

LEGAL BASIS OF THE MAXIM "NECESSITY RENDERS PROHIBITED THINGS LAWFUL" AND SCOPE OF ITS APPLICATIONS

Muhammad Shettima*

Dr. Hamma Adam Biu**

Abstract

This work intends to review the legal basis of the maxim “*al-Ḍarūrātu tubīḥ al-maḥẓūrāt*” (Necessity renders prohibited things lawful) and the scope of its applications. The work started by defining the concept of maxim and its classification. The maxim, *al-Ḍarūrātu tubīḥ al-maḥẓūrāt* (Necessity renders prohibited things lawful) is introduced as well as its meaning and legal basis. Conditions required for the application of the maxim was also presented with necessary examples. These conditions will safeguard against any abuse in the application of the maxim. Using inductive, doctrinal and hermeneutical methodologies, the authors have attempted to review several applications of the maxim in both classical and contemporary matters. The finding of the works is that it is not objective of Islam to create difficulty to its followers and that in cases of necessity things that are otherwise prohibited can be legalised. The research concluded by recommended that in fatwas, implications of the maxim along with its conditions should be taken into cognizance in order to not to create difficulty to Muslims nor fall into the slippery slope of extending the maxim beyond its legal scope of applications.

1. Introduction:

This work will attempt to shed light on the maxim, *al-Ḍarūrāt tubīḥ al-Maḥẓūrāt* and some of its contemporary applications. The purpose of this work is to determine the legal basis of the maxim *al-Ḍarūrātu tubīḥ al-Maḥẓūrāt* and its limitation as well as examples of its contemporary legal applications. The maxim demonstrates flexibility of Sharī’ah and its adaptability in unusual circumstances. One unique feature of Islamic law is its easiness, simplicity and lenience; hence its tolerance and timelessness. This easiness and leniency becomes more obvious at moments of difficulty and hardship. Among the several principles that embody the Sharī’ah inclination towards easiness one of its objectives is the maxim *al-Ḍarūrāt tubīḥ al-Maḥẓūrāt* which this work is attempting to study its effects and implications on relevant contemporary issues that seeks the position of Sharī’ah in moments of difficulty and hardship. An attempt shall be made to give a brief background into the genre of *al-Qawā’id al-Fiqhiyyah*. The definition of *Qawā’id* and its classification shall be discussed in the first section. The

* Department of Sharia and Civil Law, Mohammed Goni College of Legal and Islamic Studies, Maiduguri, Borno State, Nigeria; E-mail: baakaka1980@gmail.com

** Lecturer, Department of Arabic and Islamic Studies, University of Maiduguri, Nigeria.

second section will introduce the maxim *al-Darūrāt tubīh al-Mahzūrāt* and analyse the terms contained therein. The third section discusses significance of the maxim and its role in demonstrating the flexibility of Islamic law. The fourth section will examine the legal authorities from Qur'an and the Prophet's traditions which jurists have used as the supporting evidence for the maxim of necessity. Because the maxim's application is not absolute, section five will examine conditions for the applicability of the maxims on related particulars. These conditions limit and qualify the maxim's implication and prevent its abuse by applying it wrongfully. Section six will discuss applications of the maxim. These include applications that are classical as well as contemporary in nature. Likewise, applications that do not satisfy the requirements of the maxim shall also be discussed in this section. The paper will conclude by pointing out its major findings as well as recommendation.

2. Concept of Maxims of Islamic Law (*al-Qawā'id al-Fiqhiyyah*) and their Classifications

Maxims are essential in the understanding and comprehension of Islamic law. They bring together elements that are similar in form with the same legal injunctions under single general principle. These principles make it easier for students, legists and jurists to easily remember a provision of the law. Despite its diverse application to the Sharia Succession law, there is currently no work that brings together subsidiary injunctions under *mīrāth* encapsulated in the universal maxims and their auxiliaries.

Legal maxims (*Al-Qawā'id Al-Fiqhiyyah*) are imperative in Islamic jurisprudence as they encapsulate perceptions and precepts that can abet to figure out the factual essence of the Islamic Law in details. Reflective of a consolidated reading of *fiqh* by great jurists, it is a handy tool for researchers who need to expand their grasp and understanding of content and objective of the law. More importantly, they ease to arrive at the appropriate ruling where is no direct text is available a particular matter.

The word *al-Qawā'id* is a plural *qā'idah*, a derivative of *qa'ada* and literally has the meanings of fixation, consistency, and being well established. *Qa'ida* on the other hand means base, and *Qawā'id* means a foundation of a building, as Allah, the Most High says:

*“And remember Ibrahim and Isma'il raised the foundations
(Qawā'id) of the House”* Qur'an 2:127.

Technically, it is a general rule applicable to all its related particulars. Sadrush Sharī'ah defined *Qawā'id* as general propositions¹. Examples are *Qa'ida Nahwiyyah* (Rule of Grammar), *Qā'idah Mantiqiyya* (Rule of Logic), *Qa'ida Usūliyya* (Rule of Jurisprudence), etc.

Fiqhiyya (lit. of law) is the adjective of *Qāida* (maxim); a derivative of *fiqh* (law) which literally means understanding. *Fiqh* is a term that came to denote Muslim jurists' detailed study of practical aspect of the Divine ordainments. Imam Shafi'i (d.

¹ Al-Taftazāni, S.M.U., *Sharh Al-Talwīh 'alā Al-Taudīh li Matn Al-Tanqīh fī Usūl Al-Fiqh*, vol. 1, (Egypt, Dār Al-Kutub Al-Arabiyya, 1327H), p. 20.

204H) defined it as the knowledge of the practical injunctions of Shari'a acquired from its detailed evidences².

The two words, i.e. *Al-Qawā'id al-Fiqhiyya*, referred herein as Legal Maxims has several definitions which basically revolves around two positions. The often quoted definition of legal maxims is that "it is a general rule which applies to all of its related particulars"³. As this is an extension of the technical meaning of term *Qā'ida* in other discipline to the *Qā'ida* in law (*fiqh*), this definition has failed to encapsulate the concept of legal maxims and thus not reflective of its essence. Al-Hamawi has stated that *Qā'ida* of legists (*fuqahā*) is different from *Qā'ida* in other disciplines such as Grammar (*Nahwu*), Logic (*Mantiq*) and even Jurisprudence (*Usūlul Fiqh*). In these disciplines, it is a rule applicable to all its related particulars.⁴ From the foregoing we can say that a "legal maxim is a general proposition of law that applies to most of its related particulars"⁵.

Depending on scope of maxims, they are classified into universal maxims, general maxims, auxiliary maxims and maxims peculiar to certain schools of thoughts. The maxim *al-Darūrāt tubīḥ al-Mahzūrāt* is a general maxim (*qā'idah kulliyah*) as well as auxiliary of the universal maxim *al-Mashaqqatu tajlib al-Taisir* (Hardship begets facility).

