The Effect of Islamic Fundamental Regulations on Environmental Conservation

Kesan Peraturan Asasi Islam pada Pemuliharaan Alam Sekitar

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Abstract

This study focuses on the legal regulations and jurisprudential dictates that are applicable to environmental conservation. The study employs an analytical and inductive method. It shows the set of regulations that apply to the concept of environmental preservation and then explains analytically how these regulations can legally accommodate questions pertaining to how humans address natural beings, natural resources and each component of the universe. The regulations such as the consideration of public interest, deeds' outcomes, customs, the elimination and compensation of damage and a means taking the value of its final objective will help in the adjustment of legal questions relevant to environmental conservation. The authors ensure that the universal laws and Sharī'ah objectives must complement one another. .

Keywords: Environmental Conservation, Sharī'ah Regulations, Universal Law, Integrity of Universal and Divine Laws, Realization of Public Interest.

Abstrak

Kajian ini memberi tumpuan kepada peraturan undang-undang dan jurisprudens yang berkaitan dengan pemuliharaan alam sekitar. Kaedah yang digunapakai dalam kajian ini adalah kaedah analisis dan induktif. Kajian ini menerangkan tentang peraturan yang dikenakan kepada konsep penjagaan alam sekitar dan kemudian menerangkan secara analisis bagaimana peraturan-peraturan ini secara sah boleh menjawab soalan mengenai bagaimana manusia menangani alam semula jadi, sumber asli dan setiap

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komponen alam semesta. Peraturan-peraturan yang berhubung dengan pertimbangan dan kepentingan awam, hasil perbuatan manusia, adat, penghapusan dan pampasan kerosakan dan cara mengambil nilai objektif akhirnya akan membantu dalam penyesuaian soal undang-undang yang berkaitan dengan pemuliharaan alam sekitar. Pengarang telah memastikan bahawa undang-undang universal dan objektif Sharī ‘ah Islam adalah saling melengkapi satu sama lain.

Kata Kunci: Pemuliharaan Alam Sekitar, Peraturan Sharī ‘ah, Undang-undang Universal, Integriti Undang-Undang Universal dan Agama, Merealisasikan Kepentingan Awam.

Introduction

Environmental conservation is simply the sustainable use and management of natural resources, including wildlife, water, air, and earth deposits. In other words, it is a practice of protecting the natural environment on individual, organizational or governmental levels for the benefit of both natural environment and humans. Conservationists have the view that development is necessary for a better future but only when the changes occur in ways that are not wasteful.[1]

Islamic legislative principles, through the instruments of *ijtihād*, are rich enough to provide solutions and suggestions for all situations and problems of man. It is no wonder that the timeless validity of Islam comes from its flexibility concerning legislation. This attribute of Islamic law emanates from its wide-ranging perspective on finalizing solutions for the problems of time and exploring future prospects. Environmental conservation is one of the most essential issues in the academic arena worldwide. Muslim intellectuals have to consider this issue and play a significant role in their treatment of it.

It is worth mentioning that several articles, books, and conference papers have contributed to the establishment of the environmental discipline from an Islamic point of view.[2] However, we have not found any

[1] See: http://feelfriendly.com/information-preservation-conservation.html (cited on 3/4/2015).

[2] See: Muḥammad Haītham al-Khayyāṭ, *Ṣiḥḥat al-Bī'ah fī Mīzān al-Islām* (Al-Iskandarīyah: Munaẓẓamat al-Ṣiḥḥah al-‘Ālamīyah, 1995); ‘Abdul-Ḥakam al-Ṣa‘īdīy, *Al-Bī'ah fī al-Fikr al-Insānīy wa al-Wāqi‘ al-Īmānīy* (Beruit: Al-Dār al-Maṣrīyah al-

particular concern related to the role of foundational regulations of Islamic law on this subject. Therefore, the purpose of this study is to correlate it with the general *Sharī'ah* evidence and jurisprudential dictates to enrich *Uṣūl al-Fiqh* with contemporary instances for its regulations and to dictate environmental discipline with decisive faculties of Islamic law.

However, it is not our role here to elaborate in detail those Islamic legislative regulations and prove their roles in the foundation of jurisprudence. Rather, we intend to accommodate them to some models of environmental care, which may help administrators and authorities provide the means to this care and show them the extent of their discretionary power. These regulations are furnished and disseminated in the treatments and directives of the *Qur'ān* and *Sunnah* and the precious inheritance of the righteous ancestors.

