

alive in the instinctive love of countless millions of people who vaguely feel its principles are ‘right’: but only very few of them grasp those principles intellectually and are able, or genuinely prepared, to translate them into terms of practical life.<sup>11</sup>

This is a fundamental problem facing Muslims today; substance, in terms of the underlying spirit or value, has become delinked from forms and rituals. Thus, memorization of the Qur’an is hugely emphasized in preference to studying and understanding its message.

### *13. Embracing Life-Experience As Part of the Collective Learning Curve*

Contrary to the traditionalist understanding and approach, Islam is not intended to be an exclusively text-oriented belief. In attempting to understand this world God appears to want humans to benefit from the experience of life. He commands man to travel, see and learn about history. Rather than burying one’s head in sacred books the faculties have been called upon to observe, think and reflect on reality.

This list of values is by no means exhaustive. The values and principles above are based directly on the Qur’an which are elaborated upon and duly corroborated in the book. These should be among the essential parameters guiding the derivation and establishment of Islamic laws originating from non-Qur’anic sources. When sources other than the Qur’an, including the Hadith, conflict with these clear principles (as the deliverer of God’s final message the life of the Prophet cannot contradict the Qur’an) these principles or values must be given precedence. Furthermore, laws and codes, as required, must not be approached in an atomistic manner as per the experience of legalism. Therefore, without compelling evidence to the contrary, any laws and codes derived via human agency must not violate or compromise Qur’anic principles.

## Chapter Three

### **Islamic Law and the Use and the Abuse of Hadith**

The Qur’an is the fountain source of Islam. The second source of Islam is the Sunnah, which delineates the Prophet’s way of life, the example he set before us in his attitudes, actions and sayings, and which forms the framework of the faith. Discussion here will examine some vital issues pertaining to the subject of *aḥādīth* and discuss some of the

problems concerning the misuse of hadith in deriving, formulating and validating laws.

For the sake of simplicity and clarity, the terms Hadith and Sunnah are used here interchangeably. The Sunnah should be understood as meaning “a normative, model behavior and an exemplary conduct, and that in its primary sense it means ‘the setting up of an example.’”<sup>12</sup> However, there are some generally misunderstood positions regarding the *aḥādīth*/Sunnah.

Among these positions, there is one that assumes that if a hadith quotes the Prophet, this indicates something the Prophet had said exactly. However, readers may form the justifiable impression that the exact word of the Prophet is provided in a hadith without the clarification that the passage concerned is generally paraphrased. Not every Hadith collection points out the variation. Variations in a narration do not allow the exact words used by the Prophet to be confirmed. A second notable position is that *ṣaḥīḥ* (authentic) reports can be found in any Hadith collection (except those specifically compiled from inauthentic hadith for comparison).

There are six canonical collections collectively known as the *al-Ṣiḥāḥ al-Sittah*. However, highly-skilled experts of Hadith confirm that even within al-Bukhārī’s collection, not all the reports are beyond dispute. Furthermore, even *ṣaḥīḥ* hadith are subject to various interpretations, and human interpretations are fallible. Thirdly, there is a prominent notion that no contradiction exists between narrations of hadith. However, there are many examples of hadith, e.g. those involving the subject of *ribā* (usury), that are contradictory.

Fourthly, there is the belief that the Hadith literature provides knowledge or information that is certain or definitive. Actually, only *mutawātir bi al-lafẓ* hadith (continuously recurrent, verbatim report from numerous narrators) yields certainty of knowledge. Even *mutawātir bi al-maʿnā* (by meaning) does not yield certainty of knowledge. In fact, the number of *mutawātir bi al-lafẓ* is just a handful (merely in the teens) as confirmed by the Hadith scholars. Thus, almost the entire Hadith literature is composed of *āḥād* (non-*mutawātir*) narrations that yield probabilistic knowledge and, as such, do not yield certainty of knowledge. Additional circumspection is a must when utilizing these to formulate laws, codes and dogmas. Yet, the majority of the Islamic scholars hold the view that *āḥād* hadith can be used to derive binding laws or codes.

As such, it is important to address the use and abuse of hadith in the formulation and validation of Islamic laws. The development of a legalistic tendency has several consequences. The splintering of various *madhhabs* (schools of jurisprudence), although beneficial in some respects, has more essentially led to the fragmentation of Muslim society. The second and more important consequence of this trend relates to the many laws promulgated in the name of Islam that demonstrate a clear gender-bias, as well as promoting other unfair tendencies inconsistent with the Islamic principle of equity and fairness. This latter point requires some elucidation.

