

Generality ('Āmm) in the Legal Spectrum of Conventional Law and Sharī'ah versus Common Noun in English Grammar (A Comparative Jurisprudential and Linguistic Approach)

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ABSTRACT

Generality, indeed, is an essential character of every legal system; otherwise, they begin to lose, at ground level, their practicality and efficiency. Both Sharī'ah and the conventional legal system, therefore, employ generality as a matter of jurisprudential principle, as it ensures 'equality before law' and 'justice for all' without any discrimination. Putting great belief in generality, legal experts, predominantly, those exercising authority in their corresponding jurisprudence, propose generality in the legal texts – leaving no space for any compromise under the umbrella of legal interpretation, both at textual and contextual levels. On the other hand, the Common Noun of English grammar, showing generality of meaning, corresponds with generality in English law and 'āmm (general terms) in Sharī'ah. Though, the two legal systems have included the general rules, nevertheless, the Islamic legal system uses the generic nature of words in a better way under a fine structure and mechanism. Apart from generality, both the systems identify certain restrictions (khāss) under specific conditions in order to deal a myriad of situations. The present work, primarily, aims at comparing the general rules, adopted by both the systems and, thus, at highlighting commonalities among them. It also intends to pinpoint the differences of their adaptation and application of the same rule. The findings, reached herein, show that both present similarities/commonalities and, of course, differences, albeit insignificant and unnoticeable. Sharī'ah (Islamic law), however, is more superior in its approach and application of general words in its legal texts and contexts. Moreover, this work suggests new dimensions, as guidelines, for experts in the interpretations of their laws concerned. As the study is qualitative in nature, therefore, discourse analysis technique (narrowly can be called descriptive methodology), an appropriate method, herein, has been used for the investigation of the issue under probe.

Key Words: *'āmm, khāss, law, Sharī'ah, common noun, jurists, jurisprudence, Usūl-al-Fiqh.*

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Introduction

The grammatical rules, governing human languages, play, for interpretive (hermeneutical) purposes, a crucial role, particularly, in the legal sphere ⁽¹⁾. Factually speaking, laws and statutes, existing both in written (*jus scriptum*) and oral forms, in this respect, are no exception under any stretch of explanation. Serious impediments, however, in the way to unraveling the linguistic and semantic intricacies, principally, the ones prevailing in any legal system, lie in the interpretation of such language. In such a vague scenario, language experts unfold the meaning of legal texts of as diverse systems as the conventional, Islamic, Greek, French or others, drawing immensely on the grammatical rules of the particular language in which they are composed. Knowing the intricacies of the working of languages, legislature of any state seeks the assistance of language experts in the interpretation of laws and statutes.⁽²⁾ As the formulation/interpretation is the preliminary phase of any legislation process, the same time-honored course is strictly followed, even in the most developed countries of the world, like USA and the Great Britain.

English - the *lingua franca* - fed liberally on classical languages, like Greek, Latin and French, has developed, over the years, a set of legal terminology – legalese - that is used globally in nearly all legal systems⁽³⁾. Since various ordinary words, such as *shall, shall not, may, may not, is/are entitled to, is/are required to, is/are not required to, should, must, must not, is/are to,*⁽⁴⁾ *buy and sell, give and take, lend and borrow, have and hold, will and bequeath, steal*⁽⁵⁾, *common/proper nouns*⁽⁶⁾, *active/passive imperative*⁽⁷⁾, *performative*⁽⁸⁾ the general Arabic word

1 Yule Kim, *Statutory interpretation: General principles and recent trends* (Washington DC: Congressional Research Service, 2008).

2 Christopher Hutton, "Language and the Law BY Sanford Schane," *Journal of Sociolinguistics* 12, no. 3 (2008): 363-366.

3 Maja Stanojević, "Legal English: Changing perspective," *Facta universitatis-series: Linguistics and Literature* 9, no. 1 (2011): 65-75. Also see: O. V. Mykhailova, "LEGAL ENGLISH. Lecture 1. The main characteristics of Legal English", (2012). For further details: Christoph A. Kern, "English as a court language in continental courts," *Erasmus L. Rev.* 5 (2012): 187.

4 Olga A. Krapivkina, "Semantics of the verb shall in legal discourse," *Jezikoslovlje* 18, no. 2 (2017): 305-317. Also see specific discussion on the modal verb *shall*: Eva Pavlíčková, *Legal Text as Text in Action* Prešovská univerzita (2005): 50-63.

5 John H Baker, "The three languages of the Common Law," (*McGill, LJ* 43, 1997): 5.

6 Miroslav Bázlik and Patrik Ambrus, *Legal English and its grammatical structure* (Wolters Kluwer Česká republika, 2009).

7 Eva Pavlíčková, *Legal Text as Text in Action*, 55.

8 John L. Austin, "How to Do Things with Words," (Cambridge. Mass: Harvard 13, 1962).

'āmm, khāss⁽¹⁾, mushtarak⁽²⁾, etc. are used in varied contexts, they, for that reason, carry different legal connotations. These and other terms, of course, need interpretation-typically called the interpretation of statutes-by the corresponding legal experts for the convenience of the judicial systems. There are many words, almost in all prevailing legal systems, signifying general and plain meaning. The word 'āmm, for instance, in Islamic jurisprudence, plays the same role. The significance of these general words, coming out from the generic nature of law, means, thereby, its applicability to all and sundry without any discrimination on the bases of color, creed, sect, and religion. *Sharī'ah* (Islamic law), being a superior revealed legal system, plays a leading role in bringing such principles to practical utility.⁽³⁾

Being scrutinized afresh, it has been discovered that the Common Noun (*onoma prosegorikon*) in English language shows, primarily, the same characteristics, as possessed by general words, hinted at in both the conventional jurisprudence and *Usūl-al-Fiqh*⁽⁴⁾ (Islamic Jurisprudence). To illustrate the point in question even further, the general word *alsāriq*⁽⁵⁾ (thief), for example, frequently used generically in the Holy *Qurān* and *Sharī'ah* (Islamic jurisprudence), signifies, as is the case in English grammar, any thief and not a specific or special one. Similarly, the word *al-mominūn*⁽⁶⁾ signifies 'any devout Muslim', thus, unrestricting the meaning for a wide range. Another such word, used in the Holy *Qurān* is *al-mutalaqāt*⁽⁷⁾ (the divorced ones), meaning 'any divorced woman'. If

1 It is a word placed for a specific thing, a specific name, etc. ... Muhammad bin Ishāq Al-Shāshī, *Uṣūl al- Shāshi* (Beirut: Dār al Kitāb al-'Arabī), 1:13.

2 It is word placed for many meanings through different ways. For example, the word 'Ayn meaning 'eye', 'spy' 'gold', etc. ... Hussain Hamid Hassan, *Uṣūl-al-Fiqh* (Islamabad: Maktaba al-Jami'a al-Islamiyāh al-'alamiyāh, 2003), 336-37.

3 "... *The nations prior to you were destroyed because if a noble amongst them stole, they they used to excuse him, and if a poor person amongst them stole, they would apply (Allāh) Legal Punishment to him. By Him in Whose Hand Muhammad's soul is, if Fatima, the daughter of Muhammad stole, I would cut her hand.*" Then Allāh's Apostle gave his order in the case of that woman and her hand was cut off"... Abu Abdullah Muhammad bin Isma'il al-Bukhari, *Sahih al-Bukhari* (Dar Tawq ul Najat, 2000/1422 H), Vol.5, 151, Hadith No.4304.

4 *Uṣūl-al-Fiqh* are a set of principles (or rules or *qawānīn*) by the use of which the *mujtahid* (jurist) derives in the legal rules of conduct from the specific evidences. Imran Ahsan Khan Nyazee, *Islamic Jurisprudence* (Lahore: Federal Law House, 2013), 55.

