

# HADITH AND ISLAMIC LAW: THE ROLE OF PREUNDERSTANDINGS IN HADITH INTERPRETATION

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**Abstract:** In this study we are planning to discuss the importance of the pre-understandings on the interpretation process of hadith narrations in Islamic Law. By this perspective firstly, importance of interpretation in law will be discussed and through the notion of `pre-understanding`, the problem of understanding and interpretation in Islamic Law will be focused. Secondly, text-based pre-understanding problem will be argued. Under this title, Hadith narrations will be approached in terms of their styles and the affects of these narration styles on the judgement process will be evaluated. Then, thirdly, pre-understandings of the reader will be taken into consideration and their affects on the judgement process will be assessed. Finally, essay will be concluded by an evaluation on the problem of interpretation and over-interpretation of the text -specifically hadith text- in Islamic Law.

**Key Words:** Hadith, Islamic Law, Interpretation, Over-Interpretation, Pre-Understanding

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## Hadis ve İslam Hukuku :

### Hadis Metinlerinin Anlaşılmasında “Ön-anlama”nın Etkisi

**Öz:** Bu çalışmada İslam Hukuku'nun en temel iki kaynağından birisi olan Hadis metinlerinin yorumlanmasında kişisel birikimi ifade eden ön-anlamaların etkisini incelemek hedeflenmektedir. Bu bakış açısıyla öncelikle, genel olarak hukuk bilimlerinde özelde ise İslam Hukuku'nda yorumlamanın önemi üzerinde durulacak ve kişinin anlama ve yorumlama kabiliyetinin temel belirleyenlerinden olan ön-anlamaların yorum faaliyetindeki etkisi ortaya konacaktır. Ardından hadis rivayetlerinin aktarım üslubundan kaynaklanan ön-anlama ve anlayan kaynaklı ön-anlama başlıkları altında hadis metinlerinin salt hukuki perspektifle değerlendirilmesai halinde ulaşılabilecek sonuçlar, örnekler üzerinden izah edilecektir.

**Anahtar Kelimeler:** Hadis, İslam Hukuku, Yorum, Aşırı Yorum, Ön-anlama.



### 1. Introduction

We live in the world of the text with the meaning of written text as well as in its metaphorical sense. Owing to our interpretation of the text, we apprehend the world and communicate its meaning to one another. Thus, it is predicable that we live in and feel the world of the text, and consequently the text and the act of interpretation get into our lives before any theoretical definition about them. Especially in law, text and text interpretation occupy a central place, because we can define interpretation in legal arena basically as a rational activity that gives meaning to a legal text.<sup>1</sup> In other words, “interpretation is the process whereby one person gives meaning to the symbols of the expression used by another person.”<sup>2</sup>

As an intellectual activity in interpretation, main question is what meaning to attach to the text because content of the norm confined by the

<sup>1</sup> See: C. Ogden and I. Richards, *The Meaning of Meaning*, (10<sup>th</sup> edition) 1956; Aharon Barak, *Purposive Interpretation In Law*, New Jersey: Princeton University Press, 2005, p.3; Ronald Dworkin, *Law as Interpretation*, *Texas Law Review*, vol.60, (1982), pp.527-550, p.529)

<sup>2</sup> Barak, *Purposive Interpretation In Law*, p.6.

text is shaped by understanding and interpretation of the reader of the text.<sup>3</sup> As a result of this situation, reader can reach different understandings/meanings from just one text. This raises another question in interpretation activity: How can we understand and interpret the text? And what is the affect of reader's own concept and background in interpretation?

### 1.1 `Reader` and the Notion of `Pre-understanding` in Interpretation

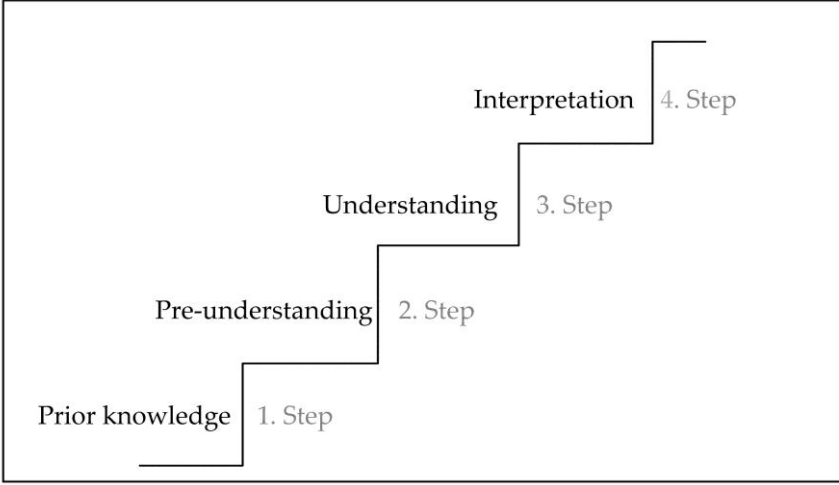
As a prominent philosopher, Martin Heidegger claims that interpretation is grounded in preconception and there could not be any interpretation without pre-understandings of a reader. According to him, there is always the presence of pre-understandings that the interpreter brings with him to the interpretation process. Since, pre-understandings are the basic and preparatory starting point for understanding and interpretation, certain background knowledge and experience are needed to understand a particular text. And depending on diverse backgrounds and experiences of different readers, meaning of a single text may vary from person to person.<sup>4</sup> Gadamer, also in his *Truth and Method*, clarifies that a person who is trying to understand a text is always projecting some initial meanings on the text. This happens because a reader has always some particular expectations regarding a certain meaning.<sup>5</sup> On the nature of interpretation Umberto Eco expresses that during understanding and interpretation process reader enters into the text completely and brings his own encyclopedia rather than just his own interpretations.<sup>6</sup> These ideas show us, understanding and interpretation of a text depends on our prior knowledge and pre-understanding which can be shown by this table:

<sup>3</sup> See: Rudolph Peters, "Divine Law or Man Made Law: Egypt and the Application of the Shari'a", *Arab Law Quarterly*, Vol. 3, No. 3 (Aug., 1988), pp. 231-253.

<sup>4</sup> Martin Heidegger, *Being and Time*, New York: Harper & Row, 1962, p.53.

<sup>5</sup> Hans Georg Gadamer, *Truth and Method*, London: Sheed and Ward, n.d., p.269.

<sup>6</sup> Umberto Eco, *The Role of the Reader*, London: Hutchinson University Library, 1985, p.21.



**Table 1: The process of understanding and interpretation**

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As shown on the chart, while all the cultural, social and mental backgrounds of a person are constitutes the notion of prior knowledge, which is the starting point of understanding and interpretation process,<sup>7</sup> the concept of pre-understanding is a verifiable and falsifiable horizon of thought which is obtained according to prior knowledge of the individual, depending on the information reached immediately at the beginning of the understanding process, without any research or evaluation of subject or text.<sup>8</sup> And, understanding is an activity which is reached after the process of evaluation -approval or refusal- of pre-understandings. There is a strong connection between understanding and interpretation of a text, so, it can be claimed that to understand, somehow, means to inter-

<sup>7</sup> Henry Sturt, *Principles of Understanding*, Cambridge: Cambridge University Press, 1915, p.240.

