

THE PRINCIPLES OF ‘UMŪM AND TAKHŞİŞ

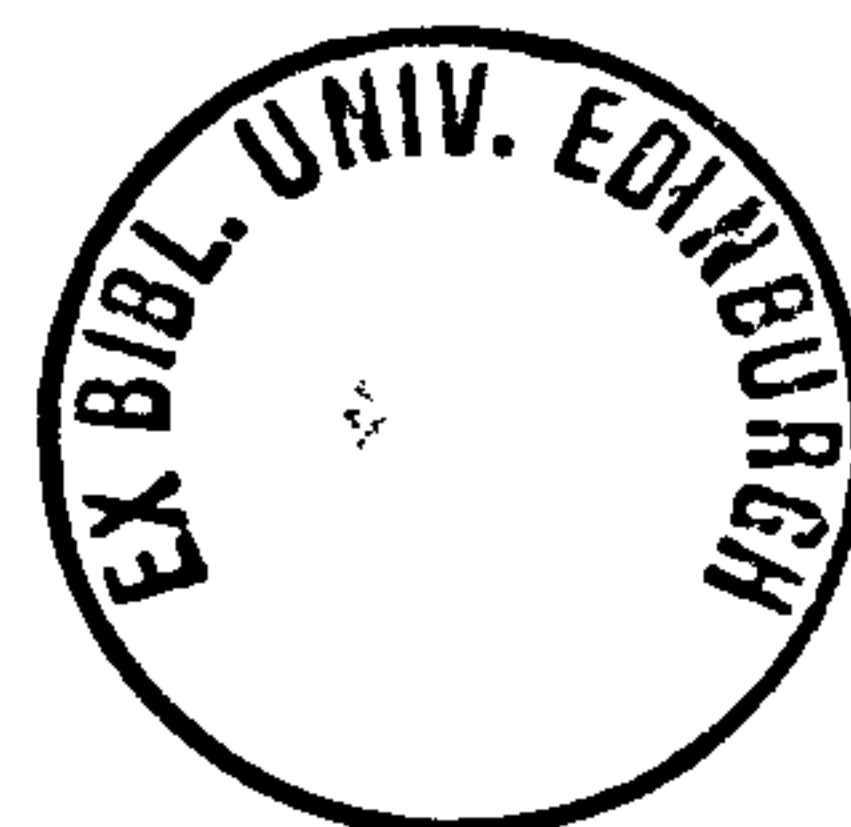
IN ISLAMIC JURISPRUDENCE

BY

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BISM ALLĀH AL-RAḤMĀN AL-RAḤĪM

IN THE NAME OF GOD, THE MOST COMPASSIONATE,
THE MOST MERCIFUL

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS	1
TABLE OF CONTENTS	111
ABSTRACT	v111
TRANSLITERATION	x
ABBREVIATIONS	x11
INTRODUCTION	1
A BRIEF ACCOUNT ON THE HISTORY, MEANING, FUNCTION, CONTENTS AND THE WORKS OF <u>UṢŪL AL-FIQH</u>	1
The Development of <u>UṣŪl al-Fiqh</u>	1
Definition	7
Subject-matter of <u>UṣŪl al-Fiqh</u>	11
The Functions of <u>UṣŪl al-Fiqh</u>	13
Methods of the Writing of <u>UṣŪl al-Fiqh</u>	15
The Method of the <u>Mutakallimūn</u>	16
Books Written Following the Method of the <u>Mutakallimūn</u>	17
The Method of the Jurists	26
Books Written Following the Method of the Jurists	27
Books Written Following Other Methods	28
The Shi'ite <u>UṣŪl al-Fiqh</u>	30
THE PURPOSE OF THE PRESENT STUDY	32
NOTES	34

PART ONE: THE PRINCIPLE OF <u>‘UMŪM</u>	37
CHAPTER ONE:	38
THE CONCEPT OF <u>‘UMŪM</u>	38
NOTES	64
CHAPTER TWO:	
<u>DALĀLAH AL-‘UMŪM</u> (THE SIGNIFICATION OF <u>‘UMŪM</u>)	65
NOTES	76
CHAPTER THREE:	77
THE TYPES OF <u>‘UMŪM</u> WORDS	77
1. <u>‘UmŪm</u> Intended to Mean <u>‘UmŪm</u>	78
2. <u>‘UmŪm</u> Intended to Mean <u>Khuṣūṣ</u> and <u>al-‘UmŪm al-</u> <u>Makhṣūṣ</u>	80
3. <u>‘UmŪm</u> Intended to Mean <u>‘UmŪm</u> and <u>Khuṣūṣ</u> Together	85
NOTES	87
CHAPTER FOUR:	88
<u>‘UMŪM</u> WORDS (<u>ALFĀZ AL-‘UMŪM</u>)	88
Exponents of <u>‘UmŪm</u>	88
Exponents of <u>Khuṣūṣ</u>	99
The <u>Wāqifites</u>	103
THE WORDS WHICH ARE CONSIDERED AS <u>‘UMŪM</u> WORDS	108
a. Singular Nouns	109
Singular nouns prefixed by <u>alif lām</u>	109
Singular nouns in <u>idāfah</u>	118
b. Words in the Plural	119
The significance of plural in <u>‘umŪm</u>	120
The minimum amount of plural	123

c. <u>Kull</u> and <u>Jamī</u>	127
d. <u>Man</u> , <u>Ma</u> and <u>Ayy</u> .	131
d. Indefinite Words	141
NOTES	144
CHAPTER FIVE:	148
THE DISCOURSES OF SPECIFIC ADDRESSEES	148
1. The Discourses Addressed by Using the Expressions Like <u>Yā ayyuhā alladhīna āmanū</u> and <u>Yā ayyuhā al-nās</u>	149
a. The Prophet	150
b. The Slave	152
c. The Unbelievers	156
2. The Discourse Addressed to the Prophet	163
3. The Discourse in the Plural of Masculinity	171
4. The Discourse in Answer to a Specific Inquiry	175
The discourse which is not independent	176
The independent discourse	180
5. <u>‘Umūm al-Lafz wa Khuṣūṣ al-Sabab</u>	184
6. The Judgement on Particular Cases For Specific Reasons	188
7. <u>Khiṭāb al-Mushāfahah</u>	190
8. <u>‘Umūm al-Muqtadā</u>	194
9. <u>Hikāyah al-Hāl</u>	198
10. The <u>‘Umūm</u> of <u>Mafhūm</u>	200
11. The <u>‘Umūm</u> of Apposition (<u>‘atf</u>)	202
NOTES	206

PART TWO: THE PRINCIPLE OF <u>TAKHŞİŞ</u>	210
CHAPTER SIX:	211
THE CONCEPT OF <u>TAKHŞİŞ</u>	211
<u>Khuşûş</u>	211
<u>Takhşîş</u>	215
What Can and Cannot be Particularized	229
The Limit of <u>Takhşîş</u>	231
NOTES	236
CHAPTER SEVEN:	238
THE EVIDENCES OF <u>TAKHŞİŞ</u>	238
THE <u>TAKHŞİŞ</u> BY INTERNAL EVIDENCES	243
1. THE <u>TAKHŞİŞ</u> BY <u>ISTITHNĀ'</u>	243
The Position of <u>Istithnā'</u> in <u>Takhşîş</u>	253
<u>Istithnā' Min Ghayr al-Jins</u>	254
On <u>Istithnā'</u> That is Positioned After Two Statements	255
2. THE <u>TAKHŞİŞ</u> BY <u>SHART</u> (conditional)	261
The Divisions of Condition	262
The Nature of Condition	264
3. THE <u>TAKHŞİŞ</u> BY <u>ŞİFAH</u> (QUALITY)	265
4. THE <u>TAKHŞİŞ</u> BY <u>GHĀYAH</u>	267
NOTES	269
CHAPTER EIGHT:	271
THE <u>TAKHŞİŞ</u> BY EXTERNAL EVIDENCES	271
1. THE <u>TAKHŞİŞ</u> BY THE QUR'ĀN	273
a. The <u>Takhşîş</u> of the Qur'ān by the Qur'ān	273
b. The <u>Takhşîş</u> of the Traditions by	

the Qur'ān	282
2. THE <u>TAKHŞİŞ</u> BY <u>MUTAWĀTIR</u> AND <u>MASHHŪR</u> TRADICTIONS	286
3. THE <u>TAKHŞİŞ</u> BY <u>ĀHĀD</u> TRADITIONS	289
4. THE <u>TAKHŞİŞ</u> BY THE PROPHET'S PRACTICE	304
5. THE <u>TAKHŞİŞ</u> BY <u>IJMĀ'</u>	308
6. THE <u>TAKHŞİŞ</u> BY <u>QIYĀS</u>	311
a. The <u>Takhşış</u> by <u>Qiyās</u> is Permissible	317
b. The <u>Takhşış</u> by <u>Qiyās</u> is Not Permissible	318
c. The <u>Takhşış</u> by <u>Qiyās</u> is Permissible Conditionally	322
d. <u>Tawaqquf</u>	326
7. THE <u>TAKHŞİŞ</u> BY <u>MAFHŪM</u>	328
8. THE <u>TAKHŞİŞ</u> BY <u>ĀDAH</u>	333
9. THE <u>TAKHŞİŞ</u> BY RATIONAL PROOF AND PERCEPTION	339
THE <u>TAKHŞİŞ</u> BY PERCEPTION	343
NOTES	345
CONCLUSION	350
BIBLIOGRAPHY	354

ABSTRACT

This thesis studies one particular aspect of Uşûl al-Fiqh (the principles of jurisprudence), the principles of ‘umûm and takhsîş. An attempt is made to present the views of early Muslim jurists in their effort to understand and interpret sources of legal injunctions by means of these principles.

The thesis is divided into two parts with an introduction. The introduction presents a brief account of the history, meaning, functions, contents and the works on Uşûl al-Fiqh.

Part one concentrates on the principles of ‘umûm, and is divided into five chapters. Chapter one deals with the concept of ‘umûm followed by a discussion on the signification of ‘umûm in chapter two. Chapter three deals with the types of ‘umûm, and chapter four with ‘umûm words. Chapter five discusses the types of discourses which are addressed to particular addressees. In all these, the views of the jurists from different schools of law are presented.

Part two deals with the principle of takhsîş. It is divided into three chapters. Chapter six discusses the concept of takhsîş, and chapter seven and eight deal with the evidences of takhsîş. In chapter seven, internal evidences which are istithnâ’, shart, şifat and ghāyah are dealt with.

Chapter eight covers the takhṣiṣ by external evidences. They are the takhṣiṣ by the Qur'ān, the Tradition, ijmāʿ, qiyās, mafhūm, reason and perception and ʿādat or custom. Various views are presented.

The conclusion summarizes the major issues and conclusions in both part one and two of the thesis.

TRANSLITERATION

The following system of transliteration has been used:

Arabic letters

Transliteration

ا	a
ب	b
ت	t
ث	th
ج	j
ح	h
خ	kh
د	d
ذ	dh
ر	r
ز	z
س	s
ش	sh
ص	s
ض	z
ط	t
ظ	z
ع	e
غ	gh

ف	f
ق	q
ك	k
ل	l
م	m
ن	n
ه	h
و	w
ي	y

The hamzah al-waṣl has been ignored and has been transliterated as written not as pronounced.

Vowels

اَ	ā
وَ	ū
يَ	ī

Diphthongs

اَوْ	aw
يِ	ay

ABBREVIATIONS

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- JAOS Journal of the American Oriental Society.
- Lane Lane, E. W., Arabic-English Lexicon (Cambridge, 1984).
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Fiqh, 3 vols. (Cairo, n. d).

INTRODUCTION

A BRIEF ACCOUNT ON THE HISTORY, MEANING, FUNCTIONS, CONTENTS AND THE WORKS OF UṢŪL AL-FIQH

Uṣūl al-Fiqh is regarded as one of the most important subjects in the study of Islam. This is not only because of its dealing with law, the core and kernel of Islam, but also because it helps in studying the development of religious thinking among the Muslims. A scholar has said,

The usefulness of Uṣūl al-Fiqh lies primarily in its being an indispensable source for understanding the views of a large and important segment of Muslim thinkers who use the subject as a vehicle for their opinion on the various topics. For example, nowhere else do we find the same kind of concern for identifying the logical structure of the arguments used in the religious and rational sciences.¹

The Development of Uṣūl al-Fiqh:

It is widely suggested that al-Shāfi‘ī was the first scholar to write systematically on the subject of Uṣūl al-Fiqh. He was also said to be the founder of this science. Coulson maintains that Islamic legal

scholarship has recognized al-Shāfi'ī's role as the father of Muslim jurisprudence.²

This recognition has led the scholars to believe that uṣūl al-fiqh or Islamic legal theory had never existed before. Al-Shāfi'ī's al-Risālah marked the beginning of a new discipline in the Islamic scholarship. Al-Shāfi'ī was living in a period two hundred years after the Prophet's time. Therefore, a question arises. Why ^{did} such a very important discipline grow ^{up} at a relatively late stage in Islamic thinking?

In answering this question, almost all Muslim scholars who deal with this subject went back to the history of legislation in the time of the Prophet. The Muslim community at that time had direct access to the revelation. A great many legal problems have been answered directly whether through revelation or by the Prophet's decisions. No question of methodology yet arises, because it was not necessary. One thing was clear; the sources of law at that time were the revelation (the Qur'an) and the Prophet's decisions.

Certainly, the Companions occasionally asked the Prophet questions concerning certain serious problems, as indicated by the Qur'ān in so many cases. For instance, the Qur'ān 2:189, 215 and 8:1. The Prophet answered them as instructed by the revelation. Most of the questions are about how to behave in accordance with the Qur'ān. However, they were not apparently

interested in the meticulous details of the regulations. There was also hardly need for legal theory, since the law was what the Prophet had proclaimed.

On occasions, cases were brought to the Prophet for his decision. In his decisions the people around him did not ask about the particular points of law for purely theoretical purposes; they took his decisions as a model for taking similar decisions in similar cases.³

It seems that the characteristics of these early regulations were mostly general, performatory in character and could be interpreted by later scholars in different ways. This was true with regard to the Qur'ān as well as the Prophet's Traditions. However, the latter in many cases gave a straight-forward answer to specific cases, whether as the explanation to the former or answering separate questions. What was certain that there was no science of jurisprudence at the time of the Prophet.

This rudimentary way of legislation was restricted to the time where most of the Muslims were settled together in one location, that is Madīnah. However, the number of the Muslims had grown up, and they were no longer just the inhabitants of Madīnah but had settled as far as the Yaman. This development started at the time of the Prophet. In this situation the people had

no direct access to the Prophet any more. They had to depend on those Companions who were sent by the Prophet to meet their needs. These Companions had to answer every question posed by this new community.

As far as the law was concerned, they followed what had been regulated by the Qur'ān and the decisions given by the Prophet. However, the possibility that they would encounter unprecedented problems was not ignored by the Prophet. This was indicated by the way he posed the question to Mu'ādh b. Jabal on the occasion of the latter's departure to the Yamān as the qāḍī and the teacher. The story has been recorded in a long Tradition reported by many reliable sources:

The Prophet has been reported to have asked Mu'ādh, "How will you decide when a question arises?" He replied, "I will answer it according to the Book of God." The Prophet asked him further, "How if you could not find the answer in there?" Then I will answer it according to the Sunnah of the Messenger of God." "And if you do not find the answer neither in the Sunnah nor in the Book?" "Then I shall come to a decision according to my own opinion without hesitation."*

This way of deciding the cases was followed by the Companions and by the jurists in later days. Only after they had failed to find the answer in these sources, did they try to formulate their answer on the basis of their best understanding of these sources. The formal sources of Islamic law have been arranged

following this order. Al-Shāfi'ī put them as, the Qur'ān, the Sunnah, īmā' and qiyās.

However, some scholars have tried to establish that the subject itself existed long before al-Shāfi'ī. The fact that al-Shāfi'ī wrote al-Risālah which seems to discuss legal theory for the first time, does not altogether deny the possibility of its existence before that period. There were reports which show that there existed some work on Uṣūl al-Fiqh before al-Shāfi'ī. The earliest evidence was Abū Yūsuf's criticism of the scholars of Syria for their ignorance of Uṣūl al-Fiqh.⁵

Ibn al-Nadīm (d. 385H) while giving the list of al-Shaybānī's work mentions one book on Uṣūl al-Fiqh.⁶ Of Abū Yūsuf he says that he had works on Uṣūl and a collection of lectures (amālī).⁷ It has been reported also that the Mu'tazilites produced major works on jurisprudence opposed to those produced by the Ahl al-Sunnah.⁸ Wāṣil b. 'Aṭā' (d. 131H) is said to have produced the first book on the principles of law. These reports show that the scholars before al-Shāfi'ī and some of his contemporaries had formulated the principles of law before him. The works of Mālik, Abū Yūsuf and al-Shaybānī on fiqh and al-Shāfi'ī's controversies with the theologians (ahl al-kalām) indicate that they must have had some systematic theory and a system of reasoning in law before him. In the early

Fiqh literature we find the key-terms of the theory of law, viz. Kitāb, Sunnah, Ijmāʿ, Qiyās, Raʾy, ʿAmal, Istihsān, Naskh, Hadīth, Shādhdh and so on.⁹ The use of these terms indicates that the early jurists in general had some sort of principles of law which were present in their minds but not in writing. Adding to this argument Muḥammad Abū Zahrah says that they might have had certain principles in rudimentary form like the ʿIrāqīs and the Madīnites, but had left no systematic works as al-Shāfiʿī did.¹⁰

In this regard, George Makdisi maintains that works had been written before al-Shāfiʿī dealing with one or other of the fundamental sources which, came to be recognized as the science of uṣūl al-fiqh.¹¹

Although we may accept this latter theory, al-Shāfiʿī still occupies a prominent place in Islamic legal theory. He may not be the first jurist to have formulated some legal principles, but the first extant work on the subject belongs to him. He should also be credited with the fact that his formulation of the principles of law gave a systematic form to Islamic jurisprudence. He also introduced a methodology which produced an integrated legal system and brought about its stability.

Definition:

The scholars of that time did not give any specific definition of this science. It remained without any proper definition for some time, though its actual subject matter seemed to be well-established. Only in the third and fourth century did the scholars try to give a clearer definition in order to distinguish it from other Islamic disciplines.

Even al-Shāfi'ī whose al-Risālah has been acknowledged as the first extant work on this discipline did not use the term uṣūl al-fiqh. He simply called his work al-Risālah. It was some time after him that the term uṣūl al-fiqh became known as denoting the science of the principles of Islamic law.

Abū al-Ḥusayn al-Baṣrī, a Mu'tazilite scholar who died in 436 H, has used the term uṣūl al-fiqh in his work al-Mu'tamad to refer specifically to this science. Furthermore, Abū al-Ḥusayn al-Baṣrī gives detailed explanation of the term.

It is common among the scholars who wrote on uṣūl al-fiqh to clarify its meaning and definition. They are in the habit of explaining the two words independently before defining them as a compound term. They may have some justifications for doing so. Makdisi says that the explanation was needed in order to distinguish between the science of fiqh and that of

uṣūl al-fiqh, and thus put an end to the equivocal use of the latter term in the sense of elements or rudiments of fiqh, reserving the two-word term to designate the methodology of the revealed Law.¹² What is obvious, ^{is that} the term fiqh is not only important in giving uṣūl al-fiqh some meaning but is also a discipline by itself.

As has been said above the term uṣūl al-fiqh is a combination of the word uṣūl and al-fiqh. Therefore, many scholars explain it in three stages. First, they explain the word uṣūl, then the word fiqh and finally uṣūl al-fiqh. Abū al-Ḥusayn al-Baṣrī, however, explains the word fiqh first followed by the word uṣūl in his al-Muʿtamad.¹³

Abū Ḥanīfah (d. 150) has been reported to have defined fiqh as,

"maʿrifah al-nafs mā lahā wa mā ʿalayhā"

[the knowledge of the rights and duties of the soul]¹⁴

According to Abū al-Ḥusayn al-Baṣrī the word fiqh is used in two different meanings. It is used in ^{the} literal sense and also as a legal term. Literally it means understanding, comprehending or to understand what is intended by the speaker. Therefore, it was said, "faqahtu kalāmaka" meaning I understand what do you mean by such and such. In the mind of the jurists, the word fiqh means a compendium of legal rulings.¹⁵ It is

a science that concerns itself with whether an individual deed is lawful or unlawful, obligatory or only recommended and so on.

In other words, as a technical term it has been confined to the knowledge of Islamic law. According to Imām al-Ḥaramayn al-Juwaynī, in the views of the jurists fiqh means the knowledge of laws and duties (al-‘ilm bi aḥkām al-taklīf).¹⁶

According to al-Ghazālī no one can understand the meaning of uṣūl al-fiqh before he knows the meaning of al-fiqh. In its literal sense, al-Ghazālī says al-fiqh means al-‘ilm wa al-fahm or the understanding and knowledge of something. For example, fulān yafham al-khayr wa al-sharr meaning, so and so understands the good and the bad of something.¹⁷ The term, however, is later known as indicating a specific field of knowledge. It is the knowledge of legal rulings on specific deeds of the mukallaf (the person who has attained the status of legal responsibility). This meaning is so established to the extent that no sensible person will apply it to a theologian or a philosopher and so on.¹⁸

What is obvious is that the term fiqh has a variety of meanings in its literal sense and has been used for some time to refer to the knowledge resulting from the exercise of intelligence and personal opinion. This meaning was very general. However, the

scope of fiqh was narrowed down, and ultimately came to be applied to legal problems and even simply to legal literature.¹⁹

Uṣūl which is the plural form of aṣl literally means root.²⁰ Abū al-Ḥusayn al-Baṣrī says that the word uṣūl denotes literally something that another is built upon.²¹ In fact, aṣl has a variety of technical meanings:

1. It is used to mean evidence or dalīl.
2. It is also used as meaning root or origin.
3. It also means preference or tarjīh.
4. Another meaning for aṣl is principle or qāʿidah, which later becomes part of the technical expression of uṣūl al-fiqh. Thus uṣūl al-fiqh or uṣūl al-ḥadīth with qawāʿid al-fiqh and qawāʿid al-ḥadīth.²²

Uṣūl al-fiqh has been defined as the science of the methodology of Islamic Jurisprudence, as the science of the proofs which lead^{to} the establishment of a legal standard. In uṣūl al-fiqh, we are not concerned with individual cases of law, but we are dealing with principles and proofs on the basis of which the rules of the individual cases are formulated. It is an area of knowledge that can roughly be translated as legal theory.

According to al-Āmidī uṣūl al-fiqh is the evidences of the fiqh and the way they establish legal

rulings and the method of deriving the law from general evidences.²³ ‘Abd al-Salām Madkūr defines uṣūl al-fiqh as the science of the principles through which the mujtahid derives legal rulings from established evidences.²⁴

The Subject-matter of Uṣūl al-Fiqh:

Uṣūl al-fiqh concerns not only the law proper, but also questions of linguistics, logic, methodology, epistemology and theology.²⁵ Therefore, it is obvious to those who study this discipline that some of the rules and principles in it have been originated from the disciplines such as logic, philosophy, theology and philology.

As far as the language is concerned, Fakhr al-Dīn al-Rāzī in his Kitāb al-Maḥṣūl says,

"Since our knowledge of the law is derived from the Qur'ān and the akhbār, and these have come to us in the language, grammar and morphology of the Arab, the science of law is dependent on these matters."²⁶

Al-Āmidī emphasises that the science of jurisprudence is actually derived in part from the science of Arabic because

"the knowledge of the meanings of the verbal directives [found] in the Book, the Sunnah and the statements of authoritative scholars (ahl al-hall wa al-‘aqq) depends on a knowledge of what has

been established in language with respect to them. "27

The intimate relationship between language and jurisprudence in Islamic tradition will be shown throughout the present study. To the Muslims, the Qur'ān is sacred and therefore is absolutely final and not subject to change. Its initial subject matter is not the law proper but the guidance in all aspects of human life. The law occupies a very limited number of verses which are presented in no specific legal terms. Consequently, a great deal of effort must be made to understand them in the legal sense. Therefore, it is no surprise that almost all books on this discipline give considerable space to ^{the} study of language in terms of law.

Uṣūl al-fiqh also had close ties with rhetoric from the very beginning. Since the Qur'ān and the Traditions were regarded as major examples of eloquent prose in Arabic and as the first Arabic rhetorical discussions arose around the verses of the Qur'ān, the proper understanding of the Qur'ānic verses and Traditions depended on rhetorical principles. Subsequently, rhetorical principles were held to have a principal role in legal reasoning. In the chapters of uṣūl al-fiqh which explained the rules for reasoning used when dealing with the Qur'ān and Traditions, rhetorical considerations constituted the major part of the

discussion.²⁸

All these are the tools to be used by the jurists to understand the legal provisions especially in the Qur'ān and the Traditions. Therefore, linguistics, logic, theology, epistemology and rhetoric are used in uṣūl al-fiqh works in order that every argument has proper bases.

However, the major concern of uṣūl al-fiqh are the sources or the bases of Law such as the Qur'ān, the Tradition, ijmā', and qiyās. They also discuss the authority of other sources which are not fully acceptable to many scholars. Among these sources are al-maṣāliḥ al-mursalah, istiḥsān, ʿādah, istiṣḥāb and so on. In some works, the discussion does not involve just law, but also the philosophy of law, theology as far as the acts of the mukallaf are concerned.²⁹

The Functions of Uṣūl al-Fiqh:

The function of uṣūl al-fiqh is to prepare the premises which are to be used in fiqh in establishing the Sharīʿah values in particular cases. Thus, uṣūl al-fiqh provides fiqh with certain general principles (qawāʿid al-kullīyyah) to be used by fiqh in deriving the provisions of the law applicable to particular cases. For example, uṣūl al-fiqh tells that under such and such condition ijmā' constitutes a proof for the

establishment of a Sharī'ah value.

In short, uṣūl al-fiqh discusses the Sharī'ah evidences, which are the basis of fiqh, in so far as they may be used as evidences for the establishment of the Sharī'ah values, and the Sharī'ah values in so far as they are deduced from the Sharī'ah evidences. But it does not discuss what the Sharī'ah values are in particular cases. The latter is the function of fiqh.³⁰ It provides the method of the inference and discovery of legal values (istinbāṭ).

In the words of Coulson, uṣūl al-fiqh is the knowledge through which we reach an understanding (al-fiqh) of the Sharī'ah and its primary task therefore is to formulate the principles or sources (uṣūl) from which such an understanding might be achieved.³¹

Abū ^{al-}ʿAynayn Badrān outlines the functions of uṣūl al-fiqh as follows:

1. to use its principles and its general rules which are based on textual proofs, in order that the individual cases have proper Sharī'ah values.

2. to realise the bases upon which legal values are formulated, and to realise the objectives of their implementation.

3. to be able to derive correctly legal values through qiyās, or other methods of ijtihād on cases the rules of which are not textually available.

4. to understand the methods of deriving legal values employed by earlier scholars, and to compare their opinions on the case at issue and hence, to give preference to the opinion of stronger proof.³²

Methods of the Writing of Uṣūl al-Fiqh:

In his al-Muqaddimah, Ibn Khaldūn (d.808H/1406) differentiates between two methods of writings on Uṣūl al-Fiqh.³³ The first method has been identified as the method of the theologians or mutakallimūn. The second method belongs to the Ḥanafites and ^{is} known as the method of the jurists (fuqahā').

This classification has been followed by most modern writers.³⁴ George Makdisi describes this classification as an error. The more severe error consists in listing al-Shāfi'ī and his al-Risālah at the head the mutakallimūn category.³⁵ He says,

Uṣūl al-fiqh, as originally conceived by Shāfi'ī, is a juridical theology, a study of God's law, as distinguished from kalām, the study of God Himself; it is a study of God's commands and prohibitions, not of whether God is, or what He is.³⁶

Ibn Khaldūn and other modern writers do not give any precise explanation about this classification. They only tell us the ways these two methods differ in formulating legal principles. On the basis of the available sources, one could suggest that these

scholars have made such classification merely on the basis of their acquaintance with the work written by those involved. They may also have based their suggestion on the initial inclination of these scholars.

The Method of the Mutakallimūn (the Theologian):

According to ‘Abd al-Wahhāb Khallāf this method is distinguished by the way the principles of law have been established. They establish the principles based on logical and rational argument and will only accept the one which is supported by evidences. They do not allow the cases which have been decided by earlier jurists to affect their decisions. It does not matter whether the ḥukm decided by earlier jurists is in accordance with their principle or not. Only those principles which are rationally valid and supported by strong argument will be accepted.³⁷

Al-Shāfi‘ī adopted this method in the writing of his al-Risālah. Other scholars whose views are in accordance with this method are some of the Mu‘taziltes, the Shāfi‘ites and some of the Mālikites.³⁸ In other words, this is the method followed by the majority of the scholars or simply called the jumhūr.³⁹ Ibn Khaldūn describes this method

as abstract writings in which the rational methods typical of theologians are employed.⁴⁰

The Books Written Following the Method of the Mutakallimūn (the Theologians):

Among those who have written the books following the method of the mutakallimūn are:⁴¹

Abū ‘Abd Allāh Muḥammad b. Idrīs al-Shāfi‘ī (d. 204 A.H). He writes his well-known al-Risālah, which has been said to be the first extant book on Uṣūl al-Fiqh. The book has been published in Cairo and printed together with his great book of jurisprudence al-Umm. It has also been edited by Aḥmad Muḥammad Shākir and published as a separate book. A few scholars have written commentaries on it. They are:

al-Imām Abū Bakr al-Ṣayrafī (d. 330)

Abū al-Walīd al-Nisābūrī (d. 349)

Muḥammad b. ‘Alī b. Ismā‘īl al-Shāshī (d. 365)

Abū Muḥammad al-Juwaynī, the father of Imām al-Ḥaramayn al-Juwaynī (d. 438).

Al-Shāfi‘ī has also written other books on this subject such as:

a. Kitāb Ibtā‘ al-Qiyās,

b. Kitāb Jamā‘ al-‘Ilm,

c. Kitāb Ikhtilāf al-Ḥadīth and

d. Kitāb al-Qiyās.

Abū al-‘Abbās Aḥmad b. ‘Umar b. Surayj (d. 306). Among his books on Uṣūl al-Fiqh is al-Radd ‘Alā Ibn Dāwūd fī Ibtāl al-Qiyās.

Abū Bakr Muḥammad b. Ibrāhīm b. al-Mundhir (d. 306). He wrote Kitāb Ithbāt al-Qiyās.

Abū al-Ḥasan al-Ash‘arī (d. 324). He wrote,

- a. Ithbāt al-Qiyās and
- b. Ikhtilāf al-Nās fī al-Asmā’ wa al-Aḥkām wa al-Khāṣṣ wa al-‘Āmm.

Abū Bakr al-Ṣayrafī (d. 330). He is said to be one of the greatest scholars of Uṣūl al-Fiqh after al-Shāfi‘ī. Ibn Khalikān says that al-Ṣayrafī has a book on Uṣūl al-Fiqh which no one before him has ever written. Among his works are:

- a. Sharḥ Risālah al-Imām al-Shāfi‘ī fī Uṣūl al-Fiqh,
- b. al-Bayān fī Dalā’il al-A‘lām ‘Alā Uṣūl al-Aḥkām,
- c. Kitāb al-Imā’.

Al-Qāḍī Abū al-Faraj al-Mālikī (d. 331). He wrote al-Luma’.

Abū Aḥmad Muḥammad b. Sa‘īd al-Khawārizmī al-Shāfi‘ī (d. 343). He wrote al-Hidāyah. This book has been classified as a very useful work in Uṣūl al-Fiqh and has been used as a reference by the scholars of Khawārizm.

Bakr b. Muḥammad b. al-‘Alā’ al-Qushayrī (d.344). He was a Malikite , and among his works on Uṣūl al-Fiqh are:

- a. Kitāb al-Qiyās
- b. Kitāb Uṣūl al-Fiqh
- c. Ma’khaḍh al-Uṣūl.

Abū al-Walīd Ḥassān b. Muḥammad al-Nisābūrī (d.349). He wrote, among others, Sharḥ Risālah al-Imām al-Shāfi‘ī.

Abū Ḥāmid Aḥmad b. Bishr b. ‘Āmir al-Marwārūdī (d.362). His work on Uṣūl al-Fiqh is al-Ishrāf ‘Alā al-Uṣūl.

Muḥammad b. ‘Alī b. Ismā‘īl known as Abū Bakr al-Qaffāl al-Shāshī al-Kabīr (d.365). He wrote Sharḥ al-Risālah li al-Imām al-Shāfi‘ī. He also has another book on Uṣūl al-Fiqh without any specific title.

Muḥammad b. ‘Abd Allāh Abū Bakr b. al-Abharī al-Mālikī (d.375). He wrote a book with no title and also a book entitled Ijmā‘ Ahl al-Madīnah.

Abū Bakr al-Jurzaqī. He is Muḥammad b. ‘Abd Allāh al-Shaybānī (d.375). He wrote a commentary on al-Shāfi‘ī's al-Risālah.

Al-Qāḍī Abū Bakr Muḥammad b. Tayyib al-Bāqillānī (d.403). His works on Uṣūl al-Fiqh have been acknowledged as among the most important books ever written on the subject not only up to his days but to the later periods of history. His works and the works of

al-Qāḍī ‘Abd al-Jabbār have been used by some later scholars as a starting point in writing more comprehensive works on Uṣūl al-Fiqh. Among his works are:

- a. al-Taqrīb wa al-Irshād fī Tartīb Turuq al-Litihād. This book has been abridged as Kitāb al-Irshād al-Mutawaṣṣit and al-Irshād al-Ṣaghīr. According to al-Subkī, this is the great work on this subject, and what was in al-Subkī's possession was the small abridgement of it which was in four volumes. It was said that the original work was in 12 volumes. But al-Subkī himself was unable to see it. This work also has been summarised by Imām al-Ḥaramayn al-Juwaynī (d.478) entitled al-Talkhīṣ.
- b. Amālī Ijmā‘ Ahl al-Madīnah.
- c. al-Tamhīd fī Uṣūl al-Fiqh.
- d. al-Muqni‘ fī Uṣūl al-Fiqh.

Al-Qāḍī ‘Abd al-Jabbār b. Aḥmad al-Ḥamadānī al-Mu‘tazilī (d.415). He wrote a few important books in this field. Among them are:

- a. al-‘Amd.⁴² Al-‘Amd appears in the version edited by al-Shaykh Khalīl al-Mays.⁴³ Muḥammad Ḥasan Hītū refers to the book by the latter.⁴⁴
- b. al-Shar‘iyyāt. It has been published as chapter seven in his al-Mughnī.

Abū Manṣūr ‘Abd al-Qādir b. Ṭāhir al-Baghdādī

(d. 429). He has pertinent views in this field which he shows in his books:

- a. al-Faṣl fī Uṣūl al-Fiqh.
- b. al-Taḥṣīl fī Uṣūl al-Fiqh.

Abū al-Ḥusayn Muḥammad b. ‘Alī al-Ṭayyib al-Baṣrī (d. 436). He is among the great Mu‘tazilite scholars. He has written a comprehensive commentary on al-Qāḍī ‘Abd al-Jabbār's al-‘Amd. His other works are:

- a. al-Mu‘tamad fī Uṣūl al-Fiqh. The book has been published in two editions. One of them was edited by Muḥammad Ḥamīd Allāh, and published in Damascus in 1964. Another edition was edited by Shaykh Khalīl al-Mays and has been published in Beirut. Both editions are in two volumes. The book has been a major reference for Fakhr al-Dīn al-Rāzī and al-Āmidī.
- b. Mukhtaṣar al-Mu‘tamad.

Abū Muḥammad ‘Abd Allāh b. Yūsuf al-Juwaynī (d. 438). He is Imām al-Ḥaramayn al-Juwaynī's father. He wrote a commentary on al-Shāfi‘ī's al-Risālah.

Al-Qāḍī Abū Ya‘lā Muḥammad b. al-Ḥusayn al-Farrā’ (d. 458). He is a Ḥanbalite scholar and he has written the following books on this field:

- a. al-‘Uddah
- b. Mukhtaṣar al-‘Uddah
- c. al-Kifāyah
- d. Mukhtaṣar al-Kifāyah.

Abū al-Walīd Sulaymān b. Khalaf al-Bājī al-Mālikī (d. 474). He wrote Ihkām al-Fuṣūl fī Ahkām al-Uṣūl.

Al-Imām Abū Ishāq Ibrāhīm b. ‘Alī al-Shīrāzī (d. 476). His works on Uṣūl al-Fiqh are:

- a. al-Tabṣīrah fī Uṣūl al-Fiqh. The book has been edited by Muḥammad Ḥasan Ḥitū.
- b. al-Luma‘
- c. Sharḥ al-Luma‘.

Abū Naṣr Aḥmad b. Ja‘far b. al-Ṣibāgh (d. 477). He wrote ‘Iddat al-‘Ālim wa al-Ṭarīq al-Sālim.

Imām al-Ḥaramayn al-Juwaynī (d. 478). He has written very well-known books in this subject, and the books have been widely acclaimed as of great value.

- a. al-Burhān. Al-Subkī has described this book as " I have no knowledge [of any other book] in Uṣūl al-Fiqh which is better and more complete than "al-Burhān" of Imām al-Ḥaramayn."⁴⁵ There are a few commentaries on this book written by later scholars. Abū ‘Abd Allāh al-Māzirī al-Mālikī (d. 534 A.H) has written Īdāh al-Maḥṣūl min Burhān al-Uṣūl. A commentary is written also by Abū al-Ḥasan b. al-Abyārī al-Mālikī (d. 614 A.H)

- b. al-Waraqāt.

al-Imām Abū Ṭāhir b. ‘Abd Allāh al-Ṭabarī (450 A.H). He wrote Sharḥ al-Kifāyah.

Abū al-Muẓaffar Manṣūr b. Muḥammad b. al-Samʿānī (d. 489 A.H). He was a Ḥanafite for thirty years before transferring to the Shāfiʿī school.⁴⁶ He wrote al-Qawāṭiʿ fī Uṣūl al-Fiqh.⁴⁷ Al-Subkī has mentioned this work as Qawāṭiʿ al-Adillāh. Al-Subkī described this work as "the most beneficial book on uṣūl for the Shāfiʿīs and the most significant".⁴⁸ After al-Subkī, al-Zarkashī described it as "the most significant work for the Shāfiʿites in uṣūl al-fiqh in its reference to sources and its argumentation".⁴⁹

Abū Ḥāmid Muḥammad b. Muḥammad al-Ghazālī (d. 505 A.H). Among his works on Uṣūl al-Fiqh are:

- a. al-Mustaṣfā min ʿIlm al-Uṣūl;
- b. al-Mankhūl min Taʿlīqāt al-Uṣūl.
- c. Shifāʾ al-Ghalīl fī Bayān al-Shubah wa al-Mukhīl wa Masālik al-Taʿlīl.

Al-Imām Badr al-Dīn al-Zarkashī (d. 794). He has written a book called al-Baḥr al-Muḥīt which has been described as invaluable in this subject.

There are many other books written by later scholars on this subject. According to Muḥammad Ḥasan Hītū, the four most influential works on this subject are:

1. al-ʿAmd of al-Qāḍī ʿAbd al-Jabbār (d. 415 A.H);
2. al-Muʿtamad of Abū al-Ḥusayn al-Baṣrī (d. 436 A.H);

3. al-Burhān of Imām al-Ḥaramayn al-Juwaynī (d. 478 A.H); and

4. al-Mustaṣfā of al-Ghazālī (d. 505 A.H).

These books have become starting points for later scholars of Uṣūl al-Fiqh. Imām Fakhr al-Dīn al-Rāzī (d. 606 A.H) has written a book called al-Maḥṣūl which was compiled mainly on the basis of the above four books. A similar attempt has been made by al-Imām Sayf al-Dīn al-Āmidī (d. 631 A.H) and as a result he wrote al-Ihkām fī Uṣūl al-Aḥkām. This book has been published in four volumes.

These two works have been simplified or elucidated with commentaries by some later scholars. Commentaries of al-Maḥṣūl have been written by Shihāb al-Dīn al-Qarāfī (d. 684 A.H) and Shams al-Dīn al-Aṣbahānī (d. 688 A.H). The work also has been abridged by the following scholars,

1. al-Imām Sirāj al-Dīn al-Armawī (d. 672 A.H) in his al-Taḥṣīl;

2. al-Imām Tāj al-Dīn al-Armawī (d. 656 A.H) in his book al-Ḥāṣil;

3. al-Imām Shihāb al-Dīn al-Qarāfī (d. 684 A.H) in his al-Tanqīḥāt; and

4. al-Qāḍī ‘Abd Allāh b. ‘Umar al-Bayḍāwī (d. 685 A.H) in his book al-Minhāj. Al-Bayḍāwī's al-Minhāj has been acknowledged as of great importance. Therefore, many commentaries have been written on it.

1. al-Imām Jamāl al-Dīn al-Isnawī (d. 772 A.H) has written Nihāyah al-Sūl fī Sharḥ Minhāj al-Uṣūl.

2. al-Imām Taqī al-Dīn al-Subkī (d. 756 A.H) has written a commentary called al-Ibhāj fī Sharḥ al-Minhāj. But he only finished the writing on the Muqaddimāt al-Wājib. However, the commentary has been completed by his son al-Imām Tāj al-Dīn al-Subkī (d. 771 A.H).

3. al-Imām Muḥammad b. Ḥasan al-Badakhshī wrote a commentary called Minhāj al-‘Uqūl fī Sharḥ Minhāj al-Uṣūl. It was compiled by al-Shaykh Shams al-Dīn ‘Abd al-Raḥīm b. Ḥusayn al-‘Irāqī (d. 806).

With regard to al-Iḥkām fī Uṣūl al-Aḥkām many commentaries and abridgements have been written. Al-Āmidī himself has written a simplified version of al-Iḥkām in his Muntahā al-Sūl fī ‘Ilm al-Uṣūl. The Iḥkām has also been abridged by al-Imām Abū ‘Umar ‘Uthmān b. ‘Amr well-known as Ibn al-Ḥājib in the book called Muntahā al-Sūl wa al-Amal fī ‘Ilmay al-Uṣūl wa al-Jadal. This book later has been abridged by Ibn al-Ḥājib himself in Mukhtaṣar al-Muntahā. The latter was considerably admired by later scholars, so many commentaries and abridgements have been written on it. ‘Aḥud al-Dīn al-Ījī (d. 756) has written a commentary which has been published together with explanatory notes on its margin written by Sa‘d al-Dīn al-Taftāzānī. It is a detailed commentary of al-

Mukhtaṣar.

Another commentary has also written by Imām Tāj al-Dīn al-Subkī (d. 771) in his book called Bī Raf' al-Hājib 'an Ibn al-Hājib in two volumes.⁵⁰

The Method of the Jurists:

The second method was employed mostly by the Ḥanafites. It is classified as the method of the jurists or fuqahā'. This method is closer to the subject of jurisprudence because many cases and examples are brought into the discussion and the problems are based on legal points. In the formation of certain legal principles they used the decisions of the scholars acceptable to them on specific legal cases as their bases.⁵¹

They take the legal decisions of their masters seriously. They try to find the reasons behind those decisions and reach conclusions upon them, and they tried to form a general principle to be applied to later cases.⁵² Therefore, the books written following this method are full of cases of law.⁵³

The Books Written Following the Method of the Jurists: 54

Al-Imām Abū Manṣūr al-Māturīdī (d. 330) wrote Ma'ākhidh al-Sharā'ī.

Al-Imām al-Karkhī (d. 340) wrote a book on Uṣūl al-Fiqh.

Al-Imām Abū Bakr Aḥmad b. 'Alī al-Jaṣṣāṣ al-Rāzī (d. 370) wrote a book known as Uṣūl al-Jaṣṣāṣ.

Abū Zayd al-Dabbūsī (d. 430) has written Taqwīm al-Adillah and Ta'sīs al-Nazar.

Al-Imām Fakhr al-Islām al-Bazdawī (d. 483) has written a comprehensive book discussing many jurisprudential problems, with special attention being given to the their applications on specific legal cases. A commentary of it has been written by 'Abd al-'Azīz al-Bukhārī (d. 730) called Kashf al-Asrār.

Al-Imām Abū Bakr Muḥammad b. Aḥmad al-Sarakhsī (d. 490) has written a book known as Uṣūl al-Sarakhsī.

Among the later scholars al-Imām Abū al-Barakāt 'Abd Allāh b. Aḥmad better known as Ḥāfiẓ al-Dīn al-Nasafī (d. 710) has written a book called al-Manār. Many commentaries of it have been written by later scholars.

Books Written Following Other Methods:

Other than these two methods, there is another approach to this subject. The scholars who followed this method combined the method of the theologians and the method of the jurists. The books written following this method are:

Ma^{af}ẓfar al-Dīn al-Sāʿatī (d. 694) has written a book called Badīʿ al-Niẓām al-Jāmiʿ Bayn Uṣūl al-Bazdawī wa al-Ihkām.

Ṣadr al-Sharīʿah (d. 747) has written al-Tanqīh. It has been elaborated by another book called al-Tawdīh. This book is, in fact, the abridged version of Uṣūl al-Bazdawī, al-Rāzī's al-Maḥṣūl and Ibn al-Ḥājib's al-Mukhtaṣar.

Kamāl al-Dīn b. al-Ḥammām (d. 761) has written al-Taḥrīr. This book is said to have more of the theologians' flavour. It has been elaborated by his student Muḥammad b. Muḥammad b. Amīr al-Ḥājj (d. 879) in a book entitled al-Taqrīr wa al-Taḥbīr. Muḥammad Amīn well-known as Amīr Bādīshāh has written another commentary with the title Taysīr al-Taḥrīr.

Al-Imām Tāj al-Dīn al-Subkī (d. 771) has written Jamʿ al-Jawāmiʿ. In the introduction, he says that the book has been written on the basis of the opinion of one hundred scholars (author). A commentary to this book has been written by al-Imām Jalāl al-Dīn al-

Muḥallī (d.864). This commentary is said to be very detailed. Another commentary has also been written by al-Imām Badr al-Dīn al-Zarkashī (d.794) in a book entitled Tashnīf al-Masāmiʿ bi Sharḥ Jamʿ al-Jawāmiʿ.

Muḥibb al-Dīn b. ʿAbd al-Shakūr (d.1119) has written Musallam al-Thubūt and a commentary on it has been made in Fawātiḥ al-Raḥmūt. Badrān has described it as the most accurate book ever written following this method. It is also more readable because of its simple language when compared to al-Tahrīr and Jamʿ al-Jawāmiʿ which are too concise.⁵⁵

After these developments, the scholars seem not to explore new dimensions in this subject. They tend to see it as sufficient to explain some words and phrases found in earlier books. However, in the midst of this static development, sometime before the year 780 A.H, Abū Ishāq Ibrāhīm b. Mūsā al-Shāṭibī came forward with his well-known al-Muwāfaqāt fī Uṣūl al-Fiqh. He was a Mālikite jurist and legal theorist of Granada. He explains the Sharīʿah in different terms. He, in other words, brings the philosophy of Islamic law into focus. It has been suggested that in writing al-Muwāfaqāt, al-Shāṭibī intended to initiate a new Islamic science of maqāṣid al-sharīʿah (the ultimate purpose of Islamic law). The book itself is a work of great originality and genius.

There are books written by modern writers on uṣūl

al-fiqh, but none of them go beyond what was elaborated by classical scholars. Among them are:⁵⁶

al-Imām Muḥammad b. ‘Alī b. Muḥammad al-Shawkānī (d. 1255), Irshād al-Fuḥūl ilā Tahqīq al-Haqq fī ‘Ilm al-Uṣūl.

Muḥammad al-Khuḍarī (d. 1345), Uṣūl al-Fiqh.

Muḥammad ‘Abd al-Raḥmān ‘Īd al-Maḥallī (d. 1920 A.D.), Tashīl al-Wuṣūl ilā ‘Ilm al-Uṣūl.

‘Abd al-Wahhāb Khallāf, Uṣūl al-Fiqh.

Muḥammad Abū Zahrah, Uṣūl al-Fiqh. He also discusses some major points of uṣūl al-fiqh in his other books on al-Shāfi‘ī, Mālik, Abū Ḥanīfah, Aḥmad b. Ḥanbal and Ibn Taymiyyah.

The Shī‘ite Uṣūl al-Fiqh:

Other than the above methods, there is another method most of the scholars have failed to mention in their study of uṣūl al-fiqh due to no obvious reasons. This is the uṣūl of the Shī‘ites. Only recently that this method has been made known to other than the Shī‘ites themselves. Hossein Modarressi Ṭabāṭabā‘ī, for instance, has made a comprehensive bibliographical study of Shī‘ī Law and has listed many works, traditional and modern, on Uṣūl al-Fiqh.⁵⁷

Many works written by the Shī‘ite scholars have also been available in Arabic, whether writ-

ten originally in this language or being a translation. Among them are Sayyid al-Murtadā's al-Dharī'ah and Muḥammad Riḍā al-Muẓaffar's Uṣūl al-Fiqh. Muḥammad Abū Zahrah has mentioned the uṣūl of the Shī'ites when he discussed the development of Uṣūl al-Fiqh.⁵⁸

The Shī'ites of the Imāmites claim that their leader al-Imām Muḥammad al-Bāqir b. 'Alī b. Zayn al-'Ābidīn was the first to establish the science of the Islamic Jurisprudence.⁵⁹ Āyat Allāh al-Sayyid Ḥasan Ṣadr says,

"...The first who established the Uṣūl al-Fiqh, opened its door and discussed its problem was al-Imām Abū Ja'far al-Ṣādiq, followed by his son. The principles (that he has established) were, later, available to his disciples orally and then, they compiled these principles systematically relying only on the reports of uninterrupted chain of transmitters."

According to Abū Zahrah, the claim made by al-Sayyid Ḥasan Ṣadr does not have an effect on the authority of al-Shāfi'ī as the one who has first written these principles. Ḥasan Ṣadr has only claimed that the principles established by the above two Shī'ite imāms were transmitted orally. However, what most of the scholars agreed upon is that al-Shāfi'ī was the first to put it in writing systematically. Therefore, the claim made by the Shī'ite scholars was not unlike the claim made by the Ḥanafites in regard ^{to} this matter.⁶⁰

Like the Shāfi'ites and the Ḥanafites, the Shī'ite Uṣūl al-Fiqh recognize four sources of law in Islām, namely, the Qur'ān, the Tradition, the consensus of the Shī'ite jurists (ijmā') and reason ('aql).⁶¹ Therefore, in their works, these sources were put under their special treatment. In other words, uṣūl al-fiqh of the Shī'ites and the Shāfi'ites and the Ḥanafites have no obvious difference in their contents, although there are some differences in their approaches.

