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THE LEGAL MAXIM “DESCRIPTION IN THE PRESENT IS IRRELEVANT, WHILE IN THE ABSENT IT IS CONSIDERED”: DOCTRINAL APPLICATIONS IN ISLAMIC FAMILY LAW

Hajed A. Alotaibi¹Saud H. Alharthi²

¹ Associate Professor, Department of Sharia, College of Sharia and Law, Majmaah University, Kingdom of Saudi Arabia.

² Associate Professor, Department of law, College of Judicial studies and regulations, Umm Alqura University, Kingdom of Saudi Arabia

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Corresponding author: Hajed A. Alotaibi

(h.alotaibi@mu.edu.sa)

ABSTRACT

This paper will review the juristic maxim of al-waṣf fī al-Hadiyat laghw wa-fī al-ghaib muktabar (description in the present is irrelevant, in the absence irrelevant) and show how it has contributed to the systematic organisation of rights, remedies and the level of evidence required in the context of Islamic family law. The study uses classical Sunni works of fiqh, particularly those retrieved by Ḥanafī, Mālīkī, Shafī‘ī, and Ḥanbalī, to restructure the epistemic elucidation of the maxim: descriptions acquire legal efficacy when they substitute for immediate perception and, accordingly, inform the assent to be informed, as applied to the classical Sunni sources of fiqh. It begins the paper by showing how the maxim assists in regulating the establishment of marriage by maintaining the materiality of descriptive representations and conditions, especially in cases where social norms restrict direct observation, and by offering redress against misdescription through options such as rescission or annulment. It still focuses on the application of the maxim to flaws in marriage (‘uyūb) and dowry (mahr) and the distinction of jurists between visible facts and concealed or absent qualities that constituted the case of actionable false (tadlīs). It also analyses the mechanisms of dissolution, including ṭalāq, zihār, and li‘ān, in which the maxim serves as a means of control over potential or rhetorical descriptions and helps to evade disproportionate judicial consequences. Finally, the paper concludes by deriving contemporary judicial and policy implications, on how the maxim can be an internally based system of fiqh governing an evidentiary discipline, proportionality and protection against abuse in family-law adjudication and reform.

KEYWORDS: Islamic family law; legal maxims (qawā‘id fiqhiyyah); misrepresentation (tadlīs); marital defects (‘uyūb); divorce (ṭalāq)

1. INTRODUCTION

The Islamic law of the family is based on an elaborate system of legal maxims (*qawai fihiyyah*) that serves as an interpretive instrument to guide juristic reasoning, harmonise dogma, and, most importantly, determine judicial rulings. These maxims are not simply summative of individual rules; instead, they serve as normative bridges between sources and principles on the one hand, and particular cases on the other where there is disagreement over the facts, incompleteness of evidence, or recurrent patterns of uncertainty in social practice (Kamali, 2008; Hallaq, 2009). In that regard, *qawaaidd* mirror the logic of Islamic jurisprudence and its ability to adapt to shifting social realities without compromising the continuity of the doctrines.

One of these maxims, the rule according to which the description in the present is a matter of law irrelevant, and the description in the absent a matter of law relevant (*al-waṣf fi al-ḥādir laḡhw wa-fi al-ghā'ib mu'tabar*), plays a very prominent part in the law of contracts and, by proxy, family law. The key feature of it is the epistemic and procedural one: it teaches jurists to regard the descriptions as the ones which have epistemic consequences only to the extent that they can convey the information which cannot be observed directly at the moment of consideration. Descriptive statements add no probative value where the subject is observable and hence they are not supposed to generate any binding expectations or remedies. On the other hand, in the absence of the subject, description is pragmatically the surrogate of first-hand knowledge, and its precision is part of the correctness of consent, the predictability of contractual results, and the prevention of injustice.

