
FACING COVID-19 IN THE LIGHT OF THE MAXIM “NO HARM SHALL BE INFLICTED OR RECIPROCATED”

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ABSTRACT

The Islamic legal maxim (al-qā'idah al-fiqhiyyah) “no harm shall be inflicted or reciprocated” has become particularly significant in this era of pandemic. In the current context, this legal maxim is reasonably expected, provided that if they are adequately employed, to influence people's choices and guide them to make certain decisions which are simultaneously religious and applicable for preservation of human life. This maxim is construed as prohibition of all actions that carry the notion of wronging, infringing on other's rights, frustrating, overpowering, or setting back some party's interests. In this article, we attempt to discern what Islamic jurisprudence has to say in this crucial combat which causes this global crisis. In light of the mentioned Islamic legal maxim, a flowchart that represents the sequence of the certain steps is derived, which is beneficial to be taken into consideration in the choices, decisions and actions related to or in the time of COVID-19.

Keywords: *Pandemic, Islamic legal maxim, harm elimination, protection, human life*

Introduction

Laws serve as the guiding principles for citizens, but if religious instructions are intertwined within the laws, then the confidence, sincerity, commitment and decision-making of believers in their routines will greatly improve. In order to contain the spread of deadly pandemic, all governments across the globe exert their maximum efforts to break the chains of virus. In this article, we attempt to discern what Islamic jurisprudence has to say in the crucial combat which causes this global crisis.

The *hadith* (saying of the Prophet Muhammad pbuh) “no harm shall be inflicted or reciprocated”, which forbids self-harm and harm to others, is one of the five Prophetic traditions around which the entire body of *fiqh* (Islamic jurisprudence) revolves (al-Ḥanbalī 1408 AH, 1: 10. This hadith prohibits all types of harm no matter if it is infliction or reciprocation, self-harm, harm to other and becoming causative of harm.

This *hadith* is also included within five universal legal maxims (*al-qawā'id al-fiqhiyyah*) which embody the crux of major Islamic principles and instructions of the *Sharī'ah*, and as a result enable jurists to extract legal rulings on new topics. In view of some scholars, this maxim encompasses half of *fiqh*, as it (Islamic jurisprudence) is either for the purposes of achieving benefit and/or repulsing harm (al-Mardāwī 2000, 8: 2846). Technically, legal maxim means “a comprehensive principle that is applicable to all of its particulars” (al-Jurjānī 1983, 171). The other wording of this maxim is “harm must be eliminated”. In order to derive principles of social ethics and interpersonal relationships, and for deducing legal rules on modern issues, this maxim is widely used.

The maxim of “no harm” has become particularly significant in the context of Covid-19 pandemic. Undoubtedly, this deadly disease is causing severe harm which has already affected human life and all interactions in an unprecedented way. Therefore, this article tries to approach this pandemic placing under the spectrum of Islamic legal maxims related to the elimination of harm. In the context of pandemic, this legal maxim could influence choices of Muslims and guide them to make certain decisions which are simultaneously religious and in conformity with orders of a given country. Moreover, in Islam, protection of five things, called *maqāṣid al-sharī'ah*, is consensually perceived as the higher objectives; which are religion, body, intellect, progeny and wealth. This pandemic has posed fatal threats in the preservation of aforesaid objectives. In addition, Islamic legal maxims are perceived as legitimate and effective methods to achieve the objectives of the *Sharī'ah*. Moreover, the legal maxims on elimination of harm encompass the crux of four foundational principles in modern medical ethics, namely respect for autonomy, non-maleficence, beneficence and justice. In addition, the content of this maxim is well acknowledged regardless of cultural diversity and regional differences, because the consequences of harm are globally loathed. Against this background, it is significant to address how to combat this pandemic from a *fiqhi* perspective. This is the main aim of this article.

Relevance of Legal Maxims related to Elimination of Harm

Major implications of harm (*darar*), in the light of a detailed survey of various definitions given by Islamic jurists, can be viewed as ‘opposite of benefit’, ‘infliction of harm on others’, ‘infringement of others’ rights’ and ‘causing emotional distress’. In Islam, harm elimination is an obligatory duty on every capable individual while harm infliction is stringently prohibited.