5 The text of the Holy *Qurān* flows as: "*As for the thief, both male and female, cut off their hands. It is the reward of their deeds, an exemplary punishment from Allāh. Allāh is Mighty, Wise*" (*Qurān*, 5: 38).

6 The Holy verse runs as: "*Successful indeed are the believers...*" (*Qurān*, 23:1).

7 The particular verse in this respect flows as: "*Women who are divorced shall wait, keeping themselves apart, three (monthly) courses*" (*Qurān*, 2:228).

randomly examined, one easily finds out that the Islamic texts are replete with such examples where words are used, in various contexts, in the same generic meaning. If consulted with the same purpose in view, the Common Noun in English, such as *school, book, house, table, village, doctor, etc.*, without a *Definite Article*⁽¹⁾, signifies the same meaning in many contexts. Likewise, the same tradition of Common Noun is in vogue in the English jurisprudence where words, like *offender, criminal, crime, prisoner, trespasser, breacher, etc.*, are construed in their generic meanings. These, and countless other examples, both from substantive and procedural law, suffice to adequately illustrate the point in question.

There exists, no doubt, a rich collection of classical Muslim jurists' works, discussing the term *'āmm* in minute details. These include endeavors of al-Shāfi'i (204/820)⁽²⁾, al-Rāzī (370/H)⁽³⁾, al-Hanbalī (428/H)⁽⁴⁾, al-Basrī (436/1048)⁽⁵⁾, al-Shīrāzī (476/H)⁽⁶⁾, Juwaynī Imām al-al-Haramayn (478/H)⁽⁷⁾, al-Sarakhsī (483/H)⁽⁸⁾, al-Ghazālī (505/H)⁽⁹⁾, Ibn Ibn Rushd (595/H)⁽¹⁰⁾, al-Zarkashī (794/H)⁽¹¹⁾, al-'Uthaymīn (1421/H)⁽¹²⁾,

1 The Definite Article *the* is one of the two types of Article: the other being Indefinite Article *a/n*. the Definite Article is used to identify specific or definite nouns: nouns that represent things, places, ideas, or persons that can be identified specifically. See for further details: Audrey Jean Thomson and Agnes V. Martinet, *A practical English grammar* (London: Oxford University Press, 1986).

2 Muhammad ibn Idrīs al-Shafī'ī, *Al-Risālah fī Uṣūl al-Fiqh* (Cairo: Muṣṭafā al Bābī al-Halabī, 1358 H/1940).

3 Alī Abū Bakr al-Rāzī al-Jaṣṣāṣ, *Al-Fuṣūl fī al-Uṣūl* (Kuwait: Wizārat al Awqāf wa al-Shu'ūn al-Islāmiyyah Kūwaitiyyah, 1414/1994).

4 Abū al-Husayn Muhammad ibn Muhammad ibn al-Husayn Abū Ya'lā al-Farrlā' al-Hanbalī, *Risālah fī Uṣūl al-Fiqh* (Makkatul Makarramah: al-Maktab al-Makkiyyah, 1413/1992).

5 Imām Abū al-Husayn Muhammad ibn 'Alī al Baṣrī al-Mu'tazilī, *Al-Mu'tamad fī Uṣūl al-Fiqh* (Beirut: Dār ul-Kutb al-'Elmiyyah, 1403/1982).

6 Abū Ishāq Ibrāhīm ibn 'Alī ibn Yūsuf al-Shīrāzī, *Al-Tabṣīrah fī Uṣūl al-Fiqh* (Dimashq: (Dimashq: Dār al-Fikr, 1403/1982).

7 'Abd al-Mālik ibn 'Abd Allāh al-Juwaynī Abū al-Ma'ālī Imām al-Haramayn, *Al-Burhān Burhān fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutb al-'Elmiyyah, 1418/1997).

8 Abū Bakar Muhammad ibn Abī Sahal Sarakhsī, *Uṣūl al-Sarakhsī* (Beirut: Dār al-Ma'rifah, n.a.).

9 Abū Hamīd Muhammad ibn Muhammad al-Ghazālī, *Al-Mūṣṭaṣfā* (Beirut: Dār al-Kutb al-'Elmiyyah, 1413/1993).

10 'Abū al-Walīd Muḥammad Ibn 'Aḥmad Ibn Rushd al-Qurtubī, *Al-Zarūri fī Uṣūl al-Fiqh wa Mūkhtaṣār al-Mūṣṭaṣfā* (Beirut: Dār al-Gharb al-Islāmī, 1994).

11 Muhammad ibn Bahādūr al-Zarkashī, *Al-Bahr al-Muhīt fī Uṣūl al-Fiqh* (Dār al-Kutbī, 1414/1994).

12 Muhammad Bin Ṣālih bin Muhammad al-'Uthaymīn, *Al-Uṣūl min 'Elmil Uṣūl* (Dār al-Nashr, 1426/H).

al-Zahidī⁽¹⁾, Abdul Karīm⁽²⁾, al-‘zī⁽³⁾, Alī Ahmad Muhammad Bābākr⁽⁴⁾ and many others who have presented thorough deliberations on ‘āmm. On the same way, there is no scarcity of works on Common Noun in the conventional law, as an alternate of ‘āmm (in Islamic jurisprudence), where the English law jurists have, in the same spirit, composed commentary on the topic. These jurists include, at the first glance, Pavličková⁽⁵⁾, Hutton⁽⁶⁾, Hutton⁽⁶⁾, Stanojević⁽⁷⁾, Mykhailova⁽⁸⁾, Kern⁽⁹⁾, Krapivkina⁽¹⁰⁾, Bázlik⁽¹¹⁾, Bázlik⁽¹¹⁾, Austin⁽¹²⁾, Salmond⁽¹³⁾, and numerous others in line. Being a language of conventional law jurisprudence, works on grammar offer a bulky body of literature on the same issue. The present work, for authenticity, has consulted grammar works of Gerald Sanders, Hoover H. Jordan, Robert M. Limpus and Wallace H. Magoon⁽¹⁴⁾, Sylvia Chalker and Edmund S. C. Weiner⁽¹⁵⁾, Susan Conrad, Douglas Biber and Geoffrey Leech⁽¹⁶⁾, Sidney Greenbaum and Randolph Quirk⁽¹⁾, Audrey Jean

1 Hāfiz Sanā Ullāh al-Zahidī, *Talkhīṣ al-Uṣūl* (Kuwait: Markaz al-Makhtūṭ wal Thurath wal Wathāyiq, 1414/1994).

2 Abdul Karīm bin Alī bin Muhammad al-Namlah, *Al-Muhadhab fī ‘Elm-e-Uṣūl al-Fiqh al-Muqāran* (Riyādh: Maktaba al-Rushd, 1420/1999).

3 Abdullāh bin Yūsuf al-Jai’ al-‘zī, *Taisīr ‘Elm al-Uṣūl al-Fiqh* (Beirut: Moassasa al-Riyān li-Taba’a al-Nashr wa al-Tawzī’, 1418/1997).

4 Alī Ahmad Muhammad Bābākr, *Dirāsāt fī Uṣūl al-Fiqh* (Madina al-Munawwara: Majlah al-Jāmi’a Al-Islāmīyyah, 1401/1981).

5 See, for example, the original work: Eva Pavličková, *Legal Text as Text in Action* Prešovská univerzita, (2005).

6 See the original as: Christopher Hutton, "Language and the Law BY Sanford Schane," *Journal of Sociolinguistics* 12, no. 3 (2008).

7 The original work can be seen as: Maja Stanojević, "Legal English: Changing perspective," *Facta universitatis-series: Linguistics and Literature* 9, no. 1 (2011).

8 See for further details: O. V. Mykhailova, "LEGAL ENGLISH. Lecture 1. The main characteristics of Legal English," (2012).

