

within the domain of theology, they do not come within the purview of our discussion.<sup>94</sup>

Al-Shāṭibī does not discuss miracles or the concept of 'ismah to prove the authority of *Sunnah*. He discusses ten Qur'ānic verses which, according to him, are enough to establish the legal authority of the *Sunnah*. These verses are quoted by some other *fuqahā'* as well. However, one verse, from *Sūrah al-Qalam*, which is particularly mentioned by al-Shāṭibī, may be cited here: "Surely [O Muhammad,] you are of a tremendous character."<sup>95</sup> When asked about the behaviour of the Prophet (p.b.u.h.), 'Ā'ishah said that the Qur'ān was his character, that he put the Qur'ān into practice and action, and that this is preserved in the form of *Sunnah*.<sup>96</sup> Al-Shāṭibī relates two sets of *aḥādīth* to establish the authority of the *Sunnah*. The *aḥādīth* which utterly condemn the negligence of the *Sunnah* and those which enjoin the Muslims to follow the *Sunnah*.<sup>97</sup> The *ḥadīth* of Mu'ādh b. Jabal in which the Prophet (p.b.u.h.) directed him to settle the matters according to the Qur'ān, the *Sunnah* and *ijtihād bi al-rā'y*, is very important to al-Shāṭibī concerning the authority of the *Sunnah*.<sup>98</sup>

Finally it would be relevant to mention the statement of Ibn Hajar al-'Asqalānī as regards the position of the *Sunnah* in the Islamic *Shari'ah*. He writes: "The 'ulamā', who are respected and followed by the people, are agreed that the *Sunnah* is an independent source of legal decision".<sup>99</sup> Ibn Hajar supports this statement by referring to the Qur'ān and the *ḥadīth*.

In the light of the foregoing discussion it may be concluded that the authoritative character of *Sunnah* was well established and it had been regarded as prescriptive source of the *Shari'ah* by the Companions including the *Rāshidūn Khulafā'*.

<sup>94</sup>Ibid. 1, 242-44.

<sup>95</sup>Qur'ān 68:4.

<sup>96</sup>Al-Shāṭibī, *al-Muwāfaqāt*, vol. 4, 9-10.

<sup>97</sup>Ibid. 10-11.

<sup>98</sup>Al-Shāṭibī, *al-Muwāfaqāt*, vol. 4, 6-12.

<sup>99</sup>Ibn Hajar, *Hady al-Sāri*, vol. 1, 5.

accepting the *Sunnah* based on *ahūd*.<sup>90</sup> In support of the *Sunnah* of *ahūd*, al-Ghazali's reasoning was as follows: the judgments of the judges and *fatāwa* of the *fuqahā* are based on probable knowledge and not on absolute and certain knowledge, but they are still binding and regarded as a source of knowledge; hence the same is the case with the *Sunnah* which is also binding like those judgements and *fatāwa*.<sup>91</sup>

Al-Ghazālī compares the certainty of the *sunnah* of *tawātūr* to the certainty of a person, who is far away from the Haram, about the direction of the Ka'bah. When he is unable to know with certainty the exact direction of the Ka'bah, he applied his senses, observing the signs of nature, and exercises *ijtihad* to determine the direction of the Ka'bah. Whichever be the direction he is satisfied with, he is obliged to face. Though his knowledge of the direction of Ka'bah is not certain, he is enjoined to follow the result of his *ijtihad*. Likewise the *Sunnah* of *ahūd* is also obligatory.<sup>92</sup>

Al-Āmidī also discusses the *Sunnah* as the second source of law. He goes in detail to prove the authority of the *Sunnah* by discussing the Qur'ānic verses, *ahādūth* of the Prophet (p.b.u.h.) and the practice of the Companions.<sup>93</sup> Before mentioning these three arguments, al-Āmidī raises the issue of *'ishmah* of the Messengers. It seems from his discussion that he wants to prove *'ishmah* in order to establish the authority of the *Sunnah*. He refers to the view of the *jumhūr mutakallimūn* that all Messengers are protected by Allah from grave sin, or from action contradicting their own teaching. Minor mistakes (*khaṭa*) and forgetfulness (*nisyān*), according to him, do not affect *'ishmah*. He also mentions the differences between the scholars and their different interpretations of *'ishmah*, but since they fall

<sup>90</sup>Al-Ghazālī, *al-Mustasfā*, vol. 1, 148-52; Ibn Qudāmah, *Rawḍat al-Nūz*, 53-56.

<sup>91</sup>Al-Ghazālī, *al-Mustasfā*, vol. 1, 147.

<sup>92</sup>Ibid.

<sup>93</sup>Al-Āmidī, *al-Ihkām*, vol. 1, 251-54.

recognised it as an original source of the *Shari'ah*, only second to the Qur'ān.<sup>86</sup> Al-Bazdawī, for example, mentions the legal authority of the *Sunnah* and explains its gradations and degrees of reliability. He seems so certain about the legal validity of the *Sunnah* that he did not need to establish its authority. For instance, he just discusses the classifications of the *Sunnah* and how it constitutes rules of law.<sup>87</sup> Al-Ghazālī, however, argues to establish the authority of the *Sunnah* before discussing its role. He mentions three points. First, the statements of the Prophet (p.b.u.h.) are *hujjah* because the reliability and truthfulness of the Messenger was proved by miracles he performed. Second, the Muslims are commanded by Allah to follow the Prophet (p.b.u.h.) and obey him. Third, the Prophet (p.b.u.h.) told the people only what he received through the revelation from Allah.<sup>88</sup> Ibn Qudāmah also upholds the same arguments.<sup>89</sup>

The *fuqahā'* not only accept the *Sunnah* which has been established by *ḥadīth mutawātir* or *mashhūr* but they accept *ahād* as well. The *Sunnah* mutawatirah ensures certainty, and its authority is like the authority of the *nass* of the Qur'ān. Though the *Sunnah* established by means of *āḥād* does not give absolute certainty, it does nevertheless contain the source of the most probable knowledge. Al-Ghazālī and Ibn al-Qayyim produce evidence from the practice of the Companions who upheld the binding role of *Sunnah*. They mention examples that the Companions consulted the wives of the Prophet (p.b.u.h.) and were aware of his *Sunnah*. Abū Bakr and 'Umar, for example, asked the wives of the Prophet (p.b.u.h.) on several matters and accepted what they were told of the practice of the Prophet (p.b.u.h.) by his wife or Companions. Both *fuqahā'*, al-Ghazālī and Ibn Qudāmah refer the consensus of the Companions on

<sup>86</sup> Al-Āmidī, *al-Ihkām*, vol. 1, 231; Ibn Ijāz, *al-Ihkām*, vol. 1, 87; al-Ghazālī, *al-Mustasfā* vol. 1, 129; Alī b. Muhammad al-Bazdawī, *Kanz al-Wuṣūl*, (Karachi: Nūr Muhammad, n.d.) 149.

<sup>87</sup> Al-Bazdawī, *Kanz al-Wuṣūl*, 149.

<sup>88</sup> Al-Ghazālī, *al-Mustasfā*, vol. 1, 129.