THE PURPOSE OF THE PRESENT STUDY:

This thesis aims at studying one of the subjects of uṣūl al-fiqh. The principles of 'umūm and takhsīs are normally discussed under the study of words or mabāḥith al-alfāz, together with muṭlaq and muqayyad; ḥaqīqah and majāz; muḥmal and mubayyan and so on. This study of words is particularly important for the Qur'ān and the Traditions, the two primary sources of Law, are the written documents the understanding of which depends so much on the understanding of the words therein.

This thesis will be divided into two parts with eight chapters. In part one, we will discuss the principle of 'umūm. Various aspects of 'umūm are to be discussed. Among them are the concept of 'umūm

according to the uṣūlīs, the category of ʿumūm, ʿumūm words and also the application of the principle of ʿumūm in the understanding of legal texts.

Part two discusses the principle of takhṣiṣ. It firstly explains the concept of khuṣūṣ prior to its later function as takhṣiṣ. This ^{is} followed by the discussion of the evidences of takhṣiṣ: internal and external. In this study many examples are taken from either the Qur'ān or the Traditions or both. Here, we try to show the importance of this principle in the process of deriving laws from the Qur'ān and the Traditions.

The opinions of the two prominent groups of uṣūlīs occupy many major issues on this principle. The opinion of the Shāfi'ites or the theologians always differs from that of the Ḥanafites or the jurists. The scholars sometimes refer the Shāfi'ites as the jumhūr. In many issues their opinions are shared by the Mālikites and the Ḥanbalites.

An attempt is made to present as many opinions as possible on all topics of discussion. The opinions of individual scholars have also contributed to the clarity of the subject. Their arguments, for example, have strengthened the opinion of their groups. Finally, it is hoped that this study will throw light on some of the important topics of uṣūl al-fiqh.

NOTES:

1. Nabil Shehaby, 'Ilā and Qiyās in Early Islamic Legal Theory,' JAOS, 102 (1982), p. 27.
2. Coulson, A History of Islamic Law (Edinburgh, 1978), pp. 60-1.
3. Aḥmad Ḥasan, The Early Development of Islamic Jurisprudence (Islamabad, 1970), p. 12.
4. The Tradition of Mu'ādh regarding iṭtihād has been reported by the following authorities:
 1. Abū Dāwūd, Sunan (Bāb iṭtihād al-ra'y fī al-qaḍā')
 2. Aḥmad b. Ḥanbal, Musnad (Cairo, n.d), vol. V, p. 230.
5. Abū Yūsuf, al-Radd 'alā Siyar al-Awzā'ī, Cairo 1357H, p. 21.
6. Ibn al-Nadīm, al-Fihrist (Cairo, 1357H), p. 288.
7. Ibn al-Nadīm, p. 286.
8. Ḥajjī Khalīfah, Kashf al-Zunūn 'an Asāmī al-Kutub wa al-Funūn (Istanbūl, 1360H), vol. 1, p. 110.
9. Aḥmad Ḥasan, The Early Development, p. 179.
10. See Muḥammad Abū Zahrah, Uṣūl al-Fiqh, Cairo 1957, pp. 14-15.
11. George Makdisi, 'The Juridical Theology of Shāfi'ī: Origins and Significance of Uṣūl al-Fiqh,' in Studia Islamica, vol. LIX, No. 1 (1984) p. 9.
12. Ibid.
13. Mu'tamad, I, p. 8.
14. Tahānawī, Dictionary of Technical Terms, vol. I, p. 30.
15. Mu'tamad, I, p. 8.
16. al-Burhān, I, p. 85.
17. al-Mustaṣfā, I, p. 3.
18. al-Mustaṣfā, II, p. 3.
19. Aḥmad Ḥasan, The Early Development, p. 6.
20. EI¹, art. Uṣūl.

21. al-Mu'tamad, I, p. 9.
22. EI¹, art. Uṣūl.
23. al-Āmidī, Ihkām, I, p. 8.
24. Muḥammad Salām Madkūr, al-Madkhal li al-Fiqh al-Islāmī (Cairo, 1963), p. 193.
25. Shehaby, ' ʿIlla and Qiyās in Early Islamic Legal Theory,' JAOS, vol. 102 (1982), p. 27.
26. As quoted and translated by Bernard G. Weiss, 'Language and Law: The Linguistic Premises of Islamic Legal Science,' in A.H. Green (ed.), In Quest of an Islamic Humanism (Cairo, 1984), p. 15.
27. al-Āmidī, Ihkām, I, p. 9 as translated by Bernard G. Weiss, 'Language and Law,' p. 15.
28. Hossein Modarresi, 'Some Recent Analyses of the Concept of Majāz in Islamic Jurisprudence,' JOAS, Vol. 106, p. 787.
29. See for example Abū al-Ḥusayn al-Baṣrī's al-Mu'tamad; Imām al-Ḥaramayn al-Juwaynī's al-Burhān; and al-Ghazālī's al-Mustaṣfā.
30. Aghnides, Mohammedan Theories of Finance (Columbia, 1912), pp. 4-5.
31. Coulson, Conflicts and Tensions in Islamic Jurisprudence (Chicago, 1969), p. 3.
32. Abū ʿAynayn Badrān, Uṣūl al-Fiqh, p. 37.
33. Ibn Khaldūn, The Muqaddimah, III, translated by F. Rosenthal (London, 1958), pp. 23-34.
34. See for examples, Muḥammad Abū Zahrah, Uṣūl al-Fiqh; Abū al-ʿAynayn Badrān, Uṣūl al-Fiqh; Muḥammad Ḥasan Hītū, al-Wajīz.
35. George Makdisi, 'The Juridical Theology of Shāfiʿī: Origins and Significance of Uṣūl al-Fiqh, in Studia Islamica, vol. LIX, No. 1 (1984) p. 42.
36. Ibid., pp. 43-44.
37. ʿAbd al-Wahhāb Khallāf, Uṣūl al-Fiqh, p. 18.
38. Khudārī, Uṣūl al-Fiqh, p. 8.
39. Ibrāhīm Abū Sulaymān, al-Fikr al-Uṣūlī: Dirāsah

- Tahliliyyah Naqdiyyah (Jeddah, 1983), p. 65.
40. Ibn Khaldūn, The Muqaddimah, III, pp. 23-34.
 41. See Hitū, al-Wajīz; Abū ‘Aynayn Badrān, Uṣūl al-Fiqh; Khudārī, Uṣūl al-Fiqh and Abū Zahrah, Uṣūl al-Fiqh.
 42. In a version of the edited Abū al-Ḥusayn al-Baṣrī's al-Mu‘tamad, Muḥammad Ḥamīd Allāh, the editor, gives the title as al-‘Ahd. See al-Mu‘tamad, I, p. 7.
 43. Abū al-Ḥusayn al-Baṣrī, al-Mu‘tamad fī Uṣūl al-Fiqh, edited by Shaykh Khalīl al-Mays (Beirut, 1983), I, p. 3.
 44. Hitū, al-Wajīz, p. 19.
 45. Ibid.
 46. George Makdisi, 'The Juridical Theology of Shāfi‘ī...', p. 35.
 47. Hitū, al-Wajīz, p. 20.
 48. George Makdisi, 'The Juridical Theology of Shāfi‘ī...', p. 35ff.
 49. Ibid.
 50. Ibid., p. 22.
 51. Khallāf, Uṣūl al-Fiqh, p. 18.
 52. Ibrāhīm Abū Sulaymān, al-Fikr al-Uṣūlī, p. 452.
 53. Khallāf, Uṣūl al-Fiqh, p. 18.
 54. See Hitū, al-Wajīz; Muḥammad Abū Zahrah, Uṣūl al-Fiqh; Abū ‘Aynayn Badrān, Uṣūl al-Fiqh; Khudārī, Uṣūl al-Fiqh etc.
 55. Abū ‘Aynayn Badrān, Uṣūl al-Fiqh, p. 19.
 56. For more see Bibliography.
 57. Hossein Modarressi Ṭabaṭabā‘ī, An Introduction to Shī‘ī Law: A Bibliographical Study (London, 1984).
 58. Muḥammad Abū Zahrah, Uṣūl al-Fiqh, p. 14.
 59. Ibid.
 60. Ibid., pp. 14-15.
 61. Muḥammad Riḍā Muẓaffar, Uṣūl al-Fiqh (Najf, n.d), I, p. 12.

PART I

THE PRINCIPLE OF ‘UMŪM

CHAPTER ONE

THE CONCEPT OF ‘UMŪM

This chapter is devoted to explaining the term ‘umŪm as it is understood by the scholars of uṣūl al-fiqh. Although, in its literal sense, ‘umŪm is self-explanatory and can hardly raise any problem, its application as a legal term and a principle in textual interpretation has caused discussions among many scholars. As will be seen in the following pages, the principle of ‘umŪm is very closely connected with the interpretation of the Qur'ān and the Traditions (Sunnah), the two primary sources of Islamic Law, and the relationship of these sources in establishing the rules of laws. Goldziher has rightly suggested that the question of ‘umŪm and khuṣūṣ is known to

"be important both for the interpretation of the Qur'ān and the Traditions, and for jurisprudential and dogmatic chapters of Islamic theology."¹

It would not seem appropriate to suggest that the involvement of many scholars in the disputation concerning this matter was as insignificant as claimed by Wansborough. He says that the scholars made this principle theoretically complex by dispute about whether all propositions were primarily and exclusively of

general or particular significance, though application of the principle was in practice easy.² They certainly did not involve themselves in such disputations for nothing. What is evident is that they try to understand what exactly was meant by the text, especially with regard to the verses of legal significance.

Therefore, among the central issues of this principle are; is there any expression of language which gives general implication in its real sense? Are all the ‘umūm in the Qur'ān to be understood according to their linguistic expression or should they be understood after due consideration has been given to other internal or external evidence? And, moreover, is there any evidence and justification for limiting the application of a text of ‘umūm significance? All these and other related issues have been dealt with in considerable detail in major uṣūl al-fiqh works.

‘Umūm as a term applies to a type of words or statements used as textual evidences. In the present work most of these evidences are legal whether they are from the Qur'ān, the Traditions or other texts. Owing to the nature of the Arabic, in which these textual evidences are presented, this principle has to be clearly defined before the required conclusion can be achieved. This is also because of, as the Muslims generally accept it, the nature of the Qur'ān when it

establishes legal injunctions. It is not uncommon, for example, for a verse of the Qur'ān has been defined and understood differently by different scholars, due to the difference in their understanding of a particular word. This also entails a difference in formulating certain legal injunctions. The result of the present study will show this more clearly.

In most cases, the concept of ‘umūm is not applied in isolation. There are verses of the Qur'ān and also the decisions made by the Prophet which refer to the same case, but they differ in one aspect or another. This state of co-existence of two or more evidences with regard to a case needs interpretation, so that the clear and correct application may be possible. Hence, the uṣūlīs have developed another principle called takhṣīs or takhṣīs al-‘umūm. This principle will be dealt with in the second part of the present study.

‘Umūm and khuṣūṣ in the technical sense have been used interchangeably with ‘āmm and khāṣṣ in most works of uṣūl al-fiqh. It seems that uṣūlīs in general have taken the slight difference in their meaning for granted. This is probably due to the fact that there seem to be no obvious and significant differences with regard to their applications.

‘Āmm is derived from the verb ‘amma meaning common or general or universal. It is applied among others to

'rain', as in the sentence,

‘amma al-maṭar al-ard

[the rain included the general, or the whole extent of the land within the compass of its fall]

It is also applied to 'gift' or ‘aṭā as in the sentence,

‘ammahum bi'l-‘aṭiyyah

[he included them in general within the compass of the gift]³

It is also used to signify the commonalty or the common people as opposed to khāṣṣ meaning the distinguished or people of distinction. Also al-khāṣṣah wa'l-‘āmmah is used in referring to the distinguished and common people respectively.⁴

The term ‘umūm is verbal noun (maṣḍar) of ‘amma literally signifying the inclusion, or comprehension, the generality or all. ‘Umūm is used as opposite to khuṣūṣ. The latter means particularity, peculiarity, speciality or specialty.⁵

As in the case of other technical terms which have been introduced by medieval scholars of different disciplines, it is difficult to trace with certainty the scholar who has used this term for the first time in its technical sense. However, it is possible to acquire a basic idea of this technical sense from the existing written material, although not without reservation in case of some future findings. Probably, on the basis of this proposition, Majid Khadduri in

the introduction to his translation of al-Shāfi'ī's Risālah maintains that al-Shāfi'ī (d. 201H) was the one who introduced the term as a technical term. He says,

"The term "general" [ʿumūm or ʿāmm] and "particular" [khuṣūṣ or khāṣṣ] as applied to rules, which are familiar to modern students of law, were introduced to Islamic Jurisprudence for the first time by Shāfi'ī." 6

Al-Shāfi'ī, however, has not discussed this principle in great details as do the later scholars. This is probably due to his conviction that such a term is clear enough not to be misunderstood and therefore, hardly needs further clarification.

Al-Shāfi'ī discusses the term only as a method of understanding the Qur'ān, and the position of the Sunnah or Tradition in respect to the Qur'ān. In other words, he only discusses the term as long as it clarifies the Qur'ān or the Sunnah. This is apparently his immediate intention. For instance, he divides the Qur'ānic injunctions into general and particular. Some of the general rules, he observes, are intended to be general, in which the particular rules are included. There are general rules in which both the general and particular rules are included, and there are general rules which are intended to be particular rules. 7

Later scholars of uṣūl al-fiqh have made their efforts to clarify this principle in great details. They have encountered Qur'ānic verses which have been

interpreted differently, and this has entailed differences in hukm for one particular act. They try to find some forces behind these differences (ikhtilāf) and if possible to support what they believe to be the preferred view with strong evidence. However, as will be shown later, this is not an easy task. In this effort they have to rely not only on legal arguments, but also language expression and application and other related subjects.

The works of Abū al-Ḥusayn al-Baṣrī (d. 436 A.H), Sayyid al-Murtaḍā (d. 436 A.H), Ibn Ḥazm (d. 456 A.H), Imām al-Ḥaramayn al-Juwaynī (d. 478 A.H), al-Ghazālī (d. 505 A.H), al-Rāzī (d. 606 A.H), al-Āmidī (d. 631 A.H) and al-Bayḍāwī (d. 685 A.H) to name but a few, are full of such a discussion. Almost all of these works resume their exposition by discussing the concept of ‘umūm itself.

Abū al-Ḥusayn al-Baṣrī defines ‘umūm as, "kalām mustaghriq limā yaṣlaḥu lahū"⁸ [a statement which includes those things to which it is applicable]. For example, he says, that the word al-rijāl [the men] includes every individual it refers to. And, also the word man of interrogation in the sentence, "‘indaka" [who is with you?]. Man in this instance refers to every rational being; and it does not extend to cover non-rational beings who are not with him; because this word does not suit them.⁹

Another example given by Abū al-Ḥusayn al-Baṣrī is the word kull. It is used to cover everything inclusive in its meaning; but anything which is not in its domain has to be excluded from its coverage.¹⁰ The word in dual form (muthannā) as rajulān (two men) is not covered by the word kull. Numerical nouns are also not included under the term kull, because they are meant to cover such a limited number they show. For example, thalāthatu rijāl (three men) or ‘asharatu rijāl (ten men) only show the limited number they indicate. Indeterminate words or alfāz al-nakirah as rijāl (without alif lām) are not ‘umūm in the strict sense. They are ‘umūm by way of badal (apposition or substitution) and not of exhaustiveness.

According to Abū al-Ḥusayn al-Baṣrī, Qāḍī ‘Abd al-Jabbār (d. 415 A.H) has the word ziyādah in his definition to exclude dual and plural. The definition goes,

"lafz mustaghriq li-jamī‘ mā yaṣlah lahū fī ahl al-lughah min ghayr al-ziyādah".¹¹

This is because dual and plural are formed by adding something to the word in ^a singular. It does not, however, by this addition deny the exclusion of numerical nouns, because it does not cover ten which comprises ten ones. Abū al-Ḥusayn al-Baṣrī, nevertheless, does not tell us why he does not adopt his teacher's definition, ^{but} instead he gives his own.

Abū al-Ḥusayn al-Baṣrī's definition has been criticized by al-Āmidī as not adequate. Al-Āmidī claims that it has two defective points. First, that when he defines al-ʿāmm by the word mustaghriq, it is ambiguous, because both words are synonymous (lafẓān mutarādifān). For al-Āmidī the definition is not as simple as that. It must clarify the musammā, that is, the sense or the meaning of the word by pointing out its initial meaning or its formal usage, which al-Baṣrī's definition lacks. Second, the definition is not māniʿ (exclusive). There is an unnecessary element in the explanation. By this definition ʿumūm covers also the sentence like,

daraba Zaydun ʿAmran

because it is covered by the word istighrāq, but it is not ʿumūm at all in this sense.¹²

Sayyid Murtaḍā defines ʿumūm simply as,

mā tanāwala lafẓuhū shayʿayn fa-ṣāʿidan¹³

[the word which deals with two or more things (in its meaning)]

He tries to make the definition clear by inserting in his explanation the definition of the opposite word, namely, khuṣūṣ. Khuṣūṣ means,

mā tanāwala shayʿan wāḥidan

[the word which deals with a single thing]

He further explains that a word could be ʿumūm or khuṣūṣ if it is seen from different points of view. For

example the sentence,

ḡarabtu ḡhilmānī [I punish my children]

If by children he intends to refer to some of his children, it is ‘umūm because it indicates more than one. But the word is khuṣūṣ because what he means is only some of the members to which the word is really applicable.¹⁴ ‘Umūm and khuṣūṣ, in the view of Sayyid Murtadā is like the word few or qalīl and many or kathīr because both of them are used in annexation or idāfah. A thing may be few or many depending on the annexation.¹⁵

Al-Ghazālī defines ‘umūm or ‘āmm as,

al-lafz al-wāḥid al-dāll min jihatin wāḥidatin
‘alā shay’ayni fa-ṣā‘idan’¹⁶

[lit. a word which indicates two or more things when it is applied by single application]

He gives as examples the words al-rijāl (the men), al-mushrikūn (the unbelievers) and the sentence,

wa man dakhala al-dār / ^{fa-} aṭṭihī dirham

[whoever enters the house, give him a dirham]

In the definition, Al-Ghazālī uses the phrase min jihatin wāḥidatin or by single application by which it excludes the sentence like,

ḡaraba Zaydun ‘Amran and ḡaraba Zaydan ‘Amr

[Zayd beats ‘Amru and ‘Amru has beaten Zayd]

In the sentence, two words with the same meaning (ḡaraba) have been used for two different applica-

tions of the meaning. This phrase also excludes both homonyms and majāz (figurative meaning of the word). This is because homonym does not refer to its various meanings at one usage but by substitution. The same argument is applied to the word used in figurative sense.¹⁷

In order to make his definition clearer, al-Ghazālī explains the nature of words as seen from ʿumūm-khuṣūṣ point of view. A word, he says could be khuṣūṣ in itself absolutely as the word Zayd (proper noun) and hādhā al-raḡul (this man); or it could be ʿumūm absolutely as the words al-madhkur (as mentioned) and al-maʿlūm (known). These words do not exclude either existent or non-existent things. The word also could be ʿumūm by idāfah (annexation) as the word al-muʾminūn (the believers) because its generalness depends on individual believers attached to it. This word is khuṣūṣ when viewed from another point, because it includes other than mushrikīn (unbelievers). In other words, it could be said that it is ʿumūm with regard to its inclusiveness of what should be included, and it is khuṣūṣ with regard to its limitedness to what it includes and its inability to include what is outside its sphere of reference.

Al-Āmidī has made a few remarks on al-Ghazālī's definition. He says that the definition is not exhaustive (ghayr jāmiʿ). The word al-maʿdūm (non-

existent) and mustahīl (impossible) for examples, are among the words of general meaning, but there is no way to single them out as two or more. Suppose, he says, the definition could be accepted as exhaustive, it is not exclusive (māni'). The word 'asharah (ten) and mi'ah (hundred) which are possibly covered by the definition are actually not 'umūm words.¹⁸ However, al-Āmidī's comment seems to be too simplistic. He does not, any way, indicate how the word 'asharah and mi'ah could be included as 'umūm words by al-Ghazālī's definition. Indeed, with regard to this problem al-Ghazālī clearly states that numerical nouns are not 'umūm.¹⁹

Al-Āmidī himself, after realizing the inadequacies of Abū al-Ḥusayn al-Baṣrī and al-Ghazālī's definitions, has tried to construct a definition of his own. He thus defines 'umūm as,

al-lafẓ al-wāḥid al-dāll 'alā musammayān fa-
ṣā'idan muṭlaqan ma'an

[a single word which shows two or more things together absolutely]²⁰

He explains the definition in detail. By the word al-lafẓ (word) he wants to show that 'umūm is only indicated by words. It also implies the concept of 'umūm as held by the jumhūr. These scholars ascribe 'umūm only to word in its real application, and not ma'nā or fi'l as some other scholars suggest.

The word al-wāḥid (single) excludes a combination of words as in the sentence,

ḡaraba Zaydun ʿAmran

He uses the phrase al-dāll ʿalā musammayān to include existent and non-existent things, but at the same time to exclude the words of unrestricted form (muṭlaq) as the word rajul (without alif lām) and dirham. It is of course true that the word rajul and dirham could refer to any man or any dirham but it is only in the form of badal (substitution). The word fa-ṣāʿidan excludes numerical nouns and proper nouns as the word Zayd.²¹

Referring to another definition which adds min ḡhayr ḡaṣr (without restriction) to exclude numerical nouns, al-Āmidī deems it as unnecessary because ʿalā musammayān fa-ṣāʿidan in his definition will serve the purpose.²²

Al-Bayḡawī has discussed this problem in his work Minḡāḡ al-Uṣūl. Al-Isnawī, al-Bayḡawī's student and the commentator of the work reproduces the definition given by the latter. The definition reads,

lafz yastaghriqu jamīʿ mā yaṣlah lahū bi-waḡʿin wāḥid²³

[A word which includes everything applicable to it by a single application]

Three things in the definition merit further discussion. They have special significance in his understanding of the concept of ‘umūm as also they did in the previous definitions. First, the word yastaghriqu or inclusive. It is used to include whatever the word signifies in one application. At the same time it excludes al-lafz al-muhmal (inoperative word) because istighrāq or inclusiveness is a part of application, while the former is not. It also excludes muṭlaq (absolute) and nakirah (indefinite) in affirmative. Al-Isnawī maintains that muṭlaq is not to be used to indicate individuals because its original usage is to show māhiyah or quiddity or the nature of that thing. It does not carry the meaning of inclusiveness.

Nakirah in affirmative is not ‘umūm according to this definition. The reason for the exclusion is almost the same as was given by the previous definition. Nakirah is used for individuals in general whether it is one as in singular nakirah or many as in dual or plural nakirah. However, it does not inclusively apply to everything the word signifies in one application. It refers to individuals under its meaning by way of substitution. For example, if someone was ordered to beat someone else by saying "idrib rajulan" and then, he beat whoever (man) he wishes either ‘Alī, Zayd or Khālid, he is, therefore, considered as having

fulfilled his responsibility. This does not constitute the beating of 'Alī, Zayd and Khālīd at the same moment; because the word does not imply this.

Second, the phrase jamī' mā yaṣlah lahū means whatever ^{is} applicable to the word. In other words it denotes what the word refers to when it is mentioned. For example, the word man as has been discussed previously, is used to refer to rational-beings and mā to non-rational beings. Both words are applicable to what they refer to and nothing else. This phrase also excludes from the definition the word which refers to only some of what it really ^{is} applicable. For example, the word al-nās in the Qur'ān 3:173,

alladhī qāla lahum al-nās, inna al-nāsa qad jama'ū lakum

[Those who have been warned by other people...]

The word al-nās or people here refers, as agreed upon by some exegetes, to Nu'aym b. Ḥajar al-Ashja'ī alone, and not to the people in general. This kind of usage restricts the application of the word to some of its reference only.

Third, the words bi-waḍ'īn wāḥid or in single application try to explain the following points. To exclude common word or mushtarak lafẓī, that is a word which has more than one meaning. For example, the word 'ayn meaning eye, spring and gold; but these meanings are not to be applied together at the same time. They



have to be used in different occasions, for if the word is used in its multiple meanings in one sentence, the sentence itself will bring nothing. On the other hand, if the word is used to indicate one of its meanings, and it is in the general sense the word is ‘umūm.

This definition has been criticized for not being exhaustive and exclusive. Al-Isnawī mentions four points of possible objection, and he replies to them one by one. First, al-Bayḍawī's use of the word istighrāq to explain ‘umūm is not acceptable, because both words are synonymous. To define something by its synonym is only permissible in the case of giving the word its meaning but not in the case of definition. This objection has been replied in two ways. Firstly, it is not true that istighrāq and ‘umūm are synonymous, because ‘umūm is in fact meaning shumūl or comprehensive or inclusive. Both shumūl and istighrāq have the meanings which are contradictory to each other, and there is no synonymity in them except that they share some of the common features. Secondly, if, for instance, it could be accepted that ‘umūm and istighrāq are synonymous in linguistic expression, they are not so in their technical sense. Thereby, it is no harm in defining ‘umūm as a technical term by using the word istighrāq, its synonym in language usage. ‘Umūm as a technical term is more specific than its

original language connotation.

The
Second objection is that this definition is not mānī' or exclusive, because it may possibly include, for example the statement, "daraba Zaydun 'Amran". This is for the reason that it is a word which includes everything applicable to it; the action by the agent or fā'il continues to exist on the object in a single application. This kind of composition (tarkīb) is constructed to show the action by the agent against an object, although it is not 'umūm.

This objection also has been answered. This word does not include everything applicable to it, because the action, that is beating, although validly applied to every type of beating, such as by stick and so on, does not include all these references. This is clearly indicated by the nature of the statement. The action of beating is regarded as having been performed, even though the beating is only done by using the stick. By this explanation, it is clear that it is excluded by al-Bayḍawī's phrase "yastaghriqu jamī' mā yaṣlah lahū".

The third objection is that if by istighrāq (inclusiveness) it means the inclusiveness of kullī or the totality to cover all its particulars and details (juz' iyyāt), then the definition is not exhaustive; it does not include plural with alif lām as in the sentence, "jā'a al-rijāl" [the men had come]. This is

because the details of plural is in terms of group, and group is formed through the combination of individuals such as Zayd, Bakr and Khālīd. The composition is called components (ajzā') and not particulars (juz' iyyāt). As such a plural is 'umūm with regard to its particulars, that is group, and not 'umūm in regard to its components, which is inconsistent with the view held by some uṣūlīs who maintain that its 'umūm is seen in terms of both.

On the other hand, if by istighrāq is meant istighrāq al-kull li-ajzā'ihī or the inclusiveness of the whole to cover its components, or its meaning is more general than the above two, then the definition is not exclusive, for it could include numerical nouns with regard to the units which form it. For example 'ten' and 'five'. 'Ten' comprises units; they are one up to ten. The same also applies to 'five'. They are components (ajzā') and not particulars (juz' iyyāt), because the particulars of ten are tens and the particulars of five are fives. In fact, numbers are not 'umūm with their particulars because they do not include them, but they do, on the other hand, include their components. Therefore, the definition includes numerical nouns which, in fact, must not be ascribed to 'umūm. This is because the words (which are indicating numbers) themselves contain limitation, while no 'umūm could be described

by the words of that kind.

This objection has been answered as follows. First, what is meant by istighrāq is actually the inclusiveness of ^{the} whole to comprise its particulars. Therefore, it excludes the noun of numbers absolutely because the inclusiveness of the latter to comprise its units is seen as the inclusiveness of all to comprise components. Secondly, it is certain that the plural with alif lam is ‘umūm, because when alif lam is attached to plural, the latter has ceased its plurality. It becomes similar to singular. Individuals like Zayd, Bakr and ‘Umar in relation al-rijāl are individuals or particulars and not components. And as such are included in the word yastaghriqu in al-Bayḍawī's definition.

The fourth objection is that in the definition there is dawr or petitio principii. The word jamī‘ or 'everything' is used and it is among ‘umūm words. It goes without saying that the knowledge of ‘umūm depends on the knowledge of the meaning of this word; this is because the word itself ^{is} one of the constituents of the definition. Certainly, the understanding of what is to be defined depends on the understanding of the constituents of the definition. As such, to understand the word jamī‘ which is employed in the above definition, ‘umūm should be understood beforehand. In other words, both jamī‘ and ‘umūm are

interdependent; and this interdependency is called petitio principii (dawr).

It has been replied that it is true that the understanding of ‘umūm depends on the understanding of the constituents of the definition and jamī‘ is one of them. However, to understand jamī‘ the understanding of ‘umūm as a technical term is not a necessary thing; it depends on the understanding of its original meaning. By this explanation, it is clear that, the dependency is only on one-side.²⁴

Some later scholars of Uṣūl al-Fiqh have followed the definition given by the earlier scholars of their choice with or without any modification. Abū al-Nūr Zuhayr, for instance, cites al-Bayḍawī's definition together with the full commentary of al-Isnāwī.²⁵ Others, however, after their awareness of some shortcomings in those earlier definitions have formed the definitions of their own in order to give full understanding of the term and also to avoid any possible 'not exclusive' and 'not exhaustive'. One of them is Badrān Abū ‘Aynān Badrān. He defines ‘umūm as,

lafz wuḍi‘a wāḥidan li-al-dilālah ‘alā afrād kathīrah ghayra maḥṣūrah ‘alā sabīl al-shumūl wa al-istghrāq li-jamī‘ mā yaṣlah lahū²⁶

[A word which is used in one application to indicate many individuals without restriction by way of inclusiveness and exhaustiveness to cover everything which is applicable]

Here the phrase 'which is used in one application' excludes common nouns, because they are used to show many things but through different applications. 'To show many individuals without restriction' excludes khuṣūṣ or word of particular reference. This is for example, numerical nouns; they are limited to the prescribed units only. 'By way of inclusiveness and exhaustiveness' is used to differentiate between ʿumūm and indeterminate plural, for the latter does not imply exhaustiveness. For example, the sentence "jā'anī tul-lāb" [Students have come to me]. It does not indicate that all the students have come.²⁷

Muḥammad Abū Zahrah defines ʿumūm as,

al-lafz al-dāll ʿalā kathīrīn al-mustaghriq fī dilālatihī li-jamīʿ mā yaṣlah lahū bi-hasbi waḍʿin wāhid

[A word which shows many individuals contained in its meaning to cover everything applicable to it by single application.

The explanations given after this definition do not have much difference. Abū Zahrah, however, ascribes this definition to the Ḥanafites.²⁸

So far we have discussed in detail the concept of ʿumūm as ^{it} has been understood and explained by great uṣūlis. There are few points ^{which} most of these scholars are in agreement. ʿUmūm in its strict technical meaning must be seen as different from muṭlaq, and alfāz al-mushtarak (homonym or common words).

Numerical nouns and indeterminate plural (jam' al-nakirah) are also not to be regarded as 'umūm. They have stressed these dissimilarities by using the expressions like istighrāq (inclusive), min jihatin wāhidatin (by single application) and so on in the definitions.

It seems important to mention one point which attracts the attention of many scholars. It is on the ascription of 'umūm to words, meanings (ma'nā) and action. Is 'umūm refer to word only; or words and meanings in the real sense?

Uṣūlis are divided into three groups in this regard. However, they agree on the ascription of 'umūm to words in the real sense; but as to meaning there are differences of opinion. First, Ibn al-Ḥāḡib ascribes 'umūm both to meanings and word as its real sense. This view is based on the original meaning of 'umūm, that is, shumūl amr li-muta'addid [the inclusion of a thing to cover various other things] and this, in essence, exists in meaning. The word amr which is used in the above definition is more general than word (al-lafz) and meaning (ma'nā). There are examples to show the use of 'umūm in meaning:

- (1) 'amma al-maṭar
- (2) 'amma al-amīr bi'l-'aṭā'
- (3) naẓr 'āmm
- (4) ḥājah 'āmmah

(5) mafḥūm ‘āmm and so on.

These usages show no difference between the use of ‘umūm in it and in words. The initial significance of a usage or application is its real sense or ḥaqīqah. Therefore, ‘umūm is both represented in words and meanings as its real application.

Second, the ascription of ‘umūm to meanings is only figurative, not in the real sense. This view belongs to the great majority of scholars. Al-Āmidī mentions this view in his Iḥkām, but he does not give his own preference whether to this or other views. This view is based on the following assumptions. Firstly, to use it as such as the real usage, it must be mutṭarid (co-existensive). But ‘umūm in meaning does not have that quality, as for example in the use of proper names. The ascription of ‘umūm to them is neither real nor in the figurative sense. Therefore, the ‘umūm of meaning is not in the real sense for it is not mutṭarid. Consequently, the use of ‘umūm in meaning is only figurative.

However, the lack of this quality of co-existensiveness is not enough to deny meaning to this ascription of (‘umūm), because, words as in the case of proper names such as Zayd or Bakr are not initially describable in ‘umūm. By this, it should follow that the ascription of ‘umūm to such words is also not real but only figurative. There is no quality of

ittirād in those examples. But no one says as such about words.

Secondly, this group of scholars also argue that ‘umūm originally means, "shumūl amr wāḥid li-muta‘ad-didīn". What is immediately understood by wāḥid is one with reference to its individuality (shakhsīyyah), while meaning, on the other hand, could not be identified by its individuality, as for example, the inclusiveness of the meaning of insān or the generalness of rain. Therefore, its use as ‘umūm is in the figurative sense.

It has been argued that, unspecified oneness is to include the singularity of individual and others. For example the singularity of mentality. Therefore, if the above argument is to be accepted, it would confine the actual significance of wahdah (oneness) to the singularity of the individual arbitrarily. It is also argued that the ‘umūm of this meaning, that is, shumūl, refers to its essence. Therefore, it only applies to meaning and it certainly could not be attached to words (alfāz). The ‘umūm of words must be of tanāwul or comprehensive. In this regard Sharbīnī says that ‘umūm is sometimes used to mean al-tanāwul and this certainly indicates certain meaning, which is perceived through its application (wad‘). What is in reality attached to as ‘umūm is words. It is also sometimes used to meaning al-kullīyyah (totality),

that is the state of thing in the mind which does not prevent it from having the idea of group. This kind of idea is perceived only through meaning. ‘Umūm is also sometimes used to mean shumūl , and by this, it is ascribed to word and meaning together.

However, as far as the uṣūlis are concerned, ‘umūm is used in the context of words. Therefore, it means tanāwul as shown by al-Suyūṭī.²⁹

The above explanation, in part, seems to reconcile with the view held by al-Isnawī who maintains that ‘umūm means shumūl by which it refers to words as well as meaning; this is because the attribution of ‘umūm to meaning is due to its essence. While the attribution to words is in regard to their appearance. Therefore, some scholars incline to believe that the disagreement naturally arises out of this aspect of discussion.

However, it is likely that ‘umūm as a legal term - as understood by a majority of uṣūlis - is concerned with words or alfāz as also evidenced from the using of the word al-lafz or kalām in their definitions.

The third view is that meaning is not ‘umūm in the real or figurative sense. This sceptic view does not have any significant adherent, because while mentioning it in his discussion, Ibn al-Ḥājjib does not ascribe it ^{to} any specific scholar.

Muṭlaq is not ‘umūm. This is the opinion held by

many uṣūlīs. It is excluded from the definition of ‘umūm because both of them are of different significance, whether in their meaning or usage. Muṭlaq literally means unspecified word, and as a term has been defined as,

mā dalla ‘alā fard aw afrād shā’i‘ah bi-dūni qaydin mustaqill³⁰

[what -word - indicates a person or (thing) or persons or (things) in general with no restriction in an unspecified manner]

The difference lies in the fact that ‘umūm refers to individuals applicable to it in the sense of inclusiveness, while muṭlaq, on the other hand, refers to any individual indicated by it in the sense that it has not been specifically identified.³¹ The following examples will illustrate a clear distinction between the two. The Qur’ān 103:1-2 says,

wa’l-‘aṣr inna al-insān la-fī khusr
[By the time, verily man is in loss]

The reference word here is insān or man which refers to every human being without restriction to any particular tribe, race or belief system, or of any particular time, and without exception. Thus, the verse means every human being is in loss generally.

The Qur’ān 58:3 says,

“But those who divorce their wives by ṣihār, then wish to go back on the word they uttered (it is ordained that such a one) should free a slave (raqabah) before they touch each other”.

The reference word here is raqabah or slave. It is a general word, but in this case it does not reflect to the totality of the slave. It does refer to slave in general but rather in the indeterminate sense. It can be a believing slave or an unbelieving one. In other words, it refers to the nature of the word in question.

NOTES

1. Goldziher, The Zāhirīs, p. 114.
2. Wansborough, Qur'anic Studies: Sources and Methods of Scriptural Interpretation (Oxford, 1977), p. 169.
3. Lane, p. 2148
4. Ibid, p. 2150
5. Ibid.
6. Majid Khaddūrī (tr.) Islamic Jurisprudence: Shāfi'ī's Risāla (Baltimore, 1961), p. 29.
7. cf. Ibid, p. 35. See chapter three.
8. al-Mu'tamad, I, p. 203.
9. Ibid, p. 204.
10. Ibid.
11. Ibid.
12. al-Āmidī, al-Iḥkām, II, p. 286.
13. al-Dharī'ah, I, p. 197.
14. Ibid.
15. Ibid.
16. al-Mustaṣfā, II, p. 12.
17. Ibid.
18. al-Āmidī, Iḥkām, II, p. 286
19. al-Mustaṣfā, II, p.
20. al-Āmidī, Iḥkām, II, p. 286
21. Ibid.
22. Cf. Ibid, pp. 286-8.
23. Nihāyah al-Sūl, II, p. 312.
24. Ibid., pp. 312ff.
25. Zuhayr, Uṣūl al-Fiqh, II, pp. 192-198.
26. Badrān, Uṣūl al-Fiqh, p. 133.
27. Ibid.
28. Abū Zahrah, Uṣūl al-Fiqh (Cairo, 1958), p. 157.
29. cf. Jam' al-Jawāmi', p.
30. Khudārī, Uṣūl al-Fiqh, p. 191.
31. al-Maḥṣūl, I, part 2, p. 522.

CHAPTER TWO

DALĀLAH AL-‘UMŪM (THE SIGNIFICATION OF ‘UMŪM)

As has been already indicated in the previous chapter, ‘umŪm refers to a type of words particularly used to indicate many things within their scope of reference. Most scholars are of the opinion that the word should refer to every individual under its coverage with certainty. The word al-mu'minŪn (those who have attained faith) is applied to every member of society who has the proper elements to enable them to be included under its term of reference. This reference is of no uncertain nature. Besides this lexical signification, an ‘umŪm word also has a certain legal significance which brings the entire statement a particular legal value.

This problem has been discussed by the uṣūlis, and it was evident that the difference of opinion concerning its value and authority has had some impact on their view with regard to certain details of law. Among the questions to be answered by uṣūlis is whether ‘umŪm is by itself definitively authoritative (qaṭ‘ī) or only belongs to the probable degree (ẓannī)?

There are at least two opposite views on this matter. The first view belongs to the great majority of

the Ḥanafites. They maintain that as far as ‘umūm words are concerned, they provide definitive or decisive proof. By this it follows that the rule attached to ‘umūm should cover every individual (who falls under its meaning) with certainty. It is incorrect to assume that the Lawgiver means by an ‘umūm word in His legislation only some part of it, if there is no valid evidence to prove that.

This view is apparently based on the fact that ‘umūm is shown by a definite word or words which are used particularly to indicate such meaning or to refer to some definite things. When a word is applied as such, it should be regarded as definitive until another evidence to prove otherwise has been found. Following that, they maintain that when an ‘umūm word is used, its application covers everything to which it is intended for certain, and they, therefore, are of definitive or qat‘ī degree. This is what they mean by “‘āmm provides a definitive authority to all its individuals in respect of coverage and rulings.”¹ It is by itself clear of its indication and hardly need any evidence to explain its intended meaning.²

They also assert that what should be relied on of a statement is what the word shows by its lexical application (maṭīq al-lughawī). Therefore, in interpreting a text, the conclusion reached should be based on it. And this true of ‘umūm. It is evident that what

the Lawgiver exactly means by a word He uses will remain as such with certainty, until there is proof to show the contrary. They, however, do not deny the possibility of ‘umūm being particularized; by which takhṣiṣ is not only rationally possible but is also legally possible and admissible on the grounds that it has been really used. No other evidence can be stronger than this to show probability and permissibility. Despite that, they regard this probability as purely rational, which gives no real impact on the definitive nature of ‘umūm when indicating all its individuals, as long as no contrary evidence could be perceived. In short, they do not give a place to merely rational conception in legal decision.

They also base their contention on what they understand as the Companions' way of understanding the concept. It has been reported that ‘Alī understood the Qur'ān 2:234 in its generic sense. The Qur'ān says,

“And if any of you die and leave wives behind, they shall undergo, without remarrying, a waiting period of four months and ten days; whereupon, when they have reached the end of their waiting term, there shall be no sin in whatever they may do with their persons in a lawful manner.”

He maintains that the ‘iddah or waiting period of a pregnant woman whose husband has died is the longest of the two. This is because he uses two evidences together.

In another case, Fāṭimah, the Prophet's daughter has been reported to have made a claim to inherit the Prophet's property based on the literal understanding of the Qur'ān 4:11,

"Concerning [the inheritance of] your children, God enjoins [this] upon you: The male shall have the equal of two female's share;"

However, the strength of these two arguments have been argued. When 'Alī has been reported to have taken the verse in the generic sense, Ibn Mas'ūd, also a Companion, has particularized the "died" verse with the "pregnant" verse. He makes the delivery as the end of ʿiddah regardless of its term. Similarly, the claim made by Fāṭimah has been objected, on the ground that the verse has been made khuṣūṣ by a Tradition. The Prophet has been reported to have said,

nahnu ma'āshir al-anbiyā' lā nūrath, mā taraknāhu ṣadaqah³

[We, the prophets could not be inherited, and whatever we have left is for charity (Ṣadaqah)]

The second view which is held by the Shāfi'ites, claims that ʿumūm brings ẓannī or probable proof only, whether it is before or after takhṣīṣ. It means that the rule attached to ʿumūm is applicable to every individual under its meaning but only to the degree of probable or most likely. In other words, the possibility that what is intended by the Lawgiver when He uses ʿumūm word is only some of its real reference

cannot be ruled out, even if there is no real takhṣiṣ. It has been established that almost all of ‘umūm in legal provision has, in fact, been made khuṣūṣ. This practical application of ‘umūm is so widely acknowledged to the extent that it becomes a maxim within the uṣūlīs,

mā min ‘āmm illā wa khuṣṣiṣā

This, in turn gives a strong indication of the probability of ‘umūm in every text to the effect that what is intended by the Lawgiver is only some of its meaning, even if there is no actual takhṣiṣ.

They also maintain that it is an agreed view that the meaning of a certain word intended by the Lawgiver is decisive at the expense of its legal connotation. Despite all these, they do not deny the obligation to follow the ‘umūm of a textual evidence until actual takhṣiṣ is evident.

According to the Mālikites, as also the Shāfi‘ites, ‘umūm statements in the Qur’ān and other accepted textual sources of law are of probable (ẓannī), not definitive (qaṭ‘ī), because ‘umūm is of the category of ẓāhir which they regard as probable.* Hence, a general legal statement pertains to all the particulars that it implies only with the degree of probability.

It is clear from the foregoing discussion, that the jumhūr, while ascertaining the probable nature of ‘umūm, do not rely on mere lexical reference of a word, as do the Ḥanafites. They, on the contrary, give a particular attention to what the Lawgiver intended; the Lawgiver sometimes uses ‘umūm word, but what He means is only partial. This means that the lexical meaning of a word is replaced by that of the Lawgiver. It gives strong argument for the probability of its indication which accordingly invalidates the decisiveness of its lexical meaning with due respect to its legal usage.

This difference in viewing the authority of ‘umūm brings nothing contradictory in their legal opinion as long as there is no khuṣūṣ evidence to contradict the ‘umūm. In that case, the rule of ‘umūm should be extended to every individual with no exception.⁵ The difference in the details of law will, in fact, arise when there exist two evidences; one is ‘umūm and the other is khuṣūṣ. This, accordingly, leads to the divergence of opinion, particularly with regard to the validity and authority of the principle of takḥṣiṣ.⁶ The Ḥanafites, therefore, maintain that ‘umūm of the Qur'ānic injunction should not be particularized by the Tradition of probable authenticity. The Mālikites and the Shāfi‘ites, on the other hand, based on the view of the indefinitiveness of ‘umūm accept the

takhṣiṣ of ʿumūm by the khuṣūṣ of probable authority. Consequently, they accept the takhṣiṣ of ʿumūm of the Qur'ān by those Traditions with probable authenticity. Furthermore, they argue that their view is in conformity with the way of the Companions. The latter have been reported to have used āḥād Tradition to explain or particularize the ʿumūm of the Qur'ān. They also suggest that to have both evidences, i.e. ʿumūm and khuṣūṣ, operating together, though in a limited manner, is better than to neglect either of them.'

With regard to the problem of consuming flesh of animals slaughtered by a Muslim who, for whatever reason, has not mentioned the name of God consciously, the differing legal opinion held by these two groups of scholars may be seen as the result of their view concerning this problem. The underlying evidence of this issue is the Qur'ān 6:121,

"Do not eat of any flesh that has not been slaughtered in the name of God; for that is sinful."

This Qur'ānic statement is very clear. It prohibits the consumption of any flesh which is slaughtered without mentioning the name of God. However, with regard to the same issue, the Prophet has been reported to have said,

"When a Muslim slaughtered (an animal), and he, however, did not mention the name of God, you can eat it for in a Muslim, there is one of God's names."

This Tradition seems to add to and interpret the obvious meaning of the Qur'ān.

The Shāfi'ites, basing themselves on these two evidences, maintain that this kind of flesh is permissible. This is because they regard the Tradition as a valid proof to particularize the Qur'ān. They regard both evidences as probable, the Qur'ān is because of its ʿumūm, and the tradition is because of its āḥād.⁸

There is another Tradition reported by Abū Dāwūd, which gives similar effect. the Prophet has been reported to have said,

"What is slaughtered by a Muslim is lawful whether he mentions God's name or not."

This Tradition is āḥād and is considered as authentic for the transmitters are said to be trustworthy.⁹

The Ḥanafites maintain that that kind of flesh is unlawful. This view is obviously based on the unacceptability of the takhṣiṣ of the Qur'ān by those two Traditions. This is because, in their view, the Tradition is of probable degree only, while the Qur'ān is definitive. The definitive could not be particularized by the probable.

Ibn Rushd, who has also noticed this difference, ascribes it not only to the ʿumūm -khuṣūṣ principle, but as a result of ^aseeming contradiction between the Qur'ān 6:121 and a Tradition reported by 'Ā'ishah,

anna qawman qālū li al-nabī: inna qawman ya'tūnanā bi al-laḥm lā nadrī adhakarū ism Allāh 'alayh am lā? fa qāla: sammū Allāh 'alayh antum wa kulūhu.

[A group of people has asked the Prophet, "Some people from the desert bring us meat, and we do not know whether the name of Allāh has been mentioned over it or not." The Prophet said, "Mention the name of Allāh over it and eat."¹⁰

Those who prohibit the consumption, maintain that the verse abrogates the Tradition. Al-Shāfi'ī, on the other hand, does not see it as such, because this Tradition apparently belongs to the Medinan period while the verse is Makkan. Therefore, al-Shāfi'ī combines the two evidences, and regards the command to mention God's name as only recommended. Al-Shāfi'ī regards the prohibitive clause, "Do not eat...for that is sinful" as referring to the sacrificial of animal as an offer to other than God. This is based on the Qur'ān 6:145,

"Or what impious (of the meat) on which a name has been invoked, other than God's."

The Ḥanafites, along with the Malikites and the Ḥanbalites also maintain that if the naming is omitted intentionally, the slaughtered animal is definitely unlawful. However, if the omission is because of forgetfulness, the animal is considered as lawful. This is based on a Tradition reported on the authority of Ibn 'Abbās, the Prophet says,

"al-muslim yakfihi ismuhu in nasiya an yusammā"

hīna yudbāḥ fa'lyadhkur ism Allāh wa lī-ya'kulhu

(reported by Bayhaqī and verified by al-Dāraquṭnī)

However, this Tradition is held as not fully authoritative, because one of the transmitters is said to be of weak memory. Ibn Kathīr views this Tradition as "raf'uhu khaṭa'")

Nevertheless, they produce another Tradition which is reported by Ibn Mājah on the authority of Ibn 'Abbās and Abū Hurayrah. The Prophet has been reported to have said,

inna Allāh waḍa'a 'an ummatī al-khaṭa' wa al-nis-
yān wa mā ustukrihū 'alayh.

