

The Identification Of Advantage And The Sacred Texts

Mr. Khalid Muhammad Khalid says,

“Umar ibn al-Khattab neglected the sacred texts of the Holy Qur'an and Sunnah when the advantage (*maslahah*) imposed him to do so. While the Holy Qur'an ordains that the party called '*al-Mu'allafah Qulubuhum* (those whose hearts have been reconciled to the Truth)' must have a share in the Zakat, `Umar canceled this share saying, 'We will not give anything for the sake of being Muslim.

Then whosoever will, let him believe, and whosoever will, let him disbelieve' although the Holy Prophet and Abu-Bakr did observe this share. Similarly, while Abu-Bakr permitted selling the bondmaids who have given birth of children to their masters, `Umar forbade it.

Also, the Holy Sunnah and the consensus of the Muslims have decided to treat the three statements of divorce that are uttered on one occasion as one only, but `Umar violated the Holy Sunnah and infringed the consensus.”¹

Ibn Qudamah says,

“It is impermissible to ignore the rulings of the Holy Qur'an and Sunnah unless there is an abrogation. Yet, abrogation is not subjected to probabilities; rather it must be issued during the lifetime of the Holy Prophet because it must be included by a sacred text; and sacred texts stopped after the demise of the Holy Prophet and the termination of the age of Revelation.

In addition, a Qur'anic law cannot be abrogated by any text other than the Qur'an itself. How was it then possible for them to neglect the judgments of the Holy Qur'an and Sunnah and, instead, invent others out of their personal opinions? Or how was it possible for them to neglect texts from the Holy Qur'an and Sunnah and adopt a personal view said by one of the Sahabah although the personal views of the Sahabah are preceded to the so-called '*Qiyas*'? ”²

Rashid Rida, the author of *Tafsir al-Manar*, says,

“Nowadays, the imperialist powers that work for enslaving all the Muslims through keeping them away from their religion are dedicating a part of their budgets to the Muslims whom are inclined to other religions. Such efforts of inclination have taken several forms, such as protecting them or seducing them to disturb the Islamic countries or disunite the Islamic unity. The Muslim authorities should have exerted similar efforts for encouraging others to be Muslims.”

According to the expression of `Umar ibn al-Khattab, it seems that he understood that the share of the *al-Mu'allafah Qulubuhum* was given as bribe for Islam or was restricted to those who had actually converted to Islam.

In other words, his speech is another picture of the speech of the missionaries who rest upon the policy of supplying people with food and medicine so as to make them convert to Christianity.

He should have understood that the Holy Prophet, through dedicating a share of the zakat to that party, did not want to seduce them to convert to Islam by money; rather he aimed at preparing their hearts to receive the invitation to Islam so that they would believe by heart.

The Holy Prophet's ways for achieving this aim were various; he once appointed one of them as the commander of a Muslim campaign, consulted with them about some affairs of the Muslims and so on. The question had nothing to do with the power or weakness of Islam; the Holy Prophet only wanted them to be faithful believers.

The following citation of Dr. Muhammad `Ajjaj al-Khatib disproves the justification of `Umar as regards the deprivation of the *al-Mu'allafah Qulubuhum* of their shares from the zakat:

“On the Makakh Conquest day, the Holy Prophet ordered his companions and army to uncover their shoulders and trot so that the polytheists would notice their power and toleration that would express the power of Islam.

During his reign, `Umar thought that the purpose of this act had been no more existent. Yet, he said: For which reason are we now uncovering our shoulders and trotting? Allah has fortified Islam and defeated atheism and its people. Nevertheless, we must never neglect anything that we used to do during the lifetime of the Messenger of Allah.”³

This is irony! According to this text, `Umar complied with the sacred texts; therefore, he can be added to the group of those who followed the sacred texts completely. According to the previously cited narrations and discussions, he was at the top of those who followed Ijtihad, adopted personal opinions in the issuance of religious verdicts, and identified the advantages that were unknown for the sacred texts!

Had he abided by the sacred text, he would have certainly followed the Holy Prophet as regards the share of the *al-Mu'allafah Qulubuhum*; and had he been a mujtahid, he should have pointed out the

matters upon which he rested in preferring a ruling to another!

It is worth mentioning that Dr. Nadiyah al-`Umariy, in her book of *Ijtihad al-Rasul*, has thoroughly discussed the issue of the three-time divorce in the course of citing examples on the scholars' disagreement about the Ijtihad. In this regard, she says:

Originally, the validity of divorce is materialized when it is said on three different occasions. In this respect, the Holy Qur'an reads,

***'Divorce must be pronounced twice and then (a woman) must be retained in honor or released in kindness.'* (Holy Qur'an: 2/229)**

The purpose beyond the separation of the divorce is that a husband will be given an opportunity to think deeply over the marital bond that the Almighty has confirmed the significance of its continuity. After the two times of divorce, Almighty Allah says,

***'And if he hath divorced her (the third time), then she is not lawful unto him thereafter until she hath wedded another husband.'* (Holy Qur'an: 2/230)**

This is the divorce as has been explained in the Holy Qur'an; it is valid only when it is separated (i.e. repeated on different occasions).

What should the ruling be if a husband wastes the opportunity and pronounces the form of divorce three times on one occasion? As a matter of fact, you cannot find in the Holy Qur'an any text that treats this question; yet, the Holy Sunnah has something about it.

It has been narrated that after Rukanah ibn `Abd had pronounced the form of divorce in his wife's face three times on the same situation, he was deeply grieved; he therefore referred the question to the Holy Prophet. 'How did you divorce her?' asked the Holy Prophet.

'I pronounced the form of divorce three times,' answered Rukanah.

'Were the three times on the same situation?' asked the Holy Prophet.

'Yes, they were,' answered Rukanah.

