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ON THE QUR'ĀNIC PRINCIPLE OF PREVENTION AS A HIGH OBJECTIVE IN THE ISLAMIC LEGISLATION

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ON THE QUR'ĀNIC PRINCIPLE OF PREVENTION AS A HIGH OBJECTIVE IN THE ISLAMIC LEGISLATION

Wang Yongbao

Abstract: This article intends to examine, through the lens of Islamic jurisprudence, the feasibility for Islamic legislation to adopt the Quranic principle of prevention to address the adverse and harmful consequences that arise when human conduct deviates beyond its originally intended scope of benefit. For this purpose, the article employs both deductive and inductive research methodologies to present case illustrations and analytical reflections on the application of this principle, enabling researchers to develop a more distinct comprehension of the objectives of Islamic law. This article concludes that, once a causal relationship is established, consideration need not be given to variations in the intermediary mechanisms required to realize the fundamental and ultimate goals of Islamic law. Accordingly, this principle operates with a combination of rigor and flexibility, corresponding to the strength and degree of individual self-discipline.

Keywords: Islamic Jurisprudence; Prevention; Objective; Means; Purpose; Medium

A. Introduction

In Islamic jurisprudential terminology, the Arabic compound noun "*Sadd al-Dharā'i'*[1]"—the principle of prevention—denotes the practice of prohibiting

[1] The Arabic word *Dharā'i'* is the plural, whose singular is *Dharī'ah*, which originally refers to a camel tied to a place so that the frightened camel can inhabit it, because camels are familiar with the place before being frightened, and when they see it, will approach it, so making easy for people to catch them. It is worth noting that "preventing small things and avoiding gradual changes", or "be precautious beforehand", or " destroy evils before they become menacing", or "caution against small matters", or "check erroneous ideas at the outset", or "nip evils in the bud" is a free translation of the Islamic jurisprudencial term *Sadd al Dharā'i'*. In other words, the literal meaning of the Arbic term *Dharī'ah* refers to "excuse", "pretext", or

or eliminating acts that will inevitably produce severe harmful outcomes, even when the acts themselves do not inherently present a danger. Accordingly, Al-Māzarī[2], a prominent jurist of the Mālikī School, interpreted this concept as: "Prevention refers to the prohibition of legally permissible acts, to prevent their use as means to attain unlawful ends.[3]"

It is important to note that the term analyzed in this article is closely associated with a separate concept, "*Taḥayyul"*—the application of legal stratagems. The latter refers to the practice of employing "*Ḥiyal"*, or stratagems, in specific contexts to evade an obligation mandated by Islamic law, and substituting the obligation with an alternative conduct deemed compliant with Islamic law. This results in a superficial appearance of compliance with Islamic law that does not reflect the actual nature of the conduct.

In summary, the term "*Sadd al-Dharā'i'"* discussed herein refers to the category of "preventive measures" that block and control harmful outcomes which will occur in the majority of cases, regardless of whether the outcome is intentional or unintended. This conceptual distinction separates it from the category of "stratagems" along two dimensions: the first is the contrast between generality and specificity, and the second is the contrast between intent and lack of intent. A third point of difference between stratagems and preventive measures is that stratagems invariably undermine one of the core objectives of Islamic law, whereas preventive measures may either undermine a beneficial objective established by the Legislator—God Almighty—or leave

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"reason", and is synonymous with another Arabic word *Wasīlah*, indicating a medium or means to achieve a certain objective. See Ibn Manẓūr, Abū al-Faḍl Jamāl al-Dīn Muḥammad bin Mukrim (AH. 630-711 / AD. 1232-1311), *Lisān al-'Arb* (Beirut: Dār al Ṣādir, 3rd ed., AH. 1414 / AD. 1994), 8: 96; 11: 724. Meanwhile, the literal meaning of the Arabic word *Sadd* refers to "blocking" and "preventing". Therefore, the phrase *Sadd al-Dharā'i'* refers to the means of preventing the achievement of the expected evil objective. If this means is not prevented, the evil objective that arises from it is likely to be achieved. Thus, Islamic jurists refer to it as "preventing small things before they happen".

[2] The outstanding Islamic jurist of the Tunisian Mālikī School, whose full name is: Abū 'Abdillāh Muḥammad bin 'Alī bin 'Umar bin Muḥammad al-Tamīmī al-Māzarī, born in the small town of Mazelle on the island of Sicily in the year 452 AH. / 1061 AD., he wrote extensively throughout his life, including his representative works on Islamic jurisprudence: ed. 'Ammār al-Ṭālibī, "*Īḍāḥ al-Maḥṣūl min Burhān al-Uṣūl*" (Tunis: Dār al-Gharab al-Islāmī, AH. 1421 / AD. 2001) and ed. Muḥammad al-Mukhtār al-Salāmī, *Sharḥ al-Talqīn* (Tunis: Dār al-Gharab al-Islāmī, AH. 1428 / AD. 2008), who passed away in the coastal city of Mahdia, Tunisia, in the year 536 AH. / 1141 AD. in the Gregorian calendar. See Al-Zarkalī, Khayr al-Dīn bin Maḥmūd bin Muḥammad bin 'Alī bin Fāris al-Dimashqī (AH. 1310-1397 / AD. 1893-1976), *Al-A'lām* (Beirut: Dār al-'Ilm lil-Malāyīn, 15th ed., AH. 1422 / AD. 2002), 6: 277.

[3] Al-Māzarī, ed. Muḥammad al-Mukhtār al-Salāmī, *Sharḥ al-Talqīn* (Tunis: Dār al-Gharab al-Islāmī, AH. 1428 / AD. 2008), 2: 317.

that objective intact. For this reason, researchers must first attain a clear understanding of the general objectives of Islamic legislation; the specific elaboration on this point proceeds as follows.[4]

1. The General Objective

A comprehensive analysis of the legislative objectives rooted in the primary textual sources of Islamic law—the Qur'ān and Ḥadīth—leads to the conclusion that both the general principles and specific foundations of this legal framework establish "*Al-Maqṣad al-'Āmm*" (the general objective) as the preservation of social order and the facilitation of healthy development and steady progress for all people through the universal realization of "*Ṣalāḥ"* (well-being and justice) for humanity. Accordingly, human well-being encompasses the soundness of human reason, the rectitude of human conduct, and the presence of truth, goodness, and beauty in the world inhabited by humanity.

For instance, Allāh the Almighty recounts and praises the mission of the prophet Shu'ayb in the Qur'ān with the following verse: "I only desire (your) betterment to the best of my power; and my success (in my task) can only come from Allāh : in Him I trust and unto Him I look." (Al-Qur'ān, Sūrah Hūd [11]: 88)[5] This scripture establishes that Allāh instructed the prophet to pursue reform to the full extent of his capacity. Furthermore, in the account of the Israelites and Pharaoh, Allāh states in the Qur'ān: "Moses had charged his brother, Aaron (before he went up): 'Act for me amongst my people: do right, and follow not the way of those who do mischief.'" (Al-Qur'ān, Sūrah al-A'rāf [7]: 142) He also adds: "Truly Pharaoh elated himself in the land and broke up its people into sections depressing a group among them: their sons he slew, but he kept alive their females: for he was indeed a maker of mischief." (Al-Qur'ān, Sūrah al-Qaṣaṣ [28]: 4) These two verses explicitly demonstrate that all immoral characteristics associated with Pharaoh constitute reprehensible sinful acts, and that the prophet Moses was dispatched to deliver the Israelites from injustice.

[4] Ibn 'Āshūr, Abū 'Abdillāh Muḥammad al-Ṭāhir bin Muḥammad al-Shādhilī bin 'Abd al-Qādir bin Muḥammad (AH. 1292-1393 / AD. 1879-1973), ed. Mu**ḥ**ammad al-Ṭāhir al-Mīsāwī, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Jordan: Dār al-Nafā'is, 2nd ed, AH. 1419 / AD, 1999), 273-277, 365-370, and 413-420.

[5] Note: when citing the Qur'ānic verses in this article, the reference is made to: 'Alī, 'Abdullah Yūsuf, *The Meaning of the Holy Qur'ān: Text, Translation and Commentary* (Kuala Lmpur: Islāmic Book Trust, 2005).

In addition, the Qur'ān records the law preached by the prophet Shu'ayb to the people of Madyan[6]: "Give just measure and weight, nor withhold from the people the things that are their due; and do no mischief on the earth after it has been set in order." (Al-Qur'ān, Sūrah al-A'rāf [7]: 85) For the Muslim community, Allāh further stipulates in the Qur'ān: "Do no mischief on the earth, after it hath been set in order." (Al-Qur'ān, Sūrah al-A'rāf [7]: 56) Concurrently, Allāh the Almighty admonishes Muslims: "Then, is it to be expected of you, if ye were put in authority, that ye will do mischief in the land, and break your ties of kith and kin?" (Al-Qur'ān, Sūrah Muḥammad [47]: 22)

The aforementioned Qur'ānic verses constitute comprehensive and unambiguous evidence confirming that the general objective of Islamic law is "*Iṣlāḥ*" (the reform) of human activity and the systematic elimination of all forms of corrupt practice. Multiple additional Qur'ānic verses reference justice in contexts of encouragement and praise, and reference sin in contexts of warning and rebuke. However, the present article does not cite these parallel passages, as they do not explicitly connect justice and sin to human conduct, instead focusing on the question of faith and unbelief in Islam. In other words, the scriptural passages discussed earlier demonstrate that worldly justice is a great grace granted by Allāh to the righteous as their reward. Accordingly, Allāh states in the Qur'ān: "Before this We wrote in the Psalms, after the Message (given to Moses): My servants, the Righteous shall inherit the earth. Verily, in the (Qur'ān) is a Message for people who would (truly) worship Allāh ." (Al-Qur'ān, Sūrah al-Anbiyā' [21]: 105-106) This verse affirms and praises justice that existed prior to the emergence of Islam. For the Muslim community, Allāh additionally declares: "Allāh has promised, to those among you work righteous deeds, that he will of a surety, grant them it to those before." (Al-Qur'ān, Sūrah al-Nūr [24]: 55) This promise confirms that segments of the righteous Muslim community will govern human society in accordance with the principles of justice.

