CHAPTER 14

The Existential Perspective on the Regulative Verses (*Āyāt al-Aḥkām*) of the Qur'an

Arif Abdul Hussain

A case of domestic violence was brought before the blessed Prophet by the father of the beaten woman.[1] The Prophet advised that his daughter respond in kind to the husband, that is, as per *lex talionis*, which was the principle underlying the regulative norm in Q. 2:178 revealed previously. Upon issuing this judgement, Q. 4:34 was revealed stipulating a regulation or regulative form affording men the right to castigate their unruly spouses; the verse also supplied the rationale for this regulative form, namely, that 'men were the governors of their womenfolk' (*al-rijālu qawwāmūna ʿalā al-nisāʾ*) for two reasons: firstly, because 'God bestowed them with existential merit' (*bi-mā faḍḍala Allāhu baʿḍahum ʿalā baʿḍ*) and not the latter, and hence secondly, because of 'the wealth they expended as provision' (*bi-mā anfaqū min amwālihim*) for the latter's upkeep.[2] Clearly, the initial judgement of the Prophet was more egalitarian than the regulative form of Q. 4:34, and yet the latter was more equitable considering the context of revelation; this is because the latter was formulated in light of the principle of justice, the prevailing views and norms regarding gender-specific societal roles and spousal relations, rights and responsibilities, and the existential aptitudes of men and women generally at that time.[3] The contextuality of this regulative form ensured that it was just, relevant to the people it was formulated for, and hence contributed to the functionality of a just community, which in turn was fundamental insofar as a just community

1 The author is grateful to Riaz Walji for kindly editing and referencing the chapter, and colleagues at Al-Mahdi Institute for organising the workshop in which an early draft of this chapter was presented and for their efforts in getting it to publication.

2 For reference to the context of Q. 4:34, see the exegeses of Faḍl b. Ḥasan al-Ṭabarsī, *Majmaʿ al-bayān fī tafsīr al-Qurʾān* (Beirut: Muʾassasat al-Aʿlamī li-l-Maṭbūʿāt, 1995), 3:79; Muḥammad Sayyid al-Ṭanṭāwī, *al-Tafsīr al-wasīṭ li-l-Qurʾān al-karīm* (Cairo: Maṭbaʿat al-Saʿāda, 1983), 3:176; Ismāʿīl Ibn Kathīr, *Tafsīr al-Qurʾān al-ʿaẓīm* (Beirut: Dār wa-Maktabat al-Hilāl, 1990), 2:70.

3 For the existential perspective and reading of this verse, see Arif Abdul Hussain, 'The Existential Perspective on "God's Bestowal of *Faḍl* upon Men" and Its Implication on *Qiwāma*', in *Islam and the Institution of Marriage: Legal and Sociological Approaches*, ed. Katherine Lemons and Laurens de Rooij (Birmingham: AMI Press, 2023), 9–32.

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is conducive to the rational, moral, and spiritual growth of both its individuals and collectivities. The aforementioned information about this regulative form, its revelation, and context demonstrates the centrality of the principle of justice; it also demonstrates the appreciation of the existential aptitudes and context of individuals and collectivities in the methodology of the Lawgiver of the Sharīʿa apropos shaping the forms of regulative essences.[4] Accordingly, they are pivotal in the formulation of regulative forms in the existential framework.

Traditional *uṣūlī*s (legal theorists) generally accept the aforementioned features of regulative forms but maintain that the contextuality of any given regulative form of the Qur'an or the Prophet does not affect or curtail its infallibility, immutability, and universality. Thus, all such regulative forms are to be enforced in all times and places.[5] The contextuality of such regulative forms are overlooked due to their being 'Qur'anic' and/or 'prophetic'; hence they are presumed to be the 'best' regulative forms irrespective of whether they are 'just' and/or rational in other contexts.[6] The *uṣūlī* paradigm maintains that the regulative forms of the Qur'an or the Prophet are based on the following considerations: (a) that the relations of things to humans qua humans are value laden in terms of 'benefit' and 'harm'; and (b) that all such relations (of things to humans qua humans) and their respective values of 'harm' and 'benefit' are

4 For information on the notions of 'form' and 'essence' in the legal methodology of the existential framework, see Arif Abdul Hussain, 'A Functional Interpretation of *Zakāt* and the Inclusion of Contemporary Taxation as Its Legitimate Form', in *The Efficacy of Financial Structures for Islamic Taxes and Dues: Proceedings of the 7th AMI Contemporary Fiqhī Issues Workshop*, ed. Wahid M. Amin (Birmingham: AMI Press, 2020), 8–31; Arif Abdul Hussain, 'The Existential Perspective on the Meaning and Implication of Impure Substances within Shīʿī Jurisprudential Discourse', in *The Regulations of Purity in Islam: Proceedings of the 8th AMI Contemporary Fiqhī Issues Workshop*, ed. Hashim Bata (Birmingham: AMI Press, 2022), 81–84; Arif Abdul Hussain, 'The Conflict between the Actual and Apparent Regulations – Part 2: The Solution of "the Existential Framework"', Shaykh Arif (blog), www.shaykharif.com/blog/the-conflict-between-the-actual-and-apparent-regulations, 9–13.

5 For the *uṣūlī*s, the notion of the infallibility, immutability, and universality of the regulative forms of the Qur'an and the Prophet is corroborated by religious reports (*aḥādīth*), e.g. 'The permissible of Muḥammad is permissible forever till the Day of Judgement, and his prohibition is prohibited forever till the Day of Judgement.' See reports in Muḥammad b. Yaʿqūb al-Kulaynī, *Uṣūl al-kāfī* (Beirut: Manshūrāt al-Fajr, 2007), 1:34–35. It should be noted that the notions of constant (*thawābit*) and variable (*mutaghayyirāt*) regulations have been discussed by *uṣūlī*s in the modern period; however, in summary, they maintain that the regulative forms of the Qur'an and those of the Prophet that are not known to have been issued in his capacity as 'the head of state' or an adjudicator are 'constant', and hence infallible, immutable, and universal. See the views of Muḥammad Ḥusayn Ṭabāṭabā'ī, Muḥammad Ḥusayn Gharavī Nā'īnī, and Muḥammad Bāqir Ṣadr in Mohsen Kadivar, 'From Traditional Islam to Islam as an End in Itself', *Die Welt des Islams* 51, no. 3–4 (2011): 462–71.

6 See references in previous note.

known by God and hence have normative statuses in accordance with those values.[7] *Uṣūlī*s classify regulative forms contained within certitude-bearing sources of normativity, such as the Qur'an, as 'actual regulations' (*aḥkām wāqiʿiyya*, sing. *ḥukm wāqiʿī*), that is, regulative forms that correspond to the statuses of the relations of things to humans qua humans in terms of 'benefit' and 'harm' in the mind of God.[8] Therefore, all the regulative forms of the Qur'an classify as 'actual regulations' irrespective of whether they pertain to devotional practices, human interactions, or consumables.

This chapter demonstrates that the *uṣūlī* view of the infallibility, immutability, and universality of Sharīʿa regulative forms generally and the regulative forms of the Qur'an in particular is premised on the untenable assumption of the fixed and immutable nature of the statuses of the relations of things to humans qua humans vis-à-vis the values of 'benefit' and 'harm'. The result is a conflation between the notions of 'the actual' (*al-wāqiʿī*) and 'actuality' (*al-wāqiʿ*); strictly speaking, the former refers to the regulative forms of the Qur'an or the Prophet that correspond to the existential statuses of the relations of things to humans qua 'the immediate audience of the Qur'an and the Prophet' in the mind of God, whereas the latter refers to the mind of God in which the existential statuses of the relations of things to humans qua 'humans of every possible context' is known; to reiterate, 'the actual' refers to regulative forms that corresponded to regulative forms in the knowledge of God during the revelatory era only and not beyond, whereas 'actuality' refers to God's knowledge of the regulative forms of every conceivable context (in other words, it refers to God's knowledge of the existential statuses of the relations of things to humans of differing existential aptitudes and contexts).[9]

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7 Arif Abdul Hussain, 'The Conflict between the Actual and Apparent Regulations – Part 1: The Theoretical Foundations of *Uṣūl al-Fiqh* and the *Uṣūlī* Resolutions', Shaykh Arif (blog), www.shaykharif.com/blog/the-conflict-between-the-actual-and-apparent-regulations, 4, 6; Muḥammad Bāqir al-Ṣadr, *Durūs fī ʿilm al-uṣūl* (Qom: Markaz al-Abḥāth wa-l-Darāsāt al-Takhaṣṣuṣiyya li-l-Shahīd al-Ṣadr, 2005), 1:176–77.