'Well,' said the Holy Prophet, 'These three utterances are regarded as one. You thus can take your wife back.' Rukanah therefore take his wife back.[4](#)

Nevertheless, the people, during the reign of `Umar ibn al-Khattab, underrated the divorce that most of them pronounced the form of divorce three times on the same situation. `Umar therefore considered what was advantageous for them and decided to regard the three-time divorce that was said on the same occasion as valid.[5](#)

However, have the Muslim jurists, throughout ages, agreed to what `Umar had done? The majority have agreed to `Umar while others have not!⁶ In my conception, the judgment in this matter relies upon the people's advantages; if the men in authority consider, as `Umar did, that the advantage requires deciding the three-time divorce as valid, they should then do; but if they consider that the public advantage requires regarding it as one only, they should also do it.

Yet, up to two years after the reign of `Umar, the three-time divorce was regarded as one. On this account, Ibn al-Qayyim has decided that to regard such divorce as one (i.e. not final) is more corresponding to the public advantage in the late ages as it will block the path before any social corruption.⁷

Ibn al-Qayyim then makes a comparison among the various ages and the difference in the public advantages that is the result of the public's circumstances.⁸

Undoubtedly, the Ijtihad of `Umar has influenced the Muslim jurisprudence. The Malikiyyah School⁹ and the Hanbaliyyah School¹⁰ have decided him who pronounces divorce three times on the same situation as sinful because he has wasted the opportunity granted to him by the Islamic Legislation.

The Shafi'iyyah School,¹¹ as well as Ibn Hazm, have decided it as opposite to the most preferred; yet it is not banned because the text appertained is general. The Hanafiyyah School¹² have decided it as heretic when its utterance is the same or when it is said in the same interval between two periods of menstruation of the wife.¹³

Dr. Mustafa al-Bagha, after quoting `Umar's opinion about the divorce, says,

“This matter is one of these whose rulings have changed according to the change of the time. As they recognized `Umar's excellent policy of disciplining his subjects, the Muslim jurists have agreed to him on this point and carried out his decision.”¹⁴

As a matter of fact, there is a number of questions that must be provided in this respect: How did `Umar identify the advantage and understand the spirit of the Islamic legislation in the question of the shares of the *al-Mu'allafah Qulubuhum*? Yet, the refutations of Ibn Qudamah and the Rashid Rida have been previously cited.

Is it acceptable that `Umar, alone, recognized what is good for the public while neither the Holy Prophet nor did Abu-Bakr recognize it?

Is it rational that Abu-Bakr and the Holy Prophet, who is connected to the Divine Revelation, might ignore what is good for the public? If it is allowable for mortals, save the divinely commissioned leaders of the ummah (namely, the holy Infallibles), to change the religious laws according to the change of time and place, what are the extents of such permission?

It is possible that some of the secondary rulings may be changed when they compete with matters that

are more important, or when their titles are, in a general manner changed; but how can we accept the claims of those who violate the religious rulings claiming the change of their titles although we do realize that the principles and purposes of the religious rulings are originated by Almighty Allah and are known by the Infallibles only?

In case one of the Infallibles informs us about the change of a religious ruling, we must then accede to him because the Infallibles are the divinely commissioned leaders of this ummah whose mission is to convey the instructions and ordains of Almighty Allah.

However, when such a change is made on bases of guesswork and conjecture, it cannot be acceptable. The same thing can be applied to the purposes beyond the religious rulings; in most cases, they involve wisdoms rather than causes.

For instance, it is said that the purpose beyond the forbiddingness of adultery is that the semen of two, or more, men will not be confused and then a baby may be ascribed to a man by mistake.

This is in fact the wisdom, not the purpose, of forbidding adultery. According to many narrations, the decision of defining a term of waiting for divorcees and widows has been made for the very aforesaid wisdom.

Yet, if the womb of a woman is removed by a surgical operation or if a woman is decisively recognized as barren, will it be obligatory upon such women to observe the terms of waiting defined by the Islamic legislation? The answer is yes; because Almighty Allah has imposed such periods on women for an advantage recorded in the Preserved Tablet (*al-Lawh al-Mahfudh*) and not allowed for people to see.

Hence, it is impulsive to exclude such women from observing the term of waiting decided by the code of the religious law on the claim of the nonexistence of the cause of the decision. In any event, some of the religious rulings are dependent upon definite causes. For instance, wine is forbidden so long as it intoxicates; and when intoxication is absent, it is legal to have it. On this account, the rule that “the much amount of a drink the little of which is intoxicating is forbidden” has been decided.

However, the case is very different with the rulings invented by Abu-Bakr and `Umar; they contrived rulings that are nonexistent in the Islamic legislation or are opposite to rulings that are openly mentioned in the sacred texts.

Besides, they stretched and shrank rulings as they claimed advantage while it is known for everybody that unless all-inclusive knowledge with the principles and purposes of the religious laws is attained and unless there is a divine commission, none is permitted to act freely with the religious rulings.

For the above mentioned discussion, Abu-Bakr and `Umar did not enjoy such knowledge and were not commissioned for such positions. Besides, as he decided the three-time divorce as final, canceled the share of the *al-Mu'allafah Qulubuhum*, and prohibited the temporary marriage, `Umar wanted for his

decisions to be perpetual, not subject to the advantage. Thus, he blocked the way in the face of anyone who would claim that `Umar's decisions were secondary or subject to his authorities as caliph.

Even if we yieldingly accept the change of the religious laws according to the change of advantages; what was the advantage of canceling those religious rulings? Who is authorized to identify such advantages? Were the substitute rulings based upon personal passions and opinions or upon observance of the religious laws and proofs? If there were a proof and a sacred text; what are they?

Alluding to the stipulations of the satisfactory advantages, Shaykh Khallaf says,

“There are three stipulations for the achievement of advantage;

(1) an advantage must be actual, not illusory. In plain words, it must be confident that the issuance of a verdict will truly achieve advantage and prohibits damage. In case it is only conjectured that an advantage can possibly be achieved without comparing it to the damage that can possibly be drawn, advantage is thus not actual rather illusory.