<sup>89</sup> Ibn Qudāmah, *Rawḍat al-Nāẓir* 46.

through reliable sources.<sup>82</sup> When the *ḥadīth* was proved to be authentic he changed his view.<sup>83</sup>

Another example of the importance of the written records of the *Sunnah* affecting the decision of the *fuqahā'* can be found in their discussion of the role of the *Amīr*. The *fuqahā'* consider that the *Amīr* is the most deserving person to lead the prayer, and during his presence no one else can lead the prayer unless he is permitted to do so by the *Amīr*, even if the congregational prayer is held in a private house.<sup>84</sup> The presence of the *Amīr* or his deputy, is likewise a requirement for the validity of the Friday prayer, and it is to be led by the *Amīr* or his deputy.<sup>85</sup> The *Ḥanafī fuqahā'* do not present any evidence in support of this view from the *nass* (textual reference from the *Qur'ān* or the *ḥadīth*). However, it is clear from historical records that this was the practice at the time of the Prophet (p.b.u.h.). He himself was the leader of the prayer, and also his appointed governors, or whomever the Prophet (p.b.u.h.) designated for this purpose, had led the prayers. This practice also continued uninterrupted throughout the *Rashidūn* period. This practical *Sunnah* which was followed by the *Rāshidūn Khulafā'*, became the source for the *Ḥanafī fuqahā'* who considered the presence of the *Amīr* as a necessary element in the Friday prayer, and for the other *fuqahā'* who, in the presence of the *Sultān* gave him precedence in leading the prayer.

Thus, the practice of the *Rāshidūn Khulafā'*, and their emphasis on following the *Sunnah* was imitated by the *fuqahā'*. They applied the *Sunnah* more systematically as an original source of *fiqh* to settle the legal questions that arose in their daily life.

The later *fuqahā'* also acknowledge the authenticity of the *Sunnah* as a source of law, and the authors of *usūl al-fiqh*

<sup>82</sup>Ibn Hazm, *al-Muhallā*, vol. 6, 11.

<sup>83</sup>Ibid. 16.

<sup>84</sup>Al-Shāfi'ī *al-Risālah*, vol. 1, 157.

<sup>85</sup>Al-Sarakhsī, *al-Mabsūt*, vol. 2, 23-25; Ibn al-Humām, *Sharh Fath al-Qadīr*, vol. 2, 54.

امام محمد بن ادریس شافعی فرماتے ہیں: فقہ میں مجھ پر سب سے زیادہ احسان امام محمد بن حن کا ہے۔

would look first to the Qur'ān and then also to the *Sunnah* for guidance. The *Sunnah* was referred to by the *fuqahā'* as a legal source in the same manner as it was done by *al-Khulafā' al-Rāshidūn*. Just as with the *Rāshidūn Khulafā'*, the *fuqahā'* would withdraw their own opinion when they came across *ḥadīth* of the Prophet (p.b.u.h.) contradicting their views. For example, Imām al-Shāfi'ī had reportedly said that if anything he had written was found to be contrary to the *Sunnah*, then the people should reject his opinion and follow the *Sunnah*. Al-Shāfi'ī admitted that whenever he found the *ḥadīth* on any aspect of *fiqh* on which he had already expressed his opinion, and which was not identical with the *ḥadīth*, then he simply withdrew his own view and accepted the *Sunnah*.<sup>79</sup> An example of this approach can be found in the treatment of the question of who is eligible to receive *zakāh*. The Qur'ān mentions eight categories of recipients of *zakāh*;<sup>80</sup> among them is included those who are travelling (*fī sabīl Allāh*) to perform *hajj* or to participate in *jihād*. The verse in the Qur'ān is general (*mutlaq*), and includes all those who travel for these purposes, whether they are rich or poor. The *fuqahā'* from the *ahnāf*, however, restricted the verse to the poor on the basis of the *ḥadīth* which states that: "The *zakāh* should be taken from the rich of the Muslims and be returned to their poor".<sup>81</sup>

Yet another example of this approach is in *al-Muhalla*. Ibn Ḥazm withdraws his own views when he finds the *ḥadīth* of the Prophet (p.b.u.h.) contradicting them. Discussing the *niṣāb* of the cow (minimum number of cattle liable for *zakāh*), for example, Ibn Ḥazm gave his own opinion of what he thought it was before the *ḥadīth* narrated by Masrūq had reached him

<sup>79</sup>Ibid. vol. 4, 233.

<sup>80</sup>Qur'ān 9: 60.

<sup>81</sup>Maḥmūd al-Bābartī, *Sharḥ al-'Ināyah*, on the margin of *Sharḥ Fath al-Qadīr* (Bulaq, 1315 A.H.) vol. 2, 18.

event has been mentioned by the *muhaddithūn* and historians. No one is reported to have objected to the conditions, either from the *ahl al-hall wa al-'aqq*, or from the common people. Ahmad b. Hanbal's reference to this tradition indicated that the practice of the *Sunnah* was well established, and that there was consensus among the Companions to follow the *Sunnah*. This was exactly what Abū Bakr had declared after being chosen as *Khalīfah*: "O people, I have been chosen as *Khalīfah* over you though I am not the best among you...Follow me as long as I follow Allah and His Messenger (p.b.u.h.); but if I disobey Allah and His Messenger, you, then, have no obligation to obey me".<sup>75</sup>

Later Hanbalī *fuqahā'*, like Ibn Taymiyyah and Ibn Qayyim al-Jawziyyah, also lay great stress on the importance of following the *Sunnah*. In this connection, Ibn Taymiyyah refers to the Qur'ān, the *ahādīth* of the Prophet (p.b.u.h.) and the practice of the Companions, particularly to the practice and understanding of 'Umar b. al-Khaṭṭāb.<sup>76</sup> According to Ibn Taymiyyah, the Qur'ān and the *Sunnah* are quite sufficient for dealing with any situation.<sup>77</sup> Ibn al-Qayyim gives reasons for the legal authority of the *Sunnah* and discusses several situations being dealt with by reference to the *Sunnah* alone, where the Book of Allah is silent.<sup>78</sup>

In the first section, we have discussed in some detail the position of the Companions and particularly that of *Rāshidūn Khulafā'* with regard to the *Sunnah* of the Prophet (p.b.u.h.). The attitude of the *fuqahā'* in the succeeding generation of Muslims was no different from that of the *Rāshidūn Khulafā'*. They followed the *Rāshidūn Khulafā'* in their acceptance of the *Sunnah*, and referred to this source and authority in the settlement of legal questions. Like the *Rāshidūn Khulafā'* they

<sup>75</sup>Al-Tabarī, *Tārīkh*, vol. 3, 210; Ibn Sa'd, *al-Tabaqāt*, vol. 3, 129.

<sup>76</sup>Ibn Taymiyyah, *Fatāwa Ibn Taymiyyah* (Makkah al-Mukarramah, 1399 A.H.) vol. 19, 174-75.

<sup>77</sup>Ibid, 176.

<sup>78</sup>Ibn al-Qayyim, *I'lām*, vol. 2, 288-90.

Although the Qur'ān does not mention any other condition, Al-Shāfi'ī prohibits widows from using perfume and make-up during this period on the grounds of certain *ḥadīth*.<sup>70</sup>

Aḥmad b. Ḥanbal (d.241 A.H.) was perhaps one of the most strict of the classical *fuqahā'* in following the *Sunnah*. To him, the *Sunnah*, is an indispensable source of the Islamic *Sharī'ah*.<sup>71</sup> He did not pay great attention to *fiqh*, since he was basically a *muhaddith* (traditionist). His position as a *faqīh* is disputed, but the Hanbalites insist that he held an eminent position in *fiqh* as well. He always tried his best to base his opinion on a *ḥadīth*, even if it is weak. He compiled the book of *ḥadīth* as *Musnad*, in which he emphasises the importance and nature of the *Sunnah*. For example, he states the *ḥadīth*, on the authority of 'Ā'ishah, that the Prophet (p.b.u.h.) established the *Sunnah* of doing *Sa'y* between *Ṣafu* and *Marwah*; hence his conclusion that therefore, no one should cease to do *Sa'y* between them.<sup>72</sup> He also mentions the *ḥadīth*, on the authority of 'Imrān b. Ḥusayn, that the Qur'ān was revealed and the *Sunnah* was established by the Prophet (p.b.u.h.) which the Companions had preserved, and that we could go astray if we failed to follow them.<sup>73</sup> Aḥmad b. Ḥanbal demonstrates the binding legal validity of the *Sunnah* by mentioning such *aḥādīth*.

