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The Notion of Flexibility in the Interpretation and Application of Islamic Legal Texts: The Contributions of the Ḥanbalī Jurist Ibn Qudāmah

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Abstract

This thesis explores the conceptual and methodological contributions of the Ḥanbalī jurist Ibn Qudāmah (d.629/1223) to Islamic legal theory (*uṣūl al-fiqh*). It emphasises the inherent flexibility within his interpretive approach and its potential for reconciling Islamic law with modernity. The study analyses his linguistic interpretations of the Qurʾān and Sunnah and their interplay with contextual changes, highlighting his prioritisation of authorial intent or God's intent (*murād Allāh*) behind revelatory texts, as articulated in Q.16:89 and Q.2:38.

The findings reveal that Ibn Qudāmah's interpretive approach demonstrated significant flexibility but was firmly rooted in uncovering the divine intent and the effective cause (*ʿillah*) underpinning specific rulings before interpreting or reviewing them. His methodology prioritised divine guidance over human assumptions, indicating that while socio-historical contexts were acknowledged, they served primarily to elucidate rather than override the divine intent.

Notably, his approach does not support wholesale revisions of legal rulings based solely on perceived contemporary needs for change, except where it can be shown that socio-historical contexts were integral to the initial formulation of specific rulings. This underscores his balanced yet cautious stance on change and reform.

By advocating for an interpretive framework that harmonises the principles of authorial intent with socio-historical contexts, this study contributes to modern Islamic legal reforms. It suggests that Ibn Qudāmah's approach offers a valuable model for preserving the intrinsic purpose of revelatory texts while addressing the challenges posed by contemporary contexts.

Declaration

This thesis is my original work submitted for the degree of Doctor of Philosophy. All sources and materials consulted or cited in the preparation of this thesis have been duly acknowledged within the text. The total word count of this thesis, excluding the bibliography, footnotes, tables, and appendices, is fewer than 100,000 words.

Acknowledgement

I express my deepest gratitude to God for granting me the strength and determination to complete this project. My heartfelt appreciation goes to my supervisor, Professor Abdullah Saeed, whose patience, understanding, and invaluable guidance were crucial throughout this journey. This thesis would not have been possible without his unwavering support and mentorship.

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Lastly, I wish to thank Rahilat Abdul, Sakinatu Musah and Dr Ahmed Badawi Mustapha for their meticulous proofreading and constructive feedback, which greatly enhanced the quality of this thesis.

Transliteration Conventions

This study follows the American Library Association/Library of Congress (ALA-LC) transliteration system for Arabic.[1] The conventions are outlined below:

1. **General Rules**:
    - Arabic words are transliterated as per the original text and italicised, except for proper nouns, which are not italicised.
    - The definite article (ال) is consistently transliterated as *al-*, regardless of whether it precedes a moon letter (*ḥarf qamarī*) or a sun letter (*ḥarf shamsī*).
2. **Special Characters**:
    - The Arabic letter (ة) is transliterated as h.
    - A *shaddah* (ّ) is represented by doubling the letter, e.g., -ww- for (وّ) and -yy- for (يّ).
3. **Vowels and Diphthongs**:
    - Long vowels are transliterated as (ى/ا) *ā*, (ِي) *ī*, and (و) *ū*, while short vowels are rendered as (َ) *a*, (ِ) *i*, and (ُ) *u*.
    - Diphthongs are represented as (َي) *ay* and (َو) *aw*.

The transliteration table below provides a comprehensive reference:

[1] The American Library Association/Library of Congress transliteration for Arabic. Accessed August 7, 2024. Arabic romanization table (loc.gov).

ر	ذ	د	خ	ح	ج	ث	ت	ب	ء
R	dh	d	kh	ḥ	j	th	t	b	ʾ
ف	غ	ع	ظ	ط	ض	ص	ش	س	ز
F	gh	ʿ	ẓ	ṭ	ḍ	ṣ	sh	s	z
	ة	ي	ه	و	ن	م	ل	ك	ق
	h	y	h	w	n	m	l	k	q
		Diphthongs		Long vowels			Short vowels		
		ـُي	ـَو	و	ـِي	ا/ى	ـُ	ـِ	ـَ
		Ay	aw	ū	ī	ȧ	u	i	a

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Chapter 1: Introduction

1.1 Overview

Many Muslim scholars, including the contemporary pioneer of *maqāṣid al-sharīʿah* (the objectives of Islamic Law), Muḥammad al-Ṭāhir ibn ʿĀshūr (d.1393/1973), maintain that Islamic law remains applicable across all situations, times, and locations, based on Q.5:3.[2] However, the contemporary social transformations driven by modernity have profoundly influenced various aspects of Muslim life. The dynamics of modernity have challenged certain notions and practices within Islam. The resulting pressure to align the Muslim lifestyle with modern societal standards and socio-political norms has led to the advocacy to review some Islamic laws.[3] Consequently, Islam's positions on issues such as polygyny, inheritance, interest-based transactions (*muʿāmalāt ribawiyyah*), human rights, and even the relevance of religion itself have become focal points in recent discussions on the need for a review.[4]

The Qurʾān and the Sunnah of the Prophet[5] are generally accepted as the primary sources of Islamic law and ethics. The theory and application of Islamic law and ethics thus depend on how these fundamental sources are interpreted. By the fifth/eleventh century, when major problems of legal theory were considered to have been addressed,[6]

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[2] Muḥammad al-Ṭāhir ibn ʿĀshūr, *Maqāṣid al-Sharīʿah al-Islāmiyyah* (Qatar: Ministry of Endowment and Islamic Affairs, 2004), 2/67; Muhammad M. Yunis Ali, *Medieval Islamic Pragmatics Sunni Legal Theorists' Models of Textual Communication* (Routledge, 2013), 41.

[3] Ibn ʿĀshūr, *Maqāṣid*, 2/67.

[4] See, for instance, Abdullah Saeed, *Interpreting the Qurʾān: Towards a Contemporary Approach* (London and New York: Routledge and Taylor and Francis, 2005), foreword; Nāʾilah al-Sillīnī al-Rāḍwī, *Tārīkhīyah al-Tafsīr al-Qurʾānī: Qaḍāyā al-Usrah wa-Ikhtilāf al-Tafāsīr, al-Nikāḥ wa-al-Ṭalāq wa-al-Raḍāʿah wa-al-Mawārīth* (Morocco: al-Markaz al-Thaqāfī al-ʿArabī, Dār al-Bayḍāʾ, 2002); Asma Lamrabet, *Women and Men in the Qurʾān* (Springer, 2018).

[5] Muslims invoke phrases such as 'Peace and blessings be upon him' or 'PBUH' when mentioning the Prophets, especially Muḥammad. In contrast, Western academic writings typically adopt a secular or neutral tone, where religious honorifics are not frequently used, regardless of the figure mentioned. Accordingly, this thesis follows the convention of omitting such invocations, except in direct quotations.

[6] Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 1997), 36.

two main perspectives regarding legal interpretations had emerged. The Ẓāhirī literalists' paradigm, on the one hand, asserted that the language of the Qurʾān and Sunnah is straightforward and can be understood without any ambiguity. They rejected any attempts to assign a meaning other than what was the apparent literal meaning of the texts (*maʿnā ẓāhir*). This position is evident in the works of Ẓāhirī jurist Ibn Ḥazm (d.456/1064), who rejected *qiyās* (analogical reasoning) and other tools of deduction, which are not explicitly supported by the primary sources of Islam.[7] In contrast, the mainstream Sunni schools, notably the Ḥanafīs, Mālikīs, Shāfiʿīs and Ḥanbalīs, embraced an interpretive approach that allows for employing tools including *qiyās* and textual implications. The mainstream approach emphasises the importance of nuanced interpretations that extend beyond the strict literal meaning of the Qurʾān and Sunnah.

Critics of traditional interpretations of the legal and ethical texts of the Qurʾān and Sunnah, like Abdullah Saeed, argue that some established interpretations of the Islamic texts fail to adequately address the legal and ethical challenges Muslims face today. This concern has prompted Muslim scholars, politicians, and researchers to seek more adaptable approaches to Islamic law that align with contemporary standards and resolve the challenges confronting Muslims today.[8]

Abdullah Saeed suggests that the flexibility provided by the Prophet for the Qurʾān to be recited in seven different ways was meant to accommodate the dialectical variations of the early Muslims during the Prophet's era. He argues that the same flexibility should guide the understanding and interpretation of God's word in line with the needs of Muslims today.[9] Along with Abdullah Saeed, researchers like Abou El Fadl have

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[7] ʿAlī ibn Aḥmad Ibn Ḥazm, *Mulakhkhaṣ Ibṭāl al-Qiyās wa al-Raʾy wa al-Istiḥsān wa al-Taqlīd wa al-Taʿlīl* (Damascus: Maṭbaʿah Jāmiʿah Damashq, 1960).

[8] See Saeed, *Interpreting*, 2; David Smock, "Special Report: Reinterpreting Islamic Principles for the Twenty-First Century," summary of a panel discussion cosponsored by the United States Institute of Peace and the Center for the Study of Islam and Democracy, March 19, 2004, https://www.usip.org/sites/default/files/sr125.pdf (accessed August 21, 2024).

[9] Saeed, *Interpreting*, 76.

proposed different approaches, such as considering the socio-historical context of the Qurʾān and Sunnah when interpreting them.[10]

While critics emphasise the need for contemporary reinterpretations to address modern challenges, this study posits that the traditional interpretive framework within Islamic legal theory is not entirely rigid. On the contrary, it possesses a degree of flexibility that can be expanded to address the diverse challenges Muslims face across different contexts. It argues that classical Muslim jurists[11] demonstrated remarkable adaptability in their legal reasoning (*ijtihād*), allowing them to address their social contexts' unique challenges. This led to the assumption that all existing social or religious problems had been adequately resolved.[12] This historical juristic creativity forms the basis for expanding the traditional interpretive framework to meet the diverse challenges Muslims face today.

Building on the idea that Islamic legal theory has historically incorporated flexibility through *ijtihād*, this study shifts the focus to the interpretive approach of one classical scholar who exemplified this adaptability: Ibn Qudāmah al-Maqdisī (d.620/1223) a Ḥanbalī jurist. By examining his methodology, this study seeks to understand how he applied Islamic law in a manner that considered both the particular circumstances of his time and the broader objectives of Islamic law. In particular, the study uncovers how his interpretive flexibility can offer insights for addressing contemporary challenges within Islamic legal discourse.

David Vishanoff describes flexibility in Islamic legal hermeneutics as the ability to depart from the 'strong default' (i.e., the most obvious) interpretations of the texts, allowing Muslim jurists to reconcile a specific revealed text with others and legal opinions.[13] By this, he argues that 'Islamic law can become whatever jurists want it to

[10] Saeed, *Interpreting*, 4-5; Khaled Abou El Fadl, "Qurʾanic Ethics and Islamic Law," *Journal of Islamic Ethics* 1, no. 1-2 (2017): 7-28.

[11] The classical period starts from the second half of the 5th/11th century to the 12th century.

[12] Bernard Weiss, "Interpretation in Islamic Law: The Theory of Ijtihād," *The American Journal of Comparative Law* 26, no. 2 (1978): 199-212, https://doi.org/10.2307/839668; Mehmet Ozalp, "Do Australian Muslims Want Shari'ah Law in Australia?", *St Mark's Review* 221 (2012): 66-79, 74-75.

[13] David R. Vishanoff, *The Formation of Islamic Hermeneutics: How Sunni Legal Theorists Imagined a Revealed Law* (New Haven, CT: American Oriental Society, 2011), 6.

be.'[14] In this research, flexibility pertains to the legitimate capacity to depart from the explicit or apparent interpretations of the legal and ethical texts of the Qurʾān and Sunnah to resolve contemporary challenges. This approach emphasises the basis to deviate from the apparent meaning of the text in question and when such deviations may be considered reasonable. In other words, this study investigates whether deviating from the explicit and apparent meanings of a text of the Qurʾān and Sunnah to accommodate evolving social contexts is legitimate from Ibn Qudāmah's perspective.

1.2 Research Aims and Objectives

Aim: This thesis explores the conceptual and methodological contributions of the Ḥanbalī jurist Ibn Qudāmah, focusing on the flexibility in his interpretive approach to Islamic law and ethics.

Objectives:

- To examine how Ibn Qudāmah's interpretive flexibility can be applied to a range of legal and ethical texts from the Qurʾān and Sunnah in the contemporary context.
- To investigate the extent to which an interpreter can exercise flexibility in applying Islamic law, as Ibn Qudāmah demonstrated in his legal works.
- To critically assess how Ibn Qudāmah's interpretive approach offers a nuanced response to the evolving needs of Muslim societies, compared to contemporary calls for flexible interpretations based solely on socio-historical context.

1.3 Research Problem

Contemporary discourses on interpretive approaches to the legal and ethical texts of the Qurʾān and Sunnah, such as *Interpreting the Qurʾān: Towards a Contemporary Approach*,[15] argue that traditional interpretations are inadequate for addressing the current needs of Muslims regarding law and morality. This inadequacy is often attributed to the failure to consider the socio-historical context in which these texts or laws were revealed, leading to difficulties in applying them in today's social contexts.

[14] Vishanoff, *The Formation*, 8.

[15] Saeed, *Interpreting*.

To address this issue, there have been calls for creative reasoning and flexible interpretations to adapt Islamic law and ethics to align with the evolving social context of Muslims.[16] However, these proposals seem to overemphasise the pertinence of social context in interpretations and overlook the creativity employed by classical Muslim jurists such as Ibn Qudāmah to resolve the challenges brought about by the changing context of their eras. This thesis explores some of the significant conceptual and methodological contributions of Ibn Qudāmah's interpretive approach, demonstrating how his flexibility can be applied to contemporary interpretations of the Qurʾān and Sunnah and highlighting the relevance of his methods in the modern era.

1.3.1 Sub-questions

1. What is the degree of flexibility in Ibn Qudāmah's analysis of linguistic concepts in interpreting and applying Islamic legal and ethical texts? The linguistic concepts covered in this thesis include (a) literal (*ḥaqīqah*) and nonliteral (*majāz*) meanings, (b) clarity and ambiguity; explicit (*naṣṣ*), apparent (*ẓāhir*), and ambiguous (*mujmal*), (c) command (*amr*) and prohibition (*nahy*), (d) generality (*ʿumūm*) and specificity (*khuṣūṣ*), and (e) textual implications (*faḥwā wa ishārah*).
2. How does Ibn Qudāmah account for culture and context (contemporary realities) in interpreting and applying legal texts?
3. To what extent is Ibn Qudāmah's interpretive approach relevant in addressing contemporary gender-related concerns, such as the case of equal inheritance among men and women in Islamic inheritance (*mīrāth*)?

1.4 Significance of the Research

This research emphasises the relevance of Ibn Qudāmah's interpretive approach and demonstrates the extent to which his approach may contribute to the understanding of the legal and ethical texts of the Qurʾān and Sunnah in today's context. While current discussions, such as those by Abdullah Saeed and Khaled Abou El Fadl, have questioned the traditional interpretations of the Qurʾān and Sunnah, making a case for

[16] Saeed, *Interpreting*, 4-5; Abou El Fadl, *Qurʾanic Ethics*; Adis Duderija, *Constructing a Religiously Ideal, 'Believer', and, 'Woman', in Islam: Neo-traditional Salafi and Progressive Muslims' Methods of Interpretation* (Springer, 2016), 137 and 191.

contextual relevance,[17] their proposals are often met with apprehensions due to fear of modernist influence and potential for religious innovations.[18] This study argues that classical Muslim jurists and legal theorists, such as Ibn Qudāmah, successfully interpreted and applied the Qurʾān and Sunnah to address the evolving realities of their societies. Given Ibn Qudāmah's wide acceptance within the mainstream Sunni schools, particularly the Ḥanbalī school, and the perceived flexibility in his legal reasoning, as argued by scholars like Chibli Mallat and Matthew Wilkinson,[19] his perspective is crucial to the ongoing debate about flexible interpretations of Islamic legal and ethical texts. Understanding his methodology can help identify areas within the existing legal framework that require revision to address the needs of Muslims today.

Additionally, this research opens a window into studying one of the most eminent Ḥanbalī jurists of the classical era, whose authority continuous to resonate within the Ḥanbalī school. Ibn Qudāmah is not only recognised as a distinguished jurist of the late twelfth and early thirteenth centuries CE but also a foundational figure whose works in *fiqh* such as *al-Mughnī*, *al-Kāfī fī Fiqh al-Imām Aḥmad*, and *ʿUmdah al-Fiqh* remain among the most reliable and authoritative references in the Ḥanbalī school. Also, his legal treatise, *Rawḍah al-Nāẓir wa Junnah al-Munāẓir* (henceforth referred to as the *Rawḍah*), has gained acceptance in the Ḥanbalī school and the broader Sunni Islamic world. A contemporary Ḥanbalī jurist, ʿAbd al-Qādir ibn Badrān, describes the *Rawḍah* as 'the most useful book for those who want to delve deeply into the foundations of Islamic law (*uṣūl al-fiqh*) from our scholars.'[20] Research into Ibn Qudāmah's works will offer valuable insights into classical Islamic legal thought and contemporary efforts to balance tradition and modernity in Islamic law.

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[17] See Saeed, *Interpreting*, 4-5; Abou El Fadl, *Qurʾanic Ethics*.

[18] Abdullah Saeed, "Ijtihad and Innovation in Neo-modernist Islamic Thought in Indonesia," *Islam and Christian-Muslim Relations* 8, no. 3 (1997): 279-295, 293.

[19] See Chibli Mallat, *Introduction to Middle Eastern Law* (Oxford: Oxford University Press, 2007; online edn, Oxford Academic, 1 Jan. 2009), https://doi.org/10.1093/acprof:oso/9780199230495.001.0001, accessed 15 Aug. 2024; Matthew L. Wilkinson, *The Genealogy of Terror: How to Distinguish Between Islam, Islamism and Islamist Extremism* (London: Routledge, 2019).

[20] ʿAbd al-Qādir ibn Ahmad Ibn Badrān, *al-Madkhal ilā Madhhab Imam Aḥmad ibn Ḥanbal* (Beirut: Muʾassasah al-Risālah, 1401 AH), 464.

1.6 Scope and Limitations of the Research

This thesis investigates the conceptual and methodological contributions of the Ḥanbalī jurist Ibn Qudāmah, highlighting the flexibility inherent in his interpretive approach. It aims to demonstrate how this flexibility can be applied to interpret various legal and ethical texts from the Qurʾān and Sunnah within contemporary contexts.

Importantly, this study does not aim to provide a comparative analysis between modernist-rationalist and classical interpretations of the legal and ethical texts of the Qurʾān and Sunnah. Instead, it focuses on the flexibility within Ibn Qudāmah's framework and examines the extent to which an interpreter can exercise flexibility while engaging with the primary sources of Islamic law and ethics, with emphasis on Ibn Qudāmah's methodology.

A case study on gender-related concerns in Islamic inheritance is included to illustrate the applicability of Ibn Qudāmah's interpretative methods to contemporary issues. Unlike other sections of the thesis, this case study adopts a comparative approach, juxtaposing modernist reformists' perspectives on inheritance with Ibn Qudāmah's classical methodology. However, this analysis is not intended to critique or endorse feminism; instead, it evaluates how Ibn Qudāmah's methodology addresses contemporary issues such as Islamic inheritance. Due to time and word count constraints, this study does not explore the use of *waṣiyyah* (bequest/will) to prioritise certain heirs over others.

1.7 Research Design and Framework

The following section outlines the research methodology and design, detailing the sources and methodologies used to gather and analyse the data, as well as the framework for presenting the study's findings.

1.7.1 Theoretical Framework

This research is guided by the critical realist theory of Roy Bhaskar, which is based on his ontological map of reality. Bhaskar distinguishes three domains of reality: the empirical, the actual, and the real.[21] Critical realism posits that reality exists

[21] Roy Bhaskar, *A Realist Theory of Science* (London and New York: Routledge, 2008), xv.

independently of human consciousness and knowledge.[22] These ontological assumptions align with many texts from the primary sources of Islamic law that indicate the existence of an ideal divine law that may differ from what a jurist may perceive. The Sunnah captures this principle in the hadith:

> If a judge passes a judgement after exerting himself [through legal reasoning] to arrive at the correct verdict, he will have two rewards. And if he is wrong [after strenuous efforts to find the truth], he will have one reward.[23]

The Qurʾān emphasises the primacy of divine authority in resolving disputes, stating, 'And in anything over which you disagree - its ruling is [to be referred] to Allah' Q.42:10.[24] This understanding is strengthened in Q.4:59,

> O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result.[25]

Considering the notion that the ideal law of God exists above and beyond all juristic endeavours, *ijtihād* serves as a method for discovering what God has prescribed or has permitted; it is not a mechanism for jurists to impose personal or unsubstantiated preferences.[26] Thus, jurists strive to exercise legal reasoning (*ijtihād*) to uncover what they consider to be the ruling (or the prescription of God) on a matter. However, because their conclusions may be fallible, their findings are only regarded as plausible based on their knowledge of the sources and their sincerity and objectivity in search of the truth. Moreover, differences of opinions may occur among Muslim jurists in the course of *ijtihād* due to the depth of the *mujtahid's* (jurisconsult) familiarity with the sources of the law (especially the *ḥadīth*/sunnah) and how they understand and apply

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[22] Björn Danermark, Mats Ekström, and Jan Ch. Karlsson, *Explaining Society: Critical Realism in the Social Sciences* (London and New York: Routledge, 2019), 18.

[23] Abū Dāwūd Sulayman ibn al-Ashʿath, *Sunan Abī Dāwūd* (Beirut: Dār al-Risālah al-ʿĀlamiyyah, 2009), 5/428 (Hadith No. 3574).

[24] Ṣaḥeeḥ International, *The Qur'ān: English Meanings* (Jeddah: Abul-Qasim Publishing House 1997; al-Muntada al-Islāmī, 2004), 481.

[25] Ibid, 78.

[26] Weiss, *Interpretation*.

the texts to uncover the rule of God on a particular subject.[27] Therefore, when scholars have different views on an issue, precision and accuracy are determined based on evidence from the primary sources of Islamic law.[28] Despite the diversity of opinions, classical Muslim scholars generally agreed that a consensus (*ijmāʿ*) among jurists on a particular legal issue establishes it as an absolute binding legal ruling. This position, upheld by most scholars except the Muʿtazilī scholar Ibrāhīm al-Naẓẓām (d.229/845), reflects the weight of *ijmāʿ* as a source of Islamic law.[29]

Establishing a research framework capable of effectively addressing the controversies surrounding the interpretive approaches to Islamic law is crucial. The critical realist paradigm offers a compelling lens for exploring the interplay between language and society and seeking answers to questions about the most reasonable interpretation[30] of the legal texts of the Qurʾān and Sunnah. Critical realism stresses the need to transcend the epistemic fallacy, which reduces ontology (the nature of being) to our epistemology (knowledge of being).[31] It argues that reality is not transparent and flat but structured, possesses a deep dimension, and contains mechanisms that are not easily accessible for immediate observation.[32] This justifies the fallibility of an interpreter's understanding or interpretation of a text and, more importantly, that not all forms of knowledge are equally prone to error.[33] These postulations align with the hadith of the Prophet regarding the relative accuracy of verdicts passed by jurists/judges after exerting efforts in legal reasoning. This critical realist paradigm is well-equipped to address the

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[27] ʿAlī al-Khafīf, *Asbāb Ikhtilāf al-Fuqahāʾ* (Cairo: Dār al-Fikr al-ʿArabī, n.d.).

[28] Muḥammad al-Amīn al-Shanqīṭī, *Mudhakkirah Uṣūl al-Fiqh ʿalā Rawḍah al-Nāẓir* (Beirut: Dār Ibn Ḥazm, 2019), 77.

[29] Abū Yaʿlā Muḥammad ibn al-Ḥusayn al-Farrāʾ, *al-ʿUddah fī Uṣūl al-Fiqh* (n.p., 1990), 3/1023: Abū al-Ḥusayn Muḥammad ibn ʿAlī al-Ṭayyib al-Baṣrī, *al-Muʿtamad fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-ʿIlmiyyah 1403 AH), 1/12; ʿAbdullāh ibn Aḥmad ibn Qudāmah, *Rawḍah al-Nāẓir wa Junnah al-Munāẓir* (Makkah: al-Maktabah al-Makkiyyah 2008), 1/343.

[30] By 'reasonable interpretation and application of Islamic legal and ethical texts,' I am referring to what Ibn Qudāmah considers congruent with the intended meanings of a particular text by considering both the letter and the overarching objectives of Islamic law (*maqāṣid sharīʿah*).

[31] Bhaskar, *A Realist*, 26-35.

[32] Danermark, Ekström, and Karlsson, *Explaining Society*, 20.

[33] Ibid, 15.

complexities of opposing interpretations of Islamic texts, providing a robust foundation for exploring reasonable and methodologically sound interpretive approaches.

As a researcher, I acknowledge my active role in the research process and recognise that my personal bias and conception of knowledge may influence the findings of this study. While I cannot claim that my research findings are free from subjective values and experience, I have endeavoured to minimise such influences through strict adherence to an ethical framework, specifically, the principles of trustworthiness, authenticity, and fairness as outlined by Yvonna Lincoln, Susan Lynham, and Egon Guba.[34]

1.7.2 Research Methodology and Method

This thesis is a qualitative research study that investigates Ibn Qudāmah's interpretive approach to the legal and ethical texts of the Qurʾān and Sunnah. It is also exploratory, aiming to uncover ideas and insights into an under-researched phenomenon or a topic we know little about. This exploratory approach allows for the examination of different aspects of the problem and the adaptability of the findings as new insights emerge.[35] Given that Ibn Qudāmah's interpretive approach and their reference to the evolving social context of Islamic legal interpretations have been under-explored, an exploratory framework is well suited for this research.

The thesis primarily relies on Ibn Qudāmah's legal treatise, *Rawḍah al-Nāẓir wa Junnah al-Munāẓir*, as well as his other significant works on Islamic law, specifically *al-Kāfī fī Fiqh al-Imām Aḥmad* and *al-Mughnī*. These works are considered the primary sources for this study. The *Rawḍah* was selected due to its status as Ibn Qudāmah's only known work on Islamic legal theory (*uṣūl al-fiqh*), offering invaluable insights into his approach to forming legal opinions. Furthermore, the *Rawḍah* provides a comparative analysis of the concepts and principles within Islamic legal theory, elucidating the foundational methodologies of the Ḥanbalī school in comparison with the perspectives of other legal theorists and schools. The *Kāfī* contributes to this study by presenting the

[34] Yvonna S. Lincoln, Susan A. Lynham, and Egon G. Guba, "Paradigmatic Controversies, Contradictions, and Emerging Confluences, Revisited," in *The Sage Handbook of Qualitative Research*, 4th ed., vol. 2, ed. Norman K. Denzin and Yvonna S. Lincoln (Thousand Oaks, CA: Sage, 2011), 97-128.

[35] C. R. Kothari, *Research Methodology: Methods and Techniques* (New Delhi: New Age International, 2004), 35.

spectrum of legal opinions within the Ḥanbalī school during Ibn Qudāmah's era. In contrast, the *Mughnī* offers a comparative perspective that analyses the diverse legal views across the mainstream Sunni schools of Islamic jurisprudence. These works of Ibn Qudāmah were chosen for this study to facilitate a comprehensive comparative analysis and critique of his methods of interpretation pertaining to the legal and ethical texts within both theoretical and practical contexts. The approach adopted for this research has provided insights into how the use of language and social transformations could shape the understanding and applications of Islamic legal texts in various social contexts from Ibn Qudāmah's perspective.

1.7.3 Text Analysis

The study draws on traditional interpretive theories and textual analysis within the Islamic tradition, particularly those rooted in the Ḥanbalī school. These include prioritising clear textual evidence, *ʾijmāʿ* (consensus), and *qiyās ṣaḥīḥ* (sound analogy) over speculative reasoning and interpretations. Within this framework and informed by the critical realist paradigm, the study employs a multi-layered analysis to shed light on Ibn Qudāmah's ideas on the relationship between the legal and ethical texts of the Qurʾān and Sunnah as sources of revealed guidance and their application as law within specific sociocultural contexts. It examines these texts from Ibn Qudāmah's perspective while considering how his social milieu may have influenced his flexible interpretation and application of the legal and ethical texts. Next, the study examines how Ibn Qudāmah conceptualises language in interpreting the primary sources of Islamic law, focusing on the interplay between language and social context. This is followed by analysing Ibn Qudāmah's consideration of culture and context in interpreting and applying Islamic legal texts. It analyses how cultural and contextual factors, both preceding and contemporaneous with Ibn Qudāmah, influenced his interpretative methods and shaped his approach to transcending literalist interpretations of the texts.

This thesis limits its analytical scope to linguistic and cultural norms in order to foreground the internal mechanisms of interpretive flexibility within Ibn Qudāmah's epistemic framework. These norms often constitute the immediate context through which legal meaning is constructed, transmitted, and negotiated, particularly in classical Islamic legal theory, where semantic precision and contextual appropriateness are central to *ijtihād*. While topics such as *qiyās* are foundational to Islamic legal reasoning, they operate within procedural frameworks distinct from the interpretive dynamics

explored here. The focus, therefore, is on interpretive flexibility as it emerges through linguistic usage, cultural assumptions, and textual engagement, rather than through formal analogical reasoning or legal derivation. The exclusion of such procedural tools allows for greater conceptual clarity by distinguishing between hermeneutical interpretation and legal deduction.

To bridge theory and practice, the study incorporates a case study methodology to contextualise and assess the contemporary relevance of Ibn Qudāmah's interpretive approach. According to Robert K. Yin

> A case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident.[36]

Case studies serve various purposes based on research objectives, including exploring or evaluating bounded entities, programs, or systems and understanding their mechanisms.[37] In this study, the case study aims to apply Ibn Qudāmah's approach to the interpretation of the Qurʾān and Sunnah related to inheritance law. This analysis focuses on how his interpretive framework can address contemporary concerns regarding gender equality within the context of reforming Islamic inheritance law. By critically engaging with his methods, the study seeks to demonstrate the enduring applicability of Ibn Qudāmah's approach in reforming traditional legal principles with modern ethical considerations.

1.8 Outline of the Thesis

This thesis is composed of ten chapters, each systematically addressing various aspects of the research. The present chapter provides an overview of the research, outlining its significance, the research questions, and the methodology employed. Chapter two presents a brief biography of Ibn Qudāmah, offering insights into his intellectual legacy and contribution to Islamic jurisprudence. It includes a literature review that highlights

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[36] Robert. K. Yin, *Case Study Research: Design and Methods*, vol. 5 (Thousand Oaks, CA: Sage, 2003), 13.

[37] Neil J. Salkind, *Encyclopaedia of Research Design,* vol. 1 (Thousand Oaks, CA: SAGE Publications, 2010), 115.

relevant studies pertaining to Ibn Qudāmah's works and relevant sources on legal interpretive approaches to identify the research gaps that this study seeks to address.

Chapters three through seven delve into Ibn Qudāmah's nuanced analysis and application of linguistic concepts in interpreting legal and ethical texts of the Qurʾān and Sunnah. Chapter three focuses on the differentiation between literal (*ḥaqīqah*) and nonliteral (*majāz*) meanings. In chapter four, the discourse shifts to the concepts of clarity and ambiguity, encompassing explicit (*naṣṣ*), apparent (*ẓāhir*), and ambiguous (*mujmal*) texts. Chapter five addresses the interpretation of command (*amr*) and prohibition (*nahy*), while chapter six explores the dynamics of generality (*ʿumūm*) versus specificity (*khuṣūṣ*) implications of the legal and ethical texts. Finally, chapter seven examines textual implications (*faḥwā wa ishārah*) and emphasises Ibn Qudāmah's analytical approach to authorial intent, particularly in instances where clarifications are supported by cross-referencing with other pertinent texts from the Qurʾān and Sunnah. Across these chapters, the degree of interpretive flexibility employed by Ibn Qudāmah in applying these linguistic concepts is critically examined, highlighting his methodologies in navigating the legal and ethical texts of the Qurʾān and Sunnah.

Chapter eight focuses on the relationship between social practices (*ʿurf* and *ʿādah*) and legal interpretations within the classical framework from Ibn Qudāmah's perspective. It also explores how social context influences legal analysis, particularly in instances where specific contexts/cultural practices appear to conflict with primary sources of Islamic law and ethics.

Chapter nine evaluates the relevance of Ibn Qudāmah's interpretive approach in addressing contemporary issues. This is examined through a case study of modern gender-related concerns surrounding equal inheritance in Islam for men and women. The chapter investigates how these concerns can be addressed within Ibn Qudāmah's interpretive framework. The concluding chapter synthesises the key findings of this thesis, highlighting the relevance of Ibn Qudāmah's interpretive approach in today's context.

Chapter 2: The Biography of Ibn Qudāmah and Literature Review

2.1 An Overview of the Biography of Ibn Qudāmah

Abū Muḥammad ʿAbdullāh ibn Aḥmad ibn Muḥammad ibn Qudāmah ibn Miqdām ibn Naṣr al-Maqdisī al-Jammāʿīlī was born in Shaʿbān 541/January-February 1147, in Jammāʿīl, a village in Nablus near Jerusalem (Bayt al-Maqdis, hence his name - al-Maqdisī). His lineage traces back to ʿAbdullāh ibn ʿUmar ibn al-Khaṭṭāb the son of the second Caliph of Islam. Renowned for his profound knowledge of Islamic law, he was honoured with the titles Shaykh al-Islām or Muwaffaq al-Dīn. Ibn Qudāmah passed away on the night of Eid al-Fitr 620/1223 in Damascus.[38]

The Qudāmah family relocated (from Jammāʿīl) to Damascus in 551/1156 following the Crusaders' invasion of Palestine and the subsequent harsh treatment endured by Muslims under the Crusade forces. In Damascus, Ibn Qudāmah grew into the esteemed Ḥanbalī jurist of his era.[39] Born into a family that valued knowledge, his father, Aḥmad ibn Muḥammad ibn Qudāmah (d.558/1162), was known for his piety and asceticism, serving as the *khaṭīb* (preacher) of Jammāʿīl before their migration to Damascus. In Damascus, Ibn Qudāmah's father became the Imam of a mosque built specially for him. Ibn Qudāmah's brother Abū ʿUmar Muḥammad ibn Aḥmad ibn Qudāmah (d.607/1210), was a respected scholar in hadith (*muḥaddith*) and a jurist who established a prominent Ḥanbalī school at al-Jabal. This institution became one of the prominent teaching centres for the Ḥanbalī school in Syria.[40]

Ibn Qudāmah memorised the Qurʾān at an early age and studied the sciences of the Qurʾān, *ḥadīth* and *fiqh*. Among the early texts he studied was *Mukhtaṣar al-Khiraqī*, a foundational book on Ḥanbalī jurisprudence, which he later expounded into his celebrated work, the *Mughnī*. Following the educational norms of the time, students of Islamic knowledge started their education in their local towns and cities before travelling to other places to enrich themselves with the knowledge of higher authorities

[38] Shams al-Dīn Muḥammad ibn Aḥmad al-Dhahabī, *Siyar Aʿlām al-Nubalāʾ* (Cairo: Dār al-Ḥadīth, 2006), 16/149; Muḥammad ibn Shākir ibn Aḥmad ibn Shākir, *Fawāt al-Wafayāt* (Beirut: Dār Ṣādir, 1974), 2/158; Ibn Rajab, *al-Dhayl*, 3/281.

[39] Ibid.

[40] ʿAbd al-Qādir ibn Muḥammad al-Nuʿaymī, *al-Daris fī Tārīkh al-Madāris* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1990), 2/77; Ibn Rajab, *al-Dhayl*, 3/108-125.

in Islamic studies. After successfully learning from the scholars of Damascus, including his father,[41] Ibn Qudāmah made his first visit to Baghdad in 561/1164 in the company of his maternal cousin, ʿAbd al-Ghanī al-Maqdisī (d.600/1203) - also a well-known Ḥanbalī traditionist or hadith scholar (*muḥaddith*). There, they studied under the eminent Ḥanbalī scholar ʿAbd al-Qādir al-Jīlānī (d.651/1166).[42] Although his time with ʿAbd al-Qādir, his new teacher, lasted about forty days, George Makdisi argues that this brief interaction influenced Ibn Qudāmah's appreciation of mysticism.[43] However, Ibn Qudāmah's work in theology, *Taḥrīm al-Naẓar fī Kutub Ahl al-Kalām*, shows a different stance on the excessive rationalism attributed to ʿAbdullāh ibn ʿAbd al-Raḥmān ibn ʿAqīl (d.769/1367), particularly with his veneration for the great mystic ʿAbd al-Mughīth al-Ḥusayn al-Ḥallāj (d.309/922).[44] After the death of ʿAbd al-Qādir, Ibn Qudāmah continued his studies under prominent scholars such as Abū al-Faraj ʿAbd al-Raḥmān ibn ʿAlī ibn al-Jawzī (d.597/1201) and Naṣr ibn Fityān who was also known as Ibn al-Mannī (d.583/1187). Under the latter's tutelage, Ibn Qudāmah specialised in *fiqh* (Islamic law) and *uṣūl al-fiqh* (Islamic legal theory). He also learned from notable female scholars such as Khadījah al-Nahrawāniyyah (d.570/1173), Nafīsah al-Bazzāzah (d.563/1166) and Shuhdah al-Kātibah (d.574/1177).[45] In 574/1177, he performed Hajj and used the opportunity to learn from the Ḥanbalī scholar, al-Mubārak ibn ʿAlī al-Baghdādī (d.575/1179). Upon his return in 575/1179, he settled in Damascus and began his teaching career. Following the death of his brother Abū ʿUmar, Ibn Qudāmah succeeded him as the Shaykh of the Ḥanbalīs and the *khaṭīb* of the Muẓaffar mosque. He also assumed leadership of the Jabal Ḥanbalī school and directed the Ḥanbalī circle

[41] Muḥammad Maẓhar Baqqā, *Muʿjam al-Uṣūliyyīn* (Makkah: Jāmiʿah Umm al-Qurā; Markaz Buḥūth al-Dirāsāt al-Islāmiyyah, 1420 AH), 3/8.

[42] Ibid, al-Dhahabī. *Siyar*, 16/149; Ibn Rajab. *al-Dhayl*, 3/282.

[43] George Makdisi, ed., *Ibn Qudāma's Censure of Speculative Theology: An Edition and Translation of Ibn Qudāma's Taḥrīm an-Nazar fī Kutub Ahl al-Kalām, with Introduction and Notes; A Contribution to the Study of Islamic Religious History* (London: Printed for the Trustees of the "E. J. W. Gibb Memorial" and published by Luzac, 1962), ix-x.

[44] ʿAbdullāh ibn Aḥmad ibn Qudāmah, *Taḥrīm al-Naẓar fī Kutub al-Kalām* (Riyadh: ʿĀlam al-Kutub, 1990).

[45] Al-Dhahabī, *Siyar*, 16/149; Ibn Rajab, *al-Dhayl*, 3/283.

(*al-miḥrāb al-Ḥanbalī*) at the Damascus Mosque, solidifying his role as a leading figure in the Ḥanbalī jurisprudence.[46]

Ibn Qudāmah's profound contributions and personal virtues earned him widespread respect and admiration in his time and beyond. His humility, benevolence, and clement nature were evident in his daily interactions with people. Despite his high status as a Shaykh al-Islām and Mufti of Damascus, he displayed deep compassion for the less fortunate. For example, he often dined with less privileged students after *ʿIshāʾ* prayers.[47] He was known for his ascetic and calm lifestyle, yet courageous and confident in defending the truth even when consulted by jurists and judges on juridical matters, as was often the case. His courage and valour were demonstrated when he took part - alongside his brother – in the reconquest of Jerusalem under the command of Ṣalāḥ al-Dīn Ayyūbī, also known as Saladin in Europe (d.589/1193).[48] This act of valour showcased his dedication to the Muslim cause and his readiness to serve beyond scholarly pursuits.

As a scholar, he demonstrated objectivity and thoughtfulness in his opinions regarding complex legal matters.[49] Most judges and jurists referred complicated and challenging cases to him for guidance or his opinion on legal or juridical matters. His ability to exercise independent reasoning as a *mujtahid* was evident in his extensive review of juristic opinions in the Ḥanbalī school and his fecund assessment of other legal schools (*madhāhib*) in his *Mughnī* and *Rawḍah*.[50] The occasions when he deviated from the prevailing Ḥanbalī stances on specific legal matters and aligned with other schools illustrate his commitment to impartiality and open-mindedness in pursuing the truth. An example is his position on the permissibility of a woman remarrying her former husband following a triple *ṭalāq* (divorce) after she had entered into and consummated a subsequent marriage under conditions deemed unlawful, such as when both or one of them was in the state of *iḥrām*. Ibn Qudāmah diverges from the predominant Ḥanbalī

[46] Ibn Rajab, *al-Dhayl*, 3/285.

[47] Al-Dhahabī, *Siyar*, 16/149; Ibn Rajab, *al-Dhayl*, 3/284-6.

[48] Al-Dhahabī, *Siyar*, 16/150-152; Ibn Rajab, *al-Dhayl*, 3/284; Bernard Lewis, Victor L. Menage, Charles Pellat, and Joseph Schacht, "The Encyclopaedia of Islam (New Edition)," vol. 3, H-Iram (Leiden: EJ Brill, 1986; London: Luzac & Co., 1986), 843.

[49] Al-Dhahabī, *Siyar*, 16/150-152; Ibn Rajab, *al-Dhayl*, 3/285 and 287.

[50] See the literature review section of this thesis.

stance, asserting that it is permissible for the former husband to take her back as his wife based on the apparent meaning of Q.2:230.[51] These instances reflect his commitment to evidence-based reasoning and upholding the truth to the best of his knowledge.[52]

Ibn Qudāmah's knowledge extended across various disciplines, including *tafsīr* (Qurʾānic exegesis), *ḥadīth, fiqh*, Arabic grammar, inheritance laws, and even astronomy. For example, he devoted the hours after the Friday prayer (*ṣalāt al-jumuʿah*) till *maghrib* (sunset) for debates on legal matters with other jurists. He kept a calm and cheerful demeanour throughout his debates.[53] Ibn al-Ḥājib Abū ʿUmar ʿUthmān ibn ʿUmar al-Mālikī (d.646/1249) - a Māliki jurist who was Ibn Qudāmah's contemporary - noted that every student aspired to study under him, and often scholars of *ḥadīth* and *fiqh* crowded his study circles.[54] Aḥmad ibn Taymiyyah (d.728/1328) also remarked that: 'None of those who came to Syria after al-Awzāʿī [referring to ʿAbd al-Raḥmān ibn ʿAmrū al-Awzāʿī (d.157/774)] was more knowledgeable in Islamic law than al-Muwaffaq - Ibn Qudāmah.'[55] On the expanse of his knowledge, Fakhr al-Dīn ibn Taymiyyah (d.622/1328) remarked that 'He - Ibn Qudāmah – was the scholar of his time in Arabic language and grammar.'[56] Muḥammad ibn ʿAbd al-Wāḥid al-Ḍiyāʾ al-Maqdisī (d.643/1245) also noted: 'He was a scholar of *tafsīr* (Qurʾān exegesis), *ḥadīth*, *fiqh*, *ikhtilāf* (the genre on differences of opinion), *farā'id* (inheritance), *uṣūl al-fiqh*, Arabic grammar and arithmetic and astronomy.'[57] Also, his teacher Ibn al-Mannī once told him, 'Nobody fills your place whenever you leave Baghdad.'[58] Abū Bakr Muḥammad ibn al-Maʿālī ibn Ghanīmah (d.582/1185) - Ibn Qudāmah's contemporary -

[51] Ibn Qudāmah, *al-Mughnī*, 10/551.

[52] See Ibn Rajab, *al-Dhayl*, 3/284; ʿAbdul Wahāb ʾIbrāhīm, *The Role of Ibn Qudāmah in the Ḥanbalī Jurisprudence* (PhD diss., University of London, 1970), 57-59.

[53] Al-Dhahabī, *Siyar*. 151.

[54] Al-Dhahabī, *Siyar*, 150.

[55] Ibn Rajab, *al-Dhayl*, 3/286; Baqqā, *Muʿjam*, 3/8.

[56] Ibn Rajab, *al-Dhayl*, 3/245.

[57] Al-Dhahabī, *Siyar*, 150; Ibn Rajab, *al-Dhayl*, 3/286; Ibn Shākir, *Fawāt*, 2/159.

[58] Al-Dhahabī, *Siyar*, 151; Ibn Rajab, *al-Dhayl*, 3/287.

stated that 'I do not know anyone in our time who has attained the status of *ijtihād* besides al-Muwaffaq ibn Qudāmah.'[59]

Ibn Qudāmah's scholarship in Islamic law and legal theory remains his most profound legacy. His works are recognised among the most authoritative references in Islamic law, especially the *Mughnī*, *ʿUmdah al-Fiqh* and the *Kāfī*. In the domain of Islamic legal theory (*uṣūl al-fiqh*), his treatise *Rawḍah al-Nāẓir* remains one of the most cited works among Ḥanbalī scholars. Beyond law, he also wrote on theology, Qurʾānic studies and asceticism. His writings, such as *al-Riqqah*, *al-Tawwābūn*, *al-Iʿtiqād*, and *al-Mutaḥābbūn*, reflect his wide-ranging intellectual pursuits and spiritual insights. Many of these works have been published and continue to be studied by scholars and students alike.

Ibn Qudāmah (541-629/1147-1223) lived during the latter phase of a period often described as the golden age of Islam, specifically between the 8th and 13th centuries CE. This period was marked by advancements in fields such as philosophy, medicine, physics, astronomy and Islamic law. The Abbasid Caliphate (132-656/750-1258) played a central role in the dissemination of knowledge and the extensive translation of many foreign texts into Arabic. These works were preserved in the grand library of Baghdad, *Bayt al-Ḥikmah* (House of Wisdom). Educational institutions, influenced by Greek, Persian, and Indian traditions, were also established, fostering a culture of learning and inquiry.[60] These developments in Baghdad and the rich Islamic scholarship contributed to the intellectual climate in which Ibn Qudāmah lived. This diverse intellectual climate contributed significantly to the rich intellectual context for scholars like Ibn Qudāmah, whose works in Islamic jurisprudence were informed by the legal and ethical challenges that confronted the Muslim community of his time.

[59] Al-Dhahabī, *Siyar*, 151; Ibn Rajab, *al-Dhayl*, 3/287; Baqqā, *Muʿjam*, 3/8.

[60] Amira K. Bennison, *The Great Caliphs: The Golden Age of the ʿAbbasid Empire* (New Haven and London: Yale University Press, 2009), 89.

2.2 Literature Review

This section reviews the current debates in Islamic hermeneutics and the pursuit of innovative methods for interpreting Islamic legal and ethical texts, particularly as they relate to contemporary issues. Specifically, it will examine the contextualist approach to interpreting the Qurʾān, the role of cultural norms and customs on Islamic law, studies on *ijtihād* and legal interpretations, as well as discussions on contemporary legal theory concerning linguistic interpretations of Islamic legal and ethical texts. Additionally, this section will review studies on Ibn Qudāmah and his contributions to Islamic law. Ibn Qudāmah is identified for his nuanced approach to legal interpretations, which transcends literal interpretations of the legal texts by integrating broader contextual considerations. This review aims to highlight existing research gaps in the ongoing debate on legal hermeneutics, specifically in determining how Ibn Qudāmah's methodology could contribute to legal interpretations in our contemporary contexts.

2.2.1 Advocacy for a New Interpretation of the Qurʾān in Light of the Current Epistemological Context

Contemporary Islamic scholars such as Khaled Abou El Fadl, Abdullah Saeed and Bernard Freamon, among others, have critiqued the traditional approaches to interpreting legal and ethical texts of the Qurʾān. They argue that the traditional interpretive approaches are inadequate to resolve the current challenges confronting Muslims today and advocate for a new interpretive framework that considers the current context of Muslims.

Abou El Fadl remarked that Islamic law and morality have received inadequate attention in the modern age. He asserted, 'The dynamism and vitality of Islamic law must be preserved in the contemporary age, and that such a result is not possible without maintaining the liberty and innovative capacities of the individual.'[61] Similarly, Abdullah Saeed emphasises the need for contextual relevance, stating:

> There is a strongly felt need among Muslims to make the Qurʾānic teachings, in particular their ethico-legal content, relevant to the needs of Muslims today, as these have greatly changed from those of the past. For many Muslims, some of

[61] Abou El Fadl, *Qurʾanic Ethics*, 9.

> the Qurʾānic teachings in this area, if taken literally, may appear ancient and archaic and not very relevant to contemporary concerns and situations. An appropriate methodological framework is therefore needed to translate this ethico-legal content in a meaningful manner for a Muslim today.[62]

Like Abdullah Saeed, Bernard Freamon also maintained that the traditional interpretive method of the Qurʾān is losing its relevance to a new Qurʾānic hermeneutic. According to him, this positive and constructive change is necessary as a result of the inability of traditional interpretations of the Qurʾān to address the challenges posed by the colonial legacy, intellectual hegemony, the perceived supremacy of post-Enlightenment modes of thought, as well as the great political, social, and economic upheavals currently affecting Muslims.[63]

The studies discussed above advocate for a new interpretation of the Qurʾān in light of the current epistemological context.[64] Abdullah Saeed aptly states, 'It is important to approach the text at different levels, giving a high degree of emphasis to the socio-historical context of the text.'[65] The advocacy for socio-historical contexts to be considered in interpreting the primary sources of Islamic law appears to utilise these contexts as a potential means to abrogate an established law within the Qurʾān or Sunnah.[66] This approach contrasts with the traditional notion of abrogation (*naskh*) as applied by classical Islamic legal theorists and jurists such as Ibn Qudāmah.[67] Against this backdrop, this thesis delves into how classical Muslim jurists and legal theorists employed linguistic concepts and socio-historical contexts to interpret the legal and ethical texts of the Qurʾān and Sunnah. Specifically, it examines Ibn Qudāmah's interpretive flexibility in contextualising Islam's legal and ethical texts within specific linguistic and social frameworks.

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[62] Saeed, *Interpreting*, 5.

[63] Bernard K. Freamon, "The Emergence of a New Qur'anic Hermeneutic," *The Law Applied* (2008): 342 - 359).

[64] Abou El Fadl, *Qurʾanic Ethics*.

[65] Abdullah Saeed, "Some Reflections on the Contextualist Approach to Ethico-Legal Texts of the Quran," *Bulletin of the School of Oriental and African Studies, University of London* 71, no. 2 (2008): 221-237, 221.

[66] Saeed, *Interpreting*, 83-84.

[67] Ibn Qudāmah, *Rawḍah*, 1/248; Ibn Qudāmah, *al-Mughnī*, 1/221.

2.2.2 The Role of Cultural Norms and Usages in Islamic Law

The concept of customary laws is intricately connected to the idea of contextual interpretation of the legal and ethical texts of Islamic law. This connection arises from the challenge of balancing established societal practices with evolving contexts. Gideon Libson observed that customs act as catalysts of change, as laws not only shape society but are also influenced by prevailing social practices.[68]

Islamic law does not openly acknowledge norms and usages (*ʿādah wa ʿurf*) as independent sources of law.[69] However, customary practices appear to have gained some basis of consideration in the application of Islamic law. Tahir Mahmood noted that the concept of *Sunnah taqrīrī* (tacit approval of the Prophet) shows that the Prophet preserved many customs of his time. Additionally, the Prophet's companions incorporated some customary laws of foreign lands into their legal systems. Examples of such laws include the incorporation of Persian customs relating to revenue and land tenure into Islamic law by the second caliph, ʿUmar ibn al-Khaṭṭāb (d.23/644).[70] Libson further observed that although classical Islamic law did not formally identify customary practices as a source of law, the normative framework incorporated norms and usages into Islamic law in the form of Sunnah, *ijmāʿ* (consensus), and *istiḥsān* (juristic preference), and *ḍarūrah* (necessity) in the Ḥanafī school.[71] This was particularly evident in the Ḥanafī and Mālikī schools, which acknowledged the practical utility of customs in formulating law.[72]

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[68] Gideon Libson, "On the Development of Custom as a Source of Law in Islamic Law: al-Rujūʿu ilā al-ʿUrfi Aḥadu al-Qawāʿidi al-Khamsi allatī Yatabannā ʿalayhā al-Fiqh," *Islamic Law and Society* 4, no. 2 (1997): 131-155, 132.

[69] Najm al-Dīn al-Ṭūfī, See Najm al-Dīn Sulayman ibn ʿAbd al-Qawī al-Ṭūfī, *Sharḥ Mukhtaṣar al-Rawḍah* (Beirut: Muʾassasah al-Risālah, 1987), 3/665; al-Sayyid Ṣāliḥ ʿIwaḍ, *Athar al-ʿUrf fī al-Tashrīʿ al-Islāmī* (Cairo: Dār al-Kitāb al-Jāmiʿī (n.d.), 237-238; P.J. Bearman, TH. Bianquis, C. E. Bosworth, E. Van Donzel and W. P. Heinrichs, "The Encyclopaedia of Islam (New Edition)," vol. X, T-U (Leiden: EJ Brill, 2000), 887.

[70] Tahir Mahmood, "Custom as a Source of Law in Islam," *Journal of the Indian Law Institute* 7, no. 1/2 (1965): 102-106, 102-103.

[71] Libson, *On the Development of Custom*, 138-140.

[72] Mahmood, *Custom*, 103.

Both Mahmood and Libson noted some instances where the Shāfiʿī and Ḥanbalī jurists applied norms and usages in deriving the legal rulings of some acts even though they do not formally acknowledge customary practices in theory.[73] The two studies conducted by Mahmood and Libson highlight a discrepancy between theoretical principles and practical applications regarding customary practices and usages in Islamic law. This thesis further examines Ibn Qudāmah's approach to customary laws and social practices (*ʿādah wa ʿurf*) as a means to interpret the legal and ethical texts found in the primary sources of Islamic law. Additionally, it explores how these considerations can be applied to address the concerns of Muslims today from Ibn Qudāmah's perspective.

2.2.3 *Ijtihād* and Legal Interpretation in Islamic Law

Ijtihād is the 'maximum effort expended by the jurist to master and apply the principles and the rules of *Uṣūl al-fiqh* (legal theory) for the purpose of discovering God's law.'[74] In other words, *ijtihād* involves interpreting legal texts to uncover divine rulings. This concept is crucial for understanding the approach adopted by Ibn Qudāmah to interpret legal and ethical texts and its relevance to our contemporary context.

Researchers like Bernard Weiss and Mehmet Ozalp have argued that the so-called 'closing of the door of *ijtihād*' in the third/ninth century has created challenges for Muslims in addressing modern issues. Weiss contended that at the end of the third/ninth century (or shortly after that), Islamic law was regarded as capable of meeting the basic needs of Muslims. This perception arose from the belief that all essential questions had been thoroughly discussed, rendering further deliberation unnecessary, if not disruptive. To him, this was responsible for the rigid and inflexible legal system experienced by later generations.[75]

Mehmet Ozalp also maintained that *sharīʿah* was more progressive during the classical period, exerting significant influence on Western legal systems.[76] However, he notes that the active development of Islamic law experienced a decline partly due to

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[73] Mahmood, *Custom*, 104; Libson, *On the Development of Custom*.

[74] Wael B. Hallaq, "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies* 16, no. 1 (1984): 3-41, 3.

[75] Weiss, *Interpretation*, 208.

[76] Ozalp, *Do Australian Muslims Want Shari'ah Law in Australia?*, 73-74.

distractions caused by the social and political challenges associated with the Crusades, the Mongol invasion and the Black Plague. These distractions experienced by Muslim societies significantly impacted their developmental trajectories, particularly in the realm of legal scholarship, leading to reduced demand for innovative interpretations or juristic discussions.[77]

Ibrahim Fekry offers a different perspective, suggesting that legal inertia, epitomised by *taqlīd* (legal conformism), became dominant rather than absolute during a particular historical period.[78] He contends that the age of *taqlīd* led to the rise of jurists who were more concerned with existing legal opinions than pursuing legal reasoning.[79] Despite this, the focus on legal outcomes provided greater flexibility for achieving social change and resolving inconsistencies in school doctrines during the age of *taqlīd* (4-7/9-13). This methodological incoherence facilitated both the stability and adaptability of Islamic law to the changing needs of society during this period.[80] Contrary to the above analysis, Wael Hallaq rejects the notion of the 'closure of the gate of *ijtihād*' as entirely 'baseless and inaccurate'.[81] He asserts that *mujtahids* existed all the time that *ijtihād* was claimed to have been closed. Among them were figure such Aḥmad ibn ʿUmar ibn Surayj (d.316/918), Muḥammad ibn Jarīr al-Ṭabarī (d.310/922), Muḥammad ibn Ibrāhīm ibn Mundhir al-Nīsābūrī (d.319/931), al-Juwaynī (d.478/1085) and al-Ghazālī (d.505/1111), all of whom were regarded as independent *mujtahids*.[82] Also, Ibn Qudāmah's contemporaries recognised him as a *mujtahid* in the seventh/thirteenth century, as noted earlier.[83]

Whether the closing of the gate of *ijtihād* or the *ikhtilāf* genre is one of the root causes of the interpretive challenges we face today, as Ibrahim Fekry has argued,[84] investigating how the classical jurists, including Ibn Qudāmah, reconciled legal texts to

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[77] Ibid, 74-75.

[78] Ahmed Fekry Ibrahim, "The Codification Episteme in Islamic Juristic Discourse between Inertia and Change," *Islamic Law and Society* 22, no. 3 (2015): 157-220, 161, http://www.jstor.org/stable/43997235.

[79] Ibrahim, *The Codification*, 165.

[80] Ibrahim, *The Codification*, 170.

[81] Hallaq, *Was the gate of ijtihad closed?* 4.

[82] Ibid, 10 and 15.

[83] Ibn Rajab, *al-Dhayl*, 3/287.

[84] Ibrahim, *The Codification*, 170.

the changing context of their time is important. Such investigation can contribute to finding a more effective way to address the perceived gap between Islamic law and contemporary societal changes.

2.2.4 Islamic Legal Hermeneutics

In most treatises on Islamic legal theory, a section on language and its interpretations, whether succinctly or in greater detail, forms a foundational component for *mujtahids* engaging with legal texts.[85] Contemporary studies have examined specific linguistic dimensions, offering valuable insights from prominent Muslim scholars. For example, John Wansbrough analyses *majāz* (periphrastic Exegesis) as discussed by Abū ʿUbaydah Maʿmar ibn al-Muthannā (d.209/824), while Omar Farahat examines generality (*ʿāmm*) and specificity (*khāṣṣ*) in legal theory from the perspectives of Abū Ḥāmid al-Ghazālī (d.505/1111) and ʿAlāʾ al-Dīn al-Samarqandī (d.539/1145).[86] Although these studies offer valuable insights into linguistic challenges in legal interpretation, no elaborate research explores the application of these linguistic tools from Ibn Qudāmah's perspective. This highlights the need to investigate Ibn Qudāmah's viewpoint to facilitate a more nuanced and comprehensive analysis of legal interpretations.

In discussing the methods of the textual indication of the legal ruling (*ṭuruq dalālāt al-alfāẓ ʿalā al-aḥkām*), Šukrija Ramić examined the perspectives of two dominant schools: the Ḥanafī and Shāfiʿī schools of law). He observed that human reasoning in a system of law with a divine origin is an arduous and complicated task, and the linguistic principles in *uṣūl al-fiqh* focus on this challenging and complicated process. He pointed out that grasping the linguistic principles underlying legal theory contributes significantly to a deeper understanding of legislation in Islam and the broader context of

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[85] See, for instance, Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Herndon, VA: International Institute of Islamic Thought, 2010); Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd ed. (Cambridge: Islamic Texts Society, 2003); Recep Dogan, *Usūl al-Fiqh: Methodology of Islamic Jurisprudence* (New Jersey: Tughra Books, 2015).

[86] John Wansbrough, "Majāz al-Qur'ān': Periphrastic Exegesis," *Bulletin of the School of Oriental and African Studies, University of London* 33, no. 2 (1970): 247-266, http://www.jstor.org/stable/613002; Omar Farahat, "Generality and Exception in Islamic Legal Theory: Intent, Language, and the Jurist's Role." *The American Journal of Comparative Law* (2024): avae024, https://doi.org/10.1093/ajcl/avae024.

Islamic law.[87] This thesis builds on Ramić's work to investigate these linguistic principles from Ibn Qudāmah's perspective on interpreting the sources of Islamic law in response to the changing context of society.

David Vishanoff is among the few contemporary scholars who have shown interest in the linguistic dimensions of Islamic legal theory. In his study of language and hermeneutics from the perspective of three legal theorists, Muḥammad ibn Idris al-Shāfiʿī (d.204/820), al-Qāḍī Abū Bakr al-Bāqillānī al-Mālikī (d.403/1013) and Abū al-Ḥusayn al-Qāḍī ʿAbd al-Jabbār (d.414/1025), he concluded that during the pre-classical era, the legal theory developed in the quest for defining how Muslims should relate to the Qurʾān and Sunnah of the Prophet.[88] In another major work on the formation of legal hermeneutics, he discussed the methods of dealing with linguistic ambiguity of the Islamic legal text. He contended that debates on linguistic ambiguity in Islamic legal theory have been persistent due to the need to derive the law from the Qurʾān and Sunnah.[89] In these studies, Vishanoff posited that the debates of the pre-classical era[90] led to the formal discussion of explicit (*naṣṣ*) and implicit (*mafhūm*) meaning during the classical era.[91] He also noted that differences between theologians affected theorists' views on language more deeply than differences among legal schools.[92] This suggests a correlation between the interpretation of language in legal theory and theology in Islam. For instance, the Muʿtazilī theologians rejected the idea of ambiguity in the language of the Qurʾān asserting that the word of God is always clear and unambiguous. On the other hand, the Ashʿarī theologians readily subscribed to the notion of ambiguity in the Qurʾān to support their doctrine of God's eternal speech (*kalām al-Allāh kalām al-nafs wa huwa qadīm*) that can be expressed in a range of different meanings.[93]

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[87] Šukrija Husejn Ramić, *Language and the Interpretation of Islamic Law* (Cambridge: Islamic Texts Society, 2003).

[88] David R. Vishanoff, *Early Islamic Hermeneutics: Language, Speech, and Meaning in Preclassical Legal Theory* (Atlanta: Emory University, 2004).

[89] Vishanoff, *The Formation*.

[90] The preclassical or the formative period of Islamic hermeneutics is the period from the third/ninth century through the fifth/eleventh century.

[91] The classical period starts from the second half of the fifth/eleventh to the twelfth centuries.

[92] Vishanoff, *Early Islamic*, 129.

[93] Vishanoff, *The Formation*, 109.

Further, Vishanoff points out that many scholars, in their efforts to establish a hermeneutic that enables Muslims to live faithfully within the modern world, often overlook the need for a consistent application of their own theological views regarding the nature of the Qurʾān and revelation.[94] This thesis draws on Vishanoff's historical analysis of Islamic legal hermeneutics during the formative era of legal theory to investigate Ibn Qudāmah's interpretive approach and how his ideas can be used to address many contemporary legal and ethical issues.

Khaled Abou El Fadl, a prominent contemporary scholar, critiques the classical interpretation of legal and ethical texts, describing it as an 'authoritarian interpretation' that conflates the author's intent with the reader's understanding. He argues that language is fluid, uncontrollable, and semi-autonomous.[95] While acknowledging that texts can convey multiple meanings, he advocates for an interpretive approach that accounts for the dynamic interaction between author, text, and reader, thereby preventing the imposition of arbitrary meanings and addressing the problem of fundamentalism.[96] This thesis examines Ibn Qudāmah's view on authorial intent and its pertinence for understanding the legal and ethical texts of the Qurʾān and Sunnah.

Bernard Weiss has contended that the process of *ijtihād* (legal reasoning) is 'the endeavour of a jurist to formulate a rule of law on the basis of evidence (*dalīl*) found in the sources [the Qurʾān and Sunnah, which are sacred and divine[97]].'[98] He also says, 'The ideal law of God exists objectively above and beyond all juristic endeavours.'[99]

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[94] David Vishanoff, "Can Qurʾānic Interpretation Be Both Practically Adequate and Theologically Principled? Some Instructive Historical Examples of the Delicate Connection between Hermeneutical Theories and Doctrines of Divine Speech," *From Revelation to Scripture: A Symposium on Divine Speech and Prophetic Inspiration in Islam*, vol. 12 (Cambridge: Cambridge Muslim College, 2015).

[95] See Khaled Abou El Fadl, *Speaking in God's Name: Islamic law, Authority and Women* (New York: Simon and Schuster, 2014), 196-197.

[96] Ibid., 198.

[97] Bernard Weiss identifies the substantive sources of Islamic law as the Qurʾān and Sunnah, which he regards as 'definitely sacred texts because they are the product of divine inspiration.' Additionally, he includes *ijmāʿ*, or consensus of the Muslim community, as a critical component in the formulation of law. For further details, see Weiss, *Interpretation*, 200-201.

[98] Weiss, *Interpretation*, 200.

[99] Ibid.

Thus, legal interpretation comprises two distinct tasks: determining the meanings of the words in a passage and contextualising the passage within the broader frame of the other texts to clarify its meaning.[100] Anver Emon also investigated the objectivity and authority of juristic interpretation in the Islamic legal system. Unlike Abou El Fadl, Emon posited that Islamic jurists theorised about the mandate of legal interpretations by contextualising each in a system where ultimate authority rested on a theological commitment to divine sovereignty.[101] He remarked that experts in the law must account for both text and context, as not all legal issues have clear or explicit resolutions in a source text.

Furthermore, Muhammad Yunis Ali argues that Islamic legal theorists seek to understand the message conveyed by God and the Prophet by interpreting their intentions, which cannot be fully grasped through linguistic utterances alone.[102] This pursuit led to the development of various methods for interpreting and comprehending the Qurʾān and Sunnah. Ali identifies two main schools of thought on pragmatic communication: the mainstream approach, followed by the Ḥanafī, Ashʿarī, and Muʿtazilī schools, and the Salafi approach, advocated by Ibn Taymiyyah (d.728/1328) and Ibn Qayyim (d.751/1350).[103]

The mainstream approach to textual interpretation asserts that the message is understood through the original meaning of words (*waḍʿ lughawī*), their usage (*istiʿmāl*), signification (*dalālah*), and the reader's interpretation (*ḥaml*) of the speaker's intent.[104] This view suggests that the intrinsic meaning of words is sufficient for comprehension, and to assume a nonliteral meaning requires an indication (*qarīnah*) by the speaker.[105] In contrast, the Salafi school of thought argues that a speaker's intention is best understood by considering the surrounding context, as words may have elastic meanings

[100] Ibid, 209.

[101] Anver M. Emon, "To Most Likely Know the Law: Objectivity, Authority, and Interpretation in Islamic Law," *Hebraic Political Studies* 4, NO. 4 (Fall 2009), 415 - 440, 418.

[102] Ali, *Medieval*, 1.

[103] The Salafi school (approach), followed mainly by the Ḥanbalīs, traced back to the early generations of Muslims and strongly advocated, defended, and elaborated by Ibn Taymiyyah and his student Ibn Qayyim al-Jawziyyah (d.751/1350) See Ali, *Medieval*, 7.

[104] Ibid.

[105] Ibid, 5 and 34.

that adapt to the communicative situation.[106] The Salafi model rejects the notion that the meaning of words can be accounted for independently of their usage, arguing that a speaker aims to make their intentions clear and will offer the hearer sufficient relevant context to reveal the motive behind their communication. Isolating expressions from their context, they argue, results in miscommunication.[107] Ibn al-Qayyim critiques the mainstream view, noting that confusion arises from conflating *kalām muqaddar* (theoretical language) with *kalām mustaʿmal* (language in use).[108]

Robert Gleave also studied the emergence and development of literal meaning in textual interpretation embodied in the concept of literal (*ḥaqīqah*) and nonliteral (*majāz*) in *uṣūl al-fiqh*. He compared the classical usage of the original linguistic meaning of words (*ḥaqīqah lughawiyyah*) and their *sharʿī* meaning of words (*ḥaqīqah sharʿiyyah*) by Ibn Qudāmah to the approach of modern Salafis. He argued that Ibn Qudāmah's determination of meaning as either *sharʿī* or *lughawī* is contextually informed (context-based), while the 'modern Salafis' give precedence to *ḥaqīqah sharʿiyyah* over *ḥaqīqah lughawiyyah*.[109] The incorporation of Ibn Taymiyyah's idea of contextualism, according to Gleave, has resulted in a 'commitment to the idea that *ḥaqīqah sharʿiyyah* is a true *ḥaqīqah*, but that its meaning is deducible through context rather than by reference to an act of *waḍʿ*.'[110] Gleave suggested that Ibn Taymiyyah's contextualist approach may have been influenced by the Ḥanbalī position developed by Ibn Qudāmah. He further posits that a deeper analysis of *uṣūl al-fiqh* as applied by Salafis today would contribute to the discussion related to the original linguistic meaning of words (*ḥaqīqah lughawiyyah*) and *sharʿi* meaning of words (*ḥaqīqah sharʿiyyah*).[111]

This thesis, informed by the works of Ali and Gleave, delves into Ibn Qudāmah's interpretive approach and critically assesses the significance of authorial intent as a key

[106] Ibid, 96-135, particularly 126.

[107] Ibid, 8 and 102. For further details see, 96-135, particularly 126.

[108] Ibid, 8.

[109] Robert Gleave, *Islam and Literalism: Literal Meaning and Interpretation in Islamic Legal Theory* (Edinburgh: Edinburgh University Press, 2012).

[110] Gleave, *Islam*, 183.

[111] Gleave, *Islam*, 182.

component of his framework. It analyses how authorial intent shapes Ibn Qudāmah's legal interpretations of the Qurʾān and Sunnah.

2.2.5 Works Assessing Ibn Qudāmah's Scholarship

Although Ibn Qudāmah is recognised as one of the leading Muslim jurists, most of his works are concentrated within the Arab world, where his contributions to Islamic theology, law, and legal theory are extensively explored. However, outside the Arab world, scholarly research into his intellectual legacy remains limited. While some of his pioneering works, such as *Censure of Speculative Theology*, *Sufficiency in Creed (Lumʿah al-iʿtiqād)*, and *ʿUmdah al-Fiqh (The Mainstay Concerning Jurisprudence)* are available in English, his broader intellectual contributions are still under-studied in the Western academia. This section provides a brief review of existing literature on his writings in the domains of *fiqh* (Islamic law) and *uṣūl al-fiqh* (foundations of Islamic law),[112] highlighting key gaps and potential areas for further research that could enrich the understanding of his contributions to Islamic legal theory.

2.2.5.1 Studies on the *Mughnī*

In 1970, ʿAbdul Wahāb ʾIbrāhīm studied the role of Ibn Qudāmah in his PhD thesis at the University of London, titled *The Role of Ibn Qudāmah in Ḥanbalī Jurisprudence*. In this work, ʾIbrāhīm noted that the Ḥanbalī school faced challenges due to conflicting opinions from the school's eponym, Aḥmad ibn Muḥammad ibn Ḥanbal (d.241/855), who changed his fatwas over time. These variations in his legal rulings, along with differing opinions from other jurists within the school, made it difficult to identify authoritative positions on specific legal issues. Ibn Qudāmah addressed these challenges by carefully assessing and evaluating the various proofs supporting the different legal opinions, thereby clarifying these distinctions and strengthening the school's jurisprudential framework. According to ʾIbrahim, Ibn Qudāmah's legal thought can be described as equitable, flexible, practical, and progressive, attributes that enabled him to make significant contributions to the Ḥanbalī school.[113] ʾIbrahim concludes that Ibn Qudāmah's treatise, the *Mughnī*, has had a lasting impact on legal thought in past and

[112] Also known as Islamic legal theory. I have used both terms in different contexts to mean the same in this thesis.

[113] ʾIbrāhīm, *The role of Ibn Qudāmah*, 150.

present Muslim societies, particularly in contexts where the Ḥanbalī school provides legal guidance. Today, the *Mughnī* is one of 'the most authoritative and reliable sources of law for jurists in general and judges in particular' within the Ḥanbalī school.[114]

Several studies on the *Mughnī* have focused on specific aspects of Ibn Qudāmah's works. For instance, ʿAbd al-Majīd ibn Yūsuf al-Muṭlaq explores Ibn Qudāmah's assessment of Imām Aḥmad ibn Ḥanbal's legal rulings in the *Mughnī*. He recommended applying Ibn Qudāmah's methodology in the *Mughnī* to address the challenges facing Muslims today.[115] Similarly, ʿAlī ibn Saʿīd al-Ghāmidī focuses on Ibn Qudāmah's preferred legal positions regarding some of the most disputed juristic cases.[116] Other scholars have explored how Ibn Qudāmah's work addresses contemporary issues. For example, Mohd Zin and al-Obead Fadwa address contemporary issues relevant to Muslims: *qiṣāṣ* (retaliation) and *jihād* (warfare in Islam). Zin compares the Pakistani penal code of 1860 to the laws governing personal injuries and assessment in Islamic law from the *Mughnī*. Fadwa focuses on warfare in Islam (*Kitāb al-Jihād*) in the *Mughnī*.[117] Additionally, al-Yahya Nasser also investigated Ibn Qudāmah's methodology and approach to certain aspects of the Islamic law of international relations and the Ḥanbalī juristic tradition.[118] Regarding *ijtihād* (legal reasoning), al-Yahya noted that Ibn Qudāmah's opinion is that the *mujtahid's* (jurisconsult) view is not necessarily definitive or infallible. On this basis, jurists must engage in debates and continuous analysis of the findings of their *ijtihād* until they are sure of the correct

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[114] Ibid, 2.

[115] ʿAbd al-Majīd ibn Yūsuf al-Muṭlaq, "Tawjīh Ibn Qudāmah li Kalām al-Imām Aḥmad min Khilāl Kitābihī al-Mughnī," *Journal of Islamic Studies* 30, no. 3 (2018): 105-142, King Saud University, Saudi Arabia.

[116] ʿAlī ibn Saʿīd al-Ghāmidī, *Ikhtiyārāt Ibn Qudāmah al-Fiqhiyyah fī Ashhar Masāʾil al-Khilāfiyyah* (Riyadh: Dār Ṭaybah, 1418 AH).

[117] Najibah Mohd Zin, *The Law of Personal Injuries and Assessment in Islamic Law: Ibn Qudamah (d.620H/1223AD) and the Pakistan Penal Code of 1860* (Glasgow: Glasgow Caledonian University, 1995); Fadwa M. al-Obead, *Kitāb al-Jihād in al-Mughni by Ibn Qudāmah* (PhD diss., University of Glasgow, 2005).

[118] Nasser A. Al-Yahya, *Ibn Qudāmah's Methodology and Approach to Certain Aspects of the Islamic Law of International Relations and the Ḥanbalī Juristic Tradition* (PhD diss., The University of Manchester, 1992).

ruling based on authentic and acceptable evidence.[119] These findings indicate that legal reasoning or *ijtihād* must not stem from the personal preference of a jurist. Instead, it should be a deliberate and rigorous process aimed at searching for the truth within the legal text. This conscious effort entails interpreting and applying the legal texts of the Qurʾān and Sunnah, which are the duty of the *mujtahid*. As these studies do not emphasise Ibn Qudāmah's interpretive approach and how he arrived at vital legal decisions, such as in *jihād*, *qiṣāṣ*, this study fills this gap by examining how such vital decisions are derived from the legal texts from Ibn Qudāmah's perspective.

2.2.5.2 Studies on the *Rawḍah*

In *uṣūl al-fiqh*, extensive research has been conducted on Ibn Qudāmah's *Rawḍah*. Some of these studies involve critical editions (*taḥqīq*) of the *Rawḍah*, such as *Ibn Qudāmah wa Atharuhū al-Uṣūliyyah* by ʿAbd al-ʿAzīz al-Saʿīd and *Rawḍah al-Nāẓir wa Junnah al-Munāẓir* by Shaʿbān Muḥammad Ismāʿīl. The latter includes annotations to help understand Ibn Qudāmah's locutions (expressions) and is one of the primary texts relied on in this thesis.[120] Additionally, there are a few commentaries on the *Rawḍah*, such as *Ithāf Dhawī al-Baṣāʾir bi Sharḥ Rawḍah al-Nāẓir* by ʿAbd al-Karīm al-Namlah, and *Mudhakkirah Uṣūl al-Fiqh* by Muḥammad al-Amīn al-Shanqīṭī. These works and others related to the *Rawḍah* are highly significant to this thesis, as they serve as primary sources for this research and provide accurate information and a clearer understanding of the *Rawḍah*.

There are also several studies in the form of comparative studies between the *Rawḍah* and other related works in legal theory, such as the *Mustaṣfā* of al-Ghazālī,[121] *Sharḥ Mukhtaṣar al-Rawḍah* by Najm al-Dīn al-Ṭūfī and the *Mudhakkirah* by al-Shanqīṭī mentioned earlier.[122] These works focused on investigating variations between the

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[119] Ibid.

[120] ʿAbd al-ʿAzīz al-Saʿīd, *Ibn Qudāmah wa Atharuhū al-Uṣūliyyah* (Riyadh: Imam Muhammad Ibn Saud University, 1987); Ibn Qudāmah, *Rawḍah*.

[121] Abū Ḥāmid Muḥammad ibn Muḥammad al-Ṭūsī al-Ghazālī (d.505/1111).

[122] See ʿAbd al-Raḥmān ibn ʿAbd al-ʿAzīz al-Sudays, *al-Masāʾil al-Uṣūliyyah al-Mutaʿalliqah bi al-Adillah al-Sharʿiyyah al-latī Khālafa fīhā Ibn Qudāmah fī al-Rawḍah al-Ghazālī fī al-Mustaṣfā* (Riyadh: Maktabah al-Rushd, 2005); Ṣiddīq Sulaymān ʿĪsā, *Mukhālafāt al-Imām al-Ṭūfī li al-Imām Ibn Qudāmah fī Kitābihī Sharḥ Mukhtaṣar al-Rawḍah* (Master thesis, al-Jāmiʿah al-ʿIrāqiyyah, Baghdad, 2012); al-

respective works and the *Rawḍah* to highlight the originality of Ibn Qudāmah's work or critique of his work by later scholars. However, their authors did not emphasise the flexibility in Ibn Qudāmah's interpretive approach and how it might have been affected by changes in different social settings.

Lastly, Muhammad Subhi Afriyanto and Muhammad Muinidinillah Basri studied Ibn Qudāmah's evaluation of the *uṣūlī* thought of the Muʿtazilīs (*ārāʾ al-Muʿtazilah al-uṣūliyyah*) as discussed in the *Rawḍah*.[123] The authors found that Ibn Qudāmah provided a comprehensive representation of the Muʿtazilīs' thought on Islamic legal theory, which are rooted in their five theological principles. These principles significantly influenced their legal reasoning and caused divergences from mainstream *uṣūlis*. However, they observed that most of the differences between the Muʿtazilīs and the mainstream legal theorists stem from the Muʿtazilīs' consideration of their theological basis in making legal deductions.[124] Nevertheless, when the Muʿtazilīs disagree among themselves on some legal principles, some of their opinions may align with the views of the mainstream *uṣūlis*. The study also indicates that the Muʿtazilīs' idea of *ijtihād* has influenced contemporary rationalists'[125] studies in Islamic legal theory. For instance, Muʿtazilīs and Muslim rationalists appeal to reason to establish their legal opinions. However, while the classical Muʿtazilīs placed God at the centre of their legal reasoning, contemporary rationalists emphasise human liberty and reason.[126] This shift highlights the evolving influence of rationalism on Islamic legal theory. The

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Continued Muthannā ibn ʿAbd al-ʿAzīz al-Jarbāʾ, *al-Masāʾil al-latī Khālafa fīhā al-Ṭūfī Ibn Qudāmah fī Sharḥ Mukhtaṣar al-Rawḍah Jamʿ wa Dirāsah* (Ghirās li al-Nashr wa al-Tawzīʿ wa al-Diʿāyah wa al-Iʿlān, 2014); Fātiḥ Ḥub al-Himṣ, "Masʿalah Taklīf al-Mukrah bayna al-Muwaffaq Ibn Qudāmah wa Muḥammad al-Amīn al-Shanqīṭī," *Journal of Islamic Sciences and Civilisation* 8 (2018): 131-149; Fātiḥ Ḥub al-Himṣ, "Māhiyyah al-Mutashābih bayna Ibn Qudāmah wa Muḥammad al-Amīn al-Shanqīṭī," *al-Ḥiwār al-Fikrī* 14, no. 17 (2019): 68-89.

[123] Muhammad Subhi Afriyanto and Muhammad Muinudinillah Basri, "Mawāqif Ibn Qudāmah Tijāh Ārāʾ al-Muʿtazilah al-Uṣūliyyah min Khilāl Kitāb Rawḍah al-Nāẓir wa Junnah al-Munāẓir," *Profetika Jurnal Studi Islam* 18 (2017): 76-89.

[124] Ibid, 79, 84-85.

[125] The idea of rationalism in Islam is the view that appealing to reason must be the fundamental justification of knowledge or beliefs in Islam. See Von Kugelgen, "A Call for Rationalism: 'Arab Averroists' in the Twentieth Century," *Alif: Journal of Comparative Poetics* 16 (1996): 97-132.

[126] Afriyanto, *Mawāqif*, 76 and 88.

effects of rationalism on Islamic legal theory as a foundation for a professed divine legal system requires a critical examination in searching for relevant legal hermeneutics for the sources of Islamic law.

2.2.5.3 Comparative Studies on the *Rawḍah* and the *Mughnī*

This section reviews literature that serves as comparative studies between the *Rawḍah* and the *Mughnī*. These studies comparing aspects of the two books are relevant to my research as they may reveal how Ibn Qudāmah applied principles of jurisprudence to Islamic law.

2.2.5.3.1 *Ijmāʿ* (Consensus)

In a study of juristic cases, the Umm al-Qura University in Saudi Arabia carried out a project in the year 2000 to find out how Ibn Qudāmah related *ijmāʿ* on legal rulings in the *Rawḍah* and the *Mughnī*.[127] The studies found that in many juristic cases, he explicitly declared *ijmāʿ* on legal rulings. However, in most cases, he employed implicit words and expressions, indicating that he was aware of differing opinions on those rulings.[128] This seems to suggest that claiming *ijmāʿ* on a legal ruling or opinion requires a more thorough investigation. In addition, ʿAbd Wahhāb al-Aḥmadī, in his examination of the *Mughnī* from *kitāb al-ʿidad* (waiting period for a woman after divorce or when her husband dies) to *kitāb al-jirāḥ* (homicide and bodily harm), noted that most legal opinions related as *ijmāʿ* in *fiqh* fall under the category of *ijmāʿ ẓannī*

[127] See for instance, Mutʿib ibn Masʿūd al-Juʿayd, *al-Ijmāʿ ʿinda Uṣūliyyīn: Dirāsah wa Taṭbīqan ʿalā al-Masāʾil al-latī Ḥakā fīhā Ibn Qudāmah al-Ijmāʿ wa al-latī Nafā ʿIlmahū bi al-Khilāf fīhā min Kitāb al-Mughnī fī Kitāb al-Zakāt* (Master thesis, Umm al-Qurā University, Makkah, 2000/1421); Marwān Ghulām ʿAbd al-Qādir Andījānī, *al-Ijmāʿ ʿinda Uṣūliyyīn: Dirāsah wa Taṭbīqan ʿalā al-al-Masāʾil al-latī Ḥakā fīhā Ibn Qudāmah al-Ijmāʿ wa al-latī Nafā ʿIlmahū bi al-Khilāf fīhā min Kitāb al-Mughnī min Awwal Kitāb al-Aqḍiyah ilā Nihāyah Kitāb ʿItq Ummahāt al-Awlād* (Master thesis, Umm al-Qurā University, Makkah, 2008/1428).

[128] ʿAbd al-Wahhāb ibn ʿĀyid al-Aḥmadī, *al-Ijmāʿ ʿinda Uṣūliyyīn: Dirāsah wa Taṭbīqan ʿalā al-al-Masāʾil al-latī Ḥakā fīhā Ibn Qudāmah al-Ijmāʿ wa al-latī Nafā ʿIlmahū bi al-Khilāf fīhā min Kitāb al-Mughnī min Awwal Kitāb al-ʿIdad ilā Nihāyah Kitāb al-Jirāḥ* (Master thesis, Umm al-Qurā University, Makkah, 2000/1421), 392.

(speculative consensus).[129] This indicates the complexity and interpretative challenges in establishing legal consensus.

2.2.5.3.2 Juristic Terminologies

In a study on juristic terminologies and concepts (*al-muṣṭalaḥ al-fiqhī*), Ḍiyāʾ Ḥasan Muḥammad al-Jabūrī delves into Ibn Qudāmah's explanation of the juristic terminologies found in the *Mughnī* from a semantic perspective. The study concluded that Ibn Qudāmah derives most of the linguistic meanings of the juristic terminologies from the Qurʾān and Sunnah. The study revealed that Ibn Qudāmah meticulously cites the linguistic meanings of the terms alongside their technical meanings as used and understood by Muslim jurists.[130] This research is particularly pertinent for exploring the interplay between the linguistic connotations of these juristic terms and Ibn Qudāmah's interpretation of legal texts in the derivation and application of Islamic law.

2.2.5.3.3 Principles of Islamic Legal Theory

There are relatively few studies on Ibn Qudāmah's application of certain principles of Islamic legal theory (*qawāʿid uṣūliyyah*), such as *naqḍ* (faulty analogy), *fāsid* (defective) and *bāṭil* (void ab initio) in the *Mughnī*. Muḥammad Hammām ʿAbd al-Raḥīm investigated the application of the concept of *naqḍ* in the *Mughnī*. *Naqḍ* is a principle used to invalidate the *ʿillah* (effective cause) of analogy (*qiyās*) if the ruling (*ḥukm*) based on *qiyās* is not applicable in other situations even though the salient feature asserted by the *mujtahid* as the effective cause is present. In such a case, the *qiyās* is deemed a faulty analogy because, if the claimed effective cause was indeed the underlying reason for the legal ruling, the ruling would need to be applicable wherever the effective cause is found in order to substantiate the validity of the *qiyās*. The study revealed that Ibn Qudāmah applied the principles of *naqḍ* in his *Mughnī* just as he expounded on in the *Rawḍah*.[131] This finding motivates a deeper inquiry into Ibn

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[129] Ibid.

[130] Ḍiyāʾ Ḥasan Muḥammad al-Jabūrī, *al-Muṣṭalaḥ al-Fiqhī ʿinda Ibn Qudāmah al-Maqdisī fī Kitābihī al-Mughnī* (Majmaʿ al-Lughah al-ʿArabiyyah ʿalā al-Shabakah al-Ālamiyyah, 2016).

[131] Muḥammad Hammām ʿAbd al-Raḥīm Mulḥim, *Qādiḥ al-Naqḍ: Dirāsah Uṣūliyyah wa Taṭbīqiyyah ʿalā Kitāb al-Mughnī li Ibn Qudāmah al-Maqdisī* (Ghazzah: ʿAmādah al-Baḥth al-ʿIlmī wa al-Dirāsāt al-ʿUlyā, al-Jāmiʿah al-Islāmiyyah, 2016).

Qudāmah's consistency in interpreting the legal texts in his legal treatise, *Rawḍah* and how this approach is reflected in the application of Islamic law in the *Mughnī*.

Ṣāliḥ ibn Sulaymān al-Ḥumayd, a professor in the College of Shariah and Islamic Studies at Umm al-Qura University of Saudi Arabia, conducted a thorough examination of the distinction between the legal terms *fāsid* (defective) and *bāṭil* (void ab initio) in Islamic legal theory and their application to invalid marriages in the *Mughnī*. Al-Ḥumayd disputed the notion that it is only the Ḥanafī school that distinguishes between *fāsid* and *bāṭil* in contracts. He observed that while jurists use both terms interchangeably to denote an invalid act of worship (*ʿibādah*) and in transactions or social relations (*muʿāmalāt*), they apply *fāsid* and *bāṭil* distinctively to demonstrate differing levels of invalidity in concepts such as marriage, Hajj and the freeing of an enslaved person based on a contract (*mukātabah*) across the various schools of law.[132]

This observation points to a discrepancy between the theoretical and practical application of the two legal rulings (*fāsid* and *bāṭil*) by the non-Ḥanafī schools of law. This finding holds significant importance for this thesis, as such discrepancies could potentially impact the interpretation and application of the legal and ethical texts of the Qurʾān and Sunnah, which are the primary focus of this thesis.

The studies reviewed above indicate a persistent process of re-evaluation within Islamic scholarship, highlighting that Islamic legal theorists continually critique and reassess their own perspectives alongside those of their peers. This iterative discourse aims to attain greater certainty on various legal issues. This dynamic underscores the significance of this thesis, particularly as Muslims navigate the complexities of reconciling traditional Islamic principles with contemporary challenges.

