

Linguistic Principles in Uṣūl al-Fiqh and Their Effect on Legal Reasoning in Islamic Law

(A comparative study of the methodology of interpretation of
authoritative texts in Islamic law)

By:
Šukri Husayn Ramić
B.A., M.A. Isl. law

This thesis is submitted to the University of Wales in fulfilment of the
requirement of the degree of Doctor of Philosophy
1996

Declaration

I hereby declare that this thesis is the result of my independent investigation, except where I have indicated my indebtedness to the sources.

Candidate

Supervisor

I declare that the work submitted in this thesis has not been previously accepted in substance for any degree and is not being concurrently submitted in candidature for any degree at this or other university.

Candidate

Supervisor

ACKNOWLEDGEMENT

All the praises and thanks be to Allāh *ta`ālā*, and peace be upon the Master of the Messengers Muḥammad and his family, friends and followers till the Day of Judgement.

I am indebted to many people who helped me completing this work.

In the first place I wish to thank Dr. Mawil Izzi Dien, my supervisor, who provided me with all means which a student needs from his teacher. May Allāh *ta`ālā* reward him the best for his efforts and great ethics which I will never forget.

I would like to thank also the University of Wales who offered me a place at their distinguished College in Lampeter. Professor Paul Badham, the Head of the Department of Theology and Religious Studies, deserves my special thanks for helping me in crucial stage of my study. I am also indebted to Mr. Alan Rogers, the Director of Academic Computer Service at the Collage who prepared a special fonts which I needed for the purpose of transliteration.

I would like to express my thanks to secretaries at Registry and Theology and Religious Studies departments who were kind and helpful.

At the end I would like to express my deep thankfulness to my friends in Great Britain and abroad who supported me and encouraged me to complete my study.

A special thanks to my family, my wife Bedrija and my three lovely daughters Lejla, Esma and Sumeja.

=====

=====

=====

Table of Contents

Table of contents	III
Preface.....	IX
Abstract.....	X
Introduction.....	1
Part I: The Methods of Textual Indication on Legal Rulings	
The Ḥanafī approach to the methods of textual indication (Introduction)	14
Chapter 1: `Ibārat al-Naṣṣ (the Explicit Meaning)	17
The linguistic definition of <i>`ibārat al-naṣṣ</i>	17
The technical definition of <i>`ibārat al-naṣṣ</i>	17
Examples of <i>`ibārat al-naṣṣ</i>	19
The indication of <i>`ibārat al-naṣṣ</i>	22
The value of <i>`ibārat al-naṣṣ</i>	22
Chapter 2: <u>I</u>shārat al-Naṣṣ (the Alluded Meaning)	23
The linguistic definition of <i>ishārat al-naṣṣ</i>	23
The technical definition of <i>ishārat al-naṣṣ</i>	23
Examples of <i>ishārat al-naṣṣ</i>	25
The indication of <i>ishārat al-naṣṣ</i>	30
The value of <i>ishārat al-naṣṣ</i>	31
Conflict between <i>`ibārat al-naṣṣ</i> and <i>ishārat al-naṣṣ</i>	31
Chapter 3: Dalālat al-Naṣṣ (the Inferred Meaning)	33
The linguistic definition of <i>dalālat al-naṣṣ</i>	33
The technical definition of <i>dalālat al-naṣṣ</i>	33
Examples of <i>dalālat al-naṣṣ</i>	35
The indication of <i>dalālat al-naṣṣ</i>	39
Legislating punishments and penance's according to <i>dalālat al-naṣṣ</i>	43
The value of <i>dalālat al-naṣṣ</i>	47
Conflict between <i>dalālat al-naṣṣ</i> and <i>ishārat al-naṣṣ</i>	47
Chapter 4: Iqtidā' al-Naṣṣ (the Required Meaning)	49
The linguistic definition of <i>iqtidā' al-naṣṣ</i>	49
The technical definition of <i>iqtidā' al-naṣṣ</i>	49
Presumed and supposed meanings.....	51
Examples of <i>iqtidā' al-naṣṣ</i>	53
The indication of <i>iqtidā' al-naṣṣ</i>	55
The value of <i>iqtidā' al-naṣṣ</i>	62
Conflict between <i>iqtidā' al-naṣṣ</i> and the other three kinds of indications	63
Conclusion.....	64

The <u>Shāfi`ī</u> approach to the methods of textual indication (Introduction)	66
Chapter 5: al-Mantūq (the Pronounced)	67
The linguistic definition of <i>mantūq</i>	67
The technical definition of <i>mantūq</i>	67
Subdivision of <i>mantūq</i>	67
Examples of <i>mantūq</i>	69
Restriction of meaning of <i>mantūq</i> by <i>mafhum</i>	72
The indication of <i>mantūq</i>	74
The value of <i>mantūq</i>	74
Chapter 6: al-Mafhūm (the Implied) Introduction	75
a) Mafhūm al-Muwāfaqah (the Agreement Meaning)	76
The linguistic definition of <i>mafhum al-muwāfaqah</i>	76
The technical definition of <i>mafhum al-muwāfaqah</i>	76
Types of <i>mafhum al-muwāfaqah</i>	78
The indication of <i>mafhum al-muwāfaqah</i>	81
Examples of <i>mafhum al-muwāfaqah</i>	86
The value of <i>mafhum al-muwāfaqah</i>	87
b) Mafhūm al-Mukhālafah (the Opposite Meaning)	88
The linguistic definition of <i>mafhum al-mukhālafah</i>	88
The technical definition of <i>mafhum al-mukhālafah</i>	88
Conflict between Ḥanafīs and <u>Shāfi`īs</u>	89
The conditions for <i>mafhum al-mukhālafah</i>	91
Examples of <i>mafhum al-mukhālafah</i>	94
The value of <i>mafhum al-mukhālafah</i>	95
Comparison between the approach of the Ḥanafīs and the <u>Shāfi`īs</u> to the methods of textual indication	96
 Part II: Clarity and Ambiguity in Words	
Introduction	99
 The Ḥanafī approach to clear words (Introduction)	100
Chapter 1: al-Zāhir (the Apparent)	101
The linguistic definition of <i>zāhir</i>	101
The technical definition of <i>zāhir</i>	101
Examples of <i>zāhir</i>	103
The value of <i>zāhir</i>	105
 Chapter 2: al-Naṣṣ (the Explicit)	106
The linguistic definition of <i>naṣṣ</i>	106
The technical definition of <i>naṣṣ</i>	106
Examples of <i>naṣṣ</i>	108
The value of <i>naṣṣ</i>	111

Chapter 3: al-Mufassar (the Explained)	112
The linguistic definition of <i>mufassar</i>	112
The technical definition of <i>mufassar</i>	112
Examples of <i>mufassar</i>	114
The value of <i>mufassar</i>	117
Chapter 4: al-Muḥkam (the Firm)	118
The linguistic definition of <i>muḥkam</i>	118
The technical definition of <i>muḥkam</i>	118
Categories of <i>muḥkam</i>	119
Examples of <i>muḥkam</i>	120
The value of <i>muḥkam</i>	123
Chapter 5: Conflict (<i>ta`āruḍ</i>) between categories of <i>wāḍiḥ</i>	124
Conflict (<i>ta`āruḍ</i>) between <i>ẓāhir</i> and <i>naṣṣ</i>	124
Conflict (<i>ta`āruḍ</i>) between <i>naṣṣ</i> and <i>mufassar</i>	128
Conflict (<i>ta`āruḍ</i>) between <i>mufassar</i> and <i>muḥkam</i>	131
Conflict (<i>ta`āruḍ</i>) between <i>naṣṣ</i> and <i>muḥkam</i>	133
The <u>Shāfi`ī</u> approach to clear words (Introduction)	134
Chapter 7: al-Ẓāhir (the Apparent)	134
The linguistic definition of <i>ẓāhir</i>	134
The technical definition of <i>ẓāhir</i>	135
Examples of <i>ẓāhir</i>	138
The effect of <i>ẓāhir</i> on legal reasoning.....	139
The value of <i>ẓāhir</i>	140
Chapter 8: al-Naṣṣ (the Explicit)	141
The linguistic definition of <i>naṣṣ</i>	141
The technical definition of <i>naṣṣ</i>	141
The existence of <i>naṣṣ</i> in the Qur`ān and <i>ḥadīth</i>	146
The value of <i>naṣṣ</i>	147
Chapter 9: Comparison between Ḥanafīs and <u>Shāfi`īs</u>	147
The Ḥanafī approach to unclear words (Introduction)	149
Chapter 10: al-Khafī (the Hidden)	151
The linguistic definition of <i>khafī</i>	151
The technical definition of <i>khafī</i>	151
Examples of <i>khafī</i>	152
The value of <i>khafī</i>	156
Chapter 11: al-Mushkil (the Problematic)	158
The linguistic definition of <i>mushkil</i>	158
The technical definition of <i>mushkil</i>	158

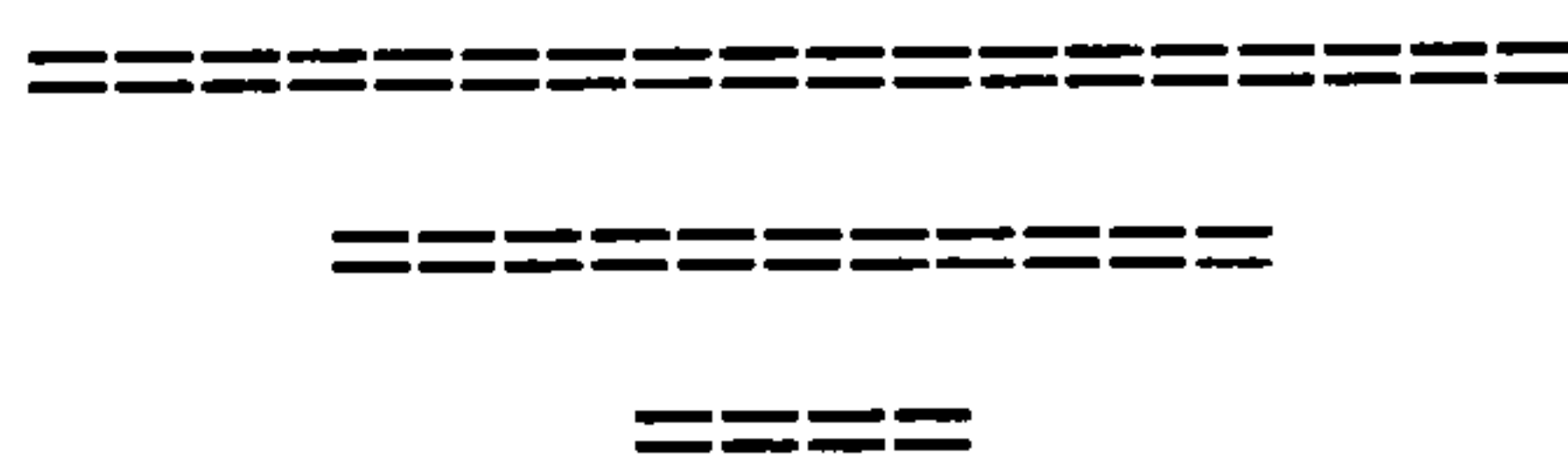
The origins of ambiguity in <i>mushkil</i>	160
Examples of <i>mushkil</i>	161
The value of <i>mushkil</i>	167
Chapter 12: al-Mujmal (the Synopsized)	168
The linguistic definition of <i>mujmal</i>	168
The technical definition of <i>mujmal</i>	168
Comparison between <i>mujmal</i> and <i>mushkil</i>	169
Categories of <i>mujmal</i>	169
Examples of <i>mujmal</i>	170
The value of <i>mujmal</i>	177
Chapter 13: al-Mutashābih (the Intricate)	179
The linguistic definition of <i>mutashābih</i>	179
The technical definition of <i>mutashābih</i>	179
<i>Mutashābih</i> and the science of <i>`ilm al-kalām</i>	180
Examples of <i>mutashābih</i>	183
The value of <i>mutashābih</i>	183
Comparison between categories of <i>mubham</i>	184
The Shāfi`ī approach to unclear words (Introduction)	185
Chapter 14: al-Mujmal (the Synopsized)	185
The linguistic definition of <i>mujmal</i>	185
The technical definition of <i>mujmal</i>	185
Existence of <i>mujmal</i> in authoritative texts.....	187
Examples of <i>mujmal</i>	188
The value of <i>mujmal</i>	191
Chapter 15: al-Mutashābih (the Intricate)	192
The linguistic definition of <i>mutashābih</i>	192
The technical definition of <i>mutashābih</i>	192
Examples of <i>mutashābih</i>	193
The value of <i>mutashābih</i>	193
Conclusion.....	194
Part III: Generality and Specific Quality of Words	
Introduction	196
Chapter 1: al-`Āmm (the General Meaning)	198
The linguistic definition of <i>`āmm</i>	198
The technical definition of <i>`āmm</i>	198
The types of <i>`āmm</i>	199
Implementation of <i>`āmm</i>	201
Examples of <i>`āmm</i>	205
The indication of <i>`āmm</i>	210
The value of <i>`āmm</i>	218

Chapter 2: al-Khāṣṣ (the Specific)	219
The linguistic definition of <i>khāṣṣ</i>	219
The technical definition of <i>khāṣṣ</i>	219
<i>Al-Takhsīs</i> (The Specification of meaning)	220
The linguistic definition of <i>takhsīs</i>	220
The technical definition of <i>takhsīs</i>	220
<i>Takhsīs</i> is opposite to the basic status of words.....	222
The difference between abrogation (<i>naskh</i>) and <i>takhsīs</i>	223
Specifying proofs:	
a) according to Ḥanafīs.....	224
b) according to Shāfi`īs	225
Conflict between `āmm and <i>khāṣṣ</i>	235
The status of `āmm when provoked by a specific cause.....	236
The value of <i>khāṣṣ</i>	238
Chapter 3: Forms of al-Khāṣṣ (the Specific) Introduction	239
1) al-Muṭlaq (the Absolute)	239
The linguistic definition of <i>muṭlaq</i>	239
The technical definition of <i>muṭlaq</i>	239
The difference between <i>āmm</i> and <i>muṭlaq</i>	240
Examples of <i>muṭlaq</i>	241
The value of <i>muṭlaq</i>	242
2) al-Muqayyad (the Qualified)	243
The linguistic definition of <i>muqayyad</i>	243
The technical definition of <i>muqayyad</i>	243
Examples of <i>muqayyad</i>	244
Conflict between <i>muṭlaq</i> and <i>muqayyad</i>	245
The precondition for restriction of <i>muṭlaq</i> by <i>muqayyad</i>	247
The value of <i>muqayyad</i>	248
3) al-Amr (the Command)	249
The linguistic definition of <i>amr</i>	249
The technical definition of <i>amr</i>	249
Forms of <i>amr</i>	249
The primary indication of <i>amr</i>	251
The absolute and the restricted order	252
Other usage's of <i>amr</i>	252
The indication of <i>amr</i> after <i>nahy</i>	254
The time in which <i>amr</i> should be performed	255
Who is addressed by the <i>amr</i>	256
The value of <i>amr</i>	258

4) al-Nahy (the Prohibition)	258
The linguistic definition of <i>nahy</i>	258
The technical definition of <i>nahy</i>	258
The forms of <i>nahy</i>	259
Other usage's of <i>nahy</i>	261
The indication of <i>nahy</i>	261
A single compliance or repetition of a <i>nahy</i>	263
The value of <i>nahy</i>	263

Part IV: The Interpretation (*ta'wīl*) of Clear and Unclear

Words	264
Introduction	264
The linguistic definition of <i>ta'wīl</i>	264
The meaning of <i>ta'wīl</i> in tradition of <i>salaf</i> and the first Islamic scholars	265
The technical definition of <i>ta'wīl</i>	269
Is <i>ta'wīl</i> acceptable as a way for the interpretation of source texts?.....	271
Sphere of <i>ta'wīl</i>	278
Precondition (<i>shurūṭ</i>) for <i>ta'wīl</i>	282
Kinds of <i>ta'wīl</i> according to their likelihood.....	287
Kinds of <i>ta'wīl</i> according to the proofs supporting it....	289
The value of <i>ta'wīl</i>	292
Conclusion	293
Index of Qur'anic verses	296
Index of Prophet's (p.b.u.h.) traditions	308
Index of names with short biographies	314
Glossary of Islamic legal terms	327
Bibliography	343



Preface

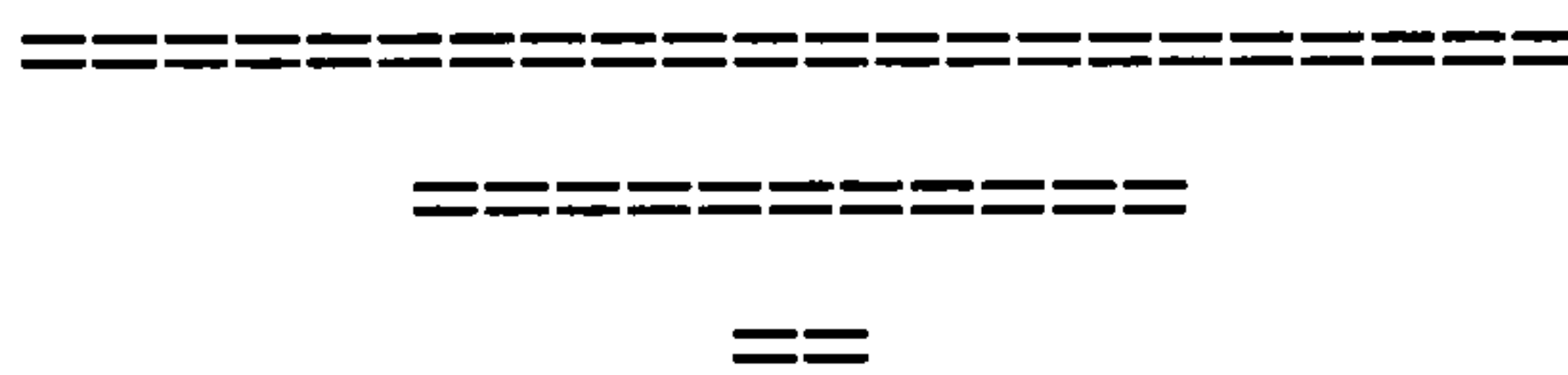
The following system has been followed in transliterating the Arabic words and names used in the text.

ء	ر	ق
'	r	q
ء	ز	ك
a, i, u (con.) ¹	z	k
ا	س	ل
ā (l.v.) ²	s	l
ب	ش	م
b	<u>sh</u>	m
ت	ص	ن
t	ṣ	n
ث	ض	هـ
<u>th</u>	ḍ	h
ج	ط	و
j	ṭ	w
ح	ظ	و
ḥ	ẓ	ū (l.v.)
خ	ع	و
<u>kh</u>	ʿ	aw (d.t.) ³
د	غ	ي
d	gh	y (con.)
ذ	ف	ي
<u>dh</u>	f	ī (l.v.)
		ay (d.t.)

Note: The Arabic names have generally been transliterated except in case of those names which have already been used untransliterated in English literature.

The *hamzah* was ignored when it occurs prior to a long vowel in the beginning of a word like *Asmā'* and *Umayyah*.

The definite article "al-" was ignored except when it occurs in governed word such as *uṣūl al-fiqh*, or when it is used as a proof for certain opinion.



¹ Consonant.

² Long vowel.

³ Diphthong.

Abstract

This present study deals with the linguistic principles that are used in the process of legal reasoning in Islamic law. These linguistic principles represent an important branch of the science of *uṣūl al-fiqh* which on its part represents the theoretical basis for the Sharīah and indisputable foundations upon which the whole structure of Islamic law is built. It is a unique study in the sense that no similar work, as far as we know, is available and its comparative and analytical approach has not been presented before.

This study is divided into four parts. The first part deals with the linguistic principles that are related to the methods of textual indication on legal rulings. In this part these principles have been analysed according to both the Ḥanafī and the Shāfi`ī approach.

In the second part this study deals with linguistic principles which are related to clarity and ambiguity of words. It is a comparative study of the Ḥanafī and the Shāfi`ī approach to this issue.

The third part highlights the generality and specific qualities of words, and the fourth part analyses the possibility of interpretation of authoritative texts not according to their obvious meanings (*ta`wīl*).

In general this is a comparative study of the methodology of interpretation of authoritative texts in Islamic law presented through the study of the linguistic principles in *uṣūl al-fiqh* and their effect on legal reasoning in Islamic law.

=====

=====

=====

Introduction

Introduction

The general need for understanding of *uṣūl al-fiqh*:

In the light of the Islamic revival which is evident this century, and which has especially gained ground in the last two decades, the Muslim world, its history and culture, have again been the focus of different studies. The Islamic law, the Sharī ah¹, has been especially targeted by these researches, probably because, as Hamilton Gibb stated that it is the Sharī ah which, throughout the centuries, has not only represented the master science in the Muslim world but the most effective agent in moulding the social order and community life of Muslim peoples and in holding the social fabric of Islam compact and secure through all the fluctuations of political fortune.² These words suggest that if someone is eager to understand Muslims, to understand their history and culture, the understanding of Islamic law may be both a starting and a vital point. To understand Islamic law properly, the understanding of its structures, foundations and basics (*uṣūl*) is most needed. It is especially needed for those jurists (scholars) who work with secular laws, because the methodology used in making Sharī ah laws often seems to be quite different. Therefore, if we are not able to understand this difference, the understanding of the Sharī ah, Muslims, and Islam in general, would be profoundly incomplete.

¹ In Islām Sharī ah (Islamic law) preceded the society. “In the beginning what Allāh has created was a pen (*qalam*), then Allāh *ta`ālā* ordered the pen to write down that which would happen until the Day of judgement” (Abū Dāwūd, *Sunan*, (no. 4700), and amongst that which the pen wrote was the Sharī ah. According to Islām the Sharī ah was revealed to previous messengers before Muḥammad (p.b.u.h.) as well, and its final form was given to Muḥammad (p.b.u.h.) known as the Seal of the prophets.

The main sources of the Sharī ah are the Qur’ān and the Sunnah. Both of them are revealed in pure Arabic language.

² Gibb, *Mohammedanism*, pp. 9-11.

What is *uṣūl al-fiqh*?

The word *uṣūl* is the plural of *aṣl* which when translated linguistically means “root”. In conjunction with the word *fiqh* it means a science developed by Islamic scholars. That science represents the theoretical basis for the Sharīah. It may be defined as the understanding of the principles by which a *mujtahid* derives practical Sharīah laws from their particular and valid premises.¹ The following is an explanation of this definition which helps us to understand the proper meaning of *uṣūl al-fiqh*:

- “principles” includes the absolute propositions (*qaḍāyā kullīyyah*) whose rules may be applied to many of their subjects. For example: “The absolute order (*amr muṭlaq*) implies a duty (*wujūb*)” is a principle. This principle is an absolute provision because it may be applied to all absolute orders, like these in the following verses: “And offer Prayers and give Alms...”² “O, you who believe! Fulfil (your) obligations.”³

All these absolute orders: “offer” and “fulfil”, which are not accompanied by any external or internal evidence, may be included in the principle by which we may recognise rulings which are, in this case, the duty (*wujūb*) of offering Prayers, giving Alms and fulfilling obligations.

Another principle “The absolute forbidding (*nahy muṭlaq*) implies the prohibition (*tahrīm*)”. It represents also, an absolute proposition because all absolute forms of prohibition, which are not accompanied by any external or internal evidence, may be included in it. The following verses explain the concept further: “And come not near to the orphan’s property, except to improve it.”⁴ “There is no compulsion in religion.”⁵ “O you who believe! Let

¹ Khallāf, *‘Ilm Uṣūl al-Fiqh*, p. 12; Khudārī Bak, *Uṣūl al-Fiqh*, p. 12; Shahān, *Uṣūl al-Fiqh al-Islāmī*, p. 6.

² Al-Baqarah, II:43.

³ Al-Mā'idah, V:1.

⁴ Al-An`ām, VI:152.

⁵ Al-Baqarah, II:256.

not a nation scoff at another nation, it may be that the latter are better than the former.”¹

All forms of prohibition (*taḥrīm*) in these verses can be included in that principle by which rulings may be recognised. Therefore, the ban, in previous verses, implies the prohibition (*taḥrīm*) of mismanagement of orphans property, forcing non Muslims to accept Islam, and scoffing at other nations.

- “by which a *mujtahid* derives practical Sharī ah rulings” means that these principles represent the tools and the methodology by which a *mujtahid* reaches Sharī ah rulings, and derives them from their premises.

- “a *mujtahid*” excludes all those who are not qualified and who did not reach the level of *mujtahid*². This means that only certain kinds of people can undertake legal reasoning (*ijtihād*) and derive legal rulings from their valid premises.

- “rulings” (*aḥkām* sing. *ḥukm*) means here the assertion of a matter to another matter (*ithbāt amrⁱⁿ li amrⁱⁿ ākhar*). Accordingly when someone states: “The sun has risen, or has not risen” it would be a ruling, because it contains the assertion of the rising or non rising of the sun.

The deduction of rulings may be achieved by three general methods:

a) through reason (*ʿaql*) like “the one is half of two”, “the whole is bigger than a part of it” etc. These rulings are termed as (*aḥkām ʿaqliyyah*).

b) through natural feeling and senses like the fire is burning. These rulings are termed (*aḥkām ḥisiyyah*).

c) through authoritative texts. These rulings are termed *aḥkām sharʿiyyah* like rulings that the prescribed Prayers are obligatory, usury and adultery are forbidden etc.

The principles of *uṣūl al-fiqh* are concerned with the third kind of rulings. It is restricted by the attribute “*sharʿiyyah*” in order to distinguish them from *aḥkām ʿaqliyyah* and *aḥkām ḥisiyyah*. These principles are established in order to help a *mujtahid* in deriving *aḥkām sharʿiyyah* from their premises.

¹ Al-Ḥujurāt, XLIX:11.

² For detailed information about the subject of *ijtihād* and *mujtahid* see books of *uṣūl al-fiqh*.

Kinds of *aḥkām sharʿiyyah*

The Sharīah rulings inherently are concerned with all aspects of human life which can be of different relevance as follows:

a) some of them are related to human actions and activities which they perform like Prayers, fasting, trading, religious endowment, making a will etc. The rulings related to these activities are called (*aḥkām `amaliyyah*).

b) some of them are related to beliefs such as belief in Allāh, His messengers, His books etc. These rulings are called *aḥkām i`tiqādiyyah*.

c) some rulings are related to purification of human souls like the obligation to be truthful, trustworthy and the prohibition of lying, betrayal, cheating etc. These rulings are called *aḥkām akhlāqiyyah*.

The science of *uṣūl al-fiqh* is concerned only with rulings related to human actions and activities. This is why these rulings (*aḥkām*) were restricted by an attribute “*amaliyyah*” (practical) to exclude *aḥkām i`tiqādiyyah* and *aḥkām akhlāqiyyah*.

- “from their valid particular premises ” a premise is a particular proof related to certain questions such as the verse: “Forbidden to you (for food) are: the dead animals)...”¹ This verse is a premise because it is related to a particular question that is eating the flesh of dead animals who have not been slaughtered according to the rules of the Sharīah and gives indications as to the ruling related to that particular question. The premise would be valid if it is related to a particular question and based on the sources of the Sharīah which are represented in universal and general proofs². The word “valid” excludes all sources of law which are not based on the Qur’ān and the Sunnah.

¹ Al-Mā’idah, V:3.

² There are universal, general and comprehensive proofs. They include the main sources of the Sharīah: the Qur’ān, the Sunnah and other sources which are based upon these two main sources like consensus (*ijmā`*) and analogy (*qiyās*). These universal proofs are divided into general (*āmm*) and specific (*khāṣṣ*) which are further divided into: commands (*amr*), prohibitions (*nahy*), absolute (*mutlaq*), and qualified (*muqayyad*).

- “particular” is mentioned in order to differentiate between particular and general (universal) proofs.

From this definition it may be seen that *uṣūl al-fiqh* is the aggregate of legal proofs which, when acquired properly, guide a *mujtahid* as to how one can reach legal judgements and derive legal rulings from their particulars¹.

The difference between the work of the scholar of *uṣūl al-fiqh* and the scholar of *fiqh*.

A scholar of *uṣūl al-fiqh* (*uṣūlī*) studies the Qur’ān, the Sunnah and other universal and general proofs viewing them from the perspective of whether they provide general, specific, absolute or qualified indication, commands or prohibitions. As the result of that study the scholar of *uṣūl al-fiqh* (*uṣūlī*) would reach certain conclusions and suggest general rules accordingly. For example when studying the indication of general provisions mentioned in authoritative texts it may be concluded that the general provisions, when not specified, include all that which is applicable to. Accordingly the scholar would put the principle: “The general provisions, when not specified, certainly includes all that which is applicable to.”

Similarly a scholar of *uṣūl al-fiqh* may study all commands mentioned in the Qur’ān and the Sunnah. If he/she concludes that these commands, when not accompanied by any internal or external evidence, imply the duty (*wujūb*) he/she would conclude the principle: “The absolute order (*amr muṭlaq*) implies the duty (*wujūb*), when not accompanied by any evidence which might change that implication”.

If the scholar is going to study prohibitions mentioned in authoritative texts he/she would come to the conclusion that all prohibitions, when not accompanied by any internal or external evidence, imply *taḥrīm*. After such conclusion the following principle is deduced: “The absolute ban (*nahy*

¹ Rāzī defined *uṣūl al-fiqh* as the aggregate, considered per se, of legal proofs and evidence that, when studied properly, will lead either to certain knowledge of a Sharī ah ruling or at least a reasonable assumption concerning the same: the manner by which such proofs are adduced, and the status of the adducer.” (*al-Maḥṣūl fī ‘Ilm Uṣūl al-Fiqh*, I:1:94.)

muṭlaq) implies the prohibition (*tahrīm*), when not accompanied by any internal or external evidence that might change that implication”.

By the use of this method the scholar of *uṣūl al-fiqh* puts principles which would help the scholar of *fiqh* in his/her attempt to derive legal rulings from their particular premises.

On his/her part when a scholar of *fiqh* wants to know the ruling related to certain matter, he/she would take these principles of *uṣūl al-fiqh* and apply them on particular proofs in order to discover their implications.

For example if the scholar of *fiqh* wants to know the ruling for Prayers he/she would first of all search for any particular proofs related to Prayers. The results of the search will offer many verses and Prophet’s sayings related to Prayers. Among these proofs he/she would find, for example, the verse: “And offer Prayer...” In this verse he/she will find the command that orders performance of the Prayer. In this instance he/she would apply the *uṣūl al-fiqh*’s principle “The absolute order (*amr muṭlaq*) implies the duty (*wujūb*)”. In the end he/she would conclude that the command “offer” implies the duty (*wujūb*) and accordingly the ruling would be that Prayer is obligatory (*wājib*).

From the previous discussion it is clear that scholars of *uṣūl al-fiqh* study universal and general proofs and deduce from them general rules which would help scholars of *fiqh* in their effort to deduce legal rulings from their particular premises.

Relation of *uṣūl al-fiqh* to other sciences

Due to the fact that all Islamic sciences have the same origin and the same objective it is natural that these sciences are interdependent, that they have a close relationship with each other, and that they borrow from and rely upon each other. The science of *uṣūl al-fiqh* is not an exception. If we compare it with other classical Islamic sciences we will find a great similarity of methodology on many subjects. The following are some examples:

1) From the Qur’anic disciplines we may find a similarity in the methodology on subjects such as:

- a) the interpretation not according to the obvious impart of words (*ta'wīl*),
 - b) abrogation of legislation (*nāsikh wa mansūkh*),
 - c) the non-standard recitations of the Qur'ān and the rules about them etc.
- 2) From the Sunnah's disciplines we may find a similarity in the methodology on the subjects such as:
- a) the transmission of the *ḥadīth* and its classification,
 - b) the criteria for narrators of *ḥadīth* (*jarḥ wa ta'dīl*) etc.
- 3) From Scholastic theology (*ilm al-kalām*) disciplines we may find a similarity in the methodology on subjects such as the discussion whether it is the *Sharīah* itself or reason which decides what is right and what is wrong, whether such knowledge can be acquired before Revelation etc.
- 4) When *fiqh* disciplines are in question we may find that *uṣūl al-fiqh* cited many examples which are derived from particulars of *fiqh* (*furū'*).¹
- e) From the disciplines of Arabic language² we may find similarity in the methodology on subjects such as:
- a) the rules related to the origins of languages,
 - b) the classifications of words into metaphorical and literal,
 - c) words' etymology, synonymy, generalisation, specification, indications etc.

Besides these, *uṣūl al-fiqh* benefited and derived many of its academic basics from logic. It used principles of logic related to premises and conclusions.

¹ Moreover, Ḥanafī methodology derived the rules of *uṣūl al-fiqh* from the particulars of *fiqh* (*furū'*).

² Some may argue that Arabic language cannot be classified as an Islamic science. The fact is that all other Islamic sciences are based on Arabic language and studies related to it. It may be stated that the Arabic language is the main tool of Islām. On this basis Arabic language may be normally regarded as an Islamic science. Moreover, it is difficult to make a distinction, from an Islamic point of view, between Islamic and non-Islamic sciences because every science which agrees with human nature and which benefits human beings and does not go against the natural laws is an Islamic science which normally supports the Qur'ān and its teachings.

Moreover, *uṣūl al-fiqh* benefited from various discussions about the validity of conclusions based on inductive reasoning, how evidences may be used to prove the claims of the one who is adducing it, how to refute contradictions, what are the ways in which words convey their meanings etc.

The importance of *uṣūl al-fiqh* and its development

The importance of the science of *uṣūl al-fiqh* lies in the fact that it represents foundations upon which whole structure of Islamic law is built. It is concerned with the rules that are used in the process of “building” of legal rulings from their particulars, i.e. in the process of the understanding of Allāh’s judgements related to human actions and activities.

During the early days of Islam, these rules were not written down. The first *mujtahids*, however, “naturally” used these rules while exercising *ijtihād*, because they spoke pure Arabic which contains these rules in its nature. Therefore the early Islamic scholars were not in need of these rules to be systematised.

The real need for such action emerged when Islam extended to non-Arabic areas and when many non-Arabs entered Islam. At that time ungrammatical speech appeared. The understanding of Arabic and, therefore, the understanding of the sources of the Sharī`ah of those new Muslims was inadequate and insufficient. Moreover, at that time, many of those who were non-qualified for legal reasoning (*ijtihād*) started working in that field. All these factors prompted Islamic scholars to systematise the rules which every “*faqīh*” was required to follow during the process of *ijtihād*. The objective of these rules was to help *mujtahids* in their attempt to deduce the legal rulings from the Sharī`ah’s source-texts and to save them from errors and accusations that they may formulate laws according to their wishes.

Shāfi`ī (d. 204/820) is considered to be one of the first scholars who collected¹ and drafted some of these rules in his “*Risālah*”.

After Shāfi`ī, various scholars adopted two different approaches to this science. One approach was that of the Ḥanafīs who formulated their theory in the light of the practical application of the Sharī`ah to relevant issues and according to rulings established by previous jurists. The other approach was that of Shāfi`īs² (Mutakallimūn³) who based their theories on general proofs (the Qur`ān and the Sunnah), without looking into their applications to relevant issues. According to them every theory which was supported by a reliable proof was confirmed, no matter whether that theory agreed or disagreed with rulings established by previous jurists.

If we look at various works on *uṣūl al-fiqh* we may conclude that the real development of this science occurred in the fourth century of the Islamic era. At that time *uṣūl al-fiqh* took its final shape, and the reference works in this field were written. What was written afterwards was, basically, only an explanation and elaboration of these works.

The branches of *uṣūl al-fiqh*

This science is primarily concerned with Islamic legal logic, and its preconditions, and linguistics. It also focuses on agreed sources of Islamic law i.e. the Qur`ān, the Sunnah, consensus and analogy, as well as the disputed sources of the Sharī`ah i.e. *istiḥsān*, *istiṣlāḥ*, *istiṣḥāb* etc., legal reasoning (*ijtihād*), indicating preference in cases of apparent conflict between legal proofs, following a specific school of legal thought (*taqlīd*) etc.

¹ Many of these rules existed and were used by *mujtahids* of *Ṣaḥābah* e.g. when `Alī used analogy (*qiyās*) in case of the consumer of alcohol regarding how many lashes he/she should take as a punishment.

² It includes all three major schools of *fiqh*: Shāfi`īs, Mālikīs, Ḥanbalīs in addition to Zāhirīs.

³ They have been called Mutakallimūn (Scholastics) because the majority of their writers were both philosophers and theologians.

The importance of linguistic principles of *uṣūl al-fiqh*

One of the most important branches of *uṣūl al-fiqh* is that which studies linguistics. It includes issues related to the way in which the words convey their meanings, clarity and ambiguity of words and their interpretation. The knowledge of these principles is essential to the proper understanding of authoritative texts from which legal rulings of Islamic law are deduced. Needless to say that unless these texts are correctly understood¹ no ruling can be deduced from them. These principles become more important when a given text is not self-evident, or when an apparent conflict between texts appears. From these principles a *mujtahid* may distinguish a speculative text from the definitive and categorise clear and unclear texts (meanings) so that the preference can be given to clearer or less ambiguous text (meaning) in case of a conflict. A proper knowledge and implementation of these principles during the process of legal reasoning would ensure the proper use of human intellectual potentials in very sensitive activities in which humans, according to Islamic teachings, substitute God (Allāh *ta`ālā*) (who is the only Lawgiver) and speak in His name by declaring legal rulings related to any matter in human life. From an Islamic prospective, the human reasoning in the system of law which originates in divine revelation, is most difficult and most complicated activity. Therefore, all precautions should be taken, and the best efforts should be made in order to reach a ruling intended by the Lawgiver. *Uṣūl al-fiqh* linguistic principles have a great role and importance in that difficult process.

The importance of these principles may be summarised as follows:

- a) They are the essential elements which may help *mujtahids* to distinguish between speculative and definitive meanings and to categorise these meanings so that the clearer may be given precedence in case of a conflict.
- b) They represent powerful backing for the *mujtahid* while legal reasoning especially in the case of conflict between legal proofs in Islamic law.
- c) It provides knowledge of the understanding of words whose interpretation is major cause of disagreement of Muslim jurists (*fuqahā'*).

¹ As close as possible to the Lawgiver intention.

d) They would help in better understanding of the methodology of legislation in Islām and the understanding of Islamic law in general.

The objectives of this research

1) To provide clear evidence that the deduction of legal rulings from authoritative texts should rely on scientific methodology of interpretation of the texts, and to show the value of this methodology in understanding and conserving the correct Islamic concepts.

2) To bring to light some “tools”, which are developed by Islamic scholars, and were used in the process of making and deriving Sharīah laws.

3) To show the main similarities and differences between the two dominant schools in *uṣūl al-fiqh* (Ḥanafīs and Shāfi`īs) and their approach to these principles.

4) To show some of the methodologies used in the process of legislation in Islām.

5) To help English language speakers to understand better sources of Islamic law.

The methodology of the research

During the research I have followed the following methodology.

1) At the beginning I have explained the linguistic and technical definition for every topic. Afterwards the practical examples were provided. That is followed by some issues which may arise like the question related to the way by which certain words imply their meanings, and possible conflict between indications. At the end I have evaluated every indication and explained it, from an Islamic point of view, examining the degree to which it must be followed and applied by Muslims.

2) If there is a clear difference between the Ḥanafīs and the Shāfi`īs in their approach to certain question I analysed it separately, otherwise no separation was assumed between these two schools.

3) During my study I have referred to scientifically relevant references approved by Muslims in different fields of Islamic studies. The direct

quotations were acknowledged by mentioning the author, the book and the page where the quotation may be found.

4) Technical definitions were arranged according to the time of death of their respectable authors so that the evolution and development of definitions may be followed.

5) The numbers of the Qur'anic chapters and verses were duly mentioned. The translations of meanings are from Arbery, Pickthall, `Alī, and Khān-Hilālī translations. I have, however, provided my own translation when I saw it necessarily.

6) Apart from the translations of meanings of the Qur'anic verses all other translations were carried out by myself in consultation with my supervisor.

7) The traditions of the Prophet (p.b.u.h.) were quoted from recognised collections of references. The degree of a certain tradition is mentioned only in the case when it is weak (*da`īf*).

8) At the end I have provided indexes of Qur'anic verses, Prophet's (p.b.u.h.) traditions, index of names mentioned in the main text with their short biographies, glossary of Islamic terms, and the bibliography of the reference books.

Plan of the research

I have divided this research into an introduction, four parts and a conclusion. In the introduction I have provided a short introduction to the science of *uṣūl al-fiqh* and an explanation of *uṣūl al-fiqh*, its importance, development, relation to other sciences, the difference between *fiqh* and *uṣūl al-fiqh*. I have especially emphasised the importance of this research topic. At the end of the introduction I have stated the main objectives of this research and the plan that I have followed.

The main research is divided into four parts. The first part deals with the methods of textual indication on legal rulings. In this part I have analysed these methods according to both the Ḥanafī and the Shāfi`ī approach.

In the second part I have analysed the clarity and ambiguity of words according to both the Ḥanafī and the Shāfi`ī approach.

The third part highlights the generality and specific qualities of words, and in the fourth part I have discussed the possibility of interpretation of words not according to their obvious meaning.

At the close of this research I have stated the conclusions to which I was driven after examining the linguistic principles and analysing the methods of textual indication and interpretation in both the Ḥanafī and the Shāfi`ī schools of Islamic law.

Lampeter, Friday, 7 June 1996/ 20 Şafar1417 H.

=====

=====

Part I

The Methods of Textual Indication on Legal Rulings

Part I: The Methods of Textual Indication on Legal Rulings

(Ṭuruq Dalālat al-Alfāz `alā al-Aḥkām)

The Ḥanafī approach to the methods of textual indication

Introduction

Deriving legal rulings from authoritative texts stated in the Qur'ān and the Sunnah would be impossible without clear understanding of a given text. To understand the true meaning of a text is frequently a difficult task because an authoritative text may be capable of imparting a few shades of meaning which can be on different levels. It might impart its meaning by letters, signs and allusions, or by logical and necessary implications without which the text would remain incomplete. All meanings indicated by the text¹ have to be stated and interpreted², because a responsible scholar who is concerned with the interpretation of a text has the responsibility of implementing all possible meanings, including all methods of interpretation (provided that they are linguistically acceptable). If he/she fails to implement some of its meanings that would undoubtedly mean that he/she has failed to implement some parts of the text.

Due to the above fact, scholars of *uṣūl al-fiqh* studied the problem of text's indication on legal rulings. They concluded that the understanding of a text, from which rulings can be derived, is based on a few methods of indications³.

Ḥanafī jurists⁴ present four of them:

¹ It is important to notice that rulings derived from all these meanings are considered, in Ḥanafī *madhhab*, as rulings derived from the apparent meaning of the text not as rulings derived by using analogy (*qiyās*). (See: Sarakhsī, *Uṣūl al-Sarakhsī*, I:236.)

² Muslim jurists maintain that the implementation of the explicit meaning of the text as well as the implementation of text's spirit and its logical meaning are obligatory duties (*wājib*). (See: Khallāf, *Ilm Uṣūl al-Fiqh*, p. 143.)

³ The basic aim of the following methods is to encourage rational inquiry in the deduction of legal rulings from authoritative texts. Secondly, these methods would provide Muslim jurists

- a) word's explicit meanings,
- b) meaning indicated by signs and allusions,
- c) meaning concluded by logical and juridical purport of the text,
- d) logical and necessary meaning without which the text would remain incomplete and would fail to achieve its purpose.

Due to the above listed reasons Ḥanafī jurists like Dabbūsī and Bazdawī¹ have divided textual implications into four: *'ibārat al-naṣṣ* (the explicit meaning), *ishārat al-naṣṣ* (the alluded meaning), *dalālat al-naṣṣ* (the inferred meaning) and *iqtidā' al-naṣṣ* (the required meaning).

The way by which they come to such conclusions was achieved by dividing the text's indication on a ruling into two categories:

a) The indication made by words which can be either intended or not. If it is intended by the speaker (i.e. that indication represents the principle or subsidiary theme of the text) it is termed *'ibārat al-naṣṣ* (the explicit meaning). If it is not intended by the speaker then it is termed *ishārat al-naṣṣ* (the alluded meaning).

b) The indication which is not taken from the text itself, but can be understood from the text either linguistically or legally (according to Sharīḥ). When it is understood linguistically it is termed *dalālat al-naṣṣ* (the inferred meaning) and if it is understood legally (according to Sharīḥ) it is termed *iqtidā' al-naṣṣ* (the required meaning).

Ḥanafīs also divided the expressions in relation to their indication on meanings into four categories:

- a) That which indicates a meaning by the explicit way,
- b) That which indicates a meaning by signs and allusions,
- c) That which indicates a meaning according to the logical and juridical purport of the text,

with guidelines which will show the way by which they may reach legal rulings from their particular premises.

⁴ Bukhārī, *Kashf al-Asrār*, I:28; Sarakhsī, *Uṣūl al-Sarakhsī*, I:236.

¹ See: Bukhārī, *Kashf al-Asrār*, I:28; Taftāzānī, *Sharḥ al-Talwīḥ 'alā al-Tawḍīḥ*, I:130.

d) That which indicates a meaning according to logical and necessary implication without which, the text would remain incomplete and would fail to achieve its purpose.

The highest level of indication is *`ibārat al-naṣṣ* (the explicit meaning or immediate meaning). Next is *ishārat al-naṣṣ* (the alluded meaning) which is followed by *dalālat al-naṣṣ* (the inferred meaning) and lastly by *iqtidā' al-naṣṣ* (the required meaning). According to this order the higher level of indication is more authoritative and would, in any case of conflict, take precedence over those versions which represent lower levels of implied indications which can be detectable in the text. The same ruling has to be applied when two apparently contradictory texts are in question.

Ḥanafī jurists assume that all other indications like the opposite meaning (*mafḥūm al-mukhālafah*) and, in some cases, adopting the qualified (*muqayyad*) from the absolute (*muṭlaq*) are incorrect.

As we have seen the Ḥanafī *madhhab* divides texts and their meanings in terms of the method (or manner) of the text's indication on meanings into four types: *`ibārat al-naṣṣ*, *ishārat al-naṣṣ*, *dalālat al-naṣṣ*, and *iqtidā' al-naṣṣ*. This division is based on the degree of textual explicitness. The first type is *`ibārat al-naṣṣ*.

=====

=====

Chapter 1

ʿIbārat al-Naṣṣ (the Explicit Meaning)

The linguistic definition of ʿibārat al-naṣṣ

ʿIBĀRAT AL-NAṢṢ (A.) ʿIBĀRAH (A) The word expression, or phrase of the text. The word ʿibārah refers to the word pronounced by the speaker and heard by other persons. Also it refers to a passage in a book or of the prose.¹

NAṢṢ (A.) explicit, declared, manifest; a religious legal term. The meaning of the root appears to be "to raise", especially "to elevate the thing so that is visible to all". *Al-naṣṣ*: the author's original text. In the technical vocabulary of *uṣūl al-fiqh*, the term refers to a text in either the Qur'ān or *Ḥadīth* that must be demonstrated to justify a legal ruling.²

In the construction ʿibārat al-naṣṣ and in other constructions which will follow this chapter *naṣṣ* refers to a text from either the Qur'ān or the Sunnah. In this usage it is more general than being the apparent or the explained etc.

The technical definition of ʿibārat al-naṣṣ

Some Ḥanafī scholars defined ʿibārat al-naṣṣ as follows:-

Bazdawī while speaking about ʿibārat al-naṣṣ stated: "The argumentation by the explicit meaning (*ʿibārat al-naṣṣ*) is acting according to the apparent meaning that the speech is stated for³." (*Wa al-istidlāl bi ʿibārat al-naṣṣ huwa al-ʿamal bi zāhir mā sīqa al-kalām lah.*)⁴

¹ Fayrūz Ābādī, *al-Qāmūs al-Muḥīṭ*, II:83; M.L.ʿA, *al-Muʿjam al-Wasīṭ*, II:580; Lane, *Arabic-English Lexicon*, II:1938; *EI*², IV:114; Baʿlabakī, *al-Mawrid*, p. 747.

² M.L.ʿA, *al-Muʿjam al-Wasīṭ*, II:926; Lane, *Arabic-English Lexicon*, II:2797-99; *EI*², VII:1029; Baʿlabakī, *al-Mawrid*, p. 1173.

³ From the explanation of Bukhārī it is clear that he means by "what the speech was stated for" both the main meaning which was the reason behind its delivery and other apparent subsidiary meanings. (See: Bukhārī, *Kashf al-Asrār*, I:68.)

⁴ Bukhārī, *Kashf al-Asrār*, I:68.

According to Sarakhsī *`ibārat al-naṣṣ* is: “The established [ruling] according to the explicit meaning is that ruling that agrees with context [of the statement]. This [ruling] normally is understood to be the subject of that text even without thinking.” (*al-Thābit bi al-`ibārah huwa mā kāna al-siyāq li-ajlih wa yu`lam qabla al-ta`ammul anna ḡāhir al-naṣṣ mutanāwil^{un} lah.*)¹

From these definitions and from the examples mentioned by Ḥanafī jurists we can formulate the following definition for *`ibārat al-naṣṣ*: “The spontaneous indication of the word on the ruling for which these words are meant for in an original or subsidiary way.” From this definition we can see that the major condition for *`ibārat al-naṣṣ* is that the expression should deliver an immediate meaning or meanings that come to mind without further consideration. Therefore, one text can contain more than one meaning and all of these meanings may be counted as *`ibārat al-naṣṣ* no matter whether that meaning or meanings represent the principle theme and purpose of the text or whether it/they represent a subsidiary theme or themes.² The important thing is that the

¹ Sarakhsī, *Uṣūl al-Sarakhsī*, I:236.

² Dr. Kamālī in his book “Principles of Islamic Jurisprudence” (p. 125.) considered *`ibārat al-naṣṣ* to be only the meaning that represents “the principle theme and purpose of the text” and excluded subsidiary meanings. This is obvious from his following conclusion: “But the first and the last are subsidiary and incidental whereas the second and the third represent the explicit themes and meanings of the text, that is, the *`ibārat al-naṣṣ*.” It seems that he mixed up *naṣṣ* and *`ibārat al-naṣṣ* because what he said about *`ibārat al-naṣṣ* is related to *naṣṣ* which has to be the principle theme and purpose of the text. Therefore, his consideration about *`ibārat al-naṣṣ* is not consistent with Ḥanafī *madhhab*. In Ḥanafī *madhhab* all apparent meanings of the text are regarded as *`ibārat al-naṣṣ* nor matter whether they represent the principle theme and purpose of the text or subsidiary theme. This view can be seen in the statement of Bukhārī who is the famous Ḥanafī scholar in *uṣūl al-fiqh*. “The indication of words, in relation to the methods by which they imply their meanings, may be of three shapes:

1) To indicate a meaning which represents the original purpose (*maqṣūd aṣlī*) of the text like the number in the following verse: “... then marry (other) women of your choice, two or three, or four...”

2) To indicate a meaning which does not represent the original purpose (*maqṣūd aṣlī*) of the text like the legality of marriage in the previous verse.

meaning or meanings derived from the text should be apparent. “This point” is made clear in the examples that follow. The reason for revelation (*sabab al-nuzūl*), possibility of specification of meaning (*takhṣīṣ*) or abrogation (*naskh*) do not play any role in case of these kinds of indications (*dalālah*) in distinction from *naṣṣ*, *mufassar* and *muḥkam*.

Examples of *‘ibārat al-naṣṣ*

Every authoritative text related to legal rulings is an example of *‘ibārat al-naṣṣ* because the Lawgiver has delivered these expressions in order to convey the meanings and rulings. Due to the fact that every text related to legal rulings has at least one apparent meaning which represents the purpose of the text, examples of *‘ibārat al-naṣṣ* seem to be numerous. This is more obvious if we

3) To suggest an inevitable meaning of the expression like the fact that a dog contract is valid despite the statement that the payment is unlawful. The following is a relevant tradition (*ḥadīth*): “Ill-gotten property is indeed the price (cost) of a dog...”

Bukhārī concluded: “Now, when you know [what we have mentioned above] it should be explained that in this case “the purpose” (*kawn al-kalām masuq^{an} li al-ma`nā*) means that the word indicates its meaning unreservedly (*muṭlaq^{an}*) no matter whether it was the original and essential intention or not.” (See: Bukhārī, *Kashf al-Asrār*, I:68)

Mayhawī also confirmed what Bukhārī stated: ““The purpose” in this case has a wider meaning from being reviled for that particular reason like in the case of *naṣṣ*. The purpose in the case of *naṣṣ* is original and essential intention and purpose, while in the case of *‘ibārat al-naṣṣ* it can refer to either the original purpose or otherwise. Therefore if someone argues for the legality of marriage by relying on the following verse: “... then marry (other) women of your choice, two or three, or four...” he would be relying on *‘ibārat al-naṣṣ* despite the fact that it is not *naṣṣ* (the explicit) but *ẓāhir* (the apparent) meaning. It must be clarified, however, that *naṣṣ* (the explicit) in this verse is the number mentioned” (See: Nasafī, *Kashf al-Asrār*, I:374.)

According to Kawrānī *‘ibārat al-naṣṣ* is “everything” that can be understood from the words of the Qur’ān or the Sunnah. (Kawrānī, *Sharḥ Mukhtaṣar al-Manār*, p. 63.). See also: Bādshāh, *Taysīr al-Tahrīr*, I:86-87.

remember that all apparent meanings of the text represent *`ibārat al-naṣṣ* no matter whether they are principle or subsidiary theme of the text.¹

a) The Qur'ān states: "...Allāh has permitted trading and forbidden *ribā* (usury)."²

Two meanings are distinguishable in this verse and both of them represent a ruling:

1) Trading is permitted and usury is forbidden.

2) There is a difference between trading and usury, because the former is permitted and the latter is forbidden.

These two rulings are different from the point that the former, is subsidiary, while the latter, is the principle theme and the purpose of the text³. Nonetheless, this difference has no effect in relation to *`ibārat al-naṣṣ*, and both rulings derived from this text are considered to be indicated by *`ibārat al-naṣṣ* (the explicit meaning) of the text.⁴ This is due to the fact that both rulings are deduced from the apparent meaning of the text and that that deduction did not require any additional effort and *ijtihād*.

b) The Qur'ān states: "And if you fear that you shall not be able to deal justly with the orphan-girls, then marry other women of your choice, two or three, or four. But if you fear that you shall not be able to deal justly (with them), then only one..."⁵

¹ Thus, the commands to perform certain Prayers, to give alms, to observe the fast during Ramaḍān, to perform pilgrimage, to enforce the prescribed penalties (*ḥudūd*) for certain offences, etc., all of them have indicated those rulings by the method of *`ibārat al-naṣṣ*.

² Al-Baqarah, II:275.

³ Because the purpose for which this verse was revealed is to deny the claim of similarity between trade and usury claimed by some. This verse was not revealed in order to explain the ruling of both of them. This is obvious from the verse itself "That is because they say: "Trading is just like *ribā*' (usury)," as well as from the reason for revelation (*sabab al-nuzūl*) of this verse. (See: Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, I:437.)

⁴ This difference would have effect if *wāḍiḥ* is in question. See *zāhir* and *naṣṣ* in the second chapter.

⁵ Al-Nisā', IV:3.

This verse provides a few apparent meanings:

- 1) The legality of marriage. This is indicated by “then marry other women.”
- 2) Limiting polygamy to the maximum of four when there is no fear from injustice. This is indicated by “then marry other women of your choice, two or three, or four.”
- 3) Remaining monogamous for someone who fears that polygamy may lead to injustice. This is indicated by “But if you fear that you shall not be able to deal justly (with them), then only one.”

All these rulings, as we have seen, are clearly indicated by the apparent meaning of the text. These rulings and meanings, however, are not the whole principle theme and purpose of the text. The reason for revelation (*sabab al-nuzūl*)¹ indicates that the second and the third ruling are the purpose for which this verse was revealed, while the first one represents a subsidiary meaning. Ṭabarī, while speaking about *sabab al-nuzūl* of this verse, mentioned that some people feared to do injustice to orphans and did not fear to do injustice to women. So this verse came down to warn them against doing injustice to women as in the case of orphans. Therefore, they should not marry more than four, and if they fear that they may commit an injustice then only one.

Ḥasan and Ḍaḥḥāk said that this verse has abrogated the existing customs in the time of the *jāhiliyyah* and in the beginning of the Islamic period when men married however many women they wanted. Consequently, this verse reduced it to four.

Therefore limiting polygamy to a maximum of four wives and remaining monogamous if the prospect of polygamy may be feared to lead to injustice, carried two meanings which are the main purpose of the text, while the legality of marriage is the subsidiary and incidental meaning. Despite this difference all three meanings and rulings are *ibārat al-naṣṣ*. This is due to the fact that all of them are “apparently indicated” by the text itself and the fact that their

¹ See: Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, V:177 (65:1); Ṭabarī, *Jāmi` al-Bayān `an Tafsīr Āy al-Qur`ān*, VII:536; Qurṭubī, *al-Jāmi` li Aḥkām al-Qur`ān*, V:11-12; Ibn Kathīr, *Tafsīr al-Qur`ān al-`Aẓīm*, I:597-600.

understanding from the text was spontaneous and did not require an additional effort.

The indication of *`ibārat al-naṣṣ*

The majority of Ḥanafīs maintain that the indication of *`ibārat al-naṣṣ* is definite (*qaṭ`ī*) if another speculative indication, based on a reliable proof, does not exist.¹

Ibn Rahāwayḥ maintains that *`ibārat al-naṣṣ* sometimes indicates speculative meanings (*ẓannī al-dalālah*).² This opinion seems not to be in disagreement with the previous one, because it probably suggests that *`ibārat al-naṣṣ* indicates speculative meaning when another meaning based on a proof emerges. This is exactly what the majority of scholars maintain. But, they, when speaking about indication of *`ibārat al-naṣṣ*, mean it in a general sense, i.e. before speculative indication emerges.

The value of *`ibārat al-naṣṣ*

The legal adherence to *`ibārat al-naṣṣ* should be the strict obligation (*wājib*) as well as the implementation of its meaning.³

=====
=====

¹ Sarakhsī, *Uṣūl al-Sarakhsī*, I:236-237; Bukhārī, *Kashf al-Asrār*, I:70. It is important to notice that Ḥanafī scholars agreed that the definite meaning (*qaṭ`ī al-dalālah*) carries wider meaning than its apparent linguistic meaning and means “non existence of a possibility based on a proof”. (See: Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, I:35-36, 130-131.)

² Ibn Rahāwayḥ, *Ḥāshiyat al-Rahāwayḥ*, I:524.

³ Khallāf, *Ilm Uṣūl al-Fiqh*, p.143.

Chapter 2

Ishārat al-Naṣṣ (the Alluded Meaning)

The linguistic definition of *ishārat al-naṣṣ*

ISHĀRAT AL-NAṢṢ (A.) ISHĀRAT (A.) lit. gesture, sign, symbol, signal, indication, hint, allusion. The word has acquired in rhetoric the technical meaning of "allusion"¹

NAṢṢ (A.) In *uṣūl al-fiqh* the term refers to either Qur'ān or Ḥadīth text.² Therefore, in the construction "*ishārat al-naṣṣ*" it implies a text from the Qur'ān and the Sunnah and it is more general than being the apparent or the explained etc.

The technical definition of *ishārat al-naṣṣ*

Ḥanafī scholars offered similar yet inconsistent definitions for *ishārat al-naṣṣ* thus:

Dabbūsī defined it as: "That which is established by allusion of speech context, although it is not in the subject matter of the context. However, *ishārat al-naṣṣ* is indicated specifically by the apparent [meaning] without increasing or decreasing its meaning." (*al-Thābit bi al-ishārah ma yūjibuh siyaq al-kalām wa lā yatanāwaluh wa lakin yūjibuh al-zāhir nafsuh bi ma`nāh min ghayr ziyādatⁱⁿ `alayh aw nuqṣānⁱⁿ `anh.*)³

Bazdawī while speaking about *ishārat al-naṣṣ* maintains: "It is that which has been linguistically composed, although it is not in the subject matter of the context or the text. Moreover, it is not apparent in all aspects." (*Mā thabata bi*

¹ M.L.`A, *al-Mu`jam al-Wasīf*, I:499; Lane, *Arabic- English Lexicon*, II:1616; *EF*², IV:113; Ba`labakī, *al-Mawrid*, p.110.

² The linguistic meaning of *naṣṣ* has been mentioned when *ibārat al-naṣṣ* was defined linguistically.

³ Dabbūsī, *al-Asrār fī al-Uṣūl wa al-Furū` fī Taqwīm Adillat al-Shar`*, I:292.

nazmih lughat^{an} lakinnah ghayr maqṣūdⁱⁿ wa lā sīqa lahu al-naṣṣ wa laysa bi ḡāhirⁱⁿ min kull wajhⁱⁿ.)¹

Sarakhsī said about *ishārat al-naṣṣ*: “That which is established by allusion is that which is not the purpose [of the text]. It can, however, be understood by considering the meaning of the word without increasing or decreasing that meaning.” (*al-Thābit bi al-ishārah mā lam yakun al-siyāq li ajlih lakinnah yu`lam bi al-ta`ammul fi ma`na al-lafz min ghayr ziyādatⁱⁿ fih wa lā nuqṣānⁱⁿ.)²*

From these definitions, it can be concluded that *ishārat al-naṣṣ* is the word’s indication on a ruling which is not intended, nor was the text transmitted for this purpose. The text, therefore, embodies a necessary inference which necessarily accompanies the ruling (the meaning) that represents the principle theme and purpose of the text. The alluded meaning is not apparent in all aspects. It imparts, however, a rationale concomitant meaning which is reached through further analysis of the signs that can be detected within the text. Due to the fact that it is a necessary meaning though not intended, the text indication regarding that meaning is by allusion (*ishārah*) and not by the explicit method (*ibārah*).³ The alluded meaning can be, sometimes, easily detectable in the text, and sometimes, in order to obtain it, further investigation is required. Moreover, the scholars who carry out this investigation have different shades of understanding and different abilities to detect alluded meanings. What may be detectable for some of them may not be detectable by others.⁴ This is why conflicts emerge whenever alluded meaning is taken as a proof for a ruling.

¹ Bukhārī, *Kashf al-Asrār*, I:68, II:210;

² Sarakhsī, *Uṣūl al-Sarakhsī*, I:236.

³ The important point is that rulings derived from both *ibārat al-naṣṣ* and *ishārat al-naṣṣ* are regarded as established and proved by the text (*naṣṣ*) despite the fact that the former is the purpose (main or subsidiary) of the text while the latter is not. The difference between them can appear in the case of a conflict between two rulings when one of them is based on *ibārat al-naṣṣ* and the other on *ishārat al-naṣṣ*. (See: Sarakhsī, *Uṣūl al-Sarakhsī*, I:236)

⁴ The obvious example is the way by which `Alī detected the shortest time for bearing the child. (See the second example of *ishārat al-naṣṣ*.)

Some scholars have argued that *ishārat al-naṣṣ* cannot be taken as a proof for a ruling.¹ Their opinion is rejected by the majority of scholars who maintain that the indication of *ishārat al-naṣṣ* is causally correlated with the apparent meaning. It would be acceptable only as a proof if correlation (*talāzum*) with *ibārat al-naṣṣ* is evident. Despite the fact that by alluded meaning many rulings can be derived and proved, it would seem that searching for it should not cause difficulty. Also establishing correlation with the explicit meaning should not tempt *mujtahid* into the exaggeration in subdue of the text. A moderate approach to this kind of study is required since an exaggeration in quest of the alluded meanings can lead *mujtahid* into the wrong direction. Islam tends to take the middle ground in everything. The Qur'ān states: “Thus We have made you a middle nation (justly balanced), that you be witnesses over mankind.”² Therefore, a moderate approach to the search for alluded meanings is required as well.

The correlation between the explicit meaning and allusion can either be apparent or hidden. It is why scholars say that the understanding of *ishārat al-naṣṣ* can sometimes be achieved by simple consideration, while sometimes deeper *ijtihād* is necessary.

Examples of *ishārat al-naṣṣ*

a) The Qur'ān states: “It is made lawful for you to have sexual relations with your wives on the nights of the fast...”³

This verse indicates, by its explicit meaning (*ibārat al-naṣṣ*), permission for having sexual intercourse with wives during the nights in the month of Ramaḍān, from the sunset till true daybreak. In the same time it indicates by alluded meaning (*ishārat al-naṣṣ*) that if the true daybreak comes while a person is in state of *janābah* it will not violate his/her fasting. This is concluded from the fact that it is allowed to have intercourse at any time

¹ See: Khudārī Bak, *Uṣūl al-Fiqh*, pp. 120-121.

² Al-Baqarah, II:143.

³ Al-Baqarah, II:187.

throughout the night. Therefore, if a person has intercourse in the last portion of the night he/she will have no time to do ritual ablutions before the appearance of the true daybreak and would enter the time of fasting while in state of *janābah*. From this fact a ruling is concluded that such person may start fasting while in that state, then have a wash and continue his/her fasting. This ruling (meaning) is based on alluded meaning *ishārat al-naṣṣ*.

b) The Qur'ān states: “The mothers shall give suck to their children for two whole years, (that is) for those (parents) who desire to complete the term of suckling, but the father of (his) child shall bear the cost of the mother’s food and clothing on a reasonable basis.”¹ This verse indicates by its explicit meaning (*ibārat al-naṣṣ*) that maintenance of mothers and their children is the fathers’ duty. Pronoun “his” (*lah*) clearly confirms that no one else but “the father” bears this obligation. This ruling is understood from the apparent meaning of the text. Due to the fact that the apparent meaning was the reason (main or subsidiary) for which this text was revealed it is termed *ibārat al-naṣṣ*.² However, alluded meanings (*ishārat al-naṣṣ*) of this verse, which are derived through further analysis of the signs detectable within the text, indicate on many other rulings (meanings), thus:³

1) The child’s descent is solely attributed to the father and his/her identity is determined with reference to that of the father. According to unanimous consensus (*ijmā’*) the pronoun “his” (*lah*) does not indicate the ownership. Therefore, it is related to the father in terms of descent only.

2) If the father belongs to one tribe the child would follow him no matter to which tribe his/her mother belongs.

3) Supporting the child is the father’s sole duty and no one shares that duty with him because the child is attributed to him.

¹ Al-Baqarah, II:233.

² See: Ṭabarī, *Jāmi` al-Bayān `an Ta`wīl Āy al-Qur`ān*, V:43.

³ See: Bukhārī, *Kashf al-Asrār*, I:71; Sarakhsī, *Uṣūl al-Sarakhsī*, I:237.

4) The father, when in dire need, may take what he needs from the wealth of his offspring without permission from the latter and without obligation to return it.¹

5) The father may not be punished if he commits a crime, for which a *ḥadd* is prescribed, against his child². Therefore, the father would not receive capital punishment if he kills his child³, nor would he be punished if he puts forward slanderous accusations of fornication against his child.⁴

All these rulings (meanings) are understood from the fact that a child's descent is solely attributed to the father. These meanings do not represent the principle or subsidiary theme or purpose of the text (*ʿibārat al-naṣṣ*). However, they embody a necessary inference and represent inevitable meanings which are the consequence of that attribution (*ishārat al-naṣṣ*).

c) The Qur'ān states: "So pass over (the Companion faults) and ask (Allāh's) forgiveness for them and consult them in affairs."⁵ The explicit meaning (*ʿibārat al-naṣṣ*) of the text "and consult them in affairs" indicates that community affairs must be conducted through consultation (*shūrā*). The alluded meaning, however, requires the creation of a consultative body in the

¹ This ruling is derived from *ishārat al-naṣṣ* and from the tradition in which one of the Companions said to Prophet (p.b.u.h.): "O the messenger of Allāh I have got wealth and children and my father wants to take from my wealth." The Prophet (p.b.u.h.) replied: "You and your property belong to your father." (See: `Ajlūnī, *Kashf al-Khafā' wa Muzīl al-Ilbās*, I:307; Ibn Mājah, *Sunan Ibn Mājah*, II:769 (no. 2291); Ṭaḥāwī, *Mushkil al-Āthār*, II:230; Albānī, *Irwā' al-Ghalīl*, III:323).

² He may be punished for some other offences as in the case when he fails to support his child.

³ In addition to *ishārat al-naṣṣ* taken from this verse Islamic scholars proved this ruling by other proofs mentioned in the Prophet's (p.b.u.h.) tradition. (See: Jaṣṣāṣ, *Aḥkām al-Qur'ān*, I:168-169.)

⁴ Despite the fact that the father would not be punished by *ḥadd* (legally specified punishments in the *Sharī'ah*) because these kinds of punishment should be prevented whenever any doubt exists, he may be punished by *ta'zīr* (the punishment which is not fixed by *Sharī'ah* law but the judge would determine it).

⁵ Al-`Imrān, III:159.

society to facilitate the consultation which is required by the explicit meaning (*ibārat al-naṣṣ*) of the text.

d) The Qur'ān states: “And We have enjoined on man to be dutiful and kind to his parents. His mother bears him with hardship and she brings him forth with hardship, and the bearing of him, and the weaning of him is thirty months...”¹

This verse indicates by the explicit meaning (*ibārat al-naṣṣ*) the favour, grace and kindness of parents towards their children, the context of the verse confirms that indication. At the beginning of the verse Allāh *ta`ālā* has ordered offspring to be kind to their parents because of their kindness to them. Then He explained the reason in relation to the mother who bears her child with hardship and brings him/her forth with hardship.

This verse indicates by alluded meaning (*ishārat al-naṣṣ*) that the bearing of a child lasts for at least six months because in another verse it is stated that the weaning is two years: “His mother bore him in weakness and hardship upon weakens and hardship, and his weaning is in two years - give thanks to Me and to your parents, - unto Me is final destination.”² Therefore, if both the bearing and the weaning is thirty months and the weaning alone is two years, that means that bearing would be counted as six months. This alluded meaning (*isharat al-naṣṣ*) remained hidden for the majority of the Companions till `Alī discover it.³

¹ Al-Aḥqāf, XLVI:15.

² Luqmān, XXXI:14.

³ It has happened that, during the reign of caliph `Uthmān, one man got married and his wife gave birth after six month. He went to `Uthmān and informed him of that. `Uthmān ordered that the woman should be stoned. When `Alī heard it he asked him: “Do you read the Qur'ān? Didn't you read Allāh's words...” `Alī then mentioned these two verses and explained the ruling which had derived that the shortest time for the gestation is six months. (See: Ibn Kathīr, *Tafsīr al-Qur'ān al-`Azīm*, IV:200-201; Zamakhsharī, *al-Kashshāf*, III:520.)

e) The Prophet (p.b.u.h) said in regard to the poor: “Give them enough so they do not need to go begging in this day.”¹

From this tradition Sarakhsī deduced a few legal rulings. The first one is based on the explicit meaning (*ibārat al-naṣṣ*) while others are based on the alluded meaning (*ishārat al-naṣṣ*):²

a) The duty (*wājib*) to give *zakāt al-fiṭr* to the poor on the day of *Eid*. This meaning is explicitly mentioned. Therefore, it is *ibārat al-naṣṣ*.

b) This duty is upon wealthy people because enrichment cannot come except from someone who is rich himself.

c) *Zakāt al-fiṭr* would not be given to anyone else except to the needy, because the needy can be enriched, not someone who is already rich.

d) *Zakāt* has to be distributed to the poor before going to the *Eid* prayer so that the needy would not have to beg and can therefore attend Prayer with a clear mind knowing that he/she and his/her family have enough to eat for that day.

e) The time when donation of *zakāt al-fiṭr* starts is by daybreak because “the day” is the time between daybreak and sunset.

f) *Zakāt al-fiṭr* can be in the shape of any goods because the aim is the enrichment that can be achieved by any kind of goods. Therefore, money may be given instead of barley, dates etc.

g) It is more appropriate for *zakāt al-fiṭr* to be given to one person because it would be easier to enrich the poor at that day.

h) “in this day” allude that the *Eid* is the festival for the poor and the rich. It would be a festival for the poor as well, only if they are happy. They will be happy if they are enriched for that day so that they do not need to beg.

Sarakhsī derived all these meanings and rulings from the alluded meaning (*ishārat al-naṣṣ*). He concluded that plenty of meanings in this text and other

¹ Bayhaqī, *al-Sunan al-Kubrā*, IV:175. Albānī stated that this *ḥadīth* is narrated by Dāraqūṭnī, Bayhaqī, Ḥākim in *Ma`rifat `Ulūm al-Ḥadīth*, and Ibn Zanjawayh in *al-Amwāl*. He categorised this *ḥadīth* as weak. (See: Albānī, *Irwā' al-Ghalīl*, III:332-333.)

² Sarakhsī, *Uṣūl al-Sarakhsī*, I:240-241.

authoritative texts are justified by the following tradition: “..., I have been gifted with comprehensive eloquence...”¹

The indication of *ishārat al-naṣṣ*

Sarakhsī maintained that the indication of *ishārat al-naṣṣ* rotates between definite (*qaṭ`ī*) and speculative (*ẓannī*). This rotation is influenced by the circumstances and position of the expression. It could be suggested, according to Sarakhsī, if the meaning supposes reality and metaphor, otherwise it would be definite.² This opinion is accepted by other early scholars like Bazdawī and Bukhārī.³ Some later scholars maintain that *ishārat* is like *ibārat* and both of them provide a definite meaning. They considered some cases in which *ishārat al-naṣṣ* provided speculative meanings to be the only exceptions to the general rule. These exceptions do not have power to change that general rule because they are caused by incidental causes.⁴

The opinion of Sarakhsī appears to be preferred by Ḥanafī scholars. Therefore, if *ishārat al-naṣṣ* supposes another meaning, which is based on a reliable proof, its indication would be speculative (*ẓannī al-dalālah*), otherwise it would be considered as having a definite meaning (*qaṭ`ī al-dalālah*).

Nonetheless, due to the fact that Ḥanafī scholars have agreed that definite meaning (*qaṭ`ī al-dalālah*) means “the non existence of a possibility based on a proof” and that the general meaning when restricted becomes speculative (*ẓannī al-dalālah*)⁵ their disagreement about *ishārat al-naṣṣ*, previously mentioned, seems to be without any influence on legal reasoning (*ijtihād*).

The value of *ishārat al-naṣṣ*

¹ Muslim, *Ṣaḥīḥ Muslim*, I:371 (no. 523).

² Sarakhsī, *Uṣūl al-Sarakhsī*, I:236-237.

³ See: Bukhārī, *Kaṣḥf al-Asrār*, I:70.

⁴ Mullā Khusro, *Mirqāt al-Wuṣūl*, I:77.

⁵ See: Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, I:35-36, 130-131.

The effect of the alluded meaning (*ishārat al-naṣṣ*) is similar to that of the explicit meaning (*ibārat al-naṣṣ*) because both of them indicate obligation, unless there is a reliable evidence suggesting otherwise. Therefore, legal adherence to *ishārat al-naṣṣ*, according to Islamic law, should be strict obligation (*wājib*)¹.

Conflict between *ibārat al-naṣṣ* and *ishārat al-naṣṣ*

The majority of scholars maintain that *ibārat al-naṣṣ* indicates a definite meaning, while *ishārat al-naṣṣ* can indicate both definite and speculative meanings. The fact that *ishārat al-naṣṣ* can be speculative gives *ibārat al-naṣṣ* preference in the case of conflict with *ishārat al-naṣṣ*. Moreover, even when both of them indicate a definite meaning *ibārat al-naṣṣ* would have a preference because its indication represents the main or subsidiary purpose of the text in contrast to *ishārat al-naṣṣ*. This is due to the fact that the meaning which was intended by the speaker in any way is stronger than that which is not intended by the speaker at all. Therefore in any conflict between *ibārat al-naṣṣ* and *ishārat al-naṣṣ* the former one would have preference as in the following example:

The Qur'ān states: "...but the father of (his) child shall bear the cost of the mother's food and clothing on a reasonable basis."² This verse indicates, as previously stated on many rulings by both *ibārat al-naṣṣ* and *ishārat al-naṣṣ*. By studying the signs detectable within the text the Ḥanafī scholars have derived a few rulings (meanings) which are based on alluded meanings.³ Amongst these rulings is that the father's sole duty is to support his child because the child is attributed to him. As a result, the father, when in dire need, has the right to be supported by his son and has preference over other relatives. If the son, for example, cannot support either of his parents, the father has preference over the mother because the father was solely responsible to support

¹ Kawrānī, *Sharḥ Mukhtaṣar al-Manār*, p. 64.

² Al-Baqarah, II:233.

³ See: Bukhārī, *Kashf al-Asrār*, I:71; Sarakhsī, *Uṣūl al-Sarakhsī*, I:237.

his son, and now when the father needs support his need for support is favoured.

This ruling is derived from the alluded meaning (*ishārat al-naṣṣ*). However, it is in conflict with the *ḥadīth* in which the Prophet (p.b.u.h) replied to a man asking whom of people he should prefer with his good companionship. The Prophet (p.b.u.h) replied by giving the mother the highest priority. The father was given only the fourth place on the list. The first three positions were all reserved for the mother.¹

This tradition indicates by its explicit meaning (*ibārat al-naṣṣ*) that the mother has preference over the father. Due to the fact that the meaning derived from *ibārat al-naṣṣ* is stronger than that derived from *ishārat al-naṣṣ* it is an obligatory duty to give preference to the ruling, based on *ibārah* (that the mother has more right to be supported), on that based on the *ishārah* (which suggests that the father should be given preference).²

=====
=====

¹ Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VII:69 (78:2); Muslim, *Ṣaḥīḥ Muslim*, IV:1974 (no. 2548).

² In fact, there are three opinions about this issue in Ḥanafī *madhhab*. (See: Marghīnānī, *al-Hidāyah*, II: 46; Kāsānī, *Badā`i` al-Ṣanā`i`*. IV:36; Ibn `Ābidīn, *Ḥasniyat Ibn `Ābidīn*, II:763.)

Chapter 3

Dalālat al-Naṣṣ (the Inferred Meaning)

The linguistic definition of *dalālat al-naṣṣ*

DALĀLAT AL-NAṢṢ (A.) DALĀLAT (A.) sign, indication, mark, denotation, notion; word's signification, or indication of meaning which can be of three kinds: a) complete correspondence (*muṭābaqah*), thus *insān* indicates an animal endowed with reason. b) partial inclusion (*taḍammun*), thus *insān* indicates a being endowed with reason. c) a necessary idea attached to the meaning in the mind (*iltizām*), thus *insān* indicates a being capable of knowledge.¹

The technical definition of *dalālat al-naṣṣ*

Ḥanafī scholars defined *dalālat al-naṣṣ* as follow:

Bazdawī defined *dalālat al-naṣṣ* while speaking about the meaning that it provides. His definition is: “That which is established by the inferred meaning is that one which is obtained by the linguistic meaning of the text, and not by legal reasoning or deduction.” (*Wa ammā al-thābit bi dalālat al-naṣṣ fa mā thabata bi ma`nā al-naṣṣ lughat^{an} lā ijtihād^{an} wa lā istinbāṭ^{an}.*)²

Sarakhsī offered a similar definition, thus: “That which is established by the inferred meaning is that which is established linguistically by the composition’s meaning not by rational deduction.” (*Fa ammā al-thābit bi dalālat al-naṣṣ fa huwa mā thabata bi ma`nā al-naṣṣi lughat^{an} lā istinbāṭ^{an} bi al-ra’y*).³

¹ M.L.ʿA, *al-Mu`jam al-Wasīṭ*, I:294; Lane, *Arabic-English Lexicon*, I:901; *EF*, II:101-102; Ba`labakī, *al-Mawrid*, p. 548.

² Bukhārī, *Kashf al-Asrār*, I:73.

³ Sarakhsī, *Uṣūl al-Sarakhsī*, I:241.

Bukhārī provided more specified definition by pointing to *dalālat al-naṣṣ* directly: “*Dalālat al-naṣṣ* is the understanding of the unpronounced from the pronounced by speech’s context and its purpose.” (*Dalālat al-naṣṣ hiya fahm ḡhayr al-manṭūq min al-manṭūq bi siyāq al-kalām wa maqṣūdīn.*¹)

From these definitions it can be concluded that *dalālat al-naṣṣ* is the indication of the text that the indicated ruling is valid for another incident, because both of these incidents share an effective cause (*‘illah*) which is common between them. It can be explained as follow:

The speech sometimes indicates, linguistically, on a ruling for an incident for which an effective cause requires such a ruling. The understanding of that effective cause, in that incident, is so simple and the ruling is so obvious, that their comprehension does not depend on study and legal reasoning (*ijtihād*). At the same time there is another incident about which the Legislator did not give his ruling, but the same effective cause, which was the reason for the first legislation, exists in the second incident too. In such circumstances, to the mind would hasten an idea suggesting that the ruling for the second incident, about which the Legislator was silent, would be the same as for the incident for which the ruling is originally intended. That idea, which would come to the mind, is not a result of legal reasoning and analogy, but it is a result of linguistic understanding which suggests that the same ruling covers both incidents, that which is pronounced and that about which the text is silent.²

In contrast to the explicit meaning (*‘ibārat al-naṣṣ*) and the alluded meaning (*ishārat al-naṣṣ*) which are both indicated in words and signs in the text, the inferred meaning (*dalālat al-naṣṣ*) is derived through identification with the effective cause of the ruling (*‘illat al-ḥukm*) which is common between the explicit meaning (*‘ibārat al-naṣṣ*) and the meaning that is derived through inference (*dalālat al-naṣṣ*). The same ruling is extended because both incidents share a common meaning (an effective cause) which is obvious to be *manāṭ al-*

¹ Bukhārī, *Kaṣh al-Asrār*, I:73.

² The first ruling is indicated by the explicit meaning (*‘ibārat al-naṣṣ*) and the second by the inferred meaning (*dalālat al-naṣṣ*).

ḥukm. As previously mentioned, this shared meaning should be so obvious (linguistically understandable) that anyone who understands the language should understand it without the need for legal reasoning (*ijtihād*) and further thoughts. It would be *dalālat al-naṣṣ* no matter whether the unpronounced (*maskūt `anh*) is equivalent to, or preferred (*awlā*) to that which is pronounced (*manṭūq*).

Therefore, when the explicit meaning (*ibārat al-naṣṣ*) indicates a ruling and when from the same meaning is understood that the same ruling may be valid for another incident which has not been mentioned, that indication is called *dalālat al-naṣṣ*.

A ruling based on *dalālat al-naṣṣ* appears to be established by the linguistic concept, rather on the legal reasoning (*ijtihād*) or deduction. This is due to the fact that the comprehension of the effective cause in an unpronounced (*maskūt `anh*) ruling is based on the knowledge of the language only.¹

Examples of *dalālat al-naṣṣ*

a) The Qur’ān states: “And your Lord has decreed that you worship none but Him. And that you be dutiful to your parents. If one of them or both of them attain old age in your life, say not to them a word of disrespect, nor shout at them but address them in terms of honour. And lower unto them the wing of submission and humility through mercy, and say: “My Lord Bestow on them Your Mercy as they did bring me up when I was small.”²

This text obviously, by the explicit meaning (*ibārat al-naṣṣ*), forbids the utterance of the slightest word of disrespect to the parents (“say not to them a

¹ Due to the fact that the ruling, in the case of *dalālat al-naṣṣ*, is taken from the meaning of the text and not from its words, this indication is called “*dalālat al-dalālah*”, or “*faḥwā al-khiṭāb*”. In *Shāfi’ī madhhab* it is termed “*mafḥūm al-muwāfaqah*” because the indication of the words, in the incident pronounced, corresponds to its indication in the incident which has not been pronounced. Therefore *ibārat al-naṣṣ* and *dalālat al-naṣṣ* are in agreement with each other when the cause for a ruling is in question. (See: Bukhārī, *Kashf al-Asrār*, I:73; Ṭaiyāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, I:133.)

² Al-Isrā’, XVII:23-24.

word of disrespect”). By employing the explicit meaning it places a duty upon the child to treat his/her parents kindly with high respect and honour “...but address them in terms of honour. And lower unto them the wing of submission and humility through mercy...”.

From the perspective of Arabic language it would be known that the effective cause for the prohibition of the utterance of the slightest word of disrespect such as “fie” to the parents is to cherish and respect them by avoiding offences to them. If such a slight offence as the word of disrespect is forbidden the inferred meaning (*dalālat al-naṣṣ*) suggests that other forms of offensive behaviour, like beating, cursing etc., are, through inferred meaning, included by the text and, therefore, forbidden. They would be forbidden because the effective cause for the prohibition would apply to them on an equal basis or if not more.¹ The conclusion, that all forms of abusive words and acts which offend the parents are forbidden, would be concluded from the previous text by anyone who understand the language despite the fact that other offences are not specifically mentioned. This is because the inferred meaning (*dalālat al-naṣṣ*) is so obvious that it is understood without a need for legal reasoning and further thoughts.²

b) The Qur’ān states: “And divorced women shall wait (as regards their marriage) for three menstrual periods, and it is not lawful for them to conceal

¹ The prohibition of something in a small amount consequently means the prohibition of it in great amount.

² Because of this clarity, some scholars refer to the inferred meaning (*dalālat al-naṣṣ*) as the clear (obvious) analogy (*qiyās jalī*). They consider it to be a kind of analogy. Amongst them is Shāfi`ī himself who stated: “This is [the kind of knowledge] of which nobody is allowed to be ignorant or speculative [as to its certainty].” (See: Shāfi`ī, *al-Risālah*, p. 289.)

With this opinion the majority of scholars do not agree. They say that the inferred meaning (*dalālat al-naṣṣ*) is different from the analogy because the effective cause (*illah*) in case of the inferred meaning is established by the language only and can be understood by anyone who understand the language. The derivation of the effective cause, in case of analogy, however, requires a proper *ijtihād* and cannot be understood except by qualified scholars. Therefore, the knowledge of the language only is not enough when analogy (*qiyās*) is in question. (See: Shā`bān, *Uṣūl al-Fiqh al-Islāmī*, p. 303.)

what Allāh has created in their wombs, if they believe in Allāh and the last day.”¹

This verse indicates by its explicit meaning (*ibārat al-naṣṣ*) that the period of waiting before remarriage is obligatory for a divorced woman. However, from an Arabic language point of view it would be understood that the effective cause (*illah*) for this ruling is to establish whether the woman is bearing a child from her former husband or not. In this way the paternity would not be confused when she remarries.² This effective cause (*illah*) exists in all kinds of separation between husband and his wife no matter whether it is a divorce, by *khul'*³ or by the death of the husband etc. In all these cases women have to wait the prescribed period like the divorced wife mentioned in the verse, because the text indicates on that ruling by its inferred meaning (*dalālat al-naṣṣ*). All cases of separation share this effective cause which has been indicated by the explicit meaning (*ibārat al-naṣṣ*) of the previous verse.

c) The Qur'ān states: “Verily, those who unjustly eat up property of orphans, they eat up only a fire into their bellies, and they will be burnt into blazing Fire!”⁴

¹ Al-Baqarah, II:228.

² Islamic scholars normally mention only this effective cause for the waiting period. One can observe that in this case some other reasons may be regarded as the effective cause for the legislation of the waiting period like the need for rest and relief from the stress which normally accompanies separation, physical, emotional and mental preparation for a new life, solving some matters which need to be solved before a divorcee gets married again etc.,. If detection of pregnancy is the only effective cause, one can argue that nowadays there are medical techniques by which pregnancy can be surely detected. The continuity of the *iddah* ruling would be therefore, questioned. However, to my knowledge no Muslim scholar seems to have discussed this matter. This indicates that, possibly, they are of the opinion that there are other reasons which they regard as effective causes of the *iddah* ruling.

³ *Khul'* is separation based on the wife's request where she gets divorced in return for a monetary compensation to be paid by her to her husband.

⁴ Al-Nisā', IV:10.

The explicit meaning of this verse is that unjustified “eating up” of the property of the orphans is forbidden (*ḥarām*). It forbids guardians and executors from using orphans’ property for their own personal gain. The effective cause (the protection of orphans’ property and fear of its ruin and waste) of this prohibition would be understood by anyone who understands the language. By way of inference, this ruling is extended to other forms in which the effective cause, that aims to protect orphans property, is identified. An example of this is regarding the financial mismanagement that does not involve personal benefit and yet causes the loss and destruction of the orphans’ property. Despite the fact that the previous verse does not indicate different ways in which destruction can be caused, they are nevertheless equally forbidden. Therefore, any act which can cause destruction or loss of orphans property falls under the same prohibition.

d) The Qur’ān states: “Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father’s sisters, your mother’s sisters, your brother’s daughters, your sister’s daughters, ...”¹

The explicit meaning (*‘ibārat al-naṣṣ*) of this verse clearly indicates that the marriage of the sister, father’s sister, brother’s daughter, sister’s daughter etc. is forbidden. From the linguistic point of view, one would understand that the reason for this prohibition is the kinship which requires special relations. This reason, which has caused the ruling, exists regarding some other relatives which have not been mentioned in the verse like grandmother and grandchildren. They are closer relatives than brother’s and sister’s children. Therefore, the previous text forbids the marriage of father’s and mother’s sisters, by explicit meaning (*‘ibārat al-naṣṣ*) and forbids marrying grandmothers by inferred meaning (*dalālat al-naṣṣ*). Also, it forbids brother’s and sister’s children by explicit meaning (*‘ibārat al-naṣṣ*) and forbids the marriage of grandchildren by inferred meaning (*dalālat al-naṣṣ*). Therefore, it is forbidden to take in marriage grandmother like it is forbidden to take in

¹ Al-Nisā’, IV:23.

marriage father's and mother's sisters. Likewise, it is forbidden to marry grandchildren as it is forbidden to marry brother's and sister's children.

