

AL-MARGHĪNĀNĪ'S STYLE OF REASONING IN AL-HIDĀYAH AND HIS JURISPRUDENTIAL INSIGHT

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Abstract

Alāamā Marghīnānī was born in Ferghana in 511 A.H. His family was very well known for deep religious knowledge and spirituality. He received his early education from his maternal grandfather and father in Marghīnān. Then he took great advantage in raising his intellect and wisdom from the renowned scholars of the muslim world. His meetings and enlightened discussions with these scholars made him a famous Ḥanafī jurist of his time. He Spent all his life reading, teaching, and writing Fiqh and Ḥadīth books. He wrote almost twelve books on Fiqh, among them Al-Hidāyah is the eternal work, which has a great name in the world of knowledge and law. No one could write such a famous book in the field of Fiqh. The articles pertaining to Islamic jurisprudence made part of the constitution of the Islamic Republic of Pakistan are also derived from it.

Alāamā Marghīnānī's jurisprudential insight can be assessed from his manifold arguments, multiple evidences, jurisprudential Critique of the other jurists. There is simplicity, smoothness, and great depth in his method of reasoning. At the time of deriving rulings, the mujtahidins follow the rules of Islamic law. He used detailed arguments to prove any Sharī'a rule from Qu'rān, Ḥadīth, Ijmā', Qiyās Qawl-e- ṣaḥābi, Isṭiḥsān, Shara' mā Qabl, Úrf.and ṣḍaldhrāy. He resolves the problems by narrative and rational arguments with great jurisprudential skill.

Keywords: Ḥanafī, jurist, Qu'rān, Ḥadīth, Ijmā', Isṭiḥsān, Shara' mā Qabl, Urf, Reasoning.

INTRODUCTION

Imam Abu'l-Ḥasan, Alī bin Abī Bakr bin 'Abd al-Jalīl bin Khalīl is commonly known as Shaykh al-Islām Burhanūddīn al-Marghīnānī. He is one of the descendants of sayīdunā Abū Bakr R.A. He was born on 8th Rajab 511 A.H. in *Rashādān* or *Rashātān*, a village of Marghīnān in the house of 'Umar ibn 'Alī, Abū Ḥafṣ and due to his relation with Marghīnān city and Farghāna province, Burhanūddīn is known as *Al-Farghānī al-Marghīnānī*. He received his early education from his maternal grandfather 'Umar bin Ḥabīb and father 'Umar ibn 'Alī, Abū Ḥafṣ in Marghīnān, then travelled to the cities of other Islamic countries besides Marghīnān according to the customs and method of education at that time. He went to Farghāna first. He then went to Samarqand, Bukhara, Nishapur, Marw, Balkh, Harmeen Sharifeen, Baghdad and Hamdan. Imām al-Zahad, Najm ad-Dīn, 'Umar bin Muhammad Nasafī and his son Aḥmad bin 'Umar Nasafī of Samarqand granted permission to him for interpreting the holy traditions of the Prophet (PBUH).

Alāamā Marghīnānī studied Fiqh, theology and philosophy from 'Umar bin 'Abd al-Aziz Mazzah in Khurasan, and sought permission from Shaykh Aḥmad bin 'Abd al-Aziz, who had been a student of Imām Abū 'Abd Allāh Muḥammad ibn al-Ḥasan ash-Shaybānī for eight years. Shaykh Muḥammad bin 'Abd ar Raḥman narrated tafseer from Bukhari. He was educated by Shaykh 'Uthman ibn 'Alī al-Baikandi, one of the last students of Shams al-A'immah Muhammad bin Abi Sahl al-Sharkhsi, and from Muhammad bin Mahmud Tarazi in Bukhara. He had been the disciple of 'Umar bin 'Abd al-Momin during his travel to Harmeen Sharif. He was also educated by 'Umar bin Muhammad, a renowned Muhaddith and Faqih of Balkh, and his brother Muhammad bin Hanafi.

Alāamā Marghīnānī's main academic field was Fiqh and Ḥadīth, in which he achieved extraordinary perfection through hard work and his God-given abilities, which resulted in the timeless and



glorious writing of *Al-Hidāyah*. His family, having expertise in Fiqh and principles of Fiqh, motivated him from his childhood to develop interest in Fiqh. Abdul Qadir Qurshi adds that he grew up in the affection of his family and started teaching Fiqh and theology. He was a direct disciple of *Imām Al-Sarkhsi*. He advised him: "O son! Learn knowledge and develop understanding in it and think specifically about Fiqh, work hard and be a counsellor. I have brought you up and raised you when you were stripped. Over time, don't become like a weak rope after me.

In Fiqh, his twelve works are *Kitab Bidayat al-mubtadi*, *Kifayat al-Muntahi*, *Nashr ul-Mazhab*, *Majmoo'l-Nawazal*, *Manasaq*, *al-Tajnis wa'l Maza'id wa Howa'l-Ahl al-Fatawi Ghair Al-Atid*, *Muntaqi al-Faroo*, *Sharh Jami al-Kabir*, *Faraiz al-Usmani*, *Al-Maza'id fi Faru'a al-Hanafiyah*, *Mukhtar al-Fataawa* and *Al-Hidāyah*. Finally, this great Muslim jurist met his creator on the night of 14th Dhul-Hajjah, 593 AH in 1197. He spent most of his time in Samarqand and it is his last resting place.

Al-Hidāyah is one of the most authoritative books of Hanafi Fiqh. His reasoning is very rational, his style is very scientific and short. *Alāamā Marghīnānī* presents his point in *Al-Hidāyah* in a way that the reader readily obtains familiarity with his style and can easily take advantage out of it. Despite the passage of more than 800 years, its academic and legal status remains intact in the world. Scholars of all ages, jurists and legal experts have been equally benefiting from it. No better, comprehensive, and coherent text has ever been seen in the history of Fiqh and law than *Al-Hidāyah*. On account of its Legal and jurisprudential significance, it is being taught in madrasas for centuries. Fatwas and court decisions have been completely dependent on it. The comprehensiveness and popularity of this book can be gauged from the fact that after its writing, the scholars have kept it in mind in all times and have consistently written *Shurūh* and *ḥwaṣhī*, introductory cases and *ṭalyqāt*. Translations of this book have been done in different languages and there has also been a regular work on the interpretation of Ḥadiths taken as evidence in it.

