Evolution in the Concept of Sunnah during the First
Four Generations of Muslims in Relation to the
Development of the Concept of an Authentic Ḥadīth
as based on Recent Western Scholarship

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Abstract
The aim of this article is to trace the evolution in the meaning of the concept of Sunnah prior to its classical definition, which largely confluentes it with the concept of an authentic (ṣaḥīḥ) Ḥadīth as defined by the classical Ḥadīth sciences. This article will first describe the semanico-contextual changes in the meaning of the term Sunnah during the period under examination and then present a chronological analysis of the development of the concept 'Sunnah' in relation to the development of the concept 'authentic Ḥadīth'. This article argues that during the first four generations of Muslims, the concept 'Sunnah' remained epistemologically independent of the concept 'authentic Ḥadīth' and that evaluation of Sunnah compliance with a certain practice or belief remained methodologically independent to that of the concept of an authentic Ḥadīth, as defined by classical ʿulūm al-ḥadīth sciences.

Keywords
Sunnah; Ḥadīth; formative period of Islamic thought

1. Introduction
Throughout Islamic historical experience, the Sunnah, alongside the Qur’ān, has been considered to be one of the primary sources of Islamic

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† The word 'recent' in the title of this article refers primarily to works written by both Muslim and non-Muslim scholars in the twentieth and twenty-first centuries.
The need for Sunnah as a source of Islamic Law stems from the actual nature of the Qur’anic Revelation itself and the role played by the Prophet Muhammad in the “Prophetic-Revelatory event” to borrow Graham’s phrase. By the term ‘nature of the Qur’anic revelation’ one means its Deutungsbeduerftigkeit, i.e., its need for interpretation and, more specifically in the context of Islamic Law, its limited usefulness for the purposes of establishing a comprehensive and systematic socio-political and legal system. Traditionally it found its expression in the maxim: 

\[\text{al-qur’ān ahwaj ilā s-sunnah min al-sunnah ilā l-qur’ān}\] (i.e. the Qur’ān is in need of Sunnah more than Sunnah is in need of the Qur’ān).

In order to fill the Qur’ānic gap, the early Muslim community took recourse to the concept Sunnah, a pre-Qur’ānic tribal custom signifying emulation-worthiness of a certain individual whose conduct becomes a norm for others to follow. This was based on the premise that Prophet Muhammad’s embodiment of the Qur’ānic Message, that took place in a variety of contexts over a period of more than 20 years during his Prophet-hood, is to be considered the most authoritative model for subsequent generations of Muslim to follow as well as its having normative value for the setting of legal antecedents and law explication purposes.

2 Few Muslim groups, such as the nineteenth and twentieth century Ahl al-Qur’ān groups in the Sub-continent or contemporary Qur’ān alone proponents, have rejected the concept of Sunnah as being normative because of their rejection of Ḥadīth. In their minds these two concepts, according to classical Islamic scholarship, were conceptually identical. Hence the rejection of the concept of Sunnah as a source of Islamic Law. See D. Brown, Rethinking Tradition in Modern Islamic Thought (Cambridge: Cambridge University Press, 1996) 38-39.


4 This notion of comprehensibility of Islam (shumuliyyat al-islām) is based upon the classical Islamic doctrine according to which Islam as a worldview touches all dimensions of human existence at both the individual and social levels. For a brief and useful discussion of the issue of shumuliyyat al-islām, see, e.g., Ramadan, The Western Muslims and the Future of Western Islam (Oxford: Oneworld, 2004) 33-37. On the limited usefulness of the Qur’ān for the development of comprehensive legal doctrine, see, e.g., W. Hallaq, A History of Islamic Legal Theories (Cambridge: Cambridge University Press, 1997) 3-15.


Therefore, the concept Sunnah is overall very significant in Islamic thought and forms a basis for a large segment of Islamic law and theology. Moreover, as the author has argued elsewhere, differences in the evaluation of Sunnah compliance with certain practices and beliefs has been responsible for the emergence of conflicting views on a variety of issues pertaining to both the realms of Islamic jurisprudence and belief, while all claiming to be firmly rooted in the Qurʾān and Sunnah/Ḥadīth.

As described below, the classical concept of Sunnah has been defined in a way that renders it hermeneutically completely dependent upon the body of Ḥadīth literature. In this article, we refer to this definition of Sunnah as Ḥadīth-dependent Sunnah.

This article attempts to answer the following questions.

- Does the traditional definition of Sunnah that took root and established itself during the post-formative or classical period of Islamic thought reflect the way this term was understood during the pre-classical period?
- If not, as this article argues, how did this classical definition of Sunnah emerge and which mechanisms were responsible for its conflation with an authentic Ḥadīth as defined by the classical ‘ulūm al-ḥadīth sciences and when did they become apparent?

As such the aim of this article is to outline a chronological analysis of the development of the Sunnah concept and, in particular, how long it

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7 A. Duderija, “Toward a Methodology of the Nature and the Concept of Sunnah”, Arab Law Quarterly, 21/3 (2007) 269-280; cf., A. Duderija, "Paradigm Shift in Assessing/ Evaluating the Value and Significance of Ḥadīth in Islamic Thought: From ‘ulūm al-ḥadīth to ʿamal al-fiqh”, Arab Law Quarterly, forthcoming. In the first quoted article I argue that the way the nature and scope of the concept of Sunnah is understood or defined is inextricably linked with the way the nature, objectives and character of Qurʾānic Revelation is conceptualised. Additionally, the article argues that apart from its ʿamal or practice-based component, Sunnah comprises akhlaq, fiqh, ʿaqidah and ‘ibadah elements which are epistemologically and methodologically independent of Ḥadīth but organically linked to a particular type of Qurʾānic hermeneutics.

8 The terms post-formative and classical will be used interchangeably throughout this article.

9 Here defined as post-fourth generation of Muslims or approximately the first 250 years of the Islamic calendar. For more on the definition of formative period of Islamic thought, see, M.W. Watt, Formative Period of Islamic Thought, Reprint, (Oxford: Oneworld, 2002) 1-4.
remained distinct from its classical definition. In order to do this, we trace how the meaning and definition of the Sunnah concept has evolved during the first four generations of Muslims and prior to its classical definition which confluences it with the concept of an authentic (ṣaḥīḥ) Ḥadīth as defined by the classical Ḥadīth sciences ('ulūm al-ḥadīth). This article will first describe semanico-contextual changes in the meaning of the term Sunnah during the period under examination and then present a chronological analysis of how the concept has evolved in relation to the development of an authentic Ḥadīth defined by the classical Ḥadīth sciences. This article argues that, during the first four generations of Muslims, the Sunnah concept remained epistemologically independent of that for an authentic Ḥadīth and that evaluation of the Sunnah’s compliance with a certain practice or belief remained methodologically independent to that of an authentic Ḥadīth.

2. The Classical Concept of the Definition of the Sunnah Concept

According to classical Islamic scholarship, as defined by the muḥadithūn,\(^{10}\) the concept Sunnah in terms of its authenticity\(^{11}\) is defined as comprising 10 Experts on the transmission of Ḥadīth, their compiling, classification and authenticity.

\(^{11}\) A sound Ḥadīth and therefore Sunnah, in its 'post-Shāfiʿi form (see our discussion in the main text below) consisted of a matn (text) and isnād (chain of transmitters), usually but not always going back to the Prophet. Muḥadithūn have formulated an impressively elaborate and complex hierarchy of Ḥadīth authenticity but not of their epistemological worth which was the task of the fuqahāʾ (usūliyyūn). The evaluation of the soundness of the Ḥadīth, a task of the muḥadithūn, is based upon the ṣadīq/uptrightness of the narrators founded on certain criteria such as his/her memory and character regardless of their epistemological value. The epistemological study of Ḥadīth and Sunnah is primarily studied by the fuqahāʾ and the usūlīyūn or the Islamic jurists and legal theorists. This study of Ḥadīth/Sunnah is concerned with the number of individual chains of narrations (isnād) ranging from ahad to mutawātīr Ḥadīth were a part of the larger concern of fuqahāʾ relating to legal methodology (usūl al-fiqh). The mutawātīr Ḥadīth are those narrations, which have been transmitted by such a large number of people that, according to great majority of fuqahāʾ (they yield certain or immediate (daruri) knowledge. It must be noted, however, that there is no consensus on either the criteria pertaining to assessment of uprightness of narrators (iḥn al-rijal), or on how many isnāds constitute and render a narration mutawātīr. There are indeed very few mutawātīr Ḥadīth, including those which (could) relate to law. Abād Ḥadīth, on the other hand, are those narrations, which do not fulfill the mutawātīr criteria and by default do not yield certain knowledge (yaqīn) as stipulated by the majority of Muslim jurists, but only zann or uncertainty and are thus legally not binding and cannot be considered as part of ’aqidah or Islamic creed. Therefore, the fuqahāʾ and usūliyyūn
numerous narratives documenting Prophet Muhammad’s deeds (fi’l), utterances (qawl) and spoken approval12 (taqrīr) as embodied in various Ḥadīth compendia considered ‘authentic’ according to the standards and criteria applied by classical Ḥadīth science criticism (ʿulūm al-ḥadīth).13

The definition of the concept Sunnah has several implications, which here we will call Ḥadīth-dependent Sunnah. First, it assumes that the scope of Sunnah is epistemologically dependent upon and constrained by Ḥadīth, i.e. that it has the same epistemological value as that of each ‘authentic’ Ḥadīth and that the Ḥadīth is the sole depository and vehicle for Sunnahic perpetuation. Secondly, it assumes that Sunnah is methodologically dependent upon the Ḥadīth. Being methodologically dependent on the Ḥadīth implies that Sunnah compliance (or otherwise) with certain (legal or theological) practices or principles is and can only be determined by sifting through numerous narratives reportedly going back to the time of the Prophet Muhammad via an authentic chain of narrators (isnād). Thirdly, as a corollary to the second premise, coalescing and substituting the nature and scope of the concept Sunnah with that of Ḥadīth breaks the symbiotic and organic relationship between the concept of the Qurʾān and Sunnah as it existed during the first four Islamic generations,14 thus making the Qurʾān increasingly more hermeneutically dependent upon the Ḥadīth compendia. Fourthly, as a result of the above, the Sunnah’s organic and symbiotic relationship with the Qurʾān, termed by Graham as the “Prophetic-Revelatory event”, was severed and the Qurʾān’s hermeneutical dependence upon Ḥadīth body of knowledge entrenched. Fifthly, the Sunnah’s function and purpose, as will be demonstrated below, became increasingly positively legalistic.15

methodology of deriving Sunnah is different to that of the muhādīthūn, and will become apparent in the main text below, closer to the way the concept of Sunnah was understood during the pre-classical period as they only accept the mutawahīr Ḥadīth to constitute Sunnah. However the definitions of Sunnah are both the same.

12 Some definitions also include Prophet’s sīfāt, that is, his features or physical appearance. M.M. Al-Aʾzami, Studies in Ḥadīth Methodology and Literature (Kuala Lumpur: Islamic Book Trust, 2002) 6.


14 Rather than being conceptualised primarily as ethico-religious or values-based.
Prior to addressing the questions raised above, a brief remark about the nature and scope of the concept Sunnah is in order. As we argued elsewhere, the pre-classical concept of Sunnah was based upon a hermeneutically symbiotic relationship with the Qur’ānic discourse as premised upon the principle of the Qur’ān’s *deutungsbedeutigkeit*. The nature and scope of the concept Sunnah, furthermore, constituted four different elements: *sunnah akhlaqiyyah* (ethico-moral or values-based component also based on the objective nature of ethical values), *sunnah ‘aqidiyyah* (theological or religious component), *sunnah fiqhiyyah* (legal component which was a reason inclusive and a values-based component that recognised the objective nature of ethical values) and *sunnah ‘amaliyyah/ibadiyyah* (practice-based component). For the purposes of this article, it is important to keep in mind that all these components of the Sunnah can be formulated, preserved and transmitted independent of any written documentation. Another important consideration to be kept in mind throughout this discussion is the fact that, during the entire period under investigation, the production, maintenance and perpetuation of knowledge, including nascent sciences such as jurisprudence, theology and Qur’ānic commentary, was oral rather than written. As such the concept Sunnah that was called upon and employed throughout this period, as demonstrated below, could and did exist independent of written Ḥadīth.

3. Evolution in the Nature and Scope of the Concepts Sunnah and Ḥadīth

Section 3 presents how the concept Sunnah has evolved vis-à-vis the development of what constitutes an ‘authentic’ Ḥadīth from the time of the Prophet until the middle of the third century Hijrah when the Ḥadīth-based Sunnah gained wide acceptance among Muslim jurists and scholars.