[Allāh has lifted from my community mistake and forgetfulness and the action under duress]

Abū 'Abbās (d. 306 H), a Shāfi'ite maintains that 'umūm words must not be regarded as indicating 'umūm and ^{to} use it accordingly as authoritative until we try to find the text of its possible takhṣiṣ.¹¹ Al-Ghazālī says that it is invalid to execute what is indicated by 'umūm words before proper study has been made to find out the possibility of its takhṣiṣ.¹²

To what extent that this study should be made? Al-Bāqillānī maintains that it must be done to the degree of certainty (qaṭ'ī) that there is no takhṣiṣ whatsoever. However, Ibn Surayj, Imām ^{al-}Ḥaramayn al-Juwaynī, al-Ghazālī, al-Āmidī, Ibn Ḥājib and others agree that the process of such a finding should be only to the degree of probability (ghālib al-ẓann) that no takhṣiṣ has been found, for it is also hardly possible to reach such a finding with certainty.¹³

Al-Shīrāzī, in accepting this view argues that the shahādah or testimony is regarded as a clear proof when the person making it is clear from fisq. But a witness is not seen as reliable until the true situation has been investigated. The same applies here.¹⁴ Ibn Ḥazm maintains that it is imperative to use the word in its ‘umūm meaning without waiting or finding its possible takhṣiṣ. However, if there is evidence which clearly indicates the exclusion of some of its reference, then we should follow it.¹⁵ He refutes the argument for the investigation. He also asserts that if evidence of the takhṣiṣ could not be ascertained it is unlawful for any one to take it as other than ‘umūm.¹⁶

NOTES

1. Uşūl al-Sarakhsī, I, p. 136.
2. al-Darīnī, p. 535.
3. Ibid, p. 538.
4. Abū Zahrah, Mālik (Cairo, 1964), p. 262.
5. al-Darīnī, p. 536.
6. See part 2 of this study.
7. Zuhayr, Uşūl al-Fiqh, II, p. 299-304.
8. See Chapter 8.
9. Ibn Hajar, Bulūgh al-Marām, p. 330.
10. This Tradition has also been reported by Mālik. See al-Muwatta'a, p. 221.
11. al-Tabṣīrah, p. 119.
12. al-Mustaṣfā, II, p. 35.
13. al-Āmidī, Iḥkām, II, p. 47; Nihāyah al-Sūl, II, p. 86; Muntahā al-Sūl, II, p. 63 and al-Mustaṣfā, II, p. 35.
14. al-Tabṣīrah, p. 120.
15. Ibn Hazzam, Iḥkām, II, p. 98.
16. Ibid, p. 103.

CHAPTER THREE

THE TYPES OF ‘UMUM WORDS:

Previously, we are certain that most uṣūlis agree that ‘umūm is indicated by words. Only a few of them are of the opinion that ‘umūm could be identified also through meaning. However, this latter view does not affect the former, because meaning is also indicated by word. In drawing the conclusion from the word used in ^a legal text, uṣūlis have discovered that these words are not all the time giving the same effect as far as legal rulings are concerned.

The word which is accepted as ‘umūm in a particular text is not necessarily ‘umūm in another. It can indicate something else instead of its normal usage. We have discussed some views concerning ‘umūm when it appears in legal text, whether it should mean ‘umūm or khuṣūṣ or mean something else. This theoretical discussion leads us to identifying the types of ‘umūm words used in legal statements or texts. At least three types of ‘umūm words with regard to their meaning can be identified:

1. ‘Umūm intended to mean ‘umūm.
2. ‘Umūm intended to mean khuṣūṣ.
3. ‘Umūm intended to mean ‘umūm and khuṣūṣ.

1. ‘Umūm intended to mean ‘umūm:

There are discourses or statements which are addressed using ‘umūm word and the meaning intended by the Lawgiver is also ‘umūm absolutely. This is what al-Shāfi‘I describes as a general declaration of the book intended to be general but in which the particular is included.¹ The discourse is normally accompanied by an indication which obviously rejects any possibility of takhṣiṣ. This type of ‘umūm generally refers to Sunnah Allāh such as the creation of heaven and earth. For example the Qur’ān 11:6 says,

“There is no moving creature on earth but its sustenance depends on God. He knows the time and place of its definite abode and its temporary deposit.”²

The Qur’ān 21:30, also gives the same effect,

“We made from water every living thing.”

In the above verses, the eternal law of God is mentioned, and it is impossible to change it or to exclude anything from its governance. The general implication of this type of verse has to be understood as decisive and no possibility of takhṣiṣ can be perceived.³

This type of ‘umūm is mostly contained in the verses relating to the legal aspect which are based on

permanent causes. For example, the Qur'ān 4:23,

"Prohibited to you (for marriage) are your mothers, daughters and sisters..."

And in a Tradition the Prophet has been reported to have said,

"What is ḥarām (prohibited) by birth is ḥarām by suckling."⁴

In these instances, the ruling is on marriage; one is prohibited from marrying his mothers, daughters and sisters. The reason for the prohibition is either lineage or fosterage, and both are permanent causes which are not to be excepted in whatever conditions.

There are also discourses in ʿumūm words intended to be ʿumūm, but the possibility of their being particularized is not altogether denied. This type of ʿumūm does not mean something else because no takhṣīs is to be found. However, the interpretation of this type of ʿumūm has caused the scholars to differ in their view concerning a certain case or principle of law. Al-Jaṣṣās has identified eighty-seven words in verses of the Qur'ān with legal import as ʿumūm intended to be ʿumūm and which have not been particularized.⁵ But not all these words have been interpreted as ʿumūm by other scholars.

Some scholars classify this type of ʿumūm as "un-particularized ʿumūm". The discourse is phrased with an

‘umūm word and is not accompanied by any indication to deny the possibility of takhṣiṣ. At the same time, it does not have any indication to deny its ‘umūm meaning. However, by its very nature it accepts takhṣiṣ.

Uṣūlis are not of one opinion with regard to the strength of proof provided by this type of ‘umūm. However, they are in agreement on the view that this ‘umūm includes every individual to which it is applicable without any restriction. Therefore, with regard to verses with legal import, the duty imposed upon individuals through this ‘umūm should be understood as universally applicable.⁶

The uṣūlis have also discussed the extent to which the mujtahid has to search for the possibility of takhṣiṣ before he can safely rely on this meaning. This problem is discussed elsewhere in the present study.⁷

2. ‘Umūm to mean khuṣūṣ:

The discourse is sometimes expressed using an ‘umūm word, but this is not its intended meaning from the very beginning whether from the linguistic point of view or in its legal significance. Only one or some of the individuals referred to by the word is really intended. This is because in the discourse itself, a clear indication to show the intended meaning could be

found. For example, the Qur'ān 22:73 says,

"O Men! A parable is set forth [herewith]; so listen to it, verily those to whom you pray, apart from God, will not create a fly, even if they were joined together to do it; and if a fly were to snatch anything from them, they could never rescue it from him."

The word 'men' (al-nās) is commonly used as ‘umūm, applying to all men or people. Shāfi‘ī says that it is clear to those learned in ^{the} Arab tongue that the meaning implied here is some of the 'men', to exclude some others. This is because, no other people were addressed by this discourse except those who worship other gods than God.*

Another example is the Qur'ān 2:199,

"Then pour forth from where the people poured forth."

Al-Shāfi‘ī maintains that it was certain that not all the people were present at ‘Arafah in the time of the Prophet and that it was the Prophet and those who were with him were those to whom this order was addressed.* Besides, it is correct according to ^{the} Arab tongue to refer the 'people' mentioned above as meaning some of the people only.

According to Khallāf, even the Qur'ān 3:97 has this effect. The Qur'ān says,

"Pilgrimage to the House is a duty men owe to God - those who can afford the journey."

'Men' or al-nās in this verse is not ʿumūm in the strict meaning of the term, because what is really meant is only mukallaf with the exception of children and the insane.¹⁰ In spite of the fact that the word is ʿumūm, the indication and legal sense shows the contrary.

In his Ahkām al-Qur'ān, al-Jaṣṣās cites the Qur'ān 5:5 as ʿumūm intended to mean khuṣūṣ. The Qur'ān 5:5 says,

"The food of those who have received the Scripture is lawful for you."

Food is an ʿumūm word indicating all foods eaten by the Christians and the Jews with the exception of pork. However, it actually refers to "slaughtered meat" of the Christians and the Jews, not vegetables, fruits, bread etc.¹¹ In this verse, to regard "the food" as ʿumūm intended to be ʿumūm or ʿumūm intended to be khuṣūṣ for "slaughtered meat" does not affect the legal ruling derived therefrom. In either case, the food of Christians and Jews including their slaughtered meat, is lawful for Muslims. The reason that Jaṣṣās considers "the food" to be an ʿumūm word intended to be khuṣūṣ is because there is no question of the lawfulness of bread, vegetables and fruits for the Muslims, because there is no Jewish, Christian or Muslim bread, vegetables and the like.¹²

‘Umūm intended to mean khuṣūṣ (al-‘umūm al-makhṣūṣ):

An ‘umūm word is sometimes used in the discourse, but the meaning intended is not as such because it has been made khuṣūṣ. The takhṣīṣ has been made by one of the takhṣīṣ elements. It is important to note that the meaning referred to by the word is not discarded altogether as in the case of ‘umūm of the second type. If the cause of takhṣīṣ ceases to exist, the discourse should be applied as it was.

This can be illustrated by the following example. The Qur'ān 2:185 says,

"So, every one of you who is present during that month should spend it in fasting, but if any one is ill or on a journey, the prescribed period (should be made up) by days later."

This verse prescribes obligatory fasting upon every one who is present in the month of Ramaḍān. However, the obligation universally imposed by the first part of the verse has been particularized by the next. By this limitation, the one who is ill or on a journey is exempted from this prescribed fasting. But in this case the cause of exception is not permanent,^{and} the said category of Muslims should do it when they are in^a normal condition.

Al-Shāfi‘ī gives two examples for this case. One is on fasting, and the other is on prayer.¹³ The

2:
Qur'ān_h 183-184 says,

"O you who have attained to faith! Fasting is ordained for you as it was ordained for those before you, so you might remain conscious of God; [fasting] during a certain number of days. But whoever of you is ill, or on a journey, [shall fast instead for the same] number of other days..."

And the Qur'ān 4:103 says,

"Verily, for all believers prayer is indeed a sacred duty linked to particular times [of day]"

In the above two verses, as also the verse mentioned earlier, fasting and prayer belong to the same category. They are obligatory upon every believer as indicated by the above-mentioned statement. However, with regard to the first verse, the exemption has been made clear by the verse itself, for it is not incumbent upon the one who is ill or on a journey to do the prescribed fasting on the prescribed days. Moreover, this verse and the latter has been made khuṣūṣ. The immature and the lunatic are excluded from these obligations by a Tradition. It has been reported that the Prophet has said,

"No obligation is imposed on three: the one asleep, until he awakes; the child, until he becomes of age; and the lunatic, until he recovers."¹⁴

It should be noted also that another verse of the Qur'ān has also excluded , menstruating women during the period of menstruation from these duties.

3. ‘Umūm words intended to mean ‘umūm and khuṣūṣ together:

This is a kind of discourse which is addressed in ‘umūm words and ‘umūm and khuṣūṣ are meant. This seems contradictory. However, in actual fact it is not. To be exact, they are viewed from different angle. For example the Qur'ān 9:41 says,

"Go forth to war, whether it be easy or difficult [for you], and strive hard in God's cause with your possessions and your lives..."

Both the words infirū (go forth) and jāhidū (strive hard) are in the plural and, therefore, should be understood as addressing the believers as a whole. Thus, it indicates that jihād is incumbent upon every one. The failure to undertake this duty would incur punishment. However, it is obvious that not every one is capable of carrying out this jihād effectively. Only a few among them who are trained in the art of warfare can effectively do this job. Therefore, it is only them, i.e a selective group of people in the community, that this verse ^{is} specifically addressed to. Upon the completion of the duty by the latter, the whole community is considered as having fulfilled the responsibility.

In short, uṣūlīs describe this category of ‘umūm as al-‘āmm alladhī yurādu minhu al-‘umūm wa yudkhiluhu

al-khuṣūṣ meaning the ʿumūm which is intended to be general, and the particular is included. By this ʿumūm also, uṣūlīs and Muslim jurists in general describe certain obligation as fard kifāyah or collective duty. It means that the duty is imposed on the believers collectively and in consequence of the observance thereof by some, becomes of no force in respect of the rest. Through these and similar verses, as well as Traditions the uṣūlīs reach the said conclusion.¹⁵

NOTES

1. al-Risālah, p. 96.
2. cf. the Qur'ān 4:176; 14:37; 18:49 and 39:63.
3. Khallāf, Uṣūl al-Fiqh (Kuwayt, 1983), p. 185.
4. al-Muwatta', p. 297.
5. Antar Ibn-Stanford Smith, "Significant Features of al-Jaṣṣāṣ' Methodology for Deriving Legal Ruling From the Qur'ān", Ph. D dissertation (University of Michigan, U.S.A., 1985), p. 54.
6. al-Darīfī, p. 533.
7. See chapter two.
8. al-Risālah, p. 100.
9. Ibid, p. 101.
10. Khallāf, Uṣūl al-Fiqh, p. 185.
11. al-Jaṣṣāṣ, Ahkām al-Qur'ān, II, p. 322.
12. Ibid; cf. Smith, p. 60.
13. al-Risālah, pp. 98-99.
14. Abū Dāwūd, IV, pp. 140-141; Ibn Ḥanbal, al-Musnad, II, pp. 188, 197, 279, 335 and 348-9.
15. See al-Darīfī, pp. 522-526.

CHAPTER FOUR

‘UMŪM WORDS (ALFĀZ AL-‘UMŪM):

In this chapter, the problem of whether ‘umŪm has words specially used for its general meaning or not will be discussed. Previously we have indicated that most uṣūlīs are of the view that ‘umŪm is identifiable through alfāz or words.¹ Do all these words indicate ‘umŪm as their real meanings or do they indicate other meanings in the real sense while indicating ‘umŪm figuratively only, or do they share the meaning and usage with other things? Al-Ghazālī mentions three groups of scholars who are involved in discussing this problem. They are:

1. the exponents of ‘umŪm.
2. the exponents of khuṣūṣ; and
3. the wāqifites who do not give their explicit judgement either for ‘umŪm or khuṣūṣ unless they are shown by obvious indications.²

Exponents of ‘umŪm:

Among those who seemed to be in this group are Abū al-Ḥusayn al-Baṣrī,³ Imām al-Ḥaramayn al-Juwaynī,⁴ al-Shīrāzī,⁵ al-Ghazālī,⁶ and other scholars among

the theologians (mutakallimūn). They insist on the point that there are words which, when used, are applied to every individual they refer to in the real sense. This usage is based merely on the expression of language. Abū al-Ḥusayn al-Baṣrī says that the fact that these words refer to comprehensiveness is very clear to discern, while to understand other meanings requires explanation. He has dealt with this problem in detail in his Mu'tamad to prove that there are words which are specifically 'umūm.⁷

In this case Ibn Ḥazm maintains that every Qur'ānic statement must be interpreted as universally applicable unless, of course, another passage abrogates that kind of general validity, by justifying its particular application to specific cases.⁸

These scholars maintain that an 'umūm word should be applied to every individual applicable to it, unless there is indication to show that the word is purposely used in the figurative connotation. They insist that there are words exclusively used to signify 'umūm. If the words are used to refer to other than 'umūm the usage is not in the real sense. Their argument basically rest on five grounds:

1. Men of language give to every item its own name, and such a naming is necessary. Thus, it is certain that there must be certain words to indicate 'umūm.

2. Some things could be exempted from the general application by excluding anything which would have been inclusive prior to its exemption. For example, it is acceptable to say,

"uqtulū al-mushrikīn illā Zayd"

[kill unbelievers except Zayd]

"wa man dakhala al-dār fa akrimhu illā al-fāsiq"

[whoever enters the house, . . . respect him except the wrongdoer]

This means that the words al-mushrikūn and man stand for ʿumūm.

3. The words can be emphasised by general terms, such as idrib al-rijāl aймаʿīn (beat the men, all of them). It is, however, incorrect to say idrib Zayd aймаʿīn. Thus, the existence of words muakkad for ʿumūm means ʿumūm words must exist.

4. It is incorrect to limit the meaning of ʿumūm words indicating the minimum of plurals only, and is incorrect as well to say that it is a mushtarak (homonym). The meaning intended may still be unknown and could not be discovered without an indicant (qarīnah), which must be either a word or a meaning (maʿnā). If it is a word, the disagreement arises as to whether the Arab uses a certain word to indicate istighrāq (inclusiveness) or not. On the other hand, if the indicant has meaning, there is no doubt that that meaning follows lafz. Therefore, there is ^a word

which is referred to as an ‘umūm word.

5. Most of the Companions and the men of language alike understand the Qur'ān and the Sunnah (Tradition) as ‘umūm to the extent that there exists no khuṣūṣ. They always demand evidence of particularization whenever a verse or a Tradition is mentioned. They never asked for evidence in the case of ‘umūm. For instance, they understand the Qur'ān 4: 11,

"yūṣīkum Allāh fī awlādikum"

[God charges you, concerning your children]

as referring to the believers as well as the Prophet's descendants. Therefore, they applied this verse to Fāṭimah, the daughter of the Prophet until Abū Bakr, mentioned a Tradition to exclude the Prophet's descendants.⁹

In spite of the fact that al-Ghazālī criticizes these arguments, it seems that he himself was in favour of this group. In another instance he says that words to indicate ‘umūm are necessary for all languages.¹⁰

Al-Ghazālī argues for ‘umūm on three points. First, one who disobeys a general command will be responsible for such an omission. On the other hand, if he follows the command in its fullest term, the responsibility will be removed from him. For example, a father ordered his son, "O son, whoever enters our house today give him a pound." [man dakhala al-dār...]

The son accordingly gives to every one who enters the house one pound. The father, therefore, cannot make any objection even if the son for instance, has given a pound to someone the father did not like. The order has been expressed in general terms. In the present case the word man is used. Any person with sound mind will, undoubtedly, blame the father if he objected ^{to} the son's action.

On the other hand, if the son fails to give "a pound" to a person who also enters the house, then, the father has the right to blame the son for the latter's failure. From this illustration, it is clear that the word is used to indicate the general nature of the command.

Secondly, ^a general statement (of informative form) or khavar accepts criticism. For instance, one says, "mā ra'aytu al-yawm ahadan" [I did not see anyone today]. But, he, in fact, did see a group of people. Therefore, his statement is wrong and false. If he subsequently says, "What I mean is someone other than that group," then his claim means disapproval. The word ahad is indefinite, preceded by negation, which is 'umūm word for those who say so. In this respect the Qur'ān 6:91 has been used to prove the assertion. The Qur'ān says,

"mā anzala Allāh 'alā bashar"

[When they say: nothing does God send down to man

(by way of revelation)]

This verse reported the unbeliever's denial of revelation prior to answering it. If it was not used to give a general meaning, there was hardly any need to refute their allegation.

Thirdly, the effect of an 'umūm word will be inclusive. For example if a person says, "I have freed my slaves male and female" and then he dies not long after that, all of them are free accordingly. By these arguments al-Ghazālī concludes that when 'umūm words are used, our mind will immediately picture every individual referred to. The reference here is in the real sense. If the words are used to denote other than that, the application is, then, figurative. ¹¹

Al-Āmidī mentions three types of arguments given by this group: (1) textual (naṣṣiyyah); (2) consensus (ijmā'), and (3) meaning (ma'nawiyyah).¹² With regard to the textual evidence they quote the Qur'ān 11:45,

"And Nūḥ called out for his Sustainer (God) and said: O my Sustainer! Verily my son was of my family."

Nūḥ has placed his hope on God to save one of his sons referring to the promise, "We will save you and your family (ahloka) and to the verse 40,

"Place on board (this ark) one pair of each [kind of animal] of either sex, as well as your family."

Nūḥ apparently understood "your family as comprising everyone in his family. But God answered him by saying that he (the son in question) is not among "your family". This is to say that Nūḥ's initial understanding of the word is correct. If the annexation of ahl (family) to Nūḥ does not show ʿumūm, then the conversation should not be like that.

They also produce the Qur'ān 21:98,

"[Then they will be told:] Verily, you and all that you worship instead of God are but the fuel of hell: that is what you destined for."

After the verse had been revealed, Ibn Zibā^{al-}ʿrā said, "I will argue with Muḥammad." He went to the Prophet and said: "Some people (who now have accepted Islam) have been worshipping Angels and Jesus, do you think all of them will be in the Hellfire?" He understood this from the word mā. It has been reported that the Prophet did not refute this argument, but later another verse of the Qur'ān was revealed, not to deny the above argument but to particularize or explain it further. The Qur'ān 21:101 says,

"[But] behold, as for those for whom [the decree of] ultimate good has already gone forth from Us - these will be kept far away from the [hell]."

They also argue on the basis of the Qur'ān 29:31,

"And so, when Our (heavenly) messenger came to Abraham with the glad tiding (of the birth of Isaac) they [also] said, Behold, we are about to destroy the people of that land, for its people

are truly evildoers."

By this verse, Abraham understands ahl hādhihī al-qaryah or "the people of that land" in ‘umūm whom Lūṭ is also included. The Angels admit this, and they answer him by exempting Lūṭ and his family. And, then go on to exempt his wife from among those who were saved. All these Qur'ānic verses have been understood as ‘umūm, and must not be comprehended otherwise.

With regard to these verses of the Qur'ān al-Āmidī says that all of them do not provide any argument for those who hold this view. Concerning the story of Nūḥ, the annexation of ahl is sometimes for ‘umūm, but there is also occasion when it is used to show khuṣūṣ. For example the following sentence,

"Jama‘a al-sultān ahl al-balad"

[the king has gathered the country's folks]

This statement, certainly, does not include children and sick persons for obvious reasons. If that is the case, to take it as khuṣūṣ when there is clear indication for it is no better than to take it as ‘umūm when there is also an indication for the latter. Al-Āmidī clarifies his position. He maintains that he does not deny the validity of understanding it as ‘umūm through indication for this is not the subject of the difference. What most of the uṣūlīs are not in agreement is with regard to whether it is used as ‘umūm in the real sense or not.¹³ This refutation is

also applicable to their understanding of the story about Abraham.

With regard to the story of Ibn ^{al-}Ziba'ra, there is no argument for them as well. His question is invalid because he obviously assumes that mā is an ʿumūm which can be used to include rational beings. The fact is otherwise. For that reason, the Prophet . . . replied to the argument disapprovingly by saying, "What makes you so ignorant . . . your own language. Have you no knowledge that mā is used for non-rational being?" i.e. in the real sense.

This group also maintains that it was a subject of agreement among the Companions to understand some words as ʿumūm. For example, ʿUmar has been reported to have argued with Abū Bakr concerning the latter's decision to kill those who deny the duty of paying zakāt. ʿUmar says:

"How could you kill them, while the Prophet has said: "I was ordered to kill people until they proclaim: there is no god but God; when they proclaim such, their blood and property are protected."

No one among the Companions has refuted this argument; but Abū Bakr has made it clear by an exceptional clause which ʿUmar did not mention. The clause is "illā bi haqqihi". This shows that plural prefixed by alif lām is for ʿumūm. Fāṭimah has produced the Qur'ān, yūṣīkum Allāh fī awlādikum li al-dhakari

mithlu ḥaẓẓi al-unthayayn to claim her right to inherit whatever her father (the Prophet) has left behind. The Companions did not reject her argument as invalid. Her failure to win the case was because the verse which she has produced to support her claim has been particularized by the Prophet is the Tradition,

"We, the Prophets could not be inherited, whatever we have left is for charity (ṣadaqah)."

Abū Bakr explained that to her.

The Companions have agreed unanimously on the generality of the Qur'ān

1. 5:38 (wa al-sāriqu wa al-sāriqatu);
2. 17:33 (wa man qutila maẓlūma);
3. 24:2 (al-zāniyatu wa al-zānī);
4. 2:278 (Wa dharū mā baqiya min al-ribā);
5. 4:29 (wa taqtulū anfusakum);
6. 5:95 (yā ayyuhā alladhīna āmanū lā taqtulū al-ṣayd wa antum ḥurum)

They also understand the following Traditions as universally applicable,

1. lā waṣiyyata li wārith.
2. walā tunkah al-mar'ah 'alā 'ammatihā walā khālatihā
3. wa man alqā silāḥahu fa huwa āmin ¹⁴

Al-Āmidī does not agree that these verses and Traditions are the proofs for the existence of 'umūm, because, al-Āmidī argues, they are used as 'umūm

for very obvious indications. The mere use of the words does not indicate ‘umūm primarily as this group claims it to be.¹⁵

From the point of meaning or ma‘nā, ‘umūm is seen as an obvious matter. It is something very important to know and to understand accordingly. Therefore it seems impossible for the men of language to neglect it and not to give any word indicating it, while at the same time there are words specially used to indicate one, two and other numerical nouns. There are also words for khavar (statements), interrogatives, expressions of hope (tarajīl) and others. There are many examples put forward by this group to support their view. Some of these will be discussed in the section dealing with ‘umūm words. Al-Āmidī, however, is not ready to accept all these arguments; although in some cases his own replies are no less convincing than theirs.¹⁶

Exponents of khuṣūṣ:

This group of scholars suggests that a word which is used to indicate ‘umūm, . . . in fact may be understood to refer to a minimum amount of plural.¹⁷ They maintain that the application of the word to indicate 'the limited general' is for certain, and it indicates the remaining amount only to a degree of probability or uncertainty. The Sharī‘ah value should not be based on uncertainty. Therefore, the former has to be taken as valid. Al-Ghazālī says however, that this opinion does not have any well-grounded argument. If the minimum amount of generality provides certain evidence, it does not necessarily indicate the remaining as only figuratively applicable. On the contrary, if the remaining is taken into account, it must either be used in the real or figurative meaning. As with the problem of amr, if the amr is to be interpreted as indicating al-nudbah or recommended for certain, it does not necessarily indicate wāḍib (obligatory) only in the figurative sense.¹⁸

Al-Ghazālī also points out that as three is a certain quantity in ten, it is, however, incorrect to consider the remaining quantity (seven) is not real.¹⁹ Similarly, this opinion is also unacceptable on the ground that if ‘umūm words rely on the minimum plural, it means that the remaining is either uncertain or

questionable. Al-Ghazālī therefore, concludes that this group, is in fact uncertain about the point at issue.²⁰

According to al-Āmidī the arguments put forward by this group to support their view are not reliable. Firstly, they maintain that when a word is used, the reference to something particular is certain, but whether it shows ‘umūm or not is a matter of uncertainty. It is preferable to hold what is certain as its real meaning. Therefore, the word is used for khuṣūṣ in the real sense. To this argument, al-Āmidī replies that to say khuṣūṣ is certain does not necessarily imply the remaining as only figuratively applicable. When three is certain in ten, it does not indicate that seven is an uncertain quantity. Therefore, it should be regarded as figurative only.²¹ This is also what al-Ghazālī meant previously.

Secondly, they also argue that these words are normally used for khuṣūṣ, and not ‘umūm. For example, someone says,

"jama‘a al-sultān al-tujjār wa al-ṣunnā‘ wa kull ṣāhib ḥirfah"

[The king gathered the merchants, craftsmen and all workers].

For some very obvious reasons, what are meant by tujjār, ṣunnā‘ and kullu ṣāhib ḥirfah are only some of them. To take what is normally understood as its real

meaning is preferable to the other way round.

Al-Āmidī does not accept this theory, arguing that "Even if we can accept this "normal usage" theory, we cannot accept that these words are used in the real sense for khuṣūṣ and in the figurative sense for ʿumūm. For example, the word shujāʿ or "brave" is used in the real meaning for a particular snake, although it is normally and frequently used to indicate a brave man." 22

Thirdly, they also maintain that if a father told his son,

"akrim al-rijāl"

[respect the men] or,

"man dakhala al-dār fa āṭihī dirham"

[whoever enter the house give him a dirham],

it is ridiculous to ask for explanation if the words are meant for khuṣūṣ. If, on the other hand, these words are meant for ʿumūm, the asking for explanation is reasonable. Therefore, the former should be of their real applications. 23

Al-Āmidī replies to this argument by saying that the suitability of posing a question on the intended ʿumūm does not deny the words are ʿumūm in their real meanings. This is because it is not invalid to ask for explanation when someone says, "dakhala al-sultān al-balad" [the king entered the country] or "laqītu al-baḥr" [I have met the sea] and so on. To all these

statements the asking for explanation is not improper. For example, with regard to the first statement a question could be asked, whether what he means by al-sulṭān is the king himself or his man only, and concerning the second statement, one can ask about the intended meaning of the word 'sea' whether it is the sea in the real sense or it refers to a generous person. All these examples show that although it is not improper to ask for explanation, these words are validly used in their real meanings.

Similarly, although it is not proper for someone to ask about some of its meanings because of its certainty, it does not necessarily indicate the word as used in the real sense. This is properly shown by 'three' as a certain quantity within 'ten'.

Fourthly, they maintain that if the sentence ra'aytu al-rijāl is ʿumūm, it would be false if he saw some of the men only. But it is not unusual in Arabic to say so, even if only some of the men are intended. Al-Āmidī says that it is false, if such a word cannot be used figuratively. The facts are against their view. It is normal in Arabic to say ra'aytu asadan [I saw a lion] or himāran [donkey] and so on when what he really saw is a brave man ^{or} a stupid person respectively. These statements are right, even though their real applications are for other meanings. This is, however, contrary to a statement, "ra'aytu ʿasharata

riḡāl" [I saw ten men] while he only saw five of them. This is because ten is not altogether suitable to be expressed by five whether it is in the real or figurative sense.²⁴

Fifthly, they say that if these words are for ‘umūm, the ta’kīd (the emphasis) following them would be of no use, and the istithnā’ (exception) would bring contradiction. Al-Āmidī answers this by comparing the use of ta’kīd in khuṣūṣ itself. For example,

ḡā’a Zaydun ‘aynuhu nafsuḡu

[lit. Has come Zayd himself or personally]

and the emphasis of numerical nouns in the phrase "ṡilka ‘aṡharatun kāmilah". If the emphasis on the latter is permissible, it would be unreasonable to deny it to the former.

The Wāqifites

A group of scholars prefers not to give any decision on this kind of word if there is no clear indication to show either side. This group is known as the wāqifites or wāqifiyyah. Among those who are in favour of this position are al-Qāḡī Abū Bakr al-Bāqillānī, al-Aṡṡarī and a group of the theologians (mutakallimūn). They hold the opinion that the alleged ‘umūm words are in fact neither used to refer to ‘umūm ex-

clusively nor khuṣūṣ. As far as ʿumūm is concerned they maintain that the linguistic expression simply does not offer ʿumūm at all; language does not have any form which in itself should always be interpreted as being universally applicable. If a statement is intended to have universal applicability, then evidence independent of the linguistic expression must be supplied to show that the statement in question does not refer to a specific case.²⁵

The words may be ʿumūm or khuṣūṣ depending on their application. They base their view on the following arguments. First, the alleged ʿumūm words are either identified through reason (ʿaql) or traditional evidence (naql) of grammarians or the Shāriʿ (Lawgiver). If the evidence is from the latter, it must be either through āḥād or tawātur transmission. Reason has no authority in this sense and traditional evidence by āḥād authority cannot stand as proof. While, with regard to tawātur transmission, there is no proof whatsoever that the knowledge has been gained through it, because if it is so, the knowledge must be of darūrī or axiomatic knowledge.

Secondly, the Arab uses the word ʿayn in many of its appellations. Also the word lawn (colour) is used to indicate black, white, red etc in its single application. Thus, the words are common words (mushtarak).

Therefore, one who claims that the word colour, for instance, is used in its real sense for black and in figurative sense for white, has opined so arbitrarily. It is not infrequent that the alleged ‘umūm words have been used to indicate khuṣūṣ and ‘umūm indiscriminately. It seems, however, that the use of the word for khuṣūṣ is rather common. Only on a rare occasion has the word been used for ‘umūm absolutely, whether in the Qur'ān, the Traditions or in general conversations. Therefore, there is no basis for those who claim that it is used for khuṣūṣ figuratively and for ‘umūm in its real sense.

Thirdly, when an ‘umūm word is used in a statement, for instance, it is not improper to ask the following question, "Does it mean all or a few only?" Also, when one says, "Whoever obeys me, I will honour him" it is proper to ask "Even if he is a hypocrite?" The answer must be either 'yes' or 'no'. These two examples show that these words are used as common words (mushtarak).²⁶

Sayyid Murtaḍā seems to be among the wāqifiyyah group. He says that the same word can be ‘umūm or khuṣūṣ depending on its usage. The word cannot exclusively be said to be an ‘umūm word. Suppose one says, for example, ḍarabtu ghilmānī [I punished my children] and what he really means is some of them. It is ‘umūm because of its reference to more than one, on the one

hand. On the other hand, it is khuṣūṣ in view of the reference to those to which the word is really applicable.²⁷ For him, ʿumūm and khuṣūṣ are like few and many (qalīl wa kathīr). The words are meant as such because of their annexation to another words. Whether things are few or many depends on the word they refer to. He concludes that by attaching one word to two different things, the meaning has changed altogether.²⁸

Sayyid Murtadā divides ʿumūm words into two categories. In the first category he includes the words which are used in their real meaning to signify one, or some of the individuals the word is really referring to, or all of them. For example the word man, in its conditional and interrogative use. The second category includes the words to be used to signify every individual they refer to because of suitability and to signify some of them because of necessity. It could not be applied to a lesser quantity than that which is initially intended. This category is applicable to words in plural form prefixed by alif lam, such as al-rijāl and al-muslimūn. The words denote every male person and every believing person respectively, and must be applied to at least three of them. They cannot be used to refer to one or two of them only absolutely.²⁹

Besides these three views, there is another opinion which maintains that ‘umūm has specific words when it is an order (amr) and a prohibition (nahy), but not when it is a khābar (informative or descriptive form). The scholars who maintain this fail to provide convincing evidence. Imām ^{al-}Ḥaramayn al-Juwaynī refutes this opinion outright. He argues that there is no basis at all to differentiate between descriptive, imperative or prohibitive form in this problem.³⁰

As has been mentioned earlier in this chapter, the jumhūr is of the opinion that there are ‘umūm words, when they are used they show ‘umūm as the real signification. If they are used to indicate other than ‘umūm, their usage is in the figurative sense. Although al-Ghazālī seems to criticise every argument put forward by any of these three groups, he, however, prefers the opinion held by the jumhūr and gives some credit to the arguments for ‘umūm.

THE WORDS WHICH ARE CONSIDERED AS ‘UMŪM WORDS:

In the following, the discussion will be on the words claimed by most uṣūlis as having general signification. They are classified under different groups by different scholars. Al-Ghazālī groups these words under five headings,³¹ while ‘Abd al-Wahhāb Khallāf divides them under six categories.³² Much later, Muḥammad Ḥasan Hitū classifies them thoroughly according to their respective functions and grammatical positions.³³ It seems, however, that this latter classification follows the groupings made by Abū al-Ḥusayn al-Baṣrī but with a few modification.³⁴ This classification seems helpful and clear, but on the other hand, it seems complicated as so many sub-headings are used.

Before we proceed to discuss the problem in detail, it seems important to make a few remarks concerning ‘umŪm words in general. In fact, some uṣūlis maintain that ‘umŪm as such is identifiable through three methods.³⁵ First, those which are considered as ‘umŪm through linguistic expression. Second, those which are ‘umŪm by custom and third, which are regarded as ‘umŪm through ‘aql(reason). The latter two categories are, strictly speaking, only methods of clarifying the ‘umŪm of the first method. Thus, they will be treated in conjunction with other ‘umŪm words.

With regard to ‘umūm as can be ascertained through linguistic expression the present study will discuss it under the following categories:

- a. Singular nouns.
- b. Words in plural (jam‘)
- c. kull and jamī‘
- d. mā , man and ayy
- e. Indefinite words in the negative form.

a. Singular nouns:

According to al-Ghazālī a singular noun is ‘umūm in three conditions. First, when it is preceded by alif lam. Second, when the word is in negative, and third, the word is in idāfah or genitive construction.³⁶ The second condition is discussed in a separate section together with plural.

Singular nouns prefixed by alif lām:

With regard to this, uṣūlis as well as the grammarians divide the functions of alif lām when it precedes nouns into the following. First, if alif lām is to indicate previous knowledge, the noun will become a known noun. In other words, alif lām is used to distinguish the noun as known to the reader in a definite sense by its being mentioned before. For

example, the word al-rasūl in the Qur'ān 73:15-16,

"kamā arsalnā ilā Fir'awn rasūla fa'aṣā Fir'awn al-rasūl"

[Like as We sent down to Pharaoh an apostle, and Pharaoh disobeyed the apostle. In this case, the pronoun may replace it]

The noun is also distinguished by being conceived in the mind, as in the Qur'ān 9:40,

"idh humā fī al-ghār"

[When they two were in the cave]

It also becomes a known noun by its being applied to something which exists at the moment. This does not occur except for example in the following situations;

1. after demonstrative pronoun (ism al-ishārah) as in the sentence, "jā'anī hādhā al-raḡul" (this man has come to me).

2. after vocative particle ayy as in "ayyuhā al-raḡul" (O man).

3. or after idhā indicating something ^{has} happen unexpectedly as in "kharaja fa idhā al-asad" (He went forth, and lo, there was the lion).³⁷

Among the scholars there are some who maintain that a noun when prefixed by alif lām will show only previous knowledge, or it is only used as lām al-ʿahd (lām indicating previous knowledge). It is, however, a matter of consensus that alif lām is indicating previous knowledge if the relevant statement has a clear indication of such a usage.

What matters in this problem is that there was a group of scholars who maintain that when lām of definition (lām al-maʿrifah) prefixes singular nouns, by which it indicates genus, it must be taken as used to show previous knowledge in the real sense (ḥaqīqah). Only after it was certain that it is inappropriate to show ʿahd, then, it could be understood as showing genus, but this also is only in the figurative sense. It, therefore, can be said as indicating ʿumūm. This view is said to be held by al-Bazdawī in his Kashf al-asrār³⁸. This point of view is, however, not thoroughly reliable. It has been reported that even those who hold this opinion, have later shifted to another view which sees this kind of noun as showing genus.³⁹

Al-Shīrāzī criticises this view. If the definite noun shows only ʿahd (previous knowledge) it would be wrong to begin a sentence by it. But it is not so. There are many instances of Divine discourses which demonstrate the mistake of this view.

They give a few examples to this effect. Among them are;

1. the Qur'ān 94:5-6,

"fa inna maʿa'l-ʿusrī yusrā wa inna maʿa'l-ʿusrī yusrā"

[And, behold, with every hardship comes ease; verily with every hardship comes ease].

2. the sentence,

"dakhaltu al-sūq fa ra'aytu rajulan thumma
'udtu ilā al-sūq fa ra'aytu al-rajul"

[I entered the market, and I saw a man. (A little while) I went again to the market and I saw the man].

All these examples show 'ahd.

To these arguments al-Shīrāzī says that , we accept the above examples as showing 'ahd, because the respective nouns refer to the same nouns mentioned earlier. These instances are of special references, because there are obvious indications showing that these nouns are for 'ahd. But this is not applicable to the case at issue.⁴⁰

The second view is that a noun prefixed by alif lām shows genus only and not its totality. This view is held by Abū Hāshim as reported by Abū al-Ḥusayn al-Basrī⁴¹ and al-Rāzī.⁴²

The arguments for this view are as follows; Firstly, if it is used for 'umūm or to indicate the totality of a kind of species, it must ^{be} also possible to be emphasised by kull and jamī' as in the case of man; but the case is otherwise. It is objectionable according to the Arabic usage to say, jā'anī al-rajul ajma'ūn [The man, all of them, has come to me]; or to say, ra'aytu al-insān kullahum [I saw the person every one of them].

Secondly, it is also objectionable to use an exception, as for example, ra'aytu al-insān illā al-mu'minīn. However, if it is ʿumūm such an expression should be acceptable. Therefore, the Qur'ān 103:1-2, "wa al-ʿaṣr inna al-insāna lafi khusr illā alladhīna āmanū" should be understood as such in the figurative sense, in the place of the exception of different in kind. To understand the verse in the light of the latter is acceptable, but to understand it in the real sense is improper. It is also possible to depict it as meaning that the loss incurs upon the people in general except the believers. This way of understanding this kind of statement is acceptable.⁴³

Al-Rāzī argues for the above view on the following grounds;⁴⁴

- 1 If someone says, "labistu al-thawb" [I wear the shirt], and "wa sharibtu al-mā'" [I drink water], it does not come to our mind that it means comprehensiveness or istighrāq.
- 2 It could not be emphasised by the words which are used normally to emphasise plurals. For example, it is not correct to say, "jā'anī al-rajul kulluhum aīma'ūn".
- 3 It could not be modified by adjectives specially designed for plurals. Therefore, it is unusual to say, "jā'anī al-rajul al-qisār" and "takallama al-faqīh al-fudalā'".

4 The word al-bay' in the Qur'ān wa aḥalla Allāh al-bay' means hādhā al-bay'. If the word bay' refers to any kind of bay', it would mean that to make this bay' lawful is to make other bay' also lawful. But this is not true.

5 māhiyyah or genus is one thing, its singularity is another, and its plural is of course something else. Nouns prefixed by alif lam do not have any other function than to show genus.

The third view is that the noun which is prefixed by alif lam of definition gives 'umūm implication, by which it shows the totality of that particular noun. This view is held by Abū 'Alī al-Jubbā'ī,⁴⁵ some of the jurists (the Ḥanafites) and al-Mubarrad,⁴⁶ and also al-Shīrāzī.⁴⁷ It has been reported that this view is also held by al-Shāfi'ī.⁴⁸

According to Abū al-Ḥusayn al-Baṣrī, Abū 'Alī maintains that al-sāriq (male thief) and al-sāriqah (female thief) in the Qur'ān 5:38 indicate the totality of them respectively. Al-Shīrāzī maintains that this kind of noun shows genus as well as the totality of that genus. He quotes the Qur'ān 80:17.,

mā
"qutīla al-insān/akfarah"

[woe to man! What has made him reject God].

and also the Qur'ān 3:28; 33:72 and 104:4. He says that the word insān in these verses signifies genus, and more than that it also indicates the totality of

that kind of creation.⁴⁹

Al-Shīrāzī also mentions another reason to support this view. He says that the word accepts exception or istithnā' by a word in the plural as shown by the Qur'ān 103:1-3,

"wa al-‘aṣr inna al-insān lafi khusr illā alladhīna āmanū wa ‘amilū al-ṣāliḥāt"

[By the time, verily man is in loss, except such as have faith and do righteous deeds]

The word insān shows genus as also do the word al-muslimīn and al-mushrikīn, the plural of muslim and mushrik respectively.⁵⁰

Therefore, it would seem appropriate to maintain that the word al-sāriq or al-sāriqah mentioned above, and also the words al-zāniyah and al-zānī in the Qur'ān 24:2 show universal applicability. All of them are ^{used} in generic sense. As such they should apply to every individual suitably referred to by those words. That is probably why grammarians call this alif lām al-istighrāqiyyah or literally alif lām of comprehensiveness.

Al-Rāzī opposes this view. He has quoted some of their arguments and highlighted their deficiency. He doubts their use of the Qur'ān 103:3 as the support of their view. He maintains that the istithnā' in the above verse is in a figurative sense, because it is grammatically wrong to say,

"ra'aytu al-insān illā al-mu'minīn"

[I saw the people except the believers]
If it is used in the real sense it should be mutṭarid
or co-extensive.

Secondly, that alif lām is used for definition and is not for defining māhiyyah (quiddity) because the latter could be indicated by the noun itself, that is, without alif lām. Al-Rāzī opines the contrary, but his reason also is not very clear.

Thirdly, the generality or ‘umūm of a ruling always follows its cause (‘illah) as the Qur’ān “wa aḥalla Allah al-bay‘” . With regard to this argument, al-Rāzī's own remarks do not appear to be very clear. To^{the} other two arguments he is silent.⁵¹

This group of scholars maintains that the word could be emphasised by another word in^{the} plural. For example the Qur’ān 3: 93,

“kullu al-ṭa‘ām kāna ḥillan li banī Isrā’īl”

[All food was lawful unto the children of Isrā’īl, save what Isrā’īl made unlawful unto itself....]

This certainly shows ‘umūm.

It is also held that this kind of noun could be qualified by the plural. Therefore, the word must be for ‘umūm.

The fourth view is held by Imām Ḥaramayn al-Juwaynī and al-Ghazālī. Al-Ghazālī says that nouns to which alif lām would be supplied are of two categories. First, a word which is distinguished as indicating genus or indicating 'one' by adding hā' as in the case of the word al-tamr to al-tamrah. This category of noun is free from that hā' indicates istighrāq, that is, indicating the totality of that class of species. For example, someone says,

"lā tabī'ū al-burr bi al-burr walā al-tamr bi al-tamr"

[Do not sell wheat for wheat and nor dates for dates].

Wheat and dates here refer to every kind of wheat and dates.

The second category refers to nouns which do not have hā' as an indication to differentiate between the functions mentioned above. In this case, however, it could come within the following two explanations; First, the noun can be accompanied by wāḥid if the single one is needed, i.e. countable nouns, and second, it could be a noun which cannot be accompanied by wāḥid, i.e. uncountable nouns. The former is not ʿumūm. For example the word al-dīnār and al-raḡul are suitable to be accompanied by wāḥid. So, one says "al-dīnār al-wāḥid" and "al-raḡul al-wāḥid". On the other hand, words in the second situation are used to

indicate ʿumūm, as the word dhahab. It is uncommon to the Arab to say dhahab wāhid.⁵²

We have seen the difference among the scholars on determining the ʿumūm of the words in singular prefixed by alif lām. It should be noted, however, that these differences are only about the position of these words in the real application. When the words are considered in interpreting the texts, these scholars are almost of the same opinion.

Singular nouns in idāfah:

The third condition where a singular noun is seen as ʿumūm is when the word is in idāfah. It is said that uṣūlīs are in agreement on this question.⁵³ For example, the Qur'ān 14:34,

"wa in taʿuddū niʿmat Allāh lā tuḥṣūhā"

[If you count God's blessings, you will never number it].⁵⁴

The niʿmat Allāh is in idāfah which can be rendered as every kind of blessing or bounty given by God. A Tradition of the Prophet has been understood as such. The Prophet when asked about performing wuḍūʾ (minor ablution) by sea water has been reported to have said,

"Its water is pure and its dead creatures are lawful." ⁵⁵

The word sea in this Tradition means sea in general

and its dead creatures also mean everything which lives in it.

b. Words in the plural (jam'):

Words in the plural are 'umūm words. That is the opinion of the usūlis in general, but not without qualification. The words are not 'umūm by themselves. Uṣūlis put certain conditions, but they are, however, not in complete agreement with regard to this point. In this section we will try to investigate some important questions posed and answered by them.

Plural or jam' in Arabic, falls, with regard to its form, into two categories. First, jam' al-salāmah (sound or perfect plural) which is built up by adding letters to words in singular forms without affecting the latter. This jam' is divided into masculine plural (jam' al-mudhakkar) and feminine plural (mu'annath) which are varied in one way or another.

The second category is jam' al-taksīr (broken plural), the plural when it has been formed from the singular, makes changes to its structure. It can be formed either by adding alif as in thawb= thiyāb or taking out one letter as in raghīf= rughuf or by changing its ḥarakah (vowel) as in asad= usud.⁵⁶

When reference to quantity that it can reach is to be considered, jam' or plural is divided into jam' al-

qillah (plural of paucity) and jam' al-kathrah (plural of multitude or abundance). From the linguistic expression, the former means the plural for persons or things whose number is between three and ten, and normally comes with the patterns of af'ul, af'al, af'ilah and fi'lah. While jam' al-kathrah refers to persons or things whose number is from three upwards with the patterns like fu'ul, fi'al etc.⁵⁷ This latter division of plural has some significance concerning the problem of 'umūm. The usūlis seem to differ on the question of the number this plural refers to when it is used in the Qur'ān or the Traditions.

The significance of plural in 'umūm:

Words in the plural do not signify 'umūm unconditionally.⁵⁸ To become 'umūm words they must meet either of these three conditions. First, they have to be prefixed by alif lām istighrāqiyyah (alif lām of comprehensiveness), an article that shows the inclusion. For example the Qur'ān 9:71 says,

"The believers men and women (al-mu'minūn /al-mu'mināt) are protectors one another; they enjoin what is just, and forbid what is evil; they observe regular prayer."

The words al-mu'minūn and al-mu'mināt are prefixed by the alif lām of exhaustiveness, by which all indivi-

duals referred to by them respectively are included and referred to without exception. The duty imposed upon ^{them} by the said verse is accordingly to be carried out by every one of them.

This rule is supported by four basic arguments. First, the word is considered as ‘umūm in language. Second, by way of common use alif lām has no other function than to indicate individuals applicable to it. Third, most of the Companions understand the word in this way. When Abū Bakr was approached by the Anṣār, demanding a share in leadership after the Prophet's death, he is reported to have replied by this Tradition,

"al-a'immaḥ min quraysh"⁵⁹

[the imām or leader should be a member of the Quraysh].

A'immaḥ is the plural form of imām and is prefixed by alif lām. It was applied to denote leadership in general, where the word was used as an ‘umūm word. The Anṣār accepted the argument. Certainly, if it is not used as ‘umūm, the Anṣār will surely argue further.⁶⁰

Finally, as an agreed principle, the majority of scholars accept that a word bearing the ‘umūm sense can exclude some of the individuals covered by it without affecting the remainder, the word is a valid ‘umūm word.⁶¹

The exponents of ‘umūm, furthermore, maintain that

this type of plural is ‘umūm on the following basis: First, the amount contained in a definite plural is more compared to the amount in an indefinite plural. Therefore, the Arab says, "rijāl min al-rijāl" and not the other way round. Hence, this plural shows comprehensiveness which is ‘umūm. Secondly, it could be emphasised by the words of general meaning, and the emphasis (ta’kid) gives the former a stronger implication. The former could not be emphasised by such a word unless it is of the same category.⁶²

The second type of plural which is regarded as an ‘umūm word is when it is in idāfah as in the Qur'ān 9:103,

"khudh min amwālihim ṣadaqah"

[of their goods take alms]

The word amwālihim is plural in idāfah. The reason for uṣūlīs maintaining this is because the word accepts istithnā'.

The third position of plural is an indefinite plural in the negative and it is usually preceded by a particle of negation.⁶³ The only reason given^{is} the possibility of ^{its} being excepted as in the above case. This is the opinion of the jumhūr of uṣūlīs. Several of those who oppose this view are the Hanafites together with Fakhr al-Islām al-Bazdawī and also the Mu'tazilite al-Jubbā'ī.⁶⁴ However, no evidence for their view seems to exist at present.

The minimum amount of plural:

With regard to this problem, there are two views prevalent among uṣūlis. One group says that the minimum number which plural should be understood as referring to is three. The other group says that it is two. The first view is said to be the one preferred by the jumhūr. It is also reported that this opinion was shared by Ibn ʿAbbās, al-Shāfiʿī, Abū Ḥanīfah, Aḥmad b. Ḥanbal, Abū al-Ḥusayn al-Baṣrī, al-Ghazālī, al-Shīrāzī and Fakhr al-Dīn al-Rāzī.