(2) An advantage must be general, not specific or personal. It must be confident that the issuance of a verdict will achieve advantage to or deter damage from the largest number of people, not an individual or a small group of individuals. Thus, when the issuance of a verdict achieves a personal advantage apart from the publics, it will not be acceptable.

(3) The issuance of such a verdict must not be contradictory to a religious ruling or principle that is openly mentioned in a sacred text.”¹⁵

On the light of the aforementioned stipulations, let us ask whether `Umar's decisions have achieved advantage to or deterred damage from the largest number of the publics taking into consideration the problems and confusions of life along with all of its pressures that make it difficult to go against one's habit.

For instance, if a husband wastes the opportunity of returning his wife, through pronouncing the utterance of divorce three times on the same occasion, will it be obligatory upon him to succumb to `Umar's ruling and lose his wife?

In the word of Dr. Nadiyah, “the wisdom of separating the utterances of divorce is to give the husband the opportunity to think deeply about the matter. This is the divorce as has been explained in the Holy Qur'an; it is valid only when it is separated (i.e. repeated on different occasions).”

What can we say to those who confess that the wisdom of specifying the pronouncing of the utterances of divorce on different occasions as the stipulation of its validity is to give the husband the opportunity to think deeply about the matter and then, falling in irony, they themselves claim that it was the public advantage that made `Umar decide the three-time divorce that is said on one occasion as final?

Undoubtedly, it is fanaticism that has made them fall in such irony! It is definitely irrational to say that it is advantageous to regard the three-time divorce as one but the breaking of this issue was based upon advantage! Unfortunately, Dr. Nadiyah has said such while she was fully aware that it was `Umar, neither the Holy Qur'an nor the Sunnah, who violated the law and decided its opposite.

It is now absolutely impossible to accept the claim that `Umar's decisions were derived from the Holy Qur'an or that his decisions were not in violation of the sacred texts although the advantage that he adopted was completely opposite to the Holy Qur'an.

Of course, uttering the word 'three' after the form of the divorce does not validate it. It is as same as saying 'Allahu Akbar five times' instead of repeating the statement five times or saying 'SubhanAllah one hundred times' instead of repeating it one hundred times! Many of the scholars have decided divorce twice is enough for the materialization of divorce. Going over the holy verse,

“Divorce must be pronounced twice,” (Holy Qur'an: 2/229)

al-Jassas says that a two-time divorce definitely validates the divorce, because one who utters the form of divorce twice cannot be regarded as two divorces. In the same manner, one who pays two dirhams cannot be regarded as paying twice unless each dirham is given on a definite occasion.

The same thing is applicable to the divorce; therefore, the verse indicates that in order to validate the divorce, it must be said on two different occasions. In addition, the verse carries warning against gathering the two divorces on the same occasion. [16](#)

`Umar's personal jurisprudence has affected the religious rulings; and it is known to everybody that he subjugated the religious laws to the advantage that he, personally, considered or supposed to be the perfect cause upon which a ruling must rest.

He therefore modified the rulings according to what he would consider as suitable or advantageous and canceled the actual advantages that are realized by none save Almighty Allah.

About the proof of seeking the advantage, Dr. Mustafa al-Bagha says,

“The Sahabah, as is indicated by too many incidents, decided definite rulings for the incidents according to their personal consideration of the advantages that bring about benefit and prohibit damage depending upon their own thoughts. They then regarded such considerations as sufficient for the issuance of religious rulings.” [17](#)

Hinting at the same point, al-Wafi al-Mahdiy says,

“When the Islamic conquests continued incessantly, especially during the reign of `Umar, various nations of various civilizations were included to the Islamic authority. As a result, the Muslims had to encounter complicated problems, whether in the military, financial, personal, or penal affairs, that they had not

known before.

They therefore had to use analogy when they could not find related texts neither in the Holy Qur'an nor in the Holy Sunnah. Before that, they used to rest upon Ijtihad through the Holy Qur'an and then the Holy Sunnah. When they could not find anything in these two sources, they would consult the experienced Sahabah.

When they also could not find anything with those, they would use personal opinions. `Umar, for instance, used to ask whether the involved issue had been treated by Abu-Bakr or not. Analogy (*Qiyas*), Equitable Preference (*Istihsan*), advantage (*Maslahah*), and blockade of excuses (*Sadd al-Dhara'i*)—all these matters were well-organized in the opinions on which they depended. In this age, consensus (*Ijma`*), which is a new source of the Islamic Legislation since it was not present in the first age of Islam, has emerged.

When he could not find a solution neither in the Holy Qur'an nor in the Sunnah, Abu-Bakr would refer the matter to a legislative body. `Umar did the same thing, too. Any decision that was made by that legislative body would be regarded as issued by all of them... [18](#)

To sum it up, when the Holy Prophet was among them, the Sahabah used to refer to him in the religious questions in most cases. Yet, when he departed life, they lost their religious authority. Therefore, their Ijtihad entered upon a more serious stage.

In the words of Mr. Mustafa al-Zarqa', the Sahabah's custom, during the Holy Prophet's lifetime, was to listen to and follow him and to refer to him in any question that would face them.

In other words, they depended totally upon him in the understanding and guidance as regards each and every matter. By his demise, they suddenly moved to the stage of Ijtihad since the authority had left them and his constitutional heritage, namely the Holy Qur'an and Sunnah, replaced his oral elucidations. Since then, it has been unavoidable to resort to Ijtihad, in an unlimited way, for solving the emergent questions." [19](#)

Ijtihad was thus the shield of the first generations and, at the same time, has been the justification of the next generations for their ancestor's deeds. A deep investigation of the so-called acceptable advantages (*al-Masalih al-Mursalah*) proves that they all were invented for correcting the Sahabah's deeds.

They have regarded Abu-Bakr's nominating `Umar as his successor—while they have claimed that the Holy Prophet did not nominate any successor—as acting upon the advantage of the ummah and the protection of the Muslims' unity. [20](#)

Similarly, they have justified `Uthman ibn `Affan's setting the copies of the Holy Qur'an to fire as he had only intended to make all the people follow the same copy [21](#) so as to save them from disagreement. For fear of lengthiness, the other innumerable examples on such justifications will be avoided.

