

CONCLUSION

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This study unveiled one of the subjects that has remained vague and scattered within the entire body of *Uṣūl al-Fiqh*. *Certainty*, being the theme of this dissertation, is an issue that has been spontaneously treated by the classical writings of *Uṣūl al-Fiqh*, but little has been done to determine its criteria and their applicability in the process of deriving legal rules. With many researchers scared to theorize for certainty in the legal field, this thesis has painstakingly ventured into a difficult area of *Uṣūl al-Fiqh*, which is renowned for its abstractness and meticulousness. It has reviewed many views advocating the speculation of *Uṣūl al-Fiqh* and attempted to mend the flaws of some. It tried to reassess some views that proved to have been influential with regards to certainty in the legal field, and finally it unfolded a trend of jurists who have ably institutionalized a new science, i.e : *Maqāṣid al-Sharī'ah*. The latter is considered the new break through in the field of legal inference and its modes. The thesis comes up with the following conclusions :

- The issue of certainty has not been subtly treated nor its criteria have been set. It remained scattered within the themes of *Uṣūl al-Fiqh*. Yet, it sometimes appears to have shaped some intellectual trends that were inclined to the uniformity of the methods of inference in the legal field. We may quote al-Imam al-Juwaynī in his effort to propound a new science that would settle disputes and salvage the *Ummah* from deterioration and disunity. His *Ghiyāthī* was a typical model for such a science. We may also quote Ibn Hazm in his effort to reject *Ta'wīl* and hence *Qiyās*. He would do so to discard any possible speculation that may taint the purity of *Sharī'ah*. Al-Ghazālī from his part

sought to ground *Uṣūl al-Fiqh* with logic in an attempt to regulate the process of legislation and hence granting *Uṣūl al-Fiqh* a solid platform to move upon. Ibn Taymiyyah would suggest new criteria to attain certainties from uncertainties. His amendment of the premises of *Qiyās* and elevating some of its speculative forms to definitiveness would single out that certainty can be achieved and new criteria can be set for it. Al-Imām al-Shāṭibī boldly ascertained that *Uṣūl al-Fiqh* is definitive and any speculation in it should be discarded. This approach was to be echoed in the twentieth century when al-Imām al-Ṭāhir Bin ‘Āshūr took the lead in calling for a fresh substitution of *Uṣūl al-Fiqh* with a new science which he called *Maqāṣid al-Sharī‘ah*.

- The traditional school of *Uṣūl al-Fiqh* had a propensity to view the speculation of *Uṣūl* as a healthy phenomenon without bothering to set up an uniformed methodology of *Uṣūl al-Fiqh*. The overwhelming majority of jurists would feel inclined to leave the scope of *Ijtihād* open so that disagreement is justified. Although this may open the scope of speculation, it puts the attitude of the jurists at odds as they are the ones who closed the gates of *Ijtihad*; thus, narrowing the scope of speculation in the process of legislation.
- The nature and degree of certainty in *Uṣūl al-Fiqh* vary from one theme to another. While it is obvious in themes such as the *Mufassar* and *Muḥkam*, it is to be deduced in themes such as *Maqāṣid al-Sharī‘ah*.

- *Shakk* (skepticism) does not constitute the ground upon which the legal rules stand.
- There is a difference between *Qat'* (certainty), *al-Zann al-Rājih* (a highly preferable speculation) and *zann* (mere speculation). The three are interchangeably used while describing a legal text. Hence, the binding force of the derived legal rule would vary according to these three classes. Yet, most jurists do consider them unseparable levels of authenticity.
- There is no such a thing as absolute certainty (*al-Yaqīn al-Muṭlaq*) in the legal field. This is because such a certainty is not attainable by human being and targeting it would be a vain attempt. Hence, the researcher is drawing the attention of jurists to a kind of certainty that can always be attained if the criteria that we proposed are fairly utilized.
- Certainty is the outcome of the interaction of various elements such as : Feeling, intuition, sense-perception and reason.
- In many of *Uṣūl al-Fiqh* references, certainty is a recommended objective but not a required one.
- The integration of the methods of inference of the science of *Kalām* (Muslim theology) and that of *Uṣūl al-Fiqh* initiated a new platform upon which certainty is conceivable in both sciences. This is mainly due to the high level of rationality that features the modes of inference in *'Ilm al-Kalām*. The issue of causality and *Qiyās* in *'Ilm al-Kalām* was smartly exploited by jurists to

extend legal rules already covered by the two sources (*Qur'an* and *Sunnah*) to others which are not. Yet, the jurists were unable to attain the same level of accuracy as Muslim theologians did. This is mainly due to the differences underlying the nature of both sciences.

- The linguistic approach falls short of interpreting the legal texts, prompting us to introduce the theory or context (*Siyāq*) after we have propounded it.
- The adequate the context would apply, the certain the legal text would become.
- The main tools forming a genuine *Siyāq* would include :
 The objectives of language combined with those of *Sharī'ah*, the inductive method and the signifiers. The last two would form an accurate method of inference which the researcher called the “**inductive signifiers**” *al-Qarā'in al-Istiqrā'iyah*. The signifiers purporting to be used in the legal field must be traced based on the inductive method. Here, we are not merely calling for enumerating the available signifiers, but we are trying to subject them to the prerequisites of the scientific induction, which proves to have been the yardstick of knowledge acquisition.
- *Siyāq* plays a pivotal role to elavate *Zannī* (speculative text) into *Qat'ī* (definitive) and degrade the *Qat'ī* into *Zannī*. Looking at the legal text from a wider perspective would generate its genuine comprehension and a proper derivation of a rule thereof. The theory of *Siyāq* would eventually focus on observing 'relevancy' that binds texts and peripheral factors together. It

would include the speech as such, the speech producer and the speech recipient.

- The certainty featuring the divine originality of *Waḥy* (revelation) would be more conceivable if it is studied within the intact norms of nature.
- The combination of the following elements would duly justify the certainty of *Mutawātir* :
 - The impossibility for a large number of people to agree on a lie.
 - Custom.
 - Signifiers.
 - Rational and intuitive certainties, producing together the logical certainty.
- The certainty of *Ijmā'*, as a source of *Sharī'ah*, is based on the evidence of “corroborating evidences”. This is referring to individual views which are speculative individually, definitive collectively. *Ijmā'* also is an evidence that is based on a ‘justified assumption’ that the *Ummah* can not agree on a lie.
- The speculation featuring many facets of *Qiyas* would be elevated into a higher rank of certainty if the modes of deduction applied therein place more emphasis on the substance (*Māddah*) rather than the mere form (*ṣūrah*). The attempt of Ibn Taymiyyah in this respect has raised the possibility for such an approach to materialize.

- Substituting the relationship binding the premises of analogy, as laid down by the Creek logic, is apt to make *Qiyās* a definitive source of law. Substituting the line of deduction in *Qiyās* by begetting by the second premise instead of the first, would unveil some productive forms of *Qiyās*, which may even entail certainty. Accordingly, there is no rigid form of *Qiyās* as it may entail certainty and uncertainty alternately.

- The thesis suggests that a genuine interest should be made to assess the call for a new science of *Uṣūl al-Fiqh* advocated by a folk of jurists. "*Maqāṣid al-Sharīʿah*", being the new frame work within which the methods of inference should operate, would be the breakthrough that has long been awaited. With the magnificent theorization of the inductive method, the solid ground for the new science, suggested by the same folk, a new horizon in the legal field is dawning.