

# Solitary Sunnah and Its Legislative Value Among the Muslim Jurists: Readings of Selected Examples

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The science of *hadith* authentication and classification (*ulum al-hadith*) has been developed by Muslim scholars mostly based on critical analysis of the texts and chains of the reports (*ahadith*) that are attributed to Prophet Muhammad (*s.a.w.*). Though this science is basically designed to identify the authentic reports which are truly the words, actions or tacit approvals of the Prophet (*s.a.w.*), however, it has left its implications on *fiqh* (legal) opinions among the Muslim jurists (*fuqaha*), who left contrasting legal opinions on certain issues of *fiqh*, some of which are as a result of their differences on *hadith* classification, particularly classifications of *hadith* into solitary and recurrent reports. This paper uses analytical method, and intends to address the implications of *hadith* authentication and classification methods on the legislative power of the *sunnah*, with particular emphasis on the solitary *sunnah* and its legislative value among the Muslim jurists.

*Keywords:* solitary *hadith*, implications, legislative value, *fiqh*, analysis

## Introduction: Functions and the Position of the *Sunnah* in Relation to the Qur'an

The Arabic term *sunnah* means clear path, established course of conduct or way of life. When *sunnah* is associated to the Prophet (*s.a.w.*), by saying *sunnatu-rasulillah*, it means the way of life of Prophet Muhammad (*s.a.w.*), including his deeds, sayings, tacit approvals, and to some extent, descriptions of his physical features and moral behavior. Closely related to *sunnah* is the word *hadith* which literally means report or narration; conceptually, *hadith* signifies the reports that are narrated on the authority of the Prophet (*s.a.w.*), thus *hadith* has the same denotations of the word *sunnah*, whereby *sunnah* and *hadith* interchangeably denote the way of life of Prophet Muhammad (*s.a.w.*). In this paper, these two terms are used as synonymous terms. With regards to the position of the *sunnah* in relation to the Qur'an, besides practicing the teachings of the Qur'an, which is the founding scripture of Islam, Muslims are also told to follow the way of life of Prophet Muhammad (*s.a.w.*). In chapter 33, verse 21, the Qur'an characterizes the Prophet (*s.a.w.*) as a model or good example of life for every Muslim, while in chapter 3, verse 32, the Qur'an makes it clear that those who wish to be obedient to Allah (*s.w.t.*), should also be obedient to the Prophet (*s.a.w.*). In chapter 16, verse 44, the Qur'an also mentions that the duty of the Prophet (*s.a.w.*) is to explain the Qur'an (*litubayyina li al-nas*), through words, actions or tacit approvals, in such a way that the *sunnah* basically forms the practical account of the Qur'anic ideals and values. These and many other verses of the Qur'an prescribe Muslims to follow and practice the way of life of

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the Prophet (*s.a.w.*). These verses also closely associated the *sunnah* to the Qur'an, in such a way that the *sunnah* becomes the second source of the Islamic teachings, based on which beliefs, values, laws and conducts are understood and evaluated. It interprets the Qur'an through different levels<sup>1</sup>: (1) the *sunnah* confirms and supports (*sunnah mu'akkidah*) the teachings of the Qur'an, in such a way that the Qur'an and *sunnah* become complementary to each other<sup>2</sup>; (2) the *sunnah* interprets (*sunnah mubayyinah*) the Qur'anic concise terms; either by providing detailed accounts (*tafsil*) of the concise words (*mujmal*) of the Qur'an, or by limiting (*takhsis*) the generic terms (*al-'am*) of the Qur'an, however, in both cases the *sunnah* plays a role of interpreter of the Qur'an; and (3) the *sunnah* might provide an independent teaching, which should be in line with the teachings and the message of the Qur'an, such as those narrations in which the Prophet (*s.a.w.*) prohibited wearing silk or golden cloths to Muslim man. For it interprets the ideals of the Qur'an and thus forms its practical account, Muslim scholars of different schools have unanimously agreed on the principle that the *sunnah* of the Prophet (*s.a.w.*) falls in the second position of the list of the *shari'ah* sources (*masadir al-shari'ah*)<sup>3</sup>; it comes after the Qur'an. Furthermore, for it constitutes the second source of the Islamic teachings, the *sunnah* became the subject of academic studies since the early age of the Islamic history<sup>4</sup>. These studies addressed different dimensions of the *sunnah*, including authentication and classifications, as well as the studies that highlighted the position of the *sunnah* in relation to the Qur'an<sup>5</sup>. This paper intends to highlight the legislative power of the *sunnah*, particularly the solitary *sunnah*. It begins with a concise exposition of *hadith* authentication method as well as its classifications, followed by an in-depth analysis of the solitary *sunnah* and its legislative value among the Muslim jurists.

