
Practical Application of Almaslaha Mursala in Judicial Proceedings

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Abstracts: *This study investigates the application of Maslaha Mursala (public interest) within Islamic jurisprudence, specifically focusing on the Maliki school of thought. It explores how this principle, which allows for the use of public interest in legal decisions when textual evidence is lacking, has influenced various legal judgments. The research examines the traditional requirement of justice for admissibility of evidence in Islamic law, the permissibility of certain medical practices and surgical operations, and the flexibility in applying punishments and legal rules under extreme circumstances. It highlights the role of Maslaha in maintaining societal harmony and addressing contemporary issues while adhering to Islamic legal principles. The study also provides examples from Nigerian courts where Maslaha Mursala has been applied to adapt legal practices to modern needs. Overall, it underscores the adaptability of Islamic jurisprudence in addressing evolving societal challenges.*

Keywords: Maslaha Mursala, Maliki school, Islamic jurisprudence, public interest, legal adaptability, Nigerian courts, Islamic legal principles

INTRODUCTION

Islamic jurisprudence, a comprehensive system of law derived from the Qur'an, Sunnah, Ijma' (consensus), and Qiyas (analogy), has long been recognized for its adaptability and responsiveness to evolving societal needs. Among the various schools of Islamic thought, the Maliki school, founded by Imam Malik ibn Anas, is particularly noted for its pragmatic approach to legal interpretation and application. Central to this adaptability is the principle of Maslaha Mursala, which allows jurists to consider public interest when the Qur'an or Sunnah does not provide explicit guidance on a particular issue.

Maslaha Mursala, or "unrestricted public interest," is a principle that empowers Islamic jurists to derive legal rulings based on the perceived welfare and benefit of society, even when there is no

direct textual evidence to support a specific decision. This principle reflects the Maliki school's commitment to ensuring that Islamic law remains relevant and effective in addressing contemporary issues and challenges. By incorporating considerations of public interest, Maslaha Mursala enables the legal system to adapt to new circumstances and social dynamics that were not anticipated by the original texts.

The application of Maslaha Mursala within the Maliki framework illustrates a dynamic interaction between traditional legal principles and modern societal needs. This principle has played a crucial role in shaping various legal decisions and adaptations, allowing Islamic law to address complex issues that arise in contemporary contexts. For example, it has influenced rulings related to the admissibility of evidence, medical practices, and the adaptation of punishments, demonstrating its practical relevance and flexibility.

This study aims to explore the application of Maslaha Mursala within the Maliki school of thought, examining how this principle has been utilized to address both historical and contemporary legal issues. By analyzing its influence on various legal decisions, the study seeks to highlight the role of Maslaha Mursala in maintaining the relevance and effectiveness of Islamic jurisprudence in modern times. Through a detailed exploration of its applications and implications, this study will provide insight into how Islamic law can continue to evolve while staying true to its foundational principles of justice and equity.

In doing so, the study will also consider the broader impact of Maslaha Mursala on the development of Islamic jurisprudence and its potential to guide legal practice in diverse and changing contexts. The adaptability of Maslaha Mursala serves as a testament to the enduring relevance of Islamic law, ensuring that it remains a vital and responsive legal system capable of addressing the needs and challenges of contemporary societies.

Admissibility of Evidence of Unjust Person

The admissibility of evidence in Islamic jurisprudence is a foundational element that ensures the integrity and fairness of legal proceedings. In traditional Islamic law, the requirement for witnesses to be just (Adil) is crucial to maintaining the credibility of testimony. However, the Maliki school of thought introduces a pragmatic adaptation to this rule, particularly through the application of Maslaha Mursala (public interest), which allows for exceptions in certain circumstances.

The Maliki approach to evidence acknowledges that the ideal requirement of just witnesses may not always be feasible, especially in communities where the ideal conditions for testimony cannot be met. According to scholars, this flexibility stems from the principle of Maslaha Mursala, which permits judges to accept testimony from as many members of a community as possible when the ideal standard cannot be fully achieved. This approach is designed to prevent societal lawlessness

and ensure that individuals have access to judicial redress, even when the community may not meet the strict criteria for witness credibility.