The Prophet ordered regular and unhindered female participation in *masjid*-centered life. However, in most Muslim-majority countries and, in fact, even in Western countries, women are not seen participating in large numbers during congregational prayers (*salah*) held within the mosques because of the restrictive and non-facilitating environment. If, for some reason, men have to “tolerate” the presence of females, the men make it quite difficult and uncomfortable for them. Let us look at two hadiths that are resorted to:

Abdullah ibn Mas’ud: The Prophet (s) said: “It is more excellent for a woman to pray in her house than in her courtyard, and more excellent for her to pray in her private chamber than in her house.”<sup>13</sup>

Narrated by ‘Ayesha: Had Allah’s Apostle known what the women were doing, he would have forbidden them from going to the mosque as the women of Bani Israel had been forbidden. Yahya bin Said (a sub-narrator) asked ‘Amra (another sub-narrator), “Were the women of Bani Israel forbidden?” She replied, “Yes.”<sup>14</sup>

Even as a *ṣaḥīḥ* (but not *mutawātir*) hadith (‘Abdullāh ibn Mas‘ūd’s report), this fact does not yield the certainty of knowledge required to ensure the veracity of the Prophet’s speech on the matter. Contradicting this tradition are numerous reports, which state that women used to participate in the mosques both regularly and in large numbers. Therefore, either the participating women in question did not care about the Prophet’s instructions to them (even in his own presence) or they understood the hadith quite differently.

As for the second of the two narrations, although this hadith appears in *Ṣaḥīḥ al-Bukhārī* it is not a statement that originates from the Prophet. In fact, it is merely the opinion of a Companion (although a

great and particularly close Companion who happened to be the wife of the Prophet). In the technical Islamic jargon, this type of narration is called *athar*. However, even though highly respected and revered – quite deservedly so – among the Muslims as a Companion, narrator of hadith and his wife, it still constitutes only a lone opinion which did not emanate from the Prophet’s mouth. There is absolutely no corroborating information, statement or report from the same period which indicates that women were committing egregious acts in the mosques. Yet, these have had a profound effect on Muslim culture leading to gross restrictions on the public participation of women.

In another example for consequences of such trend, women are barred from leadership positions. One solitary (*āḥād*) report from Abū Bakrah (not to be confused with the first *Khalīfah* Abū Bakr) has resulted in the rigid orthodox position whereby women are barred from exercising executive leadership:

Narrated by Abū Bakrah: During the battle of Al-Jamal, Allah benefited me with a Word (I heard from the Prophet). When the Prophet heard the news that the people of Persia had made the daughter of Khosrau their Queen (ruler), he said, “Never will succeed such a nation as makes a woman their ruler.”<sup>15</sup>

However, the individual, Abū Bakrah, is known to have received the punishment reserved for committing false testimony.<sup>16</sup> Moreover, this hadith does not meet the standards established by al-Bukhārī himself though he included it in his collection. The Qur’an discusses the story of Balqīs, the Queen of Saba’ (Sheba) without any hint of negativity about women’s leadership whatsoever. Yet, this solitary (*āḥād*) report of so dubious and disputed an origin has established the sweeping and often strict prohibition of women’s leadership.

One of the most glaring examples of the abuse of hadith concerns the punishment of apostasy.<sup>17</sup> One verdict for apostasy (*riddah*) is that it is not only a punishable act, but an act punishable by death [though in reality many leave the faith freely and without penalty]. One particular report in relation to this position on apostasy is: “Kill the one who changes his religion (*man baddala dinahu faqtuluhu*).”<sup>18</sup> This happens to be an *āḥād* or solitary hadith. There is no hadith attesting to the established Prophetic practice that demonstrates this particular act of punishment solely for those who committed apostasy and, in fact, the Prophet demonstrated the opposite. Surely, if the penalty of death was

valid, and being so grave a matter, the Qur'an would have addressed it, and it also does not. The Qur'an quite categorically affirms the freedom of faith. Yet, although thankfully this trend is changing, many scholars have set aside the higher Qur'anic principle in favor of a solitary hadith.

Despite the painstaking contribution of our scholars to research and sift through the treasure of Hadith, the fact remains that Hadith generally yields only probabilistic knowledge. Hence this body of literature, the Hadith we have today, needs to be used more as a source of information, as well as moral inspiration and wisdom, while a much more restrained approach needs to be taken when the Hadith literature is used to arrive at laws or codes that have a direct and serious impact on the life, honor and property of people. This restraint is even more important in case of laws or codes that might result in discrimination and injustice.

## Chapter Four

### **The Doctrine of Ijma<sup>؁</sup>: Is there a Consensus?**

Ijma<sup>؁</sup> or consensus is one of the four sources of Islamic jurisprudence. The Qur'an and the Sunnah are the two primary and foundational sources of Islam, while ijma<sup>؁</sup> and *qiyās* (analogical reasoning) represent two secondary sources. From dogma to norms to laws and codes, ijma<sup>؁</sup> is recognized to have a pivotal place in Islamic discourse and socio-religious unity. Discussion deals with the subject of ijma<sup>؁</sup>, where most of the claims concerning it are demonstrated to be unfounded and untenable based on a consistent lack of consensus regarding almost all aspects of ijma<sup>؁</sup> as a source of Islamic jurisprudence.

Despite the well-established position of ijma<sup>؁</sup> in Islamic jurisprudence, ordinary Muslims are generally unfamiliar with the reality that ijma<sup>؁</sup>, as an authority or source of Islamic jurisprudence, stands on rather thin ice. While ijma<sup>؁</sup> has to an extent played an integrative role in Islamic legal discourse, it has also contributed to some entrenched divisiveness. But even more importantly is the existence of abuses of ijma<sup>؁</sup>, in terms of it being used as a frequently cited tool to quieten opponents or to allow abuse to occur through the frequent claim of ijma<sup>؁</sup> applying to something where no ijma<sup>؁</sup> is apparent. This issue is