### Principles of Authentication and Classification of the *Sunnah*

Given the fact that by the end of the first century of the Muslim calendar and onwards, there were, already, thousands of reports which are attributed to the Prophet (*s.a.w.*), some of which are forged or fabricated ('Azami, 1977; Abdullah & Abdul Manas, 2006), Muslim jurists and scholars of *hadith* (report), who lived in the second and third centuries of the Muslim calendar and onwards, have endeavored to establish common

<sup>1</sup> Despite the fact that the jurists unanimously consented on the principle that the Qur'an and *sunnah* are the supreme sources of Islam, method and style of interpretation remain a matter of disagreement. In the course of interpretation of the text (*nass*) of the Qur'an and *sunnah*, some jurists desired the style of syllogism (*ahl al-ra'yi*), others prefer traditionalism (*ahl al-hadith*) over syllogism, while others adopted literalism (*al-zahiriyyah*). This variety of styles of interpretation led to appearance of various schools of thought, including among others, Hanafi School, Maliki School, Shafi'i School and Hambali School. The four mainstream schools of Islamic jurisprudence are al-Hanafiyyah founded by Abu Hanifah (d.148 A.H.), Al-Malikiyyah founded by Imam Malik (d.179 A.H.), Al-Shafi'iyyah founded by Imam al-Shafi'i (d.204 A.H.), and Al-Hambaliyyah founded by Ahmad b. Hanbal (d.241 A.H.). Despite the fact that convergences and divergences appear here and there in their views, nevertheless, there has been harmony for the most part among their various scholars throughout Islamic history.

<sup>2</sup> Good example of this type of *sunnah* is the narrations of the Prophet (*s.a.w.*) in which he addresses pillars of faith and Islam, which the Qur'an has already explained.

<sup>3</sup> Indeed, the Qur'an and *sunnah* form the divine guidance (*al-wahy al-rabaniyi*), which cannot be separated from each other; whereby the Qur'an constitutes the recited revelation of God (*al-wahy al-maqr'u*), while the *sunnah* forms the practical revelation (*al-wahy al-amali*).

<sup>4</sup> Notwithstanding with the fact that Muslims practiced the *sunnah* in daily life activities, the official documentation of compilation of the *sunnah* started formally around the end of the first century of the Muslim calendar. Generally speaking, the studies of the *sunnah* (the way of life of Prophet Muhammad *s.a.w.*), include three components, namely the position of the *sunnah* in relation to the Qur'an, principles of validation, and classification of the *sunnah*.

<sup>5</sup> With regards to the position of the *sunnah* in relation to the Qur'an, Muslim scholars of different schools unanimously agreed that the *sunnah* is the second source of Islamic teachings. For further details see: Al-Zuhaili (1989), Badran Abu al-Ainain Badran (1965), and Kamali (1998).

principles through which the authenticity of given reports (*ahadith*) are established and understood<sup>6</sup>. After sometime of scholastic debates and dialogues on the principles of *hadith* authentication, Muslim jurists and scholars of *hadith* have categorically agreed on common principles of *hadith* validation, with some differences on the details. Generally agreed authentication system of any given report consists of, among others, the following principles (Al-Khatib, 1981). First, the teaching (*matn*) of the report (*hadith*) which is attributed to the Prophet (*s.a.w.*) should not contradict with the Qur'anic text<sup>7</sup>. Second, it should not be against the dictates of reason or the laws of nature and common human sense (experience) ('Azami, 1977; Al-Khatib, 1981). Third, it should not be contradictory to generally agreed principles of Islam (*qawa'id al-shar'iyyah al-amah*)<sup>8</sup>. Fourth, the chain of the narrator (*sanad*) who reported the narration should not be disconnected (*maqduhu*). Fifth, narrators (*ruwat*) of the *hadith* should be morally upright ('*adl*) and with retentive memory (*hifz*)<sup>9</sup>. These principles, some of which are derived from religious teachings, while others appeal to the common sense, are known to have been employed by Muslim jurists (*fuqaha*) and scholars of *hadith*, to authenticate, classify and interpret those reports (*ahadith*) which are attributed to the Prophet (*s.a.w.*). Both the jurists (*fuqaha*) and scholars of *hadith* (*muhadithun*) had consented on the principle that, in order for a *hadith*, any given *hadith*, to be valid with legal authority, both the narrator (*mukhbir*) and the content (*mukhbir bihi*) have to fulfill the abovementioned common conditions of *hadith* authentication<sup>10</sup>. In addition, based on these principles, reports which are attributed to the authority of the Prophet (*s.a.w.*) are divided into classes on different grounds, such as the degree of authenticity, the condition of the chain (*sanad*) or number of narrator. For instance, there are cases in which based on the degree of authenticity, reports are classified into valid report (*hadith sahih*) and invalid report (*hadith dha'if*)<sup>11</sup>; while based on the condition of the chain, given reports are classified into

<sup>6</sup> For further reading on the history of *hadith* documentation and preservation see the followings: Abu Shahbah (1982), and Abu Layth (2003).

