

### III. Istishab as a source of Islamic law

- The majority of legal theorists in general hold that presumption of continuity of existing condition or state of affairs is a proof of Shari'ah that should be followed in fatwa and administration of justice, because presumption of status quo belongs to matter, which is taken as a norm by the intellect and the social order proceeds according to it.
- The people still decide about the survival of their relatives who traveled abroad presuming the continuity of their survival, as they were alive before their journey.

However, they differ on the scope of the application of this principle.

- According to the **Maliki**, the **Shafi'i** and the **Hanbali**, istishab is a perfect proof, that is, on both sides negative and positive. It is a proof for denying something and for establishing a claim.

A missing person will be deemed alive presuming the continuity of his life.

The rights to which he is entitled to would remain as they are. Therefore, no one will inherit him, nor will his wife be divorced.

Besides, he also will entitle to new rights. Thus if one of his relatives dies, he will inherit his relatives.

- On the other hand, some **Hanafi** jurists hold that istishab is a proof restricted to negative side only. It is a proof for denying something but not for establish a claim. Example, the rights already established for missing person will remain as they are, and they will not be extinguished, presuming him as alive, but the new rights will not be established in his favour, because the condition for establishment of these new rights is his being alive.

### IV. Legal maxims originating from istishab

- It is a fundamental principle that a thing shall remain as it was originally.
- The general principle is that the original state of things is permissible.
- Freedom from liability is a fundamental principle.
- Certainty is not dispelled by doubt.
- Istishab is the last ground of fatwa.
- When the jurist is asked about the ruling of particular case, he must first search for a solution in the Qur'an, the Sunnah, ijma', qiyas and maslahah.
- If a solution is still wanting, he may resort to istishab in either its positive or negative capacities.