The indication of *dalālat al-naṣṣ*

Early Ḥanafī scholars, like Bazdawī and Sarakhsī¹, did not consider whether the indication of *dalālat al-naṣṣ* is definite (*qaṭ'ī*) or speculative (*ẓannī*). They rather tried to explain the difference between *dalālat al-naṣṣ* and *qiyās*. Sarakhsī widely discussed this matter. He has pointed out very clearly the differences. For example, in case of *dalālat al-naṣṣ*, the understanding of the effective cause, which is common between the pronounced (*manṭūq*) and that which is not pronounced (*maskūt `anh*), depends entirely on the knowledge of the language. In analogy, however, the understanding of the effective cause, which is common between an original case (*maqīs `alayh*) and a subsidiary (a new) case (*maqīs*), requires certain specialised abilities from a *mujtahid*. This difference means that the effective cause, in case of *dalālat al-naṣṣ* can be understood by scholars who possess legal knowledge (*fuqahā'*) and by others who possess the knowledge of the language only, while in the case of the analogy the effective cause can be understood only by scholars who possess legal knowledge.

Some later Ḥanafī scholars², however, considered whether the indication of *dalālat al-naṣṣ* is definite (*qaṭ'ī*) or speculative (*ẓannī*). On this ground they divided *dalālat al-naṣṣ* into two: *qaṭ'ī* and *ẓannī*.

1) *Dalālat al-naṣṣ* which provides a definite (*qaṭ'ī*) indication would be when the intended meaning is certainly known. Its certainty comes from the positive indication of the ruling which has been mentioned literally and as such is certainly known. That ruling, accordingly, would be valid for the incident which has not been mentioned if both incidents share the same effective cause. Therefore, the common meaning between that pronounced and that which has

¹ Bukhārī, *Kashf al-Asrār*, I:73-74; Sarakhsī, *Uṣūl al-Sarakhsī*, I:241.

² Such as `Abd al-`Azīz al-Bukhārī and Kamāl b. al-Humām. (See: Bukhārī, *Kashf al-Asrār*, I:73; Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:113-115.)

not been pronounced is certainly known. It would be clear from the following example:

The Qur'ān states: “Among the people of the Scripture is he who, if entrusted with a *qinṭār*¹ (a great amount of wealth, etc.), will readily pay it back; and among them there is he who, if entrusted with a single silver coin, will not repay it unless you constantly stand demanding...”²

This verse, in its first part, certainly indicates, despite the fact that it is not literally mentioned, that those who are trustworthy would pay back when entrusted with a small amount. This conclusion is derived from the fact that trustworthiness is the intended meaning in “paying back”. There is no doubt that someone who is trustworthy in the great amount is trustworthy when a minor amount is in question and will pay it back when required. Therefore, the inferred meaning, in this case, is certain because the intended meaning (trustworthy) is certainly shared between the pronounced (*manṭūq*) and that which is not pronounced (*maskūt `anh*).

In the second part the verse speaks in the same way about treacherous. A treacherous person will betray in a minor amount. This meaning is literally pronounced. If he/she will betray in a minor amount, there is no doubt that he/she will do it when a greater amount is in question. This is certainly indicated by the verse despite the fact that it was not literally mentioned. This inferred meaning is certain because the intended meaning (treachery) is certainly shared between that which is pronounced and that which is not pronounced.

2) *Dalālat al-naṣṣ* would have speculative indication (*ẓannī al-dalālah*) when the effective cause of the ruling which has been literally mentioned is not certainly known, or because the effective cause does not exist, in a certain way, in that which is not pronounced due to the fact that another meaning is possibly intended.

¹ *Qinṭār* is a measure of capacity. One *qinṭār* has 100 *raṭls*. (See: *EḌ*, VI:117)

² *Āl-`Imrān*, III:75.

Therefore, the common meaning (the effective cause) between the pronounced and that which is not pronounced is not known for certain because another meaning is possible too. It is made clear by the following example:

Abū Hurayrah narrated that a man came to the Prophet (p.b.u.h) and said: “I have perished O Prophet of Allāh!” He asked: “Why?” The man answered: “I had sexual intercourse with my wife during the day of Ramaḍān.” He asked: “Can you afford to free a slave?” The man replied: “No.” He asked: “Are you capable to fast two months continuously?” He answered: “No.” “Can you afford to feed sixty poor people?”, the Prophet questioned. The man’s answer was again negative. Then he sat down and the Prophet (p.b.u.h) brought a stem of a date and said to him: “Give this in charity.” The man exclaimed: “Is there any one poorer than me to give charity to? By God, there is no house which is in greater need than ours in the entire area.” The Prophet (p.b.u.h) smiled widely so that his back teeth were visible and said to him: “Go and feed your family.”¹

This tradition indicates by its explicit meaning (*‘ibārat al-naṣṣ*) that the penance is obligatory for someone who deliberately has sexual intercourse during the day of Ramaḍān, because the Prophet (p.b.u.h) clearly ordered the person, who did so, to pay the penance. The cause for this ruling was a serious offence against fasting and omission of its basic element (*rukṅ*) by having sexual intercourse. Eating and drinking during the days of the month of Ramaḍān are also serious offences and would receive the same ruling as that regarding sexual intercourse (which is based on the explicit meaning) because eating and drinking violate that basic element (*rukṅ*) of fasting. The second conclusion is based on the inferred meaning. Therefore, the same penance is obligatory for someone who has sexual intercourse during the day and who deliberately breaks his/her fasting in other ways such as eating or drinking etc.²

¹ Bukhārī, *al-Jāmi‘ al-Ṣaḥīḥ*, II:235-236 (30:31); Muslim, *Ṣaḥīḥ Muslim*, II:781 (no. 1111).

² This is the opinion of Mālik and his followers, Abū Ḥanīfah and his followers, Thawrī and some other scholars. (See: Ibn Ruṣhd, *Bidāyat al-Mujtahid*, I:302-303; Ibn Qudāmah, *al-Mughnī*, III:115; Sarakhsī, *al-Mabsūṭ*, III:79; Ibn al-Humām, *Fatḥ al-Qadīr*, II:68-70.)

The first ruling is based on the explicit meaning (*‘ibārat al-naṣṣ*) while the second is based on the inferred meaning (*dalālat al-naṣṣ*).

The effective cause for the obligation of the penance, as previously mentioned, is violating the basic element (*rukn*) of fasting that is abstinence from anything that spoil fasting generally. However, this conclusion is not certain due to the fact that there is a possibility that the Prophet (p.b.u.h) ordered the man to undertake that particular penance because he violated the basic element in that particular way i.e. sexual intercourse.¹ This is why the effective cause in this example is speculative (*ẓanni*). Therefore, the inferred meaning, which suggests that the penance is obligatory in this case, is speculative (*ẓanni*). This fact, however, does not prevent that meaning to be the inferred meaning (*dalālat al-naṣṣ*) as well as deriving the ruling from it. This is because the main condition for the inferred meaning is to be achievable through the knowledge of the language without a need for further thinking and investigation.

It can be concluded that this certainty is based on the fact that the effective cause, which is common between the pronounced and that which is not pronounced, is certainly known, while in the case of *ẓanni al-dalālah* the effective cause is known in an uncertain way, because another meaning is also supposed to be the effective cause.

¹ This is one of the reasons why some scholars like *Shāfi‘ī*, Ibn Ḥanbal, *Zāhirīs* and some others maintained that the penance is obligatory only in a case when fasting is deliberately spoiled by sexual intercourse, not by eating, drinking or something else. They maintained that the basic rule is non existence of a penance except in places clearly mentioned by *Sharī‘ah*. In this case *Sharī‘ah* mentioned sexual intercourse only. They also maintain that the effective cause (*‘illah*) is the violation of the basic element (*rukn*) of fasting by this particular way i.e. sexual intercourse. Eating and drinking deliberately cannot be analogised with the sexual intercourse because of essential differences between them. (See: Ibn Rushd, *Bidāyat al-Mujtahid*, I:302-303; Ibn Qudāmah, *al-Mughnī*, III:115; *Shīrāzī*, *al-Muhadhdhab*, I:182).

Legislating punishments and penance's according to *dalālat al-naṣṣ*¹

Both the legislation and execution of punishments in Sharīah can be seen as a very sensitive issue since it is considered to be the sole prerogative of the Divine. This is the reason why they should be based on a sound and clear authoritative text, and cannot be carried out if there is the slightest suspicion, about their legal validity, or lack of any required condition. Ibn al-Mundhir stated: “There is a consensus amongst all scholars whom I know that punishments (*ḥudūd*) are averted by suspicions.”² The well known rule amongst Muslim judges is that “Committing a mistake in avoiding punishment is better than committing a mistake in enforcement of punishment”.

Ḥanafī *madhhab*, in general term, legislates punishments and penance's by *dalālat al-naṣṣ*.³ However, when the indication of the inferred meaning (*dalālat al-naṣṣ*) is speculative (*ẓanni*) the difference emerges between scholars about a ruling based on such a proof. The following are some examples which bring to light the differences between different schools of law and even within these schools of law themselves.

a) The Qur'ān states: “The women and men guilty of illegal sexual intercourse, flog each of them with a hundred stripes.”⁴

This verse indicates by the explicit meaning (*ibārat al-naṣṣ*) on the ruling which states that adulterous, men or women, should be flogged.⁵ Moreover, it

¹ Marghīnānī, *al-Hidāyah*, II:102, IV:159; Ibn Qudāmah, *al-Mughnī*, VIII:186-187; Dassūqī, *Ḥashiyat al-Dassūqī `alā al-Sharḥ al-Kabīr*, IV:314; Sarakhsī, *Uṣūl al-Sarakhsī*, I:242-244; Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:113.

² Ibn Qudāmah, *al-Mughnī*, VIII:184. There are many traditions which support this opinion. [See: Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, IV:25 (no. 1424); Ibn Mājah, *Sunan*, II:850 (no. 2545.)]

³ Nasafī stated that the legislation for punishments and penance's by the inferred meaning is correct. It would be incorrect if it is based on the analogy (*qiyās*) because the analogy is based on reasoning which normally contains some suspicions. Therefore, *qiyās* cannot be the ground for legislation of punishments which should be averted by any suspicion. (See: Nasafī, *al-Asrār*, I:386)

⁴ Al-Nūr, XXIV:2.

indicates by the inferred meaning (*dalālat al-naṣṣ*) that the same punishment is applied to sodomy.

Ḥanafī scholars themselves, however, disagree about the ruling related to sodomy. Abū Ḥanīfah maintains that the punishment for homosexuals is *ta`zīr*, while his disciples Abū Yūsuf and Muḥammad b. al-Ḥasan al-Shaybānī maintain that their punishment would be the same like that of adulterers, men and women, which is the opinion of Shāfi`ī too.¹

Abū Yūsuf and Muḥammad established the ruling for homosexuals by *dalālat al-naṣṣ*. They argued that the effective reasoning for prohibiting adultery is that it involves “putting the sperm into a forbidden and desired place”. This meaning is more fulfilled in sodomy because it is also in ‘an abnormal place’ and its inviolability is more stressed. The only difference between the two is the name of the place which does not prevent sodomy from sharing the same meaning (the effective cause) with adultery.

Abū Ḥanīfah differentiated between adultery (*zinā*) and sodomy on the ground of effective cause. In *zinā* he sees an action that causes the distraction of mankind both in practice and result (*ma`n^{an} wa hukm^{an}*). To him, adultery unlike sodomy can produce illegitimate children who have almost non-existent status. They would have no lineage or supporting father. In sodomy such a result (effective cause) does not exist since no children can be born. Moreover, sodomy is something what normal nature avoids.

As previously mentioned, both, the legal rulings and the verification of their punishments, are seen in Sharī`ah as very delicate matters. Therefore, the support of the rulings by inferred meaning, when its indication is speculative, would be considered as weak proof.

This is the reason why those scholars, who extended the punishment for adulterers to be valid for homosexuals, supported their opinion, beside the

⁵ This ruling is for those who did not marry. For those adulterers who were married the punishment is stoning to death. (See: Marghīnānī, *al-Hidāyah*, II:98)

¹ See: Ibn Qudāmah, *al-Mughnī*, VIII:186-187; Dassūqī, *Ḥāshiyat al-Dassūqī `alā al-Sharḥ al-Kabīr*, IV:314.

inferred meaning, by other proofs. They normally mention the verses which rebuke sodomy and give information about the punishments of those who were homosexuals at previous times.¹ They exemplified by some traditions² too: “If the man approaches the man they are adulterers.” and “Kill those whom you have found to act like the people of the Lūt³ both the active and passive.” In another narration this tradition adds: “... and stone that which is active and that which is passive.”

It seems to me that scholars do not regard the inferred meaning (*dalālat al-naṣṣ*), when its indication is speculative (*ẓanni*) as a strong proof by which the ruling for homosexuals can be established. This is a probable reason explaining why they would rather support their opinion by other reliable proofs.

It can be observed that the inferred meaning, when it indicates a speculative indication, cannot be a proof by which punishments can be established. This is concluded from the fact that the prescribed punishments (*ḥudūd*) are averted by the slightest suspicion related to any condition required. Also it is supported by the fact that the inferred meaning (*dalālat al-naṣṣ*), when its indication is speculative (*ẓanni*) carries such a suspicion.

b) Regarding the penance for a believer the Qur’ān states that he/she who kills another believer in error: “And whosoever finds this (the penance of freeing a slave) beyond his means, he must fast for two consecutive months in order to seek repentance from Allāh.”⁴

The Muslim schools of law⁵ disagree about the effective cause in the penance for manslaughter.

¹ See the following chapters: Hūd, XI:77-83; al-Naḥl; XVI:61-77; al-Shu`arā’, XXVI:160-175; al-Qamar, LIV:32-39.

² Ibn Mājah, *Sunan*, II:856 (no. 2561, 2562); Ibn Qudāmah, *al-Mughnī*, VIII:188; Marghīnānī, *al-Hidāyah*, II:102.

³ In the act of homosexuality.

⁴ Al-Nisā’, IV:92.

⁵ Ibn `Abd al-Shakūr, *Fawātiḥ al-Raḥamūt*, I:409; Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:113; Nasafī, *Kashf al-Asrār*, I:257-258.

Shāfi`īs maintain that the effective cause (*`illah*) of this ruling is the restraint and the prevention from killing. This meaning is more appropriate in the case of murder. Therefore, the penance in this case is established by the inferred meaning (*dalālat al-naṣṣ*). They argue that if the penance is obligatory in the case of manslaughter, where the intention of killing does not exist, it is worthier and more deserving for such a penance to be introduced and obligatory in the case of murder where such intention does exist¹. This ruling is consistent with and appropriate to restrain someone from killing another.

Ḥanafīs, Mālikīs and Ḥanbalīs maintain that the effective cause (*`illah*) in the case of manslaughter, which is indicated by the explicit meaning (*`ibārat al-naṣṣ*), is correcting the carelessness which emanated from the person who committed the error which led to the death of a protected human being. The penance was not prescribed in order to prevent and restrain people from killing because a person who has committed an error is not considered as a person who has committed a sin. The Prophet (p.b.u.h) stated: “Allāh has, indeed, disburdened from my followers errors, forgetfulness and that which they were forced to do against their wishes.”²

The majority of scholars, therefore, concluded that the effective cause which is available in manslaughter is not available in murder, because murder is a major sin and its crime is greater than the case of manslaughter. Moreover, putting carelessness right by penance in minor crimes does not mean that such a penance is appropriate for a greater crime. Therefore, the penance as an expiation for murder may not be established.

¹ It would be an additional punishment for the murderer because the main punishment for him is death penalty. If any of the deceased’s heirs forgive him/her he/she would pay only *diyāh* (blood money) which may be forgiven too. According to Shāfi`īs, even if blood money is forgiven to the murderer he/she has to fulfil this penance.

² Ibn Mājah, *Sunan*, I:659. (no. 2043, 2045).

The value of *dalālat al-naṣṣ*

The effect of the inferred meaning (*dalālat al-naṣṣ*) correspond to the effect of the alluded meaning (*ishārat al-naṣṣ*). It means that both of them indicate the definite (*qaṭ`ī*) meaning, if there is no proof which suggests otherwise. The only difference between them emerges in the case of conflict.¹ Therefore, the adherence to *dalālat al-naṣṣ* should be obligatory (*wājib*).

Conflict between *dalālat al-naṣṣ* and *ishārat al-naṣṣ*

The inferred meaning (*dalālat al-naṣṣ*) and the alluded meaning *ishārat al-naṣṣ* seem to be on the same level of strength and value, because both of them indicate a definite indication if a reliable proof does not suggest otherwise. In both of them the indication is taken from the understandable meaning of the text, its spirit and notion by relying on linguistic knowledge, rather than on legal reasoning and deduction.

Despite this equality, the alluded meaning has preference in the case of conflict with the inferred meaning². This is due to the fact that, in the case of the alluded meaning the ruling is indicated by the word itself by way of compliance, while in the case of the inferred meaning the ruling is based on the acquaintance of the effective cause which was the motive for the ruling. Despite the fact that such an acquaintance relies on the knowledge of the language, and the indication is given by the word itself as in the case of the alluded meaning, they are not the same because in the alluded meaning the indication comes through the meaning which was a motive for the ruling in the explicit meaning (*ibārat al-naṣṣ*) and through acquaintance of its realisation in that which is not mentioned (*maskūt `anh*).

Therefore, the alluded meaning is indicated directly by way of compliance and the inferred meaning is indicated through the medium which is the effective cause (*illah*). And what was indicated without a medium is stronger than what

¹ Nasafī, *Kashf al-Asrār*, I:385.

² Nasafī, *Kashf al-Asrār*, I:385-386.

was indicated through the medium. This is the reason why the alluded meaning has preference over the inferred meaning in case of conflict.

An example for this conflict can be seen in the legislation of the penance for murder. The Qur'ān states: "And whosoever finds this (the penance of freeing a slave) beyond his means, he must fast for two consecutive months in order to seek repentance from Allāh."¹ By the inferred meaning of this verse Shāfi`is, as mentioned before, established the duty of the penance for murder. They argued that if this penance is ordered for manslaughter it is more appropriate for murder.

The Ḥanafīs responded that this inferred meaning is opposed by the alluded meaning indicated by the following verse: "And whoever kills a believer intentionally, his recompense is Hell to abide therein, and the Wrath and the Curse of Allāh are upon him, and a great punishment is prepared for him."² This verse indicates by the alluded meaning that no penance is obligatory for the murderer because it is not mentioned while explaining punishment.

Therefore, in this example the *dalālat al-naṣṣ* (which establishes the penance) disagrees with the *ishārat al-naṣṣ*. The preference is given to the latter one because its indication is stronger, as previously explained, and the penance is not established in case of murder.

=====
=====

¹ Al-Nisā', IV:92.

² Al-Nisā', IV:93.

Chapter 4

Iqtidā' al-Naṣṣ (the Required Meaning)

The linguistic definition of *iqtidā' al-naṣṣ*

IQTIDĀ' AL-NAṢṢ (A.) IQTIDĀ' (A.) need, necessity, exigency, requirement, request; from *iqtadā* to call for, require, demand, need; *iqtadā al-dayna* he required the debt.¹

The technical definition of *iqtidā' al-naṣṣ*

To note the distinction from the previous three kinds of indications, *iqtidā' al-naṣṣ* is not indicated by the text or its meaning but by the necessity which requires a meaning to be presumed in order to make the text truthful or valid in Sharīh and mind.

Ḥanafī scholars differ on the issue whether *iqtidā' al-naṣṣ* includes omitted and concealed words (*maḥdhūf* and *muḍmar*) or not. It seems that early Ḥanafīs made no distinction between *iqtidā' al-naṣṣ* and *maḥdhūf*. Dabbūsī defined *iqtidā' al-naṣṣ* as: “An addition to the text without which the meaning of the text cannot be fulfilled.” (*al-Muqtaḍā ziyādatun `alā al-naṣṣ lam yataḥaqqaq ma`na al-naṣṣ bi dūnah.*)² In this definition he included *maḥdhūf* by making that which has to be presumed as one section. From the examples he provided it is clear that he does not differentiate between *iqtidā' al-naṣṣ* and *maḥdhūf*. He presented as an example for *iqtidā' al-naṣṣ* the following verse: “And ask the town where we have been and the caravan in which we returned...”³ He explained that it means: “Ask the people of the town” and not the town itself because the aim of the question is to be answered. Therefore this speech requires that the object of the question can provide an answer. Here, the

¹ M.L.`A, *al-Mu`jam al-Wasīf*, II:743; Ba`labakī, *al-Mawrid*, p. 147.

² Dabbūsī, *al-Asrār fī al-Uṣūl wa al-Furū` fī Taqwīm Adillat al-Shar`*, I:305.

³ Yūsuf, XII:82.

presumed object would be “the people” in order to make the speech truthful.”¹ This example, as we will see, is normally mentioned by those who make the distinction between *iqtidā’ al-naṣṣ* and *maḥdhūf* as an example for *maḥdhūf*. Later Ḥanafī scholars made the distinction between *iqtidā’ al-naṣṣ* and *maḥdhūf*. They maintained that the meaning which has to be presumed in order to make the text correct and valid in Sharīḥ is called *muqtaḍā*, and the meaning which has to be presumed in order to make the text truthful and correct in the minds is called the omitted (*maḥdhūf*) or the implicit (*muḍmar*). Sarakhsī provided for *iqtidā’ al-naṣṣ* the following definition: “It is an addition to that which is laid down in the text.” (*Huwa `ibārat^{un} `an ziyādatⁱⁿ `alā al-manṣūṣ `alayh.*)² From his further comments³ is clear that he considered *iqtidā’ al-naṣṣ* to be the indication for a meaning upon which depends truthfulness of speech or its validity in the Sharīḥ. He excluded the omitted (*maḥdhūf*) and the implicit (*muḍmar*) and maintained that those who included them in *iqtidā’ al-naṣṣ* did so by mistake because, what is omitted (*maḥdhūf*) is different from what is required (*muqtaḍā*), since it is the custom of *ahl al-lisān* to omit some words in order to shorten their speech when the rest of the speech indicates it. Sarakhsī provided examples by making a clear distinction between *muqtaḍā* and *maḥdhūf*.⁴

Dispute about this question led to long debate between the two opposing groups of scholars. The majority, do not make the difference, while the second group of scholars, who seem to be in the minority, restricted *iqtidā’ al-naṣṣ* to that which has to be presumed in order to make the speech correct and valid in

¹ Dabbūsī, *al-Asrār fī al-Uṣūl wa al-Furū` fī Taqwīm Adillat al-Shar`*, I:305-306. It is interesting that scholars of *uṣūl al-fiqh* science very frequently use the first part of this verse (“And ask the town where we have been”) as an example when they speak about the metaphor (*majāz*) or *iqtidā’ al-naṣṣ*, while ignoring the second part (“and the caravan in which we returned”) despite the fact that it has the same implication.

² Sarakhsī, *Uṣūl al-Sarakhsī*, I:248.

³ See: Sarakhsī, *Uṣūl al-Sarakhsī*, I:251.

⁴ See: Sarakhsī, *Uṣūl al-Sarakhsī*, I:251-252.

Sharīah not in language or mind. It seems that the opinion of the majority is more appropriate because the proofs which the minority presented are overturned by convincing answers from the opposite side.¹

According to the majority of scholars who do not distinguish between *iqtiḍā' al-naṣṣ* and *maḥdhūf* we can conclude that *iqtiḍā' al-naṣṣ* is a necessarily presumed indication of the text upon which the correctness of that text and its validity in Sharīah and mind (*shar`an* and *`aqlan*) is dependent. This indication is not derived from within the text. In the text itself there is no word which indicates on it but the truthfulness of the text and its correctness requires such a presumption.

Presumed and supposed meanings

Scholars of *uṣūl al-fiqh* generally speak about three kinds of meanings which sometimes ought to be presumed and supposed in order to make a speech truthful or valid in Sharīah and mind (*shar`an* and *`aqlan*).

a) That which needs to be necessarily presumed in order to make a speech truthful. This can be seen in the following example:

The Prophet (p.b.u.h) stated: “Allāh has, indeed, disburdened from my followers their errors, forgetfulness and that which they were compelled to do against their wishes.”²

This tradition literally means that errors, forgetfulness and coercion does not exist amongst Muslims since they were “disburdened from them”.

On the surface the meaning seems to be wrong and untruthful, because of the fact that the followers of the Prophet (p.b.u.h) do make errors, do forget and the removal of such deeds which have happened already is logically impossible. However, the Muslims believe that the Prophet (p.b.u.h) always speaks the

¹ See discussion about this question: Sarakhsī, *Uṣūl al-Sarakhsī*, I:248-254; Nasafī, *Kashf al-Asrār*, I:293-398; Bukhārī, *Kashf al-Asrār*, I:75-78, II:237-252; Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, I:137-140; Ibn `Abd al-Shakūr, *Fawātiḥ al-Raḥamūt*, II:412.

² Ibn Mājah, *Sunan*, I:659. (no. 2045.)

truth because he is impeccable (*ma'ṣūm*).¹ For that reason omitted (*maḥdhūf*) words would be presumed here such as “sin” or “ruling”. Therefore the tradition would mean: “Allāh has, indeed, disburdened the sins of my followers for their errors, forgetfulness and that which they were forced to do against their wishes.”, and by this presumption the tradition would be consistent with reality. The indication of “Allāh has, indeed, disburdened...” on “sin” is established by the way of *iqtidā' al-naṣṣ* because the truthfulness of the speech depends on the presumption of this word. Without such a presumption this text may be regarded as untruthful and inconsistent with reality.

b) That which needs to be necessarily presumed in order to make a speech acceptable in terms of rational reason.

The Qur'ān states: “And ask the town where we have been and the caravan in which we returned...”²

The apparent meaning of this verse is unacceptable in terms of logic without the presumption of “the people”. This phrase has to be presumed because the aim of the question is yet to be answered. The question cannot be directed at the buildings (the town) which cannot speak, but to the people of the town. Therefore the verse would mean: “And ask [the people] of the town...”

c) That which needs to be necessarily presumed in order to make a certain speech legally acceptable by the Sharī ah.

This can be illustrated by the following example:

¹ The Muslims believe that the Prophet (p.b.u.h.) committed some minor errors which have been corrected eventually through the Revelations. He is like other humans in their liabilities to commit errors. The only difference is that Allāh *ta`ālā* has saved him from falling into great sins, and that He has corrected his errors by the Revelation. For example the Prophet (p.b.u.h.) has asked forgiveness for his uncle Abū Ṭālib and he was corrected by the Revelation: “It is not (proper) for the Prophet and those who believe to ask Allāh’s Forgiveness for polytheists even though they be near kinsmen...” (al-Tawbah, IX:113). He was also corrected in the case of a blind man who came to ask him a question and the Prophet (p.b.u.h.) did not pay him attention while being busy with tribe chiefs. (See the chapter: `Abasa, LXXX:1-10.)

² Yūsuf, XII:82.

If one real estate owner says to another: “Give in charity the value of one thousand pounds from your estate, on my behalf.” This is an order to the owner of the estate to give a part of it in charity on behalf of the commander. In Islamic law it is not correct to act as an agent in a similar situation if the commander does not possess the object of his/her order. Therefore, in order to make this order acceptable in Islamic law the missing part of the speech, which would indicate the owner’s possession, would have to be presumed. The reason for possession in this case is in terms of the purchase. It is implicitly indicated by the word “one thousand pounds”. Accordingly, the meaning of the order would be: “Sell me for the value of one thousand pounds some of your estate and give it in charity on my behalf, acting as my agent.” This presumed meaning is based on the indication provided by *iqtidā’ al-naṣṣ*.

Examples of *iqtidā’ al-naṣṣ*

a) The Qur’ān states: “It is for the poor emigrants, who were expelled from their habitations and their possessions, seeking bounty from Allāh and to please Him...”¹ In this verse the Qur’ān refers to the emigrants as “the poor”, which is a term normally used to describe someone who does not possess any wealth. However, those emigrants were far from being poor in this sense since they possessed in Mekkah estates, money, trade and some of them were very wealthy. To call them “the poor” could be seen as incorrect. However, due to the fact that it was uttered by Allāh *ta`ālā* who, according to Islamic beliefs, makes no mistakes, it is bound to be correct. In line with this assumption scholars would normally assume another meaning which is more likely to agree with the intention of the Lawgiver. In this example the presumption is that their ownership of their belongings in Mekkah was ended by their migration, and the ownership was taken over by their enemies in Mekkah.

¹ Al-Ḥaṣhr, LIX:8.

The indication of the word “the poor” on this ruling is by *iqtidā’ al-naṣṣ* because its truthfulness and correctness in Islamic law are dependent on its presumption.¹

b) The Qur’ān states: “Forbidden to you are your mothers, your daughters, your sisters...”² This verse explains the prohibited degrees of relations in marriage. It does not mention explicitly the word “marriage”. Nonetheless, that word has to be read into the text to complete its meaning³.

c) The Qur’ān states: “Forbidden to you are carrion, blood, the flesh of swine...”⁴ This verse does not mention the word “for consumption” but even so it must be presumed in order to complete the meaning of the text.⁵

d) The Prophet (p.b.u.h) stated: “There is no fast (*lā ṣiyāma*) for anyone who has not intended fasting from the night before.” It is clear that the meaning of this tradition is incomplete and that a certain element is missing. Islamic

¹ Some scholars, like Sarakhsī and Bazdawī, regarded this indication as *ishārat al-naṣṣ* and not as *iqtidā’ al-naṣṣ*. (See: Sarakhsī, *Uṣūl al-Sarakhsī*, I:236; Bukhārī, *Kashf al-Asrār*, I:69). Nonetheless, it seems that this indication is *iqtidā’ al-naṣṣ* and not *ishārat al-naṣṣ* because in the latter the necessary meaning is belated and the correctness of speech does not depend on it. On the contrary the meaning of *iqtidā’ al-naṣṣ* necessarily precedes the correct understanding of the speech and the correctness of the speech depends on it. There is no doubt that the necessary meaning for “the poor” in this verse is the phrase “end of ownership”. This phrase necessarily precedes the correct understanding and should be necessarily presumed in order to understand what is the exact meaning of the word “poor”. Therefore it is *iqtidā’ al-naṣṣ* and not *ishārat al-naṣṣ*.

² Al-Nisā’, IV:23

³ In Khān and Hilālī translation of the Meanings of the Noble Qur’ān this verse is translated as follows: “Forbidden to you (for marriage) are your mothers, your daughter...” (See page 127.) Arberry (p. 75) and Pickhtall (p. 81) did not mention (abbreviate) “marriage” probably because that meaning seems to be so obvious. Probably for the same reason Ibn Kathīr did not give such an explanation. (See: Ibn Kathīr, *Tafsīr al-Qur’ān al-`Aẓīm*, I:623.)

⁴ Al-Mā’idah, V:3.

⁵ In Khān and Hilālī translation of the Meanings of the Noble Qur’ān this verse is translated as follows: “Forbidden to you (for food) are:...” (See p. 164.) Therefore, this missing section is supplied in order that the verse may convey a complete meaning.

scholars have presumed the completing element and some had differing opinions about it. Some, like the Ḥanafīs, presumed that the missing element is the word “incomplete”. Therefore, the tradition would mean that fasting is incomplete for anyone who had not made the intention to do so from the night before. Others, like the Shāfi`īs presumed that the missing element is the word “invalid”. Therefore, the tradition would mean that there is no valid fast for anyone who had not made the intention to do so from the night before. Due to these differences found in the schools of law, the legal decisions and rulings (*furū`*) were different too.¹

The indication of *iqtiḍā` al-naṣṣ*

Here we can discuss two points related to the indication of *iqtiḍā` al-naṣṣ*. The first point is related to the cases when *iqtiḍā` al-naṣṣ* assumes more than one indication. The second is related to the generalisation of the required meaning (*ʿumūm al-muqtaḍā*).

a) In some cases of *iqtiḍā` al-naṣṣ* a few meanings can be presumed. In such situations a *mujtahid* would make an effort to choose one meaning which is the most appropriate according to his/her opinion. Such an example can be seen in the tradition related by Ḥasan b. Samurah that the Prophet (p.b.u.h) stated: “The hand has a duty for what it took till return it back.”² This text mentions a certain duty which has to be fulfilled. That duty, however, is not clearly known. In order to obtain a useful and clear meaning the missing part from the text has to be presumed. If we look at the tradition we will find that it contains a few meanings that could be presumed like: keeping, protection, liability and return. The last one is dismissed by Islamic scholars because the tradition has made it an objective of the ruling and something cannot be an objective for itself. Therefore, this tradition, by *iqtiḍā` al-naṣṣ* indicates keeping, protection or liability. Some scholars presumed keeping and

¹ See: Marghinānī, *al-Hidāyah*, I:118; Ibn Ruṣhd, *Bidāyat al-Mujtahid*, I:293-294; Ibn Qudāmah, *al-Kāfī*, I:350-351.

² Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, III:566 (no. 1266); Ibn Mājah, *Sunan*, II:802 (no. 2400).

protection. This led to the legal ruling by which pledgee and borrower are not liable to pay compensation to the owner if what they took or borrowed has suffered loss or been destroyed.

On the other side those who presumed liability obliged the pledgee and borrower to compensate the owner.¹

b) Generalisation of the required meaning (*ʿumūm al-muqtaḍā*) is a question about which scholars do not have anonymous opinion. They do not disagree when *muqtaḍā* (the indication of *iqtidāʾ al-naṣṣ*) is specific (*khāṣṣ*) like in the verse: “Forbidden to you are carrion, blood, the flesh of swine...”² This is due to the fact that the prohibition is related to particular specified food and the first idea which comes to mind is that the forbidden is eating this food mentioned in the verse.

When *muqtaḍā* includes many individual subjects Islamic scholars have disagreed whether it includes them all or not. Some like Shāfiʿī³ maintains that *muqtaḍā* (the presumed indication) in such situations continues to be general and it includes all subjects. They argue that *muqtaḍā* which has been presumed is on the same level as *naṣṣ*. This is supported by the fact that a ruling based on it is regarded to be on the same level of strength as a ruling which is based on *naṣṣ*, and not as a ruling which is based on *qiyās*. Therefore, its indication can be generalised when it includes many subjects such as in the case of *naṣṣ*.

The majority of Ḥanafī scholars and many others, like Ghazālī, maintained that *muqtaḍā* cannot be generalised. They argue that *muqtaḍā* has been established due to necessity and according to the legal maxim “*al-ḍarūrah tuqaddar bi qadariha*” the necessity is assessed according to its necessary needs (i.e. the

¹ See more details about this question in chapters which deal with *ḍamān al-ʿariyyah wa al-rahn* in *fiqh*’s books.

² Al-Māʾidah, V:3.

³ See: Bukhārī, *Kashf al-Asrār*, II:237; Taftāzānī, *Sharḥ al-Talwīḥ ʿalā al-Tawḍīḥ*, I:137. It is interesting that Āmidī who followed Shāfiʿī madhhab did not mention this opinion but maintained that *muqtaḍā* cannot be generalised. (See: Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, II:363.)

minimum need that cannot be less).¹ Therefore, if the text gives a proper meaning without generalisation no generalisation would be allowed. An example of this is the permission that Sharīah grants concerning the eating of a dead animal in the case of necessity. Someone who is in extreme need would be allowed to eat it, but only the amount necessary to keep him/her alive. The law forbids a person to eat more than necessity or to take some store with him/her. The necessity in the case of *iqtiḍā' al-naṣṣ* is only one proper meaning and when it is confirmed there is no necessity for more meanings. Therefore, these scholars maintain that one of these single meanings, which makes the general, is enough to make the text provides a proper and useful meaning which could be correctly understood. The Prophet (p.b.u.h) stated: “Allāh has, indeed, disburdened from my followers their errors, forgetfulness and that which they were compelled to do against their wishes.”²

Removing errors, forgetfulness and coercion, after they have occurred, is logically impossible. Therefore, if the explicit meaning of this text is taken as its meaning it would mean that it is untrue. Accordingly, the word “ruling” is presumed and the sentence would be: “Allāh has, indeed, disburdened from my followers the ruling relevant to their errors, forgetfulness and that which they were compelled to do against their wishes”. However, the word “ruling” is general and includes the ruling related to this world in the sense whether it is acceptable or not in Islamic law, and it includes the ruling related to the Hereafter in the sense whether or not a punishment would be deserved for that action.

In this example the scholars who generalise *muqtaḍā* argue that the apparent meaning of the text denies the possible occurrence of the mistake, forgetfulness and coercion. Due to the fact that this meaning is impossible, the speech would have to be shifted to the nearest and most suitable metaphoric meaning. That meaning is the denial of all consequences both in this world or in the Hereafter.

¹ See: Ibn Nujaym, *al-Ashbāh wa al-Naẓā'ir*, p. 86; Lubnānī, *Sharḥ al-Majma'ah*, p. 30.

² Ibn Mājah, *Sunan*, I:659. (no. 2045).

Those who do not generalise *muqtaḍā* maintain that the necessity is fulfilled with the presumption of the one meaning only because *al-ḍarūrah tuqaddar bi qadariha*. Due to the fact that the ruling related to the Hereafter is agreed upon they presume only that meaning.

The disagreement in this question leads to many differences in legal rulings. The following examples illustrate this point:

a) Islamic scholars differ regarding the ruling related to someone who speaks during the Prayer by error or forgetfulness.¹ Those who maintain that *muqtaḍā* does not include all its possible meanings claim that his/her Prayer would be invalid and he/she has obligation to renew it. They argue, according to their methodology related to *iqtidā' al-naṣṣ*, that the tradition indicates the removal of “sins” that is accountable in the Hereafter only. Therefore, the tradition does not indicate that speaking by error and forgetting during the Prayer is excusable and that such a prayer is valid and correct in this world.

On the contrary, those who maintain that *muqtaḍā* includes all its possible meanings say that the Prayer during which a person has spoken in error or forgetfulness and negligence is valid and that person is not obliged to renew it. They argue that the tradition excused ruling related to this world and the Hereafter. Therefore, a few negligent comments during the Prayer, if made in error and negligence, does not make the Prayer invalid and does not cause reprisals in the Hereafter.

b) Islamic scholars have disagreed whether coercive divorce² is acceptable and legally valid and accordingly whether such a divorce has any legal effect. In the course of this disagreement *ʿumūm al-muqtaḍā* played a significant role as a further cause for disagreement and as a proof for both sides. We will see that some of the scholars based their argumentation on *ʿumūm al-muqtaḍā* and

¹ See: Marghīnānī, *al-Hidāyah*, I:61; ʿĀbidīn, *al-Hadiyyah al-ʿAlāʿiyyah*, p. 87; Khaṭīb, *Mughnī al-Muḥtāj*, I:430. In their argumentation about these matters both sides provided some other proofs too.

² Here, by the coercive divorce is meant a coercive divorce which is legally wrong. However, the right coercive divorce, when a judge concludes and passes such a judgement on the basis of the *Sharīh* would be approved by all scholars.

on the previously mentioned tradition in which the Prophet (p.b.u.h) informed followers that Allāh has disburdened them from what they were forced to do against their will.¹

As previously mentioned the Islamic scholars disagreed about coercive divorce.²

The Ḥanafīs and some other scholars like Nakha'ī, Ibn al-Musayyib, Thawrī etc. maintained that if a husband has been compelled to divorce his wife, this divorce would be valid and would take its full legal effect. They argue that the intention (*niyyah*) is not a condition for the validity of the divorce.³ They reached this conclusion by analysing the coercive divorcee with the divorce pronounced in jest, the following tradition of the Prophet states: “Three things are considered to be serious even if said in jesting: the marriage, the divorce and remarriage with one’s divorced wife.”⁴ Therefore, if a divorce by a joker, who normally does not intend what he says, is accountable and legally valid the divorce from the coercive divorcee is valid too. The common feature between them is that both of them pronounced the word of divorce and both of them did not intend its meaning.

They supported their opinion by other proofs like the general and unrestricted meanings of some verses in this domain like the verse: “O Prophet! When you divorce women, divorce them at their *’iddah* (prescribed periods)...”⁵ and the

¹ Normally the scholars, in their attempt to prove their opinion, have used various proofs beside this tradition and *’umūm al-muqtaḍā*.

² See details in the following sources: Kāsānī, *Badā’i’ al-Ṣanā’i’*, III:100; Marghīnānī, *al-Hidāyah*, I:229, IV:159; Ibn Qudāmah, *al-Mughnī*, VII:118; Dassūqī, *Ḥaḍḥiyat al-Dassūqī ’alā al-Ṣarḥ al-Kabīr*, II:367; Shīrāzī, *al-Muḥadḍhab*, II:78; Ibn Ḥazm, *al-Muḥallā*, X:202-204.

³ Kāsānī, when speaking about *arkān* of divorce mentioned only the utterance of the explicit word of divorce. He did not mention the intention (*niyyah*) as *rukn*. According to him the intention (*niyyah*) is stipulated only in the case when the word “divorce” is not explicit but implicit (*kināyah*). (See: Kāsānī, *Badā’i’ al-Ṣanā’i’*, III:100-101.)

⁴ Abū Dāwūd, *Sunan*, II:259 (no. 2149); Ibn Mājah, *Sunan*, I:658 (no. 2039).

⁵ Al-Ṭalāq, LXV:1.

tradition of the Prophet (p.b.u.h) in which he stated that: “Every divorce is permitted except divorce from the boy and the mentally deranged.”¹

The majority of scholars, Mālikīs, Shāfi`īs, Ḥanbalīs, Zāhirīs as well as some Companions of the Prophet (p.b.u.h) like `Umar, `Alī, Ibn `Abbās, maintain that coercive divorce is not valid and does not cause any legal effect. They supported their opinion by many proofs. The main proof is found in the same tradition used by the first group: “Allāh has, indeed, disburdened from my followers errors, forgetfulness and that what they were compelled to do against their wishes.” They maintain that the ruling taken from this tradition includes both worlds. Therefore, Allāh has removed responsibilities in these three circumstances in both this world and the Hereafter.

The majority of scholars provided other proofs in their favour:

`A`ishah narrated that the Prophet (p.b.u.h) said: “There is no divorce and freeing slave in *ighlāq* ².”³

`Aṭā` has argued that coercive divorce is not valid. He based his argumentation on the verse: “Whoever disbelieved in Allāh after his belief, except him who is forced thereto and whose heart is at rest with faith...”⁴ He said that disbelief is more dangerous than divorce. Accordingly, if a coercive disbelief is not considered to be valid by Allāh *ta`ālā* a divorce is more appropriate to be invalid in such circumstances. It has been narrated that in the time of `Umar a man climbed up a rope to reach some honey. While he was hanging from the rope his wife arrived. She held the rope and asked him to divorce her, and if not, she will cut the rope off. He begged her but she refused. In the end he divorced her three times. Afterwards, the man went to `Umar and informed him what had happened. `Umar said to him: “Go back to your wife. It is not a

¹ Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, III:496 (no. 1191).

² The word *ighlāq* has been interpreted as coercion. (See: Ibn Qudāmah, *al-Mughnī*, VII:118.)

³ Abū Dāwūd, *Sunan*, II:258-259 (no. 2193); Ibn Mājah, *Sunan*, I:660 (no. 2046).

⁴ Al-Naḥl, XVI:106.

divorce.” Ibn Ḥazm and Ibn Qudāmah narrated the same opinion from `Alī, Ibn al-Zubayr and Ibn `Abbās.¹

In addition to these proofs Ibn Ḥazm has regarded such a divorce as an action without intention (*niyyah*). Therefore, the consequences of that divorce are not obligatory because the Prophet (p.b.u.h) has stated: “... and for every person is that which he has intended for.”² According to this tradition every action without a proper intention is invalid. There is no doubt that coercive divorce lacks the intention and therefore is invalid and as such does not cause any legal result.

The Ḥanafīs, for their part, tried to dismiss these proofs. They said that the tradition of the Prophet (p.b.u.h) is a proof by *iqtidā’ al-naṣṣ*. If “ruling” is presumed it is not right to include ruling related to this world and to the Hereafter, but to one of them due to the fact that this presumption is caused by necessity and necessity has not to be exceeded. In this case the necessity would be fulfilled if it is applied to one of the two worlds, therefore only one world can be presumed. Having in mind that all scholars agree that it includes rulings related to the Hereafter, and that they disagree about this world, the former is taken as more the probable and correct version. Therefore, the meaning of the tradition would be: “Allāh has, indeed, disburdened [the sins³] from my followers for their errors, forgetfulness and that which they have been forced to do.” Accordingly this tradition cannot be considered as a proof for their opinion because *‘umūm al-muqtaḍā* is not acceptable.

Their proof based on analogy is not right because of the difference between *aṣl* and *far`*. This difference is reflected clearly in the fact that the joker has a free choice, while a man who is forced to make a coercive divorce has not such choice. Therefore, the analogy is not correct.

¹ See: *Shawkānī, Nayl al-Awtār*, VI:250; Ibn Ḥazm, *al-Muḥallā*, X:202-204; Ibn Qudāmah, *al-Mughnī*, VII:118.

² *Bukhārī, al-Jāmi` al-Ṣaḥīḥ*, I:2 (1:1); Abū Dāwūd, *Sunan*, II:262 (no. 2201); Ibn Mājah, *Sunan*, II:1413 (no. 4227).

³ Sins are normally associated with the Hereafter only.

From this argumentation it is obvious that the scholar disagreement about *'umūm al-muqtaḍā* had a great impact on their disagreement about coercive divorce and from there on many legal issues related to divorce.

The majority of scholars stated their preference for the second opinion and maintained that coercive divorce is legally invalid. It would seem that they are right for three reasons:

1) The coercive divorcee was unjustly forced into it and the Islamic law does not allow the implementation of an injustice. The Qur'ān is explicit: "... and when you judge between people, you judge with justice."¹ "Verily, Allāh bids to justice and good-doing and giving (help) to kith and kin; and He forbids indecency, dishonour, and insolence..."² The basic rules extracted from Islamic law and ethics suggest it clearly. "No damage or retaliation for that damage is allowed in Islam"³, "Harm should be removed."⁴, "Action is by intention"⁵

2) The provided proofs from the Qur'ān and the Sunnah clearly suggest that coercive divorce is invalid. These proofs are stronger and more explicit than the proofs which suggest otherwise.

3) This is the opinion of the great majority of the Prophet's (p.b.u.h) Companions and Islamic scholars.

The value of *iqtidā' al-naṣṣ*

The effect of the required meaning is like that of the three previously mentioned meanings. Sarakhsī discussed all four indications under the title: "The explanation of rulings based on the apparent meaning of the text not on the analogy or mind".⁶ According to this, *iqtidā' al-naṣṣ* is a definite meaning, if there is no proof which suggests otherwise. The ruling based on *iqtidā' al-*

¹ Al-Nisā', IV:58.

² Al-Naḥl, XVI:90.

³ See: Lubnānī, *Sharḥ al-Majallah*, p. 29.

⁴ See: Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, p. 85; Lubnānī, *Sharḥ al-Majallah*, p. 29.

⁵ See: Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, p. 38; Lubnānī, *Sharḥ al-Majallah*, p. 17-18.

⁶ See: Sarakhsī, *Uṣūl al-Sarakhsī*. I:236.

naṣṣ has the same treatment like that based on the explicit, alluded or inferred meaning. The only difference between them emerges in the case of conflict.¹ Therefore, adherence to *iqtidā' al-naṣṣ* should be strict obligation (*wājib*)².

Conflict between *iqtidā' al-naṣṣ* and the other three kinds of indications

As previously mentioned, these four kinds of indications are not on the same level of strength. The weakest one is *iqtidā' al-naṣṣ*. This is due to the fact that it is not indicated by the text itself, or by its meaning, but by the necessity in order to make the text correct and acceptable. Therefore in a case of conflict between *iqtidā' al-naṣṣ* and any of the three other indications they would prevail over it.

The following example is about a conflict between *iqtidā' al-naṣṣ* and *dalālat al-naṣṣ*.³ The latter, as indicated, prevails over the former in the case of conflict. The Prophet (p.b.u.h) instructed `Ā'ishah regarding washing the blood of menstruation by saying: “Scrub it off, then wash it with water, then squeeze it.”⁴ This tradition indicates by *iqtidā' al-naṣṣ* that it is not allowed to wash the impure object by any liquid but water. This indication is concluded from the fact that he has ordered that washing should be with water. It requires that washing with something else is not allowed. This text, however indicates by *dalālat al-naṣṣ* (the inferred meaning) that the washing can be carried out by any clean liquid because the aim of washing is cleaning which can be achieved by any clean liquid⁵. The inferred meaning has preference over the required

¹ Nasafī, *Kashf al-Asrār*, I:398.

² See: Isnawī, *al-Tamhīd*, p. 242.

³ Some scholars claimed that a proper example for the conflict between the two may not be fined. Mayhawī rejected such a claim stating that it is the result of the lack of scholarly and sufficient research. (See margin: Nasafī, *Kashf al-Asrār*, I:398.)

⁴ Bukhārī, *al-Jāmi' al-Ṣaḥīḥ*, I:62-63 (4:63); Muslim, *Ṣaḥīḥ Muslim*, I:240 (no. 291).

⁵ Today we can speak about other methods of cleaning like dry cleaning. Any kind of cleaning which removes traces of dirtiness can be taken into consideration.

meaning. Therefore it is allowed to wash dirt by anything clean that removes dirt's traces.

The next example is about conflict between *iqtidā' al-naṣṣ* and *'ibārat al-naṣṣ* and it is related to the punishment for manslaughter. This example is in compliance with the opinion of those who claim that *iqtidā' al-naṣṣ* includes all its possible indications¹. The tradition of the Prophet (p.b.u.h) "Allāh has, indeed, disburdened from my followers errors, forgetfulness and that what they were forced to do against their wishes." indicates by *iqtidā' al-naṣṣ* that a person who commits manslaughter in this fashion is pardoned for his/her deed and there is no punishment for him/her in this world and in the Hereafter. On the other hand, the verse: "If any slays a believer by error, then let him set free a believing slave, and blood money is to be paid to his family unless they forgo it as a freewill offering."² indicates by the explicit meaning (*'ibārat al-naṣṣ*) that such a person should be punished by a specified punishment. Due to the fact that the explicit meaning has preference over the required meaning, a person who commits manslaughter should be punished in the way mentioned in the verse.

Conclusion

From what has been discussed we can summarise that a meaning of an authoritative text could be indicated in the words of the same text, by signs and allusions which occur therein, by inference and by addition of a missing element. During the interpretation these methods can be applied individually or in combination with one another. On the bases of these methods the Ḥanafī scholars divided the indication into four kinds. From their consideration it can be concluded that an authoritative legal text may be interpreted through the

¹ In this case it would include the ruling related to this world and the Hereafter. This example is not in compliance with the opinion which does not accept *'umūm al-muqtaḍā* because if only the Hereafter is presumed there is no conflict between these two texts. The first one would be related to the Hereafter and the second one to this world.

² Al-Nisā', IV:92.

application of any of these four kinds of textual implications. According to them all four kinds carry the text to its proper and logical meanings. They also indicate a definite meaning if a reliable proof does not suggest otherwise. Therefore, these meanings have to be implemented.

All meanings understood by any of previously described methods are thought to be indicated by the text (*naṣṣ*) and the text is thought to be their proof. The meaning taken from the text's *`ibārah* is the intended meaning (either main or subsidiary purpose of the text) indicated by text words. The meaning taken from the text's *ishārah* is a necessary indication of the meaning of its *`ibārah* in such a way that they cannot be separated (despite the fact that it is not intended by the Speaker). It is considered as an indication by way of compliance. The meaning taken from its *dalālah* is a meaning indicated by its spirit and rational reason. The meaning taken from its *iqtidā'* is a necessary meaning required by the text in order to be truthful and valid in the Sharīah. The strongest indication is that of *`ibārah* then that of *ishārah* then that of *dalālah* then that of *iqtidā'*. Logically, in the case of any conflict between these indications the stronger one prevails over the weaker one.

=====

=====

The Shāfi`ī approach to the methods of textual indication ¹

Introduction

As previously indicated, the Shāfi`īs' approach to textual indication (*dalālāt al-alfāz*) is different from that of the Ḥanafīs'. Despite the fact that this difference seems to be more technical than real, it would be interesting to discuss this approach in some further detail.

In contrast to the Ḥanafīs, who classified textual indication into four types, the Shāfi`īs divided it into two: pronounced meaning (*dalālat al-manṭūq*) and implied meaning (*dalālat al-mafhūm*). Both of these indications are derived from the text and its words.

Pronounced meaning (*dalālat al-manṭūq*) is derived from the obvious text and it is divided into two types: (*ṣarīḥ*) and (*ghayr al-ṣarīḥ*). *Ṣarīḥ* includes the explicit meaning (*ībarāt al-naṣṣ*), mentioned by the Ḥanafīs. *Ghayr al-ṣarīḥ* is divided into three types: the required meaning (*dalālat al-iqtidā'*), the gesture meaning (*dalālat al-imā'*) and the alluded meaning (*dalālat al-ishārah*). From this division it appears that *ghayr al-ṣarīḥ* includes two types regarding the indications mentioned by the Ḥanafīs: the alluded meaning (*ishārat al-naṣṣ*) and the required meaning (*iqtidā' al-naṣṣ*).

Implied meaning (*dalālat al-mafhūm*) is derived through logical and juridical construction of the text and it is divided into two kinds: harmonious meaning (*mafhūm al-muwāfaqah*) and opposite meaning (*mafhūm al-mukhālafah*). The former corresponds to the inferred meaning (*dalālat al-naṣṣ*) of the Ḥanafīs.²

=====

¹ Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:63; Ījī, *Mukhtaṣar al-Muntahā*, II:171; Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:111; Shawkānī, *Irshād al-Fuḥūl*, p. 156.

² Abū Zahrah stated that all of the four-fold of Ḥanafī divisions of *dalālāt* can be classified under *dalālat al-manṭūq*. (See: Abū Zahrah, *Uṣūl al-Fiqh*, p. 116). However, this would be more accurate if we say that some of them are derived from *mafhūm* like the inferred meaning (*dalālat al-naṣṣ*) and *mafhūm* is derived from *manṭūq*.

Al-Manṭūq (the Pronounced)

The linguistic definition of *manṭūq*

AL-MANṬŪQ (A.) pronounced, uttered, said; text, wording.¹

The technical definition of *manṭūq*²

Shāfi`ī is provided for *manṭūq* some definitions which are very similar to each other.

Āmidī defined *manṭūq* as: “It is what has been undoubtedly understood from the word’s indication.” (*Huwa ma fuhima min dalālat al-lafẓ qaṭ`an fī maḥall al-nuṭq.*)

Ījī defined *manṭūq* in the following terms: “It is what has been undoubtedly understood from the text’s words.” (*Huwa ma fuhima min al-lafẓ qaṭ`an fī maḥall al-nuṭq.*)

Ibn al-Subkī provided the following definition for *manṭūq*: “That which the text indicates by its words.” (*Ma dalla `alayh al-lafẓ fī maḥall al-nuṭq.*)

The same definition for *manṭūq* is provided by Shawkānī.

From these definitions it may be concluded that *manṭūq* is the pronounced, apparent and certain indication of the text.

Subdivision of *manṭūq*

If *manṭūq* does not accept *ta`wīl* it would be considered as *naṣṣ* and if it does, it would be considered as *ẓāhir*.

Naṣṣ is divided into two types: frank (*ṣarīḥ*) and unclear (*ghayr al-ṣarīḥ*). The former would be when the text indicates on the ruling by complete

¹ M.L.`A, *al-Mu`jam al-Wasīṭ*, II:931; Ba`labakī, *al-Mawrid*, p.1124. (See etymology of the word *manṭūq* in *EF*, VI:442.)

² See: Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:63; Ījī, *Mukhtaṣar al-Muntahā*, II:171; Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:111; Shawkānī, *Irshād al-Fuḥūl*, p. 156.

correspondence (*muṭābaqah*) or by partial inclusion (*taḍammun*) and the latter would be when the text indicates on the ruling by a necessary idea attached to the meaning in the mind (*iltizām*). In case of *ghayr al-ṣarīḥ* the text is not created to deliver that particular ruling but that ruling is necessary to the meaning for which the text is created.

Ghayr al-ṣarīḥ is further divided into three types: the required meaning (*dalālat al-iqtidā'*), the gesture meaning (*dalālat al-imā'*) and the alluded meaning (*dalālat al-ishārah*).

The way by which they came to these conclusions was achieved by dividing the necessary indication into two categories:¹

a) When the text's necessary indication on a ruling, which is intended by the speaker, is indicated by the text's words itself.

b) When the text's necessary indication on a ruling, which is not intended by the speaker, is indicated by the text's words itself.

The former case may be further divided into two:

1) When the correctness of the text in mind and its validity both rationally and legally (*ʿaql^{an}* and *shar^{an}*), depends on its presumption, and this would be *dalālat al-iqtidā'*,

2) When the correctness of the text in mind and its validity does not depend on its presumption, and this would be *dalālat al-imā'*.

When the text's necessary indication on a ruling is not intended by the speaker it would be *dalālat al-ishārah*.²

From what has been displayed it can be concluded that *manṭūq* is the text's indication on a ruling, which was mentioned in the text and pronounced by complete correspondence (*muṭābaqah*), or by partial inclusion (*taḍammun*), or by a necessary idea attached to the meaning in the mind (*iltizām*).

¹ See: Ījī, *Mukhtaṣar al-Muntahā*, II:171; Anṣārī, *Ghāyat al-Wuṣūl*, p. 36; Ibn Amīr al-Ḥājj. *al-Taqrīr wa al-Taḥbīr*, I:111; Shawkānī, *Irshād al-Fuḥūl*, p. 156.

² Therefore, both *dalālat al-iqtidā'* and *dalālat al-imā'* are necessary meanings intended by the speaker while *dalālat al-ishārah* is the necessary meaning that is not intended by the speaker.

Examples of *manṭūq*

1) Examples of *manṭūq ṣarīḥ*

a) The Qur'ān states: “Forbidden to you (for food) are carrion, blood, the flesh of swine, what has been hallowed to other than God, the beast strangled, the beast beaten down, the beast fallen to death, the beast gored...”¹

This verse explicitly pronounces that carrion, blood etc. are forbidden to Muslims. Therefore it is classified as *manṭūq ṣarīḥ*.

b) The Qur'ān states: “Allāh has permitted trafficking, and forbidden usury.”²

This verse linguistically clearly states that trading is allowed while usury is forbidden. Due to the fact that the ruling related to both trade and usury is plainly pronounced that ruling is considered to be *manṭūq ṣarīḥ*.

c) The Qur'ān states: “Forbidden to you are (.....) your stepdaughters who are in your care being born of your wives you have been in to them...”³

It is clearly pronounced in this verse that a man is not allowed to marry his stepdaughter if he had married her mother and had consummated that marriage. Therefore, this indication is *manṭūq ṣarīḥ*.

2) Examples of *manṭūq ḡhayr al-ṣarīḥ*

It was mentioned previously that *manṭūq ḡhayr al-ṣarīḥ* is divided into three types. The following are examples of them:

a) *Dalālat al-iqtiḍā'*: (i.e. when correctness of the text and its validity both rationally and legally (*ʿaql^{an}* and *shar^{an}*) depends on presumption of a meaning which is intended by the speaker).

The Qur'ān states: “O you who believe! Fasting is prescribed for you as it was prescribed for those before you, that you may become the pious (godfearing)

¹ Al-Mā'idah, V:3.

² Al-Baqarah, II:275.

³ Al-Nisā', IV:23.

for days numbered; and if any of you be sick, or if he be on a journey, then the same number [should be made up] from other days.”¹

This verse apparently means that if someone has been sick or on a journey he/her has to fast on other days, even if he/she did not brake the fast and continued fasting. This apparent meaning is understood since the Qur’ān clearly stated “then the same number [should be made up] from other days”. The majority of Islamic scholars, however, presumed the concealed word to be “and he did not fast”. Therefore, the meaning of the verse would be: “... and if any of you be sick, or if he/she be on a journey, [and he/she did not fast] then the same number [should be made up] from other days.”²

¹ Al-Baqarah, II:183-184.

² The fasting during sickness or journey is a question about which the Islamic scholars have differed. The majority, as stated, maintain that a person who is ill or on a journey has a permission (*rukḥṣah*) to fast or not. If he/she fasts he/she is not obliged to do it again. They proved their opinion by the previously mentioned presumption which indicates that fasting on other days is an obligation for someone who did not fast. This presumption is supported by some traditions of the Prophet (p.b.u.h.) which indicate that fasting during the journey is permissible and therefore valid. `Ā’ishah has narrated that Ḥamzah b. `Amr al-Aslamī, who was regularly fasting, said to the Prophet (p.b.u.h.): “Will I fast on the journey?” The Prophet (p.b.u.h.) answered: “If you like you can fast and if you like you will eat and drink.” (Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:237 (30:33); Muslim, *Ṣaḥīḥ Muslim*, II:789 (no. 1121) Though this tradition can imply that the fasting in question was not obligatory, the narration mentioned by Muslim suggests that he asked about fasting in Ramaḍān because the Prophet (p.b.u.h.) answered: “It is a permission (*rukḥṣah*) from Allāh and who take it is good, and who likes to fast he will not sin..” The usage of the word “permission” indicates that the question was related to the obligatory fasting in the month of Ramaḍān, because in other days it is anyway allowed not to fast. Those who argue in favour of the above opinion mentioned other proofs which seem to be very strong.

The Zāhirīs have a different view, that fasting while travelling is not allowed because the verse apparently stated that he/she who is a traveller should fast other days. This is supported by the tradition in which the Prophet (p.b.u.h.) stated: “Fasting while travelling is not an act of piety.” The opposite to the piety is sin and committing sins is forbidden and if a person is going to commit a sin by fasting it would not be accepted as a good deed. (See: `Asqalānī, *Fath al-Bārī*, IV:156-159; Shawkānī, *Nayl al-Awtār*, IV:235-238; `Īd, *Iḥkām al-iḥkām*, II:17; Ṭaḥāwī, *Sharḥ Ma`ānī al-Āthār*, I:333; Ibn Ḥazm, *al-Muḥallā*, VI:243.)

b) *Dalālat al-imā'*: (i.e. when correctness of the text and its validity both rationally and legally (*ʿaql^{an}* and *shar^{an}*) does not depend on the presumption of a meaning which is intended by the speaker).

The Qur'ān states: “And the thief, male and female: cut off the hands of both, as a recompense for what they have earned and a punishment exemplary from Allāh.”¹

The ruling declared in this verse includes an intended explanation and justification that the speaker offers for the ruling. It clearly affirms that theft was the reason for the introduction of this ruling. This is the actual meaning of the sentence despite the fact that the ruling is mentioned after the “*fa*” conjunction which in Arabic indicates continuation (*ta`qīb*) and does not indicate justification (*ta`līl*).² Having that the sentence does not indicate the justification, the association between the ruling (cutting of the hand) and the thief would be unreasonable because there would be no consistency and harmony between them.

c) *Dalālat al-i-shārah*: (i.e. when correctness of the text and its validity both rationally and legally (*ʿaql^{an}* and *shar^{an}*) does not depend on presumption of a meaning which is not intended³ by the speaker.)

¹ Al-Mā'idah, V:38.

² According to this all rulings in the Qur'ān or the Sunnah which were induced after the “*fa*” conjunction [which sometimes can be even supposed (*muqaddar*)] are to be considered as modifiers to the adjectives interpreting and justifying them. The same situation is when someone came to the Prophet (p.b.u.h.) and asked him a question and received an answer in the form of a ruling. That ruling is considered to be an exposition for that particular question, like in the case when a man said to the Prophet (p.b.u.h.) that he had sex with his wife during the day of Ramaḍān and the Prophet (p.b.u.h.) ordered him to pay a certain amount as recompense... This conclusion, however, is speculative (*zannī*) because the “*fa*” conjunction in Arabic originally indicates the continuation (*ta`qīb*) and does not indicate justification (*ta`līl*). Accordingly, the rulings deduced from these proofs are speculative and could be challenged by other appropriate proofs having in mind that the Qur'anic texts would have preference over the Sunnah in the case of an apparent conflict.

³ This is what we suppose and, accordingly, it may be incorrect.

The Qur'ān states: “And We have enjoined on man to be dutiful and kind to his parents. His mother bears him with hardship and she brings him forth with hardship, and the bearing of him, and the weaning of him is thirty months...”¹ This verse indicates by alluded meaning (*ishārat al-naṣṣ*) that the bearing of a child lasts for at least six months because in another verse it is stated that the weaning period is two years only: “His mother bore him in weakness and hardship upon weakens and hardship, and his weaning is in two years - give thanks to Me and to your parents, - unto Me is final destination.”² Therefore, if the total period for both bearing and weaning the child is thirty months and the weaning alone is two years it can be concluded that the gestation period alone would be at least for six month. This meaning is indicated by the verse despite the fact that its correctness and validity, both rationally and legally (*ʿaql^{an}* and *shar^{an}*), does not depend on presumption of that meaning which, as we suppose, was not intended by the speaker.

Restriction of meaning of *manṭūq* by *mafhūm*

The meaning of *manṭūq* according to the majority of scholars³, can be restricted by both types of *mafhūm*: agreement (*muwāfaqah*) and disagreement (*mukhālafah*). Āmidī states in *Ihkām* that he does not know whether any scholar disagrees in this matter.⁴ We have found, however, that Rāzī disagrees maintaining that such a restriction is not allowed, because it would be in preference of a weaker (i.e. *mafhūm*) over *ʿāmm* (i.e. *manṭūq*) which is stronger.⁵

The example for restriction of *manṭūq* by *mafhūm al-muwāfaqah*

The Shāfiʿī scholars suggested an example for the above restriction without mentioning authoritative texts. They maintain that the example for it is found

¹ Al-Aḥqāf, XLVI:15.

² Luqmān, XXXI:14.

³ Āmidī, *al-Ihkām fī Uṣūl al-Aḥkām*, II:529; Aṣfahānī, *Sharḥ al-Minhāj*, I:418-420.

⁴ Āmidī, *al-Ihkām fī Uṣūl al-Aḥkām*, II:529.

⁵ Rāzī, *al-Maḥṣūl*, I:3:159-160.

in the case of a house owner who orders a doorkeeper to attack anyone who enters his/her house and afterwards he/she told him: “If Zayd come in, do not be disrespectful to him.” This indicates by *mafhūm al-muwāfaqah* that the doorkeeper is not allowed to attack Zayd and that Zayd is excluded from the general order delivered by the pronounced (*manṭūq*).

The examples for restriction of *manṭūq* by *mafhūm al-mukhālafah*

a) The Prophet (p.b.u.h) has ordered *zakāt* for animals in general term.¹ In some traditions, however, he stated that *zakāt* should be paid only for grazing animals. In one of them he stated “... for grazing sheep and goats *zakāt* is prescribed...”² From this tradition we can understand by opposite meaning (*mafhūm al-mukhālafah*) that *zakāt* is not obligatory for stall-fed animals because this tradition would restrict the absolute traditions and exclude from the absolute order the animals which are stall-fed.³

b) The Prophet (p.b.u.h) said: “Indeed, water cannot be spoiled except by which what changes its smell, taste or colour.”⁴ This general meaning is restricted by *mafhūm* of the tradition: “When the amount of water reaches *qullatayn* it cannot be spoiled.”⁵ The water mentioned in the first tradition is general and includes that which mounts *qullatayn* and that which is less. The first tradition indicated by *manṭūq* that water, no matter how much it is, does not become dirty if something dirty falls into it, while the second indicates that it would be spoiled if it is less than *qullatayn*.

¹ For example he ordered Mu`ādh, when he sent him to Yemen, to take a year old calf from every thirty cows without mentioning whether they should be grazing livestock or not. (See: Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, III:20 (no. 623); Nasā`ī, *Sunan*, V:26 (no. 2453).

² Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:124 (24:38).

³ The general order is regarded as *`āmm* (general meaning) while the traditions in which stall-fed animals are excluded are regarded as specified (*khāṣṣ*). According to a rule in *uṣūl al-fiqh* the specified meaning has preference to the general meaning.

⁴ Ibn Mājah, *Sunan*, I:174 (no. 521).

⁵ Aḥmad b. Ḥanbal, *Musnad*, VI:276 (no. 4605); Ibn Mājah, *Sunan*, I:172 (no. 517).

The indication of *manṭūq*

From what has been discussed so far I came to the conclusion¹ that *manṭūq ṣarīḥ* provides definite (*qaṭ`ī*) meaning, because it is a clear indication declared by the apparent meaning of the text. On the other hand *manṭūq ghayr al-ṣarīḥ* can provide both definite (*qaṭ`ī*) and speculative (*ẓanni*) meaning depending on its kind which are as follows:

a) *Dalālat al-iqtidā'* provides definite meaning when only one meaning can be presumed and a reliable proof does not suggest otherwise. If it is possible to presume more than one meaning it would be considered as speculative (*ẓanni*) meaning.

b) *Dalālat al-imā'* provides speculative (*ẓanni*) meaning because it cannot be certain that the attributes mentioned represent the actual reason for the ruling that precede it.

c) *Dalālat al-ishārah* would provide speculative (*ẓanni*) meaning when the meaning supposes reality and metaphor. If it supposes reality only, it would provide definite (*qaṭ`ī*) meaning.

The value of *manṭūq*

Adherence to *manṭūq* for Muslims is obligatory (*wājib*) as well as implementation of its meaning, no matter whether it is *manṭūq ṣarīḥ* which provides a definite meaning or *manṭūq ghayr al-ṣarīḥ* which might provide both definite and speculative meaning, because speculative meanings (*ẓunūn*) are also valid and should be implemented² till other reliable proofs suggest otherwise.

=====

=====

¹ Some Islamic scholars, however, have different opinions regarding some aspects. In order to shorten this elaboration I did not discuss their opinions.

² There is no difference regarding this point between Islamic scholars.

Chapter 6

Al-Mafhūm (the Implied)

Introduction

Maḥmūm is an implicit meaning reached by way of inference and it is not indicated by the word's apparent indication. *Maḥmūm* is accepted by the majority of Islamic scholars as a way by which legal rulings can be achieved from the authoritative legal texts. Ibn Ḥazm seems to be the only scholar who entirely rejected *maḥmūm*. He maintained that *maḥmūm* is a kind of analogy (*qiyās*) which is rejected entirely in *Zāhirī madhhab*¹. Ibn Ḥazm's opinion, however, is rejected by the majority of Islamic scholars. Even the founder of *Zāhirī madhhab* Dāwūd al-Zāhirī, who rejected the analogy in general, used some kinds of *maḥmūm* i.e. translucent (transparent) analogy (*qiyās jalī*) which is termed by some as *maḥmūm al-muwāfaqah*.² Therefore, the majority of Islamic scholars did not search only for the meanings in boundaries of the apparent meaning of the words but went beyond that, searching for the meanings which can be understood from the spirit of Islamic law and the implicit meanings of the text, binding themselves by the rules of Arabic, the language of the Qur'ān and the Sunnah. By using this method of Islamic law they were capable every time to produce adequate rulings suitable for the new evolving incidents and cases. The Ḥanafī scholars, as we have seen, did not differentiate between the indication reached by the way of inference and that reached from the apparent meaning of the text. In their opinion the inferred meaning has the same legal value as the apparent meaning. Āmidī mentioned,

¹ See: Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, VII:2-4, 53-59.

² For more detailed discussions see: Ibn `Abd al-Barr, *Jāmi` Bayān al-`Ilm wa Faḍlih*, II:55-69; Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, IV:272-286; Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi`īn*, I:197; Shawkānī, *Nayl al-Awtār*, IV:129. To note the distinction between those scholars it seems that Āmidī did not notice that Dāwūd al-Zāhirī used a kind of *maḥmūm* because he remarked about him that he does not consider it as a proof (*ḥujjah*). (See: Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:64-65.)

when speaking about *mafhūm al-muwāfaqah* (agreement meaning) that the scholars agreed unanimously (*ittafaqū*) that it may be a legal proof. He mentioned disagreement of Dāwūd al-Zāhirī but he did not count it as a disagreement which is valuable and effective and as such capable to effect the unanimity of other scholars that recognise it.¹

Mafhūm can be divided into two types:

- a) *mafhūm al-muwāfaqah* (agreement meaning),
- b) *mafhūm al-mukhālafah* (opposite meaning).

a) *Mafhūm al-Muwāfaqah* (the Agreement Meaning)

The linguistic definition of *mafhūm al-muwāfaqah*

Mafhūm al-muwāfaqah is constructed from two words: *mafhūm* and *muwāfaqah*².

MAFHŪM (A.) understood, known, implied, implicit, tacit, notion, connotation; the meaning, or sense, in which the word is understood.³

MUWĀFAQAH (A.) correspondence, agreement, conformity, coincidence, compatibility, consistence, accordance, harmony.⁴

The technical definition of *mafhūm al-muwāfaqah*

After careful consideration it appears that Āmidī gave a definition of *mafhūm al-muwāfaqah* in two places in his *Iḥkām*. In the first place he defined it as: “Where the ruling of unpronounced agrees with the ruling of the pronounced”

¹ Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:64-65.

² This construction in Arabic is known as genitive construction (*idāfah*) whereby the first word is termed as an adjunct or governed word (*muḍāf*) and the second as a governing noun of a genitive construction (*muḍāf ilayh*).

³ M.L.`A, *al-Mu`jam al-Wasīf*, II:704; Lane, *Arabic-English Lexicon*, II:2454; Ba`labakī, *al-Mawrid*, pp. 1084-1085.

⁴ M.L.`A, *al-Mu`jam al-Wasīf*, II:1046; Ba`labakī, *al-Mawrid*, p. 1136.

(*Huwa mā kāna ḥukm al-maskūt `anh muwāfiq^{an} li ḥukm al-manṭūq.*)¹, while in the second he provided slightly different definition: “It is the implicit indication which agrees with the pronounced indication.” (*Huwa ma yakūn madlūl al-lafẓ fī maḥall al-sukūt muwāfiq^{an} li madlūlih fī maḥall al-nuṭq.*)²

Shawkānī provided for *mafhūm al-muwāfaqah* a similar definition to Āmidī’s first definition: “Where the unpronounced agrees with the pronounced” (*Mā kāna al-maskūt `anh muwāfiq^{an} li al-malfūz bih.*)³

Taking into consideration these definitions and the following analysis and contemplation of the scholars the following definition for the agreement meaning (*mafhūm al-muwāfaqah*)⁴ can be formulated: “It is an implicit meaning about which the text is silent but nonetheless it agrees with pronounced meaning of another text which is (the meaning) equivalent or superior to it.”

Therefore *mafhūm al-muwāfaqah* is the indication of the text that a certain meaning (ruling) within it is equivalent or superior to the pronounced meaning (ruling)⁵ within another text because both incidents share an effective cause (*illah*)⁶ which is common between them. Accordingly, the implicit indication would take the ruling of the pronounced. The understanding of that effective cause should be so simple that it does not depend on study and legal reasoning (*ijtihād*). As an example for *mafhūm al-muwāfaqah* may be the Qur’anic command to the children regarding their parents which states: “... say not to them “uff” (a word of disrespect), nor shout at them...⁷ From this verse can be instantly understood by anyone who knows the language that the reason for this

¹ Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, II:466.

² Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:63.

³ Shawkānī, *Irshād al-Fuḥūl*, p. 156.

⁴ Which is in Ḥanafī madhhab known as inferred meaning (*dalālat al-naṣṣ*).

⁵ In a positive or negative sense.

⁶ Which was the reason for legislation (*manāṭ al-ḥukm*) of the pronounced ruling (*manṭūq*).

⁷ Al-Isrā’, XVII:23-24.

legislation (*manāṭ al-ḥukm*) is the prohibition of the offensive behaviour towards parents expressed in any way. The agreement meaning (*mafḥūm al-muwāfaqah*) suggests that other forms of offensive behaviour, like beating, cursing etc., are also forbidden because the effective cause for the prohibition would apply to them on an equal base or with more reason. If other forms of offensive behaviour (like any other word similar to “uff”) are equal to that stated in the text, it would be termed *lahn al-khiṭāb* (parallel meaning) and if it is more offensive like beating and cursing it would be termed *faḥwā al-khiṭāb* (superior meaning) both of which we will discuss now.¹

Types of *mafḥūm al-muwāfaqah*²

In the examples of *mafḥūm al-muwāfaqah* we will see that this implicit meaning is not always equivalent to that pronounced (*manṭūq*), but sometimes can be superior to it. On this basis some Shāfi`ī scholars divided the *mafḥūm al-muwāfaqah* into two types: *lahn al-khiṭāb* (parallel meaning) and *faḥwā al-khiṭāb* (superior meaning).

If the implicit meaning is equivalent to the pronounced meaning (*manṭūq*) *mafḥūm al-muwāfaqah* is termed as *lahn al-khiṭāb* (parallel meaning) and if it is superior to the pronounced meaning it is termed as *faḥwā al-khiṭāb* (superior meaning).³

Some Shāfi`ī scholars like Ghazālī and Rāzī⁴ maintain that superiority of the implicit meaning over the pronounced meaning is not a condition for *mafḥūm*

¹ The prohibition of something in its small amount consequently means its prohibition in greater amount.

² See: Anṣārī, *Ghāyat al-Wuṣūl*, 37; Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:112; Shawkānī, *Irshād al-Fuḥūl*, p.156.

³ Some scholars of *uṣūl al-fiqh* have disagreed about the difference between *lahn al-khiṭāb* (parallel meaning) and *faḥwā al-khiṭāb* (superior meaning). (See: Anṣārī, *Ghāyat al-Wuṣūl*, 37; Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:112; Shawkānī, *Irshād al-Fuḥūl*, p.156.)

⁴ Moreover, Zarkashī mentioned that this is the opinion of the majority of Shāfi`ī scholars. This is opposed by Hindī's comments which stated that the majority stipulate for the implicit to be superior over pronounced. (See: Shawkānī, *Irshād al-Fuḥūl*, p. 156.) Beside those

al-muwāfaqah. It is sufficient, according to them, that the effective cause, which is a reason for legislation (*manāṭ al-ḥukm*), is equivalent to the pronounced (not less appropriate and adequate) and that this shared meaning (the effective cause) is so obvious (linguistically understandable) that anyone who understands the language would understand it without a need for thinking and legal reasoning (*ijtihād*). Therefore, according to them, the agreement meaning (*mafhūm al-muwāfaqah*) is sometimes equivalent and sometimes superior to the pronounced meaning (*manṭūq*).

As an argument, which according to them should be necessarily known, they use the fact that the ruling of the pronounced is sometimes extended to the unpronounced despite the fact that the unpronounced is not more entitled for that ruling from the pronounced. This is due to the easiness and simplicity to understand the reason for the legislation (*manāṭ al-ḥukm*) which is common between the pronounced and the unpronounced such as the issue regarding the question of orphans' property. The Qur'ān prohibited the guardians from unjustly eating up the property of the orphans.¹ This ruling, however, is extended to all other forms of mismanagement which produces the same result i.e. waste and destruction of their property. The extension of this ruling is based on the agreement meaning (*mafhūm al-muwāfaqah*), or more precisely on its type, termed as parallel meaning (*lahn al-khiṭāb*).

According to Hindī, the majority of scholars maintain that the implicit meaning has to be superior in order to be considered as the agreement meaning (*mafhūm al-muwāfaqah*). This opinion is ascribed to Shāfi`ī himself².

They argue that if the unpronounced is superior to the pronounced (because the meaning of the unpronounced is more adequate for that ruling of the pronounced) it can be certain that they both share the same ruling. This is due

Shāfi`ī scholars the Ḥanafīs do not stipulate its superiority too. Their opinion is discussed under the title “Dalālat al-Naṣṣ”.

¹ “Verily, those who unjustly eat up property of orphans, they eat up only a fire into their bellies, and they will be burnt into blazing Fire!” (al-Nisā’, IV:10)

² See: Shawkānī, *Irshād al-Fuḥūl*, p. 156.

to the fact that the possibility that the ruling of the pronounced is prescribed for *ta`abbud*¹ seems to be less likely, due to the fact that the unpronounced is more appropriate for that ruling from the pronounced.

In the case when they are equal, the possibility of *ta`abbud* in establishing the ruling by the pronounced is actual and therefore its ruling cannot be extended to the unpronounced. If it is extended it would be done by way of analogy not by *mafhūm al-muwāfaqah*.

This argument seems to be unfounded if we have in mind that the shared meaning (the effective cause) in *mafhūm al-muwāfaqah* ought to be clear and simple to observe by anyone who understands the language without a need for analysis and legal reasoning (*ijtihād*). If the method to conclude the shared effective cause is not simple, that question² will not have any connection with *mafhūm al-muwāfaqah* and therefore would not be related to previous disagreements.

The fact, which suggests that the reason for legislation in both the pronounced (*manṭūq*) and the unpronounced (*mafhūm*) can be reached simply by understanding and knowledge of the language, denies the possibility of *ta`abbud* in establishing a ruling by the pronounced.

Therefore, for *mafhūm al-muwāfaqah* it is sufficient that the effective cause of the unpronounced is equivalent to the pronounced and not less. This is the opinion of the majority of Islamic scholars, both Ḥanafīs and Shāfi`īs.

The resulting practical application does not come from the scholars difference, but it is rooted in the difference of the nature of *mafhūm al-muwāfaqah* and *qiyās*. These resulting practical applications appear in cases where the unpronounced is equivalent to the pronounced. In such circumstances the first group of scholars maintain that these applications represents *mafhūm al-muwāfaqah* while the second maintain that it represents analogy (*qiyās*). If a ruling is based on *mafhūm al-muwāfaqah* it means that it is derived from the

¹ I.e. a religious obligation for which we did not discover the reason for legislation (*manāṭ al-ḥukm*) and therefore cannot be extended to another incident.

² Proving the extension of the pronounced ruling to the unpronounced.

text directly¹ as distinct from the ruling based on analogy which has been derived through a mediator i.e. through analogy (*qiyās*). The ruling based on the text can be extended to other incidents by way of *qiyās* i.e. it can be the original subject (*aṣl*) while the ruling based on *qiyās* cannot be *aṣl*. Moreover, in the case of conflict between the two, the first one (*mafḥūm al-muwāfaqah*) is stronger than the second (*qiyās*) because the first is taken directly from the text while the second is derived through a mediator.

The indication of *mafḥūm al-muwāfaqah*

Shāfi`ī scholars divided *mafḥūm al-muwāfaqah* into two types: definite (*qaṭ`ī*) and speculative (*ẓannī*).² This division is like that of later Ḥanafī scholars who divided *dalālat al-naṣṣ* into definite (*qaṭ`ī*) and speculative (*ẓannī*). The Shāfi`ī's consideration and definition of these two types, however, are different from that of Ḥanafīs. The main difference lays in the fact that Shāfi`ī's stipulated for *mafḥūm al-muwāfaqah*, both definite and speculative, the superiority of implicit indication (*mafḥūm*) over the pronounced indication (*manṭūq*)³ while Ḥanafīs stipulated only the definitive existence of the effective cause of the pronounced in the unpronounced.⁴

a) *Mafḥūm al-muwāfaqah* would provide a definite (*qaṭ`ī*) indication if the justification (*ta`līl*), which is made by the linguistic meaning, and superiority of implicit indication (*mafḥūm*) over the pronounced indication (*manṭūq*), are both definite (*qaṭ`ī*) such as the command to the children regarding their

¹ It is the reason why the Ḥanafī scholars termed it, as the inferred meaning of the text (*dalālat al-naṣṣ*).

² Ījī, *Mukhtaṣar al-Muntahā*, II:173.

³ In definite *mafḥūm al-muwāfaqah* this superiority is certain and definite, while in speculative *mafḥūm al-muwāfaqah* this superiority is uncertain and speculative.

⁴ In definite *mafḥūm al-muwāfaqah* this existence is certain and definite while in speculative *mafḥūm al-muwāfaqah* this existence is uncertain and speculative because there is the possibility that another effective cause is intended.

parents: “... say not to them “uff” (a grumbling word), nor shout at them...¹. From this verse any Arabic speaker would definitely understand that the reason (justification) for this legislation (*manāṭ al-ḥukm*) is the promotion of any offensive behaviour towards parents. Moreover, it would be definitely understood that more offensive behaviour such as beating and cursing them is “superior” i.e. deserves more to be applied than the pronounced meaning (the utterance of the word “uff”).

b) *Mafhūm al-muwāfaqah* would provide speculative (*ẓanni*) indication if justification (*ta`līl*), which is made by the linguistic meaning, and superiority of implicit indication (*mafḥūm*) over the pronounced indication (*manṭūq*) are both or either speculative (*ẓanni*). This is exemplified by the penance in case of a murder in which justification is not definite. The Qur’ān states: “... and whosoever kills a believer by mistake, (it is ordained that) he must set free a believing slave and compensate by “blood-money” the deceased’s family, unless they remit it.”² This verse indicates by its pronounced meaning that in case of manslaughter a penance should be paid. At the same time this verse suggests, by its implicit indication, that a similar penance should be paid for the murder because it deserves more to be punished and the punishment is seen as both justification (*ta`līl*) and reason for the legislation (*manāṭ al-ḥukm*) for the prescribed penance. This conclusion, however, is not a definite one, because there is a possibility that the reason (*manāṭ al-ḥukm*) for the penance in the case of manslaughter is not punishment but warning for the carelessness which caused the death of an innocent person. The Prophet (p.b.u.h) stated: “Allāh has, indeed, disburdened from my followers their errors, forgetfulness and that which they were compelled to do against their wishes.”³ Moreover, there is a question whether such a penance is considered to be a punishment or a form of worship. If it is a punishment then in the case of murder it is superior

¹ Al-Isrā’, XVII:23-24.

² Al-Nisā’, IV:92.

³ Ibn Mājah, *Sunan*, I:659. (no. 2045.)

to that of manslaughter. If it is worship then they are equal.¹ This speculative indication caused the disagreement between Islamic scholars concerning this question and many other legal questions which are based on the speculative form of *mafhūm al-muwāfaqah* such as appropriate punishment for homosexuals. Accordingly, in the case when *mafhūm al-muwāfaqah* is speculative the disagreement is possible and acceptable.

The method of indication of *mafhūm al-muwāfaqah* ²

There is a disagreement between Islamic scholars in general whether the indication of *mafhūm al-muwāfaqah* is reached directly from the text's words or by use of analogy.³

The majority of scholars of both *madhhabs* maintain that *mafhūm al-muwāfaqah* is the direct text's implicit indication which is understood from

¹ This is important because some would not consider it to be *mafhūm al-muwāfaqah* if they are equal.

² This question is thought to be very important in some legal schools when prescribed legal punishments and penance's are in question. The Ḥanafī school, for example, does not establish *hudūd* and *kaffārāt* by use of analogy (*qiyās*), however, they establish them by use of *mafhūm al-muwāfaqah*. Moreover, the meaning reached by *mafhūm al-muwāfaqah* can be an original subject (*aṣl*) for a new subject (*far`*) while the meaning reached by the analogy cannot be an original subject (*aṣl*). Due to this importance the early scholars of Ḥanafī *madhhab*, like Bazdawī in *Kashf al-Asrār*, (I:73-74) and Sarakhsī in *Uṣūl al-Sarakhsī*, (I:241-242) tried to explain the difference between *dalālat al-naṣṣ* and *qiyās*. Sarakhsī widely discussed this matter. He concluded that because of these differences Ḥanafī scholars establish punishments and penance's by *dalālat al-naṣṣ* and not by analogy (*qiyās*). For some other schools, however, this question is less important due to the fact that it does not effect their legal reasoning. For example, *Shāfi`ī madhhab* establish punishments and penance's on both analogy and *mafhūm al-muwāfaqah*. Therefore this disagreement does not effect them at all. This is a probable reason for explaining why some *Shāfi`ī* scholars declared that this disagreement is not real but verbal (literal). (See: Bunānī, *Ḥāshiyat al-Bunānī `alā Jam` al-Jawāmi`*, I:245.) However their consideration are incorrect because this disagreement has a great impact on legal reasoning in the Ḥanafī *madhhab*.

³ See: Bukhārī, *Kashf al-Asrār*, I:73-74; Sarakhsī, *Uṣūl al-Sarakhsī*, I:241; Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:65-66; Subkī, *Jam` al-Jawāmi`*, I:242; Ījī, *Mukhtaṣar al-Muntahā*. II:173.

the text's words. They clearly stated that *mafhūm al-muwāfaqah* is an implicit meaning (*mafhūm*) and not a pronounced meaning (*manṭūq*) or an analogy (*qiyās*). It is the reason why they consider and treat a ruling based on *mafhūm al-muwāfaqah* (i.e. *dalālat al-naṣṣ* in Ḥanafī *madhhab*) as a ruling based on the text and not on analogy (*qiyās*). They produced a few arguments in support of that:

a) The indication of *mafhūm al-muwāfaqah* is stronger than that of analogy because the former can be reached by knowledge of the language only, (as exemplified by previously stated examples), while the latter cannot. Sarakhsī¹ pointed out this difference very clearly, maintaining that in the case of *dalālat al-naṣṣ* the understanding of the effective cause, which is common between that pronounced (*manṭūq*) and that which is not pronounced (*maskūt `anh*), depends entirely on the knowledge of the language, while in analogy the understanding of the effective cause, which is common between *maqīs* and *maqīs `alayh*, requires further abilities and skills which are expected from a *mujtahid*. This difference means that the effective cause, in case of *dalālat al-naṣṣ* can be understood by scholars who possess legal knowledge (*fuqahā`*) and by others who possess the knowledge of the language only, while in the case of analogy the effective cause can be understood only by scholars who possess legal knowledge.

b) *Mafhūm al-muwāfaqah* existed before setting the rules for analogy (*qiyās*) in Islamic law. The Arabs used such expressions which implicitly indicate a meaning that is more eloquent than a meaning directly indicated by words. For example they would say: "This mare cannot catch the dust of that mare." This expression is more powerful than: "This mare is faster than that mare." Therefore the indication of *mafhūm al-muwāfaqah* is stronger than that of analogy.

c) The analogy cannot be based on a new subject (*far`*) while *mafhūm al-muwāfaqah* can be.

