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## An Analytical Review of *Halal* and *Haram* Food in the Light of Islamic Legal Maxims (*Al-Qawa'id Al-Fiqhiyyah*)

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### Abstract

The distinction between Halal and Haram is the most critical factor in assessing the legitimacy of an action. It is mandatory for the Muslims to ensure that their actions align with the commandments of Shari'ah. One of the primary accomplishments of Islamic law is the development of Islamic legal maxims (*Al-Qawa'id Al-Fiqhiyyah*) to formulate rules in the significant matter of halal and haram actions. This research has used study-based and descriptive approach. Content analysis have been done in this study. The present work aims to explore the principles of permissibility and prohibition of food in the light of Islamic legal maxims. The role of Islamic legal maxims has been highlighted in the domain of halal and haram food. It has been discussed that how legal maxims of Islamic law are compatible with the Qur'anic injunctions and Prophetic Traditions to develop the legal rulings regarding the issues of halal and haram food in contemporary era.

**Keywords:** Legal Maxims of Islamic Law, Halal and Haram Food, Dietary Guidelines in Shari'ah

### I. Introduction:

The legal maxims of Islamic law (*al-Qawa'id al-fiqhiyyah*) are the general rules of Islamic law that serve as principles in order to derive several additional rulings of Islamic law. Many cases can be handled with the use of these maxims to determine their solutions, helping to establish the permissibility or prohibition of specific situations. Sheikh Mustafa Ahmad Zarqa, a distinguished Hanafi Muslim scholar, has defined legal maxims of Islamic law (*al-Qawa'id al-fiqhiyyah*) as "**universal principles of Islamic law presented in a concise legal form, encompassing broad general rulings for cases falling within their scope**".<sup>1</sup>

Legal maxims of Islamic law uphold the true essence of Islamic legislation, safeguard the welfare of individuals, and address the needs of contemporary society by promoting benefits and preventing harm. In the absence of explicit rulings in legal texts, jurists rely on this domain of Islamic law to resolve issues.<sup>2</sup>

This research has examined the principles of Islamic legal maxims regarding the legality and illegality of various food sources. It has addressed contemporary challenges related to the production and consumption of both *halal* and *haram* food

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items and explored how Islamic legal maxims can be applied to resolve these issues in the modern context. *Al-Halal* (The Legal or Lawful) refers to dealings and substances deemed allowable by Shari'ah, for which there are no hindrance or limitations, and whose practice and utilization is permitted by the Law-Giver, Allah. *Al-Haram* (The Forbidden or Unlawful) refers to business and stuff explicitly outlawed by Shari'ah, with clear prohibitions and constraints on their practice and consumption. Those who engage in such illegal actions will face chastisement from the Law-Giver, Allah, in the Hereafter, and may also incur legal penalties in this world if that act is classified as a crime.<sup>3</sup>

## **II. Initial Requirements in Shari'ah for Halal and Haram Food:**

Shari'ah outlines specific rules and principles to classify food items as either *halal* or *haram*:

### **a) Meat and Poultry:**

- i. Slaughtering of birds and animals should be performed by the Muslims or the People of the Book (Jews and Christians).
- ii. Meat, liver and pancreas only from *halal* birds and animals are permitted to consume.
- iii. Making an animal unconscious before slaughtering is allowed in order to prevent the pain provided it is not fatal.<sup>4</sup>
- iv. Animals should be treated with kindness and compassion before slaughter. The blood must be completely drained from the slaughtered.

### **b) Fish and Other Sea Food:**

- i. The majority of the scholars concur that shellfish and crustaceans such as crabs, lobsters, crayfish, shrimp, krill, woodlice and barnacles are allowed for consumption, nevertheless, some of the scholars disapprove this type of sea food.
- ii. Fish with scales are unanimously accepted as *halal*.
- iii. Fish without scales are not permissible by few scholars.

### **c) Eggs and Dairy Products:**

- i. Eggs and Milk of permissible birds and animals are allowed to consume.
- ii. Dairy products derived from permissible mammals are also allowed to consume.

### **d) Drinks and Medicine:**

- i. Fermented fruit juices and other intoxicating drinks are impermissible for example, Ethyl Alcohol and alcoholic beverages.
- ii. Drugs used for intoxication purpose rather than medicine are also impermissible.