Scholarly inquiry must acknowledge that the justice expected and commended by the Legislator of Islamic law—Allāh the Almighty—is not restricted to the mistaken view that justice operates exclusively through ritual practice to reform individual belief and correct individual conduct. On the

[6] The Madyan people, transliterated from Arabic, are one of the ancient tribes recorded in the Qur'ān. They are referred to as the "Midianites" in the Old Testament of Judaism and Christianity. It is said that they were an ancient Arab tribe living south of Mount Sinai on the west coast of the Red Sea (now within Egypt), and their people were mostly engaged in commerce. This tribe is mentioned 10 times in the Qur'ān. Due to their refusal to listen to the teachings of the messenger Shu'ayb sent by Allāh , their resistance to the belief in the only Allāh , and their continued wrongdoing, they were ultimately destroyed by the earthquake. The outcome of its complete extinction is one of the major lessons that the Qur'ān warns people of.

contrary, justice is defined as the proper ordering of all elements within the context of human secular life and social affairs, as the Qur'ān explicitly observes of the wrongdoing: "When he turns his back his aim everywhere is to spread mischief through the earth and destroy crops and cattle. But Allāh loveth not mischief." (Al-Qur'ān, Sūrah al-Baqarah [2]: 205) This verse clarifies that the wrongdoing cautioned against refers to actions that inflict harm on the world. It follows that if the Legislator did not seek to preserve the orderly functioning of the world, He would not have instituted punitive legal frameworks to deter humans from evil conduct. Accordingly, the Legislator has established retributive legal provisions for murder and bodily injury, and implemented a system of value-based compensation for property damage. Furthermore, to improve the conditions of human interaction, Islamic law has also established a complete system of rights and obligations, the explicit purpose of which is the elimination of evil conduct, as the Qur'ān confirms: "If the Truth had been in accord with their desires, truly the heavens and the earth, and all beings therein would have been in confusion and corruption!" (Al-Qur'ān, Sūrah al-Mu'minūn [23]: 71) Thus, Islamic law has always been oriented toward establishing truth—defined here as justice—as a bulwark against human wrongdoing. When considered as a whole, these and related explicit criteria demonstrate that the core aim of Islamic law is to enable humanity to "seek benefits and avoid harms"; the Legislator frames this principle of "seeking benefits and avoiding harms" as an inherent feature of Islamic legal norms aligned with human nature, and it may therefore be regarded as the general rule of Islamic legislation. This rule is firmly established, and the supreme objective of Islamic law is the realization of justice and the elimination of corrupt practices in human society—a goal that can only be achieved by prioritizing justice in all human affairs and eradicating the corrupt practices that arise from its absence.

Furthermore, as humanity is the steward of the world, the just and orderly functioning of all worldly affairs hinges on human justice and moral character. Accordingly, researchers may readily observe that Islam elevates human justice and moral standing through its governance of both individual and collective affairs. First, Islam enjoins the rectification of belief and all matters related to faith, since belief constitutes the foundation of correct human cognition, enabling it to guide rational deliberation on worldly affairs. Second, Islam is dedicated to purifying the individual soul and elevating moral conduct, as the impetus for good action originates inherently in the heart. This principle is affirmed in an authentic Ḥadīth, which states: "Know! Verily, there is a piece of flesh in the human body: if it is sound, the entire body is sound; if it is

corrupt, the entire body is corrupt. Know! It is the heart.[7]" Third, Islam has consistently pursued the rectification of human conduct, a goal attained through the formulation of detailed regulatory frameworks covering all dimensions of life.

Human beings are innately inclined toward perfection, yet the actual attainment of perfection proceeds incrementally through the purification of the soul and the improvement of moral character. A clear demonstration of this gradual development is evident in the evolution of Islamic legislation: from the era of the Prophet Muḥammad's (peace be upon him, hereafter abbreviated as "PBUH") propagation of Islam in Mecca through the period following his migration to Medina, the Muslim community has consistently been guided toward the underlying objectives of Islamic law, to realize the reforms envisioned by the divine Legislator. As a comprehensive examination of Islam's holistic reform of humanity lies beyond the scope of this paper, this study will not address reforms pertaining to belief, spirituality, morality, or religious practice. Instead, the present article focuses specifically on reforms embedded in the legal provisions governing social interactions, anchored in the core principle of "seeking benefit and preventing harm" in Islamic jurisprudence.

2. The Means

With respect to the concept of "means", Al-Qarāfī, the prominent Mālikī School jurist, categorizes means that produce harmful outcomes into three classes in his work "Al-Furūq" (The Differences):

First, actions on which Islamic jurists hold a unanimous consensus that prohibition is unwarranted—an example is prohibiting grape cultivation out of concern that grapes will be used to produce wine;

Second, actions on which Islamic jurists reach a unanimous agreement that prohibition is required, such as digging unfenced wells on public thoroughfares;

Third, actions on which Islamic jurists hold divergent views regarding whether prohibition is appropriate, such as delaying sales transactions.[8]

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[7] Al-Bukhārī, Abū'Abdillāh Muḥammad bin Ismā'īl bin Ibrāhīm (AH. 194-256 / AD. 810-870), *Ṣaḥīḥ al-Bukhārī* (Damascus and Beirut: Resalah Publishers, 3rd ed., AH. 1436 / AD. 2015), no. 52, 205; Muslim, Abū al-Ḥusayn bin al-Ḥajjāj al-Qushayrī al-Naysābūrī (AH. 206-261 / AD. 822-875), *Ṣaḥīḥ Muslim* (Damascus and Beirut: Resalah Publishers, 2nd ed., AH. 1436 / AD. 2015), no. 4094, 671.

[8] Al-Qarāfī, Shihāb al-Dīn Abū al-'Abbās Aḥmad bin Idrīs bin 'Abd al-Raḥmān al-Ṣanahājī (AH. 626-684 / AD. 1226-1285), ed. Muḥammad Aḥmad Sirāj and 'Alī Jumu'ah Muḥamad, *Kitāb al-Furūq (Anawār al-Burūq fī Anawā' al-Furūq)* (Cairo: Dār al-Salām, AH. 1421 / AD. 2001), 2: 450-451; see also Al-Qarāfī, *Sharḥ Tanqīḥ al-Fuṣūl fī Ikhtiṣār al-Maḥṣūl fī al-Uṣūl* (Beirut: Dār

Following Al-Qarāfī, Ibn Qayyim al-Jawziyyah, a jurist of the Ḥanbalī School, developed a four-category classification of means based on the outcomes they generate:

The first category comprises means that inherently produce negative outcomes, for instance, alcohol consumption that results in the perpetrator losing consciousness.

The second category consists of means that lead to legally permissible outcomes but are motivated by an intent to produce negative consequences, an example being entering a sales contract with the intent of obtaining interest.

The third category includes means that lead to legally permissible outcomes and lack an intent to produce negative consequences, yet frequently generate harmful results, such as insulting the associates of others.

The fourth category covers actions that are themselves legally permissible, may produce negative outcomes, and in which the beneficial impact of the means outweighs its attendant harm, such as peeking at one's fiancée.[9]

Nevertheless, neither Al-Qarāfī nor Ibn Qayyim al-Jawziyyah addressed the core question of why certain means ought to be prioritized over others. This article posits that the resolution lies in the fact that Islamic law seeks to strike a balance between the inherent benefits of an action employed as a means and the potential harm that the action may generate, placing this issue within the framework of conflict rules between interests and harms. As expounded by Ibn ʻĀshūr, the prominent modern Tunisian Islamic jurist[10], beneficial activities may generate harmful consequences, a phenomenon that is widespread across human conduct. Such harmful consequences may even emerge only when a beneficial activity reaches its most perfected form: for example, the perfected state of fire, where humans derive full benefit from fire's capacity for combustion precisely through the destructive manifestation of flame. Accordingly, when the probability of harmful consequences from a given action exceeds the inherent benefit of that action, Islamic law applies the principle of prohibition to block the action. Means that require prohibition are precisely those actions whose harmful consequences outweigh their inherent goodness. In any case, when assessed from the perspective of the probability

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al-Fikr, AH. 1424 / AD. 2004), 353; Ed. Muḥammad Bū Khubzah et al., *Al-Dhakhīrah* (Beirut: Dār al-Gharb al-Islāmī, AH. 1414 / AD. 1994), vol. 1, 152.

[9] Ibn Qayyim al-Jawziyyah, Shams al-Dīn Abū ʻAbdillāh Muḥammad bin Abī Bakr bin Ayyūb bin Saʻd al-Zurʻī (AH. 691-751 / AD. 1292-1350), ed. Abū ʻUbaydah Mashhūr bin Ḥasan Āl Salmān, *Iʻlām al-Muwaqqʻīn ʻan Rabb al-ʻĀlamīn* (Jeddah and Riyadh: Dār Ibn al-Jawzī, AH. 1423 / AD. 2002), 3: 551-552; 4: 66 and 129; Al-Zuḥaylī, Wahbah bin Muṣṭfā (1932-2015), *Uṣūl al-Fiqh al-Islāmī* (Damascus: Dār al-Fikr, 2nd ed., AH. 1418 / AD. 1998), 2: 912.

[10] Ibn ʻĀshūr, *Maqāṣid al-Sharīʻah al-Islāmiyyah*, pp. 122-126.

of harm associated with particular means, as well as other relevant dimensions, the means discussed by classical Islamic jurists can be broadly categorized into the four classes outlined above.