2.2.6 Conclusion

The review highlighted the existing literature on Ibn Qudāmah's contributions to Islamic scholarship, particularly in law and legal theory. It also underscores the ongoing efforts to develop new interpretive methods that can effectively address the evolving

[132] Ṣāliḥ ibn Sulaymān ibn ʿAbd al-ʿAzīz al-Ḥumayd, *al-Tafrīq Bayna al-Fāsid wa al-Bāṭil: Dirāsah Uṣūliyyah Ṭaṭbīqan ʿalā Bāb al-Nikāḥ fī Mughnī Ibn Qudāmah* (Egypt: Rābiṭah al-Adab al-Ḥadīth, 2013), vol. 74, 463-539.

needs of Muslims in various contexts. By exploring Ibn Qudāmah's interpretive approach, particularly the degree of flexibility he employs in interpreting the legal and ethical texts of the Qurʾān and Sunnah, this thesis seeks to uncover pathways for navigating social transformations through his perspectives on Islamic law and ethics.

Additionally, this study explores the broader spectrum of the linguistic and contextual approaches that Ibn Qudāmah employed to interpret and apply the legal and ethical texts found in the Qurʾān and Sunnah. It assesses the relevance of his interpretive approach in our contemporary context. The goal is to contribute to the ongoing discourse surrounding the development of new Islamic hermeneutics for the Qurʾān and Sunnah to address the challenges Muslims face today and to offer potential solutions for the future.

Chapter 3: *Ḥaqīqah* and *Majāz*

This chapter explores how Ibn Qudāmah employed the concept of *ḥaqīqah* and *majāz*[133] to interpret the texts of the Qurʾān and Sunnah in his legal endeavours. The chapter will also examine how the concepts of *ḥaqīqah* and *majāz* may have influenced his interpretive flexibility of the primary sources of Islamic law and ethics.

Since the primary sources of Islamic law and ethics were revealed and recorded in Arabic, a comprehensive understanding of Arabic is necessary for effective legal interpretation and deduction.[134] Mastery of the sciences of Rhetoric (*Balāghah*) is pivotal for grasping the subtleties, nuances, and beauty inherent in Arabic, thereby serving as an indispensable tool for Islamic legal theorists. Renowned Arabic scholar Yūsuf al-Sakkākī (d.626/1229) emphasises the critical role of Arabic rhetoric in interpreting the Qurʾān, highlighting its integral function in elucidating the text's meaning and implications.

> Anyone who seeks a thorough understanding of Allah's words is in dire need of these two sciences: *ʿIlm al-maʿānī* (the science of meanings) and *ʿIlm al-bayān* (the science of eloquence). Therefore, woe to him who comments on the Qurʾān without understanding *ʿIlm al-maʿānī and ʿIlm al-bayān*.[135]

This statement emphasises that an individual's grasp of the concepts of *ḥaqīqah* and *majāz* is essential to understanding the primary sources of Islamic law and ethics.

3.1 The Conflict Between *Ḥaqīqah* and *Majāz*

The interest of Islamic legal theorists in discussing *ḥaqīqah* and *majāz* is to uncover how people use language to convey messages among themselves and to also comprehend Allah's message to His servants in the Qurʾān since He employed human language (Arabic in this case) as a medium of communicating to them.[136] However, notable scholars like Muḥammad ibn Dāwūd al-Ẓāhirī (d.297/910), Ibn al-Qayyim (d.751/1350)

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[133] Refer to Appendix 1 for definitions and classifications of *ḥaqīqah* and *majāz*.

[134] ʿAlāʾ al-Dīn al-Mardāwī, *al-Taḥrīr Sharḥ al-Taḥbīr fī Uṣūl al-Fiqh* (Riyadh: Maktabah al-Rushd, 2000), 1/191.

[135] Yūsuf al-Sakkākī, *Miftāḥ al-ʿUlūm* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1987), 162.

[136] See Robert Gleave, *Islam*, 35.

and Muḥammad al-Amīn al-Shanqīṭī (d.1393/1972) have strongly contested the use of literal and nonliteral interpretations of Arabic expressions or the Qurʾān and Sunnah.[137] Nonetheless, it remains one of the most important topics in Arabic rhetoric, particularly in exploring the beauty of different expressions, their implications and the degree of eloquence a speaker employs. Therefore, its profound impact on Islamic thought and juristic practices cannot be overemphasised.

Generally, disputes regarding a word's *ḥaqīqah* and *majāz* meanings are resolved when the meaning of a word is evident from the context in which it is employed. However, when this clarity is lacking, interpretation of the word may be a problem since both its *ḥaqīqah* and *majāz* meanings may be possibly implied.[138] To resolve this problem, Islamic legal theorists have maintained that the primary meaning of a word is its assigned definition (*al-aṣl fī al-kalām al-ḥaqīqah*).[139] Fakhr al-Dīn al-Rāzī (d.606/1210) emphasises a consensus on this view.[140] This is based on the notion that when a word is employed to convey a meaning that diverges from its literal sense, an indicator (*qarīnah*) is supplied to signal that a nonliteral meaning is implied.[141] Hence, to assume that a word is used in a nonliteral sense (*majāz*) requires a *qarīnah* (an indication) to justify it.[142]

However, the principle *al-aṣl fī al-kalām al-ḥaqīqah* does not seem to resolve the problem emanating from the conflict between *ḥaqīqah* and *majāz* entirely. This is due to the value attached to prevalent usages as a factor in determining the meaning of a word

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[137] As discussed in the literature review section 2.2.4, page 27-28. For details refer to Ali, Medieval, 8 and 96-135; Ḥisām al-Dīn Mūsā ʿAffān, "*Al-Ḥaqīqah wa al-Majāz fī al-Kitāb wa al-Sunnah wa ʿAlāqatuhumā bi al-Aḥkām al-Sharʿiyyah*," (Master thesis, Umm al-Qurā University, Makkah, 1981-1982) 116, fiqh05579.pdf (archive.org), 116; Muḥammad al-Amīn al-Shanqīṭī, *Mudhakkirah Uṣūl al-Fiqh ʿalā Rawḍah al-Nāẓir* (Beirut: Dār Ibn Ḥazm, 2019), 74; Muḥammad ibn Ṣāliḥ al-ʿUthaymīn, *Sharḥ Nuẓum al-Waraqāt fī Uṣūl al-Fiqh* (Saudi Arabia: Dār Ibn al-Jawzī, n.d.), 64.

[138] See Ibn Qudāmah, *Rawḍah*, 1/450.

[139] See, Fakhr al-Dīn Abū ʿAbdullāh Muḥammad ibn ʿUmar al-Rāzī, *al-Maḥṣūl* (Beirut: Muʾassasah al-Risālah, 1997), 1/341; ʿAlāʾ al-Dīn ʿAbd al-ʿAzīz ibn Aḥmad al-Bukhārī, *Kashf al-Asrār ʿan Uṣūl Fakhr al-Islām al-Bazdawī* (Istanbul: Sharikah al-Ṣaḥāfah al-ʿUthmāniyyah, 1890), 3/204.

[140] Al-Rāzī, *al-Maḥṣūl*, 1/341.

[141] Gleave, *Islam*, 43.

[142] Ibn Qudāmah, *Rawḍah*, 1/450.

or an expression.[143] The Mālikī jurist and legal theorist Shihāb al-Dīn al-Qarāfī (d.684/1285) expounds that there are four instances of conflict between the literal and nonliteral implications of a word.[144]

First, when the literal meaning of a word is preponderant (*rājiḥ*) even though the word is occasionally employed for a nonliteral meaning. A common example of this scenario is using the word *asad* for its original meaning: the predatory wild feline (a lion), even though it is occasionally employed for a brave person. The second scenario is when the nonliteral meaning is commonly implied on the same level as the literal meaning of a word. For instance, the word *nikāḥ* is used for both marriage contract and sexual intercourse (literal and nonliteral connotations respectively).[145] In both situations, when there is a conflict on which meaning is implied, Islamic legal theorists endorse the literal meaning over the nonliteral meaning except when there is an indication that the nonliteral meaning was implied.[146]

A common problem associated with the *ḥaqīqah* and *majāz* usages is the ability to distinguish which meaning is *ḥaqīqah* and which is *majāz*. Recognising the problem, Ibn Qudāmah notes that literal meanings of words can be identified by two attributes: the first is that the literal meaning of a word comes to mind immediately after the word is used or heard without any hint or clue (*mubādarah ilā al-dhihn bilā qarīnah*). Its nonliteral meaning will require a hint to indicate it was implied. For instance, if someone is told another person was attacked or killed by a lion, the word 'lion' will be understood as the predatory wild feline immediately without any hint. However, if the person says: 'the lion is meeting the king in his palace', the use of lion in this context will be understood as a brave person since a lion cannot be invited to the palace. Relying on a meaning that readily comes to mind to identify literal meanings may be problematic,

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[143] Shihāb al-Dīn Aḥmad ibn Idrīs al-Qarāfī, *Sharḥ Tanqīḥ al-Fuṣūl* (Cairo: Sharikah al-Tibāʿah al-Fanniyyah al-Muttaḥadah, 1973), 120.

[144] Al-Qarāfī, *Sharḥ*, 119, See also, Muḥammad ibn Aḥmad ibn ʿAbd al-ʿAzīz ibn ʿAlī al-Futūḥī ibn al-Najjār, *Sharḥ al-Kawkab al-Munīr* (Saudi Arabia: Maktabah al-ʿUbaykān, 1997), 1/195.

[145] Aḥmad ibn Fāris, *Mujmal al-lughah* (Beirut: Muʾassasah al-Risālah, 1986), 1/884; ʿAbdullāh ibn Ahmad Ibn Qudāmah, *al-Mughnī* (Riyadh: Dār ʿĀlam al-Kutub, 1997), 9/339; Muḥammad ibn al-Manẓūr, *Lisān al-ʿArab* (Beirut: Dār Ṣādr, 1414 AH), 2/625.

[146] Al-Qarāfī, *Sharḥ*, 119, See also Ibn al-Najjār, *Sharḥ al-Kawkab*, 1/195.

particularly the use of jargon that only a particular population may be familiar with. Hence, Najm al-Dīn al-Ṭūfī (d.716/1316) expounds that the expression: '*mubādarah ilā al-dhihn*' refers to the meaning that all users of a language will immediately comprehend from the use of a word or an expression but not restricted groups.[147]

The second attribute of a word's literal meaning is the possibility of deriving other forms of that word that share the same meaning (*ishtiqāq* - derivational morphology).[148] For instance, the word '*amr*' may imply a 'command' and an 'affair'.[149] These are noted in the Qurʾān as follows: '…and the *amr* (affairs) of Pharaoh was not [at all] guided (*bi rashīd*)' Q.11:96.[150] According to Ibn Qudāmah, 'command' is the literal denotation of *amr* because other forms of the verb, like *amara* (he commanded/to command), *yaʾmuru* (he is commanding – progressive tense) and *mur* (the imperative form), are all conjugated from the same root as *amr*. However, the interpretation of *amr* as a course of action (*ṭarīq* or *manhaj*), act (*fiʿl*), or affair (*shaʾn*) as in the case of the Q.11:96 by most exegetes[151] is *majāz* since other forms of the words '*amr*' do not share the same meaning.[152] Thus, in interpreting Q.11:96, Abū Ḥayyān al-Andalusī (d.745/1344) expounds that both the literal and nonliteral interpretations of the word '*amr*' are possible.[153]

The third scenario regarding the conflict between *ḥaqīqah* and *majāz* is when the nonliteral meaning of a word overrides the literal meaning such that the literal meaning is forgotten, or it is practically impossible to be implied in the context in which it was used. For example, the word *ghāʾiṭ* literally means a lower spot on the earth's surface. This meaning is, however, not in use and forgotten due to the dominant usage of '*ghāʾiṭ*'

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[147] Al-Ṭūfī, *Sharḥ*, 1/517.

[148] Ibn Qudāmah, *Rawḍah*, 1/452.

[149] Al-Ṭūfī, *Sharḥ*, 1/518.

[150] Muḥammad ibn Aḥmad al-Anṣārī al-Qurṭubī, *al-Jāmiʿ li Aḥkām al-Qurʾān* (*Tafsīr al-Qurṭubī*) (Cairo: Dār al-Kutub al-Miṣriyyah, 1964), 2/89 and 9/93; Abū Ḥayyān Muḥammad ibn Yūsuf al-Andalusī, *al-Baḥr al-Muḥīṭ fī al-Tafsīr* (Beirut: Dār al-Fikr, 2000), 6/204; Ismāʿīl ibn Kathīr, *Tafsir al-Qurʾān al-ʿAẓīm (Tafsir ibn Kathīr)* (Riyadh: Dār Ṭaybah li al-Nashr wa al-Tawzīʿ 1999), 4/348; Muḥammad ibn ʿAlī ibn Muḥammad al-Shawkānī, *Fatḥ al-Qadīr* (Damascus, Dār Ibn Kathīr, 1414 AH), 2/593.

[151] Ibid.

[152] Ibn Qudāmah, *Rawḍah*, 1/452.

[153] See Abū Ḥayyān, *al-Baḥr*, 6/204.

to imply human excrement, which is the nonliteral meaning.[154] Hence, the nonliteral meaning becomes prevalent, taking precedence over the literal meaning.[155]

Relooking into the definition of *ḥaqīqah* and *majāz*, those who consider *ḥaqīqah* as only one category - *ḥaqīqah lughawiyyah* - will consider this third scenario as *majāz*. In contrast, those who categorise *ḥaqīqah* into three, *lughawiyyah*, *ʿurfiyyah* and *sharʿiyyah*, will consider this third scenario as *ḥaqīqah*. Based on the latter perspective, a generally accepted connotation of a word based on the convention is noted as *ḥaqīqah ʿurfiyyah*. This disagreement regarding *ḥaqīqah ʿurfiyyah* does not affect how a word is interpreted, as both perspectives agree that the nonliteral meaning takes precedence over the lexical meaning since it is no longer in use.[156] The interpretation of words and expressions as either *ḥaqīqah* or *majāz* in all the cases discussed above seems to be a common practice among Islamic legal theorists, as claimed by the Ḥanafī legal theorist and jurist Niẓām al-Dīn al-Shāshī (d.344/955).[157]

However, the point of dispute is found in the fourth scenario when the nonliteral meaning of a word prevails over its literal meaning, yet the literal meaning is occasionally implied. Al-Qarāfī notes that Islamic legal theorists have varied opinions regarding which meaning must take precedence.[158] This is because the lexical meaning is still in use, as it sometimes recurs (*tataʿāhad aḥyānan*), even though its usage is uncommon when compared to the nonliteral usage of the word.[159] This may be illustrated by the implication of drinking from a river. It literally means to drink directly from it with the mouth (i.e., the *ḥaqīqah*). Drinking with the hand, cup, bottle, or any object is the *majāz* and most common today. However, the *ḥaqīqah* implication, which is to drink directly from the river, is not entirely forgotten, as it is still practised in remote

[154] Abū Ḥāmid al-Ghazālī, *al-Mustaṣfā* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1993), 190; Ibn Qudāmah, *Rawḍah*, 1/451; Gleave, *Islam*, 177.

[155] Al-Qarāfī, *Sharḥ*, 119.

[156] Ibn al-Najjār, *Sharḥ al-Kawkab*, 1/196.

[157] Niẓām al-Dīn Aḥmad ibn Muḥammad al-Shāshī, *Uṣūl al-Shāshī* (Beirut: Dār al-Kutub al-ʿArabī, 1982), 49-51, See also Ibn al-Najjār, *Sharḥ al-Kawkab*, 1/195.

[158] Al-Qarāfī, *Sharḥ*, 119, See also Ibn al-Najjār, *Sharḥ al-Kawkab*, 1/195.

[159] Ibn al-Najjār, *Sharḥ al-Kawkab*, 1/196.

areas, especially by shepherds.[160] The problem with this usage is that if a person vows not to drink from a particular river and there is no *qarīnah* to indicate the nonliteral meaning (*maʿnan al-majāzī*), do they violate their vow by drinking from the river with an object or not?[161]

In addressing such cases, Ibn Qudāmah argues that even though the *majāz* may be more commonly used, the *ḥaqīqah* must be assumed by default. This is because it represents the original connotation of the word, and in the absence of a *qarīnah*, it retains legal precedence.[162] A contrary view is held by other Muslim jurists, such as the two disciples of Abū Ḥanīfah, the eponym of the Ḥanafī school: Abū Yūsuf Yaʿqūb ibn Ibrāhīm al-Anṣārī (d.182/798) and Muḥammad ibn al-Ḥasan al-Shaybānī (d.189/805). They argue that the *majāz* should be maintained instead.[163] Al-Qarāfī justifies that since prevalence (*rajāḥah*) is essential in verifying the meaning of an expression or a word, the nonliteral meaning holds because it becomes the prevalent usage.[164] There is yet a third perspective that asserts that the meaning of a word or an expression can imply a literal meaning that is rarely used or a prevailing nonliteral meaning (i.e., the fourth scenario discussed above). In such a case, the word must be considered ambiguous (*mujmal*). A clarification (*bayān*) is required to settle on the meaning. This is because the *ḥaqīqah* and the *majāz* are both applicable.[165]

Responding to the contending views against his, Ibn Qudāmah argues that words are defined to facilitate communication. If the literal meanings still in use were disregarded for nonliteral meanings without proof (i.e., *qarīnah*), the essence of communication would be lost because everyone may claim their interpretation of words.[166] Similarly, the essence of most words would be lost if every word that could be interpreted literally and

[160] Ibid.

[161] Ibid.

[162] Ibn Qudāmah, *Rawḍah*, 1/450. This is also the view of most Islamic legal theorists. See al-Qarāfī, *Sharḥ,* 119.

[163] Al-Shāshī, *Uṣūl*, 51; Muḥammad ibn Aḥmad al-Sarakhsī, *Uṣūl al-Sarakhsī (*Hyderabad: Lajnah Iḥyāʾ al-Maʿārif al-Nuʿmāniyyah, n.d.), 1/171.

[164] Al-Qarāfī, *Sharḥ*, 118-119.

[165] Tāj al-Dīn ʿAbd al-Wahhāb ibn ʿAlī al-Subkī, *Jamʿ al-Jawāmiʿ fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2003), 32.

[166] Ibn Qudāmah, *Rawḍah*, 1/450-451.

nonliterally was considered ambiguous.[167] It can be deduced from Ibn Qudāmah's analysis that if one vows not to drink from a particular river, the person will be deemed to have violated their vow only when they drink directly from that river because that is the *ḥaqīqah*. The *ḥaqīqah* is applicable since the *majāz* connotation has not completely overridden the *ḥaqīqah*. A *qarīnah* is still required to deviate the meaning to the *majāz*. Unlike the case of *ghāʾiṭ* where the *majāz* connotation has overruled the *ḥaqīqah* to the extent that hardly will someone understand that '*raʾaytu ghāʾiṭan*' (I saw *'ghāʾiṭ'*) meant 'I saw a lower spot' which is the lexical meaning or the *ḥaqīqah*. However, when someone says they ate from a tree, the *majāz* will be understood to exclude the parts of the tree that are not edible, like the trunk, because it is not meant to be eaten even though it is the tree's core.[168]

Notably, the discussion thus far points us to the fact that jurists and legal theorists may interpret a word or text from the primary sources of Islamic law differently based on their variant perspectives on prevalent usages of words and their literal meanings. However, Ibn Qudāmah seems to give preference to literal meanings - which he observes as including lexical, conventional, and juristic usages - over nonliteral meaning except on two conditions; the first is when a nonliteral meaning becomes predominant while its corresponding literal meaning is forgotten altogether. The second condition is when there is an indication (*qarīnah*) to convey that the nonliteral meaning of a word was implied instead of the literal meaning.

3.2 The Conflict Between *Ḥaqīqah Lughawiyyah*, *ʿUrfiyyah* and *Sharʿiyyah*

Another interpretive problem regarding *ḥaqīqah* and *majāz* is the consideration of the different literal implications of a word: its conventional, juristic and lexical meanings by most Islamic legal theorists.[169] With a conflict between the literal and nonliteral meanings of a word, Ibn Qudāmah argues that the literal meaning must be given

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[167] Ibid, 1/451.

[168] Ibn al-Najjār, *Sharḥ al-Kawkab*, 1/196.

[169] Abū Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/11: Abū Yaʿlā, *al-ʿUddah*, 1/172; ʿAbd al-Malik ibn ʿAbdullāh al-Juwaynī, *al-Waraqāt* (n.p., n.d.), 9; Abū al-Muẓaffar Manṣūr ibn Muḥammad al-Samʿānī, *Qawāṭiʿ al-Adillah fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1999), 1/269; al-Ghazālī, *al-Mustaṣfā*, 186; Ibn Qudāmah, *Rawḍah*, 1/448.

preference when interpreting it since it is the assigned meaning of the word until there is proof that the nonliteral meaning was implied, as noted earlier. However, the same argument cannot be presented to resolve a conflict arising from the three different categories of *ḥaqīqah* when the different literal readings are possible with a text or an expression. Al-Qarāfī's approach of considering prevalent usages discussed above may be applicable here even though that might not be directly obvious.

Islamic legal theorists seem to agree that when there is an indication (*qarīnah*) with the usage of a word to convey a particular meaning, that meaning must be upheld.[170] However, when there are no indications to convey the meaning referred to by employing the word, they differ on which meaning must be assumed or adopted as a default: the *ḥaqīqah lughawiyyah*, or *sharʿiyyah* or *ʿurfiyyah*.[171] For example, the Prophet is reported to have instructed that: 'When an invitation is extended to one of you, he must honour it. If he is fasting, he should pray (*falyuṣalli*) [when the meal is served], and if he is not fasting, he should eat.'[172] The implication of the statement, 'He should pray (*falyuṣalli*)', has been disputed among Islamic scholars as to whether it implies supplication, which is the lexical meaning of *ṣalāh*, or the act of praying, which involves standing, bending, and prostration, which is the juristic meaning.[173]

Both Abū Ḥāmid al-Ghazālī (d.505/1111) and Sayf al-Dīn al-Āmidī (d.631/1233), are of the view that even though the usages of words by Allah and the Prophet primarily define juristic rulings, there are instances where such words were employed in the lexical sense. However, al-Ghazālī and al-Āmidī posit that if the Lawgiver employs a noun (or a word) in a command or an affirmative mode, the word must be interpreted as *ḥaqīqah sharʿiyyah* by default. However, al-Ghazālī argues that when the word is utilised prohibitively or in a form that connotes negation by the Lawgiver, the 'word' in such a circumstance is ambiguous (*mujmal*) and, thus, requires a clarification (*bayān*) from an

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[170] See Abū Bakr Muḥammad ibn al-Ṭayyib al-Bāqillānī, *al-Taqrīb wa al-Irshād (al-Ṣaghīr)* (Beirut: Muʾassasah al-Risālah, 1998), 1/192; al-Ṭūfī, *Sharḥ*, 1/501.

[171] See al-Bāqillānī, *al-Taqrīb*, 1/129; al-Ṭūfī, *Sharḥ*, 1/501.

[172] Muslim ibn Ḥajjāj ibn Muslim, *Ṣaḥīḥ Muslim* (Turkey, Dār al-Ṭibāʿah al-ʿĀmirah, 1334 AH), 4/153 (Hadith No. 1431).

[173] See al-Ṭūfī, *Sharḥ*, 1/502.

external source.[174] For al-Āmidī, he asserts that when Allah and the Prophet use a word in a negative or prohibitive context (*fī siyāq al-nahy*), its meaning should be interpreted according to its lexical definition (*musammā lughawī*). This is because it is unlikely that a legitimate action (*taṣarruf sharʿī*) that has already been given a juristic meaning would later be prohibited.[175]

Legal theorists like Abū Yaʿlā and al-Bāqillānī do not make any distinctions between positive and negative statements or commands and prohibitions. They contend that when the meaning of a word could imply any of the literal denotations, it must be considered ambiguous until clarification is supplied.[176]

Ibn Qudāmah takes the position that words employed by Allah and the Prophet must be interpreted per their juristic meanings except when it is proven that another connotation was implied.[177] This view considers that a speaker must be understood according to their conventional usages of words unless otherwise specified. In other words, vocables (*alfāẓ*) applied in juristic matters must be interpreted according to their juristic meanings. The majority of Islamic legal theorists hold this view.[178] They argue that interpreting a word related to juristic matters in its lexical or conventional sense without clear evidence is unfounded since the Lawgiver's concern is to expound on juristic matters, not conventional nor purely linguistic concerns.[179] This aligns with al-Qarāfī's principle of prevalent usages discussed earlier, as a speaker's usual connotation may be considered their prevalent usage.

In support of the position of most Islamic legal theorists, including Ibn Qudāmah, Tāj al-Dīn al-Subkī (d.771/1369) emphasises that

> A word must always be interpreted based on the norms (*ʿurf*) of the speaker. Thus, a word used in juristic expressions or by the Lawgiver (Shāriʿ) must be principally

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[174] Al-Ghazālī, *al-Mustaṣfā*, 189 – 190.

[175] ʿAlī ibn Muḥammad al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām* (Damascus and Beirut: al-Maktab al-Islāmī, 1402 AH), 3/23.

[176] Abū Yaʿlā, *al-ʿUddah*, 1/143; Al-Bāqillānī, *al-Taqrīb*, 1/130; Ibn Qudāmah, *Rawḍah*, 1/447.

[177] Ibn Qudāmah, *Rawḍah*, 1/446; Gleave, *Islam*, 178-179.

[178] Al-Rāzī, *al-Maḥṣūl*, 1/409; al-Ṭūfī, *Sharḥ*, 1/501.

[179] Ibn Qudāmah, *Rawḍah*, 1/446; al-Ṭūfī, *Sharḥ*, 1/501.

> regarded as *ḥaqīqah sharʿiyyah* because that is the conventional usage of the Lawgiver. [In circumstances where that is not practical], then the word must be interpreted based on the general conventional usage (*ʿurf ʿāmm*) [because that is the norm of those addressed]. [If the meaning based on general conventions does not make sense too], then the word's meaning must be considered based on its lexical definition.[180]

This explanation is more reasonable as a speaker must be understood according to the conventional usages they are used to. Likewise, the texts of the primary sources of Islamic law and ethics must be understood within their juristic context unless there is an acceptable reason for deviation, which will be examined later from Ibn Qudāmah's perspective.

3.3 Discussion

Most scholars of *uṣūl al-fiqh*, including Ibn Qudāmah, recognise the phenomenon of *majāz* in both the Arabic language and the Qurʾān. However, the Ẓāhirī school, along with figures such as Ibn al-Qayyim and contemporary scholars like al-Amīn al-Shanqīṭī and Ibn ʿUthaymīn, staunchly reject its applicability. They argue that the primary function of a word is to facilitate meaningful communication, asserting that every occurrence of a word is considered *ḥaqīqah*, irrespective of any accompanying *qarīnah*, as long as the intended meaning is understood. This perspective raises critical discussions about the nature of linguistic interpretation and its implications for understanding religious texts.[181] On the other hand, the advocates of *majāz* assert that if a word requires a *qarīnah* to convey a particular connotation, its usage is regarded as a *majāz* whenever it employs a *qarīnah* to claim that connotation. And it is *ḥaqīqah* when the meaning is clear without a *qarīnah*.[182]

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[180] Al-Subkī, *Jamʿ al-Jawāmiʿ*, 32.

[181] Al-ʿUthaymīn, *Sharḥ Nuẓum*, 64-65; Ali, *Medieval*, 8.

[182] Al-Ṭūfī, *Sharḥ*, 1/532; al-Qādir ibn Aḥmad ibn Badrān, *al-Madkhal ilā Madhhab al-Imām Aḥmad ibn Ḥanbal* (Beirut: Muʾassasah al-Risālah, 1401 AH), 183.

On the surface, this argument seems like a dispute based on verbal disagreement (*khilāf lafẓī*).[183] However, it is significant when applied to matters related to *ʿaqīdah* (doctrine). Most proponents of *majāz* refute its application regarding the interpretation of the attributes of God and unseen concepts.[184] Perhaps this is one of the most critical applications of *majāz* since asserting that the attributes of God and the unseen, as mentioned in the Qurʾān and Sunnah, are *majāz* would require a detailed awareness of how these attributes relate to God and the unseen world. A reality that none can claim. Notwithstanding the opposition, particularly in Islamic theology (*ʿilm al-Kalām*), it is strongly argued that *majāz* is essential for the beauty of the Arabic language and its uniqueness. Without *majāz*, the Qurʾān would have lost most of its proficient expressions. It would have also required lengthy sentences to make the most straightforward statements in the Qurʾān.[185]

From an Islamic legal theory perspective, the concept of *ḥaqīqah* and *majāz* is crucial in the interpretation and application of the Qurʾān and the Sunnah. This is evident in how it has contributed to the emergence of divergent opinions among Muslim jurists and legal theorists in their attempt to apply the Qurʾān and Sunnah across different eras and circumstances, as noted above. In addition, there is also the need to situate human expressions within the demands of the *sharīʿah* to deduce relevant legal rulings concerning law and ethics and resolving human disputes. This exercise requires some juristic exertion to form grounded deductions and applications of the texts of the Qurʾān and Sunnah (*nuṣūṣ sharʿiyyah*) concerning human utterances and deeds. That is, the *nuṣūṣ sharʿiyyah*, as well as human utterances, must be analysed within a particular lens to reasonably interpret and apply the law when necessary. While analysing, are the *mujtahids* or Muslim jurisconsults required to strictly follow the linguistic rules regarding *ḥaqīqah* and *majāz* implications of words, or can they occasionally overlook them to make the *sharīʿah* more flexible?

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[183] See Ibn Qudāmah, *Rawḍah*, 1/193; ʿAbd al-Karīm al-Namlah, *al-Muhadhdhab fī ʿIlm Uṣūl al-Fiqh al-Muqāran* (Riyadh: Maktabah al-Rushd, 1999), 2/494.

[184] Ibn Qudāmah, *Rawḍah*, 1/199; Ovamir Anjum, *Politics, law, and community in Islamic thought: The Taymiyyan moment* (Cambridge: Cambridge University Press, 2012), 149.

[185] Ibn Badrān, *al-Madkhal*, 183.

To answer these questions, it may be necessary first to understand why this concept is addressed in Islamic legal theory and the reasons behind these linguistic principles. Ibn ʿUthaymīn underscores that the purpose for examining *ḥaqīqah* and *majāz* in Islamic legal theory is to equip one with the knowledge to identify the different usages of words as either literal or nonliteral. When a word is identified as having been employed in the literal sense, the reader must be able to determine which category of literal implications it applies to, whether it is *ḥaqīqah lughawiyyah*, *ʿurfiyyah*, or *sharʿiyyah*.[186] This could minimise or eliminate speculative interpretations of utterances in many instances. It will also help in ascertaining God's intent (*murād Allāh*) in His revelation to humanity, as al-Sakkākī maintains.[187] Hence, through systematic studies (*tatabbuʿ*) of the Arabic language, the linguistic principles were developed to facilitate the understanding of Arabic usages and expressions.[188] Thus, Islamic legal theorists established these principles as a general guide to understanding the primary texts of Islamic law and ethics and resolving disputes that may arise when people disagree on the implications of their expressions and usages.[189]

Since the purpose of applying *ḥaqīqah* and *majāz* implications of a text is to discover God's intent with His revelation[190] and understand people's expressions and usages, strictly following a set of linguistic guidelines may not always apply to all situations, especially when a text is explained in another text or by the Prophet. Flexibility is thus necessary in juristic endeavours for reasonable interpretations and applications of the Islamic legal system. The following section delves into Ibn Qudāmah's flexible application of linguistic principles concerning *ḥaqīqah* and *majāz* in his legal or juristic practice.

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[186] See Muḥammad ibn Ṣāliḥ al-ʿUthaymīn, *al-Uṣūl min ʿIlm al-Uṣūl* (Saudi Arabia: Dār Ibn al-Jawzī, 2009), 20.

[187] Al-Sakkākī, *Miftāḥ*, 162.

[188] Shams al-Dīn Muḥammad ibn Muhammad ibn Amīr Ḥāj, *al-Taqrīr wa al-Taḥbīr* (Egypt: Al-Maṭbaʿah al-Kubrā al-Amīriyyah, 1316-1318), 1/76-77 and 2/23.

[189] See Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta: Lockwood Press, 2013), 49.

[190] See al-Sakkākī, *Miftāḥ*, 162; al-ʿUthaymīn, *al-Uṣūl*, 20.

3.4.1 Deviations from *Ḥaqīqah* and *Majāz* Per Ibn Qudāmah's Interpretive Approach

From the study of Ibn Qudāmah's legal works, this chapter uncovered some circumstances in which Ibn Qudāmah deviates from his linguistic principles regarding *ḥaqīqah* and *majāz* in interpreting the texts of the primary sources of Islamic law and ethics and his application of relevant legal rulings. This could be attributed to the interest of Muslim jurists and legal theorists in understanding the purpose of an utterance more than just applying strict linguistic rules.[191] Ibn Qudāmah and most classical jurists regard this as a justifiable reason to deviate from some of these linguistic principles as agreed upon, specifically when the speaker's intent could be clarified through other equally acceptable approaches, as discussed below.

The first approach involves referencing supplementary texts to clarify the implication of a specific word within a given context. For instance, the Prophet ordered that: 'When an invitation is extended to one of you, he must honour it. If he is fasting, he should pray (*falyuṣalli*) [when the meal is served], and if he is not fasting, he should eat.'[192] Per Ibn Qudāmah's linguistic approach, the fasting person would be required to stand and pray at least two units of the conventional Muslim prayer (*rakaʿatayn*) considering the command: 'He should pray (*falyuṣalli*)' in its juristic sense since that is the conventional usage of the Prophet as others have maintained.[193] However, to interpret this directive, Ibn Qudāmah refers to a narration by Ibn ʿUmar (d.73/693) wherein the statement 'He should pray (*falyuṣalli*)' is substituted with 'He should supplicate (*falyadʿu*)'.[194] This shift deviates the interpretation of *ṣalāh* in the hadith from its juristic meaning to its lexical connotation, supplication, thereby justifying the assertion that the juristic

[191] Al-Sakkākī, *Miftāḥ*, 162.

[192] Muslim, *Ṣaḥīḥ*, 4/153 (Hadith No. 1431).

[193] Al-Ṭūfī, *Sharḥ*, 1/502.

[194] Abū Dawūd narrates in his Sunan: 'When one of you is invited (to a meal), he must accept, if he is fasting, he should supplicate (*falyadʿu*), and if he is not fasting, he should eat' Abū Dāwūd, *Sunan*, 5/568 (Hadith No. 3737); because of this hadith, most scholars consider the meaning of salah in *falyuṣalli* as *duʿāʾ* (supplication) but not the *sharʿī* assigned meaning.

meaning was not implied.[195] Thus, Ibn Qudāmah deviates from the *ḥaqīqah sharʿiyyah* to *ḥaqīqah lughawiyyah* based on the clarification of the meaning in the report by Ibn ʿUmar. Most Muslim jurists broadly support this interpretation.[196] This approach is further exemplified in Ibn Qudāmah's assertion that one's neighbours are those within forty houses from one's house[197] and in maintaining that the mode of measurement in Makkah and Madinah during the Prophet's era must be the basis of measurement in matters concerning *ribā* (usury) based on the Sunnah.[198] Overall, this approach emphasises Ibn Qudāmah's preference for upholding the implications of words as clarified by primary sources rather than relying on conventional or linguistic meanings.

It may, therefore, be observed that even though one is required to follow the linguistic rules in interpreting the texts of Qurʾān and the Sunnah, it may be necessary to deviate from the linguistic rules when another text serves as a clarification of the text in question since the *murād Allāh* (God's intent) could be ascertained through it. Thus, a reader needs to be aware of other legal texts that may be relevant to the text they seek to interpret, in addition to applying the linguistic rules before interpreting a particular text.

The second instance where Ibn Qudāmah deviates from the linguistic principles concerning *ḥaqīqah* and *majāz* is when it is possible to apply both literal and nonliteral meanings of a word to a text without any contradictions. For instance, the Qurʾān instructs that: 'And do not marry (*lā tankiḥū*) those [women] whom your fathers married (*mā nakaḥa ʿābāʿukum*)' Q.4:22. Per Ibn Qudāmah's position that the literal meaning of a word must be given preference over its nonliteral meaning unless there is an indication that the nonliteral meaning is implied, it would be expected that the prohibition against marrying whom your fathers married (*mā nakaḥa ʿābāʿukum*) must be understood to refer to marrying a woman whom one's father married legally since he holds that the

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[195] Ibn Qudāmah, *al-Mughnī*, 2/5 and 10/196; ʿAbdullāh ibn Aḥmad ibn Qudāmah, *al-Kāfī fī Fiqh al-Imām* Aḥmad (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1994), 3/79; See also ʿAlī ibn Sulaymān al-Māwardī, *al-Taḥbīr Sharḥ al-Taḥrīr fī Uṣūl al-Fiqh* (Riyadh: Maktabah al-Rushd, 2000), 6/2791; Ibn al-Najjār, *Sharḥ al-Kawkab*, 3/436.

[196] Al-Qurṭubī, *Tafsīr*, 1/168.

[197] Ibn Qudāmah, *al*-Mughnī, 8/536-537.

[198] Ibid, 6/73. See Chapter Eight regarding the meaning of the word *jār* (neighbour) and the measurement mode according to Ibn Qudāmah pages 201 and 206.

word '*nikāḥ*' literally means marriage contract and nonliterally referred to as *waṭʾ* (sexual intercourse).[199] However, from his analysis of whether one can marry a woman one's father has had illegitimate sexual intercourse (*zinā*) with, Ibn Qudāmah seems to deviate from the linguistic ruling by applying both the literal and nonliteral meanings of *nikāḥ* (marriage and sexual intercourse) together.[200] His opinion is that it is forbidden to marry such a woman even though the sexual relationship was not legitimate (without a marriage contract - *ʿaqd al-nikāḥ*) just as a legal marital affair forbids such a marriage.[201] He emphasises that sexual intercourse is also referred to as *nikāḥ* (as *majāz*). Therefore, it falls under the general meaning of Q.4:22.[202]

Ibn Qudāmah's position above endorsed a theoretical position that holds that a word's literal and nonliteral meanings may be applied together when feasible, even though he did not categorically discuss this theoretical twist in his legal theory. However, legal theorists like Sayf al-Dīn al-Āmidī and al-Qarāfī have discussed this in detail, specifically responding to the question: can the *ḥaqīqah* and *majāz* meanings of a word be implied simultaneously in an expression?[203] There are three different opinions on this case.

Abū Ḥanīfah and a group of Ashʿarīs and Muʿtazilīs like Abū Hāshim al-Jubbāʾī (d.321/933) take the stance that it is not allowed to infer both the literal and nonliteral implications of a word simultaneously in a single usage since there is the need for a *qarīnah* to indicate a deviation from *ḥaqīqah* to *majāz* before one can assume the nonliteral meaning of a word. Accordingly, both cannot be applied concurrently.[204] The Ḥanafī jurist Niẓām al-Dīn al-Shāshī (d.344/955) maintains that the *ahl al-lughah* (experts of the Arabic language) have never used a word in such a manner. Hence, he is

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[199] Ibn Qudāmah, *al-Mughnī,* 9/339.

[200] Ibid, 9/526.

[201] Ibid.

[202] Ibid, 9/527.

[203] Al-Āmidī, *al-Iḥkām*, 2/242; Shihāb al-Dīn Aḥmad ibn Idrīs al-Qarāfī, *Nafāʾis al-Uṣūl fī Sharḥ al-Maḥṣūl* (Makkah, Maktabah Nizār Muṣṭafā al-Bāz, 1995), 2/740.

[204] Al-Shāshī, *Uṣūl*, 43; Aḥmad ibn ʿAlī al-Rāzī al-Jaṣṣāṣ, *al-Fuṣūl fī al-Uṣūl* (Kuwait: Ministry of Endowment, 1994), 1/78; Abū Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/300; Al-Āmidī, *al-Iḥkām*, 2/242.

emphatic that '*ḥaqīqah* and *majāz* cannot be implied concurrently in reference to the same utterance by a speaker'.[205]

A second view held by legal theorists like Abū al-Ḥusayn al-Baṣrī and al-Ghazālī is that it is not permissible to imply both the literal and nonliteral meanings of a word simultaneously from a linguistic perspective, but it may be presumably intended.[206] That is, they consider the possibility of a speaker intending a word's literal and nonliteral meaning if conceivable. However, they argue that doing so does not conform to the conventions (*ʿurf*) of the Arabic language.[207]

Contrary to the first view held by Abū Ḥanīfah and others, Muḥammad Idrīs al-Shāfiʿī (d.204/820), the eponym of the Shāfiʿī school, contends that both the *ḥaqīqah* and the *majāz* implications of a word may be applied concurrently on condition that doing so does not cause any contradictions. Notable legal theorists including the Muʿtazilī scholars like Abū ʿAlī al-Jubbāʾī (d.303/916) and ʿAbd al-Jabbār (d.320/932), the Ashʿarī scholar al-Bāqillānī (d.403/1013), and Abū Yaʿlā (d.307/1066), Ibn ʿAqīl (d.513/1119) of the Ḥanbalī school share this opinion too.[208] On his part, al-Shāfiʿī emphasises that in the absence of any indication in support of a particular connotation -*ḥaqīqah* or *majāz*-, it is incumbent to uphold both meanings simultaneously when it is feasible.[209] Thus, since both the literal and nonliteral connotations of the word '*nikāḥ*' are applicable without any contradictions, it is reasonable to infer both when a particular meaning is not specified.[210]

Ibn Qudāmah's interpretation of Q.4:22, as mentioned above, suggests that he shares the view that a word may be employed to imply both its *ḥaqīqah* and *majāz* connotations concurrently. Interestingly, proponents of this view, including al-Shāfiʿī, seem to differ on the interpretation of the text above (i.e., Q.4:22). While al-Bāqillānī contends that it is

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[205] Al-Shāshī, *Uṣūl*, 43.

[206] Abū Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/301; al-Ghazālī, *al-Mustaṣfā*, 240.

[207] Ibid.

[208] Al-Bāqillānī, *al-Taqrīb*, 1/147; Abū Yaʿlā, *al-ʿUddah*, 1/189 and 2/703; Abū al-Wafāʾ ʿAlī ibn ʿAqīl ibn Muḥammad ibn ʿAqīl, *al-Wāḍiḥ fī Uṣūl al-Fiqh* (Beirut: Muʾassasah al-Risālah, 1999), 4/50; Al-Āmidī, *al-Iḥkām*, 2/242.

[209] Al-Āmidī, *al-Iḥkām*, 2/242.

[210] Abū Yaʿlā, *al-ʿUddah*, 1/704.

not out of place for a statement like *lā tankiḥ mā nakaḥa abūka* (do not have *nikāḥ* with someone your father has had a *nikāḥ* with previously) to imply both marriage and sex. He asserts, 'Whoever disputes that this interpretation is possible and permissible is only being arrogant *(man ankara faqad kābara*).'[211] Al-Shāfiʿī seems to have a variant view as he restricts the implication of the word '*nikāḥ*' to marriage contracts regardless of whether there is sexual intercourse or not.[212] In the same vein, he does not share the view that a man is prohibited from marrying a woman his father has had illicit sexual intercourse with.[213] By this, he argues that the nonliteral meaning of *nikāḥ* is not implied in Q.4:22, contrary to Ibn Qudāmah's view. The opposing views of the jurists may suggest that it is permissible to choose any interpretation that appeals to the jurists. However, each jurist appears to substantiate their opinions with evidence from the Sunnah depending on their evaluations of valid or invalid reports from the Sunnah. Perhaps their approaches strongly indicate that an acceptable interpretation of a text is that which can be proven as the intended meaning of Allah or the speaker.

Al-Shāfiʿī, for instance, supports his position with the Sunnah: '*lā yuḥarrim al-ḥarāmu al-ḥalāl*' (What is prohibited does not cause what is permissible to be a prohibition).'[214] Ibn Qudāmah discredits the validity of this text[215] and his assessment has been confirmed by Hadith scholars such as Jalāl al-Dīn al-Suyūṭī (d.911/1505), who also regards the text as inauthentic.[216] On his part, Ibn Qudāmah maintains that the harsh tone of the text: '…It was indeed immoral, despicable, and an evil way' Q.4:22 and texts from the Sunnah, including a report that indicates that: 'Whoever looks at the private parts of [both] a woman and her daughter is cursed'[217] to strengthen his stance that the text refers to intercourse as well.[218]

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[211] Al-Bāqillānī, *al-Taqrīb*, 1/151.

[212] Muḥammad ibn Idrīs al-Shāfiʿī, *al-Umm* (Beirut: Dār al-Fikr, 1983), 5/26.

[213] See Ismāʿīl ibn Yaḥyā al-Muzanī, *Mukhtaṣar al-Muzanī* (Beirut: Dār al-Fikr, 1983), 8/270.

[214] ʿAlī ibn ʿUmar al-Dārquṭnī, *Sunan al-Dārquṭnī* (Beirut: Muʾassasah al-Risālah, 2004), 4/400 (Hadith No. 3678); al-Muzanī, *Mukhtaṣar*, 8/270.

[215] Ibn Qudāmah, *al-Mughnī*, 9/527.

[216] See, Jalāl al-Dīn ʿAbd al-Raḥmān ibn Abūbakr al-Suyūṭī, *Jāmiʿ al-Aḥādīth* (Ḥasan ʿAbbās Zakī edition.) (n.p., n.d.), 17/49-50 (Hadith No. 17539 and 17540).

[217] ʿAbd al-Razzāq ibn Hammām al-Ṣanʿānī, *al-Muṣannaf* (India: Al-Majlis al-ʿIlmī, 1983), 7/193 (Hadith No. 12744).

Similar debates are advanced regarding the interpretation of the Qurʾānic text: '*aw lāmastum al-nisāʾ*' (or you have contacted women) Q.5:6 whether both the literal implication of *lams* (a mere touching of the opposite sex) and the nonliteral connotation (sexual intercourse) are applicable in interpreting the text concurrently.[219]

The Ḥanafī school appears consistent with its linguistic rules that state that a word's literal and nonliteral meanings should not be applied together.[220] Nonetheless, in different cases where the Ḥanafī jurists adopt either of the two (the literal or nonliteral meaning of a word), they attempt to substantiate their opinions with other texts that justify their views. This trend can be noted in their discussion on applying Q.4:22 to prohibit a person from marrying a woman their father has had an illicit sexual relationship with. The jurists were sure to draw on pieces of evidence from the Sunnah to prove that *nikāḥ* refers to its literal meaning - sexual intercourse - and excludes the nonliteral meaning of legal marriage contract.[221] However, regarding the meaning of *lams* in Q.5:6, they adopt the nonliteral meaning (sexual intercourse), strengthening their stance in a similar vein, with reports that show that the Prophet did not consider a mere touching of the opposite gender to nullify a person's ablution.[222]

Closely related to the possibility of reading both the literal and nonliteral meanings of a word together is the interpretation of homonyms (*mushtarak* - words with more than one literal meaning).[223] An example of this case is the interpretation of Q.2:228 regarding the waiting period for divorced women: 'And divorced women remain in waiting for three *qurūʾ* (periods).' The word *qurʾ* is a *mushtarak* denoting both *ḥayḍ* (menstruation) and *ṭuhr* (the state of purity after menstruation).[224] The use of the word *ʿayn* (eye) may also

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[218] Ibn Qudāmah, *al-Mughnī*, 9/527.

[219] Al-Shāfiʿī, *al-Umm*, 1/29-30; Ibn Qudāmah, *al-Mughnī*, 1/256-260.

[220] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1/46.

[221] Aḥmad ibn ʿAlī Abūbakr al-Rāzī al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Taḥāwī* (Beirut; Dār al-Bashāʾir al-Islāmiyyah, 2010), 4/324-329; al-Jaṣṣāṣ, *al-Fuṣūl*, 1/46; Abū al-Ḥasan Aḥmad ibn Muḥammad al-Qaddūrī, *al-Tajrīd* (Cairo: Dār al-Salām, 2006), 9/4449-4460.

[222] Muḥammad ibn Aḥmad al-Sarakhsī, *al-Mabsūṭ* (Egypt: Maṭbaʿah al-Saʿādah (n.d.), 1/67; al-Shāshī, *Uṣūl*, 43; al-Jaṣṣāṣ, *al-Fuṣūl*, 1/78.

[223] Al-Sharīf al-Jurjānī, *al-Taʿrīfāt* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1983), 215; al-Shāshī, *Uṣūl*, 36; al-Ghazālī, *al-Mustaṣfā*, 26; Ibn Qudāmah, *Rawḍah*, 1/75.

[224] Ibn Qudāmah, *al-Mughnī*, 11/199.

lead to a similar interpretive problem as it literally denotes the organ for sight (eye), seabed/spring, gold, a spy, and the sun.[225] Should the usage of such words be considered ambiguous until clarification is sought, or should such words be treated as *ʿāmm* to comprise all their respective implications? This interpretive problem is examined by Islamic legal theorists as *ʿumūm mushtarak* (the generality of homonyms) or as *muṭlaq* (unqualified). This is particularly relevant when the context of the text or expression does not clarify a specific meaning.[226]

Interpreting Q.2:228 becomes more challenging since menstruation, and the state of purity cannot be applied together.[227] Ibn Qudāmah admits that linguistically, the word *qurʾ* implies both *ḥayḍ* and *ṭuhr*. However, he takes the stance that the word *qurʾ* in the text means *ḥayḍ* (menstruation).[228] To substantiate his interpretation, he draws on several texts from the Qurʾān and Sunnah to inform his reading. From the Qurʾān, he argues that Q.65:4 indicates that the waiting period for non-menstruating women must be three months. He infers from this text that menstruation is the basis for counting the waiting period.[229] In addition, he argues that the Prophet habitually employed the word '*qurʾ*' to convey a particular meaning: menstruation (*ḥayḍ*). For Ibn Qudāmah, this usage may be observed as the *ʿurf* of the Lawgiver for the word *qurʾ*.[230]

For instance, the prophet used the word *qurʾ* in his instruction to two different women regarding prolonged blood flow (*istiḥāḍah*). The first is to: '…abandon prayer during her *qurʾ* days (*ayyām aqrāihā*) [menstrual period]'.[231] And the second: '…when your *qurʾ* [menstruation] comes (*idhā atā qurʾiki*), do not pray; and when your *qurʾ* [menstruation]

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[225] Jalāl al-Dīn ʿAbd al-Raḥmān ibn Abūbakr al-Suyūṭī, *al-Muzhir fī ʿUlūm al-Lughah wa Anwāʿihā* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1998), 1/369; al-Jurjānī, *al-Taʿrīfāt*, 215; Al-Ṭūfī, *Sharḥ*, 1/517; Kamali, *Principles*, 162.

[226] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1/76; al-Bāqillānī, *al-Taqrīb*, 1/140; al-Shāshī, *Uṣūl,* 36; al-Āmidī*, al-Iḥkām*, 2/242; al-Ṭūfī, *Sharḥ*, 1/493.

[227] ʿAbd al-Wahhāb al-Khallāf, *ʿIlm uṣūl al-Fiqh* (Eighth edition; Cairo: Maktabah al-Daʿwah al-Islāmiyyah Shabāb al-Azhar, n.d.), 179.

[228] Ibn Qudāmah*, al-Mughnī*, 11/199.

[229] Ibid.

[230] Ibid.

[231] Abū Dāwūd, *Sunan*, 1/80 (Hadith No. 297); Muḥammad Nāṣir al-Dīn al-Albānī, *Irwāʾ al-Ghalīl fī Takhrīj Aḥāḍīth Manār al-Sabīl* (Beirut: Al-Maktab al-Islāmī, 1985), 7/199 (Hadith No. 2118).

ends (*idhā marra qurʾiki*), purify yourself (*fa ṭahhirī*) and then offer prayers during the period from one *qurʾ* to another'.[232] Ibn Qudāmah contends that the only timeframe a woman can stop praying is during her menses (*ḥayḍ*). Ibn Qudāmah also observes that there is no evidence that the Prophet employed the word *qurʾ* to imply *ṭuhr*. Thus, it becomes obligatory (*wajaba*) to interpret it per the meaning Allah and the Messenger have often used it to mean, which is *ḥayḍ*.[233]

Proponents of the above opinions prove their positions with texts from the Sunnah or make inferences from the Qurʾān. Perhaps this suggests the impact of external sources in evaluating when a word may imply either its literal or nonliteral implications or even both. In general, Ibn Qudāmah does not consider the possibility of a word referring to its literal and nonliteral meanings concurrently to be sufficient to deviate from his linguistic principle regarding *ḥaqīqah* and *majāz* interpretations of a word or text. This study, therefore, contends that situating interpretations of legal texts within the broader context of authentic proofs would enable it to be more grounded than relying on a constricted context, which may lead to rigid legal rulings. Thus, *istiqrāʾ* (extensive investigation) of the sources of the *sharīʿah* will be significant in applying the legal and ethical texts of the Qurʾān and Sunnah to prevent or reduce possible mistakes in legal deductions.[234]

When it comes to studying the primary sources of Islamic law and ethics, Ibn Qudāmah, like most legal theorists, considers it crucial to take note of the speaker's intent while interpreting the text. This practice is also evident in the Qurʾānic text, where the importance of understanding the intended meaning behind the words is emphasised. 'And We revealed to you the message (the Qurʾān) that you may make clear to the people (*li tubayyina li al-nās*) what was sent down to them' Q.16:44. Even though the companions of the Prophet understood the language of the Qurʾān well because it was their native language, it was still necessary for the Prophet to expand on its meaning to them. By extension, later generations of Muslims must rely on the Prophet's explanation of the Qurʾān to understand it according to its intended meaning.

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[232] Aḥmad ibn Shuʿayb al-Nasāʾī, *Sunan al-Kubrā* (Beirut: Muʾassasah al-Risālah, 2001), 5/319 (Hadith No. 5716); Al-Albānī, *Irwāʾ*, 7/199 (Hadith No. 2119).

[233] Ibn Qudāmah, *al-Mughnī*, 11/201.

[234] Abū Isḥāq Ibrāhīm ibn Mūsā al-Shāṭibī, *al-Muwāfaqāt* (Saudi Arabia: Dār Ibn ʿAffān, 1997), 1/27-28.

Perhaps the Prophet's explanations of God's words were necessary to situate the texts of the Qurʾān within their intended scope instead of what an individual may construe from it without knowing the purpose of a text. Islamic legal theorists underscore this essence when they consider the Qurʾān as a whole[235] with its texts 'clarifying one another',[236] just as the texts of the Sunnah also expound on one another and explain the texts of the Qurʾān as well.[237] For instance, the details of the Qurʾānic command for *ṣalāh* and *zakāh* (alms) are supplied in other texts of the Qurʾān and Sunnah regarding how and when to fulfil these commands.[238] Hence, the significance of considering relevant texts from the Qurʾān and Sunnah together before assuming a legal verdict.[239] The notion of the texts of the Qurʾān and Sunnah explaining one another is also discussed in relation to other concepts such as explicit, apparent and ambiguous meanings (*naṣṣ, ẓāhir, wa mujmal*) as well as the generality and specificity (*ʿumūm wa khuṣūṣ*) of the texts of the primary sources of Islamic law and ethics.[240]

The preceding discussion points to an important aspect of the flexibility in Ibn Qudāmah's interpretive approach to the primary sources of Islamic law: his inclination to seek justifiable suggestions beyond a single text to determine the intended meaning of a text. This approach often requires a thorough investigation (*istiqrāʾ*) of the relevant primary sources to arrive at a reasonable interpretation and application of the law. An interpreter may have to diligently study all relevant aspects and perspectives of a text for a comprehensive understanding before arriving at a conclusion.

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[235] Abū Yaʿlā, *al-ʿUddah*, 2/644; Abū Isḥāq Ibrāhīm ibn ʿAlī al-Shīrāzī, *al-Lumaʿ fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2003), 44; Ḥamad ibn Ḥamdī al-Ṣāʿidī, *al-Muṭlaq wa al-Muqayyad* (Saudi Arabia: Deanship of Scientific Research, Islamic University of al-Madinah, 2003), 169 and 267; Ali, *Medieval*, 5.

[236] ʿAlāʾ al-Dīn al-Bukhārī, *Kashf*, 4/205; Khallāf, *ʿIlm Uṣūl*, 219; Abū Yaʿlā, *al-ʿUddah*, 3/1041.

[237] Al-Shāṭibī, *al-Muwāfaqāt*, 4 /340-345.

[238] See Ibn Qudāmah, *al-Mughnī*, 2/5 and 4/5.

[239] Nuʿmān Jaghīm, *Ṭuruq al-Kashf ʿan Maqāṣid al-Shāriʿ* (Jordan: Dār al-Nafāʾis, 2014), 72-73.

[240] See chapters four and six of this essay.

3.4.2 Interpreting Human Expressions Based on *Ḥaqīqah* and *Majāz* in Legal Deductions

With regard to human expressions, most juristic cases that fall under *ḥaqīqah* and *majāz* interpretations relate to oaths (*aymān*), vows (*nudhūr*), and conflict resolutions resulting from agreements or contracts (*ʿuqūd muʿāmalāt*). In addition to considering *ʿurf istiʿmāl* (conventional usages) of the speaker in determining reasonable readings of human expressions, as noted above, Ibn Qudāmah prioritises the intentions of a speaker for declaring an oath or a vow as a *qarīnah* to assess the implications of their declarations and agreements. Again, the circumstances that could prompt or have prompted a statement could also offer possible indications about the meaning of a speaker's statement if they did not have any preconceived intentions behind their words. Thus, a speaker will be expected to honour their words based on the conditions that led to their utterances.[241] The concession to consider the intentions of a speaker for making a particular declaration is disregarded in respect of a cheat (*zālim*) because of their inclination to deceit.[242]

For instance, Ibn Qudāmah limits the definition of grilling (*shiwāʾ*) to grilled meat, based on the word's customary usage during his time, although it could also encompass other grilled dishes.[243] Therefore, if someone vows that they will not eat *shiwāʾ*, they will not be considered as having violated their vow except by consuming grilled meat according to the prevailing *ʿurf* in which Ibn Qudāmah lived.[244] Of course, this may change in a different *ʿurf* (by time or place). However, a change in *ʿurf* will not affect an older act or statement under a different *ʿurf*.[245] This is based on the premise that - under normal circumstances - people use words within the context of the customs they are used to and will have to indicate with a *qarīnah* when they intend to convey a different connotation that is not usually implied.[246] Therefore, the conditions and intentions

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[241] Ibn Qudāmah, *al-Kāfī*, 4/196-197.

[242] Ibid, 4/197.

[243] Ibid, 4/199.

[244] Ibid, 4/199.

[245] The conditions of *ʿurf* and *ʿādah* are examined below in chapter eight of this study. See also Aḥmad Fahmī Abū Sunnah, *al-ʿUrf wa al-ʿĀdah fī Raʾy al-Fuqahāʾ* (Cairo: Maṭbaʿah al-Azhar, 1947), 56-68.

[246] Ibn Qudāmah, *Rawḍah*, 1/446; al-Subkī, *Jamʿ al-jawāmiʿ*, 32.

attached to an utterance - with regard to oaths and vows - may be regarded as *qarāʾin* (indications), which may cause a deviation from *ḥaqīqah* to *majāz* implication of a word.[247]

Generally, when a word could concurrently imply its *ḥaqīqah* and *majāz* meanings, Muslim jurists and legal theorists will apply the linguistic principle: *al-aṣl fī al-kalām al-ḥaqīqah* (the basis of a speech or statement - in terms of explanation - is the *ḥaqīqah*) except when there is a *qarīnah* to determine that the *majāz* was implied when there appears to be a conflict between *ḥaqīqah* and *majāz* in an expression.[248] Al-Qarāfī explains the above principle to mean the dominance of prevalent usages.[249] However, as noted, the *qarīnah* for the meaning of an utterance is not restricted to verbal indications alone. The circumstances leading to a declaration or a person's intentions for making a particular declaration may also be considered to understand the implications of their utterances.

In determining the binding effect of a contract, the legal maxim (*qāʿidah fiqhiyyah*): *al-ʿibrah fī al-ʿuqūd li al-maqāṣid wa al-maʿānī lā li al-alfāẓ wa al-mabānī* (intentions and the implications are effective in contracts than verbal expressions and forms)[250] serves as a guide for jurists to consider the intentions and the conventional (*ʿurf*) implications of an agreement.[251] This proposition allows Muslim jurists the flexibility to interpret laws in a reasonable manner that accommodates people's needs. It helps to prevent unwarranted assumptions based solely on linguistic principles that may not have been known or considered at the time of an utterance or agreement. Considering external

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[247] Ibn Qudāmah, *Rawḍah*, 1/446; Ibn Qudāmah, *al-Kāfī*, 4/196; al-Subkī, *Jamʿ al-Jawāmiʿ*, 32; Jamāl al-Dīn ʿAbd al-Raḥmān ibn al-Ḥasan, al-Isnawī, *Nihāyah al-Sūl Sharḥ Minhāj al-Wuṣūl* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1999), 1/133; Muḥammad ibn ʿAbd al-Azīz al-Mubārak, *al-Qarāʾin ʿinda al-Uṣūliyyīn* (PhD thesis, Imam Muhammad bin Saud Islamic University, Riyadh, 2005).

[248] Al-Isnawī, *Nihāyah*, 133.

[249] Al-Qarāfī, *Sharḥ*, 120,

[250] Luqman Zakariyah translates this maxim as, 'In contracts, the effect is given to intentions and the meanings but not verbal expressions and forms.' See "Legal Maxims and Islamic Financial Transactions: A Case Study of Mortgage Contracts and the Dilemma for Muslims in Britain." *Arab Law Quarterly*, 26 no. 3 (2012): 255-285, 255, https://doi.org/10.1163/15730255-12341240.

[251] Muḥammad Mustafa al-Zuhaylī, *al-Qawāʿid al-Fiqhiyyah wa Taṭbīqātuhā fī al-Madhāhib al-Arbaʿah* (Damascus: Dār al-Fikr, 2006), 1/403.

indicators further confirms Ibn Qudāmah's regard for a broader context in interpretations rather than restricting himself to the dictates of linguistic principles.

3.5 Conclusion

This chapter delved into how Ibn Qudāmah applied the linguistic tools of literal and nonliteral (*ḥaqīqah* and *majāz*) meanings of words to interpret the legal and ethical texts of the Qurʾān and Sunnah. The analysis of his works indicates that, like other legal theorists and scholars of the Arabic language, he advocates for following linguistic principles to regulate the interpretation of words and their usage. These principles encompass various aspects, including the preference for literal meanings over nonliteral meanings (*al-aṣl fī al-kalām al-ḥaqīqah*), the use of contextual indicators (*qarāʾin*) to convey nonliteral meanings, and the consideration of the speaker's customary usage (*ʿurf al-mutakallim*) when interpreting their statements from sources such as the Qurʾān, Sunnah, or the utterances of people. However, Ibn Qudāmah's approach departs from other legal jurists as it involves referencing the broader context of primary sources of Islamic law and ethics through a thorough investigation (*istiqrāʾ*) of the relevant sources to justify his interpretations, thus placing a text within its appropriate context. Furthermore, in analysing human utterances, Ibn Qudāmah accounts for the intentions of the speaker and the surrounding conditions to determine the legal implications of their statements and expressions, leading to a flexible interpretation and application of Islamic law and ethics based on their literal and nonliteral implications.

The chapter concludes that Ibn Qudāmah employs a degree of flexibility in applying his assumed linguistic principles about the literal and nonliteral (*ḥaqīqah* and *majāz*) meanings of the Islamic legal texts. However, his deviations from his linguistic principles depend on the availability of justifiable suggestions beyond a single text. He demonstrated this by exploring the broader scope of the primary sources to determine the intended meaning of a text before applying it.

Chapter 4: Clarity and Ambiguity (*Naṣṣ*, *Ẓāhir*, and *Mujmal*)

This chapter investigates how Ibn Qudāmah engages with the concept of clarity and ambiguity of the texts of the Qurʾān and Sunnah in his legal works. It will also highlight the extent to which Ibn Qudāmah may depart from the apparent meanings of a text in his interpretations and the reasons for such departures.

4.1 Ibn Qudāmah's Analysis of the Concept of Clarity and Ambiguity

This section investigates Ibn Qudāmah's views on the three interpretive tools (*naṣṣ*, *ẓāhir*, and *mujmal*),[252] which are technical terms for describing the clarity of the message conveyed by a text regarding its application.[253] It will also examine why Ibn Qudāmah would consider a deviation from the explicit or apparent meaning of a text in his juristic works.

4.1.1 *Naṣṣ*

According to Ibn Qudāmah, the explicit meaning of a text, known as *naṣṣ*, should be upheld except when there is proof that the explicit interpretation of the text has been abrogated.[254] For example, Q.2:196 requires that pilgrims who combine *ḥajj* and *ʿumrah* and cannot sacrifice an animal must observe fasting for ten days. The expression 'that is, ten [days of fasting] in all' is regarded as an explicit statement.[255] The number cannot be reduced or increased unless proven to be abrogated.[256] Likewise, when a man divorces his wife for a third time, marriage between them is prohibited until she is married to

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[252] Refer to Appendix 2 for the definitions of the terms *naṣṣ*, *ẓāhir*, and *mujmal* as used in Islamic legal theory.

[253] The Ḥanafī school maintains a different classification of clarity and ambiguity: *muḥkam* (perspicuous), *mufassar* (unequivocal), *naṣṣ* (explicit), *ẓāhir* (manifest), *mujmal* (ambiguous), *mutashābih* (intricate), *mushkil* (difficult) and *khafiyy* (obscure), Although this does not cause any differences with the other schools in terms of application, See: Al-Shāshī, *Uṣūl*, 80; al-Sarakhsī, *Uṣūl*, 1/163.

[254] Ibn Qudāmah, *Rawḍah*, 1/455.

[255] ʿAlī ibn Muḥammad al-Māwardī, *al-Ḥāwī al-Kabīr fī Fiqh Madhhab al-Imām al-Shāfiʿī* (Beirut; Dār al-Kutub al-ʿIlmiyyah, 1999), 4/49; ʿAlāʾ al-Dīn Abubakr ibn Masʿūd al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ* (Egypt: Maṭbaʿah Sharikah al-Maṭbūʿāt al-ʿIlmiyyah, 1327-1328), 2/172; Ibn Qudāmah, *al-Mughnī*, 5/351.

[256] See Ibn Qudāmah, *Rawḍah*, 1/455.

another man who also divorces her after their marriage. The Prophet is explicit that the first man cannot remarry his divorced wife unless she was divorced from a marriage that has been consummated, as expressed in the Sunnah: '… No, until he tastes your sweetness, and you taste his sweetness' [meaning until the marriage is consummated].[257] According to Muslim jurists and legal theorists, this explicit declaration cannot be overlooked in a similar case.[258]

However, when there is proof that an explicit ruling conveyed by a text has been repealed in the Qurʾān or the Sunnah, Ibn Qudāmah holds that the old ruling must be ignored even though it was based on an explicit text.[259] This can be illustrated with warfare in Islam. Muslims were initially commanded to stand firm in a confrontation (battle) against non-Muslims even if the non-Muslims outnumber them ten times in Q.8:15-16 and Q.8:65. In a subsequent verse, Allah declares: 'Now Allah has lightened [i.e., eased the burden] for you, and He knows that there is weakness in you…' Q.8:66. The command for one person to stand firm against ten people has been explicitly reduced to one person standing firm against two people (See Q.8:66). Accordingly, even though the interpretations of Q.8:15-16 and Q.65:4 are explicit in the numbers they indicate, the reduced number mentioned in Q.8:66 takes precedence and overrides the earlier figures.[260]

4.1.2 *Ẓāhir*

Ibn Qudāmah's position on *ẓāhir* is that even though a text with an apparent meaning is open to other possible interpretations, the apparent meaning of the text must be upheld unless there is evidence that a less obvious meaning was implied or intended.[261] The departure from an apparent meaning of a word or text to a less obvious meaning (*maʿnan*

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[257] Muslim, *Sahih*, 4/155 (Hadith No. 1433).

[258] Al-Māwardī, *al-Ḥāwī al-kabīr*, 5/200; Ibn Qudāmah, *al-Mughnī*, 10/549; Ṣadr al-Sharīʿah ʿUbayd Allāh ibn Masʿūd, *Sharḥ al-Wiqāyah* (Oman: al-Warrāq, 2006), 3/91.

[259] Ibn Qudāmah, *Rawḍah*, 1/455.

[260] See Abū Jaʿfar Muḥammad ibn Jarīr al-Ṭabarī, *Jāmiʿ al-Bayān ʿan Taʾwīl Āy al-Qurʾān (Tafsīr al-Ṭabarī)* (Cairo; Dār Hajr for Printing, Publication and Distribution, 2001), 11/80 and 261-262; Ibn Qudāmah, *al-Kāfī*, 4/121-122; Ibn Qudāmah, *al-Mughnī*, 13/186-187.

[261] Ibn Qudāmah, *Rawḍah,* 1/456.

marjūḥ) based on external evidence or *qarīnah* is known as *taʾwīl*.[262] This can be determined depending on the text in question. Generally, texts or words with apparent and non-apparent readings are related to *ḥaqīqah* or *majāz*, *amr* (command) and *nahy* (prohibition), *ʿāmm* (general) and *takhṣīṣ* (particularisation) or *muṭlaq* (the unqualified) and *muqayyad* (the qualified) texts.[263]

In chapter three, regarding literal and nonliteral meanings of words, we discovered that, by default, the meaning of a word or expression is considered by its literal meaning. Any departure from the literal meaning requires justification. Likewise, the conventional usage of a speaker (*ʿurf al-mutakallim*) must be considered in terms of their context (i.e., juristic, conventional, or linguistic) unless otherwise indicated. These are regarded as the apparent meanings of such expressions. To depart from the apparent meaning or *ḥaqīqah*, the speaker must provide an indication or *qarīnah*.

The interpretations of commands, prohibitions and generality of a word or text will be examined later in chapters five and six. For this chapter, Ibn Qudāmah and most Islamic legal theorists generally consider statements in the form of *amr* (command), *nahy* (prohibition) and *ʿāmm* (general statements) to have many possible readings because they are open to multiple interpretations. Ibn Qudāmah argues that the apparent (*ẓāhir*) implication of *amr* is imperative meant to establish an obligation (*wujūb*),[264] *nahy* is also imperative meant for a prohibition (*taḥrīm*),[265] even though both are open to other interpretations that are considered less obvious.[266]

For general interpretations of words, Ibn Qudāmah, like most legal theorists, considers *ʿāmm* to comprise all the possible referents of the word (*shumūl*) even though the user or the Lawgiver may particularise the meaning of the word.[267] Similarly, *muṭlaq* is generally unqualified by default, with the possibility of it being qualified by the

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[262] Ibid.

[263] Badr al-Dīn Muḥammad ibn ʿAbdullāh al-Zarkashī, *al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh* (Dār al-Kutubī, 1994), 5/36; Khallāf, *ʿIlm Uṣūl*, 162.

[264] Ibn Qudāmah, *Rawḍah*, 1/493.

[265] Ibid, 1/540-541.

[266] See chapter five for more on the interpretations of *amr* and *nahy*.

[267] Ibn Qudāmah, *Rawḍah*, 2/629-631.

Lawgiver or the user of such an expression elsewhere.[268] These apparent implications serve as the default meanings of *amr*, *nahy*, *ʿāmm* and *muṭlaq* unless otherwise specified by the speaker as discussed below in chapters five and six.

To depart from the default implications of a command (*amr*), prohibition (*nahy*), general (*ʿāmm*), the unqualified (*muṭlaq*), or the literal (*ḥaqīqah*) meaning of a text requires *taʾwīl*, which must be justified according to Ibn Qudāmah.[269] He notes that a justifiable reason could be based on a *qarīnah* (as in the case of *ḥaqīqah* and *majāz*), the apparent meaning of another text that indicates that the non-apparent meaning of a relevant text is implied or by an apparent or preponderant analogy (*qiyās rājiḥ*).[270]

In addition to *taʾwīl*, Ibn Qudāmah applies the concept of *naskh* to deviate from the ruling established by the apparent meaning of a text by considering it repealed in favour of a new ruling conveyed by the abrogating text.[271] An example is the command for ablution after eating mutton, followed by a directive stating that ablution is no longer necessary in this case.[272]

4.1.3 *Mujmal*

With regard to a text that does not convey a precise meaning and is thus considered ambiguous, applying it seems problematic. This is because the text is open to more than one interpretation with no indication of which of its possible interpretations was intended by the author or speaker.[273] Therefore, when a text is ambiguous, the relevant law becomes incomprehensible, and the *mujtahid* cannot make a presumption regarding

[268] Ibid, 2/669.

[269] Ibid, 1/457-458

[270] Ibid.

[271] See ibid, 1/202.

[272] See Muslim, *Ṣaḥīḥ*, 1/187 (Hadith No. 352); Ibn Ḥanbal, *Musnad*, 31/442 (Hadith No. 19096); Abū Dāwūd, *Sunan*, 1/132 (Hadith No. 184); al-Tirmidhī, *Sunan*, 1/112 (Hadith No. 81); Ibn Qudāmah, *Rawḍah*, 1/502.

[273] Ibn Qudāmah, *Rawḍah*, 1/465.

the intended meaning. When ambiguity is dispelled, God's law has begun to become manifest to the *mujtahid*.[274]

Since the intended meaning of an ambiguous text cannot be presumed, Islamic legal theorists seem to agree that one must hold back (*tawaqquf*) from interpreting such a text and seek clarification (*bayān*).[275] Most legal theorists find making assumptions regarding imprecise legal requirements unacceptable. For that matter, an interpreter must seek clarification from the primary sources or refrain from applying what seems ambiguous until it becomes clear to them.[276]

4.2 Discussion

This section investigates how clarity and ambiguity are determined in Islamic legal theory. It will also examine ways of clarifying the meaning of a text and what Ibn Qudāmah considers acceptable deviations from the explicit and apparent interpretations of a text.

4.2.1 The Determination of an Ambiguous Text

Key to the concept of clarity and ambiguity in Islamic legal theory is the determination of how clear or unclear the message conveyed by a text is to be declared explicit, apparent or ambiguous. It has been argued that the 'hermeneutic of ambiguity' is the primary tool Muslim scholars have utilised to correlate legal rules with the revealed texts.[277] 'The effect of this exercise is to give the imagined interpreter the option of either taking a word at face value (in which case the word is classified as more or less clear) or reinterpreting it based on some other evidence (in which case the word must be declared as relatively ambiguous)'.[278] These assertions suggest that Muslim jurists maintain the authority to declare what is ambiguous and what is not to manipulate the interpretation of a given text of the Qurʾān and Sunnah to defend what they may want to

[274] Weiss, *The Senarch*, 441.

[275] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1/327-328; al-Bāqillānī, *al-Taqrīb*, 3/379; Ibn Qudāmah, *Rawḍah*, 1/465; al-Zarkashī, *al-Baḥr*, 5/62.

[276] Al-Shāṭibī, *al-Muwāfaqāt*, 3/328.

[277] Vishanoff, *The Formation*, 2.

[278] Ibid, 4.

project to be the law. Hence, clarity and ambiguity have been conceived as 'interpretive claims, not linguistic givens.'[279] This notion is also emphasised by the claim that 'the law-oriented theorists were very willing to modify these strong default meanings by appeal to other evidence, while still claiming to interpret commands literally'.[280]

However, an examination of the works of Islamic legal theorists reveals that they attribute the causes of ambiguity to linguistic complexities such as homonyms (*alfāẓ mushtarak*) or the primordial definitions of a word (*waḍʿ al-lughah*), inflectional morphology (*taṣrīf*), Arabic grammar (*naḥw*) and *balāghah* or Arabic rhetoric.[281] If these causes of clarity and ambiguity are established, it would suggest that the determination of ambiguity is not the reserve of Islamic legal theorists. Studies on ambiguity also indicate that it is a linguistic problem that extends beyond the interpretation of the primary sources of Islamic law and ethics to encompass the use of language in general, including human expressions.[282] Below are a few causes of ambiguity discussed by Islamic legal theorists.

To begin with, Islamic legal theorists maintain that ambiguity may be caused by using homonyms or *alfāẓ mushtarakah*.[283] For instance, the word '*ʿayn*' denotes the eye (the organ for seeing), seabed/spring, gold, a spy, the sun, and other possible denotations, as discussed earlier during the elaborations on *ḥaqīqah* and *majāz*.[284] Using such a word may cause ambiguity in an expression if the speaker does not indicate the intended meaning. Similarly, the word *qurʾ*, as noted in chapter three, linguistically implies both menstruation (*ḥayḍ*) and post-menstrual state (*ṭuhr*). This makes the word '*qurʾ*' in Q.2:228 ambiguous, as Ibn Qudāmah expresses.[285]

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[279] See Vishanoff, *The Formation*, 54.

[280] Ibid, 192.

[281] See Ibn Qudāmah, *Rawḍah*, 1/464; Usāmah Muḥammad ʿAbd al-Aẓīm Ḥamzah, *Asbāb al-Ijmāl fī al-Kitāb wa al-Sunnah wa Atharuhā fī al-Istimbāṭ* (Cairo: Dār al-Fatḥ, 1991), 17.

[282] Ḥamzah, *Asbāb*.

[283] Ibn Qudāmah, *Rawḍah*, 1/464.

[284] Al-Suyūṭī, *al-Muzhir*, 1/369; al-Jurjānī, *al-Taʿrīfāt*, 215; al-Ṭūfī, *Sharḥ*, 1/517; Kamali, *Principles*, 162.

[285] Ibn Qudāmah, *Rawḍah*, 1/464; Ibn Qudāmah, *al-Mughnī*, 11/199.

Another cause of ambiguity is the construction of sentences in a way that makes a sentence open to more than a single interpretation, even though the meanings of their words are individually precise.[286] Bernard Weiss refers to this as a composite homonym.[287] An example of this is in Q.2:237: 'And if you divorce them (your wives) before consummation, but after you have already specified a dowry (*mahr*) for them, then they are entitled to half of what you specified unless they (the wives) waive it or the one in whose hand is the marriage contract (*al-ladhī biyadihī ʿuqdah al-nikāḥ*) renounces their right.' The text stipulates that a divorced woman - whose marriage is not consummated - is entitled to part of her dowry. The text is clear that the divorced wife has the right to forgo this right. Again, the text is clear that another person - a stakeholder in the marriage - also has the right to forgive his right. However, it is not precise who this person is. Is he the husband or the *walī* (legal guardian) of the wife? The statement: 'The one in whose hands is the marriage contract', vacillates between the husband and the *walī* of the wife. This leaves the meaning of the text imprecise as it is open to both interpretations.[288]

Furthermore, inflectional morphology (*taṣrīf*) could cause imprecision or ambiguity.[289] This problem occurs if a word that maintains the same form in both subjective and objective cases is employed in a statement. Ibn Qudāmah provides an example of this phenomenon with '*mukhtār*', a term that can be ambiguous as it may refer to both the subject (meaning the chooser) and the object (the chosen). [290]

Moreover, the function of some letters (*ḥurūf* - mainly used as prepositions) in a sentence may also lead to ambiguity. For instance, the letter *wāw* may be used as a conjunction (*ʿatf*) to imply 'and' to connect two things. It may also be employed to imply *aw* (or), *rubba* (perhaps) or *ibtidāʾ* (to commence a statement).[291] For instance, in Q.3:7 concerning the *mutashābihāt* (intricate/parabolic texts) of the Qurʾān, it states that: '… No one knows its [true] interpretation except Allah. *Wa al-rāsikhūna fī al-ʿilm* (but those

[286] Ibn Qudāmah, *Rawḍah*, 1/464.

[287] Weiss, *The Search*, 443.

[288] Ibn Qudāmah, *Rawḍah*, 1/464.

[289] Ibid.

[290] Ibid.

[291] Ibid, 1/465.

firm in knowledge) say, "We believe in it. All [of it] is from our Lord".' The function of the *wāw* in '*wa al-rāsikhūna fī al-ʿilm*' could be considered as *ʿaṭf* connecting *al-rāsikhūna fī al-ʿilm* to Allah in terms of knowing the *mutashābihāt* of the Qurʾān. It may also be assumed as the commencement of a new statement (*ibtidāʾ*).[292] Thus, it could be interpreted as '… No one knows its [true] interpretation except Allah and the *al-rāsikhūna fī al-ʿilm* (those firm in knowledge). They (*al-rāsikhūna fī al-ʿilm*) say, "We believe in it. All [of it] is from our Lord'. or '… No one knows its [true] interpretation except Allah. But the *al-rāsikhūna fī al-ʿilm* (those firm in knowledge) say, "We believe in it. All [of it] is from our Lord'. Some scholars argue that the *wāw* in the statement serves as a conjunction (*ʿaṭf*), while others contend that it signifies the beginning of a new statement (*ibtidāʾ*).[293] Since both interpretations are equally credible, the implication of the verse remains ambiguous.

As can be noted from the causes of ambiguity discussed above, ambiguity or *mujmal* appears to be purely a linguistic problem but not the invention of the Islamic legal theorists or jurists to reconcile the legal texts with an imagined set of laws as may be conceived.[294]

With regard to the concept of words and expressions having an apparent meaning and yet being open to other interpretations, it can be noted as a linguistic problem in interpretations based on the significance legal theorists and Arabic linguists have attached to the study of *ḥaqīqah* and *majāz*, the different possible interpretations of forms of commands and prohibitions (*ṣiyagh al-amr wa al-nahy*), and generality and specificity (*ʿumūm wa khuṣūṣ*) and qualified and unqualified expressions (*muṭlaq wa muqayyad*) in Arabic linguistics.[295] Moreover, arguments about the clarity or ambiguity of the texts of the Qurʾān and Sunnah in Islamic legal theory seem to purposely discuss

[292] Ibn Qudāmah, *Rawḍah*, 1/197-201.

[293] Ibid.

[294] Vishanoff, *The Formation*, 50.

[295] See the discussion of these topics in chapter three (*ḥaqīqah* and *majāz*) and chapters five (command and prohibition) and six (generality and specificity) below.

the existence of this linguistic problem and how it is resolved to be extended to the interpretation of the texts of the primary sources of Islamic law.[296]

4.2.2 *Bayān* and the Clarifications of *Mujmal*

As noted earlier, Ibn Qudāmah maintains that a reader must hold back from interpreting an ambiguous text until clarifications (*bayān*) of the intended meaning are sought.[297] However, the term *bayān*, in Islamic legal theory, is not exclusive to clarifying ambiguous texts. It is generally employed to refer to any form of elucidation, whether it signifies that the explicit meaning of a text has been revoked or that the apparent meaning of a text is not intended. In this regard, *bayān* has been defined as 'That which leads to *ʿilm* (knowledge) or *ẓann* (decisive presumption) after careful analysis (*bi ṣaḥīḥ al-naẓar*)'.[298] In other words, *bayān* generally refers to a clear statement with a precise interpretation, whether it explains another statement regarded as *mujmal* or not.

With regard to clarifying ambiguous texts or statements, *bayān* has been exclusively defined as: 'Taking something out of *(ikhrāj)* the sphere of obscurity (*ishkāl*) to the sphere of clarity (*wuḍūḥ*).'[299] *Bayān*, in this sense, is that which clarifies the ambiguity or imprecision of an expression to make it understandable and applicable.

In discussing modes of clarification, Islamic legal theorists seem to consider the broader sense of *bayān* as they cover methods of clarification that apply to different levels of *bayān* (i.e., both ambiguous and non-ambiguous texts), as noted below.[300] In this sense, *bayān* comprises forms of *taʾwīl* such as *takhṣīṣ* and *taqyīd*.[301] It may also refer to *naskh*, particularly as the Ḥanafī school views abrogation as the Lawgiver's clarification (*bayān*) of the termination of the abrogated ruling.[302]

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[296] See ʿAbd al-Wahhāb ʿAbd al-Salām Ṭawīlah, *Athar al-Lughah fī Ikhtilāf al-Mujtahidīn* (Dār al-Salām, n.d.), 3-5.

[297] Ibn Qudāmah, *Rawḍah*, 1/465.

[298] Ibid, 1/474.

[299] Ibid.

[300] See al-Āmidī, *al-Iḥkām*, 3/25.

[301] See Ibn Qudāmah, *Rawḍah*, 1/209, 474 and 480; al-Āmidī, *al-Iḥkām*, 3/26.

[302] See Al-Sarakhsī, *Uṣūl*, 2/54; Ibn Qudāmah, *Rawḍah*, 1/482.

Ibn Qudāmah posits that the text of the Qurʾān and Sunnah may be clarified verbally (*kalām*) by Allah or the Messenger, in writing (*kitābah*), with a signal (*ishārah*) or by demonstration (*fiʿl*) of the Prophet.[303] An example of clarification with a statement (*kalām*) by God was the response of Prophet Mūsā in the story of the cow. When his people sought clarification of the nature of the cow they were required to slaughter, Mūsā said: 'Allah says, "It is a cow which is neither old nor virgin but median between that' Q.2:68. The Prophet also clarified the Zakat of farm produce (Q.6:141) in the following statement: 'A tenth is payable on what is watered by rain or wells, or from underground moisture, and a twentieth on what is watered by irrigation is a twentieth'.[304] For *bayān*, using writing (*kitābah*), the Prophet's writings to his delegates responsible for collecting Zakat in other provinces is an illustration.[305]

Bayān by *ishārah* (signal) is also exemplified in the Prophet's explanation that a month is either thirty or twenty-nine days, using his fingers to demonstrate that.[306] Lastly, *bayān* using demonstration is found in the practical teachings of the Prophet on how to pray or perform the Hajj rituals.[307] These are generally the means of clarification employed by the Lawgiver.

Generally, any form of specification made by the Lawgiver (*muqayyad min al-Shāriʿ*) that indicates the meaning of an expression has been considered as a form of clarification as well.[308] Perhaps the kind of clarification being sought suggests the type of *bayān* relevant to make the needed clarification. For instance, when *qarāʾin* (plural of *qarīnah*, which means an indication) could be drawn from a text or other pertinent circumstances surrounding it to determine the meaning of the text. The apparent meaning based on the *qarāʾin* is assumed to be the most reasonable interpretation. That text will not be considered ambiguous since the circumstances around it indicate its

[303] Ibn Qudāmah, *Rawḍah*, 1/474.

[304] Ibn Qudāmah, *al-Mughnī*, 4/154.

[305] Ibn Qudāmah, *Rawḍah*, 1/475.

[306] Muḥammad ibn Ismāʿīl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Damascus: Dār Ibn Kathīr, 1993), 3/27 (Hadith No. 1913); Ibn Qudāmah, *Rawḍah*, 1/475.

[307]Ibn Qudāmah, *Rawḍah*, 1/475.

[308] Ibn Qudāmah, *Rawḍah*, 1/476; al-Ṭūfī, *Sharḥ*, 2/681.

intended meaning.[309] If the context of a text could be employed to reveal the meaning of an ambiguous statement or text, it would not be necessary to hold back (*tawaqquf*) from interpreting or applying it to seek further clarification since the meaning has already been clarified either by the speaker or anyone aware of their intentions.[310]

Furthermore, the Prophet's selective adherence to certain commands suggests that the command may not be strictly imperative.[311] An example is his disregard for witnesses in transactions, despite Q.2:282 explicitly stipulating it as a requirement in buying and selling.[312] Such cases underscore the distinction between apparent and non-apparent interpretations of a command. However, most legal theorists do not consider commands to be ambiguous.[313]

For an ambiguous text, Islamic legal theorists admit that the interpretation or application of such a text is impossible without clarification by the speaker or any other person aware of the speaker's intent.[314] The contemporary Egyptian scholar Abd al-Wahhāb Khallāf (d.1375/1956) is emphatic that there is no way to explain an ambiguous text without referring to the one who made it ambiguous.[315] By this notion, the clarifications of ambiguous texts from the primary sources of Islamic law must be sought from Allah and His Messenger whose duty is to explain parts of the revelation that need to be clarified as indicated by Imām al-Ḥaramayn al-Juwaynī (d.478/1085), a Shāfiʿī legal theorists and a scholar in speculative theology (*ʿilm al-Kalām*), Najm al-Dīn al-Ṭūfī and Abū Isḥāq al-Shāṭibī (d.790/1388).[316]

A problem with restricting the clarification of ambiguous texts to a speaker's intent is that if a clarification of an ambiguity is not found in the primary sources of Islam, the text will remain ambiguous and impracticable. Abū Isḥāq al-Shāṭibī is emphatic that

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[309] See Ibn Qudāmah, *Rawḍah*, 1/465-471; Ṭawīlah, *Athar*, 290.

[310] See al-Ṭūfī, *Sharḥ*, 2/678; Khallāf, *ʿIlm Uṣūl*, 174-175.

[311] Al-Ṭūfī, *Sharḥ*, 2/681-684.

[312] Al-Ṭūfī, *Sharḥ*, 2/681-684.

[313] Ibn Qudāmah, *Rawḍah*, 1/493-499.

[314] See also al-Ṭūfī, *Sharḥ*, 2/678.

[315] Khallāf, *ʿIlm Uṣūl*, 174-175.

[316] See ʿAbd al-Malik ibn ʿAbdullāh al-Juwaynī, *al-Burhān fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1997), 1/156; al-Shāṭibī, *al-Muwāfaqāt*, 3/328; al-Ṭūfī, *Sharḥ*, 2/655.

