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Istiṣhāb between Uṣūlī Theorization and Fiqhī Codification: A Study of Fiqh Maxims and Their Applications

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Abstract:

This study examines istiṣhāb as one of the principles of Islamic legal theory that has contributed to the formulation of a number of fiqh maxims and to directing their applications in subsidiary legal rulings. It aims to clarify the concept and authority of istiṣhāb by establishing its foundations in the Qur'an, Sunnah, consensus, rational argumentation, and natural disposition. It also investigates its role in the formulation of fiqh maxims, particularly the maxim "Certainty Is Not Removed by Doubt" and the maxims derived from it, such as "The basic principle is that what existed remains as it was," "The basic principle is freedom from liability," and "The basic principle concerning things is permissibility." The study further seeks to highlight the relationship between the theoretical foundations of Islamic jurisprudence and the formulation of fiqh maxims, demonstrating how istiṣhāb moves from being a principle of legal reasoning to serving as a foundation for a number of maxims that regulate fiqh rulings and their applications. The study concludes that istiṣhāb has a significant role in maintaining the stability of fiqh rulings and ensuring consistency in their application to legal cases, and that the maxims based upon it represent an applied extension of its theoretical foundation.

Keywords: Istiṣhāb; Fiqh Maxims; Uṣūl al-Fiqh; Fiqh Legal Formulation; Certainty; Doubt; Islamic Jurisprudence.

Introduction

Praise be to Allah, Lord of the worlds, who has perfected the religion for us, completed His blessing upon us, and made His Sharī'ah suitable for every time and place. May peace and blessings be upon our master Muḥammad, who was sent as a mercy to the worlds, and upon his family, his Companions, and those who follow them in righteousness until the Day of Judgment. To proceed:

One of the distinctive features of Islamic Sharī'ah is its capacity to accommodate people's changing circumstances, take account of differences in their conditions, and respond to the development of their needs. This is made possible by the general principles, comprehensive rules, and legislative universals it contains, which enable the Mujtahid to apply Sharī'ah rulings to newly arising cases without compromising the constants of the Sharī'ah or becoming detached from its higher objectives.

Hence the importance of Uṣūl al-Fiqh becomes evident, as it constitutes the methodological framework that regulates the process of deriving rulings, connects subsidiary questions to their foundations, and prevents Ijtihād from becoming mere opinion unsupported by a Sharī'ah-based standard. Fiqh maxims likewise perform an essential function by bringing scattered subsidiary rulings together under shared comprehensive meanings, thereby facilitating an understanding of diverse rulings, their underlying causes, and their consequences.

Istiṣhāb is one of the principles that has played a prominent role in fulfilling this function. It consists in maintaining the previous ruling as it was until evidence arises requiring its alteration. It is therefore one of the proofs that gives Islamic jurisprudence considerable flexibility, enabling the Mujtahid to deal with cases for which he finds neither a specific text nor evidence transferring the ruling away from the original state that is being presumed to continue.

The importance of Istiṣhāb is further enhanced by the Fiqh maxims derived from it, which have acquired a broad presence across the various chapters of jurisprudence. Among the most prominent is the maxim: "Certainty is not removed by doubt,"

together with related maxims such as: "The original state remains as it was," "The basic presumption is freedom from liability," and "The basic rule concerning things is permissibility," as well as other maxims that have contributed to regulating a large number of subsidiary Fiqh rulings.

On this basis, this study seeks to clarify the nature of Istiṣhāb and its status in Uṣūl al-Fiqh, identify the most important Fiqh maxims founded upon it, and highlight some applications that demonstrate its effect in Islamic jurisprudence. Accordingly, the study consists of two sections:

Section One: The Concept and Authority of Istiṣhāb.

Section Two: The Concept of the Fiqh Maxim and the Most Important Maxims Based on Istiṣhāb and Their Applications.

Section One: The Concept and Authority of Istiṣhāb.

First Topic: Definition of Istiṣhāb Linguistically and Technically.

First: Istiṣhāb in the Language.

The term Istiṣhāb derives from the trilateral root ṣ-ḥ-b, whose most common uses revolve around the meanings of companionship, association, and continued accompaniment. From this root is derived the verb istaṣḥaba, which follows the pattern istaf'ala.

In its original linguistic sense, ṣuḥbah is not limited to a transient gathering; rather, it includes the meaning of continued association and accompaniment. Thus, muṣāḥabah is more specific than mere meeting, for two people may be present in the same place without their relationship constituting the kind of companionship conveyed by the root ṣaḥiba.

Al-Rāghib al-Iṣfahānī explained this meaning when discussing the root ṣ-ḥ-b. He stated that a companion is one who remains with another, whether that companion is a human being, an animal, a place, or a time, and that muṣāḥabah and istiṣhāb are stronger than mere gathering because companionship entails prolonged association. He cited the Qur'anic verse: ﴿And your companion is not possessed﴾ [Saba': 46], in which the Prophet ﷺ was described as "their companion" because of the long period of companionship and their knowledge of his outward and inward circumstances. (Muḥammad, p. 8).

If we move from the root of the word to the form istaṣḥaba, we find that it follows the pattern istaf'ala, one of whose meanings is seeking, as in istarḥama, meaning "he sought mercy." Accordingly, istaṣḥaba originally indicates seeking companionship and continued association.

Ibn Manẓūr explains this by saying: "Istaṣḥaba a man: he invited him to companionship; and everything that remains attached to something has accompanied it"¹ He also mentions among the usages of the root: "I made the thing his companion; I accompanied the book and the like; and the man aṣḥaba and iṣṭaḥaba it, meaning that he preserved it." ¹

Al-Fayrūzābādī likewise said: "Istaṣḥabahu: he invited him to companionship and remained with him."²

On the basis of these usages taken together, it may be said that Istiṣhāb in its linguistic meaning refers to companionship, continued association, and keeping something alongside its companion. Hence one may say, "I accompanied the book," meaning that I made it constantly with me and accompanying me.

This linguistic meaning is closely connected to its technical reality among the scholars of Uṣūl, since the idea of Istiṣhāb is based on maintaining the previous ruling and allowing it to continue over subsequent time unless something appears that requires its alteration.

Second: Istiṣhāb in Technical Usage. The statements of the scholars of Uṣūl concerning the definition of Istiṣhāb vary³, but their differences in wording do not prevent them from converging on one meaning: affirming the continuation of a previous state into a later time on the basis of its having been established previously.⁴

¹ Ibn Manẓūr, Lisān al-ʿArab, Dār Ṣādir, Beirut, Lebanon, 1st ed., n.d., vol. 1, p. 520.