<sup>7</sup> This is because, if the narrated report contradicts with the Qur'an, it implies unimaginable scenario; narrating a report that is contradictory to the Qur'an implies that the Prophet is teaching something that is not in line with teachings of the Qur'an, which is never being the case. Thus if there are discrepancies between the *zahir al-nass* of the Qur'an and any given report then such report should be rejected or interpreted in a way that harmonizes it with the Qur'an. This principle is founded on the understanding that, since the Qur'an is transmitted through continuous mass testimony (*mutawatir*) which stands beyond doubts, its text and message constitute the foundation of Islamic teachings. Similarly, it is hard to imagine that the Prophet (*s.a.w.*) would invite the entire mankind to believe in the Qur'an and at the same time will teach something contradictory to it. Hence, since the role of the Prophet (*s.a.w.*) is to convey (*balagh*) and interpret (*bayan*) the message of the Qur'an, any given report attributed to the Prophet (*s.a.w.*) must be in harmony with the teachings of the Qur'an. Second, the Qur'an was documented during the time of the Prophet (*s.a.w.*) and transmitted through *mutawatir*, thus narrated reports (*ahadith*) have to be in line with teachings of the Qur'an. This principle allows evaluating given narrations through the teachings of the Qur'an; if there is a contradiction between the Qur'an and the reports attributed to the Prophet (*s.a.w.*), then that would automatically indicate the invalidity of such report.

<sup>8</sup> Muslim jurists agreed to reject narrations that go against generally agreed principles of the *shari'ah*. For instant 'Aishah (*r.a.*) questioned the authenticity of the narration in which Abu Hurairah said: "whoever washes dead person or carries has to renew his or her ablution..." then when 'Aishah (*r.a.*) received such narration she replied: "does that mean Muslim dead bodies are impure (*najis*)?"

<sup>9</sup> These principles are collectively known, as the sciences of *hadith* (*ulum al-hadith*), a discipline in which narrations and reports attributed to Prophet Muhammad (*s.a.w.*) are studied and evaluated.

<sup>10</sup> With regards to the narrator (*mukhbir*) of the *hadith*, both agreed that *hadith* narrator has to fulfill the following conditions: (1) mentally sound ('*aqil*); (2) Muslim; (3) just; and (4) with retentive memory. In his monumental book, *al-Risalah*, Imam Shaf'i, argued that narrators of *hadith* were those who believe in Allah (*s.w.t.*), with the character of being truthful (*sidq*). Similarly, according to Imam Shaf'i every narration must be connected to the Prophet (*s.a.w.*). Imam Shaf'i stated: "whenever we find two conflicting narrations dealing with a single event, the savant must investigate 'the heart of the matter' thoroughly and only accept as valid that which is more likely to be in harmony with spirit of the Book, the *Sunnah* and the general principles of the Muslims". See Imam al-Shaf'i (2005, pp. 38-39), and Mohd Nabi Aziz Abd Aziz (2007, p. 109).

<sup>11</sup> Authentic *hadith* is the report that is reported with continues chain, by upright person with retentive memory, and without any outlandish defects. However, weak or *dha'if* report is the narration that does not fulfill the criterion of authentic reports.

*hadith maqtu'* (disconnected report), *hadith mutasil* (connected report), *hadith marfu'* (elevated report), etc.; whilst based on the number of narrators in the chain, given reports are categorized into recurrent report (*hadith mutawatir*), solitary report (*hadith ahad*), etc. Generally speaking, to establish the authenticity as well as the authority of given reports (*ahadith*), these aspects are all important.

Despite the fact that Muslim jurists (*fuqaha*) agreed on the position of the *sunnah* and its relation to the Qur'an, however, styles of *hadith* validation and modes of classification are matters of disagreement among the Muslim jurists. This is because, though in principles, jurists (*fuqaha*) and scholars of *hadith* agreed on the position of the *sunnah* in relation to the Qur'an<sup>12</sup>, however, classifications of reported narrations (*ahadith*) into classes, for instance, solitary and recurrent, as well as the legislative authority of each class, are also matters of disagreement among them. For instance, Muslim jurists hold different opinions about the legislative value of the solitary *hadith*, particularly when it comes to specification (*takhsis*) and limitation (*taqyid*) of the generic terms ('*am* and *mutlaq*) of the Qur'an<sup>13</sup>; some of them are on the view that solitary *hadith* has the power to specify the generic terms of the Qur'an, while others categorically opposed to such view, as analyzed in the following paragraphs.