9 For more details, see: Christoph A. Kern, "English as a court language in continental courts," *Erasmus L. Rev.* 5 (2012).

10 See for further discussion: Olga A. Krapivkina, "Semantics of the verb shall in legal discourse," *Jezikoslovlje* 18, no. 2 (2017).

11 See for details: Miroslav Bázlik and Patrik Ambrus, *Legal English and its grammatical structure* (Wolters Kluwer Česká republika, 2009).

12 See for more details: John L. Austin, "How to Do Things with Words," (Cambridge: *Mass Harvard* 13, 1962).

13 See for details: John William Salmond, *Jurisprudence: Or the theory of the law* (Stevens and Haynes, 1907).

14 See for details: Gerald Sanders Hoover H. Jordan, Robert M. Limpus and Wallace H. Magoon, *Unified English Composition* (New York: Crofts & Co, 1946).

15 See the original for details: Sylvia Chalker and Edmund S. C. Weiner. *OXFORD DIC ENGLISH GRAMMAR (P)* (Oxford University Press, 1998).

16 See for more details: Susan Conrad, et al., "Student grammar of spoken and written English," (2003).

Thomson and Agnes V. Martinet⁽²⁾, Henry Sweet⁽³⁾ and others in order to counterbalance the issue. Moreover, this investigation is a unique one; owing to the fact of its being the first attempt over the issue under investigation. This peculiarity moves around the reality that no effort has ever been undertaken over the commonalities among the three fields, i.e. *Uṣūl al-Fiqh* (Islamic jurisprudence), conventional jurisprudence and English grammar. The current work is one such effort, albeit a humble one, to revisit the existing knowledge and to explore the shared grounds among them.

The current study, like every other research endeavor, predominantly, in the field of law, is guided by a set of workable and well-defined objectives; regulating the course of the present work. This essay aims, in the first lines, at consulting the Muslim scholars to know the function and scope, as set by them, for the word “‘āmm” in *Uṣūl al-Fiqh* (Islamic jurisprudence); followed by the second phase, where attempt is made to revisit the conventional law for the significance of the general word, represented in the works of the conventional English jurists. Thirdly, the present article aims to encompass the role of the Common Noun in the development and interpretation of laws and statutes in Islamic and conventional jurisprudence. At the next stage, the study is supposed to see what grounds all the three, i.e. *Uṣūl al-Fiqh* (Islamic jurisprudence), conventional jurisprudence and Common Noun in English grammar, share regarding the generic character of a word. The current study, besides the aforementioned objectives, intends to investigate whether the Common Noun in English grammar and ‘āmm or the general term in *Uṣūl al-Fiqh* (Islamic jurisprudence) and conventional jurisprudence, respectively, convey the same meaning in different contexts – to what extent and to what extent not.

The current essay, one of ‘an academic’ kind, attempts to bring about a comparison between the general word (‘āmm) in legal terminology, used, for the most part, in *Uṣūl al-Fiqh* (Islamic jurisprudence), conventional law and the corresponding Common Noun in English grammar. Since, the scope and canvas of the present study is only appropriate for the present topic, it has, therefore, left out other legal systems, such as Greek, French, German, and others from the discussion for similar and other research projects. Moreover, only general word (‘āmm) has been included, herein,

1 See for furtherer details: Sidney Greenbaum and Randolph Quirk, *A university grammar of English* (Longman group Limited, 1990).

2 See for exhaustive details: Audrey Jean Thomson and Agnes V. Martinet, *A practical English grammar* (London: Oxford University Press, 1986).

3 See for original: Henry Sweet, *A new English grammar* (London: Cambridge University Press, 2014), 1.

without taking aboard the particular (*khāss*) and/or the common words or equivocal (*mushtarak*).

Methodology: Discourse Analysis Approach of Conventional Jurisprudence and *Uṣūl al-Fiqh* (Islamic Jurisprudence):

Discourse Analysis, one of the most effective qualitative research techniques, meets, it has been known, the requirements of the research, particularly, in legal studies. Discourse Analysis, as defined by the experts, a way of interpreting texts, takes into consideration the context of a sentence, or of a word. A single sentence, either spoken or written, is viewed in a full spectrum of meanings, thus, demystifying any opaqueness or discursion in the given discourse. Doing this helps the reader/analyst form a constructionist view of any discourse.

Following the above, there are contexts, relevant and appropriate in the current study, which have been exploited in the interpretation of different legal texts, arriving then at the exact meaning of a word/sentence. Since, the current study aims, in the first place, at interpreting different general words in their generality in *Uṣūl al-Fiqh* (Islamic jurisprudence), conventional jurisprudence and English grammar, the Discourse Analysis is the most appropriate tool to unravel their meanings in different contexts. To properly investigate the issue in hand, the Discourse Analysis technique, relevant in the present study, has been adopted to elaborate the meaning of general words in the three domains, using their respective contexts and situations. Works of Fairclough⁽¹⁾, Locke⁽²⁾, Fairclough & Wodak⁽³⁾ and Paltridge⁽⁴⁾ have been consulted for the exact definition and explanation of Discourse Analysis - prior to the application of the technique in the present study.

The study has made a substantial use of secondary data, available in both jurisprudences and English grammar, for a balanced investigation. To this end, the required material has been collected from printed and online books, reputed journals, websites, magazines, newspapers, critical essays, etc. on legal subject. Various authentic websites, particularly, those containing related data, have, therefore, been utilized in order to obtain the updated and reliable information on the issue under probe. In case of Islamic jurisprudence, the works classical Muslim jurists, such as al-Shāfi'i

1 Details can be found in: Norman Fairclough *Critical Discourse Analysis* (London: Longman, 1995).

2 For further details: Terry Locke, *Critical discourse analysis* (Bloomsbury Publishing, 2004).

3 See for details: Norman Fairclough and Ruth Wodak, *Critical discourse analysis* (n.a., 2005).

4 For details, see: Brian Paltridge, *Discourse analysis: An introduction* (Bloomsbury Publishing, 2012).

(204/820), al-Rāzī (370/H), al-Hanbalī (428/H), al-Basrī (436/1048), al-Shīrāzī (476/H), Juwaynī Imām al-Haramayn (478/H), al-Sarakhsī (483/H), al-Ghazālī (505/H), Ibn Rushd (595/H), al-Zarkashī (794/H), al-'Uthaymīn (1421/H), al-Zahidī, Abdul Karīm, al-'zī, Alī Ahmad Muhammad Bābakr have resorted for the interpretation of the word “*‘āmm*”. This technique is intentionally followed, keeping in view the reliability of such works in Islamic jurisprudence. The works of contemporary Muslim jurists, however, have been followed where deemed fit and suitable. Following a strict criterion in case of the citation, only such works have been referenced which are, one way or the other, related to the issue under investigation.