1- Consideration of Public Interest (*Al-Istiṣlāh*)

Public interest, as defined by *uṣūlÊ* scholars, refers to considerations that secure a benefit or prevent harm but are simultaneously harmonious with the objectives (*maqāṣid*) of the *Sharī'ah*. Therefore, it is the advantage of an absolute interest in the sense that it is not regulated by the lawgiver in so far as no textual authority can be found on its validity or otherwise, i.e., every interest secures a benefit or prevents a harm, and the *Sharī'ah* provides no indication as to its validity or otherwise.[3]

Lubnānīyah, 1996); Muḥammad al-Saīyd Jamīl, *Qaḍāyā al-Bī'ah min Khilāl al-Qur'ān wa al-Sunnah* (Al-Ribāṭ: Manshūrāt al-Munaẓẓamah al-Islāmīyah li-al-Tarbiyah wa al-'Ulūm wa al-Thaqāfah, 1999); 'Abdul-Raḥmān Jīrah, *Al- Islām wa al-Bī'ah* (Al-Qāhirah: Dār al-Sālam, 1st edition, 2000); Mājid Rāghib Al-Ḥilū, *Qānūn Ḥimāyat al-Bī'ah fī Ḍaw' al-Sharī'ah* (Al-Iskandarīyah: Dār al-Maṭbū'āt al-Jami'īyah, n.d.).

[3] Al-Ghazālīy, Muḥammad Abū Ḥāmid, *Al-Mustaṣfā min 'Ilm al-Uṣūl*, Edited by Ibrāhīm Ramaḍān (Beriut: Dār al-Arqam, n.d.), 2/478; Ibn Qudāmah al-Maqdisīy, *Rawḍat al-Nāẓir wa Junnat al-Muāẓir*, Edited by 'Abdul-Karīm al-Namlah (Al-Riyāḍ: Maktabat al-Rushd, 1st edition, 1993), 2/537; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Selangor: Ilmiah Publishers, 2004), 267-268.

Istiṣlāh represents a legislative source that guides the governors to establish a legitimate understanding of the eventualities that their rules are not discerned in the texts, are not regulated through scholarly consensus and cannot be adjudicated through the dictates of analogy. This is because Islam grants the executive authority wide discretionary power to organize the affairs of the nation and cure its lapses. The aim of *Sharī'ah* in availing this power is to enable governors to realize and complement interests, disrupt evils and reduce harms through innovated instruments, provided that they are consistent with the ethos of *Sharī'ah* and tracking its objectives.[4]

Environmental matters are newly evoked; and they are not specifically contained in provisions of the *Qur'ān* and *Sunnah*. They have not been regulated, until the present time, by consensus and analogy. Therefore, judging them in consideration of public interest could be more proper, whereby the government can enact necessary relevant regulations and laws related to environmental preservation, the maintenance of resources and the management of public facilities. The establishment of environmental ministries, environmental planning departments, and forest and water facilities may come under this evidence of law because they are undefined by the established rules of the *Sharī'ah* and they are harmonious with its objective to protect the five essential values: religion, life, intellect, lineage and property.

The government should build facilities, enact laws and policies and do whatever it deems fit to protect environmental resources and punish abusers.[5] Providing these facilities is not in contrast with the *Sharī'ah* objectives or its rules. However, to enact this evidence in the environ-

[4]Ahmad al-Raysuni, *IMAM AL-SHATIBI'S Theory of the Higher Objectives and Intents of Islamic Law*, Translated from the Arabic by Nancy Roberts (Kuala Lumpur: Islamic Book Trust, 2006), 45-56.

[5] Article (58) of the Mejelle states: (The exercise of control over subjects depends on what is right to be done). C.R. Tyser et al., trans., *THE MEJELLE* (Kuala Lumpur: The Other Press, 2001), 10.

mental field, a ruler should keep himself away from unbridled whims, arbitrary and self-keeping interests and unjustified interference.[6]

It is worth noting that enacting *istiṣlāh* in addressing environmental issues is dictated by two conditions:

A) Those who undertake the estimation of the benefits should be educationally qualified. Only in cooperation with experts from a variety of scientific and applied scientific fields are qualified mujtahids eligible to discern the public interest. The goal is to gather the understanding of the *Sharī'ah* with the understanding of reality. Isolating the revealed knowledge from the human science will generate illusions in adjustment to the issues. Misunderstanding the reality of issues will cause misunderstanding of *Sharī'ah* itself.

B) The *mujtahid* should take into account the temporal and spatial circumstances surrounding the facts and the political, economic and social status of the state so that the enactment of the innovated policies will not lead to the disruption of the real and vital interests of the state under these circumstances and conditions.[7]

2- Regulation of Custom *(Al-'Urf)*

'Urf denotes collective practice of a large number of people. *'Urf* is defined as 'recurring practices that are acceptable to people of a sound nature.'[8]

There have been many changes in the legal responses given by scholars due to changes in time and customs or due to situations of necessity, need or the corruption of people of a certain time.[9] These matters refer to the relationship of the revelation with the common and specific concerns of man, which cannot be ignored in every mature *ijtihād*, extending the demands of divine revelation to the requirements of the time.

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[6] Kamali, *Principles of Islamic Jurisprudence*, 277-280.

[7] Muḥammad Fatḥī al-Duraīnīy, *Khaṣā'iṣ al-Tashrī' al-Islāmīy fī al-Sīyasah wa al-Ḥukm* (Beriut: Mu'assasat al-Risālah, 1st edition, 1982), 191-192.