'legal obligation (*taklīf*) cannot be assigned based on an ambiguous text if it remains unclarified'.[317][318] He also discredits assumptions regarding the meaning of an ambiguous text unless it is based on the Qurʾān or Sunnah or *ijmāʿ*.[319] Against this backdrop, Islamic legal theorists have debated whether it is permissible for the clarification of an ambiguous statement to be delayed or not.[320]

Ibn Qudāmah notes that according to Islamic legal theorists, it is not allowed to postpone the clarification of a statement beyond the time required for its implementation (*waqt al-ḥājah*).[321] In simpler terms, it is necessary for any ambiguous statement to be clarified before its implementation. This position suggests that ambiguous statements related to legal obligations or requirements in the primary sources of Islamic law might have been clarified during the era of revelation since the generation of the Prophet and later generations had the same or similar legal obligations. If so, the duty of the *mujtahid*, in interpreting legal requirements that are ambiguous or imprecise, will be to look for clarifications made by Allah in the Qurʾān or the Prophet in the Sunnah during the era of revelation regarding the ambiguous text they are dealing with.[322] Accordingly, the *mujtahid* who is eligible to interpret and apply the Islamic legal and ethical text is required to possess comprehensive knowledge of the *āyāt al-aḥkām* (the legal verses of the Qurʾān) and *aḥādīth al-aḥkām* (the legal texts of the hadith) to equip them with further clarifications to the legal text they may work with whether it is ambiguous or not when an additional explanation is required.[323]

However, assuming that all ambiguous legal requirements have been clarified during the revelation does not fully address the interpretative discrepancies surrounding ambiguous texts. One contributing factor to these differences may be the limited accessibility to specific texts that elucidate ambiguities. This issue is particularly pronounced

[317] Al-Shāṭibī, *al-Muwāfaqāt*, 3/328.

[318] Al-Juwaynī, *al-Burhān*, 1/156.

[319] Al-Shāṭibī, *al-Muwāfaqāt*, 3/328.

[320] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2/47; Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/315; Ibn Qudāmah, *Rawḍah*, 1/478.

[321] Ibn Qudāmah, *Rawḍah*, 1/478.

[322] Al-Shāṭibī, *al-Muwāfaqāt*, 3/328.

[323] Ibn Qudāmah, *Rawḍah*, 2/870.

concerning the Sunnah, as most of it was neither documented nor systematically compiled during the formative periods of Islamic scholarship.[324] Although most of the Sunnah has since been transcribed and preserved in textual form, ongoing debates regarding the authenticity of certain reports can significantly influence the determinations of Muslim jurists regarding what constitutes valid elucidations of ambiguous texts.[325] This reality underscores the complexity involved in interpreting ambiguous texts.

4.2.3 Deviations from an Explicit Interpretation of a Text Through Abrogation (*Naskh*)

As noted earlier, Ibn Qudāmah holds that the explicit interpretation of a text must be sustained until it is proven to have been abrogated.[326] The concept of *naskh*, as observed by Ibn Qudāmah and most legal theorists, suggests that *naskh* is the sole right of Allah, which can be noted through transmission.[327] In Islamic legal theory, the concept of abrogation (*naskh*) is founded on the following Qurʾānic texts: 'We do not abrogate a verse or cause it to be forgotten except that We bring forth [one] better than it or similar to it. Do you not know that Allah is over all things competent?' Q.2:106 and 'And when We substitute a verse in place of [another] verse - and Allah is most knowing of what He sends down - they say, 'you are just making it up', but most of them do not know' Q.16:101.[328] The texts above indicate that abrogation is the right of the Lawgiver.[329] For this reason, the occurrence of *naskh* has been restricted to the era of revelation by most Muslim jurists and legal theorists.[330] Ibn Qudāmah further strengthens this view by emphasising that *naskh* must rely on a statement of Allah or His Messenger.[331]

A variant view is held by a group of legal theorists, including Ḥanafī jurist ʿĪsā ibn Abān (d.221/836), that *ijmāʿ* may abrogate and be abrogated even though *ijmāʿ* is assumed to

[324] See al-Khafīf, *Asbāb*, 57; Zysow, *The Economy*, 51.

[325] See al-Ṭūfī, *Sharḥ*, 2/655.

[326] Ibn Qudāmah, *Rawḍah*, 1/455.

[327] Al-Shāshī, *Uṣūl*, 268; Ibn Qudāmah, *Rawḍah*, 1/203.

[328] Ibn Qudāmah, *Rawḍah*, 1/211.

[329] Al-Shāshī, *Uṣūl*, 268.

[330] Al-Ṭūfī, *Sharḥ*, 2/330.

[331] See Ibn Qudāmah, *Rawḍah*, 1/203, 243, and 248.

occur after the death of the Prophet.[332] However, this view has been contested as a consensus is not expected to oppose a text unless the consensus is based on another text that indicates the abrogation of the earlier text. In this case, the abrogation is said to have been established based on the text, which serves as the basis of the consensus but not the consensus itself.[333]

In addition, Ibn Qudāmah and most Islamic legal theorists have emphasised that both the abrogating and abrogated texts (n*āsikh* and *mansūkh*) must be established through authentic transmission (*naql*) on the authority of Allah and the Prophet.[334] On this basis, Ibn Qudāmah posits that *dalīl al-ʿaql* (reasoning) and *qiyās* (analogy) are not authoritative sources in determining *naskh*. However, when a text declares the effective cause (*ʿillah*) of a ruling, most Islamic legal theorists admit that such an effective cause can be treated just like a text to repeal a ruling with a similar effective cause that was declared earlier.[335]

Regarding the use of reasoning in identifying abrogation, the works of Fakhr al-Dīn al-Rāzī (d.606/1209) reveal conflicting views. In his discussion of particularisation, al-Rāzī suggests that it is possible to assume particularisation (*takhṣīṣ*) and abrogation based on reasoning. He expounds that: 'A person who has lost his/her feet is relieved from the requirement to wash them [in ablution] (*saqaṭa ʿanhu farḍ ghaslu al-rijilayn*), and this is known by reasoning'.[336] However, regarding abrogation, al-Rāzī maintains that in Islamic law, abrogation must be indicated by a legitimate means (*ṭarīq sharʿī*). He expounds that 'legitimate means refers to a statement or an act by Allah or the Prophet'.[337] This seems to contrast with his view that abrogation may be assumed based on reasoning. He argues further that 'the inability [of a person] to do something (*ʿajz*)

[332] See al-Āmidī, *al-Iḥkām*, 3/160-161.

[333] See al-Āmidī, *al-Iḥkām*, 3/160-161; al-Ṭūfī, *Sharḥ*, 2/331-332. See also, Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 137.

[334] Ibn Qudāmah, *Rawḍah*, 1/244 and 248; al-Subkī, *Jamʿ al-Jawāmiʿ*, 58; Shihāb al-Dīn Aḥmad ibn Idrīs al-Qarāfī, *al-ʿAqd al-Manẓūm fī al-Khuṣūṣ wa al-ʿUmūm* (Egypt: al-Maktabah al-Makkiyyah, Dār al-Kutubī, 1999), 2/292.

[335] See, al-Ghazālī, *al-Mustaṣfā*, 101; Abū al-Walīd Muḥammad ibn Aḥmad ibn Rushd, *al-Ḍarūrī fī Uṣūl al-Fiqh* (Beirut: Dār al-Gharb al-Islāmī, 1994), 88; Ibn Qudāmah, *Rawḍah*, 1/244; al-Ṭūfī, *Sharḥ*, 2/332.

[336] Al-Rāzī, *al-Maḥṣūl*, 3/74.

[337] Ibid, 3/285.

may not be regarded as an abrogation of a legal ruling (*lā yalzam al-ʿajz nāsikhan li ḥukm sharʿī*) since it is not a legitimate means of abrogation.[338]

In addressing these conflicting views by al-Rāzī, legal theorists like al-Qarāfī and Tāj al-Dīn al-Subkī directly reject the view that alludes to the possibility of abrogation by reasoning,[339] other legal theorists like Shihāb al-Dīn al-Kūrānī (d.893/1488) attempt to make sense of the two variant views from different perspectives.[340] Al-Kūrānī assumes that al-Rāzī's expression of the possibility of employing reasoning to abrogate a ruling was employed considering the linguistic meaning of *naskh*. Technically, however, since al-Rāzī is emphatic that both abrogating and the abrogated interpretations or rulings must be grounded in explicit statements (*khiṭāb*) from the Lawgiver,[341] his position that reasoning cannot establish abrogation should not be misconstrued or viewed as contradictory; this distinction in his position is clearly articulated.[342]

Al-Qarāfī challenges the concept of abrogation determined by reasoning, arguing that legal rulings are binding only when specific conditions are met. He compares this to the obligation to pay Zakat, which is not considered abrogated for a poor person unable to meet the conditions. Similarly, legal rulings are not abrogated for the deceased, who are no longer subject to legal requirements.[343] Al-Qarāfī extends this reasoning to individuals who have lost their feet and are relieved from washing them during ablution. He asserts that, like Zakat and death, the exemption from washing one's feet due to physical inability cannot be classified as abrogation. This aligns with the majority view among Islamic legal theorists that abrogation of Qurʾānic texts or the Sunnah cannot be established through reasoning alone.[344]

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[338] Ibid, 3/286.

[339] Al-Subkī, *Jamʿ al-Jawāmiʿ*, 57-58; al-Qarāfī, *ʿAqd*, 2/292-293.

[340] Shihāb al-Dīn Aḥmad ibn Ismāʿīl al-Kūrānī, *al-Durar al-Lawāmiʿ fī Sharḥ Jamʿ al-Jawāmiʿ* (Saudi Arabia; Islamic University of al-Madinah, 2008), 2/464.

[341] Al-Rāzī, *al-Maḥṣūl*, 3/282-286.

[342] Al-Kūrānī, *al-Durar*, 2/464.

[343] al-Qarāfī, *ʿAqd*, 2/292.

[344] Ibid.

Islamic legal theorists generally concur that if a text's explicit or apparent interpretation or ruling has been proven to be repealed, it should not be applied.[345] However, there may be divergence regarding which specific text or ruling has been repealed. These differences are typically due to discrepancies in confirming the authenticity of reports indicating the abrogation of another text or the legitimacy of some methods of abrogation.[346]

In general, Islamic legal theorists agree that it is legitimate to establish the abrogation of a ruling conveyed by a Qurʾānic text with another Qurʾānic text. With regard to the Sunnah, they concur that the *mutawātir* (a Sunnah of the Prophet that is transmitted on a wide scale) may be repealed with another *mutawātir* and the *ʿāḥād* (solitary reports of the Sunnah) with *ʿāḥād*.[347] Ibn Qudāmah insists that it is not acceptable to assume the abrogation of a ruling founded by a Qurʾānic text with the Sunnah, whether it is a *mutawātir* report or *ʿāḥād*. Likewise, the *ʿāḥād* report cannot abrogate a ruling based on a *mutawātir* report.[348] He argues that a ruling established by a text whose authenticity is definite or unassailable (*maqṭūʿ*) cannot be abrogated by another ruling established by a text that is lower in rank compared to it or that which is *ẓannī* (speculative).[349]

On the contrary, most Islamic legal theorists hold that it is legitimate for a Qurʾānic text to be abrogated by a text from the Sunnah.[350] Muḥammad al-Amīn al-Shanqīṭī contests Ibn Qudāmah's view that there is no variance between the Qurʾān and Sunnah since they

[345] Ibn Qudāmah, *Rawḍah*, 1/210; al-Subkī, *Jamʿ al-Jawāmiʿ*, 59.

[346] Ibn Qudāmah, *Rawḍah*, 1/236-249, See also Abū Bakr Muḥammad ibn ʿAbdullāh ibn Yūnus al-Ṣaqlī, *al-Jāmiʿ li Masāʾil al-Mudawwanah* (Makkah; Centre for Scientific Research and Revival of Islamic Heritage - Umm al-Qurā University, 2013), 3/1152.

[347] Ibn Qudāmah, *Rawḍah*, 1/236; al-Āmidī, *al-Iḥkām*, 3/146; al-Ṭūfī, *Sharḥ*, 2/315.

[348] Ibn Qudāmah, *Rawḍah*, 1/237-243.

[349] Ibid, 1/210. Zysow expounds on this perspective from the Ḥanafī school. For further specifics, refer to Zysow, *The Economy*, 77.

[350] Al-Ghazālī, *al-Mustaṣfā*, 99-101; Abū al-Khaṭṭāb Maḥfūẓ ibn Aḥmad ibn al-Ḥasan al-Kalwadhānī, *al-Tamhīd fī Uṣūl al-Fiqh* (Makkah; Centre for Scientific Research and Revival of Islamic Heritage - Umm al-Qurā University, 1985), 2/369; al-Āmidī, *al-Iḥkām*, 3/153.

are both from the same source (Allah) except that the Sunnah is reported in the words of the Prophet.[351]

According to al-Shanqīṭī, abrogating a Qurʾānic text with the Sunnah should not be a problem once the abrogating and the abrogated texts were declared or revealed at different times particularly when the authenticity of the Sunnah is established.[352] Najm al-Dīn al-Ṭūfī strengthens this view as he demonstrates in his legal theory that both the Qurʾān and authentic reports of the Sunnah are from the same divine source. Additionally, the authenticity of the *mutawātir* reports of Sunnah is as definitive as the Qurʾān, hence the possibility for abrogation to occur between the two (i.e., the Qurʾān and Sunnah *mutawātir*).[353] This argument highlights the interconnectedness and divine origin of both sources within Islamic legal theory. It is supported by most legal theorists such as al-Ghazālī, Abū al-Khaṭṭāb (d.510/1116), and al-Āmidī.[354]

What is more, al-Ṭūfī and al-Amīn al-Shanqīṭī further strengthen their arguments with the occurrence of the Sunnah abrogating some rulings that were founded on Qurʾānic texts. An example is the abrogation of Q.4:24 to prevent a person from marrying a lady and her aunt simultaneously: 'A woman should not be taken as a co-wife to her paternal aunt or her maternal aunt.'[355]

4.2.4 Deviations from the Apparent Meaning of a Text (*Taʾwīl*)

In theory, *taʾwīl* may seem suitable for the *mujtahids* and Muslim jurists to justify their interpretive discrepancies. However, within Islamic legal theory, the departure from an apparent meaning of a text to a non-apparent or less obvious meaning is classified into *taʾwīl ṣaḥīḥ* (sound interpretation) and *taʾwīl bāṭil* or *fāsid* (wrong or corrupted

[351] Al-Shanqīṭī, *Mudhakkirah*, 127.

[352] Ibid.

[353] Al-Ṭūfī, *Sharḥ*, 2/321-323.

[354] Al-Ghazālī, *al-Mustaṣfā*, 99-101; Abū al-Khaṭṭāb, *al-Tamhīd*, 2/369; al-Āmidī, *al-Iḥkām*, 3/153.

[355] Al-Ṭūfī, *Sharḥ*, 2/328, See also al-Shanqīṭī, *Mudhakkirah*, 126-131.

interpretation).[356] These two forms of *taʾwīl* are based on a set of conditions (*shurūṭ*) used to distinguish between sound from unsound *taʾwīl*.[357]

Like other legal theorists, Ibn Qudāmah argues that a sound *taʾwīl* must fulfil two conditions. The first condition is that the possible interpretations - apparent and non-apparent interpretations of a text or a word - must be proven linguistically.[358] That is, both the apparent meaning of the text and the less obvious meaning assumed for the *taʾwīl* must be supported by either the linguistic usage (*istiʿmāl al-lughah*) of the word, its juristic usage (*istiʿmāl al-sharʿī*) or its conventional usage (*istiʿmāl al-ʿurfī*).[359] For example, the word *qurʾ* has only two linguistic implications: purity (*ṭuhr*) or menstruation (*ḥayḍ*). Therefore, any other implication sought for this word '*qurʾ*' will be invalid because it has no linguistic basis. Also, as mentioned earlier, *ṣīghah amr* may imply an obligatory command, a recommendation, or permission, etcetera. Accordingly, any other connotation besides the acceptable interpretations of *amr* will not be deemed supported.

The second condition for *taʾwīl* is that it must be substantiated with preponderant evidence (*dalīl rājiḥ*).[360] By this, the alternative interpretation (*maʿnā muḥtamal*) must be grounded such that the less obvious interpretation will be deemed compelling to prevail over the apparent meaning. This is relative to the strength or weakness of the less obvious interpretation juxtaposed with the apparent interpretation, according to Ibn Qudāmah.[361] As a result, a remote or distant possible meaning (*iḥtimāl baʿīd*) will require more compelling evidence to warrant a deviation. In contrast, a close and more

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[356] Al-Ghazālī, *al-Mustaṣfā*, 197; Ḥasan al-ʿAṭṭār, *Ḥāshiyah al-ʿAṭṭār ʿalā Jamʿ al-Jawāmiʿ* (Beirut: Dār al-Kutub al-ʿIlmiyyah, n.d.), 2/88; Muḥammad ibn ʿAlī al-Shawkānī, *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min ʿIlm al-Uṣūl* (Dār al-Kutub al-ʿArabī, 1999), 2/32: Ibn ʿĀshūr, *Maqāṣid*, 1/492.

[357] Ibn Qudāmah, *Rawḍah*, 1/458; al-Āmidī, *al-Iḥkām*, 3/53.

[358] Ibn Qudāmah, *Rawḍah*, 1/458.

[359] Al-Zarkashī, *al-Baḥr*, 5/44; al-Shawkānī, *Irshād,* 2/34; Abū al-Mundhir Maḥmūd ibn Muḥammad al-Minyāwī, *al-Muʿtaṣar min Sharḥ Mukhtaṣar al-Uṣūl min ʿIlm al-Uṣūl* (Egypt: al-Maktabah al-Shāmilah, 2011), 150.

[360] Ibn Qudāmah, *Rawḍah*, 1/458.

[361] Al-Ghazālī, *al-Mustaṣfā*, 197; Ibn Qudāmah, *Rawḍah*, 1/456.

apparent possible meaning (*iḥtimāl qarīb*) can be established with the least *dalīl* (proof) as the intended meaning.[362]

Besides these two *shurūṭ*, other legal theorists have further argued that the *mutaʾawwil* (the one doing the *taʾwīl*) must be qualified to do so. That is, the person doing *taʾwīl* must be a *mujtahid*.[363] Ibn Qudāmah and other notable legal theorists did not underscore *ijtihād* as a condition for *taʾwīl*. However, it can be inferred from the general principles in Islamic legal theory that a layperson - lacking the knowledge of either the Arabic language or other essential textual evidence required for a comprehensive understanding of the texts of the Qurʾān and Sunnah - is not to be expected to interpret the texts of the Qurʾān and Sunnah effectively.[364] On the other hand, the *mujtahid* is not expected to unnecessarily attempt to depart from a text's apparent meaning unless it is grounded by proof, as discussed earlier.[365]

In general, it can be noted from the works of Islamic legal theorists that deviating from the apparent meaning of a text is the duty of someone who has a comprehensive knowledge of *āyāt al-aḥkām* and *aḥādīth al-aḥkām*. This knowledge will enable the interpreter to identify other relevant texts that may strengthen their interpretation. In addition, the interpreter must prove the linguistic basis of their interpretation and demonstrate that their interpretation is compelling and grounded by other evidence in the form of either *naskh*, an apparent meaning of another text or *qiyās rājiḥ*. These requirements prevent using subjective inclinations that lack validation in interpreting the legal and ethical texts of the Qurʾān and Sunnah.

It may be argued that if the interpretations of the primary sources of Islamic law are not based on personal preferences, then why are there many different readings of some texts, and why are there many different juristic opinions by different Muslim jurists? In as much as variant views on a legal case may be based on personal preferences, an interpreter must prove that their interpretation is the intended meaning of the text they

[362] Ibid.

[363] Al-Āmidī, *al-Iḥkām*, 3/54; al-Zarkashī, *al-Baḥr*, 5/44; al-Shawkānī, *Irshād,* 2/34; al-Namlah, *al-Muhadhdhab*, 3/1207.

[364] Ibn Qudāmah, *Rawḍah*, 1/354 and 2/907.

[365] See also al-Āmidī, *al-Iḥkām*, 3/53.

are working with.[366] Therefore, Muslim jurists and legal theorists admit that not every interpretation is valid except when it meets the abovementioned conditions. They also acknowledge that individual interpretations and legal assumptions remain disputable until a consensus is reached on a particular interpretation or verdict.[367] Hence, when an apparent interpretation of a text or a *taʾwīl* opposes an explicit interpretation of another text, the explicit interpretation takes precedence. Accordingly, an explicit interpretation of a text may strengthen the apparent interpretation of another text or indicate a departure from it to a less obvious interpretation of a text.[368] Therefore, it may be argued that attempts by Muslim jurists to interpret and apply the legal and ethical texts of the Qurʾān and Sunnah are considered reasonable and acceptable based on a set of rules and principles that must be taken into account.[369]

The reasons for juristic or interpretive differences have been examined in many studies such as *al-Inṣāf fī Bayān Asbāb al-Ikhtilāf* (A Rational Explanation of Difference of Opinion in Fiqh) by Walī al-Dihlawī and *Asbāb Ikhtilāf al-Fuqahāʾ* (The Causes of Juristic Disputes by Muslim Jurists) by ʿAlī al-Khafīf. These studies demonstrate that juristic disputes and variant interpretations stem from several factors.[370] Below is a discussion of a few of these factors:

Firstly, the interpreters' familiarity with the Arabic language.[371] To put it in another way, a reader's knowledge of the Arabic language may affect their analysis of what they may consider as ambiguous text or what they may regard as a possible meaning (*maʿnan muḥtamal*) of a word.[372] An example is the interpretation of the word *istawāʾ* (established) as *istawlā* (to take possession, conquer, or take over) in '*Al-Raḥmān ʿalā al-ʿarshi istawāʾ* (The Most Merciful - who is - above the Throne

[366] Al-Sakkākī, *Miftāḥ*, 162; Ibn Qudāmah, *Rawḍah*, 1/456-458.

[367] Abū Yaʿlā, *al-ʿUddah*, 3/1023.

[368] Al-Ṭūfī, *Sharḥ*, 3/486; al-Shanqīṭī, *Mudhakkirah*, 57; Muḥammad Muṣṭafā al-Zuhaylī, *al-Wajīz fī Uṣūl al-Fiqh al-Islāmī*, Damascus; Dār al-Khayr, 2006), 2/90.

[369] Weiss, *Interpretation*.

[370] Walī Allāh al-Dihlawī, *al-Inṣāf fī Bayān Asbāb al-Ikhtilāf* (Beirut: Dār al-Nafāʾis, 1404 AH); al-Khafīf, *Asbāb Ikhtilāf*.

[371] See al-Āmidī, *al-Iḥkām*, 4/163.

[372] Zysow highlights the impact of an individual's knowledge of the nuances of the Arabic language in the context of legal interpretations. See Zysow, *The Economy*, 49-50.

established).' Q.20:5. Most Muslim scholars have opposed this interpretation because *istawlā* is not supported by the linguistic meaning of the word '*istawā*'.[373]

Secondly, the tendency to err in interpreting a legal text could be due to different levels of insight into some of the clarifications made by the Prophet.[374] This was particularly the case when the knowledge of some of the Prophet's Sunnah was confined to certain regions during the early generations.[375] Although hadith scholars have compiled the Sunnah today, disputes over the authenticity of specific reports can still result in differing opinions on legal matters.

Furthermore, the amount of time and effort a reader may commit to analysing a particular text may also affect their interpretations of the text they work with.[376] While some readers may be more diligent in interpreting the text, others may be hasty to interpret it without an extensive investigation into its meaning. Hence, in criticising hasty *taʾwīl* without grounded evidence, al-Ghazālī expounds that '*taʾwīl* is only allowed if there is credible justification to it'.[377] Due diligence can help avoid interpretations based on misconceptions or personal biases. It can also minimise legal discrepancies and wrong deviations from the definite meanings of a text.

Therefore, any *ijtihād* towards interpreting a legal text (particularly *ẓāhir* or *taʾwīl*) remains *ghalabah al-ẓann* (the most probable assumption) of the *mujtahid* which is refutable until there is *ijmāʿ* on a specific meaning.[378] As a result, the *mujtahids* are

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[373] Abūbakr Aḥmad ibn al-Ḥusayn al-Bayhaqī, *al-Asmāʾ wa al-Ṣifāt* (Jeddah: Maktabah al-Sawādī, 1993), 2/311; Ḥāfiẓ ibn Aḥmad ibn ʿAlī al-Ḥakamī, *Maʿārij al-Qabūl bi Sharḥ Sullam al-Wuṣūl ilā ʿIlm al-Uṣūl* (Dammam: Dār Ibn al-Qayyim, 1990), 1/359.

[374] Taqī al-Dīn Aḥmad ibn ʿAbd al-Ḥalīm ibn Taymiyyah, *al-Fatāwā al-Kubrā* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1987), 6/339; Muṣṭafā Saʿīd al-Khinn, *Athar al-Ikhtilāf fī al-Qawāʿid al-Uṣūliyyah fī Ikhtilāf al-Fuqahāʾ* (Beirut; Muʾassasah al-Risālah, 1998), 42.

[375] See Walī Allāh al-Dihlawī, *al-Inṣāf*, 48.

[376] See al-Ghazālī, *al-Mustaṣfā*, 342; al-Rāzī, *al-Maḥṣūl*, 6/6; al-Āmidī, *al-Iḥkām*, 4/162.

[377] Abū Ḥāmid al-Ghazālī, *Fayṣal al-Tafriqah bayna al-Islam wa al-Zandaqah* (n.p., n.d.), 47.

[378] Abū Yaʿlā, *al-ʿUddah*, 5/1466; Ibn Qudāmah, *Rawḍah*, 2/882; al-Qarāfī, *Nafāʾis*, 9/3842; Ayman Shabana, "The Place of Custom in Islamic Law: Past and Present," In Routledge Handbook of Islamic Law, ed. Khaled Abou El Fadl, Ahmad Atif Ahmad, Said Fares Hassan (London: Routledge, 2019), 286-300, 288.

required to exert efforts to situate their deductions within the sources of the *sharīʿah*, devoid of personal interests or desires to ascertain the most reasonable and legitimate interpretations of the legal texts according to their search. They must avoid making unsupported assumptions if they cannot make valid inferences.[379] Subsequently, Muslim scholars, in general, appear to detest legal verdicts that contradict explicit or apparent interpretations of a text until a more compelling reason to depart from the explicit or apparent interpretation or ruling conveyed by the text is established.[380]

4.4 Conclusion

The present chapter delved into the concept of clarity and ambiguity in Islamic legal texts and the categorisation of the texts of the Qurʾān and Sunnah into *naṣṣ*, *ẓāhir*, and *mujmal*. It pointed out that the problem of clarity and ambiguity is a linguistic one and not an interpretive claim. The examination of the term *naṣṣ* reveals a lack of consistency among Muslim jurists and legal theorists in its application. While *naṣṣ* is technically employed to denote a text with an explicit meaning, it is also utilised to describe a text with an apparent meaning. This variability can lead to confusion, particularly for those who may not be well-versed in the distinctions between explicit and implicit textual meanings.

This chapter also explored the interpretations of explicit and apparent meanings of the legal and ethical texts of the Qurʾān and Sunnah. It found that, like most Muslim jurists and legal theorists, Ibn Qudāmah holds that the explicit meaning of a text must be maintained until its abrogation is established. According to him, abrogation must be established through authentic transmission on the authority of Allah or the Prophet. Hence, *ijmāʿ*, *qiyās*, or reasoning cannot be used to infer the abrogation of a text. Additionally, suppose Allah or the Prophet explicitly specifies the underlying reason for a ruling; when it is abrogated, it impacts any similar rulings based on the same reason. This position restricts the flexibility to depart from an explicit text to its abrogation or when the effective cause of a ruling conveyed by an explicit text is no longer applicable.

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[379] Al-Shāṭibī, *al-Muwāfaqāt*, 3/328.

[380] See Muḥammad ibn Abūbakr ibn al-Qayyim al-Jawziyyah, *Iʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn* (Saudi Arabia: Dār Ibn al-Jawzī, 1423 AH), 4/184; Walī Allāh al-Dihlawī, *al-Inṣāf*, 46.

Regarding the apparent meaning of a text, Ibn Qudāmah holds that it takes precedence over its non-apparent meaning until its abrogation is established. However, Ibn Qudāmah is open to accepting deviations from the apparent meaning of a text when the less-apparent meaning is linguistically plausible and strongly supported by a *qarīnah*, another text, or *qiyās rājiḥ*. Thus, a reasonable reinterpretation (*taʾwīl*) must comply with a set of conditions to serve as a guideline for sound interactions with the texts of the Qurʾān and Sunnah.

For ambiguous texts, since no specific meaning can be derived from them, Ibn Qudāmah and other Islamic legal theorists maintain that the reader must seek clarifications made by Allah or the Prophet regarding the texts' interpretations and interpret them accordingly.

In summary, the analyses in this chapter indicate that Ibn Qudāmah relies on linguistic principles and relevant explanations from the Qurʾān and Sunnah to inform his interpretations of a text. This approach is central to his textual interpretations, allowing him to avoid making subjective assumptions to support a legal position. Consequently, his flexibility to depart from the explicit or apparent meaning of a text is limited to instances where there is clear evidence of abrogation or compelling justifications for a more nuanced reading of a text. This approach underscores Ibn Qudāmah's commitment to adhering closely to the intended meaning articulated by the author or God, thereby maintaining a structured interpretive discipline in legal discourse.

Chapter 5: Command (*Amr*) and Prohibition (*Nahy*)

This chapter investigates how Ibn Qudāmah identifies and interprets the commands and prohibitions found in the legal and ethical texts of the Qurʾān and Sunnah. It also examines how Ibn Qudāmah construed these injunctions to uncover the specific legal ruling that underpins each command or prohibition as a legal requirement. The chapter will explore *amr* and *nahy* together, diverging from the convention of most legal theorists who extensively discuss matters related to *amr* and refer their readers to infer their views on similar issues related to *nahy*.[381] The approach adopted in this study aims to relate each legal case to the relevant debates concerning commands and prohibitions in Islamic legal theory.

5.1 Ibn Qudāmah's Conception of *Amr* and *Nahy* in Legal Interpretations

This section explores how Ibn Qudāmah arrived at what he considered to be reasonable interpretations and applications of the commands and prohibitions concerning Islamic law and ethics. The focus will be on the implications of *amr* and *nahy*[382] on the different categories of the *aḥkām sharʿiyyah*,[383] the debates on the number of times a command or prohibition is expected to be followed and whether a command or a prohibition requires a prompt response or not. Finally, instances where Ibn Qudāmah considered it reasonable to deviate from what he assumed as the apparent meaning of *amr* and *nahy* to other legal rulings will be examined.

5.1.1 The Impact of *Amr* and *Nahy* on the *Aḥkām Sharʿiyyah* (the Legal Rulings)

Closely related to the previous chapter, particularly to *ẓāhir*, is the implication of *amr* and *nahy*. Linguistically, different interpretations can be attributed to the word forms of

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[381] See Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/168; Ibn Qudāmah, *Rawḍah*, 1/540.

[382] Refer to Appendix 3 for the definitions of *amr* and *nahy*.

[383] The *aḥkām sharʿiyyah* (legal rulings) from an Islamic legal perspective are: *wujūb* (an obligation), *nadb* (a recommendation) or *ibāḥah* (permission). A prohibition (*nahy*) may also denote *taḥrīm* (outright forbidding) or *karāhah* (dislike or objection). For a detailed explanation, refer to Ibn Qudāmah, *Rawḍah*, 1/100; al-Ṭūfī, *Sharḥ*, 1/247.

commands and prohibitions or *ṣiyagh al-amr* and *al-nahy*.[384] For example, Sayf al-Dīn al-Āmidī (d.631/1233), a prominent Islamic legal theorist, compiled fifteen different interpretations of *ṣiyagh al-amr*. Jalāl al-Dīn al-Maḥallī (d.864/1460), another renowned Islamic legal theorist, noted eleven more, resulting in a total of twenty-six different interpretations.[385] Interpreting command and prohibition statements can be a complex task, particularly in cases where the specific purpose of the statement is not clearly defined. Given that these types of statements can be subject to multiple interpretations, a thorough analysis is required to comprehend them accurately.

Ibn Qudāmah acknowledges this reality as he identifies that *ṣiyagh al-amr* may be employed to indicate obligation (*wujūb*), a recommendation (*nadb*), or permission (*ibāḥah*). It may also be used for bestowing honour or appreciation (*ikrām*), for humiliation or dishonour (*ihānah*), and for threats (*tahdīd*). In addition, *ṣiyagh al-amr* may be employed for supplication (*duʿāʾ*) or to indicate a wish (*tamannī*), among other possible connotations.[386]

Similarly, *ṣiyagh al-nahy* such as '*lā tafʿal*' (do not do) may also be employed to indicate an outright forbidding (*taḥrīm*) or a dislike or disapproval (*karāhah*) and other possible connotations such as supplications and guidance (*irshād*).[387] In essence, the mention of the different possible linguistic interpretations of the word forms of commands and prohibitions is a recognition by Islamic legal theorists that some command forms and prohibitions in the Qurʾān and Sunnah and ordinary Arabic usages may carry any of these linguistic meanings in different contexts.

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[384] ʿAbd al-Raḥmān al-Suhaylī, *Natāij al-Fikr fī al-Naḥw* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1992), 199; ʿIṣām al-Dīn Ibrāhīm ibn Muḥammad, *Aṭwal Sharḥ Talkhīṣ Miftāḥ al-ʿUlūm* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2001), 1/595; Mariam al-Attar, "Divine command ethics in the Islamic legal tradition," In Routledge Handbook of Islamic Law, ed. Khaled Abou El Fadl, Ahmad Atif Ahmad, Said Fares Hassan (London: Routledge, 2019), 98-111, 98-99.

[385] Al-Āmidī, *al-Iḥkām*, 2/142; al-ʿAṭṭār, *Ḥāshiyah*, 1/469.

[386] Ibn Qudāmah, *Rawḍah*, 1/488-489.

[387] Jalāl al-Dīn Muḥammad ibn ʿAbd al-Raḥmān ibn ʿUmar al-Qazwīnī, *al-Īḍāḥ fī ʿUlūm al-Balāghah* (Third edition; Beirut: Dār al-Jīl, n.d.), 3/88; al-Juwaynī, *al-Burhān*, 1/110; al-Ghazālī, *al-Mustaṣfā*, 204, Most *uṣūlīs* do not discuss this detail for *nahy*, However, they indicate that the topics under *nahy* are similar to those discussed under *amr*, See Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/168; Ibn Qudāmah, *Rawḍah*, 1/486.

The fact that *ṣiyagh al-amr* and *al-nahy* can be employed for several uses poses a problem for a reader who must decipher which of the possible interpretations of a command or prohibition is implied in a text containing *ṣīghah al-amr* or *ṣīghah al-nahy*. Could a reader consider any meaning at their discretion, irrespective of the author's or speaker's intent?[388] This may be problematic due to the possibility of missing the intended objective for some orders, especially those that are obligatory. Besides, texts from both the Qurʾān and the Sunnah indicate disapproval or threats for disobeying God and His Messenger's commands as found in Q.24:63: '…Let those who oppose his command (*yukhālifūna ʿan amrihī*) beware lest a trial afflicts them, or they receive a painful punishment.' Thus, determining the precise interpretation of a text containing a command or a prohibition in the Qurʾān and Sunnah is one of the most critical tasks of Islamic legal theorists. This is because of the primacy of command and prohibition in Islamic law and ethics. One cannot adequately observe one's religious duties without understanding the implications of *amr* and *nahy* in the texts of the Qurʾān and Sunnah.

Generally, Muslim jurists and legal theorists do not seem to disagree on interpreting the word form of a command or prohibition when there is a *qarīnah* (an indication) from the context of their usage, specifying their intended meanings. Noticeably, Allah sometimes employs moral appeals to express the benefits of conforming to standards and the dangers of violating others to indicate the meaning and significance of a particular command or prohibition.[389] The use of moral appeals may indicate whether a command or prohibition is imperative or not. This approach proves beneficial in addressing the problem associated with interpreting *amr* and *nahy* to a greater extent. For instance, in the Qurʾān, there is a command regarding orphans' wealth:

> And give the orphans their wealth [i.e., when they reach maturity] and do not substitute your worthless possession for their valuables, and do not consume their properties with your own; that would be a grave sin. (Q.4:2)

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[388] An author or speaker's intent is explored in chapter seven, which discusses Textual implications in interpreting the primary sources of Islamic law and ethics.

[389] Maḥmūd Shaltūt, *al-Islām ʿAqīdah wa Sharīʿah* (Cairo: Dār al-Sharq, 2001), 486; Kamali, *Principles*, 187.

Muslim jurists generally agree that this command is obligatory, as it would constitute a grave sin to retain such properties after the orphans have reached maturity and are capable of managing their wealth.[390]

Likewise, there are no disputes among Muslim jurists that misappropriating the wealth of an orphan is strongly prohibited (*ḥarām*) due to the severity of the consequences of misappropriating the orphans' wealth, as pointed out in Q.4:10:

> Those who wrongfully and unjustly consume the wealth or properties of the orphans are only consuming fire into their bellies, and they will be burned in a blazing flame.

The contexts of the texts above indicate that the word forms of command and prohibition in Q.4:2 are imperative since usurping the wealth of an orphan or misappropriating it is declared a grave sin and deserves to be punished.[391]

Just as a *qarīnah* may indicate that a command is imperative, it may also denote that a statement must be adhered to even though it does not have the word form of a command. This can be noted in Ibn Qudāmah's interpretation of the Qurʾānic text:

> Indeed, for those whom the angels take their souls [i.e., death/die] while they have wronged themselves, the [angels] will say: what was your plight? They will reply: "We were weak and oppressed in the land". They [the angels] will say: "Was the earth of Allah not spacious enough for you to emigrate (to other places)?" For such (people), Hell will be their abode; what an evil destination! Q.4:97.

Ibn Qudāmah expounds that it is incumbent upon a person to migrate from a land of oppression to a place where they can conveniently observe their religious obligations based on Q.4:97. He expounds that even though the text does not contain an explicit

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[390] Al-Sarakhsī, *al-Mabsūṭ*, 24/162.

[391] Muḥammad al-Ṭāhir ibn Muḥammad ibn ʿĀshūr, *al-Taḥrīr wa al-Tanwīr* (Tunis: Dār al-Tūnisiyyah, 1984), 4/221 and 254; Muḥammad al-Amin ibn Muḥammad al-Mukhtār al-Shanqīṭī, *Aḍwāʾ al-Bayān fī Īḍāḥ al-Qurʾān bi al-Qurʾān* (Beirut: Dār Ibn Ḥazm, 2019), 1/357-358.

command, the severe threat in the text is an indication that migration is obligatory for the oppressed if they can migrate.[392]

However, when there are no *qarāʾin* to indicate the meaning of an injunction, a command is termed *amr mujarrad* or *amr muṭlaq* (an unqualified command). Similarly, a prohibition of this kind is also termed *nahy mujarrad* or *nahy muṭlaq* (an unqualified prohibition). Experts in Arabic rhetoric (*balāghah*) and Islamic legal theorists alike have debated the implications of unqualified commands and prohibitions devoid of *qarāʾin* to indicate the precise reading.[393]

Abū Hāshim al-Jubbāʾī (d.321/933) and a group of Muʿtazilīs share the view that *amr muṭlaq* implies *nadb* (a recommendation).[394] Other scholars, such as al-Ghazālī (d.505/1111), seem to consider it (*amr muṭlaq*) to be ambiguous (*mujmal*), which requires clarification. Al-Ghazālī argues that one cannot attribute it (*amr muṭlaq*) to a specific meaning without a *qarīnah*.[395] In contrast, al-Ghazālī's teacher, al-Juwaynī (d.478/1084), asserts that *amr muṭlaq* implies only a demand (*ṭalab*) and that an unqualified command does not necessarily mean the required deed is compulsory. To claim it is obligatory or recommended requires proof.[396] Abū Manṣūr al-Māturīdī (d.333/944) and al-Āmidī (d.631/1233) seem to share a similar opinion too. Jalāl al-Dīn al-Maḥallī (d.864/1460) records Abū Manṣūr al-Māturīdī's position on an unqualified command as implying just 'a demand' (*ṭalab*), which is the common or the shared meaning between an imperative and a recommendation (*al-qadr al-mushtarak bayna al-wujūb wa al-nadb*).[397] Al-Āmidī (d.631/1233) expounds that even though *ṣiyagh al-amr* (word forms of command) may be employed for several connotations, they are primarily used for making a demand, threat, or to grant permission for an act. Its usage for any other meaning must be specified with a *qarīnah*.[398]

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[392] Ibn Qudāmah, *al-Mughnī*, 13/151.

[393] Ibn Qudāmah, *Rawḍah*, 1/486-490.

[394] As reported by Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/51.

[395] Al-Ghazālī, *al-Mustaṣfā*, 205-206.

[396] Al-Juwaynī, *al-Burhān*, 1/71.

[397] As reported by al-Maḥallī see al-ʿAṭṭār, *Ḥāshiyah*, 1/475.

[398] al-Āmidī, *al-Iḥkām*, 2/143.

Nonetheless, al-Āmidī posits that the use of *ṣiyagh* of *amr* implies a demand in a literal sense (*ḥaqīqah*) and can also be employed to convey threats, permissions, or any other connotation in a nonliteral sense (*majāz*). This is because the command to do something, without specifying whether it is imperative, inherently suggests a demand for that action without any further implications.[399] Najm al-Dīn al-Ṭūfī (d.716/1316) contends that such a demand is imperative (*ṭalab jāzim*).[400]

Ibn Qudāmah shares the opinion that an unqualified command is imperative.[401] He argues that even though the word forms of commands and prohibitions may have several connotations, they are imperative based on their literal meanings (*maʿnā ḥaqīqī*). When other connotations are intended, *ṣiyagh al-amr* are employed with *qarāʾin* to indicate the intended meaning. Thus, in the absence of a *qarīnah*, the apparent meaning takes precedence.[402] By this, Ibn Qudāmah attempts to classify commands and prohibitions as *ḥaqīqah sharʿiyyah*, which imply *wujūb* and *taḥrīm*, respectively, by default.[403] This appears to be the most popular opinion among the *ahl al-lughah*[404] and Islamic legal theorists.[405] Thus, *amr muṭlaq* may be noted to imply imperative (*wujūb*) from the perspective of most scholars of the Arabic language and Islamic legal theorists. This is expressed with the legal maxim: *al-amr al-muṭlaq yaqtaḍī al-wujūb* (an unqualified command is binding). Likewise, *al-nahy al-muṭlaq yaqtaḍī al-taḥrīm* (an unqualified prohibition is binding) too.[406] Ibn Qudāmah supports this opinion with evidence from the Qurʾān and Sunnah, *ijmāʿ*, and Arabic linguistics.

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[399] Ibid.

[400] Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 2/358.

[401] Ibn Qudāmah, *Rawḍah*, 1/493.

[402] Ibid.

[403] Ibid, 1/490, See also Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/168.

[404] See Abū Saʿīd al-Ḥasan ibn ʿAbdullāh ibn al-Marzubān al-Sīrāfī, *Sharḥ Kitāb Sībawayh* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2008), 2/44; Bahāʾ al-Dīn al-Subkī, *ʿArūs al-Afrāḥ fī Sharḥ Talkhīṣ al-Miftāḥ* (Beirut: al-Maktabah al-ʿAsriyyah, 2003), 1/462; Aḥmad al-Ḥāzimī, *Sharḥ Miʾah al-Maʿānī wa al-Bayān* (al-Maktabah al-Shāmilah, 1432 AH), 10/18; al-Jurjānī, *al-Taʿrīfāt*, 37.

[405] Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/50-51; Abū Yaʿlā, *al-ʿUddah*, 1/224; Ibn Qudāmah, *Rawḍah*, 1/493; al-ʿAṭṭār, *Ḥāshiyah*, 1/473; Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 2/365.

[406] See Ibn Qudāmah, *Rawḍah*, 1/493 and 540.

From the Sunnah, Ibn Qudāmah highlights the significance of following the orders and commands of the Lawgiver (Shāriʿ), as evidenced by texts from Qurʾān and Sunnah. For example, during the Prophet's farewell pilgrimage, he and his companions initially intended to combine Hajj and Umrah without a break between the two (*qirān*). However, upon reaching Makkah, the Prophet instructed them to change their intentions from *qirān* to *tamattuʿ* by separating their Umrah from Hajj. The Prophet became upset when the companions opposed this instruction, and when asked about it by his wife ʿĀishah (d.58/678), he responded, 'Why should I not be angry when I give a command, and it is not obeyed?' Ibn Qudāmah asserts that the Prophet's anger indicates the obligatory nature of his commands.[407] This text does not seem strong enough to support Ibn Qudāmah's argument, as the validity of this hadith has been disputed by hadith scholars, including the contemporary hadith scholar Nāṣir al-Dīn al-Albānī (d.1420/1999).[408]

However, Ibn Qudāmah strengthens his position with texts of the Qurʾān, in which Allah threatens those who violate the orders of the Messenger with an affliction or punishment to emphasise that a command is generally obligatory. The text states: '…Let those who oppose his orders (*yukhālifūna ʿan amrihī*) beware lest a trial afflicts them, or they receive a painful punishment' Q.24:63. Ibn Qudāmah argues that the text does not qualify the kind of command that deserves the threat issued in this verse. This indicates that an unqualified command is generally mandatory unless specified as the text does not qualify which kind of command must be adhered to.[409] Other texts include: 'When it is said to them: "bow down [in prayer]", they do not bow. Woe on that day [the day of resurrection] to the deniers' Q.77:48-49 in reprimand of those who do not follow the command of Allah and His Messenger. Ibn Qudāmah expounds that rebuking one for not observing an unqualified command (*amr muṭlaq*) indicates that such commands are imperative, else it would be unreasonable to follow such injunctions with a threat for not observing them.[410]

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[407] Ibid, 1/495.

[408] Muḥammad Nāṣir al-Dīn al-Albānī, *Silsilah al-Aḥādīth al-Ḍaʿīfah wa al-Mawḍūʿah* (Riyadh: Dār al-Maʿārif, 1992), 10/299 (Hadith No. 4753).

[409] Ibn Qudāmah, *Rawḍah*, 1/495.

[410] Ibid.

In addition, Ibn Qudāmah contends that the Prophet generally employed *amr* to indicate an obligation in his remarks, such as: 'Had I not thought it difficult for my ummah, I would have commanded them to use the *miswāk* (chewing stick or teeth cleaning twig) before every Salat'. However, the use of the chewing stick is just a recommendation (*nadb*) but not obligatory, as agreed by Muslim jurists and legal theorists.[411] However, if the prophet had commanded a chewing stick before every prayer, it would have been obligatory regardless of any difficulty or inconvenience.[412] According to Ibn Qudāmah, this hadith indicates that an unqualified command is obligatory since the word *amr* (command) was employed in an unqualified sense.[413]

Ibn Qudāmah also employs the consensus of the companions of the Prophet to prove that *amr* was generally considered obligatory by the companions of the Prophet, who combined proficiency in both the Arabic linguistics and the understanding of the texts of the Qurʾān and Sunnah (*nuṣūṣ sharʿiyyah*) better than later generations.[414] For instance, the companions of the Prophet considered the *jizyah* (a tax paid by non-Muslims to their Muslim rulers) obligatory on the Magians based on the command of the Messenger: 'Treat them like the people of the book.'[415] Ibn Qudāmah adds that the companions of the prophet also regarded the washing of a bowl that a dog has drunk from obligatory based on the command of the Prophet: 'If a dog drinks from the utensil of any of you, he should wash it seven times (*falyaghsilhu sabʿan*).'[416] Ibn Qudāmah argues that these texts and many others indicate the companions of the Prophet's consensus in treating the Lawgiver's command (*amr al-Shāriʿ*) as mandatory unless otherwise specified.[417]

From a linguistic perspective, Ibn Qudāmah argues that an unqualified command is understood to be an obligation. For instance, a superior like an army commander could rightfully punish a subordinate for disobedience without any repercussions if the subordinate does not comply with the commander's command. According to Ibn

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411 Al-Shāfiʿī, *al-Umm*, 1/38-39; al-Jaṣṣāṣ, *Sharḥ*, 1/301.

412 Al-Māwardī, *al-Ḥāwī al-Kabīr*, 1/82.

413 Ibn Qudāmah, *Rawḍah*, 1/496.

414 Ibid.

415 Mālik ibn Anas, *al-Muwaṭṭaʾ* (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1985), 1/278 (Hadith No. 42).

416 Al-Bukhārī, *Ṣaḥīḥ*, 1/75 (Hadith No. 170).

417 Ibn Qudāmah, *Rawḍah*, 1/496-497.

Qudāmah, reprimanding someone in such an instance is only reasonable if compliance is compulsory. Ibn Qudāmah believes the interpretation of command in similar instances implies that an unqualified command is typically mandatory and necessitates adherence.[418] The above deliberations suggest that Ibn Qudāmah permits flexibility in interpreting commands and prohibitions only when clear indications (*qarāʾin*) demonstrate that they were not intended to be imperative. In the absence of such indications, he maintains that commands should be understood as *wujūb* (obligatory) and prohibitions as *taḥrīm* (forbidden), without deviation.

5.1.1.1 Do *Amr Muṭlaq* and *Nahy Muṭlaq* Imply a Recurring Obligation?

Generally, Muslim jurists and legal theorists agree that compliance to *nahy muṭlaq* must be continuous or persistent (*tikrār*). Thus, a person violates a prohibition the moment they indulge in it, irrespective of how many times they have abstained.[419] Unlike this general opinion on complying to *nahy*, the scholars have differing views regarding the implication of command, whether an unqualified command (*amr muṭlaq*) by itself requires a recurring response or compliance or not (*al-amr al-muṭlaq hal yaqtadi al-tikrār*?). In other words, does a command indicate the number of times an injunction must be followed or implemented?

Like most Islamic legal theorists, Ibn Qudāmah takes the stance that a command does not indicate the number of times it must be observed.[420] The differing opinion put forth by Abū Yaʿlā (d.458/1066), a jurist and legal theorist of the Ḥanbalī school, states that a command to do something implies a corresponding prohibition from doing the opposite. Therefore, it is necessary to continue complying with the command to fulfil the condition of abstaining from the opposite of the required action.[421]

Ibn Qudāmah refutes Abū Yaʿlā's argument by distinguishing a prohibition from a command. He contends that compliance to an unqualified command or *amr muṭlaq* requires unqualified obedience, which is fulfilled by observing the command at least

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[418] Ibid, 1/497.

[419] Abū Yaʿlā, *al-ʿUddah*, 1/266; Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 2/447.

[420] Ibn Qudāmah, *Rawḍah*, 1/503-505.

[421] Abū Yaʿlā, *al-ʿUddah*, 1/264-266.

once. In this sense, confirming an unqualified demand is not general (*al-ithbāt al-muṭlaq lā yaʿumm*).[422] However, compliance with an unqualified prohibition or *nahy muṭlaq* is different. The command to refrain from an act (*nahy*) means that the prohibition should never be broken.[423] This makes compliance with a prohibition general, even if it is unqualified (*al-nafy al-muṭlaq yaʿumm*).[424] Therefore, it can be concluded that Ibn Qudāmah adopts a stricter stance in enforcing abstinence from prohibitions compared to the application of commands.

In terms of recurrence, the word forms of command and prohibitions do not indicate the number of times compliance is required linguistically. However, from a logical and legal perspective, an unqualified prohibition or *nahy muṭlaq* always requires total abstinence; compliance is continuous. However, an unqualified command or *amr muṭlaq* does not have the same condition or require the same treatment since a one-time observance qualifies as compliance.[425]

5.1.1.2 Are *Amr Muṭlaq* and *Nahy Muṭlaq* Time-Bound?

Another crucial aspect of the discussion on command and prohibition pertains to their implications for situations without explicitly indicating urgency. In this case, should compliance be immediate (*fawr*) or not?[426] Muslim jurists and legal theorists have varied opinions on this as well. Most Ḥanafī and Shāfiʿī scholars hold that it is permissible to delay compliance (*yajūzu al-tarākhī*) because the word form does not indicate it must be immediate.[427]

On the contrary, most Mālikī and Ḥanbalī legal theorists and jurists and some Shāfiʿīs hold that *amr muṭlaq* or an unqualified command intrinsically requires instant compliance (*al-amr al-muṭlaq yaqtaḍī al-fawr*).[428] One must fulfil their duty as soon as it

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[422] Ibn Qudāmah, *Rawḍah*, 1/507.

[423] Ibid.

[424] Ibid. Refer to the sixth chapter of the thesis, which provides insights into the interpretations of general and unqualified texts.

[425] See Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 2/444-447.

[426] See al-Bāqillānī, *al-Taqrīb*, 2/208.

[427] Al-Māwardī, *al-Ḥāwī al-Kabīr*, 3/454; Al-Sarakhsī, *Uṣūl*, 131-135; al-Āmidī, *al-Iḥkām*, 2/165.

[428] Abū Yaʿlā, *al-ʿUddah*, 1/281; Ibn Qudāmah, *Rawḍah*, 1/510; al-Māwardī, *al-Ḥāwī al-Kabīr*, 3/454.

is attainable or possible. Ibn Qudāmah takes the stance that the response to an unqualified command must be immediate, arguing that immediacy is linguistically implied in a command. His position can be demonstrated by the right of a superior, like an army commander, to rightfully punish a subordinate for disobedience without any repercussions if the subordinate delays in responding and complying with their command. In this instance, the right to reprimand or punish demonstrates that a command must be responded to immediately, according to Ibn Qudāmah.[429]

Ibn Qudāmah also supports his position with texts from the Qurʾān and the Sunnah that indicate that a command must be heeded at once. Examples of such texts include: 'And *sāriʿū* (hasten) to the forgiveness of your Lord' Q.3:133 and 'So *istabiqū* (compete with one another) in doing good' Q.2:148. Hastening and competing in the texts imply immediacy as they imply mandatory commands, according to Ibn Qudāmah.[430] However, employing these texts to substantiate the intended position is disputable. The sense of urgency employed in the first text is found in the word *sāriʿū* (hasten) but not the *ṣīghah al-amr* in and of itself, as not all forms of commands carry the meaning of urgency. The same applies to the word *istabiqū* (compete with one another).[431]

Unlike *nahy*, *ṣiyagh al-amr* do not possess a sense of urgency from a linguistic perspective, as Fakhr al-Dīn al-Rāzī has argued.[432] *Al-nahy* clearly demands instant abstinence because a lack of immediate abstinence is defiance of the relevant injunction. For *ṣiyagh al-amr*, just as the person who obeys immediately is regarded as having fulfilled the command, the one who observes the command later will be deemed as having also fulfilled it if this occurs within a time frame that the order could be fulfilled.

One could argue that from a legal perspective, instant compliance to command would be preferable based on various texts from the Qurʾān and Sunnah, such as those quoted above instructing believers to hasten in doing good and obeying Allah's commands. In addition, when the Messenger was asked which deed was the best, He replied: 'Salat at

[429] Ibn Qudāmah, *Rawḍah,* 1/510.

[430] Ibid, 1/512.

[431] Abū Zakariyyā Yaḥyā ibn Mūsā al-Ruhūnī, *Tuḥfah al-Suʾūl fī Sharḥ Mukhtaṣar al-Sūl* (Dubai: Dār al-Buḥūth li al-Dirāsāt al-Islāmiyyah wa Iḥyāʾ al-Turāth, 2002), 3/37.

[432] Al-Rāzī, *al-Maḥṣūl*, 2/113-114.

the beginning of its time'.[433] In another narration, it states: '…In its early time.'[434] This indicates that it may be delayed without blame, provided the command is executed within an acceptable time frame.

However, the debate on this subject is centred on whether the person who delays obedience to a command is deemed wrong. This remains debatable. Hence, Najm al-Dīn al-Ṭūfī (d.716/1316) concedes that both sides of the debate present valid arguments, even though instant compliance appears stronger in terms of obedience. Precedence is thus given to a prompt response over a delayed execution of a command.[435]

This debate is further reflected in Muslim jurists' variant opinions on whether Zakat must be paid immediately after the conditions are met.[436] Similarly, there are differences in the ruling on whether *ḥajj* (pilgrimage) must be observed immediately after one has the means or whether it is permissible to delay it even though one has the means and can perform it.[437] Therefore, for jurists such as the Shāfiʿīs who argue that it is permissible to delay the response of *amr muṭlaq*, it will be acceptable to delay the payment of Zakat and the performance of *ḥajj* after one has met the required conditions. On the contrary, those who hold that an *amr muṭlaq* requires prompt response regard it wrong to delay Zakat and *ḥajj* when the conditions have been met.

5.1.2 Deviations from the Apparent Meaning of *Amr* or *Nahy*

An examination of Ibn Qudāmah's application of *amr* (command) and *nahy* (prohibition) reveals that he regards both unqualified commands and prohibitions as imperative unless there are *qarāʾin* (indications) to suggest otherwise. Unqualified commands and

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[433] Muḥammad ibn ʿĪsā al-Tirmidhī, *Sunan al-Tirmidhī* (Egypt: Sharikah Maktabah wa Maṭbaʿah Muṣṭafā al-Bābī al-Ḥalabī, 1975), 1/319 (Hadith No. 170); Muḥammad ibn ʿAbdullāh al-Ḥākim, *al-Mustadrak ʿalā al-Ṣaḥīḥayn* (Beirut: Dār al-Kutub al-ʿIlmiyyah 1990), 1/301 (Hadith No. 680).

[434] Muḥammad Nāṣir al-Dīn al-Albānī, *Ṣaḥīḥ Sunan Abī Dāwūd* (Kuwait: Muʾassasah Ghirās, 2002), 2/303 (Hadith No. 453).

[435] Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 2/393.

[436] Al-Kāsānī, *Badāʾiʿ*, 2/3; Ibn Qudāmah, *al-Mughnī*, 4/146.

[437] Al-Māwardī, *al-Ḥāwī al-Kabīr*, 3/454; al-Sarakhsī, *al-Mabsūṭ*, 4/163-164; Abū al-Walīd Muḥammad ibn Aḥmad ibn Rushd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid* (Cairo: Dār al-Ḥādīth, 2004), 2/86; Ibn Qudāmah, *al-Mughnī*, 5/36.

prohibitions demand immediate responses unless there is a justifiable reason for delay. This section explores in the ensuing passages what constitutes acceptable *qarāʾin* to divert an unqualified command or prohibition from implying *wujūb* (obligatory) or *taḥrīm* (forbidden) to other legal rulings (*aḥkām sharʿiyyah*).

5.1.2.1 The Context of a Command or a Prohibition

In a well-known narration regarding the emancipation of Barīrah, a slave girl who was emancipated by ʿĀʾishah - the Prophet's wife - (d.58/678), ʿĀʾishah wanted to reserve the right to her *walāʾ* (inheritance)[438] after freeing her from slavery, but Barīrah's clan refused and insisted on reserving that right. The Prophet ordered ʿĀʾishah to buy and free her, adding that: 'Set the condition for them. Indeed, *walāʾ* is the right of the one who manumits [a person from slavery]'.[439] Ibn Qudāmah expounds that the statement '*ʾIshtariṭī lahum al-walāʾ*' (set the right of *walāʾ* for them - as they demanded) is not to be taken as a command in a literal sense (*fa laysa huwa amran ʿalā al-ḥaqīqah*) even though it is *ṣīghah al-amr*. It implies that setting that condition for them or not makes no difference.[440] Because the Prophet establishes in the concluding statement of the hadith that: '…Indeed, *walāʾ* is the right of the one who emancipated [the person from slavery]'. [441] The concluding statement seems to serve as a *qarīnah* that the command to set the condition of *walāʾ* for Barīrah's clan was not meant to have any impact.

Ibn Qudāmah argues further that the command in the hadith is similar to the command in the Qurʾānic text: 'Seek forgiveness for them or not [it will not make a difference], even if you ask seventy times, God will not forgive them. That is because they disbelieved in Allah and His Messenger…' Q.9:80.[442] He considers the context of the commands in these texts, diverting from the apparent interpretation of *wujūb* (obligation) to interpret them as *taswiyah*, meaning that complying or not complying with the command leads to the same outcome.

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[438] *Walāʾ* refers to a relationship due to the privilege to inherit a person one has manumitted if there is no eligible heir to inherit them after their death, See Ibn Fāris, *Maqāyīs al-Lughah*, 6/141.

[439] Al-Bukhārī, *Ṣaḥīḥ*, 2/759 (Hadith No. 2060).

[440] Ibn Qudāmah, *al-Mughnī*, 6/326.

[441] Al-Bukhārī, *Ṣaḥīḥ*, 2/759 (Hadith No. 2060).

[442] Ibn Qudāmah, *al-Mughnī*, 6/326-327.

Another instance in which Ibn Qudāmah diverges from the apparent interpretation of command is his treatment of the Prophet's guidance on selecting a spouse. The Prophet's command regarding spousal selection includes statements such as: '*ʾIẓfar bi dhāt al-dīn*' (get the religious woman), '*ʿAlaykum bi al-abkār*' (marry virgins) and '*Tazawwajū al-wadūd al-walūd*' (marry loving and prolific women).[443] Rather than viewing these commands as obligations, Ibn Qudāmah sees them as recommendations. He states, 'It is desirable (*yustaḥabb*) for an individual seeking marriage to choose a righteous woman, … a beautiful woman, … a woman with an honourable background, … a virgin and a woman who is prolific in bearing children'.[444] Nonetheless, Ibn Qudāmah acknowledges that these recommendations were given in the form of command (issued with *ṣiyagh al-amr*).

The interpretations of the hadiths above seem generally agreed upon by Muslim jurists as recommendations instead of obligatory, as held by Ibn Qudāmah.[445] The basis for these deviations is assumed to be the context of those commands.[446] The Yemeni scholar al-Shawkānī (d.1250/1834) points out that the text: 'A woman is married for four qualities…' is understood to be the Prophet's narration of the dominant reasons people look out for in a spouse. Thus, one may marry based on these traits or qualities, but a choice based on religiosity is better.[447]

With regard to deviating the interpretation of *nahy* from its apparent meaning (*taḥrīm*) due to the context of the prohibition, the prohibition from receiving wages for cupping (*ḥijāmah*)[448] may serve as an illustration. It is reported that a companion of the Prophet

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[443] Ibn Qudāmah, *al-Kāfī*, 3/25-26.

[444] Ibid.

[445] ʿAlī ibn Aḥmad ibn Ḥazm, *al-Muḥallā bi al-Āthar* (Beirut: Dār al-Fikr, n.d.), 9/110; Abū Isḥāq Ibrāhīm ibn ʿAlī al-Shīrāzī, *al-Muhadhdhab fī Fiqh al-Imām al-Shāfiʿī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, n.d.), 2/424.

[446] See Muḥammad ʿAlī Muḥammad al-Ḥafyān, *al-Qarāʾin al-Ṣārifah li al-Amr ʿan Ḥaqīqatih wa Athar dhālik fī al-Furūʿ al-Fiqhiyyah fī Kitābay al-Ṣiyām wa al-Ḥajj* (MPhil Thesis, Umm al-Qurā University, 1994), 189-190, https://dorar.uqu.edu.sa/uquui/handle/20.500.12248/121125.

[447] Muḥammad ibn ʿAlī ibn Muḥammad al-Shawkānī, *Nayl al-Awṭār* (Egypt: Dār al-Ḥadīth, 1993), 6/125-126.

[448] Cupping, also known as *ḥijāmah*, is an ancient form of alternative medicine that involves sucking blood from a small skin incision, See Abdullah AlBedah, Mohamed Khalil, Ahmed Elolemy, Ibrahim

sought permission to take wages from cupping, but the Prophet forbade him from it.[449] Ibn Qudāmah expounds that the report's context indicates the prohibition implies *karāhah* (dislike). The report states that upon the insistence of the companion who sought that permission, the Prophet said: '… Use it to buy fodder for your water-carrying camels and feed your slaves with it.'[450] Ibn Qudāmah contends that the Prophet would have forbidden the companion from accepting any wage from cupping outrightly if the prohibition were imperative.[451] Ibn Qudāmah also employs other proofs, such as the Prophet's actions (*afʿāl al-Nabī*) and *qiyās*, to corroborate his position.[452]

5.1.2.2 The Sequence of Commands and Prohibitions

Ibn Qudāmah views a command to do something previously prohibited as indicating that the command is not mandatory.[453] Perhaps this is the most debated case among Islamic legal theorists regarding the diversion of a command from its apparent meaning. Al-Ghazālī (d.505/1111) explains that this scenario involves a command using the verb '*ifʿal*' (do) for something that was once prohibited due to a specific reason or cause (*ʿillah*).[454] For example, the Messenger of Allah forbade his followers from keeping the meat of *aḍāḥī* (the sacrifice during Eid al-Adha) for more than three days.[455] Reports indicate that this was due to the influx of some poor people into Madinah during Eid al-Adha) and the need to support them.[456] Later, the Prophet commanded them to store the

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Continued Elsubai and Asim Khalil, "Hijama (cupping): a review of the evidence," *Focus on Alternative and Complementary Therapies* 16 (2011): 12-16.

[449] See al-Tirmidhī, *Sunan*, 3/567 (Hadith No. 1277); Abū Bakr al-Bayhaqī, *al-Sunan al-Kubrā* (Cairo: Markaz Hijr li al-Buḥūth wa al-Dirāsāt al-ʿArabiyyah wa al-Islāmiyyah, 2011), 19/498 (Hadith No. 19533).

[450] Al-Tirmidhī, *Sunan*, 3/567 (Hadith No. 1277); al-Bayhaqī, *al-Sunan al-Kubrā*, 19/498 (Hadith No. 19533).

[451] Ibn Qudāmah, *al-Mughnī*, 8/119.

[452] Refer to Section 5.1.2.4 (pages 108-109) for additional details; see also Ibn Qudāmah, *al-Mughnī*, 8/118-120.

[453] Ibn Qudāmah, *Rawḍah*, 1/501.

[454] Al-Ghazālī, *al-Mustaṣfā*, 211.

[455] See al-Bukhārī, *Ṣaḥīḥ*, 5/2115 (Hadith No. 5249).

[456] See, Aḥmad ibn Ḥanbal, *Musnad Aḥmad* (Beirut: Muʾassasah al-Risālah, 2001), 40/293 (Hadith No. 24249).

meat of *aḍāḥī* (*iddakhirūhā*).[457] Islamic legal theorists have debated whether the command is mandatory in such an instance or not. While the Ḥanafī school maintains that it is obligatory just as an unqualified command (*amr muṭlaq*),[458] a group of Islamic legal theorists, including Ibn Qudāmah and al-Ghazālī (d.505/1111) - perhaps most Islamic legal theorists - think otherwise. They consider the command to do something after it was previously prohibited as *ibāḥah* (permission to engage in it).[459] Imām al-Ḥaramayn, al-Juwaynī (d.478/1085) maintains that command, in this case, is *mujmal* (ambiguous). Hence, an interpreter must hold from interpreting it (*tawaqquf*) and seek clarification in another text.[460]

Proponents of the opinion that a command is imperative, as in the case above, do not consider the prohibition that preceded the command to have any impact on the command. In this context, those who argue that an unqualified command is obligatory treat the occurrence of an unqualified command for something after it was prohibited to be mandatory, too. Likewise, those who consider an unqualified command a recommendation or permission maintain that it remains the same regardless of being preceded by a prohibition.[461] However, Ibn Qudāmah appears to deviate from this trend as he considers a command for something after its prohibition to imply permission for it instead of being mandatory.

On the other hand, those who argue that an unqualified command is obligatory also consider that when something has been prohibited and is then commanded, it becomes mandatory to follow the command.

The basis for deviating from *wujūb* to *ibāḥah* is substantiated by its proponents with conventional usages (*ʿurf al-istiʿmāl*) of the Lawgiver.[462] They argue that, per the conventions of the *sharīʿah*, when unqualified commands (*amr muṭlaq*) are employed in

[457] See al-Bukhārī, *Ṣaḥīḥ*, 5/2115 (Hadith No. 5249).

[458] Al-Sarakhsī, *Uṣūl*, 1/19.

[459] Abū Yaʿlā, *al-ʿUddah*, 1/256; al-Ghazālī, *al-Mustaṣfā*, 211; Ibn Qudāmah, *Rawḍah*, 1/500.

[460] Al-Juwaynī, *al-Burhān*, 1/88.

[461] Al-Sarakhsī, *Uṣūl*, 1/19; Ibn ʿAqīl, *al-Wāḍiḥ*, 2/524-525; al-Rāzī, *al-Maḥṣūl*, 2/96; Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 2/371, Imām al-Ḥaramayn al-Juwaynī reports this view of al-Bāqillānī see al-Juwaynī, *al-Burhān*, 1/87-88.

[462] Al-Ghazālī, *al-Mustaṣfā*, 211; Ibn Qudāmah, *Rawḍah*, 1/501.

the Qurʾān and Sunnah for acts that were previously prohibited, the commands indicate that the prohibited acts are now permissible.[463]

For example, Q.5:95 and 96 prohibit hunting by pilgrims in the state of *iḥrām* (the sacred state required for a pilgrim during Hajj or Umrah). However, pilgrims are commanded to hunt when they are out of the state of *iḥrām* in Q.5:2: 'When you come out of *iḥrām*, *fa iṣṭādū* (then hunt)'. Also, Q.62:9 forbids Muslims from trading when the call to the Friday prayer (*Jumuʿah*) is made. The subsequent text commands them to '…Disperse in the land and seek from the bounty of Allah' Q.62:10. According to Ibn Qudāmah, when commands are issued for acts that were previously prohibited, such as the examples mentioned above and many others, the rulings and implications of those commands signify permission rather than obligation. In other words, when a prohibition precedes a command, it signifies that the command is not obligatory but rather conveys permissibility to engage in the act.[464]

Overall, Ibn Qudāmah explains that when an act is prohibited, it is outrightly forbidden. But if it is subsequently commanded, it indicates that the prohibition was intended to imply a dislike for it. Likewise, he interprets a command following a prohibition as permission to engage in the previously prohibited act rather than viewing it as mandatory. This is exemplified in his interpretation of the rules regarding the proceeds from cupping. According to Ibn Qudāmah, the command to use the wages from cupping to feed enslaved people and provide fodder for water-carrying camels indicates permission to accept these proceeds. Similarly, he views the prohibition against taking these proceeds as a mere dislike for the act. Ibn Qudāmah argues that one reason to shift the prohibition of cupping wages from forbidden (*taḥrīm*) to disliked (*karāhah*) is the command to take payment for cupping.[465] Therefore, he changes the prohibition in the text from *taḥrīm* to *karāhah* based on the command that follows it. Likewise, the command following the prohibition results in a change from obligation (*wujūb*) to

[463] Ibid.

[464] Ibn Qudāmah, *Rawḍah*, 1/501.

[465] Ibn Qudāmah, *al-Mughnī*, 8/119-120.

permission (*ibāḥah*), even though the Prophet describes the earning of a cupper as evil.[466]

Despite Ibn Qudāmah's extensive explanation discussed above, a thorough investigation of the instances in which *ṣiyagh al-amr* appear after prohibitions indicates he deviates from this position at times. An example is the command for women to wash off their menstrual blood and pray when their cycle has ended: 'stop praying when your menses begins, and when it ends, wash the blood from yourself and pray'.[467] The command to 'pray' after each menstrual cycle does not reduce the obligation to pray to mere permission or a recommendation. It remains obligatory even though it was preceded by a prohibition to pray. However, the command in the following hadith: 'I used to forbid you to visit the graves, but now visit them',[468] is regarded as a recommendation (*nadb*) or *mustahabb* (desirable) even though it occurs after a prohibition.[469] These and similar examples inform the opinion that *ṣiyagh al-amr* may be employed after the prohibition of an act to imply other interpretations besides *ibāḥah* (permission). Accordingly, a group of Islamic legal theorists and exegetes have argued that the occurrence of command after a prohibition abrogates the prohibition, and the ruling for the act in question reverts to its original state (the initial ruling) before the prohibition. That is, when an obligatory act is prohibited for a reason and then commanded again, the command after the prohibition must be observed as repealing the prohibition. Consequently, the ruling of the act must be considered as it was before the prohibition. Notable scholars who share this opinion include Ibn Kathīr (d.774/1373) - the famous Qurʾān exegete -, Ibn Taymiyyah (d.728/1328) and the contemporary legal theorist Muḥammad al-Amīn al-Shanqīṭī (d.1393/1972).[470]

In contrast, the discussion takes a different direction when an act is prohibited after it was commanded. Most Islamic legal theorists argue that the apparent meaning of such prohibitions, *taḥrīm*, should be upheld. This implies that a prohibition retains its binding

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[466] '…The earning of a cupper is evil' See Abū Dāwūd, *Sunan*, 5/296 (Hadith No. 3421).

[467] Al-Bukhārī, *Ṣaḥīḥ*, 1/125 (Hadith No. 324).

[468] Ibn Ḥanbal, *Musnad*, 38/156 (Hadith No. 23052).

[469] Ibn Qudāmah shares this opinion in *al-Kāfī*, 1/376.

[470] Aḥmad ibn Taymiyyah, *al-Ikhnāʾiyyah* (Jeddah: Dār al-Kharrāz, 2000), 244; Ibn Kathīr, *Tafsir*, 2/12; al-Shanqīṭī, *Mudhakkirah*, 303.

nature regardless of a preceding command.[471] By this, Islamic legal theorists seem to treat prohibitions as having stronger legal implications than commands. Hence, when a command precedes a prohibition, the interpretation of the prohibition remains unaffected, whereas the interpretation of a command may be affected by a prohibition that comes before it.[472]

A few Islamic legal theorists hold a contrary opinion. The Ḥanbalī legal theorist and jurist Abū al-Khaṭṭāb al-Kalwadhānī (d.510/1116), for example, shares the view that the prohibition of an obligatory act implies a dislike (*karāhah*) for the act.[473] On the other hand, Ibn Qudāmah seems to maintain that the prohibition of an obligatory act implies permission to stop observing it as an obligation (*al-nahy baʿda al-ījāb muqtaḍin li ibāḥah al-tark*).[474] That is, just as the command to do an act that was previously prohibited implies permission to do it, the prohibition of an act that was previously obligatory also means permission to ignore the command.

For instance, during the era of the Prophet, it was initially obligatory to perform ablution after consuming mutton (*laḥm al-ghanam*) before praying, based on an earlier hadith: '*Tawaḍḍaʾū mimmā massat al-nār*' (Perform ablution after consuming food touched by fire).[475] However, a later directive by the Prophet, '*Lā tawaḍḍaʾū min luḥūm al-ghanam*' (Do not perform ablution after [eating] mutton), explicitly abrogated this command, rendering ablution no longer obligatory.[476] Ibn Qudāmah argues that the prohibition following the earlier command indicates permissibility (*ibāḥah*) to forego ablution after eating mutton.[477] However, when corroborative evidence necessitates a deviation from this principle, he employs it to substantiate his conclusions. For example, in the case of the prohibition against making a will for one's heir,[478] which

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[471] Al-Isnawī, *Nihāyah*, 171.

[472] Abū Yaʿlā, *al-ʿUddah*, 1/262; Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 2/373; al-Namlah, *al-Muhadhdhab*, 3/1437.

[473] Abū al-Khaṭṭāb, *al-Tamhīd*, 1/183.

[474] Ibn Qudāmah, *Rawḍah*, 1/502.

[475] Muslim, *Ṣaḥīḥ*, 1/187 (Hadith No. 352).

[476] Ibn Ḥanbal, *Musnad*, 31/442 (Hadith No. 19096); Abū Dāwūd, *Sunan*, 1/132 (Hadith No. 184); al-Tirmidhī, *Sunan*, 1/112 (Hadith No. 81).

[477] Ibn Qudāmah, *Rawḍah*, 1/502.

[478] Ibn Majah, *Sunan*, 4/18 (Hadith No. 2714).

followed the command in Q.2:180, Ibn Qudāmah treats the prohibition as *taḥrīm* (forbidding), contending that the earlier command was abrogated (*nusikhat*) by the subsequent prohibition.[479] This interpretation seems to align with the view that a prohibition (*nahy*) following a command (*amr*) indicates the abrogation of the earlier command.[480] However, Ibn Qudāmah does not apply this principle universally, as its application depends on the specific context and supporting evidence, indicating his flexibility by following compelling evidence.

5.1.2.3 Command in Response to Permission Sought (*Istiʾdhān*) or a Question Asked (*Suʾāl*)

There is a debate on the implication of a command in response to a permission sought (*istiʾdhān*) or a question (*suʾāl*) by the Lawgiver akin to the one on the occurrence of command after a prohibition.[481] Islamic legal theorists regard both cases as having the same implication. For example, it is reported that a man sought permission to enter unto the Prophet, and the Prophet responded: 'Come in'.[482] Does the statement 'come in' in such an instance imply just permission granted, or does it become obligatory for the man to enter because the response was in the form of a command? Similarly, a woman enquired from the Prophet if she could fast on behalf of her deceased mother to settle her mother's outstanding fast. In response, the Prophet said: 'Observe the fast on behalf of your mother'.[483] As noted, the response was also in the form of command. The interpretations of such responses have been debated among Muslim jurists and Islamic legal theorists.

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[479] Based on another Qurʾānic text and the Sunnah. See ʿAbdullāh ibn Aḥmad ibn Qudāmah al-Maqdisī, *ʿUmdah al-Ḥāzim fī al-Zawāʾid ʿalā Mukhtaṣar Abī al-Qāsim* (Qatar: Wizārah al-Awqāf wa al-Shuʾūn al-Islāmiyyah, 2007), 695; Ibn Qudāmah, *al-Mughnī*, 8/394-395.

[480] Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 2/373.

[481] Al-Isnawī, *Nihāyah*, 171; ʿAlāʾu al-Dīn ibn Muḥammad ibn al-Laḥḥām, *al-Qawāʿid wa al-Fawāʾid al-Uṣūliyyah* (Beirut: al-Maktabah al-ʿAsriyyah, 1999), 233.

[482] Muḥammad ibn Ismāʿīl al-Bukhārī, *al-Adab al-Mufrad* (Cairo: al-Maṭbaʿah al-Salafiyyah, 1379), 372 (Hadith No. 1084); Muḥammad Nāṣir al-Dīn al-Albānī, *Silsilah al-Aḥādīth al-Ṣaḥīḥah* (Riyadh: al-Maktabah al-Maʿārif, 1995), 6/477.

[483] Muslim, *Ṣaḥīḥ*, 3/156 (Hadith No. 1148).

Advocates of the position that a word form of a command, when preceded by a prohibition, conveys an obligation (*wujūb*) also maintain that employing a word form of a command in response to a request for permission (*istiʾdhān*) or a question also implies an obligation. Likewise, those who interpret a command preceded by a prohibition as permission (*ibāḥah*) to indulge in a previously prohibited action also interpret a command given in response to a request or question as permission.[484] Abū Yaʿlā, for example, asserts that the latter opinion is agreed upon among the Ḥanbalī jurists. That is, a response in the form of a command implies permission (*ibāḥah*).[485]

Considering Abū Yaʿlā's assertion, it would be assumed that Ibn Qudāmah's position is that the implication of a command in response to a question or permission sought implies *ibāḥah*. However, this is not clearly expressed in his legal theory. Conversely, his application of texts with *ṣīghah al-amr* in response to a question suggests otherwise, as Ibn Qudāmah appears to examine such responses differently.

In a scenario where an individual pledges to fast but is unable to fulfil their commitment before passing away, Ibn Qudāmah reveals the commonly held Ḥanbalī viewpoint that it is acceptable (*yajūz*) for the individual's heirs to honour the vow on their behalf.[486] This position aligns with the general application of the principle a command in response to a question implies *ibāḥah* as the basis of this position is the command of the Prophet in response to a question.[487] However, Ibn Qudāmah's line of thought differs from the abovementioned principle.

Ibn Qudāmah argues that the Prophet's command on the case in question (above) is considered a recommendation (*nadb*) or an indication of a desirable act (*mustaḥabb*) due to the *qarāʾin* in the report, which includes the nature of the question.[488] He points out

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[484] Al-Isnawī, *Nihāyah*, 171.

[485] As reported by Ibn al-Laḥḥām, *al-Qawāʿid*, 233.

[486] Ibn Qudāmah, *al-Mughnī*, 13/655.

[487] This is a report by Ibn ʿAbbās that a woman came to the Messenger of Allah (PBUH) and said: Messenger of Allah, my mother has died, and there is due from her a fast of vow; should I fast on - her behalf? Thereupon, he - the Prophet - said: You see that if your mother had died in debt, would it not have been paid on her behalf? She said: Yes, He (the Holy Prophet) said: Then observe fast on behalf of your mother, Muslim, *Ṣaḥīḥ*, 3/156 (Hadith No. 1148).

[488] Ibn Qudāmah, *al-Mughnī*, 13/656.

that the implication of the Prophet's response differs depending on the nature of the question (*wa jawābuhū yakhtalif bi ikhtilāf muqtaḍā suʾālih*).[489] Thus, the import of command in response to a question depends on what it was intended for. If it was meant to ascertain the permissibility of an act, then the command in the response is held as permission (*ibāḥah*). Likewise, if the question is about acceptability (*ijzāʾ*), such as 'Can we pray in the sheepfold? And the Prophet responded: 'Pray in the sheepfold', which indicates that it is acceptable to pray in the sheepfold. And if the question was about an obligation such as: 'Should I perform ablution after eating camel meat?' The response: 'Perform ablution after eating camel meat' then it is obligatory.[490] This example is well understood in the context of the full report as the questioner begins by enquiring about ablution after eating mutton, and the Prophet replied: 'You may perform ablution if you want', but the Prophet was emphatic when asked about camel meat.[491] Ibn Qudāmah's line of thought that the occurrence of a command in response to a question must be interpreted depending on the nature of the question explains why such commands have been interpreted differently on different occasions.[492]

Since both command (*amr*) and prohibition (*nahy*) are considered parallel by Islamic legal theorists, it can be deduced from the discussion above that if the response from the Prophet to a question or permission sought (*istiʾdhān*) is in the form of *ṣīghah al-nahy*, it must have a similar treatment. That is, the interpretation or implication of such a response must depend on the motive behind the question or the request. Most Islamic legal theorists overlook this aspect of the discussion relating to *ṣīghah al-nahy*. Perhaps this is because it is expected to be inferred from their positions regarding similar discussions on *amr*.[493]

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[489] Ibid.

[490] Ibn Qudāmah, *al-Mughnī*, 13/656.

[491] See the complete text in Muslim, *Ṣaḥīḥ*, 1/189 (Hadith No. 360).

[492] See Ibn al-Laḥḥām, *al-Qawāʿid*, 233; Ibn Najjār, *Sharḥ al-Kawkab*, 3/62. This position also aligns with al-Qarāfī's hermeneutical principle, which recognises a significant part of understanding words based on the reality that gave rise to the specific words before classifying them to be imperative or otherwise. See Hallaq, *A History*, 150.

[493] See Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/168; Ibn Qudāmah, *Rawḍah*, 1/540.

The Shāfiʿī legal theorist and jurist Walī al-Dīn al-ʿIrāqī (d.826/1422) expounds that the implication of a prohibition after a permission is sought or a question is asked depends on the import of the question or the permission regarding obligations, recommendations, or permissions.[494] It appears that this distinction aligns with the perspective of Ibn Qudāmah, who advocated for evaluating a response to a question or permission sought to determine the appropriate legal ruling based on the bearing of the question or permission.

5.1.2.4 Clarifying the Meaning of Command and Prohibition Through Textual Proofs

The availability of another valid proof that clarifies that a particular command is not obligatory is also employed to deviate the implication of a command from its apparent meaning. A valid proof may be in the form of *ijmāʿ*, an act (*fiʿl*) of the Prophet or his tacit approval (*iqrār* or *taqrīr*) or a sound analogy (*qiyās*) as an indication that the command is not obligatory.[495]

For instance, the command in the text: '*Awtirū yā ahl al-Qurʾān* (Observe the *witr* prayer, people of the Qurʾān)'[496] is regarded by the Ḥanafī school as obligatory.[497] However, other jurists and legal theorists from the mainstream Sunni legal schools regard the *witr* prayer as recommended (*mandūb*).[498] The basis for deviating from the command in the above hadith by the majority of the Mainstream Muslim jurists and legal theorists is the availability of another hadith, which indicates the interpretation of the command in the hadith mentioned above as non-obligatory. This is in the form of a narration from the Prophet that the obligatory prayers are 'five compulsory prayers in a day and a night'.[499] When enquired whether there were any additional obligational

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[494] Walī al-Dīn al-ʿIrāqī, *al-Ghayth al-Hāmiʿ Sharḥ Jamʿ al-Jawāmiʿ* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2004), 246.

[495] Khālid ibn Shujāʿ ʿUtaybī, *Ḍawābiṭ Ṣarf al-Amr wa al-Nahy ʿan al-Wujūb wa al-Taḥrīm wa Atharuh fī al-Aḥkām al-Sharʿiyyah* (Islamic University of Madinah, 1426 AH), 94-160.

[496] Ibn Hanbal, *Musnad* (Hadith No. 877), 2/223.

[497] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2/87; al-Kāsānī, *Badāʾiʿ*, 1/271.

[498] Ibn Qudāmah, *al-Mughnī*, 1/591 and 2/7; Abū Zakariyyā Muḥyī al-Dīn ibn Sharaf al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab* (Cairo: Idārah al-Ṭibāʿah al-Munīriyyah, 1344-1347), 4/19.

[499] Al-Bukhārī, *Ṣaḥīḥ*, 1/25 (Hadith No. 46); Muslim, *Ṣaḥīḥ*, 1/31 (Hadith No. 11).

prayers, the Messenger of Allah replied, 'No unless you like to offer optional prayers (*illā an taṭṭawwaʾ*)'.[500] To interpret the command to observe the *witr* prayer as obligatory contradicts the latter hadith, which emphasises that any additional prayer to the five daily prayers is optional. Thus, according to most Muslim jurists, *witr* prayer is recommended but not obligatory.[501]

The practices and tacit approvals of the Prophet may also be employed to determine the implication of a command.[502] This can be illustrated by instances where the Prophet himself is reported to have engaged in trade transactions without calling for witnesses. These instances explain the command to have witnesses when trading with one another: '…Have witnesses present whenever you trade with one another…' Q.2:282 is not imperative. If it were, the Messenger of Allah would not ignore it in any situation, and he would have ordered his companions to do so.[503] This example illustrates the use of *ijmāʿ*, the acts of the Prophet, and his tacit approval as *qarāʾin* to deviate from the apparent meaning of *ṣīghah al-amr*.

Sound analogy (*qiyās*) has also been employed by Muslim jurists, including Ibn Qudāmah, as an indication that a command is not imperative. For instance, the Qurʾānic text regarding divorce: '…And call to witness two just men from among you and establish the testimony for the sake of Allah.' Q.65:2. This is considered by some scholars as obligatory, as said of al-Shāfiʿī (d.204/820) and Aḥmad ibn Ḥanbal (d.241/855) because of one of their opinions regarding witnessing a divorce or keeping one's wife before they end their waiting period. However, most Muslim jurists hold that it is not obligatory to have witnesses, comparing this case to the validity of marriage without witnesses.[504] Another example is the command to make a will in Q.2:180, which Ibn Qudāmah considers to be non-obligatory. His argument includes a *qiyās* that: 'A

[500] Ibid.

[501] Ibn Qudāmah, *al-Mughnī*, 1/591 and 2/7; al-Nawawī, *al-Majmūʿ*, 4/19.

[502] ʿUtaybī, *Ḍawābiṭ*, 118-134.

[503] Ibn Qudāmah, *al-Mughnī*, 6/381-383.

[504] Ibid, 10/559.

'will' is a type of gift, and since it is not obligatory during one's lifetime, it should not be compulsory posthumously, like any other gift given during one's lifetime.'[505]

With regard to deviating a prohibition (*nahy*) from its apparent meaning (i.e., *taḥrīm* or outright forbidden), based on another proof (*dalīl*), the prohibition from making a vow can be employed for an illustration. The hadith: 'Do not take or make vows…'[506] indicates a prohibition from making vows. However, Ibn Qudāmah explains the prohibition here as *karāhah,* meaning it is disliked for Muslims to make vows but not outrightly forbidden.[507] The deviation is necessary due to the appraisal of the inmates of *Jannah* (Heaven) as 'Those who fulfil the vows - they make -' Q.76:7 being one of their outstanding qualities. Ibn Qudāmah argues that fulfilling an outrightly forbidden act (*ḥarām*) is not praiseworthy. Thus, if the text implies vows are forbidden, the inhabitants of Paradise would not be commended for fulfilling their vows.[508] Likewise, the prohibition in the text: 'The prayer should not be offered in the presence of meals [when the meal has been served]'[509] is regarded by Muslim jurists as *karāhah* based on the *ijmāʿ* that if a person ignores the food and goes on to pray, their prayer is valid regardless of the prohibition from observing the Salat when the meal is served.[510] Also, the Prophet's disapproval of the burial of humans at night is regarded as a dislike (*karāhah* or *makrūh*) based on other reports indicating that he (the Prophet) did bury someone at night and based on his tacit approval of some of his companions who were buried at night.[511]

Furthermore, regarding the prohibition on the wages for cupping discussed above, Ibn Qudāmah employs other proofs to argue that the prohibition in the text does not imply *taḥrīm* (forbidden). The evidence he employed includes the act of the Prophet himself

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[505] Ibid, 8/391.