² 2 Al-Fayrūz Ābādī, al-Qāmūs al-Muḥīt, Dār al-Fikr, Beirut, Lebanon, n.d., 1978, vol. 1, p. 91.

³ See: Abū al-Maʿālī al-Juwaynī, al-Talkhīṣ fī Uṣūl al-Fiqh, Dār al-Bashāʾir al-Islāmiyyah, Beirut, Lebanon, n.d., 1996, ed. ʿAbd al-Ḥamīd Zanīd, vol. 1, p. 129; Abū Ishāq al-Shīrāzī, al-Lumaʿ fī Uṣūl al-Fiqh, Dār al-Kutub al-ʿIlmiyyah, Beirut, Lebanon, 1st ed., 1405 AH/1985, p. 122; Abū al-Ḥusayn al-Baṣrī, al-Muʿtamad fī Uṣūl al-Fiqh, Dār al-Kutub al-ʿIlmiyyah, Beirut, Lebanon, 1st ed., 1403 AH, ed. Khalīl al-Mays, vol. 2, p. 325; Abū Ḥamid al-Ghazālī, al-Mustaṣfā fī ʿIlm al-Uṣūl, Dār al-Kutub al-ʿIlmiyyah, Beirut, Lebanon, n.d., 1417 AH/1996, p. 159; Ibn Ḥazm al-Andalusī, al-Iḥkām fī Uṣūl al-Aḥkām, Dār al-Ḥadīth, Cairo, Egypt, 1st ed., 1404 AH, vol. 5, p. 5; Najm al-Dīn al-Tūfī, Sharḥ Mukhtaṣar al-Rawḍah, Muʾassasat al-Risālah, Beirut, Lebanon, n.d., 1990, ed. ʿAbd Allāh al-Turkī, vol. 3, p. 147; Ibn Qayyim al-Jawziyyah, Aʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn, Dār al-Jīl, Beirut, Lebanon, 1st ed., 1419 AH/1998, ed. ʿIṣām Fāris al-Ḥarashṭānī, vol. 1, p. 442; Badr al-Dīn al-Zarkashī, al-Baḥr al-Muḥīt fī Uṣūl al-Fiqh, Dār al-Ṣafwah, Hurghada/Kuwait, 2nd ed., 1413 AH/1992, vol. 6, p. 17; Kamāl al-Dīn Ibn al-Humām, al-Taḥrīr, with al-Taqrīr wa al-Taḥbīr fī ʿIlm al-Uṣūl by Ibn Amīr al-Ḥājī, Dār al-Fikr, Beirut, Lebanon, 1st ed., 1417 AH/1996, vol. 3, p. 386.

⁴ See: ʿAbd al-ʿAzīz al-Bukhārī, Kashf al-Asrār Sharḥ Uṣūl al-Bazdawī, Dār al-Kitāb al-Islāmī, vol. 3, p. 377.

Its essence may be expressed as: judging that a matter established in the first period remains in the same state during the second period until evidence arises requiring its alteration.

Accordingly, the essence of *Istiṣhāb* rests upon two basic elements: the establishment of a matter in the past and the absence of evidence transferring it from that state. The previous ruling therefore continues into the subsequent period.

Istiṣhāb, therefore, is not the initial creation of a new ruling; rather, it is the continuation of the previous ruling on the basis of its presumed persistence and the absence of anything established that would transfer it from that state.

Second Topic: The Authority of *Istiṣhāb*.

The scholars of *Uṣūl* differed concerning the evidentiary authority of *Istiṣhāb*. Nevertheless, a large body of *Uṣūl* scholars—including the majority of *Mālikīs*, *Shāfi'īs*, *Ḥanbalīs*, and *Zāhirīs*—held that it is an authoritative proof for maintaining what had previously been established, whether the matter concerns an original negation or a *Sharī'ah* ruling.

Imām al-Zarkashī states in *al-Baḥr al-Muḥīt*: "*Istiṣhāb* is a proof to which the Mujtahid resorts when he finds no specific proof concerning the case. This was held by the *Ḥanbalīs*, *Mālikīs*, most *Shāfi'īs*, and the *Zāhirīs*, whether the matter concerns negation or affirmation."⁵

The implication of this position is that when the Mujtahid finds no evidence transferring the previous ruling from its established state, he returns to the presumed original state, whether that state is a *Sharī'ah* ruling established by evidence or an original negation for which no contrary evidence has appeared.

Those who affirm the authority of *Istiṣhāb* have cited a number of proofs, including the *Qur'an*, *Sunnah*, consensus, rational consideration, and natural disposition.

First: Evidence for *Istiṣhāb* from the Noble *Qur'an*.

Among the evidence cited by those who affirm *Istiṣhāb* is the statement of Allah, Exalted is He: }Say, "I do not find in what has been revealed to me anything forbidden to one who would eat it, unless it be carrion, flowing blood, or the flesh of swine—for indeed, it is impure" ([*al-An'ām*: 145]).

The verse indicates that the basic rule concerning foods is permissibility, and that prohibition requires evidence that specifies an exception to this original rule. Accordingly, Allah, Exalted is He, excluded a number of prohibited things from the general principle.

This meaning is further confirmed by His statement: }And He has subjected to you whatever is in the heavens and whatever is on the earth—all from Him ([*al-Jāthiyah*: 13]), and His statement: }He is the One who created for you all that is on the earth ([*al-Baqarah*: 29]).

Ibn Ḥazm understood these verses to mean that the basic rule concerning things is permissibility and that moving from permissibility to prohibition is only possible on the basis of *Sharī'ah* evidence. He stated in *al-Iḥkām*: "We are certain that Allah, Exalted is He, has permitted for us everything He created on earth except what He has explicitly specified as prohibited by textual evidence."⁶

Ibn Ḥazm explained that, in his view, this permissibility is established by revealed law rather than by reason alone. He said: "Ādam, peace be upon him, was a messenger on earth, and Allah, when He sent him down to earth, said: }And for you on the earth is a place of settlement and enjoyment for a time ([*al-Baqarah*: 36]). Thus Allah permitted things by describing them as an enjoyment for us, and then He prohibited whatever He willed; all of that was by revealed law."⁷

Shaykh Abū Zahrah explained that the disagreement between Ibn Ḥazm and those who affirm the original presumption of permissibility relates, in part, to the basis of the argument. Ibn Ḥazm regards the original presumption of permissibility as established by revelation, whereas some of those who affirm it establish it by reason. He said: "The essential difference between Ibn Ḥazm al-Zāhirī and those who say that the basic rule concerning things is permissibility is a theoretical difference, because they say so on the basis of reason, whereas he holds that the original nature of permissibility is established by revelation."⁸

Another proof is His statement: }O you who believe, do not prohibit the good things Allah has made lawful for you, and do not transgress. Indeed, Allah does not like the transgressors ([*al-Mā'idah*: 87]). The verse prohibits exceeding the limits of legislation by declaring prohibited what Allah has not prohibited, indicating that prohibition is a ruling that requires a *Sharī'ah* basis.