(1) A Means That Will Inevitably Lead to Negative Consequences

The first category of such measures will inevitably produce negative consequences. For example, if an individual digs a deep pit at the entrance of a public area that lacks nighttime lighting, any person entering this site will face a very high probability of falling into the pit. Put another way, given the imminence of the anticipated harmful outcome to others, the measures that bring about such an outcome are likewise prohibited. Accordingly, Islamic jurists reach a unanimous principled agreement that this type of measure ought to be prohibited, and they have also formed an "*Ijmā'*" (that is, a consensus[11]) on this matter.[12]

Nevertheless, it must be emphasized that Islamic jurists have identified two distinct potential scenarios. In the first scenario, the conduct in question constitutes an unlawful act, which aligns with the situation outlined in the preceding example. Specifically, in this context, the offender is liable for any loss or harm inflicted upon third parties, given that the offender has no legal right to excavate a pit at the entrance of a public area. In the second scenario, the conduct may be fundamentally lawful, and on the question of liability in this case, Islamic jurists hold divergent opinions.

For instance, if an individual excavates a well on their own private property, and the adjacent wall of a neighboring property collapses as a result of the well's proximity, the excavation conduct in this case is fundamentally lawful, as it constitutes the legitimate exercise of the individual's property rights. Accordingly, there is no consensus on the determination of liability for the resulting damage. To summarize, one perspective maintains that the

[11] According to Islamic jurisprudence, the Arabic term "*Ijmā'*" (i.e. consensus) refers to the agreement reached by the legal creators of Muslim society at any time after the death of prophet Muḥammad (PBUH) on any matter. See Al-Āmidī, Abū al-Ḥasan 'Alī bin Abī 'Alī Mu**ḥ**ammad bin Sālim (AH. 551-631 / AD. 1156-1233), ed. 'Abd al-Razzāq 'Afīfī, *Al-Iḥkām fī Uṣūl al-Aḥkām* (Riyadh: Dār al-Ṣamī'ī, AH. 1424 / AD. 2003), 1: 261; Al-Shawkānī, Muḥammad bin 'Alī (AH. 1173-1250 / AD. 1760-1834), ed. Abī Ḥafṣ Sāmī bin al-'Arabī al-Asharī, *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min 'Ilm al-Uṣūl* (Riyadh: Dār al-Faḍīlah, AH. 1421 / AD. 2000), 1: 347-348.

[12] Al-Shāṭibī, Abū Isḥāq Ibrāhīm bin Mūsā bin al-Lakhmī al-Gharnāṭī al-Mālikī (AH. ? -790 / AD. ? -1388), ed. 'Abdullāh Darrāz, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah* (Beirut: Dar al-Ma'rifah, AH. 1422 / AD. 2001), 2: 650; Abū Zahrah, Muḥammad bin Aḥmad (AH. 1316-1394 / AD. 1898-1974), *Uṣūl al-Fiqh* (Egypt: Dār al-Fikr al-'Arabī, AH. 1377 / AD. 1958), 228; Badrān, Abū al-'Aīnayn Badrān, *Uṣūl al-Fiqh al-Islāmī* (Alexandria: Muassasah Shabāb al-Jāmi'ah, AH. 1405/ AD. 1985), 243.

perpetrator should bear liability for compensating the victim's losses, as this ruling is supported by an established Islamic legislative principle: "*Dar' al-Mafāsid Awlā min Jalb al-Maṣliḥ*[13]" (meaning that preventing harm takes priority over securing benefit).[14]

(2) A Means That May Probably Lead to Disastrous Consequences

The second category of instruments that may produce negative outcomes refers to those that, based on the most reasonable speculation, carry a high probability of causing adverse consequences and rarely, if ever, generate positive outcomes. Examples include the act of selling weapons to belligerent parties engaged in armed conflict, and the case of a Muslim selling grapes to wine producers, among other similar scenarios. It should be noted that Al-Shāṭibī, the master of Islamic jurisprudence of the Mālikī school, explicitly put forward that in accordance with the consensus reached by legal scholars, such trading activities are invalid and must be prohibited.

It should be emphasized that, excluding other Islamic legal schools of thought, only legal scholars adhering to the Mālikī and Ḥanbalī madhhabs hold that such trading activities are impermissible. This position is rooted in the fact that these activities carry a high probability of resulting in harmful outcomes. Despite the absence of definitive certainty regarding the occurrence of such negative results, these scholars maintain that the generally recognized and prevailing probabilistic assumption serves as the valid foundation for establishing Islamic legal norms. Accordingly, where a particular practice carries a high likelihood of leading to adverse consequences, it may be ruled impermissible based solely on this probability.[15]

(3) A Means That Often Lead to Negative Consequences

The third category of instrumental approaches often produces negative outcomes, yet such outcomes are not inevitable, nor can a definitive absolute probability of consistent negative outcomes be established. Numerous examples illustrating this category of approaches are documented throughout Islamic legal scholarship, and this article selects only three such instances for discussion.

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[13] Al-Zarqā, Muṣṭafā Aḥmad (1904-1999), *Sharḥ al-Qawā'id al-Fiqhiyyah* (Damascus: Dār al-Qalam, 2nd ed, AH. 1409 / AD. 1989), 205.

[14] Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, 2: 629; Abū Zahrah, *Uṣūl al-Fiqh*, 230; Badrān, *Uṣūl al-Fiqh al-Islāmī*, 243.

[15] Abū Zahrah, *Uṣūl al-Fiqh*, p. 231; Badrān, *Uṣūl al-Fiqh al-Islāmī*, 244.

A. Purchase and sale transactions utilized as a device to obtain interest, commonly termed "*Bayʿ al-Ājāl*" by Islamic jurists, involve one or both parties deferring delivery of the transaction subject or payment of the price to a future date.[16] To elaborate specifically: suppose Party A sells a piece of equipment to Party B for 100,000 US dollars, agreeing that the corresponding amount will be paid six months later, after which Party A immediately repurchases the same piece of equipment from Party B for 100,000 US dollars with immediate payment. This sequence of transactions is equivalent to Party B borrowing 80,000 US dollars from Party A and paying an additional 20,000 US dollars in interest to Party A after six months. While this transaction structure may contain no uncertain elements, it carries a high probability of generating interest, which is the fundamental source of divergences among Islamic jurists on the validity and related attributes of this type of transaction activity.

Furthermore, Imāms Mālik and Ibn Ḥanbal advanced the position that any means capable of leading to interest are unlawful and must be prohibited and guarded against. That said, if a deferred sale does not actually produce interest, that transaction remains lawful and valid. While fundamental commercial norms for transactions are inherently lawful, transactions that carry the potential to generate interest are deemed unlawful as a precautionary measure.

By comparison, Imāms Abū Ḥanīfah and Al-Shāfiʿī held that the fundamental lawfulness of a sale must be maintained, regardless of whether it is structured by extension or other arrangements, unless it can be definitively established that the transaction has produced adverse outcomes. Since commercial activity is fundamentally lawful by default, and the potential for interest to arise from a transaction constitutes only a subjective human prediction that lacks definitive confirmation, mere probability cannot supersede the inherent legality of the transaction.

Islamic jurists, however, generally regard the position advanced by Mālik and Ibn Ḥanbal as the preferred view. This position is supported by evidence from the Ḥadīth, which holds that an initial permission for an act may be set aside in the presence of a reasonable possibility (or established convention) of harm, even in the absence of explicit evidence that the act would open the way to harm.[17]

B. Islamic jurists also hold divergent positions regarding the validity of a marriage contract between a man and a woman that is entered into solely for the purpose of satisfying sexual desire, with no intention of establishing a

[16] Al-Zuḥaylī, *Uṣūl al-Fiqh al-Islāmī*, 2: 915.

[17] Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, 4: 575-578; Abū Zahrah, *Uṣūl al-Fiqh*, 232; Badrān, *Uṣūl al-Fiqh al-Islāmī*, 244.

lifelong commitment. Specifically, the leading legal scholar Mālik held that such a contract is invalid. In his view, all conduct is judged in accordance with the underlying intentions of the actor; since the intended purpose of a marriage contract is to establish a permanent union, a contract entered into without this intention is invalid. The underlying rationale for this position is to prevent the potential misuse of marriage contracts.

In contrast, the leading jurisprudential scholar Al-Shāfiʿī held that a marriage contract is valid so long as it contains no stipulations or clauses that would invalidate the union between the two parties. Per this position, Islamic legal rules do not govern the private intentions of parties, but only govern tangible, verifiable facts. In this context, whether the contract constitutes an abuse of legal arrangements is a matter of individual conscience, rather than an issue for the positive application of Islamic legal rules.[18]

In reality, the core divergence on this issue originates from differing legal perspectives, wherein distinct legal frameworks yield variant conclusions. Specifically, the legal doctrines of the Ḥanafī and Shāfiʿī madhhabs are grounded in the prima facie validity of the engagement, whereas the legal positions of the Mālikī and Ḥanbalī madhhabs account for the objectives of the engagement and the requisite preventive measures to mitigate its potential adverse outcomes.[19] It is well-established in Islamic legal scholarship that Islamic jurists hold a unanimous consensus that "*Khalwah*" (defined as a private or secret meeting between an unmarried man and an unmarried woman) is prohibited. This prohibition is rooted in the rationale that while the act itself does not independently constitute an unlawful act, it carries a material risk of leading to adultery, thereby warranting prohibition.[20]

C. A number of Islamic jurists hold the position that close relatives are prohibited from serving as witnesses or judges in legal disputes involving one another. This perspective, nevertheless, has been challenged by other scholars of Islamic jurisprudence. In a comparable vein, in situations where neither party has submitted formal evidence, judges are precluded from adjudicating disputes on the basis of their personal knowledge of the involved parties, a restriction implemented to prevent bias either in favor of or against any single party. More specifically, the underlying Islamic legal principle maintaining this prohibition holds that such practices may create a pathway to wrongful outcomes—specifically, erroneous judicial decisions—and are accordingly to be avoided. By contrast, the Ḥanafī school of Islamic law maintains that judicial

[18] Ismāʿīl, ʿAbd al-Ḥamīd Abū al-Makārim, *Al-Adillah al-Mukhtalaf fīhā wa Atharuhā fī al-Fiqh al-Islāmī* (Cairo: Dār al-Muslim, n. d.), 175.