The major evidence in support of the harm elimination maxim is derived from the Quran and the Prophetic traditions. In addition to the usage of many synonyms of harm, the word *ḍarar* (harm) and its derivatives are used in the Quran 74 times, with 6 of them referring specifically to instructions relating to harm elimination. Likewise, the Prophetic traditions also stress for harm elimination, and a frequently

FACING COVID-19 IN THE LIGHT OF THE MAXIM “NO HARM SHALL BE INFLICTED OR RECIPROCATED”

cited maxim is itself a *ḥadīth* - “harm should neither be inflicted nor reciprocated” (*lā ḍarar’ wa lā ḍirār’*).

Furthermore, Islamic jurists are in consensus that harm elimination (*izālat al-ḍarar*) is an essential objective of the *Sharī’ah* and it has an inevitable role in the Islamic legal interpretation. The scrutiny over the Quranic verses and the Prophetic traditions prove that the cause of most harm can be categorized under one of the following three human actions: 1) infringement, 2) arbitrariness and 3) negligence (Mawāfi 1997, 97).

Jurists have expounded certain criteria for considering harm that needs to be eliminated. The major four criteria are based on its reality, seriousness, nature of infringement and its damage to valid benefits.

The Islamic legal maxims (*qawā’id fiqhīyah*) embody the crux of major Islamic principles and instructions of the *Sharī’ah*, and as a result enable jurists to extract legal rulings on new legal, ethical and social issues. They reflect ethical values ingrained in the legislative system of Islam. Consequently, they appear to be vital in the lives of individuals to facilitate for appropriate decisions to be made and support efficient problem solving. In the light of the various categories of legal maxims, the top priority is given to the universal legal maxims (*al-Qawā’id al-Khams al-Kubrā*), due to their comprehensiveness and relevance to both the entire chapters of *fiqh* and their applicability to various aspects of life.

The purpose of the harm elimination maxim is to regulate human actions, so that they are harm-free and non-maleficent, at both the individual and societal levels. This maxim is a key standard used in taking legal positions related to socio-ethical issues. In addition, this maxim is construed as the prohibition of all actions that carry the notion of wronging, infringing on the rights of others, as well as frustrating, overpowering, or setting back a party’s interests. This principle is not absolute; rather it is accompanied by limits, such that if harm is inflicted to prevent a bigger harm, it is treated as justifiable.

The rubric ‘harm’ in the maxim includes private, public, moral, material, direct and indirect. This maxim plays a crucial role in medicine as it stresses the importance on the application of four foundational biomedical principles, namely: respect for autonomy, non-maleficence, beneficence and justice.

Having studied the several maxims relevant to harm elimination, the researchers have divided all maxims concerning harm elimination into three types. First, maxims relevant to the prevention of harms before their occurrence are (1) “no harm shall be inflicted or reciprocated” (*lā ḍarar wa lā ḍirār*), (2) “harm should be avoided as much as possible” (*al-Ḍarar Yudfa’ bi Qadr al-Imkān*) and (3) “repelling evils is preferable over attaining benefits” (*dar’ al-mafāsīd awlā min jalb al-maṣāliḥ*). Second, maxims relevant to the elimination of harms after their occurrence are (1) “harm must be eliminated” (*al-ḍarar yuzāl*), (2) “harm is not repelled by its alike” (*al-ḍarar lā yuzāl bi mithlihi*), and (3) “lapse of time cannot justify continuation of harm” (*al-ḍarar lā yakūnu qadīman*). Third, maxims relevant to the minimization of harms are (1) “the greater harm should be prevented by forbearing the lesser harm” (*al-Ḍarar al-ashadd yudfa’ bi al-ḍarar al-Akhaff*) and (2) “personal injury should be tolerated to prevent general injury” (*yutahammal al-ḍarar al-Khāṣṣ li al-daf’ al-ḍarar al-’āmm*).