Islamic jurisprudence on marriage contracts combines devotional (*ta'abbudī*) and transactional (*mu'āmalāt*) aspects. Although marriage is not considered a strictly commercial contract, the classical jurists still applied contractual principles, including informed consent, disclosure, and avoidance of deception and uncertainty (*gharar*), to govern its structure and implications (Ibn Qudāmah, n.d.; Al-Kāsānī, 1986). This hybridity of doctrines provides family law with a richly fertile terrain upon which to conduct experimental trial of the maxim in question: intimate relationships have stakes in the law of the highest order, yet the kin, social tradition and oblique communication often negotiate the factual circumstances of consent and disclosure. Earlier, social codes of behavior that governed the interaction of the two would-be

couples tended to limit first-hand observation, thus elevating the importance of descriptions (physical appearance, health problems, religiosity, family background, or social status) as the determinant of consent. Precisely in that environment, the maxim fails to work in the shape of a technical abstraction, but as a tool of guaranteeing the informational asymmetry and of the result of restraining the legal consequences of misrepresentation.

On a finer scale, the maxim also represents a broader juristic perspective on harm prevention and substantive equity in contract law. Family law differs from most other areas of contract law, as it creates an ongoing structure of rights and responsibilities that involve dignity, the body, reproduction, and social position. Misdescription (or hiding of material facts) could thus cause other harms in addition to financial loss, such as psychological harm, reputational harm and disturbance of family stability. The maxim gives a principled approach to balancing social necessity, in which indirect description is necessary, with legal prevention of deception and opportunism by conditioning the weight of description to the absence of the case.

Although this maxim is important to Islamic doctrines, very little attention has been given to its systematic application in the context of Islamic family law, especially in matters of marriage conditions, marital defects (*ḡuṭyub*), dowry (*mahr*), and post-marital institutions such as divorce, *zihār*, and *li ān*. Current debates are inclined either to discuss the maxim as a part of general legal theory or refer to it incidentally as the topic of a more general treatment of contract law, but have not provided a specific application-oriented analysis of the maxim as it applies to family law (Hallaq, 2009; Kamali, 2008). As a result, it remains unanswered how the maxim is often juristically invoked and how it is integrated into a coherent scholarly description of how it practically organises rights, remedies, and evidentiary standards throughout the life cycle of the marital relationship, from formation to dissolution.

The proposed paper aims to fill this gap by offering a doctrinal account of the practical application of the maxim of Islamic family law, grounded in the classical sources of the different schools of Islamic jurisprudence. It asserts that the maxim is a significant tool of safeguarding informed consent, social necessity, substantive justice, and harm occasioned by misrepresentation or informational asymmetry. Having considered its application in the context of constituting marriage

and in its dissolution, the study also indicates that the maxim is not restricted to its formative stage in the contract. Still, it continues to play its role of restraining unilateral power and as a sieve of doctrine, separating legally consequential propositions from those that are rhetorical or speculative. Accordingly, the paper affirms that the maxim still prevails in contemporary judicial rationale and policy debates on family law in Muslim cultures, where the disclosure issue, the level of evidence, and the prevention of abuse remain acute.

Research Problem

The key problem with the presented study is that there was no rigorous, practical analysis of the implementation of the abovementioned maxim of the law in the context of Islamic law on family, despite their frequent use in classical juristic discussions. Specifically, though jurists use this maxim in many sections of the family law, the treatment of such application has not been applied thoroughly in modern times, on the questions of (i) the informed consent in the formation, (ii) the right to rescind or remedy where the statements are misleading, and (iii) the validity and consequences of conditioned or descriptive statements in the dissolution mechanisms. The lack of this analysis limits academic knowledge and practical judicial advice, particularly in cases where parties rely on descriptions to prove their rights or accuse fraud.

1.1. Research Questions

1. What are the conceptualisations and arguments about the law-relevant maxim of description used by the classical jurists in the presence and absence?
2. What was the operationalisation of this maxim in the context of marriage formation, particularly on the terms, expectations and disclosure obligations?
3. How do jurists use the maxim in relation to marital defect ('uyūb) and dowry (mahr), and what were the remedies of false description?
4. How does the maxim extend to post-marital institutions such as divorce, *zihār*, and *li'ān*, particularly where statements involve conditionality or descriptive uncertainty?
5. What normative purposes does the maxim fulfil in serving the purpose of protecting consent, averting harms and curbing opportunistic claims in family law?

1.2. Objectives of the Study (Expanded)

This study aims to:

1. Illustrate the ideological basis of the maxim

within the context of the Islamic jurisprudence as well as the reason why jurists determine whether description is material or not legally.