8 Muḥammad Ṣanqūr ʿAlī, *al-Muʿjam al-uṣūlī* (Qom: Dār al-Mujtabā, 2001), 535–36. Note that since the statuses assigned to the relations of things to humans are based on the considerations of the 'benefit' and 'harm' of things vis-à-vis the rational, moral, and spiritual growth of humans, they are 'existential'. Thus, the phrase 'the *existential* statuses of the relations of things to humans in the mind of God' is used predominantly henceforth instead of 'the statuses of relations of things to humans in terms of "benefit" and "harm" in the mind of God'.

9 The notion of *al-wāqiʿ* (actuality or the realm of actuality) in *uṣūl al-fiqh* is termed *nafs al-amr* (factuality or the realm of factuality) in Islamic philosophy. It signifies the realm of facts to which propositions that do not correspond to things in 'manifested existence qua this observable, contingent universe' (such as certain moral, legal, logical, and philosophical propositions) have correspondence. For *uṣūlī*s, regulative forms pertaining to every aspect of human life exist in the mind of God. The truth of legal propositions, or regulative forms, lies in their correspondence to the regulative forms (or 'the *existential* statuses of the relations

An implication of this distinction is that the 'actual' regulative forms of the revelatory era cannot be deemed to be 'the actual' regulative forms for contexts differing from the revelatory and other similar contexts. The failure to distinguish between these two notions has caused the ascription of 'finality', 'universality', and 'infallibility' to the regulative forms of the verses of the Qur'an.

This chapter argues that the difference between the notions of 'the actual' and 'actuality' is rooted in the dynamic nature of manifested existence qua this observable, contingent universe.[10] It demonstrates that the principles of 'justice', 'ease', and 'non-hardship' mentioned in the Qur'an are existential, fundamental, and meta-legal, and hence the regulative forms of the Qur'an were formulated in light of the contexts and existential aptitudes of the individuals and collectivities they were addressing.[11] The conclusions of this chapter include (a) that the formulation and issuance of the regulative forms of the Qur'an were based on the existential statuses of the relations of things to humans qua 'the immediate audience of the Qur'an' in actuality, which in turn were based on the considerations of the existential aptitudes and contexts of its immediate audience and the principles of 'justice', 'ease', and 'non-hardship'; (b) the regulative forms of the Qur'an are not accurate depictions of 'actuality' beyond their own contexts, and hence are not optimal vis-à-vis the rational, moral, and spiritual growth of individuals and collectivities in different contexts and with diverse existential aptitudes; (c) however, they do yield the 'general' and 'specific' essences or growth values that they encapsulated, safeguarded, and upheld; and (d) thus, newer regulative forms can be formulated

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of things to humans') in *al-wāqiʿ* or *nafs al-amr*. See Ṣanqūr ʿAlī, *al-Muʿjam al-uṣūlī*, 369–70; Muḥammad Ḥusayn Ṭabāṭabāʾī, *Bidāyat al-ḥikma* (Qom: Muʾassasat al-Nashr al-Islāmī, 2018), 24–25.

10 This chapter is concerned with the relationship between the notions of 'the actual', 'actuality', and 'manifested existence qua this observable, contingent universe'. Henceforth, the phrase 'manifested existence' is employed as shorthand to refer to 'manifested existence qua this observable, contingent universe'.

11 The principles of 'ease' and 'non-hardship' in the existential framework should not be confused with similar precepts among the normative precepts (*qawāʿid fiqhiyya*) that are used by legists at the level of, or within the domain of, the current corpus of Sharīʿa regulative forms, that is, at the 'horizontal' level (this notion is explained in the chapter later). In the existential framework, these principles, together with that of 'justice', are existential, fundamental, and meta-legal; hence they are influential at the level of the formulation and modification of regulative forms in the mind of God, the legist's modifications of regulative forms in extenuating circumstances, and the legist's formulation of regulative forms in and for contexts differing from those of the revelatory and other similar contexts. Although *uṣūlī*s agree that the principles of 'ease' and 'non-hardship' were instrumental at the level of the appreciation of regulative forms of the Sharīʿa in actuality, they restrict their utility within the domain of existing Sharīʿa regulative forms only, that is, as 'normative precepts'.

in light of (i) the 'general' and 'specific' essences or growth values of the regulative forms of the Qur'an and the Prophet, (ii) the existential aptitudes and contexts of the individuals and collectivities of newer contexts, (iii) the principles of 'justice', 'ease', and 'non-hardship', thereby ensuring that regulative forms continue to facilitate the growth of individuals and collectivities in different contexts and with diverse existential aptitudes optimally.

Therefore, this chapter presents the following:

i. An overview of the *uṣūlī* position and theory on Sharī'a regulative forms generally and the regulative verses of the Qur'an in particular.
ii. The *uṣūlī* perspective on the regulative forms of the Qur'an, the underlying assumption of the fixed nature of the existential statuses of the relations of things to humans qua humans in 'actuality', and the resulting equivalence of the notions of 'the actual' and 'actuality'.[12]
iii. A critique of the assumption of the fixed nature of the existential statuses of the relations of things to humans qua humans in 'actuality', its underlying assumption of the fixed nature of the relations of things to humans qua humans in manifested existence, and its implications on the 'optimality' of the regulative verses of the Qur'an vis-à-vis the rational, moral, and spiritual growth of individuals and collectivities in different contexts and with diverse existential aptitudes.
iv. The existential reading of the regulative forms of the Qur'an in light of the dynamic nature of the relations of things to humans qua humans in manifested existence and their existential statuses in 'actuality', and the hermeneutical dichotomy of 'form' and 'essence'.

1 The *Uṣūlī* Position and Theory on Sharī'a Regulative Forms Generally and the Regulative Verses of the Qur'an in Particular

The regulative verses (*āyāt al-aḥkām*) of the Qur'an can be divided into the following three categories based on the degree of their directness or indirectness vis-à-vis normative instruction:[13]

a. Theological regulative verses
b. Ethical and virtuous regulative verses
c. Normative regulative verses

12 The *uṣūlī* perspective and position is going to be explained throughout the discussions in this chapter.

13 See Ḥaydar Ḥubbullāh, 'Introduction to Qur'anic Jurisprudence' [in Arabic], Hobbollah, 19 September 2015, https://hobbollah.com/p/44657/المدخل-إلى-الفقه-القرآني.

The verses of the last category, which directly address human behaviour, are the subject of this chapter. They are classified as follows:[14]

i. Regulative verses about devotional practices
ii. Regulative verses about human interactions
iii. Regulative verses about consumables

Two types of regulative forms can be derived from the two main sources of normativity in the Sharīʿa, namely, the Qur'an (an ordained, scriptural source) and the Sunna (an ordained, non-scriptural source):

a. The actual regulation (*al-ḥukm al-wāqiʿī*); this is a regulative form in which there is no doubt regarding the normative status of its subject; this category of regulative forms is divided further into 'the primary actual regulation' (*al-ḥukm al-wāqiʿī al-awwalī*), which is active vis-à-vis the subject ordinarily, and 'the secondary actual regulation' (*al-ḥukm al-wāqiʿī al-thānawī*), which is active in extenuating circumstances.[15]
b. The apparent regulation (*al-ḥukm al-ẓāhirī*); this is a regulative form in which there is doubt regarding the normative status of its subject;[16] an example is the precept of purity (*qāʿidat al-ṭahāra*), which confers the status of 'purity' to things whose purity-status is unknown;[17] such precepts, from which individual regulative statuses stem, are derived from the more basic principles of 'ease' and 'non-hardship';[18] it should be noted that all such precepts are 'actual' in themselves insofar as no doubt exists regarding their issuance from the Lawgiver of the Sharīʿa and their respective contents; the qualification 'apparent' refers to the regulative statuses that such precepts confer to their respective subjects, for doubt subsists regarding the conferred regulative statutes.

The categories of normative regulative forms (*aḥkām taklīfiyya*) are 'obligation', 'prohibition', 'encouragement', 'discouragement', 'permissibility in the specific sense', and 'permissibility in the general sense', which comprises the latter three categories.[19]

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14 This category includes both normative regulative forms (*aḥkām taklīfiyya*) and status-based regulative forms (*aḥkām waḍʿiyya*).

15 Ṣanqūr ʿAlī, *al-Muʿjam al-uṣūlī*, 529–30, 531–32, 535–36.

16 Ibid., 533–34.

17 For information on the precept of purity, see Muḥammad Kāẓim al-Muṣṭafawī, *al-Qawāʿid* (Qom: Mu'assasat al-Nashr al-Islāmī, 2014), 156–58.

18 The bases of these existential, fundamental, and meta-legal principles are the following verses of the Qur'an: 'God desires ease for you, and He does not desire hardship for you' (Q. 2:185), 'God does not desire to put on you any difficulty' (Q. 5:6), and 'He has chosen you and has not laid upon you [any] hardship in religion' (Q. 22:78).

19 al-Ṣadr, *Durūs fī ʿilm al-uṣūl*, 1:177–78.