Generalization of Words: An Indispensable Character of Conventional Jurisprudence and *Uṣūl al-Fiqh* (Islamic Jurisprudence):

History, particularly, that of the civilized nations reveals the unwavering fact that their legal system and application are equal and uniform; free from any discrimination on the bases of color, creed, religion, and, caste, status, estatus, etc. Replacement of the character of equality with discrimination, indeed, leads to a state of lawlessness; thus, disrupting the peace of the world at large. Ensuring, without fail, the provision of the law to every citizen, is, therefore, the first and foremost responsibility of every state and nation. The legislature, for this purpose, liberally makes use of generic terms in Statutes, Acts, Ordinance, etc., thus, extending their meaning by encompassing everyone in the fold of law. In this respect, no stone is left unturned, at any stage or level, to achieve the intended objective i.e. the generality of law. The generality of words, of course, is not only crucial in the substantive law, but also in superior law (normally called constitutional law) with the same force and magnitude. The approach of *Sharī'ah* is not different in this connection, even to slight line, and, therefore, offers a comprehensive mechanism for ensuring the generality of law – both at theoretical and practical levels. The first level, herein, is called *nazri'at-ul-'adl* (the theory of justice), while the second one, *tanfīz-ul-'adl* (implementation of justice). The classical Muslim jurists, like Imām al-Shawkānī⁽¹⁾, Imām al-Kāsānī⁽²⁾, Ibn Qudāmah al-Maqdisī⁽³⁾, Abū al-Walīd Muhammad ibn Ahmad ibn Rushd⁽⁴⁾, Imām

1 Shawkānī, *Nayl al-Awtār* (Dār Ehiā al-Tourath al-'Arabī, 1st Edition. 2001).

2 Abū Bakr ibn Mas'ūd al-Kāsānī, *Bādā'i' al-Sanā'i*, 1st Edition, (Beirut: Dār al-Fikr Labnan, 1996).

3 Ibn Qudāmah al-Maqdisī, *Al-Kafī*, 5th ed. (Beirut: Al-Maktab al-Islāmī, 1988).

4 Abū al-Walīd Muhammad ibn Ahmad ibn Rushd, *Bidāyt al-Mujtahid wa Nihāyat al-Muqtasid*, 1st ed. (Beirut: Dār al-Fikr Labnan, 2003).

Muhammad ibn Ahmad ibn Abī Sahal al-Sarakhasī⁽¹⁾, and Ibn ‘Ābidīn⁽²⁾ devote separate chapters to these concepts, and, thus, describing them with minute details. This indispensable doctrine of law and *Sharī’ah* is, for that reason, given protection at any cost, as it ensures equality and justice to everyone, not giving him/her any room for despair and disappointment – considered by experts of the field, from both legal systems, as main causes of crime. The following details are going to prove the generic character of law and *Sharī’ah*, as mentioned previously, with solid arguments.

Generalization of Words: An Orthodox Approach of the Conventional Jurisprudence:

Laws and statutes, to put the point in lay terms, are the legally well-considered and approved checks and bars on man in general. Pushing the same in other direction, they, in any form, are designed by the legislative, keeping in view two main purposes: first, to discourage man to commit crime; and, second, to draw the outlines of punishment to be awarded to the offender. In the process of this constitution of laws, “*the language is jurist’s most important instrument*”³; he, therefore, exploits the language to his best advantage. Language, the most important tool, is, thus, used to dress the law in general words. The jurist is up to this, as a matter of fact, they want to put man in general into the legal net without awarding any privilege – called technically the general application of law. In this scenario, the laws, it is strongly supposed, to be true and just in any case. John William Salmond, the contemporary legal theorist, puts the generality of law in these terms:

“[T]he common law is that which is generally applicable; it is that which will be applied in all cases in which it is not specially excluded by proof that some other set of principles has a better claim to recognition in the particular instance.”⁽⁴⁾

To elaborate on the foregoing quotation, offered by the jurist par excellence, it can be maintained that the common law (*jus commune*) uses words, characterized by generality. The word “*place*”, for instance, in law may denote “[a]ny room, house, building, boat, structure, or place of any kind”,⁽⁵⁾ thus, leaving no room for any specification. The point may further be illustrated through Section 10 of *The Pakistan Penal Code*, 1860,

1Abū Bakar Muhammad ibn Abī Sahal Sarakhsī, *Al-Mabsūt* (Beirut: Dar-Ehyā al-Turāth al-Arabi, 2002).

2Ibn ‘Ābidīn, *Radd al-Muhtār* (Beirut: Dār al-Fikr, 2005).

3 Bernhard Grossfield, *Language and the Law* (50 J. Air L. & Com., 1985), 793.

4 John William Salmond, *Jurisprudence: Or the theory of the law*, 36.

5 "Statutes-Construction-General and Specific Words," *Indiana Law Journal* (1930), Vol. 5: Iss. 4, Article 10.

where the same words “Man” and “Woman”, used as general terms, are defined as “[t]he word “man” denotes a male human being of any age; the words “woman” denotes a female human being of any age”.⁽¹⁾ Thus, this example confirms the fact that these words – taken as Common Nouns – possess the character of generality. As well, the word “person” is treated generically by the same penal code.⁽²⁾ Moreover, *The Code of Civil Procedure*, 1908 connotes the same meaning by the word “person”.⁽³⁾ *The Qanun-e-Shahadat Order*, 1984, on the other hand, also puts the same meaning in the word “person”.⁽⁴⁾ The profound study of these substantive laws, and many others, reveals the fact of their heavy reliability on the use of general words – thus, proving the philosophy related to the generality of law, envisaged by Salmond⁽⁵⁾, Austin⁽⁶⁾, Pollock⁽⁷⁾, Bentham⁽¹⁾, and

1 *The Pakistan Penal Code*, 1860, Section. 10.

2 See *The Pakistan Penal Code*, 1860, Section. 3 ... The original text flows as: “Punishment of offences committed beyond, but which by law may be tried within Pakistan: Any person liable, by any Pakistani Law, to be tried for an offence committed beyond Pakistan shall be dealt with according to the provision of this Code for any act committed beyond Pakistan in the same manner as if such act had been committed within Pakistan.”

3 See *The Code of Civil Procedure*, 1908, Section. 75 ... The original text runs as: “Commission to another Court- (1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a State other than the State in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.”

4 *The Qanun-e-Shahadat Order*, 1984, Article. 5... The exact text flows as: “Communications during marriage: No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative-in-interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.”

5 Sir John William Salmond (1862-1924) was a legal scholar, public servant and judge in New Zealand. His legal texts *Jurisprudence or the Theory of the Law* (1902) and *The Law of Torts* (1907) are considered to be his legal masterpieces. See for more details: Dorsett, Shaunnagh, and Shaun McVeigh, "The Persona of the Jurist in Salmond's Jurisprudence: On the Exposition of What Law Is...," *Victoria U. Wellington L. Rev.* 38 (2007): 771.

6 John Austin, (1790-1859), an English jurist is known his distinction between positive law from morality. His most influential work is *The Province of Jurisprudence Determined* (1832). He had little influence during his life; however, he exercised great impact posthumously on the subsequent jurists. According to him, “law is the command of the sovereign backed by sanctions; the sovereign is the person or institution whom the people have the habit of obeying”. See in detail: John Austin, ... *Lectures on Jurisprudence: Or, The Philosophy of Positive Law* (J. Murray, 1875).

7 Frederick Pollock (1845-1937), an English jurist and academician, was a prolific writer on law. His most notable work is *The History of English Law Before the Time of*

proponents of the same rank. Upon a profound look of any Ordinance, Act and Statute, belonging either to the general law category or the special/local law, the thing speaks for itself (*res ipsa loquitur*) more than once that there is an abundant use of Interrogative and Relative Pronouns i.e. “*who*”, “*whose*”, “*whoever*”, “*whosoever*”, “*whichever*”, etc. These pronouns, and, of course, the nouns, function as general words, revealing, thus, the general character of law – laws’ application to all without any qualification. *The Pakistan Penal Code*, 1860, for instance, goes on, saying:

“Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment...which may extend to seven years, and shall also be liable to fine”.⁽²⁾

The pronoun (*whoever*), herein, denotes that anyone who commits the crime of abetment shall be punished with death or life imprisonment, avoiding any distinction between/or among the abettors on the basis of any qualification – technically called equality before the law.⁽³⁾ Another relative pronoun i.e. “*who*”, mentioned in the same law, puts forward the same referential meaning by stating as:

“Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence”.⁽⁴⁾

Academician

This cited legal text reveals that the word “*who*” assigns a general meaning, herein, to the person who abets, present or absent, will be liable to punishment; meaning thereby generality of the law for all abettors, present or absent, at the scene of crime abetted. Here, the relative pronoun (“*who*”) can be applied to all sort of abettors – actively or passively involved in the commission of crime, i.e. abetment; confirming the

Edward-I. His other works include *The Principles of Contract at Law* and *The Law of Torts*. He introduced new approaches and methodologies in teaching.

