

REGULATION OF ACCESS TO THE PERMISSIBLE (*TAQYĪD AL-MUBĀĤH*) AND ITS APPLICATIONS ON THE ENVIRONMENTAL LAW OF THE KINGDOM OF SAUDI ARABIA

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ABSTRACT

This research addresses a maxim among the maxims of the fundamental of Islamic jurisprudence (Usūl al-Fiqh) which is: “regulation of access to the permissible” (taqyīd al-mubāḥ) and its correlation with the Environmental Law of the Kingdom of Saudi Arabia, and how its application has influenced the formation of the provisions of the Law. The research started with the first topic on the definition of the term maxim (al-qā’idah) lexically and technically, followed by the explication of the meaning the environment lexically and technically, and an introduction to the Environmental Law of the Kingdom of Saudi Arabia, then in the third topic the statutory provisions that were influenced by the fundamental maxim, which are the cynosure of the study, were highlighted, followed by the conclusion and the most significant findings of the study.

Keywords: Regulation – environment – Saudi Arabia – permission – Islamic law – maxims- Usūl al-Fiqh.

INTRODUCTION:

The discourse about the environment is among the prominent contemporary issues, and Islam has given great attention to the environment; Hence, it instructed the protection of the environment and disseminating the awareness on it, and encouraged enlightenment and education on the care for the nature and the conservation of biodiversity.

The Islamic law is founded on the pursuit of the benefits of humankind, and it enjoins the legally liable persons to always put this into consideration, and it regards it among the fundamentals of jurisprudential inference, Shaykh al-Islām Ibn Taimiyyah said: “It is trite that the Sharī’ah (Islamic law) came to gain benefits and complement them and to halt the harmful and mitigate them, accordingly” (Ibn Taimiyyah, 1995, 30: 234).

Therefore, the Kingdom of Saudi Arabia embarked on legislative exercises to consolidate the pursuit of people’s benefits, in the spirit of prudent management of the earth and protection of the environment, and this is why the Kingdom has enacted laws to cater for the components of the

environment, and among these laws is the Environmental Law that was enacted in year 1441 AH. Since the Saudi state derives its laws from the country's grundnorm which is the Islamic law, her entire laws were premised on the comprehensive maxims of Islamic law tapping from the maxims of the fundamentals of jurisprudence in drafting and scribing its statutory provisions.

In order to shed light on the impact of the maxims of the fundamentals of jurisprudence in enhancing the care for the environment, and the attention of the Saudi regulator to employing these maxims in the course of law-making, and the highlight of the correlation between the science of fundamentals of jurisprudence and legislative exercises, this paper was prepared to address this purpose, and titled: **“Regulation of Access to the Permissible (Taqyīd Al-Mubāḥ) and Its Applications on the Environmental Law of the Kingdom of Saudi Arabia”**.

IMPORTANCE OF THE TOPIC AND ITS RATIONALE:

In addition to the aforementioned, the importance of the topic and its rationale can be in the following:

- Highlighting the perspective of the Islamic legislation on relating with the environment and enhancing its conservation.
- Highlighting the efforts of the Kingdom of Saudi Arabia in enacting laws for the protection of the environments and its components.
- Explicating devotion of the Islamic law to the safety and care for everything that preserves and beautifies the earth.
- Highlighting the efforts of the Saudi regulator in connecting the laws with the country's grundnorm, the Qur'an and the Sunnah.
- Underscoring the correlation between the science of fundamentals of jurisprudence and law.

RESEARCH OBJECTIVES:

- Clarifying the meaning of regulating access to the permissible according to the scholars of Islamic law.
- Showing the efforts of the Kingdom of Saudi Arabia in paying attention to the environment and its protection.
- Highlighting the statutory provisions in the Environmental Law that were influenced by the maxim of regulating access to the permissible.

RESEARCH LIMITATIONS:

The limitations of the research are confined to the maxims of the fundamentals of jurisprudence and the statutory provisions of Saudi Arabia related to the environment and its conservation.