<sup>8</sup> See: Gadamer H-G., "The Universality of the Hermeneutical Problem (1966)", in: David E. Linge (ed.), *Philosophical Hermeneutics*, Berkeley, CA: University of California Press; 1977. pp. 3-17.; Pre-understanding also can be defined as a body of assumptions and attitudes which a person brings to the perception and interpretation of reality, or any aspect of it. (see: Duncan S. Ferguson, *Biblical Hermeneutics: An Introduction*, Atlanta, Georgia: John Knox Press, 1986, p.6.)

pret.<sup>9</sup> Whenever we are interpreting a text, we are always projecting our possibilities.<sup>10</sup> And we can not project possibilities unless we have at least enough understanding of the subject matter at hand to project the possibilities we project. So whenever we are interpreting we are to some extent understanding what is to be interpreted.<sup>11</sup>

By the process of understanding and interpretation, "the text" itself becomes a text "for us", even though before the interpretation there was a work, a book, etc. But here the text comes into play, along with pre-understandings of a reader, as part of the main factor of the interpretation. Bernard Lonergan, emphasizes the importance of pre-understanding by stating that we cannot find meaning in the text with an open and empty mind. This is because what we see when we read as a text is merely series of signs. These signs will have meaning when mediated by our experience, intelligence and judgement.<sup>12</sup> Therefore, we understand a text -also legal text- only after it has been interpreted and pre-understandings of a reader are the most effective elements in this process. If pre-understandings of an individual have a determinative role in interpretation process and law is constituted by the interpretations of jurists in general, what is the position of hadith interpretation in Islamic Law? How Islamic Law is performed by the scholars and the qadis? Is pre-understandings of scholars and qadis affected the final judgements of them? And did jurists make over-interpretations based on their pre-understandings? We will seek the answers of these questions by discussing the role of interpretation in Islamic Law.

<sup>9</sup> See: Barak, *Purposive Interpretation in Law*, p.38.

<sup>10</sup> Gadamer expresses this situation by this statement: "...try to escape from one's own concepts in interpretation is not only impossible but manifestly absurd." (Gadamer, *Truth and Method*, p.397)

<sup>11</sup> Heidegger, *Being and Time*, p.194.

<sup>12</sup> Bernard J. F. Lonergan, *Method in Theology*, London: Darton, Longman and Todd, 1972, p.157.

## 1.2. Interpretation in Islamic Law

Islamic law is one of the most important and effective law systems in the world, both in history and also today. Therefore, especially from the 18<sup>th</sup> century, it has been an object of debates over its nature and scope. One of the major misunderstandings about Islamic Law is the argument that it is fully divine in character; therefore it is stable and inflexible.<sup>13</sup> Contrary to this statement, it is a fundamental acknowledgement of Muslim juristic idea that law in Islam is something that human jurists must work out based upon textual sources and it has not been given to mankind as a finished product.<sup>14</sup> Because of this, interpretation is the most important feature of Islamic Law.

As can be seen through the concept of “fiqh”, which is the foremost notion of Islamic Law, literally means “understanding”, the effort of pious men to understand and formulate the divine will, Islamic law is developed on exegesis, interpretations and analogies.<sup>15</sup> As a result of this text oriented process, we can say that Islamic law as a topically-organized finished product consisting of precisely-worded rules is not inflexible and unchangeable rather it is the result of juristic interpretation. It stands at the end, not at the beginning of the interpretation process. This can be also understood through the nature of another notion, “ijtihad”. Linguistically in Arabic, the word “ijtihad” emanates from the root word “al-juhd”, meaning “exertion, effort, trouble or pain.”<sup>16</sup> “Al-juhd” connotes exercising one’s capacity, ability, power, or strength in a correct and

<sup>13</sup> For detailed analysis see: Mashood A. Baderin, “Historical and Evolutional Perceptions of Islamic Law in a Continually Changing World”, *The Middle East in London*, July-August 2009, p.7, <http://www.the-platform.org.uk/2010/02/10/islamic-law-on-trial/> (last addressed: 27/07/2012) also see: Mashood A. Baderin, *International Human Rights Law and Islamic Law*, Oxford, 2009, p.32.

<sup>14</sup> Bernard Weiss, *The Spirit of Islamic Law*, Athens: The University of Georgia Press, p.22.

<sup>15</sup> Sami Zubaida, *Law and Power in the Islamic World*, Tauris, 2003, p.11.

<sup>16</sup> Ragib al-Isfehâni, “j-h-d,” *Mufradâtü Alfâz al-Qur’ân*, Dimashk: Daru’l-Kalem, Beirut: al-Dâru al-Shâmiyya, 1992, p.208; Ibn Manzûr, Muhammed b. Mukrim, “J-h-d,” *Lisânu’l-Arab*, Beirut: al-Dâru al-Sâdir, n.d., v.III, pp.133-134; Molla Fenârî, Muhammed b. Hamza, *al-Fusûlu’l-Badâiyi’*, Istanbul: Şeyh Yahyâ Efendi Matbaasi, 1289, (vols:I-II), v.II, p.415.

righteous manner.<sup>17</sup> In the jurisprudential sense, it refers to the endeavor of a jurist to formulate a rule of law on the basis of an evidence (*dalil*) found in the textual sources which is the Qur'an and Hadiths.<sup>18</sup> Besides, it has also been depicted as a "reconsidering"<sup>19</sup> or, most commonly, as "independent reasoning".<sup>20</sup> The process of deriving rules by independent reasoning from these sources is thus a process of interpreting texts; interpretation in Islamic law is exclusively text-oriented.<sup>21</sup> Weiss states that "the theory of *ijtihâd* presupposes that the process of producing rules is a process of elucidating that which is present but yet is not self-evident. In principle a Muslim jurist never invents rules, he formulates ... rules which God has already decreed and which are concealed in the sources."<sup>22</sup> Strictly speaking, it is not the law as such which is interpreted but rather the sources of law which are mainly the Qur'an and Hadith. Interpretation does not carry out with respect to matters that have already been addressed clearly in the Qur'an and Hadiths. However, sometimes, there occur situations which have been left undetermined by the first two sources, when jurists are called upon to make (interpretation)/use of *Ijtihad*<sup>23</sup> and determine laws applicable to them or formulate new ones if necessary, in the light of the fundamental principles of Islamic jurisprudence and legislation.<sup>24</sup> However, to practice *ijtihâd*, scholar (*Mujtahid*) has to be equipped with certain qualifications. The question of who could or could not practice *ijtihâd* came under discussion, before the final formation of the positive law of the

<sup>17</sup> Al-Zabidi, Muhammed Murtada el-Huseynî, *Tâcu'l-Ârus min Cevâhiri'l-Qamus*, I-X, Egypt: al-Hayriyye, 1307, vol.II, p.329.

<sup>18</sup> Rudolph Peters, "Ijtihad and Taqlid in 18th and 19th Century Islam", *Die Welt des Islams*, XX, 3-4, p.135.

<sup>19</sup> Fazlur Rahman, "Post-Formative Developments in Islam", *Islamic Studies*, Karachi, 1, 4 (1962) p.12.

<sup>20</sup> Joseph Schacht, *An Introduction to Islamic Law*, Oxford: Clarendon Press, 1982, p.69.

<sup>21</sup> Bernard Weiss, "Interpretation in Islamic Law: The Theory of *Ijtihâd*", *American Journal of Comparative Law*, 1978, vol.26, no.2, pp.199-212, p.201.

<sup>22</sup> Weiss, "Interpretation in Islamic Law: The Theory of *Ijtihâd*", p.200.

<sup>23</sup> *Ijtihad* as a term is not technically the same with the notion of interpretation but there is a definite correspondence between the two. See: Weiss, "Interpretation in Islamic Law": p.200.

<sup>24</sup> Abd ar-Rahman I. Doi, *Shari'ah: The Islamic Law*, London: 2008, p.78.