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17 Some evidence which confirms these assertions will be presented on pp. 8-9. For more, see Duderija, “Methodology”, supra note 7. The *‘amaliyyah* component could also include the administrative and/or political aspects of Sunnah highlighted by Mathnee. *Sunnah ‘amaliyyah* could also be inclusive of the political aspect of Sunnah as political discourse relies on principals and values. See M.S. Mathnee, *Critical Reading of Fazrul Rahman’s Islamic Methodology in History*, M.A. Thesis, University of Cape Town, 2005.
theologians. The analysis first investigates semantico-contextual and thereafter epistemologico-methodological changes in the concept Sunnah.

3.1. Semantico-contextual Changes in Definition and Scope of the Sunnah

Ansari has pointed out several difficulties one encounters when studying the terminology used during the early period of Islamic thought. One such problem is the "comparative lack of fixity in technical connotations of terms in use"\(^{19}\) which resulted in a gradual change in connotation over a period of time. An important aspect in these semantical changes in terminology is their increasing 'technical', or what the author would describe as legalistic,\(^{20}\) connotations. Moreover, and importantly, these terms had a multiplicity of meanings even when employed by the same author in the same work.\(^{21}\)

Another important principle for the purpose of this study that Ansari has identified with reference to the changes in meaning of certain words and concepts is the notion of a significant time gap between the usages of the conceptual and technical/legalistic aspects of terminology. Put differently, words prior to acquiring "standard technical phraseology" had other meanings and were used in other contexts.\(^{22}\) The above distinctions are of fundamental importance to this study from the point of view of understanding the validity of the classical definition of the concept Sunnah.

We now will examine the semantico-contextual changes of the concept Sunnah. The term will be analysed by examining its etymological (pre-Qur'anic) meaning(s), Qur'anic meaning(s) and post-Qur'anic usage(s).

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\(^{19}\) Z.I. Ansari, "Islamic Juristic Terminology before Shafi'i: A Semantical Analysis with Special Reference to Kufa", *Arabica*, xix (1972) 279.

\(^{20}\) In the sense of as they are being used in literature on Islamic jurisprudence (fiqh) and legal theory (uṣūl ul-fiqh). For the difference between fiqh and uṣūl ul-fiqh, see, e.g., H. Kamali, "Introduction", in: *The Principles of Islamic Jurisprudence*, (Cambridge: Cambridge University Press, 1991).

\(^{21}\) Ansari, *supra* note 19, p. 270.

\(^{22}\) This suggests that their definition was imprecise and ambiguous, probably because these terms as concepts were quite broad and abstract in nature and were associated with ethico-moral values rather than specified edified rules/laws or dogma. We shall explore this in subsequent parts of this article.
3.1.1. Etymological, Qur’ānic and post-Qur’ānic meanings of Sunnah

Etymologically, the term Sunnah underwent several semantic changes. It originated from the Arabic root S-N-N that probably referred to “flow and continuity of a thing with ease and smoothness”. Over time, the term Sunnah was increasingly used in the context of human behaviour, and as “a way, course, rule, mode or manner of acting or conducting life of life”, thus becoming equivalent to the word *sira*. Thereafter it evolved to signify moral appropriateness and normativeness of a human worthy of being followed. Ibn Manzur defines Sunnah as a “commendable straightforward manner of conducting oneself (*al-sunnat al-tariqat al-mahmudat al-mustaqimah*)”. By its very nature it implies normativeness, *i.e.* having a normative character.

With respect to the Qur’ān, the Sunnah has been used on numerous occasions with regard to the immutable laws of the retribution of God (*sunnahāt allāh*) with respect to people who repeatedly transgressed these laws with disdain. The phrase *sunnahāt al-auwalīn* refers to the ancient people or nations who, having brought upon themselves the wrath of God by rejecting and killing His Messengers, were doomed and turned to dust. Interestingly the term Sunnah of the Messenger of Allāh (*sunnahāt un-nabi*), a fundamental concept in post-Qur’ānic Islamic thought, does not occur in the Qur’ān. The Prophet is, however, praised in the Qur’ān as “*uswah al-hasanah*” (*a good/beautiful/excellent example*) for Muslims.

Ansari aptly remarks that this use of the term is consistent with the overall Qur’ānic attitude towards all other Prophets.

28 Qur’ān 7:38; 40:18:55, etc.
29 Qur’ān 60:4.
Considering the status and authority that the Prophet enjoyed by his followers, especially in the Medinian period, and the etymological background of the word Sunnah as just described, it would be only commonsense to maintain that the expression “Sunnah of the Prophet” would have been used in the early Muslim community in the sense of being Qur’ānic sanctioning model-behaviour of the Prophet. Furthermore, there is sufficient evidence to suggest that the Prophet himself, the early caliphs such as ʿUmar (d. 23 AH), Uthman (d. 35 AH) and Ali (d. 40 AH), as well as the people at the time of early Umayyad caliphs (e.g., Abd al-Mālik, 65-86 AH), used this *sunnah al-nabi* (Prophet’s Sunnah) expression on numerous occasions.31

Apart from its usage in a phrase *sunnah al-nabi* in the first and especially second half of the first century Hijrah, the word Sunnah has been used in the following ways. Sunnah refers to the “right and just practice” of the Prophet,32 Sunnah of caliphs preceding Uthman (i.e., Abu Bakr and Umar);33 Sunnah of believers;34 Sunnah as a norm to be followed in jurisprudential sense;35 and Sunnah as distinct from Ḥadīth.36

Although still quite general and vague at the beginning of the second century, the term Sunnah, with the rise of sciences of jurisprudence (*usul al-fiqh*), was being increasingly but not exclusively used in a legal sense.37 Ansari gives us following Sunnah meanings from that period in time: obedience and loyalty of the people to the ruling government in accordance with the book (Qur’ān) and Sunnah;38 emphasis on the Sunnah as something that can be traced back to the time of the Prophet and/or early caliphs (in contrast to just any practice adopted by the people);39 Sunnah becoming a synonym of the expression Sunnah of the Prophet;40

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33 Ansari, *supra* note 19, p. 264.
34 *Ibid*.
37 *I.e.*, principles and practices of the Prophet implying normativeness and was being restricted to the persona of the Prophet himself only.
38 Ansari, *supra* note 19, p. 265.
Sunnah as practice based on *ijmāʿ*; Sunnah as a rule; Sunnah as well-established norms/practises (*ʿamal*) recognised by Muslims in general, which came through and were accepted by learned scholars (*fuqahāʾ*) and the Sunnah as antonym for heretical innovation (*bidʿah*). Juynboll offers several other contexts in which the term Sunnah was associated and used during the second century Hijrah, namely, as a politico-administrative term with a religious flavour, Sunnah as a general righteous Islamic practice (*as-sunnah al-ʿādilah; jarat al-sunnah*), Sunnah as a normative way of the early community as a whole.

Abd Allah's extensive analysis of Mālik Ibn Anas' concept *ʿamal* leads him to conclude that he used the word Sunnah in a numner of ways: that of Sunnah supported by the Medinian *ijmāʿ* (*sunna l-lā-ladhi lā ikhtilah fiha ‘indana*); Sunnah being put into practice (*madat al-sunna*); Sunnah of all Muslims (*sunnat al-muslimīn*); Sunnah known to the people of knowledge (*sunnah ‘indanah*); Sunnah of the Prophet (*sunnat al-nabi*) and simply Sunnah (*al-sunnah*).

In his book *On Schacht’s Origins of Muhammadan Jurisprudence*, Al-Azami also gives textual evidence that the word Sunnah was used "in a variety of different contexts".

Dutton's studies of Mālik's *Muwaṭat* lead him to conclude that according to Mālik the concept Sunnah was seen as:

…a normative practice established by the Prophet, put into practice by Companions and inherited from them as *ʿamal* (in this sense the practice of Companions in Medina) by the Successors and their Successors up to the time of Mālik.
A somewhat different and more nuanced understanding of the concept of Sunnah in Mālik’s *Muwatāṭa* that is still independent of Ḥadīth is argued by Guraya who defines it as a concept based on “recognized Islamic religious norms and accepted standards of conduct derived from the religious and ethical principles introduced by the Prophet”.

Importantly, Guraya also identifies Sunnah’s constituents which shall be discussed subsequently.

Another definition of Sunnah that does not depend upon its written-based documentation is argued by Pakistani scholars Moiz Amjad and Ghamidi. They define Sunnah as: “a set of actions or practical rules (excluding beliefs) which Prophet initiated promoted and performed among all of his followers as a part of God’s religion (*dīn*) and that have been perpetuated from one generation to another practically”.

Ansari echoes these words by stating that at the time of the famous Syrian scholar Awzaʾi (d. 157 AH) “the ways of referring to Sunnah, [however] were not standardised”. Similarly Wheeler in his investigation of second-century jurists such as Ibrahim (d. 182 AH) and Anas (d. 179 AH) maintains that the “concept and content of Sunnah was malleable because it was not yet to be limited to a textual corpus”.

It is worth noting the words by Al-Azami in the same section of the book dealing with the early concept of Sunnah, which serves here as a means of a brief summary of what was said above with regards to semantico-contextual changes in the Sunnah: “Not only was the word Sunnah originally not confined to the practices of the Prophet: its meaning also underwent changes”.

From the above discussion it can be established that the concept Sunnah underwent a series of semantico-contextual changes during the formative period of Islamic thought. The question that arises is why did the concept Sunnah undergo such semantico-contextual changes and which processes led to the classical definition of Sunnah? In other words, what were the background forces and mechanisms behind these semantico-contextual changes?

52 Guraya, supra note 25, “Introduction”.
53 www.understanding-islam.org/sourcesofislam.
56 Al-Azami, supra note 50, p. 33.
3.2. Epistemologico-methodological Changes in Definition and Scope of the Sunnah

The questions raised above led us inevitably to the epistemologico-methodological aspects behind the transfer in meaning and connotation of the concept of Sunnah. This part of the article traces the development of the concept of Sunnah and how it was understood during the first four generations of Muslims.

In the context of the overall aims of this article than we are interested in, defining the scope of the body of knowledge used to determine what constituted Sunnah during the pre-classical period and juxtaposing it with the epistemological boundaries governing "authentic" Ḥadīth to determine whether there are any epistemological discrepancies or disparities between the two. We are also interested in bringing to light the methodological tools used in defining and determining the concept of Sunnah during the pre-classical era and contrast these tools with those implied by the classical definition of Sunnah. Additionally, this will give us an insight into the epistemological boundaries and methodological mechanisms which have been used when defining Sunnah.

Part of the analysis will focus on depicting the broad and general trends in the evolution in perceptions of legitimacy of the use of nāʿy (personal judgment based on reason) when defining the concept of Sunnah57 and of the moral epistemological boundaries of the same.58 This will allow us to establish if there was a qualitative difference in epistemological assumptions governing the concept of Sunnah during the pre-classical and classical periods as the classical definition of Sunnah excludes the use of reason when determining the Sunnah compliance or otherwise of a certain act or practices if it is based upon an authentic Ḥadīth. In other words we shall try to ascertain to what extent and for how long Sunnah as a concept remained largely epistemologically and methodologically independent of ‘authentic Ḥadīth’. Chronology, as we shall see, plays a very important part in the way the relationship between Sunnah and “authentic Ḥadīth” is

57 Since Sunnah is organically linked and derives its legitimacy from the Qurʾān, this analysis also applies to the Qurʾān.
58 The same could be applied to Qurʾānic interpretation but is outside the scope of this study. For a very insightful treatment of this question, see G. Hourani, “Ethical Pre-suppositions of the Qurʾān”, *Muslim World*, 70 (Jan. 1980) 1-28, henceforth ‘Ethical’.
conceptualised because the usage of both\textsuperscript{59} concepts, as we earlier demonstrated, evolved against a different semantico-contextual background. Firstly, we will investigate how the concept of Sunnah at the time of the Prophet was understood.