Abū al-Ḥusayn al-Baṣrī maintains that from the etymological point of view, plural or jamʿ is meaning "to put something into the other." It has special words different from others, for example rijāl. It conveys three or more, because in Arabic two (tath-niyah) and three are referred to by different forms. We say, "raʾaytu rijālan thalāthah (I saw three men) and jamāʿatu rijāl (a group of men) and not "raʾaytu rijālan ithnayn" or "jamāʿatu rajulayn".⁶⁵

Al-Shīrāzī also maintains that the minimum plural is three. He bases this opinion on the argument employed by Ibn ʿAbbās against ʿUthmān on the question of succession. Ibn ʿAbbās is reported to have said that two brothers (al-akhawayn) are not in a position to prevent the mother of the deceased from her one-third share, to have one-sixth share instead in

accordance with the Qur'ān 4: 11,

"If the deceased leaves brothers (or sisters) the mother has a sixth."

Ibn 'Abbās is reported to have said further, "Two brothers (akhawayn) are not brothers (ikhwah) in your language," and 'Uthmān has been said to have argued no further.⁶⁶

Sayyid al-Murtaḍā also favours three as a least number in plural. He refuses to accept the view that the minimum plural is two. He maintains that the men of language have made the difference between jam' (plural) and muthannā (dual) as between them and mufrad (singular). As 'two' differs from 'one', so does two from jam'. In addition, the men of language also made them distinct in their pronouns as in muthannā they use fa'alā or humā qāmā and in the jam' they say fa'alū or hum qāmū. This last argument, however, is not very convincing.⁶⁷

Among the scholars who maintain that the minimum plural is two are some of the jurists from the School of Ibn Dāwūd and Qāḍī Abū Bakr al-Bāqillānī. Al-Ghazālī mentions the name of 'Umar, Zayd b. Thābit and Mālik as having this opinion.⁶⁸ They use the Qur'ān 21:78 as the basis of their argument,

"And remember David and Solomon, when they gave judgement in the matter of the field into which the sheep of certain people (ghanam al-qawm) have strayed by night. We did witness their judgement

(wa kunnā li-ḥukmihim shāhidīn.

In the above verse, the pronoun hum is used instead of humā to refer to David and Solomon. By this it means that hum that is a pronoun for jam' is used to refer to two.

Abū al-Ḥusayn al-Baṣrī rejects this opinion. He argues that the said pronoun is used figuratively, and not according to its real meaning.⁶⁹

This group also points out a Tradition to support their contention. The Prophet is reported to have said,

"al-ithnān fa-mā fawqahumā jamā'ah"

[two and more is considered as jamā'ah]

To this Abū al-Ḥusayn al-Baṣrī replies that what the Prophet has meant by two in this Tradition is the minimum number of Muslims to constitute a valid congregational prayer (ṣalāt jamā'ah) and not to lay down a grammatical principle.⁷⁰

Ibn Ḥazm, referring to the above Tradition says that it is not an authentic Tradition, because among the transmitters, there is one whose personality is unknown and another one is very weak (ḍa'if). Even if the Tradition could be taken into account, it in fact refers to a specific rule, that is about congregational prayer as mentioned above.⁷¹ In this connection, in another Tradition, the Prophet has been reported to have said,

"Fa-adhanā wa aqīmā wa'l-yaummakumā akbarakumā."

[Then, make a call for prayer, and say iqāmah and the older among the two should be the imām]

And it has been also reported that on one occasion the Prophet led a prayer which was followed only by Ibn 'Abbās.

Another argument for this view is that jam' means "ḍammu shay' ilā shay' ākhar" (to put or combine one thing into another. By this definition, it is possible to say that two as well as three is jam'. Thus, if the meaning of jam' can include two, it is right to apply it in the case of plural. Refuting this argument Abū al-Ḥusayn al-Baṣrī says that it is not proper to maintain that if jam' means such, everything can be generally applied to ^{this rule.} ⁷² Ibn Ḥazm in his arguments against the advocates of two has rightly said that the point in question is not jam' as equivalent to ḍumm. What concerns us here is jam' as it differs from singular (ifrād) and dual (tathniyah). In the light of this, jam', no doubt, refers to three and more. This is what is unequivocally agreed upon by men of language. ⁷³

With regard to this issue it seems that al-Āmidī does not give his preference to either three or two. He gives a full list of arguments put forward by both groups of uṣūlīs and none of them escape his criticism. According to Āmidī all these arguments have their

weaknesses. Therefore, he suggests that any one who intends to exercise ijtihad has to verify either of these views. If verification is not possible, it is better not to give any preference until clear indication could be found.⁷⁴

c. Kull and Jamī':

Kull literally means all, entirety, everyone and so on. The sentence, "huwa al-ʿālim kull al-ʿālim" literally means he is the possessor of knowledge in its entirety. It means that he is one who has attained the utmost degree of the quality thus attributed to him.⁷⁵ When preceded by a negative and followed by an exception or istithnā', the meaning becomes 'any one' as in the Qur'ān 38: 14,

"in kull illā kadhdhaba al-rusul"

[there is not any one but accused the apostles of lying]

The word kull is also used together with mā and man; kullumā means whatever, and kullamā means whenever, as often as, every time that and in proportion, and kulluman means whoever.

In its grammatical usage, kull is only attributed to nouns and gives them generic sense, and is attributable to both rational and non-rational beings. If it is used in connection with an indeterminate word it

refers to every one of the individuals to whom the word is applicable; and if it is used in connection with a determinate word (ma'rifah) the generality refers to ajzā' or the whole body of the same object. The difference can be illustrated by the following example. If one says, "qara'tu kulla kitāb" means I have read all the books which differs from, "qara'tu kulla al-kitāb" which means I have read the book entirely.

The word kull also sometimes functions as mu'akkad or confirmer, as in the Qur'ān 38: 73,

"Fa sajada al-Malā'ikah kulluhum aima'ūn"

[then, the angels bowed themselves all together].

According to the jumhūr of uṣūlīs the word kull provides the strongest evidence of 'umūm.⁷⁶ It hardly needs any indication to signify its general significance. The following verses show clearly the effect of the word kull:

1. the Qur'ān 29: 57,

"kullu nafs dhā'iqat al-mawt"

[every soul shall taste of death].

2. the Qur'ān 17: 84,

"qul kullun ya'mal 'alā shākilatih"

[every man works according to his own manner]

3. the Qur'ān 17: 13.

"wa kulla insān alzamnāhu tā'irahu"

[every man's fate we have fastened on his own neck]

According to al-Āmidī the exponents of ‘umūm argue that kull is ‘umūm for the following reasons; First, if someone says to his servant,

"akrim kulla man ra'aytahu"

[respect any one you see]

the servant has fulfilled his responsibility when he gives respect to every one of them. He is to blame, however, if he fails to give respect to some of them. This, obviously shows that the initial understanding of the word is for ‘umūm. Moreover, the statement of this kind could validly accept istithnā' which is among the ‘umūm indicators.

Second, if someone claims,

"ra'aytu kulla man fī al-balad"

[I have seen all people of this country]

his claim is a lie, because in actual fact he did not see them all for obvious reasons. Third, when a person says,

"kull al-nās ‘ulamā'

[all people are scholars]

it would be challenged by another statement,

"kull al-nās laysū ‘ulamā'"

[all people are not scholars]

If the word is not for ‘umūm, these two statements should not be contradictory, because each one represent a meaning for itself.

Fourth, that we understand the difference between kull and ba‘d. If the former is not ‘umūm, the diffe-

rence should not exist because both of them are of similar effect.⁷⁷

Jamīʿ:

Jamīʿ means in a state of collection, congregation, or union; being together, met together.⁷⁸ The difference between kull and jamīʿ is that the former implies comprehensiveness (shumūl and ihāṭah) by way of ifrād(singularities), the latter does so by way of ijtimāʿ or togetherness, that is the reference to its plural is because of its plurality. The Qur'ān 2:29 will illustrate this. The Qur'ān says,

"khalāqa lakum mā fī'l-ard jamīʿa"

[it is He who created for you all that is in the earth]

Both the word kull and jamīʿ are generic in their effect. So that their application will not be limited to only some of the things to which they are applicable. When someone says,

"kulluman dakhala al-bayt ajzihi"

[all who enter the house, I will give them the prize]

and ten men enter the house together, the effect is that each one of them will be entitled severally to the said prize.

Other than kull and jamīʿ, there are many other similar words indicating ʿumūm. The words maʿāshir, ʿāmmah, kāffah and sāʿir more or less have the same effect as kull and jamīʿ in their significance.

d. Man, Mā and Ayy:

The words man and mā are regarded as ʿumūm by the jumhūr.⁷⁹ Man which means 'he who' or 'who' and mā meaning 'what' or 'that which' are to be used as conditional or interrogative particles if they are to have this effect. Man is normally used for rational being (ʿaql) and mā for non-rational being or inanimate object.⁸⁰

Al-Isnawī mentions in al-Tamhīd that Sībawayh, in one of his statements has said that mā is applied to rational beings as well as others.⁸¹ It is, however, not surprising for Sībawayh to hold this opinion because he may mean it as the figurative usage. There are instances in the Qur'ān where man or mā is used in the figurative sense. The Qur'ān 24: 45 says,

"wa minhum man yamshī ʿalā arba"

[among them are such as walk on four]

This verse certainly does not refer to rational beings for a very obvious reason.

Man or mā in the following positions are not ʿumūm

or at least not to be used exclusively for ‘umūm:

1. If used as indefinite thing which is to be qualified by an adjective they are not ‘umūm. For example the sentence,

"marartu bi man / mā mu‘jib laka"

[I was passing by who or what makes you excited]⁸²

2. If they are mawṣūlah or prepositional man or mā could be ‘umūm or khuṣūṣ. This is determined by specific indication. For example, the Qur'ān 47:16,

"wa minhum man yastami‘u ilayka"

[Now among those (hapless sinners) are such as (pretend to) listen to you (O Muḥammad)...]

Man in the above verse refers to some of the hypocrites only, because there is obvious indication to show this limited reference.

3. If mā is of ta‘ajjubiyah or expressive of surprise, as for example in the sentence,

"mā ajmala hādhā al-bayt"

Al-Qarāfī relates from the author of al-Talkhīṣ saying that man or mā governed by a preposition is ‘umūm. This view is strongly rejected by al-Isnawī. Al-Isnawī maintains that the arguments against it are more forceful.⁸³ With regard to the conditional and interrogative man and mā, al-Rāzī maintains that it is an accepted view that they are ‘umūm in their implication. He argues against those who maintain that they are used for khuṣūṣ and mushtarak⁸⁴ Among his

arguments are that the scholars agree unanimously that when a question is asked by using mā, it is perfectly right to answer by the word kull⁸⁵. He uses kull as the indicator of ‘umūm in this regard.

Al-Isnawī gives a few examples to show that man and mā are both for ‘umūm⁸⁶. Although in these examples he clearly defines man as ‘umūm, but in another example he differentiates between two grammatical positions. He cites,

"man yadkhulu al-dār min ‘abīdī fa huwa ḥurr"

[whoever, among my slaves enters the house he is freed]

Regarding this example, al-Isnawī says that two possibilities have to be considered; First, if it is read maizūm or jussive, the freedom is applicable as a general statement to include every one who enters the house. Second, if it is read marfu‘ or indicative, the freedom is applied to the slave who first enters the house. He assumes that this difference in the understanding of man is only discernible by those who are knowledgeable in grammar. To others he simply says that it is because the latter is the preposition.⁸⁷ His other examples concern some legal speculations which also try to complement his argument for the ‘umūm of man and mā.

Man:

As has been said above, man is ‘umūm in its two positions; as a conditional and interrogative particle. The former is for example the Qur'ān 2:185,

"fa man shahida minkum al-shahr fa'l-yaṣumhu"

[Whoever of you lives to see this month shall fast throughout it]

Man here is ‘umūm indicating that whoever knows the beginning of Ramadan, he should start fasting. In the Qur'ān 4:93,

"wa man yaqtul mu'minan muta‘ammidan fa jazā'uhu jahannam"

[But whoever deliberately kills another believer, his requital shall be hell]

The ḥukm includes all those who commit that crime intentionally.

There are also verses that show the use of man as interrogative article. For example the Qur'ān 2:245,

"man dha'lladhī yuqriḍu Allāh qarḍan ḥasanā"

[Who is it that will offer up unto God a goodly loan]

And also the Qur'ān 2:255,

"Man dhā alladhī yashfa‘ū ‘indahū illā bi idhnihi"

[Who is there that could intercede^{with} Him, unless it be by His leave?]

Al-Jaṣṣāṣ maintains that man is ‘umūm. It should be understood as such unless other evidence shows the contrary. ** For example the Qur'ān 5:95,

"wa man qatalahu minkum muta'ammidan fa jazā'u mithl mā qatala min al-na'am."

[And whoever of you kills it intentionally, (shall make) amends in cattle equivalent to what he has killed]

Man here is applicable to one or many. If they kill it (animal) they are fully responsible individually to pay compensation (kaffārah). This is also true of the Qur'ān 4:92,

"wa man qatala mu'minan khata'an fatahriru raqabatīn mu'minatīn wa diyatun musallamatun ilā ahlih."

[If one kills a believer by mistake, it is ordained that he should free a believing slave, and pay compensation to the deceased's family]

This verse means that everyone who kills or collaborated in killing one believer is liable to be punished individually. This is also shown by the Qur'ān 4:93⁹. The threats of severe punishment in the above verses are against everyone who has done the evil-doing concerned. This is a very well-known principle among the linguists.⁹⁰

Someone may argue, concerning a case where a group of people had killed a man, that all of them have to pay only diyat or wergild (blood money) not freeing a slave while in fact the freeing of slave is also referred to by the verse. To this argument al-Jaṣṣāṣ says that what is shown by the nature of the word and its 'umūm connotation is that diyat should be paid

according to the number of those who had killed him. However, another evidence has confined its meaning to the exclusion of freeing the slave. In this case the evidence is ijmāʿ.⁹¹ In other than diyat and freeing a slave everyone found guilty is facing the full implication of it individually. For example, they are not any more legitimate inheritors if the one killed was their parent.

Another point of disagreement among uṣūlis with regard to man is whether it includes both male and female. It has been reported that al-Shāfiʿī and jumhūr of scholars are of the view that man is applicable to male and female alike.⁹² Imām^{al-}_{Ḥaramayn} al-Juwaynī says that this is the view of the men of language and uṣūlis.⁹³

According to al-Zanjānī, this view is based on its generic application in the case of conditional, and that both legal and language usage are in agreement on the effect of such usage. If a person says,

"man atānī akramtuhū"

[lit. whoever comes to me I will honour him]

It is obvious that this statement is ʿumūm to include male and female. Similarly, if he says,

"man dakhala dārī min ariqqāʾī fa huwa ḥurr"

[Whoever among my slaves enters the house he is freed]

Both male and female slaves are included under man in

the above statement.⁹⁴ This is also the view held by Imām al-Ḥaramayn al-Juwaynī. He, moreover, maintains that it is an indisputable fact that when man is used as an absolute demonstrative pronoun in the case of conditional it is not exclusively for male or female and not for singular or plural. It is also the agreed opinion of lawyers when the interpretation of clauses in contracts, oaths and the like is made.⁹⁵

Most of the Ḥanafites are of the view that man is exclusively for male.⁹⁶ According to Imām al-Ḥaramayn al-Juwaynī only Shirdhimah, a Ḥanafite, maintains that it does not include female.⁹⁷ This group of scholars argue that those who perceive no difference between male and female in this regard, would ridicule the Arabs who differentiate between them. The Arabs say man, manān and manūn for male and manat, manatān and manāt for female.⁹⁸

Against this argument Imām al-Ḥaramayn al-Juwaynī says that it is only the opinion of those who have no knowledge about language expression and uṣūl whatsoever. It is if anything is only among the irregularities in the language. Imām Ḥaramayn al-Juwaynī says that Sībawayh has cited these in the chapter concerning ḥikāyah and not as a rule.⁹⁹

It seems clear that the Ḥanafites and the Shāfi'ites differ on the inclusion of man. This entails a difference in the formulation of ^{the} rule on it

from a particular textual evidence. Imām al-Ḥaramayn al-Juwaynī gives the case of apostasy or riddah as an example.¹⁰⁰ In a Tradition, the Prophet has been reported to have said,

"man baddala dīnahu fa uqtulūh"¹⁰¹

[whoever has changed his religion kill him (as a punishment)]

Based on this Tradition, al-Shāfi'ī and the jumhūr are of the view that a female apostate should be killed as a punishment for her apostasy just as male apostate should be punished. Male and female in this respect makes no difference.

The Ḥanafites, on the basis of their contention of the exclusiveness of man to male only, maintain that the punishment of the female apostate is not the death penalty.¹⁰² They also have another evidence to support their view. In this case the Ḥanafites use qiyās or analogical reasoning to reach their conclusion; accordingly, the punishment of the female apostate is imprisonment and lashing. They base their argument on the basis of the punishment against unbelieving women. They were not killed.

They also produce another evidence. It has been reported that the Prophet has prohibited the killing of women in the battlefield. It has been reported on the authority of 'Abd Allāh b. 'Umar that a woman was found killed in one of the battles fought by the

Prophet. He disapproved of the killing of women and children.¹⁰³

The Shāfi'ites, on the other hand, alluded another Tradition to support their view. The Prophet has been reported to have said,

"It is not permissible to take the life of a Muslim who bears testimony (to the fact) that there is no god but Allāh, and I am the messenger of Allāh, but in one of the three cases: the married adulterer, a life for a life, and the deserter of his religion (Islām), who abandons his community."¹⁰⁴

Ayy:

The word ayy means whoever or whosoever as in the sentence, ayyu man kāna [whoever or whosoever he may be. It also means anyone, whichever and whatever. It is used both for rational and non-rational beings. This is the view of the jumhūr of uṣūliyyīn.¹⁰⁵ Al-Rāzī is amongst them.¹⁰⁶ But it does not indicate repetition. If a person says,

"ayyu waqtin qarabtī fa antī ṭāliq"

[whenever you beat, you are divorced]

and the wife has beaten repeatedly, she is divorced only once. This is quite contrary to the use of kullamā which denotes repetition.

According to al-Isnawī, al-Ghazālī does not consider ayy as ʿumūm word in his al-Mustaṣfā.¹⁰⁷ This remark about al-Ghazālī seems to be mistaken, since in Mustaṣfā and also al-Mankhūl al-Ghazālī clearly includes it as ʿumūm word. In the chapter entitled "Kitāb al-Zāhir wa al-Mu'awwal" he says,¹⁰⁸

"ʿumūm according to those who believe in its authority is divided into the strong one, which does not accept any takhsīṣ (particularization) except by conclusive or like conclusive evidence, and also divided into weak and the moderate one. The strong ʿumūm is for example the Tradition, "Ayyumā imra'atin nakaḥat bi ghayr idhni waliyyihā fa nikāḥuhā bāṭil" [Any woman who got married without the permission of her guardian, her marriage would be considered null and void]."

In al-Mankhūl he says,¹⁰⁹

"The indicant of ʿumūm: that he resumes his speech by ayy which is a conditional article, is among the most powerful ʿumūm words. Therefore, even the Waqifites do not suspend their opinion about its generalness."

Al-Isnawī gives what he terms as al-Shaybānī's problem as an example to elucidate this issue. If someone says,

"ayyu ʿabīdī darabaka fa huwa ḥurr"

[whoever among my slaves beats you, he is freed]

Or he may say,

"ayyu ʿabīdī darabtahu fa huwa ḥurr"

[whoever among my slaves you have beaten, he will be freed]

Al-Isnawī maintains that ayy in both examples is ʿumūm. This is also the view held by al-Shāshī.¹¹⁰

The reason for al-Isnawī to hold such an opinion is as follows. The subject following the verb in the first example, which is the personal pronoun in darabaka is ʿumūm because it refers to ayy. Therefore, the action which it produces must be also ʿumūm, for it is impossible that many subjects or agents are doing only one action. The act done by an agent is not the act of another agent. In the second example the agent which is tā' or personal pronoun for second person is specific, and personal pronoun of the subject, that is hā' is ʿumūm.¹¹¹

However, al-Isnawī also maintains that the ʿumūm of ayy is not in the meaning of shumūl (inclusiveness) but of badal (substitution). It differs from muṭlaq because the latter does not indicate anything of individualities but rather to show only māhiyyah (kind).¹¹²

e. Indefinite word (Nakirah):

An indefinite word (nakirah), whether it is singular or plural is not to be regarded as ^{an} ʿumūm word. Al-Shīrāzī maintains this, and he gives the following arguments. First, an indefinite noun in the affirmative (ithbāt) is not to be regarded as ʿumūm as if it is a singular. For it is not indefinite if

it indicates every individual under its appellation, nor is it indefinite if preceded by alif lām. Second, it is rightly to be emphasised by mā, as in the sentence, i'ti rijālan mā. Third, it does not accept exception (istithnā'). If for instance one says,

"Kallim rijālan illā Zayd"

[speak to anyone except Zayd]

the sentence is only figuratively correct.¹¹³

According to al-Shīrāzī, only al-Jubbā'ī maintains that an indefinite noun is for ʿumūm.¹¹⁴

The exponents of ʿumūm are reported to be of the opinion that an indefinite noun in the following conditions are ʿumūm. First, when they are in negative or nahy. For example, the Qur'ān 6:91,

"qul man anzala al-kitāb alladhī jā'a bihī Mūsā nūrā wa hudā li al-nās"

[say (i.e. ask them) "who sent down the book which Moses brought unto men as a light and a guidance"]

In this verse man or who negates all but the speaker, i.e. God.¹¹⁵ The word in nahy is for example the Qur'an 9:84,

"lā tuṣalli ʿalā aḥadin minhum māta abadan"

[And never shalt thou pray over any of them that has died]¹¹⁶

Similarly, if an indefinite word is to be used in connection with a condition in a case where the proposition dependent on such a condition is of an

affirmative, that word will be construed as a word of general signification so far as it implies negation. For instance, the sentence,

"man ya'tinī bi'l-māl aīāzahū"

[who gives me something I will reward him]

which means that I shall not reward any man, if he does not give me something.¹¹⁷ The word māl here is indefinite, so it can be any kind of thing. It is its conditional position that brings general import.

The same applies to the sentence "mā ra'aytu rajula" [I did not see any man]. Rajul or man in this sentence has not been particularly identified. And Imām Ḥaramayn al-Juwaynī explains it as follows; If one says "mā ra'aytu rajula" it means to deny seeing any man.¹¹⁸

Likewise, when an indefinite word is clothed with a quality of a general sense, it must be treated as an ʿumūm word in its effect. For instance, when a man says, "I will not keep company with any one except the learned" he would be entitled to associate with all learned men.

NOTES:

- 1 See Chapter 1.
2. al-Mustaṣfā, II, p. 13.
3. al-Muʿtamad, I, p. 209.
4. al-Burhān, I, p. 320.
5. al-Tabṣīrah, p. 105; al-Lumaʿ, p. 15.
6. al-Mustaṣfā, II, p. 14.
7. al-Muʿtamad, I, pp. 209ff.
8. Goldziher, The Zāhirīs, p. 115.
9. al-Mustaṣfā, II, p. 13.
10. Ibid., p. 17.
11. Ibid., pp. 17ff.
12. al-Āmidī, Iḥkām, II, pp. 284-5.
13. Ibid., p. 305.
14. Ibid., pp. 296-7.
15. Ibid., p. 308.
16. Ibid., pp. 308-9.
17. See our discussion on Plural.
18. al-Mustaṣfā, II, p. 16.
19. Ibid.
20. Ibid.
21. al-Āmidī, Iḥkām, II, p. 219.
22. Ibid., pp. 219-220.
23. Ibid., p. 303.
24. Ibid., pp. 320-1.
25. al-Mustaṣfā, II, p. 16.
26. Ibid.
27. al-Dharīʿah, I, p. 197.
28. Ibid., p. 198.
29. Ibid., pp. 198-9.
30. al-Muʿtamad, I, p. 239.
31. al-Mustaṣfā, II, p. 131.
32. Khallāf, Uṣūl al-Fiqh, p. 183.
33. Hitū, al-Wajīz, pp. 163-8.
34. al-Muʿtamad, I, pp. 206-8.

35. al-Mahşûl, I, part 2, p. 516.
36. al-Mustaşfâ, II, p. 26.
37. Lane, pp. 74-5.
38. Kashf al-Asrâr, II, p. 19; cf. Hitû in his note to al-Tabşirah, 115.
39. al-Tabşirah, p. 115 (see note).
40. Ibid, p. 117.
41. al-Mu'tamad, I, p. 244.
42. al-Mahşûl, I, part 2, p. 599.
43. al-Mu'tamad, I, pp. 244-5.
44. al-Mahşûl, I, part 2, p. 599.
45. al-Mu'tamad, I, p. 244.
46. al-Mahşûl, I, part 2, p. 599.
47. al-Tabşirah, p. 115.
48. Ibid, see note.
49. Ibid, p. 115.
50. Ibid, p. 116.
51. al-Mahşûl, I, part 2, p. 599.
52. al-Mustaşfâ, II, p. 18.
53. al-Darîni, pp. 505-6.
54. See also the Qur'ân 16:18.
55. al-Mustaşfâ, II, p. 10.
56. al-Burhân, I, pp. 323-6.
57. Ibid.
58. al-Mahşûl, I, part 2, p. 564.
59. Ibid., p. 583.
60. Ibid., p. 586.
61. Ibid.
62. al-Âmidî, Ihkâm, II, pp. 299-300.
63. al-Mahşûl, I, part 2, p. 586.
64. al-Tamhîd, p. 304.
65. al-Mu'tamad, I, pp. 248-9.
66. al-Tabşirah, pp. 127-8.
67. al-Dharî'ah, I, pp. 229-230.
68. al-Mustaşfâ, II, p. 26.
69. al-Mu'tamad, I, pp. 248-9.

70. Ibid.
71. Ibn Ḥazm, Iḥkām, IV, pp. 2-3.
72. al-Muʿtamad, I, pp. 248-9.
73. Ibn Ḥazm, Iḥkām, IV, p. 8.
74. al-Āmidī, Iḥkām, II, p. 300.
75. Lane, p. 3602.
76. al-Tamhīd, p. 296; See also al-Maḥṣūl, I, part 2, p. 555ff.
77. al-Āmidī, Iḥkām, II, pp. 298-9.
78. Lane, p. 457.
79. al-Tamhīd, p. 297.
80. Ibid., p. 298.
81. Ibid.
82. Ibid., p. 297.
83. Ibid.
84. al-Maḥṣūl, I, part 2, p. 523.
85. Ibid.
86. al-Tamhīd, pp. 298-300.
87. Ibid., p. 298.
88. al-Jaṣṣāṣ, Aḥkām al-Qur'ān, II, p. 580.
89. "Wa man yaqtul mu'minan muta'ammidan..." [Whoever kills a believer wilfully, his recompense is the hell], and the Qur'ān 25:19 "wa man yazlim minkum nudhiqhu 'adhāban kabīra" [Whoever of you does evil, We shall let him taste a great chastisement].
90. al-Jaṣṣāṣ, Aḥkām al-Qur'ān, II, p. 580.
91. Ibid.
92. al-Zanjānī, Takhrīj, p. 336.
93. al-Burhān, I, p. 360.
94. al-Zanjānī, Takhrīj, p. 336.
95. al-Burhān, I, p. 361.
96. Ibid.; cf. al-Tawdīh ma'a al-Talwīh, I, p. 59.
97. al-Burhān, I, p. 361.
98. Ibid., p. 360.
99. Ibid., p. 362.

100. Ibid., p. 360.
101. al-Bukhārī, Ṣaḥīḥ, IX, p. 16.
102. al-Zanjānī, Takhrīj, p. 337.
103. Muslim, Ṣaḥīḥ, XII, p. 48.
104. Ibn Ḥanbal, al-Musnad, IX, pp. 64, 124 and 197.
105. al-Tamhīd, p. 300.
106. Ibid.
107. Ibid.
108. al-Mustaṣfā, I, p. 160.
109. al-Maḥkhūl, p.
110. al-Tamhīd, p. 303.
111. Ibid.
112. Ibid.
113. al-Tabṣīrah, p. 118.
114. Ibid.
115. al-Burhān, I, p. 388.
116. al-Muṭīʿī, Sullam al-Wusūl, II, p. 323
117. al-Burhān, I, p. 388.
118. Ibid.

CHAPTER FIVE

THE DISCOURSES OF SPECIFIC ADDRESSEES

In this chapter, the expressions or discourses which are addressed to specific addressees will be dealt with. These discourses are normally expressed in the words which are used directly to them in the first place. Are these words and expressions limited in their applications or are they to be understood as umūm to be applied to the others as well. We will also discuss the discourses in answer to specific occasions, whether their applications are restricted to those occasions only or to be extended to other cases as well. The discussion will be in the following order:

1. The discourses using the expressions "Yā ayyuhā alladhīna āmanū" and "Yā ayyuhā al-nās".
 - 1) The Prophet;
 - 2) The slaves;
 - 3) The unbelievers.
2. The discourses addressed to the Prophet.
3. The discourses in plural of masculinity.
4. The discourses in answer to specific inquiries or occasions.

5. al-‘ibrah bi ‘umūm al-lafz lā bi khuṣūṣ al-sabab [consideration is given to the generality of the word, and not to its specific reason].
 6. The judgement on particular cases for specific reasons.
 7. Khittāb al-mushāfahah [the direct discourse].
 8. al-muqtaḍā.
 9. ḥikāyat al-ḥāl
 10. mafḥūm.
1. The discourses addressed by using the expressions like "Yā ayyuhā alladhīna āmanū" and "Yā ayyuhā al-nās".

On many occasions the Qur'ān addresses the people by using "Yā ayyuhā alladhīna āmanū" [O you who believe!] and Yā ayyuhā al-nās" [O people!]. All the scholars agree that these words are applied to what the words are applicable ^{to} The first addresses the whole community of the believers. The second addresses the people in general. They, however, differ on the question of whether the Prophet, the slaves and the unbelievers are also included in this kind of discourse as far as the usage is concerned.

a) The Prophet:

Most uṣūlis are of the opinion that such a discourse includes the Prophet as well as the community.¹ According to Imām al-Ḥaramayn only a certain Shirdhimah maintains the contrary, but his opinion was not significant in itself.² Nevertheless, this latter view has been adopted later by al-Rāzī.³ His argument is the same as his argument for the exclusiveness of the discourse specially addressed to the Prophet.

The view held by the majority of scholars is based on the fact that the words used in the discourse are lexically suitable to include the Prophet, and from the language usage it is decisively held that it must be comprehended in a general sense. Furthermore, the Prophet is among those who are under legal responsibility as also are the community in general.

There was a view that the Prophet had received specific orders which were exclusively his. With regard to this aspect of the Prophet's special qualities (khaṣā'is). Imām al-Ḥaramayn al-Juwaynī maintains that the existence of special orders to the Prophet in some cases do not altogether exclude him from the rulings and orders of general application. These special discourses, if compared to the general ones, are but very few.⁴

Moreover, considering those who have attained the status of legal responsibility (mukallaf) in general, some of them are of specific rulings following their specific nature and conditions. Women are, in certain cases, the subject of special injunctions different from men's. The travellers, if compared to the residents, have special consideration in certain aspect of legal obligations. These specific factors, however, do not exclude them forever from rulings of general nature.⁵

According to Imām al-Ḥaramayn al-Juwaynī the evidences he has mentioned are, in fact, superfluous, because the sense of the linguistic usage of ‘umūm, the suitability to include the Prophet under its command, the general tendency among the scholars to its applicability and the practice in accordance with the external evidence (qaḍāyā al-ẓawāhir) are sufficient.⁶ In short, the specific (order) which is not in the discourse does not particularize what is in the discourse (al-khuṣūṣ fī ghayr maḥalli al-khiṭāb lā yaqtaḍī takhṣīṣ, fī maḥalli al-khiṭāb).⁷

There was another view with regard to this matter. It was said that, if the discourse is not addressed to the Prophet to deliver it to the people in general, but, on the other hand, it was in the loose sense, then the Prophet himself is included in such discourse. On the other hand, if it was specifically

addressed to the Prophet ordering him to deliver it to the people, then he is not included; as for example the Qur'ān "Yā ayyuhā al-nās." This view is held by al-Ṣayrafī and followed by al-Ḥalīmī.

Imām al-Ḥaramayn al-Juwaynī disagrees with this view. He maintains that even the discourse of ordering the Prophet to deliver it should be regarded as 'umūm. In this instance the one who makes the order is God. The nature of order does not change in such a case, although the Prophet is specifically addressed to deliver the order to the people.⁸

According to al-Ghazālī, if the discourse is, for instance, addressed to and concerned with the community specifically, and this is shown by some obvious indications, then the Prophet is excluded from the discourse.⁹

b. The slave:

Uṣūlīs are not of one opinion concerning this matter. ^{The} majority of them maintain that the discourse using the word al-nās (people or man) and al-mu'minūn, which are 'umūm, refers to the slaves as well. Among them are Abū al-Ḥusayn al-Baṣrī,¹⁰ Imām al-Ḥaramayn al-Juwaynī,¹¹ al-Ghazālī,¹² and al-Āmidī.¹³

According to Abū al-Ḥusayn al-Baṣrī the discourses

include free man and slave indiscriminately, unless there are evidences to deter their general applicability. Among these are ‘aqlī (rational) or naqlī (traditional). The slaves are not under obligation to carry out religious observances (‘ibādah) which necessitate the possession of a certain amount of property such as the pilgrimage (ḥajj) and the sacrifice. According to some jurists, such a case is not valid for the slaves. Other than this, the slaves are included.¹⁴

There are, however, those who maintain that the slaves are not included. Imām al-Ḥaramayn al-Juwaynī describes those who hold this view as ḡu‘afā’.¹⁵

Besides these two views, there are, however, the scholars who differentiate between two kinds of command or order. If the command concerns the rights of God, the slaves are included. If, however, it is concerned with the rights of their fellow men, they are not included, because their responsibilities in the latter cases rest on their masters. This opinion is held by Abū Bakr al-Rāzī, a Ḥanafite.¹⁶

Al-Āmidī is, as has already been said above, of the opinion that slaves are included in such discourses. He mentions it as the preferred view. He maintains that the discourse, if presented by using the word al-nās or al-mu‘minūn should refer to all those who are included under the term al-nās and the belie-

vers respectively. The slave is of course "people" and "believer". Therefore, he is included under this type of discourse as far as the linguistic expression is concerned, unless there is clear indication to show otherwise.¹⁷

Those who maintain the opposite view might say that a slave, as far as he is slave, is the property of his master. Therefore, the latter has any right to dispose^{of} him at any time or in any way he likes because he has such a right as to his other properties. If he is a kind of property, he could not be included under the discourse of ‘umūm significance. Moreover, it is according to ijmā‘ that the slave is excluded from the general discourse on jihād, ḥājj, ‘umrah, jumu‘ah and so on. If he is to be included under the discourse as indicated by the use of ‘umūm word, the exclusion of him as shown above would be in contradiction to the clear and definitive evidence.

They might also say that it could be accepted that the slave is included under the discourse in the sense of language usage, but he is excluded from it by way of takhsīs. The latter could be justified as he is responsible in all circumstances to carry out his master's commands. The right of his master should be given the priority over the right of God. And this is evidenced by the following facts:

1. It is possible for the master not to allow his

slave . . . doing recommended acts of worship while they are obviously . . . God's rights.

2. The rights of God are based on forgiveness and leniency. God is not affected whether His rights are fulfilled or not. The rights of man or in this case the master are affected.

To all these arguments, al-Āmidī gives his counter-arguments. Firstly, because the slave is the property of his master it does not exclude him from being among those who are legally capable and responsible (mukallaf). If he is excluded, why he is not directed in a particular discourse to order him to stand for prayer and fasting and so on. This is of course, contrary to the ijmāʿ.

Secondly, it is not acceptable at all to believe that the master has the right to employ his slave all the time regardless of the time fixed for specific acts of worship.

Thirdly, what they have said about the ijmāʿ is not at all giving any indication that the slave is excluded from ʿumūm in the language sense. But, what is obvious is that the exclusion of him from such a discourse is by the way of takhṣīṣ; and the takhṣīṣ is not unlawful in this respect. To take takhṣīṣ in this case is preferable . . . to set ʿumūm aside. This is also the way the sick man, the menstruant and the traveller are excluded from the strict order to perform

prayer, fasting, Friday congregational prayer and to carry out jihād.

Fourthly, it is unlawful for the master to benefit from his slave at the expense of obligatory worship at its fixed time. It is also unacceptable that the rights of man should be preferred to the rights of God. Therefore, the slave is more responsible to the latter. Furthermore, although we could accept that the master has the right not to allow his slave to do a recommended act, he cannot do the same with regard to obligatory worship.¹⁸

In this, he is following al-Ghazālī who describes the opinion of the exclusion as foolish for the same reasons.¹⁹

c. The unbelievers:

According to a statement by Abū al-Ḥusayn al-Baṣrī there are two views prevalent among the uṣūlis with regard to this issue. The first view regards unbelievers as not included under the discourse explicitly addressed to the community. It has been reported that among those who hold this view are the Ḥanafites. Among their strong arguments to exclude unbelievers is that they are obviously not referred to as far as the details of the law are concerned.²⁰ The second view which belongs to Abū ‘Alī al-Jubbā’ī, Abū

Hāshim and their companions and is also shared by some other scholars, includes unbelievers along with believers under this kind of discourse. This is the view which Abū al-Ḥusayn himself agrees with, and he obviously tries to defend its validity.²¹

It has been reported that al-Shāfi‘ī includes unbelievers under the discourse of ‘umūm significance. From the linguistic expression they are suitable to be included under that kind of discourse. Furthermore, it is regarded that it is legally possible to include them under the detail of orders imposed by the Sharī‘ah. The exclusion of some of them from some of the detail of laws is no different from the exclusion of the menstruants, the women in childbirth, the travellers and sick persons, from some of the relevant legal injunctions. They are excepted from all these duties for some reasons which are shown by specific indications.²²

According to the second view also, unbelievers are under an obligation to believe in the unity of God and prophethood, and accordingly to undertake every legal injunction it provides. When these injunctions are followed, it is in their own interests. Otherwise, they would cease to get any of these benefits, and as a result they would deserve to be punished for their failure to believe in God, to believe in prophethood and finally to follow His injunctions. This is

supported by the Qur'ān 3:97,

"Wa li Allāhi 'alā al-nās hijju al-bayti man istaṭā'a ilayhi sabīla."

[Pilgrimage to the House is a duty to God for all the people who are able to undertake it]

This injunction refers to unbelievers as well as the believers, because both of them are included in the term al-nās or people. And, of course, there is no textual evidence and rational proof to deny the inclusion. From the rational point of view, the proof for its exclusion is the loss of capability to carry out an order (faqd al-tamakkun). Of the duty to perform the pilgrimage, as indicated by the above verse, unbelievers are seen as having the capability to undertake it. The only condition and prerequisite is that they must become believers first. Those who are seen rationally as capable of carrying out any duty are also considered so legally. This is no different from someone who is in the state of uncleanness, is as capable to perform the prayer on the condition that he has to have wuḍū' or minor ablution beforehand.

This problem arises from the fact that the community are unanimous with regard to the punishment of ^{the} unbeliever who commits zinā (illicit sexual intercourse or intercourse outside wedlock). Theirs are also the ḥadd punishment, the underlying reason of

which is to set an example for would-be criminals. If they are not legally responsible to abstain from zinā, then, it is not legally wrong for them to do it, and consequently they must not be punished. The fact is, however, on the contrary.

Someone may suggest that they are punished because of their failure to renounce idolatry or shirk, the cessation of which makes them legally responsible for not committing zinā. Therefore, they are punished because of the former. However, no one seems to agree with this view, because if it is to be accepted, it means that they must be punished even if they do not commit zinā, for they are unbelievers prior to zinā.

It may be suggested also that unbelievers are legally responsible for not committing zinā, for they have the capability of renouncing it even if they are in the state of their idolatry. The case in question is quite different from the duty to perform prayer or fasting, because the latter two are conditioned by Islam as its constituent of validity. Thus, it is not their legal duty to perform them before they become Muslim.

Someone may even argue that one is not to be punished for his zinā unless he has prior knowledge about its consequences. And, it is no other way to possess this knowledge than through the Sharī'ah. It is not advisable for the mukallaf to refer to other laws to govern his action. And, it is not possible for him to realise the unworthiness of an action while he is not a believing person, as also it is not possible for him to perform the prayer in this state of condition. Therefore, there is no difference between the two.

Abū al-Ḥusayn al-Baṣrī mentions a few verses of the Qur'ān to support this view. Firstly the Qur'ān 41:6-7,

"And woe unto those who ascribe divinity to aught beside Him (and) those who do not spend in charity (alladhīna lāyu'tūna al-zakāh)"

these people are to blame for disbelieving in the oneness of God and neglecting the payment of zakāt. This is similar to a statement "wayl li al-sarrāq alladhīna la yuṣallūn" meaning woe unto those thieves who do not perform the prayer.

Secondly, the Qur'ān 75:31-32, also has the same effect,

"He did not accept the truth, nor did he pray but, on the contrary, he gave the lie to the truth and turned away from it."

He is to blame for every sinful act mentioned above.

Thirdly, the Qur'ān 25:68-69,

"... and who never invoke any (imaginary) deity side by side with God, and do not take any human being's life (the life) which God has willed to be sacred -- otherwise than in (the pursuit of) justice, and do not commit adultery. And (knows that) he who commits aught thereof shall not meet a full requital (but) shall have his suffering doubled on the Day of Resurrection, for on that day he shall abide in ignominy."

Zinā is included in this promise for double punishment.

Fourthly, the Qur'ān 74:43-45,

"They will answer, 'We were not among those who prayed and neither did we feed the needy but we used to talk vanities with vain talkers.'"

If it is correct to suggest that by "lam naku min al-muṣallīn" means "we were not among the believers", but this sort of meaning is not applicable to the next verse "lam naku nuṭ'im al-masākīn", because in the latter the blame is in connection with his being "ghayr nuṭ'imīn" [among those who did not feed the needy]. This is similar to the statement,

"'āqabanī fulān lī annanī lam aku min al-nuṭ'i"
[I was punished by him, because I was not among those who abide by his order. The reason for the punishment is, therefore, disobedience].

It may be argued further that "lam naku min al-muṣallīn" is a statement telling the story about a group of people who become unbelievers after they

have once been believers. Abū al-Ḥusayn al-Baṣrī replies to this argument by saying that this verse is an answer given by the sinners of whom the Qur'ān mentions in verse 74:43,

"yatasā'alūn 'an al-muḥrīmīn"

[they will ask each other concerning the sinners]

The sinners here is 'umūm to include both the believers and the unbelievers.

Abū al-Ḥusayn, furthermore, argues rationally on the basis of logical deduction to prove the inclusion of the unbelievers under the Sharī'ah commandments.²³

The opponents also argue strongly against the inclusion of unbelievers under the the injunctions of the Sharī'ah. Firstly, if unbelievers are legally responsible under the Sharī'ah, it would mean imposing a duty on those who are not legally capable (taklīf bi mālā yuṭāq). This is because, it is impossible for them to carry out the duty of a religious nature such as 'ibādah or qurbah while they are unbelievers. Abū al-Ḥusayn replies to this argument by saying that what is not impossible is to impose the Sharī'ah while they are in the state of disbelieving. In this condition, however, they are responsible to perform such duties and obligations because they are responsible to become believing persons.²⁴

They also argue that if the unbelievers are under obligation to carry out Sharī'ah injunctions, then

their actions and practices must be taken into account. This is, however, not the case, because the belief in the oneness of God and His apostle are the two preparatory conditions for the validity of their actions. Also, if they are responsible under the Sharī'ah, it would mean that when they become Muslims one day, they are under obligation to discharge any previously neglected obligation and duty. But, the fact is otherwise.

Abū al-Ḥusayn al-Baṣrī has also answered these arguments, although in some places somewhat unsatisfactorily. In all, Abū al-Ḥusayn tries to prove that the unbelievers are included under any divine discourse.²⁵

2. The discourse addressed to the Prophet:

In many verses of the Qur'ān, the Prophet was addressed personally by the use of the expression like, "Yā ayyuhā al-nabī"²⁶ meaning "O, Prophet!" and "Yā ayyuhā al-rasūl"²⁷ meaning "O, Messenger". These verses prescribe the orders to be carried out and abomination to be avoided. Do these propositions concern the Prophet himself alone, or is it to be implied that they have an effect on his community as well? The uṣūlīs have also discussed this issue and given their respective views about what the Qurān has

really proposed. So that God's commands will not be left unobserved.

Abū Ḥanīfah, Aḥmad bin Ḥanbal and their companions are of the opinion that such a discourse should be taken as ʿumūm, concern the community as a whole unless there is evidence indicating their limited references.²⁸ On the basis of this contention, they make it a condition to the marriage contract the word hibah following the Qur'ān 33:50,

"And any believing woman who offers herself freely to the Prophet and whom the Prophet might ^{be} willing to wed."

The discourse, of course, refers to the Prophet exclusively, but the community complied with him in its obligatory nature.²⁹

Al-Shāfiʿī has been reported as having the same opinion.³⁰ But the Malikites and some of the Shāfiʿites maintain that the discourse must be understood as applicable to the Prophet himself, unless there is indication to show the contrary.

They say that a discourse addressed to a person could not be seen as being conveyed to others. The Ḥanafites and the Ḥanbalites, however, say that they accept that argument from the point of language expression, but from ʿurf this discourse has to be extended to include the whole community. The Prophet is the one to be followed, and hence the message

addressed to him should be seen as encompassing the community as a whole.³¹ The Qur'ān 65:1 served as their proof,

"O Prophet! When you do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods..."

The Qur'ān uses idhā ṭallaqtum (when you do divorce...) instead of idhā ṭallaqta and this serves as an evidence to show that the discourse to the Prophet is to the community as well. And this is also showed by the Qur'ān 33:37,

"When Zayd had accomplished what he would of her, then We give her in marriage, there should not be any fault in the believers..."

This verse is addressed to the community, though the Prophet is specially mentioned. If this is not so, it has nothing to do with the statement "there should not be any fault in the believers." The Qur'ān 33:50 and 17:79 also serves the purpose. If such a discourse is not to be understood as including the community it would not be necessary to have takhsīs in these verses.³²

The second group does not deny that some of these discourses are applicable to the community as well as the Prophet, but this is not through direct application of the expressions.³³ According to Imām al-Ḥaramayn al-Juwaynī, if the discourse is depicted according to its literal expression, it certainly

excludes the community from it. But, beyond that, there is another aspect of usage to be born in mind; that the Companions have used this kind of verses as the proof in a few arguments among themselves, and these made them conclude that the community are with the Prophet in carrying out the commands. But this is not always so.³⁴

Al-Āmidī says that the proposition "idhā ṭallaqtum al-nisā'" is ʿumūm, the Prophet and the community are included in the directive, and that the Prophet is mentioned personally at the beginning of the propositions . . . out of respect for him. Nevertheless, in the discourse, there is an indication that the message should be confined to the Prophet himself alone. Moreover, if the discourse to the Prophet includes the community from its first appearance, it seems that there is no difference between "ṭallaqtum al-nisā' fa ṭalliḡūhunn" and "idhā ṭallaḡta al-nisā' fa ṭalliḡūhunn".³⁵

Al-Rāzī maintains that this kind of discourse does not include the community. He strongly objects ^{to} the opposite view. If these people assume that the community is included in it by the direct understanding of expression, then they are in great mistake. If, on the other hand, they assume that the same command is applicable to the community through another evidence, as can be depicted from the Qur'ān

59: 7,

"...Hence, accept (willingly) whatever the Prophet gives you thereof, and refrain from anything that he withholds from you."

or the like, then the case does not belong to this issue. No one has ever denied that most of the rules of law imposed upon the Prophet are extended to the community, but it is not through the direct understanding of the discourse. Other evidences give their effect to this.

Accordingly, al-Rāzī also maintains that the discourse which is addressed to the community does not in itself include the Prophet.³⁶

In the course of their disputation with regard to this problem, we can identify three kinds of discourse which are addressed explicitly to the Prophet:

1. that which should be taken as confined to the Prophet himself alone;

2. that which is to be extended to the whole community as well as the Prophet, and

3. that which is to be regarded as applicable to the community but not the Prophet.

Concerning the first type of discourse Imām al-Ḥaramayn maintains that if it obviously indicates the special privilege of or duty to the Prophet as in the case of his marriage and spoils of war, then it must not be extended to the community.³⁷ The Qur'ān 33:50

shows this particular reference to the Prophet because there is a clear indication in the verse itself,

"O Prophet, We have made lawful to you your wives whom you paid their dowers; and those whom your right hand possesses whom God has assigned to you; and daughters of your paternal uncles and aunts who migrated (from Mecca) with you; and any believing woman who dedicated her soul to the Prophet if the Prophet wishes to wed her; this only for you, and not for believers at large; We know what We have appointed for them as to their wives and what your right hand owns in order that there should be no difficulty for you."

This verse declares the points in which, on account of special circumstances, the Prophet's marriage differed from those of ordinary Muslims. On the basis of this verse, there are four special circumstances which are of particular importance: First marriage with dower. Though this kind of marriage applies universally to the Muslim at large, the difference in the Prophet's case was that there was no limitation to the number of four, and his wives should be among Muslim women only. These points are not explicitly mentioned, but are inferred by his actual practice.

Second, the women whom 'your right hand possesses'. Third, first cousins who are not within the prohibited degrees of marriage. In the Prophet's case, none of them could marry the Prophet unless she

had migrated with him. Some commentators say that it might possibly refer to Zaynab bint Jahsh. Fourth, a believing woman who dedicated her soul to the Prophet. Obviously, this case, like the third, is only applicable to the Prophet, and the women who should be chosen by the Prophet are those suitable to give the true service to the community. Some commentators say that this applies to Zaynab bint Khuzaymah, who dedicated herself to the poor and was called umm al-masākīn or the mother of the poor.

The point of a special case is explicitly indicated by khāliṣah laka (this only for you), and should not be extended to the community at large. This phrase khāliṣah laka, however, has been used by the advocates of extension to prove the validity of their claim. They say that this limitation in particular verses shows that other verses addressed to the Prophet are, in fact, addressed ^{to} the community also. If not, the limitation serves no purpose.