[19] Abū Zahrah, *Uṣūl al-Fiqh*, 231.

[20] Badrān, *Uṣūl al-Fiqh al-Islāmī*, 245.

rulings based on a judge's personal knowledge are legally valid..[21]

It should be emphasized that among Islamic jurists, there exists a perspective that the testimony of close relatives may in fact advance the cause of justice rather than produce unjust outcomes. This holds particularly true in cases where close relatives provide testimony against one another. Accordingly, while various jurists permit fathers, sons, or spouses to testify against each other, they do not [22]grant endorsement to such practice. Consequently, Islamic jurists maintain disagreement regarding both the application of "*Sadd al-Dharā'i'*" (the principle of prevention) to specific legal issues, and the scope of its effective application across different scenarios.

(4) A Means That May Rarely Lead to Negative Consequences

The final category of practices encompasses those that rarely lead to negative outcomes, yet have the highest probability of generating positive results. For instance, an individual digging a well in a location where it is unlikely to inflict harm on any other person, speaking out against a dictator, or cultivating a specific type of fruit on their own land. Nonetheless, all of these cases, like many other similar matters, carry a certain possibility of resulting in negative consequences. For example, in the case of grape cultivation, the harvested grapes may ultimately be used for wine production; however, given that grapes themselves are far more likely to be used for beneficial purposes, the remote possibility of their use in winemaking should be disregarded. Accordingly, Islamic jurists generally reach a consensus that this category of practices is permissible. In other words, the fundamental principle governing practices of this type is permissibility — no individual may be prohibited from engaging in such conduct solely on the grounds that it may potentially lead to negative consequences. By the same token, no individual may be barred from testifying as a witness in a judicial dispute merely out of fear that the witness may commit perjury, nor may any individual be prevented from disclosing the truth to authoritarian rulers solely on the basis that doing so may potentially lead to negative consequences.[23]

In summary, practices prohibited under Islamic law are those whose resulting negative consequences outweigh their original benefits; a typical example is digging a well on a fenced public pedestrian pathway. Conversely, practices whose original benefits exceed their potential negative consequences

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[21] Ibid.

[22] Ibid., 244; Ismāʻīl, *Al-Adillah al-Mukhtalf fīhā wa Atharuhā fī al-Fiqh al-Islāmī*, 211; Shalabī, Muḥammad Muṣṭfā, *Al-Fiqh al-Islāmī bayn al-Mithāliyyah wal-Wāqiʻiyyah* (Beirut: Al-Dār al-Jāmiʻiyyah, 1982), 186.

[23] Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʻah*, 2: 638; Abū Zahrah, *Uṣūl al-Fiqh*, 230; Badrān, *Uṣūl al-Fiqh al-Islāmī*, 245.

— such as planting grapes that may incidentally be used for winemaking — are not prohibited by Islamic law. In other words, regardless of the outcomes that a given practice may produce, whether societal demand for that practice and its corresponding outcomes can be met through alternative methods is a critical factor in determining whether other practices should be prohibited. This principle, however, should not be interpreted as meaning that the existence of societal demand for a given practice renders its existence and development an absolute necessity. Rather, the core consideration is that if a practice used as a means to an end were prohibited, the majority of the public would be placed in a difficult position. Thus, prohibiting such a practice would run counter to the spirit of magnanimity inherent in Islamic law.

3. The Objective and The Medium

This theme constitutes a prerequisite for examining and differentiating Islamic legal norms governing social conduct and interpersonal interaction. Its purpose is to demarcate content falling within the hierarchy of objectives (that is, Islamic law occupies the primary position in defining the goals to be attained) from content belonging to the hierarchy of means (that is, Islamic law holds a secondary position due to its dependence on other conditions). Accordingly, this topic is of considerable significance, yet early Muslim scholars did not conduct corresponding in-depth research on it. Instead, their exploration was restricted to issues collectively categorized as "*al-Dharā'i'*" (the principle of prevention). Consequently, these scholars equated "*Dharī'ah*" (meaning means) with "*Wasīlah*" (meaning medium), and labeled implemented means as "*Maqṣad*" (meaning objective). In reality, a clear distinction exists between the "means" and "medium" through which an "objective" is achieved. Therefore, prior to investigating the Islamic legislative principle of "*Sadd al-Dharā'i'*" (the principle of preventing harmful consequences before they occur), a comprehensive analysis of the concepts of "objective" and "medium" is necessary.

In fact, with the exception of the discussions on "objective" and "medium" presented by Imām Ibn 'Abd al-Salām, a prominent Mālikī jurist, in his work "*Al-Qawā'id al-Kubrā*[24]" (The Great Rules), and the supplementary analysis provided by Imām Al-Qarāfī, also of the Mālikī school, in his work "*Al-Furūq*", the author of this article has not identified any other Muslim scholars who have conducted dedicated research on this topic outside the framework of

[24] Ibn 'Abd al-Salām, 'Izz al-Dīn Abū Mu**ḥ**ammad 'Abd al-'Azīz bin 'Abd al-Salām bin Abī al-Qāsim bin al-Ḥasan al-Sullamī (AH. 577-660 / AD. 1181-1262), ed. Nazīh Kamāl Ḥammād and 'Uthmān Jumu'ah Ḍamīriyyah, *Al-Qawā'id al-Kubrā (Qawā'id al-A**ḥk**ām fī Maṣāli**ḥ** **al-An**ām)* (Damascus: Dār al-Qalam, AH. 1421 / AD. 2000).

preventing the spread of harmful consequences. For this reason, this article integrates the relevant discussions of these two masters of jurisprudence to conduct the present study, as their separate expositions cannot meet the research requirements of this topic.

Specifically, since interests and harms are categorized on the basis of the distinction between objectives and media, the themes of Islamic legal rules are also divided into two categories. Al-Qarāfī held that "the objective encompasses both interest and harm per se, while the medium consists of the approaches and methods through which the objective is attained.[25]" Additionally, Ibn ʻAbd al-Salām maintained that "the medium leading to the optimal objective is the optimal medium, while the medium leading to the worst objective is the worst medium, with certain objectives and media falling between these two extremes." Thus, media are classified according to the degree of interest and harm. Allāh guides those who correctly grasp the hierarchy of interests, enabling them to recognize advantages and disadvantages and distinguish the order of priority. Nevertheless, scholars may hold divergent views on the ranking of certain levels of interest; consequently, when it is established that not all interests can be realized, disagreements may also arise over which interests should be prioritized. Similarly, those whom Allāh correctly guides to understand the hierarchy of harms are able to recognize the urgency of harms and distinguish their severity when multiple harms occur simultaneously. However, scholars may disagree on the ranking of certain levels of harm; as such, when it is confirmed that not all harms can be avoided, disagreements may also emerge over which harms should be prevented first. Abundant and diverse examples of the content discussed above are present throughout Islamic law.[26]

Furthermore, Ibn ʻAbd al-Salām posits in the chapter "Explaining the Hierarchy of Interests" of his treatise "*Al-Qawāʻid al-Kubrā*": "The Prophet Muḥammad (peace be upon him) ranked *Jihād* secondary to *Īmān*[27], because the value of Jihād is not intrinsic, but derivative from its function as a means to an end.[28]" Thereafter, Ibn ʻAbd al-Salām further notes in the chapter

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[25] Al-Qarāfī, *Kitāb al-Furūq*, 2: 450-453; *Sharḥ Tanqīḥ al-Fuṣūl fī Ikhtiṣār al-Maḥṣūl fī al-Uṣūl*, 352-354.

[26] Ibn ʻAbd al-Salām, *Al-Qawāʻid al-Kubrā*, 1: 74-75.

[27] It is worthy to note that according to an authoritative Ḥadīth: "Someone asked the Messenger of Allāh (PBUH), 'Which good deed is the most superior?' The Messenger replied, 'Believe in Allāh and His Messenger.' The other person asked, 'What comes next?' The Messenger replied, 'Strive in the way of Allāh .' The other person asked, 'What is it again?' The Messenger replied, 'Pilgrimage that pleases Allāh .'" Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, no. 26, 199; Muslim, *Ṣaḥīḥ Muslim*, no. 248, 101.

[28] Ibn ʻAbd al-Salām, *Al-Qawāʻid al-Kubrā*, 1:76.

"Classification of Benefits and Harms" of the same work: "Without exception, the appointment of judges and governors constitutes a means to the realization of public benefits, just as the appointment of judicial aides also serves as a means to the realization of public benefits. Likewise, … a witness functions as a means to the completion of testimony; testimony presented in court serves as a means to the rendering of a judicial ruling; and a judicial ruling acts as a means to the realization of benefits and the prevention of harms.[29]"

A review of the discourse on ends and means advanced by Ibn 'Abd al-Salām and Al-Qarāfī makes clear that both leading Islamic legal scholars confined their analysis to the categorical framework of "benefit" and "harm". This article, by contrast, pursues a deeper-level examination of the concepts of "ends" and "means". This investigation is prompted by the pressing need among Islamic legal studies scholars to advance a more profound comprehension of these two concepts. Additionally, while ends and means may occupy similar hierarchical positions within the categorical system of legal rules established by Islamic law, from the legislative perspective, the legal provisions governing interpersonal interactions involving benefits and harms vary contingent on whether a given conduct is classified as an end or a means. For this reason, a detailed elaboration on these two distinct dimensions of human conduct is required.

