

Analysis of Judicial Fiqh Principles in the Context of Civil Procedure

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Article Received: 20- May-2025, Revised: 10-June-2025, Accepted: 30-June-2025

ABSTRACT:

Judicial fiqh rules encompass a corpus of regulatory principles that underpin certain legal statutes and provisions within the framework of judicial proceedings or exert a formative influence upon them. From a particular analytical standpoint, these rules are classified into two distinct categories: general and specific. General rules are those that extend their application beyond the sphere of judicial proceedings to other domains of fiqh, including matters of worship and contractual transactions, whereas specific rules are primarily employed within the purview of adjudication and judicial decision-making, notwithstanding their occasional relevance to other topics, as exemplified by the principle (البينة على المدعى و اليمين على من انكرو) [The onus of proof rests with the claimant, and the oath with the one who denies...]. This investigation delineates the most prominent judicial rules and examines their practical implementation within civil procedure. A substantial number of judicial pronouncements and propositions related to civil procedure rights are shaped by fiqh principles in instances where legal texts are lacking, ambiguous, or subject to interpretation, with fiqh rules offering essential methodologies to facilitate the interpretation of specific legal provisions.

Keywords: *Fiqh principles, Judicial adjudication, Judicial proceedings, Civil procedure.*

INTRODUCTION:

The principles of judicial process constitute legal doctrines that are not restricted to a singular instance or particular subject matter, enduring in their applicability until supplanted by an alternative principle. These principles, embodying the most elemental juridical edicts, exercise authority over all derivative legal provisions. As delineated in Article 167 of the Constitution: "Judges are required to exert diligent effort to identify the appropriate ruling for each dispute within the framework of codified legislation, and in the event of failure to do so, they must render a decision by drawing upon authoritative Islamic sources or recognized fatwas, and they are precluded from abstaining from adjudicating a case or issuing a ruling based on silence, inadequacy, ambiguity, or inconsistency within the enacted legal texts" (Katouzian, 2002, p. 58). The primordial regulations of judicial procedure within Islam are extracted from the verses of the Holy Quran.

The Quran grounds judicial practice upon two foundational tenets: the realization of justice and the avoidance of personal caprice, as expressed: "O David, We have established you as a vicegerent upon the earth, therefore adjudicate among the people with equity and eschew the pursuit of your desires" (Surah Šād, Verse 26). Concerning adjudication among non-Muslims, it further stipulates: "...Should they approach you for judgment (should you so choose), adjudicate between them, or decline their request...

Should you adjudicate, do so with fairness, for God holds those who uphold justice in high regard" (Surah Šād, Verse 26). These examples affirm that, before the formal codification of judicial procedure statutes in Iran, the procedural and substantive guidelines governing the establishment and operation of courts within the Islamic tradition had already undergone scholarly examination. Islamic jurists, encompassing both Shia and Sunni schools, have derived regulatory principles from Quranic verses and incorporated them into contemporary judicial systems. The principles of fiqh extend beyond the scope of civil procedure, finding their origins in other legal corpora as well (Katouzian, 1995, Vol. 2, p. 396). Ambiguities, imprecisions, and discrepancies in statutory laws emerge due to a variety of factors, necessitating the employment of methodologies to aid judges in comprehending the subject matter and formulating rulings in response to these challenges.

Among the supportive mechanisms available to judicial officers, the fiqh principles governing judicial proceedings are noteworthy, possessing the capacity to surmount barriers impeding the achievement of judicial equity. The mere existence of just laws does not constitute a sufficient prerequisite for the attainment of judicial equity; rather, the meticulous and accurate interpretation of laws that are ambiguous, imprecise, or contradictory also assumes a pivotal role in this pursuit (Bahramian et al., 2018). Indisputably, in the current era, the fortification of fiqh through

inferential techniques to address emergent needs and inquiries arising from a complex existence interwoven with industrial and developmental progress represents a priority. Among these, the principles of fiqh merit scrutiny from diverse analytical vantage points.

Considering that fiqh constitutes an authoritative source within the legal system of the Government of the Islamic Republic of Iran, its effective and essential utilization of legal methodologies necessitates a deep understanding of its principles. Within any legal framework, civil procedure outlines the trajectory of legal proceedings, determining both the preliminary and concluding phases of each legal contention, and serving as the structure within which all legal norms must be situated. This phenomenon is particularly evident in certain legal systems, such as those based on Common Law. As a result, in such procedural frameworks, the application of fiqh rules remains impractical until the procedural course is delineated, since judicial procedure embodies the values, traditions, customs, and societal norms of a given nation. Additionally, the stance taken by the legislator in the Civil Procedure Law positions fiqh rules as a legitimate source for inferring judicial decisions alongside statutory legislation, thereby broadening the legal framework through this practice. In instances where statutory laws are absent, a judge's omission to consult Islamic fiqh sources and foundational legal principles is regarded as a failure to fulfill the obligation to ensure justice, thereby subjecting the judge to potential penalties (Article 167 of the Constitution and Article 3 of the Civil Procedure).