The maxims related to the minimization of harms are closely related to *Fiqh al-muwāzanah*, which is a vital branch of Islamic jurisprudence and has particular relevance in situations where conflicts of interest arise, as it supports in making appropriate decisions. The role of *al-muwāzanah* is mainly applicable to the following three situations: 1) when a person has to choose one from two or more mutually exclusive benefits, 2) when a person has to prevent one from two or more mutually exclusive evils, and 3) when a person is compelled to perform a job where the benefit is not achieved unless the harm is committed.

***Fihi* Action Plan to Combat Covid-19**

Utilizing the Islamic legal maxims related harm eliminations; we aim to prepare an action plan to combat the Covid-19, giving the people instructions to be taken when addressing this pandemic from a *fihi* perspective. This action plan is prepared keeping in conformity with the WHO and medical experts guidelines in this regard, but having placed them under the gamut of *fihi* principles. As a result, implementation of this plan is believed to be effective to protect self and others from the epidemic and at the same time elevating their acts to the rank of worship (*ibādah*) as they are following *fihi* instructions.

Step 1: Identification of a considerable harm

First duty in this plan is to identify considerable harm which needs to be eliminated. In *fiqh*, an action or inaction is called considerable harm if it meets four criteria which are (1) reality (2) seriousness (3) illegitimate way of infliction and (4) damage to valid benefit. (Ḥaydar 1991, 1: 73; al-Mawāq 1994, 5: 165; Mawāfi 804; al-‘Adwiyy 6: 1)

Needless to say, Covid-19 is real and serious as 10 million people have died as a result of this pandemic as yet and it continues further on a daily basis. Older people and those with pre-existing medical conditions like cardiovascular disease, diabetes, chronic respiratory disease, and cancer are proved to be more vulnerable to this disease. Covid-19 is regarded as 10 times more deadly than the seasonal flu, which leads to death in about 0.1% of those it infects. In this particular situation, every member of society needs to be vigilant and alert so that they are staying away from causing infection to self and others. Any careless attitude or insensitive interaction comes under causing illegitimate harm. It includes breaking the rules of quarantine, lock down and other Covid-19 protocols, visiting Covid-19 patients, unnecessary travelling, going to crowd and so on. In one way or another, any non-compliance with Covid-19 containment measures is considerable harm. No doubt, harm is caused on valid benefit because the immediate victim of this harm is human health and life, both are highly protected by Islam, and its damages extends to other major benefits and objectives for their preservation Islam gives ultimate importance. Many people are affected with emotional distress and increased risk for psychiatric illness. Among the far reaching consequences of pandemic is the largest global recession in history. These various risks of harm are posed by the spread of this disease.

The command of harm elimination falls in the category of the obligatory (*wājib*) and it is realized by its prevention before its occurrence and by its elimination after its occurrence. In addition, all deliberate interactions that cause infecting or spreading of this disease is deemed prohibited (*ḥarām*) from *fiqh* perspective. Therefore, Covid-19 is deemed as considerable harm. Any act which is direct or indirect cause of infecting or spreading this disease is prohibited. In addition, all are required to prevent/eliminate/minimize this pandemic or its consequences according to their individual or collective capabilities. As a result, involvement or/and participation in the containment measures of this disease is not only abiding by government regulations but also a adhering to religious binding for that he will be rewarded and punished if they did otherwise.

Step 2: Prioritization of containment measures

After identifying considerable harm, next duty is to make the arrangements of harm elimination according to the appropriate hierarchy, which is as follows, first: prevention, second: elimination and third: minimization. Of the three types, preference is always given to the prevention of harms before their occurrence because it prevents any ramifications of the infliction of harm and is in line with the widely recognized principle of ‘prevention is better than cure’. The maxim ‘harm should be prevented as much as possible’ (*al-Darar Yudfa‘ bi Qadr al-Imkān*) is a guiding principle for taking all possible actions in advance as a preemptory move against possible harms. This maxim portrays the *Sharī‘ah*’s deep concern

FACING COVID-19 IN THE LIGHT OF THE MAXIM “NO HARM SHALL BE INFLICTED OR RECIPROCATED”

for the safety and security of the people. When evil and benefit appear in conflict in the execution of an act or inaction, the maxim “avoidance of harm takes precedence over the attainment of benefits” (*dar’ al-mafāsīd awlā min jalb al-maṣāliḥ*) shows the way. From Islamic perspective, the preference in general is given to avoiding forbidden things to practising commands.

