⁹⁴⁷ *Sūrah al-Baqarah*, 2:144.

⁹⁴⁸ Ibid, 185.

⁹⁴⁹ *Kashf al-Asrār Sharḥ al-Bazdawī*, v3, p177.

⁹⁵⁰ *Uṣūl al-Bazdawī*, v3, p178.

⁹⁵¹ *Sūrah al-Baqarah*, 2:180.

⁹⁵² *Al-Baḥr al-Muḥīṭ*, v4, p108.

⁹⁵³ *Sūrah Yūnis*, 10:16.

⁹⁵⁴ See 952, above.

However, a *Mutawātir* (endorsed) may abrogate a *khavar al Wāḥid* (solitary) and even (with Shāfiʿī) a *khavar al Wāḥid* can abrogate a *Mutawātir* (as discussed above).⁹⁵⁵ Al Shāfiʿī views the Sunnah likewise in respect of abrogation, as being self-contained. If any Sunnah is meant to be abrogated then the Prophet would do it himself through another Ḥadīth.

III.5.i Abrogation And Ijmāʿ (Consensus)

We have seen above that Ijmāʿ (consensus) might be used to deny the legality of the abrogation of a *Mutawātir* by a *khavar al Wāḥid*, and that it might be used more importantly in a wider sense as a means to argue for the actuality of abrogation or its denial, given that there is no Qurʾānic or Sunnaic text that openly constitutes an abrogation or refers to an abrogation.

Whether abrogation occurs, or is possible or otherwise is very much a matter of individual interpretation and that Ijmāʿ in this instance might be used to invoke the authority for proving abrogation has actually occurred, in what would amount to a consensus ratified abrogation.

But could an Ijmāʿ itself abrogate a text or be abrogated? The ‘Ulamāʿ had differing opinions on this matter⁹⁵⁶. The majority said that Ijmāʿ neither abrogates nor can be abrogated itself, and among these deniers of abrogation by Ijmāʿ we must include Al Āmidī⁹⁵⁷, Ibn al Ḥajīb⁹⁵⁸, Al Ghazālī⁹⁵⁹ and Al Bayḍawī⁹⁶⁰.

Some Ḥanafī scholars believed that Ijmāʿ could abrogate the Qurʾān and the Sunnah as noted by Al Sarakhṣī⁹⁶¹ and confirmed by the Ḥanafī ‘Isā Ibn Abān Ṣadaqah⁹⁶². But Āmidī argues that an Ijmāʿ could not abrogate a Qurʾānic or Sunnaic text on the following grounds. The *Ḥukm* (rule) which the Ijmāʿ seeks to abrogate might be founded in a *Naṣṣ* (text), another Ijmāʿ or Qiyās. Ijmāʿ, however, cannot abrogate a *Naṣṣ* of the Qurʾān for Ijmāʿ is either based on an indication (*dalīl*) or it is not. If it is not based on a *dalīl* then it is to be considered erroneous⁹⁶³.

If based on a *dalīl* this could either be a *Naṣṣ* or a Qiyās. If the basis (*Sanad*) of an

⁹⁵⁵ *Al-Risāla*, Al-Shāfiʿī, p177.

⁹⁵⁶ *Al-Iḥkām*, Āmidī, v3, p145.

⁹⁵⁷ *Ibid*.

⁹⁵⁸ *Sharḥ al-ʿAḍud al-Iyḥī*, v2., p198.

⁹⁵⁹ *Al-Mustaṣfā*, v1, p81.

⁹⁶⁰ *Minḥāj al-Wuṣūl*, v2, p186.

⁹⁶¹ *Uṣūl al-Sirakhṣī*, v2, p66.

⁹⁶² ʿIsā Ibn Abbān Ibn Ṣadaqah. A leading Ḥanafite, died 221AH / 836AD.

⁹⁶³ *Al-Iḥkām*, Āmidī, v3, p147.

Ijmā' is Qiyās then abrogation is not permissible for Qiyās lacks the authority for such abrogation. If the *sanad* of an Ijmā' is a *Naṣṣ* then abrogation is by that *Naṣṣ* not by Ijmā'⁹⁶⁴.

III.5.ii Abrogation And Qiyas (Analogy)

The principal function of Qiyās is to extend the rulings of the Quran and the Sunnah in similar cases. Therefore it may never operate in the opposite direction and abrogate a text of the Qur'ān and the Sunnah, as Al Bazdawī confirms⁹⁶⁵ for this would invalidate its very function. Qiyās, also, being weaker than the *Nuṣūṣ* (texts) and Ijmā' is incapable of abrogating either.

III.5.iii Forms Of Abrogation

Muslim Jurists recognized three forms of abrogation (*Naskh*); these are as follows:

a) Abrogation of both the words of the text (recitation) and its ruling, (*Naskh al-Ḥukm wa al-Tilāwa*) best exemplified in the abrogation of the said text in *Surah Al-A'ālā* 'the book of Abraham and Moses'⁹⁶⁶.

The Muslims naturally concurred with this abrogation. The Jews in general did not, as confirmed by Ibn Ḥazm.⁹⁶⁷ Āmidī is more specific in naming the deniers of abrogation among the Jews, as being the Sham'ūniyyah and the Al 'Ināniyyah, whilst a third group among them, the Al 'Isawiyyah', are reputed to have acknowledged this (form of) abrogation⁹⁶⁸.

b) Abrogation of the *Ḥukm* only, (*Naskh al-Ḥukm wa Baqā' al-Lafẓ*) accepted by the majority of the Fuqahā' and the Mutakallimūn but opposed by an isolated group from the Mu'tazilah.⁹⁶⁹ An example of this form of abrogation is provided in the Qur'ān thus:

"it is prescribed when death approaches any of you, if he leaves any goods that he make a bequest to his parents and next of kin."⁹⁷⁰

The rule was replaced in the Ḥadīth which stipulated that 'there should be no bequest to legal heirs'⁹⁷¹.

⁹⁶⁴ Ibid.

⁹⁶⁵ *Uṣūl al-Bazdawī*, v3, p174.

⁹⁶⁶ *Sūrah al-'Alā*, 87:19.

⁹⁶⁷ *Al-Iḥkām*, Ibn Ḥazm, v4, p470.

⁹⁶⁸ *Al-Iḥkām*, Āmidī, 3, p106.

⁹⁶⁹ Ibid, v3, p129.

⁹⁷⁰ *Sūrah al-Baqarah*, 2:180.

⁹⁷¹ *Saḥīḥ al-Bukhārī*, Waṣāyā, 6.

c) Abrogation of the recitation alone, the rule (*Hukm*) being retained, (*Naskh al Naṣṣ wa Baqā' al-Hukm*)

An example of this sort of abrogation is evident in 'Umar's saying the revealed scripture once contained the words,

"If the elderly man and woman commit adultery, stone them definitely as a warning from God and his messenger."⁹⁷²

The *Tilāwa* of this verse was abrogated but the rule remains in force.

The '*Ulamā*' were generally in agreement as to the occurrence of the abrogation of rule and the retention of the *Tilāwa* and vice-versa, but reticent on the occurrence of the abrogation of both the rule and the *Tilāwa*.⁹⁷³

The main arguments regarding these forms of abrogation was posed by Āmidī⁹⁷⁴. Thus Āmidī's reply was that the words, the recited text, and the rule contained in the meaning of the text constitute an indivisible unity is that the rule can exist independently from the recitation and visa-versa and that removal of one element will not lead to confusion.

A Mujtahid in his formulations of the divine law fairly forms an opinion on the basis of individual datum, and thus will not be confused by the abrogation of a rule with one element missing, or whether the rule is still in effect or not, for he will consider the larger context and arrive at his opinion accordingly.

III.5.iv Naskh Bi Al-Ziyāda (Addition And Abrogation)

The question raised here is: does a subsequent addition to an existing text, although not at variance, amount to an abrogation (*Naskh Bi al-Ziyāda*)? When for example, an additional *Rak'ah* is added to the two that the Muslim must perform during each prayer:

No, say the Mālikis and the Ḥanbalis while the majority of the Shāfi'is said *Naskh bil-Ziyāda* was nothing more than added specification (*Takhṣīṣ*).⁹⁷⁵ The ever accommodating Ḥanafis, however, accepted such additions as abrogation, as confirmed by the Ḥanafī jurist Al Bazdawī.⁹⁷⁶

Al Āmidī, however, described the majority as viewing the addition as a supplement not a replacement, of the existing text and therefore cannot be called abrogation⁹⁷⁷. Rather, one

⁹⁷² *Kashf al-Khafā*, Ḥadīth no 1579. See also, *Al-Maḥṣūl*, Al-Rāzī, v3, p322.

⁹⁷³ *Al-Iḥkām*, v3, p141.

⁹⁷⁴ Ibid, v3, p225.

⁹⁷⁵ Ibid, v3, p155..

⁹⁷⁶ *Uṣūl al-Bazdawī*, v3, p191.

⁹⁷⁷ *Al-Iḥkām*, Āmidī, v3, p157.

might call it in modern parlance an 'amendment'.

III.5.v Text Meaning, Implied Meaning (Manṭūq, Mafhūm) And Abrogation

We can posit the following question by way of introducing this section on abrogation, is it possible for an explicitly stated rule (*Ḥukm al Manṭūq*) to be abrogated but not the implied rule (*Ḥukm al Mafhūm*) ? For example, to cite 'say not Fie to them'⁹⁷⁸ by virtue of the congruent implication (*Mafhūm al-Muwāfaqah*) could be read to imply that one was also required not to beat one's parents⁹⁷⁹.

Since the implied rule, it was argued, is considered subordinate to and dependent upon the explicitly stated rule, without the latter you could not have the former, as outlined also by the Ḥanafī Muḥib Allāh 'Abd al Shakūr al-Bahārī al-Hindī⁹⁸⁰.

III.5.vi Abrogation And Progressive Realisation (Al-Badā')

The majority of 'Ulamā' were anxious to point out the conceptual differences between *Al Badā'* (progressive realization) and *Naskh* in order to obviate any theological confusion as to the meaning of abrogation.

Badā' entails the following: the replacement of one rule by another not so much by the will of God as through his ignorance. In short the abrogating rule was a rule that had somehow been hidden from God that had subsequently become manifest to Him⁹⁸¹.

This meant that God rather than being all-knowing, was subject to a gradual progression in His knowledge. This of course was totally unacceptable to the majority of the 'Ulamā'⁹⁸², in particular the Ash'arites who could not and would not countenance infringement upon the eternal perfection of God's knowledge which *Badā'* suggested.

The Jews and the Shi'ite sect, the Rawāfiḍ, tended to confuse the two issues of *Naskh* and *Badā'*. The former, seeing abrogation from the perspective of *Badā'*, accordingly rejected it. The latter invoked the sūrah 'God erases whatever He wishes'⁹⁸³ in support of abrogation, but in a dubious context Āmidī assures us⁹⁸⁴.

⁹⁷⁸ *Sūrah al-Isrā'*, 17:23.

⁹⁷⁹ *Al-Iḥkām*, Āmidī, v3, p150.

⁹⁸⁰ A leading Hanafite, died 119AH / 1708AD. Composed his major work '*Musallem al-Thubūt* on The Ḥanafite law. See, *Musallem al-Thubūt*, v2, p87.

⁹⁸¹ *Al-Mawsū'ah al-Naqdiyya Li-al-Falsafah al-Yahūdiyya*, p57.

⁹⁸² *Al-Iḥkām*, Āmidī, v3, p103.

⁹⁸³ *Sūrah al Ra' d*, 13:33.

⁹⁸⁴ *Al-Iḥkām*, Āmidī, v3, p102.

The essential difference between *Naskh* and *Badā'* is that in *Naskh* a rule of law is replaced simply by virtue of the legislator willing this replacement not, as in *Badā'*, the replacement motivating the abrogation itself. Therefore the opinions of the Jews and the Rawāfiḍ on this matter are summarily dismissed by the majority of the 'Ulamā' and the Mutakallimūn.

The 'Ulamā' were even more anxious to distinguish *Naskh* from *Takhṣīṣ*. *Naskh* and *Takhṣīṣ* (specifying the general) resemble each other in that both tend to qualify or specify an original ruling in some way.

For some, notably Al Shāfi'ī, the resemblance crossed into synonymity, just as he considered *Ziyāda* to be merely a version of *Takhṣīṣ*.⁹⁸⁵

One of the basic requirements of *Takhṣīṣ* is that there should be a contradiction between the specific reference of one passage and the general reference of another, as exemplified in the Sunnaic verse on theft and amputation which specifies the general in the Qur'ānic verse. The conflict between the two texts is ultimately resolved through a process of diversion of the literal meaning (*ḥaqīqa*) to a figurative reference.

In short, a thief in the general sense becomes, on the application of *Takhṣīṣ*, a class or subset of thieves. With *Naskh* however, the two texts concerned, the abrogating text and the abrogated text, are genuinely in conflict, unable to co-exist together.

In addition *Naskh* can never occur in one aspect of either a general or specific ruling, whereas *Takhṣīṣ*, by its very definition, occurs in respect of a general ruling only, the general ruling which is to be specified or qualified.

Furthermore *Naskh* is basically confined to the Qur'ān and the Sunnah and can only occur by *Shar'*, whereas *Takhṣīṣ* extends to rational proofs like custom (*'urf*) and so on. In *Naskh* a definitive (*qat'ī*) ruling can only be abrogated by another (*qat'ī*) ruling, whilst *Takhṣīṣ* is possible by means of speculative evidence such as *Qiyās*.

III.5.vii *Naskh* And *Taqyīd* (Restriction)⁹⁸⁶

The principal differences between *Naskh* and *Taqyīd* appear to be:

a) *Taqyīd* (restriction) is acceptable when conveyed in a *Khabar* (statement) but this cannot be the case with *Naskh* which must operate within the linguistic form that most

⁹⁸⁵ *Al-Baḥr al-Muḥīṭ*, v3, pp243-248. See also, *Iḥkām*, Āmidī, v3, pp104-105.

⁹⁸⁶ *Al-Baḥr al-Muḥīṭ*, al-Zarkashī, v4, p47.

typically conveys a rule of law, namely its *Inshā'* (construction).

b) There is no chronological restriction to the application of *Taqyyīd*, whereas this is patently not the case with abrogation, as must be clear by now.

III.5.viii Naskh And Istithnā' (Exception)

*Istithnā'*⁹⁸⁷ is differentiated from *Naskh* in that:

a) *Istithnā'* is applicable outside the remit of the Sharī'ah rulings, whereas *Naskh* is not.

b) The excepted and the exceptor are inextricably bound up in the application of *Istithnā'*, whereas in *Naskh* the two texts in the process of abrogation cannot co-exist together. If that were possible then it would cease to be abrogation and become *Takhṣīṣ*.

III.5.ix The Argument For Abrogation

Is abrogation theoretically possible? Has it actually occurred? The arguments of the opposition were invoked to the effect that either the text containing a particular rule tied the rule to a particular time frame, whence abrogation is not possible, or the rule is to be operative in perpetuity.

If in the latter case, the opposition maintains, then there is no way to determine what is perpetually operative or not. The defenders of abrogation, however, point to sūrah al Baqarah⁹⁸⁸ as evidence of abrogation:

"none of our revelations do we abrogate or cause to be forgotten but we substitute something better or similar"

This shows the possibility, the apologists maintain, that God might abrogate his own revelations, but only in so far that it alerts us to the possibility of abrogation, not its actuality.

All arguments in this respect appeal ultimately to *Ijmā'*. The *Ijmā'* is dependent on a transmitted report derived either from the Qur'ān or the Sunnah. As there is no indication in the *Naṣṣ* texts to indicate whether abrogation has occurred reliance is placed on *Ijmā'* for providing the authority for the existence of abrogation.

There are other instances of the same, so many in fact that a momentum in favour of abrogation is created through sheer numbers, such that it is thought so many examples,

⁹⁸⁷ *Al-Ihkām*, Āmidī, v2, p265.

⁹⁸⁸ *Sūrah al-Baqarah*, 2:106.

could not all have been invented, and that while they cannot be absolutely certain that abrogation has occurred, it is felt that the actual occurrence of abrogation is more likely than its non-occurrence.

What about the rule which is abrogated prior to the time when the rule may be implemented, namely before anyone had a chance to implement what is to be abrogated? The text based argument in favour of a rule being abrogated before implementation is provided in the Qur'ānic text on adultery:

"If any of your women are guilty of lewdness take the evidence of four (reliable) witnesses amongst you against them; and if they testify, confine them to houses until death do claim them, or God ordains for them some other way.⁹⁸⁹"

The above verse was abrogated before being implemented by the following verse of sūrah Al Nūr:

"The woman and the man guilty of adultery or fornication, flog each of them a hundred lashes.⁹⁹⁰"

III.6 Istidlāl (Inference)

Istidlāl in Uṣūl al Fiqh means any indicator that does not fall under the four principal sources of the Sharī'ah: The Qur'ān, Sunnah, Ijmā' and Qiyās.⁹⁹¹

These indicators include *Istiṣhāb* (presumption of continuity), (which Amidi considered the only valid category of (*Istidlāl*)), *istiḥsan* (equity in Islamic law) *al-Maṣlahah al Mursalah* (considerations of public interest) ' *Urf* (custom), *sadd al-Dharā'i'* (blocking the means to what is unlawful) *Shar' man Qablana* (revealed laws before Islam), and *Madhhab al-Ṣaḥābī* (the *fatwā* of a Companion of the Prophet).

Jurists deemed some of these indications to be valid, having probative value in the process of formulating the law, others declared that they had little or no value at all.

III.6.i Istiṣhāb

In *Uṣūl al Fiqh* the term designates that a state of affairs initiated under the terms of the law is presumed to continue as long as there is no good reason to suppose that it has come to an end⁹⁹².

⁹⁸⁹ *Sūrah al-Nisā'*, 4:15.

⁹⁹⁰ *Sūrah al-Nūr*, 24:2.

⁹⁹¹ *Al-Kāfiyya*, pp47-48. See also, *Iqtirāḥ*, p98. Also, *Al-Iḥkām*, Āmidī, v4, pp104-120. Also, *Mujmal al-Lughah*, v1, p319. Also, *Al-Miṣbāḥ*, v1, p199. Also, *Al-Mu'jam al-Falsafī*, v1, p68.

⁹⁹² *Kashf al-Asrār*, v3, p377. See also, *Al-Baḥr al-Muḥīṭ*, v6, pp17-18.

Istiṣhāb is a rational proof which may be employed in the absence of other indications; specifically those facts, rules of law, reason whose existence, or non-existence has been proven in the past and which is presumed to remain for lack of evidence to establish any change.

Istiṣhāb not only presumes the continuation of the positive, so as once a contract of sale is concluded it is presumed to remain in valid force until a change occurs, but also presumes continuation of the negative. Any doubt over the non-existence of something it will be presumed to exist. But if the doubt is in the proof of something the presumption will be that it is not proven.

III.6.ii Varieties Of *Istiṣhāb*

a) Presumption of original non-existence (*Istiṣhāb al ‘Adm al Aṣli*).

This is where a fact or rule which has not existed in the past is presumed to be still non-existent until evidence to the contrary. An example is the child, who is presumed to remain so until he attains to his majority⁹⁹³.

b) Presumption of original existence (*Istiṣhāb al Wujūd al Aṣli*) is where the presence of a liability or a right is presumed until the contrary is proved. An example is where a husband is liable to pay his wife the dowry (*mahr*) by virtue of the existence of the marriage contract.

c) Continuity of the general rules and principles of law (*Istiṣhāb al Ḥukm*). *Istiṣhāb* takes for granted the validity of the Sharī‘ah in regard to permissible (*ḥalāl*) and prohibitive (*ḥarām*) acts, when a ruling in law prohibiting or permitting, will be presumed to continue until the contrary is proved.

d) *Istiṣhāb* by consensus (*Istiṣhāb Ḥukm al Ijmā‘*). Āmidī says there is a historic consensus to the effect that a thing that has come into being must be presumed to continue unless there is positive evidence to the contrary. If a man is uncertain whether a state of purity⁹⁹⁴, initiated through the proper ablution, continues to exist at the time of the performance of *Ṣalāh*, he is permitted to proceed with the prayer.

e) Continuity of Attributes (*Istiṣhāb al Waṣf*). When a person purifies himself for purposes of prayer the purity of the water is presumed to obtain until evidence to the

⁹⁹³ Ibid, p238.

⁹⁹⁴ *Al-Iḥkām*, Āmidī, v4, pp111-119.

contrary, namely when there is a change of colour in the water⁹⁹⁵.

The Shāfi'ī and the Ḥanbalī schools of Law unreservedly upheld *Istiṣhāb al Waṣf*, whereas the Ḥanafis and Mālikis accept it with reservations. An example is the case of a missing person (*mafqūd*), his life and its continuance being the attribute (*waṣf*). With the Shāfi'īs and Ḥanbalis the missing person, presumed to be alive, may benefit from bequests and inheritance. Thus they uphold the affirmative capacity to *Istiṣhāb* in this instance⁹⁹⁶.

The Ḥanafis and Mālikis, however, although they acknowledge the missing person is presumed to be alive, the missing person cannot inherit and others cannot inherit from him. Thus the Ḥanafi's are using this type of *Istiṣhāb* as a defence (*li-dāfi'*) whereby *Istiṣhāb* cannot be used as a means of acquiring new rights for the *mafqūd* but can be used to protect his existing rights⁹⁹⁷.

The key argument of the Ḥanafis here is that although the *mafqūd* is presumed to be alive, it is only a presumption, not a fact, and may not therefore constitute the basis of the acquisition (*kasb*) of new rights on the part of the missing person⁹⁹⁸.

f) Presumption of generality (*Istiṣhāb al- 'Umum*)⁹⁹⁹ Namely, where generality is presumed until subjected to *takhṣīs*. In short the general (*'Āmm*) must remain so in its application until qualified in some way. This applies to the validity of the text which remains so until abrogated¹⁰⁰⁰ or replaced by another text. But in matters of doubt, as to whether the general has been qualified in some way, *Istiṣhāb* would presume the absence of specification until the contrary is proved.

g) Presumption of Original Freedom from Liability (*Barā'at al Dhimmah al Aṣliyyah*). This is where freedom from obligations obtains until the contrary is proved, when the law may be compelled to perform the obligation. For example, no one is compelled to perform the *Ḥajj* more than once in his lifetime, or no one is liable to punishment until his guilt is established by due process of law¹⁰⁰¹.

The difference between the Ḥanafis and the Shāfi'īs as to the correct implementation of this principle can be illustrated in the following example. A claims that B owes him one hundred pounds and B denies it. Is a settlement (*ṣulḥ*) after a denial lawful in this case, as the Ḥanafis claim, or is original freedom from liability presumed on the basis of B's

⁹⁹⁵ *I'lām al-Muwaqī'in*, v2, p296.

⁹⁹⁶ *Al-Baḥr al-Muḥīṭ*, v6, pp17-26. See also, *Iḥkām*, Āmidī, v4, pp111-120.

⁹⁹⁷ *Kashf al-Asrār*, v3, p378.

⁹⁹⁸ *Irshād*, p238.

⁹⁹⁹ *Al-Mustasfā*, v1, p221.

¹⁰⁰⁰ *Ibid*, v1, pp221-222.

¹⁰⁰¹ *Al-Iḥkām*, Āmidī, v4, p112. See also, *Irshād*, p238.

denial, as the Shāfi'is claim, in which case B would bear no liability at all. The Ḥanafis say that original freedom from liability is not presumed on the basis of B's denial. Thus to prevent possible hostility between the two parties and promote stability in society the Ḥanafis say a settlement is possible¹⁰⁰².

h) Permissibility is the original state of things (*al Aṣl fī al -Ashyā' al Ibāḥah*). All matters which the Shārī'ah has not regulated to the contrary remains permissible and will be presumed so until evidence points to the contrary. The Ḥanbalis gave *Ibāḥah* greater prominence than the other three schools. They validate it as a basis of commitment (*'iltizām*), a commitment that does not however include *' Ibādāt*, for the latter is validated by the *Naṣṣ*, but does include things like transactions and contracts (unless validated by a higher proof)¹⁰⁰³.

An example of Ḥanbalis' *' Iltizām* with regard to the implementation of *Ibāḥah* is their encouragement of monogamy. For the husband to remain monogamous monogamy may be stipulated in the contract.

In conclusion *Istiṣhāb* is not considered an independent proof¹⁰⁰⁴ or a method of juristic deduction in its own right, but is used as a means of implementing an existing indication (*dalīl*) whose validity is established by the rules of *Istiṣhāb*.

III.7 The Invalid Indicators (According To Āmidī)

Āmidī considered that there were five authentic *Adillah*, namely the Qur'ān, the Sunnah of the Prophet, Consensus (*Ijmā'*), Analogy (*Qiyās*) and *Istiṣhāb al-Hāl* in the category of *Istidlāl*. He referred also to *Shar' man Qablana* (Revelation before Islam), *Madhhab al-Ṣaḥābī*, (The *Fatwā* of the Companion), *Istiḥsān* (Equity in Islamic law) and *Maṣlahah al-Mursalah* (Considerations of Public Interest). These he did not consider to be authentic *adillah*.

III.7.i The Fatwā Of A Single Companion (Madhhab Al Ṣaḥābī)

The question to be asked here is: is the *fatwā* of a single Companion to be considered an indicator of the law in its own right?

We have seen that Consensus (*Ijmā'*), specifically tacit *Ijmā'*, carries a Shārī'ah value, but the 'Ulamā' differ as to what value the *fatwā* of a single Companion bears.

¹⁰⁰² *Uṣūl al-Fiqh*, Zuhayr, v4, pp178-180.

¹⁰⁰³ *I'lām al-Muwaqī'in*, v1, pp295-296.

¹⁰⁰⁴ *Al-Baḥr al-Muḥīṭ*, v6, p18. See also, *Al-Iḥkām*, Āmidī, v4, p111.

For the Ash'arites and Mu'tazilis it carries no special authority,¹⁰⁰⁵ whilst the Ḥanafis, Ḥanbalis and the Mālikis consider it to be a proof (*ḥujjah*)¹⁰⁰⁶. For Mālik the *fatwā* of a single Companion carries special authority sufficient to place it in the hierarchy of indicators above Qiyās. Thus the Qur'ān, the Sunnaic and Ijma'ic evidence must turn to the *fatwā* of the Companion before resorting to analogy¹⁰⁰⁷.

What if the *fatwā*s of the Companions differed one from the other? Might this not lead to the creation of conflicting indicators throwing doubt on the inner consistency of the law?

Āmidī¹⁰⁰⁸ rejects the status of the *fatwā* of a single Companions as an indicator of the law. He cites sūrah al-Ḥashr¹⁰⁰⁹ "*fa' tabirū yā ' ulī al-Abṣār*" (So learn a lesson, you who have eyes), the standard support for Qiyās, which shows at the same time that the *fatwā* carries no special authority.

The opposition in support of their argument invoke sūrah Āl 'Imrān,¹⁰¹⁰ "you are the best community that has been raised up for mankind. You enjoin right conduct?"

Since there is an obligation to engage in right conduct, one must support that Companions. For Āmidī this latter sūrah is used in support of the authority of Ijmā'. The opposition, in turn, cite the Ḥadīth 'My Companions are like stars; whoever you follow will lead you to the right path'¹⁰¹¹. The probably intended meaning of this Ḥadīth, suggests Āmidī¹⁰¹², is that the Companions are to be imitated in respect in the matter of Ḥadīth, not in individual *fatwā*

Neither can authority in the *fatwā* of a single Companion be invested through Ijmā', maintains Āmidī, for *fatwā* of single Companions are not authoritative for fellow companions. In short, the *fatwā* of a single companion is not considered an independent proof¹⁰¹³.

¹⁰⁰⁵ *Al-Iḥkām*, Āmidī, v4, pp130-135.

¹⁰⁰⁶ *I'lām al-Muwaqī'in*, v1, p30; v4, p156.

¹⁰⁰⁷ *Al-Iḥkām*, Āmidī, v4, p127.

¹⁰⁰⁸ *Ibid*, v4, p130.

¹⁰⁰⁹ *Sūrah al-Ḥashr*, 59:2.

¹⁰¹⁰ *Sūrah Āl-'Imrān*, 3:110.

¹⁰¹¹ *Mishkāt*, Tabrīzī, v3, 1695, Ḥadīth no 6001.

¹⁰¹² *Al-Iḥkām*, Āmidī, v4, p130.

¹⁰¹³ *Sharḥ al-'Aḍud*, v2, p457.

III.7.ii Revealed Laws Preceding The Shari‘ah Of Islām (Shar‘ Ma n Qablanā)

The above indication is considered by some ‘Ulamā’ to be valid, but not by Āmidī¹⁰¹⁴.

The main controversy was whether the Prophet and the Muslim community were subject to the laws of earlier Prophets.

According to the H5anafis and some Shāfi‘is the Prophet treated as authoritative those parts of the earlier scriptures that he knew through divine revelation (*wahy*) to be authentic.

The Ash‘arites and Mu‘tazilis¹⁰¹⁵, however, rejected the authority of the earlier scriptures for Muslims. The former group put forward text (*Naṣṣ*) based arguments in support of their view, whilst the latter favoured rational based argument.

III.7.iii Istiḥsān (Equity In Islamic Law)

Linguistically the term *Istiḥsān*, the verbal noun of the tenth form, derives from the noun *Ḥusn*, beauty, as opposed to being ugly¹⁰¹⁶. Hence the tenth form *Istaḥsana*, to regard or consider as nice.

In the field of Uṣūl al-Fiqh *Istiḥsān* can be defined as follows:

- a) As a departure from one analogy based rule in favour of another that is based on a more forceful analogy.
- b) That *Istiḥsān* is the according of specificity to an analogy based rule by virtue of an indicator that is more forceful than the analogy. Thus defined *Istiḥsān* falls under the heading of restriction of an occasioning factor¹⁰¹⁷.
- c) The Ḥanafī definition has it that the essence of *Istiḥsān* is to act on the stronger of the two indications. For example, the according of specificity to the sale of dates, specifically between, that is, dry and fresh dates¹⁰¹⁸.
- d) For the Hanbalites *Istiḥsān* is a type of weighing of conflicting indicators, where the best (*aḥsan*) is chosen, providing it doesnot contradict another indicator¹⁰¹⁹.

¹⁰¹⁴ *Al-Iḥkām*, Āmidī, v4, p121.

¹⁰¹⁵ *Ibid*, v4, pp123-124.

¹⁰¹⁶ See, *Mujmal al-Lughā*, v1, p233.

¹⁰¹⁷ *Kashf al-Asrār*, v4, p3.

¹⁰¹⁸ *Iḥkām al-Fuṣūl*, al-Bājī, v2, p564.

¹⁰¹⁹ *Al-Musawwadah*, Āl Taymiyya, p405.

e) Mālik views *Istiḥsān* as similar to *Istiṣlāḥ*, where *Istiḥsān* is to abandon exceptionally what is demanded by law, for applying the existing law would lead to hardship (*rafʿ al-Ḥaraj*). For Mālik it would be permissible to depart from Qiyās or to specify the general in Qiyās on the grounds of *Maṣlahah* (Consideration of Public Interest)¹⁰²⁰.

Istiḥsān is divided into two types:

i) The *Istiḥsān* which is more effective than apparent analogy (*Qiyās Jalī*). An example is the analogy made between the leftovers of a bird of prey which is considered polluted meat and that leftover by the wild animals. Through this analogy the left overs of the wild animals is considered polluted also. According to *Istiḥsān* these leftovers from the birds of prey are considered pure, because the birds drink with their beaks which are constituted from bone tissue¹⁰²¹.

ii) The *Istiḥsān* whose validity is apparent but whose nullity is hidden. Glanced at casually it appears valid but once scrutinised its nullity becomes manifest¹⁰²². This type of *Istiḥsān*, which is weaker than the *Qiyās Jalī*, is itself considered a kind of Qiyās¹⁰²³.

III.7.iv 'Urf (Custom)

The linguistic meaning of '*urf*' is that which is known (*ma'rūf*)¹⁰²⁴. '*urf*' and '*Ādah*'¹⁰²⁵ (custom) are largely synonymous, but whilst reference to the personal habits of individuals comes under '*Ādah*', the collective practice of a large number of people falls under '*Urf*'.

The habits of a few, in short, or even a substantial minority within a group, do not constitute '*urf*'. Custom, therefore, in order to constitute a valid basis for legal decisions, must be sound and reasonable. Recurring practices devoid of benefit are not regarded as '*urf*'.

The noun '*urf*' and the participle, *ma'urf* are found in the Qur'ān. In Qur'ānic usage *ma'rūf* means¹⁰²⁶ good, whilst *munkar*, its opposite, denotes something strange to be equated with evil. Hence the verse¹⁰²⁷ in which the Muslim is urged to "enjoin belief in

¹⁰²⁰ *Al-Muwāfaqāt*, al-Shāṭibī, v4, pp206-208.

¹⁰²¹ *Mir'āt al-Uṣūl*, p251.

¹⁰²² *Mir'āt al-Uṣūl*, p251.

¹⁰²³ Ibid.

¹⁰²⁴ *Al-Miṣbāḥ al-Munīr*, p404. See also, *Mujmal al-Lughā*, v2, p661.

¹⁰²⁵ *Al-Ta'rīfāt*, p146. See also, *Al-Miṣbāḥ al-Munīr*, p436. Also, '*Umdat al-Ḥuffāz*', p388. Also, *Al-Kāfiyya*, p58.

¹⁰²⁶ *Baṣā'ir*, v4, p57.

¹⁰²⁷ *Sūrah al-A'rāf*, 7:199.

God (*wa'mur bi al-'urf*) and in His messenger, and turn away from the ignorant.

Custom, which does not contravene the principles of the Sharī'ah is valid and authoritative and must be upheld by a court of law. For Al Sarakhṣī, the Ḥanafī jurist, *'Urf* constitutes a basis of juridical decisions¹⁰²⁸. For the 'Ulamā' *'urf* is a valid criterion for purposes of interpreting the Qur'ān.

An example of this is the maintenance of children. The Qur'ān states that maintenance is a duty of the father, but that the amount of maintenance is to be determined by recourse to custom (*bi al- m'arūf*)¹⁰²⁹.

For the Fuqahā' *'urf* authorised by *Istiḥsān* is a valid criterion for the determination of the *Aḥkām* of the Sharī'ah. Customs which were prevalent during the lifetime of the Prophet received his tacit approval to become part of the Sunnah *taqrīrīyya*. Islām in this way absorbed that part of pre-Islāmic custom tacitly approved by the Prophet and upheld by the Companions.

An example would be phrased as "we used to do such and such when the Prophet was alive". Such as, for example, the liability of the kinsmen of an offender (*'āqilah*) for payment of blood money (*diyyah*) which was readily absorbed by the Sharī'ah.

III.7.iv.1 Conditions Of 'Urf

- a) *'Urf* practice must be widespread and be recurrent in the community. The practice of a few individuals within the Community at large will not be authoritative. Furthermore *'Urf* must not only be consistent but dominant.

If for example, a sale is made in a town where two or three currencies obtain in dealings, and the contract does not specify which currency one should use, then the one which is more dominant will obtain.

- b) A custom must have been prevalent at the time a transaction is concluded, not to customs which obtain afterwards.

This is particularly relevant in the interpretation of documents in the light of the custom that prevailed at the time they were written. To interpret them when the custom became prevalent after the conclusion of the document would render the interpretation irrelevant.

- c) Custom cannot overrule a clear agreement for the latter prevail over custom. Recourse to custom is valid only in the absence of an agreement. An example of preponderance

¹⁰²⁸ *Uṣūl al-Fiqh*, Abu Zahrah, p216.

¹⁰²⁹ *Sūrah al-Baqarah*, 2:233.

of agreement over '*Urf* in matters of law is payment of marriage dowry.

According to the prevailing custom one half of the dowry is payable before the marriage, one half payable after. However if the contract stipulated that the whole dowry was to be paid before the marriage, then the contractual agreement would prevail over custom.

Custom can only be involved when there is no clear text available to determine the terms of a particular dispute.

- d) Custom must not violate the *Naṣṣ*, but may be allowed to act as a limiting factor on the text.

Custom, however, might wholly violate the *Naṣṣ*, as it does in the matter of wine drinking. Wine drinking is a common custom, yet it is strictly forbidden in the Qur'ān and the Sunnah.

However *Salam* (advanced sale in which the price is determined but delivery postponed) is permitted by the Prophet by way of exception, since the prevailing custom was deemed to be of benefit to the people. Thus the law which forbids the selling of non-existing objects is waived here¹⁰³⁰.

The Prophet is said to have forbidden conditional sale, but the Ḥanafī and Mālikī Jurists validated conditions which represent standard custom. The idea was that general prohibition was retained but exceptions allowed I.e. conditions adopted by '*urf* are upheld¹⁰³¹.

III.7.iv.2 The Principal Differences Between '*Urf* And *Ijmā'*

- a) '*Urf* arises with the common agreement of the community at large and its existence is not affected by exceptions or the disagreements of a few individuals. *Ijmā'* on the other hand requires the consensus of all the Mujtahids. Disagreement invalidates *Ijmā'*¹⁰³².
- b) Custom is accepted by the majority of the community at large including the Mujtahids, whilst laymen can play no part in the formation of an *Ijmā'*¹⁰³³.
- c) The rules of '*Urf* are changeable, custom in time may make way or another custom disappear altogether. But *Ijmā'*,

¹⁰³⁰ *Ṣaḥīḥ al-Bukhārī*, v3, 44, Kitāb al-Salam, Ḥadīth no ,1 - 3.

¹⁰³¹ *Al-Idāh*, p419. See also, *I'lām al-Muwaqī'in*, v4, p199. Also, *Al-Iḥkām*, Amidī, v4, p138.

¹⁰³² *Al-Iḥkām*, v4, p138.

¹⁰³³ *I'lām al-Muwaqī'in*, v4, p199.

once concluded, cannot be re-opened for debate. It precludes fresh *Ijtihād*. *‘Urf* on the other hand can be subject to a fresh *ijtihād*.

III.7.iv.3 Types Of Custom

a. ‘Urf Qawli (Verbal ‘Urf)

‘*Urf Qawli* has to do with the usage of words for purposes other than their literal meanings, whose use is widespread in the community of large. For example, words such as *Zakāh*, *Ṣalāh* have lost their literal meaning for technical meaning. *Walad* in the Qur’ān literally means offspring, be it son or daughter, but in everyday usage has come to mean specifically a son only. Another example is *lahm*. In Qur’ānic usage it denotes both fish and meat, but in everyday usage meat only.

b. Actual ‘Urf (‘Urf Fi’li)

The payment of a marriage dowry by custom requires the amount to be paid before the marriage, with the rest being paid afterwards. The validity of this type of actual ‘*Urf* is validated by legal maxim, normally, what is accepted by ‘*Urf* is tantamount to a stipulated agreement - *al ma’rūf ‘urfān kal mashrūt shartan*. Thus the actual ‘*Urf* is to be upheld in the absence of an agreement to the contrary.

III.7.iv.4 Sub Division Of General And Special Type

a) *Al ‘Urf al ‘Āmm* is a custom which is prevalent everywhere¹⁰³⁴. An example is the practice of charging a fixed price of entry to public baths, even though the quantities of water must vary from one person to the next, thus running contrary to strict requirements of sale.

b) *Al ‘Urf al Khāṣṣ* is an ‘*Urf* which is prevalent in a particular locality, profession or trade. The Ḥanafis say that ‘*Urf Khāṣṣ* does not qualify the general provisions of the *Naṣṣ*, therefore discount it when found to be in conflict with the *Naṣṣ*.

A Qiyās whose ‘*illah* is not expressly stated in the *Naṣṣ* may be abandoned in favour of a general ‘*Urf*, but will prevail over a special ‘*Urf*. The reason is that ‘*Urf* pertains to peoples' needs. To disregard these needs may amount to an imposition of hardship on them.

¹⁰³⁴ *Al-Ta’rifāt*, pp149-150.

'Urf can be divided further into approved custom (*al'Urf al Ṣaḥīḥ*) and disapproved custom (*al'Urf al Fāsid*). An example of the latter is wine-drinking. Although commonly practised it is in clear violation of the Sharī'ah.

III.7.iv.5 Proof (Ḥujjiyah) Of 'Urf

There exists Qur'ānic evidence which repeatedly confirms 'Urf as a Sharī'ah proof. Reference in this case is usually made to sūrah Ḥajj¹⁰³⁵ "God has not laid upon you any hardship in religion", said to be an indirect reference to that 'Urf which prevails but which does not conflict with the *Nuṣūṣ*, such that to ignore it may lead to inflicting hardship on people. Another verse invoked in support of 'Urf is sūrah al A'rāf¹⁰³⁶ 'keep to forgiveness, enjoin 'Urf and turn away from the ignorant'.

III.7.v Al Maṣlahah Al Mursalah (Unqualified Public Interest)

Al Maṣlahah al Mursalah refers to an unqualified public interest not regulated by the law, for no textual authority can be found on its validity.

It is occasionally called *al Maṣlahah al muṭlaqah* on account of its being undefined by the Sharī'ah. Al Ghazālī regards *al Maṣlahah al Mursalah* as securing a benefit or preventing a harm, which are at the same time harmonious with the objectives of the Sharī'ah. These objectives have in mind to protect the values of religion, Life, intellect, lineage and property. Any measure which secures these values falls under the scope of *Maṣlahah*.

Historically the notion of *al Maṣlahah al Mursalah* originates in the practice of the Companions. 'Umar, for example, imposed the *kharāj* tax on agricultural lands in conquered territories in the absence of textual authority¹⁰³⁷.

Istiṣlāḥ is not a proof in respect of devotional matters ('*Ibādāt*)¹⁰³⁸ and the specific injunctions of the Sharī'ah (*muqaddarāt*) outside these areas, though, the majority of 'Ulamā' have validated *Istiṣlāḥ* as an indicator of divine law¹⁰³⁹.

The basic purpose of legislation is to secure the welfare of the people. When the *Maṣlahah* is identified and the mujtahid does not find an explicit ruling in the *Naṣṣ* he must pursue it and act on it, so as to prevent people being affected by hardship, as

¹⁰³⁵ Sūrah al-Ḥajj, 22:78,

¹⁰³⁶ Sūrah al-A'rāf, 7:199.

¹⁰³⁷ 'Ilm Uṣūl al-Fiqh, Khallāf, p84.

¹⁰³⁸ Nuzhat al-Khātr, v1, pp414.

¹⁰³⁹ Madkhal, Ṣābūnī, p134.

indicated in sūrah Al Mā'idah¹⁰⁴⁰, "God never intends to impose hardship on people".

The principal Ḥadīth in support of *Istiṣlāḥ* which authorizes acting upon *Maṣlahah* says, "No harm shall be inflicted or reciprocated in Islām"¹⁰⁴¹.

III.7.vi Opposition To Maṣlahah

The Zāhiris, some Shāfi'is (al Āmidī for one) and Ibn Ḥājib, the Mālikī jurist, do not recognise *al Maṣlahah al Mursalah*. They argue that the *Maṣāliḥ* are all exclusively contained in the *Nuṣūṣ*. If the Sharī'ah is silent on a matter it is a sure sign that the *Maṣlahah* in question is no more than a specious *al Maṣlahah*.¹⁰⁴²

For the Ḥanafis and the Shāfi'is *Maṣāliḥ* is either validated in the explicit *Nuṣūṣ* or indicated in the rationale (*'illah*) of a given text, or even in the general objectives of the Lawgiver. In short *a Maṣlahah* must be corroborated by an indication in the Sharī'ah. Therefore, these groups do not accept *Istiṣlāḥ* as a proof, otherwise there is a danger of confusing *Maṣlahah*, which has in mind the public good, with the arbitrary desires of a ruler, who wishes to justify his personal wishes under the mantle of *Maṣlahah*.

III.8 Sadd Al Dharā'i'

The word *dharā'i'*¹⁰⁴³ i.e., "means", the means, that is, towards obtaining a certain end. *Sadd* has the meaning of 'blocking.' Thus the phrase *Sadd al al Dharā'i'* implies blocking the means to an end. Āmidī never mentioned *Sadd al al Dharā'i'*, which he considered invalid, but it was mentioned by other 'Ulamā'.

In Sharī'ah terms this entails blocking the means to evil. Although the concept of *Sadd al al Dharā'i'* extends to 'opening the means to beneficence', it is invariably used to block the means to evil.

Cases which involve both the means and the end being directed towards evil are dealt with under the general rules of the Sharī'ah and those cases where the means and the end are directed towards *Maṣlahah*, when not regulated by the *Naṣṣ*, are as likely to be governed by *Qiyās*, *Maṣlahah* or *Istiḥsān*.

It is when the case falls into the grey area between *Maṣlahah* and *Mafsadah* i.e., that

¹⁰⁴⁰ Sūrah al-Mā'idah, 5:6

¹⁰⁴¹ Sunan Ibn Mājah, Ḥadīth no 2340.

¹⁰⁴² 'Ilm Uṣūl al-Fiqh, Khallāf, p88.

¹⁰⁴³ Sūrah Hūd, 11:77. See also, *Tājj al-'Arus*, v11, p126. also, *Mujmal al-Lughah*, Ibn Fāris, v2, pp356-357. Also, *al-Mu'jam al-Wasīṭ*, v1, p114. Also, *Umdat al-Huffāz*, al-Samīn al-Ḥallabī, p184. Also, *Al-Miṣbāḥ al-Munīr*, p208.

Sadd al al Dharā'i' applies¹⁰⁴⁴. Namely when there exists a discrepancy between the means and the end on the good -neutral-evil scale of value. An example is when a lawful means is expected to lead to an unlawful end, or when a lawful means is used to procure an unlawful end.

An example is *Khalwah* (illicit rivacy) between the sexes which is blocked and made unlawful because it may lead to *Zinā* (adultery). The fact that *Zinā* (adultery) might or might not occur as a consequence of *Khalwah* (illicit privacy) is beside the point.

Thus, the whole concept of *Sadd al al Dharā'i'* is founded on the idea of preventing an evil before it actually materialises, and is closely related to the principle of "preventing an evil takes priority over securing a benefit"¹⁰⁴⁵.

Sadd al al Dharā'i' as a principle of Jurisprudence is supported by the Sunnah of the Prophet, especially the ruling in which the Prophet prohibited a creditor from accepting a gift from his debtor for fear of it becoming a means to usury, and the gift a substitute to *Ribā*.

There was the case of Ḥudhayfah, by way of another example, who was forbidden from marrying a Jewish woman for fear that other muslims might be waylaid by the beauty of the Ahl al-Dhimmah. Thus, marriage to them was forbidden even though the Qur'an declared such marriages legal¹⁰⁴⁶.

The Ḥanafis, Shāfi'is, Ḥanbalis and the Mālikis agree on the validity of *Sadd al al Dharā'i'* as to substance, but differ in regard to its application¹⁰⁴⁷. These differences as to this application emerge in the following classification of *Sadd al al Dharā'i'*.

a) Means which definitely lead to evil¹⁰⁴⁸. This involves such acts as digging a deep pit outside a place not illumined at night, such that people are likely to fall into it. A consensus amongst the four law schools it said to have been reached on this point¹⁰⁴⁹.

In another example not so straight forward. A man might dig a water well in his own home, but close to the wall of his neighbour, causing it in time to collapse. Some 'Ulamā' consider this action lawful in that the man is seen to be exercising his right of ownership.

¹⁰⁴⁴ *I'lām al-Muwaqī'in*, Ibn Qayyim al-Jawziyya, v3, pp119-120. See also, *Al-Furūq*, al-Qarrāfi, v2, p32. Also, *Al-Muwāfaqāt*, al-Shātibī, v4, p198. Also, *Al-Ishrāf 'Alā Masā'il al-Khilāf*, v1, p275. Also, *Al-Mawsū' al-Falsafiyya*, p217. Also, *Al-Mu'jam al-Falsafi*, v1, p587.

¹⁰⁴⁵ *Al-Muwāfaqāt*, al-Shātibī, v4, p195.

¹⁰⁴⁶ *Al-I'tisām*, Ibn Qayyim al-Jawziyya, v3, 122.

¹⁰⁴⁷ *Uṣūl al-Fiqh*, Abu Zahrah, pp227-228.

¹⁰⁴⁸ *Al-Muwāfaqāt*, al-Shātibī, v4, p198.

¹⁰⁴⁹ *Uṣūl al-Fiqh*, Abu Zahrah, p228.

Others, invoking the principle that preventing any harm takes priority over securing a benefit, say that the man is to be held liable for damage.

b) The means which is most likely to lead to evil or is highly probable (*ẓann ghālib*) and rarely expected to lead to a benefit.

An example is selling weapons during wartime or grapes from which wine can be pressed.

The Mālikis and the Ḥanbalis consider such transactions to be *ḥarām*. Since they are highly likely (*ẓannī*) to lead to evil, and since *sadd ẓannī* is generally accepted as a valid basis for the *Aḥkām* of the Shari‘ah, then such means have to be blocked.¹⁰⁵⁰

c) The means which frequently leads to evil but in which there is no certainty that this will be the case. An example of this is a sale used as a means to procure usury, as manifest in deferred sales (*bay‘ al-’ Ajal*) for example.

A sells a garment for £10.00 to B, the price being payable in a month's time, and then A buys the garment from B for £8.00 with the price payable immediately. This amounts to a loan of £8.00 to B on which he pays an interest of £ 2.00 after one month. It is highly probable (*Ẓann al Ghālib*) that such sales might lead to *Ribā*, although one cannot be certain as to that fact.

d) The means which are rarely expected to lead to evil and most likely lead to a benefit. An example of this is digging a well in a place not likely to disturb anyone or by cultivating grapes. In the latter case there is a possibility that a *mafsadah* might result from such a practice, grapes might be turned into wine for example, but it is more likely that benefits would accrue rather than the opposite¹⁰⁵¹.

5) The means which lead to a lesser evil being considered in order to block those which lead to a greater evil, where a *ḥarām* might be turned into a *ḥalāl*, if this is likely to prevent a greater evil.

An example is the release of muslim prisoners of war in exchange for a ransom, where giving money to the enemy is *ḥarām* becomes *halal* when used to secure the freedom of Muslims, the means here being opened rather than blocked so that the deserved end can be realized. The ‘Ulamā’ call for caution in the application of *Sadd al al Dharā’i’* to ensure that the unlawful is not unduly rendered lawful.

¹⁰⁵⁰ *Uṣūl*, Badrān, p244.

¹⁰⁵¹ *Al-Muwāfaqāt*, al-Shāṭibī, v2, p249.

In those instances if an evil is to be prevented by blocking the means towards it, one must ascertain that the evil in question is in the Qur'ān and the Sunnah of the Prophet.

Chapter IV

The Transmission And Authenticity Of Texts

The oral nature of Qur'ānic, Sunnaic and Ijma'ic transmissions, as the expression suggests, is nothing to do with written texts, but rather concerns those texts which have come into being and whose existence has been sustained, throughout the medieval period of Islām at least, through oral transmission so that these texts might be preserved as indicators of the divine law.

There did exist written texts in Medieval Islām, but many of these entailed live (oral) transmission, where each text would have been hand copied from dictation (*imlā'*). The Medieval jurist, in particular, could not separate the idea of a text from the idea of an oral report from one person to another, whether it be a Qur'ānic, Sunnaic or Ijmā'ic text.

Hence orally transmitted material in the context of Uṣūl al Fiqh came to be known as orally received indicators (*dalīl sam'ī*). Even after the great compilations of the Qur'ān (of 'Uthmān) and the Sunnaic Ḥadīth had been realised the association persisted right into the Medieval period and beyond as the mode of passing down vital religious information pertaining to the Prophet, even when written texts constituted the vehicle through which learning was diffused.

However, the theologians and jurists were bound by the methodology that had developed for evaluating the earlier transmission process. This itself was rooted in the oral tradition of Pre-Islamic Arabia and the heroic era of Bedouin poetry which extended into and included the crucial era of early Islām when oral communication was the order of the day.

IV.1 Modes Of Transmission And Authenticity of Narrator (Mustanad al-Rāwī)

The manner in which a reporter transmits his report (*Kayfiyyat al-Riwāya*) begins with the following well known expressions which indicate that he has heard the report he is transmitting from the lips of the trustworthy person. For example in *akhbaranī fulān bi kadhā* (so and so reporter said such and such to me), the pronominal suffix "to me" indicates a direct link between the reporter and his trustworthy source.