[506] Muslim, *Ṣaḥīḥ*, 5/77 (Hadith No. 1640).

[507] Ibn Qudāmah, *al-Mughnī*, 13/621.

[508] Ibid.

[509] Muslim, *Ṣaḥīḥ*, 2/78 (Hadith No. 560).

[510] Abū ʿUmar Yusuf ibn ʿAbdullāh ibn Muḥammad ibn ʿAbd al-Barr, *al-Istidhkār* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000), 2/297; Ibn Qudāmah, *al-Mughnī*, 2/376.

[511] See Muslim, *Ṣaḥīḥ*, 3/50 (Hadith No. 943); Ibn Qudāmah, *al-Mughnī*, 3/503-504; Muḥammad ibn Yazīd ibn Mājah al-Qazwīnī, *Sunan Ibn Mājah* (Dār Risālah al-ʿĀlamiyyah, 2009), 2/481 (Hadith No. 1521).

and *qiyās*. Ibn Qudāmah contended that the Prophet employed someone for cupping and paid for it. He would not have done so if it were forbidden.[512] Besides, cupping is an acceptable service. Thus, it must be acceptable to employ someone to do it, as in other forms of trade and services such as building and sewing. Besides, it is a service that people look for. It must be acceptable to hire someone for it, like breastfeeding, since those offering it may not necessarily be relatives of those who need the service, and not everyone will be willing to offer it for free.[513]

From the discussion above, it appears that Ibn Qudāmah, like most Islamic legal theorists, agree that command (*amr*) and Prohibition (*nahy*) may have multiple implications indicated by relevant *qarāʾin* either in the context of an injunction or by an external proof. However, in the absence of *qarāʾin* to indicate a particular meaning, he holds that the apparent meaning (i.e., *wujūb* and *taḥrīm*) of *amr* and *nahy* must be given precedence. Likewise, he maintains that commands and prohibitions require prompt responses except when there are indications to prove otherwise.

5.2 Discussion

This section discusses the difference between Ibn Qudāmah's interpretive approach and literalist approach, with a specific focus on the Ẓāhirī school's perspective. It further explores the possibility of broadening the scope of the *qarāʾin* (indicators) employed by Ibn Qudāmah to include factors such as socio-historic contexts, the wisdom (*ḥikmah*) behind Islamic legal and ethical rulings and human welfare (*maṣlaḥah*) among others as means for necessary reforms in Islamic law and ethics from Ibn Qudāmah's perspective.

5.2.1 Literal and Contextual Approaches to Interpreting Commands and Prohibitions

Ibn Qudāmah's approach represents one of the two approaches toward the interpretations of *amr* and *nahy* in Islamic legal theory. These two approaches are the more literalist

[512] Ibn Qudāmah, *al-Mughnī*, 8/118-120.

[513] Ibid, 8/119.

approach and what could arguably be described as the contextualist or the textualist approach[514] held by most classical Islamic legal theorists, including Ibn Qudāmah.

The literalists' approach advocated by the Ẓāhirī School maintains that the commands and prohibitions in the legal texts of the Qurʾān and Sunnah are imperative and must be interpreted as mandatory (*wujūb*) and forbidden (*taḥrīm*), respectively. The Ẓāhirī's also insist that commands and prohibitions require prompt responses from the *mukallaf* (the one subjected to the law) regarding what has been commanded or prohibited unless there is valid proof that indicates otherwise.[515] What constitutes valid proof to warrant a deviation from the apparent reading of a command or prohibition is the apparent reading of another text from the Qurʾān or Sunnah or *ijmāʿ* that indicates that a particular command or prohibition is not imperative.[516]

Ibn Ḥazm (d.456/1064), the renowned Ẓāhirī legal theorist and jurist, expounds that when a word form of a command (*ṣīghah al-amr*) is followed by an exception (*istithnāʾ*) indicating a choice for the *mukallaf*, it implies the command is not obligatory, it means a recommendation (*nadb*) in such instances.[517] Similarly, when an exception to a prohibition is made, it implies permission (*ibāḥah*) limited to the specific conditions of that exception.[518] Any attempt to deviate from the apparent meaning of *amr* and *nahy* without these indicators, according to Ibn Ḥazm, is unacceptable and tantamount to blasphemy.[519]

The Ẓāhirīs distinguish each legal ruling with specific word forms, making their approach straightforward. *Ifʿal* (do) and *ʿalaykum* (it is required of you) are word forms for imperative commands (*awāmir wājibah*). *Nadb* is identified by the word form *lakum*

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[514] Halim Calis has argued that the theoretical origin of contextualism can be traced back to classical Islamic scholarship. See Halim Calis, "The Theoretical Foundations of Contextual Interpretation of the Qur'an in Islamic Theological Schools and Philosophical Sufism," *Religions* 13, no. 2 (2022): 188, https://doi.org/10.3390/rel13020188, 1. See also Gleave, *Islam*, 181; Saeed, *Interpreting*, 3; ʿAlī, Medieval, 89, 237.

[515] ʿAlī ibn Aḥmad ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām* (Beirut: Dār al-Āfāq al-Jadīdah, n.d.), 3/2.

[516] Ibid, 3/36.

[517] Ibid, 3/38.

[518] Ibn Ḥazm, *al-Muḥallā*, 1/175.

[519] Ibn Ḥazm, *al-Iḥkām*, 3/39-44.

(which literally means for you or you have). In addition, when a command is denoted as an act of charity (*ṣadaqah*) or when expressions are used to commend an action or the individual carrying out the action, it implies the act is recommended (*mandūb*). On the other hand, permissions (*ibāḥah*) can be identified by specific word forms like *lā junāḥ* (no blame upon you) or *lā ḥaraj* (there is nothing wrong with…), as well as expressions that convey similar implications. [520] Like the contextualists such as Ibn Qudāmah, the Ẓāhirīs also consider the word form of prohibition *lā tafʿal* (do not do) to imply an outright forbidden (*taḥrīm*).[521]

The Ẓāhirī school does not seem to provide direct references, word forms, or expressions that indicate *karāhah* (legal ruling that denotes the dislike for an act) even though the Ẓāhirīs recognise *karāhah* as one of the five legal rulings.[522] However, it can be inferred from Ibn Ḥazm's stance that *karāhah*, as a legal ruling, implies that abstaining from the specified act is deemed better than performing it. Hence, expressions that recommend abstinence from some acts may imply *karāhah*. Likewise, when a prohibition is repealed with the expression *lā junāḥ*, it implies *karāhah*, too, according to him.[523]

By distinguishing each legal ruling with specific word forms and expressions, the literalist approach seems straightforward and simple to apply. However, this approach appears to neglect deviations from the literal interpretations of commands and prohibitions that are based on non-textual proofs such as *qiyās* and deductions. The Ẓāhirīs, thus, advocate literal interpretations of the primary sources of Islamic law and ethics by following precise linguistic and legal principles. Many rulings built on specific effective causes may be generalised through this approach even when the effective cause is no longer relevant.

Moreover, the Ẓāhirīs tend to limit commands and prohibitions to the texts of the Qurʾān and Sunnah by disregarding non-textual evidence, known as *qarāʾin khārijiyyah* (external indicators). This can result in discrepancies between the literal interpretation held by the Ẓāhirīs and the contextual interpretation supported by legal theorists like Ibn

[520] Ibn Ḥazm, *al-Iḥkām*, 3/32-38.

[521] Ibid, 3/33.

[522] See supra note 382.

[523] Ibn Ḥazm, *al-Iḥkām*, 4/81.

Qudāmah. For instance, based on the literalist approach, the Ẓāhirīs consider a banquet for a newly married couple (*walīmah*) to be obligatory on the male.[524] They also maintain that it is obligatory for a person to eat what is directly in front of them when eating from a plate or a bowl. When eating from the same bowl, a person is forbidden from eating from the centre of a meal or what is in front of another person.[525] These rulings are based on direct commands and prohibitions from the Qurʾān and the Sunnah, according to jurists from the Ẓāhirī school.[526] Legal rulings must be based on direct injunctions from the Qurʾān. Thus, to the Ẓāhirīs, not to comply with these orders is sinful. On the other hand, most mainstream Sunni jurists have diverted the implications of the commands and prohibitions in the relevant injunctions of the ruling above from imperative to recommendations (*nadb*) or desirable (*istiḥbāb*), or permissions (*ibāḥah*) and disliked (*karāhah*) based on other forms of *qarāʾin*.[527]

5.2.2 Interpreting Commands and Prohibitions Through Other Non-Textual Indicators (*Qarāʾin*)

Several Islamic scholars, including Abdulah Saeed, have recently questioned the applicability of some legal and ethical rulings in the Qurʾān and sunnah.[528] These scholars advocate for a reinterpretation of the primary sources of Islamic law and ethics to better align with the current social needs of Muslims. To reinterpret the texts of the Qurʾān and Sunnah to suit the needs of Muslims today, there is the need to consider factors such as changes in socio-historic contexts, the wisdom (*ḥikmah*) behind Islamic legal and ethical rulings and human welfare (*maṣlaḥah*) as means for necessary reforms in Islamic law and ethics.

As noted earlier, Ibn Qudāmah's interpretive approach considers reasonable deviations from the apparent interpretations of commands and prohibitions that are supported by

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[524] Ibn Ḥazm, *al-Muḥallā*, 9/20.

[525] Ibid, 6/101.

[526] Ibn Ḥazm, *al-Muḥallā*, 6/20 and 101-102.

[527] See Ibn Qudāmah, *al-Mughnī*, 10/121; and 10/192; Wizārah al-Awqāf wa al-Shuʾūn al-Islāmiyyah, *al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah* (Kuwait: Ministry of Endowment, and Islamic Affairs, 1404-1427 AH), 43/142.

[528] Saeed, Some Reflections.

principles of Arabic linguistics, conventional usages (*ʿurf al-istiʿmāl*) and relevant valid legal proofs (*adillah sharʿiyyah*) that may serve as *qarāʾin* or indicators of alternative interpretations from the apparent interpretations of the commands and prohibitions in the Qurʾān and Sunnah. This section examines the flexibility of interpreting commands and prohibitions in different socio-historical contexts from Ibn Qudāmah's perspective.

Regarding the use of *qarāʾin* to deviate from the apparent interpretations of commands and prohibitions in the Qurʾān and Sunnah, an examination of the works of Ibn Qudāmah indicates the use of both textual and non-textual *qarāʾin* in his interpretive approach. However, like most Islamic legal theorists, Ibn Qudāmah distinguishes between textual and non-textual indicators. For instance, the effective cause of a command or prohibition serves as an essential factor in identifying the relevance of the command or prohibition in different contexts. Nonetheless, the effective cause of a ruling directly supplied by a text seems to be given preference by Ibn Qudāmah over an effective cause deduced through reasoning or other forms of non-textual proof.[529] This is primarily because there appears to be a degree of certainty with effective causes that are stated in the text of the Qurʾān and Sunnah as the reasons behind particular legal rulings, unlike effective causes that are deduced through reasoning or non-textual transmissions that are mostly disputed among Muslim jurists and legal theorists.[530]

5.2.2.1 Deviations from the Apparent Interpretations of Commands and Prohibitions Based on the Effective Cause (*ʿIllah*) of an Injunction

The popular legal maxim: A ruling is always consistent with its cause (*al-ḥukm yadūru maʿa ʿillatihī wujūdan wa ʿadaman*).[531] In other words, once the effective cause or the *ʿillah* of a specific ruling is noted, the two (the ruling and the *ʿillah*) are inseparable. The ruling is not applicable without the *ʿillah*. Hence, since the pre-classical era, most Islamic legal theorists have employed the effective cause of a ruling to make deductions in applying Islamic law and ethics, particularly in *qiyās*. Except for the Ẓāhirīs, Islamic

[529] Ibn Qudāmah, *Rawḍah*, 1/244.

[530] Ibid, 2/932; Niʿamah ʿAbd al-Naʿīm ʿAbd al-Raḥīm, "Al-ʿIllah ʿinda al-Uṣūliyyīn wa Ahamm al-Mabāḥith al-Mutaʿalliqah bihā," *Majallah Kulliyah al-Dirāsāt al-Islāmiyyah Banīn in Aswān* (December 2021): 2221-2456, https://doi.org/10.21608/fisb.2021.211380.

[531] Al-Sarakhsī, *Uṣūl*, 2/182; al-Samʿānī, *Qawāṭiʿ*, 2/153; Ibn Qudāmah, *al-Mughnī*, 4/404.

legal theorists and jurists generally agree on *ʿillah* as a reason for legal deviations or changes in legal rulings when their effective causes are no longer relevant. The following passages will discuss how social context (*ʿurf*), the wisdom behind a legal ruling (*ḥikmah*), and human welfare (*maṣlaḥah*) as the effective causes of legal rulings in Islam may be employed to reform specific legal and ethical rulings in Islam to conform to the current needs of Muslims.

5.2.2.1.1 *Ḥikmah* (Wisdom or Logic) as the Basis for Reviewing Legal and Ethical Rulings

A significant concern in applying Islamic law and ethics today is employing the wisdom (*ḥikmah*) behind a legal ruling as the effective cause for legal deductions and analogy. In Islamic jurisprudence, legal deductions and analogy are essential tools for deriving legal rulings in areas without explicit guidance from the Qurʾān or Sunnah. These tools involve identifying an effective cause (*ʿillah*) shared by a known legal ruling and a novel case and then applying that ruling to the new case. Islamic legal theorists have debated whether the wisdom (*ḥikmah*) behind a legal ruling can be used as the effective cause (*ʿillah*) instead of the original *ʿillah* when making legal deductions and analogies.[532] Islamic legal theorists define the *ḥikmah* of a legal ruling as the basis for making an attribute (*waṣf*) the effective cause of a legal ruling. In other words, it is the purpose of legislating a particular legal ruling (*al-bāʿith ʿalā sharʿ al-ḥukm*): the attainment of benefit or human welfare (*maṣlaḥah*) and the avoidance of harm (*mafsadah*).[533]

Abū Ḥāmid al-Ghazālī (d.505/1111) and Fakhr al-Dīn al-Rāzī (d.606/1209 or 1210) have argued that the wisdom or *ḥikmah* for a particular legal ruling is as valid as the *ʿillah* for legal deductions and analogy.[534] According to their argument, the effective cause of a ruling serves as a means to the ultimate goal of the ruling, which is to establish the intended *ḥikmah*. Hence, if it is acceptable to draw analogies from the effective cause

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[532] Al-Āmidī, *al-Iḥkām*, 3/202; ʿAbd al-Raḥīm, *al-ʿIllah*, 2352.

[533] Abū Ḥāmid al-Ghazālī, *Shifāʾ al-Ghalīl fī Bayān al-Shubah wa al-Mukhayyal wa Masālik al-Taʾlīl* (Baghdad: Maṭbaʿah al-Irshād, 1971), 615; ʿAbdullāh ibn Ibrāhīm al-Shanqīṭī, *Nashr al-Bunūd ʿalā Marāqī al-Suʿūd* (Morocco: Maṭbaʿah al-Faḍālah, n.d.), 2/133; Muḥammad al-Amīn al-Shanqīṭī, *Ādāb al-Bahth wa al-Munāẓarah*, Dār ʿĀlam al-Fawāʾid, n.d.), 303.

[534] Al-Ghazālī, *Shifāʾ*, 613; al-Rāzī, *al-Maḥṣūl*, 5/287.

(*ʿillah*) of a ruling, then drawing analogies from the *ḥikmah* - which is the very purpose of the ruling - should be even more acceptable.[535]

In contrast, most Islamic legal theorists contend that relying exclusively on the *ḥikmah* of a legal ruling for legal analogy is unacceptable.[536] Among the reasons given for rejecting *ḥikmah* as the basis for legal analogy is that the *ḥikmah* for most legal rulings is not standard (*ghayr munḍabiṭ*), which makes it difficult to assess for legal analogy. For instance, alleviating hardship (*mashaqqah*) is identified as the *ḥikmah* for allowing a traveller to reduce the number of units (*rakaʿah*) of some of the prescribed daily prayers and break their fasting during Ramadan.[537] However, what constitutes hardship varies from person to person and depends on the specific circumstances of their journey. As a result, the Lawgiver established a journey (*safar*) as the effective cause for the concession instead of the hardship involved in travelling. Therefore, considering legal analogies based on *ḥikmah* instead of the effective cause may deviate from the standards set by the Lawgiver and result in a more complex and unorganised framework.[538]

In addition, opponents of drawing legal analogies based on *ḥikmah* argue that applying *ḥikmah* is inconsistent in most legal rulings in Islam. For example, while travellers are granted a concession to ease their hardships, this concession is not always extended to non-travellers facing similar difficulties. Workers of physically demanding jobs, for instance, do not enjoy the same concession or *rukhaṣ* despite facing unbearable hardships compared to travellers.[539]

On the other hand, when it comes to capital punishment, applying the *ḥikmah* or wisdom for prescribing the death penalty seems reasonable in a case where a group conspires to kill someone. Punishing all those involved in the group appears to serve the purpose of preserving life, which is the *ḥikmah* for the death penalty. However, punishing only the

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[535] See al-Rāzī, *al-Maḥṣūl*, 5/292; al-Ṭūfī, *Sharḥ*, 3/445.

[536] Al-Āmidī, *al-Iḥkām*, 3/202.

[537] Al-Shanqīṭī, *Mudhakkirah*, 60, See also, Muḥammad ibn ʿAbdullāh Abū Bakr ibn al-ʿArabī, *al-Masālik fī Sharḥ Muwaṭṭaʾ Mālik* (Beirut: Dār al-Gharb al-Islāmī, 2007), 4/218; Ibn Qudāmah, *Rawḍah*, 2/760.

[538] Al-Āmidī, *al-Iḥkām*, 3/202.

[539] Ibid, 3/203; al-Namlah, *al-Muhadhdhab*, 5/2117.

person(s) who were physically involved in the act of killing in such a case based on the effective cause does not deter future occurrences. Hence, the famous remark by ʿUmar ibn al-Khaṭṭāb (d.23/644) in a similar case: 'If all the people of Ṣanʿāʾ (Sana, the capital of Yemen) were to be involved, I would have killed them [all in retribution] (*law ishtaraka fīhi ahl Ṣanʿāʾ la qataltuhum*'.[540] In consideration of the inconsistencies in applying *ḥikmah*, relying exclusively on it to make legal deductions or analogies can be challenging and problematic in many cases as it tends to be less consistent than *ʿillah* in Islamic legal rulings according to most Muslim jurists and legal theorists.[541]

It appears that Ibn Qudāmah supports utilising *ḥikmah* in legal deductions and analogies. For example, Ibn Qudāmah broadens the interpretation of anger in the hadith: 'A judge should not judge between two persons while he is in an angry mood'[542] based on the *ḥikmah* for the prohibition to encompass anything that may impede a judge from properly assessing a case brought before them, including hunger, sleeplessness, or intense grief and sadness.[543] However, in instances of *qiyās* where the *ḥikmah* for a legal ruling is present but the corresponding ruling is not applicable, Ibn Qudāmah maintains that because *ḥikmah* cannot be standardised based on reasoning (*raʾy*) and *ijtihād*, the effective cause can still be applied by considering the intent of the Lawgiver.[544]

Further, regarding imposing blood money on the relatives of a person who kills someone by accident (*diyah al- khaṭaʾ*), Ibn Qudāmah concedes that imposing blood money on the relatives does not conform to *ḥikmah* since they did not commit the crime. However, the payment of blood money is imposed on them to relieve the culprit for involving in murder by accident.[545] In addition, regarding how much each relative must contribute towards the payment of the blood money, some jurists are of the opinion that the judge must impose the blood money on some of the relatives for easy collection of the amount as it will be difficult to gather such an amount if each relative should be asked to pay a specific amount. Ibn Qudāmah dismisses this view on the basis that relying on the

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[540] Al-Bukhārī, *Ṣaḥīḥ*, 6/2527.

[541] Al-Āmidī, *al-Iḥkām*, 3/202.

[542] Ibn Mājah, *Sunan*, 3/413 (Hadith No. 2316).

[543] Ibn Qudāmah, *al-Mughnī*, 14/19.

[544] Ibn Qudāmah, *Rawḍah*, 2/850.

[545] Ibn Qudāmah, *al-Mughnī*, 12/44.

difficulty in collecting the amount is holding unto *ḥikmah* without any basis to support it (*taʿalluq bi al-ḥikmah min ghayr aṣl yashhadu lahā*).[546] Thus, relying on *ḥikmah* for legal deductions and analogies from Ibn Qudāmah's perspective seems to have some restrictions in certain situations, such as *ḥikmah* being applicable together with the effective cause or when it is supported by a valid proof that appears to be specific to the legal ruling under consideration.

Similarly, even though Najm al-Dīn al-Ṭūfī (d.716/1316) posits that drawing analogies from the wisdom of a legal ruling is permissible.[547] However, in cases where the *ʿillah* is not standard (*ghayr munḍabiṭ*), he also seems to apply *ḥikmah* with some restrictions.[548] For example, he identifies that applying intoxication as the effective cause for prohibiting alcohol is not standard (*ghayr munḍabiṭ*). This is because the quantity or volume of intoxicants that may cause a person to be drunk differs from one person to another.[549] Al-Ṭūfī acknowledges that proving the drawing of legal analogies from *ḥikmah* demands a comprehensive explanation to counter the opposing viewpoint. Despite this acknowledgement, he does not provide any counterargument or adequate evidence to support his position.[550]

An examination of the works of al-Ghazālī and Fakhr al-Dīn al-Rāzī indicates that they do not consider the application of *ḥikmah* for legal analogy in a general sense except when the *ḥikmah* is specific (*muʿayyan*) to the relevant ruling as noted by Ṭāḥa Jābir al-ʿAlwānī in his annotation of al-Maḥṣūl by Fakhr al-Dīn al-Rāzī.[551] For example, the hardship involved in travelling (*mashaqqah al-safar*) may be assumed as the specific *ḥikmah* for allowing Muslims the concession or *rukhsah* to reduce the units of the daily prayers (*qaṣr*) or breaking their fast during Ramadan (*ifṭār*) when they are on a journey instead of assuming hardship in an unqualified or general sense, as the *ḥikmah* for the concession. This seems reasonable since applying the concession of *qaṣr* solely on the

[546] Ibid, 12/46.

[547] See al-Ṭūfī, *Sharḥ*, 3/446.

[548] Ibid, 3/450.

[549] See al-Ṭūfī, *Sharḥ*, 3/446.

[550] Ibid, 3/445-446.

[551] Fakhr al-Dīn Muḥammad ibn ʿUmar al-Rāzī, *al-Maḥṣūl fī ʿilm Uṣūl al-Fiqh* (Beirut: Muʾassasah al-Risālah, 1992), 5/293.

grounds of hardship is generally deemed inappropriate. For example, despite their circumstance, even if a person is unwell or engaged in a physically demanding occupation, they are not permitted to decrease the number of units in their four-unit Salat.[552]

Al-Ghazālī emphasises that, in cases where the *ḥikmah* for a particular ruling is not consistent with the ruling, employing *ḥikmah* in that specific case may be rejected based on the inconsistency (*naqḍ*)[553] just as an attribute (*waṣf*) inconsistent with a ruling must not be assumed as the effective cause of a ruling for legal analogy.[554]

Al-Rāzī also expounds that it is invalid (*bāṭil*) to employ an unqualified *maṣlaḥah* as the *ḥikmah* for a particular ruling or as the reason for adopting an attribute (*waṣf*) to be the effective cause of that ruling. If this were the case, any other attribute that consists of *maṣlaḥah* could be employed as the effective cause of that ruling, which is unacceptable according to him.[555] Since it is invalid to apply *ḥikmah* that is not qualified, considering a specific *maṣlaḥah* (*maṣlaḥah muʿayyanah*) as the *ḥikmah* for which the effective cause was adopted becomes necessary.[556] This view seems to be aligned with the position taken by Ibn Qudāmah and Najm al-Dīn al-Ṭūfī against employing unqualified wisdom (*ḥikmah muṭlaqah*) without the effective cause for legal reasoning or analogy.[557]

Thus, al-Āmidī (d.631/1233) contends that *ḥikmah* may be employed for legal deductions or analogies if it is apparent and standard (*munḍabiṭ*) such that it is consistent with the relevant legal ruling in different circumstances. However, the *ḥikmah* drawn

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[552] See Ayman Ṣāliḥ, "*Al-ʿAwāmil al-Muʾaththirah fī Nawṭ al-Ḥukm bi al-Maẓinnah aw bi al-Ḥikmah*," *Majallah Kulliyah al-ʿUlūm al-Islāmiyyah - Baghdad* 70 (June 2022): 99-160, 117, https://doi.org/10.51930/jcois.2022.70.%25p

[553] *Naqḍ* is a term used in Islamic legal theory to reject the use of *qiyās* in certain cases. This occurs when an assumed effective cause or the reason for a legal ruling is inconsistent with the supposed legal ruling, so even if the effective cause is present, the ruling is not applicable, See Ibn Qudāmah, *Rawḍah*, 2/847.

[554] Al-Ghazālī, *Shifāʾ*, 615-616.

[555] Al-Rāzī, *al-Maḥṣūl*, 5/291.

[556] Ibid.

[557] Ibn Qudāmah, *Rawḍah*, 2/850; Ibn Qudāmah, *al-Mughnī*, 12/46; al-Ṭūfī, *Sharḥ*, 3/510-514.

from a legal ruling that is not constant with the ruling in all circumstances must not be assumed as the effective cause of a legal ruling based on the abovementioned reasons.[558]

Overall, using *ḥikmah* or wisdom in legal deductions and analogies may involve broader societal or ethical considerations not explicitly stated in the Qurʾān or Sunnah. However, employing *ḥikmah* for legal deviations regarding commands and prohibitions in the Qurʾān and Sunnah may be challenging and complex since it is not consistent in most legal cases involving *qiyās* and legal deductions. It will, therefore, be necessary to strengthen *ḥikmah* with other proofs, such as the effective cause or *ʿillah* of the case at hand or other textual evidence to establish a valid conclusion or deviation.

5.2.2.1.2 Human Welfare or *Maṣlaḥah* as the Basis for Reviewing Legal and Ethical Rulings

Maṣlaḥah refers to pursuing *manfaʿah* (that which is beneficial) and warding off *mafsadah* (what is harmful or evil). It is also referred to as *istiṣlāḥ* (considering something to be useful).[559]

In examining how *ḥikmah* is employed in Islamic legal theory, we discovered that Islamic legal theorists posit that the *ḥikmah* of a legal ruling is the goal for legislating laws. *Ḥikmah*, as noted, is pursuing the well-being of those subjected to the law (*mukallaf*) by promoting benefits and warding off evil. The Mālikī Legal theorist al-Shāṭibī (d.790/1388) establishes that the *aḥkām sharʿiyyah* are generally meant to serve the welfare of the *mukallaf*.[560] That is, securing what is in the best interest of humanity and safeguarding them against harm. Thus, legal theorists such as Muḥammad al-Ṭāhir ibn ʿĀshūr (d.1393/1973) have posited that 'Wherever there is *maṣlaḥah*, then there will be the legislation (*sharʿ*) of Allah'.[561] In other words, the existence of *maṣlaḥah* indicates the need for a law to secure it.

Against this backdrop, this section investigates how Muslim jurists have construed *maṣlaḥah* as a tool to interpret the commands and prohibitions in the primary sources of

[558] Al-Āmidī, *al-Iḥkām*, 3/202.

[559] Ibn Qudāmah, *Rawḍah*, 1/428-429.

[560] Al-Shāṭibī, *al-Muwāfaqāt*, 2/246.

[561] Ibn ʿĀshūr, *Maqāṣid*, 2/171-172.

Islamic law and ethics to be applied in different contexts. It must be noted that the concept of *maṣlaḥah* particularly *maṣlaḥah*-based *ijtihād*, is a vast topic and very much debated. As this broad spectrum is not the focus of this thesis, this section will emphasise only the aspects of the debate that are relevant to this chapter.

Generally, when a command or prohibition in the Qurʾān and Sunnah relates to worldly affairs and benefits, such as the command: 'And have witness when you trade' Q.2:282, it is regarded as *irshād* (guidance) but not imperative unless otherwise indicated.[562] Ibn al-Najjar al-Futūḥī (d.972/1564) expounds that *irshād* is distinguished from *nadb* (recommendation) in the sense that *irshād* is guidance in worldly affairs. On the other hand, *nadb* refers to legal recommendations linked to the benefits of the hereafter, such as: 'And help one another in righteousness and piety' Q.5:2.[563]

Najm al-Dīn al-Ṭūfī (d.716/1316) has argued that *maṣlaḥah* may specify (*yukhaṣṣiṣ*) or clarify (*yubayyin*) to the meaning of a text (*naṣṣ*) or a consensus (*ijmāʿ*).[564] If this position is taken for granted, it implies that *maṣlaḥah* may affect the implications of *ṣiyagh al-amr* and *al-nahy* to determine what is reasonable in sustaining the welfare of the *mukallaf* in different contexts. Even though al-Ṭūfī's view sounds reasonable, not all matters perceived as promoting the welfare of the *mukallaf* appear to be endorsed or considered valid by Islamic legal theorists for legal purposes. Moreover, al-Ṭūfī's concept of *maṣlaḥah* seems to lack a detailed definition and scope. Applying his theory of *maṣlaḥah* without clear boundaries becomes challenging across different legal circumstances. The deficiencies make it difficult to determine the specificity of his application or whether he implied *maṣlaḥah* in a general sense.[565]

Based on the primary sources of Islamic law, it can be inferred that some legal rulings were formulated by intentionally discounting what may be perceived to be beneficial in

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[562] Al-Āmidī, *al-Iḥkām*, 2/142; Ibn Najjār, *Sharḥ al-Kawkab*, 3/20, See also Ibn Qudāmah, *al-Mughnī*, 6/381-383

[563] Al-Āmidī, *al-Iḥkām*, 2/142; Ibn Najjār, *Sharḥ al-Kawkab*, 3/20, See also Ibn Qudāmah, *al-Mughnī*, 2/213.

[564] Najm al-Dīn Sulayman ibn ʿAbd al-Qawī al-Ṭūfī, *Risālah fī Riʿāyah al-Maṣlaḥah* (Cairo: Dār al-Miṣriyyah al-Lubnāniyyah, 1993), 25.

[565] Hallaq, *A History*, 152.

specific circumstances. For instance, alcohol (*khamr*) was prohibited even though the Lawgiver confirms that it has some benefits for humanity, as noted in Q.2:219. Similarly, the prohibition of *ribā* goes against the welfare and benefits lenders and sellers enjoy from profiting from such transactions (i.e., *ribā*). As a result, Islamic legal theorists have categorised *maṣlaḥah* in terms of legitimacy into three: those approved by the Lawgiver (*maṣlaḥah muʿtabarah*), those disregarded by the Lawgiver (*maṣlaḥah mulghāh* or *malghī*) and those without approval nor disapproval from the Lawgiver (*maṣlaḥah mursalah*).[566]

According to Ibn Qudāmah, *maṣāliḥ* (benefits or interests) approved by the Lawgiver are valid for legal deductions, while those explicitly disapproved are not. This is because employing a *maṣlaḥah* disapproved by Allah or the Prophet in legal reasoning contradicts and undermines the reasons for its disapproval. Moreover, validating such *maṣāliḥ* could lead to alterations in the legal system that disregard Allah's divine prescriptions.[567] This perspective is shared by many classical Muslim jurists, including Abū Ḥāmid al-Ghazālī (d.505/1111) and Muḥammad Amīn al-Shanqīṭī (d.1393/1972), from the Shāfiʿī and Mālikī schools.[568] Regarding *maṣlaḥah mursalah* (interests neither explicitly approved nor disapproved by the Lawgiver), Ibn Qudāmah also appears to reject its use in legal deductions, arguing that relying on such interests/welfare risks introducing human speculation into divine law, thereby undermining its integrity.[569]

However, Shihāb al-Dīn al-Qarāfī (d.684/1285) rebuts that even though some scholars openly reject *maṣlaḥah mursalah*, in practice, all the legal schools utilise it (*maṣlaḥah mursalah*) in one way or another in resolving many legal issues.[570] This observation raises questions about the kind of *maṣlaḥah mursalah* that all the legal schools appear to employ in their deductions.

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[566] Al-Ghazālī, *al-Mustaṣfā*, 173; Ibn Qudāmah, *Rawḍah*, 1/430; Muḥammad al-Amīn al-Shanqīṭī, *al-Maṣāliḥ al-Mursalah* (Islamic University of al-Madinah, 1410 AH), 15.

[567] Ibn Qudāmah, *Rawḍah*, 1/430.

[568] See Al-Ghazālī, *al-Mustaṣfā*, 173-174; al-Shanqīṭī, *al-Maṣāliḥ*, 15.

[569] Ibn Qudāmah, *Rawḍah*, 1/430-435.

[570] Al-Qarāfī, *Sharḥ*, 448.

Al-Ghazālī offers a classification of *maṣlaḥah* based on its level of necessity, dividing it into three categories: *darūriyyāt* (necessities/essentials) aimed at preventing *mafsadah* (harm), *ḥājiyyāt* (complimentary requirements) for pursuing what is good or beneficial and *taḥsīniyyāt* (embellishments) in promoting good manners (*makārim al-akhlāq*) and good practices.[571]

Al-Amīn al-Shanqīṭī adds that Islamic legal theorists identify an attribute (*waṣf*) that can effectively preserve any of these categories of *maṣlaḥah* as *waṣf munāsib* (a suitable attribute) for legal deductions and analogy.[572] When such attributes are supported by a specific proof (*dalīl khāṣṣ*), the attribute is termed *muʾaththir* (effective) or *mulāʾim* (appropriate). Conversely, attributes rejected by specific proofs are deemed *gharīb* (strange). When no proof endorses or disapproves of such an attribute, yet it is noted to be relevant to the ruling, it is classified as *maṣlaḥah mursalah*.[573] This distinction may help in clarifying the kind of *maṣlaḥah* referred to by the Mālikī legal school and al-Ṭūfī (d.716/1316) among the Ḥanbalī jurists who advocate for the use of *maṣlaḥah* for legal purposes.[574] Al-Qarāfī emphasises that when the jurists identify *munāsabah* (connection or the *waṣf munāsib*) for legal deductions without verifying the acceptance of the *munāsabah* with other proofs, they are, in effect, applying *maṣlaḥah mursalah* in practice.[575]

However, legal theorists like al-Ghazālī (d.505/1111) make a distinction between *maṣlaḥah* falling under the category of *darūriyyāt* versus those falling under *ḥājiyyāt* and *taḥsīniyyāt*. The latter two categories require a legal basis (*dalīl* or *aṣl*) before they can be employed for legal deductions and analogy. Al-Ghazālī contends that *darūriyyāt* must be preserved by the objectives of the *sharīʿah* as long as protecting that *maṣlaḥah* can be considered a universal necessity that safeguards a guaranteed outcome (*annahā ḍarūratun qaṭʿiyyatun kulliyyah*).[576]

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[571] Al-Ghazālī, *al-Mustaṣfā*, 174, See also, al-Shanqīṭī, *al-Maṣāliḥ*, 6.

[572] Al-Shanqīṭī, *al-Maṣāliḥ*, 6-7.

[573] Ibid, 9.

[574] Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 3/385.

[575] Al-Qarāfī, *Sharḥ*, 448.

[576] Al-Ghazālī, *al-Mustaṣfā*, 174.

Najm al-Dīn al-Ṭūfī (d.716/1316) sees the categorisation of *maṣāliḥ* as unnecessary. He contends that in every situation, it is enough to weigh the benefits (*manfaʿah*) and harms (*mafsadah*) in each case to determine an appropriate ruling based on an applicable *maṣlaḥah*.[577] This argument sounds controversial as al-Ṭūfī's position may be understood as a complete reliance on the outcome of an intended *maṣlaḥah* irrespective of whether the Lawgiver has considered it in a similar context or not. By this, *maṣlaḥah* will stand authoritative over the legal and ethical texts of the Qurʾān and Sunnah, as suggested by al-Ṭūfī elsewhere.[578]

Following this opinion raises some concerns regarding individuals who may use the concept of *maṣlaḥah* to justify actions that contradict explicit interpretations of the Qurʾān and Sunnah to fulfil personal desires. Unlike the application of *maṣlaḥah*, which may rely on presumptions, explicit interpretations of the Qurʾān and Sunnah provide a higher degree of certainty in legal analysis. Thus, if the idea of *maṣlaḥah* was regarded to be more authoritative than the texts of the Qurʾān and Sunnah, Ibn Qudāmah argues that there would not have been the need to send Prophets and Messengers with different revelations, as indicated in Q.5:48. That is to say there would be no need to rely on the primary sources of Islamic law and ethics for legal guidance or legislation. After all, Muslims can progressively rely on *maṣlaḥah* to determine what is relevant for them in any given circumstance.[579]

Ibn Qudāmah's view is supported by the broader epistemological principle that certainty takes precedence over presumption. Aron Zysow has discussed this in relation to solitary hadith in *The Economy of Certainty*. His analysis indicates that while many legal theorists, including the Ḥanafī scholar ʿAlāʾ al-Dīn al-Samarqandī (d.539/1144), prioritise certainty in working with solitary hadith in matters relating to belief, in legal matters, many of the legal theorists allow working with such reports, provided there is a reasonable assumption regarding the veracity of the reporter.[580] By inference, even

[577] Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 3/214-217.

[578] Al-Ṭūfī, *Risālah*, 25.

[579] See Ibn Qudāmah, *Rawḍah*, 1/431.

[580] Zysow, *The Economy of Certainty*, 22-29.

though presumptions are permissible in legal matters, priority must be given to certainty, such as explicit texts, over what is based on presumptions, including *maṣlaḥah*.

Muslim scholars, including advocates of *maṣlaḥah* and *maqāṣid sharīʿah* like Najm al-Dīn al-Ṭūfī himself and Muḥammad al-Ṭāhir al-ʿĀshūr (d.1393/1973), acknowledge Allah's inevitable role in guiding humanity to what is good and useful and guarding them from evil and objectionable practices.[581] Also, Abū Isḥāq al-Shāṭibī (d.790/1388) has established that *maṣāliḥ* or *maṣlaḥah* is considered in Islam when establishing it fulfils the interest of the *mukallaf* or those affected in the hereafter as well and not just for worldly benefit.[582] In other words, considering the individual's spiritual and worldly concerns, it becomes clear that the Lawgiver plays a crucial role in determining what is truly in their best interest. As such a perceived benefit, or *maṣlaḥah*, cannot take precedence over the primary sources of Islamic law and ethics.

Al-Ghazālī emphasises that employing *maṣlaḥah* for legal purposes is not about pursuing the objectives of humanity (*maqāṣid al-khalq*) but rather about preserving the objectives of the law (*maqṣūd al-sharʿ*).[583] In this context, Muḥammad al-Amīn al-Shanqīṭī (d.1393/1972) challenges the maxim: 'Wherever there is *maṣlaḥah*, then there will be the legislation (*sharʿ*) of Allah'.[584] He argues instead that the reverse is true: 'Wherever there is the legislation of Allah, then there is *maṣlaḥah* or benefit for humanity'.[585] This view underscores that divine legislation inherently embodies *maṣlaḥah* rather than human-perceived interests dictating divine law. Furthermore, to formulate laws based solely on personal or public interests without grounding them in divine guidance renders such laws susceptible to biases and conflicting self-interests. Consequently, it is crucial to critically evaluate what is perceived as *maṣlaḥah* in various contexts, ensuring its application aligns with the broader objectives of Islamic law and serves the greater good.

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[581] Ibn ʿĀshūr, *Maqāṣid*, 3/297-305, See also Najm al-Dīn Sulayman ibn ʿAbd al-Qawī al-Ṭūfī, *Darʾ al-Qawl al-Qabīḥ bi al-Taḥsīn wa al-Taqbīh* (Beirut: Dār al-ʿArabiyyah li al-Mawsūʿāt, 1426 AH).

[582] Al-Shāṭibī, *al-Muwāfaqāt*, See the introduction of Volume 1, p, 1 and 2/63.

[583] Al-Ghazālī, *al-Mustaṣfā*, 174.

[584] Ibn ʿĀshūr, *Maqāṣid*, 2/171-172.

[585] Al-Shanqīṭī, *al-Maṣāliḥ*, 4-5.

Muhammad al-Amīn al-Shanqīṭī argues that a critical examination of how the companions of the Prophet (the *ṣaḥābah*) treated *maṣlaḥah* reveals that, they did not consider a particular *maṣlaḥah* (i.e., *maṣlaḥah mursalah*) if the Lawgiver disapproved of it or if it would lead to a prevalent evil or harm (*mafsadah rājiḥah*). similarly, they avoided pursuing a *maṣlaḥah* if it would lead to evil or harm equal to the intended benefit (*mafsadah musāwiyah*).[586] Therefore, he emphasises that dealing with *maṣlaḥah* requires great caution to avoid pursuing *maṣlaḥah* that may have negative consequences. In other words, in determining legal rulings, one must not forfeit a preponderant benefit or sustain harm that is greater than or equal to the perceived *maṣlaḥah*.[587]

Considering a particular *maṣlaḥah* for a specific ruling must be considered before concluding that it is suitable for deductions in a different context for the same ruling as held by Ibn Qudāmah.[588] For *maṣlaḥah mursalah* that has neither been endorsed nor disapproved by the Lawgiver, this study indicates that there is the need to support such *maṣlaḥah* with other valid proofs, such as texts from the Qurʾān or Sunnah, *ijmāʿ* or *qiyās*. In this regard, Ibn Qudāmah employs *maṣlaḥah* to substantiate that it is reasonable to deviate the prohibition of cupping from *taḥrīm* (outright forbidden) to *karāhah* (a dislike), as noted earlier. This is because people need it (*li anna bi al-nās ḥājah ilayhā*) while supporting his position with other proofs.[589]

5.2.2.1.3 Social Context or *ʿUrf* and *ʿĀdah* as the Basis for Reviewing Legal and Ethical Rulings

Chapter eight of this thesis extensively examines the effect of *ʿurf* in Islamic legal discourse. For this chapter, it suffices to note that Ibn Qudāmah relies on prevailing social practices or norms to interpret the legal and ethical texts of the Qurʾān and Sunnah for two main reasons.

The first is to employ prevailing social practices and norms to define the meaning of a word used by the Lawgiver that has no juristic definition attached to it by the Lawgiver.

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[586] Ibid, 21.

[587] Ibid.

[588] Ibn Qudāmah, *Rawḍah*, 1/431 and 435.

[589] Ibn Qudāmah, *al-Mughnī*, 8/119.

Regarding such words, Ibn Qudāmah posits that definitions (*taḥdīdāt*) and estimations (*taqdīrāt*) of matters related to the sharīʿah are restricted to revelation or divine determination (*tawqīf*). He expounds that *tawqīfī* meanings may be referenced from the texts (*nuṣūṣ*) of the Qurʾān or the Sunnah or *ijmāʿ*. In the absence of any such provisions from the *nuṣūṣ* or *ijmāʿ*, Ibn Qudāmah contends that it becomes necessary to rely on *ʿurf* (social practices and usages) for definitions of such words and the estimations of unqualified legal rulings.[590] For example, one of the conditions for instituting the theft penalty is that an item must be stolen from safekeeping (*ḥirz*). However, the exact meaning of *ḥirz* is not defined by the Lawgiver. Thus, Ibn Qudāmah argues that since the Lawgiver has not defined what constitutes safekeeping in this regard, it must be considered by what is acceptable by norm as safekeeping for every item.[591]

The second reason is employing norms and practices to expound on rulings that the Lawgiver has left unqualified. Ibn Qudāmah holds that if there are social practices that expound on an unqualified ruling (*ḥukm muṭlaq*), it serves as the basis for applying it (*li anna al-muṭlaq idhā kāna lahū ʿurf, inṣarafa ilā al-ʿurf*).[592] Hence, the obligation of husbands to feed their wives is fulfilled according to what is acceptable by the norm of society. This is because the Qurʾān and Sunnah do not specify the kind of food and the quantity to be provided. Ibn Qudāmah maintains that it is acceptable for a couple to agree on the type of provision to be supplied. In dispute, however, the staple food is prescribed since it is the most acceptable by custom and norm.[593]

Therefore, legal rulings formed based on social practices or specific social contexts must be modified when the specific practices and norms are no longer relevant in a particular context. For instance, the Prophet ruled that 'It is the responsibility of the owners of gardens to guard their farms and produce by day and the owners of livestock are liable for what their animals destroy at night'.[594] This ruling follows the norms of the Prophet's

[590] Ibid, 3/45, See also 3/96.

[591] Ibn Qudāmah, *al-Mughnī*, 12/427.

[592] Ibid, 11/408.

[593] Ibid, 11/350-352.

[594] Ibn Anas, *al-Muwaṭṭaʾ*, 2/747 (Hadith No. 37).

era, as livestock were sent for grazing during the day and housed at night.[595] However, the command to keep one's livestock at night may not be relevant in a different context where livestock must be housed in secured places and checked from trespassing on others' properties at all times. Therefore, a farmer will be liable for any damages caused by their livestock if they fail to prevent their livestock from causing any damages or harm to others, even if this occurs during the day.

5.3 Conclusion

It has been demonstrated that the word forms of command and prohibitions in the Arabic language can be employed for several implications, which may result in different interpretations. However, the popular opinion among expert users of the Arabic language (*ahl al-lughah*), Muslim jurists (*fuqahāʾ*) and legal theorists (*uṣūlīs*), including Ibn Qudāmah is that the apparent interpretations of commands and prohibitions are imperative (i.e., *wujūb* and *taḥrīm* respectively). When there are no indications to specify the meaning of a command or prohibition, they are termed *amr muṭlaq* and *nahy muṭlaq,* respectively. The chapter reveals that most scholars of Arabic linguistics and Islamic legal theorists support the opinion that the default interpretation of *amr muṭlaq* is *wujūb* (an obligation). In contrast, *nahy muṭlaq* is *taḥrīm* (an outright forbidden). Both *amr muṭlaq* and *nahy muṭlaq* also require prompt responses according to the conventions of the Lawgiver, even though this is not implied linguistically.

Regarding deviations from the apparent meaning of *amr* and *nahy*, Ibn Qudāmah did not formally address deviations from the apparent meaning of *amr* and *nahy* in his legal theory, except for instances where a command is given for an act or object that had previously been prohibited. In such cases, he views the command as indicating permission (*ibāḥah*).

In addition, the study highlights additional reasons why Ibn Qudāmah may deviate from interpreting commands and prohibitions as compulsory to other legal rulings. These include contextual indicators (*qarāʾin*) and external indicators in other relevant texts, which suggested that certain commands or prohibitions were not mandatory. He also

[595] Al-Ḥasan Shuʿayb, *Shubuhāt al-Mustashriqīn al-Mutaʿalliqah bi al-Adillah al-Sharʿiyyah* (MPhil Thesis, Islamic University of al-Madinah, 2019), 536, https://rb.iu.edu.sa/Thesis/Details/36351.

relies on *ijmāʿ*, *qiyās*, the actions of the Prophet and his tacit approvals to support his interpretations. Furthermore, the chapter reveals that Ibn Qudāmah considered the purpose behind a question (*suʾāl*) or a request for permission (*istiʾdhān*) when interpreting commands and prohibitions in such contexts.

The study found that Ibn Qudāmah's interpretive approach allows for a command or prohibition in the Qurʾān or Sunnah to be reviewed based on socio-historical changes or human welfare (*maṣlaḥah*), provided that the pertinent context is established as the effective causes of the injunction in question. The relevant injunction may change when the social practice is deemed inappropriate in a different context. Likewise, when *maṣlaḥah* is established as the reason for a specific injunction, the application of the injunction will be based on the relevance of the *maṣlaḥah* in different circumstances. However, evidence from the texts of the Qurʾān and Sunnah to support a particular practice or welfare as the effective cause of a command or prohibition is required to authorise the use of a specific practice or *maṣlaḥah*, according to Ibn Qudāmah, as noted earlier.

Despite Ibn Qudāmah's formal disapproval of *maṣlaḥah* that the Lawgiver has not endorsed for legal deductions, the study found that Ibn Qudāmah treats commands and prohibitions relating to *maṣāliḥ dunyawiyyah* (worldly benefits or welfare) as indicating guidance (*irshād*) instead of being imperative. Also, in practice, the four Sunni legal schools seem to utilise *maṣlaḥah mursalah* for legal reasoning regarding matters that have no different rulings from the Qurʾān and Sunnah in the form of *qiyās shabah* (analogy by resemblance).[596]

Based on the thoughts of most Islamic legal theorists examined in this chapter regarding the use of *maṣlaḥah* for legal deductions, this chapter found that *maṣlaḥah mursalah* may be employed for legal deductions. However, considering *maṣlaḥah mursalah* in this regard should not be limited to solely material benefits. It is essential also to consider the spiritual well-being of the *mukallaf* to ensure a comprehensive approach to *maṣlaḥah* that benefits the *mukallaf* both in this world and the hereafter.

[596] Al-Shanqīṭī, *al-Maṣāliḥ*, 7-8.

For *ḥikmah*, the study shows that it is not a standard tool for legal deductions as it often lacks consistency and standardisation (*ghayr munḍabiṭ*) in most cases, even though some legal theorists have considered it suitable for legal reasoning. Despite this, the *ḥikmah* of an injunction or legal ruling may be utilised to deduce the effective cause and then employed for *qiyās*. The difference is that *ʿillah* is more reliable for legal deductions and analogy than *ḥikmah,* which is primarily inconsistent with their relevant legal rulings in most cases.

Finally, the study reveals that most classical legal theorists, including Ibn Qudāmah, employed *adillah* (proofs) such as the Qurʾān, Sunnah, *ijmāʿ* (consensus), and valid *qiyās* (analogical reasoning) to support their interpretations of commands and prohibitions in the primary sources of Islamic law and ethics. This comprehensive methodology reinforces the credibility of their interpretations and provides a robust framework for departing from the apparent meaning of certain injunctions when justified. By grounding their analyses in established proofs and principles, they ensured that their rulings aligned with the overarching objectives of Islamic law (*maqāṣid al-sharʿ*) while addressing practical needs.

Ibn Qudāmah's interpretive flexibility is evident in his nuanced consideration of *qarāʾin* (contextual indicators) and the purposes behind specific questions or permissions sought (*istiʾdhān*), which informed his understanding of intended rulings. His reliance on principles such as *maṣlaḥah*, *ḥikmah*, and social context, when substantiated as effective causes, reflects a sophisticated approach that harmonises practical realities with adherence to divine guidance. Unlike reliance on personal assumptions, which often lack consistency and evidentiary support, Ibn Qudāmah's methodology exemplifies a structured, evidence-based framework that ensures both the relevance and integrity of legal rulings.

Chapter 6: Generality and specificity (ʿ*Umūm wa Khuṣūṣ*)

This chapter will analyse how Ibn Qudāmah utilised the dual concept of ʿ*āmm* and *khāṣṣ* to interpret and determine reasonable applications of the texts of the primary sources of Islamic law and ethics. Specifically, the chapter will examine Ibn Qudāmah's perspective on when a ruling or text should be generalised or restricted to specific circumstances or individuals and how this concept influenced his application of Islamic law and ethics in various contexts.

6.1 Ibn Qudāmah's Approach to Interpreting ʿ*Umūm* (General Texts) and *Khuṣūṣ* (Specific Texts)

Given the simplistic nature of general and specific expressions, one may wrongly assume the concepts of ʿ*umūm* and *khuṣūṣ*[597] to be straightforward to identify and simple to apply because every general text will naturally be applied to the entire class being described, and specific words will be used for a restricted category. In practice, however, it is much more nuanced. It is one of the major areas where most variant juristic opinions can be referred to regarding how the jurists understand and apply the concept of ʿ*umūm* and *khuṣūṣ*. These intricacies arise due to existing differences on how to identify ʿ*āmm* from the linguistic viewpoint, the value of ʿ*āmm* and its scope, and reconciling conflicting texts. Also, the existence of other linguistic tools like *istithnāʾ* (exception) and *sharṭ* (condition) affects the application of ʿ*āmm*. *Muṭlaq*[598] (the unqualified), which is regarded by *ahl al-lughah* (experts of the Arabic language) and Islamic legal theorists as a form of ʿ*āmm* but governed by a separate principle (*taqyīd*, qualification),[599] affects the application of ʿ*āmm* too. All these key factors complicate the concept of ʿ*umūm* and require a greater level of circumspection before determining whether a particular text contains a universal legal value or a specific legal verdict that must be restricted to certain persons or situations. The current section will explore how all these factors might

[597] Refer to Appendix 4 for the definitions of ʿ*umūm* and *khuṣūṣ* and refer to Appendix 5 for their various word forms (*ṣiyagh* ʿ*umūm* and *khuṣūṣ*).

[598] *Muṭlaq* is an unidentified/unqualified item in a pool of objects under the same category, See Ibn Qudāmah, *Rawḍah*, 2/667.

[599] Ibid, 2/669.

have influenced Ibn Qudāmah's interpretations of the legal texts of the Qurʾān and Sunnah with regard to *ʿumūm* and *khuṣūṣ* as linguistic tools in his legal endeavours.

6.1.1 Deviations from a General Text Due to Particularisation (*Takhṣīṣ al-ʿUmūm*)

This section examines what Ibn Qudāmah considered acceptable evidence to limit the scope of *ʿāmm*. He identifies three concepts that affect the application of *ʿumūm*. These are *takhṣīṣ*,[600] *istithnāʾ*,[601] and *sharṭ*.[602] Some Islamic legal theorists like Tāj al-Dīn al-Subkī (d.771/1370), a leading Shāfiʿī legal theorist, refer to all these ideas as *mukhaṣṣiṣāt* (indicators of *takhṣīṣ* or particularisation).[603] By this general term, the *mukhaṣṣiṣāt* are classified into two: attached (*muttaṣilah*) and detached (*munfaṣilah*) indicators of particularisation. The *mukhaṣṣiṣāt al-muttaṣilah* are dependent clauses that are linked to a general text (*ʿāmm*) to indicate that the objects they specify are not covered in the general implication (*ʿumūm*) of the relevant text. These consist of five indicators: *istithnāʾ* (exception), *sharṭ* (condition), *ṣifah* (attribute or quality), *ghāyah* (indication of the extent or limit of application) and the fifth indicator, *badal al-baʿḍ min al-kull* (substitution of the part for the whole).[604] Of these five indicators, Ibn Qudāmah mentions only the first two (*istithnāʾ* and *sharṭ*) in his legal theory as indicators of specific reference from a general text.[605] On the other hand, the *mukhaṣṣiṣāt al-munfaṣilah* are the same as those listed by Ibn Qudāmah as *mukhaṣṣiṣāt*. They occur in different texts separate from the general texts they specify. What does Ibn Qudāmah regard as valid proofs for *takhṣīṣ* in Islamic legal endeavours?

Takhṣīṣ is the act of restricting the scope of a general expression (*ʿumūm*) by excluding part of its referents, based on sound evidence.[606] As a linguistic construct applied in a legal theory, Islamic legal theorists consider both linguistic and legal indicators to

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[600] Ibid.

[601] Ibid, 2/651.

[602] Ibid, 2/666.

[603] Al-Subkī, *Jamʿ al-Jawāmiʿ*, 48, see also al-Shanqīṭī, *Mudhakkirah*, 352; Yasin Dutton, *The Origins of Islamic Law: The Qurʾan, the Muwaṭṭaʾ and Madinan ʿAmal*. (Surrey: Curzon Press, 1999), 90.

[604] Al-Subkī, *Jamʿ al-Jawāmiʿ*, 48-51.

[605] See Ibn Qudāmah, *Rawḍah*, 2/651-667.

[606] Refer to appendix 4 for a detailed discussion on the definition of *takhṣīṣ*. See also al-Qarāfī, *al-ʿAqd*, 2/79; Al-Subkī, *Jamʿ al-Jawāmiʿ*, 47.

prove *takhṣīṣ*. Contrary to what one would expect, the first indicator of *takhṣīṣ* listed by Ibn Qudāmah is *dalīl al-ḥiss* (sense-perception).[607] It would have been expected that the indicators of particularisation based on the legal sources (*mukhaṣṣiṣāt al-sharʿiyyah* or *takhṣīṣ bi al-sharʿ*)[608] - according to the mainstream Sunni schools - would be listed before other forms of evidence. However, like most Islamic legal theorists, he begins his discussion with what is generally considered non-divine proofs (human senses and reasoning).

Reference to the senses here is defined as the perception of reality.[609] In other words, it is the certainty derived by the human senses that presuming a particular object or case under a specific general expression is impractical. Therefore, it can be argued with certainty that the description of the Queen of Sheba: 'And she has been given a share of everything' Q.27:23 does not imply *ʿāmm,* although it appears so linguistically. This is obvious as she did not have what was under the control of Prophet Sulaymān (King Solomon).[610] Likewise, Prophet Sulaymān did not possess many things even though he said, 'We have been bestowed (a share) of all things' Q.27:16. The implication of '*kulli shay'*' (all things) in both texts, therefore, implies vast possessions in respect of both King Solomon and the Queen of Sheba. That is, even though the *lafẓ ʿāmm* maintains its linguistic sense of generality, our sense of perception indicates that the *lafẓ ʿāmm* in these two texts does not imply *ʿumūm* in its thorough sense. This is because the understanding derived from sensory input leads to what Muslim thinkers refer to as necessary knowledge (*ʿilm ḍarūrī*), which cannot be disputed.[611]

The second is *dalīl ʿaql* (reasoning).[612] In this regard, the Qurʾān describes an incident after the battle of *uḥud* (3/625) when the Muslims were warned against the Quraysh as follows: 'Those [the believer] to whom the people (*al-nās*) said: 'Indeed, the people (*al-nās*) have gathered against you, so fear them…' (Q.3:173). According to Ibn Ḥazm

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[607] Ibn Qudāmah, *Rawḍah*, 2/633.

[608] al-Shawkānī, *Irshād,* 1/396; al-ʿUthaymīn, *al-Uṣūl*, 41.

[609] Abū Bakr Aḥmad ibn ʿAlī al-Khaṭīb al-Baghdādī, *al-Faqīh wa al-Mutafaqqih* (Saudi Arabia: Dār Ibn al-Jawzī, 1421 AH), 2/37.

[610] Al-Ghazālī, *al-Mustaṣfā,* 245.

[611] Abū Yaʿlā, *al-ʿUddah*, 1/80-82; al-Samʿānī, *Qawāṭiʿ*, 1/330.

[612] Ibn Qudāmah, *Rawḍah*, 2/633.

(d.456/1064), the word '*al-nās*' in the text logically refers to 'some people', not all people. This interpretation is based on reasoned analysis. Ibn Ḥazm contends that it is evident that not all people gathered to notify the Muslims about the Quraysh's intentions to attack them. Moreover, it is also definite that the informants are not the same people who gathered to attack or will be attacked. Therefore, although the term '*al-nās*' may seem general, it specifically refers to a particular group of people in this context.[613]

Al-Bāqillānī (d.403/1013) explicates the use of reasoning for *takhṣīṣ*, quoting several Qurʾānic texts in which general word forms are employed. Yet, their interpretations are restricted to part of what the generality would typically imply. He says, 'By *ʿaql*, we do not mean the particularisation (*takhṣīṣ*) of those texts by reasoning itself, except that we know through reasoning that not everything falling within the generality of that term (i.e., the *lafẓ ʿāmm*) is implied. Rather, they are not covered by the original declaration.'[614] Al-Juwaynī (d.478/1085) adds, 'If a general word is used and rational minds (*ʿuqalāʾ*) do not conceive of its generality as encompassing everything it denotes, then, by reasoning, we know that the implication of that word is specific to what can logically be implied.'[615] It can be comprehended from these viewpoints that Muslim jurists and legal theorists do not consider reasoning as a means to restrict the *ʿumūm* of a legal text except when reasoning - through what is regarded as *ʿilm ḍarūrī* or common sense - offers that the generality of an expression is not thoroughly applicable.

Therefore, al-Shāṭibī (d.1388/790) observes that the generality of an expression is determined by how it is used in context.[616] Hence, it is unrealistic to presume the generality of a word if that meaning is not linguistically sound. For instance, if a person dedicates awards to anyone who enters that person's house, they are not entitled to receive one of the prizes for entering the house themselves. Likewise, it is linguistically wrong to say, 'I will be generous to anyone who enters my house except myself.'[617] The

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[613] Ibn Ḥazm, *al-Iḥkām*, 3/137. Rober Gleave discusses a similar example in Q.22:73 from al-Shāfiʿī's Risālah. See Gleave, *Islam*, 102.

[614] Al-Bāqillānī, *al-Taqrīb*, 3/174.

[615] ʿAbd al-Malik ibn ʿAbdullāh al-Juwaynī, *al-Talkhīṣ fī Uṣūl al-Fiqh* (Beirut: Dār al-Bashāʾir, (n.d.), 2/100.

[616] Al-Shāṭibī, *al-Muwāfaqāt*, 4/19-21.

[617] See Ibid, 4/20-21.

exemption is unnecessary as it is implied by default. Common sense dictates that the statement '*Raʾaytu al-nās* (I have seen the people)' is inherently limited in scope despite the use of the word *al-nās*, which typically denotes a general expression. It is illogical to interpret this as having seen every single individual.[618]

Perhaps these two indicators of particularisation (sense-perception and reasoning) could fall under the principle of using a general idea to represent a specific object (*ʿāmm al-ladhī urīda bihī khāṣṣ*).[619] Thus, Ibn Juzay al-Kalbī (d.741/1340), the Andalusian Mālikī jurist and a poet, describes the text 'and she has been given a share of everything' Q.27:23 as a generality employed for a specific reference.[620] On the example we used for *ʿaql* (reasoning) above -'Ḥajj (pilgrimage) to the house (Kaaba) is a duty that mankind owes to Allah, for those who can undertake the journey' Q.3:97 - Abū Ḥayyān (d.745/1344) also describes it as a generality used for a specific reference.[621] If these interpretations are accepted, it implies that sense-perception and reasoning are not really indicators of *takhṣīṣ*. Instead, they indicate that the meanings that are not implied were not covered by the *lafẓ ʿāmm*, so there was no need to prove *takhṣīṣ*. This seems to be implied by the views shared by al-Bāqillānī and al-Juwaynī, as quoted above.

Ibn Qudāmah seems aware of this opinion. He, therefore, acknowledges that his understanding of *takhṣīṣ* refers to the applicable meaning of a word as intended in an utterance.[622] Insofar as the logically impossible is not included in the interpretation of *ʿāmm*, it does not matter whether *ʿaql* (reasoning) is noted as a specific reference.[623] This is because if the purpose is achieved, it does not matter whether the means is termed *takhṣīṣ*.[624]

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[618] Al-Juwaynī, *al-Talkhīṣ*, 2/103.

[619] Al-Ṭūfī, *Sharḥ*, 2/458; See also Aḥmad ibn Saʿad ibn Ḥāmid al-Ḥarbī, *al-ʿĀmm al-Murād Bihī al-Khuṣūṣ fī al-Qurʾān wa Bayān Atharih fī al-Tafsīr* (Riyadh: Kursī al-Qurʾān al-Karīm wa ʿUlūmih, King Saud University, 1436 AH).

[620] Muḥammad ibn Aḥmad ibn Juzay al-Kabli, *al-Tashīl li ʿUlūm al-Tanzīl* (Beirut: Dār al-Arqam ibn Abī al-Arqam, 1416), 2/101.

[621] Abū Ḥayyān, *al-Baḥr*, 3/274.

[622] Ibn Qudāmah, *Rawḍah*, 2/633.

[623] Ibid.

[624] Ibid, See also al-Shāṭibī, *al-Muwāfaqāt*, 4/18-27.

However, the difference between the two viewpoints stands out since employing ʿ*āmm* for a specific reference implies that the text does not cover anything except the intended or specified connotation. On the contrary, ʿ*āmm* that has been particularised denotes that the word form covered the specified meaning before it was particularised.

The third factor that restricts the scope of the ʿ*umūm* of a text is *ijmāʿ* (consensus).[625] Ibn Qudāmah argues that if a ruling established by consensus specifies a part of a text with a different ruling, it indicates the particularisation of the general ruling.[626] To illustrate this, let's look at the word *ab* (father). It refers to the biological father and grandfathers from the maternal and paternal lineages, as in Q.4:22.[627] However, with inheritance, although maternal grandfathers are all *ābāʾ* (fathers), Ibn Qudāmah declares only biological fathers and paternal grandfathers are eligible for inheritance as fathers by Sunnah and *ijmāʿ*.[628] Thus, the meaning of father in Qurʾān 4:11 is limited to the biological father and paternal grandfathers based on *ijmāʿ*. Ibn Ḥazm expounds that inheritance is restricted to direct fathers and paternal grandfathers in the absence of biological fathers from the time of the Prophet and has been transmitted by generations down to later generations by practice.[629]

On this basis, a ruling by consensus that deviates from the ʿ*umūm* of a text indicates *takhṣīṣ* if the ruling based on the *ijmāʿ* - under normal circumstances - falls under the corresponding ʿ*umūm*. This is because, according to most Muslim jurists and legal theorists like Ibn Qudāmah, a ruling by consensus is absolute (*qāṭiʿ*). At the same time, the generality of a text remains speculative, with the possibility of being repealed or particularised by another text.[630]

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[625] Ibn Qudāmah, *Rawḍah*, 2/634.

[626] Ibid.

[627] Ibn Ḥazm, *al-Iḥkām*, 3/137. See also, Aḥmad Riḍā, *Muʿjam Matn al-Lughah* (Beirut: Dār Maktabah al-Ḥayāh, 1958-1960), 1/139; Majmaʿ al-Lughah al-ʿArabiyyah, *al-Muʿjam al-Wasīṭ* (Cairo: Majmaʿ al-Lughah al-ʿArabiyyah, 1972), 1/4.

[628] Ibn Qudāmah, *al-Mughnī*, 9/65, See also Ibn Qudāmah, *al-Mughnī*, 8/529-531.

[629] Ibn Qudāmah, *al-Mughnī*, 9/65; Ibn Ḥazm, *al-Iḥkām*, 3/137-138.

[630] Ibn Qudāmah, *Rawḍah*, 2/634.

The fourth factor restricting the scope of the generality of a text is *naṣṣ khāṣṣ* (a specific text), which indicates a particularisation of a general word.[631] *Naṣṣ khāṣṣ* can be either a text of the Qurʾān or the Sunnah that specifies a particular case from a general requirement of another text. An example from the Qurʾān is the ruling for women to spend a waiting period (ʿ*iddah*) after divorce before they can marry another person. 'Divorced women remain in waiting for three periods…' Q.2:228. The text indicates a general ruling due to the word form *muṭallqāt* (divorced women). It expresses the duty expected of every divorced woman, whether old or young, menstruating or not. Also, the text does not differentiate between women who had been intimate with their husbands before the divorce and those who were not.

However, another text of the Qurʾān indicates a different ruling for divorced women who did not consummate their marriages before their divorce. This is stipulated as follows: 'O believers when you marry believing women and then divorce them before you have touched them, then they will have no waiting period for you to count…' Q.33:49. Because this ruling is specific to a group among divorced women, it particularises the general requirement for ʿ*iddah* for divorced women. Without this text, the waiting period would have remained general for all divorced women. Accordingly, Islamic legal theorists regard a specific text as a valid reason to restrict the scope of a text's generality (ʿ*umūm*). Ibn Qudāmah is, therefore, emphatic that Muslim jurists collectively agree that a divorced woman does not have to observe the waiting period if the marriage has not been consummated yet.[632] Ibn Qudāmah adds that the purpose of the waiting period is to clear doubts about the possible occurrence of pregnancy between the couple. He justifies that the specific ruling for such women is suitable since pregnancy is impossible in the given circumstances.[633]

It is worth highlighting that there is a variant ruling where a divorce occurs after the couple has been in seclusion, even though they did not engage in any sexual activity. Ibn Qudāmah contends that being in privacy alone is enough to grant the full payment of her dowry, and ʿ*iddah* becomes obligatory on her on the same basis.[634] He supports his

[631] Ibid, 2/635.

[632] Ibn Qudāmah, *al-Mughnī*, 11/194.

[633] Ibid.

[634] Ibn Qudāmah, *al-Kāfī*, 3/194; Ibn Qudāmah, *al-Mughnī*, 11/197.

position by citing a similar verdict from the Prophet's companions, arguing that such cases must have been widespread and well-known. Since there were no dissenting views, it became *ijmāʿ* (i.e., *ijmāʿ sukūtī*, a silent consensus).[635] Despite the controversy surrounding this *ijmāʿ*,[636] Ibn Qudāmah asserts that if a man divorces a woman without intimacy, she is not required to observe the waiting period unless they have been in seclusion. In such a case, the wife must observe the waiting period and is entitled to the dowry. In the absence of certainty regarding intimacy, the waiting period serves to resolve potential doubts. However, if both parties agree that no intimacy occurred, they can confidently assert that pregnancy is impossible, as no sexual relations took place.[637]

Again, Ibn Qudāmah does not consider abrogation between the two (*ʿāmm* and *khāṣṣ*) regardless of which one was declared before the other. This contrasts the viewpoint of Ḥanafī jurists, who regard the sequence between *ʿāmm* and *khāṣṣ* as indicating abrogation.[638] He argues that the evidence regarding how the companions of the Prophet treated *ʿāmm* and *khāṣṣ* reveals that they did not bother themselves looking for which text of the Qurʾān was revealed before the other. Instead, they always distinguished the specified ruling from the general to apply both texts within their respective perimeters.[639] He further argues that one cannot assume otherwise since the companions of the Prophet knew the application of *nuṣūṣ sharʿiyyah* (legal texts) better by virtue of living during the era of the Prophet and benefiting from his teachings. If their understanding were wrong, Allah would correct it through the Qurʾān or the Prophet through his sunnah.

Ibn Qudāmah disregards distinctions between the Qurʾān and the Sunnah, arguing against the position that the Sunnah can specify the meaning of general Qurʾānic texts but not vice versa. This contrasts with the stance of some legal theorists, particularly the Shāfiʿīs, who maintain that the Qurʾān cannot be used to specify the meaning of the Sunnah.[640] He also dismisses any distinction between *āḥād* (solitary reports) and

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[635] Ibn Qudāmah, *al-Mughnī*, 11/198.

[636] Ibn Rushd, *Bidāyah*, 3/48; al-Nawawī, *al-Majmūʿ*, 18/126.

[637] See Abū ʿUmar Yusuf ibn ʿAbdullāh ibn Muḥammad ibn ʿAbd al-Barr, *al-Kāfī fī Fiqh Ahl Madīnah* (Riyadh: Maktabah al-Riyāḍ al-Ḥadīthah, 1980), 2/557.

[638] Ibn Qudāmah, *Rawḍah*, 2/636.

[639] Ibid, 2/639.

[640] Ibid, 2/637.

mutawātir (widely transmitted reports) as long as the authenticity of the *āḥād* is established.[641] Ibn Qudāmah bases his argument on the treatment of these texts by the Prophet's companions, asserting that there is no evidence to suggest that the order of revelation or the level of transmission influenced the *takhṣīṣ* (specification) of general texts. For Ibn Qudāmah, the authenticity of a text alone suffices for its application.[642]

The opposing view argues that using the Qurʾān to restrict the scope of the Sunnah would elevate the Sunnah above the Qurʾān, which they reject.[643] In response, Ibn Qudāmah contends that clarifications (*bayān*) within the same source are permissible and do not imply the superiority of one text over the other. He asserts that the Qurʾān can clarify and specify the Sunnah, treating this as a form of *bayān*.[644] From this perspective, both the Qurʾān and the Sunnah are equally authoritative in issuing Islamic legal rulings (*ḥukm*), whether specific (*khāṣṣ*) or general (*ʿāmm*).

Most Islamic legal theorists and Qurʾānic exegetes accept the idea of abrogation, where the Qurʾān can abrogate the Sunnah - a form of *bayān* as well.[645] If both sources are considered *waḥy* (revelation) from Allah, there is no objection to using the Qurʾān to specify the Sunnah. Scholars such as al-Ghazālī and al-Qarāfī have established that the Sunnah, when authentic, is also a divine revelation.[646] Its authenticity is regarded as absolute in the case of those who heard it directly from the Prophet. For later Muslim generations, the authenticity of individual hadith or reports varies depending on the

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[641] Ibid, 2/640-641.

[642] Ibid, 2/639-641.

[643] Ibid, 2/637-638.

[644] Ibid, 2/641.

[645] For instance, Qurʾān 60:10 regarding female emigrants to Madinah states that '…and if you ascertain that they are believers, then do not send them back to the disbelievers…', The *ʿulamāʾ* regard this text as either *nāsikh* (abrogation) or *takhṣīṣ* of the treaty of *ḥudaybiyah*, Based on the treaty, the Prophet was supposed to return Muslim emigrants who migrated to Madinah without the consent of their families back to Makkah, Whether it is considered as the abrogation of the treaty (al-Sarakhsī, *Uṣūl*, 2/77; al-Ghazālī, *al-Mustaṣfā*, 100) or the *takhṣīṣ* of the treaty (al-Shanqīṭī, *Aḍwāʾ al-Bayān*, 8/98), both perspectives fall under *bayān* of the Sunnah by the Qurʾān. See Abū Yaʿlā, *al-ʿUddah*, 2/569; Ibn Qudāmah, *Rawḍah*, 2/641; al-Qarāfī, *Nafāʾis*, 6/2485.

[646] Al-Ghazālī, *al-Mustaṣfā*, 103-104, al-Qarāfī, *Nafāʾis*, 6/2488.

mode of transmission.[647] Ibn Qudāmah thus maintains that both the Qurʾān and the established Sunnah are equally authoritative, each serving as an absolute proof (*dalīl qāṭiʿ*).[648] This position reinforces the use of a specific text (*naṣṣ khāṣṣ*) to clarify the meaning of a general text (*naṣṣ ʿāmm*), regardless of whether the texts are from the Qurʾān or the Sunnah.

Mafhūm[649] (implicature) is the fifth indicator of *takhṣīṣ* discussed by Ibn Qudāmah. It refers to the implication or the inference of a text other than its direct meaning.[650] Islamic legal theorists observe that two forms of implication, *mafhūm al-muwāfaqah* (congruent implication) and *mafhūm al-mukhālafah* (counter-implication), may affect ʿ*umūm* by restricting its meaning to some of what it generally covers. For instance, regarding the Zakat for goats and sheep, the hadith 'For forty *shāh* (goat or sheep)[651], a goat or sheep is due for Zakat until their number reaches one hundred and twenty sheep or goats…'. This hadith does not distinguish between livestock that are grazed (*sāimah*) and those that are fed with fodder (*maʿlūfah*). However, Ibn Qudāmah holds the view that Zakat is not obligatory on livestock raised on fodder (*maʿlūfah*).[652] He stresses that the counter-implication of the hadith grounds this view: 'For the grazing sheep and goats (*sāimah al-ghanam*) Zakat is obligatory'. By inference, Zakat is not obligatory on those not *sāimah* (i.e., those not grazed for most of the year).[653] Perhaps this is because extra expenditure is incurred on livestock raised on fodder for most of the year. This is similar to the distinction between the Zakat of farm produce regarding reliance on rainwater and irrigation.[654] This is also the view of the many Muslim jurists except the Ḥanafīs and the majority of the Muʿtazilīs.[655] The Ḥanafī school, in particular, is noted for the rejection of counter-implications (*mafhūm mukhālafah*) in Islamic law.[656]

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[647] Al-Ghazālī, *al-Mustaṣfā*, 103-104; Ibn Qudāmah, *Rawḍah*, 1/252.

[648] Ibn Qudāmah, *Rawḍah*, 2/921.

[649] A detailed examination of this linguistic concept will be discussed in Chapter 7.

[650] Ibn Qudāmah, *Rawḍah*, 2/642.

[651] *Shāh* or *shāt* is a general term that refers to goats and sheep in the Arabic language.

[652] Ibn Qudāmah, *al-Mughnī*, 4/38.

[653] Ibn Qudāmah, *Rawḍah*, 2/642.

[654] See Ibn Qudāmah, *al-Mughnī*, 4/164.

[655] See al-Āmidī, *al-Iḥkām*, 3/72.

[656] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1/291.

Another example of *mafhūm* is related to the purity of water. Ibn Qudāmah shares the view that if the quantity of water is less than two pots (*qullatayn*),[657] it becomes contaminated by contact with impurities even if its physical characteristics (colour, taste and odour) do not change.[658] This view seems to contradict the hadith: 'Water is pure and is not rendered impure by anything.'[659] However, Ibn Qudāmah argues that his view is supported by another hadith, which states, 'If the amount of water is up to two pots (*qullatayn*), nothing can make it impure.'[660] The counter-implication of the hadith suggests that if the quantity of water is less than the said amount, it can become impure; otherwise, the mention of the quantity in the hadith is of no relevance. Thus, this counter-implication specifies the general implication carried by the former text. Ibn Qudāmah argues further that his view is also supported by the command that 'When any of you wakes up from sleep, he must not dip his hand in the vessel (for ablution) till he has washed it three times, for he does not know where his hand was during the night.'[661] By inference, the Prophet would not give this caution if a contaminated hand does not affect the water in a vessel.[662] Thus, the counter-implication in these two hadith is employed to specify the generality of the hadith stated above, and another narration, '*al-māʾ* (water) is pure; nothing can render it impure except that [an impure substance] which changes its smell, taste, or colour'.[663]

Conversely, the opponents of *mafhūm al-mukhālafah* (particularly the Ḥanafī school) are opposed to specifying a general text with counter-implication as they do not regard counter-implication as a valid reference.[664] However, both parties agree to specify the generality (*ʿumūm*)[665] of a text by *mafhūm al-muwāfaqah*. This can be illustrated by a

[657] *Qullatayn* is the dual of *qullah*, which literally means a pot. As a unit of measurement, it is equivalent to a hundred *ratl* or 382.5g. Thus, *qullatayn* is equivalent to 95,625g or 95.625L of water. See Ibn Qudāmah, *al-Mughnī*, 1/37; Fincyclopedia. "Ratl". Fincyclopedia: Islamic Finance. September 1, 2021, [Accessed: 01-15-2023]. Ratl – Fincyclopedia.

[658] Ibn Qudāmah, *al-Mughnī*, 1/38.

[659] Abū Dāwūd, *Sunan*, 1/49 (Hadith No. 66).

[660] Ibn Mājah, *Sunan*, 1/325 (Hadith No. 517); Abū Dāwūd, *Sunan*, 1/46 (Hadith No. 63).

[661] Muslim, *Ṣaḥīḥ*, 1/160 (Hadith No. 278).

[662] Ibn Qudāmah, *al-Mughnī*, 1/40.

[663] Ibn Mājah, *Sunan* (Hadith No. 521) 1/327.

[664] See Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/150, Ibn Ḥazm, *al-Iḥkām*, 2/2.

[665] Al-Āmidī, *al-Iḥkām*, 2/328.

parent defaulting on paying a debt to their child. In the Sunnah, it is reported that the Prophet declared that 'If the one who is capable (of settling a debt) delays it, it is permissible to dishonour and punish him'.[666] This text covers everyone who refuses to settle their debt on time (including a parent to their child) despite being in a position to do so. However, the jurists have ruled that a debtor's parents are exempt from that general ruling. Their judgement is based on the *mafhūm al-muwāfaqah* of the Qurʾānic text that prohibits showing contempt to one's parents; 'do not say to them *uff* (a word of contempt such as "fie" or "ugh")', Q.17:23. In other words, if one is forbidden from the use of any contempt word against one's parents, then dishonouring them or taking legal action against them or prosecuting them is worse and must not be tolerated. Thus, the congruent implication of Q.17:23 specifies the generality of the above hadith.[667]

The sixth factor in specifying ʿ*umūm* is an act by the Messenger (*fiʿl al-Rasūl*).[668] For instance, the wife of the Prophet, ʿĀishah (d.58/678), narrates that during her menstrual periods, the Prophet will order her to cover up with an *izār* (a lower garment or a wrapper), and he will make love to her.[669] Ibn Qudāmah expounds that this act indicates that it is permissible to enjoy some level of intimacy with one's partner as long as it does not involve sexual intercourse.[670] In effect, it serves as *takhṣīṣ* of the prohibition to approach women in their menses as indicated in the Qurʾānic text: 'They ask you of menstruation. Say it is harmful. So, keep away from women during their menses. And do not approach them until they are clean. And when they have purified themselves, you may approach them as specified by Allah...' Q.2:222.[671]

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[666] Al-Bukhārī, *Ṣaḥīḥ*, 2/845; Ibn Qudāmah, *al-Mughnī*, 6/588.

[667] Muḥammad al-Amīn al-Shanqīṭī, *Nathr al-Wurūd Sharḥ Marāqī al-Suʿūd* (Fifth edition; Beirut: Dār Ibn Ḥazm, 2019), 1/252.

[668] Ibn Qudāmah, *Rawḍah*, 2/643.

[669] See al-Bukhārī, *Ṣaḥīḥ*, 1/115 (Hadith No. 295), However, making love to a woman in her menses does not involve sexual intercourse, as explained in the hadith of Anas when that was mentioned to the Messenger of Allah (PBUH) that the Jews would not eat with a menstruating woman nor would they live with them in the house, he said: "Do everything (with them) except sexual intercourse," See Muslim, *Ṣaḥīḥ*, 1/169 (Hadith No. 302).

[670] Ibn Qudāmah, *al-Mughnī*, 1/414.

[671] Ibn Qudāmah, *Rawḍah*, 2/643.

The seventh factor for *takhṣīṣ* is the tacit approval (*iqrār*) of the Messenger of Allah. Ibn Qudāmah contends that the Prophet's silence in the face of an action contrary to the Qurʾān or Sunnah implies his approval, thereby signifying a *takhṣīṣ* of the general text.[672] An example is the prohibition to pray after the *fajr* (dawn) prayer. The Prophet himself forbade any prayer after the dawn prayers by commanding - 'No *ṣalāh* (prayer) is to be offered after the *ʿaṣr* (afternoon) prayer until the sun sets or after the morning prayer until the sun rises.'[673] This text from the sunnah is general and forbids supererogatory prayers after one has observed the dawn or the afternoon prayer. Nevertheless, another report reveals that the Prophet saw a man praying a two-unit prayer (*rakʿatayn*) after the dawn prayer, and he said, 'Is the dawn prayer to be offered twice?' The man said to him: 'I did not pray the two-unit prayer before it, so I prayed them [now]'. The Messenger of Allah remained silent.[674] His silence is an apparent approval of the man's action. If this were not so, he would have warned him not to repeat that or reminded him of the prohibition of praying after the dawn prayer until the sun rises. On this basis, tacit approvals of the Prophet are regarded as an indication of an exemption from that general prohibition for the one who is unable to offer the two-unit sunnah prayer before the prayer to do so during the prohibited hour if they choose to do so.[675]

The eighth factor to limit the scope of the generality of a text is an utterance by a companion of the Prophet (*qawl al-ṣaḥābī*) that specifies the meaning of a text to only a particular meaning. Ibn Qudāmah makes a general assertion that Islamic legal theorists who consider the sayings of the companions as a valid source of the *sharīʿah* and prefer it over *qiyās* (analogy) regard utterances of the companions of the Prophet that limit the meaning of a general word as an indicator of specific reference.[676]

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[672] Ibid, 2/643.

[673] Muslim, *Ṣaḥīḥ*, 2/207 (Hadith No. 827).

[674] Ibn Mājah, *Sunan*, 2/234 (Hadith No. 1154); Abī Dāwūd, *Sunan*, 2/447 (Hadith No. 1267).

[675] Ibn Qudāmah, *al-Mughnī*, 2/531; Aḥmad Muḥammad Bayūmī al-Rakh, "Al-Takhṣīṣ bi al-Taqrīr ʿinda al-Uṣūliyyīn wa Taṭbīqātih al-Fiqhiyyah," *al-Azhar University, Faculty of Islamic Studies for Boys in Aswan Journal*, Article 15, Volume 3, Issue 3 (December 2020): 865-977, 925, 10.21608/FISB.2020.133941.

[676] Ibn Qudāmah, *Rawḍah*, 2/644.

The above claim is contested as it does not clarify the kind of statement by the companions of the Messenger that is considered authoritative in Islamic legal endeavours. Al-Amin al-Shanqīṭī argues that the utterances of the companions of the Prophet are not an authoritative source of law unless that utterance can be categorised as sunnah. Hence, only their utterances attributed to the Prophet can indicate *takhṣīṣ*.[677] In other words, that utterance must be about matters that one cannot express one's personal opinions (*lā majāla li al-raʾy fīhi*).[678] This is based on the premise that the companions of the Prophet were trustworthy and were careful not to ascribe false claims to the Prophethood (or his Sunnah). Hence, if they comment on matters that can be known only through a divine source, it is regarded as authoritative since they were not known to make such claims except when they had heard it from the Prophet. Accordingly, such an utterance from a *ṣaḥābī* must be treated as coming from the prophet.[679]

For instance, regarding when a contract is considered sealed, the Sunnah states: 'The buyer and the seller (each of them) reserves the option to cancel (the deal), as long as they have not parted or separated (*mālam yatafarraqā*).'[680] However, the *ʿulamāʾ* differ regarding the meaning of *tafarruq* (literally translated as separation) in the hadith. Abū Ḥanīfah, Imām Mālik and several other jurists are of the view that *tafarruq* in the text means disagreement on the acceptance of the contract. Thus, one reserves the right to change one's mind before accepting the offer. These jurists consider the statement *mālam yatafarraqā* to mean 'as long as they do not disagree before the agreement is sealed.'[681] On the other hand, al-Shāfiʿī and Aḥmad ibn Ḥanbal and a group of jurists hold that the right to rescind their intentions holds until they are physically separated.[682] A third view is that they both reserve the right until they depart from the transaction venue.[683] Ibn Qudāmah argues for the view held by al-Shāfiʿī and Aḥmad ibn Ḥanbal on the basis that Ibn ʿUmar (d.73/693) and Abū Barzah al-Aslamī (d.60 or 65/685) both interpreted *tafarruq* in the hadith to mean physical separation of the parties involved in a

[677] Al-Shanqīṭī, *Mudhakkirah*, 349.

[678] Ibid, 255.

[679] Ibid, 349.

[680] Al-Bukhārī, *Ṣaḥīḥ*, 2/743 (Hadith No. 2004).

[681] Ibn ʿAbd al-Barr, *al-Istidhkār*, 6/474; al-Kāsānī, *Badāʾiʿ*, 5/134.

[682] Al-Shāfiʿī, *al-Umm*, 3/6-7; al-Nawawi, *al-Majmūʿ*, 9/174; Ibn Qudāmah, *al-Mughnī*, 6/10.

[683] Al-Sarakhsī, *al-Mabsūṭ*, 13/156.

transaction.[684] Thus, if *tafarruq* in the hadith is interpreted as *ʿāmm* comprising 'departure from the venue', 'acceptance of the offer' or 'physical separation' as held in the various opinions, the meaning offered by the companions (Ibn ʿUmar and Abū Barzah al-Aslamī) will be considered as a specific reference of the *ʿumūm* of the word *tafarruq* in the text.[685] Accordingly, Ibn Qudāmah assesses this as a valid indicator of specific reference (*takhṣīṣ*) of a general statement (*ʿāmm*).[686]

The last indicator of *takhṣīṣ* presented by Ibn Qudāmah is an analogy from a text that specifies another text (*qiyās naṣṣ khāṣṣ*) if it opposes the generality of a text.[687] Most Muslim jurists and legal theorists subscribe to this view, although others have disputed it as an invalid indicator of a specific reference.[688] The proponents of this view argue that the coverage of *ʿāmm* of all that it feasibly comprises is speculative due to the possibility of *takhṣīṣ*. Sound *qiyās*, on the contrary, is not affected by the possibility of a specific reference (*takhṣīṣ*). This makes sound *qiyās* of a text opposed to the generality of another text to be a stronger opinion regarding what it may specify out of the general meaning of that text. Therefore, it must be considered *takhṣīṣ* if it opposes the generality of a text.[689]

This indicator of specific reference can be illustrated with Ibn Qudāmah's view on the penalty for an enslaved man (whether married or not) if he commits fornication. He holds that if a man commits fornication while he is in slavery, his punishment is fifty lashes.[690] This view seems to contradict the general ruling in the Qurʾān and the Sunnah. As for the Qurʾān, the ruling appears as 'The woman and the man guilty of illegal sexual intercourse, flog each of them a hundred lashes…' Q.24:2. The Sunnah also states that '…When an unmarried male commits adultery with an unmarried female (they should receive) one hundred lashes and banishment for one year. And in case of a married male

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[684] Ibn Qudāmah, *al-Mughnī*, 6/11-13.