¹ Sarakhsī, *Uṣūl al-Sarakhsī*, I:241.

Some scholars, however, maintain that the indication of *mafhūm al-muwāfaqah* is achieved through analogy not directly from the text's vocabulary. They call that analogy "analogy of the Superior" (*qiyās awlā*)¹ or "analogy of equals" (*qiyās musāwī*)² both of which are part of a translucent analogy (*qiyās jalī*) whereby the common effective cause is equally or more evident in a new subject (*far`*) than in an original subject (*aṣl*). The equation between the original subject (*aṣl*) and the new subject (*far`*) is obvious and the discrepancy between them is removed by clear evidence. They argue that it is well known in the case of *mafhūm al-muwāfaqah* that the extension of the ruling of pronounced (*manṭūq*) to unpronounced (*maskūt `anh*) depends on the understanding of the effective cause. In order to understand it a form of reasoning is required. That reasoning is nothing else but the use of analogy (*qiyās*). In the example previously cited: "... say not to them "uff" (a grumbling word), nor shout at them..."³ the original subject (*aṣl*) is understood to be "a slightest disrespect" and a new subject (*far`*) the beating. The effective cause which is common between the two is the prevention of any kind of harm. This reasoning is in fact an analogy. If no such analysis has been exercised in this case there would not be the legislation which says that beating parents etc. is forbidden. Due to the fact that this deduction is simple to understand and conclude, it is called translucent analogy (*qiyās jalī*). The founder of *uṣūl al-fiqh* Shāfi`ī, in the first book written in this field clearly indicated that *mafhūm al-muwāfaqah* is a translucent analogy (*qiyās jalī*): "Analogy is of various kinds, and all are included under the term "analogy". They differ from one to another in the antecedence of the analogy of either one of them, or its source, or the source of both, or the circumstance that one is more clear than the other. The strongest kind (is the deduction) from an order of prohibition by Allāh or the Apostle involving a small quantity, which makes equally strong or stronger an order of prohibition involving a great quantity, owing to the

¹ The effective cause in this analogy is more evident in the new case than in the original case.

² The effective cause in this analogy is equally effective in both the new and the original case.

³ Al-Isrā', XVII:23-24.

(compelling) reason in the greater quantity. Similarly the commendation of a small act of piety implies the presumably stronger commendation of a greater act of piety; and similarly an order of permission involving a great quantity would render permissible something involving a smaller quantity.”¹ The examples he cited confirms that he regards *mafḥūm al-muwāfaqah* as *qiyās jalī*.²

Examples of *mafḥūm al-muwāfaqah*

While speaking on types of *mafḥūm al-muwāfaqah* (as well as when we spoke about *dalālat al-naṣṣ* in Ḥanafī *madhhab*) we have mentioned some of its examples. Here are a few more of them which indicates that even the Companions themselves used it in order to understand the text.

a) The Qur’ān states: “And know that, among you there is the Messenger of Allāh. If he were to obey you in much of the matter, you would surely be in trouble.”³

Abū Sa’īd al-Khudrī recited this verse and offered his interpretation of the verse⁴: “This is (the example of) your Prophet to whom the revelation was coming and who was accompanied by the best of your leaders. If he has obeyed them (i.e. those who were the best amongst you) in many matters they will be in trouble, so what about you nowadays (when you are not on the level of his Companions⁵)?” From his explanation of the verse it is obvious that he deduced more meanings from the verse than the verse apparently means. He used the agreement meaning (*mafḥūm al-muwāfaqah*) because he said to them if the first Companions (and amongst them were the best leaders) were not competent to always give correct advice to the Prophet (p.b.u.h) how could

¹ Shāfi’ī, *al-Risālah*, pp. 387-388.

² See: Shāfi’ī, *al-Risālah*, pp. 388-389.

³ Al-Ḥujurāt, XLIX:7.

⁴ Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, V:362-363 (no. 3269).

⁵ Therefore, you should also not be obeyed.

they be able to do so when they are not on the same level as those great leaders and *imāms* who accompanied the Prophet (p.b.u.h).

b) The Qur'ān states: "So whosoever does good an atom's weight will see it then and whosoever does evil an atom's weight will see it then."¹ The pronounced apparent meaning is clear. The Muslims have, however, understood from these verses that someone who does good more than an atom's weight will see it too, as well as if someone does evil more than an atom's weight.² This understanding is deduced through *mafhūm al-muwāfaqah*.

c) The Prophet (p.b.u.h) states: "Who steals a staff (walking stick) from his brother he has to give it back."³ From this tradition it is understood that if the stolen goods are more valuable it should be returned too.

The value of *mafhūm al-muwāfaqah*

Adherence to *mafhūm al-muwāfaqah* for Muslims is strict obligation (*wājib*) as well as implementation of its meaning till another reliable proof suggests otherwise. There is anonymous agreement between Islamic scholars that *mafhūm al-muwāfaqah* is *ḥujjah* (legal proof) that has to be adhered to⁴.

=====
=====

¹ Al-Zalzalah, XCIX:7-8.

² See the interpretation of these verses in Ibn Kathīr's *Tafsīr al-Qur'ān al-'Aẓīm* and other relevant books which deal with the interpretation of the Qur'ān.

³ Tirmidhī, *Sunan*, IV:402 (no. 2160).

⁴ Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:64.

b) Mafhūm al-Mukhālafah (the Opposite Meaning)

The linguistic definition of *mafhūm al-mukhālafah*

Mafhūm al-mukhālafah is constructed from two words: *mafhūm* and *mukhālafah*¹.

MAFHŪM (A.) understood, known, implied, implicit, tacit, notion, connotation; the meaning, or sense, in which the word is understood.²

MUKHĀLAFĀH (A.) opposite, divergent, varying, different; inconsistent, incompatible, contradictory.³

The technical definition of *mafhūm al-mukhālafah*

The majority of Ḥanafī scholars⁴ rejected *mafhūm al-mukhālafah*⁵. They do not accept it as a method for interpreting authoritative texts and their implications on rulings, as distinct from the Shafi`īs who accepted it when certain conditions were fulfilled⁶. Here, we are going to mention definitions provided by Shafi`īs only.

¹ This construction in Arabic is known as a genitive construction (*iḍāfah*) whereby the first word is termed as adjunct or a governed word (*muḍāf*) and the second as a governing noun of a genitive construction (*muḍāf ilayh*).

² M.L.`A, *al-Mu`jam al-Wasīṭ*, II:704; Lane, *Arabic-English Lexicon*, II:2454; Ba`labakī, *al-Mawrid*, pp. 1084-1085.

³ M.L.`A, *al-Mu`jam al-Wasīṭ*, I:251; Wehr, *Arabic-English Dictionary*, p. 258.

⁴ See: Bukhārī, *Kashf al-Asrār*, II:253.

⁵ They rejected it only when authoritative texts are in question. (See: Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:177.)

⁶ Ghazālī, *al-Mustaṣfā*, p. 264; Qarrāfī, *Sharḥ Tanqīḥ al-Fuṣūl*, p. 270; Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:67.

Āmidī defined *mafhūm al-mukhālafah* as an implicit indication which is opposite to the pronounced indication. (*Huwa ma yakūn madlūl al-lafẓ fī maḥall al-sukūt mukhālif^{an} li madlūlih fī maḥall al-nuṭq.*)¹

Qarrāfī provided for *mafhūm al-mukhālafah* the following definition: “Establishing to an unpronounced judgement an opposite ruling from the pronounced.” (*Ithbāt naqīḍ ḥukm al-manṭūq bih li al-maskūt `anh.*)²

Taking into consideration these definitions and the following consideration of Shafi`īs, *mafhūm al-mukhālafah* may be defined as, an implicit meaning which indicates that the ruling of the unpronounced would be opposite to the ruling of the pronounced.

Disagreement between Ḥanafīs and Shafi`īs³

As mentioned these two main *madhhabs* of *uṣūl al-fiqh* have disagreed whether the opposite meaning is acceptable or not. All of them provided their arguments.

Ḥanafīs argued that the opposite meaning should not be applied to authoritative texts because it would lead to distortion of these texts. For example the Qur`ān states: “Verily, the number of months with Allāh is twelve months (in a year), so was it ordained by Allāh on the Day when He created the heavens and the earth; of them four are sacred. That is the right religion, so avoid acts of injustice (*ẓulm*) therein...”⁴ This verse indicates by the explicit meaning that four months are sacred and during these months injustice should be avoided. The opposite meaning, therefore, indicates that the injustice (*ẓulm*) is allowed in the rest of the year⁵. This meaning, however, is obviously contradicting the purpose of this verse because *ẓulm* is always forbidden regardless of the time

¹ Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:67.

² Qarrāfī, *Sharḥ Tanqīḥ al-Fuṣūl*, p. 55.

³ Bukhārī, *Kashf al-Asrār*, II:253; Qarrāfī, *Sharḥ Tanqīḥ al-Fuṣūl*, p. 55;

⁴ Al-Tawbah, IX:36.

⁵ It would mean, in the same time, that the oppression was forbidden because of the time in which it is committed, what is entirely wrong.

in which it is committed. There are many similar examples which may be cited in the support of Ḥanafīs.

From their part Shafi`īs provided some arguments which support their point of view:

1) The Qur'ān states: “And whoever of you have not the means wherewith to wed free, believing women, they may wed believing girls from among those (captives and slaves) whom your right hands possess.”¹ The explicit meaning of this verse indicates the ruling that the marriage of a free man with a slave girl is not valid if he has means to wed free women.

They argue that the Islamic scholars maintained that the validity of such marriage is stipulated by incapability to marry a free woman. This stipulation is deduced from this verse by the opposite meaning. Therefore the opposite meaning (*mafhūm al-mukhālafah*) is valid and may be used as a proof.

2) The Prophet (p.b.u.h) has ordered *zakāt* to be paid on grazing animals: “... for grazing sheep and goats *zakāt* is prescribed...”² From this tradition we can understand by the opposite meaning (*mafhūm al-mukhālafah*) that for stall-fed animals, *zakāt* is not obligatory because it was restricted by “grazing”. This ruling is accepted by the majority of scholars. They maintain that there is no *zakāt* on stall-fed animals. This opinion is accepted even by Ḥanafīs who reject *mafhūm al-mukhālafah*.

3) These restrictions were not mentioned in vain. They were certainly mentioned for a purpose. Therefore, if there is no other reason (an another use like invitation (*targhīb*), intimidation (*tarhīb*), indebtedness (*imtinān*), or to explain the current situation etc.,) except to establish the opposite ruling to the unpronounced that indication should be taken into consideration. Accordingly, if validity of a ruling is dependent on certain restrictions or attributes attached to the ruling it would be invalid if that restriction or attribute is lacking.

¹ Al-Nisā', IV:25.

² Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:124 (24:38).

Therefore, whoever maintains the opposite opinion to this principle, he/she indirectly claims that these restrictions were mentioned in vane, without a real purpose, and no Islamic scholar would ever claim something like that.

It seems to me that the opposite meaning (*mafhūm al-mukhālafah*) may be used in deducing the legal rulings. Shāfi`ī's arguments seem convincing. Their superiority over the arguments of the Ḥanafīs would be clearer when we know the conditions which they offer for the opposite meaning. These conditions represent, at the same time, a sufficient reply to Ḥanafī scepticism about the opposite meaning regarding distortion of the authoritative texts. Therefore, the opposite meaning can be taken into consideration during legal reasoning, but can only be used according to strict Shāfi`īs' guidelines.

The conditions for *mafhūm al-mukhālafah*¹

Shāfi`ī scholars formulate certain conditions for the opposite meaning (*mafhūm al-mukhālafah*). It would only be acceptable, as a way for deduction of legal rulings, if these conditions are fulfilled. These conditions are as follows:

1) non-existence of any particular proof which may provide the actual ruling for a certain matter. If such proof exists the opposite meaning would not be taken into account because *mafhūm* cannot oppose *manṭūq*.

An example of this may be seen in the following verse: "And when you go forth in the land, it is no sin for you to curtail (your) worship if you fear that the unbelievers may attack you..."²

This verse provides the explicit ruling that Muslims may shorten their Prayers if they fear an enemy's presence. The opposite meaning of this verse suggests that they may not curtail their worship if danger and fear do not exist.

This opposite meaning, however, is opposed by the pronounced ruling which is especially related to this matter. The Prophet (p.b.u.h.) was asked by `Umar

¹ See: Ījī, *Mukhtaṣar al-Muntahā*, II:173; Tilmisānī, *Miftāḥ al-Wuṣūl*, p. 66; Shawkānī, *Irshād al-Fuḥūl*, 179.

² Al-Nisā', IV:101.

about shortening the Prayers when there is no danger and fear from an enemy, and he replied that shortening is a charity (*ṣadaqah*) which Allāh *ta`ālā* gave to Muslims and they should take His charity¹. Therefore, the opposite meaning (*mafhūm al-mukhālafah*) may not be taken into consideration in this and similar cases for whom a particular proof may be found, because it would violate the explicit rulings, and that is not acceptable.

2) that the opposite meaning does not exceed the extent of the pronounced meaning. The example for this may be found in the following verse: “And your Lord has decreed that you worship none but Him. And that you be dutiful to your parents. If one of them or both of them attain old age in your life, say not to them *uff* (a word of disrespect), nor shout at them but address them in terms of honour.”²

“Say not to them *uff* (a word of disrespect), nor shout at them” may indicate, by its opposite meaning (*mafhūm al-mukhālafah*), that other kinds of abuse are permissible. The opposite meaning, however, exceeds the scope of the pronounced³ and it is not acceptable accordingly.

3) that the text, in which a certain restriction has occurred, is independent. If such a text has been mentioned by the way of *taba`iyyah* (subsequently) it would not provide the opposite meaning such as is found in the following verse: “And do not have sexual relations with them (your wives) while you are in *i`tikāf* in the mosques.”⁴

From the restriction “in the mosques” may be understood, by the opposite meaning, that *i`tikāf* in other places does not forbid having sexual intercourse. This restriction, however, does not provide the opposite meaning because “in the mosques” was mentioned subsequently (*taba`iyyah*)⁵.

¹ See: Ibn Kathīr, *Tafsīr al-Qur`ān al-`Azīm*, I:723.

² Al-Isrā', XVII:23.

³ Because physical abuse, hitting, punching etc. are of greater abuse than saying a word of disrespect.

⁴ Al-Baqarah, II:187.

⁵ Which has no apparent intended bearing on the meaning.

4) that the restriction in the given text, has no another use except to establish the opposite ruling to the unpronounced. “Another use” may be anything that indicates that the ruling is not connected with the restriction and was, therefore, mentioned for another reason like invitation (*targhīb*), intimidation (*tarhīb*), indebtedness (*imtinān*), or to explain a current situation etc. The example for this condition may be in the following verse: “O you who believe! Eat not *ribā* (usury) doubled and multiplied...”¹ The opposite meaning of this verse suggests that taking usury which is not doubled and multiplied is lawful. This opposite meaning, however, is not acceptable because the restriction “doubled and multiplied” was mentioned only in order of repulsion and deterrence of people from such trading which existed at that time, and which was leading to the loss of the entire property of those who were indebted². The proof which supports such a claim may be evidenced in the verse: “but if you repent, you shall have your capital sums. Deal not unjustly (by asking more than your capital sums), and you shall not be dealt with unjustly (by receiving less than your capital sums).”³ In this verse all usury is forbidden, not only that which is doubled and multiplied.

5) that the restriction in the given text is not mentioned only because it represents a common practice such as in the following verse: “Forbidden to you (for marriage) are: [...] your step daughters under your guardianship...”⁴ In this verse the restriction “under your guardianship” is mentioned only because it was something that was most common at that time that the step-daughter be under the guardianship of her step-father, and to live in the same house. Therefore the opposite meaning which indicates that the step-daughter, if being under the guardianship of someone else, is allowed to marry her step-father, is not accepted, and such an opposite meaning may not be taken into consideration during legal reasoning.

¹ Āl `Imrān, III:130.

² See: Ibn Kathīr, *Tafsīr al-Qur`ān al-`Aẓīm*, I:536.

³ Al-Baqarah, II:279. See: Ibn Kathīr, *Tafsīr al-Qur`ān al-`Aẓīm*, I:442.

⁴ Al-Nisā', IV:23.

Examples of *mafhūm al-mukhālafah*:

While mentioning examples for *mafhūm al-mukhālafah* we may explain, at the same time, its forms. These forms are the result of restrictions in the pronounced ruling, which effect *mafhūm al-mukhālafah*. Due to the fact that they may be various, *mafhūm al-mukhālafah* may appear in different forms. Shafi`ī is mentioned a few forms of *mafhūm al-mukhālafah* accordingly¹. They are:

1) The indication of the attribute (*ṣifah*). It is an indication of the word, restricted by an attribute, which suggests that an opposite ruling would be established in the case of an unpronounced, when the unpronounced is not restricted with the same attribute. The example for this indication may be seen in the following verse: “O you who believe! If an evil living person (*fāsiq*) comes to you with news, verify it, lest you harm people in ignorance and afterwards you become remorseful as regards what you have done.”² This verse indicates by its opposite meaning (*mafhūm al-mukhālafah*) if the carrier of the news is not an “evil living person” that news must not be verified.

2) The indication of the condition (*shart*). It is an indication of the word which is dependent on a condition, that an opposite ruling would be established in the case of an unpronounced when that condition is not fulfilled. The example for this indication may be seen in the following verse: “Lodge them (the divorced women) where you dwell, according to your means, and do not treat them in such a harmful way that they be forced to leave. And if they are pregnant, then spend on them till they deliver.”³ This verse indicates by its words that the husband should spend on his divorced wife if she is pregnant. The opposite meaning indicates that if the condition of “pregnancy” is not

¹ See: Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:67-69; Qarrāfī, *Sharḥ Tanqīḥ al-Fuṣūl*, pp. 55-61.

² Al-Ḥujurāt, XLIX:6.

³ Al-Ṭalāq, LXV:6.

fulfilled the husband is not required to provide maintenance for his finally divorced wife.

3) Implication of the extent (*ghāyah*). It is an indication of the text, which provides a ruling whose extent is demarcated by the text itself, that an opposite ruling would be established in the case when that extent or scope are surpassed. The example for this indication may be seen in the following verse: “They ask you concerning menstruation. Say: that is an *adhā* (a harm), therefore keep away from women during menses and go not unto them until they have purified.”¹

The pronounced ruling in this verse indicates that the husband should avoid having sexual intercourse with his wife during her menstrual period. That prohibition, however, is limited by an extent (*ghāyah*) “till they have purified”. The opposite meaning (*mafhūm al-mukhālafah*) indicates that when that extent is surpassed the ruling would be opposite and the husband may go unto his wife.

4) Implication of the stated number (*ʿadad*). It is an indication of the text, which provides a ruling restricted by a specific number, that an opposite ruling would be established in absence of that specific number. The example for this indication may be seen in the following verse: “And those who accuse chaste women, and produce not four witnesses, flog them with eighty whips...”² Thus this verse on the punishment for slanderous accusation is clearly stated as eighty whips. The opposite meaning (*mafhūm al-mukhālafah*) indicates that it is not permissible either to increase or decrease the stated number of whips.

The value of *mafhūm al-mukhālafah*

As we have seen Islamic scholars have disagreed whether *mafhūm al-mukhālafah* may be accepted as a way by which legal rulings may be deduced. If I have to give preference to one of these two opinions I would suggest that the opposite meaning may be used in deduction, but it must be treated very

¹ Al-Baqarah, II:222.

² Al-Nūr, XXIV:4.

carefully and under the strict guidelines and conditions proposed by the scholars. If *mafhūm al-mukhālafah* is in accordance with general Islamic rules it may be a useful method for a *mujtahid* which would help him/her in his/her legal reasoning.

After all, the indication provided by the opposite meaning would be speculative (*ẓannī al-dalālah*), and that means that it may be a matter for disagreement between scholars.

Comparison between the approach of the Ḥanafīs and the Shāfi`īs to the methods of textual indication

A careful examination of their approaches would result in recognising that, despite some differences among those scholars, their considerations about these methods have many common characteristics.

Ḥanafī jurists termed the intended indication¹ of the texts as the explicit meaning (*ibārat al-naṣṣ*), and non-intended, yet logical and necessary meaning², as the alluded meaning (*ishārat al-naṣṣ*). Both of these indications, the explicit and the alluded meaning, are regarded by Ḥanafīs as the pronounced (*manṭūq*) i.e. indicated by the texts' words.

The indication of the text which is not understood from the text's words, but can be understood from the meaning provided by the text's words, Ḥanafīs termed the inferred meaning (*dalālat al-naṣṣ*)³ This indication is "that which has been understood" (*mafhūm*) from the spirit of the text (text's indications), and not that which has been explicitly mentioned and pronounced (*manṭūq*).

¹ The intended indication here is the indication which represents the principle or subsidiary theme and purpose of the text.

² Which necessarily accompany the meaning that represent the intended meaning (the principle or subsidiary theme).

³ Some of them called it "the indication of the indication" (*dalālat al-dalālah* or *faḥwā al-khiṭāb*) or agreement meaning (*mafhūm al-muwāfaqah*).

The indication which represents a logical and necessary meaning without which the text would remain incomplete and would fail to achieve its purpose, Ḥanafīs termed as the required meaning (*iqtidā' al-naṣṣ*) which may not be classified either as that which is understood from the text's meaning (*mafhūm*) and neither as the explicit and pronounced meaning (*manṭūq*).

All these indications are regarded by the Ḥanafīs as the clear (*waḍiḥ*) indications of the text, which, as we will see, should be followed when not opposed by a reliable proof which suggests otherwise. Moreover, they regarded that the legal rulings based on these indications are indicated by the apparent meaning (*ẓāhir*) of the text, and not deduced from the texts by the way of analogy (*qiyās*).

The Shāfi'īs approach to textual indication (*dalālāt al-alfāz*) is different from that of the Ḥanafīs. They divided it into two: the pronounced meaning (*dalālat al-manṭūq*) and the implied meaning (*dalālat al-mafhūm*).

The former is divided into two types: frank (*ṣarīḥ*)¹ and not frank (*ghayr al-ṣarīḥ*). *Ghayr al-ṣarīḥ* is further divided² into three types: the required meaning (*dalālat al-iqtidā'*), the gesture meaning (*dalālat al-imā'*) and the alluded meaning (*dalālat al-ishārah*).

The pronounced meaning of the Shāfi'īs, therefore, includes all three: the explicit meaning, the alluded meaning, and the required meaning, which have been mentioned by the Ḥanafīs³.

The latter one they divided into two: the agreement meaning (*mafhūm al-muwāfaqah*) (which corresponds to the inferred meaning (*dalālat al-naṣṣ*) of Ḥanafīs) and the opposite meaning (*mafhūm al-mukhālafah*), which is rejected by Ḥanafīs.

¹ *Ṣarīḥ* includes the explicit meaning (*ībarāt al-naṣṣ*), mentioned by Ḥanafīs.

² From this division it appears that *ghayr al-ṣarīḥ* includes two types of indications mentioned by Ḥanafīs: the alluded meaning (*ishārat al-naṣṣ*) and the required meaning (*iqtidā' al-naṣṣ*).

³ Abū Zahrah stated that all of the four-fold of Ḥanafī divisions of *dalālāt* can be classified under *dalālat al-manṭūq*. (See: Abū Zahrah, *Uṣūl al-Fiqh*, p. 116). However, this would be more accurate if we say that some of them are derived from *mafhūm* such as the inferred meaning (*dalālat al-naṣṣ*) and *mafhūm* is derived from *manṭūq*.

Therefore, the real difference between the two *madhhabs* exists only when the opposite meaning (*mafhum al-mukhālafah*) is in question. The rest of the differences seem to be more technical than real.

It would be stated, however, that the division of the methods of indication provided by the Ḥanafīs seems to be more accurate, but the approach of the Shāfi`īs seems to me easier to comprehend.

=====
=====

Part II

Clarity and Ambiguity in Words

Part II: Clarity and Ambiguity in Words

(Al-Wuḍūḥ wa al-Ibhām fī al-Alfāz)

Introduction

When a *mujtahid* approaches an authoritative text he/she has to explore it thoroughly in his/her attempt to understand it as close as possible to the Lawgiver's intention and accordingly derive legal rulings which have been meant by the Lawgiver. For that purpose scholars have developed certain scientific rules in the sciences of *'ulūm al-Qur'ān*, *'ulūm al-ḥadīth*, *uṣūl al-fiqh* etc. These rules ease the way for legal reasoning (*ijtihād*) and save *mujtahids* from error. In this research we are basically concerned with the linguistic rules developed by scholars of *uṣūl al-fiqh*. Study of the text and implementation of these rules on it is regarded as one stage and one step in legal reasoning (*ijtihād*).

When the *mujtahid* reads an authoritative text he/she either understand it or not. If he/she understand it clearly and there is no doubts in his/her understanding, that text would be termed clear (*wāḍiḥ*). If he/she has any doubts that the text would be termed ambiguous and unclear (*mubham*). According to this, scholars have divided words into two main categories of clear and unclear words. The former conveys meanings which are clear and intelligible without recourse to the interpretation not according to their obvious import (*ta'wīl*).¹ The rulings which are deduced from authoritative texts that provide this kind of clear meanings constitute the basis of obligation. They are obligatory and, according to Islamic beliefs, should be implemented, until other reliable proofs suggest otherwise. Unclear words, on the other hand, are those whose meanings are incomplete, ambiguous, and requires, in order to be understood, further explanation and clarification. These kinds of words cannot constitute the basis of obligation on their own but need further clarification and explanation from other reliable sources.

¹ We will see that some of these words (categories), despite the fact that they are regarded as clear, may be susceptible and open to interpretation if such a move is supported by a reliable proof.

The Ḥanafī approach to the clear (*wāḍiḥ*) words

Introduction

What the *mujtahid* might understand from *wāḍiḥ* is not always on the same level of clarity. This is due to the fact that the meaning of the clear words is subject to:

- a) specification of meaning (*takhṣīṣ*),
- b) interpretation not according to the obvious import (*ta'wīl*),
- c) abrogation (*naskh*),
- d) and the reason for revelation can be different from the ruling deduced from the text which directly effects the clarity of the texts indications.

On the basis of the degree of textual clarity Ḥanafī scholars have divided the explicit into four categories: *ẓāhir*, *naṣṣ*, *mufassar*, and *muḥkam*,

This distinction between clear words aims to identify the possibility of their interpretation not according to their obvious import (*ta'wīl*) and whether or not they are susceptible and open to abrogation. Furthermore, this distinction provides guidelines to the *mujtahid* for resolving possible conflicts between the various categories of words. Next we will attempt to explore these categories, their degrees of clarity and their effect on the legal rulings deduction (*istinbāṭ al-aḥkām*) from the authoritative texts. The first category is *ẓāhir*.

=====
=====

Al-Zāhir (the Apparent)

The linguistic definition of *zāhir*

ẒĀHIR (A.) apparent, plain, manifest, evident; *al-shayʿ*^u *zahara zuhūr^{an}* appeared and have become clear and evident after having been concealed; *zāhir^{an}* outwardly, and apparently;¹ *fī al-zāhir* in appearance.²

The technical definition of *zāhir*

Ḥanafī scholars provide *zāhir* with various definitions:

Dabbūsī defined *zāhir* in the following terms: "Whatever becomes apparent to a listener from his hearing only". (*Ma zahara li al-sāmi` bi nafs al-sam`.*)³

Bazdawī concentrates on the "wording" (*bi šīghatih*) as the defining element. He said: "It is a name for every speech the aim of which became apparent to a listener by its wording." (*Ism^{un} li kull kalāmⁱⁿ zahara al-murād bih li al-sāmi` bi šīghatih.*)⁴

Sarakhsī excludes from his definition use of "reason" and analysis when he defined *zāhir* as: "What can be understood by pure hearing without thinking. It precedes to the minds because it reflects the meaning on which it has been employed." (*Mā yu`raf al-murād minh bi nafs al-samā' min gḥayr ta`ammūḥⁱⁿ*

¹ According to the terminology of *uṣūl al-fiqh* no parallel is drawn between *zāhir* and *bāṭin*. The parallel is always drawn between *khafī* and *zāhir*. The term *bāṭin* (essence, interior nature) is normally found in *ilm al-kalām*.

² M.L.`A, *al-Mu`jam al-Wasīṭ*, II:578; Lane, *Arabic-English Lexicon*, II:1926-30; *EL*², I:1039, I:1099; Ba`labakī, *al-Mawrid*, p. 736.

³ Dabbūsī, *al-Asrār fī al-Uṣūl wa al-Furū` fī Taqwīm Adillat al-Shar`*, I:260.

⁴ Bukhārī, *Kashf al-Asrār*. I:46.

wa huwa alladhī yasbiq ilā al-`uqūl wa al-awhām¹ li zuhūrih mawḍū`an fī mā huwa al-murād.)²

According to Nasafī *ẓāhir* is the name for a speech whose aim became apparent to a listener by its wording³.” (*Huwa ism^{un} li kalāmⁱⁿ ẓahara al-murād bih li al-sāmi` bi ṣīghatih.*)⁴

To Ibn al-Humām *ẓāhir* shows its linguistic meaning independently (on its own).” (*Mā ẓahara ma`nāh al-waḍ`ī bi-mujarradih.*)⁵

These definitions are similar to one another, and at first sight it seems that the Ḥanafī scholars have the same opinion about *ẓāhir*. However, when we look at their considerations about *ẓāhir* and *naṣṣ* it becomes clear that they are different in their approach to *ẓāhir*.

From these definitions and from the Ḥanafī principle that *ẓāhir* is susceptible and open to specification of meaning (*takhṣīṣ*), interpretation not according to the obvious meaning (*ta`wīl*), and abrogation (*naskh*) we can formulate the following definition: “It is an expression which states its meaning clearly without a need for any internal (textual) or external evidence (*qarīnah*), with the possibility of interpretation not according to the obvious import (*ta`wīl*)⁶,

¹ It is interesting that the word “*awhām*” is used here as a synonym to “*uqūl*”, whereas the word “*awhām*” indicates “idea” and not “mind”. It is probably that what the author said was “*afhām*” but the transcriber or typist made a mistake. (See the meaning of the word “*awhām*”: *al-Mu`jam al-Wasīṭ*, II:1060.)

² Sarakhsī, *Uṣūl al-Sarakhsī*, I:164.

³ It means that there is no need for analysis and scrutiny to understand its meaning, and no textual or external evidence (*qarīnah*) was added to the text. However, the listener has to be one who is fluent with the language (*min ahl al-lisān*). (See: Mayhawī, *Sharḥ Nūr al-Anwār `alā al-Manār*, I:205-206.)

⁴ Nasafī, *Kashf al-Asrār*, I:205.

⁵ Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:146; Bādshāh, *Taysīr al-Taḥrīr*, I:136.

⁶ This means that: a) Its literal meaning may be abandoned in favour of metaphorical meaning which seems to be closer to the intention of the Lawgiver. b) When *ẓāhir* provides a general indication it may be specified. c) When *ẓāhir* is the absolute (*muṭlaq*) it may be qualified.

and abrogation¹ (*naskh*).” Therefore, *ẓāhir* has a clear meaning and yet is susceptible and open to the possibility of an alternative interpretation. This is mainly due to the fact that its clear literal meaning is not in harmony with the context in which it occurs because *ẓāhir* is not the principle theme of the text.

Examples of *ẓāhir*

a) The Qur’ān states: “Those who eat *ribā’* (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Satan leading him to insanity. That is because they say: “Trading is just like *ribā’* (usury),” whereas Allāh has permitted trading and forbidden *ribā’* (usury)”² The apparent (*ẓāhir*) meaning of this verse indicates that usury is forbidden. This is due to the fact that that meaning is clear, but it does not represent the principle theme of the verse.

The purpose for which this verse was revealed is to deny that which some people claimed, that trade and usury are alike.³ Although this verse was not revealed to give the legal ruling (*ḥukm*) about the two, but to deny the similarity, the apparent (*ẓāhir*) meaning of: “..Allāh has permitted trading and forbidden *ribā’* (usury),” clearly indicates that trade is permitted and usury is forbidden. This indication can be deduced from within the text itself without thinking and without using any internal (textual), or external evidence (*qarīnah*). It is *ẓāhir* because it is clear and its apparent meaning is not the main purpose of the verse.

b) The Qur’ān states: “And if you fear that you shall not be able to deal justly with the orphan-girls, then marry (other) women, of your choice, two or three, or four, but if you fear that you shall not be able to deal justly (with them), then only one or (the captives and the slaves) that your right hands possess. That is nearer to prevent you from doing injustice.”⁴

¹ According to Islamic beliefs the abrogation was possible during the time of Revelation only.

² Al-Baqarah, II:275.

³ See: Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*, I:437.

⁴ Al-Nisā’, IV:3.

This verse has the apparent meaning which relates to the legitimisation of marriage with woman (“then marry (other) women”). It is the apparent (*ẓāhir*) because its meaning is clear. The comprehension of that meaning does not depend on textual or external evidence (*qarīnah*) and the verse was not revealed for the purpose indicated by the apparent meaning, but in order to explain other matters.¹

c) The Qur’ān states: “O Prophet! When you divorce women, divorce them at their *’iddah* (prescribed periods), and count (accurately) their *’iddah* (periods).”²

According to the *ḥadīth* this verse was revealed in order to explain the period during which wives may be legally divorced.³

¹ The principle themes of this verse are the limitation on four wives in marriage, and prohibition to the men to marry more than one if they fear that they shall not be able to deal justly (with them). These rulings would be regarded as *naṣṣ* because they are clear and represent the main purpose of the text. The proof that they represent the main purpose of the text is in the *ḥadīth* narrated by `Urwah b. al-Zubayr who asked `Ā’ishah regarding the statement of Allāh: “If you fear that you shall not be able to deal justly with the orphans...” She said, “O son of my sister! An orphan girl used to be under the care of a guardian with whom she shared property. Her guardian, being attracted by her wealth and beauty, would intend to marry her without giving her a just *mahr*. Such guardians were forbidden to do that unless they did justice to their female girls and gave them the highest *mahr* their peers might get. They were ordered (by Allāh) to marry the women, who seem good to them, other than those orphan girls....” (Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, V:177 (65:4:1).

This may be supported by opinions of some other great reputable scholars. Ḥuṣayn Kathīr quoted this *ḥadīth* from Bukhārī and gave the same explanation (*Tafsīr al-Qur’ān al-`Aẓīm*, I:460). Ḥasan and Ḍaḥḥāk said that this verse has abrogated what was at the time of *jāhiliyyah* and in the beginning of Islam when the men had to marry what they want from free woman, so this verse reduced it to four. (See: Ṭabarī, *Jāmi` al-Bayān `an Ta’wīl Āy al-Qur’ān*, VII:532; Qurṭubī, *al-Jāmi` li Ahkām al-Qur’ān*, V:11.)

² Al-Ṭalāq, LXV:1.

³ “Narrated by `Abdullāh b. `Umar that he had divorced his wife while she was menstruating during the lifetime of Allāh's Apostle (p.b.u.h.). `Umar b. al-Khaṭṭāb asked Allāh's Apostle about that. Allāh's Apostle (p.b.u.h.) said, "Order him (your son) to take her back and keep her till she is clean and then wait until she gets her next period and becomes clean again.

This verse, however, carries another apparent instruction to Muslim not to divorce more than once. This legal ruling (*ḥukm*) is deduced from the apparent (*ẓāhir*) meaning which is not the main purpose of the verse. Therefore, it is *ẓāhir*.

The value of *ẓāhir*

Adherence to *ẓāhir* should be the strict obligation (*wājib*) and its obvious indications must be followed in legal reasoning because it provides definite indication¹. This adherence would be obligatory until another reliable proof indicates otherwise because the basic rule is that the apparent meaning of the word should not be dismissed except by a reliable proof (*al-aṣl `adam ṣarf al-lafẓ `an ẓāhiriḥ illā bi dalīl*)² that suggests recourse to the interpretation not according to the obvious import (*ta'wīl*) which seems to be in greater harmony with the intention of the Lawgiver.

=====

whereupon, if he wishes to stay with her, he can do so, and if he wishes to divorce her he can divorce her before having sexual intercourse with her; and that is the prescribed period which Allāh has fixed for the women meant to be divorced." (Ḍukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VI:163 (68:1)

¹ Hence, the verification of *ḥudūd* and *kafārāt* by *ẓāhir* is valid, because *ẓāhir* is only open to the possibility of metaphor (*majāz*). However, some scholars maintain that despite the fact that the apparent meaning should be followed the legal ruling which rests on *ẓāhir* is not definite (*qaṭ`ī*) because *ẓāhir* accepts *ta'wīl* (*takḥṣīs*, *taqyīd*, *majāz*) and *naskḥ*. The former argue that these possibilities are far fetched and do not rest on valid proofs (*adillah ṣhar`iyyah*). Consequently, it is not considered to be valid. (See: Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, I:126; Mayhawī, *Sharḥ Nūr al-Anwār `alā al-Manār*, I:206.)

In my opinion this disagreement has no practical effect because all agree on the duty of implementation of speculative indications (*ẓunūn*) and *ẓāhir* has never been below that level.

² Ibn Nujaym, *al-Ashbāḥ wa al-Naẓā`ir*, p. 145; Lubnānī, *Sharḥ al-Majallah*, p. 24.

Al-Naṣṣ (the Explicit)

The linguistic definition of *naṣṣ*

NAṢṢ (A.) explicit, declared, manifest; a religion legal term. The meaning of the root appears to be "to raise", especially "to elevate the thing so that is visible to all". Al-Naṣṣ: The author's original text. In the technical vocabulary of *uṣūl al-fiqh*, the term refers to either the Qur'ān or the *ḥadīth* text.¹

The technical definition of *naṣṣ*

The Ḥanafī scholars provided very similar definitions for *naṣṣ*:

Dabbūsī defined *naṣṣ* in the following terms: "It clarifies *ẓāhir* further when compared with it." (*Huwa al-zā'id `alā al-ẓāhir bayān^{an} idhā qūbila bih.*)²

Nasafī provided the following definition: "Naṣṣ is that which is clearer than *ẓāhir* because of the meaning given by the speech not by the text itself. (*Amma al-naṣṣ fa mā izdāda wuḍūḥ^{an} `alā al-ẓāhir li-ma`na fī al-takallum lā fī nafs al-ṣīghah.*)³

Bazdawī puts the emphases on the meaning given by the speaker when he states that: "Naṣṣ is that which is clearer than *ẓāhir* because of the meaning given by the speaker, not by the text itself." (*al-Naṣṣ mā izdāda wuḍūḥ^{an} `alā al-ẓāhir bi ma`nā min al-mutakkalim lā fī nafs al-ṣīghah.*)⁴

Sarakhsī like Bazdawī gives his definition from the angle of the speaker's evidence when he states: "It is what becomes more explicit due to the evidence

¹ M.L. A, *al-Mu`jam al-Wasīf*, II:926; Lane, *Arabic-English Lexicon*, II:2797-99; EI, VI:881; Ba`labakī, *al-Mawrid*, p. 1173.

² Dabbūsī, *al-Asrār fī al-Uṣūl wa al-Furū` fī Taqwīm Adillat al-Shar`*, I:260

³ Nasafī, *Kaṣḥf al-Asrār*, I:206.

⁴ Bazdawī, *Uṣūl al-Bazdawī*, I:46.

(*qarīnah*), given by the speaker." (*Amma al-naṣṣ fa mā yazdād wuḍūḥ^{an} bi qarīnahⁱⁿ taqtarin bi al-lafz min al-mutakallim.*)¹

The meaning of *naṣṣ* is that which is aimed by speaker, while the meaning of *zāhir* is not meant by speaker. That condition is widely known amongst Ḥanafī scholars² because they stipulate (*yashtariṭūn*) for *naṣṣ* to be stated for the purpose of its literally apparent meaning³, and for *zāhir* not to be stated for the purpose of the text's apparent meaning. For example when someone says: "The people came to me", it is *naṣṣ* about their coming. On the other hand if he/she says: "I saw so and so when the people came to me", it is *naṣṣ* about his/her seeing someone or something because it is the principle theme of the text, and it is *zāhir* about the people coming because it was not the main purpose of the text.

According to Ḥanafī scholars, who stipulate (*yashtariṭūn*) that the indication of *naṣṣ* is the principle theme of the text⁴, a proper and comprehensive definition for *naṣṣ* would be:

"It is an expression which provides a clear meaning which represent the principle theme of the text, yet susceptible and open to the possibility of interpretation not according to the obvious import (*ta'wīl*)⁵ and abrogation (*naskh*).⁶

¹ Sarakhsī, *Uṣūl al-Sarakhsī*, I:164.

² Nasafī, *Kashf al-Asrār*, I:206.

³ I.e. to be main purpose and the principle theme of the text.

⁴ The earlier (*mutaqaddimūn*) Ḥanafī scholars did not stipulate this condition. (See: Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ* I:124.)

⁵ The possibility of *ta'wīl* in the case of *naṣṣ* is, however, less possible than in the case of *zāhir* because the indication of *naṣṣ* represents the principle theme of the text what is not the case when *zāhir* is in question. From the definition, however, we may see that *naṣṣ* is open to *ta'wīl* and *naskh*. For example the general indication of the verse: "Forbidden to you (for food) are: the dead animals, blood..." (al-Mā'idah, V:3) has been qualified by the verse: "Say (O Muḥammad): "I find not in that which has been inspired to me anything forbidden to be eaten by who wishes to eat it, unless it be a dead animal or blood poured forth (by the slaughtering or the like..." (al-An'ām, VI:145) because in the second verse the blood was

Examples of *naṣṣ*

a) The Qur'ān states: "...That is because they say: "Trading is only like *ribā* (usury)," whereas Allāh has permitted trade and forbidden *ribā* (usury)."¹

This verse is *naṣṣ* in its denial of the similarity between trade and usury from the point of the lawfulness and prohibition², because this is what it clearly means and it has been revealed for that purpose. It was revealed in response to some people who claimed that trade and usury are alike by saying "Trading is only like *ribā* (usury)," (*innama al-bay` mithl al-ribā*). So *naṣṣ* exceeds in clarity on *ẓāhir* (which is lawfulness of the trade and prohibition of the usury) by the meaning given by the Lawgiver (that additional meaning is the purpose (*sabab al-nuzūl*) for which the verse was revealed)³ not by the text itself.

b) The Qur'ān states: "And divorced women shall wait (as regards their marriage) for three menstrual periods."⁴

This text is *naṣṣ* in regard to the period (*ʿiddah*) during which a divorcee⁵ is not allowed to remarry. It is *naṣṣ* because this apparent meaning of the verse is aimed by the Lawgiver and it represents its principle theme.⁶

attributed as "blood poured forth". Furthermore, these two verses were both qualified by the tradition in which the Prophet (p.b.u.h.) stated that the two types of dead carcasses, the fish and the locust, are permitted for consumption as well as two types of blood, the liver and the spleen. (See: Tabrīzī, *Mishkāt al-Maṣābīḥ*, II:410 (no. 1567).

⁶ In the terminology of *fiqh* *naṣṣ* carries a wider meaning and means definitive text or ruling of the Qur'ān or the Sunnah. Hence, *naṣṣ* has two meanings: this one which is vis-à-vis to *ẓāhir*, *mufassar* and *muḥkam*, and another one which means every Qur'anic verse and every Prophet's (p.b.u.h.) *ḥadīth*. You can say *naṣṣ* from Qur'ān and *Ḥadīth* and it comprises *ẓāhir*, *naṣṣ* and *mufassar*, or this legal ruling is established by *naṣṣ* not by analogy (*qiyās*).

¹ Al-Baqarah, II:275.

² The trade is lawful (*ḥalāl*) and the usury is prohibited (*ḥarām*). *Ḥalāl* and *ḥarām* are antonyms to each other and therefore they are not similar.

³ Ibn Kathīr, *Tafsīr al-Qur'ān al-ʿAẓīm*, I:436-437.

⁴ Al-Baqarah, II:227.

c) The Qur'ān states: “And if you fear that you shall not be able to deal justly with the orphan-girls, then marry (other) women of your choice, two or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one, or (the captives and the slaves) that your right hands possess. That is nearer to prevent you from doing injustice.”¹

As previously mentioned this verse has the apparent (*ẓāhir*) meaning which relates to legalising the marriage of the women (“then marry (other) women”). This meaning is *ẓāhir* because it is not the main purpose of the verse. This same verse, however, provides another two clear meanings which constitute the principle theme of the verse that is the limitation on four wives in marriage and prohibition to marry more than one if the men fear that they will not be able to deal justly with them. Therefore, these two meanings are *naṣṣ* because they are clear and they are the main purpose of the verse. The proofs for such a statement are as follows:

1- The Qur'ān has mentioned the first number, then the next, then the next, then it said: “but if you fear that you shall not be able to deal justly (with them), then only one” (*fa in khiftum an lā ta`dilū fa wāḥidat^{an}*). It is obvious that the number is concerned because the Qur'ān stated “if you fear [...] then only one”.

2- Ḥasan and Ḍaḥḥāk said that this verse has abrogated what was at the time of *jāhiliyyah* and in the beginning of Islām when the men have to marry who they like from the free woman, so this verse reduced it to four.²

3- The lawfulness of marriage was known before the revelation of this verse. It was known from the other verses and from the practice of the Prophet

⁵ It may be noticed that there are some exceptions. Some divorcees are not included in this legal ruling and their waiting period (*ʿiddah*) is shorter. (See: Ibn Kathīr, *Tafsīr al-Qur'ān al-ʿAẓīm*, I:363.)

⁶ Ibn Kathīr, *Tafsīr al-Qur'ān al-ʿAẓīm*, I:363-364.

¹ Al-Nisā', IV:3.

² Ṭabarī, *Jāmi` al Bayān `an Ta`wīl Āy al-Qur'ān*, VII:532; Qurṭubī, *al-Jāmi` li Aḥkām al-Qur'ān*, V:12.

(p.b.u.h.). However, the number was unknown, and one of the *fiqh*'s rules (*qawā'id fiqhiyyah*) says: "The establishing (of a new meaning) has preference over the confirmation (of an existing meaning)".¹

d) The Qur'ān states: "O Prophet! When you divorce women, divorce them at their *'iddah* (prescribed periods), and count (accurately) their *'iddah* (periods)."²

This verse carries apparent instruction to Muslims not to divorce more than once. This legal ruling (*ḥukm*) is deduced from the apparent (*ẓāhir*) meaning of the text. It is *ẓāhir* because it is not the principle theme of the verse.

This verse, however, provides another clear meaning which explains the legal time for having a divorce ("divorce them at their *'iddah* (prescribed periods), and count (accurately) their *'iddah* (periods)."³ This meaning is the purpose of the verse. Accordingly, that meaning is *naṣṣ* because the reason for revelation (*sabab al-nuzūl*) increased the perspicuity of the text. That additional meaning came from the Lawgiver not from within the text itself.

If comparison is made between *ẓāhir* and *naṣṣ* it becomes obvious that both of them are caused by apparent meaning, but *naṣṣ* has an additional meaning which increases its perspicuity. That additional meaning is the motive for revelation (*sabab al-nuzūl*). Hence, *naṣṣ* was revealed for its meaning (*sīqa li dhālika al-ma'nā*), and its indication represents the principle theme of the text.

¹ See: Isnawī, *al-Tamhīd*, p.167; Suyūṭī, *al-Ashbāh wa al-Naẓā'ir*, p. 135; Ibn Nujaym, *al-Ashbāh wa al-Naẓā'ir*, p. 149.

² Al-Ṭalāq, LXV:1.

³ The proof that this verse was revealed in order to explain the legal time for having a divorce is the *ḥadīth* in which the Prophet (p.b.u.h.) said to `Umar b. al-Khaṭṭāb: "Order him (i.e. your son `Abdullāh b. `Umar who had divorced his wife while she was menstruating) to take her back and stay with her until she is clean and then wait until she has her next period and becomes clean again, whereupon, if he wishes to stay with her, he can do so, and if he wishes to divorce her he can divorce her before having sexual intercourse with her; and that is the prescribed period which Allāh has fixed for women who are to be divorced." (Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VI:163 (68:1).

The value of *naṣṣ*

The strict adherence to *naṣṣ* is duty and obligation (*wājib*) until another reliable proof indicates otherwise.¹

=====

=====

¹ See: Bazdawī, *Uṣūl al-Bazdawī*, I:48; Nasafī, *Kashf al-Asrār*, I:207.

Chapter 3

Al-Mufassar (the Explained)

The linguistic definition of *mufassar*

MUFASSAR (A.) something explained, expounded, interpreted, disclosed. In the technical vocabulary of *uṣūl al-fiqh*, the term refers to a text in either the Qur'ān or the *ḥadīth* which is explained by a meaning included in the text or taken from other sources.¹

The technical definition of *mufassar*

Bazdawī defined *mufassar* in the following terms: “*Mufassar* is (a text) that is clearer than *naṣṣ* due to a meaning included in the text² or taken from other sources as to be ambiguous (*mujmal*) but supplemented by a definite explanation (*bayān qaṭ'ī*)³ that closes possibility of *ta'wīl*, or as to be (*lafẓ 'āmm*) general word supplemented by certain explanations that ends the possibility of *takḥṣīs*.” (*Fa mā izdāda wuḍūḥ^{an} 'alā al-naṣṣ sawā^{un} kāna bi ma`na fī al-naṣṣ aw bi ḡhayrih bi an kāna mujmal^{an} fa laḥiqah bayān^{un}*

¹ M.L.`A., *al-Mu`jam al-Wasīf*, II:688; Lane, *Arabic-English Lexicon*, II:2397; Ba`labakī, *al-Mawrid*, p. 1083.

² Such as when a word or text explains itself. It would be when the mood itself is not open to *ta'wīl* or *takḥṣīs* like numbers [because their values (meanings) are unchangeable], or when the text contains an explanation like in the verse: “Truly man (unbeliever) was created, very impatient; irritable (discontented) when evil touches him.” (al-Ma`ārij, LXX:19) In this verse its second part explains the meaning of “very impatient”. Such explanations may appear in the same text, as in this verse, or in another text.

³ This excludes what is not definite (*qaṭ'ī*) in its meaning or transmitting. Accordingly, the *mujmal* cannot scale up to become *mufassar* by the support of a solitary tradition (*khabar al-wāḥid*).

qāṭ`iyy^{un} fa insadda bih al-ta`wīl aw kāna `āmm^{an} fa laḥiqah mā insadda bih bāb al-takḥṣīs.)¹

Sarakhsī defined *mufassar* as: “A name given for the unconcealed whose aim is exposed in a way² that leaves no possibility for *ta`wīl*. ” (*Ism^{un} li al-makshūf alladhī yu`raf al-murād bih makshūf^{an} `alā wajhⁱⁿ lā yabqā ma`ah ihtimāl al-ta`wīl.*)³

Nasafī provided the following definition: “*Mufassar* is (a text) that is clearer than *naṣṣ* in a way that leaves no possibility⁴ for *ta`wīl* and *takḥṣīs*. ” (*Mā izdāda wuḍūḥ^{an} `alā wajhⁱⁿ lā yabqa ma`ah ihtimāl al-ta`wīl wa al-takḥṣīs.*)⁵

From these definitions *mufassar* seems to be, according to Ḥanafī school, an expression whose meaning is so obvious and clear that it offers spontaneous understanding. That clear meaning and the deducted legal ruling (*ḥukm*) from that provision were a real purpose for the speech and were confirmed in other sources. Due to these facts there is no possibility for interpretation not according to the obvious import (*ta`wīl*), and the specification of meaning (*takḥṣīs*). There is only the possibility of abrogation (*naskh*) which might have taken place during the lifetime of the Prophet (p.b.u.h.).

So *mufassar*, as distinct from *zāhir* and *naṣṣ*, is undoubtedly clearer because *mufassar* is not open to possibility of *ta`wīl* and *takḥṣīs*.

Mufassar has two sources:

a) the mood itself if it is not susceptible and open to *ta`wīl* and *takḥṣīs*, like numbers,⁶

¹ Bukhārī, *Kashf al-Asrār*, I:49.

² That exposed way should not have any doubt related to its meaning. The meaning has to be definite (*qaṭ`ī*).

³ Sarakhsī, *Uṣūl al-Sarakhsī*, I:165.

⁴ That possibility can be excluded by an explanation given by the Qur`ān itself, or by the Prophet (p.b.u.h.), or by the word when it does not bear more than one meaning, like numbers.

⁵ Nasafī, *Kashf al-Asrār*, I:208.

⁶ Specific words which are not open to any change in their literal and original meanings are in their nature of *mufassar*.

b) the definitive explanation (*tafsīr qaṭ`ī*) supplemented by the Lawgiver, in the same, or in other texts, if that explanation removes ambiguity from the provision, by explaining His intentions with complete clarity, so that the provision is closed for *ta`wīl* and *takhṣīṣ* afterwards.

Examples of *mufassar*

a) The Qur`ān states: “Allāh commands you as regards your children’s (inheritance); to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two third of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the only heirs, the mother has a third...”¹

This verse and some others prescribe specific shares for legal heirs. They consist of fixed numbers which are *mufassar* in their nature because their values are unchangeable. Therefore, there is no possibility for the interpretation not according to the obvious meaning (*ta`wīl*) and every legal heir would take his/her precise part of inheritance.

b) The Qur`ān states about the punishment for slander: “And those who accuse chaste women, and produce not four witnesses (to support their allegations) flog them with eighty stripes...”², and about the sentence for fornication³: “The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes,”⁴

Both words “eighty” (*thamānīn*) and “hundred” (*mi`ah*) are numbers, and numbers do not assume bigger or less value than it is. Therefore, numbers are always counted as *mufassar*. Consequently, the first verse clearly means that the slanders should be flogged with eighty stripes, and the second verse clearly

¹ Al-Nisā’, IV:11.

² Al-Nūr, XXIV:4.

³ For those who were not ever legally married.

⁴ Al-Nūr, XXIV:2.

means that adulators should be flogged with a hundred stripes. These are definitive (*qaṭ`ī*) meanings which are not open to *ta`wīl* or *takhṣīṣ*.

c) The words with general meanings (*alfāz al-`umūm*) when followed by an explanation which excludes the possibility of specification (*takhṣīṣ*) and interpretation not according to the obvious import (*ta`wīl*), are *mufassar*. The Qur`ān states: “So the angels prostrated themselves, all of them together.”¹ “The angels” is a general word (*lafz `āmm*) which is susceptible and open to the specification (*takhṣīṣ*). Therefore, it can mean the majority of the angels, not all of them. The possibility of the specification (*takhṣīṣ*), however, was excluded by “all of them” (*kulluhum*).

At the same time, the phrase “all of them” is susceptible to different interpretations (*ta`wīl*). It might mean that they prostrated themselves in groups and at different times, but these meanings were excluded by “together” (*ajma`īn*).²

The words which carry general meanings are *mufassar* when they are followed by an explanation which excludes the possibility of *takhṣīṣ* and *ta`wīl*.

d) The ambivalent mood (*ṣīghah mujmalah*) becomes *mufassar* when followed by a definitive explanation from the Lawgiver³ which removes ambiguity from that mood and closes the possibility of *ta`wīl*.

The Qur`ān states: “Truly man (unbeliever)⁴ was created, very impatient; irritable (discontented) when evil touches him and niggardly when good touches him. Except those devoted to Prayers, those who remain constant in

¹ Ṣād, XXXVIII:73.

² Someone could say that this verse is at one and the same time an example of *muḥkam* because the verse is information (*khābar*) and *khābar* is not open to abrogation (*naskh*). The answer is that *mufassar* is only one part of the verse “the angels all of them together” while the “prostrated” is *khābar* and therefore cannot be abrogated.

³ The Lawgiver in Islam is Allāh *ta`ālā* and His Messenger (p.b.u.h.) who, according to Muslim beliefs, does not speak from himself but transmitting it from Allāh *ta`ālā*.

⁴ From the verses that follows this one may be concluded that the word “man” in this verse includes non-believers only.

their Prayers...”¹ Aḥmad b. Yaḥya was asked what the impatience (*hala`*) in this verse means and he answered: “It is explained by Allāh and there is no explanation that is clearer than His. It is a human being who when evil touches him he expresses big fretfulness, and when he gains something good he becomes stingy and try to keep everything for himself.”² So “irritable (discontented) when evil touches him” is an explanation for “very impatient” (*halū`ā*).

There are plenty of verses which are ambivalent like: “And be steadfast in Prayer (*ṣalāt*) and give Alms (*zakāt*),”³ “Pilgrimage of *hajj* thereto is a duty men owe to Allāh.”⁴ “O you who believe! Fasting (*ṣiyām*) is prescribed to you...”⁵

The words *ṣalāt*, *zakāt*, *hajj*, *ṣiyām* are ambivalent (*mujmalah*). If we study authoritative texts we may find that the Lawgiver has used these words for the special meanings which are, sometimes, almost entirely different from their literal and original meanings. So for, the words mentioned previously had become ambiguous after being clear. This is due to the fact that these words were now used to indicate more than one meaning. Consequently, the verses in which they appear are ambiguous. The Prophet (p.b.u.h.), however, explained (*fassara*) their meanings in his words and his deeds providing both verbal and practical instructions. He prayed (performed (*ṣalāt*) with his Companions and afterwards stated: “Pray as you see me pray.”⁶ He performed the pilgrimage (*hajj*) and stated: “Take from me your rituals (holy rites).”⁷ And he wrote

¹ Al-Ma`ārij, LXX:19-23.

² Bukhārī, *Kashf al-Asrār*, I:50.

³ Al-Baqarah, II:43.

⁴ Āl-`Imrān, III:97.

⁵ Al-Baqarah, II:183.

⁶ Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, I:155 (10:18).

⁷ Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, IX:45; `Asqalānī, *Fath al-Bārī*, III:264; Shawkānī, *Nayl al-Awṭār*, V:70; Bayhaqī, *al-Sunan al-Kubrā*, V:130.

about *zakāt*¹ and explained regulations related to *ṣiyām*². After these definitive explanations the provisions which were ambivalent (*mujmalah*) became explained (*mufassarah*).

Accordingly, every *mujmal* in the Qur'ān becomes *mufassar* when followed by a definitive explanation (*bayān qaṭ'ī*) in the Qur'ān itself or in the Sunnah.³

The value of *mufassar*

Adherence to *mufassar* is obligatory⁴ (*wājib*) until another reliable proof abrogates it⁵. *Mufassar* is not open to the interpretation not according to the obvious import of the text (*ta'wīl*). It may only be abrogated during the lifetime of the Prophet (p.b.u.h.). Therefore, by the demise of the Prophet (p.b.u.h.) *mufassar* become equivalent to *muḥkam*.

=====
=====

¹ Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:123-124 (24:35); Muslim, *Ṣaḥīḥ Muslim*, II:673.

² See: Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:225-251 (30); Muslim, *Ṣaḥīḥ Muslim*, II:758-783.

³ One of obligations and duties for the Prophet (p.b.u.h.) was to explain the Qur'ān. It is obvious from the verse: “And We have also sent down unto you (O Muḥammad) the reminder and the advice (the Qur'ān) that you may explain clearly to men what is sent down to them, and that they may give thought.” (al-Naḥl, XVI:44.)

⁴ Bukhārī stated: “...and there is no disagreement between the scholars in this case...” (Bukhārī, *Kaṣh al-Asrār*, I:50.)

⁵ The abrogation (*naskh*) was possible during the life of the Prophet (p.b.u.h.) After his demise all Qur'ān became *muḥkam* in sense that it is not open to abrogation.

Chapter 4

Al-Muḥkam (the Firm)

The linguistic definition of *muḥkam*

MUḤKAM (A.) perspicuous, exact, precise, accurate, firm; a verse of the Qur'ān whose meaning is secured from change, and alteration, and specification, and interpretation not according to the obvious import, and abrogation. "In it are verses that are entirely clear (*muḥkamāt*), they are the foundations of the Book."¹ In the technical vocabulary of *uṣūl al-fiqh*, the term refers to entirely clear text, in either the Qur'ān or the Sunnah, which is not open to *ta'wīl* or *takḥṣīs* or *naskh*.²

The technical definition of *muḥkam*³

Bazdawī defined *muḥkam* in the following terms: "If (*mufassar*) increases and scales up in its strength, and its aim has been tightened then it is called *muḥkam*." (*Fa idhā izdāda quwwat^{an} wa uḥkima al-murād bih summiya muḥkam^{an}*.)⁴

¹ Āl-`Imrān, III:7.

² M.L.`A. *al-Mu`jam al-Wasīṭ*, I:190; Lane, *Arabic-English Lexicon*, I:618; Ba`labakī, *al-Mawrid*, p. 993.

³ Bukhārī stated, after quoting Bazdawī's definition, that it appears to him from what has been mentioned previously, that the text in order to be *muḥkam* has to be extremely perspicuous, clear in its meaning, and not open to abrogation. These conditions are generally accepted amongst the Ḥanafī scholars in *uṣūl al-fiqh*. Bukhārī quoted, however, many definitions from Ḥanafī scholars who do not stipulate for *muḥkam* not to be open to abrogation. This indicates that Ḥanafīs do not have the same conception about the scope of *muḥkam*. (See: Bukhārī, *Kaṣhḥ al-Asrār*, I:51)

⁴ Bukhārī, *Kaṣhḥ al-Asrār*, I:51.

Sarakhsī defines *muḥkam* in the following terms: “What went beyond and exceeded¹ on what we mentioned previously².” (*Huwa zā’ic^{un} `alā mā qulnā.*)³ Nasafī provides the following definition: “(The expression) whose objective was tightened and that excludes the possibility of abrogation (*naskh*) and change (*tabdīl*).” (*Fa mā uḥkima al-murād bih iḥtimāl al-naskh wa al-tabdīl.*)⁴ From these definitions and from the following considerations may be concluded that *muḥkam* in Ḥanafī *madhhab* is an expression whose meaning hastens to our mind because it is clear beyond doubt, and the deduced ruling from that expression represents a real purpose for transmitting that provision in a form that leaves no possibility for interpretation not according to the obvious import (*ta’wīl*) or abrogation (*naskh*). This should be applicable both during the life of the Prophet (p.b.u.h.) and the more so after his demise.

Categories of *muḥkam*

On account of the causes which cause *muḥkam* and rule out the possibility of abrogation some scholars divided *muḥkam* into two categories:⁵

- a) *muḥkam* intrinsically (by itself),
- b) *muḥkam* because of another factor.

If impossibility of *naskh* is due to the text’s meaning itself such a text is called *muḥkam* intrinsically, by itself (*li `aynih, li dhātih* ⁶). This can be seen when the text is not open to a different meaning like the verses about the existence of the Creator, His attributes, and the beginning of the World etc.

¹ In its clarity and explicitness.

² He means *mufassar*.

³ Sarakhsī, *Uṣūl al-Sarakhsī*, I:165.

⁴ Nasafī, *Kashf al-Asrār*, I:209.

⁵ See: Bukhārī, *Kashf al-Asrār*, I:51.

⁶ Because the impossibility of *naskh* has come from within the text.

On the other side the impossibility of *naskh* could be due to the absence of an abrogating text.” This category is called *muḥkam li ghayrih*¹ and it embodies altogether *zāhir*, *naṣṣ*, *mufassar*, and *muḥkam*².

Examples of *muḥkam*

While mentioning examples of *muḥkam* it would be worthy to explain, at the same time, the development process that causes some texts to be *muḥkam* and precludes all possibilities of abrogation. This process comes for the following reasons:

1) **Internal reasons** (from within the text), whereby the non-existence of abrogation is indicated in the text itself. This may be classified as follows:

a) Undisputed legal rulings based on undisputed authoritative text. An example of this can be found in matters relevant to *dīn*. These are foundations of *dīn*³ and as such they are not open to any change like the belief in Allāh, His oneness, His attributes⁴, the belief in His angels, His books, His prophets⁵, the Last Day⁶ etc.

¹ Because the impossibility of *naskh* has come from outside the text.

² Because all of them had become *muḥkam* from the point that they may not be abrogated due to the absence of an abrogating text and the fact that such a text may not appear after Prophet’s (p.b.u.h.) demise.

³ See: Ibn Abī al-‘Izz, *Sharḥ al-‘Aqīdah al-Ṭahāwīyyah*, II:511-513.

⁴ “Allāh! *Lā ilāha illā Huwa* (none has the right to be worshipped but He), the Ever Living, the One Who sustains and protects all that exists. Neither slumber, no sleep overtake Him...” (al-Baqarah, II:255) “There is nothing like unto Him, and He is the All-Hearer, the All-Seer.” (al-Shūrah, XLII:11) “Verily, Allāh is All-Knower of everything.” (al-‘Ankabūt, XXIX:62)

⁵ “The Messenger (Muḥammad) believes in what has been sent down to him from his Lord, and (so do) the believers. Each one believes in Allāh, His Angels, His Books, and His Messengers. They say, “We make no distinction between one another of His Messengers.” (al-Baqarah, II:285).

⁶ “It is not *birr* (piety, righteousness, and each and every act of obedience to Allāh, etc.) that you turn your faces towards east and (or) west (in Prayers); but *birr* is (the quality of) the one

b) News and information about what happened in the past and what will happen in the future¹.

c) Legal rulings (*aḥkām*) that represent bases for unalterable ethical and moral rules, under the condition that these rules are acceptable by normal and pure mind and unchangeable under different circumstances; like justice², filial dutifulness³, fulfilment⁴ etc.

2) External reasons, when the given meaning, understood from the text, represents partial ruling (*ḥukm juz'ī*) and followed by the declaration of continuity. This declaration rules out and precludes the possibility of abrogation such as in the following examples from the Qur'ān and the Sunnah:

a) “And it is not (right) for you that you should annoy Allāh’s Messenger, nor that you should ever marry his wives after him (his demise).”⁵

One of partial rulings given by this verse is prohibition to Muslims to marry Prophet’s widows, whereas the continuity is in His words: “ever....after him.” The word “ever...after” (*abad^{an}*) in the end of the verse is a clear declaration of

who believes in Allāh, the Last Day, the Angels, the Book, the Prophets...” (al-Baqarah, II:177)

¹ “Alif. Lām. Mīm. The Romans have been defeated. In the nearer land (Syria, Iraq, Jordan and Palestine), and they, after their defeat, will be victorious. Within three to nine years...” (al-Rūm, XXX:1-4)

²“...but say: “I believe in whatsoever Allāh has sent down of the book (all the holy Books, - this Qur’ān and the Books of the old from the Torah, or the Gospel, or the Pages of Abraham) and I am commanded to do justice among you...” (al-Shūra, XLII:15) “O you who believe! Stand out firmly for Allāh and be just witnesses and let not enmity hatred of any others make avoid justice. Be just: that is nearer to piety...” (al-Mā'idah, V:8)

³ “And you Lord has decreed that you worship none but Him. And that you be dutiful to your parents. If one of them attain old age in your life, say not to them a word of disrespect, nor shout at them but address them in terms of honour.” (al-Isrā', XVII:23)

⁴ “Those who fulfil the Covenant of Allāh and break not the *mīthāq* (bond, treaty, covenant).” (al-Ra'd, XIII:20) “...and fulfil (every) covenant. Verily! the covenant, will be questioned about. (al-Isrā', XVII:34)

⁵ Al-Aḥzāb, XXXIII:53.

continuity. This word render it *muḥkam* and rules out any possibility of abrogation.

b) “And those who accuse honourable women but bring not four witnesses (to support their allegations), - flog them with eighty stripes and reject their evidence ever after.”¹

One of the partial rulings given by this verse is the order that the testimony has to be rejected from someone who has accused honourable man/women and did not bring four witnesses to support his/her allegation, whereas the continuity which makes it *muḥkam* is in His word “ever after” (*abad^{an}*). It explicitly means permanency which precludes the possibility of abrogation.

c) “O people, I had permitted you to contract temporary marriage with women, but Allāh has forbidden it (now) until the Day of Resurrection. So he who has any (women with this type of marriage contract) he should let her off, and do not take back anything.”²

The partial ruling (*ḥukm juz'ī*) in this *ḥadīth* is prohibition of temporary marriage (*mut`ah*), whereas the continuity is in the Prophet's (p.b.u.h.) words “...until the Day of Resurrection”. It clearly means that this *ḥukm* is forever because, according to Islamic beliefs, that day will not come before the end of this World. This continuity causes this ruling to be *muḥkam* because it precludes the possibility of abrogation.

d) “*Jihād* is under way from the time when Allāh has sent me until the last (members) of my *ummah* fight Antichrist.”³

The partial ruling in this *ḥadīth* is that the *jihād* had begun by the beginning of the Revelation whereas the continuity is in the Prophet's words “until the last (members) of my *ummah* fight Antichrist”. The Antichrist, according to Islamic beliefs, will appear shortly before the Last Day, so the above mentioned ruling (*ḥukm*) is valid forever. According to that which has been

¹ Al-Nūr. XXIV:4.

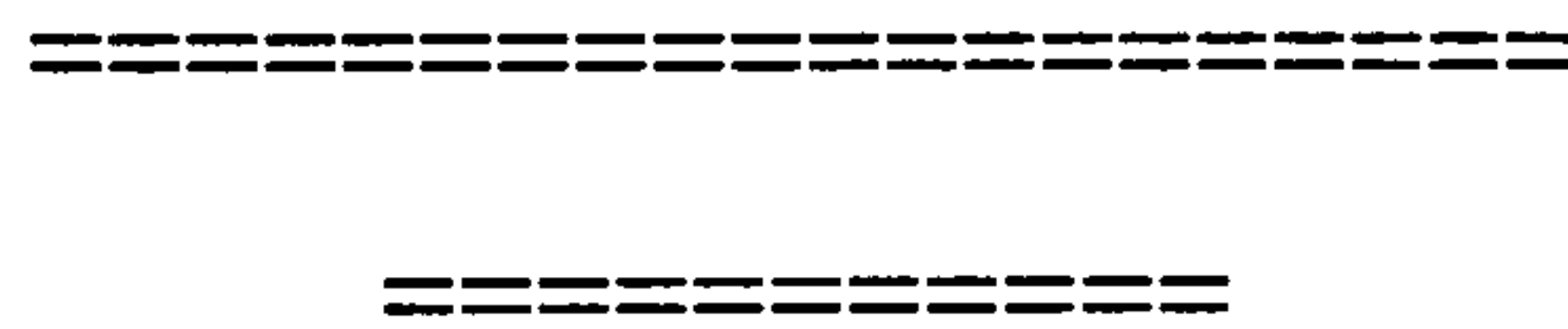
² Muslim, *Ṣaḥīḥ Muslim*, II:1025 (no. 1406).

³ Abū Dāwūd, *Sunan*, III:18 (no. 2532).

mentioned *muḥkam* is not open to *ta'wīl*¹ and *takhṣīs*² because *muḥkam* is explained in full details so that any ambiguity or possibility for interpretation not according to the obvious import is excluded. At the same time *muḥkam* is not open to the abrogation (*naskh*)³ during the time of Revelation and the more so after the Prophet's (p.b.u.h.) demise.⁴

The value of *muḥkam*

Adherence to *muḥkam* should be the strict obligation (*wājib*) because there is no possibility of *ta'wīl* or *takhṣīs* or *naskh* since (in view of the fact that) *muḥkam* is not open to them.⁵



¹ When *muḥkam* has a specific (*khāṣṣ*) meaning.

² When *muḥkam* has a general (*ʿāmm*) meaning.

³ That is why Allāh *taʿālā* has called *muḥkamāt* verses “the Mother of the Book” (*umm al-kitāb*), that is the base which is reference, as a child refers to his/her mother and so Mekkah has been called “the mother of the villages” (*umm al-qurā*) because the people refer to it for pilgrimage and on the Day of Resurrection.

⁴ See: Sarakhsī, *Uṣūl al-Sarakhsī*, I:165; Mayhawī, *Sharḥ Nūr al-Anwār ʿalā al-Manār*, I:209-210; Bukhārī, *Kashf al-Asrār*, I:151.

⁵ See: Nasafī, *Kashf al-Asrār*, I:209.

Conflict (*ta`āruḍ*) between categories of *wāḍiḥ*

As we have seen, the categories of *wāḍiḥ* in Ḥanafī *madhhab* are not on the same level of clarity. The most perspicuous is *muḥkam*, then *mufassar*, then *naṣṣ*, then *ẓāhir*. The disparity between these categories would become apparent and significant when a conflict¹ occurs between them.² Therefore, in the case of conflict the “clearer” one has the precedence.³

Conflict (*ta`āruḍ*) between *ẓāhir* and *naṣṣ*

From its technical definition the general characteristics of *ẓāhir* can be concluded as follow:

- 1) Its meaning is duly apparent.

¹ There is unanimous agreement between Islamic scholars that the conflict between authoritative texts (from the Qur`ān and the Sunnah) is apparent and not real, because a real conflict would be only if authoritative texts are at the same level, presented at the same time, and oppose one another in a way by which it is impossible to bring them together, or to give precedence to one of them. But, needless to say that this kind of conflict has never occurred. However, the conflict may exist in the mind of the *mujtahid* due to the other influences such as the lack of knowledge when the text was delivered, the understanding of the same text etc. The examples, which we will cite, will support the assertion of this kind. (For further explanation see the chapter: “*Faṣl fī Bayān al-Mu`āraḍa Bayna al-Nuṣūṣ*”, (Sarakhsī, *Uṣūl al-Sarakhsī*, II:12) and other similar titles in books of *uṣūl al-fiqh*)

² There is only disparity conflict between the two from the point of clarity and ambiguity, because there is no disparity between them from the point of certainty and uncertainty. All categories should be *qaṭ`ī al-thubūt*, otherwise there would be no proper conflict because speculative (*ẓannī*) cannot oppose definite (*qaṭ`ī*).

³ The method of recognising the “clearer” meaning in order to favour one proof over the other is an essential benefit of this study.

2) The deduced legal ruling (*ḥukm*) of *ẓāhir* is not the main objective for the presence of the text, and does not represent its principle theme.

3) The possibility of the interpretation not according to the obvious import (*ta'wīl*), and restriction of meaning (*takhsīs*), and abrogation (*naskh*) still exists.

On the other hand characteristics of *naṣṣ* are as follows:

1) Its meaning is duly clear.

2) The deduced legal ruling (*ḥukm*) of *naṣṣ* is the main objective for the presence of the text, and represents its main purpose.

3) The possibility of the interpretation not according to the obvious import (*ta'wīl*)¹, and restriction of meaning (*takhsīs*), and abrogation (*naskh*) still exists.

From the displayed characteristics it is obvious that *naṣṣ* is one degree “stronger” than *ẓāhir* because the deduced ruling (*ḥukm*) from it is the main objective for the presence of the text while in case of *ẓāhir* the deduced *ḥukm* is not the principle theme of the text nor its main objective.

Consequently, when a conflict appears between the two, *naṣṣ* would take precedence.

Here are some examples for such a conflict:

a) The Qur'ān states: “The mothers shall give suck to their children for two whole years...”² Another verse states: “...and the bearing of him and the weaning of him is thirty months.”³

The purpose for the revelation (*sabab al-nuzūl*)⁴ of the verse is to explain the length of the suckling period. Therefore, it is *naṣṣ* because the meaning of the text, which is clear, is further explained by *sabab al-nuzūl*.

¹ In the case of *naṣṣ* it is less possible than in the case of *ẓāhir* because *naṣṣ* represents the principle theme of the text as distinct from *ẓāhir*.

² Al-Baqarah, II:233.

³ Al-Aḥqāf, XLVI:15.

⁴ Ibn Kathīr, *Tafsīr al-Qur'ān al-'Aẓīm*, I:380-381.

However, the second verse brings out clearly that the suckling period is thirty months. It is a *ẓāhir* because it was not revealed to explain the suckling period, but to bring to light the mother's merits towards her child. The proof for this statement (that the verse was revealed to bring to light the mother's merits towards her child) is the beginning of the same verse: "And We have enjoined on man to be dutiful and kind to his parents. His mother bears him with hardship, and she brings him forth with hardship and the bearing of him and the weaning of him is thirty months."¹

When we apply the principle that *naṣṣ* is preponderant (*rājih*) on *ẓāhir* it results in giving the precedence to the first verse and its meaning. Accordingly, the legal ruling (*ḥukm*) deduced from the verse would be that mothers should suckle their children for two years² if they wish to complete the full term of suckling.³

b) The Qur'ān states: "All others are lawful, provided you seek (them in marriage) with *mahr* from your property, desiring chastity, not committing illegal sexual intercourse."⁴ This verse has apparent (*ẓāhir*) meaning⁵ which allows any number of women to be taken in marriage. After mentioning women that are forbidden it has stated clearly that: "All others are lawful". Hence, according to the apparent (*ẓāhir*) meaning of this verse a man could have in marriage, at the same time, more than four wives.

¹ Nasafī, *Kashf al-Asrār*, I:211-212; Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, IV:200-201.

² This is the opinion of Abū Yūsuf and Muḥammad in distinction from Abū Ḥanīfah who maintained that prescribed suckling period is thirty month. (See: Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, p. 220; Kāsānī, *Badā'i' al-Ṣanā'i'*. IV:6; Marghīnānī, *al-Hidāyah*, I:223; Ibn al-Humām, *Fath al-Qadīr*, III:5-6.)

³ The Qur'ān states about this: "for those (parents) who desire to complete the term of suckling" (al-Baqarah, II: 233.)

⁴ Al-Nisā', IV: 24.

⁵ It is not *naṣṣ* in this meaning despite the fact that it is clear and apparent because the verse was not revealed for the purpose of explaining the particular meaning but to list women who cannot be taken in marriage (*muḥarramāt min al-nisā'*). Therefore, this verse is *naṣṣ* in this second meaning.

However, another verse states: “And if you fear that you shall not be able to deal justly with the orphan-girls, then marry (other) women of your choice, two or three, or four.”¹ This verse limiting the number to four. Therefore, there is an apparent conflict between the two verses. But, due to the fact that the second verse was revealed to explain the number it is a *naṣṣ* and *naṣṣ* has precedence over *ẓāhir*.² Consequently, the legal ruling (*ḥukm*) (permission to have a maximum of four women at the same time) deduced from the second verse is preferable (*rājih*) and any violation of the limit of that number is unlawful (*ḥarām*).

c) The Prophet (p.b.u.h.) stated: “There is no Prayer for someone who did not recite the *fātiḥat al-kitāb*.”³ The apparent (*ẓāhir*) meaning of this *ḥadīth* states that the Prayer is not valid without *fātiḥat al-kitāb* regardless whether the Prayer was performed in congregation or alone. This ruling (*ḥukm*) is indicated by denial in Prophet’s words “There is no”.

In another *ḥadīth* the Prophet (p.b.u.h.) said: “Who has *imām* (who prays in congregation) the recitation of *imām* is recitation for him.”⁴ It means if someone prays in congregation he/she is not obliged to recite *fātiḥat al-kitāb*. Accordingly, when the recitation in congregation is in question, this *ḥadīth* disagrees with the former one.

However, the latter *ḥadīth* is, in this particular question, more clear than the former because the aim of the statement of this *ḥadīth* was to explain that particular question itself. Therefore, the latter *ḥadīth* is *naṣṣ* (because its meaning is supported by the presence of the text (*sabab al-wurūd*) and has precedence over *ẓāhir*. Accordingly, someone who prays in the congregation is

¹ An-Nisā’, IV: 3.

² At the same time, the former verse, is *naṣṣ* in its stipulation of the dowry, and the latter verse is *ẓāhir* in non stipulating the dowry (because the dowry is not mentioned). Consequently, the dowry is *wājib* because *naṣṣ* has precedence on *ẓāhir*.

³ Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, I:184 (10:95); Muslim, *Ṣaḥīḥ Muslim*, I:295 (no. 394).

⁴ Ibn Mājah, *Sunan*, I:277 (no. 850). (This tradition is weak.)

not obliged to recite *fātiḥat al-kitāb*.¹ The former *ḥadīth* is related to someone who prays alone, or it aims to deny some quality of the Prayer itself².

Conflict (*ta`āruḍ*) between *naṣṣ* and *mufassar*

From its technical definition we have concluded that *naṣṣ* has three general characteristics.³

On the other hand *mufassar* characteristics are:

- 1) Its meaning is duly clear.
- 2) The deduced legal ruling (*ḥukm*) of *mufassar* is the main objective for the presence of the text and it represents its principle theme.
- 3) The possibilities, of *takhṣīṣ* and *ta`wīl*, do not exist in *mufassar*. *Mufassar* is only open to abrogation (*naskh*) during the life time of the Prophet (p.b.u.h.).

In conclusion we can say that both *naṣṣ* and *mufassar* share the first two characteristics, but they differ over the third one. *Mufassar* is “clearer” because it is not susceptible to *takhṣīṣ* and *ta`wīl* while *naṣṣ* is open to them. Therefore, if a conflict appears between the two, *mufassar* would be given precedence.

Here are some examples for such a conflict:⁴

- a) The Prophet (p.b.u.h.) said: “...then wash up yourself and make ablution (*wuḍū`*) for every Prayer...” (*...thumma ighṭaṣilī wa tawadda`ī li-kulli ṣalatīn...*).⁵

¹ This question is a matter of wide discussion between scholars. Our example is in line with Ḥanafī *madhhab* which states that someone who prays in the congregation does not have to recite *fātiḥat al-kitāb*. (See: Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, p. 27; Marghīnānī, *al-Hidāyah*, I:55.)

² It means that the Prayer without *fātiḥat al-kitāb* is incomplete.

³ See: “Conflict between *ẓāhir* and *naṣṣ*”.

⁴ Nasafī, *Kashf al-Asrār*, I:212; Mayhawī, *Sharḥ Nūr al-Anwār `alā al-Manār*, I:212-213.

⁵ Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, I:63 (4:63); Ibn Mājah, *Sunan*, I:204 (no. 624); Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, I:217-218 (no. 125).

In another narration of this *ḥadīth* he stated: “...then wash up yourself and make ablution (*wuḍū’*) for the time of every Prayer.”(...*thumma ighṭaṣilī wa tawaddāi li waqt kull ṣalatīn*...).¹

The former narration (*riwāyah*) recommends for a woman whose menstruation lasted longer than expected (*mustahāḍah*) a new ablution (*wuḍū’*) for every Prayer at all times, regardless whether it is an obligatory regular Prayer (*farḍ*) performed at its proper time, or an obligatory Prayer performed later on (*qaḍā’*), and regardless as to whether it is a supererogatory Prayer (*nafl*)². That *riwāyah* is clear and its meaning is the principle theme of the text. Therefore it is regarded as a *naṣṣ* for that legal ruling (*ḥukm*).

The meaning of the latter narration (*riwāyah*) is evidently perspicuous in terms whether one ablution is enough for the period of one Prayer because it is explicitly stated “for the time”.. This *riwāyah* is considered as *mufassar* because the word “the time” (*waqt*) is explicitly and duly mentioned as an explanation (*tafsīr*) and it represent the principle theme of the text. When brought together these two narrations are apparently in conflict. On account of the fact that the former *riwāyah* is *naṣṣ* and the latter is *mufassar*, the latter is given precedence. Therefore, for the *mustahāḍah* women one ablution for one Prayer period is sufficient. During this period she can pray any number of obligatory (*farḍ*), and supererogatory (*nafl*) Prayers³.

¹ Marghīnānī, *al-Hidāyah*, I:32; Zayla`ī, *Naṣb al-Rāyah*, I:204. Zayla`ī stated that this narration is vary strange (*gharīb^{un} jidd^{an}*).

² The *fuqahā’* who maintained that *mustahāḍah* has to make ablution for every Prayer made an exception when *nafl* and *qaḍā’* Prayers are in question. They stated that she, has *rukḥṣah* permitting to pray with one ablution more then one *nafl* or *qaḍā’* Prayer. They argue that these Prayers may be numerous and it will cause hardship and difficulties for her if she has to do ablution for each Prayer. (See: Shīrāzī, *al-Muhadhdhab*, I:46; Ibn Qudāmah, *al-Mughnī*, I:342.)

³ This conclusion is in harmony with the Ḥanafī view. The rule that gives *mufassar* precedence over *naṣṣ* and the narration in which “the time” was mentioned are not the main proofs of Ḥanafīs. They needed other proofs because the latter narration (which is *mufassar*) is weak, as Zayla`ī stated: “very strange (*gharīb^{un} jidd^{an}*)”, and so for irresistible in front of the

Due to the fact that *naṣṣ* is susceptible and open to interpretation not according to the obvious import (*ta'wīl*) and that the *naṣṣ* of the former tradition is opposed by a reliable proof which suggests a different meaning the provision “for every” (*li kull*) may be interpreted as “for the time of every” by adding “the time”.¹ Consequently, the *ḥadīth* would be interpreted as follows: “... make ablution (*wuḍū'*) for the time of every Prayer.” By this interpretation the apparent conflict has disappeared. Accordingly, one ablution is sufficient for the time of every Prayer during which any number of *fard* or *nafl* Prayers can be performed.

b) If someone says: “I have married a woman for a month.” (*Tazawwajtu imra'at^{an} shahr^{an}*.) it would be regarded as a temporary marriage (*mut`ah*) and not as a legal marriage. This conclusion is made by considering that the expression “I have married” (*tazawwajt*) is *naṣṣ* which is clearly related to marriage and possibility of *mut`ah* exists in general term. However, his words “for a month” (*shahr^{an}*) is an explanation (*tafsīr*) which adds the meaning of *mut`ah* marriage because it is a suggestion (*mufassir*) that he meant *mut`ah*. There is not any possibility that he meant legal marriage because legal marriage is not susceptible to the limited duration “for a month”.

According to the rule that *mufassar* has precedence over *naṣṣ* the legal ruling (*ḥukm*), in this case, is that this marriage is considered a temporary one

former narration which is *ṣaḥīḥ* (See: Ṭaḥāwī, *Sharḥ Ma`ānī al-Āthār*, I:46, *Mukhtaṣar al-Ṭaḥāwī*, p. 22; Kāsānī, *Badā'i' al-Ṣanā'i'*, I:44; Marghīnānī, *al-Hidāyah*, I:32-33; Zayla`ī, *Naṣb al-Rāyah*, I:204.)

However, the majority (*jumhūr*) of *fuqahā'* have different opinion. They gave the advantage to the former *riwāyah* (... make ablution (*wuḍū'*) for every Prayer.” (... *tawaḍḍa'ī li kull ṣalātⁱⁿ*) because it was narrated in *Ṣaḥīḥ*, what is not the case in the latter *riwāyah* “Make ablution (*wuḍū'*) for the time of every Prayer.” for which Zayla`ī maintained to be “very strange” (*gharīb^{un} jidd^{an}*). (See: Zayla`ī, *Naṣb al-Rāyah*, I:204.)

¹ Because in Arabic one can say: “*Ātik li-ṣalat al-ḥuḥr*” and it means: “I will come to you at [the time] Prayer of *ḥuḥr*”. “The time” is not explicitly mentioned, everyone, however, would understand it from that sentence.

(*mut`ah*) and therefore it would be an illegal marriage according to the majority of scholars.

Conflict (*ta`āruḍ*) between *mufassar* and *muḥkam*

From its technical definition we have concluded previously that *mufassar* has three characteristics.¹

On the other hand *muḥkam* characteristics are:

1) Its meaning is duly clear.

2) The deduced legal ruling (*ḥukm*) of *muḥkam* is the main objective for the presence of the text and represents the principle theme of the text..

3) *Muḥkam* is not open to *ta`wīl* and *takḥṣīṣ*.

4) The abrogation (*naskh*) of *muḥkam* is not possible, neither during the lifetime of the Prophet (p.b.u.h.) or after his demise.

It can be concluded that both the *muḥkam* and the *mufassar* are similar in the first three characteristics. However, in the fourth characteristic they are different. *Mufassar* is susceptible and open to abrogation (*naskh*) during the lifetime of the Prophet (p.b.u.h) in contrast to *muḥkam* which is not open to *naskh* at all times. Therefore, when conflict occurs between the two, *muḥkam* would have precedence as in the following example:²

The Qur`ān states about giving evidence and testimony:

“... and take for witness two just persons from among you.”³

This text is *mufassar* because its meaning is clear, it represents the principle theme of the text, and it is further explained by the attribute “just” and the fact that the cause of giving evidence is to be accepted. According to the general meaning of this verse the testimony from someone, who had been punished on account of accusing a chaste person, is accepted if he/she had made repentance and his/her just status has been reinstated.

¹ See “Conflict between *naṣṣ* and *mufassar*”.

² See: Mayhawī, *Sharḥ Nūr al-Anwār `alā al-Manār*, I:213-214,

³ Al-Ṭalāq, LXV:2.

In another verse related to one who had been punished because he/she unjustly insulted and accused a chaste person the Qur'ān states:

“And those who accuse chaste and produce not four witnesses, flog them with eighty stripes and reject their testimony forever, they indeed are *fāsiqūn* (evil living persons). Except those who repent thereafter and do righteous deeds, for such verily Allāh is Oft-Forgiving, Most Merciful.”¹

The latter verse is *muḥkam* due to the occurrence of the word “forever” (*abad^{an}*) which carries the meaning of continuity and therefore precludes all possibilities of abrogation. Accordingly, the testimony of someone who had been punished on account of accusing a chaste woman is not accepted even if he/she had repented. So this meaning disagrees with the meaning of the former verse. In view of the fact that *muḥkam* has precedence over *mufassar* the testimony is not accepted from someone who had been punished because of a slander (*qadhif*) even if he/she had repented afterwards and his/her just status reinstated².