3.2.1. Sunnah as Epistemologico-methodologically Independent of Ḥadīth—
a chronological analysis

3.2.1.1. Sunnah and at the Time of the Prophet
Professors Izutsu\textsuperscript{60} and Hallaq\textsuperscript{61} claim that the emerging Qurʾānic Weltanschauung during the revelationary period was not completely divorced from its pre-Qurʾānic one. Although the Qurʾān is to be considered an independent ethico-religious and linguistic entity with its own worldview, it did not claim a complete epistemological break with pre-Qurʾānic Arabia.\textsuperscript{62} Over the revelationary period of some two decades, the Qurʾān rejected, modified, condoned and accepted the socio-cultural values and moral of Arabian tribal communionism of pre-Qurʾānic Arabia in accordance with the budding Qurʾānic ontological and ethico-religious value system. The foundation of this emerging Qurʾānic view of “reality” was, quite naturally, the Qurʾān as embodied by the Prophet himself.\textsuperscript{63} The notion of Sunnah was, as we argued earlier, a well-known concept in pre-revelational Arabia understood as a normative action-behavioural\textsuperscript{64} system set by an individual worthy of tribe’s emulation, in the post-revelational period logically ascribed to the bearer of Revelation himself.\textsuperscript{65} With the Prophet amongst their midst, the early Muslim community had a direct

\textsuperscript{59} The author has presented an evolution of the concept of an authentic Ḥadīth in the article, A. Duderija, “The evolution in the concept of an authentic Ḥadīth in relation to the concept of Sunnah during the first four generation of Muslims”, unpublished article.


\textsuperscript{63} Cf., Ansari, supra note 6.

\textsuperscript{64} In contrast to written as in the case of Ḥadīth. Henceforth, The Origins and Evolution.

access to the living commentary of the Revelation, and through him a living link to the Divine. The Prophet’s persona and character as a source of Revelation-based authority and normativeness for his contemporary adherents and believers in his Prophethood was a natural fact and a matter of common sense. With the Prophet alive in Makkah/Medina, the Muslim community was witnessing his activities daily and was subject to his instructions directly, that is without an intermediary. The community did not engage in systematically debating the questions of the nature and the scope of the Prophetic authority. When the need arose they could seek advice and consult him in matters needing personal or communal clarification.66

Indeed, in the Qur’ānic verses such as 59:767 and 4:64,68 the Qur’ān mentions the necessary intervention of and obedience to the Prophet in the affairs of the community.69 These, however, were not dogmatic in nature, i.e., did not pertain to the realm of beliefs.70 The Qur’ān, therefore, can be said to testify to that fact that the Prophet enjoyed extra-revelational authority based on “right and just practice”,71 but that this privilege was always exercised in conjunction with concepts of mutual consultation with community in a most balanced and delicate way.72 Additionally, Dutton further substantiates this point. Based on his study of Mālik’s Muwatatta he asserts that, “for Mālik the Prophet is clearly a source of extra-Qur’ānic judgement but this ‘extra- Qur’ānic’ element is

66 Cf. Ansari, supra note 6, pp. 156-171.
67 Q59:7, “So take what Apostle assigns to you and deny yourselves that which he withholds from you” (Y. Ali). “And whatever the messenger gives you take it, but whatever he forbiddeth, abstain (from it)” (M. Picthall).
68 Q4:64: “We sent not an Apostle but to be obeyed in accordance with the Will of Allah” (Y. Ali); “We sent the Messenger save that he should be obeyed by Allah’s leave” (M. Picthall).
69 It must be admitted that the verses mentioned, like many parts of the Qur’ān, were situational/contextual in character and had specific occasions of revelation—first linked to the distribution of booty and second to a concrete internal problem within the Muslim Medinian community.
70 In these matters the Prophet’s role was merely that of the Messenger, i.e., the conveyer of Revelation.
71 Additionally, the fact that ‘amal/practice of the entire Medinian community was recognised as a source of law by certain schools of thoughts (the Mālikī madhhab in particular) is clear evidence that the Prophet’s authority was not restricted to theological or faith matters stemming from the Qur’ān.
72 Ibid., p. 186. Generally on this see Graham, supra note 3; also see, Ansari, supra note 6.
considered to be within the general principals outlined by the Qurʾān rather than a separate one.\footnote{Dutton, supra note 51, p. 164.}

Elaborating on this point of organic, directly interwoven Sunnah-Qurʾānic dynamic at the time of the Prophet in Mālik’s Muwattā, Dutton also remarks that:

\begin{quote}
Many of the fundamental obligations of the Qurʾān, such as doing the prayer, paying zakāt and going on hajj, could not have been put into practice unless there were some practical demonstrations of how to do so, and the obvious model for this of course was that of the one who first put thee obligations in practice, \textit{i.e.} the Prophet. The Qurʾān could not, therefore, be divorced from its initial context, \textit{i.e.} the life of the Prophet, and, although its supremacy of the text remained beyond question, it was always seen in the light of its first practical expression, namely, the Sunnah of the Prophet.\footnote{Ibid., p. 163.}
\end{quote}

Thus, due to the nature of Qurʾānic content it was in need of Sunnah, that is, in need of both \textit{Deutungsbeduerftigkeit} and of a practical manifestation \textit{in actu}. This organic link between the Message and the Messenger is captured best by often-repeated Qurʾānic phrase exhorting the believers to “Obey God and the Prophet.”\footnote{Q4:59; 4:64; 3:132; 3:32; and many others.} This unity of “prophetic-revelatory event”, to use Graham’s phrase, has from the very beginning and throughout the first 150 years of the formative Islamic thought reflected the early Muslim understanding of the function, nature the scope and the relationship between the Qurʾān and Sunnah.\footnote{Graham, supra note 3, p. 12.} This interdependent, symbiotic relationship between the Qurʾān and Sunnah enjoyed wide-spread acceptable in early Islam. In this context Graham maintains that:

\begin{quote}
It appears [that] for the Companions and the early Followers of the Prophet, the divine activity manifested in the mission of Muhammad was a unitary reality in which the divine word, the prophetic guidance, and even the example and witness of all who participated in the sacred history of the Prophet’s time, were all perceived as complementary, integral aspects of a single phenomenon.\footnote{Ibid., p. 15; cf., Ansari, supra note 6.}
\end{quote}

Similarly, this hermeneutically intimate relationship is also noted by Sachedina who avers the following:

\begin{quote}
\textit{...}
\end{quote}
Explication of the divine intention of the revelation was among the functions that the Qur’ān assigned to the Prophet. The Prophet functioned as the projection of the divine message embodied in the Qur’ān. He was the living commentary of the Qur’ān, inextricably related to the revelatory text. Without the Prophet the Qur’ān was incomprehensible, just as without the Qur’ān, the Prophet was no prophet at all.\(^7^8\)

Similarly, in his investigation of an early Ḥanafī jurist, ‘Isa b. Aban (d. 221/836), Bedir asserts that at this time the hierarchy of the Qur’ān and Sunnah was not yet clear.\(^7^9\) This unity of “prophetic-revelatory event”, to use Graham’s phrase, has from the very beginning and throughout the first 150 years of the formative Islamic thought reflected the early Muslim understanding of the function, nature the scope and the relationship between Qur’ān and Sunnah.\(^8^0\) This interdependent, symbiotic relationship between Qur’ān and Sunnah, therefore, enjoyed wide-spread acceptability in early Islam. It was expressed in a phrase kitāb (i.e. the Qur’ān) wa sunna.\(^8^1\) Thus, similar to the Qur’ān the concept of Sunnah (but not ḥadīth Hādīth as by product of ‘ulūm al-ḥadīth sciences) can be seen as a type of wahy.\(^8^2\)

Apart from this symbiotic Qur’ān-Sunnahic relationship stemming from the very nature of the Qur’ānic revelation, another aspect of the Qur’ānic revelation influenced the character of Sunnah as exemplified by the Prophet. The predominantly ethico-religious character of the Qur’ān and the Qur’ānic legislative dimension as well as its overriding concern for the moral conduct of humans\(^8^3\) translated itself into Prophetic activity which emphasised a person’s moral responsibility and God consciousness rather than law formulation.\(^8^4\) This nature and the character of the Qur’ānic revelation and its legislative element, embodied and continued by the

\(^8^0\) Graham, supra note 3, p. 12.
\(^8^3\) In this context, Ansari’s following remarks are quite pertinent: Qur’ānic legislation differs from legal codes in form as well as in spirit and purpose. Its basic motivation is religious and moral rather than ‘legal’ in a narrow sense of the term. Its aim is to lay down certain standards of conduct that are intrinsically good and conducive to the good pleasure of God. Ansari, supra note 6, p. 143.
\(^8^4\) Or more precisely legal norms were conceived more in ethico-religious terms.
Prophet, was geared towards certain underlying legislative norms which were based on certain purposes and objectives. Schacht (rightly) observes this fact when describing the origins and development of Islamic Law by saying: "Had religious and ethical standards been comprehensively applied to all aspects of human behaviour, and had they been consistently followed in practice, there would have been no room and no need for a legal system in the narrow meaning of the term. This was in fact the original ideal of Muhammad." This claim will be investigated more closely in subsequent parts of this study.

As alluded to above, another phenomenon that needs to be taken into consideration in the context of evolution of the concept of Sunnah is that during the formative period of Islamic thought the oral nature of transmission and authentification of knowledge as well as oral-based interpretative strategies of the primary sources were considered more authentic and were more prevalent than written-based ones. In this context Souaïaïa avers that:

"In the practices of scholars and jurists closest to the time of the Prophet, there seems to be an overwhelming attraction to isnād-based oral reports and momentous lack of interest in the published literature, a phenomenon that can be documented for at least one-hundred years after the recording (tadwīn) era." He also convincingly argues that the processes of formulation, preservation and transmission of religious and legal knowledge was “fully and exclusively oral”. The above distinctions are of fundamental importance to this study from the point of view of understanding the evolution of the concept of an authentic Sunnah in relation to that of an ‘authentic’ Ḥadīth.

An additional issue needing clarification is the evolution in the scope of and the function or the employment of the use of reason in the Qurʾān and Sunnah, especially in relation to the assumptions governing the nature of

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85 Ansari, supra note 6, pp. 144-146. This seemed to have given birth to jurisprudent and legal theory literature that emphasized the importance of the maqāsid or purpose/objective-based approach to Islamic Law and its theory as evident in the writings of Al-Tusi, Shatibi and Ghazali to name a few. See Hallaq, supra note 4.


87 Ibid., p. 131; cf., Souaïaïa, supra note 18.

88 Souaïaïa, ibid., p. 94.
ethical value in the same. To date, the epistemologico-moral boundaries 
and character of the Qurʾān from the point of view of its own context, that 
is, divorced from its traditional scriptural interpretation itself, have not 
been comprehensively studied”.89 Modern scholars of Muslim tradition 
such as Hourani, maintain that the Qurʾān cannot be said to completely 
disregard the value of ḥaqq (inherent human reason) in forming ethical 
judgments, while Reinhart asserts that “[T]he Qurʾānic message time 
and again appeals to impartial knowledge that confirms the Qurʾānic 
summons.”90 Moreover, Reinhart argues that ḥaqq’s explicit Qurʾānic endorse- 
ment in recognising God’s existence, Unity and Grandeur are considered 
to favour its implicit usage in the realms of ethics and morality.91

In terms of epistemologico-methodological boundaries of the Sunnah at 
the time of the Prophet, Hourani states that in terms of ethical knowledge, 
the Qurʾān (and therefore Sunnah) considers revelation its major source 
but that “it is probable, but unproven, that natural reason is also capable 
of forming ethical judgements [independent of revelation]”.92 Furthermore, 
argues Hourani, in terms of ethical epistemology boundaries the 
Qurʾānic nature of ethical value is generally objective, “the use of indepen- 
dent reason in ethical judgements is never ruled out explicitly in the 
Qurʾān, and there are some considerations that favour implicit assump- 
tions of its use”. It is further maintained that:

... Qurʾān and Muhammad both display a common sense attitude and that we should 
not expect either of them to claim that for every ethical judgement he makes a man

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89 Hourani, “Ethical Pre-Suppositions” is the most notable study on this question; see 
supra note 58. K. Reinhart’s study on boundaries of moral epistemology in Islamic thought 
focuses on assessments of human acts prior to Revelation and how they were used in 
development of Islamic jurisprudential terminology and law as espoused by authorities 
living in the second and subsequent centuries who themselves operated within a larger 
Qurʾāno-Sunnahic hermeneutic; see Reinhart, Before Revelation—The Boundaries of Muslim 
findings of this study are useful to us and will be used in this article. Izutsu’s works cited 
previously attempt to define Qurʾānic ethico-religious concepts from the point of view of 
historical semantics rather than their epistemological sources and as such are not directly 
our concern.