2. *Al-Darūrāt tubīḥ al-Mahzūrāt* (Necessities render prohibited things lawful):

Jurists have made several statements regarding the meaning and nature of necessity. For instance, it has been interpreted as fear of damage⁶ and reaching a state where if man did not consume the prohibited he shall die or be close to death.⁷ It has also been said to be certain or presumed fear of death; but there is no stipulation that one has to be at the verge of death.⁸ Thus, based on these descriptions of necessity, some jurists contemporary scholars have attempted to provide a comprehensive definition of the term *al-Darūrah* (necessity). Zaidan for instance defines it as an excuse which causes something that is previously prohibited to be permitted. It is an overwhelming situation to force man to resort to a prohibited conduct.⁹ It has also been defined as a danger that faces man or pushes him to severe hardship that makes him fear injury to his life, organ, dignity, mind or property and other related issues which legalizes one to commit the

² Al-Zuhaili, W. *Al-Fiqh Al-Islami wa Adillatuhu*, vol. 1, (Beirut, Dār Al-Fikr, 1985) p. 16.

³ Kamali, M. H., *Qawā'id Al-Fiqh: Legal Maxims of Islamic Law*, (UK, Association of Muslim Lawyers, n.d.), p. 1.

⁴ Al-Hamawi, A.M.H., *Ghamzu Uyūnil Basā'ir Sharḥul Ashbāhi wan-Nazā'ir*, vol. 1, (Beirut, Dār Al-Kutub Al-Ilmiyyah, 1405H/1985), p. 22.

⁵ Particulars (*Juz'iyāt*) are the injunctions that apply to particular cases as provided in the detail of the law. Therefore what is true to the general proposition is also true to the particular and this provision is also extended to most of the particulars that are related to it. (Shettima, M., *Effects of the Legal Maxim: "No Harming and No Counter-Harming" on the Enforcement of Environmental Protection* (2011) in 19 *IIUMLJ* 291 @ 294).

⁶ Ibn al-'Arabī, *Ahkām al-Qur'ān*, vol. 1, p. 55.

⁷ Al-Zarkashī, *Al-Manthūr*, vol. 2, p. 319.

⁸ Ibn Juzai, *al-Qawānīn al-Fiqhiyyah*, p. 150.

⁹ Zaidan, Abdulkarīm, *Al-Madkhal li Dirāsāt al-Sharī'ah al-Islamiyyah*, (Mu'assasat al-Risālah, 1417H/1996), p. 84.

prohibited or omit the obligatory; or even delay such obligation to protect oneself from her within the limits of the Sharī'ah.¹⁰

Nevertheless, some description of necessity by scholars does not reach the level of fear of death described above. These include jurists ratiocination that blood from flea and bug are pardoned (from being najasah) as well as excrements of birds are not recognized as najasah (impure) and other similar things due to necessity. However, these are necessities that do not reach the level of fear of death of anything of that nature. For this and other reasons, it is very important for us to understand the scope of the necessity that makes prohibited things lawful and the extend of its applications in contemporary issues so that mistakes shall be avoided in applying the implication of the maxim to particulars.

Al-Darura (necessity) is defined as extreme need, difficulty and hardship that one cannot withstand against. Whether it threatens life, organ, dignity, psychic, or wealth, it is the condition that endangers a person or exposes one to grievous harm. As a result, it allows the commission of otherwise prohibited act or suspension of an obligatory conduct to prevent the probable harm within the stipulation of Sharia.¹¹ Simply put, the implication of the maxim is that it renders prohibited things lawful.

Tubīḥ (turns legal) which derived from the word *mubāḥ* (lawful) and it is synonymous with *halāl*. Technically, it is that which the Lawgiver has given an option of either doing or omitting.¹² In other words, there is no sin in committing such there and there is no reward for doing it. The lawfulness may also include negation of worldly punishment as in the case of self defence.¹³

Al-Mahzūrāt (Prohibited things) is the plural of *mahzūr* (that which is prohibited). It is synonymous with *harām* and is defined as that which the law giver has

Therefore, the maxim means situations of necessity or extreme need are causes of permitting acts that are otherwise forbidden by Sharia. With the exception of disbelief, murder and adultery/fornication, every prohibited acts, with the will be allowed in case of *ḍarūrah*, and such acts should only be limited to the extent the harm may be avoided.¹⁴

Al-Darūrah is related to other similar terms. The term *al-Durr* (harm or distress) is the opposite of benefit and is also used in describing difficult condition as well as deficiency in a thing. Allah, the Most High has said:

¹⁰ Al-Zuhailī, W., *Naẓariyya al-Darūrah al-Shar'iyyah*, (Dar al-Fikr al-Mu'āshir, 1997), p. 74.

¹¹ Al-Sadlān, S.G., Al-Sadlān, *Al-Qawā'id al-Fiqhiyyah Al-Kubrā, wa mā tafarra'a anḥā*, (Riyadh, Dar Bilansiyyah 1417H), p. 249-250

¹² Shettima, M., Effect of the Maxim of Original Lawfulness on Intellectual Property under Islamic Law, (LL.M Thesis submitted to the Faculty of Law, University of Maiduguri, 2016), p. 45.

¹³ Shubair, M.U., *Al-Qawā'id al-Kullīyyah wa al-Dawābit al-Fiqhiyyah fī al-Sharī'ah al-Islāmiyyah*, (Amman, Dar al-Nafā'is, 1428H/2007), p. 214.

¹⁴ Al-Sadlān, Op. Cit., p. 254

“And (remember) *Ayûb (Job)*, when he cried to his Lord: “Verily, **distress** has seized me, and You are the Most Merciful of all those who show mercy.”¹⁵

The word *al-Darîr* was also extracted from *al-Durr* which means some one who is in difficulty for loosing his sight.¹⁶ Technically, it means an affliction that cannot be prevented.¹⁷ Thus, the difference between harm or distress and necessity is that there is no necessity without harm; and therefore necessity is the result of detriment.

Another related term to *Ḍarūrah* (necessity) is *haraj* (difficulty). The word *haraj* (difficulty) is referred to extreme hardship. It is also used to describe sin or prohibited conduct.¹⁸

According to Zaidan, *al-Darūra* is defined as an excuse which makes permissible to carryout something that is originally prohibited.¹⁹

This maxim has been mentioned by several jurists in their works. Among these is Ibn Nujaim in his *al-Ashbāh wa al-Nazā'ir*,²⁰ al-Zarkashī in his *al-Qawā'id*,²¹ Imam al-Shātibī in *al-Muwāfaqāt*.²² Some scholars have also referred to it with different wordings. For example Al-Izz bin Abdussalam (d. 660H) inferred to it in the following words: “a thing may be lawful in state of necessity although it was not lawful in he state of choice”²³ and Ibn al-Qayyim (d. 751H) coined it as “there is no prohibition with necessity.”²⁴ While most jurists place the maxim *al-Ḍarūrāt tubīḥ al-Mahzūrāt* as an auxiliary of the maxim *al-Mashaqqatu tajlib al-Taisir* (Hardship begets facility),²⁵ some Shafi'is place it as an auxiliary of the maxim *al-Ḍararu yuzāl* (Harm should be removed).²⁶ Although the companions of the Prophet have applied its implication, it is not clear who first coined the maxim. Nevertheless, Imam Shafi'i is perhaps the first jurists to refer to it by name as a principle. In his book *al-Umm*, he coined it as follows: A thing may be made lawful in necessity although it is unlawful in circumstance that is not of necessity.²⁷

¹⁵ Qur'an 21:83.

