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The Methodology of Reasoning through Usuli and Jurisprudential Maxims in Family Jurisprudence: Takhsis al-‘Ām (Specification of the General) through Maslahah and ‘Urf as a Case Study

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Abstract

This study addresses the methodological problem of specifying general scriptural texts (*Takhsis al-‘Ām*) through public interest (*al-Maslahah*) and custom (*al-‘Urf*), and the extent to which these considerations may restrict the apparent scope of general Qur’anic and Prophetic texts within the framework of *Usul al-Fiqh*. It aims to clarify the concepts underlying this rule, examine the positions of the major schools of Islamic jurisprudence concerning its evidentiary basis and conditions, and demonstrate its practical significance in family jurisprudence.

The study adopts an analytical and comparative approach, drawing on the reasoning of prominent jurists, particularly within the Maliki school. It examines selected applications, including the Maliki position concerning maternal breastfeeding and the exemption of women of high social status, and the specification of the general prohibition of marrying polytheist women in relation to women from the People of the Book.

The study finds that valid public interest and established custom may function as considerations in specifying general texts when they fulfill the conditions recognized by Islamic legal theory and do not conflict with definitive scriptural evidence. The study highlights the importance of these methodological principles in understanding juristic disagreement and demonstrating the capacity of Islamic jurisprudence to respond to changing circumstances while remaining grounded in its textual foundations and objectives.

Keywords: Takhsis al-‘Ām; Usul al-Fiqh; Public Interest; Custom (‘Urf); Family Jurisprudence.

Introduction

Praise be to Allah, Who created humanity from a single soul and created from it its mate so that they may find tranquility therein, and established between them affection and mercy as a sanctuary and a remedy that sustains the course of human life. Through this divine bond, human continuity and growth flourish within the family—the pivotal institution of human existence, entrusted with nurturing and socializing individuals. Through the family, nations and peoples foster mutual acquaintance and interconnectedness, laying the foundations for social cooperation, integration, and solidarity, as affirmed by the Almighty⁽¹⁾

Scholarly consensus maintains that human stability and rectitude are fundamentally derived from the union of man and woman within an innate (*fitrah*) and regulated legislative framework, far removed from chaos and degradation. Contemporary global crises have increasingly coincided with weaknesses affecting the family institution, contributing to the disintegration of societies and the emergence of deviant behavioral phenomena, including delinquency, vagrancy, violence, and bullying, alongside lineage ambiguity and the erosion of human identity. Consequently, rather than fulfilling

¹ Qur'an, 49:13 (Al-Hujurat). See also Ismail ibn Kathir, *Tafsir al-Qur'an al-Azeem*, vol. 7 (Beirut: Dar Al-Kotob Al-Ilmiyah, 1420 AH), 360.

the ultimate purpose of divine vicegerency (*Khilafah*)—predicated on earthly development and reform as stated in the Qur'an, ⁽²⁾ social reality, in the absence of familial restraint, may come to embody the apprehension voiced by the angels. ⁽³⁾

Given that the family is the cornerstone of social structure, attempts to undermine human stability have historically targeted this fundamental bond. This reflects the first satanic attempt to undermine the unity of our parents, Adam and Eve, through temptation and deception, leading to their separation and displacement. In the contemporary era, such attempts have taken new forms through intellectual currents and discourses that seek to distance women from their natural roles and to strip them of the values of chastity, dignity, and privacy safeguarded by Islamic law. Recognizing the central position of the family within the human and social order, the Divine Lawgiver bound its members by a solemn covenant, described as a “firm covenant” (*Mithaq Ghaliz*), and established women as an essential party to this covenant in order to elevate their status and safeguard their rights, as stated by the Almighty. ⁽⁴⁾ Conversely, certain contemporary discourses seek to promote alternative frameworks and relationships outside this covenant, plunging societies into profound moral and social anarchy.

Islamic law (*Sharia*) has paid paramount attention to family rulings, tracing the family's formation from its inception as a latent desire in the human conscience until its structure reaches completion through the succession of children and grandchildren. Sharia promotes rearing youth upon natural disposition (*Fitrah*), encourages marriage, and establishes precise criteria for spousal selection. For men, the Divine Lawgiver directs them toward choosing a pious partner, as stated in the Hadith. ⁽⁵⁾ Conversely, guardians of women are instructed to select a righteous and compatible suitor, as the Prophet (PBUH) stated ⁽⁶⁾

This directive does not merely encourage marriage but emphasizes the selection of a man of religion and character who can be entrusted with familial responsibilities. When both parties secure a righteous partner, the foundation of the family is established upon piety, and what is founded upon piety is conducive to stability and prosperity.

Accordingly, the chapters of the Holy Qur'an and the Prophetic traditions abound with legislative texts that collectively constitute a robust and wise family system. This is evident in Surah Al-Baqarah, which regulates alimony, breastfeeding, divorce, *Ila'*, and marriage. Similarly, Surah An-Nisa details the prohibited degrees of marriage, polygyny, and inheritance, alongside Suras Al-Nur and Al-Talaq and other texts of the Prophetic Sunnah that clarify general rulings or establish additional legal provisions.

As time progressed and the geographical domain of the Islamic community expanded, Almighty Allah blessed this Ummah with independent jurists (*Mujtahidun*) who extracted the rules of jurisprudence (*Fiqh*), legal theory (*Usul*), and legislation from the primordial texts and their higher objectives (*Maqasid*), utilizing the Arabic lexicon in which the revelation was descended. This was undertaken to operationalize these tools in applying Sharia to the evolving dynamics of the Ummah in general, and to family rulings in particular.

Chief among these tools are the rules of *Usul al-Fiqh* (Islamic Legal Theory), which disciplined the process of *Ijtihad* (independent reasoning) and directed the methodology of jurisprudence toward a straight path, safeguarding it from deviation and anomaly. Prominent among these are the rules governing the specification of the general text (*Takhsis al-Am*) by its designated delineators. This study selects a single applied model to demonstrate its operationalization within family jurisprudence, namely: **The Specification of General Texts by Custom and Customary Interest (*Takhsis al-Am bi al-Adah wa al-Maslahah al-Urfiyyah*)**

Section One: Lexical and Conceptual Definitions

Prior to delving into the applied dimensions of this study, it is imperative to provide concise and precise definitions of the core concepts that constitute the foundational framework of this research. Given that this study investigates the impact of fundamental juristic rules on family laws—with the specification of general texts through public interest and custom serving as a case study—it is necessary to clarify the following terms: (The Legal Maxim/Fundamental Rule, The General Text, Specification, and Public Interest).

1. Definition of the Fundamental Rule (*Al-Qa'idah al-Usuliyyah*):

- **Lexically:** It denotes the base, foundation, or groundwork. The plural *Qawa'id* refers to the pillars or foundations of a structure, as corroborated by the Quranic verse⁽⁷⁾.
- **Conceptually:** Jurists have proffered various definitions for the term *Qa'idah*, most notably as: 'A universal proposition that is applicable to all its particulars⁽⁸⁾. However, since the term in its abstract form is shared across multiple disciplines, its precise meaning is actualized through its contextual attachment to its respective science, namely *Usul al-Fiqh* (Islamic Legal Theory). Thus, as a specialized compound term, it is defined as: 'The

2- Qur'an, 2:30 (Al-Baqarah).