### **e) Food Ingredients:**

- i. They must not be derived from the birds and animals which are considered *haram*.
- ii. All ingredients derived from vegetable and fruit are *halal* except for those which are impure, detrimental for health and cause intoxication.
- iii. Under Islamic law, genetically modified (GMO) foods which are altered through genetical engineering are also *halal*.<sup>5</sup>

## **III. Standard of Permissibility and Prohibition of Food in Shari'ah:**

To determine the legality of food in Shari'ah, numerous key factors may be regarded as standard principles including cleanliness, nutritionally favourable to health, absence of non-intoxicating properties and (in case of birds and animals), adherence to the prescribed method of slaughtering as outlined by Shari'ah.

Likewise, the standard of proscription of food also depends on the characteristics like filthiness, hazardous and intoxicating nature as well as consumption of birds and animals without slaughtering in the manner prescribed by Shari'ah.<sup>6</sup>

#### IV. Scholarly Views on Halal and Haram Food with Shari'ah Standards:

Juristic opinions on *halal* and *haram* food which are compatible with Shari'ah standards, encompassing both terrestrial and marine animals as well as plants and other modern food items have been presented here with respect to the perspectives of diverse schools of thought.

##### a) Marine Animals:

The category of marine animals covers fish and other aquatic creatures. From Hanafis' viewpoint, all fish except Hagfish and Eels is permissible while rest of the seafood is impermissible.<sup>7</sup> Shafa'is and Hanbalis deem all seafood permissible with the exception of Seadog and Sea pig.<sup>8</sup> According to Malikis, all seafood is permissible without excluding anything<sup>9</sup>. They cite specific verses in support of their viewpoint for instance:

وَهُوَ الَّذِي سَخَّرَ الْبَحْرَ لِتَأْكُلُوا مِنْهُ لَحْمًا طَرِيًّا.

*“And He is the One Who subjected the sea (to you) so that you may eat from it the fresh tender meat.”*<sup>10</sup>

Ja'faris' perspective is that fish and sea food like Tuna, Trout, Salmon, Sardine, Shrimp which have scales are *halal* however, fish and sea food like Catfish, Marlin, Shark, Octopus, Snail, Squid, and Lobster with no scales are *haram*.<sup>11</sup>

##### b) Terrestrial Animals:

Land animals are known as terrestrial animals. The permissible land animals include every kind of birds without talons such as pigeons, sparrow, doves; mammals without canine teeth such as cows, buffalos, goats, sheep, camels; poultry including chicken, turkey, geese and duck; wild animals for example deer, rabbits, mastigures, badgers, locusts; and lastly the animals (not dead) which are slaughtered in Shari'ah-compliant manner and in the name of Allah alone.<sup>12</sup>

Prohibited terrestrial animals include pig and all of their secondary products like meat, fat, skin and bones; birds of prey and all birds with talons such as vultures, eagles, falcon, kites, parrots, crows; mammals having canine teeth for example lions, tigers, wolves, beers, dogs; reptiles such as rats, snakes, frogs, crocodiles, lizards except for mastigure; insects including worms, butterflies, flies, cockroaches, spiders except for locusts; dead animals or animals which are butchered not adhering the Shari'ah-compliant manner or animals which are sacrificed in the name of someone other Allah, even if they are *halal*; and lastly domestic donkeys as well as flowing blood. All of them are not permissible for consumption.<sup>13</sup> The principal *fuqaha* hold conflicting viewpoints with regard to the insects. Imam Malik deems all insects allowed to consume without exception while Imam Abu Hanifa considers all of them forbidden for consumption. Imam Hanbal and Imam Shaf'i opine that as the injunctions given in the Qur'an declare only hazardous, disgusting and impure things forbidden therefore, some insects are *halal* while some others are *haram*.<sup>14</sup>

##### c) Crops, Fruits, Plants and Herbs:

Fruits, vegetables, grains, seeds, and other plant-based foods are considered *halal*, such as fruits like dates, pomegranates, olives, figs, and grapes; vegetables including cucumbers and gourds; grains such as wheat, barley, oats, and rice; seeds like black

seeds and sunflower seeds; and other plants, herbs, and greenery produced from the earth. However, the plants which have intoxicating properties and detrimental to health as well as drinks made from fruits, vegetables and grains that contain alcohol are not permissible. From Malikis' perspective, all crops, grains, fruits, herbs, and plants are permissible. To support their opinion, they cite the verse as under:

وَهُوَ الَّذِي أَنْزَلَ مِنَ السَّمَاءِ مَاءً فَأَخْرَجْنَا بِهِ نَبَاتَ كُلِّ شَيْءٍ فَأَخْرَجْنَا مِنْهُ خَضِرًا نُخْرَجُ مِنْهُ حَبًّا مُتَرَاكِبًا.