The Prophet's sayings, acts and endorsements constitute in the main the well spring of the Sunnah which the Companions are recipients of.

A Companion's report may well begin with the following:

1) *Sami'tu Rasūla Allāhi* (*ṣalla Allāhu 'alayhi wa sallam*) *yaqūlu kadhā* . I heard the Apostle of God...(peace be upon him)...say such and such

or

2) *Akhbaranī Rasūlu Allāhi bi kadhā* . The Apostle of God told me such and such.

or

3) *Ḥaddathanī rasūlu Allāhi bi kadhā*. The Apostle of God talked to me about such and such.

The first expression employing the word "heard" is rare, but the other expressions indicate this empirical link between the Prophet and the Companion. The Companions, being recipients of the reporting of the Prophet, are considered a privileged generation, their integrity regarded as axiomatic. They were post facto considered trustworthy persons on account of their unique relationship with the Prophet.

Going beyond the Companions to the generation of reporters who came after (*tābi'ūn*) i.e, the followers, many of these would have received reports directly from a well respected Ḥadīth specialist, a *shaykh*. The relationship or link between the shaykh and his student was shaped according to the circumstances of the transmission, as reflected in one of the following formulas:

1) If a shaykh aims his transmission at the student directly the student, the transmitter, will begin his report with the words, "*Ḥaddathanī fulān*" or "*akhbaranī fulān*", (so and so reported to me). If the shaykh directed his speech to a larger audience of which the reporter was but one member then that member will use the formula, '*qāla lanā fulān*', (so and so said).

In each case there exists a link between the shaykh and his transmitter, rendering the material acceptable as an authoritative indicator of the divine law.

IV.2 Classification Of Ḥadīth

It would be befitting to prefix the discussion on the classification of the Ḥadīth with a note on the concepts of `truth` and `falsity` as interpreted by the Fiqh scholar, since the Ḥadīth are classified (or rejected) according to the degrees of truth or falsity conferred on them through the process of a stringent application of rules and conditions.

That such a process should be so was vital for the community's well being. The Prophet's words were, in short, to be recorded faithfully and passed down with scrupulous accuracy from one generation of transmitters to the next so that these

Ḥadīth might constitute the authoritative indicators of the divine law on which the *Ummah* would be constructed.

IV.2.i Fabricated Ḥadīth Report

Fabricated reports (*mawḍū'āt*) were widespread amongst the corpus of Aḥadīth. Forgery is thought to have begun when the religio-political schisms first appeared in Islām. One thinks here of the schisms between 'Alī and the Medīnan community, for example, which led to the *Shīah-Sunni* divide, and later the formation of the *Khawārij* following 'Alī's mishandling of the battle of Ṣiffīn, the murder of 'Uthmān and so on. The factions that emerged as a result of these schisms used Qur'ānic and Sunnaic material to enhance their position over their rivals or to glorify the character of their leaders.

Professional story tellers made up stories and attributed them to the Prophet to elicit emotive responses from their audiences. Unintentional forgery was classed as Ḥadīth *Bāṭil* and arose mainly as a result of recklessness in reporting. A chain of authority (*sanad*), for example, might have ceased at the successors (*tābi'ūn*), but the transmitter extended it to the Prophet nevertheless.

IV.2.ii The Mutawātir Ḥadīth (Report)

Mutawātir means continuously recurrent, and a *Mutawātir* report is a report by an indefinite number of people transmitted in such a way as to preclude the possibility of their agreement to perpetuate a lie, on grounds that such a possibility was inconceivable, owing principally to their large number. But numbers alone did not determine whether a Ḥadīth was *Mutawātir* or not. Corroborative evidence was required also in the form of upright (*'udūl*) reporters who had a retentive memory¹⁰⁵².

The *Mutawātir* report posits the epistemological enquiry: how do we know that a report, given that a report can only be a replica of the original words of the Prophet, is an exact or approximate replica of the words heard long ago coming from the Prophet Muḥammad?

The simplistic answer is : because *Mutawātir* reports have the quality of engendering in the people who hear them a knowledge that they are true, in the same way that the scholar of Arabic and Islamic studies (or an educated member of the public for that matter) knows that the *Ka'ba* in Mecca exists, due to the plurality of reports he has read on the matter such as to rule out possibility of collusion or collaborative fabrication. This is the principle on which the *Mutawātir* report operates.

¹⁰⁵² *Baḍī' al-Nizām*, fol 95b.

According to al-Āmidī a *mutawātir* is a report that yields of its own accord knowledge of the fact reported.¹⁰⁵³ That is, as long as it meets the following conditions; namely that:

- a) The number of transmitters must be such as to rule out the possibility of collusion or collaborative fabrications.
- b) The report must be based on knowledge of what is reported, not in mere opinion.
- c) The report must be based on sense perception not on deductive argument; ie, what the transmitter heard and saw.

This latter condition brings into the discussion the concept of necessary knowledge (*al 'Ilm al Darūrī*) and its opposite (*al 'Ilm al Naẓarī*); namely, whether the knowledge that arises from a *mutawātir* report belongs to the former above mentioned category or to the latter.

Where the reporting takes place over a long period, the above conditions must apply equally to every successive stage in the transmission process, from the last person to hear the report up to the Prophet himself, showing a chain of unbroken *Isnād* (authority).

The condition concerning the hearer (*al Mustami'*) is that he must be able to aurally receive the report, ie that he is not asleep, deaf or mentally deficient.

IV.2.iii The Mash-hūr And The Mustafīḍ Ḥadīth (Report)

Before going onto discuss the *khavar al Wāḥid* Ḥadīth a brief note about the *Mash-hūr* Ḥadīth, which outnumbers the *Mutawātir* Ḥadīth, would be in order.

Ibn al-Ṣalāḥ¹⁰⁵⁴ notes that the *ahl Fiqh* acknowledged the distinction between the *Mash-hūr* and *Mutawātir* Ḥadīth with regard to their respective validity as authorised indicators of the divine law, but that the *Ahl Ḥadīth* did not.

Al-'Irāqī¹⁰⁵⁵, in defence of the *ahl Ḥadīth*, refutes the criticism of Ibn Al-Ṣalāḥ hinting that the *ahl Ḥadīth* were merely expressing a preference for, not a criticism of, *Mash-hūr*

¹⁰⁵³ *Iḥkām*, Āmidī, v2, pp14-30.

¹⁰⁵⁴ Ibn al-Ṣalāḥ, 'Uthmān Ibn 'Abd al-Raḥmān al-Shihrazūrī al-Shāfi' i Born 577AH / 1181AD, died 643AH / 1245AD. See, *Wafīyyāt al -A' yān*, v1, pp393-394. See also, *Ṭabaqāt al-Shāfi' iyyah*, Ibn Hidāyah, p84. Also, *Mu'jam al-Mu'allifin*, v2, pp361-362.

¹⁰⁵⁵ Al-'Irāqī, 'Abd al-Raḥīm Ibn Al-Hussein al-Shāfi' i. Born 725AH / 1325AD, died in Cairo 806AH / 1404AD. See, *Al-Daw' al-Lāmi'*, al-Sakhāwī, v4, pp171-178. See also, *Al-Badr al-Tāli'*, Al-Shawkānī, v1, pp354-356. Also, *Fahris al-Fahāris*, al-Kitānī, v2, pp814-818. Also, *Mu'jam al-Mu'allifin*, v2, p130.

over *Mutawātir*, largely on account of the nature and popularity of the *Mash-hūr* Ḥadīth.

For the Ḥanafis there is a further distinction to be drawn between *Mash-hūr* Ḥadīth and the *Mustafīd* Ḥadīth¹⁰⁵⁶. The *Mash-hūr* was originally reported by one, two or more companions of the Prophet (or from another Companion) but later gained popularity and was transmitted by an indefinite number of people.

The popularity of a *Mash-hūr* Ḥadīth should have been realized during the first or second generation following the death of the Prophet, otherwise it would become *Mustafīd*, namely too well known as to retain its power to distinguish between what is renowned (*mash-hūr*) and what is ordinary (*Mustafīd*).

IV.2.iv Khabar Al Wāḥid (Solitary Report)

A *khabar al Wāḥid* is a report transmitted by an individual or odd individuals from the Prophet. It is considered more speculative than a *mustafīd*¹⁰⁵⁷ by the majority of the 'Ulamā'¹⁰⁵⁸, because it fails to fulfill the requirements of either the *Mutawātir* or the *Mash-hūr/ Mustafīd*.

Namely, the *khabar al Wāḥid* does not impart the knowledge of its own accord unless supported by extraneous or circumstantial evidence. Specifically, according to the majority of Jurists, this means that the *khabar al Wāḥid* may establish a rule of law where the reporter is seen to be trustworthy, in which case acting upon it is preferable only¹⁰⁵⁹. However, where a report can be substantiated with supporting evidence then acting upon it becomes obligatory. This is Āmidī's point of view¹⁰⁶⁰.

The classification of *khabar al Wāḥid*, as a value in the determination of the *Aḥkām*, depends on the following conditions:

- 1) The reporter must be competent (*mukallaf*), and not a child, lunatic, woman, blind person or slave. Reservations were voiced, in particular, about the blind person who might be considered able to report Ḥadīth, but not able to witness.
- 2) The reporter must be a Muslim, but this condition is operable on or at the time of reporting. A Companion may have witnessed an act of the Prophet before he embraced

¹⁰⁵⁶ *Uṣūl al-Sirakhsī*, v1, p299. See also, *Al-Iḥkām*, Āmidī, v2, p31 and p56.

¹⁰⁵⁷ *Ibid*, fol 9b.

¹⁰⁵⁸ *Uṣūl al-Bazdawī*, v2, pp370-377. See also, *Uṣūl al-Sirakhsī*, v1, pp321-338. Also, *Uṣūl al-Shāshī*, pp280-287.

¹⁰⁵⁹ *Uṣūl al-Sirakhsī*, v1, p321.

¹⁰⁶⁰ *Al-Iḥkām*, Āmidī, v2, p31.

Islām.

3) The reporter must be an upright person (‘*adl*’) at the time of reporting. He must not have committed any major sins (*kabā’ir*) on a frequent basis, or minor misdemeanours, like eating in public places or associating with persons of ill-repute.

4) The reporter must have a reliable memory and a facility for retaining information, the ability of the person to take in passages, comprehend their meaning without distortion either in the text or the chain of authority, so as not to mislead intentionally or otherwise the listener.

5) The reporter must have met with and heard the Ḥadīth directly from his immediate source¹⁰⁶¹.

At the heart of the inter-Muslim dialectic on the authenticity of the *khavar al Wāḥid* report was the belief that falsity was more likely to surface over a period of time, exposed in the form of confession (intentional or otherwise) or by other means, than for silence to encourage collusion or concealment of the truth.

The exercise in evaluating character in a juristic context, is known in Arabic as ‘*al-Jarḥ wa al-Ta’dīl*’, (injuring or declaring trustworthy). Abū Ḥanīfa and his followers (as we have seen) considered an individual in general to be trustworthy on the basis of his general character or reputation, or from outward appearances (*zāhir*).

The Shāfi’īs, however, along with the Ḥanbalis, insisted that a man’s inner character (*bāṭin*) should be considered also in this process of character assessment, rigorous eschewing the notion that an iniquity (*fisq*) committed by the reporter, no matter how small, would not compromise his character as trustworthy¹⁰⁶².

Al-Sam‘ānī¹⁰⁶³ broke down the Shāfi’ī conditions on this issue, thus:

a) That the reporter has been obedient.

b) That he has not committed even the smallest sin (*ṣaghā’ir*) that might compromise his character.

c) That he has committed no *Mubāḥāt* acts to render his character blameworthy, ie eating

¹⁰⁶¹ *Al-Iḥkām*, Āmidī, v2, pp64-85

¹⁰⁶² *Al-Baḥr al-Muḥīṭ*, Al-Zarkashī, v4, p273. See also, *Iḥkām*, Āmidī, v2, pp48-63.

¹⁰⁶³ Abū Al-Muẓaffar Maṣṣūr ibn Muḥammad Al-Sim‘ānī 426AH/1035AD-489AH/1096AD. See, *Mu’jam al-Mu’allifīn*, v3, p991 see Also, *Al-Ansāb*, vol 3 p299.

in public places, associating with people of ill-repute¹⁰⁶⁴.

IV.2.v Al-Hadith Al-Mursal

A Ḥadīth al-Mursal is a Ḥadīth whose chain of authorities (*isnād*) does not extend all the way back to the Prophet¹⁰⁶⁵. To be more specific, a *mursal* is defined as a Ḥadīth which in all probability a successor (*tabī*) has directly attributed to the Prophet without mentioning the last link in the *isnād*, namely the Companion who might have narrated it from the Prophet. Therefore, with the successor belonging to the generation after the Companions, it would be considered extremely unlikely that he would have heard the words from the Prophet himself.

Mālik, Abū Hanīfa and Aḥmad Ibn Ḥanbal all advised that a *mursal* report should constitute, however, an authoritative indicator of the divine law. Al Shāfiʿī, though, made the *mursal's* acceptance conditional on a number of factors (to be discussed below).

The Fuqahā' divided the *mursal* into four types:

- a) The *mursal* of the Companions, accepted by all 'Ulamā' as an authoritative indicator of the divine law.
- b) The *mursal* of the second and third generations, accepted by the Mālikis and the Ḥanafis as a Sharī'ah proof.
- c) The *mursal* narrated by the subsequent generations, which is accepted by some Ḥanafis on the strength of the presumed integrity (*'adl*) of the transmitter missing between the second generation and the Prophet; ie, a Companion.
- d) The *mursal* which contradicts the Qur'ān and the Ḥadīth of the Prophet, or those Prophetic events well known to the community, or where they relate to matters of urgency (*ta'ummu bihi al-balwā*), or where the Companions themselves have rejected the *mursal* on the grounds of its weak link in the chain of *isnād*¹⁰⁶⁶.

Rejection of *mursal* Ḥadīth occurs from one of the following:

- 1) A break in the continuity of the *isnād* may occur as a result of contradicting factors:
- 2) A break may arise as a result of a deficient transmission, due to its transmitter being :

¹⁰⁶⁴Qawā'ī' Al-Adillah , Al-Sim'ānī fol:109b.

¹⁰⁶⁵ I'lām al-Muwaqī'in, Ibn Qayyim al-Jawzīyya, v1, p8.

¹⁰⁶⁶ Uṣūl al-Bazdawī, v3, p18.

- a) Of unknown identity, although his integrity (‘*adl*’) is assumed.
- b) Where he is considered to be a perpetual liar (*fāsiq*).
- c) If he is a youth under legal age, or considered unruly, heedless or negligent in character.
- d) If he is considered to be a whimsical transmitter (*ṣāhib al ahwā’*)¹⁰⁶⁷.

For al Shāfi‘ī, unless a *mursal* was known to have been reported by a famous Successor who was known to have met with a number of Companions (as was the case with Said bin al Musayyab)¹⁰⁶⁸ the following conditions had to be met for its acceptance as a proof of Shari‘ah:

- a) Where a *mursal* is supported by another, more reliable Ḥadīth, in which case the latter would constitute the stronger evidence.
- b) A *mursal* supported by another *mursal*, the latter having been accepted and relied upon by the ‘Ulamā’.
- c) That the *mursal* is in harmony with the precedent of the Companions, whereby it is elevated (*rufi’*) and attributed to the Prophet, the *mursal* in such cases being called *marfū’*.
- d) That the transmitter of *mursal* Ḥadīth must not have a reputation for reporting weak and doubtful Ḥadīth¹⁰⁶⁹.

The doubt over *mursal*, regarding its validity as an authoritative indicator of the divine law, arises over the use of the introductory phrase, "*qālā rasūl Allāh* " by a transmitter who clearly had never met the Prophet.

¹⁰⁶⁷Ibid , v3, p20.

¹⁰⁶⁸ *Uṣūl al-Fiqh*, Abu Zahra, p87.

¹⁰⁶⁹ *Al-Iḥkām*, Amidi, v2, pp112-113.

Chapter V

Issues Of Meaning And Interpretation Of Texts

V.1 Dalālat al Manzūm. (Explicit Indication).

Ijtihād is the mechanism by which the jurist may arrive at a new ruling through interpretation (*ta'wīl*). When the text is clear there is no need for interpretation. But the greater part of Fiqh consists of rules which are not clear and are, therefore, to be derived through interpretation and *Ijtihād*, with the view of understanding the intention of the Lawgiver.

For conceptual clarity the early Arab linguists ('Ulamā') have classified words into two main categories, clear and unclear words, and further subdivided these accordingly as to the degree of clarity or ambiguity which characterises each subcategory.

From the viewpoint of their scope these words have also been classified into the general ('*Āmm*) and the specific (*Khāṣṣ*). In the following pages we will summarise these rules of interpretation which they developed in order to help the mujtahid deduce the law from its sources and thus facilitate his efforts in resolving conflicts.

V.1.i The General ('*Āmm*) And The Specific (*Khāṣṣ*)

All words, whether in Arabic or any other language, are basically general, and unless they are specified or qualified in some way they retain their generality¹⁰⁷⁰. The general signifies a plurality of things by virtue of a single signification, as in lion, an animal, and, when the literal meaning is diverted to a non-literal one, bravery. The word "thief" signifies a plurality of thieves.

There exist three types of '*Āmm*':

a) The absolutely general, which may be indicated by a pronoun, as in sūrah Hūd:

"There is no (*mā*) living creature on Earth that God does not provide for."¹⁰⁷¹

And in al 'Anbiyā':

¹⁰⁷⁰ *Al-Baḥr al-Muḥīṭ*, Al-Zarkashī, v3, pp18-20.

¹⁰⁷¹ *Sūrah Hūd* 11:6.

"We have made everything (*kull*) alive from water."¹⁰⁷²

The pronouns *mā* and *kull*, which identify the '*Āmm*' here in the respective *āyāt*, consist of general propositions which preclude specification (*takhṣīṣ*) of any kind. Similarly, the use of the word, *Inṣān* ' (human being) in *sūrah al 'Isrā'*, "Verily the human being is in loss"¹⁰⁷³ includes every human being without exception.

b) The '*Āmm*' which implies a *Khāṣṣ*, as in the application of the word '*al Nās*' (the people) in *sūrah al 'Imrān*:

"Pilgrimage to the House is a duty to God by all people who are able to undertake it."¹⁰⁷⁴

The implication here is that children or lunatics are not able to undertake the *Hajj*, from which they are exempted as a special case.

The above is an indication of restricted reference, and is considered a rational indicator (*dalīl 'aqlī*) which serves to indicate specific reference of a general expression.

c) The '*Āmm*' which is neither absolutely general or meant to imply a *Khāṣṣ*, or where both are general and specific but in a strictly relative sense. We think here, by way of example, of the expression 'the animal' (*al Hayawān*). It is general in relation to 'the human' and 'the donkey', but specific in relation to the body (*al Jism*) and 'the substance' (*al Jawhar*).

V.1.ii Grammatical Terms Identifying The '*Āmm*'

Although the distinction between the '*Āmm*' and the *Khāṣṣ* is basically a conceptual one, the '*Ulamā*' have identified certain linguistic patterns which assist us in differentiating one from the other.

When a singular plural form of a noun is preceded by the definite article, *al*, as in the following Qur'ānic *sūrah* on adultery, "The (*al*) adulterer, whether man or woman, flog them a hundred lashes"¹⁰⁷⁵ indicating that all adulterers must suffer the same punishment, it is identified as '*Āmm*'.

The ^adulterers^ here is a rational object. A non-rational object would be '*dirāhim*'. Pronouns like *jamī'*, *kāffah*, *kull* are generic in effect, as expressed in al '*Anbiyā*':

¹⁰⁷² *Sūrah al-Anbiyā'* 21:30.

¹⁰⁷³ *Sūrah al-Isrā'* 103:1.

¹⁰⁷⁴ *Sūrah Al-'Imrān*, 3:97.

¹⁰⁷⁵ *Surah al-Nūr*, 24:2.

"We made everything (*kull shay'in*) alive from water."¹⁰⁷⁶

When a plural noun is prefixed by a relative pronoun such as '*al-lathīna*' (those)¹⁰⁷⁷, the latter has the effect of reinforcing the generality expressed, as in *sūrah al Nūr*:

"Those who accuse chaste women of adultery and fail to bring four witnesses, flog them eighty lashes."¹⁰⁷⁸

The ruling above is general, since it applies to all those who can be possibly included in its scope. An indefinite word (*nakirah*), when used to convey the negative, is also generic in effect. An example of this is found in the Qur'an, thus '*Lā 'ikrāha fī al-Dīn*'¹⁰⁷⁹ which negates all to which it applies.

The particles *men*, *mā*, *ayy* and *ayna* are specific in application, but in conditional speech these have a general application¹⁰⁸⁰, as manifest in the *sūrah al Baqarah*:

"Whoever (*men*) kills a believer in error, must release a believing slave."¹⁰⁸¹

The conditional interrogatives, which, whichever, when, whenever, are also expressions of the '*Āmm (Ṣighat al 'Āmm)*'¹⁰⁸² When a word is applied to a limited number of things then it becomes specific (*Khāṣṣ*). It may denote a particular individual, Muḥammad, Ṭāriq, or a genus, horse, bird¹⁰⁸³. *Khāṣṣ* can be defined in two ways, as :

- 1) A simple vocable (non-composite) whose meaning is such that a plurality may not participate in it, as in 'Muḥammad' or 'Ṭāriq', a vocable which is a particular (*juz'ī*), a non-composite word.
- 2) Where it is specific in a relative sense to some other expression, usually being subsumed under the meaning of that other expression, the latter signifying something universal.

V.1.iii Specifying The general. (*Takhṣīṣ Al-'Āmm*)

Specifying the general (*takhṣīṣ al 'Āmm*) lies at the heart of the debate on the generality and specificity of expressions¹⁰⁸⁴. Abū al Ḥussayn described *Takhṣīṣ al 'Āmm* as a process of subtraction, whereby a general expression is stripped of some of its referents

¹⁰⁷⁶ *Surah al-Anbiyā'*, 21:30.

¹⁰⁷⁷ *Al-Baḥr al-Muḥīṭ*, al-Zarkashī, v3, pp83-84.

¹⁰⁷⁸ *Sūrah al-Nūr*, 24:22.

¹⁰⁷⁹ *Sūrah al Baqarah*, 256.

¹⁰⁸⁰ *Al-Baḥr al-Muḥīṭ*, Al-Zarkashī, v3, pp73-83, and p257.

¹⁰⁸¹ *Sūrah al-Baqarah*, 4:92.

¹⁰⁸² *Al-Baḥr al-Muḥīṭ*, al-Zarkashī, v3, pp327-340.

¹⁰⁸³ 'Abd al-Raḥīm, *Jurisprudence*, p79.

¹⁰⁸⁴ *Ibid*, v2, p259.

and ends up signifying reference to those that are left over¹⁰⁸⁵.

This definition, says al Āmidī, undermines the distinction between literal and non-literal reference. Rather, al Āmidī sees the process of *Takhṣīṣ al ‘Āmm* as one of diversion (*ṣarf*) from a literal to a non-literal mode of expression, whereby one reference supercedes the other¹⁰⁸⁶.

Essential to the functioning of an indicator of specific reference is that which entails a contradiction of the general reference, as illustrated in the contrast between the Qur’ānic sūrah:

"As for the thief, both male and female, cut off their hands,¹⁰⁸⁷"

an *‘Āmm* expression, and the Sunnaic text on the same theme:

"There is to be no amputation except an amount worth a quarter of a dinar or more has been stolen,¹⁰⁸⁸"

which signifies the word 'thief' to be a specific, not a general, reference.

Similarly, in sūrah al Nūr we have the following:

"Those who accuse chaste women of adultery and fail to bring four witnesses, flog them eighty lashes.¹⁰⁸⁹"

The ruling here is general (*‘Āmm*) since it applies to all those who can possibly be included in its scope. Specification of this *‘Āmm* ruling is provided in the same sūrah where, in the case involving a husband (and wife) four witnesses are substituted for four solemn oaths (which, however, can be countered by the wife)¹⁰⁹⁰. The specification here is that the accusation concerns a married couple.

V.1.iv Contextual Indicators (Adillah Al Takhṣīṣ)

There are two types of contextual indicators which alert us to instances of deviative signification (in the *mejāz* mode) of the specific reference called in Arabic, *adillah al Takhṣīṣ*. These are (a) attached indicators (*adillah al Muttaṣilah*) and (b) detached indicators (*adillah al Munfaṣilah*).

¹⁰⁸⁵ Ibid, v2, p258.

¹⁰⁸⁶ Ibid, v2, p259.

¹⁰⁸⁷ Sūrah al-Mā'idah, 5:38.

¹⁰⁸⁸ Sharḥ Saḥīḥ Muslim, al-Nawawī, v11, p180. See also, *Sunan al-Nisā' 1*, v8, p74. Also, *Sunan al-Darqūṭnī*, v2, p365. Also, *Mā'ālim al-Sunan*, v3, p301. Also, *Al-Mughnī*, Ibn Qudāma, v10, p241. Also, *Badāyat al-Mujtahid*, Ibn Rushd, v2, p384. Also, *Al-Maḥṣūl*, Al-Rāzī, v3, p118. A quarter of a dinar equals three hundred dirham.

¹⁰⁸⁹ Sūrah al-Nūr, 54:21.

¹⁰⁹⁰ Ibid 24:26.

V.I.v Attached Indicators

Attached indicators are syntactically linked to a general expression. Note the following cases. Specification in the form of the exceptive (*Istithnā'*), using the particles *'illā*, *ghayr*, *siwā*, *'adā* ¹⁰⁹¹.

For example, documentation of commercial transactions ¹⁰⁹² involving deferred payments is forbidden in Islām:

"Unless it be a transaction handled on the spot, that you pass around amongst yourselves, in which case it will not be held against you if you failed to put it in writing ¹⁰⁹³,"

According to most Islamic jurists the exceptive phrase is embedded in a syntactic structure where the two phrases which go to make up *istithnā'*, the *mustathnā* and the *mustathnā minhu*, together signify a reference to transactions other than stipulated in the text. In this sense the exceptive imparts a literal rather than a non-literal sense.

Specification in the form of condition (*shart*) ¹⁰⁹⁴, as in the Qur'ānic text al-Nisā' ¹⁰⁹⁵ which prescribes the share of the husband in the estate of his deceased wife:

"In what your wives leave, you are entitled to one half if they have no children",

where the application of the general rule in the first half of the sūrah has been qualified by the condition, properly called a juridical (*shar'i*) condition. Other types of condition in this context are the rational (*'aqli*) condition and the linguistic (*lughawī*) condition.

Specification in the form of description (*ṣifa*) ¹⁰⁹⁶ is best illustrated in the Qur'ānic text, ¹⁰⁹⁷ with regard to the prohibition of marriage with one's step daughter:

"And forbidden to you are your step daughters under your guardianship from your wives with whom you have consummated your marriage".

The first half of this sūrah is qualified by the description (*ṣifa*) in the second.

V.I.vi Detached Indicators (Al-Adillah Al-Munfaṣilah)

Detached indicators show no syntactical link to a general expression, being remote, therefore, from the general expression to which they pertain.

¹⁰⁹¹ *Al-Iḥkām*, Āmidī, v2, pp265-267.

¹⁰⁹² *Sūrah al-Baqarah*, 2:282.

¹⁰⁹³ *Al-Iḥkām*, Āmidī, v2, p265.

¹⁰⁹⁴ *Ibid*, v2, p289.

¹⁰⁹⁵ *Sūrah al-Nisā'*, 4:12.

¹⁰⁹⁶ *Al-Baḥr al-Muḥīṭ*, Al-Zarkashī, v3, pp341-343.

¹⁰⁹⁷ *Sūrah al-Nisā'*, 4:23.

Attached indicators are easily identified through the syntactical link between the general proposition and the specifying, dependent clause.

Detached indicators are difficult to detect due to the absence of this link. The mujtahid, as a consequence, is required to comb the vast corpus of texts (*Nuṣūṣ*) for such indicators.

One simple example is the Sunnaic text which signifies the thief¹⁰⁹⁸ to be a particular class of thief and not a thief in general. This is known as a rational indicator. (*dalil 'aqlī*).

Rational indicators only apply when the texts under scrutiny are unclear. When presented with a clear text then juridical detached indicators prevail. These are, in general, as follows:

a) A Qur'ānic text may specify something general in another Qur'ānic text. Where two textual rulings on one and the same subject exist in the Qur'ān, one being *'Āmm* the other *Khāṣṣ*, then for the majority of 'Ulamā' the *Khāṣṣ* as the definitive (*qaṭ'i*) text would prevail over the *'Āmm* (*ẓanni*.) The latter is also deemed to be *ẓāhir*, thus being both speculative and open to *ta'wīl*.¹⁰⁹⁹

b) A Sunnaic text may specify something general in another Sunnaic text.¹¹⁰⁰

c) The acts of the Prophet¹¹⁰¹, where they can be shown to be exemplary for the Muslim community, may specify something general.

d) *Taqrīr*¹¹⁰² is considered a *qaṭ'i* Sharī'ah proof, and therefore may specify the general.

e) Construed implication (*Dalālat al Maḥmūm*) of which there are two types : *maḥmūm al mukhālafah*¹¹⁰³ (divergent meaning) and *maḥmūm al muwāfaqah*¹¹⁰⁴ (harmonious meaning).

Maḥmūm al Mukhālafah: diverges from the pronounced meaning (*dalālat al Maṭṭūf*) of the text, but nevertheless must be in harmony with that text before being able to specify the general through the process of inference. An example is the Ḥadīth which provides that :

¹⁰⁹⁸ *Sūrah al-Mā'idah*, 5:38.

¹⁰⁹⁹ *Uṣūl al-Fiqh*, Badrān, p383.

¹¹⁰⁰ *Badī' al-Nizām*, fol:125a.

¹¹⁰¹ *Al-Iḥkām*, Āmidī, v, 2, pp306-307.

¹¹⁰² Ibid

¹¹⁰³ Ibid

¹¹⁰⁴ *Al-Baḥr al-Muḥīṭ*, v3, pp223-224.

"When the water reaches the level of two feet (*qullatayn*) it does not carry dirt"¹¹⁰⁵

The inference here is that the water below the level of two feet is capable of retaining dirt and, therefore, cannot be used for ablution purposes.

Mafhūm al Muwāfaqah may be equivalent to the pronounced meaning (*dalālat al Mantūq*) or superior to it. In the former case specification is referred to as *lahn al Khiṭāb* (parallel meaning), and in the latter as *fahwā al Khiṭāb* (superior meaning).¹¹⁰⁶

In the case of parallel meaning the meaning of a text may be extended to cover other similar like conditions, as illustrated in the *sūrah al Nisā'*¹¹⁰⁷ which forbids "devouring the property of orphans", where the ruling is extended to cover forms of maladministration that might lead to loss at the expense of the orphans.¹¹⁰⁸

V.I.vii Muṭlaq (Absolute) And Muqayyad (Qualified)

*Muṭlaq*¹¹⁰⁹, the correlative of *Muqayyad*,¹¹¹⁰ denotes a word which is neither qualified nor limited in its application.¹¹¹¹ For example, a book, a generic noun, applies to any book without restriction. *Muṭlaq* (absolute) differs from the *ʿĀmm* (general) in that the latter comprises all to which it applies, whereas the former can apply to any one of a multitude but not to all.¹¹¹²

Al Bayḍāwī¹¹¹³ says the *Muṭlaq* resembles the *ʿĀmm* and the *Muqayyad* the *Khāṣṣ*. Therefore, anything that specifies the *ʿĀmm* can qualify the *Muṭlaq*. When the *Muṭlaq* is qualified by another word it becomes *Muqayyad*, such as when one describes a house as 'white', or indicates a currency with the use of the *nisba*, as in an Egyptian pound or a French franc.

An example of *Muṭlaq* in the Qurʾān is found in the *sūrah al-Mā'idah*¹¹¹⁴ which is freeing

¹¹⁰⁵ *Sunan Ibn Mājah*, v1, p172, Ḥadīth no 518.

¹¹⁰⁶ *Al-Ḥudūd*, Ibn Fūrak, no 112, p32.

¹¹⁰⁷ *Sūrah al-Nisā'*, 4:10.

¹¹⁰⁸ *Al-Iḥkām*, Āmidī, v2, p305.

¹¹⁰⁹ *Sharḥ al-Luma'*, Al-Shīrāzī, v1, p416. See also, *Al-Iḥkām*, Āmidī, v3, p3.

¹¹¹⁰ *Mudhakirat Uṣūl al-Fiqh*, Al-Shanqīṭī, pp231-234. See also, *Sharḥ al-Kawkab al-Munīr*, v3, pp393-394. Also, *Iḥkām*, Āmidī, v3, pp3-7. Also, *Kashf al-Asrār*, v2, p286. Also, *Irshād al-Fuḥūl*, pp153-156. Also, *Fawātiḥ al-Raḥamūt*, v1, p360. Also, *Al-Madkhal ilā Madhhab Imām Aḥmad Ibn Ḥanbal*, p260. Also, *Nuzhat al-Khāṭir*, v2, pp191-197. Also, *Zawā'id Al-Uṣūl*, Al-Asnawī, pp297-299.

¹¹¹¹ *al-Baḥr al-Muḥīṭ*, v3, pp413-415.

¹¹¹² *Uṣūl al-Fiqh*, Badrān, p374.

¹¹¹³ *Ghāyat al-Wuṣūl*, Al-Anṣārī, p84.

¹¹¹⁴ *Sūrah al-Mā'idah*, 5:92.

a slave. The command in this text is not limited by any kind of slave. Contrast this with another Qur'ānic passage on the expiation of erroneous killing located in sūrah al Nisā'¹¹¹⁵ which is freeing a muslim slave. The first passage is conveyed in absolute terms, the second qualified by the reference to a believing (*mu'min*) slave.

The *Muṭlaq* remains absolute in its application until qualified to become *Muqayyad*.¹¹¹⁶ For example, the prohibition of marriage with mothers-in-law regardless of whether marriage with the daughter has been consummated or not. But when the *Muṭlaq* becomes *Muqayyad* through qualification then the latter ruling prevails over the former.

V.I.viii Mujmal (Ambiguous)¹¹¹⁷

The ambiguous expression might be defined as that which signifies one of two (or more) things, neither of which has any preponderance over the other;¹¹¹⁸ or those expressions that have a single literal meaning but whose intended meaning could be non-literal.

A homonym is generally an ambiguous expression. But whereas a homonym (*mushtarak*) signifies a plurality of co-equal meanings, as in the word '*ayn*' which can mean either 'spring', 'eye', 'spy' and so on, an ambiguous expression proper signifies an intended meaning that happens to be one of several literal meanings, none of which has any preponderance over the other.

Thus if the preponderance of one meaning can be established over all other possible meanings (on the basis of contextual indicators), to the point where the meaning conveyed is more likely or probable in its intention than the others, then the ambiguity is eliminated. Examples of *Mujmal* expressions are as follows:

- a) The simple homonym which gives rise to contraries, as in the word *qura'*, which means both purity and impurity.
- b) The composite homonym; ie, that which vacillates between the sense of one expression and another, as in the Qur'ānic passage¹¹¹⁹ " he.....in whose hand the marriage lies"¹¹²⁰
- c) The pronoun that is ambiguous in respect to its antecedent, as in the sentence, '*Kullu*

mā 'alimahu al Faqīh fahuwa kamā 'alimahu', where '*faqīh*' and '*mā*' in '*kullumā 'alimahu*' are the antecedents.

¹¹¹⁵ *Sūrah al-Nisā'*, 4:92.

¹¹¹⁶ *Al-Iḥkām*, Āmidī, v 3, p 3-7. *Al-Baḥr al-Muḥīṭ*, al-Zarkashī, v3, pp415-420.

¹¹¹⁷ *Al-Iḥkām*, Āmidī, v3, p8. See also, *Al-Baḥr al-Muḥīṭ*, al-Zarkashī, v 4 p362. Also, *Al-Mujmal fī Lugha*, Ibn Fāris, v1, p198. Also, *Al-Qāmūs al-Muḥīṭ*, v4, p362.

¹¹¹⁸ Ibid.

¹¹¹⁹ *Sūrah al-Baqarah*, 2:237.

¹¹²⁰ Ibid.

d) (The expression that vacillates between an assembly of parts (*ajza'*) and an assembly of attributes (*ṣifāt*), as in five is an even number and an odd number; which can either mean that such an expression is characterised by both oddness and evenness (mathematically invalid), or that it is a composite of oddness and evenness (4+1=5).

e) The ambiguous *Wa*, which may function as a conjunction or indicate a new point of departure.

f) The ambiguous attribute; namely, as in "Ṭāriq is a clever doctor". But is he clever as a doctor, or is he a doctor who is clever about things in general; or, perhaps, is he both?

g) Vacillation between several possible, non-literal senses.

h) Expressions which are ambiguous as a result of imprecise indications of specific reference, as in the expression which signifies a reference to some (as opposed to all) members of a given class, without their being a precise indication in the texts as to which members are intended as referents..

i) An exceptive phrase that does not specify exactly what is excepted, as in the Qur'ānic passage¹¹²¹ :

"The beast of the flocks is made lawful to you (for sustenance) except what is announced unto you (herein)"

j) That which vacillates between literal meaning and technical (Sharī'ah related) meaning. The word '*ṣawm*', for example, denotes simple fasting but is usually employed in the context of ritual fasting.¹¹²²

k) *Bayan al Taghyīr*, best exemplified in the Qur'ānic verse, "and so it remained for a thousand years, less fifty", where the exceptive particle, '*illā*', effects the change which leads to the elucidation.

l) *Bayān al Tabdīl*, which effects elucidation through a conditional clause, as manifest in the Qur'ānic¹¹²³:

"*Fa'in arḍa'na lakum Fa'A'ṭūhunna 'ujūrahunna*"
(If they suckled to you, give them their wages)

which transforms an ambiguity into an obligation to become a Sharī'ah proof.¹¹²⁴

¹¹²¹ *Sūrah al-Mā'idah*, 5:1.

¹¹²² *Iḥkām*, Āmidī, v3, pp28-30.

¹¹²³ *Sūrah al-Ṭulāq*, 65:6

¹¹²⁴ *Uṣūl al-Sirakhsī*, v2, p35.

V.I.ix Interpretation Of Clear And Unclear Words

A clear word is in no need of interpretation (*Ta'wīl*), and in itself constitutes the basis of an obligation. A text, however, considered ambiguous because of an unclear word cannot constitute the basis of an action.

Clear words are divided into four types according to the degree of clarity, as follows:

- a) *Zāhir* (manifest), is the least clear of the four types.
- b) *Naṣṣ* (explicit), commands greater clarity than a *zāhir* text.
- c) *Mufasser* (unequivocal), which is clearer than the *Naṣṣ*.
- d) *Muḥkam* (perspicuous), which ranks highest in respect of clarity.¹¹²⁵

V.I.x *Zāhir* And *Naṣṣ*

*Zāhir*¹¹²⁶ is defined by al Ghazālī as an expression from which a meaning is understood in a manner that entails strong conviction (*ghalabat al Zann*) but not certainty.¹¹²⁷ Its linguistic meaning is deemed to be synonymous with the participle *wāḍiḥ* (manifest), and the verbs *ittadaḥa* (to become manifest) and *inkashafa* (to become unveiled).

Al Āmidī, in defining *Zāhir*, does not believe that a strong conviction alone can be derived from its meaning, for such a definition would preclude expressions that do not give rise to such a high level of conviction. Rather, a *Zāhir* expression, for al Āmidī, is that which gives rise to a sense of probability that its meaning is the intended meaning.¹¹²⁸

Although *Zāhir* has a clear meaning it is open to *Ta'wīl* (allegorical interpretation) for the meaning it conveys may not be contextually in harmony (within the context in which it occurs). An example is the sentence, "I saw a lion", where a simile might be implied.

Naṣṣ is a word which does convey a meaning in harmony with the context,¹¹²⁹ and therefore, unlike *Zāhir*, constitutes the dominant theme of that text.¹¹³⁰

¹¹²⁵ *Al-Hudūd*, Ibn Fūrak, p33. *Uṣūl al-Bazdawī*, v1, p51. See also, *Uṣūl al-Sirakhsī*, v1, p165.

¹¹²⁶ *Al-Iḥkām*, Āmidī, v3, p48.

¹¹²⁷ *Al-Mustasfā*, al-Ghazālī, v1, pp384-385. See also, *Kashf al-Asrār*, v1, p46. Also, *Fawātiḥ al-Raḥamūt*, v2, p19. Also, *Uṣūl al-Sirakhsī*, v1, p163. Also, *Al-Burhān*, al-Juwaynī, v1, p416. Also, *Sharḥ al-Kawkab al-Munīr*, v3, pp459-460.

¹¹²⁸ *Iḥkām*, Āmidī, v3, p48.

¹¹²⁹ *Al-Idāḥ Li-Qawānīn al-Iṣṭilāḥ*, fol: 8a.

¹¹³⁰ *Al-Iḥkām*, Āmidī, v3, p48

Despite this factor *Naṣṣ* may be still open to *Ta'wīl*, but in general the degree of susceptibility to *Ta'wīl* is a reflection of the clarity, or lack of clarity, an expression enjoys. The clearer the expression the less susceptibility it has to *Ta'wīl*.

When a *Zāhir* text is open to *Ta'wīl* and at the same time is *Āmm* (general), then it may be specified, and when it is absolute (*muṭlaq*) it may be qualified (*muqayyad*). The literal meaning of *Zāhir*, also, may be set aside for a figurative meaning. A *Zāhir* conveyed, for example, in absolute terms in the first line of *sūrah al Nisā'*¹¹³¹ referring to prohibited degrees of relationship in marriage:

"And lawful to you are women other than these "

is subsequently qualified (to become *Muqayyad*) in the next line,

"provided you seek them by means of your wealth
and marry them properly."

An example of *Naṣṣ* in the *Qur'ān* (a word not to be confused with the description of the definitive texts, *Naṣṣ*, or rulings of the *Qur'ān*) is located in *sūrah al Nisā'*¹¹³² on the matter of assigning monies which is to be deferred until "after the payment of the legacies". The meaning is clear here and not open to *Ta'wīl*.

A *Naṣṣ* open to *Ta'wīl* is the Ḥadīth concerning legal alms (*Zakāh*) of livestock, described as being "one in every forty sheep". For the Hanafis this can mean (through *Ta'wīl*) its equivalent in monetary value.

V.1.xi The Unequivocal (*Mufassar*) And The Perspicuous (*Muḥkam*)

The *Mufassar*¹¹³³ is deemed to be completely clear in meaning and contextually in harmony (within the text). *Mufassar* is not subject to *Ta'wīl* but is open to abrogation (*Naskh*)¹¹³⁴ which, if the reference is the *Qur'ān* and the *Sunnah*, might have taken place sometime during the lifetime of the Prophet. There could be, in other words, no abrogation after the death of the Prophet.

There are two types of *Mufassar*:

- a) The self-explanatory (*Mufassar bi-dhātihi*).
- b) When ambiguity in one text is clarified by another (*Mufassar bi-ghayrihi*).

¹¹³¹ *Sūrah al-Nisā'*, 4:24.

¹¹³² *Ibid*, 4:11.

¹¹³³ *Uṣūl al-Sirakhsī*, v1, p165.

¹¹³⁴ *Ibid*.

An example of *Mufassar bi-dhātihi* is provided in sūrah al Tawbah¹¹³⁵:

"Fight the Pagans altogether (*kāffah*) as they fight you altogether"

There is no need to specify what is obvious here. But where part of the text might be ambivalent in meaning then an explanation is required to remove the ambiguity, as is the case in sūrah al Qadr,¹¹³⁶ where the expression, "*laylat al Qadr*" is clarified in the latter part of the verse as, "a night in which angels and the spirit descend". Thus the text with the foregoing explanation becomes *Mufassar bi-ghayrihi*.

The value (*ḥukm*) of the *Mufassar* is such that acting upon it is often considered the equivalent to the *Muḥkam* (perspicuous) where abrogation is not relevant or applicable.

Specific words (*alfāz khāṣṣah*) that are not open to *Ta'wīl*, are in the nature of *Mufassar*. *Qadhf* (false accusation), for example, in sūrah al Nūr,¹¹³⁷ which denotes by way of punishment eighty lashes, is a fixed penalty and is not, therefore, susceptible to *Ta'wīl*.

Mufassar prevails over *Naṣṣ* (and, therefore, *Zāhir*) as we can illustrate in the following two Ḥadīth which deal with menstruation and ablution or, rather, with a woman who experiences irregular menstruations such that she may need guidance on fresh ablutions. In one Ḥadīth it is stated that:

"A woman in prolonged menstruation must make a fresh *wuḍū'* for every *ṣalāt*"¹¹³⁸,

In the second it is stated that:

"A woman in prolonged menstruation must make a fresh *wuḍū'* at the time of every *ṣalāt*"¹¹³⁹,

The first Ḥadīth, whilst being *Naṣṣ*, is not specific to the point of covering in the command both obligatory and supererogatory (*farā'id wa al-nawāfil*) types of *Ṣalāt*. Either one or the other might be indicated here. In the second Ḥadīth the temporal stipulation makes sure that both types of *Ṣalāt* are covered, and therefore this text is not subject to *Ta'wīl*.

Muḥkam (Perspicuous),¹¹⁴⁰ on the other hand, refers to words and sentences which are

¹¹³⁵ *Sūrah al-Tawbah*, 9:36.

¹¹³⁶ *Sūrah al-Qadr*, 97:1-4.

¹¹³⁷ *Sūrah al-Nūr*, 24:4

¹¹³⁸ *Sunan Abū Dāwūd*, v1, p76, Ḥadīth no 294.

¹¹³⁹ *Ibid*, Ḥadīth no 304.

¹¹⁴⁰ *Al-Tahrīr*, Ibn Hamām, p42. See also, *Al-Burhān*, Al-Juwaynī, v1, p223.

clear beyond doubt and are not open to either *Ta'wil* or *Naskh*.¹¹⁴¹ The expression "*Al Jihād mā d5in ila yawm al Qiyāmah*",¹¹⁴² (*Jihād* will continue till the day of judgement) is a *Muḥkam* that precludes any idea of abrogation. The term '*abadan*' (never), located in a *Naṣṣ* text, is not only a likely indicator of *Muḥkam* it precludes the possibility of abrogation.

There exists two types of *Muḥkam*:

- a) That which is indicated in the text itself (*Muḥkam bi-dhātihi*)
- b) That which is due to the absence of an abrogating text (*Muḥkam bi-ghayrihi*) or because of another factor.

V.1.xii Unclear Words (Alfāz Ghayr Wādiḥa)

Unclear words by themselves do not convey clear meaning. Clarification of such words can only be supplied by the Lawgiver Himself, or by a mujtahid. Such words where clarified by a mujtahid are either called obscure (*Khafī*) or difficult (*Mushkil*). Those words, unclear words in which the ambiguity can only be removed by the Lawgiver Himself, are classified as ambivalent (*Mujmal*) or intricate (*Mutashābih*).

V.1.xiii Khafī.(Ambiguous)

A *Khafī*¹¹⁴³ expression has a basic meaning but is considered ambiguous with regard to certain individual cases to which it is applied. This ambiguity can only be clarified through research and *Ijtihād*, and until done so cannot constitute the basis of a juridical order.

An example is the Ḥadīth, "The killer shall not inherit."¹¹⁴⁴ The Mālikis exclude erroneous killings (*qatil bil Khaṭa'*) from the ruling derived from this Ḥadīth, whilst the Ḥanafis argue for its inclusion, presumably to deter potential killers who may perpetrate murder under the guise of an accident.¹¹⁴⁵

¹¹⁴¹ Usul al-Sirakhsi, v1, p165.

¹¹⁴² Nayl al-Awṭār, v7, p225.

¹¹⁴³ Uṣūl al-Bazdawī, v1, p52. See also, Uṣūl al-Sirakhsi, v1, p167. Also, Al-Idah Li-Qawānīn al-Iṣṭilāḥ, p296. Also, Ḥaṣhiyyat al-Dusūqī 'Alā al-Sharḥ al-Kabīr, v4, p486.

¹¹⁴⁴ Al-Risālah, Al-Shāfi'ī, p80.

¹¹⁴⁵ Sharḥ al-Sirājiyya, Al-Jarjānī, pp9-10.

V.1.xiv Mushkil (Difficult)¹¹⁴⁶

Mushkil denotes a word that is inherently ambiguous, namely words that have more than one meaning in a particular text. The word '*qur*' has two distinct meanings, menstruation (*ḥayḍ*) and the clean period between the two menstruations (*tuhr*). The Shāfi'is favour the former interpretation, the Ḥanafis the latter.

The objective of the mujtahid is to discuss the correct meaning of *Mushkil* within the given context before it can be implemented and adopted as a basis for action.¹¹⁴⁷

V.1.xv Mujmal (Ambivalent)¹¹⁴⁸

The *Mujmal* denotes a word which is inherently unclear, and which gives no indication as to its precise meaning. In the homonym, for example, there is more than one meaning, with no indication as to which might be the correct one, or the Lawgiver has conferred on it a meaning other than its literal one.

The *Mujmal* can only be clarified by the Lawgiver Himself, for He introduced the word in the first place.

Words which have lost their literal meaning in favour of a technical sense, as in the word '*ṣawm*', (fast), where its juridical sense has endured over its literal sense, are *Mujmal*, and will remain so until clarified by the Lawgiver Himself.

An example of this clarification by the Lawgiver of a *Mujmal* expression is provided in the sūrah al Qāri'ah¹¹⁴⁹. At first unclear as to its meaning with regard to the "stunning blow", it is immediately clarified by a subordinate clause:

"The stunning blow!....it is the Day on which people
will all act like stunning moths."

The *Mujmal*, once clarified, becomes a *Mufassar*. However, if partial ambiguity remains then it becomes a *Mushkil*, in further need of research and *Ijtihād*. An example of the latter is provided in al-Baqarah¹¹⁵⁰ :

"God permitted sale but prohibited ribā (usury)"

Partial ambiguity inheres in this statement since not every increase or profit is illegal. The text, in short, remains ambivalent as to what type of increase is permitted.

¹¹⁴⁶ *Uṣūl al-Sirakhsī*, v1, p168. See also, *Uṣūl al-Bazdawī*, v1, pp52-53. Also, *Al-Mir'āt ma' Ḥāshiyyat al-Izmīrī*, v1, p408. Also, *Al-Talwīḥ 'Alā Tawḍīḥ*, v1, p126.

¹¹⁴⁷ *Uṣūl al-Sirakhsī*, v1, p168. See also, *Uṣūl al-Bazdawī*, v1, pp52-53.

¹¹⁴⁸ *Uṣūl al-Sirakhsī*, v1, pp168-169. See also, *Uṣūl al-Bazdawī*, v1, pp53-55.

¹¹⁴⁹ *Surah al-Qāri' ah*, 101: 1-5

¹¹⁵⁰ *Sūrah al-Baqarah*, 2:275.

V.1.xvi Mutashābih (Intricate)

*Mutashābih*¹¹⁵¹ denotes a word whose meaning is a total mystery.¹¹⁵² An example of *Mutashābih* is the *Muqatta'āt* (abbreviated letters) that one finds introducing certain sūras in the Qur'ān as *alif-lām-mīm* and *yā-sīn*, and *hā.-mīm*. One interpretation of their meaning is that they exemplify the inimitable quality (*I'jāz*) of the Qur'ān.

The Mu'tazilis, typically, attempt to see a figurative meaning in the *Mutashābihāt*, in keeping with their rationalist doctrine. The "hands of God is over their hands", taken from sūrah al Fath¹¹⁵³ is perhaps for them a metaphor for power, whereas for the Ash'arites this passage would be interpreted literally and given an anthropomorphic emphasis.

One may not act upon the *Mutashābih* because the correct meaning is not known to any human being. It is known only to God.¹¹⁵⁴

V.1.xvii Ta'wīl. (Allegorical Interpretation)¹¹⁵⁵

Ta'wīl is defined as a departure from the manifest (*ẓāhir*) meaning of a text in favour of another meaning, where there is evidence to justify this departure.