The second type of discourse is explicitly addressed ^{to} the Prophet but evidence shows that it is in fact directed to the whole community. For example the Qur'ān 33:37 says,

"Then when Zayd had dissolved (his marriage) with her, with the necessary formality, We joined her in marriage to you, in order that (in future) there may be no difficulty to the believers in (the matter of) marriage with the

wives of their adopted sons, when the latter have dissolved with the necessary (formality) their marriage with them. And God's command must be fulfilled."

This verse clearly indicates that the declaration therein is to be followed by the community. The explanatory words 'in order that' have been used to explain this.³⁸ The Qur'ān 35:1 also clearly proves the existence of this kind of verse.

Discourses of the third kind are those in which, although addressed^{to} the Prophet explicitly, there is an indication which shows that it is not the Prophet the discourse was aimed at but the community. For example the Qur'ān 39:65,

"If you associate other gods with God your work surely fails."

For obvious reasons, the Prophet certainly was not the target of this verse.

3. The Discourse Using the Plural of Masculinity (Jam' al-mudhakkar)

The scholars are in full agreement that the word specially used by the grammarians to denote masculine or feminine will not be taken as indicating other than what they are actually designed for.³⁹ For example the words al-rijāl and al-nisā' are used exclusively for masculine and feminine respectively. They are also in agreement that the plural with masculine indication definitely refers to men. Another point of agreement among the scholars is that the word which does not have any specific indication or reference such as al-nās should be used for both male and female.⁴⁰

They, however, differ on the position of the words with masculine indication ('alāmat al-tadhkir) as the word al-muslimūn, al-mu'minūn, fa'alū and so on. [3] The disagreement concerns whether these words, as they are used in the discourse include female as well as male. Or in other words, do these words show male and female in their real sense, or are they for male only?

There are two dominant views in this regard. One view says that these words are exclusively for males.⁴¹ This is the opinion held by the Shāfi'ites, Ash'arites, the majority of the Ḥanafites and Mu'tazilites.⁴² Imām al-Ḥaramayn al-Juwaynī is also of

this view.⁴³ This opinion is also shared by Qāḍī ‘Abd al-Jabbār as reported by al-Ghazālī. Al-Ghazālī, furthermore, says that this view is the preferred one.⁴⁴ Another view says that the words are apparently suitable for both male and female. This opinion is held by the Ḥanbalites, Ibn Dāwūd and some isolated scholars.⁴⁵

Scholars holding the first view base their arguments on the basis of the Qur'ān, the Tradition and the practices common to the Arab. For example the Qur'ān 33:35 mentions both male and female as follow,

"Inna al-muslimīn wa al-muslimāt wa al-mu'minīn wa al-mu'mināt"

The words al-muslimāt and al-mu'mināt are mentioned after the words al-muslimīn and al-mu'minīn. If the females are already included, the repetition seems to be redundant.

In a Tradition, it has been reported from Umm Salāmah that she has said to the Prophet, "O Messenger of God, the women have said: 'We only hear God has only mentioned men'." Accordingly, the revelation "Inna al-muslimīn wa al-muslimāt" was received by the Prophet. By these they conclude that if the female has already been included, the question and its affirmative response would be superfluous. There is another Tradition mentioned by Āmidī to this effect. The Prophet has been reported to have said,

"Woe, to those who touch their private parts, and then stand for prayer without performing minor ablution."

The words used in this Tradition are li alladhīna yamassūna (those who touch). 'Ā'ishah, thus, asked the Prophet, "This concerns men only. How about women?" The question by 'Ā'ishah suggests that she used to understand that the words are normally for men.

They also base their opinion on the argument that plural is, in fact, the multiplication of singular. When the word qāma (singular) does not include female nor does the word qāmū (plural).

Moreover, there are many religious duties that are imposed upon the Muslim male to the exclusion of the female. These duties have been revealed by using the words applicable to men. Such duties are jihād and Friday congregational prayer. The first duty is indicated by the Qurān 22:78,

"wa jāhidū fī Allāh haqqa jihādih"

[and struggle for God as is His duel.]

The duty on Friday congregational prayer is proclaimed by the Qur'ān 62:9,

"idhā nūdiya li al-ṣalāt min yawmi al-jumu'ati/fa is'aw ilā dhikr Allāh wa dharu al-bay'"

[when proclamation is made for prayer on Friday...]

If the words in their literal expression include male and female, it would be against the clear evidence

which excludes the females from these two duties.

The scholars who hold the second view base their contention on the following arguments. First, the grammarians have laid down a rule, "when masculine and feminine meet each other, the former will prevail." Abū al-Ḥusayn al-Baṣrī who obviously prefers the first view replies that, what the grammarians really mean is that, the people, when they want to say something concerning male and female simultaneously, use masculine words. This does not mean that the words indicate female in the real sense.⁴⁶ Al-Āmidī says that the words are used to indicate female in the figurative sense (majāz).⁴⁷

Secondly, they also argue that it is incorrect for an Arab to say: "antum āmanū wa nisā'ukum āmanāt" [you are safe and your women are also safe] when it is enough to say antum āmanūn [all of you are safe]. If women are not included, it ^{will} be wrong to say so. It is also incorrect to say to a group of people comprising men and women "qūmū wa qumna". Instead the proposition qūmū is enough. To this argument al-Āmidī replies that the women are included in this instance because the Arab believes the safety of men will not be seen as complete unless it covers the safety of women, children and also the property.

Thirdly, many of the religious obligations and duties have been sanctioned by using the words in the masculine. And the jurists agree unanimously that these obligations should be extended to include females. To this argument, al-Āmidī says that it is not always so, because there are many other obligations which are directed to men, as we have mentioned previously. The reference to women in these propositions is not on the basis of their inherent connotation, but other external evidence.⁴⁸

4 The discourse in answer to a specific inquiry or concerning a special occurrence

The Qur'ān was revealed sometimes to answer a specific question about the ḥukm or ruling on a problem facing a certain quarter of the community. The Prophet himself on certain occasions was asked about something which had happened to a certain individual, the ḥukm of which was particularly needed to be known. Should this kind of Qur'ānic verses or Traditions of the Prophet be regarded as specifically relevant only to the case in question, or should they be understood as ʿumūm, universally applicable to the community at large?

To answer this problem, Abū al-Ḥusayn al-Baṣrī first of all gives a detailed analysis of the kinds of discourses in this regard. There are two kinds of expressions which form the answer to certain questions. First, it is an expression that needs the explanation of what is indicated by the question. But this explanation could be ṣarīḥ (unambiguous) or ghayr ṣarīḥ. For example, it has been reported that ‘Umar b. al-Khaṭṭāb has asked the Prophet concerning al-kalālah. The Prophet replied, "Sufficient for you the Summer Verse (āyat al-ṣayf)."⁴⁹

Secondly, it is an expression that clearly explains what is contained in the question without any need for external explanation. This is of two kinds:

1. that which is not independent from the question
2. that which is independent.

The discourse which is not independent:

This is a type of expression which forms the answer ^{to} a particular question, which is hardly understood if not accompanied by the said question. For example, it has been reported that the Prophet was asked about the sale of ruṭab or fresh dates with the dried ones. He replied by another question, "Do the fresh dates decrease when they are dried?" The Companions said, "Yes!" He said, "If so, then the answer is

'No'." It is clear that the discourse is not easily understood if not accompanied by the question.

According to Abū al-Ḥusayn al-Baṣrī, if the discourse is of this kind, it is meant to answer the specific question only. In other words, its application is restricted to what is intended by the said question only.⁵⁰ This is also the opinion held by Imām al-Ḥaramayn al-Juwaynī.

Al-Ghazālī also seemed to have the same view. He, however, gave other examples. He says that if the discourse is not an independent statement from that of the question, and the latter is of a specific nature, the former must not be understood as ‘umūm. For example, someone says, "I have performed minor ablution (wuḍū') with sea water, is my wuḍū' valid?". Eventually someone else says, "Your wuḍū' is valid." In this instance the last statement is not ‘umūm because it is an answer to a specific question and concerning a particular person. Likewise, if someone says, "I have had sexual intercourse in the daylight hours of Ramaḍān" and the response is "(You must) free a slave." This is also khuṣūṣ applicable to that particular person only.⁵¹

In this case, its application to others, is by the employment of other principles such as the qiyās or in accordance with the rule provided by the Tradition,

"ḥukmī ‘alā al-wāḥid ḥukmī ‘alā al-jamā‘ah"

[My decision on a person is also applicable to the community]

In this circumstance also, one point should be certain, that the "others" for whom the above rule^{is} to be applied should have some identical features with the person the discourse has initially addressed to. This similarity is with regard to legal effect. Therefore, the rule applied to male slaves concerning al-sarāyah is also applicable to female slaves. The sex does not have any effect in this case. It is, however, to be considered in marriage cases.⁵²

Another instance of this kind of discourse is when the prophet said to 'Umar "Murhu fa'l-yurāji 'hā" (Order him to take her back). In the above illustration the statement must be construed as relating to the fact involved in the particular inquiry or occurrence only. So, it is not applicable as 'umūm.⁵³ In the above case we do not know the reason why such an order was imposed on the person concerned.

To illustrate further, take for example when someone says, "Zayd has broken his fasting. What shall he do?" The answer may be, "He should free a slave." This statement should not be regarded as 'umūm to be applied to any breach of fasting. Because we do not know the real circumstance where the statement has been issued. Whether he was intentionally breaking the fasting or unintentionally, or either by eating or

by sexual activity and so on. ۵۴

Al-Āmidī maintains that in such cases, answers should follow the questions in their ʿumūm or khuṣūṣ. With regard to ʿumūm particularly, it is certain that the answer must follow the question accordingly. It has been reported that the Prophet was asked concerning the sale of ripe dates (al-ruṭab) in exchange for dried ones. In response to this question the Prophet had asked, "Are the ripe dates decreased when they are dried." The companions said, "Yes" Then the Prophet said "No." ۵۵

Al-Āmidī also agrees with al-Ghazālī that with regard to the specificity of the answer following a question, the answer is not applicable to others. This is the opinion held by al-Shāfiʿī.

On the other hand, if the question is using a general proposition the answer will be expected to be given in the same way. Suppose one asks, "What is the implication of those who break their fasting?" The answer will be for instance, "Free a slave." This answer is parallel to a proposition, "Those who invalidate their fasting must free a slave as an atonement." The statement in this way should be understood as ʿumūm. ۵۶

The independent discourse:

Abū al-Ḥusayn al-Baṣrī discusses this kind of discourse by dividing it into its divisions. First, the discourse which is similar to the question and second, which is not similar to the question. He maintains that when the discourse is similar to the question, there is no doubt that its application is restricted to what is indicated by that question only.

It has been reported that the Prophet was asked about those who had had sexual intercourse in the daylight^{hours} of Ramaḍān. The Prophet replied, "On those who have sexual intercourse in the daylight^{hours} of Ramaḍān is kaffārah." Nothing in the answer indicates that it should be understood as meaning otherwise.

If the discourse is not similar to the question it could be in one of these two kinds: it is more general than the question, or it is more specific than the question. Abū al-Ḥusayn al-Baṣrī gives his opinion with regard to the permissibility of giving such answers. He says that if the discourse is more specific than the question, it is permitted in one situation and is not permissible in another. It is permissible if the questioner is a mujtahid, and there remains sufficient time for him to exercise iṭihād.⁵⁷

According to al-Ghazālī this kind of answer should be understood as ‘umūm. For example, the Prophet was asked concerning the well of Bīḍā‘ah. He said, "God has created water clean, nothing can make it otherwise except something that changes its taste or its colour or its smell." It has been reported also that the Prophet was asked concerning sea water about which he replied, "Its water is clean and its dead creatures are lawful." All these discourses are ‘umūm in terms of their application.⁵⁸

Al-Āmidī gives a detailed discussion on this matter. In his opinion the answer to that question must be in these three conditions; it is similar to the question, or more general or more specific than the question. If the first, the answer has to be considered as ‘umūm or khuṣūṣ following the question. The former is for example, it has been reported that the Prophet has been asked about the minor ablution with sea water. He answered it by saying, "The sea, its water is pure and clean." The latter is illustrated by the report that a certain Bedouin had asked the ḥukm of his act of having intercourse with his wife while he was fasting in Ramaḍān. The Prophet said to him, "Free a slave."

Secondly, if the answer is more specific than the question, it should be understood as such and must be extended to others merely on its basis. This is be-

cause the word is not ‘umūm. Thirdly, the answer may be in more general terms compared to the question, and this could be pertaining to the ruling of that particular case, or it could be other than that. If the latter, al-Āmidī says that there is no disagreement among the scholars with regard to its ‘umūm significance. He cites as an example the Tradition about performing minor ablution with sea water. As has already been cited the Prophet says, "Its water is clean and its dead creatures are lawful." The second part of the statement is obviously something more than what is needed by the question. This is, therefore, a rule the Prophet has instituted for the first time, independent of any inquiry. As such it must be understood as ‘umūm.

On the other hand, if the answer is obviously ‘umūm but is concerned only with that particular question, the scholars are divided. The Ḥanafites maintain that it must be understood as ‘umūm, and its ‘umūm implication does not cease to be effective merely because of its initial cause. In other words the specific question which the answer is given does not restrict the generality of the ḥukm therein. Mālik, al-Shāfi‘ī, al-Muzanī and Abū Thawr are reported to have the opposite view.⁵⁹

Imām al-Ḥaramayn al-Juwaynī maintains that this kind of discourse should be regarded as specific. He says that this is the valid opinion among the Shāfi‘ites.⁶⁰ This is the correct understanding of the Qur’ān 6:145,

“Say (O Prophet): “In all that has been revealed unto me, I do not find anything forbidden to eat, if one wants to eat thereof, unless it be carrion, or blood poured forth, or the flesh of swine - for that, behold, is loathsome - or a sinful offering over which any name other than God’s has been invoked.

Concerning this verse al-Shāfi‘ī says that the unbelievers have permitted the eating of carrion, blood and the flesh of swine; and also those animals which are not slaughtered in the name of God. They restrained themselves from many lawful things. Their practices are always contrary to what God has prescribed. This verse was revealed moreover, to make clear their opposition to the truth. It was as God has said to them, “Nothing is forbidden except what you made lawful.”⁶¹ This verse may be a response to the question put forward to the Prophet.⁶²

Imām al-Ḥaramayn al-Juwaynī is of the opinion that if the verse was revealed in that way, there is no reason to believe it is ‘umūm. ‘Umūm must be free from any inquiry. The revelation of which was to establish

the regulation for the first time.⁶³ Otherwise it should definitely be taken as khuṣūṣ.

5. ‘Umūm al-lafz wa khuṣūṣ al-sabab:

Some uṣūlis have also discussed the problem of the statement using an ‘umūm word following a specific occasion. Al-Ghazālī maintains that in such a case the statement must be regarded as ‘umūm. This view is consistent with the maxim widely used in the subject, that is "al-‘ibrah bi ‘umūm al-lafz lā bi khuṣūṣ al-sabab," which means that what is taken into account is the generality of the expression used in a proposition, and not the particularity of the cause or circumstances underlying it.

In order to make it clearer al-Ghazālī cites a Tradition and a few rules from the Qur'ān. The Prophet is reported to have made the following statement when he was passing by a group of goats belong to Maymūnah. He said, "Ayyumā ihāb dubigha fa qad ṭahura." Because of the nature of the statement concerned, the Tradition has been regarded as ‘umūm in its implication. Similarly, the Qur'ān 5:38 was revealed following an incident where a certain Ṣafwān's garment had been stolen. And also the zihār verses were revealed to answer the case of Salamah b. Ṣakhr and ^{the} 11'ān verse to Hilāl b. Umayyah's case.⁶⁴ All these instances are ‘umūm and

therefore, applicable to other cases which may occur later.

Şadr al-Sharī'ah al-Maḥbūbī in his al-Tawdīḥ says that the Companions and their successors accepted and acted upon the rules of ‘umūm or generally applicable, though they were laid down following particular circumstances.⁶⁵

There may be some objections to the validity of this principle. Al-Ghazālī has answered ^{of} all these doubts. It may be argued that if a proposition occasioned by the fact of a particular case were to be regarded as ‘umūm, it should be alright to discard the cause (‘illah) of the ḥukm to single it out from its generality as it was no cause at all. To this doubt al-Ghazālī replies that it is certain that the statement was an answer to that particular incident but the proposition covers other similar occasions as well. That the proposition answered that occasion is definite, while it applies to other occasions because of its apparent suitability.

Another objection which may be argued is that, if the wording of a proposition is alone to be taken into consideration, the statement of the fact of the case would be useless. Al-Ghazālī replies ^{to} this by saying that a statement of a circumstance under which a verse was revealed might be useful as furnishing historical information, and to broaden the knowledge of Sharī'ah

and moreover, to refrain from using the rule of takhsīs by iṭihād without making any reference to the circumstances of revelation. Therefore, Abū Ḥanīfah is incorrect when he excludes al-amah (bondmaid) from the generality of the Tradition, "al-walad li al-firāsh wa li al-‘āhir al-hajar."

The other objection may be put forward is that, if the intention is not to take the circumstances or causes into consideration, why should one wait until the incident takes place, or if the intention is to lay down a general proposition why should one wait until then. To this argument al-Ghazālī says that God alone knows why and when a certain rule is to be revealed, and perhaps it is a mercy to the people and therefore, of advantage to them. ۞۞

Concerning this issue, al-Āmidī obviously prefers the view held by the Ḥanafites. He maintains that it should be understood as ‘umūm until specific evidence of its takhsīs be found. He asserts that if the statement is without any specific reason or occasion, it is ‘umūm. This is to say that ‘umūm is merely shown by the word. Therefore, although words or rather statements are not without reason, the latter does not have real impact on the former. It follows that with or without reason the word shows ‘umūm. Al-Āmidī gives three evidences to prove that reason or occasion of revelation does not prevent the word from

being ‘umŪm:

1. The basic rule is that, reason does not restrict the word to be applied in a specific manner. Therefore, those who claim the contrary should provide the evidence.

2. If reason should prevent the word from its ‘umŪm significance, it would imply that God's order to follow its ‘umŪm while there is specific reason would indicate two possibilities. First, to establish the rule of ‘umŪm and at the same time to deny its general significance; or secondly, to invalidate the evidence of takhṣiṣ which seems contrary to the basic rule.

3. Most of the orders of ‘umŪm significance have been revealed to answer specific inquiries or to give a decision on specific cases. For example the stealing verse was revealed in answer to Mājīn or Ṣafwān's case and so on. The Companions have applied the rule provided by these verses extensively to other cases than the ones which the verses have originally been sent down for.

Some scholars, however, are not satisfied with the above view and insist on its special effect.

6. The Judgement on Particular Cases for Specific Reasons:

There are occasions when the Prophet passed the judgements on some particular persons for specific reasons. Are these judgements applicable only to those persons, or they are to be understood as 'umūm applicable to others who share those similar reasons?

According to al-Shāfi'ī, when the Prophet has passed a judgement on a particular case, and he mentioned the reason or reasons accordingly, it should be taken as 'umūm applicable to anyone sharing that similar reason.⁶⁷

For example, the Prophet has been reported to have said in the case of a Bedouin who was killed in his ihrām by his camel,

"Do not cover his head and do not perfume him, because he will be resurrected in the state of talbiyah." ⁶⁸

He is also reported to have recommended for those who died in the Battle of Uḥud

"Cover them with their wounds and their blood, because they will be resurrected on the Day of Judgement while their jugular veins are pouring the blood."⁶⁹

All these, according to al-Shāfi'ī, are 'umūm and should be understood as applicable to others who share the similar reasons.

Al-Qāḍī Abū Bakr al-Bāqillānī, on the other hand, has another opinion. He maintains that this type of discourse should be understood as khuṣūṣ, and applied to those cases which they are directly concerned with. According to him, it was possible that the Prophet has other specific reasons for every case mentioned above. The Prophet may have had knowledge about the real condition of that Bedouin, such as his sincerity and his position in the Day of Resurrection, and not merely because he was in ihrām.

In the case of those who were killed in the Battle of Uḥud, it may be because of their special place in the jihād and their assured martyrdom (shahīd) and not just for the reason of jihād. All these are special for them and could not be applied to others.⁷⁰

It seems that al-Ghazālī agrees with the opinion held by the Qāḍī Abū Bakr al-Bāqillānī. He maintains that the case is not applicable to others if the reason is special to that particular person.⁷¹

Al-Āmidī says that if the ḥukm of a case for specific reason is to be regarded as ʿumūm applicable to any case with similar reason, it should follow that it is absolutely right for an agent to free all black slaves if the owner ordered him, "free Salīm, my slave because he is black." But in actual consideration it must not be understood as such.⁷²

If they are regarded as ʿumūm because of the

shared reason, it may be true in one way, but this generalization could not be extended to the legal application. As indicated by the above example, the agent should only carry out the direct order, but not something he himself implies from that order. Therefore, the reason which accompanies the hukm is only to show that the latter has been established for some reasons. It, however, could only be extended to others, if the expression indicates that this is so.⁷³

7. Khiṭāb al-mushāfahah:

It is an established fact that the Qur'ān has been revealed in a particular period of time in history. For about twenty three years it was addressed to the Arabs, particularly in Ḥijāz (Makkah and Madīnah). This is true of the verses dealing with the fundamentals of belief as also of the verses dealing with laws. These verses definitely address the people of that time. For example, the Qur'ān 4:1 says,

"O mankind! Be conscious of your Sustainer, who has created you out of one living entity."

There are many verses which address the believers^e as for instance by using this phrase,

"Yā ayyuhā alladhīna āmanū..."

Mankind in the first example, and the believers in the second are those who are living in the Prophet's time. There is no disagreement among the scholars that these people are the object of the message, and therefore, they are under obligation to carry out its injunctions. The linguistic expression is absolutely consistent with this view.

Since the law of Islam is believed to be universally applicable, and no time limit could deter its validity, does this type of discourse (khitāb), on the basis of linguistic expression, include the people of later times as well? Or must its operation be regarded as applicable to the people it directly addressed only? This problem has been answered by uṣūlīs in various ways.

The jumhūr are of the opinion that this kind of discourse should be understood as addressed especially to the people of that particular time. It does not include those who are not present at the time of its deliverance. The latter are ordered to abide by the same ruling or rulings through other evidences such as īmāʿ or qiyās.⁷⁴

According to al-Rāzī, even if there is no other evidence, it could be known axiomatically, because it is the nature of the law of Islam.⁷⁵ This is also the view held by al-Ghazālī. In al-Mustaṣfā, he says that this kind of discourse could not be

regarded as 'umūm. Any injunction or command using the said phrases . . . addressing those people of the Prophet's time. The people of a later period in history subject to the . . . same law and order, of course, but they are included in these orders by other additional evidences.⁷⁶ These evidences indicate that every legal injunction decided in the Prophet's time should be extended to other generations until the Day of Judgement. Without any of these evidences, and merely on the basis of linguistic expression, these injunctions are confined to that particular time.⁷⁷ Al-Ghazālī goes on further to the extent that the following verses of the Qur'ān and Traditions are not 'umūm to include other than they initially had been addressed to. He quotes

1. the Qur'ān 34:28,

"Now [as for thee, O Muḥammad] We have not sent thee otherwise than to mankind at large."

2. the Traditions,

"I was sent to the people as a whole, and I was sent down to the reds and blacks."

"My decision on one person is also my decision on others."

3. and also the Qur'ān which addresses in some particular phrases such as "wa ittaqūnī yā ulī al-albāb" or "yā ulī al-abṣār" etc.

He maintains that these verses and Traditions are by

themselves not having ‘umūm significance. We know that they are applicable to other people of different time through other indications. We ,therefore, have this knowledge axiomatically.⁷⁸

Al-Āmidī reports that most of his companions, the Ḥanafites and the Mu‘tazilites are of this view.⁷⁹ He gives two evidences as the basis of this opinion. Both are on rational grounds. First, that the discourse using "Yā ayyuhā al-nās" or "Yā ayyuhā alladhīna āmanū" indicate clearly that the addressees are present and therefore, qualify to be so (ahl li al-khiṭāb). Those who are not present at the time when the statement has been delivered do not have any of these qualities, and therefore, could not be regarded as included under such a discourse.

Second, the discourse to the lunatics or insane people and minors or the children of the age below the age of discretion is unintelligible. Those who try to communicate, in terms of legal obligations, with them will bear nothing useful. This is, of course, in view of the fact that they are present and they have the quality of "people" or man, and initially can understand the discourse. They also have the potential to be educated by way of punishing or rewarding and the like. With these qualities they seem to be nearer than those who are not present to be the recipients of orders or discourse.⁸⁰ Therefore, khiṭāb al-

mushāfahah, from the the strict linguistic sense, is only meant to address the people of the time and the place of revelation.

According to Abū al-Nūr Zuhayr only the Ḥanbalites and a group of scholars are of the opinion that this type of discourses include the entire humankind regardless of their time difference.⁸¹ By this they mean that solely on the basis of linguistic expression these discourse are ‘umūm. Al-Rāzī does mention the arguments for this group but he himself does not name them.⁸²

8. ‘Umūm al-muqtaḍā:

By muqtaḍā, means that which the word or expression indicates,⁸³ and it is of two kinds. First, the implied meaning of a word or expression that is to exist necessarily, to give the sentence its true meaning. In other words, it is an implied meaning which must exist to make the expression ^{have} any sense. For example the Tradition,

"rufi'a 'an ummatī al-khaṭa' wa al-nisyān wa mā ustukrihū 'alayh"

[The mistake and forgetfulness are withheld from my community]

Both mistake and forgetfulness are the two facts of every human being; therefore, the expression must mean

or imply something else to make it true. In this case, what is withheld is the sin or properly the accountability of those who have done wrong mistakenly, or who have omitted a duty because of forgetfulness which is withheld.

Secondly, the implied meaning of an expression is necessary to make the sentence correct and accordingly a legal decision based on it . . . a desired effect. For example, someone says,

"a'tiq 'abdaka 'annī bi alf"

[Get your slave free by a thousand (dīnār)
on my behalf

By this expression, is meant the existence of freedom by the act of the āmīr (one who makes an order). But this cannot happen until we have implied that he has possessed that slave before he can make such an order. This is because the freedom of the slave by his order is not valid unless the slave is his.*⁴ The possession, furthermore, involves the cause (sabab) and, in this case is the "purchase" which is indicated by "'annī bi alf" [on my ^{behalf} with a thousand] which means "I have purchased your slave for one thousand dīnār". In other words, the above expression implies the following: "The āmīr says: "I buy your slave for one thousand dīnār and get him free)" and the one who takes the order would say accordingly, "I sell him to you, and I get him free from you." *⁵

If there are many implied hukms pertaining to one particular expression, and the correctness of the latter could be justified if only some of these hukm are considered, is it necessary to imply all of them or is it justifiable to imply some of them only? With regard to this problem, there are two views prevalent Among the uṣūlis. One group of them maintains that it is necessary to imply all of them, and another group holds the contrary. They maintain that if some of them are considered it would be enough.

The first opinion which is said to be held by the Shāfi'ites maintains that to imply all of these hukm is nearer to its actual reference. This is because all the rulings are de^{ri}ved from their essence. The de^{ri}vation of all these rulings makes the existence of something not counted by the Law, as if it does not exist. The scholars agree that a majāz which is nearer to the actual meaning than the others should be preferred. Therefore to imply all of these concealed rulings is preferable. Because of this, in the above Tradition, all rulings concerning mistake (khaṭa') whether they are this-worldly or other-worldly should be taken as the necessary implied reference.⁸⁶

The jumhūr of scholars are of the opinion that if the truthfulness of a statement depends on its implied meaning, the latter should be duly considered whether it is ʿumūm or khuṣūṣ.⁸⁷

It is also said that the taqdīr (implication) is something which is necessary to make the statement have any sense, and it is khilāf al-aṣl or contrary to the basic rule. Necessity will be removed by the implication of some of the meanings (things) which were previously concealed. This is an obligation (wājib), and it is invalid to try to imply all of them because it is beyond the necessary requirement, because among the scholars they have established a maxim,

"al-ḍarūrah tuqaddar bi qadarihā"

[ḍarūrah or necessity is to be measured according to its own merit]

This is said to be the opinion held by the Ḥanafites. Accordingly, they maintain that muqtaḍā is not ʿumūm. * *

Al-Āmidī maintains that what is concealed is a ḥukm or rule of law whether it is worldly or other-worldly. This understanding of a concealed ḥukm is necessary, if not the discourse has no sense. With reference to the above Tradition, if there are many rules concerning mistakes and forgetfulness, it is only some of them could be implied. The concealment is a matter contrary to the basic rule (khilāf al-aṣl) has to be used as little as possible. * *

9. Hikāyat al-hāl:

Hikāyat al-hāl means a story or a report by a Companion about what the Prophet has decided concerning certain problems. For example, a Companion relates that, "The Prophet forbade uncertain trading (bay' al-gharar)" and also "The Prophet has given the right of preemption to the neighbour." There is also a report that the Prophet has decided things based on a witness and oath.

All these are the stories or reports about something decided by the Prophet on some particular incidents. Are they to be regarded as 'umūm universally applicable to other similar cases?

Some scholars regard this kind of expression as 'umūm⁹⁰ and therefore, similar cases of later date should be decided according to what has been previously established. Thus, in reference to the above reports it was said that every type of uncertain sale is forbidden, the right of preemption to the neighbour is universally applicable, and every trial could be decided on the basis of ^α witness and oath.

They base their argument on the presumption that the rāwī (one who relates the story) is 'adl or has religious probity and moral integrity, knowledgeable of the language he was using and its meaning, and evidently, he will not relate the story unless he was

certain of its correctness. Such a rāwī should be followed, and this is said to be an agreed principle among all the scholars.

According to al-Āmidī, the jumhūr of uṣūlīs are of opinion that this kind of expression does not show ‘umūm, because it is only the report of a rāwī. He may have seen the Prophet forbid a particular transaction which contains uncertainties, or the Prophet give the right of preemption to a neighbour and he had related the incident by using ‘umūm words because he believes it to be ‘umūm. He may have heard a word which he believed to be ‘umūm, while it was in fact not ‘umūm, it may belong to many other possibilities. In this state of various possibilities, ‘umūm could not be established.⁹¹

Among the scholars who hold this view is al-Ghazālī.⁹² He maintains that it is not ‘umūm because it is only a report. Evidence must be based on the fact of the story. There are also many possibilities about the fact of the story and the rāwī's understanding of it.⁹³

10. The 'umūm of mafhūm:

Mafhūm means the meaning, or the accepted sense in which a word or a statement is understood. The term is the opposite of mantūq which literally means what is spoken. It refers to a word or a statement the meaning of which is obvious and literal.

There are two kinds of mafḥūm: (1) mafḥūm al-muwāfaqah and (2) mafḥūm al-mukhālafah. Mafḥūm al-muwāfaqah means that the meaning or sense in which a word or a statement is understood is in consonance with its letters. It is also called faḥwā al-khiṭāb. Mafḥūm al-mukhālafah, on the other hand, indicates that the meaning or sense in which a word or a statement is understood is opposite to its literal sense, and is also called dalīl al-khiṭāb.

Mafḥūm is another subject of disagreement among the uṣūlīs. Is mafḥūm to be regarded as 'umūm if the mantūq is 'umūm? There are two prevalent views on this matter. The jumhūr believes that mafḥūm could have 'umūm significance, while Qāḍī Abū Bakr al-Bāqillānī, al-Ghazālī and a group of the Shāfi'ites maintain otherwise.⁹⁴

Those who accept the validity of mafḥūm believe that it could indicate 'umūm, and therefore, they rely on its evidence. In fact, to adhere to mafḥūm means to rely not on the literal expression, but its implied

meaning. Therefore, when the Prophet says,

"On freely grazing sheep, there is zakāt"

they understand that it is not compulsory to pay zakāt on the stall-fed sheep (ma'ḷūfah). Hence, they believe it is given ʿumūm significance.⁹⁵

Arguing against the above view, al-Ghazālī emphasises that ʿumūm is only attributable to words, not to meanings or actions.² He, therefore maintains that ʿumūm could not be attributed to mafhūm at all.⁹⁶

According to al-Āmidī, although the ḥukm provided by mafhūm al-muwāfaqah includes both manṭūq and mafhūm, the inclusion is not through the ʿumūm of either of them. They share the ḥukm through different way of applications. The first was established by its literal application (manṭūq) and the second was established by way of the implied meaning (mafhūm). Both of them are only applicable to their designated references. This is therefore, not the subject of disagreement among the scholars. They only differ on the ʿumūm of mafhūm, the unexpressed side of manṭūq. The essence of the disagreement is, in the end, not unlike manṭūq.⁹⁷

Fakhr al-Dīn al-Rāzī, however, refutes al-Ghazālī's argument. He says

If you are so reluctant to call it ʿumūm, because you do not ascribe ʿumūm except to words (alfāz), the disagreement is, therefore, on the literal sense (lafẓī). But if what you mean is that we

cannot ascertain the exclusion of the ḥukm to others, then such ^{an} opinion is incorrect. This is because the discussion on whether ‘umūm could be ascribed to mafhūm or not is a part of the discussion on its authority as a proof or not. So, whenever, the agreement on its authoritativeness has been reached, the exclusion of the ḥukm to the others should have been established. 98

Al-Qarāfī comments that what is obvious from al-Ghazālī's statement is only in the designation, because he only accepts ‘umūm to be ascribed to mantūq. 99

Those who ascribe ‘umūm to both mantūq and mafhūm intend to show that the same ḥukm has been established on the basis of both of them, but not through dalālah lafziyyah (literal indication). This view is common to the exponents of mafhūm. Although the opponents deny the ‘umūm of mafhūm, they have no intention of denying the applicability of that ḥukm to it. They only reject the theory that such ‘umūm was established on the basis of dalālah lafziyyah. 100

11. The ‘umūm of apposition (aṭf):

This is another point in ‘umūm which merits discussion. The question arises on the ‘umūm of a word in apposition (ma‘tūf) to an ‘umūm word. The Ḥanafites are of the view that in such a case it must be taken as ‘umūm. The jumhūr, on the contrary deny it. For

example, the jumhūr, on the basis of a Tradition maintain that a Muslim should not be killed for the killing of a dhimmī (a protected person). The Prophet has been reported to have said,

"lā yuqtal muslim bi kāfir"

[A muslim cannot be slain for an infidel (unbeliever)].¹⁰¹

In the opinion of the jumhūr, what is meant by the Prophet is all the unbelievers whether harbī (the unbelievers whom the Muslim are at war) or dhimmī.¹⁰²

The Hanafites argue that if the above expression is ʿumūm to include dhimmī as well as harbī, it should follow that the antecedent (maʿtūf ʿalayh or the word to which an explanatory word is attached by means of a virtual conjunction) must have similar effect. The statement "wa lā dhū ʿahd fī ʿahdihī" [And not the one who is under certain treaty] should therefore, be understood as ʿumūm for this and that statement share a similar ḥukm and its description. But the fact is not so, because the muʿāhad is only protected against the ḥadd punishment if he killed the harbī and not the dhimmī.

The jumhūr base their view on the following arguments:

First, the maʿtūf is not independent for it to have any legal effect. The word which indicates the ḥukm of maʿtūf ʿalayh does not indicate the ḥukm of

ma'tūf in its clear term. On the contrary, the hukm of ma'tūf 'alayh is concealed in the ma'tūf for two reasons; immediate need and to avoid unnecessary interruption. The concealed is opposed, in the way the expression gives certain legal proof, to the original. Therefore, it should only be considered as far as it answers that necessity. It only shares the original hukm, but not the details, to avoid unnecessary dependence on anything contrary to the original proof.

Second, there are many instances where the hukm of ma'tūf and ma'tūf alayh differ. The Qur'ān "And the divorced women shall undergo, without remarrying, a waiting period of three monthly courses:..." (2:228) is 'umūm to include both revocable (raj'i) and irrevocable (bā'in) divorce, while "...their husbands are fully entitled to take them back..." is khusūṣ for the former only. In another verse, the obligatory act (wājib) was attached to the recommended act (nadb). The imperative statement "write it out for them if you are aware of any good in them" (24:33) indicates recommended act, while another statement after it indicates obligation. The verse says, "And give them [their share] of the wealth of God which He has given you". If the principle is sharing the original hukm and its details, the 'aṭf in all these situations is invalid.

Third, to share the original hukm is something certain, and in its descriptions is something uncertain. Therefore, to make ‘atf on certainty is preferable to the uncertain thing.¹⁰³

NOTES:

1. al-Burhān, I, p. 365; al-Mustaṣfā, II, p. 25.
2. al-Burhān, I, p. 365.
3. Ibid.
4. Ibid., p. 366.
5. Ibid.
6. Ibid.
7. Ibid.
8. Ibid., p. 367.
9. al-Mustaṣfā, II, p. 25.
10. al-Muʿtamad, I, p. 300.
11. al-Burhān, I, p. 356.
12. al-Mustaṣfā, II, p. 24.
13. al-Āmidī, Iḥkām, II, p. 393.
14. al-Muʿtamad, I, p. 300.
15. al-Burhān, I, p. 356.
16. al-Tamhīd, p. 349.
17. al-Āmidī, Iḥkām, II, p. 394.
18. Ibid.
19. al-Mustaṣfā, II, p. 24.
20. al-Zanjānī, p. 338; al-Mustaṣfā, II, p. 24.
21. al-Muʿtamad, I, p. 294.
22. al-Zanjānī, p. 338.
23. al-Muʿtamad, I, p. 294.
24. Ibid.
25. Ibid.
26. cf. the Qur'ān 8: 64, 65 and 70; 9: 73; 33: 1, 28, 45, 50, 53 and 59; 60: 12; 65: 1 and 66: 1 and 9.
27. cf. the Qur'ān 5: 41 and 67.
28. al-Āmidī, Iḥkām, II, p. 379.
29. al-Burhān, I, p. 368.
30. Nihāyah al-Sūl, II, pp. 358-9.
31. Ibid., p. 359.
32. al-Āmidī, Iḥkām, II, p. 381.

33. Ibid., p. 383.
34. al-Burhān, I, p. 369.
35. al-Āmidī, Iḥkām, II, p. 382.
36. al-Maḥṣūl, I, part 2, pp. 20-21.
37. al-Burhān, I, p. 368.
38. Khudārī, Uṣūl al-Fiqh, p. 167.
39. al-Āmidī, Iḥkām, II, pp. 386-7.
40. Ibid.
41. al-Muʿtamad, I, p. 250.
42. al-Āmidī, Iḥkām, II, pp. 386-7.
43. al-Burhān, I, p. 358.
44. al-Mustaṣfā, II, p. 25.
45. al-Āmidī, Iḥkām, II, p. 387.
46. al-Muʿtamad, I, p. 250.
47. al-Āmidī, Iḥkām, II, p. 390.
48. Ibid., p. 392.
49. i.e., the Qur'ān 4:176, the last verse of Sūrah al-Nisā'. In it the case of kalālah is mentioned. According to Ibn Kathīr, the verse was revealed during a summer.
50. al-Muʿtamad, I, p. 303.
51. al-Mustaṣfā, II, p. 20.
52. Ibid.
53. Ibid.
54. Ibid.
55. al-Āmidī, Iḥkām, II, p. 345.
56. al-Mustaṣfā, II, p. 20.
57. al-Muʿtamad, I, p. 303.
58. cf. al-Mustaṣfā, II, p. 21.
59. al-Āmidī, Iḥkām, II, pp. 346-7.
60. al-Burhān, I, p. 372.
61. Ibid.
62. al-Risālah, p. 207.
63. al-Burhān, I, p. 374.
64. al-Mustaṣfā, II, p. 21.
65. See Abdur Rahim, The Principles of Muhammadan

Jurisprudence, p. 83.

66. al-Mustaṣfā, II, p. 21.
67. Ibid., p. 23; al-Āmidī, Iḥkām, II, p. 373.
68. al-Āmidī, Iḥkām, II, p. 373.
69. Ibid.
70. al-Mustaṣfā, II, p. 23.
71. Ibid.
72. al-Āmidī, Iḥkām, II, p. 374.
73. Ibid.
74. Isnawī, al-Tamhīd, p. 357.
75. al-Maḥṣūl, I, part 2, p. 635.
76. al-Mustaṣfā, II, p. 35.
77. Ibid.
78. Ibid.
79. al-Āmidī, Iḥkām, II, p. 400.
80. Ibid.
81. Zuhayr, Uṣūl al-Fiqh, II, p. 222.
82. al-Maḥṣūl, I, part 2, p. 635.
83. Lane, p. 2290.
84. Khuḍarī, Uṣūl al-Fiqh, p. 160.
85. Ibid., p. 161.
86. Abū al-Nūr Zuhayr, Uṣūl al-Fiqh, 224.
87. Ibid., p. 223.
88. Ibid., p. 224.
89. al-Āmidī, Iḥkām, II, pp. 363-4.
90. Khuḍarī, Uṣūl al-Fiqh, p. 165.
91. al-Āmidī, Iḥkām, II, p. 372.
92. al-Mustaṣfā, II, p. 23.
93. Ibid.
94. Sharḥ al-Badakhshī, II, p. 131.
95. al-Mustaṣfā, II, p. 23.
96. Ibid.
97. al-Āmidī, Iḥkām, II, p. 376.
98. al-Maḥṣūl, I, part 2, pp. 654-5.
99. Sharḥ al-Badakhshī, II, p. 132.
100. al-Āmidī, Iḥkām, II, p. 376.

101. al-Tirmidhī, Ṣaḥīḥ, I, p. 265.
102. al-Āmidī, Iḥkām, II, p. 376.
103. Ibid., pp. 377-8.

PART II

THE PRINCIPLE OF TAKHŞİŞ

CHAPTER SIX

THE CONCEPT OF TAKHŞİŞ

Khuşûş:

In takhşîş, there has to exist two types of evidences: one is ‘umûm and the other is khuşûş. As far as ‘umûm is concerned we have discussed it in detail in the first part of this study.

A statement or discourse is sometimes described as khuşûş or khāşş. What does it mean in Uşûl al-Fiqh? This means that it is used to indicate one particular thing, for example the words al-Baṣrah and Baghdād.¹ Al-khiṭāb al-makhşûş or specified or particularized discourse means that what is intended by the speaker is only some of the meanings the word actually has. So, we understand by inna al-kalām makhşûş or "indeed, the speech is specific" as referring to some of its real meaning only. In other words, this restricted meaning is intended by the speaker himself.²

According to Abū al-Ḥusayn al-Baṣrī, khuşûş and makhşûş are two different terms with different implications. The former is used to indicate one particular thing. A specific discourse is described as khāşş or

khuṣūṣ and not as makhṣūṣ. The word khuṣūṣ is rarely used to refer to al-ʿumūm al-makhṣūṣ or the particularized ʿumūm; but the word khāṣṣ would refer to such a discourse as well as to a discourse of particular reference. The sentence qad khaṣṣa fulān al-ʿumūm [a person has particularized the ʿumūm] is sometimes used in the real sense or ḥaqīqah by which it means that he makes it particular, that is, by using it in some of its meanings. It is also sometimes used in the figurative sense, by which it means that he indicates its particularity, or simply he means it as takhṣiṣ.³

According to al-Āmidī khāṣṣ is used in two ways. Firstly, it is used to mean,

al-lafz al-wāḥid alladhī lā yaṣluḥ madlūluhu li ishtirāk kathīrīn fīh

[a single word the reference of which is not applicable to many things]

For example proper nouns, such as Zayd, ʿUmar etc.

Secondly, the word used to indicate a particular thing as compared to other things of more general, as the word insān (people) is khuṣūṣ if compared to ^aḥaywān or animal; because the latter is sometimes used to comprise the former.⁴

Badrān gives the following definition which he describes as acceptable to most uṣūlis, khuṣūṣ is,

lafz wuḍiʿa li maʿnā wāḥid maʿlūm ʿalā al-infirād
[a word applies to a single definite meaning by itself]

This word sometimes shows a single meaning applicable to a particular individual as in the case of proper nouns. It is sometimes used to indicate a class of thing or genus as the word insān and imra'ah, and sometimes it is used also to indicate naw' or kind as the word rajul as compared to imra'ah. Khuṣūṣ also applies to a word which indicates multiple meanings but ^{is} limited to a specific number. The word of this kind is for example, numerical nouns as two, three and so on, and also the word in dual form.

The words in khuṣūṣ form, if used in legal texts, have a definite clear implication. It definitely shows its meaning, unless there is other evidence indicating otherwise. For example the Qur'ān 2:196,

fa ṣiyāmu thalāthati ayyām

Thalāthati ayyām in the above verse is khuṣūṣ. It shows nothing else but three days of fasting. Likewise, the Qur'ān,

aqīmū al-ṣalāt wa ātū al-zakāt

The verse orders the Muslims to perform the ṣalāt and give away the zakāt. It is in the imperative and in the form of order. It indicates the obligatory nature of those acts.⁵

The uṣūlīs of all the major schools agree, according to Abū Zahrah, that khuṣūṣ statement indicates definitively those persons to whom they apply. Khuṣūṣ statement in the Qur'ān and other textual sources of

law of accepted validity are regarded to be definitive.⁶

From the standpoint of the jumhūr, khuṣūṣ statements take priority over ʿumūm statements as long as the source of the khuṣūṣ statements itself is not open to conjecture.⁷ This stipulation, however does not apply to Ḥanafite legal theory. For, since the Ḥanafites regard ʿumūm statements in the Qur'ān and other legal texts of established authenticity to be definitive, they also regard ʿumūm and khuṣūṣ statements to be equally authoritative.⁸

The consequence of this Ḥanafite position on the authoritativeness of ʿumūm and khuṣūṣ statements of well-established authority is reflected in its distinctive concept of abrogation or naskh. We will have the occasion to deal with this subject later in this chapter.

Takhṣiṣ:

Generally speaking, the takhṣiṣ is a method by way of which the meaning of an ʿumūm word is restricted to some of its references only. The concept is of great importance in Uṣūl al-Fiqh, particularly when it is concerned with the interpretation of the text of the Qur'ān or the Tradition of legal significance. As will be shown in the following discussion, this concept has to be properly understood if any legal injunction is to be properly applied. It should be noted that there are differences of opinion among the uṣūlis with regard to this matter, or properly speaking in every aspect of it. These differences lead them to differ on many issues.

Abū al-Ḥusayn al-Baṣrī defines takhṣiṣ as the act of excluding some of the things originally included in a statement.⁹ This definition, comments al-Āmidī, is not acceptable to all the jurists or uṣūlis. It is particularly opposed by the exponents of khuṣūṣ. According to this group of scholars an ʿumūm statement bears the minimum number of things applicable to it. In this case the number is one. Therefore the exclusion is not conceivable.¹⁰

Al-Shīrāzī maintains that takhṣiṣ is used to distinguish some references in a statement by a particular ḥukm. Therefore, it was said that the

Prophet is distinguished by so and so, and the others by so and so.¹¹ The takhṣīṣ of an ʿumūm is to explain what is not intended by a particular ʿumūm statement.¹²

According to the exponents of ishtirāk, the application of a common word to some of its meanings does not necessarily mean the exclusion of some other things it does not refer to. It only means to apply the word to some of its meanings temporarily. For the wāqifites the matter is very obvious. Since the word is not known, its real signification, it can be used to mean either ʿumūm or khuṣūṣ. If, on the other hand, there is clear indication that ʿumūm is intended, then ʿumūm should be considered as its correct reference. It must not be taken as meaning otherwise. On the other hand, if the indication is clearly in favour of khuṣūṣ then it must be understood as such.¹³

The exponents of ʿumūm maintain that the word indicates ʿumūm as its real connotation and indicates khuṣūṣ in the figurative sense. On the basis of this assumption, if there is no indication of it meaning something else, the word must be understood as indicating all individuals applicable to it. However, if there is indication that the real meaning of the word should be discarded, then the figurative meaning, that is khuṣūṣ, must be applied. While the word is

applied to its figurative connotation, the real meaning should be disregarded. Therefore, according to this group of scholars, the exclusion of some of the individuals the word refers to is not the case, because the word has been applied figuratively and not in the real sense. In other words, they say that what is called takhṣiṣ al-ʿumūm or "the particularized ʿumūm" is in fact an ʿumūm word which is not meant as an ʿumūm word.¹⁴

In view of the above discussion, although takhṣiṣ is seen differently and interpreted in various terms by different scholars, it has been regarded as one of the most important modes of interpretation adopted by the jurists in order to understand correctly the meaning intended by the law of certain textual proofs.

The uṣūlīs have tried to explain, analyse and give strong ground to defend its validity as a means of legal interpretation. To suit their way of thinking they give the following definitions.¹⁵

The exponents of ʿumūm defines it as ʿumūm word which is meant to be khuṣūṣ as its real meaning. The definition which suits the exponents of ishtirāk is that what is intended by the word which is applicable to both ʿumūm and khuṣūṣ is in fact khuṣūṣ. By this it is clear that ^{if} any word which ^{has} the meaning of inclusiveness is not conceivable the problem of takhṣiṣ does not arise, because the takhṣiṣ changes

the meaning of a word from its ‘umūm to khuṣūṣ. Therefore, where there is no ‘umūm, such a change does not occur from the outset. For example, the following Tradition which reports that the Prophet has addressed personally to Abū Burdah by saying that "Tuḥziuka walā tuḥzi’ aḥadan ba‘daka" [This case applies to you only and will not ^{be} applicable to others after you] does not have any sense of takḥṣiṣ in it.¹⁶

With reference to its applicability, there are two prevailing views concerning the concept of takḥṣiṣ. This difference in viewing the concept of takḥṣiṣ is due to their different way of looking at ‘umūm and khuṣūṣ, particularly at their authority as legal proofs. Many works of Uṣūl al-Fiqh identify these seemingly contradicting views as belonging to:

1. the jumhūr, and
2. the Ḥanafites.

According to the jumhūr's view, takḥṣiṣ is not based on the contradiction between two evidences, namely ‘umūm and khuṣūṣ, because the ẓannī or probable is unable to contradict the qaṭ‘ī or definitive. Therefore, takḥṣiṣ in the view of the jumhūr is a kind ^{of} elucidation or bayān to the ‘umūm which consists of two possible intended meanings:

1. The meaning intended is probably ‘umūm; or
2. The meaning intended is probably khuṣūṣ.

In this way, when khuṣūṣ evidence is clearly defined,

the preferable meaning should go to khuṣūṣ.