*“It is He Who sends down water from the sky and with it We (Allah) bring forth vegetation of all kinds and out of it We (Allah) bring forth green stalks, from which We (Allah) bring forth thick clustered grain”.*<sup>15</sup>

**d) Other Food Items:**

Edibles such as milk, fruit juices, honey and vinegar are *halal* with the exception of alcoholic beverages which are prohibited. Medicinal drugs are allowed, provided they are used for therapeutic purposes only. But if the drugs lead to addiction and are consumed for the purpose of getting intoxicated, they will be regarded as *haram*. Gelatin and glycerin derived from the skin, sinews and bones of permissible animals which are slaughtered in accordance with Shari'ah or from fruits and plants that are not fatal are *halal*.<sup>16</sup> Permissible food colors, preservatives, chocolates, sweeteners and flavors with undoubtful origins are *halal*. Vitamins, citric acid from plant sources<sup>17</sup>, vanilla extract which is alcohol-free<sup>18</sup> and yeast that is not a secondary product of beer are also deemed *halal*.<sup>19</sup>

Contemporary scholars have concluded that in case, any traces of alcohol or enzymes which are derived from pork, have been completely transformed in the production process of modern fizzy drinks, these drinks can be deemed *halal*.<sup>20</sup>

**V. Islamic Legal Maxims (Al-Qawa'id Al-Fiqhiyyah):**

The Islamic legal maxims, also known as jurisprudential maxims or Shari'ah maxims (*al-qawa'id al-fiqhiyyah*), are broad-spectrum principles of Islamic law that apply to a wide range of issues governed by common rulings. These maxims consist of broad statements based on general principles, which are derived from legal rulings and can be applied to particular cases within Islamic law. They play a crucial role in the development of Islamic law, as they serve as foundational principles for deriving many other legal rules. Numerous legal matters can be referred to these maxims for guidance as they help determine the legality or illegality of various cases. Sheikh Mustafa Ahmad Zarqa, a distinguished Hanafi scholar, has described the definition of Islamic legal maxims in these words:

*“universal principles of Islamic law formulated in a compendious legal form containing broad general rulings in those cases which come under their particular subject”.*<sup>21</sup>

**a. Significance of Islamic Legal Maxims (Al-Qawa'id Al-Fiqhiyyah):**

The *fuqaha* have utilized legal maxims of Islamic law in their juristic research, which have the worth of basic legal principles due to their great purpose and significant magnitude. Despite differences in their names, these maxims uphold the actual essence of Islamic legislation, safeguard the interests of the people and address the needs of contemporary society by promoting benefits and preventing harm within an Islamic community. When a clear legal ruling is not available from explicit texts, the *fuqaha* turn to these maxims to resolve secondary issues. This is the reason, many scholars

have compiled extensive works on Shari'ah maxims, creating a valuable legacy in this field. They have diligently presented various versions of these maxims, offering insightful interpretations and emphasizing their practical and beneficial application.<sup>22</sup>

#### VI. Legal Maxims of Islamic Law concerning Halal and Haram Food:

Several legal maxims of Islamic law are understood and analyzed, along with concise explanations and their implementation to the present-day issues related to *halal* and *haram* food. In this context, the Shari'ah perspective on the challenges faced in modern *halal* food production and consumption is explored and clarified.

##### 1. التحريم في الاصل في الأشياء الاباحه حتى يدل الدليل على التحريم (The initial presumption for all things is permissibility unless an evidence indicates prohibition).

The scholars of Islam have derived this principle of the natural lawfulness of actions and stuff from the clear *Qur'anic* injunctions for instance:

وَسَخَّرَ لَكُمْ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ جَمِيعًا مِنْهُ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَعْقِلُونَ-

“He has subjected to you, from Himself, all that is in the heavens and all that is on the earth”.<sup>23</sup>

هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا-

“He is the One Who created for you all that is on earth”.<sup>24</sup>

In Islamic law, the primary principle is that everything is originally permissible, as it has been created by Allah. Shafi'i and several Hanafi jurists, such as al-Karkhi, hold the view that the default status of every item in this world is permissibility, unless clear legal evidence establishes its prohibition. Behind this basic principle, the philosophy is that everything in this universe has been created for mankind by Allah, the Most Wise. The divine intention is that these resources should be used for their intended purpose, bringing blessings and benefits to the mankind. Based on this legal maxim, seafood is considered permissible unless there is explicit evidence in Islamic law that renders certain types of seafood *haram*. Likewise, foods such as wheat, barley, rice, grapes and dates are permissible for consumption; however, the wine derived from them is unlawful. In some cases, things, by nature, are *halal* but dealing them in a way contradictory to Shari'ah make them prohibited. For example, certain mammals, poultry and birds are lawful but slaughtering them in non-prescribed way or sacrificing them in the name of someone other than Allah renders them unlawful despite of their *halal* nature initially.<sup>25</sup>