Ta'wīl may specify the general (*ʿāmm*) or qualify the absolute (*mutlaq*), so that they become *Takhṣīṣ* and *Muqayyad* respectively. *Ta'wīl*, though, is not to be confused with *Tafsīr*.¹¹⁵⁶ *Tafsīr* explains the meaning of a given text and deduces a *ḥukm* (rule) from it, within the confines of its words and sentences.¹¹⁵⁷ *Ta'wīl* on the other hand goes beyond the literal meaning of (*ẓāhir*) expressions and reads into them a hidden meaning, often based on speculative reasoning and *Ijtihād*.¹¹⁵⁷

The 'Ulamā' of all epochs, including the Companions, have applied *Ta'wīl* in their efforts at deducing legal rules from the Qur'ān and the Sunnah of the Prophet.¹¹⁵⁸ *Ta'wīl* constitutes a valid basis for judicial decisions as long as the following conditions are met, that:

¹¹⁵¹ *Uṣūl al-Sirakhsī*, v1, p169.

¹¹⁵² Ibid.

¹¹⁵³ *Sūrah al-Fath*, 48:10.

¹¹⁵⁴ *Irshād al-Fuḥūl*, al-Shawkānī, pp31-32.

¹¹⁵⁵ *Uṣūl al-Bazdawī*, v 1, pp43-46. See also *Al-Iḥkām*, Āmidī, v 3, pp49-50. Also, *Al-Baḥr al-Muḥīṭ*, v3, pp437-439. Also, *Al-Mustasfā*, al-Ghazālī, v1, p378. Also, *Al-Burhān*, Al-Juwaynī, v1, pp511-512.

¹¹⁵⁶ *Al-Iḥkām*, Āmidī, v3, p50.

¹¹⁵⁷ *Al-Tahbīr fī 'Ilm al-Tafsīr*, al-Sayūfī, p37.

¹¹⁵⁷ Ibid, p38.

¹¹⁵⁸ *Al-Iḥkām*, Āmidī, v3, p50.

- a) There must be some evidence to warrant the application of *Ta'wīl*.
- b) That the expression of a given text is amenable to *Ta'wīl*, namely those expressions categorised as manifest (*ẓāhir*) and explicit (*Naṣṣ*), but not expressions categorised as unequivocal (*mufassar*) and perspicuous (*muḥkam*) which require no allegorical interpretation of any kind.

Similarly the general (*ʿĀmm*) and the absolute (*mutlaq*) are susceptible to *Ta'wīl*. but this is not the case with the specific (*khāṣṣ*) or the qualified (*muqayyad*).

- c) That the word which is open to *Ta'wīl*. has a propensity, even if only a weak one, in favour of such an interpretation.¹¹⁵⁹ Far fetched *Ta'wīl*. (*ba'īdah*), which go beyond the capacity of the words of a given text,¹¹⁶⁰ were looked on suspiciously by all the 'Ulamā', save the accomodating Ḥanafis. The Zāhiris, following as they tend to do the literal meaning of the Qur'ān and the Sunnah of the Prophet, denounced *Ta'wīl*.

In short the indicator (*dalīl*) in support of *Ta'wīl*. must be strong enough to overrule the initial preponderance enjoyed by the apparent meaning (*ẓāhir*) of a text to replace it with a preponderance of the non-apparent meaning (*mejāzī*).¹¹⁶¹

An example of a strong *Ta'wīl*. is provided in the sūrah al Mā'idah¹¹⁶², specifically in the phrase, "when you stand for prayers", which has been interpreted as "when you intend to pray", the requirement being that a Muslim must perform the ablutions before prayers, not after them¹¹⁶³.

V.2 Texts As Bearers Of Implied Meaning (*Dalālat Ghayr Al-Manẓūm*)¹¹⁶⁴

Law requires compliance not only with the obvious meaning of a text but also with its implied meaning and the indirect indications and inferences that could be drawn from it. In the previous section we dealt with the functioning of texts considered as bearers of explicit meaning (*dalālat al Manẓūm*). We will now turn to the functioning of texts considered as bearers of implied meaning (*dalālat ghayr al Manẓūm*); meanings, that is, which can be discovered between the lines.

One of the fundamental differences between the *dalālat al Manẓūm* and the *dalālat ghayr al*

¹¹⁵⁹ Ibid.

¹¹⁶⁰ *Al-Iḥkām*, Ibn Ḥazm, v3, pp40-41.

¹¹⁶¹ *Tafsīr al-Nuṣūṣ*, Muḥammad Ḥassan Hitou, v1, p378.

¹¹⁶² *Sūrah al-Mā'idah*, 5:7.

¹¹⁶³ *Al-Iḥkām*, Āmidī, v 3 ,pp57-58 .

¹¹⁶⁴ *Al-Iḥkām*, Āmidī, v 3 ,pp60-95.

Manzūm is that the former expressions sometimes signify meanings other than their literal meanings. That is the literal meaning is set aside or diverted to a non-literal (*majāz*) meaning.

When an expression implies a meaning, however, the explicit, literal meaning is not set aside but is retained, along with the implied meaning, to co-exist in the same text.

There exists four different types of implication:

- 1) Explicit meaning (*Ibārat al Naṣṣ*)
- 2) Alluded meaning (*Ishārat al Naṣṣ or dalālat al Ishārah*).
- 3) Inferred meaning, where implication is textually engendered (*dalālat al Naṣṣ or Tanbīh wa al-'Imā'*).
- 4) Required meaning, where implication is embedded in the text (*iqtidā' al Naṣṣ or dalālat al Iqtidā'*).

The fifth category, Construed Implication (*dalālat al Maḥmūm*), basically a Shāfi'i backed notion, is not indicated in the text, as is the case with the four types referred to above, but is arrived at by way of inference.

V.2.i 'Ibārat Al-Naṣṣ:¹¹⁶⁵

Ibārat al Naṣṣ, explicit or intermediate meaning, is based on the words and sentences of the text. This type of implication is the most dominant and authoritative and takes priority over the other levels of implied meanings.

A *dalālat al Naṣṣ* generally conveys a definitive (*qaṭ'i*) ruling, and is in no need of corroborative evidence. Most of the *Nuṣūṣ* Of the Shāfi'ah convey their rulings by way of *Ibārat al Naṣṣ*; ie, observation of the fast during *Ramaḍān*.

V.2.ii Dalālat Al-Iqtidā' (Required Meaning)¹¹⁶⁶

Dalālat al Iqtidā' (required meaning) is implication that must be assumed in order to preserve the truthfulness of the speaker. Take, for example, the Qur'ānic prohibition from

¹¹⁶⁵ *Uṣūl al-Bazdawī*, v1, p68.

¹¹⁶⁶ *Baḍī' al-Niẓām*, fol: 114a.

sūrah al Nisā' ¹¹⁶⁷ :

"Unlawful to you are your mothers and daughters."

V.2.iii *Ishārat Al-Naṣṣ* (Alluded Meaning) ¹¹⁶⁸

Ishārat al Naṣṣ (alluded meaning) imparts, in addition to its principal theme, an alluded meaning which may be obtained through further investigation of the signs in the text.

An example of *Ishārat al Naṣṣ* is found in the Ḥadīth which claims that "You and your property both belong to you father". ¹¹⁶⁹ The implication here, derived by way of *Ishārat al Naṣṣ*, is that a father, when in dire need, may take what he needs of the property of his children without their permission.

V.2.iv *Dalālat Al-Tanbīh Wa Al-'Imā'*

Known also as *dalālat al Naṣṣ*, *dalālat al Tanbīh wa al 'Imā'*, being textually engendered implication, is implication derived more from the spirit or rationale of a text than from the words of the text themselves.

V.2.v *Construed Implication. (Dalālat Al-Mafhūm)* ¹¹⁷⁰

Construed implication, or divergent meaning (*dalālat al-Mafhūm*) is not indicated in the text as is the case with the four (Ḥanafite) divisions of implication discussed above where implied meaning with the help of signs follows from the explicit meaning in the ways described.

This does not necessarily follow with divergent meaning. One has to, rather, detect the implied meaning through reflection (*naẓar*) on the context, by considering the purpose behind such expressions which effect the divergent meaning.

The technical meaning of the term '*mafhūm*' is something more than 'what is understood' in the ordinary sense. Al Āmidī defines '*mafhūm*' as that which is understood from an expression without its being the meaning that the expression articulates. ¹¹⁷¹

The Shāfi'is, however, divided textual implication into *dalālat al Mantūq* and *dalālat al*

¹¹⁶⁷ *Sūrah al-Nisā'*, 4:22.

¹¹⁶⁸ *Uṣūl al-Bazdawī*, v1, pp68-72. See also, *Uṣūl al-Sirakhsī*, v1, pp236-237. Also, *Sharḥ al-Manār*, Ibn Malak, v2, p522.

¹¹⁶⁹ *Miskāt*, al-Tabrīzī, v2, p1002, Ḥadīth 3354.

¹¹⁷⁰ *Al-Ihkām*, Āmidī, v 3, p 22. See Also, *Uṣūl al-Bazdawī*, v2, p375. *Jamī al-Jawāmi'*, v1, p241.

¹¹⁷¹ *Al-Ihkām*, Āmidī, v 3, pp62-68.

Mafhūm. The latter, implied meaning, which is arrived at by way of inference, was subdivided by the Shāfi'is into:

a) *Mafhūm Muwāfaqah* (harmonious meaning or congruent implication).

b) *Mafhūm Mukhālafah* (divergent meaning or counter implication).

Mafhūm Mukhālafah is an implicit meaning on which the text may be silent but is nevertheless in harmony with its pronounced meaning (*dalālat al Manṭūq*). It is for this reason that the Ḥanafis accept *Mafhūm Mukhālafah* implication.

Mafhūm Mukhālafah may be equivalent to the *dalālat al Manṭūq* or superior to it. In the case of equivalence it is referred to as *laḥn al Khitāb* (parallel meaning), and in the case of superiority it is known as *faḥwā al Khitāb* (superior meaning). For this reason Ibn Fūrak designated such *dalālat* as *mafḥūm al Khitāb*.¹¹⁷²

¹¹⁷² *Al-Ḥudūd*, p32. Ibn Furak, Muḥammad Ibn al-Ḥassan al-Anṣārī al-Aṣḥānī al-Shāfi'i One of the leading fiqh, Ḥadīth and grammar specialists of his era. Spent most of his time in Iraq. See, *Mu'jam al-Mu'allifin*, v3, pp229-230. See also, *Wafīyyāt al-A'yān*, v1, p610. Also, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v3, pp52-56. Also, *Al-Nujūm al-Zāhira*, v4, p240. Also, *Al-Wāfi bil Wafīyyāt*, Al-Ṣafadi, v2, p244. Also, *Shadharat al-Dhahab*, v3, pp182-183. Also, *Kashf al-Zunūn*, p200 and p439, p1106, p1960. Also, *Idāḥ al-Maknūn*, Al-Baghdādī, v1, p475; v2, p489.

Chapter VI

Ijtihād And Taqlid And Other Methods Of Reaching Verdict (Fatwā)

VI.1 The Definition Of Ijtihād

Ijtihād is derived from *jahada*, to strive. But *Ijtihād* in juristic terms has an intellectual import, defined as the sum effort made by a jurist for the purposes of inferring with a degree of probability the rules of the Shari'ah from the evidence contained in the sources.¹¹⁷³

One may state that the essential unity of the Shari'ah lies in the degree of harmony achieved between revelation and reason. *Ijtihād* is the principal instrument in maintaining this harmony. The various sources of Islamic law, *Ijmā'*, *Qiyās Maṣlahah* or *Istiḥsān*, which frequently interrelate, are all manifestations of *Ijtihād*.

Then follows the implementation of such rules and their application to particular issues. The inference on the part of the mujtahid amounts to a probability, so that extraction of a ruling from a clear text cannot be considered. The element of speculations in *Ijtihād* implies that the result arrived at is probably correct, but with the possibility of its being erroneous.

Early jurists studied initially the *Ijtihād* of the Prophet Muḥammad, and then later the *Ijtihād* of the following generations. They discussed the issues that *Ijtihād* raised in terms of reason and religious law. They discussed Fiqh issues that admitted of a probable and sure resolutions, and the problem arising from an equality between two or more equal rational indicators.

The jurists discussed also the role of the mujtahid and the validity of his *Ijtihād*, as well as explaining the nature of the relationship between two mujtahids with regard to one imitating the other. In addition the jurists covered discussion of *Taqlid* (imitation), its issues and how it affects the commoner.

Explanation was given on the *Fatwā* (legal opinion), the *Muftī* (who issues the *fatwā*) and the *Mustaftī* (receiver of the fatwa) as to the conditions and characteristics which obtained with the issuance of the *Fatwā*.

¹¹⁷³ *Al-Iḥkām*, Āmidī, v4, p141. See also, *Al-Miṣbāḥ al-Munīr*, p112. Also, *Tajj al-'Arūs*, v4, p408. Also, *al-Ibhāj*, v3, p262. Also, *Mi'rāj al-Minhāj*, v2, p283. Also, *Badī'* fol:219a. Also, *Kashf*, v4, pp14-15.

Only a *faqīh* may practice *Ijtihād*, *Ijtihād* being concerned with the practical rules of the *Sharī‘ah*, which regulate the conduct of the *mukallaf*.

VI.2 Proof (Ḥujjiyyat) Of Ijtihād

Ijtihād is validated by the Qur’ān, the Sunnah and the dictates of reason (‘*aql*). It is validated in *sūrah al Tawbah*¹¹⁷⁴ as follows, 'let a contingent from each division of them devote themselves to a study of religion' devotion¹¹⁷⁵ to a study of religion being the essence of *Ijtihād*, so that the mujtahidūn may guide the community.

In *Sūrah al ‘Ankabūt*¹¹⁷⁶ we have:

"And those who strive (*jahadū*) in Our cause. We will certainly guide them in Our paths".

The Ḥadīth of Mu‘adh Ibn Jabal¹¹⁷⁷ stands out as the foremost example providing clear authority for *Ijtihād*, despite the fact that the Ḥadīth is considered *mursal*.¹¹⁷⁸

VI.3 Conditions Of Ijtihād

The mujtahid must be a Muslim, a competent person and of sound mind, and deemed to have reached a level of intellectual competence conducive to forming independent judgement in the various disciplines of religious learning.

These qualifications first outlined by al Baṣrī (d436/1044)¹¹⁷⁹ and then modified by al Ghazālī¹¹⁸⁰ (d505/1111) and later by Āmidī¹¹⁸¹ (d632/1234), were as follows:

- a) The mujtahid must be competent in the Arabic language so as to fully understand the Qur’ān and the Sunnah, in order to deduce from them the *Aḥkām* in a competent manner.¹¹⁸²
- b) The mujtahid must have sufficient knowledge of the Sunnah with especial reference to the *Aḥkām* texts. He must be cognizant of abrogation in the Sunnah, the general (‘*Āmm*) and the specific (*Khāṣṣ*), the absolute (*Muṭlaq*) and the qualified (*Muqayyid*), and of the reliability of the Narrators in order to distinguish the reliable from the weak reports, the authentic from the spurious.

¹¹⁷⁴ *Sūrah al-Tawbah*, 9:122.

¹¹⁷⁵ *Kashf*, v4, p15.

¹¹⁷⁶ *Sūrah al-‘Ankabūt*, 29:69.

¹¹⁷⁷ *Sunan Abū Dāwūd*, v3, p1019, Ḥadīth no 3585.

¹¹⁷⁸ *Al-Mustaṣfā*, al-Ghazālī, v1, pp63-64.

¹¹⁷⁹ *Al Mu‘tamid fil Uṣūl al Fiqh*, v 2, pp306-365.

¹¹⁸⁰ *Al-Mustaṣfā*, al-Ghazālī, v2, pp350-354.

¹¹⁸¹ *Al-Iḥkām*, Āmidī, v4, pp141-142.

¹¹⁸² *Al-Mustaṣfā*, al-Ghazālī, v2, p102.

- c) He should be aware of the issues on which a conclusive Ijmā' has been made, particularly by the Companions, Successors, and the leading Imāms from the Mujtahadūn.¹¹⁸³
- d) Since the Qur'ān and the Sunnah and Ijmā' do not completely specify the law the mujtahid must frequently have recourse to Qiyās in order to discover a ruling for an unprecedented case. An adequate knowledge of the rules and rules and procedure of Qiyās is essential for the mujtahid.

For Shāfi'ī *Ijtihād* and Qiyās are synonymous, but al Ghazālī deemed *Ijtihād* to have a wider remit than Qiyās, since *Ijtihād* includes methods of reasoning other than Qiyās.¹¹⁸⁴

- e) The mujtahid should be aware of the objectives (*maqāsid*) of the Shari'ah, which consist of the *Maṣāliḥ*. These consist of the five essentials, as well as knowledge of the general maxims of Fiqh, such as removal of hardship (*raf' al-Ḥaraj*) and so on.

VI.4 Classification And Restriction

The four great schools of law adhered only to *Taqīd*. (imitation). But several 'Ulamā' side stepped over the obstacle of *Taqīd* and continued to strive and form their own legal opinions because, they claimed, *Ijtihād* was *fard kifāyah*. (collective obligation), which can never be closed¹¹⁸⁵, as is evident in sūrah al-Tawbah¹¹⁸⁶:

"And the believers should not all go out to fight. Of every troop of them, a party only should go forth, that they (who are left behind) may gain sound knowledge in Religion, and that they may warn their folk when they return to them, so that they may be aware"

Al Ghazālī¹¹⁸⁷ was the first to divide *Ijtihād* into two categories; namely into independent *Ijtihād*, which aims at deducing the law from the evidence in the sources, and limited *Ijtihād*, concerned with the elaboration and implementation of the law within the context of a particular school. This division was extended to five and later to seven classes.

Mujtahids were divided into seven classes, the principal classes being:

- a) Full mujtahid (*mujtahid fi al-Shari'*) assumed such a rank if and when they fulfilled all the requirements of *Ijtihād*

¹¹⁸³ Ibid, v2, p101.

¹¹⁸⁴ Ibid, v2, p54.

¹¹⁸⁵ *Al-Muwāfaqāt*, al-Shātibī, v4, p104. See also, *al-Musawwada*, Āl-Taymiyya, p420. Also, *Al-Milal wa-Niḥal*, al-Shahristānī, v2, p36. Also, *Al-Radd 'alā man Akhlada ilā Al-Ard*, al-Sayūfī, p4.

¹¹⁸⁶ *Sūrah al-Tawbah*, 9:122.

¹¹⁸⁷ *Al-Mustasfā*, al-Ghazālī, v2, pp253-255.

Among the above mentioned rank we must include the likes of Ibrāhīm al-Nakhā'ī¹¹⁸⁸, and the leading Sunnī Imāms.¹¹⁸⁹ It is by the authority of these that the consensus of opinion (analogy), juristic preference, *Maṣlahah* and so on were formulated and established as secondary proofs of Sharī'ah.

The majority of 'Ulama, but not the Hanbalis, have agreed that independent *Ijtihād* has been discontinued, and that a mujtahid of the first class is no longer extant. Can, then, *Ijtihād* be discounted altogether with the Sharī'ah maintaining its own continuation? Yes, says Āmidī and Ibn Ḥāḥib, whilst the Ḥanbalis say the opposite,¹¹⁹⁰ arguing that *Ijtihād* is an obligation or duty, total abandonment of which would amount to an error. According to the Ḥadīth 'My community should never agree upon an error'¹¹⁹¹ such thinking is impossible.

b) Mujtahids within the Madhhab.

Among these we must include Zufar B. al-Hudhayl¹¹⁹² and Ḥasan Bin Ziyād¹¹⁹³ (Ḥanafis); al-Muzanī¹¹⁹⁴ and Al-Nawwawī¹¹⁹⁵ (Shāfi'is); Ibn 'Abd al-Barr¹¹⁹⁶ and Abū

¹¹⁸⁸ Ibrāhīm Ibn Yazīd al-Nakh'ī. Born 46AH/ 606AD in Kūfa, Iraq. One of the Successors. Died 96AH / 815AD. A leading Faqīh and Ḥadīth specialist. See, *al-A'lām*, al-Zirikfī, v1, p80. See also, *Ṭabaqāt Ibn Sa'd*, v6, pp188-199. Also, *Hilayatu al-Awliyyā'*, v4, p219.

¹¹⁸⁹ Mālik, al-Shāfi'ī, Abu Ḥanīfa, Aḥmad Ibn Ḥanbal.

¹¹⁹⁰ *Al-Baḥr al-Muḥīt*, v6, pp216-219. See also, *Irshād al-Fuḥūl*, pp235-237.

¹¹⁹¹ *Ṣaḥīḥ Muslim*, v1, p290, Ḥadīth 1095.

¹¹⁹² Zufar Ibn al-Hudhayl al-'Anbarī, a pupil of Abu Ḥanīfa. Born, 110AH / 728AD, worked in Baṣra where he died 158AH / 775AD. See, *Al-Fihrist*, Ibn al-Nadīm, v1, p204. See also, *Lisān al-Mizān*, Ibn Ḥajr, v2, pp476-478. Also, *Kashf al-Zunūn*, Ḥajjī Khalīfa, v2, p1782. Also, *Mu'jam al-Mu'allifin*, v1, p732. Also, *al-A'lām*, Al-Zirikfī, v3, p45. Also, *Al-Jawāhir al-Muḍī'*, v1, p243; v2, p534. Also, *Shadharat al-Dhahab*, v1, p243.

¹¹⁹³ Al-Hasan Ibn Ziyad al-Lu'lu'ī, al-Kūfī, a leading Ḥanafite. Born about 116AH / 734AD. Held the position of Qāḍī (Judge) in Kūfa. Worked in Baghdād later. Composer of numerous works like *Adab al-Qāḍī*, '*Al-Kharāj*', '*Al-Nafaqāt*', '*al-'Amālī*'. Died 204AH / 819AD. See, *al-Fawā'id al-Bahiyya*, p60. See also, *Al-Fihrist*, Ibn Nadīm, v1, p204. Also, *Tajj al-Tarājum*, p16. Also, *Kashf al-Zunūn*, p1415, p1470, p1474. Also, *Tarikh Baghdād*, v7, p314. Also, *Mu'jam al-Mu'allifin*, v1, p552. Also, *al-A'lām*, al-Zirikfī, v2, p191.

¹¹⁹⁴ Ismā'īl Ibn Yaḥya al-Muzanī al-Maṣrī. A leading Shāfi'ite. Born 175AH / 791AD. Composer of numerous works, like '*Al-Jāmi' al-Kabīr*', '*Al-Jāmi' al-Ṣaghīr*', '*Mukhtaṣar al-Targhīb fī al-'Ilm*'. Died in Egypt 264AH / 878AD. See, *Siyar A'lām al-Nubalā'*, v8, p259. See also, *Al-Fihrist*, Ibn Nadīm, v1, p212. Also, *Kashf al-Zunūn*, p400, p1635, p2000. Also, *Mu'jam al-Mu'allifin*, v1, p383. Also, *al-A'lām*, al-Zirikfī, v1, p329. *Wafīyyāt al-A'yān*, v1, pp88-89. Also, *Ṭabaqāt al-Fuqahā'*, p79. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Hidāyah, p5. Also, *Al-Nujūm al-Zāhirah*, v3, p29. Also, *Shadharat al-Dhahab*, v2, pp148-149. Also, *Murūj al-Dhahab*, v8, p56. Also, *Idāḥ al-Maknūn*, v2, p424.

¹¹⁹⁵ Yaḥya Ibn Sharraf al-Nawwawī, Born in Nawwa, in the south of Syria, 631AH / 1233AD. Composer of numerous works, including '*Tahdhīb al-Asmā' wa al-Lughāt*', '*Minhāj al-Ṭālibīn*', '*Al-Daqā'iq*', '*Taṣḥīḥ al-Tanbīh*', '*Al-Minhāj fī Sharḥ Ṣaḥīḥ Muslim*', '*Al-Taqrīb wa al-Taysīr*', '*Hiliyat al-Abrār (al-Adhkār)*', '*Bustān al-'Arifin*', '*Al-Arb'ūn al-Nawwawīyya*'. (English edn, translated by Denys Johnson Davies and Ezzadin Ibrahim, entitled 'Forty Ḥadīth', 1967, The Holy Qur'ān Publ House, Damascus.) Died, 676AH / 1277AD. See, *Kashf al-Zunūn*, p59, p70, pp96-97, and p115. Also, *Mu'jam al-Mu'allifin*, v4, pp98-99. Also, *al-A'lām*, al-Zirikfī, v8, pp149-150. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Hidāyah, p89. Also, *Al-Nujūm al-Zāhirah*, v7, p676. Also, *Shadharat al-Dhahab*, v5, pp354-356. Also, *Idāḥ al-Maknūn*, v1, p252; v2, p152, p199, p425. Also, *Al-Sulūk*, Al-Maqrīzī, v1, p648. Also, *Al-Bidāyah wa al-Nihāya*, Ibn Kathīr, v13, pp278-279. Also, *Ṭabaqāt al-*

Bakr Ibn Al-'Arabī¹¹⁹⁷ (Mālikis), and Ibn Taymiyyah¹¹⁹⁸ and his disciple, Ibn Qayyim al-Jawziyyah¹¹⁹⁹ (Ḥanbalis).

VI.5 Taqlid

The majority of the Muslims are considered to be imitators of the opinions produced by the four Sunnah schools of Law. The Heretics themselves, namely the Shī'ah groups, the Khawārij, the Ismā'īlis, the 'Alawis, the Druze, the Aḥmadiyya imitated the opinions of their own particular schools of Law. In terms of Uṣūl al-Fiqh '*Taqlid*'¹²⁰⁰ is defined as 'adherence to the dictum of someone else without an authoritative base'.¹²⁰¹

Shāfi'iyya, Al-Subkī, v5, p165.

¹¹⁹⁶ Yūsef Ibn 'Abd Allāh Ibn Muḥammad Ibn 'Abd al-Barr al-Nimrī al-Qurṭabī al-Andalusī, Cordoba (Cordova) Andalusia. Born 368AH / 979AD. Died. 463AH / 1071AD. A Mālikite Faqīh. Worked as a judge in Lisbon, Portugal. Composer of numerous works, like '*al-Durar*', '*Al-Isti'āb*', '*Jāmi' Bayān al-'Ilm wa Fadlihi*', '*Al-Tamhīd*', '*al-Inṣāf*', '*Al-Intiqā'*' '*Al-Inbāh*'. See, *Wafiyyāt al-A'yān*, v2, pp458-461. See also, *al-Bidāyah wa al-Nihāyah*, Ibn Kathīr, v12, p104. Also, *Shadharat al-Dhahab*, v3, pp314-316. Also, *Kashf al-Zunūn*, passim. Also, *Idāh al-Maknūn*, v1, p54; v2, p266 and p230. Also, *Hidāyat al-'Arifin*, v2, pp550-551. Also, *Mu'jam al-Mu'allifin*, v4, pp170-171. Also, *Al-A'lām*, v8, p240. Also, *Mu'jam al-Maṭbū'āt*, Sirkīs, p159.

¹¹⁹⁷ Muḥammad Ibn 'Abd Allāh al-Ma'āfirī al-Ishbīlī al-Andalusī. Born in Ishbiliyya (Seville), 468AH / 1076AD. Became a Qur'ān memoriser. Judge in Seville. Died, 543AH / 1148AD. Composer of numerous works on Fiqh and Ḥadīth and Literature and History. Works include, '*Al-'Awāsim min al-Qawāsim*', '*Sharḥ Sunan al-Tirmidhī*', '*Aḥkām al-Qur'ān*'. See, *Wafiyyāt al-A'yān*, v1, p619. See also, *Tadhkirāt al-Huffāz*, v4, pp86-89. Also, *Al-Bidāyah wa al-Nihāyah*, v12, pp228-229. Also, *Al-Wāfi*, al-Ṣuffadī, v3, p330. Also, *Ṭabaqāt al-Mufasssirin*, al-Sayūfī, pp34-35. Also, *Shadharat al-Dhahab*, v4, pp141-142. Also, *Al-Dībāj*, Ibn Firḥūn, pp281-284. Also, *Kashf al-Zunūn*, passim. Also, *Idāh al-Maknūn*, passim. Also, *Mu'jam al-Mu'allifin*, v3, pp456-457. Also, *al-I'lām*, v6, p230. Also, *Nafaḥ al-Tīb*, v1, p340. Also, *al-Mughrib fī Ḥulā al-Maghrib*, v1, p249.

¹¹⁹⁸ Aḥmad Ibn 'Abd al-Ḥalīm Ibn Taymiyya al-Ḥarrānī al-Dimesḥqī al-Ḥanbalī. Born in Ḥarra, south Turkey. Born , 661AH / 1263AD. A Famous scholar in Damascus in Islamic sciences, died in Damascus castle, 728AH / 1328AD. Considered an Imām in his day. Composer of 4,000 works; See, *al-Durar al-Kāmina*, Imām Ibn Ḥajr, v1, p144. Works include, '*Al-Fatāwā*', '*Al-Ma' qūl wa al-Manqūl*', '*Minḥaj al-Sunnah*', '*Al-Ṣārim al-Maslūl*', '*Rafa' al-Malām*', '*Naqḍ al-Munṭaq*', '*Al-Tawassil wa al-Wasīlah*'. See, *Tadhkirāt al-Huffāz*, al-Dhahabī, v4, pp278-279. See also, *Al-Bidāyah*, Ibn Kathīr, v14, pp132 - 141. Also, *al-Nujūm al-Zāhira*, v9, pp271-272. Also, *Fawāt al-Wafiyyāt*, v1, pp35-45. Also, *al-Dāris fī al-Madāris*, v1, pp75-77. Also, *al-Manḥal al-Ṣāfi*, Ibn Taghrī Baradī, v1, pp336-340. Also, *Mir'āt al-Jinān*, v4, pp277-278. Also, *Al-Badr al-Tāli'*, v1, pp63-72. Also, *Al-Durar al-Kāmina*, v1, pp144-160. Also, *E.I.* v1, p109. Also, *Mu'jam al-Mu'allifin*, v1, pp163-165. Also, *Al-A'lām*, v1, p144.

¹¹⁹⁹ Muḥammad Ibn Abū Bakr Ibn Ayyūb al-Zur'ī al-Dimesḥqī al-Ḥanbalī. Born in Damascus 691AH / 1292AD. Died in Damascus 751AH / 1350AD. Composer of numerous works, including '*I'lām al-Muwaqī'in*', '*al-Turuq al-Ḥukmiyya fī al-Siyāsa al-Shar'iyya*', '*Shifā' al-Ghalīl*', '*Aḥkām ahl-Dhimma*', '*Zād al-Mu'ād*', '*Akhbār al-Nisā*', '*Madārij al-Sālikīn*', '*Al-Rūḥ*', '*Ighādhāt al-Lahfān*', '*Al-Tafsir al-Qayyim*'. See, *al-Durar al-Kāmina*, v3, pp400-404. See also, *Al-Nūjum al-Zāhira*, v10, p249. Also, *Shadharat al-Dhahab*, v6, pp168-170. Also, *al-Wāfi bil-Wafiyyāt*, v2, pp 270-272. Also, *Bughyat al-Wu'āt*, p25. Also, *Al-Badr al-Tāli'*, v2, pp143-146. Also, *Kashf al-Zunūn*, passim. Also, *Idāh al-Maknūn*, v1, p271, p422; v2, p540. Also, *Hidāyat al-'Arifin*, v2., pp158-159. *E.I.* v2, p416. Also, *Mu'jam al-Mu'allifin*, v3, pp164-166. Also, *Mu'jam al-Maṭbū'āt*, Sirkīs, p222. Also, *Al-A'lām*, v6, p56.

¹²⁰⁰ See, *Tāj al-'Arūs*, v5, pp204-205.

¹²⁰¹ *Iḥkām*, Āmidī, v4, p192.

VI.5.i Types Of Taqlid

There are three types of *Taqlid*.

a) *Taqlid* which is forbidden, in the following circumstances:

- i) The shunning of that which Allāh revealed, and the refusal to take it into account, accepting instead the custom of their fathers.
- ii) Where the commoner (*muqallid*) is unaware of the qualifications of the one who is imitated or consulted (the scholar).
- iii) *Taqlid* undertaken instead of referral to a known indicator or proof. This practise is unreservedly condemned by the four Sunnī Imams and the Islamic scholars.¹²⁰²

b) *Taqlid* which is essential. Here a muslim might strive to discover an indicator in order to derive from it a rule of law but fails to find it; so he turns to (*yuqallid*) a man of higher learning, imitating his opinion on the matter in hand. This is considered to be a praiseworthy and meritorious act.¹²⁰³

The implication of this is that a muslim incapable of *Ijtihād* must initiate a *Taqlid* in its place, and it is through the process of *Taqlid* that the commoner is guided by the mujtahid in the matter of the rules of the Sharī‘ah through reference to the *Naṣṣ*, *Ijmā‘* and ratiocination.¹²⁰⁴

c) *Taqlid* which is not obligatory but which is permissible. An example is where a muslim imitates a fellow muslim of higher learning only, not a fellow muslim of a similar scholastic status. This is a Shāfi‘ite opinion.¹²⁰⁵ The Ḥanafis and the Hanbalis, however, state that such a scholar may imitate a scholar of the same standing.¹²⁰⁶

VI.5.ii Extent Of Taqlid

Taqlid is a point of dispute amongst the ‘Ulamā’ with regard to its permissibility in matters of Islamic faith.¹²⁰⁷ The Heretic groups sanctioned the use of *Taqlid*. As for the Ahl al-Sunnah they opposed its use for the following reasons:

a) Reasoning (*naẓr*) is obligatory but is absent from *Taqlid*, and this is impermissible.

¹²⁰² See, *I‘lām al-Muwaqī‘in*, Ibn Qayyim al-Jawziyya, v2, p128.

¹²⁰³ Ibid, v2, p129.

¹²⁰⁴ *Iḥkām*, Amidī, v4, p198.

¹²⁰⁵ *I‘lām al-Muwaqī‘in*, v2, p143.

¹²⁰⁶ *Iḥkām al-Fuṣūl*, p635.

¹²⁰⁷ *Iḥkām*, Amidī, v4, p193.

b) There is an *Ijmā'* which has it that knowledge of Allāh is compulsory, namely knowledge of what is permissible and what is not. Therefore *Taqīd* in this instance is not required.

c) *Taqīd*, in matters of faith, is considered impermissible in legal terms.¹²⁰⁸

Taqīd in applied Fiqh is permissible, where issues admit of resolution based on opinion; in the matters of Faith, however, certainty is required.¹²⁰⁹

VI.5.iii The Elements Of *Taqīd*

The function of *Taqīd*, for the Ahl al-Sunnah, depends on the presence of three elements: The imitated (*muqallad*), the imitator (*muqallid*) and the subject of *Taqīd* (imitation).

a) The *Muqallad*. He is both scholar and mujtahid steeped in the knowledge of the Qur'ān, the Sunnah of the Prophet, Qiyās and the custom of the people.¹²¹⁰ The school of Fiqh he belongs to must be established and valid.

As for the heretic groups who deny Qiyās, they, by implication of depriving themselves of access to analogy which is a constituent part of *Ijtihād*, cannot partake in *Ijtihād* itself and therefore disqualify themselves from *Taqīd*.¹²¹¹

In my opinion the imitated (*muqallad*) must belong to one of the four Sunnī schools of law, because their doctrines are based on the four primary indicators, the Qur'ān, the Sunnah of the Prophet, *Ijmā'* and Qiyās, and their bases, the Uṣūl and applied Fiqh, are laid down so as to fulfil the conditions of *Taqīd*. Here the four Sunnī Imāms are the only true *Muqalladūn* whom the *Muqallid* can safely imitate.

b) *Al-Muqallid*. He is the commoner (*'āmī*), who is incapable of *Ijtihād*, even though he may possess a certain knowledge of *Ijtihād*.¹²¹² In the field of applied Fiqh the *muqallid*, given his incapacity to formulate an independent judgement, is obliged to perform *Taqīd*.

Restricted mujtahids are themselves obliged to perform the role of *muqallid* and imitate the great mujtahids, the four Sunnī Imāms, according to their capacity.¹²¹³ If no mujtahid

¹²⁰⁸ Ibid, v4, pp193-194.

¹²⁰⁹ Ibid, v4, p197.

¹²¹⁰ *al-Ta'rifāt*, p204.

¹²¹¹ *al-Baḥr al-Muḥīt*, al-Zarakshī, v6, p290. Also, *Fatāwa Ibn al-Ṣalāh*, p67.

¹²¹² *Iḥkām*, Āmidī, v4, p197.

¹²¹³ *Fawātih al-Raḥmūt*, v2, p403.

can be imitated on a particular issue then the restricted mujtahid will attempt to formulate an independent judgement of his own, to be imitated in turn by the commoner (‘āmī).

VI.5.iv Subject Of Taqlid

The commoner restricts himself to an imitation of the doctrines of one of the four Sunnī schools of Fiqh and, in the area of applied Fiqh, only if it pertains to the acts of devotion, transactions and sanctions.¹²¹⁴ As for the mujtahid he is able to pass an opinion which relects any one of the four schools of Fiqh with regard to the indicators of law. If those opinions are ratified by the Qur’ān and the Sunnah of the Prophet, he can weigh one opinion against another and see which one preponderates.

VI.6 Ittibā‘ (Submission To The Legal Views Of A School Of Law)

Ittibā‘ in the field of Uṣūl al-Fiqh has the meaning of submission. A muslim submits to (*yatba‘*) the teachings of the Prophet and that of the Companions.¹²¹⁵

The mujtahid for his part follows the opinion of another mujtahid if he feels he is in agreement with him or amenable to his person, in what amounts again to submission. In the latter case submission does not require *Ijtihād*.¹²¹⁶

VI.7 The Difference Between Taqlid And Ittibā‘

The imitator imitates the scholar (*muqallad*) without the need for an indicator. As for he who submits (*muttabi‘*) he follows the path of his principal, or one who is complied with, deriving a rule of law from the indications via the methods of those established by his masters.

Thus submission (*ittibā‘*) here is based on a clear indicator which refers the scholar to the authenticity of the speech of the *muqallad*. According to this authority *Ittibā‘* preponderates over *Taqlid* because the *muttabi‘*, he who submits, is, as we say, able to infer rules from the various indicators at his disposal, whilst the *muqallid* is unable to perform this legistic process.

One would go far as to say that the condition of being able to infer a rule from the various indicators presupposes in the process the concept of submission (*Ittibā‘*) and that this would guide the scholar from error. This is not the case with the commoner (‘āmī) who does not need to submit to anyone when engaging in *Taqlid*, because he cannot be subject

¹²¹⁴ *al-Tamhīd*, al-Asnawī, p526.

¹²¹⁵ *I’lām al-Muwaqī’in*, v2, p139.

¹²¹⁶ *Ibid*, v4, pp108-109.

to error (in the derivation of new rules).

VI.8 Talfiq (Combination Of Views)

Talfiq arose after the 7th century AH / 13th century AD as new issues presented themselves for which no solutions were to be found. Linguistically *Talfiq* has the meaning to unite two things.¹²¹⁷ To unite (*tulāfaqat*) a people is to harmonize (*tallā'imat*) their affairs. Hence the term *Aḥādith Mulaḥḥaqah* (contrived chatter), which is equated with untruth.¹²¹⁸

Talfiq in Uṣūl al-Fiqh consists in reconciling different or opposite views. A scholar might adopt various adverse views which have been expressed on a particular issue and attempt to reconcile them.

For example, according to the Malikis if a man touches a woman accidentally or innocently then this does not violate the requirements for ritual ablution which precede prayer. Mālik made it conditional on the muslim, regarding the performance of the ritual ablution that, in such cases, he rub all over his body and wipe all his head.

Al-Shāfi'ī stated that whether a man touched a woman accidentally or not, the ritual ablution was required anew-he being content with wiping not all of the head, as Mālik ordered, but only a part of it.

The *mulaḥḥaq*, the practitioner of *Talfiq*, might bear in mind when engaging on *Talfiq*, both the condition of Mālik with regard to touching the woman and that of Shāfi'ī with regard to wiping the head.¹²¹⁹ Both Shāfi'ī and Mālik would have considered this example as improper and illegal, because of the above stipulations with regard to ritual ablution, and that Prayer, which follows the ablution, would, according to them, be considered null and void.

The *mulaḥḥaq* in this instance would try and reconcile the two opposing views expressed directly above, choosing the easiest options available. The Ḥanafis, however, denied the existence of *Talfiq*,¹²²⁰ as did the Ḥanbalites who did not permit *Rukḥṣah* (concession). Otherwise, if a muslim performed an action allowing every concession he would be considered a sinner¹²²¹.

¹²¹⁷ *Tāj al-'Arūs*, v13, p430.

¹²¹⁸ *Lisān al-'Arab*, v2, pp306-307.

¹²¹⁹ *Sharḥ al-Budakhshī*, v3, p218.

¹²²⁰ *Manāfi' al-Daqā'iq*, al-Khādāmī, p302.

¹²²¹ *al-Musawwada*, Al Taymiyya, p463.

Summarizing, we can say that the practice of *Talfiq* would appear to be forbidden if it leads to unacceptable practices being declared acceptable, or if it leads to an evasion of Shari'ah duties which would be considered a subterfuge or undermine the objectives of the Shari'ah.¹²²²

In this case the *muqallid* is forbidden from practising *Talfiq* in what amounts to an exercise in blocking the means to evil (*Sadd al-Dharā'ī*); ie, making unacceptable practices acceptable.

Where the necessary conflicts with the unnecessary the former will prevail; namely *Taqlid* will and actually prevailed over *Talfiq*, for *Taqlid* complies with the rules of the Shari'ah, whilst the practise of *Talfiq* leads to steps where some Shariah duties are evaded, which in turn encourages the invoking of *Rukhsah*.

Knowledge of *Ijtihad*, *Ittibā'*, *Taqlid* and *Talfiq* require from its practioners a knowledge of those *adillah* on which the four Sunnī schools of law relied on for the derivation of new rules, enabling the above practioners to weigh one *dalil* against another with a view to choosing the preponderant *dalil*.

Taqlid, on the other hand, was built on the specific opinions of a particular school of law, not dependent on knowledge of the *adillah* which the jurist relied on. As for the practise of *Talfiq*, again its practitioners (*mulaḥḥiqūn*), from all schools, did not require any knowledge of the *adillah* in order to practice it.

VI.9 Ta'āruḍ And Tarjīḥ (The Weighing Of Conflicting Indicators (Tarjīḥ))

The jurists explained the different relationships between indicators of the law, the handling of conflict between indicators, the determination of preponderance through the path that leads to what one is seeking, the division of the opinion gendering indicators into two categories, those that engender opinion regarding simple (*muḥḥad*) matters and those that engender opinion regarding composite (*murakkab / taḥḥiqāt*) matters. They also list the types of *Ta'āruḍ* (contrary) and *Ta'ādul* (equality) which obtain either between two textual indicators, two rational indicators or between one textual and one rational indicator.

Tarjīḥ deals with conflicting indicators¹²²³, which have to be weighed¹²²⁴ against each other to determine the preponderance of one over the other in terms of greater probative

¹²²² *I'laam al-Muwaqī'in*, v3, p253.

¹²²³ *Uṣūl al-Fiqh*, Al-Zuhaylī v2, p1173.

¹²²⁴ *Tājj al-'Arūs*, v4, pp46-47.

strength. Following which the preponderant indicator (*rājih*) will constitute the basis for the mujtahid's formulation of the law.

If a determination of preponderance between two conflicting indicators is not possible,¹²²⁵ then a state of equilibrium (*Ta'ādul*)¹²²⁶ obtains. Not all jurists tolerated (*Ta'ādul*)¹²²⁷ but insisted that one should strive (*Ijtihād*) until a preponderance was achieved.

With regard to the Fuqahā' who accepted (*Ta'ādul*)¹²²⁸ it was not made quite clear whether this denoted a suspension of judgement altogether¹²²⁹, or whether the two conflicting indicators were to be considered co-functional as a single indicator which entailed a contradiction between rules.

Discussion of *Tarjīh* begins with the stipulation of three factors in the determination of preponderance:

- a) Definition of *Tarjīh*.
- b) Why adherence to an indicator deemed preponderant is obligatory.
- c) Which indicators are subject to weighing for the purpose of *Tarjīh* and which are not.

VI.9.i Definition Of *Tarjīh*

According to Āmidī's definition *Tarjīh* is 'the linking of one of two things that are suited to be employed as indicators of a sought for rule of law, but that contradict each other, requiring adherence to one and the denial of the other'¹²³⁰.

Once preponderance has been determined the mujtahid is obliged to formulate the law on the basis of the preponderant indicator. In Āmidī's definition of *Tarjīh* lies implicit a rejection of *Ta'ādul*.

Some jurists held that it was not necessarily the case that the mujtahid was obliged to formulate the law on the basis of the preponderant indicator, but that he could use an indicator that was not preponderant, but Āmidī refutes this.¹²³¹ (Āmidī, v4, pp320-324.)

¹²²⁵ *Lisān al-'Arab*, v9, pp83-87.

¹²²⁶ *Al-'Umad*, v2, pp293-296.

¹²²⁷ *Sharḥ al-Kawkab al-Munīr*, v4, p617.

¹²²⁸ *Al-Iḥkām*, Āmidī, v4, p172.

¹²²⁹ *Sharḥ al-'Umad*, v2, p293.

¹²³⁰ *Al-Iḥkām*, Āmidī, v4, p206.

¹²³¹ *Ibid*, Āmidī, v4, pp206-208.

Āmidī, by way of counter argument, cites the Ijmā'¹²³² of the early generation of Muslims, namely that one is under obligation to choose, out of the two conflicting opinions, the one that is the most preponderant.

For example, reports by 'Ā'isha were favoured over reports by Abū Hurayra because the former was considered more closer to the Prophet than the latter.

Determination of preponderance was also deemed to have inhered in the Prophet's confirmation of Mu'adh's intention, (during the latter's journey to the Yemen) to observe, in the matter of judging a potential incident, first the Qur'ān, then the Sunnah of the Prophet, and then *Ijtihād* in the order of priority of the indicators of the law.

Determination of the preponderance of one conflicting indicator over another can be a matter also of rational choice, in accord with what is customary among rational people. Hence the Prophet's saying, 'What the Muslims see as good is good with God'.¹²³³

VI.9.ii Opposition To Tarjīh

Opponents of *Tarjīh* cite sūrah al-Ḥashr, 'You with eyes, See (Ponder)'¹²³⁴ in support of their argument, claiming that determination of preponderance is not the type of pondering that is commanded in the above āyah, considering here that the Muslim is commanded to ponder (*I'tabara*) without qualification. Hence the Prophet's saying:

'We judge by the outward appearance (*ẓāhir*) of things and leave the hidden aspects to God'.¹²³⁵

Whereby all indicators, including those that do not enjoy preponderance, are classed under the heading of 'outward appearance of things'.

Determination of preponderance, claim its deniers, does also not apply in a court of law where the testimony of trustworthy witnesses is concerned, since the testimony of two trustworthy witnesses is considered equal to that offered by four trustworthy witnesses. What applies to the testimony of witnesses in function applies also to conflicting

¹²³² Ibid, Āmidī, v4, pp206-207.

¹²³³ *Majma' al-Zawā'id*, al-Haythamī, v1, pp177-178. *Kashf al-Khafā'*, Al-'Ajlūnī, v2, p188. See also, *Al-Maqāsid al-Ḥassanah*, al-Sakhāwī, p367. Also, *Al-Maḥṣūl*, v2, p79; v3, p22.; v4, p80, p98; v5, p118, 247, 326, 398.; v6, p127.

¹²³⁴ *Surah al-Hashr*, 59:2. So learn a lesson, o you who have eyes.

¹²³⁵ *Al-Maqāsid al-Ḥassanah*, Al-Sakhāwī, Ḥadīth no 178, pp162-163. See also, *Ṣaḥīḥ al-Bukhārī*, I'tiṣām, p21. Also, *Mukhtaṣar al-Muntahā*, Ibn al-Ḥājib, pp66-67. Also, *Tuḥfat al-Tālib*, p174. Also, *Al-Mu'tabar*, p99, 238, 244. Also, *Al-Durar al-Muntathira*, al-Sayūfī, p20. Also, *Ṭihār al-Inṣāf*, Sibṭ Ibn al-Jawzī, p228. Also, *Ṣaḥīḥ Muslim*, v2, p6. Also, *Al-Idāh Li-Qawānīn al-Iṣtilāḥ*, fol:117a.

indicators.

The Ḥanafis, as al-Bazdawī's definition of *Tarjīḥ* suggests, were not particularly enamoured of *Tarjīḥ*¹²³⁶, unlike the majority of the Fuqahā'. Ibn al-Sā'atī¹²³⁷, a Ḥanafite also, seemingly paving a middle way between the definitions of Āmidī and al-Bazdawī, subtly in the end comes down on the side of the definition held by his own madhhab.¹²³⁸

The Mālikis also, in keeping with the Ḥanafis, refuted the claim of the majority that *Tarjīḥ* was a frequent occurrence in the Uṣūl al-Fiqh, whilst al-Bājī suggests the opposite.¹²³⁹ The Ḥanbalis for their part supported the incidence of *Tarjīḥ* in *Uṣūl al-Fiqh*.¹²⁴⁰

Which indicators are subject to weighing for the purpose of *Tarjīḥ* and which are not? Only indicators¹²⁴¹ that yield opinion (*dalīl ḡannī*) and not knowledge (*dalīl qat'ī*) can be subjected to the test of preponderance.

The reason why a *dalīl ḡannī* indicator is limited to yielding opinion alone is put down to a number of factors. In the case of a textual indicator it may be uncertainty about the authenticity of the text with regard to the reliability of a transmission. One example is the saying of the Prophet concerning the matter of prayers, specifically the matter of *witr*.¹²⁴² This *witr* is obligatory (*wājib*) as say the Ḥanafites, but the Shāfi'is, Mālikis and the Ḥanbalis say it is the lesser *Sunnah Mu'akkadah*.¹²⁴³

Or it may be with regard to an ambiguity in the *matn*, or to an analogy, all which feature in the specification of the preponderant indicators in the conflicts themselves. For example, a text whose transmitter is known for his trustworthiness outweighs a text whose transmitter is not known for this quality.

The *dalīl qat'ī*, on the other hand, is an indicator that underscores a rule of law on which there can be no disagreement. An example is contained in sūrah al-Nisā':

"And unto you belongs a half of that which your wives leave, if they have no child; but if they have a child then unto you the fourth of that which they leave, after any legacy they may have bequeathed, or debt (they may have contracted, has been paid)¹²⁴⁴."

¹²³⁶ *Uṣūl al-Bazdawī*, v4, p78.

¹²³⁷ *Baḍī' al-Nizām*, fol:226b-227a.

¹²³⁸ *Al-Ta'arūḍ wa al-Tarjīḥ*, p300.

¹²³⁹ *Iḥkām al-Fuṣūl*, al-Bājī, p602.

¹²⁴⁰ *Sharḥ al-Kawkab al-Munīr*, v4, p694.

¹²⁴¹ *Sunan Ibn Mājah*, v1, pp369-370.

¹²⁴² God gave Muslims five prayers plus one *witr*.

¹²⁴³ *Al-Fiqh 'Alā al-Madhāhib al-Arba'*, v1, pp173-176.

¹²⁴⁴ *Sūrah al-Nisā'*, 4:12.

The weighing of *dalīl qaṭʿī* indicators, which cannot be in conflict (*taʿāruḍ*) since knowledge is noncontradictory, is therefore impossible.

The conflicts between the *dalīl ḡannī* indicators are generally divided into three main categories, each category containing a reputed thirty six conflicts¹²⁴⁵, as follows:

a) Conflicts involving two textual (*manqūl*) indicators¹²⁴⁶, as, for example, in *Ijmāʿ*¹²⁴⁷. Or, between an *Ijmāʿ Ahl al-Medīna* and a *khābar al-Wāḥid*, which is rejected by the Mālikis.¹²⁴⁸ Or, between a general (*ʿĀmm*) and a specific (*Khāṣṣ*),¹²⁴⁹ or *Manṭūq* and *Maḥmūl*.¹²⁵⁰

b) Conflicts involving two rational (*maʿqūl*) indicators. For example, between two Qiyās, relating either to the principal case (*aṣl*) or to the novel case (*farʿ*). If the former it may relate to the rule governing the principal case or the *ʿillah* behind the rule¹²⁵¹. Or it may involve a Qiyās and *Istiṣhāb* (Ḥanafī).¹²⁵²

c) Conflicts involving a textual indicator and a rational indicator, when rational indicators derive from Qiyās and *Istidlāl*. For example, a conflict between a Ḥadīth and a Qiyās.¹²⁵³

Āmidī, for each category, arranges the conflicts¹²⁵⁴ according to a classification of the various types of preponderance. A sample of these conflicts is as follows:

a) Those that relate to the transmission of text, to the text itself, or to the import of the text.¹²⁵⁵

i) A text with a greater number of transmitters outweighs a text with a smaller number of transmitters.

ii) A text whose transmitter is known for his trustworthiness outweighs a text whose transmitter is not known for this quality.

iii) A text whose transmitter became a Muslim earlier in life outweighs a text whose

¹²⁴⁵ *Al-Baḥr al-Muḥīṭ*, al-Zarkashī, v6, p140.