3- Qur'an, 2:30 (Al-Baqarah).

4- Qur'an, 4:21 (An-Nisa).

5- Muhammad ibn Ismail al-Bukhari, *Sahih al-Bukhari*, vol. 7 (Beirut: Dar Tawq al-Najah, 1422 AH), 9.

6- Muhammad ibn Isa al-Tirmidhi, *Sunan al-Tirmidhi*, vol. 3 (Cairo: Mustafa Al-Babi Al-Halabi, 1975), 394.

7- Qur'an, 2:127 (Al-Baqarah).

8- J: Ali ibn Muhammad al-Jurjani, *Kitab al-Ta'rifat* (Beirut: Dar al-Kotob al-Ilmiyah, 1403 AH), 171

universal axioms or holistic evidences through which practical legal rulings are derived, and by which the lawful (*Halal*) and the prohibited (*Haram*) are discerned through the scrutiny of detailed textual evidences.'

2. Definition of the General Text (*Al-Am*):

- **Lexically:** It signifies comprehensiveness, inclusiveness, and encompassing all constituents. A matter is deemed *Am* if it encompasses a collective group and exhausts its individual members⁽⁹⁾.
- **Conceptually:** *Usul* scholars have delimited it via diverse definitions, among which we adopt Al-Amidi's formulation as: 'A single lexical term that denotes two or more entities simultaneously and unrestrictedly⁽¹⁰⁾. It is, therefore, the term that exhaustively encompasses all its potential referents at once without limitation.

3. Definition of Specification (*Al-Takhsis*):

- **Lexically:** It is the antithesis of generalization (*Al-Ta'mim*)⁽¹¹⁾, denoting the differentiation of certain particulars from a collective whole by virtue of a ruling specific to them⁽¹²⁾. It is distinct from the term 'Particular' (*Al-Khas*) in that specification represents the active juristic process of restricting the scope of a general text.
- **Conceptually:** It is defined as: 'Restricting the general text to a portion of its denotations, components, or particulars based on an overriding textual or rational evidence⁽¹³⁾. In other words, it is the exclusion of certain particulars from the *prima facie* ruling of a general text via independent evidence.

4. Definition of Public Interest (*Al-Maslahah*):

- **Lexically:** It is derived from *Salah* (rectitude, goodness) and *Manfa'ah* (utility/benefit). Morphologically and semantically, it conforms to the weight of *Mafalah*. *Islah* (rectification) is the antonym of *Ifsad* (corruption)⁽¹⁴⁾, as Almighty Allah commands⁽¹⁵⁾.
- **Conceptually:** Legal theorists (*Usuliyyun*) have proffered diverse perspectives and definitions regarding the technical rendering of *Al-Maslahah*, owing to their varying views on its essence and statutory status. This conceptual divergence stems from whether *Al-Maslahah* operates as an independent source of law (*Dalil Mustaqill*), as an underlying effective cause (*Illah*) that prompts the legislation of rulings, or as ultimate teleological objectives (*Maqasid*) targeted by the Divine Lawgiver—whereby the ruling exists or ceases to exist based on the presence or absence of that interest.

Numerous definitions have been articulated in this regard. Among the most comprehensive is the formulation synthesized by Dr. Muhammad Said Ramadan Al-Bouti in his seminal work *Dawabit al-Maslahah* (The Criteria of Public Interest), stating that it is: 'The utility intended by the Wise Lawgiver for His servants, consisting of the preservation of their religion, lives, intellects, lineages, and wealth⁽¹⁶⁾. This inclusive definition fundamentally anchors the concept of *Al-Maslahah* to the five normative necessities (*Al-Daruriyyat al-Khams*) which the inductive survey of Sharia mandates to protect.'

5. Definition of Custom and Habit (*Al-Urf wa al-Adah*):

- **Lexically:** *Al-Adah* (habit) represents what an individual or a collective customarily practices and recurs periodically. *Al-Urf* (custom) denotes that which is universally recognized and accepted among people, serving as the antithesis of *Al-Munkar* (the reprehensible). In juristic nomenclature, the two terms are often usage-interchangeable; however, scholars delineate that *Al-Urf* is exclusively collective, whereas *Al-Adah* can be both individual and collective⁽¹⁷⁾. Semantically, custom is stratified into three echelons: linguistic custom (*Al-Urf al-Lughawi*), legislative custom (*Al-Urf al-Shar'i*), and social/practical custom (*Al-Urf al-Amali*)⁽¹⁸⁾.
- **Conceptually:** Al-Sharif Al-Jurjani defines *Al-Urf* as: 'That which settles in the human psyche through the testimony of reason and is readily accepted by innate human disposition.' He delineates *Al-Adah* as: 'That which people persistently practice dictated by rational judgment, returning to it repeatedly⁽¹⁹⁾.

Insofar as these concepts function as specifiers (*Mukhassisat*) of general Sharia texts, legal theorists stipulate that the validating custom or habit must be contemporary with the era of legislation (*Zaman al-Tashri*). Human persistence in a

9- Muhammad Murtada al-Zabidi, *Taj al-Arus Min Jawahir al-Qamus*, vol. 33 (Kuwait: Matba'at Hukumat al-Kuwait, n.d.), 149; see also Anis Ibrahim et al., *Al-Mu'jam al-Wasit*, vol. 2 (Cairo: Dar al-Ma'arif, n.d.), 629

10- Saif al-Din al-Amidi, *Al-Ihkam fi Usul al-Ahkam*, vol. 2 (Riyadh: Dar al-Sumay'i, n.d.), 196.

11- Muhammad ibn Yaqub al-Fayruzabadi, *Al-Qamus al-Muhit* (Beirut: Muassasat al-Risalah, 2005), 617.

12- Al-Kafawi, *Al-Kulliyat: Mu'jam fi al-Mustalahat wa al-Furuq al-Lughawiyah* (Beirut: Muassasat al-Risalah, n.d.), 422.

13- Abu Ishaq al-Isfahani, *Sharh al-Luma'*, vol. 2 (Beirut: Dar al-Gharb al-Islami, 1986), 235; see also Ala al-Din al-Mardawi, *Al-Tahbir Sharh al-Tahrir*, vol. 6 (Riyadh: Maktabat al-Rushd, 2000), 2509.

14- Ibn Manzur, *Lisan al-Arab*, vol. 2 (Cairo: Dar al-Ma'arif, n.d.), 517; Ibrahim et al., *Al-Mu'jam al-Wasit*, vol. 1, 520.

15- Qur'an, 7:56 (Al-A'raf).

16- Muhammad Said Ramadan Al-Bouti, *Dawabit al-Maslahah fi al-Sharia al-Islamiyyah* (Beirut: Muassasat al-Risalah, n.d.), 23.

17- Abdul-Wahhab Khallaf, *Ilm Usul al-Fiqh* (Cairo: Maktabat al-Da'wah, n.d.), 89.

18- Al-Kafawi, *Al-Kulliyat: Mu'jam fi al-Mustalahat wa al-Furuq al-Lughawiyah* (Beirut: Muassasat al-Risalah, n.d.), 617.