Alāamā Marghīnānī's style in *al-Al-Hidāyah* is that he begins the discussion of every issue with the text of *Bidaya*. Then, explaining it, the words of the other *Imāms* mentioned in the text, he explains these with arguments. Finally, he addresses the issue that according to *Madḥab e Mukḥṭār*. For example, *Alāamā Marghīnānī* first makes the argument of the *Sqḥbyn* and then the statement which according to *Madḥab e Mukḥṭār*. Finally, this view is usually that of *Imām Abū Ḥanīfa*. If this order changes, that is, if *Alāamā Marghīnānī* first narrates the view of *Imām Abū Ḥanīfa* and later of *Sqḥbyn*, then it should be understood that his inclination is towards the *Sqḥbyn*.

The efforts and personal hard work of *Alāamā Marghīnānī's* elders, teachers paid him off and he became a great jurist of his time. His style of reasoning and jurisprudential insights are described in the following headings:

1. *Alāamā Marghīnānī's* style of Reasoning

Alāamā Marghīnānī derives the problems from detailed arguments. That is, they derive the problems from the Qur'an, Ḥadith, *Ijmā*, *Qiyās*, Qaul-e-Sahaba, Istahasan, Shari'ah ma Qabal, 'Uraf and Blockage of means. His style of reasoning from detailed arguments in the formulation of problems is as follows:

• Style of Reasoning from the Qur'an

The Qur'an was revealed to the Prophet ﷺ and its subject is man. The Muslim Ummah agrees that the Qur'an is primary source of Islamic law and a source of guidance for Muslims. The Prophet ﷺ ordered himself and the Companions to first derive rulings from this source. This is what all jurists and principles turn to at the time of resolving issues.

Alāamā Marghīnānī himself is not a mujtahid fi al-shar'a (the first rank of mujtahid) to follow the rules and regulations set by him, but he is one of the companions of tarjih, so at the time of establishing the rulings, he follows the rules of mujtahid fi al-shar'a. When deriving problems from the text, the jurists and usooliyen keep in mind some principles and rules for the interpretation of the dalalat or text. *Alāamā Marghīnānī* has taken into account the following rules for the structure, interpretation of words and meanings in *Al-Hidāyah* :

a) Khās and Aām

Fuqh-e-*Āḥnaf* and Usooliyen have discussed the following with regard to the Khās and Aām:



Khās is a word that is designed to apply to a single meaning, or Khās is every word that is designed to know the meaning in a certain way, such as "يَتَرْتَضْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ". Here the trinity is special and is made to know the meaning. Therefore, it is obligatory to complete the number of three.

Aām refers to a word that includes people whose boundaries agree, or every word that includes many people at the same time, whether it is literal, such as Muslims and polytheists, or semantic such as min and mā. *Alāāmā Marghīnāni* has described the example of Aām as follows:

وعلى هَذَا قُلْنَا إِذَا قَطَعَ يَدَ السَّارِقِ بَعْدَ مَا هَلَكَ الْمُسْرُوقُ عِنْدَهُ لَا يَجِبُ عَلَيْهِ الضَّمَانُ لِأَنَّ الْقَطْعَ جَزَاءٌ جَمِيعٌ مَا اكْتَسَبَهُ.

Our argument is that Allah says: When the punishment of theft is imposed on the thief, he will not be taken Zaman. The argument is Allah's command. جزاء بما كسبها. This ruling is Aam and it is not permissible to overdo it because of Khabar e Wahid, but it makes the action obligatory, so we have ordered its Wajob.

b) Mushtrak and Mu'awwal

According to the jurists of *Āḥnaf* and Usooliyin, the discussion of Mushtark and mu'awwal is as follows:

A Mushtarak word that is coined for two meanings or many meanings that have different realities, such as قُرُوء, is common between menstruation and tuhr. The order of Mushtarak is that when the word is shared in many meanings and one meaning is taken to mean one meaning due to one of these meanings, then it will not be right to trust the other meaning, as in usool e shashi:

لَا يَجِبُ النَّظِيرُ فِي جَزَاءِ الصَّيِّدِ لِقَوْلِهِ تَعَالَى {فَجَزَاءٌ مِثْلُ مَا قُتِلَ مِنَ النِّعَمِ}

The muhram will not give the Misl e Sori as the prey, because the word misl is common with respect to Misl e Sori and Misl e Manvi in price. When the meaning of the price was fixed, the second possibility disappeared.

When some of the meanings of mushtark are preferred by the meaning of *Qiyās*, khabar e wahid or other Qur'an, then it becomes Mu'awwal, just as the word qur'oo is common and has two meanings, menstruation and tuhr. *Imām* Abū Ḥanīfa has taken it in the light of Ḥadiths and has preferred it. And when the word is shared between many meanings, then this preferred meaning is called Mu'awwal. Now let's come to using the word in meaning, it comes to Haqiqat and Majāz:

c) Haqiqat and Majāz

If the word is used in contrast to what the dictionary has formulated, then it is a Haqiqat as if Asad means lion. *Alāāmā* Shashi has described this example in principle:

لَوْ اسْتَأْمَنَ أَهْلَ الْحَرْبِ عَلَى آبَائِهِمْ لَا تَدْخُلُ الْأَجْدَادُ فِي الْأَمَانِ وَلَوْ اسْتَأْمَنُوا عَلَى أُمَّهَاتِهِمْ لَا يَثْبُتُ الْأَمَانُ فِي حَقِّ الْجَدَّاتِ

If a Muslim gives security to someone's father, then grandfathers will not enter it. Because grandfathers are not actually entered. In this way, if someone gives peace to the mother, then the grandmothers are not included because grandmothers are also included in the mothers, but the literal meaning of Umm is not entered in the original sense.

If the word is used in anything other than what it has been coined for, it is authorized as if Asad means a brave man. *Alāāmā Marghīnāni*, in the example mentioned above, also mentions majaz, writes that in this verse, the word Umm is used for the mother in terms of real meaning and this word will also be included virtually to grandmother, etc.