¹⁶ al-Rāzī, M.A., *Mukhtar al-Sihāh*, vol. 1, (Khāṭir, Mahmūd ed, Beirut, Nashirūn, 1415H/1995), p. 159

¹⁷ Jastinah, H.M.H., *Qā'idat al-Ḍarūrāt tubīḥ al-Mahzūrāt: dirāsah ta'siliyyah taṭbīqiyyah*, (Part of Conference on: Towards Original Methodologies in the Study Contemporary Fiqh Issues, 13-14/5/1431H/27-28/4/2010p. 841.

¹⁸ Ibid.

¹⁹ Zaidān, A., *Al-Madkhal li Dirāsāt al-Sharī'ah al-Islamiyyah*, (Mu'assasat al-Risālah, 1417H/1996), p. 84.

²⁰ Ibn Nujaim, Z.I., *Al-Ashbāh wa al-Nazā'ir*, vol. 1, p. 95.

²¹ Al-Zarkashī, M.B.A., *Al-Manhūr fī al-Qawā'id*, vol. 2, (Fā'iq, T., ed, Kuwait, Ministry of Endowment and Religious Affairs, 1420H/1982), p. 317

²² Al-Shatibi, I.M.M.L., *Al-Muwāfaqāt fī al-Sharī'ah*, vol. 4, (Riyadh: Maktabat al-Riyādh, 1420H), p. 145.

²³ Abdussalam, I. *Qawā'id al-Ahkām fī Masāliḥ al-Anām*, vol 1, (Dar al-Kutub al-Ilmiyyah, n.d.), p. 75.

²⁴ I'lām al-Muwaqqi'īn, vol. 2, (Dar al-Jil, n.d.), p. 41

²⁵ Al-Dausarī, M.M.M., *al-Mumtī' fī al-Qawā'id al-Fiqhiyyah*, (Riyadh, Dar Zidnī, 1424H), p. 191; Al-Borno, M.S.A.M., *Al-Wajīz fī Iyḍāh Al-Qawā'id Al-Fiqhiyyah*, *Al-Kulliyah* (Riyadh, Mu'assasat Al-Risālah, 1996), p. 234;

²⁶ Al-Suyūṭī, A.A., *Al-Ashbāh wa al-Nazā'ir*, (Beirut, Dar al-Kutub al-Ilmiyyah, 1402H), p. 84.

²⁷ Al-Shafi'i, M.I., *Al-Umm*, vol. 4, (Beirut, Dar al-Ma'rifah, 1393H), p. 142.

3. Significance of the Maxim:

1. Because maxims bring together scattered issues, this maxim embodies the injunctions of all instances in which the default ruling of Sharī'ah leads to difficulty. As al-Nadawī said, this maxim is recognized among fundamental principles in the formation of the Islamic fiqh. It stands by itself as an evidence for flexibility of the Sharī'ah and its recognition of people's interests and needs.²⁸

2. The maxim's significance is also attested to by the many emerging particulars brought by changing times such that it is among the most popular maxims among Muslims. Ibn Taimiyyah said, whoever that inductively analysed the Sharī'ah from its roots and sources, he shall find that it is based on the Saying of Allah Ta'ālā:

But if any is forced by hunger, with no inclination to transgression, Allah is indeed Oft-forgiving, Most Merciful.
29,30

He also said, the Sharī'ah revolves around the Saying of Allah:

“So fear Allah as much as ye can”³¹

This verse also explains the Saying of Allah:

“O ye who believe! Fear Allah as He should be feared”³²

It has also been further explained by the saying of the Prophet, peace be upon him:

“If I command you on something, do it to the best of your ability.”
33,34

3. The maxim also makes the Sharī'ah spirit of its tolerance through its applications manifest. This is because it has clearly indicated that whenever things become difficult, their injunctions are widened. Explaining aspects of the significance of this maxim, Sheikh al-Qardāwī says, one of the important elements that lead to the expansiveness of the Sharī'ah and its flexibility can be seen in the fact that the Sharī'ah has recognized necessities, needs and excuses that afflict people and treated them appropriately. This is done by providing appropriate exceptional injunctions based on its general

²⁸ Al-Nadawī, A.A., *Al-Qawā'id al-Fiqhiyyah wa Atharuhā fī al-Fiqh al-Islamī*, (LLM Thesis, Umm al-Qurā University, 1403/1983), p. 216.

²⁹ Qur'an 5:3.

³⁰ Ibn Taimiyyah, A.A., *Al-Qawā'id al-Nurāniyyah*, (Al-Faqī, M.H., Ed, Beirut, Dar al-Ma'rifah, 1399H), p. 143.

³¹ Qur'an 64:16

³² Qur'an 3:102

³³ Al-Bukhārī, M.I.I.M., *Sahīh Al-Musnad al-Sahīh*, vol. 9, (Riyadh, Darussalam 1997), p. 94, Hadīth No. 7288; Al-Naisābūriy, M.M.H.Q., *Sahīhu Muslim*, (Dār Ihyā Al-Turāth Al-Arabī, Beirut: n.d.), p. 102, Hadith No. 3321.

³⁴ I-Najdī, A.M.Q., *Majmū' Fatāwā Shaikh Al-Islām Ibn Taimiya*, vol. 28, (Al-Ri'āsah Al-'Ammah li Shu'ūn Al-Haramain n.d.), p. 184.

inclination of creating easiness for the people by lifting burdens and fetters that was applicable upon them in the previous revelations.³⁵

4. The maxim demonstrates flexibility of the Sharī'ah as it has recognized necessities and its particulars are unending as it is the principle that makes lawful an otherwise prohibited thing where application of such prohibition is difficult or lead to unbearable harm.³⁶

4. Supporting Evidence from Qur'an and Sunnah:

The saying of Allah, the Most High:

*"He hath only forbidden you dead meat, and blood, and the flesh of swine, and that on which any other name hath been invoked besides that of Allah. But if one is forced by necessity, without wilful disobedience, nor transgressing due limits,- then is he guiltless. For Allah is Oft-forgiving Most Merciful."*³⁷

Also, the Saying of the Glorious Lord:

*"Forbidden to you (for food) are: dead meat, blood, the flesh of swine, and that on which hath been invoked the name other than Allah's. that which hath been killed by strangling, or by a violent blow, or by a headlong fall, or by being gored to death; that which hath been (partly) eaten by a wild animal; unless ye are able to slaughter it (in due form); that which is sacrificed on stone (altars); (forbidden) also is the division (of meat) by raffling with arrows: that is impiety. This day have those who reject faith given up all hope of your religion: yet fear them not but fear Me. This day have I perfected your religion for you, completed My favour upon you, and have chosen for you Islam as your religion. But if any is forced by hunger, with no inclination to transgression, Allah is indeed Oft-forgiving, Most Merciful."*³⁸

The Saying of Allah:

*"Whoever disbelieved in Allah after his belief, except him who is forced thereto"*³⁹

³⁵ Al-Qaradāwī, Y., *Ri'āyat al-Darūrah wa al-A'dār fī al-Tashrī' al-Islāmī*, from the site Islamic Encyclopaedia. Accessed on 15/03/2017.

