

MULTILINGUALISM IN FAMILY LAW ACCORDING TO SHĀFĪ MADHHAB

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Abstract

Several factors have made Arabic an important language for Muslims. From an Islamic law perspective, in addition to being the language of worship, Arabic has long been the established language of instruction in *madrasabs* (colleges) for the teaching of Islamic legal sciences. It is also the language of works written in the field of Islamic law and the language that a *mujtabid* (independent jurist) who will engage in jurisprudential (*fiqh*) activity, a *qāḍī* (judge) who will adjudicate, or a *muftī* (Islamic jurisconsult) who will issue *fatwās* (legal opinions) must know. In fact, some Islamic jurists have described Arabic as the language of Shari‘ah (Islamic law). Since the early periods, many communities of different races and languages have embraced Islam. This situation has led to debates regarding the use of non-Arabic languages in Islamic jurisprudence (*fiqh*). The aim of this study is to present these discussions specifically within the Shāfi‘ī madhhab (school of *fiqh*). The limitation of the research to family law is due to the fact that after the issues related to worship, the discussions on the

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use of languages other than Arabic in Islamic jurisprudence are mostly concentrated in this field. The reason for limiting the study to the Shāfiʿī madhhab, in addition to its focus on family law, lies in the fact that al-Shāfiʿī (d. 204/820) is known for insisting that every Muslim should possess a level of Arabic sufficient to perform basic acts of worship and he strongly emphasizes the importance of Arabic for understanding the *naşş* (textual proof). Owing to these views, he has been accused of Arab nationalism and literalism. From this perspective, identifying the views of al-Shāfiʿī and the Shāfiʿī madhhab on the use of non-Arabic languages in the context of family law is of particular importance. This study demonstrates that the Shāfiʿī madhhab adopts a pluralistic approach in family law that balances adherence to the *naşş* with the practical and functional requirements of the law and highlights its flexible attitude in recognizing the validity of legal expressions formulated in foreign languages for individuals who do not know Arabic.

Key Words: Islamic jurisprudence, Shāfiʿī madhhab, Family law, Arabic, Multilingualism

Introduction

According to the theory of *ijtihād* (independent reasoning) in Islamic jurisprudence, a *mujtabids* knowledge of Arabic is a prerequisite since the textual proofs are in Arabic.¹ In al-Shāfiʿī's thought, the relationship of non-*mujtabid* Muslims with the Arabic language is limited to a level sufficient for them to perform their basic religious duties.² Therefore, while both *mujtabids* and *muqallids* (imitators) are required to know Arabic, the scope of this obligation differs between them. However, from the perspective of Islamic jurisprudence, it is not an exaggeration to state that within the Shāfiʿī madhhab, Arabic is conceived not only as a language that *mujtabids* or lay Muslims must know to a certain extent but also as the language of the Islamic jurisprudence system itself. Indeed, the fact that classical

¹ Abū l-Ḥasan al-Māwardī, *al-Ḥāwī l-kabīr fī fiqh madhhab al-Imām al-Shāfiʿī wa-buwa sharḥ Mukhtaşar al-Muzanī*, ed. ʿAlī Muḥammad Muʿawwaḍ - ʿĀdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1999), 16/51; Abū Zakariyyā al-Nawawī, *Rawḍat al-ṭālibīn wa-ʿumdat al-muṭīn*, ed. Zuhayr al-Shāwīsh (Beirut - Damascus - Amman: al-Maktab al-Islāmī, 1991), 11/95.

² Muḥammad ibn Idrīs al-Shāfiʿī, *al-Risālah*, ed. Aḥmad Muḥammad Shākir (Cairo: Maktabat Dār al-Turāth, 2005), 132-135.

Shāfiʿī *fiqh* texts depict Arabic as “the language of the Sharīʿah”³ or “the language through which the Sharīʿah was revealed”⁴ indicates that Arabic plays a foundational role in the Islamic jurisprudence system. This situation has given rise to many debates concerning the place of individuals who do not know Arabic in the functioning of Islamic jurisprudence. The requirement to use Arabic expressions in their literal sense in legal operations clearly poses challenges for legal systems that encompass multilingual and multinational elements. For this reason, while Arabic fulfills an essential function in jurisprudence, the question of whether other languages can be used within the system has preoccupied the minds of Shāfiʿī jurists. One possible reason for the emergence of this issue is that matrimonial (*nikāḥ*) rulings possess an aspect of worship (*ʿibādah*) in addition to being part of transactional law (*muʿāmalāt*). It should be noted that Shāfiʿīs generally consider marriage to be a separate matter from both worship and transactions.⁵ As Aybakan notes, some Shāfiʿī jurists regarded the devotional aspect of the marriage contract as predominant; therefore, they did not permit the use of the terms *inkāḥ* and *tazwīj* (marriage-concluding formulae) in languages other than Arabic when they concluded a marriage contract.⁶ According to this interpretation, if the original language of acts of worship is Arabic, then, by analogy, when the devotional dimension of matrimonial matters is taken into account, the language used in such contracts should likewise be Arabic. As will be discussed later, the Shāfiʿīs have generally based the determination of terms used in family law on the vocabulary used in the Qurʾān for matters relating to family law. From this perspective, the use of a language other than Arabic in family law is related to the use of translations of the Qurʾān in *fiqh*. The most common discussion on this issue in *fiqh* concerns the use of Qurʾānic translations in the performance of *ṣalāḥ* (prayer). The Shāfiʿīs hold a clear position on

³ Al-Māwardī, *al-Ḥāwī l-kabīr*, 9/155.

⁴ Al-Māwardī, *al-Ḥāwī l-kabīr*, 11/95.

⁵ For the approach of the Shāfiʿī *madhhab* on this matter, see Abū Bakr ʿUthmān ibn Muḥammad al-Bakrī, *Iʿānat al-ṭālibīn ʿalā ḥall al-fāz Fath al-Muʿīn*, ed. Yāsir al-Sayyid ʿAbd al-ʿAẓīz (Cairo: Dār al-Salām, 2021), 4/2179.

⁶ Bilal Aybakan, “Fürüʿ Fıkıh Sistematiği Üzerine”, *Marmara Üniversitesi İlahiyat Fakültesi Dergisi* 31 (2006/2), 15.

this matter and do not accept the use of a Qurʾān translation in prayer.⁷ Once the prohibition of using a translation of the Qurʾān in prayer is accepted, the central question becomes whether this ruling also applies to the translations of Qurʾānic terms employed in family law. It should be noted that views on this issue may vary depending on the underlying assumption about whether the devotional or the transactional dimension of family law is considered predominant. In addition, the fact that some Shāfiʿī jurists consider the rulings on marriage (*nikāḥ*) to be of a *taʿabbudī* nature⁸ must have opened the door to debates regarding the use of Arabic-derived expressions in the establishment of the marriage contract. If the terms *inkāḥ* and *tazwīj* (marriage) used in marriage are *taʿabbudī* in nature and determined by the *sharʿ* (divine revelation), even the use of alternative Arabic expressions –despite being Arabic– has been a matter of debate. Consequently, this debate has extended to the possibility of using translations of Arabic expressions that are accepted as prescribed by the *sharʿ*. The aim of this study is to examine the theories of Shāfiʿī scholars regarding the use of different languages within the *fiqh* system, specifically in the context of family law.

Contemporary research on al-Shāfiʿī's relationship with Arabic has generally progressed in several directions. The first concerns al-Shāfiʿī's mastery of the Arabic language.⁹ The second focuses on the great importance he attached to Arabic in his works.¹⁰ The third concerns research into how he applied Arabic language rules when

⁷ Oğuzhan Tan, "Translating the Sacred: Islamic Law, Ottoman Readership, and Two Examples of a Transitional Genre", *Ilabiyat Studies* 15/2 (December 2024), 210.

⁸ Al-Bakrī, *Iʿānat al-ṭālibīn*, 4/2223. *Taʿabbudī* refers to a legal ruling derived from the *naṣṣ* that must be accepted as it is, without being subjected to rational reinterpretation. See Ismail Keri, "The Concept of Taʿabbudi and Taʿaqquli in Islamic Law", *al-Bayyinah* 5/2 (December 2021), 216, 220.

⁹ Najihah Abd Wahid - Anas Mohd Yunus - Nor Hafizah Abdullah, "The Contributions of Imam Shafi'i in Arabic Language and Literature", *The Social Sciences* 11/5 (2016), 547-550.

¹⁰ Hülya Afacan - Osman Güman, "er-Risāle'de Şāfi'î'ye Göre Kur'ân'ın Arabîliği", *Sakarya Üniversitesi İlahiyat Fakültesi Dergisi* 24/46 (2022), 485-503; Metin Yiğit, "İmam Şāfi'î'de Arapça Vurgusu ve Lafız-Mana Dengesi", *Uluslararası İmam Şāfi'î Sempozyumu*, ed. Mehmet Bilen (İstanbul: Kent Işıkları, 2012), 803-835.

deriving legal rulings.¹¹ Apart from these theoretical studies, there are numerous academic studies on the use of languages other than Arabic in acts of worship, particularly in prayer.¹² Nevertheless, contemporary studies have investigated the use of non-Arabic languages in Islamic legal practice. These studies have generally examined how language constitutes a barrier to access to courts for non-Arabic-speaking populations alongside the expansion of Islam and the theories developed by Islamic jurists to overcome this barrier. This type of research addresses the role played by interpreters and their legal status in cases where one of the parties to the case, a witness, or a document serving as evidence is in a language that the judge does not understand.¹³ The point of convergence between these studies and the present research lies in the issue of *liʿān*.¹⁴ In *liʿān*, the parties are

¹¹ Joseph E. Lowry, “The Legal Hermeneutics of al-Shāfiʿī and Ibn Qutayba: A Reconsideration”, *Islamic Law and Society* 11/1 (2004), 9-10; Joseph E. Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfiʿī* (Leiden - Boston: Brill, 2007), 69-78, 364-366.

¹² Ahmet Keleş, “Anadilde İbadet”, *Sosyal Bilimler Araştırma Dergisi* 1/1 (March 2003), 87-113; Kâşif Hamdi Okur, “Yesevî Muhibbi Bir Hanefî Fakîh: Sıḡnâkî’nin İbadet Dili Anlayışı”, *Geçmişten Geleceğe Hoca Ahmed Yesevî Uluslararası Sempozyumu*, ed. Ömer Kul et al. (İstanbul: Şenyıldız Yayıncılık, 2016), 2/700-707; Kâşif Hamdi Okur, “Temel Fıkıh Kaynaklarına Göre İbadetin Dili”, *Dinî Araştırmalar* 1/3 (1999), 171-203; Kâşif Hamdi Okur, “Serahsî’nin Referans Kaynağı Olarak Kurʿân’a Bakışı ve İbadet Dili Anlayışı”, *Hitit Üniversitesi İlahiyat Fakültesi Dergisi* 11/22 (2012), 211-227; Fatma Nur Bedir, “Native or Liturgical Language in Prayers: A Field Research on This Debate”, *İnsan ve Toplum Bilimleri Araştırmaları Dergisi* 10/3 (2020), 2494-2514.