The scope of unlawful things and deeds is not so wide-ranging in Islamic law as Allah, in His infinite wisdom, has prohibited certain things for specific reasons only and made these prohibitions known through the Exalted Qur'an and the blessed *Seerah* of His Messenger Muhammad (peace be upon him). For example, the Shari'ah has forbidden pork, carrion (dead animals), animals not slaughtered in the approved religious manner, animals with canine teeth, birds that hunt with talons, certain seafood (such as octopus, crab, and eels) and intoxicating drinks or drugs. Anything that is not explicitly prohibited in the Qur'an or Ahadeeth is recognized as *halal*, as indicated by the aforementioned Islamic legal maxim. For instance, fish is generally considered *halal*, but the types of fish are not specified which leads to the permissibility of all types of fish. Similarly, all products of the earth such as fruits, grains, plants, herbs and greenery are initially considered lawful. Any newly discovered food from the soil or animals or birds will be presumed to be lawful too unless a clear evidence emerges to prove otherwise.<sup>26</sup> In this regard, some Qur'anic injunctions are provided here:

وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرِرْتُمْ إِلَيْهِ-

*“He (Allah) has explained to you what He has made forbidden for you except under compulsion of necessity”.*<sup>27</sup>

قُلْ أَرَأَيْتُمْ مَا أَنْزَلَ اللَّهُ لَكُمْ مِنْ رِزْقٍ فَجَعَلْتُمْ مِنْهُ حَرَامًا وَحَلَالًا-

*“Say: Do you see what Allah has sent down to you for sustenance? Yet you have made some part of it halaal and some part haraam”.*<sup>28</sup>

In *Jami' al-Tirmidhi and Ibn Majah*, a Prophetic tradition is mentioned that Hazrat Salman Farsi (may Allah be pleased with him) reported that when the Messenger of Allah (peace be on him) was asked about animal fat, cheese and fur, he replied:

*“The halal is that which Allah has made lawful in His Book and the haram is that which He has forbidden; and that concerning which He is silent He has permitted as a favor to you”.*<sup>29</sup>

The Prophet Muhammad (peace be on him) also said:

*“Allah has prescribed certain obligations for you, so do not neglect them; He has defined certain limits, so do not transgress them; He has prohibited certain things, so do not do them; and He has kept silent concerning other things out of mercy for you and not because of forgetfulness, so do not ask questions concerning them”.*<sup>30</sup>

The legal maxim of Islamic law related to the initial permissibility of all things is profound in its scope, philosophy and benefits. Based on this principle, the general ruling of lawfulness can be applied to important aspects of human life such as validity or invalidity of certain food items and beverages, dress-code, family laws, financial matters, state matters, crimes and their punishments and so on.<sup>31</sup>

Similar legal maxims are as under:

**2. الأصل بقا ما كان على ما كان (The initial presumption is that a thing continues to exist in its original state).**

**3. يسألونك ماذا أحل لهم قل إن أكلتكم الطيبات (They ask from you what is lawful for them. Say: Lawful unto you are the good things).**

This Islamic legal maxim is basically a verse 4 of Surah al-Ma'idah.<sup>32</sup> From this principle of permissibility, it can be concluded that any pure and nutritious food that is beneficial for human health and that is not explicitly declared unlawful, will be considered *halal* until contradictory verification is found in Islamic legal sources. This maxim also indicates that the things made *halal* for people by Allah Almighty are good and pure in their nature. For example, vegetables (such as cucumber and gourd), fruits (like dates, pomegranates, olives, figs, and grapes), grains (including wheat, barley, oats, and rice), seeds (such as black seed and sunflower seeds), meat from cattle (cow, buffalo, goat, sheep, camel, chicken), birds (such as pigeon, sparrow, and dove), poultry (like chickens, turkeys, geese, and ducks), wild animals (such as deer, rabbit, and locust) and other edibles like honey, vinegar and milk are all regarded as *halal*. The reason of their permissibility is their purity and benefits. On the other hand, things made *haram* for people by Allah Almighty are impure and harmful in their nature, taking the wellbeing and interests of humanity into account.<sup>33</sup> This is the guidance, the Allah's Messenger (peace be upon him) conveyed, referencing the following Qur'anic verses:

“Allah is good and does not accept anything but good, and Allah has commanded the Believers, as He commanded His messengers, saying:<sup>34</sup>

يَا أَيُّهَا الرُّسُلُ كُلُوا مِنَ الطَّيِّبَاتِ وَاعْمَلُوا صَالِحًا.