³⁶ Al-Judai', A.Y., *Taisir Ilm Usul al-Fiqh*, (Beirut, Mu'assasat al-Rayyan, 1418H/1997), p. 340.

³⁷ Qur'an 2:173.

³⁸ Qur'an 5:3.

³⁹ Qur'an 16:106

Ibn Kathir said, this is an exception for a person who is coerced to utter the word of disbelief with his tongue in agreement with polytheists though beating and hurting though his heart dislikes what he is saying and his heart is serene with faith in Allah and His messenger.⁴⁰

“Our Lord! Lay not on us a burden like that which You did lay on those before us (Jews and Christians); our Lord! Put not on us a burden greater than we have strength to bear.”⁴¹

According to Ibn ‘Atiyyah (d. 546H), this verse is a definite provision that Allah does not burden His servants any duty either of heart or limb but that which is within their ability and perception.⁴²

The verse also indicate that if it were not lawful to commit that which is prohibited due to necessity, this would have been burdening a soul that which it cannot bear and this is in contradiction with the Shari’ah spirit of tolerance.⁴³

The maxim also has supporting evidences from Prophet’s traditions. There are instances in which the Prophet made ratiocination regarding certain injunctions inferring the implication of our maxim. For example, his saying regarding a cat: “it is only one of those that roam around among you.”⁴⁴ This is ratiocination as to the basis of easing the injunction that it is not an impure because it is animal that always roam around human beings. Thus, because it is difficult to be free from waters that a cat lives after drinking from it, it was dropped from things that are considered as impure to lift such difficulty.⁴⁵

In a Hadith narrated by Abu Wāqid al-Laithī, he asked the Prophet saying we live in land where we are often afflicted by hunger; what then shall be lawful for us from a dead meat. The Prophet answered: “If you did not drink even milk in the morning nor your drink anything in the evening and you did not get any vegetables; then you can use it.”⁴⁶ In other words, the Prophet, peace be upon him is telling them that if they are faced with hunger and have no any other alternative, then can eat dead meat due to such necessity.

In another Hadith narrated by Jabir bin Samura that there is a family living in al-Harra (in Medina) who are in dire need. Their she-camel has died; and the Prophet, peace be upon him allowed them to use it which according to Jabir saved them for the reminder of the year’s winter or the year.⁴⁷

⁴⁰ Ibn Kathīr, I. A. I., *Tafsīr al-Qur’an al-Azīm*, vol. 2, (Beirut, Dar al-Fikr, 1401H), p. 588

⁴¹ Qur’an 2:286

⁴² Ibn ‘Atiyyah, A.G., *Al-Muharrar al-Wajīz fī Tafsīr al-Kitāb al-Azīz*, vol. 1, (Beirut, Dar al-Kutub al-Ilmiyyah, 1413H/1993), p. 392.

⁴³ Al-Su’aidan, W.R., *Talqīh al-Afhām al-‘Aliyyah bi Sharh al-Qawā’id al-Fiqhiyyah*, vol. 1, (Dar al-Kitāb al-Arabī, n.d.), p. 62

⁴⁴ Al-Tirmidhī, M. I. S., *Al-Sunan*, vol. 3, (Dār Ihyā Al-Turāth Al-Arabī: n.d.), Hadith No. 92,

⁴⁵ Al-Taftāzānī, S.M., *Sharh al-Talwīh alā al-Tauḍīh*, vol. 2, (Umairāt, Z. ed, Beirut, Dar al-Kutub al-Ilmiyyah, 1416H/1996), p. 159

⁴⁶ Al-Shaibānī, A. H., *Al-Musnad*, vol. 1, (Al-Maktab Al-Islāmī: n.d.), vol. 5, p 218, Hdith No. 21948.

⁴⁷ Ibid, vol. 5, p. 87, Hadith No. 20834

All these legal authorities indicate that the maxim *al-Ḍarūrāt tubīḥ al-Mahzūrāt* has its basis from the Qur'an and Hadith as understood by our jurists. However, to apply the maxim to specific legal issues, certain conditions must be fulfilled. The next section shall attempt to discuss these conditions that regulate its legal applications.

5. Conditions for the Application of the Maxim:

1. The prohibited act to be committed must not be as severe as the detriment that may be caused by the necessity. The application of this condition can be seen in the necessity to eat dead meat in case of hunger, sipping alcohol for choking, uttering word of disbelief for coercion and damaging property.

An example of the instance where this stipulation is lacking that the detriment caused by the necessity is lesser than the prohibited act is where the dead is a Prophet, it shall not be lawful to eat his meat as the Prophet's sanctity is greater than the life of the person pushed by necessity of hunger. Another example is where one is coerced to kill or rape, such act shall not be lawful as the detriment created is not less than the initial necessity. Likewise, a person buried without shroud shall not be dug out for shrouding as the dignity of his body more important than removing him and dressing him in shroud again.⁴⁸

The rationale for this stipulation is based on conflict between two beneficial things which of the two shall have preference over the other. This is the reason why where there is conflict between sanctity of life and property preference shall be given to the sanctity of life. This principle has been embodied in several maxims including, *Yukhtāru Ahwan Al-Sharrain (the lesser of two evils is preferred)*, *Idhā ta'āraḍa Maḥsadatāni rū'ya a'zamuhumā dararan bi irtikābi akhaffihimā* (In the presence of two evils, the one whose injury is greater is avoided by the commission of the lesser),⁴⁹ *Yutahammal al-Dararul Āmm li Daf'i Al-Darar Al-Khāss* (Private harm may be tolerated to prevent public harm),⁵⁰ *Al-Ḍarar Al-Ashadd yuzālu bi al-Ḍarar al-Akhaff* (Greater harm may be removed with a lesser harm),⁵¹ etc.