RESEARCH PROBLEMS:

They can be succinctly represented in the following questions:

- What is the meant by the term 'regulation of access to the permissible' according to the scholars of the fundamentals of jurisprudence, likewise the term 'environment'?

- Did the Kingdom of Saudi Arabia enact a separate law for the environment? And what is the significance of caring for the environment?
- What are the statutory provisions that were influenced by the maxim of regulation of access to the permissible in the public Environmental Law?

LITERATURE REVIEW:

There are several studies on the topic forests or the environment and its components, whether in the academia or beyond; However, the current study is distinguished from the existing literature by connecting the maxims of the fundamentals of jurisprudence that influenced certain provisions of the public Environmental Law in the Kingdom of Saudi Arabia.

RESEARCH METHODOLOGY:

The research relied on the inductive and the analytical methodology; the inductive was applied on surveying the entire provisions of the law, while the analytical was employed to explore the provisions of the law and correlate them with the maxim of the fundamentals of jurisprudence.

RESEARCH PLAN:

The research is comprised of an introduction, and three topics.

The Introduction: which is the current part, and it includes the importance of the topic and its rationale, its objectives, its problems, limitations, the literature review, the research methodology and its plan, and the conclusion.

Topic One: An explanation of “regulation of access to the permissible” and its conditions, and this includes two sub-topics:

Sub-Topic One: The definition of “regulation of access to the permissible” lexically and technically.

Sub-Topic Two: The conditions of “regulations of access to the permissible” and the extent of its authority.

Topic Two: An introduction to the term “environment” and the Environmental Law of the Kingdom of Saudi Arabia, and this includes two sub-topics.

Sub-Topic One: An introduction to the term “environment”.

Sub-Topic Two: An introduction to the Environmental Law of the Kingdom of Saudi Arabia.

Topic Three: Legal applications premised upon the maxim of “regulation of access to the permissible” in the Environmental Law.

Conclusion: Including the most significant findings and recommendations.

TOPIC ONE: AN EXPLANATION OF “REGULATION OF ACCESS TO THE PERMISSIBLE” AND ITS CONDITIONS

This includes two sub-topics:

Sub-Topic One: The Definition Of “Regulation Of Access To The Permissible” Lexically And Technically.

The maxim of “regulation of access to the permissible” exists in a compound sentence in Arabic which is “*taqyīd al-mubāḥ*”, and this Arabic sentence consists of two words, namely: “*taqyīd*”

(regulation) and “*al-mubāḥ*” (the permissible), and in order to properly define the maxim, it is pertinent that both words are firstly defined separately.

Lexically, the Arabic word “*al-taqyīd*” (regulation) denotes three meanings, namely:

- Prevention (*al-man'*): as seen in “*qayyada al-dābah taqyīdan*”, meaning: the animal was prevented from walking by tying down its leg.
- Size or capacity (*al-miqdār*): as seen in “*qayda rumḥin*” and “*qadā rumḥin*”, both meaning the size of a spear.
- Documentation or regulation (*al-ḍabt*): as seen in “*qayyada al- 'ilm bi al-kitāb*”, meaning: he recorded the knowledge by writing it down in a book, and “*qayyada al-kitāb*”, meaning: he regulated the written words through vowelization (Ibn Manzūr, (1994), Al-Rāzī, 1999, Al-Fayyūmī, N.D).

However, upon thorough consideration, the researcher is of the opinion that the third meaning is closer to the contextual connotation of the word “*taqyīd*” in the maxim under study.

Regarding the technical meaning of “*al-taqyīd*” (regulation) or “*al-muqayyad*” (the regulated), it can be defined as: restricting the generality of an absolute word by adding to it a word that connotes its restriction through conditions or adjective or circumstance etc., such that it confines its connotation to the parlance of the restriction (Kuwait, 2006).