To have a look at the general fundamentals of the Islamic jurisprudence proves that the so-called *al-Masalih al-Mursalah* have not been among the subjective fundamentals as is confirmed by all the Muslim schools of law except that of Malik ibn Anas who regard them as independent fundament.

The advantages have been classified as canceled, acceptable, and considerable and the latter has been further classified into necessary, exigent, and preferable. Resting upon these classes, the rulings and branches of the Islamic jurisprudence have been defined.

Items Of Ijtihad

Let us throw more light on `Umar's situation about the religious rulings to see whether his personal judgments stopped at this level or pushed their way to include other religious affairs. Although we can dispense with the details of this topic, our elucidation of the issue of prohibiting reporting and recording the Hadith forces us to give a thorough idea about the jurisprudential side of `Umar's personality and the items and major issues of the Islamic jurisprudence form which he benefited in the formation of his personal opinions and judgments.

`Umar ibn al-Khattab legislated the *Salat al-Tarawih* (the recommended nightly prayers during Ramadan) describing it as "the best heresy."²² As he liked the statement of "*al-Salatu Khayrun mina'l-Nawm* (Prayer is better than sleeping)" after he had heard it from a Sahabiy, `Umar added it to the adhan (declaratory call to prayers) of the Fajr (morning) Prayer and canceled the statement of "*Hayya `Ala Khayr al-Amal* (Come to the best of deeds)" which was used during the Holy Prophet's lifetime claiming that such a statement would prevent the Muslims from jihad!²³

He also prohibited the weeping for the dead,²⁴ decided that the sign of attaining maturity is to be six spans tall²⁵ while it has been authentically narrated that the Holy Prophet said, "Maturity is attained when wet dreams occur."²⁶ `Umar decided to deprive the non-Arabs of any share of the legacies and excluded those whom are born in the Arab lands²⁷ while the Holy Prophet is authentically reported to have said, "Except by means of piety, no Arab individual should be preferred to a non-Arab,"²⁸ and, likewise, Almighty Allah says in the Holy Qur'an,

"Verily, the most honored of you in the sight of Allah is (he who is) the most righteous of you."
(Holy Qur'an: 49/13) ²⁹

Regarding the doctrinal provision (Hadd) of the drinkers of intoxicants, `Umar issued various rulings; he once decided to sentence them to eighty-lash punishment³⁰ and, at other times, made them sixty only. He also ordered to omit twenty lashes of the sentence for fear of pain.³¹ It has been also narrated that `Umar, while leading a congregational prayer, omitted the Reciting³² in the Maghrib (Sundown) Prayer.

After he had finished the prayer, he was reminded that he had omitted the Reciting. "Were the Genuflection and Prostration good?" asked he. "Yes, they were," he was answered. "Well, it does not

matter!” answered he.³³ Yet, it has been authentically narrated that the Holy Prophet said,

“The prayer of him who neglects reciting the Surah of al-Fatihah (The Opening Chapter; No. 1) is invalid.”³⁴

Umar is also reported to have whipped his two sons because they had the surnames “Abu-`Isa (father of Jesus)” and “Abu-Yahya (father of Jonah)” claiming that Prophet Jesus and Prophet Jonah had no fathers!³⁵

Husham ibn `Urwah has narrated on the authority of his father that `Umar, one Friday, recited the Surah of al-Sajdah (Prostration; No. 32) and after reciting the Verse of Prostration,³⁶ he descended the minbar and prostrated himself. People, of course, followed him.

On another occasion, he recited the same verse, but when people prepared themselves to prostrate, he said, “Calm down! It is not obligatory upon us to prostrate ourselves at the reciting of these verses; rather it is optional.” He therefore prevented people from prostration.³⁷

This violation of the religious rulings has left its effects on the schools of Islamic law causing the Muslim jurists to give different rulings regarding the obligatoriness or optionality of the prostration after reciting the Verses of Prostration.

Thus, the Malikiyyah scholars,³⁸ the Shafi`iyyah scholars,³⁹ and the Hanbaliyyah scholars ⁴⁰ have decided such prostrations as *Sunnah* (a norm that has been done by the Holy Prophet) while the Hanafiyyah⁴¹ have decided them as obligatory.

Explaining Malik’s *al-Muwatta’*, al-Zarqaniy says, “The most famous jurisprudential opinions as regards the prostration after reciting the Verses of Prostration are that they are *Sunnah* and highly recommended (*Fadhilah*).”⁴²

Yet, it has been narrated on the authority of Abu-Hurayrah that the Messenger of Allah, while reciting the Surah of al-Najm (the Star; No. 53), prostrated himself and thus all the attendants prostrated except two men.⁴³

Zayd ibn Thabit yet narrated that the Messenger of Allah, while reciting the Surah of al-Najm, did not prostrate.⁴⁴ It has been further narrated that the Holy Prophet said,

“Prostration is obligatory upon him who hears and recites the Verses of Prostration.”⁴⁵

Many similar narrations have been fabricated for the sake of justifying `Umar’s decision and the opinions of the various Sunnite jurisprudential schools. The matter will be more obviously understood if an investigation is made to the effects of the Sahabah’s personal opinions on the Islamic law.⁴⁶

For instance, Malik ibn Anas, the founder of the Malikiyyah jurisprudential school, argues that because

`Umar neglected prostrating himself in the presence of the Sahabah none of whom objected to him or was reported to have opposed, his act can be taken as valid.

On this account, Malik decided the prostration as recommended since the Sahabah, in his conception, were the most knowledgeable with the religious laws![47](#)

Referring to the narrations that report the permissibility of Ijtihad during the Holy Prophet's lifetime, Dr. Madkur says,

“As a matter of fact, none of these narrations can ever prove that anyone other than the Holy Prophet, who received directly the Divine Revelation, did ever enjoy any legislative authority in that age.