[8] Kamali, *Principles of Islamic Jurisprudence*, 283.

[9] Article (39) of the Mejelle states: (It cannot be denied that with a change of times, the requirements of the law change). *THE MEJELLE,* 8.

Old *fatwās* and outdated opinions compiled in the heritage of jurisprudence are no longer suitable to the business of time. Thus, *Ibn Qaīym al-Jawzīyah* (d. 751AH/1349CE) says: "This is a great sight of knowledge without which a big mistake occurred in the inference of *Sharī'ah*, creating a great difficulty and disorder and ascribing to this magnificent legal system a sum of obligations that for sure the *Sharī'ah* never accepts".[10]

There is no doubt that the change of a practiced custom in a certain country due to changes in time and place brings about change in the rule connected with that custom. As a rule circulates with its rationale, a rule that is based on custom should change with the change of custom itself. For instance, if the currency of a country changes, the price of merchandise in a new contract should be in the present currency and not the previous one. A *muftī* is not permitted to give *fatwā* in matters concerning oaths, wills and endowments according to his own accord. He should base his *fatwā* on the meaning intended by people of that particular country, and be in agreement with original language usage or against it. Therefore, it is a must for the *muftī* to stay attached with the people and to ensure their practical and verbal habits in transactions to base his *fatwā* on a sound understanding of the two facts, the custom, and the rules of law in the texts of *Sharī'ah*.

Custom also plays an important role in the jurisprudence of the environment concerning the preservation of its components, the consumption of its resources and the reconstruction of its corrupted and polluted ingredients. The jurists made custom a scale of legal judgment in many situations, such as the following:

1- *Making reference to custom to determine the extent of a real harm caused by a person to his neighbour regarding the rights of servitude*:[11] The legal precept is to forgive the little harm and stop/end and compensate an observable harm. However, the determination of what harm is considerable and what is little cannot be known without the hints

[10] Ibn Qayyim, Shamsuddīn al-Jawzīyah, *A'lām al-Mūwaqqi'īn 'an Rabb al-'Ālamīn* (Al-Qāhirah: Dār al-Sa'ādah, 1974), 3/5.
[11] See: *THE MEJELLE*, 194-196.

of custom. Thus, when there is a dispute between neighbours over the incidence of harm, it is significant to refer to custom to distinguish considerable harm and to tailor the judgment accordingly. *Imām Mālik* (d. 179AH/795CE) said: "We don't discriminate between much and little harms something known or discerned by the law".[12]

2- *Making recourse to custom in the cultivation of abandoned lands*: The prevalent customs regarding the definition of either cultivated or abandoned lands might change with changes in time and place. It is unjustifiable to consider the determinants mentioned in the ancient books of jurisprudence[13] as a reference for *fatwā* and judgment in contemporary cases concerning the cultivation of abandoned lands. Al-Māwardīy (d. 450AH/1058CE) said: "Adjustment of the cultivation of abandoned lands is to be based on custom and purpose of cultivation, because the Prophet (s.a.w.) permitted individuals to cultivate abandoned lands, as he considered the custom of the people he addressed his discourse".[14]

3- *The designation of a construction environment*: Every country's custom is to be taken into consideration to determine particular places for the construction of industrial companies and craft facilities, although the construction of these projects in Islamic culture used to be in the outskirts of cities.

3- Consideration of Deeds' Outcome (*I'tibār al-Ma'ālāt*)

For engaging in *ijtihād*, issuing decrees, and making judgments, it is imperative to appreciate the final outcomes of the actions concerned. *Mujtahid*, *Mufti*, and *QÉÌÊ* must have prior assessment of the consequences following their rulings and *fatwās*. It is a deficient approach to make a decision on legal issues without paying attention to the outcomes and predictable results that might be borne by that decision. *Mujtahid*

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[12] Abū al-Walīd al-Bājīy, *Al-Muntaqā Sharḥ Muwaṭṭa' al-Imām Mālik* (Beriut: Maṭba'at al-Sa'ādah, 1st edition, 1332H), 6/41.

[13] See: *THE MEJELLE*, 207-209.

[14] Abū al-Ḥasan al-Māwardīy, *Al-Aḥkām al-Ṣulṭānīyah* (Al-Qāhirah: Maṭba'at Muṣṭafā al-Ḥalabīy, 3rd edition, 1973), 177.

must faithfully ensure that rulings achieve their objectives and that the obligations imposed by the law lead to the possible outcomes.[15]

According to Al-Shāṭibīy (d. 790AH/1388CE), "heeding the outcomes of actions is consistent with the higher objectives of the Law."[16] Although scholars before *Al-Shāṭibīy* applied this principle at different levels, al-Shāṭibīy established the foundation of the term and gave it a definite direction. The scholars before him did used several principles such as "harm is to be erased", "means of evil is to be blocked" and "nullification of specious exits involving deception/*Ḥīyal*". ʻAbd al-Raḥmān al-Sanūsīy defines the principle in these words: "Consideration of outcomes is to apply and base a rule onto its intended fact (*manāṭ*) on account of its secondary requirements manifesting during that application as long as the requirements concern the realization of *Sharīʻah* objectives".[17]