¹³ For examples of research on this topic, see Mahmood Kooria, “Words of ‘ajam in the World of Arab: Translation and Translator in Early Islamic Judicial Procedure”, *Justice and Leadership in Early Islamic Courts*, ed. Intisar A. Rabb - Abigail Krasner Balbale (Cambridge, MA: Harvard University Press, 2018), 71-90; ‘Abd al-Riḍā Loṭfî - ‘Alî Moṭahharî Fard, “Mâhiyyat-i Fiqhî wa-Ḥuqûqî-yi Tarjumah dar Umûr-i Qaḍâʾ”. *Guftimân-i Ḥuqûq-i Islâmî-yi Muʿâşir* 2/3 (2024), 149-172; Kemal Çiçek, “Interpreters of the Court in the Ottoman Empire as Seen from the Sharia Court Records of Cyprus”, *Islamic Law and Society* 9/1 (2002), 1-15.

¹⁴ *Liʿān* refers to the mutual cursing between a husband and wife in situations where the husband accuses his wife of adultery but is unable to prove the accusation. For detailed information on *liʿān*, see Andi Syamsul Bahri, “Legal Status of the Liʿan Children Recognition: Comparison of the Mazhab Malikiyah and the Compilation of Islamic Law”, *Jurnal Mabkamab: Kajian Ilmu Hukum dan Hukum Islam* 7/1 (2022), 67-78.

required to perform it in the presence of the *qāḍī* (judge). If one of the parties does not know Arabic, that party will perform *li'ān* in his or her own language. In such a case, if the judge does not understand the language in which *li'ān* is performed, the court must employ an interpreter for the non-Arabic-speaking party. Within the Shāfi'i *madhhab*, the main point of debate in *li'ān* concerns the legal status of interpreters. The debate on this issue revolves around whether translation should be regarded as testimony (*shahādah*) or as transmission (*khabar*).¹⁵ This is closely tied to the broader question of the status of interpreters in Shāfi'i judicial practice and cannot be considered independent of it. Consequently, since the legal status of interpreters in *li'ān* runs parallel to the findings of existing research on the legal status of interpreters in courts more generally, this study does not address the issue separately. To the best of our knowledge, no standalone study has specifically examined the role of non-Arabic languages in the Shāfi'i *madhhab* within the context of family law. From this perspective, we hope that the present study will open up space for further research not only in family law but also in other areas of Islamic jurisprudence concerning the use of languages other than Arabic.

In the *fiqh* literature of the Shāfi'i *madhhab*, the terms *ʿajam* or *aʿjamī* are used for those who speak a non-Arabic language. While the term *ʿajam* initially had a specific meaning in reference to non-Arabic speakers, particularly those whose native language was Persian, over time, it became a general term encompassing all non-Arab people.¹⁶ Indeed, the Shāfi'i jurist Abū l-Maḥāsīn al-Rūyānī (d. 502/1108) noted that the term *aʿjamī* was not exclusive to Persians, Rūm, or Nabateans but rather was used for anyone unable to speak Arabic correctly.¹⁷ Al-Khāṭib al-Shirbīnī (ö. 977/1570) emphasized that, in explaining the

¹⁵ Al-Māwardī, *al-Ḥawī l-kabīr*, 11/71-72; Kooria, "Words of ʿajam in the World of Arab", 81.

¹⁶ Adnan Karaismailoğlu, "Acem", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: TDV Yayınları, 1988), 1/321.

¹⁷ ʿAbd al-Wāḥid ibn Ismāʿīl al-Rūyānī, *Baḥr al-madhhab fī furūʿ madhhab al-Shāfiʿī*, ed. Ṭāriq Faṭḥī al-Sayyid (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2009), 10/269-270.

term *aʿjamī*, what is meant is all languages other than Arabic.¹⁸ Therefore, the use of the term *ʿajam* in the classical *fiqh* texts examined in this study should not be interpreted as limiting the debate over non-Arabic languages solely to Persian. The issue of using languages other than Arabic is not specific to Persian, nor does Persian have any particular distinction in this regard. In some cases, Persian is mentioned as an example in the relevant texts, but this does not mean that the discussion is confined to Persian. Rather, Persian is cited only as an illustrative example.¹⁹

This research will be conducted using document analysis, a qualitative research method commonly employed in the social sciences. Document analysis is a method based on the detailed and systematic examination of written materials.²⁰ The subject will be addressed within the framework of issues identified in the Shāfiʿī *fiqh* literature, particularly in areas of family law such as *nikāḥ* and *ṭalāq* (divorce).²¹

1. Nikāḥ

Al-Shāfiʿī determines which expressions must be used in *nikāḥ* by referring to the words used in the Qurʾān regarding marriage. He concludes that the Qurʾān uses the terms *nikāḥ* and *tazwīj* for the

¹⁸ Al-Khaṭīb al-Shirbīnī, *Mughnī l-muḥtāj ilā maʿrifat maʿānī alfāz al-Minhāj*, ed. ʿAlī Muḥammad Muʿawwaḍ - ʿĀdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1994), 4/229.

¹⁹ Kâşif Hamdi Okur, “Yesevî Muhibbi Bir Hanefî Fakîh”, 2/703.

²⁰ Bilgen Kırıl, “Nitel Bir Veri Analizi Yöntemi Olarak Doküman Analizi”, *Siirt Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* 8/15 (2020), 173.

²¹ The reason why discussions concerning the use of non-Arabic expressions in family law have concentrated particularly on matters of *nikāḥ* and *ṭalāq* is that these two areas constitute the most fundamental components of family law, and the meanings, scope, and legal implications of the expressions used in these procedures require detailed examination. Additionally, from a practical standpoint, the issues most frequently encountered in society in relation to family law concern marriage and divorce; therefore, it can be said that these matters occupy the attention of Shāfiʿī jurists more than others. Nevertheless, it should be noted that debates regarding the use of non-Arabic expressions are not limited to marriage and divorce; they are also addressed with considerable intensity in other areas of family law.

institution of marriage.²² According to him, it is not permissible to conclude a valid marriage using any expressions other than these two, even if the intention is to marry. This is because, prior to the conclusion of the marriage, a woman is unlawful (*ḥarām*) for a man, and for the *nikāḥ* to make her lawful (*ḥalāl*), it must be concluded using the expressions mentioned by God. According to al-Shāfiʿī, these expressions are *nikāḥ* and *tazwīj*, as designated by divine terminology.²³

The theory formulated by al-Shāfiʿī regarding the specific terminology to be used in *nikāḥ* is a widely accepted view within the Shāfiʿī madhhab. In fact, Abū l-Ḥasan al-Māwardī (d. 450/1058)²⁴ supported this view of al-Shāfiʿī, stating that the *nikāḥ* can only be concluded using *ṣarīḥ* (explicit) expressions. According to him, the only explicit expressions valid for marriage are *nikāḥ* and *tazwīj*; it is not permissible to conclude the marriage contract (*ʿaqd al-nikāḥ*) using other terms, even if the intent is marriage. Al-Māwardī also cited the view of Abū Ḥanīfah (d. 150/767), who permits the use of terms such as *bayʿ* (sale), *hibab* (donation)²⁵, or *tamlīk* (ownership) in a

²² Al-Shāfiʿī, *al-Umm*, ed. Muḥammad Zuhri al-Najjār (Beirut: Dār al-Maʿrifah, 1990), 5/40; Among the verses that al-Shāfiʿī mentions on this issue are the following: فَلَمَّا قَضَىٰ زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا “When Zayd no longer wanted her, We gave her to you in marriage” (Q 33:37); وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ “You inherit half of what your wives leave” (Q 4:12); وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ “As for those who accuse their own wives of adultery” (Q 24:6); فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ “If a husband divorces his wife after the second divorce, she will not be lawful for him until she has taken another husband” (Q 2:230); إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ “Believers,... when you marry believing women and then divorce...” (Q 33:49); وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ “Do not marry women that your fathers married” (Q 4:22). For the translation of the verses, see *The Qurʾan*, trans. M. A. S. Abdelhaleem (Oxford: Oxford University Press, 2005).

²³ Al-Shāfiʿī, *al-Umm*, 5/40; al-Shirbīnī emphasizes that marriage is valid with words derived from *inkāḥ* and *tazwīj* as well. See al-Shirbīnī, *Mughnī l-muḥtāj*, 4/227.

²⁴ To the best of our knowledge, the scholars in the classical Shāfiʿī *fiqh* literature who addressed the issue of using languages other than Arabic in family law in a comprehensive and systematic manner are al-Māwardī and Imām al-Ḥaramayn al-Juwaynī. For this reason, their views will be referred to frequently throughout this article.

²⁵ *Hibab* is “gift inter vivos, transfers the ownership of a thing during the lifetime of the donor, and with no consideration payable by the donee”. See Y. Linant de

marriage.²⁶ The Ḥanafī madhhab validates a marriage contract using these terms. Because these terms share the semantic meaning of *milk* (ownership), they can be metaphorically borrowed (*istiʿārah*) to establish the legal aim of marriage, which is *milk al-mutʿah* (a type of ownership referring to lawful cohabitation). This metaphorical application is necessary because all individual words used in the marriage contract must be part of the *milk* semantic basin to be valid.²⁷ Therefore, according to the Ḥanafīs, marriage cannot be contracted using terms such as *ibāḥah* (permissibility), *iḥlāl* (lawfulness), and *iʿārah* (loan for use), which do not convey ownership, nor with the term *ijārah* (lease), a temporary contract that denotes not ownership but merely the right of temporary use.²⁸

Imām al-Ḥaramayn al-Juwaynī (d. 478/1085), who used a similar approach to al-Māwardī, stated that according to the Shāfiʿī madhhab, marriage is valid only if the expressions *inkāḥ* and *tazwīj* are used. He argued that these two terms have universally established meanings across all languages, serving as the most well-known and explicit terms for marriage. Al-Juwaynī further maintained that the *nikāḥ* cannot be concluded using other terms, even if they express a clear meaning, as only *inkāḥ* and *tazwīj* qualify as valid explicit terms. He also rejected the use of metaphorical or indirect (*kināyah*) expressions in marriage, reasoning that since the *ʿaqd al-nikāḥ* (marriage contract) requires witness testimony, it is not possible for witnesses to ascertain the parties' intent when indirect language is used. Hence, the foundational position of the Shāfiʿī madhhab, according to al-Juwaynī, is that only

Bellefonds, "Hiba", *Encyclopaedia of Islam New Edition Online* (EI-2 English) (Accessed 4 July 2025).