Sunni law schools.<sup>25</sup> Abu'l-Husayn al-Basri (d.467/1083) in his "*al Mu'tamad fi Usul al-Fiqh*"<sup>26</sup> was set out the qualifications for a *mujtahid* which can be summarized as (i) to be cognizant of the purpose of the *sharia* and (ii) its sources and methodology of inference.<sup>27</sup>

The problem is even if the scholar (*mujtahid*) has all of the qualifications which are necessary (for *ijtihâd*) in interpretation process, as a result of human nature he could reach a decision according to his pre-understandings. Therefore, *mujtahids* reach different solutions despite the texts, which they extract rules, are the same.<sup>28</sup> The statement which is quoted from Abu Hanifah can be presented as a proof of this claim: "I believe that my opinions are correct but I am cognizant of the fact that my opinion may be wrong. Also I believe that opinions of my opponents are wrong but I am cognizant of the fact that they may be correct."<sup>29</sup>

Throughout the Islamic history, Quran and Hadith texts have never lost their power before the "reader"/"interpreter" as a main source of Islamic Law. However, sometimes their position has changed from "subject" to "object". By this sentence, we intend to mean that Quran and Hadith texts are the main "subject" of the Muslim understanding, they always shape the Muslim mind and attitudes, nevertheless, in the course of interpretation process these sacred texts can be an object of the "reader's mind. Ali ibn Abu Talib's answer, on the occasion of *Tahkim* (arbitration), to ibn al- Kawwa, the leader of the Kharijites, indicates that reader's preunderstandings can be more influential than thought:

<sup>25</sup> Wael B. Hallaq, "Was the Gate of *Ijtihâd* Closed?", *International Journal of Middle East Studies*, (1984) xvi, 1, pp.3-41, p.30.

<sup>26</sup> See: Muhammad b. Ali al-Basri, *al-Mu'tamad fi Usl a-Fiqh*, ed. M. Hamidullah, vol.2, pp.85-86.

<sup>27</sup> See: Sayf al-Din al-Amidi, *al-Ihkam fi Usul al-Ahkam*, (I-III), Cairo: Muhammad Ali, Suwayh, 1968, p.204-205)

<sup>28</sup> Ibn Taymiyyah, Taqî al-Din, *Raf'ul-Melâm an Eimmeti'l-A'lam*, thk: Abû Mus'ab Muhammad Sa'id al-Bedri, Beirut: Dâr al-Kitab al-Lubnâni, 1991, p.44; Muhammed Avvame, *Eser al-Hadis al-Sharif fi Ihtilafi Eimmeti al-Fukaha*, Kahire: Daru's-Selâm, 1987, p.35.

<sup>29</sup> See: Ahmed Zeki Hammad, *Islamic Law: Understanding Juristic Differences*, Indianapolis: American Trust Publications, 1992, p.44.



Qur'an is a book which is written on pages and does not speak itself; contrarily, people communicate with Quran and they make it to talk for them, also they derive rules from it.<sup>30</sup>

This statement of Ali ibn Abu Talib shows that the relationship between the text and the reader is not unidimensional on the contrary, it is mutual and also the text can be an object before "the reader". Because of this, the problem of interpretation and understanding is directly related to "reader's position against "text". The question is whether the text speaks and reader remains silent or reader speaks and the text keeps silent. Whatever the answer is there is always a fact that reader does not remain silent completely in interpretation process.<sup>31</sup>

For example; in the early days, disagreement over the meaning of the Quranic verse - "...if the deceased has left no children but has parents who are still alive, the mother takes one third..."<sup>32</sup> - was provoked by the particular problem of the relative rights of the father and mother when the only other surviving heir is the spouse relict.<sup>33</sup>

Ibn Abbas maintained that in this case the mother was entitled to a Quranic portion of one-third of the estate, since the Quran clearly stated that the mother's share was to be one-third in the absence of any lineal descendant or collaterals. According to him, therefore, in competition with a husband, who takes a portion of one-half, the mother takes one-third and the father as residuary, one sixth; while in competition with a wife, who takes one-quarter, the mother takes one-third and the father five twelfths as residuary.

<sup>30</sup> Abu'l-Hasan Izzaddin Ali b. Muhammed b. Abdulkarim Ibnu'l Esir, *el-Kamil fi't-Tarih*, (I-IX), Beirut: Dâru'l-Ma'rife, 2002, v.3, p.328.

<sup>31</sup> See: Khaled, Abou el-Fadl, *Speaking in God's Name Islamic Law, Authority and Women*, Oxford: Oneworld, 2001, pp.98-132.

<sup>32</sup> Qur'an: 4/11.

<sup>33</sup> See: N. J. Coulson, *Succession in the Muslim Family*, Cambridge: Cambridge University Press, 1971, p.45-46.

This view was distinctly refused by Sunni jurisprudence as a whole because Sunni scholars prefer to interpret the Quranic text in the light of the customary criterion of the priority of male agnates in succession. According to Sunni scholars, the mother in these circumstances does not take a Quranic portion but shares in the residue with the father, taking half as much as he does, after the deduction of the spouse relict's portion. Thus, in competition with the husband, the mother takes one-sixth and the father one-third of the estate; and in competition with the wife, the mother takes one-quarter and the father one-half of the inheritance.<sup>34</sup>

Formally, these cases are made compatible with the Quran by scholars, by interpreting the verse, to mean either "where the parents are the only legal heirs", or "the mother takes one-third of the residue." However, neither of these interpretations is virtually as sound as the obvious interpretation adopted by Ibn Abbas. And, one of the prominent scholars of Islamic Law, Ibn Qudama, admits "the argument of Ibn Abbas would prevail were it not for the consensus of the Prophet's companions to the contrary".<sup>35</sup> The main reason behind the forced interpretations of the Quran was simply the refusal to accept the possibility of the mother of the deceased taking a greater share in the inheritance than the father. As the Maliki authority al-Adawi, states:

The majority felt to give the mother one-third in these two cases would lead to a contradiction of basic principles. For if, competition with the husband, she takes one-third of the whole estate, she takes twice the share of the father; and there is no parallel case of female, in competition with a male of the same class and degree of relationship, taking double the share of the male.<sup>36</sup>

<sup>34</sup> Coulson, *Succession in the Muslim Family*, p.45.

<sup>35</sup> Abdullah b. Ahmad Ibn Qudama al-Maqdisi, *al-Mughni*, (vol.I-IX), Beirut : Daru'l-Kitabi'l-Arabi, 1972, v.VI, p.180.

<sup>36</sup> Ali b. Ahmed b. Mukerremillah al-Saidi al-Adawi, *al-Hâshiyetu al-Adevi ala Kifayeti't-Talibi al-Rabbani*, (I-II), Beirut: Dâru'l-Fikr, n.d., v.II, p.346.

On the other hand, Shii jurisprudence regards this as a wholly unwarranted process of forcing the text of the Quran to conform to preconceived notions of succession, whether such notions were embodied in a decision of Omar ibn al-Khattab or any other authority. They insisted that the words of the Quran should be taken at their face value and that the mother should here take one-third of the whole estate as her Quranic portion, even if this meant that the father's residual share in the presence of a surviving husband was restricted to one-sixth of the inheritance.<sup>37</sup>

In this example we are witnessing different readings and interpretations of Quranic verse. Main determinants of both of these interpretations and decisions are the pre-understandings of scholars. While one group of scholars prefers to interpret the text according to literal approach, the other one is using logical approach towards "the text" under the effect of agnatic system. Although, the text is the same, interpretations and also conclusions are assorted.