The foundation of outcome consideration has two dimensions:

1- *Preventive direction*: It is manifested in the prevention of corruption before it occurs by blocking all ways and causes to corruption and forbidding those who use permissible actions for unlawful purposes. Therefore, in addition to considering the intentions and motives, a purposeful *ijtihād* should also consider the benefit to be generated from its application in future. This is a type of precaution and assures that the "prevention of a disease is better than cure". A legal *ijtihād* must safeguard against estimated corruptions and put barriers before the creation of complications. The foundation of blocking the means of evil (*Sadd al-Dharā'iʻ*) intends primarily to prevent deeds and actions that seem to be permissible but will contribute to the creation of forbidden outcomes.[18] However, deeds that seem to be permissible in appearance and lead to

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[15] Ahmad al-Raysuni, *IMAM AL-SHATIBI'S Theory of the Higher Objectives*, 358-359.

[16] Abū Isḥāq al-Shāṭibīy, *Al-Muwāfaqāt fī Uṣūl al-Sharīʻah* (Beruit: Dār al-Kutub al-ʻIlmīyah, 1991), 4/194; Ahmad al-Raysuni, *IMAM AL-SHATIBI'S Theory of the Higher Objectives*, 359.

[17] ʻAbdul-Raḥmān al-Sanūsīy, *Iʻtibār al-Maʼālāt wa Murāʻāt Natāʼij al-Taṣarrufāt* (Al-Dammām: Dār Ibn al-Jawzīy, 1st edition, 2003), 19.

[18] Kamali, *Principles of Islamic Jurisprudence*, 310-320.

corruption are seldom. Therefore, an evil should be prevented before it matures.

2-*Therapeutic direction*: It manifests in the termination of the evil after its appearance. If an act of evil suddenly or without the observation of rulers and scholars encounters society or the political system, it should be treated vastly and dissolved urgently. This aim, however, cannot be achieved without cooperation among the policymakers, who represent the executive body, and *Sharī'ah*-versed scholars, who represent the legislative body in the country. If these two authorities are well established and suitably harmonized with one another, the entire nation will live in peace and prosperity.[19]

Thus, the foundation of outcome considerations provides the government with flexible discretionary power in resolution of the conflicts between public and private interests to preserve individual and social rights and forbid their intentionally and unintentionally harmful abuse.

Applying this foundation in the field of environmental jurisprudence leads to two procedures that are the most prominent phenomena of a purposeful *ijtihād*, which is based on preventing evil prior to its commencement and terminating it after its appearance or maturity.

A- Confining the Utilization of Permissible (*Taqyīd al-Mubāḥ*)

The state has the right to suspend or stop working with the permissible facility *(mubāḥ)* in certain circumstances, leading to definite damage either to group or to individuals. It also has the right to enforce people to handle it if the refrain of the people leads to a greater evil or deprives a preponderant interest in certain circumstances.[20]

In the environmental field, however, it is lawful for the state to confine the use of a permissible facility or, more expressively, to forbid a

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[19] Yūsuf Ḥamitū, *Mabda' I'tibār al-Ma'āl fī al-Baḥth al-Fiqhīy min al-Tanẓir ilā al-Taṭbīq* (Beriut: Markaz Nimā', 1st edition, 2012), 90; Ahmad al-Raysuni, *IMAM AL-SHATIBI'S Theory of the Higher Objectives*, 358-362.

[20] Fatḥī al-Duraīnīy, *Khaṣā'iṣ al-Tashrī' al-Islāmīy*, 276.

permissible utility if the result is not praiseworthy or the outcome does not meet the objective of *Sharī'ah* in preventing the means of corruption. Hence, it is lawful to prohibit large fishing companies from using sorts of nets that swallow large amounts of fish and even destroy the eggs that have not yet been hatched, which in return does not allow the growth of fisheries and delays its development. As a result, the state has the right to punish any company that does not comply with the applicable policies in the quality of the net. In addition, it has the right to enact measures that help survival of the natural beings, such as prohibiting fishing in the times of fish spawning to help the fish survive and keep them away from destruction. When the spawning time passes, the principle of permissibility will rule again.

One of the motives that calls a state to enforce deterrent punishments *('Uqūbāt Ta'zīrīyyah)* is the abuse of permissible utilities, such as poaching campaigns sponsored by wealthy elites to pass their leisure time. These campaigns threaten the survival of some types of endangered animals, such as deer, antelopes and zebras.