19- Ali ibn Muhammad al-Jurjani, *Kitab al-Ta'rifat* (Beirut: Dar al-Kotob al-Ilmiyah, 1403 AH), 149.

practice, coupled with divine tacit approval (*Taqrir*) and the absence of denunciation, transforms that custom into an explanatory contextual indicator (*Qarinah*) that restricts the scope of the general text from encompassing those particulars which custom routinely excludes⁽²⁰⁾. Based on this theoretical grounding, contemporary customs or conventions developed subsequent to the cessation of divine revelation and the conclusion of the legislative era cannot legally specify general texts; to validate specification via subsequent custom would erroneously imply abrogation (*Naskh*) after the finality of Sharia.

Definition of Customary Public Interest (Al-Maslahah al-Urfiyyah):

By *Al-Maslahah al-Urfiyyah*, we denote those societal utilities whose consideration and validity are established through the consistent habits and conventions of people. Were it not for this persistent customary application, these utilities would remain within the realm of unmitigated public interest (*Al-Maslahah al-Mursalah*), concerning which the Lawgiver remained silent—neither mandating them through obligation nor prohibiting them through restriction. This distinguishes them from 'Legislated Public Interest' (*Al-Maslahah al-Shar'iyyah*), which is explicitly instituted or invalidated by textual revelation, and whose compliance is obligatorily undisputed.

Section Two: The Juristic Impact of Specifying General Texts by Public Interest

1. Conceptual Framework of the Maxim:

The rule of 'Specifying General Texts by Public Interest' (*Takhsis al-Am bi al-Maslahah*) dictates that when a scriptural text from the Qur'an or Sunnah is revealed in a general formulation, a jurist (*Mujtahid*) may deduce the exclusion of certain particulars or scenarios subsumed under its literal wording. This specification is predicated on an overriding public interest, manifested either in securing an enduring utility or averting an imminent harm. In such instances, the researcher does not encounter an explicit textual specifier (*Mukhassis Lafzi*); rather, the juristic rationale rests entirely upon the jurist's evaluation of the valid interest embedded within social customs and stabilized human habits.

2. Theorists' Perspectives and Denominational Stances:

The issue of specifying general provisions via public interest and analogy (*Qiyas*) has elicited profound scholarly discourse. In this context, the Maliki jurist Ibn al-Arabi outlines the foundational premise, stating: 'If a general text stands and analogy is consistently maintained, both Malik and Abu Hanifah validate the specification of the general text by any indicative evidence, whether textual (*Zahir*) or conceptual (*Ma'na*); yet Malik specifically favors specification via public interest⁽²¹⁾. Ibn al-Arabi reaffirms this methodology elsewhere, posing the question: 'Do analogy and public interest supersede a general text or not? The doctrine of Malik is that they indeed supersede the general text, and this is likewise maintained by the generality of jurists⁽²²⁾.

Elaborating on Imam Malik's rationale—wherein his school occasionally expanded upon this source—Ibn al-Arabi comments on a specific juristic application: 'Malik's assertion: (For this is a gateway of corruption that would afflict people), alludes to the mutual estrangement and animosity that corrupts interpersonal relationships. Thus, Malik specified this general text and restricted it to some of its probable meanings based on public interest—a methodology he pioneered distinctly from other scholars. The foundational sources of law are five: four are unanimously agreed upon by the Ummah—the Book, the Sunnah, Consensus (*Ijma*), and Independent Inquiry (*Nazar* and *Ijtihad*). Public interest constitutes the fifth source, which Malik uniquely championed, and he was profoundly guided among them in doing so⁽²³⁾. Consequently, it becomes evident that the Maliki school institutionalized the specification of general texts via public interest as an autonomous specifying evidence, given their extensive reliance on unrestricted public interest (*Al-Maslahah al-Mursalah*). Conversely, the majority of jurists (*Jumhur*) from the Shafi'i and Hanbali schools practically applied the essence of the rule but tightened the criteria for validating independent interests to preclude subjective legislation, thereby restricting specification unless it falls under a universal principle.

As for the Hanafis, in light of their established axiom that 'a general text is definitive in its denotation (*Qat'i al-Dalanah*) prior to specification,' they stipulated that for public interest to operate as a specifier, the general text must have undergone prior specification. This historical specification renders the text presumptive in denotation (*Zanni al-Dalanah*), thereby making it susceptible to further specification by presumptive evidences such as solitary traditions (*Khabar al-Wahid*), analogy, and valid public interest. Alternatively, they require the specifying interest to be fortified by subsuming it under a textual effective cause (*Illah*) or definitive consensus. Below, we examine the most prominent jurisprudential applications of specifying general texts through public interest within family law and its statutory rulings.

Section Three: Applied Models of Operative Usul Maxims within Family Law

1. Specification of the General Text Concerning the Obligation of Breastfeeding for Noblewomen (Al-Sharifah):

Among the jurisprudential issues deeply intertwined with legal theory dynamics within personal status and family laws is the statutory obligation of a mother to breastfeed her infant. The foundational textual authority governing this matter is the divine decree⁽²⁴⁾. The linguistic structure deployed in this verse transitions a nominal informative statement (*Khabar*)

20- Ali ibn Muhammad al-Jurjani, *Kitab al-Ta'rifat* (Beirut: Dar al-Kotob al-Ilmiyyah, 1403 AH), 149.

21- Qadi Ibn al-Arabi, *Ahkam al-Qur'an*, vol. 2 (Beirut: Dar al-Kotob al-Ilmiyyah, n.d.), 279; see also Shihab al-Din al-Qarafi, *Sharh Tanqih al-Fusul* (Cairo: Maktabat al-Kulliyat al-Azhariyyah, 1973), 201.

22- Qadi Ibn al-Arabi, *Al-Qabas fi Sharh Muwatta Malik ibn Anas*, vol. 1 (Beirut: Dar al-Gharb al-Islami, 1992), 460.

23- Ibn al-Arabi, *Al-Qabas*, vol. 1, 683.

24- Qur'an, 2:233 (Al-Baqarah).

into an imperative command (*Amr*), and the normative legal presumption of an imperative command indicates a strict legal obligation (*Wujub*).