Giving *muḥkam* precedence over *mufassar*, on the basis that the former is not susceptible and open to abrogation (*naskh*) as distinct from the latter which may be abrogated during the lifetime of the Prophet (p.b.u.h.), seems to me a weak proof because by the demise of the Prophet (p.b.u.h.) *mufassar* instantly becomes equivalent to *muḥkam*. This is one of the reasons why Islamic scholars do not rely on this proof very much in their argumentation, but rather support their views by other proofs.³

¹ Al-Nūr, XXIV:4-5.

² This question is a matter for disagreement and of wide discussions between Ḥanafīs and Shāfi`īs. My conclusion (based on the rule that *muḥkam* has precedence over *mufassar*) that the testimony of *qādhif* (someone who has been punished because of false accusation of a chaste person) is not accepted, is consistent to the Ḥanafī *madhhab*. Both *madhhabs* provide other proofs in support of their opinion. (See: chapters about *qadhif* and testimony in their respective books.)

³ See: Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, III:354-355; Qurṭubī, *al-Jāmi` li Aḥkām al-Qur'ān*, XII:180-181.

Conflict (*ta`ārud*) between *naṣṣ* and *muḥkam*

When comparing the characteristics of *naṣṣ* and *muḥkam*¹ it can be concluded that *muḥkam* is more powerful because it, as distinct from *naṣṣ*, is not open to either interpretation not according to the obvious import (*ta`wīl*), or specification of meaning (*takḥṣīs*), or abrogation (*naskh*). Therefore, when a conflict occurs between them *muḥkam* would take precedence as illustrated in the following example:

The Qur`ān states: “And if you fear that you shall not be able to deal justly with the orphan-girls, then marry (other) women of you choice, two or three, or four...”²

This verse is *naṣṣ* in relation to permission for marrying four women at one time. This clear meaning, which represents the principle theme of this verse, causes it to be *naṣṣ*. The legal ruling (*ḥukm*) deduced from this verse addresses the Prophet’s (p.b.u.h.) too, and according to that his wives could remarry after his demise.

However, in another verse the Qur`ān states:

“And it is not (right) for you that you should annoy Allāh’s Messenger, nor that you should ever marry his wives after him (his demise).”³

This verse is *muḥkam* in relation to prohibition of marrying any of the Prophet’s wives after his demise. It is *muḥkam* because of the word “ever after” (*abad^{an}*) which rules out and precludes the possibility of *ta`wīl* or *naskh*. On account that *muḥkam* has superiority over *naṣṣ* the latter ruling is in effect, and marriage to any of the Prophet’s wives was not allowed.

=====

=====

¹ See: “Conflict between *ẓāhir* and *naṣṣ*” and “Conflict between *mufassar* and *muḥkam*”.

² Al-Nisā’, IV: 3.

³ Al-Aḥzāb, XXXIII: 53.

The Shāfi`ī approach to the clear words

Introduction

Shāfi`ī scholars¹ have a different approach to clear (*wāḍiḥ*) words from that of the Ḥanafīs. They divided clear words into two categories only: the apparent (*ẓāhir*) and the explicit (*naṣṣ*). The fact that the Ḥanafīs divided *wāḍiḥ* into four categories may suggest that their division is clearer. This will become apparent when we see the scope of *wāḍiḥ* in Shāfi`ī madhhab, and a deep disagreement between their scholars in its interpretation. First, the apparent (*ẓāhir*) will be discussed.

Chapter 7

Al-Zāhir (The Apparent)

(according to Shāfi`īs)

The linguistic definition of *ẓāhir*

ZĀHIR (A.) apparent, plain, manifest, evident; *al-shay`u ẓahara ẓuhūr^{an}* appeared and become clear and evident after having been concealed; *ẓāhir^{an}* outwardly, and apparently;² *fī al-ẓāhir* in appearance.³

¹ Some contemporary scholars categorised *wāḍiḥ* in a way that is similar, yet clearer, from that of the Shāfi`īs:

- 1) Plain and explicit text. That is one which indicates the detailed and fixed meaning which is unlikely to make sense of the interpretation not according to its obvious import (*ta`wīl*).
- 2) A text which is neither plain nor explicit. That is a text which provides a meaning, with a possibility for further meanings.

Those scholars utilise *ta`wīl* in order to preponderate one meaning over another and to them *sabab al-nuzūl* or *sabab al-wurūd* have no value in this process. (See: Bardīsī, *Uṣūl al-Fiqh*, p.171.)

² According to the terminology of *uṣūl al-fiqh* no parallel is drawn between *ẓāhir* and *bāṭin*. The parallel is always drawn between *khafī* and *ẓāhir*. The term *bāṭin* (essence, interior, intrinsic nature) is normally found in *ilm al-kalām*.

The technical definition of *ẓāhir*

Shāfi`ī scholars gave *ẓāhir* various definitions:

Baṣrī defined *ẓāhir* as: “That which does not need in expressing its apparent meaning to another.” (*Ma lā yaftaqir fī ifādat mā huwa ẓāhir^{un} fīh ilā ḡhayrih.*)

He quoted another definition: “It is one which shows its objective (intended) meaning and non-objective meaning, but the objective (intended) meaning is more apparent.” (*Huwa mā yaẓhar al-murād bih wa yaẓhar bih ḡhayr al-murād, illā anna al-murād aẓhar.*)¹

Baṣrī gave precedence to the first definition. He maintained that a provision, when its meaning becomes clear, instantly becomes apparent, no matter whether it is susceptible and open to another meaning or not.

The Baṣrī view is that the difference between *ẓāhir* and *naṣṣ* lies in the fact that the former does not require another meaning in asserting its full meaning.

This is in contrast to *naṣṣ*.

Shīrāzī stated that *ẓāhir* is a word (*lafẓ*) that denotes two meanings of which *ẓāhir* is that one which is more apparent. (*Kullu lafẓⁱⁿ iḥtamala amrayn huwa fī aḥadihim aẓhar*)²

Qarrāfī defined *ẓāhir* in the following terms: “It is an expression that alternates between two or more meanings, and in one of them *ẓāhir* would be more eminent.” (*Huwa al-mutaraddid bayna al-iḥtimālayn fa akthar huwa fī aḥadihim arjaḥ.*)³

Alternatives could be caused by the literal meaning such as the case of a word with a shared meaning (*lafẓ mushtarak*) or when one word is given as a name

³ M.L.`A, *al-Mu`jam al-Wasīṭ*, II:578; Lane, *Arabic-English Lexicon*, II:1926-30; *EL*², I:1039, I:1099; Ba`labakī, *al-Mawrid*, p.736.

¹ Baṣrī, *al-Mu`tamad*, I:320.

² Shīrāzī, *al-Lumma`*, p. 48.

³ Qarrāfī, *Sharḥ Tanqīḥ al-Fuṣūl*, p. 37. He followed Rāzī in this definition. (See: Rāzī, *al-Maḥṣūl*, I:1:315.)

to many subjects. The Qur'ān states: "...but pay the due thereof on the day of its harvest."¹ It has apparent meaning related to the duty, but it is ambiguous in relation to the amount.

In relation to the apparent meaning of the provision, all three: the meaning of the provision, ruling deduced from that provision and the provision itself are called *ẓāhir*.

Ghazālī maintained that *ẓāhir* is a provision which is susceptible and open to the interpretation not according to the obvious import (*ta'wīl*). He stated that according to the approach of Shāfi'ī, who did not distinguish between *ẓāhir* and *naṣṣ*, the former is an expression which provides a meaning which is more likely (probably) to be understood, but that understanding would be speculative. (*Huwa al-lafẓ alladhī yaghlib `alā al-ẓann fahm al-murād minh min ghayr qaṭ`*)² In another place³ he stated that an expression can have either a specified and fixed meaning which is not open to another meaning and it would be called *mubayyan* or *naṣṣ*, or it can have two or more meanings. In the latter case if no one has precedence over the other it would be called *mujmal* and if one meaning takes precedence that particular meaning would be called *ẓāhir*.

Āmidī criticised Ghazālī's definition of *ẓāhir* offering us his own definition as that which signifies its meaning according to the original (literal) or customary meaning while it can suppose other less expected meanings." (*al-Lafẓ al-ẓāhir mā dalla `alā ma`n^{an} bi al-waḍ` al-aṣlī aw al-`urfī wa yaḥtamil ghayrah ihtimāl^{an} marjūh^{an}*).⁴

Ījī maintained that: "*Ẓāhir* is what signifies its meaning in speculative way⁵".

(*al-Ẓāhiru mā dalla dalalat^{an} ẓanniyyat^{an}*).⁶

¹ Al-An`ām, VI:141.

² Ghazālī, *al-Mustaṣfā*, p. 196.

³ Ghazālī, *al-Mustaṣfā*, p. 187.

⁴ Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:48-49.

⁵ Speculative indication can be result of:

Taftāzānī defined *ẓāhir* as: “What signifies its meaning clearly”. (*Mā dalla dalalat^{an} wāḍiḥat^{an}*.)¹

Anṣārī maintained, like Ījī, that *ẓāhir* is what signifies (on its meaning) by speculative signification.” (*Mā dalla dalalat^{an} ẓanniyyat^{an}*.)²

From these definitions *ẓāhir* seems to be, according to the Shāfi`ī school, a provision which signifies its meaning by speculative signification, yet preferable, and it supposes other (meanings) which are non-preferable. (*Huwa al-lafẓ alladhī yadull `alā ma`nāh dalalat^{an} ẓanniyyat^{an}, ay rājiḥat^{an} wa yaḥtamil ḡhayrah iḥtimāl^{an} marjūḥ^{an}*.)

Therefore, when an expression has more than one meaning, it is called *ẓāhir* in relation to the apparent and preferable (*rājiḥ*) meaning, and *mu`awwaḥ*³ in relation to the non-preferable (*marjūḥ*) meaning.⁴

a) The linguistic usage of the word (*waḍ` al-lughah*). For example the word *asad* (lion) is preferable (*rājiḥ*) when used in connection with the wild animal that we know and not as a reference to a strong and brave man.

b) Usage of words, by the Lawgiver (*Shar`*), in meanings which are different from the words original and literal meaning. An example of that can be the word *ṣalāt* (Prayer). *Ṣalāt* originally means apology and supplication (i.e. *du`ā*) but it became a term preferably associated with the known ritual that Muslims have to practise five times a day.

c) By customary usage (*urf al-isti`māl*) such as the word *ḡhā`iḥ*. This word is used to mean excrement, while originally (literally) it refers to a lower part of the earth (*al-makān al-muṭma`inn min al-arḍ*). (See: Anṣārī, *Ghāyat al-Wuṣūl*, p. 83; Ījī, *Mukhtaṣar al-Muntahā*, II:168.

⁶ Ījī, *Mukhtaṣar al-Muntahā*, II:168. According to this definition *naṣṣ* is what signifies its meaning in a definite way. Hence, *naṣṣ* is partner to *ẓāhir*.

¹ Taftāzānī, *Hāshiyat al-Taftāzānī*, II:168. According to this definition *ẓāhir* is part of *naṣṣ*.

² Anṣārī, *Ghāyat al-Wuṣūl*, p. 83.

³ I.e. interpreted not according to the obvious meaning of the text.

⁴ If non-preferable meaning was given precedence on the preferable meaning.

Examples of *ẓāhir*

During the presentation of the examples of *ẓāhir* we may mention the provisions which provide apparent (*ẓāhir*) meanings:

a) The absolute imperative (jussive) mood (*muṭlaq ṣīghat al-amr*). Imperative mood is apparent in obligation (*wujūb*) and can be interpreted not according to its obvious import (*mu'awwal*) as praiseworthy (*nadb*) and permissiveness (*ibāḥah*) like in the following verse: “O you who believe! When you contract a debt for a fixed period, write it down [...] But take witnesses whenever you make a commercial contract....”¹

The imperative statements “write it down” and “take” apparently signifies obligation (*wujūb*). However, the majority (*jumhūr*) of scholars interpreted it not according to its obvious import by using the concept of *ta'wīl*² and maintained that the purpose of this kind of order is not for obligation (*wujūb*), but rather for praiseworthy (*nadb*).³ Accordingly, it is not an obligatory duty for Muslims to write down all contracts, but it would be praiseworthy (*nadb*).

b) The absolute prohibition (jussive) mood (*muṭlaq ṣīghat al-nahy*). Prohibition mood is apparent (*ẓāhir*) in *taḥrīm*. It can be, however, interpreted not according to its obvious import (*mu'awwal*) to mean blameworthy (*karāhah*). Examples of this may be the Prophet's (p.b.u.h.) prohibition of the performance of Prayers in certain places such as: graveyards, toilets, camel sheds, etc. The absolute prohibition mood is apparent in *taḥrīm*. It can be interpreted, however, as blameworthy (*karāhah*) if such interpretation is supported by a reliable proof.⁴

¹ Al-Baqarah, II:282.

² *Ta'wīl* may be used only when supported by a reliable proof.

³ Ibn Kathīr, *Tafsīr al-Qur'ān al-'Aẓīm*, I:446-450; Qurṭubī, *al-Jāmi' li Aḥkām al-Qur'ān*, III:382-383.

⁴ `Abdullāh b. `Umar related that the Prophet (p.b.u.h.) forbade the Prayer to be performed in seven places: “Dunghill, butchery, graveyard, middle of the road, bathroom (toilet), camel shed and on the top of the Ka'ba”. Tirmidhī, *al-Jāmi' al-Ṣaḥīḥ*, II:177-178 (no. 346); Ibn Mājah, *Sunan*, I:246 (no. 746). (See: *Shawkānī, Nayl al-Awtār*, II:142-143).

c) The general meaning mood (*ṣīghat al-`umūm*) provides apparent (*ẓāhir*) meaning which includes everything to which it is applicable. The restriction and specification of its meaning would be regarded as (*ta`wīl*). An example of this may be what the Prophet (p.b.u.h.) stated in the following *ḥadīth*: “No fasting is valid for someone who did not intend to (i.e. to observe fast) from the proceeding night.”¹ “Fasting” (*ṣiyām*) is indefinite noun in the context of negation. Indefinite nouns in the context of negation, according to Arabic linguistic rules, normally carry general meanings. Hence, the word “fasting” (*ṣiyām*) by its apparent (*ẓāhir*) meaning includes all meanings of fasting either be it compulsory (*fard*), supererogatory performance (*nafl*) or vowed to Allāh (*mandhūr*), etc. Therefore, specification (*takhsīs*) of this tradition means fasting during Ramaḍān only and it is regarded as an interpretation not according to its obvious import (*ta`wīl*).

d) The apparent (*ẓāhir*) meaning can appear in nouns, verbs and prepositions like e.g.: “to, till, up to” (*ilā*). The apparent (*ẓāhir*) meaning of this word signifies the extent (*ghāyah*).

The apparent (*ẓāhir*) meaning is susceptible and open to *ta`wīl*. If the word “to, till” (*ilā*) is interpreted as joining or as connection between two matters, that interpretation would be regarded as *ta`wīl*.²

The effect of *ẓāhir* on legal reasoning

As mentioned, when a provision provides more meanings the most obvious and probable would be regarded as apparent (*ẓāhir*). Such provision, however, is susceptible and open to other meanings and can be interpreted not according to its obvious meaning when such a move is supported by a reliable proof. This openness to *ta`wīl* has enormous effect on legal reasoning. That can be seen in the example which follows:³

¹ Nasā`ī, *Sunan*, IV:196 (no. 2331); Abū Dāwūd, *Sunan*, II:329 (no. 2454) (See: *Shawkānī. Nayl al-Awṭār*, IV:207).

² See: Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, I:55; Isnawī, *al-Tamhīd*, pp. 221-224.

³ Tilmisānī, *Miftāḥ al-Wuṣūl*, p. 45.

The Qur'ān states: "... and you find no water, then perform *tayammum* with *ṣa`īd ṭayyib* and rub therewith your faces and hands."¹

Shāfi`ī, who was a leader in Arabic language, stated that *ṣa`īd* is earthy dust (*turāb*, *ghubār*), and that *ṣa`īd* and dust are synonymous. In his opinion *tayammum* could be performed with something that could be called soil dust (*ṣa`īd*)² because it is what the verse indicates by its apparent meaning.

Imam Mālik acclaimed that *tayammum* could be performed with everything which rose up from the earth (*mā ṣa`ada `alā wajh al-ard*) like pebbles, stone, sand, and dust, because *ṣa`īd* means according to him everything which rose up from the earth (*mā ṣa`ada `alā wajh al-ard*).³ Therefore, he interpreted the same verse not according to its obvious import, but extended the meaning of "*ṣa`īd*" by using *ta`wīl*.

The value of *ẓāhir*

Adherence to *ẓāhir* should be incumbent (*wājib*), its meaning should be applied and strictly followed⁴ except in cases where the definitive (*qaṭ`ī*) meaning is required. The apparent (*ẓāhir*) meaning can be abandoned as well in cases when a reliable proof suggests otherwise. In such cases the proper interpretation not according to the obvious import (*ta`wīl ṣaḥīḥ*) may be used and its meaning followed.⁵

=====
=====

¹ Al-Mā'idah, V:5-6.

² Shāfi`ī, *al-Umm*, I:43.

³ Ibn Rushd, *Bidāyat al-Mujtahid*, I:71; Dassūqī, *Ḥāshiyat ad-Dassūqī*, I:175.

⁴ Although this rule applies, there is a disagreement amongst *fuqahā'* in cases when a narrator of a certain *ḥadīth* provides an explanation which is not in harmony with the apparent (*ẓāhir*) meaning of that *ḥadīth*. Some say the apparent (*ẓāhir*) meaning should be followed, while others give precedence to the explanation of the narrator. (See: Baṣrī, *al-Mu'tamad*, II:670; Amidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, II:342.)

⁵ Ibn Qudāmah. *Rawḍat al-Nāẓir*, II:29-30.

Al-Naṣṣ (The Explicit)

(according to Shāfi`īs)

The linguistic definition of *naṣṣ*

NAṢṢ (A.) explicit, declared, manifest. The meaning of the root appears to be "to raise", especially "to elevate the object so that is visible to all". Al-Naṣṣ: The original written text. In the technical vocabulary of *uṣūl al-fiqh*, the term refers to either Qur'ān or *ḥadīth* text.¹

The technical definition of *naṣṣ*

If the Shāfi`ī's (Mutakallimūn) conception, idea, and understanding of *wāḍiḥ* is carefully examined it becomes obvious that their outlook on this particular question is less clear than that adopted by the Ḥanafīs. Their conception of *wāḍiḥ* seems confused, if we do not accept an idea which suggests that the term "*naṣṣ*" and its conception had a natural evolution.

Shāfi`ī, the founder of the Mutakallimūn's school in *uṣūl al-fiqh*, himself did not make any distinction between *ẓāhir* and *naṣṣ*. He called one with the name of other² and looked upon them as two names for the same concept. This can be attributed to the fact that he took into account the linguistic meaning. From a linguistic point of view, he is absolutely correct.³

He defined *naṣṣ* as a speech from which its intended legal ruling is known independently, or by the assistance of any other indicator. (*Khīṭāb^{un} yu`lam mā*

¹ M.L.`A, *al-Mu`jam al-Wasīf*, II:926; Lane, *Arabic-English Lexicon*, II:2791-99; EI, VI:881; Ba`labakī, *al-Mawrid*, p. 1173.

² Ghazālī, *al-Mustaṣfā*, p. 196.

³ See the linguistic meaning of *ẓāhir* and *naṣṣ* in Lane's *Arabic-English Lexicon*, II:1926, and II:2797.

urīda bih min al-ḥukm sawā^{un} kāna mustaqill^{un} bi nafsih aw `ulima al-murād bih bi ghayrih.)¹

In his *Risālah* Shāfi`ī called that which have definite and speculative meaning as *naṣṣ*. He said: “The sum-total of what Allāh has declared to His creatures in His Book, by which He invited them to worship Him in accordance with His prior decision, includes various categories. One of these is what He has declared to His creatures by “*naṣṣ*” (in the Qur’ān), such as the aggregate of duties (*jumal farā’idih*)² owing to Him: That they shall perform the Prayer, pay the *zakāt* (alms tax), perform the pilgrimage, and observe the fast. And that He has forbidden disgraceful acts -both visible and hidden- and in the textual (prohibition of) adultery, (the drinking of) wine, eating (the flesh of) dead things and of blood and pork; and He has made clear to them how to perform the duty of (the major) ablution as well as other matters stated precisely in the *naṣṣ* (of the Qur’ān).”³

Words like *ṣalāt*, *zakāt*, called here as *naṣṣ*, have no definitive meanings because they are ambiguous (*mujmal*) and as such they need further explanation.⁴ Their modus was made clear at a later stage by the Prophet (p.b.u.h.) both verbally and practically. He explained the number of Prayers each day and the amount of *zakāt* and their time of fulfilment and so forth.

Shāfi`ī as well uses the term *naṣṣ* to refer to rulings textually referred to in either the Qur’ān or the *ḥadīth*.⁵

Afterwards, the majority of Mutakallimūn⁶ made the distinction between *ẓāhir* and *naṣṣ* but they disagreed in their approach to it, although the majority of

¹ Baṣrī, *al-Mu`tamad*, I:319; Ghazālī, *al-Mustaṣfā*, p.196.

² Qur’anic verses related to duties like Prayer, alms tax and so forth are *mujmal* and accordingly, they have not definite meaning. Despite that Shāfi`ī called them as *naṣṣ*.

³ Shāfi`ī, *al-Risālah*, pp. 67-68. See as well: Baṣrī, *al-Mu`tamad*, I:319.

⁴ Someone can say that Allāh *ta`ālā* has ordered obligation of Prayer by *naṣṣ* despite the fact that His order “And offer Prayer...” is *mujmal*. The answer is that it is not *mujmal* in relation to obligation, but in relation to form, time and other matters related to Prayer.

⁵ Shāfi`ī, *al-Risālah*, p. 81.

them place *ẓāhir* and *naṣṣ* in opposite to *mujmal*. They also sometimes speak about *naṣṣ* as *mubayyan* or as a category of *mubayyan*.

ʿAbd al-Jabbār defined *naṣṣ* as: “A speech whose meaning could be understood.” (*Khiṭāb^{un} yumkin an yu`raf al-murād minh.*) From three conditions stipulated by Baṣrī it is obvious that ʿAbd al-Jabbār means by *naṣṣ* a provision which is not open to any potential different meaning.¹

Shīrāzī maintains that *naṣṣ* is every expression which provides a ruling by its plain and explicit meaning in a way which may not lead to any other possibility. (*Kullu lafẓⁱⁿ dalla `alā al-ḥukm bi ṣariḥih `alā wajhⁱⁿ lā iḥtimāla fih.*)² like in the following verses: “Muḥammad is the Messenger of Allāh.”³, and: “And come not near to the unlawful sexual intercourse.”⁴, and: “And kill not anyone whom Allāh has forbidden, except for a just cause (according to Islamic law).”⁵

Ghazālī⁶ mentioned that scholars have three different approaches in their understanding and attempt to define *naṣṣ*:⁷

1) The Shāfi`ī’s approach of who did not distinguish between *ẓāhir* and *naṣṣ* and called *ẓāhir* as *naṣṣ*.⁸

⁶ See: Baṣrī, *al-Mu`tamad*, I:319; Ghazālī, *al-Mustaṣfā*, pp. 187, 196; Rāzī, *al-Maḥṣūl*, I:I:316; Shawkānī, *Irshād al-Fuḥūl*, p. 156.

¹ See: Baṣrī, *al-Mu`tamad*, I:319.

² Shīrāzī, *al-Lumma`*, p. 48.

³ Al-Fath, XLVIII:29.

⁴ Al-Isrā` XVII:32.

⁵ Al-An`ām, VI:151.

⁶ Ghazālī stated that provisions are divided into two categories: *mujmal* and *mubayyan*. The provision whose meaning is determined, definite and as such is not open to other interpretations, is called *mubayyan* or *naṣṣ*, and the provision which has two or more speculative meanings and no one can have the precedence over others is called *mujmal*. If the provision has more than one meaning but one meaning is apparent and the precedence can be given to it, that provision is called *ẓāhir*. (Ghazālī, *al-Mustaṣfā*, p. 187.)

⁷ Ghazālī, *al-Mustaṣfā*, p. 196.

2) The approach that see *naṣṣ* as a provision which is not open to any potential different meaning such as numbers.

As an example the number five (*khamṣah*) is a *naṣṣ* because its value (meaning) is unchangeable. Also the word horse (*faras*) can only mean that kind of animal. It can neither be donkey or camel. We can conclude accordingly that provisions, that provide meanings in this way which leaves not a possibility for other meanings, are called *naṣṣ*.

3) The approach that see *naṣṣ* as a provision which may not lead to another different meaning even if supported by a proof.

If the provision may lead to another different meaning, but that meaning is not supported by a proof, the provision could be still called *naṣṣ*.

Ghazālī stated that the name *naṣṣ* could be used in all three meanings. However he prefers to use the second approach which maintained that the *naṣṣ* is a provision (a meaning) that is not open to interpretation not according to the obvious import (*ta'wīl*) like the following verses: “And come not near to the unlawful sexual intercourse.”¹, “... and kill not anyone whom Allāh has forbidden, except for a just cause (according to Islamic law).”² Ghazālī gave preference to the second approach not because other approaches are unacceptable in the Sharīḥ or in the language, but because they are more widespread amongst the scholars. Furthermore the second approach is less likely to lead to confusion between *naṣṣ* and *zāhir*.

It appears to me that the majority of Shāfi'īs have followed Ghazālī in giving precedence to the opinion that *naṣṣ* is a provision which is not open to *ta'wīl*.

Ibn Qudāmah defined *naṣṣ* as: “The meaning taken only from the provision which is not susceptible to any other possibility.” (*Mā yuḥīḍu bi nafsih min*

⁸ Ghazālī regards this opinion as correct, because it is applicable to the language and there is no objection in the Sharīḥ ah. (See: Ghazālī, *al-Mustaṣfā*, p. 196.)

¹ Al-Isrā', XVII:32.

² Al-An`ām, VI:151.

ghayr ihtimāʾīn)¹ like in the verse: “...making ten days in all.”² “Ten days” is *naṣṣ* because its meaning is unchangeable and not open to *taʾwīl*.

This is his preferable opinion although he maintains that *zāhir* may be called *naṣṣ* because *naṣṣ* means *zuhūr* in Arabic.

Qarrāfī provides three different definitions for *naṣṣ*:³

1) *Naṣṣ* is what provides definitive meaning and is not open to another meaning definitely as in the case of numbers.

2) *Naṣṣ* is what provides definitive meaning although it might denote the possibility of another meaning. The example to this may be the plural moods (*ṣiyagh al-jumūʿ*) which indicate, by a definitive indication the smallest amount of plural⁴, and can include more than that like the word *ikhwah* (brothers) in the following verse: “... if the deceased left brothers or (sisters), the mother has a sixth.”⁵ The word “brothers” is definitive in two, but it is susceptible to include any number bigger than two.

3) *Naṣṣ* is what provides a meaning by any way. Most of the *fuqahāʾ* used *naṣṣ* in this meaning.

Amongst these definitions only the first one which says that *naṣṣ* is a provision which provides definite meaning and as such is not open to other meanings was mentioned by Ghazālī. Qarrāfī too gave precedence to this definition like him. Some Kalāmī scholars like Ījī⁶, Bayḍāwī⁷ and Anṣārī⁸ maintained that *naṣṣ* is: “What provides a definitive meaning.” (*Mā yadull dalālat^{an} qaṭʿiyyat^{an}*).

¹ Ibn Qudāmah, *Rawḍat al-Nāzir*, II:27-28.

² Al-Baqarah, II:196.

³ Qarrāfī, *Sharḥ Tanqīḥ al-Fuṣūl*, pp. 36-37.

⁴ Although two is dual, the majority of scholars see it as plural due to the *ḥadīth*: “Two and more than that are a core.” (See: Rāzī, *Maḥṣūl*, I:2:605.)

⁵ Al-Nisāʾ, IV:11.

⁶ Ibn al-Hājib, *Sharḥ al-ʿAḍud maʿa Mukhtaṣar al-Muntahā*, II:168.

⁷ Aṣfahānī, *Sharḥ al-Minhāj*, I:444.

⁸ Anṣārī, *Ghāyat al-Wuṣūl*, p. 83.

Shawkānī defined *naṣṣ* as: “What leaves no room for interpretation not according to the obvious import (*ta’wīl*).¹

ʿĪd defined *naṣṣ* as what does not suppose more than one meaning. He mentioned as well that *fuqahā’* use this term for those expressions whose meanings have a powerful appearance² (*al-Lafẓ alladhī dalalatuh qawīyyat al-ẓuhūr.*)³

From these various definitions may be concluded that the Shāfi’īs have different conceptions of *naṣṣ*. It seems to me, however, that the conception which regards *naṣṣ* as a provision which is not open to *ta’wīl* is preferable.

The existence of *naṣṣ* in the Qur’ān and *ḥadīth* ⁴

If definitions of *naṣṣ* are compared between the two schools the deep diversity between both the Ḥanafī and Mutakallimūn approaches to *naṣṣ* would be evident. It can also be observed that the Mutakallimūn themselves are in deep disagreement over this matter. This divergence led, among other things, to a disagreement about the extent of *naṣṣ* existence in both the Qur’ān and *ḥadīth*. Some scholars (*‘ulamā’*) maintained that the occurrence of the *naṣṣ* in the Qur’ān and *ḥadīth* is very rare. Only a limited number of examples of *naṣṣ* may be traced such as the following verse and tradition which provides a clear and explicit meaning:

The Qur’ān states: “Say (O Muḥammad): “He is Allāh, (the) One.”⁵
“Muḥammad is the Messenger of Allāh...”⁶

¹ Shawkānī, *Irshād al-Fuḥūl*, p. 156.

² A study about the difference between Ḥanafī and Kalāmī *fuqahā’* regarding this matter can be very interesting because there is no doubt that their jurists use the word *naṣṣ* in a way that carries different connotations.

³ Subkī, *al-Ibhāj*, I:360.

⁴ Qarrāfī, *Sharḥ Tanqīḥ al-Fuṣūl*, p. 36; Ibn al-Ḥājjib, *Sharḥ al-ʿAḍud ma’a Mukhtaṣar al-Muntahā*, II:168; Anṣārī, *Ghāyat al-Wuṣūl*, p. 83; Shawkānī, *Irshād al-Fuḥūl*, p. 156.

⁵ Al-Ikhlāṣ, CXII:1.

⁶ Al-Fath, XLVIII:29.

The Prophet (p.b.u.h.) stated in the *ḥadīth*: “O Unays go to women of this. If she admits adultery stone her.”¹ Some other scholars (*‘ulamā’*), however, maintain that *naṣṣ* can be found in the Qur’ān and the *ḥadīth* to a greater extent. They argue that internal (textual) and external evidences raise up the text to the level of *naṣṣ*. The former group of *‘ulamā’* did not take to consideration this argument.

The value of *naṣṣ*

Adherence to *naṣṣ* should be incumbent (*wājib*) and its meaning should be applied. This is due to the fact that, according to the majority of those from the Shāfi`ī school *naṣṣ* provides a definite meaning which is not open to *ta’wīl*. Even if it provides speculative meaning it should be applied, until another reliable proof indicates otherwise. This is due to the consensus of scholars that speculative meanings should be applied until a reliable proof suggests otherwise. Its meaning can only be avoided if abrogation (*naskh*) is ascertained.

=====
=====

Chapter 9

Comparison between Ḥanafī and Shāfi`ī categorisation of *wāḍiḥ*

Zāhir in Shāfi`ī *madhhab* is an expression that provides its meaning in an speculative way (*ẓanniyya^{an}*). This meaning can be based on the essential literal meaning of the word², or on customary use of the word³. If the word keeps its preferable meaning it would be termed *ẓāhir* and if it takes its non-preferable meaning it would be *mu’awwal*. If no meaning can take preference it would be *mujmal*.⁴ It may be concluded that *ẓāhir* in Shāfi`ī *madhhab* represent in some aspects *naṣṣ* in the Ḥanafī *madhhab*, because both of them accept that there is a possibility of different explanations.

¹ Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VIII:24-25 (no. 86:30).

² Such as the general word (*āmm*) which provides a general meaning.

³ Such as the word *ṣalāt* (Prayer).

⁴ See: Rāzī, *al-Maḥṣūl*, I:1:316.

Naṣṣ according to the majority of Shāfi`ī's provides definitive meaning (*mā yadullu dalāṭ^{an} qaṭ`iyyat^{an}*) like numbers and nouns. Therefore, it is like *mufassar* in Ḥanafī madhhab.

Mufassar, in its technical meaning, is not widely known in Shāfi`ī madhhab, and they used to express by *mufassar* a different meaning from that of Ḥanafī madhhab. Shāfi`ī used it as an opposite to *mujmal*¹, while Rāzī uses *mufassar* as a name for two categories of provisions:

1) The clear (*wāḍiḥ*), which is a provision that does not need any further explanation.

2) An expression which, in order to be understood, needs further explanation which has already been provided.²

Muḥkam in Shāfi`ī madhhab gives a clear meaning either in a definite or speculative way. It can be observed that *naṣṣ* and *ẓāhir*, as seen in Ḥanafī madhhab, are both called *muḥkam* in Shāfi`ī madhhab without distinguishing between the two. It is obvious from the definition given by Ījī that *muḥkam* provides a clear meaning in both *naṣṣ* and *ẓāhir*. (*Huwa al-mutaḍiḥ al-ma`nā sawā`un kāna naṣṣ^{an} aw ẓāhir^{an}*.)³

In my opinion the Ḥanafī division of *wāḍiḥ* is more accurate and precise for the following suggested reasons:

1) It is clearer in both definition and categorisation. The degree and level of clarity can be obtained more by referring to the detailed definitions provided by the Ḥanafīs.

2) Their division includes more meanings which can be acquired from the different proofs.

=====

=====

¹ Shāfi`ī, *al-Umm*, 7:180.

² Rāzī, *al-Maḥṣūl*, I:3:227-228.

³ Bādshāh, *Taysīr al-Taḥrīr*, I:144; Aṣfahānī, *Sharḥ al-Minhāj*, I:185.

The Ḥanafī approach to unclear (*mubham*) words

Introduction

Mubham means obscure, dubious, vague, or an unclear word; speech, or language, that is dubious, vague and not clearly expressed or easily understood.¹ From its literal meaning the technical definition for *mubham* may be foreseen. It is a provision whose meaning is dubious and its objective is obscured due to the provision itself, or due to an external incident. Both (the meaning and the objective) of the *mubham* can only be obtained as a result of research. These provisions do not convey by themselves clear meanings, and in order to be understood the additional explanations are needed.

As it has been mentioned before, when a *mujtahid* is unable to understand an authoritative text it would be termed as *mubham*. The indication on a legal ruling in case of *mubham* is concealed. The obscurity is either due to the provision itself, or to an incidental reason. On this base Taftāzānī² divided *mubham* into two groups. In the first group the obscurity and ambiguity are due to the expression itself and it includes *mushkil*, *mujmal*, and *mutashābih*. Whereas the obscurity in the second group is due to an incidental reason and it includes *khafī* only.

The obscurity in the first group can be removed by legal reasoning (*ijtihād*). If the legal reasoning is sufficient for that task that which was unclear (*mubham*) would be termed as *mushkil*. If the legal reasoning is not sufficient, but the support from an authoritative text is needed it would be termed as *mujmal*. If neither the legal reasoning nor the authoritative text is sufficient it would be termed as *mutashābih*.

Due to the fact that Islamic scholars have provided explanations for the most authoritative texts it may be concluded that the obscurity can be removed mostly by legal reasoning (*ijtihād*). Sometimes, however, it can be removed

¹ Lane, *Arabic-English Lexicon*, I:268-269; Ba`labakī, *al-Mawrid*, p. 948.

² Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawdīḥ*, I:126.

only by an explanation from the Lawgiver. Without such an explanation the expression will be *mutashābih*.¹

It might be added that the obscurity in *mubham* is not always on the same level of textual obscurity. It is the reason why Ḥanafī scholars divided unclear legal texts (*mubham*) into four categories: *khafī*, *mushkil*, *mujmal*, and *mutashābih*. The most obscure is *mutashābih*, followed by *mujmal*, *mushkil*, and *khafī*. Next we will attempt to explore these various categories, their degrees of vagueness and their effect on the legal reasoning and the deduction of legal rulings from authoritative texts. To make such an exploration valid, we need to focus on the interpretation found in the process of juridical deduction (*istinbāṭ al-aḥkām*). The first category is *khafī*.

=====

=====

¹ The Qur'ān states that some of the verses are *mutashābih*: “It is He Who sent to you (Muḥammad) the Book (this Qur'ān). In it are verses that are entirely clear, they are the foundations of the Book [and those are the verses of *aḥkām* (commandments etc.), *farā'id* (obligatory duties) and *ḥudūd* (legal laws for the punishment of thieves, adulterers, etc.)]: and others are not entirely clear (*mutashābihāt*).” (āl-`Imrān, III:7)

Al-Khafī (the Hidden)

The linguistic definition of khafī

KHAFĪ (A.) hidden, covert, latent, unperceived or hardly perceived, unknown, invisible.¹

The technical definition of khafī

The Ḥanafī scholars suggest various, yet similar definitions for khafī.

Dabbūsī defined it as: “An expression, whose meaning is obscured not because of the language itself but because of an external matter. This would cause the meaning to be less understandable unless pursued by analysis.” (*Ma khafiya ma`nāh bi `āriḍīn ghayr al-lafz fī nafsih fa ba`uda `an al-fahm bi dhālik al-`āriḍ ḥatta lam yūjad illā bi al-ṭalab.*)²

Bazdawī defined khafī as: “An expression whose meaning is dubious not due to the language mood itself but due to an external matter. That meaning could only be obtained if pursued by analysis.” (*Ma ishtabaha ma`nāh wa khafiya murāduh bi `āriḍīn ghayr al-ṣīghah*³ *lā yunāl illā bi al-ṭalab.*)⁴

Nasafī maintained that khafī is: “An expression whose meaning is obscured due to an external matter rather than the language mood itself. That meaning could be obtained as a result of research only.” (*Ma khafiya murāduh bi `āriḍīn ghayr al-ṣīghah lā yunāl illā bi al-ṭalab.*)⁵

¹ Lane, *Arabic-English Lexicon*, I:776-7; Ba`labakī, *al-Mawrid*, p. 517.

² Dabbūsī, *al-Asrār fī al-Uṣūl wa al-Furū` fī Taqwīm Adillat al-Shar`*, I:263.

³ It would be clearer if he said “*bi`āriḍ min ghayr al-ṣīghah*”. The same case is found in other definitions. In my translation of these definitions I have taken it into account.

⁴ Bazdawī, *Uṣūl al-Bazdawī*, I:52.

⁵ Nasafī, *Kashf al-Asrār*, I:214.

From these definitions it can be concluded that *khafī* in Ḥanafī *madhhab* is an expression which has an apparent basic meaning¹. However, that apparent meaning (*ẓāhir*) has been disrupted by an external matter which has caused obscurity and vagueness when we attempt to extend and apply that apparent meaning to some of its supposed applications. Therefore, *khafī* is the expression whose apparent ruling may be applied to more cases. In one case its meaning is clear, but in respect to other individual cases it is obscure. This obscurity and vagueness in these applications can be eliminated only by exercising *ijtihād* by referring to authoritative texts and taking into consideration the aims and objectives of the *Sharīh*.

Examples of *khafī*

The Qur’ān states: “Cut off the hand of the thief, male or female, as a recompense for that which they committed, a punishment by way of example from Allāh. And Allāh is All-Powerful, All-Wise.”²

This verse speaks about the thief (*sāriq*) and his/her punishment. The word *sāriq* in this verse, according to the Islamic jurists (*fuqahā’*)³, has apparent meaning when applied to a person who secretly takes from others their goods that are kept in their personal custody.” (*Ākhiḍh māl al-ghayr khufyat^{an} min ḥirz mithlih.*) The word *sāriq* is apparent to every thief who is known by that name, but it is obscured in the case of a thief who is known by other names such as pickpocket, grave robber etc. Therefore, it is obscure

¹ Someone could argue by saying if *khafī* is opposite to *ẓāhir* [which is apparent by its wording (mood) (i.e. in itself)], therefore, *khafī* has to be dubious by its wording (in itself) in order to make a proper opposition. The argument is contested by the fact that *ẓāhir* is apparent by its language mood (by its wording). In contrast to that the dubiousness in the *khafī* will have to be out of its language mood, since if the dubiousness in *khafī* is in its language mood it (the dubiousness) will be greater than the clarity in *ẓāhir*.

² Al-Mā’idah, V:38.

³ See: Marghīnānī, *al-Hidāyah*, II:118; Ibn Ruṣhd, *Bidāyat al-Mujtahid*, II:445; Ibn Qudāmah, *al-Mughnī*, VIII:240.

whether “thief” includes pickpocket, grave robber or not and whether they should be punished like thief (*sāriq*) by cutting of their right hands.¹

The meaning of theft is well known. The basic ingredients of theft, however, are present in many other illegal activities. We can see that some people take the possessions of others (*māl al-ghayr*) illegitimately by various ways. Such people are given names other than thief, and their misdeeds are sometimes not called theft. Should they receive the same verdict as a thief, or should the verdict be different?

The example that can be cited here is that of a pickpocket (*ṭarrār*).² He/she has the characteristics of thief that he/she takes possessions off others illegitimately by false and illegal means. However, his/her name is different from that of the thief and it indicates different meanings, His/her action too have further characteristics which we might not find when the theft is in question, because pickpocket takes possessions of others by surprise, unexpectedly, by using skill and trickery, while the owner is fully awake and doing his/her best to save and protect his/her possessions. These further attributes may be the reason that gave the pickpocket that particular name.

Similar to that is grave robber (*nabbāsh*)³ who secretly takes valuables from graves. Should he/she receive the same verdict as the thief mentioned in the verse?

Also the question of a person who borrows something from someone else and denies what he/she has borrowed. Should he/she face the prescribed punishment (*ḥadd*) like that of the thief?

The same situation is found with the word “killer” mentioned in the *ḥadīth* “The killer shall not inherit.”⁴ Does that word include unintentional erroneous

¹ When the theft fulfils all its conditions and stipulations.

² *Ṭarr* is taking goods from someone while he/she is awake and consciously protects and guard his/her goods, while he/she is in a state of ignorance. (See: Kawrānī, *Sharḥ Mukhtaṣar al-Manār*, p. 54.)

³ *Nabsh* is taking clothes off dead persons, from their grave, after their burial. (See: Kawrānī, *Sharḥ Mukhtaṣar al-Manār*, p. 54.)

killing, killing caused by negligence, killing by a mad person, lawful killing, justifiable killing etc.? In respect to all these varieties of killing this tradition is hidden and obscured.¹

Therefore the ambiguity in these authoritative texts in relation to their possible applications (pickpocket, grave robber etc.) comes from the fact that these applications have different names and attributes from those mentioned in the texts.² The linguistic basic rule is that every name is given to a special and a particular subject and that certain attributes indicate differences. These subjects have different names and attributes and because of that the results have to be different. Therefore, we do not know whether they were given different names from that of thief, killer etc., because the meaning of theft and killing is greater or smaller in their cases.

The only way to remove this vagueness is by exercising *ijtihād* to ascertain whether or not their deeds include the characteristics of a theft etc. This has got an important bearing on the verdict attached to that action whether it should be classified as a theft or not. If, in their deeds, all elements which are stipulated by Sharīah are completed they should receive the same verdict, if not the verdict should be different³.

⁴ Dārimī, *Sunan*, II:385.

¹ This obscurity led to disagreement. Mālikīs maintain that erroneous killing, for example, is not included in this tradition, while Ḥanafīs include it in order to safeguard the lives of the people. (See: Badrān, *Uṣūl al-Fiqh al-Islāmī*, p. 411.)

² Islamic scholars disagree whether analogy (*qiyās*) may be used when the language is in question so that we can call a subject with the name of another subject in cases when one subject includes characteristics of the other as to call the grave robber thief and the homosexual adulterer. (See: Isnawī, *al-Tamhīd*, p. 468-469.)

³ The components of theft which are stipulated by Sharīah are:

- a) The possession is taken away secretly.
- b) It is taken away with criminal intention.
- c) The stolen item should be legally owned by the person from whom it is stolen.
- d) The stolen item should have been taken out of the possession of its real owner.
- e) The stolen item should already come under the possession of the thief.
- f) The stolen item should reach the value of *niṣāb* of theft.

Ḥanafī jurists in comparing the pickpocket with the thief found that all elements of theft are present in the action of the first. A special name is given to the pickpocket as distinct from that of the thief because the meaning of theft (skilfulness and proficiency in stealing, danger, crime, offence) is more evident in the deed of the pickpocket than in the theft itself. The pickpocket takes from others their belongings which are kept in an adequately safe place while the owners are awake and extremely careful in protecting and guarding their possessions but were careless for a moment. So he/she steals by way of skilfulness and cleverness, by acting at the moment when the owner is not careful enough. When the character of the theft becomes apparent to us the ambiguity is removed and we become sure that the pickpocket is in fact a thief, but not in an ordinary manner. He/she steals during a moment of carelessness by the owner who is present, while the thief steals at a moment when the owner is sleeping or absent.

Therefore, the opinion of the Ḥanafī jurists was unanimous that the pickpocket should be classified as a thief and receive the same verdict.¹

As to the grave robber the majority of Ḥanafī jurists² maintained that he/she would not be punished by fixed punishment by law (*ḥadd*), but by non-fixed

If these components are founded in any kind of abstraction it would be counted as theft, and if any is missing it would be not counted as theft which is sanctioned by *ḥadd*.

¹ Nasafī, *Kashf al-Asrār*, I:215; Sarakhsī, *Uṣūl al-Sarakhsī*, I:167; Bukhārī, *al-Tawḍīḥ fī Ḥall Ghawāmiḍ al-Tanqīḥ*, I:126; Kawrānī, *Sharḥ Mukhtaṣar al-Manār*, p. 54.

Abū Ḥanīfah said that if the pickpocket took it from inside the pocket (*kumm*) the *ḥadd* should be applied, but if he/she took it from outside the *ḥadd* should be averted. His disciple Abū Yūsuf maintained that *ḥadd* applies in both cases. The latter opinion has preference according to Ṭaḥāwī. (See: Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, p. 271.) Ḥanafī jurists disagree whether this ruling is deduced from the explicit meaning of the text (*ibārat al-naṣṣ*) or from the alluded meaning (*ishārat al-naṣṣ*). The majority maintained that this ruling is derived from *ishārat al-naṣṣ* because the ruling related to the theft is extended to include pickpocket. (*li annahu ithbāt ḥukm al-naṣṣ bi al-ṭarīq al-awlā*). (Nasafī, *Kashf al-Asrār*, I:216; Sarakhsī, *Uṣūl al-Sarakhsī*, I:167; Bādshāh, *Taysīr al-Taḥrīr*, I:157.)

It is important to state that this fixed punishment by law (*ḥadd*) is not established by analogy (*qiyās*) because *ḥudūd* are averted by suspicions and *qiyās* contains some suspicions.

punishment (*ta`zīr*). They explained that the meanings which represent reasons for the rulings (*manāṭ al-ḥukm*) regarding theft are not fulfilled in the case of grave robbers.¹ A dead person can not be seen guarding his/her belongings in the grave nor does he/she intend doing so. His/her ownership over it is legally incomplete etc. At the same time the meaning of theft indicates that stolen goods were kept in an adequately safe place, while the meaning of a grave robber (*nabbāsh*) implies that the stolen goods were not preserved in an adequately safe place. Therefore, because of these suspicions (*shubuhāt*) the ruling could not be the same as that of the thief by reference to the alluded meaning (*ishārat al-naṣṣ*)² as it was done in the case of the pickpocket etc.³

The value of *khafī*

Muslims should believe that the intended meaning of *khafī* is correct even if that meaning is obscured. They should make efforts until intended meaning is discovered and the obscurity removed.⁴ *Khafī* should not be extended to its dubious and obscured application until pursued by further research and proper *ijtihād*. When certainty prevails that the meaning of the word is confirmed to an application which was obscure then the same ruling would be extended to that application. The main dependency of the *mujtahid* in his/her legal

² Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, p. 273; Marghīnānī, *al-Hidāyah*, II:121.

¹ a) ownership; dead person has not got the legal right to be the owner and his/her inheritor could inherit only what the dead do not need, and he/she needs clothes. b) possession; dead person is not able to manage it. c) value; valuable thing is what people desire and seek and grave-clothes is something which they dislike and avoid. d) adequate well-fortified place; grave is not made to be such place.)

² Especially regarding punishments fixed by law (*ḥudūd*). They should be averted by any suspicion.

³ Nasafī, *Kaṣḥf al-Asrār*, I:215; Sarakhsī, *Uṣūl al-Sarakhsī*, I:167; Bukhārī, *al-Tawḍīḥ fī Ḥall Ghawāmiḍ al-Tanqīḥ*, I:126; Kawrānī, *Sharḥ Mukhtaṣar al-Manār*, p. 54. See also the explanation of 23rd verse of the chapter al-Isrā' XVII:23.

⁴ Sarakhsī, *Uṣūl al-Sarakhsī*, I:168.

reasoning should be the aims and objectives of Islamic law and the authoritative texts relevant to the subject matter.

=====

=====

Chapter 11

Al-Mushkil (the Problematic)

The linguistic definition of *mushkil*

MUSHKIL (A.) problematic, complex, hard to solve, difficult, intricate, equivocal, signifies entering among meanings confused with.¹

The technical definition of *mushkil*

The Ḥanafī scholars provided various definitions for *mushkil*.

Dabbūsī defined it in the following terms: “It is (an expression) that has a meaning which is ambiguous to understand for the listener. The ambiguity is caused by the subtlety of that meaning or the metaphor and not invoked by the deceptive action of the originator.” (*Huwa alladhī ashkala `alā al-sāmi` tarīq al-wuṣūl ilā al-ma`nā alladhī waḍa`ah lah wāḍi`, aw araḍah al-musta`ir, li diqqat al-ma`nā fī nafsih lā bi`āriḍ ḥīlatⁱⁿ.*)²

Nasafī provided the following definition: “It is (an expression) that involves various equal meanings.” (*Huwa³ al-dākhil fī ashkālih.*)⁴

Sarakhsī maintained that *mushkil* is a name for (an expression) whose intended meaning cannot be identified because it is mixed within its various meanings. It may be identified only by a proof which highlights it among other meanings. (*Ism^{un} lima yashtbih al-murād minh bi dukhūlih fī ashkālih `alā wajhⁱⁿ lā yu`raf al-murād illā bi dalīlⁱⁿ yatamayyaz bih min bayn sā`ir al-ashkāl.*)⁵

¹ M.L.`A, *al-Mu`jam al-Wasīf*, I:491; Lane, *Arabic-English Lexicon*, II:1588; Ba`labakī, *al-Mawrid*, p. 1049.

² Dabbūsī, *al-Asrār fī al-Uṣūl wa al-Furū` fī Taqwīm Adillat al-Shar`*, I.264.

³ I.e. equivocal expression in its meanings.

⁴ Nasafī, *Kashf al-Asrār*, I:216.

⁵ Sarakhsī, *Uṣūl al-Sarakhsī*, I:168.

From these definitions a comprehensive definition for *mushkil* can be formulated: *Mushkil* is a self obscured expression. This obscurity is caused by variety of meanings that it can carry. The intended meaning of *mushkil* can not be identified without external evidence which distinguish it from others. It can be done by further thoughts.

In referring to the scale detailing the categories of the *mubham*, the *mushkil*¹, which is opposite to *naṣṣ* can be seen to be one grade above the *khafī*, just the same as the *naṣṣ* is one grade clearer from *zāhir*.

Mushkil is more ambiguous than *khafī* because the obscurity in *mushkil* is in the provision itself, which is inherently ambiguous, while in *khafī* the obscurity is caused by an external matter at the time when its basic apparent meaning is clear. The obscurity in the same provision (in its words) is greater than that caused by an external matter.

Therefore, the effort to understand the *mushkil* would be greater than that with *khafī*, because with *khafī* the *mujtahid* would look only to an external matter to examine closely whether it carries more meanings or less than the apparent meaning of the provision. In the case of *mushkil* a *mujtahid* would consider the provision itself and its various meanings, which could not be understood without proper research and consideration involving all external evidences and proofs. Hence, in the case of the *mushkil* ordinary research is not sufficient, but further scrutiny and careful examination is required in order to distinguish between its various meanings which are close and similar to each other and which can be indicated by the same provision. A parallel for a *mushkil* meaning can be drawn in a man/woman who left his/her country and mixed with other people who are similar to him/her. In order to find him/her it is imperative to find his/her place, then to examine all people who are similar to him/her to distinguish him/her from others.

¹ *Mushkil* and *mujmal* are very close to each other. It caused confusion for some scholars who maintained that they are the same. That opinion is not correct. (See: Sarakhsī, *Uṣūl al-Sarakhsī*, I:168.)

The origins of ambiguity in *mushkil*

The obscurity in *mushkil* is in the provision itself. The intended meaning of the provision is obscured due to the following causes:

a) Homonym.¹ When a word is originally coined to serve more than one meaning. The speaker normally would mean one of these meanings while the listener does not know which one the speaker is referring to. The confusion can be referred to the fact that the intended meaning is mixed with others leading to obscurity. The listener would then be in need of legal reasoning (*ijtihād*) to discover the intended meaning and distinguish it from others that the word might imply. This is the case with all homonyms when the expression does not contain a proof pointing to the intended meaning. In such situations a proper exercise of *ijtihād* is required in order to distinguish the intended meaning from that which is not intended by using all relevant external evidences that may suggest the intended meaning.

b) Rhetoric metaphor. When the metaphoric meaning of a word is used frequently so that the word becomes widespread and famous in its metaphoric meaning as distinct from the originally coined meaning of the word.

The distinction between the intended meaning and other meanings could be reached with a deep consideration and scrutiny by relying on outside proofs and evidences. As a result of this process the preferable meaning would emerge and become clear. At this point *mushkil* is similar to *khafī* but it is above it because there is the need for further thoughts about the mood and its forms and categories.

¹ Any homonym is at the same time *mushkil* and there is no objection for one thing to be called with two different names from different aspects. However, *mushkil* is more general due to the fact that it could be caused by other causes apart from the homonym. (See: Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:159.)

Examples of *mushkil*

a) The Qur'ān states: "If you are in state of ceremonial impurity (*janābah*)¹ purify yourself (*fa-ṭṭahharū*) (bathe your body)."²

This verse is *mushkil* in relation to some parts of the body like nostrils and inner parts of the mouth.³

The reason is that exterior parts of the skin have to be washed and internal parts have not. Both the nostrils and internal parts of the mouth are considered similar to the internal parts of the human body in a real (*ḥaqīqī*)⁴ and constructive (*ḥukmī*)⁵ meaning. Because of this consideration there is no need to wash neither the mouth nor nostrils during the *ṭahārah kubrā*. They are also considered similar to the external parts of the body.⁶ Because of this consideration⁷ the requirement to wash them during *ṭahārah kubrā* is based accordingly on the rule that all external parts have to be washed.

In the case of *janābah* there was a problem regarding the decision whether they are similar to the internal or external parts of the body since they have been previously bound to be similar to both. According to the *ijtihād* they were joined to the exterior in the case of *janābah* because the command related

¹ Ceremonial impurity (*janābah*) is normally associated with sexual discharge.

² Al-Mā'idah, V:6.

³ Some scholars mentioned this example for *khafī* saying that *ṭahāhur* is known in both literal and *Sharī'a*'s meaning and from that point is similar to *ṭarrār* (pickpocket) and *nabbāsh* (grave robber). This assertion is not accurate because the meaning of *ṭahāhur* is not known before research and scrutiny has taken place. It is known that *ṭahāhur* means "washing up of the whole body", but does the "whole body" include implicitly mouth and nostrils or not? (See: Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, I:126-127.)

⁴ It is covered by the skin.

⁵ On the basis of the ruling that swallowing the saliva does not invalidate fasting.

⁶ On the basis of the ruling that fasting would not be invalidated if food touched them (by entering the mouth).

⁷ This consideration and the previous one are based on the Sunnah of the Prophet (p.b.u.h.).

to the purification is stated in an emphatic language with *tashdīd* “*fa-ṭṭahhirū*” (purify yourself) directed to cleaning and purification¹

Contrary to that in the case of ablution (*wuḍū’*) nostrils and inner parts of the mouth are joined to interior parts of the human body. Therefore, they have not to be washed. This is also supported by the following arguments:

1) No language emphases exist in reference to the face since only the word “wash” (without *tashdīd*) is used (*fa-ghsilū wujūhakum*).

2) In *wuḍū’* the *wājib* is washing the face (*wajh*)² and there is no visible surface in the case of the nostrils and the inner parts of the mouth.

3) In *janābah*, however, the *wājib* is washing the body. The body is a name given to both the exterior and inner parts, but what is difficult or hard to wash is excluded due to the impossibility of doing so (*ta`adhdhur*). E.g. when a wound is inflicted on an exterior part of a body it would be excluded from washing and wiping over the wound would be sufficient.

4) Ablution is more frequent than washing up the entire body, therefore ablution becomes more eligible for convenience and exemption.

b) The Qur’ān states: “... so go to your tilth when or how you will.” (... *fa’tū ḥarthakum annā shi’tum*).³ The word “*annā*”, mentioned in the Qur’ān twenty eight times, is homonym (*lafẓ mushtarak*)⁴. It would become a problem *mushkil* when it appears in an expression because it could mean different meanings. For example in the verse: “He said: “O Mary! From were have you

¹ Before research and scrutiny we do not know if this exaggeration is related to quality or quantity. For example Mālik maintained that it is related to quality. Because of that he maintained that rubbing is *wājib* during bathing. Ḥanafī jurists maintained that it is related to quantity. Because of that they said that the mouth should be washed. (See: Dassūqī, *Ḥāshiyat al-Dassūqī `alā al-Sharḥ al-Kabīr*, I:126; Marghīnānī, *al-Hidāyah*, I:16.)

² *Wajh* (the face) in Arabic literally means visible surface when the name is implicated on an exterior part of a body.

³ Al-Baqarah, II:223.

⁴ Bādshāh quoted Riḍā as saying that *annā* could mean three different meanings: where, how and when. (See: Bādshāh, *Taysīr al-Taḥrīr*, I:158-159.)

got this?” (*Qāla yā Maryam annā lak hādhā?*)¹ “*annā*” was used to mean “from were”. “*Annā*” is also used to mean “how” like in the verse: “He said: “O my Lord! How can I have a son when I am very old, and my wife is barren?” (... *annā yakūn lī ghulām^{un}?*)².

Due to the fact that “*annā*” is a homonym different interpretations had emerged to the first verse:³

1) Some maintain that “*annā*” means “how” (*kayfa*). Therefore, the meaning of the verse would be: “in any position you would want.” This meaning was quoted by many interpreters of the Qur’ān like Ibn `Abbās. According to him the verse means: “He approaches her how he likes, in any manner, as long as it is not in the anus, or during her menstrual period.” Similar to this has been quoted from `Ikrimah, Mujāhid, Ibn Ka`b and others.

2) Some, like Ḍaḥḥāk, maintain that “*annā*” means “when”, i.e. at any time of day or night.

3) Some maintained that “*annā*” means “where” (*ayna*) so the meaning of the first verse would be: “in any place you want, in vagina or anus”. According to this interpretation having sex with one’s wife via the anus is allowed.

4) Some said that it means “how” i.e. go to your tilth and you could ejaculate how you like, in vagina or out. This opinion is ascribed to Ibn `Abbās and Sa`īd b. Musayyib.

Anna in the first verse, however, was translated into English as “when or how”⁴ and interpreted as such by commentators of the Qur’ān. They said that the verse means: have sexual relations with your wives in any manner, in any

¹ Āl `Imrān, III:37.

² Āl `Imrān, III:40.

³ See: Ṭabarī, *Jāmi` al-Bayān `an Ta`wīl Āy al-Qur`ān*, IV:398-416; Ibn Kathīr, *Tafsīr al-Qur`ān al-`Aẓīm*, I:351-358.

⁴ See translations of the Qur’ān by Hilālī and Khān and by The Presidency of Islamic Researches, IFTA, Call and Guidance.

position, and at any time as long as it is via the vagina and not via the anus.¹
This is the opinion of the majority of Islamic jurists as well.²

The ambiguity in “*annā*” is removed by thought analysis, scrutiny and careful examination of internal and external evidences and the reason for the revelation of the particular verse (*sabab al-nuzūl*).

Some aspects of internal and external evidences proved that “*annā*” in the first verse means “how” and “when” and not “where”.

1) The women was called “tilth”: “Your wives are a tilth for you...” i.e. they are the place for your husbandry (cultivation). Mentioning the place of cultivation proves that approaching a wife in other places is forbidden. The permissible place is also indicated by the verse: “And when they have purified themselves, then go into them as Allāh has ordained for you.”³

A women is compared with arable land because the sperm would be placed into her womb like the crop is planted into arable land. Therefore, “seed” could only be planted in a women’s uterus (because it is a fertile place) and not the anus. This argument is supported by the fact that the main purpose for sexual intercourse in Islām is to produce children and not the satisfaction of the sexual desire⁴.

2) The second proof that “*annā*” means “when” and “how” and not “where” is based on the Islamic principle of prohibiting harmful and annoying actions. If having sex with the man’s wife during her menstrual period is

¹ Qurṭubī, *al-Jāmi` li Aḥkām al-Qur`ān*, III:91-94; Ibn Kathīr, *Tafsīr al-Qur`ān al-`Aẓīm*, I:351-358.

² See: Ibn al-`Arabī, *Aḥkām al-Qur`ān*, I:174; Qurṭubī, *al-Jāmi` li Aḥkām al-Qur`ān*, III:91-94.

³ Al-Baqarah, II:222.

⁴ So having sex via the anus with the wife is forbidden, but this prohibition is speculative (*ẓannī*). Therefore someone who denies it is not considered as *kāfir*. This kind of sex is compared by analogy with that one during the women’s period. The reason (*illah*) is due to harm which is different from that in case of sodomy. In distinction to sodomy, and lesbian relations whose prohibition is definite (*qaṭ`ī*) by the Qur`ān, the Sunnah and *ijmā`*. Therefore, if certain conditions exist, who denies it would become *kāfir*.

prohibited¹ because it causes harm and annoyance (what is *`illat al-ḥukm*) then anal sex seems to be more appropriate to be forbidden because the issues relating to harm, dirtiness and annoyance are bigger.²

Ibn al-`Arabī said: “I asked al-Imām al-Qāḍī al-Ṭūsī this question and he answered: “It is forbidden to have anal sex with the wife in any circumstances. He stated that Allāh *ta`ālā* has forbade vaginal sex during the period of menstruation because of temporary dirtiness that accompanies it, so it is more appropriate that anal sex is forbidden because of the inevitable dirtiness.”³

3) This verse was revealed in response to some people’s claim that if a person has intercourse with his wife approaching her from the back to the vagina the child conceived would be cross-eyed. According to *sabab al-nuzūl* this verse was revealed to deny that claim⁴. Therefore, the meaning of the verse “*annā shi’tum*” would be: have sexual relations with your wives in any manner by which this goal is achievable, and it is achievable if it is via the vagina (place for tilth) and not via the anus (place for faeces).

The final conclusion is that “*annā*” generalises ways not places.

c) The Qur’ān states while describing the cups of Paradise: “And amongst them will be passed round vessels of silver and cups of crystal, Crystal-clear, made of silver.⁵ The meaning of (*...qawārīra min fiḍatīn*) is *mushkil* because the cup (*qarūrah*) is normally made from glass not from silver (*fiḍḍah*).

However, when we make a careful examination we will find that silver has two specifications: one ugly, that it does not show what is inside, and another

¹ The Qur’ān states: “They ask you concerning menstruation. Say: That is an *adhā* (a harmful thing for a husband to have sexual intercourse with his wife while she is having her menses), therefore keep away from women during menses and go not into them until they have purified (from menses and have taken a bath).” (al-Baqarah, II:222.)

² This conclusion is derived from the text by using the principle called *dalālat al-naṣṣ* or *qiyās awlā*.

³ Ibn al-`Arabī, *Aḥkām al-Qur’ān*, I:174.

⁴ Ibn Kathīr, *Tafsīr al-Qur’ān al-`Azīm*, I:351.

⁵ Al-Insān, LXXVI:15-16.

praiseworthy because it shines. The glass has the opposite specifications. From this usage we would know that the cups described have the clearness and softness of the glass combined with the beauty and shine of silver. They were compared with glass in its clarity and fineness and with silver in its colour and beauty. This is called rhetoric metaphor (*ist`ārah badī`ah*). Due to the rhetoric metaphor we need a further examination in order to comprehend factual meaning.

d) The Qur`ān states: “And divorced women shall wait (as regards their marriage) for three menstrual periods *thalāthata qurū`*”¹ The word “*qur`*” is a homonym which means both the clean period between two menstruation’s (*tuhr*) and menstruation (*ḥayḍ*). Whichever of these two distinctive meanings is adopted the legal ruling will differ accordingly. Some scholars exercised *ijtihād* and concluded that, in this verse, it means *tuhr* while others maintained that it means *ḥayḍ*.²

e) If someone makes a will that his/her property should be given to his/her *mawālī* it will need further explanation. If the testator dies before he/she explains whom he/she meant by his/her will, the will would be invalid³ because *mawlā* (pl. *mawālī*) is a homonym and includes both the freer (the master) and freed (his/her freed slave). The will becomes invalid because the beneficiary is unknown due to the fact that any meaning does not have precedence over another and the implementation of the general meaning of the expression is impossible.⁴

¹ Al-Baqarah, II:228.

² See: Ibn Kathīr, *Tafsīr al-Qur`ān al-`Azīm*, II:89.

³ This opinion is narrated from Abū Ḥanīfah (*ẓāhir al-riwāyah*). See: Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:159.

⁴ Bukhārī mentioned many other examples of *mushkil*. (See: Bukhārī, *Kashf al-Asrār*. I:52-53.)

The value of *mushkil*

Muslims should believe that the intended meaning of *mushkil* is the truth even if that meaning is obscured. They should make their effort until the intended meaning is discovered and obscurity removed. The research would be by consideration analysis, scrutiny and careful examination as well as using any possible evidences leading to the intended meaning and then implementing it when it becomes clear and distinct from other meanings.¹

=====

=====

¹ Nasafī, *Kashf al-Asrār*. I:216; Sarakhsī, *Uṣūl al-Sarakhsī*, I:168.

Al-Mujmal (the Synopsized)

The linguistic definition of *mujmal*

MUJMAL (A.) summed up, summarised, outlined, abridged, condensed, epitomised, synopsized, concise, brief, short; a word, a phrase, or a speech which include or imply a number of unexplained things which are confused and require further explanation.¹

The technical definition of *mujmal*

The Ḥanafī scholars suggest various definitions for *mujmal*.

Dabbūsī defined it in the following terms: “It is (an expression) whose meaning can not be understood essentially (*aṣṭān*) due to unfamiliar language, or due to metaphorical semantics.” (*Huwa alladhī lā yu`qal ma`nāh aṣṭān li tawaḥḥuṣhⁱⁿ fī al-lughah waḍ`an, aw al-ma`nā isti`ārat^{an}.*)²

Bazdawī provided the following definition for *mujmal*: “It is (an expression) which carries various congested meanings and the intended meaning becomes so ambiguous that it cannot be comprehended from the same expression but rather by referring to the explanation, research and thinking.” (*Huwa mā izdahamat fīh al-ma`ānī wa ishtabaha al-murād minh ishtibāh^{an} la yudrak bi nafs al-`ibārah, bal bi al-rujū` ilā al-istifsār thumma al-ṭalab thumma al-ta`ammul.*)³

Nasafī provided an identical definition to that of Bazdawī with the exclusion of the word *ta`ammul*.⁴

¹ M.L.`A, *Al-Mu`jam al-Wasīṭ*, I:136; Lane, *Arabic-English Lexicon*, I:461; Ba`labakī, *al-Mawrid*, p. 981.

² Dabbūsī, *al-Asrār fī al-Uṣūl wa al-Furū` fī Taqwīm Adillat al-Shar`*, I:265.

³ Bukhārī, *Kashf al-Asrār*, I:54.

⁴ Nasafī, *Kashf al-Asrār*, I:218.

Sarakhsī maintained that *mujmal* is a word whose aim can not be understood without an explanation from the speaker due to metaphorical semantics or unusual syntax according to literature terminology. (*Lafẓ^{un} lā yufham al-murād minh illā bi-stifsārⁱⁿ min al-mujmil wa bayānⁱⁿ min jihatih yu`raf bih al-murād wa dhālika immā li tawaḥḥuṣhⁱⁿ fī ma`nā al-isti`ārah aw fī ṣīghatⁱⁿ `arabiyyatⁱⁿ mimma yusammīh ahl al-adab lughat^{an} gharībat^{an}.*)¹

From these definitions it could be concluded that *mujmal* in Ḥanafī *madhhab* is an expression whose intended meaning is hidden in itself and inherently unclear so that it would not be understandable without an explanation from the originator, no matter whether the latency is caused by using its apparent meaning in the special meaning intended by the Lawgiver, or due to homonymous meanings, or the oddity of the word used. The only way to remove this ambiguity is recourse to the explanation of the Lawgiver, i.e. to the authoritative texts nowadays.

Comparison between *mujmal* and *mushkil*

If comparison is to be made between the two we can observe the following.

In both cases the ambiguity occurs to be in the used expression, and not caused by an external matter such as in the case of *khafī*.

The explanation required in the case of *mujmal* can only be provided by the speaker, while in the case of *mushkil* the explanation may be found through analytical thought.

Consequently the *mujmal* is more ambiguous than *mushkil*. Therefore it is contrast to *mufassar* which is a category of *wāḍiḥ*.

Categories of *mujmal*

According to the concluded definition, *mujmal* can be divided, with regard to its causes, into three categories:

¹ Sarakhsī, *Uṣūl al-Sarakhsī*, I:168.

1) that which is caused by using the word not in its apparent literal meaning but in a certain legal context in order to convey a technical or juridical concept which is intended by the Lawgiver, known as *naql shar`ī*.

2) that which is caused by a competition of the equal meanings (homonym) with no possibility for giving precedence to one of them because there is no indication as to which might be the correct one,

3) that which is caused by the oddity of the word which is totally unfamiliar.

Examples of *mujmal*

1) The most common category of *mujmal* is the first one (*naql shar`ī*). At this juncture we have to point out that many Arabic words took a new shades of meaning under the influence of Islām because the Lawgiver used them for the purpose other than those which they originally and literally conveyed. Words like Prayer (*ṣalāt*), alms tax (*zakāt*) originally had certain literal meanings which were enhanced and reproduced. This process of reproduction led to a by-product result of ambiguity that can not be easily unlocked by pure research and thought. The key to the meaning of the *mujmal* is the prerogative of the Lawgiver himself and there is no way of removing ambiguities without recourse to the Lawgiver's explanation. In Islamic law, the Sunnah is seen as the main source that can refer to the interpretation of the ambiguity. Its leading role in interpretation can be attributed to the large legacy that can be found in the Islamic legal corpus. Undoubtedly the Qur'ān is more important than the Sunnah when it comes to the authority of the text. However the amount of the material which may be used in interpretation is more in the Sunnah than in the Qur'ān. The value of the Sunnah in playing this role is clearly reflected in the writings of all Islamic legal scholars. They support their opinion by the verse: "And We have also sent down unto you (O Muḥammad) the reminder and the advice (the Qur'ān), that you may explain clearly to men what is sent down to them, and that they may give thought."¹ *Shāfi`ī* clearly highlighted the role of the Sunnah in his *Risālah* when he stated that there are obligations that the

¹ Al-Naḥl, XVI:44.

Almighty established in His Book, which He made clear by the tongue of the Prophet. The following examples that Shāfi`ī provides are in fact a classical model for this process of interpretation that can be found in many books of the *fiqh*. These are the daily number of Prayers, the (amount of) *ṣalāt* and the details of their performance.¹ When *mujmal* is explained it would become *mufassar*² as in the following examples:

a) Prayer is a duty upon every responsible Muslim. This ruling is derived from the Qur'anic verses. In one of them, which was repeated in the Qur'ān more than eighty times, the Prayer was ordered: “And offer Prayers perfectly...” (*Wa aqīmū al-ṣalāt.*)³ The verse: “Verily, the Prayer is enjoined on the believers at fixed hours.”⁴ is even stronger in enjoining this ritual upon the Muslims. However, one would ask what is meant by the word “Prayer” (*ṣalāt*).

Ṣalāt in Arabic literally means: call, invocation, supplication (*du`ā'*).⁵ Islām, however, applied this name to the special prayer required by the new Faith. It was defined by Islamic jurists as: “Special acts and sayings (utterances) opened by *takbīr* (*Allāh Akbar*) and concluded (ended) by *taslīm* (*assalām `alaykum*).”⁶ Therefore, the word *ṣalāt* developed a new meaning (*ma`nā shar`ī*)⁷ because the Lawgiver used it for the purpose other than it originally conveyed. Ibn al-Athīr defined *ṣalāt*, considering its new meaning, as the well known ritual which linguistically refer to supplication.⁸

¹ See: Shāfi`ī, *al-Risālah*, p. 68.

² If the explanation, however, is not sufficient, it may become *mushkil* whose ambiguity may be removed by proper *ijtihād*.

³ Al-Baqarah, II:43.

⁴ Al-Nisā', IV:103.

⁵ M.L.`A. *al-Mu`jam al-Wasīf*, I:522; Ibn Qudāmah, *al-Mughnī*, I:369.

⁶ Qal`ajī, *Mu`jam Lughat al-Fuqahā'*, p. 275.

⁷ Which, in fact, still has some relation with its original literal meaning.

⁸ Ibn al-Athīr, *al-Nihāyah fī Gharīb al-Ḥadīth*, I:273.

The ambiguity in the word *ṣalāt* was largely caused by giving it a new legal meaning that occurred in a synopsis form in the Qur'ān. The Qur'ān states: “And offer Prayers perfectly...” However, no verse explains the details i.e. forms, parts, number of Prayers, their times, number of bows and prostration, its conditions, stipulations, duties etc.

Instead we found that the Qur'ān mentioned in general aspects their times¹, the manner and way of its performance only².

The verses referred to here are ambiguous because of their synopsis and concise meanings. Accordingly they are in need of explanation. This explanation was provided by the Sunnah. The Prophet (p.b.u.h.) verbally and practically explained synopsis verses of the Qur'ān which were in need of an explanation. In the case of *ṣalāt* the Sunnah explained the number of Prayers, their level of obligation, their time, number of bows, prostration and conditions. The Prophet (p.b.u.h.) was keen to explain everything related to the Prayer. He once prayed on the *mimbar* and stated afterwards: “Indeed, I have done this for you to copy me and to learn my Prayer.”³ In another *ḥadīth* he said: “Pray as you see me pray.”⁴

After his detailed explanation the ambiguity of the previous verses disappeared.

b) In dealing with *zakāt* the Qur'ān states: “And give obligatory charity (*zakāt*).”⁵

¹ “Offer Prayers perfectly (*aqim al-ṣalāt*) from mid-day until the darkness of the night, and recite the Qur'ān in the early dawn. Verily, the recitation of the Qur'ān in the early dawn is ever witnessed.” (al-Isrā', XVII:78.) “And offer Prayers perfectly (*wa aqim al-ṣalāt*) at the two ends of the day and in some hours of the night. Verily, the good deeds remove the evil deeds (i.e. small sins).” (Hūd, XI:114.) “Guard strictly the Prayers especially the Middle prayer.” (al-Baqarah, II:238.)

² “O you who believe! Bow down, and prostrate yourselves...” (al-Ḥajj, XXII:77.)

³ Abū Dāwūd, *Sunan*. I:283-284 (no. 1080). Albānī stated that this tradition is narrated by Bukhārī, Muslim, Ibn Ḥanbal, Nasā'ī and Ibn Mājah. (See: Albānī, *Irwā' al-Ghālīl*, II:332.)

⁴ Bukhārī, *al-Jāmi' al-Ṣaḥīḥ*, I:155 (10:18)

⁵ Al-Baqarah, II:43.

The word *zakāt* literally means growth and increase.¹ It sometimes means purification (*taḥīr*) exemplified by the verse: “Take alms (*ṣadaqah*) from their wealth in order to purify them and sanctify them with it (*tuṭahhiruhum wa tuzakkīhim biha*).”²

When Islām appeared the word *zakāt* was given a new dimension, which to a certain extent was connected with its literal meaning. Islamic jurists defined *zakāt* as: “Paying out a fixed amount of the wealth, when reached determined the minimum value (*niṣāb*) to certain categories of people which are textually mentioned by the Lawgiver.”³ Beside that, the new meaning may be used to indicate the paid amount itself. Therefore, it is a homonym which indicates both the paid amount and the act of paying.

The Islamic scholars mentioned that *zakāt* in Islamic law is used to indicate two meanings:

a) growth;

This could be due to the following reasons:

1) Either because the paying of it would be a cause for growth and of the increase of wealth due to the blessing of Allāh *ta`ālā* for the donors wealth. The Prophet (p.b.u.h.) stated in his *ḥadīth*: “The charity does not decrease one’s wealth...”⁴

2) Or because *zakāt* is paid on goods which are a matter for growth.

3) Or because the Hereafter reward would be multiplied. The Qur’ān states: “Allāh deprives usurious gains of all blessing, whereas He blesses charitable deeds with manifold increase.”⁵, and the Prophet (p.b.u.h.) said: “Allāh receives charity by His right hand, and then He causes it to grow for each of

¹ M.L.`A, *al-Mu`jam al-Wasīṭ*, I:396.

² Al-Tawbah, IX:103.

³ Qal`ajī, *Mu`jam Lughat al-Fuqahā`*, p. 275.

⁴ Muslim, *Ṣaḥīḥ Muslim*, IV:2001. (no. 2588.)

⁵ Al-Baqarah, II:276.

you. Just as you raise a horse, colt, foal, or young weaned camel, so the morsel becomes as large as the Mount of Uḥud.”¹

b) purification;

This can be due to the following reasons:

- 1) because it purifies a person from miserliness,
- 2) because it purifies a person from sins.

Despite the fact that the link between the original and the new meaning still exists the word *zakāt* has become condensed and ambiguous due to the addition of the new meaning.

From numerous Qur’anic verses it may be concluded that Allāh *ta`ālā* has ordered the alms tax charity. That order, however, came in general terms.² The Qur’ān explained the groups of people to whom *zakāt* should be distributed³, and strongly warned those who do not pay *zakāt*⁴.

Despite the clear order and clear warning for *zakāt* in the Qur’ān the meaning still remained unclear and ambiguous. This resulted from the fact that the Qur’ān did not explain the details of *zakāt*. The Qur’ān did not tell us who should pay *zakāt*, the amount to be paid and the time for the payment. The ambiguity in these verses was removed by the Sunnah. The Prophet (p.b.u.h.) explained these questions in detail. Zuhri reported, on the authority of Sālim and his father, the following tradition: “The Messenger of Allāh, upon whom be peace, had the rules of *ṣadaqah* written down but could not send them to his

¹ Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, III:28 (no. 662).

² “...and give *zakāt* (obligatory charity)” (al-Baqarah, II:43.) “Eat of their fruit when they bring fruit, but pay the due thereof on the day of its harvest.” (al-An`ām, VI:141.)

³ “*Ṣadaqāt* are only for the *fuqarā`* (the poor who do not beg), and *masākīn* (the poor who beg), and those employed to collect the (funds); and for to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allāh’s Cause, and for the wayfarer; a duty imposed by Allāh. And Allāh is All-Knower, All-Wise.” (al-Tawbah, IX:60.)

⁴ “And those who hoard up (*yaknizūn*) gold and silver and spend it not in the way of Allāh, - announce unto them a painful torment.” (al-Tawbah, IX:34.) “And woe to *mushrikūn*. Those who give not the *zakāt* and they are unbelievers in the Hereafter.” (Fuṣṣilat, XL1:6-7.)

governors. Then, after his demise, Abū Bakr dispatched them and applied them, a practice which the caliph `Umar also followed and wanted others to follow, as indicated in his will.”¹ Many similar traditions are quoted from the Prophet (p.b.u.h.) in this matter² such as the following *ḥadīth* from `Alī who reported that the Prophet (p.b.u.h.) said: “There is nothing upon you in gold, until it reaches twenty *dīnārs*. Thus, if you have twenty *dīnārs* at the end of the year, then there is half a *dīnār* levied on (as *zakāt*). Any additional amount will be calculated in this manner. There is no *zakāt* on property until it has been owned for one year.”³ Shāfi`ī mentioned some of the *mujmal* verses commenting that they were clarified by the tongue of Allāh Apostle. These are relating to the required number of Prayers, their times and the modes of their performance; the amount of *zakāt* and the times of its payment; the performance of the major (*ḥajj*) and minor (*‘umrah*) pilgrimages and when these duties are required or not required.⁴

Therefore, the fact is that many verses related to the commandment of Allāh are *mujmal*. It includes verses about worship, dealings (business), crime, war and peace, international relations etc. If these verses were not explained by the Qur’ān itself they were explained by the Sunnah and none of them have been left unexplained.⁵ This is why the *mujtahid* needs necessarily to refer to the Sunnah while exercising *ijtihād*.⁶

2) The second category of *mujmal* is that which is caused by a competition of equal meanings (homonym) with lack of any external or textual evidence

¹ See: Sābiq, *Fiqh al-Sunnah*, the chapter about *zakāt al-ibil*.

² See chapters about *zakāt* in collections of Prophet’s tradition (the Sunnah).

³ Abū Dāwūd, *Sunan*, II:99-100 (no. 1572); Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, III:25-26 (no. 631).

⁴ See: Shāfi`ī, *al-Risālah*, p. 75.

⁵ If the explanation is fully detailed the text becomes an interpreted text (*mufassar*) which does not need any further clarification and therefore no need for *ijtihād*. But if the explanation is not sufficient the text becomes a problematic text (*mushkil*) and further research and *ijtihād* is needed.

⁶ See: Shāṭibī, *al-Muwāfaqāt*, III:218.

upon which the precedence could be given to one of them. This category does not appear to exist in authoritative texts anymore, because the Prophet (p.b.u.h.) is seen to have fulfilled his duty and explained whatever needed explanation.¹ The Qur'ān says: “And We have also sent down unto you (O Muḥammad) the reminder and the advice (the Qur'ān), that you may explain clearly to men what is sent down to them, and that they may give thought.”²

This category can appear in our speech when words which carry more than one meaning are used. Like the Arabic word *ṣārim* which means morning and evening, and like the word *nāhil* by which Arabs called a person sated with water and thirsty.³

Similarly if someone makes a will and that his/her property should be given to his/her “*mawālī*” such testament needs further explanation if he/she has two kinds of “*mawālī*”. If he/she dies before explaining whom he/she meant by his/her will, the will would be invalid at certain schools of law⁴ because *mawlā* (pl. *mawālī*) is homonym and includes both the freer (the master) and freed

¹ The concept of prophetic duty of explaining whatever needed explanation is reflected in the Islamic scholastic scrutiny of the Sunnah. This led to the production of a large legacy of traditions of which the accuracy of both the contents and narrators of the *ḥadīth* is ascertained. Despite this, the fact is that all the Sunnah did not reach every scholar. Consequently, this kind of *mujmal* could exist in relation to those who did not have access to some of the Prophet's traditions. This can be called temporary *mujmal*.

Someone can argue that the explanation sometimes is not sufficient, so further scrutiny and *ijtihād* is needed (like in case of *mushkil*). Despite that fact the statement that the Sunnah has explained what needed an explanation remains valid. Even when the explanation is not sufficient the homonym is not left in position where *mujtahid* is unable to give preference to one of its meanings.

² Al-Naḥl, XVI:44.

³ See: Fayrūzabādī, *al-Qāmūṣ al-Muḥīṭ*, IV:139; Bukhārī, *Kaṣḥf al-Asrār*, I:43.

⁴ This opinion is narrated by Shaybānī from Abū Ḥanīfah (*ẓāhir al-riwāyah*). (See: Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:159.) It is invalid because in Ḥanafī *madhhab* homonym cannot mean all its meanings at one time, neither in a real nor in a metaphoric sense. (See: Bukhārī, *Kaṣḥf al-Asrār*, I:40; Marghīnānī, *al-Hidāyah*, IV:251.) Our example is applicable only with *ẓāhir al-riwāyah*.

(his/her freed slave). The will became invalid because the beneficiary is unknown and the implementation of the general meaning of the expression is impossible while none of the meanings has precedence over the others.

3) Third category of *mujmal* is that one caused by the oddity of the word itself which is extremely unfamiliar and as such inherently vague.¹

a) The Qur'ān states: "Truly man was created, very impatient (*halū'an*), irritable (discontented) when evil touches him and niggardly when good touches him."² The word "*halū`*" means greediness and stinginess or anxiety and impatience. Therefore, the usage of this word in that place is strange and odd and its meaning could not be comprehended without an explanation. Because of that the Qur'ān itself provided the explanation: "irritable (discontented) when evil touches him and niggardly when good touches him." Therefore, "*halū`*" is a person who shows extreme impatience and anxiety when something bad happens to him/her, and shows extreme miserliness when he/she receives something good. Aḥmad b. Yaḥya was asked what is "*hala`*" and he answered: "It is explained by Allāh and no explanation can be clearer than that. It is a human being who when evil touches him/her he/she becomes frightened, and when he/she gains something good he/she becomes miser and tries to keep everything for himself/herself."³

The value of *mujmal*

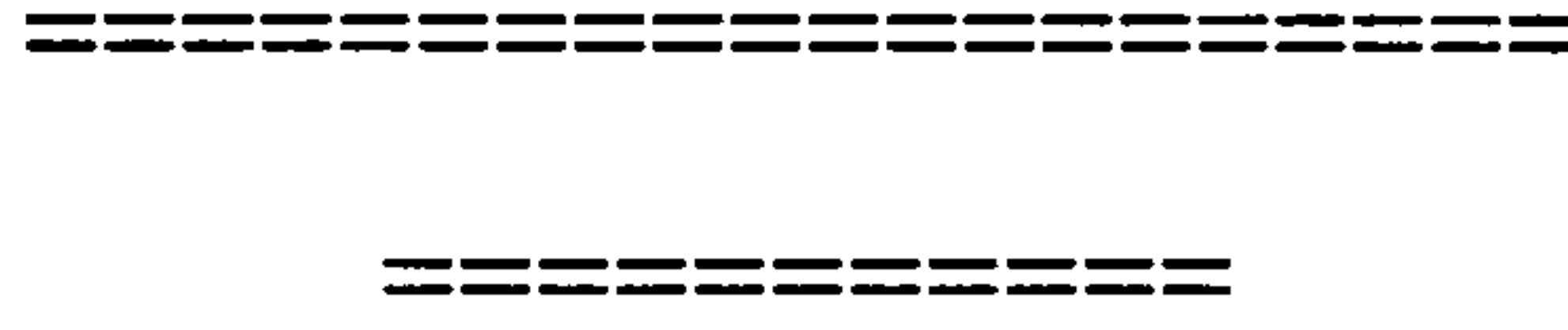
The Ḥanafī scholars consider *mujmal* to mean that which cannot be applicable unless explained by the *mujmil* by the one who uttered it, the originator. They say, as well, that the intended meaning by the Lawgiver is a truth even if we do

¹ The ambiguous mood (*ṣiġḥah mujmalah*) becomes *mufassar* when followed by sufficient and certain explanation from the Lawgiver which removes ambiguity from that mood and close any possibility of *ta'wīl*. The Lawgiver in Islam is Allāh *ta'ālā* and His Messenger (p.b.u.h.) who according to the Qur'ān, does not speak from himself but transmits whatever Allāh *ta'ālā* tells him.

² Al-Ma'ārij, LXX:19-21.

³ Bukhārī, *Kashf al-Asrār*, I:50; Ibn Kathīr, *Tafsīr al-Qur'ān al-'Aẓīm*, IV:542.

not know it.¹ Muslims are required to search for the explanation from the relevant sources.



¹ Sarakhsī, *Uṣūl al-Sarakhsī*, I:168; Nasafī, *Kaṣḥf al-Asrār*, I:219.

Al-Mutashābih (the Intricate)

The linguistic definition of *mutashābih*

MUTASHĀBIH (A.) similar, alike, akin, analogous, parallel, comparable, identical, intricate. *Mutashābihāt* in the Qur'ān means verses that are ambiguous; i.e. susceptible of different interpretations: or verses unintelligible; such as the commencements (of many) of the chapters.¹

The technical definition of *mutashābih*

The most ambiguous category of *mubham* in Ḥanafī *madhhab* is *mutashābih*. Sarakhsī defines *mutashābih* in the following terms: “It is a name for (an expression) for which hope is lost to understand its meaning.” (*Huwa ism^{un} lima inqata`a rajā' ma`rifat al-murād minh liman ishtabaha fih `alayh.*)² Bazdawī³, Nasafī⁴ and other Ḥanafī scholars⁵ provided identical or similar definitions to that of Sarakhsī.

From their definitions we can understand that *mutashābih* in their view is an expression which does not disclose its meaning on its own, and there is no textual or external evidence which can help to disclose it. That meaning remains a total mystery for us. It is seen to be exclusively retained by the Lawgiver and nobody would know it.

¹ M.L.`A, *al-Mu`jam al-Wasīf*, I:471; Lane, *Arabic-English Lexicon*, II:1499-1501; Ba`labakī, *al-Mawrid*, p. 958; *Et*², I:275 and I:409.

² Sarakhsī, *Uṣūl al-Sarakhsī*, I:169.

³ Bukhārī, *Kashf al-Asrār*, I:55.

⁴ Nasafī, *Kashf al-Asrār*, I:221.

⁵ Bādshāh, *Taysīr al-Taḥrīr*, I:160.