[685] Ḍayf Allāh ibn Hādī al-Zaydānī, Takhṣīṣ al-ʿĀmm bi Madhhab al-Ṣaḥābī wa Atharuhū al-Fiqhī, *al-Azhar University, Faculty of Islamic and Arabic Studies for Girls in Kufr al-Shaykh Journal*, Volume 4, Issue 3 (2019): 502-552 pp 540, 10.21608/FICA.2019.80563.

[686] Ibn Qudāmah, *Rawḍah*, 2/644; Ibn Qudāmah, *al-Mughnī*, 6/11.

[687] Ibn Qudāmah, *Rawḍah*, 2/645.

[688] See Al-Ghazālī, *al-Mustaṣfā*, 249; Ibn Qudāmah, *Rawḍah*, 2/645.

[689] Ibn Qudāmah, *Rawḍah*, 2/647.

[690] Ibn Qudāmah, *al-Mughnī*, 12/331.

committing adultery with a married female, they shall receive one hundred lashes and be stoned to death.'[691] However, Ibn Qudāmah maintains that the ruling regarding an enslaved man guilty of fornication, in this case, is parallel to the ruling regarding an enslaved woman who commits a similar act of fornication. He argues that there is no difference between the two except gender and that (gender) does not affect the ruling. Thus, the ruling for either of them is the same based on *qiyās*.[692] With regard to the female slave, a specific ruling for her is based on Q.4:25: '…If they commit adultery after they are married, their punishment is half that of free women…'. Consequently, the ruling on her after committing fornication is specified by Q.4:25. Since there is no text indicating a specific ruling for the enslaved man regarding fornication, Ibn Qudāmah argues that the ruling for an enslaved man must be the same as the enslaved woman concerning fornication. This is because enslaved males and females share a common effective cause, which resulted in the punishment for enslaved women being reduced by half. Additionally, the fact that freed men and women receive the same punishment for fornication or adultery suggests that the exceptional treatment given to enslaved women is due to their status as enslaved people. Therefore, based on *qiyās*, the exception should also be extended to enslaved men.

From the example above, it can be noted that enslaved people were spared from the full punishment of fornication. However, while the enslaved woman is exempted from the full sanction based on another text (*takhṣīṣ bi al-naṣṣ*),[693] the ruling regarding the enslaved man is particularised based on analogy (*qiyās*) to his female counterpart.

6.1.2 Deviations from a General Text Based on an Exception (*Istithnāʾ*) or a Condition (*Sharṭ*)

In addition to the above indicators of specific reference known as *mukhaṣṣiṣāt al-munfaṣilah* by most Islamic legal theorists,[694] Ibn Qudāmah discusses two additional

[691] Muslim, *Ṣaḥīḥ*, 5/115 (Hadith No. 1690).

[692] Ibn Qudāmah, *al-Mughnī*, 12/333.

[693] Ibn Qudāmah, *Rawḍah*, 2/635.

[694] Al-Subkī, *Jamʿ al-Jawāmiʿ*, 48; al-Shanqīṭī, *Mudhakkirah*, 352.

concepts that may cause a deviation from the *ʿumūm* of a text. These are *istithnāʾ* and *sharṭ* considered as *mukhaṣṣiṣāt al-muttaṣilah* by Islamic legal theorists.[695]

Regarding *istithnāʾ*, it is a dependent clause with a specific format that indicates an exception to the statement it is connected to.[696] It may be identified by the format (*ṣīghah*) *illā* (except) or any alternative word that indicates exceptions. These could be words such as *ghayr* (other than, except), *siwā* (but), *ʿadā* (besides, except), *laysa* (not, rather than), *lā yakūn* (is not), *ḥāshā* (except), *khalā* (devoid of).[697] For instance, concerning a person who is in a state of major impurity (*janābah*) or a woman in her menses or postnatal bleeding, Ibn Qudāmah is of the view that it is not permissible for anyone in these states to stay in the *masjid* (mosque). He substantiated his position with the interpretation of Q.4:43 as '*Lā taqrabū al-ṣalāta* (do not approach the [places of] prayer[698]) while you are intoxicated…or in a state of major impurity (*walā junuban*) except those passing through [*masjid*].' However, based on the exception granted in the text, a person who is only passing through the *masjid* or entering to pick something can do so.[699] Even those with a varied interpretation also apply the exception given in the text; '…do not approach prayer when you are intoxicated…or in a state of major impurity (*walā junuban*) except when you are on a journey until you have washed your whole body (*ghusl*). And if you do not have water, then make *tayammum*'.[700] While this text may appear complex, as some scholars have applied the concepts of *ḥaqīqah* and *majāz* in its interpretation, the exception outlined in the text remains valid regardless of whether it is understood literally (*ḥaqīqah*) or metaphorically (*majāz*).[701]

A significant practical challenge with *istithnāʾ* arises when it follows multiple statements with no clear indication that it applies to all the statements or is restricted to those it directly follows.[702] For instance, in Q.4:43, as quoted above, the statement 'except when

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[695] Al-Ṭūfī, *Sharḥ*, 2/625.

[696] Ibn Qudāmah, *Rawḍah*, 2/751; al-Āmidī, *al-Iḥkām*, 2/287.

[697] Ibn Qudāmah, *Rawḍah*, 2/751.

[698] See al-Bāqillānī, *al-Taqrīb*, 1/351.

[699] Ibn Qudāmah, *al-Mughnī*, 1/200-201.

[700] For the interpretation of the text, see al-Ṭabarī, *Tafsīr*, 8/379.

[701] See al-Zarkashī, *al-Baḥr*, 2/382.

[702] Al-Isnawī, *Nihāyah*, 206.

you are on a journey' does not apply to the intoxicated. This is because the text clearly states when the intoxicated can pray. That is, 'until you know what you utter.' This shows the disconnection of the *istithnāʾ* from intoxication even though it comes after both sentences. Also, *ghusl*, which is required of the traveller when they have no water to purify themselves, is not necessary after intoxication. This demonstrates that the two statements have different rulings and are not connected in a way such that an exemption in one must apply to the other.[703] However, to discourage and fend off accusations against chaste women regarding fornication, the Qurʾān rules as follows: 'And those who accuse chaste women of adultery and fail to produce four witnesses, give them eighty lashes each and do not ever accept a testimony from them and those are *al-fāsiqūn* (disobedient and transgressors)' Q.24:4. Based on this text, Muslim jurists agree that there are three different rulings against the convict; to be given eighty lashes, reject their witness forever and lastly rule that they are *fāsiqūn*. These statements are immediately followed by an exemption (*istithnāʾ*), 'Except those who repent afterwards and reform (from bad manners), then indeed, Allah is Forgiving and most Merciful' Q.24:5. Does the exception in this text cover all three judgements with the repentance of the convict or does it apply to only some of the judgements but not all? Islamic jurists and legal theorists differ on the scope of this exception.

Muslim jurists have agreed that the first ruling - eighty lashes - is not affected by the exemption and must be carried on even if the person repents.[704] This is because that ruling is related to the rights of others, which is not forgivable by repentance.[705] They also agree that the exemption applies to the last statement. Thus, the offender must not be considered *fāsiq* (disobedient and transgressor) after repenting.[706] But they differ on the second. On the one hand, the Ḥanafīs rule that testimonies given by the convict are not acceptable based on the above verse and that the *istithnāʾ* is not relevant to this ruling. [707] On the other hand, the majority maintain the position that testimonies given by the convict after they repent are acceptable because of the *istithnāʾ*. They contend that

[703] See al-Ṭabarī, *Tafsīr*, 4/330; Ibn Qudāmah, *al-Mughnī*, 10/348.

[704] Al-Sarakhsī, *al-Mabsūṭ*, 16/125; Ibn Rushd, *Bidīyah*, 4/226; Ibn Qudāmah, *al-Mughnī*, 14/188.

[705] Al-Isnawī, *Nihāyah*, 206; al-Zarkashī, *al-Baḥr*, 4/431; al-Māwardī, *al-Taḥbīr*, 6/2599.

[706] Al-Sarakhsī, *al-Mabsūṭ*, 16/125; Ibn Rushd, *Bidīyah*, 4/226; Ibn Qudāmah, *al-Mughnī*, 14/188.

[707] Al-Sarakhsī, *al-Mabsūṭ*, 16/125.

the exemption applies to all the sentences except when it can be proven by other sources or textual evidence that it is irrelevant to parts of the rulings.[708] Ibn Qudāmah strengthens the majority's view with ʿUmar Ibn al-Khaṭṭāb's ruling (d.23/644) on a similar case and argues that no one disputed ʿUmar's ruling among his contemporaries. Thus, the practice becomes a silent consensus by the Companions of the Prophet and must be observed.[709]

In summary, the Ḥanafī position on the case where *istithnāʾ* (exception) follows multiple statements is that its application should be restricted to the last statement only. This is because the relevance of the exception to the final statement is certain, whereas its relevance to the preceding ones remains uncertain. Hence, one should prioritise certainty over ambiguity.[710] In contrast, most Islamic legal theorists assert that, in the absence of clear indications of scope, the exception should be applied to all connected statements.[711] This position is supported by the comparison of *istithnāʾ* to *sharṭ*, as both share similar conditions in their usage. Moreover, it is generally unacceptable to apply an exception to each statement individually in such instances as it is disapproved by *ahl al-lughah* (experts of the Arabic language).[712]

The last factor discussed by Ibn Qudāmah in his legal theory as a reason to deviate from the generality of a text is *sharṭ*. It is technically defined as 'an evident and constant attribute whose absence necessitates the absence of the *ḥukm* but whose presence does not automatically bring about its object (*mashrūṭ*).'[713] *Sharṭ* can be a linguistic device, human intellect (*ʿaql*) or juristic clause. As a linguistic tool, it is identified by the 'if clauses' prototype. For example, on matters affecting a divorced couple, the Qurʾān states:

> Let them live where you live [during their waiting period] according to your means. And do not harass them to make their stay unbearable. If (*in*) they are

[708] Ibn Rushd, *Bidīyah*, 4/226; Ibn Qudāmah, *al-Mughnī*, 14/188.

[709] Ibn Qudāmah, *al-Mughnī*, 14/189.

[710] Al-Sarakhsī, *Uṣūl*, 1/275.

[711] Al-Ghazālī, *al-Mustaṣfā*, 260; Ibn Qudāmah, *Rawḍah*, 2/661.

[712] Ibid.

[713] Kamali, *Principles*, 434, See also: Ibn Qudāmah, *Rawḍah*, 1/169, 2/666.

> pregnant, then maintain (spend on) them until they deliver. And if (*in*) they nurse your child, compensate them, and consult together according to what is just and reasonable [in an acceptable way or courteously]. But if (*in*) you fail to reach an agreement [on how much to pay for nursing the child], then another woman may nurse [the child] for the father. Q.65:6.

Based on this text, Muslim jurists have derived the rights of a divorced wife to accommodation and domestic upkeep during their waiting period and pregnancy.

According to Ibn Qudāmah, the jurists agree that the upkeep of women is the obligation of their husbands based on various texts of the Qurʾān and the Sunnah.[714] This responsibility also extends to divorced wives during their waiting period if the man has the right to reverse his position on the divorce.[715] This is because he is still considered to be the husband in this state, and it is not acceptable for another man to propose to her in this circumstance until the waiting period has ended. However, if the divorce is irrevocable (such as the situation after a third divorce), then Ibn Qudāmah is of the view that the man is not obliged to provide shelter for her nor her upkeep except when she is pregnant. In this instance, it becomes his responsibility to provide for her accommodation and feeding until she delivers, based on the Qurʾānic text above.[716]

The man is required to provide financial compensation to his divorced wife if she agrees to nurse their child, as she has priority over others to do so.[717] However, suppose they disagree on remuneration for breastfeeding the child because she demands more than the man can afford for the child to be nursed; another woman may take over to breastfeed the baby.[718]

It is clear from Ibn Qudāmah's analysis how he applies the condition *in* (if) in the text to interpret the Qurʾānic text above Q.65:6 to indicate when a husband must spend on his divorced wife and when he must pay for his newborn child to be breastfed. Accordingly,

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[714] Ibn Qudāmah, *al-Mughnī*, 11/347; Ibn Qudāmah, *al-Kāfī*, 3/227.

[715] Ibn Qudāmah, *al-Kāfī*, 3/229.

[716] Ibn Qudāmah, *al-Mughnī*, 11/402.

[717] Ibid, 11/431.

[718] Ibid, 11/430; Ibn Qudāmah, *al-Kāfī*, 3/243.

in the absence of any of these conditions, the upkeep of a divorced wife is not incumbent on her former husband.

To specify the interpretation of a general text based on a condition (*sharṭ*), Islamic legal theorists may rely on the linguistic device '*in*', which is essentially equivalent to the conditional conjunction 'if' in English. This is referred to as *sharṭ al-lughawī* (linguistic condition).[719] This understanding conforms to the views of legal theorists who consider *sharṭ* as an attached indicator of specific reference. However, it is striking to note that the definition of *sharṭ*, as presented by Ibn Qudāmah and other Islamic legal theorists under the concept of ʿ*umūm*, is the same technical meaning of the term, which comprises both legal and linguistic conditions (*sharṭ al-sharʿī and sharṭ al-lughawī*). Perhaps this can be attributed to the fact that Ibn Qudāmah considers all three categories of *sharṭ* as valid indicators of specific reference or valid reasons to restrict the scope of the generality of a text, whether the condition was determined linguistically or by reasoning or legal text.[720]

For a condition (*sharṭ*) determined based on human intellect or reasoning (ʿ*aql*), Ibn Qudāmah provides an example of the relationship between life, knowledge and the desire to do something. Specifically, he argues that knowledge is essential for forming intentions and that life is a prerequisite for gaining knowledge.[721] By understanding this relationship, we can better appreciate the significance of these two conditions in fulfilling religious obligations such as Salat. To fulfil a religious obligation, one must know when and how to do it and have the physical ability to carry it out. Consequently, individuals who lack either of these necessary conditions: life and knowledge, such as children, the mentally ill, or the deceased, are not obligated to perform religious rites even though such rites may be considered universal and obligatory.

Regarding *sharṭ sharʿī* (juristic condition), Ibn Qudāmah illustrates it with the requirement of purification for Salat.[722] Unlike linguistic conditions, which can be

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[719] Al-Bāqillānī, *al-Taqrīb*, 3/159; Al-Qarāfī, *al-ʿAqd*, 2/257; Ibn al-Najjār, *Sharḥ al-Kawkab*, 1/453 and 3/340; al-Ṣāʿidī, *al-Muṭlaq*, 454.

[720] Ibn Qudāmah, *Rawḍah*, 2/666.

[721] Ibid.

[722] Ibid.

discerned directly from the text, legal conditions are derived from various sources of Islamic law, including the Qurʾān, Sunnah, *ijmāʿ* or *qiyās*.[723] For example, the requirement of purification for Salat is outlined in Q.5:6, distinctly separate from the texts enjoining Muslims to perform obligatory prayers. The Prophet further emphasises the condition of purification by saying, 'Allah does not accept any Salat without purification.'[724] Another instance is the conditions for applying the prescribed punishment for theft in Q.5:38, which mandates cutting off thieves' hands. Ibn Qudāmah identifies several conditions necessary for the application of this punishment, drawing evidence from primary sources, *ijmāʿ*, and *qiyās*, as reflected in the *Mughnī*.[725]

According to Q.5:38, the appropriate punishment for theft is amputating the perpetrator's hand. This text does not differentiate based on the gender, age, or circumstances of the offender, nor does it provide any details regarding the nature of the stolen property. This makes the text general. However, in practice, Muslim jurists make specific considerations that seem to deviate from applying the text in a broader sense. An underage thief, for instance, may be exempted from the punishment, which appears to distinguish the age at which the punishment can be applied to a thief. Likewise, an item not worth up to the threshold of Zakat may also be exempted from the sentence. The reason is that such instances do not meet the conditions for applying the punishment based on the Sunnah of the Prophet.[726]

For instance, when the Prophet was asked about stolen fruits. He replied,

> Whoever is in need and picks some of it without taking a supply with him in his garment, there is nothing against him, but he who carries some away is to be fined twice its value. But he who steals any of it after it has been put in the place where dates are dried is to have his hand cut off if the value of what he took is equal to the price of a shield.[727]

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[723] Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 1/435.

[724] Ibn Mājah, *Sunan*, 1/182 (Hadith No. 273), See also Muslim, *Ṣaḥīḥ*, 1/204 (Hadith No. 224); Ibn Qudāmah, *al-Mughnī*, 1/346.

[725] Ibn Qudāmah, *al-Mughnī*, 12/415.

[726] Ibn Qudāmah, *al-Mughnī*, 12/415.

[727] Abū Dāwūd, *Sunan*, 6/443 (Hadith No. 4390); Ibn Mājah, *Sunan*, 3/622 (Hadith No. 2596).

Muslim jurists have applied this text to specify the generality of the punishment for stealing in terms of the amount (threshold of Zakat)[728] and removal from a safekeeping place (*hirz*).[729] Perhaps this could also explain why Muslim jurists do not apply the punishment during famine if food is stolen for eating, on the condition that food is scarce.[730]

In general, it can be noted from Ibn Qudāmah's approach that his interpretations of *ʿumūm* and *khuṣūṣ* are based on the linguistic norms of the Arabs, as he frequently references. However, he attempts to substantiate his interpretive rules based on the practices of the early generations of Islam. According to him, the early generations were authorities in Arabic, and they understood the application of the texts of the primary sources of Islamic law and ethics from the Messenger himself, whose task was to explain the legal texts to everyone. It can be argued, therefore, that he did not consider his interpretive principles to be innovative, such that they may deviate from what the early generations have applied in their quest to bring the legal and ethical texts of Islam into their daily lives. On this note, Ibn Qudāmah considers the entire context of the Qurʾān and the Sunnah as indicating the norms of the Lawgiver, which must be considered in interpreting any legal or ethical text. Thus, even though he holds that *ʿāmm* must be applied to cover all that it feasibly applies to, when a text specifies a part of *ʿāmm*, he contends that the specifying text must be applied to its relevant referents. In contrast, the unspecified part remains under the generality of the *ʿāmm*. This seems to explain why Ibn Qudāmah may deviate from the interpretations of a general text to accommodate a relevant specific reference that indicates that parts of the referents to a general text do not fall under the general interpretation. The specific references discussed above also help reconcile apparent conflicts between general and specific texts.

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[728] Ibn Qudāmah, *al-Mughnī*, 12/418.

[729] Ibid, 12/426.

[730] Al-Māwardī, *al-Ḥāwī al-Kabīr*, 13/313; al-Sarakhsī, *al-Mabsūṭ*, 9/140; Ibn Qudāmah, *al-Mughnī*, 12/462; Badr al-Dīn al-ʿAynī Maḥmūd ibn Ahmad, *al-Bināyah Sharḥ al-Hidāyah* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000), 7/17.

6.1.3 *Muṭlaq wa Muqayyad* (Unqualified and Qualified Expressions)

Closely related to the dual concept of ʿ*āmm* and *khāṣṣ* is the concept of *muṭlaq* and *muqayyad*, both of which are concerned with general meanings and the restrictions imposed on their interpretations. While both concepts are linked by their general nature, they operate differently in legal interpretation. ʿ*Āmm* refers to a word's entire range of possible meanings, such as in the statement, 'Be generous to students', which applies universally to all students. On the other hand, *muṭlaq* refers to a generality that applies to a specific instance, as seen in the phrase, 'Be generous to a student', which applies to one student. The difference lies in the scope: the expression '*Be generous to students*' implies generosity to each member of the group, whereas '*Be generous to a student*' suggests that generosity is extended to only one student to fulfil the request or order. Islamic legal theorists further distinguish the generality of *muṭlaq* by describing it as ʿ*umūm badalī* - a generality based on substitution. This means that any individual item within the scope of *muṭlaq* can suffice to fulfil the intended purpose, unlike ʿ*āmm*, which encompasses the entire class of subjects without substitution. In other words, while ʿ*āmm* refers to the entire category of students as a group, *muṭlaq* allows for the substitution of any student, focusing on one at a time but not the entire group collectively.[731]

Ibn Qudāmah defines *muṭlaq* as 'That which denotes an unqualified entity out of its entire class (*jinsih*)'.[732] He identifies this as an indefinite (noun) in the context of a command.[733] Most Islamic legal theorists also express this as an indefinite noun in an affirmative context.[734] This is illustrated by the expression 'Free a slave'. This is *muṭlaq* in that any enslaved person one frees fulfils the demand because the statement does not specify any attribute to the enslaved person that must be freed.

As *khuṣūṣ* specifies the scope of ʿ*umūm*, *muqayyad*, when applicable, may also restrict the application of *muṭlaq* to a specified attribute or quality in an entire class. Ibn Qudāmah defines it (*muṭlaq*) as 'That which denotes a particular object or a non-

[731] See al-Zarkashī, *al-Baḥr*, 4/9.

[732] Ibn Qudāmah, *Rawḍah*, 2/667.

[733] Ibid.

[734] Al-Āmidī, *al-Iḥkām*, 3/3; al-Qarāfī, *al-ʿAqd*, 1/251; Al-Ṭūfī, *Sharḥ*, 2/631.

specified object with an additional attribute to its generic name'.[735] For instance, the expression 'Honour Zayd among the students' is restricted to only Zayd, while the command 'Fast for two consecutive months' restricts fasting to be continuous. Najm al-Dīn al-Ṭūfī expounds that this concept also applies to verbs, such as limiting a verb to a particular time, place, or object. Therefore, if a verb is not restricted to any variable, it is said to be *muṭlaq*.[736]

Key to the discussion of *muṭlaq* and *muqayyad* is restricting an unqualified statement (*muṭlaq*) to a specific attribute attached to the same or a similar ruling in a different text. There is no disagreement among Muslim jurists and legal theorists that a ruling should be restricted to a specific attribute or variable if the text one is working with has that restriction(s). For instance, a Muslim who accidentally kills another Muslim is obliged to free an enslaved Muslim and compensate the family of the victim. Suppose the murderer is not capable of freeing an enslaved person, then they must fast for two consecutive months as stipulated in Q.4:92. Thus, per this text, the legal requirement is that the convict of manslaughter must free an enslaved person and that enslaved person must be a Muslim. Alternatively, if a person must fast because they cannot free an enslaved person, the fasting must be consecutive for two months. Both rulings have been restricted to specific attributes.

Muslim jurists concur that a ruling should not be restricted to any specific variable if it is not explicitly qualified. Instead, the ruling must remain unqualified and be applied without any restrictions. Conversely, if a ruling is qualified with a specific variable in one instance but left unqualified elsewhere, upholding the unqualified ruling would entail disregarding the context in which the ruling was restricted to a specific attribute. In such a scenario, what should a jurist or reader do? Furthermore, is it permissible to extend a restriction on a legal requirement to a similar ruling that is *muṭlaq* (unqualified)?

The above are circumstances where Islamic legal theorists and jurists may interpret unqualified legal requirements (*muṭlaq*) in some texts in the light of others with specific attributes to the same or similar legal requirements. This is formulated as

[735] Ibn Qudāmah, *Rawḍah*, 2/668.

[736] Ibid, al-Ṭūfī, *Sharḥ*, 2/634.

interpreting *muṭlaq* based on *muqayyad* (*ḥaml muṭlaq ʿalā muqayyad*).[737] Below are the situations that Ibn Qudāmah considers acceptable to apply a qualified ruling in a text to another unqualified text and the basis of his consideration.

Generally, there are four areas where *muqayyad* in a text can be employed to restrict the application of *muṭlaq* in a different text. The first is when both texts (the *muṭlaq* and the *muqayyad* texts) have the same ruling (*ḥukm*) and cause (*sabab*). The second is when both texts have the same *ḥukm* but different *sabab*. In the third situation, both texts have different *ḥukm* but the same *sabab*; in the fourth, both texts have different *ḥukm* and different *sabab*. In the first scenario, Islamic legal theorists agree that *muṭlaq* must be read based on the *muqayyad*.[738] They also agree on the fourth scenario, but contrary to the first scenario, each text must be applied independently in the fourth situation.[739] However, the second and third scenarios are debated among the *ʿulamāʾ*. These scenarios are examined below, with a focus on instances where Ibn Qudāmah considers it acceptable to interpret *muṭlaq* in the light of *muqayyad*.

In the first case, Ibn Qudāmah argues that restricting the unqualified ruling (*muṭlaq*) to the qualified attribute (*muqayyad*) is obligatory. That is when the associated texts - *muṭlaq* and the *muqayyad* - have the same *ḥukm* and the same *sabab*.[740] He attributes a disagreement on this approach to the Ḥanafī school.[741] However, this is the stance of all four Sunni schools of jurisprudence, as will be clarified later in this study.[742] To illustrate the above point, consider the issue of guardianship in marriage. The three Sunni schools of jurisprudence, excluding the Ḥanafī school, require a guardian for the bride as a condition of a valid marriage contract. While the Ḥanafī school does not regard a guardian as obligatory, it nevertheless agrees with the other schools that a guardian, if

[737] Ibn Qudāmah, *Rawḍah*, 2/669.

[738] Al-Ṣāʿidī, *al-Muṭlaq*, 222.

[739] Ibid, 235.

[740] Ibn Qudāmah, *Rawḍah*, 2/669-673.

[741] Ibid, 2/669.

[742] See Abū Ḥāmid al-Ghazālī, *al-Mankhūl min Taʿlīqāt al-Uṣūl* (Beirut: Dār al-Fikr al-Muʿāṣir, 1998), 256; Al-Āmidī, *al-Iḥkām*, 3/4.

present, must be capable of sound judgement.[743] Two texts from the Sunnah inform this verdict.

The first is the hadith: 'There is no marriage without a *waliyy* (guardian)'.[744] The second hadith states, 'There is no marriage without a *waliyy murshid* (a guardian capable of making sound judgements)'.[745] The ruling in both texts is the same (*ittiḥād al-ḥukm*), that is, there is no valid marriage without a guardian, and the cause (*ittiḥād al-sabab*) is the same, which is marriage. However, while guardianship (the ruling) in the first text is general and is not restricted to a particular attribute (i.e., it is *muṭlaq*), it has been qualified in the second text with the ability to make a sound judgement. Ibn Qudāmah asserts that the unqualified text must be interpreted based on the text with the restricted quality due to the unity in the *ḥukm* and *sabab*.[746] As a result, he considers the guardian's ability to exercise sound judgement (*rushd*) a necessary condition for a valid marriage. The majority of Muslim jurists share this view, as they emphasise that *rushd* is a required quality in a guardian.[747]

Ibn Qudāmah's position is based on the view that the unqualified text (*muṭlaq*) does not explicitly indicate that its ruling must apply in the broadest possible sense. Therefore, it remains open to restriction by a qualifying attribute. In contrast, the *muqayyad* text is explicit in its limitation, making it necessary to interpret the *muṭlaq* in light of the more specific ruling (the *muqayyad*).[748] According to al-Āmidī, the application of the qualified text fulfils the requirement of the unqualified one, whereas applying the *muṭlaq* alone would effectively nullify the role of the *muqayyad*. Therefore, it is crucial to reconcile both texts by prioritising the qualified text, as its explicit nature holds greater legal authority than the generality of the unqualified text.[749]

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[743] Al-Sarakhsī, *al-Mabsūṭ*, 5/10; al-Kāsānī, *Badāiʿ al-Ṣanāʾiʿ*, 2/237-239.

[744] Ibn Mājah, *Sunan*, 3/78 (Hadith No. 1880); Abū Dāwūd, *Sunan*, 3/427 (Hadith No. 2085).

[745] Al-Bayhaqī, *al-Sunan al-Kubrā*, 14/138 (Hadith No. 13829).

[746] Ibn Qudāmah, *Rawḍah*, 2/669.

[747] Al-Māwardī, *al-Ḥāwī al-Kabīr*, 9/61; al-Nawawī, *al-Majmūʿ*, 16/158.

[748] Ibn Qudāmah, *Rawḍah*, 2/669-670.

[749] Al-Āmidī, *al-Iḥkām*, 3/4, See also al-Ṭūfī, *Sharḥ*, 2/636.

It can be argued that even though most Ḥanafī jurists do not consider a guardian as a condition for a valid marriage based on other reasons[750] if there should be a guardian, they agree that the guardian should possess sound judgement as a condition for his role. Al-Kāsānī (d.587/1191), the renowned Ḥanafī jurist, expounds on *ʿaql* (reasoning) as a condition of a guardian for a valid marriage contract as the ability of the guardian to safeguard the interest of the one under his guardianship.[751] The other schools imply the same reason except for the Shāfiʿī school, which explains *waliyy murshid* in terms of religious uprightness (*al-ʿadālah fī al-dīn*). In other words, the Shāfiʿī school requires a guardian in marriage to be righteous, so it disqualifies the *fāsiq* (the *fāsiq* used here refers to an open transgressor of the boundaries or rules of Allah) from being a *waliyy* on this basis.[752] Conversely, the Ḥanafī school does not consider righteousness as a condition for one to be a guardian in marriage. However, it emphasises that the guardian must be capable of defending the bride's interest in matters regarding the marriage.[753]

On this note, Ibn Qudāmah declares that no one disagrees with *ʿaql* as a condition of a guardian for a valid marriage[754] because he (the guardian) is required to investigate the affairs of the marriage. This appears to be the popular stance of most Ḥanbalī scholars. Ibn ʿUthaymīn (d.1421/2001) - a contemporary Ḥanbalī jurist - asserts that *rushd* (sound judgement) is the essential condition of a guardian in a marriage contract.[755] He expounds that it (*rushd*) may be interpreted differently in different contexts. Regarding marriage, *rushd* refers to the quality of understanding issues affecting the bride's interest in the marriage.[756] Contrary to the Shāfiʿī school, Muḥammad Ibn ʿUthaymīn (d.1421/2001) does not consider *ʿadālah* in one's religion as a condition of the *waliyy*. He contends that the guardian's honesty and integrity in defending the bride's rights are sufficient.[757] As a result, it can be argued that all the Sunni schools uphold that the

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[750] Al-Sarakhsī, *al-Mabsūṭ*, 5/10.

[751] Al-Kāsānī, *Badāiʿ al-Ṣanāʾiʿ*, 2/237-239.

[752] Al-Muzanī, *al-Ḥāwī al-Kabīr* 9/61.

[753] Al-Kāsānī, *Badāiʿ al-Ṣanāʾiʿ*, 2/239.

[754] Ibn Qudāmah, *al-Kāfī*, 3/12.

[755] Muḥammad ibn Ṣāliḥ al-ʿUthaymīn, *al-Sharḥ al-Mumtiʿ ʿalā Zād al-Mustaqniʿ* (Saudi Arabia: Dār Ibn Jawzī, 1422-1428), 12/74.

[756] Ibid.

[757] Ibid 12/79.

guardian of a bride in marital affairs must have the capacity to make sound judgements. This ensures the need for reasonable decisions in the bride's interest. Accordingly, most Islamic legal theorists maintain that all the schools agree to interpret the *muṭlaq* in light of the *muqayyad* when both the *ḥukm* (ruling) and the *sabab* (cause) are the same in both texts.[758]

Even though the Ḥanafī school also shares the majority's view in the scenario above, they maintain some conditions. The two texts must not contradict each other, and it must be possible to apply them together.[759] Furthermore, the two texts must have the same status (i.e., both texts must be either *mutawātir* or both must be *āḥād*) before this principle can be applied. If *muqayyad* is produced by *āḥād* and *muṭlaq* by *al-mutawātir*, the *muṭlaq* must not be interpreted in the light of the *muqayyad*. Other concepts, such as abrogation, may be employed instead.[760]

Unlike the instance indicated above, Islamic legal theorists disagree on whether the unqualified text should be interpreted following the qualified text if the cause (*sabab*) for each requirement differs, even though the requirements are the same. For instance, in the case of manslaughter, the convict is required to manumit an enslaved Muslim as the atonement for the crime committed as stipulated in Q.4:92. A similar ruling of freeing an enslaved person is required from the one who divorces their wife by *ẓihār*[761] in Q.58:2. The requirement in the former text qualifies the kind of enslaved person to be freed (an enslaved Muslim), but the latter is open to any enslaved person since it is not qualified. The debate here is whether it is legitimate to restrict the manumission in *ẓihār* to an enslaved Muslim since the ruling is similar to the requirement for manslaughter. Islamic legal theorists differ on this issue.[762] The variant opinions here are due to different causes of the rulings in each case. That is accidental killing - without malice aforethought - and *ẓihār*.

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[758] See al-Ṣāʿidī, *al-Muṭlaq*, 226-230.

[759] ʿAlāʾ al-Dīn al-Bukhārī, *Kashf*, 2/287.

[760] Āl Taymiyyah, Majd al-Dīn ibn Taymiyyah, Shihab al-Dīn ʿAbd al-Raḥmān, Aḥmad ibn Taymiyyah, *al-Muswaddah fī Uṣūl al-Fiqh* (Cairo: Maṭbaʿah al-Madanī, n.d.), 146.

[761] *Ẓihār* is a type of divorce whereby the husband tells his wife that she is like his mother's back to him. This implies that having intimacy with his wife is like having intimacy with his mother.

[762] Ibn Qudāmah, *Rawḍah*, 2/670.

The first view holds that both texts must be applied independently since both rulings have distinct causes.[763] The requirement in the unqualified text must not be restricted to a similar ruling with a different cause (*sabab*). Likewise, the requirement in the qualified text must be upheld. The proponents of this view posit that since applying either text separately does not contradict the other, there is no reason to reconcile the two.

The second view holds that the *muṭlaq* must be interpreted in light of the *muqayyad* on linguistic bases, as Arabs are used to qualifying their statements under different circumstances.[764] The third view takes the stance that both must be interpreted independently unless there is an effective cause (ʿ*illah*) that allows the interpretation of the *muṭlaq* in light of the *muqayyad* based on *qiyās*.[765]

Ibn Qudāmah discusses these views in his legal theory without taking a clear position.[766] However, in the *Mughnī*, his position on this debate can be noted quite obviously as he defends the view that the enslaved person to be freed in *ẓihār* must be a Muslim. He supports this position by interpreting Q.58:2 based on Q.4:92 and with the Sunnah emphasising that '*Muṭlaq* is interpreted in the light of *muqayyad* based on *qiyās* if the effective cause is found between the two texts.'[767]

In brief, it may be argued that the view to interpret both *muṭlaq* and *muqayyad* texts with the same ruling independently due to different causes of a ruling is more valid since there is no linguistic basis to support the contrary view. However, if other proofs warrant that the *muṭlaq* must be restricted to the attribute in another text (the *muqayyad*), such as the availability of a valid common effective cause between them, then the external proof (in this case, the *qiyās*) will serve as the grounds for the restriction instead of the linguistic principle of interpreting unqualified word based on another in a different text. Therefore, in substantiating the position to restrict the kind of enslaved person to be freed in *ẓihār* to a Muslim, Ibn Qudāmah had to support his opinion with the Sunnah and the viability of applying the restriction based on *qiyās*. Thus, Ibn Qudāmah considers it

[763] Abū Yaʿlā, *al-ʿUddah*, 2/638; al-Āmidī, *al-Iḥkām*, 3/5.

[764] Abū Yaʿlā, *al-ʿUddah*, 2/637-638; al-Āmidī, *al-Iḥkām*, 3/5.

[765] Abū al-Khaṭṭāb, *al-Tamhīd*, 2/181; al-Āmidī, *al-Iḥkām*, 3/7.

[766] Ibn Qudāmah, *Rawḍah*, 2/670-673.

[767] Ibn Qudāmah, *al-Mughnī*, 11/82.

acceptable to interpret an unqualified text in the light of a qualified text linguistically when both texts have the same ruling and effective cause. Also, he interprets an unqualified text based on a qualified text if there is a common effective cause between the two cases, as supported by *qiyās*. These are the only instances where he considers it acceptable to interpret *muṭlaq* in the light of *muqayyad*. On the contrary, he regards it illegitimate to interpret *muṭlaq* based on *muqayyad* if the rulings in both texts are varied, irrespective of whether the cause for the rulings is the same or different. This is because a common ruling in both texts is a condition for this principle to be applicable.[768] Most Islamic legal theorists also share this view.[769]

6.2 Discussion

It can be noted from the above discussion that Ibn Qudāmah shares the view that a general statement must be interpreted as covering all that falls under its general interpretation. However, when a specific reference regarding a general statement is found, it must be interpreted by considering the specific reference. A specific reference could be in the form of *takhṣīṣ* (particularisation), *istithnāʾ* (exception), or *sharṭ* (condition).

To apply a specific reference to a general legal provision, Ibn Qudāmah, like most Islamic legal theorists, does not consider the linguistic principles in isolation. He compares the linguistic norms and their legal implications to arrive at his final judgements. To see his legal deductions at play, we will look at *istithnāʾ*. For example, as a linguistic tool employed in specifying a general statement, it appears straightforward when attached to a single general statement. However, when *istithnāʾ* occurs after multiple statements, determining which statement it applies to is debatable. In this instance, Ibn Qudāmah argues that the exemption applies to all the sentences that precede it. But when other sources or textual evidence prove that the exemption is irrelevant to parts of the rulings, *istithnāʾ* must not be applied to it. For instance, in the case of punishing one who falsely accuses another person of adultery in Q.24:4, if the slanderer repents, they will not be exempted from receiving the ‘eighty lashes

[768] Ibn Qudāmah, *Rawḍah*, 2/673.

[769] Al-Āmidī, *al-Iḥkām*, 3/4; al-Ṣāʿidī, *al-Muṭlaq*, 235-240.

punishment' because the exemption is irrelevant to it, as noted above.[770] Conversely, the position of the Ḥanafī school is straightforward. To the Ḥanafī jurists, an exemption after multiple statements must be applied to only the statement directly connected to it (*aqrab al-madhkūr*). That is to say, the false accuser will not be considered a transgressor (*fāsiq*) after they repent, but the other two judgements will be applied to them. Although both views strengthen their positions with the Arabic language usages, Ibn Qudāmah's position seems more reasonable as he convincingly submits that making exemptions after each statement in such instances is disapproved by experts in the Arabic language. He also proves his stance by comparing *istithnāʾ* to *sharṭ* since they are similar linguistic tools.[771]

However, in Q.4:92 regarding manslaughter without criminal intent, the Qurʾān stipulates that the culprit must free an enslaved person and give a ransom to the victim's family unless the family of the victim pardons the culprit. In this instance, Ibn Qudāmah argues that a pardon from the victim's family applies to the ransom only but does not extend to the freeing of an enslaved person because the privilege to pardon covers only what they are entitled to, which is the ransom/blood money. He considers such scenarios as indications (*qarāʾin*) preventing the application of an exception to a legal stipulation in similar instances.[772]

Similarly, in cases where an exception is made from another exception (*al-istithnāʾ min al-istithnāʾ*), Ibn Qudāmah maintains that the latter exception is not considered to have any impact on the original statement. He explains that in a confirmed statement such as 'I owe him seven apples', an exception serves to deny the exempted (*al-istithnāʾ min al-ithbāt nafy*). For example, if one confirms that one owes another person seven apples, except two, one only confirms five out of the seven apples. Conversely, in a negative statement, an exception confirms the exempted (*al-istithnāʾ min al-nafy ithbāt*).[773] In essence, additional exceptions to the exceptions at hand acknowledge a part of what has been negated, but they do not relate to the original statement. Therefore, if an individual states that they owe another person seven apples, except for three, except for one, they

[770] Ibn Qudāmah, *Rawḍah*, 2/661-666.

[771] Ibid.

[772] Ibid, 2/666.

[773] Ibid, 2/665-666.

essentially indicate that they owe five apples to that person.[774] Ibn Qudāmah maintains that applying exceptions to a statement is affected by any indication (*qarīnah*) that makes such an exception impossible.[775]

Furthermore, even though Ibn Qudāmah endorses using an exception to specify the meaning of a statement, he seems to emphasise that explicit statements cannot be specified (*lā yukhaṣṣaṣ*) by assumed contexts when such contexts are not linguistically supported. This is similar to his position on *taʾwīl*, as discussed in chapter four of this thesis. With regards to exceptions, he maintains that an exception cannot nullify the entire ruling or exclude the entire subject of a statement. In the context of divorce, if a man declares that he has divorced his wife three times, except for two, except for one, this layered exception is deemed valid. As a result, only one divorce is counted.[776] However, if he states that he has divorced her three times, except all three, or claims that he meant two divorces by saying three, both the exception and the intended meaning are considered invalid. The general rule, as stated by Ibn Qudāmah, is that it is linguistically incorrect to apply exceptions to an entire subject or object or to interpret three as two. Additionally, while one's intention is important in interpreting their words, the intention is deemed invalid if it does not align with the linguistic structure of the statement.[777]

Compared to specific references that are attached to the texts or statements they specify, detached specific references (*mukhaṣṣiṣāt al-munfaṣilah*) and the restriction of unqualified statements (*muṭlaq*) are more complex to apply. This is because it requires the scrutiny of the viability of other textual evidence and other sources like *qiyās* and statements by the companions of the Prophet before concluding. Also, linguistic principles such as implicature, which are applied to both *takhṣīṣ* and *taqyīd*, are highly contested. Even though Ibn Qudāmah argues persuasively on these principles, he sometimes generalises some of the indicators to specific references that require further details. For instance, in considering whether a statement by the companions of the Prophet can specify a text, Ibn Qudāmah did not differentiate the companions' opinions from their utterances that are attributable to the Prophet. However, as al-Amīn al-

[774] See Ibn Qudāmah, *al-Muqniʿ*, 520.

[775] Ibn Qudāmah, *Rawḍah*, 2/665-666.

[776] Ibn Qudāmah, *al-Mughnī*, 10/407.

[777] Ibid, 10/401.

Shanqīṭī has argued, the opinion of the companions, in general, cannot reasonably specify a general ruling unless it can be classified as coming from the Prophet.[778]

With regard to *muṭlaq* and *muqayyad*, Ibn Qudāmah is emphatic on interpreting an unqualified requirement in the light of a qualified one if the associated texts - *muṭlaq* and the *muqayyad* - have the same *ḥukm* and the same *sabab*. He, therefore, argues that it is obligatory to restrict the unqualified ruling to the qualified attribute in this instance. Other than this circumstance, the only occasion that an unqualified text can be confined to a qualified attribute is when the restriction (*taqyīd*) is supported by sound analogy. That is when the two rulings have a common and valid effective cause. These are the only instances where he considers it acceptable to interpret *muṭlaq* in the light of *muqayyad*.

It is evident that even though Ibn Qudāmah views the concepts *takhṣīṣ* and *taqyīd* as linguistic constructs, he contextualises his interpretations of the legal and ethical texts from the Qurʾān and Sunnah within the broader framework of principles and norms of Islamic law before applying them. For instance, in interpreting an unqualified (*muṭlaq*) text based on a qualified (*muqayyad*) one, he demonstrates that such a practice is rooted in *qiyās*.[779] Ibn Qudāmah asserts that according to Q.58:2, if a person divorces his wife by comparing his relationship with her to that of his mother through (*ẓihār*), he must free a slave before he can restore the marriage. Although Q.58:2 does not specify that the enslaved person to be freed must be a Muslim, Ibn Qudāmah argues that the enslaved person must be a Muslim based on Q.4:92, which specifies the kind of enslaved person to be freed for unintentional killing.[780] To support this interpretation, Ibn Qudāmah cites a report by Muʿāwiyah ibn Ḥakam,[781] in which he, Muʿāwiyah, enquired from the Prophet if he could manumit a slave girl because he was supposed to free an enslaved person. Without asking for the reason behind the need to set an enslaved person free, the Prophet ordered the freeing of the girl because she professed her belief in Allah and the Prophet.[782] This demonstrates that beliefs were considered in the decision regardless of

[778] Al-Shanqīṭī, *Mudhakkirah*, 349.

[779] Ibn Qudāmah, *al-Mughnī*, 11/82.

[780] Ibid, 11/81-82.

[781] I could not find any reference to his date of birth or death.

[782] See Muslim, *Ṣaḥīḥ*, 2/70 (Hadith No. 537).

the circumstances prompting her emancipation. Thus, Ibn Qudāmah not only uses *qiyās* to justify interpreting an unqualified text based on another qualified text but also considers other texts that can support his interpretation.[783]

Another instance that could illustrate the consideration of other contexts to interpret a general or unqualified text is the controversial report that ʿUmar bin al-Khaṭṭāb (d.24/644), the second caliph, suspended the punishment for stealing during his caliphate due to famine. If this report is taken for granted, it might be explained as applying acceptable reasons to avert a prescribed punishment based on the Qurʾān and the Sunnah rather than suspension of the penal code. It is generally agreed among Muslim jurists that the punishment for stealing is subject to conditions based on the Sunnah of the Prophet.[784] These conditions include averting punishments based on suspicion or doubt.[785] This condition is based on several texts from the Qurʾān and Sunnah that indicate that a person should not be punished for stealing when they are compelled by circumstances to do so or when there are possibilities of their entitlement to what they stole.[786] As it is better to err on the side of caution, a judge or a ruler is not expected to be impetuous in punishment, especially if people are forced to steal for survival in certain circumstances. Hence, the popular maxim by most Islamic legal theorists and Muslim jurists is that 'Prescribed punishment must be averted due to doubtfulness (*shubuhāt*).'[787]

Indeed, preserving one's life is one of the necessities in Islam. Q.5:3 permits people to eat forbidden food if they are facing severe hunger and have no other options, provided they do not have the inclination to transgress. In times of famine, the probability of stealing food to save one's life is very high. Moreover, there are sound premises from the Qurʾān and the Sunnah that prevent the application of a penal code in certain circumstances, including a wife stealing from her stingy husband to feed herself and her

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[783] Ibn Qudāmah, *al-Mughnī*, 11/81-82.

[784] See Ibn Qudāmah, *al-Kāfī*, 4/71-481.

[785] See Ibid, 4/74.

[786] See Ibid; ʿAbd al-Raḥmān ibn Ṣāliḥ al-ʿAbd al-Laṭīf, *al-Qawāʿid wa al-Ḍawābiṭ al-Mutaḍamminah li al-Taysīr* (Saudi Arabia: Deanship of Scientific Research, Islamic University of al-Madinah, 2003), 2/669-678.

[787] Ibn Qudāmah, *al-Kāfī*, 4/74; al-ʿAbd al-Laṭīf, *al-Qawāʿid*, 2/669.

children, and a person in need (*dhū al-ḥājah*). In the Sunnah of the Prophet, we came across a situation where he discharged a person who ate from another person's farm to have nothing against them, although it was without the permission of the farm owner. This is on condition that the person was in need (*dhū al-ḥājah*), and they did not take some produce away as a supply. And when some produce is taken away, the culprits are only required to pay double the value of what they took, as long as it was not stolen from a storage facility.[788]

To clarify the reason for averting the punishment for stealing, most Muslim scholars like Aḥmad ibn Ḥanbal (d.241/855) expound that the sentence must not be carried out if the culprit was forced to steal by the prevailing circumstance.[789] Consequently, if a person has enough food or can afford what is available in the market and goes ahead to steal, they must be punished, according to Ibn Qudāmah and Ibn Qayyim (d.751/1350).[790]

I find it too hasty to assume that ʿUmar - who instructed others to base their judgements on the Qurʾān and the Sunnah before making *ijtihād*[791] - will suspend the application of the text of the Qurʾān and the practice of the Prophet on this matter without having a valid reason to do so. If the account is verified to be accurate, can it be described as a suspension of the law? Perhaps a suspension is not a suitable description for that action, provided that he based his judgment on other texts from the primary sources of the *sharīʿah*. Besides, since it is permissible in the Qurʾān to eat forbidden foods if one is forced by severe hunger without an option, and the Sunnah allows a person in need to eat from another person's plantation, it will be insufficient to assume that ʿUmar banned the punishment in contravention of the clear text of the Qurʾān based on his discretion - as has been claimed -.[792] To support the above claim, there is a need to demonstrate that ʿUmar was indeed ignorant of such concessions in the Qurʾān and the Sunnah.

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[788] See Abū Dāwūd, *Sunan*, 3/135 (Hadith No. 1710), See also Ibn Qudāmah, *al-Kāfī*, 4/71; Ibn Qudāmah, *al-Mughnī*, 12/437-438.

[789] Ibn Qudāmah, *al-Mughnī*, 12/462-463.

[790] Ibid, Ibn Qayyim, *Iʿlām*, 4/350-352.

[791] See al-Qarāfī, *al-Furūq*, 4/130; Mannāʿ ibn Khalīl al-Qaṭṭān, *Tārīkh al-Tashrīʿ al-Islāmī* (Maktabah Wahbah, 2001), 189.

[792] Abdulla Galadari, "Ijtihād Holds Supremacy in Islamic Law: Muslim Communities and the Evolution of Law," *Religions* 13, no. 4 (2022): 369 pp, 5, https://doi.org/10.3390/rel13040369.

6.3 Conclusion

This chapter highlights the significance of linguistic concepts of ʿ*āmm* and *khāṣṣ*, and *muṭlaq* and *muqayyad* in Islamic legal theory. The chapter noted that the interpretations of general and specific (ʿ*umūm* and *khuṣūṣ*) texts, along with their corresponding constructs of unqualified and qualified (*muṭlaq* and *muqayyad*) texts in the primary sources of Islamic law and ethics, tend to be the focal points of many juristic differences when compared to other linguistic tools such as *ḥaqīqah* and *majāz*. This is due to varying perspectives on the principles surrounding these linguistic concepts and how they should be applied to the legal and ethical texts of the Qurʾān and Sunnah. Various interpretations can emerge due to factors such as the classification of what is considered general (ʿ*āmm*), the existence of precise word forms that indicate general statements and the extent of their applicability. Differing interpretations may also arise due to how general statements or texts can be specified (*adillah takhṣīṣ*). How unqualified statements (*muṭlaq*) are understood in relation to restricted statements (*muqayyad*) can also lead to varying interpretations.

When it comes to *muṭlaq* and *muqayyad*, the study found that Islamic legal theorists, such as Ibn Qudāmah, generally adhere to interpreting an unqualified text in the light of a qualified one based on textual proofs. They also consider the correlation between the legal rulings and their underlying reasons found in both the qualified and the unqualified texts.

The study noted that the flexibility to reinterpret a text's general meaning (ʿ*umūm*) or an unqualified (*muṭlaq*) text is limited to indicators that can be referenced from the same or another text. To specify the general meaning of a text, a specific reference (*takhṣīṣ*) may be determined based on other legal sources (*mukhaṣṣiṣāt al-sharʿiyyah* or *takhṣīṣ bi al-sharʿ*), an exception (*istithnāʾ*) or a condition (*sharṭ*) attached to a general text. When human faculties such as sensory perception and reasoning are employed to depart from the apparent meaning of a text, the derived meaning is required to be grounded by common sense or necessary knowledge (ʿ*ilm ḍarūrī*). In this sense, the use of sense-perception (*dalīl al-ḥiss*) and reasoning (*dalīl ʿaql*) for interpreting a general text was noted as falling under the principle of using a general idea to represent a specific object (ʿ*āmm al-ladhī urīda bihī khāṣṣ*). While using specific references indicates flexibility, a close examination of what constitutes specific references and how they are applied

restricts this flexibility to only instances when departures from the apparent meanings of general texts are supported by textual evidence or common sense. This explains ʿUmar ibn al-Khaṭṭāb's departure from applying the punishment for stealing since other texts allow for non-compliance in times of necessity.

Chapter 7: Textual Implications (*Faḥwā wa Ishārah*)

In earlier chapters of this thesis, it was established that knowledge of the Arabic language in which these texts were revealed is crucial for understanding the primary sources of Islamic law. Building on this foundation, this chapter explores the nuanced interpretations (textual implications) that can be inferred from the legal and ethical texts of the Qurʾān and Sunnah. It will focus on how Ibn Qudāmah relied on implicature to arrive at what he deemed acceptable interpretations and how these implications may have influenced his views on the rigidity and flexibility in applying the primary sources of Islamic law and ethics across different contexts. This chapter also seeks to illuminate Ibn Qudāmah's approach to interpreting the legal and ethical texts of the Qurʾān and Sunnah in the evolving contexts of linguistic usage, ensuring alignment with the objectives of *sharīʿah*. Furthermore, it will explore how the legal and ethical texts of the primary sources of Islam can be applied to address the dynamic changes encountered in contemporary daily life.

7.1 Ibn Qudāmah's Views on the Types of Textual Implications

Ibn Qudāmah acknowledges that legal and ethical texts in the Qurʾān and Sunnah can convey both literal and implied meanings. He views language as the primary medium for articulating Islamic legal and ethical requirements, with its nuanced use enabling a deeper understanding of divine intent.[793] This flexible interpretive approach stands in stark contrast to the Ẓāhirī methodology, which strictly confines interpretation to the explicit lexical meanings of the texts, rejecting implied or inferred meanings as distortions of the divine message.

The application of implied meanings (*mafhūm*) to interpret the texts of the Qurʾān and Sunnah becomes more complicated when one discovers that even the proponents of implied meanings disagree on applying some forms of implicature to interpret the *nuṣūṣ sharʿiyyah*. The Ḥanafī school, for instance, disallows the reading of counter-implications (*mafhūm mukhālafah*) into the texts of the Qurʾān and the Sunnah, although they accept other forms of textual implications.[794] In some way, the Ḥanafī's position on

[793] Ibn Qudāmah, *Rawḍah*, 2/872.

[794] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1/291.

counter-implications may seem to strengthen the Ẓāhirīs' position on literal meaning, even though this is not entirely the case.

This divergence among proponents of implied meanings underscores the complexity of interpreting the *nuṣūṣ sharʿiyyah*, particularly when addressing various forms of textual implications. In his legal theory, *Rawḍah al-Nāẓir*, Ibn Qudāmah contributes to this discourse by identifying five distinct shades of implied meanings that a text may convey. He underscores that these interpretations are different from the literal meaning carried by a text or what can be referred to as the *dalālah al-manṭūq al-ṣarīḥ* (explicit meaning of the text).[795] He categorises all non-explicit meanings under *dalālah al-mafhūm* (implied meaning), of which he discusses only four. This omission, as noted by al-Amīn al-Shanqīṭī (d.1393/1972), may stem from a conflation of terminologies.[796] After a detailed examination, the five types of *mafhūm* can be identified as follows: *dalālah al-iqtiḍāʾ* (required meaning), *dalālah al-īmāʾ* (implied cause or textually engendered meaning), *dalālah al-ishārah* (nonintegral implication or alluded meaning), *mafhūm al-muwāfaqah* (a fortiori or congruent implication), and *mafhūm al-mukhālafah* (counter-implication or divergent meaning).[797] The following subsections explore these five categories in greater detail, examining their definitions, applications, and significance within Ibn Qudāmah's legal framework for interpreting the legal and ethical texts of the Qurʾān and Sunnah.

7.1.1 *Dalālah al-Iqtiḍāʾ* (the Required Meaning)

Dalālah al-iqtiḍāʾ refers to the interpretation of a text or expression that must be assumed to validate the meaning of a statement.[798] Ibn Qudāmah explains the necessity of this meaning on three grounds. The first is when the literal interpretation of a statement is not applicable, such that assuming it will render the statement false. In this case, the speaker will be considered a liar. Generally, assuming a statement by the Lawgiver (Shāriʿ) to be a lie is regarded by Muslim scholars, perhaps Muslims in general, to be offensive. Hence, the need to assume an interpretation is required to make a statement by the Lawgiver valid if the literal meaning of such a statement contradicts

[795] Ibn Qudāmah, *Rawḍah*, 2/674.

[796] Al-Shanqīṭī, *Mudhakkirah*, 374.

[797] Al-Ghazālī, *al-Mustaṣfā*, 263-265; al-Shanqīṭī, *Mudhakkirah*, 367-370.

[798] Ibn Qudāmah, *Rawḍah*, 2/674.

reality or truth. For instance, the literal meaning of the hadith '*Rufiʿa ʿan ummatī al-khaṭaʾ wa al-nisyān*' (mistakes and forgetfulness have been taken from my people)'[799] implies that there must be no mistakes or forgetfulness happening in the *ummah* (community or people) of the Prophet. However, the occurrence of these two attributes cannot be denied.[800] Should the Prophet, therefore, be considered a liar since this statement is attributed to him? Muslims regard this as offensive, if not blasphemous. Since belying part of his message is tantamount to belying all. In retrospect, it is clear that the Prophet was fully aware of the prevalence of mistakes and forgetfulness among his people when he made that statement. Hence, assuming the literal interpretation of that statement will misrepresent the hadith. However, if it is interpreted that the *ummah* will not be held accountable for their mistakes or their acts in a state of forgetfulness, the statement will be sound.[801]

According to Islamic legal theorists, even though the latter interpretation was not expressed verbatim, it is required to make the statement valid and sound.[802] Accordingly, it must be understood that the *ummah* is pardoned for their mistakes and acts done out of forgetfulness.[803] Thus, assuming the required implication becomes necessary. Interestingly, it appears that the Ẓāhirīs, who are known for their literal interpretations, do not refute the application of *dalālah al-iqtiḍāʾ*. This can be seen in how the renowned proponent of literal meaning, Ibn Ḥazm (d.456/1064), refers to the text above to prove that a person must not be held responsible for acts done by mistake or out of forgetfulness.[804]

The second ground for assuming the required meaning is when it is needed to put a statement into its juristic (*sharʿī*) context.[805] To illustrate this, Ibn Qudāmah quotes the Qurʾānic text: 'So whoever among you is ill or on a journey, then an equal number of days must be made up on other days.' (Q.2:184). If taken literally, this would mean that

[799] Jalāl al-Dīn ʿAbd al-Raḥmān ibn Abūbakr al-Suyūṭī, *al-Jāmiʿ al-Kabīr (Jamʿ al-Jawāmiʿ)* (Cairo: al-Azhar al-Sharīf, 2005), 5/164 (Hadith No. 239).

[800] Al-Ghazālī, *al-Mustaṣfā*, 187.

[801] Ibid.

[802] Ibn Qudāmah, *Rawḍah*, 2/674.

[803] Ibid, 1/470.

[804] Ibn Ḥazm, *al-Iḥkām*, 7/47.

[805] Ibn Qudāmah, *Rawḍah*, 2/674.

anyone sick or travelling during Ramadan must make up for those days they were sick or on a journey. However, Muslim jurists agree that only those who did not fast due to illness or travel are required to make up those days. To interpret the text in the appropriate juristic context, Ibn Qudāmah argues that it is necessary to assume the ellipsis 'and broke their fasting' to make the text compliant with the legal ruling.[806]

The third basis for assuming *dalālah al-iqtiḍāʾ* is when the required meaning is needed to make a statement logically sound and acceptable. For instance, it is illogical to claim that one's mother has been made unlawful for one, as in Q.4:23, except when it is assumed as a prohibition to marry them or have sexual relations with one's mother. In this case, it is required to assume that meaning to make the statement sound.[807]

Al-Amīn al-Shanqīṭī (d.1393/1972) asserts that *dalālah al-iqtiḍāʾ* can only be assumed based on an ellipsis (*iḍmār*) which is indicated by the expression as a necessary inference to validate the statement.[808] On this claim, the literalists disagree with other mainstream Sunnis. This is because they do not consider any such assumption valid unless it is supported by *ijmāʿ* or a text from the Qurʾān or Sunnah. For instance, Ibn Ḥazm takes the position that the fasting of one who goes beyond a mile in their journey is void and must be made up after Ramadan. He refutes the assumption of the required meaning: 'If they break their fast (*idhā afṭar*).'[809] By this, he also refutes the notion that breaking one's fast on a journey is a concession. He not only posits that it is obligatory not to fast on a journey, but he also asserts that if a fasting person goes beyond a mile (a distance beyond which Ibn Ḥazm considers a person to be on a journey), their fast becomes void. That person must make up for the day(s) after Ramadan.[810]

On the other hand, regarding the *muḥrim* (a person in the state of *iḥrām*) who is required to shave their hair because of a sickness, lice, or an injury, Ibn Ḥazm consents that that person can shave off their hair and pay the *fidyah* (ransom).[811] On this verdict, he claims

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[806] Ibn Qudāmah, *Rawḍah*, 2/675.

[807] Ibid.

[808] Al-Shanqīṭī, *Mudhakkirah*, 368.

[809] Ibn Ḥazm, *al-Iḥkām*, 4/399.

[810] Ibid, 4/384.

[811] Ibn Ḥazm, *al-Muḥallā*, 5/228.

that an ellipsis has been proven by *ijmāʿ* and the Sunnah. This shows a significant difference between the literalist approach of the Ẓāhirīs and their opponents from the mainstream Sunni Islamic legal schools regarding the interpretation of the *nuṣūṣ sharʿiyyah* on the use of *dalālah al-iqtiḍāʾ* from a linguistic viewpoint.

7.1.2 *Dalālah al-Īmāʾ* (Textually Engendered Meaning)

The second type of implied meaning, according to Ibn Qudāmah, is *dalālah al-īmāʾ*, *faḥwā al-kalām*, *laḥn al-khiṭāb* (textually engendered implication[812]).[813] This implied meaning involves deducing the reasoning behind a specific legal ruling based on its correlation with a suitable attribute (*waṣf munāsib*) that can be considered the effective cause for that ruling.[814] In the exposition of the *Rawḍah al-Nāẓir*, al-Amīn al-Shanqīṭī (d.1393/1972) emphatically states that *dalālah al-īmāʾ* is only applicable in deducing the effective cause of a ruling (*ʿillah al-ḥukm*).[815] He explains that this occurs when a suitable attribute is linked to a legal ruling in such a way that, if it is not regarded as the rationale for the ruling, including that attribute in the statement would seem illogical or flawed. [816]

Based on this linguistic tool - *dalālah al-īmāʾ* - the rationale behind the application of the penal code for theft is deduced from the verse: 'As for the thief both male and female (*wa al-sāriq wa al-sāriqah*), cut off their hands…' (Q.5:38) even though it was not explicitly stated as the effective cause.[817] Another example is the ruling for engaging in sexual intercourse while fasting in the month of Ramadan. When a Bedouin, remorseful, recounted having intimate relations with his wife during the fasting period in Ramadan to the Prophet: 'I have been ruined for I have had sexual intercourse with my wife in Ramadan [while I was fasting]. The Prophet said [to him], "Manumit a slave".'[818] If his action (sexual activity during Ramadan) were not the cause, the ruling to 'free a slave'

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[812] As translated by Bernard Weiss, See Weiss, *The Search*, 474.

[813] Ibn Qudāmah, *Rawḍah*, 2/675.

[814] Ibid, 2/675.

[815] Al-Shanqīṭī, *Mudhakkirah*, 370.

[816] Ibid.

[817] Ibn Qudāmah, *Rawḍah*, 2/675.

[818] See al-Bukhārī, *Ṣaḥīḥ*, 2/684 (Hadith No. 1834) and 5/2053 (Hadith No. 5053).

would lack coherence, as it would neither address the underlying issue nor provide a resolution to the man's predicament.[819] This is agreed upon by the Ẓāhirīs too, as they consider having intimate relations while fasting in Ramadan to be the reason for the ruling to free an enslaved person, fast for two months consecutively, or to feed sixty poor people. The difference between the Ẓāhirīs and the Mainstream Sunni legal schools regarding this ruling is that the Ẓāhirīs restrict the ruling to indulgence in lawful relationships with one's legal woman (wife or slave) only, while the mainstream Sunni schools apply the ruling to all sexual intimacies, whether in a legitimate relationship or not.[820]

7.1.3 *Dalālah al-Ishārah* (Nonintegral Implication)

The third type of implied meaning is *dalālah al-ishārah*, which can be translated as nonintegral implication or alluded meaning.[821] According to Islamic legal theorists, it is the necessary inference of a text, even though it is not the primary purpose for which it was constructed.[822] As noted earlier, Ibn Qudāmah does not address this as a separate implication. Nonetheless, its application can be seen in his juristic practices, as illustrated in his *Mughnī* on the minimum gestation period.

The minimum gestation period is not explicitly stipulated in the Qurʾān or the Sunnah. However, it is reported that once, a case of a woman who delivered after six months of sexual relations with her husband was raised with ʿUmar ibn al-Khaṭṭāb (d.23/644) during his caliphate, and he was poised to punish her for infidelity. Perhaps he assumed she had conceived the pregnancy before marrying her husband. However, ʿAlī ibn Abū Ṭālib (d.40/661), who later became the fourth caliph, drew his attention to an inference from two different texts that show a woman may deliver after six months. One of the texts states that 'Mothers may breastfeed their children for two whole years if they wish to complete the nursing (period)' Q.2:233. This implies that the complete duration of nursing is twenty-four (24) months. The other text states the duration of pregnancy

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[819] Al-Shanqīṭī, *Mudhakkirah*, 370.

[820] Ibn Ḥazm, *al-Muḥallā*, 4/313-320; Ibn Qudāmah, *al-Mughnī*, 4/372-375.

[821] See Weiss, *The Search*, 474; Kamali, *Principles*, 169.

[822] Al-Āmidī, *al-Iḥkām*, 3/64; al-Ṭūfī, *Sharḥ*, 2/709; al-Zarkashī, *al-Baḥr*, 5/123; al-Shanqīṭī, *Mudhakkirah*, 369.

together with nursing as follows: 'The period of bearing (gestation period) and weaning is thirty months' Q.46:15. ʿAlī ibn Abū Ṭālib deduced that six months of pregnancy and twenty-four months of breastfeeding a child totalled thirty months. Therefore, there is no reason to accuse the woman. On that account, ʿUmar refrained from punishing the woman.[823]

Ibn Qudāmah employs the above report to substantiate that the least gestation period is six months.[824] It can be noted that the substance of the texts above was not primarily to indicate the least period of pregnancies, even though it can be inferred from them. As indicated above, Islamic legal theorists hold that such implications from a text other than its primary purpose are termed *dalālah al-ishārah* or *ishārah al-naṣṣ* (an implication indicated by a text). Interestingly, Ibn Ḥazm (of the literalist school) also employs the two texts to prove the least gestation period.[825]

In a broader sense, there are notable similarities in the application of the three types of textual implications examined above (*dalālah al-iqtiḍāʾ, dalālah al-īmāʾ,* and *dalālah al-ishārah*) between mainstream Islamic legal theorists and the Ẓāhirīs. This presents a compelling area for further study. The differing perspectives among Islamic legal theorists on whether these textual implications are rooted in the wording of a text or extend beyond it may partly account for these similarities.

Al-Amin al-Shanqīṭī (d.1393/1972) points out that textual implications have two ends with a middle course.[826] One is *dalālah al-manṭūq* (verbal or word-for-word interpretation). In other words, it is a reading based on the uttered words of a text. This is agreed upon by Islamic legal theorists and regarded as the highest and most authentic form of interpretation. It must be given preference to any other interpretation.[827] The other end is an interpretation based on the implications of a text (*mafhūm*). Between these two are some interpretations that different legal theorists consider as either *manṭūq*

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[823] Al-Bayhaqī, *al-Sunan al-Kubra*, 15/580 (Hadith No. 15641), See also Ibn Ḥazm, *al-Iḥkām*, 2/125; Ibn Qudāmah, *al-Mughnī*, 11/231.

[824] Ibn Qudāmah, *al-Mughnī*, 11/231.

[825] Ibn Ḥazm, *al-Muḥallā*, 10/131.

[826] Al-Shanqīṭī, *Mudhakkirah*, 367.

[827] Al-Khin, *Athar*, 146.

(verbal) or *mafhūm* (implicature). These are *dalālah al-iqtiḍāʾ*, *dalālah al-al-īmāʾ* and *dalālah al-ishārah*.[828] These three classes of implicature are also known as *dalālah al-iltizām* (meanings inherent in the wording or utterance of a text).[829] Are these forms of interpretation implicitly indicated by the utterances of a text (*manṭūq ghayr ṣarīḥ*) or by the implicature of a text? While this remains debatable among Islamic legal theorists, Ibn Qudāmah concluded that they fall under implicature.

It appears to the researcher that the Ẓāhirīs consider *dalālah al-iltizām* as interpretations rooted in the *manṭūq* of a text. This is evident from their application of certain legal rulings derived from *dalālah al-iltizām,* even though Ibn Qudāmah, along with the majority of Islamic legal theorists, classifies such rulings under *mafhūm.* Additionally, some Islamic legal theorists use terms like *al-manṭūq ghayr al-ṣarīḥ* and *dalālah al-iltizām* interchangeably, highlighting their close connection to the three forms of verbal interpretation (*dalālah al-iqtiḍāʾ, dalālah al-īmāʾ, and dalālah al-ishārah*), as discussed earlier.[830] Thus, when *dalālah al-iltizām* is essential for interpreting a text, its clarity often depends on assuming the implicature. Consequently, those who classify *dalālah al-iltizām* as part of *manṭūq* without distinguishing between explicit (*ṣarīḥ*) and implicit (*ghayr ṣarīḥ*) meanings like the Ẓāhirīs may find it easier to accept it as a valid verbal interpretation. This perspective may help explain the overlap in rulings between the Ẓāhirīs and the mainstream Sunni schools on *dalālah al-iqtiḍāʾ, dalālah al-īmāʾ,* and *dalālah al-ishārah.*

Having established this foundation, the discussion now turns to Ibn Qudāmah's analysis of two key types of textual implications, widely recognised by Islamic legal theorists as *mafhūm* (implicature), which play a pivotal role in understanding implied meanings within the legal framework.

7.1.4 *Mafhūm Al-Muwāfaqah* (a Fortiori or Congruent Implication)

Mafhūm al-muwāfaqah, the fourth type of implied meaning according to Ibn Qudāmah, may also be referred to as *dalālah al-mafhūm*, *al-tanbīh*, or *faḥwā al-lafẓ* (a fortiori or

[828] Al-Shanqīṭī, *Mudhakkirah*, 368.

[829] Ibid, 370.

[830] See also, al-Shanqīṭī, *Mudhakkirah*, 370.

congruent implication). It refers to the derivation of a legal ruling indicated by the format and purpose of a text, even though it is not mentioned explicitly in the text. Ibn Qudāmah argues that this is determined by identifying an unspoken dimension of a text (*al-maskūt ʿanh*) to be most appropriate for the ruling conveyed in a text based on the reason for which that ruling was pronounced.[831] Based on this interpretation, Islamic legal theorists extend the prohibition of saying '*ʾuff*' (an expression of annoyance or disapproval) to one's parents to encompass a broader prohibition against insulting, striking or causing them harm. Ibn Qudāmah argues that the Qurʾānic text 'if one of them or both attain old age in your life, say not '*ʾuff*' (fie or ugh) to them…' (Q.17:23) implies the prohibition to insult or beat them as well. Ibn Qudāmah adds that 'had it not been the understanding that the text was meant to revere and dignify parents, the text could not have been employed to forbid killing one's parents.'[832] Therefore, most Islamic jurists employ this text to prohibit any mistreatment or offence that is worse than saying '*ʾuff*' to one's parents.

It is not unexpected to find that proponents of literal interpretations of the Qurʾān and Sunnah would oppose *mafhūm al-muwāfaqah*, as it relies on deduction. The Ẓāhirī school of thought has traditionally rejected interpretations and deductions that do not align with the literal wording of a text. Since *mafhūm al-muwāfaqah* involves identifying the underlying reason for a ruling in a text to apply it to a different activity not explicitly mentioned, the Ẓāhirīs reject this approach and regard it as faulty.[833]

Ibn Ḥazm contends that the statement 'say not '*ʾuff*' to them' does not necessarily mean that one cannot physically harm (kill or hit) their parents. Its meaning is restricted to prohibiting saying *ʾuff* to them, nothing more and nothing less. He argues that the prohibition from mistreating and offending one's parents is drawn from the command to treat them with *iḥsān* (honour and kindness) in the first part of Q.17:23, but not the prohibition from saying *ʾuff* to them. According to Ibn Ḥazm, the command to show them *iḥsān* encompasses all sorts of kindness, and it is contradicted by any means of

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[831] Ibn Qudāmah, *Rawḍah*, 2/676.

[832] Ibid.

[833] ʿAlī ibn Aḥmad ibn Ḥazm, *al-Taqrīb li Ḥadd al-Manṭūq wa al-Madkhal Ilayh bi al-Alfāẓ al-ʿĀmmiyyah wa al-Amthilah al-Fiqhiyyah* (Beirut: Dār Maktabah al-Ḥayāh, 1900), 154.

offending them.[834] Since it is not permissible to go against Allah's command, mistreating one's parents is not allowed, based on Ibn Ḥazm's argument.

Both interpretations of the commandments above appear correct, although the reasoning differs. Whereas most Islamic legal theorists base the prohibition of offending parents on the congruent meaning of Q.17:23, the literalists enforce the prohibition from a more explicit reference in the same text. Perhaps the existence of multiple references to this ruling further strengthens it.

Another example of *mafhūm al-muwāfaqah* is in Q.99:7-8, which states, 'Whoever does an atom's weight of good deeds will see it and whoever does an atom's weight of bad deeds will see it.' The mainstream Sunni Islamic legal theorists contend that if an atom's weight of deed will be addressed as explicitly stated in this text, then anything more significant will undoubtedly also be accounted for.[835] In essence, *mafhūm al-muwāfaqah* is seen by mainstream Islamic legal theorists as a hint at that which is greater through that which is lesser (*tanbīh bi al-adnā ʿalā al-aʿlā*).[836]

From Ibn Qudāmah's perspective, *mafhūm al-muwāfaqah* appears to expand the scope of a legal ruling based on linguistic analysis. It involves considering what is explicitly mentioned in a text as an indication of the minimum range of a legal implication. An example is the indication in Q.99:7-8 that even an atom's weight of a deed will be noted in a person's assessment. This approach seems reasonable if there is no evidence that the ruling is limited to what has been explicitly mentioned and if incorporating the unmentioned aspect into the ruling achieves the same purpose without contradictions. Based on the approaches of Islamic legal theorists to *mafhūm al-muwāfaqah*, its application in interpreting the legal and ethical texts of the Qurʾān and Sunnah shares some similarities with the application of *qiyās* and *ḥaqīqah* and *majāz*. Thus, Islamic legal theorists have debated whether it constitutes a form of *qiyās*, *majāz*, or *ḥaqīqah ʿurfiyyah*.[837]

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[834] Ibn Ḥazm, *al-Iḥkām*, 7/57: Ibn Ḥazm, *al-Taqrīb*, 154-155.

[835] Al-Bāqillānī, *al-Taqrīb*, 1/341; Al-Āmidī, *al-Iḥkām*, 3/67; Al-Shanqīṭī, *Mudhakkirah*, 371.

[836] Ibn Badrān, *al-Madkhal*, 273.

[837] Ibn Qudāmah, *Rawḍah*, 2/676; Al-Shanqīṭī, *Mudhakkirah*, 371.

7.1.5 *Mafhūm al-Mukhālafah* (Counter-Implication)

The fifth type of implied meaning, according to Ibn Qudāmah, is *mafhūm al-mukhālafah* or *dalīl al-khiṭāb*, which refers to a counter-implication or a divergent meaning that arises from a text or an expression. This interpretation is drawn from the specific mention of an object or thing in such a way that the application of the stated ruling becomes restricted to the specified object.[838] The most common example cited here is the hadith on Zakat for livestock, which states, 'For the grazing sheep and goats (*sāimah al-ghanam*) Zakat is obligatory'. Most Islamic legal theorists infer from the counter-implication of this text that Zakat is not obligatory on livestock that are not *sāimah*.[839] Based on the argument presented by most Islamic legal theorists and jurists, the specific mention of the *sāimah* would be unreasonable if paying Zakat on other livestock that do not rely on grazing for survival is obligatory. Hence, there is a need to restrict the ruling based on the context of the hadith.

In discussing textual implications, Islamic legal theorists give a detailed analysis of *mafhūm al-mukhālafah* due to its significant impact on juristic and theoretical differences. In chapter six, we explored Ibn Qudāmah's position on *mafhūm* as an indicator of *takhṣīṣ* (specificity) under the umbrella of *ʿumūm wa khuṣūṣ* (generality and specificity). While most Islamic legal theorists acknowledge that *mafhūm* could indicate a specific reference for a general statement (*ʿāmm*), the Ẓāhirīs criticise this opinion.

Ibn Ḥazm contends that inferring a counter-implication from a text to specify the generality of the text is invalid, as that approach disagrees with the explicit reading of the general text. For instance, he argues that restricting Zakat on livestock to only those depending on grazing for most of the year (*sāimah*) opposes the hadith; 'For forty *shāh* (goat or sheep), a goat or sheep is due for Zakat…'.[840] By garnering the support of fellow scholars from the Mālikī and Shāfiʿī schools, he fortifies his position. His argument centres around the notion that statements must be taken at face value, with no implications beyond their literal meaning. As such, any alternate interpretation - whether

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[838] Ibn Qudāmah, *Rawḍah*, 2/678.

[839] Ibid, 2/642.

[840] ʿAlī ibn Aḥmad ibn Ḥazm, *al-Iʿrāb ʿan al-Ḥīrah wa al-Iltibās al-Mawjūdayn fī Madhāhib Ahl al-Raʾy wa al-Qiyās* (Riyadh: Dār Aḍwāʾ al-Salaf, 2005), 2/614.

it aligns or contradicts the original statement - must have evidence from the Qurʾān or Sunnah to substantiate it.[841] According to him, an assertion cannot be deemed valid without proof from a reliable source; any assertion that deviates from this stance is considered unacceptable. Essentially, his perspective is that a statement should be taken for what it is and should not be construed to imply anything else. No additional meaning, whether consistent or contradictory, may be gleaned from a text or statement.[842]

Although the Ḥanafī school is recognised as the leading proponent of analogy (*qiyās*) in Islamic jurisprudence, interestingly, the Ḥanafī jurists also reject the idea of inferring counter-implications (*mafhūm al-mukhālafah*) from the legal and ethical texts of the Qurʾān and Sunnah.[843] According to Ḥanafī jurists, the counter-implication of a text cannot be employed to specify the general interpretation of a text, nor does it restrict a ruling to only what is explicitly stated. In simpler terms, counter-implications do not preclude any unmentioned details (*al-maskūt ʿanh*) from the ruling pronounced in the text and do not suggest a different ruling for attributes that are not mentioned.[844]

A key argument against *mafhūm al-mukhālafah* is the doubt surrounding its validity as a linguistic tool. Proponents of this critique assert that counter-implication as a linguistic usage lacks sufficient evidence, relying only on solitary transmission. For such a claim to be substantiated, a *mutawātir* transmission or one of equivalent strength is required. In the absence of such evidence, the validity of counter-implication remains highly questionable, leading many to reject its acceptability, rendering it unacceptable.[845]

It can be noted from this that the Ḥanafī school is consistent with its principle that a definite ruling may not be repealed or affected by speculative evidence. Thus, as counter-implication lacks linguistic certainty, it cannot be relied upon to infer divergent rulings from the texts of the Qurʾān or the Sunnah. On this basis, most later Ḥanafī jurists concede that *mafhūm al-mukhālafah* applies to human expressions since it is acceptable per conventional usages, but it does not apply to expressions of the Qurʾān

[841] Ibn Ḥazm, *al-Iḥkām*, 7/2.

[842] Ibn Ḥazm, *al-Iḥkām*, 7/2.

[843] ʿAlāʾ al-Dīn al-Bukhārī, *Kashf*, 2/253.

[844] Ibid, 2/253.

[845] Ibid, 2/256.

and Sunnah.[846] That being said, when other sources of jurisprudence support a ruling based on the counter-implication of a text, the Ḥanafī jurist will work with it even though they do not concede to counter-implication. This is evident in the case of the *takhṣīṣ* of Zakat on livestock by distinguishing those fed with fodder from those grazed most of the year, as discussed in chapter six.[847]

The debate on *mafhūm al-mukhālafah* has greatly impacted many juristic cases in Islamic law.[848] However, Ibn Qudāmah appears to ground his position on this concept with how the companions of the Prophet treated such texts that inform counter-implications. He argues that the counter-implication of an expression is linguistically valid, as can be observed from the practices of the companions of the Prophet (*ṣaḥābah*). For instance, Yaʿlā ibn Umayyah (d.38/658) once asked ʿUmar ibn al-Khaṭṭāb (d.23/644), the second caliph, did Allah not say, 'And when you travel through the land, there is no blame on you to shorten your prayer if you fear an attack by the disbeliever…' Q.4:101, but people are now safe. ʿUmar then replied: I wondered about it just as you are. So, I asked the Messenger of Allah about it, and he said, 'It is charity from Allah to you, so accept His charity.' Ibn Qudāmah expounds that they understood from the text that the prayer must not be shortened if people are safe. This is the essence of counter-implication, according to him.[849] It may also be argued that if their interpretation based on the counter-implication of the text were wrong, the Prophet would have made it clear to them. However, he strengthened their understanding and explained why the shortening of prayers on a journey remains valid even though there are no more threats from the unbelievers.

In addition, when the Prophet was asked what is permissible for a pilgrim in the state of *iḥrām* (*muḥrim*) to wear, he replied, 'He should not wear a shirt, trousers, nor a hooded cloak (*burnus*) …'. Ibn Qudāmah argues that if the Prophet's response does not mean wearing anything except what he mentioned is permissible, his response would be

[846] Ibn Amīr Ḥāj, *al-Taqrīr*, 1/117.

[847] See also, al-Jaṣṣāṣ, *Sharḥ*, 2/275.

[848] As Abdul al-ʿAzīz al-Bukhārī has observed. See ʿAlāʾ al-Dīn al-Bukhārī, *Kashf*, 2/258.

[849] Ibn Qudāmah, *Rawḍah*, 2/681-682.

irrelevant to the question.[850] This proves the validity of applying counter-implications (*mafhūm al-mukhālafah*) to interpret a text.

As demonstrated in the preceding discussion, except for the Ẓāhirī school, the majority of Islamic legal theorists and jurists, including later Ḥanafī scholars, acknowledge the legitimacy of applying the counter-implication (*mafhūm al-mukhālafah*) of a statement to interpret it, albeit with limitations. The Ḥanafī school, for instance, confines its use exclusively to human expressions. While this linguistic tool is widely recognised, it is applied with constraints, as can be noted from the works of most Islamic legal theorists such as Muḥammad ibn ʿAlī al-Shawkānī (d.1250/1834) and Muḥammad al-Amin al-Shanqīṭī (d.1393/1972).[851] These restrictions or prerequisites appear to curtail the scope of *mafhūm al-mukhālafah* in specific domains, which critics contend invalidates its use in interpreting the legal and ethical texts of the Qurʾān and Sunnah.

7.2 Discussion

The study in this chapter sheds light on the importance of language and meaning in Islamic legal interpretations. It is evident that Muslim jurists and legal theorists, such as Ibn Qudāmah, endeavour to achieve reasonable applications of the primary sources of Islamic law by thoroughly examining all potential linguistic meanings that can be derived from a text to achieve what they consider to be the most reasonable interpretation of the text. This section delves into how a text's various implications might have influenced the interpretations and applications of Islamic legal theorists and jurists, particularly Ibn Qudāmah, in their analysis of the legal and ethical texts of the Qurʾān and Sunnah.

7.2.1 The Relevance of Implicature in Interpreting the Legal Texts of the Qurʾān and Sunnah

As previously mentioned, there is a scholarly discussion among Islamic legal theorists about how to interpret the legal and ethical texts of the Qurʾān and Sunnah (*nuṣūṣ sharʿiyyah*). The Ẓāhirīs advocate for considering only the explicit and apparent

[850] Ibn Qudāmah, *Rawḍah*, 2/683.

[851] Al-Shawkānī, *Irshād*, 2/40; al-Shanqīṭī, *Mudhakkirah*, 376; al-Zuḥaylī, *al-Wajīz*, 2/164.

meanings of the texts. At the same time, most mainstream Sunni scholars believe that a text may contain various shades of meaning, both directly expressed and indirectly implied.[852]

According to proponents of implied meaning, such as Ibn Qudāmah, reading non-explicit meanings into a legal text is linguistically acceptable. However, most Islamic legal theorists exercise restraint when relating implied meanings to the *nuṣūṣ sharʿiyyah*, as they are cautious not to deviate from what God intended with a particular text.[853] This is why the Ẓāhirīs strictly adhere only to the explicit requirements of the primary sources of Islamic law, refraining from applying analogy and related concepts to the legal texts (*nuṣūṣ sharʿiyyah*). Similarly, the Ḥanafī school rejects the application of counter-implications of the legal texts in many cases for the same reason.

Even those who advocate for the concept of *mafhūm* or implied meaning do so with care and acknowledge the risk of relying too heavily on textual implications that oppose explicit interpretations of the legal texts. Specific rules must be followed to prevent straying from the norms of the *sharīʿah* and contradicting other more authoritative evidence. Islamic legal scholars concur that the strengths of textual implications should guide their application. In cases where multiple implications of a text conflict, the most compelling interpretation should be prioritised.[854]

When interpreting texts, Islamic legal theorists regard *dalālah al-manṭūq* as the most reliable and authentic form of interpretation and should be given preference over other interpretations.[855] The next in strength is *mafhūm al-muwāfaqah*, then *dalālah al-ishārah*. *Dalālah al-iqtiḍāʾ* is also regarded as more substantial than *dalālah al-īmāʾ*.[856] For Ibn Qudāmah, it seems he will push for the most definite (*qaṭʿī*) interpretation of a

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[852] Abū Yaʿlā, *al-ʿUddah*, 2/480; al-Juwaynī, *al-Burhān*, 1/165; al-Ghazālī, *al-Mustaṣfā*, 263; Ibn Qudāmah, *Rawḍah*, 2/674; Al-Āmidī, *al-Iḥkām*, 3/64.

[853] The concept of God's or speaker's intent in interpreting the text of the Qurʾān or Sunnah is discussed below.

[854] See ʿUthmān ibn ʿAlī and al-Shilbī, and Shihāb al-Dīn Aḥmad al-Zaylaʿī, *Tabyīn al-Haqāiq Sharḥ Kanz al-Daqāʾiq wa Ḥāshiyah al-Shilbi* (Cairo: al-Maṭbaʿah al-Kubrā al-Amīriyyah, 1314 AH), 2/118; al-ʿUthaymīn, *al-Uṣūl*, 82; Al-Khin, *Athar*, 146.

[855] Al-Khin, *Athar*, 146.

[856] Al-Khin, *Athar*, 146; Kamali, *Principles*, 167-168.

text over a speculative (*ẓannī*) one and reject an interpretation or implication that is not substantiated (*fāsid*). This is evident in his remarks on the different levels of *mafhūm al-muwāfaqah*,[857] as well as his discussion on the validity of employing the implication of a text (*mafhūm*) to specify a general statement (*takhṣīṣ al-ʿāmm*). He contends that while the generality of a text (*ʿāmm*) is speculative (*ẓannī*), the congruent implication of a text (*mafhūm al-muwāfaqah*) is definite (*qaṭʿī*), and the counter-implication of a text (*mafhūm al-mukhālafah*) wields the strength of the relevant text. Therefore, both forms of *mafhūm* can be employed to specify the generality of a statement or text.[858]

The discussion above highlights that employing counter-implications (*mafhūm al-mukhālafah*) to interpret a text is considered the weakest of all the acceptable forms of textual implications. Therefore, this approach can be controversial, especially when dealing with explicit texts. However, proponents of this approach, *mafhūm al-mukhālafah*, apply it with a degree of caution by following a set of conditions (*shurūṭ*) or restrictions (*mawāniʿ*), as has been underscored by some Islamic legal theorists including the contemporary scholar, Muḥammad al-Amīn al-Shanqīṭī (d.1393/1972).[859] These restrictions are in place to prevent assuming any interpretations that may deviate from the intended meaning of a text.

For instance, Q.17:31 states, 'Do not kill your children for fear of poverty.' The clause 'for fear of poverty' could be interpreted as limiting the prohibition to that specific condition, which might suggest that taking the life of one's child for another reason is permissible.[860] However, Muslim jurists agree that killing one's child is a grave sin.[861] Assuming the counter-implication of Q.17:31 in this context would be illegitimate. This can be clarified by examining the conditions that restrict the application of *mafhūm al-mukhālafah*.

Islamic legal theorists contend that one cannot assume the counter-implication of a text if there is an indication that the text was not meant to establish a divergent reading for

[857] Ibn Qudāmah, *Rawḍah*, 2/677.

[858] Ibn Qudāmah, *Rawḍah*, 2/642.

[859] Al-Shawkānī, *Irshād*, 2/40; al-Shanqīṭī, *Mudhakkirah*, 376; al-Zuhaylī, *al-Wajīz*, 2/164.

[860] Al-Āmidī, *al-Iḥkām*, 3/85.

