CHAPTER THREE:

CERTAINTY AND THE THEORY OF CONTEXT (SİYĀQ)
3.1 The semantic certainty of the legal text.

The aim of this chapter is not to reproduce the same debate underwent by the early jurists. Rather, the major aim is to analyze the arguments forwarded by the jurists with regards to the certainty of the legal text.

The legal text, as the main bearer of the legal ruling, is of different types. Muslim jurists would divide it into various divisions based on different considerations. Our discussion in this point is to probe into the criteria by which a legal text was classified either definitive or speculative. Hence, we would look into the certainty of the connotation that a legal text may have. The certainty pertaining to its authoritative existence (thubūt) is beyond the present study.

Our study would be selective, as the main aim is to discuss the criteria of certainty and not the various divisions of the legal text as such. Al-Nass (the explicit text), al-Mufassar (unequivocal) and al-Muhkam (perspicuous), al-‘Amm (the general), al-Khass (the

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1 As far as the Hanafi Mazhab is concerned, the first Ḥanafis such as al-Dabbūsī and al-Sarakhsi did not divide the legal text into definitive and speculative. Yet, the later Ḥanafis are the ones who generated such
specific), *al-Ḥaqīqah* (the real sense) and *al-Majāz* (the metaphor) would be the focus of our analysis as these are the main texts where *Sīyāq* is likely to engender definitive knowledge.

**a- Al-Naṣṣ (the explicit text).**

*Al-Naṣṣ* has been defined as a text that would reveal its original meaning without resorting to other signifiers (*Qarāʾin*) to determine its meaning.\(^2\) Therefore, it is a self-vivid text. Besides, the meaning understood thereof is the original meaning for which *al-Nass* has been promulgated.\(^3\)

An example of *al-Nass* would be the following:

> "Allah hath permitted trade (al-bay‘) and forbidden usury (al-Ribā)" (2:275)

This verse is clear (*Zāhir*) in reference to the permission of trade and prohibition of usury (*Ribā*); however, it is considered a *Naṣṣ* (an explicit text) in reference to making distinction between trade and usury. This meaning is the one for which this verse was revealed. For it was revealed to counter the disbelievers, who stubbornly maintained that trade is justlike usury.\(^4\)

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\(^3\) Ibid.

It is also maintained by Muslim jurists that *al-Nass* accepts the possibility of *Ta’wil* (allegorical interpretation), that is the consideration of another meaning of *al-Nass* provided there is a proof urging such a consideration.\(^5\) It is this *Ta’wil* that would spark the debate on the certainty of *Naṣṣ*.

It is held that "*al-Nass is compulsory to abide by, for it connotes its meaning in a definitive way.\(^6\)" This meaning is the original one that has been targeted by *Shari‘ah*, and the consideration of which would certainly conform to the objectives of *Shari‘ah*.

A crucial question is posed, how can *al-Nass* be certain as maintained by Muslim scholars while it is deemed susceptible to *Ta’wil*?

*Al-Duraynī\(^7\) held that *Ta’wil* would not affect the certainty of *al-Nass* so long as the possibility of *Ta’wil* is not predicated on a sound proof.\(^8\) Although there is an agreement on the obligation of abiding by *al-Nass* in the absence of a proof urging *Ta’wil*, the description of *al-Nass* as certain or speculative is yet to be determined.

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\(^7\) Dr. Faṭḥī al-Duraynī is a Jordanian Jurist with a great depth of reasoning in both *Usūl al-Fiqh* and positive Law. He is currently a full professor at the University of Jordan. His writings would include: *Manāḥīj al-Ijtihād bi al-Ra‘y*, *Naẓariyyat al-Ta‘assuf Fī Isti‘māl al-Ḥaqq* and *Buhūth Usūliyyah Muqāranah*.

\(^8\) Ibid:p. 52.
When looking into the ways by which a legal text is considered *Naṣṣ* or otherwise, we would find two major factors in play: The context and the occasion of Revelation (*Sabab al-Nuzūl*). The former, maintains al-Rāzī “is the [consideration] of everything surrounding the text”.

It is the textual context that is usually referred to when Muslim jurists talk about context (*Shuyq*). Considering the prior and the subsequent texts when dealing with a particular legal text would certainly put the latter in its genuine context and hence, guaranteeing a fair and due process of rules enactment. This is what had been ascertained by al-Shāfi‘ī when he was propounding the theory of *Bayān* (clarification). He proclaimed that there is a part of *Bayān* in which the context plays the essential role. Apart from the context, the meaning of the legal text would be derived only from the apparent connotation, which is a wrong method of inference.

From another side, *Shuyq* (context) is to be determined by legal signifiers (*Qarā‘in*), a criterion that would be discussed later.

Obviously, the certainty of *al-Naṣṣ* depends on how its context is adequately set up. Most importantly, how the signifiers would help *al-Naṣṣ* to be ranked certain. This study suggests that the more the context is adequate, the more the legal text, be it

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Nass or otherwise, turns out to be accurate and hence, certain in meaning. And this can only be attained through a genuine accumulation, selection and application of legal signifiers (Qarâ‘in) in relation to the legal text.

b- Al-Mufassar (Unequivocal):

Al-Mufassar is a word that is more clear than al-Nass and it is, in the meantime, self-vivid and not in need of Ta‘wil. The idea of the Mufassar, as the word itself implies, is that the text explains itself. The lawgiver has, in other words, explained His own attentions with complete clarity and hence, the occasion for Ta‘wil does not arise. An example of Mufassar would be the following verse:

"Fight the pagans all together (Kâffah) as they fight you all together" (9:36)

The term “pagans” (al-Mushrikîn) is a general noun that is susceptible to specification (Takhshîs); but the existence of the term Kâffah (all together) precludes the possibility of Takhshîs. This type of text appears to be certain per excellence. It is very clear that the criterion used to yield certainty to al-Mufassar is purely linguistic. While this is true in the variety of texts that were considered certain by all Muslim jurists like the rates of

11 Ibid, pp.85-86.

Zakāh and the shares of inheritance, the same criterion may not be duly applicable while judging some texts as being certain or otherwise. The foregoing verse helps prove this assumption.

While putting that verse in the general context of legislation, the linguistic criterion applied to understand the text seems to confine the meaning of the text within its linguistic borders. Such a limitation would hinder the legislator to enact the right ruling.

It is the context that would better determine the certainty of a legal text. The verse in Surah al-Tawbah (9:36), when put in its general context, would mean the following:

This verse was revealed giving Muslims the permission to defend themselves even when they are in the sacred months (al-Ashhur al-Ḥurum). Therefore, fighting all the pagans together based on the term “Kāffah” would only yield certainty to the meaning of the text and not its overall applicability.

This is because the permission to fight all the pagans is specified by the context in which the verse was revealed. And this has a number of contextual probabilities that form a set of semantic specifiers:

1. You can only fight the pagans all together when they fight you all together.
2. If they do not fight you, do not fight them.
3. If they fight you all together in the sacred months fight them back all together.
4. If they fight you all together outside the sacred months, you may fight them all together or otherwise.

13 Zulki 'dah, Zu'l Hijjah, Muḥarram and Rajab.
5. If they do not fight you all together, it is unclear as to whether you should fight them all together or otherwise.

I would say that these are probabilities related to the text classified as *Mufassar*. Each would serve as a specifier to the text purporting to be *Mufassar*. Consequently, the linguistic criterion may be considered insufficient to determine the certainty of the legal text. The consideration of the "context" would grant the text its genuine status. Accordingly, the *Mufassar* may be certain in its specific context but speculative when the same context turns out to be general.

c- *Al-Muḥkam* (The perspicuous):

*Al-Muḥkam* is defined as the word whose meaning is very clear (self-vivid) beyond any doubt and does not accept *Ta’wīl* or abrogation. This would apply to the text that underlies the basics of *ʻAqidah* and the fundamentals of ethics. This would also include the text that bears the meaning of "permanency" characterized by *Shariʻah* in the word "Abaden" (ever, never). Example of *Muḥkam* would be the following *ḥadīth*:

Abū Dawūd narrated that the Prophet (S.A.W.) said: "Jihād (holy war) remains valid till the day of resurrection".15

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Muslim jurists held that *al-Muhkam* is the most certain text available in *Qur’an* and *Sunnah*. This is due to its insusceptibility to *Ta’wil*, abrogation, specification or qualification. It is considered definitive whose certainty is indisputable.

However, Muslim jurists’ stand towards *Muhkam* seems to be far from being unanimously grounded, a matter that would definitively question the certainty of some texts that have been classified as *Muhkamät*. When discussing a text classified as *Muhkam*, the Ḥanafis and the Shafi‘is had had a clear disagreement. In *Surah al-Nūr*, the verse reads in reference to a slanderous accuser who accuses a chaste woman of a false charge of adultery:

“And accept not their testimony ever, for such men are transgressors” (*24:4*)

The Ḥanafis have held that the *Qādhif* (the slanderer) shall never be admitted as a witness even after making a sincere repentance. The Shafi‘is referred to the possibility of admitting the testimony of the slanderer after being punished, making sincere repentance and mending his characters. The Shafi‘is’ view is substantiated by the subsequent verse following (24:4) in which Allah (S.W.T.) says:

“Except those who repent thereafter and mend their (conduct), for Allah is oft-Forgiving, Most Merciful.” (*24:5*)

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Once again, what has been considered *Muḥkam* by virtue of language appears to be otherwise when the element of “context” is introduced. Clearly, the *Šafī‘is* are considering the general context within which the verse (24:4) is workable.

**d-The ‘Āmm (General) and the Khāṣṣ (specific):**

The classification of words as ‘Āmm and Khāṣṣ unveils a great deal of discussion on the element of certainty with regards to the rules of interpretation. We shall endeavor to scrutinize the criterion by which ‘Āmm and Khāṣṣ vascillated between certainty and speculation.

‘Āmm is defined as “*a word denoting all the individuals to which its (‘Āmm) meaning is applicable.*”

It is a word that absorbs all the elements folded under its meaning. A word may be general either by its form such as men, students, or by way of substitution such as prefixing pronouns like *all, every, entire,* etc.

The Hanafis, on the other hand, define the ‘Āmm as “*a word absorbing a number of nouns either by way of text or meaning.*” This definition, unlike the one given earlier, discards the element of absorption underlyng the ‘Āmm. It also stresses the significance of both text and meaning as the major components of the ‘Āmm, whereas only the text of

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the ‘Āmm is stressed according to the non-Ḥanafīs definition. Besides, the discussion of ‘Āmm would, by and large, underscore the degree of certainty that it enjoys.

Scholars, from Al-Shāfī‘ī to Ibn Ḥazm to Al-Ghazālī, agreed that ‘Āmm is of different categories. There is an ‘Āmm that is both general and specific; there is a ‘Āmm intended to be specific and there is a ‘Āmm whose meaning is determined by its context.20 There is also the ‘Āmm intended to be ‘Āmm, and a ‘Āmm from which exceptions have been made by Qur‘ān and Sunnah.21 There is also the absolute ‘Āmm and the relative ‘Āmm, as explained by al-Ghazālī.22

The aim, in this respect, is not to get indulged into defining all these divisions, for the scope of our study would not allow that. The aim would be rather an exposition of the different divisions of ‘Āmm as understood from the contexts surrounding the texts purporting to be general. The task here is to unveil the platforms that led to the disagreement underlying the certainty of the ‘Āmm.

The most notable division of ‘Āmm that refers to its certainty lies in the one adopted by al-Jumhūr.

1. The ‘Āmm whose generality is intended for certain. It is an ‘Āmm attached to a signifier (Qarīnah) that precludes its specification.

22 Al-Ghazālī, Al-Mustasfā, 2/12.
**E.g.:** “there is no moving creature on earth but its sustenance dependth on Allah” (11:6)

Every creature is subject to Allah’s (S.W.T.) sustenance.