Mutashābih and the science of *`ilm al-kalām*

Mutashābih in this sense does not exist in authoritative texts which are related to Islamic law¹. This is why any appropriate example of *mutashābih* could not be traced in various references of *uṣūl al-fiqh*. Although examples for *mutashābih* are cited², but they appear not related to *fiqh*. Instead we can place them in the field of *tawḥīd* and *`ilm al-kalām*. Some of the examples for *mutashābih* related to *`ilm al-kalām* are the individual (abbreviated) letters (*muqatta`āt*)³ that can be found at the beginning of some of the Qur'anic chapters, and some verses which refers to Allāh *ta`ālā* and ascribe to Him certain attributes⁴.

The notion that only Allāh knows the actual meaning of *mutashābih* is clearly highlighted in these two examples, because to say that those letters mean certain meaning is only a hypothesis which is not based on any reliable proof, as well as to say that “hand” metaphorically means power, and “eyes” means supervision is no more than an assumption which needs a proof.

¹ Sha`bān stated: “Investigation and scrutiny leads us to believe that *mutashābih* in this sense does not exist in both the Qur`ān and the Sunnah that explain practical legal injunctions.” (Sha`bān, *Uṣūl al-Fiqh al-Islāmī*, p. 297.) This opinion is widespread amongst *uṣūl al-fiqh* previous and contemporary scholars.

² The exaggeration in this case is obvious. The Ḥanafī scholars probably mentioned *mutashābih* only in order to make full contrast between kinds of *waḍiḥ* and kinds of *mubham*. Another possible reason for mentioning and exaggeration in discussion about this question lies in the fact that *mutashābih* verses deal with *tawḥīd* and *`ilm al-kalām* about which many keen discussions are held amongst scholars of their time and before.

³ Like *alif-lām-mīm*, *ṭā-hā*, *yā-sīn*, and many others occur on twenty nine occasions in the Qur`ān.

⁴ “The Hand of Allāh is over their hands.” (al-Fath, XLVIII:10.) “And construct the ship under Our Eyes and with Our Inspiration.” (Hūd, XI:37) “There is no secret counsel of three, but He is their fourth (with His Knowledge, while He Himself is over the Throne, over the seventh heaven), - nor of five but He is their sixth (with His Knowledge), - not of less than that or more, but He is with them (with His Knowledge) wheresoever they may be...” (al-Mujādilah, LVIII:7.)

The individual letters in the Qur'ān do not express their meaning on their own and their mystery has not been unlocked to us by Allāh *ta`ālā* and it is only He who knows their actual meaning. Therefore He knows best what He meant. Abū Bakr al-Ṣiddīq said: “Allāh *ta`ālā* has placed His mystery on every book, and His mystery in the Qur'ān are these letters.”¹

Similarly the case of verses which apparently indicate similarity between Allāh *ta`ālā* and His creatures. These are what appears to be *anthropomorphic verses* whose picturesque style, if taken absolutely literally, would seem to ascribe human attributes or acts to Allāh *ta`ālā*. Consequently, it is imperative that the apparent literal meaning should not be taken as a real meaning of the verses since the Qur'ān clearly denies it: “There is nothing like unto Him, and He is the All-Hearer, the All-Seer.”² At the same time He did not explain what He meant by “His arm”, “His face” etc. Therefore, their precise meaning cannot be known.

The opinion of the first generations of Muslims (*salaf*) is that Allāh *ta`ālā* alone knows the meaning of these verses and the knowledge of its real meaning is not attainable in any way. They maintain that the Muslims should accept that they cannot understand their meanings within their own perception of words. Therefore, they should not try to interpret it in any sense.

On the other hand the latter generations (*khalaf*) are inclined to the explanation and interpretation not according to the obvious and apparent meaning of *mutashābih* (*ta`wīl*). They say that the apparent meaning of these verses is impossible and inconceivable and everything like that will have to be interpreted not according to its obvious import. Consequently, they draw an appropriate metaphorical meaning in each case and interpret, for example, “the

¹ Nasafī, *Kashf al-Asrār*, I:223. Some scholars, however, tried to explain meanings of these letters, but their explanation seems to be unconvincing because they are based on mere hypothesis, not on reliable proofs.

² Al-Shūrā, XLII:11.

hand” as His might, “the eye” as His comprehension and protection etc.¹ Such interpretations are rejected by those who follow *salaf* and they regard them as neither satisfactory, nor certain, nor safe, and nor essential.

The cause for this disparity is their disagreement regarding the verse which speaks about *mutashābihāt* verses: “It is He who has sent down to you the Book. In it are verses that are entirely clear (*muḥkamāt*), they are the foundations of the Book; and others not entirely clear (*mutashābihāt*). So as for those in whose hearts there is a deviation (from the truth) they follow that which is not entirely clear thereof, seeking *fitnah* and seeking for its hidden meanings, but none knows its hidden meanings save Allāh. And those who are firmly grounded in knowledge say: “We believe in it; the whole of it (clear and unclear verses) are from our Lord.”² In this verse there are two ways of punctuating it, whereby a full stop can be placed after the word “Allāh”, or after the word “knowledge”.

Those who accept the first possibility maintained that the interpretation of unclear verses (*mutashābihāt*) is known to Allāh only, and they place the full stop after the word “Allāh”, whereas those who place the full stop after the word “knowledge”³ maintained that those who are firmly grounded in knowledge know the meaning of unclear verses (*mutashābihāt*) too.

The preferable opinion is that unclear verses (*mutashābihāt*) are known by Allāh only⁴, and the full stop would be correctly placed after the word “Allāh”.

¹ The disagreement between *salaf* and *khalaf* is discussed in great detail with references of *uṣūl al-fiqh* (chapter about *mubham*), *tawḥīd*, *ilm al-kalām* (when attributes of Allāh are discussed) and *tafsīr* (specially when they comment the seventh verse of the chapter Āl-`Imrān).

² Āl-`Imrān, III:7.

³ According to them the verse is punctuated as follows “...but none knows its hidden meanings save Allāh and those who are firmly grounded in knowledge.”

⁴ Some scholars, like Kamālī, gave preference to the opinion that *mutashābih* is what is open to conjecture and doubt. This opinion would lead to great confusion, because all categories of *mubham* (*khafī*, *mushkil*, *mujmal*) are open to doubt. (See: Kamālī, *Principles of Islamic Jurisprudence*, p. 103.)

The efforts made by some interpreters in order to explain these (*mutashābihāt*) are little more than guesses which do not rest on any scientific proof since their meanings are known by the Originator of the text¹.

According to Islamic law, it is not allowed for any person to interpret the Qur'ān on the basis on his/her own opinion which does not rest on a reliable proof. The Prophet (p.b.u.h.) said: “He who speaks about the Qur'ān by his own opinion, he is wrong even if he says the right.”²

Qur'anic interpretation methodology of the first generations (*Ṣaḥābah* and *Tābi'ūn*) and their followers was always accompanied by a proof, while those who rejected the methodology of the first generation followed their desires by interpreting the Qur'ān by their own opinion without producing the necessary evidence. The Qur'ān confirms that by stating: “... So as for those in whose hearts there is a deviation (from the truth) they follow that which is not entirely clear thereof, seeking *fitnah* and seeking for its hidden meanings...”. Afterwards it said “And those who are firmly grounded in knowledge say: “We believe in it; the whole of it (clear and unclear Verses) are from our Lord.”

Examples of *mutashābih*

Scholars of *uṣūl al-fiqh* mentioned many examples of *mutashābih*. However, these examples are not related to *fiqh*. Due to the fact that there is not any *mutashābih* authoritative text, we can conclude that *mutashābih* is not matter for the science of *uṣūl al-fiqh*, but rather for other sciences.

The value of *mutashābih*

The scholars of *uṣūl al-fiqh* mentioned a disagreement regarding the possibility of understanding unclear verses (*mutashābihāt*). However, due to the fact that they did not mention any example related to *fiqh*, but related to other disciplines I think that *mutashābih* is not a question for scholars of *uṣūl al-fiqh* but for scholars of *tawḥīd* and *ilm al-kalām*.

¹ See: Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, I:460-464.

² Tirmidhī, *al-Jāmi' al-Ṣaḥīḥ*, V:183. (no. 2950); Abū Dāwūd, *Sunan*, III:320. (no. 3652).

Comparison between categories of *mubham*

Mutashābih is most ambiguous. Its meaning could not be known in this world and Muslims are not obliged to search for it because Allāh *ta`ālā* preserved the knowledge of it for Himself. Muslims are obliged only to believe that His words are the truth.

Mujmal could be understood if an explanation is provided by the speaker (*mujmil*). Therefore, Muslims are obliged to search for such an explanation.

Mushkil could be understood by research, reason and scrutiny.

Khafī could be understood by research only.

=====

=====

The Shāfi`ī approach to unclear (*mubham*) words

Introduction

As we have seen *mubham* in Ḥanafī *madhhab* is divided into four categories. Such division does not exist amongst Shāfi`ī scholars (Mutakallimūn) who divided *mubham* into two: *mujmal* and *mutashābih*. These two, in Shāfi`ī's approach, include all categories of *mubham* previously mentioned in Ḥanafī *madhhab*. Furthermore, they disagree about *mutashābih* among themselves. Many of them see it as a category of *mujmal*, while others see it as a part of it. These different opinions regarding *mubham* made Shāfi`ī's approach to this question less clear than that in Ḥanafī *madhhab*. First of all we will have to explore *mujmal* from the perspective of Shāfi`ī's point of view.

Chapter 14

Al-Mujmal (the Synopsized)

The linguistic definition of *mujmal*

MUJMAL (A.) summed up, summarised, outlined, abridged, condensed, epitomised, synopsized, concise, brief, short; a word, a phrase, or a speech which includes or implies a number of unexplained things which are confused and require further explanation.¹

The technical definition of *mujmal*

Scholars in the Shāfi`ī *madhhab* (Mutakallimūn) suggested various definitions for *mujmal*.²

¹ M.L.`A, *Al-Mu`jam al-Wasīf*, I:136; Lane, *Arabic-English Lexicon*, I:461; Ba`labakī, *al-Mawrid*, p. 981.

² See: Shawkānī, *Irshād al-Fuḥūl*, p. 147.

Shīrāzī defined it in the following terms: “It is (an expression) whose meaning can not be understood from its words but needs to be explained by another (expression).” (*Huwa mā lā yu`qal ma`nāh min lafẓih wa yaftaqū fī ma`rifat al-murād ilā għayrih.*)¹

Għazālī provided the following definition for *mujmal*: “It is an expression which alternates between two or more meanings while non of them has precedence over others.” (*Huwa al-lafẓ alladhī yataraddad bayna ma`nayayn fa s̄a`id^{an} min għayr tarjīh.*)²

Rāzī divided *mujmal* into three categories. The first category corresponded to that of Għazālī. His definition is not focused on the subject but rather he defined its character and the methodology for understanding it by stating the following: “*Mujmal* occurs when an expression accepts many possible meanings and it is not possible to prefer one meaning to another.” (*Huwa an yakūna al-lafẓ muḥtami^{an} li ma`ānī kathīrat^{an} fa lam yakun ḥamluh `alā ba`dihā awlā min al-bāqī.*)³

Aṣfahānī provided the following definition: “The expression which provides equal value for the various meanings that the expression might imply.” (*Huwa al-lafẓ alladhī yakūn mutasawīyan bi al-nisbat ilā al-ma`ānī al-muta`adidah.*) He also mentioned another definition which is shorter than the previous one and similar to that of Ibn Ḥājib⁴: “It is that whose indication is not clear.” (*Huwa ma lam tattḍiḥ dalalatuh.*)⁵

¹ Shīrāzī, *al-Lumma`*, p. 49.

² Għazālī, *al-Mustaṣfā*, p. 187. Similar definition was provided by Qarrāfī in his book *Sharḥ lanqīh al-Fuṣūl*, pp. 275-277. He did not mention last part (*min għayr tarjīh*) “...while non of them has preference over others.”

³ Rāzī, *al-Maḥṣūl*, I:3:233-234. Āmidī in his book *al-Iḥkām fī Uṣūl al-Aḥkām*, III:10 mentioned many definitions. He preferred the definition which has the same meaning like this of Rāzī.

⁴ Ibn al-Ḥājib, *Mukhtaṣar al Muntahā ma`a Sharḥ al-`Aḍud*, II:158.

⁵ Aṣfahānī, *Sharḥ al-Minhāj*, I:436-437.

All these definitions agree that *mujmal* is an expression which does not show its meaning clearly. Therefore, a *mujmal* expression provides a meaning but that meaning is not entirely clear and it needs something else to explain and clarify its meaning.

Existence of *mujmal* in authoritative texts ¹

In discussing the disagreement among Shāfi`ī's regarding this question Shawkānī stated that the majority agree that *mujmal* can be found in both the Qur`ān and the Sunnah. The only exception is Dāwūd al-Zāhirī.

However, those who agree about its presence in authoritative texts disagree whether it contemporary exists.

Those who maintain that “no ambiguous text has been left by the Prophet (p.b.u.h.)” see no *mujmal* in the Qur`ān.

Juwaynī contrasts the previous view by arguing that *mujmal* does not exist anymore in texts related to commandments and obligations. To him a *mujmal* command would be an order which would be impossible to fulfil (*amr bi mā lā yuṭāq*)² and that is forbidden in Islamic law. In other authoritative texts (which are not related to commands) *mujmal* can still be found.

Māwardī states that an order can be made by a *mujmal* expression even before it is explained. He cited as an example the incident that the Prophet (p.b.u.h.) has sent his companion Mu`ādh b. Jabal to Yemen telling him to instruct the people of Yemen that Allāh has ordered alms (*zakāt*) which have to be collected from their wealthy people and distributed amongst their poor. This happened before alms (*zakāt*) was detailed and can be attributed to two reasons:

- a) To prepare people to accept it when it comes in detail.
- b) Allāh *ta`ālā* made some injunctions clear and others hidden so the people can be rewarded for their efforts in discovering the hidden meanings.

¹ Shawkānī, *Irshād al-Fuḥūl*, p. 148.

² Because the order is unknown.

From the fact that most Shāfi`ī scholars provide examples of *mujmal* it is obvious that they recognise it in their *madhhab*.

After analysis of their discussion one can but feel that most of them make no distinction between *mujmal* and *mutashābih*, or they mix them up.

Examples of *mujmal*

Shāfi`īs¹ maintain that *mujmal* can be in the form of both expressions and deeds². They mentioned many examples of *mujmal* and its causes. From the variety and multiplicity of their examples it appears that no scholar has collected all cases and examples in one document. It is also interesting to observe that those scholars disagree in many examples whether they are *mujmal* or not.³

1. Examples of *mujmal* in expressions⁴

a) When a homonym appears.

The homonym can bear different meanings⁵ (which sometimes can be entirely opposite) and wherever a homonym appears it causes an ambiguity and needs an additional meaning (in the form of internal or external evidences or an additional explanation) in order to be fully understood.

The word “`ayn” in Arabic means gold, spy etc. When we have that word in an authoritative text a textual or external evidence is needed.

¹ Shīrāzī, *al-Lumma`*, pp. 49-52; Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:9-24; Aṣfahānī, *Sharḥ al-Minhāj*, I:437-443.

² *Mujmal* in deeds can be found only in the Sunnah, while as an expression it can be found in both the Qur`ān and the Sunnah.

³ See: Baṣrī, *al-Mu`tamad*, I:317, I:324-337; Shīrāzī, *al-Lumma`*, pp. 50-52; Ghazālī, *al-Mustaṣfā*, pp. 187-191; Rāzī, *al-Maḥṣūl*, I:3:241-258; Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:12-24; Qarrāfī, *Sharḥ Tanqīḥ al-Fuṣūl*, pp. 275-277; Aṣfahānī, *Sharḥ al-Minhāj*, I:440-443; Shawkānī, *Irshād al-Fuḥūl*, pp. 149-151.

⁴ These examples can be found in both the Qur`ān and the Sunnah.

⁵ This can be applicable only with the opinion which maintain that homonym cannot include all its meanings.

The homonym can have two opposite meanings like the word *qur'* in the following verse: "And divorced women shall wait for three menstrual periods (*thalāthata qurū'*)..."¹ The word *qur'* pl. *qurū'* means both *ḥayḍ* (menstruation) and *ṭuhr* (purity). Therefore it is a *mujmal* and needs further explanation in order to be properly understood.

The homonym can be found in a constructed word too (*lafẓ murakkab*) such as in the following verse: "And if you divorce them before you have touched them, and you have appointed unto them the *mahr* then pay half of that, unless they agree to forego it, or he, in whose hands is marriage tie..."² The constructed word (*lafẓ murakkab*) "in whose hands is marriage tie" can mean either the husband and the *waliyy*. Therefore, in order to be understood this construction needs further explanation.

b) When a word does not have a specified personal meaning (*mutawāṭi'*). The Qur'ān states: "Eat of their fruit when they bring fruit, but pay the due thereof on the day of its harvest."³ The word "*ḥaqqah*" (the due thereof) does not have a specified meaning and needs further and additional explanation.

c) The Prophet (p.b.u.h.) said: "I have been ordered to fight against the people until they testify that there is no god but Allāh and offer Prayers perfectly and give *zakāt*, so if they perform all that than save their lives and properties except in the right cause."⁴

The words "people" (*nās*), and "the right cause" (*ḥaqq*) in this *ḥadīth* are unknown in both kind (*jins*) and amount (*qadr*). Therefore, it is *mujmal* and needs an additional explanation.

d) When a word (an expression) has a specific meaning that can be applicable to many examples.

When such a word is indefinite (non-specified), but only one of its meanings is intended by the originator, the meaning becomes *mujmal*. This can be

¹ Al-Baqarah, II:228.

² Al-Baqarah, II:237.

³ Al-An`ām, VI:141.

⁴ Muslim, *Ṣaḥīḥ Muslim*, I:51-52 (no. 22).

explained by the following example from the Qur'ān: “And (remember) when Moses said to his people: “Verily, Allāh commands you that you slaughter a cow.”¹ He ordered them to slaughter one non specified cow. Due to the fact that such expression can be ambiguous the Israelites claimed that they do not know which one has to be slaughtered and they asked Moses: “Call upon your Lord for us that He makes plain to us what it is!”²

e) When a word (an expression) has a specified meaning followed by an unknown (unanimous) exception that needs further clarification.

The Qur'ān states: “Lawful to you (for food) are all the beasts of cattle except that which will be announced to you.”³ “That which will be announced to you” was not clear when the verse was revealed, and the meaning of this verse remain sinopsized (*mujmal*) until the promised announcement was made.

f) When a word is given a new meaning (different from its original literal meaning)⁴ by the Lawgiver like the words: *ṣalāt*, *zakāt*, *ḥajj* etc.. Therefore, when these words appear in an authoritative text they will be treated as *mujmal* and need further explanation.

g) Sometimes *mujmal* is caused by different possibilities of punctuation.

The Qur'ān states: “... but none knows its hidden meanings save Allāh. And those who are firmly grounded in knowledge say: “We believe in it; the whole of it (clear and unclear verses) are from our Lord.”⁵

In this verse there are two ways of punctuating it whereby a full stop can be placed after the word “Allāh”, or after the word “knowledge”. The punctuation changes the meaning entirely. If the full stop is placed after the word “Allāh” the verse would mean that the interpretation of “unclear verses” (*mutashābihāt*) is known to Him only, whereas if the full stop is placed after the word

¹ Al-Baqarah, II:67.

² Al-Baqarah II:68.

³ Al-Mā'idah, V:1.

⁴ It is called *naql shar`ī*.

⁵ Āl-`Imrān, III:7.

“knowledge” the verse would mean that “those who are firmly grounded in knowledge” know the meaning of unclear verses (*mutashābihāt*) too.¹

2. Examples of *mujmal* amongst the Prophet’s deeds ²

a) When the Prophet’s (p.b.u.h.) deed could indicate two equal meanings like the narration that he combined two Prayers in a trip.³ This tradition is sinopsized (*mujmal*) because it is susceptible to more than one interpretation i.e. short and long trip. In this, and in similar situations, it is not allowed to choose one meaning while rejecting the other, without a proof.

b) When the Prophet (p.b.u.h.) passed his judgement on a case that can be applicable on either one or more situations.

It was transmitted in one *ḥadīth* that a person broke his fasting and the Prophet (p.b.u.h.) ordered him to offer a penance. This is *mujmal* because we do not know whether he broke his fasting by sexual relations, eating, or by something else. To apply one of the meanings without a proof would be incorrect.

The value of *mujmal*

Shīrāzī has been quoted as saying that *mujmal* can not be applicable unless explained, and it is not correct to use its apparent meaning as an argument. From this opinion and from the opinion of Māwardī⁴ we can conclude that the methodology of understanding *mujmal* should be based on careful thinking and scrutiny before embarking on its meaning. The selected meaning should be supported by an additional explanation, customary, or any other internal or external evidence. Therefore, a compulsory effort has to be made in order to discover the intended meaning. It has to continue until the target is reached.

=====

¹ Therefore the verse will be punctuated as follows: “...but none knows its hidden meanings save Allāh and those who are firmly grounded in knowledge.”

² This *mujmal* can be found in the Sunnah only.

³ Muslim, *Ṣaḥīḥ Muslim*, I:488-489 (no. 703).

⁴ See: *Shawkānī* in *Irshād al-Fuḥūl*, p. 148.

Chapter 15

Al-Mutashābih (the Similar)

The linguistic definition of *mutashābih*

MUTASHĀBIH (A.) similar, alike, akin, analogous, parallel, comparable, identical. *Mutashābihāt* in the Qur'ān means verses that are equivocal, or ambiguous; i.e. susceptible of different interpretations: or verses unintelligible; such as the commencements (of many) of the chapters.¹

The technical definition of *mutashābih*

While exploring *mujmal* I had the impression that most Shāfi'īs (Mutakallimūn) do not differentiate between *mujmal* and *mutashābih*. This conclusion was also made by some contemporary scholars who maintained that an expression, with regard to clarity and ambiguity, according to non Ḥanafī's², is either *mujmal* or *mutashābih*. It seems that both of them include four categories in Ḥanafī *madhhab*.³

Shīrāzī observed that Shāfi'īs gave four special features to *mutashābih*:

- 1) “*Mutashābih* and *mujmal* are one.”, i.e. that *mutashābih* has the same definition as *mujmal*. This effectively makes the two categories one.
- 2) “*Mutashābih* is that which only Allāh possess its meaning and has not been disclosed to any of His creatures.”
- 3) “*Mutashābih* includes the narration's, maxims, parables, wisdom, lawful and unlawful.”

¹ M.L.`A, *al-Mu`jam al-Wasīf*, I:471; Lane, *Arabic-English Lexicon*, II:1499-1501; Ba`labakī, *al-Mawrid*, p. 958; *EL*², I:275 and I:409.

² In the science of *uṣūl al-fiqh*, generally speaking, there are only two *madhabs* Ḥanafī and Shāfi'ī. The scholars frequently refer to Shāfi'ī *madhhab* (which in the science of *uṣūl al-fiqh* includes Shāfi'ī, Mālikī, and Ḥanbalī *madhāhib*, except Ḥanafīs) as Mutakallimūn.

³ See for example: Sha`bān, *Uṣūl al-Fiqh al-Islāmī*, p. 298.

4) “*Mutashābih* includes individual letters at the beginning of some chapters.”¹

Shīrāzī agreed that both *mutashābih* and *mujmal* are one clarifying his opinion by the following statement: “The correct is the first one because the essence of *mutashābih* is that which has speculative and mixed meanings (*ma ishtabaha ma'nāh*).”²

Ibn Ḥazm does not recognise the existence of *mutashābih* in the commandments (*awāmir* and *nawāhī*) at all. According to his opinion, he/she who claims such a claim is as ignorant as one who does not possess the knowledge. According to him the only category for ambiguous (*mubham*) is *mujmal*.³ *Mutashābih* can be found in verses which are not related to commandments such as Allāh’s swear by some of His creatures and individual letters found at the beginning of some chapters.⁴

Examples of *mutashābih*

Due to the fact that the majority of Shāfi`īs do not differentiate between *mujmal* and *mutashābih* the latter one could be presented by the same examples related to *mujmal*.

According to the opinion of Ibn Ḥazm there are no examples of *mutashābih* because it does not exist in the commandments.

The value of *mutashābih*

As we have seen, the majority of Shāfi`īs do not separate between *mujmal* and *mutashābih*. Therefore, *mutashābih* in Shāfi`ī *madhhab* would take the same ruling as that of *mujmal*.

¹ Although the last two appear to be examples Shīrāzī still includes them among the definitions (*ta`rifāt*).

² Shīrāzī, *al-Lumma`*, p. 52.

³ Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, I:42.

⁴ Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, I:42, IV:123.

Accordingly, when encountering *mutashābih* in a text it becomes an obligation (*wājib*) upon Islamic scholars to research the issue thoroughly by using any possible evidences which lead to intended meanings. When the intended meaning becomes identifiable then the meaning has to be implemented. Any meaning of *mutashābih* can not be applicable unless one meaning receives precedence over others due to a proof (additional explanation, customary, or any other internal or external evidence) which supports that preferred meaning. According to the opinion of Ibn Ḥazm, however, there is no *mutashābih* related to Islamic law (*fiqh*) and therefore it is not a matter for the science of *uṣūl al-fiqh*, but rather for other sciences such as *tawḥīd* and *ʿilm al-kalām*.

Conclusion

Mujmal in *Shāfiʿī madhhab* includes all categories of *mubham* in Ḥanafī *madhhab* except *mutashābih* which carries a wider meaning in *Shāfiʿī madhhab*. Due to that fact every *mujmal* in the Ḥanafī *madhhab* is *mujmal* in *Shāfiʿī madhhab* and not the opposite. At the same time we have to bear in mind that the majority of *Shāfiʿīs* do not differentiate between *mujmal* and *mutashābih* or that they regard *mujmal* as a category of *mutashābih*.

Mutashābih in Ḥanafī *madhhab* does not exist in the commandments. This is the opinion of Ibn Ḥazm too.

This disagreement in terminology between Ḥanafī and *Shāfiʿī madhhab* lead to the fact that explanations of *mujmal* in *Shāfiʿī madhhab* are not restricted to the Originator (*Mujmil*) but can be made by textual or external evidences and legal reasoning (*ijtihād*). In fact one category of *mujmal*, as in the Ḥanafī *madhhab*, can be explained by the originator only.

Most scholars consider *mutashābih* and *mujmal* as one. Those who make a distinction between the two maintain that *mutashābih* does not exist in the commandments and therefore is not related to *uṣūl al-fiqh*.

All scholars agree that every ambiguous authoritative text which contains commandments is explained afterwards either by the Qurʾān or by the Sunnah.

The Ḥanafī approach to *mubham* seems to be more accurate and more precise if we exclude their exaggeration in the case of *mutashābih*.

The less obscure category of *mubham* is *khafī*. *Khafī* has the apparent meaning disrupted by an external matter which could be eliminated easily by exercising *ijtihād*. Then comes *mushkil* which is a self obscured expression and its intended meaning can not be identified without an external evidence, research and proper *ijtihād*. Then comes *mujmal* which is an expression hidden in itself and its intended meaning would not be understandable without an explanation from the originator. These three categories comprise all obscure authoritative texts related to *fiqh*. The Ḥanafī division helps in accurate verification of obscure authoritative texts that lead to a better understanding and precision in deriving legal injunctions from texts. In this explanation anything that can help in removing the obscurity of the text should be taken into account in accordance to the level of obscurity and ambiguity.

This Ḥanafī approach shows us which texts are obscure, the level of obscurity and which way should be followed in order to interpret it and to remove that obscurity to reach the intended meaning and derive legal rulings which the authoritative texts contain.

=====
=====

Part III

Generality and Specific Quality of Words

Part III: Generality and Specific Quality of Words

Introduction

It seems that words in all languages carry general meanings as well as specific. The general meaning, however, seems to be more frequent because words tend to be basically general. These words remain generic in their effect until they are specified or restricted. The Arabic language, the language of the authoritative texts of Islamic law, is not an exception. Moreover, it seems that the majority of Arabic words tend to be general in their original essence i.e. to include in its meaning everything to which it is applicable. It is specially reflected in the Qur'ān and the Sunnah¹. The expressions of these two sources have been accepted as abridged and condensed. Sometimes, however, certain subjects are excluded from the general meaning of a particular word making its meaning to be specific to some of its subjects. Meanwhile, some indications can appear by suggestions that the general meaning is not intended by the Lawgiver. All these facts may stand as an obstacle between a *mujtahid* and the understanding of authoritative legal texts. The generation of the Prophet's Companions (*Ṣaḥābah*) were able to differentiate, without difficulty, between the general and the specific. Moreover, they were able to consult and ask the Prophet (p.b.u.h.) if further explanation was needed. The next generation of Muslims (*Tābi'ūn*), amongst whom were many of those whose mother tongue was not Arabic, had not the same ability and opportunity to understand the authoritative texts and to differentiate between the general and the specific. This led to some differences amongst them in their understanding of the texts which implied general rules and meanings. The understanding of the texts and deduction of the legal rulings from them required an accurate knowledge about the general (*ʿāmm*) and its variant forms, shapes, kinds, words, indications on rulings, and degree of its inclusion to subjects to which it is linguistically

¹ There is unanimous agreement between the Companions of the Prophet (p.b.u.h.) that the words of the Qur'ān and the Sunnah are generic in their effect unless a reliable proof warrants a departure from their general indication to specific ones. (See: Badrān, *Uṣūl al-Fiqh al-Islāmī*, p. 375.)

applicable. The legal reasoning in Islamic law seems to be impossible without the ability to differentiate between the general (*`āmm*) and the specific (*khāṣṣ*) meaning. This need prompted Islamic scholars to identify certain linguistic patterns of words which would help Muslims both the ordinary persons and *mujtahids* to differentiate between the general and specific meanings in their attempt to understand legal texts and deduce from them legal rulings. Although the distinction between general and specific meanings seems to be basically a conceptual, which does not necessarily appear in the grammatical forms of words, Islamic scholars have identified linguistic patterns of words which help us to differentiate the general (*`āmm*) from the specific (*khāṣṣ*)¹. In determining the scope of the general provision linguistic rules and usage of the words in Arabic are taken into consideration as well as the usage of the people². If a conflict occurs between linguistic meaning and the usage of the people, the priority is given to the latter as will be seen in the examples which will follow shortly. Next we are going to explore their considerations and contemplation about the general meaning (*`āmm*), then the specific (*khāṣṣ*) and its effect on *`āmm* in case of conflict.

=====

=====

¹ It appears to me that Islamic scholars have very successfully developed the methodology in making the distinction between general and specific meanings. It becomes more significant if we have in mind that they developed it one thousand years ago.

² It may be that words are used in the generic form, but the intention of the Lawgiver is not generic and might be even specific. Accordingly, the scope of the general provision is determined with reference to the intention of the Lawgiver and the context of the provision. However, unless a proof suggests its specification or restriction it would be regarded as the general.

Chapter 1

Al-`Āmm (the General Meaning)

The linguistic definition of `āmm

`ĀMM (A.) general, common, universal.¹

The technical definition of `āmm

Bayḍāwī provided for `āmm the following definition: “A word that includes [in its meaning] everything that it is applicable to in one setting.” (*Lafẓ yastaghriq jamī` mā yaṣluḥ lah bi waḍ`in wāḥid`in`.*)²

A similar definition was given by Rāzī: “The word that includes all what it may be applicable to in one setting.” (*al-Lafẓ al-mustaghriq li jamī` mā yaṣluḥ lah bi ḥasab waḍ`in wāḥid`in`.*)³

According to Anṣārī `āmm is: “A word that includes what it is applicable to without any specification.” (*Lafẓ` yastaghriq al-ṣāliḥ lah bi lā ḥaṣr`in`.*)⁴

From these definitions we can formulate the following definition for `āmm: “The word that is coined to indicate a single meaning⁵ which includes everything⁶ to which it is applicable to, by way of comprehension and inclusion without any specification or limitation.” Therefore, it is basically a word that has a single meaning which may be applied to an unlimited number of subjects without any specification like the word “the thief” (*al-sāriq*) in the following verse: “Cut off the hand of the thief, male or female...”⁷. The word

¹ M.L.`A, *al-Mu`jam al-Wasīf*, II:629; *EF*, IV:1098; Ba`labakī, *al-Mawrid*, p. 745.

² Aṣfahānī, *Sharḥ al-Minhāj*, I:351.

³ Rāzī, *al-Maḥṣūl*, I:2:513.

⁴ Anṣārī, *Ghāyat al-Wuṣūl*, p. 69.

⁵ This condition differentiates the `āmm from the homonym (*mushtarak*) which has more than one meaning.

⁶ This condition which means that `āmm applies to an unlimited number of subjects differentiates it from the specific (*khāṣṣ*) which applies to the specific number of subjects.

⁷ Al-Mā`idah, V:38.

“thief” is coined for one meaning related to theft and it includes everyone to whom the meaning of theft is applicable without any specification or limitation.

The types of *`āmm*¹

The Islamic scholars came to the conclusion that the general meaning may be divided into three types:

1) What is certainly known that the general meaning is aimed to by the Lawgiver. That is the general meaning which is accompanied by an evidence that excludes any possibility of specification of its meaning. This *`āmm* is absolutely general exemplified by the following verse: "And there is not a living creature in the earth but the sustenance thereof depends on Allāh."² In this verse the prefix "there is not a living creature" (*mā min dābbatⁱⁿ³*) is an expression which, according to Islamic teaching, confirms the object of divine law which is unchangeable and therefore it does not expect any specification at any time⁴. Accordingly, *mā min dābbatⁱⁿ* apply, without any exception, to all that is applicable to and no particular is excluded.

2) The general meaning by which a specified indication is undoubtedly aimed to. This type is the one which is accompanied by an evidence (from the Qur'ān, or the Sunnah, or mind) that the general meaning is not intended by the Lawgiver. This general meaning is meant to imply the specific and specified meaning and to include some of its subjects to whom it could be applied. The following verses are clear examples of such indications: "It is not

¹ See: Shāfi`ī, *Risālah*, pp. 96-108; Shawkānī, *Irshād al-Fuḥūl*, pp. 140-141; Khallāf, *Uṣūl al-Fiqh*, p. 219; Bardīsī, *Uṣūl al-Fiqh*, p. 404.

² Hūd, XI:6.

³ *Dābbah* is incorrectly rendered here, by some, as beast. (See Pickhtol's translation of this verse). It means, however, any moving living creature (*mā yadubbu `alā wajh al-arḍ*) including man.

⁴ Shāfi`ī commented this verse by citation from the Qur'ān (XI:8): "Everything, including the heaven and the earth, things having living spirit, trees and the like - Allāh has created them all. And Allāh is responsible for the sustenance of every living creature and He knows its lodging place and its repository." (Shāfi`ī, *Risālah*, p. 96.)

for the townsfolk of Madīnah and for those around them of the wandering Arabs to stay behind the messenger of Allāh and prefer their lives to his life."¹ The indications provided by this verse imply that all the people of the town of Madīnah and all the Bedouins are included in its meaning. This verse, however, did not mean old, disabled, children and lunatics and anyone who is not capable to bear the hardship. It undoubtedly meant the people who are able to bare the burden of fighting, because by reason these categories, which cannot bare it, are excluded. In another verse is further clear example for the general declaration intended to be all particular: "Those unto whom the people said, "Verily, the people have gathered against you, therefore fear from them." But it increased them in Faith, and they said: "Allāh is Sufficient for us, and He is the Best Disposer, of affairs."² The term "the people" (*al-nās*) may be applied in Arabic language to three³ or more and may include all the people on the earth. When we consider this verse, however, we will conclude those people who gathered are different from those who gathered against, and those who informed are different from both. Moreover, from history we know that the people who remained in towns are greater in number than those who were gathered and gathered against and from those who brought the information about these gatherings. Therefore, the general meaning of the term "the people" is intended to be particular because we certainly know that the whole people did not gather against them, nor inform them, nor were they the whole people against whom the others have gathered.

3) The unlimited general meaning is that one which is not accompanied by any evidence that denies the possibility of specification of general indication⁴. This indication is provided by texts that are generally unlimited and not

¹ Al-Tawbah, IX:120.

² Āl-`Imrān, III:173.

³ The preponderant opinion in *uṣūl al-fiqh* is that the core may apply to two persons and more.

⁴ The distinction between the second type and the third is in the fact that the second is accompanied by an evidence which suggests that the specified meaning is intended, while the third is not accompanied by any evidence, not that which suggests either the general or specified meaning. This is very clear from the examples provided for these two types.

accompanied by linguistic, rational or customary evidence. This kind apparently provides the general indication and would continue to do so until a reliable proof suggests otherwise as in the following verse: "Women who are divorced shall wait, keeping themselves apart, three (monthly) courses."¹ This verse is apparently generic in its effect and includes all divorced women without specification. It would be considered as generic until a reliable proof specifies it.

Implementation of the *`āmm*²

Islamic scholars can be divided into three groups according to their view on this matter:³

1) The majority of Islamic scholars maintain that the apparent meaning of "the general" should be applied. It means that it would include everything to which it is applicable and that the general meaning should be applied until a reliable proof suggests otherwise.

2) The *Ash`arīs* and some *Shāfi`īs* (*Mutakallimūn*) maintain that the suspension of the implementation of the general words is required until a proof emerges that confirms the general or the specific indication. Those scholars who follow this opinion are called *Wāqifiyyah*. *Sarakhsī* claims that this group has emerged in the fourth century AH⁴.

3) *Balkhī* and *Jubbā`ī* maintain that the general should be applied in its extremely specified meaning. This can be the only one if it is a generic type (*jins*) and if it is in the plural form.

Some scholars widely discussed this disagreement. It appears to me, however, that this question is related to Islamic beliefs (*`aqīdah*) rather than to commandment rulings (*aḥkām taklīfiyyah*) because their examples, which

¹ Al-Baqarah, II:228.

² *Sarakhsī*, *Uṣūl al-Sarakhsī*, I:132; *Bukhārī*, *Kashf al-Asrār*, I:298; *Taftāzānī*, *Sharḥ al-Talwīḥ `alā al-Tawdīḥ*, I:38.

³ *Bazdawī* and *Sarakhsī*, however, divide them into two groups. They put the second and the third group together and called them all *Wāqifiyyah*.

⁴ *Sarakhsī*, *Uṣūl al-Sarakhsī*, I:132.

they have cited, are all about *`aqīdah*. They did not mention any example which shows that they suspended any authoritative text on this basis. Moreover, those who disagreed with the majority of scholars are not supported by any reliable proof from the language or the authoritative texts¹. From an Islamic point of view their opinion is not acceptable because it would lead to disagreement with the Prophet (p.b.u.h.) and his Companions and to the suspension of most of the authoritative texts. It was not narrated that the Prophet (p.b.u.h.) or any of his Companions suspended any authoritative text because it was generic in its effect. Due to these facts I will not discuss this disagreement in full details, but mention some proofs provided by the majority of scholars:

a) The language has been created to convey the meanings in order that people can communicate. Every subject has to have its own name. Therefore, the general categories should have its own names as well as names for their particular subjects in order to be differentiate one from the other.

b) The Prophet (p.b.u.h.) and his Companions, i.e. those who were most knowledgeable about the language of the authoritative texts, implemented the general, except when specified by a reliable proof². It is a well known fact that they were looking for the proof which specifies the general and not for a proof

¹ Ghazālī, *al-Mustaṣfā*, I:225-233; Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:109-117; Ījī, *Mukhtaṣar al-Muntahā*, II:102; Shawkānī, *Irshād al-Fuḥūl*, p. 116.

² It was recorded in the unanimous agreement (consensus) of the Companions regarding numerous authoritative texts that their general meanings include all what they are applicable to, like in the following verses and traditions: "As for the thief, both male and female cut off their hands." (al-Mā'idah, V:38.) "The adulterer and adulteress, scourge ye each one of them (with) a hundred stripes." (al-Nūr, XXIV:2.) "O you who believe! Squander not your wealth among yourselves in vanity..." (al-Nisā', IV:29.), "There is no testament for an inheritor." (Zayla`ī, *Naṣb al-Rāyah*, IV:403.)

This was the methodology of the generations of scholars who came after the Prophet (p.b.u.h.) and his Companions until the emergence of the Wāqifiyyah in the fourth century who violated the consensus of the Companions. This led to Islamic scholars' conspicuous attitude towards their opinion. Their rejection was fundamentally based on the rule that consensus cannot be abrogated. (See: Bazdawī, *Kashf al-Asrār*, I:303.)

that the general includes everything to which it is applicable¹. Therefore, for them, the last idea was an axiom which did not need a proof. This was at the time when the Prophet (p.b.u.h.) was alive, and according to Muslims, it would have been corrected by him if it demonstrated an incorrect methodology. The following are some examples which clearly shows the correctness of the former claim. The first example would be related to the Prophet (p.b.u.h.) and the rest to his Companions.

1) Once while one of the Companions was praying he was called by the Prophet (p.b.u.h.). He did not respond immediately but quickly finished his Prayer and came to him. The Prophet (p.b.u.h.) asked what prevented him to respond when he was called. The companion answered that he was praying. Then the Prophet (p.b.u.h.) told him: "Did you not know what was revealed unto me 'O you who believe! Obey Allāh and His messenger when He calls you to that which quickness you.'² Therefore, the Prophet (p.b.u.h.) used the general meaning of this verse "O you who believe" to include every believer in any circumstances and therefore this companion who was called while he was praying.³

2) Abū Bakr prevented the Prophet's daughter to inherit her father (p.b.u.h.) despite the general indication of the verse: "Allāh charges you concerning (the inheritance for) your children: to the male the equivalent of the portion of two females..."⁴ He argued that the Prophet (p.b.u.h.) stated: "We the prophets are not inherited. What we leave behind us is a charity."⁵ Therefore, the Companions understood that the general meaning of the verse includes all the children⁶ and a reliable proof⁷ is required in order to specify its generic effect.

¹ Bukhārī, *Kashf al-Asrār*, I:303.

² Al-Anfāl, VIII:24.

³ See: Ṭabarī, *Jāmi` al-Bayān `an Ta'wīl Āy al-Qur'ān*, XIII:466.

⁴ Al-Nisā', IV:11.

⁵ Muslim, *Ṣaḥīḥ Muslim*, III:1379 (no. 1759).

⁶ This is indicated by the fact that they asked for their part of the inheritance.

⁷ A reliable proof used by Abū Bakr is the *ḥadīth* just mentioned.

3) When the verse: "Those who believe and obscure not their belief by injustice..."¹ was revealed, the Companions found it hard to follow and said: "Who amongst us did not do injustice to himself?". Therefore, they understood this verse to include every wrong-doing and they knew that it is impossible to avoid every wrong-doing. The Prophet (p.b.u.h.) afterwards explained to them that the verse does not intend to include every wrong-doing to which it is applicable, but it means the greatest wrong-doing i.e. *shirk* (worshipping someone or something except Allāh or associating something or someone with Him).

We can find the opinion of the majority of scholars based in the following grounds:

a) Their approach saves the nature of the Arabic language, which, as all agree tend to be basically general, and its words retain its generality unless specified.

b) It follows the same way of the Prophet (p.b.u.h.), his Companions, and the scholars of the first generations in interpreting the texts. Due to the fact that they were closer to the language of the authoritative texts they had undoubtedly understood it better than later generations.

c) The usage of the general meaning (*ʿāmm*) amongst Arabs, before and after the Prophet (p.b.u.h.), clearly supports the opinion that Arabic is basically general and, as we know, the authoritative texts are in pure Arabic.

d) By accepting the opinion of the majority the authoritative texts would not be suspended. Therefore, it is a safe way for a Muslim, because Islām regards the suspension of an authoritative text, without a reliable reason, as a major sin which can excommunicate the perpetrator out of Islām. The second opinion which maintained that the suspension of the implementation of the general is required is, according to Islamic scholars, extremely dangerous since it would deny authority to many authoritative texts.

¹ Al-An`ām, VI:83.

e) The third opinion that the general should be applied in its extremely specified meaning is at least in contrast to the nature of Arabic and therefore it opposes the Qur'ān and the Sunnah which are in that language.

f) The general indication includes in itself the specific (*khāṣṣ*). Therefore this opinion is more cautious and guarded.

Examples of *`āmm*

As mentioned previously Islamic scholars identified certain linguistic patterns of words which can help in making distinction between the general (*`āmm*) and the specific (*khāṣṣ*) meanings of words. From their contemplation about this matter it seems that *`āmm* is a grammatical term and takes many identifiable forms in its Arabic usage. The following are these patterns with the practical examples :

1) The following are words which provides general meaning by their substance: "*kull^{un}*"¹, "*jamī^{un}*", "*kāffat^{un}*", "*qāṭibat^{un}*" and "*`āmmat^{un}*"². These words mean: all, entire, total, the whole, everybody, everyone, entirely, completely, fully. When any of them accompany another word, that word would include all what it is applicable to like in the following examples:

"Lo! We have created everything (*kulla shayⁱⁿ*) by measure."³ "Everything" is generic and includes all creatures without any exception.

"He it is Who created for you all (*jamī^{an}*) that is in the earth."⁴ This verse means that everything in the earth has been created for the benefit of human beings.

¹ The generic meaning effect of "*kull^{un}*" is individual, single, solitary i.e. it includes all subjects that is applicable to but in individual form, one after another. This word, moreover, is regarded to be the most general. (See: *Shawkānī, Irshād al-Fuḥūl*, p. 110.)

² The generic meaning effect of "*jamī^{un}*", "*kāffat^{un}*", "*qāṭibat^{un}*" and "*`āmmat^{un}*" is group, i.e. it includes all what it is applicable to as a group. *Qāṭibat^{un}* and "*`āmmat^{un}*" are words that are normally mentioned by scholars as words which provides the general meaning. These two words, however, do not appear in the Qur'ān.

³ Al-Qamar, LIV:49.

⁴ Al-Baqarah, II:29.

“And We have not sent you except as a giver of glad tidings and a Warner to all humankind (*kāffat^{an} li al-nās*) but most of men know not.”¹ “All humankind” is generic and includes all humankind at all times.

2) Conditional nouns (*asmā' al-shart*) like: who, whoever (*man*), wherever (*aynama*), and whatever (*mā*).

“Whoever (*wa man*) kills a believer in error must set free a believing slave.”² This verse indicates that everyone who kills a believer by error is obliged to set free a believing slave as expiation for his/her offence. The following verses provide similar examples too.

“Whoever believes in Allāh and the Last Day and do righteous good deeds shall have their reward with their Lord, on them shall be no fear, no shall they grieve.”³

“Unto Allāh belong the East and the West, and whichsoever you turn, there is Allāh's countenance.”⁴

“And whatever good you do, (be sure) Allāh knows it.”⁵ The word “whatever” (*mā*) acts in the verse as an interrogative noun. Therefore, it is generic and the verse would mean that every good deed made by humanity is known to Allāh.

3) Interrogative nouns like who, whoever (*man*),⁶ and when (*matā*) as in the following verses: “Say: Have you thought: If (all) your water were to disappear into the earth, who then could bring you gushing water?”⁷ “... and were so

¹ Saba', XXXIV:28.

² Al-Nisā', IV:92.

³ Al-Baqarah, II:62.

⁴ Al-Baqarah, II:115.

⁵ Al-Baqarah, II:197.

⁶ Who (*man*) can be conditional (*shartīyyah*), interrogative (*istifhāmiyyah*), relative pronoun (*ism mawṣūl*), and substantive (*mawṣūf*). In the former two cases it would be definitely the general meaning, while in the latter it can be general and specific. The example for the specific meaning can be seen in the following verses: “Of them are some who listen unto thee...” (al-An`ām, VI:25), : “And of them are some who looketh toward thee...” (Yūnus, X:44) In these two verses by who (*man*) is intended some of the hypocrites, not all of them. This is the reason why translators have translated it as “some who”.

⁷ Al-Mulk, LXVII:30.

shaken that even the Messenger and those who believed along with him said, When (will come) the help of Allāh?"¹ "So whoever sights the month he must fast that month..."² Interrogative noun who, whoever (*man*) is generic in its meaning. Therefore, the last verse indicates that everyone who has reached maturity (*mukallaf*) is ordered to fast. The same general meaning is indicated by all these verses.

4) Indefinite word (*nakirah*) when used to convey the negation, prohibition and when proceeded by "of" (*min*).

The example for *nakirah* when used to convey the negation can be seen in the following tradition "No harm shall be inflicted or reciprocated."³ This tradition is negating all to which it is applicable because it is general in its import due to the fact that *lā ḍarara* and *lā ḍirār* are both indefinite words used in negation.

The example for *nakirah* when used to convey the prohibition can be seen in the following order of the Qur'ān to the Prophet (p.b.u.h.): "And never (O Muḥammad) pray for one of them who die, nor stand by his grave."⁴ The word "one" (*aḥad*) is indefinite. It is used to convey prohibition. Therefore it is generic in its effect.

The indefinite word (*nakirah*) can be proceeded by *min* in three places:

a) before the subject of a verbal sentence exemplified by the following verse: "... unto whom no Warner came before you..." (*mā atāhum min nadhīrⁱⁿ*).⁵

b) before the object exemplified by the following verse: "We sent no messenger save that he should be obeyed by Allāh's leave." (*wa mā arsalnā min rasulⁱⁿ*)⁶

¹ Al-Baqarah, II:214.

² Al-Baqarah, II:185.

³ Ibn Mājah, *Sunan*, II:784 (no. 2340).

⁴ Al-Tawbah, IX:84.

⁵ Al-Qaṣaṣ, XXVIII:46.

⁶ Al-Nisā', IV:64.

c) before the starter (*mubtada'*) in a nominal sentence exemplified by the following verse: "And there is no God save Allāh." (*wa ma min ilāhⁱⁿ illā Allāh*)¹

5) Relative pronouns like 'those men who' (*alladhīna*), 'those women who' (*allātī*), what (*mā*) exemplified by the following verses:

"Those who swallow usury cannot rise up save as he arises whom the devil has prostrated by (his) touch."² The word "those" (*alladhīna*) includes everyone who eats usury.

"As for those of your women who are guilty of lewdness, call to witness four of you against them."³ The word 'those women who' (*allātī*), includes everyone of them that is guilty of lewdness. Therefore, the ruling is general as it applies to all women that can possibly be included in its scope. This ruling remains general until the appearance of a reliable proof which specifies it⁴.

"Lawful unto you are all beyond what has been mentioned..."⁵ The word 'what' (*mā*) includes all women who were not mentioned in the previous verse in the Qur'ān.

6) Singular or plural form of a noun when proceeded by the definite article (*al*) which is not used for a definition (*ʿahd*)⁶ but for inclusion and comprehension (*istighrāq*) and (*shumūl*),⁷ or when it becomes definite by the genitive of possession as in the following examples from the Qur'ān:

¹ Al-Imrān, III:62.

² Al-Baqarah, II:275.

³ Al-Nisā', IV:15.

⁴ This verse has been specified by another verse (al-Nūr, XXIV:6) which made an exception in the case of the husband who is allowed to support his charge of adultery against his wife by taking four solemn oaths instead of four witnesses. His wife, however, has right to rebut such charge by the same oaths.

⁵ Al-Nisā', IV:24.

⁶ Like in the sentence: "The man has come". (*Jā'a al-rajul.*) if the person is known (*ma'hūd*) to them.

⁷ Like in the following sentence: "It is a strong obligation upon every person to be dutiful to his/her parents."

"The adulterer and the adulteress, scourge each one of them (with) a hundred stripes."¹ In this verse the words "the adulterer and the adulteress" (*al-zāniyah wa al-zānī*) are both in the singular form². Due to the fact that they are preceded by the definite article which denotes *istighrāq* and *shumūl* it is generic and includes all the adulterers, male and female. The prescribed punishment is applicable to all of them.

"The divorced women shall wait, keeping themselves apart, three (monthly) courses."³ The word "the divorced women" (*al-muṭallaqāt*) is plural preceded by the definite article (*al*) which indicates inclusion (*istighrāq*). Therefore, this expression provides the general meaning and includes all the women to whom it can apply.

The same rule applies when singular or plural form of a noun becomes defined by the genitive of possession exemplified by the following examples: The Prophet (p.b.u.h.) stated about sea water: "Its water is pure and its dead is allowed [for consumption]."⁴ The words "water" (*mā'*) and "dead" (*mayyitah*) are singulars which became defined by the genitive construction "its water" (*mā'uh*) and "its dead" (*mayyitatuḥ*). Therefore, this tradition indicates that all sea water is pure for ablution and all the animals which live in it are allowed for consumption even when they are not properly slaughtered before their death.

The Qur'ān states: "Allāh commands you as regards your children's (inheritance)..."⁵ "Take alms from their wealth in order to purify them and sanctify them with it."⁶ In these two verses the plural word "children" (*awlād*)

¹ Al-Nūr, XXIV:2.

² The definite article (*al*) in the words *al-zāniyah* and *wa al-zānī* may be grammatically regarded as a relative pronoun which means "that woman who commits adultery" (*allatī taznī*) and "that man who commits adultery" (*alladhī yaznī*). However, no matter how it is regarded it would provide a general indication in both situations.

³ Al-Baqarah, II:228.

⁴ Tirmidhī, *al-Jāmi' al-Ṣaḥīḥ*, I:101 (no. 69); Abū Dāwūd., *Sunan*, I:21 (no. 83). (See: Ṣaḥīḥ al-Bayhaqī, *Bulūgh al-Marām*, p. 9.)

⁵ Al-Nisā', IV:11.

⁶ Al-Tawbah, IX:103.

and “wealth” (*amwāl*) becomes definite by becoming a governed noun (*muḍāf*) of a genitive construction (*iḍāfah*) (*awlādikum* and *amwālikum*). Therefore, it includes all children and wealth without any specification or limitation.

7) The plural when it becomes defined by the genitive construction¹ exemplified by the following verse: "Forbidden unto you are your mothers..."² The word "mothers" is plural which has become defined by the genitive construction *ummahātukum*. Therefore it is generic and includes all the mothers without any specification to any particular number.

8) The indefinite noun when followed by a general adjective exemplified by the following verse: "A kind word with forgiveness is better than almsgiving followed by injury."³ The expression "a kind word" (*qawf^{un} ma`rūf^{un}*) provides a general meaning and includes every polite word because “word” (*qawf^{un}*) has been followed by a general adjective “polite” (*ma`rūf*).

The indication of `āmm⁴

When the indication of `āmm is in question we have to differentiate between `āmm which has been already specified and that which has not been specified. In the case of the former it has been agreed upon that its indication is indefinite (speculative) *ẓannī* because any of its remaining subjects is possibly specified. Therefore, due to the fact that its indication is indefinite (speculative) it can be furthermore specified by a reliable proof which can be even a speculative one like solitary tradition (*khābar wāḥid*) and analogy (*qiyās*).

¹ There is a disagreement between scholars whether the indefinite plural is generic in its effect. The majority of scholars maintain that the indefinite plural is not generic in its effect. (See the discussion about the verse "If there were therein gods beside Allāh..." (XXI:22) in "*al-Jāmi` li Ahkām al-Qur`ān*" of Qurṭubī, II:279.)

² Al-Nisā', IV:23.

³ Al-Baqarah, II:263.

⁴ Sarakhsī, *Uṣūl al-Sarakhsī*, I:134; Bukhārī, *Kashf al-Asrār*, I:291; Shāṭibī, *al-Muwāfaqāt*, III:164-165; Ibn Qudāmah, *Rawḍat al-Nāẓir*, II:166; Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, I:39-40.

There is a disagreement between Islamic scholars regarding the general meaning (*`āmm*) which has not already been specified whether its indication is definite or indefinite.

The majority of scholars¹ maintain that the application of the general to all that it includes, when the general (*`āmm*) is already specified, is speculative (*ẓannī*). They argue that every *`āmm* supposes to be specified except those accompanied by an evidence which excludes such possibility exemplified by the following verse: " There is not a beast on the earth but the sustenance thereof depends on Allāh."² Their conclusion that there is no general that is not specified has become a maxim. They reached that conclusion by following the cases of specifications in authoritative texts which originally implied the general meaning. Meanwhile, a conclusion like this cast a suspicion over the general (*`āmm*) whether it includes all its subjects or not no matter whether the specific (*khāṣṣ*) has appeared or not before us. The possibility of this should necessarily cause indefiniteness because the definite meaning cannot exist with a suspicion and a possibility.

Most Ḥanafī scholars as Karkhī, Jaṣṣāṣ and Dabbūsī maintain that its application to all that it includes is definite (*qaṭ`ī*). By studying the different branches and particular issues in Ḥanafī law they reached this conclusion. They argue that Abū Ḥanīfah has clearly stated that the specific (*khāṣṣ*) cannot eliminate the general. The specific, however, can be abrogated by the general as the tradition related to the allowance of usage of the urine of the animals that can be eaten³. This ruling has been abrogated by general indications of other traditions which have ordered Muslims to keep themselves away from the urine.⁴

Furthermore they argue that the majority of scholars (*jumhūr*) have agreed that the words have been originally created to provide the general meaning (i.e. to

¹ See: Sarakhsī, *Uṣūl al-Sarakhsī*, I:144; Bukhārī, *Kaṣḥf al-Asrār*, I:294; Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawdīḥ*, I:39-40; Sha`bān, *Uṣūl al-Fiqh al-Islāmī*, p. 274.

² Hūd, XI:6.

³ See: Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VII:13 (76:6).

⁴ See: Ibn Mājah, *Sunan*, I:125 (no. 347, 348, 349).

be generic in its effect). If it is the fact they have to continue to provide that meaning until a reliable proof indicates otherwise. If a word is originally created to indicate a general meaning it would be general definitely until becomes specified by a reliable proof. The possibilities which are not supported by proofs cannot effect the original indications of words. Therefore the verse: "Such of you as die and leave behind them wives, they (the wives) shall wait, keeping themselves apart, four months and ten days."¹ includes all the women whose husbands have died no matter whether he died before consummating the marriage or after. It would continue to provide this indication until a reliable proof suggests otherwise.

Ḥanafīs rejected the proof provided by the majority which says that there is the possibility that it is specified and accordingly, if we have any doubt, it cannot be definite (*qaṭ`ī*). They stated that they do not reject any possibility, but the possibility should be based on a proof. The possibility that is not based on a reliable proof is not accountable. Therefore, if the general (*`āmm*) is specified to some of its subjects, the possibility of specification of its remaining subjects is based on a proof. As such it is accountable and the indication of the general becomes speculative (*ẓannī*). This contemplation of Ḥanafīs is a result of their convention (*iṣṭilāḥ*) related to the article which makes the specification (*mukhaṣṣis*). They maintain that the specification (*takhsīs*) cannot happen except when the article which makes the specification is independent (*mustaqill*), joined and associated (*muqtarin*). Accordingly, the cases of specification of the general (*`āmm*) are very rare². Therefore, what others regard as specification of meaning is not considered as a specification in their opinion and for them the maxim that says "There is not a general that is not specified" (*Lā `āmma illā wa qad khusṣis*) is wrong. Moreover, such a maxim and stating that the general (*`āmm*) provides the speculative indication can, according to Shāṭibī³, lead to the cancellation of the Qur'anic general

¹ Al-Baqarah, II:234.

² If the specifying proof is not joined (associated) (*muqtarin*) it would be abrogation not specification according to the Ḥanafīs.

³ Shāṭibī, *al-Muwāfaqāt*. III:165.

expressions and possibility of argumentation by the Qur'ān at all. At the same time it violates the eloquence of the Qur'ān.

This consideration is rejected because the specification (*takhṣīṣ*) would not take place without a reliable proof and that process is governed by strict and precise rules. Therefore, it would not lead to cancellation of the Qur'anic expressions. The specification of meaning (*takhṣīṣ*) does not effect the eloquence of the Qur'ān so long as the apparent meaning (*ẓāhir*) is followed and the specification of meaning (*takhṣīṣ*) is based on a reliable proof. The fact is that most of the Qur'anic general expressions (*'umūmāt al-Qur'ān*) have been made specific and yet its eloquence has not been effected.

It seems that the opinion of the majority is stronger due to the fact that the possibility for the specification (*takhṣīṣ*) of the general (*'āmm*) exists in most of the authoritative texts no matter whether we regard it as definite or speculative. Furthermore, it must be borne in mind that regarding this matter indefiniteness is about the comprehension of the general meaning to all its subjects and that the indication of the general (*'āmm*) on its original meanings is unquestionably definite.

The practical result of this disagreement¹ appears in cases where we have conflict between a general provision of the Qur'ān, or a *mutawātir ḥadīth*, and a proof which is speculative like *qiyās*, the weak (*ḍa'īf*) and solitary (*āḥād*) *ḥadīth* which, although may be definitive in meaning, is of speculative authenticity.

Ḥanafīs do not allow such a specification because the general provisions of the Qur'ān and *mutawātir ḥadīth* are definitive in their authenticity and indication, and the definitive (*qaṭ'ī*) may not be specified by the speculative proof (*ẓannī*). According to the rule, the speculative cannot stand as opposition to the definitive. In this case the general (*'āmm*) of the Qur'ān or *mutawātir ḥadīth* is definitive, whereas *qiyās*, weak (*ḍa'īf*) and solitary (*āḥād*) *ḥadīth* are all speculative. Ḥanafīs supported their opinion by the opinions of some

¹ See: Bukhārī, *Kaṣḥf al-Asrār*, I:294; Ibn al-Ḥājjib, *Mukhtaṣar al-Muntahā'*, II:149-151; Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, II:525; Shawkānī, *Irshād al-Fuḥūl*, p. 158:

Companions of the Prophet (p.b.u.h.) such as Abū Bakr, `Umar and `Ā'ishah and the tradition when Fāṭimah bint Qays claimed that the Prophet (p.b.u.h.) granted her alimony and accommodation during the waiting period (*`iddah*) despite the fact that it was an irrevocable divorce. `Umar objected to her claim by saying: "How can we abandon the Book of our Lord because of the statement of a woman who perhaps memorised it or perhaps she forgot!?" `Umar had in mind the verse of the Book: "Lodge them where you dwell, according to your wealth, and harass them not so as to straiten life for them."¹ He refused to accept her *ḥadīth*.

The majority of scholars, however, allow this kind of specification because the general (*`āmm*), in their opinion, provides indefinite (i.e. speculative) indication. Therefore, this specification does not contradict the mentioned rule because the general (*`āmm*) of the Qur'ān and *mutawātir ḥadīth* is speculative. Accordingly, the general provision of the Qur'ān and *mutawātir ḥadīth* can be specified by both definite (*qaṭ`ī*) and speculative (*ẓannī*) proofs. They supported their opinion by the examples of the Companions who limited and specified many general meanings of the Qur'ān by solitary traditions. For example they specified the general indication of the verse: "Lawful unto you are all beyond those mentioned."² This verse includes paternal and maternal aunts. This verse is specified and paternal and maternal aunts are excluded from the verse by the tradition in which the Prophet (p.b.u.h.) forbade the man to join in marriage a woman and her paternal or maternal aunt.³ They rejected the proof of Ḥanafīs because, according to them, `Umar has rejected that tradition only because he did not know whether that tradition is *ṣaḥīḥ* or not. He did not do that because he does not allow that the Qur'ān be limited and specified by a solitary tradition. This is upheld by the following facts:

- a) he used the word "abandon" and did not use the word "specify",
- b) in an other narration `Umar justified his position by saying that it was "the statement of a woman who perhaps memorised it or perhaps she forgot."

¹ Al-Ṭalāq, LXV:6.

² Al-Nisā', IV:24.

³ Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VI:128 (67-27).

Therefore, he had suspicions as to whether she memorised it or forgot. If he was certain that she memorised it he would probably not have rejected it. Accordingly, he did not reject it because he does not allow specification of the Qur'ān to take place by a solitary tradition.

The Ḥanafīs rejected these arguments provided by the majority of scholars (*jumhūr*) by saying that these traditions are famous (*mashhūr*) and *mashhūr* may specify the general provision of the Qur'ān. According to Ḥanafī *madhhab* the *mashhūr* may specify the general provision¹ because *mashhūr* was solitary (*āḥād*) in the first generation, in the beginning of the chain of transmitters (*sanad*) and became *mutawātir* afterwards.

The following example would show a practical result regarding this conflict:

The Qur'ān states: "And eat not of that whereon Allāh's name has not been mentioned, for lo! it is abomination."² This verse is concerned about slaughter of animals. It is general in its application and its general ruling includes all animals slaughtered without mentioning Allāh's name. In the following tradition, however, the Prophet (p.b.u.h.) stated that which provides a different implication: "The believer slaughters in the name of Allāh whether he pronounces the name of Allāh or not."³ This tradition provides that what the believer slaughters may be eaten even if the name of Allāh *ta`ālā* has not been mentioned. It opposes the general indication of the verse. This tradition is, however, a solitary tradition.⁴ Even if supported by another narration⁵ it may not raise up to the level of *mutawātir*.

According to Shāfi`ī scholars this tradition may specify the verse, because in their opinion the general (*`āmm*) is speculative (*ẓannī*) in its indication. Therefore, this verse which implies *`āmm* meaning may be specified by a

¹ Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, II:219.

² Al-An`ām, VI:122.

³ Bayhaqī, *al-Sunan al-Kubrā*, VII:240; Zayla`ī, *Naṣb al-Rāyah*, IV:182.

⁴ Zayla`ī stated that it is: "Strange in this version" (*gharīb bi ḥādḥa al-lafẓ*). (See: *Naṣb al-Rāyah*, IV:182.)

⁵ Like the following tradition: "A carcass killed by a Muslim is *ḥalāl* no matter whether the name of Allāh was pronounced or not." (Zayla`ī, *Naṣb al-Rāyah*, IV:182.)

speculative proof (in this case it is a solitary tradition). It resulted in ruling that the slaughter carried out by a Muslim is lawful even without pronunciation of the name of Allāh *ta`ālā*. They interpreted the verse by saying that "that whereon Allāh's name has not been mentioned" refer to that which is slaughtered to the idols because another verse stated: "and that which has been immolated to (the name of) any other than Allāh."¹ Moreover, they analogised "that which is left deliberately" to "that which is forgotten". This analogy is rejected by Ḥanafīs because "that which is forgotten" is not excluded from the general meaning of the verse, because the person who slaughters has pronounced the name of Allāh *ta`ālā ḥukm^{an2}*, as mentioned before.

Ḥanafīs, however, maintain that slaughtering by a Muslim is unlawful for consumption without pronunciation of the name of Allāh *ta`ālā*. They did not specify the verse by the previous traditions because the general (*`āmm*) of the Qur'ān may not be specified by solitary traditions.³

The practical result of this disagreement about the possibility that the general (*`āmm*) become specified by the analogy and solitary *ḥadīth* can be seen in the following example. The Prophet (p.b.u.h.) stated: "What was watered by the sky and springs or by its roots ten percent, and what was watered by sprinkling five percent."⁴ This tradition provides a general indication due to the fact that the word "what" (*mā*) is used. It does not specify and fix certain amounts as *niṣāb*. Therefore, it includes everything that is growing from the earth, no matter whether those products are intended for the cultivation of the land or not

¹ Al-Baqarah, II:173.

² By his/her belonging to Islām.

³ Marghīnānī, *al-Hidāyah*, IV:63. The Ḥanafīs excluded from these ruling those who forgot to say Allāh's name because He has forgave forgetfulness like in the case when someone forgets and brakes his/her fasting. His/her fasting is correct and he/she can continue to fast. The traditions, previously mentioned, as some say, are related to those who forget. not to those who remember and do not pronounce the name of Allāh *ta`ālā* while slaughtering an animal. According to them that who forget to pronounce did not leave pronunciation because the Lawgiver has replaced the pronunciation by belonging to Islām and he/she is counted that he/she has pronounced it *ḥukm^{an}*.

⁴ Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:133 (24:55).

and no matter what amounts of such products were produced. Accordingly, the alms should be given for the smallest amount of agricultural products as well as for everything that grows at the land.

In another *ḥadīth* the Prophet (p.b.u.h.) stated that there is no alms on dates and grain until they reach five *awsuq*¹. Therefore the second text specified *niṣāb* to five *awsuq*. Accordingly it specified the general indication of the former tradition and declared that alms are not obligatory for agricultural products if it is less than five *awsuq*.

These two traditions apparently disagreeing because the first, by its general meaning, includes what is less than five *awsuq* while the second, which is specific, excludes it.

Due to the difference about the indication of the general (*`āmm*) the Islamic scholars disagreed about *niṣāb* related to agricultural products. Abū Ḥanīfah maintained that the alms should be paid for any amount. They argue that these two traditions apparently disagree as regards the amount which is less than the five *awsuq* and precedence can not be given to one of these traditions over the other. The general indication, however, is in accordance with the general statement of the Qur'ān which ordered alms in general term. Moreover, its application is more secure to fulfil the order. Meanwhile, the tradition with the general indication is more famous and deserve to be given precedence.

Other scholars specified the former tradition by the latter. They maintained that there are no alms until *niṣāb* (five *awsuq*) is reached. This conclusion is the result of the specification of the latter tradition over the former one.

From the previous examples it is clear that the difference about the indication of *`āmm* whether it is definite or speculative resulted in the difference about the *niṣāb* related to agricultural products.

¹ Muslim, *Ṣaḥīḥ Muslim*, II:673 (no. 979). *Awsuq* : (sing. *wasq*) : camel-load (eq=sixty *ṣā'* =165 litre).

The value of *`āmm* ¹

The legal adherence to *`āmm* is seen by Islamic law to be incumbent and a strict obligation (*wājib*) as well as the implementation of its general meaning until a reliable proof suggests otherwise. It would continue to provide a generic effect unless there is a specifying clause which would specify its application. In cases where *`āmm* is partially specified, the part that remains unspecified still retains its legal authority. The implementation of *`āmm* should not be effected by the disagreement whether it provides definitive or speculative indication² because prevailing speculative indications (*ghālib al-ẓann*) should be implemented until a reliable proof suggests otherwise.³

=====
=====

¹ Khallāf, *ʿIlm Uṣūl al-Fiqh*, p.183.

² Khudārī Bak gave priority to the opinion of the Ḥanafīs that the general provides the definite indication until a reliable proof suggests otherwise. (See: Khudārī Bak, *Uṣūl al-Fiqh*, p. 156.)

³ Sarakhsī, *Uṣūl al-Sarakhsī*, I:132; Bukhārī, *Kashf al-Asrār*, I:291.

Chapter 2

Al-Khāṣṣ (The Specific)

The linguistic definition of *khāṣṣ*

KHĀṢṢ (A.) special, particular, specific, individual, distinctive¹

The technical definition of *khāṣṣ*

The early scholars of *uṣūl al-fiqh* used to define the effect of *khāṣṣ* (i.e. *takhṣīs*)² rather than *khāṣṣ* itself. Having in mind that *khāṣṣ* is opposite to *ʿāmm* which includes an unlimited number of subjects, *khāṣṣ* may be defined as: "A word which applies to one subject³ or more, but these subjects are specified in number like number two, five, hundred etc." From this definition we may see that *khāṣṣ* may include one subject like personal names such as Ḥasan, or Ḥusayn, or more than one, but these subjects should be specified in number and it does not include everything to which it is applicable to, such as a house, a bird i.e. an indefinite word (*nakirah*) used to convey the positive meaning. Such an example can be seen in the following verse: "And there came from the uttermost part of the city a man running."⁴ In this verse the word "a man" (*rajul^m*) is indefinite (*nakirah*) and conveys positive meaning. Despite the fact that it can include any man, it reverts only to one person. These indefinite words will be specific as long as it applies to a single subject, or specified number thereof and convey the positive meaning⁵ otherwise it would be

¹ M.L. ʿA, *al-Muʿjam al-Wasīṭ*, I:237-238; *EF*, IV:1098; Baʿlabakī, *al-Mawrid*, p. 499.

² This effect appears only when it disagrees with *ʿāmm*.

³ Like in the case of indefinite noun when provides the positive as in the following expression: "I saw a man in the house." The word "a man" despite the fact that it does not specify certain person, and therefore it may mean any one, it includes only one person.

⁴ Yā Sīn, XXXVI:20.

⁵ It is very important to recognise the specific of the general for many reasons. One of them is the fact that the legal rulings which are conveyed in specific terms are definite. This means that

regarded as the general (*ʿāmm*). When the general and the specified are related to the same subjects it leads to conflict. The following study will be concerned with this question.

Specification of the General indication

As we have seen the majority of Islamic scholars maintain that the general (*ʿāmm*) is meant to include everything to which it is applicable. Therefore, a ruling deduced from the general provision is related to all subjects to which the word with generic implication is applicable. Sometimes, however, this general indication may be interrupted by a proof (which is specific and limited) that suggests that some subjects of the general are not intended, or that they are excluded. This specification of meaning is called *takhṣīṣ*.

Al-Takhṣīṣ (The Specification of meaning) ¹

The linguistic definition of *takhṣīṣ*

TAKHṢĪṢ (A) specification, particularisation, individualisation²

The technical definition of *takhṣīṣ*

Due to the fact that the Ḥanafīs have a slightly different approach to *takhṣīṣ*³ from that of Shāfiʿīs their definition is also slightly different. First the definitions of Shāfiʿīs will be mentioned:

these rulings are not subject to interpretation not according to the obvious import (*taʿwīl*) and as such should be implemented.

¹ For details about *takhṣīṣ* and its effect on legal reasoning when it disagree with some positions (status) of words like *idmār*, *majāz*, *naql*, *ishtirāk*, and *naskh* look: Ramić, *Taʿāruḍ mā Yukhill bi al-Fahm wa Atharuh fī al-Aḥkām al-Fiqhiyyah*, pp. 27-31, 54-102.

² Ibn Manẓūr, *Lisān al-ʿArab al-Muḥīṭ*, I:841-842; *EF*, IV:1098; Baʿlabakī, *al-Mawrid*, p. 294.

³ They put some conditions for specifying proof which will be mentioned soon.

Baṣrī provides for *takhṣīṣ* the following definition: “Excluding some (meanings) that are included in the text due to the conflict between the two.”

(*Ikhrāj ba`ḍ mā yatanāwaluh al-khiṭāb `anh ma`a kawnih muḡhāyir^{an} lah.*)¹

Shīrāzī defines the specification of the general meaning as the explanation of what was not intended by the general word. (*Bayān mā lam yurid bi al-lafẓ al-`āmm.*)²

Ibn al-Ḥāḡib provides for *takhṣīṣ* the following definition: “The limitation of the general to some of its subjects” (*Qaṣr al-`āmm `alā ba`ḍ musammayātih.*)³

Bayḍāwī gave a similar definition to that of Baṣrī: “Excluding some (meanings) that are included in the word.” (*Ikhrāj ba`ḍ mā yatanāwaluh al-lafẓ.*)⁴

According to these definitions *takhṣīṣ* may be defined as the limitation of the general provision to some of its subjects⁵. (*Qaṣr al-`āmm `alā ba`ḍ afrādih.*)

According to Ḥanafīs *takhṣīṣ* is limitation of the general provision to some of its subjects by an independent⁶ and joined⁷ proof⁸ (*Qaṣr al-`āmm `alā ba`ḍ afrādih bi dalīlⁱⁿ mustaqillⁱⁿ muqtarinⁱⁿ.*) Therefore, they, unlike others, stipulate for the qualifying proof to be independent, chronologically parallel and joined to the general.

¹ Baṣrī, *al-Mu`tamad*, I:252.

² Shīrāzī, *al-Lumma`*, p. 30.

³ Ījī, *Mukhtaṣar al-Muntahā*, I:129.

⁴ Aṣfahānī, *Sharḥ al-Minhāj*, I:361.

⁵ See: Anṣārī, *Ḡhayat al-Wuṣūl*, p. 75; Fattūḡhī, *Sharḥ Kawkab al-Munīr*, p. 387.

⁶ By this condition attached exception (*istithnā` muttaṣil*), condition (*shart*), attribute (*ṣifah*) and extent of application (*ḡhāyah*) are all excluded because the specification needs a kind of conflict, and these proofs do not cause conflict because they explain what general provision does not include in its meaning.

⁷ By this condition abrogation (*naskh*) is excluded, because when a specifying proof appears after the general provision it would be abrogation not specification. This is the main difference between the majority and Ḥanafīs when the difference between specification and abrogation is in question.

⁸ Bukhārī, *Kaṣhf al-Asrār*, I:37; Bādshāh, *Taysīr al-Taḡrīr*, I:271; Mayhawī, *Sharḥ Nūr al-Anwār*, I:169.

Takhṣīs is opposite to the basic status of words

The basic and original status of words in Arabic is to continue including all meanings to which it is applicable by the way of comprehension. This is due to the fact that words have originally been coined to that meaning and the rule states: “The basic rule is that everything would remain unchanged”¹ Accordingly, a word with a general provision would continue to be generic. Moreover, given that the basic rule is not a generic indication of words the understanding of authoritative texts and communications between people would be extremely difficult if not impossible because we will not know whether a general or specific meaning is intended by the originator. This would require endless questioning as to what was intended regarding these two possibilities².

Therefore, restriction, specification and exclusion of some of the subjects from the general provision is opposite to the basic and original status (*khilāf al-aṣl*) of words. Specification, restriction and exclusion can be done, according to Ḥanafīs, by specification, or partial abrogation.

Takhṣīs of the general provisions of authoritative texts is so frequent that lead to the coinage of the maxim: “There is no general provision that is not specified.”³

That *takhṣīs* is opposite to the bases (*khilāf al-aṣl*) is important to know because whenever a disagreement happen about applying specification, and there is no a reliable proof, the basic rule is non specification.

¹ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, p. 57; Lubnānī, *Sharḥ al-Majallah*, 20.

² A question may arise whether the general provision, after being specified, continue to provide a real meaning (*ḥaqīqah*) in its remaining subjects or becomes (*majāz*). After studying this question I have come to the conclusion that it continues to provide a real meaning (*ḥaqīqah*). (See: Ramić, *Ta'arūḍ mā Yukhill bi al-Fahm wa Atharuh fī al-Aḥkām al-Fiqhiyyah*, pp. 29-30.)

³ See: Nasafī, *Kaṣḥf al-Asrār*, I:161; Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, I:40.

The difference between abrogation (*naskh*) and specification (*takhṣīs*)

The Islamic scholars studied the differences between (*naskh*) and (*takhṣīs*) and produced the following conclusions:¹

1) The specification of meaning includes some subjects of the general provision, while the abrogation includes all of them.

2) The abrogation can effect any legal injunction no matter whether that injunction is related to one subject or to many, while the specification can take place only in the second case.

3) The abrogation can occur after the abrogated text has already been implemented, while the specification may not happen after the specified has been implemented².

4) The abrogation is the cancelling of a ruling after it has been established, while the specification is an explanation to the intention of the general proposition (i.e. that all subjects are not intended by the general or that some of them are excluded).

5) The specification is an explanation about “what was intended” by the general, while the abrogation is an explanation of that which was not intended by the abrogated.

6) The abrogation may be by the authoritative texts only, while the specification may be by authoritative texts, by mind, by evidences and other proofs.

7) The consensus (*ijmā`*) may be a proof for the specification and not for the abrogation.

8) The specification may effect only the general meanings while the abrogation may effect the general and specific meanings.

9) There are a few kinds of *naskh*: i.e. text abrogation, injunction abrogation, or both of them whereby *takhṣīs* applies only to the rulings.

¹ Baṣrī, *al-Mu`tamad*, I:251-252; Shawkānī, *Irshād al-Fuḥūl*, 125-126.

² Because it would be regarded as abrogation not specification.

Specifying proofs¹

The majority of scholars disagree with Ḥanafīs regarding specifying proofs. The majority maintain that a general provision may be specified either by a dependent clause that occurs in the same text or by an independent locution that occurs in another text. They put only one stipulation for the specifying clause, when it is independent from the general, that it appears before the general meaning was implemented². If it appears after the general was implemented that which it causes would be abrogation not specification of meaning.

The specifying proofs according to Ḥanafīs³

As mentioned before Ḥanafīs defined *takhṣīṣ* as intending some subjects of the general meaning by an independent and chronologically joined proof. The proofs of specification are, according to them, divided into three kinds: a) reason, b) custom and habits⁴, and c) authoritative text which is independent and chronologically joined to the general.

They have put forward two conditions for the specifying proof that have to be fulfilled in order to cause *takhṣīṣ*:

a) that the proof which specifies the general (*ʿāmm*) is independent from the text that provides the general provision,

b) that the proof which specifies a general (*ʿāmm*) is chronologically parallel (i.e. to be revealed at the same time) and attached to the general.

¹ Sha`bān, *Uṣūl al-Fiqh*, pp. 270-273.

² Therefore, according to the majority, the specification is limitation of the general provision to some of its subjects by dependent or independent proof, chronological or not, which appeared before the general provision was implemented.

³ Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, I:42-43; Bukhārī, *Kashf al-Asrār*, I:306. Mayhawī, *Sharḥ Nūr al-Anwār*, I:169.

⁴ There is no doubt that accepting the reason and custom as specification proofs, which can specify authoritative texts, gives Sharī`ah the legal flexibility so that its changeable laws (*mutaḡhayyirāt*) can be adjusted according to the beneficial and good for the people. Therefore, changeable laws (*mutaḡhayyirāt*) of Sharī`ah can be developed according to the development and new needs of the people.

From the above conditions put forward by the majority and Ḥanafīs we may see that the difference between them is related to dependency and chronology between the general provisions and specifying proofs (provisions). If the specifying proof is dependent such as the attached exception (*istithnā' muttasil*), condition (*shart*), attribute (*ṣifah*) and extent of application (*ghāyah*) it would be called limitation (*qaṣr*) and not specification (*takhṣīs*). This is due to the stipulation put forward by the Ḥanafīs that in the case of the specification there should be a kind of conflict. This is not the case in a situation when those proofs are in question.

When the chronological order is in question it might be parallel in origin, different, or unknown. According to Ḥanafīs specifying proofs would specify general provisions only in case when they are parallel or this order is unknown¹. If they are not parallel, the latter would be causing partial² or complete abrogation (*naskh juz'ī* or *naskh kullī*)³ and not the specification (*takhṣīs*).⁴ As examples for *takhṣīs* according to Ḥanafīs approach we may take the same examples of Shāfi`īs when they are mentioning specifying proofs which are independent and chronological to the general⁵.

The specifying proofs according to Shāfi`īs⁶

As a result of their study and scrutiny Shāfi`īs have concluded that proofs which may qualify general provisions of authoritative texts can be divided into two divisions: dependent and independent.

¹ Because they presume that they are parallel in such cases.

² The majority of scholars regard this as specification (*takhṣīs*) and not abrogation.

³ The partial abrogation would happen when the specifying proof is latter. If the latter is the general provision it would cause total abrogation to the specific provision.

⁴ See: The independent proofs 3b.

⁵ See: The independent proofs 3a.

⁶ Shīrāzī, *al-Lumma`*, pp. 33-34; Aṣfahānī, *Sharḥ al-Minhāj*, I:381; Ījī, *Mukhtaṣar al-Muntahā*, II:131-155; Anṣārī, *Ghāyat al-Wuṣūl*, pp. 76-79; Shawkānī, *Irshād al-Fuḥūl*, pp. 128-143.

The dependent and joined proofs (*mukhaṣṣiṣāt ghayr al-mustaqillah wa muttaṣilah*)

According to Shāfi`īs, the dependent proofs are those which are part of the text that contains the general provision. They cannot stand on their own and cannot be separated from the text in which it appears. Therefore they are dependent (*ghayr al-mustaqillah*) and joined (*muttaṣilah*). The most important dependent proofs of specification (*mukhaṣṣiṣāt*) are as follow:

1) The attached exception (*istithnā' muttaṣil*)¹ made by *illā* (except, save, but) or a word that substitute *illā* like in the following verse: “But not averse to writing down (the contract) whether it be small or great, with (record of) the term thereof. This is more equitable in the sight of Allāh and more sure for testimony, and the best way of avoiding doubt between you; save only in the case when it is actual merchandise which you transfer among yourselves from hand to hand.”² The words “whether it be small or great” include all contracts, but the exception “save only in the case when it is actual merchandise which you transfer among yourselves from hand to hand” has excluded contracts when goods are transferred from hand to hand. Therefore, the general indication “whether it be small or great” has been specified and it remained to include only merchandise contracts when goods were not transferred from hand to hand and these contracts have to be written down.³

A question arises when an attached exception comes after a few joined sentences whether it effects all of them or the last one only. This may be exemplified by the following verse: “And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever, they indeed are disobedient. Except those who repent thereafter and do righteous deeds, (for such) verily, Allāh is Oft-Forgiving,

¹ If the exception is disconnected (*istithnā' munqati'*) the Scholars have disagreed whether it may specify the general indication. (See: Sālim, *Tashīl al-Wuṣūl ilā Fahm `Ilm al-Uṣūl*, p. 37.)

² Al-Baqarah, II:282.

³ For more information about conditions for correctness of exceptions see *Tashīl al-Wuṣūl ilā Fahm `Ilm al-Uṣūl*, pp. 37-38.

Most Merciful.”¹ The exception here came after three joined sentences. It would cause different legal implications depending on whether it effect all sentences or only the last one. The Islamic scholars have disagreed about this question². The majority of them maintain that it effects all sentences because it is apparent, and the opposite need to be proved. Accordingly if they repent, their status will be reinstated, their testimony will be accepted and they will not be considered as disobedient *fāsiq* afterwards. Abū Ḥanīfah, however, maintains that it effects the last sentence alone because it is sure.³ Accordingly, they will not be considered as disobedient *fāsiq* afterwards, but their testimony would be rejected forever.

2) The condition (*shart*)⁴ may specify a general indication, if it is literally expressed and attached to that which is stipulated (*mashrūṭ*)⁵ like in the following example. The Qur’ān states: “And unto you belong a half of that which your wives leave, if they have no child...”⁶ This verse prescribes the share of husband in the estate of his deceased wife. In its first part “And unto you belong a half of that which your wives leave” the general indication implies that husband should take a half in all circumstances. The second part “if they have no child”, however, has put a condition in order to be eligible to take a half of the estate and that condition is that his wife has no child. Therefore, this condition has specified the general provision which indicated that a husband should inherit half of his wife’s estate.

¹ Al-Nūr, XXIV:4-5.

² Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*, III:354-355; Sālim, *Tashīl al-Wuṣūl ilā Fahm ‘Ilm al-Uṣūl*, p. 38.

³ This question is very important for every day law. For example if someone makes a will saying: “Give my property to the poor, to the needy, to those who are in debt, except to the immoral of them.” whether the exception effects all three groups or the last one only.

⁴ The condition referred here is the linguistic condition which is known to make one object dependent on another one. This condition has many articles like if (*in*) and when (*idhā*).

⁵ And this is the only stipulation for the condition to cause specification.

⁶ Al-Nisā’, IV:12.

In another verse the Qur'ān states: “And when you go forth in the land, it is no sin for you to curtail (your) worship...”¹ In this verse the curtail of the worship is made dependent on travelling. The article used to specify is *idhā* (when). If this condition has not been made it would be allowed to curtail the Prayer at all times no matter whether someone is on travel or not.

3) The attribute may specify the general provision, if it is literally expressed and attached to that which is characterised. Here, as an attribute is regarded an abstract characteristic and not only a grammatical adjective. Therefore, it includes adjective, circumstantial expression (*ḥāl*), adverb of time and place (*ẓarf zamān* and *ẓarf makān*), specification (*tamyīz*) etc. The Qur'ān states: “And whosoever is not able to afford to marry free, believing women, let them marry from the believing maids whom your right hands possess.”² In this verse maids have been specified by an adjective to include only the believing ones and exclude others. In another verse the Qur'ān states³: “And pilgrimage to the House is a duty unto Allāh for humankind, for him who can find a way thither.”⁴ The word humankind comprises all the people, but those who cannot find means to make pilgrimage are excluded by the second part of the verse “who can find a way thither” which embodies an exception to the first. In another verse the Qur'ān states: “Forbidden unto you are [...] your step-daughters who are under your protection (born) of your women unto whom you have gone in...”⁵ The first part embodies the general prohibition of the step-daughters. This first part, however, has been qualified by the description “unto whom you have gone in”. This description excludes all step-daughters of mothers by whom their step-fathers did not consummate the marriage.

¹ Al-Nisā', IV:101.

² Al-Nisā', IV:25.

³ Some mentioned another dependent proof that is *badal al-ba`d min al-kull* and they mentioned this verse as an example. (See: Ījī, *Mukhtaṣar al-Muntahā*, II:132; Qaṭṭān, *Mabāḥith fī `Ulūm al-Qur'ān*, p. 227; Sālim, *Tashīl al-Wuṣūl ilā Fahm `Ilm al-Uṣūl*, p. 40.)

⁴ Āl-`Imrān, III:97.

⁵ Al-Nisā', IV:23.

4) The extent of application (*ghāyah*) made by articles (like: *ilā*, *ḥattā* etc.), which indicate the extent of application, may specify general provision like in the following Qur’anic verses: “They question you (Muḥammad) concerning menstruation. Say: It is an illness, so let women alone at such times and go not unto them until they are cleansed.”¹ The part of the verse “and go not unto them” provides a general provision indicating that it is not allowed to go to them forever, while the second part “until they are cleansed” specifies the time until the general provision is applicable. In another verse the Qur’ān states: “O you who believe! When you rise up for Prayer, wash your faces, and your hands up to the elbows...”² This verse first prescribed washing of the hands “wash your faces, and your hands”. This ruling is general because it includes all hands and does not specify the area. The next part of the verse “up to the elbows”, however, specifies the area and accordingly specifies the general provision of the verse.

The independent proofs

These proofs are those that specify general provisions and are not part of the text which provides such provisions. It may be divided into three categories:

1) Reasoning (*‘aql*). The example for this may be seen in the verses which prescribe *ḥajj* and fasting of month Ramaḍān upon believers: “And *ḥajj* to the House (Ka’ba) is a duty that humankind owes to Allāh...”³ As it is apparent this duty is prescribed to entire humankind, upon every individual, because the word “humankind” (*nās*) includes all human beings. By virtue of reason, however, some people, like those who are not responsible (*mukallaf*) as infants and lunatics, are excluded from the scope of this obligation. As to the fasting the Qur’ān states: “So whoever sights of you the month he must fast that month...”⁴ The word “whoever” is generic and includes everyone. Therefore,

¹ Al-Baqarah, II:222.