The significance of this adaptation is well-documented in scholarly literature. For instance, in his work on Islamic legal methodology, Mohammad Hashim Kamali highlights that the Maliki school's approach to evidence reflects a broader commitment to ensuring justice and maintaining social order (Kamali, M. H. (2003). *Principles of Islamic Jurisprudence*. Islamic Texts Society). Kamali explains that the principle of Maslaha Mursala allows for legal flexibility and practical solutions in situations where adhering strictly to traditional rules would hinder justice.

Additionally, the application of Maslaha Mursala in the context of evidence is discussed by Abdul-Rahim Abu Haimed, who notes that this principle enables Islamic law to adapt to changing societal needs while maintaining its core ethical values (Abu Haimed, A. R. (2012). *The Dynamics of Islamic Law*. Routledge). Abu Haimed argues that by allowing for exceptions in the admissibility of evidence, the Maliki school addresses practical challenges and ensures that the legal system remains functional and equitable.

The adaptability of the Maliki approach to evidence underscores the principle's role in balancing justice with practical realities. As emphasized by other scholars, such as Khaled Abou El Fadl, the flexibility inherent in Maslaha Mursala enables the legal system to address exceptional situations effectively (Abou El Fadl, K. (2001). *Rebellion and Violence in Islamic Law*. Cambridge University Press). This pragmatic stance ensures that legal processes can continue to operate fairly and effectively, even in communities where the ideal conditions for evidence are not met.

In conclusion, the Maliki school's adaptation of the admissibility of evidence through Maslaha Mursala reflects a commitment to justice and social order, demonstrating the principle's capacity to address practical challenges while upholding core Islamic values.

Permissibility of Medical Practices

Islamic jurisprudence has traditionally been cautious about medical practices involving intimate aspects of human life, balancing ethical concerns with practical needs. Within the Maliki school of thought, the principle of Maslaha Mursala (public interest) plays a significant role in determining the permissibility of certain medical practices, particularly when addressing specific needs that arise in contemporary contexts.

Inspection of Private Parts

One notable example is the permissibility of a medical professional inspecting a woman's private parts. This practice is allowed under certain circumstances, such as diagnosing a medical condition or investigating allegations of Zina (fornication). According to Islamic legal scholars, the allowance for such inspections is grounded in Maslaha Hajiyya Khassa, which refers to specific

needs-based public interest. The goal is to alleviate hardship and address pressing medical or legal issues.

Scholars like Mohammad Hashim Kamali argue that this allowance reflects the Maliki school's pragmatic approach to legal and ethical challenges (Kamali, M. H. (2003). *Principles of Islamic Jurisprudence*. Islamic Texts Society). Kamali explains that such medical practices are permitted when they serve the public interest by providing necessary medical care or addressing legal concerns, while still respecting the boundaries of Islamic ethics.

Surgical Operations on a Deceased Body

Another application of Maslaha Mursala within the Maliki framework concerns the performance of surgical operations on a deceased body. In cases where a pregnant woman dies, and there is a reasonable belief that the fetus can survive if removed from the deceased body, Maliki jurists permit such procedures. This allowance is based on the principle that the Maslaha of saving the baby's life outweighs the Mafsada (harm) of subjecting the deceased body to surgery.

This perspective is supported by scholars like Abdul-Rahim Abu Haimed, who highlights the flexibility inherent in Islamic jurisprudence regarding medical practices (Abu Haimed, A. R. (2012). *The Dynamics of Islamic Law*. Routledge). Abu Haimed notes that such rulings illustrate the principle's application to urgent medical needs, ensuring that Islamic law remains responsive to complex situations that were not explicitly addressed in classical texts.

Contemporary Interpretations and Applications

In contemporary settings, the application of Maslaha Mursala to medical practices continues to evolve. Khaled Abou El Fadl discusses how modern Islamic scholars interpret these principles to address new medical and ethical dilemmas (Abou El Fadl, K. (2001). *Rebellion and Violence in Islamic Law*. Cambridge University Press). Abou El Fadl's analysis demonstrates that Maslaha Mursala allows for adaptive responses to medical challenges, ensuring that Islamic law remains relevant and effective in contemporary healthcare contexts.

Adaptation of Punishments

In Islamic jurisprudence, the adaptation of punishments is a critical area where the principle of Maslaha Mursala (public interest) can play a significant role. The Maliki school of thought, with its pragmatic approach, has historically utilized Maslaha Mursala to modify or suspend certain punishments to maintain societal harmony and address practical concerns.