As situation is clear as far as Covid-19 consequences are concerned, those who are safe from disease are required to their maximum efforts to stay away from all the causes and situations endanger life and health of self and others. Likewise, those who are infected have to seek the optimum treatment and contain themselves from spreading the virus. Medical experts assert that those with weak immunity power are vulnerable to more risk of Covid-19. Therefore, people and government should work for and promote a life style which helps improve immune system like having balanced diet, maintaining regular exercise, getting adequate sleep, staying away from alcohol and smoking, etc. Along with strategies to contain virus, the aspect of improving immunity is also need due attention from individuals and authorities.

However, due to inherent nature of epidemic, things go out of control and spread the disease, where prevention is impossible, there elimination and minimization are people’s duty from *fiqhi* perspective, of which details are given below.

Step 3: Maxims related to Prevention

Three governing principles must be in the hearts of agents when they apply the maxims of prevention of harm before it’s occurrence, they are:

1. “No harm shall be inflicted or reciprocated”.

This maxim focuses on forestalling the thoughts and acts of harm from minds of people as it prohibits all sorts of harm no matter if it is by word, act, single, multiple, initiation, reciprocation, etc. In addition, it promotes the ideas of cooperation, mercy, justice and kindness in people. Likewise, it guides to sustain civility, maintain public order and exterminate corruption. The health workers and society should be neither initiating any harm nor reciprocating with any harm. Awareness about this disease, its causes, consequences and remedies has vital role in implementing this maxim.

2. “Harm should be avoided as much as possible”.

This maxim is implemented by foreseeing the impending harms and trying to eliminate them in a scientific and systematic way and to remove the possibility of the occurrence and recurrence of harm (Kāmil 2000, 1:206). “As much as possible” in the maxim denotes that people are ordained only to do their maximum efforts and they are not accountable for what is beyond their capability. Experts from medical fraternity and disaster management have suggested several steps and strategies to combat this disease, and strictly following them is part of implementation of this maxim.

3. “Repelling harm is preferred to the achievement of benefits.”

This maxim underlines that the lesser benefit needs to be compromised for preventing greater harms. Islam’s approach to benefit and evil is explicit in the hadith “If I ask you to do something, do of it as much as you can, but if I forbid you from doing something, you should refrain from it” (Ṣaḥīḥ Muslim, 7: 91). This *hadith* portrays the “*Shari’ah*’s concern in eliminating evils than accomplishing benefits” (al-Nawawī, 1392 AH, 8: 78). For example, attending *jumu’ah/jamā’ah* prayer is obligatory and highly meritorious for capable individuals. However, if going mosque necessitates crowding which is huge threat for spreading this diseases it can be avoided. Against this background, going mosque is suspended or restricted in this situation, which comes under this maxim.

The primary step in preventing the infection is to know about how it spreads, then only people can stay away from the causes. The health experts have advised several steps to reduce chances of being infected or spreading Covid-19. In order to kill the viruses on hands, washing hands and avoiding the touching

eyes, nose and mouth are primary method in the precaution. For staying away from small liquid droplets from the patients' nose or mouth which may contain virus, social distancing and not coming together in crowds, wearing fabric mask are also very important. Following good respiratory hygiene (covering mouth and nose during coughing and sneezing), is another method for reducing transmission of virus. Staying home and self-isolation are important limit human-to-human transmission including reducing secondary infections among close contacts and health care workers and going out should be only for meeting necessary situation.