It is structurally critical to denote at the outset that if a mother becomes uniquely indispensable for the child's sustenance—such as when the infant rejects any other wet nurse or when no alternative suckler is available—breastfeeding becomes an individual absolute obligation (*Wujub Ayni*) upon her without juristic dispute⁽²⁵⁾. This is mandated to preserve the infant's fundamental right to life, avert fatal harm, and uphold the preservation of life (*Hifz al-Nafs*), which is a universal objective of Sharia validated by consensus (*Ijma*). However, in circumstances of capacity where alternative suckling options exist, juristic inquiry branches into two principal paradigms:

- **The First Paradigm (Non-Obligation per se):** This is the doctrine of the majority of jurists (*Jumhur*), comprising the Hanafi, Shafi'i, and Hanbali schools⁽²⁶⁾. They assert that breastfeeding is not an individual obligation upon the mother. They interpret the imperative nature of the verse as a recommendation (*Nadb*), utilizing other statutory contextual evidences⁽²⁷⁾. The inference drawn here is that were breastfeeding an absolute individual obligation upon the mother, the entitlement to financial compensation would be legally invalid, and utilizing an alternative wet nurse during marital discord would not be legislated⁽²⁸⁾.
- **The Second Paradigm (Custom-and-Interest Contingent Obligation):** This is the established doctrine of the Maliki school, which asserts that breastfeeding is an absolute legal and judicial obligation upon the mother. However, they specify this general ruling by exempting the 'noblewoman' or 'woman of high social status' (*Al-Hasibah*) whose social peers do not customarily perform manual suckling⁽²⁹⁾. Their rationale rests upon the maxim: 'What is established by custom is equivalent to a stipulated condition'⁽³⁰⁾. Conversely, the Zahiri school mandated individual suckling upon all mothers universally without socioeconomic differentiation. Ibn Hazm asserted that the verse operates in absolute generality and cannot be specified absent a definitive textual evidence⁽³¹⁾.

Operationalization of the Maxim of Specification by Public Interest and Custom among Malikis: The Maliki application of this legal theory maxim surfaces clearly in restricting the universal scope of the verse in Surah Al-Baqarah by exempting aristocratic women from manual breastfeeding. This restriction is grounded in a recognized customary interest (*Al-Maslahah al-Urfiyyah*), which protects her customary social standing and shields her from undue physical strain—both considerations reverting to a recognized interest sustained by habitual social practice.

Elucidating this theoretical specification, the Maliki jurist Ibn al-Arabi states: 'Malik asserted: Every mother is bound to suckle her child based on the scriptural rulings Allah ordained, except that Malik, uniquely among the jurists of major cities, exempted the noblewoman, declaring she is not compelled to suckle. He thus excluded her from the general text, specifying her case via a foundational source of law, namely: operationalizing public interest. This is a nuanced methodology unperceived by many Malikis, which we have verified in our works on legal theory'⁽³²⁾.

Ibn al-Arabi further clarifies the historical customary basis that Imam Malik sustained as a valid, tacitly approved legal interest, noting: 'The ingenious foundation of this ruling is that this practice was prevalent among the noble classes during the Pre-Islamic era (*Jahiliyyah*), and Islam sustained it without alteration. Wealthy and noble families continued to free mothers for spousal companionship by transferring infants to wet nurses up to his era, and thus he ruled, as we do in our contemporary era; hence we have verified it textually'⁽³³⁾. This demonstrates how established social custom explicitly directed the interest-based specification of text without contradicting it, serving instead as an explanatory framework for its targeted intent.

Within this contemporary framework, Professor Dr. Muhammad Mustafa Al-Zuhayli reinforces this legal theory approach, designating it explicitly as 'Customary Public Interest' (*Al-Maslahah al-Urfiyyah*). In his jurisprudential encyclopedia, he posits: 'An illustrative example of specifying a general text via custom is the non-obligation of a mother to breastfeed her infant if the established social convention dictates that women of her high socioeconomic standing do not engage in manual suckling. This operates as a specification of the divine verse (*Al-Baqarah*: 233), owing to the underlying customary public interest embedded therein'⁽³⁴⁾.

25- Badr al-Din al-Ayni, *Umdat al-Qari Sharh Sahih al-Bukhari*, vol. 5 (Beirut: Dar Ihya al-Turath al-Arabi, n.d.), 646; Abu al-Hasan al-Mawardi, *Al-Hawi al-Kabir*, vol. 15 (Beirut: Dar al-Kotob al-Ilmiyah, 1999), 97.

26- Kamal al-Din ibn al-Humam, *Fath al-Qadir*, vol. 4 (Beirut: Dar al-Fikr, n.d.), 368; Abu Ishaq al-Shirazi, *Al-Muhadhdhab fi Fiqh al-Imam al-Shafi'i*, vol. 3 (Beirut: Dar al-Kotob al-Ilmiyah, n.d.), 162; Ibn Qudamah, *Al-Mughni*, vol. 3 (Cairo: Maktabat al-Cairo, 1968), 243.

27- Qur'an, 65:6 (Al-Talaq).

28- Mustafa al-Khin, Mustafa al-Bugha, and Ali al-Sharbaji, *Al-Fiqh al-Manhaji 'ala Madhhab al-Imam al-Shafi'i*, vol. 4 (Damascus: Dar al-Qalam, 1992), 205.

29- Malik ibn Anas, *Al-Mudawwanah al-Kubra*, vol. 2 (Beirut: Dar al-Kotob al-Ilmiyah, 1994), 266.

30- Qadi Abd al-Wahhab al-Baghdadi, *Al-Ma'unah fi Fiqh Al al-Madinah*, vol. 1 (Beirut: Al-Maktabah al-Tijariyyah, n.d.), 935.

31- Ibn Hazm al-Andalusi, *Al-Muhalla bi al-Athar*, vol. 10 (Beirut: Dar al-Fikr, n.d.), 170.

32- Ibn al-Arabi, *Ahkam al-Qur'an*, vol. 1, 278.

33- Ibn al-Arabi, *Ahkam al-Qur'an*, Vol. 1, p. 278.

34- Muhammad Mustafa Al-Zuhayli, *Al-Wajiz fi Usul al-Fiqh*, vol. 1 (Damascus: Dar al-Khair, 2006), 657.

Consequently, this corroborative evidence demonstrates the consensus among both classical and contemporary legal theorists that when a social custom yields an authentic utility that does not conflict with a definitive scriptural text, it effectively qualifies to specify a general provision. This dynamic is profoundly manifested in safeguarding the familial structure and respecting the stratified, stabilized conventions of its members.

2. Specification of the General Ruling of Banishment

(*Al-Taghrib*) Regarding Free Women and Slaves: A prominent legal theory paradigm within family and criminal jurisprudence is the specification of universal penal sanctions based on recognized public interest. The textual foundation for this matter is the Prophetic tradition⁽³⁵⁾. The linguistic configuration of this Hadith is general, comprehensively subsuming every unmarried perpetrator, whether male or female, free or enslaved. Jurisprudentially, banishment (*Al-Taghrib* or *Al-Nafy*) entails expelling the convict from their homeland for a full calendar year to a distance qualifying for shortening prayers (*Masafat al-Qasr*) or further, designed to enforce social isolation and deterrence, since distances below this threshold fall under the jurisdiction of residency⁽³⁶⁾.

Critical juristic inquiry reveals that the universal scope of this text has been specified in respect to certain classes of individuals, prompted by public interest and the preservation of familial and social stability, as detailed below:

The Specification of Slaves (Male and Female): Slaves were exempted from the penalty of banishment because it directly conflicted with the valid interests of the master. Banishing a slave necessarily deprives the innocent owner of their lawful labor and financial utilities. To avert harm from an innocent party and protect his proprietary interests, banishment was dropped for slaves⁽³⁷⁾.