Furthermore, numerous provisions within the civil procedure can be adapted and extended to align with fiqh rules, and a thorough comprehension of these rules aids the judge in fulfilling the legislator's intended purpose. Proficiency in fiqh rules facilitates the judge's ability to achieve their objectives efficiently, as surface-level analyses and arguments lacking grounding in rational fiqh rules, coupled with a disregard for goal-oriented principles in judicial proceedings, result in the sidelining of justice and a departure from the realization of rights, thereby diminishing the aim of adjudication from the establishment of justice to the mere settlement of disputes (Khodabakhshi, 2018, p. 88). Consequently, consulting fiqh sources enables access to the underlying foundations and multifaceted dimensions of a legal statute, a process that is contingent upon familiarity with fiqh rules.

Civil procedure is constructed upon a variety of principles that form its structural and foundational basis. Certain perspectives hold that civil procedure should be confined to procedural principles and formalities, with recourse to fiqh being viable solely in substantive matters. Nevertheless, this field of law, akin to others, possesses principles that take precedence over other procedural regulations. What are termed general legal principles in civil procedure can be harmonized with specific fiqh concepts,

including fiqh rules. The degree to which fiqh can be utilized to address particular issues in civil procedure, the extent to which fiqh rules can be invoked as authoritative references, and whether the impact of civil procedure rules over fiqh rules pertains predominantly to procedural or substantive dimensions necessitate a thorough investigation and analysis. This study centers on the examination of judicial fiqh rules within the context of civil procedure.

Fiqh Principles Governing Evidentiary Proofs in Legal Claims

The principle of al-iqrār al-‘uqalā ‘alā anfusihim jā’iz (The acknowledgment by rational individuals against themselves is permissible)

Fazel Lankarani articulates the definition of confession as follows: In both linguistic and conventional usage, confession denotes the act of affirming or establishing a fact; in this context, it signifies the confessor's affirmation and validation of a given matter. Musavi Bujnurdi similarly describes confession as “the establishment of an entity through acknowledgment and affirmation” (Mousavi-Bojnourdi, 2017, Vol. 3, p. 42).

The fiqh principle of confession ranks among the widely recognized rational precepts, deemed both highly significant and practically applicable, receiving detailed attention from both general and specialized fiqh traditions. Although this principle is not directly extracted from the verbatim text of the narration, its foremost justification resides in the conduct of rational individuals. Concerning the confession rule as a mechanism for substantiating a claim, citations are drawn from verses of the Holy Quran, thereby necessitating extensive scholarly discourse. The confession rule encapsulates the essence of a renowned Prophetic hadith, which declares, “The acknowledgment by rational individuals against themselves is permissible,” implying that a rational person's admission against their interests is both valid and legally binding. The Iranian Civil Code, in Article 1259, delineates confession as “a declaration recognizing a right in favor of another to the declarant's detriment” (Shams, 2019).

The Quranic verse states: “And there are others who have acknowledged their sins, having intermingled righteous deeds with malevolent actions; it is hoped that God will accept their repentance, for God is indeed Forgiving and Merciful” (At-Tawbah 9:102). This verse portrays a cohort of Arabs who have confessed to their sins (hypocrisy), blending virtuous and sinful conduct, thereby nurturing hope for divine forgiveness (Tabatabai, 2014, Vol. 9, p. 376). However, in light of the verse's context and semantic import, it appears to lack a direct correlation with the legal validity of the confession rule. Although the admission by sinners of transgressions against reason or religious law constitutes a self-detrimental confession, such an act does not inherently substantiate the enforceability of every rational individual's self-

incriminating acknowledgment. Consequently, this verse does not constitute adequate evidence for the confession rule. Rather, it addresses a specific ruling and cannot be utilized to infer a universal principle; at its zenith, it may be considered an instance of the confession rule rather than an endorsement of its legal authority for every rational person's self-detrimental admission.

Confession constitutes a form of declaration, entailing the narration of events from the past, present, or future, wherein the confessor asserts the existence of an obligation or right in favor of others. The second constituent of confession is the "declaration of a right," encompassing rights that are material or immaterial, financial or otherwise. A right is understood as an authority conferred upon an individual by legal statute. It appears that within fiqh, the term "right" is employed in this identical sense, thereby possessing enforceable implications (Mohaghegh Damad, 2019). In the act of confession, a statement must affirm the presence of a right, either explicitly as in a claim for debt repayment where the defendant acknowledges the obligation—or implicitly as in a claim for damages due to non-performance of a commitment, where the defendant concedes a delay in fulfilling said commitment. This form of confession represents an acknowledgment of the foundational basis for the claimant's right (Emami, 2002, Vol. 6, p. 23).

A jurist, in explicating the legislator's refusal to accept denial after confession, has posited that denial equates to the abrogation of confession, and it is illogical for a rational and competent individual to intentionally and voluntarily confess to a matter, only to subsequently negate it through denial. Furthermore, should denial be permitted following confession, the reciprocal trust between the individual and society would be jeopardized, thereby disrupting the fabric of social interactions (Sadrzadeh, 1989, p. 127).