(1) The Purpose

The term "*Maqaṣad*" (purpose) refers to conduct planned by human beings for their own benefit, specifically the outcomes that humans seek to attain through various means or are required to comply with. This category of conduct is divided into two classifications: the first is grounded in "*Maqāṣid al-Shāri'*" (the purposes of the Legislator), and the second is grounded in "*Maqāṣid al-Nā*s" (the purposes of human beings (*themselves*).[30]

The purposes of the Legislator denote the specific objectives underlying Islamic legal provisions across all domains of interpersonal interaction. In concise terms, these objectives consist of the approaches and measures that the Legislator institutes to advance beneficial outcomes for the public and safeguard the public interest connected to individual conduct. This framework is designed to prevent human error stemming from negligence or partiality, and to avert harm to established public interests caused by vanity and the pursuit of personal gain. It encompasses the adherence to and preservation of prudential principles, as well as the adoption of judicious measures in the formulation of Islamic legal rules governing human conduct, such as upholding

[29] Ibid., 1: 80-81.

[30] Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, 2: 3-313.

the enforceability of credit terms in mortgage contracts, codifying family structures in marriage contracts, and eliminating enduring harm in the context of divorce.

With regard to the purposes embedded in human conduct, the concept encompasses all objectives associated with activities including the conclusion of contracts, the execution of commercial transactions, the payment of penalties, the filing of legal claims, and the achievement of mutual settlements between parties. This classification of purposes may be further divided into two subcategories. The first subcategory is both the most significant and the most widespread, encompassing conduct that is universally acknowledged by all or the majority of rational persons, who hold that these activities are necessary for the normal, ordered functioning of social life—examples include buying and selling, leasing, and lending. Additionally, this subcategory includes Islamic legal provisions that constitute core elements of regulatory conduct, such as the delineation of responsibilities in lease contracts, the granting of extensions in pre-purchase transactions, and the prohibition on the misappropriation of charitably donated property. Knowledge of this category of conduct is derived from historical analysis of human social conditions.
The second subcategory, by contrast, is neither of primary importance nor widely prevalent. It comprises the targeted outcomes that specific groups or individual persons intend and plan to pursue, as these purposes are tailored to the particular circumstances of the relevant actors. A key example is "*'Ariyyah*" (pre-sale). These purposes may be reliably identified through explicit indicators, symbolic markers, circumstantial evidence, or demonstration of urgent need. Furthermore, the two aforementioned categories of purposes are each subdivided into "*Ḥuqūq Allāh*" (the rights of Allāh) and "*Ḥuqūq al-Nās*" (the rights of mankind).

As for the "rights of Allāh", which does not refer to the apparent meaning attributed to the rights that constitute the essence of Allāh , as the rights of Allāh belong to the field of Islamic doctrine in this sense[31], such as the meaning expressed by the Qur'ān and the Ḥadīth. Regarding the Qur'ān, Allāh explicitly states: "I have only created genies and men, that they may worship Me. No sustenance do I require of them nor do I require that they should feed Me." (Al-Qur'ān, Sūrah al-Dhāriyāt [51]: 56-57) Regarding the Ḥadīth, for example, it is narrated by Mu'āz that: "I rode a donkey named '*Wufar*' with the prophet (PBUH), with the prophet in front and me behind. The prophet said, 'Mu'āz! Do you know what the duty of mankind is to Allāh ?' I said, 'Allāh and his

[31] Ibn 'Abd al-Salām, *Al-Qawā'id al-Kubrā*, 1: 219-222; Al-Qarāfī, *Kitāb al-Furūq*, 1: 269-270; Nyazee, *Islamic Jurisprudence*, 72-97.

Messenger know best.' He said, 'The duty of mankind to Allāh is to worship Allāh and not associate anyone with Him.'"[32]

However, the concept of "Allāh's rights" based on the above the Qur'ānic verse and the Ḥadīth is not the intention expressed in this article. Instead, the intention of this article is to refer to a systematic set of rights belonging to the entire population and society through the term "Allāh's rights", which can achieve the general interests of society or the interests of the majority of people. In addition, this article specifically points out that people cannot realize their right to self-protection through this term. Therefore, "Allāh's rights" refer to the rights upheld by Allāh's obligations and require people to comply with these obligations, which cannot be ignored by anyone, as the essence of these rights is a medium for upholding the universal purpose and ultimate goal of Islamic law. Besides, these rights also help prevent actions taken by individuals or groups in pursuit of personal or group interests from undermining these purposes and objectives. Similarly, these rights also help to uphold all the rights that are considered weak and cannot be defended by themselves. In fact, this type of right, such as the right to public finance and the right of persons without legal capacity.

The concept of "human rights" constitutes a core component of Islamic law, referring to an individual's capacity to pursue personal benefits and avoid harm through specific actions, provided that such actions do not impair the public interest, inflict widespread harm, or violate the personal interests of others in the course of realizing one's own interests. Accordingly, human rights represent the primary focus of Islamic law, which places the welfare of the people at the center of its priorities.

It should be clarified that in Islamic law, "the rights of Allāh" and "the rights of mankind" are often interconnected. In certain circumstances—including cases of retribution for murder, defamation of chaste women, and rape—the rights of Allāh take precedence. In other scenarios where the rights of Allāh can no longer be restored, the rights of mankind may occupy priority position. A typical example is when a victim pardons an intentional killer before the victi''s death: since the absolute prohibition on violation of the right to life has already been irreversibly breached, and the original deterrent effect of the prohibition has been lost, individual rights are prioritized in adjudication. Nevertheless, the rights of Allāh are not completely disregarded in this scenario: the perpetrator who receives the victim's pardon is still

[32] Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, no. 2856, 5967, 6267, 6500, and 7373, 767, 1437, 1488, 1528, and 1692; Muslim, *Ṣaḥīḥ Muslim*, no. 144, 87.

required to receive a sentence of one hundred lashes and one year of imprisonment.[33]

(2) The Medium

The concept of "*Wasā'il"* (medium) refers to the legal rules established by the Legislator as an instrument to give effect to other legal provisions, specifically a means of attaining Sharia's ultimate ends and objectives. A medium is thus not an end in itself; rather, it constitutes the most appropriate means of achieving other legal purposes and objectives. In the absence of a suitable medium, the ultimate ends and objectives of Islamic law risk being frustrated, or may not be fully realized.

For example, the requirement of public witnessing and formal announcement for a valid marriage contract is not an end in itself, but rather a medium to eliminate any conflation between lawful marriage and licentiousness or informal cohabitation. Similarly, the requirement that collateral be delivered to the mortgagee under a mortgage contract is not self-serving; instead, it serves the core purpose of the mortgage (that is, guaranteeing repayment of the secured debt) and ensures the security of the creditor's claim, preventing the mortgagor from granting subsequent mortgages that would displace the original mortgagee's priority right.[34]

It is important to note that, in common with the classification of legal purposes, media are also categorized into two types: those falling under "Ḥuqūq Allāh" (rights belonging to Allāh) and those falling under "*Ḥuqūq al-ʿIbād*" (rights belonging to mankind). For instance, the prohibition of bribing judges is classified as a "Ḥaqq Allāh" (right of Allāh). This prohibition is not an end in itself; rather, its purpose is to guarantee that litigants obtain what they are rightfully owed and that public officeholders discharge their mandated duties. Furthermore, under the Mālikī school of Islamic jurisprudence, the immediate transfer of gifted property is a required medium for the validity of a gift contract, established to prevent barriers to the completion of gifts, and this rule is also classified as a "*Ḥaqq Allā*h". Its purpose is to prevent individuals from circumventing inheritance rules through testamentary gifts, or from bequeathing more than one-third of their estate as permitted under Sharia. Similarly, contractual obligations become binding either upon contract

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[33] Ibn Rushd, Abū al-Walīd Muḥammad **bin** Aḥmad **al-**Ḥafīd **al-Qurṭ**ubī al-Andalusī **(AH. 520-595 / AD.1126-1198),** ed. Mājid al-Ḥamwī *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid* (Beirut: Dār Ibn Ḥazm, AH. 1416 / AD. 1995), 4: 1664; Al-Dasūqī, Shams al-Dīn Muḥammad bin Aḥmad bin ʻArafah al-Mālkī (AH. ?-1230 / AD. ?-1815), *Ḥāshiyah al-Dasūqī ʻalā Sharḥ al-Kabīr* (Egypt: Maṭbaʻah ʻĪsā al-Bābī al-Ḥalabī wa Shurkāh, n. d.), 4: 287.

[34] Ibn Rushd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, 4: 1431-1442。

formation or upon the commencement of performance, which acts as a medium to avoid the revocation of concluded contracts. All these rules are classified as "*Ḥuqūq Allāh*", as they serve to achieve the core Islamic legal objective of preventing disputes and conflict between individuals.

The classification of media also extends to the "causes" and "underlying wisdoms" of Islamic legal rules, the necessary "conditions" for the implementation of a rule, and the absence of any legal "impediments" to its application. In addition, media encompass all relevant procedural matters, such as the required form of contracts and declarations from donors to charitable funds, as these formalities serve as a medium for clarifying the intentions and terms agreed by contracting parties and donors.

It is a well-established principle that the status of medium is inherently subordinate to that of the end it serves. This principle has become a foundational maxim of Islamic jurisprudence: *"Idhā Saqaṭ I'tibār al-Maqṣad Saqaṭ I'tibār al-Wasīlah*" ("When the purpose is extinguished, the medium that serves it is also extinguished[35]"). This principle is illustrated by the case of voidable marriage contracts entered into by critically ill persons. To elaborate: revocation of an engagement is permitted as a medium to protect the inheritance rights of legal heirs. If, however, the patient recovers before the engagement is revoked, the engagement may no longer be revoked.[36] A second example is the rule that a divorced mother's custody of her child from the prior marriage terminates upon her entry into a second marriage.[37] If the child's legal guardian (the child's biological father) does not claim custody after the mother's divorce from her second husband, the child may not be separated from the mother, as this rule's core purpose is to protect the child from harm. In this case, since the triggering condition for the purpose of the rule (the mother's ongoing second marriage) no longer exists, the medium established to achieve that purpose also ceases to apply.