According to *Āḥnaf*, the principle of Haqiqat and Majāz is that Haqiqat and Majāz cannot come together at the same time under one condition.

d) 'Amr and Nahy

'Amr refers to one person ordering another person to do something through the section of 'Amr, which makes that work obligatory on him. Ahanaf uses 'Amr in all three forms of wajib, nadub and abahat, all three forms of 'amr are:

- **Taking it as a wajib:** If something that is devoid of the meaning of lack and non-judgment, then it will be taken as a Wajib, such as:

والركوع والسجود لقوله تعالى: {اركعوا واسجدوا} [الحج: 77]

Bowing and prostration are the part of the amar and the 'Amr requires Wajab, so it is obligatory to bow and prostrate within the prayer.



- **Taking 'Amr as a nadub:** When it is taken as a nadub, an example of this is, such as:

{فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا} [النور:33] وهذا ليس أمر بإيجاب بإجماع بين الفقهاء، وإنما هو أمر ندب هو الصحيح.

When the master made his slave or slave girl Makatib on the condition of wealth, and the slave accepted it, he would become 'Abd al-Makatib. However, it is because of the command of Allah that if you see improvement in them, then make them Makatib. And this is not for Wajub. The jurists are unanimous on this, and of course, it is here for the sake of nadub and that is correct.

- **When 'Amr is considered as Mubāḥ :** as *Alāāmā Marghīnāni* states in *Al-Hidāyah* , it applies to sa'id, istiyad, and what is to be hunted, and it is permissible for a non-mahram to do so at a place other than the haram, as stated by Allah. {وَإِذَا حَلَلْتُمْ فَاصْطَادُوا} [Al-Ma'ida:2] "When you are lawful, you are allowed to hunt." "

- **Nahy**

According to the Usulists, there are two definitions of Nahy: One: asking someone lower than you to refrain from doing the act. Second: Saying inaction while considering yourself to be great. Is . And the prohibition or prohibition of nihi is due to two things, one is not to act with sensuality, such as eating haram food:

{وَلَا تَأْكُلُوا مِمَّا لَمْ يُذْكَرْ اسْمُ اللَّهِ عَلَيْهِ} [الأنعام:121]. نهي وهو للتحريم

And do not eat from the slaughtered animal on which the name of Allah has not been mentioned, and this prohibition is for sanctity.

The rulings are not from the Shari'ah, such as:

ولا الوثنيات لقوله تعالى: {وَلَا تَتَّبِعُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا} [البقرة: 221]

"And it is not permissible to marry idolatrous women unless Allah says: "Do not marry polytheistic women until they believe." "

1.2 Reasoning from Ḥadith

Ḥadith is the second major source of Islamic law for Muslims. The position and status of the Prophet (peace and blessings of Allaah be upon him) mentioned in the Qur'an requires that his words, actions and speeches should be followed. The Prophet ﷺ also has a legislative status , so Ḥadiths are fundamental to the jurists . There are three well-known types of Ḥadith: mutawatir, mashhur, and khabar-e-wahid. There is no difference of opinion among jurists in following the frequent and famous, however, there is a difference of opinion in the khabar-e-wahid.

a)Khabar e Wahid: Khabar e Wahid refers to a Ḥadith that is narrated from one narrator to a narrator , or from a group to a narrator or from a narrator . There is no validity in the numbers, until the extent of the famous is reached. It is not permissible to transgress on the Book of Allah. Unauthentic knowledge is gained from it. It is obligatory to follow Khabar e wahid alone in the rulings of Shari'ah. Khabar e wahid is the proof for narrator who has the conditions of Islam, justice, restraint and reason. The Khabar e wahid can be authentic in these four places: a: the right of Allah Almighty only , b: the right of the person only in which something is obligatory on another, c. the right of the person only in which nothing is obligatory, d: the right of the person only in which something is obligatory for some reason. *Imām* Abū Ḥanīfa, like other jurists, preferred khabar-e-wahid over *Qiyās*, regardless of whether the narrator of this Ḥadith was a faqih or a non-faqih.

In fact, until the first century of Hijri, there was no problem related to Khabar Wahid's obligation and being the source of religion. Even later, *Imāms* Arba'ah and Salaf agreed that the Khabar is the only one, the principle of the religion. Even after the emergence of Mu'tazila, doubts began to arise about the authenticity of Khabar Wahid.

b) Mursal Ḥadith: According to the aḥnaf, Mursal narration will be applied in those cases where there is an apparent discontinuity. From this point of view, the *Maraseel* of the Muhadditheen, the problems, the suspensions and the broken traditions will be included in the messages of the Usulin. Interpreted outwardly as sending, and inwardly, the discontinuance should not be against the Book of Allah, the Sunnah of the Messenger of Allah, peace and blessings of God be upon him. On this principle, *Imām* Bazdawi has described two types of discontinuance. He writes that discontinuance.



has two forms:

"أما الظاهر فالمرسل من الاخبار وذلك اربعة انواع ، ما ارسله الصحابي والثاني ما ارسله القرن الثاني والثالث ما ارسله العدل في كل عصر والرابع ما ارسل من وجه واتصل من وجه آخر "

The visible form of discontinuity (Inqta Zahir) is the traditions of Mursil and it has four forms. The first is that a Sahabi sends it, the second is that the people of the Second Century and the Middle Ages send it, the third is that a righteous person of every age sends it, and the fourth case is that it is sent from one side and connected from the other side.

In the books of *Ḥanafī mutaqaḍdimīn wa muta'akhhirīn* jurists and usooliyeen, the authenticity of Khabar-e-Mursal is mentioned in full detail. *Imām* Abu Bakr al-Jaṣṣaṣ has mentioned in detail the opinions of the *Imāms* of *Āḥnaf*, which he summarizes in the words: The Marseel of Sahaba and Taabi'oon are authentic for our companion, and this is my opinion regarding the narrators of Taabi'ut-Taabi'een, while while they are known for transmitting from reliable narrators. As far as Mursal Riwayat of the *Imāms* of the Middle Ages is concerned, according to my knowledge, some of our Shaykhs are of the opinion that they do not accept their *Maraseel*. Because they refer directly to the Rasoolullah ﷺ in this case it is predicted that lies will be common among them.