Another tradition worth noting is Aḥmad b. Ḥanbal narrates that Abū Wā'il asked 'Abd al-Raḥmān b. 'Awf why he offered *bay'ah* to 'Uthmān and not to 'Alī. 'Abd al-Raḥmān b. 'Awf said that it was 'Alī's mistake. He first offered his allegiance to 'Alī on the condition that he would follow the Book of Allah, the *Sunnah* of the Prophet (p.b.u.h.) and the *siyar* of Abū Bakr and 'Umar. 'Alī said that he would follow what he could. 'Abd al-Raḥmān, then, offered *bay'ah* to 'Uthman who accepted the conditions stipulated by him.<sup>74</sup> This historical

<sup>70</sup> Al-Shāfi'ī, *Al-Risālah*, 97.

<sup>71</sup> Abū Zuhrah, *Aḥmad b. Ḥanbal*, (Dār al-Fikr al-'Arabī, 1367/1947) 220.

<sup>72</sup> Aḥmad b. Ḥanbal, *Musnad*, vol. 6, 144.

<sup>73</sup> Ibid. vol. 1, 75.

<sup>74</sup> Al-Ṭabarī, *Tārīkh*, vol. 3, 210; Ibn Sa'd, *al-Ṭabaqāt*, vol. 3, 129.

from Allāh, although it is not recited like the Qur'ān. However, its authority is above any doubt; the people are obliged to follow it. Some of the Qur'ānic verses are very clear; they direct the people to follow (*ittibā'*) and obey (*itā'ah*) the Messenger.<sup>66</sup> Al-Shāfi'ī interprets the word *al-hikmah* in the Qur'ān as referring to the *Sunnah*, while *al-Kitāb* means the Qur'ān. He discusses seven Qur'ānic verses in which *al-Kitāb* and *al-Hikmah* occur together.<sup>67</sup>

Al-Shāfi'ī not only emphasises the necessity of following the *Sunnah* on rational grounds, but also refers to the *ḥadīth* as a corroborating authority according to *Shari'ah* requirements. He gives many good examples in his *al-Umm*, which is a comprehensive treatise on *fiqh*. For example, he does not approve of the sale of fruits before they have clearly begun to ripen on the basis of *ḥadīth* which he quotes.<sup>68</sup> On the question of determining the age of *bulūgh* (sexual maturity), he depends on the *ḥadīth*, stated on the authority of 'Abd Allah b. 'Umar, which says that Muslims are held responsible for their actions and are obliged to follow the *Shari'ah* after they have reached the age of *bulūgh*. The exact year of *bulūgh* is, however, disputed because people reach puberty at different ages. Al-Shāfi'ī argues on the basis of *ḥadīth* that 'Abd Allah b. 'Umar offered himself at *Uhud* to participate in *jihād*—he was fourteen at that time but he was not allowed to go to war. He again, sought the permission of the Prophet (p.b.u.h.) to fight at *Khandaq*, when he was permitted because he was then fifteen. On the basis of this *ḥadīth* al-Shāfi'ī determines the age of *bulugh* as being 15 years.<sup>69</sup>

Another example concerns the remarriage of widows. The Qur'ān prescribes the waiting period (*'iddah*) of four months and ten days for a woman whose husband passed away.

<sup>66</sup>Ibid. 46-51.

<sup>67</sup>Ibid. 44-45, see also the Qur'ānic verses, *al-Baqarah* 2: 129, 151, 231; *Āl-'Imrān* 3: 164; *al-Nisā* 4: 113; *al-Ahzāb* 33: 34; *al-Jum'ah* 62:2.

<sup>68</sup>Al-Shāfi'ī, *al-Umm*, vol. 3, 83.

<sup>69</sup>Ibid. vol.4, 162.



confirmed by the Prophet (p.b.u.h.). He also quotes the letter of 'Umar b. al-Khaṭṭāb to Qādī Shurayh, in which 'Umar directed him to judge according to the Qur'ān and the *Sunnah*; and the statement of 'Abd Allah b. Mas'ūd that anyone who is invested with judicial powers should decide the cases according to the Book of Allah and the *Sunnah*. He also refers to the practice of 'Abd Allah b. 'Abbās who is reported to have always given *fatwā*' (legal opinion) according to the Qur'ān and the *Sunnah*.<sup>60</sup> With reference to the practices of the Companions, Al-Shāṭibī quotes the Qur'ānic verses which explain clearly the legal position, including the following verses: "Obey Allah and obey the Messenger and beware [of the consequences of the disobedience of His Messenger]"<sup>61</sup>, "Let those who disobey His [Messenger's] orders beware, lest some painful punishment should befall them"<sup>62</sup>; and, "Whatsoever the Messenger gives you, take it; and whatsoever he forbids you, abstain from it".<sup>63</sup> Thus, according to al-Shāṭibī, the *Sunnah* has been the source of law not only by virtue of the Qur'ānic injunctions, but also because of the practice of the Companions as well. This position is summed up in the well-known *ḥadīth*, cited by Imām Mālik, that the Prophet (p.b.u.h.) had reportedly said that he had left. The Qur'ān and the *Sunnah* with the people, that as long as they followed them they would not go astray.<sup>64</sup>

Imām al-Shāṭibī, who is probably the first scholar to present the legal principles of *fiqh* scientifically, places great emphasis on the *Sunnah*. He discusses the *Sunnah* in detail, quoting verses from the Qur'ān [and the *aḥādīth*] in support of the authority of the *Sunnah*, saying that Allah has commanded men to follow His Book and *Sunnah* of His Messenger (p.b.u.h.).<sup>65</sup> The *Sunnah*, according to him, is also revealed

<sup>60</sup>Al-Shāṭibī, *al-Muwāfaqāt*, vol. 4, 5-6.

<sup>61</sup>Qur'ān 5: 92.

<sup>62</sup>Qur'ān 24: 63.

<sup>63</sup>Qur'ān 59:7; al-Shāṭibī, *al-Muwāfaqāt*, vol. 4, 10.

<sup>64</sup>Mālik, *al-Muwattā*, vol. 2, 202.

<sup>65</sup>Al-Shāṭibī, *al-Risālah*, 44.

it because, according to him, it was not practised by the people of Madīnah.<sup>56</sup> The *amal* (practice) of the people of Madīnah, thus, became the criterion for the acceptance or rejection of *hadīth* with him.