²⁶ Al-Māwardī, *al-Ḥāwī l-kabīr*, 9/152.

²⁷ Hakime Reyhan Yaşar, "ʿAqd al-Nikāḥ: Explaining the Nexus Between Marriage and Contract in Islamic Law", *Ankara Üniversitesi İlahiyat Fakültesi Dergisi* 63/1 (May 2022), 173-177; See also, Mehmet Selim Aslan, *İslâm Aile Hukuku* (Bursa: Emin Yayınları, 2017), 83-84.

²⁸ According to al-Māwardī, differing opinions are attributed to Abū Ḥanīfah regarding whether a marriage may be contracted using the term *ijārah*. Al-Kāsānī, however, reported that the majority of Ḥanafī authorities (*mashāyikh*) hold the view that contracting marriage with the wording of *ijārah* is not permissible. See al-Māwardī, *al-Ḥāwī l-kabīr*, 9/152; ʿAlāʾ al-Dīn Abū Bakr ibn Masʿūd al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ fī tartīb al-sharāʾiʿ*, ed. ʿAlī Muḥammad Muʿawwaḍ - ʿĀdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2003), 3/317-319.

explicit expressions in Arabic are valid.²⁹ This foundational view is also endorsed by Abū Zakariyyā al-Nawawī (d. 676/1277), who affirmed that the marriage contract cannot be concluded using terms other than *tazwīj* and *inkāḥ*.³⁰

Al-Rāfiʿī (d. 623/1226) argued that the terms used in marriage should be limited to *inkāḥ* and *tazwīj*, referring to the devotional (*ʿibādāt*) aspect of marriage. According to him, the ruling on marriage is *mandūb* (recommended); therefore, marriage bears a quality that approximates acts of worship. The expressions employed in acts of worship are determined solely by the Sharīʿah texts. In this regard, the Qurʾān uses only the terms *inkāḥ* and *tazwīj* and makes no reference to any other expressions.³¹ Al-Bakrī (d. 1310/1892), however, approached the subject from a different angle. According to him, the marriage contract cannot be concluded with words other than *tazwīj* and *inkāḥ* because marriage is a type of *taʿabbudī*. Therefore, *qiyās* (legal analogy) cannot be applied in this context. Consequently, terms such as *ibāḥah*, *tamlīk*, or *hibah* cannot, by analogy, be rendered valid for contracting a marriage.³²

Al-Shāfiʿī's view that the marriage contract can only be validly concluded using the Qurʾānic terms *nikāḥ* and *tazwīj*—and that a contract formed with any other wording is invalid—has led, within the madhhab, to the question of whether marriage may be concluded in another language through translations of these terms. Since God used the Arabic expressions *nikāḥ* and *tazwīj* in the Qurʾān for the marriage contract and since marriage possesses a quasidevotional character, Shāfiʿī scholars have wondered the following: if the Qurʾān must be recited in its original Arabic in acts of worship, must the marriage contract likewise adhere to its Qurʾānic Arabic formula? Furthermore, if the wording used in *nikāḥ*—which is a type of *taʿabbudī*—has been

²⁹ Imām al-Ḥaramayn al-Juwaynī, *Nibāyat al-maṭlab fī dirāyat al-madhbhab*, ed. ʿAbd al-ʿAzīm Maḥmūd al-Dīb (Jeddah: Dār al-Minhāj, 2007), 12/170; see also for similar discussions; Aḥmad Salāmah al-Qalyūbī, *Ḥashbiyatā Qalyūbī wa-l-Umayrah* (Beirut: Dār al-Fikr, 1995), 2/212.

³⁰ Al-Nawawī, *Rauḍat al-tālibīn*, 7/36.

³¹ ʿAbd al-Karīm ibn Muḥammad al-Rāfiʿī al-Qazwīnī, *al-ʿAzīz sharḥ al-Wajīz (al-Sharḥ al-kabīr)*, ed. ʿAlī Muḥammad Muʿawwad - ʿĀdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1997), 7/492.

³² Al-Bakrī, *Iʿānat al-tālibīn*, 4/2223.

prescribed by the Sharīʿah, can its translations take the place of the original? This issue –namely, the validity of the marriage contract in a language other than Arabic– has been one of the debated questions within the Shāfiʿī madhhab. This question has produced a significant legal debate within the Shāfiʿī madhhab, and three primary views have emerged:

a. The first view holds that it is impermissible to conclude a marriage contract using translations of *nikāḥ* and *tazwīj* into another language. According to Abū Ishāq al-Shīrāzī (d. 476/1083), this view is based on the ḥadīth: “You have made women lawful for yourselves with the word of God”.³³ This “word of God” is Arabic, and just as the Qurʾān cannot be substituted with its translation, neither can these divine expressions be replaced with translations.³⁴ Al-Rūyānī established that the core rationale behind this view is the argument that the Qurʾān’s *iʿjāz* (inimitability) lies in both its wording and meaning and that this quality is lost when it is translated into another language.³⁵ Al-Rāfiʿī noted that those who defend this view base their reasoning on an analogy with the recitation of al-Fātiḥah in prayer. Just as a person who does not know Arabic may not recite a translation of al-Fātiḥah during the prayer, likewise, a marriage contract cannot be concluded by using a translation of the Arabic formulae in the Qurʾān related to the marriage contract.³⁶ Thus, if God used *nikāḥ* and *tazwīj* in Arabic, using their translations would not be permissible. According to the commentaries of al-Māwardī,³⁷ al-Rūyānī,³⁸ and Abū l-Ḥusayn al-ʿImrānī³⁹ (d. 558/1163), this view is attributed to the Shāfiʿī jurist Abū Ḥāmid al-Isfarāyīnī (d. 406/1016). However, this view attributed to Abū Ḥāmid al-Isfarāyīnī has not been supported by other jurists within the Shāfiʿī madhhab. In a sense, Abū Ḥāmid al-Isfarāyīnī remains the sole

³³ Abū Dāwūd Sulaymān ibn al-Ashʿath al-Azdī al-Sijistānī, *Sunan Abī Dāwūd*, ed. Shuʿayb al-Arnaʿūṭ - Muḥammad Kāmil Qarah Ballī (Beirut: Dār al-Risālah al-ʿĀlamiyyah, 2009), “Kitāb al-Manāsik”, 56 (No. 1095).

³⁴ Abū Ishāq al-Shīrāzī, *al-Mubadḍab fī fiqh al-Imām al-Shāfiʿī*, ed. Zakariyyā ʿUmayrāt (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1995), 2/438.

³⁵ Al-Rūyānī, *Baḥr al-madḥḥab*, 9/153.

³⁶ Al-Rāfiʿī, *al-ʿAzīz sharḥ al-Wajīz*, 7/493.

³⁷ Al-Māwardī, *al-Ḥāwī l-kabīr*, 9/155.

³⁸ Al-Rūyānī, *Baḥr al-madḥḥab*, 9/153.

³⁹ Yaḥyá ibn Abī l-Khayr al-ʿImrānī, *al-Bayān fī madḥḥab al-Imām al-Shāfiʿī*, ed. Qāsim Muḥammad al-Nūrī (Jeddah: Dār al-Minhāj, 2000), 9/235-236.

proponent of this view within the madhhab.

Taking this view into account, a marriage contract cannot be concluded in a non-Arabic language. Whether the person making the marriage contract knows Arabic does not change this ruling.⁴⁰ Although this view is attributed to Abū Ḥāmid al-Isfarāyīnī, al-Juwaynī attributed it to Abū Saʿīd al-Iṣṭakhrī (d. 328/940). According to al-Juwaynī, if the person who uses the literal meanings of the Arabic words *tazwīj* and *nikāḥ* in his own language does not know Arabic well and it is not possible for him to learn it, and if the addressee understands this, then, according to the opinion of the *imāms* of the madhhab, the marriage is valid with the words used by the person in his own language. Al-Juwaynī identified al-Iṣṭakhrī as the only one who disagreed with this view. Al-Iṣṭakhrī is of the opinion that the marriage is valid only with the Arabic word and that the person who does not know Arabic should either be patient until he learns it or give a proxy to someone who knows Arabic.⁴¹ On the basis of these findings, the proponents of the first view are debated within the Shāfiʿī madhhab. According to al-Juwaynī, the only scholar who advocated this view in the school was al-Iṣṭakhrī. However, according to al-Māwardī, al-Rūyānī, and al-ʿImrānī, the sole proponent of this view within the school was Abū Ḥāmid al-Isfarāyīnī. According to al-Māwardī, if the first view is taken into consideration, it follows that if the marriage contract is performed in a language other than Arabic, it is invalid regardless of whether the person knows Arabic or not. In this case, if the person does not know Arabic, he has two options: he can either ask an Arab to perform the contract on his behalf (give a proxy) or he can learn Arabic and perform the contract himself.⁴²

b. The second view permits the use of non-Arabic languages for the marriage contract only if the contracting parties do not know Arabic. If they do know Arabic, then a non-Arabic contract is invalid. While al-Juwaynī attributed the first view to al-Iṣṭakhrī, al-Māwardī,⁴³ al-

⁴⁰ Al-Māwardī, *al-Ḥāwī l-kabīr*, 9/155.

⁴¹ Al-Juwaynī, *Nibāyat al-maṭlab*, 12/171.

⁴² Al-Māwardī, without indicating whether he prefers this opinion, merely stated the legal consequences that would arise if this view was considered. For these views, see al-Māwardī, *al-Ḥāwī l-kabīr*, 9/155.

⁴³ Al-Māwardī, *al-Ḥāwī l-kabīr*, 9/155.