2. Study and tabulate the application of the maxim in practice in the key areas of Islamic family law, including matrimonial conditions, malformation, dowry, matrimonial divorce, *zihār*, and *li'ān*.
3. Demonstrate that the maxim safeguards informed consent, prevents the informational asymmetry, and provides the remedies to deception (*tadlīs*) and harmful uncertainty.
4. Show that the maxim is a restraint of unilateral power in the dissolution cases by omitting speculative descriptions of the law and stating those which are operative under the law.
5. Demonstrate the relevance of the maxim to current adjudication and reform debates by presenting it as a normative tool to aid consistency, impartiality and austerity of evidence in family law cases.

1.3. Methodology

The research is based on the classical *fiqh* analysis, and a qualitative research approach is used. It studies primary juristic literature in the great Sunni schools including the works of authority in the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbali schools of jurisprudence. The analysis is done in three stages. First, it reinstates the conceptual assumptions of the maxim by providing the juristic base on which legal consideration of description is legally consequential when no other grounds are present. Second, it determines the doctrinal applications in the various areas of family law and gives the operative legal implications (that is, whether it is in validity, rescission, substitution, annulment or imposition of procedural restraint). Third, it relies on comparative arguments to find points of intersection and divergence among jurists with regard to setting materiality, expectations of disclosure and remedies thresholds. The maxim is placed in the context of the larger interests of the Islamic law (*maqāṣid al-sharī'ah*), especially the safeguarding of rights, the prevention of damage, and the preservation of the stability of family (Kamali, 2008; Hallaq, 2009).

1.4. Structure of the Study

The structure of the paper is the following.

Part II dwells upon the theory and practise of the maxim in a marriage contract, marital defects ('uyūb) and dowry (*mahr*).

The relation of the maxims to post-marital institutions is discussed in Section III, such as

divorce, *zihār*, and *li'ān*, which are significant to regulate the circumstances or descriptive propositions with severe legal consequences.

The final section of the paper reports the conclusions and key findings and gives the recommendations on the way to proceed with the further research and strengthen the judicial practise by introducing more use of juristic maxims dealing with family-law cases.

2. APPLICATIONS OF THE MAXIM IN MARRIAGE, MARITAL DEFECTS, AND DOWRY

One of the key legal maxims in the administration of consent, expectations, and remedies in Islamic family law is *al-waṣf fi al-ḥādir laghw wa-fi al-ghā'ib mu'tabar*. This maxim was always used by the classical jurists in relation to marriage contracts, failure of a marriage, and even to dowry arrangements with the understanding that the family law is greatly situated on a special social context and is full of privacy norms, moral sensitivities and inequalities in information organisation. The transactions that are made in the field of family-laws are not linked to the economic interests, and are also not founded on the long-term relations with the other people, as opposed to the purely commercial transactions. Therefore, the description is especially important in the presented case, as well as its accuracy and relevance.

The maxim, in all these aspects is a philtre of doctrines in that it defines what descriptions are consistent with what we observe in reality and what form the major epistemological nature. By doing this, it specifies the extent to which descriptive statements are to produce legal effects involving rescission, annulment or compensation, and to what extent they are to be regarded as legally unnecessary.

2.1 Application in Marriage Contracts

According to Islamic law, marriage is based on mutual consent (*riḍā*) that must be informed and free of deception (*ghishsh*). Marriage is not defined as a commercial contract, but classical jurists applied contractual principles, such as disclosure, mistake, and misrepresentation rules, to determine its validity (Ibn Qudama, n.d.; Al-Kasasani, 1986). The maxim under consideration concerns the epistemic circumstances of consent formation, especially in a society where social values hinder face-to-face communication or eye contact between potential partners.

In the past, people communicated descriptions of physical appearance, lineage, health, religiosity,

social status, or freedom through intermediaries, family members, or guardians. In this case, the prospective spouse's consent was often based on description rather than actual perception. The jurists, therefore, only considered descriptive representations to be legally pertinent when the subject described was not in existence at the time of the contract. In the case where the subject matter was known and seen, the use of a previous description was considered legally unimportant (*laghw*) since the party to the contract could (and had) checked reality itself (Ibn Qudāmah, n.d.).