2. The ‘Āmm intended to be specific for certain. It is an ‘Āmm attached to a signifier precluding its generality.

**E.g.:** “pilgrimage thereto is a duty men owe to Allah” (3:97)

This is a generality specified by the type of pilgrims, i.e. the qualified pilgrims.

3. Absolute ‘Āmm:23 It is an ‘Āmm lacking a signifier referring to its generality or specificity. While no disagreement is recorded on the first and the second type, a disagreement is well recorded on the third type i.e.: Absolute ‘Āmm.

*Al-Jumhūr* (Malikis, Shafi’is and Hanbalis) maintain that the absolute ‘Āmm is speculative, for the simple reason that every ‘Āmm is susceptible to specification.24 Thus, the possibility of specification in ‘Āmm grants the ‘Āmm a speculative status. The latter is the outcome of a thorough examination of all the available ‘Āmm vis-a-vis their specifiers which, at the end, paved the way for *al-Jumhūr* to believe that ‘Āmm is speculative. Besides, there are two factors that are interchangeably in play: the generality of the text and its projection into the entire scope of the legal texts. While the ‘Āmm

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entails an apparent generality if taken individually, it becomes specified when a specifier is related to it.

The main factor determining the speculation of the 'Āmm, according to al-Jumhūr, is its subordination to speculation, a matter that is entirely based on induction. However, the researcher would argue that the view of al-Jumhūr is lacking some accuracy. Their view is based on a type of induction deemed speculative in principle. It would appear that the type of induction used to prove the speculation of 'Āmm is incomplete and hence speculative. The point is that al-Jumhūr foreseen a definitive proposition, i.e. the speculation of 'Āmm through a speculative evidence, i.e. induction. It would be perplexing if the mechanism of drawing a definitive conclusion from a speculative proof is not scientifically grounded. For the jurists never showed us how did they manage to trace all the 'Āmms embodied into the entire law and judge them as speculative.

The researcher would argue that the view of al-Jumhūr is contradictory in some aspects. Their view about the 'Āmm is treated like a maxim or a postulate and therefore, the speculation of 'Āmm is regarded as a definitive proposition. In the same time, the method used to establish such a proposition (induction) is speculative so long as it is not complete, though it is an authority according to all the jurists.

The questionable issue is that what justifies the certainty underlying the view of al-Jumhūr so long as the method used (induction) is deemed speculative. Otherwise, the speculation underlying induction, as always maintained by the jurists, should be

reviewed. It follows that to prove the speculation of ‘Āmm for certain, the induction used must be certain too. But if the certainty of induction is disputed, then the whole view of al-Jumhūr becomes speculative and hence their disagreement with other scholars (Ḥanafis) on the same issue would be baseless.

It is in the light of this framework that the researcher would justify the views of both al-Shafī‘i and al-Shatibi who maintained that ‘Āmm is definitive and not speculative. Al-Shaṭibili had even held that ‘Āmm is definitive considering its unquestionable certainty proven by induction that yields certainty.

The Ḥanafis’ Stand:

The Ḥanafis held that ‘Āmm is definitive if a part thereof has not been specified. Therefore, the legal ruling behind the ‘Āmm addresses each and every individual subsumed under it. They have equated the connotation of ḫass (specific) with that of ‘āmm so as to make the latter definitive. In doing so, they appear to have focused only on language as the sole criterion for the certainty of ‘Āmm. ‘Abd Al-‘Azīz al-Bukhārī puts it as follows:

28 Al-Shaṭibi, Al-Muwāfaqāt Vo3, pp.290-300.
30 ‘Abd al-‘Azīz bin Aḥmad bin Muḥammad al-Bukhārī (d.730 A.H). He was a leading jurist from the Ḥanafī School. He wrote: Kashf al-Asrār ‘Alā Uṣūl al-Bazdawī and Ghāybat al-Ṭahqīq. See al-A Ṭām (2 5/24)
"Whenever a word (or a text) is laid down for a specific meaning, that meaning should be born on its absolute connotation... unless there is an evidence that suggests otherwise."

Consequently, the Ḥanafis have categorically rejected the essence of al-Jumhūr’s contention that ‘Āmm is susceptible to specification (takhṣīṣ). Sharp-witted Ḥanafī scholars like ‘Abd al-Azīz al-Bukhārī maintained that it is possible to have certainty even with the existence of Iḥtīmāl (probability). He differentiated between al-Qāṭ' al-Muḥtamal (the probable certainty) and Qāṭ’ al-Iḥtīmāl (Quasi-probable certainty).

The point behind this distinction is that mere probability would not affect the certainty of the ‘Āmm so long as this probability is no more than an assumption. Unless this probability operates in a tangible way, the ‘Āmm would definitely remain certain. What really counts, according to the Ḥanafis, is a probability generated from a valid proof that has really existed.

The researcher would argue that the disagreement between al-Jumhūr and the Hanafis is technical rather than substantial. The former overlooked the ‘Āmm that has not been specified, rendering their position towards the ‘Āmm questionable, and the latter

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31 Ibid; 1/305.
32 Ibid; 1/308.
34 Idrīs Ḥammādī, Al-Khlāḍ al-Shar’ i wa Ṭuruqī Istithmūrīḥi, (Fass: Al-Markaz al-Thaqāfī al-‘Arabī, n.d.), p. 82.
overlooked the ‘Āmm that has really been specified, rejecting the specification (Takhšīs) of ‘Āmm (certain) by speculative evidence such as the solitary hadith (Hadīth ʿAḥād) and Analogy (Qiyās). Accordingly, the Ḥanafis have made accommodation (Sukna) and family maintenance (Nafaqah) for the divorced wife required on the part of the ex-husband,35 ignoring the hadīth of Fatimah binti Qays who mentioned that the Prophet (S.A.W.) did not prescribe for her any accommodation or expenses to be provided by her ex-husband.36

However, the Ḥanafis too, appear to have been inconsistent through out their treatment of the legal text. They appear to have adopted the linguistic criterion as the sole determinant of the certainty ‘Āmm. But assuming ‘Āmm as certain would promote it to the level of Zahir or Naṣṣ. The latter have been tackled by the Ḥanafis in a vivid elasticity, allowing some factors, beside language, to determine their certainty. In an exclusive text by al-Bazdawi37, he defined the ‘Āmm as a

"text which is more clearer than Zahir by virtue of factors generated by the speaker (himself) and not necessarily generated by the mere textual statement (Sīghah)"38

37 ‘Alī bi Muḥammad bin al-Ḥusayn bin ʿAbd al-Karīm, known as Fakhr al-ʾIṣlām al-Bazdawī (400-482 A.H.), a Hanafi jurist whose contributions helped to establish the Hanafi Māzhāb in Samarkand (South Russia). He wrote: Kanz al-Wuṣūl ilā Maʿrifah al-Uṣūl and Ghanī ʿal-Fuqahā. See al-ʿIṣām (6/208)
The adoption of the linguistic factor in 'Āmm and the ignorance of the same factor when it takes another form (Nass), renders the argument of the Ḥanafis highly ambiguous. Nonetheless, Al-Imām al-Taftazānī39 noted that Nass and Zāhir, of which 'Āmm is one of their facets, could be definitive and could be speculative as well, provided a strong evidence supports the diversion of the Nass and Zāhir from their apparent meanings.40

The Contextual 'Āmm and its Certainty:

Obviously, both al-Jumhūr and the Ḥanafis agreed that 'Āmm is certain, taking into consideration its original status. However, al-Jumhūr’s contention that “most of the ‘Āmm have been specified” would produce a signifier (Qarīnah) that degrades the ‘Āmm from certainty to speculation. The Ḥanafis from the other side confined themselves within the boundaries of language, conforming to the way the first generation (Ṣaḥābah) used to understand the ‘Āmm, i.e: ‘Āmm is certain. Yet, the above-mentioned contentions do not seem to be the sole criteria of the certainty or uncertainty of ‘Āmm. Two prominent scholars, Al-Shāṭibī and Ibn Tayamiyyah, appear to have pioneered a new doctrine of ‘Āmm that has gained little momentum, though their views are worth adopting.

40 Al-Taftazānī, Al-Talwīh, 1/126.
Al-Shāṭībī adopted a methodology that has not been attempted before. He considered two types of objectives: the objectives of Arabic language⁴¹ and the objectives of *Sharī‘ah*⁴² (*Maqāṣid al-‘Arabiyah wa Maqāṣid al-Sharī‘ah*). The former considers the prevailing patterns of Arabic language with which the Arabs are familiar, and the latter would consider the genuine goals set by *Sharī‘ah* so that unsubstantiated reasoning over the evidences of *Sharī‘ah* is rebuffed. Hence, al-Shatibi would neither consider the mere abstraction of Arabic language nor that of reason.⁴³

Al-Shāṭībī looks at the “text” from two perspectives: textual (*lafẓ*), based on the status upon which it has been laid down, and practical (*Isti ‘mālī*), based on the status upon which it has been used. He would give priority to the second over the first. For, as stipulated by the experts of Arabic language, “*If the used (‘Amm) happens to be in conflict with its original form, the former must be given preference*.”⁴⁴ According to this stand, al-Shāṭībī precludes the need to have ‘Amm specified by reason and sense perception as held by the bulk of jurists.

Al-Shāṭībī’s stand invokes three major principles:

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⁴² Ibid; 3/183.
1. The injunctions of Shari‘ah, in their general forms, are in full conformity with the original Arabic tongue. It is a commitment to the original patterns of Arabic language as the "the first generation of companions used to consider ‘Āmm as certain."[45]

2. The ‘Āmm remains authoritative after being specified.[46]

3. Considering the certainty of ‘Āmm would settle down the problematic issues surfacing the disputes of the jurists over it.[47]

Al-Shatibi’s contention is questionable in some ways:

i. The preference given to ‘Āmm in its practical form (Isti‘māli) can be one of the following cases:

- The textual ‘Āmm would conform to the Isti‘mali ‘Āmm.
- The Isti‘māli ‘Āmm, if proven genuine, would specify the textual ‘Amm, and this specification needs a specifier that could be either reason or a legal text, and this is exactly what the bulk of the jurists are contending for. Hence, the doctrine of “Al-Umūm al-Isti‘māli” (‘Āmm in its practical form) would be redundant.

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[46] Ibid;
[47] See the disagreement of scholars on the authority of ‘Āmm especially after its specification in Al-Iḥkām of Al-Āmidī, 2/232.
However, al-Shâṭibi addressed this objection by contending that the two usages of ‘Āmm (the textual and Isti‘mālī) are categorically independent from each other; therefore, the Isti‘mālī cannot specify the textual one (Lafẓī).\textsuperscript{48}

E.g.: The Arabs understood the following verse based on its original meaning, cutting it from its genuine context:

\begin{quote}
"It is those who believe and confuse not their beliefs with wrong that are truly in security, for they are on (right) guidance"\textsuperscript{(6:82)}
\end{quote}

The Āyah explains that those who have believed and have not spoilt their faith with Zulm (injustice) will actually be granted security by Allah (S.W.T.). The Sahabah, by focusing only on the generality of the word (Zulm), reacted by saying: who among us did not spoil his faith with Zulm? The Prophet (S.A.W.) replied: "that is not the case, haven’t you heard the saying of the Prophet Luqmān:

\begin{quote}
"For false worship (shirk) is indeed the highest wrongdoing"\textsuperscript{(31:13)}
\end{quote}

Shirk, thus, is a big injustice, mischief and a blatant infidelity towards God.\textsuperscript{49}

Al-Shâṭibi introduced a new concept whereby the certainty of ‘Āmm is well conceived. Responding to the above-mentioned objection, he encountered al-Jumhūr’s contentions in two ways:


\textsuperscript{49} Ibid;
1. He demolished their induction as being inconclusive. For he applied the same method (induction) and come to ascertain his findings as demonstrative.