“O you messengers! Eat of whatever is good and work righteousness. Indeed, I am aware of what you do” (Al-Qur’an 23:51).

He also said:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُلُوا مِن طَيِّبَاتِ مَا رَزَقْنَاكُمْ.

“O you who believe! Eat of the good things which We provide for you” (Al-Qur’an 2:172).

يَأْمُرُهُم بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُجِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ.

“He (the Prophet Muhammad) commands them what is right and forbids them what is evil; he makes lawful to them what is good and makes unlawful what is foul; he releases them from their burdens and from the yokes which were upon them...” (Al-Qur’an 7:157).

Particular matters and stuff are rendered invalid in Islam solely due to their filthiness and harmful effects. Therefore, if a food is detrimental to human health, it will be considered *haram*, while if it is absolutely favorable and fit for people’s health, it will be ruled out as *halal*. Similarly, if the harm of a certain food outweighs its benefits, it becomes *haram*. Conversely, if its benefits surpass any potential harm, it is deemed *halal*. This principle is clearly established in the Qur’an with regard to wine and gambling:<sup>35</sup>

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا.

“They ask thee concerning wine and gambling. Say (O Prophet): In them is great sin and some benefit for human beings, but the sin is greater than the benefit....”<sup>36</sup>

#### 4. اليقين لا يزول بالشك (Certainty is not overruled by a doubt).

The evidence for this legal maxim is found in the following Qur’anic verse and Hadith:

إِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا.

“Certainly, conjecture can be of no avail against the truth”.<sup>37</sup>

In Islamic jurisprudence, certainty (*yaqin*) and doubt (*zann*) are two fundamental concepts. In jurist’s view, certainty refers to a strong presumption or conviction about the occurrence or non-occurrence of an incident, based on an unambiguous proof. On the other hand, doubt arises when there is uncertainty between two equally plausible matters. A certainty is established through clear evidence and cannot be overturned by a doubt, which is considered inferior to a certain judgment. That’s why, a mere suspicion lacks the legal capacity to cancel the certainty of a matter. However, it is possible to undo a certainty through another authentic certain legal ruling. This principle is a cornerstone of Islamic law, applying to nearly all domains of jurisprudence. The jurists estimate that more than three-fourths of all jurisprudential rulings in Islamic law are derived from this legal maxim.<sup>38</sup> Imam al-Qarafi emphasized

that if a matter is doubtful, it is as if it never existed.<sup>39</sup> Similarly, Imam Abu Hanifa held that the certainty of a matter persists until its contrary is proven with decisive evidence.<sup>40</sup>

In Islamic jurisprudence, juristic rulings can be categorized into two types based on their derivation sources and themes:

**i. Definitive Legal Rulings (Qat'iyah):** These rulings are constructed through the explicit texts of the Qur'an and Ahadeeth. They pertain to fundamental aspects of Islam, including essential beliefs, pillars, moral values, and unequivocal directives regarding *halal* and *haram*. Examples of definitive rulings include the prohibition of alcohol and pork consumption, flowing blood as well as the instruction to consume pure food, all of which are explicitly mentioned in the Qur'an.

**ii. Speculative Rulings (Zanniyyah):** These rulings are formulated through the sources other than the Qur'an and Ahadeeth, such as analogical reasoning (*qiyas*) and scholarly consensus (*ijma'*).<sup>41</sup> This type of ruling is applied to present-day issues related to permissible food, allowing for a degree of flexibility and adjustment. In cases where there is no clear textual evidence regarding the prohibition of a particular food, the default ruling is that of permissibility until proven otherwise with certainty. In this context, the Maliki school of thought provides a relevant reference point. According to this school, all mammals, birds, insects, seafood and crops will be deemed *halal* with the exception of those which are indubitably mentioned in the verses of the Qur'an or Ahadeeth with their names or attributes as being *haram*.