The Fiqh Principle of "Man Malaka Shay'an Malaka al-Iqrār bihi"

Multiple grounds have been advanced to substantiate the legal validity of this principle, encompassing al-iqrār al-'uqalā 'alā anfusihim jā'iz (the confession of rational individuals against themselves is permissible), consensus among jurists, and the customary practice of rational individuals. However, a critical observation is that certain jurists have equated the semantic content and conceptual framework of both the confession rule and the man malaka rule. Nevertheless, a meticulous analysis of the illustrative instances associated with these two principles reveals discernible differences. For example, the confession of a minor (an individual lacking legal maturity) concerning their property cannot be upheld under the al-iqrār al-'uqalā' rule, yet it may be affirmed under the man malaka rule; conversely, the admission by a mature and rational individual of perpetrating a murder cannot be corroborated under the man malaka rule, but it is

admissible under the al-iqrār al-'uqalā' rule. Furthermore, the legitimacy of a mature person's confession regarding their possessions can be derived from the application of either principle. Consequently, the interrelationship between these two rules in their respective exemplars constitutes a dynamic of general and specific applicability from a particular perspective, signifying that one rule cannot function as evidentiary support for the other (Mostafavi, 1415 AH, p. 1287).

A significant number of jurists have asserted a consensus regarding the man malaka rule (Mostafavi, 1415, Vol. 3, p. 174), suggesting that legal scholars have adhered to it and positioned it as a central pillar in their argumentative frameworks, thereby attesting to its credible foundation.

Scholars have identified this as the foremost rationale for the rule's legal authority; should an individual possess dominion over an entity to the extent of exercising unrestricted disposition over it under any circumstance, any confession about that entity is deemed acceptable without necessitating additional evidence, given that the authority over it resides with them. For instance, in the context of revocable divorce, wherein a husband retains the prerogative to reunite with his spouse if he elects to do so, no inquiry is made into his motives for such a decision. Hence, the corollary of this authority is the acceptance of the confessor's declaration in matters relating to their domain (Mostafavi, 1415 AH, Vol. 2, p. 143). Accordingly, for the rule to possess efficacy and authoritative standing, mere prior control and ownership are inadequate; rather, the presence of current control and ownership is recognized as legally valid (Raeisi, 2018, p. 156).

Al-bayyinah 'ala al-mudda'i wa al-yamin 'ala man ankar (The burden of proof rests with the claimant, and the oath is incumbent upon the one who denies)

The principle in Islamic jurisprudence constitutes a foundational rule in judicial proceedings. This principle, prominent in both historical and contemporary Islamic legal scholarship, has served as a cornerstone for legal reasoning across various domains of adjudication. The Prophet Muhammad and the Fourteen Infallibles have articulated this principle, and it has been consistently applied by Islamic jurists throughout the history of Islamic governance. Within the Iranian legal framework, this principle is expressly enshrined in Article 1257 of the Civil Code and Article 197 of the Civil Procedure Law, promulgated in 2000. According to this principle governing the burden of proof, any individual asserting a legal right is obligated to substantiate their claim, irrespective of their position as plaintiff or defendant. Upon the claimant's presentation of evidence, the responsibility shifts to the opposing party to refute the claim by providing credible evidence and arguments deemed valid by the adjudicating body.

An additional basis for the legitimacy of this principle might be found in the concept of the "practice of

rational individuals." However, as this concept has not been invoked in traditional jurisprudential texts to validate this principle, we have abstained from citing it as an independent justification.

In the context of Islamic law, the principle of "Al-bayyinah 'ala al-mudda'i wa al-yamin 'ala man ankar" has been consistently upheld and implemented by the Prophet Muhammad and the Fourteen Infallibles. This principle is specifically applicable to civil disputes and is not relevant to criminal or penal matters that exclusively pertain to divine rights (haqq Allah). The application of this principle does not extend to cases involving purely divine rights.

Currently, this jurisprudential principle is codified in Article 1257 of the Civil Code and Article 197 of the Civil Procedure Law, enacted in 2000. Under the rule of the burden of proof, any party asserting a legal right bears the obligation to substantiate their claim, whether they are the plaintiff or defendant. Consequently, the onus of producing and presenting evidence lies with the claimant, or, in other terms, the burden of proof is borne by the claimant. Once the claimant furnishes evidence, the opposing party assumes the responsibility of disproving the claim by presenting valid evidence and arguments acceptable to the adjudicating authority. Nonetheless, a critical issue in judicial proceedings remains the determination of which party bears the burden of proof.

According to Article 194 of the Civil Procedure Act (2000), evidence is formally defined as any matter to which litigating parties refer to substantiate or defend their legal claims. However, within the domain of legal practice, the concept of evidence assumes a more restricted interpretation, referring specifically to materials admissible in judicial or quasi-judicial forums during the initiation or defense of legal proceedings. A notable example of such evidence is the presumption of innocence, articulated in Article 197 of the same statute. This article provides that innocence is the default position; hence, any individual asserting a right or claiming a debt against another is obligated to substantiate the claim with appropriate proof. In the absence of such proof, the defendant may invoke an oath, thereby prompting the court to render a judgment of non-liability.

This evidentiary principle aligns with the established maxim "al-bayyinah 'ala al-mudda'i wa al-yamin 'ala man ankar", which prescribes that the burden of proof resides with the claimant, while the respondent may resort to oath-taking to deny liability if the evidence is lacking. This maxim is one of the practical manifestations of the presumption of innocence. As such, when a person asserts that another party owes them a debt, the presumption of non-liability applies universally and by default; thus, the burden rests on the claimant to present compelling evidence. Failure to do so precludes the issuance of a judgment against the alleged debtor.

