

**AN EXEGETICAL STUDY OF *SHAWKĀNI'S* INTERPRETATION OF
ĀYĀT-AL-AḤKĀM IN THE *FATH-AL-QADĪR***

BY

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Certification

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Dedication

This research work is dedicated to the Glory of Almighty Allāh and my parents, Alhaji Aliyu Imam (d.2005) and Alhaja Hawwah Aliyu Imam. May Allāh give her long life (*Amīn*).

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M.A Gambari

ABSTRACT

Tafsīr-al-Qur'ān (Exegesis of the Qur'ān) has been the focus of the Muslim intellectuals right from the prophetic period up to the present moment. Many scholars have written commentaries on different aspects of the Qur'ān. One of them was Muhammad ʿAli Ash-Shāwkānī (d.1834 C.E) who wrote a compendium on Qur'ānic exegesis entitled: *Fath-al-Qadīr al-Jāmiʿu Bainā Fannir-Riwāyah Wad-Dirāyāh min ʿIlmit-Tafsīr* in Arabic. However, a great number of Muslims are unaware of scholastic efforts involved in the intellectual exercise of Ash-Shāwkānī *Tafsīr* work. This development made it essential to investigate the benefits of the Qur'ānic exegesis with reference to the work of Ash-Shawkānī. The objectives of this study were to: (i) highlight the significant position of the *Tafsīr* among the Muslim intellectuals; (ii) examine exegetical commentaries on some verses relating to rituals and social matters and concept of crimes and punishments as contained in the work; (iii) assess the intellectual contributions of Ash-Shawkānī to the interpretation of the Qur'ān; and (iv) evaluate the *Tafsīr* as a modern exegetical work.

The research methods adopted for this work were historical, exegetical and descriptive. Historical method enabled the researcher to examine the biography and the work while exegetical method was used for the exposition of various verses used in relation to the key issues addressed in this work. The descriptive method was used to shed more light on the features of the author's work.

The findings of the study were that:

- i. the *Tafsīr* was rated as a composite exegetical work devoid of irrelevances, complications and *Israiliyāt* (Israelites' viewpoints) among Muslim intellectuals;
- ii. the explanation of Ash-Shāwkānī of the verses relating to the major issues of focus in this work really simplified the concept and nature of the crimes and punishment as well as legal and socio-ethical challenges in the Qur'ān, the ritual, social issues as well as ethical challenges in the Qur'ān;
- iii. away from the approach of the previous commentators on the Qur'ān, Ash-Shawkānī adopted a lucid method in the Qur'ānic exegesis using the Qur'ān, the *Sunnah* and submissions of Islāmic authorities in the process; and
- iv. the *Tafsīr* of Ash-Shawkānī has been found to be a critical and essential work which brought the understanding of the Qur'ān much easier and closer to the students as well as the scholars.

The study concluded that, *Tafsīr Fath-al-Qadīr al-Jāmiʿu Bainā Fannir-Riwāyah Wad-Dirāyyah Min ʿIlmit-Tafsīr* was an important tool for veritable understanding of the last revelation of Allāh (Qur'ān), because it explicated the meaning of the verses. It was recommended that the *Tafsīr* should be studied by students of Islāmic Studies in tertiary institutions as a means of combating legal and socio-ethical challenges facing the society, while further study of the numerous aspects of the *Tafsīr* should be carried out by future researchers to bring its understanding closer to the Qur'ān audience for easy application.

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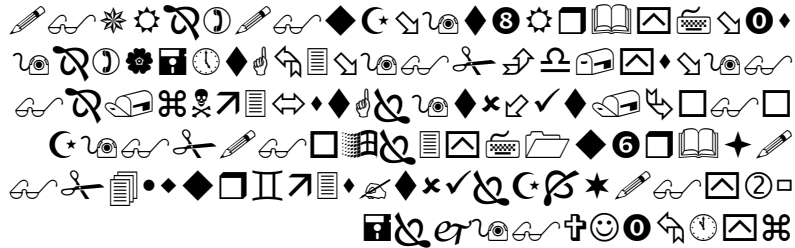
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CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

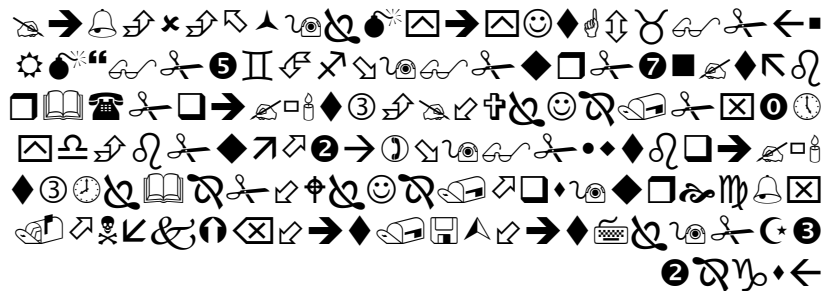
The most essential source of Islām is the Qur’ān. It contains many specific passages calling upon people to follow its teachings and be guided by its legislation. For instance, the believers are enjoined to observe justice and fair dealing in their affairs dispassionately as it could be understood in the context of Qur’ān 4:135. Similarly, the Qur’ān reproves deliberate rejectors of its principles which ought to serve as a recourse in addressing religious and worldly challenges. Such people who decline to adjudicate with the Qur’ān and imbibe its teachings are described in Qur’ān 5:49 as wrongdoers and rebellious people. Hence, the status of the Qur’ān as a guide to human affairs is explicit. In respect of this, Allāh says in the Qur’ān thus:



Surely, We have sent down to you (O Muhammad) the Book (this Qur’ān) In Truth that you might judge between men by that which Allāh has shown you (i.e. has taught you through Divine inspiration), so be not a pleader for the treacherous. (Q4:105)

The Qur’ān is the text revealed to Prophet Muhammad (S.A.W) over a period of almost 23 year, from 610 to 632 A.D. The Prophet was not its author. He was only the recipient and transmitter of the Qur’ān to the fellow companions.¹ This feature distinguishes the Qur’ān from the earlier sacred books like *at-Tawrah* and *the injil*. These other books had their divine roots undoubtedly from Allāh. The prophets before Muhammad received only the revelations conveyed in their books and they put these revelations and practices in their own words. The words of *at-Tawrah* for example, were those of prophet Musa, although their contents and meanings were revealed to him by God². The Qur’ān alone in its totality, text and meaning was revealed by Allāh through Angel Jibrīl who conveyed it to Prophet Muhammad. The Prophet recited it to his disciples who learned it by heart and taught it to their disciples in the succeeding generations and so on³. The Qur’ān is Allāh’s word, thus the Qur’ānic style is far above the

human making and reasonable of mankind and therefore, inimitable. It was this feature that defeated the Makkan enemies of Islām at the time of the rise of Islām and long before the Arabs, throughout the Arabian Peninsula cherished oratory. Infact, it was the only art that captured their imagination because they were divided into disputing rival tribes. Each tribe struggled to produce better poets and effective speakers⁴. The rivalry was most conspicuous during the annual season of the pilgrimageto the Ka'bah in Makkah⁵. Poets and speakers of various tribes delivered their literary “products” in open competitions during these fairs. The judges were from Makkah which inhabitants were believed to have reached the stage of excellence in the Arabic tongue. Yet, it was Quraysh, the tribe that enjoyed the undisputed supremacy in literary excellence that embarrassingly failed when the Qur’ān challenged them to produce something like it or like any part of it if they should deny its divine origin. Their failure clearly demonstrated that the Qur’ān was beyond the human power. It was indeed revealed by Allāh. Allāh says in the Qur’ān thus:



Say "If the mankind and the jinns were together to produce the like of This Qur'ān, they could not produce the like thereof, even if they helped one another." (Q17:88)

The Qur'ān contains among others, legal rulings which Muslims must strive to comprehend and apply in their daily lives.

Imam Qurtubi extracted the importance of understanding the Qur'ānic laws and injunctions as follows:

قال القرطبي: ينبغي له أن يتعلم أحكام القرآن فيفهم عن الله مراده وما فرض عليه فينتفع بما يقرأ ويعمل بما يتلوا فما أقبح بحامل القرآن أن يتلوا فرائضه وأحكامه عن ظهر قلب وهو لا يفهم معنى ما يتلوه فكيف يعمل بما لا يفهم معناه، وما أقبح به أن يسأل عن فقه ما يتلوه ولا يدريه فما مثل من هذه حالته إلا كمثل الحمار يحمل أسفارا. وينبغي له أن يعرف المكّي من المدنيّ ليفرّق بين ما خاطب الله به عباده في أوّل الإسلام، وما ندبهم إليه في أوّل الإسلام وما زاد عليهم من الفرائض في آخر الإسلام وما فرض في أخيره فالمدني هو الناسخ للمكي في أكثر القرآن⁶

Imam Qurtubi said:

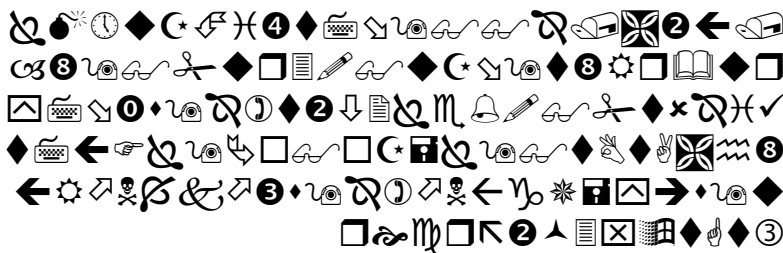
It behoves (a Muslim) to study Qur'ānic laws in order to comprehend the intent of Allāh on the legal verses and what He makes obligatory upon him. This will make what he reads from the Qur'ān beneficial to him, and enable him to put what he reads into practice. It is very bad for a memorizer of the Qur'ān to recite Qur'ānic obligations and laws offhand whereas he could not understand the meaning of what he recites. Similarly, it is bad for him to be asked about his comprehension of that which he recites but is ignorant of it. The similitude of his condition is analogous to a donkey that carries piles of books. It behoves him to be able to know the Makkan and Madinah chapters, so as to distinguish the speech of Allāh to His Servants at the inception of Islām and things that Allāh enjoins Muslims to do in the later period. As well, he is to know obligatory injunctions in the early period of Islām and additional obligations upon Muslims in the later period. The Madinah verses are the abrogating verses of the Makkan ones in numerous passages of the Qur'ān.

As discussed above, that the Qur'ān legislates worship, enjoins fixed hours for prayer and modes of purification, and prescribes fasting, giving of alms and pilgrimage. It lays down the legislation for family life, marriage and divorce as well as other responsibilities. It gives clear direction concerning financial dealing, contracts and pledges, relations with people, Muslims and non-Muslims; the administration of community life, legislation and penalties for disobedience.⁷ Thus, the Qur'ān is established as the foundation of both faith and legislation. Although the Qur'ān has covered all the aspects relating to the welfare of man and the society, it urges men to use their minds and skills to gain the understanding of the universe, its secrets and wonderful phenomena.⁸

During the course of our exploration into both the books of *Tafsīr* and *Fiqh* (Islāmic law), the work of Muhammad ʿAli Ash-Shawkāni was discovered to be among the authoritative sources of some various works on Qur'ān exegesis and foundations of Islāmic jurisprudence in Islām. More so, it is noted that his famous work on *Tafsīr* titled: *Fathu-al-Qadīr al-Jamīʿu bayna fannir-Riwāyah Wad-Dirāyah min ʿilmit-Tafsīr* gives elaborate explanations on the Qur'ānic verses of injunctions, statement of the Prophet Muhammad (S.A.W), the consensus of opinions of the companions and others, as attested to by its title.

One of the aspects of jurisprudential issues which *Fathul-Qadīr* discusses is the juristic verses on acts of worship such as: mode of purification, as-*Salah* (prayer), juristic verses on *zakat*, verses on *sawm* (fasting), *Hajj* and its conditions, marriage institutions, divorce and its processes, inheritance and its rules, child custody, family planning and dress code. All these juristic verses on acts of worship and social issues are dealt with extensively in the *Fathul-Qadīr*.⁹

However, the role of the Prophet as the Qur’ānic interpreter per excellence cannot be over-emphasised. It is pivoted on the divine obligation upon the Prophet to explain the Qur’ānic contents to the generality of Muslim^c*Ummah*. Concerning the prophetic role of explaining the message of the Qur’ān, Allāh says:



(We sent them) with Clear Signs and Books of dark prophecies; and We have sent down unto Thee (also) the Message; that Thou mayest explain clearly to men what is sent for them, and that They may give thought(16:44)

Based on the verse above, it is crystal clear that the revelation of the Qur’ān to the Prophet is linked with the responsibility of the prophet to explain its message to mankind. The purpose of the prophetic explanation is to enable the audience of Al-Qur’ān to reflect and ponder over the message contained therein. The explanations given by the Prophet on the Qur’ān exist both in verbal and practical forms. His statements technically referred to as *ahādith* are found to give lucid pieces of information on the Qur’ānic verses. For instance, he was reported to have interpreted “*ghayrīl maghdūb alayhim*”, and “*dāllīn*” in *Suratul-fātihah* as the Jews and Christians respectively¹⁰. Also, the Prophet used practical demonstrations to explain some of Allāh’s injunctions contained in the Qur’ān. The canonical ritual prayer (*salāt*) was explained by the prophet through his demonstration, similar is the case of the *Hajj* rites. In other words, the companions of the Prophet attached great importance to the statements of the Prophet as well as his actions and deeds.

Similarly, one cannot ignore the remarkable roles played by the companions of the Prophet in explaining the meanings and messages contained in the Qur'ān. This was necessitated by the fact that after the expansion of Islāmic territory through numerous conquests in the post prophetic era of the orthodox successors to the Prophet (*Khulafā'*), new converts into the fold of Islāmic religion were ardent to comprehend the message of the Qur'ān in order to enable them practice Islām in a proper way. This gave the companions impetus to rise to the occasion of unraveling the seemingly ambiguous verses contained in the Qur'ān. The companions were very precise and laconic in their mode of interpretation of the Qur'ān.¹¹ They made use of Prophetic tradition extensively to explain some of the Qur'ānic verses which the new converts yearned to fathom or understand.

Hence, notable among the companions who shouldered the task of interpreting the Qur'ānic contents are; °Abdullah bn °Abbās, °Abdullah bn °Umar, °Ali bn Abi Tālib, Ubayy bn Ka°b, °Abdullah bn Mas°ud, among others¹². It is noteworthy that some of the notable companions had centers which attracted large number of students who patronised them to acquire the knowledge of Qur'ānic exegesis. For instance, the school of °Abdullah bn °Abbas as a centre for Qur'ānic exegesis was situated in Makkah, while that of °Ubayy bn Ka°b was established in Madinah¹³. By this development, the companions expended laudable efforts in making Qur'ānic learning, most importantly its exegesis, accessible to the Muslims of their generation.

Subsequently, the successors to the companions showed relentless efforts in complementing the roles of the venerable companions on Qur'ānic interpretation. In other words, distinguished scholars like At'a, Ikrīmah, Saīd bnMusayyab, Ibn Jarīr, among others were known with remarkable contributions in the exercise of Qur'ānic interpretation¹⁴. The successors to the companions (*Tabī°ūn*) explained the Qur'ānic verses based on the knowledge they received from the companions. In some cases, they would exercise analytical deductions (*ijthād*) in deciphering Qur'ānic messages or injunctions. They were continuous and meticulous in ensuring that their interpretations were not out of the Qur'ānic context, hence the employment of the technical term known as *Ta'wīl* (interpretation).

It is pertinent to mention that the later generations, subsequent to the era of the companions and immediate successors, witnessed political turmoil and evolution of sectarianism¹⁵. This was precisely the Abbasid period. The golden age of that period witnessed documentation of knowledge and disciplines. Therefore, the era featured numerous exegetical

works on the Qur'ān produced by different disciplines such as *Tafsīr al Falsafī* (philosophical *Tafsīr*) and the *Tafsīr al Lughawī* (philological *Tafsīr*), which dealt with Arabic syntax and morphology as well as rhetorical aspect. There were also *Tafsīr ash-shi'ī* which favoured shi'ah doctrines and the *Tafsīr* works written to promote Mu'tazilism¹⁶.

In essence, the proliferation of *Tafsīr* works gave much concern to the orthodox *Ulamā'* to guard the Muslims from being infected with unorthodox doctrines and ideologies alien to the pristine teachings of Islām. This made the traditional scholars of Islām to take painstaking efforts in scrutinising the available exegetical works in circulation, which they eventually classified as *Tafsīr bil Ma'thūr* and *Tafsīr bir-Ra'y* i.e., the traditional exegesis and the rational exegesis respectively. The contents of the *Tafsīr* were examined thoroughly and sifted. This resulted into the classification of *Tafsīr* works as either *Mahmūd* or *Maqbūl* (Meritorious or Acceptable) or (*Madhmūm* or *Mardūd* i.e unacceptable or rejected)¹⁷.

Generally, the traditional *Tafsīr* are given wider acceptance simply because they appear to contain authoritative sources which lend credence to the acceptability of the interpretations of their respective authors. This involves the use of the Qur'ānic verse or verses to explain some other passages of the Qur'ān. The work of *Adwāul Bayān fī Tafsīrū Qur'ān bil Qur'ān* of Muhammad Al Amin Ash-Shinqīti is a notable work in this respect. Similarly, it also feature in the use of prophetic traditions (*'ahādith*) and statements of the Companions of the prophet in explaining the Qur'ānic verses. Numerous exegetes in this aspect whose works were credited to this merit are: *Tafsīr* Ibn Jarir At-Tabarī, *Ad-Durrul Manthūr* of Jalaludin As Sayuti and *Bahrul Ulūm* of Abul layth As Samraqandi.¹⁸ Their works are among many traditional *Tafsīr* which enjoy wide readership in the Muslim world.

In particular, the work of Muhammad bn 'Ali Ash-Shawkāni is one of the modern traditional *Tafsīr* which are given intellectual recognition and esteem. This exegetical work popularly known as *Fathl-Qadīr*, is the focus of this research project. The *Tafsīr* is examined based on the methods and approaches as used by the author in his interpretation of legislative verses. The study also focuses on textual study of the work with regards to legal verses on rituals and interpersonal laws, including crimes and punishments.

1.2 Statement of the Problem

Despite the significant role which *Tafsīr* plays in understanding the Islāmic laws, (the Qur'ān and its principles), most especially those relating to legal matters and rituals, many Muslims still regard *Tafsīr* as mere explanation of the meanings of the Qur'ān. To them, *Tafsīr* work is to be consulted on rare occasions when certain Qur'ānic verses could not be properly understood. In other words, *Fiqh* books are given much more preference even when such *Fiqh* books have restricted opinions to a school of thought in Islām. This invariably narrows the horizon of understanding the flexible nature of Islāmic law and its dynamism. It is based on this observation that this study seeks to emphasize the benefits of the Qur'ān exegetes with reference to the compendium of Shawkānī.

Some Muslims are unaware of scholastic efforts and ingenuity involved in the intellectual exercise of *Tafsīr* work. They are oblivious of the feat of Islāmic scholarship entailed in embarking on the interpretation of the Qur'ān which features in the use of numerous devices with a view to making the Qur'ānic message lucid. Undoubtedly, this makes some Muslims to have less appreciation of scholastic input in the academic exercise of *Tafsīr* work. It is the researcher's focus in this work to draw the attention of the readers with little or no background in Arabic to the effort of Shawkānī in bringing forth detailed elucidation on the legislative verses of the Qur'ān.

In this regard, the focus of this work is to answer the following research questions:

- i. what is the position occupied by *Tafsīr* of Shawkānī in the midst of modern exegetical works?
- ii. does *Tafsīr* of Ashawkānī conform with the modern exegetical approach in relating to rituals and social matters contained in the Qur'ān?
- iii. what are the genuiness in the intellectual prowess of Ash-Shawkānī's interpretation of some Qur'ānic verses?
- iv. what are the scholastic contributions of Ash-Shawkānī to the science of the Qur'ānic exegesis?

1.3 Aim and Objectives of the Study

The aim of this research work is to study the position which the *Tafsīr* of Muhammad bn Ali Ash- Shawkānī occupies in the midst of several modern exegetical works. To ensure the realisation of the aim of this study, this researcher explored several devices used by the author of *Fath-al-Qadīr* in the course of his interpretation which involve the use of corroborative evidences of the Qur'ānic verses and prophetic traditions, poems, juristic opinions,

circumstances surrounding the revelation of certain verses, grammatical analysis and so on. The objectives of this work are to:

- (i) explain the significant position which *Tafsir* of Muhammad bn ʿAli Ash-Shawkāni occupies in the midst of modern exegetical works;
- (ii) examine some Qurʾānic verses relating to rituals, social matters, crime and punishment contained in the *Fath-al-Qadīr* written by Shawkāni;
- (iii) expose the intellectual prowess of Ash-Shawkāni's interpretation of some Qurʾānic verses; and
- (iv) assess Ash-Shawkāni's contributions to the science of the Qurʾānic exegesis.

1.4 Significance of the Study

This study has several importances; it will help in drawing the attention of the readers to the book of *Tafsīr* under study which contains contemporary issues that will be beneficial to the youths and the nation in general. The researcher discovered that, it was the wish of the author of the book *Fath-al-Qadīr*, that the book reaches every part of the world. And so many people do not know about what are therein the book because it was written in Arabic language. As such, this work chooses to shade more light on it (i.e the book; *At-Tafsīr Fath-al-Qadīr*) thereby calling the attention of the readers; most especially the English readers who do not have access to Arabic language. Furthermore, Shawkāni's interpretation of the Quranic expressions on juristic verses and social issues are noted to be debatable in academia because as some scholars hold different views about the interpretations. As such, this work seeks to shed more light on the book, *At-Tafsīr Fath-al-Qadīr* thereby calling the attention of the readers, most especially the English readers who do not have access to Arabic language. Furthermore, Shawkāni's interpretation of the Qurʾānic expressions on juristic verses and social issues are noted to be debatable in academia because some scholars hold different views about the interpretations of legislative verses as well as this Book of *Tafsīr*.

1.5 Justification of the Study

Fath al-Qadīr of Imam Muhammad bn ʿAli ash-Shawkāni is one of the modern works on *At-Tafsīr bir-Riwayah (At-Tafsīr Al-Maʿthūr)* which attract momentous attention from different scholars, particularly in the North Africa and part of the Asian countries. Most of the scholars of *Tafsīr* in West Africa, particularly in Nigeria, pay little or no attention to this work on *Tafsīr*,

perhaps, because of the pragmatic approach of its author or the author's personal exposition to the words of God which is different from the orthodox approach they are familiar with in *Tafsīrul-Jālalayn*, *Tafsīru-l-Qurtubi*, *Tafsīr-ul-Kashshaf* and the like. Lack of inclination of West African Scholars to this work on *Tafsīr (Fath al-Qadīr)* put them at a disadvantage of being exposed to another far-reaching aspect of *Tafsīrul-Qur'ān* where intellect and rationalism are assiduously applied.¹⁹

What students of *Tafsīr* can claim to have laid their hands on about Imam Shawkāni in Nigeria are some write-ups on his personality and his Islāmic revolution in Yemen.²⁰ The analytical study of *Fath-al-Qadīr* of Imam Ash-Shawkāni's work on Tafsīr, is completely neglected because it was written in Arabic language and not everybody has the ability to read and understand this language. Negligence of this aspect of Muhammad bn Ali ash-Shawkāni's life has created a wide gap which needs to be filled by researchers. It is this gap that the present work on *Fathul-Qadīr* intends to fill. By so doing, it will serve as a good compliment to the existing works on his *Tafsīr*.

Furthermore, commentaries available on *Tafsīrul-Fath al-Qadīr* are written in Arabic, a predicament which stands as hindrance for the English-speaking readers. Hence, the need arises that the work has to be studied and presented in English language for wider readership.

1.6 Research Methodology

The methods adopted in carrying out this research are historical, exegetical, descriptive and expository. Historical method enabled the researcher to examine the biography and the work while exegetical method was used for the exposition of various verses used in relation to the key issues addressed in this work. The descriptive method was used to shed more light on the features of the author's work. The instrument used to obtain relevant information is through library sources, internet as well as field work. The nature of the work necessitated consultation of some experts on the field of *Tafsīr* in Ilorin and its environs. During the course of this work, experts in the field of *Tafsīr* were not only consulted but their submissions were useful and resourceful to the present study.

Efforts were made to consult numerous libraries to enrich this research work. It is based on the belief that Imam Ash-Shawkāni is such a prolific author whose intellectual output are found on academic discourse in numerous modern and contemporary literature. Adequate

information about Imam Ash-Shawkāni and his works on *Tafsīr* were gathered, synthesised and streamlined for the preparation of the present work.

1.7 Scope of the Study

This work covers the study Muhammad Ash-Shawkāni's monumental *Tafsīr* work, *Fath al-Qadīr*. It also examines the life and works of the Imam Shawkāni as well as his approach to *Tafsīr* and the impacts of this approach on the subsequent works on the subject. Some fascinating examples on *Tafsīr* of Imam Shawkāni which feature in the *Fath-al-Qadīr* are critically examined *vis-à-vis*, the viewpoints of other Qur'ānic commentators on such verses understudied by Imam Ash-Shawkāni. This work also concentrates on the textual study of selected themes from *Fathul-Qadīr* with their interpretations according to Imam Ash-Shawkāni.

1.8 Literature Review

The major theme of this study which is, an exegetical study of Shawkāni's interpretation of *Āyāt-al-Ahkām* in the *Fath-al-Qadīr* of Muhammad bn ʿAli Shawkāni work, necessitates the consultation of various works on *Tafsīr* and other related disciplines. Thus, different works and learned articles on the science of *Tafsīr* were searched in order to accumulate the guiding literatures that are related to the theme of study. The following is review of such a list of related works.

At-Tafsīr Wal-Mufasssīrūn, authored by Muhammad Husayn Adh-Dhahabi is a two volume book. This is an important work on the evolution and development of *Tafsīr* right from the prophetic era. It is a great catalogue of the biographies of the famous Qur'ānic exegetes with their various works, approaches and styles. The three major classes of *Tafsīr* i.e. *Tafsīr bir-Riwayah* (*Tafsīr bil-Ma'athur*), *Tafsīr bid-Dirayah* (*Tafsīr bir-Ra'y*) and *at-Tafsīrul-Ishārī* (demonstrative *Tafsīr*) are clearly highlighted by the author. The author further enumerates different kinds of *Tafsīr* which evolved from different sectarian groups, philosophers, theologians, jurists, sufis, historians, scientist and linguistics. The work is found relevant to the selected theme of study.²¹

Fizilali-l-Qur'ān, a study of Sayyid Qurtubi's Approach to *Tafsīr*: Badmas O.Y is based on the *Tafsīr* like the present work. The author of this work contributes to the debate on Science of *Tafsīr* and its approaches. The author argues that *Tafsīr bir-ra'y* should be discouraged where it is possible to get satisfactory commentary through *Tafsīr bil-ma'athur*. But where it is inescapably

necessary to resort to *Tafsīr bir-ra'y*, then, certain conditions such as sound knowledge of Arabic language, good background of the tradition of the prophet, etc. should be satisfied.²²

Manna^u al-Qattān's *Mabahithun fī 'ulum-l-Qur'ān* provided information on *Tafsīr* and its stages. The work gives relevant information and materials on the different approaches, which were adopted by different scholars that made valuable contributions to *Tafsīr* literature.²³ The author categorises *Tafsīr bil-ma'thūr* as the one which gives explanations on the tradition of the prophet and *Tafsīr bir-ra'y* into ancient and modern literature.

Mafatihul-Ghayb of Fakhru-din Ar-Razī, *al-Kash-shaf* of Az-Zamakhsharī and *Bahrul-Muhit* of Abū-Hayyan are among the ancient works mentioned by Mannau-al-Qattan. On the other hand, *Jawahiru-l-Qur'ān* of Tantāwī, *Al-Jawhari* of Egypt, *Fizilail-Qur'ān* of Sayyid Qutb and *Tafsīr-Bayānil-Qur'ān-l-Karim* of Aishah Abdur-Rahman Bint Shati are those works he (Qattān) considers as modern works in this respect. Thus, it becomes clear and understood that a *Mufassir* may approach his subject matter from doctrinal, legal, mystical or scientific point of view depending on the commentator's background and intention.²⁴

Jalalu-din as-Suyuti gave a comprehensive information on *Tafsīr* literature in his book entitled *Al-it-tiqān fī 'ulumil Qur'ān*. This valuable work is an indispensable reference point for the preparation of the present study, particularly on the classification of *Tafsīr*. He emphasises that there are some prerequisites to be fulfilled before one could claim competence in the interpretation of the Qur'ān.²⁵ He mentioned among other things, the profound knowledge of cultural environment of the Arabs and appreciable mastery of Arabic language among others.

Hind Shalbi's *at-Tafsīrul-'Ilmi lil-Qur'ānil-Karīm baina-Nazariyāt wat-Tatbiq* is also very useful in explaining different types of scientific *Tafsīr* as well as social issues in the *Tafsīr*.²⁶ She classified *Mafatihul-Ghayb*, *Bahrul-muhīt* and *Asrarul-Tanzil* of Naizabūrī, among others as the acceptable *Tafsīr* books, while she mentions *al-Kash-shaf* of Zamakhshari and some others as sectarian-inclined and *Tafsīr* such as *Tafsīr al-hasan askarī*, *Majmaul-bayan-lil 'Ulumil-Qur'ān* of Tabari and others as the unacceptable ones. Tijani Usman Bauchi's book entitled Qur'ānic commentary between tradition and opinion, is very useful and valuable as it supplies information on the various factors which conditioned the viewpoint of the Qur'ānic communicators at various periods.²⁷

In the same vein, the voluminous work of Az-Zarqāni titled: *Manāhilul-'Irfān fī-'ulūmi-Qur'ān* has bearing on the present study. Az-Zarqāni's work on the Science of the exegesis contains various principles of science of the interpretation of the Glorious Qur'ān. Thus, the

work is a great resource to the study in assessing the features of *Fath al-Qadir*. Another work entitled *Jāmi'ul-Bayān fit-Ta'wil Āyat-Qur'ān* is a kind of *Tafsīr* classified as *Tafsīr bil-ma'thūri*¹⁶; it was written by Abū Ja'far At-Tabari. Explanations of his interpretation of the Qur'ānic expressions particularly on jurisprudential issues of marital life and social life, will serve as one of this work²⁸.

Mukhtasar Tafsīr Ibn Kathir is also pertinent to this present work. *Tafsīr* Ibn Kathir is a voluminous work but was summarised by Muhammad 'Ali As-Sābūni. The work contains many quotations from the Qur'ān, the *Sunnah* and the opinions of some *Sahabāh* of the prophet (S.A.W). Thus, those quotations used by Ibn Kathir to interpret the Qur'ānic verses are useful to the present study on *Tafsīr Fath al-Qadīr*²⁹.

Another very important work in this direction is *Tafsīr Āyāt al-al-Ahkām minal-Qur'ān* written by Muhammad 'Ali As-Sābūni. It contains various proofs from the Qur'ān, *Sunnah*, *Sahabah* of the prophet and the Juristic verses. As-Sabūni's focuses on jurisprudential and social issues. His work is very similar to that of Muhammad 'Ali Ash-Shawkani in some styles. This information is explored in the course of this research work³⁰.

Another work on jurisprudential issues in the Qur'ān is entitled "*Ahkām al-Qur'ān Lish-Shāfi'i*". This work was written by Imam Shāfi'i which comprises two parts. The author who is one of four Sūnnī Imams analyses the opinions of early Exegetes on Qur'ānic expressions with reference to jurisprudential issues. This great work is also found useful in this present study³¹.

Another relevant work to this study is a voluminous work titled *Rawā'ul-bayān. Tafsīr Āyātul-Ahkām-minal-Qur'ān*. It was written by Abdul-Qadir Muhammad al-Bikār. In his work, Al-Bikār, upholds some of Muhammad bn 'Ali ash-Shawkāni's opinions on the issues related to jurisprudence and social issues in the Qur'ān³². In addition, a work of Nasirudīn Al-bānī titled: *Al-Ikhtiyārat al-fiqhiyyah lil Imam al-Albānī* is useful to the researcher's work. The book of Al-bānī contains his positions on selected jurisprudential issues. He used some Qur'ānic verses, *Hadith* scrutinized and authenticated by him and jurists opinions to buttress his viewpoints on the contentious issues as contained in that work³³.

Another great work *introducing to the Qur'ān* is a book written by Husnuddīn Ahmad. The book examines Qur'ānic verses that are related to *at-Tafsīr al-ma'thur* among which is two issues that are useful to this work. The two issues are captured by the author; interpreting the text of the Qur'ān and the style of the Qur'ān³⁴.

Of equal bearing to our research work is of two volume book of explanation and commentaries on *ahadith* titled *Subulus-Sulām*: and *Sharhu bulūgh al-Maram min Jami'i Adillatul-Ahkām*, which also comprise an elaborations and proofs based on *ahadith*, juristic opinions and some Qur'ānic verses. It is a comprehensive interpretation of the traditions of the Prophet as contained in *Bulūghul-Marām*. Those proofs contained in that work will be useful to the researcher's work³⁵.

Materials that are related to Islāmic law are also relevant to this study due to the jurisprudential issues which are basically from the Qur'ānic expressions. One of the Islāmic law books is; "*Al-fiqhu 'Alā Madhalh ibi Arba'*" authored by Abdur-Rahman Al-Jazāiri.³⁶ The author expresses the views of the four schools of thought, consisting the opinions of four imams on legal issues in the Islāmic affairs. The selected legal issues for this study are among those discussed in this book. Therefore, the book is of valuable benefit to this work based on its treatment of legal issues in Islām. Another relevant work to this study Sayyid Abul-^cAla Maudūdi book titled: "*Birthcontrol*", The book centered on the social, political, economic, moral and religious aspects of family life.³⁷

In the same vein, the "*Cardinal Principles of Islām*", a work of Abdur-Rahman Doi, is also relevant to the study. Doi discusses many aspects of Islāmic theology and its sources such as ritual purity, the roles and the functions of the *Masjid* in Islām and aspects of marital life with particular reference to Qur'ānic verses. Doi lays more emphasis on the Islāmic theology and its sources from the Qur'ān³⁸. Likewise, Abdul-Ati's work entitled: "*The Family Structure in Islām*" is of great value to this study. The work addresses some critical issues related to this study, most especially marital affairs and social issues.³⁹

Another relevant work which is quite relevant to this study is the M.A Dissertation of Gambari Muhammad Aliyu entitled: *At-Tafsīr bir-Ra'y: An Examination of at-Tafsīr Al-Manār of Shyakh Muhammad 'Abduh* (d.1905). The main theme of the thesis is the rational *Tafsīr* which Muhammad 'Abduh adopted while explaining the Qur'ān, hence, the thesis is relevant to this research works on the aspect of method and techniques of interpretations of some verses of the Qur'ān.⁴⁰ Likewise, Y.K Jumu'ah wrote his PhD Thesis on a *study of selected themes in Al-Razi's Mafatihul-Ghayb*. The themes of his work are: theological, jurisprudential and scientific issues as deduced from the Qur'ān. However, the author's work does not discuss Ash-Shawkāni *Tafsīr* which is the focus of this research work.⁴¹

Another great important work on Islāmic jurisprudence is entitled: “*‘Uṣul- al-ḥiqh*”, written by al-Khudari. The author of the work expatiates on the relationship between the Qur’ān and the *Sunnah*. He asserts that *Sunnah* can not contradict a content of the Qur’ān. He emphasizes that the *Sunnah* only elaborates on the Qur’ānic expressions as the Glorious Qur’ān serves as the basis of all the Islāmic injunctions,⁴² many principles of interpretations of the Qur’ān contained in Al-Khudari’s work are found to be very useful to this study.

Another book of *Tafsīr* which is also relevant to this study is written by Shaykh Abdullahi bn-Fodio titled: “*Kifāyatul Dhuaḥūs-Sūdān fī bayāni Tafsīril-Qur’ān*” meaning: (Satisfaction of the inchoate people of Sudan. In the explanation of the Exegesis of the Qur’ān), the book is in two volumes which is one of the major work on a critical appraisal of *Tafsīr*, his book is considered among the orthodox *Tafsīr*. He displayed his wideness in Arabic in explaining the word of Allāh. Researcher found this work very useful to this work.⁴³

An additional and great important book is written by Muhammad Abdur-Rauf, entitled “*An Introduction to Al-Qur’ān for A level*”, The book has 64 pages with cogent teachings of al-Qur’ān, features of the Qur’ān, importance of the Qur’ān, history of Qur’ān and *Tafsīr al-Qur’ān*. This book of Abdur-Rauf is equally useful to this research work because it was based on the teaching of the Qur’ān and it has introductory aspect of *Tafsīr*.⁴⁴ “Remembrance of Allāh; the Only Way to Stem Crime and Corruption”, a book written by Imam Ahmad Saheed Zuglool is divided into several segments. It contains several teachings of *Āyātul-Ahkām* in the Qur’ān, the statements of some scholars about the remembrance of Allāh and statements of Prophet Muhammad (S.A.W). This book is resourceful for this study⁴⁵.

‘Al-Fasād: An Examination of the commentaries of Sayyid Qutb on corruption in the Qur’ān and Relevance to the Nigerian Situation is an unpublished M.A project written by Kareem Salam Badmus and submitted to the Department of Religions, University of Ilorin, Ilorin in 2002. The writer discusses some parts of social issues: such as theft, bribery and corruptions, homicides which are parts of the focus of this research. Furthermore, the writer discusses some aspects of corruptions; moral and social aspects of corruption and its causes among the people in Nigeria. This M.A dissertation is very relevant to this study⁴⁶.

As-Sabūni’s “*Al-Mawāriṭh*” is a very concise and precise book on the issue of inheritance in Islām. The author compiled the book as a result of his various lectures he delivered on the issues of inheritance. The subject matter has been treated in the book clearly with its approaches. This book is relevant regarding discussion on inheritance in this work⁴⁷.

An Article titled: “*A Contextual Study of the Institution of Zakah in the Tafsīr al-Manār* by Shaykh Muhammad ‘Abduh (1846-1905) written by Ogunsola Miftahuddin Babatunde, discusses *Zakat* and its institution, guiding rules for zakat distributions and the roles of Muhammad ‘Abduh in giving out and distribution of *Zakat*. This great work is contribute to the standard of this thesis at length⁴⁸.

In addition, the work of Muhammad ‘Ali As-Sābūni, known as *At Tibyān Fī ‘Ulumīl Qur’ān* is relevant to this research. The author divides his contents into nine chapters. The book generally gives information about the knowledge of the revelation of the Qur’ān, its compilation. It talks about the role of the Qur’ānic exegetes among the companions and their successors. The book gives detailed information about different kinds of *Tafsīr* in the penultimate chapter⁴⁹.

Further more, the book of *Kashful Ghumma an Jami ‘il ‘Ummah* is the book written by Abdul Wahhab Ash-Sharānī. The book is in two volumes. It discusses legal matters and other related issues of rituals and morals including eschatology. The author relies only on the prophetic traditions without giving account on the chains of narrations of those traditions. The author does not give the chain of narrators possibly to reduce the volume of the book and to relieve the readers burden of reading through the narrators.

The book of Mustafā Murād titled “*Kayfa Tahfazul Qur’ān* is of relevant note. The book has two broad chapters which contain general information about the Qur’ān. It discusses the principles guiding the interpretation of the Qur’ān. It gives relevant ideas about the acceptable and unacceptable kinds of *Tafsīr* including their features⁵⁰. The book also explains inter *alia* occasions of revelation of the Qur’ān and the benefits of having knowledge about occasions of revelation.

The work of Muhammad bn Salih Al Uthaymin is also useful to this research. The book is *Al Halāl wal Harām*. The author discusses a number of issues on separate chapters most especially of marital affairs. He also discusses Islāmic injunctions on foods and drinks. The author covers wide range of issues which are in concern with religious and socio-economic affairs of the Muslims in contemporary age.⁵¹

Similarly, the work of Kamal bn Sayyid Sālim entiled “*Sahih Fiqh-us-Sunnah* is germane to the nature of this research. The book is in four volumes. The book of *fiqh* appears to be of great value because the author gives comparative study of the opinions of Muslim Scholars on jurisprudential issues, based on available evidences. He would then weigh their opinions and give his own stand point out of the divergent opinions. At times, he would state the most valid

opinion among divergent views of the scholars and this makes his work a comparative *fiqh* book that does not flit toward one school of thought in Islām.

In the same vein, the work of Abdul Wahhab Ash Sha^crānī titled *Al Mizanul Kubrah Ash-Sha'rāniyyah* has dimensional features different from *Sahih Fiqh-us-Sunnah*. The author gives areas where the scholars of Islām have consensus of opinion and divergent opinions⁵². For instance, the author states that the orthodox Imams are unanimous that *Jumu^cah* prayer is obligatory upon individuals, but the areas of divergence of opinion is about the obligatory status of *Jumu^cah* prayer upon a child, slave, traveler and woman. The author has his opinion about the stand of the orthodox Schools of law influenced by Sufi thought in numerous occasions.

The book of *Ath-thamaru-d-Dānī* is an expositional work on *Ar-Risalah* of Abu Zayd Al Qayrawānī. It was authored by Salih Abdu Sami^c Al-Abi Al Azharī, who was also known as the author of the *Jawāhirul Iklīl*. The book of *fiqh* is basically on Maliki School of thought. Though, it is written in line with views of scholars of Maliki School of thought, it contains numerous explanations on the text of *Ar-Risalah* which are considered relevant to the discussions in this research. The commentary of Al Azhari contains the opinion of prominent scholars in the Maliki school of thought such as Ibn Hajib, Ibn Shihab and others. For instance, the author cites the opinion of Ibn Yunus that a worshipper could only maintain a *raka^cah* in congregational prayer by doing and completing his *Takbiratul ^cIthram* on a standing position i.e. fore making a *rukū^c* or else, the *rakah* is null and void⁵³.

The work of Muhammad Bakr titled “*Bayna-s-Sāili wal Faqihi*” treats jurisprudential issues which are mostly on Islāmic law of personal status such as marital matters. The book is written in form of questions and answers. The book primarily discusses issues on practical aspects of Islāmic law which deal with inter personal relationship such as marriage, Islāmic views on medical treatment of modern ailment challenges and others. The author also considers validity of majority of scholastic opinions as he has shown in his argument on the case of temporary marriage which numerous school of Islām regard prohibited⁵⁴.

The author of *Al Fiqhul Muyassar* Mahmud Abu Aziz writes his book of *fiqh* in a concise, direct and precise manner. He uses the opinion of prominent scholars of Islām such as Ibn Uthaymin, Al Bānī, An Nawawī among others to substantiate his juristic views on the jurisprudential matters. For instance, he cites the opinion of *Ash-Shawkānī* which he considers as the most valid opinion concerning the actual number of persons that makes the *Jumu^cah* prayer valid. He says.

قال الشوكاني: وقد انعقدت سائر الصلوات بهما بالإجماع، والجمعة صلاة فلا تختص بحكم يخالف غيرها إلا بدليل⁵⁵

Ash Shawkānī said: All other kinds of *salat* are valid with congregation of two persons based on consensus opinion. *Jumu'ah* prayer is a kind of *salat* that should not be different from other kinds of *salat* except with availability of substantiating evidence.

In addition, the book of *Minhajul Mu'min* of Mustafa Murad is found relevant to this research. The content of the book does not only cover aspects of Islāmic etiquettes and creeds, but also encompasses acts of worship. The author exercises precision and conciseness in his explanation of jurisprudential matters. He considers the opinion of majority of Muslim scholars in matters of divergence. He says.

وأما أبواب الفقه (العبادات والمعاملات الخ) فقد عرضته بدون تطويل وتفصيل وحاولت الأخذ برأى الجمهور ما لم يكن قولهم ضعيفا⁵⁶

As for the chapters on jurisprudence (i.e acts of worship and interpersonal relationship among others) I presented them without much prolongation and elaboration. I made attempt to hold the opinion of majority of scholars so far their statement is not found to be of weak argument.

Relevantly, the book of Salih bn Fawzān entitled "*Al Mulakh-Khas Al Fiqh*" is a work on Islāmic Jurisprudence. The author treats *fiqh* issues in the book in a concise way. Though, he uses the opinions of Ibn Qayyim al Jawziy and Ibn Taymiyyah much which portrays his inclination to Hanbalite School of thought, he also cites the opinions of other school of thought such as Maliki and Hanafi. This makes the book to be more useful. He also considers the explanation of other prominent scholars on *fiqh* issues. For instance, he expresses the interpretation of Imam Ash-Shawkānī on Qur'ān 2:179 about the Islāmic law on retaliation on the matter of crime and punishment. He states thus:

قال الإمام الشوكاني رحمه الله: "أي لكم في هذا الحكم الذي شرعه الله لكم حياة، الآن الرجل إذا علم أنه يقتل قصاصا إذا قتل آخر، كفت عن القتل وانزجر عن التسرع إليه والوقوع فيه."⁵⁷

Imam Ash-Shawkānī (May the mercy of Allāh be upon him) said: It means (i.e Q2: 179) that there is a worthy

living for you in this judgment which Allāh legislates for you. This is because if a man knows that he would be killed in retaliation for killing other person, he would desist from killing and yield to warning against foolhardiness and involvement in committing homicide.

Islām in focus of Hammudah ʿAbdalati, is of great usefulness in our discussion of *Tafsīr* and the style applied or used by Imam Shawkāni in approaching verses of the Qurʾān especially on the related topics i.e. marital life and social issues. “Utilizing the Qurʾān, Stabilizing the Society”, 156th inaugural lecture by B.O Yusuf at the University of Ilorin, he expatiates vividly the history, features and characteristics of Qurʾān. In addition to this, some selected themes were also critically examined in the inaugural lecture.⁵⁸

Furthermore, at the 133rd inaugural lecture titled: “All in the Name of God,” discussed by Y.A Quadri current issues (in his books), such as Sūfīm in Nigeria, Sūfī brotherhood and the Jamaʿat *Izalah*, street begging in the Name of God and punishment for *Zina*. The aspect on the punishment for *zina*, is of relevance to this study.⁵⁹

Similarly, a book authored by Muhammad Ahmad Isa titled: *Mawsuʿatul-Israiliyat wal-mawduʿat fi kutubil-Tafsīr* which is in two volumes vividly addresses issues on misinterpretations that people give to al-Qurʾān in different ways, most especially the Orientalists and Sufis. He made observations and reservations on the effort made by the Orientalist and their Muslim allies, in their own way and perspectives to tackle individual subject in the Qurʾān. These voluminous books will be very beneficial to this study *Tafsīr* and its caliber.⁶⁰

Also related to this study is “*Asrār Tartibul-Suwar-Qurʾān*”, a book authored by Jalāluddin as-Sayūti. The writer elaborates on the arrangement of the Qurʾān and Qurʾānic styles for the readers, gives comprehensive explanations on each chapter and verses of the Qurʾān. He further explains the schools of *Tafsīr* such as Makkah School of *Tafsīr*, Madinah School of *Tafsīr* and Iraq School of *Tafsīr*.⁶¹ This book is to enrich and very relevant to enrich this study.

“Islām is the all Divine Messages in One” authored by Muhammad Higab Azhari, is a book which expresses diverse views on the issues under study; the subject has been discussed clearly with a step by step approach. It emphasises the Qurʾān as the main source of Islāmic law, it also contributes immensely to this research work.⁶²

An article titled: “*Method of at-Tabari in Qurʾānic Exegesis*” written by Muhammad Tanko Aliyu, contains extracts on the role and status of Imam at-Tabari as historian stylistic

Tafsīr, the importance of *Tafsīr*, method of Imam in interpreting the Qur'ān, the *Isnād* of his *Tafsīr* and the analytical style of his *Tafsīr* and combination of the theory and practice of *Tafsīr*. This article will shed some light in the area of Qur'ānic exegesis as there are factors that influence under penetration of the Qur'ān. The article is also very useful for this research work.⁶³

Ibrahim Shuaib's article on "*Qala Qato (Qur'ān) trends of Tafsiir in Northern Nigeria: Some Analytical Notes.*" exposes us to the religious organisations in Nigeria. The journal stated the significance of Hadith and other religious sources, on Shafa'ah (intercession), *Salat* (five daily prayers) and on menstruation. The article will be very useful while discussing the issue related to the social aspects of Islām.⁶⁴

A paper titled: "*Qur'ānic Exegesis of Creedal Concept as it relates to divinity by the companions of the Prophet (S.A.W)*" written by Yakubu Tahir Maigari, focuses on, divine appellations (Names of Allāh) and other sciences related to the Qur'ān provide useful information to this study.⁶⁵

Badmus Nadwi Olawale Abdul-Azeez discusses *at-Tafsīr* and *al-Mufasssirūn* in Nigeria. This very useful work gives gist on the qualifications of *Mufasssirūn*, conditions that an exegete must meet before embarking the interpretation of the Qur'ān.⁶⁶

Finally, all the above reviewed works constitute the references of this research work. Moreover, the contributions of Muhammad Ash-Shawkāni's interpretation of Qur'ānic expressions as contained in this work will be an addition to the existing works on Qur'ānic exegesis.

NOTES AND REFERENCES

1. M.A Abdur-Rauf, *An Introduction to Al-Qur'ān*, (Lagos: Islāmic Publications Bureau, 1984), 3.
2. M.A Abdur-Rauf, *An Introduction to Al-Qur'ān*, 3.
3. A.R. Doi, *The Cardinal Principles of Islām*, (Lagos: Islāmic Publications Bureau 1981), 21.
4. A.R. Doi, *The Cardinal Principles of Islām*, 22
5. H. Abdalati, *Islām in Focus*, (Lagos: Islāmic Call Centre Agege Motor Islāmic Publications Bureau, 1972), 55.
6. M.A Ash-Shawkāni, *Fathul-Qadīr al-Jamiu baina fanni riwayat wad-Dirayah min 'ilit-Tafsīr*. (Bairut: Darul-Fikr, Vol. 1 2007), 16
7. A.R Doi, *The Cardinal Principles of Islām*. 22
8. M.A Abdur-Rauf, *An Introduction to al-Qur'ān*, 3-4.
9. H. Shalbi, *At-Tafsīr-il -'llmil- Qur'ān al-karim bayna Nazariyah wat-Tatbiq*, (Tunus 1985), 20.
10. H. Adh-Dhabī, *At-Tafsīr Wal-Mufasssirun*, (Beruit: vol. 1, Darul-Kutbul-hadith 1976), 118.
11. B.O. Yusuf, *Fizilal-Qur'ān: A Study of Sayyid Qutb's Approach to Tafsīrul-Qur'ān*, (An Unpublished Doctoral Thesis of the Department of Religions, University of Ilorin, Ilorin, 1996) . 42.
12. K. Qattan, *Mabāithu fi 'Ulumil-Qur'ān*, (Cairo: Darul-Hikmah 12th edition 2002), 330.
13. S. As-Sayuti, *Al-it-Tiqan fi 'ilumi – Qur'ān* (Tunis: Darul-fikr, 1975), 22.
14. M.S. Al-Amin, *at- Tabsirat fi 'ulumi- Qur'ān* (Cairo NP 1989), 53.
15. S. Hindu, *At-Tafsīrul- 'llmil-lil-Qur'ān ul-karim bayna-Naraiyyat wat-Tatbiq* (Beirut: Darul-Kutub Hadithah, 1985), 14-15.
16. U.H. Tijani, *Qur'ān ic Commentary Between Tradition and Opinion* (Zaria: University Publication 2000), 46.
17. Ibn Kathīr, *Mukhtasar Tafsīr Ibn Kathir*, (Beirut; Dar-ul-Fikr 2000), 64
18. Qur'ān 16:44
19. Al-Mahli, (et al) nd *Tafsir Jalālayn*, (Lebanon: Beirut ND), 6.
20. I.O. Oloyede et al, *Exam Focus on Islāmic Studies*, (Ibadan University Press PLC, 2003), 21

21. I.O. Oloyede et al, *Exam Focus on Islāmic Studies*, 24-26
22. I.O. Oloyede et al, *Exam Focus on Islāmic Studies*, 28
23. I.O. Oloyede et al, *Exam Focus on Islāmic Studies*, 30
24. A. Rahim, *Islāmic History*, (University of Ibadan: Publication, Ibadan Nigeria 1982), 86.
25. H. Adh-Dhabi, *At Tafsīr wal Mufasssirūn*, (Lebanon: Publication, Ibadan Nigeria, 1976), 86
26. H. Adh-Dhabi, *At-Tafsīr Wal-Mufasssirun*, 14
27. M.A As-Sabūni, *Tafsīr Āyatil-Āhkam minal-Qur'ān* (Cairo: Daru-Sabun 2007), 106.
28. M.I. As-Shafī'i, *Ahkāmul-Qur'ān Lish-Shafī'i* (Lebanon: Darul-Kutub al-ilmiah 1986), 165.
29. M.A As-Sabūnī, *Tafsīr Āyatil-Āhkam minal-Qur'ān*, 108
30. I.A. Abu Shadī, *Al-Ikhtiyārāt al-fiq hiyyah-lil-Imam al-Albāni 1st edition*, (Cairo Darul-Ghadal-Jadid, 2006), 57-59.
31. M.A As-San'ani, *Kitab Subulus-Salam: Sharhu Buluqul-Marām min Jami'i Addillatul-Ahkām*, Cairo, 2007 P.80
32. M.A As-San'anī *Kitab Subulus-Salam: Sharhu Buluqul-Marām min Jami'i Addillatul-Ahkām*, P. 81
33. M.A Ash-Shawkāni, *Fathul-Qadīr al-Jami'i Baina Fannir Riwayah Wad-Dirayah min ilmit-Tafsīr* (Beirut: Lebanon, First edition 2010), 80.
34. M.I. As-Shafī'i, *Ahkāmul-Qur'ān Lish-Shafī'i* (Lebanon: Darul-Kutub al-ilmiah 1986), 165.
35. S.A Maududi, (ND). *Birth Control*, (Lagos: Markz Maktabah Islāmic Publishers, Delhi, ND), 81.
36. A.R. Doi, *The Cardinal Principles of Islām*, (Lagos: Islāmic Publications Bureau), 124-141.
37. H. Abdalati, *Islām in Focus*, (Agege Motor Road, Oshodi Lagos: Islamic Call Centre ND), 55.

38. M.A. Gambari, *Tafsīr bir-Ra'y: An Examination of At-Tafsīr al-Manār of Shaykh Muhammad ʿAbduh* M.A Research (Thesis in the Department of Religions, Faculty of Arts University of Ilorin, Ilorin, 2010), 67
39. Y.K Jumu'ah,(*A study of selected themes in Al-Razi's Mafatihul- Ghayb* 2006). An Unpublished PhD thesis submitted to the Department of Religion, Faculty of Arts, University of Ilorin.86
40. M.A. Al-Khudari, *Usūlāl-fiqh*, (Cairo; Darul-Hadith Publication, 2003). 30.
41. Fodio, A. *Kifayatu-Dhuafāus-Sudān fī bayan Tafsīril-Qur'ān*, (Kano Darul Ummah Publication), Vol. 1.
42. M.A. Abdur-Rauf, *An Introduction to Al-Qur'ān for A level* (Lagos:IslāmicPublications Bureau), 1-7.
43. S.A. Zuglool, *Remembrance of Allāh; The Only Way to Stem Crime and Corruption*, (Ilorin:Al-huda Publication), 2014, 14.
44. K.S. Badmos, *Al-Fasād: An Examination of the Commentaries of Sayyid Qutb on Corruption in the Qur'ān and their Relevance to the Nigeria Situation*,(M.A Thesis in the Faculty of Arts, University of Ilorin, Ilorin), 2002.
45. M.A. As-Sabūnī, *Al-Mawarith Fis-Shari'ah Al-Islāmiyyah*,(Cairo: Darus-Sabuni, 2002 30.
46. B.O. Miftahudeen,"*A Contextual Study of the Institution of Zakat in the Tafsīr Al-Manār by Muhammad ʿAbduh*"; (1846-1905) (A publication of the Postgraduate School, University of Ilorin, Ilorin, 2014), 132.
47. M.A As Subūnī, *At Tbiyān fī Ulumil Qur'ān*, (Cairo, Daru-s-Sabūnī, 2nd ed, 2003), 146-190
48. M. Murad, *Kayfa Tahfazul Qur'ān*,(Cairo: Darul Fajr li-t-Turath, 2nd ed, 2003), 197-202.
49. A.Ash-Shaʿrānī, *Al Mizanul Kubrah Ash-Sha'raniyyah*, (Lebanon:Darul Kutub al Ilmiyyah, 2nd ed., Vol. 1, 2009), 238.
50. A.S., Al Azhari, *Ath-Thamaru-d-Dānī, Sharhu-r-Risālah Ibn Abi Zayd al Qarwānī*, (Lebanon: Darul Fikr (n.d.), 102.
51. M.B. Ismail, *Bayna-s-Sāil wal Faqīh*, (Cairo, Darul manār, 2nd ed, 1999), 225.
52. M. Abu Aziz, *Al Fiqhul Muyassar*,(Cairo: Al Maktabatu Tawfiqiyyah, 2002), 150.

53. M. Murad, *Minhajul Mumin*, (Cairo: Darul Fajr lit-turāth, 2nd ed., 2004), 5
54. Fawzān, *AlMulakh-Khas Al Fiqhti*, (Cairo: Al Maktabatu Tawfiqiyyah, Vol. 2 n.d), 640.
55. H. Abdul-^cAti, , *The Family Structure in Islām*; (American Trust Publication, 1977), 55
56. B.O Yusuf, “*Utilizing the Qur’ān, Stablising the Society*: (Unilorin Press, Ilorin Nigeria: The One Hundred and Fifty-Sixth (156th) Inaugural Lecture Presented at the University of Ilorin, Unilorin Press, Ilorin Nigeria, 2015).
57. Y.A. Quadir, *All in the Name of God* (Unilorin Press, Ilorin Nigeria: “the One Hundred and thirty-Third (133rd) Inaugural Lecture, 2013), P. 23.
58. M .A Isa, *Mawsu^catul-Israiliyāt wal-mawdu^cat fi kutub-at-Tafsīr* (Egypt: Dar al-Ghad al-Gadeed Almansura 2008), first edition, 5.
59. J. As-Sayuti, *Asraru Tartibu Suwaril-Qur’ān*, (Lebanon: Saidan 2012), 27.
60. M. Higab, *Islām is the all Divine Message in one’s* (Lagos: *Islām*ic publications Bureau 1983), 3.
61. M.T. Aliyu, *Method of Al-Tabari in Qur’ān ic Exegesis in Al-Ishrāq Journal of Arabic and Islām*ic Studies, (Nasarawa State University, Keffi, Nigeria, 2010), 4
62. I.S. Sa^cidu, *Danmarna “The Qāla Qato (Qur’ān ist) Trends of Tafsir in Northern Nigeria: Some Analytical notes”*(International Journal of Multi-disciplinary Studies, Umaru Musa Yar’Adua University, Katsina, 2014) 42,
63. H. Abdul-^cAti, , *The Family Structure in Islām*; (American Trust Publication, 1977), and Y.T. Maigari, *Qur’ānic Exegesis of Creedal Concept as it relates to Divinity by the Companions”*(*An-Nuri Journal of Arabic and Islām*ic Studies, Yobe State University, Nigeria, 2013) 67.
64. B.O. Abdul-Azeez, “*At-Tafsīr and al-Mufasssirūn in Nigeria: A Historical Perspective”* (in *Al-Ishraq Journal of Arabic and Islām*ic Studies, Nasarawa State University Keffi Nigeria, vol. 1., 2008),
65. I.S. Sa^cidu, *Danmarna “The Qāla Qato (Qur’ān ist) Trends of Tafsir in Northern Nigeria: Some Analytical notes”*
66. H. Abdul-^cAti, , *The Family Structure in Islām*; (American Trust Publication, 1977), 58

CHAPTER TWO

Historical Background of Muhammad bn ʿAli Ash-Shawkānī

2.1 Biography of Muhammad bn ʿAli Ash-Shawkānī

Ash-Shawkānī's full name is Muhammad bn ʿAli bn Muhammad bn ʿAbdulillah Ash-Shawkānī, As-Sanʿānī. He was born in the year 1760 C.E; which is equivalent to 1173 A.H., on the 28th day of the month of Dhul Qaʿdah.¹ The surname "Ash-Shawkānī" is derived from the birth place of Ash-Shawkānī, which is a village in Yemen that has the distance of a-day journey to Sanʿān². Ash-Shawkānī is attributed to Shawkānī in Yemen because it is his birth place. He is also being referred to as AsʿSanʿānī because Sanʿān is the place where he grew up, studied and held the position of *Qādi-Qudāt*³

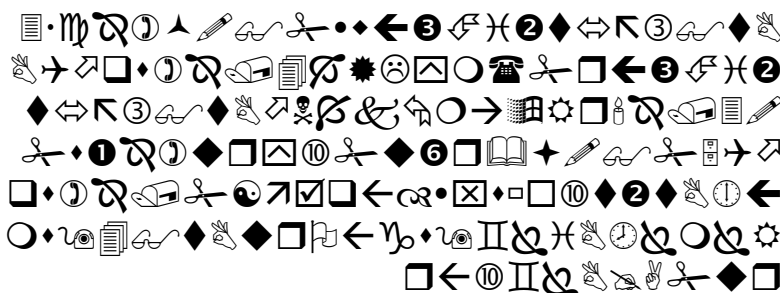
2.2 His Environment

Muhammad bn ʿAli Ash-Shawkānī lived in an environment that was characterised with intellectual disintegration and academic crises. There existed a vehement opposition and counter arguments among the various existing schools of thought in the Muslim communities of which Yemen, his birth place was of no exception. Ash-Shawkānī lived in an environment that was filled with different schools of thought, religious groups, sects such as *Rāfidah*, *Zaydiyyah*, *Mutazilah*, numerous Sufi orders and so on. He observed dogmatism, discrimination, as well as creed and ethical deviation from the pristine teachings of Islām. Similarly, Ash-Shawkānī noticed different sorts of evils, corruption, heresy, polytheistic disposition and deplorable state of ignorance of the Muslim society about the teachings of the religion of Islām.⁴

Equally, Ash-Shawkānī considered the attitudes of the Islāmic scholars and the judges in carrying out their responsibilities of enjoining and upholding justice and forbidding evils and abomination in their various localities. He observed that the social injustice which pervaded the Yemenite environment generally has deeply infected the attitude of the judges, officials and administrators. This served as the back drop of Ash-Shawkānī's environment against which he made resolution to bring about a far-reaching reformation of lasting effects⁵.

One could understand the positive position of Ash-Shawkānī in relation to his immediate environment. He was not satisfied with the *status quo*, therefore, he considered it an obligation upon himself as an enlightened Islāmic scholar to effect changes in the society. This is indeed a

religious obligation upon every Muslim scholar. It is in line with the stand of the Qur’ān that a society can only progress and enjoy divine blessing and intervention when the people of such society adjust their attitudes positively. The Qur’ān says:



Verily, Allāh will not change the condition of a people as long as they do not change their state themselves. But when Allāh wills a people’s punishment, there can be no turning back of it, and they will find besides Him no protector⁶.(Q13:11)

One might regard Ash-Shawkānī, based upon his stance, as a religious reformer. This is due to the fact that he had a strong will to carry out reforms on Islāmic religious adherents of his time, root and branch. This invariably reflects in his thoughts, principles and ideologies as a distinctive Islāmic scholar which shall be discussed later.

2.3 Parental Background of Ash-Shawkānī

Muhammad bn ‘Ali Ash-Shawkānī As-San’ānī hailed from a parental background of noble repute in respect of Islāmic education. His father was reputedly one of the great scholars of his time. The father of Ash-Shawkānī exerted enormous influence on him in Islāmic knowledge acquisition. His father, being a reputable scholar and one of the distinguished judges in San’ān, prepared the young Ash-Shawkānī and equipped him with the rudimentary knowledge of Islām. He expended much of his wealth on him. He paved way of learning for both him and his younger brother known as Yahya⁷.

The virtue of this parental tutelage enabled the young Ash-Shawkānī to learn the whole content of the Qur’ān by heart and with mastery of its art of recitation. Ash Shawkānī was able to memorise numerous texts of different branches in the disciplines of Arabic and Islāmic Studies. Among such books are *Kitābul Azhār* of Mahdi on Zaydiyyah School of Jurisprudence, the Compendium of Al-Usay-firi, *Mulhatul ‘rāb* of Al Harīrī, *Al Kāfiyah* and *Ash-Shafiyyah* of Ibn

Hājib, *At-Talkhīs* of Al Qazwīnī on Arabic, Compendium of Ibn Hājib on the Science of Islāmic Jurisprudence and a host of others⁸.

2.4 His Birth and Early Life

As said earlier, Muhammad bn °Ali Ash Shawkāni was born in the eighteenth century (1760C.E) which is equivalent to the 12th century of the *Hijrah* (1173A.H). The month of his birth fell happened to be into one of the sacred months of Islām i.e *DhulQa'dah*. He had appellations of Ash-Shawkāni and As-San'āni attached to his name based on the circumstances of his birth and where he was brought up respectively⁹.

The early life of Muhammad bn °Ali Ash Shawkāni was characterised with endeavour in Islāmic educational pursuit. He had the advantage of good upbringing by a parent who cherished learning and gave much attention to it. It might be said that the early life of Ash Shawkāni had much influence on his career as an Islāmic scholar in the later period of his life. This was because during his formative years of childhood, he received necessary Islāmic education which served as a solid foundation upon which he built up his career both as a scholar and reformer¹⁰.

Not only does the importance attached by his parent to education served as a contributive factor to achieve learning in his childhood, so also was his father's financial wherewithal. It can also be said that Ash-Shawkāni's intellectual endowment and curiosity to acquire knowledge are among other factors which paved smooth way for his learning in his early life. In relation to this, a poet aptly says:

ألا لاتنال العلم إلا ب ستة
فاستمع إلي مجموعها ببيان
ذكاء وحرص و اصطبار و بلغة
وإرشاد أستاذ و طول الزمان¹¹

Behold! Knowledge can only be achieved with six things
Listen to the collections (of the factors) with explanation
(They are) intellect, curiosity endurance and sustenance,
Guidance of the teacher and long period of learning.

2.5 His Education

Muhammad bn °Ali Ash-Shawkāni was not complacent with the knowledge he acquired from his parent. He proceeded in his knowledge acquisition. He pupilled to a considerable

number of scholars in San'ān of his period. He associated himself with many great scholars of San'ān and learnt from them different branches of knowledge such as philosophy, logic, mathematics and natural science in addition to all branches of *Shari'ah* discipline and Arabic language in which he was found to be a distinguished personality¹².

More importantly, Ash-Shawkānī displayed great assiduity in studying history, collections of literary works and others. He was industrious, painstaking and diligent in his studies most of the time. He would study almost thirteen lessons in every branch of knowledge daily. His fame as a scholar spread far and wide to the extent that he became a consultant of legal verdict on *Shari'ah* issues. He had not reached thirty years of age before he has been recognised in passing *Fatwa* (legal verdict). He exercised independent reasoning till he became an Imam and leader visited from several places. He assumed the judicial position in San'ān for almost a decade without showing a declining interest in the educational pursuit¹³.

2.6 His Teachers

Muhammad bn 'Ali Ash-Shawkānī acquired knowledge from a number of scholars. He was reported to have learnt from more than thirty teachers, different branches of knowledge¹⁴. The first among them was his father, from whom he learnt exegesis of Al Azhār, An Nāzīr and part of Sahih Al-Bukhāri. He also learnt from al Hasan bn Ismail Al Maghribi. Ash-Shawkānī described this mentor of his as a generous scholar who assisted him much and guided him in the explanation of the text of Al-Muntaqā. Ash-Shawkānī related that he was much influenced by his spiritual life, his *Salafi* orientation and his behavioral composition, most especially his enviable humility¹⁵.

Similarly, Ash-Shawkānī gained knowledge from Al Imam Al Hafiz 'Abdul Qādir bn Ahmad Al-Kawkabānī (d. 1207A.H). Ash-Shawkānī depicted him as the most distinguished scholar Ahmad Al-Kawkabānī was outstanding among his peers in Yemen. Ash-Shawkānī learnt from him different branches of knowledge in Hadith, Qur'ānic exegesis, sciences of *Hadith* and others. He studied through him *Sahihul-Muslim*, *SunahAt-Tirmidhi* and parts of Muwatta of Imam Malik and *FathulBari* of Al Asqalānī. Ash Shawkānī also studied through Al Allāmah Muhammad Ali bn Ibrahim (d. 1208A.H) the content of *SahihulBukhāri*. Ash Shawkānī studied through Hādi bn Husayn al Qārini (d. 1247A.H). He was the teacher of Ash Shawkānī on *Qira'at* (recitations) and Arabic language. Ash Shawkānī also kept company with Al 'Allāmah Ahmad

bn Muhammad Al Harrāzi (d. 1227 A.H) for thirteen years, and from him, he benefited much of the knowledge of Islāmic Jurisprudence.¹⁶

2.7 His Students

Numerous students studied under Muhamamd bn °Ali Ash-Shawkāni, many of whom have attained lofty positions in their academic career both in Yemen and other places. Some of the students of Muhammad bn °Ali Ash Shawkāni are;

1. Abdur-Rahman bn Ahmad Al-Bahkali
2. Ahmad bn Abdullah As-Samadi
3. Muhammad bn Al Hasan Ash-Shajni Adh-Dhimāri
4. Lutfullah bn Ahmad Hijāf As-San'āni
5. Al Hasan bn Ahmad °Akish As-Samadi
6. Muhammad bn Muhammad Ash-Shāmi
7. Muhammad bn Ahmad Musajjim
8. Muhammad bn Ahmad As-Sūdi
9. Muhammad bn Muhammad al Hasani¹⁷.

2.8 His Contemporaries

Muhammad bn °Ali Ash-Shawkāni had many scholars who were his contemporaries. They acknowledged his erudition and academic prowess though there were some scholars of his era who were his adversaries and made every possible effort by accusing him of destructive *da'wah* against the school that promoted the status of *Ahlul Bayt* (household of the prophet)¹⁸.

However, some of his contemporaries from whom he won accolades are: Muhammad Adh-Dhahabi, who described Ash-Shwakāni as a rare intellectual gem of his era. Muhammad Al Khisht was another scholar who regarded Ash-Shawkāni as one of the great jurists and distinguished religious reformer of the thirteenth century due to his unique intellectual endowment and organised methodology in the analysis of religious texts and exposition of arguments. Similarly, Sayyid Ibrahim described Muhammad bn °Ali Ash Shawkāni as a high prolific scholar who was praised both in poems and prose, and exchanged correspondences with kings and scholars from different regions on many branches of knowledge such as *Tafsīr*, *Hadith*, *Fiqh*, Arabic Syntax, logic, literature and others. Also, Lutf bn Ahmad Jihāf related that

Ash Shawkāni is the most distinguished personality in memorizing the *Hadith* text and was knowledgeable in the science of *Hadith*¹⁹.

2.9 His Works

Muhammad bn ʿAli Ash-Shawkānī wrote prodigiously on various sciences and issues. Some of his famous works are:

- Tafsīr** (أ) التفسير
1. فتح القدير: الجامعين فن الرواية والدراية من علم التفسير
 1. *Fathul-Qadīr Al Jāmiʿ bayna fanniy-r-Riwāyah wa-d-Dirāyah fī-t-Tafsīr.*
 2. إشكال السائل إلى التفسير والقمر قدرناه منازل
 2. *Ishkālu-s-Sāil ila Tafsīr (wal qamara qaddarnāhu manāzila)*
- Ahadith** (ب) الأحاديث
3. إتحاف الأكابر بإسناد دفاتر
 3. *3Thāful Akābir bi Isnādi-d-Dafātīr*
 4. الفوائد مجموعة في الأحاديث الموضوعية
 4. *Al Fawāidul Majmūʿah fil Ahādithil Mawdūʿah.*
 5. نيل الأوتار: شرح منقل الأكابر
 5. *Naylul Awtār, sharh Muntaqal Akhbār*
 6. إسحاق المهارة على حديث لا عدوى ولا تيارض
 6. *Ithāful Maharah ʿala hadith “Lā ʿadwā walā tiyarah*
 7. القول المقبول في الرد كبار المجهول من غير صحابة الرسول
 7. *Al Qawlul magbul fī raddi khabaru majhūl min ghayri Sahābati Rasūl*
 8. الأبحاث الودعة في كلام على حديث حب الدنيا رأس كل الخاطئة
 8. *Al Abhāthul wadīʿah fil kalami ʿala hadith ‘hubbu-d-duniyah ra’su kulli - Rhati’ah’*
 9. بحث في حديث فدين الله أحق عن اليقدي
 9. *Bahtun fī Hadith’ fa dījullahi ahaqqu an yuqda’*
- Al’Aqīdah** (ت) العقيدة
10. قتر الولي على حديث الولي
 10. *Qatrul waliyy ʿala hadithil waiyy*

11. بحث فى عن الإجابة الدعاء لا ينافى سبق القضاء
11. *Bahthun fī ‘anna ijābati-d-du’āi lā yunāfi sabqal qadāi*
12. التوضيح فى التوتر ماجاء فى منتظر مسيحي
12. *At-Tawdīh fī Tawāturi mājā’a fil muntazaril Masīhi*
13. إرشاد الغبي إلى مذهب أهل البيت فى صحب النبي
13. *Irshādul Ghabiyyi ilā madh-hab Ahlil Bayti fī Sahib-n-Nabiyy*
- Al fiqh and its Sciences** (ث) الفقه وأصوله
14. الدواء الآجل فى دفع الأعداد السائل
14. *Ad-Dawā’ul ‘Ājil fī Dafnil ‘Adadi-s-Sāil*
15. السيل الجرار المتدفق على حدائق الأزهار
15. *As-Saylul Jarrār Al Mutadaffiq ‘ala hadāiqil Azhār*
16. إرشاد السائل الى الدلائل المسائل
16. *16Irshādu-s-Sāil ilā dalāilil masā’il*
17. المسكول فتح فى خط الخوارج
17. *17Al miskul fātih fī hattil hawā’ij*
18. السوارم الهندية المسلوقة على الرياض الندوية
18. *As-Sawārimul Hindiyyah Al Maslūlah ‘ala-r-Riyādin-n-Nadiyyah*
19. المباحث الدرية فى مسألة الهمرية (On inheritance)
19. *Al mabāhith-u-d-Durriyyah fil mas’alatil Himāriyyah (on inheritance)*
20. إرشاد الفهول إلى تحقيق القول من علم الأصول
20. *Irshādul Fuhūl ilā Tahqīqil Qawl min llmil’ Usūl*
21. القول المفيد فى أدلة إجتهد والتقليد
21. *Al Qawhil Mufīd fī Adillatīl Ijtihād wa-t-Taqlid*
22. أدب الطلب ومنتهى العرب
22. *22Adabu-t-Talab wa Muntahal’Arab*
23. الدرر البحية فى مسائل الفقهية
23. *Ad-Durarul Bahiyyah fil Masā’il fiqhhiyyah*
- Philology (Lughah)** (ج) اللغة
24. الروض الوسيع فى الدلائل على عدم إنحصار على البدع
24. *Ar-Ruḍḍ al-Wasi‘ fī dalāilil ‘alā ‘adam inḥṣār ‘alā al-bid‘*

24. *Ar Rawdul wasīl[°] fī-d-Dalīl[°] ala[°] adami inhisār alālbadi[°]i*
25. نذاعة على الحق فى علم الإستحقاق

25. *Nuzhatul Ahdāq fī[°]ilmil Ishtiqaq*
26. بحث فى الرد على الزمخشري فى إستحسان بيترية .