2. He linked the ‘Āmm with the objectives of Sharīʿah, making it essential to grasp the ‘Āmm in the light of those objectives. He maintained that

"Al-ʿUmūm al-İstiʿmāli is to be understood only by considering the objective of Shariʿah... it is also to be understood by considering the Arabic usage",\(^{50}\) i.e.: How the Arabs utilized it.

It is worth mentioning that al-Shāṭibi institutializes most of his views based on the inductive method, which according to him entails certainty. The certainty of induction is a question of a principle and thus, it enjoys full length of plausibility. For if the method is certain, then the conclusion reached must be certain as well. And this is what al-Shāṭibi endeavored to prove in his seminal work al-Muwāfaqat. We shall come back to this point in a forth-coming item. It suffices to note that the inductive method would help shed light on the certainty of ‘Āmm.

3. He linked the ‘Āmm with Al-ʿAdah (custom). By observing the major injunctions of Sharīʿah, al-Shāṭibi realized that the general texts of Qurʾan and Sunnah must be predicated on the prevailing ʿAdah producing what he labeled "Al-ʿUmūm al-ʿAdī (customary ʿĀmm).\(^{51}\) He argues that Al-ʿAwāʿid (customs) are of two types:

"the general customs that are not altered by the space-time factor ... and those

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\(^{50}\) Ibid;

\(^{51}\) Ibid, 4/198.
that they do…” the former, al-Shāṭibī contends, “are well attached to a universal and eternal custom upon which all the interests of mankind stand, as proven by induction.”

It is here where a new dimension pertaining to the certainty of ‘Āmm is forwarded. Undoubtedly, al-Shatibi establishes the certainty of ‘Āmm by referring to the first type of ‘Ādah not the second. The first is clear, consistent, everlasting, and apt to yield certainty, but the second is changeable and apt to yield more conjunctures. Thus, the certainty of the following cases are well perceived as they are related to intact customs:

- The puberty (bulūgh) is a definitive sign for a child to have his capacity of execution (Ahliyyat al-wujūb) started.
- Journey (Safar) is a definitive attribute allowing the traveler to break his fast and combine his prayer.
- Nisab (the prescribed amount of prosperity from which Zakāt is given) is a definitive factor indicating the richness of some one who must pay Zakāt.
- The punishment of drinking wine is predicated on the act of drinking and not necessarily on the situation of drunkenness. For the former is definitive and the latter is speculative.
- Penetration in adultery is a definitive trait leading to the punishment, though there might not be any ejaculation or an intermingling of family kinship.

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52 Ibid, 2/298.
53 Ibid. 4/199.
In short, al-Shāṭibī regards ‘Āmm as certain due to the thorough and comprehensive study he made on it. The practical dimension of ‘Āmm, the objectives intended thereof, its customary usage and the inductive method by which it is confirmed, are but the substantial factors enhancing the certainty of ‘Āmm.

*Ibn Taymiyyah and the certainty of ‘Āmm:*

Ibn Taymiyyah is a strong advocate of the certainty of ‘Āmm. He, like al-Shāṭibī, patronizes the following prepositions:

i. ‘Āmm is definitive (Qa‘ī)

ii. The rule “Every ‘Āmm is susceptible to specification” (Mā min ‘Āmm illā wa qad khūṣṣī), as held by the majority of jurists, is baseless as this would go against all the Books sent down by Allah (S.W.T.) as well as the established speeches of the nations.

iii. The connotation of ‘Āmm is to be drawn from al-‘Umūm al-Lafzī (the generality of the text) and al-‘Umūm al-Ma’nawī (the connotative generality of the text)54, a method boldly adopted by al-Shāṭibī to confirm the certainty of ‘Āmm.

Ibn Taymiyyah addressed mainly two major objections against the certainty of ‘Āmm:

- ‘Āmm is an authority but weak
- Most of ‘Āmm in the sources (Qur’an & Sunnah) have indeed been specified.

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Ibn Taymiyyah ridiculed the first view, rendering it completely baseless. For, as long as the evidence of specification (takhṣīṣ) is absent, the ‘Āmm is workable within its general framework. Hence, it is necessary to maintain the wholeness of ‘Āmm as long as the evidence of takhsis is dubious.

As for the second view, he openly expressed his astonishment as the rule (Every ‘Āmm is susceptible to specification) is highly questionable and far from being a maxim. He puts it as follows:

"Who has affirmed that most of ‘Umumat (general terms) are specified? Although this is what is commonly used by a folk of jurists; it is indeed the most corrupted and untrue form of speech..."  

The contention of Ibn Taymiyyah goes to the roots of Arabic Language, paving the way for the semantic dimensions to settle down the current dispute. The fact that must be highlighted is two folds:

1. The specification (takhṣīṣ), which most of al-Jumhūr adopt in reference to ‘Āmm, is imaginary rather than genuine. For "those who classify a term as ‘Āmm then they contend that a part thereof has been specified, will discover that the
specified part is initially not covered by that 'Āmm..." This is to say that no actual specification does exist.

2. The general term ('Āmm) would not necessarily cover everything. Rather, 'Āmm would only cover the things of clear relevance. Besides, every term is both 'Āmm and Khass (general and specific) respectively. For the term is Khass in reference to a higher term and 'Āmm in reference to a lower one and both would be 'Āmm. All these concepts would eventually pave the way for us to discuss the certainty of the legal terms and texts from a contextual point of view. This will be addressed when we address the theory of context and its role in yielding certainty.

Al-'Umūm al-Ma'nawi (The connotative Generality of the legal text)

So far, we have been scrutinizing the 'Āmm expressed exclusively within its linguistic boundaries, i.e. the 'Amm contained in an individual term ('Āmm Lafi). But this does not seem to be the only type of 'Amm that exists. Al-'Āmm al-Ma'nawi (connotative 'Amm) is categorically equated with 'Āmm Lafi and their certainties appear to hold the same strength. The former is the outcome of tracking down a number of similar issues that eventually converge on one single meaning. The jurist keeps tracing issues of similar nature until he reaches a level where only one meaning is conceivable. Once this meaning is established through complete or incomplete induction, it would become a

57 Ibid.
source of legislation. Accordingly, any new emerging issue can be referred to that source in case a direct text from Qur'an and Sunnah seems to be lacking.\[59\]

Based on this principle, a number of sources have been established to cater for the emerging issues, notably Raf' al-Ḥaraj (Lifting the hardship) and Sadd al-Dharī'ah (Blocking the means). The aim now is to show how far the application of the doctrine of al-'Umūm al-Ma 'nawī would bring about definitive sources of Sharī'ah like the following:

i. Raf' al-Ḥaraj (Lifting the hardship):

Haraj (hardship) has been defined as “every thing leading to an extra hardship afflicted on the body, self or property whether in the short or long run”.\[60\] Lifting this hardship would require two things:

- Preventing the occurrence of hardship
- Removing it after affliction.\[61\]

The meaning embodied in this principle is found in a multitude of texts, all of which are directly referring to the element of easiness in Sharī'ah. The following evidences from Qur'an and Sunnah are merely examples:

**Qur'an:**

1. Al-Mā'idah: 6 “Allah doth not wish to place you in a difficulty...”

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\[59\] Al-Shaṭibi, al-Muwāfaqāt, 3/192.

\[60\] Ṣalih bin Ḥāmid, Ra'ā' al-Ḥaraj fī al-Sharī'ah al-Islāmiyyah (Umm al-Qurā: Ja'mi 'at Umm al-Qurā, 1401 A.H.), p. 49.

\[61\] Ibid, p. 51.
2. **Al-Hajj**: 78 "He has chosen you, and has imposed no difficulties on you in religion..."

3. **Al-Baqara**: 185 "Allah intends every facility for you; He does not want to put you to difficulties..."

4. **Al-Baqara**: 286 "On no soul doth Allah place a burden greater than it can bear..."

5. **Al-A 'lā**: 8 "And we will make it easy for thee (to follow) the simple path."

**Sunnah**

The Sunnah, from the other side, has abundantly referred to "easiness" and prompted Muslims to observe the concessions (Rukhāṣ) given by the Shari'ah. The following *Ahadīth* focus on this meaning:

1. *The widow of the Prophet, Aisha, is reported to have said that the "Prophet did not choose but the easier of the two alternatives so long as it did not amount to sin"*

2. *The Prophet (SAW) is reported to have said "Allah loves to see His concessions (rukhāṣ) are observed in the same way that His strict laws (Aza'im) are obeyed"*

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3. “God loves to see that His concessions (rukhas) are taken advantage of just as He hates to see the commission of a sin”

4. “Fulfill your duties to the extent of your ability”

5. “The best of your religion is that which brings ease to the people”

This abundance of evidences would prompt the assertion that “lifting hardship” is well intended by the Islamic Sharī‘ah. In fact, it is a definitive source from which laws can be enacted. In the same context, al-Shatibi held that if we assume that “lifting hardship” is a principle lacking a general text, we could still get a general ordinance extracted from different incidents but converging on the meaning of “lifting hardship”. He mentioned many examples that would include:

■ Tayammum (dust purity) is permitted when water is unlikely to be found within the time limit of prayer.

■ Praying while sitting for those who cannot stand.

■ Shortening and combining prayers while in a journey (al-Taqṣīr wa al-Jum‘ Fī al-Ṣalāt)

■ Renouncing faith under pressure.

■ Consuming the flesh of a dead animal to maintain life while facing necessity

■ Praying to any direction believed to be the true direction of Qiblah.

64 Ibn Ḥanbal, Musnad Ibn Ḥanbal, (Beirut: Mu‘assasat al-Kutub al-Thaqāfiyyah, 1990), Vo2, p.108

65 Muslim, Ṣaḥīḥ Muslim, p. 104. Ḥadīth No, 378

3. "God loves to see that His concessions (rukhas) are taken advantage of just as He hates to see the commission of a sin."  

4. "Fulfill your duties to the extent of your ability."  

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- Renouncing faith under pressure.

- Consuming the flesh of a dead animal to maintain life while facing necessity

- Praying to any direction believed to be the true direction of Qiblah.

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65 Muslim, *Ṣaḥīḥ Muslim*, p. 104. Ḥadīth No, 378  
Wiping over socks (*Khuffayn*) for fear of harm.\(^{67}\)

Al-Shāṭībī contends that

"Out of all these issues, we would rule that "lifting hardship" is a principle underlying all the issues [of fiqh], based on induction, and that would make al-‘Umum Ma’nawi (the connotative ‘Umum) like the ‘Umum Lafzi (textual ‘Umum)."\(^{68}\)

Consequently, the connotative ‘Umūm cannot be considered a speculative procedure of legislation; otherwise, law makers and jurists would find it difficult, if not impossible, to tackle emerging issues with ‘Umūm Lafzi alone. What is bolstering the certainty of al-‘Umūm al-Ma’nawi is the principle of ‘uniformity of meaning’ featuring the entire pieces of evidence out of which al-‘Umūm al-Ma’nawi is established. Each and every evidence is supporting the other in a corroborative way, leading finally to the establishment of a definitive source of Shari ‘ah.

**ii. Sadd al-Dhari‘ah (Blocking the means)**

*Sadd al-Dhari‘ah* implies blocking the means to an expected end that is likely to materialize if the means towards it is not obstructed. Thus, the whole concept of *Sadd al-Dhari‘ah* is founded on the idea of preventing an evil before it actually occurs.\(^{69}\) Al-


\(^{68}\) Ibid.