The Specification of Free Women: Free women were excluded from the universal scope of banishment based on a definitive public interest rooted in 'averting harm' (*Dar' al-Mafsadah*), given that banishing a woman independently compromises her modesty, exposes her to moral vulnerabilities, and creates prohibited seclusion (*Khalwah*). Chronicling this scholarly divergence, Ibn Rushd states: 'Malik asserted: A man is to be banished, but a woman is not. This was likewise maintained by Al-Awza'i. Malik holds no banishment for slaves. Conversely, Al-Thawri, Al-Shafi'i, and Ahmad maintained that banishment applies equally to both men and women⁽³⁸⁾'.

Usul Analysis of Customary and Unrestricted Interest in this Issue: The Maliki school justified the exemption of women from banishment via legal theory premises that fundamentally revert to the maxim of 'customary interest and teleological analogy' (*Al-Maslahah al-Urfiyyah*). Al-Baji posits: 'From a conceptual standpoint, a woman requires privacy (*Awrah*), and banishing her exposes her to the loss of her protective shield⁽³⁹⁾. A woman's disposition is inherently anchored in protection and modesty; hence, her independent exile jeopardizes her chastity—a rationale supported by the statutory prohibition of her traveling without a male guardian (*Mahram*)⁽⁴⁰⁾'.

Within this framework of interpretation, Ibn al-Arabi al-Maliki writes: 'A woman is not to be banished, contrary to Al-Shafi'i and others who clung to the literal generality of the Hadith. The underlying legal meaning (*Al-Ma'na*) specifies it; for a woman requires a degree of protection, preservation, and restriction from outward exposure—which are essential to her chastity—that a man does not require⁽⁴¹⁾. His deployment of the phrase 'the underlying legal meaning specifies it' serves as explicit evidence that wisdom, public interest, and the aversion of harm function as the valid statutory specifiers of the general text.

Ibn Rushd illuminates the teleological nature of this derivation, stating: 'Whoever specified women from this general text did so via analogy. He perceived that exile exposes a woman to vulnerabilities far exceeding the sin of fornication itself. This falls under unrestricted analogy (*Al-Qiyas al-Mursal*)—meaning interest-based reasoning—which Malik frequently employs⁽⁴²⁾. This is corroborated by Al-Qurtubi, who states: 'Consequently, this yields a specification of the general text of banishment via a public interest that bears recognized statutory validity⁽⁴³⁾'.

On the other hand, alternative schools attempted to accommodate this public interest through varying modalities. The Hanbali school enforced banishment but conditioned it upon the safety of the route and the accompaniment of a *Mahram*. However, their later verification scholars leaned toward the Maliki stance in the absence of a guardian; Sheikh Ibn Uthaymin posits: 'The second opinion, which is the more correct, is that she is not to be banished if she is alone. The objective of her banishment is to distance her from temptation; exiling her alone would rather invite greater temptation

35- Sahih Muslim, no. 1690.

36- Sayyid Sabiq, *Fiqh al-Sunnah*, vol. 2 (Cairo: Dar al-Fath lil-I'lam al-Arabi, n.d.), 408.

37- Abu al-Walid al-Baji, *Al-Muntaqa Sharh Al-Muwatta*, vol. 7 (Cairo: Matba'at al-Sa'adah, 1332 AH), 137.

38- Ibn Rushd al-Qurtubi (Al-Hafid), *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, vol. 4 (Cairo: Dar al-Hadith, 2004), 219; see also Muhammad ibn Ahmad al-Safarini, *Ghidha' al-Albab fi Sharh Manzumat al-Adab*, vol. 6 (Cairo: Matba'at al-Najah, n.d.), 222.

39- Al-Baji, *Al-Muntaqa*, vol. 7, 137.

40- Ministry of Awqaf and Islamic Affairs, *Al-Mawsu'ah al-Fiqhiyyah al-Kuwaitiyyah*, vol. 17 (Kuwait: Matba'at Dar al-Safwah, n.d.), 141.

41- Qadi Ibn al-Arabi, *Ahkam al-Qur'an*, vol. 1 (Beirut: Dar al-Kotob al-Ilmiyyah, n.d.), 463.

42- Ibn Rushd, *Bidayat al-Mujtahid*, vol. 4, 220.

43- Abu Abdullah al-Qurtubi, *Al-Jami' li-Ahkam al-Qur'an*, vol. 5 (Cairo: Dar al-Kutub al-Misriyyah, 1964), 89.

and evil... The correct view is that if no *Mahram* is available, it is impermissible to banish her⁽⁴⁴⁾. As for the Hanafis, they rejected banishment as a mandatory fixed penalty (*Hadd*) for both genders based on their foundational legal theory axiom that 'any addition to a definitive Quranic text constitutes abrogation (*Naskh*), and a solitary tradition cannot abrogate definitive scripture.' Thus, their structural framework aligned with the targeted public interest in its outcome, albeit through a distinct legal theory mechanism⁽⁴⁵⁾.

Section Three: The Juristic Impact of Specifying General Texts by Custom and Habit

1. Conceptual and Axiomatic Framework of the Maxim:

This legal maxim addresses the statutory impact of custom when it counteracts the literal implication of a general textual provision. It posits: If a lawgiver's text is revealed in a universal formulation that linguistically subsumes all its constituents, yet an established custom (*Urf*) or a consistent habit (*Adah*) dictates the exclusion of certain particulars from that general ruling, does such custom possess the statutory capacity to specify the general text and restrict its application? This principle branches directly from the universal macro-maxim: 'Custom is an arbiter' (*Al-Adah Muhakkamah*). A classic illustrative example within the jurisprudence of oaths and legal conventions demonstrates that custom prioritizes practical usage over literal semantics: If an individual swears an oath 'not to eat meat' (*Lahm*) and subsequently consumes fish or poultry, he does not violate his oath according to the social custom of populations who do not habitually apply the word 'meat' to fish and birds—notwithstanding that the Quranic text lexically designates fish as 'tender meat'⁽⁴⁶⁾. Thus, custom effectively specified the general linguistic scope and directed the intended meaning of the utterance.

2. Stances of the Legal Schools Regarding the Maxim's Validity:

The majority of jurists (*Jumhur*), encompassing the Hanafi, Maliki, and Hanbali schools, validate the specification of general scriptural provisions via custom and habit in a holistic manner⁽⁴⁷⁾. Conversely, the Shafi'i school generally rejected specification via custom, prioritizing the literal generality of the text to safeguard textual indicators from fluctuating conventions⁽⁴⁸⁾.

To validate custom as a functioning specifier (*Mukhassis*), proponents stipulated rigorous methodological criteria: the custom must either antedate the general text or be contemporary with the era of revelation (*Zaman al-Tashri'*), and it must be a verbal custom (*Urf Qawli*). Meanwhile, an intellectual consensus (*Ijma*) was cited among legal theorists that purely behavioral or practical custom (*Al-Adah al-Fi'liyyah*) lacks the autonomous capacity to specify general textual formulations unless accompanied by clarifying contextual indicators⁽⁴⁹⁾.