The effective system for identification of patients and providing optimized care is very crucial. Making follow up of the contacts, health measures of travellers and mass awareness programmes via online platforms can also play a pivotal role in prevention phase. In addition, scientific researches for accelerating treatment options for developing diagnostics, therapeutics and vaccines is also part of prevention.

Step 4: Elimination Stage of Covid-19

Harm is eliminated by either removing it completely or reducing its effects or stopping the chances of repetition of the same harm. Once harm occurred, its removal and repair of problems are obligatory because harm is mischief and to allow its continuance is another mischief (Muhsin et al. 2019). Usually, harm is eliminated by removal of harmful material, tort liability and legal punishments. These three methods are important in the case of Covid-19, undoubtedly.

The maxim “harm must be eliminated” is governing principle when prevention of complete harm is not successful or partially successful. In addition, the maxims “harm is not repelled by its alike” (*al-ḍarar lā yuzāl bi mithlihi*) and “harm is not repelled with harm” (*al-ḍarar lā yuzāl bi al-ḍarar*) also shed light on principles to be upheld during elimination. Removal of harm at the expense of causing another harm is not allowed in Islam because it is not elimination of harm rather infliction of a new harm which is impermissible. As a result, removal of harm without leaving any other harm and leaving lesser harms are only accepted. The maxim “lapse of time cannot justify continuation of harm” (*al-ḍarar lā yakūnu qadīman*) emphasizes that the long duration of harm is not warrant to justify its furtherance.

Self-care and treatment are among the best methods for elimination of Covid-19. Having proper rest, maintaining hygiene, drinking plenty of fluid, and eating nutritious food are important. As part of elimination, most important aspect is avoiding infecting others. For that, staying in one place in home, using a separate bedroom and bathroom, informing others about infection so they keep their distance, covering coughs and sneezes with a tissue or elbow, wearing a mask over nose and mouth, washing hands regularly, not sharing dishes, cups, eating utensils, towels, or bedding with anyone else and disinfecting common surfaces like doorknobs, counters, and table-tops are crucial.

In addition, if a Covid-19 patient deliberately or carelessly causes infection to others, he must be punished with compensation and imposing liability. The Quran says, “Therefore, if anyone transgresses a prohibition by attacking you, you may do likewise” (*al-Baqarah*: 194).

Step 5: Minimization Methods of Unavoidable Covid-19 Consequences

At the face of eliminating harm, time and again various situations appear where harm originates while eliminating existing harm or harm is eliminated only leaving some portions unsolved. In those situations, fiqh frames two major methods to influence the decisions. They are: (1) The greater harm should be prevented by forbearing the lesser harm (*Al-Ḍarar al-ashadd yudfa' bi al-ḍarar al-Akhaff*) and (2) “Personal injury should be tolerated to prevent general injury (*yutahammal al-ḍarar al-Khāṣṣ li al-daf' al-ḍarar al-`āmm*)

FACING COVID-19 IN THE LIGHT OF THE MAXIM “NO HARM SHALL BE INFLICTED OR RECIPROCATED”

As per these maxims, a person has freedom of choice if he forced to choose one from two or more mutually exclusive equal harms. However, if the harms are unequal in terms of their severity, then committing the lesser harm is legally allowed but it is religious binding in order to prevent the occurrence of greater harm. Therefore, discussing from a *maqasidic* perspective, in order to prevent harm to the needs (*ḥājiyyāt* category) and to the essentials (*ḍarūriyyāt* category), harm to the embellishments (*taḥsīniyyāt* category in the *maqāṣid*) are tolerated. Similarly, harm to the *ḥājiyyāt* is tolerated in order to prevent harm to the *ḍarūriyyāt*. For preventing that which is prohibited (*ḥarām*) discouraged (*karāhat*) is permitted. In addition, Islam gives added importance to the aspect of protecting the best interests of the public even at times tolerating harm to the private. Public means the wider community or a large group of people while private refers to a single individual or a small group of people. The minimization step needs to be executed in light of two other maxims which are: (1) “committing that which is prohibited is not allowed except in the case of dire necessity”, and (2) “necessity never requires obligating that which is inessential or optional”.