26. *Bahthun fī-r-Raddi[°] ala-z-zamakhshari fī Istihsāni bayti-r-Riyyah*

History and Biographies

(ح) التواريخ والسيرة

27. البدر التلعيح بحاسن من بدع القرن السابع
27. *Al Badru-t-Tāli[°] bi mahāsini min ba[°]di al Qarnis-s- Sābi[°]*

28. القول الحسن فى فضائل أهل اليمن .

28. *Al Qawlul Hasan fī fadā' il Alilil Yemen*

29. القول المقبول فى فبدان الغبول والسيول

29. *Al Qawlul maqbūl fī faydānil Ghuyūl wa-s-suyūl*

Logic

(خ) المنطق

30. بحث فى الحديث تم والعد الناقص

30. *Bahthum fil Haddi-t-tamm wal Haddi-n-Nāqis*

31. فتح الخلاف في جواب مسائل عبد الرزاق الهندي فى علم المنطق

31. *Fathul Khilāf fī Jawābi Masā'il[°] Abdur-Razzāq Al Hindī fī[°]ilmil mantiq*

Ethics and Moral

(د) الأخلاق

32. جواب سؤالين عن الصبر والحلم الهم المتلازمان أم لا؟

32. *Jawābu su'ālin ani-s-Sabr wal Hilm hal hummā mutalāzimāni am la?*

33. الإيضاح لمن التوبة الإصلاح 20 .

33. *Al'Iydā'u li ma[°]na-t-Tawbahwal Islāh²⁰.*

2.10 His Philosophy

The philosophy of Muhammad bn[°]Ali Ash Shawkānī is entrenched in upholding the Islāmic principles. Ash Shawkānī believes in strict obedience to the teachings of Islām and upholding the guidance that stems from authoritative sources of the Islāmic tenets. He

emphasises that Muslims need to shun dogmatism, blind imitation, and sectionalism for the Muslim nation to progress spiritually and materially. He maintained that Muslims need to make use of their reasoning faculty to fathom the principles and spirit of *Shari'ah* for the purpose of the growth of Islām.

Also, Ash-Shawkānī places a high premium on learning and its acquisition over worldly accomplishment. This is discernible from his attachment to academic career despite his attainment of dignified position or status of a judge in Yemen. To him, learning is highly instrumental to educational and spiritual progress. He cherished dissemination of knowledge and the reformative role which knowledge has to play in the society that is dominated by negative influences of ignorance, prejudice, sectarianism, among others²¹

2.11 His Adherence to Sunnism

Muhammad bn ʿAlī Ash Shawkānī was a sunni, who considered the *SunniHadith* collections as the most authoritative source in the religion after the Qurʾān and thus based his opinions mostly on them. He condemned *taqlid* and adherence to one school of thought. Ash-Shawkānī deemed *taqlid* as a reprehensible innovation developed by various Schools of thought. His urge was to return to the principal sources of the Qurʾān and *Sunnah* to determine legal rulings²².

In relation to *Usul al fiqh*, he aimed to free the *Usul* science from principles which were presumptive (*zanni*) or textually baseless. He did not consider *ijmā* to be a source of law, simply because there is no textual proof for it. He argued that it is impossible to ascertain the consensus of all scholars of all regions on an issue with the existence of different schools and temperaments, differences in understanding, contradictory dispositions and the love of contradiction. Ash-Shawkānī did not accept all forms of *Qiyās*. He argued that most of the *Qiyās* were based on reasoning. For him, *Ijtihād* provided solutions to the evil of sectarianism and fanaticism, as well as serves as a means of reforming misguided social practices. He argued that *ijtihād* is a continuous process that is necessary and not bound to any period²³.

2.12 His Political Life

Ash-Shawkānī was known with political philosophy of reforming the Islāmic Society in consonance with the pristine teaching of Islām enshrined in the Qurʾān and *Sunnah*. He

considered the attainment of political positions as a mean of effecting changes in the society through the use of authority in an Islāmic manner.

His familiarity with the kings and political officials was not with the purpose of achieving worldly glamour of transient fortune. Rather, he considered it as an opportunity to enlighten them about their specific duties and responsibilities in promoting the welfare of their subjects. This is clearly understood from his exchange of correspondences with political leaders which were based on the knowledge of Islām on various disciplines. Based upon this, it could be said that Ash-Shawkāni's scholarly repute has much influence on his political life and the ideology of his time²⁴.

2.13 His Death

Imam Muhammad bn ʿAli Ash-Shawkānī died on the night of Wednesday, 27th of Jumadah al Akhirah 1250A.H, which is equivalent to 1834 C.E at Sanʿai, at the age of seventy-six years and seven months. Funeral prayer was offered to him at the great central mosque in Sanʿai, a true profession of ascetic faith and beautiful example of total resignation to the will of Allāh were vividly displayed by Ash-Shawkāni. His *Wasiyyah* at the point of death showed his closeness to Allāh, faithfully reflected his deep piety and his great trust in Allāh and His Judgment.

His jurisprudential opinions and methodology not only influenced his contemporary society and politics, but societies after him as well. His students disseminated his teachings in all realms of life. He is considered as the last great figure in the line of traditionist scholars in Yemen and also elsewhere in the region. His arguments on how to reform the Islāmic society have resonated with the concern of many modern *sunni* reformers, both in Arab and non-Arab countries²⁵.

NOTES AND REFERENCES

1. M.R. Kahālat, *Muhjamul-Muhalifina*, Beirut, (Lebanon: Daru Muha-sa-satur-Risalah, 1993), 541.
2. K. Az-Zarkalī, *Al-Ahlamu*, (Bairut: Darul-^cilmīl-lil-Malayīna, First Edition, 1992), 298.
3. M.A. Ash-Shawkānī, *Al-Badrut-Taliu*, (Bairut: Darul-Maharifah, First Edition, 1348), 215.
4. M.A. As-Shawkānī, *Al-Badrul-Taliu*, 1348, 215-219.
5. M.A. As-Shawkānī M., *Al-Badrul-Taliu*, 1348, 230.
6. A.A Yusuf, *Qur'ān ic Text, Translation and Commentary*, (Beirut: Lebanon, 2000).
7. M.Al-Katani, *Ar-Risalatul-Mustatrifah* (Beirut: Dārul-Qutbil-^cIlmiyyah, 2nd Edition, 1400), 114.
8. M.A. As-Shawkānī, (*Al-Badrut-Tāliu*, 1348 A.H,) 230.
9. <http://www.mawsoah.net>(الموسوعة العربية العالمية) 22/05/2015, 4:30 am
10. zugailam@Islāmway.net(عبدالله بن محمد زقيل) 22/05/2015, 4:30am
11. H. Jāsir, *Al-Imam as-shawkānī wa mawqifu'u min Dahwatil-s- Salafiyyahal-Islahiyyah*, (Berut: Darhiyyah Islāmic Magazine, 2nd edition, 2009).
12. S. Ibrahim , *Tarjumatin as-Shawkānī*, (Cairo: Darul-Hadith, 1st edition, 1420 A.H), 45.
13. S. Ibrahim , *Tarjumatin as-Shawkānī*, 1420 A.H 46
14. M.A. As-Shawkānī, *Al-Badrut Tāilu*, 1420 A.H, 215-219.
15. M.A. As-Shawkānī, *Al-Badrut Tāilu*, 220.
16. www.imam alias-Shawkānī.org. Arabic version 5 22/05/2015, 8:45am
17. A.N. Adeyanju, *A critical Analysis on the Principles of Interpretation of the Glorious Qur'ān: Al-Imam As-Shawkānī as a case Study*, (unpublished M.A Desertation submitted to the faculty of Arts, University of Jos, Nigeria, 2003), 25.
18. M.H. Adh-Dhabi, *At-Tafsīr wal-Mufassirūn*, (Lebanon: Darul-Fikr, ND), 286.
19. A.N. Adeyanju, (*A Critical Analysis on the Principles of Interpretation of the Glorious Qur'ān: Al-Imam As-Shawkānī as a case Study*, 2003), 30
20. www.imamalias-shwkani.org. Arabic version, 9, 30/06/2015 5:00pm and A.N. Adejanju *A critical Analysis on the Principles of interpretation of the Glorious Qur'ān: Al-Imam Ash-Shawkānī as a case Study*, 2003, 26-29.

21. A.N Adeyanju, (A critical Analysis on the Principles of interpretation of the Glorious Qur'ān,2003), 36.
22. A.N. Adeyanju,(A critical Analysis on the Principles of interpretation of the Glorious Qur'ān, 2003) 74
23. A.N. Adeyanju,(A critical Analysis on the Principles of interpretation of the Glorious Qur'ān, 2003), 75.
24. A.N. Adeyanju,(A critical Analysis on the Principles of interpretation of the Glorious Qur'ān, 2003) 8.
25. As-Shawkānī, *Fath-al-Qadīr Al-Jamīu Baina Fannir-Riwayāt Wad-Dirayāh-Min^clmit-Tafsīr*,(Darul-Fikr, 2007), 12.

CHAPTER THREE

FEATURES AND CHARACTERISTICS OF *TAFSĪR FATH AL-QADĪR*

Tafsir Fath al Qadir, written by Imam Ash-Shawkānī is a unique work with uncommon features among numerous others. The overwhelming contributions and ability of Imam Ash-Shawkānī in translating the word of Allāh are noteworthy. A scholar of *Tafsir* comments on *Tafsir* of Ash-Shawkānī which read thus:

فتفسير الشوكاني وحيد من جمعه وترتيبه وحسن أدائه و استيعابه
لأنواع علوم القرآن وجمعه بين الدراية و الرواية هذه أهم المميزات
التي امتاز بها الشوكاني بالإضافة الى أشياء كثيرة يلمسها الباحث
عند استعراضه لقراءة هذا التفسير.

The uniqueness of Ash-Shawkānī's *Tafsīr* lies in its method of compilation, presentation, analysis and its comprehensiveness in the Sciences of Al-Qur'ān. (Above all), it amalgamates both Traditional and non Traditional styles of *Tafsīr*. These are rare qualities of Ash-Shawkānī's work among other things that attract different researchers to it.¹

From the above quotation, one can guess the uncommon distinguishing features that the work is replete with. These rare peculiarities center on a number of characteristics, ranging from favorable disposition of the author to Arabic language as displayed in the work,² abridgement between the traditional (*Tafsīr bir-Riwāyah*) and personal reasoning (*Tafsīr bil-Dirāyyah*),³ indication of various methods of recitations by different reciters and the authentic ones thereof⁴ to objective analysis of several works of other *Mufasssīrūn*.⁴ All these have contributed in no small measures to clarity in explanations, philosophical relevance and jurisprudential importance of *Fathl-Qadīr*.

The methodology adopted by the author makes the work accessible from different dimensions as *Tafsīr Qur'ān bil- Qur'ān*, *bil-Hadith* or *bir-Ra'y*. Thus, it is a multi-faceted work on the subject (*Tafsīr*). It also serves as the stock of what transpired between various generations of early period, from the prophet to his companions, to *Tabi'ūn* (their successors) and the latter generations both before and after the author. The importance of this work therefore can never be over emphasised.

3.2 The Use of Cross Textual Interpretation in the *Fath al-Qadīr*

In realising the set objectives of a *Tafsīr* of uncommon standard, the author adopts the tenet that the *Qur'ān* interprets itself. The *Qur'ān* in many places acknowledges this fact. Allāh says:

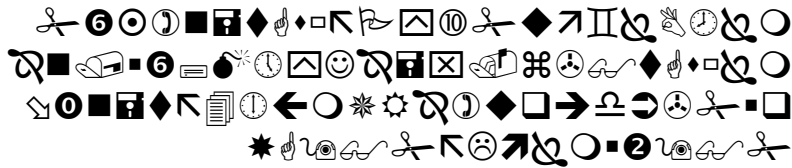
وَلَا يَأْتُونَكَ بِمَثَلٍ إِلَّا جِئْنَاكَ بِالْحَقِّ وَأَحْسَنَ تَفْسِيرًا

And no question do they bring to thee but We reveal to thee
the truth and the best explanation (Q.25:23)

The Glorious *Qur'ān* on several occasions demonstrates how it best interprets itself, hence the suspense method of analysis and narration dominates its contents. Some themes were scattered across not only the verses but also the chapters. An issue may be brief, concise or synoptically discussed in a verse while another verse may contain detailed or extensive analysis of it. An instance is seen in the *Qur'ānic* legislation regarding *Khamr* (intoxicant) and the stories of the prophets. The law of prohibition of intoxicant transcends a verse or chapter of the Glorious *Qur'ān*. The same goes for narrations about the prophets. Despite the naming of some *suwār* (chapters) after a certain prophet, that is never a yardstick to center the contents on that prophet alone but his story will still be found in another chapter while narrations in respect of others will equally be found therein.⁵

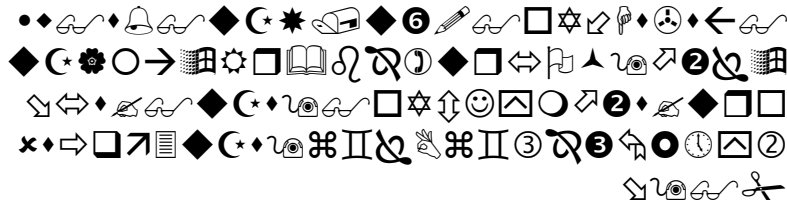
Sūrat Ibrahim, chapter fourteen of the Glorious *Qur'ān* describes this situation better. This is because despite the naming of the chapter after prophet Ibrahim, the story of prophet Mūsā, the most discussed prophet in the Glorious *Qur'ān* is found therein. Also, the chapter does not discuss Ibrahim in his entirety but one still finds discourse on him in several other chapters.

Imam Ash-Shawkānī in his work on *Tafsīr*, furnishes the contents with several verses of the Glorious Book as they complement and correspond to one another. In fact, in some instances, preference is given to a complementary and relevant verse like the one under discussion, before considering other supportive sources in driving home his points. This is undoubtedly imperative for his work to meet the standards and the best understanding of the verses of the *Qur'ān*. For example, in his *Tafsīr* of the verse:



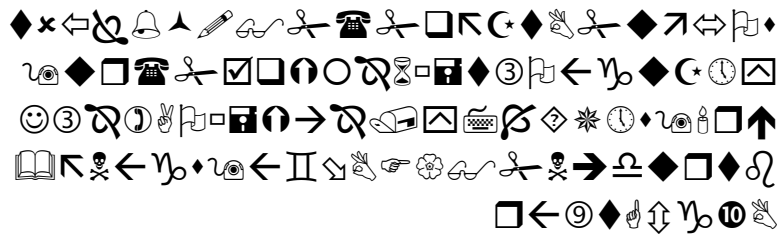
Then learnt Adam from His Lord words of inspiration, and His Lord turned towards him; for He is Oft-Returning, Most Merciful. (Q.2:37)

Imam Shawkani, despite other reports from other *Mufasssirūn* regarding the exact word of inspiration that was received by Adam as even indicated in *Fath al-Qadir*,⁶ places preference on the Qur’ānic verse which he undoubtedly considers as most suitable. He quotes:



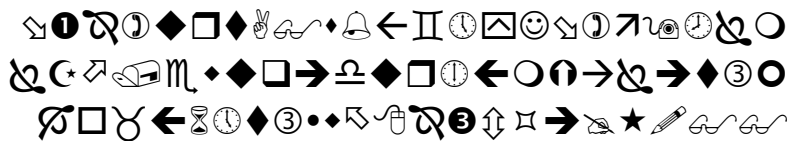
They said: "Our Lord! We have wronged our own souls: If thou forgive us not and bestow not upon us Thy Mercy, we shall certainly be lost."(Q7:23)

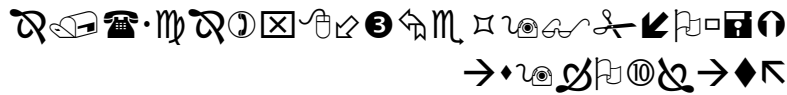
Furthermore, in another instance, Ash-Shawkāni equally demonstrates the importance of giving preference to the Qur'ān over and above other sources on the verse:



It is those who believe and confuse not their beliefs with wrong that are (truly) in security, for they are on (right) guidance(Q.6:82)

Ash-Shawkāni in explaining this,cites another explanatory verse of the glorious Qur’ān, where Allāh says:



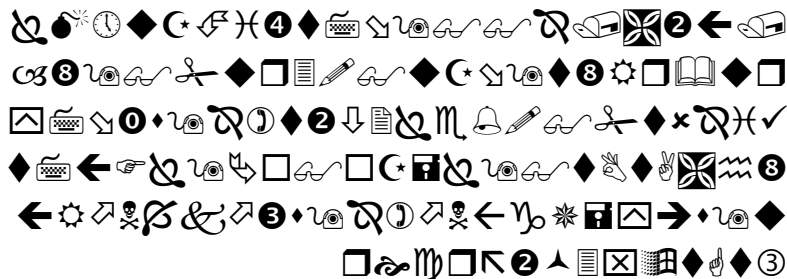


Behold, Luqman said to His son by way of instruction: "O My son! Join not In worship (others) with Allāh. for false worship is indeed the highest wrong-doing." (Q31:13)

Ash-Shawkāni therefore did not downplay the importance of giving preference to Qur'ān over and above other sources he deployed in his *Fath al-Qadir*.

3.3 Use of *ahadith* in *Fath al-Qadir*

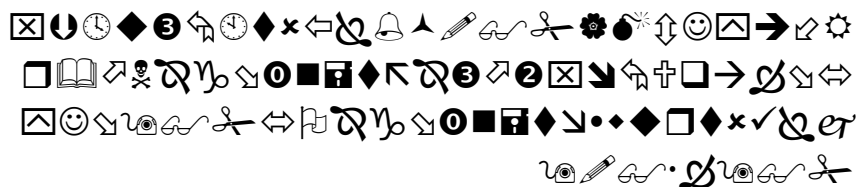
The author of *Fath al-Qadir* is excellent and tenacious in the use of Hadith, as the second primary source of Islām and the Islāmic legislations⁷ in his work, while shedding lights on a verses of the Glorious Qur'ān. This is not unconnected to his conviction that after the glorious book (Qur'ān), statements made by the prophet as the interpreter of Al-Qur'ān per-excellence. He explains that the Glorious Qur'ān is superior to other sources or references. The *Qur'ān* itself in several places, affirms the unparallel authority of the prophet in the interpretation and application of the divine laws.⁸Allāh says:



We have sent down unto thee (also) the Message; that thou may explain clearly to men what is sent for them, and that they may give thought. (16:44)

The above verse and many more emphatically established the unique role of the prophet as the interpreter of the glorious book, which he brought to the world. The prophet however played this role as he was jealously guided by Allāh. The companions on different occasions were faced with different challenges in their bid to properly digest and understand the intended message of the glorious Qur'ān. This is because despite their Arab origin, the language with which the book is revealed, they found it difficult to understand the meanings of some other messages, being the first of its kinds in their life experiences.⁹In occasion like this, resort is made

to the prophet to put them through and give them clear explanations and interpretations of the verses about which they were confused without any hindrance.¹⁰ Examples of such instances are as follows:



The way of those on whom Thou hast bestowed Thy Grace, those whose (portion) is not wrath, and who go not astray(Q1:7)

The prophet interprets the *Al-Maghdūbi* ^c*Alayhim* as Jews, while *Aḍ-Ḍāllīn* as Christians.¹¹

In another area, this is how the prophet demonstrates his superiority in the interpretation of the Glorious Qur’ān. Allāh says:

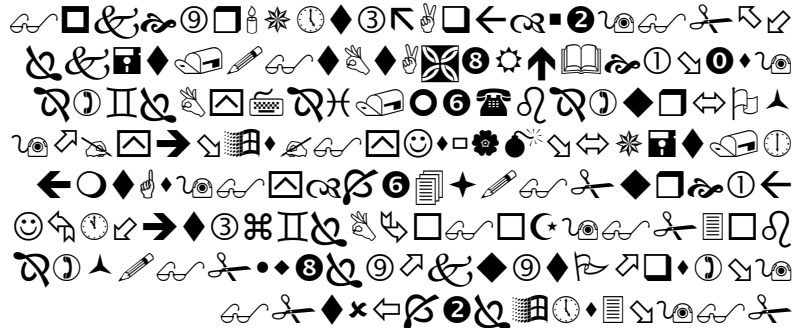


And serve Thy Lord until there come unto Thee the Hour that is certain. (Q.15:99) *Al-Yaqīn* is interpreted as Death by the prophet.¹²

Undoubtedly, to understand the meaning of the glorious Qur’ān by the latter generations, reference is made to the *ahadith* of the prophet to have an insight into how he expounds on the relevant verses. In his work, Ash-Shawkānī’s reliance on the *Hadith* of the prophet in interpreting verses of the Glorious *Qur’ān* is unparallel and beyond ordinary imagination. He demonstrates high sense of acquaintance with the traditions of the prophet and the sciences thereof. His searchlight for relevant Hadith to issues or verses under discourse captures various works and collections of Hadith and their sciences, as compiled by different scholars of different ages.

Equally, Ash-Shawkānī paid a painstaking attention to the science of authentication and categorisation of *Hadith*, giving premium to *Ṣaḥīḥ* (sound) narrations over and above others of lesser status like *Ḥassan* (fair) and *Ḍa’if* (weak). He indicates the two types both at *Matn* (text) and *Sanad* (chain) levels. He goes further in some instances to demonstrate how some *Ahadith* were reported by different narrators or compiled and compilers mentioned the variations found therein.

Specifically, Ash-Shawkānī has a special feature on the *Hadith* of either *Da'if* (weak) or *Mawdu'* (unfounded) categories. He declines any indication to point out the difference between the two. In other words, the two are of the same categories. He however uses some weak traditions in his *Tafsīr*.¹³ The is substantiated as seen in his work while explaining this verse:



O Messenger. Proclaim the (message) which hath been sent to Thee from Thy Lord. if Thou Didst not, Thou wouldst not have fulfilled and proclaimed His mission. and Allāh will defend Thee from men (Who mean mischief). For Allāh guideth not those who reject Faith.(Q.5:67)

Ash-Shawkānī cited a Shi'ites'*Hadith* which purported that the verse was revealed to the prophet at the Ghadir Khum in respect of ^cAli, the fourth *Khalifah* of the prophet. It (*Hadith*) proves that ^cAli is the leader of the *Ummah* (Muslim community). It reads:

إن عليا مولى المؤمنين

Indeed, ^cAli is the leader of the faithfuls.¹⁴

This *Hadith* had been declared as unfounded by scholars, especially the Sunnis school where Ash-Shawkānī belongs but he did not indicate the status of the said *Hadith*. Furthermore, there may be other compelling reasons for his adoption of the weak *Hadith* to drive home his points. One of those reasons may be that he prefers using a weak tradition to substantiate his point where there are no other *Hadith* of higher status and provided such a weak tradition does not alter the basic teachings of Islām or Qur'ān.

Some major works of Hadith which features prominently in *Fatih 'l-Qadir* are shown in the table below alongside the frequencies of *Ahadith* used from each.

S/N	Hadith collection	Number of Hadith there from
1	<i>ṢaḥīḥAl-Bukhārī</i>	397
2	<i>ṢaḥīḥMuslim</i>	261

3	<i>SunnahAbīDāwūd</i>	245
4	<i>SunnahAt-Tirmdhiy</i>	390
5	<i>SunnahIbnMājah</i>	155
6	<i>SunnahAn-Nasā'ī</i>	271
7	<i>Muwaṭ'aMālik</i>	10
8	At-Tabarani	506
9	Al-Bayhaqī	781
10	<i>MustadrakAl-Hākim</i>	646
11	<i>MusnadAhmad</i> ¹⁵	390

There are other works of *Hadith* in *Fath al-Qadīr*, but those mentioned above are most frequent.

3. 4 Use of the Statements of *Ṣahābah* in *Fath al-Qadīr*

The period that follows that of the prophet was that of the *Ṣahābah* (companions). They witnessed the prophet days and the methods of his interpretation of the verses of the glorious *Qur'ān*. The companions were eager to study every science of the *Qur'ān* ranging from recitation to *Tafsīr* and the application of each of the Qur'ānic verses. Abdur-Rahman As-Sulami reported that while learning the *Qur'ān* from the companions, they do not want to proceed to another verse until they properly grasped the meaning and application of the verse under discourse.

After the demise of the prophet, the full activities of Islāmic responsibilities fell on the shoulder of the companions. Every aspect of Islām, including the science of *Tafsīr* took a systematic approach due to the glaring fact that individual companion was left with his understanding in tackling issues as they cropped up.¹⁶ Undoubtedly, the companions of the prophet have the authentic and real knowledge of the *Qur'ān*, having witnessed the ways and manners the prophet explained and applied its various messages. It is however important to point out that there are variations which are informed by nature and disposition of each of them to the prophet and intellectual capacity of individual.¹⁷

Generally speaking, the companions relied on some sources in their attempt to grasp and transmit the intended meaning of the *Qur'ān*. They relied firstly on the glorious *Qur'ān* as done by the prophet himself. Much has been said about this. This is closely followed by the statement (*Hadith*) of the prophet. Where issues of contention are not clearly understood or not discussed at all in these two primary sources, the companions relied on *Ijithād* (personal reasoning) and have

paid a painstaking attention and consideration to Arabic rules and the customs of the society.¹⁸sometimes; they consulted the *Israiliyyat* works, especially in the understanding of earlier prophets andtheirrespective stories. In some instances, some stories are in respect of Jewish or Christian communities. They are therefore, obliged to consult them since much about each of the two groups were discussed in their books, Torah and Bible.¹⁹ Another compelling reason for the companions to seek clarifications from them is that there is a reported Hadith credited to the prophet which states:

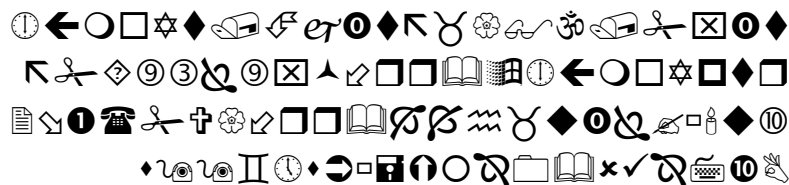
"بلغوا عني ولو آية، وحدثوا عن بني إسرائيل ولا حرج"²⁰

Narrate from me even if it's a verse or narration from the Israelites.

The above *Hadith*, which is found in the *Ṣaḥīḥ Al-Bukhar* and other collections, has a far reaching effects on not only the companions but the generality of the Muslims of different generations.According to Imam Sayūṭi in his *Al-Itiqān fī Ulūmi 'l-Qur'ān*, the prominent among these companions are ten. He lists, Abubakar, Umar, Uthman and ^CAli, the first four *Khalifah* of the prophet respectively. They are followed by Ibn Abbās, Ibn Mas^cūd, Ubayy b. Ka^b, Zayd bin Thabith, Abu Musa Al-Ashari and Abdullah bin Zubayr.²¹

It is germane to point out that three centers of learning, each at Makkah, Madinah and Kufa were established during the time of the companions.²²These centers were manned by Ibn Abbās, Ibn Mas^cūd and Ka^b respectively.²³ The centers trained people in different sciences related to the Qur'ān and other aspects of Islāmic sciences.²⁴ The graduates of these schools are *Tabi^cūn*, the successors to the companions, who later became the model to the latter generations.

Here are some of the ways the companions displayed their unparallel knowledge in the interpretations of the glorious Qur'ān.

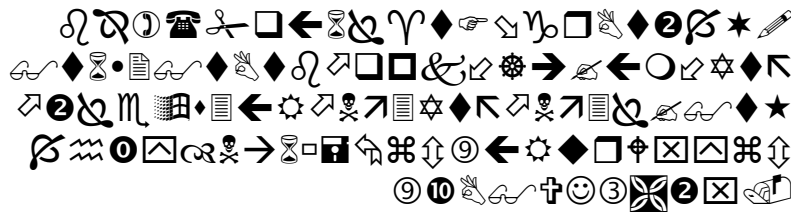


I will certainly punish Him with a severe penalty, or excutehim, unless He brings me a Clear reason (for absence).(Q.27:2)

قال ابن عباس كل سلطان في القرآن وذكر هذه الآية ثم قال : وأي سلطان كان للهدد؟ يعني أن المراد بالسلطان الحجة لا السلطان الذي هو الملك

Ibn Abbas said: Every *Sultan* in the Glorious Qur’ān connotes proof. He then read the verse. Thereafter, he states that what sort of authority does *Hudhudhas*? He (explains) further that the (Qur’ānic) intents of *Sultan* is proof and not-the authority which is Kingship.²⁵

In another area, while shedding lights on the verse of the glorious Qur’ān, where Allah says:



If you eschew the heinous of the things you are forbidden to do... (Q.4:31)

Shawkani quoted Ibn ‘Abbas thus:

قال ابن عباس : الكبيرة كل ذنب ختمه الله بنار أو غضب أو لعنة أو عذاب

Ibn Abbas explains that heinous (sin) is every shortcoming that Allāh has sealed with hellfire, anger, curse or punishment.²⁶

From the above examples, it is an undoubted fact that the work of Imam Shawkānī reflects his absolute reliance on the statements of the *Ṣaḥābah* in putting across his understandings and explanations of the Qur’ān to the coming generations. He demonstrates how each of them displayed their intellectual prowess in explaining the gray areas which they were unable to properly grasp from the prophet or circumstances that were new to them.

Also worthy of mention is the fact that Ash-Shawkānī is bias in his choice of selections of the *Ṣaḥābah*, though the reasons are obvious. He vested his interest most in just three namely out of the ten mentioned *Sahabah* by Sayuti. This is because they are the ones whom the prophet himself in one way or the other entrusted the science of Qur’ānic teaching to when he was alive.²⁷ He rarely uses the explanations of others, save in some dire circumstances when he is left with no option.

3.5 Use of Statements of *Tabi'ūn*

With the exit of the companions of the Prophet, the burden of explaining the meaning of the glorious Qur'ān rests on their successors, who were hitherto direct students of the companions and had learnt a great deal of *Tafsīr* from them. The successors relied on the same sources used by the companions. These are the Qur'ān, Hadith, *Ijtihād* (exercise of personal opinion) and *Isrā'iliyyāt*, but they used the companions as points of the references,²⁸ in a bid to properly digest the intended meaning of the glorious Qur'ān.

Worthy of mentioning is the unprecedented variations in the interpretation of some verses of the glorious Qur'ān and prevalent of forged narration which were attributed to the prophet and some companions in some circumstances.²⁹ These were on one hand due to different schools of thought and centers of learning at different places, which were mainly three: Makkah, Madinah and Kufa, and on the other hand political strife among the *Tabi'ūn* also accounted in no small measure to these upheavals.³⁰

The expansion of the Islāmic territories to non-Arab nations during the time of the successors of the prophet and his companions made Islām to come in contact with different socio-cultural and political thoughts. As people accepted Islām, they sought to fine-tune, blend and mend fences between their customs and the new faith.³¹ Also, there were a lot of new issues that cropped up which were alien to the successors.³² Individual successors were left to proffer a lasting solution to most of these issues. Thus, there was no cohesion among the successors and each tends to prove and establish his authority over and above another. These therefore accounted immensely for variations.

Imam Ash-Shawkānī, in *Fatīḥ al-Qadīr*, realises the critical roles the *Tafsīr* rendered to the successors by the companions during their time should play. He therefore uses them in his work. He displays this in a unique manner, especially by giving it consideration in the areas where the explanations from the superior authorities (Qur'ān, *Hadith* and Companions) are not directly available.

As mentioned in the previous submissions that three main schools of *Tafsīr* were established at different centers which provide the *Tabi'ūn* the privilege to learn from the companions, prominent among the beneficiaries in Makkah were:

Mujāhid Ibn Jabr Al-Makkī (d.104AH/722CE),

Ikrimah Mawlā Ibn Abbās(d.105 AH/723CE),

Aṭā' Ibn Abi Rabāḥ (d.114AH/732CE),

Sa'īd ibn Jubayr (d. 94AH/712CE), among others.

Prominent at the Madinah centre were:

Zayd bn Aslam (d.130AH/747CE)

Muhammad Ibn Ka'b Al-Qarḏiyy (d.117AH/735CE)

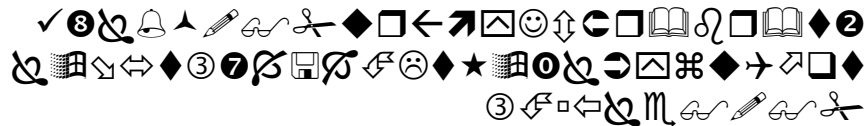
Abu Al-Āliyyah (d.90AH/708CE), among others

The center at Kūffa, (Irāq) featured Al-qamah bin Qays (d.102AH/720CE)

Qatādah Al-Sadūsī (d.117AH/735CE)

Amir As-Sha'bī (d.105AH/723CE) among others³³

There were certain number of students at each of the three centers but the methodology adopted by Shawkānī is to select the best using intellectual prowess and popularities as his yardsticks. The above listed groups of successors from each of the three centers feature prominently in *Fath al-Qadir*. Here are some instances of how Ash-Shawkāni displays the exegeses by the successors.



And who, I hope, will forgive me my faults on the day of Judgment (Q.26:82)

In explaining what the faults of Ibrahim are, Mujāhid reports that:



He said: "Nay, This was done by - This is their biggest one!(Q.21:63)



And He said, "I am indeed sick (at heart)! (Q.37:89)



When the night covered Him over, He saw a star: He said: "This is My Lord." but when it set, He said: "I love not those that set." (6:76).³⁴

The last statement was made by Ibrahim when he saw the stars. In another area, Mujahid displays his excellence in the science of *Tafsir* while interpreting (Q.35:32)

Ash-Shawkāni made reference to a great scholar who was by name Mujahid on his stand on the division of Scholars by Allah in the Qur'an 35:32. The Mujahid comments read thus:

وقال مجاهد في تفسير الآية : فمنهم ظالم لنفسه أصحاب المشأمة
 (ومنهم مقتصد) أصحاب الميمنة (ومنهم سابق بالخيرات) السابقون
 من الناس كلهم

Al-Mujahid states in his *Tafsir* that, those who wronged their soul are the companions of the left hand, the moderates are the companions of right hands while the foremost in righteous deeds are those who occupied the high-ranks among men.³⁵

^CIkrimah was quoted by Ash-Shawkāni in the book of *FathlQadīr* while explaining chapter 89:28 where Allāh says:



"Come back Thou to Thy Lord,- well pleased (thyself), and well-pleasing unto Him! (Q89:28)

He states that:

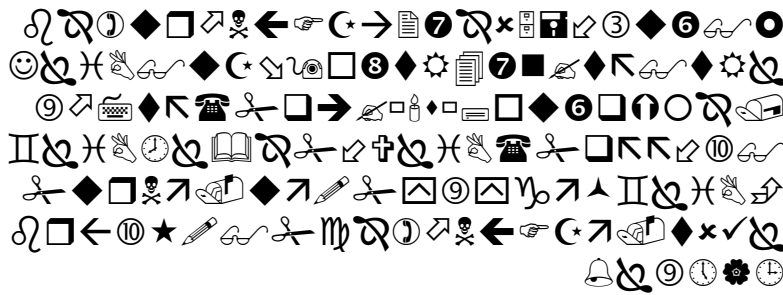
Return to the body(flesh) where you hitherto dwelt.³⁶

The above quoted verses explain the usages of the statement of *Tabi^cun* adopted by Ash-Shawkāni in his book of *Tafsir*. Despite the fact that the author's work is considered among the modern *Tafsir*, still the Shawkāni quoted and also applied several works and statement of the followers of the companions of the Prophet.

3. 6 Use of Arabic Linguistic Analyses

Arabic language, the language of *Al-Qur'ān* is cardinal to the understanding of its meaning, especially the science of *Tafsīr*.³⁷ It is therefore imperative for whoever aims at becoming an expert on Qur'ānic sciences to be vast in Arabic language and its branches like syntax (*Naḥwu*) morphology (*Ṣarf*), prosody (*‘Arud*), eloquence (*Balaghah*), among others. The use and command of Arabic language in the Glorious Qur'ān is unparalleled. One of the greatest miracles of this great book lies in its verses and its absolute control of the Arabic language. The *Qur'ān* even challenges the poetry-loving Arab community to produce something like it.³⁸

Allāh (SWT) says in the Glorious Qur'ān in respect of the above submission.



And if ye are In doubt As to what we have revealed from time to time to Our servant, then produce a Sura like thereunto; and call your witnesses or helpers (If there are any) besides Allah, if your (doubts) are true.(Q2:23)

Arabic is therefore unique. It is the medium through which the Islāmic concepts and laws were conveyed to mankind. It is impossible to understand the Qur'ān without the mastery of Arabic language and its rules. The Glorious Qur'an is derivational methods from etymological roots is unique. It is way rich in stock of words, less ambiguities and divine in nature.³⁹

An instance is given by Abdul-Qadri from the glorious Qur'ān where Allāh is legislating regarding a divorced woman. Allāh uses the word *Quru'*. This word (*Quru'*) has been differently interpreted by different scholars as either period of menses or the period between two menses (cleanliness or purity).⁴⁰ It is therefore important for the individual scholar to furnish himself with a high sense of Arabic rules and stock of Arabic words in order not to derail from the real path.(interpretation)

Imam Shawkāni passed skills in relating current issues in the Qur'ān with that of Arabic language as displayed in *Fathu'l-Qadīr*. This is because he had understood that the language is a sine qua non to not only to the *Qur'ān* but also the science of its interpretation. He equally indicates that what makes Arabic an indispensable tool in understanding the Qur'ān is the Hadith of the prophet which he quotes in his work thus:

أعربوا القرآن والتمسوا غرائبه فإن الله يحب أن يعرب .

Analyse the *Qur'ān* (grammatically) and take to its strange (grammatical methods). Indeed, Allāh loves such analysis.⁴¹

The above Hadith, though declared as weak in some quarters, played significant role in the work of Shawkāni on *Tafsīr*. In some instances, Ash-Shawkāni starts his explanation of a verse to be discussed from the grammatical analysis, pointing out the subject, predicate, object and other rules. For instance, he does so while explaining the chapter 24:35 of the glorious Qur'ān, where Allāh says:



Allāh is the light of heavens and earth (Q24:35)

Ash-Shawkāni submits, that this sentence is an appeal to vindicate the issues raised previously. The Mighty name (Allāh) is the subject (*Mubtada*) while light (*Nūr*) of the heavens and earth is its predicate (*khobar*). The genitive is dropped or hid, else, it would have read:

ذو نور السموات والأرض

The possessor of light of heaven and the earth⁴²

This is how Ash-Shawkāni used to give grammatical analysis of some verses of the glorious book.(Al-Qur'ān) In some other areas, Ash-Shawkāni demonstrates how some grammatical rules were over-run in the Glorious Book, Al-Qur'ān.⁴³ He shows how different *Qura'* demonstrate their grammatical expertise, especially when reading through those verses. Here are some examples:

	Scholastic Recitation	How the verses are written in the glorious <i>Qur'ān</i>	Chapters/Verses
1	تتفطرن ⁴⁴	تَكَادُ السَّمَوَاتُ يَنْفَطِرْنَ	Q.42:3
2	اقتتلنا ⁴⁵ , اقتتلنا ⁴⁶	وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا	Q.49:9
3	تأمننا ⁴⁷ تيمنا ⁴⁸ Talhah b. Masrif Yahya.b.Wisabi and others respectively	قَالُوا يَا أَبَانَا مَا لَكَ لَا تَأْمَنَّا	Q.12:11
4	تأمرونني ⁴⁹ Ibn cAmar	قَالَ أَفَعَبَّرَ اللَّهُ تَأْمُرُونِي	Q.39:64
5	مكنني ⁵⁰ Ibn Kathir	قَالَ مَا مَكَّنِي فِيهِ	Q.18:94

The variations here are due to *Qura'at*. They are revealed by Allāh to the Prophet not that scholars are the ones demonstrated the grammatical prowess.

Furthermore, Ash-Shawkāni makes reference to numerous authors on Arabic grammar such as *Sibaway*, Az-Zahir bin A-Anbarriyy, Muhammad bin Ahmad, Ibn Durayd bin Al-Hassan, Abu Nasr Ismail bin Ahmad among others.⁵¹ The use of the works of these scholars by

Ash-Shawkāni is a testimony to his willingness to produce a work that fits the text of all time and approachable from Arabic point of view.

Imam Shawkāni does not dispel the importance of *Balaghah* (Eloquence) to the understanding of the Qur'ān. He demonstrates how the *Qur'ān* exploits the Arabic rhetoric rules. This covers the three aspects of *Balaghah*, viz: *Ilm 'l-Bayyan* (science of expression) and *Ilm 'l-Badī'* (science of rhetoric) and *Ilm 'l-ma'ānī* (semantics).⁵² In stating the importance of Eloquence to *Tafsir*, Ash-Shawkāni quotes Zamakhzari in his *Tafsir* work, *Al-Kashshaf* thus:

لا يغوص على شيء من تلك الحقائق إلا رجل قد برع في علمين
مختصين بالقران وهما علم المعاني وعلم البيان

No one is vast or deep in that science of realities (*Tafsīr Qur'ān*) except one who is proficient in the two sciences that are central to *Qur'ān*. These are *Al-Ma'ānī* (semantics) and *Al-bayyān* (expression).⁵³

Sources also reveal that, Imam Shawkāni has a work on *Ilm 'l-Badī'*, entitled: *Ar-RawḍI-Wasī' fī 'l--Dalīl 'l-Manī' Alā'Adm inḥaṣār'Ilm 'l-Badī'*.⁵⁴ Undoubtedly, Shawkāni masters every aspect of Arabic language and displays same in his work, *Fatih 'l-Qadīr*.

3. 7Use of Arabic Poems

This is the continuation of the previous submissions on Arabic language. Ash-Shawkāni prepares for this in *Fatih 'l-Qadīr* due to a tradition emanating from the prophet which the author quotes in his work. It is narrated that a man came to make an enquiry on the most important among the sciences of the Qur'ān. The prophet categorically responded by saying:

عربية فالتمسوها في الشعر .

Arabic language and grasp (its beauty) from its poems.⁵⁵

Ash-Shawkāni applies this *Hadith* with bias in *Fatih 'l-Qadīr*. This is because he uses poems as one of his tools to explain some verses. The usage of Arabic poems to aid understanding or sheds light on the intended meaning and easy passage of the message is critical to the *Tafsir* of the Qur'ān. This is because poets over times at different stages of human existence and development, even prior to the advent of Islām, have composed meaningful and interesting poems on different topical issues. Some were specifically composed to explain some verses of

the glorious Qur'ān while some were coincidence. Imam Shawkāni incorporates great deal of poems into his *Tafsir*. Ash-Shawkāni uses several poems from different poets of different eras, from °Aṣr 'l-Jāhilī to Islām, *Ummawī* to *Abbāsī* and *Ḥadithī*⁵⁶ among others. Below are some examples:

While explaining the *Amīn* (amen) that accompanies *Suratul-Fatihah* after its recitation, he brings poems to substantiate the importance of making the statement –*Amīn*– after the completion of the recitation of the first chapter of the Glorious Qur'ān. He writes:

يارب لاتسلبني حبها أبدا ** ويرحم الله عبدا قال أمينا

Oh Lord! Never forfeits me its affection **May Allāh bemerciful to a servant who chants *Amin*.⁵⁷

Equally, he brings another one probably from another poet:

أمين أمين لأرضى بواحدة ** حتى أبلغها ألفين أمينا

Amen, repeatedly I am dissatisfied with its single (Pronouncement) until I am (able) to chant it two thousand times.⁵⁸

Equally, while explaining the beginning of *Suratul-Isrā'l* where Allāh addresses His messenger as a slave (°*Abd*) He writes:

لاتدعني الا بيا عبدها ** فإنه أشرف اسمائي

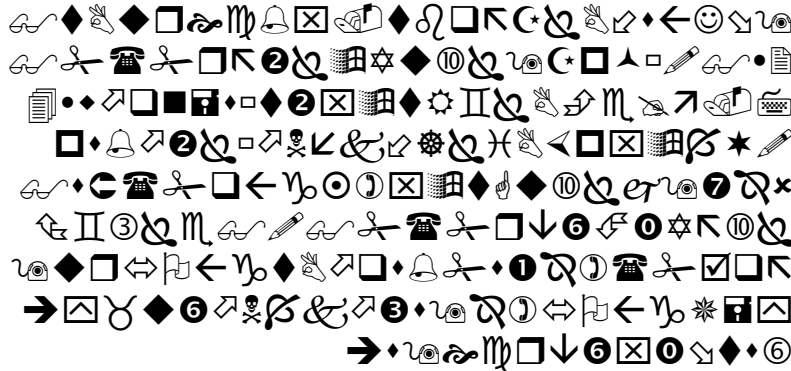
Call me not with a name other than His °Abdul (Allāh) It is indeed the **noblest** of all the names I bear.⁵⁹

3.8 Use of Juristic Opinions in *Fath-al Qadir*

According to the teaching of Islām, especially the science of jurisprudence, there is a pedigree of hierarch of authorities putting Allāh at the topmost, whose legislations are detailed in the glorious Qur'ān. Next to Him (Allāh) in legislative consideration is the prophet, who had given detail explanations to the words of Allāh both in theory and practice. In the instances where issues of contention are not expressly elucidated upon, the scholars are bound to engage their intellectuality to proffer lasting solution to such matters, adducing direct or indirect proofs from the two primary sources, that were earlier mentioned. This is technically called *Ijtihad*

(exercise of personal opinions).⁶⁰ Those who have the wherewithal to act in such capacity are called *Fuqahā'* (the Jurists).

Allāh says:



Nor should the believers all go forth together: if a contingent from every expedition remained behind, They could devote themselves to studies In religion, and admonish the people when They return to them,- that Thus They (may learn) to guard themselves (against evil). (Q9:122)

The above verse of the glorious Qur’ān points to the importance of jurisconsult in Islām. It should therefore be pointed out that not all will be blessed with this lofty bounty of the Almighty. The prophet in one of his statement, is categorical in stating that jurisprudence is the peak of Allāh’s blessings for His servants. He says:

من يرد الله به خيرا يفقهه في الدين

Whoever Allāh wishes well, He blesses him with religious (Islāmic) jurisprudence.⁶¹

It is therefore a rare blessing from Allāh to make one a religious scholar which He bestows on few among His numerous servants. After the exit of the prophet, his companions and the *Tabi’ūn* (successors) invented the process of arriving at robust decisions via *Ijithad*. Immediately after the prophet, the early jurists formed schools of thought. Notably, these are Imam Abū Ḥanifah, Mālik bin Anas, Shāfi’i, and Ahmad bin Hanbali. They founded, Hanafi (Hanifites), Mālikī (Malikites), Shāfi’i (Shafi’ites) and Ḥanabilah (Hanbalites) School⁶². Some scholars add Ja’afar school, which is meant for the Shi’ites.⁶³

These are the four notable schools in Islām and since their emergence, scholars of latter generations belong to one of them. Although, there are some scholars in some instances who stand aloof from their views, no other school has ever been formed in Islām. Scholars of nowadays are majorly interested in combining and weighing the views of the four major schools to come up with their semi-independent views.

Scholars like Ibn Taymiyyah, Ibn Qayyim Al-Jawziyyah, Ibn Abdul Wahhab, Tajudeen As-Subki, and several others of recent time like Ibn Baz, Uthaymin, At-Tantawi and a host of others belong to one school or the other but when their views are examined, one will see that they combined all the schools. Ash-Shawkāni is himself a jurist of high repute among his peers. He authored a number of books on different aspects of Islāmic sciences as previously mentioned. For instance, his *Nayl 'l-Awṭār* is acceptable across the various schools of thought and territorial boundaries.

Ash-Shawkāni in *Fatḥ al-Qadīr*, exploits diverse scholastic views and personalities in his work ranging from the classical to the modern times. He cites the views of four imams and others to buttress and shed lights on his points all in the bid to propel a better understanding and proper application thereof. The reference to scholars in his work is beyond ordinary imagination. He demonstrates how they unanimously agreed on issues and does not hesitate to point out their area of fierce juristic battles. Below are some instances of his explanation on *Iddah* (the waiting period) which either the widow or a divorced woman would observe, Allāh says:

يَنْزَبْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا

In determining the proper method of calculation, he cites different scholastic views. According to Abu Hanifah, his disciples and others who shared the same view with him, he writes :

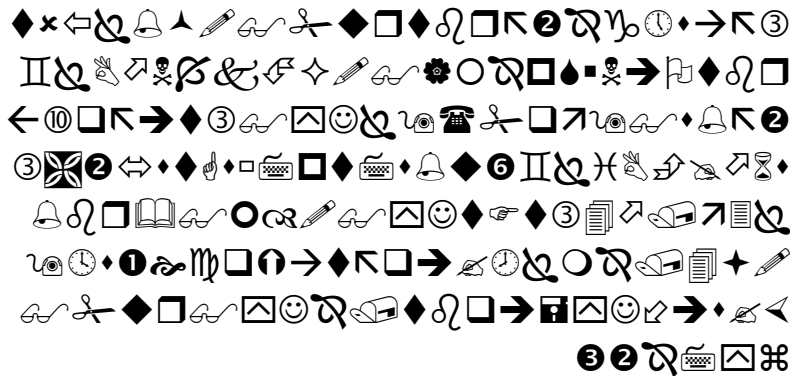
تَعَدُّ بِثَلَاثِ حَيْضٍ

(The) calculation is by menstrual period which is three.⁶⁴

The schools of Shafi'i, Maliki and Ahmad seems to have tallied with the above view but shed a further light on another gray area. They submit that:

Calculation of her waiting period is by menstruation for a menstruating woman and month for a non- Menstruating woman.⁶⁵

In another instance, while explaining chapter 58 verse 3 of the Glorious Qur’ān in respect of one of the means of marriage dissolution as especially being practiced by Arabs in the *Jahiliyyah* days. Allāh says:



But those who divorce their wives by Zihar, 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: Thus are ye admonished to perform: and Allah is well-acquainted with (all) that ye do. (Q.58:3)

Explaining this, Ash-Shawkāni states that scholars have differed in their explanation and understanding of the word, *Al-^CAwd*. According to Abu Hanifah and his disciples, it refers to determination to engage the wife in sexual relation,⁶⁶ while Maliki interprets it to mean actual intercourse.⁶⁷ In the view of Shafi’i, it refers to *kaffarah* (atonement) without which man cannot resume conjugal relation with his wife after the activation of *Zihar*, except he has observed the penalties thereof.⁶⁸ It is pertinent to state that, Ash-Shawkāni equally used to cite views from across different territories, especially the centers of Islāmic scholarship, like ^CIraq, Kufah, Syria, Egypt, Spain, Khurasan and a host of others.

3.9 *Asbābu 'N-Nuzūl* (Causes of Revelation)

According to *Al-Burhān fi ^CUlūmi 'l-Qur'ān*, proficient knowledge of *Sababu 'n-Nusūl* (cause of revelation) or the circumstances that surrounded the revelation of a verse or chapter of

the glorious *Qur'ān* is paramount and indispensable in enhancing the proper understanding of the messages of the glorious *Qur'ān*.⁶⁹ This is because it avails the interpreter the rare opportunity and privileged to getting himself acquainted with the prevailing circumstances that surrounded the revelation of a verse or chapter under discussion, thereby aiding the grasping of its message(s) and its proper application.⁷⁰ This undoubtedly prevents errors of any kind whether in respect of the verse *vis-a-vis* its meaning or applications. This is because it details underlining issues both historical and otherwise. It also shed light on whether or not a verse is specific or general. It equally erases elements of wrong assumptions or misconceptions and reveals the personality or group of personalities a verse or chapter is revealed thereof.⁷¹

Al-Wahiddi is an equivocal in stating that it is detrimental for one to discuss a verse of the Glorious *Qur'ān* without an adequate knowledge of its historical details, ranging from the circumstances that surrounded its revelation to its proper method of recitation.⁷² Ibn Taymiyyah equally submits along with opinion but goes further to state that the knowledge of causes of revelation is an indispensable tool in the bid to adequately digest the verses and messages of the glorious *Qur'ān* and its application.⁷³

Ash-Shawkāni does not playdown the importance of this vital instrument that gives the tenacity to stand shoulder equal among the comity of *Mufasssirūn*. Detail cause of the revelation of all verses and chapters that such is central to are given in *Fatḥh al-Qadīr*. Ash-Shawkāni demonstrated his wide knowledge on the *Qur'ān*, gives details of circumstances surrounding the revelation of the *Qur'ān*. This *Sababu 'l-Nuzul* according to his book of *Tasir* is about twenty-six (26) from different verses of the *Qur'ān* and two (2) *surahs*. These are *Surat 't-Tahrīm* and *Al-^CAlā*. Here is the distribution of the verses in table:

S/N	SUWAR	VERSES
1	<i>Al-Baqarah</i>	164, 204-207, 261-265
2	<i>Al-^CImrān</i>	7-9
4	<i>An-Nisā'</i>	11-14, 32-34, 95-96, 97-100
5	<i>Maryam</i>	22
6	<i>Al-Ma'idah</i>	32-34, 90-93
7	<i>Al-Anfal</i>	64-66

8	<i>At-Tawbah</i>	113-114
9	<i>Hud</i>	109-115
10	<i>Al-Kahf</i>	109-110
11	<i>An-Nur</i>	4-10, 11-21, 22-26
12	<i>Al-Furqan</i>	17-24, 55-67
13	<i>Al-Ahzab</i>	28-34, 53
14	<i>Ad-Dukhan</i>	17-37
15	<i>Al-Mujadilah</i>	5-10
16	<i>At-Tagabun</i>	14-18
17	<i>Kawthar</i>	1-3
18	<i>Ikhlas</i>	1-4

3.10 Sources of *Faih al-Qadīr*

Ash-Shawkāni draws major references for his work from different *Tafāsīr*. He considers tremendous benefits from each of those works which cut across the realms of traditional and non-traditional works on *Tafsīr*. He distinguishes himself from scholars who furnished their works with stock of lies, weak evidences and dance to the tune of their whims and caprices. He was a scholar of high repute whose works are widely consulted.⁷⁴ The references to his *Fath al-Qadīr* includes:

1. *An-Nuḥās*, by Ahmad bin Muhammad bin Ismā'īl Al-Murādī Al-Maṣrī (d.338AH).
2. *Ibn 'Aṭīyyah*, 'Abdullahi bin 'Aṭīyyah bin 'Abdullahi bin Ḥabīb Abu Muḥammad (d.383AH).
3. *Ibn 'Aṭīyyah*, 'Abdul-Haq bin Ghalib bin 'Abdur-Raḥmān bin 'Aṭīyyah Al-Maḥāribī (d.542AH).
4. *Al-Qurṭubī*, Muḥammad bin Abibakr bin Farj 'l-Anṣārī Al-Qurṭubī Al-Mālikī (d.673AH).
5. *As-Sayūṭī*, 'Abdur-Rahman bin Abibakr bin Muḥammad bin Sābiq 'd-Din Al-Khadir As-Sayuti (911AH)⁷⁵

NOTES AND REFERENCES

1. M.A.M.Ash-Shawkāni, *Fath al Qadir*, (Berut: *Dāru 'l-Wafā'*, Vol.1, ND).49
2. Ash-Shawkāni, *Fath al Qadir*, (Berut: *Dāru 'l-Wafā'*, Vol.1, ND).48,
3. Ash-Shawkāni, *Fath al Qadir*, (Berut: *Dāru 'l-Wafā'*, Vol.1, ND), 47
4. Ash-Shawkāni, *Fath al Qadir*, (Berut: *Dāru 'l-Wafā'*, Vol.1, ND),48
5. Ash-Shawkāni, *Fath al Qadir*, (Berut: *Dāru 'l-Wafā'*, Vol.1, ND).45
6. Ash-Shawkāni, *Fath al Qadir*, (Berut: *Dāru 'l-Wafā'*, Vol.1, ND).70
7. Ash-Shawkāni, *Fath al Qadir*, (Berut: *Dāru 'l-Wafā'*, Vol.1, ND).90
8. A.R.I.Doī, *Shariah:The Islāmic Law*, (London: Taha publisher, 1984), 45
9. The history of *Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-thought/460268-the-history-of-tafsir-html/> accessed on 15/02/2015
10. A.R.I.Doī, *Shariah:The Islāmic Law*, (London: Taha publisher, 1984), 24
11. Ibn Kathir, *Tafsir Ibn Kathir*, Al-Maktabah As-Shamilah, Vol.1, p. 140
12. Imam Alūsi, *Tafsir Al-Lūsi*, Al-Maktabah As-Shamilah, Vol.10, p.84
13. M.A.M.Ash-Shawkāni *Shariah:The Islāmic Law*, (London: Taha publisher, 1984),59-60
14. M.A.M.Ash-Shawkāni *Shariah:The Islāmic Law*, (London: Taha publisher, 1984),60-61
15. *The history of Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-thought/460268-the-history-of-tafsir-html/> accessed on 15/02/2015
16. *The history of Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-thought/460268-the-history-of-tafsir-html/> accessed on 15/02/20
17. *The history of Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-thought/460268-the-history-of-tafsir-html/> accessed on 15/02/20
18. A.R.I.Doī, *Shariah:The Islāmic Law*,35
19. *The history of Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-thought/460268-the-history-of-tafsir-html/> accessed on 15/02/2015
20. See Sahih Al-Bukhari, Al-Maktabah As-Shamilah, Vol.3, P.1275, No.3274
21. J.A.A.As-Sayūṭi, *Al-Itqān fī ^CUlūmi 'l-Qur'ān*, (Beirut: Daru 'l-Kitab Al-^CArabi, 2004), 788
22. As-Sayūṭi, *Al-Itqān fī ^CUlūmi 'l-Qur'ān*, 882
23. As-Sayūṭi, *Al-Itqān fī ^CUlūmi 'l-Qur'ān*, 883

24. *The History of Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-thought/460268-the-history-of-tafsir-html/> accessed on 15/02/2015
25. M.A.M.Ash-Shawkāni, *Tafsir Fath-al-Qadīr* Vol.4 179
26. M.A.M. Ash-Shawkāni, *Tafsir Fath-al-Qadīr* Vol.4, .733
27. A.R.I.Doī, *Shariah: The Islāmic Law*, 27
28. *The History of Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-thought/460268-the-history-of-tafsir-html/> accessed on 15/02/2015
29. *The History of Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-thought/460268-the-history-of-tafsir-html/> accessed on 15/02/2015
30. *The History of Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-thought/460268-the-history-of-tafsir-html/> accessed on 15/02/2015
31. *The History of Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-t hought/460268-the-history-of-tafsir-html/> accessed on 15/02/2015
32. *The History of Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-thought/460268-the-history-of-tafsir-html/> accessed on 15/02/2015
33. *The History of Tafsir*, <http://www.onIslām.net/English/reading-Islām/research-studies/Islāmic-thought/460268-the-history-of-tafsir-html/> accessed on 15/02/2015
34. M.A.M. Ash-Shawkāni, *Tafsir Fath- al- Qadr* vol.4, 140
35. M.A.M. Ash-Shawkāni, *Tafsir Fath- al- Qadr* vol.4, 460-461
36. Ibn Taymiyyah, *Maqdimah Fi ‘t-Tafsir*, Al-Maktabah As-Shamilah, .83
37. Ibn Taymiyyah, *Maqdimah Fi ‘t-Tafsir*,
38. M.A.M.Ash-Shawkāni, *Tafsir ī* vol.4, 140
39. M.A.M.Ash-Shawkāni, *Tafsir Fath- al- Qadir* vol.4,460-461
40. M.A.M.Ash-Shawkāni, *Tafsir Fthul-Qadir* , Vol.5,.589
41. A.R.I.Doī, *Shariah: The Islāmic Law*,.35
42. <http://www.Islāmicssystem.blogspot.in/2006/11/importance-of-arabic-language.html?m=1/> accessed on 15/02/2015
43. W.Write, *A Grammar of Arabic language*, (New York, Lowe & Brydone ltd, 1967),.57, 102,
44. M.A.M. Ash-Shawkāni, *Fathil-Qadir*,(Al-Maktabah Ash-Milah, Vol.3),.502
45. A.Zubair, *The importance of Arabic language in the study of Shari‘āh*,//<http://www.unilorin.edu.ng/>accessed on 12/02/2015, p.206

46. M.A.M.Ash-Shawkāni, *Fath-al-Qadīr* vol.4,48
47. M.A.M.Ash-Shawkāni, *Fthul-Qadir*.44
48. W.Write, *A Grammar of Arabic language*, (New York: Lowe & Brydone ltd, 1967),.57, 102,
49. M.A.M.Ash-Shawkāni, *Fatih 'l-Qadir*, Al-Maktabah As-Shamilah, VOL.3.,502 and 89
50. M.A.M.Ash-Shawkāni, *Fatih 'l-Qadir*, Vol.3, 622 .14
51. M.A.M.Ash-Shawkāni, *Fatih 'l-Qadir*, Vol.1 48
52. M.A.M.Ash-Shawkāni, VOL.1,622
53. M.A.M.Ash-Shawkāni, *Fatih 'l-Qadir*, Vol.1.48
54. M.A.M.Ash-Shawkāni, *Fatih 'l-Qadir*, Vol.1.,56
55. M.A.M.Ash-Shawkāni, *Fatih al-Qadir*,
56. M.A.M.Ash-Shawkāni, *Fatih al-Qadir*,
57. M.A.M.Ash-Shawkāni, *Fatih al-Qadir*, .96
58. M.A.M.Ash-Shawkāni, *Fatih al-Qadir*,686
59. This is often the classification in Arabic Literature (*Adab*)
60. A.R.I.Doī, *Shariah:The Islāmic Law*,74
61. See *Sahih Al-Bukhari*, Al-Maktabah As-Shamilah, vol.1, 39
62. A.R.I.Doī, *Shariah:The Islāmic Law*,8
63. The Ja^cafari school of thought was founded by Imam Ja^cafar Muhammad As-Sadiq (83AH-148AH). See <http://www.al-Islām.org/inquiries-about-shia-Islām-sayyid-moustafa-al-qazwini/five-schools-Islāmic-thought/> accessed on 12/02/2015
64. M.A.M.Ash-Shawkāni, *Fatih al-Qadir*, Al-Maktabah As-Shamilah, VOL.1, 376
65. M.A.M.Ash-Shawkāni, *Fatih al-Qadir*, Al-Maktabah As-Shamilah, VOL.1.,376
66. M.A.M.Ash-Shawkāni, *Fatih al-Qadir*, Al-Maktabah As-Shamilah, VOL.1, 376
67. J.A.A.As-Sayūṭī, *Al-Itqān fi ^CUlūmi 'l-Qur'ān*, (Beirut:Daru 'l-Kitab Al-^CArabi, 2004), 84
68. J.A.A.As-Sayūṭī, *Al-Itqān fi ^CUlūmi 'l-Qur'ān*, 87
69. J.A.A.As-Sayūṭī, *Al-Itqān fi ^CUlūmi 'l-Qur'ān*, 90
70. Al-Wahidi An-Nisaburi, *Asbabu 'n-Nusul*, Al-Maktabah As-Shamilah,4
71. Ibn Taymiyyah, *Maqdimah Fi 't-Tafsir*, Al-Maktabah As-Shamilah, 48
72. M.A.M.Ashh-Shawkāni, *Fath-al-Qadīr*vol.1, 44
73. M.A.M.Ash-Shawkani, vol.1, 44-48
74. Al-Wahidi An-Nisaburi, *Asbabu 'n-Nusul*, Al-Maktabah Ash-Shamilah,4

CHAPTER FOUR

JURISTIC VERSES ON ACT OF WORSHIP IN *FATH AL-QADĪR*

4.1 *At- Ṭahārah* (Purification)

Fathl-Qadir is among the modern *Tafsir* that explains the rituals, legislative verses as well as some juristic issues laid down by Islām. Purification is one of the core issues that need to be thread carefully due to its unimaginable importance on Islāmic acts of worship. It is the bedrock of worship in Islām which centers essentially on three major things. These are the body, the cloth and the place of worship.¹ Each needs to always remain pure for act of worship like *Ṣalāt*, *Ṭawāf*, and *Tilāwah*. In establishing the importance of *Ṭahārah* in Islām, the prophet unequivocally declares it as half of the faith. He is reported to have said:

الطهور شطر الإيمان

Cleanliness is half of the faith²

The Hadith above and many more, are further strengthened by an adage which establishes cleanliness as the next to Godliness. All of these emphasise the role of hygiene in the teaching of Islām and its sciences. According to *Al-Fqhu' l-Muyassir*, purity or cleanliness isto harbour or keep to hygiene while abhorring filths are to wash whatever kind of impurity in the bodies and clothes.² The submission of *Al-Mulikhīṣ l-Fiqh* agrees with this but states further that it covers both physical and spiritual aspects.³ in the glorious Qur'ān, Allāh says:



...but to make you clean, and to complete His favour to you, that ye may be grateful (Q5:6)

In rendering explanation to the verse, he writes:

من الذنوب وقيل من الحدث الأصغر والأكبر

(Purification) from sins and (equally,) it is said to be from minor and major filths.⁴

From the above statements of Ash-Shawkāni submission in his book of *Tafsir*, it could be inferred that cleanliness exonerates one from sins and filths both the major and minor. With this submission, he (Ash-Shawkāni) has succeeded in classifying impurities into two categories as it is common to *fiqh* works on cleanliness.⁵ For instance, in *Fatāwā 'l-Lajnat 'l-Dā'imah*, the major filths are what require ritual bath, like *Janābah*, *Haiḍah*, *Nifās*, among others, while the minor ones like urination, feces, and the like need to be removed with ablution.⁶ He explains further, the connection between sin, *Shirk* (polytheism), repentance and cleanliness. He writes:

التوبة من الذنوب والتطهير من الشرك

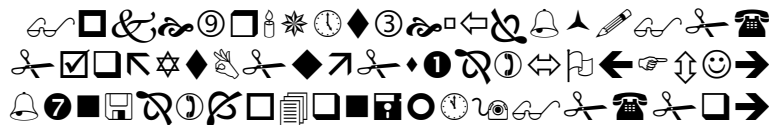
Repentance from sins, while cleanliness is equally required from idolatry.⁷

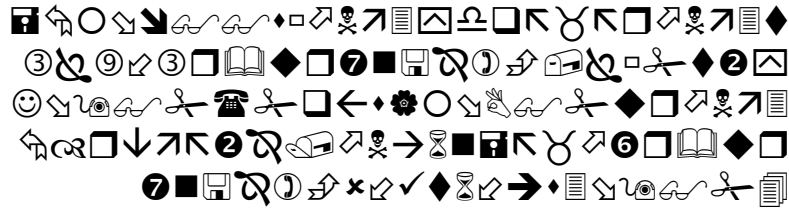
The above statement of Ash -Shawkani can be understood along with spiritual cleanliness that was earlier mentioned by other scholars. Therefore, repentance cleanses one from the dirt of sins, while purification of the heart is further required to exonerate one from the depth of *Shirk* (polytheism). He declines the numeration of what constitutes either major or minor filths that one needs to rip oneself off. This does not mean he does not discuss them at all in his *Tafsir* but since the work is exclusively exegesis, he does not consider the need to tow the *fiqh* path of categorisation and enumeration. In other words, he discusses each separately.

Nevertheless, his classification of what constitutes filths into major and minor, leads us to the discussion on the modes of purification which according to scholars are mainly three. These are *Ghusl* (Ritual bath), *Al-wudu'* (Ablution) and *Tayammum* (Dry Ablution). Each of these shall be discussed in details in the next sub-heads.

4.1.1 *Al-ghusl* (Ritual bath)

According Zuhayhi, *Ghusl* means washing with water. In order words, it means spraying water on something with the unique intention of making it pure.⁸ He explains further that technically the term refers to the act of pouring clean water on the entire body for spiritual purity.⁹ This becomes imperative as Allāh states in the glorious Qur'ān:





If ye are in a state of ceremonial impurity, bath your whole body. (Q.5:6)

Explaining this verse, Ash-Shawkāni states that what Allāh intends here is *Ghusl* (Ritual Bath) with water¹⁰ which tallies with the submission of all scholars. He explains further that scholars have divergence of opinions on what constitutes washing. He says:

هل يعتبر في الغسل الدلك باليد أم يكفي إمرار الماء والخلاف في ذلك معروف والمرجع اللغة العربية فإن ثبت فيها أن الدلك داخل في مسمى الغسل كان معتبرا

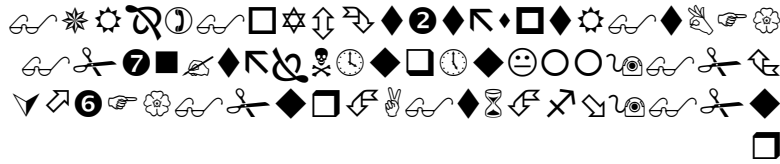
Is the bathing (*Ghusl*) scrubbing with the hand or is it enough to pour water Alone? The disparity between the two is glaring. If with reference to Arabic language, it is established part of what is known as *ghus* (bathing), then that is what is intended¹¹

Ash-Shawkāni demonstrates his alignment with the view that, washing entails the use of hands to rub while pouring water. He equally supports this with the views of another scholar who writes *Shamsu 'l-^cUlūm. Risālat fiqh 'l-Muyyasir* to enumerate what necessitates *Ghusl* in *Sharī'ah*. These are:

- Release of semen either through intercourse or otherwise (*Janabah*)
- Penetration of sexual organ of man into that of woman
- Acceptance of Islām (convert)
- Post natal-bleeding (*Nifās*)
- Menstrual blood (*Haiḍah*)
- *Jumu'at* service
- Pilgrims in *Ihrām*
- One who washes the corpse or touches it
- For the two *Ids*
- Before entering makkah
- For eclipse (be it solar or lunar)
- For irregular menses (*Isthāḍah*)

- Corpse of a Muslim except the Martyred (*Janāzah*).¹²

In *Fath al Qadir*, only two of these were sketchily discussed. These are menstrual blood and sexual intercourse. Here are some of his discussions on them. In Surat 'l-ahzāb, where Allāh mentioned *Amānah* (Trust), Allāh says:



We did indeed offer the Trust to the Heavens and the Earth and the Mountains...(Q.33:72)

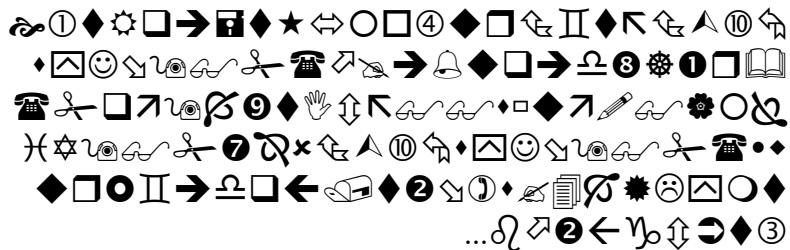
While explaining the trust that Allāh offers to man, Ash-Shawkāni identifies *Janābah* as one. He writes:

غسل الجنابة أمانة وإن الله لم يأمن ابن آدم على شيء من دينه
غيرها

Janabah bath is a trust, hence Allāh does not trust man's spiritual deeds without it.¹³

The above statement of Abu Darada (RA) quoted by Ash-Shawkāni in his *Tafsir* book establishes the importance of *Janabah* to Islāmic spirituality. Therefore, it could be inferred from the *Hadith* that acts of worship are not acceptable to Allāh from whoever commits what necessitates *Janābah*, unless *ghusl* is carried out.

Imam Shawkani's discourse on menstrual bleeding is contained while explaining verse 222 of *Surat al-Baqarah*. Allāh says:



They ask thee concerning women's courses. Say: They are a hurt and a pollution. So keep away from women in their courses, and do not approach (Q.2:222)

Haidahis aperiodic discharge of blood by a women of fertility age.¹⁴ Ash-Shawkāni explains briefly that it is a period that woman should be shunned from sexual intercourse. He writes:

فاجتنبوهن في زمان الحيض ... من هذا الاعتزال ترك المجامعة لا
ترك المجالسة أو الملامسة فإن ذلك جائز بل يجوز الاستمتاع منها
بما عدا الفرج

Refrain (from intercourse) with woman during the period of menstruation...part of this retrain is sexual abandonment but not companionship or torching of each other which is permissible. It is allowed to lustfully engage woman (during this period) except sexual intercourse.¹⁵

Sexual intercourse is only permissible after a woman might have taken her ritual bath after the stoppage of the menstruation. The reason for non-inclusion of the other is not unconnected with the fact that the work is basically *Tafsir* and not *Fiqh* book. It cannot therefore be said that the author lacks the capacity or tool to that effect, having authored a number of *Fiqh* works and each of these issues were extensively elucidated upon therein.

4.1.2 *Al-wudū'* (Ablution)

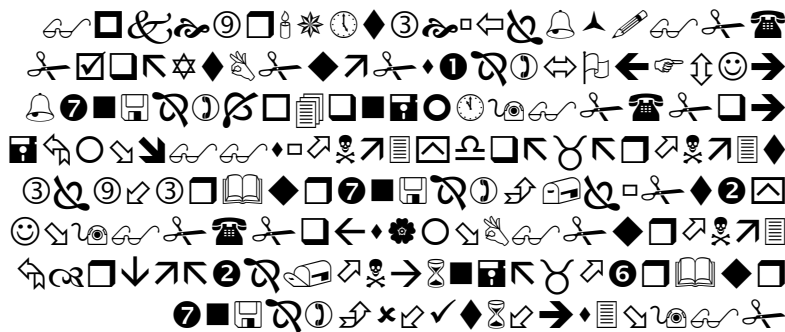
According to the submission of Sayyid Quṭb in his *Tafsir, Ṣalāt* avails man the unique opportunity to stand before his Lord and establish a channel of communication with Him. His supplications (prayers) are taken to Him (God) through this process among other benefits of *Ṣalāt*. It is therefore necessary to have a high sense of preparation before embarking on such an important act which gives man the privilege to communicate with his Creator. Part of the pre-requisites that is essential to this spiritual engagement is Ablution.¹⁶

In his commentary on the *Muwwata'* of Imam *Malik*, Ash-Shawkāni states that *Al-Wudū'* is a derivative from *wiḍā'ah* which simply means purity or cleanliness because the worshipper seeks purification through it.¹⁷ It is therefore an obligatory act for whoever intends to perform any act of *ʿIbādah*. He cites the Hadith to that effect which reads thus:

و عن عبد الله بن حنظلة أن النبي صلى الله عليه وسلم كان
أمر بالوضوء لكل صلاة طاهر اكان أو غير طاهر، فلما أشق ذلك عليها أمر بالسو
ا عند كل صلاة، ووضع عنها الوضوء إلا من حدث، وكان عبد الله بن عمر يربأ
بهقوة عن ذلك، كان يفعل محتتمات } رواه أحمد وأبو داود

Abdullah bn Hanzalat narrates that the prophet (Peace be upon him) was commended to perform ablution for every *Salat* regardless he is pure (his ablution is intact) or not. But when this (act) became difficult for him, then he was commanded to brush his teeth for every *Salat*, and performing ablution was withdrawn except he is impure. Abdullah bn Umar having seen that he was able to do that, he continues doing it until he died. (Reported by Ahmad and Abū Dawūd) ¹⁸

Ash-Shawkāni explains the above tradition in *Fathal-Qadir* along with the chapter five (5), verse six (6) of the glorious Qur’ān. Allāh says:



O ye who believe! when ye prepare for prayer, wash your faces, and your hands (and arms) to the elbows; Rub your heads (with water); and (wash) your feet to the ankles.(Q.5:6)

The explanation of the above verse leads Ash-Shawkāni to present a debate among the scholars on ablution, especially when one intends to observe *Ṣalāt*. He writes:

وقد اختلف أهل العلم في هذا الأمر عند إرادة القيام إلى الصلاة فقالت طائفة : هو عام في كل قيام إليها سواء كان القائم متطهرا أو محدثا فإنه ينبغي له إذا قام إلى الصلاة أن يتوضأ وهو مروى عن علي وعكرمة وقال ابن سيرين : كان الخلفاء يتوضؤون لكل صلاة وقالت طائفة أخرى : إن هذا الأمر خاص بالنبي صلى الله عليه و سلم وهو ضعيف فإن الخطاب للمؤمنين والأمر لهم وقالت طائفة : الأمر للندب طلبا للفضل وقال آخرون: إن الوضوء لكل صلاة كان فرضا عليهم بهذه الآية ثم نسخ في فتح مكة وقال جماعة : هذا الأمر خاص بمن كان محدثا وقال آخرون : المراد إذا قمتم من النوم إلى الصلاة فيعم الخطاب كل قائم من نوم

Scholars have expressed divergent views on the performance of ablution when one wants to observe *Ṣalāt*. To some, it is generic, therefore each time one wants to observe *Ṣalāt*, regardless of

whether or not one is pure, fresh ablution should be performed. This is submitted by Ali and ^cIkrimah. Ibn Sirin buttresses this fact, stating that all the rightly guided Caliphs do observe ablution at each *Ṣalāt* time. To others, this matter is exclusive to the prophet. It is however, a weak submission. Rather, it is directed to the generality of Muslims... There are other opinions which suggest that performance of fresh ablution at every *Ṣalāt*'s time is obligatory on them following the revelation of this verse and was abrogated during the conquest of Makkah but it was abrogated thereafter. And a group says: this is specific to those who are in the state of impurity. Some other scholars express their point of views, stating that it is only when you (believers) wake from sleep. The discus, therefore covered every one that makes up from believers sleep..¹⁹

From the above quotation, Ash-Shawkāni demonstrates how different scholars express their opinions on the performance of fresh ablution at each time of *Ṣalāt*. The preponderance of evidences as contained in his work, shows that his views along go with those who submit that an ablution is enough to observe many *Ṣalāwat* as long as one is not liable to any act of impurities.²⁰ He further buttresses this with the Hadith narrated by Muslim and others in their collections.