Such a distinction represents a more general legal tolerance of individual responsibility in making contracts. In case the spouse is available, the law will presuppose an assumption that it does not make sense to use out-of-date or even second-hand descriptions. Where the presence cannot be used to ensure the truth is found, the description however is the feasible alternative to observation and hence is legal in its own right. Once this happens, and the description proves to be false the party suffering loss is entitled to exercise a right of rescission (*khiyār*) or annulment, as long as the false statement relates to a material feature.

The Ḥanafii school put this value into a narrower form. The descriptive conditions in marriage were not considered binding except as far as the establishment of a critical basis of consent was concerned. To give an example, in case a woman was termed as free, Muslim or possessed a particular quality and this was proved to be incorrect in future, the husband could demand an annulment in case the difference influenced the contractual basis (*'aqd*) (Al-Sarakhsī, 1993). Extremely insignificant or intangible descriptions, however, did not entitle legal redress, which indicates an issue pertaining to the comparativeness and constancy of a contract.

A similar framework was also used by Mālikī jurists, but they put more emphasis on customary practise (*'urf*) when applying the relevant description to the law. The interpretation of a key feature was also relative to the social norms and requirements in a given society in marriage (Al-Qurtubi, 2003). This plan allowed applying the maxim in different social contexts without violation of the doctrine.

It can also be observed that scholars of Shāfi'ī and Ḥanbalī are conscious of the role played by the maxim in the protection of the contractual justice. They have made a thin line between accounts that are simply acts of liking and the ones that form the systematic definition of consent. The

misrepresentation committed on the latter category was the only one that needed to be annulled or rescission (Al-Nawawī, 2003; Ibn Qudāmah, n.d.). The fact that such a maxim is used so subtly underscores the fact that it is important in helping to prevent opportunistic litigation and unfair enrichment by making tactical use of descriptive errors.

2.2 Application in Marital Defects (*'uyūb*)

The maxim has been applied with great success and importance in the doctrine of marital defects (*'uyūb*). These defects (including insanity, leprosy, impotence or extreme physical defects) according to classical jurists provided an aggrieved spouse with an aggrieved spouse with a chance to annul a marriage in case they were unknown at the time of the contract to be concluded (Ibn Taymiyyah, 2005). These imperfections were not merely superficial problems but the condition of affairs that would be frustrating to the very essence of marriage, including companionship, intimacy, and procreation.

Here, a certain accuracy is used in the application of the maxim. In cases where the fault was apparent during marriage e.g. a physical condition that was apparent, the law regards reliance on representations of description to be irrelevant. Based on the evident material, the aggrieved party has been presumed to have taken the risk of the contract progression. Comparatively, in the case when the defect is latent, hidden, or otherwise inaccessible to reasonable observation, descriptive representations are relevant to the law, and concealment is one of the forms of actionable deception (*tadlīs*) (Al-Kasasani, 1986).

There are two ways of explaining this distinction juristically. First, it represents the principle of harm prevention (*daf al-darar*), as the other spouse might be subjected to severe pain, emotional, physical or social, due to unknown flaws. Second, it is structural informational asymmetry: one of the parties may possess information on a condition that cannot be reasonably suspected by the other party. This use of legal force in the absence or concealment by description is an operator of justice. It rectifies the contractual relation again by offering some feeling of balance and equity (Hallaq, 2009).

It is also remarkable that not all defects were treated equally by jurists. Schools differed on the defects that were subject to annulment and the procedural requirements of the remedies. Nevertheless, even with these differences, the maxims have brought together a system of common epistemic: the legal implications not lie in the

existence of a defect but the reasonable existence of a defect at the time of giving a consent to the action.

2.3 Application in Dowry (*Mahr*)

Dowry (*mahr*) has a special status in Islamic family law, having both symbolic, moral, and economic aspects. It is not only a material right of the wife, but also an indication of the severity of the marital commitment. Jurists used the maxim to arrangements of dowry when the subject matter was referred to rather than being directly identified at the time the contract was made.