Shīrāzī,⁴⁴ and al-Rūyānī⁴⁵ attributed this second view to himself.⁴⁶ The rationale is that, unlike the Qurʾān, the marriage contract does not possess inimitable linguistic qualities; hence, it can be rendered in other languages if necessary. This view draws an analogy with the *takbīr al-iḥrām* (saying *Allāh akbar* at the start of *ṣalah*) in prayer, which can be said in another language by someone who does not know Arabic.⁴⁷

Considering the second view, al-Māwardī stated that there may be three scenarios:⁴⁸

1. Both parties are Arabic speakers: the *nikāḥ* is valid only in Arabic.
2. Both parties are non-Arabic speakers: the *nikāḥ* is valid in their own language.
3. One party speaks Arabic, and the other does not: the contract is invalid in both languages unless one of two solutions is implemented:
 - A bilingual representative acts as a proxy.
 - The non-Arabic speaker may learn Arabic and conclude the contract in Arabic. However, the Arabic-speaking party is not required to learn another language to perform the marriage contract.⁴⁹

c. The third view holds that the marriage contract is valid in any language, regardless of whether the parties know Arabic. Of course, the words being translated here must be those designated by the *sharʿ* for the marriage contract, namely, the terms *nikāḥ* and *tazwīj*.⁵⁰

⁴⁴ Al-Shīrāzī, *al-Mubadbdhab*, 2/438.

⁴⁵ Al-Rūyānī, *Baḥr al-madbbab*, 9/153.

⁴⁶ Al-Rāfiʿī stated that the view attributed to al-Iṣṭakhrī is disputed; some maintain that he held the first opinion (absolute prohibition), whereas others contend that he adopted the second opinion, which takes into account whether someone knows Arabic. See for these evaluations al-Rāfiʿī, *al-ʿAzīz sharḥ al-Wajīz*, 7/493.

⁴⁷ Al-Māwardī, *al-Ḥāwī l-kabīr*, 9/156; al-Shīrāzī, *al-Mubadbdhab*, 2/438; al-Rāfiʿī, *al-ʿAzīz sharḥ al-Wajīz*, 7/493; For the current debate on worship in the native tongue, see Tijani Boulaouali, “Quran Translation: A Historical-Theological Exploration”, *International Journal of Islamic Thought* 19 (2021), 127-130; Tan, “Translating the Sacred”, 209-211.

⁴⁸ Al-Māwardī, *al-Ḥāwī l-kabīr*, 9/156.

⁴⁹ Al-Māwardī, *al-Ḥāwī l-kabīr*, 9/156.

⁵⁰ Al-Bakrī, *Iʿānat al-ṭalībīn*, 4/2224.

According to al-Shīrāzī, the non-Arabic equivalents of *nikāḥ* and *tazwīj* can fulfill the same legal function. He rejected the analogy between Qurʾānic translation and the translation of contract terms, arguing that the Qurʾān is inimitable because of its miraculous composition, which is not the case with contractual expressions. Similarly, he opposed comparing the necessity of Arabic in prayer (e.g., the *takbīr*) with the marriage contract, noting that prayer is an act of worship, whereas marriage is a legal agreement whose objective can be achieved in any comprehensible language. Al-Shīrāzī asserted that the third view is both valid and preferable.⁵¹ Al-Māwardī also emphasized that this is the most widely accepted and authoritative view in the madhhab.⁵² Al-Nawawī affirmed that the most authentic opinion (*aṣaḥḥ*)⁵³ is that the marriage contract is valid in a foreign language, regardless of Arabic proficiency.⁵⁴

According to al-Māwardī, if this view is accepted, then the *nikāḥ* is valid in a non-Arabic language regardless of whether the speaker knows Arabic. However, since Arabic is the language of the Sharīʿah, using Arabic is preferable if one is able. Nevertheless, the marriage contract must be understood by the witnesses. If it is performed in Arabic and the witnesses do not understand Arabic or vice versa, it is invalid. Witnesses must understand the language used to avoid ambiguity.⁵⁵

Al-ʿImrānī also noted that if one party speaks only Arabic and the other only a foreign language (non-Arabic), the marriage contract is valid in the foreign language, provided that both understand each other. Similarly, if the contract is performed in Arabic before two non-

⁵¹ Al-Shīrāzī, *al-Muḥadhdhab*, 2/438.

⁵² In our assessment, al-Māwardī appears to have adopted this view. This is because he described it as a well-known view defended by the majority of the *madhhab*. While presenting the first and second views without criticism or approval, he clearly identified the third view as a widespread and established view, indicating his preference for it. For these views, see al-Māwardī, *al-Ḥāwī l-kabīr*, 9/155.

⁵³ “In cases where two or more *wujūb* are supported by strong evidence, the one considered to be based on the strongest evidence is labeled *aṣaḥḥ*, while the others are termed *ṣaḥīḥ*”. See Bilal Aybakan, “Şâfiî Mezhebi”, *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: TDV Yayınları, 2010), 38/242.

⁵⁴ Al-Nawawī, *Rawḍat al-ṭālibīn*, 7/36; see also for similar discussions, al-Shīrbīnī, *Mughnī l-muḥtāj*, 4/229-430.

⁵⁵ Al-Māwardī, *al-Ḥāwī l-kabīr*, 9/155.

Arabic-speaking witnesses or in a foreign language before two Arabic-speaking witnesses, it is valid only if the witnesses understand the contract's intent, as the primary function of witnessing is to confirm the occurrence of the act.⁵⁶

2. Ṭalāq

Al-Shāfiʿī applied a framework to *ṭalāq* (divorce) that is similar to the one he set out for *nikāḥ*. According to him, God mentions three specific terms in the Qurʾān in relation to divorce: *al-ṭalāq* (الطَّلَاق), *al-firāq* (الْفُرَاق), and *al-sarāḥ* (السَّرَاح).⁵⁷

Al-Shāfiʿī identified *ṭalāq*, *firāq*, and *sarāḥ* as divinely sanctioned expressions for divorce, just as *nikāḥ* and *tazwīj* are for marriage. This framework underscores his approach to legal formulations, where only the terminology used in the Qurʾān is deemed valid for initiating legal effects such as marriage or divorce. In the Shāfiʿī madhhab, divorce is effected only through verbal expressions (*lafẓs*), that is, through spoken words (*qawls*).⁵⁸ Without such verbal expression, intention alone has no legal weight in enacting a divorce.⁵⁹ According to al-Shāfiʿī, when divorce is pronounced using the terms *ṭalāq*, *firāq*, or *sarāḥ*, it is considered valid regardless of the husband's intention. This is because al-Shāfiʿī regarded these terms as *ṣarīḥ* expressions for divorce, which inherently convey the legal act without requiring supporting intent. In fact, al-Juwaynī, when citing al-Shāfiʿī's position, stated that the expressions used in marriage and divorce are categorized into two types: *ṣarīḥ* and *kināyah*. He further specified that only the terms *ṭalāq*, *firāq*, and *sarāḥ* qualify as *ṣarīḥ* in the

⁵⁶ Al-ʿImrānī, *al-Bayān*, 9/236; for similar opinions see al-Nawawī, *Rawḍat al-ṭālibīn*, 7/36.

⁵⁷ يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ “Prophet, when any of you intend to divorce women, do so at a time when their prescribed waiting period...” (Q 65:1); فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِّقُوهُنَّ بِمَعْرُوفٍ “When they have completed their appointed term, either keep them honourably, or part with them honourably...” (Q 65:2); فَيَا أَيُّهَا النَّبِيُّ قُلْ لِأَزْوَاجِكُمْ إِنْ كُنْتُمْ تُرِيدُونَ الْحَيَاةَ الدُّنْيَا وَرِيتَهَا فَعَالَيْنَ أُمَتِّعْكُنَّ وَأَسَرِّخْكُنَّ “Prophet, say to your wives, ‘If your desire is for the present life and its finery, then come, I will make provision for you and release you with kindness’.” (Q 33:28); al-Shāfiʿī, *al-Umm*, 5/276.

⁵⁸ Al-Rūyānī, *Baḥr al-madhhab*, 10/37.

⁵⁹ Al-Shāfiʿī, *al-Umm*, 5/276.

context of divorce.⁶⁰

Al-Juwaynī states that divorce by words derived from the word *ṭalāq*, whether in the verb tense or in the noun tense, is explicit. Thus, if a husband addresses his wife using phrases such as the following:

أنت طالق / *anti ṭāliq* (you are divorced)

طلقتك / *ṭallaqtuki* (I divorced you)

أنت مطلقة / *anti muṭallaqah* (you are divorced), the divorce is considered valid. According to al-Juwaynī's view, which he considered to be the most authentic (*aṣaḥḥ*), the terms *sarāḥ* and *firāq* are also categorized as *ṣariḥ* expressions of divorce. Taking this view into account, as a verb modal, if

فارقتك / *fāraqtuki* (I left you)

سرحتك / *saraḥtuki* (I released you) are used, divorce takes place explicitly (*ṣariḥ*).

According to al-Juwaynī, the words derived from these two

⁶⁰ According to al-Rūyānī's account, these three terms are the recognized explicit expressions for divorce within the Shāfi'ī *madhhab*. These expressions do not require any underlying intention to effectuate divorce. That is, if a husband uses any wording derived from these three root terms, divorce takes effect automatically, regardless of whether he intended it or not. Al-Juwaynī stated that among the *ṣariḥ* expressions of divorce, the most well-known and manifest is the term *ṭalāq*. He noted that this term has been used both in the pre-Islamic (Jāhiliyyah) and Islamic periods, and that there is no scholarly disagreement over its being an *ṣariḥ* expression for divorce. Al-Juwaynī attributed the view that *ṭalāq* is the only term that qualifies as *ṣariḥ* in divorce to Abū Ḥanīfah. He also reported that the Shāfi'īs of Iraq transmitted a view ascribed to al-Shāfi'ī's *al-qawl al-qadīm* (his earlier opinion), which aligns with the opinion of Abū Ḥanīfah. According to this earlier opinion, the only term considered explicitly valid for divorce was *ṭalāq*, while *sarāḥ* and *firāq* were classified as *kināyah*. However, when examining al-Shāfi'ī's later works, particularly *al-Umm*, which represents his *al-qawl al-jadīd* (later opinion), it is evident that he included *sarāḥ* and *firāq* among the *ṣariḥ* expressions of divorce. Al-Nawawī reported this as the generally accepted position among Shāfi'ī scholars. That is the Shāfi'īs hold that there are three *ṣariḥ* expressions for divorce: *ṭalāq*, *sarāḥ*, and *firāq*. In a *ṭalāq* pronounced with *ṣariḥ* expressions, the divorce takes effect without the need for an intention, whereas with *kināyah* expressions, it takes effect only depending on the intention. For these views, al-Juwaynī, *Nihāyat al-maḥḥab*, 14/58; al-Rūyānī, *Baḥr al-madhhab*, 10/38; al-Rāfi'ī, *al-ʿAzīz sharḥ al-Wajīz*, 8/507-508; al-Nawawī, *Rawḍat al-tālibin*, 8/25; al-Shirbinī, *Mughnī l-muḥtāj*, 4/457-458; Taqī al-Dīn al-Ḥiṣnī, *Kifāyat al-akhyār fī ḥall Ghāyat al-ikhtisār*, ed. ʿAlī ʿAbd al-Ḥamīd Balṭajī - Muḥammad Wahbī Sulaymān (Damascus: Dār al-Khayr, 1994), 388-390.