Furthermore, the Arabic word “*al-mubāḥ*” (the permissible), lexically denotes ‘the courtyard’ “*al-bāḥa*” (pl. *al-bawḥ*), and it also denotes ‘disclosure’ (*al-izhār*), as seen in: “*abāḥa al-sirr*”, meaning: he disclosed the secret, and it also denotes the opposite of the prohibited, as seen in: “*abaḥtuka al-shay*”, meaning: I made it permissible for you, and “*abāḥa al-shay*”, meaning: he made it permissible (Ibn Manzūr, (1994), Al-Rāzī, 1999, Al-Fayyūmī, N.D).

Technically, “*al-ibāḥa*” (the permission), denotes: the default discretion vested in the legally liable persons by the Lawgiver to choose between doing and undoing devoid of preponderance to either of the two options.

The impact of this permission in the actions of the legally liable persons is technically called: “*al-ibāḥā*” (the permission), while the action with which the legally liable persons were granted choice in this manner is called: “*al-mubāḥ*” (the permissible) (Zaydān, 2014).

As for the definition of “regulation of access to the permissible” as a compound statement in the technical sense, it can be defined as: the suspension of the practise of what is permissible within a particular period of time, due to certain circumstances necessitating such, or making it mandatory within a particular period of time, depending on what results from applying it within such circumstances.

In case it leads brings a preponderant detrimental results and the consequences, it becomes imperative that it is stopped, and the path to it is restricted by suspending its practice, while in case its practise embodies public interests, it could be declared mandatory and upgraded to being a compulsory act, and the discretion of choice will thereby be withdrawn (Zaydān, 2014).

Sub-Topic Two: The Conditions Of Regulation Of Access To The Permissible And The Extent Of Its Authority.

The application of this maxim is subject to the following conditions:

1. That it should not come in conflict with a text of the Qur'an and Sunnah.
2. That the regulation should be compliant with the approved benefit in Islamic law, and consistent with the objectives of Islamic law.
3. That the authority should not resort to regulating the access to the permissible unless there is a justifiable need.
4. That the regulation should be temporary and subject to its reasons.
5. That the order on the regulation should only be issued after consulting the competent scholars.
6. That the authority should adhere to the adopted regulations.
7. That the regulation should be within the limits of moderation, without excesses or laxity or arbitrariness from the part of the authority in regulating access to the permissible.

After the summary mention the conditions, the question that follows is: In whom rests the powers to regulate access to the permissible?

Al-Subkī said in his *Fatāwā*: "It is incumbent upon the leader or his competent representative to pursue the interest of the generality of the Muslims and the interest of the particular territory and the interest of the hereafter, and precedence must be given to this on the worldly interest, likewise the worldly interests that are necessary and of greater benefit to people in their religious life. Whenever it is possible to achieve what is uncontroversial, such should not be abandoned for the controversial except to the extent of necessity, and whenever the absolute or the preponderant benefits is achievable through it, it should be approved, and whenever two opposing scenarios are equal or ambiguous, he should not proceed in approval, rather he should tarry a while until it becomes clear to him, and whenever something is continuous, he should not allow anyone to change its course to it until it becomes clear to him that such is justifiable, and whenever an act of worship is involved, he should make sure it is completed and perpetuated unstopped and free from innovations and he should preserve its existence in its original form.

Also, whenever any prohibited act is involved, he should make effort in reaching a decision through his reason and religiosity and his understanding of the religion and the opinion of the scholar whom he deems pious, and he should be wary of emulating whoever he fears his ignorance or recklessness or desire or succumbing to tricks or getting misled by heresy inform of Sunnah, as typical of the heretics, because this is the most detrimental thing to the religion and only a few are free from it. Hence, it is incumbent upon whoever is considering this to make his findings without being haste, such that he is rest assured with what settles his heart and clarifies his affair, and it is not vested in the authorities to give orders based on their desires or raw thoughts or the emulation of whoever comes their way and by listening to just anyone, rather, they are mandated to strive and act on whatever will be in the best interest of their subjects in terms of the best sound actions in faithfulness to the people, and with guiding people to the correct way and the straight path" (Al-Subkī, N.D. 1: 185).