*Al-Muwattā'* is Imām Mālik's magnum opus in which he records the *amal* of the people of Madīnah in the light of the *Sunnah* and the practice of the Prophet's Companions to confirm his opinion. There are many examples of how the *Sunnah* either clarified or complemented what is in the Qur'ān. For instance, Mālik relates that Khālīd b. Asīd asked 'Abd Allāh b. 'Umar whether he found the fear prayer (*ṣalāt al-khawf*) and the prayer when settled (*ṣalāt al-ḥaḍar*) mentioned in the Qur'ān. He did not find any mention of the travelling prayer in it. 'Abd Allāh b. 'Umar said that Allāh the Almighty sent to us Muḥammad (peace be upon him) as Messenger; we practised as we saw him practising.<sup>57</sup> Imām Mālik also, for example, states that the killing of women, children and aged people in military expeditions is not permitted. He quotes many *ahādīth*, the practice of the Prophet (p.b.u.h.) and the practice of Abū Bakr and 'Umar to endorse this view.<sup>58</sup>

Similarly, Mālik states that women are permitted to accompany a Muslim army because, at the time of the Prophet (p.b.u.h.), women used to go with him to nurse the sick and the wounded people.<sup>59</sup>

Following Imām Mālik, Al-Shāṭibī, a prominent Mālikī *faqīh*, discusses the authority of the *Sunnah*. He mentions first the practice of the Companions which shows that the *Sunnah* was considered an indispensable way of behaviour and source of the *Shari'ah* by them. Then he refers to the *hadīth* of Mu'ādh b. Jabal, which indicates that the Companions understood the legal position of the *Sunnah*, as was explained by Mu'ādh b. Jabal and

<sup>56</sup>Mālik, *al-Muwattā'* vol. 2, 79.

<sup>57</sup>Ibid. 124.

<sup>58</sup>Mālik, *al-Mudawwanah al-Kubrā*, version of Sahnūn, (Baghdad: Maṭba'at al-Muthanna, 1970) vol. 2, 6-7; *al-Muwattā'*, vol. 1, 297-98.

<sup>59</sup>Mālik, *al-Mudawwanah*, vol. 2, 5-6.

meticulous in following the *Sunnah*. Al-Shāfi'ī says that al-Awzā'ī accepted even the *ḥadīth munqatī*<sup>52</sup> and according to Ibn Ḥazm, he accepted the *mursal ḥadīth* as well.<sup>53</sup> Al-Awzā'ī explains his views concerning the *Sharī'ah* and presents the *naṣṣ* both from the Qur'ān and the *Sunnah*. He agrees with Abū Ḥanīfah that the Friday prayer is not valid without the Sulṭān or his deputy, or whoever is representing the Imām, since no one can lead the Friday prayer without the permission of the Imām or his designated *amīr*, as that was the practice at the time of the Prophet (p.b.u.h.) and at that of the *Rāshidūn Khulafā'*. Al-Awzā'ī argues this point from the *ḥadīth* reported on the authority of Jābir.<sup>54</sup> Al-Awzā'ī always quotes *ḥadīth* as *hujjah* (proof) of the requirements of the *Sharī'ah* rulings on which he expressed his views. Ibn 'Abd al-Barr says that al-Awzā'ī considered following the *Sunnah* as absolutely necessary in understanding the Qur'ān. In other words, the *Sunnah*, to him, was the practical interpretation of the Qur'ān, and is inseparable from the Qur'ān.<sup>55</sup>

Imām Mālik (d.179 A.H.) and the Mālikī *fuqahā'* also consider the *Sunnah* as an indispensable source of *fiqh*. Mālik only relies on authentic *ḥadīth*. He did not question the reliability of the *sanad* (chain of narrators) if a particular *Sunnah* was practised by the people of Madīnah while rejecting the *ḥadīth* which was not practised by them. For example, take the *ḥadīth*, "Both parties in business transactions have the right of withdrawal as long as they have not separated, except in the optional transaction (*bay' al-khiyar*)". The *sanad* of this *ḥadīth*—viz., Mālik from Nāfi' from 'Abd Allāh b. 'Umar from the Messenger of Allāh—is a most reliable one, but Mālik rejected

<sup>52</sup> Al-Shāfi'ī, *al-Umm*, (Beirut: Dār al-Ma'ārif, 1393 A.H.) vol. 7, 342 It is noteworthy that al-Shāfi'ī does not accept *al-ḥadīth al-munqatī*.

<sup>53</sup> Ibn Ḥazm, *al-Muḥalla*, (Cairo: Maktabah al-Jumhūriyyah al-'Arabiyyah, 1387 A.H.) vol. 2, 256.

<sup>54</sup> 'Abd al-Rahmān Al-Awzā'ī, *Fiqh al-Imām al-Awzā'ī*, ed. 'Abd Allāh M. al-Jaburī, (Baghdād: Maṭba'ah al-Irshād, 1397 A.H.) vol. 1, 260-61.

<sup>55</sup> Ibn 'Abd al-Barr, *Jāmi' Bayān al-'Ilm* (al-Madīnah al-Munawwarah: Maktabah al-Salafiyyah al-Madinat, 1388 A.H.) vol. 2, 234.

which he gave his views.<sup>45</sup> He even prefers weak *ḥadīth* to *qiyās*.<sup>46</sup> According to him, he first consulted the Book of Allah in all cases; if it did not deal with the questions, under discussion, he looked into the *Sunnah* and only in cases where the *Sunnah* was also silent he did look to the decisions of the Companions and took guidance from them. He exercised *ijtihād* only if he failed to find answers from the first three sources.<sup>47</sup> In the preface to his *Kitāb al-Kharāj*, which Abū Yūsuf (d.182), an eminent Hanafī *faqīh*, and a student of Abū Hanīfah, wrote for the guidance of Khalīfah Hārūn al-Rashīd, emphasizes the significance of the *Sunnah* in Islamic *Sharī'ah*. Abū Yūsuf points out that during 'Umar's time, the governors were obliged to teach people *al-Dīn* and the *Sunnah*.<sup>48</sup> and he quotes *ahādīth* in support of his emphasis on the *Sunnah*. On the distribution of *ghanimah* (booty), for example, he relates the *ḥadīth*, which tells of the practice of the Prophet (p.b.u.h.) concerning it.<sup>49</sup> His entire work is replete with *ahādīth* in support of his thesis. Muhammad b. al-Hasan al-Shaybānī (d.185 A.H.), another eminent *faqīh* of the Hanafī school, also follows the *Sunnah* and gives due consideration to the *ḥadīth* in his reasoning and argument.<sup>50</sup>

Al-Awzā'ī (d.157 A.H.), an early *faqīh* and *muhaddith*, says that the opinion of a *faqīh*, and his actions, must be in conformity with the *ḥadīth* and that the *faqīh* had no option to apply any other method of reasoning when there was a clear *ḥadīth* available to him.<sup>51</sup> Al-Awzā'ī was himself extremely

<sup>45</sup> Husayn b. 'Alī Al-Saymarī, *Akhbār Abī Hanīfah wa Ashābihih*, (Beirut: Dār al-Kitāb al-'Arabī, 1976) 10-11; Nu'mān b. Thābit Abū Hanīfah, *Musnad al-Imām Abī Hanīfah*, ed. Saifwah al-Saqā, (Maktabah al-Rabī', Aleppo, 1382 A.H.) 4-5.

<sup>46</sup> Ibn al-Qayyim, *F'ahm*, vol. 1, 77.

<sup>47</sup> Abū Hanīfah, *Musnad*, 4-5.

<sup>48</sup> Abū Yūsuf, *al-Kharāj*, 19-20.

<sup>49</sup> Ibid. 19-20.

<sup>50</sup> Muhammad b. al-Hasan Al-Shaybānī, *Kitāb al-Asl*, ed. Abū al-Wafā' al-Afghānī, (Hyderabad: Dā'irat al-Ma'ārif al-Nu'māniyyah, 1386 A.H.) vol. 3, 40-45, 74ff.