There are two fundamental assumptions regarding Sharīʿa regulative forms, which include the regulative forms of the Qurʾan:

a. An ontological assumption: Sharīʿa regulative forms are based on the values of 'benefit' and 'harm' vis-à-vis the relations of things to humans qua humans in the realm of actuality (*al-wāqiʿ*). These values are the existential bases or the theoretical criteria of regulative forms (*milākāt aḥkām*).[20]

b. An epistemic assumption: the legist's knowledge/derivations of the Sharīʿa regulative forms may correspond to those in 'actuality', or the correspondence may be probable, which is known as the *uṣūlī* position of fallibilism (*takhṭiʾa*).[21] Due to the possibility of non-correspondence to 'actuality', all the regulative forms of the Sharīʿa derived by legists (*fuqahāʾ*) classify as 'apparent' because of the probable nature of their extrapolations from Sharīʿa sources.[22]

Thus, regulative forms extrapolated by legists from the textual sources of the Sharīʿa are 'apparent regulations', strictly speaking, on account of the probable nature of the meanings of texts in addition to the possibility of error regarding the authenticity of most of the textual sources.[23] (It should be noted that the word 'apparent' in this context refers to 'the lack of certitude about the intent of the Lawgiver', and not 'the lack of certitude about the regulative status of a given subject' mentioned above.) This means that despite (the few) authentic textual sources containing regulative forms that correspond to the existential statuses of the relations of things to humans in actuality, the legist's knowledge vis-à-vis the correspondence is probable. The *uṣūlī*s circumvent the lack of certitude about the authenticity of most textual sources and the probable nature of the meanings of textual sources by establishing that such sources and 'the apparent meaning' of texts are 'Sharīʿa-ordained' and hence probative.[24] Thus, they have exhaustive discourses in their literature on 'the principiality of the apparent meaning' (*aṣālat al-ẓuhūr*) – including its justifications as a hermeneutical device, its probativity generally, and the probativity of its linguistic instances and applications – as the means of disclosing the intent of the Lawgiver in textual sources carrying regulative forms.[25] By establishing the

20 Ibid., 176–77.

21 Ṣanqūr ʿAlī, *al-Muʿjam al-uṣūlī*, 369–72.

22 Hence, the epistemological position of *uṣūlī* jurists and legists is 'fallibilism' (*al-takhṭiʾa*) vis-à-vis the correspondence of their extrapolated regulative forms to 'actuality' (*al-wāqiʿ*), as opposed to 'the infallibilism' (*al-taṣwīb*) in Sunnī *uṣūl al-fiqh*. Ibid.

23 Muḥammad Riḍā al-Muẓaffar, *Uṣūl al-fiqh* (Qom: Intishārāt Ismāʿīliyān, 2004), 3:45–46, 59–61, 113–14.

24 Ibid., 59–80, 113–31.

25 Ibid., 1:30–33, 3:113–31.

probativity of both the apparent meaning and Sharīʿa-ordained sources (that is, in spite of the probable nature of the former vis-à-vis correspondence to actuality and the latter vis-à-vis authenticity), regulative forms derived on the basis of the former and/or from the latter are to be regarded as 'actual' (*wāqiʿī*) regulations, that is, as regulative forms derived from sources whose authenticity are certain and significations explicitly clear (*nuṣūs ṣarīḥa*).[26] To reiterate, *uṣūlī*s regard apparent regulations (or 'probable' – *ẓannī* – regulative forms) as epistemically equivalent to actual regulations (or 'certain' – *qaṭʿī* – regulative forms) that correspond to actuality as long as:

i. the sources of derivation are Sharīʿa ordained, and
ii. the apparent meaning of the text is ascertained.

The next section summarises the *uṣūlī* outlook on the regulative forms of the Qurʾan and the underlying assumption of the fixed nature of the existential statuses of the relations of things to humans qua humans in actuality.

2 The *Uṣūlī* Outlook on the Regulative Forms of the Qurʾan and the Assumption of the Fixed Nature of the Existential Statuses in Actuality

The *uṣūlī* perspective on the regulative forms of the Qurʾan is based on the doctrinal belief that the Qurʾan is the final communication of God, who is Perfect and Omniscient, and that He has declared the religion of Islam to be complete;[27] thus, it concludes that the regulative forms of the Qurʾan are:

a. final, namely, they cannot be superseded by others,
b. universal, which means they are applicable in all times and places, and
c. infallible, that is, they encapsulate, safeguard, and uphold their respective essences or growth values perfectly.[28]

The argument for this perspective is as follows: (i) the regulative forms of God are based on His knowledge of the statuses of the relations of things to humans qua humans in terms of 'benefit' and 'harm' in the realm of actuality, and hence they are absolutely accurate; (ii) the Qurʾan is the final communication of God; and so (iii) the regulative forms of the Qurʾan are based on the knowledge of God in actuality and hence are absolutely accurate for humans qua humans;

26 Ibid., 3:14–19.

27 This is based on theological reasoning, a verse of the Qurʾan (discussed in the next section), and religious reports. For examples of reports, see al-Kulaynī, *Uṣūl al-kāfī*, 1:34–35.

28 See Munīr Khabbāz, 'Constancy and Change in the Textual Evidences' [in Arabic], al-Moneer, 3 October 2019, www.almoneer.org/?act=av&action=view&id=4124.

therefore (iv) they are final, universal, and infallible regulative forms. To reiterate, the regulative forms of the Qur'an are immutable and unchanging because they are based on His knowledge of the existential statuses of the relations of things to humans qua humans, and hence they are applicable in all times and places. The implication of this is that the existential statuses – by which is meant the growth-promoting and growth-impeding statuses, or in other words, the valuation of the relations in terms of 'benefit' and 'harm' – of the relations of things to humans qua humans are stable and not subject to change, that is, from the time of revelation till the end of the terrestrial history of humankind. This assumption of the fixed nature of the existential statuses of the relations of things to humans qua humans in 'actuality', and hence of their relations in manifested existence, means that the distinction between the notions of 'the actual' (*al-wāqiʿī*) regulation and 'actuality' (*al-wāqiʿ*) is superfluous, and hence they can be used interchangeably as synonyms for each other. Thus, the *uṣūlī* perspective on the regulative forms of the Qur'an has the following two implicative assumptions:

1. the fixed nature of the existential statuses of the relations of things to humans qua humans in 'actuality' (and hence of their relations in manifested existence), and
2. the equivalence of the notions of 'the actual' and 'actuality'.

It is these assumptions that underlie the *uṣūlī* position of strictly adhering to 'the principiality of the apparent meaning qua conventional word-meaning association' as the method of ascertaining the meaning intended by the Lawgiver (the Author of the textual sources of Sharīʿa normativity). The theory of 'the principiality of the apparent meaning qua apparent meaning' in *uṣūl al-fiqh* is based on the analysis of the phenomenon of communication between any speaker and listener and the assumptions therein. Hence, as a theory of understanding audible communication, 'the apparent meaning qua apparent meaning' was the means of understanding the Qur'an generally and its regulative forms in particular for its immediate audience. In brief, 'the apparent meaning qua apparent meaning' of any given speech assumes the speaker's usage of (a) the rules of language and (b) the language's conventional word-meaning association in any given context.[29] However, whenever 'the apparent meaning qua apparent meaning' of the Qur'an (that is, the meaning as understood by its immediate audience) cannot be discerned due to the absence of context, the legist is to adhere to and utilise 'the principiality of the apparent meaning qua conventional word-meaning association' to

29 al-Muẓaffar, *Uṣūl al-fiqh*, 3:113–14.

establish the apparent meaning.[30] Simply put, in cases where the context of the verses of the Qurʾan is unknown, 'the principiality of the apparent meaning qua conventional word-meaning association' instructs the legist to assume that the Lawgiver intended to convey the meanings associated with words in the minds of the people of that time irrespective of their existential context and aptitudes, or in other words, the Lawgiver intended to convey the meaning as per the conventional word-meaning associations in the minds of the immediate audience of the Qurʾan devoid of the consideration of their existential contexts and aptitudes. The consequences of applying 'the principiality of the apparent meaning qua conventional word-meaning association' to the regulative verses of the Qurʾan in light of the aforementioned assumptions is the following:

a. The resultant meanings are not contextual and holistic, and hence classify as 'literal'.
b. These literal meanings are considered as corresponding to the existential statuses of the relations of things to humans qua humans in the mind of God at present and in the future.
c. Hence, they are considered as 'the actual' regulations that are final, universal, and infallible.
d. This is the case for all the regulative verses of the Qurʾan, that is, those pertaining to devotional practices, human actions and interactions, and consumables.