These narrations have discussed partial issues some of which were adopted only after it had been impossible to refer to the Holy Prophet directly owing to long distance or fear of missing the opportunity; others were issued practically not legislatively. We thus can argue that the Holy Prophet did not require Ijtihad in this very sense.

After the departure of the Holy Prophet and, more precisely, during the age of the Sahabah that ends with the elapse of the first century after the Hijrah, the Sahabah, because of the expansion of the Islamic State and the conquests, had to encounter new questions that they had never known before.

They therefore had to experience the jurisprudential questions, especially after the cessation of the Divine Revelations, so as to find solutions for the first-time issues that occurred to their cursorily incremental state that comprised miscellaneous countries and races.”[48](#)

From the above, we can conclude that `Umar rested upon pure personal opinions in issuing religious laws without referring to the Holy Qur'an or the Holy Prophet's practices and confirmations.

Moreover, he, on several occasions, violated the clear-cut texts of the Holy Qur'an –such as in the case of the divorce–[49](#) and the Holy Sunnah –such as in the case of killing the man who was engaged in offering prayers[50](#) and the case of the Disastrous Thursday,[51](#) which is preventing from carrying out the Holy Prophet's order of bringing him a pen and a paper so as to record his final will– because he thought that the advantage would be achieved on the violation of these orders.

Even if we consider the personal opinions of the Sahabah as sources of the Islamic legislation and even if we consider all the Sahabah as ultimately decent, it is still unfeasible to violate the clear-cut texts of the Holy Qur'an and Sunnah. The Sahabah who violated the sacred texts should have at least freed the others from following their personal opinions and, such being the case, they would possibly be excused.

Although Ijtihad is defined as doing one's utmost and exerting all efforts for the sake of deducing a religious ruling from the Holy Qur'an and Sunnah, `Umar used to issue verdicts before he would skim through the pages of the Holy Qur'an or review the Holy Sunnah. A little ponderation over the question of the woman who was pregnant only six months after marriage would have made `Umar deduce the

possibility that her pregnancy was illegal. Yet, he immediately sentenced her to the doctrinal provisions (*Hudud*) that must be undergone by the fornicatrices!

Likewise, had he weighed up the question of depriving the Holy Ka`bah of its share, he would not have decided to seize that share. Without the intrusion of Shaybah ibn `Uthman and Ubayy ibn Ka`b who told him that the Holy Prophet and Abu-Bakr did not seize the fortunes of the Holy Ka`bah although they needed these fortunes more than he did, `Umar would have proceeded in his decision. Similarly, all the aforementioned issues prove that `Umar used to issue religious verdicts without any ponderation over the Holy Qur'an and Sunnah. Nevertheless, he wanted the Sahabah to follow his personal opinions and violate what they had personally seen and heard from the Holy Prophet!

Had the Sahabah's opinions been added to the sources of the Islamic law, it should have been obligatory upon `Umar himself to adopt the Sahabah's opinions, especially in the questions that they had directly heard from the Holy Prophet. Similarly, it should have been obligatory upon him to accept their verdicts and opinions for they acted as arguments against him and he, thus, should not have forced them to follow his personal opinions.

It is now permissible to wonder how it was possible for `Umar to threaten `Ammar, Ubayy ibn Ka`b, Abu-Musa al-Ash`ariy, and others. In this respect, he said to Abu-Musa, "You must prove your claim or I will hurt you."⁵² To Ubayy, `Umar said, "You must retreat what you have said," he then pulled him to the Masjid... etc.⁵³ To `Abdullah ibn Mas`ud, `Umar said, "You are reporting too much from the Messenger of Allah."⁵⁴ To Abu-Hurayrah, he said, "If you do not stop reporting from the Messenger of Allah, I will banish you to Dus."⁵⁵ `Umar also whipped Tamim al-Dariy for the same reason.⁵⁶

In order to find excuses for `Umar and belittle the influence of the Sahabah's objections to him, Sunnite scholars have decided that the foremost Sahabah are not bound to follow each other!⁵⁷

In view of the abovementioned narrations, it seems that the decision that the foremost Sahabah are not bound to follow each other is effective only on the Sahabah who objected to `Umar; yet Sunnite scholars have projected sanctity on the Sahabah who agreed to him and criticized any objection to the caliphs and their fans. They have even regarded the conducts of Abu-Bakr and `Umar as an indisputable source of the Islamic law although they have not decided the inerrancy of those Sahabah.

As he concentrated on analogy, `Umar only wanted to fix his personal opinions; and as he insisted on resting upon personal views, he only wanted to find himself a higher standing in the Islamic State. He therefore used to behave as if he was the legislator whose decisions must not be broken. Yet, when he was objected by a deep-seated intellectual trend depending upon a unanimous proof cited from the Holy Qur'an or Sunnah, `Umar would have to submit and retreat.

Hence, the arguments that the Sahabah's opinions are regarded as sources of the Islamic legislation and that the caliph has the right to issue verdicts depending upon his consideration of the advantage—these two arguments were the base and purpose of the Caliphate School of Jurisprudence.

So far, our conclusions can be defined in the following points:

- 1) Abu-Bakr and `Umar were not characterized by any feature that would distinguish them from the others.
- 2) The Muslims separated into two intellectual trends after the departure of the Holy Prophet.
- 3) `Umar ibn al-Khattab worked painstakingly for forcing the others to accept and act upon his personal opinions.
- 4) The Sahabah's opinions cannot be taken as sources of the Islamic law because they violated `Umar's opinions and he violated theirs in numerous issues.
- 5) The conception of the Sahabah's ultimate decency is proved as unfounded since `Umar often belied and distrusted the Sahabah's claims and vice versa.
- 6) The arguments that it is possible for the Sahabah to dispute with each other but it is impermissible to refute their opinions—these arguments were fabricated for the purpose of justifying their disagreements in issuing religious verdicts in the first age of Islam. Sarcastically, such disagreement has been decided as constructive!
- 7) The fundamentals of Ijtihad, such as analogy, Equitable Preference, and advantage, have been proven untrue because they were founded later on owing to temporal necessities and because they are found neither in the Holy Qur'an nor in the Holy Sunnah.[58](#)

Such being the case, the Sahabah escalated their objections to the adoption of personal views and Ijtihad through means of reporting from the Holy Prophet since much reporting of the Holy Prophet's heritage would naturally prove the disagreement between the Holy Prophet's school and the school of Ijtihad.