Jaṣṣaṣ says that when most of the people of the age are involved in corruption and falsehood, then the Riwayat of direct connection should not be accepted in it, unless we are aware of the 'Adaalah (integrity), truth and trust of this narrator and I have not seen Abu l-Ḥasan al-Karkhi distinguish between the *Maraseel* of all times. Ṭsa bin Abān said: "So whoever narrates a narration from the Messenger of Allah ﷺ in our time, if he belongs to the *Imāms* of the religion and indeed he has narrated it to the scholars, then his Mursal is like his musnad and the musnad of the narrator that the people accepted and while they did not accept his Mursal, then those are muquf in our opinion.

1.3 Reasoning through *Ijmā* (consensus)

Alāāmā Marghīnānī's style of reasoning is that when he writes that there is *Ijmā* in such and such an issue . In describing the *Ijmā* (consensus), he briefly writes about various levels of *Ijmā* such as the *Ijmā* of the Sahaba, the consensus of the Tabi'een and the *Ijmā* of the Taabi'ut-Taabi'een, etc., that there is consensus on such and such issues and completes the matter, as he writes while proving the consensus on not reciting the Muqtadi in the lead of the *Imām* in the congregational prayer:

" ولا يقرأ المؤتم خلف الإمام " خلافا للشافعي □ في الفاتحة له أن القراءة ركن من الأركان فيشتركان فيه. ولنا قوله عليه الصلاة والسلام " من كان له إمام فقرأه الإمام له قراءة " وعليه إجماع الصحابة □ وهو ركن مشترك بينهما لكن حظ المقتدي الإنصات والاستماع "

And Muqtadi should not recite behind the *Imām*, *Imām* Shafi'i is against it in Fatiha. The argument of *Imām* Shafi'i is that recitation is one of the adherents. Therefore, both the *Imām* and the Muqtadi will participate in it, and our argument is the saying of the Messenger of Allah, peace and blessings be upon him, that whoever is the *Imām* of the Muqtadi, then the *Imām's* recitation is his recitation. And on this there is a consensus of the Sahaba, and this recitation is a member that is shared between the *Imām* and the Muqtadi, but the Muqtadi's part is to remain silent and listen with ear.

1.3 Reasoning through *Qiyās*

In Hanafi Fiqh, much more has been taken from *Qiyās*, secondly, in the style of narration of Sahib Hadiyah, rational arguments have been combined with narrative arguments and in some places the intellect has a strong place on narration. In addition, in his style of statement, the correlation between rational and narrative arguments seems to be very reasonable. As *Alāāmā Marghīnānī* writes in the issue of prayer:

ولو حلف لا يصلي فقام وقرأ وركع لم يحنث وإن سجد مع ذلك ثم قطع حنث " والقياس أن يحنث بالافتتاح اعتبارا بالشروع في الصوم

If a person swears that he will not pray, then he stays up and recites and also bows, then this will not be Hanas. If he prostrates with him and then breaks the prayer, then he will become Hanas, and the *Qiyās* (presumption) is that he will become Hanas as soon as he starts the prayer. They speculate on the issue of starting the fast, and the reason for the speculation is that when a person starts fasting, it is obligatory to complete it, similarly, if one starts praying, it is also obligatory to complete it.

1.5 Reasoning through Istiḥsān

When *Alāāmā Marghīnāni* gives priority to *Qiyās khafī* over *Qiyās jalī* in a problem, then he proves the problem with a Ḥadīth due to *Istiḥsān* and explains the Ḥadīth as an argument, such as what is the shari'ah ruling on eating food due to mistake in the state of fasting. In this issue, *Istiḥsān* has been prioritized on the basis of Ḥadīth, excluding *Qiyās* (speculation). He writes:

إذا أكل الصائم أو شرب أو جامع ناسيا لم يفطر " والقياس أن يفطر وهو قول مالك □ لوجود ما يضاد الصوم فصار كالكلام ناسيا في الصلاة ووجه الاستحسان قوله عليه الصلاة والسلام إذا نسي فأكل وشرب فليتم صومه ، فإنما أطعمه الله وسقاه .

If a fasting person forgets to eat or drink or has intercourse, then his fast will not be broken, and the *Qiyās* (assumption) requires that the fast be broken, and this is also the view of *Imām* Malik because of the presence of what is opposed to fasting, so this person became like a person who forgot to speak in prayer and the reason for this is that the Prophet ﷺ said: When a person forgets to eat or drink, he should complete his fast, so Allah has fed him.

1.6 Reasoning from Qaul e Ṣaḥābi

During the time of the Prophet ﷺ, there was no law in the state of Madinah to collect taxes from non-Muslims outside. During the caliphate of Hazrat 'Umar, when non-Muslim states started taking ashur (chungī) from the traders of the Islamic state, Hazrat 'Umar implemented this law of Ashur. On the issue of collecting taxes from traders, *Alāāmā Marghīnāni* states Hazrat 'Umar's statement as argument as follows:

وإن مر حربي بمائتي درهم ولا يعلم كم يأخذون منا يأخذ منه العشر " لقول عمر رضي الله عنه فإن أعيانكم فالعشر

If the Ḥarbī unbeliever passes with 200 dirhams and the tax collector does not know how much tax the people of Harb collect from the Muslims, then he will collect one-tenth from them. According to Hazrat 'Umar, if you are unable to know the amount of tax, then collect one-tenth.

1.7 Reasoning from Shara' mā Qabl

Shari'ah refers to the rulings that were found in the earlier ummahs and Islam has maintained these rulings in mind and spirit. *Alāāmā Marghīnāni* mentions the ruling of qasas in the previous shari'ahs in the Qur'an and links it to the pre-Shari'ah. He writes:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالْيَدَ بِالْيَدِ وَالْجُرُوحَ قِصَاصًا. [المائدة:45] وفي السنن القصاص لقوله تعالى: وَالْيَدِ وَالْيَدِ [المائدة:45] وإن كان سن من يقتص منه أكبر من سن الأخر لئن منفعه السن لا تتفاوت بالصغر والكبر.

And We have written on them in this Book that life for life, and eye for eye, and nose for nose, and ear for ear, and tooth for tooth, and wound for wound, and tooth for tooth. The tooth being retaliated is larger than the injured tooth, so there is no difference in benefit if the tooth is small or large.