The implications of Article 197 are also reflected in judicial conduct. Judges are legally required to uphold

the presumption of innocence, enshrined not only in Article 197 of the Civil Procedure Act but also in Article 37 of the Constitution. Consequently, until the full evaluation of evidence, documents, and supporting materials is completed, judges are prohibited from treating an accused party as though they are already convicted.

The former Civil Procedure Code of 1939 did not impose upon the defendant an obligation to take an oath; however, under the 2000 Civil Procedure Act, the plaintiff lacking evidentiary support is entitled to make the outcome of the case contingent upon the defendant's sworn denial (as also indicated in Volume III of the 1935 Civil Code).

In Islamic jurisprudence, the probative authority of witness testimony is unanimously recognized across Islamic legal traditions. Testimony not only constitutes a legitimate means of proof but is frequently considered the most authoritative form thereof, embodying a paradigmatic instance of bayyina shar'iyah (legally valid evidence) (Mohaghegh Damad, 2019, p. 81). Numerous traditions in classical jurisprudence affirm the legitimacy of testimony, and from these sources, one may infer its general admissibility. While the principle of the evidentiary validity of testimony is well established in fiqh, scholarly debate persists as to whether such validity is confined to specific contexts namely, adversarial claims and disputes where explicit textual support exists or whether it extends to all areas of Islamic legal concern. A prevailing view among jurists affirms the universality of its probative value.

Islamic legal doctrine stipulates three principal conditions for admissible testimony: numerical sufficiency, male gender, and moral uprightness. In standard cases, this translates to two just male witnesses, whereas offenses such as adultery or sodomy require the testimony of four men. Some jurists further regard masculinity as an essential precondition for valid testimony and permit female witnesses only in narrowly defined circumstances cited in textual sources. Others maintain that women's testimony bears equal evidentiary weight to that of men in all but explicitly excluded domains wherein, in such cases, the testimony of four women may be admitted instead of two men.

The codified law defines bayyina as the testimony of two witnesses and prescribes, across various statutes, the requisite number and qualifications for witnesses in distinct legal contexts. For example, Paragraph (b) of Article 230 of the 2000 Civil Procedure Act implicitly characterizes bayyina as two witnesses and allows a plaintiff who cannot produce qualified testimony to prove their claim by presenting one male or two female witnesses alongside an oath.

The jurisprudential discourse on the evidentiary value of testimony distinguishes between instances where all requisite conditions are fulfilled and those where they are not. Among jurists, the presence or absence of these conditions fundamentally determines the

credibility and admissibility of the testimony. Certain authorities assert that, when the conditions are satisfied, the judge is bound to issue a ruling on that basis. Conversely, there exists no jurisprudential precedent for permitting a judge discretionary authority or conditioning a ruling on the judge's certainty when the testimony meets all formal criteria. However, many jurists agree that a judgment may not be issued based on testimony if the judge has certain knowledge of its falsity. Thus, the validity of testimony in fiqh does not hinge on the subjective impression it leaves on the judge; rather, the judge holds no autonomous evaluative role in its final determination.

Article 241 of the Civil Procedure Act reflects a legislative intention to prevent the compulsory acceptance of witness testimony by the court and instead authorizes its evaluation through the lens of conscience, equity, and evidentiary support. This provision, firstly, is not intended to affirm the judge's right to examine the conditions of witness and testimony, as such authority is presumed and indeed forms part of the judge's fundamental duties, requiring no explicit statutory acknowledgment—just as judges must evaluate the validity of confessions, documents, and other evidence without any special provision. Secondly, the article does not concern the admissibility of testimony lacking requisite conditions, as such testimony is classified not as *shahada* but as a *qara'ina qada'iyya* (judicial presumption). Therefore, Article 241 addresses the judge's discretion in evaluating fully qualified testimony, particularly when confronted with conflicting forms of persuasive evidence. Where no such conflict exists, the judge is duty-bound to base their ruling on such testimony, and any disregard of it must be substantiated by reasoned justification.

Fiqhi Principles Governing Judicial Authority

The Doctrine of Al-Ḥākim Walī al-Mumtani'

The jurisprudential doctrine known as *al-ḥākim walī al-mumtani'* literally, "the judge is guardian over the recalcitrant" functions as a pivotal mechanism within Islamic legal theory, particularly in adjudicatory contexts. The term *ḥākim* is employed not merely in its judicial sense but about a fully qualified jurist (*faqīh jāmi' al-sharā'it*), who, beyond his role as a judge or prosecutor, also assumes the responsibilities of a general supervisory authority (*muḥtasib*), thereby holding extensive administrative and legal jurisdiction (Mohaghegh Damad, 2016). The designation *walī* denotes a person vested with custodial and interventionist authority over another's affairs, particularly when intervention is warranted by legal or moral exigency. *Mumtani'*, for its part, characterizes a party who willfully refrains from performing a legal obligation.