### **Solitary Sunnah and Its Implication on Fiqh**

The Arabic word *ahad* literally means solitary or singular. Conceptually, *hadith ahad* or solitary report is the narration that is reported by single narrator or odd individuals, regardless of whether this singularity occurs throughout the chain or at some levels of the chain. In the general sense, *hadith ahad* refers to the Prophetic narration "that is narrated by one transmitter" (Kamali, 2005, p. 173), in certain stages or throughout the chain of the narration; however "this understanding is not always accurate. *Ahad* is actually defined as a *hadith* that does not fulfil the requirements of *mutawatir*"<sup>14</sup>. The term *mutawatir* is rooted in the Arabic word of *tawatara*, i.e., recurrent or continues succession. In the science of *hadith*, *mutawatir* is the report "that has been transmitted by an indefinite number of people in such a way that precludes the possibility of their agreement to perpetuate a lie upon the Prophet (*s.a.w.*)" (Abdullah & Abdul Manas, 2006, p. 77). Reported by an indefinite number of narrators, *hadith mutawatir* signifies a practice that is repeatedly done or said by the Prophet (*s.a.w.*), in a way that such saying or practice is known to a large number of Companions of the Prophet (*s.a.w.*), some of whom reported it with its identical form or meaning. The distinction between recurrent *hadith* and solitary *hadith* is: "based on the manner in which the tradition (*hadith*) has been communicated from the Messenger of Allah (*s.w.t.*), to us"<sup>15</sup>; whereby unlike the recurrent report which reflects widespread incident or saying that has been narrated by a larger number of people, solitary *hadith* is

<sup>12</sup> Scholars all agreed that the position of the *sunnah* in relation to the Qur'an is to interpret and expose the Qur'anic teachings.

<sup>13</sup> For instance, Hanafi School disagreed with the mainstream of Muslim jurists (*jumhur*) on the solitary *hadith* and its relation to the Qur'an; this is because, in principle, Hanafi School agreed on the authority of the *sunnah* in general, however, they questioned the legislative value of the solitary *hadith*, particularly when it comes to specification (*takhsis*) and limitation (*taqyid*) of the generic terms ('*am* and *mutlaq*) of the Qur'an. They argue that, the Qur'an is transmitted through continuous mass testimony which is beyond possible doubt, while solitary *hadith* is transmitted through solitary chain of narration, in which the possibility of error in it cannot be ruled-out. Thus, Hanafi School imposed a number of additional conditions for the acceptance of solitary *hadith* in legislations. Hanafi School of jurisprudence is marked by less reliance on mass oral solitary traditions as an authoritative source of legislative teachings, and with greater emphasis on the role of *qiyas* (analogical reasoning).

<sup>14</sup> It may have been narrated by one, two or three persons at every level or the number may vary, but their number does not reach that of the *mutawatir*. See Kamali (2005, p. 173).

<sup>15</sup> Retrieved from <http://islamicsystem.blogspot.com/2011/11/definition-of-iman.html>.

marked by singularity of transmission<sup>16</sup>.

Reported by a large number of people throughout the chain, who is not likely to agree upon a lie, and supported with sensible evidence, the legal value of recurrent *hadith* rises high on given issues; it:

Carries definite knowledge and prescribe certainty, and thus its legal authority is the same like that of the Qur'an. The large number of people involved in reporting the *mutawatir hadith* produces certainty in such a way that the report is without doubt the *hadith* of the Messenger of Allah (*s.w.t.*).<sup>17</sup>

Unlike the recurrent *hadith*, which carries decisive authority on given issues, for it is reported by a lesser number of transmitters compared to *mutawatir*, the decisive certainty of solitary *hadith* is disputed among the jurists<sup>18</sup>. Some of the jurists, like those of Hanafi School adopted strict measures on accepting the legal authority of solitary *hadith* in general, while some of the jurists, like those of Hanbali, Zahiris and to some extent Shafi'i Schools, adopted accommodative attitude toward accepting its legal authority<sup>19</sup>. The jurists' dispute about the legal authority of the solitary *hadith* is not about whether given solitary narrations are weak or not, this dispute is about its reliability and strength to legislate. In fact for authentication wise, the requirements that the transmitter of recurrent and solitary narrations has to fulfil are the same, whereby narrators of *ahad* and *mutawatir* reports must be competent, just and with retentive memory.