2. Rendering the prohibited lawful shall only be to the extent which the necessity may be lifted. Necessity should be determined to the extent thereof.⁵² This qualification is based on the perception of some Qur'an commentators regarding the Saying of Allah:

⁴⁸ Al-Suyūṭī, *Al-Ashbāḥ wa al-Naẓā'ir*, p. 93; Ibn Nujaim, *Al-Ashbāḥ wa al-Naẓā'ir*, p. 85.

⁴⁹ Al-Muqṭrī, M.A.M., *Al-Qawā'id*, vol. 2, (Ummul Qurā University, n.d.), p. 456, Al-Zarkashī, Badruddīn M.B.S., *Al-Manthūr fī Al-Qawā'id*, (Ministry of Endowments and Religious Affairs, Kuwait: 1402H/1982), vol. 1, p. 125, Ibn Nujaim, Op. Cit., p. 98, Al-Suyūṭī, *Al-Ashbāḥ*, Op. Cit., p. 178, Al-Zarqa, A.M., *Sharḥ al-Qawā'id al-Fiqhiyya*, (Dar al-Qalam, Damascus: 1409/1989), p. 199. Al-Borno, M.S.A.M., *Al-Wajīz fī idāḥ al-Qawā'id al-Fiqhiyyah al-Kulliyyah*, (Maktabat al-Ma'ārif, Riyādh, 1410H), p. 260.

⁵⁰ Ibn Nujaim, Op. Cit., p. 87, Al-Borno, Op. Cit., p. 263.

⁵¹ Ibn Nujaim, Op. Cit., p. 89; Al-Suyūṭī, Op. Cit., p. 87, Al-Borno, Op. Cit., p. 260.

⁵² Al-Bāhusain, Y.A., *Al-Qawā'id al-Fiqhiyyah: al-Mabādi' al-Muqawwimāt – al-Maṣādir – al-Dalīliyyah – al-Taṭawwur: Dirāsah Naẓariyyah – Taḥlīliyyah – Ta'sīliyyah – Tārīkhiyyah*, (Riyadh: Maktabat al-Rushd, 1418H/1998), p. 176.

“... without wilful disobedience nor transgressing due limits”⁵³

These commentators have interpreted the phrase “without wilful disobedience” to mean not eating beyond that which one needs and “transgressing due limits” to mean eating the dead meat although a different food is available for him.⁵⁴ This is the reason jurists stipulate that a person pushed by the necessity of hunger shall only eat that which is enough for his survival from the dead meat; a splint should only be to the extent necessary for the wound to hold and a doctor is only allowed to inspect or see private part of the patient.⁵⁵ Therefore, it shall not be lawful to add to that which is enough for the necessity to be addressed unless there is another necessity that requires such addition such as famine which will make it lawful for one to acquire that which shall be sufficient for him and his family. This is because famine is also another necessity beyond momentary severe hunger.⁵⁶

This condition is related to an auxiliary maxim of al-Darūrāt tubīḥ al-Mahzūrāt that qualifies its implications which is *Al-Darūratu tuqaddaru biqadarihā* (Necessities are determined by the extent thereof).⁵⁷ It means that whatever that is permitted because of certain need, either in form of action or omission, it is only permitted to the extent in which such harm will be avoided and should not be extended beyond that.⁵⁸ This maxim was originally attributed to Imam Shafi’i in his work: “*al-Umm*”⁵⁹. Malikis too have a similar maxim which reads: The norm (of Sharia) is that a permission for that which was certainly forbidden due to necessity is but to the extent permitted; unless there is evidence that suggests otherwise.⁶⁰ As a result, a Muslim needs to be very cautious whenever resorting to legal facilities due to needs or necessities; and Muslim scholars should be consulted in determining the extent to which such necessities attract the legal facility away from immoderateness or negligence.

3. A person affected by necessity should have no other means to overcome it but through that which is originally unlawful such as he finds himself in a place where he has to commit the prohibited conduct. If he has other means to avoid the necessity there is no necessity that justifies committing that which is unlawful. For example, it is lawful for one to defend himself by killing an assailant if it is the only available means for him. However, if one can defend himself by running away from the attacker or firing a warning shot, then killing him shall not be lawful. Likewise, where one needs a medical treatment which one’s life depends on but has no any other means but a loan with interest, one can take the loan. But if there is any other means for one to get funding other than such a loan, then it shall not be lawful for one to take such a loan.⁶¹

⁵³ Qur’an 2:173

⁵⁴ Al-Sāyis, M.A., *Tafsīr Āyāt al-Ahkām*, vol. 1, (Egypt, n.d.), p. 46-47.

⁵⁵ Al-Suyūṭī, Op. Cit., p. 93; Ibn Nujaim, Op. Cit., p. 85.

⁵⁶ Al-Bāhusain, Y.A., *Qā’idatu al-Mashaqqatu tajlib al-Taisīr Dirāsah Naẓariyyah Ta’siliyya Tatbiqiyyah*, (Riyadh, Maktabat al-Rushd, 1424H), p. 486.

⁵⁷ Majalla Art. 22, Al-Suyuti, Op. Cit., p. 84, Ibn Nujaim, Op. Cit., p. 86, Al-Zarqā, Op. Cit., p. 187.

⁵⁸ Al-Sadlān, Op. Cit., p. 272..

⁵⁹ Ibid.

⁶⁰ Al-Muqri, Op. Cit., p. 331.

⁶¹ Al-Mu’ainī, M.S., *Al-Naẓariyyah al-‘āmmah li al-Darūrah fī al-Fiqh al-Islāmī: Dirāsah Muqaranah*, (Baghdad, Matba’at al-‘Ānī, 1990), p. 38.

4. The duration of lawfulness of otherwise prohibited thing shall only remain so long as the necessity remains. Whenever the necessity ceases to exist, the lawfulness of the otherwise prohibited thing shall also revert back to its original legal position. This has been embodied by another auxiliary maxim of *al-Darūrāt tubīh al-Mahzūrāt* is *Mā jāza li udhrin baṭala bi zawālihi* (Whatever is permissible owing to some excuse will cease to be permissible with the disappearance of that excuse)⁶² and *Idhā zāla al-Māni' u 'āda al-Mamnū'u* (When the Prohibitive disappears, the prohibited returns).⁶³ This is the reason why validity of dry ablution ceases whenever water is found; and a delegated testimony shall be invalid whenever the original witness is available to testify before judgement is passed.⁶⁴

5. Necessity should not invalidate the right of another person.⁶⁵ This is because harm shall not be removed with harm.⁶⁶ This is because even though necessity causes substituting an injunction from prohibition to permission and facilitation, it does not however invalidate another person's right.⁶⁷ This is because Sharia has given full protection of people's properties, and harm cannot be removed with harm. Also the general rule is that it is not permissible for one to take another person's property without the latter's permission unless by pressing necessity⁶⁸ which has to be subsequently paid back. Necessity only drops the sin that may otherwise be committed as a result of the substitute. This is the position taken by Hanafis, Shafi'is and Hanbalis and most Malikis.⁶⁹ It should also be noted that no necessity can justify murder. It is unlawful for one to kill an innocent person when one is threatened with death. The reason is because the sanctity of every life is absolute just like the life of the person threatened. Just because one is coerced into taking the other's life does not mean that his life is better than the other life⁷⁰. In Malikiyya when one is forced to kill another, the *hadd* of retribution (*Qisas*) is upon both the coercer and the coerced⁷¹. Likewise coercion into adultery or rape is not permitted under necessity, especially for a man, as he is the dominant. But for woman, being the object, she will be exonerated from punishment if she is forced into rape and does not have the ability to protect her self.⁷²

6. The necessity should be real not imagined or expected.⁷³ In other words, the fear of death or severe injury to the body or damage to property must be in existence. This is because if imaginary hardship is used to switch to an alternative injunction of the

⁶² Majalla Art. 23, Al-Suyuti's Al-Ashbaah p. 85, Ibn Nujaim, p. 86, Al-Wajeez, p. 239.