In view of this and the preceding section, the *uṣūlī* outlook is that:

i. The regulative forms of the Qurʾan are to be adhered to as per 'the apparent meaning qua conventional word-meaning association' and as though they are 'primary actual regulations', all things being equal; thus, for instance, the duration of a fast in the month of Ramaḍān is fixed as commencing at dawn and ending at sunset in all times and places irrespective of the extreme hours (both too long and too short) that this entails in many regions of the world, all things being equal; likewise the norms of possessing slaves, concubines, and amputating the hands of thieves are fixed and applicable in all times and places, all things being equal.
ii. In extenuating circumstances, the duties of such 'primary actual regulations' are either laxed or absolved on account of the activity of the general normative precepts (*qawāʿid fiqhiyya*) of 'ease' and 'non-hardship' and hence superseded by 'secondary actual regulations';[31] for instance, persons unable to perform the extremely lengthy fasts in certain regions

30 Ibid., 123–25.
31 Ṣanqūr ʿAlī, *al-Muʿjam al-uṣūlī*, 531–32.

of the world are absolved of the obligation of fasting; and a starving person is obliged to consume the flesh of swine assuming it is the only consumable available; likewise Muslim collectivities residing in non-Islamic contexts are exempt from amputating the hands of thieves and flogging those who consume alcohol.

iii. The regulative forms of the Qurʾan governing human interactions are to be viewed as 'primary actual regulations' due to their being formulated in light of the principle of justice; thus, for instance, its regulative form stating that men can discipline their insubordinate wives is a primary actual regulation.

The *uṣūlīs* accept the phenomenon of the modification of regulative forms vis-à-vis the Qurʾan in the following contexts: (a) the abrogation of some of the regulative forms of former scriptures by the regulative forms of the Qurʾan,[32] (b) the abrogation of earlier regulative forms of the Qurʾan by later ones,[33] (c) the modification of the regulative forms of the Qurʾan by the normative precepts of 'ease' and 'non-hardship', and (d) the modification of the regulative forms of the Qurʾan pertaining to devotional practices in abnormal circumstances. The *uṣūlī*s maintain that the 'abrogated' regulative forms of the former scriptures and those of the Qurʾan itself were non-final, particular/contextual, and fallible, whereas the 'abrogating' regulative forms of the Qurʾan were final, universal, and infallible.[34] As for the modification of the regulative forms of the Qurʾan by the normative precepts of 'ease' and 'non-hardship', the *uṣūlī*s interpret the relationship between them in the following two ways:

1. The precepts are informative, instructive, and causally prior to the regulative forms. This means the regulative forms are issued by God in light of the precepts of 'ease' and 'non-hardship'; consequently, their formulations, which are based on 'the apparent meanings qua conventional word-meaning association', are intrinsically 'bearable'.[35] Obviously, God understands human nature, is aware of human aptitudes, and knows what is bearable for them. Thus, the precepts are viewed in the same manner as in the existential framework, which is as meta-legal principles that are informative and instructive at the stage of the consideration of Sharīʿa regulative forms (*iʿtibār al-ḥukm fī marḥalat al-thubūt*), prior to

32 Ibid., 136; al-Sayyid Abū al-Qāsim al-Mūsawī al-Khūʾī, *The Prolegomena to the Quran*, trans. Abdulaziz A. Sachedina (Qom: Ansariyan Publications, 1992), 191.

33 Ibid., 188–92.

34 Ibid., 192–94.

35 See Jaʿfar al-Subḥānī, 'Islamic Beliefs in Light of the School of Ahl al-Bayt' [in Arabic], Shia Online Library, https://shorturl.at/NwcUJ, 166–67.

the stage of their formulation and issuance logically speaking (*marḥalat al-ithbāt wa-l-ibrāz*). Accordingly, the relationship between such precepts and the regulative forms is vertical causally speaking, for they are formulated in light of the precepts of 'ease' and 'non-hardship'.

2. The precepts are modificatory after the formulation and issuance of regulative forms; this is in addition to being informative, instructive, and causally prior to them.[36] When adherence to regulative forms, which are 'bearable' all things being equal, is difficult for individuals due to extenuating circumstances, such as ill health, the duties of regulative forms are either laxed or absolved for such individuals due to the activity of the precepts.[37] Thus, 'primary actual regulations' are replaced by 'secondary actual regulations' stipulating the lack of duties for those unable to discharge the duties, for instance. Accordingly, the relationship between the precepts and the regulative forms is horizontal in terms of effecting modifications (as well as being vertical as discussed in the previous interpretation), for they can affect the latter after the latter's formulation and issuance by God in individual cases of hardship and difficulty.

The bases of the normative precepts of 'ease' and 'non-hardship' are the principles of 'ease' and 'non-hardship' in the Qur'an. These principles stem from and hence are subsumed under the principle of justice, which is presupposed throughout the Qur'an and is defined theologically as 'putting things in their rightful places'. The principle of justice is alluded to in verses of the Qur'an such as, 'God is never oppressive to His creatures' (Q. 3:182, 8:51, 22:10) and 'God does not task a soul beyond its capacity' (Q. 2:228).[38] Finally, as for the modification of the regulative forms of the Qur'an pertaining to devotional practices, such as shortening prayers during battle or praying while fleeing on foot or horseback, *uṣūlī*s are likely to agree that such formal changes are effected in order to convey and secure (or perpetuate, preserve, and accommodate) the essence of prayers in those circumstances; however, they would confine the process of modifying the devotional regulative forms of the Qur'an to the causes and instances of modification listed in the textual sources, which in this example is 'fear of the enemy's attack'; they would not extend it to the other genres of regulative forms.[39] To reiterate, the process of modifying devotional regulative

36 al-Muṣṭafawī, *al-Qawā'id*, 9–11.

37 See ibid., 296–98.

38 For examples of verses exhorting 'justice', see Q. 3:18, 4:58, 4:135, 5:8, 5:42, 7:29, 7:181, 10:47, 10:54, 11:85, 16:90, 42:15, 49:9, 57:25, 60:8.

39 This is clear upon a cursory reading of any *fiqh istidlālī* work; moreover, extending the process of regulative formal modification beyond the instances cited in religious texts is liable to be attributed with the designation of 'unwarranted analogy' (*qiyās*).

forms cannot be extended and applied beyond those instances listed in the Qur'an and/or other textual sources and other very similar cases pertaining to the same genres of devotional practices, that is, it cannot be extended and applied to other devotional practices whose forms have not undergone such modifications during the revelatory era and hence are not listed in the Qur'an and/or other textual sources.[40] This reluctance, in *uṣūl al-fiqh*, to consider applying the process of formal regulative modification to regulative forms whose forms were not modified during the revelatory period and hence are not listed in the Qur'an and/or other textual sources is indicative of the influence of the assumptions of 'finality', 'universality', and 'infallibility' of the Qur'an qua a communication of God on the *uṣūlī* outlook apropos the regulative forms of the Sharīʿa generally and the regulative forms of the Qur'an in particular; and as discussed previously, these assumptions ensue from the more fundamental assumption of the fixed nature of the existential statuses of the relations of things to humans qua humans in the realm of actuality and its corollary assumption of the equivalence of the notions of 'the actual' and 'actuality'.

In conclusion, the *uṣūlī* perspective on the regulative forms of the Qur'an is that they are intrinsically 'just' and 'bearable' and hence applicable in all times and places. Instances of difficulty are viewed as exceptions to the rule and hence would be modified or absolved for the duration of their unbearability.

The next section critiques the fundamental *uṣūlī* assumptions of the fixed nature of the existential statuses of the relations of things to humans qua humans in actuality, and the equivalence of the notions of 'the actual' and 'actuality'.

3 Critique of the *Uṣūlī* Assumptions: the Fixed Nature of the Existential Statuses in Actuality, and the Equivalence of 'the Actual' and 'Actuality'

There are two fundamental components underlying the *uṣūlī* outlook on the regulative forms of the Qur'an: a theological commitment or presupposition and an implicative philosophical assumption, where the latter both consolidates and is consolidated by the former as discussed in the previous sections:

a. The theological commitment or presupposition: God, who is Perfect and Omniscient, has declared the religion of Islam to be complete.[41]

40 A case in point is the aversion of *uṣūlī*s to modifying the length of fasts in regions where the fasts are either abnormally long or short.

41 See note 4 for allusions to other evidences.

b. The implicative philosophical assumption: the fixed nature of the existential statuses of the relations of things to humans qua humans in actuality.

The theological premise is evinced from the following verse of the Qurʾan: 'This day have I perfected your religion for you and completed My favour unto you, and have approved Islam as a religion for you' (Q. 5:3). Despite the declaration of the completion and perfection of 'your' religion in this verse, regulative verses continued being revealed after its revelation chronologically. Thus, the assertion of the completion and perfection of 'your' religion in this verse did not mark the point of the completion of the issuance of the regulative forms of the Qurʾan and the Prophet.[42] Based on this and the fact that the verse was revealed immediately after the Prophet and Muslims finished performing their first major pilgrimage (*ḥajj*), it can be surmised that the completion and perfection of 'your' religion mentioned in this verse marked the completion of the religion as a distinct, formal, and an organised religion with established devotional practices and a religious and spiritual identity.[43] To reiterate, the verse merely referred to the completion of the religion as an organised religion with a religious and spiritual identity and the establishment of its devotional practices, namely, the five daily prayers, fasting during the month of Ramaḍān, and the pilgrimage of *ḥajj*; the notion of the 'completion' of 'your' religion in the verse did not signify the immutability of its religious and spiritual identity

42 It could be claimed that the completion and perfection of 'your' religion mentioned in this verse included the regulative forms that had been issued up until that point. However, one then has to explain the phenomenon of issuance of regulative forms after the revelation of this verse, and hence the meaning of 'completion' and 'perfection' therein.