Imām Ibn al-Qayyim mentioned ninety-nine evidences supporting this rule and al-Shāfi‘ī recorded the agreement of all the scholars on the authenticity of Sadd al-Dhawī‘ah. We can trace the evidence forming this principle:

- “And insult not the associators lest they (in return) insult God out of spite and ignorance.” (6:108)
- “O believers! Address not the Prophet by the word ra‘ina, but address him respectfully and listen to him” (2:104)
- The Prophet forbids the killing of hypocrites. It was forbidden for fear that might give rise to a rumor that, “Muḥammad kills his own companions.”

“The Prophet forbade khalwah (close proximity) with a strange woman for fear of adultery; he also forbade woman to travel without Māḥram (relative) for fear of abduction; he strongly prohibited the construction of mosques on graves for fear of shirk (polytheism) and the like.”

“Prohibited are the following:

- Having engagement (Khīṭbah) while observing the ‘Iddah (waiting period).
- Prohibition of beautification and adornment for a widow observing her ‘Iddah.

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70 Ibn Qayyim, I ‘lām, 3/177
72 Ibid, 4/62.
73 Ibn Qayyim, I ‘lām, 3/183.
The prohibition of marriage contract while observing Ḥm (consecration)
■ Preventing the killer to get his/her share of inheritance (Mīrāḥ).”

The foregoing rules converge on one meaning, which is ‘blocking the means’ towards the Haram. And this is indeed a definitive conclusion that is in full conformity wit the five necessities of Shari ‘ah.

Al-Shāṭibī also observed that the companions of the Prophet acted in a way referring to Sadd al-Dhari ‘ah. They used to adjudicate on incidents based on al-‘Umūm al-Ma’nawī (connotative ‘Umūm)\(^7\), and that was the feature granting Shari ‘ah a more flexible way to materialize in the actual life.

Consequently, the certainty of Raf al-Ḥraj and Sadd al-Dhari ‘ah, as secondary sources of Shari ‘ah, become more than justified. Thus, the ‘Āmm, be it textual (lafzī) or connotative (Ma’nawī) is definitive in nature as proved by induction. This would also raise a question of why these sources, despite being definitive in nature, are still considered disputable sources of Shari ‘ah.

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\(^7\) Al-Shāṭibī, al-Muwāfaqāt, 2/267.
\(^7\) Ibid, 3/189-190.
**Khāṣṣ (specific) Vs. ‘Āmm (general)**

We shall disclose how certainty fluctuates between Khāṣṣ and ‘Āmm. We shall see the reciprocal elevation between Qat' and Zann, as how the former is reduced to the latter and vice versa. The Khāṣṣ has been defined as "a word laid down to refer to only one meaning"\(^{76}\). That is the reason why both al-Jumhūr and the Ḥanafis held that Khāṣṣ is definitive (Qat’ Ṭ), so long as no other evidence intervenes and suggests otherwise.\(^{77}\) This would obviously apply to the following:

- Commands (Awāmir): "Establish regular prayer" (2:43)
- Prohibitions (Nawāhi): "Approach not adultery". (17:32)
- Expiation (Kaffārah): "...Fast three days, That is the expiation for the oaths you have sworn" (5:89)
- Shares of inheritance: "Inheritance to the male, a portion equal to that of two females" (4:11)

All these texts are unequivocal in meaning, as they do not accept any meaning other than the one understood directly thereof. As far as Khass is concerned, its certainty is of two types:

1. **General certainty (Qat‘ A‘amm):**

   This is a word denoting its specific meaning without having a probability (Iḥtimāl) stemming from genuine evidence. This is like the knowledge understood from "Zahir" or "Naṣṣ" already explained.

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\(^{77}\) Ibid, 1/79.
ii. **Specific certainty (Qat' Akhas):**

It is also called "absolute certainty". It is basically a word or a text that precludes the possibility (Ihtimāl) of having a meaning different from the one for which the term has been laid down. This would include "Mufassar" "Muḫkam" and al-Ḥadīth al-Mutawātir (recurrent Ḥadīth).\(^78\)

It is worth mentioning that the example, which we have mentioned earlier, falls under the first category. For Awāmir, for instance, are classified as Khāṣṣ and hence, definitive (Qat'i). But they (Awāmir) are speculative on the ground that Awāmir in Qur'an may amount either to Wājib (mandatory) or Mandūb (recommended) or even Mubāḥ (permissible). The certainty of Awāmir is general in so far as the possibility of adopting another meaning for them stems from the fact that signifiers (Qarā'in) have really existed and turned some Awamir from wujūb (obligation) to Nadīb (recommendation).

In the same vein, the Hanafis have disputed the specification featuring the text pertaining to Kaffārah (the penance) of a false oath mentioned in Sūrah al-Mā'idah: 89. The verse reads:

"Allah will not call you to account for what is futile in your oaths, but He will call you to account for your deliberate oaths: for expiation, feed ten indigent persons..."(5:89)

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\(^78\) Al-Taftazānī, *Al-Talwijh wa al-Tawdiḥ*, 1/35
The verse stipulates three types of penance, one of which is to feed ten poor persons. The Hanafis held that “instead of feeding ten poor persons, one such person may be fed ten times.”9 This would show that Ijtihad is also operational in Khass, which is widely deemed definitive.

**e- Al-Ḥa[q]qāh (real) and al-Majāz (metaphor).**

This item will show how Siyāq plays a role to differentiate between Ḥaqiqī (real) and Majāzī (metaphoric). It is in a subject like this, that signifiers are very much needed to understand the meaning of the legal texts. We shall venture into showing the possibility of Siyāq to generate definitive knowledge from words and texts featured by their real and metaphoric meanings.

1. **Al-Ḥaqi[q]ah (the real meaning):**
   
   It is every word (Lafz) intended to reveal the original and primary meaning underlying it.80 It is of four categories:

   1. The linguistic Ḥaqiqah (al-Ḥaqiqah al-Lughawiyyah):
      
      It is a word connoting a meaning purely attributed to language e.g.: Insan (human being) connotes the speaking animal.

   2. The Legal Ḥaqiqah (al-Ḥaqiqah al-Sharʿiyyah)

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80 Al-Sarakhsi, *Uṣūl al-Sarakhsi*, 1/170
It is a word used to refer to a meaning legally intended by the *Sharī'ah*. E.g.: *Ṣalāt* (prayer) is used to connote the act of worship starting with *takbīr* and ending with *taslīm*.

3. The Special Customary *Ḥaqīqah* (*al-Ḥaqīqah al-ʻUrfiyyah al-Khāṣṣah*):

   It is a word used according to a special custom. It is also known as the technical *Ḥaqīqah*. E.g.: *Istiṣān* (referring to one of the sources of *Sharī'ah*).

4. The General Customary *Ḥaqīqah* (*al-Ḥaqīqah a 'Urfiyyah al-ʻĀmmah*):

   It is a word used according to a general customary meaning laid by people at large. E.g.: *Dābbah* (Animals walking with four legs).  

*Al-Ḥaqīqah* with all the types we have mentioned is the original status for the text. To refer to a meaning not intended by the real sense would certainly require a signifier (*Qarīnah*). The new meaning for which the literal meaning has shifted is called *Majāz* (metaphor).

ii. Al-Majāz (metaphor):

   It is a borrowed word connoting a meaning contrary to its original usage, e.g.: X is a lion. As far as *Majāz* is concerned, there must a signifier preventing the usage of the word in its real meaning. The departure from the real meaning to the metaphoric one is warranted by the following types of signifiers:

1. Tangible signifier (*Qarīnah Hissiyyah*)

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82 Ibid.
E.g.: I swear I do not eat from this tree.

Meaning: I do not eat from the fruits of this tree.

2. Rational signifier (Qarînah 'Aqliyyah)

E.g.: God to Satan

"Lead to destruction those whom thou canst among them" (17:64)

Meaning: This is not a command given by Allah to Satan to tempt people, but an endowment of ability to Satan to do so.

3. Customary signifier (Qarînah 'Urfiyyah)

E.g.: Selling based on the prevailing prices by the agent. That is, if the agent (Wakîl) is to sell something, he has to do so based on the prevailing prices.

4. Legal Signifier (Qarînah Shar'iyyah)

E.g.: Showing mala fide (bad faith) in court.

Meaning: To show that there is an attempt to prosecute the defendant unjustly, not showing that the entire faith of somebody is spoilt.

How to get the real meaning purporting to be certain?

Scholars listed many signifiers in this respect.

i. The indication of usage and custom:

E.g.: Šalāt literally means Du 'ā' (supplication) but it was used to refer to the act of worship comprising actions and sayings. Accordingly, whoever vows to pray, he must perform the prayer that begins with takbîr and ends with taslîm.
ii. The indication of the term as such:

E.g.: Whoever swears not to eat meat, his oath will not cover fish despite being a kind of meat. For meat is a mixture of flesh and blood and fish falls short of meeting this condition, hence, it is not intended when the word “meat” is uttered.

iii. The indication of the near context:

Allah (S.W.T.) says:

"Let him who will believe and let him who will reject (it)" (18:29)

The option of belief and disbelief is not primarily intended by the verse. For the other part of the verse "for the wrong doers We have prepared a fire" reprimands and predicts severe torments in Hell for those who have done injustice, of which disbelief is the gravest.

iv. The indication of the speech producer:\(^{83}\)

E.g.: If somebody is invited for lunch, then he swore by Allah not to take lunch, his oath would cover only the lunch he has been invited for, not all lunches; otherwise, it would be absurd.

\(^{83}\) Ibid, 1/415-424.
These are, in brief, the different types of قارئ (signifiers) and how they are interchangeably used. A theorization of this would be given in the next part of the discussion.

3.2 The context (سياق) and the certainty of the legal text

We have concluded in the previous item that language plays a significant role in determining the meaning of the legal text. We have also concluded that there was a general trend among the jurists to consider language a crucial factor, determining the certainty or uncertainty of the legal text. The debate invited two major groups of jurists, namely al-Jumhūr and the Hanafis whose views collided mainly upon the extent of the language usage.

The present debate contends that language alone falls short of unveiling the very nature of the legal text, prompting the introduction of the theory of context that would help view the legal text within its genuine wholeness.

Context or سياق is the term that will be used to propound a theory thereof. It is used to refer to any factor either within or without the language boundaries. It is a set of determinants that provide an overview on the text being studied. سياق is referred to when the meaning of a text cannot be drawn solely from the mere text, which is only confined within its linguistic boundaries. Yet, molding the inter-related components forming a context for a particular text is not an easy task.
The jurist must be able to observe and master “relevancy”\textsuperscript{84} as the main tool to mould a genuine context. He must dive into the texts he is dealing with and look at them in both their particular and universal contexts. And since the text bears an objective targeted by the \textit{Sharī'ah}, he must be able to identify it, confirm it and consider it essential to determine its true connotation. We shall now disclose the main aspects of the theory of context, and we shall emphasize on three major themes: the meaning, the pillars and the application of context.

3.2.1 The Concept of \textit{Siyāq} (context):

Is it possible for \textit{Siyāq} to generate notions of certain status? The answer to this question will be provided when the concept, the pillars and the mechanisms of \textit{Siyāq} are discussed. \textit{Siyāq} will be treated as a set of signifiers (\textit{Qarā'īn}) surrounding the legal text. The latter is deemed speculative until it is put into its genuine context. To establish a plausible context, we shall identify the relevant signifiers and associate them with the legal text under discussion. It is of great importance to differentiate between the weak and strong signifiers as the certainty of the legal text stands fairly on this.\textsuperscript{85}

We find an extensive legacy on \textit{Qarā'īn} embodied in the books of \textit{Uṣūl al-Fiqh}. However, the jurists are not unanimous in accepting \textit{Qarā'īn} when enacting a legal rule

\textsuperscript{84} This refers to the ability to observe the relevancy of texts to each other.