1.8 Reasoning through Urf (custom)

Urf refers to an interpretation that is generally popular among the people of an area and when those words are spoken, without any interpretation and consideration, the same meaning should be taken, which is used in the society. *Alāāmā Marghīnāni* derives problems from Urf in *Al-Hidāyah*. This is the reasoning used by him when deriving the problems.

ولو حلف لا يأكل خبزاً فميمينه على ما يعتاد أهل المصر أكله خبزاً " وذلك خبز الحنط والشعير لأنه هو المعتاد في غالب البلدان

"A man swore that he would not eat bread, it would apply to what the people of this city habitually eat as bread, and that would mean wheat and barley bread, because in most cities this bread is habitually eaten. "

1.9 Reasoning from Sadāldhḥarḥ (Blockage of means)

In the Islamic Empire, the authorities and judges used the means to block the path of evil and to avoid the fear of fitnah. In this regard, *Alāāmā Marghīnāni* writes about the sale of weapons to the rebels:

ويكره بيع السلاح من أهل الفتنة وفي عساكرهم " لأنه إغانة على المعصية

And it is abominable to take weapons from the rebellious people and their soldiers, because it is a sin to cooperate.

Alāāmā Marghīnāni's style of reasoning shows that he was a great jurist of his time. People Are Benefiting From His Fiqh Till Date. It is said that if a person understands *Al-Hidāyah* and

understands its Fiqh, then the key to Fiqh comes in his hand.

2 Jurisprudential Insight of *Alāāmā Marghīnāni*

Alāāmā Marghīnāni's Fiqh can be gauged from his works which he wrote on the subject of Fiqh. The Fiqh expertise of his book *al-Hidayyah* can be assessed from the following:

2.1 Manifold reasoning

Alāāmā Marghīnāni argues and explains problem from the *Adilat-e-Shari'ah*. This argument comes from the *Qur'an*, *Hadith*, *Ijmā*, *Qiyās*, *Istehasan*, *Qaul-e-ṣhāba*, Blockage of Means, *Pre-Shari'ah* and *'Uraf*, as they write that only men can give evidence for the evidence of *Hudood*. In this case, *Alāāmā Marghīnāni* has presented the following artificial and rational arguments, which is the reason for his multiplicity of arguments:

والشهادة على مراتب: منها الشهادة في الزنا يعتبر فيها أربعة من الرجال" لقوله تعالى: {واللّٰئِي يَأْتِيْنَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاَسْتَشْهَدُوْا عَلَيْهِنَّ اَرْبَعَةً مِنْكُمْ} [النساء:15] ولقوله تعالى: {ثُمَّ لَمْ يَأْتُوا بِاَرْبَعَةٍ شُهَدَاءَ} [النور:4] "ولا تقبل فيها شهادة النساء" لحديث الزهري □: مَضَتْ السُّنَّةُ مِنْ رَسُوْلِ اللّٰهِ ﷺ وَالْخَلِيْفَتَيْنِ مِنْ بَعْدِهِ اَنْ لَا تَجُوْرَ . شَهَادَةُ النِّسَاءِ فِي الْحُدُوْدِ وَالْقِصَاصِ .

There are a few stages of evidence. One of them is the evidence of adultery. The evidence of four men in adultery is reliable because Allah says: "And take the testimony of four of your people against those who commit adultery among Muslim women." Witnesses of adultery can only be men, the testimony of women in adultery will not be acceptable at all because the hadeeth of Zuhri: "Since the time of the two caliphs after the Rasūlullah ﷺ, it has been *Sunnah* that there is no testimony of women in *Hudood* and *Qasas*."

Apart from this, *Alāāmā Marghīnāni* has brought another rational argument:

ولأن فيها شبهة البدلية لقيامها مقام شهادة الرجال فلا تقبل فيما يندرى بالشبهات "ومنها الشهادة ببقية الحدود والقصاص تقبل فيها شهادة رجلين" لقوله تعالى: {واَسْتَشْهَدُوْا شَهِيدَيْنِ مِنْ رِجَالِكُمْ} [البقرة:282] "ولا تقبل فيها شهادة النساء" لما ذكرنا.

And because women's testimony is suspected of change. There is a doubt of change because the testimony of women is equal to the testimony of men, as Allah says: "And make two witnesses from among your men, so if there are no men, then one man and two women from among them."

This shows that the testimony of a woman in crimes of *Hudood* such as adultery, *Qadhaf* (Slander of adultery), theft and *Khamr* is not acceptable. However, the testimony of women in divorce, *iddah*, *waqf*, *waqalat* and will can be acceptable.

2.2 Plenty of evidences

In order to explain his position on any issue, *Alāāmā Marghīnāni* presents a plenty of rational arguments in *Al-Hidayyah*, such as in this issue of theft, *Alāāmā Marghīnāni* has proved the punishment of the thief by referring to the maturity of the thief, the course of theft and the punishment of the thief by referring to the *Harz*, which indicates his abundance of evidence:

If a sane adult does not suspect that ten dirhams or something worth ten dirhams has been stolen from a safe place in this way, then it will be obligatory to cut off the thief's hand. The original of this verse is:

والأصل فيه قوله تعالى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوْا اَيْدِيَهُمَا} [المائدة: من الآية:38] ولا بد من اعتبار العقل والبلوغ لأن الجنابة لا تتحقق دونهما والقطع جزء الجنابة ولا بد من التقدير بالمال الخطير لأن الرغبات تفتت في الحقيق وكذا أخذه لا يخفى فلا يتحقق ركنه ولا حكمة الزجر لأنها فيما يغلب والتقدير بعشرة دراهم مذهبنا وعند عن عائشة: قَالَ النَّبِيُّ ﷺ: تُقَطَّعُ الْيَدُ فِي رُبْعِ دِينَارٍ فَصَاعِدًا وَعِنْدَ مَالِكٍ بِنِثْلَةِ ثَلَاثَةِ دَرَاهِمٍ أَنْ الْقَطْعَ عَلَى عَهْدِ رَسُولِ اللَّهِ عَلَيْهِ الشَّافِعِيُّ رَحِمَهُ اللَّهُ التَّقْدِيرُ بَرِيْعِ دِينَارِ الصَّلَاةِ وَالسَّلَامِ مَا كَانَ إِلَّا فِي ثَمَنِ الْمَجْنُونِ: قَطَّعَ النَّبِيُّ ﷺ فِي مَجْنُونٍ ثَمَنُهُ ثَلَاثَةُ دَرَاهِمٍ-

The origin of this command is this verse: And cut off the hands of thieves, whether male or female. And it is important to rely on intelligence and maturity because the desire to steal in ordinary goods decreases, and also, the receiver does not even try to hide it when he takes a small amount of *Māl*. That is why the person who hides *Māl*. to steal is not found only in ordinary wealth.