90 Reinhart, supra note 89, p. 178.
91 Ibid.
92 Hourani, supra note 58, p. 25.
must consult a book or a scholar, or work out an analogy when the book or scholar give no direct answer to the Problem. 93

Draz, in his exhaustive investigation of the moral world of the Qurʾān, echoes this view by concluding that, according to the Qurʾānic moral world, the human consciousness in prior to Revelation and that is capable of divorcing right from wrong without it. 94 The essential common-sensical attitude of the Qurʾān and its message are evident in its discourse of “nature, ’aql, the cosmos, and their patterns—all [are] appealed to say that the message of the Qurʾān is reasonable”. 95 Thus, rationality and ethical objectivity certainly cannot be considered as alien to the overall spirit of Qurʾānico-Sunnahic teachings.

At the time of the Prophet then the concept of Sunnah was associated quite naturally with him, and, except from its ʿibadat component, seemed to have been understood primarily as a general, ethico-religious and, in Medina, politico-administrative, 96 concept based upon righteous customary practice that partially reflected some of the pre-Qurʾānic customs and practices not contrary to Qurʾānic worldview. 97 The legislative component of Sunnah, which in no doubt existed, was in consonance with the nature of the Qurʾān as the “most trustworthy mirror of the Prophet’s outlook and teaching”, also primarily conceived in religio-moral rather than positivistic terms. 98 These religious and moral teachings, in fact, functioned as a reference point for legal evaluation. 99

How the concept of Sunnah was understood in the subsequent two generation of Muslims is what we turn our attention to now.

3.2.2.2. Sunnah at the Time of Companions and Successors

Over the period of approximately one decade, 100 the Muslim community had ample opportunity to internalise and absorb the overall spirit, ethos

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93 Ibid., p. 23.
95 Reinhart, supra note 89, p. 23.
96 Mathnee has argued that early concept of Sunnah is to be primarily thought of as a political concept. See Mathnee, supra note 17, Ch. 2.
97 Cf., Ansari, supra note 6.
98 Ibid.
99 Ibid., pp. 144-146.
100 Of course, some spent less and some more time with the Prophet living in their midst.
and the character of the Prophet based on the overall Qur’ānic worldview. Juynboll refers to this notion of Sunnah as “practice based on the memory of the collective concept of Prophet’s followers on whose basis the community’s cohesion rested”.

During this period of time Prophet’s Companions observed his embodiment of the Qur’ānic message and how it was applied in society in terms of his behaviour, word and deed. The Prophet’s action-behavioural system was quite naturally described by the Muslim community as Sunnah and carried a degree of normativeness whose anchoring point was the Qur’ān. In cases of the performance of congregational prayers and ritual purification, for example, the Muslim community in Medina internalised and embodied these practices by engaging in their daily performance with the Prophet. Therefore both Companions and the Medinian community became the collective embodiment and perpetuators of these aspects of the Prophet’s Sunnah. In this context Graham astutely observes:

Naturally enough, the living Sunnah (“way”, “practice”) of the charismatic Ummah (and the Medinian community in particular), which was rooted in the Sunnah of the prophet, became the active, practical standard of authoritative faith and practice.

The practical and oral perpetuation of Sunnah must have been very common during the era of the Prophet. It is for these reasons that Mālik (d. 179 AH), as we already mentioned, considered that from the very inception of Muslim community in Medina to his time Sunnah and

102 Traditionally a Companion is any person who was in a direct contact with the Prophet while he was alive.
103 Juynboll, supra note 46, pp. 98, 100; cf., Bravmann, supra note 65, pp. 123-198; cf., Guraya, supra note 25, pp. 33-34.
104 The view that the Companions were the best sources of Sunnah is related in the following report found in Al-Qayrawani (d. 356 AH); An-Nakhai’i (a Successor) said: “Even if I had seen Companions making wudu’ up to the wrists, I would have performed wudu’ like that although I recite it ‘Up to the elbows.’” (Surat al-Ma’idah, Q7). That is because they cannot be suspected of abandoning Sunnahs. They were the masters (arkhāb) of knowledge and the most eager of Allah’s people to follow the Messenger of Allah, may Allah bless him and grant him peace.” Ibn Abi Zayd al-Qayrawani, A Medinian View—on the Sunnah, Courtesy, Wisdom, Battles and History, (tr.) Abdassamad Clarke, (Londen: TaHa Publishers, 1999) 25-26.
105 Graham, supra note 3, p. 12.
Qur’ān were inseparable both of which were interpreted and perpetuated against the ‘ʿamal/practice of the community rather than simply from the texts.\(^{106}\)

The first link in this ‘ʿamal and oral-based Sunnah were the caliphs who acted and expanded upon the Prophet’s Sunnah after his death. As the political authority was transferred to them after the Prophet’s demise, the caliphs, based on their impeccable status as witness bearers of the Qur’āno-Sunnahic ideals, became sources of Sunnah themselves.\(^{107}\) As Hallaq remarks “these caliphs set a model of good behaviour [and did not] necessarily laid down specific rulings”.\(^{108}\) Indeed, “caliphal authority was not derivative of that of the Prophet but ran parallel to it”.\(^{109}\) Juynboll maintains that “it is generally accepted fact that the first four caliphs set their own standards [and that] they ruled the community in the spirit of the Prophet, thinking their own solutions to the problems rather than meticulously copying his actions”.\(^{110}\) This is further substantiated by Souaiaia’s assertion that the classical Islamic law recognised the personal informed opinion of the first four caliphs alongside those of renowned companions, in addition to the Qur’ān and Sunnah, to be sources of law.\(^{111}\) Mathnee goes even further by stating that the early concept of Sunnah was such that it was used in an arbitrary\(^{112}\) fashion without reference to a particular authority and that it was susceptible to continuous change. He maintains further that the Sunnah could refer to a practice or a tradition or a

\(^{106}\) Dutton, supra note 51, Chs. 8 and 9; Indeed this ‘ʿamal-based Sunnah was considered superior to Hadith; cf., Al-Qayrawani, supra note 104, p. 26; cf., Guraya, supra note 25; Abd-Allah, supra note 49.

\(^{107}\) Ansari, supra note 19, pp. 277-278; see also Crone and Hinds, supra note 32, p. 66; also Juynboll, supra note 46, pp. 101-104.

\(^{108}\) Hallaq, supra note 4, p. 12.

\(^{109}\) Hallaq, supra note 61, p. 43.

\(^{110}\) Juynboll, supra note 101, p. 15.

\(^{111}\) Souaiaia, supra note 18, p. 245.

\(^{112}\) I have presented a critique of the view of the arbitrary nature of Sunnah and early fiqh in “The role of Sunnah in early Fiqh” (article under review). In essence, my argument runs as follows: Decisions/legal rulings based on sunnah akhkaqiyyah and sunnah fiqhiyyah that are rooted in Sunnah’s (and by extension the Qur’ān’s) ethico-moral and objective nature of values dimension such as justice, righteousness or fairness could be interpreted/seen as arbitrary since they do not follow a literal/textual precedent. However, if the Qur’ān and Sunnah are conceptualised as embodying and facilitating these values in the first place, as in the case of Caliph ‘Umar, then these decisions/legal rulings cannot be seen as arbitrary but rather being part of the actual normative Qur’āno-Sunnahic teachings.
combination of both and with multiple equivalent authorities. Guraya expresses a similar view by maintaining that in early Islam the concept of Sunnah was not ‘specifically determined’, that it changed over time. In other words, we could talk about several types of Sunān (pl. of Sunnah) at this point in time, that of individuals other than the Prophet (mainly well-known Companions and early caliphs) and the collective conduct of individuals upon which ‘amal-based Sunnah rested. In this context Juynboll asserts:

...the associations of sunnas with persons other than the Prophet are so numerous and varied that that does not permit us to assume that the Prophet’s example overshadowed or indeed eclipsed that of others, at least not during the first hundred and fifty years or so after his death.

These different anchoring points and sources of Sunnah at this point in time, however, were considered as one coherent whole rather then being conceptually different in any significant way.

This rather methodologically amorphous, ethico-moral and values-based and adaptable definition of Sunnah/Sunān, conceptually organically

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113 Mathnee, supra note 17, p. 12.
114 Guraya, supra note 25, “Introduction”.
115 cf. Hallaq, supra note 61, p.102; cf., S. Spektrovsky, “Sunnah in the Responses of Ishaq b. Rahwayh”, in: Studies in Islamic Legal Theory, B. Weiss, ed. (Leiden: Brill, 2002) pp. 51-70, in which the author asserts that Bin Rahwayah (d. 238 AH), a fāqih, uses the concept of Sunnah in the following ways: Sunnah alone (it is uncertain if the final authority of Sunnah is based upon practice or tradition or combination of both); Sunnah of the Companions supported by authority of the Prophet and Sunnah of the Prophet established by a legal maxim.
117 Mathnee describes this Sunnah as having “an incoherent structure and arbitrary nature”; see supra note 17, Ch. 2.
118 Professor Rahman claims that in the early Muslim community, “Prophetic Sunnah was a general umbrella-concept rather than filled with an absolutely specific content flows directly, at a theoretical level, from the fact that Sunnah is a behavioural term: since no two cases, in practice, are ever exactly identical in their situational setting—moral, psychological and material—Sunnah must of necessity, allow for interpretation and adaptation.” He also uses phrases for Sunnah such as "a point in direction rather than exactly laid out series of rules" or “Sunnah as authoritative, normative precedent” to further consolidate the point of generality and unspecificity of Sunnah as a concept. See F. Rahman, “The Living Sunnah and al-Sunnah wa l-Jama’ah”, pp. 137-138 in Hadith and Sunnah—Ideals and Realities Selected Essays, (Kuala Lumpur: Islamic Book Trust, 1996); cf., Hallaq, supra note 61, p. 77.
linked to the Qurʾān, the Practice of the Prophet, his Companions and embodied by the Medinian community remained essentially the same during the time of the first caliphs. For example this concept of Sunnah is also evident in its usage when the confrontation between ʿAlī b. Abī Tālib and Muʿāwiyah b. Abī Sufyān [q.v.] at ʿṢiffīn (37/657 [q.v.]) was resolved with an arbitration agreement on the basis of the kitāb Allāh and al-sunnah al-ʿādil al-dhjāmiʿa ghayr al-mufarrikha (i.e. the Book of God and the just Sunnah that unites rather than disperses).120

Sunnah, as a concept, therefore, was not seen as a codified set of positive laws but rather as either a moral precedent that could be adapted to various contexts/circumstances or was identified with certain practices evident in the Muslim Medinian community. Hallaq also takes the view that, at this time, Sunān “were not legally binding narratives but subjective notions of justice put to various uses and discursive strategies”.121

The early Muslim community during the first two to three decades after the Prophet’s death was still a relatively small, self-contained one where the vast majority of the Companions lived. This meant that the prevalent conditions for diffusion of Sunān without reliance on written documentation was relatively easy and quick to achieve, and remained the primary source of transmission of Sunān during the time of the Companions. With the rapid expansion of the Muslim empire towards the end of the

119 That the ambiguity regarding what Sunnah is and who/what the sources of Sunnah are existed even during the second century and is clearly demonstrated in a well-known anecdote between Zuhri (51-24 AH) and Salih b. Kaisan when discussing what might and might not be considered Sunnah. It is reproduced below. Salih says: I met with Zuhri while we were both seeking knowledge. Thus we said, let us write down the Sunnah. We wrote down what was related from the Prophet. Then he [Zuhri] said: Let us write down what is related on the authority of Companions for it is [also] Sunnah. I told him that it is not Sunnah, therefore we should not write it down. Zuhri wrote it down, and I did not write it. He attained success, while I met with failure; cited in Al-Azami, supra note 50, p. 84.


121 Hallaq, supra note 61, p. 47.

122 For a very detailed analysis of the Prophet’s Companions after his death, their place of residence and political/tribal affiliations, see F. Jabali, The Companions of the Prophet—A Study of Geographical Distribution and Political Alignments, (Leiden: Brill, 2003).