\textsuperscript{85} Anwar Maḥmūd Dābūr, \textit{Al-Qarā'īn}, (Beirūt: Dār al-\textit{Thaqāfah} al-\textsuperscript{1}Arabiyyah, 1985), p. 96.
from the sources. But they have, indeed, resorted to a number of them, especially under different titles like Asbāb al-Nuṣūl (Reasons of Revelation) and the famous rule Al-ʿIbrah Bi ʿUmmūm al-Lafz lā bi khusūṣ al-Sabah (the legal consideration refers to the generality of the term not to the specificity of the cause of the hukm).

Perhaps, the best description of Qaraʾin is provided by al-Imām al-Juwayni in his influential work al-Burhān. He clearly pinpointed to the role of the signifiers in yielding certainty to the legal text. In the Burhān we read the following text:

“Basically, the legal texts (Nuṣūṣ) must be independent in generating definitive meanings so that all kinds of speculation and probabilities are discarded. Yet, this is unlikely to be achieved solely from the semantic ground. But it is most likely that (definitive connotations from the legal text) can be drawn by virtue of al-Qaraʾin al-Ḥaliyyah wal Maqāliyyah (the circumstantial and linguistic signifiers).”

Ibn al-Qayyim al-Jawziyyah held that,

“both the jurist and the ruler are in dire need to understand two things: The understanding of Wāqiʾ (actual life or reality) that requires a full awareness of al-

\[86\] Al-Juwayni, Al-Burhān, 1/414.

\[87\] Muhammad bin Abī Bakr bin Ayyūb, known as Ibn Qayyim al-Jawziyyah (691-751A.H). He was a student of Ibn Taymiyyah and a follower of his footsteps. Like his teacher, he was a great reformist and a master of many sciences. He was released from jail after his teacher Ibn Taymiyyah died in it. He wrote influential books, namely Iʿlām al-Muwaaqiʿ in ʿArām Rabbi al-ʿAlamin; Zād al-Maʿād Fi Hadyyi Khayr al-ʿIbād and al-Ṭuruq al-Ḥukmiyyah Fī al-Siyāsah al-Sharʿiyyah. See al-Aʿlām of al-Zarkali (6/280)
Qara’in (signifiers) which are able to produce genuine knowledge”.

Yet, the leading scholar who pioneered the idea of Siyāq is undoubtedly al-Imam al. Shafi’i. The following text of his discloses a number of aspects pertaining to Siyāq:

“Al-Shaafi’ī said: Allah (S.W.T.) addressed the Arabs with their language based on what they can understand from it. And the Arabs knew that their tongue is so wide [that it can be expressed in various ways]. [(The Qur’an, hence)] would address [people] using an apparent and general term intended to be as such ... and an apparent and general term intended to be general (‘Āmm) but susceptible to specification ... and an apparent and general term intended to be purely specific (Khāṣṣ); and an apparent term intended to be otherwise because the context suggested so. All this is well understood from the beginning, the middle, or the end of the speech. Moreover, the Arabs would begin the speech with something that only the end of it would clarify the whole meaning and (vice versa) ...”

It is very clear from the passage that Siyāq is a matter of looking at the legal text objectively and comprehensively. The meaning of any term rests widely on the preceding and subsequent terms and texts, prompting the jurists to master the skills of attaching and binding the texts within their proper context.

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88 Ibn al-Qayyim al-Jawziyyah, I ‘īm, 1/86.
89 Al-Shaafi’ī Ǧī, al-Risālah, pp. 51-52.
This would definitely generate an organic unity of the Revealed texts, preventing the shortsighted jurists to enact laws without fully grasping and mastering the contextual derivations.

That is apparently the reason why the jurists disseminated the facts of Siyāq within a considerable spectrum of Fiqh and its principles. But Siyāq is quite visible in the rules of interpretations (Dalālāt) where the jurists badly needed to resort to Qarā‘in. Some of their statements read:

- “The metaphoric sense of a term needs Qarīnah”\(^{90}\)

- “No perplexity (shall be allowed) so long as Qarīnah is a available”\(^{91}\)

- “[Qarā‘in] get the terms out of their speculative and general meanings”\(^{92}\)

- “[Therefore, he who neglect (Qarā‘in) would definitely commit an error and cover the truth by his fallacies when arguing].”\(^{93}\)

- “If somebody says: ‘I have seen people’, and ‘I have adopted the view of the scholars’, and we know for sure that he has not seen all people nor has he adopted the view of all the scholars, this is indeed a Qarīnah (signifier) that

\(^{90}\) Al-Bazdawi, \textit{Kashf al-Asrār}, 2/77

\(^{91}\) Ibid.


\(^{93}\) Ibn Qayim al-Jawziyyah, \textit{Badā‘ al-Fawā‘id}, (Beirut: Dar al-Kitāb al-‘Arabi, 1980), Vo4, p.11
would certainly specify the said statement.\textsuperscript{94}

It is clear from the above-mentioned statements that \textit{Qarāʾin}, being the cornerstone of the theory of context, determine to a very large extent the true meaning of the text. \textit{Qarāʾin} are of two types: \textit{Ḥālīyyah} (circumstantial) and \textit{Lafḍīyyah} (textual).\textsuperscript{95} But scholars would go deeper to unveil the components of this \textit{Siyāq} by referring mainly to the preceding \textit{Siyāq}, the subsequent \textit{Siyāq}, the wholeness of the meaning and the objectives for which the legal text has been put. For the "\textit{Qarīnah (signifier) that would best unveil the true meaning of a term is the conformity with the preceding context as well as with the entire meaning surrounding it, let alone its compatibility with the objective intended to be achieved by Qurʾan}"\textsuperscript{96} Ibn Ḥazm has gone even to consider the circumstances surrounding the act of writing the term or text. As such, he had chosen to consider any thing whatsoever, available in a specific era that can help understand the term in its proper context. For it "\textit{is possible to extend the meaning of Siyaq to cover the circumstances surrounding the term; it can also be extended to cover various dimensions, [be it social, political, or economic] to understand the text in question.}"\textsuperscript{97}

However, not every term needs to be grasped within a context. Texts that are deemed self-vivid and unequivocal in meaning must be confined within the first meaning understood thereof. The criterion is, therefore, the possibility or otherwise of interpreting the text. For this is the basic way to understand the meaning of the text. But if it accepts

\textsuperscript{94} Al-Juwaynī, \textit{Al-Burḥān}, 1/253.
\textsuperscript{95} Ibid.
the possibility of interpretation in as much as the true meaning is contingent on *Qarīnah*, adopting it (*Qarīnah*) would be essential. In this respect, al-Imām al-Ghazālī\(^{98}\) explains:

"*Qarīnah* is either textual like "but render the dues that are proper on the day that the harvest is gathered"(6:141)[ wa ātū ḥaqqahū yawma ḥaṣadīh] or rational like in "And the heavens will be rolled up in His right hand"(39:67), or circumstantial such as signs, symbols, motions, precedent and subsequent factors that are countless and only noticeable to eye-witnesses. (Basically), the Ṣaḥābah would transmit all these signifiers to al-Ṭabīʿīn using clear terms until a necessary knowledge (ʿIlm Ḍarūrī) or a speculative one is generated, and every term or text lacking a descriptive expression (ʿĪbārah Mawsūfah) is in dire need of Qarīnīn" signifiers.\(^{99}\)

It is worth noticing that we have been dealing with signifiers related mainly to the speech as such. These signifiers would fall short of conveying the genuine meaning of the text if we fail to know the speech producer, the speech recipient and the social circumstances surrounding the speech including the milieu in which the speech was produced.\(^{100}\) This will lead us to address the pillars of the speech, which are basically the pillars of the context.

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\(^{98}\) Muḥammad bīn Muḥammad bīn Muḥammad al-Ghazālī al-Ṭusī (a province in Iran) (540-505 A.H). He was known as a Jurist, philosopher, and a Mystic. He traveled to Baghdad then Ḥijāz then to Syria then to Egypt. He was a student of al-Imām al-Juwaynī who inspired him with every bit of knowledge, especially Usūl al-Fiqh. He wrote about 200 books namely *al-Mustasfā Fī Īlm al-Uṣūl; al-Mankhūl Fī Īlm al-Uṣūl and Iḥyāʿ Ulūm al-Dīn*. See Wafāyī al-Aʿyān of Ibn Khallikān (1/463).

\(^{99}\) Al-Ghazālī, *al-Mustasfā*, 1/149.

3.2.2 The pillars of Siyāq:

This part of the research aims at studying the role that the pillars of Siyāq would play to produce certain knowledge. It is imperative to look into the text in its entirety. The latter has been best clarified by al-Shatibi in the following text:

"The science of Ma‘āni (semantics) and Bayān (clarification) by which the miraculous forms of speech are known, let alone knowing the ends of the Arab speech, is contingent on a number of situations: the situation of the speech producer or the speech recipient or it would include all… for the same speech varies according to two situations or two speakers or otherwise."\textsuperscript{101}

The foregoing passage lays down the main pillars forming Siyāq. We shall focus on the speech as such, the speech producer, and the speech recipient and see how the combination of all would grant the texts their genuine and intended meanings. Nonetheless, these pillars are but a prior stage towards a final understanding of the texts in hand.

a. The speech:

We have already seen that the speech must be understood in the light of its signifiers. This is when the text is open to interpretation and the mere linguistic connotations fall short of unveiling its true meaning. The signifiers, when deemed necessary to be considered, must be part and parcel of the text.
The researcher would argue that the integrity of signifiers with the speech would produce a logical equivalence between the two. The signifiers and the text would be in a particularized form of conversation that certainty can be easily conceived. The certainty drawn from Qarā' in is a question pertaining to reason, senses and even emotion. These three tools, when operating in combination, would promote Qarīnah from being speculative to definitive. The accumulation of a multitude of signifiers would eventually compel the mind to adopt one single understanding of the text in hand. Therefore, those signifiers keep corroborating each other to a certain point where only one comprehension is adequate. The rule is that, the more the accumulation of Qarā' in is exhaustive, the more the certainty of the text is justified.

Thus, we must admit that signifiers and texts are two separate entities. For no one, for instance, “would admit that the motion of the speaker, his ethics, customs, deeds, the variation of his grimaces, forehead, head, eyes... are all part and parcel of the speech. These signifiers are, indeed, separate, and the accumulation of which would give birth to necessary knowledge”, ¹⁰² that is the type of knowledge that we are labeling certain or definitive.

Al-Ghaḍālī highlighted this point further by referring to the acts of the speaker and how far they are expressive of his intentions. “As for the act of the speaker, when he says

¹⁰¹ Al-Shā’tibī, al-Muwāfaqīt, 3/347.
¹⁰² Al-Ghaḍālī, Al-Mustasfā, 1/149.
while having food: "Bring water!" it is well understood that he meant the plain and
cold water and not the hot and salty one."

Perhaps, we need not to resort to very exceptional cases where some people mean certain
things that are purely limited to their restricted milieu. Some people may refer to hot
water when uttering the above-mentioned statement. Thus, it is necessary to consider all-
‘Adah (custom) when the speech is put under scrutiny. Considering the factor of ‘Adah,
one type of certainty emerges, that is certainty that varies from one milieu to another. In
other words, what is considered certain in one place may be considered speculative in
another. However, the customary certainty, so to speak, is not to be confused with the
normative certainty. The latter is the type of certainty that is compatible with the norms
of the universe. They are by no means subject to the space-time factor.

The same thing would apply to Avāmir and Nawāhi (positive and negative legal
commands), the yardstick of legislation. For if they are taken individually and confined
solely within their linguistic boundaries, they would not reveal any adequate connotation.
Al-Shātibi stresses that:

"We must track down the meanings (scattered within the entire body of Sharī'ah), and pursue their objectives and
in what category of objectives they fall. We must apply al-Istiqra' al-Ma'navi (the
connotative induction) and go beyond the mere Siğah (textual wording of the legal
text)... The speech of the Arabs must be

103 Ibid, 2/15.
considered with its genuine context; otherwise, it would turn into a mockery. Have not you heard what the (Arabs) say: So and so are lions or donkeys... and if this is applicable to the speech of Arabs, would not be proper to have it applied to Allah and His messenger' speeches."