In the same way, the benefit of this warning will not be achieved. Because the wisdom of warning by punishment is found in a situation that often occurs. It is ten dirhams, and according to Imam Shafi'i, a quarter of a dinar is sufficient, but according to Imam Malik, it is necessary to have three dirhams. The quoted estimate of the value of the shield is three dirhams.

Alāāmā Marghīnāni then writes that it is better to accept at least three dirhams because this amount is absolutely certain. This is a *Hadith* of cutting hands for stealing three dirhams and

Jamhoor has made this Ḥadith a course of theft. Abdullah ibn 'Umar reported that the Prophet ﷺ cut off hand for stealing a shield, which cost three dirhams. *Imām* Shafi'i said that in the time of the Prophet ﷺ, one dinar was twelve dirhams. Thus, the fourth dinar was of three dirhams and our argument is that it is better to make the highest estimate in this chapter so that there is a means and excuse to reach the 'Had'. Because there is a small amount of doubt that the crime cannot be completed and the matter of doubt is such that when it is done, the Had ends. Our suspicion is supported by this Ḥadith. *Rasūlullah* ﷺ said:

"لَا قَطْعَ إِلَّا فِي دِينَارٍ أَوْ عَشْرَةِ دَرَاهِمٍ"

"The hand is cut for one dinar or ten dirhams".

He further writes that this Ḥadith does not meet the standards of health due to being a *Mursal*, but *Áhnaḡ* adopted the tradition of *Ibn 'Abbas* in which the price of the shield is described. When *Ahanaf* saw that the traditions were different in determining the price of the shield, they adopted a higher price, because everyone agreed on the method of theft and everyone agreed on this quantity, so to remove the doubt, adopted the quantity which is a high quantity i.e., ten dirhams .

واسم الدراهم ينطلق على المضروبة عرفاً فهذا يبين لك اشتراط المضروب كما قال في الكتاب وهو ظاهر الرواية وهو الأصح رعاية لكمال الجنابة حتى لو سرق عشرة تبراً قيمتها أنقص من عشرة مضروبة لا يجب القطع والمعتبر وزن سبعة مثاقيل لأنه هو المتعارف في عامة البلاد وقوله أو ما يبلغ قيمته عشرة دراهم إشارة إلى أن غير الدراهم تعتبر قيمته بها وإن كان ذهباً ولا بد من حرز لا شبهة فيه .

Then, in Urf, the one who is a like a coin is called a dirham. It was found that coinage is a condition so that the crime is the final limit and end of the crime, even if someone steals a piece of silver that is worth less than ten real dirhams, it is not obligatory to cut off his hand. The weight of seven shekels in one dirham is reliable because it is the custom in all countries. In this place, the author has said that if something is stolen whose value reaches ten dirhams, it indicates that If there is anything other than dirhams, its value will be measured in dirhams, even if the other item is gold, and the mentioned punishment for stealing from a safe place is undoubtedly necessary because if there is even the slightest doubt about its safety. If it happens, it will not be possible to impose *Had*.

2.3 Jurisprudential Critique

Alāāmā Marghīnāni presents the sayings of the *Qur'an*, *Ḥadith*, *Aqwal e Ṣaḡabah* and jurists to explain his position on issues. Then he establishes the priority of his position among them and criticizes on the opinions of the *Imāms* , such as in the issue of purification for prayer, he coitizes on the sayings of other *Imāms* by explaining his position with narrative and rational arguments:

" قال الله تعالى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ} [المائدة: 6] الآية. " ففرض الطهارة غسل الأعضاء الثلاثة ومسح الرأس بهذا النص-

Allah says (interpretation of the meaning): "O you who believe, when you get up to pray, wash your faces and your hands up to the elbows, wipe your heads and wash your feet up to your ankles." The duties of ablution are washing the three organs and wiping the head, due to this text.

After this, *Alāāmā Marghīnāni* writes:

قال: والمفروض في مسح الرأس مقدار الناصية وهو ربع الرأس " لما روى المغيرة بن شعبة أن النبي صلى الله عليه وسلم أتى سياطة قوم فبال وتوضأ ومسح على ناصيته وخضفها والكتاب مجمل فالتحق بيانا به وهو حجة على الشافعي في التقدير بثلاث شعرات وعلى مالك في اشتراط الاستيعاب وفي بعض الروايات قدره بعض أصحابنا رحمهم الله تعالى بثلاث أصابع من أصابع اليد لأنها أكثر ما هو الأصل في آلة المسح

He said, "And in the wiping of the head there is the amount of obligatory forehead, and it is the fourth head, as narrated by *Mugheera bin Shoba*: "*Rasūlullah* ﷺ came to the garbage heap of the people, urinated and performed ablution, and wiped the amount of forehead on his head, and also wiped on the socks." "In Quran وامسحوا بروسكم and this Ḥadith is its narration, and this narration is an argument against *Imām* Shafi'i regarding the validity of wiping on three hairs, and the same tradition is also against *Imām* Malik about the obligation to wipe complete head." And they prefer the amount of *nasya* (ناصية) in wiping.

- Simplicity, smoothness and depth in reasoning

While deriving any problem, every jurist does not explain his position in the same way, sometimes he explains the problem in a simple way and sometimes he goes into very deep reasoning. *Alāāmā*



Marghīnāni's method of inference shows simplicity, smoothness, and a lot of depth.

An example of simplicity can be seen in the issue of facing the Qibla for prayer.