² Al-Mā’idah, V:6.

³ Āl-‘Imrān, III:97.

⁴ Al-Baqarah, II:185.

this verse apparently includes all the believers¹. The reason, however, excludes those who are not *mukallaf*. These conclusions have been confirmed by authoritative texts too². For example the Prophet (p.b.u.h.) stated: “No responsibility upon three persons: a sleeping person until awake, a youth until sexual maturity {i.e. of legal age in Islamic law}, and a lunatic until they recover clear consciousness.”³ This tradition means that those mentioned are not *mukallaf* and therefore the obligations brought forward by Islamic law are not related to them.

2) Verbal customs and habits⁴ (*urf qawli*)⁵. When the Lawgiver uses a word which provides a general provision (in Arabic) to mean specified meaning (in Sharī ah) like the word “trading” in the verse: “Whereas Allāh has permitted trading and forbidden usury...”⁶ This word “trading” (*bay`*) is generic in Arabic and includes all kinds of exchange no matter whether it is related to goods or not. The practice of the Lawgiver, however, is to mean by trading exchange of goods only. Therefore, this custom specified the meaning of the word “trading” and accordingly it does not include all kinds of exchange in the verse mentioned⁷.

¹ It includes only believers because they have been addressed only in the beginning of the verse.

² According to Islamic teachings there could not be a conflict between sound reason and Sharī ah.

³ Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, IV:24 (no. 1423); Nasā`ī, *Sunan*, VI:156 (no. 3432).

⁴ It would exist at the time when general provision appears. If customs and habits are temporary it may not specify general provisions, except when it may be based on the basic rules of Islamic law. (See: “Jawziyyah, *I lām al-Muwaqqi`īn*, III:89.)

⁵ There is a disagreement about practical customs and habits whether they may specify general provisions or not. Ḥanafīs and most Mālikīs maintain that they may specify general provisions while others maintain that they may not. (See: Ibn Amīr al-Ḥājj, *al-Taqrīr wa al-Taḥbīr*, I:282; Isnawī, *Nihāyat al-Sawl Sharḥ Minhāj al-Wuṣūl*, II:469.)

⁶ Al-Baqarah, II:275.

⁷ This happen when a word is used by Sharī ah as a term that carries a different meaning from that which the word literally means in Arabic. In the science of *uṣūl al-fiqh* this is called *naql* (move, transfer).

Furthermore, the general provision may be specified by customary usage when a group of people use a general provision to indicate some of its subjects. The meaning of it would be according to the custom of the people. Accordingly when they use a particular word which is apparently generic but according to their custom it includes only some of its subjects it would be treated according to its customary meaning. Therefore, a *mujtahid* has to consider customs and habits of the “linguistic” environment at the time when the authoritative texts appeared in order to understand correctly the intended meaning. It is impossible to understand authoritative texts and derive rulings without having such a knowledge. Regarding this point Shāṭibī stated: “It is essential for everyone who wants to study the Qur’ān and the Sunnah to know the customs of Arabs in their speech and practices at the time of Qur’anic revelation and the explanation of His Prophet (p.b.u.h.), because ignorance of it leads to ambiguities and complications from which one cannot escape without this knowledge.”¹

“This knowledge” is important for the everyday law too. For example if an Egyptian makes a will in pounds without specifying, it would be regarded Egyptian not British pound because their custom is to mean by “pound” the Egyptian currency and not the British.

3) The authoritative text. This can be in either of the following two forms: a) Joined to the general provision i.e. mentioned after it in the same text², b) separated³ from it.⁴

¹ Shāṭibī, *al-Muwāfaqāt*, III:151.

² These examples are valid for Ḥanafīs too.

³ In Ḥanafī *madhhab* this would be partial or complete abrogation (*naskh juz’ī* or *naskh kullī*).

⁴ It is worthy to mention that general provision of a verse may be specified by another verse such as the following example. The Qur’ān states: “And divorced women shall wait (as regards their marriage) for three menstrual periods...” (al-Baqarah, II:228) This verse was specified and the pregnant women are excluded by the following verse: “And for those who are pregnant their *’iddah* (prescribed period) is until they deliver (their burdens)...” (al-Ṭalāq, LXV:4.)

The general provision from the Qur’ān can be specified by *ḥadīth* such as the following examples. The Qur’ān states: “Forbidden to you (for food) are: the dead animals...” (al-Mā’idah, V:3.) This verse is specified by *ḥadīth* in which the Prophet (p.b.u.h.) states: “It is

a) The Qur'ān states: "...whereas Allāh has permitted trading and forbidden usury."¹ The word "trading" is generic in the Arabic language and means exchanging goods for goods. Therefore, it may include trading with usury. The trading, however, was specified and that which contains usury was excluded by an independent text (in another sentence) "and forbidden usury". This independent text is joined in arrival to the text which carries the general meaning. In another verse the Qur'ān states: "So whoever of you sights the month he must fast that month, and whoever is ill or on a journey, the same

made lawful to us (for food) two dead and two bloods. Two dead are locusts and whale and the two bloods are liver and spleen." (Narrated by Aḥmad b. Ḥanbal and Ibn Mājah. See: `Asqalānī, *Bulūgh al-Marām*, p. 14.) The Qur'ān states: "Allāh has permitted trading..." (al-Baqarah, II:275) The general provision of this verse indicates that all trading is lawful. This verse, however, is specified by many traditions in which certain kind of contracts are forbidden like the following tradition narrated from Ibn `Umar that the Prophet (p.b.u.h.) has forbidden *`asab al-faḥl*. (See the chapter about contract's conditions and forbidden contracts: `Asqalānī, *Bulūgh al-Marām*, p. 223-240.)

The general provision from *ḥadīth* can be specified by the Qur'ān like in the following example. The Prophet (p.b.u.h.) stated: "What was cut from animal while alive it is considered as dead." (Narrated by Abū Dāwūd and Tirmidhī. See: `Asqalānī, *Bulūgh al-Marām*, p. 15.) This tradition was specified by the following verse: "And Allāh has made for you in your homes an abode, and made for you out of the hides of the cattle (tents for) dwelling, which you find so light (and handy) when you travel and when you stay (in your travels), and of their wool, fur, and hair (sheep wool, camel fur, and goat hair), a furnishing and articles of convenience (e.g. carpets, blankets, etc.) a comfort for a while." (al-Naḥl, XVI:80.)

In another tradition the Prophet (p.b.u.h.) stated: "When two Muslims meet each other with swords the killer and the killed are both in hell." This tradition has been specified by the verse: "And if two parties or groups among the believers fall into fighting, then make peace between them both, but if one of them rebels against the other, then fight you (all) against the one that which rebels until it complies with the Command of Allāh." (al-Ḥujurāt, XLIX:9.) Therefore, those who rebel are excluded from the former tradition.

The general provision from *ḥadīth* can be specified by another *ḥadīth* like in the following example. The Prophet (p.b.u.h.) stated about *zakāt* on agricultural products: "What was watered naturally one tens..." (*fīmā saqat al-samā' wa al-`uyūn al-`ushr.*) His another saying specified the first one and excluded products which are less than five *awsuq*: "There is no *ṣadaqah* in that what is less than five *awsuq*." (*laysa fīmā dūna khamsah awsuqⁱⁿ ṣadaqah.*)

¹ Al-Baqarah, II:275.

number of other days.”¹ The first parts of the verse is generic and means that any *mukallaf* who become sure that the month of Ramaḍān has began should fast. The second part which is independent and joined to the general provision in appearance, however, specified it and excluded from the general meaning those who are ill or on travel.

b) The Qur’ān states:² “And divorced women shall wait (as regards their marriage) for three menstrual periods.”³ This verse is a generic verse that includes all divorced women no matter whether divorce took place before consummation of the marriage or afterwards. Another verse, however, specified it by indicating that the woman with whom her husband did not consummate the marriage should not wait three menstrual periods. The Qur’ān states: “O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no `iddah (divorce prescribed period) have you to count in respect of them. So give them a present, and set them free i.e. divorce, in a handsome manner.”⁴ Therefore, an independent and separated text (in the latter verse) specified the general provision of the former verse and explained that the general provision of the former verse does not include women who are divorced before having sexual intercourse with their husbands. The former verse is specified by another verse too: “And for those who are pregnant their `iddah is until deliver (their burdens).”⁵ Therefore, pregnant women are excluded from the general provision of that verse and her `iddah, whether she is divorced or her husband has died, is until the birth of the baby. Another example may show us how the tradition of the Prophet (p.b.u.h.) may specify the general provision of the Qur’ān. The Qur’ān states: “Forbidden to you (for food) are: the dead animals (*mayyitah*)...”⁶ The word *mayyitah* includes all animals which have not been

¹ Al-Baqarah, II:185.

² See: Ibn Kathīr, *Tafsīr al-Qur’ān al-`Azīm*, II:363-364, III:657-658, IV:489-491.

³ Al-Baqarah, II:228.

⁴ Al-Aḥzāb, XXXIII:49.

⁵ Al-Ṭalāq, LXV:4.

⁶ Al-Mā’idah, V:3

properly slaughtered. The following tradition of the Prophet (p.b.u.h.) specified this verse and excluded the dead animals which lives in the sea. He said about the sea: “Its water is pure (*ṭāhir*) [for ritual ablution] and its dead is allowed (*ḥalāl*) [for food].”¹

Some scholars² mentioned consensus (*ijmāʿ*), analogy (*qiyās*) and intuition (*ḥiss*) as independent proofs. It seems to me that they should be rather classified under one of the previously mentioned proofs.

Therefore, consensus (*ijmāʿ*), which is always based on an authoritative text, can be classified under the authoritative texts, or under reason, because consensus has to be based on an authoritative text, and in order to reach consensus reason has to be used. The latter classification is less suitable. The example for this kind of specification may be the tradition of the Prophet (p.b.u.h.) narrated by Abū Hurayrah in which he forbade the deception contract (*bayʿ al-gharar*)³. By consensus⁴ the speculation (*muḍārabah*) is excluded from the general indication of this tradition.

Analogy (*qiyās*) may be classified under the authoritative text or reason, because it is based on authoritative texts and was reached by the use of reason. The Qurʾān states: “The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes.”⁵ The word “the woman” is generic. By another verse, however, girl slaves have been excluded from the general indication of the word “the woman”: “And whoever of you have not the means wherewith to wed free, believing women, they may wed believing girls from among those (captives and slaves) whom your right hand possess [...] And after they have been taken in wedlock, if they commit illegal sexual

¹ Narrated by Aḥmad, Nasāʿī, Abū Dāwūd, Tirmidhī, Ibn Mājah and others from Abū Hurayrah. (See: ʿAsqalānī, *Bulūgh al-Marām*, p. 9.)

² Such as Sālim in *Tashīl al-Wuṣūl ilā Fahm ʿIlm al-Uṣūl*, p. 41; Qaṭṭān, *Mabāḥith fī ʿUlūm al-Qurʾān*, p. 227.

³ Muslim, *Ṣaḥīḥ Muslim*, III:1153 (no. 1513).

⁴ See: Sālim in *Tashīl al-Wuṣūl fī Fahm ʿIlm al-Uṣūl*, p. 41.

⁵ Al-Nūr, XXIV:2.

intercourse, their punishment is half that for free (unmarried) woman.”¹ The general indication of “the woman” is furthermore specified by analogy. Female slaves are excluded too by analogising them with girl slaves specified by the authoritative text.

Intuition (*hiṣṣ*) may be classified with reason. An example of this is the verse about Mekkah: “Have we not established a secure sanctuary (Mekkah), to which are brought fruits of all kinds, a provision from Ourselves, but most of them know not.”² The word “all kinds” provides a general provision. By use of intuition the previous verse is specified because the intuition suggests that the verse does not mean all kinds but plenty of them.

Conflict between *`āmm* and *khāṣṣ*

If both *`āmm* and *khāṣṣ* provide a ruling for the same subject that would lead to a conflict between the two. This conflict may happen only according to the Ḥanafīs who regard both of them as definite (*qaṭ`ī*). The same situation will not lead to a conflict according to the Shāfi`īs, because in their opinion *`āmm* is speculative (*ẓannī*) and therefore it cannot oppose *khāṣṣ* which provides definite (*qaṭ`ī*) meaning.

Depending on the chronological order between *`āmm* and *khāṣṣ* this conflict may produce different results. The chronological order may be parallel in origin. It can also be different, or unknown. If both of them are independent locutions, and both are parallel, or this order is unknown, specifying proofs would specify general provisions³. If they are not parallel, the latter would be causing partial⁴ or complete abrogation (*naskh juz`ī* or *naskh kullī*)⁵.

¹ Al-Nisā’, IV:25.

² Al-Qaṣaṣ, XXVIII:57.

³ Because Ḥanafīs presume that they are parallel in such cases.

⁴ The majority of scholars regard this as specification (*takhṣīṣ*) and not abrogation.

⁵ The partial abrogation would happen when the specifying proof is latter. If the latter is the general provision it would cause total abrogation to the specific provision.

The status of *`āmm* when provoked by a specific cause ¹

An authoritative text containing a general provision may appear without being provoked by a special cause exemplified by the following verses: “Successful indeed are the believers. Those who offer their Prayers with all solemnity and full submissiveness. And those who turn away from evil vain talk.”² “O, you who believe! Fulfil (your) obligations.”³

The general provision, however, may be caused by special occasions known as *asbāb al-nuzūl* such as the questions put to the Prophet (p.b.u.h.) for certain events.

The question that may arise in the latter case is whether the cause of the general provision may specify and limit it (the general provision) in its applications. Some scholars maintain that the cause of a general provision may operate as a specifying factor. However, it seems that the great majority of scholars believe that it may not act in that way. According to them, if a ruling is conveyed in general terms, it should be applied as such even if the cause behind that ruling was specific. The opinion of the majority has preference due to the fact that the Prophet (p.b.u.h.) and his Companions⁴ applied, without any limitation and restriction, the general rulings which were caused by specific occasions. If we have in mind that the great majority of authoritative texts have been caused by specific occasions it will be easier to understand the rule which the scholars of *uṣūl al-fiqh* have produced: “What is important is the generality of the word and not the specificity of the cause.” The next are some examples of authoritative texts which were caused by specific causes but their general rulings remained generic and would be applied to all similar cases. The Qur’ān states: “Those among you who make their wives unlawful (*ḡihār*)⁵ to them.

¹ Anṣārī, *Ghāyat al-Wuṣūl*, pp. 80-81; Sha`bān, *Uṣūl al-Fiqh*, p. 277.

² Al-Mu`minūn, XXIII:1-3.

³ Al-Mā'idah, V:1.

⁴ Due to the fact that not one of them disagreed about this question it is regarded as their consensus (*ijmā'*). (See: Sha`bān, *Uṣūl al-Fiqh*, p.277.)

⁵ *ḡihār* is a saying of a husband to his wife: You are to me like the back of my mother (i.e. unlawful for me to approach). (See: `Assāf, *al-Aḥkām al-Fiqhiyyah*, II:398)

they cannot be their wives. None can be their mothers except those who gave them birth. And verily they utter an ill word and a lie. And verily, Allāh is Oft-Pardoning, Oft-Forgiving.”¹ The occasion of the revelation of this verse, and therefore the ruling of *zihār* was the case related to Khawlah bint Tha`labah and her husband Aws b. Ṣāmit. Khawlah went to the Prophet (p.b.u.h.) and complained about certain actions carried out by her husband. The Prophet (ḥ b.u.h.) said to her that she is now forbidden to him. She said that she complained about her difficult situation to Allāh. Afterwards the verses, which explain the ruling of *zihār* were revealed.²

The Qur`ān states: “As for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allāh that he is one of those who speak the truth. And the fifth (testimony) (should be) the invoking of the Curse of Allāh on him if he be of those who tell a lie (against her).”³ These verses, known as curses invocation verses (*li`ān*), were revealed after a complaint of Sa`d b. `Ubādah about difficulty which a spouse may face in order to prove by four eyewitnesses, the act of adultery on the part of the other spouse⁴. and the difficulty which, shortly afterwards, experienced one of the Companions⁵ who find a man with his wife.⁶ Despite the fact that the cause of the revelation was specific the ruling remains general and would be applied in any similar case.

The example from the Sunnah may be previously mentioned *ḥadīth* “Its water is pure (*tāhir*) [for ritual ablution] and its dead is allowed (*ḥalāl*) [for food].”⁷ This *ḥadīth* provides a general provision which was caused by a specific

¹ Al-Mujādilah, LVIII:2.

² See: Ibn Kathīr, *Tafsīr al-Qur`ān al-`Aẓīm*, IV:408-409.

³ Al-Nūr, XXIV:6-7.

⁴ The Qur`ān states regarding this matter: “ and those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever, they indeed are the disobedient.” (al-Nūr, XXIV:4)

⁵ His name was Hilāl b. Umayyah.

⁶ See: Ibn Kathīr, *Tafsīr al-Qur`ān al-`Aẓīm*, III:355-356..

⁷ Nasā`ī, *Sunan*, I:100-101 (no. 69); Ibn Mājah, *Sunan*, I:136 (no. 386). (See: `Asqalānī, *Bulūgh al-Marām*, p. 9.)

occasion when a person said to the Prophet (p.b.u.h.): “We sail on sea and carry with us little water. If we make ablution with that water we will be thirsty. Can we make ablution by sea water?” Despite the fact that the general ruling, that states the purity of sea water for ritual ablution, was an answer for the specific case, its ruling remained to be general that the sea water is good for ritual ablution and other usage’s. Also there is no difference whether it is liquid or not, or whether the situation in which it is used is necessity or not. It has not been recorded¹ that any scholar specified or restricted the general ruling by its cause.

The value of *khāṣṣ*

The legal adherence to *khāṣṣ* is seen by Islamic law to be incumbent (*wājib*) as well as the implementation of its meaning because it, according to the general agreement of Islamic scholars provides definite indication.

=====
=====

¹ See: *Shā`bān, Uṣūl al-Fiqh*, p. 278.

Chapter 3

Forms of al-Khāṣṣ (the Specific)

Introduction

Khāṣṣ may appear in different forms. It may be in the form of an absolute (*muṭlaq*) which is not qualified, limited or restricted in its application. It may also appear in the form of a qualified (*muqayyad*). Sometimes the specific appears in the form of an order (*amr*), or prohibition (*nahy*). Next the four forms of the specific will be explained.

1) Al-Muṭlaq (the Absolute)

The linguistic definition of *muṭlaq*

MUṬLAQ (A.) free, unlimited, unrestricted, absolute, general, absolute as opposed to restricted (*muqayyad*).”¹

The technical definition of *muṭlaq*

Āmidī provided for *muṭlaq* the following definition: “*Muṭlaq* is an indefinite word (*nakirah*) which is used to convey the positive.” (*al-Muṭlaq `ibārat^{un} `an al-nakirah fī siyāq al-ithbāt.*)²

Shawkānī provided for *muṭlaq* few definitions. In one of them *muṭlaq* was defined as: “What indicates on a widespread element within its sort.” (*Mā dalla `alā shā`i`in fī jinsih.*)³

According to Anṣārī *muṭlaq* is: “A word that indicates an entity as it is” (*Lafẓ^{un} dalla `alā al-māhiyyah min ḥayth hiya.*)⁴

¹ M.L. `A, *al-Mu`jam al-Wasīṭ*, II:564; Tahānawī, *Dictionary of the Technical Terms*, pp. 921-924; Wehr, *Arabic-English Dictionary*, p. 567.

² Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:5.

³ Shawkānī, *Irshād al-Fuḥūl*, p. 144.

⁴ Anṣārī, *Ghāyat al-Wuṣūl*, p. 82.

From these definitions we can formulate the following definition for *muṭlaq*: “It is a word that indicates a subject or a group within a multitude (*māhiyyah*) without being specified or restricted by anything that may reduce its commonality.” From this we may understand that *muṭlaq* includes only one subject which is not specified or restricted such as words: a book, a man, a student, a bird, or a group within the multitude but not specified or limited group such as books, men, students, birds etc. These and similar words represent absolute nouns which may apply to any subject or group of subjects within their sort without any restriction and limitation. This means that from *muṭlaq* are excluded all words which have been restricted by attribute, condition, place, time etc., as well as specified words like numbers greater than one, and personal individual names like `Umar, Aḥmad etc.

When *muṭlaq* is qualified it would become *muqayyad*. For example “a man” is a *muṭlaq*, but “a wise man” is a *muqayyad*.

The difference between *`āmm* and *muṭlaq*

As mentioned in the definition, the general (*`āmm*) includes everything which it is applicable to. On the other hand the absolute (*muṭlaq*) word indicates on a common single or a common group within their sort or class and does not include all of them. It may include all of them like the general, but not at one and the same time.

Therefore *`āmm* includes, all at once, everything (all subjects) which it is applicable to, while *muṭlaq* includes only one non-specified of all subjects which it is applicable to.

When we say “the man” (*al-rajul*)¹ it would include, all at once, all male human beings, and it is regarded as *`āmm*.

If we say, however, “a man” (*rajul^{un}*) it would mean any male human being. It may not include all male human beings at the same time, but it may include all of them (one after one) at different times, and it would be regarded as *muṭlaq*.

¹ If the definite article is for comprehension (*istighrāq*) and not to specify a known person (*`ahd*).

Beside these differences *`āmm* and *muṭlaq* have some common characteristics. Both of them are open to interpretation not according to the obvious import of their provisions (*ta'wīl*), and anything that may specify *`āmm* it may qualify *muṭlaq*¹.

Examples of *muṭlaq*²

a) The Qur'ān states: “So whoever of you sights the month he must fast that month, and whoever is ill or on a journey, (should fast) the same number in other days”³ The word “days” is absolute (*muṭlaq*) in the sense that it is not restricted by a restriction like succession, neither in this verse nor in any other authoritative text. Therefore, it would remained *muṭlaq* and whoever did not fast during Ramaḍān because of illness or travel he/she must fast the same number of other days, in succession or separately.

b) The Qur'ān states: “And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten days.”⁴ The word “wives” is an absolute (*muṭlaq*) because it was not restricted by any restriction in the sense of whether it includes those with whom the marriage was not consummated. It was not restricted, either in this verse or in any other authoritative text. Therefore, it would remain *muṭlaq* and include any woman whose husband died, no matter whether the marriage was consummated or not.

c) The Qur'ān states regarding distribution of inheritance: “[The distribution in all cases is] after the payment of the deceased legacies or debts.”⁵ The word “legacies” is absolute (*muṭlaq*) in the sense that it does not limit the amount.

¹ Therefore, all specifying proofs which have been mentioned previously may be mentioned here as qualifying proofs.

² As mentioned, *muṭlaq* may be restricted to become the qualified (*muqayyad*). The first two examples which I am going to mention will represent a *muṭlaq* which remained *muṭlaq*, and the third example will be of a *muṭlaq* which was qualified and became *muqayyad*.

³ Al-Baqarah, II:185.

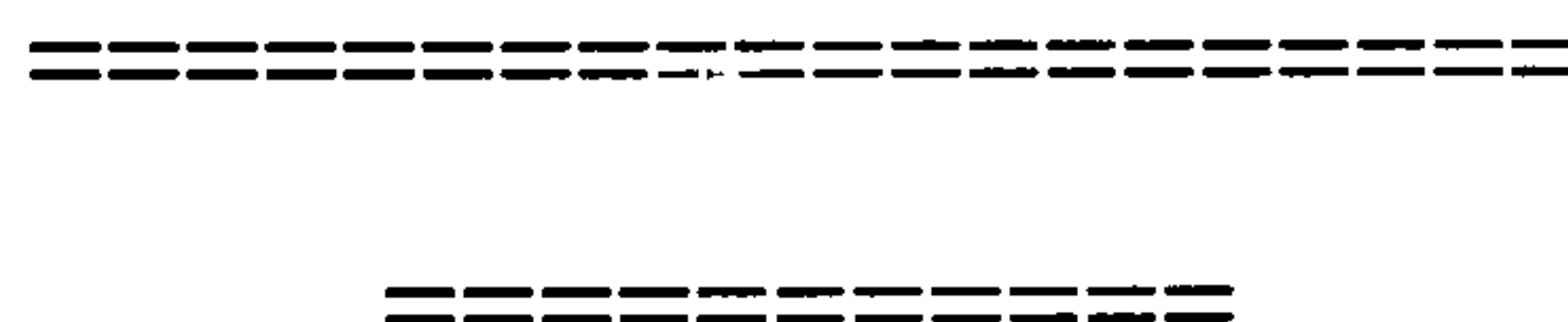
⁴ Al-Baqarah, II:234

⁵ Al-Nisā', IV:11.

According to this indication someone may give all his/her property as legacy. This word, however, was restricted by the tradition in which the Prophet (p.b.u.h.) forbade that in a legacy, one must not give more than one third of his/her whole property¹. Therefore, “legacies” in the verse means one third or less, because it did not remain absolute, but became restricted (*muqayyad*).

The value of *muṭlaq*

The legal adherence to *muṭlaq* is incumbent and strict obligation (*wājib*) in Islamic law as well as the implementation of its absolute meaning . It may not be restricted until a reliable proof² suggests a restriction³. Therefore, nobody can reduce the extent of its indication⁴ unless a reliable proof suggests that a certain and specified individual subject is intended. *Muṭlaq* provides a definite indication (*qaṭ`ī al-dalālah*), because it represents a form of *khāṣṣ* which is definitive (*qaṭ`ī*).



¹ See: `Asqalānī, pp. 285-286.

² Like in the previous examples.

³ See: Sha`bān, *Uṣūl al-Fiqh al-Islāmī*, p. 248; `Uṭhaymīn, *al-Uṣūl min `Ilm al-Uṣūl*, p. 58.

⁴ Like in the first and second example.

2) Al-Muqayyad (the Qualified)

The linguistic definition of *muqayyad*

MUQAYYAD (A.) bound, tied, limited, qualified, restricted, confined.¹

The technical definition of *muqayyad*

The qualified *muqayyad* is opposite to the absolute (*muṭlaq*). Therefore its technical definition would be opposite to that of *muṭlaq*.

Taftāzānī defined it in the following terms: “What was excluded from commonality in any way.” (*Mā ukhrija `an al-shuyū` bi wajhⁱⁿ mā.*)²

Shawkānī defined *muqayyad* as: “What does not indicate on a common within its sort.” (*Mā dalla lā `alā shā`iⁱⁿ fī jinsih.*)³

According to these definitions we may define *muqayyad* as a word that indicates on a subject or non-specified group of subjects (*māhiyyah*) to whom is attached what restricts their commonality like “a righteous person”, “righteous person”, “a white book”. “white books”, “a good student”, “good students” etc.

Therefore, *muqayyad* like *muṭlaq* includes only one subject or non-specified group of subjects within a multitude, but in distinction to *muṭlaq* that one or group are restricted by a restriction. These and similar words represent absolute nouns which have been restricted by a restriction and therefore it may apply only to these restricted subjects. This means that *muqayyad* includes all restricted words which have been restricted by an attribute, condition, place, time etc.

¹ M.L.`A, *al-Mu`jam al-Wasīṭ*, II:769; Wehr, *Arabic-English Dictionary*, p. 804.

² Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, I:63.

³ Shawkānī, *Irshād al-Fuḥūl*, p. 144.

Examples of *muqayyad*¹

a) The Qur'ān states: “And whosoever finds this (the penance of freeing a slave) beyond his means, he must fast for two consecutive months in order to seek repentance from Allāh. And Allāh is Ever All Knowing, All-Wise.”² This verse prescribes the penance for a Muslim who unjustly kills another Muslim. The word “two months” is restricted by “consecutive”. Due to the fact that no reliable proof suggests another meaning it would continue to be *qualified* and the penance would be two “consecutive” months.

b) The Qur'ān states: “And he who finds not (the money for freeing a slave) must fast two consecutive month before they both touch each other.”³ This verse prescribes the penance in case of *zihār*. Like the previous verse it is restricted by “consecutive”. It remained qualified because no reliable proof suggested otherwise.

c) The Qur'ān states: “Forbidden to you (for marriage) are: your mothers [...] your step-daughters under your guardianship, born of your wives to whom you have gone in - but there is no sin on you if you have not gone in them (to marry their daughters)...”⁴ The word “step daughters” have been qualified by “under your guardianship”. This restriction has been, however, cancelled by the statement “but there is no sin on you if you have not gone in them”. Therefore, this *muqayyad* have not been implemented, because its restriction has been nullified and it has become *mutlaq*.

¹ *Muqayyad* may continue to provide a restricted meaning but may become absolute (*mutlaq*) when a reliable proof suggests such a move. The first two examples which I am going to mention will represent a *muqayyad* which remained *muqayyad*, and the third example will be of a *muqayyad* which became *mutlaq*.

² Al-Nisā', IV:92.

³ Al-Mujādilah, LVIII:4.

⁴ Al-Nisā', IV:23.

Conflict between *muṭlaq* and *muqayyad* ¹

When *muṭlaq* and *muqayyad* deal with the same issue we may have four possibilities: a) that they agree on the cause and the ruling, b) that they agree on the cause and disagree on the ruling, c) that they disagree on the cause and agree on the ruling, d) and that they disagree on both the cause and the ruling.

a) Regarding the first possibility all scholars agree that *muqayyad* would prevail over *muṭlaq* and qualify it. The example for this conflict may be seen in the following verses. The Qur'ān states: “Forbidden to you (for food) are: the dead animal, blood...”² In this verse blood was forbidden for human consumption. The word “blood” is an absolute (*muṭlaq*). That word “blood”, however, was qualified in another verse as “blood shed forth”³. The blood in the second verse is restricted and the restricted prevails over the absolute.⁴

b) In the second possibility when *muṭlaq* and *muqayyad* agree on the cause⁵ and disagree in the ruling⁶ *muqayyad* would not qualify *muṭlaq* and everyone will operate as it stands. The example for this may be seen in the verses related to *wuḍū'* and *tayammum*. The Qur'ān states about *wuḍū'*: “O you who believe! When you stand to offer Prayer, wash you faces and your hands (fore-arms) up to the elbows...”⁷ The washing of the hands is restricted “up to the elbows”. The same verse did not restrict rubbing of the hands in *tayammum*: “and if you find no water, then perform *tayammum* with clean earth and rub therewith your faces and hands.” Due to the fact that two verses are related to

¹ Kalwazānī, *al-Tamhīd*, II:177-186; Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:6-9; Aṣfahānī, *Sharḥ al-Minhāj*, I:432; Anṣārī, *Ghāyat al-Wuṣūl*, p. 82-83; Shawkānī, *Irshād al-Fuḥūl*, pp. 144-146.

² Al-Mā'idah, V:3.

³ Al-An'am, VI:145.

⁴ The cause in this example is the consumption.

⁵ In the following example the cause is intention to perform the Prayer with a need to do ritual preparation for Prayer.

⁶ In the following example the conflict in ruling lies in the fact that in *wuḍū'* the obligation is washing hands by water, and in *tayammum* it is rubbing hands with earth.

⁷ Al-Mā'idah, V:6.

different rulings the first verse would not qualify the second and in *tayammum* hands should not be rubbed “up to the elbows” accordingly¹.

c) The third possibility is that they disagree on the cause and agree on the ruling. As an example of this possibility we may refer to the following verses. The Qur’ān states: “And get two witnesses from among your own men.”² This verse requires two witnesses in commercial transactions. The word “men” is absolute (*mutlaq*) because this verse does not qualify it. Another verse deals with the same subject of witnesses like the former one. The Qur’ān states: “And take for witness two just persons from among you.”³ This verse, however, qualified persons as “just”. The ruling of these two verses is the same because both of them require two witnesses. The causes of these rulings, however, are different. In the former the cause is commercial transactions, whereas in the latter it is revocation of the divorce (*ṭalāq*). Having in mind that the qualified prevails over the absolute the latter verse would prevail over the former and the ruling would be that witnesses in both commercial transactions and revocation of the divorce have to be “just”. This is in accordance with the opinion of Shāfi`īs, while Ḥanafī scholars do not qualify *mutlaq* by *muqayyad* in this situation and every verse operate as it stands.

d) The fourth possibility is that they disagree on both the cause and the ruling. An example of this may be seen in the verses related to ablution and theft. The Qur’ān states regarding ablution: “O you who believe! When you stand to offer Prayer, wash you faces and your hands (fore-arms) up to the elbows...”⁴ The washing of the hands in this verse is restricted “up to the elbows”. In the verse related to theft there is no such restriction. The Qur’ān states: “Cut off the hand of the thief, male or female...”⁵ Therefore it is the absolute (*mutlaq*). Due to the fact that both causes and rulings in these verses

¹ There is a disagreement between *fuqahā`* about this question. Some scholars restricted the verse about *tayammum* by some traditions. (See: Ibn Ruṣhd, *Bidāyat al-Mujtahid*, I:68-70.)

² Al-Baqarah, II:282.

³ Al-Ṭalāq, LXV:2.

⁴ Al-Mā`idah, V:6.

⁵ Al-Mā`idah, V:38.

are different there is no conflict between them and every verse operate as it stands.

The precondition for restricting of *muṭlaq* by *muqayyad*

In order that *muqayyad* may qualify *muṭlaq* certain conditions are stipulated by scholars. The most important are the following conditions¹.

1) The restriction should be in the form of attributes, while basics of rulings are already established in both *muṭlaq* and *muqayyad*. If restriction of the absolute is going to establish basics for a ruling in the form of an increase, or an increase in the number of times the *muqayyad* may not qualify the *muṭlaq*. For example it is obligatory to wash or wipe four parts in *wuḍū'*, while in *tayammum* it is only two parts. Here, *muqayyad* may not restrict *muṭlaq* because it would lead to the affirmation of a ruling which has not been mentioned, and the restriction may operate in scope of attributes only.

2) The absolute (*muṭlaq*) should be of one origin (source). If the absolute revolves between two different restrictions, the restriction would not take place. The example for this condition may be the restriction that the inheritance between spouses should take place after regulating legacy and debts². The inheritance has been mentioned in other places in the form of an absolute (*muṭlaq*). Due to the fact that this *muṭlaq* (the inheritance) and the inheritance mentioned in other places in authoritative texts are all one and the same origin it would be restricted, and therefore, the inheritance would take place after legacy and debts are regulated.

3) That they may not be harmonised (reconciled) except by restriction because implementation of their full meaning is better than cancelling some meaning.

4) That there is not a reliable proof which prevents the restriction to take place.

¹ Shawkānī, *Irshād al-Fuḥūl*, pp. 146-147.

² See the chapter al-Nisā', IV:12.

5) That an additional meaning has not been mentioned and joined to the *muqayyad* in a way that may suppose or suggest that the restriction has been mentioned because of that additional meaning. If such additional meaning is joined to *muqayyad* the restriction may not take place.

Value of *muqayyad*

As in the case of *muṭlaq* the legal adherence to *muqayyad* is incumbent and a strict obligation (*wājib*) as well as the implementation of its restricted meaning. It may not be changed to the absolute (*muṭlaq*) except by support of a reliable proof¹. *Muqayyad* also provides a definite indication (*qaṭ`ī al-dalālah*), because it represents a form of *khāṣṣ* which is definitive (*qaṭ`ī*).

=====

=====

¹ See: Sha`bān, *Uṣūl al-Fiqh al-Islāmī*, p. 249.

3) Al-Amr (the Command)

The linguistic definition of *amr*

AMR (A.) order, command, instruction. decree, authority, a term which occurs in many verses of the Qur'ān in the sense of command.¹

The technical definition of *amr*

Ibn al-Hājib provides the following definition for *amr*: “Requirement of an act not abstention, from the position of superiority.” (*Iqtidā' fi l'ghayr kaff' alā jihat al-isti'lā'*).²

Āmidī quoted a few definitions for *amr* and discussed them. He chose the definition provided by Shāfi'īs: “*Amr* is an order to act, from the position of superiority.” (*al-Amr ṭalab al-fi'l alā jihat al-isti'lā'*).³

Nasafī defined *amr* as an order to act. (*Ṭalab al-fi'l*).⁴

According to these definitions we may define *amr* as a provision that provides an order to act in the future when that order is issued from someone who is entitled to make such an order.

Forms of *amr*

Amr may be expressed in a variety of forms⁵:

a) The imperative mood of verbs exemplified in the following verse: “Then depart (*afīdū*) from the place whence all the people depart and ask (*istaghfirū*) Allāh for His forgiveness.”⁶

¹ M.L. A, *al-Mu`jam al-Wasīf*, I:26; *EF*, I:449; Wehr, *Arabic-English Dictionary*, p. 26.

² Ījī, *Sharḥ Mukhtaṣar al-Muntahā*, II:77.

³ Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, II:365.

⁴ Nasafī, *Kashf al-Asrār*, I:44.

⁵ These forms would provide *amr* provided that they are not accompanied by evidences which suggest otherwise.

Ash`arī scholars, however, maintain that the command has not its wording forms. This opinion is in contradiction with Arabic language, the Qur'ān and the Sunnah and as such this opinion is entirely rejected. (See: Sālim, *Tashīl al-Wuṣūl ilā Fahm `Ilm al-Uṣūl*, p. 23.).

b) The jussive mood of verbs (imperfect) proceeded by the command article “*li*” such as in the following verse: “Then let them complete (*li yaqdū*) the prescribed duties for them, and perform (*li yūfū*) their vows, and circumambulate (*li yaṭṭawwafū*) the Ancient House.”¹

c) The verbs in simple passive voice exemplified in the verses: “O you who believe! The law of equality in punishment is prescribed upon you in case of murder.”² “O you who believe! Fasting is prescribed upon you...”³

d) Verbal imperative noun (*ism fi`l al-amr*) exemplified in the following verse: “O you who believe! Take care of your own selves (*alaykum anfusakum*)...”⁴ The word “*alaykum*” is a verbal imperative noun (*ism fi`l al-amr*) and it is regarded as a form of *amr*.

d) The verbal noun which substitutes the imperative mood of verbs like in the verse: “hit at their necks” (*fa darb al-riqāb*)⁵. The word “*darb*” is a verbal noun which means hitting, striking. In this verse, however, it acts as a substitute to the imperative mood and means “hit”.

Besides these forms of *amr* there are some other forms which may provide the same indication like mentioning explicitly the following words: order (*amara*), ordain (*faraḍa*), prescribe (*kataba*), the duty upon (*ḥaqq `alā*) and similar to these. Here may be included provisions that indicate a moral condemnation, or contain threat with punishment, or vanishing of good deeds to someone because of his/her abandoning of certain duties. It may be even a sentence that provides information by which an order is intended, exemplified in the verse: “The mothers give suck (*yurḍi`na*) to their children for two whole years...”⁶ Due to the fact that by this information an order is intended we may see that

⁶ Al-Baqarah, II:199.

¹ Al-Ḥajj, XXII:29.

² Al-Baqarah, II:178.

³ Al-Baqarah, II:183.

⁴ Al-Mā'idah, V:105.

⁵ Al-Aḥqāf, XLVI:4.

⁶ Al-Baqarah, II:233.

some translators took it into consideration and translated the verse as : “The mothers shall give suck...”¹

The primary indication of *amr*²

If a form of an *amr* is not accompanied by clues or evidences which suggests the kind of request, *amr* would imply the definite obligatory order (*wujūb*). This is the opinion of the majority of Islamic scholars³. As proofs which would support their opinion the following may be mentioned:

a) From the Qur’ān there are any verses that include clear statements explaining this point: “(Allāh) said: “What prevented you (O *Iblīs*) that you did not prostrate, when I commanded you?”⁴ “And when it is said to them: “Bow down yourself (in Prayer)!” They bow not down (offer not their Prayers).”⁵ “And let those who oppose the Messenger’s commandment beware, lest some *fitnah* befall them or a painful torment be inflicted on them.”⁶ “It is not for a believer, man or woman, when Allāh and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allāh and His Messenger, he has indeed strayed in a plain error.”⁷

¹ Khān and Hilālī, *Interpretation of the Meaning of the Noble Qur’ān*, p. 58.

² Shīrāzī, *al-Lumma`*, p. 13; Aṣṣāhānī, *Sharḥ al-Minhāj*, I:314-324; Anṣārī, *Ghāyat al-Wuṣūl*, p. 64; Shawkānī, *Irshād al-Fuḥūl*, 83; Kawrānī, *Sharḥ Mukhtaṣar al-Manār fī Uṣūl al-Fiqh*, p. 28; Badrān, *Uṣūl al-Fiqh al-Islāmī*, p. 360.

³ There are some other opinions too: a) *amr* is a homonym (*mushtarak*) which imparts all sorts of meanings, b) it imparts only obligation and recommendation, c) *amr* imparts a permission to do something. According to these opinions *amr*, in order to impart certain meaning should be supported by a clues or circumstances. Accordingly, it may not imply obligation order without an additional evidence that suggests it. These opinions and their proofs cannot, in my opinion, oppose the clear proofs of the majority of scholars who maintain that the basic implication of *amr* is obligation order and for other implications which *amr* may imply additional evidences and clues are needed. (See: Shīrāzī, *al-Lumma`*, p. 13; Anṣārī, *Ghāyat al-Wuṣūl*, p. 64; Shawkānī, *Irshād al-Fuḥūl*, p. 83.)

⁴ Al-A`raf, VII:12.

⁵ Al-Mursalāt, LXXVII:48.

⁶ Al-Nūr, XXIV:63.

⁷ Al-Aḥzāb, XXXIII:36.

b) There is unanimous agreement between the Companions of the Prophet (p.b.u.h.) in this matter.

c) This is the nature of the Arabic language and the scholars of language have agreed upon it.

These proofs are explicit and so strong that according to Islamic methodology they cannot be opposed by other proofs.

The absolute and the restricted order ¹

An absolute order (*amr mutlaq*) necessarily includes everything without which it may not be completed. For example the order to perform Prayer necessarily includes the order to do ablution because the Prayer would not be correct without it². This is the case when we have an absolute order. When we have a restricted order (*amr muqayyad*) such as in the case of alms (*zakāt*), which is restricted by possession of a certain amount of wealth (*niṣāb*), then it does not include obligation to achieve that. This is because, by achieving it, the order will be completed, not the duty and obligation³.

Other usage's of *amr* ⁴

The *amr* originally implies obligation order. It may, however, imply other meanings when accompanied by evidences (context and circumstances) which divert its original meaning to other meanings. The following are some of other usage's of *amr*:

1) recommendation (*nadb*) exemplified in the verse: “O you who believe! When you contract a debt for a fixed period, write it down.”⁵

2) permissibility (*ibāḥah*) exemplified in the verse: “and eat and drink”⁶

¹ Shīrāzī, *al-Lumma`*, pp. 17-18.

² This does not mean that there are not special proofs for this and similar obligations.

³ The rule says: That without which the duty may not be fulfilled is a duty, and that without which the order will not be completed is not obligatory.

⁴ See: Shīrāzī, *al-Lumma`*, p. 12; Aṣfahānī, *Sharḥ al-Minhāj*, I:309-312; Anṣārī, *Ghāyat al-Wuṣūl*, p. 64; Shawkānī, *Irshād al-Fuḥūl*, pp. 85-86.

⁵ Al-Baqarah, II:282.

3) threat (*tahdīd*) exemplified in the verse: “Do what you will.”¹

4) indebtedness (*imtinān*) exemplified in the verse: “And eat of the things that Allāh has provided for you...”²

5) honour and hospitable reception (*ikrām*) exemplified in the verse: “Enter therein (Paradise), in peace and security.”³

6) to deem powerless (*ta`jīz*) exemplified in the verse: “then produce a chapter of the like thereof.”⁴

7) equalisation (*taswiyah*) exemplified in the verse: “Taste you therein its heat, and be patient or not, it is all the same.”⁵

8) contempt (*iḥtiqār*) exemplified in the verse: “Cast down what you want to cast.”⁶

9) consultation (*mashūrah*) exemplified in the verse: “so look what you think”⁷

10) a call for contemplation (*i`tibār*) exemplified in the verse: “Look at their fruits when they begin to bear.”⁸

⁶ Al-A`rāf, VII:31. This verse is normally mentioned by scholars as an example for permissibility (*ibāḥah*). It seems to me that it would rather indicate an obligation order. This opinion may be supported by many proofs: a) the *amr* originally impart an obligation order, b) the eating and drinking is only way to sustain the life and to do so is a strict obligation, c) this is mentioned in conjunction with “eat and drink but waste not by extravagance, certainly He Allāh) likes not the extravagant.”. All agree that extravagance in eating and drinking is forbidden. The conjunction with what is forbidden implicitly indicate that it is on the same level, but opposite, i.e. obligatory. The more appropriate for permissibility (*ibāḥah*) may be the verse: “But when you finish the *iḥrām* (grate or minor pilgrimage) go hunt” (al-Mā`idah, V:2). “Go hunt” (*fa iṣṭādū*) is normally translated as “you may hunt” because the order here implies the permissibility (*ibāḥah*).

¹ Fuṣṣilat, XLI:40.

² Al-Mā`idah, V:88.

³ Al-Ḥijr, XV:46.

⁴ Al-Baqarah, II:23.

⁵ Al-Ṭūr, LII:16.

⁶ Yūnus, X:80.

⁷ Al-Ṣāffāt, XXXVII:102.

⁸ Al-An`ām, VI:99.

11) supplication (*du`ā`*), when a demand came from an inferior to one who is superior, exemplified in the verse: “My Lord forgive me.”¹

12) warning (*indhār*) exemplified in the verse: “but take every precaution for yourselves”²

13) insult (*ihānah*) exemplified in the verse: “Taste you (this)! Verily, you were (pretending to be) the mighty, the generous!”³

14) request (*iltimās*) when a demand comes from equal or near equal-person exemplified when a student asks his/her fellow friend: “Give me the pan.”

The indication of *amr* after *nahy*⁴

In authoritative texts we may find that some rulings have abrogated other rulings and ordered the opposite which has hitherto been prohibited. For example the Prophet (p.b.u.h.) once stated: “I have forbidden you from visiting the graves. Nay, visit them, for it reminds you of the hereafter.”⁵ In these situations we may ask whether the order after prohibition implies obligation order or something else. The majority of scholars maintain that it would imply permissibility (*ibāḥah*) and not obligation order (*wujūb*).

A single compliance or repetition of an *amr*⁶

An *amr* may be: a) an absolute (*muṭlaq*), b) restricted to a single compliance, c) restricted to repetition. When an *amr* is restricted it would be applied according to its restrictions because the qualified has preference over the absolute.

¹ Ṣād, XXXVIII:35.

² Al-Nisā`, IV:35.

³ Al-Dukhkhān, XLIV:49.

⁴ Shīrāzī, *al-Lumma`*, pp. 13-14; Aṣḥānī, *Sharḥ al-Minhāj*, I:327-329; Anṣārī, *Ghāyat al-Wuṣūl*, p. 65.

⁵ Tabrīzī, *Mishkāt al-Maṣābīḥ*, I:554 (no. 1769).

⁶ See: Shīrāzī, *al-Lumma`*, pp. 14-15; Aṣḥānī, *Sharḥ al-Minhāj*, I:329-335; Anṣārī, *Ghāyat al-Wuṣūl*, p. 65; Shawkānī, *Irshād al-Fuḥūl*, p. 86.

An example for the single compliance may be seen in the verse: “And *ḥajj* is a duty that mankind owes to Allāh.”¹ The Prophet (p.b.u.h.) was asked whether they have to do it every year and he replied that it should be done once in a lifetime.²

The example for repetition may be the verse “Cut of the hand of the thief, male or female.”³ The command in this verse is dependent on an attribute i.e. theft. Therefore, whenever the theft occurs the cut would take place⁴.

If *amr* is an absolute (*muṭlaq*) the majority of scholars maintain that it does not imply a single compliance or repetition. Having in mind, however, that the obligation may not be fulfilled without a single compliance, a single compliance became necessary, but not because the absolute *amr* indicates it by itself.

Some scholars maintain that it implies a single compliance, while some maintain that it implies repetition during the lifetime.

The opinion of the majority and those who maintain that it implies a single compliance are not different when practically applied. The second opinion, however, seems to be more harmonious with the Arabic language.

The time in which *amr* should be performed⁵

If an *amr* is restricted by the time it would be performed according to the restriction. If the *amr*, however, is an absolute (*muṭlaq*) it would require an immediate performance⁶ because the people are ordered, in general terms, to

¹ Al-Imrān, III:97.

² See: Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Aẓīm*, I:512.

³ Al-Mā'idah, V:38.

⁴ If all conditions for punishment are fulfilled.

⁵ See: Shīrāzī, *al-Lumma*, pp. 15-17; Aṣḥānī, *Sharḥ al-Minhāj*, I:337-342; Anṣārī, *Ghāyat al-Wuṣūl*, p. 65; Shawkānī, *Irshād al-Fuḥūl*, pp. 88-89.

⁶ The time sometimes may be flexible, so that someone who does not perform the obligation immediately should not be blamed, like the Prayers which may be performed during certain times. In the light of this conclusion we may consider the Prophet’s (p.b.u.h.) delay to perform pilgrimage. Despite the fact that an absolute order may be sometimes delayed, the requirement

do good deeds as soon as possible. It is indicated by many Qur'anic verses: "And be quick for forgiveness from your Lord..."¹ "Race one with another in hastening towards forgiveness from your Lord..."² "So hasten towards all that is good."³ Moreover, bearing in mind the uncertainty of the time of one's death, an immediate performance of *amr* seems more required⁴.

Who is addressed by the *amr*?⁵

From a rational point human beings may be divided into two groups: 1) those who possess legal consciousness, 2) those who did not achieve legal consciousness because they did not reach the age of maturity, or they lost mental capabilities, temporarily or long term.

Those who do not possess legal consciousness are not addressed by legal text. This is a logical conclusion because an order is normally directed towards someone who presumably may perform the obligation. Furthermore, authoritative texts themselves indicate that they are not addressed. The Prophet (p.b.u.h.) has stated: "No responsibility upon three persons: a sleeping person until awake, a youth until sexual maturity (i.e. of legal age in Islamic law), and a lunatic until recovers consciousness."⁶

Those who possess legal consciousness may be divided into Muslims and non-Muslims. Those who are Muslims are addressed by legal texts and no scholars disagree with this. The disagreement appears when non-Muslims are in question whether they are addressed by particular injunctions of Islamic law or

to perform it as soon as possible remains in effect, due to the general requirement to perform good deeds at nearest time available.

¹ *Āl `Imrān*, III:133.

² *Al-Ḥadīd*, LVII:21.

³ *Al-Baqarah*, II:148.

⁴ According to someone's ability because Allāh burdens not a person beyond his/her scope. (See: *al-Baqarah*, II:286.).

⁵ *Shīrāzī, al-Lumma`*, pp. 20-23; *Kawrānī, Sharḥ Mukhtaṣar al-Manār fī Uṣūl al-Fiqh*, p. 42; *Uṭhaymīn, al-Uṣūl min `Ilm al-Uṣūl*, p. 39. The same answer which will be provided here is relevant to *nahy*.

⁶ *Tirmidhī, al-Jāmi` al-Ṣaḥīḥ*, IV:24 (no. 1423); *Nasā'ī, Sunan*, VI:156 (no. 3432)

not, like Islamic beliefs, the command to perform Prayers, fast the month of Ramaḍān etc.¹ The majority of scholars maintain that they are addressed by particular injunctions as well as by the general order to accept Islām. They support their claim by the following proofs:

a) The Qur'ān stated that non-believers would be asked at the Day of judgement: "What has caused you to enter Hell?" They will say: "We were not of those who used to offer their Prayers. Nor were we used to feed the poor. And we used to talk falsehoods with vain talkers. And we used to belie the Day of Recompense."² In these verses the Qur'ān mentions that non-believers would be punished by Hell because they did not perform Prayers. The Prayers are particular obligations. The fact that the Qur'ān did not mention only the greatest reason, that is the rejection to believe in the Day of Recompense, but mentioned Prayers also, indicates that non-believers are addressed by particular injunctions too.

2) When the Prophet (p.b.u.h.) was asked by some Jews to pass a judgement on some of them for the crime of adultery he applied the judgement of the Islamic law³. Therefore, had those non-Muslims not been addressed by particular injunctions, the Prophet (p.b.u.h.) would not have applied the Islamic ruling.

3) This is in harmony with the Islamic beliefs that everyone would be rewarded according to their deeds being good or bad. If non-Muslims are not addressed it would mean that they will not be rewarded according to their bad or good deeds⁴.

¹ There is no disagreement between Islamic scholars that non-Muslims are generally addressed and called to accept Islām.

² Al-Muddaththir, LXXIV:42-46.

³ This is also the Moses' law. In order to confirm that his law is not different from the Moses' law the Prophet (p.b.u.h.) asked them to bring the Torah and he showed them the place where it was written. See: Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VIII:30 (86:37).

⁴ According to Islamic beliefs non-believers will be rewarded for their good deeds in this world by a good life, wealth, good and dutiful children, thankfulness and admiration from the people etc. In the Hereafter only those who believed in Allāh *ta`ālā* will benefit from their good deeds they have done during their worldly life.

The value of *amr* ¹

According to the preferable opinion *amr* implies a definite obligatory order (*wujūb*). Therefore, Muslims should believe that the command (*amr*) implies an order before they search for a clues or evidence which may suggest other indications.

4) Al-Nahy (the Prohibition)

The linguistic definition of *nahy*

NAHY (A.) prohibition, ban, a term which occurs in many verses of Qur'ān in the sense of prohibition.²

The technical definition of *nahy*

Āmidī stated that *nahy* is opposite to *amr*. According to this statement *nahy* would be an order not to act, from the position of superiority.³

Nasafī defined *nahy* as someone's saying to another, from the position of superiority, do not act. (*Qawl al-qā'il li ghayrih 'alā sabīl al-isti'lā' lā taf'al*).⁴

Shawkānī provided for *amr* the following definition: "The declaration that requires an abstention, from the position of superiority." (*al-Qawl al-inshā'ī 'alā ṭalab kaḥn 'an fi'īn 'alā jihat al-isti'lā'*).⁵

According to these definitions we may define *nahy* as a provision that provides a prohibition of an act in the future when that prohibition order is issued from someone who is entitled to make such a prohibition.

¹ Anṣārī, *Ghāyat al-Wuṣūl*, p. 65.

² M.L. `A, *al-Mu`jam al-Wasīṭ*, II:960; Wehr, *Arabic-English Dictionary*, p. 1005.

³ Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, II:406.

⁴ Nasafī, *Kaṣḥf al-Asrār*, I:140.

⁵ Shawkānī, *Irshād al-Fuḥūl*, p. 96.

The forms of *nahy*¹

Nahy may appear in different forms. The following are some of them:

1) The imperfect preceded by the article *lā* (jussive mood) exemplified in the verses: “And eat up not (*lā ta’kulū*) one another’s property unjustly (in any illegal way).”² “O you who believe! Betray not (*lā takhūnū*) Allāh and His Messenger.”³

2) The explicit mentioning of the words: prohibition (*taḥrīm*), and ban (*nahy*), like in the following verses: “Such a thing is forbidden (*ḥurrima*) to the believers.”⁴ “Allah does not ban you (*lā yanḥākum*) to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, Allāh loves those who deal with equity. He indeed ban you (*yanḥākum*) regards those who fought against you on account of religion, and have driven you out of your homes, and helped to drive you out, to befriend them.”⁵

3) A command that requires the avoidance of something: “O you who believe! When the call for the Prayer is proclaimed on the day of Friday come to the remembrance of Allāh, and leave off (*wa dharū*) sale.”⁶ “So shun (*ijtanibū*) the abomination of idols, and shun lying speech.”⁷

4) Threats and criticism of those who do certain deeds exemplified in the following verses: “...and whoever does this shall receive the punishment.”⁸ “And who does more wrong than the one who invents a lie against Allāh, while he is being invited to Islām.”⁹

¹ Sālim, *Tashīl al-Wuṣūl ilā `Ilm al-Uṣūl*, p. 28.

² Al-Baqarah, II:188.

³ Al-Anfāl, VIII:27.

⁴ Al-Nūr, XXIV:3.

⁵ Al-Mumtaḥinah, LX:8-9.

⁶ Al-Jumu`ah, LXII:9.

⁷ Al-Ḥajj, XXII:30.

⁸ Al-Furqān, XXV:68.

⁹ Al-Ṣaff, LXI:7.

5) Prescribing of a penance for certain deeds exemplified in the verse: “And whosoever kills a believer by mistake he must set free a believing slave and a compensation be given to the deceased’s family, unless they remit it.”¹

6) The expressions as “it is not for you” (you could not) (*mā kāna lakum*) like in the verse: “And it is not (right) for you that you should annoy Allāh’s Messenger, nor that you should ever marry his wives after him.”²

7) Prescribing of a punishment (*ḥadd*) as a consequence for certain deeds like in the following verse: “The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred lashes.”³

8) Moral condemnation of a certain conduct exemplified in the verse: “It is not righteousness that you enter the houses from the back.”⁴

9) Description of a deed as corrupt or an act of the devil or his decoration exemplified in the following verse: “O you who believe! Intoxicants, gambling, arrows (for seeking luck or decision) are an abomination of Satan’s handiwork.”⁵

10) Confirmation that Allāh *ta`ālā* does not like he/she who does that, or that He will not purify him/her⁶, speak to him/her, or look at him/her⁷ etc.

11) In form of an information exemplified in the verse: “*Ḥajj* is (in) well-known (lunar year) month. So whoever intends to perform *ḥajj* then there is no sexual relations (with his wife) (*fa lā rafatha*), nor sin (*wa lā fusūqa*), nor unjustifiable dispute (*wa lā jidāla*) during the *ḥajj*.⁸

¹ Al-Nisā’, IV:92.

² Al-Aḥzāb, XXXIII:53.

³ Al-Nūr, XXIV:2.

⁴ Al-Baqarah, II:189.

⁵ Al-Mā’idah, V:90.

⁶ Al-Baqarah, II:174.

⁷ See the following verses: al-Baqarah, II:174; Āl-`Imrān, III:77.

⁸ Al-Baqarah, II:197.

Other usage's of *nahy*¹

The forms of *nahy* do not always imply strict prohibition (*taḥrīm*). They may imply other rulings too. Here are some of them²:

1) Blameworthy (*karāhah*) like the Prophet's (p.b.u.h.) prohibition of drinking from the neck of a waterskin³.

2) Supplication (*du`ā'*) when directed from the inferior to the superior exemplified in the verse: "Our Lord punish us not if we forget or fall into error."⁴

3) Guidance (*irshād*) exemplified in the verse: "O you who believe! Ask not about things, if made plain to you, may cause you trouble."⁵

4) To explain the end and outcome exemplified in the verse: "Think not of those who are killed in the Way of Allāh as dead. Nay, they are alive, with their Lord, and they have provision."⁶

The indication of *nahy*⁷

The majority of Islamic scholars maintain that *nahy*, in its reality, implies the prohibition (*taḥrīm*) if a reliable proof does not suggest otherwise.

As for the matter whether *nahy* necessarily means that the prohibited is corrupt, incorrect, and invalid and as such does not produce any legal rights and effects, it would need more detailed explanation.

The prohibited may be divided into two parts:

¹ Shīrāzī, *al-Lumma*, pp. 24-25; Anṣārī, *Ghāyat al-Wuṣūl*, p. 67; `Uṭhaymīn, *al-Uṣūl min `Ilm al-Uṣūl*, p. 37-39.

² In fact *nahy* may imply many of the rulings which *amr* implies. The difference is that *amr* implies action and *nahy* abstention. (See: Anṣārī, *Ghāyat al-Wuṣūl*, p. 67).

³ See: Nawawī, *Riyāḍ al-Ṣāliḥīn*, p. 269.

⁴ Al-Baqarah, II:286.

⁵ Al-Mā'idah, V:101.

⁶ Āl-'Imrān, III:169.

⁷ Shīrāzī, *al-Lumma*, p. 25; Aṣfahānī, *Sharḥ al-Minhāj*, I:343, 345-347; Anṣārī, *Ghāyat al-Wuṣūl*, p. 68; Shawkānī, *Irshād al-Fuḥūl*, p. 96-98; Kawrānī, *Sharḥ Mukhtaṣar al-Manār fī Uṣūl al-Fiqh*, p. 44; `Uṭhaymīn, *al-Uṣūl min `Ilm al-Uṣūl*, p. 36.

a) The prohibited which has never been treated by Allāh *ta`ālā* as good and acceptable deed i.e. has never been ordered to perform such as the subjects of prohibitions in the following verses: “And come not near to the unlawful sexual intercourse.”¹ “Worship Allāh and join none with Him.”²

These deeds have been prohibited because they are considered inherently bad (bad in themselves). They are seen as definitely forbidden, corrupt and incorrect, and what comes out as a result from them is corrupt and incorrect. According to this an illegitimate child would not follow his/her father in parenthood, and a unbeliever would not be rewarded in the Hereafter for his/her good deeds done in this world³.

2) What is prohibited from one aspect, while it is enjoined from another aspect. It may be prohibited because of three reasons:

a) because of its attribute, like prohibition for menstruating woman and drunk person⁴ to perform Prayers.

b) because of a matter which necessarily accompanies it, like the prohibition of fasting during the first day of *Eid* because it would necessarily prevent the person who fasts to celebrate the feast day.

c) because of a matter which does not accompany it⁵ like the prohibition to perform ablution with the stolen water, or to perform Prayer on the land acquired by unlawful arbitrariness⁶, or trading after the call for Friday prayer⁷.

¹ Al-Isrā', XVII:32.

² Al-Nisā', IV:36.

³ According to Islamic beliefs non-believers would be rewarded for their good deeds in this world.

⁴ Menstruation and drunkenness are attributes and the prohibited are Prayers.

⁵ i.e. there is no relation between the prohibited and that matter.

⁶ The prohibition here was introduced because of the matter which is not related to the prohibited. The ablution is prohibited not because the ablution will not be correct (like in case when water is dirty), but because the water may not be used without the permission of its owner. Therefore, the prohibition is same whether the stolen water is used for ablution, to be shed etc. In the difference between spoiled and stolen water we may see the difference between the prohibited because of an attribute in itself and a matter which does not accompany it.

A single compliance or repetition of a *nahy*¹

Nahy indicates the order to the abandonment forever of the action if it is not restricted. The proof for this may be the fact that scholars used *nahy* as a proof at all times without restricting it.

The value of *nahy*²

The absolute *nahy* implies the prohibition (*taḥrīm*) and that the prohibited is invalid. Therefore, Muslims should believe that the ban (*nahy*) implies the prohibition (*taḥrīm*) before they search for clues or evidence which may suggest other indications.

=====

=====

⁷ Some scholars maintain that the deeds in these circumstances are correct, because the trading, for example, has all its requirements, and a nugatory is outside and therefore separated from the trade. Some other scholars, however, maintain that such deeds are incorrect because the prohibition requires the punishment, and correctness requires the reward and there may not be a deed for which a person would be rewarded and punished at the same time. The latter opinion is preferable because it is supported by strong proofs. The Prophet (p.b.u.h.) stated that a deed which is not in accordance to his practise would be rejected, and his Companions were using the prohibitions as an argument that a deed is invalid, like in case of trading which contains usury.

¹ Aṣfahānī, *Sharḥ al-Minhāj*, I:343-344; Anṣārī, *Ghāyat al-Wuṣūl*, p. 67.

² Uṭhaymīn, *al-Uṣūl min `Ilm al-Uṣūl*, p. 36.

Part IV

The Interpretation (*ta'wīl*) of Clear and Unclear Words

Part IV: The Interpretation (*ta'wīl*) of clear and unclear words

Introduction

Ta'wīl is counted as one of the major causes of disagreement between Islamic scholars about many legal questions, because many Sharī'ah source-texts are susceptible to more than one interpretation. Examples could be traced not only in ambiguous texts but also in texts containing more obvious (the apparent) meaning (in both Ḥanafī and Shāfi'ī *madhhab*). Due to the fact that *ta'wīl* can be abused¹ Islamic scholars tried to elaborate and explain scientific ways of *ta'wīl*. In their opinion any *ta'wīl* has to be supported by scientific proofs. The method they have suggested helps scholars (*mujtahids*) with their legal reasoning and protect them from saying something based on their own opinion², and focuses their direction towards the right methodology regarding the usage of *ta'wīl*.

The linguistic definition of *ta'wīl*

TA'WĪL (A.) Interpretation, construction, explanation.³ Muthannā said: "*ta'wīl* is interpretation, reference, source and destiny."⁴

¹ Many people used *ta'wīl* to explain authoritative texts according to their own desires, because of lack of knowledge of the proofs and arguments, or because of preconceived notions. They did not make any efforts to discover and reveal the intention of the Lawgiver, but they only wanted to achieve their own objectives. From the orthodox point of view *ta'wīl* which is not based on a scientific basis is broadly used as an instrument for deformation, distortion and misrepresentation of Islamic teachings.

² The Prophet (p.b.u.h.) said: "He who speaks about the Qur'ān by his own opinion, he is wrong even if he says the right." Tirmidhī, *al-Jāmi' al-Ṣaḥīḥ*, V:183. (no. 2950); Abū Dāwūd, *Sunan*, III:320. (no. 3652).

³ Ba`labakī, *al-Mawrid*, p. 265;

Although, it may often be rendered by interpretation, like *tafsīr*, it more properly signifies the rendering in a manner not according to the letter, or overt sense; explaining the covert, or virtual, meaning; interpreting in a manner not according to the obvious meaning.

Ta'wīl also means "turning a verse of the Qur'ān from its apparent meaning to a meaning which it bears, or admits, when the latter is agreeable with the Qur'ān and the Sunnah. For instance, in the phrase in the Qur'ān: "*Yukhrij al-ḥayy min al-mayyit.*" (VI: 95), if the meaning be (thus explained), "He produces the bird from the egg," this is *tafsīr* and if the meaning be (thus explained), "He produces the believer from the unbeliever," or "the knowing from the ignorant," this is *ta'wīl*.

It also means "explaining the meaning of that which is *mutashābih*, (or what is equivocal, or ambiguous,) i.e., what is not understood without repeated consideration."¹

The meaning of *ta'wīl* in tradition of *salaf* and the first Islamic scholars²

The first Muslims (*salaf*) understood the meaning of the word *ta'wīl* to be interpretation, source and destiny. This is reflected in the statement made by Ibn Taymiyyah³: "In the tradition of *salaf* the word *ta'wīl* carries the same meanings Allāh has mentioned in His Book. These meanings may be exemplified by the following verses: "Await they just for the final fulfilment (*ta'wīlah*) of the Event? On the Day the Event is finally fulfilled (i.e. the Day of Resurrection), those who neglected it before will say: "Verily, the

⁴ Muthannā, *Majāz al-Qur'ān*, I:87. Ṭabarī mentioned the same linguistic definition. (See: *Jāmi' al-Bayān 'an Ta'wīl Āy al-Qur'ān*, VI:204.)

¹ M.L.`A, *al-Mu`jam al-Wasīṭ*, I:33; Lane, *Arabic-English Lexicon*, I:1257, II:2397; *EL*², I:275, I:412, I:1039.

² Practical examples of *ta'wīl* when the Prophet's tradition is in question may be seen in the book "*al-Ta'wīl Dirāsah Mawḍū'iyyah fī al-Aḥādīth al-Nabawiyyah*" by Sa`īd.

³ Ibn Taymiyyah, *Muwāfaqat Ṣarīḥ al-Ma`qūl li Ṣaḥīḥ al-Manqūl*, I:119-120.

Messengers of our Lord did come with the truth...”¹ “That is better and more suitable for final determination (*aḥsan ta’wīl^{an}*).”² “And he said: “O my father! This is the interpretation (*ta’wīl*) of my dream of old! My Lord has made it come true!”³ “Thus will your Lord choose you and teach you the interpretation (*ta’wīl*) of dreams...”⁴ “Then the man who was released, now at length remembered and said: “I will tell you its interpretation (*ta’wīl*), so send me forth.”⁵

The opinion expressed by Ibn Taymiyyah is supported by many proofs exemplified by the tradition related from Zuhri who stated: “I asked ‘Urwah why ‘Ā’ishah completes her Prayer while travelling?” He said: “She interpreted (*ta’awwalat*)⁶ like ‘Uthmān.”⁷

Due to the fact that the first Muslims spoke a pure form of the Arabic language their understanding of various expressions is accepted as reliable grounds for interpretation of the Qur’ān which was revealed in pure Arabic too⁸.

Early scholars did not differ from the *salaf* in their understanding of *ta’wīl*.

Shāfi‘ī also understood *ta’wīl* to carry all meanings of interpretation, source and destiny. It can be concluded from the following example in his *Risālah* in

¹ Al-A`rāf, VII:53.

² Al-Nisā’, IV:59.

³ Yūsuf, XII:100.

⁴ Yūsuf, XII:6.

⁵ Yūsuf, XII:45.

⁶ He meant that she interpreted the ruling related to the traveller’s Prayer in the same way ‘Uthmān did when he, during the *ḥajj*, did not shorten his Prayers in Mina; though it is permitted to do so. There are two possible explanations for this: first, he had been married from Makkah and he thought that the people of Makkah were not permitted to shorten their Prayers in Mina; second, he was afraid that some Bedouins might be confused when they watched him do so, and so he did not shorten his Prayers.

⁷ See: Ibn al-Athīr, *al-Nihāyah*, I:51.

⁸ The Qur’ān states: “Which the trustworthy *Rūḥ* (Gabriell) has brought down; Upon your heart that you may be (one) of the warners, in the plain Arabic language.” (al-Shu`arā’. XXVI:193-5.)

which he, by his gifted ability to utilise *ta'wīl*, tried to reconcile texts which appear to give conflicting meanings:¹

The Prophet (p.b.u.h.) said: “Start your Dawn prayer at day-break, for (its performance) at that time is the most rewarding to you.”²

In another tradition narrated by `Ā'ishah she said: “They, the believing women, were in the habit of performing the Dawn-prayer with the Prophet; then they went their way in the half-light, wrapped up in their robes and unrecognised by anyone because of darkness.”³

The reconciliation between these two traditions, according to Shāfi`ī, can be made by interpreting one of them not according to its obvious import (i.e. by *ta'wīl*). He said: “So whenever traditions are found to be contradictory, we should choose the one for which there is valid reason which makes us believe that it is more reliable than others.” When he was asked what would that reason be? He replied: “It is that one of the two traditions should be more consistent with (the meaning of) the Book of Allāh, for consistency with the Book of Allāh is an evidence (of reliability).”

Shāfi`ī meant that the second tradition is closer to the following verse: “Guard strictly the Prayers especially the Middle prayer.”⁴ He added that it is clear that someone who prays at the beginning of the period set for the every Prayer he/she is more anxious to perform the Prayer at its proper time from that who delays it to the end of the determined period. To elaborate on his opinion he stated: “We have noted that men prefer to perform their obligatory and voluntary prayers as nearly on time as they can, for they are liable to be busy or forgetful or suffer from other illnesses (which may cause postponement) - these are matters which are understandable.”⁵

¹ Shāfi`ī, *al-Risālah*, pp. 212-217.

² Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, I:289-291 (no. 154).

³ Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, I:144 (9:27); Muslim, *Ṣaḥīḥ Muslim*, V:143-144.

⁴ Al-Baqarah, II:238.

⁵ Shāfi`ī, *al-Risālah*, p. 215.

Shāfi`ī maintained that the latter tradition agree with the former in some respect. He said: “Since the Apostle urged men to perform their Prayers at the scheduled time and pointed out that (such performance) was meritorious, his (attitude) implied that he was in favour of performing the Prayer at the end of day break so he said: “Pray at day break,” by which he meant just at the time when the dawn begins.”

When he was asked: “Is there any other possible meaning?” Shāfi`ī replied: “Yes. It may mean either what you have held, or an intermediary position between your opinion and mine, or any other meaning that may be implied by (the term) daybreak.

He was asked: “What makes your opinion preferable to mine?” Shāfi`ī replied: “That which I have already explained as well as the Prophet’s statement: “There are two dawns: The first is like the tail of the *sirḥān*¹(false dawn)² in which (the performance of Prayer) is neither prohibited nor permitted; (the other) is daybreak, at which the performance of Prayer is permitted, but taking the meal is forbidden. That is to say, (taking the meal) by him who intends to fast (for the coming day).”³

From the previous example it is obvious that Shāfi`ī used *ta`wīl* of the former tradition as an argument. At the same time he interpreted the latter tradition by saying that it is more consistent with the Book.

At another time Shāfi`ī called the acceptance of one of two meanings “an interpretation” (*ta`wīl*). He maintained that it is allowed for a scholar, when a tradition is ambiguous, to accept one interpretation in precedence to another.⁴ Juwaynī defined *ẓāhir* by saying that it is a provision which is susceptible to two meanings and one of them is clearer. If a less clear meaning was given precedence, due to a proof, it would be called *ta`wīl*.⁵

¹ *Sirḥān* in Arabic means wolf. (See: Ba`labakī, *al-Mawrid*, p. 630.)

² Lane, *Arabic-English Lexicon*, p. 1345.

³ Bayhaqī, *al-Sunan al-Kubrā*, IV:215; Suyūṭī, *al-Durr al-Manthūr*, I:200.

⁴ Shāfi`ī, *al-Risālah*, p. 277.

⁵ Maḥallī, *Sharḥ al-Waraqāt*, p. 18.

The technical definition of *ta'wīl*

With the development and evolution of the science of *uṣūl al-fiqh* the meaning of *ta'wīl* became more specified and distinct from *tafsīr*. The scholar's definition of *ta'wīl* falls within the process of "abandoning" the apparent meaning of the word to the suspected and non preferable meaning, effected by a proof which stands in favour of the non preferable meaning.

Due to the fact that *tafsīr* is an explanation of a meaning by the authoritative assertion, while *ta'wīl* is based on supposition and uncertainty, some said that it is allowed to produce a *ta'wīl* which is based on one's own opinion while it is not allowed to produce such a *tafsīr*.¹

Ghazālī defined *ta'wīl* in the following terms: "*Ta'wīl* is a possibility supported by a proof which makes it a prevailing conjecture over the apparent meaning." (*al-Ta'wīl 'ibāratun 'an ihtimā'in ya'diduh dalīlun yaṣīr bih aghlaba 'alā al-ẓann min al-ma'nā alladhī dalla 'alayh al-ẓāhir.*)²

In this definition Ghazālī called the possibility (non preferable meaning) as *ta'wīl*. This is not right, because *ta'wīl* is the process and procedure during which a *mujtahid* would avoid the apparent meaning and stick to a likely meaning relying upon a proof which made the likely meaning preferable over the apparent meaning of a word.

Nasafī defined *ta'wīl* as: "What becomes most probable and preferable of the homonym's indications." (*Mā tarajjaha min al-mushtarak ba'da wujūhih bi ghālib al-ra'y.*)³

His definition can be criticised from different perspectives.

a) The homonym (*mushtarak*) has equal meanings and in case of *ta'wīl* we have to have an apparent meaning and other likely meanings. Therefore, *mushtarak* has nothing to do with *ta'wīl*.

¹ See: Taftāzānī, *Sharḥ al-Talwīḥ 'alā al-Tawḍīḥ*, I:125.

² Ghazālī, *al-Mustasfā*, p.196.

³ Nasafī, *Kashf al-Asrār*, I:204.

b) The suspected meaning which has been given a precedence over the apparent meaning of the word has to be supported by a reliable proof, not based on sole opinion. Any *ta'wīl* based on sole opinion is not acceptable.

Taftāzānī's definition of *ta'wīl* is: "Disclosure that a proof should be taken into account by which a meaning becomes more probable from the apparent meaning." "*Huwa inkishāf i'tibār dalīlīn yaṣīr al-ma'nā bih aghlaba `alā al-ẓann min al-ẓāhir.*"¹ Similar definition is provided by Bādshāh.²

Shawkānī said in his definition: "Giving the precedence to non preferable meaning in preference to the apparent meaning relying on a proof which makes non preferable meaning preferable." (*Ḥaml al-ẓāhir `alā al-muḥtamal al-marjūḥ bi dalīlīn yuṣayyiruh rājiḥan.*)³

Whenever *ta'wīl* is mentioned in an absolute term it is meant to be the acceptable one.

Some scholars like Āmidī, Taftāzānī, and Shawkānī made a distinction between *ta'wīl* which is acceptable by Islamic law and that which is not. Āmidī defined acceptable *ta'wīl* as: "Interpretation of the word by its non apparent meaning relying on a proof which supports interpretation without dismissing entirely its apparent meaning." "*Ḥaml al-lafẓ `alā ḡhayr madlūlih al-ẓāhir minh ma'a ihtamālih lah bi dalīlīn ya`diduh.*"⁴ Non acceptable *ta'wīl* is that one which is not supported by a proof.

From these definitions it can be concluded that *ta'wīl* in the science of *uṣūl al-fiqh* is turning from the word's essential, literal and apparent meaning to another possible meaning due to a proof which suggests it, like adopting a particular meaning from the general so called *takhsīs*. Therefore, to note the distinction from *tafsīr* which aims to explain authoritative texts within the

¹ Taftāzānī, *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, I:125.

² See: Bādshāh, *Taysīr al-Taḥrīr*, I:137.

³ Shawkānī, *Irshād al-Fuḥūl*, p. 154.

⁴ Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:50.

confines of their literal meanings, *ta'wīl* goes beyond the literal meanings and reads into texts hidden meanings.¹

Is *ta'wīl* acceptable as a way for the interpretation of source-texts?

As we have seen the majority of scholars maintain that *ta'wīl* can be a strong rational part of *ijtihād* and very useful in interpreting the source-texts when its preconditions are fulfilled. Therefore, they accept it under certain conditions.

On the opposite side *Zāhirī madhhab* refuses any interpretation not according to the obvious meaning. Dāwūd al-Zāhirī and his followers² rejected *ta'wīl* entirely. They follow only the apparent meaning of the Qur'ān and the Sunnah by maintaining that, in their general meanings, answers for everything can be found. If they do not find such a proof in both of them they refer to *ijmā'*³ They reject analogy (*qiyās*) as well. They consider that all source-texts are clear and explained, and therefore do not need the interpretation not according to its obvious import (*ta'wīl*). They do not leave an apparent meaning unless another apparent meaning from the Qur'ān or the Sunnah or *ijmā'* suggests otherwise because language is created by Allāh *ta'ālā* to be means by which meanings can be presented and conveyed, and the languages are not more than words which are fixed on certain meanings.⁴

Ibn Ḥazm, the most prominent scholar among *Zāhirīs*, defined *ta'wīl* in the following terms: “It is transfer of the word from its apparent and literal

¹ It may be noticed that the usage of *tafsīr* and *ta'wīl* amongst scholars through the ages did not carry this clear distinction. Some scholars did not make any distinction between them at all. In our time, however, it seems to me that scholars tend to use *tafsīr* and *ta'wīl* in these two distinctive meanings.

² Ibn Ḥazm was Dāwūd's most famous follower who revived *Zāhirī madhhab* after him and himself became the leader of this *madhhab*. See: *Khudārī, Tārīkh al-Tashrīh al-Islāmī*, pp. 267-268; Madkūr, *Tārīkh al-Tashrīh al-Islāmī wa Maṣādiruh*, pp. 194-195.

³ They accept only the *ijmā'* of the Companions because their *ijmā'* is based on a proof provided by the Prophet (p.b.u.h.).

⁴ See: Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:41.

indication to another meaning”. (*Huwa naql al-lafz `amā iqtadāh zāhiruh wa `amā wuḍi`a lah fi al-lughah ilā ma`nā ākhar.*)¹ According to him the *ta`wīl* would be correct if the “transferor” is someone who should be obeyed i.e. Allāh *ta`ālā* or his Prophet (p.b.u.h.). If its transferor is someone else such *ta`wīl* is incorrect and as such is rejected. In support of his opinion Ibn Ḥazm notes some corroborating evidences from the Qur`ān and the Sunnah. Here are some of them:

a) Allāh *ta`ālā* has dispraised those who change the meanings of words. It is clear proof that He has prohibited the literal meanings of the words to be changed. The Qur`ān states: “Among those who are Jews, there are some who displace words from (their) right places and say: “We hear your word (O Muḥammad) and disobey...” The verse is concluded: “...but Allāh has cursed them for their disbelief, so they believe not except a few.”²

b) Ibn Ḥazm supported his opinion by the tradition related by Ibn `Umar who said that when the leader of the hypocrites of Madīnah³ died the Prophet (p.b.u.h.) officiated at the funeral prayer. At that moment his companion `Umar asked him: “Would you pray for him and Allāh has forbade you to pray for him. The Prophet (p.b.u.h.) said: “Allāh has indeed let me choose and said: “Whether you (O Muḥammad) ask forgiveness for them (hypocrites) or ask not forgiveness for them (and even) if you ask seventy times forgiveness for them Allāh will not forgive them...”⁴ This tradition shows very clearly how the Prophet (p.b.u.h.) interpreted the word “whether” (*aw*) according to its obvious meaning i.e. to mean letting or making someone choose. Afterwards when the following verse was revealed: “And never (O Muḥammad) pray (funeral prayer) for any of them (hypocrites) who dies, nor stand at his grave.”⁵

¹ Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:42.

² Al-Nisā’, IV:46.

³ It was `Abdullāh b. Ubayy b. Salūl.

⁴ Al-Tawbah, IX:80. See: Ibn Kathīr, *Tafsīr al-Qur`ān al-`Aẓīm*, II:495-496.

⁵ Al-Tawbah, IX:84.

The Prophet (p.b.u.h.) since then implemented the obvious import of the verse and ceased to pray for hypocrites at the funeral prayer.

c) `Ā'ishah said that the Prophet (p.b.u.h.) always interpreted the Qur'ān according to its obvious import, except some verses concerned with the periods that Gabrielle informed him. Therefore, if he, as a prophet, did not interpret the text not according to its obvious import except by another text from the Qur'ān it is more appropriate for others to do so.

d) The Qur'ān states that: “And We have sent down to you the Book (the Qur'ān) as an exposition of everything...”¹ In another verse the Prophet's duty to explain was clearly confirmed: “And we have sent down unto you (O Muḥammad) the reminder and the advice (the Qur'ān), that you may clearly explain to men what is sent down to them, and that they may give thought.”² From these proofs Ibn Ḥazm concluded that it is forbidden (*ḥarām*) to interpret the Qur'ān not according to its obvious import, and someone who explained it by meanings which the words apparently do not mean, he/she has lied to Allāh *ta`ālā*.³ He strongly criticised Rawāfiḍ who did not follow the apparent meaning but interpreted the source texts according to their desires.⁴

The methods by which Ibn Ḥazm interpreted authoritative texts led him into sharp controversy on some legal issues with other schools..⁵

a) He said that every man who has the ability to marry is obliged to do so even if he is sure that he will not commit the sin of illegal sexual intercourse. He derived this ruling from the order “let him get married” in the following tradition: “O youth! Whoever has ability to marry let him get married, and who

¹ Al-Naḥl, XVI:89.

² Al-Naḥl, XVI: 44.

³ Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:44.

⁴ Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:40.

⁵ It is due to the fact that the command (*amr*), the prohibition (*nahy*), the general meaning (*umūm*), and the specified meaning (*khuṣūṣ*) are open to interpretation not according to the obvious meaning.

cannot he has to fast. Indeed, it will be for him a protection (*wijā`*).¹ The command apparently indicates strict obligation. Due to the fact that there is no proof which would transfer it to something else that command continues to mean its apparent meaning i.e. strict obligation (*wājib*).

b) The Prophet (p.b.u.h.) said: “When a dog licks [the contents or interior] of someone’s vessel let its contents be poured out, then washed seven times.”² In another narration to this tradition he said: “Cleanness of someone’s vessel, when a dog licks (something) in it, is to wash it seven times, the first time with soil (*turāb*).”³

By following the apparent meaning of this tradition Ibn Ḥazm concluded the following:

1) When a dog licks the contents and interior of vessel, no matter what kind of dog: hunting or otherwise, big or small, the requirement is to pour out whatever is in the vessel, then it should be washed seven times, the first time with soil (*turāb*).

2) The water used in washing is clean and lawful for further usage.

3) If a dog eats from a vessel, and does not lick it, or if it puts its foot, tail or falls in entirely, the vessel does not need to be washed, nor its contents poured because it is not textually mentioned. It remains lawful and clean as before because the basic rule is that everything originally permitted (*ḥalāl*) is clean and its status cannot be changed without a proof. Therefore its status of permitted and clean cannot be changed to prohibited and dirty without an explicit text, and that explicit text mentioned the licking only.

4) If a dog licks water from a pond, from a person’s hands or from something else, i.e. something that is not called the vessel, it does not need to be washed, nor its contents be poured out because what causes the dirtiness is the licking and what may become dirty are the vessels only. This is textually mentioned. Therefore, due to the fact that the hands etc. are not called “vessels”

¹ Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VI:117 (67:3); Muslim, *Ṣaḥīḥ Muslim*, II:1018-1019 (no. 1400).

² Muslim, *Ṣaḥīḥ Muslim*, I:234 (no. 279).

³ Muslim, *Ṣaḥīḥ Muslim*, I:234 (no. 279).

there is no need for them to be washed. Moreover, its contents do not have to be poured out because the Prophet (p.b.u.h.) stated that only vessels should be avoided (until properly washed) in addition to that he prohibited wastage of wealth (food, water etc.).

The first of Ibn Ḥazm's conclusions is clearly indicated by the apparent meaning of the texts, but his other conclusions seem strange and questionable for the following reasons:

1) The licked water is unclean, because the dog has touched the water not the vessel. Had the water been clean there would be no obligation for the vessel to be cleaned. Although, the former tradition seems very clear about this point the exaggeration in retaining the apparent meaning led Ibn Ḥazm to leave the apparent meaning itself.

2) The spirit of Islamic law agrees with common sense and it does not go beyond its comprehension. Therefore, making the distinction between "licking" and "eating" or "hand" and "vessel", in the way maintained by Ibn Ḥazm, contradicts the normal reason and common sense.

c) Among his nonsensical conclusions is his belief that non-Muslims are of impure substance. He said that saliva, sweat (perspiration), tears and everything that comes from their bodies is impure, because what is part of the impure is impure in itself.¹ Regarding his observation he contradicts all other Islamic schools. He relied on the verse: "O you who believe! Verily, the *Mushrikūn* are impure."² and on the tradition in which the Prophet (p.b.u.h.) said: "Verily the Muslim never becomes impure."³

The four Islamic schools interpreted the former verse not according to the apparent meaning. They maintained that "impure" can have two connotations: one which is subjective based on the consideration that their beliefs are incorrect, the other is objective which is related to what they consider to be clean or not clean for example, urine and ceremonial uncleanness after sexual

¹ Ibn Ḥazm, *al-Muḥallā*, I:130.

² Al-Tawbah, IX:28.

³ Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:73 (23:8).

intercourse. As for the previous tradition they said that it means that Muslims do not become unclean because they avoid all that is considered dirty from an Islamic point of view. It does not mean that Muslims are pure and non Muslims are impure. They based their interpretation on many proofs: ¹

1) Islām has allowed for a Muslim to marry a woman of the People of the Book (*ahl al-kitāb*). Qur'ān states: “(Lawful to you in marriage) are chaste women from those who were given the Scripture (Jews and Christians) before your time...”² A marriage requires full association and intimacy in which it seems impossible for the husband to avoid the saliva, sweat (perspiration) etc. of his wife. Nonetheless, Islām did not expect him to have additional ablution because his wife is a non-Muslim.

2) Islām has allowed the Muslim to eat the food of *ahl al-kitāb*³ and to eat with them. “Made lawful to you this day are *ṭayyibāt* (all good things). The food (slaughtered cattle, edible animals etc.) of the people of the Scripture (Jews and Christians) is lawful to you and yours is lawful to them.”⁴

3) The Prophet (p.b.u.h.) and his Companions did ablution by using the water contained in the canteen (*mazādah*) belonging to a polytheist.⁵

4) He ate the flesh of a sheep which was provided by a Jewish woman while he was in Khaybar and he ate cheese imported from Christian countries.⁶ He took barley from a Jew and carried it to his family.⁷

5) Islām teaches that all human beings are descended from Ādam. Humanity is the reason why Allāh *ta`ālā* gave precedence to humans over His other creatures. The Qur'ān states: “And indeed We have honoured the children of

¹ See: Ibn Rushd, *Bidāyat al-Mujtahid*, I:28; Shawkānī, *Nayl al-Awṭār*, I:31; Ṣan`ānī, *Subul al-Salām*, I:42.

² Al-Mā'idah, V:5.

³ When the food which they have prepared is *ḥalāl*.

⁴ Al-Mā'idah, V:5.

⁵ See: `Asqalānī, *Bulūgh al-Marām*, p.17; Shawkānī, *Nayl al-Awṭār*, I:31-84.

⁶ See: Shawkānī, *Nayl al-Awṭār*, I:31-84.

⁷ Ibn Kathīr, *Tafsīr al-Qur'ān al-`Azīm*, II:28-30.

Ādam, and We have carried them on land and sea, and have provided them with lawful good things (*ṭayyibāt*), and have preferred them above many of those whom We have created with a marked precedence.”¹ This verse did not differentiate between Muslims and non Muslims because the aim of Islamic law is to sustain and establish humanity in the world.

6) The Prophet (p.b.u.h.) said that there is no difference between human beings except in piety (good deeds) and that good deeds are the measure by which humans are judged in Islām and there is no other ground for consideration.