The Hadith states that the prophet used to perform fresh ablution at every *Ṣalāt* point but on the day Makkah was conquered, he performed an ablution in which he rubbed on his skin, sucks (*Khuff*) and observed many *Ṣalāwat* with single ablution. ^cUmar therefore challenged him stating:

يا رسول الله إنك فعلت شيئاً لم تكن تفعله فقال : عمدا فعلته يا عمر

... Oh Messenger of Allāh! You have done something which you have never done before The prophet then replied, Oh Umar! I deliberately did it.²¹

Elsewhere in *Ṣaḥīḥ Al-Bukhari*, there is a similar narration where ^cAmr was reported to have sought a clarification from Anas bin Malik when he heard that prophet used to observe many *Ṣalāwat* without fresh ablution. Anas bin Malik answered stating that:

كنا نصلي الصلوات بوضوء واحد ما لم نحدث

We do observe a number of *Ṣalāwat* with one ablution as long as we do not engage in any act of impurities.²²

This therefore confirms and supports Ash-Shawkānī stand that an ablution can be used for different *Ṣalāwat* in as much as one does not commit any act of impurity.

Ash-Shawkānī continues by giving both etymological origin of face and its clear definitions. He states that:

الوجه في اللغة مأخوذ من المواجهة وهو عضو مشتمل على أعضاء وله طول وعرض فحده في الطول من مبتدأ سطح الجبهة إلى منتهى اللحية وفي العرض من الأذن إلى الأذن وقد ورد الدليل بتخليل اللحية

Literally, *wajh* (face) comes from (direction or facing). It is a part that comprises many parts it has length and breadth. The measurement or and its length covers from the beginning of the forehead to the end of chin. While its breadth is from one ear to the other. Evidence for this is contained in the instruction to the comb the beard (during ablution)²³

It is therefore an essential part of ablution from where the obligatory parts to be washed begin.²⁴ The act of washing has been briefly discussed above while explaining *Ghusl* in the light of *Fath-al-Qadīr*. He (Ash-Shawkānī) equally states further on the remaining parts of ablution, like the act of rinsing one's mouth, snuffing of water and a host of others which the verse does not mention, that each had been taken care of in the Hadith of the prophet.²⁵

Another critical part of ablution is washing of hands to elbows. He states further that this shows the extents of washing.²⁶ He brings the tradition from the prophet to drive home his point. The Hadith states:

كان رسول الله صلى الله عليه و سلم إذا توضأ أدار الماء على مرفقيه

Whenever the prophet performs ablution, he allows the water to get to his two elbows.²⁷

On the rubbing of the head, Ash-Shawkānī states that it entails rubbing of the entire head in the opinion of some scholars, while to some, it is enough to rub part of the head. He draws different analogies to suggest that it is incumbent on one to rub the entire head.²⁸ He however shows his bias opinion in line with the Hadith of the prophet supporting partial rubbing of head. It reads:

Rubbing of the whole lies in rubbing of the parts.²⁹

Therefore, Ash-Shawkāni did not see any difference between the rubbing of the part to represent the whole.

Ash-Shawkāni gives the following explanations on washing of leg during the course of ablution. He states:

قرأ نافع بنصب الأرجل...ابن كثير بالجر وقراءة النصب تدل على أنه يجب غسل الرجلين لأنها معطوفة على الوجه وإلى هنا ذهب جمهور العلماء وقراءة الجر تدل على أنه يجوز الاقتصار على مسح الرجلين لأنها معطوفة على الرأس وإليه ذهب ابن جرير الطبري

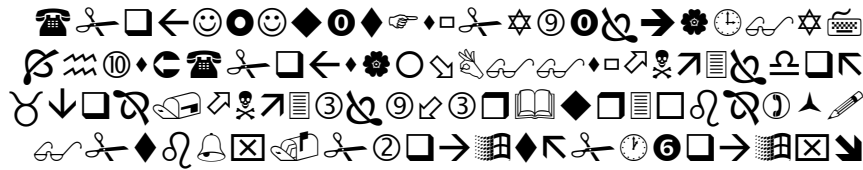
Nafiu reads *Arjul* (legs) with accusative mood (*Fatihah* or *Naṣb*) while Ibn Kathir and a host of others read *Arjul* with genitive mood (*Jar* or *Kasr*). The implication of these moods of recitation is that the former commands washing of legs because it is conjunct to face (which should be washed). This however, is the opinion of the majority of the scholars. The implication of the latter reading is that it indicates rubbing legs because it is conjunct to head (which should be rubbed). This is the view of Ibn Jarīr At-Tabari.³⁰

The above passage demonstrates the variation regarding leg washing while performing ablution as could be inferred even from the science of recitation of the *Qur'ān*. He however subscribes to the views of majority which is the recitation with accusative mood. This indicates washing of legs as contrary to rubbing as submitted from another quarter. He (Ash-Shawkāni) however recognizes At-Tabari and other scholars of high reputes all over the Islāmic world.³¹

Ash-Shawkāni equally discusses the extent of washing of legs just as he does on hands. He states that ankle is the limit thereof.³² He therefore closes up discussions on ablution with the submissions that other compulsory element of ablution like *Al-Niyyat* (intention) and the pronouncement of *Basmalah* were not mention in this verse but are clearly contained in the *Sunnah* of the prophet. He nevertheless mentions it that some scholars are even of the opinion that the statement in the verse (*Qumtum*) indicates nothing but intention.³³

4.1.3 *Tayammum* (Dry Ablution)

At-Tayamum is translated as dry ablution prescribed by *Shari'ah* for whoever lacks the capacity to get the required water to perform ablution which invariably license him to observe his *Ṣalāt* perfectly.³⁴ *Tayammum* therefore, is the substitute to Al-*Wudū'* (water Ablution) where one is in dire circumstances. Allāh says:



...then take for yourselves clean sand or earth, and rub there with your faces and hands.(Q.4:43)

The above verse of the Glorious Qur'an which contains instructions on sand ablution is used by Ash-Shawkāni to render all his points on the subject matter (dry ablution). He starts by enumerating the conditions that will necessitate *Tayammum* and exceptions thereof. He states:

هذا القيد إن كان راجعا إلى جميع ما تقدم مما هو مذكور بعد الشرط هو المرض والسفر والمجيء من الغائط وملامسة النساء كان فيه دليل على أن المرض والسفر بمجردهما لا يسوغان التيمم بل لا بد مع وجود أحد السببين من عدم الماء فلا يجوز للمريض أن يتيمم إلا إذا لم يجد ماء ولا يجوز للمسافر أن يتيمم إلا إذا لم يجد ماء ولكنه يشكل على هذا أن الصحيح كالمرضى إذا لم يجد الماء تيمم وكذلك المسافر عدم الماء في حقه غالب

This restriction (which necessitates *Tayammum*) is occasioned by the above stated conditions, ranging from sickness, travelling, passage of feces, to sexual co-habitation. The salient point there is that sickness and travelling ordinarily do not necessitate dry ablution, unless there exists one of the two necessitating factors which is non-availability of clean and enough water. Therefore, it is not ordinarily permissible for a sick to perform dry ablution, except in the occasion of absence of water. Same goes for traveler. It should equally be pointed out that same rule applicable to both the healthy and sick once the water is not available. In such instance each of them is obliged to perform dry ablution. So also the traveler could not get water. But for him (the worshipper), it is observed (*Shari'ah*) that a health worshiper is like (position) of a sick person, if he did get water (for ablution). Equally, it is also applicable on many occasions to the traveler who failed to get water³⁵

The above passage summarizes Ash-Shawkāni's discourse on conditions that may necessitate dry ablution and important related matters. These conditions could be summed up in

the statement of Al-Jazāir, while listing conditions which may prevent one from getting or using water for performance of water ablution, thereby necessitating *Tayammum* one of his works. He lists:

- (1) Non-availability of enough water
- (2) Its usage may cause sickness, increase or delay its healing
- (3) No access to clean water like well without drawer or its location portends danger or lost of life or property.
- (4) When one wants to catch up with the time of *Ṣalāt* which has almost gone, among others.³⁶

The list above therefore is both complementary and explanatory to submissions of Ash-Shawkāni as discussed in his work, *Fath al-Qadir*. Both scholars therefore submit in their respective works that the rationale behind it all is to demonstrate high sense of simplicity by Allāh in His legislation and liberality of *Shari'ah*.³⁷

Ash-Shawkāni opens his full discourse of *Tayammum* from the grammatical viewpoints. He points out that *Tayammum* is a coinage from *Qaṣd* (purpose, aim or objective). A times, it means place (*Ṣa'īd*). He continues to expatiate on the word *Tayammum* till he arrives at rubbing of face and hands with sand.³⁸ He points out that *Tayammum* for rubbing is a mere *Shari'ah* usage. In other words, it lacks etymological origin from Arabic language. He equally points out that, *Tayammum* is not performed with sand alone but there are some objects that can be used.³⁹

On the objects which can be used for *Tayammum*, Ash-Shawkāni demonstrates a high level of scholarship by presenting various arguments of different scholars on what can be used to perform dry ablution. He writes:

وقد اختلف أهل العلم فيما يجزئ التيمم به فقال مالك وأبو حنيفة والثوري والطبري: إنه يجزئ بوجه الأرض كله ترابا كان أو رملا أو حجارة وحملوا قوله { طيبا } على الطاهر الذي ليس بنجس وقال الشافعي وأحمد وأصحا بهما: إنه لا يجزئ التيمم إلا بالتراب فقط واستدلوا بقوله تعالى { صعيدا زلقا } أي: ترابا أملس طيبا وكذلك استدلوا بقوله { طيبا } قالوا: والطيب التراب الذي ينبت ...

Scholars have expressed divergent views on items which can be used for dry ablution. According to Iman Malik, Abu Hanifah, At-Thawri and Tabarani, dry ablution is only permissible on the surface of the earth be it sandy, rocky or otherwise (as long as it is

natural). They paid adequate attention to the word “clean or purity” (expressed) in the Qur’ān. They therefore submit that each of these objects must be pure and dirt-proof. In the view of Shāfi^c, Ahmad and their disciples, dry ablution is only permissible on sand and nothing else. They equally buttress this up with Qur’ānic verse: (Slippery sand) Q.18:40. Which connotes a pure sandy soil? They point to another verse that states: (purity). They unanimously submit that purity refers to natural sand...⁴⁰

The above passage should be understood along with the submission of various other scholars both at classical and modern times, on items that can be used for *Tayammum*. The common items which various scholars do mention as contained in *Al-Mulkihs Al-Fiqh* include, earth surface, sand, stone, mud, pebbles, dust, stone among others.⁴¹ Therefore, if these items are not directly mentioned in the above passage, it does not mean they cannot be used. Infact, in another understanding, they came about from the identified items in the above passage and commentary of Ash-Shawkāni in his book of *Tafsir*.

Iman Shawkāni however states that he aligns himself with the views that every surface of the earth is suitable for *Tayammum* provided it is pure.⁴² He substantiates this with a tradition from *Ṣaḥīḥ Muslim* which states:

فضلنا الناس بثلاث : جعلت صفوفنا كصفوف الملائكة وجعلت لنا الأرض كلها مسجدا وجعلت تربتها لنا طهورا إذا لم نجد الماء

Man is blessed with three different things: We queue up (in *Ṣalāt*) like the angels, the surface of the earth is made a mosque for us and the sand there of is made pure for us (for Ablution) if we lack capacity to get water.⁴³

This *Hadith* clearly complements the verse cited above on *Tayammum*, as it sheds further light on what constitutes clean place where dry ablution can be performed generally. In performing dry ablution, Ash-Shawkāni explains how rubbing should be carried out and the placement of hands on the floor. He writes:

المسح مطلق يتناول المسح بضربة أو ضربتين ويتناول المسح إلى المرفقين وبضربتين وما ورد في المسح إلى المرفقين أو إلى الرسغين

The whole rubbing is sufficed with single or double placement of hands on the ground. The said rubbing of hand should be extended to the elbows or be limited at wrists. ⁴⁴

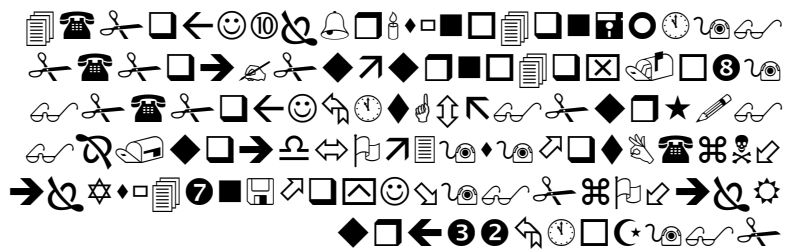
Ash-Shawkāni hints that this has been clearly explained in the *Sunnah* of the Prophet.

He however states elsewhere that the rubbing of the face should be total and not partial⁴⁵ contrary to the case of water ablution discussed above under *Al-Wudu'*. He equally points out that it is possible to perform dry ablution by a traveler or whoever can be so adjudged and the journey is of long distance. While the popular opinion among the scholars is that regardless whether or not one is on transit and the distance thereof, one is obliged to perform *Tayammum* when water is not available. This is the opinion of Malik, Abu Hanifah while Shafi^c held a reservation stating that except a non-transit person entertains some fears.⁴⁶

The above brief explanations on *Tayammum* as submitted by this erudite scholar suffices, as he thought that there are no much issues on it. He however declines explanation on methods or steps in carrying out dry ablution. He did not hesitate to refer us to other sources including one of his works, *Al-Mutaqah* for further clarifications.⁴⁷

4.2 *Aṣ-Ṣalat*

According to Zuhayli, *Aṣ-Ṣalāt* simply means prayer or supplication. Technically, it entails specific manner of speaking and actions which are directed to Allāh. It is opened with glorification of Allāh (*Takbīr*) and concluded with terminal *Taslīm*.⁴⁸ It is compulsory act that Allāh enjoins on the entire Muslim, as established in Qur'ān and Hadith of the Prophet.



So establish regular prayer, give regular Charity, and hold fast to Allāh. He is your Protector - the Best to protect and the Best to help! (Q.22:78)

Equally, according to the tradition of the prophet, Islām is built upon five pillars and *Salat* is the second in the ladder next to the testamentary statement (*Kalimatu 's-Shahadah*). The prophet says:

" بنى الإسلام على خمس: شهادة أن لا إله إلا الله وأن
محمدا رسول الله وإقام الصلاة , وإيتاء الزكاة وصوم
رمضان , وحج البيت " متفق عليه.

Islām is built upon five (pillars). To bear testament that no other god except Allāh, and that Muhammad is the Messenger of Allāh, and to observe *Salat* and giving out *Zakat*, and fasting Ramadan and taking pilgrimage to House (of Allah). The *Hadith* is concensusly accepted.⁴⁹

The above Qur'ānic verse which is complemented by the tradition of the Prophet establishes the importance of *Salat* in Islām as one of its (Islām) integral parts without which one cannot be a complete Muslim.⁵⁰The definition of Zuhayligiven above tallies with Ash-Shawkāni's explanation of *Ṣalātas* contained in his work study. Ash-Shawkāni states:

والصلاة أصلها في اللغة : الدعاء وأما المعنى الشرعي فهو هذه الصلاة
التي هي ذات الأركان والأركان

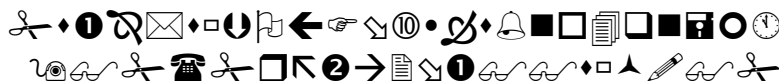
Ṣalāt literarily takes it root from prayer or supplication. According to *Shari'ah*, it entails different actions (to be carried out) and *Adhkar* (remembrance of Allāh) to be chanted (at different stages)⁵¹

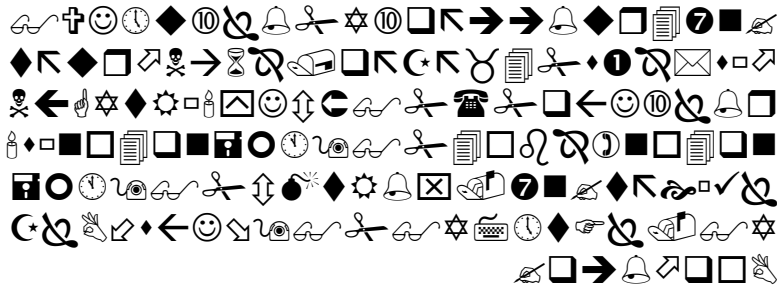
The above passage from *Fath al-Qadir* of Ash-Shawkāni summarizes the definitions given to *Ṣalāt* by different scholars. He therefore states that it is an act of worship that must be carried out at the appointed time, in the prescribed manner and arbitrary failure of compliance leads one out of the fold of Islām.⁵²

Major issues that Ash-Shawkāni discusses vis-avis *Ṣalāt* in his work are broken down below:

4.2 Time of *Ṣalāt*

Iman Shawkani opens up his discourse on the time or timing of *Ṣalāt* by stating that the times or periods are fixed and definite. He adopts a stylistic approach by explaining the times in three different places. While interpreting chapter 4 verse 103 where Allāh says:





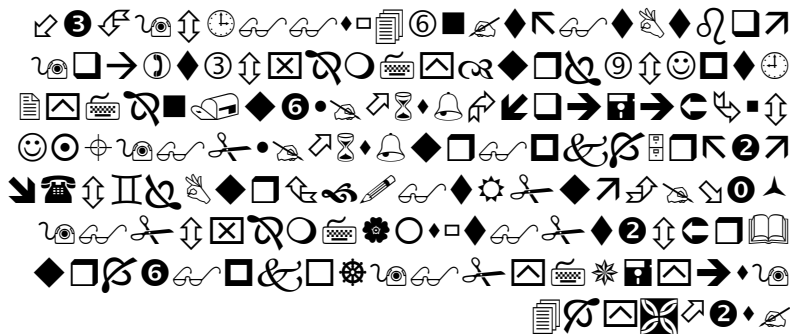
When ye pass (Congregational) prayers, celebrate Allāh's praises, standing, sitting down, or lying down on your sides; but when ye are free from danger, set up regular Prayers: for such prayers are enjoined on believers at stated times.⁵³(Q4:103)

Explaining this, Ash-Shawkāni writes:

محدودا معينا يقال: ... إن الله افترض على عبادة الصلوات وكتبها عليهم في أوقاتها المحدودة لا يجوز لأحد أن يأتي بها في غير ذلك الوقت إلا لعذر شرعي من نوم أو سهو أو نحوهما

The times are definitively fixed...Allāh has ordained His servants to observe *Salawat* as prescribed for them at their fixed periods. It is therefore not proper for one to observe them at one's convenient time without *Shari'ah* allowed excuses, like the instances of sleeping, forgetfulness and the like.⁵⁴

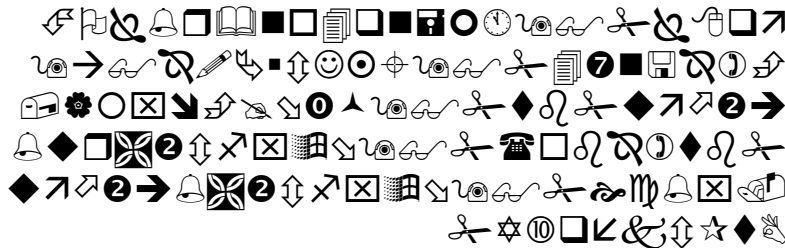
From the above therefore, Ash-Shawkāni has emphasized the importance of keeping to the time of *Salāt*. He points out that aside the circumstances spelt out by *Shari'ah*, unnecessary and flimsy excuses which lead to delay in the observance of *Salāt* will not be entertained by Allāh, who has assigned particular time for particular *Salāt*. Ash-Shawkāni explains the specific time of each prayer while explaining the verse 130 of *Surat Taha* (Q.20). Allah says in the Qur'an in the respect of time of prayers in the Qur'an



Therefore be patient with what they say, and celebrate (constantly) the praises of thy Lord, before the rising of the sun, and before its setting; yea, celebrate them for part of the hours of the night, and at the sides of the day: that thou mayest have (spiritual) joy.(Q: 130)

He submits that in the view of most interpreters of the Glorious Qur’ān, the above verse refers to the five daily *Salawat*. Therefore, before sunrises refers to the early Morning Prayer (*Subh*), before sunsets refers to *Asr* (late afternoon *Salat*) *Atraf ‘l-Nahr* refers to *Zuhr* and *Anā’ ‘l-Layl* refers to *Maghrib* and *Isha* (sun sets and early night *Salawat*). He argues that some scholars opined that *Atraf ‘l-Nahr* refers to *Maghrib* and *Zuhr*(afternoon) because the latter especially is observed at the afternoon, just as he expresses another opinion that ‘before sun sets’ refers to *Salat Zuhr* and *Asr*.⁵⁵ What matters to us is the identification of each five daily *Salat*’s time which has been done.

Elsewhere while explaining chapter seventeen of the Glorious Qur’ān, where Allāh says:



Establish regular prayers at the sun’s decline till the darkness of the night, and the morning prayer and reading: for the prayer and reading in the morning carry their testimony(Q17:78)

He states that scholars have agreed in their opinions that the above verse centers on obligatory *Salawat*. He writes:

أقم الصلاة من وقت دلوك الشمس { إلى غسق الليل } فیدخل فیها
الظهر والعصر وصلاتا غسق اللیلو هما المغرب والعشاء ثم قال {
وقرآن الفجر} هذه خمس صلوات

Observe *Salat* from when the sun passes it meridian till early night has encompasses the *Zuhr* and *Asr*. And the two early night *Salat* are two (*Maghrb and Isha’*). Those it is stated that. Then recite Qur’ān at dawn is *Subh* prayer. Thus, the five periods are catered for.⁵⁶

From the above passage therefore, Ash-Shawkāni has included the five period of *Salawat* as contained in the *fiqh* works of various scholars

4.2.2 Al-Masjid

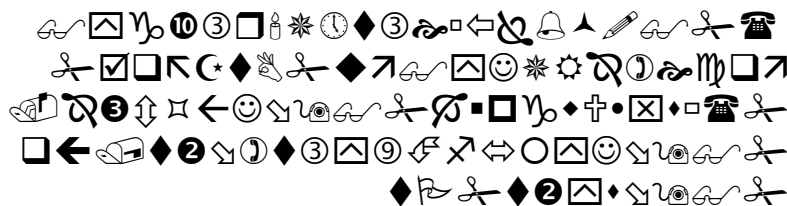


And the places of worship are for Allāh (alone): So invoke not any one along with Allāh.(Q.72:18)

The above verse points out that mosque belong to Allāh and the worship should be directed to Him only. Ash-Shawkāni submits that mosque is specifically meant for worship of Allāh. He states further that it is a place where Muslims observe *Ṣalāt* (worship).⁵⁷ In explaining this further Ash-Shawkāni cites the view of Ibn Habib who states that *Masjid* refers to the parts of the body involved in *Sujūd* (prostration). These are the toes of the two legs, and the face. Therefore, it (*Masjid*) does not refer to where the act of prostration is being carried out but what is involved in carrying it out. In the submission of another scholar, *Masjid* refers to *Ṣalāt* itself because prostration is central to all the elements of *Ṣalāt*.⁵⁸

All the above views of different scholars on the definition of *Masjid* are corroborative to each other as they connote prostration (*Sujūd*), what it involves and the place where such is carried out which is called *Masjid* in simple Arabic rules and as submitted by Ibn Abbas in his *Tafsīr*. It is therefore exclusive for *Ṣalāt* and remembrance of Allāh.⁵⁹

In establishing the sacred importance of the place of worship (*Masjid*) Ash-Shawkāni points out that it is a consecrated place, exclusively for the faithful and not the infidel.⁶⁰ Allāh says:



O ye who believe! Truly the Pagans are unclean; so let them not approach the Sacred Mosque...(Q.9:28)

The above verse of the glorious Qur’ān is clear on the position of *Shari’ah*, that the infidels are unclean and unfit to either come closer to or enter the mosque where Muslims

worship Allāh. There is no argument on the in permissibility of infidels from entering the *Masjid 'l-Haram*. However, there are pockets of misunderstanding among the scholars on whether or not the verse is exclusive to *Haram* alone or any other mosques, especially the scholars of Madinah on this, Ash-Shawkāni writes:

اختلف أهل العلم في دخول المشرك غير المسجد الحرام من المساجد
فذهب أهل المدينة إلى منع كل مشرك عن كل مسجد

The scholars hold different views on whether the idolater can enter other Mosques except *al-Masjid-al-Haram*. Every scholar of Madinah opines that it is disallowed for any idolater to enter any Mosque.⁶¹

Contrary to the above position of Madinah's scholars, who opposed entering any mosque by the infidels, Imam Shafi'i and Abu Hanifah permit it. Abu Hanifah states further that it is allowed especially for the *Ahlu 'l-Dhimmah*.⁶²

In displaying his high sense of scholarship, Ash-Shawkāni presents his position which seems more appropriate and which fit the test of all times. He writes:

ما كان ينبغي لهم دخولها إلا حال خوفهم وفيه إرشاد للعباد من الله
عز وجل أنه ينبغي لهم أن يمنعوا مساجد الله من أهل الكفر من غير
فرق بين مسجد ومسجد وبين كافر وكافر

It is not permissible for them (infidels) to enter the Mosque, except in the state of fear. Allāh has instructed His servant. (Aside, fearful situation) It is allowed to restrain the entering of *Masjid* by the infidels without exemption to any *Masjid* or infidels.⁶³

The restriction from entering the *Masjidas* contained in the above quotation is not exclusive to a particular Mosque like *Masjid 'l-Haram* or any other mosque, neither is it limited to some infidels like Idol worshippers nor the Christians. All is the same as far as the Hadith is concerned. Equally, Muslims who are in the state of impurity like *Janabah*, *Haidah*, *Nifas* among others are denied access to the *Masjid* by *Shari'ah*. The question that readily comes to mind is that when a Muslim is denied access while in the state of temporary impurity, how can a non-Muslim who is perpetually not pure be allowed? In the same token, Ash-Shawkāni indicates

that the restriction covers evils or unholy deeds, all of which must not be carried out in the mosque.⁶⁴

Imam Shawkani explains further by alluding to primordial argument put forward by the Jews in establishing their superiority over and above the Arabs and the Muslims. He cites them saying:

إن بيت المقدس أفضل وأعظم من الكعبة لكونه مهاجر الأنبياء وفي الأرض المقدسة فرد الله ذلك عليهم

Indeed, the Jerusalem mosque, is important and most honoured than the *Ka'bah*. Hence, many prophets migrated to it. Also, it is equally situated in the holy land. Allāh then replied them...⁶⁵

Ash-Shawkāni states that Allāh refutes their weak and false claims with the verse stating that the first house (*Masjid*), to be placed on earth for man is the *Ka'bah*. The Qur'ān states that:

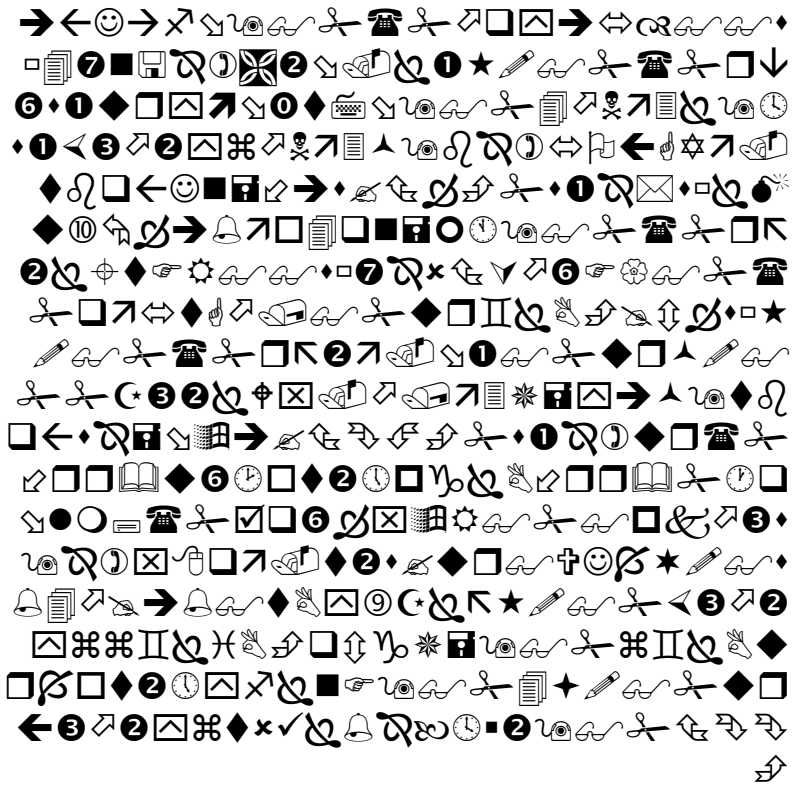


The first House (of worship) appointed for men Was that at Bakkah: Full of blessing...(Q.3:96)

Ka'bah is the first *Masjid* on earth and the *Qiblah* for all other mosques. Ash-Shawkāni however indicates that both *Masjid 'n-Nabawi* which is situated at *Madinah* and *Quba'* mosques are built upon piety in the early days of Islām.⁶⁶ He equally identifies the *Masjid 'l-Dirar* as the one built by the hypocrites of *Madinah* where the prophet refrained the Muslims from praying.⁶⁷ Ash-Shawkāni equally points out that *Ka'bah* is for every Muslim regardless of tribal or cultural differences, for *Ṣalāt*, *Tawaf* and other rites.⁶⁸ It is a common property of every Muslim. Ash-Shawkāni finally caps up his discourse on *Masjid* with the submission that every mosque must face the direction of *Ka'bah* (*Qiblah*) and all the worshipers must face the *Qiblah* for *Ṣalāt* and other acts of spiritualities.⁶⁹

4.2.3 *Jumu'at* Service





O ye who believe! When the call is proclaimed to prayer on Friday (the Day of Assembly), hasten earnestly to the Remembrance of Allāh, and leave off business (and traffic): That is best for you if ye but knew! And when the Prayer is finished, then may ye disperse through the land, and seek of the Bounty of Allāh. and celebrate the Praises of Allāh often (and without stint): that ye may prosper. But when they see some bargain or some amusement, they disperse headlong to it, and leave thee standing. Say: "The (blessing) from the Presence of Allāh is better than any amusement or bargain! And Allāh is the Best to provide (for all needs)." (Q62:9-11)

Ash-Shawkāni opens his discourse on the *Jumu'at* service from the verses above from the grammatical point of view, giving the variations in the recitations by different scholars and reciters. He points out the common mode of recitations among the scholars of different schools which adopt the pronouncement of *Jumu'at* (*dammāt Mim*) as against others who pronounce it as either *Jum'at* (*Sukun Mim*) or *Jumu'at* (*fatih Mim*). He submits that, reading the main with *Dammah* is the most appropriate as it indicates the day people gather together at a place.⁷⁰ Ash-Shawkāni states further that:

إنما سميت جمعة لأن الله جمع فيها خلق آدم وقيل لأن الله فرغ فيها
من خلق كل شيء فاجتمعت فيها جميع المخلوقات وقيل لاجتماع
الناس فيها للصلاة

Jumu'at is so named because it was the day Allāh perfected the creation of Adam. It is equally said by some scholars that, It is so named because it was the day Allāh perfected the creation of everything. He then converged all his creations at a place, while others observe that it is so named due to the fact that human beings converge for *Salat* on the day.⁷¹

The above paragraph from *Fatīhi 'l-Qadir* agrees with the view of Ar-Razi, as contained in his *Tafsīr*.⁷² Ibn Kathīr's view introduces another dimension into the matter when he states that *Jumu'at* as a name, is a derivative of *Jam'* because Muslims worship and glorify Allāh on this day.⁷³ He states further that, the last of the six days in which Allāh created both the heavens and the earth. Therefore it was the day Adam was created, the day that resurrection will take place, the day he (Ādam) was admitted to paradise and the day he was brought out. Also, Ibn Kathīr states that in it (Friday), is a period that servant's supplications to Allāh and their requests will be undoubtedly granted.⁷⁴

Ash-Shawkāni steps further that, as soon as call to prayer is made, as soon as the Imam mounts the pulpit, commercial activities become unlawful. This should therefore be shunned for the act of worship.⁷⁵ He however alludes to the fact that there was only one call to prayer in *Jumu'at* service during the life time of the prophet but another one was later introduced by 'Umar, the second *Khalifah* of the prophet.⁷⁶ Ash-Shawkāni instructs on walking to the mosque for *salat*. He expresses the reservation of Abdul Hassan that what the verse connotes is not physical walking or trekking but the intention which is essentially connected to the mindset.⁷⁷

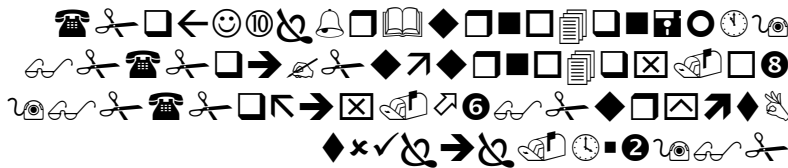
Stating further, Ash-Shawkāni opines that after the completion of the *Jumu'at* service, worshippers should disperse for trading and other purposes to better their lots, but no one should involve in prohibitions of any kind. Therefore, he calls on the people on the need to be conscious of God by remembering Him at all time.⁷⁸

He explains the reasons behind the revelation of this verse by Allāh as narrated that: "one day, the prophet was giving sermon on the pulpit when the arrival of merchandise from Syria and other places got to them. All the worshipers left the prophet behind, just twelve (12) people were left in the mosque, and sometimes, they did so to watch games and other

recreational activities.⁷⁹Allāh then revealed the verse to condemn such acts and establish the importance of *Salat*". In emphasising the importance of *Jumu'at* service, Ash-Shawkāni states that there is a time on Friday in which every supplication to Allāh is automatically accepted⁸⁰ as previously stated by Ibn Kathir and Ar-Rāzi.

4.3.1 Juristic Verses on *Zakāt*

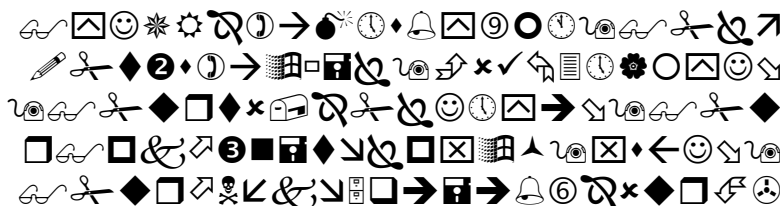
As- Shawkani opens up his discourse on zakat while explaining chapter 2 (*Surat 'l-Baqarah*), verse 43 of the glorious Qur'ān, where Allāh says:

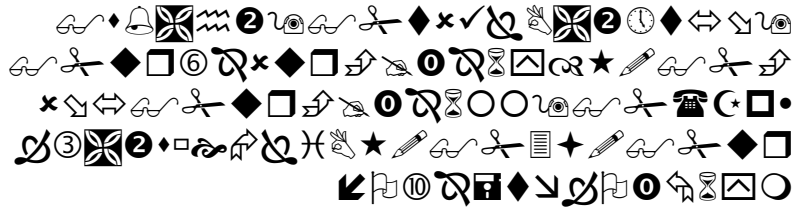


And be steadfast in prayer; practice regular charity; and bow down your heads with those who bow down (in worship)

Ash-Shawkāni writes that *zakat* is derived from purity (*zakā*) which also means to grow or increase,⁸¹ which connote positive increments in wealth. It does, despite the actual and practical decrease and due to the deduction that is made therefrom. But the wealth increases in blessing from the Almighty. Hence, it is established from some quarters that *zakat* sometimes means *namw* (increment).⁸²In substantiating his claim that *zakat* increases the wealth, he cites a tradition of the prophet where Allāh instructs the prophet to collect *zakat* from the rich among his *Ummah* (community) to both physically and spiritually purify them from physical and spiritual filths and enable an increase in a difference.⁸³ He points out that *zakat* should be paid as a form of sacrifice with sincerity and in compliance with Allāh's instruction to seek Allāh's pleasure.⁸⁴He also gives a hint on the displeasure of Allāh on those who refuse to give out *zakat* despite their qualification to do so.⁸⁵

On those who are eligible to receive *zakat*, Ash- Shawkani explains verse sixty (60) of *Surat 'l-Tawbah* where Allāh says:





Alms are for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to Truth); for those in bondage and in debt; in the cause of Allāh. And for the wayfarer: (thus is it) ordained by Allāh, and Allāh is full of knowledge and wisdom.

Explaining the above verse, Ash-Shawkāni states:

وقد اختلف أهل العلم هل يجب تقسيط الصدقات على هذه الأصناف الثمانية أو يجوز صرفها إلى البعض دون البعض على حسب ما يراه الإمام أو صاحب الصدقة ؟

Scholars have expressed divergent views on whether or not it is compulsory to disburse *Zakāt* to those eight categories of recipients mentioned in the glorious Qur’ān or to some among them, based on the observation of either the Imam or the giver of *Zakāt*.⁸⁶

The above passage of *Faiḥ al-Qadir* confirms the current legal tussles among various scholars in the recent times. There have been arguments as to the recipients of *zakaṭ* vis-à-vis the appropriateness of the recipients of *zakaṭ* as spelt out in the glorious Book. Some scholars have expressed reservations on those categories of people, that some of them are no more in existence.

The early scholars had equally shown their position on the matter as contained in the Ash-Shawkāni’s work under study. The view expressed by Shafi^c and his disciples show their subscription to the former opinion. In other words, it is not only those who are mentioned in the glorious Qur’ān that are qualified. So, their rights to take from the *zakaṭ* may be jettisoned, if need be.⁸⁷ Imam Malik and Abu-Hanifah’s view contradict the view earlier expressed by Shafi^c’s school. They submit that neither the observation of the Imam nor the giver of *zakaṭ* is imperative in the distribution of *zakaṭ* and the receivers thereof. Therefore, no change can be effected.⁸⁸

Ash-Shawkāni discusses each of the recipients of *zakaṭ* briefly, starting from the first class of recipients mentioned in the glorious Qur’ān, it is interesting to note that he displays a

high sense of scholarship by introducing the scholastic arguments on the differences between the poor (*Al-faqir*) and the needy (*Al-Miskin*). He first gives the definitions of the each which show the dissimilarities between the two. He writes:

إن الفقير أحسن حالا من المسكين قالوا : لأن الفقير هو الذي له
بعض ما يكفيه ويقيمه والمسكين الذي لا شيء له

The poor person has a fair status compare to that of a needy.
This is because the poor has something that can sustain him
while the needy does not.⁸⁹

The above submission of Imam Shawkani corresponds to the descriptions of Al-Qardawi in his *Fiqh Zakat*. Al-Qardawisubmits that the word poor means the person who is in need, but is also modest enough not to beg, while the needy is the person who is in need but humbles himself to beg.⁹⁰ Imam Malik expresses a similar view but with a slight difference. In Imam Malik's explanation, he submits that a poor is the one who needs but does not ask, while those who ask, the requestors or beggars are *Masakin*.⁹¹ The view of Abu-Hanifah, and a host of others is vice-versa. i.e. a needy is better in status than the poor⁹² while Imam Shafi'i and his cohorts opine that there is no difference between the two.⁹³

Imam Shawkani caps up the debate with is alignment with the later view as expressed by At-Tabari and Malik. He buttresses this with the Hadith of the prophet where he answered a question seeking to clarify who a needy is. The Hadith states that:

فما المسكين يا رسول الله ؟ قال : الذي لا يجد غنى يغنيه ولا يفطن
له فيتصدق عليه ولا يسأل الناس شيئا

Who is a needy, Oh! Messenger of Allāh? He replies, he is the one who lacks means to sustain oneself. He accepts *Sadaqah* but do not ask people for it.⁹⁴

Ash-Shawkani agrees in totality with the views of At-Tabari, Maliki and the like.

Having finalised that, Ash-Shawkani swings into discourse on the administrator of *Zakat*. He defines such a person as an Imam, an authorised individual who oversees the collection and disbursement of *zakat*.⁹⁵ In other words, *Zakat* affairs is his main job. He is therefore to be paid therefrom for his personal up keep. He (Ash-Shawkani) does not mince words in presenting the arguments of the scholars on the quantity to be given as his due. He writes:

وقد اختلف في القدر الذي يأخذونه منها فقيل الثمن روي ذلك عن مجاهد والشافعي وقيل على قدر أعمالهم من الأجرة روي ذلك عن أبي حنيفة وأصحابه وقيل : يعطون من بيت الله قدر أجرتهم روي ذلك عن مالك ولا وجه لهذا فإن الله قد أخبر بأن لهم نصيبا من الصدقة فكيف يمنعون منها ويعطون من غيرها ؟

The scholars held divergent views on the quantity to be given to the administrators from Zakat. One over eight (1/8) is suggested by Mujahid and Shafi'i, while Abu-Hanifah opines that it should be based on the nature of the work assigned to them. In the opinion of Malik, they should be paid from the public treasury as salary accordingly. He (Malik) states further that, since Allāh has declared their eligibility to take therefrom, there is no ground for denying them while giving to others.

From the above, Ash-Shawkāni leaves the decision at individual scholars discretion as he does not make his stand on the point known, as he used to do on other debated issues.

The next recipient of *zakat* as contained in the glorious Qur'ān is a new converts to Islām. He attempts to define who these converts are as submitted by different scholars in his *Tafsir*. He writes:

{ والمؤلفة قلوبهم } هم قوم كانوا في صدر الإسلام فقيل : هم الكفار الذين كان النبي صلى الله عليه و سلم يتألفهم ليسلموا وكانوا لا يدخلون في الإسلام بالقهر والسيف بل بالعطاء وقيل : هم قوم أسلموا في الظاهر ولم يحسن إسلامهم فكان رسول الله صلى الله عليه و سلم يتألفهم بالعطاء وقيل : هم من أسلم من اليهود والنصارى وقيل : هم قوم من عظماء المشركين لهم أتباع أعطاهم النبي صلى الله عليه و سلم ليتألفوا أتباعهم على الإسلام وقد أعطى النبي صلى الله عليه و سلم جماعة ممن أسلم ظاهرا كأبيسفيان بن حرب والحرث بن هشام وسهيل بن عمرو وحويطب بن عبد العزى أعطى كل واحد منهم مائة من الإبل تألفهم بذلك وأعطى آخرين دونهم

Those whose mind is inclined to faith are the converts of the early days of Islām. To some scholars, they are the infidels whom the prophet (SAW) was trying to incline their minds to Islām, they were neither converted under duress nor with sword but with presents/ gifts. In the opinion of another set of scholars, they are the people who accepted Islām openly but not wholeheartedly. The prophet therefore used to give them something from Zakat to incline them to the faith completely. Another set of scholars, equally identified them as the converts from the Jews and the Christians while some other opined that they are the leaders of pagans of Makkah

with sizeable followers, the prophet therefore gave them some amount from Zakat to incline them to the new faith. In another submission, they are some group of people among whom were Abu Sufyan bin Harb, Al-Harith b. Hisham, Sahil bin Amr and Huwaitib bin Abdul-Izzah, each of whom the prophet gave one hundred camels to totally arrest their minds to Islām having been publicly announced their faith.⁹⁶

A cursory examination of the set of people mentioned in the above passage as presented by each scholar shows no difference in their cases. All of them fall under those who should receive *zakat*. This is because they are converts of Islām. Doing that will expose them to the beauty of Islām.⁹⁷

The submission of Ash-Shawkāni as discussed above differs from the condition for the reception of *zakat* as submitted and explained by other scholars. For instance, they adduced the reason for their entitlement to *Zakat* citing the destruction of the properties by the adherent of their former faith in demonstration of their dissatisfaction with them.⁹⁸ Some scholars argued in support of their non-eligibility to receive *zakat*, especially in the modern time where conversion from one religion to another is enshrined in the constitutions of many countries like Nigeria and many Islāmic countries as no loss will be suffered by one word for their decisions to change their religion,⁹⁹ then such law as enshrined in the glorious Qur'ān to give the victims from *Zakat* is no more applicable.

The case of freedom acquisition from bondage of slavery or debt is equally briefly explained by Ash-Shawkāni in his *Tafsir*. He submits that it is a simple case to set a slave free by purchase, or a debtor by paying off the bills. He explains that debtors are those who are in bondage of piled up debts and lack the means of settling the debt¹⁰⁰ He points out that there is no divergence of opinions among the scholars on this. He, however expresses concern of the scholars in the circumstance where the loan or debt is incurred arbitrarily. He writes:

ولا خلاف في ذلك إلا من لزمه دين في سفاهة
فإنه لا يعطى منها ولا من غيرها إلا أن يتوب

There is no difference of opinions among the scholars on the debtor except where the debt is incurred arbitrarily. He shall forfeit the right to benefit from *Zakat*, or any other charity except he seeks repentance.¹⁰¹

From the above passage, Ash-Shawkāni tends to inculcate financial discipline and consciousness in the Muslims. It could be inferred that not all debts need to be settled with

Zakat proceeds but the ones that are decently incurred. To buttress this further, he cites a tradition of the Prophet to point out how he (Prophet) assisted a pregnant woman from the *zakat*. Such is an example of decently incurred debt.¹⁰² Ash-Shawkāni however did not explain further on the last clause which gives repentance as exception. This however should be understood as remorsefulness having realised one's mistake and shown the readiness not to commit such an act of arbitrariness again. Where that is proven beyond reasonable doubt such an incurred debt can be off-set because the victim might have learnt his lesson.

On expending *Zakat* on the path of Allāh, Ash-Shawkāni points out that scholars unanimously agreed that the warriors and the fighters who engage in *Jihad* (Holy war) are beneficiaries.¹⁰³ They should be given from the *zakat* to strengthen them, especially when they are not rich and lack the capacity to foot their bills.¹⁰⁴ He equally points out that Ahmad and Ishaq include the Pilgrims in this category, while Abu-Hanifah states that warrior should not be given from *zakat* except he is poor and lacks the capacity to fend for himself.¹⁰⁵

On the wayfarer, Ash-Shawkāni writes:

هو المسافر والسبيل الطريق... والمراد الذي انقطعت به الأسباب في سفره عن بلده ومستقره فإنه يعطى منها وإن كان غنيا في بلده وإن وجد من يسلفه

He is a traveler who is currently on a journey....It refers to someone who has been disconnected from his home and people due to journey. He should therefore be given from *Zakat*, even if he is rich in his hometown and sees someone who can loan him in for future settlement.¹⁰⁶

A wayfarer who has a means to get loan for later settlement is obliged, despite his solvency to take his *Zakat* due. Imam Malik expresses his dissatisfaction with this, stating that in such a circumstance, he should not be given, but should opt for a loan to be settled at a later date.¹⁰⁷ It is an exclusive right of the poor traveler without means to either get loan or its settlement at a later time as may be agreed upon.¹⁰⁸ In other words, they are poor both at home and away.

To cap his discourse on *zakat* up, Ash-Shawkāni points out on argument which is rare to *Fiqh* works and discourse on the subject matter. He writes:

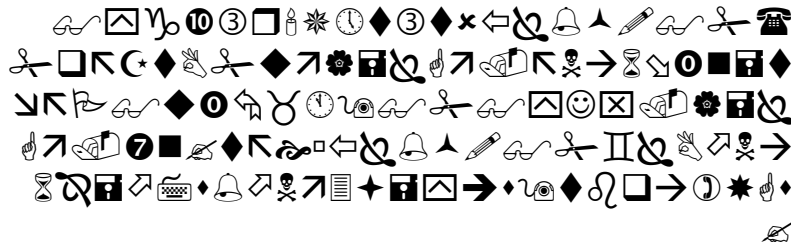
الأصناف الأربعة الأول يصرف المال إليهم حتى يتصرفوا به كما شاءوا وفي الأربعة الأخيرة لا يصرف المال إليهم بل يصرف إلى

جهات الحاجات المعتبرة في الصفات التي لأجلها استحقوا سهم
الزكاة

The first four categories of recipients shall be given from *Zakat* proceeds based on their needs. While, the later four will not be paid directly but be channeled towards what qualified them for *Zakat*.¹⁰⁹

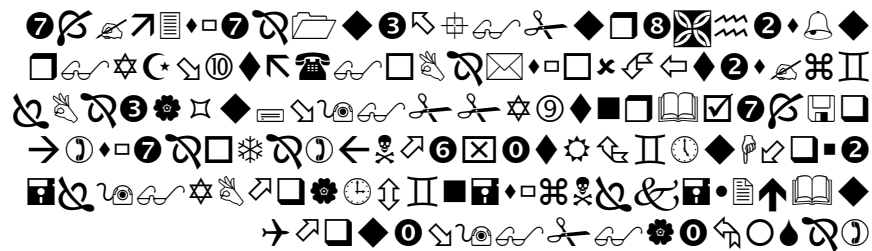
The above submissions of Ash-Shawkāni are in line with those of Al-Qardawi on his high rate of *zakat* in Islām.

4.4.1 Verses of Fasting (*Sawm*)



O ye who believe! Fasting is prescribed to you as it was prescribed to those before you, that ye may (learn) self-restraint (Q.2:183),

Ash-Shawkāni opens up his discourse on fasting by tracing its literal and technical definitions. He points out that fasting comes from *Imsāk* (to refrain or abstinence). Therefore, whoever restrains from eating, talking and drinking is said to be fasting. He states further that, one who fasts needs to restrain himself from every vitiating factor. He cites Maryam’s case as an example of a method of fasting by keeping silent. So, a person who refuses to open his mouth and talk may be referred to as fasting.¹¹⁰Allāh says referring to Maryam:



...I have vowed a fast to (Allāh) Most Gracious, and this day will I enter into not talk with any human being (Q.19:26)

From the above Qur'ānic passage, it is understood that Maryam is said to be fasting simply because she opens not her mouth to talk to anyone. Imam Alūsī submits in his *Tafsīr* that it is a form of fasting that was obtainable during the time of Maryam but was abrogated by the *Shari'ah* of the Prophet Muhammad (SAW).¹¹¹ In the view of Imam Ash-Sha'rawi as expressed in his *Tafsīr*, fasting is to keep oneself off from stomach appetites and sexual lustfulness, from dawn to sunset.¹¹²

Technically and according to *Sharī'ah*, fasting connotes absolute abstinence from anything that can vitiate one's fasting and must be accompanied with intention from dawn to sunset.¹¹³ The phrase: as prescribed on those before you attracts several interpretations from different scholars. Ash-Shawkāni writes:

هو قدر الصوم ووقته فإن الله كتب على اليهود والنصارى صوم رمضان فغيروا وقيل : هو الوجوب فإن الله أوجب على الأمم الصيام وقيل : هو الصفة : أي ترك الأكل والشرب ونحوهما في وقت فعلى الأول معناه : أن الله كتب على هذه الأمة صوم رمضان كما كتبه على الذين من قبلهم وعلى الثاني : أن الله أوجب على هذه الأمة الصيام كما أوجبه على الذين من قبلهم وعلى الثالث : أن الله سبحانه أوجب على هذه الأمة الإمساك عن المفطرات كما أوجبه على الذين من قبلهم

It refers to the number of fast and its period (fasting). Allāh has indeed prescribed Ramadan fast on the Jews And the Christians but they turned it down. To some other scholars, it connotes compulsion. This is because Allāh has made fasting a compulsion on the community of Muslim while in the view of other scholars, it is prescriptive, hence it prescribes restraining from eating, drinking and the likes during the period of its observance. (Ash-Shawkāni enumerated other three other submissions from scholars). First, Allāh prescribes Ramadan fast on His *Ummah* just as He prescribed it on those before Second, Allāh prescribes fasting on His *Ummah* just like those before. And the third is that Allāh prescribes refraining from what can vitiate fasting on this *Ummah* just as He did to those before them.¹¹⁴

The above submissions of different scholars are complementary to one another. They could therefore be summarised as follows. Allāh prescribes fasting in the month of Ramadan on the Muslim just as He, for one reason or the other prescribes some other kinds of fasting on

different nations before the messengership of Muhammad, like the Jews and the Christian. The glorious Qur'ān attests to how prophet Musa (AS) fasted for forty (40) consecutive days same which was recommended for Isa (AS).¹¹⁵ The key difference between these fasting and that of the holy month of Ramadan which is prescribed for the nation of Muhammad is that, the formers are for atonements while the latter is meant to inculcate piety and the consciousness of Allāh in Muslims.¹¹⁶ Ramadan fasting therefore is an integral part of Islām, fourth of its pillars and must be observed by every capable Muslim.

Imam Shawkāni centers his discourse on Ramadan fasting which is the ninth month of the lunar year. According to him, Ramadan is taken from *Ramḍ* (dry, intense hot or burning). This is because the person who fasts is burning up his stomach by intense heat or hot. The month of Ramadan is so named because it coincides with hot days or period of the year.¹¹⁷ He equally recognizes the submission from another quarters which suggests that Ramadan is so named because it is a period that sins are burnt down with righteous deeds.¹¹⁸ He cites different *Ahadith* and the submissions of the scholars on the month of Ramadan. Among them is the one reported by Bayhaqi. It reads:

لا تقولوا رمضان فإن رمضان اسم من أسماء الله تعالى ولكن قولوا
شهر رمضان

Do not call it Ramadan (alone), because it is indeed one of the names of Allāh. Therefore, call it month of Ramadan.¹¹⁹

The above Hadith is one of the *ahadith* that commands honor and respect for this noble month. In establishing the importance of this glorious month, Ash-Shawkāni cites another Hadith which state that:

حَدَّثَنَا مُحَمَّدُ بْنُ سَلَامٍ، قَالَ: أَخْبَرَنَا مُحَمَّدُ بْنُ فُضَيْلٍ، قَالَ: حَدَّثَنَا يَحْيَى
بْنُ سَعِيدٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى
اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ صَامَ رَمَضَانَ، إِيمَانًا وَاحْتِسَابًا، غُفِرَ لَهُ مَا تَقَدَّمَ
مِنْ ذَنْبِهِ»

Muhammad Ibn Salam informed us that, saying: Muhammad Ibn Fudayl informed us, saying: Yahay Ibn Sa'eed informed us on the authority of Abi Salmah, on the authority of Abu Hurayrah who said: the Messenger of Allāh said: "whoever fasts during the month of Ramadan with faith and hope, Allāh will forgive all his previous misdeeds".¹²⁰

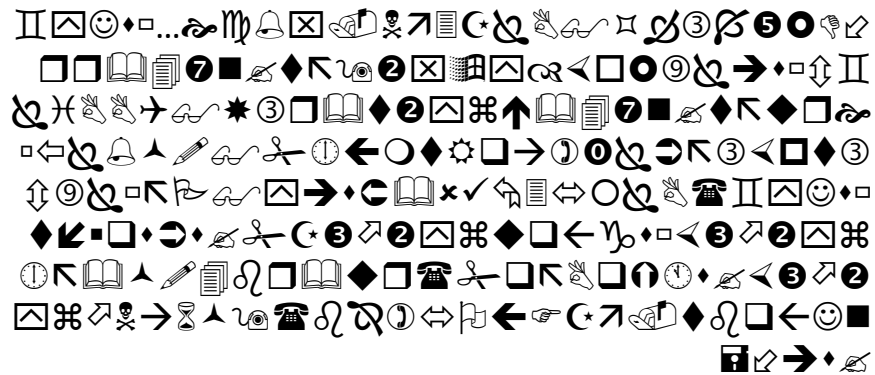
Elsewhere, he cites that:

حَدَّثَنَا يَحْيَى بْنُ بُكَيْرٍ، حَدَّثَنَا اللَّيْثُ، قَالَ: حَدَّثَنِي عَقِيلٌ، عَنِ ابْنِ شِهَابٍ، قَالَ: حَدَّثَنِي ابْنُ أَبِي أَنَسٍ، مَوْلَى النَّيْمِيِّينَ أَنَّ أَبَاهُ، حَدَّثَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، يَقُولُ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «إِذَا دَخَلَ رَمَضَانُ فَتُبِّحَتْ أَبْوَابُ الْجَنَّةِ، وَغُلِقَتْ أَبْوَابُ جَهَنَّمَ وَسُلِسَتِ الشَّيَاطِينُ»

Yahya Ibn Bukayr informed us as well as al-Layth saying, 'Uqayl informed us on the authority of Ibn Shihab saying, Ibn Abi Anas who was the slave al-Taymiyyin, informed me that his father told him that he heard Abu Hurayrah, may Allāh be pleased with him, said: the Messenger of Allāh (may Allāh be pleased with him): ...When Ramadan commences, the gates of paradise will be opened, the gates of hell fire shall be shut, and the Shaytan would be chained.¹²¹

The above two *Ahadiths* confirm the importance of forgiveness of sin and the closure of the gate of hellfire, while the doors of paradise remain opened during the month. He equally states that the glorious month of Ramadan is the very month in which *Ṣuḥūf* (scroll) of Ibrahim, *Zabūr* (psalm) of Daud, *Injīl* (Bible) of prophet ʿIsā and the Glorious Qurʾān were revealed to their respective prophet and recipients among the prophets.¹²²

4.4.1 People Exempted from Fasting



But if any of you is ill, or on a journey, the prescribed number (Should be made up) from days later. For those who can do it (with hardship), is aransom, the feeding of one that is indigent. But he that will give more, of his own free will,- it is better for him. And it is better for you that ye fast, if ye only knew. (Q.2:184)

Al-Jazairi identifies five categories of people exempted from fasting. These are the aged, sick, travelers, nursing mothers who breastfeeds and pregnant women.¹²³ These categories of people are common to most *Fiqh* works on the exemption from fasting. Az-Zuhayli however includes strain hunger, thirst and duress, where one is forced not to fast as part of the conditions that may exempt one from fasting.¹²⁴

The discourse of Ash-Shawkāni is in line with these enumerations from the two eminent scholars. He however did not subscribe to additional conditions as stated by Zuhayli. Therefore, the sick, the traveler, the aged, the weak and the nursing mother are clearly mentioned in his work.¹²⁵ By inference, the weak as included in the list of Ash-Shawkāni may be understood in line with Zuhayli's conditions above. In other words, strain hunger, thirst and duress may be taken as weak, since they are incapacitated in one way or the other, as fasting under such conditions may endanger their lives. It should be pointed out that Ash-Shawkāni discusses only the sick and travelers extensively in his work. Others were just mentioned without details.

4.4.1 The Sick

A sick person or sickness is one of the conditions for exemption from fasting. On whether or not a sick person should fast, Ash-Shawkāni submits that:

قيل للمريض حالتان : إن كان لا يطيق الصوم كان الإفطار عزيمة
وإن كان يطيقه مع تضرر ومشقة كان رخصة

A sick person has two options (depending on his condition).
Where he lacks the capacity to fast to drop the fasting is
imperative. But where he can withstand the stress despite
hardship, it is Rukhsah (authorisation).¹²⁶

The above opinion of Ash-Shawkāni shows the liberality of Islām and the need not to take liberty
for granted, hence where the stress can be withstand, then, the person concerned should fast.

4.4.4 The Traveler

Traveling is another condition stated by the glorious Qur'ān as an exemption from
fasting. Ash-Shawkāni writes:

اختلف أهل العلم في السفر المبيح للإفطار فقول : مسافة قصر
الصلاة والخلاف في قدرها معروف وبه قال الجمهور وقال غيرهم
: بمقادير لا دليل عليها والحق أن ما صدق عليه مسمى السفر فهو
الذي يباح عنده الفطر وهكذا ما صدق عليه مسمى المرض فهو
الذي يباح عنده الفطر وقد وقع الإجماع على الفطر في سفر الطاعة
واختلفوا في الأسفار المباحة والحق أن الرخصة ثابتة فيه وكذا
اختلفوا في سفر المعصية

The scholars have expressed the divergence of opinions on
the nature of journey that necessitates the abandonment of
Fasting. To some, it should be within the miles that are
required for shortening prayer (*Qasr*) though it is a glaring
fact that there is no agreed number of miles among the
majority of scholars. To some other scholars, there is no
clear cut injunction on the distance or miles, but whatever
that can be reasonably adjudged as journey, necessitate
abandonment of fasting. Same goes for sickness. There is a
unanimous hint among the scholars that to abandon fasting
while on transit is imperative. They however, disagree on a
lawful journey but the truth is that its permissibility suffices.
Equally, they expressed different views on unlawful journey.
¹²⁷

Ash-Shawkāni has equally demonstrated a high sense of scholarship by summarising
different views of the scholars on the distance, its determinant and nature of the journey either
lawful or unlawful. It could be taken therefore that any kinds of journey regardless of the
distance necessitate abandonment of fasting. Also, it is only permissible not to fast when the

journey is *Shari'ah* approved one. However, it should be noted that what forms the bulk of Ash-Shawkāni's discourse on the verse is whether or not the verse has been abrogated. He writes:

وقد اختلف أهل العلم في هذه الآية هل هي محكمة أو منسوخة؟ فذهب جماعة إلى أنها محكمة قالوا: وهي وإن كانت عامة فمعناها الخصوص والمراد بها من الوالدين من لا يرث كالأبوين الكافرين ومن هو في الرق ومن الأقربين من عدا الورثة منهم قال ابن المنذر: أجمع كل من نحفظ عنه من أهل العلم على أن الوصية للوالدين الذي لا يرثان والأقرباء الذين لا يرثون جائزة وقال كثير من أهل العلم¹²⁸

Indeeds, the scholars have expressed divergent opinions on whether or this verse has been abrogated or can be used for legislation. The first set of scholars, submit that it has been abrogated because it was meant to provide exemption for some people from fasting in the early days of legislation of fasting. This was because it was some how difficult for some to cope with. There are some who therefore choose to feed the poor as an alternative arbitrarily and refrain themselves from fasting despite their capability. Therefore, the verse was abrogated. This is the submission of most scholars.

The above passage, as submitted by Ash- Shawkani which he states further that it is neither abrogating nor legislation verse: *whoever witnesses the month should fast ... (Q.2:185)*, could not hold water as the two verses are complementary to each other.¹²⁸ The latter provides general rule while the former provides some exemptions. Still, the verse is applicable to the present time, hence both the *Ahadith* and *Fiqh* books are replete with explanations confirming exemption on some group of people. Ash- Shawkani writes on the views of the second class of scholars who are of the opinion that the verse is not abrogated. He submits that:

وروي عن بعض أهل العلم أنها لم تنسخ وأنها رخصة للشيوخ والعجائز خاصة إذا كانوا لا يطيقون الصيام إلا بمشقة

(The submission) from some other scholars, the verse is never abrogated but it provides exemption for the aged and the weak ones specifically, if fasting will pose untold difficulty to them.¹²⁹

The above quotation is further strengthened with a jurisprudential maxim which states that:

أن الضرورة تبيح المحظور

This has been duly taken care of in the glorious Qur’ān in many places including the verse under discussion. Allāh says:



Allāh intends ease for you; He does not want to putto difficulties on you(Q.2:185).

This has been discussed previously under the discussion of ablution that,Allāh intends ease for humanity and He does not place an unbearable burden on them. To this end, the general rule which is all about the rule of fasting, it will bring all about is unity,love and justice among the Muslims in the world.

Therefore, since the verse provides for exemption where necessary, it cannot be said to have been abrogated, either partly or absolutely. The views of the latter scholars on non-abrogatedness of the verse subsists.To avoid arbitrariness in this matter, Allāh encourages fasting and indicates that to fast is better than to opt for *fidyah*.¹³¹Furthermore, in establishing his position on the verse under discussion, Ash- Shawkani demonstrates his rare scholarship among his peers by presenting a tradition from the *Sahih Al- Bukhari* andMuslim which in his opinion would laythe matter to rest. He cites the Qur’ān thus:

لما نزلت هذه الآية { وعلى الذين يطيقونه فدية طعام مسكين } كان من شاء صام ومن شاء أن يفطر ويفتدي فعل حتى نزلت هذه الآية بعدها فنسختها { فمن شهد منكم الشهر } وأخرج البخاري...في قوله : { وعلى الذين يطيقونه } قال : الشيخ الكبير الذي لا يستطيع الصوم فيفطر ويطعم مكان كل يوم مسكينا ...وأخرج عن ابن عباس أنه قال لأم ولد له حامل أو مرضعة : أنت بمنزلة الذين لا يطيقون الصيام عليك الطعام لا قضاء عليك

When the verse was revealed: (On those who are incapacitated should pay *fidyah*by feeding the Poor), fasting becomes optional. Whoever wishes fast and whoever wishes opts for feeding of poorin lieu. That was the practice till when another one abrogating it was revealed, which is whoever witnesses the month should fast. He cites another Al-Bukhari’s Hadith which reads: (On those who are in capacitated, refers to the aged who lacks the capacity to fast. He would not fast but feed the poor in *lieu* for every day (in the month of Ramadan). Another submission is

coming from Ibn Abbas who submitted that it refers to nursing mother, who is either pregnant or breast feeding a baby... she would feed the poor and no repayment of fasting on her.¹³²

This discussion is capped up by Ash-Shawkāni in establishing the non-abrogative status of the verse, having shown the cancellation of the former Hadith with the latter which performs dual roles. It is both abrogating and explanatory. It is equally supplemented with similar reports which support it. Ash-Shawkāni finally submits that to fast is more beneficial for the people under this exceptive status if only they can.¹³³

4.4.2 Moon sighting for Commencement of *Ramadan*

The commencement of Ramadan fast is connected strictly to moon sighting. Allāh says:

...Whoever witnesses the month (Ramadan) should fast.
(Q.2:185)

In his complementary and explanatory role, the Prophet is reported to have said:

حَدَّثَنَا أَبُو كُرَيْبٍ قَالَ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «لَا تَقْدَمُوا الشَّهْرَ بِيَوْمٍ وَلَا بِيَوْمَيْنِ، إِلَّا أَنْ يُوَافِقَ ذَلِكَ صَوْمًا كَانَ [ص:60] يَصُومُهُ أَحَدُكُمْ، صُومُوا لِرُؤْيَيْتِهِ، وَأَفْطِرُوا لِرُؤْيَيْتِهِ، فَإِنْ غَمَّ عَلَيْكُمْ فَعُدُّوا ثَلَاثِينَ ثُمَّ أَفْطِرُوا» وَفِي الْبَابِ عَنْ بَعْضِ أَصْحَابِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ. رَوَاهُ مَنْصُورٌ بْنُ الْمُعْتَمِرِ،

Abu Kurayb informed us saying: 'Abdah Ibn Sulayman informed us on the authority of Muhammad Ibn 'Amr, on the authority of Abi Salmah, on the authority of Abu Hurayrah, saying: the Apostle of Allāh (may Allāh be pleased with him) said: Don't start the month (fasting) a day or two days earlier, except if that coincides with a regular fasting which you usually observe. Commence fasting when you sight the new moon and break (end) it when you sight it again. But, when you are beclouded from seeing it, count the month of *Shaban* to be completed at thirty days.¹³⁴

The above *Hadith* of the prophet has laid the procedure for both commencement and termination of the fasting of Ramadan. It is the proper application of this instructive *Hadith* that poses little difficulty to the scholars over a long period of time.

The bulk of Ash-Shawkāni's discourse on the moon is contained in his explanation to the chapter 2 verse 189 of the glorious Qur'ān where Allāh says:



...They ask thee concerning the New Moons. Say: They are but signs to mark fixed periods of time in (the affairs of) men.

Ash-Shawkāni commences his discourse on the above verse of the glorious Qur'ān which is in respect of moon sighting with a tradition from Ibn Asakir on the authority of Ibn Abbas which states that:

نزلت في معاذ بن جبل و ثعلبة بن عثمة وهما رجلان من الأنصار
قالا : يا رسول الله ما بال الهلال يبدو ويطلع دقيقا مثل الخيط ثم
يزيد حتى يعظم ويستوي ثم لا يزال ينقص ويدق حتى يعود كما كان
لا يكون على حال واحد ؟

The verse was revealed in respect of Mu'az bin Jabal and Thalabbin ^CUthamah. The two notable Ansar companions asked the prophet, stating that Oh messenger of Allāh! What normally happens to the crescent that it will appear for few minutes like a thread, then it will continue to wax till it becomes big (full moon). Then, starts to turn around bywaning till it becomes as before (like the thread). Why is it never retains single status but Keeps changing all time?¹³⁵

The above *Hadith* has given an important hint on the movement of the moon and how it can be monitored for observational purposes. Although Ash-Shawkāni does not include the details of the technicalities that are involved, it may be that he assumes that constant observations of its movement suffices since it is subjected to climatic and other environment factors.

On the importance of moon sighting Ash- Shawkani writes:

فجعلها لصوم المسلمين ولإفطارهم ولمناسكهم وحجهم وعدد نسائهم
ومحل دينهم

It is meant to be a sign for Muslims to commence and end their fasting, for spiritualities, *Hajj*, for female periods and other religious duties.¹³⁶

Ash-Shawkāni buttresses this with a tradition of the prophet where he (the prophet) is reported to have said the crescent is meant for commencement of Ramadan fast for Muslims, and its termination. It also indicates the periods of sacrifices and *Hajj* operation. Also, it is used by women folk to count their period of menstruation, especially non-menstruating ones (menopause) who is observing *‘Iddah*¹³⁷(the waiting period for divorce or widow) and other aspects of their religion lives.¹³⁸Therefore, moon sighting has direct bearing on the religious lives of Muslims and should be taken with every sense of seriousness and sincerity.

4.5 *Hajj* and *‘Umarah*

According Al-Juzayri, *Hajj* is defined literally as determination to achieve greatness in faith.¹³⁹ According to *Shari‘ah*, it connotes a religious act that is characterised with specifications, in respect to time, place, methods and intention or purpose.¹⁴⁰ He continues that it is a compulsory acts of *‘Ibādah*, the fifth and the last of the pillars upon which Islām is built which must be performed at least once in life time.¹⁴¹*Az-Zuhayli*’s definition seems more definite and clearer. He defines *Hajj* as the determination to be present at *Ka‘bah*, for specific acts of worship.¹⁴² In other words, *Hajj* is visitation to specific place of religious importance at a particular period of year.¹⁴³ *Az-Zuhayli* goes further to blend his definition with that of Al-Juzayri by explaining what he intends with each of the points in his definition. He writes:

والمكان المخصوص: الكعبة وعرفة. والزمن المخصوص: هو
أشهر الحج : وهي شوال وذو القعدة وذو الحجة، والعشر الأوائل من
ذي الحجة

The specific places are *Ka‘bah* and *‘Arafat*, specific time refers to the months where in *Hajj* operations are performed. These are *Shawwal* (10th), *Dhul-Qa‘dah* (11th) and the first Ten (10) days in the month of *Dhul-Hijjah* (12th) of lunar month of Islāmic calendar.¹⁴⁴

With this, *Az-Zuhayli* has shed further light on what Al-jaziri intends in his definition. Therefore, *Hajj* operation commences immediately after Ramadan but the core activities are carried out in the last ten days of the last month of Islāmic Calendar (*Dhul-Hijjah*).

In his definition of *Hajj*, Ash-Shawkāni writes:

...الإتيان بمناسك الحج التي شرعها الله

Offering the rites of *Hajj* which Allāh legislates.¹⁴⁵

The above definition of Ash-Shawkāni is better understood from another of his work where he properly put down what he intends here. In *Nayl 'l-Awtar*, he describes *Hajj* as originating from intent or desire which manifests with specific acts.¹⁴⁶ He goes ahead to cite a tradition of the prophet which establishes the compulsory nature of *Hajj* operation on every Muslim at least once in a life time.