[861] Ibn Qudāmah, *al-Mughnī*, 13/477; al-Āmidī, *al-Iḥkām*, 3/85.

what is not stated in the text (*al-maskūt ʿanh*). This can be noted when there is an indication that the speaker or the lawgiver did not mean to restrict the ruling to the attribute(s) mentioned in the text. Examples include urging the *mukallaf* or deterring them from an action, confirming a situation addressed in the text, responding to a question, or showing a favour.[862]

Assuming the counter-implication of Q.17:31 is deemed inaccurate and therefore rejected by Islamic legal theorists because the verse addresses a specific situation in which people abandoned their children mainly because of the burden of caring for them, which was a practice in pre-Islamic Arabia.[863] Hence, it would be inappropriate to restrict the ruling to the condition of fear of poverty, as stated in the text. In addition, assuming the counter-implication of the text leads to contradicting many other texts, such as Q.4:92 and Q.25:68. Moreover, one could argue that if it is forbidden to kill one's child out of fear of poverty, then doing so while being financially capable of caring for them is even more reprehensible and deserving of prohibition.[864]

The traditional Islamic legal perspective on textual implications emphasises deriving interpretations that accurately reflect the intent of the speaker or the Lawgiver at the time of expression. Muslim jurists and legal theorists, such as Ibn Qudāmah, limit the application of these implications to meanings that align with acceptable linguistic practices. Ibn Qudāmah supports this approach by employing logical linguistic inferences, demonstrating how the Prophet and his companions utilised language to deduce analogous meanings.[865] This methodology not only underscores the Prophet's role in elucidating revelation for humanity but also establishes a precedent for deriving legal and ethical rulings grounded in linguistic precision and contextual reliability.[866] Traditional Muslim scholarship consistently rejects interpretations that lack direct support for reflecting the Lawgiver's intent. Instead, it adheres to a framework of

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[862] Al-Ṭūfī, *Sharḥ*, 2/775; al-Namlah, *al-Muhadhdhab*, 4/1802.

[863] See al-Ṭūfī, *Sharḥ*, 2/775-776; Ibn Kathīr, *Tafsir*, 3/361 and 5/71.

[864] See al-Qarāfī, *Nafāʾis*, 3/1379.

[865] Ibn Qudāmah, *Rawḍah*, 2/681-684.

[866] Ibid, 2/686; Halim Calis has argued that contemporary contextualists 'do not appear to be sufficiently interested in the classical theological discussions to seek theoretical support there for the Prophet's active role in the revelatory process.' Calis, *The Theoretical Foundations*, 2.

evidence-based reasoning, regarded as divinely guided, to ensure consistency with the original meaning and spirit of the revelation. As a result, contemporary studies, such as *Islam and Literalism*, have observed that traditional Islamic interpretations often favour a literalist approach, particularly in contrast with more flexible, modern methods of interpretation.[867] However, Islamic legal theorists distinguish the Ẓāhirī school, known for its strict adherence to explicit textual meanings, as unique within the broader Sunni tradition. Unlike other mainstream Sunni legal schools, which incorporate broader textual implications into their interpretative frameworks, the Ẓāhirī school emphasises a more literalist interpretation. This distinction reflects a philosophical and methodological divergence in Islamic legal thought, with implications for both legal theory and practice.

The distinction between the Ẓāhirī and the mainstream interpretive approaches is evident in their differing interpretations and applications of Q.4:23, which specifies the categories of women that a man is prohibited from marrying in Islam. For instance, one such woman is a man's stepdaughter. According to Ibn Ḥazm (d.456/1064), a prominent Ẓāhirī scholar, it is permissible for a man to marry his stepdaughter if she is not under his care or protection. This interpretation stems from the literal reading of the verse, which explicitly confines the prohibition to marrying stepdaughters who are under the guardianship of the individual.[868] In contrast, the majority of Muslim jurists contend that it is impermissible to marry one's stepdaughter after consummating the marriage with her mother, regardless of whether the stepdaughter is under his care.[869] The Ẓāhirīs' approach seems to disregard the broader social and ethical considerations, which can lead to legal outcomes that might appear more counterintuitive to those who emphasise the role of contextual interpretation in formulating legal verdicts.

As we discussed earlier, the proponents of *mafhūm al-mukhālafah* (counter-implication) do not recognise the counter-implication of a text if the restricting clause or word refers to a prevalent situation. Ibn Qudāmah explains that the clause '*al-lātī fī ḥujūrikum*' (those under your care or your guardianship) in Q.4:23 was not employed as a condition in the text. Instead, it describes the most common case where most stepdaughters live

[867] Gleave, *Islam*, 146.

[868] Ibn Ḥazm, *al-Muḥallā*, 9/140.

[869] Ibn Qudāmah, *al-Mughnī*, 9/516.

with their mothers under the care of their stepfathers. He contends that it is not appropriate to hold onto the counter-implication of an expression that addresses a prevalent case (*wa mā kharaja makhraj al-ghālib lā yaṣiḥḥu al-tamassuk bi mafhūmihī*). As a result, Ibn Qudāmah concludes that it is not permissible to marry one's stepdaughter if one had intimacy with her mother, whether or not the stepdaughter was under his care.[870] This distinction underscores Ibn Qudāmah's flexibility, as he incorporates contextual understanding, including counter-implications, to ensure that legal rulings reflect the broader spirit and ethical goals of Islamic law. By rejecting a rigid, literalist interpretation, Ibn Qudāmah's approach aligns legal interpretations with both the common realities of society and the moral objectives of the Sharia.

7.2.2 The Consideration of the Lawgiver's Intent in Interpreting the Texts of the Qurʾān and Sunnah

The discussion in the previous section highlights the role of God's intent in interpreting the legal and ethical texts of the Qurʾān and Sunnah from the traditional perspective of Islamic legal theory. However, contemporary studies in the philosophical notion of literal meaning suggest that the literal meaning of a text can differ from the author's or speaker's intended meaning and the meaning understood by the reader or listener.[871] According to Ibn Qudāmah's interpretive approach, applying this notion in Islamic legal discourse may be problematic if assumed without critical examination. This section aims to underscore Ibn Qudāmah's prioritisation of authorial intent without directly contesting alternative interpretative frameworks that may overlook this principle. While it does not engage in debates surrounding the validity of those approaches, it implicitly highlights their limitations by demonstrating the logical coherence and methodological consistency inherent in Ibn Qudāmah's legal reasoning. Traditional Muslim scholars, including Ibn Qudāmah, have consistently considered the legal and ethical texts of the Qurʾān and Sunnah to have an intended meaning that they seek to uncover.[872] However, contemporary researchers like Abou El-Fadl have argued that claiming to know the authorial intent of the texts of the

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[870] Ibid, 9/517.

[871] Gleave, *Islam*, 4. See also W. K. Wimsatt and M. C. Beardsley, "The Intentional Fallacy," *The Sewanee Review* 54, no. 3 (1946): 468–88, http://www.jstor.org/stable/27537676.

[872] See, for instance, Ibn Ḥazm, *al-Muḥallā*, 3/169-173 and 291; ʿAbdullāh ibn Aḥmad ibn Muḥammad, Ibn Qudāmah, *Dhamm al-Taʾwīl* (Kuwait: al-Dār al-Salafiyyah, 1406 AH), 42; Ibn Qudāmah, *Rawḍah*, 2/850; al-Ṭūfī, *Sharḥ*, 2/655.

Qurʾān and Sunnah is presumptuous[873] and have therefore advocated for alternative approaches that do not rely on authorial intent, completely or partially. For instance, Abou El Fadl has advocated for an approach that considers the moral and ethical intent of the legal and ethical texts of the Qurʾān and Sunnah[874] while other advocates of progressive Islam, including Adis Duderija, have emphatically argued for the reader to be put at the centre of the interpretive process, disregarding the authorial intent of the text.[875] Approaches that may create a gap between God's intent and the generated meanings may be problematic, as placing the interpreter in a position of sovereignty seems to supplant God in this context.[876] They also undermine interpretive endeavours based primarily on uncovering the authorial intent to inform or expound legal decisions.

Propositions that ignore or place less emphasis on authorial intent face a significant challenge, as assuming a compelled meaning of a text, by the text itself or by the reader, without considering the speaker's intent clearly runs counter to the role of Prophet Muḥammad (PBUH). As noted earlier, his primary responsibility as the Messenger of Allah is to deliver and simplify the message of Allah for its practical application, as stated in Q.16:44. It is my conviction that this responsibility necessitates a particular perspective for interpreting the revealed texts. Consequently, most Muslim scholars agree that the revelation is accompanied by specific guidance intended by the Lawgiver, which must be taken into account when interpreting the texts of the Qurʾān and Sunnah.[877] This informs the notion of adhering strictly to the apparent meaning of the legal texts of the Qurʾān and Sunnah, as the Ẓāhirīs advocate. Even the mainstream Sunni schools, which allow deductions from the legal and ethical texts of the Qurʾān and Sunnah, such as applying textual implications, require that such interpretations be linguistically sound and supported by the broader context of the primary sources of Islamic law and ethics, as has been noted earlier.

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[873] See Khaled Abou El Fadl, *Speaking in God's Name: Islamic law, Authority and Women* (New York: Simon and Schuster, 2014), 25, 34, 76 and 241-270.

[874] See ibid, 202-204, 259, 329-335.

[875] Duderija, *Constructing*, 142-143.

[876] Anver M. Emon, "On Sovereignties in Islamic Legal History," *Middle East Law and Governance* 4, no. 2-3 (2012): 265-305, **doi:** https://doi.org/10.1163/18763375-00403002, 281.

[877] See, for example, the works of legal theorists such as Abū Isḥāq al-Shāṭibī in *al-Muwāfaqāt* and Muḥammad al-Ṭāhir ibn ʿĀshūr's *Maqāṣid al-Sharīʿah al-Islāmiyyah*.

Premodern Islamic legal theorists and many contemporary Muslim scholars agree that anyone seeking knowledge of Islamic law must rely on the Qurʾān. As much as knowing the language of the Qurʾān is necessary to understand it, one cannot claim to understand the meaning of the texts of the Qurʾān without the Sunnah, which explains the Qurʾān.[878] In other words, the Prophet serves as a reference to clarify any doubts about the meaning of the texts of the Qurʾān. Clarifications to aspects of the legal and ethical texts of the Qurʾān and Sunnah that require further details are explored in previous chapters of this thesis, particularly Chapter Four. The position of the Prophet in clarifying the revealed text is supported by many texts from the Qurʾān such as: 'And We revealed to you [O Muḥammad] the reminder [Qurʾān] so that you may make clear to the people what was sent down to them…' Q.16:44 and 'If you disagree over anything, refer it to Allah and His Messenger if you truly believe in Allah and the last day…' Q.4:59.[879] Therefore, any meaning ascribed to a text of the Qurʾān must have been linguistically or textually implied as the legal meaning.

Ibn Qudāmah and most Islamic legal theorists hold that understanding the Prophet's companions regarding the texts of the Qurʾān and Sunnah is a valuable resource for interpreting them. This is because they were in a better position to understand the texts than later generations from both linguistic and legal perspectives. The companions had reliable knowledge of the Arabic language. They were not only familiar with the legal and ethical texts of the Qurʾān and Sunnah, but they also profoundly understood the context in which these texts were revealed. This is because they were present during the time of revelation and had the opportunity to learn directly from the Prophet himself.[880]

Against this backdrop, applying linguistic principles to interpret a text in a way that may deviate from the speaker's intended meaning could be problematic in Islamic legal discourse unless it can be demonstrated that the Lawgiver has explicitly allowed such interpretations to elucidate or clarify aspects of the primary sources of Islamic law and

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[878] See al-Shāṭibī, *al-Muwāfaqāt*, 4/144, See also, Ibn Qudāmah, *Rawḍah*, 2/870-872; Hallaq, *A History*, 24-25.

[879] See Ibn Qudāmah, *Rawḍah*, 1/8; al-Shāṭibī, *al-Muwāfaqāt*, 4/135-136.

[880] See al-Jaṣṣāṣ, *al-Fuṣūl*, 1/200; Abū Yaʿlā, *al-ʿUddah*, 3/724; Ibn Qudāmah, *Rawḍah*, 1/359; al-Shāṭibī, *al-Muwāfaqāt*, 4/144-153; al-Ṭūfī, *Sharḥ*, 3/63.

ethics. A review of available sources from the pre-classical and classical periods of Islam reveals no evidence supporting such propositions.

When examining the various viable linguistic interpretations of a text, Islamic legal theorists do not limit their analysis to linguistic principles alone. They acknowledge the essence of other legal tools, principles, and concepts, such as knowledge of the *āyāt al-aḥkām* (verses of Islamic legal rulings), *naskh* (abrogation), the consensus of Muslim scholars (*ijmāʿ*), *ijtihād* and analogy (*qiyās*), among others.[881] To Islamic legal theorists such as Ibn Qudāmah, each concept contributes significantly to a comprehensive understanding of the subtleties of the legal texts in Islam for reasonable application. This indicates that the breakdown of syntax alone is not enough to arrive at a deeper understanding of the legal and ethical texts of the Qurʾān and Sunnah. The grasp of all these principles and concepts is necessary for positioning a jurist to appropriately make deductions and inferences to interpret the texts of the Qurʾān and Sunnah based on thorough investigations (*istiqrāʾ*) of the *adillah al-sharʿiyyah* (legal sources).

For Ibn Qudāmah or perhaps all premodern Islamic legal theorists, to interpret the text of the Qurʾān or Sunnah is to situate it within the broader context of the revelation. Thus, the traditional practice seeks to uncover the intended meaning of a particular text as might have been understood by the Prophet himself or at least as closely as possible.[882] As a result, most Muslim jurists and legal theorists share the view that when there are different interpretations of a legal text or verdict based on *ijtihād*, it is only one of the various views that could be correct or valid, as it is impossible to consider all the differing views to be valid.[883] To this end, traditional interpretations in Islamic legal theory can be described as an attempt to seek the meaning of the primary texts of Islamic law from the Lawgiver, either directly from the Qurʾān and the Sunnah or indirectly from how the companions of the Prophet understood them or based on examination of the various legal sources. The preference given to the companions, as we have noted above, is due to their privilege of having been the direct students of the Prophet and their knowledge of the language of the Qurʾān (Arabic) in its pure and unadulterated state.

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[881] See Ibn Qudāmah, *Rawḍah*, 2/870-872.

[882] Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 16.

[883] Ibid, 2/882.

In the event of many possible interpretations, the most preponderant is applied. This helps to control wrong notions that may not be grounded on concrete proof, as interpreting another person's message requires considering what they are likely to imply by their utterances. Hence, conscious efforts must be made to discover the legal requirements of the Lawgiver based on reasonable evidence, not mere guesswork.

The notion of discovering God's intent seems more reasonable as it reduces the risk of assuming different interpretations that may lead to an entirely different legal system from what the Prophet presented to humanity based on the revelation he received.[884] Regarding the existence of different legal interpretations and verdicts, it is always possible to narrow down to those that are strongly supported by the broader context of the Qurʾān and Sunnah as understood by the early generations of Islam, whereas ignoring the search for the intended meaning implies a disregard for the essence of the Prophet's duty to explain the texts of the revelation and could lead to deeper disagreements since individuals can interpret the revealed texts themselves without the need for external guidance.[885]

7.3 Conclusion

The chapter highlights Ibn Qudāmah's perspective on employing textual implications for legal interpretations: the *manṭūq* (verbal) and *mafhūm* (implicature). The *manṭūq* is subdivided into *ṣarīḥ* (explicit indications of an utterance) and *ghayr ṣarīḥ* (inexplicit indications of an utterance). The latter comprises *dalālah al-iqtiḍāʾ*, *dalālah al-al-īmāʾ* and *dalālah al-ishārah*. Islamic legal theorists such as Ibn Qudāmah consider these forms of textual implications as the implicature or *mafhūm* of a text, while others like Ibn al-Ḥājib (d.646/1249), the Mālikī scholar, consider them to be inexplicit indications of an utterance.[886]

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[884] As argued by Ibn Qudāmah regarding the use of *maṣlaḥah* that has been disregarded by the lawgiver for legal analysis, See *Rawḍah*, 1/430.

[885] See al-Shāṭibī, *al-Muwāfaqāt*, 4/144-153.

[886] See ʿAḍad al-Dīn ʿAbd al-Rahmān al-Ījī, *Sharḥ Mukhtaṣar al-Muntahā al-Uṣūlī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2004), 3/158; Muḥammad ibn Muḥammad Maḥmūd al-Muṣṭafā al-Yaʿqūbī, *Fatḥ al-Bāqī ʿalā Mandhūmah al-Marāqī* (Al-Maktabah al-Shāmilah, 1443 AH), 1/78.

The chapter observes that while the Ẓāhirī scholars advocate for considering only the explicit and apparent interpretations of the texts, most mainstream Sunni scholars, including Ibn Qudāmah, are of the view that a text may contain various shades of meaning, either directly expressed or indirectly implied, which must be considered in legal interpretations. The strength of these possible interpretations should guide their application, with the most compelling interpretation being prioritised. On this basis, Islamic legal theorists prefer *dalālah al-manṭūq* over other interpretations because it is the most reliable and authentic interpretation of a text. They apply counter-implications (*mafhūm al-mukhālafah*) with restrictions, avoiding them if there is an indication that the text was not meant to establish a divergent meaning for what is not stated.

Ibn Qudāmah's framework for interpreting textual implications introduces a degree of flexibility; however, his focus on authorial intent constrains this interpretive latitude, particularly when alternative meanings from relevant texts come into play. This perspective challenges the contemporary tendency to interpret texts in isolation from the author's intent. Q.16:89 underscores the necessity for the Prophet to clarify the revealed text (Qurʾān) to humanity, suggesting that neglecting the Lawgiver's intent undermines the Prophet's role. Thus, akin to many Muslim jurists and legal theorists, Ibn Qudāmah extends his interpretative methodology beyond mere linguistic analysis. He incorporates other legal sources, especially the Sunnah, to elucidate the meaning of a text, which he regards as the most authoritative form of interpretation. This stance ultimately moderates the reliance on a strictly text-driven meaning within Islamic legal interpretations, thereby providing flexibility and reflecting the interpretive approach of Ibn Qudāmah and classical Islamic legal theory.

Chapter 8: Cultural Norms and Usages (ʿ*Urf wa ʿĀdah*)

A critical examination of Islamic law reveals varying legal opinions influenced by specific cultures, places, and historical contexts. Juristic maxims (*qawāʿid al-fiqhiyyah*) such as '*taghayyur al-fatwā bi taghayyur al-zamān*'[887] (changes in legal verdicts/opinions due to changes in time or era) and '*al-ʿādah muḥakkamah*'[888] (custom is authoritative) highlights the impact of social context on the application of Islamic law and ethics.

For example, Muslim jurists agree that a husband is responsible for his wife's upkeep. Estimating the required level of upkeep is based on factors including her status, family background, and the era in which they live.[889] This suggests that the Islamic legal system aims to safeguard the dignity and interests of individuals, adapting to diverse social needs.

Contemporary researchers, including Abdullah Saeed and advocates of Progressive Islam, assert that sociocultural changes necessitate a reinterpretation of ethical-legal texts (*nuṣūṣ sharʿiyyah*) to address modern challenges facing Muslims.[890] While mainstream Sunni scholars acknowledge the importance of reform, they maintain that these texts should be prioritised over prevailing customs (*ʿurf and ʿādah*).[891]

This chapter argues that jurists like Ibn Qudāmah exemplified flexibility in interpreting the Qurʾān and Sunnah to meet their societal needs while adhering to the core precepts of Islamic law and ethics. It seeks to explore the relationship that existed between *ʿurf* and *ʿādah* as a concept and the *nuṣūṣ sharʿiyyah* during the revelatory period and how changes in norms might affect legal opinions from Ibn Qudāmah's perspective. The chapter contributes to the ongoing debate on flexible interpretations of the legal and

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[887] See Ibn al-Qayyim, *Iʿlām*, 1/41.

[888] Jalāl al-Dīn ʿAbd al-Raḥmān ibn Abūbakr al-Suyūṭī, *al-Ashbāh wa al-Naẓāʾir fī Qawāʿid wa Furūʿ Fiqh al-Shāfiʿī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1983), 89; ʿĀlī Ḥaydar Afandī, *Durar al-Ḥukkām fī Sharḥ Majjallah al-Aḥkām* (Beirut: Dār al-Jīl, 1991), 1/44.

[889] Ibn Qudāmah, *al-Muqniʿ*, 11/348,

[890] Saeed, *Some Reflections*; Duderija, *Constructing*, 142.

[891] Refer to Appendix 6 for the definitions *of ʿādah and ʿurf*.

ethical texts of the Qurʾān and Sunnah within a particular context from the perspective of Ibn Qudāmah.

8.1 The Relationship Between the *Nuṣūṣ Sharʿiyyah* and Social Practices (Norms and Usages)

Examining and understanding how the Lawgiver treated the prevailing social practices during the era of revelation is crucial, as it gives an idea as to whether Allah, the Lawgiver, restricted Muslims to a particular context or intended for the *sharīʿah* to be flexible to different social practices. It helps to evaluate the extent to which one may exercise flexibility in interpreting the legal and ethical texts of the primary sources of Islamic law.

A study of how the revelation treated the customary practices of the Arab community during the time of the Prophet reveals three different categories of customary practices. The first category encompasses customs and norms endorsed by the Lawgiver (Shāriʿ), while the second consists of those the Lawgiver disapproved of. The third category comprises customs and norms that the Lawgiver neither supports nor opposes, essentially being silent on such practices.

For instance, the Qurʾānic text 'Allah has permitted trading and forbidden usury…' (Q.2:275) endorses trading and condemns usury (*ribā*). Among the norms of the Arabs that the Lawgiver rejected was their perception of women. They regarded giving birth to girls as disgraceful. Sometimes, they buried their female children alive. Those who were privileged to live were not entitled to inheritance. They could perhaps be inherited if their deceased husbands' families chose to do so. In rejection of these unacceptable practices, the Lawgiver describes their treatment of girls as follows:

> And when the news of the birth of a baby girl is given to any of them, his face becomes dark, and he is filled with inward grief. He hides himself away from the people because of the bad news he has been given. Should he keep her in humiliation or bury her in the dust? How evil their judgement is! (Q.16:58-59).

The Lawgiver did not just reject such unacceptable norms; the status of women was also enshrined in the *nuṣūṣ sharʿiyyah* with honour and dignity. They are entitled to inheritance instead of being inherited as though their late husbands owned them.

In addition, the Prophet declared that anyone who raises two girls well will be close to him in paradise.[892] This enhanced the dignity of girls and women as they could be the potential cause of eternal bliss for those who cared for them. A goal every believer struggles to attain. There are also excerpts from the primary sources of Islamic law and ethics that indicate modifications to some social practices to make them more suitable according to Islamic standards. For instance, one of the norms of the Arab community in which the Prophet lived was the practice of paying for commodities, mainly fruits, before they were ready for sale. This is known as *salam* or *salaf*. Upon observing the inhabitants of al-Madīnah engaging in this practice, the Prophet instructed that 'Those who pay in advance must do so for a specified measurement or weight and for a definite time.'[893]

Furthermore, in Islam, many long-established social norms, such as trading and marriage, are considered acceptable because they do not conflict with legal rulings in the primary sources of Islamic law. Islamic legal theorists have, therefore, established the principle that all forms of human interactions and transactions are inherently permissible (*al-aṣl fī al-muʿāmalāt al-ibāḥah aw al-ḥill*).[894] This principle is further supported by the fact that the Lawgiver tacitly approved most social practices during the period of revelation, and the Prophet himself abided by many of his society's customs. For example, profit-sharing partnerships in capital and labour, known as *qirāḍ* or *muḍārabah*, were widespread among the Arabs, and the Prophet allowed his companions to engage in this practice, indicating his tacit approval.[895]

Upon examining the relationship between the customary practices of Arabs during the time of the Prophet and the revealed texts, we can infer that the social norms of other

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[892] See Muslim, *Ṣaḥīḥ*, 8/38 (Hadith No. 2631).

[893] Al-Tirmidhī, *Sunan*, 3/594 (Hadith No. 1311), See also Ibn Qudāmah, *al-Mughnī*, 6/407.

[894] Yūsuf ibn Muḥammad al-Ghafīṣ, *Sharḥ Risālah Rafʿ al-Malām ʿan al-Aʾimmah al-Aʿlām* (Al-Maktabah al-Shāmilah, 1432 AH), 5/10; Muḥammad Ḥasan ʿAbd al-Ghaffār, *Qawāʿid al-Fiqhiyyah bayn al-Aṣālah wa al-Tawjīh* (Al-Maktabah al-Shāmilah, 1432 AH), 6/6; Walīd ibn Rāshid al-Suʿaydān, *Talqīḥ al-Afhām al-ʿAliyyah bi Sharḥ al-Qawāʿid al-Fiqhiyyah* (Al-Maktabah al-Shāmilah, 1431 AH), 2/6; Ṣāliḥ ibn Muḥammad Āl ʿUmayyir al-Qaḥṭānī, *Majmūʿah al-Fawāʾid al-Bahiyyah ʿalā Mandhūmah al-Qawāʿid al-Fiqhiyyah* (Saudi Arabia: Dār al-Ṣumayʿī, 2000), 75.

[895] Abū Sunnah, *al-ʿUrf*, 8; Shuʿayb, *Shubuhāt*, 542.

communities will follow similar patterns. These norms may be approved, opposed, or neither approved nor disapproved explicitly by the texts of the Qurʾān and Sunnah. The significance of these categories when interpreting the Qurʾān and Sunnah's legal and ethical texts (*nuṣūṣ sharʿiyyah*) is explored in the following section. Specifically, we examine how customs and norms can be used to interpret *nuṣūṣ sharʿiyyah* through Ibn Qudāmah's perspective.

8.2 The Legitimacy of The Concept of ʿ*Urf* and ʿ*Ādah* in Islamic Legal Theory

The renowned Mālikī legal theorist and jurist Shihāb al-Dīn al-Qarāfī (d.784/1285) noted that the consideration of ʿ*urf* in determining legal verdicts is a common practice across all Islamic legal schools. This is evident in the extensive investigation (*istiqrāʾ*) of their juristic works.[896] This highlights the relevance of norms and customs in Islamic law and ethics.

The customs and traditions of a community, known as social practices or ʿ*urf* and ʿ*ādah*, are developed to promote peace, order, and the well-being of its members. These values and practices also foster a sense of belonging among community members. Depending on social, political, economic, and historical factors, norms and practices may vary. Islamic legal theorists and jurisprudents have recognised the importance of these factors in resolving various juristic matters.

However, determining the extent to which these factors may affect juristic practices or the interpretation of the legal and ethical texts of the Qurʾān and Sunnah (*nuṣūṣ sharʿiyyah*) is highly critical. This is because there is no explicit proof from the Qurʾān and the Sunnah that sanctions ʿ*urf* and ʿ*ādah* as a source of law in Islam. The texts provided as evidence substantiating the consideration of ʿ*urf* and ʿ*ādah* in Islamic law are all disputable. Thus, they are classified as one of the *adillah mukhtalaf fīhā* (the disputed sources).[897]

[896] Al-Qarāfī, *Sharḥ*, 448.

[897] Shuʿayb, *Shubuhāt*, 547-8.

Although the Ḥanafī and the Mālikī schools consider ʿ*urf* and ʿ*ādah* as secondary sources of law, the Shāfiʿī and the Ḥanbalī schools do not share this perspective.[898] However, all Islamic law schools reference norms and customs in some legal verdicts, as noted by al-Qarāfī. This raises a question regarding the validity of employing ʿ*urf* and ʿ*ādah* in Islamic law and ethics, as well as their role in legal interpretations.

Even though Ibn Qudāmah did not treat the concepts of ʿ*urf* and ʿ*ādah* in his legal theory, his works demonstrate an apparent reliance on some norms and usage when interpreting some relevant legal texts. For example, he argues that it is crucial to use ʿ*urf* to specify unqualified rulings by the Lawgiver and to define words in the legal texts (*nuṣūṣ sharʿiyyah*) that lack juristic definitions. Furthermore, in substantive areas of jurisprudence, such as oaths (*aymān*), Ibn Qudāmah asserts that ʿ*urf* is the basis for determining appropriate legal verdicts.[899] His legal works also illustrate similar considerations regarding business transactions (*buyūʿ*).

To examine the theoretical basis of employing ʿ*urf* and ʿ*ādah* in Islamic legal theory, this study will draw upon the works of other Islamic legal theorists. This is due to the absence of explicit references outlining Ibn Qudāmah's perspective. By adopting this approach, this study will juxtapose the theoretical aspect with Ibn Qudāmah's practical application in his juristic pursuits. I believe this approach will provide valuable insights into how Muslim jurists and legal theorists have utilised norms and customs to interpret the *nuṣūṣ sharʿiyyah*.

To establish the credibility of ʿ*urf* and ʿ*ādah*, its advocates from the classical era primarily relied on texts from the Qurʾān with the word ʿ*urf*, such as '…And enjoin what is ʿ*urf*…' (translated here as kindness or good) (Q.7:199). Additionally, they cited a statement attributed to ʿAbdullāh ibn Masʿūd (d.32/650), which asserts that 'What Muslims consider good is also considered good in the eyes of Allah.'[900] Most classical Muslim jurists used these and similar texts or statements to demonstrate the legitimacy of accepted norms within Muslim communities.

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[898] Mahmood, *Custom*, 103-104; Libson, *On the Development of Custom*, 133-134.

[899] Ibn Qudāmah, *al-Mughnī*, 10/482, 13/595.

[900] Ibn Ḥanbal, *Musnad*, 6/84 (Hadith No. 3600).

In fact, all the texts quoted in support of ʿ*urf* and ʿ*ādah* do not explicitly support the use of norms in legal deductions.[901] This makes it necessary to delve deeper into the reasoning behind applying norms and usages or social practices in Islamic law by studying the perspectives of Muslim jurists and legal theorists, particularly during the classical era. Additionally, it is vital to examine their understanding of what qualifies as a valid custom or norm in this context. Two key aspects will be explored: i) the rationale behind considering norms and ii) the criteria for determining valid norms in Islamic law.

8.2.1 The Rationale Behind Considering Norms as a Source of Law in Islam

Al-Qarāfī suggested that it is common among Muslim jurists to rely on customary practices and usages to resolve many juristic problems.[902] As the primary sources of Islamic law do not explicitly direct scholars to rely on social practices to formulate laws, this section explores what prompted them to incorporate ʿ*urf* and ʿ*ādah* into Islamic law.

Perhaps the reason behind granting legal authority to some social practices is rooted in the notion that, in the absence of explicit restrictions, all human interactions are considered lawful (*al-aṣl fī al-muʿāmalāt al-ibāḥah aw al-ḥill*).[903] In other words, unless there is an explicit prohibition, any human activity or transaction should be regarded as lawful. If this maxim is accepted, a jurist must rely on acceptable norms and usages to interpret people's expressions and actions to arrive at a verdict when resolving a dispute.

Additionally, the Lawgiver's consideration of some cultural norms and practices in some legal rulings reinforces the importance of acceptable human interactions and practices, known as ʿ*urf* and ʿ*ādah*, in arriving at relevant verdicts. An example from the Sunnah illustrates the use of ʿ*urf* and ʿ*ādah* as a legal tool. In a case where someone's livestock destroyed another person's farm, the Prophet ruled that 'It is the responsibility of the owners of gardens to guard their farms and produce by day, and the owners of livestock are liable for what their animals destroy at night.'[904] This ruling aligns with the norms of

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[901] Abū Sunnah, *al-ʿUrf*, 23-26.

[902] Al-Qarāfī, *Sharḥ*, 448.

[903] Al-Ghafīṣ, *Sharḥ*, 5/10; ʿAbd al-Ghaffār, *Qawāʿid*, 6/6; al-Suʿaydān, *Talqīḥ*, 2/6; al-Qahṭānī, *Majmūʿah*, 75,

[904] Ibn Anas, *Muwaṭṭaʾ*, 4/1082 (Hadith No. 2766).

the Prophet's era when livestock were sent for grazing during the day and housed at night, and farmers were present on their farms during the day to safeguard their crops.[905] Hence, al-Qarāfī, who sought to clarify the role of *ʿādah* as a source of law in the Mālikī school, remarks that 'A predominant custom or *ʿādah* amongst a people is taken into consideration in arbitration when resolving dispute.[906]

However, since not all forms of norms are acceptable, as noted already, legal theorists such as al-Qarāfī, who sought to clarify the role of *ʿādah* as a source of law in the Mālikī school, remarks that 'A predominant custom or *ʿādah* amongst a people is taken into consideration in arbitration when resolving a dispute.[907]

8.2.2 The Criteria for Determining Valid Norms in Islamic Law

The relationship between social practices (*ʿurf* and *ʿādah*) and the texts of the Qurʾān and Sunnah (*nuṣūṣ sharʿiyyah*) examined above revealed that not all customs and norms are deemed acceptable. What do Muslim jurists and legal theorists regard as valid norms and usages worthy of consideration in Islamic law and ethics, and under what circumstances can they be employed? It appears from the works of traditional Islamic scholars that the prevailing context of a community, especially in terms of norms and usages, plays a crucial role in law-making. Taking a community's context into account in Islamic law demonstrates its adaptability in ensuring ease and promoting the interest of humanity. Muslim jurists appear to recognise this reality but have restrictions when considering 'context' for juristic purposes. The following discussion outlines the conditions Islamic jurists consider while dealing with norms and usages to resolve pertinent concerns.

First, for a norm to be valid for juristic considerations, it must be a sustained practice (*muṭṭarid*) or a predominant act (*ghālib*).[908] This implies that irregular norms that are occasionally observed (*ʿurf al-mushtarak*) are not considered valid unless there is proof

[905] Shuʿayb, *Shubuhāt*, 536.

[906] Al-Qarāfī, *Sharḥ*, 448.

[907] Ibid, 448.

[908] Al-Suyūṭī, *al-Ashbāh*, 92; Afandī, *Durar al-Ḥukkām*, 1/50.

that they were meant to be followed in a particular case.[909] Ostensibly enforcing a verdict based on *ʿurf al-mushtarak* will be unreasonable unless it can be substantiated as a condition that was agreed upon in a specific case.

An example of such cultural practices surrounding marriage in Madinah, since the preclassical era, is that the groom pays the entire dowry to his bride before consummating the marriage. As a result, in a dispute over dowry payment, Mālikī jurists tend to give credence to the wife's claim if the disagreement arises before the marriage is consummated.[910] However, this verdict cannot be reasonably applied in a society where this norm is not prevalent.

The application of the above condition can be noted in the works of Ibn Qudāmah, as he references widespread practices to establish some legal opinions. For instance, he strengthens his interpretation of some texts from the Sunnah, such as '*lā ṣalāh illā bi ṭahūr*' (literally translated as; there is no prayer except with purification), as not being ambiguous (*mujmal*) contrary to the Ḥanafī school's perspective. According to him, per Arabic norms and usages, such statements are employed for the essence of an act but not the act itself. In this case, the text has only one acceptable implication: 'Salat is unacceptable without purification.'[911] Also, his position regarding words that emphatically imply divorce or restoring a marriage during the waiting period after a divorce (*rajʿah*) includes those commonly used for such purposes.[912]

The second condition is that to refer to a norm or usage in interpreting a statement or an act, the relevant norm or usage must have been prevalent when the matter was founded or occurred.[913] It is, therefore, unacceptable to interpret an expression or an incident based on norms and usages that emerged after its occurrence. Likewise, assessing an incident based on customs abandoned before that incident will not be legitimate. Ibn Qudāmah applies this condition to *waqf* (endowment), arguing that one may establish *waqf* without a formal declaration if there are indications (*qarāʾin*) to suggest their

[909] Abū Sunnah, *al-ʿUrf*, 57.

[910] Ibn Rushd, *Bidīyah*, 3/55.

[911] Ibn Qudāmah, *Rawḍah*, 1/467-470.

[912] See Ibn Qudāmah, *al-Mughnī*, 10/366 and 10/501; Ibn Qudāmah, *al-Kāfī*, 3/149.

[913] Al-Suyūṭī, *al-Ashbāh*, 96; Afandī, *Durar*, 1/50.

intentions. For example, allowing people to bury the dead on a piece of land without verbal permission from the owner is taken as formal approval for others to use it for the same purpose, according to the prevailing customs of the time. By implication, that piece of land becomes a cemetery by *waqf*, even though there is no formal declaration to that effect. This is because non-verbal consents were understood by custom as equally valid as verbal or formal authorisations.[914]

Ibn al-Qayyim (d.751/1350) highlights a crucial point on the significance of considering intentions and customs in legal verdicts. He notes that it is detestable and may result in forming an opinion that has nothing to do with the *sharīʿah* if one interprets a person's words and actions out of context. He cautions that it is crucial to 'beware of overlooking a speaker's intent (*qaṣd al-mutakallim*), intention (*niyyatuhū*), and custom (*ʿurfuhū*)' before interpreting their words or actions.[915] This demonstrates how prevailing norms and usages may be essential in interpreting oaths, vows, and contracts for legal purposes.

The third condition is that there must not be a statement that opposes the norm.[916] Thus, Muslim jurists rely on prevailing customs and norms as unspoken agreements in human interactions unless there is evidence to the contrary. This is coded in Islamic legal theory as 'a widely accepted custom is similar to an accepted condition' (*al-maʿrūf ʿurfan ka al-mashrūṭ sharṭan*).[917] However, if a statement or contractual agreement indicates that the parties involved in a contract disregarded the existing custom, the terms of the agreement will be preeminent. This is also coded in the principles of Islamic jurisprudence (*Qawāʿid al-Fiqhiyyah*) as 'there is no recourse to an implication (*dalālah*) when an explicit declaration has been made' (*lā ʿibrah li al-dalālah fī muqābalah al-taṣrīḥ*).[918] In this sense, customary implications do not apply to acts or contracts in which a particular custom was deliberately disregarded. For instance, Ibn

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[914] Ibn Qudāmah, *al-Mughnī*, 8/190.

[915] Ibn al-Qayyim, *Iʿlām*, 4/433.

[916] Muṣṭafā Aḥmad al-Zarqāʾ, *al-Madkhal al-Fiqhī al-ʿĀmm* (Damascus: Dār al-Qalam, 1998), 901; Abū Sunnah, *al-ʿUrf*, 67.

[917] Zayn al-Dīn ibn Ibrāhīm ibn Muḥammad ibn Nujaym, *al-Ashbāh wa al-Naẓāʾir ʿalā Madhhab Abī Ḥanīfah al-Nuʿmān* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1999), 84; Aḥmad ibn al-Shaykh Muḥammad al-Zarqāʾ, *Sharḥ al-Qawāʿid al-Fiqhiyyah* (2nd ed.; Damascus: Dār al-Qalam, 1989). 237.

[918] Afandī, *Durar*, 1/31.

Qudāmah states that placing a plate of fruits in front of a guest implies the guest is welcome to consume it without explicit permission. He is emphatic that this ruling is based on prevailing *ʿurf*.[919] However, based on the third condition mentioned above, the guest(s) would be required to refrain from eating the fruits if there is any explicit indication (i.e., verbal or non-verbal) that the served fruits are not meant for consumption. Thus, Ibn Qudāmah stresses that an explicit statement supersedes customary indications (*dalālah ʿurf*).[920]

The fourth condition is that the norm or practice must not conflict with or contravene the definite sources of Islamic law, such as the texts of the Qurʾān and Sunnah. In this case, considering the norm or custom will result in the suspension of definite proof.[921] For instance, Q.5:123 prohibits gambling (*maysir*). Therefore, in a society where gambling is normalised, justifying gambling solely based on its prevalence would contradict the Qurʾānic decree. Consequently, Muslim jurists and legal theorists have historically rejected such norms and practices. It is, however, different when the ruling from a text (*naṣṣ*) is based on a social practice (*ʿurf* or *ʿādah*), as would be explored later.

Ibn Qudāmah holds a stricter stance on this condition as he opined that legal concerns related to the Qurʾān and Sunnah must be assessed based on the relevant text(s). For instance, regarding usury (*ribā*), the Sunnah states that items of the same category must be traded on equal units of measurement. Ibn Qudāmah contends that the modes of measurement in the *Ḥijāz* (the Arabian Peninsula) during the time of the Prophet must be maintained. He substantiates his stance with the hadith: 'Volume (*mikyāl*) is to be measured according to the system of the people of Madinah, and weight (*mīzān*) is to be measured according to the system of the people of Makkah.'[922] He argues that the words of the Prophet serve as explanations for such legal rulings. Thus, the prohibition from dealing with usury in measurements refers to the units of measurement during the prophetic era and must be maintained as such.

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[919] Ibn Qudāmah, *al-Mughnī*, 8/246.

[920] Ibid, 7/250.

[921] Al-Zarqāʾ, *al-Madkhal*, 902; Abū Sunnah, *al-ʿUrf*, 61.

[922] Ibn Qudāmah, *al-Mughnī*, 6/73.

The above constitute the four primary conditions under which Islamic scholars consider customs and norms valid. There are two secondary conditions that are not widely accepted: one is that the norm must be general rather than specific to a particular group,[923] and that it must be binding.[924]

Generally, Muslim jurists do not differentiate between general and specific customs (*ʿurf ʿāmm* and *khāṣṣ*) regarding their application.[925] This is evident in Ibn Qudāmah's juristic works as well. Regarding the use of rented clothing, Ibn Qudāmah contends that it depends on the norms of a town (*ʿurf al-balad*). He rules that if undressing before bed at night is customary in one's town, then the renter of clothing must comply with this practice, as the terms of an unqualified transaction or expression are determined according to the prevailing customs and norms.[926]

The debate on considering *ʿurf al-khāṣṣ*, however, usually arises when they are employed to specify the meaning of a general text. While some legal theorists argue that it is only *ʿurf ʿāmm*, which applies to all Muslims, that can be employed to specify the interpretation of a general text and restrict an unqualified text (*muṭlaq*), others do not distinguish between specific and general norms.[927] This debate is further explored below under tensions between social practices and the legal and ethical texts of the Qurʾān and Sunnah.

The last condition states that the norm must be binding before it can be considered valid. This condition applies in cases where some customs have binding consequences. For instance, accepting a gift from a suitor may imply the acceptance of his proposal in a specific context. If his proposal is later rejected, he may have the right to ask for his gift

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[923] Al-Suyūṭī, *al-Ashbāh*, 88; Abū Sunnah, *al-ʿUrf*, 58.

[924] Abū Sunnah, *al-ʿUrf*, 66.

[925] Ibid*,* 60.

[926] Ibn Qudāmah, *al-Mughnī*, 8/58.

[927] Al-Suyūṭī, *al-Ashbāh*, 88; Muḥammad Amīn ibn ʿĀbidīn, *Rad al-Muḥtār ʿalā al-Dur al-Mukhtar (Ḥāshiyah Ibn ʿĀbidīn)* (Egypt: Sharikah Maktabah wa Maṭbaʿah Muṣṭafā al-Bābī al-Ḥalabī, 1966), 4/519; Abū Sunnah, *al-ʿUrf*, 60-61.

to be returned, unlike a situation where such gifts do not have any binding implications.[928]

8.3 Ibn Qudāmah's Consideration of *ʿUrf* and *ʿĀdah* in Interpreting the *Nuṣūṣ Sharʿiyyah* and His Juristic Practices

After grasping the theoretical conception of *ʿurf* and *ʿādah* from the perspective of Islamic legal theorists, this section delves into how Ibn Qudāmah utilised what he regarded to be valid norms and customs to interpret relevant legal and ethical texts from the Qurʾān and Sunnah (*nuṣūṣ sharʿiyyah*) and how this influenced his juristic decisions.

Ibn Qudāmah's works in *fiqh* highlight several key areas where he employs norms and usages for juristic deductions. Firstly, in interpreting *nuṣūṣ sharʿiyyah*, he uses norms and usages for two main reasons. One of these reasons is to define the meaning of a word the Lawgiver uses without a juristic definition attached to it. Ibn Qudāmah posits that definitions (*taḥdīdāt*) and estimations (*taqdīrāt*) of matters related to the *sharīʿah* are restricted to revelation or divine determination (*tawqīf*). He emphasises that *tawqīfī* meanings may be referenced from the texts of the Qurʾān or the Sunnah (*nuṣūṣ*) or *ijmāʿ*. In the absence of any such provisions from the *nuṣūṣ* or *ijmāʿ*, Ibn Qudāmah contends that it becomes necessary to rely on *ʿurf* for definitions or specifications.[929]

For example, one requirement for enforcing the theft penalty is that the stolen item must be taken from a secured place known as a *ḥirz*. However, the Lawgiver does not explicitly state the precise definition of *ḥirz*. Therefore, Ibn Qudāmah argues that *ḥirz* should be interpreted based on norms and practices, as the Lawgiver has not provided a specific definition.[930] In other words, the definition of *ḥirz* for a particular item must be determined based on what is considered to be a safekeeping place for that item in a community.

The second reason why Ibn Qudāmah employs *ʿurf* is to expound on rulings that the Lawgiver has left unqualified. Ibn Qudāmah holds that if there is *ʿurf* that expounds on

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[928] Abū Sunnah, *al-ʿUrf*, 66.

[929] Ibn Qudāmah, *al-Mughnī*, 3/45, See also 3/96.

[930] Ibid, 12/427.

an unqualified ruling (*ḥukm muṭlaq*), it serves as the basis for applying it (*li anna al-muṭlaq idhā kāna lahū ʿurf, inṣarafa ilā al-ʿurf*).[931] Hence, the obligation of husbands to feed their wives is fulfilled according to what is acceptable by the norms of their community. This is because the Lawgiver has not specified the kind of food nor the quantity to be provided. Ibn Qudāmah maintains that it is acceptable for a couple to agree on the provision to be supplied. In dispute, however, the staple food is prescribed since it is widely accepted.[932]

Another key area where Ibn Qudāmah takes social practices and usages (*ʿurf* and *ʿādah*) into consideration is to determine juristic verdicts relating to human relations. As social beings, humans inevitably relate with one another in different ways, which can sometimes lead to misunderstandings and disputes. To promote peaceful and harmonious co-existence, Muslim jurists, judges, and designated officials must interpret human interactions and statements to resolve related disputes through the lens of the *sharīʿah*.

As noted earlier, Islamic legal theorists have established the principle that all forms of human interactions and transactions are inherently permissible (*al-aṣl fī al-muʿāmalāt al-ibāḥah aw al-ḥill*) unless there is evidence to prove otherwise.[933] Ibn Qudāmah has demonstrated his application of this principle in many juristic decisions where the relevant verdicts are based on prevalent social practices, except when there is evidence to disregard it. For instance, when an individual entrusts their clothes to a tailor for alterations without specifying the cost of labour. Muslim jurists have debated whether the tailor deserves payment for their work. According to Ibn Qudāmah, compensation is warranted if the tailor relies on this work for their livelihood. He argues that entrusting a task to such workers implies that their services are being engaged for a fee, as is customary. This is akin to a verbal agreement. Therefore, even without a formal agreement, the tailor should be duly compensated for their work.[934]

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[931] Ibid, 11/408.

[932] Ibid, 11/350-352.

[933] Al-Ghafīṣ, *Sharḥ*, 5/10; ʿAbd al-Ghaffār, *Qawāʿid*, 6/6; al-Suʿaydān, *Talqīḥ*, 2/6; al-Qahṭānī, *Majmūʿah*, 75,

[934] Ibn Qudāmah, *al-Mughnī*, 8/143-144.

Also, regarding the sale of fruiting date palm trees, it is commonly held among Muslim jurists that the fruits belong to the seller unless otherwise agreed upon in the sale. This verdict is based on a hadith on this subject.[935] Having established this ruling, except for Abū Ḥanīfah, most Muslim jurists are of the opinion that the fruits (dates) can remain on the tree until it is ready to be harvested. Ibn Qudāmah strengthens this opinion by citing the practice based on *ʿurf* and *ʿādah*, where the seller is not obliged to harvest the fruits (*tamr*/dates) except at the appropriate time for harvesting that kind of *tamr*. Likewise, transporting the produce from the farm is also subject to the prevailing norms of the community. As a result, the buyer cannot insist that the seller transport all the farm produce within an unacceptable timeframe, according to the prevalent custom.[936] This verdict can be applied to most business transactions that require a special arrangement for transport. The transportation of such merchandise after sales is determined according to the customs and norms of the society, unless otherwise specified.

Another area where Ibn Qudāmah relies on norms and usages for juristic practices is the interpretation of oaths and vows (*aymān*). He holds that the interpretations of the words used in oaths and vows depend on norms and usages, as the one taking the oath employs words for the common connotations they are used to in their societies.[937] Consequently, if a person vows to abstain from eating, they do not contradict their vow (*lam yaḥnath*) by drinking water. Ibn Qudāmah contends that even though water has been referred to as food in the Qurʾān, it is not customarily regarded as food.[938] However, one will contradict their vow if one intends to include drinking water in their vow not to eat. This can be inferred from Ibn Qudāmah's opinions elsewhere.[939] Thus, he emphasises that the meanings of *aymān* depend on the intention (*al-niyyah* or *al-qaṣd*).[940]

Based on the examples cited so far, Ibn Qudāmah's consideration of *ʿurf* and *ʿādah* is unquestionable. However, it is essential to note that his application of this concept is restricted to areas where the legal and ethical texts of the Qurʾān and Sunnah are silent.

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[935] Ibid, 6/130-131.

[936] Ibid, 6/132.

[937] Ibid, 13/595.

[938] Ibid, 13/594.

[939] Ibid, 13/553.

[940] Ibid, 13/492.

This shows the importance of societal norms and usages in addressing various issues within the Islamic legal system. The essence of this concept is very crucial to the extent that it is considered unacceptable for one to give a fatwa in a place on matters that are affected by the societal customs and norms until the Mufti becomes conversant with the *ʿurf* and *ʿādah* of that particular place.[941]

In the interpretation of words between customary and juristic usages, Ibn Qudāmah seems to give preference to juristic usage (*istiʿmāl al-sharʿī*) over conventional usage (*istiʿmāl ʿurfī*) irrespective of the speaker's customary usage (*ʿurf istiʿmāl*). With *ṭalāq* (divorce), for example, Muslim jurists have disputed the implication of words like *firāq* (separation) and *sarāḥ* (acquittance) when one uses them to address one's wife. Do they explicitly imply divorce or not? Imām Mālik does not consider the words *firāq* and *sarāḥ* to explicitly imply divorce, as they are commonly employed to denote meanings other than divorce. As a result, if a person uses any of these words in a way that does not outrightly imply divorce, it cannot be interpreted as such. Ibn Qudāmah, however, contends that the words *firāq* and *sarāḥ* are explicit denotations of divorce because the Lawgiver has employed them for that meaning. Therefore, divorce is implied by default regardless of the user's intent.[942]

Ibn Qudāmah's preference for *ʿurf al-sharʿī* over *ʿurf al-istiʿmāl* is not limited to the concept of *ṭalāq*. It is also evident in his discussion of *waṣāyā* (will and bequest). For instance, when a person makes a will for their neighbours, Ibn Qudāmah posits that the will covers all who live within forty houses of his residence from all directions.[943] According to him, this view is informed by a hadith of the Prophet, which states that one's neighbour (*jār*) extends forty houses from the person, pointing to all four directions. Ibn Qudāmah asserts that this hadith is an explicit definition of who can be legally regarded as a person's neighbour if the text is verified to be authentic. However, he notes that if the text is not authentic, then the estimation of one's neighbours must be determined based on *ʿurf*.[944] By this approach, he demonstrates his preference for the

[941] Muḥammad ibn Ibrāhīm al-Baqūrī, *Tartīb al-Furūq wa Ikhtiṣāruhā* (al-Mamlakah al-Maghribiyyah: Wizārah al-Awqāf wa al-Shuʾūn al-Islāmiyyah, 1994), 1/244; Abū Sunnah, *al-ʿUrf*, 109.

[942] Ibn Qudāmah, *al-Mughnī*, 10/355-356.

[943] Ibid, 8/536.

[944] Ibid, 8/537.

juristic meaning of a word over its customary usage and his preference for the customary meaning of a word over its linguistic meaning in this order.

Similarly, in discussing the beneficiaries of a will in the name of relatives, Ibn Qudāmah argues that beneficiaries of such a will consist of all the paternal relatives of that person up to their great-grandparents. This opinion is also grounded by the Messenger of Allah's interpretation of the share of his relative (*dhawī al-qurbā*) in the spoils of war (*faiʾ*) specified in Q.59:7. According to Ibn Qudāmah, the Prophet restricted the beneficiaries of *faiʾ* to his relatives up to Banū Hāshim (the Hashemites). This excludes everyone beyond that lineage, as well as his mother's lineage. Therefore, any will made for one's relatives must be distributed to similar relations unless otherwise specified.[945]

From the examples above, Ibn Qudāmah emphasises the juristic meaning of words over their customary usages, regardless of their conventional implications in a particular context. However, as noted from the study on *ḥaqīqah* and *majāz*, his position is that the meaning of a word must be determined from the context of the user unless otherwise specified by the context. This is also the position of most Islamic legal theorists. In the legal and ethical texts of the Qurʾān and Sunnah, the juristic meaning assigned to a word by the Lawgiver takes precedence unless there is an indication that the *ʿurfī* or the *lughawī* meaning was intended. Likewise, if a word is used in a specified customary context, that usage must be acknowledged unless there is an indication otherwise. This application is evident in Ibn Qudāmah's interpretations of matters relating to *aymān*. As noted earlier, he maintains that if a person vows to abstain from eating, they are not restricted by that vow from drinking water. The person does not violate their vow by taking water unless they also intend to restrict themselves from water.[946] This seems to substantiate the Mālikī position that the usages of *firāq* (separation) and *sarāḥ* or *tasrīḥ* (acquittance) are not explicit pronouncements of divorce, as discussed above. Hence, the Mālikī opinion appears more grounded than Ibn Qudāmah's view.

However, regarding the interpretation of one's neighbour (*jār*) and relatives (*dhawī al-qurbā*), Ibn Qudāmah's opinion appears favourable. The texts he quoted - as provided above - seem to define those words. Thus, if the hadith is sound, it could be argued

[945] Ibid, 8/529-531.

[946] Ibid, 13/594.

that *jār* has a juristic (*sharʿī*) definition, which must take precedence over its customary usage(s). Similarly, the word *dhawī al-qurbā* was defined by the Prophet as he limited its meaning to a specific lineage. Per the principle that definitions of matters related to the *sharīʿah* are based on revelation or *ijmāʿ* (*tawqīfiyyah*), his preference for the *sharʿī* interpretations here would be more grounded. This argument, however, cannot be made regarding *firāq* and *taṣrīḥ* as the texts do not seem to provide definitions for these words.

The preceding analysis reveals areas where Ibn Qudāmah considers it reasonable to apply *ʿurf* and *ʿādah* in deriving legal opinions. These include *taḥdīdāt* (definitions) of juristic concepts that the Lawgiver has left undefined. It also encompasses *taqdīrāt* (estimations) of variables such as entitlements and responsibilities that the Lawgiver has left open. Unqualified legal rulings by the Lawgiver may also be determined and restricted to the norms of a particular society when necessary. Additionally, the interpretation of oaths and vows for juristic or legal purposes also depends on the norms and usages of the one involved in such matters. Lastly, regarding disputes arising from human interactions, the study has shown Ibn Qudāmah's reliance on customs, norms, and usages in areas where the sharia is silent for resolution when there is a need to do so.

8.4 Discussion

Societies strive to establish peace and order by enforcing social practices that ensure their collective objectives are met. These norms are typically formulated based on what is regarded as most advantageous for advancing societal objectives and public welfare. Over time, the most common and widely accepted practices become ingrained as customs and norms. Distancing people from such norms can be challenging, as individuals may resist change to preserve what they are accustomed to.[947]

The *Sharīʿah* shares a similar goal of organising human societies to promote the interest (*maṣlaḥah*) of the *mukallaf* (the one subjected to the law) in both their worldly affairs and the afterlife. This is achieved through maintaining ease (*taysīr*) and alleviating difficulty on the *mukallaf*. Consequently, the Lawgiver does not need to condemn every social norm and enforce change except when necessary. Therefore, many legal and ethical rulings in Islam are formulated based on *ʿurf* and *ʿādah*. Changes are only

[947] Abū Sunnah, *al-ʿUrf*, 16.

introduced when a norm or a custom undermines human dignity or overlooks the *maṣlaḥah* of the *mukallaf* in their worldly affairs and the afterlife.[948]

Islamic legal theorists classify norms and customs into four categories based on their application in Islamic law. The first encompasses norms and customs that serve as sources of law in specific circumstances.[949] For example, it is widely accepted that trading in a commodity that does not exist or is not yet ready for sale is impermissible.[950] However, the Lawgiver allowed *salam* trading (*bayʿ al-salam*) based on the norms of the people of Madinah during the Prophet's time, under the principle of *taysīr*. The conditions attached to this concession (as mentioned earlier)[951] regulate trading in commodities not yet ready for sale, ensuring certainty in terms of product quantity and time of delivery, thus minimising potential disappointments leading to disputes.[952]

The second category comprises norms and usages used in determining legal verdicts.[953] This may be illustrated by the responsibility of husbands to feed their wives, which is determined based on the customs and norms of a particular society, as discussed above. The third category covers norms and practices regarded as substitutes for verbal expressions.[954] For example, verbal expressions are required in all trade transactions. However, in some cases, a non-verbal transaction, such as selecting and paying for an item at a store without speaking, can be considered a valid form of communication and a legitimate purchase based on societal norms.[955] The final category of norms and usages is verbal expressions based on conventional usages.[956] This may be illustrated by the interpretation of oaths and vows based on the common understanding of the words used according to the parties' conventions.

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[948] Shuʿayb, *Shubuhāt*, 538-539.

[949] Abū Sunnah, *al-ʿUrf*, 27.

[950] Al-Ṭūfī, *Sharḥ*, 3/329.

[951] See also al-Tirmidhī, *Sunan*, 3/594 (Hadith No. 1311); Ibn Qudāmah, *al-Mughnī*, 6/407.

[952] Ibn Qudāmah, *al-Mughnī*, 6/384.

[953] Abū Sunnah, *al-ʿUrf*, 44.

[954] Abū Sunnah, *al-ʿUrf*, 50.

[955] Ibn Qudāmah, *ʿUmdah al-Ḥāzim*, 3/185.

[956] Abū Sunnah, *al-ʿUrf*, 54.

In a constantly evolving world, how do changes in norms and customs impact Islamic law and ethics? Do verdicts based on norms become established doctrine once declared or documented in *fiqh* books? In examining this question, it will be necessary to bear in mind the different categories of ʿ*urf* and ʿ*ādah* as they may have varying implications for the validity and strength of their application. For instance, the first type of ʿ*urf* and ʿ*ādah*, recognised as a source of law, wields a more reasonable basis for application than the other three categories, lacking this legal legitimacy. The ensuing passages will explore the questions raised above.

8.4.1 The Legal and Ethical Texts of the Qurʾān and Sunnah (*Nuṣūṣ Sharʿiyyah*) Vis-À-Vis Social Context (ʿ*Urf* and ʿ*Ādah*)

One of the key challenges in applying ʿ*urf* today is reconciling it with established Islamic ethos. There should not be a problem accepting any social practice in Islamic law and ethics if that practice conforms with the *nuṣūṣ sharʿiyyah*. However, when a prevailing social context conflicts with the *nuṣūṣ sharʿiyyah*, it raises the question of whether the conflicting text should be reinterpreted to fit the new context or if Muslims should adjust themselves and their context to comply with the existing interpretation of the relevant text.

Abdullah Saeed has argued that the concept of *naskh* in Islam could be a valuable tool to reconcile different contexts with the *nuṣūṣ sharʿiyyah*. The abrogation of some *aḥkām* in the Qurʾān and the Sunnah suggests the provision of a tool for Muslims to employ to reinterpret the *nuṣūṣ sharʿiyyah* or adjust the *aḥkām al-sharīʿah* in line with their changing needs. This view, therefore, posits that:

> There is a problem in holding the view that all Qurʾānic rulings must be immutable or unchangeable - in the sense that another ruling cannot be devised or implemented to match with the broader Qurʾānic objectives.[957]

The traditional position held by most Muslim jurists until recently has been that valid norms that should be considered in Islamic law and ethics must not contradict the *nuṣūṣ*

[957] Saeed, *Interpreting*, 84.

sharʿiyyah.[958] This is one of the conditions for a custom or norm to be considered in juristic endeavours. However, there are some instances where customs and norms have been applied in a way that seems to contradict this condition. This is particularly the case when customs and norms are employed to specify the meaning of a legal text. Does this suggest the abrogation of existing laws based on social change? How have traditional Islamic legal theorists applied *ʿurf* and *ʿādah* in the light of the *nuṣūṣ sharʿiyyah*, particularly when there seems to be conflict in dealing with both the *nuṣūṣ sharʿiyyah* and *ʿurf*?

Tensions between norms and the *nuṣūṣ sharʿiyyah* generally take two forms. One arises when a norm is incompatible with a specific text on the same subject. The other occurs when a norm falls under the general ruling of a text. In this case, the norm may be regarded as an aspect or a subset of the implication of a general text.[959] These scenarios may be discussed in two sections: tensions between norms and practices and specific rulings from the *nuṣūṣ sharʿiyyah* and tensions between norms and general implications of the *nuṣūṣ sharʿiyyah*.

8.4.2 Tensions Between *ʿUrf* and *ʿĀdah* and Specific Implications or Rulings of the *Nuṣūṣ Sharʿiyyah*

As we discovered earlier, during the era of revelation, the Lawgiver endorsed some of the existing norms of pre-Islamic Arabian society while disapproving of others. This forms the basis of the validity of norms and provides evidence for the argument that the popularity of some social practices is not enough to legitimise them. As a result, Muslim scholars generally make a distinction between aspects of the *sharīʿah* that are based on *ʿurf* or *ʿādah*, which have been either approved or disapproved by the Lawgiver, and those that do not have explicit endorsement or rejection by the Lawgiver.

Ibn Qudāmah emphasises that it is unacceptable to disregard the ruling by the Lawgiver regarding specific social practices unless it can be proven that the ruling has been abrogated. Moreover, when the Lawgiver endorses a particular practice, it implies that

[958] Al-Zarqāʾ, *al-Madkhal*, 903.

[959] Ibid.

adhering to it benefits us.[960] This view is further reinforced by the Mālikī legal theorist al-Shāṭibī (d.790/1388), who underscores that rulings on specific social practices or customs (*ʿādāt*) that have been sanctioned or proscribed by the Lawgiver remain perpetual and do not change even if the perception of people regarding the appropriateness of those customs change.[961]

Thus, Muslim jurists and legal theorists contend that if a norm is incompatible with a legal or ethical text from the Qurʾān or the Sunnah, such that working with that norm implies disregarding the text, that norm must be rejected in favour of the text.[962] This view seems to align with the reaction of the Prophet's companions, who were instructed to refrain from activities that appeared to benefit them in certain aspects of their lives. Rāfiʿ ibn Khadīj (d.73 or 74/695 or 696), one of the companions of the Prophet, reports that when the companions of the Prophet were prohibited from renting out farmlands in exchange for a portion of the produce, they said,

> The Messenger of Allah came out to us and forbade something that had been beneficial for us (*kāna lanā nāfiʿā*), but the obedience of Allah and His Messenger is better for us (*wa ṭawāʿiyatu Allah wa rasūlihī anfaʿu lanā*)….[963]

The report above reveals that not all legal rulings may align with our immediate preferences or what we may readily consider to be to our advantage. Through analysis of the *sharīʿah*, it becomes apparent that some rulings impose restrictions on what may be pleasurable, while others may require demanding tasks. While these aspects of the *sharīʿah* may present challenges, they are the very values that establish more lasting benefits and promote the more significant interests of the *mukallaf* (the one subjected to the law) both in this life and the afterlife, in accordance with Islamic beliefs.

For example, suppose a specific context influenced the Lawgiver's approval or rejection of a particular practice and the sociohistorical needs of the time. In that case, the ruling must change because the context is no longer relevant. This could be a more substantial

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[960] Ibn Qudāmah, *Rawḍah*, 1/417.

[961] Al-Shāṭibī, *al-Muwāfaqāt*, 2/488.

[962] Al-Zarqāʾ, *al-Madkhal*, 903.

[963] Muslim, *Ṣaḥīḥ*, 5/23.

basis to advocate for change. However, a fundamental problem arises when a text of the Qurʾān or Sunnah approves or disapproves of a practice or norm. To change such a ruling based on a prevailing context would contradict the Lawgiver's ruling as stipulated in the text. Such applications of context will amount to revoking the relevant legal text.

Technically, changing a ruling from what has been stipulated in the Qurʾān or Sunnah is known as *naskh* (abrogation). Islamic legal theorists have been very strict in preventing deviations from the rulings established by the Lawgiver, as spelled out in the texts of the Qurʾān and Sunnah, to avoid possible human interpolations. For instance, Islamic legal theorists deem it unacceptable to assume the abrogation of a ruling established by a legal text from the Qurʾān based on reasoning (*dalīl al-ʿaql*) or analogy (*qiyās*), as this is considered the exclusive and preserved right of the Lawgiver.[964] This is supported by Q.2:106: 'We do not abrogate a verse or cause it to be forgotten except that We substitute it with a better or similar one. Do you not know that Allah is capable of all things?' Consequently, to Islamic legal theorists, *naskh* can only be established through a transmission (*naql*) indicating the Lawgiver's repeal of a specific ruling or text.[965] Therefore, context or social circumstances may not be employed for abrogation from this viewpoint.

It seems reasonable to argue that changes in many legal rulings by the Lawgiver due to the changing circumstances of Muslims during the era of revelation highlight the importance of adapting the texts of the Qurʾān and Sunnah that no longer meet the social needs of Muslims. If this assertion is taken for granted, the existing context of Muslims may be employed to revise some divine laws that are perceived as unsuitable. However, some texts from the Qurʾān demonstrate that human reasoning alone cannot be relied upon to reinterpret a legal text or revise a divine ruling.[966] Allah expounds on this in the following text:

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[964] Ibn Qudāmah, *Rawḍah*, 1/248; Ibn Qudāmah, *al-Mughnī*, 1/221.

[965] Ibn Qudāmah, *Rawḍah*, 1/203.

[966] Ovamir Anjum sheds some light on this in Islamic Political Theology within sections 2.1 and 2.3. See Ovamir Anjum, "Islamic Political Theology," In *St Andrews Encyclopaedia of Theology*, edited by Brendan N. Wolfe et al. University of St Andrews, 2022–. Article published August 29, 2024. **https://www.saet.ac.uk/Islam/IslamicPoliticalTheology**.

> When our verses are recited to them as clear evidence, those who do not expect to meet with us say, "Bring us a Qurʾān other than this or change it [make some changes to it]". Say [O, Muḥammad], "It is not for me to change it of my own accord; I only follow what is revealed to me. Verily, I fear the torture of the dreadful day if I were to disobey my Lord". (Q.10:15).

It is evident from the text that only Allah has the authority to alter the revealed texts and rulings. 'The Messenger's duty is only to deliver the message clearly' (Q.24:54). The above texts and similar ones, such as Q.69:44, appear to reinforce the claim that what the Lawgiver has decreed cannot be revoked after the Prophet's death, as it marks the end of revelation.[967]

The preceding analysis raises questions about the assertion that the *sharīʿah* is dynamic and flexible. Islamic legal theorists' response to this question can be deduced from their application of the maxim: *al-ḥukm yadūr maʿa ʿillatih wujūdan wa ʿadaman* (a ruling is always consistent with its effective cause).[968] In other words, once the effective cause or the *ʿillah* of a particular ruling is identified, the application of the ruling becomes dependent on the effective cause. The ruling is not applicable without the *ʿillah*. Consequently, when norms and practices are identified as the underlying reasons (*ʿillah*) for specific legal rulings or verdicts, they can serve as legitimate grounds for change, depending on how a society upholds the norms that influenced the ruling or verdict.[969] Such practices are mostly seen as indicators of the relevant legal rulings.[970]

For example, the Prophet advocates for the consent of a virgin girl to be sought before she is given in marriage to a man. The Sunnah indicates that her silence signals her consent.[971] The basis for this judgement is that virgins or unexposed girls were usually shy back then.[972] This is clarified as the reason (*ʿillah*) for considering their silence as

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[967] Al-Shāṭibī, *al-Muwāfaqāt*, 2/489.

[968] Al-Sarakhsī, *Uṣūl*, 2/182; al-Samʿānī, *Qawāṭiʿ*, 2/153; Ibn Qudāmah, *al-Mughnī*, 4/404.

[969] Al-Shāṭibī, *al-Muwāfaqāt*, 2/489.

[970] Abū Sunnah, *al-ʿUrf*, 103.

[971] Ibn Qudāmah, *al-Mughnī*, 9/399.

[972] Ibid, 9/408.

indicative of their consent, as in a report by ʿĀishah (d.58/678), the Prophet's wife.[973] Therefore, in a society or an era where girls are no longer shy about expressing their interest in marriage, as in most societies today, a girl's silence on a marriage proposal will not necessarily indicate her interest because the *ʿillah* (shyness) is no longer applicable in such socio-cultural contexts. Consequently, that ruling based on the *ʿurf* of the Prophet's era may change in the context of different societies and eras.

Furthermore, norms and practices employed to determine appropriate definitions in matters that the Lawgiver has left unqualified or undefined may also have a similar effect. An example is the legal requirement to provide for or spend on one's wife (*nafaqah al-zawjiyyah*). The acceptable mode and estimation of *nafaqah* are ruled based on different social circumstances and needs.

The recognition of varying legal verdicts due to different social circumstances is again strengthened with the legal maxim *lā yunkar taghayyur al-aḥkām bi taghayyur al-zamān* (there are no objections to changes in legal verdict due to changes in time or era).[974] Thus, a legal opinion or a verdict founded upon *ʿurf* is affected by changes occurring in the acceptance or practice of that *ʿurf*.

Shihāb al-Dīn al-Qarāfī, the Mālikī jurist and legal theorist posits that:

> Maintaining legal verdicts that are dependent on *ʿawāʾid* (plural of *ʿādah*, i.e., norms and customs) after those customs have changed is ignorance of the religion, and it contradicts *ijmāʿ*. On the contrary, the verdicts of matters in the *sharīʿah* that are influenced by customs and norms must be adapted to reflect the relevant changes in those customs.[975]

It is evident from the above that Islamic legal theorists like al-Qarāfī distinguish between immutable legal rulings and those that may be subject to change for valid reasons. *ʿUrf* and *ʿādah*, or social circumstances and needs, are examples of such variable effective

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[973] Ibid, 9/408.

[974] Ibn al-Qayyim, *Iʿlām*, 1/48; al-ʿAbd al-Laṭīf, *al-Qawāʿid*, 1/308.

[975] Shihab al-Dīn Aḥmad ibn Idrīs al-Qarāfī, *al-Iḥkām fī Tamyīz al-Fatāwā ʿan al-Aḥkām wa Taṣarrufāt al-Qāḍī wa al-Imām* (Beirut: Dār al-Bashāʾir, 1995), 218.

causes that may require flexible and dynamic evaluation regarding their relevant legal rulings (*aḥkām*) and texts (*nuṣūṣ sharʿiyyah*).

The occurrence of changes in legal verdicts based on varying social circumstances may be loosely referred to as a form of abrogation, as Abdullah Saeed has suggested.[976] Yet, this description is not technically accurate because modifying a legal verdict based on different circumstances is a form of *ijtihād* and does not require divine decree to change from one ruling to another.[977] This being said, *ʿurf* remains an effective tool in promoting socially acceptable practices that do not contravene any divine declarations.

8.4.3 The Consideration of *ʿUrf* and *ʿĀdah* in Interpreting the General Implications of the Texts of the Qurʾān and the Sunnah

This section examines instances where Islamic legal theorists rely on social practices and usages to interpret the general implications of a legal text. This discussion is divided into two parts. The first involves employing *ʿurf qawlī* (conventional usage) to interpret a general text (*naṣṣ ʿāmm*), and the second consists of employing *ʿurf fiʿlī* or *ʿurf ʿamalī* (conventional practice) to interpret a general text.

8.4.3.1 The Interpretation of Words Based on Usages (*ʿUrf Qawlī*)

From the study of *ḥaqīqah* and *majāz*, we noted Ibn Qudāmah's position on interpreting words based on either their lexical (*lughawī*), juristic (*sharʿī*), or conventional (*ʿurfī*) meanings. This position indicates the relevance of the context of a word in specifying its meaning unless there is *qarīnah* to suggest otherwise. Like most Islamic legal theorists, Ibn Qudāmah is of the view that if the meaning of a word is not specified by the context in which it was used, the speaker's *ʿurf* must be given preference in determining the meaning of their expression. Accordingly, in interpreting the legal and ethical texts of the Qurʾān and Sunnah, the juristic meaning of a word takes precedence unless there is *qarīnah* to indicate a variant meaning was intended. The same principle is applied in interpreting people's expressions according to the *ʿurf al-istiʿmāl* of the speaker. Suppose

[976] Saeed, *Interpreting*, 83-84.

[977] As noted in the discussion in this section. See also Ibn Qudāmah, *Rawḍah*, 1/203 and 248; Ibn Qudāmah, *al-Mughnī*, 1/221.

a speaker employs a word with a general implication and a specific meaning according to the ʿurf of the speaker. In that case, the specific takes precedence over the general because the speaker must be understood within their context. Specifying the meaning of *ʿāmm* based on customary usages is known as *takhṣīṣ bi al-ʿurf*.[978]

Ibn Qudāmah maintains that it is unlikely to presume that one will employ a word to imply a meaning that is not commonly understood in their society. Therefore, there needs to be evidence such as *qarīnah* to indicate that a word was intended for a non-conventional meaning if used in that way.[979] Thus, from Ibn Qudāmah's juristic works, especially on topics like oaths and vows, business transactions, contracts, and social interactions such as those relating to matrimony and divorce, he takes the prevailing *ʿurf* into account to arrive at conclusions or legal verdicts.

We also noted above that where the Lawgiver has not specified the meaning of a word or statement, Ibn Qudāmah takes the stance that the reader must resort to *ʿurf* to interpret it if there is a relevant definition in *ʿurf*. These positions point out the pertinence of usages or *ʿurf al-istiʿmāl* in interpreting some legal texts (*nuṣūṣ sharʿiyyah*) as well as human interactions.

As cultures and societies continue to develop, so too do their languages. This means that the meaning of a word changes to adapt to its current context. Applying new usages to existing expressions, contracts, or texts like the Qurʾān and the Sunnah could potentially distort the original interpretations of those texts and declarations. Islamic legal theorists refer to usages and practices that emerge after a text as *ʿurf al-ṭāriʾ ʿalā al-naṣṣ*. The question that arises is whether changes in the meaning of a word might affect the interpretation of that word in a preceding text, declaration, or contract. In other words, is it acceptable to construe a text differently due to changes in the conventional usage (*ʿurf al-istiʿmāl*), particularly if those changes impact its meaning? Similarly, is it permissible to reinterpret a contract or statement due to changes in the meaning of some words used, even if it was formulated before the change?

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[978] Al-Rāzī, *al-Maḥṣūl*, 2/362; al-Qarāfī, *Nafāʾis*, 4/1832; ʿAlī ibn Ismāʿīl al-Abyārī, *al-Taḥqīq wa al-Bayān fī Sharḥ al-Burhān fī Uṣūl al-Fiqh* (Kuwait: Dār al-Ḍiyāʾ, 2013), 2/281.

[979] Ibn Qudāmah, *al-Mughnī*, 13/595.

In Islamic legal theory, it is generally agreed that for *ʿurf* to be employed in interpreting a text or an expression, it must have been prevalent when the text or contract under consideration was declared. A prevalent custom or usage during a declaration is known as *ʿurf al-muqārin*.[980] It appears from this condition that any *ʿurf al-istiʿmāl* that was not in use at the time of the Prophet may not be considered in interpreting the legal and ethical texts of the Qurʾān and Sunnah. Likewise, any *ʿurf al-istiʿmāl* that emerges after a contract has been signed or that was outdated before an agreement was made must not be employed in interpreting that contract. This view seems to be contradicted by a contemporary proposition that advocates that the interpretation of the legal and ethical texts of the Qurʾān and Sunnah (*nuṣūṣ sharʿiyyah*), like any cultural text, is 'dependent upon human knowledge of human sciences, which itself is socio-temporarily contingent.'[981] According to this theory, the meaning of the *nuṣūṣ sharʿiyyah* may vary per changes occurring in norms and usages.

An examination of Ibn Qudāmah's works reveals that he does not consider the impact of *ʿurf al-istiʿmāl* on the *nuṣūṣ sharʿiyyah* when the meaning of a text is defined. This is evident in his analysis of whether *firāq* (separation) and *sarāḥ* (acquittance) are explicit denotations of divorce. He asserts that because the Lawgiver has employed them to imply divorce, they remain explicit denotations of divorce irrespective of their conventional usages.[982]

The Qurʾānic text 'Allah will not call you to account for the unintended oath (*al-laghwu fī aymānikum*) …' (Q.5:89) could serve as a good illustration. This means a person is not bound by an unintended oath or swearing (*laghwu al-yamīn)*. The word *aymān* in the text primarily refers to swearing by Allah. However, later generations have employed the term *yamīn* to include a vow to divorce or emancipate an enslaved person (*yamīn al-talaq* and *yamīn al-ʿitq*, respectively). If changes that have occurred in the meaning of *yamīn* are taken into account to interpret Q.5:89, the text will apply to *yamīn al-talaq* or *yamīn al-ʿitq*.

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[980] Badr al-Dīn Muḥammad ibn ʿAbdullāh al-Zarkashī, *al-Manthūr fī al-Qawāʿid al-Fiqhiyyah* (Kuwait: Wizārah al-Awqāf, 1985), 2/394.

[981] Duderija, *Constructing*, 142.

[982] Ibn Qudāmah, *al-Mughnī*, 10/355-356.

Extending Q.5:89 to cover the concepts of *yamīn al-talaq* or *yamīn al-ʿitqa* means that if a person makes a vow that his wife will be divorced if he goes against certain principles, the vow will only be valid if he intends to carry it out. Otherwise, it is considered a frivolous vow or *laghwu al-yamīn*. This concept may apply when someone makes such a vow in jest without intending to divorce their wife. However, this application may extend the scope of the text beyond its original purpose and contradict a hadith that advises against making jokes about divorce.[983]

Additionally, the word *ḥajj* linguistically refers to a visit to a revered object or place. However, the Lawgiver restricted its meaning to visiting the house of Allah (the *Kaʿbah*) during a specific season. Since then, this has been the juristic meaning and the conventional usage of the word *ḥajj*. Thus, references to *ḥajj*, whether in the *nuṣūṣ sharʿiyyah* or ordinary conversations, are understood to mean a visit to the *Kaʿbah* (the house of Allah in Makkah or the Kaaba). Suppose conventions should revert to the original meaning of *ḥajj* or a different meaning altogether. In that case, it will be unreasonable to reinterpret existing texts of the Qurʾān and Sunnah to comprise what was not originally intended. Similarly, agreements among people regarding *ḥajj* must not be adjusted to imply what was not initially intended before the change, since the users did not consider the hypothetical new usage when they made those declarations. As a result, the hadith '*Ḥajj* has been prescribed on you, so perform it' may not be reinterpreted to mean anything other than what it meant during the promulgation of this obligation, a visit to the house of Allah in Makkah.[984]

Zayn al-Dīn Ibn Nujaym (d.970/1562), the renowned Egyptian and Ḥanafī scholar, remarks regarding the meaning of words that it is only the usage in existence at the time of declaration that holds. Thus, 'an emerging norm or usage (*ʿurf al-ṭāriʾ*) must not be considered.'[985] Al-Āmidī's remark on *dalālah al-iqtiḍāʾ* may conveniently be employed here in support of this proposition. He contends that 'It is required to follow the original

[983] 'There are three matters that are treated as serious whether undertaken seriously or in jest: marriage, divorce, and taking back one's wife after divorce (*rajʿah*).' See al-Zarqāʾ, *al-Madkhal*, 920.

[984] Abū Sunnah, *al-ʿUrf,* 91.

[985] Ibn Nujaym, *al-Ashbāh*, 86.

meaning (*al-waḍʿ al-aṣlī*) in rejection of an emerged usage (*ʿurf al- ṭāriʾ*). Whoever claims otherwise is required to substantiate their claim.'[986]

8.4.3.2 Interpreting a General Text Based on Prevalent Practices (*ʿUrf al-ʿAmalī*)

The interpretation of the legal and ethical texts of the Qurʾān and Sunnah (*nuṣūṣ sharʿiyyah*) remains a subject of debate among Muslim scholars when it comes to determining the meaning of a text based on predominant practices. The renowned Mālikī jurist and legal theorist ʿAlī ibn Ismāʿīl al-Abyārī (d.616/1219), in his commentary of *al-Burhān fī Uṣūl al-Fiqh*, noted that Muslim jurists and legal theorists have varying opinions regarding how specific the meaning of a general text should be based on the prevalent practices of a people.[987] For example, in a report by one of the Prophet's companions, Maʿmar ibn ʿAbdullāh (d.41 or 60/663 or 682), the Messenger of Allah (PBUH) prohibited the sale of food for food (*al-ṭaʿām bi al-ṭaʿām*) except for equal quantities. Maʿmar, the reporter of this tradition, further explained that wheat was the prevalent food at the time.[988] Thus, Muslim scholars have debated whether the term food (*ṭaʿām*) in the report should be strictly limited to wheat or be extended to cover any food.

If we assume that the word *ṭaʿām* in the report above refers to the predominant food item only, then the prohibition would apply to trading wheat for wheat in different quantities alone. This means exchanging other types of food within the same category would be allowed, regardless of the quantity differences. Al-Abyārī points out that this is where Muslim jurists and legal theorists disagree on the concept of specifying the meaning of a general text with prevailing customary practice (*takhṣīṣ* with *ʿurf*).[989] The Ḥanafī school is noted for employing dominant social practices to specify the meaning of a general text (*takhṣīṣ bi ʿurf ʿamalī ʿāmm*), contrary to the view held by the majority of Muslim scholars.[990] However, this idea requires further examination.

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[986] Al-Āmidī, *al-Iḥkām*, 2/249-250.

[987] Al-Abyārī, *al-Taḥqīq*, 2/283.

[988] See Muslim, *Ṣaḥīḥ*, 5/47.

[989] Al-Abyārī, *al-Taḥqīq*, 2/283.

[990] See Abū Sunnah, *al-ʿUrf,* 91.

Ibn Qudāmah emphasises the need to interpret people's expressions based on the norms and usages of their settings. His approach to employing ʿ*urf* in general, both usages and practices (ʿ*urf qawlī* and ʿ*urf ʿamalī*), to specify the meaning of human interactions is notable, especially when the predominant usage or practice contradicts the general lexical meaning of a word. While most legal theorists and jurisprudents do not have issues with this approach, they do not apply the same principle to interpret or specify the general meaning of the legal and ethical text of the Qurʾān and Sunnah (*nuṣūṣ sharʿiyyah*) with ʿ*urf ʿamalī*.[991]

However, the Ḥanafī school is found to maintain the generality of some *nuṣūṣ sharʿiyyah* even though they could have specified the meanings of those texts with ʿ*urf ʿamalī*. One such instance is the prohibition of *ribā*. The Ḥanafī jurists seem to apply the text on *ribā*: 'Allah has permitted trading and forbidden *ribā*.' (Q.2:275) in a general sense. Although it is generally agreed that the norm of the Arabs in dealing with usury at the time was compounding interest,[992] the Ḥanafī school does not specify the meaning of the text with that ʿ*urf*. It can, therefore, be observed that Muslim jurists and legal theorists seem to make a distinction between the *nuṣūṣ sharʿiyyah* and human expressions on this matter. Whereas they agree that human expressions must be interpreted based on the common usages and practices of their settings, they differ in applying the same principle in interpreting the *nuṣūṣ sharʿiyyah*.

An instance where the mainstream Muslim legal schools seem to agree to specify a common practice out of the general ruling of a text is the ruling on *istiṣnāʿ* (contracting a person or company to manufacture a product). According to the Sunnah, the Prophet prohibits a person from selling what they do not possess (*lā tabiʿ mā laysa ʿindak*).[993] This tradition generally forbids the sale of anything not present or ready at the point of sale or contract. By this ruling, *istiṣnāʿ* must be regarded as unlawful because it entails the sale of a product that the seller does not possess, or it requires the commitment to a contract of a non-existent product.

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[991] Al-Khaṭīb al-Baghdādī, *al-Faqīh*, 1/310; Ibn ʿĀbidīn, *Rad al-Muḥtār*, 4/519

[992] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1/296; al-Sarakhsī, *al-Mabsūṭ*, 12/117; al-Shāṭibī, *al-Muwāfaqāt*, 4/379-380; Abū Sunnah, *al-ʿUrf*, 94.

[993] Ibn Mājah, *Sunan*, 3/308 (Hadith No. 2187).

While some references indicate disputes on the permissibility of *istiṣnāʿ*,[994] in practice, it is generally regarded as permissible by Muslim jurists.[995] Some consider the basis of its permissibility to be the consensus practice of people since the time of the Prophet, while others regard it as a form of *salam* trading. Regardless of these technical differences, the ruling on *istiṣnāʿ* as *ʿurf ʿāmm* could be considered as specified from the general prohibition of selling what one does not possess, as indicated in the text above.

Regarding the report by Maʿmar, the interpretation of the term *ṭaʿām* varies among Muslim jurists. Apart from the Ḥanafī jurists, most do not deem it appropriate to specify the meaning of *ṭaʿām* in the report with *ʿurf al-ʿāmm* in terms of the dominant foodstuffs of the time. The Ḥanafī school argues that the meaning of *ṭaʿām* in the report should be limited to the staple foods eaten by the Prophet's companions during the time of the prohibition, which was wheat, according to the reporter. However, some Ḥanafī scholars, such as al-Sarakhsī (d.483/1090), have expanded this to include other commodities such as dates, raisins, and cottage cheese due to other narrations showing that these were also common foodstuffs at the time.[996] In effect, the Ḥanafī school specifies the meaning of *ṭaʿām* with *ʿurf ʿāmm* of the time. On the other hand, most Muslim jurists argue that the word *ṭaʿām* is an indication of one of the effective causes for banning *ribā* in the sale of certain foodstuffs, stating that any edible product that is measurable must not be sold except in the same quantity.[997]

Arguably, the term *ṭaʿām* in the hadith may refer to food in general and not necessarily be restricted to wheat or staple foods of that time.[998] This also seems to be the understanding of Maʿmar, the reporter of the hadith. This is evident in his response when

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[994] Al-Majlis al-Aʿlā li al-Shuʾūn al-Islāmiyyah, *Mawsūʿah al-fiqh al-Islāmī* (Cairo Egypt: Wizārah al-Awqāf, 1997), 7/91-92; al-Zarqāʾ, *al-Madkhal*, 915.

[995] See a lecture by Sulaymān ibn Salīm Allāh al-Ruḥaylī: al-Qanāt al-ʿIlmiyyah, "ʿAqd al-Istiṣnāʿ," YouTube, August 27, 2020, عقد الاستصناع 18.

[996] Al-Jaṣṣāṣ, *Sharḥ*, 3/26.

[997] Al-Qāḍī ʿAbd al-Wahhāb ibn ʿAlī ibn Naṣr al-Baghdādī, *al-Ishrāf ʿalā Nukat Masāʾil al-Khilāf* (Beirut: Dār Ibn Ḥazm, 1999), 2/540; Ibn Qudāmah, *al-Mughnī*, 6/53-58.

[998] Such as Raisins, cottage cheese and dates, See al-Bukhārī, *Ṣaḥīḥ*, 2/548.

he was prompted that the two commodities were of a different genus. He remarked, 'I am afraid it may be the same (*akhāfu an yuḍāriʿ*) [in meaning and ruling].'[999]

The approval of *istiṣnāʿ* by Muslim jurists appears to give some credence to the idea of specifying a text with a general practice (*ʿurf ʿāmm*) as understood by the Ḥanafī school. If the practice was widespread and concurrent with the text, then in case of conflict between a general practice (*ʿurf ʿāmm*) and a general text (*naṣṣ ʿāmm*), the two must be reconciled by considering the *ʿurf* as a specific reference to the general text once they are both on the same subject matter. However, this does not appear to be the standard approach, as can be observed in the variant interpretations of the hadith reported by Maʿmar.

Upon examining the argument for *takhṣīṣ bi al-ʿurf*, it can be contended that claiming that *ʿurf ʿāmm* can specify *naṣṣ ʿāmm* is a broad assertion. Proponents of *takhṣīṣ bi al-ʿurf* hold that for a custom or norm to be used in specifying the meaning of a text, it must be widely practised and must have existed contemporaneously with the text.[1000] In such a case, the continuation of such a practice or norm alongside the text without the disapproval of the Lawgiver legitimises the said practice or *ʿurf*. This justifies why such a practice may specify the general application of the relevant text. This is particularly evident in cases where all the Muslim legal schools (*madhāhib*) seem to concur on specifying some practices from the general implication of some relevant texts. *Istiṣnāʿ*, for instance, seems to have the tacit approval of the Prophet for two main reasons. The first is because it was a common practice during his time, and he was cognisant of it. The second is the availability of reports that the Prophet himself commissioned someone to make a ring for him and another to make a pulpit (*minbar*) for him.[1001] These reports could be interpreted as his validation of *istiṣnāʿ* as an acceptable practice.

Therefore, a contemporary Ḥanafī jurist, Abū Sunnah (d.1424/2003), following his assessment of the status of *ʿurf* in Islamic law, contends that *ʿurf* by itself is not a specific reference; it is the underlying evidence strengthening the use of *ʿurf* to specify a

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[999] Muslim, *Ṣaḥīḥ*, 5/47, See also al-Qāḍī ʿAbd al-Wahhāb ibn ʿAlī ibn Naṣr al-Baghdādī, *Sharḥ al-Risālah* (Beirut: Dār Ibn Ḥazm, 2007), 1/355.