Therefore, the regulation of access to the permissible by the government and the public authority should be based on thorough consideration and caution, in order to achieve the best interest of the

citizens. This means enacting laws that are capable of regulating the application of the permissible, to prevent falling into what has been detested or prohibited, which the Islamic law has either encouraged to be avoided or ordered to be abandoned.

TOPIC TWO: AN INTRODUCTION TO THE TERM “ENVIRONMENT” AND THE ENVIRONMENTAL LAW OF THE KINGDOM OF SAUDI ARABIA, AND THIS INCLUDES TWO SUB-TOPICS.

Sub-Topic One: An Introduction To The Term “Environment”.

The lexical definition of the Arabic term for the “environment” which is “*al-bīah*” could be traced to the verbs “*bawa’ah*” and “*bā’ah*”, which denote the following meanings in Arabic language:

- The first meaning: pointing and setting, as seen in: “*bawwa’ah al-rumḥ naḥwahū*”, meaning: he pointed the arrow and set it in his direction.
- The second meaning: renovating a place, as seen in: “*tabawwahahū*”, meaning: he renovated it and got it fixed and made it comfortable for him.
- The third meaning: a residence and abode, as seen in: “*tabawwaha al-makān*”, meaning: he resided at the place, which is comfortable and conducive (Ibn Manẓūr, (1994), Al-Rāzī, 1999, Al-Fayyūmī, N.D)..

The word “environment” was used by the Muslim scholars as far back as the third century of hijra in reference to what is moderate in nature, geography, place and bio-habitat where the living things live, and in reference to the moderate climate, politics, moral, and thought surrounding the human (Al-Faqqī, 1999).

There are several definitions for the environment in the modern era, in respect to the parlance of each field and the perspective of the person giving the definition, as there is the genetic environment or the urban environment, the cultural environment, the rural environment, the climate, the marine environment, and the human environment.

Modern ecology defines the environment as: the space or the spatial field in which a person lives, including its components from the natural and human phenomena with which they are affected or which they influence (Al-Faqqī, 1999).

It was also defined in another statement that says: The environment is a group of natural, social and cultural systems in which humans and other organisms live, from which they derive their sustenance and perform their activities (Mursī, 1999).

The environment is of two divisions:

Firstly: The natural environment, that consists of water, air, soil, minerals, energy sources, and life in all its forms, all of which represent the resources that God has made available to man; to obtain the necessities of his life.

Secondly: The artificial environment, which consists of the physical infrastructure that man has built from the social systems and the institutions that he has established (Al-Faqqī, 1999).

Sub-Topic Two: An Introduction To The Environmental Law of the Kingdom of Saudi Arabia.

The latest Environmental Law was issued by Royal Decree No. (M/165) dated: 11/19/1441 AH pursuant to Council of Ministers Resolution No. (729) and date: 11/16/1441 AH, which came as a substitute for the repealed laws, which are the Law of the Saudi Commission on Wildlife, issued by Royal Decree No. (M/22) dated: 09/12/1406 AH, the Law on Hunting Wild Animals and Birds, issued by Royal Decree No. (M/8) dated: 04/16/1416 AH, and the Trade in Endangered Wild Organisms and Their Products Regulation issued by Royal Decree No. (M/9), dated: 03/06/1421 AH, and the General Environmental Law, issued by Royal Decree No. (M/34) dated: 07/28/1422 AH, the Pastures and Forests Law issued by Royal Decree No. (M/55) dated: 10/29/1425 AH, and the Wildlife Reserved Areas Law issued by the decree Royal No. (M / 66) and the date: 10/19/1436 AH.

This law covers the environmental spaces: which is everything that surrounds human, animal, plant, or any living organism, like water, air, land, soil, forests, living things, biodiversity, gases in the atmosphere and water bodies, and what these mediums contain in terms of inanimate objects, different forms of energy, environmental habitats, natural processes and their interaction with each other.