⁵ Al-Zarkashī, *al-Baḥr al-Muḥīt fī Uṣūl al-Fiqh*, vol. 6, p. 17.

⁶ Ibn Ḥazm al-Andalusī, *al-Iḥkām fī Uṣūl al-Aḥkām*, vol. 6, p. 188.

⁷ Ibn Ḥazm al-Andalusī, *al-Iḥkām fī Uṣūl al-Aḥkām*, vol. 1, p. 58.

⁸ Muḥammad Abū Zahrah, Ibn Ḥazm: *Ḥayātuhu wa 'Aṣruhu, Ārā'uhu wa Fiqhuhu*, *Dār al-Fikr al-'Arabī*, Cairo, Egypt, n.d., 1997, p. 321.

He also says: }O you who believe, do not ask about things which, if made clear to you, would distress you; but if you ask about them while the Qur'an is being revealed, they will be made clear to you. Allah has pardoned them, and Allah is Forgiving, Forbearing {[al-Mā'idah: 101].

Ibn Ḥazm relied on this meaning in affirming that whatever has no ruling from the Lawgiver remains upon the original presumption of permissibility, and that one may not depart from this original presumption merely on the basis of precaution or conjecture.⁹

Second: Evidence for Istiṣhāb from the Prophetic Sunnah.

Numerous Prophetic ḥadīths establish the meaning of Istiṣhāb. Among the most prominent is the ḥadīth of 'Abbād ibn Tamīm from his uncle, in which a man complained to the Messenger of Allah ﷺ that he imagined that he experienced something during prayer. The Prophet ﷺ said: "He should not leave, or turn away, until he hears a sound or smells an odor."¹⁰

The ḥadīth clearly indicates that prior certainty is not removed merely by an ensuing doubt. Whoever is certain of his state of purity and then doubts whether it has been nullified continues to apply the ruling of purity until he becomes certain that it has been nullified.

Imām al-Nawawī said in his commentary on the ḥadīth: "This ḥadīth is one of the foundations of Islam and one of the principles of Fiqh: things are judged to remain upon their original states until the contrary is established with certainty, and an incidental doubt does not harm them"¹¹

Another ḥadīth indicating this is the ḥadīth of Abū Sa'īd al-Khudrī, may Allah be pleased with him, that the Prophet ﷺ said: "If one of you doubts in his prayer and does not know whether he prayed three or four, let him discard the doubt and build upon what he is certain of." The ḥadīth makes certainty the basis upon which the ruling is built and discards an incidental doubt that has not reached the level of certainty.¹²

There is also the ḥadīth of 'Abd Allāh ibn 'Umar, may Allah be pleased with them both, concerning the clothing of the Muḥrim. The Prophet ﷺ mentioned what the Muḥrim may not wear, saying that he should not wear a shirt, turban, trousers, a hooded cloak, or a garment touched by saffron or wars¹³... The point of evidence is that when the Prophet ﷺ was asked about the clothing of the Muḥrim, he mentioned the prohibited items without enumerating everything that may be worn, because permissible things are ordinarily unlimited, whereas prohibited things can be specified and enumerated. Al-Māzarī, may Allah have mercy on him, said: "He, peace and blessings be upon him, was asked about what the Muḥrim wears, and he answered by mentioning what he should leave. He did so because what is to be left is limited, whereas what may be worn is not limited. Thus he enumerated what is to be left in order to make clear that whatever is besides it is permissible to wear."¹⁴

This is also supported by the statement of the Prophet ﷺ: "Indeed, the gravest of Muslims in sin against Muslims is one who asks about something and it is prohibited for them because of his question."¹⁵

Al-Zarkashī said: "This clearly indicates that the basic rule concerning things is permissibility and that prohibition is incidental."¹⁶

⁹ See: Ibn Ḥazm al-Andalusī, al-Iḥkām fī Uṣūl al-Aḥkām, vol. 5, pp. 50–51.

¹⁰ Muḥammad ibn Ismā'īl al-Bukhārī, Ṣaḥīḥ al-Bukhārī, Book: 'One should not perform ablution on the basis of doubt until certainty is attained,' no. 137, Dār Ibn Kathīr, al-Yamāmah, Beirut, Lebanon, 3rd ed., 1407 AH/1987, ed. Muṣṭafā Dīb al-Bughā, vol. 1, p. 84; and Muslim ibn al-Ḥajjāj, Ṣaḥīḥ Muslim, Book: 'Evidence that whoever is certain of purity and then doubts whether ritual impurity occurred...', no. 361, Dār Iḥyā' al-Turāth al-'Arabī, Beirut, Lebanon, n.d., ed. Muḥammad Fu'ād 'Abd al-Bāqī, vol. 1, p. 276, among others.

¹¹ 11 Abū Zakariyyā Yaḥyā ibn Sharaf al-Nawawī, Sharḥ Ṣaḥīḥ Muslim, Dār Iḥyā' al-Turāth al-'Arabī, Beirut, Lebanon, 2nd ed., 1392 AH, vol. 4, p. 49.

¹² 12 Muslim ibn al-Ḥajjāj, Ṣaḥīḥ Muslim, Book: 'Forgetfulness in prayer and the prostration for it,' no. 571, vol. 1, p. 400.

¹³ Al-Bukhārī, Ṣaḥīḥ al-Bukhārī, Book: 'One who answers the questioner with more than he asked,' no. 134, vol. 1, p. 62.

¹⁴ Abū 'Abd Allāh al-Māzirī, al-Mu'lim bi-Fawā'id Muslim, Dār al-Gharb al-Islāmī, Beirut, Lebanon, 2nd ed., 1992, ed. Muḥammad al-Shādhilī al-Nayfar, vol. 2, p. 45.

¹⁵ Al-Bukhārī, Ṣaḥīḥ al-Bukhārī, Book: 'What is disliked concerning excessive questioning...', no. 6859, vol. 6, p. 2658; Muslim, Ṣaḥīḥ Muslim, Book: 'His ﷺ veneration and refraining from excessive questioning about matters of no necessity...', no. 2358, vol. 4, p. 1831.