¹²⁴⁶ *Al-Iḥkām*, Āmidī, v4, p223.

¹²⁴⁷ *Ibid*, v4, pp224-225.

¹²⁴⁸ *Ibid*, v4, pp231-232.

¹²⁴⁹ *Ibid*, v4, pp232-233.

¹²⁵⁰ *Ibid*, v4, p221.

¹²⁵¹ *Uṣūl al-Fiqh*, Al-Zuhayfī, v2, p1200.

¹²⁵² *Uṣūl al-Sirkhasī*, v2, pp263-264.

¹²⁵³ *Sharḥ al-Kawkab al-Munīr*, v4, p627.

¹²⁵⁴ *Al-Iḥkām*, Āmidī, v4, pp207-253.

¹²⁵⁵ *Sharḥ al-Kawkab al-Munīr*, v4, p627.

transmitter became a Muslim in later life.

iv) A text¹²⁵⁶ whose authenticity is guaranteed by the scale of its transmission (*mutawātir*) outweighs a text whose authenticity depends on the trustworthiness of an individual transmitter (*Khabar al-Wāhid*).

b) Conflicts involving two rational indicators.¹²⁵⁷

i) An analogy involving an original rule, that is certain, outweighs an analogy involving an original rule that is merely probable.

ii) An analogy involving an original rule that is agreed not to be abrogated outweighs an analogy involving an original rule whose abrogation is disputed.

VI.9.iii Coverage Of Tarjīh

Al-Shāfi'ī covered discussion of conflicting indicators (*Ta'ārud*) and the weighing of these indicators in his renowned work 'Al-Risālah',¹²⁵⁸ as well as in a work entitled 'Ikhtilāf al-Ḥadīth'.¹²⁵⁹ As with Al-Shāfi'ī al-Shīrāzī (d476AH / 1085AD)¹²⁶⁰ covers *Ta'ārud* and *Tarjīh* indirectly within the scope of other subjects.

For example, al-Shīrāzī discusses *Tarjīh*¹²⁶¹ under the chapter on Abrogation in his celebrated work 'Al-Luma',¹²⁶² as he does¹²⁶³ in a chapter on Ijmā' in the same work,¹²⁶⁴ whilst coverage of *Ta'ārud*¹²⁶⁵ is supplied in a discussion on Qiyās,¹²⁶⁶ which also included mention of *Tarjīh*.¹²⁶⁷ In 'Al-Luma' we also find a discussion of *Tarjīh*¹²⁶⁸ in a chapter on *Ijtihād*.¹²⁶⁹

In Al-Shīrāzī's other major work, 'Sharḥ al-Luma',¹²⁷⁰ we find another mention of *Tarjīh* (of two Ḥadīth texts)¹²⁷¹ in the seventh part of the book. In the eighth section of the same

¹²⁵⁶ *Al-Iḥkām*, Āmidī, v4, p212.

¹²⁵⁷ *Ibid*, v4, pp236-250.

¹²⁵⁸ *Al-Risāla*, pp560-601.

¹²⁵⁹ *Ikhtilāf al-Ḥadīth*, Al-Shāfi'ī, Beirut, first edn 1985.

¹²⁶⁰ Ibrāhīm Ibn 'Afi al-Fayrūz Ābādī al-Shīrāzī. Born in Shīrāz, Irān, 393AH / 1003AD. Then travelled to Baghdād, where he studied and taught. Died in Baghdād. See, *Mu'jam al-Mu'allifin*, v1, p48. See also, *Ṭabaqāt al-Shāfi'īyya*, al-Subkī, v3, pp88-111.

¹²⁶¹ *Kitāb al-Luma' fī Uṣūl al-Fiqh*, Al-Shīrāzī, p54.

¹²⁶² *Kitāb al-Luma' fī Uṣūl al-Fiqh*, Al-Shīrāzī, first edn, Cairo, 1326AH / 1908AD.

¹²⁶³ *Ibid*, p62.

¹²⁶⁴ *Ibid*, pp56-63.

¹²⁶⁵ *Ibid*, p78.

¹²⁶⁶ *Ibid*, pp63-84.

¹²⁶⁷ *Ibid*, p79.

¹²⁶⁸ *Ibid*, p88.

¹²⁶⁹ *Ibid*, pp87-90.

¹²⁷⁰ *Sharḥ al-Luma'*, al-Shīrāzī, paras 648-772.

¹²⁷¹ *Ibid*, v2, pp657-662.

book, in the last chapter on *Ijmā'*¹²⁷² to be precise, the author discusses *Tarjīh*¹²⁷³ vis a vis the Companions, as he does in the section on *Qiyās*¹²⁷⁴ with regard to a conflict between two '*illahs*',¹²⁷⁵ and later the *Tarjīh* of two '*illahs*'.¹²⁷⁶

The subject of *Ta'āruḍ* and *Tarjīh* receives the same scattered treatment in another of this author's work, entitled '*Al-Tabṣirah fi Uṣūl al-Fiqh*'¹²⁷⁷. This work is divided into thirteen sections, in which matters of *Uṣūl al-Fiqh* are covered in diverse form, the first subject being the Command and Prohibition forms¹²⁷⁸ and the last being *Ijtihād*.¹²⁷⁹

In the second section dealing with the '*Umūm*', matter 14¹²⁸⁰ we find a discussion of '*Āmm*' and '*Khāṣṣ*' conflicting indicators¹²⁸¹, as is the case with matter 15 in the same section¹²⁸², whilst conflict between two Qur'ānic indicators¹²⁸³ is covered by matter 17, again in the same section.

In section nine in the same work, matter 27¹²⁸⁴ we have discussion of the weighing of Ḥadīths as indicators of the law with regard to the matter of transmitters.¹²⁸⁵

The equilibrium between the original and novel cases¹²⁸⁶ provides us with the subject of section 12, matter 18 on *Qiyās*;¹²⁸⁷ matter 20 from the same section deals with the role of the '*illah*' in conflicting indicators,¹²⁸⁸ whilst matter 24 deals with conflicting '*illahs*'.¹²⁸⁹

In a third work by al-Shīrāzī, '*Al-Ma'ūnah fi al-Jadl*'¹²⁹⁰, divided into twenty one chapters, we find mention of *Tarjīh* with regard to Ḥadīth indicators,¹²⁹¹ and a discussion of *Tarjīh al-Ma'ānī* in chapter eleven.¹²⁹²

Al-Juwaynī¹²⁹³ (419-478AH) offers a comprehensive coverage of *Ta'āruḍ* and *Tarjīh* in

¹²⁷² Ibid, paras 773-784.

¹²⁷³ Ibid, v2, pp742-751.

¹²⁷⁴ Ibid, Paras 885-1113.

¹²⁷⁵ Ibid, v2, pp938-949.

¹²⁷⁶ Ibid, v2, pp950-965.

¹²⁷⁷ *Al-Tabṣirah fi Uṣūl al-Fiqh*, Al-Shīrāzī, first edn Damascus, 1980.

¹²⁷⁸ Ibid, pp17-104.

¹²⁷⁹ Ibid, pp496-537.

¹²⁸⁰ Ibid, p105.

¹²⁸¹ Ibid, p151.

¹²⁸² Ibid, p153.

¹²⁸³ Ibid, p159.

¹²⁸⁴ Ibid, p289.

¹²⁸⁵ Ibid, p348.

¹²⁸⁶ Ibid, p470.

¹²⁸⁷ Ibid, p416.

¹²⁸⁸ Ibid, p474.

¹²⁸⁹ Ibid, p481.

¹²⁹⁰ *Al-Ma'ūnah fi al-Jadl*, first edn Kuwait, 1987.

¹²⁹¹ Ibid, p121.

¹²⁹² Ibid, pp128-151.

¹²⁹³ *Al-Burhān fi Uṣūl al-Fiqh*, Al-Juwaynī, first edn 1399AH / 1979AD, Qatar.

a section¹²⁹⁴ in his celebrated work, 'Al-Burhān fi Uṣūl al-Fiqh', as he does in his other work on the subject entitled, 'Al-Kāfiyya fi al-Jadl',¹²⁹⁵ where chapters twenty to twenty three cover respectively conflicting indicators,¹²⁹⁶ rules with regard to conflicting indicators,¹²⁹⁷ aspects of *Tarjīh* and its classification,¹²⁹⁸ and finally the weighing of *'illahs* as indicators of the law.¹²⁹⁹

In Ibn Burhān Al-Baghdādī's¹³⁰⁰ work, 'Al-Wuṣūl ilā al-Uṣūl',¹³⁰¹ discussion of *Ta'ārūd*¹³⁰² and *Ta'ādul*¹³⁰³ takes place within the chapter on Qiyās.¹³⁰⁴ According to the Ḥanafīs, discussion of *Ta'ārūd* and *Tarjīh* appears legitimate only when it takes place within the reference of *Ijtihād* or *Taqīd*, as we find with al-Sarakhsī,¹³⁰⁵ and the Shāfi'ite al-Bayḍāwī (d685AH / 1286AD)¹³⁰⁶, whilst the Shāfi'īs in general placed discussion of *Ta'ārūd* and *Tarjīh* in order of importance after *Ijtihād*, as indeed we find with Āmidī¹³⁰⁷ and the majority of the Mālikīs, including Abū Sulaymān al-Bājī,¹³⁰⁸ and last but not least with the Ḥanbalīs, including 'Abd al Qādir Badrān.¹³⁰⁹

VI.10 The Fatwā, The Muftī. The Mustaftī And Istiftā'

The muslim will encounter during his life problems that require legal opinion or advice, being guided either through the Sharī'ah or by the legal advice of a *muftī* to a commoner (*mustaftī*).

VI.10.i Fatwā

Fatwā as an expression in Uṣūl al-Fiqh merely has the meaning of a reply in the form of a legal piece of advice offered to the recipient (*mustaftī*).¹³¹⁰ The *muftī* must have reached the status of a mujtahid with regard to the issuance of the *fatwā*, be knowledgeable of the issues of the *mustaftī* and be familiar with his social standing and customs.

¹²⁹⁴ *Al-Burhān fi Uṣūl al-Fiqh*, v2, pp1142-1292.

¹²⁹⁵ *Al-Kāfiyya fi al-Jadl*, al-Juwaynī, first edn Cairo, 1399AH / 1979AD.

¹²⁹⁶ *Ibid*, p412.

¹²⁹⁷ *Ibid*, p418.

¹²⁹⁸ *Ibid*, p440.

¹²⁹⁹ *Ibid*, pp494-528.

¹³⁰⁰ Aḥmad Ibn 'Alī Ibn Muḥammad Ibn Burhān. Born in Baghdād, 479AH / 1086AD. Was a Ḥanbalite but changed to the Shāfi'ites. Teacher in the celebrated Nizāmiyya school in Baghdād. Died, 520AH / 1126AD. See, *Wafiyyāt al-A'yān*, v1, p35. See also, *Shadharat al Dhahab*, v4, pp61-62. Also, *Mu'jam al-Mu'allifin*, v1, p211.

¹³⁰¹ *Al-Wuṣūl ilā al-Uṣūl*, 2 vols, first edn Riyādh, 1403AH / 1983AD.

¹³⁰² *Ibid*, v2, pp331-332.

¹³⁰³ *Ibid*, p333.

¹³⁰⁴ *Ibid*, v2, pp323-335.

¹³⁰⁵ *Uṣūl al-Sarakhsī*, v2, pp242-289.

¹³⁰⁶ *Al-Ibhāj fi Sharḥ al-Minhāj*, 3 vols, first edn Cairo 1402AH / 1982AD, v3, pp212-262.

¹³⁰⁷ *Al-Ihkām*, Āmidī, v4, p207.

¹³⁰⁸ *Ihkām al-Fuṣūl*, al-Bājī, v2, p645.

¹³⁰⁹ *Nuzhat al-Khāṭir*, 2 vols, v2, p406.

¹³¹⁰ *Anīs al-Fuqahā'*, p309.

VI.10.ii Muftī

The dispenser of legal advice. The conditions of being a *muftī* are as follows:

- a) That he be a mujtahid.
- b) He must be conversant with the rational indicators, Qiyās and so on.
- c) That he must be familiar with the Qur'ān and the Ḥadīth and know how to derive new rules from these sources.
- d) That he be an upright character and trustworthy.
- e) That he has a propensity to guide people and instill in them a knowledge of the rules of the Shari'ah.
- f) That he be a tranquil character and dignified in his approach to life, that he does not covert other peoples' property and is not given to dissimulation.¹³¹¹
- g) That he be a *mukallaf*, namely that he be legally responsible.
- h) That he be a muslim.
- i) That he be rational.
- j) That he be a thinker.
- k) That he be intelligent.
- l) That his conduct be unimpeachable.
- m) That he be vigilant.
- m) That he be inventive in his work.¹³¹²

In addition to the above attributes the *muftī* must meet the following conditions to qualify for the position of *muftī mustaqill* (independent *muftī*).

VI.10.iii Conditions For The Independent Mufti

- 1) He must possess all the requisite attributes referred to above.
- 2) Must be familiar with the Uṣūl al-Fiqh
- 3) He must be knowledgeable of the Qur'ānic sciences, the Ḥadīth, grammar, linguistics, must be steeped in the science of Debate, and be a *faqīh* thoroughly familiar with the issues of Fiqh and its derivative arguments.¹³¹³

Those who meet the above conditions are considered to be an independent, fully qualified *muftī*, (*muftī muṭlaq mustaqill*) *muftīs* of the standing of Shāfi'ī, for example, but these are far and few between. Below the independent *muftīs* are those mujtahids associated with the four Sunnī schools of law, called al-Fuqahā' al-Muntasibīn.¹³¹⁴

¹³¹¹ *Iḥkām*, Amidī, v4, p192.

¹³¹² *Adab al-Muftī Wa al-Mustaftī*, pp85-86.

¹³¹³ *Ibid*, pp86-87.

¹³¹⁴ *Ibid*, p91.

VI.10.iv The Conditions For The Associate Muftī

1) That he belong to one of the four great Sunnī schools of law.

2) He must imitate his Imām in the matter of issuing *fatwā* in terms of its rules and bases. But he can attain to the level of his Imām in the issuance of a *fatwā* if, in his striving, he is able to derive from the sources a new law not before derived by his predecessors, be it his Imām or another scholar, in what in Arabic is called a *fatwā al-muttabi*‘ (submitted *fatwā*). Where a *muftī* locates a *fatwā* issued by his masters and imitates it then this is called a *fatwā al-Muqallid*.¹³¹⁵

3) The third class of *muftī*, the *muftī faqīh*. He does not attain to the level of the *mujtahid al-Muqayyad* (restricted) but is considered intelligent, a guardian of the learning of his school, and is acquainted with the indicators of God's law. The *fatwā* that he issues, however, is limited in scope to his particular school. This class of *muftī* reached numerous levels during the 5th century AH / 11th century AD.¹³¹⁶

4) The fourth class of *muftī* is *faqīh* but does not possess the learning of the third class of *muftī*. For example, he is, unlike the third, only partly knowledgeable of the *adillah* and only partly aware of the issues that *Iftā* covers. If he issues a *fatwā* this can only be based on a previously established *fatwā*. He is not qualified to strive and issue a new *fatwā* of his own.¹³¹⁷

The *muftī* must be, in short, an unimpeachable character answerable to the Muslim community, a trustee of the Sharī‘ah. We see this evidenced in the Ḥadīth, 'The ‘Ulamā’ are the heirs of the Prophets as they themselves are heirs of learning’.¹³¹⁸

Secondly, the *muftī* is to the fore in the dissemination of the rules of the Sharī‘ah. He is the channel through which new laws are realized through their derivation, in the way of *Ijtihād*, from the requisite sources. In his obedience to Islām he occupies the position of leading scholar in his society.¹³¹⁹

The practise of a Shāfi‘ite, say, issuing a *fatwā* on the basis of the transmitted doctrine of another school, say the Ḥanafis, was considered a controversial matter. In this instance if their *muftī* is a *mujtahid* and is skilled in the application of existing legal doctrine to a concrete situation, able to distinguish between differentiation in and the unity of doctrine,

¹³¹⁵ Ibid, p95.

¹³¹⁶ Ibid, pp98-99.

¹³¹⁷ *Adab al-Muftī Wa al-Mustafī*, pp99-100.

¹³¹⁸ See, *Musnad Ahmad Ibn Hanbal*, v5, p196.

¹³¹⁹ *al-Muwāfaqāt*, al-Shātībī, v4, pp244-246.

and is able to debate these matters, then he is qualified to issue a *fatwā*.¹³²⁰

From the above we note that the only scholar to meet the true definition of *muftī* is the independent unrestricted *muftī*. As for the other classes these are, in reality, mere substitutes for the position of *muftī*.¹³²¹ The *fatwā* issued by the independent *muftī* bears the authority of Kings. The *fatwā* issued by the second class of *muftī*, (*muqayyad*) bears the stamp of the deputy king. The *fatwā* issued by the third class associated with the school of law and the *muftī al-Faqīh*, their *fatwās* bear the authority of the under deputy or an authorized representative.¹³²²

As for those muslims who do not meet the above conditions with regard to the issuance of *fatwā*, it is beholden on them to seek advice (*fatwā*) from one of the above classes. If this advice is not available in their own town they must journey to another town in search of a *muftī*. If they cannot journey they must undertake their own search for this advice for a legal ruling, consulting the books of the four Sunnī schools. If they cannot locate a *fatwā* here they must desist.

However, in matters of urgency, they are obliged to refer to the appropriate *adillah* from the Qur'an, the Sunnah, Ijmā' and Qiyās for this *fatwā* and then to the various rational indicators from *Istidlāl*, *Istihsān*, *Maṣlahah al-Mursalah*, 'Urf, 'Ādāt, and *Sadd al-Dharā'i'*.

VI.10.v General Rules Concerning The Muftī

- a) A *muftī* may be a slave or freeman, a man or a woman, single or married.
- b) The *muftī* has to meet the conditions laid down for the *rāwī* (relator)¹³²³ in addition to the above.
- c) The *muftī* cannot be diverted in his task by domestic difficulties or hostilities. Neither can he be involved in (political) intrigue or in the promotion of harm. The *muftī* has to serve the Sharī'ah not the interests of the individual. He has to meet the strict conditions of the *rāwī* rather than that of the *Shāhid* (witness).
- d) The legal opinion of a *muftī* is not binding on a muslim (*mustaftī*) as is the case with a ruling issued by a judge.
- e) If the *muftī* issues a *fatwā* out of personal antagonism then it is disregarded, as will be his testimony in court.
- f) A *muftī* is not necessarily disqualified from holding office if he is blind or mute, pro-

¹³²⁰ *Iḥkām*, Āmidī, v4, p204.

¹³²¹ *Adab al-Muftī Wa al-Mustaftī*, p103.

¹³²² *I'lām al-Muwaqī'in*, v4, p187.

¹³²³ See, The transmission of text, Khabar al-Wahid, 4. chapter IV, part two.

viding he can understand the issues and effectively communicate an opinion on the matter in hand.

g) A *muftī* who is a sinner cannot issue a *fatwā*, even if he is a mujtahid of the highest degree. If a problem arises concerning his own conduct as a muslim then he is entitled to issue a *fatwā* regarding himself, and doesnot require a *fatwā* from outside.

h) A *fatwā* concerning a closet sinner. A closet sinner cannot issue a *fatwā*, as is the case with the sinner in the matter of testimony. But the majority of the *Fuqahā'* say the closet sinner is permitted to issue a *fatwā* when, with regard to his intentions, he is given the benefit of the doubt.

i) The judge in order to issue a *fatwā* must meet the conditions of the *Iftā'* (to give a *fatwā*).¹³²⁴

In my opinion the present day *muftis* do not meet the conditions of *Iftā'* with regard to the qualities of the *muftī* and the conditions and rules, and that they are *muftis* in name only. Their correct present day appellations should be adjusted to the following: After the independent *muftī* there follows the associate *muftī*, then the restricted *muftī*, followed by the discerning *muftī* and finally by the *muftī* as guardian of the Qur'an and the Ḥadīth.

VI.10.vi Commoner (Mustaftī)

He is the receiver of the *fatwā al-Sharī'ah*.¹³²⁵ from the *muftī*, the scholar in *Sharī'ah* studies who is knowledgable of the four permissible acts of devotion, transactions, penalties and penances, as well as knowledgeable of the four primary indicators of Gods law.¹³²⁶

a) The *mustaftī* can either be a mujtahid or a commoner. If he is a mujtahid and strives to formulate an opinion on an issue, and if he arrives at a new ruling, he has no need to submit to another mujtahid regarding the same issue or regard the *fatwā* of a *muftī* on the same issue.

If this mujtahid does not strive to formulate an opinion the 'Ulamā' differ as to the permissibility of a mujtahid submitting to the *fatwā* of another mujtahid. The prevailing opinion is that a scholar of a mujtahid's standing cannot imitate the opinion of another scholar, be he of a higher level or otherwise.¹³²⁷ In this respect the scholar is obliged to issue a *fatwā* himself on the said issue.

¹³²⁴ *Adab al-Muftī Wa al-Mustaftī*, pp106-107.

¹³²⁵ *Anīs al-Fuqahā'*, p309.

¹³²⁶ Ibid.

¹³²⁷ *Iḥkām*, Amīdī, v4, p177.

b) If the *mustaftī* is not a mujtahid, then : if he is a *bona fide* scholar:

1- He must submit to the legal opinion of the *muftī*,¹³²⁸ as indicated in the Qur'ān, Ijmā' and the rational indicators.

For example we have the Qur'ānic line,

"And We sent not (as Our messengers) before thee other than men whom We inspired. Ask the followers of the remainder if you know not."¹³²⁹

Ijmā'ic support for consultation is established through the argument that the commoners in early Islam, that of the Companions and Successors, sought *fatwas* from mujtahids. Since no one objected to this practice, an Ijmā' was established in its favour.

As for the rational argument, if someone who is not qualified to give a legal opinion but nevertheless has to arrive at a solution to a particular issue, that person will be placed under great hardship which runs contrary to the principle found in the Qur'ān and the Sunnah, namely that there can be no hardship in religion.¹³³⁰

2- If the *mustaftī* is a commoner who has some knowledge required to engage in *Ijtihād* on the issue at hand but not the full minimal amount that would enable him to lay claim to the status of mujtahid.¹³³¹

VI.10.vii Duties Of The Mustaftī

1) He must be vigilant in his choice of the right *muftī* whom he imitates and on whom he relies, be aware that the *muftī* is a pious scholar, and that he is unimpeachable.¹³³²

2) The *mustaftī* must choose a *muftī* with whom he is contemporary, if possible. If this is not possible he must choose an associate *muftī*. On no account must he refer to or consult with the Companions or Followers.¹³³³ The reason for this is that the *fatwās* of the Companions were vague in meaning and content, and that to submit to a *muftī* who is contemporary with the *mustaftī* and is therefore knowledge of the issues at hand, is the most preferable option.¹³³⁴

3) If a problem arises to which the *mustaftī* requires a solution (*fatwā*) he looks to his Imām. If the opinion of his Imām differs from that held by the the *mustaftī's* contempo-

¹³²⁸ Ibid, v4, p193.

¹³²⁹ *Sūrah al-Anbiyā'*, 21:7.

¹³³⁰ *Ihkām*, Āmidī, v4, p198.

¹³³¹ Ibid, v4, p193.

¹³³² *al-Ghiyāthī*, Imām al-Haramayn al-Juwaynī, pp408-410. Also, *Ihkām*, Āmidī, v4, p200, 204.

¹³³³ *al-Ghiyāthī*, p410.

¹³³⁴ Ibid, p414.

rary regional *muftī*, then he can do two things: he looks to his Imām whom he will imitate. If the contemporary regional *muftī* agrees with the Imam in the matter of the *fatwā*, then the *mustaftī* is obliged to submit to that *fatwā*.

If, however, a difference of opinion obtains between the Imām and the contemporary regional *muftī*, the *mustaftī* can turn to the general *muftī* for a *fatwā*. If the general *muftī* agrees with the regional *muftī*, then the *mustaftī* must abide by their ruling. If however the general *muftī* issues a *fatwā* different in meaning to that held by the regional *muftī* then the *mustaftī* must abide by the ruling held by the general *muftī*.

4) In the absence of a *muftī* of mujtahid standing the *mustaftī* is obliged to turn to a discerning *faqīh*, skilled in analogy, because the consultation of a *faqīh* is preferable to no result at all to issues whose resolution is vital to the well being of the Sharī‘ah.¹³³⁵

5) If a commoner submits to a *fatwā* issued by some mujtahid on a particular issue and acts on the *fatwā*, then the following applies: The ‘Ulamā’ agree that once the *fatwā* has been acted on then it cannot be revoked. This posits the question: If the commoner had not acted on the *fatwā* in the first place would he be in the right to ask another *muftī* for advice on the same issue for a more suitable ruling? The answer is in the positive.

A commoner, that is, may move from mujtahdid to mujtahid in search for advice on different questions. He is not bound to adhere to the doctrine of one mujtahid, as supported by the Ijmā‘ of the Companions inferred from the fact that none of them objected when commoners of their generation consulted different mujtahids on different questions.

If, however, the *mustaftī* declares his loyalty to a particular school then he becomes bound, with regard to all legal questions, to the doctrine of the mujtahid from that school.¹³³⁶

6) The *mustaftī* must treat the *muftī* with respect and in a well mannered way and do not approach him awkwardly.¹³³⁷

7) The *mustaftī* ought not to demand from the *muftī* the reasoning behind his *fatwā*. But if he wishes to know this information for his own peace of mind he can ask the *muftī* at a later hearing.

8) If the *mustaftī* presents his enquiry in written form then space must be allowed

¹³³⁵ Ibid, pp426-427.

¹³³⁶ *Ihkām*, Āmidī, v4, p205.

¹³³⁷ *Adab al-Muftī Wa al-Mustaftī*, p108.

alongside the enquiry for the *muftī's* complete reply in order that the *fatwā* may be rendered in full¹³³⁸ and at the same time may not be separated from the enquiry.

9) If the *mustaftī* wishes to direct his enquiry to a number of *muftis*, then he must send his first enquiry to the oldest and most learned of the *muftis*, and then by decending degrees to the remainder, as required by the protocol of Islamic law.¹³³⁹

10) If two versions of one issue emerges from the consultation amongst the *muftis*, it is incumbent on the *mustaftī* to try and unite the two versions. If unification of the two views is not possible then he must choose the most preferable of the two versions with regard to the standing of the *muftis* in question *vis a vis* their knowledge of the Islamic religion, learning and their measure of piety. This involves for the *mustaftī* an element of reasearch into the lives of the said *muftis*.¹³⁴⁰

11) If the characters of the two *muftis*, in the matter of respectability and intellectual skill, cannot be separated but have issued *fatwas* that differ one from the other, one which is forbidden, for example, and the other permissible, then the *mustaftī* can choose between the two without further research into the characters of the *muftis*.¹³⁴¹ Once the *mustaftī* has made his choice of *fatwā* it is irrevocable.¹³⁴²

The classes of the *mustaftis* (commoners) vary according to the level of education they have attained. What unites them is their obligation to seek a *fatwā* from a *muftī* or his authorized deputy, pursuing this practice according to the rules laid down for the process of *Istiftā* (consultation), whenever an issue arises requiring a *fatwā* and its susequent application, or when that *fatwā* is refused in favour of another *fatwā*. As we have seen above the 'Ulamā' have devised means which facilitate the process of *Iftā* and *Istiftā* in keeping with the necessities of the Sharī'ah.

VI.10.viii The Subject Of Istiftā (Consultation)

The subject of *Istiftā* covers those issues which beset the people in their ordinary daily lives with regard to their conduct under Sharī'ah rules. These issues can be divided into two types.

a) Issues which admit only of a sure resolution based on certainty, (namely transmitted, text based issues).

¹³³⁸ *Al-Faqīh Wa al-Mutafaqqih*, al-Khaṭīb al-Baghḍādī, v2, pp180-181.

¹³³⁹ Ibid, v2, pp181-182.

¹³⁴⁰ Ibid, v2, pp203-204.

¹³⁴¹ *Sharḥ al-Luma'*, al-Shīrāzī, v2, p1039.

¹³⁴² *al-Musawwadah*, Āl Taymiyya, p463.

1) The rational issue is comprehended through a rational process. For example, the existence of Allah is comprehended through his creations which we can comprehend rationally. The issue of Monotheism is confirmed by both reference to the text (*Naṣṣ*) and rational based argument.

According to the standard definition there inheres in *Istiftā* the concept of submission (*Ittibā'*). But rational based issues concerning the faith of Islam (*'Aqīdah*) do not require submittance on the part of the *mustaftī* for the simple reason that such issues do not admit imitation (*Taqlīd*) or *Iftā* (issuance of a *fatwā*) on matters of Islamic faith, either by the mujtahid or the scholar.¹³⁴³

An example of the above issues are as follows: the issue concerning the existence of Allāh, what is possible with regard to Allāh, namely that he creates, and what is impossible, namely that He is created. Then there is the issue of what is obligatory with regard to Allāh, concerning his good qualities (*ṣifāt al-Ḥasana*) and what is forbidden to Him with regard to pejorative qualities; ie, mean, tyrannical qualities (*ṣifāt al-Sayyi'ah*).¹³⁴⁴

2) The Speech of Allāh is an issue which cannot be comprehended except through reference to the Text (*Naṣṣ*). Just as the rules of the Sharī'ah are comprehended by reference to the Qur'ān, the Sunnah, and Ijmā'. For example, the duties of Prayer, is a text based issue.

b) Issues (*al-Masā'il al-Zānniyya al-Ijtihādiyya*) which admit a resolution based on opinion only, the solution to which requires *Ijtihād* and *Istiftā* and, by implication, submission (*Ittibā'*) on the part of the *mustaftī*.¹³⁴⁵ These issues lack an unambiguous positive indicator but which admit a resolution based on opinion only; ie, probable, or have a positive indicator which is obscure (*Khafī*).¹³⁴⁶

It appears from the above that the function of *Istiftā* is restricted, in the way of *Ijtihād*, to issues of applied Fiqh. *Istiftā*, for example, is not possible with regard to issues of (Islamic) Faith, for Faith must be based on certainty and we have seen that in the field of *Istiftā* only issues, which admit a resolution based on opinion, obtain.¹³⁴⁷

We noted that the subject of *Istiftā* covers the actions of the people in the way of religious devotion, the undertaking of transactions, the measure of punishments, the objectives of

¹³⁴³ *al-Maḥṣūl*, al-Rāzī, v6, p91.

¹³⁴⁴ *Iḥkām*, Āmidī, v4, p193.

¹³⁴⁵ *Ibid*.

¹³⁴⁶ *al-Musawwadah*, pp441-442.

¹³⁴⁷ *al-Tamhīd*, al-Asnawī, p15.

reward and the goal of penance. The *muftī*, for him to produce a *fatwā* covering these issues, must have knowledge of the rules which govern these actions with regard to their permissibility (*Hilāl*) or their proscription, (*Harām*) their incumbency (*Wājib*), their recommendation (*Mandūb*), and their reprehensibility (*Makrūh*).

The means to the *muftī* of deriving new rules from the sources at hand and the issuance of *fatwas* rests with his knowledge of Uṣūl al-Fiqh. Without this means the *muftī* will not be able to apply existing legal doctrine to a concrete situation, the function of *Istiftā*. He, then, who is not acquainted with these principles, cannot perform the task of *muftī*.

1348

PART THREE

Critique And Editing Of Baḍī' Al-Niẓām

Chapter I

Introduction

PART THREE is the final section of the first volume of my thesis which is primarily a critical edition of the manuscript entitled Baḍī' al-Niẓām which brings together the two approaches of 'Uṣūl al-Bazdawī' and the 'Iḥkām' of Āmidī, the two approaches, that is, of the Fuqahā' and the Mutakallimūn, respectively, in the religio-legal field of Islamic Jurisprudence.

Beside this introduction, PART THREE consists of three other chapters. Chapter II gives biographical accounts of the three authors, al-Bazdawī, Āmidī and Ibn al-Sā'ātī who wrote the three works 'Uṣūl al-Bazdawī', the 'Iḥkām' of Āmidī, and the Baḍī' al-Niẓām, respectively.

Chapter III presents a description of the manuscript Baḍī' al-Niẓām which is the subject of our critical edition. Finally, Chapter IV is the conclusion which finishes Volume One of my thesis. This is followed by the Bibliography and the Appendices.

Chapter II

Authors

We offer in this chapter brief biographies of the three authors central to my editing of *Badi' al-Nizām*, namely al-Bazdawī, al-Āmidī and Ibn al-Sa'āfi. Each one of them, in their respective works, have a bearing on my thesis. Here, I cover the nature of their scholarship and the works they have composed. No comment has been made in this chapter on the political aspect of the writers and their works since this has been covered in part one, namely that which deals with the history of Islamic jurisprudence.

II.1 Al-Bazdawī

The full name of the author of 'Uṣūl' is 'Alī Ibn Muḥammad Ibn al-Ḥusayn Ibn 'Abd al-Karīm Ibn Mūsā Ibn 'Isā Ibn Mujāhid al-Nasafī al-Bazdawī. He was born in 400AH / 1010AD¹³⁴⁹ and takes his *nisba* from the fortress town of Bazdah.¹³⁵⁰

Al-Bazdawī hails not only from a scholarly family but also a scholarly town. Amongst these scholars we must include al-Bazdawī's brother Al-Qāḍī Muḥammad Ibn Muḥammad¹³⁵¹ and his paternal grandfather, the leading muḥadith 'Abd al-Karīm Ibn Mūsā Ibn 'Isā al-Bazdawī.¹³⁵²

Of 'Abd al-Karīm's progeny we must include 'Alī Ibn Muḥammad, his son, Ḥassan,¹³⁵³

¹³⁴⁹ Fakhr al-Islām al-Bazdawī, a leading faqīh and Ḥadīth specialist of his day. Died. 482AH / 1089AD. See, *Tajj al-Tarājim*, Ibn Kuṭlūbughā, pp30-31. See also, *Al-Jawāhir al-Muḍiyya*, al-Qurashī, p372. Also, *Sīr A'lām al-Nubalā'*, v18, p602. Also, *al-Fawā'id al-Bahiyya*, al-Laknawī, pp124-125. Also, *Kashf al-Zunūn*, p112, 467, 553, 563, 568, 1016, 1485, 1581. Also, *Iḍāḥ al-Maknūn*, al-Baghdādī, v2, pp334-388. Also, *Hadiyat al-'Arifin*, v1, p693. Also, *Ṭabaqāt al-Fuqahā'*, Ṭāsh Kubrī Zāda, p85. Also, *Miftah al-Sa'āda*, Ṭāsh Kubrī Zāda, v2, p110, 141, 164, 242. Also, *Dhakhā'ir al-Turāth al-'Arabī*, v1, p277. Also, *Tarikh al-Adab al-'Arabī*, v6, pp288-290. Also, *Mu'jam al-Mu'allifin*, v2, p501. Also, *al-A'lām*, v4, p328. Also, *al-Ansāb*, al-Sim'ānī, v1, pp339-341. Also, *al-Ikmāl*, Ibn Māqūlah, v1, p473. Also, *Al-Qāmūs al-Islāmī*, Aḥmad 'Āṭiyya, v1, p310. Also, *al-Wāfi Bil-Wafiyāt*, al-Ṣufādī, v21, p430. Also, *Mu'jam al-Buldān*, Yāqūt, v1, p409. Also, *Al-Lubāb*, Ibn al-Athīr, v1, p146. Also, *Sīr A'lām al-Nubalā'*, v18, p602. Also, *Al-Fath al-Mubīn*, al-Marāghī, v1, p276. Also, *Abjad al-'Ulūm*, p209.

¹³⁵⁰ *Mu'jam al-Buldān*, Yāqūt, v1, p146.

¹³⁵¹ He was a judge, (known as Ṣadr al-Islām), in Samarkand, born 421AH / 1030AD. Died, 493AH / 1100AD. Composed numerous works on Fiqh and Uṣūl al-Fiqh and Arabic grammar. Published works include 'Uṣūl al-Dīn'. See, *Tajj al-Tarājim*, pp48-49. See also, *Kashf al-Zunūn*, 1581. See also, *Hadiyat al-'Arifin*, v2, p77. See also, *Mu'jam al-Mu'allifin*, v3, pp638-639. See also, *al-A'lām*, v7, p22. Also, *Fawā'id al-Bahiyya*, p188. Also, *Jawāhir al-Muḍiyya*, v2, p116; pp270-271. Also, *Tarikh al-Adab al-'Arabī*, Brockelman, p290. Also, *Miftah al-Sa'āda*, v1, p124, 168; v2, p165. Also, *Sīr A'lām al-Nubalā'*, v19, p49. Also, *Al-Ansāb*, al-Sim'ānī, v1, pp339-341.

¹³⁵² A great Ḥadīth scholar. See, *al-Ikmāl*, Ibn Māqūla, v1, p374. Also, *Al-Ansāb*, Al-Sim'ānī, v1, pp339-340.

¹³⁵³ Abū Thābit al-Ḥassan Ibn 'Alī Ibn Muḥammad. A leading Ḥanafite scholar and Ḥadīth specialist. Born after 470AH / 1078AD. He was a judge in Samarkand and Bukhārā. Settled in Bazdah. Died, 557AH / 1162AD. Related

Muḥammad Ibn Muḥammad and his son Aḥmad,¹³⁵⁴ all belonging to the Ḥanafite school of law.

Without doubt Al-Bazdawī is considered one of the outstanding scholars of his age yet we are provided with very little information as to how he acquired his education, save to say that he, because of his outstanding scholarship, acquired the title of sheikh al-Ḥanafīyya and the leader of the Imāms.¹³⁵⁵

In particular Bazdawī excelled in Fiqh and Uṣūl al-Fiqh,¹³⁵⁶ and mastered the Islamic sciences as a whole, which is manifest throughout his works. He was the author of numerous compositions, most prominent of which is his 'Uṣūl'. It might be said that al-Bazdawī's 'Uṣūl' was the *ne plus ultra* of works on Uṣūl al-Fiqh on account of the number of comments, notes and commentaries it attracted. Certainly it is one of the leading Ḥanafite works of the era.

So, it was not for nothing that Ibn al-Sa'āṭī chose the 'Uṣūl' of al-Bazdawī (along with the *Iḥkām* of Āmidī) to illustrate the essential differences between the approaches of the Mutakallimīn and the Fuqahā' in the field of Uṣūl al-Fiqh.

Among his other works is *Risālah Fi Qirā'āt al-Muṣallī*, Qur'ānic readings pertaining to prayer. This *risālah* can be found in Dār al-Kutub al-Miṣriyya library, under the reference :*Fiqh Ḥanafī* 3/ 114.

Kitāb al-Mabsūṭ, on the subject of *Fatwā*, which is another of his compositions, can be found in the Waḥī al-Dīn Effendī collection, Maktabah Sulaymaniyya library, Istanbul under the reference number 1454. Appendix no VIII lists Al-Bazdawī's compositions as well as some of the commentaries on his works.

II.2 Al-Āmidī

His full name is 'Alī Ibn Abī 'Alī Ibn Muḥammad Ibn Sālim al-Taghlibī. His nickname was Abū al-Ḥassan and his laqab Sayf al-Dīn.¹³⁵⁷ He was born in 551AH / 1156AD in

the *Musnad* of 'Alī Ibn 'Abd al-'Azīz al-Baghawī. See, *Mu'jam al-Buldān*, Yāqūt, v1, p409. See also, *al-Ansāb*, al-Sim'ānī, v1, p339.

¹³⁵⁴ Abu al-Ma'ālī Aḥmad Ibn Muḥammad Ibn Muḥammad. A Ḥanafite scholar. A Ḥadīth specialist, was a judge in Marū and taught Fiqh in Bukhārā. See, *al-Jawāhir al-Muḍiyya*, v2, p270. al-Sim'ānī was a pupil of his. See, *al-Ansāb*, al-Sim'ānī, v1, p339.

¹³⁵⁵ Ibid.

¹³⁵⁶ *Al-Fath al-Mubīn*, al-Marāghī, v1, p276.

¹³⁵⁷ See, *Sīr A' lām al-Nubalā'*, v22, pp364-367. See also, *Tārīkh al-Ḥukamā'*, al-Qifī, pp240-241. Also, *Wafiyāt al-A' yān*, v3, pp293-294. Also, *Mir'āt al-Jinān*, v4, pp73-75. Also, *Mir'āt al-Zamān*, v8, p691. Also, *al-Takmilah*, *al-Mundharī*, v3, p2508. Also, *Dhayl al-Rawḍatayn*, Abū Shāmah, p161. Also, *Shadharat al-Dhahab*, v5, pp142-144. Also, *Hussen al-Mahādarah*, al-Sayūfī, v1, p259. Also, *Kashf al-Zunūn*, ppassim.

Āmid¹³⁵⁸ where he first learnt the Qurʾān and became a Qurʾānic reciter.¹³⁵⁹

Later he moved to Baghdād where he continued his studies.¹³⁶⁰ He spent ten years in Baghdād as a Ḥanbalite, studying with Ibn al-Mannī al-Ḥanbalī.¹³⁶¹ After that he studied the subject of *ʿIlm al-Khilāf* (science of Disputation) with Abū al-Qāsim Ibn Faḍlān,¹³⁶² excelling in his study, and memorizing the works *Ṭarīqat al-Sharīf*¹³⁶³ and the *Zawāʿid* of Asʿad al-Mayhanī.¹³⁶⁴

Āmidī completed his Qurʾānic recital before the learned ʿAlā Ibn ʿUbayda.¹³⁶⁵ He studied the wisdom of the Ancients and developed his intelligence to a high level, which tended to colour his attitude on religion.¹³⁶⁶ In Karkh¹³⁶⁷, a locality of Baghdād, he studied the ancient sciences of the Christians and Jews¹³⁶⁸, Karkh being at that time a centre for the Shīʿah and the study of philosophy.

Also, *Hadiyat al-ʿArifin*, v1, p707. Also, *Idāḥ al-Maknūn*, passim. Also, *Rawḍāt al-Jinān*, pp489-492. Also, *ʿUyūn al-Anbāʾ*, v2, pp174-175. Also, *Lisān al-Mizān*, Ibn Ḥajar, v3, pp134-135. Also, *Al-Bidāyah Wa al-Nihāyah*, Ibn al-Kathīr, v13, pp140-141. Also, *Duwal al-Islām*, v2, p103. Also, *Tarīkh al-Islām*, al-Dhahabī, fol: 112-113, (Ayasophia library manuscript no 3012). Also, *Nujūm al-Zāhira*, v6, p285. Also, *al-Dāris Fi al-Madāris*, v1, p362, p389 p393; v2, p4, p129. Also, *Ṭabaqāt al-Shāfiʿiyya*, al-Subkī, v5, p129. Also, *Mizān al-Iʿtidāl*, al-Dhahabī, v1, p439. Also, *al-Aʿlām*, v4, p332. Also, *Muʿjam al-Muʿallifin*, v2, p479. Also, *Miftaḥ al-Saʿādah*, passim.

¹³⁵⁸ Ibid.

¹³⁵⁹ With Sheikh Muḥammad al-Ṣaffār and Sheikh ʿAmmār al-Āmidī. See, *Sīr Aʿlām al-Nubalāʾ*, v22, p366.

¹³⁶⁰ *Tarīkh al-Hukamāʾ*, al-Qifṭī, p161.

¹³⁶¹ Abū al-Faṭḥ Nāṣr Ibn Fityān Ibn Muṭr Ibn al-Mannīyya al-Nahrawānī. Sheikh Ḥanābilah. Born 551AH / 1156AD. A leading faqīh and Ḥadīth specialist. Died, Maʾmūniyya, Baghdad, 583AH / 1187AD. See, *Sīr Aʿlām al-Nubalāʾ*, al-Dhahabī, v22, p364; v21, pp137-138. Also, *Al-Kāmil Fī al-Tarīkh*, v11, p230. Also, *al-Takmilah*, al-Mundharī, v1, Biography no 21. Also, *Duwal al-Islām*, al-Dhahabī, v2, p70. Also, *Dhayl Ṭabaqāt al-Ḥanābilah*, Ibn Rajab, v1, p358. Also, *al-Ibar*, al-Dhahabī, v4, p251. Also, *Shadharat al-Dhahab*, v4, p277. Also, *Al-Nujūm al-Zāhira*, v6, p106.

¹³⁶² Abū al-Qāsim Yaḥyā al-Wāthiq Ibn ʿAlī Ibn al-Fuḍl Ibn Habat Allāh Ibn Barakah al-Baghdādī. Born in 517AH / 1123AD. A leading faqīh, disputant, jurist, scholastic theologian, muḥadith and debator. Teacher at the Dār al-Dhahab. Died, 595AH / 1198AD. See, *Sīr Aʿlām al-Nubalāʾ*, v21, pp257-258; v22, p364. Also, *al-Kāmil*, Ibn al-Athīr, v12, p65. Also, *al-Takmilah* al-Mundharī, biography no 491. Also, *Dhayl al-Rawḍatayn*, Abū Shāmah, p15. Also, *Shadharat al-Dhahab*, v4, p321. Also, *al-Nujūm al-Zāhira*, v6, p153. Also, *Ṭabaqāt al-Shāfiʿiyya*, al-Subkī, v7, p322. Also, *al-Bidāyah Wa al-Nihāyah*, Ibn Kathīr, v13, p21. Also, *Mirʾāt al-Jinān*, al-Yāfiʿī, v3, p479. Also, *al-Jāmiʿ al-Mukhtaṣar*, Ibn al-Sāʿī, v9, p11. Also, *al-Ibr*, al-Dhahabī, v4, p289.

¹³⁶³ *Sīr Aʿlām al-Nubalāʾ*, v22, p364.

¹³⁶⁴ Majd al-Dīn, Abū al-Faṭḥ Asʿad Ibn Abī Naṣr Ibn al-Faḍl al-Qurashī al-ʿUmari al-Mayhanī. Born, 461AH / 1069AD. A leading faqīh, disputant and jurist, inheritance studies, and became a teacher there. Left for Baghdād, where he became a teacher in the Madrasah al-Nizāmiyya, 507AH / 1113AD. Died, Hamadhān, Iran, 527AH / 1133AD. See, *Sīr Aʿlām al-Nubalāʾ*, v19, pp633-634. See also, *al-Kāmil Fī al-Tarīkh*, v10, p281. Also, *Wafiyāt al-Aʿyān*, v1, pp207-208. Also, *Al-Ibar*, al-Dhahabī, v4, p71. Also, *Ṭabaqāt al-Shāfiʿiyya*, Subkī, v7, pp42-43. Also, *Ṭabaqāt Asnawī*, v2, pp424-425. Also, *Ṭabaqāt al-Shāfiʿiyya*, Ibn Qāḍī Shahbah, v1, pp299-300. Also, *Al-Nujūm al-Zāhira*, v5, p252. Also, *Shadharat al-Dhahab*, v4, p80. Also, *Kashf al-Zunūn*, p1113. Also, *Hadiyat al-ʿArifin*, v1, p204.

¹³⁶⁵ *Sīr Aʿlām al-Nubalāʾ*, v22, p364.

¹³⁶⁶ Ibid, v22, p366.

¹³⁶⁷ See, *al-Rawḍ al-Miʿtār*, pp490-491.

¹³⁶⁸ *Tarīkh al-Hukamāʾ*, al-Qifṭī, p161.

It is at this stage that Āmidī exchanged his Ḥanbalite persuasion for that of the Shāfi'ite. His intellectual activities gave rise for concern amongst the Fuqahā' who questioned the validity of his faith. For fear of persecution Āmidī left Iraq¹³⁶⁹ for Aleppo, Syria.¹³⁷⁰ There he met Shihāb al-Dīn al-Suhrawardī al-Maqtūl.¹³⁷¹

Shihāb al-Dīn al-Suhrawardī died in 587AH / 1191AD and we can gather from this that Āmidī must have met the former before this said date, but we do not know exactly when or the time Āmidī left Iraq for Syria, save to say that he was known to have entered Syria in 582 / 1186AD, residing there for a while.¹³⁷²

We know, however, that when Shihāb al-Dīn al-Suhrawardī was executed Āmidī had reached the age of 38. Āmidī resided in Iraq for 10 years, after which he made his way to Syria to study alongside the like of al-Mujīr al-Baghdādī.¹³⁷³ Whilst resident in Iraq Āmidī worked on the *Shifā'* of Avicenna¹³⁷⁴ and the *Shāmil* of al-Juwaynī.¹³⁷⁵

Āmidī worked intensely and read widely, especially the *Mustaṣfā*,¹³⁷⁶ particularly excelling in the rationalist sciences, logic and disputation. Students from all over the Islamic world came to sit at his feet and learn.¹³⁷⁷

We do know that Āmidī studied in Damascus at the feet of al-Mujīr al-Shāfi'ī,¹³⁷⁸ the latter

¹³⁶⁹ Ibid.

¹³⁷⁰ Second city of Syria, situated in the north. See, *al-Rawḍ al-Mi' tār*, pp196-197. See also, *Subḥ al-A'shā*, al-Qalqashandī, v4, p116. Also, *Rihlat Ibn Jubayr*, p213. Also, *Rihlat Ibn Baṭūṭa*, p220. Guide to Syria, pp182-214.

¹³⁷¹ Yahyā Ibn Ḥabash Ibn Amīrak, Abū Futūḥ al-Suhrawardī, born 549AH / 1154AD. Became a leading sufi. Published works include, '*Hikmat al-Ishrāq*', '*Hay Ibn Yaḡzān*', '*Risālah Fī l'itqād al-Ḥukamā*', '*Qiṣṣat al-Ghorbah al-Gharīb*', '*al-Lamahāt*', '*Majmū' Fī al-Hikmat al-Ilāhiyya*', '*Hayākil al-Nūr*'. See, *Dhakhā'ir al-Turāth al-'Arabī*, v1, p581. Imprisoned in Aleppo castle on the order of King al-Zāhir Ghāzī, after a fatwa was issued by the 'Ulamā', requiring the death of Suhrawardī. He was hanged in 587AH / 1191AD. See, *Wafiyāt al-A'yān*, v2, pp345-348. Also, *Mu'jam al-Udabā'*, Yāqūt, v19, pp324-320. Also, *Lisān al-Mizān*, Ibn Ḥajar, v3, pp156-158. Also, *Al-Nujūm al-Zāhira*, v6, pp114-115. Also, *Kashf al-Zunūn*, passim. Also, *Idāḥ al-Maknūn*, v1, p330, 521; v2, p503, 607. Also, *Hadiyat al-'Ārifīn*, v2, p521. Also, *Mu'jam al-Mu'allifīn*, v4, p90. Also, *al-A'lām*, v8, p140. Also, *Abjad al-'Ulūm*, v2, pp106-1-7.

¹³⁷² See, *al-Dāris Fī al-Madāris*, al-Nu'aymī, v1, p293. See also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shahbah, v2, pp79-80.

¹³⁷³ Mujīr al-Dīn Abū al-Qāsim Maḥmūd Ibn al-Mubārak Ibn 'Alī al-Wāsiṭī al-Baghdādī. Born 517AH / 1123AD. Became legist and logician in Baghdād and the sheikh of the Shāfi'is there. Taught at the Nizāmiyya school. Made his way to Damascus where he taught the Shāfi'is. Left Damascus for Shīrāz and Wāsiṭ. Died, 592AH / 1195AD. See, *Sīr A'lām al-Nubalā'*, v21, pp255-256. See also, *Al-Takmilah Fī Wafiyāt al-Naqala*, al-Mundharī, biography no 363. See also, *Dhayl al-Rawḍatayn*, Abū Shāmah, p10. Also, *al-'Ibar*, al-Dhahabī, v4, p280. Also, *Nujūm al-Zāhira*, v6, p140. Also, *Shadharat al-Dhahab*, v4, p311. Also, *Ṭabaqāt al-Shāfi'iyya*, Subkī, v7, p287. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shahbah, v2, pp47-48, p49, 73, 94. *Mir'āt al-Jinān*, al-Yāfi'ī, v3, p473.