Analyzing the statement "X is a lion" would disclose the role that Qarina plays to produce definitive knowledge. Bearing in mind that X is a human being, which is what the fact has already confirmed, would preclude any possibility that X is a real lion. Besides, X appears to be very brave and courageous, traits that add to our conviction that X was likened to a lion as the lion is very brave and courageous. Therefore, the discrepancy between the nature of both X and lion, as one is a human being and the other is an animal, and their similarity in bravery and courage are two definitive signifiers that are capable of producing definitive knowledge.

It all depends on how far are we able to pinpoint to the semantic systems that relate objects, creatures and meanings together. It also depends on the ability to observe the different levels of convergence and divergence among the said entities. These are prerequisites for Qara’in to be used effectively at the level of the text in its wording form.

b. The Speech Producer:

Knowing the speech producer at all levels would lay bare a great deal of the meaning of the text. For the ignorance of the nature, the background, the objective and the essence of

the speech producer would strip the text from its genuine context. For instance, there is a
great difference between the Divine speech and that of the human. There is even a
difference between Allah's speech and the Prophet's. It is a speech of a creator that has
not been directly heard, but its producer is still and will be present forever, that is in
contrast with the Prophet's speech that had been directly heard but its producer does not
exist anymore. Hence, once we got to know who Allah is and what responsibilities he has
entrusted us with, it would be so certain that Allah (S.W.T) wants justice, equality,
tolerance, goodness, prosperity and anything deemed good.

Thus, any doubt about that would certainly stem from the ignorance of Allah's essence
and attributes. That is why the companions (Sahabah) used to consider the silence of
Shari'ah over certain matters as a sign of approval on the part of Allah (S.W.T.) and His
Prophet (S.A.W.). The rule they upheld states that 'silence is a sign of approval', for
Allah (S.W.T.) would not endorse bad things and mischief by keeping silent; otherwise, it
would be against His wisdom and the principles of goodness that He upholds. And "this
is an inference applied without relying on a text; it is relying on the deep meanings
lying in His names and attributes and that He would not endorse anything deemed
wrong until He clarifies it."\textsuperscript{105}

Consequently, it would be well justified to say that the fundamentals of ethics mentioned
in Qur'an like justice, equality, tolerance, goodness etc... are concepts of definitive
nature. And any alteration befalling these principles of ethics would offend Allah
(S.W.T.) and put Him at odds. Accordingly, "observing and emulating Allah's attributes

\textsuperscript{105} Ibn Qayyim, \textit{Ilām}, 1/218.
and deeds”, al-Shāṭībī contends “is a prerequisite for Ijtihād”. It is imperative on the part of the jurist “to observe the ‘Ādah (way) of Allah (S.W.T.) when revealing (Qur’an), the way He addresses His servants, His treatment of His servants with due mercy and beneficence in that He made (Qur’an) in Arabic so they can understand it...”

The speech producer would also include the Prophet’s sayings, deeds and approvals. The latter are accepted or rejected based on how far the concept of Prophethood of someone is vivid in our minds. Knowing his background, thus, is not a question of sublimating a person, ascribing to him supernatural capabilities that many cult leaders through out history would eventually partake.

Notwithstanding the Prophet (S.A.W.) does have traits transcending those of humanity, they are only conceived within the prerequisites of his Prophethood. This provision is very essential to perceive the words he utters and the deeds upon which he acts, the ignorance of which would restrict the Prophetic speech to linguistic frameworks only.

Now how can the personality of the Prophet (S.A.W.) help conceive certainty in the legal field? The answer lies in two points:

First, The certainty of his speech rests mainly on the certainty of his Prophethood. It is a matter of certitude that Muhammad (S.A.W.) was entrusted with the last message. This has been bolstered up by the Revelation of Qur’an that happened to be miraculous in that no human being would dare to produce something similar, even a small part thereof.

This challenge is even boosted by the fact that the one who brought it was illiterate. The failure to produce a similar Qur'an and the illiteracy of the Prophet (S.A.W.) form a conceptual platform that is both definitive and irrefutable. Once his Prophethood is confirmed certain, the way then, is well paved to listen wholeheartedly to what this Prophet says and follow his instructions.

Second, the Prophet (S.A.W.) was trying to actualize the teachings he preaches. His sayings, deeds, and judgements were expressive of one personality with different facets. Sometimes he acts like a judge, some other time like an ordinary man or head of state and of course, he was mainly acting as a Prophet. The researcher contends that certainty cannot be achieved if the distinction between the various facets of the Prophet's personality is not made.

This distinction is made by certain criteria that are logically plausible:

i. Allah's silence on his Prophet:

Again, the criterion of silence is a subtle measurement to know what is accepted or rejected by the Islamic law. For the Prophet would not be consented for casual blunders on his part. In other words, the views and opinions of the Prophet (S.A.W.), which invoked Allah's objection, were merely stemming from his person as a human being not as a Prophet.

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ii. Views encroaching upon the actual facts:

Some of the Prophet’s views used to clash with factual incidents as in the case of advising farmers to fertilize palm trees in a peculiar way to which the companions unreservedly applied themselves. To their astonishment, the method suggested by the Prophet did not work, as no crops were cultivated that season. Knowing that his method did not work, the Prophet directed them to resort to their expertise rather than to his opinion, which was wrong. ¹⁰⁹

Moreover, the speech producer would include the *Ummah* to which the duty to perpetuate the injunctions of *Sharī'ah* has been assigned. The *Ummah*, represented in the institution of *Ijmā‘* would be the only vocal body, after the demise of the Prophet (S.A.W) to enact laws within the legitimate scope of *Ijtihād*. We shall come back to this point to study the intrinsic elements of certainty lied therein.

Consequently, the assimilation of all these factors shaping the speech producer or the lawgiver are very essential to target certainty in *Sharī'ah*. These sources are operational either in combination or independent from each other and the certainty of the text could stem from each or from all of them.

¹⁰⁸ This applies to Allah’s objection against the Prophet’s views that the captives of the battle of Badr must be freed and also in the case of his funeral prayer on some hypocrites.

¹⁰⁹ The hadith is related to *Muslim* on the authority of Rāfi‘ ibn Khudayj. See *Muslim*, 2/374.
iii. **The Speech Recipient:**

The speech must take into account the recipient purporting to be its virtual carrier. His nature, capabilities and qualifications are very necessary to grasp the theory of *Siyāq* in the legal field.

The legal rules vary according to the nature of the law recipient. He is sometimes as fit as a fiddle and sometimes ill. He is at one time settled and at the other travelling etc... Accordingly, the speech of *Makkah* and that of *Madīnah* differed in that the former stressed on ‘*Aqīdah* and the latter on legislation. The recipient, in both cases, was the same but his faculties as well as his qualifications were different. Therefore, if the first injunctions of Islam were about prayer and fasting, the companions would have found it difficult to accept those commands as definitive orders. The Āyah that reads: “**Establish regular prayer**” would have seemed too turgid to the companions that they would not be submissive the moment they hear it. For the prior knowledge about the commander of prayer, i.e.: Allah (S.W.T) is very essential to have prayer abided by at once.

It is also noticeable that Allah’s speech comes in different forms. It is concise and affluent, varying according to the assimilative potentials of the recipient. This would produce a cohesive legal system that builds up its ordinances upon the natural capacities of the recipient. Hence, the certainty of some legal texts, like that of prayer and fasting, are duly made conceivable to the recipient so that he performs his duties decisively and confidently.
That is why the jurists stipulated two types of capacities in reference to the law recipient: 
_Ahliyyat al-Adā' _ (legal capacity for execution) and _Ahliyyat al-Wujūb _ (legal capacity for 
rights but not for obligations).

When Allah (S.W.T.) Says: "_Aqīmu al-Ṣalāt _" (Establish regular prayer). This would 
implicate the servant in so far as his capacity of execution is complete. Therefore, the 
word "_Aqīmu _" cannot be comprehended only by virtue of language, though language 
would classify it as _Fiʿl Amr _ (command) and every _Amr entails Wujub _ (obligation)."^{110} 
That is purely credited to the fact that _Amr _ is classified by both grammarians and jurists 
as _Khaṣṣ _ and, hence, definitive.

The point of contention here is that the word "_Aqīmu _" is semantically definitive, but if 
discarded from the context of the law recipient, it would only be speculative. For 
children, mad people and those with legal excuses would be implicitly included under the 
same command. It is here where the law recipient factor determines the certainty of the 
legal texts.

3.2.3 The Periphery of the Legal Text

The legal text was revealed in a particular time and space. It has been fifteen centuries 
since the divine message of Islam was endowed upon the _Ummah _, and it has been, and 
will be the last message ever revealed. Yet, a question arises as to whether the element of

\[^{110}\text{Abdul Karim Zidan, } Al-Wajīz Fī Uṣūl al-Fiqh, 4^{th} \text{ edn. (Beirūt: Muʿassasat al-�ālah, 1994), p.12.}\]
'historicity' would sway the legal text and cast doubt on its authenticity. Besides, do the geo-political and socio-economic factors surrounding the legal text lay bare its ultimate verities including its certainty?

When we look into the periphery surrounding the legal text, we find it of two categories:

1. The history of the legal text:

   This would include its revelation, timing, and the stages of its compilation, reasons of its revelation, its standardization and ways of its recitation. All these are studied under the science of Qur’an. The mastery of this science is crucial before the jurist embarks upon deducing laws. It is equally important to use this science to scrutinize the legal text and judge it certain or otherwise.

To clarify this, we may cite an example about the diversity of the Qur’anic recitations. It is believed that the divine text took into account the multitude of the Arab tongues, considering seven of them. The main reason behind this is to put people at ease so they can read Qur’an and abide by it easily. Moreover, the diversity of the Qur’anic narration would, by and large, help unveil a new legal rule. 111

The Makkī (Qur’an revealed in Makkah) and Madānī (Qur’an revealed in Madīnah) would also confirm the laws of revelation. This would help the jurist to apply the rules of

Abrogation (Naskh) in case two texts happen to be in conflict, thereby rendering the sequence of verses very essential when inferring from the texts.

2. The Geo-political and Socio-economic Factors.

Studying the environment, be it social, political, economic cultural or religious, is very essential for the jurist to have a proper inference from the texts. Al-Imām al-Shāṭibi referred to this factor when discussing the divisions of Maqasid (the objectives of Shari'ah). He reiterated that "comprehension" is a very important principle in the Islamic Shari'ah. And since Qur'an was revealed in the Arabic language, then grasping this language becomes an objective targeted by the Sha'ri'ah itself. Accordingly, the Shari'ah is basically meant to be comprehended in the Arabic language. Besides, al-Shāṭibi adds:

"The spirit of Qur'an is Arabic, its mood and stylistic peculiarity (Uslūb) are both Arabic. Hence, diving into the objectives of Qur'an would be through observing and getting absorbed into its Arabic spirit..."

Al-Shāṭibi raised a number of points in order to stress the "Arab" dimension in comprehending the legal text.

i. He maintained that,

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112 Ibid.
113 Al-Shāṭibi, Al-Muwāfaqat, 2/64.
“If the Arabs did have in their tongue an ongoing custom, it is not to be ignored while comprehending Shari’ah, and even when no custom existed, it is not allowed to apply an understanding which the Arabs did not know”\textsuperscript{115}.

He referred to one custom, that is when the Arabs sometimes focus on the meaning rather than the wording to express something. For “\textit{(The Arabs) do not commit themselves to either one so long as the speech is not affected.”}\textsuperscript{116}

ii. The meaning of the text transcends the wording.