He writes:

عن أبي هريرة قال " خطبنا رسول الله صلى الله عليه وآله وسلم فقال يا أيها الناس قد فرض الله عليكم الحج فحجوا فقال رجل أكل عام يا رسول الله فسكت حتى قالها ثلاثا فقال النبي صلى الله عليه وآله وسلم لو قلت نعم لوجبت ولما استطعتم "

On the authority of Abi Hurayrah who reports that Allāh's messenger addressed us (one day). He said: O mankind! Allāh has made pilgrimage an obligation on you all. So, perform it (as-soon as you can). A man Asked, is it to be performed annually Oh Messenger of Allāh! The prophet kept mute till the question was repeated three times. He (the prophet) then replied, stating that. If I should say yes, it will become an annual obligation. And you will not have the capacity. (Ahmad and Muslim)¹⁴⁷

Elsewhere, he explains further that:

الحج مرة فمن زاد فهو تطوع

Hajj performance is once in life time. Whoever carries it out more than one, it is a voluntary act.¹⁴⁸

The above tradition quoted by Ash-Shawkāni as reported by different narrators and compilers of *Hadith* had established the obligation of *Hajj* for whoever has the capacity and at least once in a life time. In *Umdat Sālik*, it is submitted that *Hajj* operation is only compulsory for a Muslim who is mature, intelligent, a free person, not a slave and he who has the capacity both financially and otherwise to withstand its involvements.¹⁴⁹ Ash-Shawkāni discusses each of the essential elements of *Hajj* briefly in his *Tafsir*. He starts his discourse with *Arafat*, which according to *Shari'ah* every pilgrim must stand on the plain of *Arafat* for their *Hajj* to be perfect and complete. He writes further on the significance of *Arafat*:

إن آدم التقى هو وحواء فيها فتعارفا وقيل غير ذلك قال ابن عطية :
والظاهر أنه اسم مرتجل كسائر أسماء البقاع واستدل بالآية على
وجوب الوقوف بعرفة لأن الإفاضة لا تكون إلا بعده

It is a place where Adam and Hawa' met to recorgnise each other (after a long time of separation). Some other scholars have submitted variant opinions. According to Ibn ^cAtiyyah, it is a derivation name just like the name of other places of importance in *Hajj* operation. The verse therefore points to the compulsion of standing on the plain of *Arafat* because it is followed by terminal circumambulation.¹⁵⁰

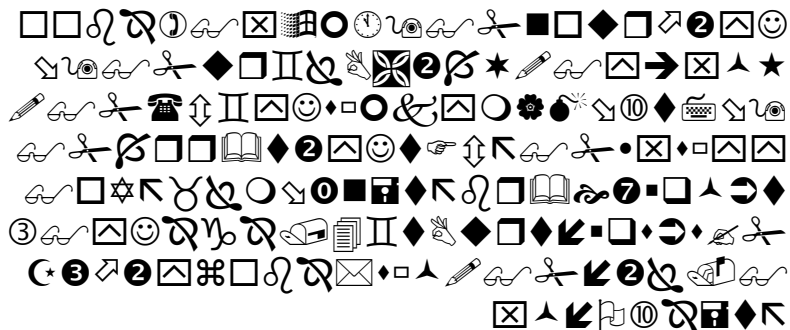
This is in line with the Hadith of the prophet which state that:

حكم الوقوف بعرفة: أجمع العلماء على أنه الركن الأصلي
من أركان الحج، لقوله صلى الله عليه وسلم: «الحج عرفة»
(2) أي الحج: الوقوف بعرفة، وأجمعت الأمة على كون
الوقوف ركناً في الحج، لا يتم إلا به. فمن فاتته فعليه حج من
عام قابل، والهدي في قول أكثرهم.¹⁵¹

The verdict on the stand on *Arafah*: The scholars unanimously agree that it is a cardinal pillar of pilgrimage. This is based a prophetic tradition: Hajj is ^c*Arafah*, that is stand on ^c*Arafah*. All Muslim community agree unanimously that that it is an important pillar of Pilgrimage which cannot be complete without it. Whoever misses it should observe it in the following year. Sacrificial animal is also compulsory, according to the majority opinion.¹⁵¹

It is therefore an essential aspect of *Hajj* operation without which one has forfeited the reward of the important religious rite.

Another essential aspect of *Hajj* operation discussed by Ash-Shawkāni in his work is *Sa'iy* (hastening between the *Şafāh* and *Marwa*). Allāh says:



Behold! Safa and Marwa are among the Symbols of Allāh. so if those who visit the House In the Season or at other times, should compass them round, it is no sin In them. and if any one obeyeth His own impulse to good,- be sure that Allāh is He who recogniseth and knoweth. (Q.2:158)

Ash-Shawkāni explains by tracing the etymology of both spots (*Ṣafah* and *Marwa*), before giving the explanations on how to go about their operation. He writes:

الحجر الأملس وهو هنا علم لجبل من جبال مكة معروف وكذلك
(المروة) علم لجبل بمكة معروف

(*Ṣafah* literally originates from) the sleek rock. But in this context it is the proper name of a popular mountain in *Makkah*. So also *Marwah* is named after a popular mountain name in *Makkah*.¹⁵²

Having presented the etymology of the two places, Ash-Shawkāni writes further that:

من أعلام مناسكه... مواضع العبادة التي أشعرها الله إعلاما للناس
من الموقف والسعي والمنحر ومنه

(*Ṣafah*) is one of the signs of Hajj rites.. In other word it is a place of religious rites. Which Allāh has symbolized for men. Others, are standing (on the plain of *Arafat*), hastening (between *Ṣafah* and *Marwah*), and to offer sacrificial animal.¹⁵³

They are therefore an essential aspects of *Hajj* that must not be overlooked by pilgrims. Ash-Shawkāni explain further by giving the narration (Hadith) from the tradition of the Prophet where Allāh's Apostle was seen hastening between the *Ṣafah* and *Marwah*. He then said:

(إن الصفا والمروة من شعائر الله) وأخرج الطبراني عن
ابن عباس قال : سئل رسول الله صلى الله عليه و سلم فقال
: (إن الله كتب عليكم السعي فاسعوا) وأخرج أحمد في سنده
والشافعي وابن سعد وابن المنذر وابن قانع والبيهقي عن
حبيبة بنت أبي تجرأة قالت : (رأيت رسول الله صلى الله
عليه و سلم يطوف بين الصفا والمروة والناس بين يديه وهو
وراءهم يسعي حتى أرى ركبتيه من شدة السعي يدور به
إزاره وهو يقول : اسعوا فإن الله عز و جل كتب عليكم
السعي)

"Behold! Safa and Marwa are among the Symbols of Allāh." It was reported from At-Tibrani and from Ibn Abbas said: The prophet of Allah was asked and the prophet responded that: "Allāh has indeed, prescribed *Sa^cy* for you The jog (between *Safah* and *Marwah*)"¹⁵⁴ According to Tabarani on the authority of Ibn 'Abbas saying: the messenger of Allāh was asked, and he responded: Indeed, Allāh has sanctioned *Sa^cy* on you, then you should observe. Also, according to Ahmad in his collection of Hadith, Shafi'i, Ibn Sa'd, Ibn al-Mundhir, Ibn Qani', and al-Bayhaqi on the Habeebah bint Abi Tajara'ah who said: "I saw the messenger observing *Sa^cy* between Safa and Marwah amidst people, while he was behind them observing *Sa^cy* until I saw his knees as a result of painstaking *Sa^cy*. He was trying to cover them with his wrapper. He said: observe *Sa^cy* for Allāh, the Almighty has sanctioned it for you"

Tawwafis anotheran integral aspect of *Hajj* which is enjoined on a pilgrim. *Tawwāf* (Circumambulation of *Ka^cbah*). The pilgrims are expected to carry out thistimes without number. Imam Shawkani in his *Tafsir* does not emphasise on it too much. He mentions it when he was explaining chapter 22 (*Surat 'l-Hajj*) verse 29 of the glorious Qur'ān where Allāh says:

وليطوفوا بالبيت العتيق

...and circumambulate the Ancient House.

Ash-Shawkāni explains the above verse while giving a list of what constitutes *Hajj* rites as reported on the authority of Ibn Abbas. He writes:

حلق الرأس... وونتف الإبط وحلق العانة والوقوف بعرفة والسعي بين
الصفا والمروة ورمي الجمار وقص الأظفار وقص الشارب والذبح
والطواف

(The *Hajj* rites that pilgrims must carried out include:) shaving of the heads, the public and private hairs, standing on the plain of Arafat, hastening between *Safah* and *Marwah*, throwing of pepples, clipping of nails and mustaches, slaughtering of animal and circumambulation of *Ka^cbah*¹⁵⁵

These are important rites that every pilgrim must not downplay without cogent reasons. Elsewhere, he briefly refers to *Tawwaf* in the above verse as *ifadah*, (concluding *Tawwaf*) which takes place after the *Arafat* day and marking the signing out from the *Hajj* operation.¹⁵⁶

Ihrām, the wearing of white garment is another aspect that Ash-Shawkāni discusses in his *Tafsir*. Every pilgrim wears this garment as soon as the Hajj operation begins and cannot off it until the completion of the entire exercise. Ash-Shawkāni writes on the time to put on the *Ihrām*, and its importance in pilgrimage. He cited the *Hadith* of the prophet that white garment is allowed for anyone unless in the month of Hajj. He discusses the importance of *Ihrām* while explaining this verse, Allāh says:



For Hajj are the months well-known. If anyone undertakes that duty therein (Q.2:197)

Ash-Shawkāni explains this verse vis-à-vis preparation for Hajj. Since *Ihrām* marks the commencement of Hajj operation, he submits that it must not be put on unless the months of Hajj has approached. He writes:

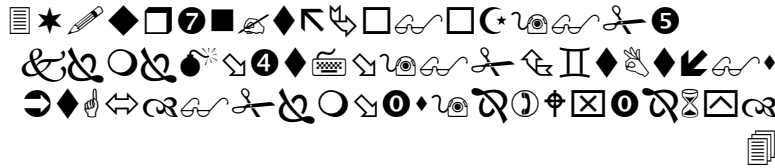
لا يجوز الإحرام بالحج قبل أشهر الحج

It is not permissible to wear *Ihrām* (for Hajj operation) before the months of *Hajj*.¹⁵⁷

The situation in the above could be likened to one who starts *salat* before its proper time.¹⁵⁸ Therefore, the *Ihrām* that is meant for *Hajj* cannot be put on prior to the period, especially where one intends *Ifrad*. In other words, one intends *Hajj* operation alone.¹⁵⁹ It is however allowed where one can bear it to put on *ihrām* for the whole period of the exercise, which is the three months that are slated for *Hajj* operation.

In the same token, Ash-Shawkāni recognises the instance of *Tamattu*¹⁶⁰ and *Qiran*¹⁶¹ where both *Hajj* and *Umrah* are joined together. Therefore, *Ihrām* which is specifically meant for *Hajj* operation is only put on during the month of Hajj, starting from *Shawwal*, the tenth (10th) month of the lunar year till the first ten (10) days of the *Dhul-Hijjah*. It can therefore only be put off, three days after *id* days which marks the completion of *Hajj* operation.¹⁶²

4.5.1 Conditions for Hajj



Pilgrimage thereto is a duty men owe to Allāh,- those who can afford the journey (Q.3:97)

Al-Juzryi, in his work is unequivocal while submitting that one of the essential conditions of *Hajj* is capability which entails both physical (health) and financial fulfillments. It is therefore, not duty bounded on an incapacitated person.¹⁶³ He remarks that scholars have expressed divergent opinions on what constitutes the capability of an individual before he/she can embark on *Hajj* operation. He writes that in the view of Abu Hanifah and Hanbali, it entails the ability to cater for domestic provisions for himself, the family and all primary obligations on him. It also includes the traveling fares and safety of route to Makkah, be it by trekking or riding.¹⁶⁴ The scholars of Malikischool submit that once it is possible for one to get to Makkah without an unbearable stress, regardless of whether or not one treks or rides, one has fulfilled the condition for *Hajj* and should embark on it as soon as one can. He does not mince words in stating that capability does not entail provision for feeding either for oneself or those that one is obliged to cater for.¹⁶⁵

The school of Shafi'i submits that capability is of two kinds. It is either by oneself or by someone else, who wishes to take charge of its involvements. Then, one has fulfilled the conditions for *Hajj*.¹⁶⁶ Imam Shawkani in his attempt to summarise the above views of scholars.

He writes:

اختلف أهل العلم في الاستطاعة ماذا هي ؟ فقيل : الزاد والراحلة
وإليه ذهب جماعة من الصحابة... قال مالك : إن الرجل إذا وثق
بقوته لزمه الحج وإن لم يكن له زاد وراحلة إذا كان يقدر على
التكسب وبه... قال الضحاك : إن كان شابا قويا صحيحا وليس له
مال فعليه أن يؤاجر نفسه حتى يقضي حجه

Scholars differ on what constitutes capability. To some, it covers provision for feeding and safety of the route to Makkah. He says this is the opinion of most companions of the prophet,... Once a man is sure of his capacity physically, Hajj is obligatory on him, even if he lacks the provision and the means of getting to Makkah provided he can work on his way to keep himself up...if he is a capable youth without

money, he should be working till he can fulfill the obligation of Hajj.¹⁶⁷

Ash-Shawkāni therefore has displayed a high sense of scholarship by demonstrating the view he aligns himself with, which is the first view. He points out that scholars generally have agreed unanimously that safe route to Makkah is paramount and that where the safety is not guaranteed, then one is incapacitated.¹⁶⁸ Equally, he summarises his submissions by stating that provision for oneself, and the discharge of responsibilities and obligations is very important for an intended pilgrimage.¹⁶⁹ He did not stop till he mentions sound health and easy means either by trekking or riding depending on the time and distance, are key to the capability of *Hajj* and should also not be jettisoned. Whoever lacks any of these is not qualified and has not fulfilled the conditions for *Hajj*.¹⁷⁰ He finally warns that one should not preventively ignore *Hajj* operations. That whoever does that is a *kafir* (Infidel). It is one of the pillars of Islām, so, if one qualifies, one should carry it out to complete the five pillars that Islām is built upon.¹⁷¹

4.5.3 Month of *Hajj*

Ash-Shawkāni writes on the month of *Hajj*:

اختلف في الأشهر المعلومات فقال ابن مسعود : هي شوال وذو القعدة وذو الحجة

Scholars have expressed different views on the months of *Hajj*. According Ibn Mas'ud and a host of others, they are *Shawwal*, *Dhul-Qa'dah* and *Dhul-Hijah*.¹⁷²

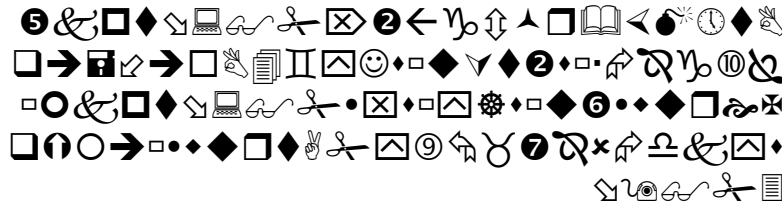
A cursory examination of these months reveals that they are the last three months of the lunar year which commences immediately after the completion of Ramadan. The implication of this therefore, is that *Hajj* operation starts after Ramadan fast. The scholars with their unique and golden pen did not leave this undiscussed, rather they point out what is involved. In other words, not all the days of *Dhul-Hajj* are due for *Hajj* operation but the first ten (10). The scholars explain this further along with two phrases *Ayamu-Ma'lūmat* and *Ayamu-Ma'dūdat* (the known days and the counted days). They say:

الأيام المعلومات أيام العشر والأيام المعدودات أيام التشريق... أيام التشريق يذكر فيهن بتسييح وتهليل وتكبير وتحميد قال ابن عباس قال : الأيام المعدودات أربعة أيام : يوم النحر والثلاثة أيام بعده

Ayam Ma' lūmatare the first ten days of *Dhul-Hijjah*, while *Ayam Ma' dūdat* are the days of *Tashrīq*. Where in, (*Tasbih*, *Tahlil*, *Tahmid* and *Takbirof* Allāh are chanted. Ibn Abass equally submitted that the counted days are the day of sacrifice of Animal and three days thereafter.¹⁷³

4.5.3 Forbidden acts for the Pilgrims

Allāh in the Glorious Qur'ān state that:



For *Hajj* are the months well-known. If anyone undertakes that duty therein, Let there be no obscenity, nor wickedness, nor wrangling in the *Hajj*.(Q:2:197)

Ash-Shawkani explains the above verse in the following manner. He writes:

الرفث والفسوق : الخروج عند حدود الشرع وقيل : هو الذبح
للأصنام وقيل : التنازع بالألقاب وقيل : السباب والظاهر.... والجدال
مشتق من الجدل وهو القتل والمراد به هنا الممارسة وقيل : السباب
وقيل : الفخر بالأبواء والظاهر

Ar-Rafath and *Al-Fusūq* means transgressing the bond of *Shari'ah*.It is explained as offering of sacrifice to idol's, calling with bad name and uttering of abusive languages. *Jidal* (arguing) is coined from *Jadal* (to argue). It means fight and proudness...¹⁷⁴

Ash-Shawkāni explains that each of these interpretations is condemned in several places in the glorious Qur'ān. They must all be shunned by pilgrims for their act of worship to be acceptable to Allāh. In the same vein, he explains chapter 5 verse 96 of the glorious Qur'ān where Allāh legislates prohibition of hunting while one is in *Ihram*. Since *Ihram* is connected to *Hajj* operation, hunting therefore forms one of the forbidden acts for the pilgrims. He writes:

نهاهم عن قتل الصيد في حال الإحرام وهذا النهي شامل لكل أحد من
ذكور المسلمين وإناثهم

He prohibited for them killing of ganous while is in *Ihram*.
This prohibition covers both male and Female.¹⁷⁵

Therefore, all these acts must be shunned by the pilgrims as directed by the *Shari'ah*.

NOTES AND REFERENCES

1. Al-Qayrawani, *Matn 'r-Risālah*, (Beruit:Al-Maktabah As-Shamilah ND), 12
2. See *Ṣaḥīḥ Muslim*, (Beruit: Al-Maktabah As-Shamilah, vol.1), 140, No.556
3. S.Y.Mahmud, *Al-Fiqh 'l-Muyassir*, (Cairo: Al-Maktabah 't-Tawfiqiyah, nd),11
4. S. Al-Fawsan, *Al-Mulikhīṣ 'l-Fiqhī*, (Lebanon: Al-Maktabah As-Shamilah), 15
5. M.A.M.Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
6. *Fatawā Al-Lajnat 'd-Dā'imah*, (Al-Maktabah As-Shamilah, Vol.4), 106
7. M.A.M.Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.1, 345
8. Az-Zuhayli, *Al-Fiqhāī 'l-Islāmi wa Adillatuhu*, (Al-Maktabah As-Shamilah, Vol.1), 452
9. Az-Zuhayli, *Al-Fiqh 'l-Islāmi wa Adillatuhu*,454
10. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
11. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
12. A.J.Al-Jazā'irī, *Minhaj 'l-Muslim*, (Beirut: Daru 'l-Fikr,2003),152-153
13. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 437
14. <http://www.en.wikipedia.org/wiki/Menstruation> accessed on 25/03/2015
15. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), vol.1, 344
16. S.Qutb, *Fizlal 'l-Qur'ān*, (Al-Maktabah As-Shamilah, vol.2), 324
17. M.A.Y.Az-Zarqani, *Sharh 'z-Zarqani*, (Al-Maktabah As-Shamilah, vol.1), 64
18. See *Sunnah Abi Daud*, (Al-Maktabah As-Shamilah, vol.1), 17, No.48
19. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
20. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2),.25
21. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
22. *Sunnah At-Tirmidhi*, (Al-Maktabah As-Shamilah, vol.1,)88, No.60
23. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), .25
24. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25

25. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2),.25
26. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2),.25
27. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
28. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
29. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
30. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
31. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
32. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
33. M.A.M. Ash-Shawkani,(*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 25
34. A.J.Al-Jazā'irī, *Minhaj 'l-Muslim*, (Beirut: Daru 'l-Fikr,2003),155
35. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah, Vol.2), 705
36. A.J.Al-Jazā'irī, 15*Minhaj 'l-Muslim*, (Beirut: Daru 'l-Fikr,2003), 5
37. M.A.M. Ash-Shawkani,(*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.1, 705
38. M.A.M. Ash-Shawkani,(*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.2, 25
39. M.A.M. Ash-Shawkani,(*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.2, 25
40. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.2, p.25
41. S. Al-Fawsan,vol.1, 72
42. M.A.M. Ash-Shawkani,(*Fath al Qadir*, Al-Maktabah As-Shamilah), vol. 25
43. See Sunnah Al-Bayhaqi Al-Kubrah, Al-Maktabah As-Shamilah), vol.1, 230, No.1029
44. M.A.M. Ash-Shawkani,(*Fath al Qadir*, Al-Maktabah As-Shamilah,) vol.1, 705
45. M.A.M. Ash-Shawkani,(*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.2, 25
46. M.A.M. Ash-Shawkani,(*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.2, 25
47. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), 25
48. Az-Zuhayli, vol.1,(*Al-Fiqh 'l-Islāmi wa Adillatuhu*),572
49. See *Ṣaḥīḥ Al-Bukhari*, (Al-Maktabah As-Shamilah, vol.4,1641, No.4243)
50. Az-Zuhayli, (*Al-Fiqh 'l-Islāmi wa Adillatuhu*) vol 2,37
51. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.1,.54
52. Az-Zuhayli,(*Al-Fiqh 'l-Islāmi wa Adillatuhu*),577
53. M.A.M. Ash-Shawkani,(*Fath al Qadir*, Al-Maktabah As-Shamilah), 769
54. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), 25
55. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah),.25
56. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.2, 25

57. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.3, 563
58. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.3, 358
59. M.A.M. Ash-Shawkani, vol.1, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol. 433
60. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol. 769
61. *Tafsir Ibn Abbas*, Al-Maktabah As-Shamilah, vol.2, 112
62. M.A.M.A.M.Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.1,
63. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), 79
64. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), 709
65. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.2, 546
66. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.2, 585
67. M.A.M. Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.2, 507
68. M.A.M.Ash-Shawkani (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.2, 507
69. M.A.M.Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.2, p.507
70. M.A.M.Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah), vol.5, p.318
71. M.A.M.Ash-Shawkani, (*Fath al Qadir*, Al-Maktabah As-Shamilah),
72. F.Ar-Razi, *Mafatihul 'l-Ghayb*, Al-Maktabah As-Shamilah, vol.1, 4466
73. Ibn Kathir, *Tafsir Ibn Kathir*, Al-Maktabah As-Shamilah, vol.8 119
74. Ibn Kathir, *Tafsir Ibn Kathir*, Al-Maktabah As-Shamilah, vol.8, 119
75. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 318
76. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, .318
77. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 318
78. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 319
79. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 318
80. Ibid, And F.Ar-Razi, *Mafatihul 'l-Ghayb*, Al-Maktabah As-Shamilah, vol.1.4466
81. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 121
82. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, .318
83. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 318
84. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 580-581
85. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah 20
86. M.A.M.Ash-Shawkani, vol.5, 54 *Fath al Qadir*, Al-Maktabah As-Shamilah 21
87. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 541
88. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah *ih 'l-Qadir*, 541

89. M.A.M.Ash-Shawkani,*Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 541
90. Y.Al-Qardawi, *Fiqh 'z-Zakat*, (Jeddah: Scientific Publishing House, nd,p.5)
91. Y.Al-Qardawi, *Fiqh 'z-Zakat*, (Jeddah: Scientific Publishing House, nd,p.5) .6
92. M.A.M.Ash-Shawkani,*Fath al Qadir*, Al-Maktabah As-Shamilah vol.2, 541
93. Y.Al-Qardawi, *Fiqh 'z-Zakat*, (Jeddah: Scientific Publishing House, nd,p.5) .6 -8
94. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 720
95. M.A.M.Ash-Shawkāni,*Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 720
96. M.A. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah Vol. 5 720
97. M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 720
98. Y.Al-Qardawi,36
99. See section 38(1) of the constitution of the Federal Republic of Nigeria, 1999 as (amended)
100. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.2, 541
101. M.A.M.Ash-Shawkāni,*Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 720
102. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 721
103. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 721
104. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 723
105. M.A.M.Ash-Shawkāni,*Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 724
106. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 725
107. M.A.M.Ash-Shawkāni,*Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 726
108. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 727
109. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, .728
110. M.A.M.Ash-Shawkāni,*Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 277
111. Imam Alūsī, *Tafsir Alūsī*, Al-Maktabah As-Shamilah, vol.11 .480
112. M.M.As-Sha^crawi, *Tafsir 's-Sha^crawi*,Al-Maktabah As-Shamilah, vol.1, 464
113. F.Ar-Razi,vol.1,p.76o&M.A.M.Ash-Shawkani, vol.1, 277
114. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 277
115. Ibn Kathir, vol.3, 46*Fath al Qadir*, Al-Maktabah As-Shamilah 8
116. S.Qutb,vol.1,p.140
117. M.A.M.Ash-Shawkani,*Fath al Qadir*, Al-Maktabah As-Shamilah vol.1,280
118. M.A.M.Ash-Shawkāni,*Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 281
119. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 282

120. See *Ṣaḥīḥ Muslim*, vol.2, .177, No.1817
121. See *Ṣaḥīḥ Al-Bukhari*,vol.3, 1194, No.3103
122. M.A.M.Ash-Shawkani, vol.1, 280
123. A.J.Al-Jazā'irī, .236-237
124. Az-Zuhayli, vol.3, 71-79
125. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 277
126. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, .278
127. M.A.M.Ash-Shawkāni, vol.5, 2*Fath al Qadir*, Al-Maktabah As-Shamilah 278
128. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 279
129. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol. 5 280
130. A.A *Majmū'at 'l-Fawa'id 'l-Bahiyah*, Al-Maktabah As- Shamilah, 102
131. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol..277
132. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 278
133. See *Ṣaḥīḥ Al-Bukhari*,vol.2,.674, No.1810
134. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1,.291
135. M.A.M.Ash-Shawkāni,*Fath al Qadir*, Al-Maktabah As-Shamilah vol.5,293
136. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, .376
137. M.A.M.Ash-Shawkāni, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.5, 291
138. A.Al-Jazīri,*Al-Fiqh 'Alā 'l-Madhāhib 'l-Arab'ah*, Al-Maktabah AShamilah,vol.1, 993
139. Az-Zuhayli, vol.3, 398
140. Az-Zuhayli, vol.3,.399
141. Az-Zuhayli, vol.3, 340
142. Az-Zuhayli, vol.3, 341
143. Az-Zuhayli, vol.3, 342
144. M.A.M.Ash-Shawkani, vol.1, 248
145. M.A.M.Ash-Shawkani, *Nayl 'l-Awtar*, Al-Maktabah As-Shamilah, vol.5, 2
146. See *Ṣaḥīḥ Muslim*, vol.4, 102, No.3321
147. See *Sunah Al-Bayhaqi Al-Kubra*, vol.4, .326 No.8400
148. K. Nuha Min (Trans), *Reliance of the Traveler ('Umdat-s-Salik)*, Maryland Amanah Publication, 1994, 301
149. M.A.M. Ashawkani,vol.p.248
150. See *Sunah Al-Bayhaqi Al-Kubra*, vol.4, 326 No.8400

151. M.A.M.Ash-Shawkāni, vol.1, 248
152. M.A.M.Ash-Shawkāni, vol.1, 248
153. M.A.M.Ash-Shawkāni, vol.1, 248
154. M.A.M.Ash-Shawkāni, vol.3, 647
155. M.A.M.Ash-Shawkani, vol.1, 308
156. M.A.M.Ash-Shawkani, vol.1, 309
157. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 309
158. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 410
159. Ibn Qudamah, *Al-Mughni*, Al-Maktabah As-Shamilah, vol.3, p.238
160. Ibn Qudamah, *Al-Mughni*, Al-Maktabah As-Shamilah, vol.3, p.239
161. M.A.M.Ash-Shawkani, vol.3, .642
162. A.Al-Jazīri, vol.1, 103
163. A.Al-Jazīri, vol.1, 104
164. A.Al-Jazīri, vol.1, 105
165. A.Al-Jazīri, vol.1, 1006
166. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 547
167. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 547
168. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 547
169. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 548
170. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 550
171. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 306
172. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 313
173. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.1, 306
174. M.A.M.Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.2, 113
175. M.A.M. Ash-Shawkani, *Fath al Qadir*, Al-Maktabah As-Shamilah vol.2, 113

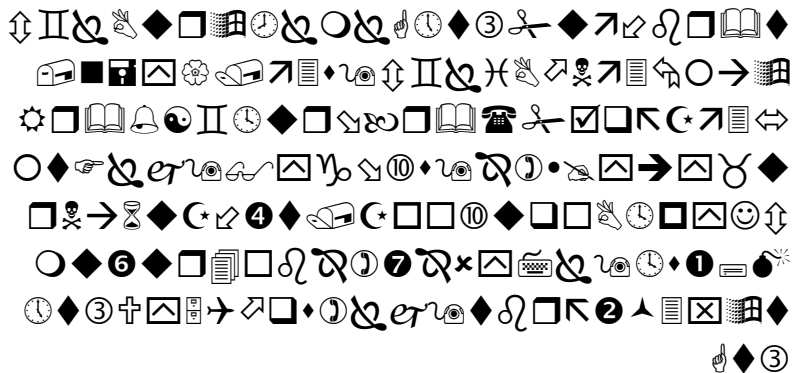
CHAPTER FIVE:

VERSES ON SOCIAL ISSUES IN *FATH-AL-QADIR*

5.1 Marital issues in *Fath-al-Qadīr*

5.1.1 Marriage Institutions in *Fath-al-Qadīr*

Marriage in Islām is an institution that aims at the common good of the couple. It is legislated to achieve the greatest possible good for all the concerned with love and harmony which should prevail at home.¹ Marriage is a civil contract made by mutual consent between man and woman to establish a family. It requires full agreement of both parties involved without any compulsion being brought to bear on either parties. A marriage which takes place forcibly is considered null and void. When an agreement is reached between the two parties the man pays to the woman a bride money (*Sadaq*) which is a token as stipulated by Shari‘ah, not a purchase price or a form of enslavement. This is in line with the following verse from the Qur’ān.² which reads thus: The Qur’ān(Q 4:4)



And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell In tranquillity with them, and He has put love and Mercy between your (hearts): Verily In that are Signs for those who reflect. (Q30:21)

The Prophet Muhammad Said:

تتاكحوا تكاثروا فإني أباهي بكم الامم يوم القيامة³

Marry and procreate, for I shall be proud of you among all the nations on the Day of Judgment.

From what has been said thus far, it is understood that marriage in Islām is a contract that is to be undertaken willingly and by mutual consent of the two parties. It is also clear that marriage continues to exist as long as there is peaceful co-existence inspired by mutual understanding and harmony between the couple; otherwise, the husband and wife would endanger their marriage if they keep hatred and enmity between one and other. In this circumstance, the law allows the revocation of the contract. It should also be understood that the validity of the marriage contract legalizes sexual intercourse and procreation between the couple. Thus, sexual intercourse outside the legal wedlock is a punishable crime under the provision of Islāmic law.⁴

Islām exhorts those who are not able to marry to engage themselves in the devotional acts of nearness to Allāh i.e. fasting. Such people can also resort to study, practice sports or take part in religious or social activities.⁵

Abdullah Ibn Mas'ud reported the prophet's advice to the youth:

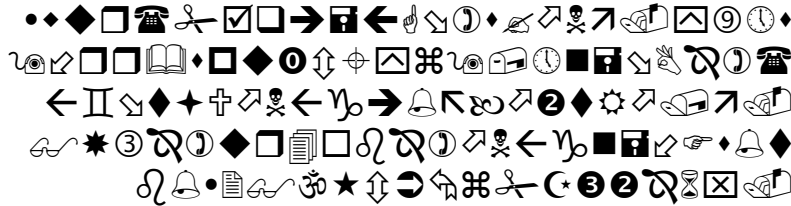
عن علي وابن مسعود رضي الله عنهما أن النبي {صلى الله عليه وسلم} قال يا معشر الشباب من استطاع منكم الباءة فليتزوج فإنه أغض للبصر وأحصن للفرج ومن لم يستطع فعليه بالصوم فإنه له وجاء رواه بخاري ومسلم⁶

Young men, those of you who can support a wife should marry, for it keeps you from looking at strange women and preserves you from immorality. But those who cannot, should devote themselves to fasting, for it is a means of suppressing sexual desire” Transmitted by Bukhari and Muslim.

In this segment we shall take specific look at the Islāmic reforms on matrimonial issues in the following order:

- a. Infanticides

Islām is concerned not only with the welfare of the woman when she became what she is today instead the noble religion protects her interest from childhood to her day of death. In pre-Islāmic Arabia, there was the practice of female infanticide because female children were considered extra burden. Not only that, they were considered as source of poverty. Allāh therefore sent His messenger to curb the ugly situation as He declares:⁶



Kill not your Children for fear of want: we shall provide sustenance for them As well As for you. Verily the killing of them is a great sin. (Q:17: 31)

Furthermore, the Prophet of Allāh criticised the attitude of such parents who reject their female children. He says:

Whosoever has a daughter and he does not bury her alive, does not insult her, and does not favour his son over her, Allāh will put him in paradise.⁷

Imam Shawkāni comments on the attitudes of the Arabs before the advent of Islām:

نهاهم الله سبحانه عن أن يقتلوا أولادهم خشية الفقر وقد كانوا يفعلون ذلك ثم بين لهم أن خوفهم من الفقر حتى يبلغوا بسبب ذلك إلى قتل الأولاد لا وجه له فإن الله سبحانه هو الرازق لعباده يرزق الأبناء كما يرزق الآباء فقال : { نحن نرزقهم وإياكم } ولستم لهم برازقين حتى تصنعوا بهم هذا الصنع وقد مر مثل هذه الآية في الأنعام ثم علل سبحانه النهي عن قتل الأولاد لذلك بقوله : { إن قتلهم كان خطأ كبيراً⁸ }

Allāh forbids them from killing their wards for fear of poverty. They used to do that before. Then He (Allāh) explains to them that their fear of poverty which make them mortalise their off-springing has no basis (in Islām) Indeed, Allāh is the provider for his servant, He provides for the children, likewise their fathers. He says: "We provide for them and you (the parents) are not the providers for them (wards), that which make you do what you are doing to them (killing of your children). This kind of verse has been mentioned in

Suratul-An'ām, then Allāh vividly forbids killing of the children as He said (verily, killing of them (wards) is a great sin).

The prophet further educates the Muslims as regards the treatment that should be given to female children. Infact, whoever trains and supports two daughters till they matured, is guaranteed paradise on the Day of Judgment. The prophet says again

Whosoever supports two female children till they mature, he and I will come in the Day of Judgment at this (and he pointed with his two fingers).⁹

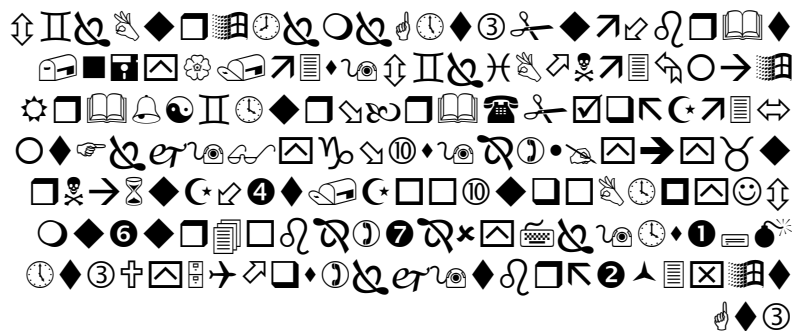
The analogy here is that the prophet was signifying to the paradise on the Day of Judgment. Thus, female child escaped the inhuman treatments she had been experiencing before the advent of Islām. Islām brought this great and blissful reform to the Nation.

b. Consent of the Bride

Islām condemns completely the idea of treating woman as an object of sale. This is reason why her consent should be sought before a marriage could be regarded valid.

The prophet says: (...and the virgin shall not be married until her consent is obtained¹⁰

The marriage contract should be entered into by mutual consent expressed by the two parties (the husband and the wife) in the presence of witnesses.¹¹ This consent could be expressed after they have satisfied themselves. This is because marriage is shared between the two halves of the society, and that its objectives, in addition to perpetuating human life, are emotional well-being and spiritual harmony. Its bases are love and mercy. In illustrating, this view the Qur'ān clearly states that:¹²



And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and Mercy between your (hearts): Verily In that are signs for those who reflect.(Q30:21) .

Imam Shawkāni comments on the above verse:

{ ومن آياته أن خلق لكم من أنفسكم أزواجا { أي ومن علاماته ودلالاته الدالة على البعث أن خلق لكم من أنفسكم أزواجا : أي من جنسكم في البشرية والإنسانية وقيل المراد حواء فإنه خلقها من ضلع آدم { لتسكنوا إليها { أي تألفوها وتميلوا إليها فإن الجنسين المختلفين لا يسكن أحدهما إلى الآخر ولا يميل قلبه إليه { وجعل بينكم مودة ورحمة { أي ودادا وتراحما بسبب عصمة النكاح يعطف به بعضكم على بعض من غير أن يكون بينكم قبل ذلك معرفة فضلا عن مودة ورحمة¹²

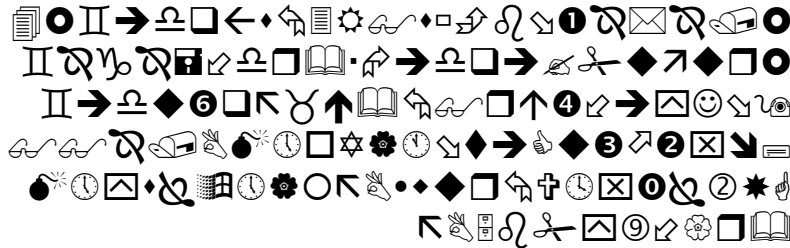
"Among His signs is that He created for you wives from yourself (ribs)." That is among His signs and manifestations (proofs) that point to the resurrection is that He created for you wives from yourselves. That is from your genes of flesh and humanity. Some say (the verse) refers to Hawāh because He (Allāh) created her from Adam's rib. "So you may resort to her". That is to relate with and tend towards her, because two opposite sexes cannot accommodate each other and his mind will not turn to him. "And He established between you love and blessing" i.e affection and mutual mercy on account of sanctity of marriage, by which one would be kind to another, without having known each other before, talkless of sharing love and mutual mercy among themselves (the couple)

Concerning the meaning of love in marriage, Imam Shawkāni made reference to Mujahid, Hasan and Sadiyyu thus:

وقال مجاهد : المودة الجماع والرحمة الولد وبه قال الحسن وقال السدي : المودة المحبة والرحمة الشفقة وقيل المودة حب الرجل امرأته والرحمة رحمته إياها من أن يصيبها بسوء¹³

Al-Mujahid maintained that *al-Mawaddah* (love) means sexual intercourse while *ar-Rahmah* denotes child. Al-Hassan and as-Sadiyy also submitted that *al-Mawaddah* is love, while *ar-Rahmah* is kindness. It was even said that *Mawaddah* is for man to love his wife, and *Rahmah* is to be kind to her by not causing harm to her.

A woman cannot therefore, be married to any man without her consent, particularly a *Rashidah* i.e. intelligent person, hence the role of the guardian comes into vogue. The guardian is the legal representative of the bride.¹⁴



Marry them with the leave of their guardians and give them their dowers, according to what is reasonable: they should be chaste, not lustful, nor taking paramours: (Q4:25)

Imam Shawkani gave a critical commentary on the seeking of permission before marrying a maiden or a single lady. He quoted the Qur'ān that:

{ فانكحوهن بإذن أهلهن } أي بإذن المالكين لهن لأن منافعهن لهن لا يجوز لغيرهم أن ينتفع بشيء منها إلا بإذن من هي له قوله { وآتوهن أجورهن بالمعروف } أي : أدوا إليهن مهورهن بما هو بالمعروف في الشرع وقد استدل بهذا من قال : إن الأمة أحق بمهرها من سيدها وإليه ذهب مالك وذهب الجمهور إلى أن المهر للسيد وإنما أضافها إليهن لأن التأدية إليهن تأدية إلى سيدهن لكونهن¹⁵

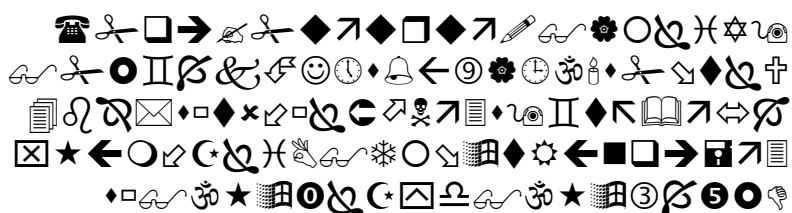
"Marry them with the leave of their guardians" i.e. with the permission of those who have authority over them because their usefulness for them (men) which is not permissible (for men) to enjoy anything from them (women) except with permission of her possessor (parents or relatives). Allāh says: (And give them (women) their dowries in a normal way). That is, give them their dowries with what is popular (acceptable) in the Islāmic law (shar'iah). This is referred to as it is said: verily, a female –servant must has her due dowry from her master. Imam Malik and majority

(of scholars) share the view that her (dowry) is for her master, but only allocated for them, but given it (dowry) to them is the same as given their masters.

However, opinions of the scholars differ as to the limit of the guardian's authority. Some hold the view that irrespective of the status of the bride, the guardian could exercise absolute authority on her in contracting her marriage to any man of his choice. On the other hand, some scholars hold a contrary view that the bride's consent should be sought before she is given out in marriage whether intelligent, imbecile or already married. Further discussion on this will be made. There is no difference of opinion as regards man who has attained the age of majority. He can contract marriage without the approval of guardians. From the above, it is understood that Islām accorded the woman freedom of choice by allowing her to have a say in her matrimonial matters.¹⁶

C. *Sadaq* (Marriage Gift)

In pre-Islāmic Arabia, women were seemingly considered object of sale. The prospective husband paid a huge amount of money to her parents before she became his wife. However, Islām redeemed her from such a treatment. Islām does not approve of such a treatment. The *Mahr* otherwise known as *Sadaq* it is regarded as a gift *Nihlat* from the bridegroom to the bride. The Glorious Qur'an is explicit on this as it declares:

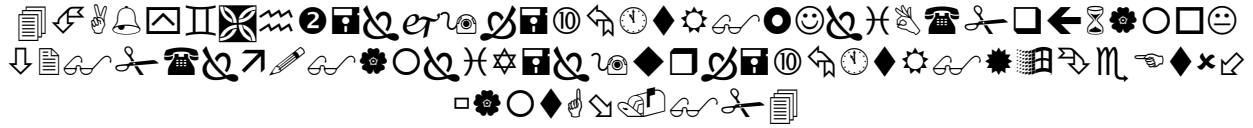


And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer.(Q4:4)

{وآتوهن أجورهن بالمعروف } أي : أدوا إليهن مهورهن بما هو بالمعروف في الشرع¹⁷

Give them their dowries that which are popularly (accepted) in *Shari'ah*

This verse suggests that women were given right of possession as related in another Qur'ānic verse thus:



...to men is allotted what they earn and to women that they earn...(Q4:47)

Ash-Shawkani also commented on the above verse on the women's right of possession, accommodation and provision of daily needs for your wives. The comments read thus:

(أَسْكُنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ) هذا كلام مبتدأ يتضمن بيان ما يجب للنساء من السكنى ومن للتبعيض : أي بعض مكان سكناكم وقيل زائدة (من وجدكم) أي من سعنتكم وطاقتكم والوجد القدرة قال الفراء : يقول على ما يجد فإن كان موسعا عليه وسع عليها في المسكن والنفقة وإن كان فقيرا فعلى قدر ذلك قال قتادة : إن لم تجد إلا ناحية بيتك فأسكنها فيه وقد اختلف أهل العلم في المطلقة ثلاثا هل لها سكنى ونفقة أم لا ؟ فذهب مالك والشافعي أن لها السكنى ولا نفقة لها وذهب أبو حنيفة وأصحابه أن لها السكنى والنفقة وذهب أحمد وإسحاق وأبو ثور أنه لا نفقة لها ولا سكنى وهذا هو الحق وقد قررته في شرحي للمنتقى بما لا يحتاج الناظر فيه إلى غيره (ولا تضاروهن لتضييقوا عليهن) نهى سبحانه عن مضارتهن بالتضييق عليهن في المسكن والنفقة¹⁸

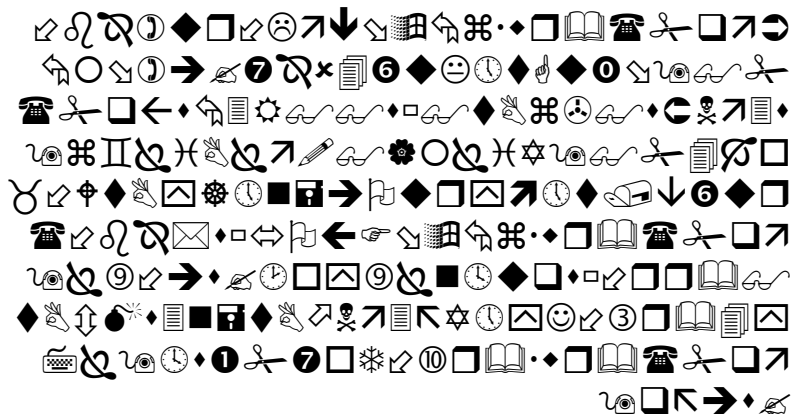
Lodge them (women) in the house where you dwell in. This statement is a predicate entailing an explanation of what is due for women regarding accommodation. ... That is from your provision and within your capacity. Al-Farrā says: he says on what they possesses, if he is blessed (with money), he should make use it to provide home for her and finance him (as well) but if is a poor, should use it (according to his in come) for her. Qatadah says that, if he (husband) not have more than an apartment in his house, he should provide for her.Scholars have different views about a woman divorced three times at the same time.It is belong to her support the residence and the finance or not?Imam Malik and Shafi'i hold the view that the residence is for her but not the financial status. Abu Hanifah and his companions posit both the residence and the financial responsibility are due for her. Ahmad,

Ishaq and Abu Thawar stress that both residence and financial support are a matter imposed on her This is right. I have emphasized this in my commentary on *al-muntaqis* such that there is no need for one to consult any other source. (you should not inconvenience them that would make thing difficult for them). Allāh forbids of hurting and making thing difficult in residential place and finance for them.

This serves as the basis for women’s acquisition of possession as against the pre-Islāmic Arabia where she is considered a possession herself. The reform in this regard elevates the status of women in the society.

D. Polygamy

In pre-Islāmic Arabia, men used to marry as many wives as they wanted. In fact, there was no limit to the number of wives a man could take at a time. With the advent of Islām, this act was checked to an extent. The measure introduced by Islām, was to control men’s lust for women.¹⁹ The Qur’ān is unambiguous in this respect whereit says:

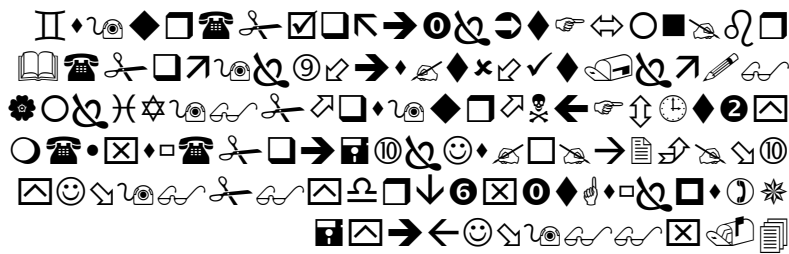


If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice. (Q3:3)

Polygamy is secondary as it entails the ability to be just and fair according to the Quranic verse quoted above. Maintenance should be provided adequately. The shortcut demands justice

to a reasonable extent among the wives in terms of *Nafaqah* and co-habitation. Views of scholars on this will be critically discussed.

However, it is expedient to note here that only those who are physically fit with sufficient means of livelihood or income possess the right to marry several wives, though within the limits of Allāh; maximum of four concurrently. People of the above qualities could marry more than one wife if they so desire. The exception too is only permission to extra ordinary care and circumstance and not an obligation of the shortcut law. To some women, however, polygamy is absurd as it is seen as a deprivation of some essential things such as devotional love and affection, and maintenance. More so, they believe that justice which is required in polygamy can never be achieved by men. They often refer to this following Qur’ānic verse:

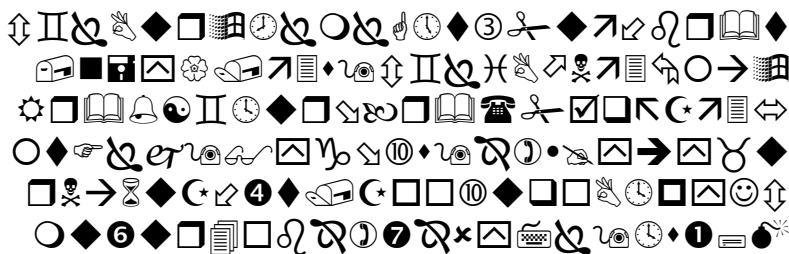


Ye are never able to be fair and just As between women, Even if it is your ardent desire: but turn not away (from a woman) altogether, so As to leave Her (as it were) hanging (in the air)...(Q4:129)

On the whole, Islām rendered the greatest service to the course of womanhood at a time when the society was steeped in ignorance and women labored under grave social disabilities. Ash-Shawkāni agrees on this as he says:

“Islām granted them (women) individuality and recognized their independent status in all phases including marriage.”²⁰

In view of this submission, the Holy Qur’an openly declares that:



marriage ceremony. Hence, the entire family members do everything possible to enlist their confidence in them from the very beginning, since the inception of Islām. Psychologically, when it is being performed, the fear of Allāh descends on them and it is reassuring that blessings of Allāh have descended upon the marriage contract. Thereafter, other merry-making will follow suit ranging from marriage reception i.e formal party to welcome relatives, friends and well-wishers to marriage feast to other traditional fanfares.

Other activities embarked upon by the Muslims to Islāmize marriage solemnization include the practice of night prayer which is offered to replace the customary system of oracle consultation and toward off evil things before, during and after the marriage ceremony. In some areas, as observed among Muslims the Qur'ān, *Madhu-r-Rasul* and other types of prayer are offered to ask Allāh bless the union. Similar prayers are also organized by the grooms family or friends for the same purpose. It is worthy of note at this juncture, that there is no specification in either the Qur'ān or the *Hadith* on the mode of celebrations of marriage. What Islām requires therefore is avoidance of extravagance and unIslāmic acts during the actual ceremony. There are *Ahadith* showing that marriage must be publicized, even with the beat of drums.²³

With the same objective in view, music is allowed at marriage gatherings. On such an occasion, girls sang with the beating of drum in the presence of the holy Prophet. The following *ahadith* on this subject is relevant. It says: “make public this marriage and perform it in the mosques and beat drums for them”. Another one goes thus:

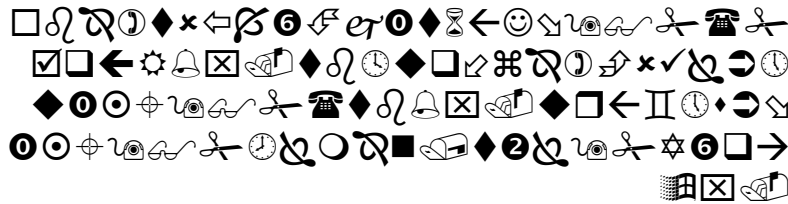
"The difference between the lawful and the unlawful (i.e marriage and fornication) is proclamation and the beating of drums..."²⁴

After *Nikah* is over, the bride is conducted to the husband's house, and this is followed by the marriage feast called *Walimah*. The feast is another step in the publicity of the marriage, and hence, the holy prophet laid stress on it. On the occasion of his own (the prophet) marriage with Sofiyyah, when returning from Khaybar, he gave a feast in which every one was required to bring his food with him.²⁵

The ceremony was on a journey which informed the request that every one should bring his food, but at the same time it shows the great importance given to the marriage feast. The prophet also invited his friends to a *Walimah* feast on the occasion of his marriage with Zainab,

which is said to have been the most sumptuous of all his *Walimah* feasts, and yet he slaughtered only one goat.²⁶

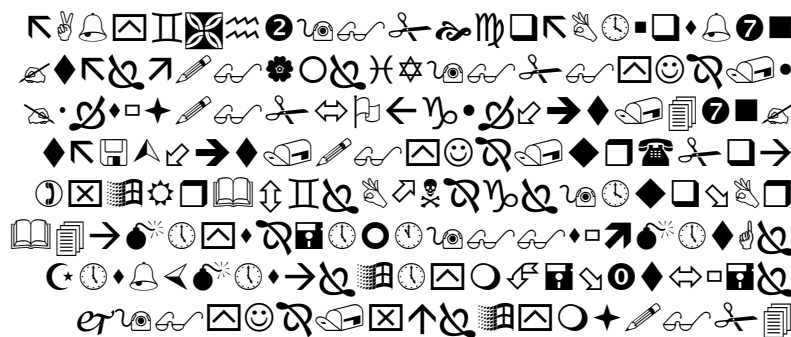
The above submissions stress the point that all unIslāmic acts or extravagance should be avoided in whatever a Muslim organizes, be it marriage ceremony; naming ceremony or any other similar programme. Extravagance has been condemned in an unequivocal terms when Allāh says in the holy Qur’ān thus:



Verily spendthrifts are brothers of the evil ones; and the evil one is to His Lord (himself) ungrateful.

The spendthrifts are ingrates, it has been said that spendthrifts are not merely fools, they are of the same family as the evil ones. So those who misuse or squander Allāh’s gifts are also ungrateful to Allāh, as the chief of the evil ones. *Satan* himself fell by his ingratitude to Allāh.

5.1.3 Marital Responsibilities According to *Fath-al- Qadir* and Muslim Scholars



Men are the protectors and maintainers of women, because Allāh has given the one more (strength) than the other, and because They support them from their means. Therefore the righteous women are devoutly obedient, and guard In (the husband's) absence what Allāh would have them guard...

The above Qur’ānic verse spells out in a clear term the responsibilities of the husband to his wife or wives. In reciprocity, the concluding part of the same verse elucidates the duties of

the wife or wives to the husband. Imam Ash-Shawkani comments on the role of men for their respective wives. The comments read thus:

(الرجال قوامون على النساء) يعني : أمراء عليهن أن تطيعه فيما أمرها الله به من طاعته وطاعته أن تكون محسنة إلى أهله حافظة لماله (بما فضل الله) فضله عليها بنفقته وسعيه (فالصالحات قانتات) قال : مطيعات (حافظات للغيب) يعني إذا كن كذا فأحسنوا إليهن وأخرج عبد بن حميد وابن جرير وابن المنذر عن قتادة (حافظات للغيب) قال : حافظات للغيب بما استودعن الله من حقه وحافظات لغيب أزواجهن وأخرج ابن المنذر عن مجاهد قال : (حافظات للغيب) للأزواج وأخرج ابن جرير عن السدي قال : تحفظ على زوجها ماله وفرجها حتى يرجع كما أمرها الله وأخرج ابن جرير وابن المنذر وابن أبي حاتم والبيهقي في سننه²⁷

.....(Men are in charge of women)

That is they (men) are in charge of them (women), she must follow what Allāh commands her by adhering to her husband. And keeping his command would be doing good to his family, and taking care of his wealth. (what Allāh has given one over the other) based on his spending (Allāh) ordained his right on her. (So righteous women are devoutly obedient), adherents (guarding in (the husband's) absence what Allāh would have them guard). This means that, if they remain loyal with (these injunctions) once should be good to them.

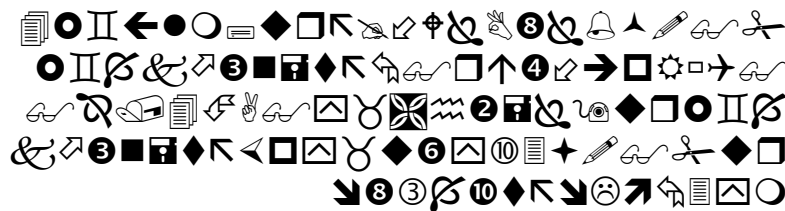
Islām therefore, recognizes from secular as well as spiritual points of view, as stated in the same as that of man, because good works attract the same reward, whether to a male or to a female. The Holy Qur’ān further states:



And their Lord hath accepted of them, and answered them: "Never will I suffer to be lost the work of any of you, be He male or female: ye are members, one of another... (Q3:195)

Paradise and its blessings are equally for both sexes. Woman is recognised as being at par with man. She can earn money and own property just as man can do and therefore, she may, if she feels the need, follow any profession. For men are the benefit of what they earn, and women is the benefit of what they earn”.²⁸

Both man and woman, having entered into the married life, do not lose any of their personal rights and obligations, rather they assume new additional responsibilities. The solemnisation of marriage that binds them together strengthens more their rights and obligations to each and every one of them. The basis upon which these rights and duties rest are found in the words of Allāh.



And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. and Allāh is Exalted In power, Wise. (Q2:228).

It is understood from the above Qur’ānic quotation that spouses have similar, but not the same rights. The duties and rights of each of them are assigned to them respectively in accordance with their natures and peculiarities. Man is physically stronger than woman in dealing with the vicissitudes of life including the hardships of the struggle to earn a livelihood while the body of woman is equipped or prepared for caring for the children. Nature has endowed man and woman with the ability to perform most efficiently only one of the two functions; the man by nature is unable to bear and rear children while the woman cannot be put to bear the back-braking burdens of earning her livelihood particularly during the period she puts to bed and when her child is breast feeding. She cannot also bear the burden of plunging herself into the conflicts of the society.²⁹

The male, by his nature, is attracted to the female in order to complement his being, both physically and psychologically and vice-versa. Marriage is therefore, based on this reality and all its matrimonial rules revolve around this axis. In Islām, all individuals have equal rights, as earlier submitted, but it does not mean that every individual should be entrusted with every

responsibility and every duty. A weak person is not required by this natural law to perform the task pertinent to the strong one. If we treat the weak and the strong equally, we will harm them both. It is in view of this fact that Allāh undertake the charge to allot different rights and duties to each spouse according to his or her nature. The man, because of his physical strength and ability, is given final authority in the family. As such, men are the protectors and maintainers over woman as earlier referred.

Four major functions are concealed under verse 34 of chapter 4 earlier quoted, for the bridegroom, as indicated below while the duties of the woman as earlier stated, include chastity and obedience to her husband. Based on the above injunction, the jurists of Islāmic law enumerate the following as important obligations in marriage.

- (a) Wife's obligation
 - i) Devoted obedience towards the husband
 - ii) Chastity and
 - iii) Home management ³⁰

Analyses of the above classifications are as follows:

- 1- Protection: It is the responsibility of the husband to protect his wife. That is, the wife must be given adequate security. In the same vein, the husband's rights are the wife's obligation. By marriage, a woman acquires new rights, though at the same time, she shoulders new responsibilities as earlier discussed. Her rights towards her husband, are affirmed by what the prophet said to Abdullahi Bn 'Umar viz:"

Thy body has a right over thee and thy soul has a right over thee as thy wife has a right over thee".³¹

It is understood from the above prophetic statement and view of Imam Shawkani that a woman is entitled to certain rights from her husband. One of such rights is that she must be protected by her husband. Allāh has made man the leader and controller of the family because of his natural qualities and powers which the woman does not possess. The word used by the Qur'ān i.e. *Qawwam*' signifies that the husband serves as a guardian or protector or as manger of his wife's affairs. He should either direct and guide her. He has to protect her interest and enjoin

her to do good and forbid her from doing evil. The woman must not go anywhere without seeking permission of her husband.³²

If the husband declines to give her proper guidance, he would be called to account by Allāh. The prophet is quoted to have said that:

فَكَتَبَ ابْنُ شِهَابٍ، وَأَنَا أَسْمَعُ: يَأْمُرُهُ أَنْ يُجْمَعَ، يُخْبِرُهُ أَنَّ سَالِمًا حَدَّثَهُ: أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ، يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «كُلُّكُمْ رَاعٍ، وَكُلُّكُمْ مَسْنُونٌ عَنِ رَعِيَّتِهِ، الْإِمَامُ رَاعٍ وَمَسْنُونٌ عَنِ رَعِيَّتِهِ، وَالرَّجُلُ رَاعٍ فِي أَهْلِهِ وَهُوَ مَسْنُونٌ عَنِ رَعِيَّتِهِ، وَالْمَرْأَةُ رَاعِيَةٌ فِي بَيْتِ رَوْجِهَا وَمَسْنُونَةٌ عَنِ رَعِيَّتِهَا، وَالْخَادِمُ رَاعٍ فِي مَالِ سَيِّدِهِ وَمَسْنُونٌ عَنِ رَعِيَّتِهِ»³³

Ibn Shihab wrote, and I was hearing: he ordered him to gather (people); he informed him that Salim informed him that Abdullah Ibn 'Umar said: I heard the Messenger of Allāh (may Allāh bless him) said: "Every one of you is a guardian and every one of you is responsible (for his subjects), a man is a guardian for his family and responsible (for them). A woman is a guardian in her home and she is responsible for her household. A maid is a guardian concerning the property of his master and he is responsible for his constituency.

The prophet is said to have recited the following Qur'ānic verse to buttress his saying in this regard:

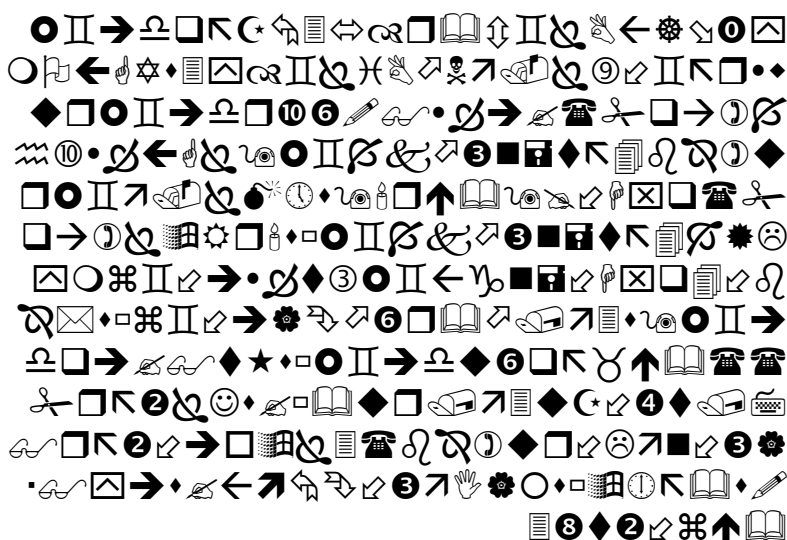
فَكُنْ لَهُمْ قَائِلًا تَدْعُهُمْ إِلَى التَّقْوَىٰ وَيُنذِرُهُمْ يَوْمَ تَأْتِي السُّيُوفُ وَالسَّهَابُ وَالسَّمُومُ ۚ ذَٰلِكَ يَوْمَ تَصِفُّ أَعْيُنُ النَّاسِ لِمَا أَهْلَتْ بِهِمْ وَيَدْخُلُونَ فِيهَا مِنْ حَيْثُ يُخْرِجُهُمُ اللَّهُ بِإِذْنِهِ ۗ وَاللَّهُ يَصِفُّ أَعْيُنَ النَّاسِ لِمَا كَانُوا يَعْمَلُونَ ۗ

O ye who believe! save yourselves and your families from a Fire whose fuel is men and stones, over which are (appointed) angels stern (and) severe, who flinch not (from

executing) the commands They receive from Allāh, but do (precisely) what They are commanded.(Q66:6)

The above Qur’ānic verse used by the prophet to buttress his statement together with the said statement teaches that man must carefully guard, not only his own conduct, but the conduct of his families and dependants.

ii- *Nafaqah* (maintenance). The word *Nafaqah* is a technical term in Islāmic jurisprudence denoting provision of food, clothing, accommodation and other lawful needs for the wife’s living and comfort. Such a provision should be made according to the best of one’s means. The Holy Qur’ān tates in this respect:



Let the women live (in 'iddat) In the same style As ye live, according to your means: annoy them not, so As to restrict them. and if They carry (life In their wombs), then spend (your substance) on them until They deliver their burden: and if They suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable. and if ye find yourselves In difficulties, let another woman suckle (the child) on the (father's) behalf. (Q65:6)

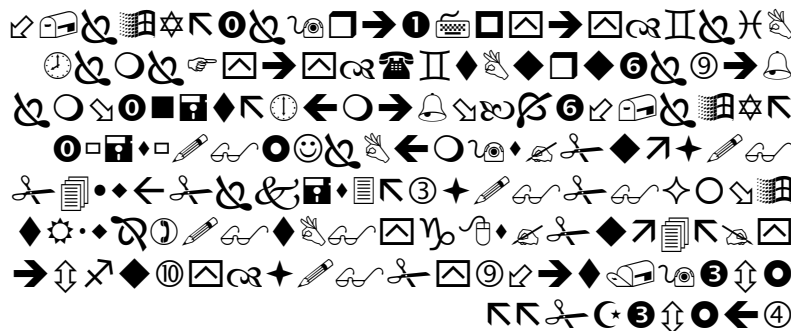
The prophet commented on the above Qur’ānic verse, in a Hadith reported by Abu Dawud thus:

I came to the prophet and I said:- “what would you say regarding our wives”? He (the Prophet) said:- Feed them from what you eat, clothe them from what you put on, and do not beat them (on the face) and do not spoil them.³⁴

Another relevant Hadith in this respect reveals that the messenger of Allāh addressed the people during the farewell pilgrimage saying:

Fear Allāh in respect of women for you have taken them as trust from Allāh, therefore their feeding and clothing are incumbent upon you according to what is reasonable.³⁵

From the above prophetic statements, it could be understood that provision of food cloth and accommodation for wife (s) are obligations of the husband. A wife or woman occupies herself with nursing and training of the children. She also takes care of domestic matters. All these call for her proper maintenance by the husband. Even if she is sick, she must be cared for, maintained and even the hospital bill or expenses incurred during the course of her treatment should be taken care of by him (the husband). Imam Shawkāni critically comments on *Nafāqah* by the husband to his wife(ves) It is worthy of note at this juncture that Islām expects that a woman should be given what is enough for her sustenance. Notwithstanding, one could give according to one's financial capability. The Qur'ān says



Let the man of means spend according to His means: and the man whose resources are restricted, let Him spend according to what Allāh has given Him. Allāh puts no burden on any person beyond what He has given Him. After a difficulty, Allāh will soon grant relief. (Q66:6)

From this verse, the following issues could be considered under the proper maintenance of wife and within the limit of the husband's means of livelihood.

- (i) Food: The quality and quantity of food that should be provided for the wife depend, to a large extent, on the type of food she had been taking in her parent's house. If for example, she is the type that used to take fried eggs, custard together with bread and tea in the morning everyday, she could be given at least food of similar quantity and quality, if not better. To give her food of less quality and quantity may not satisfy her and as such, she may ask for separation.

The Qur'ān has ordered the husband to "retain them (the wives) in kindness or separate from them with humanity". A husband cannot claim that he was keeping his wife with kindness when she was not properly fed. Therefore, any food injurious to her health must be disregarded and should not be given. It has even been submitted by an author of a book, that the wife must be given such food that befits her status in the city.³⁶ If a husband fails to maintain his wife, it is advisable for them to separate so as to avoid a situation where the wife would be forced to seek for dissolution of their marriage. Shafi' school of thought, which is in line with our view analyses (Q2:229) to buttress the point being discussed. "that a wife that is not retained in kindness must be released from such a material bandage". This view is a basis upon which the separation between the couple could be based.³⁷

(ii) Clothing: another responsibility of the husband to his wife is the provision of clothes. It has been maintained by some jurists that it is incumbent on a husband to give or provide for his wife annually at least a set of dress or clothes.³⁸ However, with the present day high cost of livelihood, as one observes, the provision of clothes could be made as the husband deems convenient. In the same source, according to other opinions, the wife must be supplied with such and as many clothes as worn by women of her status in her city. However, the capacity of the husband should not be jeopardized, that is, it must be within the limit of the husband's resources.

(iii) Lodging: the wife is entitled to an independent house which could be shared only with her husband. The room should not be shared either with the co-wife or other people except with the permission of such a wife. In addition, the husband may not force the wife to share her room or apartment with his parents, brothers, sisters or other members of the family, i.e. husband's family. Such an act will not only contravene the regulations or injunctions relating to maintenance but will amount to inflicting mental cruelty on the wife. By refusing to share her apartment with others, the wife may be considered to be *nasihah* (refectory or recalcitrant). The wife on her own cannot accommodate her own relations in the house provided for her by her husband against the wish of her husband.

(iv). Standard of Maintenance: The financial strength of both spouses should be put into consideration when determining the standard of maintenance. If the spouses fall within the class of rich people, the maintenance will be such that befits their standard of living. If both are, however, poor, the maintenance must be relatively inferior to that of the rich. In case one of the

spouses belongs to rich family and the other to a poor family standard, standard of maintenance may also be considered along with *Kafa'ah*.

(v) Other Services: if a woman belongs to a well-to-do family and she does not have to do such household works as cooking prior to the marriage, she cannot be compelled to do the same in her husband's house, and as such, the husband has to arrange for her food or to maintain for her a housemaid or servant who shall be cooking for her and doing other house chores.

Nafāqah (maintenance expenses) include provision of such articles as are necessary according to the custom of the people and particular class of the wife such as cosmetics, cleansing soap, hair oil, articles of domestic use including cooking utensils, mats, carpets, blankets, furniture.³⁹ However, books of Islāmic jurisprudence (*fiqh*) emphasize food, cloth and shelter or accommodation as basic needs for a wife. The *Nafaqah* is determined by the ability of the husband and not on the status of the wife. It would be wrong, however, to have the impression that maintenance is restricted to these three items. The items considered to constitute necessities of life must naturally differ with deference in culture, social status and financial capability of different people and would also change with the changes of time. Thus, no amount of maintenance is fixed, either by the Qur'ān or *Sunnah* of the Prophet.

As regards the duty of the wife, she should protect the interests of her husband, as Allāh has protected them both in his presence and in his absence. This means that a good wife is obedient and clement in her husband's presence; and in his absence, she guards his reputation and property as well as her own virtue as ordained by Allāh. All these rules are general and applicable in every situation. Imam Ash-Shawkāni gives strong supports to the above statement which read thus:

Hence, no wife should be completely neglected else she must be released. If he has no love or sympathy for her, she has the right to be freed from marital bound, and the husband should not stand on her way to new life.⁴⁰

Below are the explanations on the home management and child upbringing in Islām

5.1.4 Home Management and Upbringing of Children

The up-bringing of children and the domestic needs of the family jointly demand that the wife should stay mostly at home. The Qur'ān clearly and unambiguously determines the area of woman's activity and function in these words: 'And stay in your houses with dignity, and do not show off yourselves like the showing off of the former days of ignorance'

Explaining this verse, Ash-Shawkani says:

{ ولا تبرجن تبرج الجاهلية الأولى } التبرج : أن تبدي المرأة من زينتها ومحاسنها ما يجب عليها ستره مما تستدعي به شهوة الرجل⁴¹

(Expose not yourself in public as that of the ancient ignorant people) *At Tabruj* means when a woman unveils or exposes her adornment and her beauty which is obliged on to cover it, from which (as a result of her exposure) can cause man's passion (appetite) for it.

The first Qur'ānic verse is at the instance of the prophet's wives and not the generality of the Muslim women while the prophetic tradition speaks of the women's outrageous outing in general. That is, women are not allowed by Islām to go out without proper Islāmic outfit so as to win their respect, honour and regard. Though, it is one of the rights of the husband that his wife should stay at home to attend to his domestic comfort, it does not mean that she is disallowed to attend to external engagements particularly if she is a working class woman.

In addition, she has to do some domestic works like cooking, sweeping the floor, washing the utensils, fetching water, arranging the furniture and keeping the whole house tidy as obtainable in the developing countries. In advanced nations, however, a housemaid or servant is employed to do the domestic works. This does not mean that it is only advanced counties that such a maid or servant is employed. In the developing nations, whoever is capable of employing a servant has the right to do it to assist his wife or wives. The prophet has been quoted a saying that; 'the best wife is she who takes proper care of her husband's properties.'⁴²

Explaining the earlier quoted verses, Ash-Shawkani says:

ويمكن أن يراد بالجاهلية الأخرى ما يقع في الإسلام من التشبه بأهل الجاهلية بقول أو فعل فيكون المعنى : ولا تبرجن أيها المسلمات بعد إسلامكن تبرجا مثل تبرج الجاهلية التي كنتن عليها وكان عليها من

قبلكن : أي لا تحدثن بأفعالكن وأقوالكن جاهلية تشابه الجاهلية التي
كانت من قبل⁴³

It is possible that what is ment by pre-Islāmic that which happens in Islām by emulating the ignorant people through speech or deed. This would mean that expose not yourself oh the (female) believers after you have been in Islām, an exposure as that of the ignorant people that which you had been practised before, and had been practiced before you. This means that you (women) should neither say nor do anything in emulating the *Jahiliyyah* people before Islām.

It is a fact that a woman should stay at home but the husband should be financially competent and capable to maintain her properly. If the husband is not financially capable of providing all necessities of life for the wife, he should allow her to work and earn a living, or augument her husband's provision. She can as well remain at home and at the same time be earning through lawful means. Yet, her primary duty of taking care of the offspring of the marriage tends to restrict her considerably.

Finally, on the duties of the spouses, it must be concluded that both the wife and the husband have the right to inherit in case any of the two dies. The fraction of the estate to be taken by the surviving partner is fixed and contained in the Qur'ān. Each spouse should make himself or herself attractive, so that each will be proud of the other.⁴⁴

They should also be considerate with each other and allow the fear of Allāh govern their mutual dealings.

5.1.5 Marriage Prohibitions in Islām According *Fath al-Qadīr* and Muslim Scholars

Having dealt with the marital responsibilities to this point, this study shall now consider the forms of marriage i.e. polygamy or monogamy. However, before then, it is considered it relevant to mention briefly the marriage prohibitions which the Qur'ān enumerates. To start with, the law of Islām prohibits men and women who are close relations to live together in close relationship to avoid incest. Talking about the categories of women a man cannot marry, the Qur'ān declares:

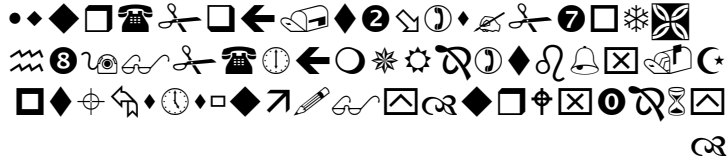
i.



Prohibited to you (for marriage) are:- your mothers, daughters, sisters; father's sisters, Mother's sisters; brother's daughters, sister's daughters; foster-mothers (Who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in,- no prohibition if ye have not gone in;- (those who have been) wives of your sons proceeding from your loins; and two sisters In wedlock at one and the same time, except for what is past; for Allāh is Oft-forgiving, Most Merciful;-(Q4:23)

Islām has so cleansed the men and women of those relations that they cannot even imagine being sexually attracted mutually. These categories of people as enumerated by the Qur’ān , fall under the prohibitions by relation and fosterage. Other prohibitions are:-

ii- Unlawful conjunction or prohibition of adultery as the Qur’ān says:



Nor come near to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils). (Q 17:32)

iii- *‘Iddah*: A woman during the *‘Iddah* period is forbidden to contract marriage until the period is over. If the *‘Iddah* is as a result of widowhood or divorce, she must be free from pregnancy; but if she is an expectant, she must wait until the infant is born, then she may contract a new marriage. Shawkani quoted the opinions of Imam Qurtubi and Ibn Kathir on the duration of the *‘Iddah* period either that of divorce or widowhood. It reads thus:

حكى ذلك القرطبي وابن كثير ومعنى تعتدونها : تستوفون عددها من
عددت الدراهم فأنا أعتدها وإسناد ذلك إلى الرجال للدلالة على أن
العدة حق لهم كما يفيد (فما لكم عليهن من عدة) قرأ الجمهور
(تعتدونها)⁴⁵

It was relayed by al-Qurtubi and Ibn Kathir that the meaning of *ta'atadūnahāis* to complete the number (of the days) of *‘Iddah*.....Ascribing it to the men shows that it is their duty to ensure that the number of *‘iddah* is complete...The majority emphasizing that it should be completed.

iv. Polygamy and Monogamy

There are two basic forms of marriage in all human societies. Monogamy, being the first form, is the union of one man with one woman. Where marriage is monogamous, the group forming the family will consist of the couple and their children.⁴⁶This in effect means that the family is confined to the parents – husband and wife and their children; Polygyny on the other hand, is the union of a man with multiple marriage partners. Polygyny is synonymous with polygamy.⁴⁷ Polygamy is used to cover both polygyny and polyandry. But polyandry is different. Polyandry is when a woman has more than one husband; and conversely, polygyny is outrightly

in Islām. Islām does not enjoin and approve the practice of polygny conditionally. It does not detract from a man’s character if he contents himself with one wife, not withstanding his financial competence to marry more. On the other hand, it is not objectionable if a woman refuses to marry a man who is already married to a wife. She may never agree to be a second wife even to a king. No law can legalize a forcible marriage as earlier mentioned.