¹³⁷⁴ Avicenna. Published in Cairo, 1952.-1976, 19 vols. See, *Dhakhā'ir al-Turāth al-'Arabī*, v1, pp145-147.

¹³⁷⁵ See, *Sīr A'lām al-Nubalā'*, v22, p364.

¹³⁷⁶ al-Mustaṣfā, By al-Ghazālī, published three times, Cairo between 1904-1906. Pub in Baghdād, 1970, and in Cairo once more 1937.

¹³⁷⁷ *Sīr A'lām al-Nubalā'*, v22, p364.

¹³⁷⁸ See 17, above.

teaching at a school, al-Jārūkhiyya, that was specially commissioned for him¹³⁷⁹ in 592AH / 1195AD, the very year that al-Mujīr died. This indicates to us that Āmidī was present in Damascus some ten years earlier.

Then Āmidī made his way to Cairo in 592AH / 1195AD¹³⁸⁰ at the age of 41 years, indicating that he spent some 17 years in Damascus, having left Āmid his place of birth at the age of 14 and Iraq at the age of 24, as confirmed by the following source, 'He moved to Syria where he mastered the rationalist sciences with a perfection hardly to be matched, so that there was no one to compete with him in this respect. Then he moved to Egypt.'¹³⁸¹

Whilst in Baghdad he excelled in the rationalist sciences, in polemics, debate and disputation,¹³⁸² as well as in Fiqh and Uṣūl al-Fiqh, perfecting this excellence whilst resident in Damascus.¹³⁸³

Āmidī was flexible above all in his studies, never adopting one particular method (be it Ḥanbalī or Shāfi'ī) in the presentation of his work. Neither was he frightened to mix with and study alongside jews and christians and philosophers and ṣūfis in his quest to broaden his mind and extend the range of his studies.

When Āmidī left Syria for Egypt we are not sure that he went by a direct route, but would suggest he followed the popular one for all students and the 'Ulamā, by dropping off at the learned centres of Jerusalem and al-Khaḥīl (Hebron) on the way.

Neither, so it appears, did Āmidī travel to Egypt with merely a visit in mind but obtained a position of teacher at the Manāzil al-'Izz (al-'Azīziyya).¹³⁸⁴ Next he obtained the post of assistant at the al-Nāṣarī school, located next to al-Shāfi'ī's mausoleum, and then obtained a professorship at the al-Zāfirī school mosque,¹³⁸⁵ teaching philosophy and logic there. It is also maintained that Āmidī taught at the Shāfi'ī school,¹³⁸⁶ and also at the Qirāfa al-Ṣughrā school.¹³⁸⁷

In time Āmidī created for himself a reputation for outstanding study, not fearing to ven-

¹³⁷⁹ This school was located near the Umayyad mosque in Damascus, built by Jārūkh al-Turkomānī. See, *al-Dāris Fī al-Madāris*, v1, pp225-232.

¹³⁸⁰ *Tarīkh al-Hukamā'*, al-Qifī, pp240-241.

¹³⁸¹ *Wafiyāt al-A'yān*, v3, p293.

¹³⁸² *Abjad al-'Ulūm*, v3, p118.

¹³⁸³ Ibid.

¹³⁸⁴ *Tarīkh al-Hukamā'*, al-Qifī, pp240-241.

¹³⁸⁵ *Tabaqāt al-Shāfi'iyya*, al-Asnawī, v1, p138.

¹³⁸⁶ *Tabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shahbah, v2, p79.

¹³⁸⁷ *Wafiyāt al-A'yān*, v3, p293.

ture in the fields of philosophy and logic as a means of extending his range of study, whereby his works became widely known, particularly in the subjects of philosophy and scholastic theology.¹³⁸⁸

Āmidī's reputation, however, secured for him a number of enemies who envied his intellectual prowess. These enemies accused him of following a rationalist line in debate, of lacking faith and they drew up a petition against him and presented it to a leading *ʿālim* for endorsement. The latter came to the defense of Āmidī with these lines:

"You envy the youth because of his position
And now the people are his enemies.
Like the fellows of a beautiful woman
Who criticize her beautiful face
Because of envy and anger
her face becomes censured."¹³⁸⁹

When Amidi realized the extent of the conspiracy against him he left Egypt under cover for Syria where he resided at Ḥamāt¹³⁹⁰ in 615AH / 1218AD at the age of 64 after having resided in Egypt for 23 years. There he took refuge with the ruler Manṣūr¹³⁹¹ who offered patronage to Āmidī¹³⁹² and his like. Shortly after, Āmidī moved to Damascus at the invitation of the ruler al-Muʿazzam ʿIsā¹³⁹³ who appointed him for the position of teacher at the ʿAzīziyya school.¹³⁹⁴

Āmidī enjoyed his sojourn in Damascus under the rulership of Muʿazzam. When the latter died, however, in 624AH / 1227AD he was succeeded by the conservative al-Ashraf,¹³⁹⁵

¹³⁸⁸ *Tarīkh al-Ḥukamāʾ*, al-Qifī, pp240-241.

¹³⁸⁹ *Wafiyāt al-Aʿyān*, v3, pp293-294.

¹³⁹⁰ A major city in Syria, located at the centre, between Aleppo and Hums. See, *Guide to Syria*, pp169-181. See also, *Al-Rawḍ al-Miʿtār*, p199. *Subḥ al-Aʿshā*, v4, p140. Also, *Riḥlat Ibn Jubayr*, p257.

¹³⁹¹ Abū Maʿālī Muḥammad Ibn ʿUmar al-Muẓẓafar Ibn Shāhhinshāh Ayyūbī, ruler of Ḥamāt after his father, Muẓẓafar died. A leading scholar of his day in the Ḥadīth, literature, history. Died, 617AH / 1221AD. Pub works include, *Maḍmār al-Ḥaqāʾiq Wa Sirr al-Khalāʾiq*. See, *Dhakhāʾir al-Turāth al-ʿArabī al-Islāmī*, v22, p857. See also, *Fawāt al-Wafiyāt*, v2, pp252-253. Also, *Kashf al-Zunūn*, p1102. Also, *al-Wāfi Bil-Wafiyāt*, al-Ṣufadī, v4, pp259-260. Also, *al-Bidāyah Wa al-Nihāyah*, Ibn Kathīr, v13, p93. Also, *Dhayl al-Rawḍatayn*, p124. Also, *al-Salūk*, al-Maqrīzī, v1, p205. Also, *Tarīkh Ibn al-Wardī*, v2, p139. Also, *al-Aʿlām*, v6, p313. Also, *Muʿjam al-Muʿallifin*, v3, p561.

¹³⁹² *Shifāʾ al-Qulūb*, p339.

¹³⁹³ Al-Muʿazzam Sharif al-Dīn ʿIsā Ibn al-ʿĀdil Muḥammad Ibn Najm al-Dīn Ayyūb. Born, 576AH / 1180AD. A great Ḥanafite scholar in grammar, literature. Studied in Damascus and died there 624AH / 1227AD. His published works include, *al-Sahm al-Muṣīb Fī al-Radd ʿAlā al-Khaṭīb al-Baghdādī*. See, *Dhakhāʾir al-Turāth al-ʿArabī al-Islāmī*, v2, p858. See also, *Al-Nujūm al-Zāhira*, v6, pp267-268. Also, *al-Dāris Fī al-Madāris*, v1, pp579-581. Also, *Tajj al-Tarājim*, p36. Also, *al-Jawāhir al-Muḍiyya*, v1, pp402-403. Also, *al-Fawāʾid al-Bahiyya*, al-Leknawī, pp151-153. Also, *Wafiyāt al-Aʿyān*, v1, p396. Also, *al-Kāmil Fī al-Tarīkh*, v12, p183. Also, *Hadiyat al-ʿĀrifīn*, v1, p808. Also, *al-Salūk*, al-Maqrīzī, v1, p224. Also, *al-Aʿlām*, v5, p108. Also, *Muʿjam al-Muʿallifin*, v2, p592.

¹³⁹⁴ The most prominent school of the times. See, *al-Dāris Fī al-Madāris*, al-Nuʿaymī, v1, pp382-389, 393.

¹³⁹⁵ Muẓẓafar al-Dīn Abū al-Faṭḥ Mūsā Shāh Arman Ibn al-ʿĀdil. Born, 576AH / 1180AD. Ḥadīth specialist and poet. Ruler of Jerusalem, then of Syria. Died, 635AH / 1237AD. See, *Sīr Aʿlām al-Nubalāʾ*, v22, pp122-127. Also, *Mirʾāt al-Zamān*, Sibṭ Ibn al-Jawzī, v8, pp 711-717. Also, *Wafiyāt al-Aʿyān*, v5, pp330-336. Also, *al-Nujūm al-Zāhira*, v6, pp300-301. Also, *Shadharat al-Dhahab*, v5, pp175-177. Also, *Dhayl al-Rawḍatayn*, p165. Also, *al-ʿIbar*, al-Dhahabī, v5, p146.

who leaned towards the policies of the Muḥadithūn and the Ḥanbalis. It was during his reign that a religio-political division occurred between the Ḥanbalis and the Shāfi'īs.¹³⁹⁶ It was also under his rule that the policy, of isolating and banning scholars who studied philosophy and logic, prevailed. Under such conditions Āmidī was accused of lack of faith,¹³⁹⁷ and he retired to his house. He died shortly after in 631AH / 1233AD and was buried in Qāsyūn¹³⁹⁸ mountain, north of Damascus. Such was the life of Sayf al-Dīn al-Āmidī, forced to flee from one town to another, then living an enforced residence until his death.

We cannot enumerate all of Āmidī's students but those we recall include al-Qāḍiyān Ibn Sannī al-Dawlah Ṣadr al-Dīn¹³⁹⁹ and Muḥyī al-Dīn Ibn al-Zakī.¹⁴⁰⁰ Āmidī was admired by both students and teachers alike. 'Izz al-Dīn Ibn 'Abd al-Salām¹⁴⁰¹ said of him, 'I have never heard of anyone to match the standard of Āmidī in giving lectures that sound like sermons.¹⁴⁰² Al-Ḥassan Ibn Muḥammad Ibn Sharf Shāh al-'Alawī al-Istirābādī¹⁴⁰³ too praised Āmidī for similar qualities, as did al-Dakhwār,¹⁴⁰⁴ and Ibn Abī Uṣaybi'ah¹⁴⁰⁵

¹³⁹⁶ See, *Sīr A'lām al-Nubalā'*, v22, p126.

¹³⁹⁷ *Mizān al-I'tidāl*, al-Dhahabī, v2, p449.

¹³⁹⁸ See, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shahbah, v2, p80.

¹³⁹⁹ Shamis al-Dīn Yaḥyā Ibn Sanniyya al-Dawlah Hibbat Allāh Ibn Yaḥyā al-Dimashqī al-Shāfi'ī. Born, 552AH / 1157AD. A faqīh and muḥadith, taught Ḥadīth in Damascus and Mecca. Died, 635AH / 1237AD. See, *Sīr A'lām al-Nubalā'*, v23, pp27-28. See also, *Mir'āt al-Zamān*, Sibṭ Ibn al-Jawzī, v8, pp717-718. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn al-Subkī, v5, p105. Also, *Nujūm al-Zāhira*, v6, p301. Also, *Shadharat al-Dhahab*, v5, pp177-178.

¹⁴⁰⁰ Abū al-Ma'ālī Muḥyī al-Dīn Muḥammad Ibn 'Alī Ibn Muḥammad al-Qurashī al-'Uthmānī. He was a judge in Damascus, whilst excelling in literature, preaching and Fiqh. See, *Wafiyāt al-A'yān* v3, p364. See also, *Sīr A'lām al-Nubalā'*, v22, p366. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shahbah, v2, p52, FN no 2.

¹⁴⁰¹ 'Abd al-'Azīz Ibn al-Salām Ibn Abī al-Qāsim al-Sulmī. Born, 577AH / 1181AD. Became mujtahid and sheikh of the Shāfi'īs. He was sheikh of Umayyad mosque where he also taught the Islamic sciences. Left Damascus for the more milder political climate of Egypt, where he taught. Died, 660AH / 1262AD. His published works include, '*al-Ishārah Ilā al-Ijāz Fi Ba'd Anwā' al-Majāz*', '*Ḥal al-Ramūz Wa Mafātiḥ al-Kanūz*', '*al-Fawā'id Fi Mushkil al-Qur'ān*', '*Qawā'id al-Aḥkām Fi Iṣlāḥ al-Anām*', '*Masā'il al-Ṭarīqah Fi 'Ilm al-Ḥaqīqah*' (See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, v1, pp172-173.), '*Bidāyat al-Sūl Fi Tafḍīl al-Rasūl*'. See, *al-A'lām*, v4, p21. See also, *Mu'jam al-Mu'allifin*, v2, p162. Also, *Fawāt al-Wafiyāt*, v1, pp287-288. Also, *Kashf al-Zunūn*, passim. Also, *Idāḥ al-Maknūn*, v1, p84, 167, 631. Also, *Hadiyat al-'Arifin*, v1, p580. Also, *Ṭabaqāt al-Shāfi'iyya*, al-Subkī, v5, p102, 103. Also, *Ḥusen al-Muḥāḍarah*, al-Sayūfī, v1, p203. Also, *al-Nujūm al-Zāhira*, v7, p208. Also, *Dhayl al-Rawḍatayn*, p216. Also, *Mu'jam al-Maṭbū'āt*, Sirkis, p164. Also, *Shadharat al-Dhahab*, v5, pp301-302. Also, *Ṭabaqāt al-Shāfi'iyya*, Ibn Qāḍī Shahbah, v2, pp109-111. Also, *Mir'āt al-Jinān*, al-Yāfi'ī, v4, p153. Also, *Mu'jam al-Mu'allifin*, v2, p162.

¹⁴⁰² *Sīr A'lām al-Nubalā'*, v22, p366.

¹⁴⁰³ *Miftah al-Sa'adah*, v1, p171.

¹⁴⁰⁴ 'Abd al-Raḥīm Ibn 'Alī Ibn Ḥamid, better known as al-Dakhwār. Born, 565AH / 1170AD. He was a renowned physician. A man of letters. and a calligraphist, worked on a 100 volumes. Astronomist. Taught by Āmidī. Died, 628AH / 1230AD. See, *Fawāt al-Wafiyāt*, Ibn Shākir, v2, pp315-318. See also, *Ṭabaqāt al-Uṭibā'*, Ibn Abī Uṣaybi'ah, v2, pp239-246. Also, *Dhayl al-Rawḍatayn*, p159. Also, *al-Nujūm al-Zāhirah*, v6, p277. Also, *al-Dāris Fi al-Madāris*, v2, pp127-128. Also, *al-'Ibar*, al-Dhahabī, v5, p111. Also, *Mir'āt al-Jinān*, v4, pp65-66. Also, *Shadharat al-Dhahab*, v5, pp127-128. Also, *Kashf al-Zunūn*, p1410. Also, *al-A'lām*, v3, p347. Also, *Mu'jam al-Mu'allifin*, v2, p133.

¹⁴⁰⁵ Aḥmad Ibn al-Qāsim Ibn Khafifa al-Khazraji. Born, 596AH / 1200AD. A physician and poet. Moved to Egypt to practice and teach his profession 634AH / 1236AD. Returned to Syria and died, 668AH / 1270AD. Published works include, '*Uyūn al-Anbā' Fi Ṭabaqāt al-Uṭibā'*'. Published five times. See, *Dhakhā'ir al-Turāth*

who recalled his meeting with Āmidī while he was studying the work 'Rumūz al-Kunūz'¹⁴⁰⁶ under the latter's tuition.

Āmidī composed over 20 works, some of which have been published, some are still in manuscript form and some are lost. His published works include the list in Appendix no: IX.

Judging from his works we note that the majority of Āmidī's writing deal with the subjects of scholastic theology, logic, debate and disputation, with only a few works that deal with Uṣūl al-Fiqh. We also note that Āmidī always approached his subject from the perspective of the mutakallim rather than from that of the faqīh.

Thus we can say that Āmidī was first and foremost a philosopher¹⁴⁰⁷ and secondly a specialist on Uṣūl al-Fiqh. It goes without saying that the reader of Āmidī's works must himself have attained a level of education through a wide and diverse reading so as to understand his arguments; to be able to distinguish, that is, between the arguments put forward by the philosophers and those presented by the Fuqahā'.

II.3 Ibn al-Sā'ātī

Ibn al-Sā'ātī's full name is Aḥmad Ibn 'Alī Ibn Tughlib Ibn Abī al-Dīyā', but is better known as Ibn al-Sā'ātī. He was born in Baghdād¹⁴⁰⁸ and claims a direct lineage to the Prophet¹⁴⁰⁹ through the Abbāsīd Hāshimī line¹⁴¹⁰.

His laqab is Muẓaffar al-Din, al-Mullah, sheikh al-Islām or shams al-Islām¹⁴¹¹. His nicknames are Abū al-'Abbās and Ibn al-Sā'ātī.¹⁴¹²

al-'Arabī al-Islāmī, v1, p29. See, *al-Dāris Fī al-Madāris*, v2, pp136-137. Also, *al-Nujūm al-Zāhirah*, v7, p229. Also, *Kanūz al-Ajdād*, Kurd 'Alī, pp332-337. Also, *Kashf al-Zunūn*, p1096, 1185. Also, *al-Bidāyah Wa al-Nihāyah*, v13, p257. Also, *Shadharat al-Dhahab*, v5, p327. Also, *al-A'lām*, v1, p197. Also, *Mu'jam al-Mu'allifin*, v1, pp229-230.

¹⁴⁰⁶ 'Uyūn al-Anbā' Fī Ṭabaqāt al-Uṭibā', pub in Cairo, 1882-1884, v2, p147. Pub in Beirut, 1965, pp650-651.

¹⁴⁰⁷ Āmidī was inclined to make mistakes thorough his works. These mistakes are raised by Ibn Taymiyya. See, *Minhāj al-Sunnah*, See, in the latter, *Fahris al-A'lām*, v9. and *Dur' Ta'āruḍ al-'Aql Wa al-Naql*, especially the latter. See, in the latter, *Fahris al-A'lām*, v11.

¹⁴⁰⁸ *Talkhīṣ Majma' al-Ādāb*, Ibn al-Fūfī, v5, p161. Biographical no 1175. See also, *Tarīkh 'Ulamā' al-Mustanṣiriyya*, v1, p91. Also, *Al-Manhal al-Ṣāfi*, Ibn Tughrī Barādī, v1, p400.

¹⁴⁰⁹ Namely, the Quraysh.

¹⁴¹⁰ *A'lām al-Akhyār*, al-Kafawī, Fol: 344a. See also, *Talkhīṣ Majma' al-Ādāb*, v5, pp422-423. Also, *Tarīkh 'Ulamā' al-Mustanṣiriyya*, v1, p93; v2, pp314-315.

¹⁴¹¹ *A'lām al-Akhyār*, al-Kafawī, fol: 344a. See also, *Al-Manhal al-Ṣāfi*, v1, p400. Also, *Tajj al-Tarājim*, p6. Also, *Al-Jawāhir al-Muḍiyya*, v1, p208. Also, *Mir'āt al-Jinān*, al-Yāfi'i, v4, p227. Also, *Kashf al-Zunūn*, p193. Also, *Hidāyat al-'Arifīn*, v1, pp100-101. Also, *Miftah al-Sa'āda*, v 2, p167. Also, *al-Fath al-Mubīn*, al-Marāghī, v1, p540. Also, *al-Fawā'id al-Bahiyya*, pp325-328. Also, *Tarīkh 'Ulamā' al-Mustanṣiriyya*, v1, pp91-93.

¹⁴¹² Ibid.

He was born in Baghdad¹⁴¹³, 651AH / 1254AD by virtue of his father's migration there from Baalbeck¹⁴¹⁴ many years before. He died 694AH/1295AD,¹⁴¹⁵ at the age of 52, and was buried in Baghdad.

The al-Sā'atī family are related to the 'Abbāsids, in particular to the 'Abbāsīd caliph al-Mustanşir Billāh¹⁴¹⁶ who requisitioned the building of the famous school library, in Baghdad, in 631AH / 1233AD. It was al-Mustanşir Billāh who called for the help of his relation, Nūr al-Dīn 'Alī Ibn Taghlib al-Sā'atī, the father of Ibn al-Sā'atī to make the renowned clocks that hang above the door of the Mustanşiriyya school door.¹⁴¹⁷ Nūr al-Dīn 'Alī remained in Baghdad until his death in 683AH / 1284AD.

Nūr al-Dīn 'Alī's daughter, Amat al-'Azīz, sister of Aḥmad Ibn al-Sā'atī, was a famous calligraphist of her age. We don't know the date of her death but she certainly lived until 711AH / 1311AD because she was known to have copied her brother's manuscript '*Baḍī' al-Niẓām*' at that time, the known date of the copy.¹⁴¹⁸

Ibn al-Sā'atī's own daughter Fāṭima was herself steeped in the study of Islamic sciences and calligraphy and was known to have written a commentary on her father's book, '*Majma' al-Baḥrayn*'.¹⁴¹⁹

Ibn al-Sā'atī's son, Muḥammad Ibn Aḥmad, was an assistant at al-Mustanşiriyya school; later he took up the position of teacher at the al-Mughithiyya school in Baghdād. He also worked in the Mustanşiriyya school library.¹⁴²⁰

The nephew of Ibn al-Sā'atī was a certain 'Alī Ibn Anjab, better known as Ibn al-Sā'ī. He

¹⁴¹³ *Talkhīṣ Majma' al-Ādāb*, v5, p161, no 1175.

¹⁴¹⁴ Baalbeck is one of the oldest sites in Lebanon with architectural remains, the Heliopolis of Roman times, the city of the sun. Contains temple ruins to Bacchus and Jupiter. The Muslim army conquered Baalbeck during the era of 'Umar, 14AH / 635AD. See, *Al-Rawḍ al-Mi'ār*, p109. See also, *Nuzhat al-Mushtāq*, Al-Idrīsī, p116. Also, *Subḥ al-A'sha*, v4, p109.

¹⁴¹⁵ *Mir'āt al-Jinān*, al-Yāfi'ī, v4, p227. See also, *Al-Manhal al-Ṣāfi*, v1, p400. Also, *Tajj al-Tarājim*, p6. Also, *Hidāyat al-'Arifīn*, v1, pp100-101.

¹⁴¹⁶ Manşūr Ibn Muḥammad Ibn al-Nāşir, Born 588AH / 1192AD. Died 640AH / 1242AD. See, *Al-Asjad al-Masbūk*, al-Ashraf al-Ghassānī, pp420-506. See also, *Mir'āt al-Zamān*, Sibṭ Ibn al-Jawzī, v8, section 2, p739. Also, *Al-Ḥawādith al-Jāmi'ah*, p155. Also, *Al-Nujūm al-Zāhira*, v6, p345. Also, *al-Fakhrī*, Ibn al-Ṭaṭṭaṭī, pp266-267. Also, *Tarīkh Mukhtaṣar al-Duwal*, Ibn al-'Ibrī, p253. Also, *al-A'lām*, v7, p304. Also, *al-Kāmil*, Ibn al-Athīr, v12, p177. Also, *Tarīkh al-Khamīs*, v2, p370.

¹⁴¹⁷ *Al-Ḥawādith al-Jāmi'a*, pp83-84. See also, *Āthār al-Bilād*, al-Quzwīnī, pp316-317. Also, *Tarīkh 'Ulamā' al-Mustanşiriyya*, v2, pp324-325. Also, *Al-Jawāhir al-Muḍiyya*, v1, p80, no 148. Also, *Tarīkh 'Ulamā' Baghdād*, Al-Musamma Muntakhab al-Mukhtār, al-Taḳī al-Fāṣī, p36.

¹⁴¹⁸ Amat al-'Azīz. The original copy is in Sulaymaniyya library, Istanbul, under the collection of Dāmād Ibrāhīm Pāshā, ref no 435. Composed folio, p229b, from Ibn al-Sā'atī's manuscript, 711AH. I have the photocopy of the original.

¹⁴¹⁹ See, *A'lām al-Akhyār*, Al-Kafawī, fol: 344b. See also, *A'lām al-Nisā'*, v4, p27. Also, *Al-Jawāhir al-Muḍiyya*, v2, pp277-278.

¹⁴²⁰ Muḥammad Ibn Aḥmad. See, *Majma' al-Ādāb*, Ibn al-Fūfī, v5, pp219-220. See also, *Tarīkh 'Ulamā' al-Mustanşiriyya*, v1, pp161-162.

was the head librarian for the Mustanşiriyya school. He was reputed to have been born 593AH / 1197AD. But this cannot be the case since it is known that his grandfather, 'Ali Ibn Taghlib al-Sā'atī, was born 601AH / 1204AD, and died 674AH / 1275AD. We must take into consideration also the fact that he composed numerous works which wouldnt have been possible in the short life he reputedly led.¹⁴²¹

Ibn al-Sā'atī was raised in Baghdād, where he learnt the Islamic sciences. Later he entered the Mustanşiriyya school, the conditions of entry being that he must have mastered the Islamic sciences and composed several books on the subject. After he completed his studies he became an assistant there, then was promoted to the position of teacher.

Ibn al-Sā'atī was a student of some of the most prominent 'Ulamā' of his time. Amongst these we must include Al-Shaykh Ṣahīr al-Dīn Muḥammad Ibn 'Umr al-Bukhārī al-Nawjābādī, teacher at the Mustanşiriyya school. Later Ibn al-Sā'atī was to become his assistant in teaching, and when al-Shaykh Ṣahīr al-Dīn al-Bukhārī¹⁴²² left Baghdad 683AH / 1284AD his Ḥanafite chair was taken over by his prize student.¹⁴²³ Among the writer's teachers we must also include Abū al-Barakāt 'Abd Allāh Ibn Aḥmad al-Nasafī al-Ḥanafī.¹⁴²⁴

Ibn al-Sā'atī once sat at the feet of Ibn al-Ṣayqal al-Jazrī¹⁴²⁵, the head teacher for Arabic

¹⁴²¹ *Jawāhir al-Muḍiyya*, v1, p354. See also, *Tarīkh 'Ulamā' Baghdād*, Ibn Rāfi' al-Silāmī, pp137-139. Also, *Shadharat al-Dhahab*, v5, pp343-344. Also, *Al-Ḥawāḍith al-Jāmi'a*, p386. Also, *Idāḥ al-Maknūn*, v1, p42. Also, *Hadiyat al-'Arifin*, v1, pp712-713. Also, *Kashf al-Ẓunūn*, passim. Also, *al-Ta'rif bil-Mu'arrikhkhīn*, al-'Azāwī, v1, pp92-95. Also, *Mu'jam al-Mu'allifin*, v2, pp408-409.

¹⁴²² Muḥammad Ibn 'Umr al-Nawjābādī al-Bukhārī, born in Nawjābādī, a village near Bukhāra, 616AH / 1219AD. Moved to Damascus, and then onto Baghdād. Became a Ḥanafite teacher in Mustanşiriyya, 668AH / 1269AD. until 683AH / 1284AD. Among his most renowned compositions we must include, '*Kashf al-Asrār*', '*Kashf al-Ibhām*' and '*Talkhīṣ al-Qudūrī*'. See, *Al-Ḥawāḍith al-Jāmi'a*, p443. See also, *Fawāt al-Wafiyāt*, v21, p113. Also, *Talkhīṣ Majma' al-Ādāb*, v5, p561. Also, *Al-Jawāhir al-Muḍiyya*, v2, p104. Also, *Al-Fawā'id al-Bahiyya*, p183. Also, *Hadiyat al-'Arifin*, v2, p129. Also, *Tarīkh 'Ulamā' al-Mustanşiriyya*, v1, pp90-91. Also, *al-A'lām*, v6, pp313-314. Also, *Mu'jam al-Mu'allifin*, v3, p565. Also, *Kashf al-Ẓunūn*, p1484, 1485, 1634. Also, *Idāḥ al-Maknūn*, v2, p355.

¹⁴²³ *Talkhīṣ Majma' al-Ādāb*, v5, p561.

¹⁴²⁴ A leading Ḥanafite faqīh. Died 710AH / 1310AD. His published works include, '*Madārik al-Tanzīl Fī Tafsīr al-Qur' ān*', '*Kanaz al-Daqā'iq*' on Fiqh, '*al-Manār*' on Uṣūl al-Fiqh, '*Kashf al-Asrār Sharḥ al-Manār*'. See, *A'lām al-Akhyār*, al-Kafawī, fol: 344a. See also, *Al-Fawā'id al-Bahiyya*, pp101-102. Also, *Al-Fath al-Mubīn*, al-Marāghī, v2, p112. Also, *Al-Jawāhir al-Muḍiyya*, v1, p270. Also, *Al-Durar al-Kāmina*, Ibn Ḥajar, v2, p247. Also, *Tarīkh 'Ulamā' Baghdād*, Ibn Rāfi', p65. Also, *Tajj al-Tarājim*, p22. Also, *Kashf al-Ẓunūn*, passim. Also, *Hadiyat al-'Arifin*, v1, p464. Also, *Idāḥ al-Maknūn*, v1, p98. Also, *Miftah al-Sa'āda*, passim. Also, *Mu'jam al-Mu'allifin*, v2, p228. Also, *Al-A'lām*, v4, pp67-68.

¹⁴²⁵ Ma'idd Ibn Naṣr Allāh Ibn Rajab, nicknamed Shams al-Dīn, but best known as Ibn al-Ṣayqal al-Jazrī. A man of letters. Moved to Baghdad from Mūsil, became teacher of literature at Mustanşiriyya. His published works include, '*Maqāmāt al-Zaynabiyya*', completed in 672AH / 1273AD. Taught his work 676AH / 1277AD when Ibn al-Sā'atī would have been in attendance. He died 701AH / 1301AD. See, *Al-Maqāmāt al-Zaynabiyya*, pp37-68. See also, *Tarīkh 'Ulamā' Baghdād (Muntakhab al-Mukhtār)*, p228. Also, *Al-Bulgha*, al-Fayrūz Ābādī, p260. Also, *al-Durar al-Kāmina*, Ibn Ḥajar, v2, p376. Also, *Tarīkh al-Adab al-'Arabī Fī al-'Irāq*, al-'Azāwī, v1, p290. Also, *Hadiyat al-'Arifin*, v2, p465. Also, *Kashf al-Ẓunūn*, p1785. Also, *Mu'jam al-Mu'allifin*, v3, p897. Also,

literature at Mustanşiriyya school, and listened, along with a hundred and sixty ‘Ulamā’¹⁴²⁶, over a period of ten sittings, to a recitation of the shaykh's work entitled ‘*Al-Maqāmāt al-Zaynabiyya*’.¹⁴²⁷

At the end of the readings of this masterful work (676AH / 1277AD) each ‘ālim, including Ibn al-Sā‘atī, received a diploma stating that the ‘ālim had listened and had thoroughly understood the contents of the *Muqāmāt*. One of Ibn al-Sā‘atī's revered teachers was Jamāl al-Dīn Ibn al-‘Āqūfī, a Shāfi‘ite shaykh who taught at the Mustanşiriyya school.¹⁴²⁸

Ibn al-Sā‘atī's pupils were numerous. Amongst these we must include ‘Alī Ibn Sangar, better known as Ibn al-Sabbāk¹⁴²⁹ who later was to become the leader of the Ḥanafīyya school in Iraq and a teacher at the Mustanşiriyya school. As a student his reading list would have included Ibn al-Sā‘atī's ‘*Majma‘ al-Baḥrayn*’, and ‘*Hidāyah*’.¹⁴³⁰

Another student was his nephew, Ibn al-Sā‘ī¹⁴³¹. We also include his own daughter, Faṭimah¹⁴³², and his sister Ammat al-‘Azīz.¹⁴³³ Not to mention Ibn al-Sā‘atī's brother, Nāṣir al-Dīn Muḥammad.¹⁴³⁴ We also mention his son, Majd al-Dīn Muḥammad who learnt the Islamic sciences from his father, later became an assistant at the Mustanşiriyya school and then was promoted to the position of teacher at the Mughithiyya school.¹⁴³⁵

One of his more famous students was Shaykh Rukn al-Dīn al-Samarkandī, who was granted a diploma in 690AH / 1291AD to teach all the works of Ibn al-Sā‘atī.¹⁴³⁶ The latter also conferred a diploma on Abū Ḥayān al-Naḥwī al-Andalusī whilst travelling through Egypt.¹⁴³⁷

Al-A‘lām, v7, p266.

¹⁴²⁶ *Al-Maqāmāt al-Zaynabiyya*, p49

¹⁴²⁷ Ibid, p54.

¹⁴²⁸ Head of the Shāfi‘iyya school of law. Taught at the Shāfi‘iyya school, 674AH / 1275AD. Reached position of deputy chief judge, 683AH. / 1284AD. See, *al-Durar al-Kāmina*, Ibn Ḥajar, v2, p299. See also, *Muntakhab al-Mukhtār*, p47. Also, *Tarīkh ‘Ulamā’ al-Mustanşiriyya*, v1, pp139-141.

¹⁴²⁹ ‘Alī Ibn Sanjar Ibn ‘Abd Allāh al-Baghdādī. Born 661AH / 1263AD, Died 750AH / 1349AD or 755AH / 1354AH. A Ḥanafite and a teacher at the Mustanşiriyya school. See, *Al-Durar al-Kāmina*, Ibn Ḥajar, v3, pp54-55. See also, *al-Wāfi bil-Wafiyāt*, v2, p162. Also, *Al-Fawā'id al-Bahiyya*, p121. Also, *Muntakhab al-Mukhtār*, Ibn Rāfi‘, pp141-144. Also, *Kashf al-Zunūn*, p569, 570. Also, *Tarīkh ‘Ulamā’ al-Mustanşiriyya*, v1, pp93-99. Also, *Al-A‘lām*, v 4, p292. Also, *Mu‘jam al-Mu‘allifin*, v2, p448.

¹⁴³⁰ *Muntakhab al-Mukhtār*, p195.

¹⁴³¹ See 1421, above.

¹⁴³² See 1419, above.

¹⁴³³ See 1418, above.

¹⁴³⁴ Nāṣir al-Dīn Muḥammad Ibn ‘Alī. Was present with his brother at the reading of the *Muqāmāt al-Zaynabiyya*. See, *al-Maqāmāt al-Jazriyya*, p54.

¹⁴³⁵ *Talkhīṣ Majma‘ al-Adab*, Ibn al-Fūfī, v5, pp219-220. See also, *Tarīkh ‘Ulamā’ al-Mustanşiriyya*, v1, pp161-162.

¹⁴³⁶ ‘Abd Allāh Ibn Muḥammad al-Samarkandī al-Hanafī. A leading faqīh of his day. Died 701AH / 1302AD. See, *Hadiyat al-‘Ārifin*, v1, p463. See also, *Mu‘jam al-Mu‘allifin*, v2, p281. Also, *Al-Jawāhir al-Muḍiyya*, v1, p81. Also, *Tarīkh ‘Ulamā’ al-Mustanşiriyya*, v1, pp330-331.

¹⁴³⁷ Muḥammad Ibn Yūsef Ibn ‘Alī al-Andalusī. Born 654AH, travelled to Cairo where he met Ibn al-Sā‘atī. Of his

We cannot gauge the number of students that were attached to Ibn al-Sā'ātī because they were too numerous, but we do know there were numerous from the number of manuscripts copied by students relating to his work.

Ibn al-Sā'ātī was one of the leading Ḥanafite scholars of his era. he was a prolific writer on the subject of Fiqh and Uṣūl al-Fiqh and literature,¹⁴³⁸ in which fields he was considered to be supreme.¹⁴³⁹ He had many, fine compositions to his name.¹⁴⁴⁰

His most prolific work is '*Majma' al-Baḥrayn Wa Multaqa al-Nayrayn*' In this work on Fiqh Ibn al-Sā'ātī brought together the *Mukhtaṣar* of Aḥmad Ibn Muḥammad al-Qudūrī¹⁴⁴¹ and the *Manzūma* of 'Amr Ibn Muḥammad al-Nasafī.¹⁴⁴² The *Mukhtaṣar* itself deals solely with Ḥanafite fiqh whilst the *Manzūma* deals with the theological and philosophical differences between the four schools of law.

Ibn al-Sā'ātī arranged his work on the lines of the Fiqh argument, beginning with an introduction¹⁴⁴³, then moving onto the book of *Ṭahāra*, (purity) followed by *Ṣalāt*, (prayer) then by *Zakāt*, (tax) *Ṣawm*, (fasting) *Ḥajj* (pilgrimage) and so on until *Wiṣāya* (will) and *Farā'id*.

The 'Ulamā' made numerous copies of '*Majma' al-Baḥrayn*' which are to be found scattered throughout the ancient libraries located in the great cities and towns of Islām.¹⁴⁴⁴

published works '*Al-Baḥr al-Muḥīṭ*' and '*Tafsīr al-Nahr*' and '*Tuḥfat al-Arīb*' Died, Cairo, 745AH / 1344AD. See, *Muntakhab al-Mukhtār*, al-Fāṣī, p36. See also, *Al-Durar al-Kāmina*, v4, pp302-310. *Ṭabaqāt al-Shāfi'iyya*, Al-Subkī, v6, pp31-44. Also, *Fawāt al-Wafiyāt*, al-Kuttubī, v2, pp282-285. Also, *Al-Nujūm al-Zāhira*, v10, pp111-115. Also, *Al-Badr al-Tālī*, v2, pp288-291. Also, *Kashf al-Zunūn*, passim. Also, *Idāḥ al-Maknūn*, v1, and v2, passim. Also, *Hadiyat al-Ārifin*, v2, pp152-153. Also, *Mu'jam al-Mu'allifin*, v3, pp784-785.

¹⁴³⁸ *Mir'āt al-Jinān*, al-Yāfi'i, v4, p227.

¹⁴³⁹ *A'lām al-Akhyār*, al-Kafawī, fol: 344ab, 345A.

¹⁴⁴⁰ *Al-Manhal al-Ṣāfi*, v1, pp400-401.

¹⁴⁴¹ Aḥmad Ibn Muḥammad al-Baghdādī, known as Al-Qudūrī al-Ḥanafī. Head of the Ḥanafite school. Born 362AH / 973AD. Died, 428AH / 1037AD. His published works include, '*Mukhtaṣar al-Qudūrī*' and *Kitāb al-Nikāḥ*' and '*Kitāb al-Jihād*'. See, *Tarīkh Baghdād*, v4, p377. *Kashf al-Zunūn*, passim. Also, *Wafiyāt al-A'yān*, v1, p26. Also, *Al-Jawāhir al-Muḍiyya*, al-Qurashī, v1, pp93-94; v2, pp336-337. Also, *Miftaḥ al-Sa'āda*, v2, passim. Also, *Mu'jam al-Mu'allifin*, v1, p242. Also, *Al-A'lām*, v1, p212.

¹⁴⁴² Al-Samarkandī. Born in Nasaf, near Samarkand, 461AH / 1069AD. Specialist in Fiqh, Hadith, Linguistics, Interpretation of the Qur'ān and literature. In Baghdād became a Ḥanafite muftī. Published books include, '*Tilbat al-Ṭalaba*' and '*Kitāb al-'Aqā'id*' al-Nasafīyya' and '*Mukhtaṣar Sharḥ al-'Aqā'id*'. See, *Dhakhā'ir al-Turāth al-'Arabī al-Islāmī*, v2, p879. See also, *Mu'jam al-Udabā'*, *Yāqūt*, v16, pp70-71. Also, *al-Fawā'id al-Bahiyya*, pp149-150. Also, *Al-Jawāhir al-Muḍiyya*, al-Qurashī, v1, pp394-395. Also, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-Ārifin*, v1, p783. Also, *Idāḥ al-Maknūn*, v1, p25, 117. Also, *Mu'jam al-Mu'allifin*, v2, p571. Also, *Al-A'lām*, v6, p60.

¹⁴⁴³ Introduction to *Majma' al-Baḥrayn* (my manuscript) fol: 2b -4a

¹⁴⁴⁴ Manuscripts in Turkish Libraries. Ahmad III library. (Topkapi) Manuscript no 3878, dated 748AH / 1347AD. Manuscript no 3879. Manuscript no 3880, copied in Aleppo, 828AH / 1425AD. Manuscript no 3881, copied in 837AH / 1433AD. Manuscript no 3882, copied in 865AH / 1460AD. Manuscript no 3883, copied 10th century / 16th centuryAD. Manuscript no 3884, copied 813AH / 1410AD. Man no 3885, Man 3886, copied in 843AH / 1439. Man no 3887. Man 3888, copied in 830AH / 1426 AD. Man no 3889. Man no

The Ḥanafites ascribed four great books for teaching law, one of which was '*Majma' al-Baḥrayn*'. However, in spite of its importance '*Majma' al-Baḥrayn*' has yet to be fully published.

There were numerous commentaries and notes made on '*Majma' al-Baḥrayn*', of which an important commentary was made by Ibn al-Sā'ātī himself, in two volumes, at the request of 'Abd Allāh Ibn Yūsef Ibn 'Abd al-'Azīz Ibn Al-Khaḥifa al-Mustanṣir al-Abbāsī.¹⁴⁴⁵ The commentary was completed in 690AH / 1291AD¹⁴⁴⁶. Copies of this commentary are to be found in several ancient libraries¹⁴⁴⁷.

The notes on '*Majma' al-Baḥrayn*' made by the author's daughter, Fāṭima,¹⁴⁴⁸ was another of the well known commentaries as was a commentary under the title of '*al-Manba' Fī Sharḥ al-Majma'*' or '*al-Murtaqa Fī Sharḥ al-Multaqa*'¹⁴⁴⁹ which was made by Aḥmad Ibn Ibrāhīm al-'Ayntābī.¹⁴⁵⁰

Undoubtedly there exist other notes and commentaries on '*Majma' al-Baḥrayn*', but due to incompleteness of catalogues we are unable to locate them. However, all other known commentaries are to be found in the Bibliography no: X.

Another major work of Ibn al-Sā'ātī was entitled '*Al-Durr al-Mandūd*'.¹⁴⁵¹ This work in effect was a riposte to Ibn Kamūna's 'The Enquiries into Three Faiths'.¹⁴⁵² The latter, under the patronage of the Buddhist Mongol kings who removed the Abbasid caliphs from power in 656AH / 1258AD weakening Islamic rule,¹⁴⁵³ severely criticised Islām.

3890, copied 879AH / 1474AD. There are many more manuscripts of *Majma' al-Baḥrayn*, according to the Union Catalogue of Manuscripts in Sulaymaniyya library, Istanbul, namely 31 manuscripts. Other manuscripts are to be found scattered throughout the world. See, Brockelman, *Tarīkh Adab al-'Arabī*, v6, p358.

¹⁴⁴⁵ See, introduction to *Sharḥ al-Baḥr al-Muḥīt*, Ibn al-Sā'ātī. Man no 3893 in Topkapi library, Istanbul. Copied 830AH / 1427AD.

¹⁴⁴⁶ See, *Kashf al-Zunūn*, v2, p383.

¹⁴⁴⁷ Topkapi library, Manuscript no 3893, and manuscript no 3894 copied 1006 / 1597AD. Murad Mullah library, Istanbul, no297.4. Hajji Salim Aga library no 297.5. In the Sulaymaniyya Union catalogue there can be found 10 other manuscripts. See, Brockelman, *Tarīkh Adab al-'Arabī*, p358.

¹⁴⁴⁸ See 13, above.

¹⁴⁴⁹ The manuscript of this book is in Dār al-Kutub al-Miṣriyya, no 472473.

¹⁴⁵⁰ Born, 705AH / 1305AD. Studied in Aleppo. Muftī and Qāḍī in Damascus. Died 767AH / 1366AD. See, *Al-Durar al-Kāmina*, Ibn Ḥajar, v1, p82. Also, *Al-Manhal al-Ṣāfi*, v1, p197. Also, *Kashf al-Zunūn*, 1601, 1749, 1816. Also, *Mu'jam al-Mu'allifin*, v1, p87. Also, *Al-A'lām*, v1, p87.

¹⁴⁵¹ See, *Kashf al-Zunūn*, p480.

¹⁴⁵² Edited by Moshe Perlmann, University of California Press, Berkeley and Los Angeles, 1967. Published in Arabic. Translated from the Arabic to English by Moshe Perlmann, University of California Press, Berkeley, Los Angeles, London, 1971.

¹⁴⁵³ See, *Al-Kāmil Fī al-Tarīkh*, Ibn al-Athīr, v9, p330. See also, *al-Asjad al-Masbūk*, p640. Also, *al-Bidāyah wa al-Nihāyah*, v13, pp301-312. Also, *al-Ḥawādith al-Jāmi'a*, pp325-334. Also, *al-Tarīkh al-Kabīr*, Ibn Qāḍī Shāhbah, fol: 125B-128B. Also, *Nihāyat al-'Arab*, fol: 63B. Also, *Tarīkh al-Islām*, al-Dhahabī, v34, fol: 183b-200A. Also, *al-Salūk Li-Ma'rifat Duwal al-Mulūk*, v1, section 2, p412. Also, Introduction to *Kitāb al-Ṭdāh Lī Quwānayn al-Iṣtilāḥ*, p17.

Ibn Kamūna was a prolific writer,¹⁴⁵⁴ but none of his works was so polemical as the 'Enquiries into the Three Faiths'. The book so incensed the Muslim people, whose religion was but tolerated under the Mongols, that they rioted against the author who, as a consequence, fled to Hilla, south of Iraq. Some days later he died,¹⁴⁵⁵ whether from fright or natural causes was never confirmed.

Unfortunately most of Ibn al-Sā'ātī's work has not survived to come down to us. One work of his which has survived and is central to our thesis is '*Badī' al-Nizām*'. This work combines the approaches (in Uṣūl al-Fiqh) of al-Bazdawī's '*Uṣūl*' and Āmidī's '*Iḥkām*'.

Ibn al-Sā'ātī's vocations included that of preacher, particularly in the mosque of Mustanṣiriyya school, and often, as deputy, on behalf of the 'Abbāsid preacher Muḥyī al-Dīn Ibn al-Muḥayyā,¹⁴⁵⁶ wherein he preached with intelligence and clarity. He was also an outstanding copyist¹⁴⁵⁷ and a skilled calligraphist and writer.¹⁴⁵⁸ He taught¹⁴⁵⁹ principally at the Mustanṣiriyya school on the subjects of Fiqh and Uṣūl al-Fiqh, according to Ḥanafite law. In addition he served as a muftī and assistant to the chief judge,¹⁴⁶⁰ the latter at around 684AH / 1285AD.

We know very little about Ibn al-Sā'ātī's private life but we do know that, out of poverty, he made a trip to Egypt in 690AH / 1291AD¹⁴⁶¹ but met with little success with regard to making any money there. Indeed he penned this verse below whilst on the edge of penury:

"People of Egypt I find your hands closed tight against me.
And failing to find you generous I find myself eating my
books as though I was a woodworm".

Whilst in Egypt Ibn al-Sā'ātī granted Abū Ḥayyān al-Naḥwī¹⁴⁶² a diploma which allowed the latter to cite the work of the former.

It is thought that Ibn al-Sā'ātī journeyed to Samarkand for he was reputed to have granted a diploma to a fellow named Samarkandī¹⁴⁶³ whilst outside the borders of Islām¹⁴⁶⁴.

¹⁴⁵⁴ See, *Mu'jam al-Mu'allifin*, v1, p758. See also, introduction to 'Enquiries into the three Faiths', ed by Moshe Perlmann.

¹⁴⁵⁵ *al-Ḥawādith al-Jāmi'a*, pp441-442.

¹⁴⁵⁶ *al-Manhal al-Ṣāfi*, v1, p423.

¹⁴⁵⁷ see 1418, 1419, above.

¹⁴⁵⁸ *al-Muntakhab al-Mukhtār*, p35.

¹⁴⁵⁹ *al-Manhal al-Ṣāfi*, v1, p420.

¹⁴⁶⁰ *Tarikh 'Ulamā' al-Mustanṣariyya*, v1, p91.

¹⁴⁶¹ Ibid, v1, p92.

¹⁴⁶² See 1437, above.

¹⁴⁶³ See 1436, above.

¹⁴⁶⁴ *al-Jawāhir al-Muḍiyya*, v1, p81.

Chapter III

The Manuscript

III.1 Authorship and Titles

There is a difference of opinion amongst the ancient Fuqahā' and historians as to how 'Badī' al-Nizām al-Jāmi' Bayna Kitabay al-Bazdawī wal-Ihkām,¹⁴⁶⁵ composed in 694AH / 1296AD by Ibn al-Sā'atī, arrived at its true title.

Writers tended to either change the title or abbreviate it. For example Ibn Khaldūn,¹⁴⁶⁶ whilst acknowledging that Ibn al-Sā'atī combined in his work Bazdawī's 'Uṣūl'¹⁴⁶⁷ and Āmidī's 'Ihkām',¹⁴⁶⁸ i.e., that he combined the two approaches of Fiqh,¹⁴⁶⁹ he called it 'Al-Badā'i'¹⁴⁷⁰.

Ṭāsh Kubarī Zāda¹⁴⁷¹ afforded Ibn Sā'atī's work two titles, 'Al-Badāyi'¹⁴⁷² and 'Badā'i'¹⁴⁷³, whereas Al-Khuwānsārī¹⁴⁷⁴ called it 'Kitāb al-Badī' fī al-Uṣūl,¹⁴⁷⁵ as did 'Abd al-Qādir al-Qurashī,¹⁴⁷⁶ acknowledging at the same time that it was a combination of

¹⁴⁶⁵ See, Appendix XI below.

¹⁴⁶⁶ 'Abd al-Rahmān Ibn Khaldūn, Born, 732AH / 1332AD. Held position of Mālikite judge. Died in Cairo, 808AH / 1406AD. Composer of many works, including, *Tarīkh Ibn Khaldūn*, the first volume being the famous Muqaddimah. *Riḥlat Ibn Khaldūn*, *Shifā al-Sā' il Li-Tahdhīb al-Masā' il*. See, *Al-Daw' al-Lāmi'*, al-Sakhāwī, v4, p145. See also, *Nafah al-Ṭib*, v4, pp6-17. Also, *Shadharat al-Dhahab*, v7, pp76-77. Also, *Al-Badr al-Ṭālī'*, al-Shawkānī, v1, pp337-339. Also, *Kashf al-Zunūn*, passim, Also, *Idāḥ al-Maknūn*, v2, p228. *Hidāyat al-Ārifīn*, v1, p259. Also, *Zuhr al-Islām*, v3, pp225-228. Also, *Falasifat al-Islām*, Muḥammad Luṭfi Juma', pp225-252. Also, *Hussen al-Muḥāḍarah*, al-Sayūfī, v1, p263. Also, *Mu'jam al-Mu'allifīn*, v2, pp119-120. Also, *al-A'lām*, v3, p330.

¹⁴⁶⁷ See Part one. V.2.iv, above.

¹⁴⁶⁸ See Appendix, XI.1, below.

¹⁴⁶⁹ The method adopted by the Ḥanafis, called Ṭarīqa al-Fuqahā' See Part one .V.2.iii, And the method adopted by the Mutakallimūn and the Shāfi'īyya. See Part one.V.5.iii.

¹⁴⁷⁰ Muqaddimah Ibn Khaldūn, pp 456-457.