Suspension of Specific Verses or Hadith

In some cases, Muslim jurists have chosen to suspend the application of specific Qur'anic verses or hadith to preserve social order and ensure justice. An illustrative example is the adaptation of punishments in cases of collective responsibility. Traditional Islamic law prescribes retaliation for

murder, where the offender or their family may be subject to punishment. However, in practice, the Maliki school has sometimes ruled that if a group of people is involved in a murder, the entire group may be held accountable, even if this approach deviates from the strict letter of the Qur'anic law.

This adaptation is grounded in the principle of Maslaha, which emphasizes the welfare of society and the prevention of chaos. According to scholars, this approach aims to prevent individuals from evading justice by involving others in their crimes. For instance, Khaled Abou El Fadl argues that such adaptations are necessary to prevent abuse and maintain social order (Abou El Fadl, K. (2001). *Rebellion and Violence in Islamic Law*. Cambridge University Press). By adapting punishments, Islamic law seeks to balance individual accountability with broader societal interests.

Universal Wisdom (Hikima Kulliyya)

The concept of Hikima Kulliyya, or universal wisdom, also plays a role in adapting punishments. This concept refers to the broader objectives of Islamic law, including the protection of life and maintenance of social stability. According to Mohammad Hashim Kamali, Maliki jurists often use Hikima Kulliyya to interpret and apply legal principles in a way that aligns with these overarching goals (Kamali, M. H. (2003). *Principles of Islamic Jurisprudence*. Islamic Texts Society). This approach allows for the modification of punishments to ensure they serve the public interest and achieve justice in complex situations.

Case Studies and Modern Applications

The application of Maslaha Mursala and Hikima Kulliyya in adapting punishments has been observed in various historical and contemporary contexts. For example, during the early Islamic period, the Maliki school made significant adaptations to punishments to address the specific needs of different communities and circumstances. Abdul-Rahim Abu Haimed discusses how these adaptations reflect the dynamic nature of Islamic jurisprudence and its responsiveness to societal changes (Abu Haimed, A. R. (2012). *The Dynamics of Islamic Law*. Routledge).

In modern contexts, the principle continues to influence legal adaptations. Contemporary Islamic scholars and jurists apply Maslaha Mursala to address new social and legal challenges, ensuring that Islamic law remains relevant and effective in contemporary societies. This ongoing application underscores the principle's importance in maintaining justice and social harmony while adhering to core Islamic values.

Application in Nigerian Courts

The influence of the Maliki school of thought in Nigerian legal practice is a significant aspect of the country's legal landscape, particularly in the northern regions where Islamic law is predominantly applied. The principle of Maslaha Mursala has played a crucial role in adapting traditional Islamic legal principles to contemporary legal contexts in Nigeria. This section explores

the application of Maslaha Mursala in Nigerian courts, highlighting its impact and relevance in modern judicial processes.

Historical Context and Legal Framework

The application of Islamic law in Nigeria, especially in the northern states, has a deep historical foundation dating back to the Sokoto Caliphate. The Maliki school of thought, being the predominant Islamic legal tradition in the region, has greatly influenced the development of local legal practices. The Nigerian legal system recognizes Islamic law as a source of law in personal status matters, such as family law and inheritance, within the framework established by the Nigerian Constitution and relevant legislation.

Maslaha Mursala in Nigerian Judicial Practice

The principle of Maslaha Mursala has been applied in Nigerian courts to address specific legal issues and adapt traditional Islamic rulings to contemporary needs. One notable example is the practice direction issued by the Grand Kadi of the Kano State Sharia Court of Appeal, which incorporates Maslaha Mursala into the legal process. This direction requires that a village head or ward head be one of the witnesses in cases involving inheritance claims related to pension, gratuity, or other funds in a deceased person's account.

This application of Maslaha Mursala reflects an adaptation of Islamic legal principles to address practical challenges in the contemporary context. According to Abdul-Rahim Abu Haimed, this adaptation ensures that Islamic law remains relevant and responsive to current social and legal needs (Abu Haimed, A. R. (2012). *The Dynamics of Islamic Law*. Routledge). The requirement for local officials to serve as witnesses aims to enhance the reliability and efficiency of inheritance proceedings, aligning with the broader goals of Maslaha Mursala.