Furthermore, Islām does not disrupt monogamous life. It only helps mankind to mitigate the evils inherent in external monogamy where a large number of women remained unmarried and left destitute and exposed to prostitution. To meet this obvious necessity, Islām permits a limited polygamy as against unbridled number of women being married during the pre-Islāmic era as it applied to the Arabs.⁴⁸

The marriage laws of Islām have the healthy effect of providing homes for the homeless people and saving a large number of helpless female prostitution and immorality. It also prevents the well-to do from having as many women as wives as they wished. Polygamy, from point of view of some scholars, is a blessing to seemingly childless parents, because sometimes a second marriage becomes a necessity for the husband, for want of children. In the process, a childless family may become blessed example in this regard.⁴⁹Fida Hussein extolling the virtues of polygamy says:

Biologically weak and more exposed to disease than men, many women lose their health. In that case, a man by marrying a second wife not only saves the declining health of his first wife but also keep himself away from fornication and adultery because marriage, as described by Hadrat “Umar”, is a strong weapon against *zina*.⁵⁰

From this quotation, it could be derived that handicapped woman, instead of being discarded, retains her home, receives good attention, and is maintained financially in her status as a wife. If a man is healthier than his wife, society should allow him to lead the sexual life of a

legitimate character through multiple marriage; though with a condition that he maintains them financially within his reach. A social system which does not permit polygyny, in such circumstances, will be constantly threatened with moral corruption. In view of this, polygyny could rightly be regarded as the medicine of the disease of society, provided its rules, particularly on financial obligation, are objectively applied, because Islām does not give an open registry for marriages.

However, in spite of these virtues and advantages, polygamy is not without its attendant problems. Apart from the jealousy that becomes the bane of such a home, the principle of justice emphasized by the Qur'ān is another issue that deserves serious attention. The Qur'ān takes full cognizance of the state of human nature and the weakness of human beings, it openly declares:

Ye are never able to be fair and just as between women, even if it is your ardent desire, but turn not away (from a woman) altogether, so as to leave her (as it were) hanging in the air. If ye come to a friendly understanding and practice self restraint, Allāh is oft-Forgiving most Merciful. (Q4:12)

Shawkani comments on the above verse on the issues of justice on the side of man to his wife. He explain that reads thus:

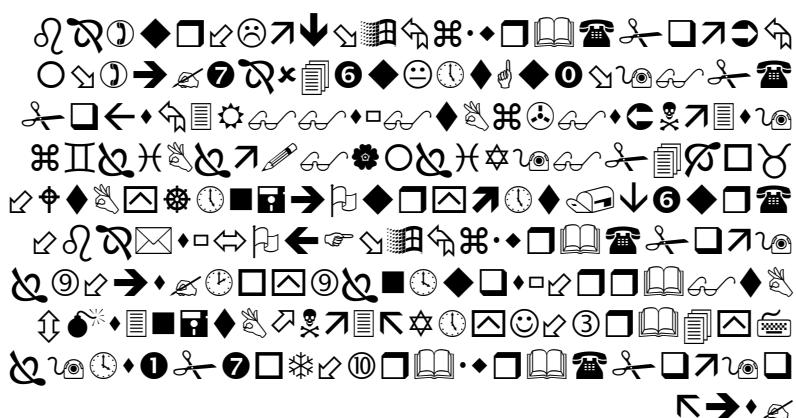
(ولن تستطيعوا أن تعدلوا بين النساء) أخبر سبحانه بنفي استطاعتهم للعدل بين النساء على الوجه الذي لا ميل فيه ألبتة لما جبلت عليه الطباع البشرية من ميل النفس إلى هذه دون هذه وزيادة هذه في المحبة ونقصان هذه وذلك بحكم الخلقة بحيث لا يملكون قلوبهم ولا يستطيعون توقيف أنفسهم على التسوية ولهذا كان يقول الصادق المصدوق صلى الله عليه وسلم : (اللهم هذا قسمي فيما أملك فلا تلمني فيما لا أملك⁵¹)

(You will never able to be fair and just between women). Allāh (in His Majesty) revokes their ability to be fair and just amongst the women, on the basis that there is no (element of) preference therein. Human natural characteristics have been overshadowed him by prefer this (women) than that (woman). And that to have more passion for these (women) and less passion for (that woman). This is human natural habit because they have power on their minds (thoughts) nor, regulate their minds towards justice. This is why the Prophet (peace be upon him) was reported to have said: (O

Allāh this is my apportion that I can afford, please; do not blame me upon what I cannot afford).

The above quoted verse of the Holy Qur'ān and Shawkani statements ascertain the human weakness in relation to maintenance of justice not even among the women or wives alone but also among the children bestowed on man. To this writer and in line with the principles of Islām, there is no moral justification for anyone who embraces Islām to transgress the limits of Allāh's injunction in any respect whatsoever. Qur'ān 4 verse 3 limits the number of women a Muslim can marry to four as against the unlimited number practiced by some Muslims.

Allah says in the Qur'an



If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice.(Q4:3)

While these are many purposes that could warrant polygyny, two distinctive purposes could be deduced for the practice of polygyny. Firstly, it reduces the escalation of prostitution as earlier submitted, and secondly, it provides women a sort of security, especially where women population outnumbers that of men.⁵²

In this regard, the Mu'tazilites pointed out that *'adl..* (justice) does not only mean equality of treatment in matters of judgments, clothing and other domestic requisites, but also includes complete equity of love affection and esteem.⁵³ To Mutazilites, therefore, absolute justice in matter of feeling is impossible. They believe that the Qur'ānic prescription amounted in reality to a prohibition.⁵⁴ Some scholars believe that polygamy is circumstantial, but desirable and even

beneficial because in those countries where the condition of society are different where means, which in advanced communities enabled women to help themselves, are absent or wanting, polygamy must necessarily continue to exist”.⁵⁵

From the above submission, it could be understood that the two groups are identical if monogamy is the rule, the polygamy is circumstantial. The Qur’ānic passage earlier rendered, no doubt, permits polygamy under certain circumstance, it does not enjoin it nor even permit it unconditionally. In spite of this Qur’ānic recommendation, I have the feelings that Nigerian situation called for the practice of polygyny because of its precarious and precipitous position of moral degeneration. Instead of looking hungrily for paramours in the society and spending lavishly for them outside the matrimonial home, it is advisable that one should go polygamous and have legal relationship with the wives. The little income one has could be judiciously used to cater for the family through this practice, polygamy could be effectively used to curb moral degeneration in our society.

The issue of *‘adl* though very significant should not blind fold the Muslim community. What the Qur’ān requires is what is humanly possible and attainable; particularly ability to maintain the wives and the attendant large family. Justice to wives in terms of companionship, provision of social amenities and such controllable aspects of the family life, should be paramount in the mind of the husband. This view is supported by this reaction that says: Feelings and emotions may sometimes defy control and it may be in vain to decree that an individual develops and maintains the same intensity of feeling for a number of persons even they should be his children, wives or close friends.⁵⁶

Allah in the Glorious Qur’ān has warned against turning away from a woman altogether as earlier quoted. The message of the Qur’ān, having established that a Muslim husband may not be able to be just in dealing with his wives warns against leaning to one wife at the expense of other wives. It could be understood that polygyny could be considered primarily as a measure of regularization and stabilization of the society. It is further observed that “the idea was to replace the ill-defined marriage practices, which provided no protection for the woman by a well defined institution and to incorporate the superfluous women into the community, instead of allowing them to act as a disintegrative factor”.⁵⁷

Thus, the multiple numbers of women in the society today should be catered for by not leaving them to prostitution. The prophet's action in marrying widows is a good example in this respect. The modern girls consider polygamy as an abomination because of their exposure to western type of life. They fail to note that it is the only practical safeguard against many evils.

With this submission, one can understand that monogamous society of the West is filled with prostitutes. The monographic films are the products of this society, and many societies of the world have been polluted because of nudist practice of the West. However, one is not saying that in a polygamous society like Nigeria, the society is free from prostitutes, but not in a large scale as practiced in the West. From the critical study of Islāmic history, polygamy came into existence simply to save women from destruction. However, a few examples could be relevant here in respect of where some designated Islāmic countries have taken stringent measure against the practice of polygamy.

From the Islāmic point of view however, the status of each of the wives should be established by whoever is carrying out the distribution of the estate. If it is established that only four of the nine wives were the legal wives, judgment would be entered in their favour and they would be legally entitled to their respective shares from the estate. This is in line with the *Hadith* of the prophet earlier quoted in this work that a man who had more than four wives should release the excess and in conjunction with the statement that: It was said that what He (Allāh) meant by *Al-muhsanat mina-Nisa*, was the free-women.⁵⁸

That is to say that any of them above four is forbidden for you save those whom your right hand possesses, for there is no limit for you as regards the female slaves (that you can take as wife).⁵⁹ The point being raised is that a Muslim should not marry more than four wives concurrently as the judge has rightly observed. In the case under review, if it is established that the deceased married more than four wives the deceased would be adjudged a transgressor of Allāh's limit in respect of his marital life, and the excess would be declared null and void. Their children too would be declared illegitimate and nothing would be given to them from the estate. Meanwhile, the four legal wives must be ascertained as legal wives through the laws governing marriage in Islām which has been discussed earlier.

In this chapter, efforts have been made to look at the position of marriage among Muslims of Nigeria. We also endeavored to consider the essentials of marriage in conjunction

with their applicability by the Muslims to their system of marriage practicability after the introduction of Islām into the land. Under these essentials, four focal points that constitute valid marriage were deliberated upon. These essentials include guardian, *Sadaqi* (dowry) and the stand of Islam on witnesses. The sub-chapter under review also touched on the marital responsibilities, marriage prohibition as well as polygamy and monogamy. The next sub-chapter shall focus on divorce and other related issues.

5.1.6 Divorce and its Processes

In most human societies, marriage can be terminated by divorce if husband and wives fail to perform their marital duties. Divorce means, therefore, the breaking of the established connections between groups.⁶⁰

In the preceding discussion, marriage institution among the Muslims engaged our attention. In this sub-chapter, we focus on dissolution of marriages among Muslims of Nigeria. The Arabic word for divorce is *Talāq*. It carries the literal significance of freeing or the undoing of a knot.⁶¹ In the terminology of the jurists, *talaq* is also called *khul*^C (meaning literally, the putting off or taking off a thing), when it is initiated by the wife.⁶² Although, marriage dissolution through divorce is universal and hence inevitable in principle, the frequency of its occurrence and the reasons for it as well as the reactions vary in time and space.⁶³

Ash-Shawkani comments on the above submission on the stand of divorce and its divisions according to the teachings of Islam. The comments read thus:

والمراد أن يطلقوهن في طهر لم يقع فيه جماع ثم يتركن حتى تنقضي عدتهن فإذا طلقوهن هكذا فقد طلقوهن لعدتهن وسيأتي بيان هذا من السنة في آخر البحث إن شاء الله { وأحصوا العدة } أي احفظوها واحفظوا الوقت الذي وقع فيه الطلاق حتى تتم العدة : وهي ثلاثة قروء والخطاب للأزواج وقيل للزوجات وقيل للمسلمين على العموم والأول أولى لأن الضمائر كلها لهم⁶⁴

What is meant to is to divorce them (women) when they are pure without having sexual intercourse with them. Then they should be left (without having any intercourse with them) until they finish their *‘idah*. So, if you divorce them (upon this condition) you have already divorced them their *‘idah* (menstrual period). The explanation of this shall come later as the Sunnah by Allāh grace

(And be conscious of the *‘Iddah*). That is, be conscious (keeping) of it and calculate the time the divorce is pronounced until she finishes the *‘idah*. That is the three pronouncements of divorce and the declaration is for the husbands. Others option it is for the wives, others argue it is for the Muslims, but the first one is better, because every thought is for them.

Indeed, divorce is said to have been unusual and forbidden in some areas in the world before the advent of Islām, though it may result from ill-treatment, witchcraft, adultery or any other vicious act or crime.⁶⁵ However, divorce was very rare generally in the past among Muslim people, so rare as to be practically considered as non-existing. Furthermore, it is by no means easily obtained especially when there are children for the divorcing couple.

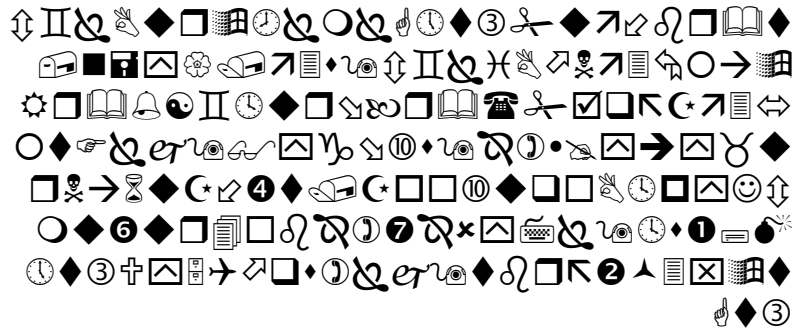
According to Islām, marriage is both a sacred and a civil contract. Thus, the rights and obligations of the spouses are governed by the law of such contract. It is opened, as far as the position of divorce in Islām is concerned to the spouses to specify and restrict each other's right and obligation arising out of the marriage and fix the conditions for its termination by mutual consent. It cannot be denied that dissolution of marriage brings about disintegration of family life with consequent uncertainty and unhappiness for the children of the divorcing spouses. On the other hand, it must be equally conceded that dissolution of marriage is evidently desirable when the spouses can no longer live together in harmony and have lost confidence in one another and on all mutual regards. The continuation of an unhappy marriage breeds hatred and disgust, and there is every likelihood that it could ruin the lives of the parties involved or at least the life of one of them.

a. Causes

It could be stated from the outset that the failure of some of the objectives of marriage may not necessarily constitute sufficient ground for divorce while in some cases, the failure of a single object may be sufficient for separation. Hence, every case has to be decided on its merit. The main objects that constitute ground for divorce include external displeasure, pro-creation and happy companionship.⁶⁶

The sexual instinct is innate in man and it must be satisfied through lawful means. If this is not possible between married couple, there is tendency that they may satisfy themselves through unlawful means. As regards procreation, it is an extension of human life. If this is not

possible between the spouses, it may be a good ground for separation. Qur’ān 42 verses 49 and 50 show that happy companionship is another important object of marriage. The Qur’ān declared on this statement.



And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): Verily in that are signs for those who reflect.(Q30:21)

There must be love and compassion. When this object is defeated, it could form a good ground also for divorce. The failure or success of any married life may depend on whether or not the spouses are fulfilling their obligations. If a husband fails to feed his wife, divorce may be the best solution. A wife may as well be divorced if she is not fulfilling here obligations. Both spouses are given certain rights and obligations, which if they fail to fulfill, they are not operating within the limit of Allāh. These rights and obligations have been discussed in previous sub-sections.

A Muslim marriage is a relationship for life based on mutual consent of the parties who have a right to continue with the contract or discontinue with it on reasonable ground. A marriage can therefore be dissolved by either the husband or the wife or by their mutual consent or by the *Qadi*- (Judge). Thus, four modes of divorce are recognized by the *Shari'ah* from the above submission. These are:

1. *Talāq* or unilateral repudiation of the wife by the husband.
2. *Khul'* Dissolution of marriage at the instance of the wife.
3. *Mubara'* Divorce by mutual consent of the parties, and
4. *Faskh*₂ Divorce by judicial decree.

Marriage can also be terminated automatically on the happening of certain contingencies such as death. The ground for dissolution of marriage can be due to the physical or mental condition of the husband or wife. The marriage can also be dissolved when the parties are not compatible. Under the principle of *Shari^Cah* law, there are two major types of divorce. They are:

- i) Revocable otherwise known as *raji^c* and
- ii) Irrevocable *ba'in*.

A divorce is revocable when the husband is entitled to retract divorce during the wife's *'iddah*. The main purpose of this rule is to afford the couple an opportunity for reconciliation as a cooling down period. During this period, the marriage is not dead but merely dormant and capable of being revived. Hence, a mutual right of inheritance continues to exist between the parties during the period.

On the other hand, an irrevocable divorce is a final severance of the marital tie. Rights of inheritance cease immediately upon this type of divorce and do not persist during the wife's *'iddah*.⁶⁷

Talaq₂ as mentioned above is recoverable, that is the reason why reconciliation is recommended in plain words. When speaking of the *'iddah* the Holy Qur'an says:



...and their husbands have the better right to take them back

In that period, if they wish for reconciliation... Q2:228

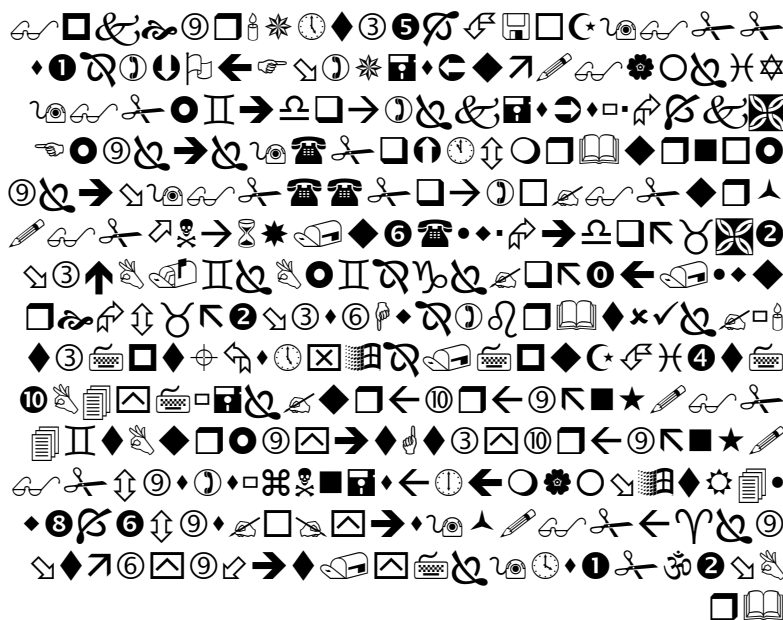
Every divorce is thus an experimental temporary separation during its initial stages, and by making the parties live together, every chance is afforded to them to re-establish conjugal relations. Even after the period of waiting has passed away, the two parties are allowed, and encouraged to remarry".⁶⁸

Remarriage of the divorced parties is thus encouraged and recommended as being more profitable and purer for the parties. The condition is laid down that such a revocable divorce, where reunion of the parties is allowed, can be pronounced twice. Allāh says:

1- *Talāq*. The husband can dissolve his marriage with a wife through *talaq*. The *Shari'ah* concedes to a Muslim husband the right to terminate his marriage unilaterally at his absolute discretion. It is this unilateral repudiation of the wife by the husband that is referred to as *talaq*. It is validly effected by the husband pronouncing the appropriate words of repudiation at such time and in such a place as he deems fit without the intervention of the court. However the pronouncement is ineffective if given under compulsion or influence, or in a state of intoxication, anger or jest by mistake inadvertence.

Under Islāmic law, a man is not allowed to use the institution of *talāq* (divorce) arbitrarily. He must comply with the laid down guidelines by Allāh. Islāmic jurists have recognized divorce in three forms. A man would sometimes pronounce divorce three times on one and the same occasion, and this would be understood as meaning that divorce has been given thrice. This is called *talaq bidi'c* (or an innovation in divorce after the holy prophet's time).⁷¹ On the other hand, a man would divorce his wife for the first time in one *tuhr* (sanitize) and with a third divorce in the third, thus divorcing thrice in one *'iddah* or one period of waiting. This method of *talaq* is called *talaq hasan* (a good way of divorcing) in the terminology of the jurists.⁷² The name *talaq hasan* (or the best method of divorcing) is given to the form in which *talaq* is pronounced in a *tuhr* only once, and this is followed by the period of waiting.

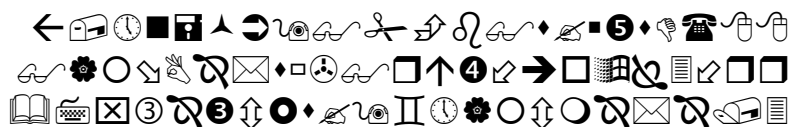
This last method is the only method recognized by the Holy Qur'ān which read thus;



O Prophet! when ye do divorce women, divorce them at their prescribed periods, and count (accurately), their prescribed periods: and fear Allāh your Lord: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness, those are limits set by Allāh and any who transgresses the limits of Allāh, does Verily wrong His (own) soul: thou knowest not if perchance Allāh will bring about thereafter some new situation. (Q.65.1)

The divorce is thus to be pronounced only once, and when it has been pronounced, the *Ciddah* or waiting period follows and during this time the parties have a right of revocation of the divorce. All other forms of divorce are against the Holy Qur’ān and the *Sunnah* of the prophet. Thus the Holy Qur’ān recognizes *talaq* only in one form, where for certain reasons a husband makes one single pronouncement of a divorce in a period of *tuhur*, i.e. purity when the woman is free from her menstrual period. This should be followed by abstinence from sexual intercourse and she remains under his maintenance up till the end of her waiting period as the Qur’ān in which part had been earlier quoted eloquently puts it”.⁷³

Talaq, as earlier explained, could be either revocable or irrevocable. However, one single *talaq* does not amount to a final severance of the marital tie as the husband may repudiate his will to divorce during the period of the wife’s *Ciddah* as mentioned earlier.⁷⁴ The following circumstances will render divorce by *talaq* irrevocable that is:



A divorce is only permissible twice: after that, the parties should either hold together on equitable terms, or separate with kindness (Q2:229)

Imam Ash-Shawkāni comments on the above verse:

المراد بالطلاق المذكور هو الرجعي بدليل ما تقدم في الآية الأولى :
 أي الطلاق الذي تثبت فيه الرجعة للأزواج هو مرتان : أي الطلقة
 الأولى والثانية إذ لا رجعة بعد الثالثة⁷⁵

What is meant to as *Talāq* (divorce) that is mentioned is revocable, this is in accordance with what is referred to in the first verse earlier mentioned(quoted). That is, *Talāq* that warrants reconciliation between the couple is when the *Talāq* is pronounced twice (two times). If it is more than two times, (that is three times) no avenue (opportunity for reconciliation

(a) Triple *talaq*. It must be noted that a husband is normally not allowed to withdraw a repudiation against the same wife more than two times hence a third repudiation or *talaq* is final and irrevocable as previously discussed. The term triple *talaq* is used to describe cases of three repudiations pronounced on the same occasion or repudiations coupled with words or sings indicative of three pronouncements (e.g. I repudiate you three times).⁷⁶

(b) Single *talāq* with oath of finality; the same effect will be given where a husband adds to a single *talaq*, an oath or other solemn expression of finality. The *talaq* becomes final and irrevocable just like the triple *talaq*.

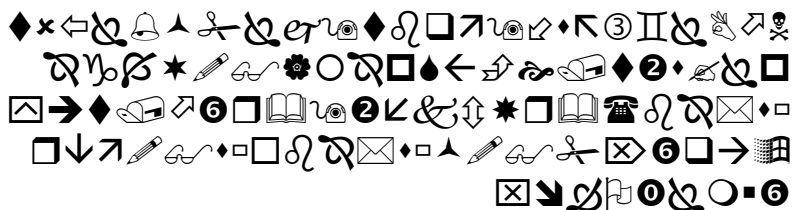
(c) Single *talaq* in cases of minor female where marriage is not consummated. In this situation, no *‘iddah* is incumbent on the wife in case of divorce. Hence a simple and single *talaq* constitute an immediate and final divorce since there is no period during which the husband may revoke it.⁷⁷

It is worthy of note at this juncture that a final *talaq* pronounced by the husband during his death-sickness will not have the effect of an irrevocable *talaq*. Such a pronouncement will not deprive the wife her right to inheritance.

Still under *talaq* we shall endeavor to talk briefly on two terms that seemingly connote *talaq*. They are *ila’* and *zihar*.

i- *Ila’* was a practice of the pre-Islāmic days by which the wife was kept in a state of suspense, sometimes for the whole of her life. *Ila’* which means literally swearing, signifies technically the taking of an oath that one shall not go into one’s wife.⁷⁸ During the pre-Islāmic period, the Arabs used to take such oaths frequently, and as the period of suspension was not limited, the wife had sometimes to pas her whole life in bondage and misery, having neither the position of a wife, nor that of a divorced woman free to marry elsewhere. The Holy Qur’ān

referred to this state of things by commanding that if the husband did not reassert conjugal relations within four months the wife should be divorced. Allāh says:



For those who take an oath for abstention from their wives,
a waiting for four months is ordained; if then They return,
Allah is Oft-forgiving, Most Merciful. (Q.2:226)

The Prophet Muhammad (SAW) is reported to have said is supporting the above Qur’ānic injunction that:

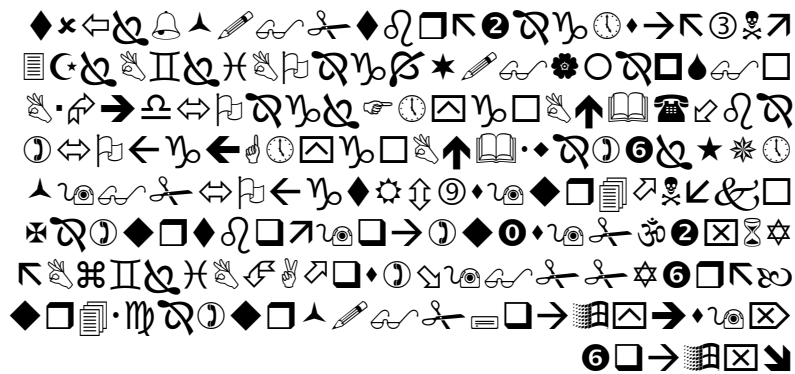
“It was reported from Suayl bn Abi Solih-from his father that he said: I asked twelve people among the companions of prophet Muhammad (SAW) about a man who swore (not to go into his wife).They said: “he had done nothing until four months passed and he was stopped if he rescinded his decision there would be no divorce”, narrated by Daral-Qutniy.⁷⁹

The above quotations put the period of *ila’* to be four months after which divorce will take place at the instance of the woman/wife if the husband fails to resume conjugal relationship with her (wife). Such a divorce was considered *talaqu raji’* i.e. revocable by the consensus of the jurists. It is said: Majority of the scholars hold the view that divorce that takes place from *ila’* is considered revocable (*talaqun raji’iyy*).⁸⁰

From the above submission, *ila’* is not strictly a divorce but a cessation of sexual relation between the husband and the wife. A husband may vow not to have sexual relation with his wife for certain number of months. It is a form of suspensive separation. It is not strictly a divorce, but has been treated as such by Muslim jurists. It was not a divorce because sexual relation could resume after the expiration of the time fixed. If no time is fixed in the vow, the wife remained tied down to her husband and could not contract another marriage. But with the reform of Islām, the vow should not exceed four months. If it does, divorce can take place. This form of

suspensive divorce does not exist in Yoruba culture either before or during the advent of Islām. It was an attitude common in pre-Islāmic days to punish the wife for one reason or the other.

(ii) *Zihār*:- This is the situation whereby the husband allegorically compares the back (*zāhr*) of his wife to that of his mother. The word *zihar* is derived form *zahr* meaning (back). An Arab in the days of ignorance would say to his wife: “You are to me as the back of my mother”⁸¹ No sooner were these words pronounced, than the relation between the husband and the wife ended as by a divorce, and since it is forbidden to have sexual dealing with one’s mother, such husband will deprive the wife of sexual enjoyment indefinitely. This is also not a divorce for the woman will remain in this miserable marital tie with the husband and she cannot marry another person. It was a pre-Islāmic practice of punishing wives.



If any man among you divorce their wives by *Zihar* (calling them mothers), They cannot be their mothers: none can be their mothers except those who gave them birth. and in fact they use words (both) iniquitous and false: but truly Allāh is one that blots out (sins), and forgives (again and again).(Q58:2)

Ash-Shawkani commented on the above verse regarding to *Zihar* practices during the *Jailiyyah* practices among the Arabs before the advent of Islam. The comment read thus:

واختلفوا إذا قال لامرأته أنت علي كراسي أمي أو يدها أو رجلها أو نحو ذلك؟ هل يكون ظهارا أم لا وهكذا إذا قال أنت علي كأمي ولم يذكر الظهر والظاهر أنه إذا قصد بذلك الظهار كان ظهارا وروي عن أبي حنيفة أنه إذا شبهها بعضو من أمه يحل له النظر إليه لم يكن ظهارا وروي عن الشافعي أنه لا يكون الظهار إلا في الظهر وحده

There is a divergent of opinions (among the scholars) on the issue that if a man tells his wife that you are unto me like my mother's head, or her head or her leg and the likes. Is this a *Zihār* (calling them mothers) or not? Equally, if he (husband) says, you are unto me like my mother, but does not mention *zihār*. What is glaring (popular) is that, if he intends (with his statement) *zihār* (calling them mothers) *zihār* should be counted against him.

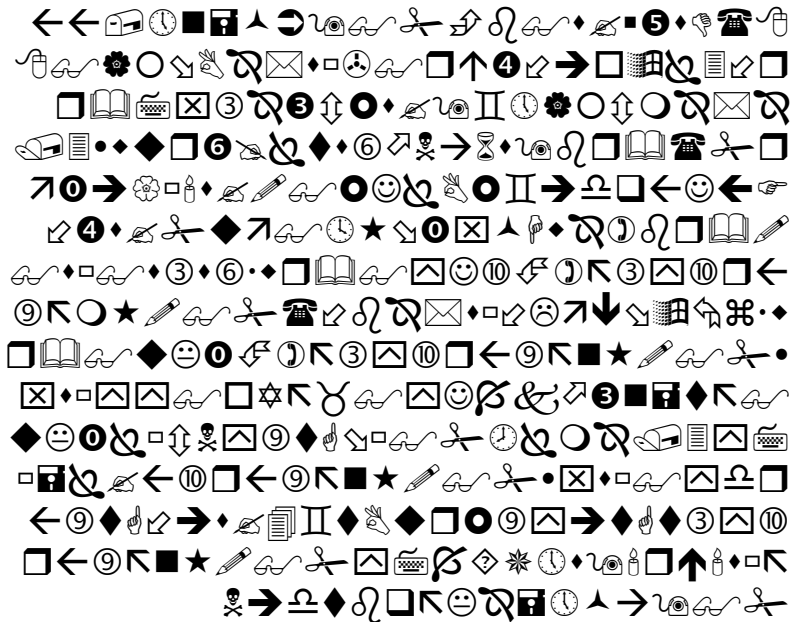
With the advent of Islām, any man who resorts to this practice is ordered to free a slave; or if he could not find one, then to fast two successive months as an atonement, and if unable to do that, to feed sixty poor people. The order, it could be inferred, is made to deter wicked people who may decide to punish innocent wives for no just cause.

This verse clears the air in respect of a man who waives his right to compensation in an event where a wife seeks divorce. Whenever the husband is clearly at fault, he must be directed to discharge his full duties to his wife. If a man maltreats his innocent mate or pressurizes her to seek self-redemption and she does so, the marriage will be dissolved by the court and she will not refund anything to him of what he has given her. Such a husband will not be permitted to take anything from her. Conversely, she is forbidden to request a divorce from her innocent husband unless she has some valid justifications.

5.1.7 Conditions Governing *Khul^c* in Islām as Discussed by Ash-Shawkāni

If *Khul^c* seeks to release herself from a marriage tie by compensating her husband for the dower paid on her. In other words, it is self redemption. The step is taken if she is unhappy in her marriage for her own reasons. If the husband has no overt fault or guilt she may seek a divorce from him. She shall then refund to the husband the dowry and possibly other marriage expenses or gifts as explained in the previous. The repayment of the dowry or other gifts serves as a compensation for his materials and or moral losses. However he may waive his right to compensation and simply agree to release the woman in compliance with her request particularly when children are involved.⁸³

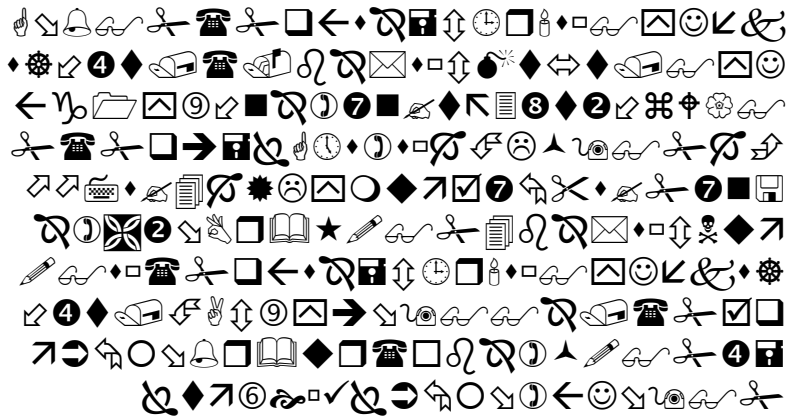
In fact, there are instances in which women sought the divorce and their requests were granted by their mates without asking for or getting anything in return. The Qur’ān refers to *Talaq* thus:



A divorce is only permissible twice: after that, the parties should either hold together on equitable terms, or separate with kindness. It is not lawful for you, (men), to take back any of your gifts (from your wives) except when both parties fear that they would be unable to keep the limits ordained by Allāh. if ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allāh, there is no blame on either of them if she gives something for Her freedom. These are the limits ordained by Allāh. so do not transgress them if any do transgress the limits ordained by Allāh, such persons wrong (themselves as well as others).(Q2;229)

A wife shall be entitled to the dissolution of her marriage under the following conditions:

- (a) If the husband had deceived his wife about the financial condition and made her believe that he was well off, but he is found, subsequently to be a destitute and an indigent.
- (b) If the husband is well off but does not maintain the wife properly or refuses to maintain according to his financial status.



If two parties among the believers fall into a quarrel, make ye peace between them: but if one of them transgresses beyond bounds against the other then Fight ye (all) against the one that transgresses until it complies with the command of Allāh; but if it complies then make peace between them with justice and be fair: for Allāh loves those who are fair (and just).(Q49:9)

Thus, the parties should not throw mud at each other, but recognize what is right and honorable on a consideration of all the circumstances. In this regard, the man is not allowed to ask back for any gifts or property he may have given to the wife. Allāh says in the same verse quoted above; “It is not lawful for you, (men) to take back any of your gifts (from your wives)”.⁸⁸ This injunction is for the protection of the economically weaker sex, lest that protective provision itself work against the woman’s freedom; though exception is made in the following clause of the verse that: “Except when both parties fear that they would be unable to keep the limits ordained by Allāh”.⁸⁹

It could be understood from the last clause of the Glorious Qur’ān that if there is any fear that in safeguarding the woman’s economic rights, her very freedom of person may suffer, the husband refusing the dissolution of marriage, and perhaps treating her with cruelty, then, in such exceptional cases, it is permissible to give some material consideration to the husband. In this circumstance, the divorce is *Khul^c* Meanwhile, the *Mubarah* form of marriage dissolution is less common among the NigeriaMuslims, whereas *Khul^c* is very popular in the Northern Nigeria and it is getting its root in Yoruba land.

iv. *Faskh*: Another means of separation between spouses is the use of judicial decree. This simply means divorce effected through the intervention of the court. It is called *faskh*. This

usually occurs when a marriage violates the express injunction of Allāh. For example, if a man marries his sister, the court has the power and right to separate them. The court can also separate two spouses in dispute, if such dispute cannot be settled amicably. It is the duty of any government in Islāmic state to enforce the rules contained in the Qur’ān. Although, the Sunni schools, to some extent or in varying degrees, recognize the right of a wife to petition for judicial divorce on the broad ground of the husband failure to fulfill his marital duties. Maliki law is the most liberal in this respect for it allows judicial divorce under the following four major headings:⁹⁰

(a) Physical or Mental Disease:

This covers all cases of serious diseases of the body or mind of the husband where the continuation with the marriage would jeopardize the health of the wife. K.N. Ahmad says in this regard:

A marriage can be dissolved by the *Qadi* when the husband is suffering from a serious mental or physical defect which renders the continuation of the marriage unsafe or undesirable for the wife.⁹¹

In addition to the above, impotence and any incurable disease such as epilepsy are examples of such illness. Sayyid Sabiq submits in this respect thus:

If the wife complains of difficulty about the husband in which continuation of relationship becomes impracticable, as a result of defect, she reserves the right to seek for separation from the Judge”.⁹²

(b) Husband’s Failure to Maintain the Wife

If the husband fails to maintain properly his wife or wives, the court can intervene as a result of the wife lodging the complaint. A decree will then be issued on this ground whether the husband’s failure to provide maintenance at the proper standard is the result of a willful refusal or a simple inability to do so. If it were to be a deliberate action by the husband then, the divorce will be effected by the court or judicial process. Sayyid Sabiq says:-

If the husband refuses to spend on his wife, and he has got the money, judgment will be passed on him (compulsorily)

to spend on his wife, but if he has no money, and he does not declare whether he is indigent or wealthy, but insists on not spending, the Judge will dissolve the marriage immediately.⁹³

It is understood from the above submission that if the husband deliberately refuses to spend on his wife, and efforts to convince or force him fails, the divorce will be effected by the *Qadi*. But if it is due to the husband's inability to spend as a result of poverty, the husband will be given a short time to make efforts in this regard. Sayid Sābiq reported in his *fiqh* book. Thus:

If he has got no money, the Judge will appeal to him and give him a short time (to adjust). But if he (the husband) does not send what the wife will spend on herself, or he does not come to spend on her, the judge will pronounce divorce on him after the time given has lapsed.⁹⁴

(c) Desertion

A wife is entitled to dissolution of her marriage with the husband where the husband has deserted the wife without lawful reason and thus deprived her of the right of consortium. The Imam Maliki allows divorce on the ground of desertion only after one lunar calendar year⁹⁵ to three years absence of the husband. While Ahmad (a Maliki Jurist) sees it that the least period that a woman can seek for separation in the absence of her husband is six months, because the least period that a woman can exercise patience during the absence of her husband is that period (six months).⁹⁶ Another scholar holds the view that: The conduct or behavior of the husband that gives cause for the dissolution of marriage must be such as injuriously affects the wife such as when the husband absents himself from the conjugal domicile for a period of four years or longer and the whereabouts is not known.⁹⁷

The views of scholars above are all attempt to discourage undue absence of a husband from his wife without a justifiable reason. Imam Malik has given some reasons why a husband can be absent from his wife and their marriage remains intact. He says:

The reasons given above are cogent enough to avert dissolution of marriage but with a condition that the wife should be maintained by the husband by sending her requirements or needs adequately. In addition to this, the wife should be able to control her moral behaviour, that

is, she should live within the purview of Islāmic law. But if she is afraid of falling victim of adultery, she reserves the right to seek for dissolution. Imam Malik says:

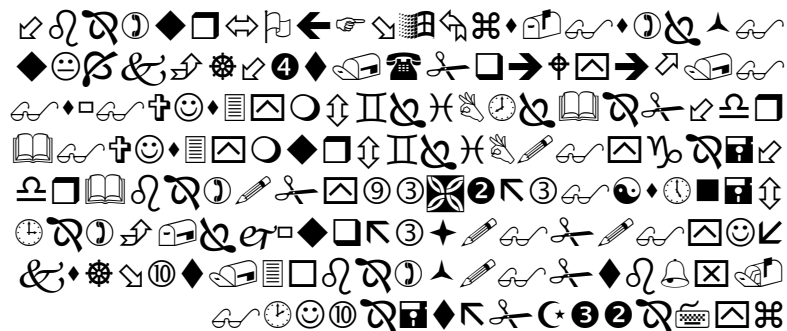
It will become certain, after a year has passed, that the wife will feel injured and lonely. With this, she will be afraid of falling into what Allāh has forbidden.⁹⁸

(d) Cruelty or Injury (*Darar*)

This ground is as important as other principle. It is a principle based on or enunciated by the *Shari'ah* thus: '*la darara wa la dirara*'⁹⁹ meaning "no harm or mutual injury". It has become an important cause for a wife's petition; covering all forms of cruelty physical or mental from the husband. *Darar* also includes turning away one's back to the wife in bed if it is intended to injure the feelings. Ill-treatment and deliberate sexual desertion are *darar* if they are not to correct the wife's mistake as contained in *Surah* 4 verse 34. *Darar* also covers cases of incompatibility which may in effect lead to divorce.

5.1.8 Reconciliation

The aim of the *Shari'ah* is to establish a healthy family unit through marriages, but for some reasons, as we have been discussing in this chapter, when this purpose fails there is no need to linger on under false hopes. Thus, Islām encourages reconciliation between spouses rather than severance of their relations. But where good relations between the spouses become distinctly impossible, Islām does not keep them tied in a loathsome chain to a painful and agonizing position.¹⁰⁰ It then permits divorce. As soon as differences between spouses take a serious turn to endanger their contract, the Qur'an ordains that arbiters be appointed to sort out these differences and bring about reconciliation between them, it says:



If you fear a break between the two, appoint (two) arbiters, one from his family and the other from hers, if they wish for peace, Allāh will cause them reconciliation: for Allāh has full knowledge and is acquainted with all things¹⁰¹ (Q4:35)

Imam Ashawkani critically comments on the verse of the Qur’ān regarding to settlement between the couple.

Two arbiters are recommended by the verse of the Qur’ān rendered above, but in case the arbitrators fail to effect a rapprochement between the spouses, the same Qur’ān permits such spouses to part company. It says: “But if they disagree and must part, Allāh will provide abundance for all from His all-reaching bounty”.¹⁰² If the stage of parting has been reached, the parties are enjoined not to misuse or abuse their power or position rather the matter should be disposed off amicably.¹⁰³ It is in such times, when marriage becomes impossible to work, it is better to separate amicably rather than drag on indefinitely making the family-home a hell.

Since the *‘iddah* of marriage as discussed earlier, is not normally observed among the Muslims, the end result of any marriage terminated through divorce either through the court or otherwise, is final and irrevocable. As such, mutual rights of inheritance do not exist between the couple; since there is no period of *‘iddah* observed by the wife. This is a sharp departure from the pure Islāmic Shari‘ah.

5.1.9 Other Types of Marriage Dissolution in the *Tafsir* of Ash-Shawkani

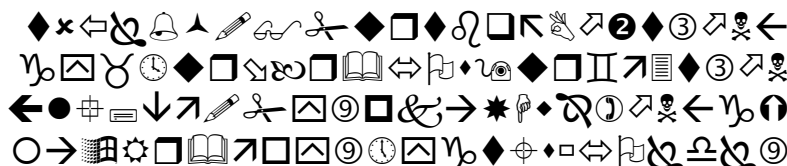
i.- *Li‘an*: The word *li‘an* is derived from *La‘nah* meaning curse. *Li‘an* and *Mula‘na* signify literally mutual cursing or mutual imprecation.¹⁰⁴ Technically however, the two words indicate that particular form of bringing about separation between the husband and the wife in which the husband accuses the wife of adultery but has no evidence to support the accusation while the wife denies it.¹⁰⁵ The process of *li‘an* has been clearly shown in *Surat-Nur* of the Holy Qur’ān . Q 24 verse 6-9. Imam Ash-Shawkāni also bring the views of Muslim jurist and Qur’ānic Exegetes on the dissolution of marriage in Islām.

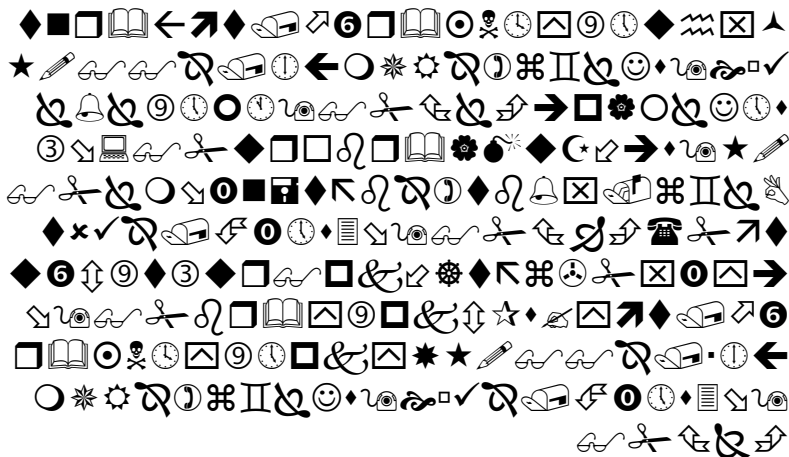
واختلف العلماء في صورة توبة القاذف فقال عمر بن الخطاب
والشعبي والضحاك وأهل المدينة : إن توبته لا تكون إلا بأن يكذب

نفسه في ذلك القذف الذي وقع منه وأقيم عليه الحد بسببه وقالت فرقة منهم مالك وغيره : إن توبته تكون بأن يحسن حاله ويصلح عمله ويندم على ما فرط منه ويستغفر الله من ذلك ويعزم على ترك العود إلى مثله وإن لم يكذب نفسه ولا رجع عن قوله ويؤيد هذا الآيات والأحاديث الواردة في التوبة فإنها مطلقة غير مقيدة بمثل هذا القيد

The scholars have different opinions in form-*Tawbah* on *al-Qādhf* (to accuse the wife of adultery). ‘Umar bn al-Khattāb, Ash-sha’abi, Adh-Dhilāk and people of Madīnah say: His repentance cannot be granted, unless he falsifies himself upon what he has said about *Qadhf* (against his wife). And the penalty of (*Qadhf*) should be taken on him for his falsehood. Some set among them (among the madinites) such as Malik and others say that *Tawbah* (his repentance) depends on to make good of his habit and to do good, and to regret on what he has done bad and to seek Allāh's forgiveness on it and to bear it in mind that he would never repeat such again. If he did not deny himself (falsify himself), he must not go back to (bud thing) again verses of the Qur’ān and some traditions on *Tawbah* (repentance) support this.

The difference between *Qadhf* and *li‘an* is that the latter is restricted to the accusation put forward by the husband in respect of his wife. In the case of *Qadhf* four witnesses are required to give evidence to prove the accusation as laid down in the above Imam Shawkani's comments and the opinions of other scholars on *Al-Qadhf* in the Qur’ān.¹⁰⁷ The Holy Qur’ān makes adultery a severely social ill. At the same time, it makes an accusation of adultery an equally serious crime, punishable like adultery if strong evidence of adultery is not forthcoming.¹⁰⁸ Thus, if the husband accuses his wife of adultery, he has to swear with the name of Allāh four times saying that he saw his wife committing adultery or that the pregnancy was not for him, and then swear the fifth time invoking Allāh’s curse (*la‘nah*) on himself if he had accused her falsely. Likewise, the woman if she is not guilty would also take oath four times saying that she was not guilty of adultery and that her husband had lied. The fifth times, she would also invoke Allāh’s curse upon her if she is lying.¹⁰⁹





And for those who launch a charge against their spouses, and have (in support) no evidence but their own,- their solitary evidence (can be received) if they bear witness four times (with an oath) by Allāh that they are solemnly telling the truth;And the fifth (oath) (Should be) that they solemnly invoke the curse of Allāh on themselves if they Tell a lie.But it would avert the punishment from the wife, if she bears witness four times (with an oath) by Allāh, that (her husband) is telling a lie; (Q24:6-8)

However, if she confessed her guilt, she would be given *Hadd* punishment for *zina*. If the husband refuses taking the required oaths, he will be given *hadd* punishment for *Qadhf* which amounts to eighty lashes. If the wife refuses to take oaths of innocence, she will be deemed accordingly.¹¹⁰ That is, if she does not confess and refuses to accept the oath by the court of law. While the *Qadi* hears the suit, the husband will have two alternatives. He may either retract or withdraw the charge before the end of the trials which will immediately bring the case to an end, or persists in his attitude and takes the oath of imprecation as contained in the verses quoted above. In this respect the suit for *li'an* will be deemed complete and the marriage stands dissolved. Such a dissolution becomes irrevocable as agreed upon by Imam Malik and some other schools of Islāmic jurisprudence;¹¹¹ with the exception of Imam Abu Hanifah who opines that, if the oath of imprecation was as a result of the monument, the husband will be given *hadd* punishment and they can remarry and the child in dispute if any, will be given to him.¹¹²

ii- *Talaq al-Bid'ī* (Innovated Divorce).

This is a divorce called *bid'ī*. in this form *talaq* becomes irrevocable as soon as it is pronounced. The format is that the husband pronounces divorce thus: “I divorce you, I divorce you; I divorce you,” in one sitting or conveys it to the wife in writing.¹¹³ This form of divorce

leaves no room for reconsideration and no chance for repentance. It is done for selfish motives. The holy prophet is reported to have severely denounced this practice and Sayyidina °Umar used to whip the husband who pronounced divorce thrice at one and the same sitting.¹¹⁴ If the divorce is due to a cause imputable to the husband, he has to make over to her all property, and pay off the *mahr* that has been settled upon her if it was deferred. If however the divorce has been resorted to at the instance of the wife, without any justifiable cause, she has to simply abandon her claim to the dower.¹¹⁵

iii- *Talaq al-Bain* (Irrevocable) is a divorce with three pronouncements. In this divorce there is no possibility of return to the conjugal relationship when the three divorce are completed.¹¹⁶ There are two kinds of *talaq al-bain*. *Baynuhat Sughrah* (minor irrevocable divorce) and *Baynunat Kubrah* major(irrevocable divorce). The *Baynunat-sughrah* decreases the conjugal rights of the husband, but if the conjugal right increases, the divorce becomes revocable. In the event of the death of one of the parties, if conjugal right does not increase, the other will not inherit from the other party while in *Baynunat-al-Kubrah* the conjugal rights ceases.¹¹⁷ It is thus laid down in the Qur’ān that divorce can only take place twice. Allāh says “Divorce may be pronounced twice: then keep them in good fellowship or let them go with kindness”. From this Qur’ān ic verse, it is understood that after the second revocation, or remarriage, the parties must make their choice either to live together forever or separate forever. If the second experiment fails and the parties are separated by a divorce for the third time, this is irrevocable divorce or *talaq bain*. The husband cannot remarry the wife again unless (he divorce wife) marries another man and the new husband voluntarily divorces her without any intention of *tahlil*;¹¹⁸ (i.e. causing the other man to divorce the woman in order to make her lawful for him). In such a case, as earlier submitted, the bar to remarriage between them will be temporary and can be removed by the divorcee’s marriage to another man. The essence is to ensure that the man and the woman would have learnt lesson which will make them both be sober woman to her former husband in the remarriage exercise if at all they remarry.

Divorce may be given orally or in writing, but it must take place in the presence of witnesses. The Qur’ān testifies to this when it says:

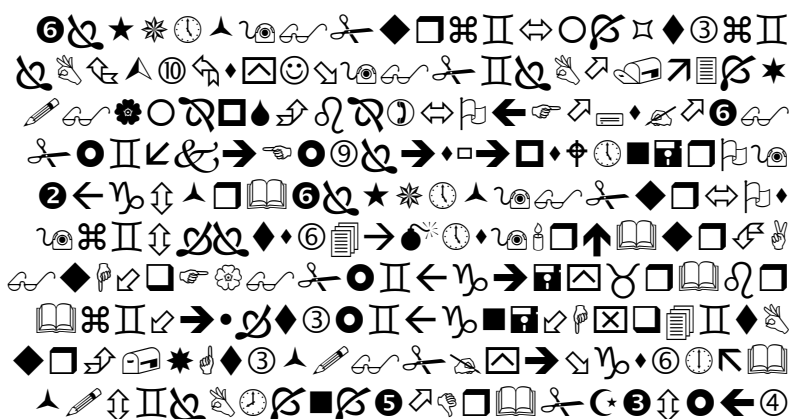
“When they have reached their prescribed time, then either retain them with kindness or separate them with kindness,

and call to witness two men of justice from among you, and give upright testimony for Allāh”.

Whatever the actual words used for divorce, they must expressly convey the intention that the marriage tie is being dissolved.

The *Shari'ah* permits divorce in three distinct and separate periods within which they might endeavour to become reconciled, but should all attempts at reconciliation prove unsuccessful, then in the third period the final separation becomes effective,¹¹⁹ A man would divorce his wife for the first time in one *tuhr*, following on with a second divorce in the second *tuhr* and with a third divorce in the third, thus divorcing thrice in one or one period of waiting. This method of *talaq*, as earlier mentioned in this chapter, is called *talaq hasan* (a good way of divorcing) in the terminology of the jurists.¹²⁰ That is, the period of time between two successive menstrual discharges during which he has not had sexual intercourse with her. After the pronouncement of divorce (I divorce you), the husband then leaves her to observe the waiting period called *'iddah*. The repudiation becomes final on the expiry of the prescribed period of *'iddah*.

Before the expiry of *'iddah*, the husband may revoke the divorce in which case the dissolution is of no effect. However, after the expiry of *'iddah* the divorce becomes effective.¹²¹ The rule is laid down in the Qur'an wherein it is said:



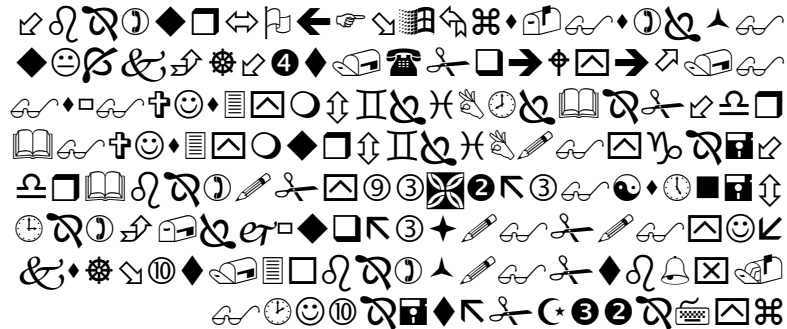
Such of your women As have passed the age of monthly courses, for them the prescribed period, if ye have any doubts, is three Months, and for those who have no courses (it is the same): for those who carry (life within their

wombs), their period is until They deliver their burdens: and for those who fear Allāh, He will make their path easy.(65:4)

However, if the husband has intercourse with his wife during this period then the divorce is cancelled and the relationship of husband and wife is maintained. During *‘iddah*, the wife continues to enjoy the provision of accommodation by her husband as earlier mentioned. The husband should properly maintain her and the husband must abstain from dealing with her sexually until the end of the *‘iddah*. After the *‘iddah*, the divorce has been affected and has become effective. Thus, if the husband wants to remarry her, he has to repeat the processes of contracting a valid marriage.

5.1.10 Precautions against Divorce

Since emphasis in marriage is often placed on love and fairness to the wife or wives, a great precaution against divorce should be observed by both the husband and the wife or wives. Thus, remedies are recommended by the Holy Qur’ān. Allāh teaches in Qur’ān 4 verses 35 thus:-



If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allāh will cause their reconciliation: for Allāh hath full knowledge, and is acquainted with all things.(Q4:35)

It is due to such teachings of the Holy Qur’ān that the holy prophet Muhammad declared divorce to be the most hateful of all permissible things.¹²² These injunctions indicate that Islām abhors divorce, but immediately the couple feel that they may no longer reconcile or maintain peace with each other, they have to separate. In this connection, all possible methods of reconciliation must be tried before divorce is resorted to. This is the duty of every Muslim husband, especially when divorce is expected to be a tragedy entailing much suffering.

It was reported that a man complained to the Prophet of his wife's stubborn insolence, and the Prophet advised him to divorce her, but when the man explained that this would be hard because she had long cohabited with him and had children, the Prophet said to him; "Talk to her or instruct her; her natural goodness, if she has any, she will respond to his/her advice".¹²³

Similarly, it is a wife's duty to try to gain her husband's good will, when the trouble comes from him. Moreover, each spouse is enjoined to correct himself /herself. Self-examination should be undertaken and any fault should, if possible, be put right. It is in line with this that the following steps are recommended by Islāmic jurists to discourage divorce thus:-

(a). It is recommended in Islām that, before the selection of a partner, the opportunity should be given to both parties to study and have a good look at each other. This is to detect the qualities in each of them and make sure that they are compatible in some respects as earlier discussed.¹²⁴ Prophet Muhammad is quoted to have said: "Take ye care that non-contract of women in marriage but their proper guardians, and that they be not so contracted but with their equals; because the desirable ends of marriage, such as cohabitation, society and friendship, cannot be completely enjoyed except by persons who are each other's equal".

(b) If any disagreement which may lead to separation occurs between the couples, then one or both spouses should inform their relatives to effect the settlement. Where no relatives can be contacted, it is the responsibility of the judge (if such a case is reported to him) to appoint arbiters for them. It is only after the attempt to settle the dispute fails that dissolution may take place. The Qur'ān declares: If ye fear a breach between them twain, appoint (two) arbiters, one from His family, and the other from hers; if They wish for Peace, Allāh will cause their reconciliation: for Allāh hath full knowledge, and is acquainted with all things. (Q4:34)

(c) The period of waiting for three months (*'iddah*) by the wife under the *Nafaqah* of the husband is to give both of them time for reconsideration, settlement and revocation of such a divorce.

Ash-Shawkani comments the view of scholars regarding the pronouncement of divorced three times and the expenses of the women are compulsory for him.

وقد اختلف أهل العلم في المطلقة ثلاثا هل لها سكنى ونفقة أم لا ؟ فذهب مالك والشافعي أن لها السكنى ولا نفقة لها وذهب أبو حنيفة وأصحابه أن لها السكنى والنفقة وذهب أحمد وإسحاق وأبو ثور أنه لا نفقة لها ولا سكنى وهذا هو الحق وقد قررته في شرحي للمنتقى بما لا يحتاج الناظر فيه إلى غيره (ولا تضاروهن لتضيقوا عليهن) نهى سبحانه عن مضارتهن بالتضييق عليهن في المسكن والنفقة وقال مجاهد¹²⁵:

There is divergence of opinions among the scholars on pronouncement of divorce thrice as whether giving her residing home and spending on her is eligible or not? Imam Malik and Ash-shāfi'i affirm that residence should be allocated for her, but not to spend on her. Imām Abu Hanifah and his companions posit that both residence and spending are due for her. Ahmad, Ishāq and Abu Thawr against allocating residence for her and spending on her. This is true. I have read it in the commentary of Al-Muntaqi, (which is so clear) that there is no need of looking to another source by whoever studied it (you should not discomfort (harm) them, to make things difficult for them). Allāh forbids harming the women (wives), by making living and spending difficult

(d) When the divorce is pronounced by the husband *talaq*, the deferred portion of the wife's dower must be paid promptly. Likewise, if it is pronounced by the wife (*Khul'*) the dower and part of the other expenses must be returned in form of redemption for the wife.

Meanwhile, if divorce is because of a defect such as minority, non discretion or insanity, it could be effected through the guardians who possess seniority, discretion and sanity. A divorce given by an insane person or a child will not be considered a valid *talaq*. Abu Hurairah has narrated the hadith quoted earlier to buttress the point if a divorce is given without an intention or choice, that is through duress, it will not be valid according to Imam Malik and some others.¹²⁶ Thus, the conditions given above are defective, particularly the issue of adulthood. One who is *baligh* but he is not *Rashid* intelligent or *baligh* but could not exercise discretion as a result of lack of intelligence.

5.2 Islāmic Law of Inheritance in *Fath-al-Qadīr*

5.2.1 Inheritance (*al-Mirath*)

Inheritance which means in Arabic ‘*al-mirāth*’ or *llmu’l-Faraid* represents the science of knowing how the property left behind by a deceased person is shared among the heirs on equitable term¹²⁷” This science occupies a significant position in Islāmic Jurisprudence. The Glorious Qur’ān (4:11-12 and 176) talks extensively on the law of inheritance.



Allāh (thus) directs you as regards your children's (inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. for parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth. (the distribution In all cases ('s) after the payment of legacies and debts. ye know not whether your parents or your children are nearest

to you In benefit. These are settled portions ordained by Allāh. and Allāh is All-knowing, All-Wise.(Q4:11)

Imam Ash-Shawkāni comments on the above verse on the inheritance as follows:

{ للرجال نصيب مما ترك الوالدان والأقربون } وهذه الآية ركن من أركان الدين وعمدة من عمد الأحكام وأم من أمهات الآيات لاشتغالها على ما يهم من علم الفرائض وقد كان هذا العلم من أجل علوم الصحابة وأكثر مناظراتهم فيه وسيأتي بعد كمال تفسير ما اشتمل عليه كلام الله من الفرائض ذكر بعض فضائل هذا العلم إن شاء الله¹²⁸

(Men have share from what their parents and relatives left (for them). This verse is a pillar among the pillars of religions and a major among the major and succinctness, like wise this verse a mother among the mothers of the Qur'ān for its intentions on the law of successions. Indeed, this teaching is because of the knowledge of *Sahabah* and their efforts on the subject matter. This shall be discussed before the completion of this *Tafsir*.

The same law was described by the prophet Muhammad (S.A.W) as half of the total sum of knowledge in his statement quoted below: Prophet Muhammad (S.A.W.) was reported to have said:

تعلموا الفرائض وعلّموا فقال : قال رسول الله الفرائض وعلّموا، ومن ذلك :
 مارواها بنمسعود :
 4: الصفحة رقم حدّثنا إبراهيم بن أبي المُنْذِرِ الحِزَامِيُّ، قَالَ :
 حَدَّثَنَا حَفْصُ بْنُ عُمَرَ بْنِ أَبِي الْعَطَّافِ، قَالَ :
 حَدَّثَنَا أَبُو الزُّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ، قَالَ :
 قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ :
 يَا أَبَاهُ هُرَيْرَةَ، تَعَلَّمُوا الْفَرَائِضَ، وَعَلِّمُوهُ، فَإِنَّهُ نَصْفُ الْعِلْمِ، وَهُوَ يُنْسَى، وَهُوَ أَوْدٌ شَيْءٌ يُنَزَّ عُمْنًا مَتِي. " 129

Learn the the science of the inheritance and teach (others).
 The Messenger of Allah says that Knowledge of inheritance is to learn it.

Endeavour to learn science of inheritance and teach it to other people, for it constitutes half the total sum of knowledge. It is easily forgotten and the first of branch of knowledge which will suffer neglect from my community.

Imam Ash-Shawkani commented on the above statement. It read thus:

جاءت امرأة سعد بن الربيع إلى رسول الله صلى الله عليه و سلم
فقالت : يا رسول الله هاتان ابنتا سعد بن الربيع قتل أبوهما معك في
أحد شهيدا وإن عمهما أخذ مالهما فلم يدع لهما مالا ولا ينكحان إلا
ولهما مال فقال : يقضي الله في ذلك فنزلت آية الميراث { يوصيكم
الله في أولادكم { الآية فأرسل رسول الله صلى الله عليه و سلم إلى
عمهما فقال : أعط ابنتي سعد الثلثين وأمهما الثمن وما بقي فهو لك
أخرجه من طرق عبد الله بن محمد بن عقيل عن جابر¹³⁰

...from Jabirs he said: wife of Sa'd bn Ar-Rabi'i came to the messenger of Allāh (peace be upon him), she said: O Messenger of Allāh these are the two daughters of Sa'd bn Rabi'i their father was killed in the battle of Uhud as a martyr and their uncle has taken their property, and does not leave for them any property, and they can not marry except that they have money. (The prophet) said: Allāh will judge on this and the verse of inheritance revealed (Allāh makes bequest for you about your children). The prophet was however sent to their uncle and said give the two daughters of Sa'ad two third (of the property) and their mother one out of eight (1/8), and whatever remains is for you.

With the law of inheritance, the heirs in their various categories can be justly taken care of from the property left behind by a deceased person. Exposition of what Shawkani discusses on the law of inheritance in his *Fath-al-Qadīr* is not the writer's intention here, but a re-examination of some topical issues which are yet to be logically concluded by the earlier writers before Ash-Shawkāni in the subject. These include:

- i. legal rights of relatives on the maternal side termed "*Dhawu 'l-'arham*" to inherit with the heirs of the fixed shares (*Ashābu 'L-Faraid*).
- ii, definite share of two daughters left behind by the deceased. (This is not clearly mentioned in the Glorious Qur'ān).
- iii. *al-hujb* (Exclusion)
- iv. *al-kalālah* - (a deceased person having neither parent nor off spring) *al-wasiyyah* (Law of Bequest)

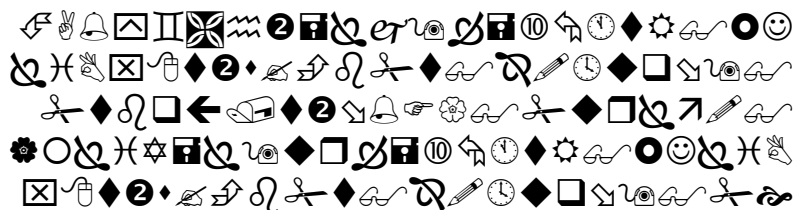
5.2.2 The Right of Relatives on the Maternal Side (*Dhawu 'l' - 'Arhām*) to Inherit with the Heirs of the Fixed Shares (*Ashabu 'l Farāid*)

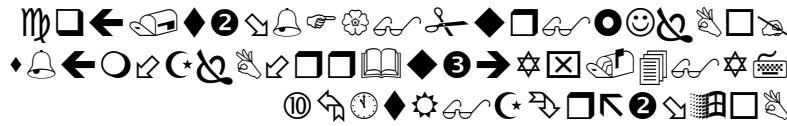
The term *Dhawu 'l- 'arhām* refers to relatives on the maternal side. The Arabic word *Ar-Rahym*' (singular form of "*arhām*), means womb, uterus relationship or kinship, among many others. The term *dhawu' - 'l-arhām* (cognate heirs), then connotes relations that can be traced to the same womb. Imam Ash -Shawkani examines the jurists' opinion on the legal right of the relations on the maternal side (cognate heirs) to co-inherit with the heirs whose shares are fixed in the glorious Qur'ān (*ashābu 'l-furūd*) and the relatives on the paternal side known as *Ashābu-l-^cAsabah* (the agnates).¹³¹

Ash Shawkāni first presents Imam Qurtubi opinion on the subject. (Rhazes 864-932 C.E) argues that relations on the maternal side have the legal right to co-inherit with the heirs of the fixed shares (*ashabu 'l-furūd*) and the relatives on the paternal side *ashābu 'l-^casabah* (the agnates). This includes the male, children and other agnates i.e; grandson (s) the father, the grandfather, the male sibling(s) (full and consanguine brother(s), the uncle(s) and the sons of the last two).¹³² Imam Ash-Shawkāni disagrees with the opinion held by the jurists with regard to the collateral status to which the relatives on the maternal side are categorised. He based his argument on Allāh's word in the glorious Qur'ān reads:

Unto the men (of family) belongeth a share of that which parents and a near kindred leave, and unto the women a share of that which parents and a near kindred leave, whether the property be small or large- a legal share.(Q4:7)

In Qurtubi's understanding of the above verse, the paternal aunts, daughters' sons and other female sibling(s) have the legal rights to inherit from the inheritance left behind by their near kindred (*al-^caqrabun*), according to the import of the verse under discussion. Imam Ash-Shawkāni explains further that, though their shares are not specially mentioned in the verse under discussion, their right of inheritance with the heirs of the fixed shares and with other agnates is legally established in the verse under examination (Q.4:7). The amount of their share can be inferred from related cases.





From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large,-a determinate share.(Q4:7)

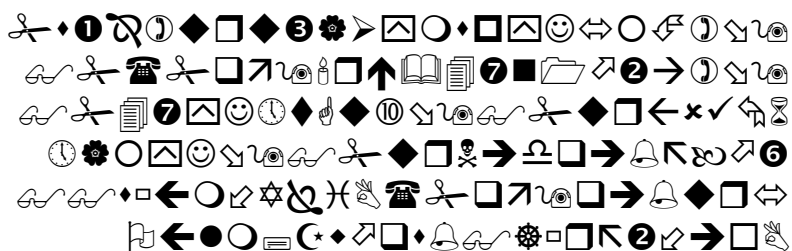
Shawkāni disagrees with the opinion expressed by Imam Qurtubi on four grounds:

- i. the word *‘al-‘aqrabun* (close relations) used by Allāh in the verse (Q.4:7) which Imam Shawkani argues, does not include distant relations, but strictly connotes nearest relations. The nearest relations to a person, according to Imam Ash-Sawkani, are those who are related to him by blood. These include his parents and his children. Parents are directly mentioned in the verse as *al-walidain*, while children are metaphorically referred to as *al-‘aqrabun* (nearest kindred) in the same verse. With this interpretation, the word,*al-‘aqrabun*,used in the verse, in Imam Ash-Shawkāni’s opinion and in that of the majority of the jurists, can only mean the children, and that has excluded all the relations through the maternal side.¹³³
- ii. the verse under discussion, Ash-Shawkāni asserts further, is ended with the words *“nasiban mafrudan”* (a determinate share) and unanimously no share is fixed for maternal; relation(s) in Islāmic law. This ending remark means that the heirs of the fixed shares (i.e. parent and children) are the object of the revelation. Therefore, any heir whose share is not fixed in the glorious Qur’ān is not intended by the message contained in the verse.
- iii. Kn Ahmad expatiates further upon the word *mafrud* which ends the verse under examination. He says:

The word *fard* (compulsory duty) is determined by the Hanafite jurists by a duty whose ordinance is known through a clear-cut proof from the Glorious Qur’ān, while the word *‘wujūb’* (obligatory duty) by a duty whose legislation is based on a speculative proof Since *fard* is determined by a definite proof and *wujub* by an indefinite one, the words *nasiban mafrudan* (a determinate share) can only refer to the heirs of definite share known in Shari‘ah as *‘ashabu’l-furud* which include parents and children. The definite tone (*nasiban mafrudan*,.) with which the verse is ended, according to Shawkani, has excluded the maternal relatives from the category of the heirs meant with the import of

the verse. This is because their shares are not definite from the Glorious Qur’ān. Hence, the word ‘*al-aqrabun*’ used in the verse under discussion cannot be extended to them.¹³⁴

iv Ash- Shawkani also quotes the succeeding verse (Q:4:8) to the one under examination to buttress his argument for the exclusion of the maternal relatives from the word *al-aqrabiün* used in the verse under study. The verse read thus:



But if at the time of division other relatives, or orphans or poor, are present, feed them out of the (property), and speak to them words of kindness and justice.(Q4:8).

Imam Ash-Shawkāni commented on the verse which read thus:

إن أولى القربى المذكورين هنا هم الوارثون كان للنسخ وجه وقالت طائفة : إن هذا الرضخ لغير الوارث من القرابة واجب بمقدار ما تطيب به أنفس الورثة وهو معنى الأمر الحقيقي فلا يصار إلى النذب إلا لقرينه والضمير في قوله { منه } راجع إلى المقسوم المدلول عليه بالقسمة وقيل : راجع إلى ما ترك والقول المعروف : هو القول الجميل الذي ليس فيه من بما صار إليهم من الرضخ ولا أذى¹³⁵

The next of other relatives mentioned here are the heirs that can be abrogated. Other people says, this (*Uli-l-qurbah*) is concurred to those who will not inherit among the other relatives is compulsory in the measure with what will please the inheritors (heirs). This is what is referred to here originally. There is no need of looking to other lamentation except for comparison. And the meaning of the word (out of the property) refers to the position (of the estate) that the verse refers to others say, it refers to what is left behind (by the deceased). But what is popularly known (accepted) is mild (pleasant) word that would not be painful to them.

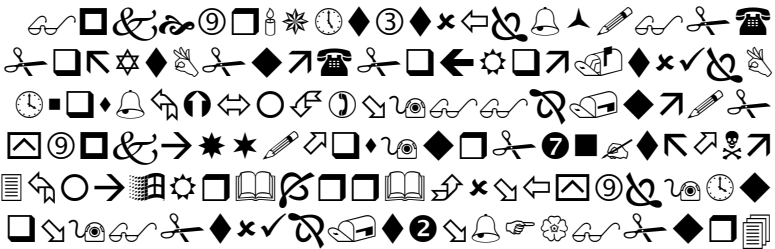
In his interpretation of the verse quoted above Shawkani declares that Allāh Knows that there are certain relatives who must necessarily inherit the property left behind by a deceased person, and there are some who must not necessarily inherit same. The *qurba'l-quntha* (other

relatives) used in the latter verse is different in import from the one used in the former. The ‘*ulu’l-qurba* (other relatives) mentioned in the latter verse refers to the distant relatives; maternal relatives inclusive. The category of the people (i.e. orphans and poor who are not even members of the family to whom they are grouped in the verse shows their lower status compared with the heirs of the fixed shares (*al-a qrabun*) - (nearest kindred) with regard to the inheritance. Certain portion from the property is recommended for them as a charitable token, not as a legal right, or a constructive word in absence of none. The wisdom behind this consideration, according to Shawkani, is to recognize their gesture of good-will in order to further enhance good relationship between the close and the distant families.¹³⁶

The four grounds explained above, according to Imam Ash-Shawkāni, are among the factors which keep maternal relations to a collateral status in their right of inheritance.

The writer of the present work shares opinion with Shawkani in his argument that the word ‘*aqrabun*’ (close relations) connotes more than children and the agnates, but also includes relations from the maternal side. Our argument can be justified by calling attention to the same word *aqrabun*’ which is used in the Glorious Qur’ān to refer to both paternal and maternal relations in other passages which include’

i.



 O ye who believe! stand out firmly for justice, As witnesses to Allāh, Even as against yourselves, or your parents, or your kin(*al-aqrabun*’) (Q4: 135).

Shawkani commented on the verse under study by explaining the word *Qawaminna* and *Al-aqrabinna* as inter changeably. The verse read thus:

{ قوامين } : أي ليتكرر منكم القيام بالقسط وهو العدل في شهادتكم على أنفسكم وهو الإقرار بما عليكم من الحقوق وأما شهادته على والديه فبأن يشهد عليهما بحق للغير وكذلك الشهادة على الأقربين وذكر الأبوين لوجوب برهما وكونهما أحب الخلق إليه ثم ذكر الأقربين لأنهم مظنة المودة والتعصب فإذا شهدوا على هؤلاء بما عليهم فالأجنبي من الناس أحرى أن يشهدوا عليه¹³⁷



The prophet is closer to the believers than their own selves, and His wives are their mothers. Blood-relations among Each other have closer personal ties, In the Decree of Allāh. than (the brotherhood of) believers and Muhajirs: nevertheless do ye what is just to your closest friends: such is the writing in the Decree of Allāh...(Q33:6)

They also relied on the prophetic tradition which states that: the maternal uncle of a deceased person who is survived by no heir is entitled to inherit from him. Likewise, Shawkani state his statements on that particular verse quoted above on inheritance of uterine blood relations that he possessed the share from the property left behind by his brother from the same brother. The comment goes thus:

{ النبي أولى بالمؤمنين من أنفسهم } أي هو أحق بهم في كل أمور الدين والدنيا وأولى بهم من أنفسهم فضلا عن أن يكون أولى بهم من غيرهم فيجب عليهم أن يؤثره بما أراده من أموالهم وإن كانوا محتاجين إليها ويجب عليهم أن يحبوه زيادة على حبهم أنفسهم ويجب عليهم أن يقدموا حكمه عليهم على حكمهم لأنفسهم¹³⁸

(The Prophet is closer to the believers than their own selves). That is, (The Prophet) is the best for them based on their religious and mundane affairs, and he (The prophet) is closer to them than their own selves, talk less of being closer to them on other affairs. It is therefore an obligation on them to follow (adhere) to him on what he needs from their wealth, even if they are in need of it. It is also obliged on them to love him more than own selves and also compulsory on them to put his decree superior to their own decrees (to consider the prophet's and make use of it, before their own decreed.