Moreover, the Holy Prophet's school comprises edificatory truths that are opposite to the intents of the Ijtihadists. These truths can be manifestly shown through any investigation to the books of Hadith and Islamic history.

In this manner, a group of the Sahabah objected to the adoption of personal views and Ijtihad, called for the derivation of the religious laws from the Holy Qur'an and Sunnah only and rejected the baseless opinions and conducts of the Sahabah in general and Abu-Bakr and `Umar in particular. The other group of the Sahabah argued the legitimacy of `Umar's opinions regarding them as sources of the Islamic law that must be followed.

In brief, reporters and recorders of the Hadith lined themselves with the group of the pure compliance with the sacred texts and thus corresponded to the spirit of the Islamic law, which encourages learning, and to the instructions of the Holy Prophet who concentrated on recording the items of knowledge.

Thus, they reported and recorded the Hadith as much as they could. On the other side, those who prohibited reporting and recording the Hadith lined themselves with the group of Ijtihad and personal opinions, following the ruling authorities.

Unfortunately, reporters and records of the Hadith had to suffer humiliation and disparagement during the ages of the caliphs to the degree that al-Hajjaj ibn Yusuf al-Thaqafiy, the governor of Iraq during the reign of `Abd al-Malik ibn Marwan the Umayyad ruler, stamped on the hand of Jabir ibn `Abdullah al-Ansariy and the necks of Sahl ibn Sa`d al-Sa`idiy and Anas ibn Malik so as to mark them as unwelcomed persons and ordered the people to leave them and not to listen from them.[59](#)

- [1.](#) Khalid Muhammad Khalid: al-Dimuqratiyyatu Abada (Democracy forever) 155.
- [2.](#) Ibn Qudamah: al-Mughni 2:526.
- [3.](#) Muhammad `Ajjaj al-Khatib: al-Sunnah qabl al-Tadwin 86 as quoted from Musnad Ahmad ibn Hanbal 1:297 H. 317 with authentic series of narrators. Also, Sunan Abi-Dawud 2:178 H. 1887.
- [4.](#) Musnad Ahmad ibn Hanbal 1:265 H. 2387; al-Bayhaqi: al-Sunan al-Kubra 7:339 H. 14764; Ibn Rushd al-Qurtubiy: Bidayat al-Mujtahid 2:50; Ibn Qayyim al-Jawziyyah: A`lam al-Muwaqqi`in 3:32; al-Shawkaniy: Nayl al-Awtar 7:16-20.
- [5.](#) Dr. Nadiyah Sharif al-`Umariy: Ijtihad al-Rasul 240.
- [6.](#) Al-Qurtubiy: Tafsir 3:129.
- [7.](#) Ibn Qayyim al-Jawziyyah: A`lam al-Muwaqqi`in 3:48.
- [8.](#) Dr. Nadiyah Sharif al-`Umariy: Ijtihad al-Rasul 242.
- [9.](#) One of the four major Sunnite jurisprudential schools founded by Malik ibn Anas.
- [10.](#) One of the four major Sunnite jurisprudential schools founded by Ahmad ibn Hanbal.
- [11.](#) One of the four major Sunnite jurisprudential schools founded by Muhammad ibn Idris al-Shafi`iy.
- [12.](#) One of the four major Sunnite jurisprudential schools founded by Abu-Hanifah.
- [13.](#) Dr. Muhammad Sallam Madkur: Manahij al-Ijtihad fi`l-Islam 177.
- [14.](#) Dr. Mustafa Dib al-Bagha: Athar al-Adillati`l-Mukhtalafi fiha fi`l-Fiqh al-Islamiy 277. The majority of the Sunni jurisprudents have accepted `Umar's decision in this regard.
- [15.](#) `Abd al-Wahhab Khallaf: `Ilm Usul al-Fiqh 86-9.
- [16.](#) Al-Jassas: Ahkam al-Qur'an 1:378.
- [17.](#) Dr. Mustafa Dib al-Bagha: Athar al-Adillati`l-Mukhtalafi fiha fi`l-Fiqh al-Islamiy 54.
- [18.](#) See Al-Wafi al-Mahdiy: al-Ijtihad fi`l-Shari`ah al-Islamiyyah 46. As a matter of fact, `Umar used to join Abu-Bakr with the Holy Prophet as being one of the sources of the Islamic legislation. He thus said to the one who warned him against seizing the money paid to the Holy Ka`bah because neither the Holy Prophet nor did Abu-Bakr do such, "These two men must be followed." See Sahih al-Bukhariy 6:2655 H. 6847; Musnad Ahmad ibn Hanbal 3:410; Usd al-Ghabah fi Tamyiz al-Sahabah 3:8 (Biography of Shaybah ibn `Uthman al-`Abdariy). Apparently, it was `Umar ibn al-Khattab who was the first to give a value to the opinions of Abu-Bakr after his death. This was in fact the first step that he took in order to guarantee that his personal opinions would be given a value after his death. From such a step and its likes, the so-called 'Sirat al-Shaykhayn (Conducts of Abu-Bakr and `Umar)' was invented as a substitute for the Holy Prophet's traditions (Sunnah) that `Umar prohibited.
- [19.](#) Al-Wafi al-Mahdiy: al-Ijtihad fi`l-Shari`ah al-Islamiyyah 69-70. The words of Dr. Mustafa al-Zarqa' have been quoted from al-Fiqh al-Islami fi Thawbihi`l-Jadid 1:167.
- [20.](#) Tarikh al-Tabariy 2:353; Ibn Sa`d: al-Tabaqat al-Kubra 3:200; Ibn al-Jawziy: al-Mutadham 4:126.
- [21.](#) Ibn al-Athir: al-Kamil fi`l-Tarikh 3:7-8; Abu-Bakr al-Maliqiy: al-Tamhid wa`l-Bayan 1:62-63; Ibn Kathir: al-Bidayah wa`l-Nihayah 7:218.
- [22.](#) Sahih al-Bukhariy 2:707 H. 1906; Malik ibn Anas: al-Muwatta' 1:114 H. 250; Ibn Shabbah: Tarikh al-Madinah al-Munawwarah 2:713; al-Tabariy: al-Riyad al-Nadira 1:309; al-Ya`qubiy: Tarikh 2:140; Ibn Sa`d: al-Tabaqat al-Kubra 5:59.
- [23.](#) Of course, there are other reasons and motives that made `Umar add this statement to the adhan and to cancel the

