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Legal Traditions in *'Irāq* in the second century of *hijra* and *'Irāqī* Jurists

[*Aḥādīth-i Aḥkām avr Fuqahā'-i 'Irāq*]

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The book under study is one of the recent (2015) publications of Islamic Research Institute, a well reputed international research institute in Pakistan[1], which deals with an important domain of Islamic law, the Sunnah of the Prophet Muhammad, peace be upon him, with a special focus on those Prophetic traditions refer to any aspect of Islamic law (including family law, international law, commercial law, criminal/penal law, even the law of rituals etc.) and hence can be called "aḥādīth-i aḥkām", legal traditions. The book also pays special attention to the methodological approach of *ḥadīth* examination/verification adopted by the Ḥanafite jurists.

Thesis of the book

Ḥanafite school of Islamic law, during its formative period, extensively applied several methods of legal reasoning such as, juristic opinion (*ra'y*, in its broad meaning), analogical reasoning (*qiyās*) and juristic preference (*istiḥsān*) etc., to infer legal rulings (*aḥkām*/positive law) for day to day issues of Muslim community and doing so they did not accept some of the Prophetic traditions that were contravening their established fundamental principles of the law.

However, this caused some jurists of other schools to misunderstand Ḥanafīte methodological approach to *ḥadīth*, therefore, the Ḥanafīte jurists were often alleged by their opponents at times to reject and at others to neglect Prophetic traditions (*aḥādīth*) that, apparently, go against any of their juristic opinions (*ra'y*).

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1 This Institute is Pakistan's premier research institute established on 10 March 1960 "to organise research on Islam, to give it a rational and scientific interpretation in the context of modern age and to bring out the achievements of Muslims in the fields of history, philosophy, science and culture." Since its establishment the institute has been publishing research books, quarterly research journals and monographs in English, Arabic and Urdu. Currently it is a constituent unit of the International Islamic University Islamabad. For detail see the following link: http://iri.iiu.edu.pk/index.php/iri/content/id/44/1466845298

This book systematically shows that the Ḥanafite School did recognize *ḥadīth* as a primary source of Islamic law and the said accusation was unjust. The study further demonstrates that Ḥanafite jurists actively employed *ḥadīth* in their legal discourse, as did the other schools of Islamic law. However, some fundamental rules of *ḥadīth* examination set by Ḥanafite jurists that led them to reject several traditions, could not get acceptance by their opponents and, thus, Ḥanafites were alleged to care little for *ḥadīth*.

Methodology of the book

As its methodology, this book analyzes all the available sources attributed to Abū Yūsuf (Ya'qūb b. Ibrāhīm) (d. 182/798) and Muḥammad b. Ḥasan al-Shaybānī (d. 189/805), (the two prominent disciples of Abū Ḥanīfah (Nu'mān b. Thābit) (d. 150/767); the eponym of Ḥanafite school) in order to determine the status of *ḥadīth* in Ḥanafite legal theory. The book pays special attention to Ḥanafite methodology of *ḥadīth* examination with a focus on the rules of matn/text verification introduced and formulated by Ḥanafite school of Islamic law.

Description

The book, consisting of 315 pages, is published in Urdu language under the title of, "***Aḥādīth-i aḥkām avr Fuqahā'-i 'Irāq***" [**Legal Traditions and *'Irāqī* Jurists**]. It is divided into three chapters and each chapter is subdivided into several subchapters according to the requirements of the subject.

Chapter one, which is divided into three subchapters, deals with the development of the Ḥanafite school providing precise introduction to the founders of the school.

Chapter two is divided into the following three subchapters:

a. legal and non-legal traditions;

b. legal traditions in 'Irāq (during the second century of the *hijrah*); and,

c. legal traditions in the accounts of Abū Yūsuf and Muḥammad b. Ḥasan al-Shaybānī.

In this chapter, the author has made an effort to enumerate all the legal traditions employed by the school and thus he reached the conclusion that there are more than one thousand legal traditions that are used by Abū Yūsuf and al-Shaybānī in their entire legal corpus.

Chapter three of the book deals with the fundamental rules and criteria of *ḥadīth* examination/criticism set by the Ḥanafite and is further divided into the following three subchapters,

1. *ḥadīth* as overruling authority in Ḥanafite legal discourse;

2. common rules of *ḥadīth* examination and evaluation;
3. rules of text/*matn* criticism (text-based examination process).

The book is appended by a summary, conclusions and the index. At the end a bibliography, consisting of 99 sources, including Arabic, Urdu and English works has been provided.

Findings/conclusions/comments

The significant conclusions reached by the author in this book can be summarized as follows.

The classical *hadīth* corpus is generally an amalgam of legal and non-legal traditions, regardless of their authenticity, and thus, it is not an easy task to differentiate between both the categories[2]. During the formative period of Islamic law, Muslim jurists had shown their keen interest, to a great extent, to the legal traditions employing them in their legal discourse. However, there is hardly still available an account or study which deals with enumeration of the actual number of all the legal and otherwise traditions in *ḥadīth* corpus.