Furthermore, this rule is also applicable to certain contractual forms employed in contexts that differ from their original usage, provided that the new meaning is connected to the intended meaning. An example of this is when a guardian uses the phrase "I gift" or similar wording in a marriage contract, such as the statement "I authorize you to have her", where the expression is relevant to the concept of "betrothal ceremony". Accordingly, Muslim scholars have formulated the foundational principles and legal rules of Islamic jurisprudence, referred to as legal maxims: "When meanings are clear and

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[35] Al-Qarāfī, *Kitāb al-Furūq*, 2: 452; Ibn 'Abd al-Salām, *Al-Qawā'id al-Kubrā*, 1: 168 and 175.

[36] Ibn Rushd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, 3: 1012-1013.

[37] Ibid., 3: 1033-1034.

valid, words are of no legal consequence" (*Idhā Istaqāmat al-Maʻānī fa lā ʻIbrah bi al-Alfāẓ*), "All matters are determined by their intentions" (*Al-Umūr bi-Maqāṣidihā*, meaning that the legal effect arising from a given matter shall be determined in accordance with the intention of the actor), and "In contracts, legal weight is given to intentions and meanings, not to words and outward forms" (*Al-ʻIbrah fī al-ʻUqūd lil-Maqāṣid wal-Maʻānī lā lil-Alfāẓ wal-Mabānī*).

It is acknowledged that multiple means may be employed to attain the same objective. Consequently, Islamic law identifies the optimal means among available options and establishes requirements to fulfill the intended purpose, ensuring that the objective is achieved in a complete, stable and effective manner. This constitutes an extensive domain that reflects the depth, breadth and foresight of Islamic law in addressing matters of public interest, and also demonstrates the precision of Islamic law and its rejection of error and extremism. For this reason, in-depth examination and research into the various methodologies adopted by Islamic law to uphold this principle represents one of the primary objectives that legal drafters and jurists must prioritize in the processes of legal reasoning, legislation, and analysis of the underlying rationales of Islamic law. This principle must also be a particular focus for judges and rulers during the implementation of Islamic law. In practice, this principle is characterized by multiple sub-principles and far-reaching influence.

If we suppose that multiple means leading to the realization of the same purpose and objective are equivalent under all circumstances, the position of Islamic law is to treat these means equally and permit the responsible party to select any one of them. This is because, as stated previously, means are not pursued for their own sake. By way of illustration, Allāh the Almighty states in the Qur'ān: "If any of your women commit lewdness, bring forward four credible witnesses from among you against them; if they testify, confine the women to their houses until death takes them, or Allāh ordains another course for them" (Al-Qur'ān, Sūrah al-Nisā' [4]: 15). This command set forth in the Qur'ān is binding upon all people and society, with the objective of enforcing imprisonment and punishment upon the women in question. The outcome is identical whether the punishment is implemented by the woman's guardian, her husband, or a judge. Nevertheless, owing to changes in social circumstances that have weakened the authority of women's guardians or their husbands, judges have been specifically assigned the responsibility of implementing this punishment, as it constitutes a more effective instrument for the prompt and uninterrupted application of the "detention" penalty. To elaborate, in an era of modesty and simple social order, implementation of this punishment by women's guardians was easier, quicker, and more feasible. In

contrast, in an era where a fully developed judicial system is established, a woman's guardian may lack the capacity to enforce detention to the same extent as a judicial ruling.

In conclusion, all the foregoing cases concern the means employed to fulfill the objectives of Islamic law, which constitute distinct categories of objects of obligation. Once a causal link is established, variations in the means employed to attain the desired ends and objectives shall not be taken into consideration. Accordingly, the majority of Islamic jurists uphold a uniform legal rule prohibiting the consumption of wine, fermented date juice, and all other beverages capable of causing intoxication, regardless of whether their intoxicating effect is established or unproven, and stipulate a fixed punishment—namely, 80 lashes—for offenders. This position rests on the ground that these beverages do not differ in their intoxicating effect.

Likewise, Islamic legal provisions prescribe qisas (equal retaliation) for intentional homicide committed by means of an instrument, where death results when the instrument is employed with the intent to be used against a human being. It is important to note that it is irrelevant whether the instrument causes the victim's death immediately upon a single application or requires repeated use to produce the fatal outcome. Consequently, the legal rule of qisas applies equally in cases of intentional homicide, regardless of whether the homicidal means consists of swords, firearms, projectiles, throwing stones from an elevated position, throwing the victim to a predatory wild animal, or any other instrument or method.

In summary, means and ends can be either good or evil, material or ethical, tangible or intangible, and do not necessarily exist concurrently. For example, under Islamic law, the act of "seclusion" between unmarried men and women is unlawful, as such private seclusion constitutes a potential means for adultery, irrespective of whether this means actually leads to that outcome. In other words, by reason of the certainty or possibility of extramarital relations between men and women, all sexually suggestive conduct that is foreseeable to lead to adultery is equally prohibited.

4. The Principle of Prevention

Having discussed the general objectives, methods, purposes and carriers of Islamic law, this paper further analyzes the "prevention" principle in Islamic legislation, that is, preventing the occurrence of prohibited events. It is generally recognized that preventing the spread of evil consequences constitutes a crucial objective of Islamic legislation. In fact, this implication is embedded in the specific rules of Islamic law, its interaction approaches with ethnic groups across the globe, and the strategies formulated to achieve its

goals. Accordingly, the prevention principle is specifically embodied at three distinct levels. For researchers, a careful examination and classification of human behaviors will lead to the division of prevention methods into the following two categories.

First, certain acts are inherently definite means that trigger adverse consequences, as evil constitutes an invariable attribute and an inherent component of these means. The review of such means is a fundamental principle of Islamic legislation and the basis for numerous Islamic legal norms, with the prohibition of alcohol consumption being a typical example.

Second, some acts may serve as inducements for adverse consequences of varying degrees, and the possibility of evil arising from these acts also differs. This category is the rationale and core theme of the explicit provisions in the Qur'ān and the Ḥadīth, exemplified by the prohibition of selling food before full delivery is completed.[38] In fact, certain forms of this type of acts emerged not during the lifetime of the Prophet Muhammad, but after his passing. This is the reason why Islamic jurists have long held divergent views on whether these forms of acts should be permitted or prohibited, leading to both consensus and disagreement on the legal norms governing these acts. Specifically, their uncertainty stems from the characteristics of the consequences of these acts: the consequences may be overt or covert, frequent or rare, short-term or long-term, and may either conflict with or align with the necessity of eliminating harm.

To elaborate, the first category of means constitutes the foundation for analogical reasoning in this field, while the second category falls into the application scope of "explicit analogy" or "implicit analogy"[39]. For the latter,

[38] It is narrated that the prophet (PBUH) said: "Whoever buys food, do not sell it until you receive it." See Mālik, Abū 'Abdillāh Mālik bin Anas bin Abī ʿĀmir bin al-Ḥārith al-Aṣbaḥī al-Ḥamīrī (AH. 93-179 / AD. 711-795), ed. Bashshār 'Awwād Ma'rūf, *Al-Muwaṭṭa'* (Bierut: Dār al-Gharab al-Islāmī, 2nd ed., AH. 1417 / AD. 1997), no. 1876, 171; Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, no. 2133, 611; Muslim, *Ṣaḥīḥ Muslim*, no. 3845, 639.

[39] The term "explicit analogy" or "direct analogy" (*Al-Qiyās al-Jalī*) in Islamic jurisprudence refers to an argument composed of a more sufficient reason in analogical reasoning, where a new case, although not specified by the textual source of Islamic law (i.e. the Qur'ān and the Ḥadīth), belongs to the meaning of the text. In other words, the valid reasons for this analogy are more evident in the new case than in the original case, or the equivalence or valid reasons between the original and new cases are very obvious, as the differences between the two are eliminated by clear evidence. As for "implicit analogy" or "indirect analogy" (*Al-Qiyās Khafī*), it involves a process in which legal creation cannot easily find effective reasons for legal rules, but is inferred from texts through various methods. In other words, the effective reason for this analogy is more hidden in the new case than in the original case, or the difference between the original and new cases is eliminated through speculation. See Al-Shawkānī, *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min 'Ilm al-Uṣūl*, 2: 921; Hallaq, Wael B.,

its application depends on how Islamic jurists accurately identify the correlation between the analogized act and the original case. Therefore, the consideration of these means also confirms that they fall into the category of safeguarding interests and preventing harm, and various forms of "deferred sale" contracts are typical examples. Imām Mālik does not approve of and prohibits such contracts, on the ground that they are often used by people as a tool to legalize interest-based transactions, which are inherently harmful evil acts. In Mālik's view, the intention of parties entering into such contracts will facilitate the expansion and spread of harm, hence any interest generated from such contracts is prohibited. This is why Mālik holds a skeptical attitude toward such contracts, because the intention of the parties does not affect the inherent nature of the legislative judgment. Without this consideration, the relevant ruling would be different: when such transactions become prevalent in the market, actors seeking to legalize prohibited acts will deliberately pursue the harmful consequences. In fact, this view constitutes an important part of Mālik's legal thought, but its significance has been misinterpreted by many. As Al-Qarāfī pointed out in his classic work "*Al-Furūq"*, even some insightful Islamic jurists mistakenly hold that "if these transactions are prohibited on the grounds of precaution, then transactions concluded by devout and virtuous Muslim believers should not be subject to the prohibition".[40]

In reality, this understanding is incorrect. Human intentions cannot alter Islamic legislation, and any such attempts should be interpreted as indications or symbols of the perpetrators' insistence on legitimizing conduct that is prohibited under Islamic law. It is necessary to clarify that intentions do not affect outcomes beyond the scope already stated above. For example, if an individual engaged in usurious transactions during the pre-Islamic Jahiliyyah period, and after converting to Islam converted these usurious transactions into *Salam*[41] (i.e., advance-purchase pre-order transactions), such conduct is no longer deemed prohibited. This is because the individual has replaced usury gains with legitimate profits from *Salam* transactions, thereby avoiding the prohibited sin inherent in usurious activities. Furthermore, the individual's

A History of Islamic Legal Theories (Cambridge: Cambridge University Press, 1999), 96-104; Hasan, Ahmad, *Analogical Reasoning in Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 1986), 79-91.