<sup>51</sup> Baltajī, Muhammad, *Manāhij al-Tashrī'*, (Riyādh: Jāmi'ah al-Imām Ibn Sa'ūd, 1397 A.H.) vol. 1, 445.

had received from him to those who were not present there.<sup>40</sup> Imām al-Shāfi'ī related a *ḥadīth* on the authority of 'Abd Allah b. Mas'ūd, which states: May Allah cause the one to flourish who listened to and preserved my words and then passed them on to others exactly as he heard them.<sup>41</sup>

## 1.1 DISCUSSIONS OF THE *FUQAHĀ'*

The early *Fuqahā'* had also accepted the *Sunnah* to be an independent or original source of law. The Ḥanafī, Mālikī, Shāfi'ī and Ḥanbalī jurists have unanimously agreed on the binding legal validity of the *Sunnah* second only to the Qur'ān, for the Qur'ān itself states: "Whoever has obeyed the Messenger has obeyed Allah". There are also other verses commanding the Muslims to accept legal authority of the *Sunnah*.<sup>42</sup>

Ibn Abī Layla (d.148 A.H.), an early *faqīh*, whose *fiqh* views are mostly recorded by al-Sarakhsī and Ibn Qudāmah, recognizes the *Sunnah* as a source of the *Sharī'ah*.<sup>43</sup> Likewise, Zayd b. 'Alī (d.122 A.H.) who is a contemporary *faqīh* of Imām Abū Ḥanīfah, Imām Mālik and Ibn Abī Layla, admits the *Sunnah* to be a fundamental source of law. *Al-Majmū'*, which is attributed to him, makes it clear that the *Sunnah* is a basic source to him and that his legal interpretations are based on the *aḥadīth* which had reached him mostly on the authority of 'Alī b. Abi Tālib.<sup>44</sup>

Abū Ḥanīfah (d.150 A.H.) had reportedly referred, first, to the Qur'ān and, second to the *Sunnah* in all those cases on

<sup>40</sup>Ibid. 26.

<sup>41</sup>Al-Shāfi'ī, *al-Risālah*, 175; al-Dārimī, *Sunan*, vol. 1, 75; Muḥammad b. Yazīd ibn Mājah, *Sunan Ibn Mājah*, (Cairo: Dār Iḥyā' Kutub al-'Arabiyya, 1372 A.H.) vol.1, 84; Aḥmad b. Ḥanbal, *Musnad*, vol. 1, 437.

<sup>42</sup>Qur'ān 4: 80.

<sup>43</sup>Al-Sarakhsī, *al-Mabsūṭ*, vol. 13, 13; vol. 15, 134.

<sup>44</sup>Zayd b. 'Alī, *Musnad Zayd b. 'Alī* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1403 A.H.).

Thus, we see that the Companions as well as *al-Khulafā' al-Rāshidīn* preserved the *Sunnah* in their daily lives. According to Ahmad b. Hanbal, 'Imrān b. Ḥuṣayn said that the Qur'ān was revealed to the Prophet (p.b.u.h.) and the *Sunnah* was established by him and that they were preserved by the Companions; therefore, the people should follow them. "By Allah", he said, "if the people would not do so they would go astray".<sup>36</sup> The Companions not only preserved the *Sunnah* but also transmitted and taught others around them. During the life-time of the Prophet (p.b.u.h.), his *Sunnah* was followed and the Qur'ān was memorized and transmitted as they were revealed. Ahmad b. Hanbal relates that a delegation of 'Abd al-Qays came to the Prophet (p.b.u.h.) in the 10th year after the *Hijrah* and embraced Islam. They spent ten days in Madīnah Munawwarah with the Muslims learning the Dīn of Islam from the Prophet (p.b.u.h.) and his Companions.<sup>37</sup> The Prophet (p.b.u.h.), one day, asked them about their stay and treatment by their Madinian hosts. The people of 'Abd al-Qays said that they had come across the best of brothers who had provided them with comfortable lodging, delicious food and who, in addition, had spent their days and nights teaching them the Book of Allah and the *Sunnah* of the Prophet (p.b.u.h.).<sup>38</sup> The process of transmitting dealings and knowledge to others made it easy for the Companions and *al-Khulafā' al-Rāshidīn* to ascertain the *Sunnah* regarding any matter under consideration and to act accordingly. The Prophet (p.b.u.h.) himself directed the people to transmit knowledge from him even if it is one verse.<sup>39</sup> At the gathering at 'Arafat during the Farewell *Hajj* the Prophet (p.b.u.h.) delivered the *Khuṭbah* in which he commanded the people to convey the message they

<sup>36</sup>Ibid. 445.

<sup>37</sup>Al-Bukhārī, *al-Sahīh*, vol. 1, part 1, 32; Ibn Ḥajar al-'Asqalānī, *Fath al-Bārī* (Cairo: Mustafā al-Bābī al-Jalabī, 1378 A.H.) vol. 1, 193; vol. 16, 373; Ibn 'Abd al-Wahhāb, *Nihayat*, Al-Nuwayrī, Ahmad, *Al-'Arab fi Fimūn al-Adab*, (Mu'assasat al-Misriyyah al-'Āmmah, Cairo; n.d) vol. 18, 65-67.

<sup>38</sup>Ahmad b. Hanbal, *Musnad*, vol. 4, 206.

<sup>39</sup>Al-Bukhārī, *al-Sahīh*, part 1, 207.

Ibn Ḥazm says that all the Companions and their successors agreed on the authority of the *Sunnah*. Whenever something happened they used to inquire as to the ruling given by the Prophet (p.b.u.h.) in that particular case, and then followed his example.<sup>30</sup> This statement is confirmed by Al-Āmidī who records the consensus of the Companions as to the authority and validity of the *Sunnah* as a basic source of *fiqh*.<sup>31</sup> Al-Zuhrī (d.125 A.H.), an early *muḥaddith*, says that the close followers of the Prophet (p.b.u.h.) who had knowledge before him (Al-Zuhrī) firmly believed that success in the next world depended on following the *Sunnah*.<sup>32</sup> This means that the Companions and their successors (*Tābiʿūn*) gave due consideration to the *Sunnah* and understood their responsibilities accordingly. To quote the Qurʾān, "Whoever does not believe in Allah and His Messenger, we have prepared a blaze for those who deny".<sup>33</sup> The verse, "Certainly there is a good example for whoever looks to Allah and the Last Day and invokes the name of Allah much", according to Al-Khaṭīb al-Baghdaḍī, made them refer to the actions of the Prophet (p.b.u.h.) in all problems in which there was no clear direction, since the actions of the Prophet (p.b.u.h.) were regarded the embodiment of the *Sharīʿah* by the Companions.<sup>34</sup> Ali, for example, had detailed records in writing about the rules of *ṣadaqat* (*zakāh* and charity) which he called *Ṣaḥīfah*, and from which he used to teach and administer the rules of *ṣadaqāt*.<sup>35</sup> This *Ṣaḥīfah* was one of his most valued possessions which he always kept with him in the sheath of his sword.

*Maḥsūr* (Beirut: Dār al-Maʿrifah, n.d.) vol. 9, 37-52.

<sup>30</sup>Muḥammad b. ʿAlī Ibn Ḥazm, *al-Iḥkām fī Usūl al-Iḥkām*, ed. Aḥmad Shakir (Cairo: Maṭbaʿah al-ʿĀshimah, 1968) vol. 1, 102.

<sup>31</sup>Al-Āmidī, *al-Iḥkām*, vol. 1, 253-54.

<sup>32</sup>Al-Dārimī, *Sunan*, vol. 1: 45.

<sup>33</sup>Qurʾān 48:13.