43 The usage of the second-person plural pronoun as the direct objects and possessive pronouns in the verse ('I perfected your religion for you', 'completed My favour unto you', and 'approved Islam as a religion for you') signifies the perfection and completion of the religion vis-à-vis the existential aptitudes and contexts of its immediate audience; for had the religion of Islam qua 'the organised religion of all Muslims' been completed, then the verse would have stated unequivocally, 'I have perfected Islam and I have completed My favours'. Furthermore, it should be noted that the Qurʾan states that the prophets conveyed the same one religion – Islam – on the one hand, and yet on the other, it refers to each of the previous Abrahamic faiths by its distinct spiritual identity marker and name. This means all the Abrahamic faiths were regarded as 'Islam' by God and hence declared to be 'perfect' and 'complete' as distinct, formal, and organised religions with established devotional practices and religious and spiritual identities for their respective adherents at particular moments in history, and yet their societal and interactional regulations continued to be modified by subsequent prophets. This is evidence that the regulative aspect of every religion, whose function is to regulate humans, cannot be deemed to be 'perfect' or 'complete' beyond its original existential context and other similar contexts due to the dynamic nature of human existence.

markers or even its regulative forms pertaining to the devotional practices in every time and region.[44]

In any case, the *uṣūlī* presumptions of the infallibility, eternality, and universality of the regulative forms of the Qurʾan, all of which are encapsulated in the notion of 'finality' vis-à-vis the regulative forms of the Sharīʿa generally, follow on naturally from the acceptance of the assumptions of the fixed nature of the existential statuses of the relations of things to humans qua humans in actuality and the equivalence of the notions of 'the actual' and 'actuality'. However, if these assumptions are inaccurate, then the consequent presumptions are inaccurate too. In other words, if the relations of things to humans qua humans in manifested existence are dynamic, and hence their respective existential statuses subject to flux in actuality, then the regulative forms of the Qurʾan can only be deemed to be 'infallible' and 'universal' with respect to the individuals and collectivities of the existential contexts they were formulated in and for and the individuals and collectivities of other similar contexts; this is because it is only in these contexts that one can be certain of the correspondence between 'the actual' (regulations of the Qurʾan) and (the existential statuses of the relations of things to humans qua 'the individuals and collectivities comprising the immediate audience of the Qurʾan' in) 'actuality'; for beyond these contexts, one cannot be certain of the said correspondence; and hence it is necessary to distinguish between 'actuality' and 'the actual' regulative forms of the Qurʾan.

The assumption of the fixed nature of the existential statuses of the relations of things to humans qua humans in actuality is untenable because the nature of manifested existence, which includes human beings and their

44 Evidently, the regulative forms of the five daily prayers and fasting during Ramaḍān are in need of modification vis-à-vis Muslims residing in regions with abnormally long or short days and nights. Change due to differences and/or growth in the existential aptitudes and contexts of individuals and collectivities necessitates change in the forms of regulations in order to continue to facilitate the optimal growth of individuals and collectivities, irrespective of whether regulative forms are devotional, societal, or pertain to consumables. Obviously, novel challenges require minds to conceive of regulative forms afresh in all these categories of regulative forms, such as Muslims residing on the International Space Station for a few months or the rights of artificially intelligent workers; a Muslim astronaut is in need of regulative forms instructing on the rules of prayers in zero gravity and environments in which terrestrial sunrises and sunsets are not experienced. In view of this, the claim that Islam is complete and comprehensive vis-à-vis its current corpus of regulative forms is inaccurate both with respect to unprecedented future challenges and conveying their respective essences or values in differing contexts and hence facilitating growth therein.

contexts, is one of constant flux and change.[45] This flux necessitates change vis-à-vis the relations of things to humans and hence their existential statuses too in actuality.[46] In view of this, then, the regulative forms of the Qur'an were formulated for their original contexts primarily, given they were revealed in and for particular contexts, and other similar existential contexts secondarily. Thus, they are 'actual' regulative forms corresponding to the existential statuses of the relations of things to humans qua 'humans who were the immediate audience of the Qur'an in seventh-century Arabia' in actuality. To uphold the assumption of the finality of the regulative forms of the Qur'an today is to claim that they are 'the actual' regulative forms corresponding to the existential statuses of the relations of things to humans qua 'humans today' in actuality; this assumes that there has been no change in the existential aptitudes and contexts of humans since the revelatory era, which is patently absurd, for it ignores the dynamic nature of manifested existence and hence of the existential statuses of the relations of things to other things in the realm of actuality. The result is the conflation and equivalence of the notions of 'the actual' and 'actuality', the consequence of which is that it is not possible to distinguish between the essences or growth values of regulations and their context-based forms. The essences of the regulative forms of the Qur'an are final, acontextual/universal, and infallible, for they pertain to and are perpetually in line with the existential property and telos of growth, but their original forms are temporal, contextual, and fallible, and hence may be rendered obsolete as humankind grows (rationally and morally) and contexts change.

In light of the dynamic nature of manifested existence, the following two points ensue vis-à-vis 'actuality' and 'the actual':

a. The condition of humans and other things in manifested existence is one of evolution and dynamism; hence their relations to things and each other in manifested existence are subject to flux, which means their existential statuses in the realm of actuality are also subject to change. Flux in human aptitudes and contexts can result in either unprecedented challenges requiring the formulation of novel regulative forms or significant changes over time necessitating the modification of existing regulative

45 Arif Abdul Hussain, 'The Primacy of the Freedoms of Thought and Expression within the Existential Framework: Implications on Sharī'a Regulations, Rights, and Freedoms', in *Free Speech, Scholarly Critique and the Limits of Expression in Islam: Proceedings of the 9th AMI Contemporary Fiqhī Issues Workshop*, ed. Wahid M. Amin (Birmingham: AMI Press, 2022), 14–16.

46 Abdul Hussain, 'The Conflict between the Actual and Apparent Regulations – Part 2', 7–9, 11–14.

forms in order to safeguard and facilitate the attainment of the essences or growth values in the original forms.

b. The regulative forms of the Qur'an correspond with 'actuality' in their original contexts and other similar contexts only; accordingly, they qualify as 'the actual' regulative forms therein only and not other differing contexts. This means the regulative forms of the Qur'an were never intended to be efficacious in facilitating the growth of individuals and collectivities in every possible existential context, and hence they were never required to convey the intended essences or values beyond their immediate and similar contexts.

In summary, the regulative forms of the Qur'an do not correspond to actuality, and hence do not classify as 'the actual' (regulations) beyond their own and other similar existential contexts; and they were never meant to be deemed as eternal or universal regulative forms to be applied in all times and places. Thus, there is 'no finality' with respect to the 'forms' of the regulations of the Qur'an, but there is 'finality' (which includes its subsidiary notions of 'eternality', 'universality', and 'infallibility') with respect to the 'essences' or 'growth values' inherent in the 'forms' of the regulations of the Qur'an, which is elaborated upon in the next section.

The next section delineates the outlook of the existential framework on the regulative forms of the Qur'an.