[40] Al-Qarāfī, *Kitāb al-Furūq*, 3: 1056; *Sharḥ Tanqīḥ al-Fuṣūl fī Ikhtiṣār al-Maḥṣūl fī al-Uṣūl*, 356.

[41] The Islamic legal term "*Salam*" refers to customers pre-ordering crops before they mature; in other words, Islamic law allows advance payment for the purchase of goods supplied or produced. For a detailed discussion on this issue, please refer to: Al-Zuḥaylī, *Al-Fiqh al-Islāmī wa Adillatuh,* 4: 597-630.

Salam transaction retains all the legally permitted benefits associated with this type of transaction. At the same time, it must be emphasized that the formulation of Islamic legal norms never aims to impose unnecessary burdens on individuals. Accordingly, depriving individuals of legitimate profits solely on the basis of original intention is inconsistent with the objectives and purposes of Islamic law. It can therefore be concluded that, in accordance with the strength and degree of individuals' self-discipline, the Islamic legislative principle of "gradually preventing the occurrence of harmful consequences" can be applied with corresponding levels of strictness or leniency.

If the concept of "prevention" is not specifically defined as referring to measures that block pathways leading to harm, it should be restated that Islamic law prohibits certain means leading to evil while permitting others, a position clearly articulated by Al-Qarāfī in his work "*Tanqīḥ al-Fuṣūl*" (The Refinement of Legal Principles).[42] However, this article adheres to the terminology established by Islamic jurisprudence, where "the principle of prevention" specifically refers to measures targeting pathways that lead to evil. It is therefore necessary to remind readers that Islamic law prioritizes means that lead to positive outcomes and public welfare, and incorporates these means into binding mandatory legal rules, regardless of whether their superficial form might otherwise be deemed prohibited or merely permitted. This normative position is formalized in Islamic jurisprudence as the principle that "if an obligatory duty can only be fulfilled through a specific means, that means is also obligatory", and this approach is classified in Islamic jurisprudence as prudence or prevention (*Iḥtiyāṭ*). It should also be noted that defending one's country through armed resistance inherently carries risks that may lead to the loss of the defender's life and property. Even so, armed resistance remains a core obligatory duty, because it constitutes the necessary means to defend national territorial integrity and safeguard social security. Abandoning resistance against aggressors entirely would result in far greater harm to the general population. This specific example falls under the fundamental Islamic legal framework that divides human conduct into means (*Wasā'il*) and objectives (*Maqaṣad*). For this reason, readers should exercise caution to avoid conflating these two distinct lines of reasoning.

Additionally, it must be noted that there is a nuanced distinction between "religious excess" (*Al-Ghuluww fī al-Dīn*) and the legal principle of "prevention" with respect to the interpretation of Islamic law and the practice of legal reasoning. The principle of prevention applies only when evil and harm are actually present, whereas religious excess involves embellishing

[42] Al-Qarāfī, *Sharḥ Tanqīḥ al-Fuṣūl fī Ikhtiṣār al-Maḥṣūl fī al-Uṣūl*, 353.

rulings on actions that are either permitted or prohibited under Islamic law. It also refers to the practice of performing obligatory acts mandated by Islamic law through more stringent measures than those actually required by legislators, under the pretext of ensuring that the legislators' original intentions are fulfilled. In Hadith, this orientation is explicitly described as "excessive overreach" (*Ta'ammuq*[43]) and "pedantic nitpicking" (*Tanaṭṭ'*[44]).

It is important to recognize that religious excess manifests across multiple hierarchical levels, encompassing not only the so-called "pious" acts—whether an individual voluntarily imposes excessive strictures on themselves or coerces others to accept such strictures—but also blameworthy forms of incitement and seduction. Both scholars who engage in independent reasoning and inductive interpretation of Islamic legal norms, as well as authoritative guides who issue legal opinions on these norms, face significant challenges in this area. They must therefore steadfastly avoid the pitfalls of excess and overreach, and exercise rigorous caution when formulating behavioral standards for the general public, given the gravity of their responsibility.

Furthermore, as the prominent modern Egyptian Islamic jurist Abū Zahrah Muḥammad bin Aḥmad (1898–1974) observed, the nature and normative value of any means are determined by its intended outcome, regardless of whether the outcome is intentional or unintentional. When a specific action is confirmed to lead to a particular outcome—whether that outcome is good or evil—it is classified as a means to that end. Accordingly, the actor's intention is not relevant to the objective identification and determination of a means' value; rather, the expected outcome defines the legal value of the means. If the expected outcome is good or praiseworthy, the means employed to achieve it will be similarly classified. If the expected outcome is blameworthy, then regardless of the perpetrator's intention or the actual realization of the outcome, both the perpetrator and the means employed are subject to condemnation. For instance, Allāh the Almighty explicitly commands Muslims in the Qur'an: "Revile not those whom they invoke besides Allāh, lest they out of spite revile Allāh in their ignorance." (Al-Qur'ān, Sūrah al-Ana'ām [6]: 108) This verse articulates four core [45]principles:

First, Muslims are prohibited from insulting idol worshippers, regardless of the inherent evil of idol worship or the subjective intentions behind the insult.

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[43] Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, no. 7241, 1668; Muslim, *Ṣaḥīḥ Muslim*, no. 2570-2571, 449.

[44] Muslim, *Ṣaḥīḥ Muslim*, no. 2670, 1102.

[45] Abū Zahrah, *Uṣūl al-Fiqh*, 228.

Second, by prohibiting the insult of idol worshippers as a means to prevent negative consequences, what might otherwise be permitted or even praised may produce negative outcomes that alter its legal status. Thus, even means that are fundamentally commendable may acquire a different legal valuation if they lead to negative outcomes.

Third, the prohibition is rooted in the possibility that polytheists may respond by insulting Allāh. In other words, this ruling is based on the expected outcome, regardless of whether that outcome will actually materialize. For this reason, Muslims are prohibited from insulting idols and their worshippers irrespective of the ultimate consequences that may result from such action.

Fourth, the intention to produce a specific outcome is irrelevant to the application of this prohibition. Even if a Muslim is unaware of the expected outcome—that the insulted party will retaliate by insulting Allāh—their insult of idol worship remains prohibited. Whether the Muslim's intention is good or malicious, any act of insulting idols or their worshippers is prohibited, because objectively, such action creates a significant probability that the expected harmful outcome will occur.

In summary, researchers shall focus on three key points. First, existing discussions on prevention primarily address instruments that inherently facilitate illegal ends; when even a lawful instrument may be used to serve illegal purposes, the instrument itself becomes unlawful. Nevertheless, the application of the prevention principle also encompasses scenarios where potentially unlawful conduct may yield lawful outcomes, and such conduct shall be permitted if it can avert more severe consequences. In other words, lesser evil may be tolerated to prevent the occurrence of greater evil. For instance, Islamic jurists generally hold that paying ransom to enemies in exchange for the release of one's prisoners of war is permissible. Although providing funds to enemies is deemed unlawful under Islamic legal principles—given that it unequivocally enhances enemy capacity and typically harms one's own side—such conduct is permitted in the context of prisoner exchange, since ransom payments secure the actual release of prisoners of war and thereby strengthen one's own military strength. In fact, this legal perspective is rooted in the principle of prevention, which emphasizes enabling rather than obstructing the adoption of instruments to achieve expected benefits. Accordingly, a state may also pay a specified sum to enemies to prevent them from inflicting greater harm on the public, on the premise that the state is incapable of [46]mounting an effective self-defense. Furthermore, Islamic jurists generally hold that bribery is permissible when

[46] Ibid., 232.

it constitutes the only available measure to prevent oppression and the victim is unable to defend themselves. In response to this position, legal scholars of the Mālikī and Ḥanbalī schools have added an additional constraint: bribery may only be employed as an instrument to defend one's established rights, and is not permitted in cases where the relevant rights are contested.[47]

Second, while the prevention principle can serve as an effective source of Islamic legislation, Islamic jurists hold that excessive reliance on this principle should be avoided. Moreover, there is a general consensus among Islamic jurists that over-application of this source may result in rendering legitimate, even praiseworthy and mandatory conduct unlawful, and therefore such over-application should not be encouraged. For example, a righteous individual refuses to personally oversee the property of an orphan, motivated by avoiding the potential for misconduct. Nevertheless, such refusal appears to overemphasize the risk of potential evil in the instrument, as the Holy Qur'ān provides specific guidance on the regulation of orphans' property, which states: "They ask thee concerning orphans. Say: 'The best thing to do is what is for their good; if ye mix their affairs with yours, they are your brethren; but Allāh knows the man who means mischief from the man who means good." (Al-Qur'ān, Sūrah al-Baqarah [2]: 220) This verse permits the mixing of orphans' property with that of their guardians for entrusted management.

Notably, when discussing the warning from Islamic jurists against excessive reliance on "prevention" to formulate legal rules, Abū Zahrah cited the view of the classical Islamic jurist Ibn al-'Arabī of the Mālikī school: the application of this source requires regulation to ensure its proper and moderate implementation. Abū Zahrah further argues that if instruments are adopted to prevent adverse consequences, it must be confirmed that the consequences in question are those explicitly specified in the texts of the Qur'ān and Ḥadīth. Similarly, when advancing a particular interest through open instruments, the legitimacy of that interest must be sustainably derived by analogy to interests already recognized as legitimate in the texts of the Qur'ān and Ḥadīth. However, out of caution, Abū Zahrah adds that these conditions still represent individual subjective judgments, and are not necessary requirements in the authoritative exposition of this doctrine within the Mālikī school. In addition, Islamic jurists generally argue that the harm caused by a righteous person's refusal to oversee an orphan's property may exceed the harm resulting from accepting such oversight, and therefore the person shall bear corresponding responsibilities as a guardian. If an individual shirks oversight of an orphan's property out of fear of enabling misuse of the

[47] Ibid.

entrusted property, or refuses to testify out of fear of being tempted to lie, this in itself will inevitably constitute a greater evil and shall be avoided.