The problem of interpretation and the affect of pre-understanding of the reader are not only can be seen in the interpretation of Quranic verses. It can also be experienced during the understanding and interpretation process of the hadith texts. Much greater part of the Islamic law would be anchored in hadith than in the Qur'an. The vast and comprehensive body of Islamic law (*fiqh*) critically rests on the hadith literature. Once exegesis—the extraction of law from texts—had thanks to be increased, dependence on hadith narrations became central to Islamic jurisprudence.<sup>38</sup> Accordingly, one of the main factors of judicial controversies in Islamic Law is the understanding and interpretation problem of the hadith texts. Hence, as we have discussed above, we will question the affect of the pre-understandings of a reader during the process of interpretation/ijtihad, by focusing on hadith texts. The question will be approached under two paradigms. Firstly, text based pre-understanding problem and its affect

<sup>37</sup> See: Coulson, *Ibid*, pp.44-45.

<sup>38</sup> Weiss, *The Spirit of Islamic Law*, p.15.

on the judgement will be questioned, secondly reader based pre-understanding problem will be discussed.

## 2- Text Based Interpretation Problem of Hadith Narrations and Its Affects on the Judgement

It is a well known fact that narrating an event or an expression to another person, in principle, has two distinct ways which are oral or written transmission. When we make a comparison on both of the narration methods, it can be claimed that the meaning which can be reached on the basis of oral transmission could be different than the meaning of written transmission. Because, in written transmission contrary to the oral transmission, there are grammar rules which regulate the sentences and fixed the meaning.<sup>39</sup> Accordingly, meaning in written transmission is mostly related to the language structure of the written statement while in oral transmission it is connected with the context of event or expression.<sup>40</sup>

Considering the difference between oral and written transmission it can be claimed that the textualisation of the oral expression is associated with the risk of removal of its meaning from its context.

We have preferred to start this chapter by pointing the difference between oral and written transmission of an event or an expression, because Hadiths, as a source of Islamic Law, are the texts which are narrated orally first.<sup>41</sup> As a result of this situation the problem of understanding has occurred depending on the difference between oral and written narration. We can clarify this claim by stating two different narrations on the same topic. For example, in a hadith, it is stated that "*Prophet Muhammad (pbuh) has forbade leasing of a land*"<sup>42</sup>. But in another hadith which is narrated by Ahmed ibn Hanbal from Urwa b. Zubayr the aim of the Prophet Muhammed is reported in detail: "*Zayd b. Sabit said: Two people who fight with*

<sup>39</sup> Edibe Sözen, *Söylem*, Istanbul: Paradigma, 1999, p.36.

<sup>40</sup> Paul Ricour, *From Text to Action*, translated by: Kathleen Blamey and John B. Thompson, London: Northwestern University Press, 1991, pp.106-110.

<sup>41</sup> M. M. Azami, *Studies in Early Hadith Literature*, American Trust Publications, 2001, p.18.

<sup>42</sup> Muslim, *Kitab al-Buyû*, 4/49.

each other came to Prophet Muhammed. When he saw their situation He said: "If your situation is such, do not lease your land".<sup>43</sup> As can be seen in these narrations if the oral expression is removed from its context, like the method of copy and paste, the problem of understanding occurs on how to understand the expression of Prophet Muhammad. As his expressions are the source of Islamic Law depending on the scholars mind and approach toward narrations, the decision/verdict on the topic can be change.<sup>44</sup>

Oral or written transmission of an expression or event is an indication of giving a value to that statement or event; on the other hand it brings the risk of changing the meaning of the original statement in the hands of the narrator.<sup>45</sup> It means that even if the report has conveyed through the most reliable people, the transmission style of the text by the narrator would determine the possible meanings of the text.<sup>46</sup> In this case, the meaning of the narration is closely related to the preferred narration style of the information/statement.

Transfer of a thought or an expression takes place in different structures. Especially in written language, the absence of the structures that facilitate to narrate an expression as in colloquial language has provided the formation of variety of narration styles.<sup>47</sup> Accordingly, in written language, knowledge is narrated by two different methods which are expressed as direct narration and indirect narration styles.

In direct narration, the narrator tries to maintain the syntax and the original word structure of the speaking person and he aims to narrate the

<sup>43</sup> Ahmad b. Hanbal, *al-Musnad*, v.1, p.178.

<sup>44</sup> To examine different verdicts depending on these narrations compare: Ibn Hāzım al-Andalusı, Alı ibn Aḥmad, *al-Muhalla bi al-Asar*, (I-XII), Beirut: 1408, v.VII, p.55; al-Shaybānı, Muḥammad ibn al-Ḥasan, *Kitabu'l-Hujja ala Ahl al-Madina*, (I-IV), Beirut: 1403; *al-Jami al-Saghir*, Beirut: 1406, p.469; Sarakhsı, Muḥammad ibn Aḥmad, *Kitab al-Mabsut*, (I-XXX), Egypt: 1324, v.XXIII, p.17.

<sup>45</sup> See: Wael b. Hallaq, *Sharia: Theory, Practice, Transformations*, Cambridge: Cambridge University Press, 2009, pp.87-97.

<sup>46</sup> Yavuz Ünal, *Hadis Geleneğinde Metin Bilinci*, Samsun: Etüt Yayınları, 2008, p.174.

<sup>47</sup> Bkz: Munteha Gül, "Söz ve Düşünce Aktarımı", *Turkish Studies/Turkoloji Araştırmaları*, v.2, y.2007/ Spring, pp.239-256.

event or an expression without any changes.<sup>48</sup> On the other hand in indirect narration statements and events are narrated alongside the interpretations and opinions of the narrator, he expressed the event or statement by his own words, sometimes by summarizing or by extracting rules etc.<sup>49</sup> The difference between both styles in terms of the affect of transmitter on text signifies that the meaning in the written statement is determined by the interaction between *the source of word – comprehension level of the narrator – the preferred narration style*.

Transmission style of the narration, as in all written texts, shows its affect on the extraction of rules from hadith narrations and also on their interpretation. It can be expressed that in direct narration, narrator tries to transfer all he heard and saw by expressing all the details without interfering its origin, like taking a photo of a moment. On the contrary, in indirect narration, the meaning which is understood on the basis of the statement or conduct is conveyed by transformation of the narration into the needed form. In other words, in indirect narration conveyed message is not the original statement or deed; it is the narrators understanding of the expression. Most of the time, in hadith narrations indirect narration style appears as a form of rule because narrator wants to convey the law not all of the details. Firstly we'll discuss these styles by giving examples and then examine their affect on the preunderstandings of reader in the process of extracting rules from these texts.

## 2.1. Direct Narrations in Hadith Texts

Direct narratives, refers to the transfer of statement, event or action with its historical context with the intention of narrating all of the information about it. That is to say, purpose of the narrator would determine the style, so it would shape the narration. Examples of direct narrations in hadiths can be classified under three different fields as direct narratives in practi-

<sup>48</sup> Geoffrey N. Leech, - Michael H. Short, *Style In Fiction*, Newyork: Longman, 1981, p.321.

<sup>49</sup> See: Leech- Short, *Ibid*, p.318.

cal religious knowledge, direct narratives in socio-cultural knowledge, and direct narratives in historical knowledge.