Among the most impactful applications of this maxim within family law and the foundational framework of marriage is the contemporary case of 'Marrying Women of the People of the Book (*Kitabiyat*) within Non-Muslim Environments.' This is a jurisprudential issue wherein scholars diverged into four principal doctrines, deeply influenced by the extent to which they applied specification through customary and interest-based frameworks, as outlined below:

2. Specification of Marrying Scriptural Women (*Kitabiyat*) from the General Prohibition of Marrying Polytheist Women (*Mushrikat*):

1. **Jurisprudential Preamble and Survey of Doctrines:** Among the contemporary family law issues embedded with profound applications of legal theory (*Usul*) is the statutory ruling on a Muslim man marrying a woman from the People of the Book (a Jew or a Christian). This issue is subject to the interpretive pull of distinct textual appearances. On one hand, a universal prohibition is instituted in the divine decree⁽⁵⁰⁾. The literal scope of *Al-Mushrikat* (polytheistic women) linguistically subsumes any individual who ascribes a partner to Allah; and unconditionally, the People of the Book fall into theological polytheism through their dogmatic claims regarding the divine sonship or divinity of Jesus and Ezra—exalted is Allah far above what they utter. Jurists have bifurcated into four primary doctrines regarding this legal reality:
 - **The First Doctrine (Absolute Prohibition):** Maintained by Abdullah ibn Umar (may Allah be pleased with them) and a group of scholars. He adhered strictly to the literal linguistic generality of the verse in Al-Baqarah, asserting

44- Muhammad ibn Salih al-Uthaymin, *Al-Sharh al-Mumti' 'ala Zad al-Mustaqni'*, vol. 14 (Riyadh: Dar Ibn al-Jawzi, 2006), 237.

45- Shams al-A'immah al-Sarkhasi, *Kitab al-Mabsut*, vol. 1 (Beirut: Dar al-Ma'rifah, n.d.), 440.

46- Ala al-Din al-Bukhari, *Kashf al-Asrar 'an Usul Fakhr al-Islam al-Bazdawi*, vol. 2 (Beirut: Dar al-Kitab al-Arabi, n.d.), 99.

47- Ibn Nujaym, *Al-Ashbah wa al-Naza'ir 'ala Madhhab Abi Hanifah*, vol. 1 (Beirut: Dar al-Kotob al-Ilmiyah, 1419 AH), 86; Shihab al-Din al-Qarafi, *Al-Furuq*, vol. 1 (Beirut: Dar al-Kotob al-Ilmiyah, n.d.), 211; Ala al-Din al-Mardawi, *Al-Tahbir Sharh al-Tahrir*, vol. 6 (Riyadh: Maktabat al-Rushd, 2000), 2698.

48- Abu al-Muzaffar al-Sam'ani, *Qawati' al-Adillah fi al-Usul* (Beirut: Dar al-Kotob al-Ilmiyah, 1997), 193; see also Badr al-Din al-Zarkashi, *Al-Bahr al-Muhit fi Usul al-Fiqh*, vol. 4 (Cairo: Dar al-Kutub, 1414 AH), 519.

49- Al-Qarafi, *Anwar al-Buruq fi Anwa' al-Furuq*, vol. 5 (Riyadh: Maktabat al-Rushd, n.d.), 2148; Al-Zarkashi, *Al-Bahr al-Muhit*, vol. 4, 522; Al-Kafawi, *Al-Kulliyat*, 617.

50- Qur'an, 2:221 (Al-Baqarah).

that a scriptural woman's belief that Jesus is her Lord constitutes the apex of supreme polytheism. Consequently, he maintained that the permissive provision in Surah Al-Ma'idah was abrogated by the prohibition in Al-Baqarah⁽⁵¹⁾.

- **The Second Doctrine (Discommendation - *Karahah*):** Reported from the Rightly-Guided Caliphs Umar and Ali, as well as Ata. This is the official position of the Maliki school, following Imam Malik, who discommended such marriages to block the means to harm (*Sadd al-Dhariah*) and avert the pedagogical and religious corruption that impacts children exposed to the mother's non-Islamic lifestyle⁽⁵²⁾. Ibn Taymiyyah transmitted this discommendation from the majority of scholars when Muslim women are available, safeguarding free Muslim women from social spinsterhood⁽⁵³⁾.
 - **The Third Doctrine (Conditional Recommendation):** Propounded by Imam al-Nawawi and al-Qaffal from the Shafi'i school. They recommended marrying a scriptural woman if there is a viable prospect of her inclination toward and ultimate conversion to Islam under her husband's custody, drawing precedent from the action of Uthman ibn Affan, who married a Christian woman whose conversion subsequently flourished⁽⁵⁴⁾.
 - **The Fourth Doctrine (Statutory Permission):** Maintained by the universal majority (*Jumhur*) of classical and contemporary scholars. They decreed the legal permissibility of marrying scriptural women provided they are chaste, anchored to the explicit, chronologically later textual authorization⁽⁵⁵⁾.
2. **The Juristic Modality of Specification via 'Quranic Usage and Convention':** The preferred *Usul* harmonization that reconciles the prohibition in Surah Al-Baqarah with the permission in Surah Al-Ma'idah relies on the operationalization of the maxim: 'Specifying General Texts via Custom,' specifically 'the customary usage within Quranic discourse.' Upon inducting the vocabulary of revelation, legal theorists concluded that the stylistic convention of the Holy Quran systematically avoids applying the absolute titles of *Al-Mushrikin* and *Al-Mushrikat* (polytheists) to Jews and Christians as a primary moniker—notwithstanding their fall into theological disbelief. Instead, the Quran singles them out via the designated title 'The People of the Book' (*Ahl al-Kitab*) to structurally distinguish them from Arab pagans and idolaters.

This conventional distinction surfaces distinctly in numerous verses where the two categories are conjoined via a coordinating conjunction (*Ataf*), which linguistically dictates mutual exclusivity; such as⁽⁵⁶⁾. Based on this binding customary discourse, the People of the Book are structurally excluded *ab initio* from the general scope of *Al-Mushrikat* in Surah Al-Baqarah, rendering their marriage entirely outside the purview of the original prohibition.

Verifying this ingenious derivation, Imam Ibn al-Arabi al-Maliki writes: 'Every disbeliever is essentially a polytheist... Thus, if we interpret the word according to its literal linguistic reality, it constitutes a general term that was specified—rather than abrogated—by the verse in Surah [Al-Ma'idah]. Conversely, if we interpret it according to customary usage, the term *Mushrik* conventionally applies only to those who possess no scriptural text, such as the Magians and Arab idolaters... Thus, while the term disbelief (*Kufr*) encompasses them all, that structural classification distinguishes them⁽⁵⁷⁾. Through this theoretical grounding, it becomes evident how scriptural customary usage navigated the specification without necessitating claims of contradiction or abrogation, thereby serving the objective of easing marital unions and constructing extended family networks."

.Conclusion, Findings, and Recommendations

Following this comprehensive academic inquiry into clarifying conceptual frameworks, investigating the legal theory (*Usul*) maxims governing the specification of general texts via public interest and custom, and examining jurisprudential methodologies alongside their applications in family law, this study yields a series of pivotal findings and recommendations as outlined below:

1. Research Findings:

1. The study demonstrates that the specification of general scriptural provisions from the Qur'an and Sunnah predicated upon valid public interests (*Masalih*) and stabilized customs (*Urf*) constitutes a structurally sound and recognized *Usul* approach. This methodology has been operationalized by the majority of classical and contemporary jurists (*Jumhur*), notwithstanding their methodological variations and conditioned criteria, which fluctuate between restrictive and expansive applications.
2. It is manifest that the maxim of specifying general provisions via public interest and custom exerts a profound, tangible impact on directing Islamic jurisprudence universally, and personal status and family legislations specifically. This is dynamically exemplified in the exemption of 'noblewomen' from the general obligation of manual breastfeeding, and the specification of 'scriptural women' (*Kitabiyat*) from the universal prohibition of marrying polytheist women, respecting scriptural customary discourse.