⁶³ Majalla, Art. 24, Al-Zuhaili, M.M., *Al-Qawā'id al-Fiqhiyyah wa Taṭbīqātuhā fī al-Madhahib al-Arba'a*, (Dar al-Fikr, 1427H/2006), Maxim No. 85, p. 506.

⁶⁴ Al-Suyūṭī, Op. Cit., p. 94.

⁶⁵ Majalla Art. 33, Al-Wajeez, p. 185, Al-Borno's Al-Mawusu'a vol. 2, part 1, p. 208.

⁶⁶ Al-Subki. Al-Ashbaah Wal'nazaa'ir vol. I, p. 42. Mausū'at al-Qawā'id al-Fiqhiyya Part VI, p. 257.

⁶⁷ Al-Zuhaili, Op. Cit., p. 286

⁶⁸ Ibid, p. 298

⁶⁹ Kuwaiti Ministry of Endowments and Religious Affairs, *Al-Mausū'ah al-Fiqhiyyah*, vol. 12, (Kuwait, Dhāt al-Salāsīl 1412H/1992), p. 113-114.

⁷⁰ Jumu'a, I.A., *Al-Qawā'id al-Fiqhiyya al-Muyassara*, (Silsilat al-Ulūm al-Islamiyyah, 1427H), p. 59

⁷¹ Al-Rūkī, M., *Naẓariyyat al-Taḳ'īd al-Fiqhī wa Atharuha fī Ikhtilāf al-Fuqahā*, (Casablanca, Matba'at al-Najāh al-Jadidah, 1414H/1994), p. 341.

⁷² Jumu'a, Op. Cit.

⁷³ Al-Bahusain, Qā'idat al-Mashaqqā, Op. Cit., p. 487.

Sharī'ah, people will attempt to change its provisions at will without sticking to the appropriate methodology.

6. Applications of the Maxim:

6.1 Classical Applications:

Classical jurists have mentioned several applications of the maxim al-Ḍarūrāt tubīḥ al-Maḥẓūrāt. These applications have the single theme of making a thing that was previously prohibited into lawful due to presence of certain necessity or difficulty. Some of these applications can be seen below:

- It is permissible for a debtor to recover his money, whether cash or value by force from a procrastinating creditor.⁷⁴
- It is permissible for a doctor to uncover the private parts of his patients if his treatment necessitates that.⁷⁵
- It is permissible for a person pressed by necessity to eat dead meat and the flesh of swine to prevent from death as provided in the above verse.⁷⁶
- It is also permissible to eat dead meat due to hunger and sipping an alcohol for choking.⁷⁷
- Necessities such as non-bathing or lack of proper bathing, burial without facing *qibla* or in a confiscated cloth or land allows for the exhuming of dead bodies for proper burial.⁷⁸
- It is permissible for one pushed by necessity to eat another person's food,⁷⁹ but he will have to pay back if the owner does not permit as will be seen later under the main maxim "necessity does not invalidate the right of another".
- In cases of life-threatening conditions, it is allowed to use force to have access to sustenance as has been seen in a case quoted in the Kuwaiti Encyclopaedia of Fiqh. It is reported to an *athar* attributed to Umar, may Allah be pleased with him, that a group of people in need of water, have asked its owners to guide them to the well, but they didn't. They tell them that our throats and the throats of our horses are severely dried up, show us the well and give us a bucket of water and they didn't guide them. Umar say to them, why didn't you use weapon against them.⁸⁰

⁷⁴ Al-Zarqā, Op. Cit, p. 185.

⁷⁵ Abdussalam, Op. Cit., vol. 2, p. 108;

⁷⁶ Al-Da'as, Izzat Ubaid, *Al-Qawā'id Al-Fiqhiyyah ma'ash-Sharh Al-Mūjaz*, (Dār Al-Tirmidhi, Damascus: 1989), p. 33.

⁷⁷ Al-Zuhaily, Op. Cit., p. 277.

⁷⁸ Al-Da'as, Op. Cit., p. 33.

⁷⁹ Al-Zuhaily, Op. Cit., p. 277

⁸⁰ *Al-Mausū'at ul Fiqhiyya*, vol. 25, p. 373.

- Also where there is a necessity to acquire certain food, clothing or weapons, and the merchants or the people who possess such properties refuse to sell it, it can be taken with the right price even without their acceptance and the government can force them to sell it, or sell it to those who are in need.⁸¹
- Treatment with an impure (*najasa*) substance for one that is pressed by necessity is also allowed⁸².

Permissibility to prevent an attacker, human or animal, even if such prevention leads to the death of the assailant⁸³.

6.2 Contemporary Applications of the Maxim:

1. While ruling on the validity of sales by instalmental payment which has become a common form of contract in this era, contemporary *ijtihād* has stipulated certain limitations like the one contained in the maxim, "that which is legalised due to necessity shall only be recognised to the extent of necessity" (*Mā ubīha li al-Ḍarūriati tuqaddaru biqadarihā*). In addition, our religion is based on easing which justifies facilitation to the poor. Another related maxim provides that, "Hardship begets facility" (*Al-Mashaqqatu tajlib al-Taisīr*). All these imply that where there is no suspicion of *ribā* (usury), *gharar* (uncertainty) or *jahālah* (ambiguity) in such contracts, jurists are in agreement that it is valid. This is the decision reached by the Fiqh Academy of Jeddah.⁸⁴

Both the above mentioned maxims are related to our maxim. The opinions are also based on the following saying of Allah Ta'ālā:

*"But if one is forced by necessity, without wilful disobedience, nor transgressing due limits, then is he guiltless. For Allah is Oft-forgiving Most Merciful."*⁸⁵

Another authority is also the Saying of Allah Ta'ālā:

*"But (even so), if a person is forced by necessity, without wilful disobedience, nor transgressing due limits, - thy Lord is Oft-forgiving, Most Merciful."*⁸⁶

The above verses imply that things that are unusual are only permitted due to necessity on a condition that a person pushed by necessity is not willfully pursuing that which is prohibited in Islam. In other words, a person shall not

⁸¹ Ibn Taimiyya, Al-Hasīn vol. 1, p. 534.