concepts and used as noun modals are as follows:

أنت مفارقة / *anti mufāraqah* (you were abandoned)

أنت مسرحة / *anti musarraḥah* (you have been released); when these words are used, there are two *wujūh* (opinions)⁶¹ about whether a divorce has taken place here:

- According to the first *wajh*, these words are *ṣarīḥ*, as is the case with the words أنت مطلقة (you are divorced).⁶²
- According to the second *wajh*, these words are *kināyah*. Because the words *sarāḥ* and *firāq* are not *ṣarīḥ* and famous like the word *ṭalāq*. Al-Shāfiʿī classifies the words *sarāḥ* and *firāq* as *ṣarīḥ* because they are mentioned in the Qurʾān. In the Qurʾān, these words are mentioned only in the verb tense. This concept is not mentioned in the Qurʾān in the form of *al-mufāraqah* (المفارقة) and *al-musarraḥah* (المسرحة); in contrast, although the word *ṭalāq* is very famous, the word *al-muṭallaqah* (المطلقة) is mentioned in the Qurʾān.⁶³

Al-Juwaynī addressed the issue of using *ṣarīḥ* expressions for divorce in languages other than Arabic. According to him, Shāfiʿī scholars hold the view that the meaning of the term *ṭalāq* in non-Arabic languages is likewise considered *ṣarīḥ*, just as it is in Arabic.⁶⁴ Al-Juwaynī noted that some authors have attributed to al-Iṣṭakhrī the opinion that a divorce expressed in a language other than Arabic cannot be considered *ṣarīḥ*. However, he regarded this attribution as unusual (*gharīb*) and lacking any sound basis. In his view, the disagreement reported from al-Iṣṭakhrī primarily pertains to the issue of *nikāḥ*, not divorce.⁶⁵

According to al-Juwaynī's account, Shāfiʿī scholars have argued that

⁶¹ "The term *wajh* (plural: *wujūh*) denotes the legal interpretations and reasoned extrapolations (*takhrījāt*) developed by later Shāfiʿī jurists in line with al-Shāfiʿī's methodological principles". See Aybakan, "Şāfiī Mezhebi", 38/242.

⁶² Al-Juwaynī, *Nibāyat al-maṭlab*, 14/58.

⁶³ Al-Juwaynī, *Nibāyat al-maṭlab*, 14/59.

⁶⁴ See also for similar discussions, al-Shirbīnī, *Mughnī l-muḥtāj*, 4/458.

⁶⁵ Al-Juwaynī, *Nibāyat al-maṭlab*, 14/60; Despite al-Juwaynī's observation, al-Rāfiʿī stated that the view that divorce formulae expressed in a language other than Arabic are not *ṣarīḥ* terms of divorce is attributed to al-Iṣṭakhrī. For these evaluations, see al-Rāfiʿī, *al-ʿAzīz sharḥ al-Wajīz*, 8/511.

the *şariḥ* equivalent of the term *ṭalāq* in non-Arabic languages is the expression *tū hashte'ī* (تو هشته ای), meaning “you are divorced”. Al-Juwaynī transmits the opinion of his teacher and father, Abū Muḥammad al-Juwaynī (d. 438/1047), who held that the meanings of expressions considered *şariḥ* in Arabic are likewise *şariḥ* in other languages. For example, saying *anti ṭāliq* (you are divorced) in Arabic corresponds to *tū hashte'ī* in Persian. Similarly, *ṭallaqtuki* (I have divorced you) corresponds to *dasht bāzdāshtam* (دشت بازداشتم),⁶⁶ *fāraqtuki* (I have separated from you) corresponds to *az tu judā kardam* (از تو جدا کردم), and *sarraḥtuki* (I have released you) corresponds to *tu rā gusīl kardam* (ترا کسیل کردم).⁶⁷ Al-Juwaynī also referred to the opposing opinion of al-Qāḍī Ḥusayn al-Marwarrūdhī (d. 462/1069), who argued that only *tu hashte'ī* should be considered an *şariḥ* expression of divorce, whereas *dastat bāzdāshtam* does not qualify as *şariḥ*.⁶⁸ Al-Juwaynī, however, criticizes this view. He argued that uttering *dasht bāzdāshtam* effectively interprets the expression *ṭallaqtuki* (I divorced you). Thus, if *tu hashte'ī* is accepted as the equivalent of *anti ṭāliq* (you are divorced) and is thus *şariḥ*, then *dasht bāzdāshtam* should likewise be considered *şariḥ*, since it conveys the same meaning as *ṭallaqtuki*. Al-Juwaynī therefore found al-Qāḍī Ḥusayn's critique unconvincing.⁶⁹ Furthermore, al-Juwaynī also

⁶⁶ This expression appears in al-Juwaynī's text both in the form *dasht bāzdāshtam* and *dastat bāzdāshtam*. However, the correct usage should be the second form. Indeed, al-Rāfi'ī's use of the word “dast” rather than “dasht” in this context indicates this. For comparison, see al-Juwaynī, *Nihāyat al-maṭlab*, 14/60; al-Rāfi'ī, *al-ʿAzīz sharḥ al-Wajīz*, 8/511.

⁶⁷ Although in al-Juwaynī's Arabic text it is written with the letter “kāf” (ك), the correct pronunciation of the word should be *Gusīl* (كسیل), not *Kusīl* (كسیل). Indeed, al-Rāfi'ī also writes this word as *Gusīl*. For comparison, see al-Juwaynī, *Nihāyat al-maṭlab*, 14/60; al-Rāfi'ī, *al-ʿAzīz sharḥ al-Wajīz*, 8/511.

⁶⁸ For the opinion of al-Qāḍī Ḥusayn al-Marwarrūdhī, see also al-Rāfi'ī, *al-ʿAzīz sharḥ al-Wajīz*, 8/511.

⁶⁹ In classical works of Islamic jurisprudence, discussions concerning the use of a non-Arabic language in legal matters have often employed the expressions “the language of the *ʿajam*” or “Persian”. The examples cited in these debates are likewise frequently drawn from Persian. However, as previously noted, al-Rūyānī explicitly stated that the term *ʿajamī* is not restricted to Persians, Byzantines, or Nabataeans; rather, it applies to anyone who cannot articulate Arabic properly. Similarly, although al-Māwardī centered much of his discussion on the use of Persian in ritual worship performed in a language other than Arabic, he did not

disagreed with his father's view regarding the expressions derived from *sarāḥ* and *firāq* in non-Arabic languages. Contrary to his father, he held that the meanings of *fāraqtuki* and *sarraḥtuki* in other languages are not *ṣarīḥ*. In his assessment, there is uncertainty even regarding the Arabic nominal forms *al-mufāraqah* and *al-musarraḥah* as to whether they are *ṣarīḥ* expressions of divorce. As previously mentioned, al-Juwaynī acknowledged that while the verbal forms of *sarāḥ* and *firāq* are subject to scholarly disagreement, the most authentic (*aṣaḥḥ*) is that they are *ṣarīḥ*. However, their nominal forms (*al-mufāraqah* and *al-musarraḥah*) are disputed. Therefore, if even their Arabic forms are subject to disagreement regarding their explicitness, then the controversy over their meanings in other languages is even more pronounced and significant.⁷⁰

Al-Mawardī evaluated the use of *ṭalāq* in languages other than Arabic through the lens of an Arabic speaker using a non-Arabic language. He probably started from the implicit assumption that it is permissible for a non-Arab to file for divorce in his native language. According to him, when an Arab uses a non-Arabic language and utters expressions that are considered *ṣarīḥ* in that language, three scenarios can arise:⁷¹

confine the debate to Persian alone. Instead, he broadened the scope to include other languages such as Syriac, Turkish, and Indian languages. Al-Rāfiʿī also discussed the possibility of concluding the marriage contract in languages other than Arabic, such as the *ʿajamī* language (Persian) or other tongues. Although he presented his examples in Persian, he treated Persian and all other non-Arabic languages as equivalent in this regard. This indicates that the predominance of Persian examples in classical texts should not be understood as implying that the debate itself was limited to Persian. The specific prominence of Persian in these discussions is likely due to practical reasons: many authors who wrote in Arabic were also proficient in Persian; the largest non-Arab Muslim population living alongside Arabs at the time consisted of Persians; certain Arab jurists—such as al-Juwaynī—lived in Persian territories; and a number of Persian-born jurists authored works in Arabic. These factors together help explain why Persian receives particular emphasis in the classical legal literature, even though the underlying debate concerns non-Arabic languages more broadly. For these views, see al-Māwardī, *al-Ḥāwī l-kabīr*, 2/96; al-Rūyānī, *Baḥr al-madhhab*, 10/269-270; al-Juwaynī, *Nibāyat al-maṭlab*, 14/60; al-Rāfiʿī, *al-ʿAzīz sharḥ al-Wajīz*, 7/493, 8/512-514.

⁷⁰ Al-Juwaynī, *Nibāyat al-maṭlab*, 14/60.

⁷¹ Al-Māwardī, *al-Ḥāwī l-kabīr*, 10/227.

a. If he knows the non-Arabic meaning of the wording he uses, whether he intends to divorce or not, the divorce will take place regardless of his intention.⁷²

b. If he does not know the non-Arabic meaning of the wording he uses and does not intend the meaning that the wording requires in his language, namely, divorce, then the divorce will not take place.⁷³

c. If he does not know the meaning of the wording he uses but intends the meaning required by the wording in his language, namely, divorce, then according to the view that Abū Ḥāmid al-Isfārāyīnī conveyed from some Shāfi'īs, the divorce does not take place because the person does not know the meaning of the wording he uses. However, al-Māwardī opposed this view and held the view that even if he does not know the meaning, the divorce takes place in this case because he intends to divorce. According to him, if it is claimed that the divorce did not take place because of the wording used by the person in the third position, then there is no difference between the person who does not know the meaning and does not intend to divorce and the person who intends to divorce, both of which are in an equal position in terms of the ruling. However, there is a difference between intending to divorce and not intending to divorce, and the two are not equal.⁷⁴

Al-Māwardī also stated that if an Arab uses a non-Arabic *ṣarīḥ* expression for divorce and the wife claims to know the meaning of the expression used by her husband, then the husband's statement is taken into account, provided that he swears that he does not know the meaning of the expression.⁷⁵ Thus, al-Māwardī accepted the validity of a divorce granted in a non-Arabic language. If a divorce granted by an Arab in a language other than his mother tongue is valid, then a fortiori (*awlā*) should be valid for a non-Arab in his own language.