*Example 1: Direct narrations in practical religious knowledge transfer:*

One of the most intense usages of direct narration is observed within the hadiths which contains practical religious knowledge. It can be claimed that the reason for using direct narratives is related to the aim of not to miss even the smallest detail of information and transfer it to the other Muslims. Narrations can be examined according to Marston Speight's structural approach towards hadith texts. In his study, he classified the narrations as two-part narrative, three-part narrative, four part narrative and story typed narratives/(qissa).<sup>50</sup> According to him the simplest narrative form consists of two parts which are *a*) action and *b*) reaction. Three-part narrative forms are composed with *a*) statement *b*) question *c*) answer and four-part narrative forms are shaped by *a*) an initial action or statement- *b*) an action or statement eliciting *c*) a reaction *d*) a response to the reaction. Also he expresses that "qisas" are formed with all of these types together. We would examine a direct narrative according to this structural approach regarding how Prophet Muhammed performed an ablution:

Urwa bin Al-Mughira narrated from his father: I was one night with the Messenger of Allah (may peace be upon him) on a journey. He asked me: Have you any water with you? I said: Yes. He (the Holy Prophet) came down from his ride and went on till he disappeared in the darkness of night. He then came back and I poured water for him from the jar. He washed his face, He had a woollen gown on him and he could not bring out his forearms from it (i.e. from its sleeves) and consequently he brought them out from under his gown. He washed his forearms, wiped over his head. I then, bent down to take off his socks. But he said: Leave

<sup>50</sup> Marston Speight, "Narrative Structures in the Hadith", *Journal of Near Eastern Studies*, v.59/4 y.2000, pp.265-271.

them, for my feet were clean when I put them in, and he only wiped over them.<sup>51</sup>

Having examined the narration in terms of its structure we have observed that it is narrated with four part narrative form. *a) an initial action or statement:* I was one night with the Apostle of Allah (may peace be upon him) on a journey. He asked me: Have you any water with you? *b) an action or statement eliciting:* I said: Yes. *c) a reaction:* He (the Holy Prophet) came down from his ride and went on till he disappeared in the darkness of night. He then came back and I poured water for him from the jar. He washed his face, He had a woollen gown on him and he could not bring out his forearms from it (i.e. from its sleeves) and consequently he brought them out from under his gown. He washed his forearms, wiped over his head. I then bent down to take off his socks. *d) a response to the reaction:* But he said: Leave them, for my feet were clean when I put them in, and he only wiped over them.

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In this narration, narrator (*rawi*) transmits all of the information he had with direct narration style. By doing this, he pays attention to the order of Prophet Muhammed's ablution and also emphasizes the wiping over of feet with narrating in detail. Rather than transmitting with direct narration he could have used indirect narration style by stating that "*while Prophet Muhammed taking an ablution he has wiped over his soled boot if he put on them with clean feet*". However, it could not be as clear as and also as effective as the direct narrative. In this narration we have experienced that the direct narrative style has been used to transmit information effectively about the ablution of Prophet Muhammed.

*Example 2: Direct narrations in socio-cultural knowledge transfer:*

It has been noted that one of the other main using area of direct narrative style is transferring socio-cultural knowledge. We can put forward a narration on Prophet Muhammed's response for lizard eating as an example of narration on socio-cultural knowledge transfer:

<sup>51</sup> Muslim, *Kitab al-Tahâre*, 23.



Abdullah b. 'Abbas reported that Khalid b. Walid who is called the Sword of Allah had informed him that he visited Maimuna, the wife of Allah's Apostle (may peace be upon him), in the company of Allah's Messenger (may peace be upon him), and she was the sister of his mother (that of Khalid) and that of 'Ibn Abbas, and he found with her a roasted lizard which her sister Hufaida the daughter of al-Harith had brought from Najd, and she presented that lizard to Allah's Messenger (may peace be upon him). It was rare that some food was presented to the Holy Prophet (may peace be upon him) and it was not mentioned or named. While Allah's Messenger (may peace be upon him) was about to stretch forth his hand towards the lizard, a woman from amongst the women present there informed the Messenger of Allah (may peace be upon him) what they had presented to him. They said: Messenger of Allah, it is a lizard. Allah's Messenger (may peace be upon him) withdrew his hand, whereupon Khalid b. Walid said: Messenger of Allah, is a lizard forbidden? There upon he said: No, but it is not found in the land of my people, and I feel that I have no liking for it. Khalid said: I then chewed and ate it, and Allah's Messenger (may peace be upon him) was looking at me and he did not forbid (me to eat it).<sup>52</sup>

When we examine the exemplary narration structurally we would understand that it has narrated with four part narrative form: *a) an initial action or statement*: Khalid b. Walid and Prophet Muhammed visited the house of Maimuna and she presented them roasted lizard and women have informed the Prophet by stating that it is a lizard. *b) an action or statement eliciting*: Allah's Messenger (may peace be upon him) withdrew his hand, *c) a reaction*: Khalid b. Walid said: Messenger of Allah, is a lizard forbidden? *d) a response to the reaction*: There upon he said: No, but it is not found in the land of my people, and I feel that I have no liking for it. Khalid said: I then chewed and ate it, and Allah's Messenger (may peace be upon him) was looking at me and he did not forbid (me to eat it).

<sup>52</sup> Muslim, *Kitab al-Sayd ve al-Zebâih*, 7.

In this hadith which shows us the food culture in the region and also the reaction of Prophet Muhammed against that culture is narrated with the form of direct narrative style. Instead of using that style narrator could prefer indirect narration style by summarizing all the information inside the narration, also he could narrate it as an object of law or as a rule by stating that “*eating lizard is not forbidden in Islam*”. However he did not prefer to narrate it as a rule contrary Abdullah b. Abbas has gave us all of the details even the reaction of Prophet Muhammed to Khaled b. Waled, when he was eating lizard, has narrated in detail. This shows us the affect of narrator on the information which is transmitted from one person to another and also indicates that it is not possible to understand a narration without considering the position of narrator.

*Example 3: Direct narrations in historical knowledge transfer:*

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Narrators have also transmitted historical knowledge by using direct narrative style with the aim of transferring every detail of the historical events. We will examine a narration about Battle of Ditch in respect of its narrative structure:

It was narrated that Abdullah bin Mas’ud said: We were with the messenger of Allah and we were prevented from praying Zuhr Asr, Maghrib and Isha, during the Battle of Ditch. I felt upset about that and I said to myself: We are with the Messenger of Allah and fighting for the sake of Allah. Then the Messenger of Allah commanded Bilal to say, the Iqamah and he led us in praying Asr. Then he said the Iqamah and he led us in praying Maghrib. Then he said the Iqamah and he led us in praying Isha. Then he went around among us and told us: “There is no group on earth who is remembering Allah, the Mighty and Sublime, except you.”<sup>53</sup>

Instead of using indirect narration style, by saying “*during the difficult moments of the battle of trench we could not pray on time and we prayed all*

<sup>53</sup> Ebû Abdurrahman Ahmed b. Şuayb Nasâî, *as-Sunan*, Beirut: Dâru’l-Marife, 2007, Mevâkıt, 55, (h.no:621, p.144).

of them in the evening”, narrator preferred to transmit information with all the details of the event by direct narrative style.

Having examined the sample narration in terms of its structure we have seen that it has transmitted with two part narrative form: *a) action:* We were with the messenger of Allah and we were prevented from praying Zuhr, Asr, Maghrib and Isha, during the Battle of Ditch. I felt upset about that and I said to myself: We are with the Messenger of Allah and fighting for the sake of Allah. *b) reaction:* Then the Messenger of Allah commanded Bilal to say, the Iqamah and he led us in praying Asr. Then he said the Iqamah and he led us in praying Maghrib. Then he said the Iqamah and he led us in praying Isha. Then he went around among us and told us: “There is no group on earth who is remembering Allah, the Mighty and Sublime, except you.