123 Sunān is plural rather than singular Sunnah due to above-mentioned reasons.

124 It also should be kept in mind that throughout this period, ‘umal-based Sunnah as well as values and ethico-religious-based Sunnah (derived from the Qurʾān) that was
first half of the first century Hijrah and the accompanying changes in the socio-political climate made the problem of transmission and dissemination of non-written Sunān more difficult.\textsuperscript{125} Companions, the sources and perpetuators of the Prophet’s Sunnah as understood at that time-period, dispersed to various provinces of the ever-expanding Muslim Empire.\textsuperscript{126} With the establishment of the Companions in these provinces, people who did not have the opportunity to see the Prophet first-hand or were born after the Prophet’s death, termed Successors (\textit{tabī‘in}), were eager to find out from them what the Prophet did, how he behaved and acted. Companions, however, were facing increasingly new problems to which they had no specific Prophetic precedent due to the nature of the Sunnah as it was understood at that time. In such cases, Companions used their own judgment and reason in order to arrive at solutions, which were still considered as falling under the general aegis of the Prophetic precedent. Al-Azami also noted this by remarking that “[S]ometimes the norms drawn analogically from the practice or the sayings of the Prophet were also called sunna”.\textsuperscript{127} This assertion is also substantiated by the fact that Muslims at that time “regarded as authoritative not only the precepts and practices of the Prophet, but also those of his Companions”.\textsuperscript{128} In this context Hakim maintains that:

It is not unusual for companions of the Prophet to be credited with a Sunnah of their own. Thus, Abu Bakr, together with Umar, is credited to have Sunna... In other traditions we find expressions such like ‘\textit{sunnät Abī Bakr al-nabīdah al-mahiyyah}’ or ‘\textit{sunnät Abī Bakr aw Umar aw Uthman aw ‘Alī}’. Moreover, the Islamic tradition frequently refers to \textit{sunnät ‘Umar}.\textsuperscript{129} Prevalent at the time of the Prophet and the Companions was epistemologically independent of any potentially written-based documentation of it.\textsuperscript{125} We will investigate these more closely in the part that deals with evolution of written-based Sunnah.\textsuperscript{126} Reportedly, some 188 Companions migrated from Madina and Makkah, Iraq, Syria, Egypt and Khurasan: Hallaq, \textit{supra} note 61, p. 72; see also Jabali, \textit{supra} note 122, pp. 84-137.\textsuperscript{127} Al-Azami, \textit{supra} note 50, p. 36.\textsuperscript{128} Ansari states: “The authority of the Companions was well-established circa 75 AH and the precepts and practices of the Prophet as well as the Companions continued to be characterised as Sunnah.” Ansari, \textit{supra} note 19, p. 280.\textsuperscript{129} A. Hakim, “Conflicting Images of Lawgivers: The Caliph and the Prophet (\textit{Sunnat ‘Umar wa Sunnat Muḥammad})”, in: H. Berg (ed.), \textit{Method and Theory in the Study of Islamic Origins}, (Leiden: Brill, 2003) 159-160.
That the Companions themselves made a distinction between Sunnah (in this instance in the form of the Medinian ‘amal) and Ḥadith. ‘It has been transmitted that ‘Umar ibn al-Khattab said on the minbar, “Through Allah’s help, glory be to Him, I will cause to be severely straightened the circumstance of any man who transmits a Ḥadith contrary to the ‘amal of Madinah”.’¹³⁰  

The above-described concept of Sunnah seems to have been transmitted to the Successors largely in a manner similar to that which the Companions themselves received it that is via practical means based on the overall spirit of the Prophet’s life legacy. For example, in Medina, a Successor, Ibn Musayyib (d. 90 H) and his colleagues founded schools of jurisprudence based on the verdicts of Ḥ. Omar and Ḥ. Uthman,¹³¹ while, in Kufa, Nakha’i (d. 95 H), also a Successor, and his associates, based their opinions and knowledge of jurisprudence (ṣafāqquh) on legal opinions (fatwa, pl. futāwā) of an esteemed Companion Ibn Mas’ud (d. 94 H) and the fourth Caliph Ali (d. 40 H) largely independent of any written-based documentation of Prophetic actions or words.¹³² The nature of this Sunnah as espoused by these authorities was still very much in tune with that of the Prophet, as Nakha’, an Iraqi law specialist:  

…did no more than give opinions on questions of ritual and perhaps kindred problems of directly religious importance, cases of conscience concerning alms tax, marriage, divorce and the like, but not on technical points of law. The same is true of Ibrahim’s contemporaries in Medina.¹³³  

The legal character of Sunnah manifesting itself in a body of literature on positive law was thus still not evident at this point in time. This led Schacht to conclude that what we could term a distinctively new Qur’ān-Sunnahic law anchored in the Prophetic dicta (Ḥadith, corpus-based or not) was non-existent during the most of the first century Hijrah.¹³⁴ This assertion is echoed by Hallaq who maintains that “evidence from the early sources

¹³¹ Well-known Companions and the second and third caliphs.  
¹³³ Schacht, supra note 86, p. 27.  
¹³⁴ Ibid., p. 19.
appears to support the view that the legal authority during the better part of the first Islamic century was in no way exclusively Prophetic.\footnote{135} The jurisprudential activity of Successors led to the formation of regional centres of Sunnah based on their understanding of Sunnah that was transmitted to them via the Companions. Thus, the regional Sunnah was ultimately deriving its legitimacy and authority from the Companions rather than from the Prophet.\footnote{136} This geographically based Sunnah was then diffused throughout the region itself. It, in turn, served as a foundation on which the practice of the people was based or was normatively assessed against.\footnote{137}

As such, the Sunnah-based practices of Muslim community as a whole within a particular region also became embodiments of Sunnah as well as sources and perpetuators of Sunnah for subsequent generations.

The use of the practice of Muslims/believers in Medina as additional sources of Sunnah, argues Dutton, features prominently in Mālik’s Muwaṭa and is described as ‘\textit{ażāl}’.\footnote{138} This ‘\textit{ażāl}’ was based upon the Qur’ān, Sunnah dating from time of the Prophet and an element of ‘\textit{ra’y}’\footnote{139} of later authorities which merged into it.\footnote{140} Although what we just said pertains primarily to Medina, similar processes in other major regional schools such as Kufa, Basra, Syria and Egypt were taking place.\footnote{141}

For example, notion of practice as indicator of Sunnah is also evident in Abū Yusuf’s writings who lived in Kufa. The practice-based Sunnah derives,

\footnote{135} Hallaq, supra note 61, p. 43.\footnote{136} \textit{I.e.}, Companions’ interpretation of Sunnah of the Prophet, see Schacht, supra note 86, pp. 32-33; also Hallaq, supra note 61, p. 102. This is further supported by Souaïia’s characterisation of Islamic law as being accretive in nature: see Souaïia, supra note 18.\footnote{137} Dutton, supra note 51, p. 36.\footnote{138} Ibid., pp. 37-41, 165.\footnote{139} Personal judgement/opinion—we shall investigate the changes in the meaning and usage of this term shortly.\footnote{140} Ibid., p. 35; cf., Guraya, supra note 25, p. 34.\footnote{141} “...companions have spread throughout the new lands of Islam taking with them the knowledge of Qur’ān and Sunnah, and exercising their best judgement (\textit{yatahdīdīna bi \textit{ra’y}ībīn}) when they knew of no specific guidance on the matter... Furthermore the first three caliphs had been concerned to avoid dispute among the Muslim troops and had sent directives to them on even relatively unimportant matters in order to establish the din and prevent dispute over the Book and Sunnah, but they never told anyone to go against the practice of any of the companions, whether in Egypt, Syria or Iraq...”, Dutton, supra note 51, p. 175; for regional differences in ‘Sunnah’ see also Al-Azami, supra note 50, pp. 58-80; Guraya, supra note 25, pp. 54-78, on what he refers to as “Ancient view of Sunnah and Ḥadīth”.
in his view, from “those norms which were recognised as such by the Muslims in general, were accepted by the fuqahāʾ and which had come down through reliable and learned people (al-sunnah ‘an rasul Allāh ‘an al-salaf min ashabih wa min qaum fuqahā’).” Similarly, early Ibadism filtered Ḥadith on the basis of al-ḥaqq al-maʿrif fi kitāb Allāh wa sumūt nabīyyihī wa athar al-salihīn, i.e. al-ʿimma wa l-ulama. Although in the context of Iraq the notion of Medinian ‘amal-based Sunnah did not exist, their concept of Sunnah was ultimately derived from the living practice of Companions who migrated from Medina to Iraq and was not expressed in Ḥadith.

In Motzki’s investigation of the development of early Islamic jurisprudence in Makkah it is argued that for a Successor Ata ibn Rabah’s (d. 115 AH), one of the disciples of Ibn Abbas (d. 67 AH), the founder of the Mekkan law school:

…die Idee vom Vorbildcharacter der sunna des Propheten und ihrer moeglichen Funktion als Rechtsquelle in Erganzung zum Koran in sein Denken noch nicht Ein gang gefunden hatte oder—falls das schon der Fall war—Ata noch nicht die Notwen dingkeit verspurtete, dies im Einzenlen zu belegen. Diese Annahme wird auch durch Atas Gebrauch des Wortes sunna gedeckt, das bei ihm den Brauch im Sinne der aner kannten gesellschaftlichen Praxis in Melka bezeichnet.

Similarly, in Syria the notion of Sunnah as conceptualised by their region’s main jurist, Awzaʾi, was understood in terms of an uninterrupted practice of Muslims beginning with the Prophet and maintained by the early caliphs and later scholars… without adducing of Ḥadīth.

Therefore, “each locale, from Syria to Iraq to the Hejaz, established its own legal practices on the basis of what was regarded as the Sunnah of the forefathers, be they Companions or the Prophet.” Summarizing the


144 Hallaq, supra note 61, pp. 106-107.

145 H. Motzki, Die Anfaenge der islamischen Jurisprudenz, (Deutsche Morgenlaendische Gesellschaft, Franz Steiner Verlag, 1991) 115, emphasis is mine.

146 Hallaq, supra note 61, p. 107; Guraya, Origins, 30.

147 Ibid., p. 107.
nature and the scope and Sunnah's method of transmission at this point in
time, Wheeler asserts:

The authority of the sunnah as prophetic practice, as conceived by the local second
century authorities, was guaranteed by a continuous tradition of practice through
generations going back to the prophet. It was defined as an interpretation having an
authority that was conveyed by the link it represented with the prophetic past. Being
regarded as either common practice or logically consistent practice, the content of
sunnah was considered prophetic on account of its receipt from these previous gen-
erations or derivation on the basis of these generations' practice.148

In terms of its epistemological value, this practice-based Sunnah was, like
the Qur'ān and unlike a majority of Ḥadīth, a mutawātir-based source of
knowledge.149

Since Sunnah, in its narrowest edified sense, could only literally be
applied to those practices and behaviours that surfaced and were estab-
lished during the Prophet's lifetime, the scope of that body of Sunnah was
rather limited and was increasingly in need of interpretation and extra-
polation. This interpretative need of Sunnah, based on the same characteristic
of the Qur'ānic text itself, could be satisfied by identifying it150 with certain
more abstract principles said to be in accordance with the spirit of the
Qur'ān and Sunnah,151 and which could be deemed relevant to a new case.
As well, its scope could be expanded by legitimising the use of personal
judgement based on reason (ra'y).152

The former is termed 'applied reason or analogy' (qiyās) and the later
'pure reason' (ra'y/ijtihād). Decisions based on these thought processes

148 Wheeler, supra note 55, p. 43. On the meaning of mutawātir see below.
149 Dutton, supra note 51, p. 36. At this stage, the ethico-religious and values-based
aspects of Sunnah embedded in the Prophet's rational embodiment of the Qur'ānic
Weltanschauung started to receive less attention in the overall understanding of the concept
of Sunnah by Muslim scholars as Sunnah came to be increasingly identified with 'āmal or
practices extant in the communities. This distorted the nature and the scope of the concept
as it was understood by the Prophet and the first generation of Muslims. Instead what
I refer to as sunnah akhlaqiyyah component was increasingly derived from sprouting Ḥadīth
literature.
150 And therefore the concept of Shari'ah as well.
151 This is exactly what Crone and Hinds suggest about how Sunnah was conceptualised
up until the Abbasid Caliphate of Al-Mahdi (158-169 AH/775-785 CE); see supra
note 32, pp. 66-96.
152 Other sources included pre-Qur'ānic Arabian custom and laws and practices in newly
conquered lands; see Hallaq, supra note 4, pp. 3-15; Hallaq, supra note 61, p. 32.
would also become parts of Sunnah. Indeed, in this context, Guraya in his close analysis of the concept of Sunnah in early Islam maintains that speculative free thought was considered as genuine, valid and authoritative constituent of Sunnah. This is exactly what happened when the first four caliphs introduced certain penalties, for example, in cases of alcohol prohibition and punishment that had neither a direct precedent in the Qur’ān or in the Sunnah. These practices were, however, later considered as Sunnah for two reasons. Firstly, they were consistent with the concept of the spirit of Sunnah because of Sunnah’s conceptualisation in abstract value-oriented terms. Secondly, and as a direct result of this understanding of Sunnah, the caliphs themselves as well as other Companions and fuqahā, were considered sources as well as perpetuators of Sunnah. In this context Abbott asserts that her investigation of early Arabic literary papyri has led her to conclude that:

[The ] term sunnah [which] frequently alternates with the plural Sunān, is not limited to the example or conduct of Muhammad but applies also to at least the caliphs Abu Bakr and Umar I and to a number of outstanding men who held high office under their three heads of state.