In cases where there is no khuṣūṣ evidence to be found, ʿumūm is unexplained discourse. Therefore, it needs to be explained, so that the meaning intended can be properly recognized. In other words, the takhṣiṣ does not change anything, but it only makes clear the intended meaning from two possibilities. By this it means that it is imperative to follow ʿumūm before the takhṣiṣ is in operation.

The jumhūr, therefore, define: takhṣiṣ as ^{an} act of restricting the meaning of ʿumūm to some of what it initially meant by means of evidence. They deem it as not important to differentiate between several types of evidence in this case. It does not matter whether such evidence is probable or definitive; independent or not; or of the same time or not.

On the basis of this, the jumhūr have another principle at their disposal: "whenever khuṣūṣ and ʿumūm are together, the meaning intended is khuṣūṣ in so far as the former incorporates the latter." This is because the strong evidence will elucidate the weaker one, for no doubt the former is more potent in describing what is really intended by the law.

The Ḥanafites, due to their difference in some basic points with the jumhūr, see the takhṣiṣ quite differently. Although they understand takhṣiṣ as a kind of elucidation, as do the jumhūr, they incor-

porate in it the idea of contradiction .They see it as bayān because it elucidates the meaning primarily intended by the law. However, there is something contradictory in it. This is because in their view both ‘umūm and khuṣūṣ are authoritatively of the same level, that is qaṭ‘ī. Therefore, the takhṣiṣ in their opinion should follow these conditions:

1. It should be a separate complete statement. Things like istithna’, shart are excluded from the meaning of takhṣiṣ .
- 2 It should be of the same time as ‘umūm in their establishment as legal evidences. It must not come later, because if it is in this situation the khuṣūṣ becomes an abrogating evidence .The takhṣiṣ and naskh are two different things.
- 3 It must belong to the same level of authority as ‘umūm ,whether it is probable or definitive.

Therefore, the takhṣiṣ in the Ḥanafites' view is an act of restricting the meaning of ‘umūm to some of its members by an independent evidence which is of a similar level of authority.

As has been noted earlier, the concept of takhṣiṣ according to the Ḥanafites has the idea of contradiction between two evidences. It is only possible ^{to be made} by an independent complete sentence. By this is meant that

the Ḥanafites do not regard istithnā', ṣifah, shart and ghāyah as valid evidences for takhṣiṣ, because they are only a part of a complete statement.

As has been mentioned, the jumhūr regard khuṣūṣ evidence as stronger compared to ʿumūm. Therefore, whenever both ʿumūm and khuṣūṣ are together, the latter should be given the priority. The intended meaning of ʿumūm should be understood to be in complete agreement with what is indicated by khuṣūṣ evidence. This is, however, not the way the Ḥanafites interpret them.

The best way to understand the Ḥanafites's way of thinking is elaborated by al-Jaṣṣāṣ. According to him ʿumūm and khuṣūṣ may oppose each other under four circumstances:

1. when khuṣūṣ comes after ʿumūm and has the possibility of acting upon khuṣūṣ ;
2. when khuṣūṣ is revealed before ʿumūm ;
3. when both of them are revealed together, in the same statement creating a situation similar to takhṣiṣ; and
4. when it is not known which one came first.¹⁷

He explains all these situations. The first situation is abrogation of the ʿumūm verse. It is not takhṣiṣ in the strict sense of the term. The Qur'ān 24:4 and 24:6-7 are examples of abrogation of this kind. The Qur'ān 24:6-9,

"And as for those who accuse their own wives (of adultery) but have no witness except themselves, let each of these accusers call God four times for witness, that he indeed is telling the truth, and the fifth time that God's curse be upon him if he is telling a lie.....telling the truth."

abrogates the penalty designed by the verse 24:4,
 "And those who accuse honourable women but ^{could} not bring four witnesses, give them eighty stripes."

According to al-Jaṣṣāṣ it is abrogation because at the time it was revealed there was no indication that it was not meant to be ʿumūm in regard to married women. The fact that the Qur'ān 24:6-9 replaces the Qur'ān 24:4 concerning married couples is pointed out by a Tradition.¹⁸

The second situation is also abrogation. The third situation is takhṣiṣ because both the evidences that are ʿumūm and khuṣūṣ are used together. The khuṣūṣ when it is revealed together at the same time as an ʿumūm word is like istithnā'. This principle can be used in the Qur'ān 2:173,

"He has forbidden to you only carrion, and blood, and the flesh of swine, and that over which any name other than God's has been invoked; but if one is driven by necessity neither coveting it nor exceeding his immediate need no sin shall be upon him: for, behold, God is much forgiving, a dispenser of grace."

The principle signifies that internal takhṣiṣ occurs in that verse because the exception by the condition

of dire need and necessity was made before the actual establishment of the legal ruling.¹⁹

The same applies when the Qur'ān 2:275, "wa harrama al-ribā" [God has forbidden usury] follows "wa aḥalla Allāh al-bay'" [And God has permitted sale]. The word al-bay' is 'umūm to include both usury-free transactions and sales with usury. However, the ribā verse has restricted this generalness to exclude sales with usury from the domain of lawful transactions. This evidence is regarded by the Ḥanafites as independent and similar in time of their revelation.

The fourth situation, when it is not known which one came first, could be approached in one of four ways. First, a jurist may use both evidences together; that is to combine 'umūm and the khuṣūṣ. For example the Prophet has been reported to have prohibited the selling of what they do not have and then permitted them as a special allowance in regard to buying in advance when the volume and weight are known. Second, jurists may agree to use either the evidences but not both, then one of them is regarded as abrogated. Third, a jurist may use the legal proof most of the jurists use. If some jurists are adhering to the legal proof that is 'umūm, it is permissible to follow the one one's teacher follows. Then one of the legal evidences is regarded as having been abrogated.²⁰

Another example given by the jumhūr as

takhṣiṣ, seems otherwise, to the Hanafites. The Qur'ān 2:28, says

"Divorced women shall wait concerning themselves for three monthly periods."

The al-muṭallaqāt [divorced women] in the above verse is ʿumūm to include all wives regardless of their status; whether their marriages have already been consummated or not. The verse signifies that every divorced woman should observe ʿiddah (waiting period) without mentioning the details. However, the generalness of this verse has been particularized by another verse to exclude those wives whose marriages have not been consummated. The verse says,

"O ye who believe! When you marry believing women, and then divorce them before you have touched them, no period of ʿiddah have you to count in respect of them" (Q, 33:49)

The Hanafites on the contrary do not regard this verse as takhṣiṣ, because it is a separate, although a complete statement. In their opinion it should be compatible or muqārīn, that is it must come together with ʿumūm. They maintain that if ʿumūm is meant to include every individual within its scope ab initio, then when there is a need to restrict its meaning to only some of them it is not takhṣiṣ in the strict sense of the term but naskh juz'ī or partial abrogation. This means that the second text cancels the ḥukm for some of the individuals initially included.

According to the Ḥanafites, an ‘umūm statement in the Qur'ān or other textual evidences can only be rendered khuṣūṣ, when the legal text that indicates such takḥṣīṣ is linked to it contextually or when there is some other indication that the two statements were revealed at the same time. For example, a legal statement in one verse may be ‘umūm, but the following verse renders it khuṣūṣ. If, however, the ‘umūm and khuṣūṣ statements are not linked together contextually or there is some other indication they were revealed at different times, the last of them to have been revealed is regarded as having abrogated the earlier statement.²¹

The Qur'ān 24:4 says,

“And those who launch a charge against chaste women, and produce not four witnesses (to support their allegation)- flog them with eighty stripes.”

The word alladhīna (those who) in the verse refers to every one who makes the allegation whether the objects of their allegation are their own spouses or others. However, after that comes the verse 24:6 which specifies the ḥukm of those who make such allegation on their own wives.

“And for those who launch a charge against their spouses, and have (in support) no evidence but their own, their solitary evidence (can be received) if they bear witness four times (with an oath) by God that they are solemnly telling .

truth."

This verse shows that the punishment of eighty lashes is not applicable in cases where the accused are their own spouses. Thus, the second verse abrogates a part of the general ruling mentioned in the earlier verse.²²

The jumhūr also differs from the Ḥanafites about the khuṣūṣ that comes after the ʿumūm in time. The Ḥanafites considered that situation as naskh, or properly speaking naskh juz'ī, as has been mentioned earlier. The jumhūr see it as takhsīs regardless of the date of their establishment as legal evidences.

Another point of difference between the jumhūr and the Ḥanafites ^{arises when} the date of revelation is unknown for both khuṣūṣ and ʿumūm. The latter are of the opinion that the verified evidence should be preferred. If not neither of the two should be taken. The jumhūr, on the other hand deem it as absolutely clear that in this case the preference should be given to the khuṣūṣ. For example the Tradition,

"mā saqat al-samā' fa fihī al-ʿuṣhr"

[On what is irrigated by rain, the zakāt is a tenth]

This text is ʿumūm and includes in its ḥukm all the produce whether little or great. It is, therefore, obligatory on the owners to pay one tenth of their produce in whatever circumstances.

However, there is another Tradition on the subject which specified the minimum amount (niṣāb) from which the zakāt should be paid. The Prophet is reported to have said,

"laysa fīmā dūna khamsati awsuq ṣadaqah"

[No zakāt to be paid on less than five awsuq]

According to the Ḥanafites this Tradition and the one mentioned earlier are contradictory. While the former insists on the obligation of zakāt on all produce, the latter denies such obligatory nature on what is less than five awsuq. Moreover, both Traditions do not have any indication to ^{show} their date of initial pronouncements. They of course belong to the same category. Therefore, one should not be preferred to the other. In order to make the choice, the evidence of their preference has to be found. In this example, the Ḥanafites give preference to ʿumūm because it is more beneficial to the people. In this case, the criterion for their choice is maṣlaḥah ʿāmmah or public interest.²³

The jumhūr, on the other hand, chooses khuṣūṣ and they do not see these Traditions as contradictory. The second Tradition specifically shows the minimum amount of the produce the zakāt has to be paid. This specific reference of the Tradition is strong compared to the Tradition of general significance.

One more thing which makes the jumhūr and the

Ḥanafites differ in their conception of takhṣiṣ is with regard to their way of looking at the authority of ʿumūm statements after they have been particularized. The Ḥanafites regard ʿumūm statements to be definitive prior to their having been rendered khuṣūṣ but probable afterwards. The distinction here would appear to be between khuṣūṣ statements that are khuṣūṣ ab initio, which are regarded to be definitive, and those statements that are initially ʿumūm but are then particularized and, hence are regarded as probable. Perhaps, they are regarded to be probable because their initial ʿumūm meaning has been demonstrated not to be definitive. According to the two early scholars of Uṣūl al-Fiqh, ʿĪsā b. Abān (d. 221/836) and al-Karkhī (d. 340/952), Abū Ḥanīfah maintains that once an ʿumūm statement has been particularized, further takhṣiṣ should be possible by means of qiyās, although he does not regard qiyās to be authoritative enough to particularize ^{an} ʿumūm text independently.²⁴

What can and cannot be particularized:

To answer this question, Abū al-Ḥusayn al-Baṣrī, first of all explains the kinds of speech or discourse. He maintains that discourses are of two kinds. Within the first, there is the discourse, the takhṣiṣ of which is discernible and possible. There is indication to show whether it has an ‘umūm meaning or not. If the indication does not favour an ‘umūm meaning, the takhṣiṣ is not discernible because takhṣiṣ means to exclude a part of the discourse from the discourse itself. Then there is also the discourse which has no parts, the takhṣiṣ of which is not possible. For example, the Prophet is reported to have said to Abū Bardah b. Niyār, “yuḥḍiḥka walā yuḥḍiḥ aḥadan ba‘daka”. This ḥadīth is so specific, that to exclude something from it is not possible.²⁵

On the other hand, if in the discourse there is an ‘umūm meaning or it indicates inclusiveness the possibility of takhṣiṣ is to depend on its form, whether it is in word or not. In this case Abū al-Ḥusayn al-Baṣrī chooses ‘ayn as an example. Indication shows that it must be other meanings of ‘ayn than its ordinary meaning; its other meaning can be obtained through other methods such as fahw al-qawl or dalīl al-khiṭāb or universal cause (‘illah shāmilah). All of these have the possibility to be particularized. This

is because they contain a part or parts the exclusion of which is discernible and possible.²⁶

Secondly, the discourse which permits other evidence to particularize it. According to Abū al-Ḥusayn al-Baṣrī, the discourse, the takḥṣiṣ of which is not discernible, does not permit other evidence to particularize it. On the other hand, if the discourse has the possibility of being particularized, and it is a general word or lafz ʿumūm, then other evidence would particularize it. If it is not ^aword, it must be either ʿillah (legal cause) or not. The latter includes dalīl al-khiṭāb according to those who view it as authoritative. ʿillah is of two kinds. First, the causation of the awlā (the greater effect), which is also called fahwā al-qawl or the signification of a discourse. In this case some of the meaning or signification (fahwā) could not be excluded as far as the word itself remains. However, in the Qur'ān 17:23 "falā taqul lahumā uff", it could be made khuṣūṣ by beating because of their similar effect. The ʿillah which is not of awlā category is divided into two kinds. One is manṣūṣah, that which is indicated by a direct textual evidence, and the other one is mustanbaṭah, that which is deduced from the text. With regard to these causes, Abū al-Ḥusayn al-Baṣrī has only said that the uṣūlīs are not of one opinion. He does not elaborate further.²⁷

The limit of takhṣiṣ:

The uṣūlīs are of different views on the limit of takhṣiṣ. Is it permissible to exclude something from its original reference up to one, or three or any other number? There are at least four points of view in this regard. First, that after the takhṣiṣ has been made, a considerable amount of its original meaning should be left unaffected. This the opinion held by Abū al-Ḥusayn al-Baṣrī, Imām al-Ḥaramayn al-Juwaynī and al-Rāzī. But they differ on the definition of a considerable quantity.²⁸

Secondly, Ibn al-Ḥājib sees different kinds of takhṣiṣ in different terms. In his opinion, if the takhṣiṣ is made by a connected evidence, either by istithnā' or badal, it could be up to one. For example, it is permissible to say, "akrim al-nās illā al-zanādiqah" [Honour all the people except the atheists] or "akrim al-nās al-ʿālim minhum" [Honour the people, the learned among them]. If, on the other hand, the takhṣiṣ is made by ṣifat or shart, it could be up to two. For example, it is permissible to say "akrim al-qawm al-fuḍalā'" [Honour the people the distinguished among them] or "akrim al-qawm idhā kānū fuḍalā'" [Honour the people if they are the distinguished among them]. If the takhṣiṣ is by a separate evidence, it could be up to two if the ʿumūm is

referring to a fixed number. For example, a person says, "qataltu kulla zindiq" [I have killed *every* atheist], while they are three, and he killed two of them only. In this situation, the takhsīs is permissible up to two. If the quantity in ‘umūm is not fixed, or fixed with a large number, the takhsīs could be up to the number, the remaining unaffected ‘umūm could validly be considered as ‘umūm, as viewed by Abū al-Ḥusayn al-Baṣrī.²⁹

Thirdly, it is not permitted to make a takhsīs up to one absolutely, whether the ‘umūm is in the plural or not. However, Ibn al-Subkī regards this opinion as isolated.³⁰

Fourthly, Some other scholars allow the takhsīs of all ‘umūm words up to one.³¹ This is also the opinion held by al-Shīrāzī.³² According to Abū al-Ḥusayn al-Baṣrī, it is better not to allow such a view to all ‘umūm words. It is certain that by using those words, the user's intention is to signify 'many' although the exact number is not known. It is permitted, however, to use any of those words to indicate one in the case of glorification (ta‘zīm). One in that instance is considered as many in respect of his authority or strength. In other than this purpose, the use of ‘umūm words to indicate one should not be allowed. It is clear, for instance, if a man says,

"akaltu kulla mā fī al-dār min al-rummān"

[I have eaten all pomegranates in the house] while he actually had eaten only one or three pomegranates among thousands in the house, the men of language will not accept the proposition. However, if he had eaten all of them or a great quantity of them, the proposition should be accepted. The same applies to the proposition "akaltu al-rummān alladhī fī al-dār" or I ate the pomegranates which were in the house, and he had eaten three or even if he says "akaltu al-rummān" or I ate the pomegranate, unless by it he means its genus and not istighrāq.

Those who permit the takhṣiṣ up to the maximum number but one give the following arguments. They say that if that extent of takhṣiṣ is not permissible, it may be because the sentence or the discourse has been used in the figurative sense, or because if it is used as one it cannot be used as indicating plural anymore. In these cases it was not used in the real sense. In the first, the takhṣiṣ could not be applied altogether. In the second, the takhṣiṣ is also not permissible because the subject of ʿumūm word is inclusiveness and not others. If a word cannot be used other than in its real position, then it also cannot be used for other than to indicate inclusiveness.

Their other argument is based on the Qur'ān 15:9, "innā nahnu nazzalnā al-dhikr wa innā lahū lahāfīzūn"

[We have, without doubt, sent down the message and
We will assuredly guard. { it}]

He who has sent down the message is no other than God alone. And a poet says, "innā wamā a'nī siwāya" [We, surely, and what I mean is only myself (alone)]. 'Umar b. al-Khaṭṭāb, when he sent al-Qa'qā' with one thousand horsemen to Sa'd b Abī Waqqāṣ says, "I have sent to you two thousand. men". He identifies al-Qa'qā' as equal to one thousand men. By this it can be implied that if it can be used for numerical nouns, the use of it in 'umūm words is more acceptable.

However, these arguments are not fully justifiable, because the above usages are out of glorification or to tell that the one who possesses a high quality and dignity can simply stand in the place of a group of people. This kind of usage is well-known that it hardly needs further elaboration. 33

Al-Shīrāzī argues that if the takhsīs of man and mā up to three is permissible, there is no reason for not permitting other 'umūm words to be particularized up to one. He rejects the arguments of those who suggest that the plural nouns are not to be used to indicate less than three. He says that the use of the plural nouns for below three is valid. The Qur'ān 3: 173 says,

alladhīna qāla lahum al-nās. inna al-nās qad
jama'ū lakum

[those who have been warned by other people,

"Behold, a host has gathered against you; so, beware of them!]

In this verse, the word lakum (against you) refers to Nu'aym b. Mas'ūd al-Ashja'i alone.³⁴ Such reference is confirmed by many exegetes.³⁵ Similarly, the Qur'ān 24:26 refers to 'Ā'ishah alone.³⁶ The verse is,

ulā'ika mubarra'ūn mimmā yaqūlūn

[these are innocent of all that evil tongues may impute to them]

Lastly, it has been reported from Abū Bakr al-Qaffāl that he permits the takhṣiṣ of the word man as long as it still has one under its meaning.³⁷ However, he sets a limit to the takhṣiṣ of the 'umūm of the collective and plural words up to three. For example, the words al-nās (people) and al-rijāl (men) could be particularized to the limit that there remains three.³⁸

With regard to this problem, it seems that al-Āmidī does not hold any specific view. In view of the fact that all opinions have some weaknesses in their arguments, he suggests that we should decide the matter on the basis of our own ijtihād.³⁹

NOTES:

1. al-Muʿtamad, I, p. 251.
2. Ibid.
3. al-Muʿtamad, I, p. 251.
4. al-Āmidī, Iḥkām, II, p. 289.
5. Badrān, Uṣūl al-Fiqh, p. 111.
6. Abū Zahrah, Mālik, p. 268.
7. Ibid.
8. Abū Zahrah, Mālik, pp. 268-9.
9. al-Muʿtamad, I, p. 251
10. al-Āmidī, Iḥkām, II, pp. 407-408.
11. al-Lumaʿ, p. 18.
12. al-Muʿtamad, I, p. 251.
13. al-Āmidī, Iḥkām, II, p. 408.
14. al-Āmidī, Iḥkām, II, p. 409.
15. al-Āmidī, Iḥkām, II, p. 409.
16. Ibid.
17. Smith, p. 65, see note 22.
18. Ibid., p. 65, see note 24.
19. Ibid., p. 66, note 25.
20. Ibid., p. 67, note 26.
21. Abū Zahrah, Mālik, pp. 268-9
22. Badrān, Uṣūl al-Fiqh, p. 139.
23. Fath al-Qadīr, II, p. 3.
24. Abū Zahrah, Mālik, pp. 271-3.
25. al-Muʿtamad, I, p. 252
26. al-Muʿtamad, I, p. 252.
27. al-Muʿtamad, I, p. 252.
28. Nihāyah al-Sūl, II, p. 76; al-Āmidī, Iḥkām, II, p. 261 and Ibn al-Ḥāḥib, al-Muntahā, p. 97
29. al-Muntahā, p. 87
30. cf. Hitū in his note to al-Tabṣīrah, p. 125
31. al-Āmidī, Iḥkām, II, p. 412.
32. al-Tabṣīrah, pp. 125-6.

33. al-Mu‘tamad, I, p. 253.
34. al-Tabṣīrah, p. 126.
35. cf. al-Qurṭubī, IV, p. 279.
36. Ibid, XII, p. 111.
37. al-Āmidī, Iḥkām, II, p. 415.
38. al-Tabṣīrah, p. 125.
39. al-Āmidī, Iḥkām, II, p. 415.

CHAPTER SEVEN

THE EVIDENCES OF TAKHŞİŞ OR MUKHAŞŞİŞĀT AL-‘UMŪM:

Mukhaşşişāt al-‘umŪm are those kinds of evidence which change ‘umŪm words or expressions from their ‘umŪm to khuṣŪṣ meanings. In other words, the takhşīṣ is, in fact, the act of giving the ‘umŪm its exact intended meaning. In this way the mukhaşşīṣ evidence serves as a means to discover the intended meaning of a word or an expression. It is also an explanation as well as the indicant or ‘alāmah.

Since the jumhūr regards the ‘umŪm statements in the Qur'ān and other legal texts of unquestioned authenticity to be probable, the number of mukhaşşīṣāt that are regarded to be valid means of takhşīṣ, are very numerous in their view. In the Ḥanafite legal theory, on the other hand, since ‘umŪm statements in the Qur'ān are regarded to be definitive, the number of mukhaşşīṣāt that can be used to indicate takhşīṣ is relatively few. They accept only those mukhaşşīṣāt to be legitimate means of takhşīṣ if they are also definitive.¹

The limitedness in the number of mukhaşşīṣāt in the Ḥanafites' view is also due to the rigidity of the conditions of takhşīṣ in their theory. They maintain

that takhṣiṣ should be made only by an evidence of independent statement which is closely related in the sequence of their structure to the ʿumūm. Its time of revelation or regulation should be known and must be similar to that of the ʿumūm. These conditions apply to any type of mukhaṣṣiṣāt whether they are textual, rational or customs. As has been already discussed previously they see the exceptional clause by dependent evidence as qaṣr, and an independent but unrelated evidence as naskh.² Furthermore, they view the takhṣiṣ by maṣāliḥ al-mursalah, whether the latter is of necessity or need, as the causation or taʿlīl. This view is probably based on the fact that darūrah or necessity and need are the exceptions from the fixed legal ruling.³

Abū al-Ḥusayn al-Baṣrī identifies two types of evidences by which the takhṣiṣ could be made. First, the statement which is connected to the statement to be particularized. In the present study we will call this type of statement "internal evidence". Second, the statement which is separate and independent from the statement to be particularized and is completed by itself. This is to be called "external evidence".⁴

Al-Ghazālī, after giving the arguments for the possibility of takhṣiṣ, and in some cases describing it as necessary, mentions ten ways of takhṣiṣ. He says that he never heard of anyone who, having agreed on

the principle of ‘umūm, was reluctant to accept the principle of takhṣiṣ altogether. This is by virtue of the fact that almost all the scholars agree that the Qur'ān 13:16; 46:25; and 24:2, to mention but a few, all have to be understood in the particularized term.⁵ The Qur'ān 13:16 says,

“Say: God is the Creator of all things...”

All things here should be understood as excluding Himself. The Qur'ān 46:25, “Everything will it destroy by the command of its Lord”, excludes, for example, the earth, the heaven and water. The Qur'ān 24:2 says,

“The Woman and the man guilty of adultery or fornication, flog each of them with a hundred stripes.”

This verse is ‘umūm, but it should be understood in the particularized term, because the Prophet has decreed another punishment for ^amarried man and woman.

He also maintains that almost all the verses pertaining to the law in the Qur'ān have been made khuṣūṣ. Only in a very few instances, they have to be understood as ‘umūm. However, these verses do not seem to pertain to the law. For example the Qur'ān 2:29, “wa huwa bi kulli shay'in ‘alīm” [He has full knowledge of all things]. The meaning of the verse remains as it is and will never receive any takhṣiṣ because of a very obvious reason. However, this verse is not dealing with the law proper; its major concern

is God's attribute. No believing man could understand otherwise, as it will affect one's faith.

Al-Qarāfī, a Malikite scholar, cites fifteen mukhaṣṣiṣāt according to which ʿumūm statements in the Qur'ān may be rendered as khuṣūṣ.⁶ It is also said that according to the Malikites, ʿumūm statements in the Qur'ān or other well-established legal texts are rendered khuṣūṣ on the basis of the consideration of maṣlahah. In other words, ʿumūm texts may only be understood as ʿumūm and applied accordingly as long as that application does not obliterate the maṣlahah for which it was intended.⁷

Al-Āmidī discusses this subject under fourteen headings,⁸ some of which are already mentioned by Abū al-Ḥusayn al-Baṣrī, Imām al-Ḥaramayn al-Juwaynī, al-Ghazālī and other scholars.

A contemporary scholar on Uṣūl al-Fiqh, Abū ʿAynayn Badrān divides the kinds of takhṣiṣ evidences into: First, independent but connected evidence (al-kalām al-mustaḳill al-muttaṣil). This is a statement in which further provisions are mentioned together in the text which is to be particularized, on the condition that the former must not be of different time of their revelation. For example, the Qur'ān 2: 185,

Fa man shahida minkum al-shahr fa'l-yaṣumhu, wa man kāna marīḍan aw ʿalā safar fa ʿiddatun min

ayyām . . . ukhar

[Let those of you, who are present at the month fast it, if any of you be sick, or if he be on a journey, then a number of other days]

The above-quoted verse explicitly shows that fasting is obligatory on every one who is present in the month of Ramaḍān. The verse then, followed by a statement which is complete grammatically. This statement excludes the sick/man and the one who is on a journey from the general implication of the verse. Consequently, the said two categories of the Muslims are free to break their fasting, provided they make up for it by fasting in future days.

Secondly, an independent and separate statement (al-kalām al-mustaqill al-munfaṣil). It is a further statement that is not mentioned in the text with general meaning. For example, the Qur'ān 2:180,

Kutiba 'alaykum idhā ḥaḍara aḥadakum al-mawt in taraka khayrā al-waṣiyyata li al-wālidayn wa al-aqrabīn bi al-ma'rūf ḥaqqan 'alā al-muttaqīn

[Prescribed for you, when any of you is visited by death and he leaves behind some goods to make a testament in favour of his parents and kinsmen honourably an obligation on the godfearing]

This verse means that a testament should be made in favour of one's parents and kinsmen whether they already have a share in the inheritance or not. However, when the succession was revealed, the Prophet is reported to have declared,

Inna Allāh a'ṭā kulla dhī ḥaqq ḥaqqahu, falā waṣiyyata li-wārith

[Surely, God has given every one his due thus no bequest in favour of an heir]

The Tradition obviously, excludes those who are inheriting from the general meaning of the verse.

Thirdly, a subordinate clause (al-kalām ghayr al-mustaqill). These kinds of statement are divided into al-istithnā' al-muttaṣil, shart, ṣifat, and ghāyah.⁹

THE TAKHṢĪṢ BY INTERNAL EVIDENCES

Abū al-Ḥusayn al-Baṣrī divides internal evidences into: istithnā' (exception), shart (conditional) ṣifah (quality) and ghāyah (limit).¹⁰ The discussion here will be made following this division.

1. THE TAKHṢĪṢ BY ISTITHNĀ' (EXCEPTION):

By istithnā' or exception we mean anything excluded from or not in concordance with a general rule, principle, class etc. In law, it usually means a clause or term in a document that restricts the usual legal effect of the document. With reference to the Arabic grammar, istithnā' is of three kinds:

1. al-muttaṣil (the joined) in which mustathnā (the thing excepted) is similar in kind to the general term, or mustathnā minhū (that from which exception is made) as in "lā ilāha illā Allāh" [There is no God except Allāh].

2. munqatiʿ (the severed), in which the thing excepted is different in kind from the general term, as in "mā qāma al-qawm illā himāran" [the people do not rise up but an ass], and

3. mufarragh (the emptied), where the general term is not expressed, as in "mā baqiya illā Ḥasan" [lit. did not remain except Ḥasan].

The commonest way of expressing istithnā' is by the particle illā which is a modification of in and lā which means "if not". Istithnā' also could be made using ghayr, mā ʿadā and mā khalā, siwā, khalā, ḥāshā, ʿadā, laysā and lā yakūn.¹¹

Besides exceptive particles, two important elements in istithnā' are the thing or person exempted (mustathnā) and the general statement or the things or persons to be exempted (mustathnā minhū literally means that from which exception is made).

According to Abū al-Ḥusayn al-Baṣrī, istithnā' which is connected to a statement particularizes the latter. This means that it excludes (something) from the meaning of that statement, without which it remains under its meaning. For example, the statement

"akrim al-nās illā al-fāsiqīn" [lit. give respect to the people except the wrongdoers].¹²

Another example of istithnā' is the Qur'ān 16:106,

"man kafara bi Allāhi ba'da Imānihi illā man ukriha wa qalbuḥu muṭma'inn bi'l-Imān"

[As for anyone who denies God after having once attained faith - and this, to be sure, does not apply to one who does it under duress, the while his heart remains true to his faith]

The general notion derived from "man kafara" in the verse has been made khuṣūṣ by an exception using the particle illā. By this, the verse is to be understood as follows; whoever disbelieves in God after he has earlier attained faith, is not regarded as believer any more, except those who are forced by others to utter disbelief. In other words, this verse relates to believers who, under torture or threat of death, ostensibly "recant" in order to save themselves.¹ The exception refers to a case like that of 'Ammār, whose father Yāsir and mother Sumayya, were subjected to unspeakable torture for their belief in Islām.

Abū al-Ḥusayn al-Baṣrī divides istithnā' into two kinds:

1. the one which is connected to that, is to be particularized;

2. the one which could be considered as connected.

The first kind of istithnā' is as shown in the above example. In the statement, mustathnā comes immediately

after mustathnā minhū without any lapse in time and or by word. The second kind is that mustathnā and mustathnā minhū are separated, for example, by time lapse. This separation and lapse must not show that the speaker has the intention to stop his statement at that point only, as for example the pause for breathing. It has been reported from Ibn al-‘Abbās that he was of the opinion that separate istithnā' particularizes an ‘umūm statement, and is considered as valid istithnā'. Abū al-Ḥusayn al-Baṣrī, however, does not regard this istithnā' as valid. Whatever reason the speaker might have in his mind should not be accepted.¹⁴

Al-Āmidī mentions a few definitions of istithnā' and it seems that he prefers the following definition. Istithnā' refers to an expression which is not complete by itself, attached to a statement by illā or its sisters. This istithnā' shows that the meaning intended is different from the statement it attaches to.

According to al-Āmidī the definition excludes reason and sensory perception from the meaning of istithnā'. This is because it uses a certain expression, that is, words. The definition also excludes separate statement from istithnā'. Therefore, the sentence like "qāma al-qawm wa Zayd lam yaqūm" is not istithnā'.¹⁵

Al-Āmidī also makes it clear that by this definition confirmative and qualifying nouns are not istithnā'. It also exclusively determines that exceptive statements by other than illā and her sisters are not istithnā' in the strict sense of the term. Therefore, the sentence "qāma al-qawm dūna Zayd" is not istithnā'. Other qualifiers such as condition, quality (ṣifat) and ghāyah are also not in the meaning of istithnā'.¹⁶

It has been reported by al-Zanjānī that al-Shāfi'ī defines istithnā' as the exclusion of some meanings of a statement from the statement by using ^{the} particle illā or its sisters. By operating istithnā' the content of mustathnā minhū (that from which the exception is made) should be restricted to ^{the} level indicated by an exception. The general notion of the statement remains on the basis of mu'āraḍah (contradiction). Hence, al-Shāfi'ī identifies the difference between istithnā' and takhsīṣ. He maintains that istithnā' should always be connected to the statement, while the takhsīṣ should be separated.¹⁷

It seems that al-Shāfi'ī bases the above view on the following assumptions. First, the linguists are in agreement that the declaration of the unity of God (kalimat al-tawhīd) - lā ilāha illā Allāh - is set out in such a way to negate deities other than Allāh, and also to affirm His godhead. If istithnā' does not

indicate the negation which is in contrast to the earlier statement, how could lā ilāha illā Allāh be understood to affirm the godhead to Allāh. It would, on the contrary, indicate the negation of deities other than Allāh, but not to affirm the godhead to Allāh. This will show that Islām has set out an incomplete concept of God. But this is not the true nature of Islām. Therefore, it should mean the affirmation which is opposed to the negative implication of mus-tathnā minhū.¹⁸

Second, that the statement "I owe him one hundred" (lifulān 'alayya mi'ah) implies the obligation to pay one hundred (dīnār) to him. If the statement is as such, the obligation will remain. However, if the statement is followed by, for instance, "except ten" (illā 'asharah) the meaning will surely change. This later statement contradicts the earlier one, by which it excludes from the statement some of those meanings it initially has. Thus, the latter should be regarded as affirmative. On this basis, al-Shāfi'ī argues that the exception of a negative statement is affirmation, and the exception of an affirmative statement means negation.¹⁹

Abū Ḥanīfah and his companions are said to have had the opinion that istithnā' is an expression to be added to a general statement by which the latter ceases its general connotation. It, on the other hand,

implies as the speaker has made the statement that is after the exception has been imposed.

They assume that the Arab has two ways of expressing something as for example the way they describe nine hundred. One way is very concise and straightforward, that is tis'ū mi'ah, and the other is indirect such as "alf illā mi'ah" [lit. one thousand except one hundred. But, according to Zanjānī when someone says, "lahū 'alayya alfa dirham illā mi'ah" it means that I owe him one thousand dirhams, except one hundred dirhams which is not my responsibility to pay him. The former has been constructed in a brief and concise way, and the manifest negation has been left out because the literal meaning of the word has already indicated its hidden signification. This is also the way to understand the Qur'ān 29: 14,

"fa labitha fihim alfa sanatīn illā khamsīna 'āman"
[...and he (Noah) dwelt among them a thousand years but fifty]

For them, the first statement should mean "I owe him nine hundred dirhams". They do not agree with the opinion that the exception of negative is affirmation. On the other hand, they claim that between negative and affirmative there is another rule, namely, 'adam al-hukm (the absence of valuation). The exception, therefore, will do nothing in this respect. Neither negative nor affirmative can be drawn from the thing

excepted (mustathnā). For example, the Prophet has been reported to have said, "lā ṣalāt illā bi ṭuhūr" [lit. no prayer except in (the state of) purity] and "lā nikāḥ illā bi walī" [lit. no marriage except by (the permission of) the guardian].²⁰

Judging from the above argument, it seems that they incline to invalidate the exception (istithnā') of the thing which is not of the same kind (istithnā' min ghayr al-jins). For example, if someone says, "lahū 'alayya alfa dirham illā thawba" [lit. I owe him one thousand dirhams except a piece of cloth], it must be understood as meaning "I owe him one thousand dirhams" only, because mustathnā (that is excepted) is not a part of mustathnā minhū.²¹

Owing to the difference in viewing this concept, some scholars differ from others in their opinion with regard to some legal cases. For example, in the case of usurious things (ribawī), according to al-Shāfi'ī, in essence, the things which are considered as usurious are prohibited to be exchanged in transaction. The permissibility, which is an exception from the original rule of prohibition, is based on three conditions: if the goods are of the same kind, namely, equal proportion, permissibility and taqābuḍ (a reciprocal taking possession). If the goods are of different kind two conditions should exist, namely, permissibility and taqābuḍ.

From 'Ubādah b. Ṣāmit, that the Prophet has said:

"Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt - like for like, equal for equal, and hand to hand; if the commodities differ, then you may sell as you wish, provided that the exchange is hand-to-hand."²²

The Prophet prohibits the selling of those commodities between themselves generally, then the exception has been made on the condition that they are equal. The prohibition applies to anything measurable. Therefore, the Shāfi'ites do not allow the selling of one handful (of wheat) for two handfuls (of wheat), and also the selling of one watermelon in exchange with two.

Abū Ḥanīfah, on the other hand, maintains that the original ruling concerning those commodities is 'permissible' (al-ibāḥah) based on the Qur'ān 2:29,

mā
 "Huwa alladhī khalaqa lakum/fi'l-ard jamī'ā"

[It is He who created for you all that is in the earth]

and also based on the permissibility of ownership. He claims that what is intended by the ribawī Tradition is the second part of it, despite the fact that it was originally a prohibition. This is similar to his interpretation of the Tradition, "lā ṣalāt illā bi ṭuhūr", which means to affirm the purification as the condition for the validity of prayer; and not to nullify the prayer without purification. However,

the nullification of prayer while there is no purification is taken into consideration because, the non-existence of a condition to its validity. Likewise, the ribā al-faql is also forbidden because the condition which makes the transaction lawful -the equality in measurement - does not exist.

Al-Shāfi'ī makes al-taqābuḍ as a condition for the permissibility of food to be exchanged with food, whether the food is of the same kind or not. For him the permissibility is the exception from the original ruling of prohibition. There is the word taqābuḍ which can be clearly deduced from "yadan bi yadin" (hand-to-hand) in the above Tradition. And then from the customary practice the taqābuḍ has to take place in the same session (maḥall).

Abū Ḥanīfah holds the view that hand-to-hand refers to the exchange which differs from that of naṣī'ah, and that 'aynan bi 'aynin indicates confirmation and reiteration. He also assumes that it has been made clear by patent analogy (qiyās ḡalī) with regard to the original rule of transaction, which is permissible and the cause of the imperfection of the transaction is al-faql. He differs from al-Shāfi'ī's view because they regard taking possession in the same occasion as similar to taking possession in different occasions.²³

The Position of istithnā' in takhṣiṣ :

It has already been mentioned that the jumhūr regard istithnā' as a means of takhṣiṣ. In spite of that, it seems that al-Shāfi'ī himself understands istithnā' as different from takhṣiṣ. The jumhūr accept istithnā' as takhṣiṣ, if the former is connected to the 'umūm statement.²⁴

The validity of the takhṣiṣ by istithnā' lies on two conditions. First, it must be materially connected to that which is to be excepted. This connection must conform to what is usually recognized. It is not unconnected, if the discontinuities of the statement are because of respiration (tanāffus) or cough. These conditions are not considered as disconnection in the common usage. In this case, al-Āmidī says that for istithnā' to be valid, it must be attached to mustathnā minhū in the real sense. And it must be in that sense. In other words, it must not be interposed by other element. Al-Āmidī claims that this is also the opinion held by his companions and a majority of the scholars.²⁵

It has been reported that Ibn 'Abbās was among those who accepted the validity of separate istithnā'. Istithnā' is still valid even if it was interrupted for as long as a month.²⁶ The exponents of this opinion further declare that if someone has in mind

while pronouncing a statement, that he wants to make an exception, and after one month he says that what he means is this, apart from so and so, his statement must be accepted.²⁷ However, this opinion must be for special reason. If not, their argument and the opinion itself could be practically impossible.

Istithnā' min ghayr al-jins:

This is a kind of exception used in Arabic where the exception and the thing to be excepted, are not of the same kind. According to Abū al-Ḥusayn al-Baṣrī, the use of this istithnā' is a matter of fact. The Qur'ān 38:73-74 says,

"Fa sajadā al-malā'ikat kulluhum aīma'ūna illā iblīs"

[Then the angels bowed themselves all together save iblīs]

Iblīs is excluded from the statement, while he is not an angel himself. As has been stated earlier, istithnā' means to exclude something from the statement. In the above verse, the designation malā'ikah or angels do not include iblīs. However, the the Qur'ān uses it to the effect that iblīs is excluded from angels who are obedient to God's order. Therefore, there must be a kind of ellipsis (idmār) in the statement. Ellipsis may be in istithnā' itself or in mus-

tathnā minhū. Example for the former is as in the sentence,

"lī Zayd 'alayya 'asharat athwāb illā dīnār"

[lit. I owe Zayd ten piece of shirts except one dīnār]

In this instance, dīnār means a shirt or shirts the value of which is a dīnār. Istithnā', therefore, comes in meaning similar to mustathnā minhū, that is value. And in this instance ellipsis occurs to istithnā'.

The Qur'ān 15:30-31 above provides the example of the second type. Those verses should be in the meaning "fa sajadā al-malā'ikat wa man umira bi al-su'ūd illā iblīs" [lit. then the angels and those who are ordered to bow bow themselves all together save iblis]. Angels and iblis have been treated as having a common quality, that is among those who are ordered to bow, and as a result the exception is regarded as valid and acceptable.²⁸

On whether the istithnā' which is positioned after two statements refers to both statements or to the latter only:

According to Abū al-Ḥusayn al-Baṣrī, the Shāfi'ites are of the opinion that that istithnā' refers to both statements; and the Ḥanafites are of the view

that it refers to the second statement only. They, however, maintain that with regard to the istithnā' bi mashī'at Allāh (subject to the will of God), and shart (conditional), they refer to both statements respectively.²⁹ A certain al-Hūrī has related from a Ṣāhirite the same opinion as the Ḥanafites' and he made no distinction between al-mashī'ah, shart and istithnā'. He mentions that this opinion belongs to the Ṣāhirite school.³⁰

According to Qāḍī 'Abd al-Jabbār, if the second of the two statements is still on the same subject as the first, and there is no indication to show that the subject-matter has changed; and moreover, from the grammatical point of view istithnā' could refer to them correctly, then that istithnā' should be understood as referring to both of them.³¹ On the other hand, if the second statement, through some indications, has turned to explain something other than the first, then that istithnā' should be understood as referring to what it directly concerns.

Abū al-Ḥusayn al-Baṣrī has made a great effort to explain this subject. He says that it can be explained by making this assumption, "That the second statement would possibly have something in common with the first albeit in a concealed manner, or it has nothing of this kind."

If the second statement has nothing in common with the first, they would appear in the following situations: First, both statements are of different types (naw'); furthermore, the subject-matter of the second differs from the first. For example,

"Idrib Banī Tamīm. Wa al-fuqahā' hum aṣḥāb Abī Ḥanīfah illā ahl al-balad al-fulānī"

[lit. Beat Banī Tamīm. The jurists are Abū Ḥanīfah's Companions except the people of a certain country]

In this instance, istithnā' should refer to the second statement only, because the speaker has made this statement independent from the first one, and the former is of different subject-matter. It is clear that he has turned his attention from it. No other better proof should be added to support this argument.

Second, the second statement is of the same kind as the first one, except they differ on ism or name and hukm. For example, the sentence

"Idrib Banī Tamīm wa akrim Rabī'ah illā al-Ṭiwāl"

[Lit. Beat Banī Tamīm, and pay respect to Rabī'ah except the tall ones].

In this case, istithnā' should refer to what it follows, because the first and the second statements are independent and not similar. The speaker has also turned his attention from the first statement to the second.

Third, the two statements are bound together by

their apparent ḥukm only, or their common feature is their ism or appellation. One of them does not have any concealed feature different from the other. The first, for example,

‘alā
 “Sallim/Banī Tamīm wa sallim ‘alā Rabī‘ah illā al-ṭiwāl”

[lit. Greet Banī Tamīm and greet Rabī‘ah except the tall ones]

In this case, istithnā’ should refer to what it follows. This is because the speaker seems to turn his attention from the first clause to the second, by which it shows that his concern for the first clause has ^{been} completed.

If they share a common ism only they should appear in the following ways:

1. The two ḥukms do not share any common end. For example,

‘alā
 “Sallim/Banī Tamīm, wa ista’jir Banī Tamīm illā al-ṭiwāl”

[lit. greet Banī Tamīm, and employ Banī Tamīm except the tall (amongst them)].

In this case, the correct view is that istithnā’ should refer to what it follows only.

2. The two ḥukms share a common end, by which they are to be seen as belong to one ḥukm, and the first must not in any way differ from the second in their subject matter. In this case istithnā’ should refer to both. For example,

"Sallim 'alā Rabī'ah wa akrim Rabī'ah illā al-ṭiwāl"

[lit. greet Rabī'ah and give respect to Rabī'ah except the tall (amongst them)]

The two ḥukms share a common end and purpose, that is, i'zām or to give high respect.

It is also possible that, while the second statement does not have ^{an} explicit common thing with the first, it however, exists in the way of ellipsis. It could be ism or ḥukm. The former is for example, the statement,

"akrim Rabī'ah wa ista'jirhum illā man qāma"

[lit. Give respect to Rabī'ah and employ them except those who stand up]

The latter for example,

"akrim Banī Tamīm wa Rabī'ah illā man qāma"

[lit. Give respect to Banī Tamīm and Rabī'ah except those who stood up]

In both cases, istithnā' should refer to two statements together.

The Qur'ān 24: 4-5 says,

"wa alladhīna yarmūna al-muḥṣanāt thumma lam ya'tū bi arba'ati shuhadā' fa illidūhum thamānīna jildah wa lā taqbalū lahum shahādat abadā wa ulā'ikahum al-fāsiqūn, illā alladhīna..."

[And those who launch a charge against chaste women, and produce not four witnesses (to support their allegation) flog them with eighty stripes; and reject their evidence ever after; for such men are wicked transgressors (4) Unless they repent thereafter and mend their conduct...]

This verse is classified under this category, because in the second statement there is a concealed thing which also exists explicitly in the first statement. This concealed thing is "those who launch a charge..." Furthermore, there is nothing in the second statement which indicates that the thing or things it discusses is different from that of the first statement. Both share a common theme.

This verse also could be classified under the first category. This is because the rejection of their future evidence, flogging them and regarding them as wicked transgressors share a common theme, that is in-tiqām (revenge) and dhamm (disparagement).³²

This theoretical grammatical framework is too simple, and although this kind of grammatical formula is taken into consideration in determining a certain rule, it is not the only criterion to be adhered to. Therefore, in the case of slander shown by the Qur'ān 24:3-4 above, the repentance has little effect as far as the mortal punishment is concerned. Abū Ḥanīfah considers that neither the flogging nor the incompetence for giving future evidence is cancelled by repentance, but only the spiritual stigma of "wicked transgressors" is removed.³³

2. THE TAKHŞİŞ BY SHART (CONDITIONAL):

Shart, which literally means a condition, a term or a stipulation, has been defined as a thing imposed upon a person as obligatory, and taken upon oneself as such. For example a legal maxim says "lā yajūz shartān fī bayʿ." or two conditions in a transaction are not permissible. For example, when someone says, "I sell to you this garment, or piece of cloth, for a dīnār of ready money, and for two dīnārs on credit." 34

As a technical term, Muslim jurists define shart as :

"mā yalzam min ʿadamihi al-ʿadam wa lā yalzam min wujūdihi wujūd wa lā ʿadam li dhātihī"

[lit. something that makes ^{the} other thing do, not exist necessarily when it does not exist, but it does not necessitate ^{the} other thing exists or does not exist by its own existence by its very nature]

The nature of shart is shown by the above definition. The first part of the definition is used to exclude māniʿ or hindering element, as the case of menstruation to prayer. The second part of the definition is intended to exclude sabab or cause of ruling. For example, the existence of niṣāb (minimum amount of property liable to payment of the zakāt) to the zakāt. The third part of the definition li dhātihī (by its very nature) is used to make clear two points:

1. It is certain that when the condition exists

besides sabab (cause) the other thing must exist. For example, the complete ḥawl (one year) is the condition for the obligation of zakāt alongside the niṣāb which is the cause of its obligation.

2. When the condition exists alongside the mānīʿ, the other thing or in this case mashrūʿ certainly does not exist. For example, the existence of ḥawl along with the state of debt will hinder someone from the obligatory zakāt.

In other words, the existence of zakāt in the first case is because of its co-existence with sabab, and not because of its own existence alone. Similarly, the absence of compulsory zakāt in the second case is because of the existence of mānīʿ.

The divisions of condition:

Condition has been divided into four kinds. First, reason, as for example 'life' is a condition for being able to gain knowledge. Second, legal or sharʿ as for example, purification is a condition for the validity of one's prayer. Third, common sense as for example ^aladder is a condition for someone to be able to reach the upper part of the house. Lastly, grammatically as in the sentence, "Give this book to him, if he comes".³⁵ This last kind of condition is what we are going to look to in the discussion of takhsīṣ.

Abū al-Ḥusayn al-Baṣrī is certain that condition particularizes a statement. According to Abū al-Ḥusayn al-Baṣrī condition is of two kinds:

1. Something is excluded from the statement, and it is indicated by external evidences: reason or traditional, and it, therefore, becomes certain. This is for example, when someone says

"akrim al-qawm abadan in istatafa"

[lit. Give respect to that people if you can]

2. Something is excluded from the statement by an indication, and we would not know the exclusion without that indication. For example, someone says

"akrim al-qawm abadan in dakhala al-dār"

[lit. Give respect to that group of people, if they enter the house].

In this statement, the act of respect should be paid to them in whatever condition, in the statement "if they enter the house". By mentioning this condition, the obligation to respect does not exist if they do not enter the house. The particle in (if) in the above sentence is used for conditional.³⁶

There are instances in the Qur'ān where this kind of takhsīs is taking place. In the Qur'ān 4:12,

"wa lakum nisf mā taraka azwājukum in lam yakun lahunn walad"

[For you a half of what your wives leave if they have no children.

The conditional statement in the verse is in lam yakun

lahunna walad [if they have no children]. By this statement is meant that the husband has a half of his wives' possession only if the wives left no children. If the wives left children, the husband will have a different portion of ^{the} share.

Al-Ghazālī maintains that there is no difference between the effect of istithnā' and condition in a statement. For example, it has no difference if someone says " uqtulū al-mushrikīn illā an yakūnū ahl 'ahd" and "uqtulū al-mushrikīn in kānū ḥarbiyyīn". Both istithnā' and condition is part of the statement. They change the meaning of that statement.