¹⁴⁷¹ Aḥmad Ibn Muṣṭafā, Born in Bursa, Turkey, 901AH / 1495AD. Received his education in Ankara, became judge in Istanbul 958AH. Became blind 961AH. Composed his major work then , *'Al-Shaqā'iq al-Nu'māniyya fī 'Ulamā' al-Dawla 'Uthmāniyya'* in 965AH.Died 968AH / 1561AD. Published works include, *'Al-Shaqā' iq'*, *'Miftāḥ al-Sa'āda wa Miṣbāḥ al-Siyāda, fī Mawdū'āt al-'Ulūm'* *'Adāb al-Baḥath wa al-Munāẓarah'* *'Risālāt al-Shifā' Li-Adwā' al-Wabā'* *'Sharḥ al-Fawā'id al-Dīyyā'iyya'*, *'Sharḥ al-Muqaddimah al-Jazriyya'*, *'Ṭabaqāt al-Fuqahā'*. See, *Kashf al-Zunūn*, passim. See also, *Idāḥ al-Maknūn*, Al-Baghdādī, v1, p134, 309; v2, p126. Also, *Al-Badr al-Ṭālī'*, al-Shawkānī, v1, p121. Also, *Shadharat al-Dhahab*, v8, pp 352- 353. Also, *Mu'jam al-Mu'allifīn*, v1, p308. Also, *Al-A'lām*, v1, p257. Also, *Iktifā' al-Qanū'*, Cornelius Van Dyke, p384.

¹⁴⁷² *Miftāḥ al-Sa'āda*, v2, p167.

¹⁴⁷³ Ibid.

¹⁴⁷⁴ Muḥammad Bāqr Ibn Zayn al-'Ābidīn Ibn Ja'far al-Mūsawī, born,1226AH / 1811AD. Shi'ite, historian. Died,1313AH / 1895AD. See, *al-A'lām*, v6, p49. See also, *Mu'jam al-Mu'allifīn*, v3, p152.

¹⁴⁷⁵ *Rawḍāt al-Jinān*, p89.

¹⁴⁷⁶ 'Abd al-Qādr Ibn Muḥammad al-Qurashī. Born, 696AH / 1297AD. Died there, 775AH / 1373AD. Published works include, *'Al-Jawāhir al-Muḍīliyya fī Ṭabaqāt al-Ḥanafīyya'*, See, *al-Fawā'id al-Bahiyya*, p99. See also, *Al-Durar al-Kāmina*, Ibn Ḥajar, v2, p392. Also, *al-A'lām*, al-Zirikfī, v4, p42.

the two works, the 'Uṣūl' of Fakhr al-Islām al-Bazdawī and the 'Iḥkām' of Āmidī.¹⁴⁷⁷ Yet, in the same breath, Qurashī used another title, ' al-Badā'i' fī Uṣūl al-Fiqh'.¹⁴⁷⁸ It was also noted that Taqiyy al-Dīn Ibn 'Abd al-Qādir al-Tamīmī¹⁴⁷⁹ referred to the title as 'Al-Badī' fī Uṣūl al-Fiqh',¹⁴⁸⁰ as did Ibn Tughrī Baradī,¹⁴⁸¹ which he, incidentally, referred to as an incomparable work.¹⁴⁸² He was echoed in his choice¹⁴⁸³ of title by both Muḥammad Ibn Rāfi' al-Sallāmī¹⁴⁸⁴ and 'Umar Riḍa Kaḥālla.¹⁴⁸⁵

As for Ibn al-Fūfī¹⁴⁸⁶ he preferred the title 'Kitāb Badā'i' al-Niẓām fī Jawāmi' al-Aḥkām',¹⁴⁸⁷ whilst Brockelman used the title, ' Kitāb Badī' al-Niẓām fī Uṣūl al-Fiqh, whereby the two approaches of 'Uṣūl' of Bazdawī and the 'Iḥkām' of Amidi are realized.¹⁴⁸⁸

¹⁴⁷⁷ *Fawā'id al-Bahiyya*, pp26-27.

¹⁴⁷⁸ Ibid,

¹⁴⁷⁹ Taqiyy al-Dīn Ibn 'Abd al-Qādir al-Tamīmī al-Ghazālī al-Miṣrī, born, 950AH / 1543AD. Historian, a man of letters, poet, a Ḥanafite faqīh, died in Cairo, 1010AH / 1601AD. See, *Khulāṣat al-Athar*, al-Muḥibbī, v1, p479. See also, *Rayḥānat al-Alibbā'*, pp233-235. Also, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-ʿArifin*, v1, p245. Also, *Mu'jam al-Mu'allifin*, v1, pp457-458.

¹⁴⁸⁰ See, *al-Tabaqāt al-Sanniyya Fī Tarājim al-Ḥanafiyya*, v1, pp462-464.

¹⁴⁸¹ Yūsef Ibn Taghrī Baradī, Born 813AH / 1410AD. Died 874AH / 11470AD. Historian, and a leading faqīh and muḥadith of his day. published works include, 'Al-Nujūm al-Zāhira fī Mulūk Maṣr wa Qāhira', 'Mawrid al-Laṭāfa fī man Wuliyya al-Salṭana wa al-Khilāfa', 'al-Manhal al-Ṣāfi wa Al-Mustawfā Ba'da al-Wāfi', 'Ḥawādith al-Dahūr fī Mad al-Ayyām wa al-Shuhūr'. See, *Nujūm al-Zāhira*, v1, pp9-28. See also, *Al-Daw' al-Lāmi'*, v10, pp305-308. Also, *Shadharat al-Dhahab*, v7, pp317-318. Also, *al-A'lām*, v8, pp222-223. Also, *Dhakhā'ir al-Turāth al-ʿArabī al-Islāmī*, v1, p60. Also, *Al-Badr al-Ṭālī'* al-Shawkānī, v2, pp351-352. Also, *Kashf al-Zunūn*, passim. Also, *Idāḥ al-Maknūn*, v2, p19. Also, *Hidāyat al-ʿArifin*, v2, p560. Also, *Mu'jam al-Mu'allifin*, v4, p149.

¹⁴⁸² *Al-Manhal al-Ṣāfi*, v1, pp400-401.

¹⁴⁸³ *Mu'jam al-Mu'allifin*, v1, pp199-200.

¹⁴⁸⁴ Born, 704AH / 1305AD. Became a leading Ḥadīth, Fiqh and History specialist. Received learning from numerous shaykhs, referred to in his celebrated work, 'Mu'jam'. Died, 774AH / 1372AD. His other published works include, 'Tarīkh Ulamā' Baghdād' (*Muntakhab al-Mukhtār*). ' *Dhayl Muntakhab al-Nisba (al-Dhahabī)*', 'Al-Wafiyyat'. See, *Al-Durar al-Kāmina*, Ibn Ḥajar, v3, pp439-440. See also, *Shadharat al-Dhahab*, v6, pp234-235. Also, *Ṭabaqat al-Qurrā'*, Ibn al-Jazrī, v2, pp139-140. Also, *Al-Dāris Fī al-Madāris*, v1, pp94-95. Also, *Kashf al-Zunūn*, p288, 1696, 2019. Also, *Al-A'lām*, v6, p124. Also, *Mu'jam al-Mu'allifin*, v3, p291.

¹⁴⁸⁵ 'Umar Riḍa Kaḥālla Born, 1905AD. Worked in the National library, Damascus. His published works include, 'A'lām al-Nisā', ' *Mu'jam Qabā'il Al-ʿArab*'. ' *Mu'jam al-Mu'allifin*', ' *Fahris Majallat al-Majma' al-ʿIlmi al-ʿArabī*', ' *Darāsāt al-Ijtima' iyya Fī Uṣul al-Islāmiyya*'. See, *Mu'jam al-Mu'allifin al-Suriyyin*, 20th Century, pp435-436.

¹⁴⁸⁶ Ibn al-Fūfī, 'Abd al-Razzāq Ibn Aḥmad al-Ṣabūnī al-Baghdādī, known as Ibn al-Fuṭī. Born, 642AH / 1244AD. Educated there to become a specialist in the fields of History, Literature, Ḥadīth and Philosophy. Died, 723AH, / 1323AD. His published works include, ' *Talkhīs Majma' al-Ādāb Fī Mu'jam al-Asmā' Wa al-Alqāb*', ' *Al-Ḥawādith al-Jamī'at Wa Al-Tajārib al-Nāfi' Fī al-Mi'a al-Sābi'a*'. See, *Fawāt al-Wafiyyat*, Ibn Shākir, v1, pp272-273. See also, *Al-Bidāyah Wa al-Nihāyah*, v14, p106. Also, *Al-Nujūm al-Zāhira*, v9, p260. Also, *al-Durar al-Kāmina*, v2, p364. Also, *Lisān al-Mizān*, Ibn Ḥajar, v4, pp10-11. Also, *Tadhkirat al-Ḥuffāz*, v4, pp273-277. Also, *Shadharat al-Dhahab*, v6, pp60-61. Also, *Al-Badr al-Ṭālī'*, al-Shawkānī, v1, pp356-357. Also, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-ʿArifin*, pp566-567. Also, *Al-A'lām*, v3, pp349-350. Also, *Mu'jam al-Mu'allifin*, v2, pp138-139.

¹⁴⁸⁷ *Talkhīs Majma' al-Ādāb*, v5, pp561-562.

¹⁴⁸⁸ *Tarīkh al-Adab al-ʿArabī*, Brockelman, trans by Dr 'Abd al-Ḥafīm al-Najjār, v6, pp357-360.

In the meantime, it was noted that ‘Abd al-Laṭīf Ibn Muḥammad Riyāḍī Zādeh¹⁴⁸⁹ talked about Ibn al-Sā‘ātī's work as having three titles, ' al-Badā‘ī‘ fī Al-Fiqh', ' Al-Badī‘ fī Uṣūl al-Fiqh'¹⁴⁹⁰ and ' Al-Badī‘ fī Uṣūl al-Fiqh (unifying) Uṣūl Fakhr al-Islām ‘Alī al-Bazdawī and the Iḥkām of Āmidī'¹⁴⁹¹.

Therefore, the following question could be posed here: Did Ibn al-Sā‘ātī compose two works, one entitled 'Kitāb al-Badā‘ī‘ fī al-Fiqh' and 'Kitāb al-Badī‘ fī Uṣūl al-Fiqh' or were the two but variant titles of one work? Here I would rather ignore Muḥammad Riyāḍī Zada's reference to three different titles of Ibn al-Sā‘ātī's work and would be more inclined to refer instead to Ibn Khaldūn's reference to the subject matter of Badī‘ al-Niẓām, allotting it the title of 'Kitāb al-Badā‘ī‘',¹⁴⁹² thus confirming the singularity of the title.

Finally, it should be mentioned here that Al-Zarkashī¹⁴⁹³ always referred to Ibn al-Sā‘ātī's work as 'al-Badī‘'. He frequently referred to him in Baḥr al-Muḥīṭ,¹⁴⁹⁴ whenever he cited from his work,¹⁴⁹⁵ as the most learned *faqīh* of his time in the field of Uṣūl al-Fiqh, whereas Al-Marāghī always referred to it as 'Kitāb al-Badī‘ fī Uṣūl al-Fiqh', which unites the two methods employed in Āmidī's 'Iḥkām' and Bazdawī's 'Uṣūl'.

III.2 Description Of the Manuscripts

In editing 'Badī‘ al-Niẓām al-Jāmi‘ Bayna Uṣūl al-Bazdawī Wa Al-Iḥkām' I have relied on ten manuscripts, chosen from over fifteen, and these are as follows.

1) The first text comprises papers taken from the collection of the Dār al-Kutub al-Miṣriyya, Cairo, Uṣūl al-Fiqh, under the reference no 139, consisting of 67 folios, with lines to the pages between 20 and 30 lines, 25 words to the line, written in naskh handwriting, with vowel pointing, with bold titles, under the main title 'Nihāyat al-Wuṣūl Ilā ‘Ilm al-Uṣūl', composed by the author, Ibn al-Sā‘ātī. This is the manuscript upon which the present study is based. This manuscript is referred to by the Arabic letter (M) *Mīm*.

The author wrote on the first page, 'I, Aḥmad Ibn ‘Alī Ibn Taghlib Ibn al-Sā‘ātī, Ḥanafī teacher at the Mustanṣariyya school, have composed, bringing together (the Iḥkām of

¹⁴⁸⁹ ‘Abd al-Laṭīf Ibn Muḥammad Ibn Muṣṭafā. Born 1021AH / 1612AD approximately. He was a judge, Istanbul. Shaykh of Rustum Pasha school. Died, 1078AH / 1667AD. See, Introduction to 'Asmā' al-Kuttab', pp3-11. See also, *Hadiyat al-‘Arifin*, v1, p617. Also, *Mu‘jam al-Mu‘allifin*, v2, p218.

¹⁴⁹⁰ *Asmā' al-Kuttab*, p79.

¹⁴⁹¹ Ibid, p277

¹⁴⁹² *Muqaddimah Ibn Khaldūn*, p456.

¹⁴⁹³ Muḥammad Ibn Bahādir al-Zarkashī, died 794AH/1392AD, see, *Mu‘jam al-Mu‘allifin* v 3 pp 174-175.

¹⁴⁹⁴ *al-Baḥr al-Muḥīṭ*, v1, p8.

¹⁴⁹⁵ Ibid, v2, p176; v3, p10, p168, 186; v5, p156.

Āmidī and the Uṣūl of Bazdawī).

On the last page we find these words, 'This book is complete, thanks be to Allāh, first and last. (...) I finished this draft in *Muḥarram*, 694AH / 1294AD, by the hand of Aḥmad Ibn Taghlib Ibn al-Sā'ātī, Ḥanafī teacher at the Mustanṣariyya school (...)

On the title page we come across the various owners of the manuscript, the first one, 'Abd Allāh Ibn Muḥammad Ibn Aḥmad Nūr al-Dīn al-Sā'ātī, 719AH / 1319AD, being the grandson of the author. Another owner is Maḥmūd Ibn 'Ubayd Allāh al-Ḥanafī. Followed by a certain 'Abd al-Barr Ibn al-Shihna.¹⁴⁹⁶

He is followed by 'Abd al-'Azīz al-Turkmānī.¹⁴⁹⁷ The next owner is Yūsef Ibn Ibrāhīm al-Ḥanafī, 811AH / 1408AD. Followed by Aḥmad Ibn al-'Aṭṭār.¹⁴⁹⁸

Ownership of this manuscript at first remained in the hands of the al-Sā'ātī family, passing down to the author's grandson. After, the manuscript passed amongst the 'Ulamā' who made copious notes on it. And from these notes we obtain information about the owners¹⁴⁹⁹ themselves and their families.¹⁵⁰⁰

The manuscript itself was accorded substantial interest by the educational establishments of the day, until it finally passed down to Dār al-Kutub al-Miṣriyya.

It is my opinion that this manuscript is a draft copy, as indicated in the words of the author on the last page. 'This draft (*musawwada*) is complete.' We find on this draft many corrections and memoranda which are written in the margins of the draft, endorsed with the word, 'correct', as manifest from the first page until folio 65B.

In this manuscript we also find a number of crossings out as in folios 18A, 21B, 23A-B, 24A-B, 25A-B, 27A, 28A-B, 37A-B, 38A-B, 39B, 40A-B, 41B, 54B, 61B and 62A.

1496 Abū al-Barakāt Sa'ī al-Dīn 'Abd al-Barr Ibn Muḥammad Ibn Muḥammad Ibn Maḥmūd, better known as Ibn al-Shihna. Born, 851AH / 1448AD. Studied in Aleppo, where he became a leading faqīh, jurist, poet, Qur'ān interpreter, historian and man of letters. Became judge and mufī, died 921AH / 1515AD. Published works include, '*al-Dhakhā'ir al-Ashrafiyya Fī al-Alghāz al-Ḥanafīyya*'. See, *Kashf al-Zunūn*, passim. See also, *Idāh al-Maknūn*, v1, p311, p602. Also, *al-Kawākib al-Sā'irah Fī A'yān al-Mi'ah al-'Ashira*, al-Ghazzī, v1, p220. Also, *Shadharat al-Dhahab*, v8, pp98-100. Also, *al-A'lām*, v3, p273. Also, *Mu'jam al-Mu'allifin*, v2, pp45-46.

1497 The Turkmān family are renowned for producing a number of Ḥanafite jurists and fuqahā'. See, the index of *Mu'jam al-Mu'allifin*, v4, p263.

1498 Shihāb al-Dīn Abū al-'Abbās Aḥmad Ibn Muḥammad Ibn 'Alī al-Dunaysarī al-Shāfi'. Born, 746AH / 1345AD. A man of letters. died, 794AH / 1392AD. See, *Kashf al-Zunūn*, passim, see Also *al-Durar al-Kāmina*, Ibn Hajar, v1, pp287-289. Also, *Shadharat al-Dhahab*, v6, p333. Also, *al-A'lām*, v1, p225. Also, *Mu'jam al-Mu'allifin*, v1, p280.

1499 See 1496, 1497, above.

1500 See 1497, above.

After making this draft I believe that Ibn al-Sāʿatī must have made a clean copy, and it is probably this clean copy which his sister, Amat al-ʿAzīz,¹⁵⁰¹ has used to make her copy in 711AH / 1311AD.

At the same time I believe Ibn al-Sāʿatī changed the title of the draft, 'Nihāyat al-Wuṣūl Ilā ʿIlm al-Uṣūl'¹⁵⁰² to the title of the clean copy, 'Badīʿ al-Nizām al-Jāmiʿ Bayna Kitābay al-Bazdawī Wa al-Iḥkām,'¹⁵⁰³ as manifest in the numerous copies that fell into the hands of the jurists and scholars, as opposed to the number with regard to the former.

This manuscript was recited over seven readings. On folio 13A we find the word 'third' i.e. the third reading, and on folio 24A we find the word 'fourth'. On folio 27A we find the word 'fifth', and folio 37A we find the word 'sixth', and finally on folio 57A we find the word 'seventh'.

We do not know, however, who has given these recitations or the nature of the audience because these facts are not recorded, save to say that such activities would have been held in scholastic circles.

2) The second text comprises papers taken from the collection of the Prime Minister, Dāmād Ibrahīm Pāshā, under the reference number, 435, which is now to be found in the Sulaymāniyya library, Istanbul. This manuscript will be referred to by the Arabic letter (D) 'Dāl'.

The manuscript itself contains 229 folios. There are 13 lines per page on average, and ten words to each line.

A copy of this manuscript was made by the author's sister,¹⁵⁰⁴ 711AH / 1311AD, and is regarded as an authentic copy.

¹⁵⁰¹ Ibid.

¹⁵⁰² This title is to be found on manuscript lodged in Istanbul University, Merkez library, ref no 726. Also to be found on manuscript in Diyarbakr Umumi library, ref no 1159. Also on manuscript located in Aḥmad III collection, Topkapi Saray Museum library, ref no 3258. Same library, another copy, ref no 3259. I have the microfilm copy of the latter.

¹⁵⁰³ This title is to be found on the manuscript lodged in FaydAllah Effendi library, Istanbul, ref no 17248. Another manuscript lodged in Veliuddin Effendi collection, Sulaymaniyya library, ref no 895, with this title. Another manuscript Aḥmad III Collection in Topkapi Saray Museum library, ref no 328. Another manuscript in Nuruosmaniye library, ref no 3318. Another manuscript in Marmara University Ilahiyat Faculty library, ref no 13188. Another manuscript in Izmir Milli library, ref no 1581, with the same title. Another manuscript in Istanbul University, Merkez library, ref no 709. Another manuscript in Diyarbakr Umumi library, ref no 804. Another manuscript can be found in Vehbi al-Baghdadi collection in Sulaymaniyya library, ref no 376, Microfilm ref no 4313. I have the microfilm copy. Another manuscript with the title can be found in Shahīd ʿAfi Pasha collection, Sulaymaniyya library, ref no 601, Microfilm ref no 4314, a copy of which I have. In the same library ref no 602. Microfilm ref no 4315, a copy of which I have. Manuscript, Jugoslavenska Akademija Znanosti, Zagreb. Croatia. ref no 115. Princeton University library, Yehuda collection, ref no 89, ref no 1770. Chester Beatty library, Dublin. Ref no 5034. Chester Beatty library manuscript ref no 3647.

¹⁵⁰⁴ See folio 1A and fol:229B.

It was initially owned by ‘Alī Ibn Ayyūb al-Maqdisī.¹⁵⁰⁵ He compared it with the original and made the necessary corrections; then it passed down to Sulaymān Ibn ‘Alī al-Ḥanafī¹⁵⁰⁶ through his sheikh in 743AH / 1342AD. Ownership was later transferred to Muḥammad Ibn Muḥammad, better known as Shāhī.¹⁵⁰⁷ Finally this copy was placed in keeping by Ibrāhīm Pāsha under the *Waqf* office. The manuscript is in good shape, written in ordinary, clear Naskh style, and is vowel pointed.

3) The Āyāh Şufiyya (Hagia Sophia) copy is based in the collections under the title, 'Kitāb al-Badī' Fī Uṣūl al-Fiqh,' under the reference number, 948, in the Sulaymāniyya library, Istanbul, and eventually was placed under the *Waqf* trusteeship of Sulṭān Maḥmūd Khān.¹⁵⁰⁸ This manuscript will be referred to by the Arabic letter (A) 'Alif'. The copy consists of 87 folios, having 21 lines to the page, and on average 13 words per line. It is written in ordinary Naskh style. Some words are vowel pointed, and in other places there have been corrections.

The copying of this manuscript was concluded on Monday, 17th in the month of Jumāda al-Ula, 860AH¹⁵⁰⁹ by the copyist ‘Abd al-Razzāq Ibn Yūsuf al-Ḥanafī.¹⁵¹⁰ The front page is endorsed with the stamp of Sheikh Abū al-‘Abbās Aḥmad al-Ḥanafī Ibn al-Sheikh Zayn al-Dīn ‘Abd al-Ghanī al-Sirsī's¹⁵¹¹ approval for his student for conducting lessons, along with a commentary by Sheikh Shams al-Dīn Maḥmūd al-Aṣfahānī¹⁵¹² on 'Badī' al-Nizām'.

It has been read by a number of luminaries dealing with the fields of Fiqh, Uṣūl, scholastic theology, logic, grammar, diversion (from the literal to the metaphorical), and rhetoric. The sheikh's approval was effected by the end of 860AH / 1456AD.¹⁵¹³

¹⁵⁰⁵ See Fol:1A.

¹⁵⁰⁶ Ibid.

¹⁵⁰⁷ Ibid.

¹⁵⁰⁸ The Ottoman Maḥmūd the first, son of Mustapha II. Born 1108AH / 1696AD. Became sultan in 1143AH / 1730AD. Died 1168AH / 1754AD. Commissioned four libraries in Istanbul. One in Āyāh Şofia mosque, one in al-Sulṭan al-Muḥammad al-Fātiḥ mosque, one in Wālida mosque and one in Galatasaray library. Ownership of books placed under Waqf trusteeship. All four collections housed in Sulaymaniyya library, Istanbul. See, *Tarīkh al-Dawlah al-‘Aliyya al-‘Uthmāniyya*, Muḥammad Farīd al-Muḥāmī, pp320-326.

¹⁵⁰⁹ See Fol:87B.

¹⁵¹⁰ ‘Abd al-Razzāq Ibn Yūsuf Ibn ‘Abd al-Razzāq al-Qibṭī al-Shadhli al-Ḥanafī, known as Ibn ‘Ajīn Ummihī, born 830AH / 1426AD. Studied under Sheikh Abū al-‘Abbās al-Sirsī and Sheikh Muḥammad al-Ḥanafī and Ibn Hummām al-Siwāsi. Poet, man of letters, historian, ṣūfī and muḥadith. Died 896AH / 1493AD. See, *al-Daw’ al-Lāmi’*, al-Sakhāwī, v4, pp196-197.

¹⁵¹¹ Shihāb al-Dīn Abū al-‘Abbās Aḥmad Ibn Muḥammad Ibn ‘Abd al-Ghanī al-Sirsī al-Ḥanafī al-Shādhilī. He was Imām, jurisprudent and faqīh, a scholastic theologian, logician, grammarian, rhetorician, a famous scholar of his time. Died, 861AH / 1456AD. See, *al-Daw’ al-Lāmi’*, al-Sakhāwī, v2, p125; v11, p207. See also, *al-Ṭabaqāt al-Kubra*, al-Sha‘rānī, v2, p83. See also, *Jāmi’ Karāmāt al-Awliyyā’*, Yūsuf al-Nabhānī, v1, p157, p322.

¹⁵¹² See the Commentaries section, this chapter.

¹⁵¹³ See Fol: 87B.

4) The Ḥālat Effendī manuscript, entitled, 'Kitāb Nihāyat al-Wuṣūl Ilā 'Ilm al-Uṣūl', known better as 'al-Badī',¹⁵¹⁴ bears the reference number 318 and is held in the Sulaymāniyya library, Istanbul, under the *Waqf* trust by Ḥālat Effendī in 1235AH. This manuscript will be referred to by the Arabic letter (H) 'Ḥā'.

The manuscript consists of 232 folios, with between 13-15 lines a page, 9 words a line, and written in ordinary Naskh style. The majority of the text has been vowel pointed. The copying was finished in Jumāda al-Thānī, 725AH by 'Uthmān Ibn 'Alī al-Ḥanafī¹⁵¹⁵ who worked from the A'ẓmiyya mosque in Iraq. The text has been corrected in places, some words having been dotted, some not. This manuscript copy was compared with the author's original manuscript in 736AH.¹⁵¹⁶

It appears that the manuscript was initially owned by Muḥammad Ibn Ḥussein al-Ḥasanī, towards the end of the year 769AH. From there it then passed down to 'Abd al-Wahhāb al-Mawlā in 996AH, and from him to 'Abd al-Qādir al-Shāmī. From thence it found its way to 'Abd al-Qādir Ibn Qāsim, and next to Muḥammad Ibn 'Abdī al-Adhanī. The manuscript was recited in some fourteen sessions. Reference to the thirteenth session is mentioned on folio 221A, and the fourteenth on folio 229A.

5) The Laleli manuscript bears the reference number 686 and is to be found in the Sulaymaniyya library, Istanbul. This manuscript will be referred to by the Arabic letter (L) 'Lām'. It consists of 132 folios, with each page holding 19 lines, 10 words approximately to the line. The manuscript's first owner was 'Abd al-Raḥīm Ibn Maḥmūd and the second was Muḥammad Ibn Maḥmūd Ibn Aḥmad al-Ḥusseinī.¹⁵¹⁷ It is held in the *Waqf* trusteeship (1217AH) of Sulṭān Saḥīm (III) Khān Ibn al-Sulṭān Muṣṭafā (III) Khān.¹⁵¹⁸

This copy is written in ordinary Naskh style, the task being completed at the Muqaddimiyya school,¹⁵¹⁹ Damascus, 701AH, by a certain Yahya Ibn Iliyās al-

¹⁵¹⁴ See Fol: 1A.

¹⁵¹⁵ Sābiq al-Dīn 'Uthmān Ibn 'Alī Ibn Bishārah al-Shiblī al-Ḥanafī. Born 672AH / 1274AD. Muḥadith, faqīh, jurist. Taught in Damascus in Khānqāh al-Shiliyya school. Died 755AH / 1354AD. See, *al-Dāris Fī Tarīkh al-Madāris*, v2, p163.

¹⁵¹⁶ See Fol: 232B.

¹⁵¹⁷ Muḥammad Ibn Maḥmūd al-Ḥusseinī. A faqīh, jurist, active around 857AH / 1470AD. See, *Kashf al-Zunūn*, 1826. See also, *Mu'jam al-Mu'allifin*, v3, p703.

¹⁵¹⁸ Born 1175AH / 1762AD. Became sulṭān 1203AH / 1789AD. Removed from power 1222AH / 1807AD, and replaced by Sulṭān Mustaspha IV Ibn 'Abd al-Ḥamīd I. Died 1223AH / 1808AD. See, *Tarīkh al-Dawlah al-'Aliyya al-'Uthmāniyya*, Muḥammad Farīd, pp363-393.

¹⁵¹⁹ Al-Madrasah al-Muqaddimiyya al-Jawwāniyya. Established under the Waqf system by Shams al-Dīn Muḥammad Ibn 'Abd al-Malak Ibn al-Muqaddam. Died 583AH / 1187AD. Situated Bāb al-Farādīs, Damascus. See, *Al-Dāris Fī Tarīkh al-Madāris*, v1, pp594-599. See also, *Khuṭaṭ al-Dimashq*, Akram al-'Ullabī, pp220-221.

Qūnawī.¹⁵²⁰ The full title of this copy reads, Kitāb Baḍī' al-Niẓām al-Jāmi' Bayna Kitābay Al-Bazdawī Wa al-Ihkām',¹⁵²¹ by Ibn al-Sā'atī al-Baghdādī al-Ḥanafī. The delivery of the Laleli manuscript was achieved in some fourteen sessions at the local majlis.¹⁵²²

6) This manuscript is from the E. Hazinesi collection located in the Topkapi Saray Museum library under the old ref no 841, and the new ref no 1025, and under the microfilm ref no 710. The manuscript is entitled ' Kitāb Baḍī', Baḍī' al-Niẓām al-Jāmi' Bayna Kitābay al-Bazdawī Wa al-Ihkām' Under this title Ibn al-Sā'atī's full name is registered.¹⁵²³

The first owner of the manuscript was a certain Abū Bakr Ibn Rustum Ibn Aḥmad al-Shirwānī.¹⁵²⁴ Then it was passed down to the keeper of the castle mosque in Ḥamāt,¹⁵²⁵ and then to Muḥammad Maṣraf Zāda, and then to Aḥmad Sulṭān al-Ḥanafī.

The manuscript is copied out in Naskh style by Muḥammad Ibn 'Abd Allāh al-Ḥanafī al-Ḥamawī at al-Qulayjiyya school, Damascus, 740AH / 1339AD.¹⁵²⁶ It contains a 150 folios. The copyist has written on the last page, fol: 150A, '*Balagha Muqābalatan*' a comparison, that is, between the original and (my) copy. And these words, ' I have corrected it for you as best as I possibly could, 740AH / 1339AD in al-Qulayjiyya school, Damascus,'¹⁵²⁷ On the title page underneath the title, the copyist has written ' I copied this title from the copyist of Ibn al-Sā'atī's original (clean) copy, one title being, ' Nihāyat al-Wuṣūl Ilā 'Ilm al-Uṣūl' and the other, 'Baḍī' al-Niẓām'

The manuscript is recited in over 15 sessions at the local majlis, as indicated on the fol:1B for the first session, fol:10A for the second session, fol:20A for the third, fol:30A for the fourth, fol:40A for the fifth, fol:50A for the sixth, fol:60 for the seventh, fol:70A for the

¹⁵²⁰ Muḥyī al-Dīn Abū Zakariyya Yaḥyā Ibn Iliās Ibn Amīn al-Dawlah al-Qūnawī al-Dimashqī. A leading Ḥanafite faqīh, a man of letters, calligraphist. He taught as an assistant in Damascus schools. He copied many manuscripts. Died, 743AH / 1342AD. See, *Kitāb al-Wafiyāt*, Ibn Rāfi' al-Sallāmī, v1, p432. See also, *al-Durar al-Kāmina*, v5, p190.

¹⁵²¹ See Fol: 132A.

¹⁵²² see Fol: 130A.

¹⁵²³ See Fol: 1A.

¹⁵²⁴ Abu Bakr Ibn Rustum Ibn Aḥmad Ibn Maḥmūd al-Shirwānī al-Ḥanafī. A man of letters, author of 'Mā Lā Budda Minhu Lil-Adīb'. Held important collection of manuscripts, now held in Istanbul libraries. See, *Hadiyat al-'Arifīn*, al-Baghdādī, v1, p241. see also, *Mu'jam al-Mu'allifin*, v1, p437. Also, '*Umdat al-Huffāz*', al-Samīn al-Ḥallabī, p8, pp37-38.

¹⁵²⁵ Sharīf al-Dīn Ya'qūb Ibn 'Abd Al-Raḥmān Ibn 'Uthmān Ibn Ya'qūb al-Ḥamwī. A faqīh (Shāfi' ite), poet, Qur'ānic interpreter, grammarian, made his reputation in Ḥamāt. Died 774AH / 1372AD. See, *al-Durar al-Kāmina*, v4, p434. See also, *Bughyat al-Wu'āt*, al-Sayūfī, p419. Also, *al-A'lām*, v8, p200. Also, *Mu'jam al-Mu'allifin*, v4, p130.

¹⁵²⁶ Founded under the Waqf trust by Sayf al-Dīn 'Alī Ibn Qulayj al-Nūrī for the Ḥanafis. See, *al-Dāris Fī Tarīkh al-Madāris*, v1, pp569-571. See also, *Khuṭaṭ Dimashq*, pp210-213.

¹⁵²⁷ Ibid.

eighth, fol:80A for the ninth, fol:90A for the tenth, fol:100A for the eleventh, fol:110A for the twelfth, fol:120A for thirteenth, fol:130A for the fourteenth and fol: 140A-150A for the fifteenth. At the end of each session the copyist has written the words '*Balagha Muqābalatan.*'

Some words are vowelised and some words are dotted. For purposes of editing I have placed the copy of this manuscript sixth in order of priority.

7) The seventh manuscript is in the Shahīd 'Alī Pāshā¹⁵²⁸ collection in Sulaymaniyya library, Istanbul, ref no 603, entitled '*Kitāb al-Badī' Fī Uṣūl al-Fiqh.*'

This manuscript will be referred to by the letter (SH)*Shīn*. The manuscript is in two volumes, the first consisting of 133 folios, and the second 130 folios. On every page there is 15 lines and on every line there are 7 words on average. Written in the Naskh style with the words dotted and vowelised. The manuscript is complete.

The copyist of this manuscript is Muḥammad Ibn 'Isā Ibn 'Alī al-Qurashī, better known as al-Mālikī,¹⁵²⁹ and the copy was finished in 732AH / 1331AD. It was recited over some 14 sessions.¹⁵³⁰

Its initial owner was Mūsā Ibn Zakariyya, who was followed by Muḥammad better known as Muḥarram Zāda, then Muḥammad Aḥmad Dhihnī. Then it was placed in trust by Shahīd 'Alī Pasha in his collection.¹⁵³¹

8) The eighth manuscript is placed in the collection of Ḥājī Bashīr Āghā¹⁵³² in the Sulaymaniyya library under the reference no 186, under the title '*Kitāb al-Badī' Fī Uṣūl al-Fiqh.*' This manuscript will be referred to by the Arabic letter (B) *Bā'*.

It consists of 106 folios. There are 21 lines to the page, and an average of 10 words per line, written in ordinary Naskh style. There are comments in the margins. The manuscript is copied in 744AH / 1343AD by Ilyās Ibn Ḥaydr¹⁵³³ at the Qulayjiyya school, Damascus.¹⁵³⁴

¹⁵²⁸ There are 2843 manuscript in this collection, 2538 in Arabic, 149 in Persian and 148 in Ottoman Turkish. See, *Tarīkh al-Turāth al-'Arabī*, The Arabic Manuscript collections in the World libraries, p101. Sizgīn.

¹⁵²⁹ See Fol: 263B.

¹⁵³⁰ See Fol: 263A.

¹⁵³¹ See Fol: 2A.

¹⁵³² There 631 manuscript in this collection, of which 654 are in Arabic, 62 in Ottoman Turkish, 5 in Persian. The index for the collection was published in Istanbul 1303AH / 1886AD. See, *Tarīkh al-Turāth al-'Arabī*, The Arabic Manuscript collections in the World libraries, p96. Sizgīn.

¹⁵³³ Ilyās al-Ḥanafī, he became sheikh al-Khānqāh al-Ṭuqiz Dummariyya, 743AH /1342AD. See, *al-Wafiyāt*, Ibn Rāfi', v1, p436.

¹⁵³⁴ See 1527, above.

On the title page we find that ‘Alā’ al-Dīn al-Qūnawī¹⁵³⁵ has granted a license in 746AH / 1345AD to the copyist who listened to Qūnawī's recitation in Khānqāh al-Sumaysāṭiyya.¹⁵³⁶

Some of the names of the various owners of this manuscript are ineligible, whilst others include Sa‘d al-Dīn Sa‘īd Ibn ‘Alī Ibn Ismā‘īl al-Ḥanafī, followed by Muḥammad al-Ḥallabī, then ‘Alī Ibn ‘Umar Ibn ‘Abd al-‘Azīz Ibn Abī Jarādah al-Ḥanafī, then Aḥmad al-Ḥussein al-Khabbāz, then Muḥammad Ibn Ibrāhīm Ibn Abī Bakr Ibn Aḥmad Ibn al-Khaṭīb, then the Ḥanafī *faqīh* Ibn Rashīd al-Qūnawī.¹⁵³⁷

The owner's name on fol:1B is Ḥājī Bashīr Āghā, the date is 1158AH / 1745AH. It was placed in trust by the owner, as endorsed by Muḥammad Amīn, Waqf inspector of Mecca and Medīna. On the last page we find another owner's name, Muḥammad al-Arāmī, muftī for the area of Kaffa.¹⁵³⁸ This manuscript is complete. I have acquired a microfilm copy.

9) This manuscript is placed under the collection of Sulṭān Muḥammad al-Fāṭih¹⁵³⁹ and is located in Sulaymaniyya library in Istanbul under the reference no 1243. It consists of 327 folios. To every page there are 11 lines, approximately 7 words to each line, and is written in ordinary prose style. Some of the words are dotted, some are not, and likewise some words are vowelised whilst some are not. This manuscript will be referred to by the Arabic letter (F) *Fā’*.

This manuscript was copied in 774AH / 1372AD by Muḥammad al-Fārābī¹⁵⁴⁰ in the al-Khātūniyya al-Jawwāniyya school, Damascus.¹⁵⁴¹ The manuscript was placed in trust by Badr al-Dīn Ibn Sayyid Aḥmad al-Ḥallabī, (along with 12 other manuscripts) and is processed by Muḥammad Ibn ‘Alī al-Fanārī.¹⁵⁴²

¹⁵³⁵ Sheikh al-Shayūkh ‘Alā’ al-Dīn ‘Alī Ibn Maḥmūd Ibn Ḥamīd al-Qūnawī al-Ḥanafī. Died, 749AH / 1348AD. See, *al-Dāris Fī Tarīkh al-Madāris*, v1, p571.

¹⁵³⁶ Equals Dār al-Ṣūfiyya. Abū al-Qāsim ‘Alī Ibn Muḥammad Ibn Yaḥyā al-Sumaysāṭī commissioned the building of the Khānqāh, centre for Ṣūfis in Damascus. Khānqāh repaired, under the Waqf trust, 1329AH / 1911AD. Became centre for the Waqf trust. Born, 373AH / 983AD. Died 453AH / 1061AD. See, *al-Dāris Fī Tarīkh al-Madāris*, v2, p497, pp151-161. See also, *Khuṭaṭ Dimashq*, al-‘Ullabī, pp398-399.

¹⁵³⁷ See Fol: 1A.

¹⁵³⁸ An old Turkish town. Kaffa is also a town in Palestine, near Jerusalem, the nisba being Kaffawī. See, *Mu‘jam al-Maṭbū‘āt*, Sirkīs, v1, p293. See, *Tāj al-‘Arūs*, v20, p129.

¹⁵³⁹ Muḥammad II Ibn Murād II, born 833AH / 1429AD. Became seventh sulṭān in the dynasty in 855AH / 1451AD. His capital was Edirne (Adrianopolis). Conquered Constantinople in 857AH / 1453AD. Died, 886AH / 1481AD. See, *Tarīkh al-Dawlah al-‘Aliyyah al-‘Uthmāniyya*, Muḥammad Farīd, pp160-178.

¹⁵⁴⁰ Shams al-Dīn Muḥammad Ibn al-Ḥassan al-Khawārizmī al-Fārābī al-Shāshī al-Ḥanafī. A scholastic theologian, a Ḥanafite. He wrote a commentary on *Kitāb al-Khamsīn Fī Uṣūl al-Dīn*, by Fakhr al-Dīn al-Rāzī, in 781AH / 1379AD. See, *Hadiyat al-‘Arīfīn*, v2, p170. See also, *Mu‘jam al-Mu‘allifīn*, v3, p217.

¹⁵⁴¹ Founded by Khātūn Bint Mu‘īn al-Dīn, wife of Shaḥīd Nūr al-Dīn Maḥmūd Zinkī. Later became the wife of Ṣalāḥ al-Dīn. Died 581AH / 1185AD. See, *al-Dāris Fī Tarīkh al-Madāris*, v1, pp507-518.

¹⁵⁴² Muḥammad Ibn ‘Alī Ibn Yūsef al-Fanārī. A Ḥanafite *faqīh*, handled inheritance cases. Became chief judge during the ‘Uthmān era. Died, 929AH / 1523AD. See, *Shadharat al-Dhahab*, v8, p167. See also, *al-Kawākib al-*

Penultimately the book was placed in the Fātiḥ collection in the Fātiḥ mosque, Istanbul before being moved to Sulaymaniyya library. We find in some places of this manuscript the official stamp of Sulṭān Maḥmud Ibn Mustapha¹⁵⁴³ who commissioned the building of Fātiḥ library.

10) The tenth manuscript is located in Nūr 'Uthmāniyya library, Istanbul, under the reference no 1294, Microfilm ref no 4326. This manuscript will be referred to by the Arabic letter (N) *Nūn*. It is entitled, 'Al-Baḍī'. It consists of 195 folios. There are 15 lines on each page and approximately 10 words per line. It is written in a classic Naskh style. All the words are dotted and vowelled.

This manuscript was copied in 790AH / 1388AD by Ḥassan Ibn Yūsuf Ibn Sha'bān¹⁵⁴⁴ at al-Khānqāh al-Shaykhūnī, near Mountain castle (Qal'at al-Jabal) in Cairo.¹⁵⁴⁵ It was placed in trust by Sulṭān 'Uthmān Ibn al-Sulṭān Mustapha,¹⁵⁴⁶ and processed by Ibrāhīm Ḥanīf, Waqf inspector for Mecca and Medīna.¹⁵⁴⁷

On the last page we find the words 'the correction and recitation is complete'. We find the words, 'the third session' written on folio 21A, and on folio 11A we find the words, 'the second session' and so on.

I have greatly benefited by having at my disposal a good number of manuscripts from which I have been able to use a select ten, from which vantage point I have been able to competently edit 'Baḍī' al-Niẓām,' just as I have benefited from the comments found on the manuscripts and the accompanying commentaries on 'Baḍī' al-Niẓām'¹⁵⁴⁸ which the copyists rendered and the scholars composed respectively.

III.3 The Author's Method

In this section I review Ibn al-Sā'ātī's approach on Islamic Jurisprudence. In what follows I examine the author's method of writing in his original manuscript. In the footnotes I refer to the material the author has taken from the 'Uṣūl' of al-Bazdawī and the 'Iḥkām' of Āmidī.

In his introduction the author mentions how he abridges in Baḍī' al-Niẓām the two

Sā'irah, v1, pp58-59. See also, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-'Ārifin*, v2, pp230-234. Also, *al-Fawā'id al-Bahiyya*, p183. *Mu'jam al-Mu'allifin*, v3, p555.

¹⁵⁴³ See Fol: 2AB, Fol: 216B. Fol: 326B.

¹⁵⁴⁴ See Fol: 195A.

¹⁵⁴⁵ For Ṣūfis in Cairo, near Jabal al-Muqāṭṭam. See, al-Mawsū' al-Thaqāfiyya, pp767-768.

¹⁵⁴⁶ 'Uthmān III Ibn Mustapha II, born, 1110AH / 1696AD. Assumed authority 1168AH / 1754AD. Died 1171AH / 1757AD. See, *Tarikh al-Dawlah al-'Aliyya al-'Uthmāniyya*, Muḥammad Farīd, pp327-328.

¹⁵⁴⁷ See Fol: 1A.

¹⁵⁴⁸ See III.2, above.

works, the '*Iḥkām*'¹⁵⁴⁹ of Āmidī and the '*Uṣūl*' of Fakhr al-Islam al-Bazdawī¹⁵⁵⁰, with additions.¹⁵⁵¹

The work is divided into four parts.

- a) The postulates.
- b) Aurally received indicators and rules.
- c) The rules of independent reasoning, the muftī and the enquirer.
- d) The weighing of conflicting indicators.¹⁵⁵²

In the first part,¹⁵⁵³ the author acquaints the reader with the definition, subject matter and objectives of the science of Islamic jurisprudence (*Uṣūl al-Fiqh*). This is followed by a discussion of the Theological postulates¹⁵⁵⁴ and therein acquaints the reader with the category which engenders opinion regarding composite matters (*Murakkab*).¹⁵⁵⁵

The author then presents us with a discussion of the *Lughā* (language) related postulates.¹⁵⁵⁶ He also defines the simple word and the composite,¹⁵⁵⁷ totality and the partial,¹⁵⁵⁸ the meaning of the general,¹⁵⁵⁹ the necessary, specifying the general,¹⁵⁶⁰ the difference between the general and absorption,¹⁵⁶¹ the homonym,¹⁵⁶² allegorical interpretation,¹⁵⁶³ the adjective, the confirmatory and synonyms,¹⁵⁶⁴ the literal and the metaphorical,¹⁵⁶⁵ legal nouns,¹⁵⁶⁶ connectives,¹⁵⁶⁷ homonyms and the metaphorical,¹⁵⁶⁸ deviation from the norm in terms of custom or legal requirements,¹⁵⁶⁹ *Lughā* (language) related analogy (*Qiyās*)¹⁵⁷⁰ and derivation.¹⁵⁷¹ The author then moves on to a discussion of the verb,¹⁵⁷² followed by a discussion of the particle,¹⁵⁷³ both simple¹⁵⁷⁴ and

¹⁵⁴⁹ folio: 1B.

¹⁵⁵⁰ Ibid

¹⁵⁵¹ Ibid.

¹⁵⁵² Ibid. See, *al-Iḥkām*, Āmidī, v1, p6.

¹⁵⁵³ Fol: 2A. See, *al-Iḥkām*, Āmidī, v1, p7.

¹⁵⁵⁴ Ibid.

¹⁵⁵⁵ Ibid.

¹⁵⁵⁶ Fol: 2B See, *al-Iḥkām*, Āmidī, v1, p9.

¹⁵⁵⁷ Ibid.

¹⁵⁵⁸ Fol: 2B-3A.

¹⁵⁵⁹ fol: 3A.

¹⁵⁶⁰ Ibid

¹⁵⁶¹ Ibid.

¹⁵⁶² Fol: 3B.

¹⁵⁶³ Ibid.

¹⁵⁶⁴ Ibid.

¹⁵⁶⁵ Fol: 3B-4A.

¹⁵⁶⁶ Fol: 4B.

¹⁵⁶⁷ Fol: 5A.

¹⁵⁶⁸ Ibid.

¹⁵⁶⁹ Fol: 5A-6A.

¹⁵⁷⁰ Fol: 6A.

¹⁵⁷¹ Fol: 6B.

¹⁵⁷² Fol: 6B. *al-Iḥkām*, Āmidī, v1, p56.

¹⁵⁷³ Fol: 7A.

¹⁵⁷⁴ Fol: 7A.

composite.¹⁵⁷⁵ Then follows a discussion of the *Lugha* (language) related postulates.¹⁵⁷⁶

For Ibn al-Sa'ātī there does not exist a natural suitability between the vocable and its meaning as the Mu'tazilah believe. He then discusses here the Mu'tazilah's opinion, treating the subject of waḍ' based language.¹⁵⁷⁷ He then moves on to a discussion of the Fiqh postulates, beginning with the role of Allāh as *Hākim* (Judge),¹⁵⁷⁸ followed by a definition of a Shari'ah categorization, *Hukm*, (rule) and the explication of six types of Shari'ah categorization, namely, (decree) *fard*¹⁵⁷⁹, (duty) *wājib*¹⁵⁸⁰, (forbidden) *ḥarām*¹⁵⁸¹, (reprehensible) *makrūh*¹⁵⁸², (recommended) *nadb*¹⁵⁸³, and (permissible) *Ibāḥah*¹⁵⁸⁴.

The capability¹⁵⁸⁵ (of the Muslim) provides the next theme for discussion, including the subject¹⁵⁸⁶ and the object¹⁵⁸⁷ of this capability, the condition for capability being reason.¹⁵⁸⁸

This is followed by a few lines on capacity (of the Muslim), divided into a *capacite de Jouissance*,¹⁵⁸⁹ and b) *capacite de D'exercice*¹⁵⁹⁰ which involves varying degrees of incapacity.¹⁵⁹¹ These are *al-* (foolishness) *Junūn*,¹⁵⁹² (under legal age) *Ṣighar*,¹⁵⁹³ (insanity) ' *Atah*,¹⁵⁹⁴ (forgetfulness) *Nisyān*,¹⁵⁹⁵ (sleepiness) *Nawm*,¹⁵⁹⁶ (slavery) *Riqq*,¹⁵⁹⁷ and (Accidental)¹⁵⁹⁸ (ignorance) *Jahl*,¹⁵⁹⁹ (jesting) *Hazl*,¹⁶⁰⁰ (stupidity)

¹⁵⁷⁵ Fol: 9B.

¹⁵⁷⁶ Ibid.

¹⁵⁷⁷ Ibid. See, *al-Iḥkām*, Āmidī, v1, p70.

¹⁵⁷⁸ Fol: 10A. See, *al-Iḥkām*, Āmidī, v1, p76.

¹⁵⁷⁹ Fol: 11B. See, *Uṣūl al-Bazdawī*, v2, p300. See also . *al-Iḥkām*, Āmidī, v1, p91.

¹⁵⁸⁰ Fol: Ibid. See, *Uṣūl al-Bazdawī*, v2, p302. See also . *al-Iḥkām*, Āmidī, Ibid.

¹⁵⁸¹ Fol: 14B-15A. See, *Uṣūl al-Bazdawī*, v1, p356. See also . *al-Iḥkām*, Āmidī, v1, p105.

¹⁵⁸² Fol: 15B. See, *al-Iḥkām*, Āmidī, v1, p114.

¹⁵⁸³ Ibid. See, *al-Iḥkām*, Āmidī, v1, p111.

¹⁵⁸⁴ Ibid. See, *al-Iḥkām*, Āmidī, v1, p114.

¹⁵⁸⁵ Fol: 17B.

¹⁵⁸⁶ Ibid.

¹⁵⁸⁷ Fol: 18B.

¹⁵⁸⁸ Ibid.

¹⁵⁸⁹ Fol: 18A.

¹⁵⁹⁰ Fol: 19A.

¹⁵⁹¹ Ibid.

¹⁵⁹² Ibid. See, *Uṣūl al-Bazdawī*, v4, p263.

¹⁵⁹³ Fol: 20A See, *Uṣūl al-Bazdawī*, Ibid.

¹⁵⁹⁴ Ibid. See, *Uṣūl al-Bazdawī*, Ibid.

¹⁵⁹⁵ Ibid. See, *Uṣūl al-Bazdawī*, Ibid.

¹⁵⁹⁶ Ibid. See, *Uṣūl al-Bazdawī*, Ibid.

¹⁵⁹⁷ Fol: 20B. See, *Uṣūl al-Bazdawī*, Ibid.

¹⁵⁹⁸ Ibid. See, *Uṣūl al-Bazdawī*, Ibid.

¹⁵⁹⁹ Ibid. See, *Uṣūl al-Bazdawī*, Ibid

¹⁶⁰⁰ Fol: 21A. See, *Uṣūl al-Bazdawī*, Ibid.

Safah,¹⁶⁰¹ (error) *Khata'*,¹⁶⁰² and *Ikrāh* (compulsion)¹⁶⁰³.

In the second part Ibn al-Sa'āfi discusses the three principal evidences (*Adillah*)¹⁶⁰⁴, the Qur'an¹⁶⁰⁵, the Sunnah¹⁶⁰⁶, which deals with the words¹⁶⁰⁷, endorsements¹⁶⁰⁸ and actions of the Prophet¹⁶⁰⁹, and Ijmā'¹⁶¹⁰ (consensus). In the case of Ijmā' the author defends the possibility of Ijmā' against the Khawārij and the Mu'tazilite al-Nazzām¹⁶¹¹. He then discusses the *adillah* (evidence) of Ijmā'¹⁶¹², weighing up the pro's and cons of its admissibility¹⁶¹³.

Ibn al-Sa'āfi moves onto a discussion of the modes of transmission with regard to the chain of authority of a Ḥadīth (*sanad*)¹⁶¹⁴ and its content (*matn*)¹⁶¹⁵, when present in *Mutawātir* (Ḥadīth ensured by many lines of transmission)¹⁶¹⁶, *khavar al-Wāḥid* (Ḥadīth ensured by only one or two lines of transmission)¹⁶¹⁷, and *Mashhūr* Ḥadīth (well known tradition)¹⁶¹⁸.