Assuming the dowry was visible and existent, as the particular object or amount, then its actual nature became superior to the previous description. The descriptive language in this case was considered legally unnecessary, since the parties' rights and liabilities were determined by observable reality. However, if the dowry was not present, was deferred, or was generally defined, the contract's descriptive terms took effect. In case the dowry delivered was significantly different from what was agreed upon, the wife had the right to insist on the replacement, modification or compensation (Alotaibi, H. A. (2021).

The application demonstrates how the maxim can be used to strike a balance between contractual and practical necessity. The classical societies were characterised by deferred dowries and generic descriptions because of economic concerns and traditions of the societies. A pure state of specification would then have immediately placed the access to marriage in undue, outrageous embarrassment. The maxim allowed leeway and made the wife financially independent by making the description of the law have force under absence.

2.4 Normative Significance within Family Law

Both marital failures and dowry have the maxim normative role in the context of various marriage formations: the normative role is to safeguard informed and consent without breaking the social constraints. It does not absolutise the descriptive utterances and does not deny them in the utterance. Instead, it introduces legal relevance based on three related terms, which are presence, observability, and materiality.

By so doing, the Islamic jurisprudence foresees the problems the central concerns of modern family law discussion comprise, including disclosure requirements, misrepresentation, unequal access to knowledge, and relational justice. As demonstrated by the maxim, classical fiqh has developed contingent instruments that can regulate intimate

social relations without compromising on the consistency and ethics of the doctrines. Rather to the contrary, it is a technical principle of subsidiary importance, which serves as an organising principle in the system of justice and duties in the most sensitive area of legal control the family.

3. APPLICATIONS OF THE MAXIM IN DIVORCE, ZĪHĀR, AND LI'ĀN

The legal maxim *al-waṣf fī al-hādir laghw wa-fī al-ghā'ib mu'tabar* also applies to the issue of formation of a marriage to govern some of the most delicate and momentous processes of the Islamic law that have to be used to part with the marriage relationships. In divorce (ṭalāq), zīhar, and li'ān, the maxim is a theological tool to distinguish the descriptions that are legally effective, and those that are made ineffective by the presence of the party, certainty of the facts or sufficiency of the evidence. Its application is a moderate balance between the juridical impact of certain statements and the moral requirements of simple words, will (niyyah) and the avoidance of harm (daf al-darar).

Unlike in a commercial transaction, the dissolution processes in a family law are generally characterised by unilateral statements which have immediate and in some instances irreversible legal implications. Classical jurists thus formulated interpretive restraints to curb abuse, arbitrariness, and overreliance on speculative or rhetorical descriptions. It is this restraining role that the discussed maxim fulfils.

3.1 Application in Divorce (Ṭalāq)

In Islamic law, divorce is usually achieved through clear verbal statements, but jurists have paid much attention to the legal implications of conditional, descriptive, and ambiguous divorce declarations. The special case of conditional divorce (ṭalāq mu'allaq), in which divorce is subject to a specified event, was particularly problematic, as it tended to turn speculation or falsification into legal outcomes.

The maxim applies when a husband grounds a divorce on a statement that is, or is not, in fact. Classical jurists agreed that in case the condition or description which was placed on divorce is an ascertainable fact in the present, the description ceases to have legal relevance once the reality is known. To take an example, when a husband in such-and-such a place declares, You are divorced, being in such-and-such a place, whereas the wife is physically in such-and-such a location, and is proved to be elsewhere, the description is held to be void (laghw). Whenever that occurs, certainty in

matters of fact is more dominant than descriptive formulation because the truth can be determined instantly (Ibn Qudadah, n.d.).

Such an approach points to a broader epistemic principle of Islamic jurisprudence: the certainty (yaqīn) that, once there is certainty, speculative description will not be of any probative value. Observable reality should be left to be subdued by the descriptive conditions, which allow manipulation and subversion of the law's predictability.

Conversely, in cases where the conditional divorce is related to some occurrence in the future, absent or unknown as to fact, that is, a supposed act, a journey, or a condition, the description is legally effective. When the stated situation turns real, the divorce will be conducted respectively (Al-Sarakhsī, 1993). Such situations give rise to descriptive acts as the only source of epistemic anchor, and the law gives them the power of law to fix coherence and predictability in the consequences of contracts.