<sup>34</sup>Al-Khaṭīb al-Baghdaḍī, *al-Faḥḥ*, vol.1, 131; for the verse of the Qurʾān, see al-Qurʾān 33:21.

<sup>35</sup>Aḥmad b. Ḥanbal, *Musnad*, vol. 1, 100.

when he heard the relevant *ḥadīth* from Abū Sa'īd al-Khudrī—viz., that the transaction of money-changing should be from hand to hand and equal in weight.<sup>24</sup>

The Companions who were strong in their understanding of Islam, and who were in a position to give opinions concerning the *Sharī'ah*, considered the *Sunnah* the best way to live. 'Abd Allah b. Mas'ūd had reportedly advised those who were in a position to make judgement, to make their decisions in accordance with the Qur'ān and the *Sunnah*.<sup>25</sup> Another eminent Companion, 'Abd Allah b. 'Abbās, whenever he was asked a question, would answer from the Qur'ān and the *Sunnah*. Ibn 'Abbās also took the judgements of Abū Bakr and 'Umar into consideration because he was certain that these judgements were based on the Qur'ān and the *Sunnah*.<sup>26</sup> Both of these last named Companions are regarded to be the *fuqahā'* of the *Rāshidūn* times.<sup>27</sup> Mu'ādh b. Jabal, another Companion *faqīh*, was advised by the Prophet (p.b.u.h.) to refer to and follow the *Sunnah* as a source and evidence of the verdict of *Sharī'ah*.<sup>28</sup>

Another example is to be found in the *ḥadd* punishment for adultery committed by a married person, which is stoning to death. This punishment is not stipulated in the Qur'ān, but it was a *Sunnah* of the Prophet (p.b.u.h.), and this was not abandoned by the *Khulafā'*. 'Umar insists on stoning to death the married person who committed adultery, and 'Alī enforced this punishment saying that it was upheld by the *Sunnah*.<sup>29</sup>

<sup>24</sup>Ibid. 140-41.

<sup>25</sup>Al-Dārimī, *Sunan*, vol. 1, 59; al-Shātibī, *al-Muwāfaqāt*, vol. 4, 6.

<sup>26</sup>Ibid.

<sup>27</sup>Ahmad b. Abī Ya'qūb Al-Ya'qūbī *Tārīkh al-Ya'qūbī*, (Beirut: Dār Sādir, 1379 A.H.) vol. 2, 138-61.

<sup>28</sup>Muhammad b. 'Isā Al-Tirmidhī *Sunan al-Tirmidhī*, (Iḥims: Dār al-Da'wah) vol. 5, 8-9; Abū Dāwūd, *Sunan Abī Dāwūd*, ed. 'Izzat 'Ubayd (M. 'Alī Al-Sayyid, Iḥims, 1388 A.H.) vol. 4, 18-19; Al-Dārimī, *Sunan*, vol. 1, 60.

<sup>29</sup>Al-Bukhārī, *Ṣaḥīḥ*, vol. 3, Part 8, 204; al-Dārimī, *Sunan*, vol. 2, 179. For the views of *fuqahā'*, see Mālik, *al-Muwāṭṭā'*, vol. 2, 165-68; al-Māwardī, *al-Aḥkām al-Sultāniyyah*, 223-25; 'Abū Ya'la Ibn al-Farrā', *al-Aḥkām al-Sultāniyyah*, ed. M.H. al-Fiqī, (Cairo: Muṣṭafa al-Bābī al-Halabī, 1386 A.H.) 263-64; Muhammad b. Ahmad al-Sarakhsī, *al-*



declared that he had appointed the governors in various cities to teach the people their *Dīn* and the *Sunnah*.<sup>19</sup>

In 17 A.H., 'Umar designated Abū Musa as Governor of Baṣrah, and advised him especially on holding fast to the *Sunnah*. Abū Mūsā requested the *Khalīfah* to send along some of the Companions to help him and teach the people. 'Umar allowed him to select whom he liked to accompany him to Baṣrah. Abū Mūsā selected twenty-nine Companions including Anas b. Mālīk, 'Imrān b. Ḥuṣayn and Hāshim b. 'Amīr.<sup>20</sup>

When 'Umar expelled the people of Najrān from the Peninsula of Arabia, he made it clear that the decision was taken in accordance with the will of the Prophet (p.b.u.h.). The Prophet (p.b.u.h.) is reported to have said in his last days of life that two religions should not exist in the Arabian Peninsula.<sup>21</sup> Upon being chosen as *Khalīfah*, 'Alī b. Abī Tālib, likewise, directed the people to hold fast to the Book of Allāh and the *Sunnah*, in his first *khuṭbah* in Madīnah al-Munawwarah. He also referred to the meticulousness with which Abū Bakr and 'Umar had followed the *Sunnah*.<sup>22</sup> Like *al-Khulafā al-Rāshidūn*, other prominent Companions also emphasised to follow the *Sunnah*. For instance, 'Abd Allāh b. 'Umar, who had rented out agricultural lands belonging to his family, was not sure whether such renting out was permitted or otherwise. On being told by Rāfi' b. Khadīj, that such renting out was prohibited by the Prophet (p.b.u.h.), 'Abd Allāh gave up renting of his lands.<sup>23</sup> Likewise, 'Abd Allāh b. 'Abbās had his own opinion about *bay' al-ṣarf* (money-changing), but he changed it

<sup>19</sup>Abū Yūsuf, *Kitāb al-Kharāj*. (Cairo: Maktabah al-Salafiyyah. 1976) 15; al-Ṭabarī, *Tārīkh*, vol. 4, 204; Ibn Sa'd, *al-Ṭabaqāt al-Kubrā* (Cairo: Dār al-Faḥrīr. 1388 A.H.) vol. 3, 201; Ibn Taymiyyah, *al-Siyāsah al-Shar'iyyah*, ed. 'Alī b. Muḥammad al-Maghribī (Kuwait: Dār al-Arqam, 1406 A.H.) 39.

<sup>20</sup>Al-Ṭabarī, *Tārīkh*, vol. 4, 70-71; Ibn al-Athīr, *al-Kāmil*, vol. 2, 541.

<sup>21</sup>Al-Ṭabarī, *Tārīkh*, vol. 4, 446.

<sup>22</sup>Al-Muttaqī al-Hindī, *Kanz al-'Ummāl*, vol. 4, 445; Ibn 'Abd Rabbih, *al-'Iqd*, vol. 4, 66.

<sup>23</sup>Al-Khaṭīb al-Baghādī, *al-Faḥḥ*, vol. 1, 140.

حضرت امام شافعی رحمۃ اللہ علیہ کا قول ہے کہ تمام لوگ فقہ میں امام ابوحنیفہ (رحمۃ اللہ تعالیٰ علیہ) کے پروردہ ہیں۔

a case, used to have a bath, 'Umar and the other Companions adopted the same practice.<sup>15</sup> Imām al-Shāfi'ī states that 'Umar pronounced that fifteen camels should be given towards compensation for the loss of a thumb, and for the loss of other fingers he prescribed different numbers. 'Umar then found a written *ḥadīth* with the family of 'Amr b. Ḥazm which showed that ten camels should be given for every finger. 'Umar immediately withdrew his decision and implemented the Prophet's decision.<sup>16</sup>

'Umar not only practised the *Sunnah* himself, but also instructed his governors and judges to do the same. When giving instructions on how to decide cases, 'Umar wrote to Abū Musā al-Ash'arī that he should look first into the Qur'ān and the *Sunnah* of the Prophet (p.b.u.h.), and in case of failing to find a ruling in the Qur'ān and the *Sunnah* he should try to look for similar cases and precedents from these sources, reach a decision through analogy.<sup>17</sup> In a letter to Shurayh who was appointed a judge by 'Umar, he gave him clear directions for judging and settling matters according to the Qur'ān and the *Sunnah*, says al-Dārimī.<sup>18</sup>

All this indicates the measure of 'Umar's commitment to ensuring that the *Sunnah* was preserved and practised. Governors and administrators were under an obligation to teach the people *al-Dīn* and the *Sunnah*. According to Imām Abū Yūsuf and al-Ṭabarī, 'Umar, in one of his Friday addresses,

<sup>15</sup> Al-Āmidī, Abū al-Ḥasan b. Abū 'Alī, *al-Ihkām fi Usūl al-Ahkām*, (Maṭba'ah al-Ma'ārif, Cairo, 1332 A.H.) vol. 1, 253-54.