In fact, as observed by some *Māliki* scholars, fishing has three rules. It might be obligatory for some people, recommended for some others and permitted with reprehensibility for others.[21] Fishing, as Professor *Muḥammad Fatḥī al-Duraīnīy* (d. 1428AH/2008CE) states, is exposed to the five defining laws according to the differences in circumstances. It is permissible in ordinary times, recommended for the refinement of one's family, obligatory in the status of necessity and the preservation of life, permitted with reprehensibility in the status of unjustified entertainment and prohibited if it results in the wastage of wealth without any useful outcome. Generally, the utilization of environmental resources is subject to the five defining rules. When fishing, grazing or utilizing natural wealth leads to definite damage, harm or futility, the disposition thereof should be forbidden. Henceforth, the state has the right to enact policies that eliminate corruption means, block the causes of the harm,

[21] Ibn Rushd al-Ḥafī d, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Beriut: Dār al-Fikr, n.d), 1/557.

and, if necessary, to forbid its permissibility in certain circumstances.[22] The ruler has the right to behave in the circle of permissibility as he sees it suitable to the circumstance, aiming to meet the requirements of needs and necessities. Therefore, an interest may require prohibiting the permissibility to prevent an evil or to bring an outweighing interest. In all cases, the ruler has to be obeyed in secret and in public as long as his manner remains for the interest of the nation.

B- Confining the Use of Private Rights

The individual rights in *Sharī'ah* are two-faceted. They reflect a combination of the rights of the holder and the rights of the community. An act may be legitimate in appearance, but this legitimacy does not give the owner right to implement it without due consideration for the community's interest. If the utilization of the right does not generate a considerable harm to others, it will maintain the virtue of legitimacy, and therefore, one will not be forbidden from doing it. However, if the intention of using a right is to create damage, then this will convert the nature of the act and render it prohibitive, pursuant to the principle contained in the *Ḥadīth*: "No harm shall be inflicted or reciprocated in Islam".[23] Prejudicing this principle, no doubt, is an essential factor for the incidence of public and private damages.[24]

The main applications of this principle in the field of the environment can be seen in the following domains:

1) Owners of neglected lands are to be compelled to cultivate and develop them, aiming at the maintenance of the environment and the

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[22] Muḥammad Fatḥī al-Duraīnīy, *Buḥūth Muqāranah fī al-Fiqh wa Uṣūlih* (Berut: Mu'assasat al-Risālah, 1st edition, 1994), 2/267.

[23] Ibn Mājah al-Qazwīnīy, *Sunan Ibn Mājah* (Beriut: Al-Maktabah al-'Ilmīyah, n.d.), Kitāb al-Aḥkām, Ḥadīth no. (2340), 2/784; Al-Ḥākim al-Naīsābūrīy, *Al-Mustadrak 'alā al-Ṣaḥīḥaīn* (Beriut: Dār al-Kutub al-'Ilmīyah, 1st edition, 1990), Ḥadīth no. (2345), 2/66.

[24] Muḥammad Fatḥī al-Duraīnīy, *Naẓarīyat al-Ta'assuf fī Isti'māl al-Ḥaqq* (Beriut: Mu'assasat al-Risālah, 4th edition, 1988), 167.

preservation of natural properties, even if the land owners are wealthy and are not in need of agriculture. This is because the negligence of properties opposes the objectives of *Sharī'ah* in the rehabilitation, the reconstruction of earth and the preservation of property. However, if people need to cultivate their lands but do not have the money or ability to do so, the government should provide them the help necessary to realize this objective. This is what *Ibn Ḥazm* (d. 456AH/1064CE) alluded to: "We shall force him to cultivate his land …and we shall not let him remain a burden on Muslims while exposing his property to loss".[25]

2-Restrictions are to be placed on the rights of ownership and business that involve properties such as abandoned lands and commercial activities that involve precious metals, provided they are disastrous to the economy of the state and threaten its environment space.[26]

4- Regulation of Damage (*Al-Ḍarar*)

There is no dispute among Muslim jurists that damage should be stopped if its signs are recognized. However, to minimize the effect of damage, *Sharī'ah* law bides the person who indulge in creation of a tort to compensate for the damage according to its amount, type, and effects. This principal rule could be elaborated in regulative maxims such as the following:

A- Damage shall be eliminated[27]

According to Islamic jurisprudence, there are two types of damage: (1) damage that is intended to create harm, which is normally motivated by hatred and revenge incentives; and (2) damage that is created accidently and without intention or insistence on doing so, for instance, a person, within his limits, does something for his own benefit that in-turn harms others. All types of damage are to be forbidden, except for those

[25] Ibn Ḥazm al-Andalusīy, *Al-Muḥallā* (Beruit: Al-Maktab al-Tijārīy, n.d.), 10/100.
[26] Fatḥī al-Duraīnīy, *Buḥūth Muqāranah*, 2/267.
[27] Article (31) of the Mejelle says: (Damage is repelled as far as possible). *THE MEJELLE*, 7.

which the Islamic law has made permissible for a benefit that overrides the damage, such as the penalties described by *Sharī'ah* for offenders of the law. The principle "*damage shall be eliminated*"[28] serves as a guiding instrument for concerned scholars and rulers to eradicate damage and prevent harm. Thus, there is no difference between damage that has occurred and the harm that is predictable, and there is no discrimination between harm that is intended and harm that is unintentional. This phenomenon occurs due to the inclusive nature of the principle thereof.