The two sides of this maxim are to obtain on the one hand, legal certainty, by chaining the conclusions to demonstrable facts; and to restrain on the other hand the destruction of marriage by thoughtless, false, or malicious characterisations. This is in line with the broader fiqh objective of reducing harm (darar) resulting from unnecessary or unjustified divorce, a constant theme of classical and current jurisprudence (Alotaibi, H. A. (2022).

3.2 Application in Zīhār

Zīhār, where a husband likens his wife to a female relative permanently prohibited to him, such as his mother, occupies a unique position in Islamic family law. Although denounced by revelation, zīhār does not immediately terminate the marriage, but only postpones the marital intercourse pending expiation (kaffārah). The maxim used in this case concerns the connection between descriptive language, the facts, and moral culpability.

The jurists believed that a statement of zīhār made by a husband based on a description existing in a way of fact and observation was of no additional juridical force to the statement itself. This is the legal implication of the explicit formulation of resemblance and not the factual correctness or incorrectness of the description (Al-Qurtubi, 2003). Descriptive assumptions are therefore made legally unnecessary in such situations by the existence of the wife.

However, where zīhār is attached to a description that is absent or supposed to describe,

to a wife that likening the wife to another woman, of uncertain identity, status, or qualities, the description will be legally relevant. There is disagreement among jurists over whether an inaccurate description of the decision affects the validity of *zihahar*. However, most jurists held that descriptive uncertainty did not imply the invalidity of the utterance insofar as it is an intentional invocation of the prohibited analogy (Al-Kasani, 1986).

In this case, the maxim acts as a moderating factor. It averts exaggeration of speculative resemblance into exaggerated legal results without sacrificing the moral weight of *zihār* as a serious marital offence. The emphasis has shifted from intention (*niyyah*) and legal formulation to empirical similarity, so that speculative principles do not determine liability.

3.3 Application in *Li'ān*

Li'ān is one of the most outstanding and procedurally careful mechanisms of the Islamic family law. It permits husbands and wives to dismiss the allegations of infidelity or refusal to accept paternity by mutual oaths, leading to irreparable parting and the termination of the kinship. Under these irreparable effects, the jurists placed serious evidentiary and procedural precautions, and in them, the maxim acquires a specific significance.

The jurists insisted that when the allegations are connected to the visible and present facts, they do not need to resort to descriptive allegations. To give an example, when a paternity can be determined by physical presence, gestation, or strong indications, simple descriptive assertions or suspicions should not lead to the *li'ān* (Ibn Taymiyyah, 2005). Where this happens, the available uncertainty supplants descriptive inference.

This is, however, not the case since once the alleged act or circumstances are not under immediate perception, for example, claims of covert behaviour or past occurrences, the description will be legally obligatory, assuming that the procedural requirements of *li'an* are satisfied. The maxim, then, restricts the application of *li'an* to cases of actual epistemic uncertainty such that it cannot be an unreasonable tool of groundless rejection or reputational damage (Hallaq, 2009).

The maxim adds to the greatness of the concept of *li'an* by establishing legal consequences on the presence or absence of verifiable facts. It helps protect the institution against suspicion-based, anger-based, and strategic litigation.

3.4 Doctrinal and Ethical Implications

The maxim protects against the abuse of descriptive terms in divorce, in *zihār*, and *li'ān*. It creates a straight post between certitude and conjecture, where part of the inevitable effects of marital rejection, matrimonial suspension, or permanent alienation is put on provable reality or procedurally legitimising non-certainty.

Under the normative perspective, the application highlights the maintenance of the stability of the family in Islamic law where such a dissolution is only to be done in the case of need, fairness and moral responsibility. The juristic caution which surrounds the truthfulness of evidence and moral moderation is found in the maxim, which foreshadows the modern concern with unilateral power abuse and some balance between formal law and substantive justice in intimate relations.

4. CONTEMPORARY JUDICIAL AND POLICY IMPLICATIONS

The classical applications of the maxim "*al-waṣf fi al-ḥādir laghw wa-fi al-ghā'ib mu'tabar*" continue to retain substantial relevance for contemporary judicial practice and family law policy. Although developed in pre-modern *fiqh* texts, the maxim appears to incorporate the principles of jurisprudence, and the sections of the maxim which concern the certainty of evidence, the proportionality of evidence, and the moderation of applying uncompensable legal consequences approach much closer to the contemporary concept of procedural fairness and a reasoning adjudication process.