¹⁶ Al-Zarkashī, al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh, vol. 6, p. 13–14.

This meaning is reinforced by the ḥadīth: "Leave me with what I have left for you. Those before you were destroyed only because of their excessive questioning and their disagreement with their prophets. When I command you to do something, do of it as much as you are able; and when I forbid you from something, refrain from it."¹⁷

Ibn Ḥazm understood the ḥadīth to mean that whatever the Lawgiver has left unmentioned, neither commanding nor prohibiting it, remains upon the original presumption of permissibility¹⁸.

Moreover, people's reliance in their transactions upon what they previously established, and their building subsequent conduct upon it, accords with the meaning of Istiṣḥāb established by the Sunnah.

Dr. al-Hindāwī referred to this aspect, saying: "In their transactions and contracts, people rely upon what they have established as existing in the past. When they consider its continuation probable, they act upon it unless something is established that changes it. Likewise, when they have established the absence of something in the past, they continue to presume its absence unless its existence is established."¹⁹

Third: Evidence by Consensus.

One of the strongest meanings supporting Istiṣḥāb is the scholars' agreement that certainty is not removed by doubt, because a ruling established with certainty cannot be lifted merely by possibility or doubt.

Imām al-Qarāfī said: "This is a unanimously agreed-upon maxim: everything that is doubtful is treated as nonexistent when its nonexistence is certain."²⁰

In Uṣūl al-Sarakhsī it is stated: "Holding fast to certainty and abandoning what is doubtful is a principle in the Sharī'ah."²¹

Accordingly, applying this maxim is in reality a clear application of the principle of Istiṣḥāb, since the previous ruling established with certainty continues until authoritative evidence arises to change it.

Fourth: Rational Evidence.

Rational consideration also supports adopting Istiṣḥāb, because a ruling established by evidence and not contradicted by anything remains supported by its evidence. It is not rational to remove an established matter merely because of the possibility that something may have arisen to change it. When a quality or state has been established at a particular time and there is no evidence establishing its transition, maintaining it is closer to rational judgment than declaring it terminated without evidence.²²

For this reason, rational people customarily build their future judgments upon what they have established in the past. They send letters to those whom they previously knew to exist, entrust deposits to them, and affirm rights on the basis of previous acknowledgments; they do not depart from such assumptions except when evidence indicates a change.²³

The maxim "Certainty is not removed by doubt" is itself supported by rational intuition. If a person is certain of a contract, right, or ownership and then doubts whether it has ceased, it is not rational to remove that certainty merely because of a possibility.²⁴

¹⁷ Muslim, Ṣaḥīḥ Muslim, Book: 'The obligation of performing Ḥajj once in a lifetime,' no. 1337, vol. 2, p. 975.

¹⁸ See: 'Alī ibn Aḥmad Ibn Ḥazm al-Zāhirī, al-Muḥallā, Dār al-Āfāq al-Jadīdah, Beirut, Lebanon, n.d., ed. Arab Heritage Committee, vol. 1, p. 64. (The source repeats the same citation.)

¹⁹ Ḥasan ibn Ibrāhīm al-Hindāwī, al-Ijtihād al-Istiṣḥābī wa Atharuhu fī al-Fiqh al-Islāmī, Mu'assasat al-Risālah, Beirut, Lebanon, 1st ed., 1425 AH/2004, p. 58.

²⁰ Shihāb al-Dīn Abū al-'Abbās al-Qarāfī, al-Furūq, al-Maktabah al-'Aṣriyyah, Sidon/Beirut, Lebanon, 1st ed., 1423 AH/2002, ed. 'Abd al-Ḥamīd Hindāwī, vol. 1, p. 125.

²¹ Muḥammad ibn Aḥmad ibn Abī Sahl al-Sarakhsī, Uṣūl al-Sarakhsī, Dār al-Ma'rifah, Beirut, Lebanon, n.d., 1372 AH, ed. Abū al-Wafā' al-Afghānī, vol. 2, p. 116.

²² Faṭḥī al-Darīnī, Buḥūth Muqāranah fī al-Fiqh al-Islāmī wa Uṣūlih, Mu'assasat al-Risālah, Beirut, Lebanon, 1st ed., 1414 AH/1994, vol. 1, p. 362.

²³ Al-Āmidī, al-Iḥkām fī Uṣūl al-Aḥkām, vol. 4, p. 133.

²⁴ Muḥammad al-Rūkī, Qawā'id al-Fiqh al-Islāmī min Khilāl Kitāb al-Ishrāf 'alā Masā'il al-Khilāf li-l-Qāḍī 'Abd al-Wahhāb al-Baghdādī al-Mālikī, Dār al-Qalam, Damascus, p. 184.

Furthermore, the continuation of a thing is more likely than judging it to have changed, because change requires an additional established factor beyond mere continuation. Therefore, in many situations, the presumption that the previous state remains is stronger than the presumption that it has changed.²⁵

Likewise, the continued validity of the Sharī'ah rulings established during the lifetime of the Prophet ﷺ, in part, upon presuming their continuation, since the basic rule is that a ruling remains in force and is not abrogated until evidence establishes its abrogation.²⁶

Fifth: Evidence from Natural Disposition (Fiṭrah).

The effect of Istiṣhāb is not confined to theoretical discussions in Uṣūl al-Fiqh; it extends to people's daily lives and their ordinary dealings. Imām al-Rāzī pointed out that most worldly interests and transactions are founded upon Istiṣhāb.²⁷

Dr. Maḥdī Faḍl Allāh explains that human beings, in their practical activities and conduct, naturally rely upon the continuation of what they know to have existed in the past. Even those who theoretically deny Istiṣhāb in argument cannot dispense with it in their actual dealings.²⁸

Thus, Istiṣhāb is not merely an abstract uṣūlī principle; rather, it accords with ordinary human practice and contributes to stability and continuity in judgments and transactions.

Section Two: The Fiqh Maxim and the Effect of Istiṣhāb in Its Formation

First Topic: The Concept of the Fiqh Maxim.

First: The Fiqh Maxim in Linguistic Usage.

The lexical use of the term qā'idah revolves around the meaning of a foundation or basis upon which something else rests. Ibn Manẓūr states in Lisān al-'Arab: "The qā'idah is the foundation of a thing; al-qawā'id are the foundations; and the foundations of a house are its basis." Among the examples is the statement of Allah, Exalted is He: }And when Abraham and Ishmael were raising the foundations of the House {[al-Baqarah: 127]}".²⁹

Allah, Glorified be He, also says: }Then Allah came upon their building from the foundations {[al-Nahl: 26]}.