**5. ما ثبت باليقين لا يزول بالشك (What is established through certainty is not removed by doubt).**

The legality of a particular food won't be invalidated by a doubt if it is explicitly proved to be *halal* in obvious textual evidence such as, fish and locusts are considered permissible as stated in Ahadeeth, consequently all types of fish like whale, dolphin, shark, and shrimps are *halal*. Similarly, the proscription of certain edible products cannot be overruled by doubt if it is clearly mentioned to be *haram* in a definite text. For example, wine manufactured by any substance, even it is *halal*, will be regarded as unlawful based on many Qur'anic injunctions and Ahadeeth.<sup>42</sup> Allah Almighty said:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ.

“O you who believe! Wine, gambling, *ansaab*, and *azlaam* are a Rijs of Satan's handiwork. So avoid that in order that you may be successful”.<sup>43</sup>

**6. ما ثبت لا يبيقن الا يرتفع بيقين (The matter once proved with certainty cannot be eliminated without another certainty).**<sup>44</sup>

A certain food, originally declared lawful, cannot be rendered invalid unless some clear evidence from Islamic law proves otherwise. For example, initially, domesticated donkeys were permissible for Muslims to eat, but later, their consumption was prohibited through a decree of Allah's Messenger (peace be upon him).

**7. الاحكام تنبنى على العادة الظاهرة (The laws are to be structured upon the apparent physical facts).**

In determining the legal ruling on the lawfulness or unlawfulness of a food, the decision is based on the apparent physical characteristics such as its nature, traits, purity and advantages. For example, if a fruit or herb is considered pure, non-intoxicating,

nontoxic and nutritious to humans, it will originally be regarded as permissible, since the default ruling for all edible items is permissibility, unless clear proof of its proscription is found.<sup>45</sup>

#### 8. كُلُّ شَرَابٍ أَسْكَرَ فَهُوَ حَرَامٌ (Every drink that causes intoxication is forbidden).

This is a legal maxim as well as a *Hadith*:

عَنْ عَائِشَةَ، قَالَتْ سَأِلْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الْبَيْعِ فَقَالَ كُلُّ شَرَابٍ أَسْكَرَ فَهُوَ حَرَامٌ.

*Reported from Hazrat Ayesah (may Allah be pleased with her) that Allah's Messenger (peace be upon him) was asked about Bit'i, whereupon he said: "Every drink that causes intoxication is forbidden".*<sup>46</sup>

This highlights the prohibition of all alcoholic drinks due to their intoxicating nature. *Khamr* (intoxication) impairs one's ability to distinguish between right and wrong, leading to further sins and harmful actions. Consumption of intoxicating beverages as well as inebriated drugs like heroin, hemp, opium and cigarettes is prohibited in Islam. Additionally, alcohol consumption is considered one of the *hudoos* offenses, and the legal punishment for committing this offense is 80 lashes.<sup>47</sup>

#### 9. الأصل في الميتات النجاسة (The initial presumption about dead animals is filthiness)

Animals that die due to disease or through strangulation, excessive blood loss, falling, beating or are partly consumed by wild animals are forbidden to eat. This is because impure and harmful substances are prohibited in Islam and animals not slaughtered according with the suggested way of *Shari'ah* are deemed impure and hazardous to human health. The blood, which may contain harmful germs, mixes with and is absorbed into the dead animal's flesh. Therefore, animals must be slaughtered in the manner outlined by *Shari'ah*. Additionally, dead animals are considered repulsive by human nature with the exception of fish and locusts, which remain fresh and are nutritious and lawful.<sup>48</sup>

#### 10. كل ميتة نجسة الا السمك والجراد. (Each dead animal except fish and locust is filthy)

Above-mentioned legal maxim has been originated from this *Hadith* which is narrated from Hazrat Abdullah bin Umar (may Allah be pleased with him) that Allah's Messenger (peace be upon him) said:

أُجِلَّتْ لَنَا مَيْتَتَانِ الْخُوثُ وَالْجَرَادُ -

*"Two kinds of dead meat have been permitted to us: fish and locusts".*<sup>49</sup>

#### 11. المشقة تجلب التيسير (Hardship begets facility)

This legal maxim has been derived from the following sources which are *Qur'anic* injunctions:

يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَلَا يُرِيدُ بِكُمْ الْعُسْرَ -

*"Allah intends for you ease and He does not want to make things difficult for you".*<sup>50</sup>

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا -

*"Allah burdens not a person beyond his scope".*<sup>51</sup>

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ -

*"He has chosen you and has not laid upon you in religion any hardship".*<sup>52</sup>