In the instances when given *ahad* narration fulfils these requirements and it:

Is free from obvious and hidden defects, it is a decisive evidence according to the Zahiris (literalists school of *fiqh*) and Hambalis (*hamabli* school of law), but it is less decisive (i.e., *zanni*) according to the majority of the *madhahib*. (Kamali, 2005, p. 173)

Zahiris and Hambalis are on the view that if the solitary *hadith* fulfils the conditions of authenticity, the solitary *hadith* functions as decisive evidence with binding legislative authority. However, same like the jurists of Zahiris and Hamabalis, the jurists of Hanafi and Maliki Schools agreed on the principle that *ahad* narration has to fulfil generally agreed method of *hadith* validation, yet to further "verify reliability and strength of the *ahad hadith*" (Kamali, 2005, p. 173), jurists of Hanafi and Malaiki Schools tend to impose some additional requirements. For instance, narrated by competent, just transmitter with retentive memory, and free from obvious and hidden defects, *ahad* narrations, according to the jurists of Maliki school, should also be in line with the practices of Madinah people (*amal ahl al-madinah*). This is because, according to Maliki school, Madinah "practice is the true reflection of the teachings and *sunnah* of the Prophet (*s.a.w.*), and as such it is more reliable than the reports of odd individuals" (Kamali, 2005, p. 173). Thus, if the solitary narration contradicts the practice of Madinah people, then jurists of Maliki School prefer the practice of Madinah over the solitary *hadith*.

<sup>16</sup> Imam al-Nawawi, in *Sharh Sahih Muslim*, stated that the solitary report was a "report that does not fulfil the conditions of the *mutawatir* report, regardless of whether the narrator was a single person or more. It is the kind of report that generates dispute over its ruling. The overwhelming majority of Muslims, ranging from the Companions, Successors of the Companions, and the following generation of narrators of tradition (*muhaditheen*), jurists (*fuqaha*), scholars of *usul* (foundations of jurisprudence) agree to take the individual report as evidence in the sacred law relating to actions, but they do in fact entail speculation and not certainty". Retrieved from <http://islamicsystem.blogspot.com/2011/11/definition-of-iman.html>.

<sup>17</sup> Retrieved from <http://islamicsystem.blogspot.com/2011/11/definition-of-iman.html>.

<sup>18</sup> This dispute is not because *hadith ahad* is weak or forgery, neither about the requirements that the transmitter of the solitary narrations has to fulfil is different from that of the recurrent *hadith*.

<sup>19</sup> Leading jurists, like Imam al-Shatibi, stated that "the Lawgiver allowed singularly narrated traditions which engender speculation only in matters concerning actions which are in the branches (*furu'*) but not the foundation (*usul*) of the *din* (religion)". Retrieved from <http://islamicsystem.blogspot.com/2011/11/definition-of-iman.html>.

Similarly, jurists of Hanafi School have also laid down a number of additional requirements to verify the reliability of solitary *hadith*<sup>20</sup>. First, according to jurists of Hanafi School, solitary narration should not contradict the known actions and practices of its narrator; “should it be known that the narrator (of *ahad*) had actually acted contrary to his own report, this would mean the report is unreliable” (Kamali, 1998, pp. 74-76). This is because, says Hanafi School, Companions of the Prophet (*s.a.w.*) are known to have firmly applied and followed the teachings of the Prophet (*s.a.w.*) and it is never been the practice of the companions to narrate a report on the authority of the Prophet (*s.a.w.*) and ignore it in practice. Thus, if there is a solitary narration which goes against the known practices and decisions of its reporter, then the legislative value of such report demises. It is on this ground, for example, that the Hanafi School does not rely on the following solitary *hadith*, narrated by Abu Hurayrah: “If a dog licks a dish, wash it seven times, one of which must be with clean sand” (Al-Albaniyi, 1988, p. 72). According to the view held by jurists of Hanafi School, this solitary narration is unreliable, and the reason is because Abu Hurayrah, the transmitter of this solitary report, “did not act upon it” (Kamali, 1998, p. 75). According to the jurists of Hanafi School, this particular solitary *hadith* also goes against the normal practice of washing impure substances which is one or three times. Therefore, since the requirement of washing is normally one, two or three times, and the narrator of this report (Abu Hurairah) does not act upon it, this solitary report is considered weak, and thus jurists of Hanafi School does not rely upon it.