The principle has two dimensions: the preventive dimension, which blocks the path towards harm, and the therapeutic dimension, which aims to treat harm after it occurs. This situation is similar to preventing a disease before it appears and prescribing the appropriate medicine after it spreads.

Considering environment scale, one may illustrate this principle with different examples, such as to prevent a house-owner from constructing a chimney if its smoke pollutes the surrounding environment and causes harm to the neighbours. Another example is to force those whose crafts or factories require the combustion of fuels, such as bakers and blacksmiths, to distance their outlets from residential areas.[29]

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[28] Al-Suyūṭī, Jalāl al-Dīn, *Al-Ashbāh wa al-Naẓā'ir* (Mekkah: Maktabat Nizār al-Bāz, 2nd edition, 1997), 1/10-11.

[29] Article (1200) of the Mejelle states: (Excessive damage in whatever way it may be caused is to be removed. For example, when a forge or mill is made touching a house, and weakness is caused to the building of the house by the striking of the iron or the turning of the mill, or, when it is not possible for the owner to live in his house from the bad smell, made by a new linseed oil factory, or, the excessive smoke made by a new oven, because these damages are excessive damage, they can be put a stop to in any way which is possible. Again… if someone makes a dust heap at the foot of his neighbour's wall, and, by throwing his sweepings there the wall is decayed, the owner of the wall can cause the damage to be removed. Likewise, when the owner of a house is annoyed, by the dust coming from a threshing floor newly made by someone else near his house, to such an extent that he cannot live in that house, the damage from it is put an end to…Likewise, if someone makes a new cook shop in the market of the cloth marchants, and its smoke causes excessive damage by falling on the goods of his neighbours, it can be put a stop to). *THE MEJELLE*, 195-196.

B- A detriment shall never be removed by a similar detriment[30]

One of the restrictions imposed on the prevention of evils and detriments is that a detriment should never be removed by a similar or a greater one. Thus, if a detriment cannot be replaced by a minor one but only by an equal or greater one, and there is no way to remove it, then it must be left there. Explaining this restraint, *Ibn al-Subkīy* (d. 771AH/1370CE) says: "A detriment should be removed, but not with a detriment. This is because if a similar damage substitutes it, the principal statement that 'A detriment shall be eliminated' will not come true."[31]

On the environmental scale, this principle could be applied in the disposal of radioactive materials and industrial waste, which is an undisputable necessity to keep man and the environment healthy. However, this disposal should take place in a safe way that does not cause a similar or greater damage because a type of damage or a detriment is not removed by a similar one.

C- The least of two damages shall be chosen[32]

In cases of two unavoidable damages, the rule is that the least of them shall be committed. This is according to the effect of each. "It is obligatory to commit the minor damage rather than the greater one. For instance, a choked person should drink wine (if only wine is available); it is a must to have another person's food in case of starving; and if necessary, it is not wrongdoing to corrupt another person's property. In other words, since corrupting other's property is not forbidden for itself, it will

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[30] Article (25) of the Mejelle says: (A damage cannot be put an end to by its like). *THE MEJELLE,* 6.

[31] Tājuddīn Ibn al-Subkīy, *Al-Ashbāh wa al-Naẓā'ir,* Edited by 'Adil Aḥmad and 'Alī Mu'awwaḍ (Beruit: Dār al-Kutub al-'Ilmīyah, 1st edition, 1991), 1/41.

[32] Articles (26-29) of the Mejelle state: (Sever damage is made to disappear by a lighter damage… When two wrongful acts meet, the remedy of the greater is sought by the doing of the less… The smaller of two harms is chosen). *THE MEJELLE*, 6-7.

be obligatory or permissible to consume it if one is compelled under duress and coercion",[33] says *Al-Ghazālīy* (d. 505AH/1111CE).

One of the applications to this rule in the environmental field is to give surplus water to a person whose well has dried up to enable him to irrigate his plants because he is trying diligently to fix the well.[34] The loss of the plants may cause monetary loss for the farmer, the damage of environmental resources and the community may cause the loss of the product of its labourers and sons. Therefore, to push away the greater detriment (damage) and choose the minor one, the person with surplus water must give it to the needy person, even though this may cause damage to him.

D- Private damage shall be tolerated to prevent common damage[35]

One of the most important things to consider carefully is the cautious selection between two conflicting harms. Since the harms cannot be dissolved entirely, it is recommended or even made obligatory to reduce them or to trivialize one of them.Therefore, if two harms occur at the same time, one general and the other limited, then the limited one should be preferred so as to avoid harm to the public. That is because the public interest outweighs the private interest and not vice versa. Muslim jurists summed up this rule: "The private damage shall be endured to prevent the common damage."[36]

A practical application of this restraint in the scope of the environment is to forbid the construction of factories and blacksmith workshops in populated residential areas where they will cause noise and excessive

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[33] Al-Ghazālīy, *Al-Mustaṣfā*, 1/98.