The nature of condition:

It could be ^{that} more than one condition is a statement or ḥukm. These conditions are in the form of badal (substitution) and jam' (combination). The former, for instance, when someone says:

"akrim al-qawm abadan in dakhālū al-dār aw in dakhālū al-sūq"

[lit. Give respect to that group of people if they enter the house or if they enter the market place].

If any of these two conditions exists, they must be honoured.

Condition in the form of combination (jam') is for example, the statement

"akrim al-qawm abadan in dakhālū al-dār wa dakhālū al-sūq"

[lit. Give your respect to that group of people if they enter the house and the market place].

They deserve such respect only if they have fulfilled the said conditions. Similarly, for instance if someone says,

"If he had committed adultery and is a muḥṣan the punishment must be stoning."

In this example, both the committed adultery and muḥṣan are conditions to exist for punishment by stoning to be realized.

On the other hand, a single condition may be applied to many aḥkām (things). It is also in the form of badal and jamʿ. For example,

"aʿtī Zaydan dirhaman aw dīnāran in dakhala al-dār"

[lit. Give to Zayd a dirham or a dīnār if he enters the house].

This is in the form of badal. In the form of jamʿ is for example,

"aʿtī Zaydan dirhaman wa ukhluʿ ʿalayh in dakhala al-dār"³⁷

3. THE TAKHṢĪṢ BY ṢIFAH (QUALITY):

There are two possible conditions of ṣifah in a statement. First, it could be positioned following a

statement or sentence, or second, it could be positioned after several statements or sentences.

The first, for example ^{when} someone says, "akrim al-nās al-ṭiwāl" [lit. respect the people those who are tall]. The duty to respect, in this case, is restricted to the tall people only. If there was no such quality in the statement, it must include the short as well as the tall.³⁸

Another example is the Qur'ān 4:25,

"wa man lam yastaṭi' minkum ṭawlan an yankih al-muḥsanāt al-mu'mināt fa minma malakat aymānukum min fatayātikum al-mu'mināt"

[if any of you have not the means wherewith to wed free believing women, they may wed believing girls from among those whom your right hands possess].

The word fatayāt is ʿumūm to include all believing and unbelieving girls. However, when it is followed by al-mu'mināt, it indicates no other than believing girls. The quality here changes the ʿumūm significance of the word to become khuṣūṣ.

The second situation is for example,

"akrim banī Tamīm wa banī Rabīʿah al-ṭiwāl"

[respect the tall ones among the tribe of Tamīm and Rabīʿah]

About this situation, the scholars are divided into two major points of view, and the case is similar to the istithnā' following several statements.³⁹

4. THE TAKHŞİŞ BY GHĀYAH (FURTHEREST LIMIT):

Ghāyah is shown by ilā meaning "to", "up to" and "until" and hattā meaning "until", "up to" and "as far as". Ghāyah indicates the ḥukm of something which is mentioned after it, is different from the one mentioned before it. If it does not have this quality, it ceases to be ghāyah any more.

Ghāyah may follow a statement or several statements. If the former it could be a single ghāyah. For example, someone says,

"akrim banī tamīm abadan ilā an yadkhulū al-dār"

[Respect Banī Tamīm forever, until they enter the house].

If he does not say "until they enter the house", the effect is that Banū Tamīm should be respected forever, in whatever condition, whether they enter the house or not. The respect must be paid to them unconditionally. However, when ghāyah is mentioned the duty to respect is restricted to that is before ghāyah. If the respect is also obligatory after Banū Tamīm enter the house, the entering is no more regarded as ghāyah and nihāyah (limit). If this is the case, the conjunction ilā an is meaningless.

It is also possible that one statement or ḥukm has several ghāyahs. They could be in the form of badal (substitution) or jam' (combination). In the form of

badal, for example when someone says,

"iḍrib Zaydan abadan ḥatta yadkhula al-dār aw ḥattā tusallim 'alā Zayd"

[lit. Beat Zayd (forever) until he is willing to enter the house or until you greet him].

If any of these two acts occur, the duty to beat Zayd has ceased to operate. In the form^{of} combination is, for example when someone says,

"iḍrib banī Tamīm ḥattā yadkhulū al-dār wa ḥattā yusallimū 'alā Zayd"

[lit. Beat Banī Tamīm (forever) until they enter the house and until they greet Zayd].

In this sentence, both requirements must be fulfilled if the beating is to be terminated.⁴⁰

It is also possible that a ghāyah follows several statements. The views of the scholars on this matter are similar to their views concerning istithnā' after several statements.⁴¹

NOTES

1. Abū Zahrah, Mālik, pp. 269-270.
2. al-Darīmī, p. 513.
3. Ibid.
4. al-Mu'tamad, I, p. 257.
5. al-Mustasfā, II, p. 27.
6. al-Qarāfī, Tanqīh al-Fuṣūl, as cited in Abū Zahrah, Mālik (Cairo, 1963), p. 270.
7. Umar Fārūq 'Abd-Allāh, 'Mālik's Concept of "Amal in the light of Mālikī Legal Theory', unpublished Ph. D dissertation (University of Chicago, 1978), p. 147.
8. al-Āmidī, Ihkām, II, pp. 416-495.
9. Badrān, Uṣūl al-Fiqh, p. 142.
10. al-Mu'tamad, I, p. 257.
11. al-Āmidī, Ihkām, II, p. 419.
12. al-Mu'tamad, I, p. 260.
13. Badrān, Uṣūl al-Fiqh, p. 140.
14. al-Mu'tamad, I, p. 260.
15. al-Āmidī, Ihkām, II, p. 418.
16. Ibid., p. 419.
17. al-Zanjānī, Takhrīj, p. 152.
18. Ibid.
19. Ibid., p. 153.
20. Ibid., p. 152.
21. Ibid., p. 154.
22. Muslim, Ṣaḥīḥ,
23. al-Zanjānī, Takhrīj, p. 158.
24. Abū al-Najā, Uṣūl al-Fiqh, p. 111.
25. al-Āmidī, Ihkām, II, p. 420.
26. Ibid., p. 421.
27. Ibid.
28. al-Mu'tamad, I, p. 262.
29. Ibid., 264.
30. Ibid.

31. Ibid., p. 265.
32. Ibid.
33. As quoted by ‘Abdullah Yūsuf ‘Alī, The Holy Qur’ān: Text, Translation and Commentary, p. 897.
34. Lane, Lexicon, p. 1533.
35. al-Mustaṣfā, II, p. 39.
36. al-Mu‘tamad, I, p. 258.
37. Ibid., 259.
38. Ibid., p. 358.
39. al-Āmidī, Iḥkām, II, pp. 457-8.
40. al-Mu‘tamad, I, pp. 257-8.
41. al-Āmidī, Iḥkām, II, p. 459.

CHAPTER 8

THE TAKHŞİŞ BY EXTERNAL EVIDENCE

This chapter is aimed at discussing the takhşîş by evidence which is external to the discourse to be particularized. Some uşûlîs describe this type of takhşîş as the takhşîş by separate evidence. We have seen that the Ḥanafites only recognize the takhşîş by this kind of evidence. It seems clear that they do not regard the takhşîş by internal evidence as takhşîş, even though they understand it to have a similar implication to what the jumhūr regard as takhşîş.

As has already been indicated previously the Ḥanafites differ from the jumhūr on the question of the authority of ‘umūm and khuṣūṣ of particular discourse. This leads them to differ on the evidence to be used in the takhşîş. The rigid approach of the Ḥanafites leads them to recognize a lesser number of takhşîş evidences than the number of takhşîş evidences which are accepted by the jumhūr.

Abū al-Ḥusayn al-Baṣrī divides external evidence into ‘aqlī (rational evidence) and sam‘ī or naqlī (revealed). The latter comprises the Qur'ān, Sunnah mutawātirah, the definitive ijmā‘ which he terms dalālah, āḥād Tradition and the qiyās which he

terms amārah.¹ Mukhaṣṣiṣāt al-‘umūm which are put forward by al-Ghazālī are sensory perception (dalīl al-ḥiss), rational evidence (‘aql), consensus (ijmā‘), the specific textual evidence (naṣṣ), the implied meaning of a discourse (fahwā al-khiṭāb), the Prophet's deeds and words, the Prophet's approval of one's deed, the speaker's custom, the Companions' opinion and the exception made by a specific reason.² However, not all these means of takḥṣīs are acceptable to al-Ghazālī.

In this chapter, we will discuss those evidences which are acceptable to most of the scholars. They are:

1. The Qur'ān;
2. Mutawātir and Mashhūr Tradition;
3. Āḥād Tradition;
4. The Prophet's Practice;
5. Ijmā‘;
6. Qiyās;
7. Mafhūm;
8. ‘Ādah;
9. Rational proof (‘Aql) and perception.

1. THE TAKHŞİŞ BY THE QUR'ĀN:

a. The takhşîş of the Qur'ān by the Qur'ān:

The Qur'ān, in the Muslim view, is the very words of God, and ^{by} its very nature is definitively authoritative. Its very authority will never brook any argument. But, with regard to its individual verses, as far as their authority is concerned, most scholars agree that some of them provide definitive proof (dalīl qat'ī) and some others provide probable proof only.

According to Abū al-ʿAynayn Badrān, by its very nature, it is an irrefutable fact that a verse of the Qur'ān could be particularized by another verse of the Qur'ān. There is hardly any opposing view on this principle. There are occasions when an ʿumūm of the Qur'ān seems to contradict another statement of the Qur'ān, which comes in a very specific nature, also concerning the same question. With regard to this, Badrān says that this ʿumūm should be explained on its own merit after the specific statement has been properly taken into consideration.³

There are many verses of the Qur'ān that are explained in this way. For example the Qur'ān 2:185,

"Hence, whoever of you lives to see this month shall fast throughout it; but he that is ill, or

on a journey, [shall fast instead for the same] number of other days."

The second part of the verse "but that he is ill..." particularizes the first part which is ‘umūm in its significance. This is also applied to the understanding of the Qur'ān 2:276,

"Allāh has permitted sale (bay‘) but prohibited usury (ribā)"

This is the view held by most scholars. Only the Ṣāhīrites do not understand those verses in this way.⁴

The scholars who favour this principle do so on the basis of revelational evidence and reason. They maintain that there is absolutely no objection to the ways, in which the Muslims right from the time of the Prophet have understood the following verses. The Qur'ān 65:4,

"and as for those who are with child (pregnant women), the end of their waiting-term shall come when they deliver their burden"

particularizes the Qur'ān 2:234,

"And if any of you die and leave wives behind, they shall undergo, without remarrying, a waiting period of four months and ten days."

And also the Qur'ān 2:221,

"You shall not marry the pagan women unless they embrace the faith"

has been understood in association with the Qur'ān 5:5,

"And [lawful to you are] in wedlock, women from

those who believe [in this divine writ]..."

From these examples it is certain that takhṣiṣ has occurred, and the occurrence, no doubt, indicates permissibility.⁵

On the permissibility of the takhṣiṣ of the Qur'ān by the Qur'ān, Abū al-Ḥusayn al-Baṣrī argues that when it is possible for God to use ʿumūm discourse to indicate some specific things, it is also possible for one verse in the Qur'ān to be particularized by another verse of the Qur'ān. As examples, he says that the Qur'ān 2:234 has been particularized by the Qur'ān 65:4. The Qur'ān 2:234 says,

"If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days."

This verse prescribes a waiting period for widows in general, but the Qur'ān 65:4 excludes the pregnant widows from its generality. The Qur'ān 65:4 says,

"For those who carry (life within their wombs), their period is until they deliver their burdens."

Abū al-Ḥusayn al-Baṣrī also gives another example in this matter. He says that the Qur'ān 2:221 is particularized by the Qur'ān 5:5. The Qur'ān 2:221 says,

"And do not marry women who ascribe divinity to aught beside God ere they attain to [true] belief"

And the Qur'ān 5:5 says,

"...And [lawful to you are] in wedlock, women from among those who believe [in this divine writ], and

in wedlock, women from among those who have been vouchsafed revelation before your time..."

He also maintains that although the Qur'ān 16:44, i.e. "And upon you [too] have we bestowed from on high this reminder, so that you might make clear unto mankind all that has ever been thus bestowed upon them" indicates the role of the Prophet as the explainer to the "all that has ever been thus bestowed upon them", it does not, in any way, deny the explanation of His revelation by another discourse of that revelation. This is so, because God while describing the Qur'ān has stated that in it (the Qur'ān) "tibyān... likull shay'" (the Qur'ān 16:89) that is, "to make everything clear." Therefore, it is neither impossible nor unlawful for some of its verses to explain other verses.⁶

Al-Isnawī while accepting the validity of this kind of takhṣiṣ gives the Qur'ān 65:4, 2:228 and 2:234 as the examples. Al-Isnawī's position is consistent with his own opinion regarding the principle of takhṣiṣ. For him, the khuṣūṣ statement particularizes the ʿumūm in whatever condition. The Qur'ān 65:4 excludes some of the meanings contained in the Qur'ān 2:234 and 2:228.⁷ All these verses provide a specific term of waiting period for woman before she can marry again. The Qur'ān 2:228 says,

"Divorced women shall wait concerning themselves

for three monthly periods."

and the Qur'ān 2:234 prescribed four months and ten days as the waiting period for a widow. However, these fixed waiting periods are not applicable in the case of pregnant woman as indicated by the Qur'ān 65:4.

Regarding this instance, both the Shāfi'ites and the Ḥanafites are in agreement ^{with} the conclusion. However, the Shāfi'ites reach it through the principle of takhṣiṣ, while the Ḥanafites reach the conclusion through the principle of naskh. According to the Ḥanafites the Qur'ān 65:4 is of later date compared to the other two verses. They maintain that this chronological order of revelation has been confirmed by authentic Traditions.

The Ḥanafites also maintain that when there are two verses of the Qur'ān pertaining to one particular case, the one ʿumūm and the other khuṣūṣ and to understand them together is well-nigh impossible. The only way to resolve such a complexity is by using either of them. However, this also does not provide a straight-forward answer, because if the ʿumūm statement is to be taken into consideration, it would mean to disregard or moreover, to invalidate the proof of that khuṣūṣ evidence absolutely. The only possible way of reconciliation is to understand them in accordance with the khuṣūṣ statement. By doing so, it does not necessarily mean to invalidate the evidential nature

of the ‘umūm statement. The latter still has the force of evidence which is covered by the khuṣūṣ statement. To understand them with regard to the khuṣūṣ statement is, therefore, preferable. In this case, the force of evidence that the khuṣūṣ statement has is stronger than ^{that} of the ‘umūm statement.*

By this conclusion, it does not mean the end of the problem. The preferability of the khuṣūṣ statement to the general one is either based on the principle of takhṣiṣ or naskh. Al-Āmidī gives his preference to the principle of takhṣiṣ. He bases this view on the following grounds:

1. Naskh means that there exists ^a certain kind of original decision on a particular issue, but this decision has been repealed. Therefore, the decision is no more operating. The takhṣiṣ, on the other hand, is merely an explanation to the ‘umūm statement, by which it shows that the Lawgiver by his ‘umūm statement does not intend it as such. The thing suspended by naskh is more than what is suspended by takhṣiṣ. Therefore, the understanding by way of takhṣiṣ is preferable.
2. Naskh means to eliminate something after it has been established. While takhṣiṣ means to prevent something before its operation. The prevention is easier than elimination.
3. The occurrence of takhṣiṣ is more likely in law

than naskh. It is, therefore, better to incline to takhṣiṣ in view of its more likely occurrence. The operation of takhṣiṣ does not depend on whether we know their time of revelation or not, or whether the one has been revealed before or after the other.⁹

There are those who only accept it as a valid takhṣiṣ if the khuṣūṣ statement is of later date. If the date of the latter's revelation is unknown, the takhṣiṣ must not be accepted. This is because of two probabilities. First, the khuṣūṣ statement is of earlier date, then ʿumūm statement which comes later abrogates the former. Second, it could be that ^{an} ʿumūm statement belongs to ^{an} earlier date, and the khuṣūṣ statement which comes later serves as takhṣiṣ. It is difficult in this situation to give preference to one against the other. The result is contradiction and confusion (tasāquṭ). Therefore, it is advisable to seek another more clearly defined evidence as suggested by Abū Ḥanīfah, al-Qāḍī Abū Bakr al-Bāqillānī and Imām al-Ḥaramayn al-Juwaynī.¹⁰

If, for instance, we accept the khuṣūṣ statement as takhṣiṣ without knowing the date of its revelation, it is not acceptable in the case of ^{an} ʿumūm statement, because its function is definitely the naskh to the khuṣūṣ evidence. The khuṣūṣ could not also particularize the ʿumūm statement in this situation. This is

the view of the Ḥanafites and Mu'tazilites.¹¹

They illustrate their view as follows: (1) The statement "uqtulū al-mushrikīn" (kill the unbelievers) is the same as when we say "uqtulū Zayd al-mushrik wa 'Umar al-mushrik wa Khālīd al-mushrik" (lit. Kill Zayd the unbeliever, 'Umar the unbeliever and Khālīd the unbeliever and so on). In that case, if the specific statement "Kill Zayd the unbeliever" is followed by the general statement which prohibits the killing of all, the former obviously concerns Zayd specifically. However, if the statement is as follows "uqtulū Zayd wa lā taqtulū Zayd" the latter undoubtedly abrogates the former.

(2) The khuṣūṣ statement of earlier dates could be abrogated, and the 'umūm statement which supersedes it could be the abrogating evidence. In this situation, the abrogation should be the preferable one.

(3) It is uncertain whether the khuṣūṣ statement of an earlier date was abrogated or ^{whether} it could particularize the statement of a later date. This state of uncertainty must not be the quality of mukhaṣṣis, because the bayān must be certain.

(4) Ibn 'Abbās has been reported to have said,

"na'khudhu al-aḥdath fa al-aḥdath"

lit. We accept only the latest and then the latest]

In this case the 'umūm statement of later date is the

latest. Therefore, we should take it.¹²

Al-Āmidī simply regards these arguments as insignificant. He answers their arguments, first, by saying that an ‘umūm statement which includes many individuals in its application could not simply be identified with putting together several specific words because the latter refer to specific meanings independently. These words by themselves do not accept takhṣiṣ. They differ from ‘umūm words.

Second, the possibility of khuṣūṣ being abrogated, does not necessarily indicate that it ever occurred. If the possibility shows the occurrence, it should be more intelligible that khuṣūṣ should particularize ‘umūm in view of its possibility of being mukhaṣṣiṣ to the latter. If both of these propositions are to be held as valid, an impossible situation will exist where khuṣūṣ is abrogated, and is also the mukhaṣṣiṣ of its abrogating statement.

Third, if what they mean by the state of uncertainty of khuṣūṣ, whether it has been abrogated or it functions as mukhaṣṣiṣ, is to give similar preference to both the above conditions, this is objectionable. On the other hand, if they mean to give the preference to one of them, then it does not prevent us from using it as a mukhaṣṣiṣ.

Fourth, that the statement is of a Companion. It must be taken to mean, that if the latest is khuṣūṣ the evidence should be understood together dependently.¹³

b. the takhṣiṣ of the Tradition by the Qur'ān:

According to al-Āmidī a great majority of the jurists and the Mutakallimūn are of the view that the takhṣiṣ of the ‘umūm statement of a Tradition by the Qur'ān is permissible.¹⁴ Al-Shīrāzī says that the above view is acceptable to the jurists in general. Only very few of them do not agree with this principle.¹⁵

The way this kind of takhṣiṣ operates is best illustrated by the following example. The Prophet has been reported to have said,

"mā quṭi‘a min hayy fa-huwa mayyit"

[Whatever is cut from the living animal is carrion].

This statement of the Prophet is ‘umūm to include anything which is cut from any living animal whether . . . skin, flesh, wool, horn etc. The Qur'ān 16:80, however, is more specific, and therefore, has been regarded as particularizing the above Tradition. The Qur'ān 16:80 says,

"...and out of their wool, and their soft fibres (between wool and hair), and their hair, rich

stuff and articles of convenience (to serve you) for a time."¹⁶

According to Shīrāzī the permissibility of this kind of takhṣiṣ can be deduced from the Qur'ān 16:89,

"We have sent down to you the Book explaining all things..."

It is certain that if the Qur'ān is khuṣūṣ and is seemed contradictory to the 'umūm statement whether of the Qur'ān or the Tradition, it particularizes the latter. This is because, the Qur'ān in this case is absolutely definitive and the Tradition is probable. If the takhṣiṣ of the Qur'ān by the Tradition is permissible, the takhṣiṣ of the latter by the former is more intelligible.

In using the Qur'ān 16:89 "...the Book explaining all things" to justify the validity of the principle, Āmidī says that the Prophet's Tradition is among "all things" and therefore, it should be regarded as included in the meaning of the said "all things".¹⁷

Those who oppose this means of takhṣiṣ say that the function of the Tradition is to explain the Qur'ān ^{is} as obvious from the Qur'ān 16:44,

"...and We have sent down (also) the message (dhikr) to you, that you may explain clearly to men what is sent for them."

Shīrāzī maintains that the function of explaining the Qur'ān ascribed to the Tradition is only with regard to those verses which need to be explained. Or we may

assume that what is meant by explanation (bayān) here is clarification (izhār). Because, if the Qur'ān as a whole is said to be in need of explanation, the explanation must be clarification. The takhṣiṣ, on the other hand, is not what the Qur'ān as a whole needs. Only certain verses of it have to be explained by way of takhṣiṣ. Therefore, the Qur'ān 16:44 does not, in any way, object ^{to} the takhṣiṣ of the Tradition by the Qur'ān. 18

They also may suggest that if the Qur'ān 16:89 is taken to mean as such, it would unnecessarily contradict the Qur'ān 16:44. The latter clearly defines the Prophet's duty to explain the Qur'ān, and this is made possible by his Tradition. However, if we suggest that the Qur'ān is to be used to explain the Tradition, it would mean that the thing to be explained is the explanation. This is obviously not possible. Furthermore, the thing to be explained must be the one which has been established earlier compared to the explanation. The conclusion, therefore, should be on the basis of this consideration. Thus, if the Qur'ān is to be used to explain the Tradition the situation is the other way round, and is unacceptable to the Muslim mind.

Al-Āmidī replies ^{to} this assumption. He maintains that when the Qur'ān indicates the Prophet as being the explainer to the revelation, it does not

necessarily deny the possibility of explaining the Tradition by the Qur'ān. The latter also has been revealed through his mouth. This is in view of the fact that the Tradition is also referred to by the Qur'ān 53:3-4,

"He does not speak out of his own fancy. This is an inspired revelation."

The Prophet's Tradition is considered as non-scriptural revelation. Thus, to explain one revelation with another is obviously permissible.¹⁹

The Qur'ān provides explanation to all things. This is obvious, as shown by the verse 16:89 "...explaining all things". Therefore, everything is explained by the Qur'ān, yet the Qur'ān is not in the position to follow them. Āmidī says further, that sometimes a definitive evidence has been used to explain the meaning of a probable evidence, but the former is not regarded as ... been reduced to the position of the latter.²⁰

2. THE TAKHŞİŞ BY MUTAWĀTİR AND MASHHŪR TRADITION:

Uşūlis, based on the same ground as the takhşış by the Qur'ān permit the takhşış of the ‘umūm of the Qur'ān by mutawātīr Tradition. It is because this Tradition by its very nature is definitive. Therefore, they allow the Qur'ān 3:97 to be particularized by a Tradition. The Qur'ān 3:97 says,

"Pilgrimage unto the House is a duty owed to God by all people (al-nās) who are able to undertake it."

The word al-nās (people or men) in this verse is ‘umūm. However, it has been particularized by the following Tradition. The Prophet has been reported to have said,

"rufi‘a al-qalam ‘an thalath: ‘an al-nā'im hattā yastayqiza, wa ‘an al-ṣabī hattā yahtalima wa ‘an al-majnūn hattā yafīq"

[No obligation is imposed on three: the one asleep, until he awakes; the child, until he comes of age; and the lunatic, until he recovers.]²¹

Uşūlis regard this Tradition as mutawātīr.²²

According to al-Āmidī, he never knows of those who reject this type of takhşış.²³ Al-Rāzī maintains that this kind of takhşış is permissible, whether the Tradition is of words or of actions.²⁴ The scholars have used it, and understood the Qur'ān in the light of such a Tradition. They particularized the Qur'ān

4: 11,

"God (thus) directs you as regards your children's inheritance"

by the following Traditions,

"The killer does not inherit" ²⁵ and

"Two persons belong^{ing} to different religions do not inherit from each other"²⁶

They also particularize the Qur'ān by the Prophet's actions and deeds. The Qur'ān 24:2 prescribes lashing as the punishment against illegal sexual intercourse (zinā) in general. However, the punishment carried out by the Prophet concerning muḥṣan (one who has been in wedlock) was stoning. The report of this Prophet's action is considered as reaching the level of tawātur. Therefore, the majority of scholars maintain that it is obligatory to punish the muḥṣan by stoning. ²⁷

It has been reported that 'Umar has strongly emphasised the importance of this Tradition. He is reported to have said,

"I fear that with the passage of time some will say, 'We do not find stoning in the Book of God' and on that pretext they will neglect a Divine ruling which God has revealed. Stoning is a just claim against the non-virgin fornicator when valid proof is brought, or pregnancy occurs, or confession is made. We used to recite it, "The shaykh and the shaykhah, when they fornicate, stone them

outright." The Messenger of God stoned and we have stoned."²⁸

THE TAKHŞİŞ BY MASHHŪR TRADITION:

Mashhūr or "well-known" Tradition is a Tradition which is āḥād as to the head of the chain of transmitters and has become mutawāṭir in later generations.²⁹ On the takhşış by mashhūr Tradition, the uṣūlīs are not fully in agreement. Some of the Ḥanafites permit such a takhşış, but others disagree with the ^{above} view. Those who permit it, do so because they associate mashhūr Tradition with the mutawāṭir. One of the most popular examples in this case is the takhşış of the Qur'ān 5:3 by a report that the Prophet whenever he was asked concerning sea water has replied, "The water is clean, and its dead species are lawful." The Qur'ān 5:3 "Forbidden to you is carrion, and blood, and the flesh of swine, and that over which any other ^{name} than God's has been invoked...." is ‘umūm to include animals living in the sea and on the land. The Tradition particularizes it to exclude animals of the sea from this ruling. This Tradition is considered as mashhūr.³⁰

3. THE TAKHŞİŞ BY ĀḤĀD TRADITIONS:

In the following pages, the discussion will be on the position of āḥād Traditions as compared to the ʿumūm statement of the Qur'ān. Āḥād Traditions refer to a category of the Prophet's Traditions transmitted by one, two or even more authorities provided their number falls short of that required for the mutawāṭṭir. It is also called khābar al-wāḥid or ḥadīth āḥād. Āmidī defines it as the reports (of the Prophet's Traditions) which do not reach the quality of mutawāṭṭir.³¹ It should be clear from the beginning that in this discussion special consideration is given to that sort of Traditions which have specific legal values or which are khuṣūṣ in their reference.

On the authority of āḥād Tradition to particularize the ʿumūm of the Qur'ān, the opinions of the uṣūlīs are divided. The difference in their opinion is, initially the result of their view with regard to the value of āḥād Tradition in the sphere of law.

On the acceptability of these Traditions the uṣūlīs differ on the conditions they must have. Mālik insists that it should not contradict the practice of the Medinans. Al-Shāfiʿī accepts these Traditions provided they are authentic; the chain of authorities are uninterrupted and the transmitters were renowned for their honesty and ability to comprehend and quote

accurately. Aḥmad b. Ḥanbal agrees with al-Shāfi'ī on the importance of continuity in the chain of transmitters. The Ḥanafites accept āḥād Traditions provided the narrators are trustworthy and the narration made good sense.³²

According to al-Ghazālī, there was a consensus of opinion among the scholars on the permissibility of using and following āḥād Traditions which particularise the ʿumūm statement of the Qur'ān.³³ However, with regard ^{to} its authority of takhsīs, the scholars are divided into different opinions.

One group among them maintains that the preference should be given to the ʿumūm statement of the Qur'ān. This opinion clearly belongs to the Ḥanafites. They maintain that the ʿumūm of the Qur'ān should be given the priority. This is because the Qur'ān is definitive, while āḥād Traditions are, on the contrary, only of the probable category. According to this view, the Tradition should function either as naskh (abrogation) or as bayān (elucidation). In the present case, to function as naskh is not possible, because the scholars have unanimously agreed that the naskh is not permissible by āḥād Tradition. And to be as bayān is also unacceptable, because bayān is only valid by a statement which is not independent from what is to be elucidated.

Considering all these, the Ḥanafite uṣūlīs do not

regard it as lawful to particularize the ‘umūm of the Qur'ān by āḥād Tradition. They maintain that the Qur'ān is definitive in authority and āḥād Tradition is of probable category only. The probable could not particularize the definitive absolutely. Their argument rests on the assumption that if the practice of particularizing the Qur'ān by āḥād Tradition is to be allowed, it could lead to allowing the strong proof to be set aside by the weaker one. Al-Bazdawī says, "Most of our masters have the opinion that the ‘umūm the particularity of which has not been identified for certain, could not be particularized by āḥād Tradition or qiyās." He says that this is a well-accepted view.³⁴

Furthermore, the Ḥanafites maintain that evidence of probable authority can never particularize any evidence of higher authority. For them the takhṣiṣ is not a kind of bayān (elucidation) as most of the Shāfi‘ites believe it to be, rather it is used to invalidate the implication of some of the meanings contained in the statement. They also maintain that such a statement is self-explanatory, and therefore, hardly needs any external explanatory evidence. As an example they quote the Qur'ān 5:6,

are about

"O, believers, when you ^{are about} to pray, wash your face and your hands up to the elbows, and lightly rub your heads and (wash) your feet up to the ankles."

The verse is 'umūm and has clearly described the nature of performing wuḍū' (minor ablution) which is not necessarily to be completed in sequential order. Based on this, they regard it as valid wuḍū' if someone performs it not in the order mentioned by the above verse.

They obviously disregard the Tradition which stipulates that the wuḍū' is to be performed in sequential order, which also particularizes the Qur'ān 5:6. It has been reported that the Prophet says,

"God will not accept one's prayer until he cleanses every part in their order. He washes his face followed by his hands."

The Ḥanafites take only from this Tradition, the general obligation of performing wuḍū'. They regard the tartīb which is prescribed by the Tradition as corroborative to the Qur'ān 5:6 in its obligatory nature.

The Shāfi'ites, Mālikites and Ḥanbalites, on the contrary, take the Tradition as prescribing the sequence^{of} the wuḍū' should be performed. Tartīb to these scholars, is an absolute requirement for the validity of wuḍū'. They regard the Tradition as particularizing the 'umūm of the Qur'ān 5:6. 35

The Ḥanafites also give another evidence, based on the story of 'Umar's decision against a Tradition reported by Fāṭimah bint Qays. The story is as follows. Fāṭimah had testified before 'Umar that she was given

an irrevocable triple divorce by her husband, but the Prophet made no provision for her residential accommodation during her waiting period (‘iddah), nor did he recommend expenses for her maintenance. ‘Umar did not accept this Tradition. He says that he could not abandon the Book of Allāh for the report of a woman when he could not judge whether she was speaking the truth or telling a lie.³⁶ In ‘Umar's opinion, the Tradition reported by Fāṭimah bint Qays might contradict the Qur'ān 65:6 "Let them (the women) live in ‘iddah in the same style as you live according to your means." Based on this report they assert that ‘Umar, one of the great Companions, did not use āḥād Traditions as an explanation on the above Qur'ānic verse.

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Abū ‘Aynayn Badrān who praises the opinion held by the Ḥanafites, says that the above story of ‘Umar is a strong support for the validity of their view. However, the jumhūr do not agree on the point that by ‘Umar's decision means that he doubted the authority of āḥād Tradition. He rather doubted the authenticity of the said Tradition. This is clear from his last statement "whether she was speaking the truth or telling a lie."³⁷

Moreover, on the other side of the report, it is said that this remark of ‘Umar is only known to the ‘Irāqīs and reported by Abū Yūsuf alone. Whereas Mālik

and al-Shāfi'ī have used this Tradition considerably. They, therefore, provide no maintenance to a divorced wife (in the case of irrevocable divorce) during ʿiddah. They understand the Qur'ān 65:6 which contains the obligation of providing maintenance to the divorced in favour of the pregnant wife only.³⁸

Among the Ḥanafites, there were some who accepted the takhsīs by an āḥād Tradition but not without any condition. ʿIsā b. Ābān, for example, maintains that the ʿumūm which has been particularized by a definitive evidence could later be particularized by an āḥād Tradition.³⁹

Al-Jaṣṣāṣ agrees with ʿIsā in this regard. He, however, distinguishes between two possibilities: (1) literal meaning (ẓāhir) whose purpose is obvious and does not need further elucidation (bayān), (2) literal meaning of the Qur'ān or Tradition which is equivocal and can be interpreted in different ways. In the case of the latter, takhsīs by āḥād Tradition is reasonable (maʿqūl). This rule is based on a principle that is clearly expressed and repeated several times in his work,

"kull mā yathbut min ṭarīq yūjīb al-ʿilm fa ghayr
lāʾiz tarkuh bimā lā yūjīb al-ʿilm"

[lit. whatever is established by means which necessitates certain knowledge cannot be disregarded on the ground of that which does not necessitate it].⁴⁰

This is also said to be the opinion of al-Karkhī.

The way these scholars perceive this relationship between the ‘umūm of the Qur’ān and the khuṣūṣ of āḥād Tradition can be illustrated by this example. The Qur’ān 4:24 says,

“...but lawful to you all [women] beyond these, for you to seek out, offering them your possessions, taking them in honest wedlock, and not in fornication.”

This verse is ‘umūm, which implies that the unbelievers are not unlawful to the Muslim to take as marital partners. This is because, the previous verse which identifies those who are forbidden to the Muslim, unbelieving women are not mentioned. However, this state of ‘umūm has been made khuṣūṣ by another verse of the Qur’ān (2:221) which says,

“Do not marry unbelieving women (idolaters) until they believe.”

Both this and the earlier verse are definitive in view of their source of origin. This definitiveness, however, has changed once it was particularized. Its authority becomes probable. Accordingly, it could be particularized by an āḥād Tradition. In this case, the Ḥanafites accept the Tradition,

“One cannot be married to a woman and her paternal aunt, or a woman and her maternal aunt at the same time.”⁴¹

They strongly oppose the takḥṣīs beyond what has been

said previously. They maintain that if the takhṣiṣ of the Qur'ān by an āḥād Tradition is permissible, it would mean allowing the naskh (abrogation) of the Qur'ān by such^a Tradition. But the abrogation of that kind is not permissible. Therefore, it is also invalid to use an āḥād Tradition in the case of takhṣiṣ. This view is obviously based on the notion that takhṣiṣ is similar to naskh. If this is the reason, their argument is not reliable.

Opposed to the above view, are scholars who accept the takhṣiṣ of the Qur'ān by āḥād Traditions. It is reported that this is the opinion held by a majority of the Shāfi'ites, Mālikites and Ḥanbalites.⁴³ Among the uṣūlis who hold this view are Imām al-Ḥaramayn al-Juwaynī, al-Ghazālī, Abū al-Ḥusayn al-Baṣrī, al-Rāzī, al-Āmidī, Ibn al-Ḥājib and al-Bayḍāwī.

This opinion is based on the nature of the authority of the ʿumūm of the Qur'ān and the strength of the proof provided by an āḥād Tradition. They maintain that the ʿumūm of the Qur'ān^{is} as the Qur'ān itself, is definitive by its very nature. This fact is accepted generally by the whole Muslim community. However, according to these uṣūlis, this ʿumūm of the Qur'ān has only the degree of the category of probability in its legal implication. There are many indications to show that almost every ʿumūm statement found in the Qur'ān does not always remain ʿumūm.

These statements have been made khusūṣ by either the Qur'ān itself, or the Tradition or by other lawful means of takhṣiṣ. Therefore, the ʿumūm statements of the Qur'ān are definitive if seen from ^{the point of} their source of origin, and probable with regard to their authority. Āḥād Traditions, on the other hand, give definitive proof if they are specific, though their source of origin is probable. This state of probability with regard to their origin does not have any effect on their authority as an evidence. These Traditions have unequivocally specified what kind of action has to be undertaken or omitted and to whom these injunctions have been addressed.

This opinion is clearly based on their understanding of the doctrine of takhṣiṣ. The probable evidence can certainly particularize another probable evidence. Thus, with the above argument, they assert that an āḥād Tradition which is khusūṣ can particularize the ʿumūm statement of the Qur'ān. It is also in agreement with their view that an āḥād Tradition can be bayān or an elucidation of the Qur'ān; and the takhṣiṣ is a kind of bayān.⁴⁴

However, al-Ghazālī does not agree with this opinion and he argues against it. According to al-Ghazālī their first opinion is not valid for the following reasons: First, they have put the ʿumūm statement of the Qur'ān in the place of a khusūṣ

statement and the implication of its meanings is to be taken accordingly. But this view which is based on their understanding of ‘umūm words has been refuted by the Wāqifites. How is it possible to maintain that such a statement is definitive, while its signification is not so?

Second, if all the statements are to be regarded as authoritatively definitive, it would imply that all the transmitters of those Traditions are unreliable. But, the view held by a majority of scholars is not so. Third, that the principle of barā'ah al-dhimmah (the state of innocence or freed from any obligation or duty) is approved as definitive. However, it has been clarified by an āḥād Tradition. This clarification is possible because the latter is regarded as definitive. Similarly, for example, sea water in a jug is definitely clean on the condition that there is no report from a reliable person about its being defiled. ‘Umūm, in the same way, has to be understood as ‘umūm until khuṣūṣ has been identified.

Fourth, an āḥād Tradition is to be accepted definitely. This obligation is held as such by ijmā‘. What is probable is only with reference to its transmitters. We are under no obligation to believe in their trustworthiness. For example, we are under obligation to wipe the blood from our body after we are told about the existence of blood there by two

trustworthy persons. But, we, on the contrary, are not obliged to believe them as trustworthy. Thus, to act in response to āḥād Tradition is obligatory.

Their second argument has been refuted on the basis of their difference in understanding the concept of bayān or elucidation. Al-Ghazālī says that the Tradition should function as bayān, and according to him, between the bayān and that ^{which} is to be elucidated need not come together. If such a situation is required, how could they know that that Tradition came later than the statement in question. It could be that, it was a direct response to the latter, but the rāwī fails to report their position. For example, the jurists agree that the Qur'ān 5:38 has to be understood and interpreted in accordance with the Tradition, "lā qaṭʿa illā fī rubʿ dīnār" (The hand is not cut off for (the stealing of) less than a quarter of a dīnār).⁴⁵ If the āḥād Tradition is to be neglected, how could the jurists understand the above verse in such way.⁴⁶

Al-Shīrāzī in his Tabṣīrah says that this group is reported to confine such ^{an} attitude to those Traditions the community does not agree unanimously on acting upon. If the community unanimously agree that certain āḥād Tradition should be followed and acted upon it accordingly, then the takḥīṣ by it is obviously

valid. Therefore, they hold as valid the takhṣiṣ of the bequest verses by the Tradition, "lā waṣīyya li wārith" (No bequest to an heir).⁴⁷

According to al-Shīrāzī the Muslims agree unanimously to accept the takhṣiṣ of the succession verses by the Tradition,

"A Muslim cannot inherit from a kāfir, nor can kāfir from a Muslim."

And, they also accept the takhṣiṣ of the Qur'ān 4:3, "Then you may marry women who seem good to you..." by the Tradition, "One cannot be married to a woman and her paternal aunt, or a woman and her maternal aunt at the same time."⁴⁸

They also base their view on the fact that most of the Companions have used āḥād Traditions to particularize the 'umūm statements of the Qur'ān. Reports have not come to us to reveal that there was a Companion who rejected such practice. The Traditions, "laysa li'l-qātil mirāth" [The killer does not inherit] and "lā yatawārath ahl millatayn shattā" [People from two different religions cannot inherit from each other] are used in association with the Qur'ānic verses concerning succession. And also, the generic order of cutting off the hand of a thief in the Qur'ān has been applied without neglecting the Tradition, "The hand is not cut off for less than a quarter dīnār."

Abū Bakr has been reported to have argued against

Fāṭimah, the daughter of the Prophet, concerning her claim for succession by the Tradition, "innā ma'shar al-anbiyā' lā nūrath, mā taraknāh ṣadaqah"⁴⁹ This Tradition is classified as an āḥād Tradition, and obviously limited the ʿumūm statement of the Qur'ān in this regard.⁵⁰

Although the Mālikites are said to agree to some extent with the jumhūr's view on the takhṣiṣ by āḥād Traditions, they differ slightly about the condition. As ^{for} the opinion of the jumhūr, they regard the ʿumūm statements of the Qur'ān as not definitive, because it only provides external evidence (zāhir). According to them the zāhir is not definitive. However, they are reported to hold the opinion that an āḥād Tradition could not be ^{used} as an independent evidence to particularize the former effectively. In this regard the Mālikites' opinion is somewhat like the Ḥanafites, which also does not permit the Qur'ān to be particularized or abrogated independently by āḥād Tradition. They regard āḥād Tradition as authoritative means of takhṣiṣ if those Traditions are in conformity with ʿamal.⁵¹

However, it has been reported that Mālik himself ^{adhere to} sometimes does not ^{adhere to} this opinion consistently. On many occasions Mālik seemed to permit the takhṣiṣ by āḥād Traditions. For example, he holds that the ʿumūm statement of the Qur'ān 4:24 - "All women other than

these are lawful to you, provided you seek them with your wealth in modest conduct, not in lust" - has to be understood in relation to the Tradition, "One cannot be married to a woman and her paternal aunt, and a woman and her maternal aunt at the same time."⁵²

On another occasion he discards āḥād Tradition in favour of an ‘umūm statement of the Qur'ān. He understands the Qur'ān 6:145, "Say, I find nothing in what has been revealed to me that forbids men to eat of any food except carrion, running blood, and the flesh of swine" independent from the Tradition, "The Prophet prohibits eating animals with claws." From this example it seems that Mālik does not take the Tradition into consideration.

However, the Mālikites say that Mālik uses ‘āḥād Traditions as a mean of takhṣiṣ if it is in consonance with ‘amal ahl al-Madīnah (the practice of the Medinans) or qiyās. Accordingly, Mālik holds it as not lawful to eat the meat of an animal which has ^a nāb or fang. This is obviously an exception to the ruling prescribed by the Qur'ān 6:145 above, and he uses a Tradition which he himself has transmitted in his Muwatta’. It has been reported that the Prophet says, "It is unlawful to eat animals with fangs." However, he describes later in his Muwatta’ "wa huwa al-amr ‘indanā" (This is the custom among us).

If the Tradition is not supported by qiyās or the practice of the Medinans, he discards it, and sticks to the ‘umūm statement of the Qur'ān. For example, he does not use the following Tradition. The Prophet has been reported to have said,

"idhā walagha al-kalb fī inā'i aḥadikum fal-yaghsilhu sab'an iḥdāhunn bi al-turāb"

[When a dog laps the water in^a vessel belonging to any of you, he must wash it seven times, using earth the first time]⁵³

Instead, he, based on the Qur'ān 4:5 - "All good things are lawful to you as well as that^{if} you have taught the birds and beasts of prey to catch, training them as Allāh has taught you" - refused the use of that Tradition by saying "How is the hunted (meat) to be eaten if the dog itself is unclean."⁵⁴

4. THE TAKHṢĪṢ BY THE PROPHET'S PRACTICE:

With regard to the Prophet's practice, the majority of scholars consider it as binding and therefore, it is legally valid to particularize the ʿumūm of the Qur'ān with it. Among these scholars are the Ḥanafites, the Shāfi'ites and the Ḥanbalites. The scholars who oppose this view are very few. Among them is al-Karkhī.

Abū al-Ḥusayn al-Baṣrī maintains that it is valid to particularize the Qur'ān by the Prophet's practice. As far as legal evidence is concerned his practice has a similar impact to that of his words. Therefore, the Qur'ān 24:2, "The adulteress and the adulterer, flog each one of them one hundred strokes" is particularized by a report on the punishment which has been carried out by the Prophet in the case of Mā'iz.⁵⁵ However, the example given by Abū al-Ḥusayn al-Baṣrī may not be appropriate, because the verse could be understood as having been particularized by many other Traditions. For example, the Prophet has been reported to have said,

"Take it from me! God has now appointed a way for women: the virgin with the virgin, one hundred strokes and a year's banishment; the non-virgin with the non-virgin, one hundred strokes and stoning."⁵⁶

Al-Ghazālī accepts the Prophet's practice as legal

evidence in the Sharī'ah. It, however, must be accompanied by a statement to this effect. For example, the Prophet is reported to have said, "Pray as you have seen me praying" and "Take from me the way you perform your pilgrimage." These Traditions have clearly informed the Muslims that the practice of the Prophet in these regards should be taken as evidence.

However, if there was no such indication, and the Prophet was seen to have done something contrary to his earlier pronouncement, the latter must not be understood as abrogating the former. It could be that the Prophet has particularized it. Al-Ghazālī illustrates this as follows. First, the Prophet is reported to have prohibited continuous fasting (al-wiṣāl), but later, he himself was seen to have violated it. The Prophet was asked about this contradiction. He replies, "I am not as one of you. God provides me food and drink all the time." It is clear by this answer that his general remark about the continuous fasting is not meant for him.

Second, the Prophet has prohibited facing the qiblah while relieving oneself. But he was seen by Ibn 'Umar to have faced the qiblah and in front of him was a wall. Therefore, his earlier prohibition should be seen as an 'umūm, while his action particularizes it to exclude the facing of qiblah from the prohibition when there is wall in front of him.⁵⁷

Al-Āmidī inclines towards accepting the idea, but not unconditionally. To form his theory, al-Āmidī reiterates two possibilities of ‘umūm: the ‘umūm which is generally applicable to the community and the Prophet alike and the ‘umūm that concerns the community but not the Prophet.

Referring to the first kind of ‘umūm, al-Āmidī illustrates it through the following example. The Prophet is reported to have said,

"al-wiṣāl aw istiḡbāl al-qiblah fī qaḍā' ḥājah aw kashf al-‘awrah ḥarām ‘alā kullī muslim"

[The continuous fasting, facing the qiblah while relieving oneself or exposing one's nakedness are forbidden to every Muslim]⁵⁰

If later, someone saw him doing something contrary to what he has proclaimed, no doubt, it was his right to do so. His latest action was an exception from the general rule he had prescribed before.

With regard to the community, the Prophet's practice of this kind could be under either of the following circumstances: (1) it could be as an order which the community should follow, or (2) it was exclusively the Prophet's. If the former, the general rule that has been proclaimed before should be discarded by the community as well as the Prophet himself. However, this is not takhṣiṣ but naskh because the rule has been removed altogether.

If the latter, the Prophet was the only one exclu-

ded from the generalness of the previously established ‘umūm rule. And, this exclusion should not be extended to cover the community.

On the other hand, if that ‘umūm statement is addressed particularly to the community, his action does not indicate any takḥṣiṣ at all. This is because he was not included in it from the beginning. His action may indicate that he himself from that moment should do that particular practice. With regard^{to} the community, if it is to be accepted that the community is under an obligation to follow the Prophet's action, the action itself, in this case is nāsikh to the rule that has been set up before. According to Āmidī, as far as the Prophet's action is concerned, its position in Islamic Jurisprudence is very clear. There should not be any disagreement among the scholars.⁵⁹

5. THE TAKHŞİŞ BY IJMĀ':

Ijmā' has been accepted as a valid means of takh-
şış. It can particularizes the 'umūm of the Qur'ān and
also the Tradition. Al-Ghazālī, al-Rāzī, al-Āmidī and
also al-Jaṣṣāṣ are among those who defend this view.

Al-Ghazālī maintains that the proof provided by
ijmā' can certainly particularize 'umūm, because ijmā'
is definitive and devoid of any mistake. 'Umūm, on the
other hand, is only of probable authority. The commu-
nity of believers will not make any judgement which
opposes the general meaning of 'umūm words, unless
there is a definitive evidence by which the generality
of the word is to be rendered khuṣūṣ. He also main-
tains that ijmā' is stronger than a khuṣūṣ textual
evidence. This is because the latter is exposed to the
possibility of ^{having} been abrogated. Ijmā', on the contrary,
cannot be abrogated, because it has been reached after
the revelation has ceased. 60

Al-Jaṣṣāṣ, who lived before al-Ghazālī, is also
reported as having the same ^{view} with regard to this
problem. He maintains that the Qur'ān 24:2

"The fornicatress and the fornicator, scourge each
of them with a hundred stripes."

should not cover the slave. The majority of scholars
have decided that the punishment for the slave should
be fifty lashes. This judgement is based on the gene-

ral regulation concerning slaves.⁶¹

Al-Rāzī simply says that the takhṣiṣ by ijmāʿ is ijāʿiz (possible and permissible) because it is an historical fact. On the basis of ijmāʿ they particularize the inheritance verse to exclude slaves⁶² from the right of inheritance. They also particularize the verse of the punishment of flogging on the basis of ijmāʿ. According to this view the slave will receive a half of the punishment prescribed in the Qur'ān. This decision follows the punishment against the slave girl.⁶²

Al-Āmidī says that he does not know any contrary opinion.⁶³ He mentions two bases for the validity of this view; revelational and rational evidence. With regard to revelational evidence, he says that through ijmāʿ the verse concerning false accusation (qadhf) has been rendered khuṣūṣ. The vast majority of scholars agree that the slave will receive only a half of the punishment mentioned in the Qur'ān.

On the basis of rational proof, he argues that ijmāʿ is of definitive authority, while ʿumūm is not definitive as far as the individuals which it refers to are concerned. If ahl al-ijmāʿ (those who are competent to bring about ijmāʿ) gave their opinion, concerning some cases, contrary to ʿumūm, we know that their decision has been reached after they have thoroughly considered its potential takhṣiṣ. On this

question, al-Āmidī says that what he means by "ijmā' being a mukhaṣṣiṣ to the Qur'ān and Tradition" is when ijmā' determines the validity of the evidence of takḥṣiṣ.⁶⁴

To make it clearer, al-Āmidī draws our attention to the problem of naskh. He says, when the practice of the Companions and ahl al-ijmā' seemed to contradict a specific textual evidence, this contradiction is nothing but ^{only} their belief that that evidence has been abrogated. In this instance, the function of ijmā' is to determine the nāsikh (abrogating evidence), and ijmā' itself is not nāsikh. According to the majority of scholars, nāsikh must be of the divine discourse (khiṭāb al-shāri') and ijmā' is not of that category.⁶⁵

6. THE TAKHŞİŞ BY QIYĀS:

The problem of the takhşîş by qiyās arises when an issue of law has two possible evidences to indicate its ḥukm or ruling. One of the evidences is textual and the other is the result of deduction by means of analogical reasoning or qiyās, and they seem apparently contradictory. As ^{we} have already seen in the case of the takhşîş by āḥād Traditions, the takhşîş by qiyās also has been thoroughly discussed by the uṣūlis, and there was disagreement among them.