1 Jeremy Bentham (1748-1832), an English legal and social reformer, a versatile thinker, who supported equal rights for women, the separation of church and state, the right to divorce and some other radical theories. See for details: Ross Harrison, "From the Routledge Encyclopedia of Philosophy," (1998).

2 *The Pakistan Penal Code*, 1860, Section. 115.

3 The original text, given in the Constitution of Pakistan, flow as: “*All citizens are equal before law and are entitled to equal protection of law.*” ... *The Constitution of Pakistan* 1973, Article. 25(1).

4 *The Pakistan Penal Code*, 1860, Section. 114.

applicability of *The Pakistan Penal Code*, 1860 to all citizens, as envisaged in Section 2 of the same legal document.⁽¹⁾ *The Code of Civil Procedure*, 1908, while dealing with another familiar relative pronoun, i.e. “whose” refers to any person in whose favor the judgment is given by the court of competent jurisdiction. In this regard, Section. 3 of the same code states as: “‘decree-holder’ means any person in **whose** favour a decree has been passed or an order capable of execution has been made”.⁽²⁾ The generality of law, as discussed earlier, is reflected, too, from Section. 23 of the same code.⁽³⁾

Generalization of Words: A Central Approach of *Uṣūl al-Fiqh* (Islamic Jurisprudence):

Legal systems, framed exclusively, in the first place, for a specific context, begin to lose their efficacy when they are de-contextualized. German, French and English (conventional) laws, the most effective systems of modern day world, for instance, seem to lose currency and applicability, once they are taken out of their respective settings. This is, however, not true in the case of *Sharī’ah*, as it is for man in general, transcending, thus, the limits of time and space. Put logically, its jurisdictions are unlimited and have attained aspatial and atemporal dimensions. This attribution, found missing in other legal systems, is due to its universality of application, based in the teachings of the Holy *Qurān*, the ultimate source of derivation (*Al Masdar al Aslī*).⁽⁴⁾ This universality of *Sharī’ah* is evident from the conventional way the Holy *Qurān* addresses its audience. While addressing man, the Holy Book, for example, uses generic terminologies, such as “*Yā aiyuhan nāsu’ ...*” (O people)⁽⁵⁾ or “*wa minan nāsi ...*” (among men)⁽⁶⁾ – the best technique for the generality of rules and regulations envisaged, therein. While going a step ahead on the issue, *Sharī’ah* has devised and formulated clear cut rules in this

1 Ibid, Section 1 ... The original text flows as: “*This Act shall be called the Pakistan Penal Code, and shall take effect throughout Pakistan.*”

2 *The Code of Civil Procedure*, 1908, Section. 03.

3 The original text goes on saying ... “*Penalty for default —The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may ...*” *The Code of Civil Procedure*, 1908, Section. 32.

4 See for example ... *Qurān*, 34: 28 ... The original text flows as: “We have not sent thee but as a universal [Messenger] to men, giving them glad tidings, and warning them [against sin], but most men understand not.”

5 See for example ... *Qurān*, 2: 21 ... The original text flows as: “O ye people! Adore your Guardian-Lord, who created you and those who came before you, that ye may have the chance to learn righteousness”.

6 See for example ... *Qurān*, 22: 11 ... The original text flows as: “There are among men men some who serve *Allāh*, as it were, on the verge: if good befalls them, they are, therewith, well content; but if a trial comes to them, they turn on their faces: they lose both this world and the Hereafter: that is loss for all to see!”

connection – by not depending merely on generic elaboration of the principle. The Holy *Qurān*, for instance, elucidates the point by stating:

“O ye who believe! stand out firmly for justice, as witnesses to Allāh, even as against yourselves, or your parents, or your kin, and whether it be [against] rich or poor: for Allāh can best protect both. Follow not the lusts [of your hearts], lest ye swerve, and if ye distort [justice] or decline to do justice, verily Allāh is well-acquainted with all that ye do”.⁽¹⁾

The preceding Holy verse confirms, in a telling way, the general applicability of law; even if the same goes against one’s own self, one’s parents, siblings and near and dear ones. *Sunnah*, being a practical interpretation of the Holy *Qurān*, maintains the same approach to the generality of law. The forthcoming *hadīth*, explicates the point in question:

“... The nations prior to you were destroyed because if a noble amongst them stole, they used to excuse him, and if a poor person amongst them stole, they would apply (Allāh) Legal Punishment to him. By Him in Whose Hand Muhammad’s soul is, if Fatima, the daughter of Muhammad stole, I would cut her hand.” Then Allāh’s Apostle gave his order in the case of that woman and her hand was cut off” ...⁽²⁾

Upholding the general applicability of *Sharī’ah*, the above-cited *hadīth* indicates the Holy Prophet (SAW) avows to award the same punishment to his beloved daughter Fatima (RA), if she committed the crime of stealing.

Drawing on the rules of language, *Sharī’ah* formulates legal rules and regulations, focusing on the philosophy of generality at the face of any the situation. This golden principle is kept intact, hardly compromised on in any discipline of law .i.e. family law (*fiqh-ul-usrah*), law of inheritance (*fiqh-ul-mirāth*), law of compensation (*fiqh-ul-zamān*), criminal law (*fiqh-*

1 See for example ... *Qurān*, 4: 135 ... The original text flows as:

2 Abu Abdullah Muhammad bin Isma’il al-Bukhari, *Sahih al-Bukhari* (Dar Tawq ul Najat, 2000/1422 H). Vol.5, 151, Hadith No.4304 ... The original text of the hadith is as:

حَدَّثَنَا مُحَمَّدُ بْنُ مِقَاتٍ، أَخْبَرَنَا عَبْدُ اللَّهِ، أَخْبَرَنَا يُونُسُ، عَنِ الزُّهْرِيِّ، قَالَ: أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ، أَنَّ امْرَأَةً سَرَقَتْ فِي عَهْدِ رَسُولِ اللَّهِ ﷺ فِي غَزْوَةِ الْفَتْحِ، فَفَرَعَ قَوْمُهَا إِلَى أُسَامَةَ بْنِ زَيْدٍ يَسْتَشْفِعُونَ، قَالَ عُرْوَةُ: فَلَمَّا كَلَّمَهُ أُسَامَةُ [ص: ١٥٢] فِيهَا، تَلَوْنَ وَجْهَ رَسُولِ اللَّهِ ﷺ، فَقَالَ: «أَتَكْلِمُنِي فِي حَدِّ مِنْ حُدُودِ اللَّهِ»، قَالَ أُسَامَةُ: اسْتَغْفِرُ لِي يَا رَسُولَ اللَّهِ، فَلَمَّا كَانَ الْعَشِيُّ قَامَ رَسُولُ اللَّهِ ﷺ خَطِيبًا، فَأَتَى عَلَى اللَّهِ بِمَا هُوَ أَهْلُهُ، ثُمَّ قَالَ: «أَمَّا بَعْدُ، فَإِنَّمَا أَهْلَكَ النَّاسَ قَبْلَكُمْ: أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكَوهُ، وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ، وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ، لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا» ثُمَّ أَمَرَ رَسُولُ اللَّهِ ﷺ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِتِلْكَ الْمَرْأَةِ فَقَطَعَتْ يَدَهَا، فَحَسُنَتْ تَوْبَتُهَا بَعْدَ ذَلِكَ وَتَزَوَّجَتْ قَالَتْ عَائِشَةُ: «فَكَانَتْ تَأْتِي بَعْدَ ذَلِكَ فَارْفَعُ حَاجَتَهَا إِلَى رَسُولِ اللَّهِ ﷺ»

ul-jinayāt), procedural law (*fiqh-ul-murafa'āt*), mercantile law (*fiqh-ul-mu'āmalāt-al-māliyah*), international law (*fiqh-ul-'ālaqāt-al-duwaliyah*), etc. While using the word '*āmm*', the element of generality is inculcated in these laws – giving superiority to the principle of equality before law.