Due to the fact that the opinion of Ibn Ḥazm in this question seems to be baseless some Islamic scholars did not take his opinion into account at all when they studied this question. Nawawī said that unanimous agreement between Islamic scholars from the past and the present is that non Muslims have got the same ruling in relation to *ṭahārah* and *najāsah*. Therefore, saliva, sweat (perspiration), tears of a non Muslim are clean under all conditions:

- if he/she is in state of *janābah* (major ritual impurity caused by sexual intercourse)
- women after the menstrual period and after *nifās* (a certain period after childbirth).

Undoubtedly, Zāhirī’s approach to the interpretation of the authoritative texts is more guarded and more vigilant, but it can lead, as exemplified by the previous examples, to unacceptable interpretations which are far from the spirit of Islamic law. Ibn Ḥazm’s accusation that anyone who does not accept the apparent meaning is interpreting according to his/her desires is not accurate. That allegation can be related to those who do not follow the scientific way of *ta’wīl* i.e. do not fulfil its preconditions.

All recognised Islamic scholars who accept *ta’wīl* as a method of interpretation have made rules which, if followed, will save a *mujtahid* from committing errors and from saying something about the Qur’ān without knowledge. *Ta’wīl* which has fulfilled its preconditions cannot commit perjury about Allāh *ta’ālā*

¹ Al-Isrā’, XVII:70.

because these rules and preconditions are based on His Book and the Sunnah of his Prophet (p.b.u.h.).

The *Zāhirī* method, despite the fact that it seems very safe, can not give answers for some questions and can lead to strange interpretations and rulings which are obviously wrong.

Sphere of *ta'wīl*

If we take a look at any expression with an open mind in an effort to interpret it in different ways as much as possible (without due consideration to any ground of interpretation), we will find that almost every expression can be interpreted in so many ways. That would ultimately mean that people do not fully understand one another and that humans cannot fully communicate to each other that which is in their minds.

On the other hand, (by basing our understanding on some ground of interpretation) we would understand others clearly. If someone says to us that we do not, we would bitterly argue that we do, and we would provide them with personal evidence as proof.

In every language certain rules have been developed in order to help people understand each other. In the beginning these rules were unwritten. With the development of language these rules were collected and systematised. Nowadays, these rules are taught and they really help us to understand others both from the past and the present. One of the most important benefits of these rules is the fact that they prevent people from misinterpretation for preconceived reasons. This is extremely important when the *Sharī'ah* source-texts are in question.

One of these rules is that the reality is the essence of the meaning. (*al-aṣl fī al-kalām al-ḥaqīqah*.)¹ Therefore, non apparent meaning has to be supported by a reliable proof.

¹ See: Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, p. 69; Lubnānī, *Sharḥ al-Majallah*, pp. 24-25; Zaydān, *al-Madkhal li-Dirāsah al-Sharī'ah al-Islāmiyyah*, p. 93.

Now, when one knows these rules one has to ask what is the sphere for *ta'wīl* i.e. for the interpretation not to the obvious (apparent) import of the text?

Islamic scholars realised the fact that authoritative expressions can not always be interpreted according to their apparent meaning.¹ At the same time they carry a moral obligation to interpret the Sharī'ah source-texts according to the intention of the Lawgiver. The predominant method is by referring to the rules of the language. At the same time they insist that it is not acceptable to interpret it according to the wishes and desires of the people. This attitude towards the Sharī'ah source-texts is one of the main reasons why Islamic thought has been preserved from distortion. Despite the apparent fact that there are so many diversions among the followers of Islam, the fact remains that Muslims agree on matters where disagreement is impossible (*muḥāl*).

The implementation of the apparent meaning

All *imāms* agree that the basic method for deriving legal rulings is non-*ta'wīl*. They say that implementation of the apparent meaning is an indisputable obligation (*wājib*), and no one is allowed to avoid the apparent meaning without a proof which requires such a move. Therefore, a general expression should be interpreted in general sense until particularisation emerges. Also unrestricted expression should be interpreted in that sense until restriction emerges, the command would be interpreted as an undisputed obligation until that which directs it towards another meaning emerges. Therefore, the apparent meaning of an expression, which comes to listener's mind as one's spontaneous understanding would be counted as the true meaning of the expression and consequently implemented. Avoiding the apparent meaning is not allowed except with a reliable proof. This is confirmed by all Islamic scholars.

When speaking about orders of prohibition consistent with previous orders in certain matters Shāfi'ī mentioned a tradition in which the Prophet (p.b.u.h.)

¹ *Zāhirī madhhab* rejected *ta'wīl* entirely and maintained that every Sharī'ah source-text has to be interpreted according to its obvious import.

said: “When the sun first rises, Satan’s horns are associated with it¹: when it is up, they are separated; when it is at the meridian they join it; when it begins to descend, they are separated; when it approaches its setting, they join it again; and when it disappears, they are separated. The Apostle of Allāh has forbidden the performances of Prayer during these hours (when Satan’s horns are associated with the sun).”² Shāfi`ī stated that this text can be interpreted in different ways. He concluded: “Since the two meanings (are permissible) it is obligatory for the learned not to become attached to the particular- as distinct from the general- meaning unless there is a specifying indication in the Sunnah or an agreement among the scholars who do not agree on any matter contrary to the Sunnah. Similarly, other traditions from the Apostle should be accepted as explicitly general unless an indication specifies otherwise, as I have explained, or unless there is an agreement of the Islamic scholars specifying that their meaning is implicit, not explicit (literal), and that it is particular, not general; and people should obey them in either case as such.”³ In another place in his *Risālah* he said: “Thus every explicitly general statement in the Sunnah of the Apostle should be accepted as such unless another reliable tradition from the Apostle indicates that only part of that explicitly general statement was intended to be general, as I have already explained regarding this and other similar points.”⁴

This statement from Shāfi`ī is based on the fact that the Qur’ān is revealed in pure Arabic language. Consequently that implies that Qur’anic injunctions are apparent and general. No one has the right to avoid or restrict the apparent

¹ The scholars have different opinions about the meaning of Satan’s horns (*qarn al-shayṭān*). Some maintain that it means the proximity (*muqāranah*) of the devil to the sun, while the others accepted the literal meaning of the word that sun rises between the two horns of the devil. (See: Suyūṭī, *Tanwīr al-Ḥawālik Sharḥ Muwaṭṭa’ Mālik*, I:220.)

² Mālik, *al-Muwaṭṭa’*, I:145.

³ Shāfi`ī, *al-Risālah*, p. 231.

⁴ Shāfi`ī, *al-Risālah*, p. 238.

meaning without a reliable proof, because such action would violate language scientific rules, and violate the actual intention of the text.

Other scholars entirely agree with Shāfi`ī in this matter.¹ The famous commentator of the Qur`ān Ṭabarī states: “It is not allowed to leave a comprehensive apparent meaning and incline towards the hidden for which there is no proof of its validity.”² When commenting on the verse: “When He decrees a matter, He only says to it: “Be!” - and it is.”³ Ṭabarī explains that it is general in everything that Allāh has decreed and created, because its apparent meaning is general. It is not allowed to turn apparent meaning into hidden meaning by *ta`wīl* without a proof.”⁴

Despite the fact that the basic method in deriving legal rulings is the interpretation of texts according to the obvious and apparent meaning - non-*ta`wīl* - it can be concluded that the majority of the authoritative texts which are related to command injunctions (*aḥkām taklīfiyyah*) can be interpreted not according to their obvious import. It includes all ambiguous texts (*khafī, mushkil, mujmal, and mutashābih*⁵) and of the clear (*wāḍiḥ*) includes only *zāhir*.⁶ Due to this fact, *ta`wīl* can be much abused if scientific rules are not followed and applied during the exercising of the *ijtihād*. If a person who interprets the Qur`ān does not fear reprisals from Allāh *ta`ālā* he/she can, by using *ta`wīl*, avoid the intended meanings and interpret it according to his/her fictions, imaginations and desires. By that way he/she can change the meanings

¹ See titles: *zāhir* and *`āmm* in both Shāfi`ī and Ḥanafī *madhhab*.

² Ṭabarī, *Jāmi` al-Bayān `an Ta`wīl Āy al-Qur`ān*, II:15.

³ Al-Baqarah, II:117.

⁴ Ṭabarī, *Jāmi` al-Bayān `an Ta`wīl Āy al-Qur`ān*, II:546.

⁵ *Mutashābih* texts are not related to commandments, and Muslims are not obliged to search for their meanings. (See interpretation of the seventh verse of Āl `Imrān, III:7.)

⁶ In the field of deriving legal rulings from the Sharī`ah source-texts many kinds of *ta`wīl* occurs like adopting the particular from the general (*ḥaml al-`āmm `alā al-khāṣṣ*), adopting a metaphor rather than real meaning (*ḥaml al-ḥaqīqah `alā al-majāz*), adopting one of homonyms meanings (*ḥaml al-mushtarak `alā aḥad ma`nāyayh*), adopting a command to be not obligatory (*wājib*), adopting prohibition as that which is not strictly forbidden (*ḥarām*) etc.

and injunctions entirely¹ At the same time it is not enough for the person who interprets the Qur'ān and derive legal rulings from authoritative texts to be afraid of Allāh, but he/she has to have knowledge of all the Islamic sciences which are involved in the interpretation and the legal reasoning (*ijtihād*).

Preconditions (*shurūṭ*) for *ta'wīl*²

It was previously mentioned that Islamic scholars clearly confirmed and supported their confirmation with scientific proofs that the basic methodology in the interpretation of the texts is interpretation according to its obvious meaning. In order to prevent the Qur'ān and the Sunnah from being misinterpreted Islamic scholars suggested the preconditions for *ta'wīl*. These preconditions were deduced from the examination of various cases with consideration of the spirit of Islām.

If the following preconditions are fulfilled *ta'wīl* would be accepted, but if any one is lacking *ta'wīl* is invalid and therefore rejected.

1) A person who exercises *ta'wīl* (i.e. *ijtihād*) must be qualified for that task so that his/her interpretation is in harmony with the rules of the language, customary and juridical usage and the spirit of Islām and its general rules.³

2) A word has to be susceptible to different interpretations.⁴

¹ This is the reason why Islamic scholars stipulated that the commentator of the Qur'ān and of the *mujtahid* to be rightful and honest Muslims (*ʿadl*).

² Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:50; Shawkānī, *Irshād al-Fuḥūl*, p. 156; Sha'bān, *Uṣūl al-Fiqh al-Islāmī*, pp. 288-289.

³ This precondition is stipulated due to two reasons:

- a) It is not allowed for anyone to speak about the Qur'ān without knowledge.
- b) It is not allowed for the *muqallid* to follow someone who is ignorant.

⁴ Only certain types of words are open to *ta'wīl* like the apparent (*ẓāhir*) and explicit (*naṣṣ*) according to Ḥanafī *madhhab*, or the apparent (*ẓāhir*) according to Shāfi'ī *madhhab*, or the general (*āmm*) and the absolute (*muṭlaq*) according to both. If a word does not accept *ta'wīl* such as the explained (*mufassar*) and the firm (*muḥkam*) its interpretation not according to its obvious import would not be valid.

3) The meaning of a word which was given precedence over the apparent meaning of that word has to be probable.¹ Therefore, adopting a particular meaning from the general (*ḥaml al-`ām `alā al-khāṣṣ*) is correct if supported by a reliable proof, because the general meaning in reality assumes possible specification and restriction of its general meaning. Adopting a metaphor (*ḥaml al-ḥaqīqah `alā al-majāz*) is correct if supported by a reliable proof because the word can assume the metaphor etc. For example if the transaction (*bay`*) is transferred from its real and apparent meaning to mean gift, because a proof was suggesting that that particular dealing was in fact a transfer of ownership free of charge (*gratis*) it would be correct *ta`wīl* because the word (*bay`*) is open to that interpretation.

If the word, however, does not suppose such a meaning, and does not indicate it by any way such *ta`wīl* is not correct and not acceptable in Islamic law. Therefore, if someone interprets sheep to mean camel or horse such *ta`wīl* would not be correct because it is not the way by which the Legislator uses the words and it is not His customary practice.

4) The interpretation not according to the obvious import has to be supported by a correct and reliable proof i.e. there has to be a reliable proof which gives precedence to non preferable meaning in relation to the apparent meaning. The reliable proof can be another authoritative text, consensus of opinion (*ijmā`*), analogy (*qiyās*), or a principle (rule) of Islamic law. This precondition is due to the fact that the basis for the Lawgiver's expressions is to mean the apparent meaning.² Therefore, the implementation of the apparent meaning is an

¹ The preferable meaning has to be indicated either by literal apparent meaning (*manṭūq*) or by implicit meaning (*mafḥūm*). On the other hand the non preferable meaning has to be harmonious and consistent with the language, even by way of metaphor, customary, or the method of the Lawgiver.

² In relation to the proof *ta`wīl* can be:

a) acceptable, if a proof is strong enough to support non preferable meaning in relation to the apparent meaning.

b) non acceptable, if a proof is not strong enough to support non preferable meaning in relation to the apparent meaning.

indisputable obligation until a reliable proof suggests otherwise. This means that an imperative (*amr*) means strict obligation and cannot be transferred to praiseworthy action (*mandūb*) without a proof. Prohibition (*nahy*) means strict prohibition and cannot be transferred to blameworthy (*makrūh*) until a reliable proof suggests such interpretations etc. If *ta'wīl* is not based at least on one reliable proof it is invalid.

These preconditions were derived from the spirit of Sharīah which includes its language as well as customary underpinning provided by the Qur'ān and the Sunnah.

If *ta'wīl* is based on this ground it would constitute a valid basis for judicial decisions and become a strong rational part of *ijtihād* which would be very useful in the interpretation of source-texts and accordingly in deduction of legal rulings. Such *ta'wīl* is generally accepted in Islam, and Islamic scholars, starting from the *Ṣaḥābah*, have applied it while exercising *ijtihād*.

Those who do not follow the rules and guidelines provided by scholars and interpret source-texts in isolation from the guidelines of the Sharīah and Arabic language concepts will very likely commit errors in their interpretation of the Sharīah source-texts and therefore in their *ijtihād*. Examples of that can be found among many individuals and groups some of which were proclaimed by Islamic scholars to be not Islamic such as *Bāṭinī madhāhib*.¹ They rejected the apparent meaning of the texts in both the Qur'ān and the Sunnah and gave themselves the right to oppose both the linguistic meaning, or that which was customarily offered by the Sharīah. They maintained that these texts have hidden meanings which can be understood only by some authoritative people amongst them called (*khawāṣṣ*). In order to support their beliefs and attitudes they interpret source-texts in unacceptable methods to those advocated by

c) when the apparent meaning and non preferable meaning are equal. In this case further search for a proof which supports one of the meanings is needed.

¹ See: Shahrastānī, *al-Milal wa al-Niḥal*, I:195-224, II:1.

Islamic orthodoxy and a more scholarly points of view¹. This tendency is obvious when one looks at their interpretations of source-texts. The following examples demonstrate some of the *Bāṭinī* interpretations:

1) They interpreted Moses stick as “his proof” (*ḥujjah*) in the verse: “He said: “This is my staff, whereon I lean, and wherewith I beat down branches for my sheep, and wherein I find other uses.” (Allāh) said: “Cast it down, O Moses!” He cast it down, and behold! It was a snake, moving quickly.”²

2) They interpreted “mothers” as “scholars” and prohibition as “disagreement and opposition” in the following verse: “Forbidden to you (for marriage) are: your mothers, your daughters, your sisters...”³ In this way they made lawful for men to marry their mothers and daughters etc. They argue that the brother has more rights towards his sister and he is worthier and more deserving to marry her than anyone else, and the father is more deserving to marry his daughter etc. It is clear to everyone that these interpretations have nothing common with Islām. Those “Muslims” who misinterpret Islām in that way are declared by Islamic scholars as heretics. Ibn Ḥazm stated that Rawāfiḍ went astray because they abandoned the interpretation of the text according to its obvious impart and went on interpreting it without knowledge following their desires. He mentioned many of their misinterpretations of source-texts like their interpretations of the following verses: “And (remember) when Moses said to his people: “Verily, Allāh commands you that you slaughter a

¹ The orthodox Islamic point of view on Bāṭinīs can be summarised as follows: They do not use the source texts to find the true Islamic meaning and believe in it but rather alter the meaning itself through interpretation according to their beliefs. They maintain that source-texts contain hidden meanings which are only known by selected people *khawāṣṣ*. From the orthodox point of view the *Bāṭinī* approach to interpretation leads to the distortion of Islām because every text can be interpreted in different ways (if linguistic and customary rules are not applied). In that way the confidence about the right meaning will be lost, and no meaning would seem to be obligatory, and as a result the texts from the Qur’ān and the Sunnah and their meanings will be suspended.

² Ṭā-Hā, XX:18-20.

³ Al-Nisā’, IV:23.

cow.”¹ They say that the literal apparent meaning of this verse is not intended, by Allāh *ta`ālā* and He never meant a cow, but He meant `Ā`ishah the wife of the Prophet (p.b.u.h.) and the daughter of the first caliph Abū Bakr. They did not interpret the *jibt* and *ṭāghūt* in the verse: “They believe in *jibt* and *ṭāghūt*”² according to the literal and apparent meaning of these words, but maintained that it indicates Abū Bakr and `Umar³.

They provided for the verse: “On that Day when the heaven will shake with a dreadful shaking, and the mountains will move away with a (horrible) movement,”⁴ a symbolic interpretation. They maintained that the literal apparent meaning of this verse is not the intended meaning, but “the heaven” symbolically means Muḥammad and “the mountains” are his Companions (*Ṣaḥābah*). They said that the verse: “And your Lord inspired the bee, saying: Take your habitations in the mountains and in the trees and in what they erect,”⁵ does not mean its apparent meaning but “the bee” are the members of the Prophet’s tribe the Hāshimites, and what comes from their abdomens is knowledge. They said that “pearl and coral” in the verse: “Out of them both come out pearl and coral,”⁶ are grand sons of the Prophet (p.b.u.h.) Ḥasan and Ḥusayn.⁷

¹ Al-Baqarah, II:67.

² Al-Nisā’, IV:51.

³ The words “*jibt* and *ṭāghūt*” cover a wide range of meanings: It means anything worshipped other than the Real God (Allāh) i.e. all the false deities, it may be an idol, Satan, graves, stone, sun, star, angel, human being, a Messenger, Jesus the son of Mary, Ezra, Moses, saints etc. (See: Ibn Kathīr, *Tafsīr al-Qur’ān al-`Aẓīm*, I:682; Hilālī and Khān, *Tafsīr Ma`ānī al-Qur’ān al-Karīm*, p. 135.)

⁴ Al-Ṭūr, LII:9-10.

⁵ Al-Naḥl, XVI:68.

⁶ Al-Raḥmān, CV:22.

⁷ See: Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:40-41; Ibn Taymiyyah, *al-Muqaddimah fī Uṣūl al-Tafsīr*, pp. 87-89.

Kinds of *ta'wīl* according to their likelihood ¹

1) Closest interpretation of its meaning. This kind of *ta'wīl* refers to the interpretation that accepts the non preferable meaning yet possible, when supported by a minimal proof, instead of the apparent meaning.

For example the Qur'ān states: "O you who believe! When you get up (intending) to offer Prayer, wash your faces and your hands up to the elbows, rub (by passing wet hands over) your heads, and (wash) your feet up to the ankles."²

"Get up" for the Prayer is interpreted not according to its apparent import (getting up) but according to the possible (non preferable) meaning that is "intention" to perform Prayer. This can be proved by the following three points:

a) This meaning represents a spontaneous understanding of the verse.

b) The Lawgiver did not order the ablution after the beginning of the Prayer, but before it began. He made it a precondition for the Prayer without which a valid Prayer cannot be performed and therefore that precondition has to be fulfilled before the Prayer.

c) "Getting up" for the Prayer can be at the prior to it commencing and no scholar maintained that ablution is obligatory before intending the Prayer.

Likewise is the interpretation of the following verse: "... and not to show off their adornment except only that which is apparent."³ It is a well-recorded (*mashhūr*) view among the majority of scholars that the interpretation of "that which is apparent" (*mā ḡahara minha*) is the face and hands.⁴ This interpretation is supported by the tradition narrated by `Ā'ishah that her sister Asmā' entered the room wearing thin clothes when the Prophet (p.b.u.h.) present. He lowered his gaze and said: "O Asmā'! When a woman begins

¹ Ghazālī, *al-Mustaṣfā*, p. 196; Shawkānī, *Irshād al-Fuḡūl*, p. 156.

² Al-Mā'idah, V:6.

³ Al-Nūr, XXIV:31.

⁴ See: Ibn Kathīr, *Tafsīr al-Qur'ān al-'Aẓīm*, III:379.

menstruation (reaches feminine maturity) it is not right to see her (body) except this and this and he pointed to his face and hands.”¹

Due to the fact that the non preferred meaning is very possible this kind of *ta’wīl* is granted precedence even if the proof is not strong.

2) Remote interpretation of its meaning.² This kind of *ta’wīl* refers to the interpretation that accepts the non preferable meaning which is far from possible, instead of the apparent meaning. Due to the fact that such a meaning is hardly possible it needs the support from a strong proof in order to be valid and acceptable.

This can be seen with the interpretation of the following verse of the Qur’ān: “O you who believe! When you intend to offer Prayer, wash your faces and your hands up to elbows, rub (by passing wet hands over) your heads, and your feet (*arjulakum* or *arjulikum*) up to ankles.”³ For the word “your feet” the two right (correct)⁴ different readings (declensions) were transmitted (in accusative *arjulakum* and in genitive *arjulikum*).⁵ If the *mujtahid* rely on the genitive declension (*arjulikum*) he/she can interpret this verse in two different ways. The first one indicates that feet should be washed and the second that wiping the feet with wet hands is sufficient. The second interpretation is accepted by Shītes who argue that “your feet” is coupled (joined) to “your heads” because the latter is in genitive. Due to the fact that “the heads” have to be wiped the feet should take the same ruling.⁶ The majority of Islamic scholars, however,

¹ See: Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Aẓīm*, III:379.

² Shāfiī scholars usually mention, when speaking about this kind of interpretation, some examples of interpretations provided by Ḥanafīs. They claim that their interpretations are very remote. (See: Ghazālī, *al-Mustaṣfā*, p. 197- 202; Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, III:51-60.)

³ Al-Mā’idah, V:6.

⁴ i.e. they are amongst the seven methods of recitation (*qirā’āt sab’ah*) which were transmitted from the Prophet (p.b.u.h.) by the *mutawātir* way.

⁵ Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Aẓīm*, II:36-40.

⁶ Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Aẓīm*, II:37; Hulyy, *al-Mukhtaṣar al-Nāfi fī Fiqh al-Imāmiyyah*, I:6.

stated that this interpretation (*ta'wīl*) is far from possible. They maintain that “your feet” is coupled to “your hands” (*aydiyakum*). The latter is in accusative. Therefore, what is coupled to it is in the accusative due to the rule in Arabic language that what follows the conjunction “waw” takes the same grammatical status of that to which it is joined.¹ They supported their opinion by various proofs from both language and *ṣaḥīḥ* traditions. These proofs clearly support the opinion of the majority and gainsay Shī'its' interpretation (*ta'wīl*) which seems very remote and far from possible.²

3) Impossible interpretation. It would be when the provision is not susceptible to such meaning at all. If an expression does not accept such interpretation by any method of analysis that *ta'wīl* is invalid and not acceptable such as the interpretation of some Shī'its' of the verse: “And (remember) when Moses said to his people: “Verily, Allāh commands you that you slaughter a cow.”³ They said that “a cow” is `Ā'ishah, the Prophet's wife. This kind of *ta'wīl* is entirely unacceptable due to the fact that it is not supported by any reliable proof. Ghazālī said: “Every interpretation which removes and eliminates a *naṣṣ* or its part is invalid (*bāṭil*).⁴

Kinds of *ta'wīl* according to the proofs supporting it .⁵

Ta'wīl can be based on authoritative source-texts, or any secondary sources.⁶

¹ See: Qabash, *al-Kāmil fī al-Naḥw wa al-Ṣarf*, p. 190.

² Look at their arguments in detail: Kāsānī, *Badā'i' al-Ṣanā'i'*, I:5-7; Ibn Rushd, *Bidāyat al-Mujtahid*, I:15-16; Ibn Qudāmah, *al-Mughnī*, I:132-136; Ibn Kathīr, *Tafsīr al-Qur'ān al-`Azīm*, II:37-41; `Asqalānī, *Bulūgh al-Marām*, p. 21.

³ Al-Baqarah, II:67.

⁴ Ghazālī, *al-Mustaṣfā*, p. 198.

⁵ Islamic scholars disagree on the strength of some legal proofs and their validity to be reliable in interpretation not according to the obvious import. For example whether analogy (*qiyās*) or narration narrated by one companion only (*khābar al-wāḥid*) should be used in restricting a general meaning to be of particular indication (*ḥaml al-`ām `alā al-khāṣṣ*), or in restricting of the absolute (*ḥaml al-muṭlaq `alā al-muqayyad*).

The source-texts are the strongest foundation for *ta'wīl*. An example of this kind can be seen regarding the ruling related to the legitimacy of using the skin of a dead animal.

The Qur'ān states: "Forbidden to you are the dead animals..."¹ This statement apparently indicates that the usage of the skin of the dead animal is forbidden in all circumstances no matter whether it was tanned or not. This indication is taken from the general meaning of the word "the dead". But, there is a possibility that the leather is not meant by this general meaning due to the fact that prohibition is attached to "the dead". This, in the Lawgiver's customary expression, indicates that eating is forbidden and since the leather is not normally eaten, therefore, the general meaning does not include usage of the leather. This conclusion, deduced by using *ta'wīl*, is supported by the following *ḥadīth* source-texts.

The Prophet (p.b.u.h.) said in a tradition narrated by Ibn `Abbās: "If any skin is tanned it becomes clean."² This tradition, by its apparent general meaning, includes the skin of the dead animal too.

In another tradition related to the dead sheep which was granted to the freed slave of Maymūnah the Prophet (p.b.u.h.) said: "Why have not you taken its skin, tanned it and benefited from it. They answered that it was dead. He replied: "What is forbidden is to eat it."³

These two authoritative texts clearly indicate that tanned skin is not forbidden and therefore it stands in support of *ta'wīl* which indicate that the leather is excluded from the general meaning of the verse.⁴

⁶ Among classical secondary sources are *ijmā'*, *qiyās*, *istiṣḥāb*, *istiḥsān*, *istiṣlāḥ*, *Sharī'ah* principle, the Lawgiver intention and wisdom which stands behind such legislation, etc.

¹ Al-Mā'idah, V:3.

² Muslim, *Ṣaḥīḥ Muslim*, I:277 (no. 366).

³ Bukhārī, *al-Jāmi' al-Ṣaḥīḥ*, VI:231 (72:30).

⁴ See: Kāsānī, *Badā'i' al-Ṣanā'i'*, I:85; There are other opinions about this question too. See: Ibn Rushd, *Bidāyat al-Mujtahid*, I:78-79; Ibn Qudāmah, *al-Mughnī*. I:66.

Similarly there is the ruling related to the prohibition of blood in the same verse “Forbidden to you are the dead animals and blood...”¹. In its general meaning the verse includes blood whether shed or not. This general meaning, however, has been interpreted not according to its obvious meaning. By utilising *ta’wīl*, non shed blood is excluded relying on another verse which restricts the general meaning of “blood”: “Say o (Muḥammad) I find not in that which has been inspired to me anything forbidden to be eaten by one who wishes to eat it, unless it be a dead animal or blood poured forth...”² The latter verse explained that by prohibited “blood” in the former verse, is meant blood that has been shed. In that way the latter verse supports *ta’wīl* of the former verse by which the blood that has not been shed is excluded from the general meaning of the verse.³

Analogy is often a strong proof for *ta’wīl*. The example for that can be seen in the question related to feeding the poor as penance for killing. The Qur’ān did not mention feeding as a way for expiation in case of manslaughter⁴. Not mentioning that kind of penance apparently means that it is not an obligatory duty. According to those who accept the analogy in this field the feeding as penance in the case of manslaughter can be introduced by analogy on the case of *ḡihār*⁵ and the breaking of the fast deliberately⁶ due to the fact that all penance’s are Allāh’s rights (*ḥuqūq Allāh*). Therefore, the penance for manslaughter should be similar to both *ḡihār* and the penance for fast breaking. The Lawgiver intention or wisdom of legislation can be a reason for *ta’wīl* and the proof on which it relies. An example of this kind can be an interpretation related to *zakāt* in Ḥanafī *madhhab*. The Prophet (p.b.u.h.) said “In every forty

¹ Al-Mā’idah, V:3.

² Al-An`ām, VI:145.

³ This *ta’wīl* is supported by many traditions too. (See: Ibn Kathīr, *Tafsīr al-Qur’ān al-`Aẓīm*, II:11-12.)

⁴ See the chapter al-Nisā’, IV:92.

⁵ See: Marghīnānī, *al-Hidāyah*, II:19; Ibn Ruṣhd, *Bidāyat al-Mujtahid*, II:111.

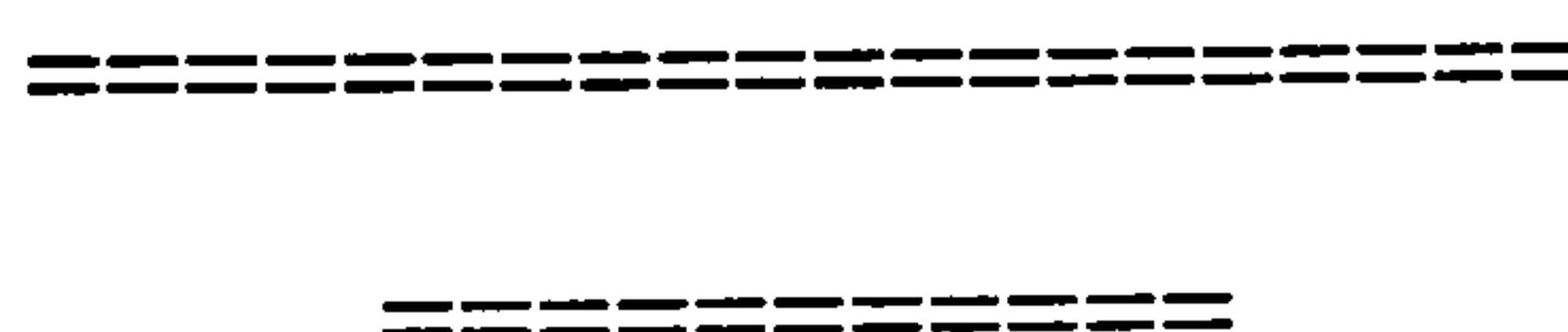
⁶ See: Marghīnānī, *al-Hidāyah*, I:124-125; Ibn Ruṣhd, *Bidāyat al-Mujtahid*, I:301-303.

grazing sheep (which is fed on pasture-ground) one sheep is due.”¹ The apparent meaning of this tradition is that one actual sheep would have to be given, but they maintained that the monetary value of sheep can also be given. They argue that the wisdom behind the legislation of the *zakāt* is to benefit the poor. That goal can be reached by giving him/her a sheep as well as by giving him/her money. Moreover, the value of the sheep given to the poor could be more useful for him/her than the animal itself.

External evidences can be a proof which supports *ta’wīl*. The Prophet (p.b.u.h.) once said: “Bad example is not for us to follow. He who return his given gift is like a dog who eats his vomit.”² This tradition apparently means that returning the gift is not forbidden because it is not forbidden for the dog to eat his/her vomit. However, the beginning of the tradition gives a clear evidence that indicates that it is a “bad example” which was denounced by the Lawgiver. Consequently, it is forbidden for a granter to take back a gift which he/she has granted to someone.

The value of *ta’wīl*

It is obligatory (*wājib*) to adhere to the meaning concluded by proper *ta’wīl*. However, this adherence should not be unquestionable and conclusive (*‘alā sābīl al-qaṭ’ wa al-yaqīn*). The reason for this is that the *ta’wīl* process is established by the prevailing opinion³ which supposes oversight and error and therefore it is not certain. According to this conclusion if someone, for example, finds water he/she should use it for ablution if it prevails in his/her opinion that it is clean, with the possibility that it is unclean. If it becomes clear that water was not clean he/she has to renew ablution and Prayer.⁴



¹ Bukhārī, *al-Jāmi’ al-Ṣaḥīḥ*, II:124 (24:38). (See: `Asqalānī, *Bulūgh al-Maram*, p.168.).

² Bukhārī, *al-Jāmi’ al-Ṣaḥīḥ*, III:142-143 (51-30).

³ Due to that fact if someone denies it he/she can not be considered as unbeliever.

⁴ Sarakhsī, *Uṣūl al-Sarakhsī*, I:163; Nasafī, *Kashf al-Asrār*, I:205.

Conclusion

During my study of the linguistic principles of *uṣūl al-fiqh* and their effect on legal reasoning in Islamic law I have come to the following conclusions. Some of these conclusions are general and some are specific.

General conclusion:

1) According to Islām all sciences are very close to each other and they cannot be entirely separated¹. For example a jurist of Islamic law needs to know all other sciences without which he/she may not reach the level of a *mujtahid*.

2) Arabic language is an inseparable part of Islamic law. The decline of the Arabic language necessarily means the decline of Islamic law and Islām. Therefore, Arabic language should be considered as a part of the *dīn*. It is a collective obligation (*farḍ kifāyah*) upon the Muslim *ummah* to have scholars knowledgeable in the Arabic language who will be able to maintain this knowledge.

3) The scientific approach to the sources of Islamic law would only guarantee their proper use. This is equally important for Muslims and non-Muslims. Only the proper use of authoritative texts may provide the righteous foundations upon which a stable, genuine and just relationship may be established between Muslims and non-Muslims. Any non-scientific approach may lead to misuse of authoritative texts which may have negative consequences on both sides. On one side we will see Muslims who misunderstood Islām because of misuse of authoritative texts. On the other hand we will see Muslims, sincere or insincere, do injustice to Muslims and

¹ Even the sciences which study nature are part of Islām and may be considered as “Islamic studies”. This is due to the fact that every true knowledge, according to Islām, comes from one source Allāh *ta`ālā* and every true knowledge leads to Him by His way.

non-Muslims under the cover of the wrong interpretation of authoritative texts¹.

4) Islamic law is based on unchangeable principles. This is the reason why its laws were not changed during the ages. According to Islamic law whatever is inherently bad would continue to be so, and that which is inherently good would continue to be good too. The laws related to those inherently good or bad matters would be unchangeable. Some laws which are bound to circumstances, would normally change when the circumstances are changed, but these changes would be in accordance with the general unchangeable principles of Islamic law.

Specific conclusions:

1) A proper knowledge of the linguistic principles of source methodology of Islamic jurisprudence is essential to the proper understanding of authoritative texts from which legal rulings of Islamic law are deduced.

2) These principles are based on the rules of Arabic language. Therefore, Arabic language is a necessary need for any Islamic jurist who wants to enter the field of legal reasoning (*ijtihād*).

3) There is inseparable connection between the source methodology (*uṣūl*) and the particulars (*furū'*) of Islamic law. The knowledge of this link and the application of the source methodology in legal reasoning is the only safe way for *ijtihād*.

4) Mastering the way in which the source methodology can be applied and establishing the link between the basics (*uṣūl*) and the particulars (*furū'*) in Islamic law is the best way for an Islamic jurist to prepare himself/herself for the very difficult task of *ijtihād*.

¹ It seems to me that in modern-day Islamic societies whatever Muslims and Islamic countries do, whether good or bad, is in most cases justified by authoritative texts. It seems even popular amongst some people to find cover in authoritative texts for different kinds of injustice which they commit. The justification of injustice by the authoritative texts may happen only if authoritative texts are misinterpreted.

5) These principles ease the legal reasoning to *mujtahids* because they would help them to distinguish between speculative and definitive meanings and to categorise these meanings so that the clearer may be given precedence in case of a conflict. Therefore, they may be a supportive evidence for a *mujtahid* in case of a conflict between legal proofs.

6) There is a great need for understanding the language and the environment during which the Qur'ān was revealed because that knowledge would help in a better understanding of the authoritative texts.

7) The legal reasoning in Islamic law cannot be carried out in a proper manner without a proper implementation of these linguistic principles.

8) The understanding of authoritative texts and their interpretation is one of the major causes which lead Islamic jurists (*fuqahā'*) to many disagreements.

9) The linguistic principles are only one step in the process of legal reasoning in Islamic law. Before a *mujtahid* comes to this step he/she must examine the authenticity of the texts used in the process of *ijtihād*.

10) Some disagreements in the methodology between Islamic scholars are of a technical nature. This becomes clear when we see them disagreeing in some methods and agree in the results.

11) An authoritative text may not be interpreted in isolation from other authoritative texts, because the authoritative texts explain each other.

12) The interpretation not according to the obvious import of the texts (*ta'wīl*) must be used with great carefulness, by strict adherence to the scientific rules. Any other approach may lead to the misinterpretation of authoritative texts.

13) These principles are valid and may be applied for all sorts of interpretations.

14) The knowledge of *uṣūl al-fiqh* linguistic principles may improve our ability in understanding others' in everyday life.

15) This knowledge may help provide a better understanding of the method of legislation in Islām and to improve understanding of the Islamic law in general.



Indexes

Index of Qur'anic verses

Sūrat al-Baqarah

- "... then produce a chapter of the like thereof" (II:23)253.
- "He it is Who created for you all that is in the earth." (II:29)205.
- "And be steadfast in Prayer and give alms," (II:43).....2, 116, 171, 172.
- "Whoever believes in Allāh and the Last Day and do righteous good deeds shall have their reward with their Lord, on them shall be no fear, no shall they grieve." (II:62)206.
- "And (remember) when Moses said to his people: "Verily, Allāh commands you that you slaughter a cow." (II:67).....190, 286.
 - "Call upon your Lord for us that He makes plain to us what it is!" (II:68).....190.
- "Unto Allāh belong the East and the West, and whichever you turn, there is Allāh's countenance." (II:115)206.
- "When He decrees a matter, He only says to it: "Be!" - and it is." (II:117)281.
- "Thus we have made you a middle nation (justly balanced), that you be witnesses over mankind." (II:143)25.
- "So hasten towards all that is good." (II:148)256.
- "...and that which has been immolated to (the name of) any other than Allāh." (II:173)216.
- "O you who believe! The law of equality in punishment is prescribed for you in case of murder." (II:178)250.
- "O you who believe! Fasting is prescribed to you..." (II:183).....116, 250.
- "O you who believe! Fasting is prescribed for you as it was prescribed for those before you, that you may become the pious (godfearing) for days numbered; and if any of you be sick, or if he be on a journey, then the same number [should be made up] from other days." (II:183-184).....70.
- "So whoever of you sights the month he must fast that month, and whoever is ill or on a journey, the same number from other days" (II:185)
.....207, 229, 233, 241.

- “It is made lawful for you to have sexual relations with your wives on the nights of the fast...” (II:187) 25.
- “And do not have sexual relations with them (your wives) while you are in *i tikāf* in the mosques.” (II:187)92.
- “And eat up not one another’s property unjustly (in any illegal way).” (II:188).....259.
- “It is not righteousness that you enter the houses from the back.” (II:189) 260.
- “...making ten days in all.” (II:196).....145.
- “The *ḥajj* is (in) well-known (lunar year) month. So whoever intends to perform *ḥajj* then there is no sexual relations (with his wife) nor sin nor unjustifiable dispute during the *ḥajj*. (II:197)206, 260.
- “Then depart from the place whence all the people depart and ask Allāh for His forgiveness.” (II:199)250.
- “... and were so shaken that even the Messenger and those who believed along with him said, When (will come) the help of Allāh.” (II:214)207.
- “They ask you concerning menstruation. Say: That is an *adhā* (a harm)...” (II:222)..... 95,164, 229.
- “...so go to your tilth when or how you will.”(II:223)162.
- “And divorced women shall wait (as regards their marriage) for three menstrual periods.” (II:227)108.
- “And divorced women shall wait (as regards their marriage) for three menstrual periods, and it is not lawful for them to conceal what Allah has created in their wombs, if they believe in Allah and last day.” (II:228).....37, 165, 166, 189, 201, 209, 233.
- “The mothers shall give suck to their children for two whole years...” (II:233)26, 31, 125, 250.
- “And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four month and ten days.” (II:234)212, 241.
- “And if you divorce them before you have touched them, and you have appointed unto them the *mahr* then pay half of that, unless they agree to forego it, or he, in whose hands is marriage tie...” (II:237)189.

- “Guard strictly the Prayers especially the Middle prayer.” (II:239)267.
- “There is no compulsion in religion.” (II:256)2.
- “A kind word with forgiveness is better than almsgiving followed by injury.” (II:263)210.
- “Trading is just like *ribā*’ (usury),” whereas Allāh has permitted trading and forbidden *ribā*’ (usury)” (II:275)20, 69, 103, 108, 208, 230, 232.
- “Allāh deprives usurious gains of all blessing, whereas He blesses charitable deeds with manifold increase.” (II:276)173.
- “... but if you repent, you shall have your capital sums. Deal not unjustly (by asking more than your capital sums), and you shall not be dealt with unjustly (by receiving less than your capital sums).” (II:279)93.
- “O you who believe! When you contract a debt for a fixed period, write it down [...] But take witnesses whenever you make a commercial contract....” (II:282)138, 226, 246, 252.
- “Our Lord punish us not if we forget or fall into error.” (II:286)261.

Sūrat al-`Imrān

- “It is He Who sent to you (Muḥammed) the Book (this Qur’ān). In it are Verses that are entirely clear, they are the foundations...” (III:7) ...118,182,190.
- “He said: “O Mary! From where have you got this?”(III:37)163.
- “O my Lord! How can I have a son when I am very old, and my wife is barren?” (III:40)163.
- “And there is no God save Allāh.” (III:62)208.
- “Among the people of the Scripture is he who, if entrusted with a *qinṭār* (a great amount of wealth, etc.), will readily pay it back; and among them there is he who, if entrusted with a single silver coin, will not repay it unless you constantly stand demanding...” (III:75)40.
- “Pilgrimage of *ḥajj* thereto is a duty men owe to Allāh.” (III:97)116, 228, 229, 255.
- “O you who believe! Eat not *ribā* (usury) doubled and multiplied...” (III:130)93.
- “And be quick for forgiveness from your Lord...” (III:133)256.

- “So pass over (the Companion faults) and ask (Allah’s) forgiveness for them and consult them in affairs.” (III:159) 27.
- “Think not of those who are killed in the Way of Allāh as dead. Nay, they are alive, with their Lord, and they have provision.” (III:169)261.
- “Those unto whom the people said, “Verily, the people have gathered against you, therefore fear from them.” But it increased them in Faith...”(III:173) ..200.

Sūrat al-Nisā’

- “And if you fear that you shall not be able to deal justly with the orphan-girls, then marry other woman of your choice, two or three, or four. But if you fear that you shall not be able to deal justly (with them), then only one...” (IV:3)20, 103, 127, 133.
- “Verily, those who unjustly eat up property of orphans, they eat up only a fire into their bellies, and they will be burnt into blazing Fire!” (IV:10)37.
- “Allāh commands you as regards your children’s (inheritance); to the male, a portion equal to that of two females...” (IV:11)114, 145, 203, 209, 241.
- “And unto you belong a half of that which your wives leave, if they have no child...” (IV:12)227.
- “As for those of your women who are guilty of lewdness, call to witness four of you against them.” (IV:15)208.
- “Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father’s sisters, your mother’s sisters, your brother’s daughters, your sister’s daughters, ...” (IV:23)38, 54, 69, 93, 210, 228, 244,285.
- “All others are lawful, provided you seek (them in marriage) with *mahr* from your property, desiring chastity, not committing illegal sexual intercourse.” (IV: 24)126. 208. 214.
- “And whoever of you have not the means wherewith to wed free, believing women, they may wed believing girls from among those (captives and slaves) whom your right hands possess.” (IV:25)90, 228, 235.
- “but take every precaution for yourselves” (IV:35)254.
- “Worship Allāh and join none with Him.” (IV:36)262.
- “...but Allāh has cursed them for their disbelief, so they believe not except a few.” (IV:46)272.

- "They believe in *jibt* and *ṭāghūt*" (IV:51)286.
- "And when you judge between people, you judge with justice." (IV:58)62.
- "That is better and more suitable for final determination." (IV:59)266.
- "We sent no messenger save that he should be obeyed by Allāh's leave." (IV:64)207.
- "And whosoever kills a believer by mistake he must set free a believing slave and a compensation be given to the deceased's family, unless they remit it." (IV:92)45, 48, 64, 82, 206, 244, 260.
- "And whoever kills a believer intentionally, his recompense is Hell to abide therein, and the Wrath and the Curse of Allah are upon him, and a great punishment is prepared for him." (IV:93)48.
- "And when you go forth in the land, it is no sin for you to curtail (your) worship if you fear that the unbelievers may attack you..." (IV:101)91, 228.
- "Verily, the Prayer is enjoined on the believers at fixed hours." (IV:103)..171.

Sūrat al-Mā'idah

- "Lawful to you (for food) are all the beasts of cattle except that which will be announced to you." (V:1)2, 190, 236.
- "Forbidden to you are carrion, blood, the flesh of swine..." (V:3)4, 54, 56, 69, 234, 245, 290, 291.
- "(Lawful to you in marriage) are chaste women from those who were given the Scripture (Jews and Christians) before your time..." (V:5)276.
- "... and you find no water, then perform *tayammum* with *ṣa`īd ṭayyib* and rub there with your faces and hands." (V:5-6)140.
- "O you who believe! When you stand to offer Prayer, wash you faces and your hands (fore-arms) up to the elbows..." (V:6) 161, 229, 245, 246, 287, 288.
- "And the thief, male and female: cut off the hands of both, as a recompense for what they have earned and a punishment exemplary from Allah." (V:38)71,152,198, 246, 255.
- "And eat of the things that Allāh has provided for you..." (V:88)253.
- "O you who believe! Intoxicants, gambling, arrows (for seeking luck or decision) are an abomination of Satan's handiwork." (V:90)260.

- "O you who believe! Ask not about things, if made plain to you, may cause you trouble." (V:101)261.

- "O you who believe! Take care of your own selves." (V:105)250.

Sūrat al-An`ām

- Those who believe and obscure not their belief by injustice..." (VI:83)204.

- "Look at their fruits when they begin to bear." (VI:99)253.

- "Eat of their fruit when they bring fruit, but pay the due thereof on the day of its harvest." (VI:141)136,189.

- "Say (O Muḥammad): "I find not in that which has been inspired to me anything forbidden to be eaten by who wishes to eat it, unless it be a dead animal or blood poured forth (by the sloughtering or the like..." (VI:145) ...
.....245, 291.

- "And kill not anyone whom Allāh has forbidden, except for a just cause (according to Islamic law)." (VI:151)143,144.

- "And come not near to the orphan's property, except to improve it." (VI:152).....2.

Sūrat al-A`rāf

- "What prevented you (O *Iblīs*) that you did not prostrate, when I commanded you?" (VII:12)251.

- "And eat and drink..." (VII:31)253.

- "Verily, the Messengers of our Lord did come with the truth..." (VII:53) .266.

Sūrat al-Anfāl

- "O you who believe! Obey Allāh and His messenger when He calls you to that which quickness you." (VIII:24)203.

- "O you who believe! Betray not Allāh and His Messenger." (VIII:27)259.

Sūrat Tawbah

- "O you who believe! Verily, the *Mushrikūn* are impure." (IX:28)275.

- "Verily, the number of months with Allāh is twelve month (in a year)..." (IX:36)89.

- "Whether you (O Muḥammad) ask forgiveness for them (hypocrites) or ask not forgiveness for them (and even) if you ask seventy times forgiveness for them Allāh will not forgive them..." (IX:80)272.

- “And never (O Muḥammad) pray for one of them who die, nor stand by his grave.” (IX:84)207, 272.
- “Take alms (*ṣadaqah*) from their wealth in order to purify them and sanctify them with it.” (IX:103)173, 209.
- “It is not for the townsfolk of Madīnah and for those around them of the wandering Arabs to stay behind the messenger of Allāh and prefer their lives to his life.” (IX:120)200.

Sūrat Yūnus

- “Cast down what you want to cast.” (X:80)253.

Sūrat Hūd

- “There is not a beast on the earth but the sustenance thereof depends on Allāh.” (XI:6)211.
- “And offer Prayers perfectly at the two ends of the day and in some hours of the night. Verily, the good deeds remove the evil deeds (i.e. small sins).” (XI:114).....172.

Sūrat Yūsuf

- “Thus will your Lord choose you and teach you the interpretation of dreams...” (XII:6)266.
- “I will tell you its interpretation so send me forth.” (XII:45)266.
- “And ask the town where we have been and the caravan in which we returned...” (XII:82)49, 52.
- “And he said: “O my father! This is the interpretation (*ta’wīl*) of my dream of old! My Lord has made it come true!” (XII:100)266.

Sūrat al-Ḥijr

- “Enter therein (Paradise), in peace and security.” (XV:46)253.

Sūrat al-Naḥl

- “And We have also sent down unto you (O Muḥammad) the reminder and the advice (the Qur’ān) ...” (XVI:44)170, 176, 273.
- “And your Lord inspired the bee, saying: Take your habitations in the mountains and in the trees and in what they erect,” (XVI:68)286.
- “And We have sent down to you the Book (the Qur’ān) as an exposition of everything...” (XVI:89)273.

- “Verily, Allah bids to justice and good-doing and giving a kinsmen; and He forbids indecency, dishonor, and insolence...” (XVI:90)62.

- “Whoever disbelieved in Allah after his belief, except him who is forced thereto and whose hart is at rest with faith...” (XVI:106)60.

Sūrat al-Isrā’

- “And your Lord has decreed that you worship none but Him. And that you be dutiful to your parents” (XVII:23-24).....35, 82, 85, 92.

- “And come not near to the unlawful sexual intercourse.” (XVII:32).....
.....143, 144, 262.

- “And indeed We have honoured the children of Ādam, and We have carried them on land and sea, and have provided them...” (XVII:70)277.

Sūrat Ṭā Hā

- “Cast it down, O Moses!” he/she cast it down, and behold! It was a snake, moving quickly.” (XX:18-20)285.

Sūrat al-Ḥajj

- “Then let them complete the prescribed duties for them, and perform their vows, and circumabulate the Ancient House.” (XXII:29)250.

- “So shun the abomination of idol, and shun lying speech.” (XXII:30)259.

Sūrat al-Mu’minūn

- “Successful indeed are the believers. Those who offer their Prayers with all solemnity and full submissiveness. And those who turn away from evil vain talk.” (XXIII:1-3)236.

Sūrat al-Nūr

- “The women and man guilty of illegal sexual intercourse, flog each of them with a hundred stripes.” (XXIV:2)43, 114, 209, 234, 260.

- “Such a thing is forbidden to the believers.” (XXIV:3)259.

- “And those who accuse chaste women, and produce not four witnesses (to support their allegations) flog them with eighty stripes...” (XXIV:4)
.....95, 114, 122.

- “And those who accuse chaste and produce not four witnesses, flog them with eighty stripes and reject their testimony forever, they indeed are *fāsiqūn*” (XXIV:4-5)132, 227.

- “As for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them...” (XXIV:6-7)237.

- “... and not to show off their adornment except only that which is apparent.” (XXIV:31)287.

- “And let those who oppose the Messenger’s commandment beware, lest some *fitnah* befall them or a painful torment be inflicted on them.” (XXIV:63) ...251.

Sūrat al-Furqān

- “And whoever does this shall receive the punishment.” (XXV:68)259.

Sūrat al-Qaṣaṣ

- “... unto whom no Warner came before you...” (XXVIII:46)207.

- “Have we not established a secure sanctuary (Mekkah), to which are brought fruits of all kinds, a provision from Ourselves, but most of them know not.” (XXVIII:57)235.

Sūrat Luqmān

- “His mother bore him in weakness and hardship upon weakness and hardship, and his weaning is in two years - give thanks to Me and to your parents, - unto Me is final destination.” (XXXI:14)28, 72.

Sūrat al-Aḥzāb

- “It is not for a believer, man or woman, when Allāh and His Messenger have decreed a matter that they should have any option in their decision...” (XXXIII:36)251.

- “O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them....” (XXXIII:49)233.

- “And it is not (right) for you that you should annoy Allāh’s Messenger, nor that you should ever marry his wives after him (his demise).” (XXXIII:53)121, 133, 260.

Sūrat Saba’

- “And We have not sent you except as a giver of glad tidings and a Warner to all mankind but most of men know not.” (XXXIV:28)206.

Sūrat Yā Sīn

- “And there came from the uttermost part of the city a man running.” (XXXVI:20)219.

Sūrat al-Ṣāffāt

- “So look what you think” (XXXVII:102)253.

Sūrat Ṣād

- “My Lord forgive me.” (XXXVIII:35)254.
- “So the angels prostrated themselves, all of them together.” (XXXVIII:73)
.....115.

Sūrat Fuṣṣillat

- “Do what you will.” (XLI:40)253.

Sūrat al-Shūra

- “There is nothing like unto Him, and He is the All-Hearer, the All-Seer.”
(XLII:11)181.

Sūrat al-Dukhkhān

- “Taste you (this)! Verily, you were (pretending to be) the mighty, the
generous!” (XLIV:49)254.

Sūrat al-Aḥqāf

- “Hit at their necks” (XLVI:4)250.
- “And We have enjoined on man to be dutiful and kind to his parents. His
mother bears him with hardship and she brings him forth with hardship...”
(XLVI:15)28, 72, 125.

Sūrat al-Fath

- “Muḥammad is the Messenger of Allāh.” (XLVIII:29)143, 146.

Sūrat al-Hujurāt

- “O you who believe! If a rebellious evil person comes to you with a news,
verify it, lest you harm people in ignorance and afterwards you become
regretful to what you have done.” (XLIX:6)94.
- “And know that, among you there is the Messenger of Allah. If he were to
obey you in much of the matter, you would surely be in trouble.” (XLIX:7) 86.
- “O you who believe! Let not a nation scoff at another nation, it may be that
the latter are better than the former.” (XLIX:11)3.

Sūrat al-Ṭūr

- “On that Day when the heaven will shake with a dreadful shaking, and the
mountains will move away with a (horrible) movement.” (LII:9-10)286.

- “Taste you therein its heat, and be patient or not, it is all the same.” (LII:16)
.....253.

Sūrat al-Qamar

- “Lo! We have created everything by measure.” (LIV:49)205.

Sūrat al-Ḥadīd

- “Race one with another in hastening towards forgiveness from your Lord...”
(LVII:21)256.

Sūrat al-Mujādilah

- “Those among you who make their wives unlawful to them, they cannot be
their wives. None can be their mothers except those...” (LVIII:2)237.
- “And he who finds not (the money for freeing a slave) must fast two
successive month before they both touch each other.” (LVIII:4)244.

Sūrat al-Ḥashr

- “It is for the poor emigrants, who were expelled from their habitations and
their possessions, seeking bounty from Allah and to please Him...” (LIX:8)..53.

Sūrat al-Mumtaḥinah

- “Allah does not prohibit to you (*lā yanḥākum*) to deal justly and kindly with
those who fought not against you on account of religion ...” (LX:8-9)259.

Sūrat al-Ṣaff

- “And who does more wrong than the one who invents a lie against Allāh,
while he is being invited to Islām.” (LXI:7)259.

Sūrat al-Jumu`ah

- “O you who believe! When the call is proclaimed for the Prayer on the day of
Friday ...” (LXII:9)259.

Sūrat al-Ṭalāq

- “O Prophet! When you divorce women, divorce them at their *`iddah* ...”
(LXV:1)59, 104, 110.
- “And take for witness two just persons from among you.” (LXV:2).131, 246.
- “And for those who are pregnant their *`iddah* is until deliver (their burdens.”
(LXV:4)233.
- “Lodge them (the divorced women) where you dwell, according to you
means...” (LXV:6)94, 214.

Sūrat al-Mulk

- “Say: Have you thought: If (all) your water were to disappear into the earth, who then could bring you gushing water?” (LXVII:30)206.

Sūrat al-Ma`ārij

- “Truly man (disbeliever) was created, very impatient; irritable (discontented) when evil touches him and niggardly when good touches him. Except those devoted to Prayers ...” (LXX:19-23)116, 177.

Sūrat al-Muddathir

- “What has caused you to enter Hell?” They will say: “We were not of those who used to offer their Prayers ...” (LXXIV:42-46)257.

Sūrat al-Insān

- “And amongst them will be passed round vessels of silver and cups of crystal, Crystal-clear, made of silver.” (LXXVI:15-16)166.

Sūrat al-Mursalāt

- “And when it is said to them: “Bow down yourself (in Prayer)!” They bow not down (offer not their Prayers).” (LXXVII:48)251.

Sūrat al-Zalzalah

- “So whosoever does good an atom’s weight will see it then and whosoever does evil an atom’s weight will see it then.” (XCIX:7-8)87.

Sūrat al-Rahmān

- “Out of them both come out pearl and coral,” (CV:22)286.

Sūrat al-Ikhlāṣ

- “Say (O Muḥammad): “He is Allāh, (the) One.” (CXII:1)146.

=====

=====

Index of Prophet's (p.b.u.h.) traditions

- "Allāh has, indeed, disburdened from my followers errors, forgetfulness and that what they were forced to do against their wishes." Ibn Mājah, *Sunan*, I:659. (no. 2043, 2045)46, 51, 57, 82.
- "Allāh receives charity by His right hand, and then He causes it to grow for each of you. Just as you raise a horse, colt, foal, or young weaned camel, so the morsel becomes as large as the Mount of Uḥud." Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, III:28 (no. 662)173-174.
- "... and for every person is that which he has intended for." Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, I:2 (1:1); Abu Dāwūd, *Sunan*, II:262 (no. 2201); Ibn Mājah, *Sunan*, II:1413 (no. 4227)61.
- "Bad example is not for us to follow. He who return his given gift is like a dog who eats his vomit." Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, III:142-143 (51-30) ..292.
- "Cleanness of someone's vessel, when a dog licks (something) in it, is to wash it seven times, the first time with soil (*turāb*)." Muslim, *Ṣaḥīḥ Muslim*, I:234 (no. 279)274.
- "Every divorce is permitted except divorce from the boy and mentally deranged." Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, III:496 (no. 1191)60.
- "... for grazing sheep and goats *zakāh* is prescribed..." Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:124 (24:38)73, 90.
- "Give them enough so they do not need to go begging in this day." Bayhaqī, *al-Sunan al-Kubrā*, IV:175. Albānī stated that this *ḥadīth* is narrated by Dāraqutnī, Bayhaqī, Ḥākim in *Ma`rifat `Ulūm al-Ḥadīth*, and Ibn Zanjawayh in *al-Amwāl*. He categorized this *ḥadīth* as weak. (See: Albānī, *Irwa' al-Ghalīl*, III:332-333.)29.
- "He who speaks about the Qur'ān by his own opinion, he is wrong even if he says the right." Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, V:183 (no. 2950); Ebu Dāwud, *Sunan*, III:320 (no. 3652)183.
- "If any skin is tanned it becomes clean." Muslim, *Ṣaḥīḥ Muslim*, I:277 (no. 366)290.

- “If the man approaches the man they are adulterers.” Ibn Mājah, *Sunan*, II:856 (no. 2561, 2562); Ibn Qudamah, *al-Mughnī*, VIII:188; Marghīnānī, *al-Hidāyah*, II:10245.
- “I have been gifted with comprehensive eloquence...” Muslim, *Ṣaḥīḥ Muslim*, I:371 (no. 523)30.
- “I have been ordered to fight against the people until they testify that there is no god but Allāh and offer Prayers perfectly and give *zakāt*, so if they perform all that than save their lives and properties except in the right cause.” Muslim, *Ṣaḥīḥ Muslim*, I:51-52 (no. 22)189.
- “I have forbidden you from visiting the graves. Nay, visit them, for it reminds you of the hereafter.” Tabrīzī, *Mishkāt al-Maṣābīḥ*, I:554 (no. 1769)254.
- “I have perished O Prophet of Allah!” He asked: “Why?” The man answered: “I had sexual intercourse with my wife during the day of Ramaḍān.” He asked....” Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:235-236 (30:31); Muslim, *Ṣaḥīḥ Muslim*, II:781 (no. 1111)41.
- “Indeed, I have done this for you to copy me and to learn my Prayer.” Abū Dāwūd, *Sunan*. I:283-284 (no. 1080). Albānī stated that this tradition is narrated by Bukhārī, Muslim, Ibn Ḥanbal, Nasā’ī and Ibn Mājah. (See: Albānī, *Irwā’ al-Ghālīl*, II:332.)172.
- “Indeed, water cannot be spoiled except by that what changes its smell, taste or color.” Ibn Mājah, *Sunan*, I:174 (no. 521)73.
- “In every forty grazing sheep (which is fed on pasture-ground) one sheep is due.” Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:124 (24:38). (See: `Asqalānī, *Bulūgh al-Marām*, p.168.)292.
- “Its water is pure (*tāhir*) [for ritual ablution] and its dead is allowed (*ḥalāl*) [for food].” Nasā’ī, *Sunan*, I:100-101 (no. 69); Ibn Mājah, *Sunan*, I:136 (no. 386). (See: `Asqalānī, *Bulūgh al-Marām*, p. 9.)209, 234, 238.
- “*Jihād* is under way from the time when Allāh has sent me until the last (members) of my *ummah* fight Antichrist.” Abū Dāwūd, *Sunan*, III:18 (no. 2532)122.

- “Kill those whom you have found to act like the people of the Lūṭ.” Ibn Mājah, *Sunan*, II:856 (no. 2561, 2562); Ibn Qudamah, *al-Mughnī*, VIII:188; Marghīnānī, *al-Hidāyah*, II:10245.
- “No harm shall be inflicted or reciprocated.” Ibn Mājah, *Sunan*, II:784 (no. 2340)207.
- “No fasting is valid for someone who did not intend to (i.e. to observe fast) from the proceeding night.” Nasā’ī, *Sunan*, IV:196 (no. 2331); Abū Dāwūd, *Sunan*, II:329 (no. 2454) (See: Shawkānī, *Nayl al-Awṭār*, IV:207)139.
- “No responsibility upon three persons: a sleeping person until awake, a youth until sexual maturity {e.i. of legal age in Islamic law}, and a lunatic until they recover clear consciousness.” Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, IV:24 (no. 1423); Nasā’ī, *Sunan*, VI:156 (no. 3432)230, 256.
- “O people, I had permitted you to contract temporary marriage with women, but Allāh has forbidden it (now) until the Day of Resurrection. So he who has any (women with this type of marriage contract) he should let her off, and do not take back anything.” Muslim, *Ṣaḥīḥ Muslim*, II:1022 (no. 1406)122.
- “O Unays go to women of this. If she admits adultery stone her.” Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VIII:24 (86:30); Muslim, *Ṣaḥīḥ Muslim*, III:1324-1325 (no. 1698)147.
- “O youth! Whoever has ability to marry let him get married, and who cannot he has to fast. Indeed, it will be for him a protection (*wijā`*).” Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VI:117 (67:3); Muslim, *Ṣaḥīḥ Muslim*, II:1018-1019 (no. 1400) .274.
- “Pray as you see me pray.” Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, I:155 (10:18)
.....116, 172.
- “Scrub it off, then wash it with water, then squeeze it.” Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, I:62-63 (4:63); Muslim, *Ṣaḥīḥ Muslim*, I:240 (no. 291)63.
- “Start your Dawn prayer at day-break, for (its performance) at that time is the most rewarding to you.” Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, I:289-291 (no. 154) .267.
- “Take from me your rituals (holy rites).” Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, IX:45; `Asqalānī, *Fath al-Bārī*, III:264; Shawkānī, *Nayl al-Awṭār*, V:70; Bayhaqī, *al-Sunan al-Kubrā*, V:130116.

- “The believer slaughters in the name of Allāh whether he pronounces the name of Allāh or not.” Bayhaqī, *al-Sunan al-Kubrā*, VII:240; Zayla`ī, *Naṣb al-Rāyah*, IV:182215.
- “The charity does not decrease one’s wealth...” Muslim, *Ṣaḥīḥ Muslim*, IV:2001. (no. 2588.)173.
- “The hand has a duty for what it took till return it back.” Tirmidhī, *Sunan*, III:566 (no. 1266); Ibn Mājah, *Sunan*, II:802 (no. 2400)55.
- “The killer shall not inherit.” Dārimī, *Sunan*, II:385.154.
- “...then wash up yourself and make ablution (*wuḍū’*) for every Prayer...” (*...thumma ighṭaṣilī wa tawaḍa’ī li-kulli ṣalatīn...*). Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, I:63 (4:63); Ibn Mājah, *Sunan*, I:204 (no. 624); Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, I:217-218 (no. 125)128.
- “...then wash up yourself and make ablution (*wuḍū’*) for the time of every Prayer.”(*...thumma ighṭaṣilī wa tawaḍḍaī li waqt kull ṣalatīn...*). Marghīnānī, *al-Hidāyah*, I:32; Zayla`ī, *Naṣb al-Rāyah*, I:204. Zayla`ī, stated that this narration is vary strange (*gharīb^{un} jidd^{an}*)129.
- The Prophet (p.b.u.h.) and his Companions did ablution by using the water contained in the canteen (*mazādah*) belonging to a polytheist. See: `Asqalānī, *Bulūgh al-Marām*, p.17; *Shawkānī, Nayl al-Awtār*, I:31-84276.
- The Prophet (p.b.u.h.) ate the flesh of a sheep which was provided by a Jewish woman while he was in *Khaybar* and he ate cheese imported from Christian countries. See: *Shawkānī, Nayl al-Awtār*, I:31-84276.
- The Prophet’s (p.b.u.h.) combined two Prayers in a trip. See: Muslim, *Ṣaḥīḥ Muslim*, I:488-489 (no. 703)191.
- The Prophet (p.b.u.h.) forbade the deception contract (*bay` al-gharar*). Muslim, *Ṣaḥīḥ Muslim*, III:1153 (no. 1513)234.
- The Prophet (p.b.u.h.) forbade the man to join in marriage a woman and her paternal or maternal aunt. Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VI:128 (67-27)214.
- The Prophet (p.b.u.h) was asked by a man which of people should be preferred with his good companionship ...” Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VII:69 (78:2); Muslim, *Ṣaḥīḥ Muslim*, IV:1974 (no. 2548)32.

- The Prophet (p.b.u.h) prohibited of drinking from the neck of a waterskin. (See: Nawawī, *Riyāḍ al-Ṣāliḥīn*, p. 269)261.
- “There is no alms on dates and grain till they reach five *awsuq*.” Muslim, *Ṣaḥīḥ Muslim*, II:673 (no. 979)217.
- “There is no divorce and freeing slave in *ighlāq*.” Abu Dawūd, *Sunan*, II:258-259 (no. 2193); Ibn Mājah, *Sunan*, I:660 (no.2046)60.
- “There is no Prayer for someone who didn’t recite the *fātiḥat al-kitāb*”. Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, I:184 (10-95); Muslim, *Ṣaḥīḥ Muslim*, I:295 (no. 394)127.
- “There is nothing upon you in gold, until it reaches twenty *dīnārs*. Thus, if you have twenty *dīnārs* at the end of the year, then there is half a *dīnār* levied on (as *zakāt*). Any additional amount will be...” Abū Dāwūd, *Sunan*, II:99-100 (no. 1572); Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, III:25-26 (no. 631)175.
- “They, the believing women, were in the habit of performing the Dawn-prayer with the Prophet; then they went their way in the half-light, wrapped up in their robes and unrecognised by anyone because of darkness.” Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, I:144 (9:27); Muslim, *Ṣaḥīḥ Muslim*, V:143-144267.
- “This is (the example of) your Prophet to whom the revelation was coming and who was accompanied by the best of your leaders. If he has obeyed them...?” Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, V:362-363 (no. 3269).....86.
- “Three things are considered to be serious even if said in jesting: the marriage, the divorce and remarriage with one’s divorced wife.” Abū Dāwūd, *Sunan*, II:259 (no. 2149); Ibn Mājah, *Sunan*, I:658 (no. 2039)59.
- “Verily the Muslim never becomes impure.” Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:73 (23:8)275.
- “We the prophets are not inherited. What we leave behind us is a charity.” Muslim, *Ṣaḥīḥ Muslim*, III:1379 (no. 1759)203.
- “What was watered by the sky and springs or by its roots ten percent, and what was watered by sprinkling five percent.” Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, II:133 (24:55)216.

- “When a dog licks [the contents or interior] of someone’s vessel let its contents be poured out, then washed seven times.” Muslim, *Ṣaḥīḥ Muslim*, I:234 (no. 279)274.
- “When the amount of water reaches *qullatayni* it cannot be spoiled.” Aḥmad b. Ḥanbal, *Musnad*, VI:276 (no. 4605); Ibn Mājah, *Sunan*, I:172 (no. 517) ..73.
- “When the sun first rises, Satan’s horns are associated with it; when it is up, they are separated; when it is at the meridian...” Mālik, *al-Muwatta’*. I:145280.
- “Who has *imām* (who prays in congregation) the recitation of *imām* is recitation for him.” Ibn Mājah, *Sunan*, I:277 (no. 850) (This tradition is weak.)127.
- “Who steals a staff (walking stick) from his brother he has to give it back.” Tirmidhī, *al-Jāmi` al-Ṣaḥīḥ*, IV:402 (no. 2160)87.
- “Why have not you taken its skin, tanned it and benefited from it. They answered that it was dead. He replied: “What is forbidden is to eat it.” Bukhārī, *al-Jāmi` al-Ṣaḥīḥ*, VI:231 (72:30).....290.

=====

=====

Index of names with short biographies ¹

- Ibn `Abbās, `Abdullāh b. `Abbās b. `Abd al-Muṭṭalib al-Qurashī al-Hāshimī, Abū al-`Abbās (3 BH-68/619-687). He was a prominent companion (*ṣaḥābī*) and very knowledgeable. He was born in Makkah. He accompanied the Prophet (p.b.u.h.) and transmitted from him many traditions. Bukhārī and Muslim recorded 1660 *ḥadīth* from him. He died in Ṭā'if. (See: *Ḥulyat al-Awliyā' wa Ṭabaqāt al-Aṣfiyā'*, I:314; *al-Iṣābah fī Tamyīz al-Ṣaḥābah*, no. 4772; *al-A`lām*, IV:95.)

- `Abd al-Jabbār, `Abd al-Jabbār b. Aḥmad b. `Abd al-Jabbār al-Hamadhānī al-Asdābādī, Abū al-Ḥusayn, Qāḍī al-Quḍāt (d. 415/1025) He was the most prominent *mu`tazilī* scholar of his time. His nick name was Qāḍī al-Quḍāt (the judge of judges). Some of his books are: *Tenzīh al-Qur`ān `an al-Maṭā`in*, *al-Amālī*, *Sharḥ al-Uṣūl al-Khamsah*, *al-Mughnī fī Abwāb al-`iawḥīd wa al-`Adl*, *Tathbīt Dalā'il al-Nubuwwah*, *Mutashābih al-Qur`ān*. (See: *al-A`lām*, III:273.)

- `Ā'ishah, `Ā'ishah bint Abī Bakr al-Ṣiddīq `Abdullāh b. `Uthmān, Umm `Abdullāh (9 BH-58/613-678). Mother of believers (*umm al-mu`minīn*). Most knowledgeable Muslim woman in law and literature of her time. The Prophet (p.b.u.h.) married her during the second year after Hijrah. She transmitted 2210 *ḥadīth* from the Prophet (p.b.u.h.). She died in Madīnah. (See: *Ṭabaqāt Ibn Sa`d*, VIII:399; *Ḥulyat al-Awliyā' wa Ṭabaqāt al-Aṣfiyā'*, III:43; *al-A`lām*, III:240.)

- `Alī, `Alī b. Abī Ṭālib b. `Abd al-Muṭṭalib al-Hāshimī al-Qurashī, Abū al-Ḥasan (23 BH-40/600-661). The fourth righteous caliph. One of the ten who were given glad tidings that they will go to paradise. He was born in Makkah and was the second person to accept Islām after Khadījah. He was very eloquent and very knowledgeable. In the year 35 he became the *khalīfah*. On the 17th of Ramaḍān he was assassinated. 586 traditions were transmitted by

¹ Ibn, Bint, Abū and the definite article "al-" were ignored in the Alphabetical order.

him. (See: *Ṣifat al-Ṣufwah*, I:118; *Tārīkh al-Umam wa al-Mulūk*, VI:83; *al-A`lām*, IV:295.)

- Āmidī, `Alī b. Muḥammad b. Sālim al-Taghlibī, Abū al-Ḥasan Sayf al-Dīn al-Āmidī (551-631/1156-1233). His origin is from Āmid (Diyār Bakr) where he was born. He studied in Baghdād and went to Cairo. From there he went to Ḥamāh and Damascus where he died. He wrote more than twenty books. Some of them are: *al-Iḥkām fī Uṣūl al-Aḥkām*, *Abkār al-Afkār*, *Lubāb al-Albāb*, *Daqā`iq al-Ḥaqā`iq*, *al-Mubīn fī Sharḥ al-`Ulamā` wa al-Mutakallimīn*. (See: *al-A`lām*, IV:332.)

- Anṣārī, Zakariyyā b. Muḥammad b. Aḥmad b. Zakariyyā al-Anṣārī al-Sanakī al-Miṣrī al-Shāfi`ī, Abū Yaḥyā (823-926/1420-1520). He was *shaykh al-islām*, a judge, *mufassir*, and *ḥāfiẓ* of the tradition. Some of his books are: *Ghāyat al-Wuṣūl Sharḥ Lubb al-Uṣūl*, *Fath al-Raḥmān (tafsīr)*, *Tuḥfat al-Bārī `alā Ṣaḥīḥ al-Bukhārī*, *Asnā al-Maṭālib Sharḥ Rawḍ al-Ṭālib (fiqh)*. (See: *al-Kawākib al-Sā`irah fī A`yān al-Mi`ah al-`Ashirah*, I:196; *al-A`lām*, III:46.)

- Ibn al-`Arabī, Muḥammad b. `Abdullāh b. Muḥammad al-Mu`āfirī al-Ishbīlī al-Mālikī ((468-543/1076-1148) A prominent judge and scholar of *ḥadīth*. He wrote books in all the main fields of Islamic studies. Some of his books are: *al-`Awāṣim min al-Qawāṣim*, *Aḥkām al-Qur`ān*, *al-Nāsikh wa al-Mansūkh*, *al-Inṣāf fī Masā`il al-Khilāf*. (See: *al-A`lām*, VI:230.)

- Aṣfahānī, Maḥmūd b. `Abd al-Raḥmān b. Aḥmad b. Maḥmūd Abū al-Thana` Shams al-Dīn al-Aṣbahānī (674-749/1276-1394) Scholar in *fiqh*, *tafsīr* and philosophy. He was born in Aṣbahān, travelled to Damascus where he was honoured by its citizens. Ibn Taymiyyah admired him. He died in Cairo. Amongst his works are the following books: *Tafsīr*, *Sharḥ al-Minhāj li al-Bayḍāwī*, *Sharḥ Kāfiyat li Ibn al-Ḥājjib*. (See: *Bughyat al-Wu`āt*, p. 388; *Shudhurāt al-Dhahab*, V:165; *al-A`lām*, VII:176.)

- Ibn al-Athīr, al-Mubārak b. Muḥammad b. Muḥammad b. `Abdulkarīm al-Shaybānī al-Jazarī, Abū al-Sa`ādāt, Majduddīn, known as Ibn al-Athīr al-Jazarī (544-606/1150-1210). A famous scholar in Arabic language, *uṣūl al-fiqh* and *ḥadīth*. He was born at Ibn `Umar island and lived in Mosul. He died in a village near Mosul. Some of his books are: *al-Nihāyah fī Ghārīb al-Ḥadīth wa*

al-Athar, Jāmi` al-Uṣūl fī Aḥādīth al-Rasūl, al-Inṣāf fī al-Jam` bayn al-Kashf wa al-Kashshāf. (See: *al-A`lām*, V:272-273.)

- **Balkhī**, Aḥmad b. Sahl Abū Zayd al-Balkhī (235-322/849-934). A prominent scholar of Sharīah, philosophy, and literature. He was born and died in Balkh. Some of his books are: *Aqsām al-`Ulūm, Sharā`i` al-Adyān, Kitāb al-Siyāsah al-Kabīr, Akhlāq al-Umam, Naẓm al-Qur`ān.* (See: *al-A`lām*, I:134.)

- **Baṣrī**, Muḥammad b. `Alī al-Ṭayyib, Abū al-Ḥusayn, al-Baṣrī (d. 436/1044) One of the Mu`tazilī leaders. He was born in Baṣrah, lived in Baghdad where he died. Of his most well-known books the following may be listed: *al-Mu`tamad fī Uṣūl al-Fiqh, Sharḥ al-Uṣūl al-Khamsah.* (See: *Wafayāt al-A`yān*, I:482; *Tārīkh Baghdād*, III:100; *al-A`lām*, VI:275.)

- **Bayḍāwī**, `Abdullāh b. `Umar b. Muḥammad b. `Alī al-Shīrāzī, Abū Sa`īd. Abū al-Khayr, Nāṣir al-Dīn al-Bayḍāwī (d. 685/1286). The judge (*qādī*), *mufassir*, the prominent scholar. Born in the town Bayḍā near Shīrāz and died in Tabrīz. He wrote books in both the Arabic and the Persian language. Some of his books are: *Anwār al-Tanzīl wa Asrār al-Ta`wīl* (his famous *tafsīr*), *Minhāj al Wuṣūl ilā `Ilm al-Uṣūl, Ṭawālī` al-Anwār (tawḥīd).* (See: *al-Bidāyah wa al-Nihāyah*, XIII:309; *Bughyat al-Wu`āt*, p. 286; *al-A`lām*, IV:110).

- **Bazdawī**, `Alī b. Muḥammad b. al-Ḥusayn b. `Abd al-Karīm, Abū al-Ḥasan, Fakhr al-Islām al-Bazdawī (400-482/1010-1089). A prominent scholar in *fiqh* and *uṣūl al-fiqh*. He was a follower of the Ḥanafī school. He lived in Samarqand. Some of his books are: *al-Mabsūt, Kanz al-Wuṣūl* (known as *Uṣūl al-Bazdawī*), *Tafsīr al-Qur`ān, Ghinā` al-Fuqahā`.* (See: *al-A`lām*, IV:328-329).

- **Bukhārī**, `Abdul-`Azīz b. Aḥmad b. Muḥammad, `Alā`uddīn al-Bukhārī, (d. 730/1330). A famous Ḥanafī jurist who was knowledgeable in *uṣūl al-fiqh* too. He was from Bukhārā. Some of his books are: *Kashf al-Asrār Sharḥ Uṣūl al-Bazdawī, Sharḥ al-Muntakhab al-Ḥusāmī.* (See: *al-A`lām*, IV:13).

- **Dabbūsī**, `Abdullah b. `Umar b. `Abdul`azīz b. al-Mundhir Abū Zayd al-Dabbūsī (d. 430/1039). He was a jurist. Some of his books are: *Ta`sis al-Nazar, al-Asrār, Taqwīm al-Adillah,* (See: *al-A`lām*, IV:109).

- **Ḍahḥāk**, al-Ḍahḥāk b. Qays b. **Khālid** al-Fihri al-Qurashī, Abū Umayyah, or Abū Unays (5-65/626-684) A prominent *Tābi`ī*. Mu`āwiyah has appointed him as a governor of Kūfah, then Damascus. He was assassinated in Marj Rāhiḡ. (See: *al-A`lām*, III:214-215).

- **Ghazālī**, Muḥammad b. Muḥammad b. Muḥammad al-Ghazālī al-Ṭūsī, Abū Ḥāmid (350-505/1058-1111). A prominent scholar, philosopher, *ṣūfī*. He wrote more than 200 books. He was born and died in Ṭabrān in **Khorāsān**. Some of his books are: *Iḥyā' `Ulūm al-Dīn*, *Tahāfut al-Falāsifah*, *al-Iqtisād fī al-`Itiqād*, *al-Muṣtaṣfā min `Ilm al-Uṣūl*, *al-Mankhūl min `Ilm al-Uṣūl*, (See: *Wafayāt al-A`yān*, I:463; *Shudhurāt al-Dhahab*, IV:10; *al-A`lām*, VII:22.)

- **Ibn al-Ḥājib**, `Uḡmān b. `Umar b. Abī Bakr b. Yūnus, Abū `Amr Jamāl al-Dīn b. al-Ḥājib (570-646/1174-1249). A famous scholar in the *fiqh* and Arabic language. He was a follower of Mālikī *madhhab*. He was Kurd by origin. He was born in Isnā and grew up in Cairo. He spent some time in Damascus and died in Cairo. Some of his books are: *Muntahā al-Sawī wa al-Amal fī `Ilm al-Uṣūl wa al-Jadal*, *al-Kāfiyah fī al-Naḥw*. (See: *Wafayāt al-A`yān*, I:314; *Ghāyat al-Nihāyah fī Ṭabaqāt al-Qurrā'*, I:508; *al-A`lām*, IV:211.)

- **Abū Ḥanīfah**, al-Nu`mān b. **Thābit**, al-Taymī, al-Kūfī Abū Ḥanīfah (80-150/699-767) The leader of Ḥanafī *madhhab*. A prominent *mujtahid*. One of four *imāms* of Ahl al-Sunnah. He is of Persian origin. He was born and raised in Kūfah. Among his works are: *al-Musnad*, *al-Makhārij*, *al-Fiqh al-Akbar*. (See: *Tārīkh Baghdād*, XIII:323-423; *al-Bidāyah wa al-Nihāyah*, X:107; *al-A`lām*, VIII:36.)

- **Ḥasan**, Ḥasan b. Yasār al-Baṣrī, Abū Sa`īd (21-110/642-728). He is a famous *Tābi`ī*. He was an *imām* in Baṣrah and a prominent scholar of his time. He was born in Madīnah. During the reign of Mu`āwiyah he travelled to Baṣrah where he died. He was brave and frank. (See: *al-A`lām*, II:226-227.)

- **Ḥasan**, al-Ḥasan b. `Alī b. Abū Ṭālib al-Hāshimī al-Qurashī, Abū Muḥammad (3-50/624-670). The fifth righteous caliph. He was born in Madīnah. His mother is Fāṭimah the daughter of the Prophet (p.b.u.h.). The people of Irāq appointed him as a caliph in the year 40 H. and asked him to fight Mu`āwiyah. He went with his army, but was reluctant to fight his brothers in

Islām. He resigned as caliph and gave his pledge to Mu`āwiyah in Quds in the year 41. Afterwards he went to Madīnah where he died. He had eleven sons and one daughter. (See: *al-A`lām*, II:199-200.)

- Ibn Ḥazm, `Alī b. Aḥmad b. Sa`īd b. Ḥazm al-Zāhirī, Abū Muḥammad (384-456/994-1064) The famous scholar in Andalusia of his time. One of Islamic leaders. Amongst his books are: *al-Fiṣal fī al-Milal wa al-Ahwā`i wa al-Niḥal*, *al-Muḥallā*, *al-Iḥkām fī Uṣūl al-Aḥkām*, (See: *Irshād al-Arīb ilā Ma`rifat al-Adīb*, V:86-97; *Lisān al-Mizān*, IV:198; *al-A`lām*, IV:254.)

- Hindī, Muḥammad b. `Abdurrāhīm b. Muḥammad al-Armawī, Abū `Abdullāh, Ṣafīyyuddīn al-Hindī (644-715/1246-1315). A scholar in *fiqh* and *uṣūl al-fiqh*. He was born in India. In the year 685 H. he left Delhi and travelled to Yemen, Mekkah and settled in Damascus where he died. Some of his books are: *Nihāyat al-Wuṣūl ilā `Ilm al-Uṣūl*, *al-Fā`iq*, *al-Zubdah*. (See: *al-A`lām*, VI:200.)

- Ḥusayn, al-Husayn b. `Alī b. Abū Ṭālib al-Hāshimī al-Qurashī, Abū `Abdullāh (4-61/625-680). He was born in Madīnah. His mother was Fāṭimah the daughter of the Prophet (p.b.u.h.). The Prophet (p.b.u.h.) stated that Ḥasan and Ḥusayn will be the leaders of youth in Paradise. He was killed in Karbalā` on Friday tenth of Muḥarram. (See: *al-A`lām*, II:243.)

- Ibn al-Humām, Muḥammad b. `Abdulwāḥid b. `Abdulḥamīd b. Mas`ūd al-Sīwāsī al-Iskandarī, Kamāluddīn known as Ibn al-Humām (790-861/1388-1457). One of great Ḥanafī scholars. He was knowledgeable in many Islamic sciences. He died in Cairo. Some of his books are: *Fath al-Qadīr*, *al-Taḥrīr*, *Zād al-Faqīr*, *Mukhtaṣar fī Furū` al-Ḥanafīyyah*. (See: *al-A`lām*, VI:255.)

- Abū Hurayrah, `Abdurrahmān b. Ṣakhr al-Dawsī, known as Abū Hurayrah (21 BH-59/602-679) A companion (*ṣaḥābī*). He memorised more traditions than any of the Companions. From him was recorded 5374 *ḥadīth*. He died in Madīnah. (See: *Tahdhīb al-Asmā` wa al-Lughāt*, II:270; *Ṣifat al-Ṣufwah*, I:285; *al-A`lām*, III:308.)

- Ījī, `Abdurrahmān b. Aḥmad b. `Abdulghaffār, Abū al-Faḍl, `Aḍud al-Dīn al-Ījī (d. 786/1355). A scholar of *uṣūl al-fiqh* and Arabic language from Īj in Persia. He was arrested by the governor of Karmān who imprisoned him in a

castle where he died. Some of his books are: *al-Mawāqif*, *al-`Aqā'id al-`Aḍdiyyah*, *Sharḥ Mukhtaṣar Ibn al-Ḥājib*. (See: *Bughyat al-Wu'āt fī Ṭabaqāt al-Lughawiyyīn wa al-Nuḥāt*, p. 296; *Miftāḥ al-Sa`ādah wa Miṣbāḥ al-Siyādah*, I:196; *al-A`lām*, III:295.)

- `Ikrimah, `Ikrimah b. `Abdullāh al-Barbarī al-Madanī, Abū `Abdullāh. A prominent *Tābi`ī*. He was knowledgeable in *tafsīr*. He travelled a lot. He died in Madīnah. (See: *al-A`lām*, IV:244.)

- Ibn Jabal, Mu`ādh b. Jabal b. `Amr b. Aws al-Anṣārī al-Khazrajī, Abū `Abdurrahmān (20 BH-18/603-639) A prominent *ṣaḥābī*. He was most knowledgeable about *ḥalāl* and *ḥarām*. He attended all battles with the Prophet (p.b.u.h.). The Prophet (p.b.u.h.) sent him to Yemen as a teacher and judge. He transmitted 157 *ḥadīth*. (See: *al-A`lām*, VII:258.)

- Jaṣṣāṣ, Aḥmad b. `Alī al-Rāzī, Abū Bakr al-Jaṣṣāṣ (305-370/917-980). An honourable man from Rayy, and a prominent Ḥanafī scholar. He lived in Baghdād where he died. Some of his books are: *Aḥkām al-Qur'ān*, *al-Fuṣūl fī Uṣūl al-Fiqh*. (See: *al-Jawāhir al-Muḍiyyah fī Ṭabaqāt al-Ḥanaifiyyah*, I:84; *al-A`lām*, I:171.)

- Jubbā'ī, `Alī b. Muḥammad b. Ḥasan al-Anṣārī al-Ishbīlī, Abū al-Ḥasan al-Jubbā'ī (d. 663/1265) He was a judge in Anadaluṣia, then he went to Marocco where he died. (See: *al-A`lām*, IV:333.)

- Ibn Ka`b, `Ubayy b. Ka`b b. Qays b. `Ubayd, Abū al-Mundhir (d. 21/642). He was *ṣaḥābī* from Madīnah. Before he accepted Islām he was a famous Jewish scholar. When he accepted Islām he was in the process of recording in writing the Qur'ān. He attended all battles with the Prophet (p.b.u.h.). He transmitted 164 *ḥadīth*. (See: *al-A`lām*, I:82.)

- Karkhī, `Abdullāh b. al-Ḥusayn al-Karkhī, Abū al-Ḥasan (260-340/874-952) The last famous Ḥanafī jurist in Irāq. He was born in Karkh and died in Baghdād. Some of his books are: *Risālah fī al-Uṣūl*, *Sharḥ al-Jāmi` al-Ṣaghīr*, *Sharḥ al-Jāmi` al-Kabīr*. (See: *al-A`lām*, IV:193.)

- Khudrī, Sa`d b. Mālik b. Sinān al-Khazrajī (d. 64/666). A prominent companion (*ṣaḥābī*). One of leaders amongst *Anṣār*. His father took part in the

battle of Uḥud. He died in Madīnah. (See: *Mashāhīr `Ulamā' al-Amṣār wa A`lām Fuqahā' al-Aqtār*, p. 30.)

- Māwardī, `Alī b. Muḥammad b. Ḥabīb, Abū al-Ḥasan al-Māwardī (364-450/974-1058). A prominent scholar. He was born in Baṣrah and went to Baghdād where he died. As a judge he was serving in many places. Some of his books are: *Adab al-Dunya wa al-Dīn*, *al-Aḥkām al-Sulṭāniyyah*, *al-Nukat wa al-`Uyūn*, *al-Ḥawī*, *Naṣīḥat al-Mulūk*, *A`lām al-Nubuwwah*. (See: *al-A`lām*, IV:327.)

- Maymūnah, Mymūnah bint al-Ḥārith b. Ḥuzn al-Hilāliyyah (d. 51/671). The mother of the believers (*umm al-mu`minīn*). The last woman who married the Prophet (p.b.u.h.) in the year 7 H, and the last one to die amongst his wives. She died in Saraf near Mekkah at the place where she married the Prophet (p.b.u.h.). (See: *Ṭabaqāt Ibn Sa`d*, VIII:94-100; *Usud al-Ghābah fī Tamayīz al-Ṣaḥābah*, V:550; *al-A`lām*, VII:342.)