While the Qur'an does not explicitly articulate this principle, its normative basis emerges from the jurisprudential interpretation of certain hadiths. These

narrations, though lacking the precise phrasing of the rule, endorse its substance—compelling performance from those who unjustifiably withhold due acts, such as repaying a debt or releasing hoarded goods during times of shortage (Al-Hurr al-ʿĀmilī, 2005). A wide range of juristic opinions, supported by practical applications, substantiates an emergent consensus (*ijmā'*) regarding the validity of this principle.

Some scholars, such as Ṣāhib al-Jawāhir, have appealed to the Qur'anic verse concerning divine guardianship (e.g., *innamā walīyyukum Allāh...*) as indicative of the judge's derivative authority. However, this inference has faced criticism, particularly on the basis that such verses delineate exclusive guardianship to God, the Prophet, and the Imams, and not to others without demonstrable textual support affirming a jurist's general deputation.

Alternatively, Shaykh Murtadha al-Ansari has situated the principle within the framework of the *lā ḍarar* (no harm) maxim, arguing that judicial authority to intervene arises specifically in contexts of harm caused by refusal, as exemplified by the Prophet's response to Samura ibn Jundab's obstinacy in property and social matters.

For this doctrine to be operational, three cumulative conditions must be met: the demonstrable refusal (*imtina'*) of the obligated party, the presence of judicial authority, and a formal request from the aggrieved party. Crucially, the judge's authority is not self-activating but is contingent upon the affected party's appeal. The adversarial process becomes a prerequisite for establishing refusal, especially in cases such as judicial divorce on grounds of non-maintenance, where compulsion must precede any verdict (Mohaghegh Damad, 2016; Emami, 2002).

In the context of a political and legal order governed by a *faqīh jāmi' al-sharā'it*, judicial legitimacy is drawn from his overarching authority. Consequently, only those judges authorized by him possess jurisdiction, and parallel claims to judicial authority by other jurists are not recognized, given the imperative to ensure legal uniformity and social order.

The private nature of civil relations further necessitates that judicial intervention occur solely upon request by the rights-holder, a condition that safeguards against unwarranted state interference. This principle is also evident in jurisprudential rulings concerning the divorce of absent or negligent husbands, where enforcement is permissible only upon the wife's discontent with the existing state of affairs.

In Iranian legal practice, the principle of *al-ḥākim walī al-mumtani'* serves as a foundational tool for ensuring the enforceability of rights and obligations. Judges apply it to compel performance from parties who unjustifiably refuse to honor legal duties, thereby reinforcing both procedural justice and the authority of the legal system.

The practical application of the fiqh-based doctrine "*Al-Ḥākim Walī al-Mumtani'*" is particularly observable within the Iranian Civil Code, most notably

in provisions such as Articles 328, 1029, 1023, 591, and 747, which may be interpreted in alignment with this principle. However, its most explicit and salient legal instantiation appears in Article 1129, which stipulates that if a husband persistently refuses to fulfill his obligation of maintenance (*nafaqah*) and the court's decision in this regard cannot be enforced, the wife is entitled to petition the judge for a divorce. In such cases, the judge is empowered to compel the husband to issue a divorce, even where the husband's inability to provide maintenance is rooted in incapacity rather than willful refusal.

As to the doctrinal impact of this rule within the context of Civil Procedure, it is necessary to distinguish between two principal categories of judicial decisions: declaratory and constitutive rulings. Declaratory judgments merely affirm the existence of a pre-existing legal status without creating a new legal effect, for instance, a certificate confirming the legal heirs of a deceased person. By contrast, constitutive judgments generate new legal relationships, establish entitlements, or impose affirmative or prohibitory obligations upon individuals. It is the latter category, particularly those judgments culminating in the issuance of enforceable deeds of conveyance, that is closely tied to the implementation of the aforementioned *fiqh* rule. Such judgments can, directly or indirectly, result in the execution and formal registration of a deed through enforcement procedures. Nonetheless, effectuating such enforcement is contingent upon satisfying multiple legal prerequisites and procedural steps, some of which lie within the jurisdiction of courts and their enforcement branches, while others pertain to notarial offices. Under Article 1 of the Law on the Enforcement of Civil Judgments, only judgments that have attained finality—either because they are not appealable or because the period for contestation has elapsed—are subject to enforcement. Crucially, enforceability is also contingent upon the proper service of the judgment to the parties or their attorneys by Article 302 of the Civil Procedure Code. Once service is effected and the judgment attains final status, the prevailing party must formally request enforcement from the trial court. The court, upon verifying the fulfillment of statutory conditions and procedural requirements, proceeds to issue an enforcement writ, which is then duly served upon the judgment debtor. Upon receipt of the writ, the debtor is granted ten days to comply with the operative terms of the judgment (Civil Procedure Code, enacted 2000).

The Fiqh Rule of “Lā Ḥaraj” (No Hardship)

The jurisprudential doctrine of *Lā Ḥaraj* constitutes a foundational principle within Islamic *fiqh*, stipulating that any religious obligation that results in excessive hardship, beyond what is customarily bearable by individuals, is nullified. Both Qur’anic verses and Prophetic traditions that underpin this principle occasionally substitute the term *ḥaraj* (hardship) with

its semantic equivalent, ‘*usr* (difficulty), each conveying notions of distress and severity. In Persian legal parlance, these terms are generally interpreted as signifying hardship and adversity, and jurists apply them based on their common understanding to indicate extreme difficulty.