Within this context discussion takes place of *Jarḥ Wa Ta' dīl* (scrutinising and vetting of witnesses)¹⁶¹⁹, *mustanad al-Rāwī* (method of the transmitter)¹⁶²⁰, the *Muḥadithūn*¹⁶²¹ the modes of transmission being by validation of the Sheikh¹⁶²², by word of mouth¹⁶²³ and by the written word¹⁶²⁴. The author then covers the subject of *Mursal* Ḥadīth (incompletely transmitted Ḥadīth)¹⁶²⁵, before moving on to the subject of the *matn*¹⁶²⁶.

¹⁶⁰¹ Fol: 21B. See, *Uṣūl al-Bazdawī*, Ibid.

¹⁶⁰² Ibid. See, *Uṣūl al-Bazdawī*, Ibid.

¹⁶⁰³ Fol: 21B. See, *Uṣūl al-Bazdawī*, Ibid.

¹⁶⁰⁴ Fol: 22A. See, *Uṣūl al-Bazdawī*, v1, p19. See also . *al-Iḥkām*, Āmidī, v1, p145.

¹⁶⁰⁵ Ibid. See, *Uṣūl al-Bazdawī*, v1, p21. See also . *al-Iḥkām*, Āmidī, v1, p147.

¹⁶⁰⁶ Fol: 22B. See, *Uṣūl al-Bazdawī*, v2, p359. See also . *al-Iḥkām*, Āmidī, v1, p155.

¹⁶⁰⁷ Fol: 23A. See, . *al-Iḥkām*, Āmidī, v1, p156.

¹⁶⁰⁸ Fol: 23B. See, . *al-Iḥkām*, Āmidī, v1, p170.

¹⁶⁰⁹ Fol: 22B. See, *al-Iḥkām*, Āmidī, v1, p173.

¹⁶¹⁰ Fol: 24A. See, *Uṣūl al-Bazdawī*, v3, p226. See also . *al-Iḥkām*, Āmidī, v1, p179.

¹⁶¹¹ Ibid.

¹⁶¹² Fol: 24B. See, *Uṣūl al-Bazdawī*, v3, p236. See also . *al-Iḥkām*, Āmidī, v1, p219.

¹⁶¹³ Fol:25B.

¹⁶¹⁴ Fol:28A. See, *Uṣūl al-Bazdawī*, v2, p329. See also . *al-Iḥkām*, Āmidī, v2, p2.

¹⁶¹⁵ Ibid. See, *Uṣūl al-Bazdawī*, v, p. See also . *al-Iḥkām*, Āmidī, v2, p119.

¹⁶¹⁶ Fol: 29A. See, *Uṣūl al-Bazdawī*, v2, p360. See also . *al-Iḥkām*, Āmidī, v2, p114.

¹⁶¹⁷ Fol:30A. See, *Uṣūl al-Bazdawī*, v2, p370. See also . *al-Iḥkām*, Āmidī, v2, P30.

¹⁶¹⁸ Fol: Ibid. See, *Uṣūl al-Bazdawī*, v2, p368.

¹⁶¹⁹ Fol:31A. See, *Uṣūl al-Bazdawī*, v2, p392. See also . *al-Iḥkām*, Āmidī, v2, p77.

¹⁶²⁰ Fol:32A. See, *Uṣūl al-Bazdawī*, Ibid. See also . *al-Iḥkām*, Āmidī, v2, p2.

¹⁶²¹ Fol:33A.

¹⁶²² Fol:33B. See, *Uṣūl al-Bazdawī*, v3, p41.

¹⁶²³ Ibid. See, *Uṣūl al-Bazdawī*, Ibid.

¹⁶²⁴ Ibid. See

¹⁶²⁵ Fol:34B. See, *Uṣūl al-Bazdawī*, v3, p3. See also . *al-Iḥkām*, Āmidī, v2, p112.

¹⁶²⁶ Ibid.

In dealing with *dalālat al-Mantūq* (explicit expression)¹⁶²⁷ he begins with a talk about the command (of all things positive)¹⁶²⁸, and about the issues¹⁶²⁹ that arise as a result of using the command and the *Adillah* of the command¹⁶³⁰. Next, the issue of prohibition¹⁶³¹ is raised with the same objective in mind.

This is followed by a coverage of the general (*‘Āmm*)¹⁶³² and the specific (*Khāṣṣ*)¹⁶³³, and the specification of the general by means of *‘aql* (reason)¹⁶³⁴, *ḥissī* (sensory)¹⁶³⁵ and *lafzī* (verbal)¹⁶³⁶ with a view to discussing how one derives new rules from the application of the general¹⁶³⁷ and the specific¹⁶³⁸.

Ibn al-Sa‘āfi sets aside a section for the discussion of the *Muṭlaq* (absolute)¹⁶³⁹ and the *Muqayyad* (qualified)¹⁶⁴⁰, for *Mujmal* (ambiguous)¹⁶⁴¹ and *Mubayyan* (transparent)¹⁶⁴², and then for *Bayān* (lucidity)¹⁶⁴³ which is divided into five categories. a) *Bayān al-Taqrīr* (the *Bayān* of statement)¹⁶⁴⁴, b) *Bayān al-Tafsīr* (the *Bayān* of explanation)¹⁶⁴⁵, c) *Bayān al-Taghyīr* (the *Bayān* of change)¹⁶⁴⁶, d) *Bayān Darūra* (the *Bayān* of necessity)¹⁶⁴⁷ and e) *Bayān Tabdīl Wa Naskh* (the *Bayān* of replacement and abrogation)¹⁶⁴⁸.

Abrogation¹⁶⁴⁹ itself is divided into four categories, a) Abrogation of both the recitation and the rule.¹⁶⁵⁰ b) Abrogation of the recitation whilst the rule remains.¹⁶⁵¹ c) Abrogation of the rule but the recitation remains.¹⁶⁵² d) Abrogation of the adjective of the rule.¹⁶⁵³

Moving onto the second section¹⁶⁵⁴ dealing with the *matn*, Ibn al-Sa‘āfi covers the subject

¹⁶²⁷ Ibid. See, *Uṣūl al-Bazdawī*, v1, p67. See also . *al-Iḥkām*, Āmidī, v2, p120.

¹⁶²⁸ Ibid. See, *Uṣūl al-Bazdawī*, v1, p101. See also . *al-Iḥkām*, Āmidī, v2, p120.

¹⁶²⁹ Fol: 36A.

¹⁶³⁰ Fol: 36A-38B.

¹⁶³¹ Fol: 38A.

¹⁶³² Fol: 39A. See, *Uṣūl al-Bazdawī*, v1, p33. See also . *al-Iḥkām*, Āmidī, v2, 181p.

¹⁶³³ Ibid. See, *Uṣūl al-Bazdawī*, v1, p30. See also . *al-Iḥkām*, Āmidī, v2, p182.

¹⁶³⁴ Ibid.

¹⁶³⁵ Fol: 43B.

¹⁶³⁶ Ibid.

¹⁶³⁷ Fol: 44A.

¹⁶³⁸ Ibid.

¹⁶³⁹ Fol: 44B. See, *Uṣūl al-Bazdawī*, v3, p111. See also . *al-Iḥkām*, Āmidī, v3, p3.

¹⁶⁴⁰ Ibid.

¹⁶⁴¹ Ibid.

¹⁶⁴² Ibid.

¹⁶⁴³ Fol: 45A. See, *Uṣūl al-Bazdawī*, v3, p119. See also . *al-Iḥkām*, Āmidī, v3, p22.

¹⁶⁴⁴ Ibid.

¹⁶⁴⁵ Ibid.

¹⁶⁴⁶ Fol:45B. See, *Uṣūl al-Bazdawī*, v3, p119. See also . *al-Iḥkām*, Āmidī, v23 p27.

¹⁶⁴⁷ Ibid.

¹⁶⁴⁸ Fol:47A. See, *Uṣūl al-Bazdawī*, v3, p119. See also . *al-Iḥkām*, Āmidī, v3, p125.

¹⁶⁴⁹ Ibid. See, *Uṣūl al-Bazdawī*, v3, p118. See also . *al-Iḥkām*, Āmidī, v3, p95.

¹⁶⁵⁰ Fol:48B. See, *Uṣūl al-Bazdawī*, v3, p175. See also . *al-Iḥkām*, Āmidī, v3, p105.

¹⁶⁵¹ Ibid.

¹⁶⁵² Ibid.

¹⁶⁵³ Ibid.

¹⁶⁵⁴ Fol: 49B.

of implication, particularly text embedded implication (*dalālat al-Iqtidā'*)¹⁶⁵⁵ and non-integral implication (*dalālat al-Ishārah*)¹⁶⁵⁶ as well as '*Ibārah al-Naṣṣ*'¹⁶⁵⁷ (statement of text).

The third section deals with *Mafhūm* (implication)¹⁶⁵⁸ of which there are two types, *mafhūm al-Muwāfaqah* (congruent implication)¹⁶⁵⁹ and *mafhūm al-Mukhālafah* (counter implication)¹⁶⁶⁰. *Mafhūm al-Muwāfaqah*¹⁶⁶¹ is divided into six categories, beginning with *mafhūm al-Ṣifa* (the implication of adjective)¹⁶⁶², *mafhūm al-Sharṭ* (the implication of condition)¹⁶⁶³, *mafhūm al-Ghāyah* (the implication of limit)¹⁶⁶⁴, *mafhūm al-Laqaḥ* (the implication of nickname)¹⁶⁶⁵, *mafhūm al-Ḥaṣr* (the implication of restriction)¹⁶⁶⁶ and *mafhūm Qirān al-'Aṭf* (the implication of conjunction)¹⁶⁶⁷, explaining at the same time that *mafhūm al-Mukhālafah* was not considered a proof by the Ḥanafis¹⁶⁶⁸.

In the fourth section of this chapter Ibn al-Sa'āṭi deals with *Qiyās* (Analogy)¹⁶⁶⁹. First he explains the pillars (*arkān*) of *Qiyās*¹⁶⁷⁰, and then explains the function of the original case (*Aṣl*)¹⁶⁷¹ and the new case (*Far'*)¹⁶⁷² as perceived by the Fuqahā' and the Mutakallimūn (scholastic theologian), before moving on to discuss the conditions of *Qiyās*.¹⁶⁷³ Namely, the conditions of the *ḥukm al-Aṣl* (rule of the original case)¹⁶⁷⁴, the conditions of the '*illah al-Aṣl* (cause of the original case)¹⁶⁷⁵, conditions which the ancient jurists argued about as to their number and validity¹⁶⁷⁶. This was followed by an explanation of the conditions of the new case¹⁶⁷⁷.

Another section is set by the author for explaining the *ḥukm al-'Illah* (the rule of the cause) and its transference to that which lies outside the text (*Naṣṣ*)¹⁶⁷⁸, covering also the

¹⁶⁵⁵ Fol: 40A. See, *Uṣūl al-Bazdawī*, v1, p75. See also . *al-Iḥkām*, Āmidī, v3, p60.

¹⁶⁵⁶ Fol: 50B. See, *Uṣūl al-Bazdawī*, v1, p67. See also . *al-Iḥkām*, Āmidī, v3, p61.

¹⁶⁵⁷ Ibid.

¹⁶⁵⁸ Ibid.

¹⁶⁵⁹ Ibid.

¹⁶⁶⁰ Ibid.

¹⁶⁶¹ Ibid.

¹⁶⁶² Ibid.

¹⁶⁶³ Fol: 51A, See, *Uṣūl al-Bazdawī*, v2, p210. See also . *al-Iḥkām*, Āmidī, v3, p.

¹⁶⁶⁴ Ibid.

¹⁶⁶⁵ Ibid.

¹⁶⁶⁶ Fol: 51B. See also . *al-Iḥkām*, Āmidī, v3, p66.

¹⁶⁶⁷ Ibid.

¹⁶⁶⁸ Fol: 52A. See, *Uṣūl al-Bazdawī*, v2, p253. See also . *al-Iḥkām*, Āmidī, v3, p66.

¹⁶⁶⁹ Fol: 52B. See, *Uṣūl al-Bazdawī*, v4, p2. See also . *al-Iḥkām*, Āmidī, v3, p167.

¹⁶⁷⁰ Ibid.

¹⁶⁷¹ Ibid.

¹⁶⁷² Ibid.

¹⁶⁷³ Ibid.

¹⁶⁷⁴ Ibid.

¹⁶⁷⁵ Fol: 53B. See, *Uṣūl al-Bazdawī*, v4, p187. See also . *al-Iḥkām*, Āmidī, v3, p185.

¹⁶⁷⁶ Ibid.

¹⁶⁷⁷ Fol: 55B.

¹⁶⁷⁸ Fol: 56B.

justification whereby the *'Illah* confirms the *Mūjab* (stipulator or its adjective)¹⁶⁷⁹, or the condition or its adjective¹⁶⁸⁰, or the *Hukm* or its adjective, as well as discussing regular sequence (*Tard*) and its divisions¹⁶⁸¹.

Then Ibn al-Sa'āfi acquaints us with the phenomenon of *Istihsān* (discretion in a legal decision)¹⁶⁸² and its divisions¹⁶⁸³, pointing out the differences between *Istihsān* and *Qiyās* according to the Ḥanafis' reasoning¹⁶⁸⁴.

This is followed by a section on *Qiyās*, specifically on confirming the *'Illah* by way of *Ijmā'*,¹⁶⁸⁵ by the Qur'ān and the Sunnah,¹⁶⁸⁶ by *Sabr wa Taqsim* (sounding)¹⁶⁸⁷, by suitability (*Munāsabah*) and by deduction (*Ikhālah*).¹⁶⁸⁸

Ibn al-Sa'āfi goes on to explain the five fundamental Shari'ah objectives.¹⁶⁸⁹ These are:

a) Protection of religion.¹⁶⁹⁰

b) Protection of the soul.¹⁶⁹¹

c) Protection of intelligence.¹⁶⁹²

d) Protection of lineage.¹⁶⁹³

e) Protection of property.¹⁶⁹⁴

There are also objectives in addition to the five fundamental ones mentioned above. Then he moves on to mention *Hājāt* (necessities)¹⁶⁹⁵, matters which are not essential¹⁶⁹⁶, and then follows with the *Taḥsīnāt* (embellishments)¹⁶⁹⁷. The Fuqahā' and the Mutakallimīn, Ibn al-Sa'āfi informs us in this section, saw the use of *Qiyās* as being a command of God,

¹⁶⁷⁹ Fol: 55B. See, *al-Iḥkām*, Āmidī, v, p97.

¹⁶⁸⁰ Fol: 56A. See, *Uṣūl al-Bazdawī*, v4, p169. See also . *al-Iḥkām*, Āmidī, v3, p241.

¹⁶⁸¹ Fol: Ibid. See, *Uṣūl al-Bazdawī*, v3, p365. See also . *al-Iḥkām*, Āmidī, v3, p274-278.

¹⁶⁸² Fol: 57A. See, *Uṣūl al-Bazdawī*, v4, p2. See also . *al-Iḥkām*, Āmidī, v4, p136.

¹⁶⁸³ Ibid.

¹⁶⁸⁴ Ibid.

¹⁶⁸⁵ Ibid.

¹⁶⁸⁶ Ibid.

¹⁶⁸⁷ Ibid.

¹⁶⁸⁸ Fol: 58A. See, *al-Iḥkām*, Āmidī, v, p5.

¹⁶⁸⁹ Fol: 58B. See, *Uṣūl al-Bazdawī*, v3, p214-216. See also . *al-Iḥkām*, Āmidī, v3, p.

¹⁶⁹⁰ Ibid.

¹⁶⁹¹ Ibid..

¹⁶⁹² Fol: 58A.

¹⁶⁹³ Fol:58B.

¹⁶⁹⁴ Ibid.

¹⁶⁹⁵ Ibid.

¹⁶⁹⁶ Ibid.

¹⁶⁹⁷ Ibid.

whilst the Shī‘ah, al-Nizzām and a few Mu‘tazilah were of the opposite view¹⁶⁹⁸.

Ibn al-Sā‘atī promotes al-‘Ilal al-Mu‘aththira (influencing causes)¹⁶⁹⁹. He explains the kinds of opposition¹⁷⁰⁰ and resistance¹⁷⁰¹ and the aspects or ways to avoid the contradictory¹⁷⁰² and to avoid wayward causes¹⁷⁰³.

He then talks about the division of the *Aḥkām* and its appendages, namely, reason,¹⁷⁰⁴ the cause,¹⁷⁰⁵ and the condition.¹⁷⁰⁶ There are three kinds of rights concerning the *Aḥkām al-Mashrū‘*, the right of Allāh¹⁷⁰⁷, the rights of Man¹⁷⁰⁸ and the shared rights of both Allāh and Man¹⁷⁰⁹, in which the rights of Allāh outweigh the rights of Man, and the shared rights of both Man and Allāh in which the rights of man outweigh those of Allāh. The *Aḥkām al-Sharī‘ah* is attached with a reason (*sabab*)¹⁷¹⁰ or a cause (‘*illah*)¹⁷¹¹ or a condition (*shart*)¹⁷¹² or a sign (‘*alāma*)¹⁷¹³.

Ibn al-Sa‘atī and some jurists attach to the *Adillah al-Sharī‘ah* a legal evidence which they termed *Istidlāl* (reasoning)¹⁷¹⁴ He accepted this term¹⁷¹⁵, explaining the nature of its rule¹⁷¹⁶. From there Ibn al-Sa‘atī moves on towards explaining revelation before Islām (*Shar‘ man Qablana*)¹⁷¹⁷, and the *Mathhab al-Ṣaḥābī* (The Companions school)¹⁷¹⁸.

The third part of Ibn al-Sa‘atī's work centres on the subject of *Ijtihād* (independent reasoning)¹⁷¹⁹. He acquaints the reader with the issue of *Ijtihād*¹⁷²⁰ and mentions the two conditions that a jurist has to meet to qualify as a mujtahid¹⁷²¹. This is followed by a discussion of *Taqīd* (imitation)¹⁷²², and then acquaints the reader on the role of the *muftī*¹⁷²³.

¹⁶⁹⁸ Fol:59A.

¹⁶⁹⁹ Fol:60A.

¹⁷⁰⁰ Ibid.

¹⁷⁰¹ Ibid.

¹⁷⁰² Fol:61A.

¹⁷⁰³ Ibid.

¹⁷⁰⁴ Fol:62B.

¹⁷⁰⁵ Ibid.

¹⁷⁰⁶ Ibid.

¹⁷⁰⁷ Ibid.

¹⁷⁰⁸ Fol:62B.

¹⁷⁰⁹ Ibid.

¹⁷¹⁰ Ibid..

¹⁷¹¹ Fol; 63A.

¹⁷¹² Fol:63B.

¹⁷¹³ Fol:64.

¹⁷¹⁴ Fol: 64B. See, *al-Iḥkām*, Āmidī, v4, p104.

¹⁷¹⁵ Ibid.

¹⁷¹⁶ Ibid.

¹⁷¹⁷ Ibid.

¹⁷¹⁸ Ibid.

¹⁷¹⁹ ibid. See, *Uṣūl al-Bazdawī*, v4, p14. See also . *al-Iḥkām*, Āmidī, v4, p141.

¹⁷²⁰ Fol: 65A.

¹⁷²¹ Ibid. See, *Uṣūl al-Bazdawī*, v4, p14 See also . *al-Iḥkām*, Āmidī, v4, p141-142.

¹⁷²² Fol: 65B. See, *al-Iḥkām*, Āmidī, v4, p192.

¹⁷²³ ibid. See, *Uṣūl al-Bazdawī*, Ibid See also . *al-Iḥkām*, Āmidī, v4, p192.

In part four Ibn al-Sa'ātī defines *Tarjīh* (weighing of conflicting indicators)¹⁷²⁴, from the strength of effect¹⁷²⁵ and from the strength of confirmation¹⁷²⁶ and the frequency of *Adillah*¹⁷²⁷. Then there follows a discussion of *Ta'āruḍ* (contradiction)¹⁷²⁸, explaining why the weighing of one Qiyās against another is not acceptable¹⁷²⁹.

In presenting '*Baḍī' al-Nizām*' Ibn al-Sa'ātī brings together the two approaches of the Fuqahā' and Mutakallimīn in discussing the subject of Uṣūl al-Fiqh. His attempt represents the first attempt that a scholar has ever made to unite the two approaches. This is underlined by the author's own opinion.

III.4 Commentaries on Baḍī' al-Nizām

The 'Ulamā' considered Baḍī' al-Nizām so important that they widely copied it and commentated on it. Some of the copies and commentaries have come down to us in manuscript form, some, though, have been lost. In what follows I describe some of the commentaries that we know about.

a) The name of the first commentary, by Shams al-Dīn al-'Aṣfahānī,¹⁷³⁰ is called Bayān Ma'ānī al-Baḍī'.¹⁷³¹ It was produced in 703AH.¹⁷³²

I obtained a microfilm copy from the Aḥmad III library in Istanbul. The manuscript contains 283 folios and is referenced under the old no of 283 and under the new no of 1308. It was copied by 'Alī Ibn 'Umar al-Qarāḥiṣārī¹⁷³³ in 752AH / 1351AD. The copyist mentions the date the commentator completed his commentary.

I have also obtained a microfilm copy of a second manuscript which included only the first part, the part that takes us up to a discussion of the khabar al-Wāḥid report. The

¹⁷²⁴ Fol: 66A. See, *Uṣūl al-Bazdawī*, v4, p78. See also . *al-Iḥkām*, Āmidī, v4, p206.

¹⁷²⁵ Ibid.

¹⁷²⁶ Ibid.

¹⁷²⁷ Ibid.

¹⁷²⁸ Fol: 66B. See, *Uṣūl al-Bazdawī*, v4, p52. See also . *al-Iḥkām*, Āmidī, v4, p209.

¹⁷²⁹ Ibid.

¹⁷³⁰ Shams al-Dīn Abū al-Thanā' Maḥmūd Ibn 'Abd al-Raḥmān Ibn Aḥmad Ibn Muḥammad al-Aṣfahānī. Born, 674AH / 1276AD. Received his education at the Umayyad mosque. Taught at the Rawahiyya school, between 725AH / 1324AD and 733AH / 1332AD. taught in Khankāh al-Qarāfa. Died 749AH / 1349AD. He was a grammarian, poet, Qur'ānic interpreter, a sufi, a scholastic theologian and legist. His published works include, '*Maṭālī' al-Anzār Fī Sharḥ Ṭawālī' al-Anwār*'. manuscript of his *Tafsīr al-Qur'ān* in Sofia, in the Socialist library, ref no 1 / 43. See, *al-Dāris Fī al-Madāris*, v1 passim. See also, *Ṭabaqāt al-Shāfi'iyya*, al-Asnawī, v1, pp172-173. Also, *Al-Durrar al-Kāmina*, Ibn Hajar, v4, pp327-328. Also, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-'Arifīn*, v2, p409. Also, *Idāḥ al-Maknūn*, v1, p143. Also, *Mir'āt al-Jinān*, al-Yāfi'i, v4, p331. Also, *al-Badr al-Ṭālī'*, al-Shawkānī, v2, p298. Also, *al-A'lām*, v7, p176. Also, *Mu'jam al-Mu'allifīn*, v3, p814.

¹⁷³¹ manuscript in Dār al-Kuttub al-Miṣriyya library under the ref no 14, Uṣūl al-Fiqh. This is by al-Aṣfahānī. Another manuscript in Sulaymaniyya library, Husni Pasha collection, ref no 532. manuscript, also in Sulaymaniyya library, Fātiḥ collection, references 1345, 1346 and 1347. In the same collection another manuscript ref no 532. manuscript in the British library, India Office, v1, ref no 1460.

¹⁷³² See, last page in manuscript Aḥmad III.

¹⁷³³ Ibid

original is to be found in Aḥmad III library, Istanbul and was copied by Ibrāhīm Ibn Muḥammad Ibn ‘Abd al-Qāhir al-Shāfi‘ī in 735AH.¹⁷³⁴ It contains 219 folios.

b) Al-Rafi‘ Fī Sharḥ al-Badī¹⁷³⁵ written by Ibn Amīr al-Ḥājj.¹⁷³⁶

c) Kāshif Ma‘anī al-Badī Fī Bayān Mushkillihi al-Manī¹⁷³⁷ composed by Sirāj al-Dīn al-Hindī.¹⁷³⁸ I have a microfilm of the first and third volumes of this manuscript from the Arab manuscript institute, Cairo. The original is in the Dār al-Kutub al-Miṣriyya library, Ṭal‘at collection ref no 299 and the Uṣūl al-Fiqh section under the ref no 96.

d) Sharḥ al-Badī¹⁷³⁹ by Ibn Sheikh al-‘Awaynah.¹⁷⁴⁰ The work was produced in 990AH / 1582AD, contains 345 folios and is lodged in the Dār al-Kutub al-Miṣriyya library under the reference no 17 Uṣūl al-Fiqh.

e) Sharḥ al-Badī¹⁷⁴¹ by Ibn Hummām.¹⁷⁴²

¹⁷³⁴ See last page of the manuscript in Aḥmad III library.

¹⁷³⁵ See, *Kashf al-Zunūn*, v1, p911. The second volume of this manuscript is located in the Dār al-Kutub al-Miṣriyya, Egypt ref no 63, Uṣūl al-Fiqh.

¹⁷³⁶ Mūsā Ibn Amīr al-Ḥājj Ibn Muḥammad al-Tabrīzī al-Ḥanafī. Born, 669AH / 1270AD. Died, 736AH / 1335AD. See, *al-Durrar al-Kāmina*, v4, p374. Also, *al-Jawāhir al-Muḍiyya*, v2, p185. Also, *Tajj al-Tarājim*, p74. Also, *Fawā'id al-Bahiyya*, p216. Also, *al-Fath al-Mubīn*, al-Marāghī, v2, p145.

¹⁷³⁷ See, *Kashf al-Zunūn*, v2, p1368. manuscript in St Petersburg, third vol, ref no 862. Another manuscript in Leiden library, ref no 1827. manuscript in National Biblioteque, Paris, ref no 1260.

¹⁷³⁸ ‘Umar Abū Ḥafṣ Ibn Ishāq Ibn Aḥmad al-Hindī al-Ghaznawī, born 704AH / 1304AD. A judge and muftī. A leading light in the study of Fiqh, logic, philosophy, sufism. His published works include, ' *al-Ghurra al-Munīfa Fī Tarjīḥ Madhhab Abī Ḥanīfa*. ' Published in Cairo, 1950. Died, 773AH / 1372AD. See, *al-Durrar al-Kāmina*, v3, pp154-155. Also, *al-Badr al-Ṭālī*, v1, p505. Also, *Kashf al-Zunūn*, passim. Also, *Iḍāḥ al-Maknūn*, v2, p96, 416, 595. Also, *Hadiyat al-‘Arifin*, v1, p790. Also, *Mu‘jam al-Maṭbū‘āt*, Sirkīs, p1379. Also, *al-Nujūm al-Zāhira*, v11, pp120-121. Also, *Ṭabaqāt al-Fuqahā*, Ṭash Kubrī Zada, pp129-130. Also, *al-A‘lām*, v5, p42. *al-Fath al-Mubīn*, al-Marāghī, v2, p195. Also, *Mu‘jam al-Mu‘allifin*, v2, p544.

¹⁷³⁹ See, *Kashf al-Zunūn*, v1, p911.

¹⁷⁴⁰ Zayn al-Dīn Abū al-Ḥassan ‘Alī Ibn al-Ḥussein Ibn al-Qāsim Ibn Maṣṣūr al-Mūṣafī al-Shāfi‘ī, born, 681AH / 1282AD. Became a leading jurist and linguist. died 755AH / 1354AD. See, *Kashf al-Zunūn*, passim. Also, *Hadiyat al-‘Arifin*, v1, p720. Also, *al-Badr al-Ṭālī*, al-Shawkānī, v1, pp442-444. Also, *Durrar al-Kāmina*, v3, pp43-45. Also, *al-Nujūm al-Zāhira*, v10, p297. Also, *Bughyat al-Wu‘āt*, al-Sayūfī, p335. Also, *al-A‘lām*, v4, p280. Also, *Mu‘jam al-Mu‘allifin*, v2, p432.

¹⁷⁴¹ *Kashf al-Zunūn*, v1, p235.

¹⁷⁴² Kamāl al-Dīn Muḥammad Ibn ‘Abd al-Wāhid Ibn ‘Abd al-Ḥamīd Ibn Mas‘ūd al-Siwāsi al-Ḥanafī. Born, 790AH / 1388AD. Taught in Cairo, Mecca and Medīna. Renowned for his learning in comparative religion, Quranic interpretation, mathematics, linguists, music and logic. His published works include, ' *Al-Taḥrīr al-Jāmi* ' *Bayna Iṣtilāḥay al-Ḥanafī Wa al-Shāfi‘iyya*, ' *al-Musāyarah Fī ‘Ilm al-Kalām* ' and ' *Fath al-Qadīr* ' and ' *Zād al-Faqīr* '. Died 861AH / 1457AD. See, *Dhakhā'ir al-Tarāth al-‘Arabī al-Islāmī*, v1, p274. See also, *al-Badr al-Ṭālī*, v2, pp201-202. Also, *Kashf al-Zunūn*, passim. *Hadiyat al-‘Arifin*, v2, p201. Also, *al-Daw’ al-Lāmi*, al-Sakhāwī, v8, pp127-132. Also, *al-Fawā'id al-Bahiyya*, p180. Also, *al-Jawāhir al-Muḍiyya*, v2, p86. Also, *Hussen al-Muḥāḍarah*, al-Sayūfī, v1, p270. Also, *al-A‘lām*, v6, p255. Also, *Mu‘jam al-Mu‘allifin*, v3, pp469-470.

- f) Sharḥ al-Baḍī'¹⁷⁴³ by Ibn Khaṭīb Jibrīn.¹⁷⁴⁴
- g) Sharḥ al-Baḍī'¹⁷⁴⁵ by 'Uthmān al-Kurḍī.¹⁷⁴⁶
- h) Ḥaṣhiyya 'Alā al-Baḍī'¹⁷⁴⁷ by Mawlāna Zāda.¹⁷⁴⁸
- i) Sharḥ al-Baḍī', author unknown.¹⁷⁴⁹
- j) Sharḥ al-Baḍī', author unknown.¹⁷⁵⁰
- k) Sharḥ al-Baḍī' Li-Ibn al-Sā'ātī, author unknown.¹⁷⁵¹
- i) Ma'ānī al-Baḍī'¹⁷⁵² (Sharḥ al-Tabrīzī¹⁷⁵³ 'Alā al-Baḍī').

The number of commentaries, listed here is sufficient indication of the interest shown in al-Sa'ātī's Baḍī' al-Niẓām, the commentaries dating, incidentally, from Ibn al-Sā'ātī's own era.

In conclusion, and before presenting my edition of Ibn al-Sā'ātī's manuscript, I would like to state the reasons for my choice. Firstly, the book (in manuscript form) has never before been edited and therefore remains unpublished. Second, Baḍī' al-Niẓām is the first work to combine the approaches of the Fuqahā' and the Mutakallimūn, specifically through the works of Al-Bazdawī in his 'Uṣūl' and that of Āmidī in 'Iḥkām'. Third, the manuscripts comprising Baḍī' al-Niẓām were not only copious but were authentic and legible, enabling me to edit the work and present it in a clear, academic manner. Finally, the works of Ibn al-Sā'ātī have, in general, been neglected and remain unpublished, save

¹⁷⁴³ See, *Kashf al-Zunūn*, v1, p235.

¹⁷⁴⁴ Abū 'Umar Fakhr al-Dīn 'Uthmān Ibn 'Alī Ibn Ismā'īl al-Miṣrī al-Ṭā'ī al-Ḥallabī. Born, 662AH / 1264.AD. A Shaafi'ite jurist of note and an accomplished musician, logician and grammarian. Became chief judge in Aleppo. Died in Cairo, 739AH / 1338AD. See, *al-Durrar al-Kāmina*, v2, pp443-446. See also, *Ṭabaqāt al-Qurrā'*, Ibn al-Jazrī, v1, pp507-508. Also, *al-Badr al-Ṭālī'*, al-Shawkānī, v1, pp412-413. Also, *Kashf al-Zunūn*, p236, 418. Also, *Hadiyat al-'Arifīn*, v1, p655. Also, *Shadharat al-Dhahab*, v6, p122. Also, *Tarīkh Ibn al-Wardī*, v2, p323. Also, *al-Nujūm al-Zāhira*, v9, pp320-321. Also, *al-A'lām*, v4, p210. Also, *Mu'jam al-Mu'allifīn*, v2, p364.

¹⁷⁴⁵ *Kashf al-Zunūn*, v1, p235.

¹⁷⁴⁶ 'Uthmān Ibn 'Abd al-Malik al-Kurḍī al-Miṣrī. A leading faqīh of his day, a jurist, muḥadith. Died, 738AH / 1337AD. See, *Kashf al-Zunūn*, passim. See also, *Mu'jam al-Mu'allifīn*, v2, p364.

¹⁷⁴⁷ *Kashf al-Zunūn*, v1, p235.

¹⁷⁴⁸ Muḥibb al-Dīn Muḥammad Ibn Aḥmad, better known as Mawlāna Zāda al-Ḥanafī, died 859AH / 1454AD. See, *Kashf al-Zunūn*, v1, p236.

¹⁷⁴⁹ This manuscript can be located in Leiden library, ref no 1829.

¹⁷⁵⁰ Manuscript in Top Kapi Sarayi Museum library, ref no 3262.

¹⁷⁵¹ This manuscript can be located in Beyazit Devlet library, ref no 460.

¹⁷⁵² This manuscript can be located in Princeton Library, USA, Yahuda collection ref no 3571. (894).

¹⁷⁵³ Ḥussām al-Dīn Abū 'Abd Allāh Ḥassan Ibn Sharaf al-Tabrīzī, faqīh, man of letters, died approx 790AH / 1388AD. See, *Kashf al-Zunūn*, p729, p1866. See also, *Mu'jam al-Mu'allifīn*, v1, p544.

two sections from a manuscript entitled 'Sharḥ Majma' al-Baḥrayn' published in New Delhi, India, 1899. under the titles of 'Al-Shuf'ah' (pre-emption) and 'al-Ṭalāq' (divorce).

It gives me great pleasure to edit Baḍī' al-Niẓām with reference to the field of Islamic jurisprudence, making it available to students of the subject for the first time.

Chapter IV

Conclusion

We have seen that the science of Uṣūl al-Fiqh has its origins in the period during which Islām was established under the leadership of the Prophet Muḥammad, the first principle of Uṣūl al-Fiqh being the Qurān and the Sunnah of the Prophet.

Another fundamental principle of Uṣūl al-Fiqh, Ijma' was formulated during the period of the Companions, as was the fourth fundamental principle, analogy (Qiyās), that initially functioned under the guise of opinion (Ra'y).

The two earliest schools of Uṣūl al-Fiqh were the school of Ḥadīth (in Ḥijāz) and the school of Opinion (in Irāq). The essential arguments which inform the science of Uṣūl al-Fiqh were in the main recorded during the lifetimes of the four great Sunnī Imāms.

To convey these arguments two methodologies were devised and adopted, the methodology of the (Sunnī) Mutakallimūn followed by the Mālikis, the Shāfi'is, the Ḥanbalites, and the Mu'tazilah, and the methodology of the Fuqahā' followed by the Ḥanafites.

That the jurists continued to debate the issues of Uṣūl al-Fiqh well beyond the fourth century AH tenth century AD (when it was claimed that the gate of *Ijtihād* was closed) is evident in the activity of the judges and the *Muftis* who formulated independent judgements in legal or theological questions, as their office qualified them to do.

In PART ONE, I have described the development of Uṣūl al-Fiqh, or more properly its history, from the time of the Prophet until the end of the seventh century AH, / thirteenth century AD supporting my description with reference to the (Sunnī) scholars and their works.

In my opinion we have now a firm basis for a modern study of Uṣūl al-Fiqh, using the latest technology which has facilitated access to the requisite information, (indicators of law, terminology etc) which will allow scholars to build up a huge data base for the study of Uṣūl al-Fiqh, specifically where the inference of new rules is concerned with regard to living in a modern society according to Sharī'ah principles.

In PART TWO, I described in detail the science of Uṣūl al-Fiqh, its issues and in particular the methods of deriving new legal rules from the principles of Uṣūl al-Fiqh, as based on my research.

In PART THREE, I presented a detailed account of Ibn al-Sā'atī's 'Badī' al-Nizām', 'al-Jāmi' Bayna Uṣūl al-Bazdawī Wa al-Ihkām'. I also included a short biography on each of Bazdawī, Āmidī and Ibn al-Sā'atī. Besides, PART THREE provided information on the various scholarly works stimulated by these most important works on Islamic jurisprudence, namely, the 'Uṣūl' of al-Bazdawī and the 'Ihkām' of Āmidī, and the 'Badī' al-Nizām' of Ibn al-Sā'atī.

In Volume II, the Arabic edition, I have edited the text of 'Badī' al-Nizām' using ten manuscripts, one of which was original, and one copied from the original by the author's sister. By using these manuscripts, comparing one against the other, I provided myself with a clear, concise manuscript, and from this vantage point I was able to competently edit 'Badī' al-Nizām'.

The references to the Āyāt of the Qur'ān, the Ḥadīth, the poetry and prose and their practitioners taken from 'Badī' al-Nizām' were all identified by me. I also have made a general bibliography of the works referred to throughout this section.

It gives me great pleasure to edit 'Badī' al-Nizām' with reference to the field of Islāmic jurisprudence, making it, I believe, available to students of the subject for the first time.

APPENDICES

Appendix I

Ḥanafī Compositions In Uṣūl Al-Fiqh

Until The End Of The 7th Century AH / 13th Century AD

Above and beyond those Ḥanafī compositions on Uṣūl al-Fiqh referred to above we must mention those which, historically, take us up to the end of the 7th century AH. These include:

- I.1) Zufr Ibn al-Hudhayl. His works unfortunately have not come down to us but are to be found scattered throughout other Ḥanafite works on Uṣūl al-Fiqh.
- I.2) Abū Yūsef. His published works on Uṣūl al-Fiqh include 'Ikhtilāf Abū Ḥanīfa and Ibn Abū Layla'. 'al-Radd 'Ala Siyar al-Awzā'i'.
- I.3) Muḥammad Ibn al-Ḥassan al-Shaybānī. 'Kitāb al-Ṣalāt', 'Kitāb al-Zakāt', 'Kitāb al-Manāsik', 'Kitāb Nawādir al-Ṣalāt'.
- I.4) Abū Sulaymān al-Juzajānī, 'Masā'il al-Uṣūl', 'al-Amālī', which covered the subject of Uṣūl al-Fiqh.
- I.5) 'Isa Ibn Abbān Ibn Ṣadaqah, 'Ithbāt al-Qiyās', 'Khabar al-Wāḥid', 'Ijtihād al-Ra'y', 'al-'Ilal Fī al-Fiqh'.
- I.6) Ishāq Ibn Ibrāhīm al-Shāshī, a published work entitled, 'Uṣūl al-Shāshī'.
- I.7) 'Umar Ibn 'Abd al-'Azīz Ibn 'Umar Ibn Māzah, known as al-Ṣadr al-Shahīd. 'al-Fatāwā al-Kubra', 'al-Fatāwā al-Sughra', 'Umdat al-Muftī Wa al-Mustaftī', 'Uṣūl Ḥussām al-Dīn'.
- I.8) 'Abd al-Ghufūr Ibn Luqmān, known as Abū al-Mafākhar al-Kardārī. Composed a work on Uṣūl al-Fiqh.
- I.9) 'Abd al-'Azīz Ibn 'Uthmān Ibn Ibrāhīm al-Nasafī. 'Kifāyat al-Fuḥūl Fī 'Ilm al-Uṣūl', 'al-Ta'liqa Fī al-Khilāf', 'al-Fuṣūl Fī al-Fatāwā', 'al-Munqidh Min al-Zalal Fī Masā'il al-Jadl'.

I.10) Aḥmad Ibn Muḥammad Ibn Maḥmūd al-Ghaznawī. 'al-Rawḍah Fī Ikhtilāf al-‘Ulamā’, and he composed a work on Uṣūl al-Fiqh.

I.11) Al-Muwaffaq Ibn Muḥammad Ibn al-Ḥassan al-Khaṣṣī al-Khawārizmī. 'al-Fuṣūl Fī ‘Ilm al-Uṣūl'.

I.12) Maḥmūd Ibn Aḥmad Ibn ‘Abd al-Sayyid, known as Jamāl al-Dīn al-Ḥaṣīrī. The head of the Ḥanafis in his time. A work on Uṣūl al-Fiqh, entitled 'al-Ṭarīqah al-Ḥaṣīriyya Fī al-Khilāf Bayna al-Ḥanafiyya Wa al-Shāfi‘iyya'.

I.13) Mukhtār Ibn Maḥmūd al-Ghazmīnī. 'al-Ṣafwah Fī Uṣūl al-Fiqh', 'al-Mujtabah Fī Uṣūl al-Fiqh'.

I.14) ‘Alī Ibn Muḥammad Ibn ‘Alī al- Rāmushī al-Bukhārī. 'Sharḥ Uṣūl al-Bazdawī'.

I.15) ‘Umar Ibn Muḥammad Ibn ‘Umar al-Khabāzī al-Khajandī. 'al-Mughnī Fī Uṣūl al-Fiqh'.

I.16) ‘Abd Allāh Ibn Aḥmad Ibn Maḥmūd, known as Abū al-Barakāt Ḥafīẓ al-Dīn al-Nasafī. 'Manār al-Anwār Fī Uṣūl al-Fiqh', 'Sharḥ Manār al-Anwār'.

I.17) Al-Ḥussein Ibn ‘Alī, known as Ḥussām al-Dīn al-Sighnāqī. 'Al-Kāfī Sharḥ Uṣūl al-Bazdawī', 'Sharḥ al-Muntakhab' (al-Akhsikthī)

Appendix II

The most important published works of Mālik

II.1) al-Muwatta'.

II.2) Letter from Mālik to Hārūn al-Rashīd on the matter of preaching.

II.3) Manuscript of book entitled, 'al-Masā'il'.

II.4) Letter replying to the Qadarites.

II.5) A book on astronomy entitled, 'al-Nujūm',

II.6) An explanation of the difficult phrases in the Qur'ān.

Appendix III

The most important Malikite compositions

III.1) ‘Abd Allāh Ibn Wahab al-Qurashī. Of his published works we must include 'al-Jāmi‘ Ibn Wahab'.

III.2) Aṣbagha Ibn al-Faraj Ibn Sa‘īd Ibn Nāfi‘. He composed, amongst others, a work on Uṣūl al-Fiqh.

III.3) Ismā‘īl Ibn Ishāq al-Azdī. He composed a work on Uṣūl al-Fiqh.

III.4) ‘Amr Ibn Muḥammad Abū al-Faraj al-Laythī al-Baghdādī. He composed a work on Uṣūl al-Fiqh entitled 'Al-Luma‘'.

III.5) Bakr Ibn Muḥammad Abū al-Faḍl al-Qushayrī. Composed a number of works including 'Kitāb al-Qiyās', 'Uṣūl al-Fiqh', and 'Ma‘khadh al-Uṣūl'.

III.6) Muḥammad Ibn ‘Abd Allāh Abū Bakr al-Abharī. His works, amongst others, include, 'Kitāb al-Uṣūl', and 'Kitāb Ijmā‘ Wa Ahl al-Medīna'.

III.7) Muḥammad Ibn Aḥmad Ibn Mujāhid al-Ṭā‘ī. Composed a work on Uṣūl al-Fiqh.

III.8) Sa‘d Ibn Muḥammad al-Ghassānī al-Qirawānī. Composed a work on Uṣūl al-Fiqh entitled, 'al-Maqālāt'.

III.9) Muḥammad Ibn al-Ṭib al-Qāḍī Abū Bakr al-Bāqilānī. Compositions include, 'Amāli Ijmā‘ Ahl al-Medīna', 'Tamhīd Fī Uṣūl al-Dīn', 'al-Muqni‘ Fī Uṣūl al-Fiqh', 'Kashf al-Asrār' and 'Hatak al-Istār Fī Radd ‘Alā al-Bāṭiniyya'.

III.10) al-Qāḍī ‘Abd al-Wahhāb al-Baghdādī. His works on Uṣūl al-Fiqh include, 'al-Adillah Fī Masā’il al-Khilāf', 'al-Ifādah Wa al-Talkhīṣ', 'Awā’il al-Adillah', and 'Ishrāf ‘Alā Masā’il al-Khilāf'.

III.11) Aḥmad Ibn Muḥammad al-Ṭalamankī al-Andalusī. Compositions include, 'Al-Wuṣūl Ila Ma‘rifat al-Uṣūl'.

III.12) Sulaymān Ibn Khalaf Abū al-Walīd al-Bājī al-Andalusī. Of his published works we must include, 'Iḥkām al-Fuṣūl Fī Aḥkām al-Uṣūl' and 'Kitāb al-Ḥudūd'.

III.13) Aḥmad Ibn Sulaymān Ibn Khalaf al-Bājī. Compositions include, 'Mi'yār al-Nazr' and 'Sirr al-Nazr Fī 'Ilmay al-Uṣūl Wa al-Khilāf'.

III.14) Muḥammad Ibn Aḥmad Ibn Aḥmad Abū al-Walīd Ibn Rushd. Compositions include, 'al-Bayān Wa al-Taḥṣīl'.

III.15) Muḥammad Ibn al-Walīd Abū Bakr al-Ṭarṭūshī. Compositions include, 'Ta'fīqah Fī Masā'il al-Khilāf Wa Uṣūl al-Fiqh', and 'al-'Umd'.

III.16) 'Abd Allāh Ibn Muḥammad Ibn al-Sayyid al-Baṭlayūsī. Published works include, 'Al-Inṣāf'

III.17) 'Abd Allāh Ibn Ṭalḥah al-Yābuṛī. Works include, 'al-Madkhal'.

III.18) Ibrāhīm Ibn 'Abd al-Ṣamad al-Tanūkhī. Two works here, and their titles are, 'al-Tanbīh', and 'al-Anwār al-Badī'ah Ila Asrār al-Sharī'ah'.

III.19) Muḥammad Ibn 'Alī Ibn 'Umr al-Tamīmī al-Māzarī al-Ṣaqillī. Commented on Juwaynī's 'al-Burhān' under the title, 'Idāḥ al-Maḥṣūl Min Burhān al-Uṣūl'. Also includes a commentary entitled, 'al-Talqīn'.

III.20) Muḥammad Ibn 'Abd Allāh al-Qāḍī Abū Bakr Ibn al-'Arabī al-Ishbīlī al-Andalusī. Compositions include, 'al-Khilāfiyyāt', 'al-Inṣāf Fī Masā'il al-Khilāf', 'al-Maḥṣūl Fī 'Ilm al-Uṣūl', 'al-Nāsikh Wa al-Mansūkh', and 'Qānūn al-Ta'wīl'.

III.21) 'Alī Ibn Muḥammad al-Fazārī al-Ghurnāṭī. Compositions in Uṣūl al-Fiqh include, 'Tanbīh al-Mut'allimīn', 'Madārik al-Ḥaqā'iq'

III.22) Muḥammad Ibn Aḥmad Ibn Rushd al-Ḥafīd. Compositions on Uṣūl al-Fiqh include, 'Minhāj al-Adillah', 'Mukhtaṣar al-Mustaṣfa Fī al-Uṣūl', and 'Maqālah Fī al-Qiyās'.

III.23) 'Alī Ibn 'Aṭīq al-Anṣārī al-Qurṭabī. One composition on Uṣūl al-Fiqh.

III.24) 'Alī Ibn Ismā'īl al-Abyārī. Compositions include 'Sharḥ al-Burhān'.

III.25) 'Alī Ibn Aḥmad al-Tujībī al-Ḥarālī al-Andalusī. Wrote compositions on scholastic theology, Uṣūl al-Fiqh and logic.

- III.26) Sahl Ibn Muḥammad al-Azdī. Compositions include, 'al-Mustaṣfā Fī Uṣūl al-Fiqh'.
- III.27) 'Uthmān Ibn 'Umar Ibn al-Ḥāḥib. Compositions include, 'Muntahā al-Sawī Wa al-Amal Fī 'Ilm al-Uṣūl Wa Jadl', and 'Mukhtaṣar Muntahā al-Sawī Wa al-Amal'.
- III.28) Aḥmad Ibn Muḥammad al-Azdī al-Ishbīlī Ibn al-Ḥāj. Wrote a summary on al-Ghazzālī's 'al-Mustaṣfā' and its issues.
- III.29) Aḥmad Ibn 'Abd Allāh Ibn 'Umayra al-Tūnisī. Replied to Fakhr al-Dīn al-Rāzī's 'Kitāb al-Mu'ālim Fī Uṣūl al-Fiqh'.
- III.30) Aḥmad Ibn Idrīs al-Qarāfī. Compositions on Uṣūl al-Fiqh include, 'al-Tanqīḥ', 'Sharḥ al-Tanqīḥ', 'Sharḥ al-Maḥṣūl' (by al-Rāzī). 'Anwār al-Barūq Fī al-Farūq', and 'al-'Iqd al-Manẓūm Fī al-Khuṣūṣ Wa al-'Umūm'.
- III.31) Aḥmad Ibn Muḥammad al-'Āmarī al-Gharnāfī. Compositions on Uṣūl al-Fiqh include, 'Sharḥ al-Mustaṣfā'
- III.32) Muḥammad Ibn 'Alī Ibn Daqīq al-'Id. Compositions on Uṣūl al-Fiqh include, 'al-Imām Wa al-Ilmām Fī Aḥādith al-Aḥkām', 'Muqaddimah al-Muṭarriẓī', and 'Sharḥ Mukhtaṣar Ibn al-Ḥāḥib'.
- III.33) Muḥammad Ibn Ibrāhīm Ibn Muḥammad al-Baqūrī. Compositions include, 'Mukhtaṣar Farūq al-Qarāfī Fī Uṣūl al-Fiqh'.
- III.34) Aḥmad Ibn Ibrāhīm al-Thaqafī al-Ghanārī. Compositions include, 'Sharḥ (of al-Bājī's) al-Ishārah'.
- III.35) Al-Ḥussein Ibn Abī al-Qāsim al-Baghdādī 'Izz al-Dīn al-Nabī. Compositions on Uṣūl al-Fiqh include, 'al-Imhād'.
- III.36) Qāsim Ibn 'Abd Allāh al-Anṣārī al-Sabtī. Compositions include, 'Anwār al-Barūq'.
- III.37) Aḥmad Ibn Muḥammad Ibn 'Uthmān al-Azdī Ibn al-Banā'. Compositions include, 'Muntahā al-Sawī Fī 'Ilm al-Uṣūl'.
- III.38) Muḥammad Ibn Muḥammad Ibn 'Abd al-Nūr al-Ḥimyarī al-Tūnisī. Compositions include, 'Shar' al-Hāṣul'.

III.39) Aḥmad Ibn al-Ḥussein Ibn ‘Alī al-Kalā‘ī, known as Ibn al-Zayyāt. Composed work on the subjects of faith, jurisprudence and applied Fiqh under the title of 'al-Muṣaffaha al-Waṣimah Wa al-Minḥah al-Jaṣimah'.

Appendix IV

Published works of Shāfiʿī

IV.1) Aḥkām al-Qurʿān.

IV.2) Ikhtilāf al-Ḥadīth.

IV.3) Adab al-Qāḍī.

IV.4) Kitāb al-Umm.

IV.5) Jimāʿ al-ʿIlm.

IV.6) Diwān al-Shāfiʿī.

IV.7) Riḥlat al-Imām al-Shāfiʿī.

IV.8) Al-Risālah.

IV.9) Sunan al-Shāfiʿī.

IV.10) Musnad al-Shāfiʿī.

Appendix V

The most important Shāfi'ite compositions

V.1) al-Buwayfī. His opinions on Uṣūl al-Fiqh are to be found in his works.

V.2) al-Muzanī. His opinions on Uṣūl al-Fiqh are to be found in his works.

V.3) Dhakriyā Ibn Yaḥyā al-Sājī. An abridged version on Uṣūl al-Fiqh is available from his vast work on Khalāfiyyāt.

V.4) Muḥammad Ibn Ibrāhīm Ibn al-Mundhar. Compositions include 'Kitāb al-Qiyās', 'Kitāb al-Ijmā' and 'Kitāb al-Ishrāf Fī Madhāhib al-Ashrāf' on the subject of Disagreement.