The preference of direct narrative style to transmit information in the text which includes religious knowledge as well as historical knowledge, as a result of the nature of hadith text, gives the opportunity to understand the affair with all the details. Especially, the last statement of the Prophet Muhammed concerning the participants of battle makes the preference of direct narrative style meaningful in the narration.

## 2.2. Indirect Narrations in Hadith Texts

In indirect narrative style; narrator, instead of narrating word for word, integrates his expressions to the original statement by acting as he is an interpreter of the words of the speaker.<sup>54</sup> Considering this situation in terms of its affects to the hadith texts, we can say that hadith text which is narrated indirectly can cause the problem of not to understand Prophet Muhammed’s original intend. Especially in Islamic law, scholars aim to reach all of the variants of one narration to deal with this understanding problem. By doing so, they target to understand the real message of the

<sup>54</sup> Leech-Short, *a.g.e.*, p.320.

Prophet Muhammed.<sup>55</sup> As an example for the difference between direct and indirect narrative style, we can compare two hadith texts which are transmitted related to the same event:

Indirect Narrative:

Abdullah ibn Umar -narrated- : *The deceased person suffers because of people's wailing over him.*<sup>56</sup>

Direct Narrative:

Aisha (the wife of the Prophet Muhammed) said: The funeral of a Jewish lady passed by Rasulullah and he saw her people crying and said: *They are crying over her and she is being punished in her grave.*<sup>57</sup>

Having examined these two narratives, which transmit the same event, carefully; despite their shared topic we have noted different meanings as a result of their narrators approach. The narrative which is transmitted indirectly expresses the summary of what transmitter understood from the act and saying of Prophet Muhammed, on the other hand direct narrative transmits the incidence like taking photo of that event and narrates the statement compatible with its context. As a result of this situation, in indirect narration style, it is possible to understand that the dead person is suffering in consequence of the crying of his/her relatives, contrary to that ruling in direct narrative, it is understood that the dead person does not suffer because of his/her relatives crying, instead in consequence of his/her belief he suffers.

Also another example which is narrated from Aisha shows us the importance of direct narration to understand the hadith text. In an indirect narrative Urwa b. al-Zubayr narrated from Aisha from Prophet Muhammed: *"Whoever is tried by having daughters and preserves them, they will*

<sup>55</sup> Mohammad Hashim Kamali, *Shariah Law: An Introduction*, Oxford: Oneworld, 2008, pp.102-107

<sup>56</sup> Nasâî, *Kitab-al Janâiz* 15; Muslim, *Kitab al-Janâiz*, 9.

<sup>57</sup> Nasâî, *Kitab-al Janâiz*, 15.

veil him from the Hellfire (on the day of Judgement)."<sup>58</sup> Based on this narration it is possible to reach a negative impression about having daughters. On the other hand direct narration of the same event illustrates us the real meaning: *Aisha recounts that "A woman entered asking me (for food) and had two daughters with her. But all I had with me was a date, so I gave it to her, and she split it between her two daughters without eating any herself. When the Prophet came I told him of this, and he said "Whoever is tried by these daughters, they will be a veil from Hellfire (on the day of judgement)"*<sup>59</sup>

These examples can be perceived as a sign of importance of narrative style while extracting rules from narratives and also indicates that narrative style should not be ignored. In the light of these findings, we will discuss the importance of narration style as a determinant of pre-understandings of a reader/judge in legal area.

### 2.3. From Hadith Narrations to Legal Decision

The meaning of a text is determined by every parts of the sentence, which are verb, object, subject etc. On the other hand, if this sentence is the statement or deed of another person, another determinant of meaning appears: The narration style of the transmitter.

As we have discussed before, narration styles have an impact on reader's mind while interpreting the text to reach a verdict. Because in indirect narration, transmitter conveys what he extracts from the sentences of a speaker, while in direct narration it is not the case, transmitter narrates the sentence or event with extra care for the aim of protecting the whole structure.

For example; depending on the text of the hadith which is narrated indirectly by the words: "*Drink from containers and do not get drunk*"<sup>60</sup> (*eşri-bu fi'd-durufi vela tuskiru*) can be reached that the Prophet Muhammed has allowed drinking alcohol with the condition of not getting drunk; the

<sup>58</sup> Tirmidhi, *Kitab al-Birr va's-Sıla*, 13.

<sup>59</sup> Tirmidhi, *Kitab al-Birr va's-Sıla*, 13.

<sup>60</sup> Nasâî, *Kitab al-Janaiz*, 100.

other version of the narration which is narrated directly shows the context of that narration and demonstrates us the real meaning:

Ibn Burayda narrated from Prophet Muhammed: "I had banned you to visit graves, but now you can visit them. I have prevented you to keep meats of sacrificial animals more than three days, However, you can store them. *I had prohibited you to drink nabidh (a kind of beverage) from containers other than leather, now you can drink it from all the cupp. Nevertheless, do not drink which intoxicatep.* (Wala tuskiru muskiran).<sup>61</sup>

Having compared these two different narratives we can easily understand the difference and reach separate conclusions. Second narrative is transmitted with its context while the first one is the summary of what narrator understands from the statements of Prophet Muhammed. On the basis of these two divergent approaches, judgement can be change according to the approach of the jurist. In this example it is really hard to find a jurist who applied the direct narrative in his verdict because the rule is against the common knowledge of scholars of Islamic law. However, on the other hand, it is not the case every time. For instance, the debates around the maintainance and lodging rights of divorced women is directly related to the narration style of the text:

- It was narrated form Fatima bnt. Qais that the Prophet said: *The thrice divorced woman is not entitled to provision and shelter.*<sup>62</sup>

- Fatima bint Qais (Allah be pleased with her) reported from Allah's Messenger (may peace be upon him) that *there is no lodging and maintenance allowance for a woman who has been given irrevocable divorce.*<sup>63</sup>

According to these narrations which are transmitted indirectly, it is possible to reach the conclusion that there is no right of maintainence and lodging for every irrevocable divorced women. And also, some scholars of Islamic law reached that conclusion on the basis of this, Fatima bint

<sup>61</sup> Nasâî, *Kitab al-Ashriba*, 40.

<sup>62</sup> Muslim, *Kitab al-Birr*, 47.

<sup>63</sup> Muslim, *Kitabu't-Talak*, 9.

Qais's, indirectly narrated report.<sup>64</sup> On the other hand, other versions of these narrations show us that the Prophet Muhammed declared his decision considering the personal circumstances of Fatima bnt. Qais and this verdict is not covering all of the cases. Also, in another indirect narration, transmitter stresses that the verdict is "for her": *My husband has divorced me irrevocably and Allah's Messenger did not determine housing and maintenance for me*"<sup>65</sup>. Considering this, having examined the other narrations which transmit the information directly it is possible to understand and reach a result differently. The direct report of Aisha makes clear the meaning of these narrations:

Narrated Qasim: Ursa said to Aisha, "Do you know so-and-so, the daughter of Al-Hakam? Her husband divorced her irrevocably and she left (her husband's house)." 'Aisha said, "What a bad thing she has done!" 'Ursa said (to 'Aisha), "Haven't you heard the statement of Fatima?" 'Aisha replied, "It is not in her favor to mention." 'Ursa added, 'Aisha reproached (Fatima) severely and said, "*Fatima was in a lonely place, and she was prone to danger, so the Prophet allowed her (to go out of her husband's house).*"<sup>66</sup>

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On the basis of this directly transmitted narration it is understood that Prophet Muhammed has declared his decision specifically by considering the respective conditions of Fatima bnt. Qais. He has declared that there is no maintenance and lodging for her because she has gone to her father's house after the divorce. And it is not possible to reach a verdict for every situation from above mentioned indirectly transmitted narrations. Even Omar b. Khattab has challenged the narration of Fatima bnt. Qais by stating that "*We cannot abandon the Qur'an and the sunnah of the Prophet just considering the statement of a woman which we cannot know exact-*

<sup>64</sup> See: Ibn Hazm, 'Ali ibn Ahmad, *al-Muhalla bi'l Asar*, (I-XII), Beirut: 1408, v.IX, p.459.

