CHAPTER 6

Legal Maxim regarding Elimination of Harm: “No Injury/Harm Shall Be Inflicted or Reciprocated” (Lā Ḍarar wa-lā Ḍirār)*

Prohibition and Elimination of Harm (Ḍarar)

The fourth basic general maxim, which is directly lifted from the Ḥadīth of the Prophet, deals with the prohibition of harm and injury and elimination of hardship as defined in Chapter 5. This maxim encompasses many subjects in Islamic Law and is widely applicable to any matter relating to the occurrence, avoidance, and elimination of harm in obligatory duties. Of course, the rules of Islamic jurisprudence are laid down to attract benefits and to eliminate hardship, in order to protect the five necessities of life recognized by Islam: religion (dīn), life (nafs), offspring/lineage (nasl), wealth/property (māl) and intellect (ʿaql). The maxim emphasizes the purposes of the Sharīʿa (maqāṣid ash-sharīʿa) and their actualization and realization by way of deterrents (zajr) or preventive measures (sadd adh-dhariʿa), or minimization of their occurrence.

Definition and Interpretation of the Maxim Lā Ḍarar wa-lā Ḍirār

Some Muslim scholars prefer to coin the maxim as “Harm should be eliminated” (aḍ-ḍarar yuzāl), citing “No harm shall be inflicted or reciprocated” (lā ḍarar wa-lā ḍirār) as evidence for the legality of the maxim. Others code the Ḥadīth as a grand maxim with other subsidiary maxims. The reason for this, according to al-Burnu, is that the Ḥadīth encompasses all ways of inflicting harm (ḍarar), whether by transgression or in reciprocation. And in fact,

1 al-Nadawi, 287.
4 al-Suyūṭī, al-Ashbāh, 83; and Ibn Nujaym, al-Ashbāḥ wa-n-Nazāʿīr, 85.
using the Ḥadīth as a maxim strengthens its status.⁶ In his comment on the Ḥadīth that forms the basis for the maxim, al-Shāṭibī says that, although the Ḥadīth is not as sound as others, it embodies all kinds of harm that are prohibited in Islam.⁷ A. al-Zarqāʾ distinguishes between the two maxims, as “the maxim stated by the tradition of the Prophet stands as a prohibition of inflicting ḏarar and the other one indicates that if ḏarar occurs for one reason or another, it should be removed”.⁸ Presented thus, the two maxims do appear characteristically distinct.

Preventing harm is a fundamental principle (aṣl) generally agreed upon and widely applied in Islamic jurisprudence, as it has its roots firmly in Qurʾānic injunctions and in the traditions of the Prophet. God in the Qurʾān states: “no mother shall be treated unfairly [caused harm] on account of her child, nor father on account of his child”⁹ and prohibits giving property to an infant who cannot manage his affairs in order not to cause harm to afflict him in the future as he might destroy the property before attaining puberty.¹⁰ Instructions for distributing inheritance require that “no loss [harm] is caused to any one”.¹¹ It is also reported that a landowner came to the Prophet complaining about another man who had planted a tree on his property, thus harming the land. Because of this, the Prophet asked the man to pay compensation to the landowner or give him the tree as a gift. The planter refused both options, so the Prophet asked the landowner to destroy the tree, and told its owner: “You are harming someone”.¹²

This maxim has been interpreted in different ways. Some scholars interpret the two words as synonyms, asserting that the latter (ḏirār) is nothing more than an emphasis on the former (ḏarar), while other scholars hold that the two words have different meanings because “Establishing a new norm is better than emphasizing an existing one” (at-taʾṣīs aw-lā min at-taʾkīd).¹³ However, there is no unique interpretation given to either word. The most common interpretation states that the word ḏarar means inflicting harm on another person who has not caused you harm, while ḏirār means inflicting

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⁶ al-Burnu, al-Wajīz, 251.
⁷ al-Shāṭibī 3:185.
⁸ A. al-Zarqāʾ, Sharḥ, 166.
⁹ Q. 2:233.
¹⁰ Q. 4:5.
¹¹ Q. 4:12.
¹³ al-Suyuti, al-Ashbah, 135; M. al-Zarqa, 165.