ويستقبل القبلة لقوله تعالى: {فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ} [البقرة: 144] ثم من كان بمكة ففرضه إصابة عينا ومن كان غائبا ففرضه إصابة جهتها هو الصحيح لأن التكليف بحسب الوسع-

And they turned to the *Qiblah* and said: "So turn your faces towards the Mosque of Haram." Then whoever is in *Makkah*, it is his duty to find the *Ka'bah* and whoever disappears from *Makkah*, his duty is to find the *Ka'ba*. This statement is correct because pain is according to power.

Smoothness refers to the multiplicity of arguments in the same issue in such a way that the arguments on the argument are given fluently, as *Alāāmā Marghīnāni* writes about the obligation of Hajj in the Book of Hajj:

Hajj is obligatory on people who are independent, mature, sane and healthy, as long as they have the ability to travel and ride which is more than their accommodation and necessities of life. And it is more than the bread and sustenance of his family, until he returns home, and the way is also peaceful. The author has used the word '*Wajub*' for Hajj, although this is a confirmed obligation, and its obligation is proved by the Book of Allah.

It is further stated that this obligation of Hajj is proved by this statement of Allah Almighty.

وهو قوله تعالى: {وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ} [آل عمران: 97] الآية "ولا يجب في العمر الا مرة واحدة" لأنه عليه الصلاة والسلام قيل له الحج في كل عام أم مرة واحدة ولأن سببه البيت وإنه لا يتعدد فلا يتكرر الوجوب ثم هو واجب على الفور عند أبي يوسف رحمه الله وعن أبي حنيفة رحمه " فقال " لا بل مرة واحدة فما زاد فهو تطوع الله ما يدل عليه -

And It is the right of Allah over the people that whosoever is able to reach should perform Hajj for him. Hajj is obligatory only once in a lifetime, because he ﷺ was asked whether Hajj is obligatory every year or once. He ﷺ said once Whoever does more than that, that will be *Nafal*. And his rational argument is this: The cause of obligation is the *BaytuAllah* and there will be no repetition in the *BaytuAllah* and there will be no repetition its being obligatory. Then hajj is obligatory immediately with *Imām Abu Yusuf* and there is nothing narrated from *Imām Abū Ḥanīfa* in this matter.

It is further written that it is obligatory for *Imām Muhammad (RA)* and *Imām Shafi'i (RA)*. Because Hajj is the *wazifa* of '*Umar* , and '*Umar* is in it as if there is time within prayer . The reason is that Hajj is specific to a particular time and it is rare for death to occur in one year, so there will be a precautionary constraint in time. Therefore, it is better to hurry to perform Hajj. Unlike at the time of prayer, because death is rare in such a time, and the author has put the condition of freedom and maturity, because of this command of the Prophet ﷺ.

" أيما عبد حج عشر حجج ثم اعتق فعليه حجة الإسلام وأيما صبي حج عشر حجج ثم بلغ فعليه حجة الإسلام" ولأنه عبادة والعبادات بأسرها موضوعة عن الصبيان"

Even if a slave performs ten Hajjs after becoming free, then the Hajj of Islam remains for him, and if a child performs ten Hajj, then he has become an adult, then the Islamic Hajj is obligatory on him, Because Hajj is worship and worship is actually forgiven for children (because they are not *Mukalaf*).

It is very well known to him to describe a problem deeply, as *Alāāmā Marghīnāni* discusses about washing the elbows and ankles in the issue of ablution.

والمرفقان والكعبان يدخلان في الغسل " عندنا خلافا لزفر رحمه الله تعالى هو يقول الغاية لا تدخل تحت المغيا كالليل في باب الصوم. ولنا أن هذه الغاية لإسقاط ما وراءها إذ لولاها لاستوعبت الوظيفة الكل وفي باب الصوم لمدا الحكم إليها إذ الاسم يطلق على الإمساك ساعة-

Washing our elbows and ankles is included in our duty. *Imām Al-Zuffar* disagrees with this and says that *ghayat* is not included under *mughya*, just as there is a night in the chapter of fasting that the night does not enter into the order of fasting, and our argument is that *ghayat* i.e. *il al-marafeqain* and *ali al-ka'bien* are here to remove their beyond. Because if it were not for this, then the duty of washing would have included the whole arm and the whole leg, and in the chapter of fasting, it is until the time of fasting is prolonged till night. That's because the word *صوم* applies to an absolute moment's stop. That is, literally, stopping from eating and drinking for time is called *صوم*, but



Sahib e Hadiyah has taken it here in the sense of prolonging the soom till night, which is showing the utmost deepness.

In addition, in his analysis of the problems, *Alāāmā Marghīnāni* has derived the same problem from both *Qiyās* and Istahasan sources that this problem can be derived from *Qiyās* and as Istahasan, which shows the deepness, as such:

ومن أغني عليه خمس صلوات أو دونها قضى وإن كان أكثر من ذلك لم يقض " وهذا استحسان والقياس أن لا قضاء عليه إذا استوعب الإغماء وقت صلاة كاملاً لتحقيق العجز فأشبهه الجنون وجه الاستحسان أن المدة إذا طالت كثرت الفوائت فيتخرج في الأداء وإذا قصرت قلت فلا حرج والكثير أن تزيد على يوم وليلة لأنه يدخل في حد التكرار.

If a person is unconscious for five prayers or less, then he should make up those prayers, if the prayers made up due to unconsciousness are more than five, then he should not make them up. This comandment is due to Istehsan not Qisas. It should be because here his inability has been proved. So, it will become similar to madness and the reason for this is that when the period of unconsciousness is prolonged, then the Qaza prayers will also be more, then there will be a problem in performing them, and when the period of unconsciousness is less, the prayers will also be less and there will be no harm in performing them. More than the night, because prayers more than one day and one night enter the limit of repetition.