The validity and normative force of the *Lā Ḥaraj* rule are grounded in the four principal sources of Islamic jurisprudence: the Qur’an, the Sunnah, rational judgment (‘*aql*), and scholarly consensus (‘*ijmā’*). Among the most frequently cited textual evidence is Qur’an 22:78, wherein God, following an exhortation for worship and righteous conduct in the preceding verse, declares: “Strive for the cause of God with the striving due to Him. He has chosen you and has not placed upon you any hardship in the religion.” This verse establishes a fundamental principle that religious obligations must not result in undue hardship.

Further textual proof is found in Qur’an 2:286, which petitions: “Our Lord, do not impose upon us burdens as You imposed on those before us.” The term *isr* used therein denotes burden, constraint, sin, or punitive confinement, interpreted as a reference to onerous or overly rigid pre-Islamic religious injunctions. Exegetes maintain that during the Prophet’s ascension (Mi‘rāj), he appealed to God to relieve the Muslim community from burdens previously borne by earlier nations, such as the prohibition of spoils, enforced separation from menstruating women, and the requirement to remove garments tainted by impurity.

From a rationalist standpoint, some scholars assert that the *Lā Ḥaraj* principle is intrinsically rooted in the axiom of the impermissibility of imposing obligations beyond one’s capacity (*taklīf bimā lā yutāq*). They argue that any legal imposition that entails excessive strain or exceeds human capability is inherently irrational and thus inadmissible as divine law. Accordingly, this interpretation restricts the scope of *Lā Ḥaraj* to only those duties that fall beyond ordinary human endurance, positing that a broader application would necessitate the abrogation of most legal obligations (Mir Muhammadi, quoting ‘Awā'id al-Ayyām).

Rational convention (*binā’ al-‘uqalā’*) similarly rejects the legitimacy of legislating burdensome rulings across all legal dimensions. Given that the Divine Legislator is the paradigm of rational authority, deviation from this universal rational consensus would be inconsistent. Thus, from the standpoint of practical reason, understood as the repository of sound and commendable judgment, the institution of hardship-inducing rules is unjustifiable. Upon recognition that a specific ruling entails harm intrinsic to its subject matter, the Sharī‘ah necessarily invalidates it for lacking a legitimate basis and declares it null (Mousavi-Bojnourdi, 2000, p. 368).

Within Imāmī jurisprudence, consensus (‘*ijmā’*) is only recognized as an authoritative source of law, comparable to the Qur’an, Sunnah, and reason, when it is demonstrably indicative of the opinion of an

infallible Imam (ma‘šūm). In cases where consensus is merely inferred from textual or rational analysis without uncovering the Imam’s view, it lacks definitive probative value and is not binding upon others.

The legal principle of Lā Ḥaraj has found expression in the legislative framework of Iran, as demonstrated by its explicit inclusion in Article 1130 of the Civil Code—where the phrase ‘usr wa ḥaraj is directly referenced—and its underlying influence in other statutes, including Article 9 of the 1983 Landlord-Tenant Law and Article 7 of the 2013 Civil Liability Act.

A particularly pressing issue in contemporary society pertains to the inadequacy of financial resources to satisfy outstanding debts. Historically, the incarceration of financial convicts, compounded by the absence of effective legal procedures for examining claims of i‘ṣār (insolvency), and a disregard for the jurisprudential foundations of the insolvency doctrine, has contributed to a proliferation of debtor imprisonment and fostered flawed judicial practices in adjudicating such claims.

The promulgation of the 2015 Law on the Execution of Financial Convictions introduced a more jurisprudence-informed model for evaluating claims of insolvency. This legislative development has played a pivotal role in mitigating the imprisonment of indigent debtors. While statutory instruments concerning i‘ṣār abstain from providing a conceptual definition, they characterize an insolvent individual (mu‘ṣir) as one who, due to the insufficiency of assets or inaccessibility to property, is unable to discharge court-related expenses or debts (Civil Procedure Code, Art. 504). The 2015 Execution Law adopts a similar stance, defining a mu‘ṣir as a person who cannot fulfill their financial obligations due to the absence of seizable property, and explicitly equates lack of access to property with a lack of ownership.

A claim of i‘ṣār constitutes a procedural mechanism by which a debtor formally seeks a deferment or installment arrangement for the settlement of legal debt. Under the prior execution law, a debtor’s imprisonment was required, in addition to their failure to declare or produce sufficient assets, a determination that the individual was not insolvent. Hence, if a person was judicially ordered to pay—whether in the form of restitution, equivalent value, damages, or diyah (blood money)—and did not comply, the court could impose imprisonment, conditional upon the absence of legally recognized insolvency.

In contrast, the 2015 legislative revision adopts a model more congruent with jurisprudential doctrines, affording the debtor a one-month grace period from the date of execution notification to either substantiate or declare insolvency. Within this timeframe, the debtor is exempt from incarceration and retains the opportunity to resolve the financial obligation (Art. 3, 2015 Execution Law).