Qiyās has been generally accepted as a valid evidence for the Sharī'ah after the Qur'ān, the Tradition and ijmā'. Only a few of the scholars do not agree to regard it as valid evidence. The Zāhirites are among those who rejected the authority of qiyās.

Qiyās is regarded as ittihād by reasoning, and has been defined as,

the method which consists in assimilating the derived case (far') to the basic or original case (aṣl) by virtue of their similarity with regard to the 'illah of the ḥukm or ruling. " "

The principle of qiyās operates when there is a case to be decided legally, but there is no direct injunction from the Qur'ān or the Tradition to solve it. After some reflection, it was found that there was a

text which specifically indicated the ruling (hukm) of a case quite similar to the case at issue. Based on the similarity of their cause ('illah) jurists have decided that the same ruling should be applied to this new case. However, the application of this principle in Islamic jurisprudence is not as simple as it seems to be. Because of its technical nature, much debate has occurred among the uṣūlis concerning almost every aspect of it.⁶⁷ It is not the purpose here to deal with it in detail. Only those aspects which are deemed appropriate to the principle of takhsīs will be duly considered.

As could be seen from the foregoing illustration, the discussion on qiyās would involve its major constituents. There are four constituents to exist for a valid qiyās: (1) a new case for which the hukm or ruling of which is to be decided; (2) an original or basic case (aṣl) governed by a hukm defined by a text; (3) an 'illah of the law which can provide the common element (ma'nā jāmī') justifying the assimilation of the derived case with the original case, and (4) a result, which is the hukm applied to the derived case.

Before going any further, it seems appropriate at this stage to give an example of such a takhsīs. The Qur'ān 5: 38 says,

"As for the man or woman who is guilty of theft, cut off their hands to punish them for their

crimes."

The Qur'ān prescribes the punishment in general terms to include the free man as well as the slave. However, this generalness of the Qur'ān is not to be extended to cover the slave. This is because the form of the punishment of the latter for another ^{Crime} has been prescribed by another verse of the Qur'ān. But, the verse does not concern the crime in question specifically. The Qur'ān 4:25 says,

"When they are taken in wedlock, if they fall into shame, their punishment is half that for free women."

This verse specifically prescribes the punishment against female slave criminals when they are convicted, and therefore, the Qur'ān 5:38 is still applicable against the male slave. But, most jurists are of the opinion that the punishment against male slaves regarding this crime is also half of that against free men. Their decision is obviously based on the principle of qiyās. They compare the male slave with the female the punishment of whom has been clearly prescribed in the Qur'ān 4:25, and this comparison is called qiyās in Islamic legal terminology.⁶⁰

As has already been said earlier, the difference of opinion with regard ^{to} the authority of qiyās with regard to the ‘umūm of the text stands as a basis for

the difference of opinion among the scholars with regard to its function as mukhaṣṣiṣ.

In this problem, uṣūlis differentiate between two categories of qiyās: definitive qiyās (qiyās qaṭʿī) and probable qiyās (qiyās ḥannī). Isnawī asserts that the disagreements concern only the qiyās of probable authority. In the case of qiyās qaṭʿī (definitive qiyās) the scholars accept it unanimously (ijmāʿ).⁶⁹ Al-Shīrāzī puts it clearly, "It is permissible to particularize ʿumūm with concealed qiyās (qiyās khāfī)."⁷⁰ It seems that according to Isnawī and Shīrāzī the difference of opinion is only with regard to the takhṣiṣ by qiyās khāfī and not qiyās jālī. As far as the takhṣiṣ by qiyās of the second category is concerned the uṣūlis differ. The jumhūr is in favour of such takhṣiṣ.⁷¹

Ibn Surayj and some of the Shāfiʿites permit the takhṣiṣ by a patent qiyās (qiyās jālī) and not by a concealed qiyās.

In this regard, there are at least four prevalent views amongst the uṣūlis. Although some scholars suggest that there are seven views regarding this issue,

a final analysis suggests that these further views are but the elaboration of their views concerning some minor points. The four views are:

1. it is permissible absolutely;
2. it is not permissible;

3. it is permissible on certain conditions; and

4. tawaqquf (it is better to suspend the judgement).

In short, it has been said that the takhṣiṣ by qiyās is of the same category as the takhṣiṣ by an āḥād Tradition. Therefore, whoever is reluctant to accept the latter does not accept the former. However, some of those who accept the latter may not accept the former. This is because they regard qiyās as authoritatively weaker than an āḥād Tradition.⁷²

According to Abū Bakr al-Jaṣṣāṣ, any ‘umūm statement that cannot be particularized by an āḥād Tradition, cannot be particularized by qiyās. The reason is that an āḥād Tradition should come before qiyās with regard to the takhṣiṣ of ‘umūm (khabar al-wāḥid muqaddam ‘alā al-qiyās). By this he means that an āḥād Tradition is of more importance in the hierarchy of proofs, so that appealing to qiyās is allowed only when no other textual evidence provides certainty. The evidence of an āḥād Tradition is prior to qiyās in validity.⁷³

In general, al-Jaṣṣāṣ seemed to maintain that qiyās cannot operate actively on textual evidence. It can only be used if firmly based on revelation. He says that

"wa lā yastaqīm al-ra'y wa'l-qiyās fī'l-tanzīl, innamā yuqāsū ‘alā'l-tanzīl wa ammā al-tanzīl fī

'aynihī lā yuqās'

[the Qur'ān and scriptural sources cannot be modified by human reasoning].

Al-Jaṣṣāṣ also agrees on the principle that a qiyās which particularizes an 'umūm statement must be based on an aṣl (basic rule) which is a textual evidence or on the conclusion of the ijmā'. The main idea in this context is that a text (naṣṣ) has a more solid basis than a conclusion from qiyās. A text, however general is more certain than a decision based on qiyās.⁷⁴

'Isā b. Ābān agrees to the takhṣiṣ of the particularized 'umūm by qiyās. Al-Karkhī is also in agreement with this view but on the condition that the 'umūm must have been already particularized by a munfaṣil or separate evidence.⁷⁵

Al-Āmidī is of the opinion that if the common 'illah in that qiyās has been established by ta'thīr or strong evidence such as by the Qur'ān, Tradition or ijmā', the takhṣiṣ is permissible. This strongly established 'illah has the authority of ^a/khuṣūṣ text, and therefore, it is no doubt, a lawful means of takhṣiṣ as in the case of takhṣiṣ by textual evidence. However, if the 'illah is of a derivative nature (mustanbaṭah) and not strongly established as mentioned above, Āmidī rejects such takhṣiṣ.⁷⁶

Abū 'Alī al-Jubbā'ī maintains that it is not permissible to particularize 'umūm by qiyās. He and a

group of the Mu'tazilites give priority to ʿumūm over qiyās. Qāḍī Abū Bakr al-Bāqillānī, Imām ^{al-}Ḥaramayn al-Juwaynī and ^{al-}Ḡhazālī in al-Mankhūl choose not to give any judgement in this regard. Al-Ḡhazālī, however, in his Mustaṣfā gives ^a further elaboration which could make him among those who hold the third view. The detailed discussion of these four views follows.

a. The takhṣiṣ by qiyās is permissible:

According to al-Āmidī⁷⁷ and Ibn al-Ḥājjib⁷⁸ the first view belongs to the four leading scholars, Abū Ḥanīfah, Mālīk, al-Shāfiʿī and Aḥmad b. Ḥanbal, al-Ashʿarī and also a group of the Mu'tazilites like Abū Hāshim and Abū al-Ḥusayn al-Baṣrī.⁷⁹ However, the attribution of this view to Abū Ḥanīfah is not wholly true as will be shown later.

Those who are in favour of the takhṣiṣ by qiyās give the following arguments. First, they maintain that the probability of ʿumūm to become specifically intended or figuratively applicable or its real meaning being other than that cannot be ruled out. Qiyās, on the other hand, does not have such a probability.

To this argument al-Ḡhazālī says that the probability of there being a mistake in qiyās is no less than the probability of ʿumūm being figuratively or specifically intended. And this probability exists

in the origin of qiyās. Moreover, it may have been derived from āḥād Tradition. If the latter, the doubt is cast upon its original application. Al-Ghazālī points out one more weakness in their arguments. He says that the conclusion reached through that qiyās may be the result of an effort of those who pretend to be muṭahids, while in actual fact they are not. If so, such a conclusion should be rejected. Al-Ghazālī also insists that ijtihād could not be a valid means of interpreting ‘umūm texts, for this would imply that there was the possibility of the Qur’ān having error.⁸⁰

Second, this group of scholars views the takhṣiṣ by qiyās as meaning to bring together the Qur’ān and qiyās, and it is better than to disregard both of them. However, according to al-Ghazālī this view is completely defective (fāsid), because the extent to which the Qur’ān and qiyās seem compatible does not indicate any similarity or togetherness. What is obvious in this case of takhṣiṣ is that the meaning in ‘umūm has been removed, and qiyās is the only evidence used.⁸¹

b. The takhṣiṣ by qiyās is not permissible:

Among the scholars who hold this view are Abū ‘Alī al-Jubbā’ī, a Mu‘tazilite, and al-Rāzī. This is also

said to be the well-established opinion among the Ḥanafites. According to this view, if there are two evidences, the Qur'ān which is ‘umūm, and the qiyās which is khuṣūṣ, referring to a very specific case, the former should be the preferred one.⁸² Their argument for such a view is based on the fact that qiyās is only far‘ while the ‘umūm statement of the Qur'ān is the original. Therefore, it would be improper to give the priority to the far‘ at the expense of the original.⁸³

Secondly, in their view the ḥukm which could be decided on the basis of qiyās is a case where the Qur'ān is absolutely silent. But, in the case at issue, the Qur'ān has prescribed its ruling (ḥukm). It is vocally expressed (manṭūq), although in a general sense. Therefore, how should the preference be given to qiyās.

Their third argument is based on an oft-quoted Tradition of the Prophet. The Prophet has been reported to have asked Mu‘ādh b. Jabal on the occasion of the latter's departure to the Yaman as qāḍī,

"How will you decide when a question arises?" He replied, "I will answer it according to the Book of God." The Prophet asked further, "How if you could not find (such an answer) there?" "Then (I will answer it) according to the Sunnah of the Messenger of God," "And if you do not find the answer either in the Sunnah or in the Book?" "Then I shall come to a decision according to my own

opinion (ajtahidu ra'yī) without hesitation."

It is clear from the above Tradition, the Prophet has made i'tihād a last method by which any legal value could be reached. Therefore, it seems unreasonable to rely on qiyās while there is the answer in the Qur'ān.

Al-Ghazālī does not agree with this view, and he sees their argument against qiyās as inadequate and too simple. Al-Ghazālī, in answering their first argument, is well aware of the fact that the ḥukm reached through qiyās is based on textual evidence. But, it does not have to belong to the text that is to be particularized. He maintains that the text is sometimes particularized by another textual evidence, and sometimes by what is understood from a text. Qiyās belongs to the latter. For example, the Qur'ān 2:275, "wa aḥalla Allāh al-bayʿ" [God has made buying and selling lawful] is ʿumūm. It is particularized by the qiyās of rice (al-aruzz) with wheat (al-burr). This case is not the takhṣīṣ of an original case with its farʿ. Because, in this case the rice is the farʿ case of the burr Tradition and not of the Qur'ān 2:275 above. Therefore, the Qur'ān 2:275 is, in fact, being particularized by the qiyās. *

Referring to their second argument al-Ghazālī agrees that the ḥukm is articulated (manṭūq) by the Qur'ān. However, manṭūq in this case is not ^{as} same as

manṭūq in prescribing one particular thing. For example, the Zayd referred to in the Qur'ān "uqtulū al-mushrikīn" is not as same as Zayd in the statement "uqtulū Zayd". So, the rice which the Qur'ān 2:275 refers to is not the same ^{rice} as "yahillu bay' al-aruzz bi al-aruzz mutafāḍilan wa mutamāthilan" [It is permitted to sell rice for rice equal for equal and like for like]. Therefore, if the Qur'ān does not indicate the lawful things for transaction in a specific and definite term, its manṭūq is also not definite. If that is the case, when by its ʿumūm the Qur'ān means khuṣūṣ, it should not be expressed in indefinite terms.

Regarding their third argument al-Ghazālī says that in that Tradition the priority is given to the Qur'ān. But, in any ruling mentioned in the Qur'ān, it is most probable that its term of reference is ʿumūm, and as such, it belongs to the probable category. Therefore, it was for Muʿadh to seek the answer in the Mutawātir Traditions or āḥād Traditions, if the latter are specific in their term of reference. Of course, the text of the Qur'ān must not be neglected for a Tradition unless the latter provides the explanation to the meaning of the former. Furthermore, the Qur'ān and the Tradition are sometimes giving the explanation by words and also by the implication of a word (maʿqūl al-lafz).

Al-Ghazālī also maintains that the principle of barā'ah al-dhimmah (the absence of any responsibility) which is based on rational proof should be neglected in favour of the rules provided by āḥād Tradition and the qiyās of that Tradition. It is unintelligible to follow rational proof in the presence of Tradition; because in this situation the rule based on rational proof becomes uncertain. The same applies to ʿumūm.

c. The takhṣiṣ by qiyās is permissible conditionally:

The third view is that the takhṣiṣ by qiyās is permitted if the ʿumūm has been once particularized. Otherwise, according to this view, the takhṣiṣ by qiyās is not permissible. This view is held by ʿĪsā b. Ābān. In addition to this, he is said to have put another condition; the takhṣiṣ should be made by definitive evidence. However, al-Bayḍawī and al-Subkī (the author of Jamʿ al-Jawāmiʿ) do not agree that this condition is required. They say that qiyās has more authority than an āḥād Tradition. Therefore, the takhṣiṣ by qiyās cannot be made conditional on weaker evidence.

Abū Ḥasan al-Karkhī is of the opinion that the takhṣiṣ by qiyās is permissible only if the ʿumūm which is to be particularized has been once made khuṣūṣ by another separate evidence (dalīl al-munfa-

şil). If it has not been made khuşûş before, or even if it has only been made khuşûş by connected evidence, the takhşîş by qiyās is not permissible.⁸⁵

The difference between the takhşîş by qiyās jālī and qiyās khāfī:

Ibn Surayj, a Shāfi'ite maintains that if the qiyās is of a clear category (qiyās jālī), the takhşîş by it is permissible. On the other hand, if it is qiyās khāfī, the takhşîş should not be permitted. This is because qiyās khāfī does not have as strong authority as qiyās jālī has, as will be shown in the following discussion.⁸⁶

Qiyās jālī gains the definitive status, because between the original case and the new case there is no effective cause for their difference. For example, the qiyās of male slave with the female slave. The cause of their similarity of being slaves is decisive in establishing the same rule for both of them. Therefore, the Qur'ān 4:25 could be extended lawfully to cover the male slave. As the result, the punishment against the male slave for committing adultery is half of the punishment against the free man who also commits the same crime. The sexual difference is not considered as effective in this legal atmosphere.

Similarly, in a Tradition the Prophet has been re-

ported to have said,

"The judge should not give his verdict while he is angry."

The cause of the prohibition is that he could not give his full attention to the case being tried, and his judgement most probably will be affected. This cause, however, is applicable also to those who are hungry or who suffer from tiredness. On the basis of these arguments, al-Ghazālī maintains that the contradiction between ʿumūm and qiyās is in regard to the individual the latter refers to. If one of them is verified, it should be the preferred one. However, if both of them are at the same level, neither of them should be taken. We have to wait for a proof to verify that one of them has been found. This view is based on the following premise. ʿUmūm with regard to its coverage refers to all its individuals. The rule which is established on the basis of this ʿumūm should cover every individual under its designation which includes the individual referred to by the qiyās.⁸⁷

However, in this case the ruling introduced by qiyās differs from what has been established through ʿumūm. Therefore, the ruling referring to these individuals should not cover the one which is introduced by qiyās. Yet both ʿumūm and qiyās only have the probable authority.

To solve this problem, al-Ghazālī says that we may

assume that one of them must be seen by some mujtahid as having a higher degree of probability. The one which is stronger should be taken. Therefore, if we are certain that the degree of probability of the ‘umūm is stronger because its uncertainty is less than that of qiyās, then the ‘umūm is to be followed. On the other hand, if we assume the contrary due to the fact that the value shown by qiyās is stronger in its effect than what is indicated by ‘umūm, the rule based on qiyās must be the preferred one. Thus, the rule established by ‘umūm will only cover the individuals who are not indicated by qiyās.

Al-Ghazālī also maintains that if, for instance, the degree of probable^{proof} in both ‘umūm and qiyās are similar, the action should be suspended temporarily until we find other evidence indicating the preferable one. If we go on doing our action on the basis of either of these two evidences with no certain knowledge about the more preferable, our action is invalid. However, this argument has been replied to by the exponents of qiyās, who maintain that qiyās must always be the preferred evidence in this circumstance. ۞ ۞

d. Tawaqquf:

Tawaqquf means to suspend the judgement temporarily. The scholars who hold this view prefer not to give any decision regarding that particular matter. This is due to the existence of two equally authoritative evidences, when there is no other proof to be found to suggest the preferred one. Among the scholars who hold this position is Imām ^{al-}Ḥaramayn al-Juwaynī.⁸⁹ They try to be on the safe side. However, the exponents of qiyās reject their standpoint on the ground that qiyās is always the preferable.

The wāqifites seemed to base their argument on the failure of the exponents of qiyās and the opponents alike to give sufficient proof for their respective views. They maintain that after all we are certain that their arguments are insufficient to support their view. Both ʿumūm and qiyās are proofs that are accepted by most scholars. Sometimes they stand side by side in providing the proof to a particular case, and no other evidence is found to verify either of them. In this situation, the only possible thing to do is not to decide any thing until further evidence is found.

Tarjīh could be made by rational or traditional evidences. If it is rational it must be either nazarī (speculative) or darūrī (axiomatic). While if it is

made by traditional evidence it must be ^a/tawātur or āḥād Tradition. However, as far as the problem in question is concerned, nothing has been recorded by either. Therefore, to give the decision in this situation could be making a mistake unnecessarily. The better way to resolve it is by saying nothing.

Doubt may be raised concerning this view by arguing that the wāqifites' point of view is contrary to that of ijmā', because the community has agreed unanimously to give preference to one of them, although they differ about the details. Furthermore, no one before Qāḍī Abū Bakr al-Bāqillānī held such a view. The statement from the Qāḍī himself was sufficient to answer this doubt. He says that the community never expressly invalidated the tawaqquf position and there was no record of their agreement on that matter having been found. Most of the scholars gave preference either to ʿumūm or qiyās on individual basis; ijmā' could not be established in such a way. Moreover, how could those who could not definitely invalidate their opponents' arguments on the problem by giving the preference to qiyās or ʿumūm invalidate the arguments of those who choose not to take either side until further evidence is found.

7. THE TAKHŞİŞ BY MAFHŪM:

MafhŪm means the meaning or sense in which a word or statement is understood. The term is the opposite of manṭūq. The latter means what is articulated, and it refers to a word or a statement the meaning of which is obvious and literal.

There are two kinds of mafhŪm: (1) mafhŪm al-muwāfaqah, and (2) mafhŪm al-mukhālafah. By mafhŪm al-muwāfaqah is meant the meaning or sense which is understood of a word or statement which is in agreement with its literal sense. MafhŪm al-mukhālafah, on the other hand, means the meaning or sense which is understood of a word or a statement which is opposite to its literal sense.

Al-Āmidī is not aware of any disagreement concerning the permissibility of takhşış by mafhŪm, whether it is mafhŪm al-muwāfaqah or mafhŪm al-mukhālafah. He says that this is the view held by a majority of scholars. It seems that al-Āmidī reaches such a conclusion by a very simple reasoning. He says that if a person said to his son, "Whoever enters our house, beat him" and followed ^{it} by "If Zayd enters the house do not say to him fie", the second statement indicates the prohibition of beating Zayd and excludes him from the generalness of the earlier statement. This conclusion is understood by way of mafhŪm al-

muwāfaqah, and is also from the meaning indicated by the structure of the sentence, which is to prevent causing offence to Zayd. It is no difference if a jurist says that the prohibition against the beating is deducible from the meaning indicated by the word (dilālah al-lafz), or it is on the basis of qiyās jāli. °°

The Qur'ān 2:34 prescribes, among others, the obligation of zakāt from livestock (an'ām). The Prophet, however, has been reported to have said,

"fī al-ghanam al-sā'imah zakāt."

[Zakāt is compulsory on freely grazing sheep]

The Tradition should be understood as making some modification to the general rule of the above verse of the Qur'ān. The Prophet emphasises the zakāt of free grazing sheep. This Tradition also implies that on other than this kind of sheep, the payment of zakāt is not required. This sort of legal opinion is concluded by way of mafhum.

Al-Āmidī, in supporting this view, maintains that mafhum indicates a specific legal proposition, therefore, it has to be regarded as ^αlawful means of takhsīs of the relevant 'umūm statement. This is because the indication of khusūṣ should prevail over the indication of 'umūm.

Opponents who may not be satisfied with the above view, may argue that even if the mafhum is specific

and has a strong indication compared to that of ‘umūm, the latter is mantūq and mantūq is authoritatively stronger in its indication than mafḥūm. Mafḥūm is always in need of mantūq, and not vice versa.

Al-Āmidī replies to this doubt by maintaining that to give preference to mafḥūm does not necessarily mean to discard the whole indication of ‘umūm, as would be the case for mafḥūm if the ‘umūm was given preference over the mafḥūm. He maintains further, that to take two evidences (dalīlayn) together is better than to take the literal sense of the one and to discard another one altogether.”¹

Al-Bayḍawī is also in favour of the takhṣīṣ by mafḥūm. He maintains that it is permissible to particularize the mantūq by mafḥūm. This is because the latter is also regarded as a valid evidence. For example, the case of the takhṣīṣ of the following Tradition by the mafḥūm of another Tradition, where the Prophet has been reported to have said,

“God creates water clean and pure, it is not defiled except when its taste, or colour or scent has changed.”

This is particularized by what is understood from the Tradition,

“When there is enough water to fill two pitchers it bears no impurity.”²

It seems that the scholars accept mafḥūm as a va-

lid evidence to particularize ‘umūm. However, the generalization made by al-Āmidī is not fully justifiable. This is because, as reported in Musallam al-Thubūt’³ there are diverse views concerning this matter. Some scholars say that mafḥūm mukhālafah as well as mafḥūm muwāfaqah may particularize ‘umūm. Other scholars do not permit the takhṣiṣ by mafḥūm mukhālafah. Some others do not permit it even if it is mafḥūm muwāfaqah. According to this latter view, the literal sense of a statement (‘ibārah) is authoritatively stronger than that of mafḥūm. They only accept it as an evidence of takhṣiṣ if that ‘umūm has been particularized by an ‘ibārah qāṭi‘ah.

Al-Isnawī maintains that it is certain that mafḥūm particularizes if it is unequivocal and clear. It has been related in Sharḥ al-Mukhtaṣar that there was consensus of opinion among the scholars on the permissibility of takhṣiṣ by mafḥūm muwāfaqah, if the latter is jālī. In other words, scholars agree that it is either legally stronger than maṭṭūq or at least of the same level. If the position is otherwise, it could not particularize unless the ‘umūm prior to this operation has been made khuṣūṣ by a definitive evidence. This is based on the view that ‘umūm after takhṣiṣ is regarded as probable (ẓannī).

In al-Maḥṣūl, al-Rāzī seems not have made any conclusive statement. He only restates the statements

of those who disallow such a takhṣiṣ. He says that, what it means, if someone says that mafḥūm is weaker than mantūq in terms of their legal significance. This means that to allow such a takhṣiṣ would mean to give preference ^{to} the weak evidence rather than the stronger one.

Al-Bayḍawī permits this kind of takhṣiṣ because he regards mafḥūm as valid evidence. Therefore, it could particularize ʿumūm on the basis that by takhṣiṣ means to bring two evidences together. This is validly applicable to mafḥūm as also it is valid in the case of other evidences. For instance, the first Tradition mentioned above indicates by its literal sense that water is not defiled if its condition is unchanged in whatever amount it may be. But, the second Tradition implies that the small amount of water could be defiled even if the condition is unchanged. The latter, which is mafḥūm particularizes the former, which is mantūq.⁹⁴

However, the argument put forward by al-Bayḍawī and agreed upon by al-Isnawī has been criticized. It has been said that it is not necessary if mafḥūm mukhālafah is accepted as a valid evidence, it could be used to particularize ʿumūm. This is because when ʿumūm is mantūq it is accepted as indisputable evidence. However, the authority of mafḥūm mukhālafah is not accepted by all scholars.

8. THE TAKHŞİŞ BY ‘ĀDAT (CUSTOM):

In this section we will discuss the position of ‘ādat in takhşış. Is ‘ādat one of the valid means of takhşış? Or at least, does it have any legal impact in this matter?

‘Ādat literally means custom or customary law. It indicates the realities of social life. The words ‘ādat and ‘urf have been used to mean the same thing. From the point of view of Islamic legal principles, they have never exactly reflected the Sharī‘ah. This is true not only in regard to the ritual aspect of Islām, but also and even more so in regard to its juridical aspects.’⁵

In other words, it has not been accepted as among the formal sources of Islamic law. However, in one way or another, ‘ādat has some impact on determining certain legal values with regard to some particular cases. Furthermore, ‘ādat plays a tremendous part in implementing the fiqh in its various aspects. In other words, the Muslim jurists have eventually recognized various kinds of customary practices and therefore, incorporated them in the main body of fiqh. There is the case where the fiqh itself expressly refers to customary usage. For example, to determine what is to be understood by equivalent dowry (mahr al-mithl), or by ordinary standard of nourishment in zakāt al-

fiṭr. 96

‘Ādat is of two kinds; customary practice or al-‘urf al-‘amalī and customary usage or al-‘urf al-qawī. 97 Abū al-Ḥusayn al-Baṣrī 98 al-Ghazālī 99 and al-Āmidī 100 are of the view that the takḥṣiṣ by customary usage is permissible. For example a person has entrusted his dābbah (animal) to someone else in a country whose people understand the word dābbah as horse. Although the word dābbah in its ordinary meaning is applied to goat, cow, horse etc., its specific meaning as understood by that particular people in that particular place should be taken into consideration. 101

With regard to the customary practice, they do not allow the takḥṣiṣ by it. This is also the view held by al-Shāfi‘ī. 102 Abū Ḥanīfah, on the other hand allows such a takḥṣiṣ. He maintains that al-‘urf is among the valid means of takḥṣiṣ, and is by itself sufficient. Therefore, no explanation (ta’wīl) or other proof is needed to support its application. 103 For example, it has been reported that the Prophet has prohibited the selling of one food in exchange for (another) food. Some of the Ḥanafites assume that since it was customary among the people to eat wheat, the word food in the Prophet's Tradition should be understood as wheat. 104

Imām al-Ḥaramayn al-Juwaynī suggests that the

above view must not be permitted. In his opinion custom could not change the meaning that has already been established linguistically. He also answers the claim that the people are addressed in the language they understand by saying that what they must understand of a word is its proper meaning and not what they assume it to be. If such an understanding and application were to be considered it would lead to confusion.¹⁰⁵ It seems that Imām al-Ḥaramayn al-Juwaynī does not only disregard customary practice as mukhaṣṣiṣ, but also customary usage.

Abū al-Ḥusayn al-Baṣrī says that if, for example, it was customary among the people to use a certain kind of medicine, and later on God has revealed a law prohibiting medicine in general terms, the latter must be understood in its entirety. It should not be particularized by what was customary among the people.¹⁰⁶

It seems that al-Ghazālī does not regard customary practice as a valid means of takhsīṣ. For example, if it is customary among the people (to whom the law was addressed) to eat a particular food, and eventually the law was imposed to prohibit them from food in general terms, the food here should be understood in its generality. It should not exclude what is customary among the people, because in this case the evidence is indicated by the word and must not be

based on their practice. The reason is very obvious, because the people may have practised something which was unacceptable to the law.¹⁰⁷ Al-Āmidī, while agreeing with the above view, concludes that it belongs to the jumhūr. He says that the jumhūr agree that the word food here should be understood in its general term. In other words, the law prohibits all kind of food including what is customary among the people and what is not.¹⁰⁸

According to al-Darīmī the Ḥanafites and the Mālikites make no difference between the customary practice and usage. In their view both particularize ʿumūm. The Mālikites, moreover allow the takhṣiṣ by custom of specific case (al-ʿurf al-khāṣṣ) whether it is usage or practice. However, this view is not acceptable to the most influential group of the Ḥanafites.¹⁰⁹

The jumhūr argue that the proof in this case is provided by the word in use, that is, food which includes anything edible. The word is not confined to the limited meaning understood by that particular people. The word, therefore, has decisive power over custom.¹¹⁰

As always al-Āmidī foresees criticism of this opinion. For example, the criticism could be in the following way. If you do not allow the takhṣiṣ of ʿumūm by the customary practice and also do not allow

the word to be understood as what has been customary among the people, how could you differentiate it from the takhsīs of a word by some of its linguistic meanings; because in most cases this restriction in the application of the word is known through ‘ādat. For example, the word dābbah has been understood to mean "the animals with four legs" or dhawāt al-arba‘, even if the word dābbah is ‘umūm to include any creeping or crawling animal. Similarly, the word al-thaman or price in the transaction has been understood in a specific meaning, that is, the kind of money used in that particular country.¹¹¹

Al-Āmidī replies to this criticism by saying that the difference is in the position of the subject of ‘ādat at issue which is peculiar to the eating of that particular food and not to restricting the meaning of the word food to that type of food only. This type of application does not affect the original meaning of the word. The word dābbah, on the other hand, has been given a new meaning, that is the animals with four legs, to the extent that no other meaning is discernible when the word is used. The new meaning alters its original meaning altogether.¹¹²

Al-Darīnī is inclined to believe that the cause (‘illah) for takhsīs is established in both kinds of custom; usage and practice. Because the essence or basis (manāṭ) of takhsīs is something that is

immediately understood as the meaning intended, and this meaning is other than its ordinary meaning. What is immediately understood is a sign of ḥaqīqah. Therefore, in the case of al-‘urf, the ḥaqīqah is what is customary among the people whether it be a usage or a practice.¹¹³

A general precept in this matter is "When the meaning of a discourse is obvious, it must not be understood in a figurative sense unless there is clear evidence for this." There is another precept to this effect "al-‘ādah muḥakkimah" or custom has a role in determining legal effect.

Al-Rāzī, on the other hand, differentiates between three kinds of ‘ādat. Firstly, ‘ādat which is known, by its own character to have existed in the time of the Prophet, and that he has not forbidden it. The takḥṣīs by this kind of ‘ādat is permissible. However, in his view, the fact is that this is not ‘ādat anymore, but it is the Prophet's approval and should be considered as a Tradition.

Secondly, ‘ādat which is known to have not yet existed in the Prophet's time. Al-Rāzī maintains that the takḥṣīs by it is not permissible, because the people's practice has no legal force at all. However, if this practice was agreed upon by consensus, the takḥṣīs by it is permissible. But, in this case also the takḥṣīs is not by ‘ādat but by consensus (ijmā‘).

Thirdly, the ‘ādat whose time of existence is unknown. If this is the situation, al-Rāzī says that it could belong to one of the above two kinds.¹¹⁴

9. THE TAKHŞİŞ BY RATIONAL PROOF (‘AQL) AND PERCEPTION

Abū al-Ḥusayn al-Baṣrī discusses reason under separate or external evidences. He regards reason as a valid means of takhşış of the ‘umūm of the Qur’ān and the Tradition.¹¹⁵ This is evident from the following example. A minor or child and lunatic are excluded from the term ‘āqil (one who possesses sound mental ability) referred to in the Divine Command to perform any ritual obligation (‘ibādah). The child is obliged to carry out the duties when he reaches the age of puberty or the lunatic when he regains his mental ability. This opinion is agreed upon by ijmā‘. For example the Qur’ān 2:43 says,

“wa aqīmū al-ṣalāt”

meaning “And perform the prayer.” The order in this verse is directed to everyone. There is no other evidence to exclude lunatics and children. Therefore, it is known through reason that the children and lunatics are excluded from that general injunction.

¹¹⁶

Al-Jaṣṣās gives this means of takhşış a very

important place. He confers upon reason or rational argument as much dignity as he does the Qur'ān and Tradition. He points out that the Qur'ān is nothing but God's revealed arguments, which are fundamentally rational. He quotes the Qur'ān 4:1 "O, people" explaining that it would not be reasonable to address a speech to children or mad people; it would be foolishness to do so. Therefore, we may consider that the verse can be particularized by reason, and that the Qur'ān means only reasonable people. The purpose of the Qur'ān is elucidated (tabyīn) by rational argument. Al-Jaṣṣāṣ concludes that there is no real difference between rational takhṣīṣ and takhṣīṣ by the Qur'ān or the Tradition.¹¹⁷

Al-Ghazālī gives another example to support this view. He says that the Qur'ān 6:102, "The creator of all things" should be understood in the particularized term, because it must not include His own Being. He also quotes the Qur'ān 3:97

"Pilgrimage unto the House is a duty owed to God by all people who are able to undertake it."¹¹⁸

He gives a similar explanation as Abū al-Ḥusayn al-Baṣrī does toward the Qur'ān 2:43.

Al-Āmidī regards the permissibility of takhṣīṣ by reason as generally accepted by a majority of the uṣūlīs. Only a group of the theologians has opposed this view.¹¹⁹

Al-Rāzī says that the takhṣiṣ by reason is something known through common sense. For example the Qur'ān 39:62 says,

"God is the Creator of all things".

The generalness of "all things" here does not include His own Being. This is known through reason. He also cites another example similar to what has been cited by al-Ghazālī above.¹²⁰

Abū al-Ḥusayn al-Baṣrī puts a question to those who doubted the validity of this kind of takhṣiṣ. He asks, "Is it not through reason that you know that God does not address the Qur'ān 2:21 to children and lunatics." ¹²¹ If they answer it by "Yes", but they do not accept it as takhṣiṣ, then they obviously disagree only on its name. They accept its principle and meaning. To these people, Abū al-Ḥusayn al-Baṣrī adds that the takhṣiṣ has no meaning other than to exclude from a statement some of the things or meanings otherwise included.¹²²

If their answer is . . . negative, their view is obviously incorrect. This is because children and lunatics have no access to the understanding of law, whether in general or in detail. If we insist on them observing it, while they do not have such a quality, then we impose on them a burden which they are naturally unable to cope with or taklīf limā lā yuṭāq. This is absolutely not the nature of the Divine

Command. 123

There was another argument put forward by the opponents of takḥṣiṣ by reason. How could reason be accepted as mukhaṣṣiṣ because its existence is earlier than textual evidence? The mukhaṣṣiṣ should be of later date if it is to be compared with particularizing evidence. To this, al-Ghazālī says that although reason per se exists before revelation, as mukhaṣṣiṣ it comes later as we consider it in the takḥṣiṣ, because reason itself exists beyond our calculation. 124

There were some scholars who have tried to denounce the validity of reason as mukhaṣṣiṣ by pointing out that the child and lunatic are included under Divine discourse with regard to their responsibility to pay blood money in criminal cases and also their responsibility in the cases of mutlafāt or damage to property caused by them. It is also decided through ijmāʿ that the prayer performed by the child is valid. If he is not included in the discourse, how could the problem be like that. 125

Al-Āmidī rejects this view. He maintains that children and lunatics are not responsible under any sort of discourse. This is established by declaratory law and Traditions of the Prophet. Even if they are under obligation to pay blood money in the case of criminals and return the amount of damaged property as

mentioned by the discourse, it is the duty of their next-of-kin to do so. On the validity of their prayer, al-Āmidī says that it means that their act of performing the prayer caused them to get rewards (ṭhawāb).¹²⁶

THE TAKHṢĪṢ BY PERCEPTION:

As the evidence provided by reason is accepted as a valid means of takhṣiṣ so is perception.¹²⁷ Al-Ghazālī maintains that through perception the Qur'ān 46:25 and 27:25 have been held as khuṣūṣ. The former which is

"Everything will it destroy by the command of its Lord,"

excludes heaven and earth and other things which could be known through perception. Similarly the Qur'ān 27:23

"...she has been given all (good) things."

al-Ghazālī says that what are Sulayman's possessions are not hers (Bilqīs). This we know by way of perception.¹²⁸ Al-Rāzī says that through reason we know that something in the heaven and the throne (‘arsh) are not in her hand.¹²⁹

By this, it is clear that perception indicates what is to be excluded from ‘umūm of a word which is not intended by the speaker and therefore, it is a

valid proof of takḥṣiṣ.¹³⁰

Probably because perception is something common in the understanding of discourse, many scholars have taken it for granted. Perception as such is understandable through reason.

NOTE

1. al-Mu'tamad, I, p. 257.
2. al-Mustaṣfā, II, p. 27ff.
3. Badrān, Uṣūl al-Fiqh, p. 146.
4. al-Maḥṣūl, I, part 3, p. 117.
5. al-Āmidī, Iḥkām, II, p. 465.
6. al-Mu'tamad, I, p. 275.
7. Nihāyah al-Sūl, p. 458.
8. Ibid.
9. al-Āmidī, Iḥkām, II, p. 466.
10. Ibid., p. 467.
11. Ibid.
12. Ibid., p. 468.
13. Ibid., p. 469.
14. Ibid., p. 300.
15. al-Tabṣīrah, p. 136.
16. See Hītū, al-Wajīz, p. 196.
17. al-Āmidī, Iḥkām, II, p. 300.
18. al-Tabṣīrah, p. 136.
19. al-Āmidī, Iḥkām, II, p. 471.
20. Ibid.
21. This Tradition has been transmitted on the authority of 'Ā'ishah and 'Alī. For the transmission from 'Ā'ishah see Abū Dawūd, al-Sunan, IV, pp. 140-1; and for the transmission from 'Alī, see al-Musnad, II, pp. 188, 197, 279, 335 and 348-9.
22. Badrān, Uṣūl al-Fiqh, p. 146.
23. al-Āmidī, Iḥkām, II, p. 472.
24. al-Maḥṣūl, I, part 3, p. 120.
25. For a detail description of this Tradition see notes by the editor in ibid.
26. See ibid.
27. 'Ulwānī in a note in al-Maḥṣūl, I, part 3, p. 123 says,

"Among those who have reported this occasion

were Abū Bakr, ‘Umar, Jābir b. ‘Abd Allāh, Abū Sa‘īd al-Khudrī, Abū Hurayrah, Buraydah al-Aslamī, Zayd b. Khālīd etc. Some of them reported the case of Mā‘īz, while others have reported al-Lakhmīyah's case, a Bedouin woman or al-Aslamī who committed zinā with her husband's servant (‘Asīf).

28. This Tradition has been reported on the following chain of authority. From al-Zuhrī, from ‘Ubayd Allāh b. ‘Abd Allāh b. ‘Utbah, from Ibn ‘Abbās. See al-Risālah, pp. 128-137; Burton, The Collection of the Qur'ān (Cambridge, 1979), p. 79.
29. Ṣubḥī al-Ṣāliḥ, ‘Ulūm al-Ḥadīth wa Muṣṭalahuh (Beirut, 1981), p. 150.
30. Badrān, Uṣūl al-Fiqh, pp. 146-7.
31. al-Āmidī, Iḥkām, II, p. 49.
32. Abdur Rahmān I. Doi, Sharī‘ah: The Islamic Law (London, 1984), p. 58.
33. al-Mustaṣfā, II, p. 29.
34. al-Bazdawī, Uṣūl al-Bazdawī (Cairo, 1963), p. 294; al-Tabṣīrah, p. 132, and Badrān, Uṣūl al-Fiqh, p. 147.
35. Abū Zahrah, Uṣūl al-Fiqh (Cairo, 1957), p. 156.
36. Abū Yūsuf, Kitāb al-Āthār, p. 132.
37. ‘Ā’ishah has been reported to have rejected this Tradition. Cf. Muslim, Saḥīh, al-Darīnī, p. 550.
38. Mālik b. Anas, Muwatṭa’ (Cairo, 1958), p. 581; al-Shāfi‘ī, Kitāb al-Umm, V (Cairo, 1322 A.H), p. 219.
39. al-Mustaṣfā, II, p. 29.
40. As quoted by Marie Bernand, “Ḥanafī Uṣūl al-Fiqh Through a manuscript of al-Ġaṣṣāṣ”, JAOS, 105 (1985), p. 627.
41. al-Musnad, XI, p. 49.
42. al-Mustaṣfā, II, p. 29.
43. al-Tabṣīrah, p. 132; al-Āmidī, Iḥkām, II, p. 301.

44. Abū Zahrah, Uṣūl al-Fiqh, p. 156.
45. This Tradition has been reported by al-Bukhārī, Muslim, al-Tirmidhī and Abū Dāwūd. See Ibn al-Athīr, Jāmi' al-Uṣūl, III, p. 555.
46. al-Mustasfā, II, p. 30.
47. al-Tabṣīrah, p. 132. See note 2.
48. Mālik b. Anas, Muwatta', p. 248; al-Bukhārī, Sahīh, III, p. 245.
49. This Tradition has been reported in various ways. Aḥmad b. Ḥanbal has transmitted it as "Innā ma'shar al-anbiyā' lā nūrath" and al-Bukhārī has reported in the following words, "lā nūrath mā taraknāhu ṣadaqah". See al-Tabṣīrah, p. 133.
50. Ibid., pp. 132-6.
51. 'Amal is a concept used by the Mālikites referring to the practice of the Medinans.
52. Abū Zahrah, Uṣūl al-Fiqh, p. 156.
53. Ibn al-Athīr, Jāmi' al-Uṣūl, VII, pp. 99-101.
54. Abū Zahrah, Uṣūl al-Fiqh, p. 157.
55. al-Mu'tamad, I, p. 275.
57. al-Mustasfā, II, p. 28.
58. al-Āmidī, Iḥkām, II, p. 480.
59. Ibid.
60. al-Mustasfā, II, p. 28.
61. As quoted by Bernand, "Ḥanafī Uṣūl al-Fiqh...", p. 626. See the Qur'ān 4 : 25.
62. al-Mahṣūl, I, part 3, p. 123.
63. al-Āmidī, Iḥkām, II, p. 477.
64. Ibid., p. 478.
65. Ibid.
66. EI², art. kiyās.
67. al-Āmidī, Iḥkām, II, p. 478.
68. Hītū, al-Waḥīz, p. 195.
69. Nihāyah al-Sūl, II, p. 112.
70. al-Tabṣīrah, p. 133.
71. Hītū, al-Waḥīz, p. 195.

72. See al-Tabṣīrah, p. 132 (notes).
73. As quoted by Bernand, "Ḥanafī Uṣūl al-Fiqh...", p. 627.
74. Ibid.
75. al-Āmidī, Iḥkām, II, p. 491.
76. Ibid.
77. Ibid.
78. Ibn al-Ḥājib, Muntahā, p. 98.
79. See also al-Maḥṣūl, I, part 3, p. 123.
80. al-Mustaṣfā, II, p. 31.
81. Ibid.
82. Ibid., p. 30.
83. Ibid.
84. Ibid., p. 31.
85. al-Maḥṣūl, I, part 3, p. 148.
86. Abū al-Nūr, Uṣūl al-Fiqh, II (Cairo, n.d), p. 273.
87. al-Mustaṣfā, II, p. 32.
88. Abū al-Nūr, Uṣūl al-Fiqh, II, p. 309.
89. al-Burhān, I, p. 428.
90. al-Āmidī, Iḥkām, II, p. 479.
91. Ibid., p. 480.
92. Reported by Aḥmad b. Ḥanbal, Abū Dāwūd, al-Tirmidhī, Naṣā'ī, Dārimī and Ibn Mājah. See Mishkāt al-Maṣābiḥ, tr. J. Robson, I, p. 96.
93. See Fawātiḥ al-Raḥmūt, printed together with al-Ghazālī, al-Mustaṣfā min 'Ilm al-Uṣūl (Beirut, 1983), I, pp. 355-6.
94. Nihāyah al-Sūl, p. 467.
95. EI², art. ʿāda.
96. Ibid.
97. al-Muʿtamad, I, p. 301.
98. Ibid.
99. al-Mustaṣfā, II, p. 29.
100. al-Āmidī, Iḥkām, II, pp. 486-7.
101. al-Muʿtamad, I, p. 301.
102. al-Burhān, I, p. 446.

103. Ibid.; al-Āmidī, Ihkām, II, p. 301.
104. al-Burhān, I, p. 446.
105. Ibid., p. 447.
106. al-Muʿtamad, I, p. 301.
107. al-Mustaṣfā, II, p. 29.
108. al-Āmidī, Ihkām, II, p. 301.
109. al-Darīnī, pp. 591-2.
110. al-Āmidī, Ihkām, II, p. 486.
111. Ibid., p. 487.
112. Ibid.
113. Musallam al-Thubūt, I, pp. 93-4.
114. al-Maḥṣūl, I, part 3, pp. 198-9.
115. al-Muʿtamad, I, p. 272.
116. Ibid.
117. Bernand, "Ḥanafī Uṣūl al-Fiqh...", p. 626.
118. al-Mustaṣfā, II, p. 27.
119. al-Āmidī, Ihkām, II, p. 459.
120. al-Maḥṣūl, I, part 3, p. 111.
121. "O people, worship your Sustainer Who has created you..."
122. al-Muʿtamad, I, p. 272.
123. Ibid.
124. See al-Mustaṣfā, II, p. 27.
125. al-Āmidī, Ihkām, II, p. 463.
126. Ibid., p. 464.
127. Ibid.
128. al-Mustaṣfā, II, p. 27.
129. al-Maḥṣūl, I, part 3, p. 115.
130. al-Āmidī, Ihkām, II, p. 465.

CONCLUSION

This study shows that linguistic connotation has a considerable influence in the understanding of law in Islām. This is true due to the fact that the two principal sources of Islamic law, the Qur'ān and the Prophet's Tradition, are written materials whose proper understanding and appreciation would only be possible through the knowledge of the science of language. The principles of ʿumūm and takhsīs are parts of it.

In a way the foregoing discussion on ʿumūm reflects a method of understanding a word in its linguistic connotation and perceiving its legal meaning. ʿUmūm indicates the application of a word to every individual under its reference. However, as this study shows, a majority of the scholars are of the opinion that almost no ʿumūm words remain ʿumūm in their meaning and application. This is, in part reflected by a maxim "mā min ʿāmm illā wa khuṣṣiṣā" [there is no ʿumūm without being particularized]. Al-Ghazālī, for example, has tried to give examples to show ʿumūm which is ʿumūm. But, his examples as well as other examples given by other scholars are not of legal significance.

Almost all uṣūlīs agree that a ruling which has been pronounced in an ‘umūm word is applicable to all individuals it refers to. It should be understood as such pending the discovery of contrary evidence. The uṣūlīs, however, differ on the degree of authority this ‘umūm word has. The Shāfi‘ites (or the jumhūr) are of the opinion that such a word has the probable or ẓannī authority only. This applies to the words of the Qur'ān as well as the Tradition. The Ḥanafites (or the jurists), on the other hand, maintain that the ‘umūm of the Qur'ān is definitive or qat‘ī.

On the discourses addressed to particular addressees, the uṣūlīs take a logical stand. The application should be exclusive, if it is accompanied by a statement or statements to that effect, or it has a proper indication to limit such application. Otherwise, it should be understood that as well as its being applicable to the specified addressee, it is also universally applicable. The discourse addressed to the Prophet and the discourse using masculine plural are examples of this kind.

Khuṣūṣ is another type of word which is used in legal discussions. Its meaning and application are straightforward and in some cases definitive. However, if it exists side by side with an ‘umūm which, in one way or another, has a similar significance with the khuṣūṣ, a different conclusion is to be expected.

Initially, this co-existence may be assumed as a conflict of legal evidence. However, the uṣūlis have resolved this problem by resorting to the principle of takḥṣiṣ.

Takḥṣiṣ means restricting the application of ‘umūm to some of the individuals it seemed to apply to. This is made possible by different kinds of statements or evidences. Uṣūlis identify two types of takḥṣiṣ evidence: internal and external evidences. Internal evidences are istithnā', shart, ṣifat and ghāyah. This type of evidences of takḥṣiṣ is a logical implication of linguistic structure and usage. Therefore, most uṣūlis are in agreement on this matter.

On the takḥṣiṣ by external evidences, two views are prevalent among the uṣūlis. The first view belongs to the Shāfi‘ites (or the jumhūr), and the second view belongs to the Ḥanafites (or the jurists). All of them agree that an evidence of definitive authority could be particularized by other definitive evidence, and the probable could be particularized by other probable evidence. They, however, differ on the issue of conferring ^{to} these evidences their degree of authority and disagree on whether they are definitive or probable?

As we have said earlier, in the jumhūr's opinion ‘umūm words, whether they are from the Qur'ān or the Tradition, are of the probable authority only.

The jurists, on the other hand, maintain that the ‘umūm of the Qur'ān and mutawātir Tradition are definitive. Therefore, as this study shows, the number of the evidences of takhṣiṣ in the opinion of the jumhūr is greater than the number of evidences acceptable to the Ḥanafites (or the jurists).

According to the Ḥanafites the ‘umūm of the Qur'ān and mutawātir Tradition could only be particularized by another text of the Qur'ān or mutawātir Tradition. It remains as such until it has been particularized by other definitive evidence. In that case their status becomes probable, and therefore, the takhṣiṣ by other probable evidence is permissible.

The understanding of these principles is very important for the law as they determine those who are to be included under a particular obligation, and who are exempted from it. Therefore, almost all scholars who wrote on Uṣūl al-Fiqh since al-Shāfi‘ī onwards have had to include the study of ‘umūm and takhṣiṣ in their works.

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