3 Opinions of Muslim Jurists on the Fiqh work of *Alāāmā Marghīnāni*

The opinion of scholars regarding *Alāāmā Marghīnāni*'s jurisprudence

Alāāmā Marghīnāni was a great jurist, muhaddith, pious and researcher in the eyes of his contemporaries, scholars and jurists, like his contemporaries. Said, as Abdul Hai Lakhanvi writes that

Sheikh Burhanuddin Marghīnāni was an *Imām* of his time, a great jurist, a hafiz of Ḥadith, a commentator, a master of various sciences and arts, a man of piety and piety, an ascetic and a researcher. He had a broad and critical eye on various fields of science and literature. He held a high position in the knowledge of Khlaqiat and had a jurisprudential approach to the religions. He further writes that Allah Ta'ala has elevated *Imām Marghīnāni* to the highest position of knowledge, jurisprudence, interpretation, rulings, grace and perfection, and may he grant such greatness that Apart from Akabir and Mashaikh, contemporaries recognized his greatness and superiority as *Imām* Fakhruddin Razi, Qazi Khan, Zaheeruddin Bukhari and others like Akabir and Arbab Ilm wa Fazl called Marghīnāni an unparalleled researcher and jurist of his era.

Imām Zain al-Din al-Atabi and al-Sadr al-*Imām* Mahmud bin Ahmed bin Abdul Aziz have also paid tribute to the grace and status and academic excellence of *Imām* Burhan al-Din Marghīnāni. Very soon, due to his knowledge and skill, he surpassed his Shaykhs and Contemporaries, and after the authorship of *Al-Hidāyah* and *Kifaya al-Muntahī*, he became more prominent in the eyes of the people.

Findings of research work

Research on this topic leads to the following logical findings:

1. *Alāāmā Marghīnāni* is a well-known Hanafi jurist. Many of his works, especially *Al-Hidāyah*, has a very high position in Hanafi Fiqh, which shows their Fiqh. It is a Shariah and legal book and till the present time, the judiciary of the Islamic Republic of Pakistan has been resolving sharia laws in the light of *Al-Hidāyah*.
2. *Alāāmā Marghīnāni* mainly derives problems from the Qur'an, Ḥadith, *Ijmā* and *Qiyās*.
3. *Alāāmā Marghīnāni* has also taken advantage of Istehsan, qaul-e-sahaba, Sadaldhḥarḥ, Urf, pre shari'a and Istashab in dealing with problems.
4. *Āḥnāf* are called Ahl u Rai because of *Qiyās*, which is why problems related to *Qiyās* are frequently found in *Al-Hidāyah*
5. The jurists of *Āḥnāf* agree on the importance of Khaber e Wahid and according to them, the *Maraseel* of authentic and Adil narrators are also permissible.
6. They prove the problems with great depth, abundant evidences, and many arguments. There is depth in their arguments and knowledge.

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- [11] *Ibid, 2/131.*
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- [13] *Ibid, 1/396.*
- [14] *Ibid, 1/390.*
- [15] Haji Khalifa, *Kashf al-Zanun, 2/1622.*
- [16] 'Abd al-Qadir Al-Qurashi, *al-Jawahir al-Madiyyah, 1/4.*
- [17] Urdu Darirah Ma'arif Islami, *Thesis Al-Marghināni, Lahore, DanishGah Punjab, 1984, 20/461.*
- [18] Al-Babrati, Muhammad bin Muhammad bin Mahmud, *Al-Anayah Sharh Al-Hidāyah, Dar-ul-Fikr, Beirut, Lebanon, N, 6/472.*
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- [20] Alshashi, Nizam ul din, *Usool ul Shashi, (Maktabba Haqania, Multan),P. 5.*
- [21] *Al-Qu'rān 77:22.*
- [22] Amethvi, Mulla Jiwan, Ahmad Bin Saeed, *Noor ul Anwar, (Dar ul Hadith , Bayroon Bohur Gate , Multan) ,P .67.*
- [23] Alshashi, *Usool ul Shashi, P .20.*
- [24] Al-Marghināni, *Al-Hidāyah, Kitab Ul Salat, 1/104.*
- [25] Alshashi, *Usool ul Shashi, P .9.*
- [26] *Ibid.*
- [27] *Ibid, P. 39.*
- [28] *Ibid, P. 13.*
- [29] Al-Marghināni, *Al-Hidāyah, Kitab Ul Talaq, Bab Ul Idat, 2/428.*
- [30] Alshashi, *Usool ul Shashi, P. 14.*
- [31] *Ibid, P. 46.*
- [32] *Ibid, P. 14.*
- [33] Al-Marghināni, *Al-Hidāyah, Kitab Ul Nikah, Fasal Fi Bian il Muhrmat, 2/327.*
- [34] *Ibid.*
- [35] *Ibid, Kitab Ul Salat, Bab Saift ul Salat, 1/97.*
- [36] *Ibid, Kitab Ul Mukatib, 3/319.*
- [37] *Ibid, 2/99.*
- [38] *Ibid, Kitab Ul Zbayh, 4/434.*
- [39] *Ibid, Kitab Ul Nikah, Fasal Fi Bian il Muhrmat, 2/330.*
- [40] Alshashi, *Usool ul Shashi, P 51.*
- [41] Mofiq Ibn e Ahmad Makki, *Monaqib Imām Azam, (Taba Daira tul Moarif , Haiderabad , 1332H), 1/95.*
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- [43] Al-Jassas, Ahmad b. 'Ali Abu Bakr al-Razi, *al-Fas'ul fi al-Usul, Wazarat al-Awqaaf al-Kuwaitiyyah, al-Tabata: al-Thaniyyah, 1414, 3/145.*
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- [46] *Ibid, Kitab al-Soom, Bab Ma'yajb al-Qaza wa'l-Kaffara, 1/234.*
- [47] Al-Bukhaari, Saheeh, *Kitab-ul-Soom, Bab al-Sa'im, Al-Aqal aw Sharab Nasaya, Raqib al-Hadith: 1933*
- [48] Al-Marghināni, *al-Hadaiyyah, Bab Fiman Yamr 'Ala al-'Ashar, 1/214.*

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- [50] *Ibid*, Kitab al-Iman, 2/485.
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- [52] Al-Marghīnāni, Al-Hidāyah, Kitab al-Shahadat, 3/161.
- [53] Ibn Abi Shaybah, 'Abd Allah b. Muhammad b. Ibrahim, al-Lekhak fi al-Ahadith wa'l-Athar, Kitab al-Hadid, fi Shahadat al-Nissa fi al-Hadid, Maktabat al-Rashad, al-Riyadh, al-Taba'at al-Awli, 1409AH, Raqat al-Hadith: 28714.
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