'*Āmm*', a derivation from the Arabic word, '*amma*', denotes generality of both application and implication in the legal spectrum. The literal meaning of the word explicitly signifies the general sense of the word '*āmm*'. Also, it denotes, in various contexts, an indefinite range of meanings, characterized by 'all-inclusiveness' (*al-shumūl* and *istighrāq*). In his jurisprudential work, Imām Abū Bakar Muhammad ibn Abī Sahal Sarakhsī (483/H)⁽¹⁾, a renowned Hanafī classical Muslim jurist, assigns the same wide-range meaning to the term.⁽²⁾ Moreover, there are precedents, predominantly, in the classical Muslim jurists' research endeavors, where the word (*āmm*) conveys the same meaning in technical contexts. Muhammad bin Ishāq Al-Shāshī (344/H), for instance, describes the word '*āmm*' technically, as: "*Āmm*' is a word that gives several meanings, either by using a word like '*Muslimūn*' and '*Mushriqūn*' or through meaning like '*man*' (who) and '*mā*' (what)".⁽³⁾ Alī Abū Bakr al-Rāzī al-Jassās (370/H), too, endorses the same definition of the word '*āmm*'.⁽⁴⁾ In brief, *istighrāq* and *al-shumūl* exclusively signifies that the word '*āmm*' is generally used for 'any person, place or thing'. Even its lexical meaning shows generality without including any kind of discrimination (of creed, caste and colour) of the implied person place or thing. Imām Abū al-Husayn al-Baṣrī (436/H), while explaining the word, underscores the point by saying that the use of general words is not simply an issue of linguistics, but is, in fact, based in reason. The Imām denotes that when one says, for example, the general word '*men*', one instantly draws a demarcation between men and non-men (non-human) entities, excluding animals, etc.⁽⁵⁾ Simply put, any general

1 The original text runs as: وَالْعَامُّ كُلُّ لَفْظٍ يَنْتَظِمُ جَمْعًا مِنَ الْأَفْرَادِ إِذَا لَفْظًا كَقَوْلِنَا مُسْلِمُونَ وَمَشْرُقُونَ وَإِنَّمَا مَعْنَى كَقَوْلِنَا مَنْ وَمَا ... Muhammad bin Ishāq Al-Shāshī, *Uṣūl al-Shāshi* (Beirut: Dār al Kitāb al-'Arabī), 1:17.

2 The original text flows as:

وَمَعْنَى الْعُمُومِ لَفْظُ الشُّمُولِ تَقُولُ الْعَرَبُ عَمَهُمُ الصَّلَاحُ وَالْعَدْلُ أَي شَمَلَهُمْ وَعَمَّ الْخِصْبُ أَي شَمَلَ الْبِلْدَانَ أَوِ الْأَعْيَانَ وَمِنْهُ سَمِيَتْ التَّخْلَةُ الطَّوِيلَةُ عَمِيمَةٌ وَالْقِرَابَةُ إِذَا اتَّسَعَتْ انْتَهَتْ إِلَى الْعُمُومَةِ فَكُلُّ لَفْظٍ يَنْتَظِمُ جَمْعًا مِنَ الْأَسْمَاءِ سَمِيَّ عَامًّا لِمَعْنَى الشُّمُولِ وَذَلِكَ نَحْوُ اسْمِ الشَّيْءِ ... Abū Bakar Muhammad ibn Abī Sahal Sarakhsī, *Uṣūl al-Sarakhsī* (Beirut: Dār al-Ma'rifah, n.a.), 1:125.

3 Muhammad bin Ishāq Al-Shāshī, *Uṣūl al-Shāshi*, (Beirut: Dār al Kitāb al-'Arabī), 1:17.

4 Alī Abū Bakr al-Rāzī al-Jassās, *al-Fuṣūl fī al-Uṣūl*, 1:142.

5 The original text runs as follows:

اعْلَمُ أَنَّ الْكَلَامَ الْعَامُّ هُوَ كَلَامٌ مُسْتَعْرَقٌ لِجَمِيعِ مَا يَصِلِحُ لَهُ هَذَا هُوَ الْمَعْقُولُ مِنْ كَوْنِ الْكَلَامِ عَامًّا أَلَّا تَرَى أَنَّ قَوْلَنَا الرِّجَالُ مُسْتَعْرَقٌ لِجَمِيعِ مَا يَصِلِحُ لَهُ لِأَنَّهُ اسْتَعْرَقَ الرِّجَالُ دُونَ غَيْرِهِمْ إِذْ كَانَ لَا يَصِلِحُ لِغَيْرِهِمْ

word, including 'men' means anything of that kind and of no other kind or sort – whatever the explanation may be. Imām Sarakhsī, while discussing the legal status of general words in other jurists' view, considers it incumbent on a judge (*Qāḍī*) to act upon the generality of words and to not deviate from it under any stretch of judicial interpretation. Free from any mystery or ambiguity, his words, in this regard, send a perfectly clear message to anyone by stating: "In the view of all jurists, acting upon the generality of a word is obligatory in nature" (وَالدَّلِيلُ لِعَامَةِ النَّفْهَاءِ عَلَى أَنْ الْعَامَ مُوجِبٌ) (العَمَلُ بِعُمُومِهِ).⁽¹⁾ This signifies strict rules of interpretation of general words whereby it means that Imām Sarakhsī does not allow any judge to take liberties while any law while interpreting such (generic) words. This is, of course, in line with the philosophy, offered by the Islamic jurisprudence for the interpretation of the word 'āmm'.

It is, no doubt, a hardbound rule to use generic words in general meanings; however, such rules are relaxed in different situations where the general terms, albeit still possessing generality, seem to denote meaning yet limited in scope. This restriction, nestled at the center of generality, has been essential, so to speak, in *Sharī'ah* in order to deal with situations – an essential and indispensable character of *Sharī'ah*. Being well-aware of the duality of language (and thus of law), the Muslim jurists, particularly, those who are considered authorities on *Uṣūl al-Fiqh* (Islamic jurisprudence), point out situations where restricted meanings from general words are extracted - hence, limitation of their implementation. The restricted meaning of a general word, discussed in the preceding lines, is technically called *takhṣīṣ* (restriction) in *Uṣūl al-Fiqh*. Extraction of rules for restricted meaning from the general words/meaning is proved even from many verses of the Holy *Qurān* and from *ahādīth*. While putting the statement in an illustration, Abu Ishāq al-Shīrāzī, a classical Muslim jurist, says that general rules, regarding inherence, are: that, in normal circumstances, a son inherits a prescribed part from his father's property and vice versa (general rules).⁽²⁾ However, some specifications of meaning have been implemented on this rule in a *hadīth* where this generality has been delimited/restricted to a specific circumstance. Further explaining the point with the same *hadīth*, al-Shīrāzī says that, as per *Sharī'ah* rules, a

'Alī al-Baṣrī al-Mu'tazilī, *Al-Mu'tamad fī al-Uṣūl al-Fiqh* (Beirut: Dār al-Kitāb al-Elmiyyah, 1403/1982), 1:189.

1 Abū Bakar Muhammad ibn Abī Sahal Sarakhsī, *Uṣūl al-Sarakhsī*, 1:135.

2 *Qurān*, 4: 7, 10, 11.