The maxim offers a process of addressing the informational asymmetry and interpretive uncertainty in family conflicts. In modern courts, lawsuits are always presented on a description basis as opposed to simple demonstrations, particularly those involving emotional context, like in divorce, annulment, and lineage cases. The maxim provides an internal *fiqh*-grounded system which the judges can use to divide legally operative and speculative claims and also to distinguish between rhetorical statements which are strategically structured and those which are operative.

4.1 Judicial Reasoning and Evidentiary Standards

In contemporary Sharia-compliant litigation, especially when it comes to family courts, conflict of interest tends to come in the form of descriptive accusation with regard to intention, ethical conduct, stand, or past operations. The maxim

offers a philtre to the judges, favouring observable facts and verifiable evidence over subject-telling. In the case of facts that can be directly ascertained, the statements indicating such facts are invalid before the law, and the transformation of the accusations into law is prohibited.

This philosophy is correlated with the contemporary evidentiary norms, which promote the objective evidence instead of inference and speculation. This is due to the fact that any such description relating to the current and provable reality renders such a statement as legally void (*laghw*) to curtail the opportunity to institute litigation opportunistically, in particular, in the context of the divorce and annulment proceedings, where such a situation may be motivated by the emotion of conflict (Galligan, 1997).

The maxim also maintains judicial discipline in the sense that it limits judicial discretion. It deters such cases where judges use inferred intent in the cases where the facts are evident hence enhancing predictability and uniformity. In this sense, the maxim is a rule of epistemic prudence, a foundation of judicial thinking with regard to known reality in place of guessing or even ethical scepticism.

4.2 Protection Against Abuse of Family Law Mechanisms

The likelihood of abuse of unilateral powers, in the context of divorce and similar cases in general, is one of the hottest topics of family law (and the legal system in general). Specifically, it is the risk of abuse that is most eminent within the frames of Islamic family law wherein certain procedures of dissolution may be triggered through a unilateral declaration.

The maxim is also used as a guard to restrict the legal power of the descriptive terms which do not conform to the actual facts or which have been made on the basis of speculations. This can only be done by regulating the legal outcomes via the application of ambiguous, conditional, or framed language. It also reduces chances of weaker parties to play family law doctrines against one another.

Policymaking-wise, the position corresponds to the larger intention of ensuring the vulnerable populations (especially women and children) are not unreasonably or disproportionately left to be interfered with the family relationships. The avoidance of harm (*daf' al-darar*), proportionality and restriction of unilateral power are also a priority of modern reforms of family law. The following goals are not unfamiliar to the Islamic jurisprudence, since they are already found in the logic of the maxim itself (Alotaibi, H. A. et al (2025).

This way, the higher the dependency of such maxim proves the capability of the Islamic legal theory to internalise protective norms and at the same time be doctrinally sound and normative in itself.

4.3 Harmonisation with Codified Family Law Systems

The codified family law regimes in most modern Muslim-majority jurisdictions are now selective in adopting classical fiqh doctrines. In such systems, the text and the underlying statutory and jurisprudential principles are, in most cases, strained. The maxim is also the source of harmonisation, providing an interpretive link between the codified rules and the classical legal thought process.

The maxim can support the interpretive principles in those jurisdictions where judges are required to assess utterances on conditional divorce, misrepresentation, or allegations of marital status. It allows the courts to harmonise the text and the facts, thereby enabling one to be confident that the law has been correctly applied to the facts (Kamali, 2008).

Indicatively, the maxim does not necessarily need to be written in words to be normative in nature. Its rationale may be included in the reasoning of the judicial review, in the standards of appellate review, or in explanatory clauses that supplement the family law legislation. This does not undermine interpretive flexibility but rather supports the legitimacy of doctrines.

4.4 Policy Implications for Family Law Reform

The policy level, the maxim advocates a moderate course of reformation of the family-law - a steady and flexible one. Lawmakers and policymakers can also rely on the mainstream maxims of jurisprudence to support reforms intended to enhance the clarity of law, procedural fairness, and protection against maltreatment instead of developing new or foreign ideas and principles.