This law came to regulate and supervise the environment sector, as well as related activities and services, in accordance with the provisions of the Environmental Law and its regulations, and raising the level of environmental awareness, and encouraging social participation; to enhance the protection and support of the environment, and to develop appropriate mechanisms and enablers to enhance the role of society in preserving the environment, and it performs oversight over the lands of vegetation, the reserved areas and their living and non-living components, their development and preservation. This law also aims to protect, develop and sustain the environment, and adhere to environmental principles.

TOPIC THREE: LEGAL APPLICATIONS PREMISED UPON THE MAXIM OF “REGULATION OF ACCESS TO THE PERMISSIBLE” IN THE ENVIRONMENTAL LAW.

The regulation of the public law on the environment contains forty-four articles, and upon studying these articles, the researcher was able to discover certain provisions that were influenced by the maxim of regulation of access to the permissible, and they are as follows:

Article Twelve: Lands of forests, pastures, national parks, wild and geological parks could not be acquired by any form of transfer of ownership.

The article above stipulates in the first paragraph the illegality of ownership of the lands of forests, pastures, and land parks under any guises, and this is against the Sharī'ah principle that allows the rights of ownership, and the freedom of benefiting from the lands that are terra nullius, because the default ruling on ownership is that it is permissible; Hence, this prohibition constitutes restriction and limitation to the permissible. However, the restriction is considered justifiable, based on the maxim of regulation of access to the permissible.

Article Fourteen: It is incumbent upon any person before tapping or using sand, gravel, rock or mud; to obtain a permit, in accordance with the regulations.

The article made it mandatory for whoever wishes to benefit from the environmental lands through tapping, or use of sand, gravel, or mud, to obtain a permit that allows him to do so, and this mandatory act is part of regulation of access to the permissible, because the default ruling of benefitting from the components of the earth is permissibility, as established in the principles of the Sharī'ah, hence, the procedure therein comes apparently in contrast with the connotation of the proofs of the Sharī'ah, but its application could be justified based on the maxim of regulation of access to the permissible.

Article Fifteen: Without prejudice to the provisions of Article (Fourteen) of this law, it is stipulated that agricultural and the vegetation lands could only be reclaimed and levelled subject to obtaining a license, as indicated by the regulations.

The article stipulates for the reclamation of the agricultural and vegetation lands that a permit allowing such must be obtained, and this stipulation is regarded a restriction to the permissible, because the default ruling on the use of agricultural lands is permissibility, as well established in the Sharī'ah. Hence, the procedure therein comes apparently in contrast with the connotations of the proofs of the Sharī'ah, but its application is justifiable based on the maxim of regulation of access to the permissible.

Article Twenty: Local production, transportation, storage, sale or promotion of firewood or charcoal is prohibited. without obtaining a permit or license, in accordance with the regulations.

The article prohibits the production of local firewood or charcoal or any related activities, without obtaining a permit or license, and this prohibition is against absoluteness and freedom in the rule of permissibility, because the default ruling regarding firewood and the likes is permissibility. Hence, the prohibition is deemed apparently in contrast with the proofs of the Sharī'ah, however, its application could be justified based on the maxim of regulation of access to the permissible.

Article Twenty Seven: It is prohibited to hunt live animal, wild species, and as an exception, it is permissible to hunt specific types of them after obtaining a license, taking into account the following:

- 1- Hunting should be limited to the species determined by the competent authority.
- 2- The hunting should take place at the places and times determined by the competent authority.
- 3- There should be no use of means of baiting of animals and birds or means that lead to the hunting of more than one animal or bird at once.