- Mujāhid, Mujāhid b. Jabr, Abū al-Ḥajjāj al-Makkī, Mawlā Banī Makhzūm (21-104/642-722). Second generation (*Tābi`ī*). A great *mufassir* from Mekkah. Ibn `Abbās has taught him *tafsīr*. He travelled a lot. At the end he settled in Kūfah. (See: *Mīzān al-Ḥidāyah*, III:9; *Ḥulyat al-Awliyā' wa Ṭabaqāt al-Aṣfiyā'*, III:279; *al-A`lām*, V:278.)

- Ibn al-Mundhir, Muḥammad b. Ibrāhīm b. al-Mundhir al-Naysābūrī, Abū Bakr (242-319/856-931). A great jurist and a *mujtahid*. He was *shaykh* of the *Ḥaram* in Mekkah, where he died. He wrote many books as: *al-Mabsūt*, *al-Awsaṭ fī al-Sunan wa al-Ijmā' wa al-Ikhtilāf*, *Ikhtilāf al-`Ulamā'*, *Tafsīr al-Qur`ān*. (See: *al-A`lām*, V:294.)

- Ibn al-Musayyib, Sa`īd b. al-Musayyib b. Ḥuzn b. Abī Wahb al-Makhzūmī al-Qurashī, Abū Muḥammad, (13-94/634-713). A prominent *Tābi`ī* (second generation) and one of the seven jurists (*fuqahā'*) in Madīnah. He was pious and knowledgeable in *ḥadīth* and *fiqh*. He made his living by trading in oil. Some called him “the transmitter from `Umar” because he was most knowledgeable about his legal judgements. He died in Madīnah. (See: *Ḥulyat al-Awliyā' wa Ṭabaqāt al-Aṣfiyā'*, II:161; *al-A`lām*, III:102.)

- **Muthannā**, Ma`mar b. al-Muthannā al-Baṣrī, Abū `Ubaydah al-Naḥawī (110-209/728-824). A prominent scholar in Arabic language and its literature. He was born and died in Baṣrah. He wrote more than two hundred books. Some of them are: *Naqā'id Jarīr wa al-Farazdaq*, *Majāz al-Qur'ān*, *Ma'āthir al-'Arab*, *al-Insān*, *Ṭabaqāt al-Shi'r*. (See: *al-A'lām*, VII:272.)
- **Nakha`ī**, Ibrāhīm b. Yazīd b. Qays b. al-Aswad, Abū `Imrān al-Nakha`ī (46-96/666-815). A prominent scholar in *ḥadīth* from the second generation (*tāb`ī*). He was a *mujtahid* who has his own *madhhab*. He lived in Kūfah and died while hiding from Ḥajjāj. (See: *Ṭabaqāt Ibn Sa'd*, VI:188-199; *Ḥulyat al-Awliyā' wa Ṭabaqāt al-Aṣfiyā'*, IV:219; *al-A'lām*, I:80.)
- **Nasafī**, `Abdullāh b. Aḥmad b. Maḥmūd al-Nasafī, Abī al-Barakāt, Ḥāfiẓ al-Dīn (d. 710/1310) He was knowledgeable in *fiqh* and *tafsīr*. He wrote many valuable books like: *Madārik al-Tanzīl*, *Kanz al-Daqā'iq*, *Kashf al-Asrār*, *al-Wāfi*. (See: *al-A'lām*, IV:67.)
- **Qarrāfī**, Aḥmad b. Idrīs b. Abdurrahmān Abū al-`Abbās, **Shihāb al-Dīn al-Qarrāfī** (d. 684/1285) Mālikī scholar. He was born, raised and died in Egypt. Some of his books are: *al-Dhakhīrah*, *Sharḥ Tanqīḥ al-Fuṣūl*, *Nafā'is al-Uṣūl*. (See: *Shajarat al-Nūr al-Zakiyyah*, p. 188; *Mu`jam al-Maṭbū`āt*, p.1501; *al-A'lām*, I:94.)
- **Bint Qays**, Fāṭimah bint Qays b. **Khālid al-Qurashiyyah** (d. about 50/670). She is *ṣaḥābiyah* amongst the first who made *hijrah* to Madīnah. After caliph `Umar was assassinated the council meeting took place in her house. (See: *al-A'lām*, V:131-132.)
- **Ibn Qudāmah**, `Abdullāh b. Muḥammad b. Qudāmah al-Jamā`ilī al-Maqdisī al-Dimashqī al-Ḥanbalī Abū Muḥammad, Muwaffaq al-Dīn (541-620/1146-1223). Born in the village Jammā`il near Nablus in Palestine. A prominent *faqīh*. Among the greatest in Ḥanbalī *madhhab*. He died in Damascus. Some of his books are: *al-Mughnī*, *Rawḍat al-Nāẓir wa Jannat al-Manāẓir*, *al-Muqni`*. (See: *al-Bidāyah wa al-Nihāyah*, XIII:99; *Shudhurāt al-Dhahab*, V:88; *al-A'lām*, IV:76.)
- **Ibn Rahāwayḥ**, Ishāq b. Ibrāhīm b. Mukhlid al-Ḥanḍalī al-Tamīmī al-Marwazī, Abū Ya`qūb b. Rahāwayḥ (161-238/778-853). A great scholar at his

time. He travelled a lot collecting the tradition of the Prophet (p.b.u.h.). Among his students were Aḥmad b. Ḥanbal, Bukhārī, Muslim, Tirmidhī and Nasā'ī. He died in Naysābūr. Some of his books are: *al-Musnad*, *al-Ḥāshiyah*. (See: *A'lām*, I:292.)

- Rāzī, Muḥammad b. `Umar b. al-Ḥasan b. al-Ḥusayn al-Taymī al-Bakrī, Abū `Abdullāh, Fakhr al-Dīn al-Rāzī (544-606/1150-1210). A well known scholar in *uṣūl al-fiqh* and *tafsīr*. He was fluent in both Arabic and Persian language. He originated from Ṭabaristān. He died in Harāt. Among his books are the following: *Mafātiḥ al-Ghayb*, *al-Maḥṣūl fī `Ilm al-Uṣūl*, *al-Masā'il al-Khamsūn fī `Ilm al-Kalām*, (See: *Wafayāt al-A'yān*, I:474; *Lisān al-Mīzān*, IV:426; *al-A'lām*, VI:313.)

- Sālim, Sālim b. `Abdullāh b. `Umar b. al-Khaṭṭāb al-Qurashī al-`Adawī (d. 106/725). One of seven famous jurists in Madīnah. A prominent *Tābi`ī*. He died in Madīnah. (See: *al-A'lām*, III:71.)

- Ibn al-Ṣāmit, Aws b. al-Ṣāmit b. Qays, brother of `Ubādah b. al-Ṣāmit. Attended the battle of Badr and most of the other military campaigns. He died in Madīnah when he was eighty five. (See: *Usud la-Ghābah fī Tamyīz al-Ṣaḥābah*, I:146.)

- Samurah, Samurah b. Jundub b. Hilāl al-Fazārī (d. 60/679). A prominent *ṣaḥābī*. He was raised in Madīnah and travelled to Baṣrah and died in Kūfah. He transmitted some traditions from the Prophet (p.b.u.h.) (See: *al-A'lām*, III:139.)

- Sarakhsī, Muḥammad b. Aḥmad b. Sahl, Abū Bakr, Shams al-A'immaḥ (d. 483/1090) He was a judge, a prominent Ḥanafī scholar, a *mujtahid*, from Sarakhs in Khorasān. Some of his books are: *al-Mabsūṭ* (he dictated it to his students while he was imprisoned in the well Ozjand in Farghānah), *Uṣūl al-Sarakhsī*, *Sharḥ al-Jāmi` al-Kabīr li al-Imām Aḥmad*. (See: *al-Jawāhir al-Muḍiyyah fī Ṭabaqāt al-Ḥanafīyyah*, II:28; *Miftāḥ al-Sa`ādah wa Miṣbāḥ al-Siyādah*, II:55; *al-A'lām*, V:315.)

- Shāfi`ī, Muḥammad b. Idrīs b. al-`Abbās b. `Uthmān b. Shāyī` al-Hāshimī al-Qurashī al-Maṭlabī, Abū `Abdullāh (150-204/767-820). One of four *imāms* of Ahl Al-Sunnah. To him *Shāfi`ī madhhab* is ascribed. He was born in Ghazzah

in Palastine. When he was two years old he was brought to Mekkah. He visited Baghdad twice and died in Cairo. Among his books are: *al-Umm*, *al-Musnad*, *Aḥkām al-Qurʾān*, *al-Risālah*. (See: *Tadhkirat al-Ḥuffāz*, I:329; *Tahdhīb al-Tahdhīb*, IX:25; *Tārikh Baghdād*, II:56-73; *al-Aʿlām*, VI:26.)

- **Shāṭibī**, Ibrāhīm b. Mūsā b. Muḥammad al-Lakḥmī al-Ghranāṭī, known as al-Shāṭibī (d. 790/1388) The famous scholar in *uṣūl al-fiqh* from Granada, Andalusia. He was a leader in the Mālikī school. Among his books are: *al-Muwāfaqāt*, *al-ʿItisām*, *al-Maqāṣid al-Shāfiyah fī Sharḥ Khulāṣat al-Kāfiyah*. (See: *Nayl al-Ibtihāj bi Taṭrīz al-Dībāj*, pp. 46-50; *al-Aʿlām*, I:75.)

- **Shawkānī**, Muḥammad b. ʿAlī b. Muḥammad b. ʿAbdullāh al-Shawkānī (1173-1250/1760-1834). A jurist and a *mujtahid*. One of prominent scholars in Yemen, from Ṣanʿā. He was appointed as a judge there in 1229 H. He maintained that *taqlīd* is forbidden. He wrote 114 books. Some of them are: *Nayl al-Awṭār Sharḥ Muntaqā al-Akḥbār*, *Irshād al-Fuḥūl*, *Fath al-Qadīr*. (See: *al-Badr al-Ṭālīʿ bi Maḥāsin man baʿd al-Qarn al-Tāsiʿ*, II:214-??5; *al-Aʿlām*, VI:298.)

- **Shaybānī**, Muḥammad b. Ḥasan b. Farqad, Mawlā Banī Shaybān, Abū ʿAbdullāh (131-189/748-804). He was an *imām* in both *fiqh* and *uṣūl al-fiqh*. He transmitted and spread the *fiqh* of Abū Ḥanīfah. He was born in Wāsiṭ, raised in Kūfah, lived in Baghdād and died in Rayy. His most famous books are: *al-Mabsūṭ*, *al-Ziyādāt*, *al-Jāmiʿ al-Kabīr*, *al-Jāmiʿ al-Ṣaghīr*, *al-Siyar al-Kabīr*, *al-Siyar al-Ṣaghīr*, *al-Aṣl*. (See: *al-Bidāyah wa al-Nihāyah*, I:202; *Lisān al-Mīzān*, V:121; *al-Aʿlām*, VI:80.)

- **Shīrāzī**, Ibrāhīm b. ʿAlī b. Yūsuf al-Fayrūzābādī al-Shīrāzī, Abū Ishāq (393-476/1003-1083) A prominent scholar. He was born in Fayrūzābād in Persia and studied in Shīrāz. He went to Baṣrah then to Baghdād in the year 415 H. He was one of prominent *muftīs* of his day. Among his books are: *al-Tanbīh*, *al-Muhadḥḥab*, *al-Tabṣirah*, *al-Lummaʿ*, *Ṭabaqāt al-ʿUqahāʿ*. (See: *Ṭabaqāt al-Shāfiʿiyyah al-Kubrā*, III:88; *Wafayāt al-Aʿyān*, I:4; *al-Aʿlām*, I:51.)

- **Ṭabarī**, Muḥammad b. Jarīr b. Yazīd al-Ṭabarī, Abū Jaʿfar (224-310/839-923). A prominent historian and *mufasssir*. He was born in Ṭabaristān. He lived

in Baghdād where he died. He refused to be a judge. Some of his books are: *Akhbār al-Rusul wa al-Mulūk* (known as *Tārikh al-Ṭabarī*), *Jāmi` al-Bayān fī Tafsīr al-Qur`ān* (known as *Tafsīr al-Ṭabarī*), *Ikhtilāf al-Fuqahā`*, *al-Qirā`āt*. (See: *al-A`lām*, VI:69.)

- Ibn Taymiyyah, Aḥmad b. `Abdulḥalīm b. `Abdussalām b. `Abdullāh b. Abī al-Qāsim al-Ḥarrānī al-Dimashqī al-Ḥanbalī (661-728/1263-1328). He was the most famous scholar at his time and a *mujāhid*. He was imprisoned many times in Cairo, Alexandria and Damascus. He died in Damascus while in prison. All the members of his town came to his funeral. He wrote more than three hundred volumes. Some of his books are: *al-Siyāsah al-Shar`iyyah*, *al-Fatāwī*, *al-Īmān*, *al-Jam` Bayn al-Naql wa al-`Aql*, *al-Furqān Bayn Awliyā` Allāh wa Awliyā` al-Shayṭān*, (See: *al-A`lām*, I:144.)

- Bint Tha`labah, Khawlah bint Tha`labah b. Aṣarr b. Fahr b. Tha`labah b. Ghanam b. `Awf b. `Amr b. `Awf b. al-Khazraj al-Anṣāriyyah al-Khazrajiyyah. One of Companions. An incident related to her and her husband was a reason for the revelation of verses of *zihār*. (See: *Tahdhīb al-Tahdhīb*, XII:314.)

- Thawrī, Sufyān b. Sa`īd b. Masrūq al-Thawrī, Abū `Abdullāh (97-161/716-778). A leading scholar in *ḥadīth*. He was pious and knowledgeable. He was born and raised up in Kūfah. He lived in Mekkah and Madīnah. He died while hiding from Maḥdī who asked him to be a judge (*qāḍī*) and he refused. Some of his books are: *al-Jāmi` al-Kabīr*, *al-Jāmi` al-Ṣaghīr*, *al-Farā`id*. (See: *Ṭabaqāt Ibn Sa`d*, VI:257; *al-Fahrasat*, I:225; *Tahdhīb al-Tahdhīb*, IV:111-115; *al-A`lām*, III:104.)

- Ṭūsī, `Abdurrazāq b. `Abdullāh b. `Alī b. Ishāq, Abū al-Maḥāsin Shihābuddīn al-Ṭūsī (d. 515/1122). He was a minister at the time of sultan Shanjar Shāh al-Saljūqī. His teacher was Imām al-Ḥaramayn al-Juwaynī. He died in Naysābūr. (See: *al-A`lām*, III:352.)

- Ibn `Ubādah, Sa`d b. `Ubādah b. Dalīm b. al-Ḥārithah al-Khazrajī, Abū Thābit (d. 14/635) One of the *Ṣaḥābah*. He was the leader of the tribe Khazraj before he became a Muslim and after. He attended battles with the Prophet (p.b.u.h.). He died in Horān. (See: *al-A`lām*, III:85.)

- `Umar, `Umar b. al-Khaṭṭāb b. Nufayl al-Qurashī al-`Adawī. Abū Ḥafṣ (40 BH-23/584-644). The second *khalīfah* and the first one who was given the title *amīr al-mu`minīn*. The strong and righteous. He accepted Islam five years before the Hijrah and attended many military campaigns. During his time Islamic state was rapidly and considerably extended. He transmitted 537 *ḥadīth*. He was assassinated. (See: *Ḥulyat al-Awliyā` wa Ṭabaqāt al-Aṣfiyā`*, I:38; *Ṣifat al-Ṣufwah*, I:101; *al-A`lām*, V:45.)

- Ibn `Umar, `Abdullāh b. `Umar b. al-Khaṭṭāb al-`Adawī, Abū `Abdurrahmān (10 BH-73/613-692) A companion. He was strong and frank. With his father he migrated to Madīnah and attended *fath* Mekkah. He was born and died in Mekkah. He gave *fatwā* for a period of 60 years. Books of *ḥadīth* recorded his 2630 *ḥadīth*. (See: *Tahdhīb al-Asmā` wa al-Lughāt*, I:278; *Ṭabaqāt Ibn Sa`d*, IV:105-138; *Ḥulyat al-Awliyā` wa Ṭabaqāt al-Aṣfiyā`*, I:292; *al-A`lām*, IV:108.)

- `Urwah, `Urwah b. al-Zubayr b. al-`Awwām al-Asadī al-Qurashī, Abū `Abdullāh (22-93/643-712). One of seven jurists of Medīnah. He was a good honourable man, knowledgeable in *dīn*. He did not participate in any *fitnah*. He went to Baṣrah, then to Egypt where he married and stayed for seven years. Afterwards he returned to Madīnah where he died. He was the brother of `Abdullāh b. al-Zubayr. (See: *Ṣifat al-Ṣufwah*, II:47; *Ḥulyat al-Awliyā` wa Ṭabaqāt al-Aṣfiyā`*, II:176; *al-A`lām*, IV:226.)

- `Uthmān, `Uthmān b. `Affān b. Abī al-`Āṣ b. Umayyah (47 BH-35/577-656). He belonged to the Quraysh tribe. He was the third *khalīfah* and one of the ten who were given glad tidings that they will go to paradise. He was born in Mekkah and became a Muslim shortly after the appearance of the Prophet (p.b.u.h.). He was rich and spent a lot of his wealth on good causes. He completed the collection of the Qur`ān. In the year 23 H. he was chosen to be *khalīfah*. From him 146 *ḥadīth* were transmitted. He was killed in his house in the morning of the *eid al-aḍḥā*. (See: *Ḥulyat al-Awliyā` wa Ṭabaqāt al-Aṣfiyā`*, I:55; *Ṣifat al-Ṣufwah*, I:12; *al-A`lām*, IV:210.)

- Abū Yūsuf, Ya`qūb b. Ibrāhīm b. Ḥabīb al-Anṣārī al-Kūfī al-Baghḍādī, Abū Yūsuf (113-182/731-798) The famous student of Abū Ḥanīfah and a great

scholar of *fiqh*. For some time he was a judge in Baghdād where he died. Some of his books are: *al-Kharāj*, *al-Āthār*, *al-Nawādir*, *Ikhtilāf al-Amṣār*, *Adab al-Qādī*, *al-Amālī fi al-Fiqh*. (See: *al-A`lām*, VIII:193.)

- Zāhirī, Dāwūd b. `Alī b. Khalaf al-Zāhirī, Abū Sulaymān, known as al-Zāhirī (201-270/816-884) One of the *imāms* and *mujtahids* in Islām. He and his followers were called Zāhirīs because they followed the apparent (*ẓāhir*) meaning of the authoritative texts. They rejected *ta`wīl* and analogy (*qiyās*). Dāwūd was the first one who expressed this opinion. He was born in Kūfah, lived in Baghdad where he died. (See: *Wafayāt al-A`yān*, I:175; *Tadhkirat al-Huffāz*, II:136; *Lisān al-Mīzān*, II:422; *al-A`lām*, II:333.)

- Ibn al-Zubayr, `Abdullāh b. al-Zubayr b. al-`Awwām al-Qurashī al-Asadī, Abū Bakr (1-73/622-692). The first child born in Madīnah after *Hijrah*. He became caliph in 64 H. after the death of Yazīd b. Mu`āwiyah and held that post for nine years. He was an eloquent speaker like Abū Bakr. He was the first who made “circule money” from gold. (See: *al-A`lām*, IV:87.)

- Zuhri, `Abdullāh b. `Umar b. Yazīd b. Kathīr al-Zuhri al-Aṣbahānī, Abū Muḥammad (187-252/803-866). A judge and a scholar of the *ḥadīth*. He was from Aṣbahān. For some time he was a judge in Karkh where he died. He wrote several books. (See: *al-A`lām*, IV:109.)

=====

=====

GLOSSARY

of Islamic law legal terms appearing in the text

-A-

- *adhā* : any harmful object.
- *āḥād* : solitary *ḥadīth* reported by a single person or by limited number of individuals.
- *aḥkām `aqliyyah* : rational rulings like “one is half of two”, “the whole is bigger than a part of it” etc.
- *aḥkām ḥisiyyah* : rulings reached through feeling and senses like the fire is burning.
- *aḥkām shar`iyyah* : rulings reached through authoritative texts like that the prescribed Prayers are obligatory, usury and adultery are forbidden etc.
- *aḥkām taklīfiyyah* : commandment rulings such as defining law which underline rights and obligations, values and ordinances.
- *ahl al-kitāb* : lit. the people of the Book; non-Muslims who believe in a holy scriptures, Christians and Jews.
- *al* : the Arabic definite article.
- *`āmm* : general, unspecified, a technical term which normally refers to general meaning.
- *amr* (pl. *awāmir*) : command, matter, affair.
- *amr muqayyad* : restricted command.
- *amr muṭlaq* : absolute command.
- *ash`arīs* : the school of *`ilm al-kalām* named after Abū al-Ḥasan `Alī b. Ismā`īl al-Ash`arī (d. 324/936.).
- *aṣl* (pl. *uṣūl*) : lit. root, essence, base that upon which something else is built. Technically, the sources of law or the principles of jurisprudence.
- *awsuq* : (sing. *wasq*) : camel-load (eq=sixty *ṣā`* =165 litre²).

² Qal`ajī, *Mu`jam Lughat al-Fuqahā`*, p. 502.

-`A-

- *`aqīdah* : Islamic beliefs.
- *`aql* : reason, intellect, rationality.
- *`ayn* : a homonym that means gold, sun, spy etc.

-B-

- *bāṭil* : invalid, null and void without any effect.
- *bāṭinī madhāhib* : a name applied to a number of Muslim sects who seek the inner or spiritual meaning of the Qur'ān and who adopt its allegorical interpretation.
- *bayān qaṭ'ī* : definite explanation and clarification.
- *bay`* : sale transaction.
- *bay` al-gharar* : deception sale.

-D-

- *dalālāt* (sing. *dalālah*) : meaning, implication of words.
- *dalālāt al-alfāz* : verbal indications.
- *dalālat al-imā'* : gesture indication of a given text which is borne out by text's gesture.
- *dalālat al-iqtidā'* : required indication of a given text, a technical term which normally refers to a necessarily presumed indication of the text upon which the correctness of this text and its validity in Sharī'ah and mind (*shar'an* and *`aql^{an}*) are dependent.
- *dalālat al-mafhūm* : implied indication of a given text, a technical term which normally refers to an implicit meaning reached by a way of inference and not indicated by word's apparent indication.
- *dalālat al-manṭūq* : pronounced indication of a given text, a technical term which normally refers to text's indication on a ruling, which was mentioned in the text and pronounced by complete correspondence (*muṭābaqah*), or by partial inclusion (*taḍammun*), or by a necessary idea attached to the meaning in the mind (*iltizām*).
- *dalālat al-naṣṣ* : inferred meaning or implied meaning of a given text, a technical term normally refers to the indication of the text that the indicated

ruling is valid for another incident, because both incidents share an effective cause (*'illah*) which is common between them.

- *dīn* : usually translated to mean religion. This word, however, implies transaction between Allāh *ta`āla* as a debtor and human beings as the indebted, because the root of the word is *dāna* (to owe, take a loan). Accordingly, practicing the *dīn* (Islam) means repaying one's debt to Allāh.

- *dinars* (sing. *dinār*) : gold coins.

- *du`ā* : supplication.

-D-

- *ḍa`īf*: weak, also used for the poorly attested kind of traditions.

-E-

- *eid*: eid, feast, festivity, public celebration.

-F-

- *faḥwā al-khiṭāb* : superior meaning.

- *far`* : lit. a branch or a sub-division, and (in the context of *qiyās*) a new case and a new subject.

- *farḍ*: obligatory, obligation, precept of the divine law.

- *fāsiq*: (pl. *fāsiqūn*): evil livers, disobedient.

- *fātiḥat al-kitāb*: the first chapter of the Qur`ān.

- *fiqh*: lit. understanding, the science of Islamic law or jurisprudence.

- *fitnah*: temptation, trial, attractiveness, enchantment; whatever distracts and disturbs; misguidance, dissuasion from the path laid by Allāh.

- *fuqahā'* (sing. *faqāh*): legal scholars, jurists, those who are learned in *fiqh*.

- *furū`* (sing. *far`*): branches or subsidiaries, such as particulars of *fiqh* (*furū` al-fiqh*), that is, the 'branches of *fiqh*', as opposed to its roots and sources (*uṣūl al-fiqh*).

-G-

- *ghālib al-ẓann*: prevailing speculative indication.

- *ghāyah*: the extent of application.

- *ghayr al-ṣarīḥ*: unclear, latent, unpronounced, ambiguous, equivocal.

- *ghubār*: dust, (normally associated with *tayammum*) [q.v.].

-H-

- *ḥadd* (pl. *ḥudūd*) : lit. limit; prescribed punishment, a specific, fixed penalty.
- *ḥadīth* (pl. *aḥādīth*) : narratives and reports of deeds and utterances of the Prophet (p.b.u.h.) as recounted by his Companions.
- *ḥajj* : pilgrimage to Mekkah held once a year which is binding on all Muslims to perform once in a life-time if they can afford.
- *ḥāl* : circumstantial expression, status, a linguistic form.
- *ḥalāl* : what is allowed, an act which is permissible to do, or an article which is permissible to consume in Islam.
- *ḥanafīs* : one of Sunnī schools of law developed in Kūfa in Iraq whose eponym was Abū Ḥanīfah (699-767 H.).
- *ḥanbalīs* : the Sunnī school of law named after Aḥmad b. Ḥanbal (780-855 H.) a famous scholar of *ḥadīth*.
- *ḥaqīqī* : original, real, literal (as opposed to metaphorical).
- *ḥaqq* : the right cause, right of Allāh, or public right.
- *ḥarām* : forbidden, an act which is forbidden to do, or an article which is forbidden to consume in Islam.
- *ḥayḍ* : menstruation.
- *ḥiss* : intuition, none materialistic sense.
- *ḥudūd* : prescribed punishments by the authoritative texts.
- *ḥujjah* : legal proof or evidence.
- *ḥukm* : (pl. *aḥkām*) as in *ḥukm shar`ī* : the injunction of Sharī`ah.
- *ḥukm juz`ī* : partial ruling or injunction.

-I-

- *ibāḥah* : allowance, permissiveness.
- *ibārat al-naṣṣ* : explicit meaning of a given text which is borne out by its words.
- *idāfah* : genitive construction in Arabic language.
- *iddah* : the waiting period, during which a woman cannot re-marry, following dissolution of marriage by death or divorce. The legal rights and obligations of the spouses are not wholly extinguished during this period.
- *ighlaq* : coercion.

- *ihānah* : insult.
- *iḥtiqār* : contempt.
- *ijmā'* : consensus, a source of Islamic jurisprudence, unanimous consensus of opinion of Muslim scholars after the death of the Prophet (p.b.u.h.) in any age, on any matter of faith.
- *ijtihād* : lit. 'exertion'; exertion of efforts by a qualified scholar or a group of qualified scholars to find out the Islamic point of view on a certain issue by applying the required knowledge.
- *ikhtilāf* : lit. disagreement, normally associated with jurists disagreement.
- *ikrām* : generosity and hospitable reception or treatment.
- *'illah* : effective cause, or *ratio legis*, of a certain injunction (in the original sources of *Sharī'ah*) which can provide the ground justifying the assimilation of a derived case to a basic case in the process of analogy (*qiyas*). A legal principle established by an original case is extended to cover new cases on the ground that they possess a common *'illah*.
- *'illat al-ḥukm* : (q.v.) *'illah*.
- *'ilm al-kalām* : scholastic theology.
- *iltimās* : request.
- *iltizām* : a necessary idea attached to the meaning in the mind thus *insān* indicates a being capable of knowledge.
- *imtinān* : indebtedness, gratitude.
- *indhār* : warning, legal notice.
- *iqtidā' al-naṣṣ* : the required meaning of a given text.
- *irshād* : guidance.
- *ishārat al-naṣṣ* : the alluded meaning that can be detected in a given text.
- *ist'ārah badī'ah* : rhetoric metaphor.
- *istighrāq* : inclusion of one concept to many others.
- *iṣṭilāḥ* : convention.
- *istiḥsān* : to deem something good, a discursive device used by some jurists whereby preference is given to a rule other than the one reached by the more obvious form of analogy. It is in this context that *istiḥsān* has sometimes been

translated as “jurists preference”. It is used only in cases not regulated by authority of the Qur’ān, *ḥadīth*, or *ijmā’*.

- *istinbāṭ al-aḥkām* : juridical deduction, deduction of legal rulings.

- *istiṣḥāb* : presumption of continuity, or presuming continuation of the *status quo ante*, a methodological principle whereby a state of affairs known to have once existed is regarded to have persisted unless the contrary can be proven.

- *istiṣlāḥ* : a methodological principle whereby the welfare and well-being of both the individual and society as a whole are deemed paramount in reaching a legal judgment.

- *istithnā’ muttasil* : attached exception.

- *i’tibār* : a calling for contemplation, admonition, that which is of consequence.

- *i’tikāf* : confining oneself in a mosque for Prayers and invocations leaving the worldly activities.

-J-

- *jāhiliyyah* : ignorance, a term used to refer to the period before the advent of Prophet (p.b.u.h.) and final Revelation. It involves relying on what is other than the truth.

- *janābah* : the state of a ceremonial uncleanness of a person after sexual discharge or contact, whether intentional or not.

- *jarḥ wa ta’dīl* : the criteria for narrators of *ḥadīth*, for the acceptance (*ta’dīl*), or rejection (*jarḥ*).

- *jibt* : Any deity worshipped other than the True God (Allāh) i.e. all the false deities, it may be an idol, Satan, graves, stone, sun, star, angel, human being, a Messenger, Jesus the son of Mary, Ezra, Moses, saints etc.

- *jihād* : lit. striving for the sake of Allāh, self exertion and struggle for the sake of establishing truth and justice in an unbalanced situation.

- *jins* : kind, generic type.

- *jumhūr* : dominant majority of Muslim scholars.

-K-

- *Ka’ba* : the sacred house in Mekkah.

- *kalām* : derived from the root *k l m* normally refers to scholastic theology.

- *kanz* : the accumulated money of which *zakāt* has not be paid.
- *karāhah* : blameworthy, abhorrence, abomination.

-Kh-

- *khābar wāḥid* : a solitary tradition narrated by limited number of narrators.
- *khafī* : hidden, obscure; also refers to a category of unclear words.
- *khālaf* : the latter generations of Muslim *ummah* [q.v.].
- *khāṣṣ* : specific, a word or a text which conveys a specific meaning.
- *khilāf al-aṣl* : opposite to the basic, original and approved status.
- *khul`* : release or redemption, a form of divorce by mutual agreement, a dissolution of the bonds of marriage by the use of this word or its derivatives and for consideration which the wife pays or promises to pay.

-L-

- *lahn al-khiṭāb* : parallel meaning.
- *lafẓ `āmm* : general word.
- *lafẓ murakkab* : compound word.
- *li`ān* : lit. imprecation; curses invocation, a form of irrevocable dissolution of marriage in which the husband affirms four times under oath that his wife committed adultery and invokes the curse of Allāh on him if he was telling a lie; the woman then affirms four times under oath that her husband is telling a lie, and invokes on herself the curse of Allāh if he was telling the truth. Also called *mulā`anaḥ*³.

-M-

- *madhhab*; pl. *madhāhib* : classical juristic/theological schools of legal thought.
- *mafḥūm* : notion, concept, implicit meaning.
- *mafḥūm al-mukhālafah* : divergent meaning, an interpretation which diverges from the obvious meaning of a given text.
- *mafḥūm al-muwāfaqah* : agreement meaning an interpretation which agrees with the obvious meaning of a given text.
- *maḥdhūf* : omitted.

³ See the Qur'anic chapter al-Nūr, XXIV:6-9.

- *mahr* : (also called *ṣadāq*), the dower, a sum of money or other property which becomes payable by the husband to the wife as an effect of marriage.
- *makrūh* : blameworthy, abominable, reprehensible, undesirable cause which cause blame if done.
- *mālikīs* : one of Sunnī schools of law developed in Madīnah and named after Mālik b. Anas al-Aṣbaḥī (713-795 H.).
- *manāṭ al-ḥukm* : effective cause.
- *mandhūr* : vowed to Allāh.
- *mandūb* : praiseworthy, a desirable cause which does not cause blame if not done.
- *manṭūq* : pronounced.
- *maqīs* : subsidiary a new case (in *qiyās*) (q.v.).
- *maqīs`alayhi* : original case (in *qiyās*) (q.v.).
- *marjūh* : non-preferable opinion.
- *mashhūr* : well-known, widespread, a famous tradition of the Prophet (p.b.u.h.) which is widely reported.
- *mashrūt* : stipulated.
- *mashūrah* : consultation.
- *maskūt`anh* : not mentioned, concealed, unpronounced rulings.
- *ma`ṣūm* : infallible, immune from making errors (normally refers to the Prophet (p.b.u.h.)).
- *mawlā* (pl. *mawālī*) : a homonym that means both the freer (the master) and freed (his freed slave).
- *mayyitah* : dead animal (cattle-beast not slaughtered according to Islamic law requirements).
- *mu`awwal* : interpreted not according to the obvious meaning of the text.
- *mubayyan* : determined and explained words.
- *mubham* : the ambiguous and unclear words.
- *muḍārabah* : speculation, a profit and loss sharing contract in which one party provides capital and the other party manages the enterprise. In case of loss, the supplier of capital bears the financial loss while the agent-partner loses the return for his labor. In case of profit, both parties share it in agreed proportions.

- *muḍmar* : concealed an implicit words in a given text.
- *muḥkam* : firm, a technical term normally refers to a word or a text conveying a firm and unequivocal meaning.
- *muḥkam* (pl. *muḥkemāt*) : verses from the Qur'ān who are not susceptible to *ta'wīl*, or abrogation.
- *mujmal* : sinopsysed, inconclusive, ambivalent, ambiguous, a technical term which normally refers to a category of unclear words.
- *mujtahid* : a qualified person who exercise *ijtihād*.
- *mufassar* : explained, clarified. a technical term which normally refers to a category of explained and clarified words.
- *mukallaf* : a person who has reached the age of maturity in Islām, and is in full possession of his/her faculties.
- *mukhaṣiṣ* : (pl. *mukhaṣṣiṣāt*) the articles which make the specification, proofs of specification.
- *muqatta'āt* : the individual (abbreviated) letters in the Qur'ān.
- *muqayyad* : confined, qualified, a technical word which normally refers to a word that indicates on a subject or non-specified group of subjects (*māhiyyah*) to whom is attached what restricts their commonality.
- *muqtaḍā* : required indication of a given text without which the meaning of the text would be incomplete..
- *muqtarin* : joined and associated.
- *mushkil* : difficult, a technical term which normally refers to a provision which cannot be easily understood..
- *mushrikūn* : polytheists, pagans, idolaters, and disbelieves in the Oneness of Allah, etc., those who worship others along with Allah or set up rivals or partners to Allah, etc.
- *mushtarak* : homonym, a technical term which normally refers to a word or phrase imparting more than one meaning.
- *mustaqill* : independent.
- *muṭallaqāt* (sing. *muṭallaqah*) : divorcée.
- *mutawāṭi'* : a specified personal meaning.

- *mutawātir ḥadīth* : a tradition which has a sufficiently large number of independent chains of authority to guarantee its authenticity.
- *muṭābaqah* : complete correspondence thus *insān* indicates an animal endowed with reason.
- *mut`ah* : lit. pleasure, temporary marriage recognized only by Shī`ah school, and considered as illegal by the Sunnis.
- *mutakallimūn* : the philosopher-theologian writers, in *uṣūl al-fiqh*.
- *mutashābihāt* (sing. *mutashābih*) : verses of the Qur`ān that are beyond humans comprehension.
- *muṭlaq* : absolute, unqualified, a technical term which normally refers to a word that indicates on a subject or a group within a multitude (*māhiyyah*) without being specified or restricted by anything that may reduce its commonality.
- *muṭlaq ṣiḡhat al-amr* : absolute imperative (jussive) mood.
- *muṭlaq ṣiḡhat al-nahy* : absolute prohibition (jussive) mood.

-N-

- *nabbāsh* : grave robber.
- *nadb* : recommendation, praiseworthy, commendable deeds for which a reward is promised when performed with good intention.
- *nafl* : supererogatory worship.
- *najāsah* : impurity, uncleanness, dirt, filth, squalor.
- *nahy* : prohibition.
- *nakirah* : indefinite noun, unknown person.
- *nās* : mankind, people.
- *naskh* : abrogation, cancellations, deletions or substitutions of one text or its injunction with another.
- *naṣṣ*, : lit. text; an explicit provision of the Qur`ān or Sunnah, a clear injunction, an explicit textual ruling.
- *nifās* : women menstrual period after delivering baby.
- *niṣāb* : the wealth when reached determined minimum value which normally refers to amount of property or wealth which cause the owner to be responsible for paying *zakāt*.

- *niyyah* : intention, in Islām the actions are valued according to the intention.

-Q-

- *qadhf*: slanderous accusation of illicit sexual relations.

- *qadr* : amount.

- *qarīnah* : evidence, context or circumstantial evidence.

- *qasr*: limitation.

- *qat`ī*: definitive, decisive, free of speculative content.

- *qat`i al-dalālah* : that definite meaning.

- *qawā`id fihiyyah* : the *fiqh*'s rules extracted from Islamic law by the *fuqahā`* to form a general rule or a maxim.

- *qintār*: measure of capacity. One *qintār* has 100 *ratls*. (1 *ratl* = 407,5 gram.)⁴

- *qiyās* : The process of forming Islamic judgements on the basis of logical deduction based on the original sources of Sharī`ah.

- *qiyās awlā* : analogy of the superior, logical deduction based on the original sources when the cause (*`illah*) in a new case is more evident than in the original case.

- *qiyās jalī* : translucent analogy, logical deduction based on the original sources when the cause (*`illah*) in a new case is more evident than in the original case.

- *qiyās musāwī* : analogy of equals, logical deduction based on the original sources when the cause (*`illah*) is equally evident in both new case and original case.

- *qullatayni* (sing. *qullah*) : jug, pitcher (one *qullah* = 160,5 litres of water.)⁵

- *qur`* (pl. *qurū`*) : a homonym that means both the menstrual period and the period between two menstruation's.

-R-

- *rājih* : preferable, used of a variant juristic opinion which is deemed to be more correct view.

- *ramadān* : month of fasting, the ninth month of Muslim calendar.

⁴ Qal`ajī, *Mu`jam Lughat al-Fuqahā`*, p. 223.

⁵ Qal`ajī, *Mu`jam Lughat al-Fuqahā`*, p. 367.

- *rawāfiḍ*: is one name given to the Shī ah and denominates those who rejected caliphs Abū Bakr and `Umar.
- *ribā'*: usury, interest on a capital loan.
- *riwāyah*: narration, transmission of *ḥadīth*.
- *rukn* (pl. *arkān*): basic element, pillar, essential ingredient, essential requirement.

-S-

- *sabab al-nuzūl*: the specific reason and circumstances for the revelation of various verses of the Qur'ān.
- *salaf*: the first generations of Muslims.
- *sāriq*: thief.
- *sunnah*: traditions attributed to the Prophet (p.b.u.h.), the way of the Prophet (p.b.u.h.) which is directly relevant to the religious guidance of Muslims usually divided into: verbal utterances, acts of the Prophet, and the tacit assent of the Prophet (p.b.u.h.). It is the second most important source of Islam, after the Qur'ān.

-Ṣ-

- *ṣadaqah*: alms and voluntary almsgiving, charity.
- *ṣaḥābah* (sing. *ṣaḥābī*): Prophet's (p.b.u.h.) Companions.
- *ṣaḥīḥ*: valid and effective, authentic tradition.
- *ṣa`īd*: earthy soil dust.
- *ṣalāt*: literally means: call, invocation, supplication (*du`ā'*), name to the special obligatory Prayers required by Islam.
- *ṣarīḥ*: clear, plain, open, frank, unambiguous, unequivocal.
- *ṣiḡḡah mujmalah*: ambivalent mood.
- *ṣiḡḡat al-jumū`*: general meaning mood.
- *ṣifah*: attribute.
- *ṣiyām*: fast from everything what may invalid the fasting from the first light of dawn until sunset.

-Sh-

- *shāfi`īs*: one of Sunnī schools of law named after Muḥammad b. Idrīs al-Shāfi`ī (d. 820 H.). In *uṣūl al-fiqh* it includes four schools of law: *shāfi`īs*.

mālikīs, *ḥanbalīs* and *ẓāhirīs*. Altogether they are called in *uṣūl al-fiqh* either the majority, or *shāfi`īs*, or *mutakallimūn*.

- *sharī`ah* : the divine law of Islam.
- *shart* (pl. *shurūṭ*) : condition.
- *shī`ites* : the followers of `Alī and the people of his house.
- *shirk* : polytheism, idolatry; worshipping someone or something except Allāh or associating something or someone with Him.
- *shubuhāt* : suspicions.
- *shumūl* : comprehension.
- *shūra* : consultation.

-T-

- *ta`abbud* : piety, devotion, worship, obedience to Allāh *ta`āla*.
- *ta`adhdhur* : impossibility of doing something.
- *ta`āla* : exalted, glorified.
- *taba`iyyah* : subsequently, afterwards, consequently.
- *tābi`ūn* : next generation of Muslims after *Ṣaḥābah*.
- *taḍḍamun* : partial inclusion thus *insān* indicates a being endowed with reason.
- *tahdīd* : threat.
- *taḥrīm* : prohibition, or rendering something into *ḥarām*.
- *tafsīr* : explanation, normally refers to explaining the Qur`ān.
- *tafsīr qaṭ`ī* : definitive explanation.
- *ta`jīz* : to deem powerless.
- *takbīr* : saying *Allāh Akbar* (Allāh is great)
- *takhsīs* : specifying the general provision.
- *talāzum* : correlation between two meanings or ideas.
- *ta`līl* : justification, ratiocination, search for the effective cause of a ruling.
- *tamyīz* : specification of a meaning or subject.
- *ta`qīb* : continuation.
- *targhīb* : invitation, attraction.
- *tarhīb* : intimidation, threatening.

- *tashdīd* : intensification, strengthening; (gram.) intensified pronunciation, doubling (of a consonant), doubling sign over a consonant.
- *taslīm* : ending a Prayer by saying *assalām `alaykum*.
- *taswiyah* : equalization between the two.
- *tathīr* : purification.
- *tawātur* : continuous recurrence, continuous testimony, impeccable plurality of narrators which continue from one generation to other - normally used in describing the narration of the Qur'ān or *ḥadīth*.
- *tawḥīd* : the science of Islamic beliefs, the belief in the oneness of Allāh and His oneness.
- *ta'wīl* : the interpretation not according to the obvious import of a given text, allegorical interpretation.
- *tayammum* : ablution with hands pre-rubbed with clean dust/earth in the event no water may be available.
- *ta'zīr* : lit. deterrence; non-fixed punishment, discretionary penalty determined by the judge (*qāḍī*).
- *turāb* : dust.

-Ṭ-

- *ṭāghūṭ* : It means anything worshipped other than the True God (Allāh) i.e. all the false deities, it may be an idol, Satan, graves, stone, sun, star, angel, human being, a Messenger, Jesus the son of Mary, Ezra, Moses, saints etc.
- *ṭahārah kubrā* : the complete ablution, washing the entire body with water after ceremonial uncleanness
- *ṭāhir* : pure.
- *ṭarrār* : pickpocket.
- *ṭayyibāt* : all good things.
- *ṭuhr* : purity, normally the period between two menstruation's.

-U-

- *`ulamā'* (sing. *ālim*) : scholars.
- *`ulūm al-ḥadīth* : the science of *ḥadīth*.
- *`ulūm al-Qur'ān* : the science that helps in understanding of the Qur'ān.

- *ummah* : the community of Islam, a generation of Muslims which includes all those within the faith of Islām.
- *umrah* : minor pilgrimages.
- *umūm al-muqtaḍa* : a technical term which normally refers to the generalisation of the required meaning.
- *urf qawlī* : verbal customs and habits prevalent in a society.
- *uṣūl al-fiqh* : source methodology of Islamic jurisprudence.
- *uṣūlī* : the scholar of *uṣūl al-fiqh*.

-W-

- *wāḍiḥ* : clear, lucid, plain, distinct, obvious, manifest, a technical term which normally refers to clear words.
- *wājib* : obligatory, strict obligation which Muslims should observe.
- *wāqifiyyah* : a name applied to a number of Muslim groups or sects who halt to give their legal opinion about certain question.
- *waqt* : lit. the time.
- *wijā`* : cutting and used by *ḥadīth* to refer to the protection against sin.
- *wuḍū`* : ablution with clear water.

-Z-

- *zakāt* : a religious obligation on Muslims to pay a predetermined percentage of the value of their annual savings to the Islamic state to be distributed to certain categories of people.
- *zakāt al-fiṭr* : *al-fiṭr* obligatory donation of foodstuffs or money required at the end of Ramaḍān, the month of fasting.
- *zina* : adultery, fornication.

-Z-

- *ẓāhir* : apparent, manifest, a technical term which normally refers to the apparent meaning of the text.
- *ẓāhirīs* : a school of Islamic law which was based on the principle of relying exclusively on literal meaning (*ẓāhir*) of authoritative texts.
- *ẓannī* : indefinite, speculative, doubtful; the legal value attached to the results of juristic reasoning.
- *ẓannī al-dalālah* : speculative meaning.

- *ẓarf makān* : place adverb.

- *ẓarf zamān* : time adverb.

- *ẓihār* : from the root *ẓ a h r*, a term refers to the saying of a husband to his wife: “You are to me like the back of my mother (i.e. unlawful for me to approach)”.

- *ẓulm* : oppression, injustice.

- *ẓunūn* : speculative meanings.

=====

=====

Bibliografy

-A-

- Ibn Abī al-`Izz, `Alī b. `Alī b. Muḥammad b. Abī al-`Izz al-Dimashqī (d. 792 H.), *Sharḥ al-`Aqīdah al-Ṭahāwīyyah*, Mu`assasat al-Risālah.
- Abūghosh, Bassām Sulaimān and Waffā' Zaki Shaqra, *A Glossary of Islamic Terminology*, Ṭā Hā Publishers Ltd. London, 1992.
- Albānī, Muḥammad Nāṣir al-Dīn al-Albānī. *Irwā' al-Ghalīl fī Takhrīj Aḥādīth Manār al-Sabīl*, 10 Vols., 1st edn., al-Maktab al-Islāmī, 1399/1979.
- `Alwānī, Ṭāhā Jābir al-`Alwānī, *Source Methodology in Islamic Jurisprudence*, The International Institute of Islamic Thought, 2nd edn., Virginia, USA, 1415/1994.
- Ibn Amīr al-Ḥājj, Muḥammad b. Muḥammad b. al-Ḥasan known as Ibn Amīr al-Ḥājj (d. 879 H.). *al-Taqrīr wa al-Taḥbīr*, 3 Vols., Dār al-Kutub al-`Ilmiyyah, 2nd edn., 1403/1983. Egypt, al-Maṭba`ah al-`Uthmāniyyah, 1311 H.
- Anderson, Norman. *Law Reform in the Muslim World*, University of London, The Athlone Press, 1976.
- Anṣārī, Shamsul'islām Abū Yaḥya al-Anṣārī (d. 926 H.). *Ghāyat al-Wuṣūl Sharḥ Lubb al-Uṣūl*, Surabaya, Indonesia.
- Anṣārī, `Abd al-`Alī Muḥammad b. Niẓāmuddīn al-Anṣārī (d.1180 H.). *Fawātiḥ al-Raḥamūt*, Printed on the margin of *al-Mustaṣfā*, al-Maṭba`ah al-Amīriyyah, 1334 H.
- Arberry, Arthur J. Arberry. *The Koran Interpreted*, Oxford University Press, London, 1964.
- Aṣfahānī, Shamsuddīn Maḥmūd b. `Abd al-Raḥmān al-Aṣfahānī (d. 749 H.). *Sharḥ al-Minhāj*, Maktabat al-Ruṣhd, Riyadh, 1410 H.
- Aṣfahānī, Aḥmad b. `Alī al-Aṣfahānī (d. 420 H.). *Ḥulyat al-Awliyā' wa Ṭabaqāt al-Aṣfiyā'*, Egypt, 1351 H.
- Ibn al-Athīr, Majduddīn Muḥammad b. Muḥammad b. `Abdulkarīm, known as Ibn al-Athīr al-Jazarī (d. 606 H.). *al-Nihāyah fī Ghārīb al-Ḥadīth wa al-Athar*, al-Maṭba`ah al-`Uthmāniyyah, Egypt, 1311 H.

-Ā-

- Al`Abdullaṭīf, `Abdullaṭīf b. Ibrāhīm āl `Abdullaṭīf, *Ṭarīq al-Ruṣhd ilā Takhrīj Aḥādīth Bidāyat ibn Ruṣhd*, Islamic University in Madīnah. Saudi Arabia.

- Āmidī, Sayfuddīn Abī al-Ḥasan `Alī b. Abī `Alī b. Muḥammad al-Āmidī (d. 631 H.). *al-Iḥkām fī Uṣūl al-Aḥkām*, 2 Vols., Dār al-Kutub al-`Ilmiyyah. 1st edn., Beirut, 1405/1985.

-`A-

- Abd al-Bāqī, Muḥammad Fu`ād `Abd al-Bāqī. *al-Mu`jam al-Mufahras li-Alfāz al-Qur`ān al-Karīm*, Dār Iḥyā' al-Turāth al-Islāmī, Beirut, Lebanon.

- Ābidīn, Muḥammad `Alā'uddīn b. Muḥammad Amīn `Ābidīn (d. 1306 H.). *al-Hadiyyah al-`Alā'iyyah*, 3rd edn., 1398/1978.

- Ibn `Ābidīn, Muḥammad Amīn known as Ibn `Ābidīn (d. 1252 H.). *Ḥāshiyat Radd al-Muḥtār `alā al-Durr al-Mukhtār* known as *Ḥāshiyat ibn `Ābidīn*, 5 Vols., Maṭba`at Būlāq, Egypt, 1282 H.

- Ajlūnī, Ismā`īl b. Muḥammad al-Ajlūnī al-Jarrāḥī (d. 1162 H.). *Kashf al-Khafā' wa Muzīl al-Ilbās `ammā Ishtahara min al-Aḥādīth `alā Alsinat al-Nās*. Maṭba`at al-Qudsī, 1351 H.

- Alā'ī, Khalīl b. Kīkildī al-`Alā'ī (d. 761 H.). *Talqīḥ al-Fuhūm fī Tanqīḥ Ṣiyagh al-`Umūm*, Edited by `Abdullah b. Muḥammad b. Ishāq āl-Shaykh. 1st edn., 1403/1983.

- Ibn al-`Arabī, Abū Bakr Muḥammad b. `Abdullāh Ibn al-`Arabī (d. 543 H.). *Aḥkām al-Qur`ān*, 4 Vols., `Isā al-Ḥalabī, Cairo, 1376-1378 H.

- Asqalānī, Aḥmad b. `Alī al-Kan`ānī, known as Ibn Ḥajar al-`Asqalānī (d. 852 H.). *al-Iṣābah fī Tamayīz al-Ṣaḥābah*, Egypt, 1358/1937.

- Asqalānī, Aḥmad b. `Alī al-Kan`ānī, known as Ibn Ḥajar al-`Asqalānī (d. 852 H.). *Bulūgh al-Marām*, Revival of Islamic Heritage Society, Kuwait, 1994.

- Asqalānī, Aḥmad b. `Alī al-Kan`ānī, known as Ibn Ḥajar al-`Asqalānī (d. 852 H.). *Fath al-Bārī*, al-Maṭba`ah al-Amīriyyah, Cairo, 1301 H.

- Asqalānī, Aḥmad b. `Alī al-Kan`ānī, known as Ibn Ḥajar al-`Asqalānī (d. 852 H.). *Lisān al-Mīzān*, Ḥaydarabād, 1331 H.

- Assāf, Aḥmad Muḥammad `Assāf, 2 Vols., Dār Iḥyā' al-`Ulūm. 6th edn., Bairut, Lebanon, 1409/1988.

-B-

- Badrān, Abū al-`Aynayn Badrān. *Uṣūl al-Fiqh al-Islāmī*. Alexandria, Mu'assasat Shabāb al-Jāmi`ah, 1404/1984.
- Bādshāh, Muḥammad Amīn al-Ḥusaynī al-Ḥanafī al-Khorasānī al-Bukhārī al-Makkī known as Amīr Bādshāh (d. 987 H.). *Taysīr al-Taḥrīr*, 2 Vols., Dār al-Fikr.
- Baghdādī, Aḥmad b. `Alī b. Thābit al-Khaṭīb al-Baghdādī (d. 463 H.). *Tārīkh Baghdād*, Egypt, 1349 H.
- Ba`labakī. Rūḥī al-Ba`labakī, *al-Mawrid*, Dār al-`Ilm li al-Malāyīn, 4th edn., 1992.
- Bardīsī, Muḥammad Zakariyyā al-Bardīsī. *Uṣūl al-Fiqh*, 2nd edn., Maṭba`at Dār al-Ta`līf, Cairo, 1381 H.
- Baṣrī, Abū al-Ḥusayn Muḥammad b. `Alī b. al-Ṭayyib al-Baṣrī al-Mu`tazilī (d. 436 H.). *al-Mu`tamad fī Uṣūl al-Fiqh*, The French Institute for Islamic Studies, Damascus, 1384/1964.
- Bastī, Muḥammad b. Ḥibbān b. Aḥmad al-Tamīmī al-Bastī, Abū Ḥātim (d. 965 H.). 1st edn., Mu'assasat al-Kutub al-Thaqāfiyyah, Beirut, Lebanon, 1408/1987.
- Bayhaqī, Aḥmad b. al-Ḥusayn al-Bayhaqī (d. 458 H.). *al-Sunan al-Kubra*, 10 Vols., 1st. edn., Maṭba`at Dār al-Ma`ārif al-`Uṭhmāniyyah, Ḥayderabād, 1356/1937.
- Bazdawī, `Alī b. Muḥammad b. al-Ḥusayn al-Bazdawī, Fakhrulislām (d. 482 H.). *Uṣūl Fakhrulislām al-Bazdawī*, Printed on the margin of *Kashf al-Asrār `an Uṣūl Fakhrulislām al-Bazdawī*, Dār al-Kitāb al-Islāmī, Cairo.
- Bell & Watt, *Introduction to the Qur`ān*, Edinburgh University Press, Paperback edition 1977.
- Brill, E.J. *The Encyclopedia of Islam*, 8 Vols., and supplement, (1913-1938; reprint) Leiden: E.J. Brill, 1987.
- Brill, E.J. *The Encyclopedia of Islam*, new edition, Leiden. E.J. Brill, 1960.
- Bukhārī, `Alā`uddīn `Abdul`azīz b. Aḥmad al-Bukhārī, (d. 730). *Kashf al-Asrār `an Uṣūl Fakhrulislām al-Bazdawī*, 2 Vols., Dār al-Kitāb al-Islāmī. Cairo.

- Bukhārī, `Alā`uddīn `Abdul`azīz b. Aḥmad al-Bukhārī, (d. 730). *al-Tawḍīḥ fī Ḥallī Ghawāmiḍ al-Tanqīḥ*, Printed together with *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ* of Taftāzānī.

- Bukhārī, Abū Muḥammad `Abdullāh Muḥammad b. Ismā`īl al-Bukhārī (d. 256 H.). *al-Jāmi` al-Ṣaḥīḥ*, al-Maktabah al-Islāmiyyah, Istanbul, Turkie.

- Bunānī, `Abdurrahmān b. Jādullāh al-Bunānī al-Maghribī (d. 1197 H.). *Hāshiyat `alā Sharḥ al-Maḥallī `alā Jam` al-Jawāmi`*, 2 Vols., 2nd edn., Muṣṭafā al-Bābī al-Ḥalabī, 1386 H.

-C-

- Coulson, N.J. *A History of Islamic Law*, Edinburgh University Press, Paperback edition, 1978.

-D-

- Dabbūsī, `Abdullah b. `Umar al-Dabbūsī Abū Zayd (d. 430 H.). *al-Asrār fī al-Uṣūl wa al-Furū` fī Taqwīm Adillat al-Shar`*, Ph.D. thesis presented at al-Azhar University, Cairo, by Maḥmūd Tawfīq `Abdullah al-`Awāṭilī al-Rughā`ī.

- Dārimī, `Abdullāh b. `Abdurrahmān b. al-Faḍl b. Bahrām al-Dārimī (d. 255 H.) *Sunan, Dār Iḥyā` al-Sunnah al-Nabawiyyah*, Beirut, Lebanon.

- Dassūqī, Muḥammad b. Aḥmad b. `Arafah al-Dassūqī (d. 1230 H.). *Ḥashiyat al-Dassūqī `ala al-Sharḥ al-Kabīr*, 4 Vols., Īsā al-Bābī al-Ḥalabī, Cairo.

- Abū Dāwūd, Sulaymān b. al-Ash`ath al-Sijjistānī al-Azdī (d. 275 H.). *Sunan*. Edited by Muḥammad Muḥyuddīn `Abdulḥamīd, al-Maktabah al-`Aṣriyyah, Bairut.

- Dhahabī, Abū `Abdullāh Muḥammad b. Aḥmad b. `Uthmān al-Dhahabī (d. 748 H.) *Tadhkirat al-Ḥuffāz*, Ḥaydarabād, 1333-1334 H.

- Dhahabī, Abū `Abdullāh Muḥammad b. Aḥmad b. `Uthmān al-Dhahabī (d. 748 H.). *Mīzān al-Ḥtidāl fī Naqd al-Rijāl*, Dār al-Fikr al-`Arabī.

- Dimashqī, Muḥammad Amīn Suwayd al-Dimashqī (d. 1355). Edited by Dr. Muṣṭafā Sa`īd al-Khinn, 1st edn., Dār al-Qalam, Damascus, 1412/1991.

- Dimashqī, Abū Zakariya Yaḥya b. Sharaf al-Nawawī al-Dimashqī (d. 676 H.). *Riyāḍ al-Ṣaliḥīn*, Revival of Islamic Heritage Society, Kuwait, 1414/1994.

- Dimashqī, `Imād al-Dīn Ismā`īl b. `Umar b. Kathīr al-Qurashī al-Dimashqī (d. 774 H.). *al-Bidāyah wa al-Nihāyah*, Egypt, 1351-1358 H.

- Doi, `Abdurrahmān I. *Sharīah; the Islamic Law*, Ṭā Hā Publishers, London, 1404/1984.

- Donzel, E. Van Donzel. *Islamic Desk Reference*, E. J. Brill, Leiden, 1994.

-E-

- Esposito, John L. Esposito. *Modern Islamic World*, 4 Vols., Oxford University Press, 1995.

-F-

- Fārūqī, Ḥārith Sulaymān Fārūqī. *Fārūqī's Law Dictionary*. 2nd edn., Librairie du Liban, Beirut, 1983.

- Fayrūzabādī, Muḥammad b. Ya`qūb Majd al-Dīn al-Fayrūzabādī (d. 817 H.). *al-Qāmūs al-Muḥīṭ*, 4 Vols., 5th edn., Muṣṭafā Maḥmūd, Cairo, 1373 H.

-G-

- Gibb, Hamilton Gibb. *Mohammedanism*, O.U.P., 2nd edn, London, 1953.

- Gibb and Kramers, H. A. R. Gibb and J. H. Kramers, *Shorter Enciclopedia of Islam*, E. J. Brill, Leiden, 1974.

- Glasse, Cyril Glasse. *The Concise Enciclopedia of Islam*, Stacey Internacional, London, 1989.

-GH-

- Ghazālī, Abū Ḥāmid Muḥammad b. Muḥammad b. Muḥammad al-Ghazālī (d. 505 H.). *al-Mustaṣfa fī `Ilm al-Uṣūl*, Dār al-Kutub al-`Ilmiyyah, 1st edn.. Beirut, Lebanon, 1413/1993.

- Ghazzī, Najm al-Dīn al-Ghazzī. *al-Kawākib al-Sā`irah fī A`yān al-Mi`ah al-`Ashirah*, al-Maktabah al-Amarīkiyyah, Beirut 1945, 1949.

-H-

- Haywood, J.A. Haywood and H. M. Nahmad. *A new Arabic grammar*. Lund Humphries, London, 1993.

- Hilālī, Dr. Muḥammad Taqiyuddīn, and Khān, Dr. Muḥammad Muḥsin. *Tafsīr Ma`ānī al-Qur`ān al-Karīm*, Maktabat Dār al-Salām, 4th edn., 1994.

- Hulyy, Abū al-Qāsim al-Hulyy, *al-Mukhtaṣar al-Nāfi` fī Fiqh al-Imāmiyyah*. Maṭābi` Dār al-Kitāb al-Arabiyy, Egypt.

- Ibn al-Humām , al-Kamāl Ibn al-Humām (d. 861 H.). *Fatḥh al-Qadīr Sharḥ al-Hidāyah*, 8 Vols., 1st edn., al-Maṭba`ah al-Amīriyyah, Egypt, 1315 H.

-H-

- Ibn al-Ḥāḥib , Jamāl al-Dīn `Uṭhmān b. `Umar, known as Ibn al-Ḥāḥib (d. 646 H.). *Sharḥ Mukhtaṣar al-Muntahā*, printed with *Sharḥ al`Aḍud ma`a Mukhtaṣar al-Muntahā*, 2 Vols., Maṭba`at al-Kulliyyāt al-Azhariyyah, Cairo, 1406/1986.

- Ḥafnāwī, Muḥammad al- Ḥafnāwī. *al-Ta`āruḍ wa al-Tarjīḥ*, 2nd edn., Dār al-Wafā', Mansūrah, Egypt, 1408/1987.

- Ḥamawī, Yāqūt b. `Abdullāh al-Rūmī al-Ḥamawī, Abū `Abdullāh (d. 626 H.). *Irshād al-Arīb ilā Ma`rifat al-Adīb*, Maṭba`at Marghliyūth, Egypt, 1907-1925.

- Ibn Ḥanbal, Ahmad b. Ḥanbal (d. 241 H.). *Musnad*, Edited by Aḥmad Muḥammad Shākir, Dār al-Ma`ārif, Cairo, 1377/1958.

- Ḥanbalī, Abū al-Falāḥ `Abdulḥayy al-Ḥanbalī (d. 1089 H.). *Shudhurāt al-Dhahab fī Akhbār man Dhahab*, al-Maktabah al-Tijāriyyah li al-Ṭibā`ah wa al-Nashr, Beirut.

- Harris, Phil Harris. *An Introduction to Law*, 2nd edn., Weidenfeld and Nicolson, London, 1984.

- Ḥasan, Khalīfah bā Bakr al-Ḥasan. *Takḥṣīṣ al-Nuṣūṣ bi al-Adillah al-Ijtihādiyyah `inda al-Uṣūliyyīn*, 1st edn., Maktabat Wahbah, Cairo, 1413/1993.

- Abū Ḥātim, Muḥammad b. Hibbān b. Aḥmad al-Tamīmī al-Bastī, Abū Ḥātim (d. 965 H.). *Mashāhīr `Ulamā' al-Amṣār wa A`lām Fuqahā' al-Aqṭār*. Edited by Marzūq `Alī Ibrāhīm, 1st edn., Mu`assasat al-Kutub al-Thaqāfiyyah, Beirut, Lebanon, 1408/1987.

- Ibn Ḥazm, `Alī b. Aḥmad b. Sa`īd b. Ḥazm al-Zāhirī, Abū Muḥammad (d. 456 H.). *al-Muḥallā*, Dār al-Āfāq al-Jadīdah, Beirut.

- Ibn Ḥazm, `Alī b. Aḥmad b. Sa`īd b. Ḥazm al-Zāhirī, Abū Muḥammad (d. 456 H.). *al-Iḥkām fī Uṣūl al-Aḥkām*, 8 Vols., Maṭba`at al-Sa`ādah, 1st edn., Egypt, 1935.

- Ibn Ḥazm, *al-Fiṣal fī al-Milal wa al-Ahwāi' wa al-Niḥal*, 5 Vols., Maktabat al-Salām al-`Ālamiyyah.

-I-

- Isnawī, Jamāluddīn Abī Muḥammad `Abdurraḥīm b. al-Ḥusayn al-Isnawī (d. 772 H.). *Nihayat al-Sawl*, Printed on the margin of *al-Taqrīr wa al-Taḥbīr* of Ibn Amīr al-Ḥājj, 3 Vols. 2nd edn., Dār al-Kutub al-`Ilmiyyah, 1403/1983.
- Isnawī, Jamāluddīn Abī Muḥammad `Abdurraḥīm b. al-Ḥusayn al-Isnawī (d. 772 H.). *al-Tamhīd fī Takhrīj al-Furū` alā al-Uṣūl*, Edited by Dr. Muḥammad Ḥusayn Hīto, 3rd edn., Mu`assasat al-Risālah, Beirut, 1404/1984.

-Ī-

- Ījī, `Abdurraḥmān b. Aḥmad b. `Abdulghaffār `Aḍud al-Millah al-Ījī (d. 756 H.). *Mukhtaṣar al-Muntahā*, 2 Vols., Maktabat al-Kulliyyāat al-Azhariyyah, Cairo, 1403/1983.

-J-

- Jabbūrī, Ḥusayn Khalaf, *al-Aqwāl al-Uṣūliyyah li al-Imām Abī al-Ḥasan al-Karkhī*, 1st edn., 1409/1989.
- Jaṣṣāṣ, Abū Bakr Aḥmad b. `Alī al-Rāzī al-Jaṣṣāṣ (d. 370 H.). *Aḥkām al-Qur`ān*, 3 Vols., Maṭba`at al-Awqāf al-Islāmiyyah, Cairo, 1335 H.
- Ibn al-Jawzī, Abū al-Faraj Jamāl al-Dīn `Abdurraḥmān b. `Alī, Ibn al-Jawzī (d. 597 H.). *Ṣifat al-Ṣufwah*, Ḥaydarabād, 1355 H.
- Jawziyyah, Ibn Qayyim al-Jawziyyah (d. 751 H.). *Glām al-Muwaqqi`īn `an Rabb al-`Ālamīn*, 4 Vols., 1st edn., Maṭba`at al-Sa`ādah, Cairo.
- Jazarī, Muḥammad b. Muḥammad b. Muḥammad b. `Alī b. Yūsuf Shams al-Dīn Abū al-Khayr b. al-Jazarī (d. 833 H.), *Ghāyat al-Nihāyah fī Ṭabaqāt al-Qurrā'*, Egypt, 1351 H.

-K-

- Kalwazānī, Maḥfūz b. Aḥmad b. al-Ḥasan Abū al-Khaṭṭāb al-Kalwazānī al-Ḥanbalī (d. 510 H.). *al-Tamhīd fī Uṣūl al-Fiqh*, Edited by Dr. Mufīd Maḥmūd Abū `Amshah, 1st edn., Umm al-Qurā Univeristy, Mekkah, 1406/1985.
- Kāsānī, Abū Bakr b. Masūd al-Kāsānī al-Ḥanafī (d. 587 H.). *Badāi` al-Ṣanāi` fī Tartīb al-Sharāi'*, al-Maktabah al-Islamiyyah, Beirut, Lebanon.
- Ibn Kathīr, `Imād al-Dīn Abī al-Fidā' Ismā`īl b. Kathīr al-Qurashī al-Dimashqī (d. 774 H.). *Tafsīr al-Qur`ān al-`Aẓīm*, Revival of Islamic Heritage Society, Kuwait, 1414/1994.

- Kawrānī, Ṭāhā b. Aḥmad b. Muḥammad b. Qāsim al-Kawrānī (d. 1300 H.). *Sharḥ Mukhtaṣar al-Manār fī Uṣūl al-Fiqh*, Edited by Dr. Sha`bān Muḥammad Ismā`īl. 1st edn., Published by Dār al-Salām, 1408/1988.

-KH-

- Khallāf, `Abdul-Wahhāb Khallāf. *Ilm Uṣūl al-Fiqh*, Maktabat al-Da`wah al-Islamiyyah, Shabāb al-Azhar.

- Ibn Khalkān, Aḥmad b. Muḥammad b. Ibrāhīm b. Abī Bakr b. Khalkān al-Barmakī al-Irbilī, Abū al-`Abbās (d. 681 H.) *Wafayāt al-A`yān wa Anbā` Abnā` al-Zamān*, Egypt, 1310 H.

- Khaṭīb, Shams al-Dīn Muḥammad b. Aḥmad al-Khaṭīb al-Sharbīnī (d. 977 H.). *Mughnī al-Muḥtāj ilā Ma`rifat Ma`ānī Alfāz al-Minhāj*, 4 Vols., Muṣṭafā al-Bābī al-Ḥalabī, 1377 H.

- Khaṭīb, Muḥammad `Ujāj al- Khaṭīb. *Lamaḥāt fī al-Maktabah wa al-Baḥṭh wa al-Maṣādir*, 14th edn., Muassasat al-Risālah, Beirut, 1412/1991.

- Khuḍarī Bak, Muḥammad b. `Afīfī al-Bājūrī, known as al-Khuḍarī Bak (d. 1345 H.). *Tārīkh al-Tashrī` al-Islāmī*, Cairo.

- Khuḍarī Bak, Muḥammad b. `Afīfī al-Bājūrī, known as al-Khuḍarī Bak (d. 1345 H.). *Uṣūl al-Fiqh*, Dār al-Fikr, Beirut, Lebanon, 1409/1988.

-L-

- Lane, Edward William Lane. *Arabic-English Lexicon*, Edited by Stanley Lane Poole 1877, Islamic Text Society Trust, 1984.

- Lubnānī, Salīm Rustum al-Lubnānī. *Sharḥ al-Majallah*, 3rd edn., Dār Iḥyā` al-Turāth al-`Arabī, Beirut, Lebanon, 1406/1986.

-M-

- Madkūr, Muḥammad Salām Madkūr. *Tārīkh al-Tashrī` al-Islāmī wa Maṣādiruh wa Naẓratuh li al-Amwāl wa al-`Uqūd*, 2nd edn., Cairo, 1955.

- Ibn Mājah, Abū `Abdullah Muḥammad b. Yazīd al-Qazwīnī b. Mājah (d. 275 H.). *Sunan Ibn Mājah*, Edited by Muḥammad Fu`ād `Abd al-Bāqī, al-Maktabah al-Islāmiyyah, Istanbul, Turkie.

- Majma` al-Luḡah al-`Arabiyyah, *al-Mu`jam al-Wasīṭ*, Dār Iḥyā` al-Turāth al-`Arabī, 2nd edn., Cairo, 1380/1960.

- Maḥallī, Jalāluddīn Muḥammad b. Aḥmad al-Maḥallī (d. 864 H.) *Sharḥ al-Waraqāt*, Maktabat Riyāḍ al-Ḥadīthah, Riyadh, Saudi Arabia.
- Mālik, Mālik b. Anas (d. 179 H.). *al-Muwāṭaʿ*, Edited by Muḥammad Fuʿād ʿAbd al-Bāqī, Dar al-Nafāʿis, 2nd edn., Cairo, 1951.
- Mallat, Chibli. *The Renewal of Islamic Law*, Cambridge University Press, First published 1993.
- Marghīnānī, Burhānuddīn Abū al-Husayn ʿAlī b. Abī Bakr b. ʿAbdul-Jalīl al-Ruḥdānī al-Marghīnānī (d. 593 H.). *al-Hidāyah*, 2 Vols., al-Maktabah al-Islāmiyyah.
- Mawdūdī, S. Abūlʿ Aʿlā al-Mawdūdī. *Islamic Law and Constitution*, 8th edn., Islamic Publications Ltd. Lahore, Pakistan.
- Mayhawī, Mulla Jiyūn b. Abī Saʿīd b. ʿUbaydullah al-Ḥanafī al-Ṣiddīqī al-Mayhawī (d. 1130). *Sharḥ Nūr al-Anwār ʿalā al-Manār*, Printed on the margin of *Kashf al-Asrār Sharḥ al-Muṣannif ʿalā al-Manār*, 2 Vols., 1st edn., Dār al-Bāz, Makkah, 1406/1986.
- Muṣleḥuddīn, Muḥammad. *Islamic Jurisprudence and the Rule of Necessity and Need*, Abūl Qasim Bookstore, Jeddah, Saudi Arabia.
- Muslim, Muslim b. al-Ḥajjāj al-Quṣhayrī al-Naysābūrī, Abū al-Ḥusayn (d. 261 H.). *Ṣaḥīḥ Muslim*, Dār Iḥyāʿ al-Kutub al-ʿArabiyyah, Cairo.
- Muthanna, Abū ʿUbaydah Maʿmar b. al-Muthanna (d. 209 H.). *Majāz al-Qurʾān*, Edited 1374 H.

-N-

- Ibn al-Nadīm, Muḥammad b. Ishāq b. Muḥammad b. al-Nadīm (d. 438 H.). *al-Fahrasat (Fahrasat Ibn Nadīm)*, Leipzig, 1871.
- Nasafī, Abī al-Barakāt ʿAbdullāh b. Aḥmad (d. 710 H.). *Kashf al-Asrār Sharḥ al-Muṣannif ʿalā al-Manār*, 2 Vols., 1st edn., Dār al-Bāz, Makkah, 1406/1986.
- Nasāʾī, Aḥmad b. Shuʿayb b. Dīnār al-Nasāʾī (d. 279 H.) *al-Mujtabā* (known as *Sunan al-Nasāʾī*), Maktabat al-Maṭbūʿāt al-Islāmiyyah, Ḥalab, Syria.
- Naṣīr, Jamāl J. Nāṣīr, *The Islamic Law of Personal Status*, Graham & Trotman, 2nd edn., London, 1990.

- Nawawī, Abū Zakariyyā Yaḥyā b. Sharaf al-Nawawī (d. 676 H.). *Sharḥ Ṣaḥīḥ Muslim*, 18 Vols., Muḥammad `Alī Ṣubayḥ, Egypt.

- Nawawī, Abū Zakariyyā Yaḥyā b. Sharaf al-Nawawī (d. 676 H.). *Tahdhīb al-Asmā' wa al-Lughāt*, Egypt.

- Ibn Nujaym, Zayn al-`Ābidīn b. Ibrāhīm b. Nujaym (d. 970 H.). *al-Ashbāh wa al-Nazā'ir*, Mu'assasat al-Ḥalabī, Cairo, 1387/1968.

-P-

- Pickthall, Mohammed Marmaduke Pickthall. *The Meaning of the Glorious Koran*, Taj Company, New Delhi, 1989.

-Q-

- Qal`ajī, Muḥammad Rawwās Qal`ajī. *Mu`jam Lughat al-Fuqahā'*, 1st edn., Dār al-Nafā'is, Beirut, Lebanon, 1985.

- Ibn Qudāmah, Abū Muḥammad `Abdullāh b. Aḥmad b. Muḥammad b. Qudāmah (d. 620 H.). *al-Kāfī*, 4 Vols., 2nd edn., al-Maktab al-Islāmī, Beirut, Lebanon, 1399/1979.

- Ibn Qudāmah, Abū Muḥammad `Abdullah b. Aḥmad b. Muḥammad b. Qudāmah (d. 620 H.). *al-Mughnī*, 9 Vols., Maktabat al-Riyāḍ al-Ḥadīthah, Riyadh, Saudi Arabia.

- Qarrāfī, Shihāb al-Dīn Abū al-`Abbās Aḥmad b. Idrīs; *Sharḥ Tanqīḥ al-Fuṣūl*, 1st edn., Dār al-Fikr, Cairo, 1393/1973.

- Qurashī, `Abdulqādir b. Muḥammad al-Qurashī (d. 775 H.). *al-Jawāhir al-Muḍiyyah fī Ṭabaqāt al-Ḥanafīyyah*, Ḥaydarabād, 1332 H.

- Qurtubī, Muḥammad b. Aḥmad al-Anṣārī al-Qurtubī (d. 671 H.). *al-Jāmi' li Aḥkām al-Qur`ān*, 20 Vols., Dār al-Kitāb al-`Arabī.

- Qabash, Aḥmad Qabash. *al-Kāmil fī al-Naḥw wa al-Ṣarf*, VIth edn., Dār al-Rashīd, 1986.

-R-

- Ramić, Shukrī b. Husayn Ramić. *Ta`ārd mā Yukhill bi al-Fahm wa Atharuh fī al-Aḥkām al-Fiqhiyyah*, M.A. thesis, King Sa`ūd University, Riyadh, 1992.

- Rāzī, Fakhruddīn Muḥammad b. `Umar b. al-Ḥusayn al-Rāzī (d. 606 H.). *al-Maḥṣūl*, 6 Vols., Edited by Dr. Ṭāhā Jābīn Ṭayyib al-Alwānī, 1st edn., Islamic University Muḥammad b. Sa`ūd, Riyadh, 1399/1979.

- Ibn Rushd, Muḥammad b. al-Rushd al-Qurṭubī (d. 595 H.). *Bidāyat al-Mujtahid*, 2 Vols. 7th edn., Dār al-Ma`rifah, Beirut, Lebanon, 1405/1985.

-S-

- Sa`d, Dr. Maḥmūd Tawfīq Muḥammad Sa`d. *Dalālat al-Alfāz*. 1st edn., Maṭb`at al-Amānah, Egypt, 1407/1987.

- Sa`id, Muḥammad Ra`fat Sa`id, *al-Ta`wīl Dirāsah Mawḍū`iyyah fī al-Aḥadīth al-Nabawiyya*, Maktabat al-Aqṣā, Doha, Qatar, 1994.

- Ṣāliḥ, Muḥammad Adīb Ṣāliḥ. *Tafsīr al-Nuṣūṣ*, 3rd edn., al-Maktab al-Islāmī, Beirut, 1404/1984.

- Ṣan`ānī, Muḥammad b. Ṣalāḥ b. Ismā`īl al-Ṣan`ānī (d. 1142 H.). *Subul al-Salām*, 2 Vols., 2nd edn., .Published by Muṣṭafā al-Bābī al-Ḥalabī, 1369 H.

- Sarakhsī, Muḥammad b. Aḥmad b. Sahl al-Sarakhsī, known as Shamsuddīn al-Sarakhsī (d. 483 H.). *Uṣūl al-Sarakhsī*, Edited by Abū Wafā' al-Afghānī, 2 Vols., Dār al-Ma`rifah, Beirut, Lebanon.

- Sarakhsī, Muḥammad b. Aḥmad b. Sahl al-Sarakhsī, known as Shamsuddīn al-Sarakhsī (d. 483 H.). *al-Mabsūṭ*, 30 Vols., Maṭba`at Dār al-Sa`ādah, Egypt, and an another copy from Dār al-Ma`rifah, Beirut, 1406/1986.

- Subkī, Tāj al-Dīn `Abdulwehhāb b. `Alī al-Subkī (d. 771 H.). *Ṭabaqāt al-Shāfi`iyyah al-Kubrā (Ṭabaqāt al-Subkī)*, Egypt, 1324 H.

- Suyūṭī, Jalāl al-Dīn Abdurrahmān b. `Uthmān al-Ṣuyūṭī (d. 911 H.). *Lubāb al-Nuqūl fī Asbāb al-Nuzūl*, 2nd edn., Muṣṭafā al-Bābī al-Ḥalabī.

- Suyūṭī, Jalāl al-Dīn Abdurrahmān b. `Uthmān al-Ṣuyūṭī (d. 911 H.). *Bughyat al-Wu`āt fī Ṭabaqāt al-Lughawīyyīn wa al-Nuḥāt*, Egypt, 1326 H.

- Suyūṭī, Jalāl al-Dīn Abdurrahmān b. `Uthmān al-Ṣuyūṭī (d. 911 H.). *Tanwīr al-Ḥawālik Sharḥ Muwaṭa' Mālik*, Dār al-Nadwah al-Jadīdah, Beirut.

- Suyūṭī, Jalāl al-Dīn Abdurrahmān b. `Uthmān al-Ṣuyūṭī (d. 911 H.). *al-Durr al-Manthūr*, Cairo, 1314/1897.

- Suyūṭī, Jalāl al-Dīn Abdurrahmān b. `Uthmān al-Ṣuyūṭī (d. 911 H.). *al-Ashbāh wa al-Naḍā`ir*, Matba`at Muṣṭafā Muḥammad, Egypt.

-SH-

- Sha`bān, Dr. Zakiyy al-Dīn Sha`bān. *Uṣūl al-Fiqh al-Islāmī*. Dār al-Kitāb al-Jāmi`ī, Cairo, 1983.

- Shāfi`ī, Muḥammad b. Idrīs al-Shāfi`ī (d. 204 H.). *al-Risālah fī Uṣūl al-Fiqh*, translated by Mājid Khaddūrī, 2nd edn., The Islamic Texts Society, Cambridge, UK, 1987.
- Shāfi`ī, Muḥammad b. Idrīs al-Shāfi`ī (d. 204 H.). *al-Umm*, 7 Vols., 1st edn., al-Maṭba`ah al-Amīriyyah, Cairo, 1321-1325 H.
- Shāfi`ī, Muḥammad b. Idrīs al-Shāfi`ī (d. 204 H.). *al-Musnad*, Edited by Muḥammad `Abid al-Sindī, Cairo, 1369/1950.
- Shahrastānī, Muḥammad `Abdulkarīm, *al-Milal wa al-Niḥal*, al-Maṭba`at al-Adabiyyah, Cairo 1317 H. (On margins of the book of Ibn Ḥazm with the same title.)
- Shawkānī, Muḥammad b. `Alī b. Muḥammad al-Shawkānī (d. 1250 H.). *Nayl al-Awṭār Sharḥ Muntaqā al-Akḥbār*, 8 Vols., 2nd edn., Muṣṭafā al-Bābī al-Ḥalabī.
- Shawkānī, Muḥammad b. `Alī b. Muḥammad al-Shawkānī (d. 1250 H.). *Irshād al-Fuḥūl*, al-Bāz, Mekkah, Saudi Arabia.
- Shawkānī, Muḥammad b. `Alī b. Muḥammad al-Shawkānī (d. 1250 H.). *al-Badr al-Ṭālī` bi Maḥāsin man ba`d al-Qarn al-Tāsi`*, Egypt, 1348 H.
- Shīrāzī, Abī Ishāq Ibrāhīm b. `Alī b. Yūsuf al-Fayrūzabādī al-Shīrāzī (d. 476 H.) *al-Lumma`*, 1st edn., Dār al-Kutub al-`Ilmiyyah, Beirut, Lebanon, 1405/1985.
- Shīrāzī, Abī Ishāq Ibrāhīm b. `Alī b. Yūsuf al-Fayrūzabādī al-Shīrāzī (d. 476 H.) *al-Muḥadḥḥab*, 2 Vols., Maṭba`at Muṣṭafā al-Bābī al-Ḥalabī, Cairo.

-T-

- Taftāzānī, Mas`ūd b. `Umar b `Abdullāh al-Taftāzānī, Sa`d al-Dīn. *Sharḥ al-Talwīḥ `alā al-Tawḍīḥ*, Dār al-Kutub al`Ilmiyyah, Beirut, Lebanon.
- Taftāzānī, Mas`ūd b. `Umar b `Abdullāh al-Taftāzānī, Sa`d al-Dīn. *Ḥāshiyat al-Taftāzānī*, printed with *Sharḥ al`Aḍud ma`a Mukḥtaṣar al-Muntahā*, 2 Vols., Maṭba`at al-Kulliyyāt al-Azhariyyah, Cairo, 1406/1986.
- Tahānawī, Muḥammad b. `Alī b. al-Qāḍī Muḥammad Ḥāmid b. Muḥammad Ṣābir al-Fārūqī al-Ḥanafī al-Tahānawī (d. after 1158 H.). *Dictionary of the Technical Terms*, Calcutta, 1862.

- Tanbaktī, Aḥmad Bābā b. Aḥmad b. `Umar al-Batakrūrī al-Tanbaktī al-Sūdānī, Abū al-`Abās (d. 1036 H.). *Nayl al-Ibtihāj bi Taṭrīz al-Dībāj*, Printed on the margin of *al-Dībāj al-Mudhdhahab* in Egypt 1329 H.
- Tilmisānī, Abū `Abdullāh Muḥammad b. Aḥmad, known as al-Sharīf al-Tilmisānī (d. 771 H.). *Miftāḥ al-Wuṣūl ilā Binā' al-Furū' alā al-Uṣūl*, al-Maṭba`ah al-Ahliyyah, Tunis.
- Tirmidhī, Abū `Īsa Muḥammad b. `Īsa b. Sawra al-Tirmidhī (d. 297 H.). *al-Jāmi` al-Ṣaḥīḥ*, 5 Vols., Edited by Aḥmad Muḥammad Shākīr. Dār al-Kutub al-`Ilmiyyah, Beirut, Lebanon.
- Ibn Taymiyah, Taqiyy al-Dīn Aḥmad b. Taymiyah (d. 728 H.). *al-Muqaddimah fī Uṣūl al-Tafsīr*, Edited by Dr. `Adnān Zarzūr, Dār al-Qur`ān al-Karīm, Beirut, 2nd edn., 1979.
- Ibn Taymiyyah, Taqiyy al-Dīn Aḥmad b. Taymiyah (d. 728 H.). *An Introduction to the Exegesis of the Qur`ān*, (translated by Dr. Muḥammad `Abdul-Ḥaq Anṣārī), Islamic University of Imām Muḥammad b. Saud, Riyadh, 1409/1989.
- Tilmisānī, Abū `Abdullāh Muḥammad b. Aḥmad known as al-Sharīf al-Tilmisānī (d. 771 H.). *Miftāḥ al-Wuṣūl ilā Binā' al-Furū' alā al-Uṣūl*, al-Maṭba`ah al-Ahliyyah, Tunis, 1346 H.

-Ṭ-

- Ṭabarī, Abū Ja`far Muḥammad b. Jarīr al-Ṭabarī (d. 310 H.). *Jāmi` al-Bayān `an Tafsīri Āy al-Qur`ān*, 30 Vols., Maṭba`at Būlāq, Egypt, 1329 H. And another edition which is edited by Maḥmūd Shākīr, Dār al-Ma`ārif, Egypt.
- Ṭabarī, Abū Ja`far Muḥammad b. Jarīr al-Ṭabarī (d. 310 H.). *Tārīkh al-Umam wa al-Mulūk*, Egypt, 1326 H.
- Ṭabrīzī, Muḥammad b. `Abdullāh al-Khaṭīb. *Mishkāṭ al-Maṣābīḥ*, Edited by Muḥammad Naṣiruddīn al-Albānī, 3 Vols., 2nd edn., al-Maktab al-Islāmī, Beirut, 1399/1979.
- Ṭaḥāwī, Abū Ja`far Aḥmad b. Muḥammad b. Salāmah al-Ṭaḥawī al-Ḥanafī. (d. 321 H.). *Sharḥ Ma`ānī al-Āthār*, 2 Vols., India, 1302 H.
- Ṭaḥawī, Abū Ja`far Aḥmad b. Muḥammad b. Salāmah al-Ṭaḥawī al-Ḥanafī. (d. 321 H.). *Mushkil al-Athār*, 4 Vols., 1st edn., Ḥaydarabād, 1333 H.

- Ṭaḥawī, Abū Ja`far Aḥmad b. Muḥammad b. Salāmah al-Ṭaḥawī al-Ḥanafī. (d. 321 H.). *Mukhtaṣar al-Ṭaḥawī*, 1st edn., Edited by Abū al-Wafā` al-Afghānī, Dār Iḥyā` al-`Ulūm, Beirut, Lebanon, 1406/1986.

-W-

- Wehr, Hans Wehr. *Arabic-English Dictionary*, Edited by J. Milton Cowan, 3rd edn., Harrap London, 1976.

- Wensinck, A.J. Wensinck, *al-Mu`jam al-Mufahras li Alfāz al-Ḥadīth al-Nabawī*, E.J. Brill, Leiden, 1965.

-Z-

- Zādah, Aḥmad b. Muṣṭafā b. Khalīl Ṭāshkabarī Zādah (d. 968 H.). *Miftāḥ al-Sa`ādah wa Miṣbāḥ al-Siyādah*, Ḥaydarabād, 1329 H.

- Abū Zahrah, Muḥammad Abū Zahrah. *Uṣūl al-Fiqh*, Maṭba`at Mukḥaymir, Cairo.

- Zamakhsharī, Maḥmūd b. `Umar al-Zamakhsharī al-Khawārizmī (d. 538 H.). *al-Kashshāf `an Ḥaqā`iq Ghawāmiḍ al-Tanzīl wa `Uyūn al-Aqāwīl fī Wujūh al-Ta`wīl*, Dār al-Ma`rifah, Beirut, Lebanon.

- Zander, Michael. *The Law-Making Process*, 2nd edn., Weidenfeld and Nicolson, London, 1985.

- Zaydān, *al-Madkhal li-Dirāsāt al-Sharī`ah al-Islāmiyyah*, Maṭba`at al-`Ānī, Baghdād, 1967.

- Zayla`ī, Muḥammad b. `Abdullāh b. Yūsuf al-Zayla`ī (d. 762 H.). *Naṣb al-Rāyah fī Takhrīj Aḥādīth al-Hidāyah*, 4 Vols., 1st edn., Maṭba`at Dār al-Ma`mūn, Egypt, 1357 H.

- Zeriklī, Khayruddīn al-Zeriklī, *al-A`lām*, 6th edn., Dār al-`Ilm li al-Malāyīn, Beirut, Lebanon, 1984.

- Zuhri, Muḥammad b. Sa`d b. Manī` al-Zuhri (d. 230 H.). *Ṭabaqāt Ibn Sa`d*, Laiden, 1321 H.

Al-ḥamdu lillāh.

=====

=====