It was reported also that when Thābit Ibn al-Dardah died, the Prophet (SAW) said to Qays Ibn ʿAsim:

Has he any relative among you? Qays said: He was a stranger among us. We do not know any of his relative, except 'Abu Lubāba who is his maternal nephew" the prophet (SAW) allowed Abu Lubāba to inherit the property left behind by the deceased man.¹³⁹

The legal right of the maternal relations to inherit the property left behind by their relations can never be over-emphasized, because in the Malikite and the Shafi'ite schools of thought, property of a deceased person who left no heir except maternal relations, is returned to the public treasury instead of giving it to his maternal relations. The only condition that can make them give the property of such a man to his maternal relations is when the public treasury is not properly administered. Whereas in the Hanafite and the Hanbalite schools, priority is given to the maternal relations over the public treasury.¹⁴⁰

5.2.3 Legal share of two daughters which is not fixed by the law

The case of two daughters whose share is not fixed by the law is one of the special cases in the Islāmic law of inheritance. In his appraisal of the subject, Shawkani examines this case and studies the controversies surrounding it with a view to arriving at a logical conclusion. In order to achieve this goal, Shawkani first presents divergent opinions of the jurists on the matter and this is followed by his own personal opinion.

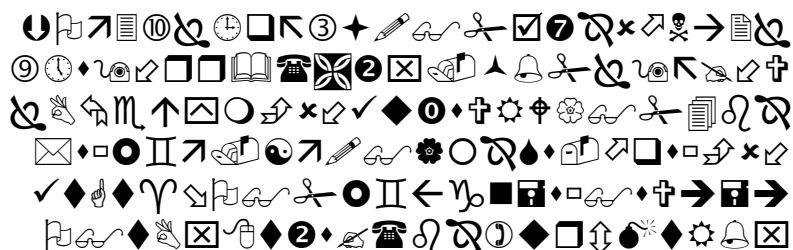
i. Jurists' Opinions on Legal Shares

Jurists are not unanimous on the legal share of two daughters who succeeded a deceased person as the only heirs. Some jurists hold that since two third (2/3) is the legal share fixed for three daughters and above, according to the Qur'ān (4:11), the legal share for two daughters should be half (1/2) of the property. The holders of this view based their judgment on the authority of a legal opinion attributed to Ibn 'Abbas who says:

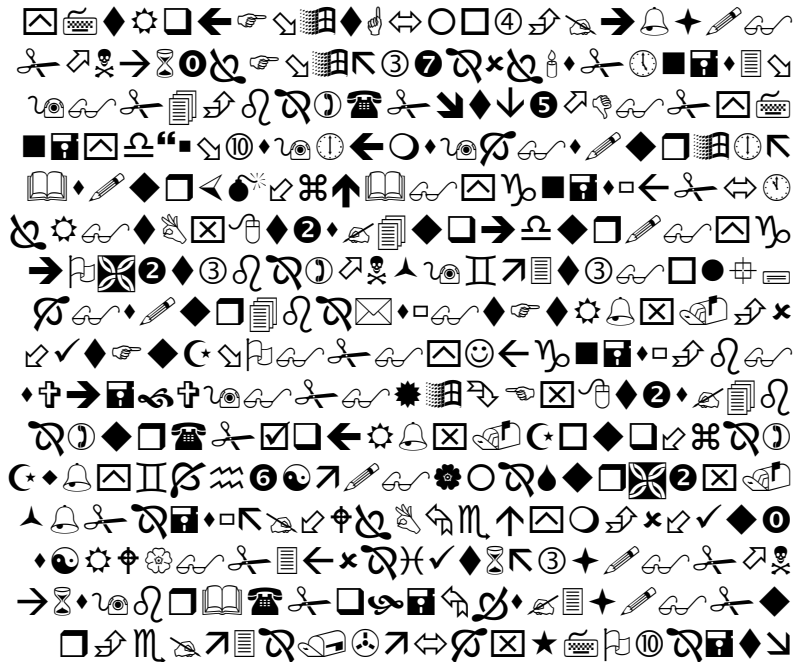
الثلاثان فرض الثلاث من البنات فصاعدوا أما فرض البنتين فهو النصف¹⁴¹

Two third(2/3) is the legal share of three daughters and above, the legal share of two daughters then will be half of the property,

Ibn 'Abbās, according to Imam Ashawkani, based his judgment on the verse of the glorious Qur'ān which reads:



iii. Another inference is drawn from the case of *al-Kalalāh*. Allāh (S.W.T) says in the glorious Qur’ān with respect to the case of *al-kalalāh*’ (a deceased person having neither parent nor offspring)



They ask Thee for a legal decision. say: Allāh directs (thus) about those who leave no descendants or ascendants As heirs. if it is a man that dies, leaving a sister but no child, she shall have half the inheritance: if (Such a deceased was) a woman, who left no child, Her brother takes Her inheritance: if there are two sisters, They shall have two-thirds of the inheritance (Between them): if there are brothers and sisters, (They share), the male having Twice the share of the female. Thus doth Allāh make Clear to you (his law), Lest ye err. and Allāh hath knowledge of all things.(Q4:176)

Imam Shawkani comments on the Qur’ānic above.

وقد أخرج البخاري ومسلم وأهل السنن وغيرهم عن جابر بن عبد الله قال : [دخل علي رسول الله صلى الله عليه وسلم وأنا مريض لا أعقل فتوضأ ثم صب علي فعقلت فقلت : إنه لا يرثني إلا كلاله فكيف الميراث ؟ فنزلت آية الفرائض]¹⁴⁵

It was narrated by al-Bukhāri and Muslim, and Ahlu Sunnah and other narrators. On the authority of Jābir bn Abdullah, who said: The messenger of Allāh (peace of Allāh be upon him) visited me on my sick bed, and I was unconscious, (lost my memory) by then, He (the prophet) performed the ablution, and then pour water on

me, so I regain my consciousness (memory) and I said, they can never inherit me, except through *Kalalah*, but what about the heirs? So, the verse of inheritance was revealed.

Here, two-third of the property is allotted to two sisters as their legal share. The majority then argue that if gender consideration is kept in view, the two-third allotted to two sisters can be equally given to two daughters, even two daughters are more entitled to two-thirds than two sisters if the degree of closeness to the deceased is taken into consideration. With the inference, drawn from the verse quoted above, it can be legally argued that what is not explicitly mentioned in the former verse (4:11) with regard to the legal share for two daughters has been clearly explained in the latter (4:176). The majority of the jurists' remark's as quoted by Shawkani in his *Fath-al-Qadīr*

In his contribution to the issue, Shawkani argues in favour of two-third of the property as the legal share for two daughters of a deceased. He vehemently disagrees with the half (1/2) of the property suggested by Ibn 'Abbas because the point on which his argument is based is found not to be sound and is incredible. For instance, he claims that since two thirds have been fixed in a verse of the Qur'ān (4:11) as the share for women more than two, same cannot be fixed again as a share for two women. However, the half, which he suggested as the share for two daughters, has been also fixed as a share for a single daughter who survived a deceased as the only heir. The second part of the verse which he quotes (4:11) confirms the above assertion. Based on the loophole found in Ibn 'Abbas argument, the half of the property which he suggested as the legal share for two daughters is not acceptable. Shawkani remarks the view of jurists take a step further by examining the actual number of the people that can form prayer congregation in Islām. They make reference to this issue, so that their finding can be used to determine the actual number of the people that form plural in ordinary human endeavors. Ibn 'Abbas holds that the least number of the people that can form congregation in the Shari'ah is three. This Ibn.'Abbas's statement became a precedent for later law enacted in the fundamentals of the jurisprudence (Usūlu'l-fiqh) which states:

أقل الجمع ثلاثة على ما ثبت في أصول الفقه¹⁴⁶

The least number that can form a group is three, according to a laid down rule in the fundamental of Jurisprudence.

Some eminent companions like Uthman Ibn ʿAffān share this opinion with Ibn Abbās. Other jurists are of the opinion that the least number, which forms a group in Islām, is two. Al-Qādi ʿAbibakar al-Baqiāni (d. 1013 C.E) leads the holders of this opinion. They quote a tradition reported by Ibn. Mjahid in his *Sunanh*

The Prophet (S.A.W.) was reported to have said:

"الإثنان فما فوقهما جماعة" ¹⁴⁷

Two people and above form a congregation

However, there are divergence of opinions on the number that forms a group causes different interpretations of the following verse from the Glorious Qurʿān :



if only daughters, two or more, their share is two-thirds of the inheritance; (Q4:11).

The authored of Shawkani commented on the above verse on the share of two female under arguments.

{ وإن كانت واحدة فلها النصف } كان فرض البنيتين إذا انفردتا فوق فرض الواحدة وأوجب القياس على الأختين الاقتصار للبنتين على الثلثين وقيل : إن فوق زائدة والمعنى : وإن كن نساء اثنتين كقوله تعالى { فاضربوا فوق الأعناق } ¹⁴⁸

(If she is one, she will has half of the property). And the share of two women. The share of two female children when they were together is more than a female child. It is compulsory to calculate the share of two consanguine sisters, so that the share of two female children would up to two – third of the estate. Some say that: if they (female children) are increasing there share would also increased as regard the meaning of, if the women (wives) are two as Allāh says that, they should be calculated together.

Those who believe that plural is formed from two people, interpret the word *an-Nisāʿ* used in the verse under discussion to mean two women and the statement: "*fawqaʿ Ithnatain*" (above two women) which follows it to mean three women and above. Those who hold that the least number that can form a group is three, interpret the word "*anNisa*" to be three women and

above. The statement “*fawqa*’ that comes after it explains the number of women (i.e, three) which the word *an-Nisā*’ indicates. Shawkani as quoted above paragraph.

...(If she is one, she will have half of the property). And the shares of two women. The share of two female children when they were together is more than a female child. It is compulsory to calculate the share of two consanguine sisters, so that the share of two female children would up to two – third of the estate...

From the foregoing discussion, it is evidently shown that two-third of the inheritance is the legal share fixed for two daughters of a deceased. This opinion according to this researcher arrived at from facts based on the evidence presented by Shawkani from his study of the subject. Through the present analogical deduction, Shawkani is able to deduce the legal share of two daughters which is left vague in the verse earlier quoted (4:11) from another verse (4:176) where the share of the two sisters of a barren deceased person ‘*al-kalālah*’ is fixed to be two-thirds. The definite share mentioned here is used to determine the share of two daughters which is left implicit in the former verse (4:11).

Furthermore, my own view is that any attempt to interpret the word ‘*an Nisā*’ used in the verse under discussion to mean “two daughters” may be misleading. Divergent opinions of the jurists on the actual number of the people that forms congregation in *Shari‘ah* must not be used to legalize heretical interpretation in the study of *Tafsir*. Effort towards this endeavor must be restrained so that misrepresentation of the word of Allāh will not be transferred from one generation to another. However, it has been observed by us that many Qur’ānic commentators, particularly the modern ones, have inclination to this type of interpretation in their works on *Tafsir*. Muhammad ‘Ali and Abdullāhi Yusuf for instance uphold this kind of interpretation in their commentaries on the verse under examination. Such interpretation as earlier stressed is not only erroneous but also misleading.

5.2.4 *Al-Hajb* (Exclusion)

The Arabic word *al-Hajb* means exclusion. Literally, it also means barrier, overshadowiness, veil and prevention. Technically, the term “*al-hajb*” used to describe the case where a person qualified to inherit is denied all or part of inheritance because of the presence of another person who is more qualified.¹⁴⁹ Exclusion’ is of two kinds:

- i. Total exclusion termed *hajbu- 'I-hirman* or *hajbu 'l-Isqat*.
- ii. Partial exclusion termed '*hajbu-n-nuqsan* or "*hajbu-n-Naql*'.

A detailed study of exclusion is not intended here. Various books on Islāmic law of inheritance are filled up with detailed information about the subject. The prime intention here is the critical study of two issues out of many issues discussed by Shawkani under this topic in his *Fath-al-Qadīr* . The selected issues for discussion are:

- i. the legal share of a brother whose presence reduces the mother's share from one-third to one-sixth.
- ii. the actual number of the brothers or sisters capable of reducing the mother's share.

As regards the first issue, Shawkani first makes reference to the verse which legislates the reduction of the mother's share from one-third to one-sixth by the presence of brothers in the verse: "If the deceased left brothers (or sisters) the mother has 1/6". (Q4: 11) He brought the opinions of other Muslim scholars and their views on the share of grand-mother and the mother, he quoted *Hadith* of the prophet to buttress his points. The comments read thus:

واختلفوا في توريث الجدة وابنها حي فروي عن زيد بن ثابت
وعثمان وعلي أنها لا ترث وابنها حي وبه قال مالك والثوري
والأوزاعي وأبو ثور وأصحاب الرأي وروي عن عمر وابن مسعود
وأبي موسى أنها ترث معه وروي أيضا عن علي وعثمان وبه قال
شريح وجابر بن زيد وعبيد الله بن الحسن وشريك وأحمد وإسحاق
وابن المنذر قوله { إن كان له ولد } الولد يقع على الذكر والأنثى
لكنه إذا كان الموجود الذكر من الأولاد وحده أو مع الأنثى منهم فليس
للجد إلا السدس وإن كان الموجود أنثى كان للجد السدس بالفرض
وهو عصبية فيما عدا السدس¹⁵⁰

There is divergence of opinions on inheritance of grandfather whose her child is alive. On the authority of Zayd bn Thābit, °Uthmān and °Ali, they says that she (grandmother) cannot inherit when her child is alive. But Malik ath-Trawi, al-Awzā'i, Abu Thawr and the men of intelligence (jurists) posit that she inherit with her child...(If he has a male child). child here refers to male and female child, but if only a male child is found among his children or female child is among them, only one-sixth (1/6) is the share of grandfather but if only a female child is left, grandfather will have 1/6 of the share of the property and he would be in position of be residual, except one- sixty.

From the verse quoted above, Shawkani observes that the legal share of the brothers referred to in the verse is not mentioned along with their right of exclusion. The omission,

according to Shawkani, has given rise to much controversy among the jurists. Some of the jurists hold that the presence of the brothers only reduces the share of the mother from one-third to one-sixth, it does not give them the right to inherit with the presence of the father, the residuary inheritor *‘ahlu l-aabah* to whom the residue of the property must be returned. In sharp contrast to the jurists, Muslim jurist argues that brothers and sisters are entitled to a share in the property, because the mother’s share is reduced on account of their presence which cannot be legislated without a purpose. The father, the residuary legatee, according to some scholars takes the residue only after the brother’s share is taken out of the property. Thus, the jurists’ opinions differ on the legal right of the brothers and sisters to inherit, after their presence has caused reduction to the mother’s share.

Imam Ash-Shawkāni disagrees with Ibn.‘Abbāss opinion on the matter. In Shawkani’s view Allāh’s apparent silence about the share of the brothers after they have reduced the share of the mother from one-third to one-sixth shows their illegitimate right to inherit with the presence of the father. It further confirms the fact that the legitimate right to reduce the share of a heir does not necessarily mean legal right to inherit. So the reduction caused by the presence of the brothers and sisters to the mother’s share, according to Shawkani, does not affect the legal right of the father to take the remaining property as an agnate who legally owns the property. In our own view, Ibn. ‘Abāss argument is sound and logical. The legal right of the brothers to reduce the share of the mother from one-third to one-sixth cannot be legislated without a purpose as argued by Ibn. ‘Abbass. Ibn ‘Abbass opinion is corroborated by some other jurists who believe that the omitted share of the brothers in the verse under discussion (4:11) has been fixed to be one-sixth in the verse (4:12). According to the latter jurists, one-sixth given to them and sister of a barren deceased person who left parents in the Q4:12 apply at the case of the brothers and sisters in the Q4: 11. The brother and sisters referred to in the former verse (4:12) are the same brothers and sisters spoken of in the latter (Q4:11). Their share which is not mentioned in the earlier verse (4:11) is the one explained in the subsequent verse. (4:12). The deceased referred to in Q4:11 is the one same *kalālah*’ mentioned in Q4:12. The type of the *Kalālah's* here is a childless deceased person who left parents.¹⁵¹

Shawkani quoted the author of *Tafsir al-Kashashf* on the types of *al-KalAllāhin* the Islāmic law of inheritance.

وقال صاحب الكشاف : إن الكلاله تنطلق على ثلاثة : على من لم يخلف ولدا ولا والدا وعلى من ليس بولد ولا والد من المخلفين وعلى القرابة من غير جهة الولد والوالد انتهى قوله { أو امرأة }¹⁵²

The author of al-Kashashf says: Indeed, *al KalAllāh*(the person has no decendants nor ascendants as heires) is based on three things: the one who leaves behind neither a child nor a father. The one who is neither a child nor a father. And the relation neither from the child nor from the father.

Concerning the second issue, (i.e. the actual number of the brothers or sisters capable of reducing the mother's share), the jurists are unanimous on the minimum of three brothers or three sisters that can cause reduction to one-sixth. Opinions are divergent on whether two brothers or two sisters can affect the same reduction. With regards to two brothers or two sisters as capable heirs to reduce the share of the mother, Shawkani quotes Ibn, °Abbās as saying: Two brothers or two sisters cannot reduce the mother's share, just as one brother or one sister can neither do that as well.

وهذا إجماع ودلت الآية على أن الإخوة لأم إذا استكملت بهم المسألة كانوا أقدم من الإخوة لأبوين أو لأب وذلك في المسألة المسماة بالحمارية وهي إذا تركت الميتة زوجا وأما وأخوين لأم وإخوة لأبوين فإن للزوج النصف وللأم السدس وللأخوين لأم الثلث ولا شيء للإخوة لأبوين ووجه ذلك أنه قد وجد الشرط الذي يرث عنده الإخوة من الأم وهو كون الميت كلاله ويؤيد هذا حديث : [ألحقوا الفرائض بأهلها فما بقي فلأولى رجل ذكر] وهو في الصحيحين وغيرهما¹⁵³

This is consensus of opinion (of scholars), the verse indicates that the consanguine brother from mother side if the condition (for inheritance) is fulfilled (completed) for them, they are legitimate (to inherit) than consanguine brothers of parents or (father side), That is the condition under al- Humāriyah. That is, if a woman left behind (her) husband (but no child). Her husband will have half ($\frac{1}{2}$) of her estate, $\frac{1}{6}$ for her mother, $\frac{1}{3}$ for her consanguine brethren. Father, mother and no share for her consanguine brethren of her father. This is because, there is condition that would make brethren to inherit the mother, this is when the death of *Al-kalalah* occurred. The following *Hadith* supports this: Give the property (of inheritance) to the owner, what is remained, is meant for a male person. (The Hadith is narrated in Sahihaini; Buhari and Muslim).

Ibn ʿAbbas explains further that the verse (4:11) which legislates the reduction makes the presence of at least three brothers or three sisters (*al-Ikhwah*) stern condition for the reduction. The word '*al-ikhwah*' used in the verse in question is in plural form and the least number of the people that can form *jamaʿah* according to him, are three. Hence the right to reduce the mother's share cannot be claimed unless with the presence of three brothers or three sisters. Shawkani reports an occasion where Ibn ʿAbbas was reported to have challenged ʿUthman Ibn. ʿAffan for effecting reduction of mother's share from one-third to one-sixth by the presence of two brothers. The extract below shows the dialogue between the two:

Ibn. ʿAbbas: "O the Khalifah I want to know the law which takes two brothers qualified to reduce mother's share from one-third to one-sixth; whereas you are fully aware of what the injunction says about the matter. ʿUthman: it is beyond my power to revert a judgment which had been upheld by those before me and which has become a prevalent practice throughout the empire ¹⁵⁴

However, lack of unanimity of the jurists on the above subject necessitates: the revisiting of the inconclusive matter of the minimum number of people that form *Jamāʿah* in Islām . The jurists' inability to reach a logical conclusion on the minimum number of people that forms congregation affects their legal decision on the actual number of the brothers and sisters that can effect reduction of the mother's share. Some jurists approve two brothers or two sisters as a valid number to effect reduction; while others consider three brothers or three sisters as an adequate number for the exercise.

Ash-Shawkāni Muhammad, among the early Qur'ānic commentators, sees the view that the word (*al-Ikhwah*) used in the verse under examination, can represent both two or three brothers, whether full, consanguine or uterine. Each of the two numbers (i.e. two or three) according to him, easily reduces the mother's share from one-third to one-sixth, but none of them can inherit with the presence of father, the agnate and the residuary inheritor.¹⁵⁵

Ibn Kathir, who is also among the early Qur'ānic commentators shares the same opinion with Ash-Shawkāni on this issue. The stand of both Sayyid Qutb and Ash-Shawkāni on the subject matter is not different from the views expressed by the early Qur'ānic commentators mentioned above.¹⁵⁶

Imam Ash-Shawkāni considers the issue at stakes one of the issues which should be properly addressed by the Islāmic scholars in the present day. This experience has shown that

consideration is no longer given to the brothers and the sisters of a childless deceased person who left parents behind. Some parents consider themselves the only heirs, for their deceased child. Whereas, the presence of the brothers and sisters of the deceased, according to the law, affects their legal share. All the inheritors of all categories also need to be informed of the scope and limitation of this provision, so that this divine gesture would not be abused by both the benefactors and the beneficiaries when the need arises for its application.

5.2.5 *Al-Kalalah*(A Person who leaves no Descendants or Ascendants)

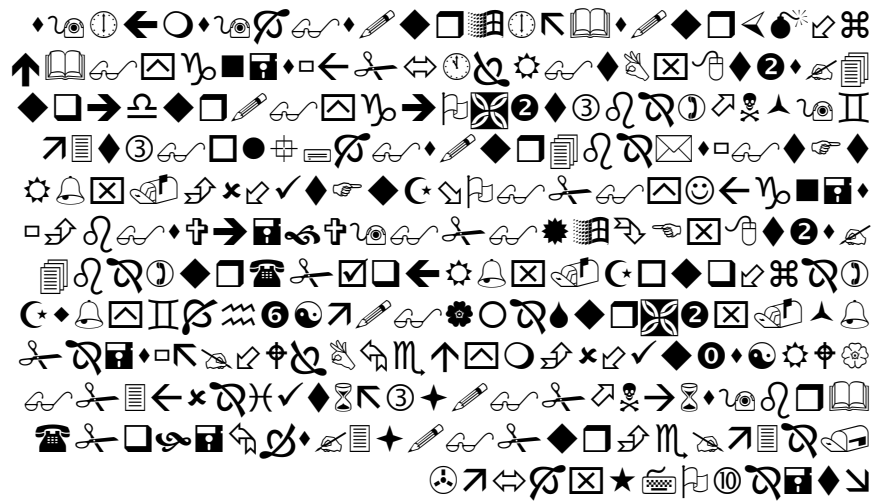
The Arabic word, *al-kalalah*, according to Shawkani means tiredness, weariness, fatigue, exhaustion and dullness. Its verbal form, ‘*kalla*,’ may mean, to become tired, fatigued, weary, weak and exhausted. When the Arabs say: *Kallaar-Rajul*, they mean he is tired, fatigued, weary and exhausted. The same word *Kalālahis* is used to represent an orphan who has no children. The word, ‘*kalālah*’ is to refer to such person because of his weak and helpless condition for the loss of parents and children altogether. Etymologically, the word also means encompassment or encirclement. Based on the meaning of the word, an orphan who has no children is called ‘*al-kalalah*’ because other distant relations rally round him and provide the protection which he has lost by the loss of parents and children.¹⁵⁷

Opinions differ on the definition of ‘*al-kalalah*’ in Islāmic jurisprudence. Abubakr as-Siddiq (R.A), defines the word as somebody who has neither parents nor children.¹⁵⁸ While ‘*al-kalalah*’ to ‘Umar Ibn Khattab (R.A) refers to a childless deceased person who left parent behind. ‘Umar. Ibn. Khattab (R.A) was reported to have answered a question thrown to him on *al-kalalah*. He said:

Al-Kalālah’ is a childless person who died and left parents behind. But I feel shy to disagree with ‘Abūbakr s-iddiq, so *al-kalālah* may also mean somebody who has neither parents nor children. Had three things been explained to us by the prophet (S.A.W) before he died, I would have loved it more than this world and all what it contains. The things are: *al-kalālah*’, *al-khilafah*’ and *ar-Ribā*.¹⁵⁹

‘Umar. Ibn. Khattab based his argument on the Qur’ānic definition of the word which read thus:





They ask thee for a legal decision. say: Allāh directs (thus) about those who leave no descendants or ascendants As heirs. if it is a man that dies, leaving sister but no child, she shall have half the inheritance: if (Such a deceased was) a woman, who left no child, her brother takes her inheritance: if there are two sisters, they shall have two-thirds of the inheritance (between them): if there are brothers and sisters, (They share), the male having twice the share of the female. Thus doth Allāh make clear to you (his law), lest ye err. and Allāh hath knowledge of all things.(Q4:176)

Imam Ash-Shawkāni comments on the verse thus:

What is referred to as *walad* here is son because both are used interchangeably. Because a daughter cannot disqualify consanguine sister, as Allāh says: (And he as sister), this is followed by (and there is no child for him). Sister which is referred to here is full sister of the two parents or sister from father side not mother side. Her share is one – sixth (1/6) as earlier discussed. Many among the scholars shared the same view with sahabah and their followers and other people after Tabi^un, that the full sisters or through father side take the position of the daughters, there is no any brother among them. Ibn Abās, Daw^ud Az-Zāhiri and some others opine that sisters cannot take the position of the daughters. They say that there is no share for full-sisters (of the same father and mother) or sister through father side, when there is daughter.¹⁶⁰

Umar’s evidence, which is deduced from the verse quoted above, according to Shawkani is considered null and void by the generality of the jurists. The jurists call attention to the abnormal situation in the verse under discussion, where brothers and sisters who are second class

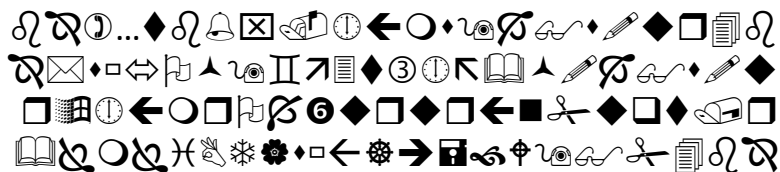
heirs to the deceased have taken the place of the first class relations, i.e, parents, children, husbands and wives (*'ashabu'l-furud*) in inheritance. Brothers and sisters have the privilege to inherit, as clearly stated in the verse under examination because none of the heirs of fixed shares (*'asahbu'l-furiid*) is in existence. If all of them or some of them are in existence, brothers and sisters have no legal right to inherit, according to the law. For the fact that, the right to inherit is conferred on them (brother and sisters) in the verse, it is a sufficient evidence to show that they are eligible for that right because the owners of the right (*'ashābu'l-furiid*) are not present. A justification shows the fact that the *'Kalalah'* in the verse in question can only mean a person who has neither parents nor children.¹⁶¹ Imam Shawkani also commented on the above passage

وثبت في الصحيح أيضا [أن النبي صلى الله عليه و سلم قضى في بنت و بنت ابن وأخت فجعل للبنت النصف ولبنت الابن السدس وللأخت الباقي] فكانت هذه السنة مقتضية لتفسير الولد بالابن دون البنت قوله { وهو يرثها } أي المرء يرثها : أي يرث الأخت¹⁶²

It is affirmed in as-Sahih ... again that the Prophet (peace of Allāh be upon him) made a judgment (divided the property) among a female child, son's female child (son's daughter) and a consanguine sister. He gave a share of one-half for a female child, and one-sixth (1/6) for son's daughter and the rest of the estate for the consanguine sister. This kind of prophetic tradition gives the verdict to explain the meaning of "*al-walad*" as al-Ibn (son), not daughter (female child). He says: (He will inherit her), that is, he inherits consanguine sister.

If Umar's understanding of the verse is guided by the fact that parents are not reported dead in the verse as the case with the children, the share (half of the property) allotted to the sister in the same verse has vividly shown the death of the Parents. So the *'Kalālah'* in the verse is a childless and parentless one which goes in line with 'Abābakr's definition of the word.

The issue of brother(s) and sister(s) as the only heirs of *'al-kalalah*, according to Shawkani, needs to be re-examined. The re-examination of the case becomes necessary because of different treatment given to them in the two places where the issue of *'al-Kalalah'* is explicitly mentioned in the glorious Qur'ān. (4:12 and 176). These include:



وصية يوصي بها أو دين { الكلام فيه كما تقدم قوله } غير مضار
163 {

Al-Kalālah is a deceased who is survived by neither a child nor parents. This is a verdict of Abu Bakar as-Sidiq, °Umar bn al-Kattāb, °Ali bn An-Tālib and some other scholars. This is also supported by Sāhibus' Kitābii-°Ayu and Abu Mansur Al-Laghur, and Ibn °Arafah,... Ibn Kathir also says that the people of Madinah and Al-Kuffah, and Basrah, also uphold that this is in accordance with the seven scholars and the four sunni Imams, and majority of the predecessors and their successors, almost all of them (scholars), it is reported even more than one person that reported the Hadith. Also, it is reported by Abu Hātim and Athram, on the authority of Abu Hubaydah who said: *Al-Kalālah* means a person whose cannot be inherited neither by father, mother nor brother is referred to as *Kalālah* to the Arab.

The Qur'ānic exegetes, according to Shawkani, unanimously agree that the status of the brothers and the sisters in the first verse (4:12) in terms of relationship to the deceased is quite different from that of brothers and the sisters in the second verse.(4:16). The difference in their status is determined by the quantity of the share allotted to each of them from the property left behind by a deceased person who is a *kalālah*. The brother and sister who succeeded a '*kalālah*' in the first verse are given one-sixth of the inheritance each, while a sister who succeeded a '*kalālah*' as the only heir in the second verse is given half of the inheritance, two sisters are given two-thirds, while brothers and sisters more than two are given the whole of the property to be shared among themselves, on the basis of "the male takes twice share of the female." The share (one-sixth) allotted to the brothers and sisters in former verse (4: 12), according to the majority of the jurists, clearly shows that the brothers and the sisters in the verse are uterine ones who can inherit only when none of the heirs of the fixed share (*'ashabi 'l-faraid*) and the agnates (*A 'l-asabah*) is not in existence. The share (half of the property) allotted to a single sister who succeeded a deceased person who is a '*kalalah*' in the second (4:176), indicates that the sister in the verse is an immediate heir who must be either full or consanguine sister. The same thing applies to all other heirs mentioned in the same verse, such as two sisters, brothers and sisters more than two. Their respective shares (i.e, two-thirds and the whole of property) show that they are agnates who are related to the deceased through paternal side. Thus the distinction is created between the uterine and the consanguine or full brothers and sisters related to *al-kalālah*.

Having reviewed all the preceding opinions presented here on *al-kalālah*, we consider both definitions of *al-kalālah*' presented by °Abūbakar and °Umar to be sound and valid. The

soundness of Abūbākr's definition can be based on analogical deduction (*qiyas*) which has been logically explained by the jurists, (i.e.) with the presence of parents, brothers and sisters cannot inherit). Going by the validity of this legal principle, it can be said that the *kalalah*' spoken of in the latter verse (4:176) is an orphan who has no children. This goes in line with Abūbākar's perception of the word. The validity of ʿUmar's opinion is based on the clear text of Qur'ān where *al-kalalah*' is defined as somebody who dies leaving no children, except brothers or sisters. Nothing is said about the deceased's parent in the verse.¹⁶⁴

Though, it can be said on analogical consideration that the presentation of brothers and sisters as the inheritors in this circumstance shows the death of parents, yet man reacts to the clear text of the Qur'ān, and he cannot be blamed for that. Because in '*Usūlu- 'l-fiqh 'qiyas*' remains ineffective when a clear text of the Glorious Qur'ān on a matter is visible. On the basis of this principle, ʿUmar's definition of the word *al-kalalah*' is equally correct. In order to remove the dichotomy created among the jurists on the issue of *al-kalalah*, my understanding is that *al-kalalah*' is of two types according to Muslim Scholars as presented in the following;

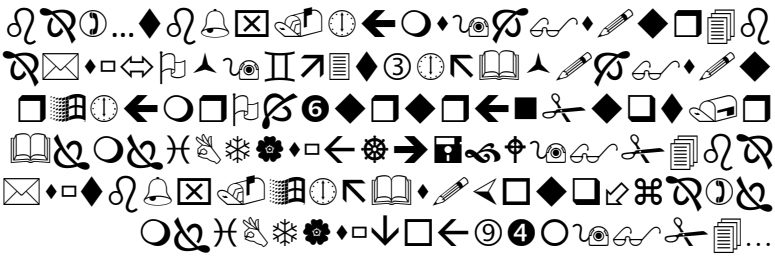
وهم الجمهور احتمال أن يكون الكلالة الميت واحتمل أن يكون القرابة
وقد روي عن علي وابن مسعود وزيد بن ثابت وابن عباس والشعبي
أن الكلالة ما كان سوى الولد والوالد من الورثة قال الطبري :
الصواب أن الكلالة هم الذين يرثون الميت من عدا ولده ووالده
لصحة خبر جابر [فقلت : يا رسول الله إنما يرثني كلاله أفأوصي
بمالي كله ؟ قال : لا] انتهى وروي عن عطاء أنه قال : الكلالة المال
قال ابن العربي¹⁶⁵

Some Muslim scholars posit that *al-Kalālah* is for the deceased, while some opin that is for kinsmen. On the authority of ʿAli and Ibn Mas'ud and Abbās and Ash-Shaʿabi, they emphasise that *al-Kalālah* exempts son (male child) and parent among the heirs. At-Tabari stresses that *al-Kalālah* are those inherit the deceased with neither child nor parent. On the authority of Jabir who said: I asked, O messenger of Allāh, *al-Kalālah* would inherit me, should I make bequest of all my property? The Prophet replied: No!

i. A man who dies leaving neither children nor parents is a *kalalah*'. This type corresponds with Abūbakar's understanding of the word. The half of the inheritance allotted to a sister, two-thirds to two sisters, and the whole of the property to brothers and sisters more than two in the verse under discussion (4:176) show that the *kalālah* 'in the verse has neither children nor parents. That is why the second group of inheritors have to inherit all his property.

ii. A man who dies leaving no children but parents is another type of *al-kalalah*'. This type also fits into 'Umars perception of the word

This second type of *al-kalalah*' is the one referred to in the Glorious Qur'an reads:



 ... if the deceased left children; if no children, and the
 parents are the (only) heirs, the mother has a third; if the
 deceased left brothers (or sisters) the mother has a sixth. (the
 distribution In all cases ('s)...(Q4:11)

The above verse in our opinion, is talking of the *Kalalah* which 'Umar was referring to in his definition of the word. According to the verse, a childless person who dies leaving parents behind is also a *kalalah*'.

It is observed however that Shawkani holds a contrary view to the view expressed by the majority of the jurists who opine that one-sixth given to the brother and sister each in the former verse (4:12) is as a result of their being uterine relations who are related to the deceased through the maternal side, likewise, half of the property allotted to a single sister, two-thirds to two sisters and the whole of property to brothers and sisters more than two in the latter verse (4:176) are on of their being either full or consanguine brothers and sisters. The reasons by the jurists for the allotment of the shares according to Shawkani do not comply with the textual meaning of the verses in question. The reason for allotting one-sixth to the brother or sister in the former verse (4:12) is simply because the brother or the sister co-exists with the mother. When a brother or a sister co-exists with parents, their existence reduces the mother's share from one-third to one-sixth. While the reason for allotting half of the property to a single sister, two-thirds to two sisters and the whole of the property to brothers and sisters more than two in the latter -verse (4:176), is because the heirs mentioned above succeeded an orphan who has no children not on account of their being either full or consanguine brothers and sisters as viewed by the majority of the jurists.¹⁶⁶

Taking cognizance of Shawkani's expositions given above, onone can see that the reasons given by him for allotting shares to the heirs in the two verses under discussion (Q4:12 and 176)

have cleared the ambiguity created by the majority of the Qur’ānic commentators on the subject. The nature of relationship of the concerned heir to the deceased person given as the reason for allotting different shares to them by the majority of the Qur’ānic exegetes is not acceptable to Shawkani. The status discrimination which the interpretation of these exegetes creates between the full consanguine and the uterine brothers and sisters is more of *Ta’wil* than *Tafsir*, so it is debatable and questionable. More so, when this sense is not expressly so applied in the text in question. Therefore, Shawkani’s interpretation of the verses, in our opinion, is rational and explicable, because it is intended for the existing law of *hajib* (exclusion) which allows the second groups of the inheritors (*ashābulasabah*) to inherit the property in the absence of the first groups.

5.2.6 Bequest (*Wasiyyah*)

This study concludes Ash-Shawkani's discussion on inheritance by treating bequest (*al-Wasiyyah*). This integral part of the law of inheritance, which a Muslim is permitted to handle by himself while alive without prejudice to anybody’s right, constitutes a great value and significance to the lives of the heirs of a deceased after his demise. This permission is accorded a Muslim who acquires wealth and who may wish to decide on how to disburse such wealth for the benefit of certain people and the society in general. However, such permission is guided by laws and regulations in order to prevent favoritism and unjust distribution.

Etymologically, the word ‘*wasiyyah*’ traces its origin to Arabic word *wasā* which means to reach, to get in touch, to connect, to link or to contact. When Arabs say: “*wasa fiilanun ash-Shalā bi ‘I-ākhar*” (وصى فلان الشيء بالآخر) (somebody connects two things together) they mean two things are connected together.

Technically, the word *wasā* or ‘*awsā*’ (in quadrilateral form) means to trust, to direct, to bequeath, to will or to dispose. Thus, the word ‘*al-Wasiyyah*’ represents directive, instruction, will, bequest and testamentary disposition of an estate.¹⁶⁷

Imam Shawkani considers the emphasis laid by Allāh in the Glorious Qur’ān (4:11-12) on the execution of bequest and the settlement of debts before sharing of the property takes place; a clear evidence showing the significant position which the law of bequest occupies in Islāmic jurisprudence. Details of what Shawkani says about *al-Wasiyyah* in his *Fathul-Quadir* is not the prime aim of the writer here, since these have been relatively provided for in the books of

Islāmic Jurisprudence. The intended aim of the author is to examine Imam Ashawkani's contributions to certain aspects of the subject which include the following:

- i. Right of the heir to be the legatee (*al-mūsa lahi*).
- ii. Right of the testator (*al-Mufl*) to will all his property to the foreigner with the existence of the heirs.
- iii. The claim that the later verses (Q.4: 11 & 12) on *al-wasiyyah* have abrogated the former ones (Q.2:180 and 240) on the subject.

With regard to the first point above, Imam Ash-Shawkani argues that all the verses revealed on *al-Wasiyyah* do not support the right of the heir to be a legatee at same time. The recurrent expression (i.e., after the payment of legacies is debts) at the end of each case of inheritance, according to Shawkani suggests that the expression addresses another set of people different from the heirs. Shawkani therefore, asserts that the verses revealed on *al-Wasiyyah* are specifically meant for 'legatee of a deceased person who must not be a deserving heir who can inherit. He further substantiates his argument with the prophetic statement reported by 'Amamah al-Bahuli who said: I heard the messenger of Allāh (S.A.W) saying:

Allāh has indeed given each heir his right; thus bequest is not permissible for a heir. ¹⁶⁸

With a critical look at the verses under discussion, it could be said that Shawkani's interpretation of the verses is sound and adequate. Only that he did not take a conditional case which can make the heir eligible to be a legatee into consideration.

Such condition is visible when the other heirs approve of the portion willed by the deceased person to one of them. This conditional case is referred to by some Islāmic scholars and their argument is corroborated by another *Ijtīd* reported by Ibn 'Abbās (R.A) who says: The messenger of Allāh (S.A.W.) says:

"لا تجوز لوارث وصية إلا أن يشاء الورثة"¹⁶⁹

Bequest is not permissible for a heir unless with other heirs' approval.

Furthermore, there may be a situation when some heirs approve of it and some disapprove. In such situation, the bequest can still be executed from the share of those who have given their approval as recommended in the Mālikite School.

Concerning the second point above, Shawkani opposes an opinion which claims that the verses revealed on *al-wasiyyah* allows the testator to will out all his property with the presence of the heirs if he so will. The holders of this opinion according to Shawkani, argue that since some debts can claim the whole property and leave the heirs with nothing, and so can some bequests. This is because the Arabic particle of conjunction ‘Aw’ (or) which connects them together suggests that they are equal in intensity and characteristics. ‘What is applicable to one is equally applicable to the others. On that basis, bequest also can be made to exhaust all the property; the holders of the opinion assert

Reacting to this opinion, Shawkani declares that from the Qurānic and traditional points of view, it is not permissible for a testator to will all his property to a foreigner(s) with the existence of the heirs. Many Qur’ānic verses such as (Q4:7, 9, 11, 12 and 176) which enjoin the heirs to inherit property left behind by a deceased relation, according to Shawkani, are sharply contrasting the idea. This also is contrary to the prophetic tradition which strongly warns against the heirs as poor and destitute. In order to buttress his point, Shawkani quotes the *hadith* reported by Sa‘d bn. Abi: Waqqas (R.A) who said that the messenger of Allāh says:

إنك أن نذر ذريتك أغنياء خير من تزرهم عالة يتكفون الناس¹⁷⁰

Certainly, if thou leave their heirs rich and comfortable is better than leaving them poor and destitute who only rely on begging people for their living.

The only condition that can make the testator will all his property, in Shawkani’s opinion, is non-existence of the deserving heirs. If any one of them is restrance exists, the disposition of all the property to the foreigners is illegal, Imam Ash-Shawkāni concludes.

In our opinion, Imam Ash-Shawkāni’s view on the subject matter is debatable. Because conclusion contrasts with the opinion of some other scholars on the subject. The school, for instance, supports the disposition of the whole property as a bequest if none of the deserving heirs is in existence. But surprisingly, the school, (Imam Shawkani school) not only disapproves of the idea, but also detests bequest from such property that exceeds one-third. Their reason for that lies in the fact that right for disposition of such property, in their opinion, belongs only to Islāmic Government or Islāmic Court. While the Malikite and other Schools approved more than one-third of the property as bequest, though on condition the bequest receives the consent and approval of the surviving relatives of the person who left direct heirs.

In the final analysis, what can be inferred from the divergent opinions of the jurists on the issue under discussion is that the testator has full authority to make bequest which must not exceed one-third from his property if heirs are left behind. If no heir is left behind his freedom to dispose all his property as a bequest desired to legatee(s) is supported by some schools of law and restricted by some. Imam Ash-Shawkāni argues in favor of the school where the right of position of the whole property as a bequest is given to the testator in the absence of the heirs. Our stand-point, however, is that any jurisprudential issue on which jurists' opinions differ' the divergence of their opinions which is considered *Rahmah* in *Shaṅ'ah*, has made the issue optional. In the optional cases, scholars allow individual to uphold the tradition of his school.¹⁶³

The claim that the latter verse (Q4: 11-12) revealed on *Al-Wasiyyah* have abrogated the former ones (Q2:18 and 240) on the subject. Ash-Shawkāni vehemently disagrees with the occurrence of abrogation to any verse from the glorious Qur'ān as claimed by the majority of the Qur'ānic exegetes. With the copious evidences in the glorious Qur'ān showing the occurrence of abrogation in some Qur'ānic verses. Ash-Shawkāni remains firm in opposing this doctrine in his work on *Tafsir*. The common verse, (Q2:106), which the majority of the Qur'ānic exegetes quote to establish the principle of abrogation was understood by Shawkani from a different perspective. The word 'Ayah' (sign) used in the verse, according to Shawkani, does not refer to the verses of the Qur'ān, but to the different laws contained in the previous scriptures like *at-Tawrah*, *al-Injil* and *az-Zabūr*; and also to other natural phenomena of life. This sense is expressed by Shawkani in the Arabic extract below:

إن المراد الآيات المنسوخة هي الشرائع التي في الكتب القديمة من التوراة والإنجيل والزيبور ... إذن، تكسنا في وقوع النسخ بقوله تعالى "مانسخ من آية أو تسها نأت بخير منها أو مثلها" والإستدلال به أيضا ضعيف.¹⁷¹

The intended aim (of Allāh) by the abrogated signs (*al-ayātu- I-mansūkhah*) is the divine laws contained in the previous scriptures like *at-Tawrah*, *al-Injil* and *az-Zabūr*.... Therefore, our belief in the occurrence of abrogation based on Allāh's word: "None of our signs do we abrogate, or cause to be forgotten, but we substitute something better or similar" is very weak and baseless. Likewise our reference to same as an evidence proving the doctrine of abrogation.

Ash-Shawkāni's view on abrogation influences his judgment on the former and the latter verses revealed on *al-wasiyyah*. (Q2: 180 and 240) and (Q4: 11-12). In his contribution to the

issue of abrogation of former verses by the latter ones, Shawkani informs that opinions differ on the issue. He explains further that the majority of the Qur'ānic exegetes like Jalālud-Din as-Sayuti, Ibn ʿArabi and az-Zarqani argue in favour of abrogation of the former verses on *Al-Wasiyyah* by the latter ones (Q4:1 1-12). revealed on the subject. This group buttresses their argument by quoting the prophetic tradition which says:

لاوصية للوارث¹⁷²

"Bequest is not permissible for a deserving heir".

What the content of this *Hadith* implies is that the allotment of the fixedshares to all deserving heirs in the latter verses, (Q4:1 1-12), according to theseexegetes, has rendered the laws in the former ones (Q2:180 and 240) abrogated and redundant. Muhammad ʿAli Ash-Shawkāni holds contrary view to the submission by the majority of the Qur'ānic exegetes on this issue. Shawkani argues that there is no verse in the glorious Qur'ān that buttress this point in the Qur'ānic quotations above. Every verse in the glorious Qur'ān, according to Shawkani was revealed to serve a particular purpose. These particular verses (Q180 and 240) claimed to be abrogated, in Shawkani's opinion, remain (in both recitation and regulation-*hukm*) in the pages of the Qur'ān to compensate those who cannot inherit any property left behind by the children 'because of an impediment like difference in religion, slavery and homicide; or maternal relations (*Dhawu- 'l- 'arham*) who may not inherit with the presence of the heirs of fixed shares. (*'as' hābu-l-asabah*) (the agnates). The parents and the relations referred to as beneficiaries of the bequest in the verses under discussion (Q2:180 and 240) are the class of parents and relations whose difference of religion must not hinder them from enjoying kindness from their children and close relations. Therefore, the former verses revealed on *Al-Wasiyyah*, according to Imam Shawkani, remain dynamic and effective. They are not abrogated, neither in recitation nor in regulation. They are initial verses of the glorious Qur'ān. Shawkani's opinion as expressed above is corroborated by some other eminent Qur'ānic exegetes like Ibn ʿAbbas, Hasan al-Basri, Masraq, Tāwūs, ad-Dahbh, Muslim bn. Yassir, bn. Zayyad and Abū Muslim al-As'fahani. To all the above mentioned eminent Qur'ānic exegetes, the verses under discussion remain in the Qur'ān as proof showing the bequest as an obligatory duty of a testator to a relation who cannot inherit for one reason or the other. Shawkani reaffirms.

فعند هؤلاء أن هذه الآية بقيت دالة على وجوب الوصية للقريب الذي لا يكون وارثا¹⁷³

As for these people, this verse explains the importance of bequest for the relatives who is not among the heirs.

With our critical study of the issue under examination, we are inclined to our opinions with Shawkani and other eminent Qur'ānic exegetes like Ibn l-Hassan Al-Basri Abu Muslim Al-Asfahani and others, on their position on the injunctions. Q.2:10 and 240' which legislate making a bequest in favour of parents, wives and other close relations, which some Qur'ānic exegetes believed had been abrogated by the later revealed verses (Q.41 1-12) remain dynamic and effective. By the provision of these injunctions, bequest can be legally made in favour of mothers, wives and other close relations, who cannot inherit for a reason or the other. It would have been very difficult to have Qur'ānic injunctions back this concession if the verses (Q.2:180 and 240) which legislate the law are really abrogated as claimed by some Qur'ānic exegetes.

We also give support to the position held by the same exegetes on their refutation of the doctrine of abrogation in the study of the Qur'ānic exegesis. In as much as the so-called abrogated verses in the Qur'ān are found relevant to certain situations and solution to certain problems, it is wrong to admit that these verses are abrogated by the other ones.

5.3.0 Criminal offences According to *TafsirFathlal Qadir*

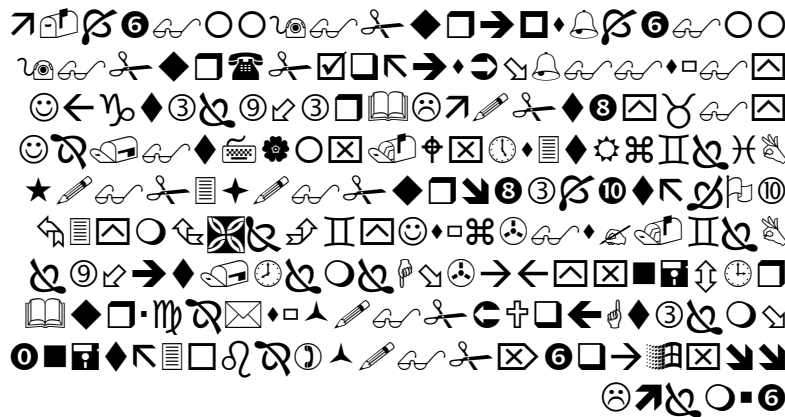
Shawkani takes a step forward in his jurisprudential study to another important aspect of the subject; the 'Penal Law' termed "*al-Hudud*" in juristic terminology. This aspect of Islāmic jurisprudence represents a legal provision made by Allāh to deal with all crimes mentioned in the glorious Qur'ān. It is a punishment prescribed by Allāh to be inflicted upon whoever violates any limit set by Allāh in His glorious book. In the Islāmic criminal laws, all violations of the divine limits are punishable only by the divine penalties prescribed in the glorious Qur'ān . Punishment for violation or prejudice to other people's rights termed *at-Ta'zir*, in juristic terminology may be inflicted by the state, though under the guiding principles laid down in Islām. Among the punishable crimes mentioned in the glorious Qur'ān, which Shawkani discusses in his *Fath-al-Qadīr*, and are selected for study are stated as follows:

- (i) Theft (*as-Sarqah*).
- (ii) Adultery/fornication (*az-Zina*)

It should be noted that detailed discussion on the topics above is not intended here. Our main objective is to focus on some inconclusive issues on each of the topics which have given rise to controversies among the jurists, and which need to be revisited for the purpose of achieving a compromise position and a way- forward.

5.3.1 Theft

The Arabic word for ‘theft’ is ‘*as-Sarqah*’ which means stealing, filching and robbery. Theft according to Shawkani is a capital crime punishable by amputation of hand as revealed by Allāh in the following glorious Qur’ānic verses:



As to the thief, male or female, cut off his or her hands: a punishment by way of example, from Allāh, for their crime: and Allāh is Exalted In power. But if the thief repents after his crime, and amends his conduct, Allāh turneth to him in forgiveness; for Allāh is Oft-forgiving, Most Merciful. (Q5:38-9)

The following are some of the controversial issues relating to *Sarqah*:

- (i) the amount of the stolen article that makes amputation lawful;
- (ii) part of the hand to be amputated,
- (iii) argument on whether the word ‘*iyd*’ (hands) used in the verse under consideration contains feet or not; and
- (iv) contention that repentance, after the committance of sin, nullifies punishment.

With regard to the first point, the majority of the jurists, according to Shawkani hold that amputation of hand as a punishment for stealing has not become necessary until after the following two conditions are established:

- (i) determination of the worth of the stolen article which must reach the

agreeable amount recommended by the jurists and,

(ii) assurance of the security of the stolen article.

The followings are the comments by Ash-Shawkani:

وقال الخوارج : من المنكب والسرقة لا بد أن تكون ربع دينار فصاعدا ولا بد أن تكون من حرز كما وردت بذلك الأحاديث الصحيحة وقد ذهب إلى اعتبار الربع الدينار الجمهور وذهب قوم إلى التقدير بعشرة دراهم وذهب الجمهور إلى اعتبار الحرز وقال الحسن البصري إذا جمع الثياب في البيت قطع وقد أطال الكلام في بحث السرقة أئمة الفقه وشراح الحديث بما لا يأتي التطويل به ها هنا بكثير فائدة قوله : { جزاء بما كسبا }¹⁷⁴

Al-Khawarij posit that as for the theft, no doubt the stolen property should be up to 1/4 *Dirham* and more. And it should be a protected (property) as it is reported from the sound traditions. Many of the people (majority) review the issue of one-fourth *Dinār*. Some people propose that the measure should be 10 (ten) *Dirhām*. Some hold view about the protected (property). Al-Hassan Al-Basri emphasizes that when the clothes are gathered together in a residence (room) and (was stolen), his (chief's) hands should be amputated. Many researches had been carried out about theft by the scholars of *fiqh* (jurists) and the commentators of *Hadith*, which does not need too much of explanation here (May Allāh reward them upon their contributions).

Shawkani commented on the above statements to the supports of the views of Muslim jurists on the points i-iv mentioned above.

{ فاقطعوا } القطع معناه الإبانة والإزالة وجمع الأيدي لكرهية الجمع بين تشنيتين وقد بينت السنة المطهرة أن موضع القطع الرسغ وقال قوم : يقطع من المرفق¹⁷⁵

(Cut off) cutting off means to cut off and to remove all the hands in order to avoid matching the two together. It is dearly explained in the *sunnah* that the actual place to cut off is his wrist, other say, it should be amputated in the elbow

As for the first condition, the majority of the jurists argue that before hands could be amputated as a punishment for stealing, the stolen article must reach an agreeable amount. According to the jurists, this 'is necessary because 'as-Sarqah' (stealing) constitutes a grievous offence in *Shari'ah*. For instance, taking away one grain of wheat, or a single straw, or a chunk

of bread or anything of their equal may not be considered an act of stealing to an Islāmic legislator. In order to avoid amputation for no just cause, the majority of the jurists recommend the amount of the stolen article that can make amputation become lawful. For example, al-Imām ash-Shafi'ī recommends one quarter of *Dinār* as an amount the stealing of which, can be referred to as theft (*nisibus-Sarqah*). Ash- Shafi'ī bases his recommendation on the prophetic tradition which goes thus:

"لاقطع إلا في ربع دينار" ¹⁷⁶

No amputation becomes lawful unless, the stolen article worth's one quarter of Dinar.

Al-Imām Abu Hānifah recommends the 'Dirhams (coin of 50 *Sulus*, of 1/1000 of a Dinar) as an amount that can make amputation become lawful. Abū Hanfah too relies on another prophetic tradition in his recommendation. The traditional reads:

" لا قطع إلا في ثمن المجن " ¹⁷⁷

No amputation should take place except on eighth of the cost of a shield.

The cost of a shield, according to Abu Hanifah, is not less than ten Dirham. al-Imām Mālik and Ahmad Ibn. Hanbal uphold three Dirhams in their schools. They rely on the Hadith reported from Ibn 'Umar (RA.) who said:

أن رسول الله (ص) قطع في مجن قمنه ثلاثة دراهم ¹⁷⁸

The messenger of Allāh (SAW) amputated on a shieldworthy of three *Dirhams*.

Thus, the amount of the stolen article that makes amputation become lawful varies from school to school. The jurists' divergent views on the fixed amount of stolen article which makes amputation lawful are used by another jurists as a good reason for disagreeing with their stand-points. The latter jurists argue that since the amounts recommended by the jurists vary from school to school and from time to time, the best option is to resolve on the least amount of money or of any article whose value would be equivalent to the agreeable least amount of money as required amount for making amputation lawful. Hands, according to these jurists, are not amputated in *Shari'ah* because of the amount of the stolen goods, but because the punishment

will serve as a deterrent for other people from choosing the contemptible and ignominious act as a career Ibn ʿAbbās, Ibn Zubayr and Hasan Al-Basri are the vanguard of this opinion.

With regard to the second point (i.e., assurance of the security of the stolen article), majority of the jurists argue that the stolen article must be in a strongly fortified place where it remains inaccessible to a thief. Any article stolen under such security condition makes amputation lawful. But an article exposed to the public which can be easily reached is liable to be removed by anybody. Taking such article to one's possession, according to the jurists, cannot be considered an act of stealing; within the purview of *Shariʿah*. Therefore, it does not make amputation become lawful.

The two issues which the majority of jurists consider to be necessary condition that can make amputation become lawful are no condition to Ibn ʿAbbās, Zubayr and Hasan Al-Basari. Their contrary view are expressed by Shawkani in the Arabic extract below;

وقال ابن عباس وأبن الزبير والحسن البصري: "القدر غير معتبر
فالقسط واجبما في سرقة القليل والكثير، والحرز أيضا غير معتبر"¹⁷⁹

Ibn ʿAbbās, Ibn Zubayr and al-Hasan al-Bari A particular amount of the stolen article is not considered (by the law). Amputation becomes necessary for any kind of stealing, whether in a large or a small scale. Also, the assurance of the security of the stolen article is not kept in view (by the *Shariʿah*).

In his own contribution to the issue, Shawkani observes that the jurists who advocates a particular amount of the stolen article before amputation becomes lawful are not unanimous among themselves. The prevalent variation of the amount of the stolen article noted with the jurists throws the populace into confusion, and makes their views liable to rejection by the jurists like Ibn ʿAbbas, Ibn Zubayr and al-Hasan al-Basari as earlier presented.

Shawkani quotes Dāwūd Al-Asfahāni, another eminent jurist who disapproves of the fixation of a particular amount of the stolen article before the prescribed punishment could be inflicted on a confirmed thief. Dāwūd says:

We do not make amputation lawful for stealing one grain or one straw, but for a thing less than that, once that thing remains valuable and precious to the owner. That shows that large or little amounts of a stolen article are not fixed in our school. Because thousands of money may be valueless to a Mighty King, while one Dirharm alone may be valuable to a poor and a destitute man.¹⁸⁰

Dāwūd's opinion, according to Shawkani is corroborated by Al-Imām Ash Shafi'ī who later confirms inequity in the fixation of the amount for the stolen article before amputation takes place. Ash-Shafi'ī says:

If somebody claims to be very rich, and it is later discovered that he can only boast of some few grains of wheat, his statement must be believed; because the quantity of grain which he boasts of may be very significant to him due to the level of his poverty.¹⁸¹

These feelings, according to Imam Ash-Shawkāni, made al-Imām Ash Shafi'ī reproach the variations noted among the jurists on the fixed amount of the stolen goods for which amputation become lawful. He maintained one-quarter of *Dinār* as the minimum value that can make amputation inevitable. Ash-Shafi'ī himself agrees that his option of one-quarter of *Dinār* as amount that can make amputation lawful is not supported by the text of the Qur'ān, but by the text of *Hadith*. Notwithstanding, the interpretation of *Hadith*, in most cases, is inevitably required for better understanding of some verses of the Qur'ān. On that consideration, it can be said that a law which is not promulgated in the Qur'ān but legislated in the Hadith can be considered binding.

However, a critical mind guided by reason and cognition will be inclined to support the fixation of a minimum amount and the protection of the stolen article before amputation becomes lawful. This idea is supported by the Hadith of the Prophet Muhammad (SAW) which states that:

There is no amputation on what is put on a mountain unprotected, but amputation becomes inevitable for stealing what is kept in its resting place.¹⁸²

Concerning the second point which centres on which of the two hands to be first amputated, Shawkani declares that the injunction is not specific on the issue. But Al-Imām Mālik legislates that if a man is guilty of theft in the first time, his right hand should be first amputated. When he is convicted again of the same act in the second time, his left leg should be amputated. A conviction of the same act in the third time attracts his left hand, while in the fourth time affects his right leg. Their judgment is based on the Qur'ānic injunction in which the cutting of hands and feet, from opposite sides, is prescribed as a punishment for the persisting act of stealing. (5:36)

This Qur'ānic injunction, according to them is corroborated by the Prophetic tradition reported by Abū Hurairah (R.A) who said that: as reported by Abu Hurairah (R.A), the Prophet

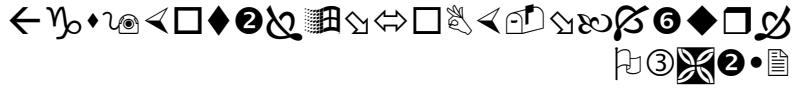
(SAW) said: about a particular thief. “If he is found guilty of stealing (in the first time) amputate his (right) hand, his (left) leg (in the second time) his left hand (in the third time) and his right leg (in the fourth time). Jurists are unanimous on the first and the second amputations, but divergent on the third and the fourth ones. Abu Hanifah and Sufyan ath-Thauri are among the eminent jurists who disagree with the third and the fourth amputations, They argue that if a man is found guilty of theft in the third time after his right hand and left leg had been amputated for the previous act of stealing before the present one, no amputation should be effected on him again. Instead, he will be jailed and subjected to corporal punishment until he repents. They base their argument on what ʿAli bn. Abi Talib (R.A) was reported to have said when he was asked to amputate a thief whose (right) hand and (left) leg had been already amputated that: “What will he be using to touch and eat?. Another thief whose (right) hand, (left) leg and (left) hand had been already amputated was brought to him to amputate his (right) leg. He said: If I amputate the only leg remains with him, what will he be using for walking? I fear Allāh. He then flogged the thief and jailed him. A1-Imam Ash-Shafiʿi reacted to the contrary view held by Abū-Hanfah and Sufyān ath-Thaori in two ways:

- i. if the act which necessitates amputation
- ii. the first and the second times is repeated in the third and the fourth times, it will equally attract the same punishment.
- iii. the word called *ayd* (hand) used in Allāh’s word: *Faqtaw ‘aydiyahurna’*), is in plural form. ¹⁸³

5.3.2 Adultery and Fornication

Islām condemned outrightly the act of adultery and fornication. The concise encyclopedia of Islām describes it as grave sin and socially considered as a crime for which th Qur’ān mentioned degrees of punishment. According to Doi while defining the meaning of *Zina*, he said: *Zina* means sexual intercourse between a man and a woman not married to each other. Allāh said in the glorious Qur’ān which the verse read thus:





Women impure are for men impure, and men impure for women impure and women of purity are for men of purity, and men of purity are for women of purity: these are not affected by what people say: for them there is forgiveness, and a provision honourable. (Q24:26)

Imam Ash-Shawkāni takes a significant look into the Qura'nic verses quoted above which read as thus:

ثم ختم سبحانه الآيات الواردة في أهل الإفك بكلمة جامعة فقال:
(الخبيثات للخبِيثين) أي الخبيثات من النساء للخبِيثين من الرجال :
أي مختصة بهم لا تتجاوزهم وكذا الخبيثون مختصون بالخبِيثات لا
يتجاوزونهن وهكذا قوله : (والطيبات للطيبين والطيبون للطيبات)
قال مجاهد وسعيد بن جبير وعطاء وأكثر المفسرين : المعنى
الكلمات الخبيثات من القول للخبِيثين من الرجال والخبِيثون من
الرجال للخبِيثات من الكلمات والكلمات الطيبات من القول للطيبين
من الناس والطيبون من الناس للطيبات من الكلمات قال النحاس :
وهذا أحسن ما قيل قال الزجاج : ومعناه لا يتكلم بالخبِيثات إلا
الخبِيث من الرجال والنساء وهذا ذم للذين قذفوا عائشة بالخبِيث
ومدح للذين برأوها وقيل إن هذه الآية مبنية على قوله : (الزاني لا
ينكح إلا زانية) فالخبِيثات الزواني والطيبات العفاف وكذا الخبيثون
والطيبون والإشارة هنا بقوله : (أولئك مبرؤون مما يقولون) إلى
الطيبين والطيبات : أي هم مبرأون مما يقوله الخبيثون والخبِيثات
وقيل الإشارة إلى أزواج النبي صلى الله عليه وسلم وقيل إلى رسول
الله صلى الله عليه وسلم وعائشة وصفوان بن المعطل وقيل عائشة
وصفوان فقط¹⁸⁵

Then (Allāh) the sublime completes the verses that explain the (plot) of people of falsehood as He says: (Evil (women) are for evil men). That is, the evil (impure) among the women are fit to marry the evil among the men: that is, they (evil woman) are subjected to their male counterparts, and they should not go

beyond the reach (in marriage) and vice versa. (In addition, good (pure) words are due to good men and vice versa). Mujāhid, Saʿīd bn Jubayr and some other commentators say that Meaning of *al-Kalimat al-Khabithāh* (malicious or evil talks are for exit men and the impure men is for impure women, among the speeches. And the pure talks are subjected to pure among the people, and the pure among them men are due for pure speeches (talks). an-Nahās expresses that this (verdict) is good. az-Zajāj says that the meaning of this is that nobody should vice versa. The (injunction) is a dispraise for those who allege ʿAishat of impurity (*Zinā*) and a praise for those who remove the allegation (for her). It is said that the verse is built upon this verse (A male adulterer should not marry except a female adultery). The female impures are the adulterers and the female pures are the non-adulterers, the same thing applicable to male impures innocent of what they say against them). That is, they are innocent and women. Some say it refers to the wives of Prophet Muhammad (peace be upon him). Others say, it refers to the messenger of Allāh (peace be upon him), Aishah, and Safwān bn al-Ma'atal. Other say it is ʿAishat and Safwān only.

Ash- Shawkani comments on the punishment of *Zina*

{ الزانية والزاني } هذا شروع في تفصيل ما أجمل من الآيات البيّنات { فاجلدوا كل واحد منهما } أو على الخبرية لسورة كما تقدم والزنا هو وطء الرجل للمرأة في فرجها من غير نكاح ولا شبهة نكاح وقيل هو إيلاج فرج في فرج مشتهى طبعاً محرم شرعاً والزانية هي المرأة المطاوعة للزنا الممكنة منه كما تنبئ عنه الصيغة لا المكروهة وكذلك الزاني ثم بين ذلك بقوله : { فاجلدوا } والجلد الضرب يقال : جلده إذا ضرب جلده مثل بطنه إذا ضرب بطنه ورأسه إذا ضرب رأسه وقوله : { مائة جلدة } هو حد الزاني الحر البالغ البكر وكذلك الزانية وثبت بالسنة زيادة على هذا الجلد وهي تغريب عام وأما المملوك والمملوكة فجلد كل واحد منهما خمسون جلدة¹⁸⁶

(The female and the male adulterers). This is to make analysis of what is contained in the verses. (And give each of them one hundred lashes) *zinā* (fornication) is to have sexual inter course between a man and woman without solemnization of marriage, nor what is considered as nikah (marriage). It is even said that (fornication) is getting in (of a man's privacy) into a woman's

privacy for enjoyment, naturally (deliberately) and that is forbidden in Shari'ah. A female fornicator is a woman who voluntarily allows herself for *Zinā* which is possible that which communication has been established before (between the two fornicators). The same thing applicable to the male partner. (Flog them ...) flogging is beating (one hundred lashes). It is a penalty for a male, free, matured and unmarried fornicator and that of female). It is also established in the sunnah that (the number of lashes) can be increased, but such is uncommon among the majority. But as for the male and female servants (slaves), their lashes is fifty each.

5.4 Child Custody

Hadāna is derived from the word '*hadana*', which literally means to embrace or hug. In the *Shari'ah* it means raising or bringing up of a child. *Hadāna* is a form of guardianship which women are more suitable to assume because they are more experienced in the area of looking after children, and they are generally more caring and compassionate. Muslim jurists gave preference as to who has the right to care for a child taking into consideration the interest of the child. Women are preferred over men, and within the same gender preference has been given to those who are closer to the child and who are expected to be more compassionate and merciful.

a. Right of Women to Child Custody:

- i) The mother unless she is unfit.
- ii) Grandmothers: from the mother's side first and then from father's.
- iii) Sisters: Full sister, half sister from the mothers side and then half sister from the father's.
- iv) Aunties: from the mother's side and then from the father's.

v) Nieces: from the mother's side and then from the father's.

b. Right of Men to Child Custody:

If none of the above mentioned women is available or available but unfit, then *hadana* become the right of one of the men in the following order:

- (i) The father, and then the grandfathers.
- (ii) The brothers and then their children (nephews)
- (iii) The uncles and then their children (cousins) ¹⁸⁷

Women have more right to custody of children than men. In principle, custody belongs to them, because they are more compassionate and more kind, and they know better how to raise small children, and they are more patient in dealing with the difficulties involved. The mother has more right to custody of her child, whether it is a boy or a girl, so long as she does not re-marry and so long as she meets the conditions of custody. This is according to scholarly consensus. The conditions of custody are: being accountable (i.e., an adult of sound mind etc.), being free (as opposed to being a slave), being of good character, being a Muslim if the child concerned is a Muslim, and being able to fulfill all obligations towards the child. The mother should not be married to a person who is a stranger (i.e., not related) to the child. If one of these conditions is not fulfilled and there is an impediment such as insanity or having remarried, etc., the woman forfeits the right to custody, but if that impediment is removed, then the right to custody is restored. But it is best to pay attention to the interests of the child, because his rights come first.

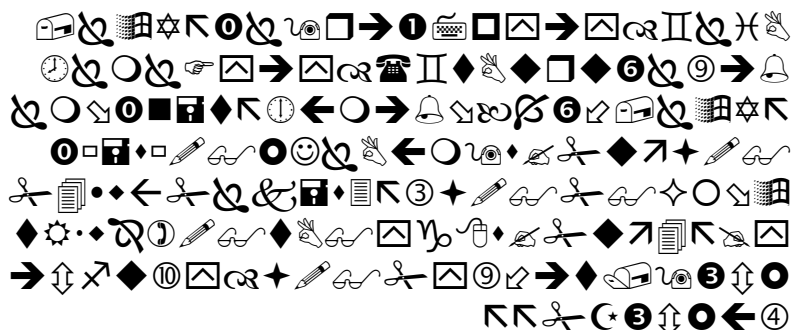
The period of custody lasts until the age of discretion and independence, i.e., until the child is able to discern what is what and is independent in the sense that he can eat by himself, drink by himself, and clean himself after using the toilet, etc. When the child reaches this age, the period of custody ends, whether the child is a boy or a girl. That is usually at the age of seven or eight. With regard to the effect of travelling on transferring custody, if the parents have separated and are disputing custody, any of the following scenarios may apply to their travelling:

1. If one of the parents wants to travel without moving, i.e., he or she intends to come back, then the parent who is staying put has more right to the child.
2. If one of them wants to travel for the purpose of settling there, and the new city or the route is dangerous, then the parent who is staying put has more right to the child.
3. If one of them wants to move and settle within the same city, and the city and the route is safe, the father has right to the child than the mother, regardless of whether the one who is moving is the father or the mother.
4. If both parents want to travel to the same place, then the mother should retain custody.
5. If the place is nearby so that the father and child may see one another every day, then the mother should retain custody.

When the child reaches the age of independence, the period of custody comes to an end, and the period of *kafaalah* or sponsorship of the young begins, which lasts until the child reaches adolescence or in the case of a girls, starts her periods. Then the period of sponsorship ends and the child is free to make his own choices. Women's right to sponsor children. It appears from the comments of the Muslim jurist that women have the right to sponsor children in general, and that mothers and grandmothers in particular have this right. But the scholars differed as to who has more right to sponsorship if the parents are in dispute and are both qualified to sponsor the child. The Maaliki and Zahiris view that the mother has more right to sponsorship of the child, whether it is a boy or a girl. The Hanbalis view that boys should be given a choice, but the father has more right in the case of a girl. The Hanafis views that the father has more right in the case of a boy and the mother has more right in the case of a girl. Perhaps the correct view is that the child should be given a choice if the parents are disputing and they both fulfill the conditions for sponsorship.¹⁸⁸

c. Ash-Shawkāni's Views on Child Custody According to *Fatḥ-al-Qadīr*

The main issue in custody disputes is what is in the best interest of the child. Ibn Qudaamah al-Maqdisi, Islāmic scholar of the 12th century said , “Custody is aimed at looking after the child, so it should not be given in a way that will be detrimental to his welfare and his religious commitment.” If a marriage ends and there is a dispute about who should have custody of the children or who should financially support them; then the solutions can be found within the teachings of Islām.¹⁸⁹ Until the child reaches the age of discernment, the mother is more entitled to custody than the father, unless the mother remarries, in this case the custody belongs to the father. That is unless he agrees with the mother on something that is better for their child. Muslim scholars over the centuries have differed in their views regarding child custody; however, they have all agreed that the child's best interests must be the primary concern. A divorced woman whose ex-husband was claiming custody of their child went to Prophet Muhammad, may the mercy and blessings of Allāh be upon him, and said, “My womb was a vessel for this son of mine, and my breasts gave him to drink, and my lap was a refuge for him, but his father has divorced me and he wants to take him away from me. Prophet Muhammad said to her. “You have more right to him so long as you do not remarry.” According to Islām, the period of discernment is around the age of seven or eight, at which time the official period of custody ends and the period of *kafalah* or sponsorship begins. This period lasts until the child reaches puberty at which time the child is free to choose with which parent he or she will reside with. The choice however is dictated by the need for certain conditions to be fulfilled. These conditions include that the parent or guardian is a Muslim who is able to be held accountable (i.e., an adult of sound mind etc.) is of good character and is able to fulfill all obligations towards the child. Maintenance however is obligatory upon the father whether the mother is rich or poor. He is responsible for accommodation, food, drink, clothing and education, and other everyday needs. However, the monetary amount is based on the father’s circumstances and means. Every situation is different. The Glorious Qur’ān gives support to this circumstances which read thus:



Let the man of means spend according to His means: and the man whose resources are restricted, let Him spend according to what Allāh has given Him. Allāh puts no burden on any person beyond what He has given Him. after a difficulty, Allāh will soon grant relief. (Q65:7)

Shawkani comments on child custody and the roles of the parents and the guardian on child sponsorship.

{ لينفق ذو سعة من سعته } فيه الأمر لأهل السعة بأن يوسعوا على
المرضعات من نسائهم على قدر سعتهم { ومن قدر عليه رزقه } أي
كان رزقه بمقدار القوت أو مضيق ليس بموسع { فلينفق مما آتاه الله
{ أي مما أعطاه من الرزق ليس عليه غير ذلك } لا يكلف الله نفسا
إلا ما آتاه { أي ما أعطاه من الرزق فلا يكلف الفقير بأن ينفق ما
ليس في وسعه بل عليه ما يقدر عليه وتبلغ إليه طاقته مما أعطاه الله
من الرزق { سيجعل الله بعد عسر يسرا } أي بعد ضيق وشدة سعة
وغنى¹⁹⁰

(Let those who are blessed abundantly spend from their abundant wealth). It is a law for those who possess abundant wealth to extend their wealth on their wives, according to their earnings (possessions) (And for those who are given very little). That is, he whose earnings is no more than buying food or somebody who is poor (lack of financial sustenance), let him spent from what Allāh gives him). That is, to spend (on his household) from the little given to him by Allāh, so far he does not have more than that (Allāh does not impose burden on a soul except from what He gives her).

e. Fairness and Gift Giving by the parents to their children in Islām

Islām tells us that it is important to treat children fairly. Prophet Muhammad (SAW), said:

“Fear Allāh and treat your children fairly.”¹⁹¹

In relation to spending this means giving each child what he or she needs to cater for his livelihood. Another example would be if one child is getting married and the parents have arranged it, they should do the same for other children when they desire to get married.

It is not permissible to show preference to one gender over the other or to one child over the others. This can lead to sibling rivalry, jealousy, and bad feelings within the family. In extreme cases, it may even lead to the breaking of family ties.