The use of the term qā'idah in such contexts indicates the basis and foundation upon which a structure rests.

The term is also used for non-sensible meanings, such as the rules of knowledge, the principles of Islam, and similar expressions.

On the basis of this linguistic meaning, the Fiqh maxim is called a qā'idah because it represents a comprehensive foundation under which a group of similar subsidiary questions and cases are organized.

Second: The Fiqh Maxim in Technical Usage.

Al-Jurjānī defined the qā'idah as: "A universal proposition applicable to all of its particulars."³⁰

Al-Fayyūmī defined it as: "A universal matter applicable to all of its particulars."³¹

Abū al-Baqā' al-Kafawī stated: "Technically, the qā'idah is a universal proposition inasmuch as it potentially encompasses the rulings of the particulars belonging to its subject."³²

These definitions show that the maxim gathers a number of similar particulars under one principle, so that the rulings of those particulars may be known through the universal rule under which they fall.

However, describing the maxim as universal does not necessarily mean that it admits no exceptions. Rather, the description is based on predominance, since some subsidiary cases may fall outside the maxim because of specific evidence.

²⁵ 25 Al-Āmidī, al-Iḥkām fī Uṣūl al-Aḥkām, vol. 4, p. 134.

²⁶ 'Alī ibn 'Abd al-Kāfī al-Subkī, al-Ibhāj fī Sharḥ al-Minhāj, Dār al-Kutub al-'Ilmiyyah, Beirut, Lebanon, 1st ed., 1404 AH, vol. 3, p. 170.

²⁷ Muḥammad ibn 'Umar al-Rāzī, al-Maḥṣūl fī 'Ilm Uṣūl al-Fiqh, Imam Muḥammad ibn Saud Islamic University, Riyadh, Saudi Arabia, 1st ed., 1400 AH, vol. 6, p. 165.

²⁸ Maḥdī Faḍl Allāh, al-Ijtihād wa al-Mantiq al-Fiqhī fī al-Islām, Dār al-Ṭalī'ah, Beirut, Lebanon, 1st ed., 1987, pp. 285–286.

²⁹ Ibn Manẓūr, Lisān al-'Arab, vol. 3, p. 362.

³⁰ 'Alī ibn Muḥammad al-Jurjānī, al-Ta'rīfāt, Dār al-Kitāb al-'Arabī, Beirut, Lebanon, 1st ed., 1405 AH, ed. Ibrāhīm al-Abyārī, p. 219.

³¹ Muḥammad al-Fayyūmī, al-Miṣbāḥ al-Munīr, vol. 2, p. 74.

³² Abū al-Baqā' al-Kafawī, Kulīyyāt Abī al-Baqā', Mu'assasat al-Risālah, Beirut, Lebanon, 1st ed., 1412 AH/1992, p. 728.

Accordingly, the Fiqh maxim has been defined as: "A universal ruling applicable to its particulars, by which their rulings may be known."³³

Muṣṭafā al-Zarqā' defined it as: "Universal principles expressed in concise, constitutional formulations containing general legislative rulings concerning cases falling within their subject matter."³⁴

After reviewing a number of definitions and the observations associated with them, 'Alī Aḥmad al-Nadwī concluded that the Fiqh maxim is: "A Sharī'ah ruling concerning a predominant case from which the rulings of whatever falls under it may be known."³⁵

This is because Fiqh maxims gather multiple Sharī'ah rulings from different chapters of jurisprudence under a common element. Hence the restriction "Sharī'ah" excludes non-Sharī'ah rules, while "predominant" indicates that some subsidiary cases may depart from the maxim because of specific evidence.

Shaykh al-Sadlān preferred this definition and regarded it as one of the appropriate definitions of the Fiqh maxim.³⁶

Second Topic: The Most Important Fiqh Maxims Based on Istiṣḥāb.

Istiṣḥāb contributed to the formation of a number of Fiqh maxims that have had a broad effect on deriving rulings and organizing subsidiary jurisprudential questions. Among the most important are the following:

First: The Maxim: "Certainty Is Not Removed by Doubt."

This maxim is one of the major maxims of Islamic jurisprudence, and its scope extends to acts of worship, transactions, criminal matters, adjudication, and other fields.

Its status is such that al-Suyūṭī said in al-Ashbāh wa al-Nazā'ir: "This maxim enters into all chapters of Fiqh, and the issues derived from it amount to three quarters of Fiqh and more."³⁷

Al-Nawawī said in al-Majmū': "This is a consistently applicable maxim from which only a few issues are excluded."³⁸

The implication of the maxim is that a matter established with certainty is not abandoned merely because of doubt, because certainty is stronger than doubt, and it is inconceivable that the weaker should affect the stronger.

This maxim manifests one of the characteristics of Islamic Sharī'ah: the removal of hardship and difficulty. It prevents the legally responsible person from giving free rein to doubts and obsessive misgivings and directs him to rely upon the state of which he is certain.

Among its principal proofs is the ḥadīth of 'Abbād ibn Tamīm from his uncle, mentioned above, in which the Prophet ﷺ instructed a person who doubted whether something had exited from him not to leave the prayer until he heard a sound or detected an odor.³⁹

Al-Nawawī said: "This ḥadīth is one of the foundations of Islam and a great maxim of Fiqh: things are judged to remain upon their original states until the contrary is established with certainty."⁴⁰

Another example is the ḥadīth of Abū Hurayrah, may Allah be pleased with him, that the Prophet ﷺ said: "If one of you feels something in his abdomen and is uncertain whether something has come out of him or not, let him not leave the mosque until he hears a sound or smells an odor."⁴¹

³³ Sa'd al-Dīn Mas'ūd ibn 'Umar al-Taftāzānī, al-Talwīḥ 'alā al-Tawḍīḥ, Maṭābi' Ṣabīḥ, Cairo, Egypt, n.d., vol. 1, p. 20.

³⁴ Muṣṭafā Aḥmad al-Zarqā', al-Madkhal al-Fiqhī al-'Āmm, Damascus University Press, n.d., 1383 AH, vol. 2, p. 941.

³⁵ 'Alī Aḥmad al-Nadwī, al-Qawā'id al-Fiqhiyyah: Maḥūmuhā, Nash' atuhā, Taṭawwuruhā, Dār al-Qalam, Damascus, Syria, 2nd ed., 1412 AH/1991, p. 43.