Facilitating in a religious matter means that the easier option will be resorted to in case of occurrence of a hardship in a certain situation, provided that option would be permissible one.<sup>53</sup> The Shari'ah rulings are designed considering the feasibility and interests of people or everyone would face unreasonable restrictions, troubles and complications. Nevertheless, this ease and relief do not imply the absence of ethical or legal boundaries. The enforcement of Islamic laws pertaining to religion, morality and society is essential for the continuation of a pious and peaceful community.<sup>54</sup> The exemptions, alleviation and feasibility provided by Shari'ah fall into two categories: one granted for general ease and the other due to special circumstances. This principle shows that subsequent relaxation is granted by Shari'ah everytime a hardship arises yet this does not apply in ordinary situations. For example, if a minor or mentally unstable person commits a *hadd* offense such as wine drinking or a *ta'zir* offense like pork consumption, the penalty would not be applied to them due to their incapacity. Similarly, exemptions are granted in cases where individuals consume unlawful food due to circumstances such as slavery, under coercion, by mistake or due to ignorance of Islamic teachings, especially when living in a non-Muslim country.<sup>55</sup>

**12. الضرورات تبيح المحظورات (Necessity permits the prohibited).<sup>56</sup>**

This legal maxim has been originated from the above mentioned primary maxim of distress reduction. Following *Qur'anic* verse can also be taken as a source of this maxim:

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخَنزِيرِ وَمَا أُهِلَّ بِهِ لِغَيْرِ اللَّهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ  
إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ.

*“He has forbidden you only the dead animals, blood, the flesh of swine and that which is slaughtered as a sacrifice for other than Allah. But if one is forced by necessity without willful disobedience or transgressing due limits, then there is no sin on him. Truly, Allah is Oft-Forgiving, Most Merciful”.*<sup>57</sup>

From this principle, following legal rulings have been derived by the jurists:

- i. Consumption of prohibited animals and stuff such as the meat or milk of wild beasts with fangs, birds of prey or dead animals, pork or wine is allowed in case of intense hunger, thirst or sickness when a person's life is at risk and *halal* food is not available.
- ii. It is permissible to swallow a morsel lodged in someone's throat by consuming a sip of wine in case of absence of water or any other *halal* beverage.
- iii. Consumption of unlawful thing is allowed under forceful circumstance or when it is necessary to preserve one's life.<sup>58</sup>

**13. الضرورات تقدر بقدرها. (Necessity is limited by its extent).**

A proscribed thing can be rendered to something permitted due to a certain necessity. However, this permissibility is limited to the extent of the necessity. For example, if few morsels of prohibited food are enough to prevent starvation or a small amount of wine is needed to treat a disease in case of unavailability of *halal* stuff, then that proscribed item should only be used to the extent necessary to meet that need.<sup>59</sup>

**14. الأمر إذا ضاق اتسع. (Under duress, the rules are relaxed).<sup>60</sup>**

Using dead or forbidden animals is allowed in order to save life or under forceful circumstances. However, this alleviation won't be applied once the state of duress ends.<sup>61</sup>

**15. إذا تعارض مفسدتان روعي اعظمهما ضررا بارتكاب اخفهما. (In case of conflict between the bearing of two injuries, the lighter injury is borne of the lesser).<sup>62</sup>**

When a person has to choose between two harmful options, the principle established by Shari'ah is to select the smaller of the two evils in order to protect the society from greater harm. For example, consuming a dead or forbidden animal may be allowed in a state of extreme hunger or thirst. Although this is against the Islamic law, yet preserving life takes precedence over the enforcement of legal mandate in sight of Shari'ah. Similarly, hunting animals is prohibited while in a state of *ihram* but if necessary, it may be permitted for one's survival.<sup>63</sup> In cases where drug addiction or alcoholism, particularly from opium or grapes, is increasing in a particular region due to local cultivation, the government may issue a temporary ban on the cultivation of opium / grapes to protect people from the danger of use of drug / alcohol.