V.5) 'Alī Ibn Ismā'īl, known as Abū al-Ḥassan al-Ash'arī. His compositions on Uṣūl al-Fiqh include, 'Ithbāt al-Qiyās', 'Ikhtilāf al-Nās Fī al-Asmā' Wa al-Aḥkām Wa al-Khāṣṣ Wa al-'Āmm, and others.

V.6) Muḥammad Ibn 'Abd Allāh al-Baghdādī, known as Abū Bakr al-Ṣayrafī. His compositions on Uṣūl al-Fiqh include, 'al-Bayān Fī Dalā'il al-A'lām 'Alā Uṣūl al-Aḥkām', 'Kitāb al-Ijmā', and 'Sharḥ Risālah al-Shāfi'ī'.

V.7) Aḥmad Ibn Abī Aḥmad al-Ṭabarī, known as Ibn al-Qāṣ. Composed a work on Uṣūl al-Fiqh.

V.8) Ibrāhīm Ibn Aḥmad, known as Abū Ishāq al-Marwazī. Compositions on Uṣūl al-Fiqh include, 'al-Faṣūl Fī Ma'rifat al-Uṣūl'.

V.9) Muḥammad Ibn Sa'īd al-Khawārizmī, known as Ibn al-Qāḍī. One work of note on Uṣūl al-Fiqh, entitled 'al-Hidāyah'.

V.10) Al-Ḥussein Ibn al-Qāsim, known as Abū 'Alī al-Ṭabarī. Composed one work on Uṣūl al-Fiqh, one work on polemics and one touching on the subject of Disputation under the title, 'al-Muḥarrar'.

V.11) Aḥmad Ibn Muḥammad Ibn al-Qaṭān al-Baghdādī. Composed one work of note on Uṣūl al-Fiqh.

V.12) Aḥmad Ibn Bishr al-'Āmirī, known as Abū Ḥamid al-Marwazī. One work of note

on Uṣūl al-Fiqh entitled 'al-Ishrāf 'Alā al-Uṣūl'.

V.13) Muḥammad Ibn 'Alī Ibn Ismā'īl al-Shāshī, known as al-Qaffāl al-Kabīr. One commentary of Shāfi'ī's 'Risālah' and one on Uṣūl al-Fiqh.

V.14) Muḥammad Ibn Khafīf al-Shīrāzī. One work of note on Uṣūl al-Fiqh entitled, 'al-Faṣūl Fī al-Uṣūl'.

V.15) 'Abd al-Wāḥid Ibn al-Ḥussein al-Ṣaymarī. Two works on Uṣūl al-Fiqh entitled, 'al-Qiyās Wa al-'Ilal', and 'Adab al-Muftī Wa al-Mustafī'.

V.16) Aḥmad Ibn Muḥammad, known as Abū Ḥāmid Ibn Abū Ṭāhir al-Isfarāyīnī. Composed a work on the science of Uṣūl al-Fiqh which unfortunately has not come down to us.

V.17) Muḥammad Ibn Ḥussein Ibn Fūrak al-Anṣārī. Has a number of compositions on Uṣūl al-Fiqh the most notable being, 'Kitāb al-Ḥudūd Fī al-Uṣūl'.

V.18) Ibrāhīm Ibn Muḥammad, known as Rukn al-Dīn Abū Ishāq al-Isfarāyīnī. He wrote a paper on Uṣūl al-Fiqh.

V.19) 'Abd al-Qāhir Ibn Ṭāhir al-Tamīmī, known as Abū Manṣūr al-Baghdādī. Two works of note on Uṣūl al-Fiqh, 'al-Faṣal', and 'al-Taḥṣīl'.

V.20) Ṭāhir Ibn 'Abd Allāh, known as Abū al-Ṭayyib al-Ṭabarī. Composed works touching on such subjects as Disputation, Polemics and Uṣūl al-Fiqh.

V.21) 'Alī Ibn Muḥammad al-Baṣrī al-Māwardī. Composed many works on Uṣūl al-Fiqh.

V.22) Aḥmad Ibn al-Ḥussein, known as Abū Bakr al-Bayhaqī. Composed a work entitled, 'Disputations' (al-Khilāfiyyāt), in which the author summarizes the debate in Uṣūl al-Fiqh between Abū Ḥanīfa and al-Shāfi'ī.

V.23) Shāhbūr (or Shahphūr) Ibn Ṭāhir, known as Abū al-Muẓẓaffar al-Asfarāyīnī. Composed a work of note on Uṣūl al-Fiqh.

V.24) Ibrāhīm Ibn 'Alī, known as Abū Ishāq al-Shīrāzī. Published works on Uṣūl al-Fiqh include, 'al-Luma', 'Sharḥ al-Luma', 'al-Tabṣirah', and finally 'al-Ma'ūnah'.

V.25) 'Abd al-Sayyid Ibn Muḥammad, known as Abū Naṣr Ibn al-Ṣabāgh. Works on Uṣūl al-Fiqh include, 'al-'Umdah', 'Tadhkirat al-'Ālim Wa al-Ṭarīq al-Sālim', and a work on the debate between the Shāfi'is and the Ḥanifis entitled, 'al-Kāmil Fi al-Khilāf'.

V.26) 'Abd al-Malik Ibn 'Abd Allāh al-Juwaynī, known as Imām al-Ḥaramayn. His published works on Uṣūl al-Fiqh include, 'al-Burhān', 'al-Waraqāt', 'al-Kāfiyya Fi al-Jadl'.

V.27) Maṣṣūr Ibn Muḥammad, known as Abū al-Muẓaffar al-Sim'ānī. A work of note on Uṣūl al-Fiqh is entitled, 'Qawāṭi' al-Adillah'.

V.28) 'Abd Al-Wahāb Ibn Muḥammad Ibn 'Umar Ibn Rāmīn al-Baghdādī. He has a number of compositions to his name on the subject of Uṣūl al-Fiqh.

V.29) 'Alī Ibn Muḥammad Ibn 'Alī al-Ṭabarī, known as al-Kiyyā al-Harāsī. Composed one work of note on Uṣūl al-Fiqh and one on Disputation entitled, 'Shifā' al-Mustershidīn'.

V.30) Muḥammad Ibn Muḥammad, known as Abū Ḥamid al-Ghazzālī. Two of his renowned published works are, 'al-Mustaṣfā' and al-Mankhūl'. Other works include, 'al-Maknūn Fi Uṣūl'.

V.31) Aḥmad Ibn 'Alī Ibn Muḥammad al-Wakīl, known as Ibn Burhān. Works include, 'al-Basīṭ', 'al-Wasīṭ', 'al-Awsaṭ' and 'al-Wajīz'.

V.32) Al-Ḥassan Ibn Ṣāfi Ibn 'Abd Allāh, known as Malik al-Nuḥāt. Wrote summaries on Uṣūl al-Fiqh and scholastic theology.

V.33) Muḥammad Ibn 'Umar al-Tamīmī al-Bakrī, known as Fakhr al-Dīn al-Rāzī. Published works include, 'Ma'ālim al-Uṣūl', and 'al-Maḥṣūl'.

V.34) Muḥammad Ibn Yūnus, known as 'Imād al-Dīn al-Arbīlī. Wrote a work on polemics entitled 'al-Taḥṣīl', and wrote a summary of al-Rāzī's 'al-Maḥṣūl'.

V.35) Al-Muẓaffar Ibn Ismā'īl Ibn 'Alī al-Wārānī (or al-Rārānī) al-Tabrizī. Composed summary of al-Rāzī's 'Maḥṣūl' under the title 'al-Tanqīḥ'.

V.36) Muḥammad Ibn Ibrāhīm Ibn Aḥmad al-Fayrūz Ābādī, known as al-Fakhr al-Fārisī. Composed one work on Uṣūl al-Fiqh and scholastic theology, entitled 'Muṭiyyat al-Naql Wa 'Aṭiyyat al-'Aql'.

V.37) ‘Uthmān Ibn ‘Abd al-Raḥmān al-Shahrazūrī, known as Ibn al-Ṣalāḥ. Composed a work on Fatawā.

V.38) Maḥmūd Ibn Aḥmad Ibn Muḥammad al-Zinjānī. His published works include, 'Takhrij al-Farū' 'Alā al-Uṣūl'

V.39) ‘Abd al-‘Azīz Ibn ‘Abd al-Sallām al-Silmī al-Dimashqī, known as Sulṭān al-‘Ulamā’ al-‘Izz Ibn ‘Abd al-Sallām. Composed a work on Uṣūl al-Fiqh under the title, 'al-Imām Fi Adillah al-Aḥkām'.

V.40) ‘Abd al-Raḥmān Ibn Ismā‘īl, known as Abū Shāmāh al-Dimeshqī. Works on Uṣūl al-Fiqh include, 'al-Muḥaqqaq', 'al-Uṣūl Fi al-Uṣūl', and a summary of 'Kitāb al-Mu’ammal Lil Radd Ilā al-Amr al-Awwal', which traces the religious rules (*Aḥkām*) to the Qur’ān and the Sunnah.

V.41) ‘Abd al-Raḥīm Ibn Muḥammad al-Mawṣilī. Wrote a summary of al-Rāzī's 'Maḥṣūl'.

V.42) Muḥammad Ibn ‘Alī Ibn al-Ḥussein al-Khalāṭī. Composed commentary on the 'Wajīz Fi Uṣūl' by Ibn Burhān under the title, 'Qawā'id al-Shar' Wa Dawābuṭ al-Aṣl Wa al-Far'.

V.43) Muḥyā al-Dīn Yaḥyā Ibn Sharf al-Nawawī. Published work on Uṣūl al-Fiqh includes, 'al-Uṣūl Wa al-Dawābuṭ'.

V.44) ‘Abd Allāh Ibn ‘Umar al-Qāḍī al-Bayḍawī. Published work includes, 'Minhāj al-Waṣūl Ilā ‘Ilm al-Uṣūl', 'Sharḥ Minhāj al-Waṣūl', and 'Sharḥ al-Muntakhab Fi al-Uṣūl'.

V.45) Muḥammad Ibn Maḥmūd Shams al-Dīn al-Aṣfahānī. Wrote a commentary on al-Rāzī's 'Maḥṣūl', and a work entitled, 'al-Qawā'id Fi al-‘Ulūm al-Arba‘ah', namely on Scholastic theology, Jurisprudence, Disputation and Logic.

V.46) ‘Abd al-Raḥmān Ibn Ibrāhīm al-Firkāḥ. Provided a commentary on Juwaynī's 'al-Waraqāt'.

V.47) Aḥmad Ibn ‘Isā al-Qalyūbī. Composed works on Uṣūl Al-Fiqh entitled, 'Nahaj al-Wuṣūl Fi ‘Ilm al-Uṣūl', and a summary of Uṣūl al-Fiqh.

V.48) Aḥmad Ibn Kamāl al-Dīn Aḥmad Ibn Ni‘mah al-Nābuluṣī. Wrote a work on Uṣūl

al-Fiqh which brings together the two approaches of Āmidī and al-Rāzī.

V.49) ‘Abd al-‘Azīz Ibn Muḥammad al-Ṭūsī. Wrote a commentary on al-Ḥāḡib's summary of Uṣūl al-Fiqh.

V.50) Maḥmūd Ibn Mas‘ūd Ibn Maṣlah, known as al-Qaṭb al-Shīrāzī. Wrote a commentary on al-Ḥāḡib's summary of Uṣūl al-Fiqh.

V.51) ‘Alī Ibn Muḥammad Ibn Khaṭṭāb al-Bāḡī. Wrote a summary of al-Rāzī's 'Maḥṣūl' under the title, 'Ghāyat al-Sūl'

V.52) al-Ḥassan Ibn Sharaf Shāh al-Astarābādhī, known as Rukn al-Dīn. Wrote a commentary on al-Rāzī's summary of Uṣūl al-Fiqh.

V.53) Muḥammad Ibn ‘Abd al-Raḥīm al-Armawī, known as Ṣafyyī al-Dīn al-Hindī. Composed 'Nihāyat al-Wuṣūl Ila ‘Ilm al-Uṣūl'.

V.54) Muḥammad Ibn Yūsuf Ibn ‘Abd Allāh al-Jizrī, known as Ibn al-Ḥashāsh. Wrote a commentary on 'Taḥṣīl', 'Ajwibah ‘Alā Masā’il Min al-Maḥṣūl' by al-Rāzī, and 'Sharḥ Minhāj al-Bayḍāwī'.

V.55) Ibrāhīm Ibn Hibat Allāh, known as Nūr al-Dīn al-Asnawī. Wrote a commentary on the Muntakhab Fī Uṣūl al-Fiqh.

V.56) Yūnus Ibn ‘Abd al-Majīd al-Ārmentī. Composed a work on Uṣūl al-Fiqh entitled, 'al-Masā’il al-Muhimmah Fī Ikhtilāf al-A’imah'.

V.57) ‘Alī Ibn Ismā’īl Ibn Yūsuf, known as ‘Alā’ al-Dīn al-Qūnawī. Composed a work on Uṣūl al-Fiqh entitled, 'Ikhtisār al-Ma’ālim Fī al-Uṣūl'.

Appendix VI

The Compositions Of Aḥmad Ibn Ḥanbal

VI.1) al-Musnad.

VI.2) Kitāb al-Sunnah.

VI.3) Kitāb al-Zuhd.

VI.4) al-Risālah al-Saniyya Fi al-Ṣalāt.

VI.5) Kitāb al-‘Ilal Wa al-Rijāl.

VI.6) Faḍā’il al-Ṣaḥābah.

VI.7) Kitāb al-Radd ‘Alā al-Jahmiyya Wa al-Zanādiqah.

VI.8) Kitāb al-Wara’.

VI.9) Masā’il Aḥmad Ibn Ḥanbal.

VI.10) Masā’il Aḥmad Ibn Ḥanbal.

VI.11) Juz’ Fī Uṣūl al-Sunnah.

VI.12) Qaṣīdah Fī al-Mawt Wa al-Yawm al-Ākhir.

VI.13) Kitāb al-Ashribah.

VI.14) Tafṣīr al-Qur’ān.

VI.15) Al-Furū’.

VI.16) Risālah Aḥmad Ila al-Khalīfah al-Mutawakkil.

VI.17) Al-Asmā’ Wa al-Kunā.

VI.18) Kitāb al-Imān.

VI.19) al-Nāsikh Wa al-Mansūkh.

VI.20) al-Tarīkh.

VI.21) Ḥadīth Shu‘bah.

VI.22) al-Muqaddam Wa al-Mu’akhkhar Fī al-Qur’ān.

VI.23) Jawābāt al-Qur’ān.

VI.24) al-Manāsik al-Kabīr.

VI.25) al-Manāsik al-Ṣaghīr.

VI.26) Kitāb al-Farā’id.

VI.27) Nafī al-Tashbīh

VI.28) al-Imāmah.

VI.29) Qaṣīdah Fī al-Khuḍū‘ Li-Allāh Lā Li-al-Nās.

Appendix VII

The most important Ḥanbalite compositions

VII.1) al-Ḥasan Ibn Ḥāmid Abū ‘Abd Allāh al-Warrāq. He composed a book and a commentary on Uṣūl al-Fiqh.

VII.2) Muḥammad Ibn al-Ḥussein al-Farā‘ Abū Ya‘lā. Composed 'Kitāb al-‘Idda', a commentary on the same work, 'al-Kifāyah' on Uṣūl al-Fiqh, and then a summary of it.

VII.3) Maḥfūz Ibn Aḥmad al-Kalwādhī al-Baghdādī. Composed a work on Uṣūl al-Fiqh entitled 'al-Tamhīd'.

VII.4) ‘Alī Ibn ‘Aqīl Abū al-Wafā. Composed 'al-Wāḍiḥ'.

VII.5) ‘Alī Ibn ‘Ubayd Allāh Ibn Naṣr Ibn al-Sirrī, known as Abū al-Ḥassan Ibn al-Zaghūnī. Composed 'Ghurār al-Bayān'.

VII.6) ‘Abd al-Raḥmān Ibn ‘Alī, known as Abū al-Faraj Ibn al-Jawzī. Composed 'al-Taḥqīq Fī Aḥādīth al-Khilāf', and 'Minhāj al-Wuṣūl Ilā ‘Ilm al-Uṣūl'.

VII.7) ‘Abd Allāh Ibn Aḥmad Ibn Qudāmah al-Maqdisī. Composed 'Rawḍat al-Nāzir Wa Jannat al-Munāzir', 'al-Munāzarah'.

VII.8) ‘Abd al-Salām Ibn ‘Abd Allāh Majd al-Dīn Ibn Taymiyyah. Composed 'al-Musawwadah', which was then added to by his son, ‘Abd al-Ḥalīm and his grandson Abū al-‘Abbās Taqī al-Dīn.

VII.9) Shihāb al-Dīn ‘Abd al-Ḥalīm Ibn ‘Abd al-Salām Ibn ‘Abd Allāh Ibn Taymiyyah. Composed a number of commentaries on Uṣūl al-Fiqh including 'al-Musawwadah'.

VII.10) Zayn al-Dīn Ibn al-Munajja al-Tanūkhī. Has a number of compositions on the subject.

VII.11) Sulaymān Ibn ‘Abd al-Quwwī al-Ṭūfī al-Ṣarṣarī. Produced a summary of 'al-Rawḍah', and a summary of 'al-Ḥāṣal'.

VII.12) Taqī Dīn Aḥmad Ibn ‘Abd al-Ḥalīm Ibn ‘Abd al-Salām Ibn ‘Abd Allāh Ibn Taymiyyah. Recorded his fatwas, composed a work by the title of 'Minhāj al-Sunnah,'

'Dar' Ta'arud al-'Aql Wa al-Naql', 'Musawwadah' and 'Ijmā'.

VII.13) Yūsuf Ibn 'Abd al-Raḥmān Ibn al-Jawzī. Compositions include 'Kitāb al-Idāḥ Li-Qawānīn al-Iṣṭilāḥ', and 'al-Madhhab al-Aḥmad Fī Madhhab Aḥmad'.

VII.14) Aḥmad Ibn Muḥammad Ibn al-Ḥajjāj al-Merwazī. Collected numerous Ḥadīth from Ibn Ḥanbal. Composed 'al-Sunan Bi Shawāhid al-Ḥadīth'.

VII.15) Aḥmad Ibn Muḥammad Ibn Ḥārūn al-Khallāl. Composed 'al-Jāmi' Fī al-Fiqh al-Ḥanbalī', 'al-'Ilal', 'al-Sunnah Wa Alfāz Aḥmad Wa al-Dalīl Min al-Aḥādīth'.

VII.16) Aḥmad Ibn Muḥammad Ibn Ḥanī' al-Athram Composed 'al-Sunan', 'al-'Ilal', 'al-Nāsikh Wa al-Mansūkh Min al-Ḥadīth'.

VII.17) Aḥmad Ibn Muḥammad Ibn Khalaf Ibn Rājāḥ al-Maqdisī al-Ṣāliḥī al-Ḥanbalī. Composed a commentary on al-Rāzī's 'Sharḥ al-Ma'ālim', 'al-Fuṣūl Wa al-Furūq'

Appendix VIII

Al-Bazdawī compositions

VIII.1) *Sharḥ al-Fiqh al-Akbar*. The MSS can be found in St.Petersburg library under the reference number 938 and in the Escorial library, Spain under the reference number 995. It has been published.

VIII.2) *Kitāb al-Muyassar* on the subject of scholastic theology. It can be located in MSS form in Rampūr library, India, under the reference number 323/312.

VIII.3) *Sharḥ al-Jāmi‘ al-Ṣaghīr*. The MSS is present in Rampūr library under the reference number 207:262 and in Top Kāpī in Istanbul under reference 2423. It consists of 334 folios.

VIII.4) *Sharḥ al-Jāmi‘ al-Kabīr*, on the branches of Fiqh.

VIII.5) *Ghanā’ al-Fuqahā’*.

VIII.6) *Tafsīr al-Qur’ān*, consists of 120 volumes, testament to its vastness.

VIII.7) *Ṭarīqah al-Bazdawī*, an approach to debate/polemics touching on the legal indications, namely the Qur’ān, Sunnah, Ijmā’, Qiyās and Istidlāl. In this work Bazdawī sets up a model of debate for other Fuqahā’ to follow. Al-‘Amīdī, by way of contrast invokes not only the legal indications in his debate but also philosophy, as manifest in his work *Irshād*.

VIII.8) *Al-Mabsūt Fī al-Fiqh*, which consists of 11 volumes.

VIII.9) *Zallāh al-Qāri’*, on the subject of Qur’ānic readings. The MSS is to be found in Kūparulu library, Istanbul under the reference number 3/ 103.

VIII.10) *Kanz al-Wuṣūl Ilā Ma’rifat al-Uṣūl*, on the subject of Uṣūl al-Fiqh, following the methodology of the Fuqahā’ in the presentation of the work. Published. This book has been commentated on widely by the Fuqahā’, some titles of which we list below:

VIII.10.i) *Kashf al-Asrār* or *Kashf al-Bazdawī*, written by ‘Abd al-‘Azīz Ibn Aḥmad al-Bukhārī. Commentary published, conjoined with *Uṣūl al-Bazdawī*.

VIII.10.ii) *Sharḥ Uṣūl al-Bazdawī*, by Sālīm Ibn Aḥmad al-Sindī.

VIII.10.iii) *Sharḥ Uṣūl al-Bazdawī* (*known as al-Kafi lima qassar "anhu al-wafi*) by Al-Ḥusayn Ibn 'Alī Ibn al-Hajjaaj Ibn "ali al-Sighnāqī.

VIII.10.iv) *Al-Taqrīr*, by Muḥammad Ibn Maḥmūd al-Bābartī.

VIII.10.v) *Tanqīḥ al-Uṣūl*, by Ṣadr al-Sharī'ah al-Aṣghar al-Maḥbūbī

VIII.10.vi) *Sharḥ Usul al-Bazdawī*, by Badr al-Dīn Muḥammad Ibn Shams al-Dīn.

VIII.10.vii) *Al-Shāmil*, by Amīr Kātib Ibn 'Umar al-Fārābī al-Itqānī al-Ḥanafī.

VIII.10.viii) *Sharḥ Uṣūl al-Bazdawī* by Ilāhdād al-Junpuṛī al-Hindī.

VIII.10.ix) *Takhrīj Aḥādīth Uṣūl al-Bazdawī* by Qāsim Ibn Kuṭlūbughā.

VIII.10.x) *Sharḥ Uṣūl al-Bazdawī*, (Author unknown).

VIII.10.xi) *Kashf al-Bazdawī* (Author unknown)

VIII.10.xii) *Sharḥ Uṣūl al-Bazdawī* by al-Qāḍī Shihāb al-Dīn Aḥmad Ibn 'Umar al-Dawlatābādī, at the bequest of 'Isā Ibn Muḥammad al-Dahlawī.

VIII.10.xiii) *Sharḥ Uṣūl al-Bazdawī* by Sa'd al-Dīn al-Khayrābādī.

VIII.10.xiv) *Sharḥ Uṣūl al-Bazdawī* by Wajīh al-Dīn al-'Alawī al-Gujarātī.

VIII.10.xv) *Fawā'id (from) Usul al-Bazdawī* by Quṭb al-Dīn al-Shīrāzī.

VIII.10.xvi) *Sharḥ Uṣūl al-Bazdawī* by Shams al-Dīn al-Asfahānī.

VIII.10.xvii) *Sharḥ Uṣūl al-Bazdawī* by Abū al-Makārim al-Jārbardī.

VIII.10.xviii) *Sharḥ Uṣūl al-Bazdawī* by Qawām al-Dīn al-Atrārī al-Ḥanafī.

VIII.10.xix) *Sharḥ Uṣūl al-Bazdawī* by Abū al-Baqā' Muḥammad Ibn Aḥmad al-Ḥanafī.

VIII.10.xx) *Sharḥ Uṣūl al-Bazdawī* by 'Umar al-Arzinjānī.

VIII.10.xxi) *Sharḥ Uṣūl al-Bazdawī* by Shams al-Dīn al-Fanārī.

VIII.10.xxii) *Sharḥ Uṣūl al-Bazdawī* by ‘Alā al-Dīn Muṣannifak.

VIII.10.xxiii) *Sharḥ Uṣūl al-Bazdawī* by Mullā Khusro

VIII.10.xxiv) *Ta’līqah ‘Alā Uṣūl al-Bazdawī* by Ḥamīd al-Dīn al-Ḥanafī

VIII.10.xxv) *Ta’līqah ‘Alā Uṣūl al-Bazdawī* by Jalāl al-Dīn Rasūlā al-Tibānī.

VIII.10.xxvi) *Ta’līqah ‘Alā Uṣūl al-Bazdawī* . By Qawām al-Dīn al-Kākī

APPENDIX IX

Amidi's Compositions

IX.1) Al-Iḥkām Fī Uṣūl al-Aḥkām, written in 625AH / 1228AD in both Medīna and Damascus.

IX.2) Ghāyat al-Murām Fī ‘Ilm al-Kalām.

IX.3) Al-Mubīn Fī Sharḥ Alfāz al-Hukamā’ Wa al-Mutaqaddimīn.

IX.4) Muntahā al-Sawī Fī ‘Ilm al-Uṣūl.

Other works include.

IX.5) Kashf al-Tamwīhāt Fī Sharḥ al-Tanbīhāt

IX.6) Kitāb al-Jadl.

IX.7) Abkār al-Afkār.

IX.8) Daqā’iq al-Ḥaqā’iq (on logic).

IX.9) Al-Ma’akhidh ‘Alā al-Rāzī.

IX.10) Manā’ih al-Qarā’ih, a summary of Abkār al-Afkār.

IX.11) Lubāb al-Al-Lubāb.

IX.12) Ṭarīqah al-Āmidī Fī al-Khilāf.

IX.13) Al-Mukhtaṣar Fī al-Khilāf.

IX.14) Sharḥ Jidāl al-Sharīf.

IX.15) Ghāyat al-Aml Fī ‘Ilm al-Jadl.

IX.16) Muntahā al-Sālik Fī Rutab al-Masālik.

IX.17) Daḥil Muttahid al-I'tilāf.

IX.18) Kitāb al-Tarjīḥāt (on disputation).

IX.19) Al-Ta'ḥiqah al-Kabīrah.

IX.20) Al-Ta'ḥiqah al-Ṣaghīrah.

IX.21) Khulāṣah al-Abṛiz.

IX.22) Ramūz al-Kanūz. about 'Ilm al-Kalām.

IX.23) Al-Nūr al-Bāhir Fī al-Ḥukm al-Zawāhir.

APPENDIX X

Ibn al-Sā'atī s

commentaries and notes made on '*Majma' al-Bahrayn*'

X.1) The commentary made 'Abd al-Laṭīf Ibn 'Abd al-'Azīz Ibn Amīn al-Dīn Ibn Malak, better known as Ibn Farashta.

X.2) The commentary made by Muḥammad Ibn Aḥmad al-Qarashī al-'Umri.

X.3) The commentary entitled '*Mustajma' Fi Sharḥ al-Majma'*' by Maḥmūd Ibn Aḥmad al-'Aynī.

X.4) A commentary by Muḥammad Ibn Yūsef al-Qūnawī.

X.5) A commentary' by 'Alī Ibn Muḥammad Muṣannafak.

X.6) A commentary, '*Tashnīf al-Masma' Fi Sharḥ al-Majma'*' by Aḥmad Ibn Muḥammad al-Ṭarābulṣī.

X.7) A commentary by Muḥammad Ibn Qāḍi Āyāthlūgh Chalabīṣī.

X.8) A commentary by Muṣṭafa Ibn 'Umr.

X.9) A commentary, author unknown.

X.10) Notes on the commentary of Ibn Malak made by Qāsim Ibn Qūtlūbughā.

APPENDIX XI

Photocopies of sample pages of the Manuscripts

الصفحة الأولى من مخطوطة دار الكتب المصرية رقم: ١٣٩ ، وهي بخط المؤلف ورمزها (م) M (XI.1)

[illegible]

الصفحة الأولى من مخطوطة مكتبة داماد ابراهيم باشا في اسطنبول رقم: ٤٣٥، ورمزها (د) D (XI.2)

بسم الله الرحمن الرحيم

الحيز اباك اللهم واجب الوجود والقيض شاكرا واسع
الرحمة والجلود انت الذي لا ينقض فضلك العطاء وكلنا يدك
بالخير سحابة لك النعمة السابعة والحي البائنة ونعوك
عياد العباد ومنك الملاء واليك المعاد نبئت النعمين بالحق
فأنت لهم الحجة وأوصيت بهد بهم الحجة وخصصت محمد
سيدا لبشر انواع الكمال وختمت رسالته الرسالات
وقطعت حجة العالم وسخت بعلمه المال اللهم فضيل عليه
صلوة تقف دونها نجات الطلب وتبوا بها اعلا المقامات
والرب ولجعلنا اللهم ممن رضاك باتباعه وخلصت
لك في قول الحق استماعه وأراد وحمك الكرم مما تقه
وصنفه واستحب نوصفك بما جمعه وألفه قد تحكك
أيها الطالب لنهاية الوصول إلى العلم لا حول بهذا الكتاب

البديع في معناه المطايات اسمها لمسا ماضته الشمر كتاب
الإحكام ورضعته بالجواهر البقيسة من اصول الحرف الإسلام
فانها الحرف الحيطار عوامع الاصول الجوامع لقواعيد
المعقول والمنقول هذا حار والقواعد الحكيمة الاصولية وال
مشهور بالشواهد الحربية الفروعية وهذا الكتاب
يقرب منها البعيد ورواف الشريد ولست لك الطرريقين
وتعرفك اصطلاح الفريقين وتعرفك اصطلاح الفريقين مع
زادات شرفه وقواعد شريفة لطيفة لاختيار الفقير والدار
ورعاية للذهب الذي هو اصل الباب ناخذرك بتخصيله
وتحقيق احكامه وتقصيه والله الموفق لادراك الامان واستجداء
ابكار المعاني وقد رتته على الزرع قواعد الآيات في المبادئ والبيان
في الادلة السمعية واقتسامها والثالث في احكام الاجتهاد
والفني المستفني والرابعة في ترجمات طرق المطلوبات

والله اعلم

على العالم وكيف يزعج العام الذي هو قدره وبقله
 الاوصاف فاستد كقولهم ذات وصف فكان اول مرت
 ذات وصفين فلما اجملة فرع النضر والنضر المختص والمطوك
 واحد والقتله والكثرة صورته والريح لبشر الالمعالي

ثم الكتاب ولحمد لله اولاً واحراً
 وظاهراً وباطناً وصلواته على خيرته
 من خلقه محمد النبي الامي واله واصحابه
 الطاهرين وذلك على يد المعقود الى الله
 تعالى امته التي نزلت مولفه لا يويه
 مؤلفه في شهر رجب سنة احدى عشرة وستمائة

بفتح لا ضار فيه ولا يمد



SOLE	E	TÜPHANESİ
Kismi	Damad Ibrahim pa	
Yeni Kavi		
Eski K:	435	
Tasnif		

بسم الله الرحمن الرحيم، وبه المستعان؛ قال رحمه الله
 لخير دايك اللهم ما واجبه الوجود، والفيض شِعَارَكَ يا واسع الرحمة والجلود، أنت الذي لا
 ينقص فيضك العطا، وكلتهديك بالخير سحابة لك النعمة السابعة والحجة البالغة، وبغفوك
 عباد العباد، ومنك المبدأ واليك المحل، بعثت النبيين بالحق فاقمت بهم الحجة، وأوحيت بهم
 المحجة، وخصمت محمد سيدا البشر بأنواع الكلمات، وختمت برسالته الرسالات، وقطعت
 بحجة العلل، ونسخت بملته الملل، اللهم فصل عليه صلوة تقف دونها نهايات الطلب،
 وتقبوا بها أعلى المقامات والرتب، واجعلنا اللهم من أَرْضَاكَ باتباعه، واخضر لك في
 قول الحق واستماعه، واراد وجهك الكريم بما نفعه وصنعه، واستصحب توفيقك فيما جمعه
 والده، قد منحك أيها الطالب لنهاية الوصول إلى علم الأصول، بهذا الكتاب البديع في معناه
 المطابق اسمه لسماء، لخصته لك من كتاب الأحكام، ورصعته بالجواهر النفيسة من أصول
 فخر الإسلام، فإنها البحران المحيطان بمجامع الأصول، الجامعان لقواعد المجهول والمنقول
 هذا حاو للقواعد الكلية الأصولية، وذلك مشحون بالشواهد الجزئية الفرعية، وهذا الكتاب
 يقرب منهما البعيد، ويولف الشريد، ويعبد لك الطريقين، ويعرفك اصطلاح الفريقين مع
 زيادات شريفة، وقواعد منقحة لطيفة، واختيار للنصر واللباب، ورعاية للذهب الذي هو
 أصل الباب، فما أدرك تحصيله وتحقيق أجماله وتفصيله، والله الموفق لأدراك الأمان
 واستجلاء أسرار المعاني، وقد رتبته على أربع قواعد الأولى في المبادئ، والثانية في الأدلة
 السمعية واقسامها، والثالثة في أحكام الاجتهاد والمفتي والمستفتي، والرابعة في ترجيح
 طرق الطلبات، الثاني في الأصول في المبادئ، وحق على من حاول علما أن ينصروه بحمد
 أورسمة ويعرف موضوعه وغايته واستمداده فأصول الفقه علما وعلما العلم بالقواعد
 التي يتوصل بها إلى استنباط الأحكام الشرعية الشرعية عن أدلتها التفصيلية، واستنباط
 الأحكام فصل عن استنباط الصناعات والشرعية عن العقلية والفرعية عن مثل كون الأداة

الصفحة الأولى من مخطوطة مكتبة حالت أفندي في اسطنبول رقم: ٣١٨، ورمزها (ح) H (XI.4)

خبر

من مكتبة الفقير عبد الله
المولى عبد الله بن عبد الله
في سنة ٩٩٤

من مكتبة الفقير عبد الله
الفادري شافعي مؤلفه عنه

كتاب نهضة النفوس إلى علم الاصول

دخل في مكتب العاصم
عبد الله الفادري في
غفرته ليلة ١٠

الشيخ الفاضل العالم
العلامة الفاضلة
لعل الشاعرة لحنه في تعده
لله رحمة ولت كفايته



ملكه بالشرع الشرعي
محمد بن عبد الله

نراشغل بالطريق الشرعي الى...
لرحمته الحسيني الترمذي...
اوله عام ١٢٠٠

Süleymaniye U. Kütüphanesi	
Kısmı	Halet Ef.
Yeni Kayıt No	
Eski Kayıt No.	318

بسم الله الرحمن الرحيم
الحمد لله الذي هدانا لهذا
ما كنا لنهتدي لولا أن هدانا الله

٢٦٠

تَرْجِيحُ الْمَبَاسِ مِثْلَهُ فَايِدُ بِأَفْرَادِهِ بِالْعِلَّةِ وَتَعْلِيلِهِ
الْأَشْبَاهَ كَقَوْلِهِمْ شَبَّهَ الْوَلَدَ بِالْحَرَمِيِّهِ وَأَبْنَى الْحَرَمِ
بَسَابِرِ الْوَجْهِ كِبُوضِ الذَّكْوَةِ وَحُلَّ الْحِلْدِ وَقَبُولُ الْمَشَاهِدِ
وَوُجُوبُ الْقَضَايَا كَانَ أَوَّلِي لَانْ كُلِّ شَيْءٍ كَالْقَبَاسِ
فَكَانَ كَالْأَوَّلِ وَالْعُمُومُ كَقَوْلِهِمْ الطَّعْمُ أَحَقُّ لَانَّهُ
بِعَمِّ الْعِلَلِ وَالْكِبَرُ فَلَنَا الْوَصْفُ فَرَحُ النَّصْرِ وَالْعَامُّ
كَالْخَاصِّ عِنْدَنَا وَعِنْدَكُمْ كَالْخَاصِّ يُقْتَضَى عَلَى الْعَامِّ مَكَلَفُ
يَبْحُ الْعَامِّ الَّذِي هُوَ فَرْعُهُ وَتَقْلَهُ الْأَوْصَافُ
فَايِدُ كَقَوْلِهِمْ ذَاتٌ وَصِفٌ فَكَانَ أَوَّلِي مِنْ ذَاتٍ
وَصَفِيٍّ قُلْنَا الْعِلَّةُ فَرَحُ النَّصْرِ وَالنَّصْرُ الْمَحْصَرُ
وَالْمَطْوَلُ وَاحِدٌ وَالْعِلَّةُ وَالْكِبَرُ صُورَةٌ وَالْعَرَجُ
لَيْسَ إِلَّا بِالْمَعَانِي وَاللَّهُ الْمَوْقِيُّ ثُمَّ الْكَلَامُ
بِالْحَمْدِ لِلَّهِ وَحْدَهُ وَصَلَّى اللَّهُ عَلَى عَبْدِ اللَّهِ مُحَمَّدٍ وَآلِهِ وَصَحْبِهِ
مَحْرَمِينَ أَوْضَعِ خَلْقَ اللَّهِ نَعَالِي عَمَانٍ مِنْهُمْ عَلَى كَيْفِ
رَحْمَةِ اللَّهِ مِنْهُمْ فَهِيَ كَذَلِكَ وَتَعْلِيلُهُ

الخاص
بالحامد

بسم الله الرحمن الرحيم
الحمد لله الذي هدانا لهذا
ما كنا لنهتدي لولا أن هدانا الله

الصفحة الأولى من مخطوطة مكتبة لاله لي في اسطنبول رقم: ٦٨٦، ورمزها (ل) XI.5)

مكتبة اضعف عباد الله
عبد الرزاق بن محمد غفر له

١٩ سطر
١٩٠

بلا من عو من العبد

كتبه يدو النظام الجامع بين كتابها ليزدوي والا احكام
لا بن اتاتاي البغدادي اكنفي شمس عظمة

وان جميعه من الكعبة ابن امير الحاج لول شمس
والعلامه سراج الدرس عمر لول شمس والعلامه كال الدين محمد نور شمس
المؤلف شمس وهناك فقه شمس شمس وابره شمس

مكتبة اضعف عباد الله
عبد الرزاق بن محمد غفر له



686

الصفحة الأخيرة من مخطوطة مكتبة لاله لي في اسطنبول رقم: ٦٨٦، ورمزها (ل) L

132

١٨
 والفتنة والكثرة صورة والترجيح ليس إلا باللعان ١٨
 ، ثم الكتاب بجنس الملك الثوب وهو علم بالصوت إلى المرحوم والآ
 ، وقع الكلام في حجة ليله الملك الفلاح ورابع الف
 ، في شهر ربيع الأول في المدينة
 ، في شهر المحرم في المدينة
 ، اضحى الناس عبيد الناس
 ، القوي اضحى لكانه
 ، صانعة



الصفحة الأولى من مخطوطة مكتبة خزانة ضوب قاني في اسطنبول رقم: ٨٤١، ورمزها (ت) T (XI.6)

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ تَوَكَّلْ عَلَى اللَّهِ
 الْخَيْرُ ذَاكَ اللَّهُمَّ يَا وَاجِبَ الْوُجُودِ وَالْفَيْضِ شَيْخَاؤُكَ يَا وَاسِعَ
 الرَّحْمَةِ وَالْجُودِ أَنْتَ الَّذِي لَا يَنْفُضُ نَفْصُكَ الْعَطَا وَكَلْبَانُكَ
 بِالْخَيْرِ شَيْخَاؤُكَ الْبَغْدَا الْمُسَالِغَةُ وَاجِبَةُ الْبَالِغَةِ وَلِعَفْوُكَ عِبَادَ
 الْعِبَادِ وَمِنْكَ الْمَبْدَأُ وَالْبَيْتُ الْمَعَادُ بَعَثْتَ الْبَنِينَ بِالْحَقِّ
 فَأَمَّتْ بِهِمُ الْحُجَّةُ وَأَوْصَحَتْ بِهِمْ الْحُجَّةُ وَحَصَصْتَ مُحَمَّدًا سَيِّدَ
 الْبَشَرِ بِأَنْوَاعِ الْكَمَالَاتِ وَخَمَّتْ بِرِسَالَتِهِ الرِّسَالَاتِ وَقَطَعَتْ
 كَحْنَهُ الْعِلَالُ وَتَحْتَ مَمْلُوكِهِ الْمَلِكُ اللَّهُمَّ صَلِّ عَلَيْهِ صَلَوةً
 تَنْفُذُ فِيهَا نَهَايَاتِ الطَّلِبِ وَيَتَّبِعُهَا أَعْمَالُ الْمَنَامَاتِ وَالرَّبِّ
 وَاجْعَلْنَا اللَّهُمَّ مِنْ أَرْضَاكَ بِأَتْبَاعِهِ وَأَخْلَصْ لَكَ فِي قَوْلِ الْحَقِّ
 وَأَتْبَاعِهِ وَارَادَ وَخَفِكَ الْكَرِيمُ بِمَنْحِهِ وَصَفَهُ وَأَسْتَصْحَبَ
 تَوْفِيقَكَ فِيمَا جَعَلَهُ وَاللَّهُ قَدْ مَخْتَرَكَ إِيَّاهَا الطَّالِبُ لِنَهَايَةِ الْوُصُولِ
 إِلَى أَعْلَى الْأَصُولِ بِهَذَا الْكِتَابِ الْمُبْدِعِ فِي مَعْنَاهُ الْمَطَابِقِ أَسْمَاءُ
 لِحَصْنِهِ لَكَ مِنْ كِتَابِ الْأَحْكَامِ وَوَصَفَتُهُ بِالْجَوَاهِرِ الْمُنِيبَةِ مِنْ
 أَصُولِ فَخْرِ الْأَسْلَامِ فَأَمَّا الْبَحْرُ الْمَحْظَرَانِ بِكُوَامِعِ الْأَصُولِ
 الْحَامِيَانِ لِنَوَائِدِ الْعُقُولِ وَالْمَقُولِ هَذَا جَاوِلٌ لِلْقَوَاعِدِ الْكَلِمَةِ الْأَصُولِيَّةِ
 وَذَلِكَ شُجُونٌ بِالشَّوَاهِدِ الْجَزْئِيَّةِ الْفُرُوعِيَّةِ وَهَذَا الْكِتَابُ يَقْرُبُ

عَالِي الْمَنَافِعِ شَيْخَاؤُكَ
 رَحْمَةُ اللَّهِ عَلَيْكَ

٢٢
 لهم

الكتاب

شما

١٥-
 بِإِذْنِكَ يَكْفُو لَهُمْ ذَاتُكَ وَتُشْرِفُ نَكَانَ أَوَّلِي مِنْ دَارِ
 وَصْفِيْنَ قُلْنَا الْعَلَمُ الْبَطْنُ وَالْمَضْجُ الْمُخْتَصِرُ وَالْمَطْوَلُ وَاحِدُ
 وَالْأَلَّةُ وَالْكُفُّ صَدْرُ الْوَجْهِ لَيْسَ إِلَّا بِالْعَاجِزِ وَاللَّهُ عِلْمُ
 هُمُ لَعُونِ اللَّهِ وَحَسْبُ تَوْفِيقُهُ يَوْمَ الْجُمُعَةِ سَابِعُ شَهْرِ صَفَرِ
 الْمَارِكِ مِنْ شَهْرِ رَسْمِهِ أَرْبَعِينَ مَسْعَ مَائَةٍ
 عُلْفُهُ لِنَفْسِهِ وَلِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ مِنْ لَعْدِهِ تَوَقَّرَ عَلَيْهِ
 مَهْرُ عَيْسَى الْخَنَزِيَّ الْحَمِيَّ وَذَلِكَ بِدِينِهِ شَقِ
 الْحَرُوسَةِ بِدَرْسَةِ الْقَلِيبَةِ رَحْمَ بَابِهَا
 وَأَمْرَاتِ الْمُسْلِمِينَ أَجْمَعِينَ إِنَّهُ أَرْحَمُ
 الرَّاحِمِينَ

وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ
 وَالْحَمْدُ لِلَّهِ لَا وَاحِدًا وَلَا شَرِيكَ وَلَا شِدَادًا عَلَى سِدْنَا مُحَمَّدٍ
 خَيْرِ خَلْقِهِ وَخَاتَمِ أَنْبِيَائِهِ وَعَلَى آلِهِ وَصَحْبِهِ أَجْمَعِينَ
 وَمُصَابِيحِ الدِّيْنِ صَلَاحِ دَائِمِهِ بِدَوَائِمِكَ يَا خَاتَمَ
 الْبَاشَرَاتِ وَالرَّحْمَةَ عَلَى مَنْزِلِهِمْ بِأَحْسَنِ
 وَعَلَى عِلْمَاءِ الْأُمَّةِ فِي كُلِّ زَمَانٍ

بلغ مقابلة

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ . وَبِهِ نَسْتَعِينُ
 قَالِ الشَّيْخُ الْأَمَامُ الْعَالِمُ الْفَاضِلُ الْمُتَّقِنُ الْمُحَقِّقُ زَيْنُ
 الْأَدْبَاءِ وَالْمُتَكَلِّمِينَ تَاجُ الْفُقَهَاءِ وَالْأُصُولِيِّينَ مُطَهَّرُ
 الدِّينِ مُحَمَّدُ بْنُ أَبِي الْعَبَّاسِ أَحْمَدُ بْنُ عَلِيٍّ بْنِ تَعَلِّبِ الْمَعْرُوفِ

بَابُ السَّعَادَةِ بِحَمْدِ اللَّهِ تَعَالَى الْحَمْدُ

ملاية مؤلفي
 وحملوا الحجة الشرعية

دَائِمَكَ اللَّهُمَّ يَا وَاجِبَ الْوُجُودِ وَالْفَيْضِ شِعَارَكَ يَا وَاسِعَ
 الرَّحْمَةِ وَالْجُودِ ذَاتَ الَّذِي لَا يَنْقُصُ فَيْضُكَ الْعَطَاءُ
 وَكَلَامُكَ يَا خَيْرَ سَخَاءٍ لَكَ النِّعْمَةُ السَّابِغَةُ وَالْحُجَّةُ
 الْبَالِغَةُ وَبِعَفْوِكَ عِيَاذُ الْعِبَادِ وَمِنْكَ الْمُبْدَأُ وَإِلَيْكَ
 الْمَعَادُ بَعَثْتَ النَّبِيِّينَ بِالْحَقِّ قَمْتِ أُمَّ الْحَجَّةِ
 وَأَوْضَحْتَ بِهَدْيِهِمُ الْحَقَّةَ وَخَصَّصْتَ مُحَمَّدًا سَيِّدَ
 الْبَشَرِ بِأَنْوَاعِ الْجَمَالَاتِ وَخَتَمْتَ بِرِسَالَتِهِ الرِّسَالَاتِ
 وَقَطَعْتَ بِحُجَّتِهِ الْعِلَلَ وَنَسَخْتَ بِعِلَّتِهِ الْمِلَالَ اللَّهُمَّ
 فَضِّلْ عَلَيْهِ صَلَوةَ تَقِفِ دُونَهَا نَهَايَاتُ الطَّلَبِ وَيَتَبَوَّأُ
 بِهَا أَعْلَى الْمَقَامَاتِ وَالرَّتَبِ وَأَجْعَلْنَا اللَّهُمَّ مِمَّنْ أَرْضَاكَ

بَابُ السَّعَادَةِ

صُورُهُ وَالتَّزَجُّجُ لِلْسَّالِ بِالْمَعَانِي،

عَمَّ الْحَمْدُ ————— مُحَمَّدًا لِلَّهِ وَعَوْنَهُ

وَصَلَّى اللَّهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَآلِهِ

وَصَحْبِهِ وَسَلَّمَ عَمَّا لِلَّهِ

عَنْ دَابَّتِهِ وَتَوَفَّاهُ مُسْلِمًا وَوَقَّاهُ

مِنْ قَتْلِهِ الْقَبْرَ وَعَذَابِهِ وَمِنْ

أَهْوَالِ الْقِيَمَةِ مُحَمَّدٌ

عَلَيْهِ بِنُورِ الْقُرْشِيِّ عَرَفَ

بِالْمَلَأَى وَذَلِكَ

خَامِسُ عَشَرَ شَوَّالَ

سَنَةِ اِسْرَافِيلَ

وَسَعَمَاءِ



أَحْسَنُ لِلَّهِ الْعَاقِبَةُ مُحَمَّدٌ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

بَلَّغَ مَعَانِيَهُ عَلَى أَصْلِهِ بِحَسَبِ الْإِيمَانِ فَصَحَّ لِلَّهِ الْحَمْدُ وَالْمِنَّةُ

اه الطير وهو
 البعاد وقال
 قيل بغير فاعله



مبيع غير فلامشترط قبضه اولى من قولهم ما الا ان يورقوا بل كل جنسه حر ثم روى الفقه الا اننا
 نعلم بمد الصرف وراس مال السلم له دين مدني ولا عكس لتعليقهم لان بيع السلم لا يشترط
 اموال الر باو اوجب فيه القرض تحت ذاع الكاي بالكاي في ذلك اذا تعارضت ما تخرج
 احدها ذاتي والاخر حالي فالاعباد للذاتي ليسبقه كاجتهاد ارفع حكمه لان نسخ بغيره و
 لتمام الحال بالذات فلو اعتبرناه مضافا للذات فيحتاج الى ازالة بالتبع مثاله ان اخ اخ اخ
 اواب احق من العم له حان الاول في ذات القرابة والثاني في حالها وكذا نكر العم لانه مع
 الحال لاب وام احق بالثلاث والثلث للحال لانهما في الذات والحال في الحال واسن الاخ
 طب وام احق منه طب لستوا بهما في الذات فخرج بالحال وهو قوه الاتصال واسن الاخ
 طب وام لا يرت مع اسن الاخ لاب للرجحان في الذات او على هذا قرعنا مثلا صنعة الغالب
 حشر مقطع بحق المالك لتمام الصنعة بذاتها وهلاك العن من وجه فرجت الصنعة بالوجود
 والانتقال قاعدة بالمصنوع باقية به لاننا نقول البقاء تابع للوجود فهو حال والوجود اسبق
 ترجيح القياس عنده فاسد لانفراد بالعلية وبغلبة الطلباء كقولهم الاخ يشبه
 الولد بالمحرمة واسن العم سائر الوجوه كوضع الزكوة وحل الخيلة وقبول الشهادة
 ووجوب القصاص فكان اولى لان كل شيء كالقياس فكان كالا قول وبالعموم كقولهم
 الطعم احق ذلمه بهم القليل والكثير قلنا الوصف فرع النص والعام كالخاص عندنا
 وعندنا الخاص يقع على العام فكسرت ترجيح العام الذي هو فرع وبغلبة الا وحي فاسد
 كقولهم ذات وصف فكان اولى من ذلت وصفنا قلنا العلة فرع النص والنص المخصص
 والمطلوب واحد والقله والكثرة صورة والترجيح ليس الا بالمعاني والاداء في

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بسم الله الرحمن الرحيم
 اخير دابك اللهم يا وليب الوصي والفيض شعارك
 يا واسع الرحمة واجود انت الذي لا تنقص فيضك
 العطا وكلت يدك بالخير سحابة لكر النعمة السابغة
 واجم البالغة وبغفوك عيلة العبد وخلك المبدأ
 والدار المنة بعثت النبيين بالحق فاقمت لهم
 الحجج واوضحت لهم الحجج وضجبت محمد اسيد
 البشر بانواع الكمالات وضمت برسالته الرسا
 ل للرفعة وطعت بحجته العلاء وسعت علمه الملان اللهم
 غاصلوة تقف دونها نهاية الطلب وتنبواؤها اعل
 المقامات والرب ولعلنا اللهم من ارضاك بالتباعة

XI.10) الصفحة الأولى من مخطوطة مكتبة نور عثمانية في اسطنبول رقم: ٤٣٢٦، ورمزها (ن) N

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ہا، وہ فرعون کے ملاطمت - وکتبہ درہ لیج اکمل الجواہر

اسمہ بن ابی اسد، اسد بن ابی اسد، اسد بن ابی اسد

مرحطی عباس اعلیٰ لکھ سارے عن الاسماء و انتقل

ووصل طاعونه بوزن العصاره والماء الداف

الحمد لله رب العالمين

! بحکم المحسنه من

حضر



MURDOSSIANE KOTJONNES

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Engraving

1294

Teardrop

Micro Film

Arşivi: 4 3 26

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