Muslim son is not entitled to inherit any part from the property, etc. of his non-Muslim father and vice versa.⁽¹⁾

Al-Āmidī, an authority on Islamic jurisprudence, claims that, apart from the prerogatives of the Holy *Qurān* and *ahādīth*, one can restrict the meaning of a general word through *qiyās* (analogy). He states in this regard: “An analogy can be used for restricting the meaning of a general word in the Holy *Qurān* and the same can be done through “*khabar-ul-wāhid*” (isolated tradition)”.⁽²⁾ Al-Shatibī (790/H), another Muslim jurist of antiquity, while associating himself with Imām Malik and Imām Abū Hanīfa in their notion of the same, says that *takhṣīṣ* can be actualized through any argument (i.e. the Holy *Qurān*, *aḥādīth*, *ijmā’ qiyās*, and etc.). Imām al-Zarkashī (794/H) has the same juristic opinion over the issue.⁽³⁾ Imām Abū Hanīfa, according to Al-Shatibī, recommends that it can be done, even, through *maṣlahah ‘āmmah* (public interest).⁽⁴⁾ The preceding statement, indicating Imām Abū Hanīfa’s flexibility in terms of jurisprudential approach, when he restricts the meaning of a general word for public interest. It denotes, in the contemporary context, that *hākim* (the head of a state), legislature and even *qāḍī* (the deputy/representative of the *hākim*) can restrict the general meaning, feeling need for the same in their corresponding jurisdictions. This jurisprudential discussion reveals the flexibility and adoptability of the Islamic law to the new dimensions of legal spectrums.

1 The original text as: يجوز تخصيص عموم القرآن بغير الواحدلنا هو أن المسلمين أجمعوا على تخصيص آية الموارث بقوله عليه السلام لا يرث المسلم الكافر ولا الكافر المسلم وعلى تخصيص قوله {فانكحوا ما طاب لكم من النساء} بقوله صلى الله عليه وسلم لا تنكح المرأة على عمتها ولا على خالتها واحتج أبو بكر الصديق رضي الله عنه على فاطمة رضي الله عنها بقوله صلى الله عليه وآله وسلم إنا معشر الأنبياء لا نورث ما تركناه صدقة وهذا تخصيص للعموم من القرآن بغير الواحد فدل على جواز ذلك
Ibrāhīm ibn ‘Alī ibn Yūsuf al-Shīrāzī, *Al-Tabṣīrah fī Uṣūl al-Fiqh* (Dimashq: Dār al-Fikr, 1403/1982), 1:132-133.

2 Sayf al-Dīn Abū al-Husayn ‘Alī ibn Abī ‘Alī ibn Muhammad al-Tha’labī al-Āmidī, *al-Ihkām fī Uṣūl al-Ahkām* (Beirut: Maktab al-Islāmī, 1332), 2:122).

3 The original text runs as:

يُجوزُ تخصيصُ القرآنِ بالسُّنةِ المُتواترةِ، قولاً واحداً بالإجماع، كما حكاه الأستاذُ أبو منصورٍ. وقال الأُميدِيُّ: لا أعرفُ فيه خلافاً، لكنْ حكى بعضهم في الفعليَّةِ خلافاً. وقال الشَّيخُ أبو حامدِ الإسفراييني: لا خلافَ في ذلك، إلا ما يحكي داودُ في إحدى الروايتين. وقال ابنُ كحج: لا شكَّ في الجوازِ، لأنَّ الخبرَ المُتواترَ يُوجبُ العلمَ كما أنَّ ظاهرَ الكتابِ يُوجبهُ

... Muhammad ibn Bahādur al-Zarkashī, *Al-Bahr al-Muhīt fī Uṣūl al-Fiqh* (Dār al-Kutbī, 1414/1994).

4 The original texts flows as:

فإنَّ مالِكاً وأبا حنيفةَ يريانَ تخصيصَ العمومِ بأيِّ دليلٍ كان، من ظاهرٍ أو معنى، ويستحسنُ مالِكٌ أنْ يُخصَّ بالمصلحةِ، ويستحسنُ أبو حنيفةٌ أنْ يخصَّ بقول الواحد من الصحابة الوارد

... Ibrāhīm bin Mūsā bin Muhammad al-Khammī al-Gharnatī Al-Shahīr bil-Shatibī, *al-Mawafiqāt* (Dār ibn ‘Affān, 1417/1997), 5:197.

Generality of Words in *Sharī'ah* and Law vs the Common Noun in English Grammar – Commonalities:

Language, the most effective tool of communication, is the springhead of every imaginable text. Though there are exceptions, constitutions and laws, like literature, owe their existence to written language⁽¹⁾. Spoken language, more or less, is as unavoidable; for example, in daily interaction as well as in court proceedings and interrogation. However, serious problems do exist in constructing their meaning. The issue between language and its understanding, if observed from close quarters, is twofold: the incomprehensible legalese (special legal terminology) and the elusive nature of words - as a single words conveys different meanings in different contexts. Here, in such a volatile situation, the interpretation of statutes' theory originates in all legal systems, including conventional and Islamic. As for the first system (conventional), one can realize and understand that the interpretation of statutes has been included in its jurisprudence.⁽²⁾ *Sharī'ah*, as compared to the conventional law, assigns more space in its jurisprudence to the interpretation of statutes and the rules and regulations, involved therein – passively or actively. For instance, the terms 'āmm (general), *khāss* (specific), *mushtarak* (equivocal), *mutlaq* (an absolute or indeterminate word), *muqayyad* (determined), *amr* (command), *nahy* (proscription), *haqīqah* (actual application), *majaz* (figurative sense), *'ibārat al-nass* (the plain meaning rule), *ishārat al-nass* (the connotation of the text), *dalālat al-nass* (the implication of the text), *iqtidā' al-nass* (requirement of the text by necessity), *mushkil* (difficult), *mujmal* (unelaborated), *muhkam* (unalterably fixed), *mutashābih* (unintelligible), etc. are various concepts of interpretation, predominantly, related to language. In addition, Islamic law, while discussing a law, offers first its literal meaning (*al-m'anā al-lughawī*) and second its technical meaning (*al-m'anā al-istilāhi*) – this effect shows an undeniable significance of the working of language.

Words, categorized in different classes, are dynamic linguistic entities, performing efficiently, like a faithful and diligent servant, various functions in a sentence. Being dynamically versatile, a single word can play, like a seasoned actor, varied roles on different linguistic levels. It plays, for example, paradigmatic as well as syntagmatic roles on the linguistic and syntactic levels. The functions, numerous in number, range from noun through to interjection to object. Discussion on each aspect of a word, in itself a debate, can span over hours of session, well-represented in

1 Customary law, for example, is not documented but is in effect in particular situations. See for further details: Lon L. Fuller, *Anatomy of the Law* (FA Praeger, 1968), 933.

2 This discussion of interpretation of statutes can be found in great details. See for further details ... John William Salmond. *Jurisprudence: Or the theory of the law*, 126-133.

numerous books of grammar and composition.⁽¹⁾ These functions, exceeding the bounds of daily verbal and non-verbal interaction, so to say, perform substantive role in as systematized and essential fields as the law itself. One commentator has stated that, “*It is on the loom of language that all law is spun*”.⁽²⁾ The Common Noun, a key subclass in the English grammar, for instance, plays multiple performative functions in the field of law. Denoting generality of meaning, it is of great linguistic and semantic utility in legal texts and contexts – termed, therein, as the General Word. The forthcoming discussion, an academically extraordinary enterprise, approaches the topic – the function and role of the Common Noun in law - from the distinct perspectives (conventional jurisprudence and Islamic jurisprudence). The debate, of course, includes a substantial discussion on the concept, nature and scope of the Common Noun in English grammar – the domain of its origin.