<sup>65</sup> Muslim, *Kitab al-Rada*, 109,111, 114, 117, Ebu Davud, *Kitab al-Talak*, 39; Tirmidhi, *Kitab al-Nikah*, 38, *Talak*, 5; Nasâî, *Kitab al-Nikâh*, 21, *Talâk*, 7.

<sup>66</sup> Al-Bukhari, *Kitab al-Talaq*, 63

ly whether she has memorised the hadith exactly or not.”<sup>67</sup> Depending on this directly transmitted version of these narrations, contrary to the scholars like Ibn Hazm who does not accept lodging and maintenance right of irrevocably divorced women, Hanafi scholars accept that the husband has the obligation of lodging and maintenance.<sup>68</sup> This shows that the narration style of an event or statement has also an impact on judgement process. Just as, reaching a decision parallel to the understanding and interpretation process we can claim that pre-understandings of the reader based on transmission style of a narration would affect the final decision of a jurist.

### 3. Reader Based Interpretation Problem of Hadith Texts and Its Affects on the Judgement

After the Qur’anic verses, hadith narrations are the most important sources of Islamic Law. The expression of al-Shafii which “if the hadith is authentic, that is my opinion” (in *sahha'l-hadis, fe haza mezhebî*)<sup>69</sup> is important in terms of its indicative position on significance of hadith texts. Also his usage of nearly four thousand three hundred narrations in his “Kitab al-Umm” to support every details of Islamic Law<sup>70</sup> demonstrates the value of hadith texts in Islamic law.

On the other hand, employing the narrations with the aim of supporting judicial ideas, sometimes leads the problem of reaching a conclusion with over-interpreting the text, which is formed by the scholars juristic mind. This problem is the result of atomic approach towards the nar-

<sup>67</sup> Tirmidhi, *Kitab al-Talak*, 5. al-Bayhaki, *as-Sunan al-Kubra*, ed. Muhammed Abdulkadir Ata, Beirut: Dâru'l-Kutubu'l-Ilmiyyah, 2003, v.7, p.781; Ali b. Ömer ed-Darakuṭnî, *Sunan*, Beirut: 1966, v.4, p.26; Abû Bekir Abdullah b. Muhammed İbn Ebi Şeybe, *al-Musannef fi'l-Ahâdis ve'l-Asâr*, Beirut: 1409, v.4, p.136.

<sup>68</sup> See: al-Marwadhî, Abu Abdullah Muhammed b. Nasr, *al-Ikhtilaf al-Ulama*, Beirut: 1406, p.148; al-Sarakhsi, Abu Bakr Muhammed b. Ahmed, *al-Uṣûl al-Sarakhsi*, Istanbul, 1984, v.I, p.343-344,365.

<sup>69</sup> Muhammed b. Hibban b. Ahmed Ebû Hâtim al-Bustî, *Sahihu Ibn Hibbân*, ed. Şuayb Arnavut ve Huseyin Esad, Beirut: Muessesetu'r-Risale, 1983, v.5, p.498.

<sup>70</sup> Jonathan Brown, *Hadith - Muhammed's Legacy in the Medieval and Modern World-*, Oxford: Oneworld Publications, 2009, p.158.



rations, in other words instead of using the own context of the text, differentiation of the meaning of a narration by adopting reader's pre-understandings into the text.<sup>71</sup> The statement of al-Karhi (d.340/952), Hanafi scholar, "Every text which does not comply with the opinion of our schools are either "abrogated" or should be interpreted with the opinion of our school."<sup>72</sup> can be accepted as an example of binding the text by pre-understandings of a reader. This means that rather than allowing a text to speak itself to the reader, sometimes, reader determines the meaning of a text according to his approach. We will discuss it on the bases of two exemplary decision.

### 3.1. Punishment of the Person who Abandones Daily Prayer

Approaching hadith narratives as a judicial information source, sometimes may cause a trouble of evaluation of a hadith text according to the meaning which is reached with the legal viewpoint rather than with the own horizon of the meaning of a text. We can exemplify this by stating the usage of a narration, which aims to discourage from leaving regular daily prayer (*salat*), as an example of evaluating the text with judicial pre-understandings, even as a main determinant of a source of the rule "killing someone who abandons the prayer intentionally":

Abdullah b. Burayda narrated from his father: I heard from Prophet Muhammed: "The difference between us and them is prayer (*salat*). Who abandons prayer, becomes infidel."<sup>73</sup>

This narration is referred as a source of the rule, which is killing a man who abandons the prayer, by Hanbali scholars, because it was evaluated with the narration of "anyone who converts kill him"<sup>74</sup>. According to

<sup>71</sup> Umberto Eco, *Interpretation and Over-Interpretation*, Cambridge: Cambridge University Press, 1998, pp.45-89.

<sup>72</sup> Muhammed b. Afîfî al-Bacurî al-Hudarî, *al-Târih al-Teşrîi al-Islâmî*, Beirût: 1960, p.323. (*kullu ayetin tuhalifu ma aleyhi ashabuna fe hiye muevoeletum ev mensuhetum*)

<sup>73</sup> San'ani, Abd al-Razzaq ibn Hammam, *al-Muşannaʿ*, Beirut: al-Majlis al-Ilmi, 1970, v.3, p.124; Muslim, *Kitab al-İman*, 35; Ebû Dâvud, *Kitab al-Sunnah*, 14.

<sup>74</sup> (Men baddala dinehu faktuluhu) Bukhari, *Kitab-al-Jihad*, 149; *Kitab al-Istitabetu'l-Murteddîn*, 2; Abû Dâvud, *Kitab al-Hudûd*, 1; Nasâî, *Kitab al-Tahrîmu'd-Dem*, 14.

complementary situation of one narration to another, Hanbali scholars understand these narrations together and accept that who abandons prayer is like who converts his religion and who converts should be killed based on the second narration above.<sup>75</sup>

Source and proof of this judgement is not, only the narration which is mentioned secondly. For example; Shafi and Maliki scholars supporting their decision to kill who abandones daily prayers, in comparison with Abu Bakir's (the first khalif of Islam) fighting with apostates and who rejects to give their alms (zakat), because the man who left one order of the religion can be accepted as an apostate.<sup>76</sup> However, in this research it is not our aim to discuss the nature of the verdict of a scholar on certain topic, it can be supported with different proofs or not, but we are aiming to examine the juristic approach towards narrations and question the affect of this stance on judicial opinion. Indeed, other variant of the narration which is mentioned above is transmitted in following way:

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Ummu Aiman narrated that Prophet Muhammed (pbuh) said: *Do not abandon prayer intentionally. Allah's and His Messenger's protection removed from the one who abandons the prayer intentionally.*<sup>77</sup>

That variant shows us; it is hard to build a judicial provision by considering just one narration, because in this variant, instead of becoming infidel, one who abandones the prayer, is deprived of Allah and His Prophet's protection. Having considered the opinions of some other scholars from Hanafi school we would see the punishment of "ta'zir" instead of killing that person as a result of abandoning the daily prayer.<sup>78</sup> This presents us the hardness of reaching a decision from one narration and also indicates that approaching narrations with juristic pre-

<sup>75</sup> Abû İbrahim İsmail b. Yahya al-Muzenî, *Mukhtasar al-Muzenî*, Beirut: Dâru'l-Kutubu'l-İlmiyyah, 1993, v.9, p.40; Shafi, *Kitab al-Umm*, v.2, p.563.