³⁶ Ṣāliḥ ibn Ghānim al-Sadlān, al-Qawā'id al-Fiqhiyyah al-Kubrā wa Mā Tafarā'a 'Anhā, Dār Balansiyyah, Riyadh, Saudi Arabia, 1st ed., 1417 AH, p. 13.

³⁷ 'Abd al-Raḥmān ibn Abī Bakr al-Suyūṭī, al-Ashbāh wa al-Nazā'ir, Dār al-Kutub al-'Ilmiyyah, Beirut, Lebanon, 1st ed., 1403 AH, p. 51.

³⁸ Abū Zakariyyā Muḥyī al-Dīn ibn Sharaf al-Nawawī, al-Majmū', Dār al-Fikr, Beirut, Lebanon, 1st ed., 1417 AH/1996, ed. Maḥmūd Maṭrajī, vol. 1, p. 259.

³⁹ Al-Bukhārī, Ṣaḥīḥ al-Bukhārī, Book: 'One should not perform ablution on the basis of doubt until certainty is attained,' no. 137, vol. 1, p. 39.

⁴⁰ Al-Nawawī, Sharḥ Ṣaḥīḥ Muslim, vol. 4, p. 49.

⁴¹ Al-Bukhārī, Ṣaḥīḥ al-Bukhārī, Book: 'Evidence that whoever is certain of purity and then doubts whether ritual impurity occurred may pray with that purity,' no. 361, vol. 1, p. 276.

Likewise, the ḥadīth of Abū Saʿīd al-Khudrī, may Allah be pleased with him, concerning one who doubts the number of rakʿahs, instructs him to discard the doubt and build upon certainty.⁴²

Among the jurisprudential applications of this maxim are:

- Whoever is certain that impurity is present on his garment but does not know its location must wash the entire garment.⁴³
- Whoever doubts whether impurity has affected water proceeds on the presumption of purity.⁴⁴
- Whoever doubts the number of rakʿahs builds upon the lesser number of which he is certain.⁴⁵
- Whoever doubts whether the sun has set may not break the fast until sunset is certain, because the original presumption is that daytime continues.

Whoever doubts whether dawn has risen may eat, because the original presumption is that night continues.⁴⁶

- Whoever doubts the number of circuits of ṭawāf or the number of pebbles he has thrown builds upon certainty.⁴⁷

These applications demonstrate the breadth of the maxim and its direct connection with the principle of Istiṣḥāb.

Among the maxims derived from it or closely connected with it are the following:

A. The Maxim: “The Original State Is That What Was, Remains as It Was.”

The meaning of this maxim is that a state established in the past continues at a later time unless evidence appears that transfers it from that state.

Whatever has been established as permissible remains permissible until evidence establishes prohibition; whatever has been established as prohibited remains prohibited until something is established that changes its ruling; and whatever has been established as pure remains pure until the contrary is established. The same applies to other rulings and attributes.

This maxim represents Istiṣḥāb in its clearest form, because it is based on maintaining the previous ruling until evidence establishes what changes it.

B. The Maxim: “An Event Is Attributed to the Nearest of Its Times.”

The meaning of this maxim is that when there is disagreement concerning the time at which a particular event occurred, and no evidence determines that time, the event is attributed to the time nearest to the present state.

The reason is that the disputing parties agree that the event occurred at the nearer time, whereas one of them claims that it occurred earlier, at a more remote time; the original presumption is that such earlier occurrence has not been established.

Its applications include:

- Whoever finds impurity on his garment after prayer and does not know when it affected the garment repeats the prayer from the time of his last known state of ritual impurity.⁴⁸
- If a person strikes a pregnant woman and the fetus is delivered alive, remains for a period without suffering, and then dies, the assailant is not liable, because the original presumption is that the death is attributed to another cause; this differs if the fetus dies immediately after the blow or remains in pain until death.⁴⁹
- If a Muslim dies leaving a Christian wife, and after his death she claims that she embraced Islam before his death while the heirs deny this, the statement of the heirs is accepted, because the conversion is an event attributed to the nearest time.⁵⁰
- If a wife claims that her husband divorced her during his terminal illness, while the heirs claim that the divorce occurred while he was healthy, the statement is in favor of the wife, because the event whose timing is disputed is the divorce during

⁴² Muslim, Ṣaḥīḥ Muslim, Book: ‘Forgetfulness in prayer and the prostration for it,’ no. 571, vol. 1, p. 400.

⁴³ Zayn al-Dīn ibn Ibrāhīm, known as Ibn Nujaym al-Miṣrī, al-Ashbāh wa al-Naẓāʾir, Dār al-Fikr, Damascus, n.d., 1986, ed. and intro. Muḥammad Muṭīʿ al-Ḥāfīz, p. 60.

⁴⁴ Ibn Qayyim al-Jawziyyah, Badāʾiʿ al-Fawāʾid, Maṭābiʿ al-Fajjālah al-Jadīdah, Egypt, n.d., 1392 AH, vol. 3, p. 273.

⁴⁵ 45 Ibid., vol. 3, p. 272.

⁴⁶ See Ibn Nujaym, al-Ashbāh wa al-Naẓāʾir, p. 63; al-Suyūṭī, al-Ashbāh wa al-Naẓāʾir, p. 52.

⁴⁷ Ibn Qayyim al-Jawziyyah, Badāʾiʿ al-Fawāʾid, vol. 3, pp. 273–274.

⁴⁸ Ibn Nujaym, al-Ashbāh wa al-Naẓāʾir, p. 81.

⁴⁹ Al-Suyūṭī, al-Ashbāh wa al-Naẓāʾir, p. 59.

⁵⁰ Ibn Nujaym, al-Ashbāh wa al-Naẓāʾir, p. 72.

illness; it is therefore attributed to the nearest time, namely the terminal illness claimed by the wife, unless the heirs establish evidence that the divorce occurred while he was healthy.⁵¹

C. The Maxim: “The Original Presumption Is Freedom from Liability.”

This maxim establishes that a person’s legal liability is originally free of rights and obligations, and it does not become encumbered except through evidence establishing the liability. Hence the claimant is required to produce proof, while the original presumption is that no right has been established against the defendant.