Concerning the use of expressions for divorce in non-Arabic languages, al-Nawawī summarized the basic view of the Shāfi'ī madhhab. According to him, there are two main views: The first view holds that translations of *ṭalāq* into other languages are also expressions for *ṣarīḥ* but that these terms are generally and

⁷² Al-Māwardī, *al-Ḥāwī l-kabīr*, 10/227.

⁷³ Al-Māwardī, *al-Ḥāwī l-kabīr*, 10/227.

⁷⁴ Al-Māwardī, *al-Ḥāwī l-kabīr*, 10/227.

⁷⁵ Al-Māwardī, *al-Ḥāwī l-kabīr*, 10/227.

traditionally used to mean divorce in the context of that language. This is similar to how such terms are explicitly understood among Arabs. The second view considers the translation of *ṭalāq* into a non-Arabic language as *kināyah*.⁷⁶ Al-Nawawī stated that there is scholarly disagreement regarding the translations of *sarāḥ* and *firāq*. However, according to the most authentic (*aṣaḥḥ*) view, their translations are considered *kināyah*. Al-Juwaynī also argued that the translated forms of *sarāḥ* and *firāk* cannot be considered explicit expressions in the sense of divorce.⁷⁷

3. Rijʿah

In Islamic jurisprudence, *rijʿah* refers to the right of a man who has issued a revocable divorce (*al-ṭalāq al-rajʿī*) to return to his wife before the completion of her waiting period (*ʿiddah*) without the need for a new *nikāḥ*.⁷⁸ According to the Shāfiʿī madhhab, *rijʿah*, like *nikāḥ*, can be effected only through verbal expression (*qawḥ*). On the basis of this opinion, actions such as engaging in sexual intercourse with the wife, kissing her, or touching her do not constitute valid *rijʿah* in the absence of a verbal statement expressing the intent.⁷⁹ According to the Shāfiʿīs, just as the marriage contract should be made in word and not in deed, so *rijʿah* should be made in word and not in deed. There is a dispute in the Shāfiʿī madhhab as to which words can be used for *rijʿah*. There is scholarly debate concerning which specific

⁷⁶ According to al-Kāsānī, the view taken into account in *fatwā* within the Ḥanafī madhhab concerning divorce pronounced in Persian is as follows: If a Persian expression used for divorce is one that is employed exclusively for the purpose of divorce in Persian, then it is considered a *ṣarīḥ* expression, and when directed toward the wife, divorce takes effect without regard to intention. However, expressions in Persian that are used both for divorce and for other meanings are regarded as Persian *kināyah* expressions, and their legal status corresponds to that of *kināyah* expressions in Arabic. See al-Kāsānī, *Badāʿiʿ al-ṣanāʿiʿ*, 4/224.

⁷⁷ Al-Nawawī, *Rawḍat al-ṭālibīn*, 10/25; al-Shirbīnī also held that the translations of the terms *firāq* and *sarāḥ* constitute *kināyah*. He based this view on the disagreement over whether *sarāḥ* and *firāq* are considered *ṣarīḥ* divorce expressions in Arabic. That is, if there is disagreement in the Arabic original, then their translations should be regarded not as *ṣarīḥ* but as *kināyah*. Al-Shirbīnī, *Mughnī l-muḥtāj*, 4/458.

⁷⁸ İsmail Narin - Haşim Özdaş, "Talâkta Ricʿat Bağlamında Kurʿân-ı Kerimʼde Belirtilen İlkeler", *Tokat İlmiyat Dergisi* 8/2 (December 2020), 685.

⁷⁹ Al-Rüyānī, *Baḥr al-madhhab*, 10/247; al-Shirbīnī, *Mughnī l-muḥtāj*, 5/4-5.

expressions are valid for effecting *rij'ab*. Similarly, whether reconciliation can be effected through translations of Arabic expressions is also subject to discussion.⁸⁰

Al-Rāfi'ī stated that in *rij'ab*, there are both *şarīḥ* and *kināyah* expressions, and he emphasized that the following expressions are *şarīḥ* in relation to *rij'ab*: “*raja'tuki*/رَجَعْتُكَ” (I have taken you back), “*rāja'tuki*/رَاجَعْتُكَ” (I have made *rij'ab* to you), and “*irtaja'tuki*/ارْتَجَعْتُكَ” (I have taken you back again). According to him, these expressions are *şarīḥ* formulae for *rij'ab* because they have been instituted by the Sharī'ah and are found in transmitted *ḥadīths* and *āthār*.⁸¹ Al-Rāfi'ī also referred to many other types of expressions and formulations whose status as *şarīḥ* is a matter of dispute.⁸² Al-Rāfi'ī reported three different opinions regarding the permissibility of using translations of the Arabic *şarīḥ rij'ab* formulae. The view he adopted and characterized as *şahīḥ* is that a *rij'ab* pronounced in Persian is valid.⁸³ Like al-Rāfi'ī, al-Nawawī also stated that there is a view in the *madhhab* that *rij'ab* is not valid in a language other than Arabic. Another view differs on the basis of the individual's Arabic proficiency: if one is proficient in Arabic, *rij'ab* in a non-Arabic language is invalid; however, if one does not know Arabic well, *rij'ab* in another language is valid. A third opinion conveyed by al-Nawawī holds that *rij'ab* in an ‘*ajamī*’ language is valid regardless of the individual's knowledge of Arabic. According to him, this is the *şahīḥ* opinion.⁸⁴

4. *Khul'*

Khul' is a legal term in Islamic jurisprudence and refers to a woman's request for divorce in exchange for a financial compensation paid to her husband, thereby persuading him to terminate the *nikāḥ*. When both the husband and wife mutually agree to dissolve the marriage on this basis, the process is referred to as *mukbāla'ah*.⁸⁵ According to the Shāfi'ī *madhhab*, *mukbāla'ah* may be concluded

⁸⁰ Al-Shīrāzī, *al-Mubadhdhab*, 3/47.

⁸¹ Al-Rāfi'ī, *al-‘Azīz sharḥ al-Wajīz*, 9/170.

⁸² Al-Rāfi'ī, *al-‘Azīz sharḥ al-Wajīz*, 9/171-173.

⁸³ Al-Rāfi'ī, *al-‘Azīz sharḥ al-Wajīz*, 9/173.

⁸⁴ Al-Nawawī, *Rauḍat al-tālibīn*, 8/216.

⁸⁵ Fahrettin Atar, “Muhālea”, *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (Ankara: TDV Yayınları, 2020), 30/397.

using either *ṣarīḥ* expressions such as *kbulʿ* and *ṭalāq*,⁸⁶ or using *kināyah* expressions such as *bayʿ* (sale), *shirāʾ* (purchase), and *faskh* (annulment).⁸⁷ Al-Rāfiʿī cited numerous Persian expressions used for *kbulʿ* and stated that these formulations are valid. He also did not transmit any opinion, requiring that *mukhbālaʿah* be conducted exclusively in Arabic.⁸⁸ According to al-Nawawī, expressions for *kbulʿ* in other languages are to be regarded as fully equivalent to their Arabic counterparts. That is, just as a *mukhbālaʿah* concluded that the term *kbulʿ* in Arabic is valid, it should likewise be valid when conducted using its translation in another language. Al-Nawawī also observed that the disputes that exist regarding which expressions may be used in the marriage contract do not apply in the case of *mukhbālaʿah*.⁸⁹

5. Qadhf

Qadhf in Islamic jurisprudence refers to the act of accusing a chastity (*muḥṣan*) individual of committing *zinā* (unlawful sexual intercourse) or denying their legitimate lineage.⁹⁰ The punishment for *qadhf* is clearly stated in the Qurʾān as follows:

As for those who accuse chaste women of fornication, and then fail to provide four witnesses, strike them eighty times, and reject their testimony ever afterwards: they are the lawbreakers. (Q 24:4)

Although there is no specific or fixed formula for the expression of *qadhf*, there is scholarly debate regarding which utterances fall within its legal definition.⁹¹ Additionally, the question arises whether an accusation made in a language other than Arabic can constitute *qadhf*. Al-Māwardī maintained that if *qadhf* is committed in a non-Arabic language, it still requires the implementation of the *ḥadd* punishment, just as it would if expressed in Arabic.⁹²

⁸⁶ Al-Shīrāzī, *al-Mubadbdhab*, 2/490; al-Rāfiʿī, *al-ʿAzīz sharḥ al-Wajīz*, 8/401-406.

⁸⁷ Al-Rāfiʿī, *al-ʿAzīz sharḥ al-Wajīz*, 9/173; Atar, “Muhālea”, 30/399.

⁸⁸ Al-Rāfiʿī, *al-ʿAzīz sharḥ al-Wajīz*, 8/402.

⁸⁹ Al-Nawawī, *Rawḍat al-ṭālibīn*, 7/377; al-Shirbinī, likewise reports that a *mukhbālaʿah* is valid when the term *kbulʿ* is expressed in translation. Al-Shirbinī, *Mughnī l-muḥtāj*, 4/440.

⁹⁰ Hamza Aktan, “Kazf”, *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (Ankara: TDV Yayınları, 2022), 25/148.

⁹¹ Al-Rāfiʿī, *al-ʿAzīz sharḥ al-Wajīz*, 9/335.

⁹² Al-Nawawī, *Rawḍat al-ṭālibīn*, 11/71.

Al-Rūyānī discussed a related issue concerning testimony in *qadhf* cases. He stated that if one of two witnesses claims that the accusation was made in Arabic, while the other asserts that it was made in Persian, then the crime of *qadhf* cannot be legally established. From this, it may be inferred that al-Rūyānī considered *qadhf* committed in a non-Arabic language to be legally valid, just like in Arabic, provided that there is clarity and agreement in the testimony.⁹³ Al-Rāfiʿī also cited numerous instances of *qadhf* expressed in Persian. This finding indicates that a *qadhf* uttered in a language other than Arabic has legal consequences.⁹⁴

6. Liʿān

Liʿān refers to the mutual oath-taking between a husband and wife when the wife is accused of *zinā* by her husband. In Islamic jurisprudence, a person who accuses another of *zinā* must substantiate the claim with the testimony of four witnesses. Otherwise, the accuser is deemed guilty of *qadhf*. However, if the accuser is the husband and he cannot produce four witnesses to support his allegation, he may avert the *ḥadd* punishment for *qadhf* by swearing four times before a judge that his wife has committed adultery. Similarly, if the accused wife denies the allegation and swears four times before the judge that she did not commit adultery, she is also exempt from the *ḥadd* punishment for *zinā*.⁹⁵ The Qurʾān outlines the procedure of *liʿān* in the following verses:

As for those who accuse their own wives of adultery, but have no other witnesses, let each one four times call God to witness that he is telling the truth, and, the fifth time, call God to reject him if he is lying; punishment shall be averted from his wife if she in turn four times calls God to witness that her husband is lying and, the fifth time, calls God to reject her if he is telling the truth. (Q 24:6-9)

The fact that these specific formulations of *liʿān* oaths are mentioned in the Qurʾān has given rise to debate regarding whether they must be uttered in Arabic, as they appear in the scripture, or

⁹³ Al-Rūyānī, *Baḥr al-madbbab*, 11/240.