Furthermore, Note 1 of the same article clarifies that the legislator’s leniency is not strictly constrained to these thirty days. Even beyond this term, where the debtor can provide a surety, submit acceptable collateral, or furnish a financial guarantee equivalent to the adjudicated amount, and upon creditor consent, the court may defer imprisonment until the debtor’s insolvency status is resolved.

Consequently, insolvency claims hold dual significance. From one angle, they represent a point of vulnerability within the judicial system, susceptible to manipulation by debtors seeking to evade payment and delay judgment execution, thereby undermining public confidence in the courts. From another perspective, such claims serve as an essential safeguard against the punitive incarceration of innocent debtors who are genuinely unable to pay, thus offering a means of reducing the carceral population. It is therefore imperative that courts approach these cases with caution, ensuring legal safeguards are both effectively enforced and insulated from abuse.

Yaquḍī al-ghā’ib bi-l-bayyina wa-l-ghā’ib ‘alā ḥujja (judgment is rendered against the absent with evidence, and the absent must rely on proof)

The jurisprudential maxim has not historically been treated in legal literature as a formal fiqh rule. It might have been more appropriately classified as a theoretical principle. Nevertheless, due to its wide-ranging application and relevance across numerous legal instances and subcategories, it has come to be addressed under the broader category of jurisprudential rules (Mohaghegh Damad, 2016, vol. 3, p. 307).

Islamic jurists have articulated this rule in the context of judicial procedure, highlighting its controversial status within discussions of adjudication and judicial decision-making. Given the requirements set forth by shar‘ī evidence and the judge’s jurisdiction over litigants in Islamic legal procedure, adjudication typically presupposes the presence of both parties. However, enforcing an unqualified requirement for the continuous presence of both litigants would, in practice, result in the deprivation of legal rights. This concern becomes particularly acute in modern, industrialized societies, where litigants—acting under a presumption of their righteousness—may violate others’ rights while systematically evading judicial oversight. Such behavior often involves intentionally avoiding court proceedings, thereby obstructing the administration of justice and destabilizing the judiciary’s role in upholding legal order.

A rational and legal resolution to this dilemma lies in the legislative endorsement of trials conducted in absentia, culminating in the issuance of ghiyābī (default) judgments. The discussion that follows examines the implications of this jurisprudential rule in greater detail.

In his seminal legal text *Sharā’i’ al-Islām*, al-‘Allāma al-Ḥillī affirms: “A judgment may be rendered in absentia concerning ḥuqūq al-nās—such as debt claims

and contractual disputes—but not in matters involving ḥuqūq Allāh, like fornication and sodomy, as such cases are grounded in the principle of divine leniency. In cases where both domains intersect as in theft the judge may render a default ruling regarding the civil liability (e.g., restitution), but the punitive aspect, such as amputation, remains a matter of juristic hesitation” (al-Hillī, 1408 AH, vol. 4, p. 7).

According to al-Hillī, default adjudication in matters of private rights poses no legal barrier, and judges may issue such rulings concerning financial obligations and contractual matters. However, in matters involving divine rights, particularly in criminal offenses grounded in religious prohibition, issuing a judgment in absentia is impermissible, on the basis that Islamic law prioritizes leniency in these areas. When a legal matter encompasses both divine and private rights, as in theft, al-Hillī refrains from issuing a definitive ruling. His hesitation appears to be rooted in the assumption that both dimensions derive from a shared causal foundation, making their separation legally problematic.

Nonetheless, such reasoning lacks logical persuasiveness, given the absence of a necessary causal nexus between human behavior and divine injunctions in Islamic jurisprudence. Thus, the extension of rational maxims (qawā'id 'aqliyya) to this domain is unfounded (Mohaghegh Damad, 2019, p. 313).

A segment of scholars upholds the permissibility of in absentia proceedings, asserting that the court is authorized to adjudicate and issue judgments against a defendant who fails to appear. Opposing this stance are prominent jurists such as Shaykh Ṭūsī, Muḥaqqiq Ardabīlī, and Muḥaqqiq Yazdī, who reject the validity of issuing in absentia judgments. They contend that just as a judge is not authorized to issue a verdict against a defendant present in court despite the plaintiff providing evidence without formally notifying him, similarly, if the defendant resides within the jurisdiction, the judge is obliged to notify him of the judicial process and summon him before issuing any decision (Mohaghegh Damad, 2016, p. 240).

To ascribe the designation in absentia to a judicial ruling, three conditions must concurrently be fulfilled: the defendant's physical absence, the lack of any submitted written defense, and the failure of effective and actual service of the summons. The absence of any one of these conditions reclassifies the judgment as in personam, with all corresponding legal ramifications. Some legal theorists have emphasized that while the court's action concerning an absent defendant constitutes a judicial measure or decision, it cannot be deemed a “judgment” in the strict juridical or definitive shar'ī sense (Mohaghegh Damad, 2019, p. 315).