Third, although "instruments" and "preparatory acts" sometimes overlap, there are still clear distinctions between the two concepts. In brief, "preparatory acts" constitute the necessary components for achieving the intended outcome, meaning that without preparatory acts, the outcome cannot be realized. For example, a contract is the "preparatory act" of a transaction, and the transaction cannot be performed without the contract. However, the relationship between an instrument adopted to achieve a goal and the goal itself is not identical. While instruments are generally employed to bring about expected outcomes, the outcome can also be achieved through other alternative instruments. In other words, the outcome does not depend exclusively on any single instrument. For example, traveling for the purpose of theft constitutes a "preparatory act" of theft, but it is not an instrument of theft, since travel may involve taking a train or plane in a certain direction, which is inherently neutral. Objectively, therefore, it cannot be characterized as an instrument of theft. In contrast, "*Taḥlīl*" (the intermediary marriage[48]) contracted to legalize remarriage between a divorced couple is an instrument, but not a "preparatory act," as the legalization of remarriage does not depend entirely on such an intermediary marriage. Similarly, sexual arousal between men and women is an instrument of adultery, but not a preparatory act of adultery, because adultery can be committed even without such arousal. That is, sexual arousal can only constitute a "preparatory act" of adultery when it directly leads to the commission of adultery between men and women.

Furthermore, in terms of purpose, another difference between means and preparatory acts is that, as mentioned earlier, the former is usually evaluated and declared illegal on an objective basis, even if its intended purpose is not achieved, which is one aspect. On the other hand, if the actual behavior does not become a part of the purpose, then the preparatory behavior has no value. Because the relationship between preparatory actions and their outcomes is subjective, evaluation can only be based on completed or expected outcomes. For example, a Muslim walking towards a mosque is assessed as fulfilling a Friday gathering prayer, but the value of this obligation can only be truly realized when the Muslim actually fulfills the gathering, otherwise it cannot be realized.[49]

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[48] The term "intermediary marriage" in Islamic jurisprudence refers to a marriage contract between a man and a divorced woman solely for the purpose of allowing the divorced couple to reconcile.

[49] Badrān, *Uṣūl al-Fiqh al-Islāmī*, 245-246; Ismā'īl, *Al-Adillah al-Mukhtalf fīhā wa Atharuhā fī al-Fiqh al-Islāmī*, 171.

From this, it can be seen that the principle of prevention seems to be not only a means to prevent people from leading to negative consequences, but also, in a positive sense, it is based on the fundamental purpose and overall goal of maintaining Islamic legal rules (especially the public interest), or rather, its foundation is aimed at achieving certain purposes and goals, such as striving to prevent corruption and evil, which cannot be overturned solely by changing or adopting certain strategies. When such threats arise, prevention is a way for rulers and legal creators to maintain the basic purpose and overall objective of legal rules by closing the door to manipulation and abuse.

It is worth noting that the reason why the Mālikī school of Islamic jurisprudence has become the main representative of the "prevention" doctrine is basically due to its emphasis on the "public interest" while also recognizing it as an independent source of Islamic legal rules. In other words, the rigor of the Mālikī school's theory of "preventing evil consequences before they happen gradually late on" largely stems from its parallel emphasis on the public interest. Due to its roots in achieving the true public interest, the Mālikī school was able to give this doctrine a certain degree of prominence, which other schools of Islamic law cannot provide.

Furthermore, while the concept of "prevention" inherently carries the potential to impede manipulation and abuse, Abū Zahrah cautions against over-dependence on this approach, as prevention itself may also become a vector for manipulation and abuse. Entities overly devoted to employing prevention to counter manipulation and abuse may frequently engage in violations of the fundamental freedoms of third parties, and may impose restrictions on permissible, recommended, and even mandated actions and practices.[50]

Additionally, Islamic jurists have drawn a clear and rigorous distinction between "application strategies" (*ḥiyal*) and prevention. In essence, the core distinction between the two concepts lies in that the former constitutes a method of circumventing legal provisions through targeted action that typically employs ostensibly legitimate means, with the explicit goal of evading legal requirements through the use of facially proper conduct. A illustrative example is when a Muslim transfers property as a gift to another party to avoid fulfilling tax obligations: while gift-giving is legally permitted as a general matter, in this context it is deployed as a tool for tax evasion.

On the whole, the key distinctions between "prevention" and "application strategies" can be categorized into four core points:

[50] Abū Zahrah, *Uṣūl al-Fiqh*, 233.

First, contrary to the standard practice of "prevention", which targets harmful intent to block its harmful outcomes, "application strategies" actively create pathways to advance harmful intent, for the sole purpose of evading the provisions of Islamic law. As a result, methods employed to achieve legitimate outcomes do not fall under the classification of "application strategies", and are instead typically categorized within the framework of pre-empting harmful consequences before they arise.

Second, the intention of the actor carries decisive weight in the definition of "application strategies", while intention does not function as a determining criterion for the pre-emptive prevention of harm.

Third, the scope of the concept of pre-empting minor risks to prevent incremental harm is broader than that of "application strategies", as the former embodies a degree of inherent objectivity and openness that the latter lacks.

Fourth, the classification of "application strategies" is assessed and determined on the basis of the actor's intent, while pre-emptive intervention to address emerging risks is framed by an objective assessment of the foreseeable outcomes of a given action. This objective factor often renders the relevant methods more susceptible to shaping by prevailing social norms and material conditions. That said, in certain contexts, the line between strategic application and preventive measures is not clearly demarcated, and the two concepts may overlap in application.[51]

In summary, "the principle of prevention" represents a normative legal framework established to stop harm before it materializes into actual harm. As such, the harmful outcome does not need to actually occur for the principle to apply. More specifically, the law holds an objective expectation that a given method may produce harmful outcomes; even if the expected harmful outcome does not materialize, the method itself is still deemed unlawful. The aforementioned example of unchaperoned interaction between unmarried men and women falls into this category: even if no adultery actually occurs, such private meetings are still deemed unlawful. Furthermore, since the core purpose of pre-emptive prevention of harm is to intervene before harm occurs, the presence or absence of intent to produce a specific harmful outcome cannot serve as a reliable criterion for assessing the lawfulness of the methods that may lead to that outcome.

5. Conclusion

[51] Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, 4: 655; Mīqā, Abū Bakr Ismāʿīl Muḥammad, *Al-Ra'y wa Atharuh fī Madrasah al-Madīnah* (Beitut: Mu'assasah al-Risālah, AH. 1405 / AD. 1985), 455.

Islamic jurists hold the unanimous position that the principle of prevention mandates the prohibition of acts that would ultimately result in substantial harm, even if such acts do not independently pose an immediate threat. As a core principle of Islamic legislation, the concept of prevention has long been subject to divergent interpretations among Islamic jurists, stemming from its dual functional nature. While certain interpretations by Islamic jurists may deviate from the literal connotation of "preventing the spread of evil", in the context of judicial practice, the scope of this concept may also be extended to cover methods that facilitate the attainment of good. However, when considered as a formal principle of Islamic legislation, "preventing the spread of evil" strictly corresponds to the first connotation: it constitutes a mechanism and intermediary for obstructing the realization of harmful objectives, which also represents the defining functional feature of "preventing the spread of evil". The second extended connotation has not received prominent emphasis in classical interpretations of this doctrine, a circumstance that may be attributed to the fact that the fundamental objective and practical function of the entire Islamic legal system as a whole is to enable access to good, rather than limiting its scope exclusively to the domain of prevention.

In general terms, when Islamic legal provisions establish a specific obligation for a party, the methods required to fulfill that obligation are also classified as obligations; correspondingly, when Islamic legal provisions prohibit a given act, the methods employed to carry out that act are also deemed unlawful.[52] It should be noted that means may occasionally generate both "good" and "evil" outcomes. In such scenarios, if the magnitude of the evil outcome is equivalent to or greater than that of the good outcome, the prohibition of evil takes precedence over the attainment of good.[53] This conclusion is derived from the general maxim of Islamic law which holds that "preventing evil is superior to attaining good". Consequently, prevention and control have gradually evolved into both an independent legal principle and a deductive approach for deriving judicial rulings on issues or conducts that are not explicitly regulated by existing positive law.

In summary, although legal scholars have employed diverging methodological approaches to the theory of preventing the spread of harm, the conclusion formulated by the master jurist of the Mālikī school, Al-Shāṭibī, holds that scholars across all major schools of Islamic law broadly recognize the normative validity of the concept of preventing the spread of harm, with disagreements limited exclusively to its specific modes of application. More specifically, the divergent positions held by different schools on this issue

[52] Al-Qarāfī, *Kitāb al-Furūq*, 2: 451.
[53] Ibid., 4: 614; Badrān, *Uṣūl al-Fiqh al-Islāmī*, 242.

concentrate on two core dimensions: the identification of circumstances that may be classified as instrumental to achieving other ends, and the extent to which the concept of prevention and control may be validly applied.[54] Additionally, it is important to note that the prominent modern Egyptian Islamic jurist Abū Zahrah reached a conclusion consistent with that of Al-Shāṭibī through systematic empirical and doctrinal research: on this issue, the Ḥanafī and Shāfiʿī schools have reached a substantial consensus with the Mālikī and Ḥanbalī schools, with divergences confined to specific granular details.[55]

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[54] Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʻah*, 4: 557.

[55] Abū Zahrah, *Uṣūl al-Fiqh*, 227-228.

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