⁹⁴ Al-Rāfiʿī, *al-ʿAzīz sharḥ al-Wajīz*, 9/339-340.

⁹⁵ Mehmet Âkif Aydın, “Liʿān”, *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (Ankara: TDV Yayınları, 2003), 27/172.

whether they may also be expressed in other languages.⁹⁶

Al-Shāfiʿī held that if either of the spouses involved in the *liʿān* procedure is non-Arabic speaking, they may perform *liʿān* in their own language.⁹⁷ For *liʿān* performed in a non-Arabic language to be valid, al-Shāfiʿī requires the presence of two upright witnesses who understand the language of the person making the declaration. However, he noted that the presence of four such just witnesses is preferable.⁹⁸ Al-Shīrāzī noted that if the individual performing *liʿān* does not know Arabic, the declaration can be made in their own language. He argued that the legal weight of the phrases used in *liʿān* is no greater than that of the *adbkār* recited in prayer. Just as a person who does not know Arabic may recite the necessary phrases of prayer in their own language, so too may someone perform *liʿān* in their native tongue if they are not proficient in Arabic.⁹⁹

Similarly, al-Nawawī affirmed that a person who does not know Arabic may conduct *liʿān* in their own language. However, he emphasized that careful attention must be given to the translation of the terms testimony, curse (*laʿnab*), and wrath (*ghaḍab*) used in the *liʿān* formula.¹⁰⁰

After quoting al-Shāfiʿī's view that non-Arabic speakers can make *liʿān* in their own language, al-Māwardī detailed whether it is permissible to make *liʿān* in a non-Arabic language. He treated the situation of Arabic-speaking individuals differently. Al-Māwardī argued that when evaluating an individual who speaks Arabic, attention should be given to his mother tongue and general language practice. According to him, if the person who performs *liʿān* is Arab by origin and habitually speaks Arabic, he should perform *liʿān* only in Arabic, even if he speaks a foreign language.¹⁰¹ He offered two main justifications for this position:

a. *Liʿān* must be in accordance with the Qurʾānic expressions. Since these expressions are in Arabic, a native Arabic speaker should perform the *liʿān* in Arabic in accordance with the linguistic

⁹⁶ Al-ʿImrānī, *al-Bayān*, 10/449.

⁹⁷ Al-Shāfiʿī, *al-Umm*, 5/309.

⁹⁸ Al-Shāfiʿī, *al-Umm*, 5/309.

⁹⁹ Al-Shīrāzī, *al-Mubadhdhab*, 3/87; al-ʿImrānī, *al-Bayān*, 10/449.

¹⁰⁰ Al-Nawawī, *Rauḍat al-ṭālibīn*, 8/353; al-Shirbīnī, *Mughnī l-muḥtāj*, 5/66.

¹⁰¹ Al-Māwardī, *al-Ḥāwī l-kabīr*, 11/71.

formulation of the Qurʾān.¹⁰²

b. If an Arab uses a language other than his own, this may cast doubt on the seriousness or truthfulness of the statement. This would undermine the seriousness and integrity of the *liʿān* procedure.¹⁰³

Therefore, the basis of al-Māwardī's view is to ensure that the language of *liʿān* is compatible with the language of the Qurʾān, i.e. Arabic, and to avoid any doubt that might arise if a person deliberately uses a language other than his own, especially in a matter of such legal and moral weight.

Al-Māwardī stated that there are two different views in the Shāfiʿī *madhhab* of thought on whether a person whose mother tongue is not Arabic but who speaks Arabic fluently can perform *liʿān* in a language other than Arabic:

a. The first view is attributed to Abū Ḥāmid al-Isfarāyīnī. According to this view, it is not permissible for a non-Arab who knows Arabic to perform *liʿān* in a language other than Arabic. This is because *liʿān* should be based on the statements in the Qurʾān, and therefore, the declaration should be made only in Arabic.¹⁰⁴ Al-Shīrāzī also cited this view. According to him, those who accept this view say that Sharīʿah commands that *liʿān* be performed in Arabic. Therefore, if one can perform *liʿān* in Arabic, it is not permissible to do so in any other language – just as the prayers (*adḥkān*) in prayer cannot be recited in a language other than Arabic.¹⁰⁵ Al-ʿImrānī stated that this view, as reported by al-Shīrāzī, is attributed only to Abū Ḥāmid al-Isfarāyīnī and Ibn al-Ṣabbāgh (d. 477/1084) and is not widely held. According to him, those who adopt this view believe that the words used in the Qurʾān actually exist in the Qurʾān itself. Therefore, anyone who can use the Arabic words of the Qurʾān should do so, and it is not valid for them to perform *liʿān* in another language.¹⁰⁶

b. The second view is that a foreigner (non-Arab) who knows Arabic can make *liʿān* in his own language. This is because the use of one's own language removes any doubt as to whether the *liʿān* is truly *liʿān*, and it is done in accordance with one's own language habits that

¹⁰² Al-Māwardī, *al-Ḥāwī l-kabīr*, 11/71.

¹⁰³ Al-Māwardī, *al-Ḥāwī l-kabīr*, 11/71.

¹⁰⁴ Al-Māwardī, *al-Ḥāwī l-kabīr*, 11/71.

¹⁰⁵ Al-Shīrāzī, *al-Mubadḥadḥab*, 3/87; al-ʿImrānī, *al-Bayān*, 10/449.

¹⁰⁶ Al-ʿImrānī, *al-Bayān*, 10/449.

he uses in his daily life.¹⁰⁷ Al-Shīrāzī also cited the view that it is permissible to make *liʿān* in one's own language. According to him, this view is based on the fact that *liʿān* is an oath (*yamīn*) and that oaths can be made in Arabic or any other language.¹⁰⁸

Al-Māwardī argued for the second view. According to him, if a person performing *liʿān* is non-Arab but has a good command of Arabic, it is nonetheless permissible for them to perform *liʿān* in their own language. He explained that *liʿān* functions either as an oath or as a testimony (*shahādah*), both of which may validly be expressed in a non-Arabic language.¹⁰⁹ Al-Rūyānī also reported that some Shāfiʿī jurists hold the view that even if the individuals involved in *liʿān* know Arabic, they may still perform it in a non-Arabic language just as is the case in the *nikāḥ*. He further noted that this view is more consistent with *qiyās*.¹¹⁰ Al-Nawawī also remarked that there is scholarly disagreement as to whether *liʿān* must be performed in Arabic when the person involved knows Arabic. He maintained that the authentic (*ṣaḥīḥ*) view is that the individual may perform *liʿān* in whichever language they choose.¹¹¹ From these citations, it can be concluded that the Shāfiʿī madhhab generally accepts the permissibility of a non-Arabic-speaking individual performing *liʿān* in their own language, regardless of whether or not they know Arabic.

Al-Shāfiʿī stated that the presence of two fair witnesses who understand the language of the declarant is sufficient for the *liʿān* performed by a non-Arab to be valid, but the presence of four such witnesses is preferable.¹¹² Al-Māwardī also stated that if the *liʿān* is made in a language other than Arabic and the judge does not

¹⁰⁷ Al-Māwardī, *al-Ḥāwī l-kabīr*, 11/71.

¹⁰⁸ Al-Shīrāzī, *al-Mubadhdhab*, 10/449.

¹⁰⁹ Al-Māwardī, *al-Ḥāwī l-kabīr*, 11/71.

¹¹⁰ Al-Rūyānī, *Baḥr al-madhdhab*, 10/349-350.

¹¹¹ Al-Nawawī, *Rauḍat al-ṭālibīn*, 8/353; Commenting on al-Nawawī's views on this matter, al-Shirbīnī stated that even if a person knows Arabic, they can perform *liʿān* in a language other than Arabic. He based this view on the fact that *liʿān* means oath or testimony, and that all languages are equal in this regard. Al-Shirbīnī also reported another view (*wajb*) within the madhhab. According to this view, a person who knows Arabic cannot perform *liʿān* in any language other than Arabic, because *al-sharʿ* came in this language, and a person who can use this language has no right to resort to another language. See al-Shirbīnī, *Mughnī l-muḥtāj*, 5/66.

¹¹² Al-Shāfiʿī, *al-Umm*, 5/309.

understand this language, the presence of two fair interpreters who understand the statements made is the view accepted by the Shāfiʿī madhhab. He also suggested two possible interpretations of al-Shāfiʿī's view on the necessity of four just persons when the *li'ān* is performed in a foreign (non-Arabic) language:¹¹³

- The other interpretation is that the expression “four persons” is interpreted as the persons to be present in the assembly for the *li'ān*, apart from the witnesses of the interpreter.
- The expression “four people” can be understood not as witnesses but as those who should be present at the *li'ān* assembly.

Al-Shīrāzī, after stating that the judge should have an interpreter to translate what is spoken in case the lianters do not speak the language, stated that the number of interpreters depends on the opinion of Shāfiʿī madhhab on the number of witnesses required for the denial of adultery; according to one opinion, four interpreters are sufficient, and according to another opinion, two interpreters are sufficient. Al-Shīrāzī did not state his preference on this issue.¹¹⁴ Nevertheless, al-Nawawī reported that al-Shīrāzī accepted the view that two interpreters are sufficient.¹¹⁵

7. *Īlā'*

Linguistically, *ilā'* refers to taking an oath. In Islamic legal terminology, it denotes a husband's declaration through an oath, vow, or conditional statement that he will abstain from sexual relations with his wife.¹¹⁶ The ruling on *ilā'* is expressed in the Qurʾān as follows:

For those who swear that they will not approach their wives, there shall be a waiting period of four months if they go back, remember God will be most forgiving and merciful, but if they are determined to divorce, remember that God hears and knows all. (Q 2:226-227)

Al-Shāfiʿī addresses the legal status of *ilā'* when it is made in Arabic

¹¹³ Al-Māwardī, *al-Ḥāwī l-kabīr*, 11/72.