Indeed, the basis of Caliphal Law throughout the Umayyad period (up to 132 AH/750 CE) was based on the Qur’ān, Sunnah in a sense of general, good practice and ra’y, so that the Umayyad caliphs were “free to make and unmake Sunnah as they wished”. Additionally, and importantly, “the concept of Sunnah was not in itself an obstacle to legal innovation”. Ra’y as well as qiyās were essentially seen as legitimate, pragmatical tools in extrapolating law and had a positive connotation to them. Ansari considers that the personal judgements of jurists “which were considerably influenced by subjective considerations… [and] accompanied by a broad understanding of the spirit and goals of Islam, played a fairly important

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153 Guraya, supra note 25, “Introduction”.
154 Ibid., p. 8.
155 In other words, if a behaviour, norm or practice was considered to be just or righteous and was not directly linked to a Qur’ānic or Sunnahic precedent and justice/righteousness was equated with the spirit of Sunnah (and the Qur’ān) then that behaviour, norm or practice was considered to be a Sunnah.
156 Crone and Hinds, supra note 32, p. 55. In this context, Juynboll asserts that “An Umayyad’s judgement is positively labelled a Sunna”: Juynboll, supra note 46, p. 103.
157 Ibid.
158 Ibid., p. 15; Hallaq, supra note 61, p. 53; Guraya, Origins, pp. 115, 119.
part in the early Islamic legal thinking”.

Established juristic authorities such as Abdallah b. Abbas (d. 68 AH), Hasan al-Basri (d. 110 AH) and S. ibn Musayib (d. 90 AH) were representatives of this method. This was only possible if both Qurʾān and Sunnah were conceptualised in such terms. Moreover, Schacht maintains that ṭayy has been an integral part of regional Sunnah and an essential element of Islamic thought from its very inception. Hallaq, furthermore, asserts that the meaning of ṭayy during the entire first century Hijrah and the portion of the next “was a major sources of legal reasoning and judicial rulings” and furthermore was “very close to and, in fact, could not be separated from Sunnah.” Similarly, Guraya in his examination of Mālik’s concept of Sunnah identifies sound reason and independent considered opinion (ṭayy) as being constitutive of Sunna.

This ṭayy, in words of Rahman, produced an immense wealth of legal, religious and moral ideas during the first one and a half centuries approximately . . . [and] the product of this activity became rather chaotic, i.e. the Sunnah of different regions—Hejaz, Iraq, Egypt—became divergent on almost every issue of detail”. Not only were there differences in doctrines between various regions but also within them.

Juynboll summarises the methods of Sunnahic development during the first century Hijrah by saying that two distinct manners were evident: that is by resorting to individual judgement (common sense or ṭayy) and by the quest for, and transmission of, a precedent. In a similar tone Hallaq asserts that “as late as 90s AH and some decades after qadis (jurists) relied on three sources of authority in framing their rulings: Qurʾān, Sunān (including caliphal law) and discretionary opinion (ṭayy)”.

Again, it is

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159 Ansari, supra note 54, p. 153.
160 Motzki, supra note 145, p. 256.
161 Schacht, supra note 86, p. 35.
162 Hallaq, supra note 61, pp. 52-53.
163 Ibid.
165 Rahman, supra note 118, p. 139; cf., Wheeler, supra note 55, pp. 19-43.
166 Motzki, in the context of the beginnings of the development of Islamic jurisprudence in Makkah says: “Die Rechtsgelehrsamkeit in Mekka war trotz eines Konsenses in vielen Fragen nicht uniform”, supra note 145, p. 258.
167 Juynboll, supra note 46, p. 33; cf., Ansari, supra note 142, pp. 495-496.
168 As understood in accordance with what was said above.
169 Hallaq, supra note 61, p. 44.
important to note that these sources of Sunnah were entirely independent of any form of written documentation (i.e. Ḥadīth).

Our discussion on the evolution of the concept of Sunnah leads us now to the next generation of Muslims, that of the Successors’ Successors.

3.2.2.3. Sunnah at the Time of the Successors’ Successors

With the end of the first and beginning of the second century, significant changes to the concept of Sunnah in the minds of the third generation of Muslims started to develop in terms of its source, mode of transmission, methodological and epistemological parameters (that is, its nature, sources and scope). In this context Juynboll asserts that:

\[\ldots\text{the approximate date of origin of the narrowing down of the concept of Sunnah, formerly comprising the Sunnah, or exemplary behaviour, of the Prophet as well as his most devoted followers, to the exemplary behaviour of Prophet only… [occurred] towards the end of the first century of the Hijrah and was conceived at the time of Caliph Umar ibn Abd al-Aziz (99-101).}\]

Hallaq dates this shift somewhat earlier by saying that the isolation of Prophetic Sunnah from other Sunān began to emerge by the late 60s AH.

The reasons for this process began in the second half of the first century. The continued territorial expansion of Muslims meant that ever more complex legal and governing processes and institutions had to be put in place within the enlarging boundaries of the area under the Muslim rule. The notion of the administrative and social practices being based on the Qurʾān and Sunnah were still operative and engrained in the minds of those Muslims who conquered new lands.

A general perception that the expanding Muslim empire would become organically detached from the Qurʾānic and Sunnahic teachings was becoming widespread. This realisation had already prompted some Muslims to collect and gather a bound (mushaf), official version of the Qurʾān, a task that was largely achieved during the reign of the third Caliph
Uthman (d. 35 AH). Additionally, a change in political fortunes and the subsequent rise of the Abbasid dynasty (132 AH), that used the concept of custodians of the Prophet's Sunnah through his uncle's cousin Abbas to justify and legitimise their political power, created an ever greater impetus for a more systematic collection of, and searching for, Sunnah in any form. This, in turn, gave rise to a talab al-ʿilm phenomenon which gradually started to transform behaviour-practice-based regional Sunnah into written-based ‘Sunnah’. Another factor that started to give shape to the later concepts of an ‘authentic Hadith’ was the partisan tensions that emerged within the nascent Muslim community. These brought serious schisms based on conflicting claims to the successorship of the Prophet's political authority as well as certain theological controversies prevalent at the time.

These two divergent, powerful trends resulted firstly in practice-based Sunnah being increasingly clad in the mantle of written-based predominantly purely Prophetic Sunnah, and secondly in the development of more stringent mechanisms in establishing the authenticity of written-based Sunnah, especially in terms of the mode of its transmission, i.e. ʿulūm al-isnād. The custom of reliance on regionally practice-based Sunnah was increasingly becoming challenged by a growing corpus of written-based

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173 The traditional classical as well as Western accounts of the arrangement and collection of the Qurʾān have been challenged by the Islahi school of thought in Pakistan who are of the view, based on careful Qurʾānic analyses and that of traditional historiographies such as Tabaqat of Ibn Saʿad and Tārikh of Al-Tabari, that the Qurʾān has been arranged and collected by the Prophet before he died. See www.understanding-islam.org and www.studying-islam.org.

174 Abbott has identified a number of other specific factors which favoured the recording of Hadith including the socio-economic ambitions of the non-Arabs attained by their involvement in religious sciences, the threat and fear of heresy and religious innovation (bīdaʾah) creeping into the tradition, the firm establishment of family isnād, the expansion of journeys (riḥlah, talab) aimed for collection of reports and of the profession of the warraq (book seller/publisher, the increase in student population and the progressive lengthening of isnād. Nābia Abbott, Studies in Arabic Literary Papyri, Qurʾanic Commentary and Tradition, Vol. 2, (Chicago: University of Chicago Press) 1967, p. 56.

175 Journeys undertaken by pious Muslims who wanted to preserve the Prophet’s words and put them in writing. Also referred to as rihlah. On the extent of these journeys and how they contributed to the development of the early Islamic written tradition, see Abbott, ibid., pp. 40-57.

176 The same epistemologico-methodological changes can also be observed in the science of Qurʾānic commentary. For more on this, see J. van Ess, Hadith und Theologie, Berlin, 1975, p. 185.
Sunnah as the by-product of ḥadīth al-ʿilm. The objectives of this search for knowledge/ʿilm were such as to collect as much information about the Prophet as possible in all spheres of his life. No qualitative distinction between the Prophet's role as a Messenger, judge, ethico-moral reformer, family man or statesman was made, and no careful consideration was given to the fact that this could conceptually change the nature and the scope of the concept of the Qurʾān and Sunnah and their interrelationship that existed during the first three generations.

The "epistemological promise", to use Prof. El-Fadl's phrase, of having access to the actual words of the Prophet himself in a documented form was much more attractive and "logical" than the regional concept of Sunnah. One could argue that it was considered superior to it for several reasons by many of those who accepted its epistemologico-methodological premises. Firstly, the oral and then written in nature of proliferating 'Sunnah' was more tangible than one based on a vague behaviourally practical or abstract values- or objective-based concept. Secondly, written-based Sunnah was more voluminous as it was collected across all regions of the Muslim empire rather than being limited to just one area. Thirdly, it was more specific and dealt with a broader subject matter than a practice-based Sunnah, which was often based on the spirit of the Qurʾān and Sunnah and was more difficult to verify. Fourthly, most of the reports were claimed to be going back to the Prophet, while the immediate source of practice-based Sunnah were the Successors and the practice of the community at the time. Fifthly, the practice of the regional community as a source of Sunnah was sometimes problematic because not all community practices were Sunnah-based so that scepticism about all of the community practices started slowly to creep in. Lastly, rather than relying on the general practice of the entire community, many of whom were ignorant of the complexities pertaining to the value and preservation of this newly formed concept of written-dependent Sunnah, one was presented with a chain/isnād of several transmitters, many of whom were held in high esteem and were said to have had an unbroken ‘link’ to the Prophet himself and, as such, qualified as Sunnah's custodians.

Despite this paradigm shift in the way Sunnah was becoming to be viewed, the broader view of Sunnah still existed throughout the second century. When we examine the period of founders of the personal schools

177 Cf. Ansari, supra note 142, pp. 494-496.
178 Ibid., p. 496.
of thought\textsuperscript{179} such as Mālik (d. 179), Auzaʾī (d. 157), Abū Ḥanafī (d. 150) and his disciples Abū Yusuf (d. 182) and Shaibanī (d. 189) we notice that a qualitative, conceptual distinction between Ḥadīth and Sunnah was still being made.\textsuperscript{180} In Abū Ḥanafī’s letter to Uthman al-Batti (d. 143) the usage of the word Sunnah only makes sense as a concept referring to “normative way of the early community as a whole”\textsuperscript{181} (rather than that of the Prophet himself only in the form of Ḥadīth). According to Abd al-Rahman b. al-Mahdī (d. 198) who, when talking about three well-established authorities (fuqahā) of Muslim community at that time namely, Al-Thawrī (d. 161), Al-Auzaʾī (d. 157) and Mālik ibn Anas (d. 179) characterises the second as Ḭāmid fī l-sunnah wa layta bi-Ḥāmid fī l-ḥadīth (recognised authority on questions pertaining to Sunnah but not Ḥadīth) in contradistinction to the first who was authority on Ḥadīth but not on Sunnah and the third as authority on both Sunnah and Ḥadīth (Ḥāmid fī ḡāma jamiʿa).\textsuperscript{182} Abū Yusuf, a disciple of Abū Ḥanafī was also known as a sāḥib ḥadīth wa sāḥib Sunnah\textsuperscript{183} (“custodian or disposer”, lit. owner/proprietor of Ḥadīth and Sunnah). Ahmed Hasan in his The Early Development in Islamic Jurisprudence notes a similar observation when he says:

...it is not necessary that Sunnah be always deduced and known from a Ḥadīth. Early texts on law show that the term Sunnah was used in a sense of the established practice of the Muslims claiming to have come down from the time of the Prophet. That is why Sunnah sometimes contradicts Ḥadīth and sometimes Ḥadīth documents it.\textsuperscript{184}

Therefore, existence of Ḥadīth did not mean an a priori dispensing with the earlier concept of Sunnah. Moreover, as we shall subsequently argue, we can infer from Hasan’s above-cited statement that the practice-based Sunnah was used as a criterion for distilling Sunnah congruent from Sunnah non-congruent Ḥadīth.