original statement. In an independent survey, I, the author of the book, have explained all these aspects under the title of “al-Adhan Bayna al-Asalah wa’l-Tahrif (The Adhan Between Genuineness and Distortion).” This study has taken three volumes the first of which has been published under the title of “Hayya `Ala Khayt al-`Amal al-Shar`iyyah wa’l-Shi`ariyyah.”

[24.](#) Sahih al-Bukhariy 1:432 H. 1226 (In this reference book of Hadith, it is written that `Uthayyah condemned for his having narrated such a Hadith, saying, “By Allah I swear, the Messenger of Allah has never said that Almighty Allah would torture the dead believer when his family weep for him! Rather, the Messenger of Allah said that Almighty Allah would increase His torture upon the disbelievers even if their family members weep them.” `Uthayyah then said, “(In order to prove the falsity of `Umar’s claim) you may listen to the Holy Qur’an that reads, ‘And no bearer of burden shall bear the burden of another.’”) Sahih Muslim 2:238; Sunan al-Nassa’iy (al-Mujtaba) 4:18 H. 1858; Musnad Ahmad ibn Hanbal 1:237 H. 2127, 1:335 H. 3103 (In this book, it is written that `Umar ibn al-Khattab beat the women who wept for the demise of Ruqayyah, the Holy Prophet’s daughter, but the Holy Prophet warned him against so.) al-Zarkashiy: al-Ijabah... 67; Ibn Shabbah: Tarikh al-Madinah al-Munawwarah 2:676, 3:905.

[25.](#) Al-Aminiy: al-Ghadir 6:171 as quoted from al-Muttaqiy al-Hindiy: Kanz al-Ummal (on the authority of Ibn Abi-Shaybah, `Abd al-Razzaq, Musaddad and Ibn al-Mundhir as is recorded in al-Tabaraniy’s al-Mu`jam al-Awsat.)

[26.](#) Musnad Ahmad ibn Hanbal 6:100-101; al-Hakim: al-Mustadrak `Ala’l-Sahihayn 2:59.

[27.](#) Malik ibn Anas: al-Muwatta’ 2:502 H. 14; al-Mudawwanah al-Kubra 8:338.

[28.](#) Musnad Ahmad ibn Hanbal 5:411.

[29.](#) Al-Haythamiy: Majma’ al-Zawa’id 3:273.

[30.](#) Al-Bayhaqiy: al-Sunan al-Kubra 8:318-319 as quoted from Ibn Hazm: al-Muhalla; Musannaf `Abd al-Razzaq 11:42.

[31.](#) Al-Bayhaqiy: al-Sunan al-Kubra 8:317-318; Ibn Abi’l-Hadid: Sharh Nahj al-Balaghah 12:137; al-Fa’iq 3:229.

[32.](#) The Reciting (of the Surah of al-Fatihah and another optional one) is one of the chief parts of the obligatory prayers. All Muslim jurisprudents have decided that any omission of the Reciting invalidates a prayer.

[33.](#) Al-Bayhaqiy: al-Sunan al-Kubra 2:347-381.

[34.](#) Musnad Ahmad ibn Hanbal 2:241 H. 7289, 2:478 H. 10201; Sunan Abi-Dawud 1:217 H. 822; Sunan al-Tirmidhiy 1:194 H. 247; Sunan al-Nassa’iy 2:137 H. 38; Sahih al-Bukhariy 1:63 H. 723; Sahih Muslim 1:297 H. 395; Sunan al-Darimiyy 1:213 H. 1242.

[35.](#) `Abd al-Razzaq: al-Musannaf 11:42; Sunan Abi-Dawud 4:291 H. 2963; al-Bayhaqiy: al-Sunan al-Kubra 9:310; al-Shaybaniy: Taysir al-Wusul 1:47 H. 7; Ibn Abi’l-Hadid: Sharh Nahj al-Balaghah 12:44. The following narration is quoted from Ibn Sa’d: al-Tabaqat al-Kubra 5:69:

`Umar ibn al-Khattab, once, summoned all the boys who carried the names of the Prophets and detained them in a room so as to change their names. Yet, the boys’ fathers could prove that most of those boys were named by the Holy Prophet himself. `Umar therefore had to release them.

[36.](#) According to Islamic jurisprudence, it is obligatory to prostrate oneself after reciting the Four Verses of Sajdah (namely, 32:15, 41:37, 53:62 and 96:19). Hence, there are other verses of prostration at the reciting of which prostration is optional.

[37.](#) Dr. Turkiy: Munadharat if Usul al-Shari’ah bayna Ibn Hazm wa’l-Bajiy 297; Malik ibn Anas: al-Muwatta’ 1:206 H. 484; Sharh Ma`ani al-Quthar 1:354; al-Bayharyy: al-Sunan al-Kubra 2:321 H. 3574, 3:312 H. 5587; Ibn `Abd al-Barr: al-Tamhid 19:128.