Some of the scholars are of the opinion that it is permissible to show preference to some children in regards to gift giving under certain specific circumstances. For instance, it may be permissible if one of them is disabled or has a large family or is preoccupied with seeking knowledge or if there is some other reason that means he or she is in need of extra financial aid. It may also be permissible to withhold gifts or money from your children if they are engaged in forbidden actions. *Ibn Uthamien*, noted Islāmic scholar of the 20th century said, “If a parent granted one of his children financial remuneration to fulfill a necessity, such as a medical treatment coverage, the cost of a marriage, the cost of initializing a business, etc. then such a grant would not be categorized an act of injustice and unfairness. Such a gift will fall under the right to spend in the essential needs of the children, which is a requirement that a parent must fulfill.”¹⁹²



And let not the hatred of others to you make you swerve to wrong and depart from justice. be just: that is next to piety: and fear Allāh. for Allāh is well-acquainted with all that ye do.(Q5:8)

Islām is a religion concerned with justice and respect. It is a religion that places great emphasis on rights and responsibilities. It is a religion concerned with individual needs only as far as they do not impinge on the needs of a cohesive community. Children have certain rights, the most important being that they are able to know and love Allāh. It is the parents (caregivers and guardians) responsibility to feed, clothe, educate, and nurture the children that have come under their cares.

f. Scholars Opinions on *Hadanah* in Islām

Other *madhāhib*: The position mentioned by this researcher, in which legal custody of the female child remains with the mother until marriage, is apparently the position of the Maliki followers; in the Shafī'i *madhhab*, until puberty (maturity), in which case she is free to choose with which of the parents to live; in the Hanbali *madhhab*, it is transferred to the father upon the girl's reaching puberty (maturity). Each position should be checked by teachers of that *madhahib*.

5.5.0 Family Planning According to *TafsirFath-al-Qadīr*

Family planning as a private measure to space or regulate the family size for health or economic reasons is permissible in Islām. There is neither any verse in the Qur`an or *Hadīth* against birth control, nor is it obligatory to have children in marriage. Moreover, there are several ahadith which categorically prove that birth control is permissible.

“One of the two (means) of affluence is to have few dependents.”It is narrated from Imām °Alī “(Imām) °Ali ibn Al-°Usayn. It is narrated from Imām As-Sādiq (R.A) see no problem in coitus interrupts and he used to recite the verse that ‘When your Lord took from the Children of Adam, from their loins, their descendants...’ So from whatsoever (seed) Allāh (SWT) has taken a covenant, it is sure to be born even if it is (spilled) on a hard rock.¹

According to the above tradition, creation is in the hand of Allāh (SWT) alone. Whether or not we practice birth control, if Allāh (SWT) wills, the child will be conceived.

In a nutshell, the above *ahādith* demonstrate that birth control is permissible in Islām.

5.5.1 Islām and Family Planning

In the early day of Islām Muslims particularly the companions, some adopted family planning due to economic reason and social objectives economically they inclined to plan their families because of the hardship and poverty to maintain their children while on the other hand they inclined to planning for fear of getting themselves into a shortage of income to maintain a family. However, socially inclined to the planning to avoid giving birth to a female child who according to them she might bring a bad name to the family due to an evil act of fornication and other sexual abuses attributed to the female child.

However, the means and method adopted by the early Muslims to control a birth was the withdrawal method (*Al'azlu*) which is an act of sexual contact but without an ejaculation of semen within the private of a woman.

In response, the prophet (S.A.W) remain silent and did not forbid any one from such practices, except one day he made a remark by saying:

"If God decreed to create, you cannot succeed in withdrawal"

Methods of Contraception

There are number of different methods of contraception. The most commonly used ones will be examined below to determine whether their use is permissible in Islām or not. Permissibility has been determined by the definition of the beginning of pregnancy according to the Islāmic point of view, which is when the fertilized ovum is implanted onto the lining of the uterus. Therefore, whatever prevents implantation is permissible and whatever terminates pregnancy after implantation is an abortion which is *haram* in Islām. The researcher is going to study the views of Muslim jurists and Qur'ānic exegesis on their views and in the contraception and abortion in Islām.

1. Oral Contraceptives

Birth control pills prevent conception by inhibiting ovulation. The pills alter hormonal levels and suppress the hormonal signal from the gland for the ovaries to release an ovum. These pills are taken orally on a precise schedule for 20 or more days during each menstrual cycle. Since all such pills inhibit ovulation, they are permissible; however, the individual must consult the physician about possible side-effects.¹⁹³

There are some pills which work after the intercourse has taken place, for example, the 'morning-after pill' or the recently developed pill. Again, since the use of such pills prevents implantation, it is permissible. Therefore, the pills like the 'morning-after' may be taken after the intercourse but not after feeling or knowing that pregnancy has already occurred.¹⁹⁴

2. Barrier Devices

All barrier devices prevent the sperm from entering the uterus. This is done by sheathing the penis with a condom, or by covering the cervix with a diaphragm, cervical cap, or vaginal sponge. The use of spermicidal substances which kill the sperm before reaching the ovum is also a barrier device. All of these are permissible forms of birth control in Islām.

3. Abstinence during fertile period

There are three basic procedures to predict ovulation, in order to avoid sexual intercourse during the approximately six days of a woman's most fertile monthly phase.

These three methods are as follows

- a. Ovulation Method: A woman learns to recognize the fertile time by checking the difference in the constitution of the cervical mucus discharge. The cervical mucus discharge signals the highly fertile period; and thus avoiding sex during this time prevents conception.
- b. Rhythm Method: A method similar to the first, but it depends on observing the monthly cycles for a whole year to determine the fertile days.
- c. Temperature: In this method, besides keeping a calendar record of her cycle, a woman also takes her temperature daily to detect ovulation. She can know her ovulation whenever her basal body temperature increases.¹⁹⁵

a. Withdrawal (Coitus Interruptus)

Coitus interruptus means withdrawing the penis just before ejaculation. This was the most common method of birth control before the invention of modern devices.

It is narrated that Muḥammad bn Muslim and ʿAbdur Raḥmān says their views about withdrawal system.

The Imām Abdullāh Maymun asked Imām as-Ŝādiq said: "It is up to the man; he may spill it wherever he wants."¹⁹⁶

However, in another Hadīth, Muḥammad bin Muslim narrated from the companions as follows:

“In case of a slave-girl, it is allowed, however, in case of a free woman, I dislike it unless it had been so stipulated at the time of marriage.”

Based on the above *ahadith*, the majority of our *mujtahids* believe that coitus interruptus is allowed but Makrūh without the wife’s consent.

b. Sterilization

Sterilization involves surgical operation. Sterilization in men, known as a vasectomy, involves the severing or blocking of the tube in the male reproductive tract. This tube or duct passes sperm from the testes to the prostate and other reproductive organs.

Sterilization in women, known as tubal ligation, involves the blocking or severing of the fallopian tubes which transport the ovum. Sterilization is not free from objection, although it is permissible if it does not entail the prohibited methods outlined below.

Prohibited Methods are as follows:

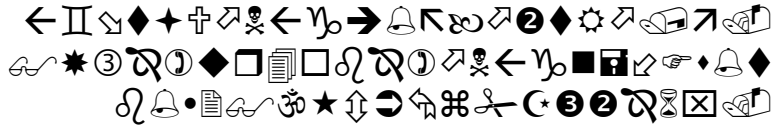
Any method of birth control is prohibited under the following circumstances:

- a) When it poses serious harm to a woman’s health, such as removing certain organs like the ovaries.
- b) When it involves a *ḥarām* act, such as a male touching or looking at the private parts of a woman that are forbidden for him to look at, is prohibited in Islām.

These conditions can only be overridden in extreme circumstances, when it is necessary.

5.5.2 Consent between husband and wife

According to the legal aspect of Islāmic law, the wife has full right to the use of contraceptives, even without the consent and approval of her husband.¹⁹⁷ However; she should not use a method which may come in the way of her husband’s conjugal rights. For example, she cannot force him to use a condom or practice coitus interruptus. This rule is based upon the principle that the extent of the husband’s conjugal rights over his wife is just that she should be sexually available, responsive, and cooperative. This right does not extend to that of bearing children for him. Bearing children or not is a personal decision of the woman, and therefore, she



Kill not your Children for fear of want: we shall provide sustenance for them As well As for you. Verily the killing of them is a great sin.(17:31)

Imam Ash-Shawkāni commented on the above verse on killing of children either by abortion or any other means of killings that are very common among the community of the Muslims.

نهاهم الله سبحانه عن أن يقتلوا أولادهم خشية الفقر وقد كانوا يفعلون ذلك ثم بين لهم أن خوفهم من الفقر حتى يبلغوا بسبب ذلك إلى قتل الأولاد لا وجه له فإن الله سبحانه هو الرازق لعباده يرزق الأبناء كما يرزق الآباء فقال : { نحن نرزقهم وإياكم } ولستم لهم برازقين حتى تصنعوا بهم هذا الصنع وقد مر مثل هذه الآية في الأنعام ثم علل سبحانه النهي عن قتل الأولاد لذلك بقوله : { إن قتلهم كان خطأ كبيرا }¹⁹⁹

Allāh (the sublime) forbids them from killing their offsprings for fearing of poverty. They were doing so before, and Allāh explains to them that their fear of poverty, which made them to kill the children has no basis. Verily, Allāh (the sublime) is the provider for his servants. He provides for the children as He provides for the father, so, He says: (We provide for them and you). And you (parents) are not the provided for them, that will make you to do (kill) what you were doing to them. This prototype of this verse had been mentioned in a verse of *Suratul 'Anām*. Then, Allāh aptly forbid them from killing the children, for this, He Says" (Verily, Killing of them was a great misdeed).

a. A child who is a product of rape

When a woman is raped, she should use the morning after pill immediately after the sexual assault in order to prevent the possible implantation of a fertilized ovum. However, once pregnancy is established, then Islām does not allow abortion. In such cases, Islām cannot justify the abortion of a child for the crime of the father. As for the reputation of the woman.

Islām strongly condemns the people who look down upon the rape victim; instead of reviling her, they should be sympathetic to her.²⁰⁰

b. A child has a defect

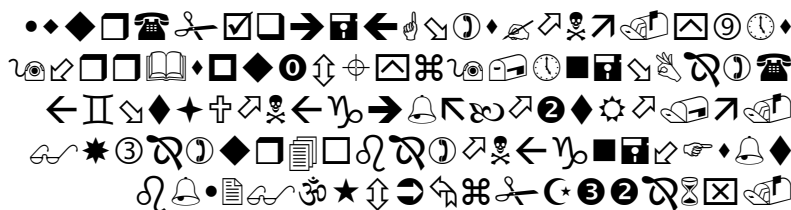
With the use of ultrasounds and other recent technology, it is possible to know whether or not a child has a defect long before it is born. Some people justify the abortion of a defective foetus. However, the present *Mujtahid* do not allow such abortions, even if the deformities are so serious that they are untreatable after birth, and the child may not survive after birth except for a short while and in pain. The parents should pray and hope for a normal and healthy child. Indeed, there are always chances that the foetus is developed contrary medical prediction. This chance, however slim and negligible, denies us the right to terminate a life.

The only permissible instance of abortion is if the foetus is less than four months (before the soul enters into it) and doctors declare with reasonable certainty that the continuation of pregnancy will harm her, or cause her difficulty to a degree that is not normally tolerable.²⁰¹

It is not possible to abort the foetus after four months irrespective of the reason for abortion. If an abortion is carried out, whoever performs the abortion will become liable for the payment of indemnity. This is regardless of whether or not the abortion is done voluntarily, with the consent of one or both parents. The payment of indemnity forms part of the child’s estate and will go to his heirs, i.e. his parents, even though they may have been party to the decision. However, it is something that the parents, as his heirs, may waive their rights to, hence removing the liability of payment from the person who performs the abortion.

5.5.4 Controversy over the Permissibility of Family Planning in Islām

The scholars quote the Qur’an prohibits family planning and quote a verse which says, “And kill not your children for fear of poverty. We provide for them and for you. Surely the killing of them is a great wrong” (17:31)



Kill not your Children for fear of want: we shall provide sustenance for them As well As for you. Verily the killing of them is a great sin.(17:31)

Ash-Shawkāni commented on the verse:

نهام الله سبحانه عن أن يقتلوا أولادهم خشية الفقر وقد كانوا يفعلون
ذلك ثم بين لهم أن خوفهم من الفقر حتى يبلغوا بسبب ذلك إلى قتل
الأولاد لا وجه له فإن الله سبحانه هو الرازق لعباده يرزق الأبناء
كما يرزق الآباء²⁰²

Allāh forbids them of killing their children in fear of poverty. They (Kuffār) were doing this (killing of children). Then (Allāh) explains to them that verily, their fear of poverty that made them to kill their children has no basis (cannot assist them). Allāh in His majesty is provider for His servants, He provides for the children as well as the parents.

In no way does this verse refer to family planning because it is talking of ‘killing’ and you kill one who exists. No law in the world will permit killing one who is already born and hence the Qura'n rightly condemns the killing of children. Some people suggest that the verse in question refers to the practice of burying girl children alive and when asked they would say they could not provide for them and hence Allāh responds that He provides for them.

Imam Shawkāni suggests the verse refers to both male and female children being kept ignorant. Thus, killing them has not been used as in killing the body but the mind which is as bad as killing the body. The word used here is ‘*awlad*’ i.e. children, which include both male and female. Imam Shawkani’s suggestion seems to be quite reasonable and in fact a large family means children cannot be properly educated by poor parents and hence parents ‘kill’ them mentally by keeping them ignorant. They cannot even cloth them properly nor can they provide proper living space. In such circumstances, one cannot raise quality human beings, and quantity does not matter much. That said, we should understand that at the time of the revelation of the Qur’ān, the problem of family planning did not exist, nor did the need for population control. It is a modern problem which has arisen in our time. Most nation states in the developing world do not have the economic means to support large populations, and when we say supporting large populations it does not mean only feeding them but also includes education and the provision of proper health services. These are the basic duties of modern nation states.

In fact, in view of the paucity of resources, it has become necessary to adopt family planning. When the Qur'ān was being revealed there was any properly organized neither state nor education nor health services being provided by a state agency. It is important to note that the Qur'ān, which shows eight ways to spend *Zakat*, does not include education or health which is so essential for the state to provide today. Thus what Imam Shawkani suggests is not only very correct but also enhances the importance of family planning in modern times as a small family can support better education and health services.

It would be interesting to note that as for 4:3 (which is used by Muslims for justification of polygamy) Imam Shafi'i interprets it rather differently. It ends with the words *anlla ta'ulu*, which is generally translated, as 'you may not do injustice' i.e. do not marry more than one woman so that you may not do injustice. But Imam Shafi'i renders it as 'so that you do not have a large family'. The Qur'ān has already mentioned that 'if you fear injustice then marry only one' woman and so there was no need to repeat it. That is why Imam Shafi'i feels it should be translated as 'so that you do not have a large family'.

It can be seen that in understanding the Qur'ān even very eminent scholars in Islām and great jurist differed with one another on some issues related to family matters in Islām. One should not impose one single meaning of a verse on all Muslims. The Qur'ān could be interpreted differently by different people in their own context and circumstances, as has historically been the practice. Family planning being a modern need, one should not reject it out of hand and quote Qur'ānic verses out of context.

Family planning does not mean killing children after they are born but to plan the birth of children in a way that parents can bear all the expenses for their education, health, living space, upkeep, etc. in a proper manner. The Qur'ān also suggests that a child be suckled for two years, and it is well known that as long as the mother breastfeed she may not conceive. Thus, indirectly, the Qur'ān suggests spacing between children. Imam Shawkani commented on the suckling of the breast by the baby on Qur'ān 2 verse 232 of *Surarul- Baqarah*.

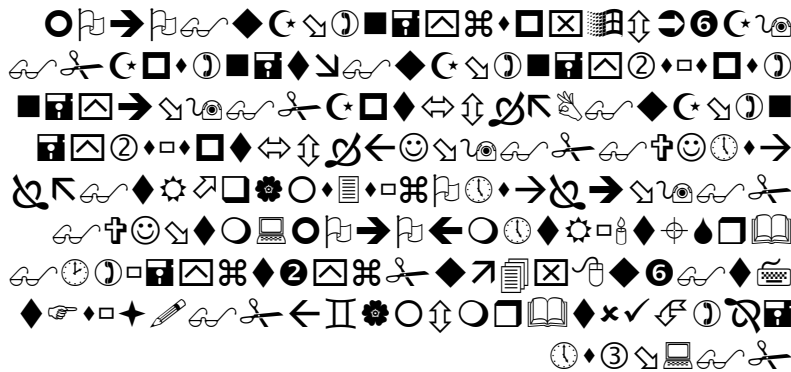
{ يرضعن } قيل : هو خبر في معنى الأمر للدلالة على تحقق
مضمونه وقيل : هو خبر على بابيه ليس هو في معنى الأمر على
حسب ما سلف في قوله : { يتربصن } وقوله : { كاملين } تأكيد

للدلالة على أن هذا التقدير تحقيقي لا تقريبي وقوله : { لمن أراد أن
 يتم الرضاعة } أي ذلك لمن أراد أن يتم الرضاعة وفيه دليل على أن
 إرضاع الحولين ليس حتما بل هو التمام ويجوز الاقتصار على ما
 دونه²⁰³

In Hadith, we find that the Prophet (PBUH) permitted prevention of conceiving in certain circumstances. When a person asked the Prophet for permission for ‘azl (withdrawal) as he was going for a long journey along with his wife and he did not wish his wife to conceive, the Messenger of Allāh allowed him. In those days, this was the only known method for planning the birth of a child. Today there are several more methods available.

Imam Ghazali allows even termination of pregnancy if the mother’s life is in danger and suggests several methods for termination. He even allows termination of pregnancy on health grounds or if the mother’s beauty is in danger, provided it is in consultation with her husband.

Some scholars referring to the verse 23:14 conclude that one can terminate pregnancy up to three months after conception as the Qur’ān, in this verse, describes the stages of development of the sperm planted in the mother’s womb; it takes three months for life to begin.



Then we made the sperm into a clot of congealed blood; then of that clot we made a (foetus) lump; then we made out of that lump bones and clothed the bones with flesh; then we developed out of it another creature. So blessed be Allāh, the Best to create!(Q23:14)

Imam Ash-Shawkāni Comments on the verse:

{ ثم خلقنا النطفة علقه { أي أنه سبحانه أحال النطفة البيضاء علقه حمراء { فخلقنا العلقه مضغه { أي قطعة لحم غير مخلقة { فخلقنا المضغه عظاما { أي جعلها الله سبحانه متصلية لتكون عمودا للبدن على أشكال مخصوصة { فكسونا العظام لحما { أي أنبت الله سبحانه على كل عظم لحما على المقدار الذي يليق به ويناسبه { ثم أنشأناه خلقا آخر { أي نفخنا فيه الروح بعد أن كان جمادا وقيل أخرجناه إلى الدنيا وقيل هو نبات الشعر وقيل خروج الأسنان وقيل تكميل القوى المخلوقة فيه ولا مانع من إرادة الجميع والمجيء بتمه لكمال التفاوت بين الخلقين { فتبارك الله أحسن الخالقين { أي استحق التعظيم والتناء وقيل مأخوذ من البركة : أي كثر خيره وبركته : والخلق في اللغة التقدير يقال خلقت الأديم : إذا قسته لتقطع منه شيئا فمعنى أحسن الخالقين أتقن الصانعين المقدرين²⁰⁴

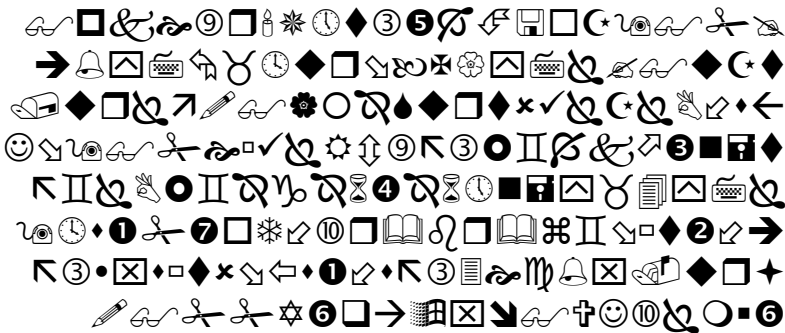
(Then we made the sperm into a cloth of congealed blood) That is Allāh made the white sperm to become red congealed blood. (Then of that cloth we made foetus clump). That is, a piece of flesh that have not become a creature (And we made out of the lump a bone). That is Allāh joined (the bone) together with flesh as a stake for the shape being given (to the creature) (And clothed the bone with flesh). That is, Allāh made flesh to cover the bone in accordance to the shape and amount that befit it (Then we developed out of it another creature). That is, we blowed in it living soul after he had been an ordinary (in animate) object. Other says, we made him to be born (to come to the world), some say that, it is growing of hairs, some say is growing of teeth, some say is process of becoming perfect (complete) human being. However, there is no one to be discarded from these opinion what is important is the variance of making human perfection. (So blessed be He, the Best to create) That is, Allāh is worthy to be praised and glorified.

However, many scholar today oppose the termination of pregnancy. Whatever the case one cannot declare family planning as prohibited in Islām as it in no way amounts to killing a child. Even the termination of a pregnancy is allowed in order to properly plan the birth of a child according to one's financial resources.²⁰⁵

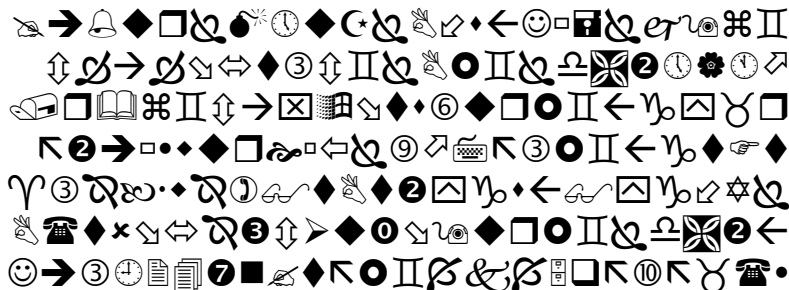
5.6 Dress Code in the Qur'ān According to *Tafsir Fathi al-Qadir*

Islām is a complete way of life, each and every aspect is designed by our Creator to advance happy, healthy communities and ease the path to eternal bliss in paradise. In today’s society modesty is seen as a sign of weakness or insecurity. This is not the case in Islām, where modesty is seen as a sign of respect for oneself and others.

The *haya* that every human being is born with is seen as something to be treasured. To this end, Islām has a dress code for both women and men. Its purpose is to protect the society as a whole and promote modest dressing and behavior. It creates a barrier between the sexes and allows us to conduct our lives with modesty, dignity and respect. Islām holds women in very high esteem and the Islāmic rules of covering are intended to protect and guard her dignity and honour. The word used most often in regard to covering is *hijab*. All Muslim scholars throughout the history of Islām agree that fulfilling the conditions of the dress code is an obligation on all Muslim men and women. They have based these conditions on evidence found in the Qur’ān and the *Sunnah*. Below are the most well known verses of the Qur’ān and the most well known saying from the Prophet Muhammad (SAW) concerning the subject of *hijab*.



O Prophet! tell thy wives and daughters, and the believing women, that They should cast their outer garments over their persons (When abroad): that is most convenient, that They should be known (as such) and not molested. and Allāh is Oft- Forgiving, Most Merciful. (Q33:59)



وقد اختلف العلماء في حد العروة قال القرطبي : أجمع المسلمون على أن السوءتين عورة من الرجل والمرأة وأن المرأة كلها عورة إلا وجهها ويديها على خلاف ذلك وقال الأكثر : إن عروة الرجل من سرته إلى ركبته { ولا يضربن بأرجلهن ليعلم ما يخفين من زينتهن { أي لا تضرب المرأة برجلها إذا مشت ليعلم صوت خلخالها من يسمعه من الرجال فيعلمون أنها ذات خلخال قال الزجاج : وسماع هذه الزينة أشد تحريكا للشهوة من إبدائها ثم أرشد عباده إلى التوبة عن المعاصي²⁰⁶

Scholars have divergence of opinions on the issue of nakedness. Imām Qurtabi says that the Muslims agree that the men's genitals is his navel and that the woman's body is entirely genital (nakedness) except her face and her hands. Majority of people stress that man's nakedness starts from his navel to his knees (Do not beat them (women) in their legs to the extent that their beauty and ornament would expose). That is, do not beat a woman in her leg if you dare want (to do that) to the extent that men would be hearing the sound of her bangle (anklet), to the fact that (men) would know that she wears bangle,

The Prophet Muhammad (SAW) made a statement

When a girl reaches the menstrual age, it is not proper that anything should remain exposed except this and this. He pointed to the face and hands.[Abu Dawud]²⁰⁷

5.6.2 Women's *Hijab* According to *Fatḥ-al-Qadīr*

The purpose of *hijab* is to cover the body and *awrah* varies in different situations and amongst different groups of people. We begin with the conditions of *hijab* for a woman in public and amongst non-*mahram* men. As long as these conditions are fulfilled a woman may wear whatever she pleases.

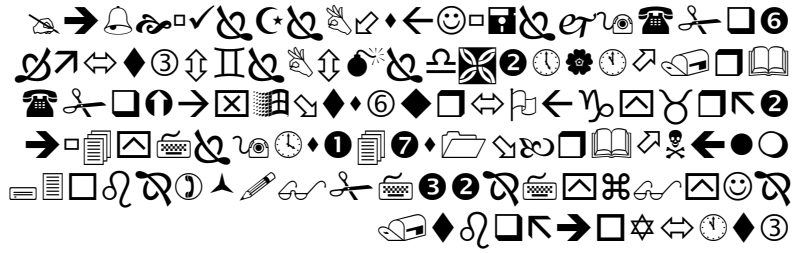
{ يا أيها النبي قل لأزواجك وبناتك ونساء المؤمنين يدنين عليهن من جلابيبهن { من للتبويض والجلابيب جمع جلباب وهو ثوب أكبر من الخمار قال الجوهرى الجلباب الملحفة وقيل القناع وقيل هو ثوب

يستتر جميع بدن المرأة كما ثبت في الصحيح من حديث أم عطية]
 أنها قالت : يا رسول الله إحدانا لا يكون لها جلباب فقال : لتلبسها
 أختها من جلبابها [قال الواحدي : قال المفسرون يغطين وجوههن
 ورؤوسهن إلا عينا واحدة فيعلم أهن حرائر فلا يعرض لهن بأذى
 وقال الحسن : تغطي نصف وجهها وقال قتادة : تلويه فوق الجبين
 وتشده ثم تعطفه على الأنف وإن ظهرت عيناها لكنه يستتر الصدر
 ومعظم الوجه والإشارة²⁰⁸

(Oh you Prophet, command your wives and your daughters, and women of the believers to cover up (their body) with their jalabis) Jalbāb is a kind of cloth that is biggest than ordinary veil (scarf). It is said that (*Jalbāb*) is a cloth used to cover the whole body of the woman as it is confirmed in Hadith Sahih reported by Ibn ʿAtiyat (she said: Oh messenger of Allāh! One of us has not Jalbāb. He (the Prophet) said; Let her sister cover her (give her) from her Jalbāb). The Qurʾānic commentators (*mufasssirun*) say that (women) should cover their faces and their heads except (their) eyes only.

1. The *hijab* (covering) must conceal the entire body except the face and the hands.
2. It should not be translucent or tight. Tight clothes, even if they conceal the colour of the skin, still describe the size and shape of the body or part of it, and create vivid images.
3. It should not attract the attention of the opposite gender; thus it should not be extravagant or excessively opulent. Nor should jewellery and makeup be on display.
4. It should not be a garment worn because of vanity or to gain popularity or fame. The female companions were known to wear black and other dark colours but other colours are permissible; a woman must not however wear colourful clothes because of vanity.
5. It should not be perfumed. This prohibition applies to both the body and the clothes.
6. It should not resemble the clothing worn by men.

5.6.3 Men's Dress code in Islām



Say to the believing men that They should lower their gaze and guard their modesty: that will make for greater purity for them: and Allāh is well acquainted with all that They do.(Q24:30)

Shawkani critically commented on the meaning of *Gaddul-Basor* on the aspect of men and women in Islām.

ومن في قوله : { من أبصارهم } هي التبعية وإليه ذهب الأكثرون وبينوه بأن المعنى غض البصر عما يحرم والاقتصار به على ما يحل وقيل وجه التبعية أنه يعفى للناظر أول نظرة تقع من غير قصد وفي هذه الآية دليل على تحريم النظر إلى غير من يحل النظر إليه ومعنى { ويحفظوا فروجهم } أنه يجب عليهم حفظها عما يحرم عليهم وقيل المراد ستر فروجهم عن أن يراها من لا تحل له رؤيتها ولا مانع من إرادة المعنيين فالكل يدخل تحت حفظ الفرج قيل ووجه المجيء بمن في الأبصار دون الفروج أنه موسع في النظر فإنه لا يحرم منه إلا ما استثنى بخلاف حفظ الفرج فإنه مضيق فيه فإنه لا يحل منه إلا ما استثنى وقيل الوجه أن غض البصر كله كالمعتد بخلاف حفظ الفرج فإنه ممكن على الإطلاق والإشارة²⁰⁹

The word: "from their faces" is *tabi'idiyyah*. This is the position of many scholars; they explained that the meaning of *Ghadd al-Basar* means what is forbidden. Limiting this to what is allowed, some say that, this means *tabi'idiyyah*. It implies that one is excused for looking at the opposite sex just once unintentionally. In this verse, there is an indication that it is forbidden for one who is not a mahram to look at the lady. The meaning of *wa yahfazhu furujahum* is that it is compulsory on them to protect their private part. It is said that it means covering of their protection so no one who is not authorized could see it. It may also include both meanings, as everything involves the protection of private part. The reason the word *min* is attached to *absar* as against

furu is that looking in the former is flexible as what is forbidden is an exception. But the latter case is rigid as what is permitted is an exception.

Although they are sometimes overlooked or not well understood there are conditions of dress code for men as well. Some of the conditions are the same as the conditions for woman but others relate particularly to men.

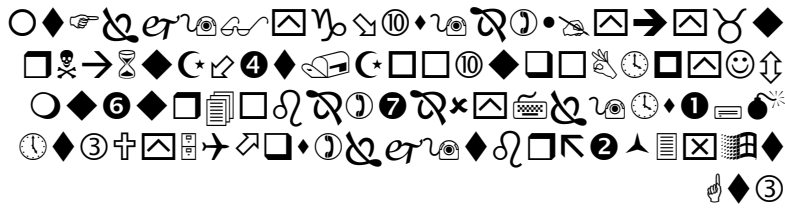
1. The part of the body from the navel to the knees should be covered.
2. It should not resemble the clothing that is specific to the non-Muslims. Western clothing that does not represent a certain group or sect is normally permitted.
3. It should not resemble the clothing worn by women.
4. It should not be tight or see-through.
5. A man is not permitted to wear garments made of silk, or jewellery made of gold.
6. Two types of adornment are forbidden to men but permitted for women. These are, gold and clothing made of pure silk.

The scholars of Islām overwhelmingly agree that for men everything between the navel and the knees (including the knees) must be covered in the presence of anybody. The only exception to this is a man in the presence of his wife. Finally, it is recommended for men not to wear garments that fall below the ankles.

The definition of *awrah* is the parts of the body that should be covered and this does vary in different situations among different groups of people. However, to fully implement the Islāmic dress code it is important to understand a number of other situations in which *awrah* becomes important.

There is no *awrah* between a husband and wife. When a woman is alone with her husband she is permitted to wear any clothing that pleases them both.



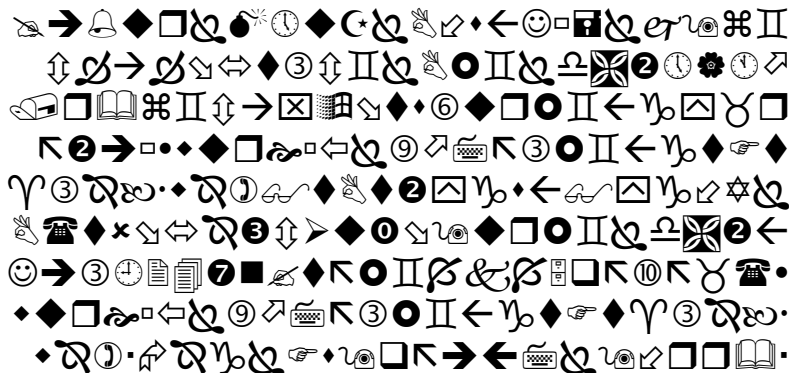


And among his Signs is this, that He created for you mates from among yourselves, that ye may dwell In tranquillity with them, and He has put love and Mercy between your (hearts): Verily In that are signs for those who reflect. (Qur’ān 30:21)

A *mahram* is a person one is never permitted to marry, because of a close blood relationship, breastfeeding, or marriage. One’s spouse is also one’s *mahram*. A *mahram* is a person one is allowed to be alone with. A close blood relationship: For a female, her father, grandfather, son, grandson, brother, both paternal and maternal uncles and nephews. Likewise for a male, his mother, daughter, granddaughter, sister, both paternal and maternal aunties and nieces. Breastfeeding: This includes anyone, male or female breastfed by the same mother or wet nurse. (and includes the brother or husband of the one who breast fed the person in question)

Marriage: People who become your relations by marriage for example father-in-law, mother-in-law, stepfather, step-grandfather, stepson.

When a woman is amongst her *Mahrams*, the scholars of Islām agree that a woman does not have to observe strict rules of covering but rather that she is able to uncover her hair, face, arms, hands, legs from below the knee, and feet. However, a Muslim woman must always remember that she is known for her modesty and *haya*, therefore she must never make a wanton display of herself.



بن مخرمة : ظاهر الزينة هو الكحل والسواك والخضاب إلى نصف الساق ونحو ذلك فإنه يجوز للمرأة أن تبديه وقال ابن عطية إن المرأة لا تبدي شيئاً من الزينة وتخفي كل شيء من زينتها ووقع الاستثناء فيما يظهر منها بحكم الضرورة ولا يخفى عليك أن ظاهر النظم القرآني النهي عن إبداء الزينة إلا ما ظهر منها كالجلباب والخمار ونحوهما مما على الكف والقدمين من الحلية ونحوها وإن كان المراد بالزينة مواضعها كان الاستثناء راجعاً إلى ما يشق على المرأة ستره كالقفين والقدمين ونحو ذلك وهكذا إذا كان النهي عن إظهار الزينة يستلزم النهي عن إظهار مواضعها بفحوى الخطاب فإنه يحمل الاستثناء على ما ذكرناه في الموضوعين وأما إذا كانت الزينة تشمل مواضع الزينة وما تنزين به النساء فالأمر واضح والاستثناء يكون من الجميع قال القرطبي في تفسيره : الزينة على قسمين : خلقية ومكتسبة فالخلقية وجهها فإنه أصل الزينة والزينة المكتسبة ما تحاوله المرأة في تحسين خلقها كالثياب ²¹⁰

People have different opinions on the manifestation (visible) ornament and what it is? Ibn Mas'ud and Saï'd bn Jubayr said that visible ornament is the cloth, Saï'd bn Jubayr adds that it is the face. °Atāu and al-Awzā'i. say that is the face and the two hands. Ibn Abbās Qatadah and al-Musawir bn Mukhramah express that visible ornament is eyeliner, sooks and pigment up to the half of leg, etc. It is permissible for a woman to expose this, but Ibn °Atiyah says that no any of the ornament should be unveiled by a woman, she should veil everything of her ornament, but the exemption of which is exposed out of it as a result of necessity is intact. It is no hidden to you that the Qur'ān forbids exposing of ornament except that which is already manifested such as Jalbāb and scraf (yashmark) and among others.

5.6.4 Women dressing in front of other (Muslim) women

A woman should dress decently in front of other Muslim women; she can uncover what she would usually uncover, her hair, arms, and feet. As for other parts of her body, such as her thighs, and breast area, they should not be uncovered.

وقد اختلف العلماء في حد العروة قال القرطبي : أجمع المسلمون على أن السوءتين عورة من الرجل والمرأة وأن المرأة كلها عورة إلا وجهها ويديها على خلاف ذلك وقال الأكثر : إن عروة الرجل من

سرته إلى ركبته {ولا يضربن بأرجلهن ليعلم ما يخفين من زينتهن }
 أي لا تضرب المرأة برجلها إذا مشت ليعلم صوت خلخالها من
 يسمعه من الرجال فيعلمون أنها ذات خلخال قال الزجاج : وسمع
 هذه الزينة أشد تحريكا للشهوة من إبدائها ثم أرشد عباده إلى التوبة
 عن المعاصي²¹¹

Scholars hold different views on the specific place for genitals. Al-Qurtabi says that Muslim' conventionally agree that man's navel is his genitals. And that whole woman's body is her genitals except her face and her two hands. Majority of people express that man's genitals starts from his navel to his knee (And do not beat them (women) in their legs such as a way that their adornment would be inveiled). That is, do not beat woman in her leg to the extent that men would hear the sound of her anklet, that they (men) would know that she is with bangle (she wears bangle) Az-Zajāj says that hearing the sound of this ornament is very sensitive to lust (having an interest on her) than to expose it. He (Allāh) then instructs His servant to seek forgiveness from the sins.

Although she is allowed to wear beautiful and flattering clothes and make up, she must take great care to behave and dress in a manner that befits her station and does not offend the *haya* of other women. If a Muslim woman finds herself in a situation where there are other women who are known to be morally bad, then she must dress accordingly and must follow the same rules of *awrah* that apply when in public. (The rules we learned as the conditions of *hijab*.)

5.6.5 Woman dress in front of her children:

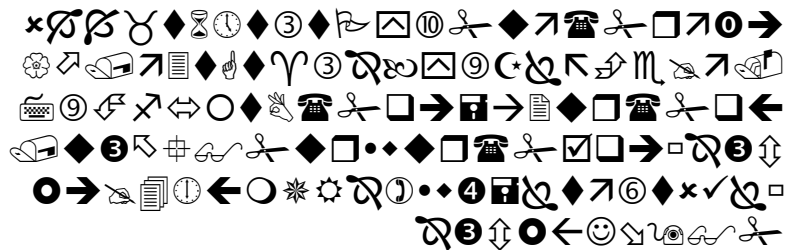
If the child is an infant or unable to understand the meaning of *awrah* and sexuality then it is permissible for her to uncover herself to the same degree as with other Muslim women. If however the child is a male and comes to an age where he understands the meaning of *awrah* and the difference between men and women then the women's *awrah* is the same as it is for other male *mahrams*.²¹²

All Muslims, male or female, should maintain a sense of *hayau* (modesty) at all times because *haya* is part of faith. A person's clothing is usually one of the indicators of their modesty. It was reported that the prophet (SAW) said in one of his tradition,

“Faith consists of more than sixty branches (i.e. parts). And *haya* is a part of faith.” (Sahih Al-Bukhari)²¹³

In the first two lessons, we learned a lot of new terms and tried to assimilate a lot of new information. We now shift the focus to what to wear when praying. Praying is something that every Muslim does at least five times per day. It is more than a few moments of quiet contemplation it is a time when an individual is connected to the Creator of the Universe – Allāh. For this pleasure, it makes sense to want to look and feel our best.

When the time comes for a woman to pray, one of the conditions that must be fulfilled in order for her prayer to be valid is that she covers her *awrah*.



O children of Adam! wear your beautiful apparel at every time and place of prayer: eat and drink but waste not by excess, for Allāh loveth not the wasters.(Q7:30)

The Prophet said, ‘Allāh does not accept the prayer of a woman who has reached puberty unless she wears a veil’.

The *awrah* of a woman when she is prayer. However, it is perfectly acceptable for a woman to wear a long loose fitting garment over her indoor clothes, presuming she is praying in the privacy of her home. If she is praying in the mosque, of course she will be wearing clothes that are acceptable in front of strangers.

In order for a man’s prayer to be valid he too must cover his *awrah*, which is from the navel to the knees. However because Islām is a religion that is very concerned with community cohesion and respect for others, a man must always be aware of where he is. In accordance to the spirit of *haya* it is always advisable for a Muslim (man or woman) to be cautious about those things that could affect either him or those around him. It is desirable for a man to wear perfume when he is standing in front of his Lord for prayer. Women must be careful of this point. While it

is allowable even desirable for her to wear perfume in the home it is not acceptable for either her skin or her clothing to be perfumed if she wants to pray in the mosque.

“If any one of you (women) attends evening prayer, let her not touch any perfume.”[Sahih Muslim]²¹⁴

5.6.6 The Wisdom in the Islāmic Dress code according to Shawkani contributions

{ يا أيها النبي قل لأزواجك وبناتك ونساء المؤمنين يدنين عليهن من جلابيبهن } من للتبعيض والجلابيب جمع جلباب وهو ثوب أكبر من الخمار قال الجوهرى الجلباب الملحفة وقيل القناع وقيل هو ثوب يستر جميع بدن المرأة كما ثبت في الصحيح من حديث أم عطية [أنها قالت : يا رسول الله إحدانا لا يكون لها جلباب فقال : لتلبسها أختها من جلبابها] قال الواحدي : قال المفسرون يغطين وجوههن ورؤوسهن إلا عينا واحدة فيعلم أهن حرائر فلا يعرض لهن بأذى وقال الحسن : تغطي نصف وجهها²¹⁵

"O ye the Prophet! tell (instruct) your wives and daughters and wives of the believers to cover (their body) with their *jalbāb*" and *jalābīb* is the plural of *jalbāb*, and it means a garment which is bigger than veil. Al Jawhary asserted that *jalbāb* is ----, some scholars opined that it is ---- while some others posited that it is a cloth which covers the whole body of woman as confirmed in the authentic Hadith in which Ummu Utiyyah said: "O the Prophet, one of us has no *jalbāb*. The Prophet said: Let her sister give her from her own *jalbābs*" Al-Wāhidi said: The exegetes asserted: The women used to cover their faces and heads with the exception of an eye so that they would be identified whether they are free persons who should not be harassed. Al-Hasan asserted she should cover the half of her face.

There is great wisdom in the Islāmic dress code. In order to see and understand it clearly one must remember a few basic concepts. First and foremost, that Islām was revealed for all people in all places, at all times. Thus what is in or out of fashion is not relevant. Secondly, Islām is a holistic religion concerned with humankind's physical, spiritual and emotional health, and not just for each individual but for the community or society as a whole. This involves respect; for Allāh, for each other and for oneself.

Thirdly, a dress code is required for both men and women, Islām does not put the responsibility entirely on one gender, and in fact the verses referring to men were revealed first. However both men and women are commanded to lower their gaze and protect their modesty; and both men and women are expected to create a healthy social environment with constructive morals, manners and values.

هذا خطاب لجميع بني آدم وإن كان واردا على سبب خاص فالاعتبار بعموم اللفظ لا بخصوص السبب والزينة ما يتزين به الناس من الملابس أمروا بالتزين عند الحضور إلى المساجد للصلاة والطواف وقد استدل بالآية على وجوب ستر العورة في الصلاة وإليه ذهب جمهور أهل العلم بل سترها واجب في كل حال من الأحوال وإن كان الرجل خاليا كما دلت عليه الأحاديث الصحيحة والكلام على العورة وما يجب ستره منها مفصل في كتب الفروع²¹⁶

This is for the entire Adam's progeny (human beings), even if it comes on a specific condition, the world used is general not specific. The adornment is what people use (to beautify themselves) among the clothes. Making adornment is ordered to be used when intending to go to the mosque for observing salat, and tawaf (circumambulation). The verse has been already proclaimed the necessity of keeping (veil of genital in the prayer. Majority of people among the scholars based their argument on this, hence veiling of nakedness is important in every circumstance, even where there is no man.

The term *hijāb*, is more than a scarf and more than a dress code. It is a term that denotes modest dressing and modest behaviour. For instance, if a Muslim woman was correctly covered but at the same time was using bad language, she would not be fulfilling the requirements of *hijab*. If a Muslim man was covered from the navel to the knee but walking around in public calling attention to himself or behaving rudely he would also not be behaving in an appropriate manner.

Women who wear *hijab* point out many benefits to be gained from adhering to the Islāmic dress code. Some describe wearing hijab as being “set free” from society’s unrealistic expectations. They are no longer thought of as sexual objects, but are desired for their intellect. They are no longer

valued for their looks or body shape but for their personality and character. Women wearing hijab report that it minimizes sexual harassment in the workplace.²¹⁷

Many women report that people (both Muslims and non Muslims) are more inclined to show good manners towards a woman in a scarf. Men open doors, give up seats on public transport, apologize for bad language, and offer to carry groceries and many other small kindnesses that were once a normal part of life in most western communities. To promote modesty and seeks to minimize vice and immorality in society. One of the ways it does so is by requiring modest dress. Islām sets the standards of decency for both men and women. In most Western countries there are laws defining what is decent. This usually amounts to the male having to cover his genitals and the female having to cover her genitals and her breasts. If this minimum requirement is not met, the most a person can be charged with is indecent exposure. The reason cited for the difference in required clothing between men and women in this matter is the difference in their anatomies.

Islām prescribes a more conservative minimum dress code for both men and women. In Islām, both men and women are expected to dress simply, modestly, and with dignity. A man must always be covered in loose and unrevealing clothing from his navel to his knee. This is the absolute minimum covering required. He must never, for example, go out in public wearing a short bathing suit. When leaving the home, a Muslim woman must at least cover her hair and body in loose and unrevealing clothing, obscuring the details of her body from the public; some also choose to cover their face and hands.

ومعنى : يغضضن من أبصارهن كمعنى يغضوا من أبصارهم
فيستدل به على تحريم نظر النساء إلى ما يحرم عليهن وكذلك يجب
عليهن حفظ فروجهن على الوجه الذي تقدم في حفظ الرجال
لفروجهم { ولا يبدين زينتهن } أي ما يتزين به من الحلية وغيرها
وفي النهي عن إبداء مواضعها من أبدانهن بالأولى ثم استثنى سبحانه
من هذا النهي فقال : { إلا ما ظهر منها }²¹⁸

The meaning of (women) should control their sight (lower their eyes) out of modesty, means to lower their eyes, which indicates that women should not look at what Allāh forbids them. At the same time it is obligatory on them to keep their privacy as it was

previously discussed that men too should keep their privacy (from fornication). (they (women) should not unveil their adornment). That what (women) use as adornments (to beautify themselves) like jewelry (decoration), among others. As regards prohibition for (women) from exposing where they use the adornment in their body, then Allāh made an exemption from this verdict by saying (Except the one that is manifest (exposed) in their body).

The wisdom behind this dress code is to minimize sexual enticement and degradation in society as much as possible for both men and women. Obeying this dress code is a form of obedience to God. Islām forbids any sex appeal and physical allurements outside of marriage. In contrast, Islām encourages sex appeal and physical attraction for both men and women within the privacy between married couples. Some Western observers have assumed that the head covering of a woman is meant to show her inferiority to men. This could not be further from the truth. In Islām, a woman who dresses this way commands respect, and through her modesty rejects sexual servitude. The message that the woman gives when she wears Islāmic dress in society is this: “Respect me for who I am. I am not a sex object.”

Islām teaches that the consequences of immodesty fall not only on the individual but also upon the society that permits women and men to mingle freely, display themselves, and compete or allure one another through sexual attraction. These consequences are significant and cannot be ignored. To make women into sex objects for the pleasure of men is not liberation. In fact, it is a dehumanizing form of oppression rejected by Islām. The liberation of the Muslim woman is that she is recognized by the content of her character rather than by the display of her physical attributes. From the Islāmic point of view, “liberated” Western women who must often worry about their looks, figure, and youth for the pleasure of others are trapped in a form of slavery.

5.7.0 Forbidden Food According to *TafsīrFathal-Qadīr*

Muslims normally live in their own various homes, villages and cities, in the midst of their families and relations, eating variety of foods and drinking different drinks that they desire; They are familiar with the ingredients of these foods and know that they are free from all that their religion has forbidden, their faith has rejected, and their rich Islāmic values have kept distance from.

However, when they migrate to foreign countries to reside in the midst of non-Muslim communities, they are faced with problems in eating and drinking because they do not find foods that are familiar and desirable to them, nor are their ingredients known to them. This is so because the host community is not Islāmic; it has its own values, customs and habits which naturally do not abide by the laws of Islām. So, when a Muslim desire to eat any food in a restaurant [in a non-Muslim country], he is faced with the problem of whether, or not the food is permissible and pure.

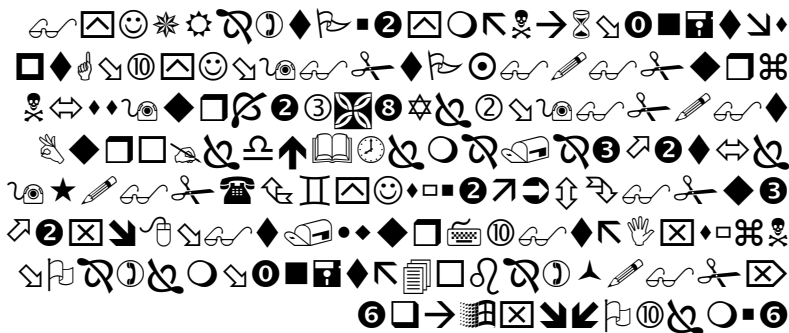
5.7.1 General Rules on lawful Food in Islām

Since the followers of the past revealed religions (that is, the Jews, the Christians and the Zoroastrians) are ritually pure, many of the problems concerning the status and permissibility of the food are resolved when we live in their midst. It becomes permissible for us as Muslims to eat from their food no matter whether they touched it with their wet hands or not as long as we do not know or are not sure that it consists of what is forbidden to us, like intoxicating drinks. As for meat, fat and their extracts, there are specific rules that will be discussed later on.²¹⁹

A Muslim is allowed to eat the food prepared by a non-Muslim who is not from *AhlulKitab* [for example, a Hindu or a Buddhist], provided that he does not know or is not sure that the non-Muslim touched the food with wetness; and provided that he does not know or is not sure that the food consists of what is forbidden to him like intoxicating drinks. As for meat, fat, and their extracts, there are specific rules that will come later on. A Muslim is allowed to eat any food made by a person whose faith and religion is not known to him, no matter whether that person touched it with wetness or did not touch it, if he does not know or is not sure that the food consists of what is forbidden to him. As for meat, fat, and their extracts, there are specific rules that will come later on. In short, all kinds of food with the exception of meat, fat, and their extracts are permissible for a Muslim, even if he doubts that it might contain something which is forbidden for him to eat or doubts that its cook whosoever he may be had touched it with wetness. Just as it is not obligatory on him to inquire about the ingredients of such food to ensure that it is free from what is forbidden to him, it is not obligatory on him to ask the cook whether he touched it while preparing the food or after it.

All kinds of packed food with the exception of meat, fat and their extracts, are permissible for a Muslim, even if he doubts that its ingredients might contain what is forbidden for him or even if he doubts that the cook whosoever he may be had touched it with wetness. It is not obligatory on him to inquire about its ingredients to ensure that it does not contain anything that is forbidden to him.

A Muslim is allowed to buy all kinds of *halal*(Lawful) meat from a Muslim shopkeeper who sells it to Muslims. Such meat would be considered *halal* even if the vendor belongs to a school of thought which have different conditions for slaughtering from ours as long as there is a possibility that the animal was slaughtered in accordance with our conditions. This latter statement applies to all conditions except the one that says that the animal’s belly should be facing the *qiblah* at the time of slaughter. Not observing the condition of *qiblah* because the slaughterer’s school of thought does not consider it a necessity will not detract from [the permissibility of the meat]. If a Muslim knows and is sure that this meat is from an animal which is permissible for Muslims to eat (like cow, sheep or chicken) but that it is not slaughtered in accordance with Islāmic laws, that meat is to be considered *mayta*. *Mayta* is not permissible for a Muslim to eat even if its seller is a Muslim. Similarly, such meat is impure (*najis*) and would make other things impure, if it comes into wet contact with it. Allāh (SWT) says in the Qur’ān in regards to the animal slaughtering of in Islām.



He hath only forbidden you dead meat, and blood, and the flesh of swine, and that on which any other name hath been invoked besides that of Allāh. but if one is forced by necessity, without wilful disobedience, nor transgressing due limits,- then is He guiltless. for Allāh is Oft-Forgiving Most Merciful.(Q2:173)

Imam Ash-Shawkāni vividly comments on the verse on the consumption of dead animals blood, swine and kinds of meat that are unlawful in Islām. The comment goes thus:

عن ابن عمر مرفوعا ومثل حديث جابر في العنبر الثابت في الصحيحين مع قوله تعالى : { أحل لكم صيد البحر } فالمراد بالميتة هنا ميتة البر لا ميتة البحر وقد ذهب أكثر أهل العلم إلى جواز أكل جميع الحيوانات البحر حيها وميتها وقال بعض أهل العلم : إنه يحرم من حيوانات البحر ما يحرم شبهه في البر وتوقف ابن حبيب في خنزير الماء وقال ابن القاسم : وأنا أتقيه ولا أراه حراما قوله²²⁰

On the authority of bn ^cUmar alone, also regarding the Hadith of Jābir about using of al-^cAnbar is affirmed in both the books of al-Bukhāri and Muslims as Allāh says (It is permissible for you to take (consume) the animals of ocean. What is referred to as dead animals here is dead animals on the earth not the river. Majority of scholars agree to eat all animals of the river (aquatic animals) being alive or dead. Others say that what is forbidden among the terrestrial animals on also applicable to that of the river. Ibn Habib made no decision on river's pig, but In al-Qasm says that she should not see anything forbidden in it.

{ أحل لكم صيد البحر } فالمراد بالميتة هنا ميتة البر لا ميتة البحر وقد ذهب أكثر أهل العلم إلى جواز أكل جميع الحيوانات البحر حيها وميتها وقال بعض أهل العلم : إنه يحرم من حيوانات البحر ما يحرم شبهه في البر وتوقف ابن حبيب في خنزير الماء وقال ابن القاسم : وأنا أتقيه ولا أراه حراما قوله²²¹

" The hunting of the sea is permissible" The intended meaning of the dead animal here is the dead animal of land and not that of sea. Many scholars asserted that all the kinds of sea animal are lawful to eat, the living or the dead. Some scholars opined that only what is forbidden among the sea animals are those whose kinds are forbidden on the land. Ibn Habib noted that sea pig is also included. But Ibn al-Qasim contended: I am sure this is not forbidden.

If a Muslim buys or receives meat from a non-Muslim, or from a Muslim who got it from a non-Muslim and did not inquire about its slaughtering according to the Islāmic laws, such meat

is *haram* for him. However, if the Muslim does not know that the animal was not slaughtered according to Islāmic laws, it would not be considered *najis*, although it is still *haram*.

(والدم) قد اتفق العلماء على أن الدم حرام وفي الآية الأخرى : (أو دما مسفوحا) فيحمل المطلق على المقيد لأن ما خلط باللحم غير محرم قال القرطبي : بالإجماع وقد روت عائشة أنها كانت تطبخ اللحم فتعلو الصفرة على البرمة من الدم فيأكل ذلك النبي صلى الله عليه وسلم ولا ينكره قوله : (ولحم الخنزير) ظاهر هذه الآية والآية الأخرى أعني قوله تعالى : (قل لا أجد في ما أوحى إلي محرما على طاعم يطعمه إلا أن يكون ميتة أو دما مسفوحا أو لحم خنزير)²²²

(Blood), Scholars unanimously hold the view that consuming of blood is forbidden. In another verse (or blood that pour out). This is glaring that only blood is purely referred to here but the blood that has been mixed with flesh is not forbidden. Al-Qurtabi says: It is reported from ʿAishat, who was reported to have said that she used to cook meat for the Prophet, which the red foam of the blood appears on the screw and the prophet used to eat it (the meat) and he did not object it. This verse and other verses indicate (mean) the following word of Allāh (says, I do not see from what is revealed to me a forbidden of food that should be consumed, except it is dead, or blood (that is pour out) or swine flesh.

Some experts say that by letting out the blood by way of slaughtering, the meat of the animal becomes healthier for the consumer than an animal that was not slaughtered. And so you should not be surprised to see some non-Muslims buying the meat that had been slaughtered according to Islāmic laws from *halal* meat stores.

It is not necessary a Muslim or to utter the name of Allāh for the fish to become *halal*. So, if a non-Muslim catches a fish and brings it alive from the water or it dies after getting caught in his fishing net or fishing line, and it has scales on it, it is permissible to eat.

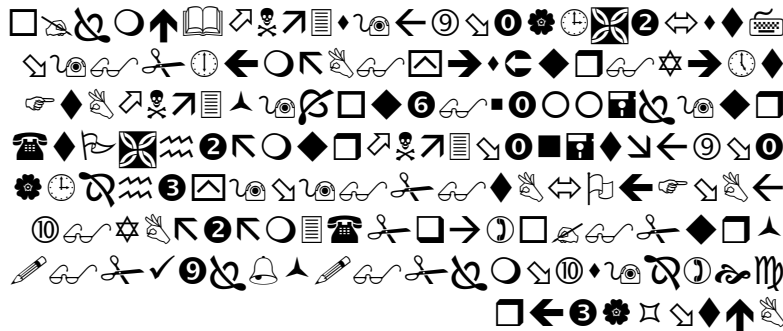
Shawkani comments on the verse above.

(أحل لكم صيد البحر) الخطاب لكل مسلم أو للمحرمين خاصة وصيد البحر ما يصاد فيه والمراد بالبحر هنا كل ماء يوجد فيه صيد بحري وإن كان نهرا أو غديرا قوله : (وطعامه متاعا لكم وللسيارة) الطعام

لكل ما يطعم وقد تقدم وقد اختلف في المراد به هنا فقيل : هو ما قذف به البحر وطفا عليه وبه قال كثير من الصحابة والتابعين وقيل طعامه ما ملح منه وبقي وبه قال جماعة وروي عن ابن عباس وقيل طعامه ملحه الذي ينعقد من مائه وسائر ما فيه من نبات وغيره وبه قال قوم وقيل المراد به ما يطعم من الصيد : أي ما يحل أكله وهو السمك فقط وبه قالت الحنفية والمعنى : أحل لكم الانتفاع بجميع ما يصاد في البحر وأحل لكم المأكول منه وهو السمك فيكون التخصيص بعد التعميم وهو تكلف لا وجه له ونصب متاعا على أنه مصدر²²³

(The animals hunted in the river (aquatic animals) are lawful for you) (The verse) addresses every Muslim and those with Iḥrām only. Aquatics animals are the animals hunted in the ocean. And what is referred to as ocean here is every water that the animals are living there, even if it is an ordinary stream or brook (streamlet). (And it's (river's) food are for your enjoyment (consumptions) and for the transportation). Food is what is consumable different views are observed here. Some say, it is what is taken from the ocean as opined by many among the sahabah and their followers.

A Muslim can ascertain the first condition by examining the fish if it is being displayed or by observing its name which can tell you whether it is a skin fish or a scale fish as long as you can trust the authenticity of the label. A list of scale fish has been appended at the end of this book.



Lawful to you is the pursuit of water-game and its use for food,- for the benefit of yourselves and those who travel; but forbidden is the pursuit of land-game;- As long as ye are In the sacred precincts or In pilgrim garb. and fear Allāh, to whom ye shall be gathered back.(Q5:96)

Imam Ash-Shawkāni comments on the above verse which reads thus:

وقيل المراد به ما يطعم من الصيد : أي ما يحل أكله وهو السمك فقط
وبه قالت الحنفية والمعنى : أحل لكم الانتفاع بجميع ما يصاد في
البحر وأحل لكم المأكول منه وهو السمك فيكون التخصيص بعد
التعميم²²⁴

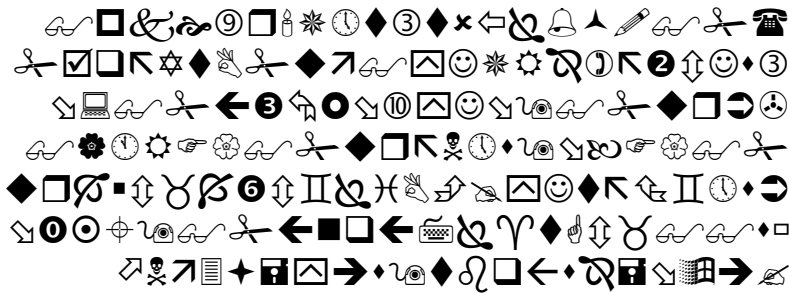
Some say that what is referred to here is what is consumable among the animals, killed through hunting That is, what is permissible for consumption, i.e fish only this is the view of al-Hanifayah school. And the meaning of (it is permitted for you to make use (enjoy) with all what is hunted from the ocean, and also permitted for you to consume (eat) from it, It is fish. This is special verdict after the general rule.

The second condition is fulfilled in almost all the countries, as they say, because the universal method of fishing ensures that the fish comes out of the water alive or they die after they are caught in the fishing net. Based on this, it is permissible to eat the fish that one gets from a non-Muslim just as one gets from a Muslim, irrespective of whether it is canned or uncanned. (See the below statement of Ash-Shawkāni):

{ وحرّم عليكم صيد البر ما دتم حرمًا { أي حرم عليكم ما يصاد
في البر ما دتم محرّمين وظاهره تحريم صيده على المحرم ولو كان
الصائد حلالاً وإليه ذهب الجمهور إن كان الحلال صاده للمحرم لا
إذا لم يصدّه لأجله وهو القول الراجح وبه يجمع بين الأحاديث وقيل
إنه يحل له مطلقاً وإليه ذهب جماعة : وقيل يحرم عليه مطلقاً وإليه
ذهب آخرون²²⁵

(It is forbidden for you animals on earth (terrestrial animals) in as much as you are in Ihram (for consumption). That is, it is forbidden for you any hunted terrestrial animals in as much as you remain with Ihram. It is clear that Al-Muhrim (a pilgrim with Ihram cloth) should not hunt animals even if he is hunting a lawful animal (for consumption). This view is shared by the majority. But if it is lawful animal wished to hunt by Al-Muhirm, no, if he does not wish it for himself, this view out weights (other views). Another view on the Hadith was observed, some say it is permissible for him (Al-Muhrim) to hunt animals unrestrictedly, this view is shared by majority other say it (hunting) is forbidden for him unrestrictedly other people shared this view.

It is permissible to eat shrimps, if they are brought out of the water alive. It is forbidden to eat frogs, lobsters, turtles, every amphibious animal, snails, and crayfish. (See the question-answer section below.) The law concerning eggs of fish follows the fish itself: the eggs of a *halal* fish are permissible to eat and those of a *haram* one are forbidden. Some experts of fisheries say that scaleless fish mostly feed upon the waste of the sea and are in a way purifier of the filth, the squalor and the garbage of the sea. It is forbidden to drink wine, beer, and everything that causes intoxication or drunkenness in solid or liquid form. Almighty Allāh says in the Qur’ān :



O ye who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination,- of Satan's handwork: eschew such (abomination), that ye may prosper. (Q5:90)

The Prophet Muhammad (SAW) said, “One who drinks intoxicants after Allāh has made them *haram* by my statement is not worthy of marriage [to your daughter] if he proposes to her, or of intercession when he asks for a good word, or of any credibility when he speaks, or of being entrusted with anything.” Imam Shawkani quoted the author of Al-Kashaf (Zamakhsari)

قال في الكشاف : أكد تحريم الخمر والميسر وجوها من التأكيد منها تصدير الجملة بإنما ومنها أنه قرنهما بعبادة الأصنام ومنه قوله صلى الله عليه وسلم : [شارب الخمر كعابد الوثن] ومنها أنه جعلهما رجسا كما قال : { فاجتنبوا الرجس من الأوثان } ومنها أنه جعلهما من عمل الشيطان والشيطان لا يأتي منه إلا الشر البحت ومنها أنه أمر بالاجتناب ومنها أنه جعل الاجتناب من الفلاح وإذا كان الاجتناب فلاحا كان الارتكاب خيبة ومحقة ومنها أنه ذكر ما ينتج منهما من الوبال وهو وقوع التعادي والتباغض بين أصحاب الخمر والقمر وما يؤديان إليه من الصد عن ذكر الله وعن مراعاة أوقات الصلوات انتهى وفي هذه الآية دليل على تحريم الخمر لما تضمنه الأمر

بالاجتناب من الوجوب وتحريم الصد ولما تقرر في الشريعة من
تحريم قربان الرجس فضلا عن جعله شرابا يشرب قال أهل العلم من
المفسرين وغيرهم²²⁶

Al-Kashāf stresses that: (Taking) of alcohol and gambling is critically forbidden. It is originally forbidden, and both (alcohol and gambling) are equivalent to as worshipping of idols. This is what the Prophet of Allāh (peace be upon him) says (the alcohol consumer is like idol worshipper). Another thing is that (Allāh) compares them as impurity, Allāh says: (Beware of the impurity among the Idols). They are also compared as the trap (work) of shaytān and shaytan would never bring anything except bad. Also, Allāh warns Muslims to shun (keep away) from it (totally). He (Allāh) also attributes keeping away (from alcohol and gambling) as a means to victory (success). And, if keeping away from it is a success, actually taking of it is failure and destructive. Also, (Allāh) mentions what is can result to such as evil consequences that cause (lead to) enmity hatred among the alcohol consumers and the gamblers and also cause him to forget remembrance of Allāh and oblivion of time of salat. In this verse, is the forbidden of alcohol (liquor), which attracts a command of keeping away from it as compulsory. So far it is manifested in the shari^{ah} that immolation (sacrifice using idols or other objects) is impure act talk less of taking alcohol is compared to as impurity. This is the observation by the commentators and, among others.

In another *hadith*, he says, “Allāh has accursed alcohol, its growers, those who squeeze it from the grapes, its drinkers, its servers, its buyers, its sellers, those who live on its income, its transporter, and the one to whom it is being transported.” There are many more *ahadith* you will find in books of *hadith* and jurisprudence. It is *haram* to eat at the table on which alcohol or any other intoxicants are being consumed. Based on obligatory precaution, it is *haram* to even sit at such a table

كان تحريم الخمر بتدرّيج ونوازل كثيرة لأنهم كانوا قد ألفوا شربها وحببها الشيطان إلى قلوبهم فأول ما نزل في أمرها (يسألونك عن الخمر والميسر قل فيهما إثم كبير ومنافع للناس) فترك عند ذلك بعض من المسلمين شربها ولم يتركه آخرون ثم نزل قوله تعالى : (لا تقربوا الصلاة وأنتم سكارى) فتركها البعض أيضا وقالوا : لا حاجة

لنا فيما يشغلنا عن الصلاة وشربها البعض في غير أوقات الصلاة حتى نزلت هذه الآية : (إنما الخمر والميسر) فصارت حراما عليهم حتى كان يقول بعضهم ما حرم الله شيئا أشد من الخمر وذلك لما فهموه من التشديد فيما تضمنته هذه الآية من الزواجر وفيما جاءت به الأحاديث الصحيحة من الوعيد لشاربها وأنها من كبائر الذنوب²²⁷

Prohibition of alcohol has different status (level) and circumstance because they (sahābah were addicted to taking of it, and that shaytan had trapped their minds to love it. This first revelation on alcohol is (they would ask you about alcohol and gambling, tell (them) there is great sin in it, but benefit to people). Some Muslims however, kept away from taking (alcohol), while some did not then Allāh also revealed (Do not engage (observe) *Salat* when you are intoxicated (unconscious). However, some (among them) forbade it. They said: we do not have business with what keeps us away from *salat*, hence, some of them drink it, but not the time of prayer, until the following was revealed: (That alcohol and gambling...) However, both of it are forbidden for them, to the extent that some of them told their colleagues, nothing is forbidden to us as difficult as alcohol. And that until when they understood and were able to accommodate the verdict of this verse, coupled with what is said in the sound *Hadith* as penalty (punishment) for who drinks it and that is part of grave sins.

It is permissible for a Muslim to go to places where wine is being served with the food, provided that it does not lead to promotion of those restaurants. However, he cannot eat from the table on which wine is being consumed and should not, based on obligatory precaution, sit at that table. There is no problem though, in sitting at a table near the table on which wine is being consumed.

It has been mentioned in the above that all kinds of alcohol whether derived from wood or other sources are pure (*tahir*). Therefore, the food in whose preparation alcohol was used is *tahir*; the liquids in which it has been dissolved are also *tahir*.

{ من عمل الشيطان } صفة لرجس : أي كائن من عمل الشيطان
بسبب تحسينه لذلك وتزيينه له وقيل هو الذي كان عمل هذه الأمور
بنفسه²²⁸

(It is the works of Shaytan), an attribute of impurity: That is (alcohol) is part of the Shaytan mischievous acts, because of endearing of alcohol and adorning it to him. It is said that (shaytan) is the one who fashioned the misdeeds by himself (to trap) people.

It is *haram* to use anything that causes serious harm to the human being like taking poison. It is also *haram* for a pregnant woman to drink something that would cause miscarriage. Similarly, anything that is known to be harmful or supposed to be harmful or has the probability of harm (is also *haram*), if that probability is considerable in the views of sensible people and that harm is serious enough to cause death or to disable a limb of the body.

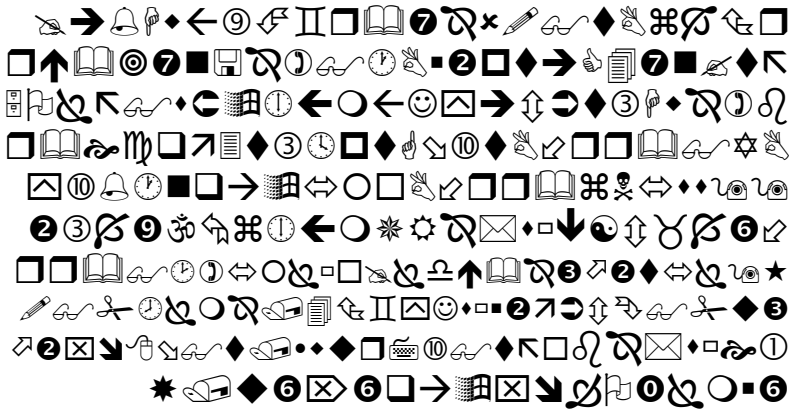
Imam Shawkani quotes the *Hadith* of the prophet to support his argument on the slaughtering of the animal and eating anything unlawful in Islām. He read thus:

وقد ثبت في الأحاديث الصحيحة الأمر بالتسمية في الصيد وغيره
وزهد الشافعي وأصحابه وهو رواية عن مالك ورواية عن أحمد أن
التسمية مستحبة لا واجبة وهو مروى عن ابن عباس وأبي هريرة
وعطاء بن أبي رباح وحمل الشافعي الآية على من ذبح لغير الله
وهو تخصيص للآية بغير مخصص وقد روى أبو داود في المرسل
أن النبي صلى الله عليه وسلم قال : [ذبيحة المسلم حلال ذكر اسم
الله أو لم يذكر] وليس في هذا المرسل ما يصلح لتخصيص الآية نعم
حديث عائشة أنها قالت للنبي صلى الله عليه وسلم : [إن قوما
يأتوننا بلحمان لا ندري أذكر اسم الله عليه أم لا ؟ فقالوا : سمو أئتم
وكلوا] يفيد أن التسمية عند الأكل تجزئ مع التباس وقوعها عند
الذبح²²⁹

It is well established in the sound traditions a directive to mention Allāh's name when hunting and some other engagements, Imām ash-Shāfi^c and his disciples shared this view. It is reported from Mālīk and Ahmad that mentioning Allāh's name is voluntary act not compulsory. This is reported from Ibn Abās Abu Hurayrah and ^cAtāu bn AbiRibāh. Imām Ash-Shafi^c opines that the verse specifically refers to whoever slaughters (animals) not in Allāh's course It was reported from Abu Dāwūd that the Prophet was reported to have said (whatever animals slaughtered by a Muslim is lawful, either he mentioned Allāh's name or not). On the authority of Aishat who was reported to have said (A set of people

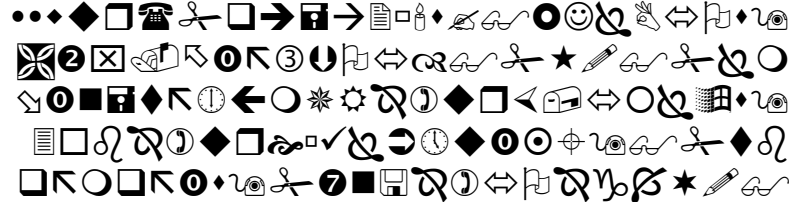
brought us two pieces of meat, which we did not know whether Allāh's name is mention when slaughtering it or not? They (people) asked us the mention Allāh's name and eat it). It is clear here that mentioning Allāh's name when eating (meats) purifies any doubt about the meat as whether Allāh's is mentioned on it or not.

There is certain etiquette to be observed at the dining table. Starting with the name of Allāh; eating with the right hand; making small morsels; sitting longer at the table; chewing the food well; thanking Allāh after the food; washing the fruits and vegetables before eating; not eating after satisfying the appetite; not over eating; not looking at the faces of others while eating; not taking away the food from others who are sitting at the table; and tasting the salt at the beginning and the end of the dinner.



Say: "I find not In the Message received by me by inspiration any (meat) forbidden to be eaten by one who wishes to eat it, unless it be dead meat, or blood poured forth, or the flesh of swine,- for it is an abomination - or, what is impious, (meat) on which a name has been invoked, other than Allāh.s". but (even so), if a person is forced by necessity, without willful disobedience, nor transgressing due limits,- Thy Lord is Oft-forgiving, Most Merciful (Q6:145).

Allāh says in the glorious Qura'an:





Eat not of (meats) on which Allāh's name hath not been pronounced: that would be impiety. but the evil ones ever inspire their friends to contend with you if ye were to obey them, ye would indeed be Pagans. (Q6:121)

The verses above state that swine is unclean and that is why we cannot eat it. We cannot eat anything that was not slaughtered correctly because it means that you were not thinking of Allāh when the animal was killed, and the animal was not meant for being killed for meat. We also cannot eat the meat that is slaughtered by someone other than the people of the book because the devil contends with you if you do, and you may obey the devil and become a polytheist. Also, the meat may have been slaughtered for one of their idols, meat that we surely would not want to eat and become a transgressor.

نهى الله سبحانه عن أكل ما لم يذكر اسم الله عليه بعد أن أمر بالأكل
 مما ذكر اسم الله عليه وفيه دليل على تحريم أكل ما لم يذكر اسم الله
 عليه 230

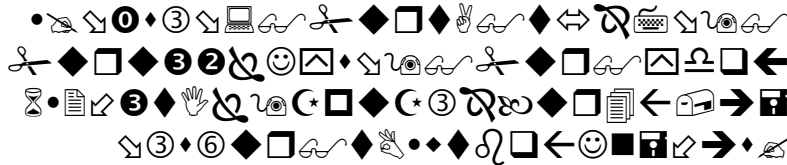
Allāh forbids taking of what Allāh's name is not mentioned (When being slaughtered) it, after He had ordered mentioning Allāh's name. This is to say that taking of what Allāh's name is not mentioned among the slaughtered animals is prohibited.

وقد اختلف أهل العلم في ذلك فذهب ابن عمر ونافع مولاة والشعبي
 وابن سيرين وهو رواية عن مالك وأحمد بن حنبل وبه قال أبو ثور
 وداود الظاهري : أن ما لم يذكر اسم الله عليه من الذبائح حرام من
 غير فرق بين العامد والناسي لهذه الآية ولقوله تعالى في آية الصيد :
 { فكلوا مما أمسكن عليكم واذكروا اسم الله عليه } ويزيد هذا
 الاستدلال تأكيدا قوله سبحانه في هذه الآية - { وإنه لفسق } 231

The scholars hold different views about this (subject matter). Ibn °Umar, Nāfi Mawlāhu, Ash-Sha°ābi and Ibn Sirin shared this view. This is the authority of Mālik and Ahmad bn Hanbali, also shared

by Abu Thawr and Dawd az-Zāhiry: Verily, any slaughtering that Allāh's name is not mentioned on it is prohibited, without any discrimination (regardless) whether he forgets or deliberately does it, because of this verse which Allāh says about the hunted animals. (eat from which are lawful for you and mention Allāh's name on it).