Judicial decisions are not monolithic in nature. Frequently, courts issue provisional or interim orders. A ḥukm (judgment) properly refers to a final judicial ruling issued after evaluating both the plaintiff's

allegations and the defendant's defense within the framework of shar'ī standards, thereby concluding the dispute. However, in instances where the defendant is absent or refuses to participate in the proceedings, Islamic law may permit the judge to issue a provisional decision to safeguard the plaintiff's rights. Such interim rulings are ancillary to the principal judgment and do not constitute the judge's definitive resolution. The judge's final judgment materializes only once the absent party appears, either accepting the provisional ruling or contesting it. In the absence of contestation, the provisional ruling is confirmed and elevated to a final verdict (Mohaghegh Damad, 2019, p. 315).

Concerning the jurisprudential rule al-ghā'ib 'alā ḥujja understood within the domain of tashrī'ī or codified judicial justice—it is permissible to render judgments against an absent party. According to the dominant opinion among Imami jurists, issuing such judgments is acceptable, albeit with divergent views regarding their applicability across various claims. The question of in absentia adjudication and ruling constitutes a fundamental topic in the structure of judicial proceedings.

In the context of Iranian positive law, the designation of a court's decision as in absentia is appropriate only when it is based upon the verified absence of one party to the litigation. Where no absence exists, the decision must be legally classified as in personam. Furthermore, given that the classification of a judgment as either in absentia or in personam bears significant procedural consequences, especially in that only in absentia decisions are subject to specific types of objections such as vākhwāhī, the proper legal characterization of judicial decisions is of critical procedural and substantive importance.

The judicial foundation for the fiqhī maxim “al-ghā'ib 'alā ḥujja” within the civil procedural framework is articulated in Articles 303 and 304 of the 2000 Civil Procedure Code. These provisions address the issuance of absentia judgments both in situations where there is a single defendant and where multiple defendants are involved. In the first scenario, the absence of the defendant from court proceedings whether personally or via representation as well as the failure to submit a written defense, combined with the lack of actual and verified service of summons, qualifies the resulting judgment as in absentia. In the second scenario, the same evaluative criteria are applied to each defendant, thereby permitting a disaggregated characterization of the judgment, distinguishing between present and absent defendants.

This legal framework highlights the pivotal role of the actual service of summons in determining the procedural classification of the judgment. Upon completion of valid service, the defendant's absence does not suffice to render the decision in absentia; rather, it is deemed in personam or equivalent to a standard adversarial ruling under the respective jurisdiction's procedural law.

The criterion underpinning the jurisprudential rule “al-ghā’ib ‘alā ḥujja” in this context reflects a fundamental commitment to the preservation of the right to defense. This principle serves as the legal and procedural basis for designating a ruling as in absentia and for granting the absent defendant the right to file an objection (vākhwāhī). Anchored in robust jurisprudential authority, this principle implies that the procedural presence or absence of litigants carries distinct legal implications and enforcement consequences. In the case of an in absentia trial, the resulting judgment is not regarded as final or binding, premised on the argument that it does not meet the standards of a definitive shar‘ī ruling. Consequently, following Article 305 of the Civil Procedure Code, the defendant may, upon appearing, object to the ruling, thereby enabling its potential annulment. This procedural vulnerability renders the in absentia judgment inherently unstable and legally non-final.

CONCLUSION:

Among the primary objectives of an Islamic government is the establishment of the rights of rightful claimants, the elimination of falsehood and its adherents, and the implementation of divine commandments and penal ordinances in the context of judicial adjudication, collectively characterized as the realization of judicial justice. The attainment of judicial justice encompasses multiple dimensions, one of which involves the accurate articulation and codification of laws that are intended to govern a nation and structure a fair procedural system. Due to the persistent presence of ambiguities, generalities, and contradictions within statutory texts, it is incumbent upon judges, under Article 167 of the Constitution and Article 3 of the Civil Procedure Code, to resolve such legal uncertainties through reliance on foundational procedural principles and rational-legal reasoning. In this undertaking, fiqhī doctrines serve a vital and unparalleled function, offering robust models for legal interpretation and adjudicative application.

While civil procedure is formally categorized as a component of procedural law, it nonetheless absorbs influences from substantive law. Given the imperative that judicial regulations conform to the principles of Islamic jurisprudence, the influence of fiqhī norms on procedural rules is both unavoidable and structurally necessary. To avoid judicial subjectivism, courts must move beyond mere theoretical acknowledgment of the relevance of fiqhī principles and instead integrate them meaningfully into judicial processes and the formation of legal precedents. However, despite this necessity, a substantive and operational connection between fiqhī doctrines and procedural law remains underdeveloped in both doctrinal literature and legal praxis.

Efforts aimed at remedying deficiencies within the judicial system, fulfilling legitimate public expectations, and improving the overall efficacy of

procedural law must, therefore, involve the strategic application of enduring fiqhī principles to refine the organization and clarity of civil procedure. Since procedural rules function as foundational instruments in the judicial system, reinforcing their coherence with fiqhī standards will illuminate the procedural pathway and enhance systemic reliability.

In light of the foregoing, a recommendation to the judiciary is warranted: recognizing the interpretive and structural capacities inherent in fiqh can foster greater doctrinal unity and coherence within the domain of civil procedure. Additionally, given that civil procedure acts as the organizing framework for substantive legal rights, elucidating its interconnection with fiqhī principles will facilitate the realization of a more just and efficient judicial process and help avert excessive case backlog and procedural delays within the courts.

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