Furthermore, this is also one of the reasons of why Hanafi School questioned the reliability of the solitary report in which male guardian (*wali*) is required for female marriage contract, and took the position that male *wali* is not a requirement for the validity of female marriage contract. Aishah (*r.a.*) reported the Prophet (*s.a.w.*) saying that: “No marriage except with a guardian and the ruler is the guardian of she who has no guardian” (Abu Da’ud, 2004). On another occasion, Aishah (*r.a.*) reported similar narration but with different tone and words, as follows: “if any woman marries without the permission of her guardian, then her marriage is void, then her marriage is void, then her marriage is void” (Al-Termidhiyi, 2006). For Hanafi School, this solitary *hadith* is unreliable for a number of reasons, including that the reporter of this narration, which is Aishah (*r.a.*), does not act upon it. This report made male guardian a must for the validity of female marriage contract, however, the narrator of the *hadith*, Aisha (*r.a.*), arranged the marriage of her niece, the daughter of her brother namely Hafsa b. Abdul Rahman, while her brother was absent during the marriage contract initiation (Ibn al-Hamam, Muhammad Ibn Abd al-Wahid, 1900, p. 159). Aisha’s action in this case seems to be contradictory to the report that is attributed to her on the need for male guardian to initiate female marriage contract. As such, for Hanafi School, if indeed Aisha (*r.a.*) narrated this report, why did not she act upon it? The fact that the narrator did not act upon his or her own solitary narration, says the Hanafi School, weakens the reliability and legislative power of such a solitary narration. For that reason, the Hanafi School of law does not rely upon this narration, and thus prefers not to include male guardian in the essential requirements of the validity of female

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<sup>20</sup> Jurists of Hanafi School of law agreed on the authority of the *sunnah* in principles, however, they have imposed somewhat stricter conditions to accept the legislative value of the solitary *hadith*, particularly when it comes to specification (*takhsis*) and limitation (*taqyid*) of the generic terms (*‘am* and *mutlaq*) of the Qur’an. They argue that, the Qur’an is transmitted through continuous mass testimony which is beyond possible doubt, while the solitary *hadith* is transmitted through solitary chain of narration, in which the possibility of error in it cannot be ruled-out. Thus, Hanafi School of jurisprudence is marked by less reliance on mass oral solitary traditions as an authoritative source of legislative teachings, and with greater emphasis on the role of *qiyas* (analogical reasoning), this does not however mean that Hanafi School of jurisprudence is completely denying the legal authority of solitary reports, rather it acknowledges the legislative power of solitary *hadith*, but imposes a number of additional conditions for the acceptance of solitary *hadith* in legislations. See Abu Halibah (2001, pp. 154-155), and Kamali (1998, pp. 74-76).

marriage contract.

However, “the majority of jurists including those of Shafi’i School, on the other hand, take the view that discrepancies between the report and the action of the narrator may be due to forgetfulness or some other unknown factor” (Kamali, 1998, p. 75). They argue that, in the case where there is a contradiction between the actions of the narrator and his or her solitary reports, priority would be given to the reports over the actions of the narrator. The reason is because reports (*ahadith*) are authority (*hujjah*) while human actions and opinions are not; thus what is important is the narration not the narrator’s action. Thus, “discrepancies of this kind do not, by themselves, provide conclusive evidence to render the report unreliable” (Kamali, 1998, p. 75); hence, the *sunnah* would be evaluated in itself regardless of narrator’s behavior. Responding to the Hanafi School’s opinion on this *hadith*, al-Shirazi (d.476 A.H.), who is a prominent Shafi’i jurist, argues that if a narrator (*rawi*) does not act upon his or her narration, that does not necessarily make his or her narration void. The reason is because, the words of the Prophet (*s.a.w.*) are authority (*hujjah*), while the actions of the narrator are not authority, thus the later cannot nullify the former; provided the report fulfils other requirements of *hadith* validation (Al-Shirazi, 1983, p. 343). Thus, according to the jurists of Shafi’i School of law, the presence of male guardian (*wali*) to initiate female marriage contract is required<sup>21</sup>; indeed in the views of Shafi’i School of law, male guardian is a must prerequisite (*shart*) for the validity of marriage contract; and any marriage contract that is done without male guardian (*wali*) is null and void. This is due to the fact that, jurists of Shafi’i School of law and others accepted the legislative authority of this solitary report, and thus concluded to the opinion that a female needs a relative male guardian to represent her in the marriage contract, otherwise her marriage will not be valid.

Second, according to Hanafi School of law, solitary *hadith* should not contradict with apparent (literal) meaning of the Qur’anic text (*zahir al-nass*). This condition (*shart*) is a general requirement upon which every narration, both recurrent and solitary reports, are validated, however, Hanafi School of law gives greater emphasizes to this condition (*shart*) on the validation of solitary narrations. The reason is because, the text of the Qur’an forms decisive certainty, while solitary narrations, says Hanafi School of law, do not constitute firm certainty, thus the latter should not, in any form, explicitly or implicitly, run-counter to the former (Al-Samarqandi, 1987, pp. 433-434). This is the reason why Hanafi School of *fiqh*, for instant, questions the reliability of the solitary *hadith* that states: “no marriage may be made without the presence of a guardian”<sup>22</sup>. Besides the fact that this *hadith* contract with the known practices of its reporter, as mentioned earlier, according to Hanafi School of law, the teachings of this *hadith* seems to be different from the apparent meaning (*zahir al-nnas*) of the Qur’anic texts such as verses in chapter 2, verses 230-231, and chapter 2, verse 240, which, according to the jurists of Hanafi School of *fiqh*, explicitly permit woman to initiate her marriage contract without male guardian. Thus the legal authority of the abovementioned narration in which the male guardian is required for the female marriage contract is questioned. The Hanafi School of law is on the view that since woman is permitted to initiate other contracts, such as selling and buying, without referring to a male guardian (i.e., brother or any other male relative), she can also initiate a marriage contract as well, without male guardian.