[34] Ibn Juzaīy, *Al-Qawānīn al-Fiqhīyah* (Beruit: Al-Maktabah al-Thaqāfīyah, n.d.), 222.

[35] Article (26) of the Mejelle says: (To repel a public damage a private damage is preferred). *THE MEJELLE,* 6.

[36] Zaīnuddīn Ibn Nujaīm, *Al-Ashbāh wa al-Naẓā'ir* (Mekkah: Maktabat Nizār al-Bāz, 2nd edition, 1997), 88.

smoke to the extent that people cannot enjoy their comfort or benefit from their private properties as usual.

E- Prevention of evils takes priority over the realization of interests[37]

Muslim jurists judged that if an interest and an evil meet one another and they are equal in every way, then the evil should be obstructed and aborted without considering the possible benefit. An interest that bears greater evils is not a pure interest and cannot be acknowledged as a true concept of interest. Therefore, the *uṣūli* scholars stated: "A description will lose its accreditation as interest if associated with an equal or outweighing evil and the later will invalidate the former".[38] The same concept was expressed by some other jurists: "Preventing evils precedes realization of interests".[39] They preferred the abortion of evils over the realization of interests because Islamic legislation emphasizes the prevention of evils more than it does the contrast regarding interests. Furthermore, there is no disagreement amongst the experts that he who removes a wrong from someone will truly render him a real interest. Adversely, he who renders someone an interest might not necessarily prevent from him an evil.[40]

A practical example of this in environmental concerns is the permissibility of using fertilizer and pesticides to increase the agricultural production and make the land fertile. However, this practice is not allowed unless the consequences that were guaranteed will appear. In con-

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[37] Article (30) of the Mejelle says: (The repelling of mischief is preferred to the acquisition of benefits). *THE MEJELLE*, 6.

[38] 'Uthmān Ibn al-Ḥājib al-Kurdīy, *Mukhtaṣar al-Muntahā al-Uṣūlīy*, Edited by Sha'bān Ismā'īl (Al-Qāhirah: Maktabat al-Kullīyāt al-Azharīyah, 1st edition, 1983), 2/241; Fakhruddīn al-Rāzīy, *Al-Maḥṣūl fī 'Ilm al-Uṣūl*, Editted by Ṭāhā Jābir al-'Alwānīy (Beriut: Mu'assasat al-Risālah, 3rd edition, 1997), 5/168-171.

[39] Abū al-'Abbās al-Wansharīsīy, *Īḍāḥ al-Masālik ilā Qawā'id al-Imām Mālik*, Edited by Aḥmad al-Khaṭṭābīy (Al-Ribāṭ: n.p., 1980), 219.

[40] Ibn Qayyim al-Jawzīyah, *Miftāḥ Dār al-Sa'ādah wa Manshūr Wilāyat al-'Ilm wa al-Irādah* (Beriut: Dār al-Kutub al-'Ilmīyah. n.d.), 2/16; Al-Sanūsīy, *I'tibār al-Ma'ālāt*, 465.

trast, if the chemicals happen to destroy the physical nature of the land, kill the natural bacteria in it and pollute the drinking water, this practice will be forbidden due to the evils following it. In fact, the harm is still there if a similar or an outweighing harm replaces it.

5- Regulations of Means (*Al-Wasā'il*)

Means have a special consideration in Islamic *Sharī'ah* because they are ways to achieve higher intents and objectives of law. Therefore, it is necessary to explain their dictates and regulations, discriminating locations where forbidden means remain prohibitive and locations where they are exceptionally permissible. These dictates are extremely significant because Islam only fulfils its requirements of social change and political reform through strong and appropriate means.[41] In fact, rules of means are basically related to *maqāṣid* discipline; they are linked with their objectives as a cause is linked to its effect. The rule might be juristic or foundational, or it may have a dual nature relating to both foundational and jurisprudential fields.The aim here is not to investigate the rules of means and their jurisprudential application but simply to give examples and explain their legal effects on environmental rule through the following elaboration.

A- The means to a *Wājib* (obligatory) also partakes in *Wājib*

A means follows the rule of its final objective. Thus, when the intended aim is obligatory, then the means also becomes obligatory. However, it would be more accurate to say that when the means to *wājib* consists of an act that is within the capacity of the *mukallaf*, then that act is also *wājib*.[42] The conclusion of this regulation is supported by an insight-

[41] Ahmad al-Raysuni, *IMAM AL-SHATIBI'S Theory of the Higher Objectives*, 56-64.
[42] Kamali, *Principles of Islamic Jurisprudence*, 326-327.

ful view of the Islamic *Sharī'ah* through the method of induction.[43] That is also what Sheikh *Abū Zahrah* (d. 1394AH/1974CE) believes.[44]

Regarding applications of the mentioned regulation in the environmental field, one may say: Whatever cares for the environment is then a religious obligation, such as moderation in resource usage, care for animals, land cultivation and reform, the enactment of policies that prevent pollution and punishment imposed against land spoilers and environment vandals.