<sup>16</sup> Muḥammad b. Idrīs al-Shāfi'ī, *al-Risālah* (Cairo: Mustafā al-Bābī al-Jalabī 1969) 183; al-Khaṭīb al-Baghādī, *al-Faṭḥ*, vol. 1, 134-35.

<sup>17</sup> Abū 'Uthmān 'Amr b. Baḥr, Al-Jāhiz, *al-Bayān wa al-Tabyīn*, ed. A. Salām M. Harūn, Mu'assasat al-Khānjī, 1367 A.H.) vol. 2, 49; al-Māwardī, *al-Ahkām al-Sultāniyah* (Cairo: Mustafā al-Bābī al-Jalabī) 71; Muḥammad b. Khalaf Wakī, *Akhbār al-Qudāt* (Beirut: 'Ālam al-Kutub, n.d.) vol. 1, 238-84; 'Alī b. 'Umar al-Dāraquṭnī, *Sunan al-Dāraquṭnī* (Beirut: Dār al-Muḥāsīn, 1386 A.H.) vol. 4, 206-7.

<sup>18</sup> Al-Dārimī, *Sunan*, vol. 1, 60; Wakī, *Akhbār al-Qudāt*, vol. 2, 189-90; al-Bayhaqī, *al-Sunan al-Kubrā*, (Hyderabad Dakkan: Dā'irat al-Ma'ārif, 1344 A.H.) vol. 10, 110; Ibn al-Qayyim, *I'lām*, vol. 1, 61-62; Abū Ishāq Ibrāhīm b. Mūsā al-Shātibī, *al-Muwāfaqāt* (Cairo: Maṭba'ah M. 'Alī Ṣabīh, 1969/70) vol. 4, 6; al-Muttaqī al-Hindī, *Kanz al-Ummāl*, vol. 5, 481-82.

share. Muḥammad b. Muslimah confirmed his being witness to this particular *Sunnah*. Abū Bakr then gave the woman one-sixth share in the inheritance. ‘Umar pronounced the like decision in a similar case during his *Khilāfah*, according to al-Shawkānī.<sup>10</sup>

Once the issue as to how Magians should be treated came under discussion. Abū Bakr discussed the matter with the Companions, and he was informed by ‘Abd al-Rahmān b. ‘Awf of the *ḥadīth* which calls for Magian to be treated as *Ahl al-Kitāb*. Abū Bakr then, allowed them the rights and obligations enjoyed by the *ahl al-Kitāb* under Islam.<sup>11</sup> Ibn Sīrīn also states that Abū Bakr would use reasoning or exercise *rā’y* only in cases where he failed to find answers in the two basic sources the Qur’ān and the *Sunnah*.<sup>12</sup>

‘Umar b. al-Khaṭṭāb also considered the *Sunnah* to be binding, and followed it like his predecessor. Mahrān b. Maymun covers in his report cited above that ‘Umar followed the *Sunnah* in the same way as Abū Bakr did.<sup>13</sup> According to observation of Ibn Qutaybah, ‘Umar was very strict in following his two predecessors, the Prophet (p.b.u.h.) and Abū Bakr, and followed them as a weaned camel follows its mother.<sup>14</sup> The early *fuqahā* have recorded many instances wherein ‘Umar invoked the *Sunnah* to settle cases. Al-Āmidī narrates the procedure followed by ‘Umar in settling the question as to whether a person who ends his sexual intercourse with his wife without ejaculation had to have a bath or not. Some of the Companions were in favour while others not. ‘Umar then sent a lady to Ā’ishah, to enquire about the practice of the Prophet (p.b.u.h.). Upon being told that the Prophet (p.b.u.h.), in such

<sup>10</sup> Al-Shawkānī, *Nayl al-Awtār*, vol. 6, 175.

<sup>11</sup> Alī b. Ḥabīb al-Māwardī, *Adab al-Qādī*, ed. Muḥyi Ḥilāl al-Sarḥān (Baghdad, 1971) vol. 1, 614-15.

<sup>12</sup> Ibn al-Qayyim, *I’lām*, vol. 1, 54.

<sup>13</sup> Al-Dārimī, *Sunan*, vol. 1, 58; Ibn al-Qayyim, *I’lām*, vol. 1, 62; al-Muttaqī al-Hindī, *Kanz al-Ummāl* (Hyderabad: Dā’irat al-Ma’ārif al-Uthmāniyah, 1374 A.H.) vol. 5, 348-49.

<sup>14</sup> ‘Abd Allāh b. Muslim, Ibn Qutaybah, *al-Imāmah wa al-Siyāsah*, ed. Tāhā M. al-Zaynī (Beirut: Mu’assasah al-Ḥalabī, reprint of Cairo edition of 1967) vol. 1, 26.

امام محمد بن ادریس شافعی فرماتے ہیں: فقہ میں مجھ پر سب سے زیادہ احسان امام محمد بن حسن کا ہے۔

swore that he would do exactly what he had observed the Prophet (p.b.u.h.) doing.<sup>8</sup>

Al-Dārimī delicate the approach of Abū Bakr when dealing with legal and social issues. This was quite similar to that adopted by the *fuqahā'* in the later period because they followed the example of *al-Khulafā' al-Rāshidūn*. On the authority of Mahrān b. Maymūn, whenever a dispute arose, or any issue was taken to Abū Bakr for settlement, he looked into the Qur'ān first to find a solution; and in cases where no solution could be found, he referred to the *Sunnah* of the Prophet (p.b.u.h.) and settled the matter accordingly. In case he was not sure of his knowledge of the *Sunnah* on any particular issue, he would call the Companions and ask them about the Prophet's *Sunnah* on that particular issue, and would decide the matter in accordance with the *Sunnah*. However, if he was unable to arrive at a decision or the Companions could not cite any relevant saying from the Prophet (p.b.u.h.) concerning the issue, he would summon the leaders and notables to discuss the matter with them."

Al-Māwardī refers to some cases in which Abū Bakr consulted the Companions in order to know the *Sunnah*. For instance, in the case of inheritance by a grandmother, when Abū Bakr was told that the Prophet (p.b.u.h.) gave her one-sixth, he decided accordingly. Al-Shawkānī discusses the same issue in detail. A grandmother came to Abū Bakr and asked him for her share in an inheritance. Abū Bakr told her that he did not find any share assigned in the Qur'ān, nor did he know of anything in the *Sunnah*. However, he asked her to come back after some days. Meanwhile, upon consulting the Companions, he was told by Mughīrah b. Shu'bah that he had been present when the Prophet (p.b.u.h.) granted a grandmother one-sixth of a share. Abū Bakr then asked Mughīrah whether there was anyone else who witnessed the Prophet (p.b.u.h.) giving her one-sixth of the

<sup>8</sup>Al-Ṭabarī, *Tārīkh*, vol. 3, 207-8.