These principles can be integrated into the judicial training programmes, commentaries on the law, and explanatory principles to promote uniformity in the courts and reduce discrepancies in the outcomes. Moreover, the focus on these maxims of the reform discourse criticises the fact that family law founded on Sharia is allegedly rigid or non-evolutionary. On the contrary, it is a model of ideal development grounded on the ancient juristic arguments and internal normative supplies

(Hallaq, 2009).

5. CONCLUSION AND KEY FINDINGS

This study has examined the juristic maxim “*al-waṣf fī al-ḥādir laghw wa-fī al-ghā’ib mu’tabar*” and its applications within Islamic family law, with particular attention to marriage, marital defects, dowry, divorce, *zihār*, and *li’ān*. By conducting a doctrinal investigation into classical sources of *fiqh*, supplemented by exposure to current legal reasoning, the research paper shows that this maxim is one of the cornerstones that govern the legal topicality of descriptive statements in family-law transactions.

The main result of the study is that the maxim is a stable juridical principle of giving legal certainty precedence over conjecture. Descriptions of current and observable facts are considered legally ineffective because they add no additional probative value. However, the statements regarding missing or unspecified facts are deemed to be legally binding due to their probative and contractual significance. This disparity protects the law against vagueness, and the rights against insinuation, by the use of rhetorical, or speculative terms.

The analysis also demonstrates that the maxim is instrumental in regulating unilateral powers in family law. The rule limits the proliferation of the legal implications of cases like divorce and its analogues to what is explicitly and factually determined and intended. This directly yields to the maintenance of marital stability and abortion, which is in accordance with general Sharia goals of justice (*‘adl*), balance (*tawāzun*), and avoidance of harm (*daf’ al-ḍarar*) (Alotaibi, H. A. (2021).

The other notable observation is that the maxim has timeless relevance in judicial practice in the current times. This is a classical principle that applies especially to the modern adjudicative principles, especially those that are aimed at the evidentiary rigour, proportionality and procedural fairness. The application of it also provides courts with a systemic method of differentiating between binding and non-binding statements in the law, thus facilitating uniformity, predictability and legitimacy in family-law determinations (Kamali, 2008).

In general, the paper substantiates the claim that, as a non-peripheral, non-abstract rule, the given maxim serves not only as a source of normative stability but also provides practical benefits.

6. RECOMMENDATIONS AND FUTURE RESEARCH DIRECTIONS.

Recommendations can be offered based on the findings of this work to the court practise, legislative policy and future academic research.

First, the application of juristic maxims, particularly those that establish the applicability of evidence, is implied to be clearly applied by the judges of Sharia based family courts in the assessment of argumentation in the condition of the statements or descriptive statements. This is supposed to be incorporated in the formal systems of judicial training and reasoning paradigms to enable the doctrine to be more coherent and less inconsistent in making decisions.

Second, reforms in the area of family law by legislators and policymakers ought to take into account the logic behind this maxim. Rather than establishing the maxim in a written form, the principles may be used to inform the delivery of conditional divorce, misrepresentation, marital defects and the test of evidence. In this approach, the flexibility of *fiqh* is preserved without being out of context with the present tendency in drafting legislations (Hallaq, 2009).

Third, the dialogue between the classical theory of *fiqh* and the modern comparative family law is encouraged further. The discussed maxim of Islamic jurisprudence shows that Islamic jurisprudence has its means to deal with the problems commonly brought up in the modern legal system, including the misuse of rights, uncertainty of evidence, and proportion. Such an emphasis on these mechanisms can enrich comparative scholarship and clear images of Islamic family law that are reductive.

In terms of future research, several possible directions exist. The empirical data would also be useful for comparative legal research on how courts in other jurisdictions with Muslim-majority populations are, consciously or unconsciously, adopting this maxim in family law cases. A systematic review of judicial cases can demonstrate a correlation between the use of juristic maxims and greater consistency, justice, or satisfaction among litigants. Lastly, the interdisciplinary studies that would be implemented to apply *fiqh* maxims to prevailing theories of stages of law interpretation, procedural justice, and evidentiary reasoning further inform their applicability in contemporary legal frameworks.

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