B- The means to *Ḥarām* (prohibitive) also partakes in *Ḥarām*

This rule is paired to the previous one. The two rules legally correlate between the means and what it serves. The original rule of the means might be obligation, prohibition, reprehensibility or permission, but it would change according to the intended purpose. Thus, whatever leads to *ḥarām,* for instance, is considered a forbidden means even though it is not a sin by itself nor takes part in that forbidden act directly.[45] For example, a regular private meeting with a non-relative woman will pave the way to adultery. Therefore, this behaviour should be banned and forbidden regardless of whether it leads an unlawful act. As *Ibn Qayyim al-Jawzīyah* says, "When Allah (S.W.T) forbids something that has ways and means leading to it, He, as well, forbids these ways and means in order to confirm and achieve that interdict and to prevent approaching to what He bans. Because if He permits the mediums and means that lead to the *ḥarām*, it would be revocation of the banning and souls temptation, whereas Allah's wisdom and knowledge entirely refuse that".[46]

Environmental applications of this regulation could be the prevention of draining or exhausting natural resources, exterminating the animal kingdom, and polluting the environment with waste, radiation, fumes and

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[43] Shihāb al-Dīn al-Qarāfīy, *Al-Furūq* (Beriut: ʿĀlam al-Kutub, n.d.), 2/32.

[44] Muḥammad Abū Zahrah, *Aḥmad Bin Ḥanbal: Ḥayātuh wa 'Aṣruh, 'Arā'uh wa Fiqhuh* (Beruit: Dār al-Fikr, n.d.), 314.

[45] Ibn Juzaīy al-Andalusīy, *Taqrīb al-Wuṣūl ilā 'Ilm al-Uṣūl*, Edited by Muḥammad ʿAlīy Farkūs, 1st edition, 1990), 255.

[46] Ibn Qayyim al-Jawzīyah, *A'lām al-Mūwaqqi'īn*, 3/135.

noises. These corruptive acts lead to mislaying and deviating from the *Sharī'ah* objectives and the depravation of the innate balance of universe. Because these dangerous acts are obviously forbidden, whatever entails them is regarded as *ḥarām*.

C- That which is prohibited because it is a means to *Ḥarām* shall be permissible in evidence of overriding interest

The action that is forbidden because it is a means to corruption is permitted in the case of necessity or overriding interest. *Ibn Taymīyah al-Ḥarrānīy* (d. 728AH/1328CE) referred to this principle as "that which is prohibited to block a means to evil shall be permissible for an outweighing interest".[47] His statement was emphasized by *Ibn Qayyim*, who said: "That which is forbidden to end an evil, shall be permissible in the case of necessity or overriding interest".[48]

This principle is established on weighing the balance between benefit and harm. Thus, if a lesser harm contradicts an overriding benefit, then the benefit takes precedence because the benefit therein will overwhelm any actual or expected harm (from performing that action). Therefore, in this case, repelling harm will not be considered as long as the resulting benefit is stronger, and this, in fact, is another means to repel the harm that cannot be separated from the benefit in actuality. In fact, if a means does not contain an evil, then it is permissible; and it is only forbidden because it is a means to harm. Therefore, when the benefit outweighs the harm, the matter returns to its origin of being permissible.[49]

An application of this principle in environmental conservation is that the annihilation of a complete species of an animal is prohibited to prevent its extinction and because it is a creature, just like humans. How-

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[47] Ibn Taymīyah al-Ḥarrānīy, *Majmu' al-Fatāwā*, Edited by 'Abdul-Raḥmān al-Najdīy (Al-Ribāṭ: Maktabat al-Ma'ārif, n.d.), 23/186-187.

[48] Ibn Qayyim al-Jawzīyah, *Zād al-Ma'ād fī Hadī Khaīr al-'Ibād*, Edited by Shu'aīb al-Arnā'ut & 'Abdullah al-Arnā'ut (Beruit: Mu'assasat al-Risālah, 15th edition, 1987), 4/78.

[49] Article (24) of the Mejelle says: (When the prohibition has faded away, the forbidden thing returns). *THE MEJELLE*, 6.

ever, the annihilation may be permitted if there is an overriding benefit that outweighs any harm (from this action). The benefit in this particular case may be the prevention of harm to human life or wealth and the protection of the environment from destruction and ruin.

Conclusion

The chief concern of Islamic law is the preservation of the universe and the environment. The main objective of *Sharī'ah* is to establish an innate relationship between mankind and the entire universe. The study concludes that evidences of law, such as custom, public interest and the consideration of deeds' outcomes, can best establish the jurisprudence of the environment. Jurisprudential regulations that divide the rules of means and damage in Islam can generate directives for the adjustment of legal issues pertaining to environmental conservation. The universal laws and *Sharī'ah* objectives must complement one another. Any legal response/*fatwā* or jurisdiction contradicting this fact will be either devoid of universal value or unauthenticated by evidence and the higher objectives of *Sharī'ah*.