Scholarly Perspectives on Legal Adaptation

The adaptation of Islamic legal principles in Nigerian courts is supported by various scholarly perspectives. For instance, Khaled Abou El Fadl discusses how Maslaha Mursala allows for flexible interpretations of Islamic law to meet the needs of diverse and evolving societies (Abou El Fadl, K. (2001). *Rebellion and Violence in Islamic Law*. Cambridge University Press). Abou El Fadl emphasizes that such adaptations are essential for ensuring that Islamic law remains effective and applicable in modern contexts.

Similarly, Mohammad Hashim Kamali highlights the role of Maslaha Mursala in enhancing the practical implementation of Islamic legal principles. Kamali argues that the application of Maslaha Mursala in Nigerian courts demonstrates the principle's capacity to address contemporary issues while maintaining adherence to Islamic values (Kamali, M. H. (2003). *Principles of Islamic Jurisprudence*. Islamic Texts Society). This perspective underscores the importance of Maslaha Mursala in bridging traditional jurisprudence with current legal practices.

CONCLUSION

The principle of Maslaha Mursala (public interest) within the Maliki school of thought has demonstrated a remarkable capacity for adapting Islamic jurisprudence to contemporary societal needs. This adaptability is crucial for maintaining the relevance and effectiveness of Islamic legal principles in addressing modern challenges, while still adhering to foundational ethical values.

Adaptability and Relevance

Maslaha Mursala allows for the dynamic application of Islamic law, reflecting a commitment to addressing the evolving needs of society. By permitting deviations from strict textual interpretations when justified by public interest, the Maliki school exemplifies a pragmatic approach to jurisprudence. This flexibility is evident in various aspects of legal practice, including the admissibility of evidence, permissibility of medical practices, and adaptation of punishments.

Impact on Legal Practice

The application of Maslaha Mursala has had a significant impact on legal practice, both historically and in contemporary contexts. In the Maliki tradition, this principle has facilitated legal adaptations that enhance justice and social order. For instance, the allowance for testimony from community members in cases where the ideal criteria cannot be met ensures that justice is not compromised by practical limitations. Similarly, the permissibility of certain medical practices and adaptations in punishments illustrate how Maslaha Mursala addresses pressing needs while preserving core ethical principles.

In Nigerian courts, the application of Maslaha Mursala has enabled Islamic law to adapt to modern legal challenges. The practice direction requiring local officials to witness inheritance cases involving pensions and gratuities demonstrates the principle's role in ensuring effective and equitable legal processes. This application underscores the relevance of Maslaha Mursala in bridging traditional jurisprudence with contemporary legal practices.

Scholarly Perspectives

Scholarly analyses support the view that Maslaha Mursala plays a crucial role in the evolution of Islamic jurisprudence. According to Mohammad Hashim Kamali, the principle's flexibility is essential for maintaining the practicality and relevance of Islamic legal principles (Kamali, M. H. (2003). *Principles of Islamic Jurisprudence*. Islamic Texts Society). Abdul-Rahim Abu Haimed emphasizes that Maslaha Mursala helps address contemporary issues while staying true to Islamic values (Abu Haimed, A. R. (2012). *The Dynamics of Islamic Law*. Routledge). Khaled Abou El Fadl's work further illustrates how Maslaha Mursala enables Islamic law to adapt to new social contexts and challenges (Abou El Fadl, K. (2001). *Rebellion and Violence in Islamic Law*. Cambridge University Press).

Future Directions

The ongoing application of Maslaha Mursala suggests that Islamic jurisprudence will continue to evolve in response to new societal needs. Future research and legal practice should focus on further exploring how Maslaha Mursala can address emerging issues in diverse contexts. By maintaining a balance between tradition and innovation, Islamic law can continue to provide relevant and effective solutions to contemporary challenges.

In summary, the principle of Maslaha Mursala within the Maliki school of thought has proven to be a vital tool for adapting Islamic jurisprudence to the complexities of modern society. Its application across various legal domains highlights its importance in ensuring that Islamic law remains dynamic, responsive, and grounded in public interest. As Islamic jurisprudence continues to evolve, Maslaha Mursala will play a key role in shaping legal practices that uphold justice and equity in contemporary contexts.

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