⁸² Al-Gharyani, p. 321.

⁸³ Al-Zuhaili p. 278

⁸⁴ Rustum M.Z., '*I'māl al-Qawā'id al-Fiqhiyyah li-stinbāt Ḥukm al-Qadāyā al-Fiqhiyyah al-Mustajiddah*', (Conference on Original Method in the Study of Contemporary Legal Issues, organised by Markaz Al-Tamayyuz Al-Bahthī [Centre for Distinguished Research] at the Imam Muhammad bin Su'ūd Islamic University, Riyadh, from 13-14/05/1431H), p. 750.

⁸⁵ Qur'an 2:173.

⁸⁶ Qur'an 6:145

exceed his need from legalization due to necessity and should be moderate while dealing with such facilitations or easements of the Sharī'ah. Therefore, if one has ability to pay at ones, it is preferable for him to pay and not engage the instalmental payment model as its legality is exception from the usual. The normal form of contract is that it is either fully debt or fully paid.

2. Transplanting organ from a living person to another to save his life or to restore the function of a basic organ is permissible based on the maxim *al-Ḍarūrāt tubīḥ al-Maḥzūrāt* subject to the following conditions:

- i. The transplant should not threaten the life of the donor because the rule is that harm shall be removed without causing further harm or with lesser harm. It cannot be removed with a similar harm as the maxim *Al-Ḍararu lā yuzālu bi mithlihi au bi al-Ḍarar* (harm shall not be removed with similar harm)⁸⁷ or even with graver harm.

- ii. The donation of the transplanted organ should only be gratuitous and without consideration. This is because the donor has no right of ownership of his organ is the right to enjoy (*haq al-intifā'*). This is a personal right of an individual to enjoy a property but cannot transfer it with or without consideration.⁸⁸

- iii. Organ transplant must be identified as the only treatment through which such an ailment can be cured. This is because it is not lawful by default rather by necessity; and as a result, if there is other lawful means that does not extend to necessity, then such means should be considered. This is because one of the conditions for the application of the maxim is that the necessity must be real; and therefore, if there is other means of treatment that is lawful, then such necessity is not real.

- iv. The procedure of removal of the organ and its transplant must be mostly or usually successful. Thus, where the donor shall be harmed by the removal of the organ such as removal of heart or liver which will definitely kill the donor, it shall not be lawful as such shall constitute pure harm which Allah has prohibited in His Saying:

“and do not throw yourselves into destruction.”⁸⁹

The verse means do not cause that which will lead to your death as opined by several jurists.

3. Another contemporary application according to Sheikh Jādallah is that it is permissible to carryout a surgical operation due to need and necessity of a hermaphrodite in order to remove the genitals or signs of the suppressed gender. Such operation shall obviate the dominate features and it shall be the hermaphrodite's gender. The condition for such lawfulness is the necessity to determine the dominant gender of the hermaphrodite and not a desire to change

⁸⁷ Ibn Al-Subki, T.A.A., *Al-Ashbāh wa al-Nazā'ir*, vol. 1, (Beirut, Dar al-Kutub al-Ilmiyya 2011), p. 42; Al-Borno, Al-Borno, M. S. A. M. *Mausu'at al-Qawa'id al-Fiqhiyya*, vol. 4, (Beirut, Resalah Publishers 1424H/2003), p. 257.

⁸⁸ Shettima, M., Effect of the Maxim of Original Lawfulness on Intellectual Property under Islamic Law, (LLM Thesis submitted to the University of Maiduguri, 2016), p. 101.

⁸⁹ Qur'an 2:195.

one's gender which shall be prohibited based on the narration of Ibn Abbas in which he said, the Prophet has cursed men taking features of women and women taking features of men."⁹⁰

4. Some jurists have relied on the maxim of necessity to state that it is permitted for a woman to abort pregnancy after conception before it reaches one hundred and twenty days in order to save the mother's life if the pregnancy will likely endanger her life. Besides the maxim of necessity, they have also referred to the maxim, *Yutahammal al-Dararul Āmm li Daf'i Al-Darar Al-Khāss*⁹¹ (Private harm may be tolerated to prevent public harm) and *Idhā ta'ārada Mafsatātāni rū'ya a'zamuhumā dararan bi irtikābi akhaffihimā* (whenever there is conflict between two evils, the greater evil shall be avoided by committing the lesser evil).⁹² This is because there is conflict between the health of the mother and the foetus and as a result the interest of the mother shall have preference over that of the foetus which has not been pumped with soul. It should however be noted that this opinion is in line with the fatwa in the Hanafi School of thought.⁹³ This opinion demonstrates the importance of the maxim of necessity in determining the legal effect of abortion at the early stage of pregnancy.

It should however be noted that there are other opinions on whether or not abortion at such early stage is lawful. To summarise the juristic opinions regarding abortion before pregnancy completing its fourth months, we can say the following: the legal effect of aborting pregnancy at its early stage range from lawfulness with necessity according to Hanafis⁹⁴ and lawful before it reaches forty days according to Shafi'is,⁹⁵ disliked according to some Hanafis⁹⁶ and an opinion narrated by al-Dasūqī of Malikiyyah and prohibited which is the opinion held in Malikiyyah.⁹⁷

5. Woman travelling alone without a *mahram* (husband or unmarriageable relative):

One of the contemporary applications of the maxim is that it is lawful for a woman to travel alone due to necessity under certain circumstances:

- i. Where the husband or accompanying relative dies on the way while travelling.
- ii. A woman forced to travel alone without her mahram.
- iii. A woman forced to travel from land of disbelief to the land of Islam and she has no mahram.

⁹⁰ Transmitted by Bukhari, Hadith No. 5546.

⁹¹ Ibn Nujaim, Op. Cit., p. 87, Al-Borno, Al-Wajīz, Op. Ti., p. 263.

⁹² Al-Muqṭī, Op. Cit., vol. 2, 456, Al-Zarkashī, Op. Cit., vol. 1, p. 125, Ibn Nujaim, Op. Cit., p. 98, Al-Suyūṭi, Op. Cit., p. 178; Al-Zarqā, Op. Cit., p. 199. Al-Borno, *Al-Wajīz*, Op. Cit., p. 260.

⁹³ Ibn Ābidīn, Muhammad Amīn, *Hāshiyat Radd Al-Mukhtār 'alā Al-Durr Al-Mukhtār* vol. 3, (Būlāq: date), p. 192.

⁹⁴ Ibid, vol. 2, p. 380.

⁹⁵ Al-Ramlī, Muhammad bin Ahmad bin Hamzah, *Nihāyat al-Muhtāj ilā Sharh al-Muhtāj*, vol. 8, (Mustafa Al-Halabi: 1357H) p. 416;

⁹⁶ Ibn Abidīn, Op. Cit., vol. 2, p. 380.