\textsuperscript{179} This is the second stage in the development of madhāhib; see C. Melchert, The Formation of the Sunni Schools of Law in the 9th-10th Centuries CE (Leiden: Brill, 1997).

\textsuperscript{180} Dutton, supra note 51, p. 168; We have already referred to Mālik’s view of Ḥadīth-independent Sunnah as being “normative pattern of life established by the Prophet, put into practice by Companions, and then inherited as ‘amal by the Successors and the Successors of Successors down to his time”. Cf., Ansari, supra note 54, pp. 152-157.

\textsuperscript{181} Juynboll, supra note 46, p. 104.

\textsuperscript{182} As cited in Shah Walli Allah, Al-Musawwa min Ḥadīth al-Muwatṭa, Makkah, 1351 AH, p. 15.

\textsuperscript{183} As cited in Goldziher, supra note 36, vol. I, p. 15.

\textsuperscript{184} A. Hasan, Early Development of Islamic Jurisprudence, Islamabad, 1970, p. 87.
In the context of the definition of Sunnah during this time of personal schools of thought,\(^1\) we need to remember that there now existed two significant and accepted modes of its transmission, namely practical and Ḥadīth-based. These two modes of transmission of Sunnah were based on two different epistemologico-methodological foundations. The reasons for this were the existing and acknowledged fabrications and contradictory elements becoming evident during the process of formulation of written-based Sunnah, and the possible contamination of practice-based Sunnah with the general practice of community. Therefore “the concern of all ancient [i.e. personal] schools of thought was thus to know what represented the genuine, normative Sunnah of the Prophet and his Companions”.\(^2\) Both, according to this view, however, could embody Sunnah.

The Iraqis referred to the Sunnah which functioned as a “Sunnah filter” as al-sunnah al-mahfūla al-mā’rufa, the well-established Sunnah,\(^3\) and it was this Sunnah that was accepted as normative by the consensus of the majority of ‘ulama referred to as ījmā’”\(^4\). Mālik ibn Anas referred to it as sunnah ‘indana or at times ‘amal and it acted as the final arbiter and ultimate proof of the Prophetic practice.\(^5\) Some parts of this ‘amal was considered to be Sunnah whilst others were not. Guraya who investigated Mālik’s usage of the concept of Sunnah in his Muwatā has determined the actual constituents of Sunnah according to Mālik as follows:

(i) the religious and ethical principles introduced by the Prophet which, in due course of time, had acquired the status of recognised Islamic

\(^{1}\) The regional schools of law, which represent the first stage of development of madhābih, were followed by a second stage of development termed ‘personal schools of law’ because they were founded on the authority of an individual such as Abū Ḥanafā, Mālik, Shāfi’, and Ibn Ḥanbal, hence Ḥanafī, Mālikī, Shāfi’ī and Ḥanbalī madhābs. The fact is that, in most cases, the founders of these schools of thought were actually the disciples of these authorities. For more, see Melchert, supra note 179.


\(^{3}\) Shāfi’, Kitāb al-Umm, op. cit., p. 314; cf., Hallaq, supra note 61, p. 69.


\(^{5}\) Ibid., p. 105; cf., Guraya, supra note 25, pp. 177-183. Schacht refers to this sunnah madiyya as the “living practice of ancient schools of thought” and considers it to be the major sources of Islamic jurisprudence in the first one and a half centuries Hijrah. For an excellent overview of Schacht’s understanding of the living practice, see Z. Maghen, “Dead Tradition: Joseph Schacht and the Origins of ‘Popular Practice’ “, Islamic Law and Society, 10/3 (2003) 276-347.
religious norms and the accepted standard of conduct [al-qawā’id al-kulliyah]
(ii) sound reason and independent considered opinion (ra’y), and
(iii) legal and moral reasoning.\textsuperscript{190}

Dutton defines this Sunnah as ‘a generally agreed core of experience which constituted the community’s knowledge of what it meant to live as a Muslim’,\textsuperscript{191} ‘Abd Ar-Rahman ibn Mahdi (d. 198) is also reported to have not only made a distinction between Sunnah and Ḥadith but was an advocate of the superiority of Sunnah based on the ‘amal of Medina over that of Ḥadith-based Sunnah asserting that “A preceding Sunnah from the Sunnah of the people of Madinah is better than Ḥadith”.\textsuperscript{192} Similarly, the Hanafi Judge Isa b. Aban (d. 221 AH) argued that the early Muslim community had rejected ahad ḥadīth which contradicted the Qur’ān or established Sunnah and used reason as the ultimate arbiter for judging the veracity of a report and not the isnād.\textsuperscript{193}

The regional Sunnah we described above was, according to Rahman, constantly re-defined and re-crystallised based as it was on two methodological tools: ijtihād-qiyās (personal opinion thought to be in accordance with the broad, general concept of regional Sunnah termed al-sunnah al-ma’rufa) and ijmā’ whose ultimate anchoring point was the Prophet.\textsuperscript{194}

The prevalence of this fundamentally same attitude to Sunnah at this time period is demonstrated by the fact that the bulk of Al-Shaibanī’s (d. 189) last work entitled Siyar al-Kābir consists of his own ijtihād. This was based on his scrutiny of works of earlier generations rather than any literal adherence to Ḥadith.\textsuperscript{195}

As far as the use of ra’y based on ‘aql during the second century AH is concerned, a similar narrowing down of its legitimacy, scope and connotation was starting to take place, but this process, just like in the case of

\textsuperscript{190} Guraya, \textit{Origins}, pp. 115, 119.
\textsuperscript{191} Ibid.
\textsuperscript{192} Al-Qayrawani, \textit{supra} note 104, p. 26.
\textsuperscript{193} Abū Bakar al-Jassas, \textit{Uṣul al-Jassas}, vol. 1, Muhammad Tahir, ed. (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2001) 504 ff, 2, pp. 3-6, 14.
\textsuperscript{194} Rahman, \textit{supra} note 118, p. 140; cf., Calder, \textit{The Origins}, p. 55.
\textsuperscript{195} Ibid. Perhaps the only notable difference is that these authorities had to deal with growing number of Ḥadith and were under a growing influence of them as potentially and contingently (upon regional Sunnah-based criteria) embodying Sunnah but not an \textit{a priori} acceptance.
Sunnah, was incomplete. Reinhart argues that throughout the Abbasid era, which includes the period under question, the Islamic worldview:

... was complemented by religious ideology arguing that all human kind share[d] a kind of moral common sense, the ‘aql, which has always enabled humans to know the good from detestable. In this process of trying to account for this universal knowledge, scholars sought to locate acts, values in the act itself and the valuation of it in the ‘aql... Muslim Revelation, consequently, was understood as a supplementary form of knowledge, one that confirmed ‘aql...197

As we previously mentioned, for example, numerous fuqahāʾ, who died during the second and the third decade of the second century, relied heavily on exercising personal opinions based on reason/‘aql rather than being involved in Ḥadīth transmission. This trend was evident also among many second or even third century authorities who belonged to the Aḥl al-Sunnah (or were given the title of šāhib sunnah) but who were not necessarily associated with proficiency and accuracy of Ḥadīth transmission.199

At the time of Ibn Al-Muqaffa (d. 140), the positive connotations of raʾy were still in operation although they had started to develop a negative connotation as well.200 As the Ḥadīth body of literature was gradually expanding, views not based on these now entirely textual sources of Sunnah increasingly started to denote ‘arbitrary opinion’ in the minds of those engaged in the process of written documentation of Sunnah.201 This mixed trend of good and bad raʾy was still evident at the time of Abū Yusuf (d. 182) and Shaibanī (d. 189). However, since Sunnah was increasingly associated with literal adherence to proliferating Ḥadīth, which were thematically diverse and quite comprehensive, in contrast to being interpreted against the background of ‘amal-based Sunnah or sunnah al-maʿrufah, conceptually Sunnah’s nature was becoming more edified and its scope was ever more narrowly defined.

196 Rahman maintains, e.g., that Shaibani “has often recourse to istiḥbān (juristic preference) in opposition to earlier precedents and [that he] exercises absolute reasoning”; see supra note 118, p. 140.
197 Reinhart, supra note 89, p. 178.
198 Juynboll, supra note 101, pp. 36-37; cf., Crone and Hinds, supra note 32, p. 75.
200 Ansari, supra note 19, p. 289; Raʾy seems to have dominated jurist thought until the middle of the second century; Hallaq, supra note 61, pp. 75-76; see also Ansari, supra note 54, p. 159.
201 Ibid.
The growing insistence on a literal following (bi-lā kaifa) of ‘authentic Ḥadith’, as the only legitimate sources and perpetuators of Sunnah, its superiority as a tool of Qur’ānic tafsīr (exegesis) at the cost of non-written-based Sunnah, and reason-based opinion (ra’y) began to considerably narrow down the epistemologico-methodological playfield of both the Qur’ān and Sunnah and therefore the nature and the scope of the concept of Shari‘ah. This methodological concept of bi-lā kaifa (literally ‘without asking how’) was based on the premise that whatever is written in the Qur’ān as well as in ‘authentic Ḥadith’ is not allowed to be contextualised, interpreted in a metaphorical sense or based on certain non-textual epistemological and methodological tools such as notion of ethical objectivism, the use of reason or concept of the spirit and rationale (qasd) of the Qur’ān and Sunnah which were, as we saw earlier, the foundation of Qur’ānic and Sunnahic teachings as characterised by the Prophet’s embodiment of the Qur’ānic message put into practice and perpetuated by the first three generations of Muslims.

A significant impetus to this view of the epistemologico-methodological superiority of Ḥadith-based Sunnah to that of al-sunnah al-ma‘rifah was provided by Shāfi‘ī who belonged to the fourth generation of Muslims.

3.2.2.4. Sunnah at the Time of Shāfi‘ī and Beyond

In the previous part of our discussion we alluded generally to the forces which were contributing towards the growth of the written recordings of (reportedly) Prophet’s actions and words and the absorption of non-written-based Sunnah into them. We also saw that a broader and narrower version of Sunnah were co-existent with an increased tendency for ‘Ḥadith-ification’ of regional Sunnah. We shall refer to these factors as mechanisms of traditionalisation. Calder describes this process as a transition from a discursive tradition to a hermeneutic tradition (purporting to derive the law exegetically from the Prophetic sources). Ansari, similarly, talks in terms of the shift towards “an objectively justifiable juristic theory” at the time of Shāfi‘ī. Therefore, those religious authorities that fully embraced and adhered to this narrower epistemologico-methodological definition of Sunnah (Sunnah equals ‘authentic Ḥadith’) are conventionally referred to

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202 Norman Calder, Studies in Early Muslim Jurisprudence (Oxford: Clarendon Press), 1993, p. 8. He also suggests, in the same sentence, that this process “was a lengthy and complex one”.

203 Ansari, supra note 142; O. Shafi‘ī, see infra.
as traditionalists (Ahl al-Hadîth) while others who remained faithful to the broader definition of Sunnah, which included an element of ra'y, were given the title of rationalists (Ahl al-Ra'y). 204

The increasing epistemologico-methodological constraints on Sunnah emerged as a by-product of this traditionalisation towards the end and the beginning of the second century with the process of systematic collection and criticism of Hadîth. 205 These efforts bore fruit in form of the collection of large quantities of purely written-based ‘Sunnah’ that were claimed to have originated from the very mouth of the Prophet. This ‘Sunnah’, although originally oral in nature was in due course completely written-based and came from every corner of the Muslim empire. 206 Its authenticity was guaranteed by an increasingly ‘healthier’ isnâds as developed by mubahithiûn. 207 The champion of this definition of ‘Sunnah’ was the famous jurist Shâfi‘î (d. 204). Shâfi‘î’s concept of Sunnah was:

Established by traditions going back to the Prophet, not by practice or consensus. [Apart] from a few traces of the idea of al-sunnah al-ma‘rufah in his earlier writings, Shâfi‘î recognises the ‘Sunnah of the Prophet’ only in so far as it is expressed in traditions going back to him. 208 This is the idea of Sunnah we find in the classical theory of Muhammadan laws, and Shâfi‘î must be considered as its originator there … Shâfi‘î restricts the meaning of Sunnah so much to the contents of traditions from the prophet, that he is inclined to identify both terms more or less completely. 209

Thus, it was with Shâfi‘î, a member of the fourth generation of Muslims, that the methodologico-epistemological beginnings of the coalescing of Sunnah with Hadîth came into being for the first time. Up to this point in time, prevalent ethico-religious character of Sunnah being interpreted,
crystallising and re-interpreted by the fuqahāʾ in the light of ‘amal was becoming ever more legalistic and written in nature. The fuqahāʾ of the regional and personal schools of law (as we briefly outlined and shall deal with in more detail in the next part of the study on Ḥadīth-dependent Sunnah) developed their own hermeneutic of Sunnahic definition and interpretation based on their broader hermeneutic orientation which, in the eyes of Aḥl al-Ḥadīth, suffered from numerous defects.210 As such, Shāfiʿī often accused these fuqahāʾ, such as Abū Yusuf and Mālik, of ignoring or interpreting away the Ḥadīth in favour of their own school’s doctrine or that of their own raʾy.211

A faqīḥ who belonged to a personal school of law was increasingly presented with a dilemma either of following the school’s doctrine of Sunnahic hermeneutic or that of Shāfiʿī.212 A dilemma was made much more difficult if the faqīḥ had to judge a case that did not have a direct precedent in his school’s doctrine but was found in an isolated213 Ḥadīth going back to the Prophet pertaining to the matter at hand, or if these two legal tools were contradictory.