Its branches include:

- If the person liable for damage and the rights-holder disagree about the amount damaged or usurped, the statement of the liable party is accepted regarding the excess, because the original presumption is that his liability is free of it.⁵²
- If the defendant refuses to take the oath, judgment is not rendered against him merely because of his refusal, because his liability is originally free.⁵³
- If a dispute arises between a lender and a borrower concerning the amount stipulated as repayment in a loan, the original presumption is that the borrower’s liability is free of anything beyond the amount established with certainty.⁵⁴

D. The Maxim: “The Original Rule Concerning Things Is Permissibility.”

This maxim establishes that things for which no Shari‘ah evidence of prohibition or obligation has been transmitted remain upon the original presumption of permissibility until evidence transfers them from that state.

Scholars have disagreed concerning the basis of this presumption: is the original rule concerning things permissibility, prohibition, or suspension? Nevertheless, the presumption of permissibility has a strong presence in Fiqh and Uṣūl al-Fiqh.

E. The Maxim: “The Original Rule Concerning Sexual Relations Is Prohibition.”

This maxim constitutes an exception to the general presumption of permissibility, because sexual relations and matters of sexual honor are not rendered permissible by mere possibility; rather, a legally recognized cause of permissibility must be established.

Among its proofs is the statement of Allah, Exalted is He: }And those who guard their private parts, except with their wives or those whom their right hands possess, for indeed they are not blameworthy. But whoever seeks beyond that, then those are the transgressors {[al-Mu’minūn: 5–7].

This maxim is also connected with the objective of preserving lineage and honor, one of the objectives that the revealed laws have sought to protect.

Its applications include:

- If a wife becomes confused with other women so that her identity cannot be determined, her husband may not have intercourse with any of them merely on the basis of personal reasoning, because sexual matters require precaution.⁵⁵
- Whoever emancipates one of his female slaves and then forgets which one she was may not have intercourse with any of them until the emancipated woman is identified.⁵⁶
- Whoever divorces one of his wives three times and then forgets which wife it was may not have intercourse with any of them until the divorced wife is identified.⁵⁷

F. The Maxim: “The Original Presumption Concerning Incidental Attributes or Matters Is Their Non-Existence.”

The original presumption concerning incidental matters that were not present initially is their non-existence, because non-existence is the previously certain state, whereas the existence of an incidental attribute requires proof. Accordingly, if a person claims against another a contract, damage, or crime and the defendant denies it, the original presumption is that these matters do not exist until evidence establishes them.

However, the maxim “the original presumption is non-existence” cannot be stated without qualification. Ibn Nujaym noted that non-existence is the original presumption with respect to incidental attributes, whereas with respect to original attributes

⁵¹ Ibn Nujaym, *al-Ashbāh wa al-Nazā’ir*, pp. 64–65.

⁵² Ibn Nujaym, *al-Ashbāh wa al-Nazā’ir*, p. 64.

⁵³ Al-Suyūṭī, *al-Ashbāh wa al-Nazā’ir*, p. 53.

⁵⁴ *Ibid.*, same page.

⁵⁵ Al-Nawawī, *al-Majmū’*, vol. 1, p. 257.

⁵⁶ Ibn Nujaym, *al-Ashbāh wa al-Nazā’ir*, p. 74.

⁵⁷ *Ibid.*, same page.

the presumption is existence. He stated: "The original presumption is not non-existence absolutely; rather, it applies to incidental attributes, whereas with original attributes the presumption is existence."⁵⁸

Among its branches are:

— If a debt is established against a person by admission or evidence, and he then claims payment or release, the statement of his creditor is accepted, because the original presumption is that payment and release have not occurred.⁵⁹

— If a person purchases a slave described as a scribe or baker and a dispute later arises concerning the existence of that attribute, the statement of the party denying the incidental attribute is accepted in accordance with the relevant Fiqh rules.⁶⁰

— If a person purchases a female slave on the understanding that she is a virgin and a dispute later arises concerning this, the ruling takes account of virginity as an original attribute; accordingly, the statement of the person asserting it is accepted unless the contrary is established.⁶¹

G. The Maxim: "The Original Rule in Speech Is the Literal Meaning."

This maxim is based on another principle: "Giving effect to speech is preferable to disregarding it," and the original rule is to interpret a word according to the meaning for which it was conventionally established unless there is an indication diverting it to another meaning.⁶²

Literal usage means using a word in the meaning for which it was established, whereas figurative usage means using it for something other than its original meaning in the presence of an indicator establishing that usage.

Accordingly, the words of a speaker—whether the Lawgiver, a contracting party, or a person taking an oath—are interpreted according to their literal meanings when no contextual indication diverts them from that meaning.

If someone says to another, "I have gifted this thing to you" and then demands payment, claiming that by "gift" he meant a sale figuratively, his statement is not accepted, because the original rule is to interpret speech literally. But if he says, "I have gifted it to you for two dinars" the mention of compensation may constitute an indication that the intended meaning is a sale.⁶³

H. The Maxim: "No Weight Is Given to an Evidently Erroneous Assumption."

Once it becomes clear that the assumption upon which a legally responsible person based his conduct was mistaken, that assumption no longer has effect against established reality.

This maxim applies to acts of worship, transactions, and other matters. Its applications include:

— Whoever assumes that water is impure and performs ablution with it, then discovers that it is pure, has a valid ablution.⁶⁴

— Whoever prays believing that his garment is pure and then discovers after prayer that it was impure is subject to the relevant rulings according to the circumstances of when the impurity became known and the time involved.⁶⁵

— Whoever eats believing that night remains and then discovers that dawn has risen, or believes that the sun has set and eats before discovering that daytime remains, must make up the fast according to the detailed Fiqh rulings; he is not treated as one who acted deliberately.⁶⁶

— Whoever spends on a woman irrevocably divorced, believing that she is pregnant, and then discovers that she is not pregnant may recover what he spent on her in accordance with the applicable rulings.⁶⁷

— If a man marries a woman while believing that she is not legally eligible for marriage and then discovers that she is eligible, the marriage is valid; but if he marries a woman believing that she is eligible and then discovers otherwise, the marriage is

⁵⁸ Ibid., p. 71.

⁵⁹ Al-Suyūṭī, al-Ashbāh wa al-Nazā'ir, p. 58.

⁶⁰ Ibn Nujaym, al-Ashbāh wa al-Nazā'ir, p. 71.

⁶¹ Ibid., same page.

⁶² See: Badr al-Dīn al-Zarkashī, al-Manthūr fī al-Qawā'id, 2nd ed., 1993, ed. Yāsir Fā'iq Aḥmad Ḥamūd, Ministry of Awqāf and Islamic Affairs, Kuwait, vol. 1, p. 183; al-Suyūṭī, al-Ashbāh wa al-Nazā'ir, p. 128.