In the book under question, the author has made an effort to enumerate the legal traditions in the *ḥadīth* corpus. Hence, he reached the conclusion that all the legal traditions employed by several prominent jurists during the second century of the *hijrah* were no more than about four to five thousand in number including all the authentic and otherwise (spurious, false, fabricated, etc.) legal traditions. However, it is still a matter of further research to figure out the exact number of all the traditions/ sayings, including legal and otherwise as well as authentic and otherwise, attributed to the Prophet Muhammad, peace be upon him, taking all the available *ḥadīth* material into account.

About fifteen hundred, out of four to five thousand legal traditions, were employed by Hejazi jurists and more or less the same were used by Abū Yūsuf and al-Shaybānī in their entire legal corpus while the rest of the legal traditions were employed by other jurists of the period under study. Moreover core part of most authentic legal traditions was not more than around 1500 (one thousand and five hundred).

Hardly a jurist in the said period had full access to all the said legal collection; however, Irāqī jurists had a privilege over Ḥijāzī jurists since they travelled many times to Ḥijāz to learn *ḥadīth*, whereas, on contrary, only rare examples can be found. For example, to learn *ḥadīth* by Mālik b. Anas, the great *ḥadīth* scholar of al-Madīnah

2 The division of Prophetic traditions into legal and non-legal categories is usually observed in the writings of classical Muslim jurists, according to which the traditions deal clearly with legal injunctions/rulings (al-Ahkam al-Shar'iyya) are called "legal traditions" while the otherwise are considered as "non-legal traditions" such as those related to *'aqīdah*, *faḍā'il*, *maghāzī* etc., generally speaking.

in the second century of hijrah, al-Shaybānī stayed for three years in Madinah and thus he gained well acquaintance with all the legal traditions employed by Ḥejazite jurists as well as he was also well acquainted with all the legal traditions used in the academic circles in ʻIrāq.

While Ḥanafite jurists had access to both Ḥijāzī and ʻIrāqī *ḥadīth* corpus, they only employed more or less about one thousand to one thousand and five hundred legal traditions and ignored the rest of the non-legal traditions considering them spurious or unauthentic as per their strict and specific rules of *ḥadīth* criticism set by the founders of the school.

Though Abū Ḥanīfah and his disciples had almost full access to the said collection in the second century of the *hijrah*, they did not transmit Prophetic traditions as did their contemporary *ḥadīth* scholars such as, Mālik b. Anas in Madinah (d. 179 AH) and even Qatādh b. Diʻamah al-Sudūsī al-Baṣarī (d. 117 AH), Sulaymān b. Mihrān al-Aʻmash al-Kūfī (d. 148 AH), Shuʻbah b. al-Ḥajjāj al-Baṣarī (d. 160 AH), Sufyān b. al-Saʻīd al-thawrī al-Kūfī (d. 161 AH), Wakīʻ b. al-Jarrāḥ al-Kūfī (d. 197 AH), Sufyān b. al-ʻUyaynah al-Kūfī (d. 198 AH) and ʻAbd Allah b. al-Mubārak (d. 181 AH) in ʻIrāq.

The essential part of legal traditions was transmitted in ʻIrāq by several Iraqite jurists, especially by those Iraqite *tābiʻīn* (successors of the companions of the Prophet Muhammad, peace be upon him) who travelled to Ḥijāz (for example, ʻAlqamah, Masrūq b. Ajdaʻ, ʻUbaydah al-Salmānī, Aswad b. Yazīd, Saʻīd b. Jubayr, ʻĀmir al-Shaʻbī, etc.) and learned *ḥadīth* by the famous Ḥejazite companions of the Prophet, peace be upon him (for example, ʻUmar b. al-Khaṭṭāb, ʻĀ'ysha (umm al-Mu'mnīn), ʻAbd Allāh b. ʻUmar, Zayd b. Thābit, ʻAbd Allāh b. ʻAbbās, etc.).

In accepting or rejecting the Prophetic traditions, especially the legal ones, in the legal discourse, Ḥanafite jurists had strictly followed specific criteria set by their founding fathers, however, some late Iraqite jurists such as ʻĪsā b. Abān, al-Karkhī and Abū Bakr al-Jaṣṣāṣ, quoting and depending on the opinions of ʻĪsā b. Abān, had added a number of rules to the said criteria which led to a debate in and outside the Ḥanafite school.