Step 6: Take decision which is harm-free or with least possible harm in unavoidable situations.

For the most appropriate and valid harm elimination procedures, the professionals should keep the maxims below in mind:

1. No weight is given to the harm if it is inflicted with contentment (*Lā ‘ibrata li al-ḍarar ma’a al-riḍā*).
2. “Necessities are estimated according to their quantity” (*Al-Ḍarūrat Tuqaddar bi qadrihā*).
3. The necessity does not invalidate the rights of others (*al-iḍṭirār lā yubṭilu ḥaqq al-ghayr*). It expounds that commission of prohibited and avoidance of required due to the necessity are allowed with a condition that it should not be harmful to others.
4. Hardship begets facility (*al-Mashaqqatu Tajlibu al-Taysīr*). The maxim of necessity has been legislated in order to eliminate the harms during a necessity and to save the *ummah* from its predicaments.
5. Contentment with Lesser Harm does not Convey Contentment with Greater Harm (*al-riḍā bi adnā al-ḍararyn lā yakūnu riḍan bi a’lāhumā*). It explains that if somebody feels comfortable with a lesser harm that does not mean inflicting greater harm to him is also allowed.

Concluding Remarks

The features of briefness and generality of *qawā’id* enable them to be instrumental for deriving the legal rules on unprecedented issues and making judicial decisions on the situations of ethical dilemmas. The entire discourses in *fiqh* are meant to either achieve the benefits or eliminate the evils. As a result, the maxims related to the elimination of harm occupy a paramount position in Islamic law and they govern several juristic chapters with inevitable roles.

The universal legal maxim “harm must be eliminated” guides people to the methods that are conducive to eradicate the harm at its roots, and it plays a pivotal role in various junctures ranging from harbouring malicious thoughts to harm reduction in unavoidable situations. The main maxim and its sister maxims shed light mainly on three stages of harm elimination, namely: (1) prevention of harms before their occurrence, (2) elimination of harms after their occurrence and (3) minimization of harms at unpreventable circumstances.

In light of the discussion above, a table presented below which aims to portray the major parts of action plan to combat the Covid-19 in light of Islamic legal maxims related elimination of harm. Importance of this table is that since it is framed in line with *fiqh* principles and particularly Islamic legal maxims as

well as guidelines of WHO, following them is simultaneously meritorious in Islam and safe for self and others.

| No | Stage | COVID-19's Scenario | Ruling / relevant Maxims |
|----|---------------------------------------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Identification of a considerable harm | Four criteria of considerable harm is fulfilled in Covid | Its elimination is obligatory (<i>wājib</i>). Inaction, deliberate infection and spreading are prohibited (<i>ḥarām</i>) |
| 2. | Prioritization of containment measures | Covid-19 can be prevented from spreading | Maximum measures for preventing infection of Covid-19 must be given priority, then elimination and then minimization. |
| 3. | Prevention | Scientifically and medically proved methods are available for preventing Covid-19. | 1. "No harm shall be inflicted or reciprocated". 2. "Harm should be avoided as much as possible". 3. "Repelling harm is preferred to the achievement of benefits." |
| 4. | Elimination | Medical care is proved effective for overcoming Covid-19 | 1. "harm must be eliminated" 2. "harm is not repelled by its alike" 3. "harm is not repelled with harm" 4. "lapse of time cannot justify continuation of harm" |
| 5. | Minimization | Since still Covid-19 is spreading, the minimization stage is crucial | 1. "The greater harm should be prevented by forbearing the lesser harm" 2. "Personal injury should be tolerated to prevent general injury" |
| 6. | decision which is harm-free or with least possible harm | Ambiguity in decisions regarding dealing with Covid-19 is important | 1. "No weight is given to the harm if it is inflicted with contentment" 2. "Necessities are estimated according to their quantity" 3. "The necessity does not invalidate the rights of others" 4. "Hardship begets facility" 5. "Contentment with Lesser Harm does not Convey Contentment with Greater Harm" |

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