<sup>9</sup>Al-Dārimī, Abū Muhammad 'Abd Allah, *Sunan al-Dārimī* (Beirut: Dār al-Kutub al-'Ilmiyyah, n.d) vol. 1, 58; Ibn al-Qayyim, *I'lām al-Muwaqqi'īn*, ed. M. Muhyi al-Dīn 'Abd al-Hāmid, (Beirut: Dār al-Jil, 1390 A.H.) vol. 1, 62.

☆ امام مالک بن انس رحمۃ اللہ علیہ کی ولادت سن ۹۳ ہجری میں اور وفات ۱۷۹ ہجری میں ہوئی۔ ☆

he would still send out the army of Usāmah.<sup>4</sup> Abū Bakr also displayed his firmness in following the command of the Prophet (p.b.u.h.) when he was approached by some Companions who requested him to appoint someone older and more experienced to lead the army instead of Usāmah, as he was a youth of about twenty and his command included many older Companions, Abū Bakr again plainly refused to make any change in the Prophet's decision to send the force under Usāmah.<sup>5</sup> Similarly, Abū Bakr remained firm in his stand against the tribes who refused to pay *zakāh* to the *Khalīfah* but assuring loyalty and adherence to the faith of Islām. The *Khalīfah* rejected their demand outright, saying, "If you withhold even the tether of a tithed camel, I will fight against you for the same".<sup>6</sup> In this way, he successfully restored the practice of collecting and establishing the institution of *zakāh*.

Yet another instance of his commitment to the *Sunnah* may be found when the question regarding the inheritance of the estate of the Prophet (p.b.u.h.) arose. According to the *Shar'īah*, it should have been distributed among the legal heirs, but Abū Bakr based his ruling on the *ḥadīth* of the Prophet (p.b.u.h.) that the estates of the Messengers of Allāh should be distributed as charity.<sup>7</sup> When 'Abbās and Fāṭimah approached him for their share from the land of Fadak and Khaybar, Abū Bakr recounted to them what the Prophet (p.b.u.h.) had said viz., that the Messengers of Allāh did not make anyone the inheritors of their property and that whatever was left by them was considered *ṣadaqah*. According to Al-Ṭabarī also Abū Bakr was so determined to follow the *Sunnah* of the Prophet (p.b.u.h.) that he

<sup>4</sup> Al-Ṭabarī, *Tārīkh*, vol. 3, 225.

<sup>5</sup> Ibid. 226; Ibn al-Athīr, *al-Kāmil*, vol. 2, 335.

<sup>6</sup> Muslim, *Ṣaḥīḥ*, vol. 1, 38. Al-Ṭabarī, *Tārīkh*, vol. 3, 244; Ibn al-Athīr, *al-Kāmil*, vol. 2, 335.

<sup>7</sup> Mālik b. Anas, *al-Muwattā'*, (Cairo: Muṣṭafā al-Bābī al-Jalabī, n.d) vol.1, 335; Muḥammad b. 'Alī al-Shawkānī, *Nayl al-Awtār* (Beirut: Dār al-Jīl, 1973) vol. 6, 196-97; Z.I. Anṣārī, *The Early Development of Fiqh in Kūfā* (Ph. D. thesis, McGill University, 1966.) 67-68.

be binding. According to Ibn 'Abd Rabbih, Abū Bakr delivered a *khutbah* (sermon) in which he directed the people to follow the Messenger of Allah, arguing on the basis of Qur'anic verses which laid down that obedience to the Messenger is, in fact, obedience to Allah.<sup>2</sup>

Abū Bakr's strict adherence to the *Sunnah* during his tenure as *Khalīfah* cannot be gainsaid. An instance in point is his decision, the first one he took as *Khalīfah*, to despatch an army under the command of Usāmah against the tribes who turned to unbelief. It is worth noting that the political situation, being rather acute, called for extreme caution. Many tribes who had accepted Islam shortly before the Prophet's death were not sufficiently committed in their faith, and returned to disbelief after his death. A number of other tribes such as the Ghassān, the Banū Asad and the Banū Hanīfah remained in the fold of Islam, but refused to pay *zakāh* to the *Khalīfah*; they rebelled against the authority of the *Khalīfah*. The developing situation was explosive enough to unnerve even some senior Companions who advised the *Khalīfah* to postpone the dispatch of Usāmah for the time being. These Companions, 'Umar included, gave priority to the defence of Madīnah; they wanted the *Khalīfah* to keep the army in Madīnah to defend it against any possible attack.

Abū Bakr, however, would not deviate from what he considered the *Sunnah* of the Prophet (p.b.u.h.). He declared: "By Allah in whose hand is my life, even if I knew that the beast would grab me, I would still certainly despatch the army of Usāmah as the Prophet (p.b.u.h.) directed".<sup>3</sup> The key words here are, "as the Prophet (p.b.u.h.) directed", and they indicate the measure of his steadfastness to follow the *Sunnah*. This momentous declaration was supplemented by another equally important one that even if he was the only one left in the town,

<sup>2</sup> Ibn 'Abd Rabbih *al-Iqd al-Farīd* (Cairo: Lajnat al-Ta'līf wa-al-Tarjūmah, 1384 A.H.) vol. 1, 61.

<sup>3</sup> Al-Tabarī, *Tārīkh*, vol. 3, 225; Ibn al-Athīr, *al-Kāmil*, (Beirut: Dār al-Kitāb al-'Arabī, 1387 A.H.) vol. 2, 334; al-Dhahabī, M.B. Ahmad, *Tārīkh al-Islām* (Cairo: Maṭba'ah al-Quds, n.d) vol. 3, 14-15.

## AUTHORITY OF THE *SUNNAH*

The word *Sunnah* literally means a norm, usage sanctioned by tradition, or the customary practice of a person or group of people. However, it has come to refer almost exclusively to the practice of the Messenger of Allah in the literature of the early *muḥaddithūn* and *fuqahā'*. In the early years of Islam the practice of setting apart the *Sunnah* of the Prophet (p.b.u.h.) from the *Sunnah* of the Companions or that of the tribes or of particular people was not in vogue. However, a study of the early *ḥadīth* literature indicates that there was an increasing tendency to use the phrase, "*Sunnah* of the Prophet" (p.b.u.h.) and it occurs quite frequently. By the time of *fuqahā'*, *al-Sunnah* was a well-established term attributed exclusively to the Messenger of Allah.

Abū Bakr, upon his being chosen as *Khalīfah*, lost no time in showing his intention to follow the Book of Allah and the *Sunnah* of the Prophet (p.b.u.h.). "Obey me as long as I obey Allah and His Messenger" he declared, "And if I disobey Allah and His Messenger you are under no obligation to obey me".<sup>1</sup> The gathering to which these words were conveyed comprised Muhājirūn and Anṣār, and they all acclaimed his statement. This meant that not only Abū Bakr but also the Companions, who were present on this historic occasion, considered the *Sunnah* to

<sup>1</sup>Ibn Hishām, *al-Sīrah al-Nabawiyyah*, ed. Khalīl Harrās, (Cairo: Maktabah al-Jumhuriyyah) vol. 4, 457; al-Ṭabarī, *Tārīkh*, (Cairo: Dār al-Ma'ārif, 1961) vol. 3, 210; Ibn Qutaybah, *Uyūn al-khbār* (Cairo: al-Mu'assasah al-Miṣriyyah al-ʿĀmmah, 1383 A.H.) vol. 2, 234.