Rather than opting for acceptance of a ‘raw’ Ḥadīth unknown to previous authorities belonging to same school, the majority of fuqahāʾ belonging to a particular school of thought, especially those of lower status, were faithful and obedient (muqallid) to their school’s hermeneutic.214 In discussing this, Brown astutely observes that, with the exception of Ḥanbalism, the theoretical triumph of the Shāfiʿī’s concept of Sunnah affected the personal schools of law only “peripherally”. The allegiance to the school’s doctrine of legal theory, he further maintains, was based on

210 See Calder, Origins, Ch. 9, on the development of hermeneutical skills in various schools of thought.
211 See, e.g., Schacht, supra note 86, pp. 58-80.
212 For a detailed discussion on this, see B. Sadeghi, The Structure of Reasoning in Post-Formative Islamic Jurisprudence, Ph.D. Thesis, Princetown University, 2006.
213 A report that was transmitted by one or only few individuals in contrast to mutawātir Ḥadīth which was transmitted by a large number of narrators. See below for a more detailed definition of isolated (abād) and successive (mutawātir) Ḥadīths.
214 For example, schools of thought/law gained high prestige in society and were awarded a great deal of authority and reverence to their founding fathers; for an exhaustive analysis of this subject, see W. Hallaq, Authority, Continuity and Change in Islamic Law, (Cambridge: Cambridge University Press, 2001) cf., Sadeghi, The Structure of Reasoning in Post-Formative Islamic Jurisprudence.
consensus as the ultimate criterion in its decision-making processes and not on the Ḥadīth. For example, Abū Yusuf, Shāfiʿī’s older contemporary, is quoted as having said:

So make the Qur’ān and well-known Sunnah (al-sunnah al-maʿrufah) your imam and guide. Follow and judge on that basis whatever matters come to you that have not been clarified for you in the Qur’ān and Sunnah . . .

adding:

So beware of irregular (shadhdh) Ḥadīth and go by those Ḥadīth, which are accepted by the community and recognised by, the fuqahā [as valid] and which are in accordance with the Qur’ān and Sunnah. Judge matters on that basis".

Thus this “sunnaic-concensual practice”, to use Hallaq’s terminology that was considered binding was seen as “determinative of Ḥadīth”. As Brown writes, these personal schools of thought (madhahib) “had given assent in theory to the importance of Ḥadīth whilst resisting its thorough application” creating a tension between Shāfiʿī’s definition of Sunnah and “the actual doctrine of the madhhab”. The consolidating Ahl al-Ḥadīth movement, however, increasingly questioned these practices as being un-Sunnahic, throwing the doors wide-open for the concept of ihy al-sunnah, revivification of and return to Prophetic Sunnah, by means of a literal adherence to ‘authentic Ḥadīth’ without any intermediaries.

Shāfiʿī’s methodological innovation did not only pertain to Sunnah but also to the entire evolving legal theory. To him is attributed the title of the

215 This consensus should not be confused with the later definition of it in form of ijmāʿ but should be understood in terms of the agreed living practice constituting Sunnah. Cf. Hallaq, supra note 61, pp. 110-112.

216 Brown, supra note 2, p. 20.


218 Hallaq, supra note 61, p. 110.

219 For the sake of simplicity, madhhab is rendered here as schools of thought/law. For its various definitions and evolution, see Melchert, “Introduction”, supra note 179.

220 Brown, supra note 2, p. 20.
first scholar to develop a systematic model of law derivation, and in many ways he was considered a father of Islamic jurisprudence.²²¹

The efforts of Shāfiʿī to systematise and develop a more coherent model of legal theory by making Ḥadīth the only vehicle of perpetuation and sole repository of Sunnah, supported by Abl al-Ḥadīth, resulted in the further consolidation²²² of existing personal schools of law such as the Mālikī, Hanafī and later on development of Shāfiʿī and Abl al-Ḥadīth madhhabs.

Shāfiʿī's hierarchical legal theory set up for purposes of defining the epistemological boundaries and methodological procedures for derivation of positive law was, apart from the Qurʾān and Ḥadīth-based Sunnah, founded on ijmaʾ and on qiyas.²²³ The increasingly hierarchical structure of this entirely textual hermeneutic (the Qurʾān and Ḥadīth) meant, however, that non-textual sources (practice-based Sunnah/well-known Sunnah, abstract ethico-moral principles, ijmāʿ and analogy) were largely displaced and constrained by them. In relation to this phenomenon Wheeler asserts:

Writing about this epistemologico-methodological shift, Rahman comments that while in earlier times of the Companions the use of ijtihād slowly crystallised in consensus, giving rise to al-sunnah al-mawʿuẓa (well-known Sunnah), only to be again abolished and re-formulated in the light of new circumstances, the epistemological value of ijtihād was reversed in the post-Shāfiʿī period so that ijtihād was significantly constrained by the ijmāʿ.

²²¹ For a more detailed account of this, see Hallaq, supra note 4, pp. 21-29. For an exhaustive study of Shāfiʿī's usul al-fiqh approach, see J. Lowry, The Development of Early Islamic Jurisprudence (Shāfiʿī's Kitab al-Umm), (Leiden: Brill, 2007).

²²² I.e., Shāfiʿī's more systematic approach to law provided an impetus for the existent schools of law to develop their own hermeneutic that was more coherent, hierarchical and systematic in nature.

²²³ For a critique of this view, see J. Lowry, “Does Shāfiʿī have a ‘Theory of Four Sources of Law”, in: Studies in Islamic Legal Theory, B. Weiss, ed., pp. 23-50. For the critique of the critique, see ibid., pp. 389-391.

²²⁴ Wheeler, supra note 55, p. 18.
principle. All this contributed to “the conviction becom[ing] absolute that law is justified only if it can be related hermeneutically to Prophetic example, and not if it is presented discursively as emanating from an ongoing juristic tradition.” This, of course, is directly related to the fact that the epistemologico-methodologically broader concept of Sunnah prevailed and was considered superior to Ḥadīth during the formative period of Islamic thought. The coalescing of concepts of Sunnah with “authentic Ḥadīth” in theory was, to a large extent, clearly evident but not fully complete at time of Shāfi‘ī. The person who is to be accredited with this is one of the main proponents of Abl al-Ḥadīth Sunnahic hermeneutic, Ahmad ibn Ḥanbal (d. 241 AH). His approach to the concept of Sunnah is clearly demonstrated in his treatise Ṭābāqat-Ḥanbalah in which he states: “And the Sunnah with us are the āthār (narrations) of the Prophet” (wa l-sunnatu ‘indana atharu rasulillah). Moreover, in terms of epistemologico-methodological value and interpretational tool of Ḥadīth, Ḥanbal maintains that: “the Sunnah (i.e. athār/ḥadīth) explains and clarifies the Qur’ān (wa l-sunnatu 231 tufassir al-qur’ān) . . . there is no analogical reasoning in the Sunnah and the examples are not to be made for it” (wa laisa fi l-sunnati qiyās, wa lā tudhrabu laha l-amthal). Nor is it [Sunnah] grasped and comprehended by the intellects or the desires (wa lā tudraka bi-l-ʿuquli wa lā l-ahwa’). Thus, Sunnah was epistemologically and methodologically self-identified with Ḥadīth/ṣīhār and was considered as supreme commentary upon the already earlier discussed deutungsbefürpflichtung of the Qur’ān.

225 Rahman, supra note 118, pp. 145-146.
227 Making a distinction between the Shāfi‘ī and Abl al-Ḥadīth madhhīb speaks for itself regarding this fact.
228 Watt, supra note 9, p. 296; also see A. Ibn Ḥanbal, Foundations of Sunnah, (tr.) Amjad ibn Muhammad Rafiq, (Birmingham: Salaĥi Publications, 2003).
229 This treaty is found in or attributed to A. Ibn Ḥanbal, The Foundations of the Sunnah, A. ibn M. Rafiq (Eng. tr.) (Birmingham: Salaĥi Publications, 2003).
230 ṣīhār is usually a synonym for Ḥadīth, going back to the timer of the Prophet but also to the Companions; see Ansari, supra note 19, p. 256.
231 The word Sunnah is used here rather than Ḥadīth but given the previous statement it is to be understood in the sense of ṣīhār/ḥadīth.
232 As cited in Ibn Ḥanbal, The Sunnah, pp. 11-12.
233 See the first page of this article.
Since the *Ahl al-Hadīth* movement, unlike other schools of thought, considered both theological and jurisprudential sciences based on both Qur’ānic and Sunnahic interpretation completely dependable on literal, Hadīth-based Sunnah devoid of imput of reason, Hourani maintains that the inherently Qur’ānic principles of ethical *objectivism* and *partial rationalism* were transformed into ethical *volunterism* (ethical concepts understood only in terms of God’s will) and *traditionalism* (humans can never know what is morally right by independent reason, but only by revelation and derived sources), thereby changing the epistemologico-methodological character of both the Qur’ān and Sunnah. In this context, Reinhart asserts that “[A]t this point in time Islam itself became the standard and the congruence of reason and religion, which once served to justify religion, now, at best, justified reason.” Furthermore, the overriding principles of textual hermeneutic also meant “Revelation must categorically alter morality and epistemology…” and by inference “[B]efore or without Revelation there can be no moral knowledge.”

### 4. Conclusion

At the beginning of this article, two questions that guided its analyses were asked: namely whether the traditional definition of Sunnah that took root and established itself during the post-formative or classical period of Islamic thought reflect the way this term was understood during the pre-classical period. The answer, based on our above analyses is a clear ‘no’. We have seen that over a period of some 250 years Sunnah was semantico-contextually and epistemologico-methodologically fluid. Secondly, this article has attempted to explain which mechanisms were responsible for its conflation with an authentic Ḥadīth as defined by the classical *ʿulūm al-hadīth* sciences and when they became apparent. From the above chronological analyses of the concept of Sunnah we can conclude the

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234 God’s will, however, is always subject to the interpretation of those who engage in deducing meaning from the text; El-Fadl, *Speaking*, pp. 115-132.

235 There was a degree or variation on these issues between different as well as within schools of thought. For an exhaustive discussion on this issue, see Reinhart, *supra* note 89, pp. 11-37.


238 Ibid., p. 183.
following. At the time of the Prophet and the first three to four generations
of Muslims, the Qur’ān and Sunnah, in terms of their nature and scope,
were conceptually seen as one organic whole. In addition to the 'ibadah
dimension of Sunnah both of these sources of Islamic thought were
primarily seen in ethico-religious and objective or values-based concepts
and were reason inclusive. All these aspects of Sunnah could be formulated,
preserved and transmitted orally. The concept of Sunnah was conceptually
differentiated from that of Ḥadīth may it be in a form of sunnah al-maʿrufah
or that of sunnah madiyyah. With the process of what we have described as
traditionalisation, this concept of the nature and the scope of the concept
of Sunnah (and that of the Qur’ān) underwent important conceptual
changes. Severance of the symbiotic link between the Qur’ān and Sunnah
occurred, and, over time, its hermeneutical dependence on Ḥadīth-based
literature was largely engendered, thus changing conceptually its nature
and scope as it was understood during the first three generations of
Muslims.239 Secondly, the nature and the scope of the concept of Sunnah
was conceptually distorted and conflated with the concept of ‘a post-Shāfiʿī
authentic Ḥadīth’ which is how the contemporary Islamic majority
mainstream thought continues to conceptualise it to this day.

239 For more on this see, Duderija, “Methodology”, supra note 7.