[1000] Ibn Nujaym, *al-Ashbāh*, 86; Afandī, *Durar*, 1/50.

[1001] See Muslim, *Ṣaḥīḥ*, 6/150 (Hadith No. 2092) and 2/74 (Hadith No. 544).

general text in a particular case, such as another text that endorses it, the tacit approval of the Prophet, *ijmāʿ*, *ḍarūrah*, or *maṣlaḥah* that serves as the actual specific reference (*mukhaṣṣiṣ*).[1002]

Furthermore, proponents of *takhṣīṣ bi ʿurf ʿamalī*, within the Ḥanafī school, maintain that the practice or the *ʿurf* must run contemporaneously with the text it seeks to specify. This condition excludes all practices that emerge after the relevant text was declared or revealed. This condition also falls in line with the Ḥanafī school's principle that *takhṣīṣ* must be concurrent with the text (*al-muqārin li al-naṣṣ*).

8.4.4 The Consideration of Customary Norms and Practices for Issues that Do Not Have Direct Legal Rulings from the *Nuṣūṣ Sharʿiyyah*

The discussion in the previous section raises the question of how to address new norms and practices that are not directly addressed in the legal and ethical texts of the Qurʾān and Sunnah (*nuṣūṣ sharʿiyyah*). As the social needs and circumstances of Muslims are constantly changing, it is essential to find solutions to their challenges and make their affairs easier. These solutions may align with existing legal and ethical rulings. Generally, there are no concerns when the conceived solutions align with existing legal and ethical rulings or opinions. Disputes arise when there are conflicting directives between social practices and the explicit or apparent interpretations of the *nuṣūṣ sharʿiyyah* or existing legal deductions (*ijtihād*). In such cases, pursuing social norms and practices that conflict with existing legal rulings may inadvertently lead to disregarding the *nuṣūṣ sharʿiyyah* or valid *qiyās*. Since we have previously addressed the resolution of tensions between *ʿurf* and the *nuṣūṣ sharʿiyyah*, we will explore how to resolve tensions between *ʿurf* and existing *ijtihād*, particularly matters based on opinions such as *qiyās* and *maṣlaḥah*, as the two are the most common cases in current debates.

When current norms or social practices conflict with existing or popular legal deductions, choosing between previous legal opinions or current social standards may be challenging. However, when the basis of the existing legal opinion is identified, it makes it easier to reconcile the differences. For instance, Abū Ḥanīfah ruled against selling bees and silkworms because he considered them pests of no monetary value. However, later

[1002] Abū Sunnah, *al-ʿUrf*, 95-101.

Ḥanafī scholars like his disciple Muḥammad ibn al-Ḥasan al-Shaybānī (d.189/805) ruled otherwise because bees and silkworms gained economic value during his era and selling them became common.[1003]

Ibn Qudāmah's view aligns with al-Shaybānī's, who also ruled in the *Mughnī* that it is acceptable to trade in bees and silkworms because they are valuable.[1004] It can be noted that both views here had no direct legal text to back them. They were made based on the *ʿurf* or the social needs of the time those verdicts were made, as is evident from the reasons given for the different opinions.

A critical study of the *fiqh* works within the mainstream Sunni legal schools reveals that in cases where legal opinions are based solely on *ijtihād*, the social needs or circumstances of the relevant people significantly influence the final verdicts, provided the Lawgiver has not already declared a ruling on that matter. Even when a particular legal ruling from the Qurʾān or Sunnah is based on *ʿurf*, any changes in that *ʿurf* can lead to a change in the ruling. Ibn al-Qayyim al-Jawziyyah (d.751/1350) and Ibn ʿĀbidīn (d.1252/1836), among others, have extensive discussions on this concept.[1005]

In addition, the context of a people is essential for changes in fatwā or varying legal verdicts on matters founded on different social contexts such as time, place, circumstance, intention, and norms or prevalent social practices. In underscoring the importance of this topic, Ibn Qayyim recounts that the lack of the requisite understanding on this topic has led to many mistakes in applying the *Sharīʿah*.[1006]

Incorporating the social needs of Muslims into Islamic legal practice to better align the Qurʾān with the needs of modern-day Muslims 'is not to argue, in any way, for an unguided, unprincipled, or undisciplined approach. Principles and approaches will have to be developed for this purpose.'[1007] This was the approach taken by classical Islamic legal theorists and jurisprudents like Ibn Qudāmah, who utilised *ʿurf* and *ʿādah* in

[1003] As reported by Aḥmad Fahmī Abū Sunnah, See *al-ʿUrf*, 103.

[1004] Ibn Qudāmah, *al-Mughnī*, 2/4.

[1005] See Ibn al-Qayyim, *Iʿlām*, 1/41 and Muḥammad Amīn Afandī Ibn ʿĀbidīn, *Nashr al-ʿUrf fī Bināʾ Baʿd al-Aḥkām ʿalā al-ʿUrf* (Isṭanbūl: Dār al-Saʿādah, 1907).

[1006] Ibn al-Qayyim, *Iʿlām*, 1/41.

[1007] Saeed, *Interpreting*, 89.

Islamic law and ethics to tackle challenges facing Muslims during their respective eras. They developed guiding principles to ensure a disciplined approach, such as determining valid and invalid customs and norms and the conditions for considering them in law. However, the relevance of this classical approach has been questioned today due to the need to conform to modernity.[1008]

Abou El-Fadl claims that Islamic law and morality have received inadequate attention in the modern age. To him, maintaining the liberty and innovative capacities of the individual is very significant in maintaining the dynamism and vitality of Islamic law in our contemporary age.[1009] He posits that Muslims' current epistemological context should inform the application of ethical and legal texts of Islamic law.[1010] Abdullah Saeed has also argued that 'It is important to approach the text at different levels, giving a high degree of emphasis to the socio-historical context of the text.'[1011] These propositions challenge scholars who still rely on interpretive methods from the classical era, highlighting the importance of considering prevailing contextual factors.

Proponents of contemporary interpretive notions argue for interpretations based on the sociohistorical context of the reader.[1012] This approach seeks to facilitate creative readings of the primary sources of Islamic law and ethics whereby the interpreter fashions and creates the meaning of the *nuṣūṣ sharʿiyyah* instead of discovering the perceived meaning the text is claimed to maintain.[1013] The pioneers of this argument, such as the Progressive Muslims, also seek to promote human intellect by challenging and overlooking the meaning of the texts (*nuṣūṣ sharʿiyyah*) based on the classical approaches to interpretation.[1014]

[1008] Ahmed Gad Makhlouf, "Continuity and Change of Traditional Islamic Law in Modern Times: Tarjīḥ as a Method of Adaptation and Development of Legal Doctrines," *Oxford Journal of Law and Religion* 12, no. 1 (2023): 55-74, 63.

[1009] Abou El Fadl, *Qurʾanic Ethics*, 9.

[1010] Ibid.

[1011] Saeed, *Some Reflections*, 221.

[1012] Duderija, *Constructing*, 143.

[1013] Ibid.

[1014] Ibid.

Admittedly, the classical methods of interpretation emphasise the discovery of the meaning of the *nuṣūṣ sharʿiyyah* according to the intent of the Lawgiver (Shāriʿ).[1015] However, proponents of contemporary interpretive approaches do not pay much focus to the implications of the *nuṣūṣ sharʿiyyah* that may be considered divinely inspired (author's intent) and what are intrinsic to the texts.[1016] This may seem controversial because of explicit instructions in the Qurʾān commanding the Messenger to explain and make the meaning of the revelation clear to its adherents, such as in Q.16:44. However, it brings to the fore the need to explore the relevance of social norms and practices (i.e., the sociohistorical reality) of a reader to their interpretation and the application of the primary sources of Islamic law and ethics.

It can be challenging to distance people from the habits or the norms that have become integral parts of their lives. Since Islam promotes ease, it will be crucial to consider prevailing practices that serve the interests of individuals and the public in Islamic law and ethics. Thus, it is necessary to critically assess the relevance of predominant and novel customs and norms or social practices and how to accommodate them into Islamic law and ethics. To adequately address this, we should examine how social norms and practices during the time of the Prophet were received in the revealed texts. This can serve as a precedent for dealing with current social practices that distinguish our context from earlier Muslim generations.

As noted earlier in this chapter, not all social practices during the Prophetic era were incorporated or assimilated into Islam. Some were accepted and permitted by virtue of the Lawgiver's endorsement, while others were condemned and prohibited as unacceptable. Earlier in this chapter, we discussed examples of pre-Islamic norms that were accepted or rejected in Islam, as evident in the *nuṣūṣ sharʿiyyah*. Could the Lawgiver's reception of those norms and practices be attributed to the socio-historic context of that time and considered irrelevant today?

To many Muslims, the Lawgiver's disapproval of certain pre-Islamic customs and practices is not restricted to a particular time frame or context. What was condemned and regarded unlawful at the time of the Prophet cannot become permissible for later

[1015] Ibid, 142.

[1016] Ibid.

generations. It must be retained as a universal ruling with no time limits. Consequently, if any of those practices, such as the disregard for the girl-child or women in general, were to re-emerge today, the practices would still be considered un-Islamic and unacceptable because they were prohibited by the Lawgiver, despite being prevalent and deemed reasonable in the pre-Islamic Arabian society. This position challenges the perception that anything traditional is backward and that modernity indicates progress.[1017] Therefore, the assumption that 'we always know better', even better than what we ourselves knew just a while ago,[1018] may not necessarily be a better alternative for Qurʾānic injunctions or that of the Sunnah.

As previously mentioned, the Mālikī legal theorist and advocate of applying *maqāṣid sharīʿah* (the objectives of Islamic law) in legal analysis, al-Shāṭibī (d.790/1388), underscores that rulings on social practices or customs (*ʿādāt*) that have been endorsed or abolished by the Lawgiver remain perpetual and immutable regardless of shifting societal perceptions.[1019] On the other hand, practices that have not been endorsed or disapproved by the Lawgiver may have varying verdicts depending on how the people of a particular place or era perceive them.[1020]

Again, it is reported that when faced with options, the Prophet would choose the most accessible as long as it was not sinful.[1021] This also indicates a form of ease in dealing with the challenges we face in different circumstances, particularly on aspects of social activities that have no direct legal rulings in Islam. However, the condition 'as long as it is not sinful'[1022] seems to regulate the choices one can make in such matters. That is to say that not all available options may be acceptable. Thus, one's choices must not lead one to go against the legal rulings enshrined in the primary sources of Islamic law and those that Islamic scholars have agreed upon.

[1017] Wael B. Hallaq, *The Impossible State: Islam, Politics and Modernity's Moral Predicaments* (New York: Columbia University Press, 2013), 15.

[1018] Ibid.

[1019] Al-Shāṭibī, *al-Muwāfaqāt*, 2/488.

[1020] Al-Shāṭibī, *al-Muwāfaqāt*, 2/489.

[1021] See al-Bukhārī, *Ṣaḥīḥ*, 5/2269; Muslim, *Ṣaḥīḥ*, 7/80.

[1022] See al-Bukhārī, *Ṣaḥīḥ*, 5/2269 (Hadith No. 5775); Muslim, *Ṣaḥīḥ*, 7/80 (Hadith No. 2327),

What is more, if it is considered illegitimate to endorse social practices that were previously condemned by the texts of the Qurʾān and Sunnah (*nuṣūṣ sharʿiyyah*), regardless of changes in how people may perceive such practices today, as al-Shāṭibī has argued,[1023] it seems more reasonable to examine novel social practices that appear contradictory to or undermine the essence of the legal and ethical texts of the Qurʾān and Sunnah with the same standards employed to assess similar norms and practices during the Prophet's era. Ignoring precedence will be absurd unless there is a justifiable reason. This notion substantiates the validity of the conditions set for working with *ʿurf* and *ʿādah* in the light of the *nuṣūṣ sharʿiyyah* as outlined by Islamic legal theorists. On this basis, customs that have direct legal rulings in the texts of the Qurʾān and Sunnah will be considered according to the dictates of the texts. In contrast, those without definite guidance from the texts may vary depending on the social needs of a community.

Also, on matters that have social elements or customs and norms as their effective cause, the individual *aḥkām* continues to revolve around changes occurring to the relevant social element that is regarded as the *ʿillah* or effective cause of each *ḥukm*. This approach seems more reasonable in maintaining the sanctity of the *sharīʿah* and the *nuṣūṣ sharʿiyyah* alongside the maintenance of the well-being and social needs of the *mukallaf*.

8.6 Conclusion

This chapter examined the relevance of prevailing customs and usages (*ʿurf* and *ʿādah*) in Islamic law and ethics and how they may influence the interpretation of the legal and ethical texts in Islamic law, focusing on Ibn Qudāmah's perspective. It observed that the prevailing social practice during the revelation of the primary sources of Islamic law could be classified into three categories: those endorsed and or rejected by the lawgiver and those in which the texts of the Qurʾān and Sunnah are silent on their acceptance or rejection. Therefore, social practices and usages in Islamic law and ethics are subject to certain conditions to be valid for legal considerations.

The chapter observes that social practices or *ʿurf* and *ʿādah* are not authoritative in themselves in deriving legal opinions in Islamic law, as Abū Sunnah (d.1424/2003), a

[1023] Al-Shāṭibī, *al-Muwāfaqāt*, 2/488-489.

contemporary Ḥanafī jurist, has argued. This is because Muslim jurists and legal theorists rely on valid legal sources to validate their consideration of *ʿurf* and *ʿādah* in individual legal cases. When social practices specify a general text, Abū Sunnah argues that the practice itself is not considered the specific reference. It is the underlying evidence strengthening that norm, such as another text that endorses it, the tacit approval of the Prophet, consensus (*ijmāʿ*), necessity (*ḍarūrah*), or public interest (*maṣlaḥah*), that serves as the actual specific reference (*mukhaṣṣiṣ*).[1024] This appears to be the very reason why the proponents of *takhṣīṣ bi ʿurf ʿamalī*, the Ḥanafī school, maintain that the practice or the *ʿurf* must co-exist with the text it specifies. This condition, thus, excludes employing any practices that emerge after a particular text was declared or revealed to specify it. The condition also aligns with the Ḥanafī school's principle that *takhṣīṣ* must be concurrent with the text (*muqārin li al-naṣṣ*).

Furthermore, when there is a conflict between a legal and ethical text of the Qurʾān and Sunnah and social context, classical Muslim jurists and legal theorists like Ibn Qudāmah make a distinction between aspects of the *sharīʿah* that are based on *ʿurf* or *ʿādah*, which have been either endorsed or abolished by the Lawgiver, and those excluded from this category. Islamic legal theorists generally regarded it unacceptable to disregard the ruling by the Lawgiver regarding specific social practices unless the ruling has been repealed, even if people's perceptions regarding the appropriateness of those customs change. Ibn Qudāmah argues that the divine law must be understood to preserve the *maṣlaḥah* of Muslims in their worldly affairs as well as their well-being in the afterlife. However, for legal rulings formulated based on social practices, the rulings (*aḥkām*) continue to depend on changes occurring to the social element regarded as the effective cause of the specific ruling (*ḥukm*).

The chapter reveals that the flexibility in Ibn Qudāmah's application of social practices and context in legal interpretations is restricted to determining the meanings (*taḥdīdāt*) of legal concepts that the Lawgiver has left undefined, making estimations (*taqdīrāt*) regarding variables such as entitlements and responsibilities that the Lawgiver has left open and restricting unqualified legal rulings with valid customs and usages when necessary.

[1024] Abū Sunnah, *al-ʿUrf*, 95-101.

It has also shown Ibn Qudāmah's reliance on customs, norms, and usages to resolve matters on legal verdicts relating to oaths, vows, and disputes arising from human interactions. This indicates that he is flexible in applying predominant social practices, particularly in areas where the legal and ethical texts of the primary sources of Islamic law are silent. This is supported by the legal maxim that unless there is an explicit prohibition, any human activity or transaction should be considered lawful (*al-aṣl fī al-muʿāmalāt al-ibāḥah aw al-ḥill*).

In brief, considering how the Lawgiver treated social practices within the context of the revelation and Islamic ethos, this study finds it more reasonable to restrict the consideration of social practices or contexts to matters the Lawgiver has left open for norms and prevalent practices to be applied. However, as Ibn Qudāmah and al-Shāṭibī have maintained, on matters where the Lawgiver has specified a ruling, it will be more appropriate to adhere to that ruling. The chapter has shown that the Lawgiver abolished many norms and practices that seemed valuable and meaningful to the pre-Islamic Arabian community. This position is further supported by Rāfiʿ ibn Khadīj's report that the Messenger of Allah forbade them from an act that benefitted them. But they obeyed and were content with the prohibition because they believed that obedience to Allah and His Messenger was more beneficial to them.[1025] This demonstrates that going by the *sharīʿah* is not only to achieve what may be perceived as *maṣlaḥah* or public interest but also to comply with the *aḥkām sharʿiyyah* even though the immediate benefits of some legal ruling may not be realised.

[1025] Muslim, *Ṣaḥīḥ*, 5/23

Chapter 9: The Relevance of Ibn Qudāmah's Interpretive Approach to Our Current Context: A Case Study of Gender-related Concerns in Islamic Inheritance (*Mīrāth*)

Central to the ongoing debates on reconciling Islamic law and ethics with contemporary standards is the argument that traditional interpretations of Islamic ethical-legal texts are inadequate for addressing the challenges faced by Muslims today. Proponents advocate for new interpretations tailored to modern contexts.[1026] However, a closer examination of Ibn Qudāmah's methodology, grounded in the Lawgiver's intent and established juristic principles, demonstrates that Islamic law can adapt to evolving contexts without compromising its integrity. This chapter explores how Ibn Qudāmah's interpretive approach could provide relevant solutions to contemporary gender-related challenges in Islamic inheritance, with a particular focus on issues of gender equality.

9.1 Inheritance in Islam and Gender-related Concerns

The enactment of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1981 has affected many existing legislations that are perceived to be affecting the rights and dignity of women. Most Muslim-majority countries have ratified CEDAW and are required to ensure substantive equality between men and women in their legal systems.[1027] This has empowered many Muslim reformists to advocate for equality between men and women in areas where they perceive discrimination against women.[1028] Concerns raised within Muslim circles regarding equality point to the status of women in Islam, including but not limited to family relations and gender roles, leadership roles in public and private spheres, testimony, and inheritance, which is the focus of this chapter.[1029]

[1026] See Saeed, *Interpreting*, and Abou El Fadl, *Qurʾanic Ethics*

[1027] EnnaharTV, "ʿAlā al-Jazāʾir al-tahaffuẓ ʿalā baʿḍ bunūd ittifāqiyyāt "Sīdāw" li annahā tamussu bi mujtamaʿinā" (Algeria must express reservations to certain clauses of CEDAW due to their negative impact on our society.), YouTube, April 2, 2016, "سيداو"شائعة جعفري : على الجزائر التحفظ على بعض بنود إتفاقية لأنها تمس بمجتمعنا (youtube.com); Royal News, "Niqāsh Sīdāw min jadīd" (the CEDAW debate again), Youtube, January 8, 2022, نقاش سيداو من جديد (youtube.com).

[1028] Royal News, "Niqāsh Sīdāw min jadīd."

[1029] See al-Rāḍwī, *Tārīkhīyah*; Lamrabet, *Women*.

The predominant concern in the gender equality discussion in Islamic inheritance laws today is the stipulation that males are entitled to a share equivalent to that of two females. This is mentioned twice in the Qurʾān. The first relates to the inheritance of sons and daughters of a deceased in Q.4:11, and the second applies to the inheritance of brothers and sisters of a deceased in Q.4:176. In both cases, a male is given twice the share of a female. In other words, if a person dies and leaves behind only a son and a daughter, the inheritance is divided into three shares: two for the son and one for the daughter. Similarly, if the heirs are only a brother and a sister, the deceased's brother takes two-thirds while the sister is given one-third.

It is easy to conclude at a glance that the inheritance distribution in Islam favours males over females. In the inheritance of children and siblings, with the exception of maternal half-siblings, who inherit equal shares, males are entitled to double the share of females.[1030]

A mother's inheritance is also less than that of a father if they are the only heirs, as the father is given the residual of the inheritance after the equally allotted shares of one-third to each of them.[1031] The female, as a wife, gets a quarter upon the death of her husband if he has no child, while a husband takes half of her inheritance if the wife passes away without a child. Even when each of them had a child, upon the death of either of them, the husband takes one-fourth while the wife takes one-eighth. If there are multiple wives, they are all entitled to the share of one wife.[1032]

Reformists like Nāʾilah al-Sillīnī view the apparent disparity in the inheritance as an adoption of the pre-Islamic inheritance system of the Jews and the Arabs, as the then-Muslim jurists intended to favour men and discriminate against women.[1033] Asma Lamrabet, on the contrary, argues that inheritance distribution in Islam was fair in the seventh century when the laws on inheritance were first introduced. She contends that the distribution favoured men because they were tasked with providing women with all their material needs. However, this is no longer the case in our current context, and

[1030] See Ibn Qudāmah, *al-Mughnī*, 9/7 and 9/18.

[1031] See Ibn Qudāmah, *al-Mughnī*, 9/18-20.

[1032] Ibn Qudāmah, *al-Mughnī*, 9/21.

[1033] Al-Rāḍwī, *Tārīkhīyah*, 240 and 246.

therefore, the existing inheritance distribution must be reviewed, according to these reformist perspectives.[1034]

9.2 The Basis of Islamic Inheritance Distribution from Ibn Qudāmah's Perspective

This section examines the foundations of the existing inheritance distribution from Ibn Qudāmah's perspective. It then explores how concerns of gender equality in inheritance could be addressed through Ibn Qudāmah's interpretive approach to the Qurʾān and Sunnah.

A key criticism against the existing inheritance system in Islam is that it fails to consider the relevant texts in the Qurʾān and the Sunnah that allow for equal inheritance between males and females. Reformists like Nāʾilah al-Sillīnī observe this as a deliberate attempt to discriminate against women by reverting to pre-Islamic concepts of inheritance held by the Arabs and the Jews, even though the Qurʾān clearly revoked that.[1035] Al-Bāsiṭ Qamūdī, a researcher on Islamic inheritance, argues that the claim that the current inheritance system in Islam is based on explicit declarations of the Qurʾān cannot be supported.[1036] Furthermore, inheritance by residual (*taʿṣīb*), seen as the most discriminatory against women and through which distant male relatives are entitled to inherit any residuals after distributing the fixed shares to their beneficiaries, is claimed to be founded on an invalid text from the Sunnah.[1037] These assertions make the validity of the existing inheritance distribution in Islam questionable, especially if these claims are justified. Against this backdrop, this section explores Ibn Qudāmah's analyses of the inheritance distribution in Islam and its basis from the primary sources of Islamic law and ethics.

Contrary to the views above that the texts of the primary sources of Islamic law do not support the existing inheritance distribution, Ibn Qudāmah asserts that most of the

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[1034] Ursula Lindsey, "Can Muslim Feminism Find a Third Way?" *The New York Times*, April 11, 2018, accessed July 29, 2019, https://www.nytimes.com/2018/04/11/opinion/islam-feminism-third-way.html.

[1035] See also al-Rāḍwī, *Tārīkhīyah*, 244.

[1036] Mominoun WithoutBorders, "Mīrāth al-nisāʾ wa-wahm qaṭʿīyah al-dalālah: tilka qismah ḍīzā," YouTube, July 28, 2019, "ميراث النّساء ووهم قطعيّة الدّلالة: تلك قسمة ضيزى" :اللّقاء الحواري حول كتاب - YouTube.

[1037] Ibid.

beneficiaries of a person's inheritance are explicitly declared in the Qurʾān and the Sunnah and agreed upon by *ijmāʿ* (consensus).[1038] However, not all the eligible heirs inherit at the same time. The eligibility of most of them is conditional. For instance, the siblings of a deceased are only eligible to inherit when a person dies without leaving 'children' (especially a son in some cases) or a father to inherit them.[1039] In addition, Ibn Qudāmah provides evidence from the Qurʾān and Sunnah in declaring each heir's entitlement to the inheritance of their deceased relative. For example, the inheritance of sons and daughters, and that of fathers and mothers, is stipulated in Q.4:11. The text clearly defines what each heir is entitled to receive in different situations of the inheritance, taking into account the availability of other eligible beneficiaries to inherit with them.[1040]

In addition, in cases where males are entitled to more shares of the inheritance than females, such as the two-to-one shares allotted to brothers and sisters of the deceased, respectively, is based on Q.4:176:

> If a man dies leaving a sister but no children, she shall have half of the inheritance…But if there are surviving brothers and sisters, the male is entitled to twice the share of the female.[1041]

Similarly, the allotted shares of husbands and wives are also stated in Q.4:12, declaring how much each is entitled to inherit in different scenarios.[1042]

Ibn Qudāmah discusses the various shares allotted to eligible inheritance beneficiaries, supporting each entitlement with evidence from the Qurʾān or Sunnah.[1043] Dismissing the basis of such inheritance distribution and asserting that it has no basis in the Qurʾān is problematic since this claim fails to recognise the relevance of Qurʾānic texts, such as Q.4:11, 12 and 176, that clearly define disparity in the shares of males and females in the current inheritance law in Islam.

[1038] Ibn Qudāmah, *al-Mughnī*, 9/63.

[1039] See Ibid.

[1040] See Ibid, 9/64.

[1041] See Ibid, 9/63.

[1042] See Ibid, 9/21 and 64.

[1043] See Ibid, 9/63-64.

The Sunnah of the Prophet also provides for the eligibility of some beneficiaries of a person's inheritance, such as their grandparents. For example, the grandmother (maternal) is entitled to inherit from her grandchild in the absence of the deceased's direct mother because the Prophet allowed her a sixth of the inheritance in a similar case.[1044] The inheritance of the paternal grandmother is also considered because she is also regarded as a mother.[1045] This is supported by a report that the Prophet gave inheritance to three grandmothers: two from the paternal line and one from the maternal.[1046] The paternal grandfather is also entitled to a third or sixth of the inheritance of his grandchild in the absence of the deceased's father based on the Sunnah of the Prophet.[1047]

The above exposition is not to claim that the texts of the Qurʾān and Sunnah explicitly support the entire inheritance distribution. There are many cases in inheritance where the companions of the Prophet and the Muslim jurists had to make *ijtihād* to resolve because they were not directly addressed in the primary sources of Islamic law and ethics. For instance, grandchildren's inheritance is not directly mentioned in the Qurʾān or Sunnah. However, Ibn Qudāmah, like other Muslim jurists, consider them children too.[1048]

Ibn ʿĀshūr clarifies that the word *awlādikum* (your children) in Q.4:11 is general (*ʿāmm*) for all biological children.[1049] To distinguish between direct children and grandchildren, Ibn Qudāmah posits that direct children are covered in Q.4:11 as *ḥaqīqah* while grandchildren or great-grandchildren are treated as children by *majāz*.[1050] Therefore, grandchildren are eligible to inherit only when there is no direct child or when direct children do not exhaust their share.[1051]

[1044] Ibid, 9/54.

[1045] Ibid, 9/54-55.

[1046] Ibid, 9/55-57, See also al-Dārquṭnī, *Sunan*, 5/161 (Hadith No. 4163).

[1047] See Ibn Mājah, *Sunan*, 4/25 (Hadith No. 2722); Abū Dāwūd, *Sunan*, 4/523 (Hadith No. 2896); Ibn Qudāmah, *al-Mughnī*, 9/65.

[1048] See Ibn Qudāmah, *al-Mughnī*, 8/450.

[1049] See Ibn ʿĀshūr, *al-Taḥrīr*, 4/259.

[1050] Ibn Qudāmah, *al-Mughnī*, 8/450.

[1051] Ibid, 9/14.

Also, Ibn Qudāmah expounds on the expression 'your children' in Q.4:11 to exclude grandchildren from the daughter's line since they are considered children of another family. Put differently, a person's lineage is considered from their father's line, not their mother's.[1052] This and many similar cases that were not explicitly addressed in the primary sources of Islamic law and ethics were resolved by Muslim jurists based on *ijtihād*. In the following section, we will examine the basis of the entitlement of females in Islamic inheritance law, focusing on cases where the legitimacy of the distribution has been questioned by reform advocates in Islamic inheritance law, such as inheritance by residual. This is aimed at exploring whether there were deliberate attempts by Muslim jurists to overlook the Qurʾānic injunctions regarding the shares of females in the inheritance distribution and whether such deviations were influenced by or adapted from the pre-Islamic concepts of inheritance among the Jews and the Arabs.

9.2.1 The Pre-Islamic Concepts of Inheritance Held by the Arabs and the Jews Compared to the Existing Inheritance Distribution in Islam

The renowned Qurʾān exegete, Muḥammad Ibn Jarīr al-Ṭabarī (d.310/923), reports in his commentary of the Qurʾān that the pre-Islamic Arabs used to deny children from inheritance until they grew and could partake in warfare. The oldest family member takes everything a deceased left behind after their death. Similarly, they did not give women any share of inheritance.[1053] Their reason for doing so was that they considered eligibility for inheritance to be the ability to bear societal responsibilities: the ability to defend and bring gains to the tribe. Hence, they used to say, 'They [children and women] do not partake in warfare (*lā yaghzūn*), and they do not bring any booty [gains] (*wa lā yaghnamūn khayran*).[1054] Therefore, Allah prescribed inheritance distribution (*mīrāth*) to end the practice of claiming that only those who could defend their tribes or communities during tribal feuds or participate in raids were entitled to inherit.[1055]

Concerning inheritance distribution among the Jews, the sons of the deceased were given privileges over their daughters. Daughters were entitled to inherit their fathers only when

[1052] Ibn Qudāmah, *al-Mughnī*, 8/203-204. See below for more on this discussion.

[1053] See al-Ṭabarī, *Tafsīr*, 6/353.

[1054] Ibid, 7/534.

[1055] Ibid.

their fathers did not have sons to inherit them. Wives and mothers of the deceased were not eligible heirs. Even among the sons, the first son inherits double the shares of his younger brother's entitlement to their father's inheritance.[1056]

In the Islamic inheritance law, however, as noted earlier, the vulnerable in society, including women, children, the elderly, and even the mentally or the physically challenged, are all entitled to secured and fixed shares of the inheritance of their deceased relatives regardless of their role in society, age and gender.[1057] In addition, unlike the Jewish inheritance law, there is no discrimination between the sons of the deceased, irrespective of whether one is the first or the youngest. Daughters must also be given their due share even though the deceased may have an eligible son(s) to inherit them, as can be noted in Q.4:11. Even a foetus is entitled to their share of inheritance regardless of their gender on the condition that they were born alive, even if they live for a short time.[1058]

The examination above reveals significant disparities between the Islamic law of inheritance on the rights of women and the vulnerable in society to inherit their relatives compared to other existing inheritance laws, including the prevailing practices among the Jews and the Arabs.[1059] Asma Lamrabet notes this disparity in the following words:

> The Islamic revelation, from the start, awarded women the right to inherit, a right that had never before been mentioned by any revealed text, ideology, or political system, and even less practised. By granting women inheritance rights, unknown to any of the other civilisations of the era, Islam forced the recognition of the

[1056] Rachel L. Blumenfeld, *The Jewish Laws of Inheritance and Estate Planning in Canada* (Canada: B'nai Brith Law Journal, November 1, 2009), 2-3.

[1057] See Ibn Qudāmah, *al-Mughnī*, 9/63; Wizārah al-Awqāf, *al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah*, 7/162; Al-Majlis al-Aʿlā li al-Shuʾūn al-Islāmiyyah, *Mawsūʿah*, 17/175.

[1058] See Abūbakr Muḥammad ibn Ibrāhīm ibn al-Mundhir, *al-Ishrāf ʿalā Madhāhib al-ʿUlamāʾ* (UAE: Maktabah Makkah al-Thaqāfiyyah Raʾs al-Khīmah, 2004), 4/361.

[1059] See also Nayer Honarvar, "Behind the Veil: Women's Rights in Islamic Societies," *Journal of Law and Religion* 6, no. 2 (1988): 355-387, 380-381.

> juridical rights of women, something that had never previously been done throughout the history of mankind.[1060]

The examination of the Islamic inheritance distribution compared to the pre-Islamic inheritance systems among the Jews and the Arabs shows a reform introduced by Islam to recognise the rights of women and others who were denied the right to inherit from their close relatives before the advent of Islam.

The allocation of inheritance shares among beneficiaries can vary depending on their relationship with the deceased. Additionally, gender appears to play a role in determining the shares. However, the discrepancies between the entitlements of males and females, such as sons and daughters or full and paternal half-siblings, are explicitly stated in the Qurʾān. According to Q.4:11 and 176, males in each category are entitled to double the shares of females. This study observes that these distributions do not result from Muslim jurists manipulating the inheritance system to discriminate against females, as the shares are clearly outlined in the Qurʾān. Thus, the claim that the existing inheritance distribution in Islam is merely an adoption of pre-Islamic practices among the Jews and the Arabs cannot be justified by the historical evidence examined above.

9.2.2 Residual Inheritance (*al-Mīrāth bi al-Taʿṣīb*)

In Islamic inheritance law, distant male relatives such as the son of a full brother, the son of a paternal half-brother, a paternal uncle and son of a paternal uncle, a paternal great uncle and the son of a paternal great uncle are eligible to inherit a person in the absence of eligible close ones. This is referred to as residual inheritance (*al-irth bi al-taʿṣīb* or *al-mīrāth bi al-taʿṣīb*). Those who fall under this category inherit whatever remains after distributing the inheritance to those with specific shares. Residuary heirs are also entitled to inherit all of a person's legacy in the absence of those entitled to prescribed shares stipulated in the Qurʾān and Sunnah.[1061]

[1060] Lamrabet, *Women*, 132. Although this claim sounds general, there are no historical records of such privileges given to women before the advent of Islam.

[1061] See Ibn Qudāmah, *al-Mughnī*, 9/9.

Contemporary reformists in Islamic inheritance law, such as Nāʾilah al-Sillīnī and Farīd bin Balqāsim, among others, have called for the revocation of the concept of residual inheritance, arguing that it discriminates against females. Moreover, according to these reformists, inheritance by residual is not supported by the primary sources of Islamic law and ethics.[1062] However, classical Muslim jurists who held onto this provision, such as Ibn Qudāmah, maintain that the Sunnah of the Prophet authorises the eligibility of distant male relatives to inherit their distant relatives in some specific situations and conditions, as discussed below.[1063]

Ibn Qudāmah states that the inheritance of distant male relatives is based on the command of the Prophet: 'Give the *farāʾiḍ* (the prescribed fixed shares [in the Qurʾān]) to those who are entitled to them [i.e., the prescribed shares], and then whatever remains, should be given to the (*awlā*) closest male relative of the deceased.'[1064] This text explicitly gives preference to the eligible heirs, males and females, among one's close relatives declared in Q.4:11, 12 and 176 over distant relatives. Regarding the eligibility of distant relatives for inheritance, Ibn Qudāmah contends that this text excludes maternal relations because they are not part of one's lineage.[1065]

Abū Zahrah (d.1394/1974) expounds that the meaning of *awlā* (literally translated as most worthy) in the hadith quoted above regarding residual inheritance refers to the closest relative. He maintains that lineage is only considered from the paternal line (*wa al-nasab lā yakūn illā min jihah al-ab*).[1066] Some mainstream Sunni jurists, such as the renowned Meccan scholar Muḥammad ibn Ibrāhīm ibn al-Mundhir (d.318/930) and Egyptian Ḥanbalī scholar Manṣūr ibn Yūnus al-Buhūtī (d.1051/1641), have maintained that this notion is unanimously agreed upon.[1067]

[1062] Suhaylah Zayn al-ʿĀbidīn Ḥammād, *al-Mīrāth fī muswaddah mashrūʿ mudawwanah al-aḥwāl al-shakhṣiyyah*, al-Madinah Online, accessed November 17, 2023, المیراث في مسودة مشروع مدوّنة الأحوال الشخصية جريدة المدينة - (3) (al-madina.com); Mominoun WithoutBorders, "Mīrāth."

[1063] See also Ibn Qudāmah, *al-Mughnī*, 9/63.

[1064] Al-Bukhārī, *Ṣaḥīḥ*, 6/2476 (Hadith No. 6356); Muslim, *Ṣaḥīḥ*, 5/59 (Hadith No. 1615).

[1065] Ibn Qudāmah, *al-Mughnī*, 9/63.

[1066] Muḥammad Abū Zuhrah, *Aḥkām al-Tarikāt wa al-Mawārīth* (Cairo: Dār al-Fikr al-ʿArabī, n.d.), 158.

[1067] Muḥammad ibn Ibrāhīm ibn al-Mundhir, *al-Ijmāʿ* (Riyadh: Dār al-Muslim, 2004), 77.

Restricting the application of the text to only the paternal lineage of a deceased appears to be a form of *ijtihād* that needs to be substantiated. Accordingly, Ibn Qudāmah employs texts from the Qurʾān and Sunnah and Arabic usages to support his interpretation that a person's relatives are from the paternal lineage. He argues that conventionally, the children of one's daughter(s) are not ascribed to him but belong to a different family. This is noted in Arabic poetry as follows:

> Our sons are the sons of our sons, for our daughters, their sons are the sons of distant men (*banūnā banū banūnā wa banātunā ... banū hunna abnāʿu al-rijāli al-abāʿidi*).[1068]

In support of this understanding of patrilineage, Ibn Qudāmah, like most Muslim jurists, employs various texts of the Qurʾān, such as 'Muḥammad is not the father of any of your men…' Qurʾān 73:40 as indicating one's lineage from the paternal line.[1069] The most substantial evidence of this, in my opinion, is the Prophet's interpretation of his relatives (*dhawī al-qurbā*), who are the beneficiaries of the spoils of war provided in Q.59:7. He restricted this to his paternal relatives (Banū Hāshim and Banū al-Muṭṭalib) and excluded his mother's lineage. This justifies one's relatives to be one's paternal line.[1070] It may also serve as a precedent for defining the composition of one's relatives and lineage.

Thus, even before Abū Bakr (d.13/634), the first caliph reported that the Prophet was not to be inherited; those who would have been eligible to inherit the Prophet after his death did not include his grandchildren (males and females). None of them was regarded as an eligible heir because they had descended from his daughters. No report indicates any of his grandchildren demanding their shares of his inheritance, nor did their parents demand it on their behalf. If they were eligible to inherit under normal circumstances, ʿAlī ibn Abī Ṭālib (d.40/661) - the Prophet's cousin and the husband of his daughter Faṭimah (d.11/632) - would have demanded the shares of his children just as he did for his wife.[1071] To argue that the availability of his daughter makes his grandchildren ineligible

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[1068] Ibn Qudāmah, *al-Mughnī*, 8/204.

[1069] See Ibn Qudāmah, *al-Mughnī*, 8/204; Manṣūr ibn Yūnus al-Buhūtī, *Sharḥ Muntahā al-Irādāt* (Beirut: ʿĀlam al-Kutub, 1993), 3/190.

[1070] Ibn Qudāmah, *al-Mughnī*, 8/529-531.

[1071] See al-Bukhārī, *Ṣaḥīḥ*, 6/2474 (Hadith No. 6347).

for inheritance does not seem strong because of the possibility for a paternal grandmother to inherit together with the father in the absence of the deceased's direct mother.[1072] Additionally, if the Prophet's grandchildren from his daughter Faṭimah were eligible heirs, they would inherit as residuary heirs (*ʿaṣabah*) as there were males among them. Consequently, ʿAbbās ibn Abd al-Muṭṭalib (d.32/653), the Prophet's surviving uncle at the time, would not have been eligible as grandchildren take precedence over uncles when they inherit as residuary heirs.[1073] However, reports show that the Prophet's daughter, uncle, and wives were the only ones who looked forward to inheriting him, even though they were denied inheritance based on the report by Abū Bakr.[1074]

Notwithstanding this, Shiite Muslim scholars have contested the validity of Ibn ʿAbbās' report on the residual of an inheritance to be given to the closest male relatives.[1075] As a result, most advocates of equal inheritance between men and women have called for the revocation of inheritance by residual on the basis that it is not founded on a valid report from the Prophet.[1076]

The rejection of the text on residual inheritance dates to the fourth/seventh century, with a contrasting report by the Shiite hadith scholar Abū Ṭālib al-Anbārī (d.356/967). In this text, Qāriyah ibn Muḍrib[1077] asserts the denial of the text in support of residual inheritance by its reporters: Ṭāwūs ibn Kaysān (d.106/724) and Ibn ʿAbbās. Abū Jaʿfar al-Ṭūsī (d.460/1067), the renowned Shiite scholar of his time, reports that Qāriyah ibn Muḍrib said: 'I sat by Ibn ʿAbbās in Makkah, and I said to him: "The people of Iraq narrate a report by Ṭāwūs on your authority (according to you) that the Prophet said:

[1072] Ibn Qudāmah, *al-Mughnī*, 9/60-61.

[1073] Ibn Qudāmah, *al-Mughnī*, 9/63; Muḥammad ibn Muḥammad Aḥmad al-Ghazālī, *Shahr al-Fuṣūl al-Muhimmah fī Mawārīth al-Amah* (Saudi Arabia: Dār al-ʿĀṣimah, 2004), 1/207.

[1074] See al-Bukhārī, *Ṣaḥīḥ*, 3/1126 (Hadith No. 2927), 6/2474 (Hadith No. 6346) and 6/2475 (Hadith No. 6349); al-Tirmidhī, *Sunan*, 4/158 (Hadith No. 1710).

[1075] Abū Jafar Muḥammad ibn al-Ḥasan ibn ʿAlī al-Ṭūsī, *Tahdhīb al-Aḥkām fī Sharḥ al-Muqniʿ* (Tehran: Dār al-Kutub al-Islāmiyyah, 1385 AH), 9/305.

[1076] Mominoun WithoutBorders, *Mīrāth al-nisā'*.

[1077] ʿAlī Akbar al-Ghaffārī noted that the name Qāriyah ibn Muḍrib could be an error confirming that he is Ṭalḥah ibn Muḍrib, See Al-Ṭūsī, *Tahdhīb*, 9/305, However, Ibn Ḥajar refers to him as Ḥārithah ibn Muḍrib. See Ahmad ibn Ali ibn Ḥajar al-ʿAsqalānī, *Tahdhīb al-Tahdhīb* (first edition; Hyderabad: Dāʾirah al-Maʿārif al-Niẓāmiyyah, 1325-1327 AH), 5/268.

'whatever remains after the distribution to those with allotted shares (of inheritance) should be given to the closest male *ʿaṣabah*'. Upon hearing this, Ibn ʿAbbās replied, "Inform the people of Iraq that I did not say this, nor did Ṭāwūs narrate this from me". Qāriyah (or Ḥārithah in other reports[1078]) said: I met Ṭāwūs, and he said: "No, by God, I did not narrate this, but the devil threw it on their tongues".[1079]

After examining the two contrasting reports on residual inheritance, this study observes that the report asserting Ibn ʿAbbās's denial of residual inheritance is reported from only one source: the Shiite hadith scholar Abū Ṭālib al-Anbārī (d.356/967). Conversely, the report establishing residual inheritance has been reported from multiple credible sources, including *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ Muslim*.[1080] Many contemporary Hadith scholars, including Nasir al-Dīn al-Albani (d.1420/1999), have verified the residual inheritance report as sound and authentic.[1081] On the other hand, there is not much information about the chain of narrators in the contrasting report by al-Anbārī, as noted by Ibn Ḥajar al-ʿAsqalānī (d.852/1449).[1082] This challenges the credibility of al-Anbārī's report. Interestingly, equal inheritance advocates such as Suhaylah Zayn al-ʿĀbidīn and Farīd ibn Balqāsim hold onto the unverified report by al-Anbārī and assert that the authenticated report is instead a fabrication.[1083]

It should be noted that residual inheritance is not exclusive to only distant male relatives. It also includes close relatives such as sons, fathers, and full and paternal half-brothers. This category of residuary heirs is known as *ʿaṣabah bi al-nafs* (sole residuary heirs).[1084]

[1078] As noted by Ibn Ḥajar in his *Tahdhīb*, 5/268.

[1079] Al-Ṭūsī, *Tahdhīb*, 9/305.

[1080] See al-Bukhārī, *Ṣaḥīḥ*, 6/2476 (Hadith No. 6351); Muslim, *Ṣaḥīḥ*, 5/59 (Hadith No. 1615).

[1081] The hadith is reported by many jurists and hadith collectors, including Abū Ḥanīfah, al-Bukhārī, and Muslim, See Hishām Muḥammad Ṣalāḥ al-Dīn, Hishām Muḥammad Naṣr Miqdād, and Maḥmūd al-Sayyid ʿUthmān, *Ṣaḥīḥ al-Kutub al-Tisʿah wa Zawāʾiduh* (Egypt: Maktabah al-Īmān, 2019), 526 (Hadith No. 3848).

[1082] The transmitters of the hadith consist of Abū Ṭālib al-Anbārī, Muḥammad ibn Ahmad al-Barbarī, Bishr ibn Hārūn, al-Ḥumaydī, Sufyān, Abū Isḥāq, Ḥārithah ibn Muḍrib. The narrators between al-Anbārī and al-Ḥumaydī are unknown, which affects the reliability of the report, See Ibn Ḥajar, *Tahdhīb*, 5/268.

[1083] Mominoun WithoutBorders, "Mīrāth al-nisā'."

[1084] Ibn Qudāmah, *al-Mughnī*, 9/22; ʿAbdullāh ibn Aḥmad ibn Muḥammad ibn Qudāmah, *ʿUmdah al-Fiqh* (Beirut: al-Maktabah al-ʿAsriyyah, 2004), 77-78; Ibn Qudāmah, *al-Kāfī*, 2/305.

The legitimacy of this group is supported by Q.4:11 and 176, as noted earlier. The second category of residuary heirs is the deceased's daughters, full sisters, and paternal half-sisters. They are entitled to fixed shares of the inheritance. However, they inherit the residual when they inherit together with their male counterparts and are referred to as *ʿaṣabah bi al-ghayr* (residuary heirs with a male(s) relative) in this instance.[1085] Q.4:11 and 176 authorise this category.

The Sunnah provides another category of residuary heirs, which consists of females only. Ibn Qudāmah expounds that this is when the eligible heirs of a person's inheritance consist of daughters and sisters (full and paternal half-sisters). The sisters here are called *ʿaṣabah maʿa al-ghayr* (residuary heirs with a female relative). They inherit the residual after the distribution of fixed shares.[1086] Ibn Qudāmah maintains that this view is the position of most jurists and the companions of the Prophet, except Ibn ʿAbbās, who takes the stance that sisters do not inherit anything if daughters inherit. In support of the majority position, Ibn Qudāmah argues that the view is founded on the Sunnah of the Prophet as confirmed by Ibn Masʿūd (d.32/650) when Abū Mūsā al-Ashʿarī (d.44/665) referred a case of inheritance involving the daughter, the deceased's son's daughter, and the full sister to him. Ibn Masʿūd remarked: 'I will judge [this case] according to the judgement of the Messenger of Allah (PBUH); the daughter gets a half, and the son's daughter gets one-sixth to make up the two-thirds [share of daughters]. And what is left goes to the sister'.[1087] It can be noted from this discussion that Islamic law acknowledges the rights of females to inherit in most scenarios than the pre-Islamic concepts of inheritance known to the Arabs and the Jews.

The study above demonstrates that the primary sources of Islamic law and ethics strongly inspire the existing inheritance law. Instances where males are entitled to inherit more than females are explicitly mentioned in the Qurʾān, as could be noted in Q.4:11, 12 and 176. Furthermore, the eligibility of distant male relatives to inherit their deceased family members in specific circumstances without their female counterparts is supported by an authentic hadith, as discussed above. Therefore, this study finds the accusation

[1085] Ibn Qudāmah, *al-Mughnī*, 9/9-11 and 13.

[1086] Ibid, 9/9-10.

[1087] Al-Bukhārī, *Ṣaḥīḥ*, 6/2479 (Hadith No. 6361); al-Nasāʾī, *Sunan al-Kubrā*, 6/107 (Hadith No. 6294).

levelled against Muslim jurists as having adopted the pre-Islamic system of inheritance among the Arabs and Jews in favour of men[1088] to be unsubstantiated.

However, at a glance, it is easy to observe the preference given to males over females in some cases of the inheritance law in Islam. The fixed shares prescribed for women can be noted as preferential treatment in many other instances, especially when their male counterparts are ultimately denied inheritance if there is no residual. The following section examines the possibility of reform in Islamic inheritance law to ensure justice and fairness to both genders, as postulated by reform advocates in Islamic inheritance law.

9.3 Review of the Inheritance Law Based on Changes in Socio-Economic Circumstances

Regarding instances when males inherit more than females or when the residual of the inheritance is given to the closest male relative, a group of reform advocates in Islamic law of inheritance, including Asmāʾ al-Murābiṭ (also known as Asma Lamrabet) and Muḥammad ʿAbd al-Wahhāb Rafīqī, a Moroccan based researcher in Islamic studies, among others, hold the view that the preference given to males in Islamic inheritance law was spatiotemporal and subject to review based on changes in socio-economic circumstances.[1089] This section will examine the possibility of reforming Islamic inheritance law based on the reasons supplied by reform advocates: the logic behind the disparity of inheritance shares and the need to promote justice and fairness to ensure the welfare of women (*maṣlaḥah*).

[1088] Al-Rāḍwī, *Tārīkhīyah*, 240 and 246, See also Lamrabet, *Women*, 132 and 133 for the assertion of equal shares of allocation for men and women in Islamic inheritance.

[1089] Lamrabet, *Women*, 139; al-ʿUmq al-Maghribī, "ʿAbd Wahhāb Rafīqī yuḥallil mauḍūʿ al-taʿṣīb fī mudawwanah al-usrah," YouTube, March 22, 2023, عبد الوهاب رفيقي يحلل موضوع التعصيب في مدونة الأسرة - YouTube.

9.3.1 Advocacy for Equal Inheritance Based on the Logic Behind the Disparity Between the Shares of Males and Females

This section attempts to verify the validity of the need for males to provide for their female relatives as the effective cause for allowing them a greater share compared to their female counterparts.

Lamrabet justifies the need to review the existing laws on inheritance to allow equal shares between males and females based on why the latter were allotted smaller shares of inheritance from her perspective. According to her:

> The Qurʾānic allocations were fair and just given the household structure of the era of the Revelation. However, given the nuclear family structure in which we live today - where sisters are rarely financially supported by their brothers and often contribute to the economic well-being of the entire family, including parents and brothers - can we continue to justify the inheritance division rules of bygone era?[1090]

She argues that:

> In today's context, not only has the literal application of the verse concerning the division among siblings become a profound structural injustice, it also departs from the stated objectives of the Qurʾān which, as we have seen, advocate the protection and preservation of the assets of women and vulnerable minorities and the fair division of responsibilities within the family.[1091]

Suppose the effective cause for allotting more shares of inheritance to males was the fact that they must provide for the needs of their female counterparts, as asserted by Lamrabet; the stipulated shares of males in inheritance will become irrelevant once its effective cause or the *ʿillah* is not applicable in a particular context.[1092] As we discovered in chapter five, Islamic legal theorists affirm that a ruling must be consistent with its

[1090] Lamrabet, *Women*, 139.

[1091] Ibid, 140.

[1092] Al-Shāṭibī, *al-Muwāfaqāt*, 2/489; Abū Sunnah, *al-ʿUrf*, 103.

effective cause (*al-ḥukm yadūr maʿa ʿillatihī wujūdan waʿadaman*).[1093] In other words, a ruling becomes irrelevant once its effective cause or the *ʿillah* is not applicable in a particular context. This could be a solid reason to advocate for a reform in the Islamic law of inheritance to allow equal shares for males and females, once the effective cause of the disparity between the two genders, as assumed by Lamrabet above.

In an attempt to understand the basis for giving different shares to different beneficiaries and in various circumstances, Ibn Kathīr (d.774/1373), the renowned Qurʾānic exegete, deduced that men were given more than women to conform to the financial burden imposed on them by Islam.[1094] The contemporary Egyptian scholar Muḥammad Imārah (d.2020) expounds that the Islamic law of inheritance is governed by three principles, which he explains as the wisdom (*ḥikmah*) for the variant shares:

i. The degree of kinship between the deceased and the heir: The closer an heir is to the deceased, the larger their share of the inheritance.
ii. The generation of the beneficiary: preference is given to the younger generation over the older. And
iii. The financial burden imposed on an heir by Islam.

According to Imārah, the logic for allocating more shares to some males compared to their female counterparts is based on the financial responsibilities imposed on them by Islam.[1095] The expression 'financial burden' seems much more appropriate than reducing it to the responsibility to support other nuclear and extended family members.

According to most Muslim jurists, young male Muslims are supposed to support themselves when they become financially independent by maturity.[1096] In addition to paying dowry to their wives, they must provide shelter, food, and clothing, among other financial responsibilities, for their wives and children.[1097] It is also mandatory for them

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[1093] Al-Sarakhsī, *Uṣūl*, 2/182; al-Samʿānī, *Qawāṭiʿ*, 2/153; Ibn Qudāmah, *al-Mughnī*, 4/404.

[1094] See Ibn Kathīr, *Tafsīr*, 2/225; al-Shanqīṭī, *Aḍwāʾ al-Bayān*, 1/362.

[1095] Muḥammad Imārah, *al-Taḥrīr al-Islāmī li al-Marʾah* (Cairo: Dār al-Shurūq, 2002), 67-69. See also Ṣalāh al-Dīn Sulṭān, *Nafaqah al-Marʾah wa Qaḍiyyah al-Musāwāh* (Egypt: Dār Nahḍah Miṣr, 1999), 3-5.

[1096] Sulṭān, *Nafaqah*, 9-12.

[1097] See Ibn Qudāmah, *al-Mughnī*, 11/347-349 and 11/372.

to support other needy family members if they are in a position to help.[1098] Fathers are also to provide for the needs of their daughters until they are married.[1099] As wives, even financially independent, their husbands are obliged to provide for their basic needs according to their financial abilities.[1100] In the absence of their husbands and fathers, their sons, brothers, and other extended family members are required to provide them with the necessary support according to acceptable social standards.[1101] These financial burdens imposed on men, as noted by Ibn Kathīr, are proportionate to their entitlement to inheritance.[1102] For Imārah, the financial burden is one of the wisdom (*ḥikam*) for allowing males more than females. However, both Ibn Kathīr and Imārah do not seem to be emphatic that it is the effective cause for allowing males more shares than females.

To rely on the financial situations of men and women and their contributions towards the family to advocate for equal inheritance depends on whether the deduced logic regarding the disparity between the shares of men and women could serve as the effective cause for the allotted shares. In other words, is it reliable to determine the shares of men and women based on the ability of men to execute the financial burden imposed on them in Islam as the effective cause for their shares in inheritance? The analysis of this case depends on the debates regarding employing the *ḥikmah* behind a legal ruling as a valid effective cause for legal deductions.

Based on the examination of the use of *ḥikmah* for legal deductions discussed in chapter five of this thesis, we noted an incident where Ibn Qudāmah appears to apply the *ḥikmah* for a legal ruling to extend the ruling to cover similar scenarios. For instance, he extends the *ḥikmah* in preventing a judge from ruling on a case in a state of anger to include anything that may impede a judge from properly assessing a case brought before them, including hunger, sleeplessness, or intense grief and sadness.[1103] However, in instances of *qiyās* where the *ḥikmah* for a legal ruling is present but the corresponding ruling is not applicable, Ibn Qudāmah maintains that because *ḥikmah* cannot be standardised based on

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[1098] See Ibn Qudāmah, *ʿUmdah al-Fiqh*, 112; Ibn Qudāmah, *al-Kāfī*, 3/238-240.

[1099] Sulṭān, *Nafaqah*, 9-12.

[1100] See Ibn Qudāmah, *al-Mughnī*, 11/348-349.

[1101] Sulṭān, *Nafaqah*, 6-9.

[1102] See Ibn Kathīr, *Tafsīr*, 2/225; al-Shanqīṭī, *Aḍwāʾ al-Bayān*, 1/362.

[1103] Ibn Qudāmah, *al-Mughnī*, 14/19.

reasoning (*raʾy*) and *ijtihād*, the effective cause must be applied by considering the intent of the Lawgiver instead of the *ḥikmah*.[1104] These different applications of *ḥikmah* for legal deductions and analogies by Ibn Qudāmah make it difficult to conclude on applying *ḥikmah* in a general sense from his legal practices.

Even Islamic legal theorists such as Abū Ḥāmid al-Ghazālī (d.505/1111) and Fakhr al-Dīn al-Rāzī (d.606/1209 or 1210) who advocate for employing *ḥikmah* for legal analogies or deductions do not seem to apply *ḥikmah* in an unqualified manner. For instance, al-Ghazālī emphasises that, in cases where the *ḥikmah* for a particular ruling is not consistent with it (i.e., the ruling), employing *ḥikmah* in that specific case may be rejected based on the inconsistency (*naqḍ*) just as an attribute (*waṣf*) that is not consistent with a ruling must not be assumed as the effective cause of a ruling for legal analogy.[1105] This view seems to be aligned with the position taken by Ibn Qudāmah and Najm al-Dīn al-Ṭūfī (d.716/1316) against employing unqualified wisdom (*ḥikmah muṭlaqah*) without the effective cause for legal reasoning or analogy.[1106] On the part of Fakhr al-Dīn al-Rāzī, the annotator of *al-Maḥṣūl*, Ṭāḥa Jābir al-ʿAlwānī, observed that the author, Fakhr al-Dīn al-Rāzī, does not consider the application of *ḥikmah* for legal analogy in a general sense except when the *ḥikmah* is specific (*muʿayyan*) to the relevant ruling.[1107] Thus, al-Āmidī (d.631/1233) contends that *ḥikmah* may be employed for legal deductions or analogies if it is apparent and standard (*munḍabiṭ*) such that it is consistent with the relevant legal ruling in different circumstances. However, the *ḥikmah* drawn from a legal ruling that is not constant with it (i.e., the ruling) in all circumstances must not be assumed as the effective cause of a legal ruling based on the abovementioned reasons.[1108]

The examination of the positions held by Muslim jurists and legal theorists concerning the application of *ḥikmah* in legal reasoning raises significant concerns about using financial obligations as the core determinant for the varying inheritance shares between males and females. This approach appears problematic and impractical, as the logic

[1104] Ibn Qudāmah, *Rawḍah*, 2/850.

[1105] Al-Ghazālī, *Shifāʾ*, 615-616.

[1106] Ibn Qudāmah, *Rawḍah*, 2/850; Ibn Qudāmah, *al-Mughnī*, 12/46; al-Ṭūfī, *Sharḥ*, 3/510-514.

[1107] Al-Rāzī, *al-Maḥṣūl*, 5/293.

[1108] Al-Āmidī, *al-Iḥkām*, 3/202.

(*ḥikmah*) does not adequately encompass numerous inheritance scenarios. Notably, it overlooks cases where male heirs may be incapable - due to physical or mental limitations - of fulfilling the financial obligations typically assigned to men within an Islamic framework.[1109]

We cannot dispute that even during the era of revelation, inheritance beneficiaries received their designated shares as delineated in the Qurʾān and Sunnah, regardless of factors such as age or circumstances that might impede their capacity to discharge the financial responsibilities typically associated with male heirs. For example, the shares of children, elderly individuals, and those with permanent disabilities - whether cognitive or physical - would have been affected based on the assumption that those capable of fulfilling financial responsibilities were entitled to inherit more. This would have been the exact reason for denying the weak in society, including women, their inheritance rights before Islam. However, this is not the case, as there is no discrimination against heirs based on their circumstances.[1110] This observation undermines the rationale that financial obligation must moderate inheritance shares between males and females. This observation also seems to justify the position of most Islamic legal theorists who do not regard *ḥikmah* (the logic or wisdom) behind some legal rulings as valid for legal deductions, as discussed in chapter five of this thesis. Hence, Muslim scholars who tried to justify the logic behind the disparity in the shares of males and females, such as Ibn Kathīr and Imārah, were not emphatic that the financial burden imposed on men is the effective cause for their larger shares.[1111]

Furthermore, during the time of the Prophet, women like Umm Salamah (d.62/680) were the breadwinners of their families, yet that did not impact their inheritance shares.[1112] If the contributions of women towards their families must affect their share of the inheritance, the Prophet would have indicated it. In a report by al-Bukhārī (d.256/870), Umm Salamah asked the Messenger of God whether she would have a reward for spending on her children with Abū Salamah (d.4/625). The Messenger replied: 'Spend

[1109] Ibid.

[1110] Wizārah al-Awqāf, *al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah*, 7/162.

[1111] See Ibn Kathīr, *Tafsīr*, 2/225; Imārah, *al-Taḥrīr*, 67-69.

[1112] See Abū Muḥammad al-Ḥusayn ibn Masʿūd al-Baghawī, *al-Tahdhīb fī Fiqh al-Imām al-Shāfiʿī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1997), 3/132.

on them, and you will have the reward for whatever you spend on them'.[1113] There is no evidence that her contributions to the family influenced her share of an inheritance, even though the Prophet was aware of her circumstances. A similar report is narrated about Zaynab al-Thaqafiyyah (d. unknown), who used to spend on her husband, ʿAbdullāh ibn Masʿūd (d.32/650) and some orphans under her guardianship.[1114] Instances of economically independent women who supported their families during the era of the Prophet present a challenge to the notion that the economic circumstances of women today should drive reforms towards equal inheritance. After all, similar cases did not lead to changes in Islamic inheritance law during the Prophet's time.[1115]

Conversely, the economic situations of women have been considered by Muslim jurists, such as the eponym of the Ḥanbalī legal school, Aḥmad ibn Ḥanbal, to determine their contributions in supporting their relatives in need, such as parents and children.[1116] Isḥāq ibn Manṣūr al-Kawsaj (d.251/865) emphasises that 'a wealthy mother must be compelled to provide full support for her children in the absence of their father'.[1117] This is particularly so when their male counterparts, such as husbands or brothers, cannot provide the necessary support due to their financial circumstances.[1118] In some cases, a woman who spends on her family is entitled to a refund when the financial situation of the man responsible improves, especially if she had in mind to be reimbursed, as in the case of a wife.[1119] Most Muslim Jurists, including Ibn Qudāmah, base the requirement for women in good financial conditions to provide social or financial support on the general provision of the Qurʾānic text: '…The same duty is incumbent on the [father's]

[1113] Al-Bukhārī, *Ṣaḥīḥ*, 2/533 (Hadith No. 1398).

[1114] See Ibid, (Hadith No. 1397).

[1115] See Ibid; Ibn Qudāmah, *al-Mughnī*, 4/151; ʿAbd al-Muḥsin ibn Muḥammad al-Qāsim, *al-Masbūk ʿalā Minḥah al-Sulūk fī Sharḥ Tuḥfah al-Mamlūk* (n.p., 1428 AH), 3/93.

[1116] Khalid Al-Ribāṭ, et all, *al-Jāmiʿ li ʿUlūm al-Imām Aḥmad* (Egypt: Dār al-Falāḥ, 2009), 11/577.

[1117] Abū Yaʿqūb Isḥāq ibn Manṣūr al-Kawsaj al-Marwazī, *Masāʾil al-Imām Aḥmad ibn Ḥanbal wa Isḥāq ibn Rāhūyah (Rāhawayh)* (Saudi Arabia: ʿAmādah al-Baḥth al-ʿIlmī, al-Jāmiʿah al-Islāmiyyah bi al-Madīnah al-Munawwarah, 2002), 6/3121.

[1118] Al-Kāsānī, *Badāʾiʿ*, 4/30-34; Ibn Qudāmah, *al-Mughnī*, 11/373; ʿAlī ibn Muḥammad al-Māwardī, *al-Iqnāʿ fī al-Fiqh al-Shāfiʿī* (n.p., n.d.), 143.

[1119] Ibn Qudāmah, *al-Mughnī*, 11/374; Kamāl al-Dīn Muḥammad ibn al-Hummām, *Fatḥ al-Qadīr* (Egypt: Sharikah Maktabah wa Maṭbaʿah Muṣṭafā al-Bābī al-Ḥalabī, 1970), 4/411.

heir...' Q.2:233. This text requires a person to support those they may inherit from in times of need.[1120]

Moreover, if males were entitled to inherit more than females just because they were supposed to provide the material needs of their female counterparts and cater for their extended families, it would be expected that the inheritance of males should always exceed that of their female counterparts. However, this logic is not observed in many inheritance cases, as noted by Muḥammad Imārah after deducting the logic behind the disparity in the shares of males and females in inheritance.[1121] For example, suppose a woman dies, leaving behind her father, mother, two daughters, and husband, and assuming the property she left behind is sixty pieces of gold. In that case, the distribution will be as presented in the table below:

Heir	Share	Distribution $x/12$ adjusted to $x/15$	Actual inheritance
Father	$1/6$+ residual	$2/15$+0 residual	8
Mother	$1/6$	$2/15$	8
Husband	$1/4$	$3/15$	12
2 Daughter	$2/3$	$8/15$	32
Total			60

Figure A1.[1122]

For the table above, each daughter receives sixteen (16) pieces of gold from the inheritance.

However, if in place of the two daughters were two sons, the distribution would be as follows:

Heir	Share	Distribution $x/12$	Actual inheritance
Father	$1/6$	$2/12$	10
Mother	$1/6$	$2/12$	10
Husband	$1/4$	$3/12$	15
2 Son	Residual	$5/12$	25
Total			60

[1120] Al-Kāsānī, *Badāʾiʿ*, 4/30-34; Ibn Qudāmah, *al-Mughnī*, 11/374; al-Sarakhsī, *al-Mabsūṭ*, 5/209; Ibn al-Hummām, *Fatḥ al-Qadīr*, 4/411.

[1121] Imārah, *al-Taḥrīr*, 69-70.

[1122] Prepared and calculated by the author.

Figure A2.[1123]

Each son receives twelve and a half (12.5) pieces of gold of the total inheritance. Compared to the share of each daughter in Figure A1, daughters inherit more than the share of each son in Figure A2. The distribution in the two scenarios indicates a preferential treatment given to females to secure their shares when they inherit alone, unlike their male counterparts, who inherit the residual after the distribution of the prescribed shares.

Interestingly, in the above scenarios, if the woman's estate were to be divided among her heirs, including her grandchildren, her granddaughters would inherit, while her grandsons would not. The inheritance distribution in this case is as follows:

Heir	Share	Distribution $x/12$ adjusted to $x/15$	Actual inheritance
Father	$1/6$+ residual	$2/15$	8
Mother	$1/6$	$2/15$	8
Husband	$1/4$	$3/15$	12
Daughter	$1/2$	$6/15$	24
Granddaughter	$1/6$	$2/15$	8
Total			60

Figure B1.[1124]

The granddaughter inherits eight pieces of gold in this distribution. However, if in place of the granddaughter were a grandson, the distribution would be as follows:

Heir	Share	Distribution $x/12$ adjusted to $x/13$	Actual inheritance
Father	$1/6$	$2/13$	9
Mother	$1/6$	$2/13$	9
Husband	$1/4$	$3/13$	14
Daughter	$1/2$	$6/13$	28
Grandson	residual	0	0
Total			60

Figure B2.[1125]

[1123] Prepared and calculated by the author.

[1124] Prepared and calculated by the author.

According to this distribution in Figure B2, the grandson inherits nothing because he inherits by residual, and nothing remains after distributing the allotted shares. It is intriguing to observe that in all the distributions above, daughters of the deceased would benefit more than sons, fathers, and husbands (who could even be the biological fathers of the daughters). In the case of grandchildren, the granddaughter's share was secured, while that of the grandson was not.

As the cases above demonstrate, inheritance law also favours females in certain circumstances. If financial obligations were the sole determining factor in determining inheritance amounts, men would have received a more substantial inheritance in all situations, as they typically bore greater financial responsibilities in premodern eras. However, since financial contributions cannot be the sole basis for inheritance entitlement, examining the primary factor that allowed males to receive a larger inheritance than females before advocating for equal inheritance is necessary. Supposing men's financial obligations during the time of revelation contributed to their allotted shares of inheritance, then we must consider all other potential contributing factors to present a strong case for equal inheritance in a context where both men and women contribute financially to their families. At this point, the current financial responsibilities of men and women alone do not appear to be a compelling factor to justify equal inheritance, as it cannot be identified as the primary reason for males receiving a larger share than females. Therefore, a comprehensive consideration of all potential factors is required to determine how reform can be implemented.

9.3.2 Advocacy for Equal Inheritance to Promote Justice, Fairness and the *Maṣlaḥah* (Interest/Welfare) of Women

Another factor in advocating for equal inheritance between men and women in Islam is ensuring women's interests (*maṣlaḥah*) are upheld today by promoting justice and fairness.[1126] Over time, the dignity of women has been tied to the rights and privileges they enjoy compared to men. The CEDAW has been very instrumental in ensuring this

[1125] Prepared and calculated by the author.

[1126] Lamrabet, *Women*, 139-140.

becomes a worldwide achievement.[1127] To hold onto Islamic religious tenets that are perceived as 'male preferences', such as the inheritance law, is considered degrading and devaluing to women (*tanqīṣ li qīmah al-marʿah*) today, as echoed by the Moroccan liberal and feminist Fāṭimah al-Shāwatī.[1128] Equal inheritance between men and women in Islam is, therefore, considered the way forward in advancing fairness and the dignity of women.[1129]

Even though Muslim jurists do not differ on the dignity of humans in general, what constitutes discrimination against a particular gender remains disputable between religious and secular intellectuals. While some contemporary Muslims, such as Asmāʾ al-Murābiṭ, ʿAbd al-Wahhāb Rafīqī, Fāṭimah al-Shāwatī, and Nāʾilah al-Sillīnī may consider reviewing Islamic laws to ensure Muslim men and women are on an equal footing regardless of the implications of those rulings, their approach in advocating for equal inheritance appears to deviate from the explicit readings of the inheritance-related texts in the Qurʾān and Sunnah. It, therefore, requires a careful examination before applying it.

When it comes to interpreting the texts of the Qurʾān and Sunnah, Islamic legal theorists categorise the texts in terms of their clarity into *naṣṣ*, *ẓāhir* and *mujmal*.[1130] Like most Muslim jurists and legal theorists, Ibn Qudāmah takes the position that when the meaning of a text is clear, such that it does not entertain any other possible interpretation, it is classified as *naṣṣ*. The apparent meaning of a text that is open to more than one interpretation is classified as *ẓāhir*. A text with no clear interpretation and requiring clarification from other texts is classified as *mujmal*. According to Ibn

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[1127] Mohammad Towhidul Islam, "Equality Between Men and Women in Islam Especially in Respect of Inheritance and Its Compatibility with International Human Rights," *Dhaka University Law Journal* 15, no. 2 (2004): 163-207, 178-184, https://ssrn.com/abstract=3736816.

[1128] Télé Maroc, "Ilghāʾ al-taʿṣīb min niẓām al-irth, mādhā naqṣid bi al-taʿṣīb? Wa hal yushkil ilghāʾuh taʿāruḍan maʿa al-dīn?," YouTube, April 11, 2018, "ماذا نقصد بالتعصيب؟ وهل يشكل "إلغاء التعصيب من نظام الإرث إلغائه تعارضا مع الدين؟ - YouTube.

[1129] Al-ʿUmq al-Maghribī, "ʿAbd Wahhāb Rafīqī"; MEDI1 TV, "Barnāmij "azamah al-ḥiwār" al-taḥawwulāt al-ijtimāʿiyyah wa niẓām al-taʿṣīb fī al-ʾirth" YouTube, May 1, 2018, "برنامج "أزمة حوار .. التحولات الاجتماعية و نظام التعصيب في الإرث - YouTube.

[1130] These terminologies are examined in chapter four of this thesis. See also Ibn Qudāmah, *Rawḍah*, 1/454.

Qudāmah, the explicit interpretation of a text (*naṣṣ*) must be maintained until evidence proves the text has been repealed.[1131] However, for a text that is open to more than one interpretation, the apparent interpretation must be upheld until there is evidence to warrant a valid *taʾwīl* (deviation from the apparent interpretation).[1132]

Regarding the shares allotted to the beneficiaries of inheritance in the Qurʾān, many Muslim scholars, such as the contemporary Moroccan scholar Saʿīd al-Kamalī, among others, maintain that it is not acceptable to deviate from the existing distribution method because the Qurʾān and Sunnah are specific on the shares prescribed for the beneficiaries.[1133] For instance, Q.4:11 clearly states the allotted shares of daughters in different situations: when they inherit without their brothers and when they inherit together. The allotted shares to fathers and mothers are also spelt out in the exact text. Q.4:12 also explicitly declares the shares of husbands and wives, while Q.4:176 explicitly declares the shares allotted to brothers and sisters.[1134]

However, ʿAbd al-Wahhāb Rafīqī has argued that it is acceptable to revise the distribution of inheritance in Islamic rulings regardless of whether the existing distribution is based on explicit provisions of a text or not.[1135] He bases his argument on reports that assert the suspension of the punishment for stealing and the repeal of the share of those whose hearts need winning over (*muʾallafah qulūbuhum*) in Zakat by the second caliph ʿUmar ibn al-Khaṭṭāb as precedents for changing rulings supplied by the Qurʾān and Sunnah based on social needs.[1136] Rafīqī reasons that the re-evaluation of such legal rulings was based on *maṣlaḥah* and demonstrates that Qurʾānic legal rulings are not immutable as assumed.[1137] Thus, since the social circumstances of Muslims have changed, the inheritance system must be revised to reflect both the dynamics of life and

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[1131] See Ibn Qudāmah, *Rawḍah*, 1/455.

[1132] See Ibid, 1/456.

[1133] Qanāt al-Shaykh Saʿīd al-Kamalī, "Taghyīr al-Irth Iqtidāʾan bi ʿUmar bin al-Khaṭṭāb fī taʿṭīl Naṣṣ al-Qurʾān," YouTube, April 22, 2024, تغيير الإرث اقتداءً بعمر بن الخطاب في تعطيل نص القرآن - الشيخ سعيد الكملي - YouTube.

[1134] See Ibn Qudāmah, *al-Mughnī*, 9/63-64.

[1135] Al-ʿUmq al-Maghribī, *"ʿAbd Wahhāb Rafīqī"*; MEDI1 TV, "Barnāmij "azamah al-ḥiwār."

[1136] Ibid.

[1137] Ibid.

the realities of society to promote the welfare women have been deprived of by the existing inheritance law in Islam.[1138]

Rafīqī seems to overlook the differentiation made by Islamic legal theorists between *ijtihād* in revoking the explicit implication of a text (*ijtihād fī ibṭāl al-naṣṣ*) and *ijtihād* in understanding a text (*ijtihād fī fahm al-naṣṣ*). The later *ijtihād* is based on various possible interpretations of a text and reconciling different texts to draw a conclusion.[1139] Consequently, Ibn Qudāmah maintains that deviating from a text's explicit implication is unacceptable unless proven to have been abrogated.[1140] Yet, in line with making *ijtihād* to understand the text, he establishes legal verdicts drawn from the implications of the texts of the Qurʾān and Sunnah. An example is his application of the ruling on *ẓihār* (the pronouncement of separation from one's wife by comparing her to one's mother). He extended the ruling on *ẓihār* to cover any comparison of one's wife to women who are unlawful to him for marriage, as the two statements carry the same implication.[1141] The re-evaluation of a text due to social change depends on whether the Lawgiver considered relevant social factors when issuing the specific text or ruling in question. Examples of this can be seen in legal rulings concerning *nafaqah* (provisions for one's wife), as explored in chapter eight of this thesis.

Thus, a text may be open to *ijtihād* due to the availability of another text that may expound on its implications or based on the effective cause for the ruling established in the text. On the other hand, employing *ijtihād* to develop an interpretation that is not supported by either the effective cause of a text or by another text that expounds on its application is said to be a contradiction of the text. Hence, the convention among Muslim scholars: it is not acceptable to make *ijtihād* on legal rulings founded on explicit texts of the Qurʾān and sunnah (*lā ijtihād maʿa al-naṣṣ*). This can be supported by Q.33:36, where Muslims are discouraged from opposing opinions regarding matters that have been decided upon by Allah and the Prophet. Ibn Qayyim confirms this in his

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[1138] Ibid.

[1139] See al-Ghazālī, *al-Mustaṣfā*, 198 and 325; al-Zarkashī, *al-Baḥr*, 5/50; ʿAbd al-Majīd Maḥmūd ʿAbd al-Majīd, *al-Ittijāhāt al-Fiqhiyyah ʿinda Aṣḥāb al-Ḥadīth fī al-Qarn al-Thālith al-Hijrī* (Egypt: Maktabah al-Khānjī, 1979), 639; Jaghīm, *Ṭuruq*, 90-91.

[1140] Ibn Qudāmah, *Rawḍah*, 1/455.

[1141] Ibn Qudāmah, *al-Mughnī*, 11/57-58.

analysis of the concept of *fatwā* as he demonstrates that it is unlawful to pass a verdict based on *ijtihād* when there is a clear text on that ruling.[1142] To set matters straight, he established this view before discussing the circumstances for changing legal verdicts (*fatwā*) based on different situations, times, places, intentions, and social practices.[1143] Ibn Qayyim's observation indicates a distinction between legal rulings (*ḥukm sharʿī*) and legal verdicts (*fatāwā*).[1144]

Regarding the precedent cited by Rafīqī to support his argument on inheritance reform, deviations from implementing the penal code during famine and the share of the *muʾallafah qulūbuhum* are assumed to be grounded by other premises from the Qurʾān and Sunnah of the Prophet. As discussed in Chapter Six, the assumed suspension of the punishment for stealing is considered as averting the prescribed punishment based on working with other legal texts that demand the punishment to be avoided. It cannot, therefore, be regarded as conflicting with an explicit legal ruling in the Qurʾān since its application has always been conditional.[1145]

Regarding the distribution of Zakat to win the hearts of certain individuals and incline them toward Islam, it is understood as a diplomatic measure to prevent potential hostility and strengthen Islam by gaining their favour when they accept it.[1146] This is provided by Q.9:60 along with the beneficiaries of Zakat:

> Alms are meant only for the poor, the needy, those who administer the Zakat [fund], those whose hearts need winning over, to free captives [or slaves] and for those in debt, for the cause of Allah, and for the wayfarer [who is stranded]. This is ordained by Allah; Allah is all-knowing and wise.

The reasons for the beneficiaries' entitlement to the Zakat funds can easily be deduced from the text. For instance, not all travellers are expected to benefit from the funds,

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[1142] Ibn Qayyim, *Iʿlām*, 4/36.

[1143] Ibid, 4/337.

[1144] See also Abū Zakariyyā Yaḥyā ibn Sharaf al-Nawawī, *Ādāb al-Fatwā wa al-Muftī wa al-Mustaftī* (Damascus: Dār al-Fikr1988), for more on *fatwā* and its pertinent conditions; Saeed, *Interpreting*, 85.

[1145] Refer to chapter six of this thesis, pages 164-166.

[1146] Ibn Qudāmah, *al-Muqniʿ*, 98. See also al-Ḥusayn ibn Masʿūd al-Baghawī, *Sharḥ al-Sunnah* (Damascus: al-Maktab al-Islāmī, 1983), 6/92.

except those stranded and needing support. Likewise, the share of the *muʾallafah qulūbuhum* is meant to strengthen Islam and avoid the threat of those who could intimidate or oppress Muslims, according to Ibn Qudāmah.[1147] This is supported by reports that the Prophet gave some of the *muʾallafah qulūbuhum* a share of the booty after the battle of Ḥunayn (8/630) and denied others. The Prophet explained that he gave them to win their hearts (*ata allafu bihim*) because they were new to Islam.[1148] Most legal theorists, such as Ibn Qudāmah and al-Āmidī, consider such an expression to explicitly indicate an action's effective cause or ruling.[1149] Aḥmad ibn Taymiyyah (d.728/1328) emphasises that anything legislated for a specific reason remains legitimate if the reason persists, such as the allocation for the *muʾallafah qulūbuhum*.[1150] Based on this understanding, ʿUmar ibn Khattab expounded that Islam was strong at the time and could not be threatened by them. Apparently, one would not expect the eligibility of individual beneficiaries of the Zakat fund to be forever, particularly when their situations change. For example, a person who was once entitled to the Zakat fund due to poverty does not maintain their eligibility for Zakat when they are no longer poor. The Prophet has emphasised that Zakat must be taken from rich Muslims to support the poor.[1151]

Ibn Qudāmah maintains that for the eligibility of the *muʾallafah qulūbuhum*, the Zakat fund remains valid as per the Qurʾān and Sunnah of the Prophet. He explains that ʿUmar ibn al-Khaṭṭāb's reported denial of their shares does not justify the suspension or revocation of their entitlement to the Zakat fund. He emphasises that withholding the shares of the *muʾallafah qulūbuhum* during the time of ʿUmar does not contradict the teachings of the Qurʾān and Sunnah, and it does not nullify the ruling because there was no need for them to be given at the time. When there is a need, they should receive their entitlement, just like any other beneficiary of the Zakat fund.[1152] Against this backdrop, it can be noted that most Muslim jurists, including Ibn Qudāmah, do not consider the

[1147] Ibid.

[1148] See Muslim, *Ṣaḥīḥ*, 2/733 (Hadith No. 1059).

[1149] See Ibn Qudāmah, *Rawḍah*, 2743; al-Āmidī, *al-Iḥkām*, 3/252.

[1150] Aḥmad ibn Taymiyyah, *Majmūʿ al-Fatāwā* (al-Madīnah al-Munawwarah: Mujammaʿ al-Malik Fahad li Ṭibāʿah al-Muṣhaf al-Sharīf, 2004), 33/94.

[1151] See al-Bukhārī, *Ṣaḥīḥ*, 4/1580 (Hadith No. 4090); Ibn Qudāmah, *al-Mughnī*, 4/5.

[1152] Ibn Qudāmah, *al-Mughnī*, 4/124-125 and 9/316-317

examples given as precedents for revising explicit rulings of the Qurʾān and Sunnah compelling.[1153]

In retrospect, when one comes to know that the specific people ʿUmar denied Zakat were among those who denounced Islam after the death of the Prophet and were compelled to revert to Islam because they could not subdue the Muslims, one may appreciate why those people did not deserve to be given any preferential treatment to win their heart towards Islam at the time.[1154] Accordingly, they did not need to be given a share of public funds in the form of Zakat or the spoils of war to win their hearts towards Islam.[1155] This sounds reasonable, as the effective cause for making them beneficiaries of the Zakat fund no longer applied to them.[1156] There is no evidence to indicate that any of the Prophet's companions opposed ʿUmar's view after his explanation. This deduction seems similar to denying beneficiaries of Zakat due to poverty because their situations have changed, and they are no longer poor and needy of such benefits.[1157]

Applying the different circumstances of the beneficiaries of Zakat as the effective cause for their entitlement is not the same as assuming changes in the circumstances of the beneficiaries of inheritance as the effective cause for their prescribed allotments. For instance, there is no valid reason to deny people with mental or developmental challenges the shares prescribed for them because the logic for giving them a share of the inheritance does not apply to them.[1158] If the ability to provide for other family members were the effective cause, they would have been denied their full shares of the inheritance in favour of their carers or guardians. On the contrary, their guardians -

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[1153] Qanāt al-Shaykh Saʿīd al-Kamalī, "Taghyīr al-Irth."

[1154] See Muḥammad ibn ʿUmar ibn Wāqidī al-Wāqidī, *al-Riddah* (Beirut: Dār al-Gharb al-Islāmī 1990), 48-52; Abūbakr ʿAbd al-Razzāq ibn Hammām al-Ṣanʿānī, *al-Amālī fī Āthār al-Ṣaḥābah* (Cairo: Maktabah al-Qurʾān, n.d.), 87: Ibn Qudāmah, *al-Mughnī*, 9/317.

[1155] See, Abū Bakr ibn ʿAlī al-Ḥaddādī, *al-Jawharah al-Nayyirah* (Al-Maṭbaʿah al-Khayriyyah, 1322 AH), 1/128, See also Abū ʿUmar ibn ʿAbd al-Barr, *al-Tamhīd* (London: Muʾassasah al-Furqān li al-Turāth al-Islāmī, 2017), 12/510.

[1156] The effective cause here is based on the statement of the Prophet explaining why he gave them a share of the booty at the battle of Ḥunayn, See Muslim, *Ṣaḥīḥ*, 2/733 (Hadith No. 1059).

[1157] See Ibn Qudāmah, *al-Mughnī*, 4/125.

[1158] See Wizārah al-Awqāf, *al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah*, 7/162.

perhaps a female relative who may inherit less than them - must cater for them and manage their assets on their behalf, as indicated in Q.4:6.[1159]

In addition, there are differences between the distribution of Zakat and inheritance. Unlike inheritance, the Zakat beneficiaries are not entitled to specific shares of the Zakat funds. Also, it is not a requirement to distribute the funds to all eligible beneficiaries in every instance, as Ibn Qudāmah has defended. Therefore, preference could be given to some beneficiaries over others, whereas some could be denied depending on the circumstances at hand or the *maṣlaḥah* of the distribution.[1160] In contrast, the distribution of inheritance to all eligible beneficiaries is mandatory according to the dictates of the Qurʾān and Sunnah, regardless of their individual circumstances, such as financial status or health.[1161] Perhaps the distribution of Zakat funds is left open to be determined based on what must be prioritised in various contexts. With these differences between the inheritance and Zakat distributions and the lack of sufficient proof to establish the effective cause for the variant shares of inheritance, employing *ijtihād* to review beneficiaries and their entitlements seems problematic.

With the use of the *maṣlaḥah* of women today as the basis to advocate for equality in Islamic inheritance, there is a need for textual proofs or *ijmāʿ* for validation based on Ibn Qudāmah's position on the use of *maṣlaḥah* for legal deductions.[1162] He contends that the ruling of Allah consistently embodies *maṣlaḥah*.[1163] Thus, one cannot assume a perceived *maṣlaḥah* to overturn an explicit ruling of the Qurʾān or Sunnah without a scriptural basis. Allowing this creates room to change the entire legal system based on human discretion.[1164] This view is compelling because it preserves the revealed law rather than leaving it to the mercy of changing context, a situation Wael B. Hallaq describes as the evisceration of the *sharīʿah* in our modern context.[1165]

[1159] See Ibn Qudāmah, *al-Kāfī*, 2/106; Abū Zakariyyā Yaḥyā ibn Sharaf al-Nawawī, *al-Minhāj Sharḥ Ṣaḥīḥ Muslim Ibn al-Ḥajjāj* (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1392 AH), 18/113.

[1160] See Ibn Qudāmah, *al-Mughnī*, 9/332-333, 4/117 and 4/127-128.

[1161] See al-Ṭabarī, *Tafsir al-Ṭabarī*, 6/429: Ibn Qudāmah, *al-Kāfī*, 2/295.

[1162] Ibn Qudāmah, *Rawḍah*, 1/430-435.

[1163] Ibid, 1/417.

[1164] Ibid, 1/430, See also al-Ghazālī, *al-Mustaṣfā*, 173-174; al-Shanqīṭī, *al-Maṣāliḥ*, 15.

[1165] Hallaq, *The Impossible State*, ix.

Additionally, a critical examination of the relevant texts concerning the distribution of inheritance reveals the broad scope of its associated *maṣlaḥah*, which encompasses both worldly and afterlife benefits for the deceased and their heirs. Ibn Kathīr (d.774/1373) noted in his commentary on Q.4:11: '…You do not know among your parents and your children who is more beneficial to you. [These shares are] an obligation from Allah, and Allah is ever knowing and wise.' This statement follows the declaration of the shares of parents and offspring in the same verse.[1166] Again, after announcing the shares of wives, husbands, and maternal half-siblings in Q.4:12, the subsequent two texts, Q.4:13-14, also emphasise the need to uphold the stipulated distribution by declaring: 'These [entitlements] are the limits set by Allah'. The Lawgiver connects the stated distribution to the intended spiritual benefit by underscoring that whoever obeys Allah and His messenger will attain the ultimate success (admission to Paradise). However, whoever disobeys will be humiliated in Hell.[1167]

The Qurʾān, thus, suggests that the respective interests or *maṣāliḥ* of both the deceased and the heirs were taken into account for the distribution. Hence, the *maṣlaḥah* related to the distribution of inheritance in Islam appears broader than assuming the worldly circumstances of the beneficiaries alone.

In his examination of the impact of contemporary *ijtihād* based on *ḥikmah*, ʿUmar Muḥammad Samīr ʿAbd al-Salām demonstrates that, further to the explicit declarations on inheritance, Allah (the Lawgiver) utilises certain indicators to underscore the need to adhere to the existing distribution. The opening statement of Q.4:11: *yūṣīkum Allāh* (Allah instructs you) is interpreted as imperative, which is further strengthened with the statement: *farīḍah mina Allāh inna Allāh kāna ʿalīman ḥakīmā* (an obligation from Allah and Allah is ever knowing and wise).[1168] To argue that the phrase *yūṣīkum Allāh* merely offers advice is to imply that the entire distribution system is only recommended but not obligatory. This interpretation would have provided a valid rationale to deny women and children their rightful shares of inheritance. The Prophet's companions understood it to be obligatory, as indicated by Ibn Jarīr al-Ṭabarī, who reports that when the verses of

[1166] Ibn Kathīr, *Tafsir*, 2/229.