4 The Existential Outlook on the Regulative Forms of the Qur'an

Manifested existence is dynamic as per 'the principiality of substantial motion' (*aṣālat al-ḥaraka al-jawhariyya*) therein; it is in constant motion, moving to completion by actualising its innate potential gradually. Thus, motion is both the principal norm and the telos of manifested existence on account of the existential property of growth, for manifested existence is imbued with the property of growth, and hence its raison d'être is to grow and complete itself.[47] It is not merely the bodies of the individuals and collectivities of the human species that are subject to evolutionary motion and growth but also their minds and souls. Technically, growth is said to occur along the vertical and horizontal axes of the existence of things; growth along the vertical axis

47 Growth, or motion to completion, is an existential property on account of 'the principiality of existence' (*aṣālat al-wujūd*) and 'the principiality of substantial motion' (*aṣālat al-ḥaraka al-jawhariyya*) and as such, manifested existence cannot be devoid of it.

refers to the motion of the individuals and collectivities of any given species from potentiality to actuality, and growth vis-à-vis the horizontal axis refers to the degrees of growth of individuals and collectivities relative to one another either within the same or differing eras.[48]

In view of this, since 'the actual' (*al-wāqiʿī*) regulative forms are the formulations and issuances of the existential statuses of the relations of things to humans qua humans in 'actuality' (*al-wāqiʿ*) or the mind of God, then perpetual flux vis-à-vis manifested existence necessitates that there will be change in those relations in manifested existence and hence in the existential statuses in 'actuality'. If regulative forms do not reflect such changes in the existential statuses in 'actuality', then they will be suboptimal vis-à-vis growth at best or outrightly unjust at worst. Moreover, the phenomenon of perpetual flux vis-à-vis manifested existence affects every type of regulative form: those pertaining to devotional practices, human interactions, and consumables. This means 'the actual' regulative forms qua God's considerations of the existential statuses of the relations of things to humans qua humans in 'actuality' (*iʿtibār al-ḥukm fī marḥalat al-thubūt li-l-ḥukm*) are in a constant state of flux. Thus, it is inaccurate to claim equivalence between the notions of 'the actual' and 'actuality' given that 'the actual' regulative forms of the Qurʾan corresponded to 'actuality' only during the revelatory and other similar contexts. To reiterate, the regulative forms of the Qurʾan were formulations and issuances of God's considerations of the existential statuses of the relations of things to humans qua 'the immediate audience of the Qurʾan' in actuality; in other words, they were formulated in light of God's consideration of the vertical and horizontal axes of existential growth of the individuals and collectivities that comprised the immediate audience of the Qurʾan.

This section discusses (a) the existential features of the regulative forms of the Qurʾan; (b) the implications of the non-equivalence of the notions of 'the actual' and 'actuality' on the presumption of the 'finality', 'universality', and 'infallibility' of the regulative forms of the Qurʾan; (c) the worth of 'the apparent meaning qua conventional word-meaning association' of the regulative verses of the Qurʾan beyond the revelatory and other similar contexts and the method of formulating regulative forms in the absence of such 'apparent meaning'; and (d) the role of the notions of 'essence' and 'form' in the formulation of new *societal* regulative forms in the existential framework.

48 For information on the notions of the vertical and horizontal axes of existential growth, see Abdul Hussain, 'The Conflict between the Actual and Apparent Regulations – Part 2', 7–9.

4.1 The Existential Features of the Regulative Forms of the Qur'an

The purpose of the regulative forms of the Qur'an was to regulate the lives of humans qua 'the immediate audience of the Qur'an' in their individual and collective capacities, and thereby facilitate the actualisation of their innate potential and hence their rational, moral, and spiritual growth. The fulfilment of this purpose (the growth of individuals and collectivities) is contingent upon regulative forms that address the needs of both the body and spirit of the individuals and collectivities of any given society. Congruence between regulative forms and the bodily and spiritual needs of individuals and collectivities results in balance (between these two aspects of the humans), and hence peace, harmony, and the fulfilment of the needs of individuals and collectivities without infringing upon the rights of the 'other'. Accordingly, the regulative forms of the Qur'an were formulated in light of the existential aptitudes and contexts of its immediate audience, as is evinced in all its regulative verses including the example of Q. 4:34 cited at the beginning of this chapter (the context of which was the case of domestic violence brought before the blessed Prophet). A chronological reading of the verses of the Qur'an reveals that regulative forms were few and minimalistic during the Meccan period of the revelatory era, that is, prior to the Prophet's migration to Medina, after which they increased gradually both in number and sophistication to accommodate the increasing aptitudinal and contextual needs of the individuals and collectivities of Medina.[49]

As discussed in previous sections, the regulative forms of the Qur'an were formulated in light of existential principles. They include the principles of 'justice', 'ease', and 'non-hardship' in religion. These were instrumental in the formulation and issuance of the forms of the essences or growth values of the regulations of the Qur'an. They contributed to ensuring that the regulative forms were formulated and issued in light of the existential aptitudes and contexts of the immediate audience of the Qur'an. In this way, the regulative forms addressed and catered for their bodily and spiritual needs, thereby facilitating optimal growth. The principles of 'justice', 'ease', and 'non-hardship' were not only influential during the process of formulating the regulative forms of the Qur'an, but rather they were also contributory in the process of modifying regulative forms in extenuating circumstances and thereby accommodating,

49 This is evinced from a chronological reading of the chapters of the Qur'an.

safeguarding, and continuing the applicability of the essences or values of those regulative forms in differing contexts.[50]

Other meta-legal principles that (a) are subsidiary, subordinate, and stem from the principles of 'justice', 'ease', and 'non-hardship', and (b) were influential in the formulation of the societal regulative forms of the Sunna specifically (alongside the existential aptitudes and contexts of the immediate audience of the Qur'an), include the precepts of 'the accuracy of testimonies' and 'just trade'.[51]

In view of the above, the *uṣūlī* assertion of the intrinsic 'bearability' and 'justness' of the regulative forms of the Qur'an is true with respect to the contexts (and existential aptitudes) they were formulated in and for and other similar contexts (and existential aptitudes) only; it is not true with respect to contexts (and existential aptitudes) differing from those of the revelatory era and other similar contexts.

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50 See Q. 22:78: 'He has not laid upon you [any] hardship in religion'. This verse conveys the fact that the norm of God is to formulate and issue regulative forms in light of the principles of 'ease' and 'non-hardship' vis-à-vis individuals and collectivities. Examples of regulative verses offering alternative regulative forms when existing ones became 'unbearable' and in which the principles of 'ease' and 'non-hardship' are either explicitly stated or presupposed include (a) Q. 2:185, in which travellers and sick persons are exempted from fasting during Ramaḍān for the duration they are travelling or ill, respectively, and instructed to make up the missed days after the month has ended; the verse also provides the rationale for the modification, which is that 'God desires ease for you, and He does not desire hardship for you'; (b) Q. 2:239, in which those in danger are instructed to perform their prayers on foot or while riding and hence are to forego the acts of bowing and prostrating and the requirement of the direction of prayers; and (c) Q. 4:101–4, in which soldiers are instructed to shorten their prayers during battle.

Similarly, see Q. 16:90 vis-à-vis the principle of justice: 'Indeed, God commands justice and the doing of good'. Such verses exhort individuals and collectivities comprising the immediate audience of the Qur'an to abide by the principle of justice. Interestingly, such verses never define 'justice' on account of it being self-evident, existential, and contextual in its applications. 'Justice' is to give each thing its rightful due in accordance with its existential aptitude and context. Thus, in the case of Q. 4:34, cited at the beginning of this chapter, pertaining to the case of domestic violence brought before the Prophet, the egalitarian judgement of the Prophet was superseded by the said regulative verse based on the existential aptitudes of men and women generally at that time and the prevailing views and norms regarding gender-specific societal roles and spousal relations, rights, and responsibilities. The same is the case regarding the regulative verses pertaining to the shares of inheritance, divorce, and child maintenance.

51 These subsidiary and subordinate meta-legal principles (that is, the precepts of 'the accuracy of testimonies' and 'just trade') can be derived from Q. 2:282 and 4:29.

To summarise, the following are the main points vis-à-vis the existential and meta-legal principles that are either stated explicitly or presupposed in the regulative verses of the Qur'an:

1. In addition to the considerations of the existential aptitudes and contexts of the immediate audience of the Qur'an, the principles of 'justice', 'ease', and 'non-hardship' are the fundamental guiding principles in the formulation of regulative forms, the assignment of rights, and the modification of regulative forms.
2. The precepts of 'the accuracy of testimonies' and 'just trade' are examples of subsidiary guiding principles in the formulation of regulative forms, the assignment of rights, and the modification of regulative forms, in the domain of societal human interactions and trade.
3. The fundamental guiding principles also serve as means of absolving the duties of individuals who are unable to discharge them and for which there is no alternative.

This existential understanding of these fundamental guiding principles differs radically from the *uṣūlī* appreciation of them. The latter regard them mainly as referential precepts that legists appeal to and invoke in order to absolve individuals from adhering to the duties of the Sharī'a regulative forms in extenuating circumstances; this means the relationship between them and regulative forms is horizontal, for they effect modifications in them after their issuance by God in individual cases of hardship.[52] In the existential framework, however, these guiding principles are meta-legal and hence instrumental at the level of (a) God's considerations of the regulative forms and rights in 'actuality', and hence His initial formulations of them as regulative forms and rights in the textual sources, and (b) God's considerations of modified regulative forms and rights in 'actuality', and hence His formulations of them as such in the textual sources.