Used liberally in the legal texts, the general words, albeit, denoting different meanings in different contexts, carry the same attributes of the Common Nouns in English grammar. While highlighting the nature and function of the Common Nouns vis-à-vis the Proper Nouns, Samuel J. Cuning, in his doctoral dissertation, concludes that Common Noun “*applies to all who share some common quality*”.⁽³⁾ This discussion takes a pleasant and illumining turn when the contents of such analyses are applied in the interpretation of legal texts. As an illustration, the word “*thief*”, in legal texts, can be applied to any person who steals - the quality shared by all thieves - and is, therefore, by law (*de jure*) culprit, as signified by a Common Noun. Also, even the gender is not specified here in this abstract. The same attributes of the Common Noun are unanimously supported by several grammarians in their works.⁽⁴⁾ Gerald Sanders, Hoover H. Jordan, Robert M. Limpus and Wallace H. Magoon, in their monumental work explicate by saying that they “*are the names given to all members of a common group of objects; they have no reference to a particular person*

1 Nirmalangshu Mukherji, *The Primacy of Grammar* (India: PHI Learning, 2011).

2 Bernhard Grossfield, "Language and the Law," (*J. Air L. & Com.* 50, 1984), 797.

3 Samuel Cumming, "Proper nouns," PhD diss., (Rutgers University-Graduate School-New Brunswick, 2007), 6.

4 P. C. Wren and H. Martin, *High School English Grammar & Composition* (India: S. Chand & Company LTD. Google Scholar, 2000). Also see: Sylvia Chalker and Edmund S. C. Weiner. *OXFORD DIC ENGLISH GRAMMAR (P)*. Oxford University Press, (1998).; Susan Conrad, et al., "Student grammar of spoken and written English," (2003).; Sidney Greenbaum and Randolph Quirk, *A university grammar of English* (Longman group Limited, 1990).; Elizabeth Walter and Kate Woodford, *Collins Easy Learning Writing* (Collins, 2010).; Audrey Jean Thomson and Agnes V. Martinet, *A practical English grammar* (London: Oxford University Press, 1986).

place, or thing.”⁽¹⁾ To further illustrate the point in question, the book furnishes “*woman*”, “*horse*”, “*city*” as examples of Common Nouns. This illustration shows that Common Noun denotes names, given in general to persons, places or things, not specifying the attributes to a limited set of names, as is normally the case with Proper Nouns. Similarly, Henry Sweet in his work maintains that “[*t*]he term *Common Noun* [means] *that such a designation as man is shared – or may be shared – in common by an indefinite number of individual men... Common Nouns by themselves [do not] suggest a definite individual...*”⁽²⁾ This and numerous other definitions indicate the generic nature of Common Noun, the quality shared by the general words, abundantly used in legal texts.

Academic and Institutional Implications of the Research:

Most legal systems, existing famously worldwide, offer rules which are, by and large, universal in their approach towards justice and equality – a character they are supposed to abundantly possess. This approach requires, of course, indispensable generality in terms of application without any discrimination of creed, caste, and color. The character of generality, implementable on anyone, prioritizes offense over the offender, as his/her age, intent, gender, nationality and other factors hardly exercise any impact on the crime. However, law is also, inevitably, required to offer specification to the generality of words for tackling situations, arising at various stages and levels of judicial proceedings. At this particular stage, the concept of ‘exception’ appears on the legal scene, complicating the seemingly simple doctrine of generality even further. While formulating laws, particularly in Pakistan, legislators, therefore, have to consider, besides other points, the use of words with general characteristics so that the experts and judges/lawyers may interpret laws as per the original meaning, intended therein. However, it does not justify the excessive flexibility and generality of law; rather, there must be a preamble to any law, pinpointing specifications of that particular law. *Shari’ah*, as opposed to the conventional law, is more flexible in this respect, owing to its universal nature and application. When the *ḥākim* of a state, for example, formulates laws under the concept of *siāsah shari’yah* (administration of justice), he is bound to not only consider the generality of the language of the law but, at the same time, to also take into consideration the exceptions/restrictions, therein, for making it more qualitative. Also, a *mujtahid* (a jurist of Islamic law) can derive laws from all available resources in general terms, leaving, too, space for

1 Gerald Sanders, Hoover H. Jordan, Robert M. Limpus and Wallace H. Magoon, *Unified English Composition* (New York: Crofts & Co, 1946): 56.

2 Henry Sweet, *A new English grammar* (Cambridge University Press, 2014): Vol. 1.

specifications/restrictions/exceptions. This jurisprudential approach would, indeed, widen the boundaries of Islamic law – specifically, in terms of its implications in the society as a whole. While having the above-mentioned in the back, the current research endeavor aims at drawing the attention of legislators (both conventional and Islamic) towards the use of generic words, as well as, specification of language, used in legal texts and even contexts. This approach may also facilitate the textual and contextual interpretation of statutes – surely making the process easier for all stakeholders, i.e. judges, lawyers, legal experts, law commentators, and etc. This may, undeniably, lead to a situation where the term ‘quality of law’ conveys a meaning even to a layman.

Conclusion:

Generality is a marked attribute of any law; as the same extends the guaranteed justice and equality to anyone without a tinge of discrimination on the bases of color, creed and religion. Every legal system, thus, be it *Sharī’ah*, English, French, German, Greek, or any other, ensures the generic character in their corresponding legal spectrums – both at textual and contextual levels. Islamic and conventional legal systems, more than any of these, put emphasis on generality, predominantly, in their jurisprudential principles, and, thus, attain universality in nature and application. In order to twinkle with this character, the conventional law, for example, makes abundance use of general words (both in superior and substantive laws), like “*who*”, “*whose*”, “*whoever*”, “*whosoever*”, “*whichever*”, etc. (Relative, Indefinite Pronouns, Pronouns, and others). Since, the English law has been rendered in English language, rules of grammar of the same language, therefore, apply to it in full effect. Legal experts/judges/lawyers, supposed to be fairly grounded in the rules of grammar themselves, apply these rules of the language at the time of formulating and/or interpreting the laws. They, for example, apply the rules of the common noun to words, intended to convey generic meaning in a legal clause/section/article/statute, etc. The same generality in Islamic law, endorsed by the Holy *Qurān* and *ahādīth* alike, has been established by the abundant use of words, such as “*alsāriq*”, “*al-mutalaqāt*”, “*al-Mominūn*” “*yāaiyuhan nāsu*”, “*wa minan nāsi*” and many more. This generality, pervading every legal system, is not unintentional or accidental; rather, it is included, therein, on purpose, as it is in accordance with the principles, mentioned in the Holy *Qurān* and *Sunnah* – ‘equality before law’ and ‘justice for all’ without any sort of discrimination. A glance at the Islamic legal history reveals the same fact where the principle of generality has not only been just a theory but virtually been, too, in practice since the beginning. The *hadīth* of the Holy Prophet: “... *By Him in Whose Hand Muhammad’s soul is, if Fatima, the daughter of Muhammad stole, I would*

cut her hand....”, best illustrates the point in question. Elucidating the indispensable generic character of the Islamic law in the best possible way, the *hadīth* leaves/causes no ambiguity in minds of the legal experts or lawyers/judges, while settling any dispute of civil or criminal nature. The Islamic law, like language, does not always go with the rules. It and, of course, others legal systems as well, at times, restricts the meaning of general words, narrowing it down to limited meaning in particular situations. These restrictions, possibly called exceptions, however, are not for laymen to derive meaning from, but need the expertise of *Uṣūlī* - experts in *Uṣūl al-Fiqh* - to interpret the meaning of laws. Though there are serious differences among these experts over the absolute nature of general rules, mentioned in the Holy *Qurān* and *Sunnah* of the Holy Prophet (SAW), they unanimously agree on the existence of exceptions in Islamic law. Owing to this fact, a *sharī’ah* expert/*mufti/qāḍī/ mujtahid* is bound to keep intact such exceptions while interpreting a general rule. However, to do so, qualifications for the restriction of a general word - rightly called *shurūṭ al-takhṣīṣ* (conditions for restrictions) - must be ensured to have been observed.