Third, among the additional conditions laid down by Hanafi School of law to accept the reliability and the

<sup>21</sup> He could be her father, paternal grandfather, son, grandson, full brother, paternal half-brother, paternal uncle, etc., with the condition that he should be a Muslim.

<sup>22</sup> For further discussion on this and other narrations related to this subject see: Ibn Rushd (1999).

legal authority of the solitary *hadith* is that the subject matter of the solitary narrations should not be a matter “that would necessitate the knowledge of a vast number of people” (Kamali, 1998, p. 75). For instance, if we receive an information attributed to the Prophet (*s.a.w.*), by means of solitary chain, of an action of the Prophet (*s.a.w.*) which is supposed to be known by a vast number of people (*ma ta’umu bihi al-balwa*), probably hundreds or thousands, yet one or two have narrated it, the legislative value of such report is challengeable (Al-Jasas, 2000, p. 6). For this reason the Hanafi School of law questioned the legislative authority of the solitary narration which states that: “anyone who touches his sexual organ must take a fresh ablution”. The Hanafi School argues that, had this *hadith* been authentic, it would have become an established practice among all Companions of the Prophet (*s.a.w.*), which is not the case; hence the Hanafi School does not rely upon this narration. Nevertheless, the Shafi’i School of law does accept the legislative authority of this narration, and holds that the people who witness or observe an incident do not necessarily report it; they argue that there are incidents in which countless people witnessed, like pilgrimages (*hajj*), but only few of them reported their observations. As such, for Shafi’i School of law, to insist of this kind of requirement for the reliability of the solitary *hadith* makes no sense, thus they tend to accept the legislative authority of this solitary narration.

Fourth, the solitary *hadith* should be in harmony with the renowned narrations (*al-sunnah al-mashhurah*) (Mohd Nabi Aziz Abd Aziz, 2007, p. 70). Discrepancies between famous reports (*al-sunnah al-mashhurah*) and solitary *hadith*, says the Hanafi School of law, make the legal authority of solitary *hadith* unreliable. It is on this ground that the Hanafi School of law does not rely on a number of reports including the report on witness (*shahid*) and swearing (*yamin*) on the part of the accuser (Al-Hindiyyi, 1998, p. 76), which according to Hanafi School of law contradicts the famous report that requires witness from the accuser and swearing from the accused.

Fifth, another additional requirement imposed by the Hanafi School of law on the acceptance of solitary *hadith* is that solitary *hadith* should not contradict with analogical reasoning (*qiyas*); however, in the cases whereby the solitary report contradicts analogical reasoning, if the narrator of a given solitary *hadith* is not a *faqih* (jurist) (Al-Badkhashiyi, 1984, p. 354), then Hanafi School of law prefers *qiyas* over solitary narration. The Hanafi School of law holds that when a narrator of solitary *hadith* is not a *faqih* (jurist), his report is accepted only if it agrees with *qiyas*, otherwise *qiyas* would be given priority over *ahad*.<sup>23</sup> However, if the narrator is known to be *faqih*, such as the four rightly guided caliphs (*khulafa’ al-rashidin*), then his solitary report would be preferred over *qiyas* (Al-Sarakhsi, 1996, p. 276). It is on this ground that the Hanafi School of law has questioned the legislative value of the *hadith* reported by Abu Hurayrah (*r.a.*) on selling the animal whose milk is retained in its udders (*musarrat*) so as to impress the buyer. Abu Hurayrah reported that the Prophet (*s.a.w.*) said:

Do not retain milk in the udders of a she-camel or goat so as to exaggerate its yield. Anyone who buys a *musarrat* has the choice, for three days after having milked it, either to keep it, or to return it with a quantity (*sa’*) of dates. (Al-Termidhiyyi, 2006)

This *hadith* according to Hanafi School of law is contrary to *qiyas*, that is, to make analogy with the rule of equality between indemnity and loss (Al-Tamartashi, 2000, pp. 266-267). Hanafi School of law holds the