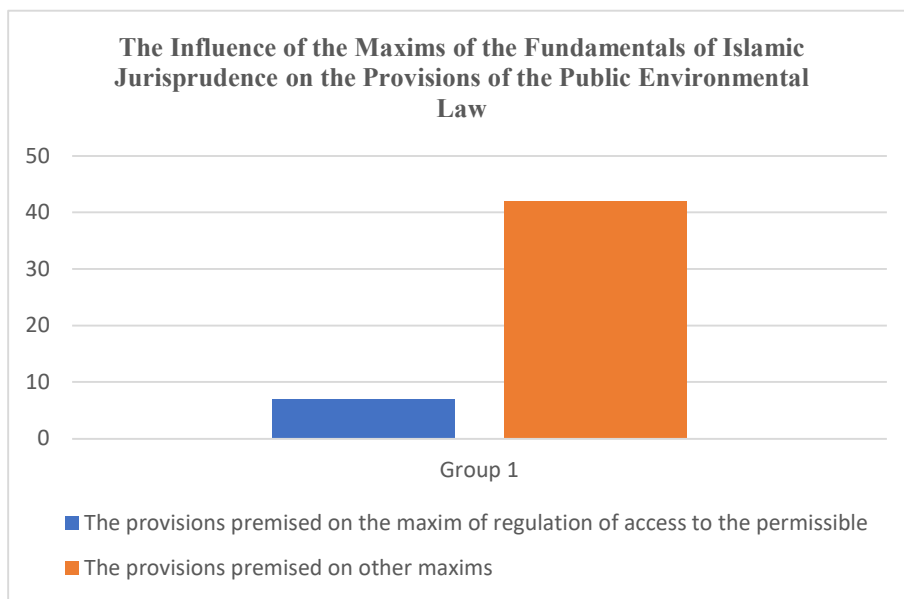
The article prohibits the hunting of live animals and natural species, with exception to some specific types, without obtaining a conditional license, and this prohibition is deemed a restriction to the absoluteness of the rule of permissibility, because the default ruling on hunting is permissibility. Hence, this prohibition is apparently in contrast to the connotation of the proofs of the Sharī'ah, however, it could be justified based on the maxim of regulation of access to the permissible.

Article Thirty: It is prohibited to practice any activity within the boundaries of the reserved areas, without obtaining a permit or license, in accordance with the regulations.

The article prohibits engaging in any activity within the boundaries of the protected areas without obtaining a permit or license, and this prohibition constitutes restriction and limitation to the permissible, because the default ruling on benefitting from the earth is permissibility. Hence, the prohibition is deemed apparently in contrast with the connotations of the proofs of the Sharī'ah, however, it could be justified based on the maxim of regulation of access to the permissible.

Article Thirty-One: The competent authority shall make rules for access to the reserved areas - in coordination with the Ministry of the Interior - and for using them for grazing, eco-tourism, conducting research, and the likes. This is according to the nature of each reserved area, and in a way that achieves the objectives of this law.

The article vests in the competent authority the duty of making rules for access to the reserved areas, and benefitting from them through grazing, eco-tourism, and research etc., and these procedures and rules are deemed as restriction and limitation to the principle permissibly, because the default ruling on grazing and tourism and research is permissibility. Hence, this restriction is apparently in contrast with the connotations of the proofs of the Sharī'ah, however, the premises for its justification could be traced to the provisions of the maxim of regulation of access to the permissible.



CONCLUSION:

The foregoing paper has revealed this following:

- 1- The necessity of paying attention to the environment, and considering human interest and its sustainability in compliance to the Sharī'ah and the law.
- 2- The attention given in the laws of the Kingdom of Saudi Arabia to protecting everything that would enhance the sustainability of the environment and its components from whatever may cause harm to them.
- 3- The correlation between the science of fundamentals of Islamic jurisprudence and the laws of the Kingdom of Saudi Arabia in the way they were drafted and enacted, and the interpretation of their regulations and provisions.

- 4- The influence of the maxim of “regulation of access to the permissible” on seven articles in the Environmental Law, which are: article 12, article 14, article 15, article 20, article 27, article 30, and article 31.

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