51- Ismail ibn Kathir, *Tafsir al-Qur'an al-Azeem*, vol. 1 (Beirut: Dar Al-Kotob Al-Ilmiyah, 1420 AH), 582; see also Ibn Hajar al-Asqalani, *Fath al-Bari Sharh Sahih al-Bukhari*, vol. 9 (Beirut: Dar al-Ma'rifah, 1379 AH), 417

52- Malik ibn Anas, *Al-Mudawwanah al-Kubra*, vol. 2 (Beirut: Dar al-Kotob al-Ilmiyah, 1415 AH), 219.

53- Ibn Taymiyyah, *Majmu' al-Fatawa*, vol. 5 (Medina: King Fahd Complex, 1995), 461.

54- Al-Ujayli, *Futuh al-Wahhab bi-Sharh Manhaj al-Tullab*, vol. 4 (Beirut: Dar al-Fikr, n.d.), 194

55- Qur'an, 5:5 (Al-Ma'idah).

56- Qur'an, 98:1 (Al-Bayyinah); see also Qur'an, 2:105 (Al-Baqarah).

57- Qadi Ibn al-Arabi, *Ahkam al-Qur'an*, vol. 1 (Beirut: Dar al-Kotob al-Ilmiyah, n.d.), 218

3. The study underscores the critical importance of operationalizing valid public interest in formulating rulings and interpreting textual implications. It serves as the vital mechanism to realize the teleological objectives of Sharia (*Maqasid*), manifested fundamentally in averting and minimizing harms, while securing and maximizing utilities, thereby ensuring the adaptability and timeless validity of jurisprudence across temporal and spatial realities.

2. Recommendations and Proposals:

1. The study recommends re-examining and systematically conducting inductive surveys of *Usul* maxims to operationally project them onto contemporary human conditions and evolving customs generally, and within the scope of contemporary family law issues specifically.
2. It advocates for the execution of specialized interdisciplinary studies dedicated to the practical applications of legal theory maxims within personal status laws and family structures, thereby bridging the divide between abstract legal theory and judicial reality.
3. It emphasizes the need to intensify academic research and scientific projects that explore the methodologies of classical jurists, highlighting their profound flexibility in activating foundational and jurisprudential maxims to safeguard the familial unit and ensure societal stability."

Footnotes:

- (1): Qur'an, Surah Al-Hujurat: 13. See also Ismail ibn Kathir, *Tafsir al-Qur'an al-Azeem*, vol. 7 (Beirut: Dar Al-Kotob Al-Ilmiyah, 1420 AH), 360.
- (2): Qur'an, Surah Al-Baqarah: 30.
- (3): Qur'an, Surah Al-Baqarah: 30.
- (4): Qur'an, Surah An-Nisa: 21.
- (5): Muhammad ibn Ismail al-Bukhari, *Sahih al-Bukhari*, vol. 7 (Beirut: Dar Tawq al-Najah, 1422 AH), 9.
- (6): Muhammad ibn Isa al-Tirmidhi, *Sunan al-Tirmidhi*, vol. 3 (Cairo: Mustafa Al-Babi Al-Halabi, 1975), 394.
- (7): Qur'an, Surah Al-Baqarah: 127.
- (8): Ali ibn Muhammad al-Jurjani, *Kitab al-Ta'rifat* (Beirut: Dar al-Kotob al-Ilmiyah, 1403 AH), 171.
- (9): Muhammad Murtada al-Zabidi, *Taj al-Arus Min Jawahir al-Qamus*, vol. 33 (Kuwait: Matba'at Hukumat al-Kuwait, n.d.), 149; see also Anis Ibrahim et al., *Al-Mu'jam al-Wasit*, vol. 2 (Cairo: Dar al-Ma'arif, n.d.), 629.
- (10): Saif al-Din al-Amidi, *Al-Ihkam fi Usul al-Ahkam*, vol. 2 (Riyadh: Dar al-Sumay'i, n.d.), 196.
- (11): Muhammad ibn Yaqub al-Fayruzabadi, *Al-Qamus al-Muhit* (Beirut: Muassasat al-Risalah, 2005), 617.
- (12): Al-Kafawi, *Al-Kulliyat: Mu'jam fi al-Mustalahat wa al-Furuq al-Lughawiyah* (Beirut: Muassasat al-Risalah, n.d.), 422.
- (13): Abu Ishaq al-Isfahani, *Sharh al-Luma'*, vol. 2 (Beirut: Dar al-Gharb al-Islami, 1986), 235; see also Ala al-Din al-Mardawi, *Al-Tahbir Sharh al-Tahrir*, vol. 6 (Riyadh: Maktabat al-Rushd, 2000), 2509.
- (14): Ibn Manzur, *Lisan al-Arab*, vol. 2 (Cairo: Dar al-Ma'arif, n.d.), 517; Ibrahim et al., *Al-Mu'jam al-Wasit*, vol. 1, 520.
- (15): Qur'an, Surah Al-A'raf: 56.
- (16): Muhammad Said Ramadan Al-Bouti, *Dawabit al-Maslahah fi al-Sharia al-Islamiyyah* (Beirut: Muassasat al-Risalah, n.d.), 23.
- (17): Abdul-Wahhab Khallaf, *Ilm Usul al-Fiqh* (Cairo: Maktabat al-Da'wah, n.d.), 89.
- (18): Al-Kafawi, *Al-Kulliyat: Mu'jam fi al-Mustalahat wa al-Furuq al-Lughawiyah* (Beirut: Muassasat al-Risalah, n.d.), 617.
- (19): Ali ibn Muhammad al-Jurjani, *Kitab al-Ta'rifat* (Beirut: Dar al-Kotob al-Ilmiyah, 1403 AH), 149.
- (20): Muhammad ibn Bahadur al-Zarkashi, *Al-Bahr al-Muhit fi Usul al-Fiqh*, vol. 4 (Cairo: Dar al-Kutub, 1414 AH), 521.
- (21): Qadi Ibn al-Arabi, *Ahkam al-Qur'an*, vol. 2 (Beirut: Dar al-Kotob al-Ilmiyah, n.d.), 279; see also Shihab al-Din al-Qarafi, *Sharh Tanqih al-Fusul* (Cairo: Maktabat al-Kulliyat al-Azhariyyah, 1973), 201.
- (22): Qadi Ibn al-Arabi, *Al-Qabas fi Sharh Muwatta Malik ibn Anas*, vol. 1 (Beirut: Dar al-Gharb al-Islami, 1992), 460.
- (23): Ibn al-Arabi, *Al-Qabas*, vol. 1, 683.
- (24): Qur'an, Surah Al-Baqarah: 233.
- (25): Badr al-Din al-Ayni, *Umdat al-Qari Sharh Sahih al-Bukhari*, vol. 5 (Beirut: Dar Ihya al-Turath al-Arabi, n.d.), 646; Abu al-Hasan al-Mawardi, *Al-Hawi al-Kabir*, vol. 15 (Beirut: Dar al-Kotob al-Ilmiyah, 1999), 97.
- (26): Kamal al-Din ibn al-Humam, *Fath al-Qadir*, vol. 4 (Beirut: Dar al-Fikr, n.d.), 368; Abu Ishaq al-Shirazi, *Al-Muhadhdhab fi Fiqh al-Imam al-Shafi'i*, vol. 3 (Beirut: Dar al-Kotob al-Ilmiyah, n.d.), 162; Ibn Qudamah, *Al-Mughni*, vol. 3 (Cairo: Maktabat al-Cairo, 1968), 243.
- (27): Qur'an, Surah Al-Talaq: 6.
- (28): Mustafa al-Khin, Mustafa al-Bugha, and Ali al-Sharbaji, *Al-Fiqh al-Manhaji 'ala Madhhab al-Imam al-Shafi'i*, vol. 4 (Damascus: Dar al-Qalam, 1992), 205.
- (29): Malik ibn Anas, *Al-Mudawwanah al-Kubra*, vol. 2 (Beirut: Dar al-Kotob al-Ilmiyah, 1994), 266.
- (30): Qadi Abd al-Wahhab al-Baghdadi, *Al-Ma'unah fi Fiqh Al al-Madinah*, vol. 1 (Beirut: Al-Maktabah al-Tijariyyah, n.d.), 935.
- (31): Ibn Hazm al-Andalusi, *Al-Muhalla bi al-Athar*, vol. 10 (Beirut: Dar al-Fikr, n.d.), 170.
- (32): Ibn al-Arabi, *Ahkam al-Qur'an*, vol. 1, p 278.