¹¹⁴ Al-Shīrāzī, *al-Mubadhab*, 3/82.

¹¹⁵ Al-Nawawī, *Rawḍat al-tālibīn*, 8/353.

¹¹⁶ Hamdi Döndüren, “İlâ”, *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: TDV Yayınları, 2000), 22/61.

as well as in non-Arabic languages. According to him, if a non-Arab makes an *ilāʾ* declaration in his own language, he is to be regarded as a *mūlī* (a husband who has taken an oath not to have sexual intercourse with his wife); in other words, *ilāʾ* expressed in a non-Arabic language is valid.¹¹⁷

However, if the individual uses a phrase in his own language that could plausibly be interpreted either as *ilāʾ* or something else and if this dual meaning remains linguistically ambiguous, then this is treated similarly to a case in Arabic where the expression is likewise ambiguous. In such cases, al-Shāfiʿī rules that the speaker's intention must be investigated. If the husband states that he intended to perform *ilāʾ*, then he is legally considered a *mūlī*. If he claims that he did not intend *ilāʾ*, his statement is accepted upon oath, if requested by the judge.¹¹⁸

According to al-Shāfiʿī, if a person who knows both Arabic and another language performs *ilāʾ* in any of the languages other than Arabic, the *ilāʾ* will be valid regardless of the language used. However, if the person later claims, "I did not intend to do *ilāʾ*", al-Shāfiʿī argued that such a statement is a matter between the person and God and has no legal value in a court of law. Another case al-Shāfiʿī discusses concerns a person who is an Arab and does not understand a non-Arabic language but nevertheless utters a non-Arabic sentence related to *ilāʾ*. If he later claims, "I did not know what I said and I did not mean *ilāʾ*", his statement will be accepted, provided that he swears to that effect. This is not the same as the case of a person who is known to speak and understand a non-Arabic language. Similarly, if a non-Arabic speaker uses an Arabic expression *ilāʾ* and is known to understand Arabic, his claim of "I did not mean *ilāʾ*" will not be accepted in court. However, the situation is different between this person and God; he is responsible in the eyes of God for what he intends in his heart.¹¹⁹

After reporting al-Shāfiʿī's opinion, al-Māwardī supported his view and elaborates on how the case of an Arab making an *ilāʾ* declaration in an *ʿajamī* language should be categorized into three scenarios:¹²⁰

¹¹⁷ Al-Shāfiʿī, *al-Umm*, 5/292.

¹¹⁸ Al-Shāfiʿī, *al-Umm*, 5/291-292.

¹¹⁹ Al-Shāfiʿī, *al-Umm*, 5/292.

¹²⁰ Al-Māwardī, *al-Ḥāwī l-kabīr*, 10/406.

1. If the Arab individual knows and speaks the foreign language and then makes an *ilā'* declaration in that language, it is deemed equivalent to making the declaration in Arabic. This is because *ilā'* is not specific to any language, and everything other than the Qur'ān may be expressed in languages other than Arabic. However, if this individual claims, "I did not intend *ilā'* by using that foreign expression", it is treated the same as if he had made the same claim after using the Arabic term. Therefore, such a statement is not accepted *ẓāhir^{an}* (legally in court), i.e., in the court's judgment, and the person remains religiously accountable for what he has uttered.

2. If the Arab individual knows the foreign language but does not normally speak it and yet makes an *ilā'* statement in that language, he is still considered to have made a valid *ilā'*. However, if he claims, "I did not intend *ilā'* by that expression", this statement is also not accepted *ẓāhir^{an}*. Nonetheless, it may be accepted *bāṭin^{an}* (in a religious sense), since the fact that he does not habitually speak the language introduces the possibility that he is telling the truth. Thus, his statement may be religiously credible.

3. If the Arab individual does not understand the foreign language and makes an *ilā'* statement in that language, he is asked whether he intended *ilā'* by that statement. If he replies, "Yes, I intended *ilā'* with that expression", then the *ilā'* ruling is established by this confession. However, if he says, "No, I do not know what I said and I did not intend *ilā'*", then his claim is accepted only if supported by an oath. This is because, *ẓāhir^{an}*, he appears to be telling the truth, although the possibility of lying still exists, necessitating an oath. In this case, the individual is not considered liable for *ilā'* – neither legally (*ẓāhir^{an}*) nor religiously (*bāṭin^{an}*). If he refuses to swear the oath, the obligation passes to the wife. If the wife swears, the ruling of *ilā'* is established. If she too refuses, then no *ilā'* ruling is confirmed. Al-Māwardī notes that when a non-Arab performs *ilā'* in Arabic, the evaluation follows the same three scenarios mentioned above, as in the case of an Arab using a foreign language.¹²¹

After reporting al-Shāfi'ī's statements on the matter, al-Juwaynī added that if a non-Arab who has a good command of Arabic performs *ilā'* using the Arabic language, he is to be evaluated in the same way

¹²¹ Al-Māwardī, *al-Ḥāwī l-kabīr*, 10/406.

as an Arab. However, if the non-Arab individual claims not to have understood the meaning of the word he uttered and the contextual evidence indicates that he is lying, he is to be regarded as dishonest, and his claim is legally dismissed. On the other hand, if there is doubt as to whether he understood the word he used, then his statement is considered provided that it is accompanied by an oath. Similarly, if an Arab uses a non-Arabic language, the same rulings apply as previously mentioned. This principle is applicable in all cases where a person speaks in a language other than his own.¹²²

Conclusion

This study examined the use of non-Arabic languages in family law within the Shāfiʿī madhhab and explored the validity of legal acts carried out in such languages. Legal debates, especially regarding the permissibility of using non-Arabic languages in *nikāḥ* and *ṭalāq*, underscore the central role of Arabic as the foundational language of Islamic jurisprudence in the Shāfiʿī madhhab. The characterization of Arabic as the “language of the Sharīʿah” within the Shāfiʿī madhhab necessitates a deeper inquiry into the role of other languages in legal processes.

The discussion concerning which language may be used in family law is also closely connected to wider debates on the use of Qurʾānic translations in legal reasoning. In particular, the question of whether it is permissible to use a translation of the Qurʾān during prayer constitutes an important background to this issue. Since the Shāfiʿīs categorically reject the use of Qurʾānic translations in *ṣalāḥ*, some jurists have raised the question of whether this approach should likewise apply to Qurʾānic expressions used in the marriage contract. Thus, another key point in the debate concerns whether the principle that prohibits the use of translations in acts of worship should also be extended to the terminology employed in family law. This issue is fundamentally rooted in the view that, within matters of family law, the *ʿibādāt* dimension prevails over the *muʿāmalāt* dimension. Some Shāfiʿī jurists, considering the *ʿibādāt* aspect of the marriage contract to be predominant, required that Qurʾān-derived terms such as *inkāḥ* and *tazwīj* be expressed exclusively in Arabic. This stance parallels the

¹²² Al-Juwaynī, *Nibāyat al-maṭlab*, 14/462.

broader assumption that the original language of acts of worship is Arabic.

The classification of marriage-related rulings as *ta'abbudī* entails the adoption of the wording prescribed by the *sharʿ* exactly as it stands. The fact that these prescribed formulae are in Arabic has given rise to the problem of whether their translations may be used. The Shāfiʿīs, asserting that the expressions employed in marriage contracts are determined by the *sharʿ* and that no alternative wording—even if in Arabic—may be substituted, have, in effect, opted to adhere to the ritualistic dimension of matrimonial matters. At this point, they have prioritized strict adherence to the *naṣṣ* to which they refer. However, the majority within the school accepted that translations of the Arabic expressions specified by the texts could also be used, thereby overcoming what could otherwise be viewed as a legal deadlock. Nevertheless, the broader Shāfiʿī madhhab reveals a generally more flexible stance toward the use of non-Arabic languages in family law. In light of this, it is reasonable to conclude that Shāfiʿī jurists tend to regard the *muʿāmalāt* dimension of *nikāḥ* as more dominant than its *ʿibādāt* dimension. In this way, despite the privileged status of Arabic—the language of the *naṣṣ* in legal discourse—the Shāfiʿīs have doctrinally endorsed the principle of multilingualism in family law by considering the practical and functional requirements of legal practice. Moreover, al-Shāfiʿī's reliance on Qurʾānic terminology in determining valid formulae for *nikāḥ* and *ṭalāq* suggests that he regarded the Qurʾān not only as a source of legal rulings but also as a reference in the application of law. Given that Arabic is the language of the Qurʾān, it thus assumes a functional role in the implementation of legal acts. Consequently, debates concerning the permissibility of using languages other than Arabic in family law arise, particularly regarding the formulae required for *nikāḥ* and *ṭalāq*.

Three principal positions emerge within the Shāfiʿī madhhab in this context: (1) that *nikāḥ* and *ṭalāq* are only valid when expressed in Arabic using explicit formulae; (2) that Arabic must be used by those who are capable of speaking it, but non-Arabic languages are permissible for those who are not; and (3) that legal formulae are valid in other languages, regardless of one's knowledge of Arabic. These divergent views reveal both rigid literalist and flexible approaches within the Shāfiʿī madhhab. However, the third view appears to be the

predominant and authoritative position, indicating a general acceptance of multilingualism in matters of *nikāḥ* and *ṭalāq*.

This principle of multilingualism also manifests in other areas of family law, such as *rijʿah*, *khulʿ*, *qadhʿ*, and *ilāʾ*. A further critical area is *liʿān*, which arises when a husband accuses his wife of adultery. Since the Qurʾān specifies the exact wording to be used in *liʿān*, debates have emerged regarding whether non-Arabic formulations are acceptable. While some argue that Arabs should only perform *liʿān* in Arabic and that non-Arabs proficient in Arabic should also do so, the dominant opinion affirms that non-Arabs may perform *liʿān* in their native language, regardless of their Arabic proficiency.

The fact that expressions used by non-Arabs in legal transactions such as *nikāḥ*, *ṭalāq*, and *ilāʾ* are treated as translations of the Arabic equivalents underscores the privileged status of Arabic within the legal discourse. Nevertheless, the operational effectiveness of the law necessitates the inclusion of multiple linguistic realities. Accordingly, the Shāfiʿī madhhab recognizes the principle of multilingualism in family law as a matter of legal doctrine. This recognition reveals a rich body of juristic reasoning that seeks to balance the central role of Arabic in Islamic jurisprudence with the linguistic and social diversity of Muslim communities.

In conclusion, al-Shāfiʿī's flexible stance –accepting the performance of family law transactions by non-Arabs in their native languages– challenges the characterization of him as a rigid literalist or Arab nationalist and calls for a more nuanced understanding of his legal thought.

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