4.2 The Implications of the Non-equivalence of the Notions of 'the Actual' and 'Actuality' on the Presupposition of the 'Finality', 'Universality', and 'Infallibility' of the Regulative Forms of the Qur'an

The existential property of growth means that everything in manifested existence is subject to existential flux. The implication of this is that the regulative forms of the Qur'an are not 'final', 'universal', and 'infallible' in (a) conveying and securing their essences or growth values in and for contexts (and

52 al-Muṣṭafawī, *al-Qawā'id*, 9–15.

existential aptitudes) differing from those of the immediate audience of the Qur'an and hence (b) in facilitating growth in such contexts. However, their non-infallibility in fulfilling their purpose (which is to convey and secure their respective essences or growth values in order to facilitate the maximum possible growth) extends to the revelatory contexts themselves. This is because the regulative forms of the Qur'an qua 'regulative forms' could never achieve the ideal of being 'the best forms' (that is, apropos conveying and securing their essences and values, and hence in facilitating the maximum possible growth) with respect to every individual of the collectivities of the immediate audience of the Qur'an. This incapacity (to convey and secure their essences and values vis-à-vis every individual of the collectivity and hence facilitate the maximum possible growth) is an essential feature of regulative forms qua regulative forms due to their being formulated in light of 'the lowest common denominator' or 'the average' among any given collectivity in terms of existential aptitudes. Thus, it is more appropriate to state that the regulative forms of the Qur'an were 'optimal' in conveying and securing their essences and values in the contexts they were formulated for, rather than stating that they were 'final', 'universal', and 'infallible'.

The impossibility of the regulative forms of the Qur'an to be 'infallible' – with respect to every individual of the collectivities comprising the immediate audience of the Qur'an – can be evinced from the following examples of the verses of the Qur'an pertaining to the Sharīʿa-ordained regulative forms of testimony: (a) Q. 4:111–13 was revealed warning the Prophet of deceit on the part of witnesses after he had adjudicated a case based on their testimonies; he subsequently revised his judgement in light of new evidence; (b) Q. 5:106–8 affirms that the testimonies of two male witnesses is undermined when two other credible witnesses offer counter-testimonies; and (c) the tonality of Q. 2:282, which implies that the testimonies of two female witnesses are to be counted as a single testimony (of a male witness) judicially, affirms the fallibilistic nature of the process of establishing the facts and hence by extension the regulative forms governing it. Thus, it is clear that the Qur'an's regulative forms were formulated for its immediate audience within the limitations of their context and in accordance with the existential aptitudes of either 'the lowest common denominator' or 'the average' among them. Hence, its regulative forms could not be more than 'optimal', that is, they could never claim to be 'infallible' with respect to all the individuals they addressed in any genre of regulative forms (devotional practices, human actions and interactions, and consumables) let alone all the individuals of every possible and conceivable context.

Undoubtedly, the regulative forms of the Qur'an are 'infallible' in terms of their being formulated in accordance with the existential aptitudes and needs

of either 'the lowest common denominator' or 'the average' among its immediate audience. They were 'the actual' regulative forms insofar as they did correspond to the existential statuses of the relations of things to humans qua 'the immediate audience of the Qurʾan' in 'actuality'. However, they cannot be considered 'the actual' regulative forms, and hence 'infallible', vis-à-vis other individuals and collectivities of different existential aptitudes and contexts of (i) the same era, that is, along the horizontal axis, or (ii) different eras, that is, along the vertical axis; at most, its regulative forms could be claimed to be 'optimal' with respect to them too. Inevitably, as individuals and collectivities actualise their innate potential and grow over time, past regulative forms lose not only their 'infallibility' within the same region but also their 'optimality' in the same and other regions too. This is corroborated by the fact that successive scriptures were revealed periodically, and some earlier regulative forms of the Qurʾan were abrogated by later ones. Past regulative forms lose their 'optimality' due to changes in the existential aptitudes and contexts of individuals and collectivities, and so they no longer convey and secure their essences or growth values, and hence facilitate the maximum possible growth, with respect to individuals and collectivities with different existential aptitudes in differing contexts. Therefore, it is clear that the forms of regulations are 'non-final' essentially.

In summary, the main points vis-à-vis the 'infallibility' of the regulative forms of the Qurʾan are as follows:

1. The correctness of the attribution of the statuses of 'infallibility' and 'optimality' to the regulative forms of the Qurʾan is restricted to the revelatory and other similar contexts only.
2. Beyond the revelatory and other similar contexts, the regulative forms of the Qurʾan lose their 'optimality' along both the horizontal and vertical axes of the existential growth of individuals and collectivities.
3. Therefore, the regulative forms of the Qurʾan are not 'final', 'universal', or 'infallible' in conveying and securing their essences and growth values, and hence facilitating the maximum possible growth, with respect to all people of every possible, conceivable context.

4.3 'The Apparent Meaning qua Conventional Word-Meaning Association' of the Regulative Verses of the Qurʾan beyond the Revelatory and Other Similar Contexts, and the Formulation of Regulative Forms in the Absence of Such 'Apparent Meaning'

Given that there is 'change in actuality' and hence 'the actual' regulative forms of the Qurʾan do not correspond with 'actuality' beyond their own and other

similar contexts, no certitude-based sources or evidences exist from which 'the actual' regulative forms pertaining to contexts differing from the revelatory and other similar contexts can be extrapolated. This means 'the apparent meaning qua conventional word-meaning association' of the regulative verses of the Qur'an (which is the basis of the legists' extrapolations of the regulative forms of the Qur'an) do not yield regulative forms that correspond to the existential statuses of the relations of things to humans qua 'individuals and collectivities with different aptitudes and in differing contexts to those of the revelatory and other similar contexts' in 'actuality'. Inevitably, such regulative forms will be suboptimal in conveying and securing their essences or growth values, and hence facilitating the maximum possible growth, with respect to individuals and collectivities with different existential aptitudes and in differing contexts to those of the immediate audience of the Qur'an. Thus, it is untenable to regard the regulative forms of the Qur'an as 'infallible' regulative forms beyond the revelatory and other similar contexts on the basis of the presumptions that (a) the regulative verses of the Qur'an carry regulative forms that correspond to 'actuality' vis-à-vis humans qua humans, and hence (b) their appreciation via 'the apparent meaning qua conventional word-meaning association' yields God's intended regulative forms for all individuals and collectivities in every possible and conceivable context. In light of this inefficacy (of 'the apparent meaning qua conventional word-meaning association' of the regulative verses of the Qur'an to yield regulative forms corresponding to 'actuality' beyond the revelatory and other similar contexts), the question is how and by what means are regulative forms to be reformulated so that they convey and secure the essences or growth values of the original regulative forms of the Qur'an and hence continue to facilitate the maximum possible growth for individuals and collectivities of different existential aptitudes and contexts.

Legists are able to extrapolate the intended essences or growth values inherent in the regulative forms of the Qur'an on account of the fact that the regulative forms corresponded to the existential statuses of relations of things to humans qua 'the immediate audience of the Qur'an' in 'actuality' and hence were optimal vis-à-vis the rational, moral, and spiritual growth of the individuals and collectivities they were formulated for. As discussed in previous sections, the regulative forms of the Qur'an were formulated, and modified occasionally, in light of the fundamental guiding principles of 'justice', 'ease', and 'non-hardship' to ensure that they were optimal in conveying and securing the intended essences or growth values. Thus, the regulative forms of the Qur'an provide valuable insights into the process of their own formulation. In some of its regulative verses, the essences of its regulative forms are stated explicitly, and in the rest, the essences are implied and become manifest upon

reading them existentially, that is, in light of the existential property and telos of growth. Once the particular growth facet or essence of any given regulative form of the Qur'an is known, then a newer regulative form can be conceived of in light of (i) the aforementioned guiding principles, (ii) an appreciation of the existential aptitudes and contexts of the individuals and collectivities it is being formulated for, (iii) the existential telos of growth, and (iv) all other means that assist in the reformulation of its particular growth facet or essence.[53] The justification for resorting to such means and sources, which are liable to be attributed with the charge of 'lying beyond the text of the Qur'an', is that the regulative forms of the Qur'an are themselves a reading of the existential contexts and aptitudes of the individuals and collectivities that comprised its immediate audience, and hence they are not extraneous means and sources in the least. Therefore, the means of formulating regulative forms on account of not being able to rely upon 'the apparent meaning qua conventional word-meaning association' of the regulative verses of the Qur'an is to determine the essences or growth values of the regulative forms of the Qur'an primarily and then to formulate befitting forms that convey and secure those essences.

4.4 The Role of the Notions of 'Essence' and 'Form' in the Formulation of New Societal Regulative Forms in the Existential Framework

Despite the diversity of genres, the regulative forms of the Qur'an can be reduced to two types from the perspective of their essences:

1. Those formulated on the basis of 'the general essence' or 'the generic existential facet of growth'; these comprise the societal regulative forms of the Qur'an mainly.
2. Those formulated on the basis of 'particular essences' or 'particular facets of growth' contained within the regulative forms of the Qur'an; they comprise regulative forms pertaining to devotional practices, consumables, and 'marriable/unmarriable persons'.