⁶³ Ṣāliḥ ibn Ghānim al-Sadlān, al-Qawā'id al-Fiqhiyyah al-Kubrā wa Mā Tafarā'a 'Anhā, p. 163.

⁶⁴ Ibn Nujaym, al-Ashbāh wa al-Nazā'ir, p. 161.

⁶⁵ Ibid., same page.

⁶⁶ Al-Sadlān, al-Qawā'id al-Fiqhiyyah al-Kubrā wa Mā Tafarā'a 'Anhā, p. 201.

⁶⁷ Al-Suyūṭī, al-Ashbāh wa al-Nazā'ir, p. 157.

invalid. In such cases, consideration is given to the actual state of affairs, not merely to the legally responsible person's assumption.⁶⁸

— If a debtor pays his creditor the debt owed and then his agent or guarantor pays the same debt again, believing that it has not yet been paid, the debtor or his agent may recover the second payment, because it was made on the assumption that the debt remained outstanding; once that assumption is shown to be mistaken, it no longer has effect.

Thus, contracts, acts, and obligations undertaken on the basis of an assumption become ineffective when that assumption is shown to be erroneous.⁶⁹

I. The Maxim: “No Statement Is Attributed to One Who Remains Silent.”

The original rule is that silence does not by itself indicate the creation of a contract, obligation, or legal act, because expression of intention requires something that indicates it; mere absence of speech is insufficient.

This maxim is connected with *Istishāb* because the absence of a statement is the certain state, whereas attributing an intention to silence is merely possible.

Its applications include:

— If a woman is brought to her husband's house and he enters upon her with her permission, he owes no rent for the period of his residence. If he enters her house with the permission of her family while she remains silent, he owes rent for the period of his residence with her, because no statement is attributed to one who remains silent.⁷⁰

— If a judge sees a minor, an insane person, or either of their slaves buying and selling and remains silent, this does not constitute authorization to engage in commerce, because no statement is attributed to one who remains silent.⁷¹

— If a person remains silent concerning intercourse with his female slave, the dowry is not thereby waived.⁷²

J. The Maxim: “The Original Presumption Is the Absence of Specification.”

The original rule concerning legal rulings and obligations is that they are not restricted or quantified unless there is *Sharī'ah* evidence specifying their limits or amounts.

Dr. Muḥammad al-Rūkī established that specification and quantification are incidental attributes; therefore, the original presumption is their absence, and that presumption continues until *Sharī'ah* evidence transfers the matter from it.⁷³

The importance of this maxim is evident in the fact that the *Sharī'ah* does not assign a person a particular amount or limit without evidence. Hence specification cannot be established merely by opinion or conjecture.

Research Findings

A review of the concept and proofs of *Istishāb*, followed by an explanation of its relationship to *Fiqh* maxims, shows that this principle constitutes an important element in the *uṣūlī* and *Fiqhī* structure, since it enables the *Mujtahid* to address cases for which there is no evidence transferring the previous ruling.

It has also become clear that *Istishāb* has not remained confined to theoretical discussion in *Uṣūl al-Fiqh*; rather, it has had a clear impact on the process of formulating *Fiqh* maxims, giving rise to a group of maxims under which large numbers of subsidiary rulings are organized.

The foregoing applications reveal the breadth of these maxims and their ability to organize rulings across the various chapters of *Fiqh*, thereby facilitating the jurist's task of controlling particulars and connecting them to comprehensive universal principles.

Conclusion

After this examination of the concept and authority of *Istishāb* and of its effect on the formation of *Fiqh* maxims and the direction of subsidiary rulings, the principal findings may be summarized as follows:

— *Istishāb* is an authoritative *uṣūlī* principle based on maintaining the previous ruling as it was until valid evidence requires its alteration.

⁶⁸ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, p. 161.

⁶⁹ Muḥammad al-Rūkī, *Qawā'id al-Fiqh al-Islāmī*, p. 195.

⁷⁰ Sulaymān ibn 'Umar ibn Muḥammad al-Bujayrimī, *Hāshiyat al-Bujayrimī*, al-Maktabah al-Islāmiyyah, Diyarbakır, Turkey, n.d., vol. 3, p. 40.

⁷¹ Muḥammad Amīn Ibn 'Ābidīn, *Hāshiyat Ibn 'Ābidīn*, Dār al-Fikr, Beirut, Lebanon, 2nd ed., 1386 AH, vol. 8, p. 118.

⁷² Al-Suyūṭī, *al-Ashbāh wa al-Nazā'ir*, p. 142.

⁷³ Muḥammad al-Rūkī, *Nazariyyat al-Taḳ'id al-Fiqhī wa Atharuhā fī Ikhtilāf al-Fuqahā'*, p. 495, Kingdom of Morocco, Mohammed V University.

- Istiṣhāb is an important means of addressing cases for which no specific evidence exists, and therefore it has had a prominent place in Fiqhī Ijtihād.
- Those who affirm the authority of Istiṣhāb rely on evidence from the Qur'an, Sunnah, consensus, rational consideration, and natural disposition, confirming the established place and strength of this principle in the Fiqhī structure.
- The idea of Istiṣhāb accords with reason and natural disposition: people in their lives and dealings rely upon previously certain matters and do not abandon them merely because of possibility.
- Istiṣhāb has had a clear effect on the formation of a number of major and subsidiary Fiqh maxims, foremost among them the maxim "Certainty is not removed by doubt."
- Numerous maxims branch from or are connected to "Certainty is not removed by doubt," including: "The original state is that what was, remains as it was"; "An event is attributed to the nearest of its times"; "The original presumption is freedom from liability"; "The original rule concerning things is permissibility"; "The original rule concerning sexual relations is prohibition"; "The original presumption concerning incidental attributes is their non-existence"; "The original rule in speech is the literal meaning"; "No weight is given to an evidently erroneous assumption"; "No statement is attributed to one who remains silent"; and "The original presumption is the absence of specification."
- The jurisprudential applications of these maxims demonstrate that Istiṣhāb is not merely a theoretical principle; it has practical effects in acts of worship, transactions, adjudication, and the other fields of Fiqh.
- The maxims based on Istiṣhāb reveal an aspect of the flexibility of Islamic jurisprudence and its capacity to accommodate new circumstances while preserving Sharī'ah controls and universal principles.
- All of this confirms the richness and breadth of Islamic jurisprudence and demonstrates that reliance on universal principles and maxims enables the Mujtahid to address new developments without becoming detached from the objectives and foundations of the Sharī'ah.

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