<sup>76</sup> Shafi, *al-Umm*, v.2, p.563.

<sup>77</sup> Ibn Hanbel, *al-Musned*, v.6, p.469.

<sup>78</sup> Ebû Suleyman Hamd b. Muhammed b. İbrâhim Hattabi, *Mealimu al-Sunan*, (I-II), İstanbul: 1992, v.1, p.58; Badruddîn Ebû Muhammed Mahmud b. Ahmed b. Musa al-Hanefi al-Aynî, *Umdet al-Kâri*, (I-XX), Kahire: 1972, v.19, p.366.

understandings can cause problems on understanding the message of hadith.

Although daily prayer (salat) is a sign of becoming Muslim, having an opinion of killing who abandones the prayer<sup>79</sup> by considering the narrations, which take part in the classical books with the aim of discouraging the behaviour of neglecting the prayer,<sup>80</sup> is directly related to the perspective of juristic approach against hadith narratives.

### 3.2. Punishment of the Person Who Watches Someone's House Without Permission

We can focus on another example, to see interpretation problem of hadith texts by considering every narration as a source of judicial verdict, which is about looking inside someone's house without the permission of residents.

As a religion which addresses every aspect of life, Islam has rules which must be obeyed in every area of social life. For example; asking permission of the residents while entering into the house is one of these rules emphasized in the Qur'an.<sup>81</sup> This provision, expressed through revelation, has found place also in hadith texts and Muslims keep away from entering and looking someone else's house without permission. However, narrations which aim to protect private life, through banning to look inside of a house, are interpreted as an evidence of criminal law by some scholars of Islamic law, as a result of their juristic approach towards narrations. By focusing on these narrations we will compare the difference between the context of narration itself and interpretation of it with judicial perspective.

Ubaydullah ibn Abi Bakr ibn Anas related from Anas that: A man

<sup>79</sup> See: Ibn Qudâme, *Muğnî*, v.2, p.156-159; Nawawî, *al-Majmû*, ed. Mahmud Matarâcî, (I-X), Beirut: Dâru'l Fikr, 1996, v.3, p.14-15.

<sup>80</sup> Al-Mundhirî, Abd al-Azîm ibn Abd al-Qawî, *al-Tarhib wat-Tarhib min al-Hadîth al-Sharîf*, (ed. Ibrahim Shamsuddin), (I-IV), Beirut: Dâru'l-Kutubu'l-Ilmiyya, 1417.

<sup>81</sup> Qur'an: 24/27.

looked into one of the rooms of the Prophet, may Allah bless him and grant him peace, and he went for him for a sharp arrow, or stick and made to seathily poke him with it.<sup>82</sup>

Based on this narration, some scholars has ruled that “*if a host of the house throws something to peeker and he losts his eyesight, there is no responsibility for the host. Even if he losts his life there is no need for atonement and it is not a sin.*”<sup>83</sup> Also Nawawi states that “*there is no necessity for warning before to throw something to the peeker*”.<sup>84</sup>

As seen above statements, evaluating the narrations with reductionist approach which aims to reach judicial results may cause to make an interpretation which accepts the killing of a person, who watches a house without permission, as a right of householder. In social life, it is a very serious offence to watch someone’s house by interrupting his private life. On the other hand, punishment of this offence by removing the eye of the watcher or even by killing him is not a behaviour which complies with the principle of justice and balance on penalty in Islamic Law.<sup>85</sup>

To reach a judicial decision from the narration (text), which aims to discourage people from negative behaviour in social life, is directly related to the perspective and understanding of a reader. Even, hadith narrations which contain advice rather than provision can be understood as a certain law text, according to the juristic approach based pre-understandings of the reader against hadith texts.

#### 4- Conclusion

“The Shariah is God’s justice among His servants and His mercy among His creatures. It is God’s shadow on His earth. It is His wisdom which leads to Him in the most exact way and the

<sup>82</sup> Bukhari, *Kitab al-Diyât*, 23.

<sup>83</sup> See: Shafii, *al-Umm*, v.7, p.81.

<sup>84</sup> Nawawi, Yahya ibn Sharaf, *Sahihu Muslim bi Sharh an-Nawawî*, (I-XVIII), Cairo: Matbaatu’l-Misriyye bi’l- Ezher, 1929, v.14, p.138.

<sup>85</sup> See: Ali Bardakoğlu, “*ceza/punishment*”, *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, İstanbul: Türkiye Diyanet Vakfı Yayınları, 1993, v.7, p.475.

most exact affirmation of the truthfulness of His Prophet. It is His light which enlightens the seekers and His guidance for the rightly guided".<sup>86</sup>

There is no authority rather than God and the Prophet in Islamic Jurisprudence, but God and the Prophet are represented by texts which are Qur'an and Hadiths. This means that in Islamic Law "the text" has the main authority in terms of its affect on Muslim life. However, although there is one text on certain topic, jurists reach different verdicts. The question is clear: What determines the meaning of the text? And what kind of relation does the text and reader has? Who has the power to speak: text or reader?

This methodological research has attempted to combine the debates on interpretation of the text -specifically hadith texts- in Islamic Law, based on above mentioned questions. By considering the fundamental position of "text" in every area of law, we have tried to discuss the effectiveness of hadith texts- and its reader on interpretation process. By doing so, we aim to focus on the nature of Islamic Law considering the affect of the interpretation of hadith narrations. The main conclusions of this study can be summarized as follows:

1-The most important difficulty over the text is the interpretation problem which is shaped by reader's mind. As a result of human's activity of understanding and interpretation there is always an open door for divergent meanings over the same text. One of the main determinants of this understanding problem is "the text" itself, while the other one is "the reader".

2-Text and its interpreter constitute the law together. They interact with each other during the interpretation process. While the text shapes the understanding of reader, reader also forms the meaning of the text. The notion behind this interaction is the preunderstandings of reader.

<sup>86</sup> Ibn Qayyim al-Jawziyya, *I'lam al-Muwaqqin an Rabbe'l-Alemin*, Cairo: Maktabat Ibn Taymiyya, n.d., v.3, p.5-6.

3-Depending on text based pre-understandings, reader's mind has being shaped by the structure of the text. As a special focusing point of our research, we understand that narration style of the hadith texts has also an impact on interpretation and judgement process of reader. It can lead disagreements over the same issue.

4-Also, keeping juristic approach towards every kind of hadith text without distinguishing obligational hadith text from recommandational hadith text, as a result of reader based pre-understandings, has caused interpretation problem in Islamic Law.

5-As a subsidiary conclusion we may note that Islamic law is constituted by the interpretations of scholars and there is no possibility to see one type of interpretation in every time and everywhere. Although Islamic Law is generally named as a Law of God as can be seen in the above quoted remarks of Ibn Qayyim, it is not possible to claim the result of every juristic interpretation as Islamic Law itself. Based on this, while judging some regulations of Muslim communities around the world one should keep in mind that implementation of the rules of Islam is the result of the pre-understandings, which is constituted by tradition, education and culture, of that community.

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