- (33): Ibn al-Arabi, *Ahkam al-Qur'an*, Vol. 1, p. 278.
- (34): Muhammad Mustafa Al-Zuhayli, *Al-Wajiz fi Usul al-Fiqh*, vol. 1 (Damascus: Dar al-Khair, 2006), 657.
- (35): Sahih Muslim, no. 1690.
- (36): Sayyid Sabiq, *Fiqh al-Sunnah*, vol. 2 (Cairo: Dar al-Fath lil-'Ilam al-Arabi, n.d.), 408.
- (37): Abu al-Walid al-Baji, *Al-Muntaqa Sharh Al-Muwatta*, vol. 7 (Cairo: Matba'at al-Sa'adah, 1332 AH), 137.
- (38): Ibn Rushd al-Qurtubi (Al-Hafid), *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, vol. 4 (Cairo: Dar al-Hadith, 2004), 219; *see also* Muhammad ibn Ahmad al-Safarini, *Ghidha' al-Albab fi Sharh Manzumat al-Adab*, vol. 6 (Cairo: Matba'at al-Najah, n.d.), 222.
- (39): Al-Baji, *Al-Muntaqa*, vol. 7, 137.
- (40): Ministry of Awqaf and Islamic Affairs, *Al-Mawsu'ah al-Fiqhiyyah al-Kuwaitiyyah*, vol. 17 (Kuwait: Matba'at Dar al-Safwah, n.d.), 141.
- (41): Qadi Ibn al-Arabi, *Ahkam al-Qur'an*, vol. 1 (Beirut: Dar al-Kotob al-Ilmiyah, n.d.), 463.
- (42): Ibn Rushd, *Bidayat al-Mujtahid*, vol. 4, 220.
- (43): Abu Abdullah al-Qurtubi, *Al-Jami' li-Ahkam al-Qur'an*, vol. 5 (Cairo: Dar al-Kutub al-Misriyyah, 1964), 89.
- (44): Muhammad ibn Salih al-Uthaymin, *Al-Sharh al-Mumti' 'ala Zad al-Mustaqni'*, vol. 14 (Riyadh: Dar Ibn al-Jawzi, 2006), 237.
- (45): Shams al-A'immah al-Sarkhasi, *Kitab al-Mabsut*, vol. 1 (Beirut: Dar al-Ma'rifah, n.d.), 440.
- (46): Ala al-Din al-Bukhari, *Kashf al-Asrar 'an Usul Fakhr al-Islam al-Bazdawi*, vol. 2 (Beirut: Dar al-Kitab al-Arabi, n.d.), 99.
- (47): Ibn Nujaym, *Al-Ashbah wa al-Naza'ir 'ala Madhhab Abi Hanifah*, vol. 1 (Beirut: Dar al-Kotob al-Ilmiyah, 1419 AH), 86; Shihab al-Din al-Qarafi, *Al-Furuq*, vol. 1 (Beirut: Dar al-Kotob al-Ilmiyah, n.d.), 211; Ala al-Din al-Mardawi, *Al-Tahbir Sharh al-Tahrir*, vol. 6 (Riyadh: Maktabat al-Rushd, 2000), 2698.
- (48): Abu al-Muzaffar al-Sam'ani, *Qawati' al-Adillah fi al-Usul* (Beirut: Dar al-Kotob al-Ilmiyah, 1997), 193; *see also* Badr al-Din al-Zarkashi, *Al-Bahr al-Muhit fi Usul al-Fiqh*, vol. 4 (Cairo: Dar al-Kutub, 1414 AH), 519.
- (49): Al-Qarafi, *Anwar al-Buruq fi Anwa' al-Furuq*, vol. 5 (Riyadh: Maktabat al-Rushd, n.d.), 2148; Al-Zarkashi, *Al-Bahr al-Muhit*, vol. 4, 522; Al-Kafawi, *Al-Kulliyat*, 617.
- (50): Qur'an, surah Al-Baqarah: 221.
- (51): Ismail ibn Kathir, *Tafsir al-Qur'an al-Azeem*, vol. 1 (Beirut: Dar Al-Kotob Al-Ilmiyah, 1420 AH), 582; *see also* Ibn Hajar al-Asqalani, *Fath al-Bari Sharh Sahih al-Bukhari*, vol. 9 (Beirut: Dar al-Ma'rifah, 1379 AH), 417.
- (52): Malik ibn Anas, *Al-Mudawwanah al-Kubra*, vol. 2 (Beirut: Dar al-Kotob al-Ilmiyah, 1415 AH), 219.
- (53): Ibn Taymiyyah, *Majmu' al-Fatawa*, vol. 5 (Medina: King Fahd Complex, 1995), 461.
- (54): Al-Ujayli, *Futuh al-Wahhab bi-Sharh Manhaj al-Tullab*, vol. 4 (Beirut: Dar al-Fikr, n.d.), 194.
- (55): Qur'an, 5:5 (Al-Ma'idah).
- (56): Qur'an, 98:1 (Al-Bayyinah); *see also* Qur'an, 2:105 (Al-Baqarah).
- (57): Qadi Ibn al-Arabi, *Ahkam al-Qur'an*, vol. 1 (Beirut: Dar al-Kotob al-Ilmiyah, n.d.), 218