This was the ultimate aim of the Arabs when uttering and hearing words. It all depends on the syntax of the speech and the elements of its composition. Accordingly, the attention must be drawn first to the wholeness of the speech rather than to its syntactical components. The following example brought by al-Shaṭībī would clarify this:

A man asked ‘Umar (R.A.) about the meaning of the verse “\textit{wa fākihatin wa Abbā}” in surah ‘Abasa(80:31), particularly the \textit{Abb}. ‘Umar (R.A) replied: “We have been ordained not to go deeper in understanding the verses…” It is also reported that ‘Umar (R.A) reprimanded someone for exceedingly asking about (\textit{Al-Mursalat}) and (‘\textit{Asifat}) and the like.\textsuperscript{117}

This is governed by one condition, that is the meaning of the text must not solely rest only on that particular word; otherwise, it would be mandatory to seek its meaning and

\textsuperscript{115} Al-Shaṭībī, \textit{al-Muwāfaqāt}, 2/82.

\textsuperscript{116} Ibid.

\textsuperscript{117} Ibid., 2/87.
consider it throughout the operation of inference. This explains why ‘Umar himself asked about the genuine meaning of the word “takhawwuf” mentioned in Surah al-Nahl, verse No.47 “aww ya’khudakum ‘alā takhawwuf”. A man from the tribe of Hudhayl replied: “Al-takhawwuf is tanaqqus (Reduction) according to our language.”

iii. Shari‘ah has also considered the religious and intellectual capabilities of the Arabs, for “the rulings pertaining to the creed and law must be appropriate with the potentials of the Arab man so that he can grasp it and abide by it.”

It is well known that illiteracy had featured the people upon whom the message of Islam was sent down. Except a few who could write and read, the majority of them would just rely on memorization to recall things. This would also explain the intellectual fabric that appeared to be very simple. Their location between the Persian and the Roman Empires did not seem to jeopardize their ordinary life. Yet, their life capsules different dimensions that appeared to form a common denominator among all the nations of the world.

The idol worshipping that they practiced symbolizes the shirk that all the then nations were in. The concept that their idols would bring them near to God symbolizes the deviation that can befall a religion anytime, just like what happened to the teachings of Mūsā and ‘Īsā (peace be upon them). I would say that the Arabs combined two contradictory elements i.e.: the simple-mindedness and complexity underlying idol worshipping. The latter is a situation when a person gradually degrades himself to a level.

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118 Ibid., 2/88.
119 Ibid.
where he views mute objects as sacrosanct. He would offer his loyalty to a mere object that one day he used to pass by a feel its abasement.

The combination of these contradictory elements required a divine speech that would dismantle the complexities underlying idol worshipping with a language that caters for their simple mindedness and complex belief. That is why, Qur'an varies its tone from harsh to lenient, to awake the Arabs from the folly of idol worshipping, and to stimulate their dormant belief in the true God.

This explains why the Arabs and their strayed beliefs formed the major themes of the Qur'an. The latter systematically demolished their beliefs and established its tenets instead in the best plausible way. Then it moved to establish its laws based on what they were accustomed to. It related prayer to the motion of the Sun throughout the day, a timing with which the Arabs were already familiar. It chose one of their months, Ramadan, and made fasting during the month obligatory. It chose another month, Zul Hijjah, and made Hajj compulsory in it once in a lifetime. It acknowledged certain rituals of Hajj\textsuperscript{120}, after some amendments, and made them the pillars of Hajj in Islam.

The Prophet (S.A.W.) proclaimed that he came to complete the good manners the Arabs had in the pre-Islamic era,\textsuperscript{121} a matter that shows the adoptive aspect of the Sharī‘ah. Islam also considered the willingness of Arabs to get rid of the bad conducts, considering

\textsuperscript{120} Like sa‘y (compassing) between Safā and Marwā and Standing in Mīnā,

\textsuperscript{121} This refers to the Ḥadīth “Innamā Bu ‘ithtu li utammima Makārim al-Akhlāq”
their deep attachment to certain evils. Since the Arabs were very fond of wine, it took Qur’an several stages to finally come to its prohibition. And since the Arabs were widely involved in business, their transactions were stained with Ribā (usury), which was the order of their business. It took Qur’an several stages to finally prohibit Ribā, though there were desperate attempts by the non-believers to equate trade with Ribā, a question that Qur’an strongly opposed.

Moreover, a contemplative view over the legal text would suggest that the jurist must go beyond the element of “Arabism” that is shaping a great deal of Allah’s injunctions. A thorough study on mankind as a whole appears to be very necessary to assimilate the legal text. This is “because Allah (S.W.T) has elucidated a big deal of Mankind’s habits and norms; He also pointed out the divine laws governing mankind; and also told us the best stories about the previous nations…”\textsuperscript{122} It would be baseless and futile if we do not draw from those stories and facts what can help us fulfill our mission. It would be a failure on the part of the jurist if he sets off enacting laws, ignoring the facts mentioned by Allah (S.W.T.) about man, be he an individual or a societal element. Thus, “how do we comprehend a verse like “people were but one nation (2:213)” contends al-Sheikh Rashīd Ridā, “if we do not know the true facts about mankind, and how they got united and progressed; and what is the meaning of “wahdah” (unity) ascribed to

\textsuperscript{122} Rashīd Ridā, \textit{Tafsīr al-Manār}, 1/23.
their assembly; and was it beneficial or destructive; and what was the impact of the Prophets on them?"\textsuperscript{123}

Undoubtedly, all these require a new methodology to understand the legal text within its proper context. Perhaps, this is what has instigated a number of scholars and institutions in the modern world to design a new methodology dealing with the legal text from traditional and modern perspectives. Accordingly, Muslim scholars and jurists are summoned to benefit from the human sciences in a bid to understand human being and the inner laws governing him. How far the scientific theories propounded by human scientists are accurate is actually beyond the scope of this thesis. It suffices to note the significance of such an approach in the juristic studies in the modern world.

3.3 Practicality of \textit{Siyāq} and the Certainty of The Legal Texts.

3.3.1 Elevation and Degradation processes between \textit{Qa'ī} and \textit{Zanni}.

The scope of practicality of \textit{Siyāq} is so wide that it makes its presence in the entire body of \textit{Sharī'ah}. As far as the certainty of texts is concerned, \textit{Siyāq} can help some texts to enjoy definitiveness after they were speculative. It can also degrade a definitive text to a lower level rendering it speculative. The following cases would clarify this:

\textsuperscript{123} Ibid.
1. The speculative of the Qur’an can be made definitive by the Sunnah:

Here, the jurists would resort to Siyāq to interpret the texts. The following example of ‘Āmm would highlight this:

‘Āmm from Qur’an → “Allah permitted sale but prohibited usury” (2:275)

Khāṣṣ from the Sunnah → “The Prophet (S.A.W.) prohibited the sale of unripe fruit on a tree”

The verse is Zannī in that it permits all kinds of sales without exception. Yet, the hadīth has made an exception by excluding the sale of unripe fruits on a tree. The specified part of the verse becomes definitive after the whole verse was speculative. The unspecified part is reduced into Zannī and will be treated as such. This process has taken place by tracing the evidences sharing similar contents. That is why al-Jumhūr are of the opinion that “it is not permitted to utilize the ‘Amm before looking for a specifier (Mukhassis)”.

This would require a full implementation of the theory of Siyāq explained earlier.

2. The speculative of the Sunnah can be made definitive by Qur’an:

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124 Muslim, Ṣahīh Muslim, hadīth No 2906, in Kitāb al-Musāqāh.

The same methodology would apply to substantiate the definitiveness of the texts. E.g.: The solitary Prophetic reports (Ahādīth al-Āhād)\textsuperscript{126} that elaborate the definitive Qur'anic prohibition of usury (Ribā) in Sūrah (2:275) are speculative by virtue of being Āhād. But the substance of these Ahādīth is supported by the definitive Āyah (2:275), rendering those Ahādīth definitive despite the original speculation they stand on. The Āyah reads:

"Those who devour usury will not stand except as stands one whom the evil one by his touch hath driven to madness. That is because they say: "trade is like usury", But Allah hath permitted trade and forbidden usury."(2:275)

Thus, all solitary Ahādīth whose authenticity is open to speculation are elevated to the rank of Qatī if they can be substantiated by clear evidence in the Qur'an.\textsuperscript{127}

In yet another example, the famous hadīth narrated by 'Umar Ibn Al-Khaṭṭāb \textit{"Innā al-A‘māl bi al-Nīyyāt..."}\textsuperscript{128} (deeds are but based on intentions). This hadīth is solitary in that it is narrated by only one person, i.e. 'Umar (R.A.A.). However, the content of the hadīth is supported by a number of verses stressing intention (al-Nīyyah) as a prerequisite

\textsuperscript{126} Ḥadīth Āhād is a Prophetic report narrated by a single person or odd individuals. Al-Imām al-Shāfī'i calls it khabar al-Khāṣṣah. It is mainly a Ḥadīth that does not meet the conditions of Tawātūr. See al-Risalah of al-Shāfī'i, i, p.160.


\textsuperscript{128} Bukhārī, Sahīh al-Bukhārī, Ḥadīth No 1, in Kitāb bad' al-Wahy.
for deeds to be accepted by Allah (S.W.T). As such, Al-Bukhārī did not hesitate to inaugurate his Śahīh with this ḥadīth despite its solitary status.

3. **The definitive text of the Qur’an can disqualify the Sunnah:**

This is when the Sunnah appears to contradict the definitive indication of a Qur’anic text. In this case, the Sunnah runs the risk to be rejected. ‘A’isha (Radiya Allahu ‘Anhā), for instance, rejected the following ḥadīth:

> "If someone wakes up from bed, he is bound to wash his hand before putting it in the water container, for he does not know where his hand was (during the night)"\(^{130}\)

She did so, because she felt that such ordinance is conducive to hardship (Mashaggah), a matter that puts this ḥadīth at odds with the verses stressing "Lifting hardship" like\(^{131}\):

- "Allah intends every facility for you; He does not want to put you to difficulties" (2:185)

-"He doth not wish to place you in a difficulty". (22:78)


\(^{130}\) Muslim, Šahīh Muslim, 1/223.

4. The *Zannī* of the *Qur'an* may be elevated into *Qāṭī'ī* by means of corroborative evidence in the *Qur'an* itself or in the *Sunnah*:

This requires that the jurist should not confine himself to the speculation underlying the individual evidence. Instead, he should consider the entire context to understand the text at hand. For "if we look at prayer, we find *Qur'an* commanding it in motley ways, praising those who establish it, reprimanding those who neglect it, stressing on the servants to establish it, whether standing or sitting even laying (on beds) and fighting those who neglect it... we certainly come to realize the obligation of prayer".\(^{132}\) This method presumes the speculation of every evidence referring to prayer. But the corroborations of all these evidences would leave no room for doubt that prayer is *Wajib* (obligatory).


The establishment of these notions is the establishment of universalities (*Kulliyāt*) which are more valuable than particulars (*Juz' iyyāt*). Al-Shāṭibi\(^{\_}\) puts it:

"That is why the *Uṣūl* (universal principles) have excelled over al-*Furūʿ* (the particular evidences), for the latter lean to solitary evidences and (scattered) sources, thus, they have remained speculative as their original status require. That is in contrast with *Uṣūl*, for they are extracted from tracking down a multitude of evidences and their meanings."\(^{133}\)


\(^{133}\) Ibid.
5. The Zannī of the Sunnah may be elevated into Qaṭʿī by means of corroborative evidence in the Sunnah itself or in the Qur'an.

This would require the same method applied in the previous item.