The reason we cannot eat horse or donkey meat is because the Qur’ān does not grant permission to do so. The only one that happened during the prophet battles was as a result of no food to eat or unavailability of drink and then the companions went and ate the horse and the actions did not continued.



And (He has created) horses, mules, and donkeys, for you to ride and use for show; and He has created (other) things of which ye have no knowledge. (Q16:8)

When Allāh refers to donkeys and horses, it was explicitly said that they were meant to be ridden. As for cows, he gives permission to eat it, saying that we may ride and eat them while it only said we may ride horses and donkeys. Some religious scholars say that this is not enough to label horses and donkeys are *haram*, for that to be true it must directly say they are *haram*, this rather makes them *makruh* (disliked) to eat

(Horses, mules and donkeys): That is (Allāh) created these three (animals) for you ... (to ride them). This is reasons for their great usefulness because their usefulness beside riding them is obvious such as putting load on them. ²³²

NOTES AND REFERENCES

1. M.Higab, *Islām is all Divine Messages in one*, (Bureau: Islāmīc publication, vol-1983), 106

2. A.I. Arikewuyo, *"Perspectives in Islāmic Studies, (Department of Islāmic Studies"*, College of Education, Ilorin, 2010), 84.
3. M. Bukhari, *"Sahihu Bukhari Arabic text"*(Beirut; Dar ibn Hazm), Vol.2, 673
4. H. Abd al-^ḥati, *"Family Structure in Islām"*, (Indiana; American Trust Publication, 1977), 87.
5. As quoted by Muhammad Ali in his book "The Religion of Islām, quoted earlier, 616.
6. M. Bukhari, *Sahihu Bukhari Arabic Text* (Beirut; Dar ibn Hazm Vol.5 1806), 1949.
7. M.I. As-San^ḥan, *Subulus-Salam, Sharḥu Bulughul-Marām Min Jāmiu-Addillahu- Ahkam*, (Cairo: Darul-manar 2007), 80.
8. M.I. As-San^ḥan, *Subulus-Salam, Sharḥu Bulughul-Marām Min Jāmiul-Addillahu- Ahkam*, (Cairo: Darul-manar 2007), 80.
9. M.M Khan (Tr) *Sahih al-Bukhari*,Beirut-Dar-Al-Arabic (nd) 97.
10. M.I. As-San^ḥan, *Subulus-Salam, Sharḥu Bulughul-Marām Min Jāmiul-Addillahu- Ahkam*, (Cairo Darul-manar 2007), 80.12. and Qur'ān chapter 42 verses 49 & 50 of Ilorin, June 1990, p.59
11. M. ^ḥAli *The Religion of Islām*, (New Delhi: S,Shand and company Ltd, ND), 671
12. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min 'Iimit-Tafsir"*,(Beirut: Lebanon ND) 167.
13. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min 'Iimit-Tafsir"*,,(Beirut: Lebanon ND) 167.
14. A.I. Arikewuyo, *"Perspectives in Islāmic Studies, (Department of Islāmic Studies"*, College of Education, Ilorin, 2010), 84.
15. M. Ibrahim, *Islāmic Law of Marriage*, (Riyadh, King Saudi University Press, N.D). 16
16. Khalil bn Ishaq, *Jawairul-Iklil a Commentary on Mukhtasar*(Cairo:Vol.1. A.A. Hanafi, N.D) 329.

17. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamīu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*", (Beirut: Lebanon ND) 167.
18. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamīu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*", (Beirut: Lebanon ND)167.
19. A.I Doi, *Women in Shari^cah*, (Zaria: Gaskiyah corporation Ltd, 1983), 59
20. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamīu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*", (Beirut: Lebanon ND),168 .
21. Miracea Ehadi, *Theb Encyclopedia of Religions*, vol.9, (macmillian publishing company: New York, 1987),217 and also H.A Abdul-Salam, *Matrimonial issues among Yoruba Muslims of Nigeria*, a thesis submitted to the Postgraduate School: in partial fulfilment for the requirement for the Degree of Ph.d (Islāmic Studies) Department of Religions, Faculty of Arts University of Ilorin, Ilorin 1997).
22. O.D. Ya'qub "*Marriageandchildupbringing*" (A two way Strategy for National Development an Islāmic Frame work, B&B investment, Abuja, 2014), 18.
23. M. M. Khan (Tr) *Sahih al-Bukhari* (Beirut: Dar al-Arabia, (n.d.), 97
24. O.D. Ya'qub "*Marriageandchildupbringing*" (A two way Strategy for National Development an Islāmic Frame work, B&B investment, Abuja, 2014), 18. H.A Abdul-Salam, *Matrimonial Issues among Yoruba Muslims of Nigeria*, a Thesis Submitted to the Postgraduate School, in partial fulfilment for the requirement for the Degree in Ph.d (Islāmic Studies) Department of Religions, Faculty of Arts University of Ilorin, Ilorin, 1997.
25. M. M. Khan (Tr) *Sahih al-Bukhari* (Beirut: A.R Doi, The cardinal principle of Islām,(Daru al-Arabia Islāmic publication, n.d.) 97
26. A.R Doi, *The cardinal principle of Islām*, (Lagos:Islāmic publication Bureau, Mushin, Lagos1972), 177
27. A.R Doi, *The Cardinal Principle of Islām, Islāmic publication*, 178
28. A.R Doi, *The Cardinal Principle of Islām, Islāmic publication*, 178

29. A.R Doi, *The Cardinal Principle of Islām, Islāmic publication*,179
30. Z.S (et-al), *Shariatul-Ahkām al-Usrah Fil-Islām,Kwait*, University of Kuwait,NP, 19
31. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",180
32. M. M. Khan (Tr) *Sahih al-Bukhari* (Beirut –Dar al-Arabia, (n.d.), 103
33. Z.S (et-al), *Shariatul-Ahkām al-Usrah Fil-Islām*,(Kwait: ND), 123
34. Y. Ali, *The Qur'ān text Translation and Commentary*, (Lagos: Amana corp Maryland, 1983),701
35. I. Mustapha,*Islāmic Law of Marriage*,(King Saudi Arabia:University press, Riyadh, N.D), 11
36. I. Mustapha,*Islāmic Law of Marriage, King Saudi Arabia*,12
37. I. Mustapha,*Islāmic Law of Marriage, King Saudi Arabia*,,
38. K.N Ahmad, *Muslim Law of Divorce, Kitab Bahwan*, 1961, 741
39. K.I Ahmad, *Muslim Law of Divorce, Kitab Bahwan*,743
40. K.N. Ahmad, *Muslim Law of Divorce*,741
41. A.M, Abi Abdullah, *Al-Qazurni, The Muslim Family*, Theran Khundania press, Iran N.D 68
42. A.M, Abi Abdullah, *Al-Qazurni, The Muslim Family*,69
43. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",83
44. Y. Ali, *The Qur'ān text Translation and Commentary*, Lagos: Amana corp Maryland, 1983, 701
45. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",184

46. M. Mahjuba, *The Magazine for Muslim women*, (Tehran) Islāmic Republic of Arab, vol. 9 1984), 16
47. Khalil bn Ishaq, *Jawairul-Iklil a Commentary on Mukhtasar* Vol.1. 47
48. J.M Cowan, *A Dictionary of Modern Written Arabic*, (India:Modern Language Service, 1988),
49. A. Ali, *The spirit of Islām*, (London:OxfordUniversity press, 1965) 229
50. A. Ali, *The spirit of Islām*, London, 223
51. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamīu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*", 170.
52. B. Daura, The limit of polygamy in *Journal of Islāmic and comparative law*, (JICL, vol.3 1969), 21
53. A. Ali, *The Spirit of Islām*, London, OxfordUniversity press, 229
54. A. Ali, *The Spirit of Islām*, London, OxfordUniversity press, 230
55. A. Ali, *The Spirit of Islām*, London, OxfordUniversity press, 232
56. M. Ibrahim, *The Islāmic Law of Marriage*,⁴³ see also the theses of H.A Abdul-Salam, *Matrimonial issues among Yoruba Muslims of Nigeria*,
57. M. Mahjuba, *The Magazine for Muslim women*,¹⁸ a H.A Abdul-Salam, *Matrimonial issues among Yoruba Muslims of Nigeria*,
58. H. Abd al-^cati, "*Family Structure in Islām*"⁸⁸
59. Z.S (et-al), *Shariatul-Ahkām al-Usrah Fil-Islām*,*Kwait*,²⁴
60. W.S Kajubi (et-al), *African Encyclopedia*, (Oxford University press: 1974),³²⁸ and also see Thesis of H.A Abdul-Salam, *Matrimonial Issues among Yoruba Muslims of Nigeria*, Department of Religions,
61. M .M Ali, *The Religion of Islām* (New Delhi:S. Shand and Company Ltd,N.D.S).⁶⁷¹

62. Hammudah Abdu'Alati, *The Family Structure in Islām*, (Lagos I,P,P, 1782), 218
63. Hammudah Abdu'Alati, *The Family Structure in Islām*, (Lagos: I P B, 1782, 218
64. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, (Bairut: Darul-Ishad) 89
65. O.D. Ya'qub *"MarriageandChildUpbringing"* (A two way Strategy for National Development an Islāmic Frame work, B&B investment, Abuja, 2014), 18.
66. A.I. Arikewuyo, *"Perspectives in Islāmic Studies, (Department of Islāmic Studies"*, College of Education, Ilorin, 2010), 84.
67. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, 189
68. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, 189
69. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, 189
70. M. Mutahhar, *The Right of Women in Islām*, (Maktabatus-Shamillah: Darul-Qur'ān publication, Lebanon), 245
71. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, 189
72. Khalil bn Ishaq, *Jawairul-Iklil a Commentary on Mukhtasar Vol.1.* 49
73. M .M Ali, *The Religion of Islām*(New Delhi: S. Shand and Company Ltd., N.D.S) .677
74. M .M Ali, *The Religion of Islām*678
75. M .M Ali, *The Religion of Islām*671
76. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, 194

77. Khalil bn Ishaq, *Jawairul-Iklil a Commentary on Mukhtasar* Vol.1..53 and M.M Ali, *The Religion of Islām*,176
78. A.M. Bn Abdul-Wahab, *Ahkamunis-Sai*, (Madinatu- Nasr, Cairo: first edition, 2007), 167
79. A.I. Arikewuyo, "*Perspectives in Islāmic Studies, (Department of Islāmic Studies*", 2010), 87
80. M.M Ash-Shawkāni, *Naylu Awtar*, (Mustapha Al-Haby publication: 1998,) vol 5, 12
81. M.M Ash-Shawkāni, *Naylu Awtar*, .13
82. Khalil bn Ishaq, *Jawairul-Iklil a Commentary on Mukhtasar*,89
83. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^climit-Tafsir*",123
84. M.Muhammad Ali, *The Religion of Islām*, 671
85. M. Muhammad Ali, *The Religion of Islām*672
86. M. Muhammad Ali, *The Religion of Islām*, 673
87. A.I. Arikewuyo, "*Perspectives in Islāmic Studies, (Department of Islāmic Studies*", 2010), 87
88. A.I. Arikewuyo, "*Perspectives in Islāmic Studies, (Department of Islāmic Studies*", 2010), 88
89. M.Muhammad Ali, *The Religion of Islām*, p.676 and also the thesis of H.A Abdul-Salam, *Matrimonial issues among Yoruba Muslims of Nigeria*,
90. al-Jibaly, Muhammad, *The Quest for Love and Mercy: Regulations for Marriage and Wedding in Islaam*. (Beirut:Lebanon: Al-Kitaab & as-Sunnah Publishing, 2000), 4-5
91. Zarabozo,Jamaal.(1998).*FiqhofMarriage*.<http://www.javan.com/pages/Marriage/Marriage.html> and Ja^cafar bn. Al-Hasan, *Shari^cah-al-Islām*,Tehran, WOFIS, 1377 AH.221, p,45
92. As-Sayyid Sabiq, *Fighs-Sunnah*, (Beirut: Darul-Fikr, 1977), vol,2 249
93. As-Sayyid Sabiq, *Fighs-Sunnah*, (Beirut, Darul-Fikr, 1977), 250
95. As-Sayyid Sabiq, *Fighs-Sunnah* (Beirut, Darul-Fikr, 1977), 250-51

96. As-Sayyid Sabiq, *Fiqh-Sunnah*(Beirut, Darul-Fikr, 1977), 253
97. K.N. Ahmad, Op.cit., 25
98. K.N. Ahmad, Op.cit., 26
99. Khalil bn Ishaq, *Jawairul-Iklil a Commentary on Mukhtasar A.A. Hanafi*, (Cairo:N.D). vol.1 329.
100. A.R I. Doi., *Shar'iah the Islāmic Law*,(Ibadan: Iksan Islāmic publishers, 1990), 195. For details, see *Bidayat-Mujtahid* vol.2 40
101. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Iimit-Tafsir*",130
102. Charles H, *The Hedaya, Commentary on the Islāmic Laws*, translated, (Darya Ganji; Kitab Bhayan, 1979) 35
103. Charles H, *The Hedaya, Commentary on the Islāmic Laws*, 36
104. Charles H, *The Hedaya, Commentary on the Islāmic Laws*, 37
105. Charles H, *The Hedaya, Commentary on the Islāmic Laws*,37-38
106. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Iimit-Tafsir*",130
109. A.R I. Doi,*Shar'iah the Islāmic Law*,(Ibadan: Iksan Islāmic publishers, 1990), 189
110. A.R I. Doi,*Shar'iah the Islāmic Law*,(Ibadan: Iksan Islāmic publishers, 1990), 190
111. Khalil bn Ishaq, *Jawairul-Iklil a Commentary on Mukhtasar*, vol.1.(A.A. Hanafi, Cairo: N.D).329.
112. A.R. I. Doi,*Shar'iah the Islāmic Law*,(Ibadan: Iksan Islāmic publishers, 1990),189
113. A.R I. Doi., *Shar'iah The Islāmic Law*,p.*Shar'iah the Islāmic Law*,(Ibadan: Iksan Islāmic publishers, 1990), 192

114. A.R I. Doi., *Shar'iah The Islāmic Law*, 193
115. A.R I. Doi., *Shar'iah The Islāmic Law*,
116. A.R I. Doi., *Shar'iah The Islāmic Law*,
117. A.R I. Doi., *Shar'iah The Islāmic Law*,
118. Muhammad °Ali Op.cit. 684
119. Abdur-Rahman I. Doi, Op.cit. 173, See also Muhammad °Ali, Op.cit. 685
120. Ameer °Ali, *The Spirit to Islām*, London, OUP, 1965,. 243 – 244
121. Muhammad °Ali, Op.cit, 682 – 683
122. M. M. °Ali, Op.cit. 622
123. Ibrahim Abdul-Hamid *Dissolution of Marriage in Islāmic Law*”, *Islāmic Quarterly, A Review of Islāmic Culture* vol.IV No. 1957 – 59, p.168
124. Charles H, *The Hedaya, Commentary on the Islāmic Laws*, translated, (Darya Ganji; Kitab Bhayan, 1979) p.36
125. Charles H, *The Hedaya, Commentary on the Islāmic Laws*,40
126. Charles H, *The Hedaya, Commentary on the Islāmic Laws*,42 and Khalil bn Ishaq, *Jawairul-Iklil a Commentary on Mukhtasar* vol.1
127. Charles H, *The Hedaya, Commentary on the Islāmic Laws*, p.42 and Khalil bn Ishaq, *Jawairul-Iklil a Commentary on Mukhtasar* vol.1
128. Charles H, *The Hedaya, Commentary on the Islāmic Laws*,42 and Khalil bn Ishaq, *Jawairul-Iklil a Commentary on Mukhtasar* vol.1
129. H. Abdu'Alati, *The Family Structure in Islām*, (Lagos: I.P.P 1782), 218
130. H. Abdu'Alati, *The Family Structure in Islām*, (I P B., Lagos 1782), 218

131. S. Athar Husain et al, *Islāmic Marriage*, World Islāmic Network, 1st edition, 2001, 86
132. S. Athar Husain et al, *Islāmic Marriage*, World Islāmic Network, 1st edition, 2001, 86-8
133. S. Athar Husain et al, *Islāmic Marriage*, World Islāmic Network, 1st edition, 2001, 90
134. S. Athar Husain et al, *Islāmic Marriage*, World Islāmic Network, 1st edition, 2001, 86
135. J. Al-Hasan, *Shari'ah-al-Islām*, Tehran, WOFIS, 1377 AH.221, 78
136. J. Al-Hasan, *Shari'ah-al-Islām*, Tehran, WOFIS, 1377 AH.221, 79
137. J. Al-Hasan, *Shari'ah-al-Islām*, Tehran, WOFIS, 1377 AH.221, 78
138. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir*", 130
139. A I. Doi., *Shariah the Islāmic Law*, (Ibadan: Iksan Islāmic Publishers, 1990,) 195
140. Khalil bn Ishaq, *Jawairul-Iklil a Commentary on Mukhtasar*, vol.1. A.A. Hanafi, Cairo: N.D. 395.
141. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir*", 189
142. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir*", 189
143. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir*", 189
144. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir*", 189
145. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir*", 198
146. Bill Mclean, Sahih Muslim bill@mclean.faithweb.com <http://www.mclean.faithweb.com>

147. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu B M. Ash-Shawkāni, "Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, 190
148. J.M Cowan, *A Dictionary of Modern Written Arabic*, Modern Language Service, India
149. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah mi ^cIimit-Tafsir"*, 183
150. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, 230
151. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, 276
152. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, 279
153. A. M Al-Imran, *Qawaid wad-Dawabit-Tafsir*, Jumhuriyyah Yamaniyyah,, p.156
154. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, 281
155. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, 282
156. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*,..279
157. M. Higab *Islām is the all divine messages in one*, Islāmīc publication Bureau, Lagos vol.1, 1993 and also see this A.R I. Doi., *Shar^ciah the Islāmīc Law*, 192
158. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, 280
159. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, 285

- 160 M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min' Iimit-Tafsir*", vol.2 134
161. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min' Iimit-Tafsir*", vol. 2 136
- 162 M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min' Iimit-Tafsir*", 280
163. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min' Iimit-Tafsir*", 280
164. Bill Mclean, Sahih Muslim bill@mclean.faithweb.com <http://www.mclean.faithweb.com>
165. S. Athar Husain et al, *Islāmic Marriage*, World Islāmic Network, 1st edition, 2001, p.89 M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min' Iimit-Tafsir*", 209
166. S. Athar Husain et al, *Islāmic Marriage*, World Islāmic Network, 1st edition, 2001, 92 M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min' Iimit-Tafsir*", 210
167. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min' Iimit-Tafsir*", 288
168. S. Athar Husain et al, *Islāmic Marriage*, World Islāmic Network, 1st edition, 2001, p.92 M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min' Iimit-Tafsir*", 210
169. Bill Mclean, Sahih Muslim bill@mclean.faithweb.com <http://www.mclean.faithweb.com>
170. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min' Iimit-Tafsir*", 289
171. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min' Iimit-Tafsir*", 290

172. *M. Ash-Shawkāni, "Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Iimit-Tafsir", 293*
173. A. Hizuddin, *Ahkamul-Halfu Bit-Talaq* : Cairo:Dirasatul Fiqhiyyah in Islām,270
174. J.M Cowan, *A Dictionary of Modern Written Arabic*, Modern Language Service, India
175. S. Abdullah As-Sayri, *Ahkamu Nikahul-Misyar Al-Fiqhiyyah*, Islāmic publication, Lebnon, 78
176. S. Abdullah As-Sayri, *Ahkamu Nikahul-Misyar Al-Fiqhiyyah*, Islāmic publication, Lebnon, 78
177. S. Abdullah As-Sayri, *Ahkamu Nikahul-Misyar Al-Fiqhiyyah*, Islāmic publication, Lebnon, 78
178. *M. Ash-Shawkāni, "Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Iimit-Tafsir", 298*
179. S. Abdullah As-Sayri, *Ahkamu Nikahul-Misyar Al-Fiqhiyyah*, Islāmic publication, Lebnon, 85
180. S. Abdullah As-Sayri, *Ahkamu Nikahul-Misyar Al-Fiqhiyyah*,Islāmic publication, Lebnon, 87
181. S.A Maududi, *Birth control, its social political, economic moral and religious aspect*, Markazi MatabaIslāmic publications, Delhi, 120 and also S. Abdullah As-Sayri, *Ahkamu Nikahul-Misyar Al-Fiqhiyyah*, Islāmic publication, Lebnon, 85
182. S.A Maududi, *Birth control, its social political, economic moral and religious aspect*, Markazi Mataba Islāmic publications, Delhi, 120 and also see this Wikipedia, the free encyclopedia this is a *sub-article of Islāmic economical jurisprudence and inheritance*.
183. Wikipedia, the free encyclopedia this is a *sub-article of Islāmic economical jurisprudence and inheritance*.

184. From Marriage to Parenthood The Heavenly Path Rays of the Sun and Wikipedia, the free encyclopedia this is a *sub-article of Islāmic economical jurisprudence and inheritance*.
185. From Marriage to Parenthood The Heavenly Path Rays of the Sun and Wikipedia, the free encyclopedia this is a *sub-article of Islāmic economical jurisprudence and inheritance*.
186. S.A Maududi, *Birth control, its social political, economic moral and religious aspect*, Markazi Mataba Islāmic publications, Delhi, 124 and also Population Reference Bureau via e-mail (prborders@prb.org) or at the address below. The English versions are available on PRB's website (www.prb.org) Website: www.prb.org
187. Ibrahim B. Saeed *Family Planning*, Islāmic Research Foundation International, Inc. Shefford Website: <http://www.irfi.org>
188. Ibrahim B. Saeed *Family Planning*, Islāmic Research Foundation International, Inc. Shefford Website: <http://www.irfi.org>
189. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir*",..293
190. Ibrahim B. Saeed *Family Planning*, Islāmic Research Foundation International, Inc. Shefford Website: <http://www.irfi.org> and S.A Maududi, *Birth control, its social political, economic moral and religious aspect*, Markazi Mataba Islāmic publications, Delhi, 125
191. Ibrahim B. Saeed *Family Planning*, Islāmic Research Foundation International, Inc. Shefford Website: <http://www.irfi.org> and S.A Maududi, *Birth control, its social political, economic moral and religious aspect*, Markazi Mataba Islāmic publications, Delhi, 120
192. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir*", vol, 297

193. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, 293
194. Shiab Al-Baqdawi, *Irshadu Saliq*, Ashrkatul-Ifrikiyyah, Lebanon, 2000 p.82
195. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, vol,3 186
196. Shiab Al-Baqdawi, *Irshadu Saliq*, Ashrkatul-Ifrikiyyah, Lebanon, 2000, 88
197. Shiab Al-Baqdawi, *Irshadu Saliq*, Ashrkatul-Ifrikiyyah, Lebanon, 2000,82
198. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, vol,3 186
199. Shiab Al-Baqdawi, *Irshadu Saliq*, Ashrkatul-Ifrikiyyah, Lebanon, 2000 p.89 and also M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, vol,3 186
200. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, vol,3189
201. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, vol,3 189
202. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, vol,3 190.
203. M. M. Khan (Tr) Sahih al-Bukhari (Beirut A.R Doi, The cardinal principle of Islām, Islāmic publication Dar al-Arabia, (n.d.) 97
204. M. M. Khan (Tr) Sahih al-Bukhari (Beirut – A.R Doi, The cardinal principle of Islām, (Islāmic publication Dar al-Arabia, n.d.) 97
205. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, vol,3 199
206. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min'Imit-Tafsir"*, vol,3 190.

207. Zakariyah Al-Ansary, *Usnal-Matlub fi Shari'ci Raodul- Talib*, Darul-Kitabul-^cIlmiyyah Bairut, 2000, vol.5 76
208. Zakariyah Al-Ansary, *Usnal-Matlub fi Shari'ci Raodul- Talib*, Darul-Kitabul-^cIlmiyyah Bairut, 2000, vol.5,78
209. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsi* vol.3 194
210. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",vol,3 198.
211. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah mi ^cIimit-Tafsir*",vol,3 190.
12. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",vol,3 202.
213. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",vol,3 207
214. .M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",vol,3 209
215. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",vol,3 210
- 216 M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",vol,3 211
217. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",vol,3 212.
- 218 M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",vol,3 213
219. M. Ash-Shawkāni, "*Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir*",vol,3 215.

220. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,3 202.
221. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,3 20
222. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,3 20
223. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,3 20.
224. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,3 20
225. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,3 20
226. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,3 20
227. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,3 20
228. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,1 200
229. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,4 201
230. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,1 203.
231. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,4 410
232. M. Ash-Shawkāni, *"Fath-al-Qadīr al Jamiu Baina fanir-Riwayah wad-Dirayah min^cIimit-Tafsir"*, vol,4, 411

CHAPTER SIX

CONCLUSION

6.1 Conclusion

In the preceding chapters, the environment in which Muhammad Ash-Shawkāni was born was presented to the reader as highly intellectual; one which was full of teeming theologians, philosophers, jurists and exegetes with diverse forms of Islāmic thoughts and aristotelian type of reasoning coupled with various legal schools and conceptual interpretation of the Glorious Qur'ān. The whole region of San'an, being a vibrant centre for the activities of theologians, philosophers and jurists soon formed a bureau of knowledge and intellectualism during the golden period of the °Abbāsīd dynasty (786-833) which was recognized as a renaissance of learning and research.

It should be recalled that Imam Ash-Shawkāni°Ali, Muhammad's father, was among the eminent scholars who accelerated the pace of learning and research in this environment. It was this type of environment that produced a crucial epoch when a pragmatic scholar like him was needed for consolidation of learning, passing the Islāmic judgement and orthodox ideas.

In the previous chapters, various stages of life of Ash-Shawkāni were projected; in those chapters. Ash-Shawkāni was portrayed as follows.

1. A pupil under the instruction of his father where he acquired solid religious and ethical backgrounds which served as a source of natural aptitude for his extensive reading and devotion;¹
2. A student under a line of scholars which included Al-Imām Muhammad Ibn. °Idris Ash-Shā-fi°ī, Shaykh Kamal As-Sinnānī and Shaykh Al-Majd Al-jīlī and a lot of others from whom he drew his inspiration for learning and research;²
3. A researcher who travelled far and wide in a bid to research into almost all disciplines known in his time. He was persuaded by this drive to study *Ahādith* and its literature. Ash-Shawkāni also adherently follows the Muslims Orthodox and school of Islāmic laws of that Imam Abu Hanifah and philosophy of Abū Barakāt;³

4. A central figure in the jurisprudential debate and controversies, who emerged as a vanguard for the survival of the Sunnite school. Ash-Shawkāni pursued this laudable cause, sometime at the risk of his life, or to the detriment of his personality;⁴
5. A destitute who was terribly in need at the outset of his career. The collections made for him by his compatriots in order to help him when he fell ill at San'an, was a testimony to the extent of his poverty at that particular time;⁵
6. A preacher who was known to be down-to-earth in passing Allāh's message to his audience. He did not mince words in saying the truth. He shed tears when he preached and inflamed the passion of his listeners to the point of drawing flood of tears from their eyes;⁶
7. A proprietor who ran centres for learning and research under the patronage of 'Alā'u-d-Dīn Muhammad ibn Takash II, the Sultan of khwarārisim. With the establishment of these centres, the dissemination of knowledge across the Central San'an was made possible;⁷
8. an author who wrote on nearly all the subjects such jurisprudence, fiqh, inheritance, grammar *Tafsir* and etcin Islamic which existed in his time. His books received wide acceptability from the literate populace of Central Asia and Arab Countries. The qualities of the books made the public take them as classic materials and reject most of those of other authors;⁸
9. a politician who served as a special adviser on religious, social and political affairs under successive rulers of the Arabian World;⁹
10. a rich man who was in high taste of a luxurious life towards the end of his life and;
11. shaykhu'l-Islām and Sunni, a title conferred on him Judge (*Qadi*) by a team of scholars and rulers as a mark of recognition for his immense contribution to knowledge and civilization.¹⁰

In the earlier chapters, it could be seen that Shawkani's personality generated a lot of controversies among the contemporary scholars of his time. Some scholars projected him as an opportunist and materialist who believed that wealth, possessions and physical comforts are more important than spiritual values in life. These scholars considered his association with rulers of his time and his yearning for wealth and property which resulted in his high taste and sophisticated life of the royal elite, as repugnant and totally unacceptable as it amounted to an assault on knowledge and violation of Islāmic tenet and cultures.¹¹

Other scholars portrayed Ash-Shawkānī as a religious and Qur'ānic commentator scholar whose objective behind any of his activity centred on devoutness and piety. To these scholars, the repugnance with which Ash-Shawkānī considered this ephemeral life, the contempt with which he looked at any worldly achievement of a man as well as the reproaches which he brought to the excesses of the rulers of his time, project him not only as a religious scholar but also as a great exegetes leader of his time.¹² However, the two contrasting views have been discussed in the previous chapters particularly in chapter two and five.

Our findings in these chapters reveals that Muhammad Ash-Shawkānī was not only a religious scholar but also a teacher, a judge and Imam (leader) who turned the whole of central Arabian into a religious community and Sunni environment after it had been a centre for doctrinal controversies and political commotion.

A true profession of ascetic faith and a beautiful example of total resignation to the will of Allāh were vividly displayed by Ash-Shawkānī in his *Wasiyyah* at the point of death. Ash-Shawkānī's *Wasiyyah*, as earlier discussed in chapter two reflects his deep piety and his great trust in Allāh and His Judgment.¹³

Ash-Shawkānī's contribution to the development of learning and research is immense and enormous. It is on record that Ash-Shawkānī's instinctual out-puts, right from the medieval age up to the present time have and continued to serve as references for students and researchers.

It also has been asserted that the effort to produce alternative interpretation of the glorious Qur'ān based on the pure Sunnite doctrines, and in most case its talks about the knowledge of syntax. Indeed, the book serves as a good alternative *Tafsīr* and saves the world from the sect doctrines with which the pages of their works on *Tafsīr* are saturated.

As it could be seen in the preceding chapters, Ash-Shawkānī's work is not only a commentary on the glorious Qur'ān, but also a compendium of various branches of knowledge in the Humanities and Sciences. It is a great corpus for all. Ash-Shawkānī's views and ideas on different issues discussed in the previous chapters which came up for discussion during his life time and after his demise have adequately portretted his personality in terms of academic excellence and intellectual disposition.

Through our study, the researcher discovered that the book under study (*Fath-al-Qadīr*) is a monumental piece on the *Sunni* styles of exegesis, a compendium on theological and *Ahkam*

studies, a treatise on philosophy, an epitome on traditions of the prophet, an encyclopedia on religion, ethics and history, a lexicon on Arabic Language and a synopsis on logic and Rhetorical Studies: what Ash-Shawkāni wrote on each of these disciplines as could be seen in the previous chapters, remains glorious and indelible in the midst of Qur'ānic exegesis. Muhammad Ali Ash-Shawkāni adopted special methodology which is characterized by certain systematic arrangement particularly known with him in the realm of science of *Tafsir*. With this method, Ash-Shawkāni logically connects chapters with the preceding ones, rationalizes the title given to the chapter under discussion, narrates circumstances surrounding its revelation and these would be followed by citation of the grammatical and linguistic variations on some words and expressions which appear prominently in the verse and then the literal meaning of the words and the verses one after the other would be considered. These would be also followed by the traditional meaning of the verse(s), exposition of their intrinsic intellectual values and reflection of the theological, jurisprudential scientific, philosophic, ethical and rhetorical cases as well. All these go along with the extensive quotations from the glorious Qur'ān, *Hādith*, poetical verses, statement of saint and men of wisdom, coupled with the divergent opinions of the past Qur'ānic commentators on the verses under study.

In his exposition, Ash-Shawkāni formulates hypotheses, itemises the cases arising from the chapter, classifying them into divisions and sub-divisions and each division and sub-division would receive adequate treatment and attention. With this method, Ash-Shawkāni's landmark contributions to and deep exploration of meaning of the glorious Qur'ān was facilitated.

Some scholars view this as a book which belongs not to the class of *Tafsir* on the basis that it contains many disciplines which have no bearing on *Tafsir*. Other scholars projected the book as a monumental work on *Tafsir* on the ground that it contains *Tafsir* and other subjects which are related to it as well.¹⁴ Another group of scholars consider the book an epitome of *Tafsir* on account of the fact that it contains nothing except *Tafsir*. However, it has been said in the earlier chapters that an individual's perception of *Tafsir* determines what constitute *Tafsir* in his own perspective. Taking cognizance of the divergent opinions on the status of this analytical study, it can be unequivocally that the book is a *Tafsir* of its kind as earlier stated in the previous chapters.

Furthermore, there is no any argument on whether the book was solely authored by Ash-Shawkāni or in collaboration with other co-authors. He wrote another book of Tafsir book but he

could not be able to complete the second before he was died. Nevertheless, sufficient evidences showing Ash-Shawkāni's sole authorship of his books. The portrays Ash-Shawkāni as a versatile *Mufassir*, given all credentials required of a *mufassir*, such as knowledge of *Hadīth*, of '*Asbābu-n-Nuzūl*, of Arabic Language and Literature, of Rhetoric as well as that of '*Uṣūlu'l-fiqh*. History and Logic are highly demonstrated by Ash-Shawkāni in his book *Fath-al-Qadīr* .

Ash-Shawkāni's critical study of legislative verses in the preceding chapter shows the significant position which subject occupied in the jurisprudential pane in the early mediaeval age. Ash-Shawkāni versatility with the main current of thoughts of the early theologians on faith enabled him to project the subject not just a mere confession or utterance of few words, but as a conscious acceptance of "Word of Testimony" with its stipulations and complete adherence to it in practical life.

Ash-Shawkāni succeeded in presenting to his readers far-reaching opinions of various sectarian groups on free-will and predestination. Unlike Abu'l-Hasan Al-'Ash'ari, his mentor, Ash-Shawkāni was emphatic in his doctrine of predestination and so he took a decisive position on the issue. As a Sunnite theologian, he portrays Allāh as the Creator of all things with measure and divine justice which are subject not to any reproach or criticism.

It could be equally seen that readers are afforded an opportunity to follow a wide rage of *Ayatul-Ahkam* discussions on anthropomorphic doctrine in relation to the nature of God. Sufficient proofs which show that all anthropomorphic expressions in the Glorious Qur'ān must necessarily be interpreted have been provided by Ash-Shawkāni in his presentation on the subject.

It remains to be said that Ash-Shawkāni delves into legal matters within the purview of Islāmic jurisprudence. He fishes out some inconclusive legal issues and strives to reach a logical conclusion on the issues in the light of the Qur'ān, *Sunnah*, and *Ijamā'*. The issues of the legal share of two daughters left behind as the only heirs, the legal right of *Dhawu'l-arhām* (Maternal Relations) to co-inherit with *Aṣhābu'l-furūd* (heir of the fixed shares) and *'Asabah* (agnates) are, prior to his time, inconclusive issues in the *Sharī'ah*. Other inconclusive legal matters are: definite description of *Al-Kalālah*, the legal share of brothers or sisters of a deceased person who reduced the mothers share from one- third to one-sixth and the legal right of the heir to still be a legatee. All these Issues are extensively discussed by Ash-Shawkāni to logical conclusions in his presentation.

Ash-Shawkāni's legal illumination was highly displayed in his study of Islāmic penal law. A discourse on issues which are related to the inconclusive aspects of the punishments prescribed for major criminal offences in the *Sharī'ah* was presented by Ash-Shawkāni. With his discourse, controversies surrounding law of amputation of arms, stoning to death, public execution and crucifixion were evidently cleared.

Ash-Shawkāni did not also leave business transaction involving future obligations termed *Al-mudāyanah* untouched, which he presented pain-stakingly in his bid to convince his readers that the Qur'ānic guidance encompasses all aspects of human endeavors. The laws binding buying or selling goods on credit, cash and carry business and mortgage transaction are well illustrated by Ash-Shawkāni emphasis laid on record-keeping and witness-taking as inevitable features for the success of any form of business, further shows Ash-Shawkāni's apex of expertise in business studies.

The high level of scientific experience of the people of the medieval age was displayed by our *Mufassir* through analysis of some verses from the Glorious Qur'ān, most especially on the time for abortion if the pregnancy is not up to two month. As could be seen in the researcher previous discussions in sub chapter five. Ash-Shawkāni's analytical exposition on the origin and development of spermatozon and ovum, his hypothesis about the development of a man right from zygote to the embryonic and fontal stage up to the period of birth are credible. His account of formation and functions of all systems in human beings are also found accurate, relevant and fascinating. In addition, the verses dealing with theft, crime and punishment, Islāmic family laws and marine studies receive adequate attention of the author in his great corpus on *Tafsīr*.

6.2 Observation

The prime objective of Ash-Shawkāni in writing his monumental work on *Tafsīr* as could be inferred, was not just to produce literal and traditional commentaries on the Glorious Qur'ān but to see that many viable themes of great value and significance which have bearing on *Tafsir* and in which the Glorious Qur'ān abounds, are diligently uncovered and presented to the readers for a better appreciation of the book of God which is a profound cluster of numerous branches of knowledge.

Ash-Shawkāni recognized many factors which stood as hindrance to attaining this goal in the earlier works on *Tafsīr*, who tailored their commentaries towards the viewpoints of their doctrinal schools, and so saturated the pages of their *Tafsīr* with elusive thoughts and ideas which militated against recognizing the clear vision of the divine purpose of revelation.

Ash-Shawkāni's acquisition of deep knowledge of almost all disciplines known in his time was seen as a means to all end. The revival of the enormous pearls of wisdom and numerous sets of values which filled the Glorious Qur'ān and which had been steadily eroded by the waves of heretical interpretation, borne out of the prevalent intellectualism and sectarian dogmatism, was seen by Ash-Shawkāni as an end or a goal which must be achieved. The means to achieve this goal, therefore, becomes inevitable. Thus Ash-Shawkāni's flair for literature and advanced reading of various books on theology, philosophy, politics, history and sciences, jurisprudence was informed by this aspiration. His versatility with the main currents of sectarian thoughts and ideas enabled him to win the difficult intellectual war by producing his corpus on *Tafsīr* which projects the beauty and marvels of the Glorious Qur'ān for human progress and advancement. This explains why the mainstream of ideas expressed by Ash-Shawkāni in his commentary on the Glorious Qur'ān centres not only on *fiqh*, theology, philosophy, jurisprudence, History, Logic and Politics, but also on Metaphysics, Ethics, Rhetoric, Poems and Grammar.

The more reason why some critics of Ash-Shawkāni's work on *Tafsīr* refused to classify it among the *sunni's* works on *Tafsīr*, is because, according to them, it contains everything except *Tafsīr*. Whereas the numerous themes contained in the book, according to Ash-Shawkāni's admirers, are derivatives of the verses from the Glorious Qur'ān which could be grasped only by the reflective readers. These themes were brought to light from their subtle form by Ash-Shawkāni to avail elite readers of the Glorious Qur'ān a deep understanding of its imports and messages.

The most striking thing in Ash-Shawkāni was his ability to have expertise in almost all disciplines known in his time. His enormous works on the humanities and science, his intellectual disposition during his different encounters with contemporary scholars of his time and his dissemination of knowledge in the nooks and crannies of Central Arab further enhanced the renaissance of learning and turned the whole region to a research centre and literate

community; a scenario which made Ash-Shawkāni's intellectual outputs remain the major landmark in History of learning and research in the mediaeval and modern age.

In the field of *Da'wah* Ash-Shawkāni made a concerted effort to see that the message of Islām was diligently delivered to the people who were completely thrown into utter materialism and mundane existence. His *Da'wah* activities cut across all and sundry of his environment including members of the ruling elite and political juggernauts. He was down to earth in admonishing his audience and he did not mince words in checking excesses and arrogance noted in many of them, regardless of their status and class. Through his *Da'wah*, activity, modesty and liberality became popular culture among the people of his time.

On the political plane, Ash-Shawkāni ran the whole gamut of political thoughts and systems of his time, by being one of the political forces who made things happen in the sphere of politics. The creditable performance of Ash-Shawkāni when he was a special adviser, on religious, social and political affairs under some rulers at that time, made him closer to the ruling class and distant from some of his contemporary scholar who saw his political appointment as an assault on knowledge and a step towards mundane attainment and finally he was made as a judge of San'an . However, Ash-Shawkāni used the opportunity to take his *Da'wah* activities into the ruling class and royal environment, an input which helped immensely in reforming the political system of the day to conform with Islāmic tenets and framework.

The connection between Ash-Shawkāni's involvement in political life of his time and his rare emphasis on *Da'wah* activities, lies in belief that, through his involvement in Sunni school, members of ruling class would be involved in *Da'wah* activities and such might boost the morale of Islām throughout the empire indeed, the rulers' involvement in *Da'wah* by way of giving moral, financial and political supports to its cause, had graphically painted out of Ash-Shawkāni's time in a real Islāmic out-look, where all and sundry fashioned their lives in accordance with Islāmic dictates and principles.

Ash-Shawkāni's economic life was a model and exemplary pattern for any serious and lofty academician who wants to lead a life of honour and respect, and is keen to have freedom of thought, freedom of expression and freedom of existence Muhammad Ash-Shawkāni refused to be a sycophant to any ruler or rich person with the level of his education and wide experience of life. Instead of relying on any wealthy and supercilious ruler for his livelihood, Ash-Shawkāni employed the opportunity of his being an author, instructor, proprietor and administrator to build

a substantive source of living for himself and made a great mark of honour for his career. His gold and silver factory plus his livestock farm also served as other sources of private economic power which made him live comfortably, decently and religiously.

One of the striking approaches of Ash-Shawkāni in his novel idea of connecting each chapter and each verse of the Glorious Qur'ān to another, explaining relationship between the connected chapter and the linked verses. Like he logically connected *Sūratu'l-Ahqāf* (Q. 46) to *Sūratu Muahammad* (Q. 47); *Sūratu Qāf* (Q.52) to *Sūratu-n-Najim* (Q5:3); *sūratul'l-Qamar* (Q54) to *Sūratu-r-Rahmān* (Q.55) etc. With this type of connection, Ash-Shawkāni considers all chapters of the Glorious Qur'ān as a single unit with regards to their theme, style, message and goal.

Another uniqueness of Ash-Shawkāni is his peculiar method of handling issues arising from the verses of the Glorious Qur'ān. Our *mufasssir* would be seen after connecting the new chapters with the preceding ones, enumerating issues connected with the chapter or with the verse under study. Itemizing cases and different opinions arising from them with various headings and sub-headings, all in a systematic arrangement and scholarly presentation. His popular formula “*mas ‘alah*” or “*masā'il*” (issue or issues) is applied to form his hypothesis on any issue which cropped up from his study and which would be painstakingly treated accordingly.

However, this Ash-Shawkāni's method, sometimes, appears cumbersome to the reader to follow except with painstaking attention and extra-ordinary devotion. This aspect is seen by the researcher and some scholars as a shortcoming in Ash-Shawkāni's work for which was sharply criticized. Nevertheless, it is pertinent to note that nobody, except Allāh, is perfect. The few inadvertent shortcoming of Ash-Shawkāni cannot in any way reduce his eminent position as an erudite scholar of note, nor can they bring him down from being a great contributor to the development of science of *Tafsīr* in the world. It is also pertinent to mention that Ash-Shawkāni's approach to *Tafsīr* is largely informed by his extensive reading of various books in the humanities. So his momentous work on *Tafsīr* was quite suitable for the milieu of his time and is appropriate for any citadel of learning and research.

Ash-Shawkāni's style of reasoning and application of the logical rule cannot be faulted and his conclusion on a matter can hardly be punctured as well.

Through our excursion into his works, we could see no trace of intellectual arrogance or a sense of superciliousness in Muhammad Ash-Shawkāni. Rather he was seen throughout as a symbol of humility and epitome of modesty in the course of discharging his duty to the literate populace of the whole Central Asia. Our *mufassir* demonstrated this humane quality when he was advised through his historic letter, to renounce controversy over scholastic theology and philosophy and incline to the mystical world through which the joy of this life and that of the Hereafter could be attained. In compliance with advice, Ash-Shawkāni renounced his age-long career and adopted mysticism as his new way of life. He reproached himself for what he had used the greater part of his life to attain. This explains why he abounds with spiritual insights and mystical dispositions and why the book itself was titled the *Tafsir Fatul-Qadir ʿAla Fanir-Riwayyah wad-Dirayyah Min ʿIlmi Tafir*.

Ash-Shawkāni has ‘a special way of treating “*ʿIsraʿiliyyat*” in his *Tafsir*. After his disapproval of this old trend of *Tafsir*, he presents all “*ʿIsraʿiliyyat*” commonly related on a particular issue in the Glorious Qurʾān to the readers and then gives his own interpretation of the episode, basing his argument on the text and the fact of the Qurʾān. With regard to the case of the prophet Dāwūd (A.S.), for instance, Ash-Shawkāni refuted all the “*ʿIsraʿiliyyat*” surrounding the case and based his refutation on the fact that a prophet of Allāh who was immune could not be involved in such an evil and indecent act. The ten excellent qualities with which Allāh qualifies Prophet Dāwūd (A.S.) before the story (Q 38:17-20), Ash-Shawkāni argues further, and another five qualities of equal merit after the story are clear vindications of the Prophet Dāwūd’s acquittal. The researcher of this work does not lay his hand on this subject matter since it is not among the focus of this study.

It is to the credit of Ash-Shawkāni that he succeeded in consolidating as an institution in the study of science of *Tafsir*. The influence of Ash-Shawkāni’s work on *Tafsir* has been greatly felt in many later works on the subject. Such works include: ‘*Anwaru-t-Tanzil wa’ asraru-t-Ta’wil* of *al-Baydawi*; *Gharaibu-’l-Qur’ān wa raghaibu’l-Furqan* of *Nazzamud- Din*; *Tafsiru’l- Manar* of Rashid Rida/Muhammad ʿAbdu’u *Al-Hawahir fi Tafsir’l-Qur’āni’l-Karim* of Tantāwī Al-Jawhāir and a host of others through which Orthodox *Tafsir* (*Tafsir-Bil-Qur’ān*) an off-shoot of *At-Tafsir-bi-r-Ra’y* became an important aspect of science of *Tafsir* and so widened the scope of learning and research for both scholars and researchers in the field.

6.3 Research Findings

In this study, it has been discovered that Ash-Shawkāni's work on *Tafsīr* is so vital and that it could be said to have marked a new epoch in the science of *Tafsīr*.

Our research findings include the followings:

1. Spiration to present the glorious Qur'ān to the world as a miraculous book filled with various branches of knowledge provoked Ash-Shawkāni to produce his work on *Tafsīr* which portrays the Qur'ān as a compendium of knowledge and epitome of wisdom where divine guidance and basic information of all things can be obtained;
2. knowledge of saturated with extensive grammatical, rhetorical, jurisprudential, theological and scientific arguments because the author believes that without deep knowledge of these subjects, proper understanding of the word of Allāh could not be ensured.
3. Ash-Shawkāni is thorough and meticulous in discussing any issue arising from the verses of the glorious Qur'ān or from any academic subject. No matter how complicated or delicate an issue might be, he does not lose focus and trend of discussion. His unique expertise in dealing with issues always assists him in drawing a logical conclusion with far-reaching effects and incredible output;
4. Ash-Shawkāni succeeded in integrating Islāmic jurisprudential themes with many subjects in the humanities and sciences. For instances: he convincingly established that *Āyatul- Ahkam* (legislative verses), far from its earlier dogmatic and elusive ideas.
5. Ash-Shawkāni's effort to find logical conclusions to some inconclusive cases in Islāmic jurisprudence is seen as a viable *'Ijtihād*, and landmark development in the history of the subject. An enormous gap which the departure of the four exponents of the *Sharī'ah* had created has been filled by Ash-Shawkāni with his convincing conclusions on such cases;
6. Muhammad Ash-Shawkāni takes a decisive position on verses from the glorious Qur'ān which have scientific connotations. In his view point, the Qur'ān cannot be devoid of scientific knowledge with numerous references which it makes to many scientific phenomena and which form the basic information for the later scientific findings;
7. through our critical study of Ash-Shawkāni's work on *Tafsīr* and some of his works on other disciplines, it is discovered that most of his works on other disciplines are

- incorporated and that makes the book a profound cluster of numerous branches of knowledge, the more reason the book is otherwise called Sunni book of *Tafsir*;
8. it has been also observed that, Ash-Shawkāni usually divided chapters into topical units and each unit attracted comprehensive commentaries which always provide focus for academic debate and discourse;
 9. the author carefully and technically established the link between the end of one chapter and the beginning of another and between the end of one verse and the beginning of another in all chapters of the glorious Qur'ān.
 10. all stories of the Qur'ān are carefully presented, scrutinized and analyzed by Ash-Shawkāni, drawing all virtues, wisdom, rationale and lessons from them for readers' assimilation and consumption;
 11. Ash-Shawkāni extensively used *Hadīth* in his work on *Tafsīr* to expatiate on certain issues arising from the glorious Qur'ān. In his use of *Hadīth*, he ensured that such '*Ahādīth* are sound and authentic;
 12. Ash-Shawkāni was an adept in Arabic literature. His style of quoting poems to elucidate strange words used in the glorious Qur'ān is very striking and appropriate;
 13. Muhammad Ash-Shawkāni did not make a water-tight division between spiritual and mundane affairs of life. Although, he was very rich and well placed later in life, his riches and position were used to promote *Da'wah*, knowledge and civilization;
 14. the exegesis is a demonstration of expertise in various subjects to explain the riddles and enigmas of the glorious Qur'ān drove him unconsciously into prolificity and exhaustive research which reserved his work on *Tafsīr*, in terms of consultation and reading to the curious readers and intellectual elite;
 15. the attracted various commentaries from verses of the Qur'ānic exegesis, scholars of different disciplines have more than any other works produce on the Qur'ān in the mediaeval age are also visited by Imam Ash-Shawkāni in his book under study;
 16. If the verses of the glorious Qur'ān are viewed in Shawkāni's perspective, it will be found that they draw man's attention to the facts and truths relevant to the challenging times, and thus play a vital role in facing the contemporary challenge of atheism and

materialism ‘tending to become universal, and provide guidance to the wayward people; and

17. with Ash-Shawkāni’s commentary on the glorious Qur’ān, his ultimate objective of epitomizing the Holy Book as the basic foundation of all branches of knowledge and civilization has been greatly achieved.

6.4 Contributions to Knowledge

This present work contributes immensely to knowledge and human advancement. Its significance includes the following;

1. the work is an additional effort to bring, Ash-Shawkāni’s great work on the Qur’ānic Exegesis, closer to the readers who may like to study the Qur’ān from an intellectual perspective and in a vast and multifarious dimensions;
2. it keeps the non-Arabic readers abreast of the current development in the field of *Tafsīr*; for the opportunity it affords them to have insight and access to the invaluable knowledge always contained in the works of *Tafsīr*;
3. the work also portrays *Tafsīr*’ beyond its earlier dogmatic and narrow perspective. With the study of various themes like theology, philosophy, jurisprudence themes and *Ayatul-Ahkam*, science of the Qur’ān within the contents of *Tafsīr*. It is proved beyond any doubt, that *Tafsīr* is a subject of multifarious disciplines where hypothesis and basic information of many subjects can be obtained;
4. the *Āyatul-Ahkām* theme of this work provides a focus for jurisprudential interpretations of some verses of the glorious Qur’ān believed to the Islāmic orthodox implied. It therefore serves as a response to tile recent interest of deep knowledge in the study of the verses of the Glorious Qur’ān with *ahadith* connotations and *Salaf* books; and
5. however, this present work, given its contents, approaches and novel ideas. It is an additional but unique contribution to the study of *Tafsīr*, especially when it is viewed in a wider perspective and intellectual disposition. The selected themes for study in the work constitute another substantive piece for further learning and research on Muhammad Ash-Shawkāni and his a magnum opus which marked a new epoch in the field of *Tafsīr*.

6.5 Suggested Areas for Further Research

Through our panoramic study, it is discovered that the book entitled: *Fath-al-Qadīr al-Jāmi' uBainaFannir-Riwāyah Wad-Dirāyāh min 'Ilmit-Tafsīr* is enormous, and at the same time very rich, fertile and multidimensional. It abounds with various branches of knowledge which are researchable and beneficial to mankind in general. It is because of this background that I recommend the following, as possible viable research areas to interested students, scholars and other researchers:

1. philosophy

In his encounters with the great philosophers of his time, Ash-Shawkāni displays a profound knowledge of philosophy to counter their platonic and aristotelian views and ideas which filled the air and threatened all other views, a scenario which made his *Tafsīr* saturated with philosophical materials which deserve further research;

2. ethics

In his bid to entrench ethical culture in the people of his time, Ash-Shawkāni made an extensive study of the ethical values in the Qur'ānic perspective and world-views. Thus, ethical theme permeates the pages of his *Tafsīr* and this should attract the interest of researchers in this area;

3. logic

Copious logical conclusions and fascinating approach to issues in the Qur'ān which shows deep knowledge of Ash-Shawkāni in the field of logic. His rules of logic in which ideas or facts are based on other true ideas or facts are worthy of further research by any student of logic,

4. mysticism

This is another fertile area which should attract the interest of researchers. More so, when Ash-Shawkāni graphically painted his *Tafsīr* with mystical colour which reflects his deep exploration into the mystical world and ascetic sphere,

5. political science

Ash-Shawkāni's political exposure during his tenure of political office as a *grand-Qādi*, gave him deep insight for the interpretation of some verses of the glorious Qur'ān which have political connotations. An extensive research on Ash-Shawkāni's political thoughts could be painstakingly carried out from his corpus of *Tafsīr*;

6. social theme

The clamour for a decent and ideal society based on Islāmic social order incorporating dispensation of justice and fairness, made Ash-Shawkāni focus extensively on full explanation of verses which are sociologically inclined. This tendency made his *Tafsīr* imbued with sociological input that provides focus for further research on this aspect of discipline;

7. rhetoric (*balāghah*)

There is also the need to research into the rhetorical cases with which the author saturated pages of his *Tafsīr*, so as to see how vast, enormous and superlative the author is in this fascinating discipline. His expense in this field which is copiously displayed in his *Tafsīr* should attract the attention of any researcher;

Finally, there are still more fertile areas of research in the *Tafsīr* which remain untapped and on which attention could be focused for the promotion of learning and research, for the advancement of mankind. Such areas include: psychological, administrative, economic and diplomatic themes which Ash-Shawkāni has deeply explored in his *Tafsīr* and which have successfully facilitated the globalization of Islām and knowledge in the mediaeval age.

NOTES AND REFERENCES

1. Māhir Mahdī Hilāl, *Fakharud-Dīn Ash-Shawkāni Balaghīyan*, (Irāq: Wizāratu'l-^cAlim, Fī'l-Jumhuriyyati'l-^cArabiyyah'l-^cIrāqīyyah, 1997), 52
2. *Ibid*, 53, also see Ibn Khalikān, *Wafīyyatu'l-A^cyan wa 'ambā'u 'Abnā'i-z-Zamān* Matba^catu-s-Sa^cdah, (Qāhirah, 1948), vol.3, 382.
3. G.C, Anawati “ MuhammadAsh-Shawkāni an article in the encyclopedia of Islām, vol. London, (ED) B. Lewis, V.L. Maenage and C.H Pellat, Luzac and co. 1971, 752
4. G.C, Anawati “ MuhammadAsh-Shawkāni an article in the encyclopedia of Islām, 752
5. G.C, Anawati “ MuhammadAsh-Shawkāni an article in the encyclopedia of Islām, 572
6. Ibn Khallikān, 653, also see Anawati G.C. 752
7. Ibn Abī Usaibi^cah, *Uyūnu'l-^cAnbaīfi Tabaqātil'l-Atibbā'*, vol:3, Matba^catu'l- Iqbāl, Qahirah, 1959, 34-35.
8. Ibn Khallikān, 653
9. As-Safadī, *Al-Wāfi bi'l-Wafayyāt* vol.4,(Damascus: Matba^catu-l- Damashqiyyah, 1961), 49-50
10. As-Subkī, *Tabaqātu-sh-Shāfi^ciyyah*, (Cairo: vol.5, Al-Matba^catu-'l-Husainiyyatu 1984)
11. Misriyyah, 1324 A.H, P.3 5, also see Māhir Mahdī Hilāl, 51, Ibn Khallikān, 653.
12. Māhir Mahdī Hilāl, 48.
13. Hind Shalabī, *Mashākilu-l-Uluhiyyaminkhilāli-Tafsīr-r-Rāzī*, journal of knowledge,
14. Kullīyyatu-z-Zaituniyyah li-sh-Sharī^cah wa Usūli-d-Dīn, University of Tunis, No. 8, 1985, pp 45-46, also see Māhir Mahdī Hilāl, and op.cit, pp. 65-66.

BIBLIOGRAPHY

Arabic Sources

- Abduh, S. (et-al) *At-Tarikh Daolatul-Islāmiyyah*, Jiddah, Daru-asfa^āni publication, 3rd edition.
- Abdul Āti, H. *The Martial Structure in Islām* American Trust Publication, 1977.
- Abdullah bn fodio “*Kifayatu Dhuafāus-Sudan fī Bayanit-Tafsīrl Qur’ān*”, Dar’Ummah for publishing Agency Kano, 2000.
- Al-Jawziyyah Ibn Qayyim “*al-Fawāhid Ibn Qayyim al-Jawziyah*” Al-Maktabatul-Ad-Dariyyah Beirut, 2005 Muhammad Nuhu, “*At Tawjihatu Nabawiyyah* ^āalātariq African Publishers Accra Ghana, 1st edition 1424.
- Abdul-Majid Abdus-Salam, A. *Al-Mu’tasib ‘itijāhatul-Tafsīr fil-asri-ar-rahin*, second edition ^āAmon publication, 1979.
- Abdul-Rahim M.A, *Jesus a prophet of Islām*, ar-Riyad WAMMY, 1977.
- Abī-ayyan, M.A *al-Bahrul-Muhīt*, Ar-Riyād, Jami^āt al-Imam Muhammad bn sa’ud al-Islāmiyyah, vol. II, ND
- Abul-Faraj, J. *Zadul-Ma^āasīr fī ^āilmit-Tafsīr* Beirut: Dar Ibn Hizam Publication, 2002.
- Abū-Malik Muhammad bn Hamid “*Fatāwil-Marhatul-Muslimah*” Dārul-al-Athār al-askandariyyah, 1580.
- Ad-Dāwuri, H.S. *Taobaqatul-Mufassirūn*, Beirut Lebanon Darul ^āAlamiyyah 1430 A.H/1983 CE.
- Ad-Dimosqi, M.M. (*An-Nashru fil-Qirā^āt al-ashari*, Beirut, Lebanon, Daurul-Kutubil-^āalamiyyah, Beirut Lebanon, Vol. I and II.
- Adh-Dhabi Muhammad Husayin, *At-Tafsīr wal-mufasirūn*, Cairo Darul-Qutubul- Hadithā, Vol. I and II, 1976.
- Adnān, M.S (etal), *Majmahul-kalmātil-Qur’ān-l-^āAzim* U.S.A Daral-fikr, first edition, 1997.
- Ahmad Amin, *Zuhru-l- Islām* Beirut Lebanon Shirkatl-al-bani, shariful- Ansāri, Vol. II, 2006.
- Ahmad, A. (et al) *Al-munfasal fītarikh al- adabu – al- Arabi*, Cairo, Darul-fikr Vol. II, 1980.
- Ahmed, H. *Introducing the Qur’ān*, New Delhi, Good word books, Lebanon, 2005.
- Al-Baqlani, M.A. *^āijazul-Qur’ān*, Beirut Darul-ihyahul-^āulum, Second edition, 1994.
- Al-Batili, A.A. Al-Mu^āajimu *Loqawiyyah wa truq tartibiā*, Ar-Riyad, Darul-ar Rayyat ar-Riyad, 1992.
- Al-Bikār, A.M, *Rawā^āul-Bayān: Tafsīr āyāt al-Ahkāminal-Qur’ān*, Cairo Darus-Salam, 1995.

- Al-Fanisān S.A., *Ikhtilaf al-Mufasssirin: Asbabuhu wa-Athāruhu* (1st edition) Riyād; Markaz ad-Dirāsāt wal-^cAlam, 1998.
- Al-Hashimi A. *Jawahirul Adabiyāt wal-inshāul-Luqatul-Arab*, Beirut, Vol. I (ND)
- Al-Hilāl, M.T (et al) *Translation of the Noble Qur’ān with full Arabic Text and English Translation*, Cairo, Darul-Qutubil-Haidth, 2000.
- Al-Jalāli, A. *Al-^calāqatu-l-ijtimāhiyyah fil-Qur’ān*, Ar-Riyād Maktabatu-Dārul-s-Salam, 1995.
- Al-Jasas A.I. *Ahkāmul-Qur’ān Li-Jasās*, Beirut Dār Ihyāhut-Turas al-Araby, 1405 A.H.
- Al-Juzairi A.R. *Al-Fiqhul-^cAlā Madhabibul-Arba^cah*, Cairo, Darul-Fajir, 2000.
- Al-Quntubi I. *Fadāilul-Qur’ān wa^cādābu-t-Tilawah*, Cairo: al-maktab ash-shaqafi, 1986.
- Ar-Rāzi M.F., *Tafsīr al-Kabīr wa-mafātih-l-Ghayb* (New edition Beirut, Darul-Fikr, (ND)
- Ar-Rumī F.A., *Khasoisul-Qur’ānul-Karim*, Riyādh, Darul-Tayyibah, 1989.
- Ash-Shara’wi Mutawali “*Tafsīr ash-Sharawi*” Islām Research Academy, 991.
- Ash-Sharawi Muhammad Mutawali “*al-Liqāu Baina az-Zawjayni fil-Qur’ān was-sunnah*” Maktabatul-Tawfiqiyyah, 2004.
- Ash-Shawkāni “*Fath al-Qadīr al-Jamiu-baina Fannir-Riwāyāti Wad-Dirayāt min^cilmit – Tafsīr*, Darul-Fikr Beirut Lebanon Vol. I, II, III, IV and V, 2010.
- As-Sabuni M.A *Al-Mawarith Fi Shari^cah al-Islāmiyyah* Cairo, Darus-Sabunī, 2002.
- As-Sabūni M.A., *Tafsīr Āyātil-Ahkām minal-Qur’ān*, Cairo, Darus-Sabun, 2007.
- As-Sayis M.A. *Tafsīr ^cĀyati ^cAhkām*, Beirut Darul-Kutubi Islāmiyyah, 1998.
- As-Sayuti “*Asrār Tartib Suwarul-Qur’ān*” Abnaus-Sharif al-Ansari Beirut Lebanon, 2012.
- As-Sayūti J., *Al-Itqānfi^cUlumil-Qur’ān* 1st edition Beirut: Darul-Fikr Publication, 2005.
- As-Sha^carawī M.M Tafsir Sha^crawi: Khawa tir As-Sha’rawi, Hawlal-Qur’ān, Egypt: Al-Azhar Research Academy, 1988.
- As-Shāfi^ci M.I. *^cA^cakamu-l-Qur’ān*, Beirut Lebanon, Darul-Qalam, First edition Vol. I and II, (ND).
- As-Sun^cani M.I., Subulus-Salam: *Sharhu Bulūgh-al-Maramin Jami^ciul-Addilatul-Ahkām*, Cairo Shirkal-Qudus Publication, 2007.
- At-Tabarī A.M., *Jami^cu al-Bayān Fi Ta’hwīl Ayātul-Qur’ān* Beirut Danul-Fikr, 1998.
- At-Tantāwī J. *At-Jawkari fit-Tafsīr-l-Qur’ān al-Karim*, Beirut Darul-Fikr, (ND).
- Az-Zarkashi M.A. *Al-Burhan fi ^culūmil-Al-Qur’ān*, Beirut Darul-al-Ma’rifah, 1994.
- Az-Zarqāni Abdul-Azim, *Manāilul-^cirfāni fi ^cUlūmil-Qur’ān*, Cairo, Daru ihyāul-Kutubul-Arabiyyah, Vol. II, 2000.

- Az-Zarqānī M. *Manahil-l-ʿIrfānī fi ʿUlūmil-Qurʿān* Cairo Darul-Hadith, 1998.
- Cowan J.M., *A Dictionary of Modern Written Arabic* Ithaca New York, Ithaca, 1960.
- Farid Wujdi M. *Dāiratul-Maʿarif-l-Qarnil-Ishrin*, Beirut Lebanon, Darul Maʿarifah Vol. VII.
- Hindu Shalbi, *At-Tafsīrul-ʿilmi lil-Qurʿānil-Karim baina-Nazāriyāt wat-Tatbiq*, Tunis, Darul-ʿilmī, 1985.
- Ibn Kathir I. *Muhtasir Tafsīr Ibn Kathīr*, Beirut: Dar-ul-Fikr publication, 2000.
- Ibn Mansur, *Lisanul –ʿArabi*, Vol. II Beirut Lebanon Daru-Sadir, 1990.
- Ibn-l-ʿAraby A.A., *Ākhām al-Qurʿān* New edition, Beirut: Dārul-Kutub al-ʿIlmiyyah (ND).
- Lukman M.S. *As-Sunnah waʿujihātuha wamā kanātuha fil-Islām*, al-amān Darus-Salam, first edition, 1989.
- Muhammad Ahmad Issa “ *Mawsuatul-Israhillyat wal-Mawaduʿat Fi kutubit-Tafsīr* Darul-Gadil-Jadid Vol. I and II, 2007.
- Muhammad al-Munshawi “ *as-Shaykh as-Shaʿrawi wa-Hadithu-zikiriyyat*, Darul fadhilat, 1999.
- Muhammad Idris A., *ʿĀkhām al-Qurʿān lis-Shafīʿi*, Beirut: Darul-Kutub al-ʿilmiyyah, Lebanon, (ND)
- Ogunsola, Miftahudeen “ *A contextual study of the institution of Zakat in Tafsīr al-Manar*” A publication of the Post Graduate School, University of Ilorin, Ilorin Vol. 12, No. 1, 2014.
- Qamhāwī M.S *Garibul-Qurʿān*, Cairo Al-kuliyyātu-l-azhariyyha, (ND)
- Rashid Rida, *M.Tafsīr-l-Qurʿān al-karīm (Tafsīr al-Manār)* 2nd edition, Beirut Darul-Fikr Publication, 2005.
- Sabq A.I. *ʿAdwaʿu ʿAlā-ʿulumil-Qurʿān*, Kuwait Maktabatul-Manār al-Islāmiyyah, 1992.
- Taha, A.S., *ʿIlmu at-Tafsīr* a preamble of Tafsīrul Qurʿān Āzīm Li ibn Kathir (New edition), Cairo: Maktabatul-Imām, 2006.
- Yusuf, A.A., *Arabic text, Translation and Transliteration of the Qurʿān*, Cairo 2000.

English Sources

- Ambali M.A, *The Practice of Muslim family law in Nigeria*, Zaira, Famaza Publishing Ltd, No. 9 Old Jos Road Kango, 1998.
- Ataur-Rahim, *Jesus a prophet of Islām*, ar-Riyad WAMMY, 1977.
- Abdul-Raheem, M.A "Arabic/Islāmic Studies and the challenge of Quality Control in the Nigerian Educational System." *Towards Sustainable Development of Islāmic Studies in the Nigerian Educational System*, Shebotimo Publication, Ijebu-Ode Nigeria.

- Barau, A.S *Environment and sustainable development in the Qur'ān*, Kano international institute of Islāmic thought, Nigeria, 2004.
- Deedat A; *Al-Qur'ān The Miracle of Miracles* Riyād Saudi Arabia, Darul- °AlamiyahLil-Kitabil-Islām 1997.
- Doi A.R. *The Islāmic Law*, London, Taha Publishers, 1984.
- Doi A.R.I. *Women in Shari'ah*, Mushin Lagos, 1980.
- Doi, A. Rahim “*The Cardinal Principles of Islām*” Islāmic Publications Bureau Lagos, Nigeria, 1981.
- Flint, E.J *The Cambridge History of African*, Vol. 5 London Cambridge University Press, 1790-1870.
- Hammudah Abdalati “*Islām in Focus*” Islāmic call centre, Agege,Lagos (ND).
- Higab Muhammad “*Islām is the All Divine Messages in one*” Vol. I, Islāmic Publications Bureau, Lagos, 1983.
- Hitti P.K. *History of the Arabs*, London Macmillan Publishers, Ltd 10th edition 1934.
- Hudsen, C.M., *Arab Politics the search for Legitimacy*, Tunis Yale University Press, 1977.
- Kurawa, Ibrhaim, *Shariah, and the Press in Nigeria, Islām versus western Christian civilization*, Kano Kuawa holding limited first edition, 2001.
- Lapidus M.I., *History of Islāmic Societies*, London, Cambridge University, Press, second edition.
- Maududi Abul-A°la, “*Birth Control its social, political, economic moral and religious aspects*” Markazi Maktaba Islāmic Publishers Delhi (ND).
- Maududi Abul-°Alā *Towards Understanding of the Qur'ān*, United Kingdom, the Islāmic foundation 223 London Road, Vol. I 1998.
- Muhammad Abdur-Rauf “*An Introduction to al-Qur'ān for A level*” Islāmic publications Bureau, Lagos, 1999
- Qādi A.Y. *Introduction to the science of the Qur'ān*, United Kingdom, Al-Hidayyah Publishing and Distribution, 2003.
- Raheem, A., *Islāmic History*, Mushin, Lagos Islāmic Publicaiton Bureau 1989.
- Tāhir Usman H. *Qur'ānic Commentary BetweenTtraditional and Opinion*, Ilorin Atoto Press, 1995.
- Umar Khalid “*Khawatir Qur'āniyyah*” Arab Scientific publishers first edition, 2004.
- Usmāni M.T. *An approach to the Qur'ānic Sciences* India New Delhi, 2006.

Yusuf B.O “Of Etiquette and Ethical Vices: A digest of comments of Sayyid Qutb in the Fizilal”
In Akintola Lakin; Yusuf, B.O. and Salisu, T.M (ed) *Correlates of Islām*, Zaria: Ahmadu
Bello University Press Limited, 2009.

Von Denffer, A. *An introduction to the Science of the Qur’ān*, Pakistan the Islāmīc Foundation,
1977.

Zuglool Imam Ahmad, *"The only way to Stem Crime and Corruption*, Al Huda Publication,
2014.

Articles in Journals

Abdul-Raheem, M.A, “The Role of Muslim Women in National Security in Nigeria: Peace
building in perspective" NATAIS *Journal of the Nigeria Association of Teachers of
Arabic and Islāmīc Studies*, 2011

Badmus Nadwi Olawale A. “*At-Tafsīr* and *al-Mufasssirūn* in Nigeria. A Historical Perspective”
Al-Ishrāq Journal of Arabic and Islāmīc Studies, Vol. 1, 2008.

Ibrahim Shu[‘]aibu Saidu “The Qāla Qato (Qur’ānist) Trend of *Tafsīr* in Northern Nigeria: Some
Analytical Notes" *Danmarna International Journal of Multi-disciplinary Studies*, Vol.1,
2014.

Maigari, Y.T “Qur’ānic Exegesis of Creedal Concept as it relates to divinity by the Companions
of Prophet Muhammad”, *An-Nur Journal of Arabic and Islāmīc Studies*, Vol. 12, 2013

Muhammad T.A "Method of At-Tabbari in Quranic Exegesis "*Al-Ishraq Journal of Arabic
and Islāmīc Studies*, Vol. 3, 2010.

Ogunsola, M.B "Contextual Study of the Institution of *Zakat* in the *Tafsir* Al-Manār by Shaykh
Muhammad [‘]Abduh (1846-1905)" *Postgraduate Journal Multidisciplinary Studies*,
Vol.12 No 1, 2014.

Shittu, A.D "A Critique of the Trial of Shehu [‘]Usman for Homicide under the *Shari‘ah* penal
code of Kano State" NATAIS *Journal of the Nigerian Association of Arabic and Islamic Studies*,
Vol. 13, 2010.

Solagberu, I.A “An Examination of Modern trend in the Science of *Tafsīr*” *Hamdard Islāmīcus*,
Vol. XXVI, No.I, 2009.

Yusuf, B.O “A Re-appraisal of the Muslim Brotherhood of Egypt and its impact on Society”,
Alore: Ilorin Journal of Humanities, VOL. II, 2001.

Encyclopeadia

- Al-qāli al-Baqdādi A.I. *Al-Bārii fil-lugah*, Beirut, Darul-Hadmat-l-Arabiyyah, 1974.
- Bosworth C.E. Van Donzel (et al), *The encyclopeadia of Islām*, U.S.A Netherlands Vol. 17 1986.
- Ibn Duraid M.A *Kitabu Jamharatu Luqāt*, Beirut, Darul-‘ilmi lil-malayin Vol. II, 1987.
- Kajub W.S. (et al) , *African Encyclopeadia for Schools and Colleges*, London. Oxford University Press 1971.
- Michael D.H. (Ed) *The New Websters International Encyclopeadia*, New York, Trident Press International, 1991.

Theses/Desertations

- Abdul-Salam, H.A. *Matrimonial Issues among Yoruba Muslims of Nigeria*, a Thesis Submitted to the Postgraduate School, in partial fulfilment for the requirement for the Degree in Ph.d (Islāmīc Studies) Department of Religions, Faculty of Arts University of Ilorin, Ilorin, Jimoh Yusuf Kolawole, *A study of selected themes in Al-Razis's Mafātihul-Ghayb*. An Unpublished Ph.D, thesis submitted to the Department of Religions, University of Ilorin, Ilorin 2006
- Gambari, Muhammad Aliyu “*Tafsīr Bir-Ra’y*: An Examination of *At-Tafsīr Al Manar* of Shaykh Muhammad Abduh. M.A Dissertation, Department of Religions, Faculty of Arts, University of Ilorin, Ilorin, 2010.
- Kareem Salam Badmos “*Al-Fasad: An examination of the commentaries of Sayyid Qutb on corruption in the Qur’ān and their Relevance to the Nigerian Situation*” M.A. dissertation, Department of Religions, Faculty of Arts, University of Ilorin, Ilorin, 2002.
- Yusuf, B.O., *Fizilālil-Qur’ān: A study of Sayyid Qutb’s Approach to Tafsīrul-Qur’ān*, Unpublished Ph.D thesis, Department of Religions, Faculty of Arts, University of Ilorin, Ilorin, 1996.

Inaugural Lectures

- Abdus-Salam Abdul-Ganiy Oladosu (2012) “*Fluctuations in the Fortunes of Arabic Education in Nigeria*” The One Hundred and Fifteenth (115th) Inaugural Lecture, Published by the Library and Publications Committee, University of Ilorin, Ilorin, Nigeria.

Oloyede Is-haq Olarewaju (2012) “*Islāmic: The conflux of Disciplines*”. The One Hundred and Sixteenth (116th) Inaugural Lecture, Published by the Library and Publications Committee, University of Ilorin, Ilorin.

Quadri Yasir Anjola, (2012) “*All in the Name of God*” the 133rd Inaugural Lecture presented by him, Department of Religions University of Ilorin, Ilorin.

Yusuf Badmas Olanrewaju(2015) “*Utilizing the Qur’ān, Stabilizing the Society*” The One hundred and fifty sixth (156th) inaugural lecture presented by him Department of Religions University of Ilorin, Unilorin press.