**16. إذا اجتمع الحلال والحرام غلب الحرام (When permitted and prohibited come together on a point, the prohibited is given predominance).<sup>64</sup>**

A few Hadith scholars, such as Abdul Razzaq, have narrated this principle as a *Marfu'* Hadith in his *Musannaf* and the jurists have adopted this Hadith as an Islamic legal maxim. When two rulings of Shari'ah come forth pertaining to a matter-- one permitting it and the other prohibiting it-- the ruling of proscription will take precedence. For example, if some animals from a hunt are permitted while others are prohibited and they are mixed together in a way that it is impossible to distinct them then all of them will be regarded as unlawful.<sup>65</sup> Similarly, if both trained and untrained hounds are used during a hunt, the animal caught will no longer be thought as *halal*.<sup>66</sup> Another example is that in case of mixing the fats of a dead or prohibited animal, such as a dog, donkey or pig, with oil accidentally, that oil is not permissible to use. Milk of cow mixed with the donkey's milk, becomes prohibited to drink.<sup>67</sup> An example from contemporary society could be that it becomes impermissible to eat or drink from a particular hotel, restaurant or bakery that, proved by an authentic source, serves dishes made with both permissible and impermissible meat, fats and alcohol. The customer who knowingly consumes food from such an establishment will be a sinner. Additionally, as it is also a crime, the owners, administration and staff of that place will be held accountable and penalized for this crime.

**17. درؤ المفساد أولى من جلب المنافع (Repelling an injury is preferred over the securing of a benefit).<sup>68</sup>**

When something has both beneficial and harmful properties, the harm will be prioritized over the benefit. For instance, the manufacturing and trade of wine in an Islamic state cannot be permitted even for non-muslim minorities or foreigners to increase national income. If a person possesses two sources of income, one legal and the other illegal, and the illegal earning exceeds the legal one, it is forbidden to accept gifts, charity or anything from that person or eat at his place. Similarly, if a shop sells products derived from random sources and the distinction between the *haram* and *halal* sources is not clear, it is prohibited to purchase from that shop.<sup>69</sup>

**18. العادة محكمة (Custom is a basis for judgment).**

For this legal maxim, the derivation source is the saying of the Companion, Abdullah ibn Mas'ud (may Allah be pleased with him) as follows:

فما راي المسلمون حسنا فهو عند الله حسن وما راوا سينا فهو عند الله سيء.

“Whatever the Muslims determine to be good, is good in the sight of Allah and whatever they view as evil is evil in the sight of Allah”.<sup>70</sup>

The evidence for this legal maxim can also be found in the *Qur'anic* verse:

وَأْمُرْ بِالْعُرْفِ-

“Enjoin what is customary”.<sup>71</sup>

*Al-'Adah* refers to custom, tradition or norm which can be changed based on the need of time, place and circumstances.<sup>72</sup> *'Urf* and *ma'ruf* are the terms alternatively used for *'adah* in the *Qur'an* and they also refer to the customary laws and practices widely accepted by the majority of people in a particular area, provided these customs are advantageous and in alignment with the principles of *Shari'ah*. Customs, similar in temperament of *Shari'ah*, are upheld and not renounced. For example, consuming masticure was a common practice in the pre-Islamic Arabia. Allah's Messenger (peace be upon him), though did not prefer to eat himself, never prohibited its consumption, thus tacitly approving this customary practice.

**19. العادة تجعل حكماً إذا لم يوجد التصريح بخلافه. (Decision will be made according to the custom when a clear declaration is not against it).**

Decisions based on certain norms are valid if those norms are not in contradiction with the unambiguous texts of the *Qur'an*, *Ahadeeth* or other sources of Islamic law. For example, if eating crabs is a common practice among the people of a specific country, as much of their food source is seafood, it is allowed for them, as in the viewpoint of *Maliki* and *Shafi'i* scholars, eating crabs is lawful. In *Imam Malik's* opinion, no seafood is *haram*, whether it is fish or not.<sup>73</sup> However, social practices directly conflicting the clear teachings of *Shari'ah*, such as alcohol and pork consumption, smoking, vaping or preparing dishes with unlawful ingredients, commonly seen in the preparation of Chinese, Thai or European dishes, must be avoided without exception and have no room in Islam.<sup>74</sup>

## **VII. Conclusion:**

Various issues can be resolved with the help of Islamic legal maxims (*Al-Qawa'id al-Fiqhiyyah*) that fall under general rulings. These maxims consist of statements that express overarching principles originated from jurisprudential rulings, which can be applied to certain cases in Islamic law. Islamic legal maxims play a crucial role in the development of Islamic law as they serve as guiding principles to determine the legality or illegality of particular cases. The current study examines the principles of *Shari'ah* governing the lawfulness and unlawfulness of various food sources, highlighting contemporary challenges in manufacturing and utilization of *halal* and *haram* food. It emphasizes the role of Islamic legal maxims in supporting and guiding Muslim scholars, researchers and legislators to address and resolve issues related to permissible and proscribed food in the modern time period.



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