Examining the criteria set by the Ḥanafite jurists with respect to *ḥadīth* verification, the author has reached the conclusion that a number of rules are common between the Ḥanafites and their opponents, however, some of them which particularly deal with text (*matn*) criticism, are introduced and formulated only by the Ḥanafite jurists which caused conflict between Ḥanafite jurists and a number of prominent *ḥadīth* scholars. These rules[3] which, in particular, deal with the *ḥadīth* category called

3 One can find these rules of *matn*/text criticism in the classical books of *Uṣūl al-Fiqh* in the chapter of *al-Sunnah* under the category of "dubious *ḥadīth* due to "inqiṭāʻ bi l'maʻna" (bāb taqsīm al-khabar min ṭarīq al-maʻna/ باب تقسيم الخبر من طريق المعنى). It is pertinent to mention here that in the Sub-Continent a number of revisionist Muslim scholars such as Sir Sayed

"*khabar al-aḥād*" (single, "*khabar al-wāḥid*"), can be summarized in the following points.

1. A *ḥadīth* would be considered dubious if it contradicts the Quran regardless if it is approved by all other standards of *ḥadīth* examination set by the early scholars of *ḥadīth*, and hence, the Quran must be the final arbiter.

2. Likewise, a *ḥadīth* would also be considered unreliable if it is not in conformity with the *al-sunnah al-mashhūrah*[4] (a well-known and famous *ḥadīth*), and hence, in such a situation where both are in conflict with each other, the later one will be given preference.

3. A *ḥadīth* would be considered unreliable if it contravenes to matters of *'umūm al-balwā*/public affliction (a widespread/general situation which is difficult to avoid) and is reported hardly by one or two narrators rather than a large number of narrators.

4. A *ḥadīth* would be classified dubious if it is knowingly ignored by the companions of the Prophet, peace be upon him, in any way.

The author has provided a number of quotations from the writings of Abū Yūsuf and al-Shaybānī in terms to expound that the mentioned rules are introduced and employed by the founders of the Ḥanafite school of Islamic law. However, for text-based/matn examination, there are a number of similar rules (such as the authority of both: 1) sound human reasoning as well as; 2) analogical reasoning over *a ḥadīth* that contradicts any of them, etc.) incorporated in the Ḥanafite legal writings but it is unjust to attribute all of them to the founders of Ḥanafite school as they were developed and extended by the late Ḥanafite jurists such as 'Īsā b. Abān, al-Jaṣṣaṣ, al-Karkhī relying upon their own understanding.

In this respect, as a case study, the author has analyzed a rule in detail according to which a *ḥadīth* reported by a companion of the Prophet (peace be upon him) who

Ahmad Khan, Shibli Numani, Hamiduddin (Abdul Hameed) al-Farahi, etc., discussed them under the title of "dirāyah," utilizing an existing hadith-terminology in the classical books of *'ulūm al-ḥadīth*, however, in much different meaning. These rules, in the history of Islamic law, experienced broadly by *'Irāqī* jurists as can be found in the writings of Abū Yūsuf and al-Shaybānī, however, al-Shafi'*ī* challenged many of these rules in his polemical account: *al-Umm*, and inspired almost all the Ḥadīth scholars of second and third centuries of *Hijrah*.

4 According to Ḥadīth scholars, *al-sunnah al-mashhūrah* or *"ḥadīth al-mashhūr"* is a *ḥadīth* transmitted by three or more narrators in each level of transmission, but does not reach the level of *"mutawātir"* (a ḥadīth transmitted by a significant number of narrators throughout the chain of transmission in each level, whose agreement upon a lie is impossible). However, according to Ḥanafite jurists it refers to the Prophetic tradition that reported, accepted and implemented by the overwhelming majority of the companions of the Prophet, peace be upon him, and then by their successors/jurists and thus it became and remained well-known in the classical academic circles. Hence, it is more or less like that of a *"mutawātir"* in *ḥadīth* sciences.

is considered as *"qalīl al-fiqh"* can be classified as unacceptable if it conflicts with analogical reasoning. The author has reached the conclusion that this specific principle had been introduced and added by ʻĪsā b. Abān into the legacy of Abū Ḥanīfah and through al-Jaṣṣaṣ who borrowed and advocated Abān's understanding in the matter under question, a number of Ḥanafite scholars incorporated this viewpoint, however, in fact it was not stemmed back to the founders of the school. On contrary, there are a lot of examples in their writings which most likely did not align with the understanding of ʻĪsā b. Abān as elaborated by the author in the book under review.

Muhammad b. Idrīs al-Shāfiʻī was the first who critically analyzed many of Ḥanafite criteria of *ḥadīth* examination in his polemical account: *al-Umm*, and hence the majority of *ḥadīth* scholars of second and third hijrī centuries were influenced by al-Shāfiʻī. Thus, they accommodated in their famous *ḥadīth* accounts a number of legal traditions which had already been considered as spurious by the Ḥanafite jurists. Nevertheless, it is surprising that with the passage of time a great number of jurists belonging to other schools of Islamic law were progressively influenced by the Ḥanafite jurists with respect to the rules of matn/text examination in *ḥadīth* sciences.