<sup>23</sup> The Hanafis maintain that when the narrator of *ahad* is not a *faqih*, his report is accepted only if it agrees with *qiyas*, otherwise *qiyas* would be given priority over *ahad*. However, if the narrator is known to be a *faqih*, then his report would be preferred over *qiyas*. See Kamali (1998, p. 76).



view that the quantity (*sa'*) of dates may not be equal in value to the amount of milk the buyer has consumed. Hence if the buyer wishes to return the beast, he must return it with the cost of milk which was in its udders at the time of purchase, not with a fixed quantity of dates. However, jurists from other schools of *fiqh* have, on the other hand, accepted this legislative value of this *hadith* and have given it priority over *qiyas*. These jurists are on the view that, for it was used to be the staple food in those days, dates are particularly specified in this report, thus the compensation may include of a *sa'* of dates or of its monetary value.

Sixth, according to Hanafi School of law, the subject matter of the solitary *hadith* should not be on the issues and practices upon which the companions disagreed (*mima ikhtalafa al-sahabah fi al-amali bihi*) (Mohd Nabi Aziz Abd Aziz, 2007, p. 74). If, for instant, it is reported to us a solitary narration which reflects on one side of the companions' views of any given issues, then the legislative authority of such narration would not be binding (Al-Sarakhsi, 1393 A.H., p. 369). This is because, in this case the narration consists of one opinion, and opinions have no binding authority.

### Concluding Remarks

In the legal profession, judgments of right or wrong are issued on given matters, however, judgments are valid only if the sources or evidences of given judgments are firmly established with decisive sentence (*nass qat'i*). With this in mind, Muslim jurists have in principles agreed that the sources of *fiqh* judgments (*al-ahkam al-fiqhiyyah*) are, among others, the Qur'an, the *sunnah*, *Ijma'* (consensus), *qiyas* (analogy), etc., whereby legal judgments of business transactions, family disputes, as well as criminal cases, are all derived from these evidences (*adilah*). However, based on moods of transmission as well as the level of clarity of the sentences, the jurists classified these sources (*adilah*) mainly into two types: *dalil qat'i*, i.e., clear or decisive source, and *dalil zani*, i.e., speculative source. The former could be further divided into two: *qat'i al-thubut* or reported by means of certainty, and *qat'i al-dalalah* or to signify certainty. In this case, given sources of judgement (*adilah al-ahkam*) might be reported by means of certainty, like the verses of the Qur'an, but with speculative sentence (*zaniyu al-dalalah*), such as those verses of the Qur'an, which indicate many meanings to many people (*al-mutashbihat*). In addition, it is also true that a given source or evidence might be presented with decisive sentence (*qati' al-dalalah*) but reported through probable chain (*zaniyu al-thubut*), as in the case of some narrations that are attributed to the Prophet (*s.a.w.*), which are basically stated with decisive sentence (*qati' al-dalalah*), but through speculative transmission (*zaniyu al-thubut*) as in the case of many solitary narrations (*ahadith*). It is also possible that given evidences might be both *qat'i al-thubt* and *qa'i al-dalah* (reported by means of certainty with decisive sentence) while some evidences might be both *zaniyu al-thubut* and *zaniyu al-dalah* (reported by means of uncertainty and with speculative sentence). The mainstream of the Muslim jurists (*fuqha*) is on the view that the *fiqh* judgments which are based on the evidences that are *qat'i al-thubt* and *qa'i al-dalah* (reported by means of certainty and with decisive sentence) are binding, such as the Qur'anic verses and the authentic recurrent *hadith* which are stated with decisive sentence. However, the jurists also noted the principle that the validity of *fiqh* opinions and judgments which are based on evidence that is *zaniyu al-thubut* (reported by means of uncertainty) can be challenged, even though such evidence is presented with clear sentence, such as the solitary narrations (*ahadith*), the authenticity of which is disputed. However, in the cases whereby the evidence is reported by means of certainty or recurrent such as the Qur'an, but with probable or speculative sentence (*zaniyu al-dalalah*), differences of opinions on given issues are then allowed.

Based on this categorization, the *fuqaha* agreed that the evidences (*al-adilah*) of jurisprudence which are reported by means of certainty or recurrent (*mutawatir*) such as the Qur'an and *hadith mutawatir* have binding legal authority as long as the sentences of such verses and recurrent *hadith* are decisive (*qa'i al-dalah*); a denial of which is tantamount to infidelity (*kufr*). However, the *fuqaha* disagreed on the legal authority of narrations which are reported by means of *ahad*; some of them like Hanbalis and Zahiris, have adopted accommodative behaviour toward solitary *hadith*, while others like Hanafi School of *fiqh* adopted somewhat strict measures toward accepting the reliability of solitary *hadith* and thus minimized the legal authority of solitary *hadith* on given matters.

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