⁹⁷ Al-Dasūqī, M. A. A., *Al-Hāshiyah Alā Al-Sharh Al-Kabīr*, vol. 2, (Dār Al-Fikr: n.d.), p. 266-267

Under all these circumstances, a woman can travel alone without the mahram to save her life or religion. These situations are definitely forms of necessity that makes it lawful for her to travel alone.⁹⁸

6. Although blood is impure (najasah) and unlawful to be purchased under normal circumstances, the Fiqh Council under the auspices of World Islamic League has issued a fatwa that it is lawful to purchase blood for the purpose of transfusion where no donor is available. They based this fatwa on the necessity.⁹⁹

6.3 Exceptions of the Maxim:

The popular saying that for every rule there is an exception is also true to *al-Qawā'id al-Fiqhiyyah*. The reason for exceptions is usually because certain conditions for the application of the maxim are not met or impediment whose absence is necessary for its application is present. Such essential requirement could be textual provision, preference of safeguarding *Shari'ah* objective and ratiocination of an injunction.

The maxim *al-Darūrāt tubīh al-Mahzūrāt* also has exception where particulars that have not satisfied certain qualifications of the maxim are excluded from its applications. The following particulars are examples of these exceptions:

Necessity is not a justification to take a loan in bank either to run a business or farm, or building a house. Taking loan with usury from bank is not lawful based on necessity. This is because none of these needs can be described as a life-threatening necessity that can turn that which is prohibited into lawfulness. Several fiqh councils have issued fatwa confirming that necessity is no justification to legalise usury (*ribā*).¹⁰⁰

Fear of poverty and lack of income is not a justification to control birth and as a result, the maxim cannot be used as a basis for legalizing it. Allah the Most High has said:

“Kill not your children because of poverty -- We provide sustenance for you and for them”¹⁰¹

In another verse too, Allah has said:

“And kill not your children for fear of poverty. We provide for them and for you. Surely, the killing of them is a great sin.”¹⁰²

⁹⁸ Khitab, H.S., *Qā'idat al-Darūrāt tubīh al-Mahzūrāt wa Tatbīqātuhā al-Mu'asirah fī al-Fiqh al-Islāmī in Majallat al-Usūl wa al-Nawāzil*, 2, 1430H, p. 209.

⁹⁹ *Resolutions of Fiqh Academy under the Auspices of the World Muslim League*, p. 253-254.

¹⁰⁰ Al-Duwaish, A.A., *Fatawa al-Lajnah al-Dā'imah lil-Buhūth al-Ilmiyyah wa al-Iftā'*, vol. 15, (Riyadh, General Directorate for Scientific Research and Fatwa, 1989), p. 416

¹⁰¹ Qur'an 6:151.

¹⁰² Qur'an 17:31.

Several fatwas have been issued by various fiqh councils that fear of poverty and the high number of children is not a necessity that legalizes control of birth in Islam as protection of progeny is among the basic necessities in Islam.¹⁰³

It is unlawful to work in night clubs where indecencies, consumption of alcohol, drugs, adultery, dancing, music are a norm and unemployment or the need to work does not also make it lawful. The claim that such a work is taken out of necessity and if the person did not take it he shall be engaged in theft or rubbery. Nevertheless, this situation is not covered by Necessity Renders prohibited things Lawful and therefore, working under conditions remains unlawful. Therefore, a Muslim should look for a lawful income through which he does not commit sin. The Prophet, peace be upon him has said, "Whatever I forbid you from, avoid it; and whatever I command you do it as much as you can."¹⁰⁴ The Hadith is absolute in prohibition that anything prohibited one should absolutely avoid it while that which is commanded, one should do it to the best of his ability. Likewise, by avoiding such employment, one has taken precaution regarding his religion and one has distant himself from anything that will caste suspicion to his dignity.

8. Research Findings and Recommendations

8.1 Research Findings

The following is the brief presentations of some findings of this paper:

1. Maxims are important in determining the legal positions of several contemporary issues.
2. Provisions of Islamic law are not intended to create hardship and difficulty to Muslims.
3. Necessity that threatens one's life or makes life difficult turn things that are otherwise prohibited into lawful. However, this is subject to the stipulated conditions that must be met in order to turn a prohibited thing into lawful.

8.2 Recommendations

Thus, based on the above findings, the researchers recommend the following:

1. Muslim scholars should dedicate efforts in their understanding of essential maxims of Islamic law as well as its application as they are easily applicable to contemporary issues.
2. In issuing fatwas regarding contemporary matters, Muslim scholars should look at the facts and circumstances in which the enquirer is living and answer it in accordance with such position. That way an unnecessary difficulty which the Shari'ah did not intend to impose shall be avoided.
3. Whenever applying a particular issue to the maxim, 'necessity renders prohibited things into lawful', a mufti in particular and a Muslim in general should make sure that all necessary conditions for its application are met.

¹⁰³ Isma'il, M.B., *al-Qawā'id al-Fiqhiyyah bain al-Asālah wa al-Taujīh*, (Cairo, Dar al-Manar, 1417H), p. 73.

¹⁰⁴ Bukhari, Hadith No. 7288; Muslim, Hadith No 6259.

7. Conclusion

The work has attempted to shed some light on one of the most important general maxims of Islamic law; which is *al-Ḍarūrāt tubīḥ al-Mahzūrāt* (Necessity renders prohibited things lawful), its legal basis, limitations as well as its scope of application. The maxim of necessity implies that the law will legalise something that was otherwise prohibited due to the difficulty that may be incurred if it remains prohibited. This proposition is based on several provisions of the Qur'an and Sunnah. The maxim is significant because it demonstrates the flexibility of the Islamic law and that obligations of the Shari'ah should be obeyed as much as one can. It also demonstrates the spirit of tolerance of the Shari'ah whose objective is to lift unbearable burdens upon the people. To apply the maxim of certainty to particulars, certain conditions need to be fulfilled. These are: the alternative act to avoid the necessity should not be more harmful than the necessity itself, the prohibited act should only be adopted to the extent the necessity can be avoided, there must be no alternative option that is lawful for one to resort to the prohibited in case of certainty, the prohibited shall only be lawful so long as the necessity remains, necessity should not be an excuse to invalidate another person's right and the necessity should be real and not imaginary or expected. The maxim has several applications from classical times to contemporary age. All the applications has demonstrated that the proposition of the maxim to the particulars in which necessity turned things that are otherwise prohibited into lawful is truth. Nevertheless, there are instances where the maxim's proposition is not true to the related particulars. These were treated as exceptions to the maxim. The reason for such exception is because certain conditions required by the maxim have not been satisfied and as a result, such necessity does not render prohibited things into lawful. For this reason, it is very important for a Muslim to take note of these conditions while attempting to apply the maxim to particulars which one may think comes under the scope of the maxim.