6. The Zannī of both the Qur'an and Sunnah may be elevated into Qaṭʿī by means of conclusive Ijmā', especially the Ijmā' of companions. This will be highlighted in Chapter 4. It suffices to note, in this respect, that Siyaq means also looking into the entire sources of Sharī'ah and figure out how they corroborate each other.\textsuperscript{134}

3.3.2 The legal proof between definitiveness and speculation.

The legal proof, as the main bearer of the legal rule, is the ground from which law enactment stems. Jurists would always scrutinize it from various perspectives, depending on the field of study they are engaged in. As far as the legitimacy of the laws enacted is concerned, the degree of certainty of the legal proof would be of paramount importance. Every legal proof is either definitive or speculative. If it were the former, then no reason would hinder the process of law enactment. This is the highest and the strongest proof ever used in the process of legislation. It is called Qaṭ'iyy al-thubūt Qaṭ'iyy al-dīlālāh (definitive in both source and connotation). This is like the proofs pertaining to the obligations of prayer, Zakāt Śawm and Ḥajj.

\textsuperscript{134} Kamālī, \textit{The Principles}, 35.
If the legal proof happens to be speculative, it would have two considerations as explained by al-Imām al-Shāṭibī (d. 790 A.H.): it refers to a definitive principle or to a speculative one. If it refers to a definitive principle, it would be considered definitive too. In case it refers to a speculative principle, we should stand by until a valid consideration is introduced. Al-Shāṭibī then introduces four divisions\(^{135}\) of the legal proof as far as its certainty is concerned:

1. A definitive proof, as both its source (thubūt) and connotation (dīlāṭah) are definitive. No doubt shall arise regarding the certainty of this type. Examples of this type would be:

- Shares of inheritance: “Allah (thus) directs you as regards your children (Inheritance): to the male, a portion equal to that of two females” (4:11)

- Ḥudud punishments: “Flog each one of them with a hundred stripes” (24:2)

2. A speculative proof referring to a definitive principle:

This is like Akhbār al-ʻAḥād (solitary reports) in relation to Qur'an. Every solitary report is speculative by itself, but its authenticity augments as it confirms the proofs of Qur'an. This is like the ʿAḥādīth reporting Tahārah (legal purity), prayer, ḥajj and the like. In short, any solitary ḥadīth that happens to confirm and consolidate a proof from the Qur'an shall be considered definitive too.

\(^{135}\) Al-Shāṭibī, *Al-Muwāfaqāt*, 3/16
Another example is about the hadith "La ḫara rwa lā Ḍirār." (Harm is neither to be inflicted nor to be tolerated). This hadith, though speculative in its originality, is covered and supported by definitive proofs from the Qur'an. For the prohibition of inflicting and tolerating harm is spread in the entire body of the Shari'ah, be it juz'iyāt or kulliyāt; this would also include the prohibition to harm people's selves, wealth and dignities.\(^{137}\)

It is here where al-Shāṭi'ī portrays the practicality of Siyāq to determine the value of the legal proof. Thus, looking at a solitary hadith in the absence of its Qur'anic origins would brash aside a considerable number of Aḥādīth.

3. A speculative proof contradicting definitive principle and no definitive principle would support it:

This type of proof is rejected as it stands against the definitive principles of Shari'ah. Besides, it failed to have a supporting definitive proof to boost its status. An example of this would be the view of some scholars to stipulate the fasting of two consecutive months for someone divorcing his wife by Ḫaṭir.\(^{138}\)

\(^{136}\) Ibn Mājah, Sunan ibn Mājah, hadith No 2331.

\(^{137}\) Al-Shāṭi'ī, al-Muwāfaqāt, 3/17

\(^{138}\) A type of divorce practiced by the early Arabs whereby a husband would divorce his wife by likening her sanctity with that of his mother. This would amount to an injurious assimilation of wife to mother whereby the wife will be permanently divorced. See Mu'jam Lughat al-Fuqahā' of Qal'aji, p.297.
instead of stipulating setting a slave free as ordained by the Qur'an\textsuperscript{139} at the beginning of Sūrah al-Mujādalah. The Āyah reads:

\textit{"But those who divorce their wives by Zhiḥār, then wish to go back on the words they uttered, it is ordained that such a one should free a slave before they touch each other...And if any has not (the wherewithal), he should fast for two months consecutively ...But if any is unable to do so, he should feed sixty indigent ones" (58:3-4)}

The Kaffārah (expiation) sequence requires that freeing a slave should be observed first, if not, then fasting two consecutive months, if not, then feeding sixty needy people.

Another example clarifying this type of proofs would be the Fatwā (religious decree) given by some scholars to a Muslim king who had sex with his wife in the day of Ramadān. They decreed that he should fast two consecutive months instead of freeing a slave given the sequence of the kaffārah of such a case.

Responding to objections raised against this Fatwā, those scholars held that the kaffārah of freeing a slave would not deter such a King, as he would find it easy to spend his wealth for his sexual pleasures. But this answer does not seem to gain some credibility among the bulk of scholars. The latter maintained that although fasting two consecutive

\textsuperscript{139} Al-Shāṭibī, \textit{al-Muwāfaqāt}, 3/18
months would be the most deterrent punishment for some rich people, yet, it opposes the legal proof that places freeing a slave before fasting two consecutive months\textsuperscript{140}.

The researcher maintains that this debate is centered on a single person violating a teaching of Islam. Would it be proper to stick to the same rule when the matter is projected on a more societal scale? In other words, if the rich people of one region would commit the same mistake by having intercourse with their wives in the day of Ramadān, would freeing a slave be the ideal expiation for them?

Looking at Shari‘ah from a broader perspective, we observe that the violation of its rules varies from two scales, i.e. the individual scale and the societal scale. What is prohibited at the individual scale may not be necessarily the same at the societal scale and vice versa. The objectives of Shari‘ah would determine the variations of the two scales respectively. This applies to the example of the King having intercourse in the day of Ramadan. It could be right to maintain the original order of the kaffārah pertaining to such a crime, that is freeing a slave or fasting two consecutive months or feeding sixty needy people, if the number of rich people violating the sanctity of Ramadān are a few. Yet, if the number of those people increased to the extent that the sanctity of Ramadān is completely affected, and hence Religion is affected too, than recommending the freeing of the slave would undermine the objective of kaffārah itself. For people would then find it easy to expiate their wrongdoings and that would surely contribute towards the demolition of Religion.

\textsuperscript{140} Abd Allah Dirāz, commentary on \textit{Al-Muwaqaq}, 3/18
In the same vein, al-Shāṭibī reported an argument pertaining to the solitary ḥadīth. The contention was: if the solitary ḥadīth (Khabar al-Wāḥid) meets all the conditions of a genuine ḥadīth, shall it be referred to al-Qur'an afterwards? Al-Shāṭibī rejected the principle of referral at once, arguing that a ḥadīth meeting all the conditions of a genuine ḥadīth shall also meet the condition of not contradicting Qur'an.\textsuperscript{141}

But, as al-Shāṭibī observed, this issue is deep-rooted in the conduct of Salaf (the pious ancestors). He quoted a number of incidents where the Ṣānnī was rejected because of its opposition to the Qafī of the Qur'an.

- ‘A’isha (R.A) rejected the ḥadīth "The dead would be punished as his family cries for him"\textsuperscript{142} (Bukhārī and Muslim). She held that this ḥadīth is contradicting the verse:

\begin{quote}
"Namely, that no bearer of burdens can bear the burden of another" (53:38)
\end{quote}

- She rejected the ḥadīth reporting the incident of Isrā’ (the night journey) when the Prophet (S.A.W.) saw His Lord with his naked eyes. She argued that this ḥadīth contradicts the verse "No vision can grasp Him." (6:103)", which makes it impossible to see Allah with the naked eyes.

Together with Ibn ‘Abbās, she rejected the ḥadīth of Abū Hurayrah pertaining the avoidance of putting hands in water utensil before washing them. According to

\textsuperscript{141} Ibid, 1/19

\textsuperscript{142} Ibn Ḥajār, \textit{al-Talkhīṣ wa al-taḥbīr}, 2/32
her, this *ḥadīth* would contradict the principle of *Rafʿ al-Ḥaraj* proved through a variety of definitive proofs in both *Qur'an* and *Sunnah*.

- Al- Imām Mālik rejected a few *Aḥādīth* on the pretext that they contradict definitive proofs:

-He rejected the *ḥadīth* that recommends the cleansing of a water pot after being licked by a dog. He wondered how the dog's hunting is permitted while its saliva, when licking a pot, is detestable. The dog's hunting is confirmed by a definitive proof from the *Qur'an* that would implicitly ascertain the purity of the dog's mouth.\(^{143}\)

- Mālik also rejected the *ḥadīth* of *Khiyār al-Majlis* (options in a business meeting) as it goes against the rule *Gharar* (Aleatry sale), which is a definitive principle.\(^{144}\)

According to Mālik, the option given to the buyer is indefinite and thus, it may undermine the interests of the seller.

-He also rejected the following *Aḥādīth* as they oppose definitive proofs:

"*He who dies with some arrears of fasting, his guardian shall fast on behalf of him*"

This *ḥadīth* goes against the verse that reads:

"*Namely, that no bearer of burdens can bear the burden of another*(53:38)"

\(^{143}\) Abdullah Dirāz, commentary, 3/21

\(^{144}\) Al-Shāṭibī, *al- Muwafaqāt*, 3/22
* He did not recommend the fasting of the six days of *Shawwāl*, though the *hadith* was very much authentic (related to al-Imām Muslim). His view is based on the definitive proof of *Sadd al-Dharā‘i‘*. He was considering the possibility that some people may think that the six days of *Shawwāl* are mandatory to fast since they are attached to *Ramaḍān* whose fasting is *wājib*.

- He does not specify the number of sucks (*Rada ‘āt*) mentioned in *sūrah al-Nišā‘* (4:23), as the verse referring to breast-feeding by foster-mothers is general.

4. A speculative proof that is lacking the support of a definitive principle and yet, it does not oppose any definitive principle.

This is disputable is many ways:

- From one side, it is invalid as it lacks the support of a definitive proof, the prerequisite for a proof to be considered valid. Al-Shā‘ībī observed that such a proof does not exist, as proven by induction.145

- From the other side, it may be considered valid, given legislative procedures that *Sharī‘ah* would not overrule speculative proofs. In this case, it suffices to have a speculative *ḥadīth* not contradicting any definitive principle, though it may not be supported by a definitive principle.

The four cases mentioned earlier would strengthen the assertion that the smart usage of *Siyyāq* determines to a large extent the certainty or speculation of the legal proof. The consideration of a speculative proof would not necessarily require its subordination to a

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145 Ibid, 3/26
definitive text featured by its singularity and isolation. The definitive proof that would boost the authenticity of the speculative one is of two sorts:

1. A definitive text governed by the criteria of certainty mentioned earlier.

2. A definitive proof established through the inductive signifiers like Sadd al-Dhari'ah and Raf' al-İharaj.

Although the definitive text (a verse or a hadīth) is of sublime origins, its authoritativeness is duly contingent on the methodology we proposed, i.e.: the inductive signifiers.

Consequently, Siyāq proved capable of yielding certainty in various ways. Through its universal approach, it tends to elevate Zanni into Qat'i and may degrade Qat'i into Zanni. It goes beyond the linguistic boundaries to look into the objective of language and combine it with the objective of Shari'ah. It goes even deeper to consider the circumstances in their wider variations so that the down-to-earth dimension of Shari‘ah is well maintained.

The two main tools to establish a genuine Siyāq appear to be Qarā'in and the inductive method. While in this chapter we have exclusively referred to the former, the latter will receive a detailed elaboration in the last chapter. Yet, by the end of the last chapter, we will discover that both tools (signifiers and induction) would form a combined tool of research able to engender certainty. We shall call this binary tool: Al-Qarā'in al-
Istiqra'iyyah (the inductive signifiers). The latter would produce a type of certainty that we shall call semantic certainty.