[38.](#) Ibn Qudamah: al-Mughni 1:688 and al-Sharh al-Kabir 1:816; al-Nawawiy: al-Majmu’ 4:61.

[39.](#) Al-Shafi’iy: Kitab al-Umm 1:119; al-Shashiy: Hilyat al-`Ulama’ 2:122; al-Nawawiy: al-Majmu’ 4:69.

[40.](#) Al-Nawawiy: al-Majmu’ 4:61.

[41.](#) Al-Nawawiy: al-Majmu’ 4:61; al-Sarakhsiy: al-Mabsut 2:4; Nur al-Qadah 1:80; al-Hidayah fi Sharh al-Bidayah 1:87.

[42.](#) Sharh al-Zarqaniy 2:27.

[43.](#) Dr. Mustafa Dib al-Bagha: Athar al-Adillati’l-Mukhtalafi fiha fi’l-Fiqh al-Islamiyy 355; Sunan al-Darimiyy 1:342; Sunan Abi-Dawud 2:59 H. 1406; Sahih al-Bukhariy 1:363 H. 1017 (In this reference book, it is written that `Abdullah said that the Holy Prophet recited Surah of al-Najm in Makkah and, on reciting the Verse of Prostration therein, prostrated himself. Following him, the others also prostrated themselves except one old man who took a sum of stones in his hand and raised it to his forehead claiming that it was sufficient to do such. Yet, this man was then killed as infidel.”) Similar narrations are

recorded in Sahih Muslim 1:405 H. 576, Sunan al-Darimiy 1:407 H. 1465, al-Shafi'iy: Kitab al-Umm 1:135; al-Bayhaqiy: al-Sunan al-Kubra 2:321 H. 3572.

[44.](#) Sunan al-Nassa'iy 2:160; Sunan al-Darimiy 1:343; Sunan Abi-Dawud 2:58 H. 1404; Sahih al-Bukhariy 1:364 H. 1022.

[45.](#) Dr. Mustafa Dib al-Bagha: Athar al-Adillati'l-Mukhtalafi fiha fi'l-Fiqh al-Islamiy 355; al-Sarakhsiy: al-Mabsut 2:4; Bada'i' al-Sana'i' 1:180; Nasb al-Rayah 2:178.

[46.](#) For instance, see Dr. Mustafa Dib al-Bagha: Athar al-Adillati'l-Mukhtalafi fiha fi'l-Fiqh al-Islamiy 353-433.

[47.](#) Dr. Mustafa Dib al-Bagha: Athar al-Adillati'l-Mukhtalafi fiha fi'l-Fiqh al-Islamiy 355 as quoted from Ibn Qudamah: al-Mughni 1:446; Ibn Rushd al-Qurtubiy: Bidayat al-Mujtahid 1:214; al-Zarqaniy: Sharh al-Muwatta' 2:194-196.

[48.](#) Dr. Muhammad Sallam Madkur: Manahij al-Ijtihad fi'l-Islam 43-44.

[49.](#) Sahih Muslim 3:130 H. 1417. It has been narrated that `Abdullah ibn `Abbas said, "During the age of the Holy Prophet, the reign of Abu-Bakr, and the first two years of `Umar ibn al-Khattab's reign, the three-time divorce was decided as one. Yet, `Umar ibn al-Khattab said, 'People are rushing in a matter for which they have been given respite; therefore, we will oblige them to this decision.' He thus did." See al-Durr al-Manthur 1:668.

[50.](#) Ibn Hajar al-Asqalaniy: al-Isabah fi Tamyiz al-Sahabah 484; Abu-Na'im: Hilyat al-Awliya' 3:227; Musnad Ahmad ibn Hanbal 3:15.

[51.](#) Sahih al-Bukhariy 1:54 H. 114, 6:2680 H. 6932; Sahih Muslim 3:1259 H. 1637; Musnad Ahmad ibn Hanbal 1:324 H. 2992, 1:336 H. 3111.

[52.](#) Sahih al-Bukhariy 5:2305 H. 5891; Sahih Muslim 3:1694 H. 1203; al-Bayhaqiy: al-Sunan al-Kubra 8:339; Ibn Hajar: al-Wuquf `Ala'l-Mawquf 1:114 H. 148.

[53.](#) Ibn Sa'd: al-Tabaqat al-Kubra 4:21; Ibn `Asakir: Tarikh Madinat Dimashq 26:371; Jalal al-Din al-Suyutiy: al-Durr al-Manthur 5:231.

[54.](#) Al-Tabaraniy: al-Mu`jam al-Awsat 3:378 H. 3449; al-Haythamiy: Majma' al-Zawa'id 1:149; al-Dhahbiy: Siyar A'lam al-Nubala' 7:206, 11:555.

[55.](#) Al-Sarakhsiy: al-Usul 1:341; al-Muhaddith al-Fasil 1:554; al-Dhahbiy: Siyar A'lam al-Nubala' 2:601; Ibn Kathir: al-Bidayah wa'l-Nihayah 8:106; Ibn Shabbah: Tarikh al-Madinah al-Munawwarah 3:800.

[56.](#) Bughyat al-Bahith `An Zawa'id Musnad al-Harith 1:328 H. 214; al-Muttaqiy al-Hindiyy: Kanz al-Ummal 8:49 H. 21810; Al-Dhahbiy: Siyar A'lam al-Nubala' 2:248.

[57.](#) Dr. Mustafa Dib al-Bagha: Athar al-Adillati'l-Mukhtalafi fiha fi'l-Fiqh al-Islamiy 339.

[58.](#) All the points that they have lately presented as proofs on the legality of Qiyas, Istihsan, and the like invented principles are refutable and baseless.

[59.](#) Ibn al-Athir: Usd al-Ghabah fi Tamyiz al-Sahabah 2:336 (Biography of Sahl ibn Sa'd al-Sa'idiy); Ibn `Abd al-Barr: al-Isti'ab 2:664 No. 1089; al-Muzziy: Tahdhib al-Kamal 12:189.

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