[1167] See Ibid, 2/232-233.

[1168] Naṣir al-Dīn ʿAbd Allah ibn ʿUmar al-Bayḍāwī, *ʿAnwār al-Tanzīl wa Asrār al-Tʾwīl* (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1418 AH), 2/63.

inheritance were revealed, it was hard for the people to accept the decree (*shaqqa dhālika alā al-nās*). They found it unreasonable to allocate shares of inheritance to women and children. They hoped for another revelation to repeal the distribution as they understood it to be mandatory. They said, 'If this is established, it will be obligatory, and there will not be a way out (*la ʿin tamma hādhā innahū la wājibun mā minhu budd*)'.[1169] Interpreting the phrase *yūṣīkum Allāh* to mean other than obligatory also appears to contrast with other texts that indicate the imperative nature of the distribution structure outlined in the primary sources of Islamic law. In Q.4:176, the need to uphold the declared allocations is emphasised again: 'Allah makes this clear to you so that you do not make mistakes (*an taḍillū*): and He has full knowledge of everything.' The implication of these statements emphasises the need to uphold the allotted shares given to the beneficiaries in the stipulated circumstances.[1170]

Regarding the fair and just distribution of inheritance in Islam, some contemporary researchers on the subject matter, such as Mohammad Towhidul Islam, have argued in favour of the existing distribution, contending that the divine rights and responsibilities imposed on Muslim men and women justify the divine distribution of inheritance in Islam.[1171] When women have to assume the duties originally charged to men, they do not do so as their primary responsibilities. Muslim jurists such as Ibn Qudāmah have held that they are entitled to a refund if they desire a reimbursement when the men responsible can pay it.[1172] When a woman supports her husband or other male relatives out of her own good will without seeking a refund, she gets the reward for being charitable to her family, which the Prophet recommended.[1173]

A woman may seek divorce if her husband is incapable of providing for her needs, as held by most Muslim jurists, including Ibn Qudāmah.[1174] However, the Prophet

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[1169] See al-Ṭabarī, *Tafsīr*, 7/532.

[1170] See ʿUmar Muḥammad Samīr ʿAbd al-Salām, *Athar al-Taʿlīl bi al-Ḥikmah fī Ijtihādāt al-Muʿāṣirah fī Qaḍāyā al-Marʾah Dirasah Taqwīmiyyah* (Master's Thesis, University of Qatar 2020), 31-42, أثر التعليل بالحكمة في الاجتهادات المعاصرة في قضايا المرأة (qu.edu.qa).

[1171] Islam, *Equality*, 178-184.

[1172] Ibn Qudāmah, *al-Mughnī*, 11/374; Ibn al-Hummām, *Fatḥ al-Qadīr*, 4/411.

[1173] See al-Bukhārī, *Ṣaḥīḥ*, 2/533 (Hadith No. 1397).

[1174] Ibn Qudāmah, *al-Mughnī*, 11/360-361.

recommends that women support their husbands in need if they can.[1175] From the ongoing discussion, Ibn Qudāmah and many Muslim jurists do not consider the contributions a woman may offer to her immediate family and other relatives as mandatory. They maintain that women reserve the right to support their husbands or request reimbursement, contingent upon the financial situation of the individual obligated to provide that support.[1176] For these reasons, women's contributions to their families may not necessarily substantiate the need to compensate them with equal inheritance. Furthermore, discussions about responsibility, meaning, rights, and privileges could be argued in favour of either sex, depending on one's perspective. In the context of inheritance, instances where men inherit less than their female counterparts or inherit alone could be seen as discriminatory against men. As previously mentioned, the fixed shares allocated to women benefit them more than men. If rights and privileges are considered independently from the broader framework of Islamic law and ethics, Islamic culture may seem biased toward a specific gender.[1177] However, when inheritance is examined alongside other legal and ethical considerations in Islam, one can understand everyone's rights, responsibilities, and the compromises necessary for peaceful coexistence.

Regarding changes in family structures within Muslim societies, Lamrabet has proposed that many Muslims are embracing the nuclear family model. She argues that this shift necessitates a review of inheritance distribution in Islam to align with the nuclear family structure.[1178] However, the nuclear family model may not necessarily be an ideal change. There are concerns surrounding the nuclear family system. American cultural commentator David Brooks has criticised it as a mistake.[1179] Giving prominence to the nuclear family while diminishing the role of extended family relationships also contributes to insufficient social networks, which recent studies have identified as a

[1175] See al-Bukhārī, *Ṣaḥīḥ*, 2/533 (Hadith No. 1397).

[1176] See Ibn Qudāmah, *al-Mughnī*, 11/360-361 and 374; Ibn al-Hummām, *Fatḥ al-Qadīr*, 4/411.

[1177] See Islam, *Equality*.

[1178] Lamrabet, *Women*, 139.

[1179] See David Brooks, "The Nuclear Family was a Mistake," *The Atlantic*, March 2020, https://www.theatlantic.com/magazine/archive/2020/03/the-nuclear-family-was-a-mistake/605536/.

significant contributor to the epidemic of loneliness in modern societies.[1180] In addition, endorsing the nuclear family system today and revoking the existing inheritance distribution goes against many other texts from the Qurʾān and Sunnah that underscore the essence of living together as a community and supporting one another. The obligation of Zakat exemplifies a religious practice that underscores the sense of community within Islamic ethos. Virtue or piety (*birr*), according to Q.2:177, is not restricted to spiritual rites. It includes social concerns such as being supportive and charitable to one's relatives, the orphans and those in need. Q.4:36 further emphasises the rights and obligations of close and distant relatives, neighbours, and the wider Muslim community.

From the Sunnah, we know that 'The one who fills his stomach while his neighbour goes hungry is not a believer'.[1181] In emphasising kindness to one's neighbour, the Prophet remarked, 'Gabriel kept commending the neighbour to me [regarding how to treat them] to the extent that I thought he would confer on the neighbour the right to inherit from me'.[1182] These indicate the significance Islam attaches to building solid social bonds even though preference is given to the closest relations before the distant. In this regard, one must support relatives (both nuclear and extended) in times of need.[1183] This shows that as important as one's nuclear family is, Islam does not overlook the importance of keeping distant relations. Consequently, the adoption of a new family lifestyle that rejects the rights and obligations of extended family members seems to contravene the broader philosophy of maintaining social ties in Islam. Wael B. Hallaq, a leading contemporary scholar in Islamic law in Western academia, has argued that such shifts, which he describes as modern moral dilemmas, have contributed to the collapse of organic social units in our communities.[1184]

Even if the financial obligations imposed on Muslim men are based on the socio-cultural practices of the time, Ibn Qudāmah posits that the Lawgiver's endorsement of a

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[1180] See Killeen, Colin, "Loneliness: an epidemic in modern society," Journal of Advanced Nursing 28, no.4 (1998): 762-770.

[1181] Al-Bukhārī, *al-Adab*, 60 (Hadith No. 112).

[1182] Al-Bukhārī, *Ṣaḥīḥ*, 5/2293 (Hadith No. 5669); Muslim, *Ṣaḥīḥ*, 8/37 (Hadith No. 2625).

[1183] See al-Kāsānī, *Badāʾiʿ*, 4/30; Ibn Qudāmah, *al-Kāfī*, 3/238.

[1184] Hallaq, *The Impossible State*, xiii.

particular norm indicates *maṣlaḥah* in upholding it. Ibn Qudāmah maintains that deviating from such rulings or measures is unacceptable until proven to have been abrogated.[1185] This view is further strengthened by Rāfiʿ ibn Khadīj's report that: 'The Messenger of Allah came out to us and forbade something that had been beneficial for us (*kāna lanā nāfiʿā*), but the obedience of Allah and His Messenger is better for us (*wa ṭawāʿiyatu Allah wa rasūlihī anfaʿu lanā*)…'.[1186] The companions of the Prophet had to let go of what they believed to be good for their welfare because the law forbade them. On this basis, the Mālikī legal theorist al-Shāṭibī (d.790/1388) underscores that rulings on specific social practices (*ʿādāt*) that have been endorsed or abolished by the Lawgiver remain perpetual and do not change even if the perception of people regarding the appropriateness of those customs change.[1187] For instance, Q.42:49-50 underscores that humans are created in different genders, males and females. This notion is contrasted by the modern perception of gender as a social construct that is subject to change. The idea that individuals reserve the liberty to change their gender may also oppose many texts in the Qurʾān, such as Q.4:119.

The passage above suggests that relying on assimilated norms, introduced through international norm-building, perhaps a form of political or cultural imposition,[1188] may not always be ideal for reform. Adopting such international norms has resulted in some societies transitioning to nuclear family structures and assuming that both men and women should bear financial obligations equally. However, as highlighted in the preceding passages, these reasons fall short of serving as sufficient grounds to support the argument for equal inheritance.[1189]

[1185] See Ibn Qudāmah, *Rawḍah*, 1/417.

[1186] Discussed earlier in chapter eight. See also, Muslim, *Ṣaḥīḥ*, 5/23.

[1187] Al-Shāṭibī, *al-Muwāfaqāt*, 2/488.

[1188] See Feryal M Cherif, "Culture, Rights, and Norms: Women's Rights Reform in Muslim Countries," *The Journal of Politics* 72, no, 4(2010): 1144-1160, 1146, Retrieved from: http://www.jstor.org/stable/10.1017/s0022381610000587 [Accessed: 13-12-2023].

[1189] This position is also supported by recent studies, including Islam, *Equality*, 184-185; Md Abdullah Hil Gani and Md Nadir Khan, "Women Rights of Inheritance in Islam: Equity versus Equality," *Journal of ELT and Education* 2, no. 3&4 (2019): 73-80.

In many Muslim-majority countries or communities today, local and transnational norms have received preference over those endorsed by the primary sources of Islam.[1190] These changes form parts of significant social transformations that challenge Muslims to reconcile Islamic law and ethics and the assimilated cultures (both local and foreign). As indicated in Chapter Eight, the type of laws that must change due to social transformations are those for which the social circumstances of people were taken into account when enacting them. This study does not find the inheritance distribution in Islam to be one of such laws per Ibn Qudāmah's interpretive approach, as demonstrated in this chapter.

The lack of commitment to rights and responsibilities among Muslims today may be a significant factor contributing to the perceived structural injustices and resentments surrounding inheritance distribution in Islam today. Exploring non-compliance with rights and responsibilities can further address perceived structural imbalances in Islamic inheritance distribution. If this is the case, enforcing laws that assist disadvantaged family members, as in Q.2:233, may effectively mitigate these issues, as the introduction of similar laws in most advanced countries, such as child support, has effectively resolved most cases of child neglect.[1191] Establishing checks and balances within a legal system empowers individuals to maximise their rights, particularly women and vulnerable groups. This approach resonates with core Islamic principles, such as *al-ghunmu bi al-ghurm* (rights come with responsibilities).[1192] Besides, the Prophet's Sunnah encourages standing against injustice, advising that to help the oppressor, one should prevent them from oppressing others.[1193]

9.4 Conclusion

This chapter has examined how gender equality concerns in Islamic inheritance could be addressed using Ibn Qudāmah's interpretive approach. It explored the motivations

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[1190] See Cherif, *Culture*, 1144.

[1191] See Office of Child Support Enforcement Administration for Children and Families, U.S, Department of Health and Human Services, Child Support Handbook, Child Support Handbook: Foreward (hhs.gov) (Retrieved on June 4th, 2024).

[1192] Afandī, *Durar*, 1/90; al-Zuhaylī, *al-Qawāʿid*, 1/543.

[1193] Al-Bukhārī, *Ṣaḥīḥ*, 2/863 (Hadith No. 2312), See also al-Zuhaylī, *al-Qawāʿid*, 1/543.

behind the advocacy for equal inheritance in Islam. These motivations include refuting the existing inheritance law as a revelation, recounting the current socio-cultural and economic context of Muslims, securing the dignity of women by promoting their welfare, justice and fairness, and preventing the perceived discrimination against women in the Islamic inheritance law.

The study contends that the existing inheritance law, as analysed from Ibn Qudāmah's perspective, strongly correlates with the primary sources of Islamic law and ethics. This makes the notion that the existing inheritance distribution was adopted from the pre-Islamic inheritance systems among the Arabs and the Jews very feeble.[1194] The Qurʾān provides a detailed and relevant distribution of inheritance to prevent any oversight, mainly because the then-existing inheritance - which was to be abolished by the new inheritance law - favoured the strong over the weak, including females and children who could hardly fight for their rights. The study, therefore, maintains that assumptions that the current inheritance law in Islam is an adoption of pre-Islamic systems of inheritance by Muslim jurists to discriminate against women is misleading and speculative. It also illustrates that the existing distribution does not always discriminate against women, as there are many instances where women are favoured over their male counterparts, as demonstrated under section 9.3.1. above.

Secondly, examining Ibn Qudāmah's interpretive approach, despite his flexibility on some legal matters, there seem not to be enough grounds to warrant a flexible reinterpretation of the relevant texts of the inheritance distribution in Islam. This is primarily due to the explicit detailing of the shares of males and females in the pertinent texts. To warrant a review, an established abrogation of these texts would be required, but no such abrogation can be established.[1195] Alternatively, one can employ a valid effective cause[1196] for the allotments to review the existing shares.[1197] The reasons given

[1194] See 9.2.2; The pre-Islamic concepts of inheritance held by the Arabs and the Jews compared to the existing inheritance distribution in Islam.

[1195] See Ibn Qudāmah, *Rawḍah*, 1/455.

[1196] A valid effective cause (*ʿillah*) of a ruling may be explicitly expressed in a text or deduced from it. When it is deduced, it must fulfil certain conditions, including being consistent with the relevant legal ruling in all instances where the ruling is applicable according to Islamic legal theorists, See Ibn Qudāmah, *Rawḍah*, 2/802 and 839-868.

to justify equal inheritance fail to qualify as valid justifications for reviewing the inheritance distribution according to Ibn Qudāmah's interpretive approach. For instances where men are allotted more than their female counterparts in the inheritance distribution, the study finds that the financial burden imposed on men does not seem to be the effective cause for their shares, even though it can be noted as a possible logic behind their benefit. Precedents from the era of the Prophet, such as the case of Umm Salamah - the Prophet's wife - who could be described as the breadwinner for her children, Zaynab al-Thaqafiyyah, who used to spend on her husband, ʿAbdullāh ibn Masʿūd (d.32/650) and some orphans under her guardianship, the inheritance of the insane, and other heirs who make no financial contributions towards their families indicate that the economic circumstance and financial contributions to a person family cannot be considered a valid reason to review the allotted shares as noted earlier.

This chapter takes the view that it is essential to consider the broader perspective of Islamic law and its objectives when undertaking any reform project in Islamic inheritance law. This involves consciously distinguishing between explicit and apparent interpretations of the relevant texts on inheritance law to identify which texts are open to *taʾwīl* and which are not. Furthermore, understanding the holistic framework of Islamic law and its objectives and considering all potential factors that the Lawgiver may have regarded before stipulating a ruling, such as in inheritance distribution, is crucial to avoid conflicting with explicit statements in the texts of the Qurʾān and Sunnah.

Thirdly, the study found that the *maṣlaḥah* of the inheritance distribution has a broader scope, including the worldly and spiritual benefits for both the deceased and their successors. So, it appears unreasonable to restrict the *maṣlaḥah* of inheritance to the worldly welfare of women alone to call for a review of the allotted shares. Indeed, the welfare and dignity of women must not be compromised in Islam. But the *maṣlaḥah* of women must not be considered in isolation from other objectives of the inheritance law.

The study further demonstrated that what is regarded as equality, discrimination, or privilege may be relative, so it must not be the sole reason for legal changes. The competition for rights and privileges is usually based on bickering and quibbles

[1197] Ibn Qudāmah, *al-Mughnī*, 4/404.

(*mushāḥḥah*).[1198] Hence, even though the pursuit of the rights and privileges of women is essential, it must not be at the expense of the greater welfare of Muslims, which the Lawgiver has considered in Islamic law and ethics. Regarding the *maṣlaḥah* in the inheritance distribution, an examination of the relevant texts reveals that the Lawgiver considers the worldly and spiritual interests of the *mukallaf*; therefore, the spiritual benefits of the inheritance distribution must not be overlooked in favour of worldly benefits.

[1198] Jamāl al-Dīn ʿAbd al-Raḥmān ibn Ḥasan al-Isnawī, *al-Tamhīd fī Takhrīj al-Furūʿ ʿalā al-Uṣūl* (Beirut: Muʾassasah al-Risālah, 1981), 515.

Chapter 10: Conclusion

The current discussion on interpretive approaches to Islam's legal and ethical texts underscores the need for a more flexible interpretive framework to meet the diverse needs of Muslims in different contexts. This thesis delved into the conceptual and methodological contributions of the Ḥanbalī jurist Ibn Qudāmah to explore the flexibility in his interpretive approach and its relevance in interpreting a range of legal and ethical texts of the Qurʾān and Sunnah in today's context.

This study did not aim to compare the modernist-rationalist and the classical approaches to interpreting the legal and ethical texts of the Qurʾān and Sunnah. Instead, it focused on exploring the areas and extent of flexibility, as perceived by classical Muslim jurists and legal theorists, with a specific emphasis on Ibn Qudāmah's approach.

10.1 Key Findings

Ibn Qudāmah's interpretive approach mirrors the approach embraced by most classical Muslim scholars, which emphasises that the interpretation of a text relies on the clarity of its message. It underscores the essence of discerning God's intent (*murād Allāh*) and the underlying reason for a particular text or ruling, which play a central role in understanding or interpreting the relevant text. Additionally, he advocates for adherence to linguistic principles in regulating the interpretation and usage of words.

Ibn Qudāmah's emphasis on the importance of understanding God's intent in legal and ethical texts of the Qurʾān challenges the idea that interpretations of Islamic legal and ethical texts should be based solely on the literal meaning without considering the author's intent. The notion of text-compelled meaning draws from contemporary studies in the philosophy of linguistics, which indicate that the literal meaning of a text may differ from the author's intended meaning and the reader's or listener's understanding. However, this proposition for a text-compelled meaning is challenged by the role of the Prophet as the elucidator of the revelation, as mentioned in Q.16:44. Ibn Qudāmah's approach, therefore, does not support assuming a compelled meaning of a text devoid of the Lawgiver's intent as it contradicts the message underscored in Q.16:44.

In the subsequent sections, the key findings and contributions of this thesis are summarised.

10.1.1 *Bayān* (Clarification)

The study found that the problem of clarity and ambiguity is a linguistic one rather than an interpretive claim. When the message conveyed by a text is ambiguous or requires further explanations for implementation, Ibn Qudāmah holds that clarifications must be sought from the Lawgiver, either through the Qurʾān or the Sunnah of the Prophet, before interpreting it. This approach restricts any interpretation based on assumptions regarding ambiguous texts (*mujmal*) that lack substantiation from either the Qurʾān or the Sunnah. However, when the message conveyed by a text can be understood clearly, Ibn Qudāmah maintains that there is no need to reinterpret it unless there is a valid reason to do so. This could be an underlying reason for establishing a specific ruling in the form of *maṣlaḥah*, *ḥikmah*, or social practice as long as it can be established as the effective cause of that ruling. It may also be a matter of necessity (*ḍarūrah*) that calls for a concession to that ruling in a particular context. However, such a concession does not change the initial ruling. It has limited application (*al-ḍarūrāt tuqaddar bi qadarihā*),[1199] just as a person under extreme hunger or thirst is allowed to consume something unlawful to survive. This is the exact reason for averting the punishment for stealing if it was necessary to save a life, according to Ibn Qudāmah.[1200]

The thesis found that the classical legal theorists' approach to *ijtihād* highlights two essential aspects: *ijtihād*, which revokes the explicit meaning of a text, and *ijtihād* in comprehending a text. It uncovered the inconsistent use of the term *naṣṣ* by Muslim jurists and legal theorists, which leads to confusion, particularly regarding texts (*nuṣūṣ*) that are open to *ijtihād*.

10.1.2 *Naskh* (Abrogation)

The study found that the message conveyed by an explicit text cannot be overlooked unless it has been abrogated. In classical Islamic scholarship, the abrogation of a text and its associated legal or ethical ruling is considered the exclusive prerogative of the Lawgiver. However, the modernist reform project seeks to expand this concept, arguing that legal and ethical rulings of the Qurʾān and Sunnah can evolve in response to

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[1199] Al-Zarqā, *Sharḥ al-Qawāʿid*, 187.

[1200] As discussed in Chapter Six, Section 6.2, pages 164-166. See also Ibn Qudāmah, *al-Mughnī*, 12/462-463.

changing social circumstances. The challenge of integrating the modernist perspective within the traditional interpretive framework, as outlined by Ibn Qudāmah, lies in the latter's emphasis on the Lawgiver as the sole authority capable of abrogating a text or its ruling. For Ibn Qudāmah, this process must be established through authentic transmission from the Qurʾān or Sunnah, not reasoning, consensus, or analogy.

This position lays the groundwork for a more in-depth examination of Ibn Qudāmah's framework, particularly his perspective on the flexibility of applying rulings based on their underlying rationale.

10.1.3 Flexibility Based on the Underlying Reason of a Ruling: the Effective Cause (*ʿIllah*), *Ḥikmah*, or *Maṣlaḥah*

In addition to abrogation, Ibn Qudāmah's interpretive model recognises the relevance of the underlying reason in reviewing a ruling in an explicit text when that reason is no longer applicable or relevant. The thesis found that, unlike the Ẓāhirīs who reject legal deductions based on analogy, Ibn Qudāmah's interpretive approach introduces some flexibility based on the underlying reason or effective cause for a specific ruling to reinterpret the relevant laws when the underlying reasons are no longer valid. This approach is rooted in the well-known legal maxim: *al-ḥukm yadūr maʿa ʿillatihī wujūdan waʿadaman* (a ruling is always consistent with its effective cause).[1201]

The study found that most modernists and reformers often utilise the concept of public interest (*maṣlaḥah*) and *ḥikmah* as tools to re-evaluate many legal texts and rulings when the application of a particular text appears to conflict with public interest or the welfare of people. In this context, *maṣlaḥah* and *ḥikmah* function as tools to introduce flexibility in interpreting those texts or rulings by modernists. Upon analysing Ibn Qudāmah's interpretive approach, it becomes evident that *maṣlaḥah* can be utilised to review legal interpretation on condition that the said *maṣlaḥah* is established as the rationale behind the legal injunction in question. Once established, applying the injunction will be contingent on the relevance of the *maṣlaḥah* in different circumstances. However, Ibn Qudāmah's examination of *maṣlaḥah* indicates that he confines the use of *maṣlaḥah* in legal deductions to those endorsed by the Lawgiver (in

[1201] Al-Sarakhsī, *Uṣūl*, 2/182; al-Samʿānī, *Qawāṭiʿ*, 2/153; Ibn Qudāmah, *al-Mughnī*, 4/404.

the Qurʾān or Sunnah). Hence, he disapproves of *maṣlaḥah* that the Lawgiver has not endorsed for legal deductions.

Conversely, this thesis found that in practice, the four Sunni legal schools utilise *maṣlaḥah mursalah* (public interest or welfare not explicitly approved or dismissed by the Lawgiver) for legal reasoning regarding matters that lack specific rulings in the Qurʾān and Sunnah through *qiyās shabah* (analogy by resemblance). This thesis discovered that *maṣlaḥah mursalah* is an effective tool for deriving legal verdicts in such cases. However, this thesis also emphasises that applying *maṣlaḥah mursalah* in legal analysis and reform should not focus solely on material benefits but must also consider the spiritual well-being of the *mukallaf* (the one subjected to the law) to ensure a comprehensive approach that benefits them, both in this life and the hereafter.

For *ḥikmah*, the study found that Ibn Qudāmah relies on *ḥikmah* for legal deductions and analogies when *ḥikmah* can be applied alongside the relevant effective cause of a ruling or when it is supported by a valid proof that appears to be specific to the legal ruling under consideration. Other than these scenarios, he dismisses the use of *ḥikmah*, and he describes such an application as holding onto *ḥikmah* without any basis to support it (*taʿalluq bi al-ḥikmah min ghayr aṣl yashhadu lahā*).[1202] This finding supports the general view that *ḥikmah* is not a consistently reliable tool for legal deductions, as it lacks standardisation (*ghayr munḍabiṭ*) in most cases. Hence, its restricted use for legal reasoning in Ibn Qudāmah's approach.

10.1.3.1 Changes in Socio-historical Context

Many modernists like Abdullah Saeed look to changes in social context to push for a review and reform of Islamic law and ethics. However, the study found that the type of laws that must change due to social transformations are those for which the social circumstances of people were taken into account when they were formulated, such as when a social practice is the effective cause for a legal ruling or when the meaning of a text relies on existing social norms and practices to be understood or implemented. Ibn Qudāmah demonstrates this in his reliance on valid customs, norms, and usages to determine the meanings (*taḥdīdāt*) of legal concepts that the Lawgiver has left undefined. He also employs social practices to make estimations (*taqdīrāt*) regarding

[1202] Ibn Qudāmah, *al-Mughnī*, 12/46.

variables such as entitlements and responsibilities that the Lawgiver has left open. Unqualified legal rulings by the Lawgiver may also be determined and restricted to the norms of a particular society when necessary.

When there is conflict between social practices and the legal texts, most Muslim jurists and legal theorists, such as Ibn Qudāmah, strictly oppose disregarding the Lawgiver's ruling on specific social practices unless it can be demonstrated that the ruling has been revoked. The examination of the relationship between the Islamic legal texts (*nuṣūṣ sharʿiyyah*) and customary practices (*ʿurf*) in this thesis shows that many pre-Islamic practices were modified to align with Islamic ethos through the texts of the Qurʾān and Sunnah, with the overarching focus being on promoting human dignity and interest according to what is deemed appropriate in the eyes of Allah. Therefore, the study concludes that when there is an indication that the Lawgiver has endorsed or abolished a particular norm or practice, it is crucial to adhere to those specific rulings even if they may not seem immediately beneficial, just as some practices were abolished during the era of the revelation even though they seemed appropriate and beneficial to the pre-Islamic Arab community.

The study observes that when most Muslim jurists rely on valid social norms and practices in legal interpretations, especially to particularise the implication of a general text, they typically do not consider these norms as inherently authoritative. Instead, they often substantiate their reliance on these practices through supporting evidence. This evidence may take the form of corroborating texts that endorse the practice or norm, the tacit approval of the Prophet, *ijmāʿ*, *ḍarūrah*, or *maṣlaḥah*. These specific references (*mukhaṣṣiṣāt*) are considered authoritative rather than the social practice as Abū Sunnah (d.1424/2003) has observed.[1203]

10.2 The Flexibility to Reinterpret the Apparent Meaning of a Text (*Taʾwīl*)

Chapter four of this thesis notes that a text may be open to two or more interpretations. When one of these interpretations is apparent, it is considered the *ẓāhir*. According to Ibn Qudāmah's interpretive approach, the most evident interpretation must take precedence over the less obvious one. This concept encompasses the interpretations of literal (*ḥaqīqah)* and nonliteral (*majāz)*, command (*amr*) and prohibitions (*nahy*), the

[1203] Abū Sunnah, *al-ʿUrf*, 95-101.

generality of a text as there is a possibility of particularisation (*takhṣīṣ*) and implicature (*mafhūm*) of a text. Even though Ibn Qudāmah's interpretive approach gives precedence to apparent interpretations of a text over its non-apparent interpretation, he is open to accepting diversions from the apparent meaning when the less-apparent meaning is linguistically plausible and strongly supported by a *qarīnah*, another text, or *qiyās rājiḥ*. Thus, a reasonable reinterpretation (*taʾwīl*) of an apparent text must comply with a set of conditions to provide a reliable framework for engaging with the texts of the Qurʾān and Sunnah.

To provide a reliable framework for interpreting the texts of the Qurʾān and Sunnah, the study found that Ibn Qudāmah recommends a reasonable reinterpretation (*taʾwīl*) of apparent meanings, provided it adheres to specific conditions. This reinterpretation must be guided by the conventional usages of the speaker, contextual evidence (*qarāʾin*), and the speaker's intent when identifiable. Such a flexible approach allows for a nuanced application of Islamic law and ethics. The validity of any reinterpretation depends on the reasons provided, with priority given to the most compelling interpretation. Islamic legal theorists generally prefer *dalālah al-manṭūq* (literal or word-for-word interpretation) as it is considered the most reliable and authentic. They apply counter-implications (*mafhūm al-mukhālafah*) cautiously, avoiding them when there is evidence suggesting that the text was not intended to convey a divergent meaning or ruling, particularly regarding unstated rulings.

Furthermore, while using specific references to particularise the generality of a text may indicate Ibn Qudāmah's flexibility, a close examination of the specific references restricts the flexibility to only instances when departures from the apparent meanings of general texts are supported by textual evidence or common sense. Therefore, when reasoning is employed to depart from the apparent meaning of a text, it is required to produce an understanding based on common sense or necessary knowledge (*ʿilm ḍarūrī*). In this sense, the use of sense-perception (*dalīl al-ḥiss*) and reasoning (*dalīl ʿaql*) for interpreting a general text was noted as falling under the principle of using a general idea to represent a specific object (*al-ʿāmm al-ladhī urīda bihī khāṣṣ*).

10.3 The Relevance of Ibn Qudāmah's Interpretive Approach Today: Gender Equality Concerns in Islamic Inheritance

The study observed that the Islamic inheritance system was designed to rectify the unfair pre-Islamic distribution, which favoured the strong at the expense of the weak,

including women and children. It found that the current distribution does not necessarily discriminate against women, as there are many instances where women receive shares exceeding those of their male counterparts. Additionally, the study validated the hadith establishing residual inheritance, which some modern reformists, such as Suhaylah Zayn al-ʿĀbidīn and Farīd ibn Balqāsim, argue should be revoked due to concerns over the hadith's validity.

The study concluded that the arguments presented by proponents of equal inheritance for both genders do not align with Ibn Qudāmah's interpretive framework. According to Ibn Qudāmah, a valid, authentic transmission must indicate the abrogation of the Qurʾānic distribution before any reform can be considered. The study found no such indication. Additionally, factors such as worldly benefits (*maṣlaḥah dunyawiyyah*), women's economic situations, and their financial contributions in contemporary society cannot be considered valid effective causes from Ibn Qudāmah's perspective. Similarly, the financial burden imposed on men as the *ḥikmah* (wisdom) for larger shares for some males cannot be upheld, as Ibn Qudāmah rejects using *ḥikmah* in legal analysis when it lacks a solid legal basis.

Finally, the study concluded that Ibn Qudāmah's interpretive approach strongly opposes advocating for equal inheritance based on contemporary concerns, as there is no compelling textual basis or valid effective cause to justify the revision of the existing distribution.

10.4 Final Remarks

The research reveals that both traditional Islamic scholarship and modernist thinkers agree on the possibility of reviewing or reforming Islamic law and ethics. Whereas modernists base their approach on the liberty of an interpreter, their ability to apply creative approaches, and contemporary philosophical concepts to reconsider the interpretation of Islamic legal and ethical texts, traditional Muslim scholars, such as Ibn Qudāmah, base their interpretations on discerning and applying God's intent in the legal and ethical texts. God's intent, as found from the analysis of Ibn Qudāmah's approach, can be determined from the elucidation of the Prophet, derived from the underlying reason for a legal ruling, or deduced from other relevant texts.

Ibn Qudāmah's interpretive flexibility is found to be limited to matters that are open to *ijtihād*. These matters are determined by their effective causes, compelling evidence that

strengthens a less obvious meaning of a text over its apparent meaning, or laws that the Lawgiver has left open to be defined or estimated based on social norms. However, he does not consider socio-historical contexts authoritative in revoking a legal ruling. Additionally, he does not consider any situation perceived to contain *maṣlaḥah* or *ḥikmah* to require a review of a legal ruling unless a specific context can be established as the effective cause for that ruling.

The limited flexibility in Ibn Qudāmah's interpretive approach might be seen by some modernists as a sign of its limited relevance today. However, this thesis offers a different perspective, as Ibn Qudāmah's framework emphasises the importance of critically examining the grounds for re-evaluating rulings established by the Qurʾān or Sunnah. This examination should be applied to modern advocacies such as shifts in socio-historical context, perceived *maṣlaḥah*, *ḥikmah*, contemporary philosophical concepts, and the innovative capacity of the interpreter. Such an approach is crucial for preserving the sanctity of the legal texts as sources of guidance. Moreover, it aligns with the view advocated by scholars like Abdullah Saeed, who emphasises the importance of context with proper guidance in interpreting Islamic legal and ethical texts.[1204] Additionally, Ibn Qudāmah's framework allows for alleviating difficulties based on the principle that 'necessities permit prohibitions' (*al-ḍarūrāt tubīḥu al-maḥẓūrāt*) when absolutely necessary.[1205]

The study advocates for an interpretive approach that emphasises both authorial intent and socio-historical contexts in modern Islamic legal reforms, particularly when these contexts can be substantiated as the basis for specific legal rulings. It suggests exploring the expansion of the concept of necessities (*ḍarūrah*/*ḍarūrāt*) as a mechanism for legal reforms in specific cases. Future research should explore how different schools of thought within Islamic jurisprudence apply these concepts and whether they can offer new interpretations to address contemporary challenges.

Given that the study did not examine the potential of *waṣiyyah* (will) and *waqf* (endowment) to provide additional financial support for certain heirs, further research is needed to explore these mechanisms as tools for reforming inheritance law. Specifically,

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[1204] Saeed, *Interpreting*, 89.

[1205] See, for instance, Ibn Qudāmah, *al-Mughnī*, 1/83 and 3/316-319.

future studies could examine how *waṣiyyah* and *waqf* could complement the traditional inheritance system to ensure a more equitable distribution of wealth, particularly in cases where modern societal needs, such as financial support for marginalised heirs, are at stake. Additionally, research could investigate whether non-compliance with rights and responsibilities among heirs contributes to the perceived structural imbalances in the current inheritance distribution system. Comparative studies with secular legal systems may provide valuable insights into the enforcement of laws that assist disadvantaged family members. For example, laws such as child support, which have proven effective in addressing child neglect in many countries, suggest that similar approaches might help resolve some of the challenges in Islamic inheritance distribution.

Appendices

Appendix 1

Definition and Classification of *Ḥaqīqah* and *Majāz*

Ḥaqīqah is commonly defined as a word used in its lexical sense, whereas *majāz* is noted as any word used with a connotation different from its literal meaning.[1206] For example, the word *baḥr* (sea), in its literal sense, refers to a large salty water body. In a nonliteral sense (*majāz*), it could refer to an extensively knowledgeable person.[1207] By this definition, *ḥaqīqah* is restricted to the lexical meaning of a word, while *majāz* comprises figurative usages, customary usage (*istiʿmāl ʿurfī*) and juristic usage (*istiʿmāl sharʿī)* because these usages of words give different connotations from their initially assigned meanings. However, we find some legal theorists who endorse the definition above, like al-Juwaynī (d.438/1047) and Abū al-Ḥusayn al-Baṣrī (d.436/1044), classify *ḥaqīqah* into *waḍʿiyyah or lughawiyyah*, *ʿurfiyyah*, and *sharʿiyyah*.[1208] However, this categorisation is rather dependent on the notion that *ḥaqīqah* is a word used to imply the meaning assigned to it by its users (by convention), and *majāz* is a word used to imply a nonliteral meaning.[1209]

In terms of the literal and nonliteral implications of a noun, Ibn Qudāmah classifies nouns into four categories: *ḥaqīqah waḍʿiyyah/lughawiyyah* (original or lexical meaning), *ḥaqīqah ʿurfiyyah* (customary usage/meaning), *ḥaqīqah sharʿiyyah* (juristic meaning) and *majāz* (metaphoric or nonliteral meaning).[1210] His limitation of *ḥaqīqah* and *majāz* to nouns is because it is the most common area of discussion among legal

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[1206] Abū Yaʿlā, *al-ʿUddah*, 1/172; al-Baghdādī, *al-Faqīh*, 1/213; al-Juwaynī, *al-Talkhīṣ*, 1/185; al-Juwaynī, *al-Waraqāt*, 9.

[1207] Al-Khaṭīb al-Baghdādī, *al-Faqīh*, 1/213.

[1208] Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/12; al-Juwaynī, *al-Waraqāt*, 9.

[1209] Abū Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/11: Abū Yaʿlā, *al-ʿUddah*, 1/172; Al-Juwaynī, *al-Waraqāt*, 9; Abū al-Muẓaffar Manṣūr ibn Muḥammad al-Samʿānī, *Qawāṭiʿ al-Adillah fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1999), 1/269; Abū Ḥāmid al-Ghazālī, *al-Mustaṣfā* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1993),186; Ibn Qudāmah, *Rawḍah*, 1/448.

[1210] Ibn Qudāmah, *Rawḍah*, 1/442. See also, Gleave, *Islam*, 177.

theorists.[1211] However, other legal theorists, like Najm al-Dīn al-Ṭūfī (d.716/1316), have preferred the term *alfāẓ* (words/vocables) to include verbs and particles, per the norms of Arabic linguistics.[1212]

Accordingly, Ibn Qudāmah defines *ḥaqīqah waḍʿiyyah*/*lughawiyyah* as a word used in its lexical sense, such as employing the word *asad* (lion) to refer to its originally assigned meaning: the predatory wild feline.[1213] He refers to *ḥaqīqah ʿurfiyyah* as a word used to imply a conventional meaning that has become the prevalent meaning instead of its original meaning.[1214] For instance, the word *dābbah*, commonly understood as an animal, specifically a four-legged animal, originally referred to any living thing that walks or creeps on the earth.[1215] With regard to *ḥaqīqah sharʿiyyah*, Ibn Qudāmah defines it as a word used by the Lawgiver (Shāriʿ) to indicate a juristic or legal connotation (*maʿnan sharʿī*).[1216] *Ṣalāh*, for example, literally means prayer. However, in Islamic usages, it means a specific form of worship comprising actions and utterances that begins with *takbīr* (saying: '*Allāh Akbar*') and ends with *taslīm* (saying: *salām*).[1217]

The last category of words in terms of their literal and nonliteral implications is *majāz*. Ibn Qudāmah defines it as 'a word employed with a meaning that differs from its assigned definition within the bounds of acceptable usage (*ʿalā wajhin yaṣiḥḥ*).'[1218]

The various word categories, ranging from literal to nonliteral meanings, reflect the diverse interpretations that a word can have in different situations. However, Ibn Qudāmah cautions against haphazard usages when he emphasises that deviating the usage of a word from the literal meaning that has been assigned to it must be within

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[1211] As clarified by Najm al-Dīn al-Ṭūfī, See Najm al-Dīn Sulayman ibn ʿAbd al-Qawī al-Ṭūfī, *Sharḥ Mukhtaṣar al-Rawḍah* (Beirut: Muʾassasah al-Risālah, 1987), 1/484.

[1212] Al-Ṭūfī, *Sharḥ,* 1/484.

[1213] See Ibn Qudāmah, *Rawḍah*, 1/442.

[1214] Ibid, 1/443.

[1215] Ibid; Gleave, *Islam*, 177.

[1216] Ibid.

[1217] Ibn Qudāmah, *Rawḍah*, 1/443; Wizārah al-Shuʾūn al-Islāmiyyah wa al-Awqāf wa al-Daʿwah wa al-Irshād, Saudi Arabia, *al-Fiqh al-Muyassar fī Ḍaʾu al-Kitāb wa al-Sunnah* (Madinah: King Fahd Complex for the Printing of the Holy Qurʾān, 1424 AH), 43.

[1218] Ibn Qudāmah, *Rawḍah*, 1/448.

acceptable limits. Different usages of a word for variant implications can be problematic, especially when one is not qualified to distinguish between the literal and nonliteral interpretations of a word. Also, a problem could be encountered when literal and nonliteral meanings of a word are arguably acceptable interpretations of the word in a text or an expression.

Appendix 2

Definition of *Naṣṣ*, *Ẓāhir* and *Mujmal*

Linguistically, depending on how clear or ambiguous an expression conveys a message, experts in the Arabic language have classified expressions into *naṣṣ* (explicit), *ẓāhir* (apparent) or *mujmal* (imprecise or ambiguous[1219]).[1220] Islamic legal theorists seem to follow the same classification in determining the clarity (*wuḍūḥ*) of the message conveyed by the texts of the Qurʾān and Sunnah.[1221] This section explores the meaning of *naṣṣ*, *ẓāhir*, and *mujmal* as employed by Islamic legal theorists.

Naṣṣ

Islamic legal theorists employ the term *naṣṣ* for three different connotations. The first is to differentiate textual proof from reasoning. In this sense, every text of the Qurʾān and Sunnah is referred to as *naṣṣ* regardless of whether the message it conveys is explicit or ambiguous.[1222] The second is when it is employed in terms of clarity or ambiguity of the messages it conveys; in this instance, *naṣṣ* refers to a text that carries an explicit meaning in contrast to ambiguous texts and those that have an apparent meaning out of other possible interpretations.[1223] Thirdly, it may also be utilised loosely to imply a text with an apparent (*ẓāhir*) meaning, particularly when the other possible meanings are weak and cannot be supported.[1224] The different usages of *naṣṣ* may be a problem, especially for readers not conversant with the other usages or when a particular usage is unclear.

[1219] *Al-Mujmal* is mostly translated as ambiguous, but Islamic legal theorists use it to refer to a text that does not give a precise implication, as we will come to know later; for this reason, I would prefer to call it 'imprecise'.

[1220] Abū al-Baqāʾ Ayyūb ibn Mūsā al-Ḥusaynī, *al-Kulliyyāt Muʿjam fī al-Muṣṭalaḥāt wa al-Furūq al-Lughawiyyah* (Beirut: Muʾassasah al-Risālah, n.d.), 845.

[1221] Ibn Qudāmah, *Rawḍah*, 1/454; al-Ṭūfī, *Sharḥ*, 1/553; Muḥammad Dukūrī, *al-Qaṭʿiyyah min al-Adillah al-Arbaʿah* (Madinah: Islamic University of Madinah Research Directorate, 1420AH), 132.

[1222] Al-Ghazālī, *al-Mustaṣfā*, *196*; Ibn Qudāmah, *Rawḍah*, 1/506-508; ʿIyāḍ ibn Nāmī al-Sulamī, *Uṣūl al-Fiqh al-Ladhī lā Yasʿu al-Faqīhu Jahluhā* (Riyadh: Dār al-Tadmuriyyah, 2005), 390; al-Qarāfī, *Sharḥ*, 36.

[1223] Ibid.

[1224] Ibid.

However, regarding the clarity and ambiguity of a text or statement, Islamic legal theorists, including Ibn Qudāmah, employ the term *naṣṣ* to distinguish it from other texts that may be described as *ẓāhir* or *mujmal*. Hence, they sometimes use the term *naṣṣ ṣarīḥ* to refer to *naṣṣ* in its technical sense.[1225] Technically, *naṣṣ* is a text or action that 'conveys its intended meaning with no other possible or alternative interpretation.'[1226] Or that which conveys only one meaning.[1227] For example, a person who combines *ʿumrah* and *ḥajj* on a single journey (*ḥajj al-tamattuʿ* or *al-qirān*) is required to sacrifice an animal or if they are not able to afford the sacrifice, Q.2:196 states that: 'And whoever cannot find [or afford such an animal] - then a fast of three days during Hajj and seven when you have returned [home]. Those are ten complete [days].' Islamic legal theorists regard '…Those are ten complete (days)' as an explicit statement.[1228]

Ẓāhir

Ẓāhir means 'the manifest' or 'the apparent'.[1229] In Islamic legal theory, it refers to the meaning of a text or a word that readily comes to mind, among other possible interpretations.[1230] In other words, it is the most obvious interpretation of a word or text with more than one interpretation. Al-Ghazālī expounds that *ẓāhir* is a word or text that is open (*iḥtamala*) to *taʾwīl* (a deviation from its apparent interpretation).[1231] For instance, the prohibition of dead animals is expressed as '*ḥurrimat ʿalaykum al-maytah* (prohibited to you are dead animals)' Q.5:3. The apparent meaning of this verse is the proscription against the eating of dead animals.[1232] Even so, the verse may also imply a

[1225] Al-Ghazālī, *al-Mankhūl*, 243.

[1226] Ibn Qudāmah, *Rawḍah*, 1/455.

[1227] Al-Qarāfī, *Nafāʾis*, 2/615; Al-Shanqīṭī, *Mudhakkirah*, 274; al-Namlah, *al-Muhadhdhab*, 3/1078.

[1228] Ibn Qudāmah, *Rawḍah*, 1/455.

[1229] Aḥmad ibn Fāris, *Muʿjam Maqāyīs al-Lughah* (Beirut: Dār al-Fikr, 1979), 3/471; Ibn Manẓūr, *Lisān*, 4/523.

[1230] Ibn Qudāmah, *Rawḍah*, 1/456; al-Ṭūfī, *Sharḥ*, 1/558; al-Shanqīṭī, *Mudhakkirah*, 275; al-Namlah, *al-Muhadhdhab*, 3/1078.

[1231] Al-Ghazālī, *al-Mustaṣfā*, 196.

[1232] Ibn Qudāmah, *Rawḍah*, 1/465.

general prohibition from utilising any part of a dead animal, such as the skin or claws, or consuming its meat, as some of the Prophet's companions assumed.[1233]

Mujmal

Mujmal is commonly translated as ambiguous or imprecise. Literally, it means that which has been put together (*mā juʿilat jumlatan wāḥidatan*)[1234] or 'to sum up'.[1235] It may also refer to being vague or ambiguous (*mubham*).[1236] As a technical term in Islamic legal theory, Islamic legal theorists have offered different definitions of *mujmal* as a technical word in legal theory based on their perspectives of how the term '*mujmal*' is connected to its linguistic meaning.[1237] However, the various definitions seem to agree on one thing: a word or a text described as *mujmal* requires further clarification before it can be applied.[1238] From the works of Islamic legal theorists, *mujmal* can be conceptualised in two ways: The first is in line with the most common definition of the term *mujmal*: 'That which is open to (*iḥtamala*) two things [or meanings], none of which has the merit - to be considered - over the other'.[1239] In other words, the possible interpretations of a text described as *mujmal* are equally feasible.

The second understanding of *mujmal* is that which is clear in a sense but still requires extra information to make it practical.[1240] This form of *mujmal* is described by Islamic legal theorists as that which is clear in one sense (*wāḍiḥ min jihah*) but imprecise

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[1233] Ibn ʿAbbās said: The Messenger of Allah (PBUH) saw a dead goat, which had been given in charity to the freed slave girl of Maymūnah. The Messenger of Allah (PBUH) said: Why did you not remove its skin and utilise it? They (the Companions around the Holy Prophet) said: It is dead. Upon this, he said: It is the eating (of the dead animal) which is prohibited, Muslim, *Ṣaḥīḥ*, 1/190 (Hadith No. 363).

[1234] Al-Ṭūfī, *Sharḥ*, 2/648.

[1235] Al-Āmidī, *al-Iḥkām*, 3/8; Ḥamzah, *Asbāb*, 2.

[1236] Ṣafī al-Dīn Muḥammad ibn ʿAbd Raḥīm al-Hindī, *Nihāyah al-Wuṣūl fī Dirāyah al-Uṣūl* (Makkah; al-Maktabah al-Tijāriyyah, 1996), 5/1791.

[1237] Ibn Qudāmah, *Rawḍah*, 1/464; al-Āmidī, *al-Iḥkām*, 3/8; al-Ṭūfī, *Sharḥ*, 2/649; Ṣafī al-Dīn al-Hindī, *Nihāyah*, 5/1791; Ḥamzah, *Asbāb*, 2.

[1238] Abū Yaʿlā, *al-ʿUddah*, 1/142; Ṣafī al-Dīn al-Hindī, *Nihāyah*, 5/1791.

[1239] Abū al-Walīd Sulaymān al-Bājī, *al-Ishārāt fī Maʿrifah al-Uṣūl wa al-Wijāzah fī Maʿnā al-Dalīl* (Makkah; al-Maktabah al-Makkiyyah, 1996), 7; Ibn Qudāmah, *Rawḍah*, 1/464.

[1240] ʿAbd al-Karīm ibn ʿAbdullāh al-Khuḍayr, *Sharḥ al-Waraqāt fī Uṣūl al-Fiqh* (n.p., n.d., al-Maktabah al-Shāmilah version), 8/22.

in another (*mujmal min jihah*).[1241] The obligatory acts of worship like Salat, Zakat, and Hajj, for example, are expressed in this form of *mujmal*. Even though they are understood to bear their juristic meanings, there is still the need to refer to other texts and the actions of the Prophet before one can know the precise manner in which these rituals must be carried out.[1242] This notion of *mujmal* in Islamic legal theory aligns with its literal meaning, which refers to that which has been put together or summed up as mentioned above.

[1241] Weiss, *The Search*, 441.

[1242] See Ibn Qudāmah, *Rawḍah*, 1/475; al-Khuḍayr, *Sharḥ al-Waraqāt*, 8/22.

Appendix 3

Definition of *Amr* and *Nahy*

Linguistically, *amr* may refer to a command, an act, or an affair.[1243] Technically, *amr* has been defined as an utterance that calls for the commanded person (*maʾmūr*) to comply by performing the required act (*maʾmūr bihī*).[1244] Ibn Qudāmah dismisses this definition as circular since it makes use of definiens that are cognates of *amr* (i.e., *maʾmūr* and *maʾmūr bihī*). This definition is problematic because the definientia cannot be understood without understanding the definiendum. For this reason, Ibn Qudāmah defines *amr* as an authoritative verbal demand by someone in a perceived position of superiority for an act to be executed.[1245]

Regarding *nahy*, it is defined linguistically as the opposite of *amr* or a restriction. It is also referred to as intellect (*ʿaql*) that prevents one from objectionable acts. It may also refer to the act of leaving something (*tark*). It may also refer to reaching a target, the end or peak of something.[1246] Technically, *nahy* has been defined by Islamic legal theorists as an utterance that demands abstinence from an act.[1247] It is also defined as 'A verbally authoritative demand [by someone] in a perceived position of superiority [for another person] to abstain from doing something.'[1248]

The definitions above emphasise that both *amr* and *nahy* must be utterances. Najm al-Dīn al-Ṭūfī (d.716/1316), however, argues that including 'utterance' or 'verbal demand' in the definitions is unnecessary, as commands can be issued non-verbally.[1249] That said, proponents of verbal specifications may view verbal forms as literal indicators of command and prohibition (*ḥaqīqah*) and non-verbal forms as nonliteral indicators

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[1243] Ibn Fāris, *Muʿjam*, 1/137; Majd al-Dīn al-Fayrūzʾābādī, *al-Qāmūs al-Muḥīṭ* (Beirut: Muʾassasah al-Risālah, 2005), 344; al-Zarkashī, *al-Baḥr*, 3/258.

[1244] Al-Ghazālī, *al-Mustaṣfā*, 202; al-Qarāfī, *Nafāʾis*, 3/1120.

[1245] Ibn Qudāmah, *Rawḍah*, 2/485.

[1246] Ibn Fāris, *Muʿjam*, 5/359; Ibn al-Manẓūr, *Lisān*, 15/346.

[1247] Al-Bāqillānī, *al-Taqrīb*, 2/15; al-Ghazālī, *al-Mustaṣfā*, 202.

[1248] Abū Yaʿlā, *al-ʿUddah*, 1/159; al-Shanqīṭī, *Mudhakkirah,* 315.

[1249] Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 2/347.

(*majāz*).[1250] Essentially, *amr* represents an instruction or injunction requiring compliance, while *nahy* denotes one demanding abstinence from an act, both of which can be verbal or non-verbal.

[1250] See Al-Ghazālī, *al-Mustaṣfā*, 202; Al-Ṭūfī, *Sharḥ Mukhtaṣar*, 2/350.

Appendix 4

Definition of ʿ*Umūm* and *Khuṣūṣ*

ʿ*Umūm* is the verbal noun or root word of the verb ʿ*amma* (to comprise). Thus, ʿ*āmm* is its adjectival form, which refers to general, comprehensive or comprises an entire class of things or objects. ʿ*Umūm* is the act of being general. ʿ*Āmm* is the word or thing that is considered general or comprehensive.[1251] In Islamic legal theory, the term ʿ*āmm* has been defined differently by different Islamic legal theorists. Some of these definitions do not distinctly distinguish ʿ*āmm* from other similar linguistic tools like *muṭlaq* (absolute), *mushtarak* (homonym) and *ḥaqīqah wa majāz* that share some characteristics of ʿ*āmm*. A definition must provide a comprehensive meaning that will prevent overlap between the defined item (like ʿ*āmm* in this case) and other terminologies that may be closely related to it (like *muṭlaq*, *mushtarak* and *ḥaqīqah wa majāz* to ʿ*āmm*). Ibn Qudāmah's definition of ʿ*āmm* is one of such definitions that do not adequately distinguish ʿ*āmm* from other related terminologies.

Ibn Qudāmah defines ʿ*āmm* as 'A single word that denotes (*al-dāl ʿalā*) two or more things (*shayʾayni faṣāʿidan*) without any restriction (*muṭlaqan*)'.[1252] Sayf al-Dīn al-Āmidī (d.631/1233) - a leading Ḥanbalī legal theorist who later became a Shāfiʿī - argues that the use of *shayʾ* (a thing) in the definition does not cover 'the non-existent' (*maʿdūm*) and the impossible (*mustaḥīl*) as most Islamic legal theorists have contended. The Muʿtazilīs do not regard the non-existent and the impossible as a thing (*shayʾ*). However, both words - *maʿdūm* and *mustaḥīl* must be covered by the definition of ʿ*āmm*.[1253] His remark was made while refuting al-Ghazālī's definition of ʿ*āmm*,[1254] but it suitably applies to the definition offered by Ibn Qudāmah as well, since both (al-Ghazālī and Ibn Qudāmah) made use of the definiendum '*shayʾ*' in their definitions of the term (ʿ*āmm*).

[1251] Al-Zarkashī, *al-Baḥr*, 4/8.

[1252] Ibn Qudāmah, *Rawḍah*, 2/589.

[1253] Al-Āmidī, *al-Iḥkām*, 2/195, see also Weiss, *The Search*, 384.

[1254] Al-Ghazālī defined *al-*ʿ*āmm* as 'A single word that indicates two or more things (*shayʾayni faṣāʿidan*) from the same perspective (*min jihatin wāḥidatin*)' see al-Ghazālī, *al-Mustaṣfā,* 224.

In addition, Muḥammad al-Amīn al-Shanqīṭī (d.1393/1972) criticises Ibn Qudāmah's definition for not being restrictive to *ʿāmm* as the words '*zawj*' (a pair) and '*shafʿ*' (even) indicate two things, but no one considers the two (*zawj* and *shafʿ*) as *ʿāmm*.[1255] Al-Amīn al-Shanqīṭī, thus, favours the definition offered by Abū al-Ḥusayn al-Baṣrī (d.436/1044) with some modifications. Abū al-Ḥusayn al-Baṣrī defines *ʿāmm* as 'A statement that covers all of that to which it is suited'.[1256] Al-Amīn al-Shanqīṭī considers adding three additional entries necessary to make the definition more comprehensive. The first is the statement: *bi ḥasab waḍʿin wāḥid* (in a single meaning), the second *dafʿatan* (all together) and the last *bilā ḥaṣr* (without any restrictions).[1257] The first restriction is given by al-Rāzī (d.606/1209), while the second and third are from ʿAbdullāh al-Shanqīṭī's (d.1335/1820) definition.[1258] To Muḥammad al-Amīn al-Shanqīṭī, *ʿāmm* can be defined as 'That which covers all of that which is suited (or applicable to) all together in a single meaning (*bi ḥasab waḍʿin wāḥid*) without any restrictions (*dafʿatan bilā ḥaṣr*)'.[1259]

An example of *ʿāmm* in the Qurʾān is: 'There is not a single creature that moves on the earth, but Allah is responsible for its sustenance. He knows where it dwells (*mustaqarahā*) and where it is laid to rest (*mustawdaʿahā*[1260])' Q.11:6. The leading advocate of *maqāṣid sharīʿah* (the objectives of Islamic law) as an approach to resolve juristic differences, Muḥammad al-Ṭāhir ibn ʿĀshūr (d.1393/1973), points out that the linguistic style (*uslūb*) used in the text indicates *ʿumūm* (the generalisation) of Allah's

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[1255] Al-Shanqīṭī, *Mudhakkirah,* 318.

[1256] Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/189.

[1257] Al-Shanqīṭī, *Mudhakkirah,* 318.

[1258] Abū al-Ḥusayn al-Baṣrī defines *ʿāmm* as follows: 'A general statement is a statement that covers all of that to which it is suited' (Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 1/189), Al-Rāzī refutes this meaning and defines it as 'A word that covers all of which it is suited in a single meaning (*bi ḥasab waḍʿin wāḥid*)' (al-Rāzī, *al-Maḥṣūl*, 2/309), In *al-Marāqī al-Suʿūd* by ʿAbdullāh al-Shanqīṭī, another entry is added to qualify the scope of *ʿāmm*, Thus, the author defines *ʿāmm* as 'That which covers all of that which is suited (i.e, which meaning applies to it) at a go without any restrictions (*dafʿatan bilā ḥaṣr*)' (see al-Shanqīṭī, *Nashr*, 1/206). Al-Shawkānī expounds that the definition provided by al-Rāzī would be more reasonable if the term '*dafʿatan*' (all at a go) is included in the definition. See al-Shawkānī, *Irshād,* 2/287.

[1259] Muḥammad ibn Ḥusayn al-Jayzānī, *Maʿālim Uṣūl al-Fiqh ʿinda Ahl al-Sunnah wa al-Jamāʿah* (Saudi Arabia: Dār ibn al-Jawzī, 1427 AH), 412.

[1260] *Mustaqarahā* and *mustawdaʾahā* have been given different translations, Refer to tafsir books like Tafsir ibn Kathīr and others for the different interpretations.

provision for all His creation on earth and His all-encompassing knowledge of all their affairs.[1261] Thus, this text expresses God's universal knowledge and provision for His creation.

Khuṣūṣ and *khāṣṣ* from a linguistic perspective, are the opposite of *ʿumūm* and *ʿāmm,* respectively. Thus, *khuṣūṣ* is to 'Single out part(s) of something from its general class or order',[1262] and *khāṣṣ* is that which has been treated with preference or exception out of a group.[1263] Technically, Islamic legal theorists have employed the word *khāṣṣ* to mean 'A word that implies a single entity or a limited group of things'[1264] and *khuṣūṣ* as 'The state whereby a word implies a single entity or part of what it applies to.'[1265] Others have defined *khāṣṣ* as a word that implies a definite singular meaning or definite entity.'[1266] Based on this understanding, al-Qarāfī defines *takhṣīṣ* as 'Excluding an aspect of the general implication of a word based on sound evidence before applying its legal ruling or verdict.'[1267]

Therefore, *khāṣṣ* can be referred to as a word or statement that refers to a specific entity (a person, an act or an idea) or part(s) of a general classification (of people, activities, or ideas). For example, Qurʾānic text: 'And for those pregnant, their term [waiting period] is until they give birth.' Q.65:4, which outlines a distinct waiting period for pregnant women who are divorced and those who have lost their husbands.[1268]

Islamic legal provisions often include exceptions that shift general rulings (*aḥkām ʿāmmah*) to specific cases. These exceptions arise when two texts on the same subject present different rulings. In such cases, Muslim jurists apply the specific rule to relevant cases while maintaining the general rule for others. This process is called *takhṣīṣ* in Arabic and Islamic legal theory. The question that readily arises is the basis for

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[1261] Ibn ʿĀshūr, *al-Taḥrīr*, 12/5. See also Al-Qurṭubī, *Tafsīr*, 9/6.

[1262] Muḥammad Murtaḍā al-Zubaydī, *Tāj al-ʿArūs* (Kuwait: Wizārah al-Irshād wa al-Anbāʾ, 1965-2001), 17/551.

[1263] Majmaʿ al-Lughah al-ʿArabiyyah, *al-Muʿjam*, 1/237.

[1264] Al-Zarkashī, *al-Baḥr*, 4/324.

[1265] Ibid.

[1266]Al-Sarakhsī, *Uṣūl*, 1/124.

[1267] Al-Qarāfī, *al-ʿAqd*, 2/79.

[1268] See Ibn Qudāmah, *al-Mughnī*, 11/194.

conceding to *takhṣīṣ* in such instances, which are aberrations from some general texts. There are three reasons to explain this.

The first reason for applying *takhṣīṣ* in Islamic legal theory is that it is a linguistic tool that serves to clarify a speaker's intent. General statements are often accompanied by specific details to define their scope. For example, when a speaker makes general and specific statements on a subject, the specific statement refines the general unless evidence suggests otherwise.[1269]

The second reason is that, in Islamic law, the practice since the era of the Prophet's companions has been to particularise a general text with a specific one if both are on the same subject matter, as Ibn Qudāmah observes.[1270] For instance, children are entitled to inherit from their parents as stipulated in Q.4:11. This general ruling was, however, specified by the companions using the hadith: 'Our [we Prophets'] property is not to be inherited, and whatever we leave is to be spent in charity.[1271]

Similarly, regarding divorce, a man can remarry his divorced wife after the first and the second divorces. However, he cannot do so after the third divorce until another person has married and divorced her. This is stipulated in the Qurʾān as: 'And if he (a husband) divorces her (his wife, for the third time) then she is not lawful to him after that until she marries a husband other than him' Q.2:230. This statement is general. However, when the Prophet was asked whether it was lawful for a woman to return to her first husband, who had divorced her three times before her second marriage, if the second husband divorces her before consummation? The Prophet ruled, 'No until he tastes her sweetness' (meaning until the marriage is consummated).[1272] Thus, the Prophet clarified the Qurʾānic text by *takhṣīṣ*.

The third reason for acknowledging *takhṣīṣ* is based on *istiqrāʾ* (extensive investigation). According to Muslim jurists and legal theorists, the prevalent practice in conventional

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[1269] Al-Bāqillānī, *al-Taqrīb*, 3/76; al-Khaṭīb al-Baghdādī, *al-Faqīh*, 1/231; al-Juwaynī, *al-Burhān*, 2/257; al-Ghazālī, *al-Mustaṣfā,* 88; al-Qarāfī, *Nafāʾis,* 5/2101; al-Ṭūfī, *Sharḥ*, 2/550.

[1270] Ibn Qudāmah, *Rawḍah*, 2/639.

[1271] Muslim, *Ṣaḥīḥ*, 3/1377 (Hadith No. 1757).

[1272] Muslim, *Ṣaḥīḥ*, 4/155 (Hadith No. 1433).

usages is that specific statements are employed to clarify general ones on a topic.[1273] Ibn Qudāmah emphasises that Islamic legal theorists generally accept *takhṣīṣ* as a valid method for reconciling general and specific texts.[1274]

[1273] Ibn Qudāmah, *Rawḍah*, 2/640.

[1274] Ibid, 2/632. Frederick Schauer has observed that general aspects of law make the application of the law more consistent and not entirely ad-hoc, while specifications of some aspects of the law are desirable because they facilitate entrenchment and ensure fairness and equality in its application in different circumstances. Karl N Llewellyn, The Theory of Rules (Chicago and London: The University of Chicago Press, 2011), 24.

Appendix 5

Ṣiyagh ʿUmūm -Forms of Generalisation- or *Alfāẓ ʿUmūm* -General Words

After a critical review (*tatabbuʾ*) of Arabic usages as well as the *ʿurf* (conventions) of Qurʾān and the sunnah, most Islamic legal theorists have noted a group of words that denote *ʿumūm* in the Arabic language. These words are known as *ṣiyagh ʿumūm* or *alfāẓ ʿumūm*. These two terminologies are used interchangeably in this discussion. Familiarity with these words is essential because it makes it easy to identify which expressions in the legal texts of the Qurʾān and Sunnah and the Arabic language have universal inferences and which do not. It is also valuable for interpreting the day-to-day interactions of people, particularly in resolving their differences in times of dispute. Thus, one comes to appreciate the different possible interpretations of statements and expressions based on the type of words used in a statement.

While Islamic legal theorists agree on the use of universal or general expressions as a linguistic tool, they differ on whether there are specific words that indicate such expressions (termed in Islamic legal theory as *alfāẓ* or *ṣiyagh ʿumūm*). The *Mālikī* scholar Muḥammad ibn al-Muntāb[1275] and the Ḥanafī jurist Muḥammad ibn Shujāʿ al-Thaljī (d.266/879) both contend that *ʿāmm* has no specific linguistic format and that all the forms listed by others as forms of *ʿāmm* (*ṣiyagh ʿumūm*) equally indicate *khāṣṣ* too. Accordingly, there is always the need for a *qarīnah* (an indicator) to determine whether the form was employed for *ʿāmm* or *khāṣṣ* instead of just relying on the 'word form' (*ṣīghah al-lafẓ*).[1276] The position of these two scholars, however, has been refuted by most *uṣūl* scholars as unfounded. The latter view (by the majority of Islamic legal theorists) posits that evidence from the linguistic and customary usages of the Arabic language and *sharʿī* (legal or juristic) usages suffice in rejecting the former's claim.[1277]

[1275] Al-Shawkānī references Muḥammad ibn al-Muntāb as one of those who argues that there are no specific words for *ʿumūm* (al-Shawkānī, *Irshād,* 1/292), However, I could not find any information on the biography of this Mālikī jurist as per the references available to me, Perhaps he is the Ḥanbalī scholar Abū al-Ṭayyib ʿUthmān ibn ʿAmr ibn al-Muntāb (d.389/999) as claimed by ʿIyāḍ al-Sulamī, See al-Sulamī, *Uṣūl*, 310.

[1276] Ibn Qudāmah, *Rawḍah*, 2/594.

[1277] See Al-Juwaynī, *al-Burhān*, 1/111; al-Shawkānī, *Irshād,* 1/291-293.

Al-Shawkānī (d.1250/1839) - the famous Qurʾān commentator and an Islamic legal theorist - observes that anyone who knows the Arabic language and the usages of Qurʾān and Sunnah can quickly notice the usage of certain word forms (*alfāẓ ʿumūm*) that indicate *ʿumūm*.[1278]

Both the proponents and the opponents of *ṣiyagh ʿumūm* substantiate their positions with evidence of instances where the word forms were employed to mean either *ʿāmm* or *khāṣṣ*. However, it can be noted from their arguments that they all agree that the *alfāẓ ʿumūm* can convey general or specific meanings depending on the context.[1279] Their dispute is, however, centred on whether a *qarīnah* is required to indicate the intended meaning or whether the *alfāẓ ʿumūm* signify a particular connotation by default. On the one hand, the proponents of *alfāẓ ʿumūm* argue that the *alfāẓ ʿumūm* indicate *ʿāmm* and must be generalised by default unless there is an indication (*qarīnah*) that the general meaning was not implied. On the other hand, their opponents contend that the words claimed as *alfāẓ ʿumūm* indeed refer to the minimum number that can be considered as plural (*aqall al-jamʿ* - which is disputed among Islamic legal theorists as either two or three[1280]) but does not necessarily indicate *ʿāmm*.[1281] A third group, the *wāqifiyyah* (undecided), take no sides, arguing that the *alfāẓ ʿumūm* may imply either *ʿāmm* or *khāṣṣ* depending on the context, so they are not specific to either of the two linguistic tools. They contend that the word '*al-muslimūn*' (Muslims) can be interpreted in various ways, such as referring to the smallest group of Muslims (*aqall jamʿ*), all Muslims, or anything in between, such as ten more or less. Therefore, assigning a definitive meaning to the word forms of *ʿāmm* is impossible unless it can be supported by evidence (*qarīnah*).[1282]

To resolve these differences, Ibn Qudāmah pushes for the stance of most Islamic legal theorists based on how the companions of the Prophet treated such word forms. According to him, in addition to the fact that the companions of the Prophet were authorities in Arabic, they were also privileged to learn the legal and ethical texts of the

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[1278] Al-Shawkānī, *Irshād,* 1/293.

[1279] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1/99; Abū Yaʿlā, *al-ʿUddah*, 2/485*;* al-Shawkānī, *Irshād,* 1/293; al-Namlah, *al-Muhadhdhab*, 3/1273 and 4/1469.

[1280] Ibn Qudāmah, *Rawḍah*, 2/608.

[1281] Ibid, 2/594.

[1282] See Ibn Qudāmah, *Rawḍah*, 2/594; al-Ṭūfī, *Sharḥ*, 2/475-476.

Qurʾān and Sunnah directly from the Prophet. These opportunities placed them in a better position to understand and apply the legal and ethical texts of the Qurʾān and Sunnah better than later generations concerning the linguistic and legal implications of the texts of the Qurʾān and the Sunnah. Ibn Qudāmah asserts that they treated the *alfāẓ ʿumūm* in general, whether in the Qurʾān, sunnah and day-to-day linguistic expressions as *ʿāmm* until evidence was found to indicate *takhṣīṣ* (particularisation). He contends that this proves that the word forms of generality (*ṣiyagh ʿumūm*) indicate generalisation by default.[1283] For instance, after the death of the Prophet, his daughter (Fāṭimah d. 11/632) and his wives wanted their shares of what he left behind as their right of inheritance based on the general provision of the Qurʾān for children and wives on inheritance Q.4:11-12.

These women based their demand on this text since women in pre-Islamic Arabia were not entitled to any inheritance before these texts were revealed.[1284] Ibn Qudāmah posits that their argument was not refuted because the word forms *awlādukum* (your children) and *azwājukum* (your spouses) could indicate *khuṣūṣ* or *ʿumūm*. Instead, the companions provided evidence to show that prophets were excluded from the general provisions of these texts. Therefore, the hadith 'Our property is not to be inherited, and whatever we leave is to be spent in charity'[1285] was employed to resolve the matter. Ibn Qudāmah cited many other instances where the companions of the Prophet accepted the interpretation of the *ṣiyagh ʿumūm* as universal by default without refuting any such applications. Instead, they provided evidence to show particularisations when a text that expresses a general provision was found to have been specified. If these word forms did not imply general ideas by default, the best response would have been to point out the misapplication of the *ṣīghah* to mean *ʿumūm* rather than proving *takhṣīṣ* as in the example above.[1286]

Furthermore, Ibn Qudāmah argues that generalisation in communication is an essential linguistic tool. As such, it will be strange for word forms indicating this concept to be

[1283] Ibn Qudāmah, *Rawḍah*, 2/596.

[1284] See Jawād ʿAlī, *al-Mufaṣṣal fī Tārīkh al-ʿArab Qabl al-Islām* (Second edition; Baghdad: Jāmiʿah Baghdād, 1993), 5/566.

[1285] Muslim, *Ṣaḥīḥ* (Hadith No. 1757) 3/1377.

[1286] Ibn Qudāmah, *Rawḍah*, 2/596-600.

overlooked.[1287] Also, anyone who defies a general command is reprimanded for their action, and one who conforms to it is applauded. For example, if one claims they did not see anyone even though they saw a group of people, their statement will be considered contradictory and a lie. This understanding proves the use of *ṣiyagh ʿumūm* to imply universal and general expressions unless there is evidence to suggest *takhṣīṣ* as in the case of excluding the heirs of the Prophet from the general provision of Q.4:11-12 mentioned above.[1288]

Perhaps the strongest argument put forward by the proponents of *ṣiyagh ʿumūm* is the application of word forms by the companions of the Prophet to denote general implications by default. The companions of the Prophet are regarded as having preserved the Arabic language in its purest form. Furthermore, they had the unique opportunity to understand the legal and ethical implications of the Qurʾān and Sunnah directly from the Prophet himself.

What are the word forms that Ibn Qudāmah argues indicate *ʿumūm* by default? To streamline the *alfāẓ ʿumūm*, Ibn Qudāmah summarises them into five categories, which will be examined below.[1289] However, other Islamic legal theorists such as al-Qarāfī and al-Shawkānī state more categories than that.[1290] To be more specific, al-Qarāfī, in his *al-ʿAqd al-Manẓūm fī Khuṣūṣ wa ʿUmūm*, discusses over two hundred *alfāẓ ʿumūm* which he classifies into thirteen categories.[1291]

The following passages will focus on the word forms of *ʿumūm* discussed by Ibn Qudāmah, alongside other notable forms cited by Islamic legal theorists, such as al-Qarāfī, which Ibn Qudāmah did not cover. This comparative approach aims to provide a more comprehensive understanding of the concept.

[1287] Ibid, 2/600.

[1288] Ibid, 2/600.

[1289] Ibid, 2/591.

[1290] Al-Shawkānī, *Irshād,* 1/291.

[1291] Al-Qarāfī, *al-ʿAqd*, 2/5.

The first category of the *alfāẓ ʿumūm* identified by Ibn Qudāmah is any noun that has the prefix *alif* and *lām* (*al-*).[1292] This is known as '*al*' *al-istighrāqiyyah* (the comprehensive, the all-inclusive, or the all-encompassing *al-*). This prefix (*al-*) may refer to an object commonly known to the speaker and the audience. To indicate *ʿāmm*, the prefix must not refer to a definite or an object identifiable between the user and the audience (*li ghayr al-maʿhūd*).[1293] Ibn Qudāmah argues that it denotes generality when used as a prefix to plural nouns (*alfāẓ al-jumūʿ*), *ism al-jins* (common nouns)[1294] or *lafẓ al-wāḥid* (also known as *al-mufrad*).[1295]

The Qurʾānic text 'and the places of worship (*al-masājid*) are for Allah (alone), so do not invoke anyone along with Allah' Q.72:18 is understood in a general sense. This is due to the prefix '*al-*' attached to the plural noun *masājid*. This renders the statement general because no specific mosque is indicated (*laysa li al-maʿhūd*). Thus, the statement covers every *masjid* or place demarcated for the worship of Allah.[1296] Another example is the description of pure and impure water in the hadith of the Prophet: '*Al-māʾ* (water) is pure, and nothing can render it impure except that (an impure substance) which changes its smell, taste, or colour'.[1297] This implies that water is only considered impure when its smell, taste, or colour has changed due to contamination by an impure substance,

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[1292] *Alif* and *lām* are two Arabic alphabets that are used as a prefix to define words with specific meanings or entities. It works like the definite article (the) in the English language.

[1293] Ibn Qudāmah, *Rawḍah*, 2/592.

[1294] *Ism al-jins*: Ibn Qudāmah describes this as nouns with no singular forms. Perhaps he restricted it to the plural or noncountable forms only because *ism jins* may have both singular and plural forms with the addition of *tāʾ* (that describes feminine objects) at the end of the singular forms. See Zayn al-Dīn ʿUmar ibn Muẓaffar ibn al-Wardī, *Sharḥ Alfiyyah Ibn Mālik* (Riyadh: Maktabah al-Rushd, 2008), 2/658. It may be described as any noun that refers to one or more things but does not refer to a specific entity, like *ḥayawān* (animals), *māʾ* (water) and *turāb* (dust or sand). When these words are prefixed with *al-* (*al-ḥayawān, al-māʾ and al-turāb*) they indicate generalisation (*ʿumūm*), See Ibn Qudāmah, *Rawḍah*, 2/592; Yaʿīsh ibn ʿAlī ibn Yaʿīsh, *Sharḥ al-Mufaṣṣal li al-Zamakhsharī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2001), 1/91.

[1295] Ibn Qudāmah, *Rawḍah*, 2/592.

[1296] Al-Ṭabarī, *Tafsīr*, 23/665; al-Qurṭubī, *Tafsīr*, 19/20; Al-Shanqīṭī, *Aḍwāʾ al-Bayān*, 8/320.

[1297] Ibn Mājah, *Sunan,* 1/327(Hadith No. 521).

regardless of the quantity.[1298] These two examples illustrate situations where *lafẓ al-jamʿ* and *ism al-jins* have been employed as *ʿāmm,* respectively.

The third form of '*al*' *al-istighrāqiyyah*, *al-mufrad al-muḥallā bi al-lām* can be illustrated by the Qurʾānic text: 'Indeed *al-insān* (humankind) is in loss' (Q.103:2). Qurʾān exegetes interpret the text as universal, comprising all human beings. Another example can be found in the word *al-sāriq* (the male thief) in Q.5:38 to stipulate the penalty for theft: 'As for the thief, both male and female (*Wa al-sāriq wa al-sāriqah*), cut off their hands…'. This text conveys a universal verdict applicable to all thieves, irrespective of gender, age, or the stolen object. The text explicitly emphasises the law's applicability to both genders, reinforcing the universality of the ruling.

The proponents of *ṣiyagh ʿumūm* have cited numerous examples to demonstrate how the use of '*al*' (*al-istighrāqiyyah*) can imply generalisation in the Arabic language.[1299] According to Ibn Qudāmah, when '*al-*' is employed for a specific reference in the forms discussed, it generally signifies *ʿumūm* unless there is evidence suggesting a deviation towards *khāṣṣ*. In the case of the example on theft in Q.5:38, although Ibn Qudāmah and other Islamic legal theorists agree that the verse conveys a general ruling (*ḥukm ʿāmm*), they also acknowledge specific exemptions in its application.[1300] These exemptions occur when certain conditions are not met, which may appear to deviate from the general principle of applying *ʿumūm* in the verse. Ibn Qudāmah attributes this deviation to specific *shurūṭ* (conditions) necessary for the penalty of theft to apply.[1301] These conditions are examined in Chapter Six, Section 6.1.2.

The second category of *alfāẓ ʿumūm*, according to Ibn Qudāmah, is the use of any of the forms stated in the first category (*ism al-jamʿ*, *ism al-jins* and *al-mufrad*) as an *iḍāfah* (head of a genitive construct) to a definite noun (*maʿrifah*).[1302] An example of this category is *awlādukum* (your children). Adding *awlād* (children) to the possessive pronoun *kum* (your) indicates *ʿumūm*. Thus, '*yūṣīkum Allāhu fī awlādikum*' (Allah

[1298] Ibn Qudāmah, *al-Mughnī,* 1/47; Ibn Qudāmah, *al-Kāfī* 1/31.

[1299] Ibn Qudāmah, *Rawḍah*, 2/592, 604.

[1300] Ibn Qudāmah, *al-Mughnī*, 12/415.

[1301] Ibid, 12/415.

[1302] Ibn Qudāmah, *Rawḍah*, 2/592.

instructs you regarding your children's inheritance) Q.4:11 indicates the right of every child to inherit from their parents. It thus covers all a person's offspring, both males and females, adults and young, the weak and the strong, whether wealthy or poor.[1303]

Najm al-Dīn al-Ṭūfī contends that this category only comprises plurals (plural nouns added to dependent genitive constructs). Put differently, *ism al-mufrad* added to a definite noun or pronoun does not indicate *ʿāmm* since its meaning is restricted to a single entity.[1304] However, it appears some singular nouns (*ism mufrad* or *al-mufrad*) have been employed in the *nuṣūṣ* to imply *ʿāmm* in a genitive construction. This can be demonstrated by the Qurʾānic texts; 'Say who has forbidden the adornment of Allah (*zīnata Allāh*) which He has provided for His servants' Q.7:32 and 'If you were to count the blessings or favours of Allah (*niʿmata Allāh*) you can never reckon them' Q.16:18. These examples substantiate Ibn Qudāmah's position that the addition of a singular noun (*mufrad*) to a dependent genitive construct makes the *mufrad* general. However, applying this principle as a straitjacket may be problematic with other texts. For instance, in the text, 'Say verily my prayer (*ṣalātī*), and my sacrifice (*nusukī*), my life and my death are all for Allah' Q.6:162, singular nouns are added to definite nouns in genitive constructions to denote both general and specific entities. On the one hand, *ṣalātī* and *nusukī* both cover all the prayers and sacrifices of a person and are not specific to a particular prayer or sacrifice, even though the words employed are in the singular form. On the other hand, *maḥyāya* (my life) and *mamātī* (my death) are singular too but refer to only life, which cannot be generalised in this context. This makes the use of this word form to mean generality more complex.

To assume that al-Ṭūfī's claim only refers to instances where singular nouns (*mufrad*) have been employed in genitive expressions for specific reference (*li al-maʿhūd*) do not resolve the problem of this word form adequately. However, suppose the nouns cited in the above examples are regarded as common nouns (*asmāʾ al-ajnās*), and the singular nouns in the examples above and the likes provided in support of Ibn Qudāmah's stance are considered as *ism al-jins*. In that case, the examples will fall outside this dispute

[1303] Fakhr al-Dīn Muḥammad ibn ʿUmar al-Rāzī, *Mafātīḥ al-Ghayb* (*Tafsīr al-Rāzī*) (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1420 AH), 9/502; al-Qurṭubī, *Tafsīr*, 5/59.

[1304] Al-Ṭūfī, *Sharḥ*, 2/467.

since both sides agree that *ism al-jins* in a genitive structure implies *ʿumūm*. Thus, *al-mufrad al-mudāf* will be considered a word form for generalisation with an additional condition that it must be *ism al-jins*.[1305] However, Ibn Qudāmah applies this *lafẓ* (*al-mufrad al-mudāf*) as *ʿāmm* irrespective of whether it is *ism al-jins* or not. This is evident in his analysis of a man with four wives who says: 'My wife (*zawjatī*) is divorced' without exactly intending any of them. According to Ibn Qudāmah, this affects the statuses of all his wives since *al-mufrad al-mudāf* denotes *ʿumūm*.[1306] In other words, they all become divorced based on that statement since he did not have any specific wife in mind while making that utterance.

The third of the *alfāẓ ʿumūm* is *adawāt sharṭ* (conditional tools).[1307] These may be in the form of *asmāʾ* (nouns) and *aḥruf/ḥurūf* (letters). Conditional tools in general (whether *ism* or *ḥarf*) render an indefinite noun (*nakirah*) in a conditional statement to have a general meaning.[1308] However, unlike *ḥurūf sharṭ*, *asmāʾ sharṭ* like *man* (who), *mā* (what), *ayyu* (whichever or whoever), *ayna* (where), *matā* (when) imply *ʿumūm* by themselves.[1309] An example of rendering *nakirah* a general interpretation (*ʿāmm*) by employing *adawāt sharṭ* is as follows: '*ayna mā* (wherever) you may be death will find you' Q.4:78. Another illustration can be in the following text: 'O you who believe *in* (if) a *fāsiq* (an immoral, evildoer or disobedient person) comes to you with any information, verify it, so that you do not harm people out of ignorance and become regretful of your actions' Q.49:6. The word *fāsiq* covers everyone who is not trustworthy or whose credibility is questionable not only because of the conditional phrase but also the conditional tool in the text - *in* - is not *ʿāmm* by itself. Therefore, it appears Ibn Qudāmah's use of *adawāt sharṭ* was a compromise since not all conditional tools imply *ʿumūm* by themselves. Thus, the text, '*Man* (whoever) does *ṣāliḥan* (good) does it to their benefit' Q.41:46. '*Man*' covers anyone who does a good deed, and the word *ṣāliḥan* also covers all virtuous deeds because the former is *ism sharṭ*. At the same time, the latter is *nakirah* in a conditional statement. Thus, both are interpreted as *ʿāmm* in this

[1305] Khālid ibn ʿAlī al-Mushayqih, *Sharḥ Manẓūmah al-Qawāʿid al-Fiqhiyyah li al-Saʿdī* (Kuwait: Maktabah al-Imām al-Dhahabī, 2015), 198.

[1306] Ibn Qudāmah, *ʿUmdah al-Ḥāzim*, 249; al-Zarkashī, *al-Manthūr*, 492.

[1307] Ibn Qudāmah, *Rawḍah*, 2/593.

[1308] Al-Isnawī, *Nihāyah*, 186.

[1309] Al-Zarkashī, *al-Baḥr*, 4/176; al-Shawkānī, *Irshād,* 1/291.

text. This is expressed by the maxim *al-nakirah fī siyāq sharṭ taʿumm* (an indefinite noun/verb in a conditional statement has a general meaning).[1310]

The fourth category of *alfāẓ ʿumūm* comprises words that signify generalisation by their primordial meaning. Words like *kull* and *jamīʿ* are examples of such words that refer to every, all, entirely, the whole, and similar meanings.[1311] They are often employed to emphasise the generality (*ʿumūm*) of the nouns they qualify. 'Every soul (*kullu nafsin*) will taste death,' Q.3:185, and 'Turn to Allah in repentance, all of you (*jamīʿan*), o believer…' Q.24:31 are examples of this category in the Qurʾān.

The fifth category is an indefinite noun in denial or negated expression (*al-nakirah fī siyāq al-nafyi*).[1312] In the third category, an instance where *nakirah* is considered as *ʿāmm* was discussed. Here, we come across another instance where *nakirah* is employed in a negative context to imply *ʿumūm*. An example of this is found in Allah's emphatic denial of having a son: 'How could He have a son when He does not have a *ṣāḥibah* (companion or wife)?' Q.6:101. *Ṣāḥibah* in this text is an indefinite noun preceded by *lam* (not – sometimes used to imply 'not yet'). Renouncing a partner in such a format (with an indefinite noun) makes the indefinite noun (*ṣāḥibah*) *ʿāmm*. Thus, it comprises any object that can be described as a partner or wife for procreation. This category also includes indefinite nouns in prohibitions (that is, *al-nakirah fī siyāq al-nahyi*) as well[1313] as in 'Do not enter any house (*buyūtan*) other than your own until you have asked for permission and greeted its occupants' Q.24:27. Here, the object *buyūtan* (houses) is indefinite. It covers all houses because of the context (*siyāq al-nahyi*). Conversely, an exception is given to one's residence, which has been excluded from the general prohibition in the text.

These formats - *ṣiyagh ʿumūm* - as argued by Ibn Qudāmah and most Islamic legal theorists like al-Qarāfī, are indications of general expressions in the Arabic language and, therefore, imply universal legal and ethical expressions when employed in the texts of the primary sources of Islamic law and ethics. However, in practice, many legal

[1310] Al-Qarāfī, *al-ʿAqd*, 1/564.

[1311] Ibn Qudāmah, *Rawḍah,* 2/593.

[1312] *Ibid*.

[1313] Al-Qarāfī, *al-ʿAqd*, 1/316.

rulings deduced or inferred from texts in these formats are applied with functional exemptions. This is further complicated by the controversial[1314] maxim: '*mā min ʿāmmin illā wa qad khuṣṣa*' (Every general expression has been particularised in some way or the other).[1315] To express differently, to every universal statement, there is an exception. This maxim indicates the possibility of deviations from the established interpretations of most general texts from the Qurʾān and Sunnah. Thus, from a practical perspective, an *uṣūlī* or a *faqīh* might ignore the *ʿumūm* interpretation of a text to exclude some objects or circumstances that fall under it, provided that there is an acceptable proof justifying the intended exemption from the legal ruling in question.

[1314] I describe the maxim as controversial because it is debatable. Ibn Taymiyyah (d.682/1328) for instance, refutes this maxim strongly because of many texts in the Qurʾān that do not accept exceptions in his view (See Ibn Taymiyyah, *Majmūʿ al-Fatāwā*, 6/441-443). Perhaps it would be well understood if the maxim is restricted to legal matters. In my view, it would be more practical to contend that most legal texts have exceptions than broadening the maxim to include other areas outside of *uṣūl al-fiqh* since the discipline is concerned with the foundations of jurisprudence.

[1315] Al-Qarāfī, *Nafāʾis,* 2/933. See also Ibn Qudāmah, *Rawḍah,* 2/623.

Appendix 6

Definition of ʿ*Urf* and ʿ*Ādah*

The terms ʿ*urf* and ʿ*ādah* are often used interchangeably, referring to any repeated act that people are accustomed to and comfortable with.[1316] This connotation is implied linguistically in Arabic and technically by most Muslim jurists and legal theorists. Nonetheless, there have been attempts to distinguish between the two by referring to ʿ*urf* as usages and ʿ*ādah* as customs or norms. This distinction, however, does not seem to have any impact on Islamic law.[1317] In other contexts, ʿ*ādah* is used for norms of individuals or communities, while ʿ*urf* is restricted to shared practices only.[1318]

Islamic legal theorists have offered many definitions for ʿ*urf* and ʿ*ādah* from the perspective of Islamic legal theory (*Uṣūl al-Fiqh*). This study will refer to ʿ*urf* and ʿ*ādah* per the most popular definitions and conditions of application discussed by Islamic legal theorists as 'that which has settled with people, accepted by sound intellect and reasoning, suitable to sound human nature and which a people have persisted on either with the approval of the *Sharīʿah* or because the Lawgiver does not disapprove it'.[1319]

[1316] Shuʿayb, *Shubuhāt*, 528-530.

[1317] Ibid.

[1318] Muṣṭafā Aḥmad al-Zarqāʾ, *al-Madkhal al-Fiqhī al-ʿĀmm* (Damascus: Dār al-Qalam, 1998), 871.

[1319] Ibn Amīr Ḥāj, *al-Taqrīr*, 1/282; Abū Sunnah, *al-ʿUrf*, 8; ʿIwaḍ, *Athar*, 52. See also Shuʿayb, *Shubuhāt*, 528-530.

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