The societal regulative forms of the Qur'an were either endorsed or modified forms of pre-Qur'anic norms, and as such they were not novel introductions. Such pre-Qur'anic norms pertained to transactions, the marriage contract, divorce, retributive justice, inheritance, and so on. Norms requiring modification were presented in the regulative verses of the Qur'an as norms that had undergone modification in light of the principles of 'justice', 'ease', and 'non-hardship', 'human dignity and nobility', and the existential contexts and

53 Other means include knowledge from the humanities and sciences.

aptitudes of the people.[54] Since the principle of justice was the basis of the modifications of pre-Islamic societal norms in the Qur'an, it is the yardstick in the existential framework to (a) judge whether the societal regulative forms of the Qur'an are optimal in facilitating the growth of individuals and collectivities, and (b) modify them if they are not.[55]

As discussed in previous sections, the existential property of growth means there is constant flux in manifested existence. In the human domain, this translates as growth in existential aptitudes as a result of humans actualising their potential gradually. The principle of justice demands that such growth be met by modifying societal regulative forms so that they continue to be optimal in facilitating the rational, moral, and spiritual growth of individuals. Similarly, 'human dignity and nobility' dictates that such growth be mirrored by changes in the methods of punishments; thus, regulative forms instructing that the limbs of thieves be decapitated in order to deter theft and protect society can be replaced by regulative forms stipulating imprisonment and/or moral education, therapy, and community service so long as they achieve the same results, namely, deterring theft and protecting society.[56]

Generally, societal regulative forms can be conceived of and hence formulated independently of the textual sources of the Sharīʿa. The more demanding and detailed areas vis-à-vis the modification of the regulative forms of

54 Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1982), 6–14. Even the devotional practices of Islam had antecedent forms in pre-Islamic Arabia; for instance, the pilgrimage of *ḥajj* was a norm in pre-Islamic Arabia, as were the devotional practices of prayers and fasting, which were practised by pre-Islamic, Arabian Jews and Christians (see Q. 2:125, 22:26–27, 2:183; Abdul Hussain, 'A Functional Interpretation of *Zakāt*', 9). Similarly, norms pertaining to diet and 'marriable/unmarriable persons' were established and listed in the Bible (see Lev. 20:10 onwards). All such pre-existing norms were either endorsed or modified and supplemented in the regulative verses of the Qur'an.

55 For instance, Q. 4:34 designated 'men' as 'the governors of women' and supplied the rationale for the designation, which was 'God's bestowal of existential merit upon men'; in other words, the superior rights conferred upon men were due to their existential state. It follows from this that if the existential aptitudes of women are equal to those of men in any given context (such as those that facilitate the actualisation of their potential), then the principle of justice demands that regulative forms are modified to be egalitarian vis-à-vis rights and responsibilities within the familial, marital, and societal domains. Consequently, men would not have the right to castigate their spouses, the unilateral right to divorce, double shares of inheritance, nor privileged societal positions, in such contexts. See Abdul Hussain, 'The Existential Perspective on "God's Bestowal of *Faḍl* upon Men"', 12–32.

56 In the context of such growth in existential aptitudes, 'human dignity and nobility' will necessitate the formulation of regulative forms that abrogate the regulative forms pertaining to slavery, concubinage, and 'the othering' of non-Muslims too.

the Qurʾan in the existential framework are those pertaining to non-societal norms, that is, regulative forms in the domains of the devotional practices, consumables, and some areas of societal regulative forms. The methodology of determining the essences and values of such regulative forms is complex and requires lengthy expositions; and as such its delineation is beyond the scope of this chapter.[57]

5 Conclusion

*Uṣūlī*s consider the regulative forms of the Qurʾan (*āyāt al-aḥkām*) to be infallible, immutable, and universal. This means they are applicable and enforceable vis-à-vis individuals and collectivities irrespective of their existential aptitudes and contexts. This position assumes the fixed and immutable nature of the statuses of the relations of things to humans qua humans vis-à-vis the values of 'benefit' and 'harm' in the mind of God. This is because they maintain that the regulative forms of the Qurʾan are instances of 'the actual' (*al-wāqiʿī*) till the Day of Reckoning, which means they correspond to the existential statuses of the relations of things to humans qua humans in the mind of God (or 'actuality' – *al-wāqiʿ*) for the remainder of human existence upon this earth.

57 For an introduction to the application of the notions of 'essence' and 'form' as per the existential framework generally and in the domains of regulative forms pertaining to the devotional practices and consumables in particular, see Arif Abdul Hussain, *Islam and God-Centricity: Plurality and Mutability of Religion* (Birmingham: Sajjadiyya Press, 2022), 57–173; Abdul Hussain, 'A Functional Interpretation of *Zakāt*'; Abdul Hussain, 'The Existential Perspective on "God's Bestowal of *Faḍl* upon Men"'. The following is an example of the essence of a regulative form in the domain of devotional practices: based on the verses of the Qurʾan on fasting (Q. 2:183–85, 2:187) and the *ḥadīth* literature (the narrations of the Prophet and his blessed family), the legist is able to discern that the essence of the obligatory practice of fasting during the month of Ramaḍān is 'to abstain from sexual activity and the consumption of food and drink for the majority of the waking hours of each day of the month in accordance with what is "bearable" for the "average" person and for the sake of the refinement of the soul'. With respect to the immediate audience of the Qurʾan, this essence was conveyed and secured by the regulative form of the Qurʾan stipulating that each fast commenced at dawn and terminated at sunset, that is, a conventional day of twelve and a half to sixteen hours depending on which season the month of Ramaḍān fell in any given year in the Hejaz. In regions of the earth with abnormally long or short periods of daylight, the regulative form would not stipulate the duration of each fast in terms of 'sunrise' and 'sunset', for that would entail contravening the 'essence'; rather, the duration would be defined in terms of the conventional meaning of 'day' and 'night'. Additionally, recourse would be made to the medical sciences to ascertain what constitutes 'a fast' that is 'bearable' vis-à-vis the body and given that it is to be performed daily for a month.

The result is a conflation in their discourse between the notions of 'the actual' (*al-wāqiʿī*) and 'actuality' (*al-wāqiʿ*).

However, the Qurʾan is emphatic that its regulative forms were based on the principles of 'justice', 'ease', and 'non-hardship'. This means they were formulated in light of the contexts and existential aptitudes of the individuals and collectivities they were addressing, which proves that the regulative forms of the Qurʾan were contextual and not acontextual, and hence they were not infallible, immutable, and universal; it also is demonstrative of the existential, fundamental, and meta-legal nature of the principles of 'justice', 'ease', and 'non-hardship' in the formulation of its regulative forms. Moreover, the dynamic nature of manifested existence as per 'the principiality of substantial motion' (*aṣālat al-ḥaraka al-jawhariyya*) means that the relations of things to humans are in flux, and hence their existential statuses in 'actuality' are subject to change. Consequently, the notions of 'the actual' and 'actuality' must be distinguished from each other. This is because the regulative forms of the Qurʾan classify as instances of 'the actual' during the revelatory and other similar contexts only and not for other differing contexts; hence, they only correspond to the existential statuses of the relations of things to humans qua 'the immediate audience of the Qurʾan' in 'actuality' and not to the existential statuses of the relations of things to humans qua 'humans of differing existential aptitudes and contexts to those of the revelatory era' in 'actuality'.

The following are the conclusions of this chapter: (a) the formulation and issuance of the regulative forms of the Qurʾan were based on the existential statuses of the relations of things to humans qua 'the immediate audience of the Qurʾan' in 'actuality', which in turn were based on the considerations of the existential aptitudes and contexts of its immediate audience and the principles of 'justice', 'ease', and 'non-hardship'; (b) the regulative forms of the Qurʾan do not correspond to 'actuality' beyond their own and other similar contexts, and hence are not optimal vis-à-vis the rational, moral, and spiritual growth of individuals and collectivities in different contexts and with diverse existential aptitudes; (c) despite this non-correspondence with 'actuality', the regulative forms of the Qurʾan do yield the 'general' and 'specific' essences or growth values that they encapsulated, safeguarded, and upheld; and (d) accordingly, it is possible to formulate new regulative forms in light of (i) the 'general' and 'specific' essences or growth values of the regulative forms of the Qurʾan and the Prophet, (ii) the existential aptitudes and contexts of the individuals and collectivities of newer contexts, and (iii) the principles of 'justice', 'ease', and 'non-hardship'. In this way, legits will ensure that regulative forms continue to facilitate the growth of individuals and collectivities in different contexts and with diverse existential aptitudes optimally.

Finally, based on the distinction between the notions of 'the actual' and 'actuality', it is clear that the regulative forms of the Qur'an were never meant to be deemed as eternal or universal regulative forms that are to be applied in all times and places. Therefore, there is 'no finality' with respect to the 'forms' of the regulations of the Qur'an; however, there is 'finality' (and hence 'eternality', 'universality', and 'infallibility') with respect to the 'essences' or 'growth values' inherent in the 'forms' of the regulations of the Qur'an.

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